

**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 MONDAY**  
**THE 5<sup>TH</sup> DAY OF JUNE, 2023.**

**BETWEEN:**

**SUIT NO. B/971/2021**

**MR. EDOSOMWAN OGUNOROBO -----CLAIMANT**

**AND**

**1. PERSON UNKNOWN } -----DEFENDANTS**  
**2. PERSON UNKNOWN }**

**JUDGMENT**

The Claimant instituted this suit vide a writ of summons dated and filed on the 26th of October, 2021 seeking some declaratory, injunctive and compensatory reliefs against the Defendants.

At the hearing, the Claimant testified, tendered some documentary exhibits called one witness and closed his case. The Defendants never put up any appearance to defend the suit.

From the evidence adduced at the trial, the Claimant's case is that he is the owner and in possession of a large expanse of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] in Obagie N'Evbosa Community by inheritance which is more particularly delineated in a Survey Plan No.

GOS/ED/173/2016 dated the 8<sup>th</sup> day of April, 2016. He tendered the Survey Plan which was admitted as Exhibit “C” at the hearing.

He alleged that the land originally belonged to his great grandfather who deforested it and settled thereon. He said that upon the demise of his grandfather, his own father - Pa. Ekenomaghele Ogunorobo - took over the land and continued farming on it in peace. He said that with the setting up of a Plot Allocation Committee, his father made an Application for a Building Plot dated the 15<sup>th</sup> day of March, 1975 through the Enogie and Elders of Obagie N’Evbosa Community, off Sapele Road, Benin City to the Oba of Benin, His Royal Highness Oba Akenzua II and his application was subsequently approved on the 22<sup>nd</sup> day of May 1975. The Oba’s Approval was admitted as Exhibit “A” at the trial.

The Claimant stated that during the time when his father was farming on the land up till date, the entire area of land has been known as ‘Agor Ekenomaghele’ which means- Ekenomaghele’s Settlement. He alleged that his father exercised various acts of ownership over the land by planting crops such as corn, cassava, okra and rubber trees and was never challenged by anyone.

He said that upon the demise of his father in December 1986, he being the eldest surviving son inherited the entire land by means of the sharing done by the family in the year 2015. The document of sharing was admitted as Exhibit “B”

The Claimant stated that upon inheriting the land, he has been in peaceful and quiet possession of same until the Defendants encroached on the land by bulldozing part of the land, uprooting his rubber trees and other crops on the land. He alleged that the Defendants have also molded blocks on the land and commenced laying of building foundations on both portions of land trespassed upon.

The Claimant alleged that by the Defendants’ acts of trespass and malicious damage to his crops; he has incurred losses and damage to his economic crops and means of livelihood.

At the close of the Claimant’s case, fresh hearing notices were issued and served on the Defendants to enable them come to the Court to put up their defences but they failed to put up any defence.

Consequently, the Claimant's counsel filed a Final Written Address which he adopted as his final arguments in support of the Claimant's case.

In his written address, the learned counsel for the Claimant, *S.I. Okoror Esq.* formulated a sole issue for determination as follows:

***“Whether the Claimant has been able to prove by credible evidence his entitlement to the land in dispute.”***

Arguing the sole issue for determination, the learned counsel submitted that in an action for declaration of title, the first duty of the Claimant is to establish the identity of the land in dispute with certainty and he cited the cases of *UDIFIA V. AFFIA 6 W.A.C.A. 216*; *OLUFOSOVE V. OLORUNFEMI [1986] LPELR 2615 (SC)*; and *DANWE V. TUKUR [2019] LPELR 46996 (CA)*.

Counsel posited that it is not in dispute that the Claimant has clearly identified the land in dispute which is situate at Obagie N'Evbosa Community, off Sapele Road, Benin City, Edo State and shown in a Survey Plan which is Exhibit C before this Honourable Court.

He submitted that in an action for a declaration of title to land the Claimant should establish his root of title and he referred the Court to the classical case of *IDUNDUN V. OKUMAGBA [1976] 9-10, SC 227* where the apex Court enumerated the five ways of proving title to land.

