IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

ON THIS 12TH DAY OF MARCH, 2025

BEFORE: HIS LORDSHIP HON. JUSTICE JUDE O. ONWUEGBUZIE

SUIT NO: FCT/HC/CV/924/2022

BETWEEN:

REGISTERED TRUSTEES OF NIGERWIVES-NIGERIA……..CLAIMANT

AND

1. MR. PAUL TIMOTHY
2. UNKNOWN PERSONS } **……..…… DEFENDANTS**

JUDGMENT

INTRODUCTION

By a Writ of Summons dated the 21st day of March, 2022, the Claimant claims against the Defendants as follows:

1. A Declaration that the Claimants are the owner of plot MF-2118 lying and situate within Sabon Lugbe East Extension Layout and more particularly described and shown in the Offer Letter, and particularly described in the survey Plans as beacon numbers PB8601, PB9392, PB9391 and PB 6941 respectively.
2. A Declaration that the Defendants are trespassers and their continuous entry into the said plot of land is wrong an illegal.
3. An Order that the Defendants, their Privies, Representatives, Heirs, Agents, Workers, Successors in Title or Servants should vacate the said plot of land in dispute and to remove all they have kept on the said plot forthwith.

4. An Order of perpetual injunction restraining the Defendants either themselves, Privies, Representatives, Heirs, Agents, Workers, Successors in Title or Servants from further entry into the said plot of land to cause further development, interfere with, assigning, selling or disposing or otherwise dealing with the said plot or any portion thereof.
5. The sum of (N100,000,000.00) One Hundred Million Naira only against the Defendants jointly or severally for general damages caused on said plot of land including the destroyed economic trees and trespass therein.
6. The sum of (3,000,000.00) Three Million Naira only being the cost of engaging the law firm of Nicholas Elechi & Co. to handle this action and other consequential cost incidental thereof amounting to (1,000,000.00) One Million Naira only against the Defendants.

However, the Defendants did not file any process in defence, despite been served with the originating process and several hearing notices in this suit.

THE CLAIMANT'S CASE AND COUNSEL'S SUBMISSION

The Counsel to the Claimant submitted that from the outset, they answer to the sole issue above is in the affirmative. That from the plethora of case and legal authorities, the law is settled at all times, in civil cases, the Claimant is required to prove his case on a preponderance of evidence or balance of probabilities. Section 134 of the Evidence Act, 2011, provides thus: "The burden of proof shall be discharged on a balance of probabilities in all civil proceedings." He also cited the case of : Mrs Vidah C. Ohochukwu v A. G. (Rivers State) & 2 Ors. (2012) 6 NWLR (Pt. 1295) 53 @ 84.

That by the provisions of Section 133(1) of the Evidence Act, 2011, "In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party

against whom judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the proceedings."

That Subsection (2) provides: "If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with."

The Counsel to the Claimant submitted further that in discharging the burden of proof, the Claimant is required to so by credible evidence. Whether or not a Claimant has established his claims in a case, or has discharged the burden of proof placed on him to the satisfaction of the law, as enunciated above, is a matter of facts, and depends on the evidence adduced in support of his case, which is on record.

That as the principal reliefs sought in this suit bother on title to land, in a long line of authorities, it has been settled that there are generally five ways of proving title to land, namely:

(a) by traditional history or evidence; or

(b) by production of documents of title; or

(c) by various acts of ownership, numerous and positive and extending over a length of time as to warrant the inference of ownership; or

(d) by acts of long enjoyment or possession of the land; or

(e) by proof of possession of adjacent land in circumstances which renders it probable that the owner of such adjacent land would in addition be the owner of the land in dispute.the Counsel relied on the cases of Idundun v Okumagba (1976) 9 - 10 SC 227; Alhaji Matanmi & Ors. v Victoria Dada & Anor (2013) 7 NWLR (Pt. 1353) 319 @ 332; Ajibulu v Ajayi (2014) 2 NWLR (Pt. 1392) 483 @ 500.

