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 WEDNESDAY

THE 24TH DAY OF JULY, 2024.

BETWEEN: ***SUIT NO. B/191/2021***

DR. DARLINGTON O. AMADASUN ……. CLAIMANT

AND

MACFRANKLIN ENG. SERVICES LTD ……. DEFENDANT

JUDGMENT

The Claimant instituted this suit vide a Wit of Summons and Statement of Claim on the 16th of March 2021, claiming against the Defendant as follows:

a. ***A Declaration that the Defendant's entry, occupation and use of the claimant's piece or parcel of land otherwise know and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State is unauthorized, forcible, illegal and unlawful;***

b. ***A Declaration that the Defendant's unauthorized entry, occupation and use of that Claimant's said piece or parcel of land otherwise known and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State constitute actionable trespass;***

c. ***₦52,300,000.00 (Fifty Two Million, Three Hundred Thousand Naira) for 1,046 days at ₦50,000.00 (Fifty Thousand Naira) daily against the Defendant for the occupation/use of that Claimant's piece or parcel of land otherwise known as and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State;***

To Wit:

Number of days of occupation/use	***1,046***
Fess Demanded	***x 50,000.00***
	52,300,000.00

d. ***₦1,000,000.00 (One Million Naira) against the Defendant for cleaning, clearing, restoration etc. consequent upon the unauthorized entry, occupation and use of the Claimant's piece or parcel of land otherwise known as and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State;***

e. ***₦2,000,000.00 (Two Million Naira) against the Defendant as General Damages for trespass on that Claimant's piece or parcel of land otherwise known as and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State;***

f. ***₦1,500,000.00 (One Million, Five Hundred Thousand Naira) against the Defendant as Solicitor's/Litigation Cost; and***

g. ***15% (Fifteen Per cent) interest on the judgment sum until same shall be fully paid.***

At the trial, the Defendant filed their Statement of Defence, which was deemed as properly filed and served on the 20th of January 2022.

At the hearing of this suit, the Claimant led oral and documentary evidence in proof of his case and closed his case. From the evidence adduced at the trial, the Claimant's case is that he is the owner of a parcel of land located at No. 3, (same as Plot 5) Amadasu Lane, Off Mission Road, Benin City. He alleged that he inherited the said property from his late father, Pa Henry Otuomogie Amadasu over 50 (fifty) years ago and has been in quiet and undisturbed possession of the land ever since.

According to the Claimant, some time ago, he let out the land to some mechanics and other artisans who were carrying on their various trades on the land.

He said that sometime on the 21st of February, 2017, he discovered that the Defendant had entered the land and occupied same with his personnel and machineries, and heavy duty equipment, while using the land as a camp while executing some construction works around that area.

The Claimant stated that he never at any time authorized nor gave consent to the Defendant's entering, occupation and/or use his said property in the manner aforementioned and/or any manner whatsoever.

The Claimant alleged that upon meeting the Defendant on his land, he verbally instructed them to quit the premises but when they refused to comply, he proceeded to serve them with written notices to quit and to demand payment for the use and occupation of his property without authorization. At the trial, he tendered several letters of demand which were admitted as Exhibits "A", "B1" to "B" and "C".

The Claimant alleged that despite the service of the aforesaid letters, the Defendant neither replied nor vacated the land in dispute.

The Claimant took some photographs of the Defendant's presence on his land but when he tendered them at the trial, they were marked rejected because of non-compliance with the provisions of the ***Evidence Act, 2011***.

The Claimant alleged that subsequently, the Defendant eased out the artisans and mechanics on the land without his knowledge, consent and/or authorization. He said that on the whole, the Defendant occupied the land for a total period of 1046(one

thousand and forty six) days for which the Claimant is demanding the sum of N50, 000.00 (Fifty Thousand Naira) per day from the Defendant.

At the trial, the Claimant maintained that the mechanics/artisans found on his land by the Defendant were tenants and squatters who had no power and/or authority to let, sublet or release the land to the Defendant.

In defence to this suit, the Defendant called two witnesses and led evidence that when they were awarded a road construction contract by the Edo State Government, sometime in 2017, they approached some Mechanics who were tenants in possession of the land in dispute, situate at Amadasun lane, off Mission Road, Benin City.