He submitted that in the instant case, the Claimant adduced sufficient evidence to prove his title by the production of Documents of Title.

He maintained that the Claimant led evidence of how his late father, Pa. Ekenomaghele Ogunorobo acquired the large expanse of land measuring 800feet by 1000feet by inheritance from the Claimant's great grandfather who deforested the said land. He said that the Claimant's father subsequently obtained the Oba of Benin's approval over the said land on the 22<sup>nd</sup> of May 1975 and he tendered the Oba's Approval as Exhibit A at the trial.

He said that the Claimant led evidence of how he inherited the land upon his father's demise and he tendered the document of sharing which was admitted as Exhibit B at the trial. He said that the Claimant surveyed the entire land and tendered the Survey Plan as Exhibit C.

He posited that the Claimant is not bound to establish all the five (5) ways of proving title as proof of one is sufficient and he relied on the following decisions on the point: ***BARTHOLOMEW ONWBUARIRI V. ISAAC IGBOASIOYI [2019] LPELR 46454 (CA); GOBA V. ALGONI [2020] LPELR 40489 (CA);*** and ***CHIEF ADEYEMI LAWSON V. CHIEF AYO AJIBULU [1992] LPELR 1766.***

Counsel submitted that the Claimant's claim is strengthened by Exhibits A, B and C and the evidence of his witness who corroborated the evidence of the Claimant. Furthermore, he submitted that the Claimant gave cogent and compelling evidence of the neighboring lands having a common boundary with his land.

He maintained that the evidence adduced by the Claimant properly identified the land and he relied on the case of ***Dudu Addah & Ors v. Hassan Sahi Ubandawaki (2016) 1 WRN 1.***

On the burden of proof of declaration of title to land, Counsel referred to the cases of ***OJO S.I [PASTOR] v. RAJI AJIBOLA GANIYU [ALHAJI] (2016) 52 WRN 40 C.A; NIKAGBATSE O. EDWARD v. FRENCH GOD' POWER [MR.] (2014) 49 WRN 55 C.A ratio 5;***and ***AYORINDE v. SOGUNRO (2012) 50 NSCQR 553 ratio 5.*** He submitted that in this case, the Claimant has adduced sufficient evidence to establish his title and he urged the Court to enter judgment in his favour.

Furthermore, counsel posited that one of the ways to succeed in a claim for title to land is for the Claimant to plead a continuous chain of devolution to trace his root of title and thereafter lead evidence to sustain the pleadings. He said that the production of documents of title is necessary as they make oral evidence more credible and he cited the case of ***AYANWALE v. ODUSAMI (2011) 48 NSCQR 38.***

He posited that the Claimant has adduced evidence of the chain of devolution of his title from his great grandfather who deforested the land to his late Father who inherited the land and finally to himself who inherited the land from his late father. s

Furthermore, Counsel submitted that the with the Defendants' failure to defend this suit, the Court is at liberty to enter judgment in favour of the Claimant based on the unchallenged evidence adduced by the Claimant and he relied on the case of ***Tari Vandighi vs. Sebastine Hale (2014) 49 WRN P. 138.***

In conclusion, he urged the Court to enter judgment in favour of the Claimant.

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 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 by acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered several title documents as follows:

- 1) The Oba's Approval which was admitted as Exhibit "A" at the trial;***
- 2) The document of sharing was admitted as Exhibit "B"; and***
- 3) The Survey Plan which was admitted as Exhibit "C".***

Obviously, the Claimant's strongest title documents of title appear to be the Oba's Approval (Exhibit "A") and the document of sharing (Exhibit "B"). It is settled law that an Oba's Approval is prima facie proof of title to the land over which it was issued.