According to the Claimant's Counsel, a Claimant can succeed upon proving any one of the ways of proving title to land enumerated above. That the Supreme Court, in Ziregbe v Eyekpimi (2020) 9 NWLR (Pt. 1729) 327 @ 346, held that 'Proof of any ways of establishing title is sufficient to ground declaration of title.' Similarly, in Ajibulu v Ajayi (supra), it was held that "*The burden placed on the plaintiff is to prove, at least, one of the five ways, and not conjunctively*."

It was the case of the Claimant's Counsel that from the pleadings and evidence on record (both oral and documentary), it is clear that the Claimants adopted the second method of proof, that is, by production of documents of title.

That whether or not the Claimants have established their claims in this case, or has discharged the burden of proof placed on it to the satisfaction of the law as redacted above is a matter of fact, and depends on the state of the pleadings filed by the Claimants, and the evidence adduced in support of the claims.

He went further that the principal evidence of the Claimants is as contained in the Claimants witness' statement on oath deposed to by the Claimants' witness and filed and adopted for that purpose at the trial and documents tendered in support of the Claimants' case.

The evidence of the Claimants can be summarized thus:

> (a) The summary of the Claimants' claim is that sometimes in the year 2000, the Claimants acquired the property, Plot MF-2118 measuring about 1 hectare at Sabon Lugbe East Extension Layout, the subject matter of this suit, and that they have been enjoying peaceful ownership and possession of the same property until sometimes in January, 2022, when they (the Claimants) discovered that the defendants have trespassed into the property to disturb their peaceful possession.
>
> (b)That the Defendants hold no title to the subject matter neither have they been in possession nor have any right to disturb the Claimants' title or possession; and as such judgment should entered in favour of the Claimants as per all the claims they have against the Defendants.
>
> (c) In support of the Claimants' case, the Claimants led evidence and tendered and had admitted the following enumerated documents:

(i) Irrevocable Power of Attorney - Exh. PW1 A

(ii) Search report dated 18/04/2000 - Exh. PW1 B

(iii) Offer of terms of grant ('crossed copy') in the name of Ifoma & Co, and dated 11/3/98 - Exh. PW1 C

(iv) Offer of terms of grant (marked 'changed') in the name of Nigerwives - Nigeria, and dated 20/7/2000 - Exh. PW1 D

(v) Title Deed Plan (TDP) in name of Nigerwives - Nigeria - Exh. PW1 E.

(vi) Right of occupancy rents and fees in the name of Nigerwives Nigeria - Exh. PW1 F.

(vii) AMAC Revenue/departmental receipts: for the payment for change of name, levy receipt, receipt for form and processing fees for C of O and TDP, all in the name of Nigerwives - Nigeria -Exh. PW1 G (1-3)

(viii) The receipt for the payment to the Claimants' lawyers to prosecute this case Exh. PW1 H.

The Counsel posited that the evidence led by the Claimants were never challenged by the Defendants despite several opportunities given to them. When the matter got to the stage the Claimants were to call their witness and open their case, the Claimants were in court with their sole witness on 3/7/2023 and 9/10/2023 while the Defendants were absent despite being served with hearing notices but the court did not allow the Claimants to proceed to take their witness on those dates on the ground that another opportunity be given to the Defendants to see if they will be available to defend the matter. When the matter came up again on 20/11/2023 for the Claimants to open their case, the court only allowed the Claimants' sole witness to 'adopt her Witness Statement Oath' and adjourned the matter at the stage where documents were to be tendered through the witness so that another opportunity can be given to the Defendants to be available to raise any possible objection to the documents the Claimants is tendering in evidence. On 17/1/2024, when the matter came up for continuation of hearing, the Claimants were in court and the Defendants were absent as usual despite service of hearing notice against that date on them. When the Claimants wanted to proceed with the business of the day that

