

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 24TH DAY OF JULY, 2025.

BETWEEN:

SUIT NO. B/1252/2022

MR. SAMSON OMORODION -----CLAIMANT
(Suing through his Attorney, Mr. Amos Osadolor Omorodion)

AND

1. MR. FRANK OGBEIDE	}	-----DEFENDANTS
2. MR. GABRIEL OTAMERE		
3. CHRISTOPHER OSARENKHOE OGBEIDE		
4. MATTHEW EHIEMWENMA		
5. 2 PERSONS UNKNOWN		

JUDGMENT

The Claimant instituted this suit against the Defendants vide a Writ of Summons and Statement of Claim filed on the 20th of December, 2022. However, the Claimant's extant Claim is his Amended Statement of Claim dated 11th of October, 2024 wherein he claimed against the Defendants as follows:

- a. A DECLARATION that the Claimant is the legal and rightful owner of the piece of land described in Survey Plan Nos: SMD/EDO/2021/3665A and**

SMD/EDO/2021/3665B with Certificate of Occupancy No. EDL 66062 lying and situate at Evbo-Ikhuenbor Village, Uhegie Village Area, Egba Road in Uhunmwonde Local Government Area, Benin City, Edo State.

- b. AN ORDER directing the Defendants to jointly and severally pay to the Claimant the sum of ₦10,000,000. 00 (Ten Million Naira) being cost of the destroyed cassavas and utilized granites and sands.***
- c. AN ORDER directing the Defendants to jointly and severally pay to the Claimant the sum of ₦5,000,000. 00 (Five Million Naira) for special and general damages.***
- d. AN ORDER of perpetual injunction restraining the Defendants, their privies, agents and servants from further trespass and dealing on the land***

The Writ of Summons, Statement of Claim and other accompanying processes were served on the Defendants and one ***M. A. Okwumabua, Esq.*** entered appearance on behalf of all the Defendants.

When the said ***M. A. Okwumabua Esq.*** entered appearance for the Defendants, he tried to reconcile all the parties but when the Defendants were not forth coming, by leave of Court, he withdrew from further representing the Defendants.

Thereafter, several hearing notices were issued and served on the Defendants but they failed to appear in Court to defend this suit, neither were they represented by any counsel despite several hearing notices that were served on them. In essence, the suit was undefended.

At the hearing, Mr. Amos Osadolor Omorodion, the Claimant's Lawful Attorney testified for the Claimant and one Mr. Agharese Omoruyi Osawe testified as the C.W.1.

In his evidence, the Lawful Attorney testified that the Claimant acquired a parcel of land measuring 200feet by 500feet as described in the Survey Plan No. SMD/EDO/2021/3665A vide an application for Building Plot dated 26th October, 2018 to the Odionwere and Elders of Evbo-Ikhuenbor Village. The Survey Plan and the Application were admitted as Exhibits "C1" and "C2" respectively at the hearing.

He further testified that the Claimant's father, Pa. Amos Osadolor Omorodion also acquired a parcel of land measuring 200feet by 400feet as described in the Survey Plan No and SMD/EDO/2021/3665B vide an application for Building Plot dated 7th September, 2020 to the Odionwere and Elders of Evbo-Ikhuenbor Village and surveyed same as shown on survey Plan No SMD/EDO/2021/3665B, which said land is bounded by the Claimant's land. The Community approval and the Survey Plan were admitted in evidence as Exhibits "D2" and "D1" respectively.

The witness alleged that before the application for building plot, the Claimant and his father had been farming on the parcels of land for over seven decades.

According to the witness, subsequently, the Claimant's father gave the Claimant the authority to apply and obtain a Certificate of Occupancy covering both the Claimant's land and his father's land in the Claimant's name.

Eventually, the Claimant applied and obtained a Certificate of Occupancy in respect of the two parcels of land. At the hearing, the Certificate of Occupancy No. EDL 66062 was admitted in evidence as Exhibit "E".

The witness alleged that thereafter, the Claimant commenced development on the land by purchasing and depositing over four truckloads of sand and granites on a part of the land with a view to erecting a building thereon. He alleged that the Claimant also planted cassava and yams on the remaining part of the land which was managed by his parents.

