

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. AKHIERO
ON FRIDAY
THE 2ND DAY OF OCTOBER, 2026.

BETWEEN:

SUIT NO. B/1188/2022

MRS. TOBORE ANETHUA ----- CLAIMANT

**(Suing through her Lawful Attorney,
MR. MUDIARE IDAHOSA)**

AND

PERSON UNKNOWN ----- DEFENDANT

JUDGMENT

The Claimant, suing through her Lawful Attorney, Mr. Mudiare Idahosa, instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim dated on the 16th day of November 2022. However, the Claimant's extant claim is her Amended Statement of Claim dated 23rd of January 2024 wherein she claims against the Defendant as follows:

A. A DECLARATION that the Claimant is entitled to exclusive possession of ALL that piece and parcel of land measuring 50ft by 100ft lying, being and situate at Ward 37B, Evboriaria Quarters, Benin City, Edo State which said land is very well known to the parties in this suit and is within the jurisdiction of this Hon. Court;

B. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant, by himself/herself, agents, servants and/or privies or otherwise whosoever from committing any or further acts of intermeddling, trespass on the said parcel of land and property belonging to the Claimant which is very well known to the parties in this suit and however doing anything inconsistent with the rights and the interest of the Claimant herein;

C. AN ORDER for General, aggravated and Exemplary damages in favour of the Claimant for the sum of N10,000,000.00 (Ten Million Naira) only against the Defendant as reparation for the unlawful acts that culminated in the suit; and

D. N1,000,000.00 (One Million Naira) only as cost of this suit.

On the application of the Claimant, this Court granted leave to serve all the processes in this suit on the Defendant by substituted service, by pasting same on the wall of the structure on the land in dispute located at Ward 37B, Evboriaria Quarters, Benin City, Edo State. The processes were served on the Defendant but he did not put up any appearance in this suit despite several hearing notices that were served on him. In essence, the suit was undefended.

At the hearing, the Claimant's Lawful Attorney, Mr. Mudiare Solta Idahosa, who is the brother of the Claimant, testified for the Claimant as the sole witness. He adopted his statement on oath as his evidence and tendered five documents in evidence.

In his evidence, the witness stated that the Claimant donated a Power of Attorney to him to institute and prosecute this suit on her behalf. The said Power of Attorney dated the 14th day of March, 2022 was admitted in evidence as Exhibit "A".

He testified that the land in dispute is situate at Ward 37B, Evboriaria Quarters, Benin City, Edo State and that the Defendant is an unknown person who entered the land without the authorization or consent of the Claimant.

According to the witness, sometime in 2014 the Claimant acquired the land in dispute measuring 50ft by 100ft from Mirror Multi Concept Nig. Ltd. vide a Deed of Transfer dated the 10th day of May, 2014. He stated that the Claimant misplaced the original copy of the Deed of Transfer when she relocated to Abuja and all efforts made by her to find it proved abortive. A photocopy of the said Deed of Transfer was admitted in evidence as a receipt of purchase as Exhibit "B".

The witness stated that the Claimant's predecessor in title, Mirror Multi Concept Nig. Ltd., acquired a larger parcel of land measuring 100ft by 200ft from one Mr. Sunday Ewemade vide a Deed of Transfer dated the 10th day of January, 2012, while the said Mr. Sunday Ewemade acquired the vast land measuring 200ft by 200ft from the Oba of Benin, His Highness Akenzua II, C.M.G., vide an Oba's Approval dated the 2nd day of February, 1972 and approved on the 5th day of May, 1972. He said that at the time of the transaction, the Claimant's vendor gave her photocopies of the said Deed of Transfer and the Oba's Approval, which were admitted in evidence as Exhibits "C" and "D" respectively.

He further testified that in 2016, the Claimant engaged the services of a surveyor who surveyed the land and prepared a survey plan dated the 25th day of July, 2016. The Survey Plan No. OAE/ED16/027 was admitted in evidence as Exhibit "E". He stated that the Claimant commenced development on the land in 2016 and built the property to lintel level.

The witness alleged that the Claimant was in quiet possession of the land without any disturbance from anybody until the 23rd day of February, 2022, when she went to the

land and found a notice pasted on the wall of her building by the Task Force on Private Property Protection at the Government House, Benin City. He said that a person was laying claim to a parcel of land measuring 100ft by 200ft and that while the Claimant was attending the hearing of the Committee, another notice was pasted on the land by another person who claimed to own 100ft by 100ft. He said that each of the petitioners claimed that the Claimant's land forms part of their land.

He stated that the Claimant submitted her title documents to the Committee, which sent Police officers to interview the elders and the people around the land, and that it was confirmed that the land belongs to the Claimant. He said that the Claimant does not know the names of the persons who wrote the petitions against her because the Committee refused to reveal their names to her.