17/1/2024, the court stopped them and posit that another further opportunity be given to the Defendants to appear and do the needful. And so, the matter was adjourned till 7/2/2024. On 7/2/2024, the Claimants were in court and ready to proceed with the case but the Defendants were absent. The matter was not entertained that day and the matter was adjourned to 28/2/2024 to allow the Defendants further opportunity to do the needful. On 28/2/2024, the Defendants were absent in court again, and on the conviction of service of the hearing notice on them, the Court allowed the Claimants to proceed to tendering documents (which were duly admitted in evidence) and conclude, in chief, the testimony of the Claimants' sole witness (PW1). The Claimants' application for the foreclosure of the Defendants from the cross-examination of the Claimants' witness (PW 1) was refused by the court on that date (28/2/2024) and instead the matter was adjourned till 28/3/2024 to allow for further opportunity for the Defendants to be available to cross-examine the PW1. On 28/3/2024, when the Defendants failed to appear in court despite service of the hearing notices, on the Claimants' counsel application that the Defendants be foreclosed from cross-examining, the Court foreclosed the Defendants from cross-examining PW1 and adjourned the matter till 15/5/2024 for Defence. On 15/5/2024 when the matter came up for Defence, the Defendants still failed to appear to put up a defence. On the date the Claimants' counsel applied that the Defendants be foreclosed but the Court refused the application and opted that the Defendants be given yet another opportunity for their defence hence the matter was adjourned till 24/6/24 for defence. On 24/6/2024 when the matter again came up for defence, the Defendants still failed to appear in court despite service of the hearing notice on them. On this date (24/6/2024), on the Claimants Counsel's application that the Defendants be foreclosed from defending this suit, this honourable court foreclosed the Defendants and the matter was adjourned till 30/9/2024 for the adoption of final written address of counsel in the matter.

So, as it stands now, the evidence or the case of the Claimants in this suit is unchallenged or controverted. That the law is trite that unchallenged and uncontroverted evidence are deemed admitted and the Court is bound to act upon unchallenged and uncontroverted evidence (viva voce or documentary). See **Airtel Networks Ltd v Plus Ltd (2020) 15 NWLR (Pt. 1747) 235 @ 299, para. H;**

Uzodinma v Ihedioha (2020) 5 NWLR (Pt. 1718) 529 (SC) @ 574; Thompson v Akingbehin (2021) 16NWLR (Pt 1802) 283 (SC) @ 325, paras. E - F. In the case of Adamawa State Min., Land and Survey v Salisu (2021) 2 NWLR (Pt 1759) 1 @ 29 30, paras. H - E, the court held:

> **Where the plaintiff pleads and gives evidence in support of his claim for declaration of title and his evidence is neither challenged nor controverted, the trial court is bound to accept the evidence... Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to act on the unchallenged evidence before it.**
>
> **…any unchallenged evidence in a deposition is deemed admitted."**

The Counsel argued that from the foregoing, it is unequivocally clear that the Claimants' evidence, which remained uncontroverted and unchallenged by the Defendants, even when they had several opportunities to do so, is deemed admitted by the Defendants and the honourable court is bound to act on them, and he urged your lordship to so hold.

The Counsel, respectfully submitted that going by the credible, positive, convincing and unchallenged evidence of the Claimants, the Claimants have been able to establish their title to the subject matter and as such are entitled to declaration of title over the subject matter in their favour and he urged your lordship to so hold.

The Counsel to the Claimant further argued on the other reliefs claimed by the Claimants, he first and foremost submitted that where there are two or more persons claiming ownership of a piece of land, it is the person with a better title that is in possession. In other words, where two parties claim possession, the law ascribes possession to one who can show better title. He relied on Iseru v Catholic Bishop Warri Diocese (1997) 3 NWLR (Pt. 495) 517 @ 526; Abdullahi v Adebutu (2020) 3 NWLR (Pt. 1711) 338 SC @ 358; Think Ventures Ltd v Spice & Regler Ltd (2021) 2 NWLR (Pt. 1759) 114 @ 136, paras. D-E.

