

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 14TH DAY OF APRIL, 2024.

BETWEEN:

SUIT NO. B/346/2021

- 1. FREDRICK A. IKPEA, ESQ**
- 2. MRS. CYNTHIA C. IKPEA**

} -----CLAIMANTS

AND

- 1. ISAAC OGBEWE**
(Popularly known as SUPOL)
- 2. OMORODION OSASERE**
- 3. OSARUMWENSE OGIERIAKHI**
(Popularly known as YOUNGEST LANDLORD)
- 4. MOMOH (other names unknown)**
- 5. HENRY (other name unknown)**
- 6. MR. AUSTIN (other names unknown)**
- 7. PERSON UNKNOWN**

} ----- DEFENDANTS

JUDGMENT

The Claimants instituted this suit vide a Writ of Summons and Statement of Claim, filed on the 26th of April, 2021 wherein they claimed against the Defendants jointly and severally as follows:

- A. A DECLARATION that the Claimants are the rightful owners and entitled to be granted Statutory Right of ownership over all that piece or parcel of land measuring approximately 100 feet by 100 feet located at Obagie N'Evbosa Community, Ikpoba Okha Local Government Area of Edo State and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor;**
- B. A DECLARATION that the acts of invasion of the Claimants' piece or parcel of land measuring approximately 100 feet by 100 feet located at Obagie N'Evbosa Community, Ikpoba Okha Local Government Area of Edo State and more particularly described in survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor, and destroying their economic crops without the Claimants' consent and authority is wrongful and unlawful;**
- C. AN ORDER of this Honourable Court that the Claimants are the owners and in possession of the piece or parcel of land located at Obagie N'Evbosa Community, measuring approximately 100 feet by 100 feet and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor;**
- D. AN ORDER OF COURT awarding general damages of N10, 000,000.00 (Ten Million Naira) only to the Claimants against the Defendants for the act of trespass committed on the Claimant's piece or parcel of land;**
- E. AN ORDER OF COURT awarding special damages of N5,000,000.00 (Five Million Naira) only to the Claimants against the Defendants for the act of destruction and setting ablaze of the crops which the Claimants cultivated on their piece or parcel of land; and**
- F. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants either by themselves, their servants, agents, privies, assigns, executors or anybody acting or claiming for them or claiming through them from committing or further committing any act of trespass on the Claimants' piece or parcel of land measuring approximately 100 feet by 100 feet and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor.**

Upon the service of the originating processes on the Defendants, the 1st, 3rd and 4th Defendants filed their Statement of Defence and Counter-Claim on the 16th of June 2021 and Counter-Claimed against the Claimants as follows:

- 1) *A declaration that the 1st Defendant, the Nobore N' Obagie of Obagie N'Evbosa Community and the 3rd and 4th defendants, who are Elders of Ogieriakhi camp of Obagie NEvbosa Community respectively which comprises of three (3) major families; Ogieriakhi, Ohonbamu and Edogiawerie who settled in the virgin land called Ogieriakhi camp from time immemorial in the reign of Oba Esigie of Benin Kingdom which forms a part of Obagie N'Evbosa Community in the present Ikpoba Okha Local Government Area of Edo State founded by Ogieriakhi, their progenitor are the owners of all that land known as Ogieriakhi camp which includes the land now in dispute with user and customary rights over all that land before the Land Use Act 1978;*
- 2) *A declaration that the land now in dispute measuring 100ft by 100ft lying being and situate in Ogieriakhi camp in Obagie N'Evbosa Community and all that surrounding land now claimed by the claimant forms part of the ancestral and communal farmland of the 1st, 3rd and 4th defendants/counter- claimant's land outside the area of land acquired by NEPA Staff Co- operative Multi-Purpose Society Ltd. The defendants shall rely on a litigation survey plan which shall be filed with this statement of defence and counter claim;*
- 3) *A declaration that the 1st, 3rd and 4th defendants/counter-claimants are the persons entitled with their Community to user rights over all that parcel of land measuring 100ft by 100ft being a part of the communal farmland of Ogieriakhi camp, Obagie NEvbosa Community;*
- 4) *An order of perpetual injunction restraining the claimants, their agents, and servants howsoever called from further trespassing on or building thereon any structure on the communal farmland in the 1st, 3rd and 4th defendants' Community;*
- 5) *N5, 000,000.00 (Five Million Naira) only as general damages for claimants acts of trespass and or further acts of trespass on the communal farmland of the 1st, 2nd and 4th defendants.*

