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Trespass to Land in Nigeria: Associated Violence and Volatility

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Abstract
Trespass to land in Nigeria is a topical issue that need not be over emphasized as its prevalence is wide spread while consequences arising there from impact negatively the very peace of the nation. The actual use and enjoyment of land by occupiers are threatened while lives and properties are often not spared. This work examines at close quarters, the trespass to land with its associated violence and volatility. An attempt to examine the recent trends in the pronouncements of higher courts and the attitude of the government and the people to matters relating to trespass to land was made. These primary methods of data collection were utilized and such data was descriptively analysed. It was found among other, that the tension and crisis usually associated with trespass to land are overrated. This is because they are often actuated and propelled by political and other external considerations other than mere trespass to land. Furthermore, the land needs of all Nigerians including the itinerant Fulanis ought to be readdressed by all the stakeholders concerned. Due to the negative impact of trespass to land, tolerance and hospitality should be the watch word and been braced by land holders in Nigeria.

Key words: trespass, violence, possession, land.

Introduction
Olawoye[1] in his book stated that;

> *Land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds. On the other hand, things placed on land, whether made of the product of the soil or not, do not constitute land.*

For Nwabueze[2],

> *It seems to be agreed even among laymen, that land does not just mean the ground and its subsoil, but includes also, all structures and objects like buildings and trees standing on it… but the legal concept of land goes further than this, and includes even abstract, incorporeal rights, like right of way and other easements as well as profits enjoyed by one person over the ground and building as belonging to another.*

Osamolu, Oduwole and Oba[3], postulated in their work that;

> *The principle encapsulated in the latin expression: "quic quid plantantor solo solocedit", which literally mean; "whatever is affixed to the soil is part of the soil", applies to the*

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[1]Olawoye C.O., *Title to land in Nigeria* (Ibadan: Evans Brothers Limited, 1974), p.2

[2]Nwabueze B.O., *Nigerian Land Law* (Nwamife Publishers Limited 1972), p. 3

[3]Osamolu S.A., Oduwole O.T and Oba C.O., *Real Property Law and Conveyancing Practice in Nigeria*, (Abuja. Evans Publishers Limited, 2008), p. 1

> *definition of land. In this regard, land consists of all the surface of the earth not covered by the sea.*

It is however the opinion of Kwardem[4], that;

> *The term 'land' suggests different things to different people depending upon their outlook and interest at that moment.* Furthermore, he stated not surprising therefore that *individuals and communities defend their right over land with all their strength and might, sometimes up to the extent of making the supreme sacrifice of laying down their lives the process…*

Alubo[5] posited that;

> *The pertinence of land in any society cannot be over-emphasized. Land in contemporary society is second only to the children. No doubt there is great difficulty in comprehensively defining land.*

For Adewale[6]

> *The availability of land is the key to human existence and its distribution and use are of vital importance. The natural division of physical property is into land or immovable and other objects known as chattels or movables. Property may also be classified as real property (land) and personal property (other properties). One may then ask the question: what is land? We should note however, that term land as conceived by law is fraught with controversies.*

Kodilinye[7]in his work stated that;

> *Trespass to land called trespass 'quareclausumfrigit' is committed where the defendant without lawful justification;*
>
> 1. *enters upon the land in the possession of the plaintiff or*
> 2. *remains upon such land, or*
> 3. *directly places or projects any material object upon such land.*
>
> *Trespass was originally conceived as a remedy against forcible and aggressive entry on to the land of others; but later it was extended to include any wrongful entry, whether forcible or not, as well as merely remaining on the land unlawfully, or wrongfully placing a material object on it.*

It is imperative to note that trespass regulations are purely for the protection of the person that is currently in the physical possession of the land and not necessarily the person upon whom actual ownership of the land resides. Kodilinye[8]in line with this, adumbrated that the principle was clearly explained by Fatayi-Williams, J.S.C. in Amakor v Obiefuna[9] thus;

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[4]Kwardem M.D., *Essential Features of Land Administration*, (Jos: Fab Education Books, Fab Anieh Nig. Ltd., 1996) p. 1.
[5]Alubo A.O., *Contemporary Nigerian Land law* (Jos: Innovative Communications, 2012), p. 1
[6]Adewale T., *The Nigerian law* (Lagos: Princeton & Associates Publishing Co. Ltd., 2016), P. 11
[7]Kodilinye C.R., *The Nigerian Law of Tort* (Ibadan: Spectrum Publishers,1996), p. 177
[8]Kodilinye Ibid at p. 183
[9] (1974) 3 S.C. 67 at p. 75

