

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. AKHIERO
ON MONDAY
THE 25TH DAY OF NOVEMBER, 2024.

BETWEEN: **SUIT NO. B/584/2023**
DR SUNNY EIMUAN OKOJIE -----***CLAIMANT***
AND
PERSONS UNKNOWN -----***DEFENDANT***

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 3rd of July, 2023 wherein he claimed as follows:

- 1. A declaration that the Claimant is the person in lawful possession/occupation and owner of the parcel of land measuring 5496.75 square meters lying and situate at No 96 Upper Adesuwa College Road (now known also as 2nd Ugbor) Benin City, covered by Certificates of Occupancy numbers BDSR 1593 and BDSR 1418 respectively;***
- 2. An order of perpetual injunction restraining the Defendant, whether by himself, servants, agents, privies, assigns, successors-in-title, whosoever***

related to or connected to the Defendant in any manner whatsoever and howsoever from further trespassing on my land covered by Certificates of Occupancy No. BDSR 1593 and BDSR 1418 respectively, lying situate at No. 96 Upper Adesuwa College Road (now also known as 2nd Ugbor Road), Benin City; and

- 3. The sum of N500, 000,000.00 (Five Hundred Million Naira) only as general damages against the Defendant for his act of trespass on my land measuring approximately 5496. 75 square meters lying and situate at No. 96 Upper Adesuwa College Road (now known as 2nd Ugbor) Benin City, Edo State.*

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant but he did not put up any appearance in this suit despite several hearing notices that were served on him. In essence, the suit was undefended.

At the hearing, one Dr. (Mrs.) Caroline Bakare, who is the daughter of the Claimant, testified for the Claimant as the sole witness and the Claimant closed his case.

In her evidence, the witness stated that the Claimant is the owner of a parcel of land measuring 5496.75 square meters; known as No. 9 Upper Adesuwa College Road (also now known as 2nd Ugbor Road), Benin City, covered by two separate Certificates of Occupancy numbers; BDSR 1418 and BDSR 1593. At the trial, certified true Copies of certificates of occupancy Nos. BDSR 1418 and BDSB 1593 were admitted in evidence as Exhibits “A” and “A1” respectively.

The witness alleged that the entire land is fenced together, but divided into two by a fence at the middle, with a sentry gate at the middle of the dividing wall for passage between the two parcels of land.

She informed the Court that the Claimant built and operated a Hospital named ZUMA MEDICAL CENTER on the Land.

She stated that the Claimant is now a retired octogenarian, and the Hospital is no more functional and that she is the person who is presently managing the Claimant’s property.

She alleged that the Claimant has been in peaceful possession and management of the disputed property for over forty five years and that they were shocked when the

Defendant forcibly broke into the land through the back wall fence and uprooted the foundation of a staff quarter which the Claimant laid on the land many years ago.

She alleged that the Defendant also uprooted the palm trees and other economic trees on the land and is presently erecting a structure on the land in dispute.

She stated that the Claimant reported a case of malicious damage, forcible entry and trespass against the Defendant at the Divisional Police Station at Ugbor and the site Engineer was arrested and taken to the Police Station. She said that shortly after the arrest, the Assistant Inspector General of Police, Zone 5, Benin City (AIG Zone 5) directed the Divisional Police Officer to release the site engineer.

Upon the conclusion of the evidence of the Claimant's sole witness, the matter was adjourned for cross examination and fresh hearing notice was served on the Defendant. On the next date, the Defendant failed to attend the Court to cross examine the witness and the Court discharged the witness and the matter was adjourned for Defence or final address. Again, fresh hearing notice was issued and served on the Defendant but he failed to come to Court and the Claimant's counsel adopted his final written address and the suit was adjourned for judgment.

In his final written address, the learned counsel for the Claimant, *C.Obaro-Umeh Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has furnished the Court with adequate evidence to prove his claim to ownership of the land, so as to warrant and guarantee judgment in his favour.”

Arguing the sole issue for determination, the learned counsel enumerated the five established ways of proving title to land in Nigeria as expounded by the Supreme Court in the cases of *Otukpo v. John (2012) 7 NWLR (Pt. 1299) 357 (P. 376, paras. A-D) SC* and *Idundun V. Okumagba (1976) 1 NMLR 200*.

He maintained that the Claimant is obliged to prove only one of the ways and he relied on the following cases: of *Obi V. Onyemelukwe (2011) 1 NWLR (Pt. 1228) 400 (Pt. 1228) (Pp. 425-426, paras. G-C) CA*; *Onwugbufor V. Okoye (1996) NWLR (Pt.424) 252*; *Olagunju V. Adesoye (2009) 9 NWLR (Pt. 1146) 225*; *Balogun v. Akanji (1988) 1 NWLR (Pt. 70) 301*; *Nkado v. Obiano (1997) 5 NWLR (Pt. 503) 31*.

He posited that the Claimant in his evidence (given by the CW1) stated how he became the owner of the Land; and tendered two Certificates of Occupancy which were admitted as Exhibits “A” and “A1” respectively.

