

**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 THURSDAY**  
**THE 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**BETWEEN:**

**SUIT NO. B/547/2022**

- |                                    |                         |
|------------------------------------|-------------------------|
| <b>1. ADA. S. EVBUOMWAN</b>        | ----- <b>CLAIMANTS</b>  |
| <b>2. HRH OGIESOBA AGHAGHOWEN</b>  |                         |
| <b>AND</b>                         |                         |
| <b>1. MR. ENOGHAYI AKA (YOSKY)</b> |                         |
| <b>2. PERSONS UNKNOWN</b>          | ----- <b>DEFENDANTS</b> |

**JUDGMENT**

The Claimant instituted this suit against the Defendants vide a Writ of Summons and Statement of Claim sometime in 2022, seeking the following reliefs:

- 1) DECLARATION: that the 1st Claimant is the rightful owner of all that piece/parcels of land measuring approximately 44 Hectares which form part of the land in dispute clearly covered and identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001, covering 44 Hectares of land lying being and situate at Ogua Village, Ikpoba-Okah Local Government Area, Benin City, Edo State of Nigeria and the one entitle to secure a Certificate of Occupancy (C of O) covering the passion of land allotted to him by Ugua Community;**

- 2) ***DECLARATION that the trespass and destruction of the 1st Claimant Economic palm trees worth over N15, 000,000.00 (Fifteen Million Naira) and other development on the land measuring 44 Hectares, clearly identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001 lying, being and situate at Ogua Village, Ikpoba-Okah Local Government Area, Benin City, Edo State of Nigeria by the Defendants herein without the authority or consent of the 1st Claimant amount to trespass for which they are liable;***
- 3) ***DECLARATION that the Defendants, their agents or tenants should immediately vacate and give up possession of the trespassed land described in relief A and B above to the 1st Claimants;***
- 4) ***DECLARATION: that the Defendants are liable to pay the 1st claimant the sum of 20,000,000.00 (Twenty million Naira) only as general damage for bulldozing the 1st Claimant palm trees and for trespassing on the Claimants land without his consent and for all legal actions taken by the Claimants to warn off the Defendants from their act of trespass on the land; and***
- 5) ***AN ORDER of perpetual injunction restraining the Defendants themselves, agents, privies, assigns or any person claiming through or for them by whatever name called, from further trespassing on the 1st Claimants land and for the Defendants to stop destroying the 1st claimant palm trees on the land and from further interfering or trespassing on the said land measuring approximately 44, Hectares of the land in dispute clearly identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001.***

In proof of their case the Claimants called two witnesses who testified on their behalf, they tendered some documents, the 2<sup>nd</sup> Claimant testified and the Claimants closed their case.

In this suit, the Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants by substituted means, but they did not put up any appearance in this suit nor were they represented by any counsel despite several hearing notices that were served on them.

From the evidence which they adduced at the hearing, the Claimant's case is that sometime in the year 1994, the 1<sup>st</sup> Claimant was interested in purchasing a land in Ogua community in Ikpoba-Okha, Local Government Area, Edo State, for the purpose of development.

In order to get a good land in the said community, the 1<sup>st</sup> Claimant approached the 2<sup>nd</sup> Claimant who is the Enogie and some Elders of Ogua Village to negotiate for the land.

Eventually, the 2<sup>nd</sup> Claimant and the Elders in charge of allocation of land in Ogua community took the 1<sup>st</sup> Claimant to a vast portion of Ogua Community land sharing a common boundary with Evbomoma community and they allotted parcels of land measuring 44 hectares to the 1<sup>st</sup> Claimant after payment of the agreed purchase price.

Thereafter, the 1<sup>st</sup> Claimant was issued with a community approval covering the 44 hectares allocated to him by the Enogie and Elders of the community. At the hearing, the Community Approval was tendered and admitted in evidence as Exhibit “B”.

Upon acquiring the 44 hectares of the land, the 1<sup>st</sup> Claimant commissioned a surveyor to survey the land and a survey plan No. KS/ ED/ 275/ 2001 dated 31<sup>st</sup> December 2001 was produced. The survey plan was admitted as Exhibit “A” at the hearing.

Thereafter, the 1<sup>st</sup> Claimant took possession of the land and cultivated a palm plantation on it has since been harvesting the palm fruit without any disturbance from anyone ever since.

At the hearing, the 2<sup>nd</sup> Claimant testified that the land which was allocated to the 1<sup>st</sup> Claimant was formally part of Ogua Community land.