> *it is trite law that the trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who could establish a better title. Therefore, anyone (other than the true owner) who disturbs his possession of the land, can be sued in trespass, and in such an action, it is no answer for the defendant to show that the title to the land is in another person.*

For Alubo[10];

> *it invariably means that a non-owner, a tenant, a caretaker of premises can successfully maintain an action against a trespasser… in most cases, trespass to land action are not initiated together with actions for declaration of title to the land. But it must be added that, a claim for trespass is not dependent on the claim for declaration of title because the issues to be decided on the claim for trespass are whether the plaintiff has established his actual possession of the land and the defendant trespassed on it. Trespass is always against a person not in possession. A plaintiff cannot therefore maintain an action both for trespass to a particular piece of land and recovery of possession of the same land as both claims are contradictory, inconsistent and mutually divergent.*

Trespass to Land in Civil Cases

According to Winfield and Jolowicz on Tort[11], trespass to land is the name given to that form of trespass which is constituted by unjustifiable interference with the possession of land. He further stated that;

> *Entry upon another's land is tortuous whether or not the entrant knows that he is a trespasser. It is no defence that the only reason for his entry was that he had lost his way or even that he genuinely but erroneously believed that the land was his.*
>
> *Since the decision in Fowler v Lanning, it may be asked whether liability for trespass to land, like that for trespass to the person, requires proof of intention or negligence on the part of the defendant, but the question is of little practical interest, for the majority of trespasses to land are, in the nature of self-evidently intentional things. I intend to enter upon your land if I consciously place myself upon what proves to be your land, even though I neither knew nor could reasonably have known that it was not mine...*
>
> *On the face of it the law looks hash, and the appearance of harshness is enhanced by the fact that trespass is actionable per-se, i.e., whether or not the plaintiff has actually suffered any damage. In earlier times, however, trespass was so likely to lead to a breach of the peace that even unwitting and trivial deviation unto another person's land was reckoned unlawful. At the present day, there is of course, much greater respect for the law in general and appreciation of the security which it affords, and the theoretical severity of the rules as to land trespass is hardly ever exploited in practice. It is true that "legal theory has*

[10]Alubo A. O., Op Cit at p. 271

[11] Roger, W.V.H. *Winfield & Jolowiczon Tort* (London: Sweet & Maxwell; 1979), p.335-6

> *nothing to do with the fact that a great deal of trespassing is tolerated by reasonable owners and occupiers as being substantially harmless.*
>
> *Nobody except a churl would drag into court a person who takes a short cut across his meadow or land without doing any visible injury to it. Moreover, there are cases where a trespass is justified by the common law and many modern statutes confer a right of entry upon private property.*

The erudite scholar whose work was cited above was of the opinion that the issue of trespass is not likely to lead to a breach of peace as it used to in the far past. With due respect this present writer differs in opinion because in recent times there are multiple cases of crises which leads to the breach of peace emanating from issues of trespass or the interference with a person or people's use and enjoyment of their land.

People do not tolerate trespass as was opined by Winfield and Jolowicz, rather issues of trespass are taken seriously and sometimes even blown out of proportion thereby causing the loss of lives, properties and livelihood in the Nigerian society. The above notwithstanding, the aforementioned book is foreign and was edited by a foreign editor who may not fully articulate and appreciate the realities in Nigeria. Also it was published since the year 1979, barely one year after the Nigerian's Land Use Act[12] was promulgated.

It is worthy of note that the present writer associates with the views of Ndukwe[13] which stands out regarding the root cause of land crises and trespass to land;

1. *Exploitation of forest reserves and the compulsory acquisition of land by government where such land lies between communities. In the event of the above, there is often a determination of which community, group or individual to be paid either the monies for the resources accruing from the land or the compensations for the acquisition. Consequently, this led to claims and counter-claims by neighbouring communities resulting ultimately to communal land clashes.*
2. *Increase in rural population leading to the expansion of the agricultural zone of each defined community. When two communities expanded in search of farm land and others, they would meet at a point, such contact usually creates tension and disputes with regard to trespass in the delimitation of the area.*
3. *An attempt at actual delimitation by government of boundaries usually cause disputes especially where adequate care was not exercised with regard to history, ethnic sentiments and other vital considerations.*

The above notwithstanding, the writer strongly holds the view that the main factor that fuel the incessant crises being experienced today in Nigeria is land and its control. Where matters of trespass to land is not properly addressed and given its adequate attention by the Executive, Judiciary, Legislators and the general public, the crises will not abate and gradually it would become the norm.

