

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 MONDAY
THE 25TH DAY OF JULY, 2022.

BETWEEN:

SUIT NO. B/17/2018

**KINGSLEY KOKUMO EDOSOMWAN ----- DEFENDANT TO
COUNTERCLAIM**

AND

OSASERE OSARO - ITOTA ----- COUNTER-CLAIMANT

JUDGMENT

Originally, the Defendant to the Counter-Claim instituted a suit against the Counter-Claimant vide a writ of summons filed on the 15th of January, 2018. However as a result of the failure of the Defendant to the Counter-Claim to prosecute his case, the claim was struck out on the 19th day of July, 2021 and the Defendant/Counter-Claimant was granted leave to open his case to prove his Counter-Claim.

In his Counter-Claim, the Counter-Claimant claimed against the Defendant to the Counter-Claim as follows:

- 1. A Declaration that the Ogbaneki Community land approvals granted in favour of Mrs. Theresa Itota and Mr. Itota Sunday Osaro respectively dated 23rd day of June 2009 and 26th day of May, 2009 remains valid and subsisting;***
- 2. A Declaration that the Counter-Claimant is the beneficial holder of the Customary Right Of Occupancy over the disputed parcel of land measuring 100 feet by 300 feet, situate and lying at Ogbaneki Community, in Oredo Local Government Area of Edo State; and***
- 3. Perpetual Injunction restraining the Defendant to the Counter-Claim, his agents, servants, privies and/or anyone claiming through him from further trespassing into the parcel of land measuring 100 feet by 300 feet, situate and lying at Ogbaneki Community, in Benin City.***

In proof of his counter-claim, the Counter-Claimant testified for himself, called one witness, CCW1 and tendered Exhibits A, B, C, D & E respectively. The Defendant to the Counter-Claim did not lead any evidence at the trial.

From the evidence adduced at the trial, the Counter-Claimant's case is that by an approved application for allocation of land dated the 23rd day of June, 2009, his late mother, Mrs. Theresa Itota became the beneficial owner of a parcel of land measuring 100ft by 200ft at Ogbaneki community in Oredo Local Government Area of Edo] State. The land is comprised in a Survey Plan Number JAO/ ED2010/ 67 and bounded by Beacon Numbers H355D, H356D, H357D and H358D.

At the trial, the Counter-Claimant tendered the following documents in evidence: an Application for allocation of land dated 23/6/09 admitted in evidence as Exhibit A; and a Survey Plan dated 19/3/10 which was admitted in evidence as Exhibit B.

Testifying further, the Claimant stated that his late father, Mr. Itota Sunday Osaro also vide an approved application for building plot dated the 26th day of May, 2009 also acquired a parcel of land measuring 100ft by 100ft situate and lying at Ogbaneki Community of Oredo Local Government Area of Edo State comprised in Survey Plan No: JAO/ED2010/99, bounded by beacon numbers: H1551D, H1552D, H1553D and H1554D.

At the trial, the Claimant also tendered the following documents: an Approved application for building plot dated 26/5/2009 which was admitted in evidence as

Exhibit C; a Survey Plan No. JAO/ED2010/99 admitted as Exhibit D; and Ogbaneki Community cash receipt No. 0006 admitted in evidence as Exhibit E.

According to the Counter-Claimant, his late father's parcel of land and that of his late mother were adjoining lands which together measures 100ft by 300ft, lying and situate at Ogbaneki Hill Road and bounded on the right by a road and a parcel of land belonging to one Mr. Ediae of Osvin hotels. He said that one Mr. Kenneth has his land at the back of the land while a demolished Fadama building is on the left side of the land.

The Counter-Claimant informed the Court that Exhibits A and C were duly signed by the then Chairman of the Ogbaneki Community Development Committee, the Odionwere, Pa. Monday Uwudia and other members of the Elders in council of the Community including the community secretary.