He said that recently the 1<sup>st</sup> Defendant and other unknown persons trespassed on some parts of Ogua Community land, including parts of the community land earlier allocated to other people, such as the 1<sup>st</sup> Claimant, members of the Edo State Judiciary, Church of God Mission and several others.

When the 1<sup>st</sup> Defendant and the unknown persons started their acts of trespass, the Claimants carried out some investigation and found out that trespassers are from the neighbouring Evbuomoma community.

The 1<sup>st</sup> Claimant reported the issue to the police and in spite of the warning given to the 1<sup>st</sup> Defendant and his cohorts to stop bulldozing the Claimants’ lands, they continued in their acts of trespass and malicious damage of the Claimants’ land.

They alleged that the 1<sup>st</sup> Defendant was later charged to court and entered terms of settlement with the 1<sup>st</sup> Claimant. However, 1<sup>st</sup> Defendant allegedly breached the terms of settlement and continued their alleged acts of trespass on the Claimants’ lands.

Eventually, the Claimants instituted this suit to seek redress.

Upon the conclusion of the evidence in chief of the Claimants, the suit was adjourned for defence or final address. On the next adjourned date, the Claimants' counsel adopted his written address as his final argument.

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

***“Whether the Claimant has adduced enough evidence in this case in proof of his case to entitle him the reliefs sought.”***

Arguing the sole issue, the learned counsel submitted that the Claimants led through uncontroverted evidence to prove that 1<sup>st</sup> Claimant the is the rightful owner and has been in lawful possession of all that parcel of land measuring approximately 44 Hectares which form part of the land in dispute clearly covered and identified in a survey Plan No: KS/ED/275/2001 dated 31<sup>st</sup> December 2001.

He said that the 1<sup>st</sup> Claimant gave evidence of how he purchased the land in dispute from the 2<sup>nd</sup> Claimant, the Enogie of Ogua Community vide Exhibit “B”.

He submitted that Exhibit “B” which was duly and legally executed by the 1<sup>st</sup> Claimant and the Plot Allotment Committee of the Ogua community is sufficient evidence for the 1<sup>st</sup> Claimant to proof title to the land in dispute. He referred the Court to the case of *Oyebamiji v. Lawanson (2008), All FWLR, (Pt. 438), page 251*, where the supreme court held as follows:

***“in a land dispute, were there is a duly executed deed of conveyance it is sufficient evidence to support the award of title to the beneficiary thereof”***

He submitted that the Claimant subsequently produced EXHIBIT A (Survey Plan) as the lawful owner in possession of the land thereof, and tendered same in proof of title and to clearly identify and/or described the 1<sup>st</sup> Claimant's land in dispute as it relates to the land's certainty. He relied on the case of *Ogah v. & Anor v. Gidado*

**& Anor (2013) LPELR – 20298 (CA)** on the importance of a survey plan to identify the land.

He submitted that the Claimant has complied with all the requirements of the law as it relates to acquisition of land in line with all the five ways laid down by the Supreme Court in the celebrated case of; **Idundun v. Okumagba [1976] NWLR 200 @ 210** and **Ewo v. Ani (2004) 3NWLR (pt. 861) pg. 610 @ pg. 615 ratio 1.**

He submitted that with the documents which he tendered, the Claimants have established their title to the land in dispute. He relied on the case of **Lufthausa German Airlines v. Ballanyne (2013) 1 NWLR (pt. 1336) pg 527 at pg 532 R.5** where the court held thus:

***“A party that relies on the content of a document to establish his case has a duty to produce the original of the document before the court”***

Furthermore, he posited that the Claimants led evidence to show that the 1<sup>st</sup> Claimant has been in possession of the land in dispute and had constantly cultivated crop farming on same over the years before this suit. He said that this act of long exclusive possession and enjoyment of the land by the Claimant is sufficient proof of title and he cited the case of **Omorie v. Idugiemwanye (1985) 2NWLR pt. 5.**

Furthermore, he submitted that the acts of the Defendants’ unjustifiably interfering, entering the land and remaining on the Claimant’s land without any lawful authority, constitutes an act of trespass and he cited the case of **Eze V. Obiefuma [1995] 6 NWLR (PT. 404) 639 SC** and **Ajibulu V. Ajayi [2014] 2 NWLR (PT. 1392).**

He submitted that the 1<sup>st</sup> Claimant is entitled to damages for trespass and he relied on the following cases: **Olaloye v. Balogun [1990] 5 NWLR (Pt. 148) 24, [1990] 7 SCNJ 205** and **Ojibah v. Ojibah [1991] 5 NWLR (Pt. 191) 296, [1991] 6 SCNJ 156.**

Learned counsel submitted that it is trite law that unchallenged evidence ought to be accepted by the court as proof of the facts stated and he relied on the case of *ADIM vs N.B.C LTD (2010) 9NWLR (Pt1200)543@549*.