He said that he also substantiated his claim by relying on evidence of long possession of over forty five years. He posited that on the portion of the land covered by Exhibit “A”, the Claimant has a Hospital Complex, known as ZUMA HOSPITAL, which was closed down recently. He maintained that this is a clear act of ownership by long possession.

He posited that the part of the land trespassed upon by the Defendant is the back side of the property, which is covered by Exhibit “A1”. He said that the entire land, (though covered by two separate C of O's) and divided in the middle by a wall; is fenced together. He maintained that this shows that the land trespassed upon belongs to the Claimant because the owner of a land, not in dispute, is most probably the owner of the adjoining land.

He referred to the evidence of the CWI where she stated that her father’s Gardener farmed on the piece of land in dispute over time.

He submitted that the evidence led by the Claimant is cogent and compelling to establish his ownership of the land in dispute.

He posited that the Claimant’s evidence is unchallenged; and therefore ought to be accepted and he relied on the cases of: *Leadway Ass. Co. Ltd. v. Zeco (Nig.) Ltd. (2004) 11 NWLR (Pt. 884) 316 (P. 329, paras. A-C)*; *Iri v. Erhurhobara (1991) 2 NWLR (Pt.173) 252*; and *American Cyanamid CO. v. Vitality Pharm. Ltd. (1991) 2 NWLR (Pt.171) 15*.

Learned counsel submitted that the Defendant's failure to file a defence in this matter has lessened the burden of proof required of the Claimant. He therefore 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 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 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 the case of *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, fourth and fifth means of proof, to wit: proof by the production of documents of title, acts of ownership, possession of connected or adjacent land and acts of long possession and enjoyment of the land.

On the proof by the production of title documents, the Claimant tendered two Certificates of Occupancy over the land where he built his hospital and the adjoining land in dispute which were admitted as Exhibits “A” and Exhibit “A1” respectively.

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

In this case, the Defendant did not adduce any evidence to challenge the validity of the certificates of occupancy which were admitted as Exhibit “A” and “A1”. In the absence of any challenge to said title documents, I hold that they will suffice to establish the Claimant’s title to the land in dispute.

Furthermore, on the proof by acts of ownership, possession of connected or adjacent land and acts of long possession and enjoyment of the land, in this suit, the Claimant led evidence which was unchallenged that he has been in possession of the

land in dispute for over forty five years. He established the fact that the he built a hospital complex on the portion of the land covered by Exhibit “A”. He also led evidence of how his Gardener farmed on the piece of land in dispute covered by Exhibit “A1”, over time.

The Claimant led evidence to show that the part of the land trespassed upon by the Defendant is immediately behind the hospital in the portion covered by Exhibit “A1”. This is sufficient evidence of 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

I hold that all these evidence of acts of possession by the Claimant are cogent and compelling to establish his ownership of the land in dispute.

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, his agents, privies or assigns from further trespassing on the Claimant’s land.

Lastly on the order for the award of sum of N500, 000,000.00 (Five Hundred Million Naira) only as general damages against the Defendant for his acts of trespass, it is settled law that the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant.

Thus, it is the duty of the Court to assess the 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.

At the trial, the Claimant testified of how the Defendant forcibly broke into the land through the back wall fence and uprooted the foundation of a staff quarter which the Claimant laid on the land many years ago. He also led evidence of how the

Defendant uprooted the palm trees and other economic trees on the land and is presently erecting a structure on the land in dispute.

From the evidence adduced, I am of the view that the Claimant has suffered some losses from the economic trees that were destroyed by the Defendant. Furthermore, he may expend some funds to demolish the illegal structures on the land in dispute. He is therefore entitled to some reasonable compensation to cover all these expenses. 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 *OYENEYIN & 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, I hold that the sole issue for determination is resolved in favour of the Claimant and judgment is entered in favour of the Claimant as follows:

- 1. A declaration that the Claimant is the person in lawful possession/occupation and the owner of the parcel of land measuring 5496.75 square meters lying and situate at No 96 Upper Adesuwa College Road (also known as 2nd Ugbor Road) Benin City, covered by Certificates of Occupancy numbers BDSR 1593 and BDSR 1418 respectively;*
- 2. An order of perpetual injunction restraining the Defendant, whether by himself, servants, agents, privies, assigns, successors-in-title, whosoever related to or connected to the Defendant in any manner whatsoever and howsoever from further trespassing on the Claimant's land covered by Certificates of Occupancy No. BDSR 1593 and BDSR 1418 respectively, lying situate at No. 96 Upper Adesuwa College Road (also known as 2nd Ugbor Road), Benin City; and*
- 3. The sum of N5, 000,000.00 (Five Million Naira) only as general damages against the Defendant for his act of trespass on the Claimant's land measuring approximately 5496. 75 square meters lying and situate at No. 96 Upper Adesuwa College Road (also known as 2nd Ugbor Road) Benin City, Edo State.*

The Defendant shall pay the sum of ₦200, 000.00 (Two Hundred Thousand Naira) to the Claimant as costs.

P.A.AKHIHIERO
JUDGE
25 /11/2024

COUNSEL:

C. Obaro-Umeh Esq.-----Claimant.

Unrepresented----- Defendant.