In the case of **ENABULELE V. AGBONLAHOR (1999) LPELR-1138(SC)** (PP. 8-9 PARAS. D), the Supreme Court while expounded on the role of the Oba's Approval in proof of title to land stated thus:

***"The law is that under Bini customary law, title to land is acquired through a grant by the Oba of Benin through a specific procedure, which is as follows:- (a) A person intending to acquire land must direct an application in writing to that effect through the plot allotment committee responsible for the ward in which the land intended to be acquired is situated. (b) Upon receipt of the application the plot allotment committee will delegate some of its members to carry out an inspection of the land and they in turn will report back to the Committee on their inspection; the purpose of inspection being to ascertain the plot to be granted with certainty and also to ascertain if it is free from dispute or has been previously granted to someone else. (c) After being satisfied that the desired piece of land is dispute-free, the Committee will endorse the application and forward it to the Oba of Benin. (d) The Oba of Benin will then grant his approval to the application in writing."***

Although the above can be regarded as the "findings" of the apex Court in that case, the point must be made that the aforesaid findings have by constant judicial usage in several other cases, based on the custom of plot allotment in Benin City, come to be regarded and treated as notorious customs which could be judicially noticed under **Section 17 of the Evidence Act 2011**, and applied without further proof. See the following cases on the point: **Ogbeide Aikhionbare - Ohen - Eriaria of Evboriaria & Ors v. Uyiekpen Omoregie - Enogie of Evbuoba Ohen Village & Ors (1976) 12 S.C. 11, at p. 28. Mrs. D. M. Aigbe v. Bishop John Edokpolor (1977) 2 S.C. 1 Peter Mbachu v. Napoleon Oshodi & Anor (1977) 3 F.C.A. 110. Madam I. Arase v. Peter Arase (1981) 5 S.C.33 Atiti Gold v. Beatrice Osaseren (1970) 1 All N.L.R. 132 Vincent Bello v. Magnus Eweka (1981) 1 S.C.; and NDUBUISI ONWUANYI v. LAWRENCE BORHA (2013) LPELR-21970(CA).**

In the instant case, the Claimant led evidence of how his late father made an Application for a Plot dated the 15th day of March, 1975 through the Enogie and Elders of Obagie N'Evbosa Community, off Sapele Road, Benin City to the Oba of Benin, His Royal Highness Oba Akenzua II and his application was subsequently approved on the 22nd day of May 1975. The Oba's Approval was admitted as Exhibit "A" at the trial.

It is settled law that a grant of land by the Oba of Benin based on the Oba's approval of such a grant of land to a grantee does not require any registration at the Lands Registry in Benin City to be valid. See the cases of *Amayo V. Erinmwingbovo (2006) 11 NWLR (Pt. 992) 669 @ p. 682*; and *DR. DANIEL AMU & ANOR v. K.S. OKEAYA-INNEH ESQ. SAN (2021) LPELR-55660(CA)*.

At the trial, none of the Defendants adduced any evidence to challenge the validity of the Oba's Approval 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 root of title to the land in dispute.

Furthermore, the Claimant relied on the document of sharing which was admitted as Exhibit "B". The pertinent question that I must raise at this stage is whether Exhibit "B" *per se* can qualify as a title document?

It is trite law that mere production of a document of title does not necessarily carry with it automatic relief of grant of declaration relating to such Land, certain factors must be taken into account in the consideration. The Supreme Court in the case of *DABO vs ABDULLAHI (2005) LPELR 905 (SC)* expounded inter alia as follows:

***"--- production and reliance on such an instrument inevitably comes with the need for the Court to inquire into some of or all of a number of questions:***

- (a) Whether the document is genuine and valid.***
- (b) Whether it has been duly executed, stamped and registered.***
- (c) Whether the grantor had the authority and capacity to make the grant.***
- (d) Whether in fact the grantor had in fact what he purported to grant.***
- (e) Whether it has the effect claimed by the holder of the instrument."***

From the foregoing, I am of the view that the document of sharing, Exhibit "B" *per se* cannot vest a valid title on the Claimant, however in conjunction with the Oba's Approval, Exhibit "A", I am of the view that in the absence of any evidence challenging the Claimant's title, the Claimant has established his 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 he acquired the land, he has been in undisturbed possession of the land until the Defendants trespassed into the land. 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.***

Next, on the declaration 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 he is in exclusive possession of the land in dispute. Thus, the disturbance of the Claimant's exclusive possession by the Defendants amounts to trespass.

