

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 26TH DAY OF FEBRUARY, 2026.

BETWEEN: **SUIT NO. B/1272/2022**
MR. OSAMEDE OSAZUWA OSAYANDE-----CLAIMANT
AND
MRS. ROSEMARY OSHODI-----DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 22nd of December 2022 wherein he claimed as follows:

- 1. A Declaration that the Claimant is the one with and/or has a statutory right of occupancy which is registered as No. 11 at Page 11 and in volume B193 and subsequently registered as No. 5, at Page 5 and in Volume 1038, a plot of land referred to as Plot 122 Block “C” which is measuring 100feet by 135feet [approximately 1212.893 meters] in Evboriaria Layout, Benin City, Edo State.*
- 2. A Declaration that the act(s) of the Defendant in erecting a building on a portion of land measuring 45 feet by 100 feet which forms part of the Claimant’s entire parcel measuring 100feet by 135feet*

referred to as Plot 122 Block “C” which is situate in Evboriaria Layout, Benin City, Edo State without the Claimant’s authority amounts to trespass.

- 3. An order of perpetual injunction restraining the Defendant, her Privies, Servant(s), Agent(s) in whatever name they are called from further trespassing into the Claimant’s piece of land which is measuring 45 feet by 100 feet which forms part of the Claimant’s entire parcel measuring 100feet by 135feet, referred to as Plot 122 Block “C” and situate in Evboriaria Layout, Benin City, Edo State.*
- 4. An Order awarding General damages in the sum of Ten Million Naira [N10, 000, 000.00] against the Defendant for altering the topography of the Claimant’s land by erecting a building on the land which is measuring 45 feet by 100 feet which forms part of the Claimant’s entire parcel measuring 100feet by 135feet, referred to as Plot 122 Block “C” and situate in Evboriaria Layout, Benin City, Edo State without the consent and authority of the Claimant.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant by substituted means, but she did not put up any appearance in this suit neither was she represented by any counsel despite several hearing notices that were served on her. In essence, the suit was undefended.

At the hearing, the Claimant’s first witness, C.W. 1, Mr. Osayande Napoleon Ibude testified that the Claimant is his son and the owner of the parcel of land measuring One Hundred Feet by One Hundred and Thirty-Five Feet [100feet X 135feet] and situate at Plot 122, Block “C” in Evboriaria Layout, Benin City, Edo State. He said that the Defendant is resident at No. 46, Sokponba Road, Benin City, Edo State which is also within the jurisdiction of this honourable Court.

C.W. 1 testified that he assisted the Claimant in acquiring the parcel of land by virtue of a Deed of Assignment between one Mr. Wilfred O. Igbinoba [as the Assignor] and the Claimant [as the Assignee]. C.W.1 affirmed that he signed as a witness to the Claimant. The said Deed of Assignment made on the 23rd of August 2013 was admitted in evidence as Exhibit “A”.

C.W.1 stated that the said Mr. Wilfred O. Igbinoba became seised of the parcel of the land described above by virtue of a Certificate of Occupancy EDSR 13296 registered

as No. 11 at Page 11 and in Volume B193 of the Edo State Deeds Registry. The Certificate of Occupancy is annexed to Exhibit “A”.

The C.W. 1 alleged that as soon as the Claimant acquired the land, he immediately took possession of it, deposited some sand and granite on it and molded blocks on the land. He said that he always watched over the land and hired laborers to clear the bushes.

C.W.1 stated that prior to the Defendant’s unlawful entry into the Claimant’s land, no one had ever challenged their presence on the land, and that none of the labourers which he hired to maintain the land were ever harassed by the Defendant at any time.

C.W.1 alleged that the Claimant enjoyed many years of peaceful possession of the land before the Defendant suddenly entered a portion of the land measuring Forty-Five Feet by One Hundred Feet [45 feet by 100 feet] and commenced the erection of a building on the said portion of the Claimant’s land. He said that all attempts made by the Claimant to stop the Defendant from her act(s) of trespass into the Claimant’s land proved abortive as the Defendant paid deaf ears to the Claimant’s complaints and warnings to Defendant through him.

The witness testified that the Claimant’s Counsel, on the instruction of the Claimant, wrote a letter to the Defendant and served same on her. The letter dated 9th of February 2018 was admitted as Exhibit “B”.

C.W.1 claimed that he is aware that Evboriaria is divided into layouts by the State Government and all lands therein are covered by a Certificate of Occupancy except areas de-acquired to Evboriaria Community. He said that the Claimant’s land measuring One Hundred Feet by One Hundred and Thirty-Five Feet [100feet X 135feet], and the subject matter of this suit, is situate in Block ‘C’ in the Evboriaria Layout.