He stated that, after purchasing the lands, his late parents immediately took possession of the land in 2009, cleared the land, fell the rubber trees that were on the land and started farming on the land. He said that they also built a dwarf wall fence round the land and they have been enjoying uninterrupted possession of the land ever since.

Furthermore, he stated that after acquiring the parcels of land, they filled a large portion of the land which was a valley at the time with laterite sand and his parents allowed one Mr. Osayawemwen Osazuwa, his late mother's cousin to farm on the land from 2009 to 2015 before they started farming on the land by themselves.

He stated that in December, 2017, after the abrogation of Community Development Associations across Edo State, they were requested to submit their community approvals for verification to the Odionwere of the Ogbaneki community and they handed the said documents to the Odionwere.

He said that two weeks after they submitted their documents for verification, the Defendant to the Counter Claim came up to lay claim to the land and trespassed thereon by putting a trip of granite on a part of the land. He said that the Defendant to the Counter Claim also destroyed a part of the dwarf wall fence which they erected round the land after purchasing it.

He alleged that as a result of the trespass, his late mother reported the matter to the Office of the Assistant Inspector General of Police, Zone 5, Nigeria Police, Benin City and upon investigation, the Police found that the Community approval presented

by the Defendant to the Counter Claim was forged by the Odionwere in connivance with the Defendant to the Counter Claim.

He said that the Odionwere was charged to court and convicted by the Oredo Magistrate Court amongst other alleged offences for forgery.

Upon the conclusion of the Counter-Claimant's evidence, the matter was adjourned for cross examination and the Court ordered that fresh hearing notice should be issued and served on the Defendant to the Counter-Claim. The Hearing notice was served on him but he failed to appear in the Court so the Court foreclosed him and the suit was adjourned for Defence. The Defendant to the Counter-Claim never showed up in Court to defend the Counter-Claim so the matter was adjourned for final address.

In his final address, the learned counsel for the Counter-Claimant, **C.O.Izomon Esq.** formulated a sole issue for determination as follows:

“Whether from the pleadings and the totality of evidence before the Court, the Counter-Claimant has proved his case to be entitled to the reliefs sought”.

Opening his arguments on the sole issue for determination, learned counsel submitted that it is trite law, that in a Claim for declaration of title to land, the onus is on the Claimant to establish his title upon the preponderance of evidence or on the balance of probability.

He submitted that there are five ways of proving title to land, proof of one of which is sufficient to entitle the Claimant to a declaration.

See: *Nruamah v Ebuzoene (2013) All FWLR (pt 681) S. C 1426 R2*

He said that in the instant case, the Counter-Claimant relied on the production of documents of title duly authenticated and executed in proof of his title to the disputed land.

He posited that it is an essential requirement of Benin Customary Law that for a person to acquire a valid legal estate in any given communal land, he must show that his application was recommended to the Oba for approval by the appropriate ward plot allotments Committee having Jurisdiction over the area in which the land is situated. **See: *Ighiwiyesi v. Igbinere (2016) ALL FWLR (pt 819) pg at 1069-1070 paras G-A.***

Learned counsel rehashed the salient portions of the evidence of the Counter-Claimant and his witness and posited that it substantiated the Counter-Claimant's case.

He posited that the evidence was neither challenged, contradicted nor discredited under cross examination and he submitted that the unchallenged evidence of the Claimant is deemed admitted and he urged the Court to so hold.

Furthermore, he submitted that where the evidence offered by the Claimant goes one way without any other evidence to the contrary, the standard of proof is a minimal one and he cited the following cases: *Yakubu v. P.H.C.N Plc (2012) All FWLR (pt 616) 529 at p. 547 paras. F-H; Cameroon Airlines v. Otutuizi (2011) ALL FWLR (570) S. C1260 at p. 1286 paras A- B*; and *Nacenn (Nig.) Ltd v. Bewac Auto Prod. Ltd (2011) All FWLR (585) S. C 280 R 4*.