Upon receipt of the Counter-Claim, the Claimant's filed their Reply and Defence to the Counter-Claim on the 29/6/2021. The other Defendants did not respond to the originating processes and subsequent processes which were served on them.

At the hearing, the 1st Claimant testified and they called one witness.

In his evidence, the 1st Claimant alleged that they acquired the parcel of land in dispute which is measuring approximately 100 feet by 100 feet lying, situate and being at Obagie N'Evbosa Community, Ikpoba Okha Local Government Area of Edo State for valuable consideration from one Anigboro Odeh Clement sometime in 2018. They tendered a copy of the Deed of Transfer between one Anigboro Odeh Clement and themselves as a receipt of purchase and same was admitted in evidence as Exhibit "A".

The Claimants alleged that immediately after the purchase of the said parcel of land, they took active possession of same and contracted a Registered Survey who surveyed the parcel of land and they have been farming on the land ever since without any adverse claim from the Defendants or anybody for over three years. A copy of the survey plan was admitted in evidence as Exhibit "B".

According to the Claimants, on one of their routine visits to the land, they discovered that the Defendants had entered the land and wrongfully destroyed all their economic crops and set them on fire. They tendered photographs showing the farmland, crops before same was maliciously destroyed and the photographs of the farmland after the crops were destroyed and same were admitted in evidence as Exhibits "C1", "C2", and "C3" respectively.

The Claimants alleged that the destruction of all the economic crops on the said farmland has caused them severe losses.

They said that when they became aware of the alleged acts of trespass on their farmland by the Defendants, they wrote a petition to the Commissioner of Police of Edo State and a copy of the petition was admitted in evidence as Exhibit "D".

They alleged that despite their report to the police, the Defendants continued to erect structures on the land in dispute. They tendered photographs of the new buildings on the land and they were admitted as exhibits. The certificate of compliance and the photographs were admitted as Exhibits "E" and "E1" respectively.

The Claimants alleged that the Defendants colluded to invade the Claimants' landed property which they acquired for valuable consideration, without justification. Hence they filed this suit to seek redress.

At the hearing, the 1st Claimant was cross-examined by the 3rd Defendant. The Claimants' predecessor in title testified for the Claimants as CW1.

Thereafter, the Defendants stopped coming to court and abandoned the proceedings despite the issuance and service of several hearing notices on them. The Court was

therefore constrained to foreclose the Defendants and the suit was adjourned for final addresses.

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

1. Whether or not the Claimants have established their claim on the balance of probability; and

2. If the answer to the Issue One is in the affirmative, whether or not the Claimants are entitled to the reliefs sought.

Thereafter, the learned counsel argued the two issues together.

He submitted that by the evidence adduced by the Claimants, there is no doubt that the Claimants acquired a piece or parcel of land measuring approximately 100 feet by 100 feet situate and being at Obagie N'Evbuosa Community, Ikpoba Okha Local Government Area of Edo State for valuable consideration.

He referred the Court to all the documents tendered by the Claimants and the oral evidence of their witnesses

He said that the CW1 identified Exhibits 'A' and 'A1' and that a careful perusal of Exhibit 'A', 'A1' and 'B' will reveal that the identity of the subject matter of this case is certain.

