

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO
ON MONDAY
THE 18TH DAY OF MARCH, 2024.

BETWEEN: **SUIT NO. B/880/2022**

GRACE EDOBOR -----CLAIMANT

A N D

1. ONAIWU IDUEROBO } ----- DEFENDANTS

2. PERSONS UNKNOWN }

JUDGMENT

The Claimant instituted this suit vide a Writ of Summons and Statement of Claim dated 5th September, 2022 and filed on 13th September, 2023 seeking the following reliefs:

- 1. The sum of N100, 000,000.00 (One Hundred Million Naira) being general damages for trespass in that the Defendants without the consent and/ or authority of the Claimant broke into the Claimant's parcel of land lying and situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, being a part of the land**

measuring 100 feet by 200 feet, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 of the Lands Registry in the office at Benin City, and wantonly destroyed Claimant's economic crops thereon; and

2. *PERPETUAL INJUNCTION restraining the Defendants by themselves, their agents, assigns, privies from entering into the Claimant's parcel of land situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, measuring 100 feet by 200 feet and being the Claimant's entire parcel of land, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as 1 at page 1 in volume B.196 of the Lands Registry in the office at Benin City for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's rights and interest thereto.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on all the Defendants but despite several hearing notices served on them, they failed to attend the Court so the hearing commenced without them.

At the hearing, in proof of the Claimant's case, the Claimant's sole witness testified as CW1 and tendered the following Exhibits:

- 1) Exhibits A & A1 – Certificate of Occupancy and Survey Plan;
- 2) Exhibit B – Petition; and
- 3) Exhibit C - Caveat

The Defendants did not file any Statement of Defence neither did they defend this action.

From the evidence of Mr. Godwin Ogbaburhon (C.W. 1), the Claimant's case is that the Claimant is the absolute owner in possession of the parcel of land part of which is now in dispute situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State measuring 100 feet by 200 feet, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 of the Lands registry in the office at Benin City. At the trial a certified true copy of the Certificate of Occupancy was tendered and admitted in evidence as Exhibits "A" while the survey plan of the land was admitted as Exhibit "A1".

The C.W.1 alleged that before the grant of the Certificate of Occupancy in 1996 by the Edo State Government to the Claimant in respect of her entire land measuring 100 feet by 200 feet which part is now in dispute, the Claimant had been in peaceable possession, exercising acts of ownership and possession by planting arable crops on the land from year to year without interference from anyone including the Defendants.

He said that on the 14th of August 2022, the Claimant received a call from her friend that someone has deposited trips of sand in front of her land and molded some blocks in preparatory to erecting structures thereon. He said that the alleged trespassers who the Claimant later identified as the Defendants erected a fence on part of the land.

That upon discovering the illegal structure on her land; the Claimant inscribed a notice on the walls that **“THIS LAND IS NOT FOR SALE”** and also added phone numbers to the inscription.

That subsequently, one Onaiwu Iduerobo, the 1st Defendant in this suit arrived at the scene and introduced himself as the owner of the land. The 1st Defendant further alleged that he was in prison in 2006 and that before his release some people sold off his land. That at that stage, the Claimant’s niece informed the 1st Defendant that the Claimant purchased that land in 1977 and fenced same in 1997 long before the 1st Defendant went to prison.

The 1st Defendant allegedly requested the Claimant’s niece and the C.W. 1 to accompany him to a juju shrine to swear, but they told him that they are Christians and that they do not patronise juju shrines.

That the C.W. 1 reported the incident to the Claimant who instructed him to report the 1st Defendant to the fourth eldest man in the Ugbor community who has been helping the Claimant to look after the land now in dispute.

The matter was later reported to the Odionwere of the Ugbor community who advised the Claimant to commence building on the land immediately to prevent the 1st Defendant from encroaching on the land. However, the C.W. 1 alleged that the Claimant had no money to start erecting any building project as suggested by the Odionwere. That as a result, the C.W.1 wrote a petition to the Assistant Inspector General of Police, Zone 5 Headquarters, Benin City, intimating him of the acts of trespass of the 1st Defendant on the Claimant’s land.