He said that while the Claimant was outside the country, the 1st to the 4th Defendants held themselves out as the owners of the parcels of land described in the Certificate of Occupancy No. EDL 66062 and sold same to the Persons Unknown in this suit.

He alleged that the Persons Unknown thereafter trespassed into the land after utilizing and converting the Claimant's sand and granites in molding blocks and laying foundation therein and also destroying all the cassava which the Claimant planted on the land. He said that the areas of the land where the yams were planted have not been trespassed upon by the Defendants before the filing of this suit.

At the hearing, the C.W. 1 tendered the pictures of the destroyed cassava farm and the photographs were admitted as Exhibits “F1” to “F3” while the Certificate of Compliance was admitted as Exhibit “F”.

Upon the conclusion of the Claimant’s evidence, the matter was adjourned for defence or final address and the Court ordered that fresh hearing notices should be issued and served on the Defendants. The Hearing notices were served on them.

On the next date, the Defendants 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.A. Mohammed Esq.* formulated two issues for determination as follows:

1. *Whether or not the Claimant proved his case against the Defendants in order to be entitled to the reliefs sought; and*
2. *Whether or not the Court can act on the unchallenged and uncontroverted evidence before it for the just determination of this Case.*

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

Arguing the first issue, counsel submitted that from the un-contradicted evidence of the Claimant, it was established that there was a valid claim against the Defendants.

He said that it is not in dispute that the Claimant is the owner of the land in dispute by virtue of the **Certificate of Occupancy No. EDL 66062** granted to him by the Edo State Government neither is it in dispute that the Claimant had already invested a lot in the redevelopment of the parcel of land, before the Defendants and their agents trespassed into the property by destroying the Claimant’s molded blocks, carting away the Claimant’s sand and granite and destroying the cassava farm therein.

He submitted that the burden of proof shifts when evidence given by one party gives rise to a presumption favorable to it and unless rebutted, the Court should hold that the fact sought to be proved has been established and he referred the Court to the following cases: *Elema v. Princess Akenzua* (2000) 13 NWLR. (Pt.683) 92; *Higrade Maritime Services v. 1st Bank* (1991) 1 NWLR (Pt. 167) 290; and *David Ituama v. Friday Akpe-Ime* (2002) 12 NWLR (Pt.680) 156.

He submitted that the Claimant discharged the burden of proof placed on him when the Court admitted in evidence the **Certificate of Occupancy No. EDL 66062** and the photographs showing that the Claimant had commenced development on the land before the Defendants encroached on same.

He enumerated the five methods of proving title to land in Nigeria and cited the case of *Idundun v. Okumagba (1976) 9-10 S.C. 227 @ 246*.

He said that the Defendants failed to defend the case against them because they know that they do not have any valid defence to the Claimant's claims against them.

ISSUE 2:

Arguing issue two, learned counsel posited that the evidence adduced by the Claimant and his witness before this Honourable Court, were not in any way contradicted or controverted. He said that it settled law that the Court has a duty to accept and act on the unchallenged and credible evidence given before it and he cited the following cases: *Securities Solutions Ltd v. Adamu – Oladiran (2016) ALL FWLR (pt. 836) 520 at 548; Amayo v. Erinmwingbovo (2006) ALL FWLR (pt. 318) 612; and O.A.N. OVERSEAS AGENCY NIGERIA LIMITED v. BRONWEN ENERGY TRADING LIMITED & ORS (2022) LPELR-57306(SC) at P. 31, paras. B-C*.

Finally, he urged the Court to resolve the two issues in favour of the Claimant and grant all the reliefs sought by the Claimant in this suit.

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 Defendants 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 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, third and fifth means of proof, to wit: proof by the production of documents of title; by acts of ownership; and acts of long possession of the land.