They alleged that the Mechanics obliged the Defendant on terms, whereby the Defendants were allowed to keep their materials on the land in dispute during the construction work. They alleged that by the nature of the construction work, the Defendant moved its equipment and materials on daily basis as the work progressed. They alleged that throughout the duration of the Road Construction within the area, the Defendants were never challenged by the Claimant or anybody for the few days they occupied the space given to them by the Mechanics/tenants.

They alleged that they reached an agreement with the Mechanics/tenants who were on the land that they would help them reconstruct their workshop and screed the ground at the conclusion of their construction work. They said that they fulfilled these promises after the tenure of the construction work. They maintained that the Claimant was never a party to the agreement between the tenants and the Defendant so there was no basis for the Claimant to have written any letter to the Defendant.

According to them, the Claimant is a stranger to the Defendant and there is no privity of contract between the Defendant and the Claimant.

Upon the conclusion of the evidence, the learned counsel for the parties filed their final written addresses which they adopted as their final arguments.

In his final written address, the learned counsel for the Defendant, ***Michael Ekwemuka Esq.*** formulated two issues for determination as follows:

1. ***Whether or not the Claimant has established his claim on the balance of probability.***

2. ***If the answer to the issue 1 is negative whether or not the claimant is entitled to the reliefs sought.***

In his written address, the learned counsel argued the two issues together.

He commenced his arguments with the issue of privity of contract between the parties. He submitted that from the evidence as led by the Defendant, it is not in doubt that the Mechanics who are tenants of the Claimant authorised and/or gave permission to the Defendant for the use of the land, based on the agreement reached between the parties which the Claimant was never a party to.

He submitted that only a party to a contract will have the right to enforce such contract and relied on the cases of ***AG FED v. A.I.C LTD (2000) LPELR-628*** and ***REBOLD INDUSTRIES LTD v. MAGREOLA & ORS (2015) LPELR-24612***.

Learned counsel also cited the following cases:

1. ***OGUNDARE v. OGUNLOWOW (1997) 6 NWLR (Pt. 509) page 360***
2. ***IKPEAZU v. A.C.B LTD. (1965) NMLR 376-378***
3. ***KANO STATE OIL AND AHMED PRODUCTS LTD. v. KOFA TRADING COMPANY LTD (1996) 3 NWLR (Pt. 436) Page 244***
4. ***UNION BEVERAGES LTD. v. PEPSI COLA INTERNATIONAL LTD. (1994) 3 NWLR (Pt. 330) Page 1.***

Learned counsel referred to the evidence of the Claimant and submitted that from the evidence adduced by the Claimant, it is clear that the Defendant had no agreement whatsoever with the Claimant regarding the use of the subject matter of this Suit contrary to the case of the Claimant. He said that the evidence of the Claimant supports the case of the Defendant that there is no privity of contract between the parties. He said that the evidence of the Claimant is an admission against the interest of the Claimant under ***Section 42 of the Evidence Act 2011.***

He referred the Court to the case of ***JINADU & ORS v. ESUROMBI-ARO & ANOR (2009) LPELR-1614*** the Court held thus:

"A statement oral or written made by a party to civil proceedings and which statement is adverse to his case or interest is admission in the proceedings as evidence against him of the truth of the facts asserted in the statement".

Learned counsel reproduced the contents of a letter dated 21st February, 2017 written to the Defendant by the tenants on the land and submitted that a community reading of the letter reveals that there was an agreement between the Claimant's tenants who are mechanics on the piece or parcel of land who also gave permission to the Defendant to make a temporary use of same.

Furthermore, he pointed out that the Claimant pleaded a letter dated 21st February 2017 but refused to tender the pleaded letter in evidence. He said that the said letter forms part of the record of proceedings in this Suit which this Honourable Court can take judicial notice of and make use of same in the determination of this Suit. For this view, he relied on the case of ***GARUBA & ORS v. OMOKHODION & ORS(2011) LPELR-1309***.

He posited that the letter dated was not tended in evidence at the trial because the Claimant knew that the letter would be unfavourable to him. He referred the Court to ***Section 167(d) of the Evidence Act 2011*** and the case of ***JALLCO LTD & ANOR v. OWONBOYS TECHNICAL SERVICES LTD (1995) LPELR-1591.***

He submitted that the Defendant has established that there is no privity of contract between the parties in this case and he urged the Court to strike out the Claimant's case.