That when the Claimant saw that the 1st Defendant was bent on selling off part of her land, she instructed her lawyer to place a Caveat on the land at the Edo State

Geographic Information Service (EDOGIS). A copy of the Caveat, dated 30th August, 2022 was admitted in evidence as Exhibit “C” at the hearing.

The C.W. 1 maintained that the Claimant has been in peaceable possession and enjoyment of the land in dispute ever since she purchased it without any disturbance from anybody before this time.

He alleged that the Claimant did not transfer her parcel of land measuring 100 feet by 200 feet or any part thereof to anybody at any time whatsoever including the Defendants in this action and urged the Court to grant the Claimant’s reliefs.

At the close of the Claimant’s case, fresh hearing notices were served on the Defendants to enable them come to Court to defend the suit but they failed to show up so they were foreclosed from putting up any defence and the matter was adjourned for final address.

The Claimant’s counsel filed a Final Written Address which he adopted as his final arguments in support of the Claimant’s case and the matter was adjourned for judgment.

In his final written address, the learned counsel for the Claimant, *W.O. Ovbiebo Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has proved her claim on the preponderance of evidence”.

Arguing the sole issue for determination, the learned counsel submitted that it is settled law that for a Claimant to succeed he must prove by cogent, credible and convincing evidence one of the five judicially recognized modes of title to land and he cited the following cases in support: *Aighobahi v. Aifuwa (2006) 6 NWLR (Pt. 976) 270*; and *Idundun v. Okumagba (1976) NMLR 200*.

Thereafter, he enumerated six modes of land acquisition as follows:

- a) By Deforestation of a virgin land;***
- b) By conquest during war;***
- c) By gift;***
- d) By customary grant;***
- e) By sale; and***
- f) By inheritance***

See *Ajiboye v. Ishola (2006) 13 NWLR (Pt. 998) 623; Aighobahi v. Aifuwa (2006) 6 NWLR (Pt. 976) 270 and 286.*

Learned counsel posited that the Claimant through her witness gave evidence in line with facts pleaded in paragraphs 4 – 24 of her Statement of Claim. He said that the Defendants’ failure to file any defence is an acceptance of the truth of the said facts contained in the Statement of claim.

Counsel rehashed the evidence adduced by the Claimant at the hearing and submitted that the Claimant led uncontroverted and credible evidence to prove her case. He pointed out that the Defendants did not call any evidence to either challenge, contradict or rebut the evidence of the Claimant. He submitted that where the Defendant does not call any evidence, minimal proof is required and he relied on the case of *Monkom v Odili (2010) 2NWLR (Pt. 1179) 419, 442, Para H.*

He therefore urged the Court to accept the Claimant’s evidence as uncontroverted and grant her reliefs.

Counsel submitted that taking the principle of Benin Customary Law along with the evidence led, and the documents tendered, the Claimant is entitled to the reliefs claimed.

Furthermore, he submitted that the Claimant is entitled to some reliefs for trespass because the Claimant has proved that she has been in exclusive possession of the entire land in dispute, which the Defendants broke into without her consent/authority. He maintained that the Claimant is entitled to be indemnified in damages for the Defendants’ acts of trespass.

He said that the Claimant is also entitled to the relief of perpetual injunction as same can be tied to a well-defined and easily ascertained parcel of land which is clearly demarcated in the Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy admitted as Exhibit “A”.

Counsel maintained that the Claimant has been in actual and physical possession of the land and in paragraphs 4 and 7 of her Statement of Claim, she pleaded that in exercise of her right of ownership, she surveyed the parcel of land in her own name as per Survey Plan No. ISO/ED/713/93 and has been exercising acts of ownership and possession over the said parcel of land part of which is now in dispute by planting arable crops on the land, which she has harvested and has been enjoying the proceeds thereof from year to year without interference from anyone including the Defendants. He submitted that the acts of the Claimant surveying the

land and farming thereon without any interruption or disturbance from anyone including the Defendants are acts of possession and ownership of the land.

Counsel submitted that the person in possession can maintain an action in trespass against anyone who cannot show a better title and he cited the case of *Amakor v Obiefuna (1984) 1 ANLR 119*.