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 claim for the sum of N10,000, 000:00 (Ten Million Naira) as general damages 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 evidence of how the Defendants encroached on his land by bulldozing part of the land, uprooting his rubber trees and other crops on the land. He alleged that the Defendants have also molded blocks on the land and commenced laying of building foundations on both portions of land trespassed upon.

The Claimant alleged that by the Defendants' acts of trespass and malicious damage to his crops; that he has incurred losses and damage to his economic crops and means of livelihood.

However, the Claimant did not elaborate on the extent of destruction or losses occasioned by the Defendants' trespass. For example, we do not know the monetary value of the rubber trees and other crops destroyed by the Defendants. Going through the entire gamut of the Claimant's evidence, there is no evidence of the quantum of damages suffered from the action of the Defendants.

General damages is defined as the kind of damages which the law presume to flow from the wrong complained of by the victim. It covers all losses which are not capable of exact quantification, including non-financial losses. The manner in which general damages is quantified by the Courts is by relying on what would be an opinion and judgment of a reasonable person in the circumstance of the case. See *Badmus & Anor v. Abegunde* (1999) LPELR-705 (SC); and *Akinterinwa vs. Oladunjoye* (2000) LPELR-358 (SC). Items of general damages, unlike special damages, need not be specifically pleaded and proved. All that is required is some

evidence of the damages. The measure or quantum of general damages is a matter that is at the discretion of a Judge taking into account the type of wrong committed or injury suffered. See: *ELF Petroleum vs. Umah & Ors (2018) LPELR-43000 (SC)*.

On the whole, the sole issue for determination is resolved in favour of the Claimant and his claims are granted as follows:

- a. A Declaration that the Claimant is the one entitled to apply for a statutory right of Occupancy in respect of the parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] that is, 6.453 hectares which is more particularly delineated in Survey Plan No. GOS/ED/173/2016 dated the 8<sup>th</sup> day of April 2016 which is lying and situate at Obagie N'Evbosa Community, off Sapele Road, Ikpoba-Okha Local Government Area, Edo State;*
- b. A Declaration that the act(s) of the 1<sup>st</sup> Defendant in clearing the Claimant's parcel of land measuring One Hundred Feet by Two Hundred Feet [100feet X 200feet] which forms part of the Claimant's entire parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] that is, 6.453 hectares; uprooting and destroying the Claimant's rubber trees, moulding blocks and laying a foundation on the said portion of the Claimant's land measuring One Hundred Feet by Two Hundred Feet amounts to trespass on the Claimant's parcel of land;*
- c. A Declaration that the act(s) of the 2<sup>nd</sup> Defendant in clearing the Claimant's parcel of land measuring One Hundred Feet by One Hundred Feet [100feet X100feet] which forms part of the Claimant's entire parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] that is, 6.453 hectares; uprooting and destroying the Claimant's rubber trees, moulding blocks and laying a foundation on the said portion of the Claimant's land measuring One Hundred Feet by One Hundred Feet [100feet X100feet] amounts to trespass on the Claimant's parcel of land;*
- d. An Order of Perpetual Injunction restraining the Defendants, their Privies, Servants, Agents in whatever name they are called from further trespassing into the Claimant's parcel of land measuring One Hundred Feet by Three Hundred Feet [100feet by 300feet], which forms part of the Claimant's entire parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000*

*feet] that is, 6.453 hectares which is lying and situate at Obagie N'Evbosa Community, off Sapele Road, Ikpoba-Okha Local Government Area, Edo State;*

*e. The sum of One Million Naira only (N1, 000, 000. 00) only as General Damages.*

*The sum of N200, 000.00 (Two Hundred Thousand Naira) is awarded as costs in favour of the Claimant.*

***P.A.AKHIHIERO***

***JUDGE***

***05 /06/2023***

***COUNSEL:***

***S.I. Okoror Esq. -----Claimant.***

***Unrepresented-----Defendants.***