He submitted respectfully that a party in possession will necessarily succeed in an action for trespass against an intruder (except if the intruder is able to prove a better title than the party in possession). He cited Monkom v Odili (2010) 2 NWLR (Pt. 1179) 419 @ 451.

That the law is that an unauthourized invasion of the right of the party in possession entitles that party to maintain an action in trespass against the whole world except the owner. He cited UBA PIc v Samba Petroleum Co. Ltd (2002) 16 NWLR (Pt. 793) 361; Think Ventures' case supra @ 141, paras. E - H. In an action for trespass, all that the Claimant is required to prove in court is not necessarily title to the property in dispute but exclusive possession of the property on which the trespass has been committed. He relied on Adegbite v Ogunfaolu (1990) 4 NWLR (Pt. 146) 578; Think Ventures Ltd v Spice & Regler Ltd (2021) 2 NWLR (Pt. 1759) 114 @ 140-141.

That the Claimants, having established a better title than the Defendants, are no doubt the ones in possession; and also having led evidence that they are in possession, should succeed in the case of trespass against the Defendants and he urged your lordship to so hold.

The Counsel submitted further that on the Claimants' case for injunction against the Defendants, the law is trite that a court can grant an order of perpetual injunction to protect the interest of a successful party in an action for declaration for title as a consequential relief. He cited the cases of ESCSC V. GEOFREY (2007) 21 WRN 144; Odedeyi V. Odedeyi (2002) Vol. 11 WRN 161; and OLUWOLE V. ABUBAKARE (2012) 17 WRN 68.

The Counsel posited further that consequently, it follows that the remedy of an injunction will be available to a Claimant whose claim for declaration of title and/or trespass succeeds, as in the instant case and he urged your lordship to so hold.

On the claim for general damages, it was submitted that though it is at the discretion of the court, it is also an ancillary relief whose assessment relates to

evidence sufficiently placed before the court. he placed reliance on the case of: Kupolati v MTN (Nig.) Comms Ltd. (2020) 13 NWLR (Pt. 1740) 1.

In the Claimant's Counsel's conclusion, he submitted that the Claimants herein have placed sufficient evidence on record to suggest that they suffered damages which flows from the acts of the Defendants and thus are entitled to the ancillary reliefs of injunction and damages.

That the Claimants, also by evidence before this Court, established the cost incurred by them in prosecuting this action and are therefore also entitled the relief of the cost of action claim by them and indeed other reliefs sought by the Claimants against the Defendants.

COURT'S ANALYSIS:

Now, I have read and carefully considered the Claimant's writ, Statement of Claim and the Exhibits annexed thereto including submissions made out in the final address of the learned counsel representing the Claimant in this suit.

I align myself with the learned counsel to the Claimant's sole issue raised in this instance as to wit:

> **Whether the Claimant on the preponderance of evidence has made out a case to be entitled to judgment going in their favour in this case.**

By the provisions of Sections 135-137 of the Evidence Act 2011 cited by the learned counsel which provided thus:

Section 135(1)

"***Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those exist"***

Section 135(2)

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person

Section 136

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 137 (1)

> **in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgement of the court would be given if no evidence were produced on either side regard being had to any presumption that may arise on the pleadings.**

In ***Nwanze Augustine OkidegbeVs. Mallam Mahmoud Mohammed &Ors(2021) LPELR – 55191(CA)*** it was held thus:

> **It is exiomatic that proof in civil causes is on a balance of probabilities. It is proof that is on the preponderance of evidence. Under Section 136(1), (2) of the Evidence Act 2011, the burden of proof prescribed by law is said to be as follows: 136(1). The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person but the burden may in the course of a case be shifted from one side to the other. (2) In considering the amount of evidence necessary to shift the burden of proof, regard shall be heard by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.**

In the case of ***Ekweozor&OrsVs. Reg. Trustee of the Saviours Apostolic Church of Nig(2020) LPELR-49568(SC) Peter Odili, JSC,*** held extensively at pp39 to 40 para B-4 as follows:

