

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON FRIDAY THE
3RD DAY OF NOVEMBER, 2023.

BETWEEN:

SUIT NO: B/30^{OS}/2023

1. MR. VICTOR ASEMWOTA
2. MR. IMAFIDON JOSEPH ASEMWOTA
3. MRS. VIOLET OMOSIGHO ASEMWOTA
4. MRS. MERCY EHINWENMA ESEZOBOR
(suing for themselves and on behalf of the beneficiaries
of the Estate of Late Micheal E. Asemwota)

} CLAIMANTS

AND

1. TONIA EBHOHIMEN
2. MR. SHREDRACK (other names unknown)
3. MR. SHAIBU (other names unknown)
4. MR. CLEMENT (other names unknown)
5. AGENT NELSON (other names unknown)
6. UNKNOWN PERSON
7. UNKNOWN PERSON
8. UNKNOWN PERSON
9. UNKNOWN PERSON
10. UNKNOWN PERSON

} DEFENDANTS

JUDGMENT

The Claimants instituted this suit by Originating Summons pursuant to *Order 54, Rules 2 and 3 of the Edo State High Court (Civil Procedure) Rules, 2018* against the Defendants.

In this suit, the Claimants are seeking the following orders:

An order of this Honourable Court directing the Defendants to yield up/deliver up possession of the piece/parcel of land measuring 200 feet by 250 feet lying and situate at Ward 43B Oghede Ivbioba/Ugbighoko Area, Benin City, Edo state covered by Survey Plan No: OSA/308/BD77 dated 21st November, 1977 and Judgment of this Honourable Court in Suit No: B/538/1996 delivered on 23rd December, 2015 to the Claimants forthwith.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

The Originating Summons is supported by an eighteen paragraphs affidavit and the written address of the learned counsel for the Claimants.

From the facts contained in the affidavit in support of this Originating Summons, the Claimants are the beneficiaries of the estate of their late father, one Micheal E. Asemwota. In his lifetime, the deceased was the owner of the owner of a parcel of land measuring 200feet by 250feet lying and situate at Ward 43B Oghede Ivbioba/Ugbighoko Area, Benin City. They traced their father's root of title to the land.

Upon the demise of their father, the Claimants and the other beneficiaries after performance of the burial rites inherited the land in dispute in accordance with Benin native law and custom.

According to the Claimants, sometime in 1996 their late father instituted an action vide Suit No: B/538/1996 against the following persons: Nosa Erhunmwunse, John Obakpolor and Lucky Igbinovia. Judgment was entered in favour of their father on the 23rd of December, 2015 and a certified true copy of the Judgment and the enrolment of order were attached to the supporting affidavit as Exhibits AO6 and AO7 respectively.

Subsequently, their late father obtained a Warrant of Possession and was put in possession of the land on the 10th of June, 2016. A Certified True Copy of the Warrant of Possession and the other relevant documents are attached as Exhibits AO8 and AO9.

According to the Claimants, the Defendants in this suit are the agents, assigns and privies of the Defendants/Judgment Debtors in the aforesaid Suit No: B/538/1996 who have remained in illegal occupation/squatting on the land in dispute without the consent, license and/or authority of the Claimants despite the execution of the judgment of the Court in the previous suit.

The Claimants' Solicitor allegedly wrote letters to the Defendants and their agents to vacate the property within 7 days but they have refused/neglected to vacate same. The Claimants' Solicitors' letters and the Edo Parcel and Logistic Service delivery sheet are exhibited as Exhibits BO1, BO2, BO3, BO4, BO5, and BO6, respectively.

The Claimants allege that the Defendants are squatters in unlawful occupation of their property hence they have instituted this suit to evict the Defendants and take possession of their property.

In his written address, the learned counsel for the Claimants, ***Anthony Osula Esq.*** formulated a sole issue for determination as follows:

“Whether the Claimants have placed before the court sufficient facts that will enable the court exercise discretion in their favour.”

Arguing the sole issue for determination, the learned counsel posited that the Claimants' claim for possession was brought under the special procedure provided by ***Order 54 of the Edo State High Court (Civil Procedure) Rules, 2018*** as a result of the Judgment of the Edo State High Court in Suit No. B/538/1996.

He submitted that under the above rules, an Originating Summons can be used to recover possession of land from any Defendant who does not fall within the exceptions listed in ***Order 54, Rule 1 (1) of the Edo State High Court (Civil Procedure) Rules, 2018***.