He posited that the Counter-Claimant also led evidence to substantiate the alleged trespass on his land by the defendant to the Counter-Claim sometimes in December, 2017 as a result of which he suffered damages as stated in paragraphs 10-12 of the Counter-Claimant's deposition.

He submitted that once title has been proved, the person having title to the land is presumed to be in lawful possession and the other party does not acquire possession by his further act of trespass. See: *Okoko v. Dakolo (2006) 14 NWLR (pt1000) pg. 401 R 7*.

Finally, he urged the Court to resolve the sole issue for determination in the affirmative and grant the reliefs sought by the Counter-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 Counter-Claimant.

As I have already observed, the Defendant to the Counter-Claim did not put up any defence to this suit. Thus, the evidence of the Counter-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 Counter-Claimant to ascertain whether they are credible and sufficient to sustain the Counter-Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Counter-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 Counter-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 Counter-Claimant tendered the following documents in proof of his title to the land in dispute: an Application for allocation of land dated 23/6/09 which was admitted in evidence as Exhibit A; and a Survey Plan dated 19/3/10 which was admitted in evidence as Exhibit B; another Approved application for building plot dated 26/5/2009 which was admitted in evidence as Exhibit C; another Survey Plan No. JAO/ED2010/99 admitted as Exhibit D; and Ogbaneki Community cash receipt No. 0006 admitted in evidence as Exhibit E.

It is evident that the salient documents of title appear to be the Community Approvals to wit Exhibits A and C. It is evident that Exhibits A and C are not registered legal instruments so they 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.g***

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 Exhibits A and C, *per se* cannot establish legal title to the land in dispute, they will suffice to vest an equitable interest on the Counter-Claimant, which can only be defeated by a purchaser for value without notice of the prior equity. In the absence of any challenge to Exhibits

A and C, I hold that they will suffice to establish the Counter-Claimant's title to the land in dispute.

On acts of ownership and possession, the Counter-Claimant led unchallenged evidence to prove that immediately after the purchase of the land, his late parents took possession, cleared it, fell the rubber trees that were on the land and started farming on the land. He said that they also built a dwarf wall fence round the land and enjoyed uninterrupted possession of the land thereafter.

Furthermore, he stated that after acquiring the parcels of land, they filled a large portion of the land which was a valley at the time with laterite sand and his parents allowed one Mr. Osayawemwen Osazuwa, his late mother's cousin to farm on the land from 2009 to 2015 before they started farming on the land by themselves. All these pieces of evidence were unchallenged at the trial.

From the uncontroverted evidence of the Counter-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 Counter-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*.

From the unchallenged evidence adduced by the Counter-Claimant, I hold that he has established his title to the land in dispute.

On the relief of a perpetual injunction against the Defendant to the Counter-Claim, 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 Counter-Claimant is entitled to a perpetual injunction to restrain the Defendant to the Counter-Claim, his Agents, privies or servants from any further acts of trespass on the Counter-Claimant's land.

The claims succeed and judgment is entered in favour of the Counter-Claimant as follows:

- 1. A Declaration that the Ogbaneki Community land approvals granted in favour of Mrs. Theresa Itota and Mr. Itota Sunday Osaro respectively dated 23rd day of June 2009 and 26th day of May, 2009 remains valid and subsisting;*

2. *A Declaration that the Counter-Claimant is the beneficial holder of the Customary Right Of Occupancy over the disputed parcel of land measuring 100 feet by 300 feet, situate and lying at Ogbaneki Community, in Oredo Local Government Area of Edo State; and*
3. *Perpetual Injunction restraining the Defendant to the Counter-Claim, his agents, servants, privies and/or anyone claiming through him from further trespassing into the parcel of land measuring 100 feet by 300 feet, situate and lying at Ogbaneki Community, in Benin City.*

P.A.AKHIHIERO JUDGE

25 /07/2022

COUNSEL:

C.O.Izomon Esq. -----Counter-Claimant.

Unrepresented-----Defendant to Counter-Claim.