Furthermore, learned counsel contended that the artisans/mechanics who are Claimant's tenants were in exclusive possession of the parcel of land at the time they granted the use of the land to the Defendant. He said that the same mechanics are still in possession of the said land, up till date.

Counsel referred the Court to a letter dated 30th of January 2008 written by the Claimant to the artisan/tenants where he categorically and unequivocally warned them not to sub-let or alienate any part of the land. He said that this letter which was withheld by the Claimant clearly showed that the artisans/mechanics are statuary tenants who had the legal capacity to contract with the Defendant to make use of the land. He said that the Artisans did not need the permission of the Claimant to sublet

part of the land. He submitted that the Court has the power to look into its file and make use of the document therein and referred to the cases of ***EDILCON (NIG) LTD v. UBA PLC (2017) LPELR-42342***; ***AGBASI V. EBIKOREFE (1991) 4 NWLR (PT. 502) 630;*** and ***UZODINMA V. IZUNASO (NO. 2) (2011) 17 NWLR (PT. 1225) 30.***

He urged the Court to look into its file in this case and make use of the letter dated 21/2/2017 and 30/1/2008 with a view to holding that the Claimant has failed to establish the case of forcible entry by the Defendant.

Furthermore, counsel posited that the Claimant's case is fraught with contradictions. He said that in paragraph 5, 4, 13 and 15 of his Written Statement on Oath the Claimant alleged that sometime on the 21st of February, 2017, he found that the Defendant had entered his land but under cross-examination he stated that he became aware of the Defendant's presence on his land on the 25th or 26th of February, 2017. Furthermore, he alleged that under cross examination, the Claimant stated that the rental value for the land in dispute as at today should be about N100, 000.00 (One Hundred Thousand Naira) per month.

He submitted that the evidence as led by the Claimant in an attempt to establish his claim before this Honourable Court, is clothed with material contradictions and he urged the Court to reject same in its entirety and relied on the case of ***WACHUKWU & ANOR v. OWUNANNE & ANOR (2011) LPELR-3466***.

Learned counsel posited that from the pleadings and the evidence adduced by the Claimant, it is clear that the artisans/mechanics who are at the centre of the Claimant's allegation are proper parties to the suit. He submitted that the Artisans/ mechanics are necessary parties to the suit without whose presence, this Honourable Court cannot effectively and completely determine the issue raised by the Claimant in this case and he referred to the case of ***GREEN v. GREEN (2001) FWLR (Pt. 76) 795.***

He submitted that it is trite law that it is only when proper parties are before the Court that the Court will be competent to adjudicate on the Suit and he referred to the cases of ***BAKARE & ORS v. AJOSE-ADEOGUN & ORS (2014) LPELR-25024(SC);*** and ***U.O.O. NIG. PLC v. OKAFOR & ORS (2020) LPELR-49570.***

He therefore urged the Court to strike out the suit for want of jurisdiction.

Finally, learned counsel posited that the Claimant is not entitled to the beliefs sought in this suit because going through the length and breadth of the Claimant's pleading/evidence before this Court, the Claimant has not proved his right over the parcel of land upon which he seeks a declaration and damages for trespass.

In his own final written address, the learned counsel for the Claimant, ***F.O. Ogierhiakhi Esq.*** formulated two issues for determination as follows:

(a) Whether the unauthorized entry and occupation of the Claimant's land constitutes actionable trespass; and
(b) Whether the Claimant is entitled to the reliefs sought per his Writ of Summons and Statement of Claim:

Arguing the first issue for determination, the learned counsel submitted that trespass to land is actionable at the suit of the person in possession of the land and he referred to the cases of ***ECHERE V. EZIRIKE*** *(2006) 5 KLR (Pt.* ***217-219) 1659 at 1670 A;*** and ***CHUKWUMA V. IFELOYE (2009 37 NSCQR 741 at 781.***

He said that it is incontrovertible on the evidence that the Claimant is the owner and the person in possession of the land which the Defendant entered and occupied without leave. He said that it is not in dispute that the Defendant never sought nor obtained the consent of the Claimant before he entered his land. He said that what is admitted needs no further proof and cited the case of ***NIGERIAN BOTTLING CO. PLC V. UBANI (2013) 8 - 12 KLR (Pt. 336) 4027 at 4053C/4054G/4056F.***

Learned counsel posited that the Defendant admitted that they entered the land without the consent of the Claimant. He submitted that a person cannot give what he does not have and he referred the Court to the case of ***NIGERIAN BOTTLING CO. PLC V. UBANI (Supra)*** where the Respondent's (Plaintiff's) wife purportedly gave out the property to Appellant, yet the claim for trespass succeeded. He urged the Court to hold that, the invasion of the Claimant's land by the Defendant constitutes actionable trespass.