He posited that the said rule is aimed at persons who have no right or claim, whatsoever in respect of the land they occupy most especially when they derive title from defendants against whom judgment and execution was gotten against in suit No: B/538/1996. He pointed out that **Order 54** is headed “**SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNERS CONSENT.**”

He posited that a claimant wishing to take benefit of the aforementioned rule shall commence the action by Originating Summons in accordance with the provisions of the Order and it shall be in Form 42 without ***any requirement of acknowledgement of service of the Summons by person(s) unlawfully occupying the property.***

He submitted that the Claimants have complied with the provisions of **Order 54 Rules 2 & 3** and urged the Court to grant the prayers contained in the Originating Summons.

He submitted that by **Order 54 of the Rules**, recovery of landed property can be done without the evidence of notice to quit or notice to recover possession which is sine qua non in the recovery of property from a tenant. He maintained that the Defendants are not tenants of the Claimants neither are they in occupation of the land with the authority or consent of the Claimants. He urged the Court to grant their reliefs and relied on the following authorities: **CHUKU V TOLHEI (2018) LPELR-45951 (CA) at Page 14-23, Para E-C; SAM NWANKWO VS. THE ESTATE OF LATE DARLINGTON GEORGE AND ITS REPRESENTATIVES (2008) BLR [Pt. 1] Pg. 850; COUNTY AND CITY BRICKS DEVELOPMENT & CO. LTD VS. UACN PROPERTY DEVELOPMENT COMPANY LTD & 100OTHERS (2008) BLR [PT. 1] PG. 423.**

I have carefully considered all the processes filed in this suit, together with the arguments of the learned counsel for the Claimants.

In this suit, the Claimants have come under a unique procedure in our rules to evict squatters and those in unlawful possession of property in circumstances where there is no dispute about the title of the Claimants. It is enshrined in **Order 54 of the Edo State High Courts Civil Procedure Rules, 2018.**

For the avoidance of doubt, the said **Order 54** provides as follows:

“ORDER 54

1. Application of this Order

(1) This Order shall not apply where the person in occupation of land is:

(a) a tenant; or

(b) a tenant holding over after termination of his tenancy; or

(c) a licensee of the owner or person entitled to possession; or

(d) a person who had the consent of the predecessor-in-title of the person who is entitled to possession.

(2) Where a person claims possession of land which he alleges is occupied solely by persons other than those listed in sub-rule 1, proceedings may be brought by originating summons in accordance with the provisions of this Order.

2. Proceedings to be brought by originating summons: Form 42

The originating summons shall be in Form 42 and no acknowledgment of service shall be required.

3. Affidavit in support

The claimant shall file in support of the originating summons, an affidavit stating:

(a) his interest in the land;

(b) the circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and

(c) that he does not know the name of any person occupying the land who is not named in the summons.”

In the case of: ***Emeka Okoli & Ors. Vs. Alhaji Ibrahim Gadan (2014) LPELR-23067 (CA). per Abiru, JCA at pages 28-30, Paras E-A*** the Court of Appeal explained the application of this special procedure thus:

“In proceedings under this order, the only claim that can be made in the originating process is for recovery of possession of land; no other cause of action can be joined with such a claim in such proceedings, whether for payment of money, such as rent, mesne profits, damages for use and occupation or other claim for damages or for injunction or declaration or otherwise. The Order is narrowly confined to the particular remedy described in Rule 1. No order for costs can be made except there is a named defendant.....”

Essentially, the rule enables a land owner whose land is in the occupation of a squatter(s) or a person (s) occupying the land without his consent, to commence summary proceedings against the squatter for possession of the land. The procedure offers a Claimant the opportunity to recover possession of land wrongfully occupied by unknown persons. This is contrary to the normal procedure where the person in illegal possession would be identified and named as a defendant so that he can be bound by the order of the court in the suit.

This special procedure was introduced to avoid the injustice and hardship on the part of claimants who are unable to proceed against unknown trespassers because of their inability to identify and serve them as defendants in the suit. See the case of: ***Nnodi vs. Thanks Investment Ltd. (2005) 11 NWLR (Pt.935) 29.***

The Order applies where the occupier has entered into occupation without the license or consent of the person in possession or of any of his predecessor in title. See the case of: ***County & City Bricks Development Company Ltd. vs. UACN Property Development Company Ltd. 2008) BLR (Pt.1) p.423.*** In the case of: ***Bristol Corporation vs. Persons Unknown 1974) 1 WLR 365,*** the court held that the procedure also applies to a person who has entered possession of land with a license but has remained in occupation without a license.

