

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. AKHIHIERO
ON TUESDAY
THE 27TH DAY OF JUNE, 2023.

BETWEEN: **SUIT NO. B/326/2022**
ANDREW OBOH -----**CLAIMANT**
AND
1. CHRISTOPHER PRINCE IGBINOSUN }
2. EDO STATE GEOGRAPHICAL } -----**DEFENDANTS**
INFORMATION SERVICE }

JUDGMENT

The Claimant instituted this suit against the Defendants vide a writ of summons dated the 8th of April, 2022. However, the Claimant's extant Claim is his Amended Statement of Claim dated and filed on the 11th of August 2022.

The Claimant's reliefs are contained in paragraphs 23 (a) – (e) of the Amended Statement of Claim.

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants. The 1st Defendant did not put up any appearance in this suit neither was he represented by any counsel. The 2nd Defendant also failed to attend the Court, but was represented by a counsel although they did not file any Statement of Defence. In essence, the suit was undefended.

At the hearing, the Claimant testified and tendered some documentary evidence. The Claimant's case is that he acquired a parcel of land measuring 100feet by 100feet vide an application for building plot dated 12th February, 2011 from Okhuoromi Community, took immediate possession of same and commenced development of two flats building thereon up to window level. He tendered his approved Application for Allocation of a Building Plot which was admitted as Exhibit "A" at the hearing. A Deed of Transfer between the representatives of the Okhuoromi Community and the Claimant was admitted as Exhibit "B". He also carried out a property survey of the land and his Survey Plan was admitted as Exhibit "C".

He alleged that subsequently, he approached the elders of Okhuoromi Community for the allocation of an additional plot and the adjoining land was allocated to him.

According to him, sometime in March, 2021 the 1st Defendant encroached on part of his land and started to erect a wall fence on the land and he reported to the elders of Okhuoromi Community who promptly resolved the matter. Their resolution was that the Claimant should remain in his former parcel of land where he had erected some buildings, while the adjoining land was given to the 1st Defendant. Furthermore, both the Claimant and the 1st Defendant were given their balance parcels of land measuring 100feet by 100feet elsewhere within Okhuoromi community. The aforesaid resolution which was reduced into writing was admitted as Exhibit "D" at the hearing.

The Claimant alleged that surprisingly, the 1st Defendant subsequently applied to Edo Geographical Information Service for the grant of a Certificate of Occupancy over the Claimant's parcel of land measuring 100feet by 100feet at Okhuoromi Community. That upon becoming aware of the aforesaid application, the Claimant promptly filed an objection at the 2nd Defendant's office. The Letter of Objection was admitted as Exhibit "E".

The Claimant alleged that despite his objection, the 2nd Defendant proceeded to grant a Certificate of Occupancy in favour of the 1st Defendant over the Claimant's parcel of land measuring 100feet by 100feet. That upon this development, the Claimant wrote a letter of protest to the 2nd Defendant, requesting them to correct the anomaly. His letter of protest was admitted as Exhibit "F". However the 2nd Defendant responded by their letter which was admitted as Exhibit "H" and advised the Claimant to seek redress in Court hence he instituted this suit.

Upon the conclusion of the Claimant's evidence, the matter was adjourned for cross examination and the Court ordered that fresh hearing notice should be issued

and served on the 1st Defendant. The Hearing notice was served on him but he failed to appear in the Court so the Court foreclosed him and the Claimant closed his case.

The learned counsel for the 2nd Defendant informed the Court that they are not contesting the suit so the matter was adjourned for final address.

In his final address, the learned counsel for the Claimant, *G.A. Izevbigie Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has proved his case on the preponderance of evidence to justify the grant of the reliefs sought from this Honourable Court.”

Arguing the sole issue for determination, the learned counsel submitted that the Claimant has proved his case on the preponderance of evidence and on the balance of probability as required by law to justify the grant of the reliefs sought from this Honourable Court and he relied on *section 134 of the Evidence Act 2011*.