On the proof by the production of title documents, the Claimant tendered the following documents of title:

- 1) Application for Building Plot dated 26th October, 2018 to the Odionwere and Elders of Evbo-Ikhuenbor Village and a Survey Plan which were admitted as Exhibits “C1” and “C2”;
- 2) Community approval and another Survey Plan which were admitted in evidence as Exhibits “D2” and “D1” respectively; and
- 3) Certificate of Occupancy No. EDL 66062 which was admitted in evidence as Exhibit “E”.

From the evidence adduced at the hearing, the Claimant’s title documents over the two parcels of land are the two Community Approvals which were admitted as Exhibits “C2” and “D2” together with the Certificate of Occupancy, Exhibit “E” which is in respect of the two parcels of land.

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 Defendants did not adduce any evidence to challenge the validity of the Certificate of Occupancy which was admitted as Exhibit “E”. In the absence of any challenge to Exhibit “E”, I hold that it will suffice to establish the Claimant’s title to the parcels of land in dispute in this suit.

Furthermore, the Claimant led unchallenged evidence to show that he had commenced development on the land by purchasing and depositing over four truckloads of sand and granites on a part of the land with a view to erecting a building thereon. He also planted cassava and yams on the remaining part of the land which was managed by his parents.

From the available evidence, while the Claimant was outside the country, the 1st to the 4th Defendants purportedly sold the Claimant’s land in dispute to the Persons Unknown in this suit.

He led evidence to show how the Persons Unknown trespassed into the land by utilizing and converting the Claimant's sand and granites, molded blocks on the land, laid a foundation on the land and destroyed all the cassava which the Claimant planted on the land. At the hearing, the C.W. 1 tendered the pictures of the destroyed cassava farm and the photographs were admitted as Exhibits "F1" to "F3" while the Certificate of Compliance was admitted as Exhibit "F".

At the hearing, all these facts were not challenged or controverted by the Defendants so they are deemed to have admitted them. I believe the uncontroverted evidence adduced by the Claimant in this suit.

From the uncontroverted evidence of the Claimant, his evidence of acts of possession is also 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 Defendants' acts of entering into the Claimant's land to erect structures and to destroy his crops amount to trespass.

On the relief for the sum of ₦10,000,000. 00 (Ten Million Naira) being cost of the destroyed cassavas and utilized granites and sands and for the sum of ₦5,000,000. 00 (Five Million Naira) as special and genera damages, 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.

From the heads of claims enumerated by the Claimant in this suit, the Claim for the sum of ₦10,000,000. 00 (Ten Million Naira) being cost of the destroyed cassavas and utilized granites and sand is apparently a claim for special damages. It is settled law that a claim for special damages must be strictly proved. See the case of ***BUO ANEKAKWE & SONS (NIG) LTD & ANOR V. NMA & ANOR (2022) LPELR-57286(CA)(PP. 47-49 PARAS. F).***

From the evidence adduced at the hearing, the Claimant did not give sufficient particulars or a break-down of how he arrived at the sum of Ten Million Naira as damages for the aforesaid items. I hold that special damages have not been proved in this suit.

However, from the unchallenged evidence of the Claimant, since trespass has been established, the Claimant is entitled to some reasonable compensation to cover some of the expenses which he has suffered as a result of the Defendants' acts of trespass culminating in the prosecution of this suit. 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 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 Claimant is entitled to a perpetual injunction to restrain the Defendants, their agents, privies or servants from any further acts of trespass on the Claimant's land.

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 legal and rightful owner of the piece of land described in Survey Plan Nos: SMD/EDO/2021/3665A and SMD/EDO/2021/3665B with Certificate of Occupancy No. EDL 66062 lying and situate at Evbo-Ikhuenbor Village, Uhegie Village Area, Egba Road in Uhumwonde Local Government Area, Benin City, Edo State;***
- 2) AN ORDER directing the Defendants to jointly and severally pay to the Claimant the sum of ₦3,000,000. 00 (Three Million Naira) as general damages; and***

3) AN ORDER of perpetual injunction restraining the Defendants, their privies, agents and servants from further trespass and dealing on the land

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

P.A.AKHIHIERO

JUDGE

24 /07/2025

COUNSEL:

S.A. Mohammed Esq.-----Claimant.

Unrepresented-----Defendants.