

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 21ST DAY OF JULY, 2025.

BETWEEN: **SUIT NO. B/697/2022**
DR. ANTHONY DIBIE.....CLAIMANT
AND
UNKNOWN TRESPASSER.....DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 7th of July, 2022 wherein he claimed as follows:

1. *A Declaration that the Claimant is the owner of the piece or parcel of land known and referred to as plot 314, Etete Layout, Benin City, in Oredo Local Government Area of Bendel State of Nigeria now presently known as Peter Otaigbe Street, Etete Layout, Benin City, Edo State measuring an area of approximately 2654.906 square meters delineated in survey plan No. BE.409 covered by certificate of occupancy No. BDSR 6226 dated 6th day of October 1986, with file no. 17179 registered as No. 13 at page 13 in volume B.84 at the Edo*

geographic information system at the land registry Benin City, within the jurisdiction of the Honourable Court;

- 2. N20,000,000.00(Twenty Million Naira) general damages for Defendant's acts of trespass on the Land;*
- 3. An order of perpetual injunction restraining the Defendant, either by himself, his servants, agents, privies and assigns from further acts of trespass on the Claimant's Land; and*
- 4. An Order of this court mandating the defendant to remove his structure or buildings from the Claimant's Land.*

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 neither was he represented by any counsel despite several hearing notices that were served on him. In essence, the suit was undefended.

At the hearing, the Claimant testified that he is the first and only son of Late Mr. Michael Ojianwuna Dibia the owner of the parcel of land in dispute which is situated at Plot 314, Etete Layout, Benin City, in Oredo Local Government Area of Edo State of Nigeria now presently known as Peter Otaigbe Street, Etete Layout, Benin City, Edo State measuring an area of approximately 2654.906 square meters delineated in survey plan No. BE.409 covered by certificate of occupancy No. BDSR 6226 dated 6th day of October 1986, with file no. 17179 registered as No. 13 at page 13 in volume B.84 at the Edo Geographic Information System at the land registry in Benin City.

He alleged that the land in dispute was granted to his late father by the defunct Bendel State Government.

He said that his late father who worked and retired as a Permanent Secretary in the Ministry of Economic Planning in the defunct Bendel State, applied and was allocated the said plot of land by the then Military Government of Bendel State.

According to the Claimant, the land in dispute was granted directly to his late father for valuable considerations vide a Certificate of Occupancy No. BDSR 6226 dated 6th day of October, 1986 and registered as No. 13 at page 13 in volume B.84 at the

Lands Registry of the defunct Bendel State Government now kept in the EDOGIS Land Registry at Benin City, Edo State. At the trial, he tendered a copy of the Certificate of Occupancy which was admitted as Exhibit “D”.

He said that the said plot of land is properly delineated in Bendel State Government Survey Plan No. BE.409 dated 15/7/1978. The Survey Plan was admitted as Exhibit “E” during the hearing.

He alleged that the said plot of land was also covered by the Bendel State of Nigeria allocation of description and dimension of parcel of land to which the above certificate of occupancy relates, dated 6th day of October, 1986 issued by the then Military Governor of Bendel State of Nigeria.

The Claimant alleged that his family has been in possession of the land in dispute and that after acquiring the land, his father carried out various acts of ownership and possession including planting of palm trees on the land.

He said that his father died in February, 2017 and after performing the final burial rites of his father, the family in line with the custom and traditions handed over all the property of his late father including the land in dispute to him as the only surviving son.

The Claimant alleged that he has been in peaceful and absolute possession and enjoyment of the land in dispute until the Defendant forcefully entered the land, erected and completed various buildings on the Land.

He maintained that in his lifetime, his late father did not transfer his right and interest over the property to anyone.

He said that upon his return to the Country from the United States of America, in an attempt to sell the property to a prospective buyer, he discovered that the Defendant had trespassed into the land.

According to him, in a bid to sell the land, the proposed buyer required a report from the EDOGIS to ascertain the title of the property through his solicitors G.C. Igbokwe (SAN) & Co as a condition for the purchase of the property.

He said that upon the request of the buyer, his solicitors conducted a search on the property at the Edo Geographic Information System (EDOGIS) and a comprehensive report issued by EDOGIS revealed that from 1986 till the date of the filing of this suit, the title of the property identified as plot 314 was vested on the Claimant's late father and there has been no subsequent transaction on the said property. The search application and EDOGIS reports were tendered and admitted as Exhibits "A" and "B" respectively.

He said that he was alarmed to see a completed building on the land when he visited the land to show the prospective buyer.

He said that upon his discovery, he caused his solicitors to apply for an identification of the plot as regards the report earlier issued by them. The application letter to identify the plot dated 17/5/2022 was admitted as Exhibit "C" at the hearing.

He said that he instructed his solicitors, G.C.IGBOKWE (SAN) & Co. to write a letter to the Defendant on his act of trespass and the letter dated 16/6/2022 was admitted as Exhibit "F" at the hearing.

He said that despite his solicitor's letter to the Defendant, he refused to comply with the directive of the letter and continued his alleged acts of trespass hence he instituted this suit to seek redress.

Upon the conclusion of the 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. The Hearing notice was served on him but he failed to appear in the Court so the Court foreclosed him and the Claimant closed his case. Eventually, the matter was adjourned for defence or final address and fresh hearing notice was again served on the Defendant.

On the next date, the Defendant did not show up so the Claimant's counsel adopted his final written address.

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

“Whether the Claimant has proved his claim on the preponderance of evidence and balance of probabilities.”