Finally, he urged the Court to grant all the Claimants' reliefs.

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 Claimants remain 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 Defendant, 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 the 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 Claimants are entitled to the reliefs claimed in this suit.***

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that he is entitled, on the evidence adduced by him, to the declaration 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 *Oyenyin 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 follows:

- 1) ***By traditional evidence;***
- 2) ***By the production of documents of title;***
- 3) ***By proving acts of ownership;***
- 4) ***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***
- 5) ***By acts of long possession and enjoyment of the land.***

See the case of *Idundun vs. Okumagba (1976) 9-10 S.C. 227*.

The point must be made that any one of these 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, from the tenor of his evidence the 1<sup>st</sup> Claimant appears to be relying on the second and third means of proof, namely: proof by production of documents of title, and proof by acts of ownership.

On the proof by documents of title, the Claimant tendered two relevant documents which were admitted in evidence, namely, a document titled "Application for Acquisition of Plot" dated 24/3/1994 admitted as Exhibit "B" and a Survey Plan with Plan No. KS/ED/215/2001, made on 31/12/2001, admitted as Exhibit "A".

It is clear that Exhibit B is not a registered legal instrument so it cannot convey legal title to the land.

Oghobaye Community. The Claimant's lawful attorney testified that after the Claimant had acquired the land, the Claimant took steps to survey the property. The survey plan was tendered in evidence as Exhibit "C". This survey plan tendered in evidence as proof of ownership was not challenged by the Defendant.

The Claimant's main document of title is the Approval for Building Plot which was admitted as Exhibit "B". However, it is evident that Exhibit "B" is not a registered legal instrument so it cannot convey legal title to the land.

However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc. (2011) 11NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR (Pt.671) 199 at 211; and Goldmark (Nig.) Ltd. vs. Ibafor Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.*

In the recent case of: *Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor. (2018) 1 NWLR (Pt.1599) 32 at 55, Sanusi JSC*, delivering the lead judgment of the Supreme Court restated the position thus:

***"A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price."***

Flowing from the foregoing, I am of the view that although Exhibit "B", *per se* cannot establish legal title to the land in dispute, it will suffice to vest an equitable interest on the 1<sup>st</sup> Claimant, which can only be defeated by a purchaser for value without notice of the prior equity. In the absence of any challenge to Exhibit "B", I hold that it will suffice to establish the 1<sup>st</sup> Claimant's title to the land in dispute.

On acts of ownership and possession, the 1<sup>st</sup> Claimant led unchallenged evidence to prove that immediately after he acquired the land, he surveyed the land vide the Survey Plan which was admitted in evidence as Exhibit "A". Furthermore, evidence was led to show that the 1<sup>st</sup> Claimant was in possession of the land cultivating it with a palm plantation before the Defendants started their acts of trespass on the land.

The uncontroverted evidence of the 1<sup>st</sup> Claimant's peaceful and undisturbed possession of the land amounts to acts of possession which is one of the ways of proving title to

land. This is further proof of the 1<sup>st</sup> Claimant's title. See: ***Section 35 of the Evidence Act, 2011.***

It is an established principle of law that exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except the person who can establish a better title. See the case of ***EKRETSU & ANOR V. OYOBEHERE & ORS (1992) LPELR-1099(SC) (PP. 27-28 PARAS. F).***

Furthermore, it is settled law that possession of land can be by sundry means. In the case of ***Thompson v. Arowolo (2003) FWLR (Pt.164) 315 at 371, Onu JSC*** expounded thus: "***Survey beacons constitute an act of possession which can be relied on to prove title to land.***" See also the case of ***ANOSIKE V. UGOCHUKWU & ORS (2018) LPELR-46096(CA) (PP. 14-16 PARAS. E).***

Again, in the case of ***ONYEULO & ANOR V. IBE & ANOR (2017) LPELR-42622(CA) (PP. 34 PARAS. C)*** the Court of Appeal stated thus: "***... Even the act of surveying the land with beacon stones alone and registering the same, together with Power of Attorney (Exhibit B) with the lands Registry, Umuahia, as No 95-page 95 Volume 610, was sufficient act of possession***"

See also the cases of ***Ajero Vs Ugorji (1999) 7 SC (pt.2) 58; OFEI Vs Danqua (1961);*** and ***OMAC OILS NIG. LTD & Ors Vs EGBADEYI & Anor (2014) LPELR - 24112 CA.***

From the foregoing, I hold that the 1<sup>st</sup> Claimant is entitled to the relief for a declaration that he is the rightful owner of the land in dispute and is entitled to apply and be granted Statutory Right of Occupancy in respect of the land.