Under this procedure, the Claimant commences the action by Originating Summons, without any requirement of acknowledgment of service of the summons by the person unlawfully occupying the land. See: ***Order 54 Rule 2 of the Edo State High Courts Civil Procedure Rules, 2018.***

A salient point that must be noted at this stage is that the procedure under ***Order 54*** is only restricted to the recovery of possession of landed property. It cannot apply where the Claimant is seeking declaration of title to the land. See the

case of: *Emeka Okoli & Ors. Vs. Alhaji Ibrahim Gadan (2014) LPELR-23067 (CA). per Abiru, JCA at pages 28-30, Paras E-A.*

To succeed in a claim brought under *Order 54*, the Claimant's supporting affidavit must establish the following facts:

(a) His interest in the land;

(b) The circumstances in which the land has been occupied without license or consent and in which his claim to possession arises; and

(c) That he does not know the name of any person occupying the land who is not named in the summons.

Going through the Claimants' supporting Affidavit; it is evident that the Claimants complied with the requirements of *Order 54 of the Rules*.

From paragraphs 3 to 13 the Claimants narrated how their late father became the owner of the owner of a parcel of land measuring 200feet by 250feet lying and situate at Ward 43B Oghede Ivbioba/Ugbighoko Area, Benin City. That upon the demise of their father, they inherited the property after performing the burial rites in accordance with Benin native law and custom.

They narrated how sometime in 1996 their late father instituted an action vide Suit No: B/538/1996 against the following persons: Nosa Erhunmwunse, John Obakpolor and Lucky Igbinovia. Judgment was entered in favour of their father on the 23rd of December, 2015.

Subsequently, their late father obtained a Warrant of Possession and was put in possession of the land on the 10th of June, 2016. According to the Claimants, the Defendants in this suit are the agents, assigns and privies of the Defendants/Judgment Debtors in the aforesaid Suit No: B/538/1996 who have remained in illegal occupation/squatting on the land in dispute without the consent, license and/or authority of the Claimants despite the execution of the judgment of the Court in the previous suit. The Claimants maintain that the Defendants are squatters in unlawful occupation of their property hence they have instituted this suit to evict the Defendants and take possession of their property.

Furthermore in paragraphs 15 and 16 of the supporting affidavit they stated that they do not know the names of some of the Defendants and other persons who are illegally occupying the land in dispute.

It is to be noted that under the rules, "landed property" means land with or without building thereon. See: ***Ord.54 Rule 8(2) Edo State Civil Procedure Rules, 2018***. So the property that can be subject to the procedure is not limited to an undeveloped land but also includes a developed property.

Notwithstanding the liberal provisions of ***Order 54***, where the suit is uncontested, the Claimants still have the onus to prove their Claim. However, in the unreported case of: ***Olumuyiwa Odejayi & Anor. vs. Person Unknown Suit No: ID/97M/2005(unreported)***, the High Court of Lagos State held that in such a case, the burden is of such minimum proof as is sufficient to establish their entitlement to judgment.

Going through the available affidavit evidence, I am of the view that the evidence is credible and substantial enough to sustain the claim for possession in favour of the Claimants.

Although the provisions of ***Order 54*** does not require personal service of the Originating Summons on the unnamed Defendants, in order to avoid any complaint of non-service by the Defendants, the Claimants obtained the leave of the Court to effect service of the Court processes on the Defendants by substituted service by pasting same on the walls of the buildings on the land. This is in line with the provisions of ***Order 54 Rule 4(2) (a) of the Edo State High Courts Civil Procedure Rules, 2018***.

On the whole, I am satisfied that the Claimants have discharged the onus of proof under the provisions of ***Order 54 of the Edo State High Courts Civil Procedure Rules, 2018*** in respect of their interest in the land, by virtue of the affidavit evidence, by showing the circumstances under which their claim for possession has arisen in relation to the Defendants' occupation of the land without the Claimants' license or consent.

Consequently, ***upon hearing the learned Counsel for the Claimants, Anthony Osula Esq. and upon reading the Affidavit of the Claimants filed on***

the 13th of February, 2023, it is ordered that the Claimants do recover possession of the land described in the Originating Summons, measuring 200 feet by 250 feet lying and situate at Ward 43B Oghede Ivbioba/Ugbighoko Area, Benin City, Edo state covered by Survey Plan No: OSA/308/BD77, dated 21st November, 1977 and Judgment of this Honourable Court in Suit No: B/538/1996 delivered on 23rd December, 2015 forthwith and the Defendants do deliver up forthwith, possession of the said parcel of land illegally occupied by them without the licence or consent of the Claimants and give possession of the said land to the Claimants. Costs is assessed at N100, 000.00 (One Hundred Thousand Naira) in favour of the Claimants.

P.A.AKHIHIRO
JUDGE
03/11/2023

COUNSEL:

Anthony Osula Esq.....CLAIMANTS.

Unrepresented.....DEFENDANTS.