Upon the conclusion of the evidence-in-chief of the Claimant's Lawful Attorney, the matter was adjourned for cross examination and fresh hearing notice was issued and served on the Defendant. On the next date, the Defendant failed to attend the Court to cross examine the witness, so the Defendant was foreclosed from cross examining him and the witness was discharged from the witness box. The Claimant closed her case and the suit was adjourned for defence. Again, fresh hearing notices were issued and served on the Defendant but he failed to come to Court. The Court foreclosed the Defendant from defending the suit and the matter was adjourned for final address. On the 6th day of July, 2026, the learned counsel for the Claimant adopted the Claimant's final written address filed on the 13th day of February, 2026 and the suit was adjourned for judgment.

In the final written address settled by ***B.A. Iluobe Esq.***, the learned counsel for the Claimant formulated a sole issue for determination as follows:

"Whether the Claimant has proved her claim on the preponderance of evidence to entitle her to the judgment of this Honourable Court."

Arguing the sole issue for determination, learned counsel submitted that civil cases are determined on the preponderance of evidence and balance of probabilities and that he who asserts a fact must prove it with credible evidence. He relied on ***sections 131, 132, 133 and 134 of the Evidence Act, 2011.***

He referred to the case of ***MOGAJIN V. ODOFIN BELLO (1978) 4 SC 91*** on the duty of the trial Judge to place the evidence adduced by the parties on an imaginary scale in order to determine where the balance of probability lies.

He submitted that the Claimant's predecessor in title acquired the land in dispute from one Sunday Ewemade vide the Deed of Transfer dated the 10th day of January, 2012, and that the transfer, having not been challenged, remains valid. He posited that a claimant who traces his title to a vendor must prove the title of his vendor and he relied on the case of ***AHMED V. ADEDOKUN (2023) 25 WRN 24 at 29.***

Learned counsel enumerated the five ways of establishing title to land as stated in the cases of ***SOGUNRO V. YEKU (2017) 16 WRN 1 at 7***, and ***IDUNDUN V. OKUMAGBA (2000) 20 WRN 127.*** He posited that the Claimant relied on the production of documents of title as her root of title, having acquired the land from Mirror Multi Concept Nig. Ltd., who in turn acquired same from one Sunday Ewemade.

He submitted that the Court is only entitled to rely on the evidence before it and not on speculation, and he relied on the case of ***SEISMOGRAPH SERVICE (NIGERIA) LTD. V. OGBENI (1976) 4 SC 25 at 85.*** He further submitted that evidence which is relevant to the subject matter in dispute and which has neither

been challenged nor controverted must be accepted and relied upon by the Court, and he relied on the case of *AKOJU V. AEGOKE (2017) 12 WRN 119 at 128*.

Learned counsel maintained that the Claimant, having given unchallenged evidence, is entitled to judgment and he urged the Court to resolve the sole issue in favour of the Claimant and to grant the reliefs sought.

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 the case of *Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1 at 23-24*.

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by the unchallenged and uncontroverted evidence of the Claimant if it is cogent and credible. See the case of *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 the case of

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.***

It is pertinent to observe at the outset that the Claimant's principal relief, as amended, is for a declaration that she is entitled to exclusive possession of the land in dispute. Nevertheless, the Claimant founded her entitlement to possession upon her title to the land, which she traced through documents to the Oba of Benin. I will therefore examine the evidence in the light of the established principles for proof of title to land.

In a claim for a declaration of title to land, the burden is on the Claimant to satisfy the Court that she is entitled, on the evidence adduced by her, to the declaration which she seeks. The Claimant must rely on the strength of her 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 follows:

- (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 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 her evidence the Claimant appears to be relying on the second, third and fifth means of proof, namely: proof by the production of documents of title, proof by acts of ownership and proof by acts of long possession and enjoyment of the land.

On the proof by documents of title, the Claimant tendered three documents which were admitted in evidence, namely: the Deed of Transfer dated the 10th day of May, 2014 between Mirror Multi Concept Nig. Ltd. and the Claimant, which was admitted as a receipt of purchase (Exhibit "B"); the Deed of Transfer dated the 10th day of January, 2012 between Mr. Sunday Ewemade and Mirror Multi Concept Nig. Ltd. (Exhibit "C"); and the Oba's Approval dated the 2nd day of February, 1972 in favour of Mr. Sunday Ewemade (Exhibit "D").

Exhibits "B", "C" and "D" are photocopies. The Claimant pleaded and gave evidence that the original of Exhibit "B" was misplaced when she relocated to Abuja and that her vendor gave her only photocopies of Exhibits "C" and "D". The documents were admitted without objection. By *section 89(c) of the Evidence Act, 2011*, secondary

evidence may be given of the existence, condition or contents of a document where the original has been destroyed or lost. From the evidence of the sole witness in this suit, I am satisfied that the Claimant laid sufficient foundation to tender the photocopies of her title documents without any objection from the Defendant.

Learned counsel for the Claimant rightly submitted that a claimant who traces her title to a vendor must prove the title of her vendor. In the instant suit, the Claimant traced her root of title through her vendor, Mirror Multi Concept Nig. Ltd., to Mr. Sunday Ewemade and ultimately to the grant by the Oba of Benin evidenced by Exhibit "D". The chain of title disclosed by the evidence is consistent: Mr. Sunday Ewemade acquired 200ft by 200ft by the Oba's Approval; he transferred 100ft by 200ft of it to Mirror Multi Concept Nig. Ltd.; and the said company in turn transferred 50ft by 100ft to the Claimant.