He said that it is trite law that in land cases, the Claimant's title must first be determined before that of the Defendant and he cited the following cases:

1) *Iroagara v. Uromadu* (2009) 1 NWLR (Pt. 1153) 587 at 609;

2) *Dim v. Enelo* (2009) 10 NWLR (Pt. 1149) 353 at 381;

3) *Agu v. Nnadi* (2002) 11 NWLR (Pt. 798) 103;

4) *Lawsee v. Ajibutu* (1997) 6 NWLR (Pt 507) 14;

5) *Tromiro v. Awoyemf* (1972) 2 SC1 at 11

He submitted that a Claimant or a Counter Claimant has the duty in any action for declaration of title to land to adduce sufficient, credible and convincing evidence to establish the mode of acquisition of the title and he must succeed on the strength of his own case and not on the weakness of the defence (if any) although he may take advantage of the Defendant's evidence where it supports its case. See *Aromoro v. Awoyemi* (1972) 2 SC 1.

He posited that declaratory reliefs are not granted as a matter of course and a Claimant or Counter Claimant must satisfy the court on the balance of probabilities to be entitled to same. He said that declaratory reliefs are not granted even on the admission by the Defendant or in default of defence and he relied on the case of *Adame v. Nigeria Air Force (2022) 5 NWLR (Pt. 1822) 159 at 177*.

On the identity of the land in dispute, counsel submitted that in claim for a declaration of title to land, the Claimant must establish with certainty the identity of the land in dispute and he cited the following cases:

- 1. *Karimu v. Lagos state Government (2012) 15 NWLR (Pt. 1294) 620;***
- 2. *Ayanwale v. Odusami (2011) 18 NWLR (Pt. 1278) 328;***
- 3. *Jinadu v. Esurombi (2005) 14 NWLR (Pt 944)142.***

He submitted that in this suit, the Claimants have established the identity of the land by cogent, credible and convincing evidence and by tendering the Property Survey Plan that is, Exhibit 'B'.

He therefore submitted that from the documentary evidence proffered by the Claimants, the land in dispute measuring 100 feet by 100 feet has been identified and he relied on the case of *Ayuya v. Yonrin (2011) 10 NWLR (Pt 1254) 135*.

Learned counsel submitted that the five different ways of establishing title to land are as enumerated in the case of *Idundun v. Okumagbe (1976) 9-10 SC 227 at 246 or (1976) NMLR 200 at 210*.

Submitting further learned counsel posited that in a claim for declaration of title, the onus is on the Claimant to satisfy the court that he is entitled by the evidence adduced by him to the declaration claimed. He said that to discharge the burden of proof placed on the Claimant by law, the Claimant must rely on the strength of his own case and not on the weakness of the Defence, except where the Defendant's case supports his case.

He maintained that this same burden lies on a counter-claimant, it being an independent action and he relied on the following cases: *Kodilinye v. Odu (1935) 2 WACA 336*, *Bello v. Eweka (1981) 1 SC 101* *Eze v. Atasie (2000) 10 NWLR (Pt. 675) 450*, *Adesenye v. Aderounmu (2000) 9 NWLR (Pt. 672) 370*.

He posited that the evidence of the Claimants is that they acquired a piece or parcel of land measuring 100 feet by 100 feet located at Obagie N'Evbuosa Community,

Ikpoba Okha Local Government Area of Edo State vide Exhibit 'A' and 'A1' from CWI.

He said that Exhibit 'A1' is the document of title to the land upon which the capacity of CWI to sell was predicated. That the said Exhibit 'A1' shows that CWI bought the portion of the land measuring 100 feet by 100 feet from NEPA Staff Cooperatives Multipurpose Society Ltd (NEPASCOOP) Benin City, sometime in 2012 out of a larger expanse of land belonging to it and he referred the Court to paragraph 6 of the 1st Claimant's Witness Statement on Oath, sworn to on the 26th day of April, 2021.

Furthermore, he maintained that the Claimants in further in proof of their case, tendered Exhibit 'F' as purchase receipt which is the document of title evidencing the contract/sale between His Royal Highness Stephen U. Imadonmwinyi and CWI's, predecessor-in-title (NEPA Staff Cooperatives Multipurpose Society Ltd) for and on behalf of Obagie N'Evbuosa Community.