Finally, he urged the Court to resolve the sole issue for determination in favour of the Claimant and grant the reliefs claimed in the Statement of Claim.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimant. As I have already observed, the Defendants did not put up any defence to this suit. Thus, the evidence of the Claimant against them remains unchallenged. The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: *Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663*.

Furthermore, where the Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants, the burden on the Claimant is lighter as the case will be decided upon a minimum of proof. See: *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24*.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341*.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: *Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650*.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

In a suit relating to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the reliefs which he seeks. The

Claimant must rely on the strength of his own case and not on the weakness of the Defendant's case. See: *Ojo vs. Azam (2001) 4 NWLR (Pt.702) 57 at 71; and Oyeneyin vs. Akinkugbe (2010) 4 NWLR (Pt.1184) 265 at 295.*

It is now settled law that the five ways of proving ownership of land are as follow:

- i. By traditional evidence;*
- ii. By the production of documents of title;*
- iii. By proving acts of ownership;*
- iv. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute; and*
- v. By acts of long possession and enjoyment of the land.*

See: *Idundun vs. Okumagba (1976) 9-10 S.C. 227.*

The point must be made that any one of the five means will be sufficient to prove title to the land as each is independent of the other. See: *Nwosu vs. Udeaja (1990) 1 NWLR (Pt.125) 188; and Anabaronye & Ors. vs. Nwakaihe (1997) 1 NWLR (Pt.482) 374 at 385.*

In the instant suit, it is significant to observe that the Claimant is not seeking any relief for a declaration of title to the land in dispute. The Claimant's reliefs are simply for damages for trespass and for a perpetual injunction to restrain the Defendant from further trespassing on her land. The absence of a specific relief for a declaration of title appears rather curious.

However, the absence of a specific relief for declaration of title is not fatal to a claim for trespass to land. It is settled law that trespass to land is rooted in actual possession of the land in question by the Claimant. Thus, a Claimant need not have a specific claim for a declaration of title to the land in his favour. However, if he can prove that he is in actual possession of the land at the time of the invasion on it by a trespasser, such an invasion by a trespasser is actionable at the instance of the Claimant who is in possession of the land. See the old cases of *Shell B. P. D. C. of Nigeria v. Abedi (1974) 1 SC 23; and Oluwi V. Eniola (1967) N. M. L. R. 339.*

Also in the latter case of *Aromire & Ors V. Awoyemi (1972) 1 ALL NLR 101*, the Supreme Court per *Coker, JSC* restated the position thus:

"Claim in trespass pre-supposes that the plaintiff is in possession of the land at the time of the trespass."

Thus where a Claimant successfully leads evidence to show that he was in actual possession of the land in question as at the time of the trespass, he would be entitled to succeed in an action for trespass and injunction. This was re-stated succinctly by the Supreme Court in the case of *Pius Amakor V. Bennedict Obiefuna (1974) 3 S. C. 67 at 126, per Fatayi -Williams, JSC* (as he then was), to wit:

"It is trite that trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except a person who could establish a better title."

Therefore, anyone other than the true owner who disturbs the person in possession of the land can be sued in trespass and in such an action it is no answer for a Defendant to assert that the title to the land is in another person. See also the following cases: *Adeniji v. Ogunbiyi (1965) N.M.L.R 395 at 397 – 398; Shell B. P. D. C. of Nigeria v. Abedi (1974) 1 SC 23; Oluwi V. Eniola (1967) N. M. L. R. 339; and Aniabor & Anor vs. Ezeabii (2014) LPELR-24151(CA) (Pp. 25-28 paras. E).*

However, in the instant case notwithstanding the fact that the Claimant did not seek a declaration of title to the land in dispute, she adduced evidence to prove her title to the land. From the tenor of her evidence, the Claimant led evidence to prove her title to the land by the production of documents of title, by acts of ownership and by acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered two documents of title to wit: her Certificate of Occupancy which was admitted as Exhibit "A" and her Survey Plan admitted as Exhibit "A1".