However, it is evident that Exhibits "B" and "C" are not registered legal instruments so they cannot convey legal title to the land in dispute.

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) 11 NWLR (Pt.1258) 375 at 415; *Dauda vs. Bamidele* (2000) 9 NWLR (Pt.671) 199 at 211; and *Goldmark (Nig.) Ltd. vs. Ibafon Co. Ltd.* (2012) 10 NWLR (Pt.1308) 291 at 349-350.

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

Furthermore, at the hearing the Claimant led evidence to show that she took possession of the land after the purchase. In the absence of any challenge to Exhibits "B", "C" and "D", I hold that they will suffice to establish the Claimant's title to the land in dispute.

On acts of ownership and possession, the Claimant led unchallenged evidence that she caused the land to be surveyed in 2016, as evidenced by the Survey Plan, Exhibit "E"; that she commenced development on the land in 2016 and built the property to lintel level; and that she was in quiet possession of the land without any disturbance from anybody until the 23rd day of February 2022. It is noteworthy that the substituted service ordered by this Court was effected by pasting the processes on the wall of the structure on the land in dispute.

The uncontroverted evidence of the Claimant's peaceful and undisturbed possession of the land amounts to acts of possession which 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***. See also the case of ***MOMODU V. IBRAHIM (2021) LPELR-54137(CA) (PP. 32-33 PARAS. B)***.

It is an established principle of law that exclusive possession gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all

wrongdoers except the person who can establish a better title. See the case of *Ekretsu & Anor v. Oyobebere & Ors* (1992) LPELR-1099(SC) (Pp. 27-28 paras. F).

Furthermore, it is settled law that possession of land can be by sundry means. In the case of *Thompson v. Arowolo* (2003) FWLR (Pt.164) 315 at 371, Onu JSC expounded thus: "*Survey beacons constitute an act of possession which can be relied on to prove title to land.*" See also the cases of *Anosike v. Ugochukwu & Ors* (2018) LPELR-46096(CA) (Pp. 14-16 paras. E); and *Ajero vs Ugorji* (1999) 7 SC (Pt.2) 58.

From the foregoing, I hold that the Claimant has established her title to the land in dispute by the production of documents of title and by acts of possession, and she is entitled to the declaration that she is entitled to exclusive possession of the land in dispute, as claimed in her first relief.

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 the following decisions on the point: *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) 411.

Furthermore, the grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by Court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See the cases of *Goldmark Nigeria Ltd & Ors v. Ibafon Company*

Ltd. (2012) 49 NSCQR 1763 at 1820; and Udo v. Anyankana (2016) LPELR-41192(CA) (Pp. 13-14 paras. C).

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 claim for the sum of N10,000,000.00 (Ten Million Naira) only as general, aggravated and exemplary damages against the Defendant, it is settled law that general damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See the cases of ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess General Damages, taking into consideration the surrounding circumstances and the conduct of the parties. See the case of ***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.

However, in the instant case, the Claimant did not elaborate on the extent of losses occasioned by the Defendant's acts of trespass. Going through the entire gamut of the

Claimant's evidence, there is no evidence of the quantum of damage suffered from the alleged acts of trespass by the Defendant.

Thus, where as in the instant suit, the Claimant did not lead sufficient evidence on the extent of injury or losses suffered, she is only entitled to nominal damages which is at the discretion of the Court using the test of a reasonable man. See: *Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357; Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370.*

Furthermore, there is no evidence of any conduct on the part of the Defendant to warrant an award of aggravated or exemplary damages.

Consequently, the Claimant is entitled to nominal damages.

On the fourth relief for the sum of N1,000,000.00 (One Million Naira) as cost of this suit, the award of costs is at the discretion of the Court, and I will exercise my discretion to award reasonable costs in favour of the Claimant.

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 entitled to exclusive possession of ALL that piece and parcel of land measuring 50ft by 100ft lying, being and situate at Ward 37B, Evboriaria Quarters, Benin City, Edo State, covered by Survey Plan No. OAE/ED16/027 dated the 25th day of July, 2016;

2. An order of perpetual injunction restraining the Defendant, by himself/herself, agents, servants and/or privies or otherwise whosoever from committing any or further acts of intermeddling or trespass on the said parcel of land and property belonging to the Claimant, or doing anything inconsistent with the rights and interest of the Claimant therein; and

3. The sum of N3,000.000.00 (Three Million Naira) as general damages against the Defendant for trespass.

The Defendant shall pay the sum of N500,000.00 (Five Hundred Thousand Naira) to the Claimant as costs.

***P.A. AKHIHIERO
JUDGE
2/10/2026***

COUNSEL:

B.A. Iluobe Esq. & J.C. Anulumba Esq. ----- Claimant.

Unrepresented ----- Defendant.