He posited that it is trite law that a Claimant who seeks a declaration of title to the land must prove his case by credible evidence and must succeed on the strength of his case and not on the weakness of the defence. He listed the five ways of proving title to land as laid down in the following cases:

- (i) Kyari vs. Alkali (2001) 11 NWLR (pt. 724) 412 at 439 paras D – G, 443 paras F;*
- (ii) Dada & ors vs Obalanlege & ors (2019) 10 W.R.N. 12 R1 at 146;*
- (iii) Tsonfada & ors vs Zubairu (2019) 47 W.R.N. 92 at 112; and*
- (iv) Idundun vs. Okunmagba (1976) 9-10 SC 27.*

Counsel posited that in the instant case, the Claimant gave copious evidence of how he acquired the land in dispute and tendered the relevant documents of title. He rehashed the evidence adduced at the trial and submitted that the Claimant has established his root of title by the production of documents of title and acts of possession and he relied on the case of *AMINU VS OGUNYEBI (2004) 10 NWLR PT. 882, 457 at 462*.

Furthermore, counsel submitted that the Claimant’s evidence was not controverted in any way either by pleadings or by way of cross examination. That the law is trite that where a piece of evidence is not controverted, same should be accepted by the trial Court and he referred the Court to the following cases:

- *Aderonpe vs Eleran & ors (2019) 25 W.R.N. 58 at 78 – 79 lines 47 – 5*
- *Lanre vs the State (2019) W.R.N. 46 at 69 – 70 lines 43 – 10*

- *Ishaya vs the State (2019) 19 W.R.N. 131 at 151 lines 5 – 30*
- *Nasir vs Civil Service Commission, Kano State (2010) 2 MJSC 1 R9 at page 13 paras E – R.*
- *New Breed & Ors vs. Eromosele (2005) 5 NWLR PT. 274, PG 499.*

Again, he submitted that where evidence adduced in a case is one sided, the onus of proof is discharged on a minimal proof and he relied on the following cases:

1. *Visafone vs Onamusi (2016) LPELR – 41444 (CA)*
2. *Shayi vs Baba (2017) LPELR – 43147 (CA)*
3. *Olaleye vs Wema Bank Ltd. & Ors (2010) LPELR – 4744 (CA)*

He posited that Exhibit “A” the application for allocation of building plot of the Claimant was made and same was granted in 2011 whereas the 1st Defendant’s community approval attached to Exhibit “I” was made and granted in 2015. Again, he maintained that the community resolution dated 24/4/2021 which is Exhibit “D” equally re-emphasized the fact that the Claimant was the first person to be allotted the disputed land before same was inadvertently allotted to the 1st Defendant.

He submitted that a grant or allotment which is first in time takes priority over a latter grant and he relied on the case of *ENOLO VS EKHATOR (1962) 2 NWLR (PT 430) 338 at 345.*

He submitted that a Certificate of Occupancy is only prima facie evidence of title or possession and it is not a conclusive proof of title to the land to which it relates and he referred to the following cases:

- *Otukpo vs. John (2012) 38 WRN 1, (2012) 7 NWLR (pt. 1299) 357 at 377.*
- *Oriamzi vs. Ag – Rivers State (2017) 14 WRN 1*
- *Aderonpe vs. Ekran (2019) 25 W.R.N. 58 at page 78 lines 15 – 25*

He submitted that whereas in the instant case the Certificate of Occupancy was wrongly granted, same ought to be set aside *ex debito justitiae* and he urged the Court to set aside Exhibit ‘I’ having been granted in favour of the 1st Defendant erroneously.

In conclusion, he urged the Court to grant all the reliefs in the Claimant’s Amended 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 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 Kopék 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 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 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, from the tenor of his evidence the Claimant appears to be relying on the second, third and fifth means of proof, to wit: proof by the production of documents of title, by acts of ownership and acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered the following documents of title:

- (i) Exhibit "A"- Approved Application for Allocation of Building Plot;
- (ii) Exhibit "B"- Deed of Transfer;
- (iii) Exhibit "C"- Survey Plan; and
- (iv) Exhibit "D" – Resolution by the Okhuromi Community.

In this suit, the Claimant's main documents of title appear to be Exhibit "A", the Approved Application for Allocation of Building Plot and the Deed of Transfer which was admitted as Exhibit "B".

On Exhibit "A", as the learned counsel for the Claimant rightly posited, the said application for allocation of building plot by the Claimant was made and same was granted in 2011 whereas the 1st Defendant's alleged community approval attached to his Certificate of Occupancy (Exhibit "I"), was made and granted in 2015.

Again, as he rightly pointed out, the community resolution which is Exhibit "D" clearly stated that the Claimant was the first person to be allotted the disputed land before same was inadvertently allotted to the 1st Defendant.