He referred to Clause 2 of Exhibit 'F' which states as follows:

"The Transferor herein is the Enogie of Obagie N'Evbuosa Community and has been duly authorized by the entire people of Obagie N'Evbuosa Village to execute the Deed on their behalf."

He urged the Court to discountenance the contention of the 3rd and 4th Defendants in Paragraph 15 of the 1st and 3rd Defendants' Statement of Defence that, under Benin Customary Land System, the Enogie of Obagie N'Evbuosa cannot single handedly sell any portion of communal land in Obagie N'Evbuosa to any person in his name. He said that the 1st, 3rd and 4th Defendants sold the land, subject matter of this Suit to the 6th and 7th Defendants without the consent and authority of the Claimants who acquired the said parcel of land for valuable consideration.

He submitted that flowing from the above, the evidence of the Claimants is consistent and credible and he urged the Court to so hold.

He submitted that Paragraphs 6, 7, 8, 11, Exhibits A, A1, B, C1, C2, C3 and E1 of the 1st Claimant's Witness Statement on Oath sworn on the 26th day of April, 2021 will reveal that there's a cause of action and reasonable cause of action against the Defendants to which the Defendants ought to be liable in damages. He relied on the case of ***NIGERIA ASSOCIATION OF GENERAL PRACTICE PHARMACIST EMPLOYERS v. PHARMACISTS COUNCIL OF NIGERIA & ORS (2013) LPELR21834 (Pp. 75-76).***

He submitted that the Claimants are entitled to the award of general damages in an action for trespass which they have proved by evidence before this honourable Court

and he cited the case of *N.B.C PLC VS. UBANI (2009) 3 NWLR PT. 1129 PAGE 512 @ 520* where the Court held that trespass is actionable *per se*.

He maintained that the award of special damages in action for trespass does not and should not affect a deserving award of general damages in the same action.

Counsel submitted that if the Court makes a finding of trespass, an injunction should be granted to protect a party in possession of the land trespassed upon and he relied on the case of *ANYANWU VS UZOWUAKA (2009)13 NWLR PT 1159 PG. 445 @ 453454*.

He posited that the Claimant has shown by unshakable evidence that he has been in possession of the land in dispute and has succinctly described the land in dispute to enable the Court grant an order of perpetual injunction in his favour and he urged the Court to grant same.

He submitted that a counter claim does not automatically succeed mainly because a reply was not filed. He said that a counter claim like the main claim must be proved on the balance of probability as any other civil matter and where the Defendant fails to prove his counter claim his action should be dismissed.

He submitted that the 3rd and 4th Defendants/Counter-Claimants have not established their counter claim on the preponderance of evidence having abandoned same despite the opportunities given to them by the honourable Court vide series of hearing notices. He therefore urged the Court to dismiss the counter claim in its entirety.

In conclusion, he urged the Court to hold that the Claimants have established their case on the balance of probability and dismiss the counter-claim of the 1st, 3rd and 4th Defendants.

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 Claimants.

As I have already observed, the Defendants did not put up any defence to this suit. Thus, the evidence of the Claimants 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 Defendants, 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 Claimants to ascertain whether they are credible and sufficient to sustain their Claims.

I am of the view that the two Issues for Determination in this suit are as follows:

- (i) Whether the Claimants are entitled to the reliefs claimed in this suit;*
- (ii) Whether the 1st, 3rd and 4th Defendants /Counter-Claimants are entitled to the reliefs claimed in their Counter-Claim?*

I will proceed to resolve the two issues seriatim.

ISSUE 1:

Whether the Claimants are 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:

- 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 their evidence the Claimants appear 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.

