

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
21ST DAY OF JULY, 2022.

BETWEEN:

SUIT NO: B/368/2021

GOODLUCK VICTOR OKORO----- CLAIMANT
*(Suing through his Lawful Attorney
Esohe Gift Okoro)*

AND

MR. ROBINSON JOHNBULL ----- DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a writ of summons dated the 30th of April, 2021 claiming as follows:

- A. A DECLARATION that the Claimant is the only person entitled to a statutory Right of Occupancy and the only person entitled to be granted a Certificate of Occupancy over all that piece or parcel of land measuring 100 feet by 100 feet lying and situate at Obe Community, off Sapele Road, Benin City, Oredo Local Government Area of Edo State;**
- B. AN ORDER of Perpetual Injunction Restraining the Defendant, his Agents, servants, Assigns or any person connected to him howsoever from trespassing on, entering or doing anything that will adverse to the ownership of the Claimant over all that piece or parcel of land measuring 100 feet by 100 feet lying and situate at Obe Community, Off Sapele Road, Benin city, Oredo Local Government of Edo State;**
- C. GENERAL DAMAGES of 5,000.000.00 (Five Million Naira) against the Defendant for Trespass; and**
- D. AN ORDER or such further order as this Honourable Court may deem fit to make in the circumstances of this Case.**

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendant by substituted service but he failed to attend the Court so the hearing commenced.

At the hearing, the Claimant's Lawful Attorney testified in proof of the Claimant's case.

In her evidence, the Claimant's Lawful Attorney narrated how the Claimant acquired the land in dispute. She testified that the Claimant is the owner of the land in dispute now measuring 100 feet by 100 feet formerly 100 feet by 200 feet, lying and situate at Obe Community, Off Sapele Road, Benin city, Oredo Local Government Area of Edo State and has being in exclusive possession of the said parcel of land.

She said that the Claimant became siesed of the said land vide a Deed of transfer executed between him and one Prince Ohangbon Osa (now deceased), dated the 19th day of November, 2009. The said Deed of Transfer and the Oba's Approval attached to the Deed were collectively admitted in evidence as Exhibit B.

The witness testified that the land was given to Late Prince Osa Ohangbon by the Obe Community, in commemoration of his contributions towards the development of Obe Community. She stated that the following people were signatories to the said Allocation: Pa. George A. Idemudia, the Odionwere of Obe village, Chief Dr. M.E Nehizena the Chairman of Obe Community Development Association and Mr. Eghosa Otakhoigbogie, the General Secretary.

She further stated that by an Application for Building Plot through the Plot Allotment Committee, Obe Village Area, Benin/Sapele road, Benin City dated 15/4/73 and approved on the 17/7/74 by the Oba of Benin as the Trustee of all Communal Land in Benin according to Bini Customary Law, a piece of land situate at new layout, Obe Village Area, Benin City measuring 200 feet by 300 feet was allocated to Late Prince Osa Ohangbon.

The witness identified the Application for Building Plot dated 17th day of July, 1974 as the document attached to Exhibit B.

She testified that it was from the aforesaid parcel of land measuring 200 feet by 300 feet allocated to Prince Osa Ohangbon, that he transferred a portion of 100 feet by 200 feet to the Claimant for the sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira).

That immediately after the purchase of the said land, the Claimant paid for some trips of sand and blocks, deposited them on the land and commenced some developments.

She alleged that the Claimant had developed the land to a reasonable extent before it was illegally sold and occupied by the Defendant. She maintained that the trips of sand and blocks were still on the land when the Defendant encroached on the land

by building swiftly with thugs always present on the land to ward off any protest from the Claimant.

That on the 12th day of December, 2018, the Claimant wrote a Petition to the Edo State Private Property Protection Committee in respect of the encroachment and the Committee carried out their investigation, obtained the statements of witnesses and issued a Report. A copy of the said Statements of Parties and witnesses and Investigation Report was tendered at the trial and admitted as Exhibit C1.

Upon the conclusion of the evidence of the Claimant's Lawful Attorney, the matter was adjourned to enable the Defendant cross examine the witness. On the next date, the Defendant failed to appear in Court so the Claimant closed her case and the matter was adjourned for final address.

In his Final Written Address, the learned counsel for the Claimant, *Nosakhare Festus-Ajayi Esq.*, from the Law Firm of *Douglas Ogbankwa Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has not proved his claim against the Defendant on the balance of probabilities.”

Arguing the sole issue for determination, the learned counsel submitted that the Claimant has proved his case against the Defendant on the balance of probabilities and is entitled to the judgment of this Honourable Court.

He referred to the evidence adduced by the Claimant at the trial and posited that since the evidence of the Claimants' Attorney was unchallenged and uncontroverted by the Defendant, the Court should accept it as correct. He pointed out that the Defendant was afforded ample opportunity to contradict or challenge the evidence of the Claimant's Attorney but chose to ignore same and he referred the Court to the case of *F.C.D.A. v. Nzelu (2014) 5 NWLR (Pt. 1401) 565 at 581 Paras. F – G* where the Court of Appeal held inter alia thus:

“...an unchallenged and uncontroverted evidence ought to play against that party who should have challenged or contradicted it but had failed to so do.”