Obviously, the Claimant's strongest title document is her Certificate of Occupancy which was admitted as Exhibit "A" at the trial. It is settled law that a Certificate of Occupancy is prima facie proof of title to the land over which it was issued. Once a person is granted a Certificate of Occupancy over a parcel of land, he is entitled to hold same to the exclusion of any other person unless and until the said Certificate of Occupancy is set aside or it gives way to a better title. See the following cases: *Ilona v Idakwo (2003) LPELR-1496(SC); Madu v Madu (2008) 2-3 S.C. (PT 11) 109, (2006) LPELR-1806(SC).*

In this case, none of the Defendants has adduced any evidence to challenge the validity of the certificate of occupancy which was admitted as Exhibit "A". In the absence of any challenge to Exhibit "A", I hold that it will suffice to establish the Claimant's title to the land in dispute.

On acts of ownership and long possession of the land, the Claimant led unchallenged evidence to prove that since she acquired the land, she has been in undisturbed possession of the land by planting arable crops on the land, which she has been harvesting and has been enjoying the proceeds thereof from year to year without interference from anyone until the Defendants trespassed on the land. It is settled law that "*...if a person adduce evidence that he or his agents or servants were cultivating a farmland, that would be evidence sufficient to establish that he was in possession of the land.*" *Per MADARIKAN, J.S.C in Mogaji & Ors vs. Cadbury Fry (Export) Ltd (1972) LPELR-1892(SC) (Pp. 11-12 paras. E)*

Furthermore, the Claimant led evidence of how she surveyed the land and she tendered her survey plan as Exhibit "A1" at the trial. In certain circumstances surveying land and burying survey pillars on it is evidence of possession. See the cases of *Wuta-Ofei v. Mabel Danquah (1961) WLR 1238 (PC) at p. 1243*; and *Bassil & Anor vs. Fajebe & Anor (2001) LPELR-757(SC) (Pp. 29-30 Paras. C)*.

The evidence of acts of possession adduced by the Claimant was not challenged or controverted by the Defendants at the trial. From the uncontroverted evidence of the Claimant, I hold that the Claimant has been in exclusive possession of the land. This evidence of possession is one of the ways of proving title to land. See *Section 35 of the Evidence Act, 2011* and the case of *Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312*.

At the trial, the Claimant led evidence that on the 14th of August 2022, the Claimant received a call from her friend that someone had deposited trips of sand in front of her land and molded some blocks in preparation of erecting structures thereon. The Claimant later identified the alleged trespasser as the Defendants who had erected a fence on part of the Claimant's land.

It is evident that the actions of the Defendants amount to trespass on the Claimant's land, it is trite law that trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. Possession is the foundation of any claim for trespass. See the cases of *JIAZA VS. BAMGBOSE (1999) 7 NWLR (PT. 610) 182*; *FASIKUN II VS. OLURONKE II (1999) 2 NWLR (PT. 589) 1*; *OSHO VS. FOREIGN FIN. CORP. (1991) 4 NWLR (PT. 184) 157*; *ADELAJA VS. FANOIKI (1990) 2 NWLR (PT.*

131) 137; ANYABUNSI VS. UGWUNZE (1995) 6 NWLR (PT.401) 255; and OROK & ORS V. IKPEME & ORS (2017) LPELR-43493(CA) (PP. 10-12 PARAS. A-A).

In the instant case, the Claimant has established that she was in exclusive possession of the land in dispute before the Defendants encroached on the land. Thus, the disturbance of the Claimant's exclusive possession by the Defendants amounts to trespass.

In respect of the claim for general damages for trespass, the law as it relates to damages in trespass was stated in the case of **REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORPORATED VS. EMENIKE & ORS (2017) LPELR-42836 (CA)** where the Court held thus:

"The law is also clear that trespass is actionable per se and once proved, a plaintiff is entitled to damages even without the proof of actual injury resulting from the wrongful acts constituting the trespass. A party who proves trespass is entitled without more to general damages which is quantified by relying on what would be the opinion and judgment of reasonable person in the circumstances of the case."