> **To untie the puzzle it needs reiteration that the burden of proof in civil cases has two distinct facets; the first is the burden of proof as a matter of law and pleadings normally termed as the legal burden or the burden of establishing a case. The second is the burden of proof in the sense of adducing evidence usually described as the evidentical burden. While the legal burden of proof is always static and never shifting the other type being evidential burden of proof shift or oscillates constantly as the scale of evidence of preponderates.**

In resolving the issue, the primary onus of proof in a civil case such as the present one lies on the plaintiffs who happen to have shown it through the pleadings, the statement of claim. I rely heavily on the following cases: ***AnachunaNwokafor&OrsVs. NwamkwoUdegbe&Ors (1963)1 All N.L.R 107; Mogaji&Ors Vs. Odofin& Anor (1978) 4 SC 91; Bello Vs. Emeka (1981)1 SC 101 AT 117-120.***

In Okidegbe v. Mohammed (Supra) it was stated thus:

> **It needs to be said that the onus of proof does not exist in vacuum. The onus or burden of proof is the legal duty or obligation to prove or establish facts in relation to an issue. There cannot be any burden of proof where there are no issues in dispute between the parties for example, if the plaintiff's claim is admitted. There will generally be no onus on the plaintiff to go into proving of his claim. Similarly, if a particular averment of the plaintiff is admitted there will no longer be**

an onus to prove what has been admitted by the opposite party, therefore, to discover where the onus lies in any given case, the court has to look critically at the pleadings. Per Stephen Jonah Adah, JCA pp.31-34 para E-B.

Let it be expressly stated here that the requirement of our law on the evidential burden and standard of proof in the civil cases has not changed. The required proof is on the balance of probabilities. I take my guide from the case of ***Emeka v. Chuba-Ikpeazu &Ors(2017) 15 NWLR(PT. (1589)345*** and particularly the case of ***Ngene Vs. Igbo& ANOR(2000)4NWLR (PT.651) 131*** where the supreme court held as follows: "*In land matter, as in other civil matters, proof is on the balance of probabilities. It is the law that once plaintiff in a civil matter shows a prima facie case, the balance of probabilities will be in his favour unless the defendant's case tilts that balance.* This is implicit in the case of ***Aromire Vs. Awoyemi(1972)2 SC 1 AT 10-11***

Therefore, by the plethora of cases as well as the statutory provision x-rayed above, the court has come to an inevitable conclusion that the Claimant in this instant case have effectively proved both the legal and evidential burden placed on them and I so hold.

In the PW1's evidence:

> That sometimes in the year 2000, the Claimants acquired the property, Plot MF-2118 measuring about 1 hectare at Sabon Lugbe East Extension Layout, the subject matter of this suit, and that they have been enjoying peaceful ownership and possession of the same property until sometimes in January, 2022, when they (the Claimants) discovered that the defendants have trespassed into the property to disturb their peaceful possession. That the Defendants hold no title to the subject matter neither have they been in possession nor have any right to disturb the Claimants' title or possession;

and as such judgment should entered in favour of the Claimants as per all the claims they have against the Defendants.

That in support of the Claimants' case, the Claimants led evidence and tendered and had admitted the following enumerated documents:

(i) Irrevocable Power of Attorney - Exh. PW1 A

(ii) Search report dated 18/04/2000 - Exh. PW1 B

(iii) Offer of terms of grant ('crossed copy') in the name of Ifoma & Co, and dated 11/3/98 - Exh. PW1 C

(iv) Offer of terms of grant (marked 'changed') in the name of Nigerwives - Nigeria, and dated 20/7/2000 - Exh. PW1 D

(v) Title Deed Plan (TDP) in name of Nigerwives - Nigeria - Exh. PW1 E.

(vi) Right of occupancy rents and fees in the name of Nigerwives Nigeria - Exh. PW1 F.

(vii) AMAC Revenue/departmental receipts: for the payment for change of name, levy receipt, receipt for form and processing fees for C of O and TDP, all in the name of Nigerwives - Nigeria -Exh. PW1 G (1-3)

(viii) The receipt for the payment to the Claimants' lawyers to prosecute this case Exh. PW1 H.