He further relied on the following decisions on the point: *Obiegue v A. G. Federation (2014) 5 NWLR (Pt. 1399) 171 at 207 Paras; Nwabuoku v. Ottih (1961) N.S.C.C 234; and Omoregbe v Lawani (1980) N.S.C.C 164 at 170.*

Counsel further submitted that when the evidence led by a Claimant supports his case, he would be entitled to judgment in that regard. He posited that the Claimants' Attorney gave evidence of facts supporting the case of the Claimant, which facts were not contradicted or controverted by the Defendant and he relied on the case of *F.C.D.A. v. Nzelu (Supra)*.

Learned counsel submitted that in awarding damages to the Claimant, the Court should take judicial notice of the depreciation of the value of the national currency and the inflationary trend in the country since the incident giving rise to this suit was in 2015. For this submission, he relied on the following authorities:

Onagoruwa v I G P (1991) 5 NWLR (Pt. 193) 593 at 650 – 651; and Usman v Abubakar (2001) 12 NWLR (Pt. 728) at 710, Paras D – E.

Finally, he submitted that in the light of the unchallenged, uncontroverted and un-contradicted evidence led by the Claimants' Attorney he urged the court to hold that the Claimant has proved his case on the balance of probabilities and resolve the sole issue 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 follows:

- 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 and third means of proof, to wit: proof by the production of documents of title and by acts of ownership.

On the proof by the production of title documents, the Claimant tendered the following documents in proof of his title to the land in dispute:

- (i) A Deed of Transfer and the Oba's Approval attached to the Deed were collectively admitted in evidence as Exhibit B; and
- (ii) The Statements of parties and witnesses and the Investigation Report of the Edo State Private Property Protection Committee was admitted as Exhibit C1.

The Claimant's main document of title is the Deed of Transfer and the Oba's Approval attached to the Deed which were collectively admitted as Exhibit B. It is evident that Exhibit B is not a registered legal instrument so it cannot convey legal title to the land.

However, it is settled law that a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered acquires an equitable interest which can only be defeated by a purchaser for value without notice of the prior equity. See the following cases: *Agboola vs. U.B.A. Plc. (2011) 11NWLR (Pt.1258) 375 at 415; Dauda vs. Bamidele (2000) 9 NWLR (Pt.671) 199 at 211; and Goldmark (Nig.) Ltd. vs. Ibafor Co. Ltd. (2012) 10 NWLR (Pt.1308) 291 at 349-350.*

In the recent case of: *Atanda vs. Commissioner for Lands and Housing, Kwara State & Anor. (2018) 1 NWLR (Pt.1599) 32 at 55, Sanusi JSC*, delivering the lead judgment of the Supreme Court restated the position thus:

“A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase price.”

Flowing from the foregoing, I am of the view that although Exhibit B, *per se* cannot prove legal title to the land in dispute, it will suffice to vest an equitable

interest on the Claimant, which can only be defeated by a purchaser for value without notice of the prior equity. In the absence of any challenge to Exhibit B, I hold that it will suffice to establish the Claimant's title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence to prove that immediately after the purchase of the land, he paid for some trips of sand and blocks, deposited them on the land and commenced some developments.

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

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 servants from any further acts or trespass on the Claimant's land.

On the claim for the sum of ₦5,000, 000:00 (Five 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 did not explain the nature of injury or losses occasioned by the Defendant's trespass. Neither did he lead any evidence of what he suffered from the acts of the Defendant.

Going through the entire gamut of the Claimant's evidence, there is no evidence of anything he suffered from the action of the Defendant. It is usual in cases such as this, where the Claimant has not shown that any particular loss was suffered

for the Court to award nominal damages. 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*. In the event, I think the Claimant is only entitled to nominal damages.

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:

- A. A DECLARATION that the Claimant is the only person entitled to a statutory Right of Occupancy and the only person entitled to be granted a Certificate of Occupancy over all that piece or parcel of land measuring 100 feet by 100 feet lying and situate at Obe Community, off Sapele Road, Benin City, Oredo Local Government Area of Edo State;**
- B. AN ORDER of Perpetual Injunction Restraining the Defendant, his Agents, servants, Assigns or any person connected to him howsoever from trespassing on, entering or doing anything that will adverse to the ownership of the Claimant over all that piece or parcel of land measuring 100 feet by 100 feet lying and situate at Obe Community, Off Sapele Road, Benin city, Oredo Local Government of Edo State; and**
- C. GENERAL DAMAGES of N500, 000.00 (Five Hundred Thousand Naira) against the Defendant for Trespass.**

Costs is assessed at N100, 000.00 (One Hundred Thousand Naira) in favour of the Claimant.

**P.A.AKHIHIERO
JUDGE
21 /07/2022**

COUNSEL:

**Douglas Ogbankwa Esq..... Claimant.
Unrepresented Defendant.**