He said that he knows that the Edo State Government would never assign a land in the layout, which is in dimension, smaller than a plot of land measuring approximately 1212.893 meters as that is the standard of the Edo State Government.

The Claimant called another witness who gave evidence similar to that of the C.W.1.

Upon the conclusion of the C.W.2’s evidence in chief, the suit was adjourned for cross examination while fresh hearing notice was issued and served on the Defendant.

However, the Defendant failed to appear in court to cross-examine the Claimant's witnesses, so the Defendant was foreclosed from cross-examination.

Thereafter, the Claimant closed his case, and the suit was adjourned for defence or final address. On the next adjourned date, the Claimant's counsel adopted her written address as her final argument.

In her final written address, the learned counsel for the Claimant, **Mrs. F.A. Okoror** formulated three issues for determination as follows:

- 1. Whether the Claimant has discharged the burden of proof upon the preponderance of evidence and as required by law to entitle him to the reliefs sought.***
- 2. Whether the Claimant can succeed in his own case in evidence.***
- 3. If the answer to no. 1 and no. 2 above are in the affirmative, whether the Claimant in the circumstance is entitled to judgment.***

Arguing the first issue for determination, the learned counsel submitted that litigation is fought on pleadings of the parties, as it forms the foundation from which it is developed and tackled to the stage of judgment. She said that it is the pleadings that form the basis of a case and the evidence that is adduced in support and she cited the case of **NWOKOROBIA V. NWOGU (2009) 10 NWLR (PT. 1150) 553**.

Learned counsel argued that the case of the Claimant is straight and in line with the pleadings and evidence adduced. She submitted that by the evidence led, both oral and documentary, the Claimant has been able to establish his case before the court.

Learned counsel stated that the law is trite that in a civil matter such as this, the standard of proof is based on preponderance of evidence or balance of probability. She cited the cases of **ORJI V. DORJI TEXTILES MILES NIGERIA LTD. (2009) LPELR-2766** and **EMEKA V. CHUBA IKPEAZU & ORS. (2017) LPELR-41920(SC)**.

Learned counsel argued that the burden of proof is on the party who alleges the affirmative. She also cited the case of **NWAVU & ORS. OKOYE & ORS (2008) LPELR-2116 (SC)**.

Learned counsel submitted that a cardinal principle of law is that a plaintiff who asserts must prove his case with credible and unchallenged evidence and it is after a plaintiff has proved his case in this manner that the burden of proof shifts.

Learned counsel argued that considering the evidence of “CW1” and every other witness(s) before this honourable court, the Claimant gave evidence that he became seised of the parcel of land measuring 100feet by 135 feet, that is approximately 1212.893 meters situate at Plot 122, Block "C". Evbuoriararia Layout, Benin City, Edo State by virtue of a Deed of Assignment between one Wilfred O. Igbinoba (as the Assignor) and the Claimant, (the Assignee) through a Deed of Assignment part of which 45 feet by 100 feet is in dispute and encroached upon by the Defendant.

She posited that the Claimant also explained how his predecessor in title, Mr. Wilfred O. Igbinoba became seised of the parcel of land vide a Certificate of Occupancy. She said that these instruments were tendered and admitted by the Court.

Learned counsel submitted that in an action for declaration of title, the first hurdle to be crossed by the Claimant is to establish the identity of the land in dispute with certainty. She cited the cases of *UDOFIA V. AFFIA*, 6 W.A.C.A 216, *OLUFOSOYE V. OLORUNFEMI* (1989) LPELR-2615 (SC) and *DANWE V. TUKUR* (2019) LPELR - 46996 (CA).

Learned counsel cited the case of *ATANDA V. ILIASU* (2013) 6 NWLR (PT. 1351) 529 Ratio 8, where it was held that proof of identity of land in dispute can be either:

1. By oral evidence describing with such degree of accuracy the parcel of land in dispute, and/or
2. By filing a survey plan reflecting all the features of the land and showing clearly the boundaries.

Learned counsel rehashed the evidence and submitted that these pieces of evidence, were not denied nor contested by the Defendant who chose not to come to court to defend the suit.

Learned counsel posited that the second hurdle on the path of the Claimant in an action for declaration of title to land is to establish his root of title by any of the ways postulated in the quintessential and celebrated case of *IDUNDUN V. OKUNMAGBE* (1976) 9-10, SC 227. She also cited the case of *AJIBULU V. AJAYI* (2014) 2 NWLR (PT. 1392) 483 AT 500.