Arguing his second issue for determination, learned counsel submitted that it is trite Law that a Claimant who has established that a Defendant is a trespasser on his land

is entitled without more, to general damages for trespass and he relied on the case of ***NIGERIAN BOTTLING CO. PLC V.UBANI (SUPRA) at 4055H.***

He maintained that the Claimant led evidence of the Defendant's unauthorized entry into his land. He said that the artisans on the land had no authority to sublet any part of the land to the Defendant.

On the Claimant's claim for **N50, 000.00 (Fifty Thousand Naira)** daily for **1,046(one thousand and forty-six)** days; being the period that the Defendant occupied the Claimant's property, he submitted that a party who has pleaded and given particulars of special damages is entitled to be granted the relief over and above the general damages and he referred to the case of ***NIGERIAN BOTTLING CO. PLC V.UBANI (Supra) at 4056C.***

He said that the Claimant led evidence to establish that he gave notice/warning to the Defendant to vacate his land or pay N50, 000.00 (Fifty Thousand Naira) daily for continuing illegal occupation. He referred to Exhibits A- F which are letters of notice/warning served on the Defendant before filing the suit. He said that the Claimant also caused his Solicitors to issue Exhibit G which was also ignored by the Defendant.

He said that apart from merely saying that they were on the Claimant's land for a few days, the Defendant did not state the number of days they occupied the Claimant's property.

On the Defendant's counsel contention of lack off privity of contract between the Claimant and the Defendant, he submitted that the onus is on the Defendant to prove the existence of an alleged contract with the so-called tenants it met on the Claimant's land.

On what constitutes a valid and enforceable contract, counsel referred to the cases of ***AKINYEMI V. ODU'A INVESTMENT CO. LTD (2012) 1 KLR (Pt 30....) 55 at 72 H, 76 D, E & 76G; BFI GROUP CORP.V. BUREAU OF PUBLIC ENTERPRISES (2012) 7 KLR (Pt. 316) 2553 (a)2569A;2575G*** and ***ZAKHEM CON. (NIG) LTD V. NNEJI (2006) 5 KLR (Pt. 219) 2011.***

Submitting on the alleged letter dated 21st February, 2017 and addressed to the Defendant, learned counsel maintained that the letter was not pleaded. He submitted

that the Court cannot act on a document that was neither pleaded nor tendered in evidence and he referred to the cases of ***ADEYEFA V. BAMGBOYE (2013) 2 KLR (Pt. 324) 647 at 657D*** *and* ***658E; ACN V. NYAKO (2012) 11-12 KLR (Pt. 319) 3267.***

He posited that the Claimant's claim is founded on trespass and not in contract. He submitted that the Claimant as landlord/owner is the person entitled to the reversionary interest on the land. He said that there is unchallenged evidence that the Claimant did not authorize the said squatters/tenants to sublet any part of the property. He said that the onus was on the Defendants who said they were led into the property by these persons to call them.

On whether proper parties are before the Court he posited that it was the duty of the Defendant to have joined the artisans.

On the issue of the artisans being in possession of the land counsel maintained that the Claimant was in possession in law.

Finally, he urged the court to grant the Claimant's reliefs.

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***.

Essentially, the Claimant's case is founded on trespass to land. Trespass to land is an unwarranted or unjustifiable entry or intrusion by one person upon land in possession of another. It is settled that trespass is actionable per se without proof of actual damage. See the following decisions on the point: ***AKINTERINWA & ANOR V. OLADUNJOYE (2000) LPELR-358(SC) AT 38-39 (G-A), (2000) 6 NWLR (PT.659) 92, STIRLING CIVIL ENGINEERING (NIG) LTD V. YAHAYA (2005) LPELR-3118(SC) AT 23(E)***.