On the relief for a declaration that the Defendants acts amount to trespass, in view of the failure of the Defendants to deny or controvert the evidence of the Claimants on the trespass, I hold that the 1<sup>st</sup> Claimant has established the fact that the Defendants trespassed into his land.

On the claim for the sum of N200,000,000.00 (Two Hundred Million Naira) only as damages against the Defendants for trespass, it is settled law that general damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated

on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: *Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.*

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: *Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.*

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.*

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant.

However, in the instant case, the Claimants did not elaborate on the extent of losses occasioned by the Defendants' acts of trespass. Going through the entire gamut of the Claimants' evidence, there is no evidence of the quantum of damage suffered from the alleged acts of trespass by the Defendants.

Generally, the trial court has discretion as to the quantum of damages it would award in a claim for damages for trespass. The assessment does not depend on any legal rules- but the discretion of court is, however, limited by usual caution or prudence and remoteness of damage when considering its award of damages. See: *U.B.N. v. Odusote Bookstores Ltd. (1995) 9 NWLR (Pt.421) pg. 558; Solanke v. Ajibola (1969) 1 NMLR pg. 45; ACB Ltd v. Apugo (2001) 5 NWLR (pt.707) pg. 653; and YENEYIN & ANOR V. AKINKUGBE & ANOR (2010) LPELR-2875(SC).*

However, where the 1<sup>st</sup> Claimants did not lead sufficient evidence on the extent of injury or losses suffered, he is only entitled to nominal damages which is at the discretion of the Court using the test of a reasonable man. 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.* Consequently, the 1<sup>st</sup> Claimant is 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 1<sup>st</sup> Claimant is entitled to a perpetual injunction to restrain the Defendants, their Agents, privies or servants from any further acts of trespass on the 1<sup>st</sup> Claimant's land.

On the whole, the sole issue for determination is resolved in favour of the Claimants.

The claims succeed and judgment is entered in favour of the Claimants as follows:

- 1) ***DECLARATION: that the 1<sup>st</sup> Claimant is the rightful owner of all that piece/parcels of land measuring approximately 44 Hectares which form part of the land in dispute clearly covered and identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001, covering 44 Hectares of land lying being and situate at Ogua Village, Ikpoba-Okah Local Government Area, Benin City, Edo State of Nigeria and the one entitled to secure a Certificate of Occupancy (C of O) covering the passion of land allotted to him by Ogua Community;***
- 2) ***DECLARATION that the trespass and destruction of the 1<sup>st</sup> Claimant's economic palm trees worth over N15, 000,000.00 (Fifteen Million Naira) and other development on the land measuring 44 Hectares, clearly identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001 lying, being and situate at Ogua Village, Ikpoba-Okah Local Government Area, Benin City, Edo State of Nigeria by the Defendants herein without the authority or consent of the 1st Claimant amount to trespass for which they are liable;***
- 3) ***DECLARATION that the Defendants, their agents or tenants should immediately vacate and give up possession of the trespassed land described in relief A and B above to the 1<sup>st</sup> Claimants;***
- 4) ***DECLARATION that the Defendants are liable to pay the 1st claimant the sum of N5,000,000.00 (Five Million Naira) only as general damages for bulldozing the 1<sup>st</sup> Claimant's palm trees and for trespassing on the 1<sup>st</sup> Claimant's land without his consent and for all legal actions taken by the Claimants to warn off the Defendants from their act of trespass on the land; and***

5) *AN ORDER of perpetual injunction restraining the Defendants themselves, their agents, privies, assigns or any person claiming through or for them by whatever name called, from further trespassing on the 1<sup>st</sup> Claimant's land and for the Defendants to stop destroying the 1<sup>st</sup> Claimant's palm trees on the land and from further interfering or trespassing on the said land measuring approximately 44, Hectares of the land in dispute clearly identified in a survey Plan No: KS/ED/275/2001 dated 31st December 2001.*

*The Defendants shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs to the Claimants.*

**P.A. AKHIHIERO**  
**JUDGE**  
**11/12/2025**

**COUNSEL:**

*Jatto Topa Esq-----Claimants*

*Unrepresented----- Defendants*