Learned counsel maintained that the five ways of proving title to land above are quite separate and distinct in their application and that each of the five ways can be relied upon exclusively by a party to support his claim. She cited the cases of ***MORENIKEJI V. ADEGBOSUN (2003) 8 NWLR (PT. 823) 612 AT 661-662; BALOGUN V. AKANJI (1988) 1 NWLR (PT.700) 301.***

Learned counsel contended that in this suit, the Claimant is claiming title to the land in dispute by documents of title (Deed of Assignment) through direct sale from his Predecessor-in-title, and a Statutory Right of Occupancy.

Learned counsel submitted that the Claimant tendered the Deed of Assignment between him and his predecessor-in-title (Mr. Wilfred O. Igbinoba).

She argued that the Claimant also led evidence that he took possession of same by his father (Mr. Osayande Napoleon Ibude) and deposited some sand and granite on the land and moulded blocks on the land.

She submitted that the Claimant equally led evidence that he had enjoyed many years of peaceful possession and ownership of the land in dispute after he acquired the land and employed workers to carry out development on the land in dispute without any adverse claim, interference or hindrance from any third party or harassment whatsoever.

Arguing Issue 2, learned counsel submitted that all through the pendency of this suit, the Defendant vehemently refused to come to court despite the repeated hearing notices issued and served on her.

On the effect of an unchallenged piece of evidence, learned counsel submitted that where a Defendant did not discredit the evidence of the Claimant, the Court is bound to act on it. She cited the cases of ***R.O. IYERE V. BENDEL FEED AND FLOUR MILL LIMITED (2008) 37 NSCQR @ PP. 290-336 PAR. @ PG. 299 R. 14; EBEINWE V. STATE (2011) 7 NWLR (PT. 1246) 406 @416 PARA D*** and ***MONKOM V. ODILI (2010) 2 NWLR (PT. 1179) 419 @ 442 PARAS D-E.***

Learned counsel also contended that since the Defendant has refused to defend this suit, the burden of proof placed on the Claimant is discharged on minimal proof and she cited the cases of ***LARMIE V. DATA PROCESSING MAINTENANCE & SERVICES LTD. (2005) LPELR-1756 (SC); OGUNJUMO & ORS. V. ADEJUMO & ORS (1995) LPELR-2337 (SC) 23.***

Arguing Issue 3, learned counsel submitted that the Claimant has successfully and satisfactorily proved his case in support of his claim. She argued that the Defendant deliberately and persistently refused to come to court to put up her defence or controvert the evidence adduced by the Claimant in this suit.

Learned counsel submitted that since the Defendant didn't file her Statement of Defence, this court should give the Claimant judgment accordingly.

Learned counsel submitted that the law is settled on the concept of trespass in the case of **AMAKOR V. OBIEFUNA (1974) 1 ALL NLR (PT. 1) 119**, where the Supreme Court held that;

“Any slightest crossing of the boundary or entry upon another person's land without consent, however minimal, constitutes trespass”.

She also cited the case of **OKOKO V. DAKOLO (2006) 14 NWLR (PT 1000) 401(SC)** where the court held thus:

“Entry onto land without consent is trespass, even where the Defendant believes they have a right to be there”. *Ogunbiyi v. Adewumi* (1988) 5 NWLR 215.

Learned counsel urged the Court to grant the Claimant's 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 Defendant 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 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 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 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 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 one document which was admitted in evidence as Exhibit “A”, namely, a photocopy of a Deed of Assignment made the 23rd day of August 2013 between Mr. Wilfred O. Igbinoba (the Assignor) and the Claimant, Mr. Osamede Osazuwa Osayande (the Assignee). Attached to the Deed of Assignment was a Certificate of Occupancy No. EDSR 13296 being his predecessor’s root of title.

The Claimant’s main document of title is Exhibit “A”, the Deed of Assignment. A Deed of Assignment is the recognized legal instrument by which an assignor transfers his entire interest in land to an assignee. Once validly executed and supported by the requisite statutory consent, it transfers both equitable and legal interest in the property.

See *Awojugbagbe Light Industries Ltd. v. Chinukwe* (1995) 4 NWLR (Pt.390) 379, where the Supreme Court affirmed that a duly executed deed of assignment passes the assignor’s interest to the assignee.

Also, under *Section 22 of the Land Use Act*, alienation of a statutory right of occupancy requires the consent of the Governor. The purpose of this provision is regulatory and not to invalidate otherwise genuine transactions. The law is settled that an assignment executed without consent is merely inchoate and becomes perfected upon the subsequent grant of Governor’s Consent. See, *Savannah Bank Ltd. vs. Ajilo* (1989) 1 NWLR (Pt.97) 305.