However, where a Claimant has suffered specific loss on account of trespass committed on his land, he is entitled to claim special damages for the loss suffered apart from the general damages for trespass. See the case of ***NBC PLC V. UBANI (2013) LPELR-21902(SC) AT 31-32 (B-A).***

It is trite law that by the Evidence Act the burden of proof of trespass is on the Claimant who is alleging that the Defendant has trespassed into his land. The burden

of proving a particular fact is upon the party who asserts it and who will fail if no evidence is called at all upon the issue, regard of course being had to any presumption which may arise from the pleadings of the parties. This onus of proof, however, is not static. It continually shifts from side to side in respect of the fact until it finally rests on the party against whom Judgment will be given if no further evidence is proffered before the Court. See the following authorities on the point: ***Sections 131 to 133 of the Evidence Act, 2011; F.A.T.B. Ltd, v. Partnership Investment Co. Ltd (2003) 18 NWLR (Pt. 851) 35;*** and ***Orji v. D.T.M (Nig) Ltd (2009) 18 NWLR (pt. 1173) 467***.

Furthermore, trespass to land is a wrongful entry into the land in actual or constructive possession of another. See the case of ***FOLORUNSHO v. ENGINEER AMOS AROWOLO DADA (2021) LPELR-55684(CA) (Pp. 11 paras. E-E).***

Thus once the Claimant proves that he was in possession and the Defendant set his feet even by an inch into the land without the consent or authorization of the Claimant, the burden will shift to the Defendant to prove that he had a right to enter the land. See the case of ***DANJUMA V. S.C.C. (NIG) LTD & ORS (2016) LPELR-41553(CA) (PP. 23-24 PARAS. C).***

In the instant case, it is not in dispute that the Defendant entered the Claimant's land at No. 3 Amadasun Lane and made use of the land during the execution of a road construction contract close to the land. The Claimant has consistently maintained that the Defendant committed an act of trespass because they entered his land without his consent. The Defendant admitted that they never obtained the consent of the Claimant before entering the land but they maintained that they were not in trespass because the obtained the consent of the artisans/tenants who were in actual possession of the land. They insist that they have no privity of contract with the Claimant who they claim was not in possession of the land at that time.

It is settled law that trespass to land is founded on possession of land.

However it is settled law that in law, there are two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is said to be in actual possession of it. A person who although not in actual possession knowingly has both power and the intention at a given time to exercise dominion and control over a thing either directly or through

another person or persons is said to be in constructive possession of it. See ***Black's Law Dictionary 5th Edition at page 1047;*** and the case of ***EGBAREVBA V. ORUONGHAE (2001) LPELR-10341(CA) (PP. 30-31 PARAS. E).***

Furthermore, in the case of ***SAPO & ORS V. SUNMONU (2010) 11 NWLR (PT 1205) 374***, the Supreme Court held that proof of ownership is prima facie proof of possession. The presumption being that the person having title to the land in dispute is in possession. See also the case of ***ONYIA V. MBIKO & ANOR (2014) LPELR-23028(CA) (PP. 24-26 PARAS. C).***

Although trespass is based on exclusive possession, it is settled law that a person can be in possession through a third party such as a servant, an agent or even a tenant as in this case. In such a case the tenant himself cannot claim to be in possession as he is properly said only to be in occupation, while possession remains in his landlord through him even though the landlord *"does not even set foot on the land"* so said ***Nnaemeka-Agu JSC.*** in the case of ***Udeze v. Chidebe (1990) 1 NWLR (Pt.125) 141 @ p.162.*** See also the case of ***FATIMEHIN V. LAWANI (2014) LPELR-23476(CA) (PP. 91 PARAS. A).***

From the foregoing authorities, it is apparent that at all material times, the Claimant who is the undisputed owner of the parcel of land in dispute was in constructive possession of the land. The artisans/tenants who were in physical possession of the land were merely in occupation, while holding possession of the land on behalf of the Claimant who is having title to the land in dispute.

Thus, it is a legal fallacy for the Defendant to boldly contend that they had no duty to obtain the consent of the Claimant because there is no privity of contract between them. Clearly, when the Defendant met the artisans on the land they were aware that they were mere tenants on the land. Prudence demands that the Defendant should have taken steps to obtain the consent of the owner of the land instead of dealing with a group of artisans whose tenure on the land was unknown to him.