In their proof by the production of title documents, the Claimants alleged that they acquired the parcel of land in dispute which is measuring approximately 100 feet by 100 feet lying, situate and being at Obagie N’Evbosa Community, Ikpoba Okha Local Government Area of Edo State for valuable consideration from one Anigboro Odeh Clement sometime in 2018. They tendered a copy of the Deed of Transfer between one Anigboro Odeh Clement and themselves as a receipt of purchase and same was admitted in evidence as Exhibit “A”.

In this case, the Defendants did not adduce any evidence to challenge the validity of the Deed of Transfer between their predecessor in title, Anigboro Odeh Clement and themselves which was tendered as a receipt of purchase and admitted in evidence as Exhibit “A”.

However, it is noteworthy that Exhibit “A” is an unregistered Deed of Transfer which was tendered as a receipt of purchase.

It is settled law that Exhibit “A” is an instrument which is inadmissible in evidence to prove title having not been registered. However, it is equally true that Exhibit “A” is quite admissible as a receipt of purchase and to show that such a transaction took place and money changed hands. See the case of *Ogunleye V Safajo (2010) All FWLR (Pt.523) 1889*.

It is trite law that a declaration of title will only be made when there is sufficient evidence by which the Court is satisfied that a title of the nature claimed has been established. See the cases of *Atunya V Onyejekwe (1975) 2 SC 161. In Fakoya V St. Paul's Church Sagamu (1994) 4 SCNJ 176*

However, on the peculiar facts of the case, the said unregistered instrument, (Exhibit “A”) was tendered and admitted as a receipt of purchase.

An unregistered instrument may be admitted as evidence of the existence of a contractual relationship between the parties. Thus, a contract is admissible to prove the existence of an equitable interest arising from the contract and the unregistered instrument is only ineffectual against a purchaser for value without notice. This reasoning applies with equal force to a conveyance or to a lease which has not been registered. Such an instrument can be admitted to prove the existence of personal obligations between the vendor and purchaser and if, as it usually does, it contains an acknowledgment of the receipt of the purchase money, it is admissible to prove the payment of money, thus laying a foundation for a title in equity. It follows therefore that an unregistered conveyance is only ineffectual against a bona fide purchaser of a legal estate for value without notice. See the case of *YARO V. MANU & ANOR (2014) LPELR-24181(CA) (PP. 52-55 PARAS. B)*.

In the absence of any challenge to Exhibit A, I hold that it will suffice to establish the Claimants’ equitable interest in the land in dispute.

However, apart from relying on documents of title, in this suit, the Claimants are also relying on the third means of proof of title, to wit: by proving acts of ownership.

On the issue of acts of ownership, the Claimants testified that immediately after the purchase of the said parcel of land, they took active possession of same and contracted a Registered Survey who surveyed the parcel of land and they have been farming on the land ever since without any adverse claim from the Defendants or anybody for over three years. A copy of the survey plan was admitted in evidence as Exhibit “B”.

According to the Claimants, on one of their routine visits to the land, they discovered that the Defendants had entered the land and wrongfully destroyed all their economic crops and set them on fire. They tendered photographs showing the farmland, crops before same was maliciously destroyed and the photographs of the farmland after the crops were destroyed and same were admitted in evidence as Exhibits “C1”, “C2”, and “C3” respectively.

This evidence of the Claimants is a vital aspect of their proof by acts of ownership. Incidentally at the trial, the Defendants did not lead any evidence to contradict the evidence of the Claimants. The effect is that they are deemed admitted and the Court will be entitled to act on it. See the case of *Adefarasin Vs. Dayekh (2007) 11 NWLR (pt. 1044) 89*.