Therefore, upon the endorsement of the Governor’s consent, the assignment became legally effective and capable of transferring title from Mr. Wilfred O. Igbinoba to the Claimant. The Deed of Assignment is further accompanied by the Certificate of Occupancy No. EDSR 13296 issued in favour of the Assignor, together with Survey Plan No. BE 418 identifying the land with certainty. The law is that a Certificate of Occupancy constitutes prima facie evidence of title unless rebutted by superior evidence. See, *Olohunde vs. Adeyoju* (2000) 10 NWLR (Pt.676) 562.

The Defendant also despite being served with several hearing notices, failed to appear to challenge the authenticity of Exhibit “A” or the Claimant’s title. Flowing from the foregoing, I therefore hold that Exhibit “A”, as a duly registered Deed of Assignment sufficiently establishes the Claimant’s title to the land in dispute. See, *Awojugbagbe Light Industries Ltd v. Chinukwe* (1995) 4 NWLR (Pt. 390) 379 (SC).

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that immediately after he acquired the land, he exercised acts of possession over the land by depositing sand and granite, molding blocks, clearing and maintaining the land, and supervising labourers on the property.

The uncontroverted evidence of the 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 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. OYOBEBERE & ORS (1992) LPELR-1099(SC) (PP. 27-28 PARAS. F).***

From the foregoing, I hold that the Claimant is entitled to the first relief for a declaration that he is the rightful owner of the land in dispute and is the one with a statutory right of occupancy over the land in dispute.

Having established valid title and prior possession, the law presumes possession in favour of the person with better title. Trespass is rooted in possession, and any unauthorized entry upon land in possession of another constitutes trespass, however slight. See ***Amakor vs. Obiefuna (1974) 1 All NLR (Pt.1) 119.***

The Defendant's entry onto a portion measuring 45 feet by 100 feet forming part of the Claimant's land without consent therefore amounts to trespass. The Claimant is consequently entitled to protection of his proprietary interest by way of a declaration.

On the relief of a perpetual injunction against the 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 Defendant, her agents, privies or servants from any further acts of trespass on the Claimant's land.

On the claim for the sum of N10,000,000.00 (Ten Million Naira) only as damages against the Defendant 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.

In the instant case, the Claimant gave uncontroverted oral evidence stating that the Defendant has altered the topography of the Claimant's land by erecting a building on part of the land measuring 45 feet by 100 feet which forms part of the Claimant's entire parcel measuring 100feet by 135feet. Based on this, the Claimant is entitled to damages. Generally, the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. 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).

In the instant case, I will exercise my discretion to award a reasonable sum as general damages to compensate the Claimant.

On the whole, 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:

- 1) *A Declaration that the Claimant is the one with and/or has a statutory right of occupancy which is registered as No. 11 at Page 11 and in volume B193 and subsequently registered as No. 5, at Page 5 and in Volume 1038, a plot of land referred to as Plot 122 Block "C" which is measuring 100feet by 135feet [approximately 1212.893 meters] in Evboriaria Layout, Benin City, Edo State.*
- 2) *A Declaration that the act(s) of the Defendant in erecting a building on a portion of land measuring 45 feet by 100 feet which forms part of the*

Claimant's entire parcel measuring 100feet by 135feet referred to as Plot 122 Block "C" which is situate in Evboriaria Layout, Benin City, Edo State without the Claimant's authority amounts to trespass.

- 3) An order of perpetual injunction restraining the Defendant, her Privies, Servant(s), Agent(s) in whatever name they are called from further trespassing into the Claimant's piece of land which is measuring 45 feet by 100 feet which forms part of the Claimant's entire parcel measuring 100feet by 135feet, referred to as Plot 122 Block "C" and situate in Evboriaria Layout, Benin City, Edo State.*
- 4) An Order awarding General damages in the sum of Three Million Naira [N3, 000, 000.00] against the Defendant for altering the topography of the claimant's land by erecting a building on the land which is measuring 45 feet by 100 feet which forms part of the Claimant's entire parcel measuring 100feet by 135feet, referred to as Plot 122 Block "C" and situate in Evboriaria Layout, Benin City, Edo State without the consent and authority of the Claimant.*

The Defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs to the Claimant.

P.A. AKHIHIERO
JUDGE
26/02/2026

COUNSEL:

Mrs. F.A. Okoror -----Claimant.

Unrepresented----- Defendant.