It is settled law that a grant or allotment which is first in time takes priority over a latter grant. In the case of *AWOYOGBE VS OGBEIDE (1988) 1 NWLR (PT.*

73) 695 at 697 – 701 commenting on the doctrine of priorities under Bini Customary Nnamani JSC stated *inter-alia* thus: "***Where two allocations have been made by the same Ward Allocation Committee, the first one takes priority...***"

Thus, where there are two competing equitable interests, the general rule of equity is that the person whose equity attached to the property first will be entitled to priority over the other. In other words, where the equities are equal and none of the parties has a legal estate, the first in time prevails. See ***UGBO VS ABURIME (supra); LABODE VS OTUBU (2001) 7 NWLR (PT. 712) 256; OKOYE VS DUMEZ (NIG) LTD (1985) 1 NWLR (PT. 4)783.AKHIGBE V. ENAGBONMUNA (2019) LPELR-46466(CA) (PP. 13-16.***

Furthermore on the 1st Defendant's alleged Certificate of Occupancy which was admitted as Exhibit "I", it is settled law that a Certificate of Occupancy is only prima facie evidence of title or possession and it is not a conclusive proof of title to the land to which it relates. It therefore means that where a Certificate of Occupancy is successfully challenged, it can be nullified. In other words, a Certificate of Occupancy is not absolute evidence of title because, where there is evidence that it was wrongly issued or obtained, the Court on application of the adversary, can nullify it. See the following decisions on the point: ***Ezeanah v. Atta (2004) 7 NWLR (pt.873) 468; Osazuwa v. Ojo (1999) 13 NWLR (pt.634) 286 and Auta v. Ibe (2003) 13 NWLR (pt.837) 247; Madu v. Madu (2008) 6 NWLR (pt.1083) 296; and Umar v. Bailey & Ors (2018) LPELR-44285(CA) (Pp. 45-46 paras. E).***

Coming to Exhibit "B", the Deed of Transfer, it is evident that it 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.g***

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 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 also suffice to establish the Claimant’s title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that immediately after the purchase of the land; he took possession of the land and erected two flats building thereon up to window level. He also carried out a property survey of the land and his Survey Plan was admitted as Exhibit “C”.

From the uncontroverted evidence of the Claimant, this evidence of carrying out some developments on the land amount to acts of possession which is one of the ways of proving title to land. This is further proof of the Claimant’s title. See: *Section 35 of the Evidence Act, 2011* and the case of: *Alikor vs. Ogwo (2010) 5 NWLR (Pt.1187) 281 at 312.*

From the foregoing, the Claimant is entitled to a declaration of title in this suit.

On the relief of a perpetual injunction against the 1st Defendant, 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 1st Defendant, his Agents, privies or servants from any further acts of trespass on the Claimant’s land.

Sequel to the foregoing, the sole issue for determination is resolved in favour of the Claimant. The Claims succeed and judgment is entered in favour of the Claimant as follows:

- (a) A DECLARATION that the Claimant is the owner and the person entitled to apply for and be granted a statutory right of occupancy over that piece or parcel of land particularly described in the Survey Plan No. TDN/ED/219/2021 dated 11th February,2021;**
- (b) A DECLARATION that the action of the 2nd Defendant in granting the Certificate of Occupancy No. EDL61823 in the name of the 1st Defendant over the disputed land despite Claimant’s protestation violates Claimant’s proprietary rights and same is null and void and of no effect;**

- (c) *AN ORDER of court setting aside or revoking the purported Certificate of Occupancy No. EDL 61823 in the name of the 1st Defendant as same is null and void ab initio;*
- (d) *AN ORDER of court directing the 2nd defendant to issue a Certificate of Occupancy to the claimant in respect of the piece or parcel of land particularly described in the Survey Plan No. TDN/ED/219/2021 dated 11th February, 2021; and*
- (e) *AN ORDER of perpetual injunction restraining the 1st Defendant, his agents, servants, privies and or assigns from committing any further acts of trespass on the said land or from continuing to do anything inconsistent with the Claimant's rights and interest thereon.*

The sum of N200, 000.00 (Two Hundred Thousand Naira) costs is awarded in favour of the Claimant against the 1st Defendant.

P.A.AKHIHIERO

JUDGE

27 /06/2023

COUNSEL:

G.A. Izevbigie Esq. -----Claimant.

Unrepresented-----1st Defendant.

E.E. Akhimie Esq. -----2nd Defendant.