Furthermore, I think it was not the duty of the Claimant to join the artisans in this suit as co-defendants with the Defendant because they were not trespassers. Rather, I think it was the duty of the Defendant to call the artisans as witnesses in defence of this suit. They are the ones who can support the Defendant's purported contract of a

sub-lease or sub-letting. Failure to call any of the artisans further weakened the Defendant's defence.

In the absence of obtaining the consent of the Claimant, I hold that the Defendant's entry and use of the land amounted to trespass.

Having found the Defendant liable in trespass, it must be noted that trespass is actionable *per se* without proof of actual damage. See ***AKINTERINWA & ANOR V. OLADUNJOYE (2000) LPELR-358(SC) AT 38-39 (G-A), (2000) 6 NWLR (PT.659) 92, STIRLING CIVIL ENGINEERING (NIG) LTD V. YAHAYA (2005) LPELR-3118(SC) AT 23(E)***.

However, as earlier stated, where a Claimant has suffered specific loss on account of trespass committed on his land, he is entitled to claim special damages for the loss suffered apart from the general damages for trespass. See ***NBC PLC V. UBANI (2013) LPELR-21902(SC) AT 31-32 (B-A).***

In the instant case, the Claimant is claiming the sum of ₦52,300,000.00 (Fifty Two Million, Three Hundred Thousand Naira) for 1,046 days at ₦50,000.00 (Fifty Thousand Naira) daily against the Defendant for the occupation/use of the Claimant's land.

He is also claiming the sum of ₦1,000,000.00 (One Million Naira) for cleaning, clearing, restoration etc. of the premises; ₦2,000,000.00 (Two Million Naira) as General Damages; and ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) for Solicitor's/Litigation Cost.

From the foregoing, it is apparent that the Claimant is claiming both special and general damages. The claim for N52, 300,00.00 rent is a claim for special damages.

It is thus well settled that in law there is need to specifically plead and strictly prove special damages as the rule requires anyone asking for special damages to prove strictly that he did suffered such damages as being claimed.

What is required of a party claiming special damages is to establish entitlement to such special damages by credible evidence of such a character as would suggest that he indeed is entitled to an award under that head. See ***Oshinjinrin v. Elias (1970) All***

NLR 153. See also Warner International v. Federal Housing Authority (1993) 6 NWLR (Pt.298) 148.

It must be pointed out at once that the mere fact that the adverse party did not lead evidence to challenge the case of the party claiming special damages, would not ipso facto amount to proof of all special damages claims. See ***FLOURMILLS OF NIGERIA PLC & ANOR V. NIGERIA CUSTOMS SERVICE BOARD & ORS (2016) LPELR-41256(CA) (PP. 32-34 PARAS. E).***

In the instant case, the Claimant was already collecting rents from the artisans who are his bona fide tenants on the land. He has not justified why he should be paid the sum of N50, 000.00 (Fifty Thousand Naira) per day for over 1000 days. Moreover, he did not lead any evidence to justify that arbitrary rent. I think the claim for special damages has failed.

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 did not elaborate on the extent of destruction or losses occasioned by the Defendant's trespass. Going through the entire gamut of the Claimant's evidence, there is no evidence of the quantum of losses suffered. In the event 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. 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 Defendant's entry, occupation and use of the Claimant's piece or parcel of land otherwise know and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State is unauthorized, forcible, illegal and unlawful;***
2) ***A Declaration that the Defendant's unauthorized entry, occupation and use of that Claimant's said piece or parcel of land otherwise known and described as No. 3, (same as plot 5) Amadasun Lane, Off Mission Road, Benin City, Edo State constitute actionable trespass;***
3) ***The sum of N3, 000,000.00 (Three Million Naira) as general damages for trespass; and***
4) ***The Defendant shall pay 15% (Fifteen Per cent) interest per annum on the judgment sum from today until same shall be fully paid.***
   The Defendant shall pay the sum of N200,000.00 (Two Hundred Thousand Naira) as costs to the Claimant.

P.A.AKHIHIERO
JUDGE
24 /07/2024

<u>COUNSEL:</u>

F.O.Ogierhiakhi Esq. ----------Claimant.

Michael Ekwemuka----------Defendant.