Arguing the sole issue for determination, the learned counsel submitted that it is trite law that for a Claimant to succeed, he must prove his case by cogent, credible and convincing evidence before the court. He enumerated the five ways of proving title to land in Nigeria and referred the Court to the cases of ***IDUNDUN V. OKUMAGBA (1976)9-10 S.C. 227***; and ***AIGHOBAHI VS AIFUWA (2006) NWLR (PT 976 270***.

He posited that in the instant case, the Claimant pleaded and gave unchallenged and uncontroverted evidence of how the land in dispute was allocated to his late father by the then military Government of the defunct Bendel State and tendered the relevant title documents.

He said that the Claimant led evidence of how his family has been in possession of the land and how he inherited the land upon the demise of his father in February 2017.

He said that the Claimant’s evidence was not challenged at the hearing and that the failure of the Defendant to file any defence is an acceptance of the Claimant’s case.

He submitted that where the Defendant does not call any evidence to rebut the Claimant’s case, the case will be determined upon minimal proof and he relied on the case of ***MONKOM V ODILI (2010) 2 NWLR (PT 1179) 419, 442 para H***. He also cited the case of ***KOPEK CONSTRUCTION LTD V EKISHOLA (2010) 3 NWLR (PT 1182) pg 618 at 626 R 11***.

Furthermore, he submitted that possession is one of the well-established methods by which title or ownership of land may be proved and these were laid down in the case of ***ODUNDUN V OKUMAGBA (Supra)***.

He maintained that the Claimant has been in possession with his family ever since his father acquired the land in dispute. He referred the Court to ***section 143 Evidence Act 2011***, and the following decisions: ***ASHIRU V OLUTOYA (2006) 11 NWLR (PT 990) 1 at 32 p 33-34***; ***ATIPIOKO EKPEM & ORS V CHIEF AGWU UYO & ORS (1986) 33 NWLR (PT 26) 63***; ***AMAKOR VOBIEFUNA (1984) 1 NWLR 119***.

Finally, he urged the Court to resolve the sole issue for determination in favour of the Claimant and grants his reliefs.

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 *Oyenehin 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:

- 1) *By traditional evidence;*
- 2) *By the production of documents of title;*
- 3) *By proving acts of ownership;*
- 4) *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*
- 5) *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 means of proof, to wit: proof by the production of documents of title.

On the proof by the production of title documents, the Claimant tendered a Certificate of Occupancy over the land which was admitted as Exhibit "D".

The Claimant led unchallenged and uncontroverted evidence that the land in dispute was granted to his late father by the defunct Bendel State Government vide Exhibit "D".

The Claimant also led unchallenged evidence to show that from 1986 till the date of the filing of this suit, the title of the property in dispute has remained vested on the Claimant's late father and there has been no subsequent transaction on the said

property. The search application and EDOGIS reports were tendered and admitted as Exhibits “A” and “B” respectively at the hearing.

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 Certificate of Occupancy which was admitted as Exhibit “D”. In the absence of any challenge to Exhibit “D”, I hold that it will suffice to establish the Claimant’s root of title to the land in dispute.

Furthermore, the Claimant led unchallenged evidence to show that upon the demise of his father in February, 2017 and after performing the final burial rites of his father, the family in line with the custom and traditions handed over all the property of his late father including the land in dispute to him as the only surviving son.

According to him, he has been in peaceful and absolute possession and enjoyment of the land in dispute until the Defendant forcefully entered the land, erected and completed various buildings on the Land.

At the hearing, all these facts were not challenged or controverted by the Defendant so he is deemed to have admitted them.

From the uncontroverted evidence of the Claimant, his evidence of acts of possession 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*.

From the foregoing, I hold that the Defendant’s acts of entering into the Claimant’s land to erect structures without the consent of the Claimant amounts to trespass.

On the relief for the sum of ₦20, 000,000.00 (Twenty Million Naira) as general damages for the Defendant’s acts of trespass on the land, 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 upon an inspection of the land with a prospective buyer, he saw a completed building on the land.

It is evident that the Claimant has expended some funds to investigate the Defendant's acts of trespass and to prosecute this suit. 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 YENEYIN & 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 for these expenses.

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 of trespass on the Claimant's land.

On the relief for an order that the unknown Defendant should remove all his structures on the land, it is settled law that where there is a trespass or encroachment or an illegal structure on a person's land, the proper order to make is for the illegal structure to be removed. See the cases of *DANJUMA V. NASIRU & ANOR (2015) LPELR-25922(CA)(PP.21 PARAS. C)*; and *HASSAN V. HAKIMI & ORS (2020) LPELR-52792(CA)(PP. 26 PARAS. C)*.

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 owner of the piece or parcel of land known and referred to as Plot 314, Etete Layout, Benin City, in Oredo Local Government Area of Bendel State of Nigeria now presently known as Peter Otaigbe Street, Etete Layout, Benin City, Edo State measuring an area of approximately 2654.906 square meters delineated in survey plan No. BE.409 covered by Certificate of Occupancy No. BDSR 6226 dated 6th day of October 1986, with file no. 17179 registered as No. 13 at page 13 in volume B.84 at the Edo Geographic Information System at the Land Registry Benin City, within the jurisdiction of the Honourable Court;*
- 2) *N3,000,000.00(Three Million Naira) general damages for Defendant's acts of trespass on the land;*
- 3) *An order of perpetual injunction restraining the Defendant, either by himself, his servants, agents, privies and assigns from further acts of trespass on the Claimant's land; and*
- 4) *An Order of this Court mandating the Defendant to remove his structure or buildings from the Claimant's Land.*

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

P.A.AKHIHIERO

JUDGE

21 /07/2025

COUNSEL:

S.C. Eti Esq.-----Claimant.

Unrepresented-----Defendant.