In proving title/ownership of land it is very well established in our law from the decision of the Supreme Court in **IdundunVs. Okumagba** (supra) followed by several decisions of the Supreme Court and other courts of superior jurisdiction that a claim for a declaration of title to land may be proved by one or more of the following methods (a) by traditional evidence; (b)production of title documents duly authenticated unless they are 20years old or more; (c) by act of possession in and over the land dispute extending a sufficient length of time numerous and positive as to warrant the inference that the person in possession is the true owner; (d) acts of long possession and enjoyment; (e) by acts of possession of connected

or adjacent lands in circumstances rendering it probable that the owner of such adjacent of connected land could in addition be the owner of the land in dispute. I call in aid the following cases: ***GarbaVs. Tsoida(2020)5 NWLR (PT. 1716)1; Ziregbe V. Eyekpimi(2020)9 NWLR (PT 1929)329***. In the instant case before this court, the Claimant has so far proved ownership of Plot plot MF-2118 lying and situate within Sabon Lugbe East Extension Layout Abuja FCT and more particularly described and shown in the Offer Letter, and particularly described in the survey Plans as beacon numbers PB8601, PB9392, PB9391 and PB 6941, by the production of title document as highlighted somewhere in this judgment and I so hold.

It is trite that the trial court is vested with the primary duty of evaluating evidence and ascribing probative value to same. This primacy is the court's responsibility arising out of the fact of the advantage it has of seeing and observing the witnesses making impression as they testify. The case of ***Ajibulu Vs Ajayi (2013) LPELR-21860(SC)*** gives credence to the above . The Court's discretion is to calculate what sum of money will be reasonable in circumstance, I derive my support from the case of ***OlajogunOrs Vs. Agoro(2014) LPELR -24040***

The law is trite that a court is at liberty to accept and act on unchallenged and uncontroverted evidence. There is a qualification to that principle of law, for the court to accept and act on unchallenged and uncontroverted evidence, the evidence must in itself be admissible and must be credible and not capable of creating doubts in the mind of the Court, the court will neither accept nor act on such evidence. I am on the same page with the case of **Godwin** ***Onyekwelu Okafor Vs. Cecilia and Ors. (2014) LPELR- 23561 (CA) Per MisituraOmoDere Bolaji Yusuf JCA (Pp. 43-44, Per as (FA).***

It does appear to me that a distinction has not always been drawn in the manner in which evidence is challenged or controverted. "Unchallenged and uncontroverted" have most been used as meaning the same thing. See for instance ***Egbun Ike Vs. A. C. B. Ltd. (1995)2 NWLR (Pt. 375) 34 SC*** where it is stated that in a strict Sense "Unchallenged and uncontroverted" may not mean same thing. To challenge is to object or render doubtful. To controvert is to dispute or deny, oppose or contest. For both definitions see Black's Law Dictionary 6th Edition.

Notwithstanding the distinction in most cases the consequence would be the same whether evidence is unchallenged or whether it is uncontroverted. Where evidence is challenged and rendered doubtful or without weight by cross-examination by contrary evidence will not render it cogent or weighty. On the other hand, the fact that contrary evidence has not been adduced to controvert the evidence of a witness on a particular matter weaken any suggestion that the evidence is not true. I get my strength from the case of ***OforLete Vs. State (2000) LPELR- 2270- (SC)*** in the instant case before this Honourable court, despite the fact that the writ of summons, statement of claim as well as several hearing notices were served on all the Defendants, they did not file any defence to the suit brought against them. The Counsel there initially appeared for them later withdrew his appearance and nothing more from their side. This in effect connotes that the evidence of the Claimant remains unchallenged and uncontroverted as it is the position of the law that in civil litigation generally, any evidence unchallenged or uncontroverted whether contain in an affidavit, witness statement on oaths, or as oral testimony on oath affords the court credible material to rely on in deciding the case at hand. The Case of ***Nanna Vs. Nana (2006) 3 NWLR (Pt. 966)*** supports the above principle of law.