When the issue in a case, is which of the two claimants has a better right of possession to and/or occupation of a piece or parcel of land in dispute, the law will ascribe possession and/or occupation to the person who proves a better title thereto – See the following cases: *Aiyeola Vs. Pedro (2014) 13 NWLR (pt. 1424) 409 at 421. See also Ajibulu Vs. Ajaji (2004) 11 NWLR (Pt. 885) 558; Fasoro Vs. Beyioku (1988) 2 NWLR (pt. 76) 263 and Aromire Vs. Awoyemi (1972) 25 SCI.*

A person is said to be in possession when he is in occupation or physical control of the land. The degree of physical control necessary to constitute possession may vary from one case to the other. The act or conduct which constitutes possession may also vary with the type of land. *See Aliyu Vs. Dikko (2021) ALL FWLR (Pt. 632) 1714 and Kareem Vs. Ogunde (1972) 1 SC 182.*

In the instant case, the Claimants testified to the fact that immediately after the purchase of the said parcel of land, they took active possession of same and contracted a Registered Surveyor who surveyed the parcel of land and they have been farming on the land ever since without any adverse claim from the Defendants or anybody for over three years.

I believe the unchallenged evidence of the Claimants and I hold that the Claimants have established their title to the land by unchallenged acts of ownership. They are entitled to a declaration that they are the owners of the land in dispute.

Next, on the declaration that the acts of invasion of the Claimants parcel of land and destruction of their economic crops was wrongful, it is trite law that trespass to land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. Possession is the foundation of any claim of trespass. See the cases of *JIAZA VS. BAMGBOSE (1999) 7 NWLR (PT. 610) 182; FASIKUN II VS. OLURONKE II (1999) 2 NWLR (PT. 589) 1; OSHO VS. FOREIGN FIN. CORP. (1991) 4 NWLR (PT. 184) 157; ADELAJA VS. FANOIKI (1990) 2 NWLR (PT. 131) 137; ANYABUNSI VS. UGWUNZE (1995) 6 NWLR (PT.401) 255; and OROK & ORS V. IKPEME & ORS (2017) LPELR-43493(CA) (PP. 10-12 PARAS. A-A).*

In the instant case, the Claimants have established that they were in exclusive possession of the land in dispute before the Defendants encroached on the land. Thus, the disturbance of the Claimants' exclusive possession by the Defendants amounts to trespass.

On the relief of a perpetual injunction against the Defendants, 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 Claimants are entitled to a perpetual injunction to restrain the Defendants, their agents, privies or servants from any further acts of trespass on the Claimants' land.

Furthermore, on the order for the award of general damages of N10,000,000.00 (Ten Million Naira) only to the Claimants and special damages of N5,000,000.00 (Five Million Naira) only to the Claimants against the Defendants for the acts of destruction and setting ablaze of the crops which the Claimants cultivated on their piece or parcel of 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. See: *Chevron (Nig.) Ltd. vs. Omoregha supra.*

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 Claimants testified of how upon one of their routine visits to the land, they discovered that the Defendants had entered the land and wrongfully destroyed all their economic crops and set them on fire. They tendered photographs showing the farmland, crops before same was maliciously destroyed and the photographs of the farmland after the crops were destroyed and same were admitted in evidence as Exhibits "C1", "C2", and "C3" respectively.

The Claimants alleged that the destruction of all the economic crops on the said farmland has caused them severe losses.

They are therefore claiming general and special damages.

The law requires that claims for special damages must be proved strictly since they cannot be inferred. This means that the evidence led by the Claimant, must be of such quality, that the facts relied upon to make the exact calculation in arriving at the claim, must be presented so that the Defendant can engage in a similar arithmetical calculation, to see if he can arrive at the same exact figure. The court would also need to have the same facts so that it can also see exactly how the amount was arrived at. Once that is successfully done, the only hurdle is for the court to assess credibility whilst evaluating the evidence, in order to accept or reject the evidence proffered. See the following cases: *OSUJI VS ISIOCHA (1989) 3 NWLR (PT.111)*

623; GARBA VS. KUR (2003) FWLR (PT.148) 1277; and JULIUS BERGER NIGERIA PLC V. ELUWA (2014) LPELR-24380(CA) (PP. 9-10 PARAS. E).

In the instant case, the Claimants did not lead any evidence of how they arrived at the exact calculation of the sum of N5, 000,000.00 (Five Million Naira) which they are claiming as special damages. In essence, their claim for special damages has not been strictly proved and it is bound to fail.