See also the following cases: ***Ojibah v. Ojibah (1991) 5 NWLR (Pt. 191) 296;*** and ***Ajero & Anor vs. Ugorji & Ors (1999) LPELR-295(SC) (Pp. 21-22 paras. B).***

Furthermore, it is settled law that general damages are damages which the law implies or presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result or the necessary result of the wrong complained of. A trial Court has the discretionary power to award general damages and when exercising such discretionary powers, it has the duty to calculate what sum of money will be reasonably awarded in the circumstance of the case. See ***TAYLOR V. OGHENEOVO (2012) 13 NWLR (pt. 1316) pg. 46 @ 66 paras F-H, GARBA v. KUR (2013) 13 NWLR (pt. 831) and BELLO v. AG. OYO STATE (1986) 5 NWLR (Pt. 45) 828.***

Thus, in awarding general damages, the Court would simply be guided by the opinion and judgment of a reasonable man. General damages are losses which flow naturally from the act of the Defendant. See ***IJEBU-ODE LOCAL GOVT. V. ADEDEJI BALOGUN & CO. LTD. (1991) 1 NWLR (Pt. 165) 136.*** The guiding principles for the award of damages for trespass to land is to compensate the victim for the loss he has suffered. It is a discretionary power of the Court which ought not to be exercised arbitrarily. ***BAYELSA STATE GOVERNMENT & ANOR v. MR. ORIAKU EGEMZE & ORS (2019) LPELR-49088(CA).***

Furthermore, general damages may be awarded for trespass to land in recognition of the proprietary interest of the Claimant having regard to the circumstances of the case. See: *Umunna & Ors. v. Okwuraiwe & Ors (1978) LPELR-3378(SC)*; *Osuji & Anor v. Isiocha (1989) LPELR-2815(SC)*; *Adamu v. Esonanjour (2014) LPELR-41137(CA)*; *Haruna & Anor v. Isah & Anor (2015) LPELR-25894(CA)*.

Thus, it is the duty of the Court to assess General Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: *Olatunde Laja vs. Alhaji Isiba & Anor. (1979)7 CA*. However, the quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

In the instant case, going through the entire gamut of the Claimant's case, I observed that he did not give a proper breakdown of the losses he actually incurred as a result of the acts of the Defendants.

It is usual in cases such as this, where the Claimant has not proved the particular losses which she suffered, for the Court to award nominal damages. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357*; *Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370*.

In the event, I think the Claimant is only entitled to nominal damages.

On the relief of a perpetual injunction against the Defendants, it is settled law that once trespass has been proved, an order of injunction becomes necessary to restrain further trespass. See: *ADEGBITE VS. OGUNFAOLU (1990) 4 NWLR (PT. 146) 578*; *BABATOLA VS. ALADEJANA (2001) FWLR (PT. 61) 1670 and ANYANWU VS. UZOWUAKA (2009) ALL FWLR (PT. 499) PG. 411*.

In the event, I hold that the Claimant is entitled to a perpetual injunction to restrain the Defendants from any further acts of trespass on the Claimant's land.

On the whole, I hold that the Claimant is entitled to the reliefs which she seeks in this suit. The sole issue for determination is therefore resolved in favour of the Claimant and judgment is entered in favour of the Claimant as follows:

1. *The sum of N3, 000,000.00 (Three Million Naira) being general damages for trespass in that the Defendants without the consent and/or authority of the Claimant broke into the Claimant's parcel of land lying and situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, being a part of the land measuring 100 feet by 200 feet, more particularly marked and delineated in Survey*

Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 of the Lands Registry in the office at Benin City, and wantonly destroyed Claimant's economic crops thereon; and

2. *PERPETUAL INJUNCTION restraining the Defendants by themselves, their agents, assigns, privies from entering into the Claimant's parcel of land situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, measuring 100 feet by 200 feet and being the Claimant's entire parcel of land, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as 1 at page 1 in volume B.196 of the Lands Registry in the office at Benin City for any purpose whatsoever or doing anything at all thereat inconsistent or competing with the Claimant's rights and interest thereto.*

Costs is assessed at N200, 000.00 (Two Hundred Thousand Naira) in favour of the Claimant.

P.A.AKHIHIERO

JUDGE

18 /03/2024

COUNSEL:

W.O. Ovbiebo Esq. -----Claimant.

Unrepresented-----Defendants.