The Claimant's fifth relief is a claim of One Hundred Million Naira in general damages jointly and severally. Now the law is trite that general damages are that which the law implies or presumes to have occurred from the wrong complained of. All the court needs to do in exercising its discretion is to calculate what sum of money will be reasonable in the circumstance of the case I am tempted to refer you to the case of ***Olajogun and Ors. Vs. Agoro (2014) LPELR- 240-40.***

Given that this is a land matter and the Claimant has asked for perpetual injunction against trespass by the Defendant, then this Court will rightfully conclude that the damages in the case relate to trespass to land. Now it is general principle in law that where a party has by trespass made use of a Claimant's land, the Claimant is entitled to receive by the way of damages such as should reasonably be paid for use. The law as it relates to damages in trespass was stated in ***Registered Trustees Of Masters Vessel Ministers (Nig) Incorporated Vs Emenike&Ors (2017) Lpelr-42836 (CA)*** where the court held that:

> ***The law is also clear that trespass is actionable per se and once proved a plaintiff is entitled to damages even without the proof of actual injury resulting from the wrongful acts constituting the trespass. A party who proves trespass is entitled without more to general damages which is quantified by relying on what would be the opinion and judgement of a reasonable person in the circumstances of the case.***

It is trite law that generally speaking a claim for trespass to land is rooted in exclusive possession. In other words, all that a party is required to prove in court is not the title to the property in dispute but exclusive possession of the property or the right to such possession of the land in dispute. I am in agreement with the case of ***Amakor Vs. Obiefuna(1974)3 SC.***

The two(2) types of possession in law therefore are:

i. Actual physical possession
ii. Possession imputed by law which is derived from title.

Applying the principle of exclusive possession above to the instant case, the plaintiff sustain an action for trespass. I have arrived at the conclusion because the plaintiffs do have physical possession of the land and their title to the land has been fully established and as such their relief of damages succeeds and I so hold.

Even if the damages are just mere general damages and not damages in relation to trespass, the law is that damages must flow from the immediate, direct and proximate result of the wrong complained as buttressed in the Court of Appeal case of ***Alhaji TawoOyelekeVs.. Professor Muriel Ayodeji Oyediran(2020)LPELR – 52098(CA).***

COURT'S DECISION:

Consequently, and in the light of the foregoing the Court hereby Declares and Orders as follows:

1. A Declaration that the Claimants are the owner of plot MF-2118 lying and situate within Sabon Lugbe East Extension Layout and more particularly described and shown in the Offer Letter, and particularly described in the survey Plans as beacon numbers PB8601, PB9392, PB9391 and PB 6941 respectively.
2. A Declaration that the Defendants are trespassers and their continuous entry into the said plot of land is wrong and illegal.

3. An Order that the Defendants, their Privies, Representatives, Heirs, Agents, Workers, Successors in Title or Servants should vacate the said plot of land in dispute and to remove all they have kept on the said plot forthwith.
4. An Order of perpetual injunction restraining the Defendants either themselves, Privies, Representatives, Heirs, Agents, Workers, Successors in Title or Servants from further entry into the said plot of land to cause further development, interfere with, assigning, selling or disposing or otherwise dealing with the said plot or any portion thereof.
5. The sum of (N2,000,000.00) Three Million Naira only against the Defendants jointly or severally for general damages caused on said plot of land including the destroyed economic trees and trespass therein.
6. The sum of (500,000.00) Five Hundred Thousand Naira only being the cost of engaging the law firm of Nicholas Elechi & Co. to handle this action and other consequential cost incidental thereof amounting to (500,000.00) Five Hundred Thousand Naira only against the Defendants.

This is the Judgment of the Court.

……
HON. JUSTICE JUDE O. ONWUEGBUZIE

Appearances:

1. O.M Aikpitanyi Esq. for Claimant.
2. No appearance for the Defendants