On the claim for general damages, the trial court has a 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 Claimants.

From the foregoing, I hold that issue one is resolved in favour of the Claimants.

ISSUE 2:

Whether the 1st, 3rd and 4th Defendants /Counter-Claimants are entitled to the reliefs claimed in their Counter-Claim?

Let me start by pointing out that a counter claim is a separate action, independent of the Claimants' claims. Therefore the burden and standard of proof on the Defendants/Counter-Claimants is the same with that required by the Claimants. See the following cases: *Onazi & Anor V C.G.C (Nig) Ltd & Anor (2015) LPELR-40583 (CA); Ogbonna V A-G Imo State (1992)1 NWLR (Pt.220) 647; Usman V Garke (2013) 14 NWLR (Pt.840) 261 Nsefik V Muna (2014) 2 NWLR (Pt.1390) 151 at 184.*

Consequently, the Defendants/Counter-Claimants must prove their Counter-Claim with credible evidence to support their reliefs. See the case of *ABDULLAHI V. ZOKA & ANOR (2018) LPELR-48264(CA) (PP. 20-21 PARAS. D-D).*

Incidentally, in the instant case, the Defendants/Counter-Claimants abandoned the case before the Claimants closed their case. So they did not lead any evidence in defence of the Claimants case or in proof of their Counter-Claim.

Where a Counter-Claimant fails to lead any evidence in proof of his counter - claim he is deemed in law to have abandoned the counter - claim. See the case of *OJIAKO V. NWABUISI (2018) LPELR-43773(CA) (PP. 16-17 PARAS. C).*

When the Counter-Claimant has abandoned his counter-claim, the court is entitled to dismiss the counter-claim. See the case of *OHIMAI V. OLUSANYA (2019) LPELR-47964(CA) (PP. 24-26 PARAS. A)*.

Flowing from the foregoing, the Counter-Claim is entitled to be dismissed. Issue two is therefore resolved against the Defendants/Counter-Claimants.

In conclusion, the Counter-Claims of the Defendants/Counter-Claimants are hereby dismissed and the Claimants' Claims are granted as follows:

- 1) A DECLARATION that the Claimants are the rightful owners and entitled to be granted Statutory Right of ownership over all that piece or parcel of land measuring approximately 100 feet by 100 feet located at Obagie N'Evbosa Community, Ikpoba Okha Local Government Area of Edo State and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor;*
- 2) A DECLARATION that the acts of invasion of the Claimants' piece or parcel of land measuring approximately 100 feet by 100 feet located at Obagie N'Evbosa Community, Ikpoba Okha Local Government Area of Edo State and more particularly described in survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-lrughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor, and destroying their economic crops without the Claimants' consent and authority is wrongful and unlawful;*
- 3) AN ORDER of this Honourable Court that the Claimants are the owners and in possession of the piece or parcel of land located at Obagie N'Evbosa Community, measuring approximately 100 feet by 100 feet and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor;*
- 4) AN ORDER OF COURT awarding general damages of N3, 000,000.00 (Three Million Naira) only to the Claimants against the Defendants for the acts of trespass committed on the Claimant's piece or parcel of land; and*
- 5) AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants either by themselves, their servants, agents, privies, assigns, executors or anybody acting or claiming for them or claiming through them from*

committing or further committing any act of trespass on the Claimants' piece or parcel of land measuring approximately 100 feet by 100 feet and more particularly described in Survey Plan No. GEO: 283:2020: ENG-EDO made on 06/02/2020 by Engr. Prof. Ehigiator-Irughe R. (M.Eng, Ph.D. Mnis) Registered Surveyor.

P.A.AKHIHIERO
JUDGE
14 /04/2025

COUNSEL:

Michael Ekwemuka Esq. -----Claimants/Defendants to Counter-Claim

Uyi E. Bazuaye Esq-----1st, 3rd & 4th Defendants/Counter-Claimants.

Unrepresented-----2nd, 5th – 7th Defendants.