[12] Land Use Act Cap 202, Laws of the Federation, 1978
[13]Ndukwe U.O. *Cases and Commentary on Land Use Act* (Calabar: University of Calabar Press; 2002), p.124

Individuals and groups usually do not respect boundaries and seek leave or consent of holders or owners before entering into land either for grazing or for other activities. On the other hand, the land needs of all Nigerians including the itinerant fulanis are yet to be re-addressed.

In Orlu v Onyeka,[14] the Supreme Court held that a claimant must prove exclusive possession of land to succeed in his suit for trespass.

The court repeated the five methods by which title to land in Nigeria can be established[15] and stated further that a party may rely on any of the five methods. In the present case, the registered deeds of conveyance (exhibit'A'and'E') tendered by the respondent proved that he has a better title to the land in dispute.

Trespass to land, its meaning and ingredients were the focus in the case of Oyewusi v Olagbami.[16] The Court held while unanimously dismissing the appeal of the appellant that;

> *Trespass to land is a wrongful entry into the land in actual or constructive possession of another, a claim which is rooted in exclusive possession of the land in dispute. Once a defendant claims ownership of the same land, title is put in issue and for the plaintiff to succeed, he must show a better title than that of the defendant.*
>
> *The Supreme Court reiterated the pronouncements of the court by reproducing the (5) five main ways in which title to land is proved in a declaration of title suit.*

Furthermore, the Court held[17] that

> *In an action where the claim is for trespass, two separate and independent issues must be considered. They are:*
>
> a) *Whether the plaintiff established his actual possession of the land ;and*
>
> b) *Whether the defendant trespassed on it.*

Thus the twin questions to be considered are-what constitute acts of possession and trespass? A survey of case law reveals that putting tenants and erecting pillars on a piece of land constitute acts of possession. Indeed, a person can be in possession through a third party. On the other hand, chasing away tenants on the land by the defendant constitutes an act of trespass. Equally removing pillars put on the land by the plaintiff constitutes acts of continuing trespass.

Incessant Crisis Emanating From Trespass to Land

There is a rise in disputes emanating from land matters including trespass to land in Nigeria in recent times. In Northern Nigeria, it has been observed between Muslim communities and Christian communities; between Birom and the Hausa and Fulani of Plateau State; the ZagonKataf and Hausa and Fulani of Kaduna State; the Tiv and Fulani in Benue State; the Jukun and fulani and Hausa in Taraba State respectively.

[14] [2018] 3 NWLR pt 1607, p. 467
[15] See Idundun v Okumagba (1976) 9-10 SC 227; Faleye v Dodo (2016) 15 NWLR (pt. 1534) 80.
[16][2018] 14 NWLR 195 at 297
[17]Ibid at 305

An important area of land dispute generated by trespass to land is often between the Fulani cattle rearer and the farmers both in the North, the middle belt, the South-east, East and West respectively.

In Northern Nigeria, violence often ensues when the herds of Fulani cattle rearers leave the normal cattle route *Lawani* and trespassed into farmlands of the farmers. Such crises are familiar features in most parts of Northern Nigeria. Since the various cattle routes are not clearly designated or marked, encroachments often result to land crises. Sometimes, a seemingly innocuous trespassing of Fulani cattle into farmlands of Hausa, Birom or other ethnic groups have led to unprecedented crisis with the attendant loss of lives and properties. Isolated incidents are usually amicably resolved but repeated incursions have often triggered off crises of monumental proportions.

At other times however, trespasses on land have just been a facade impelled by long running suspicions and animosities which are induced by other hidden causes like questions of indigeneity, and other negative social-political considerations. In other words, trespass is often used to mask an already festering problems stemming from other issues for which the concerned people would cash in on to perpetrate the killings of innocent citizens. Sometimes, the farmers are the culprits when they would deliberately farm on the cattle route thereby denying access to the cattle rearers with the resultant clashes[18].

Reports of such clashes abound especially from the wake of the twenty first (21st) century. In several states both the North Central and other states of Nigeria, the Fulani cattle rearers in recent times have had running battles with the farming and other members of such states with regard to trespass to land. Most of these incidences have recorded unprecedented destruction to lives and properties. These states include Benue, Taraba, Plateau, Enugu, Oyo to mention a few, the minority ethnic groups and others that had once cohabited peacefully with the Fulani cattle rearers, have fought vicious, violent and very atrocious wars as it were over the issue of trespass to land in one form or another. In some quarters, it is strongly believed that these incessant land crises do not strictly stem from mere trespass and grazing rights but are being politically motivated. The above and similar postulations were made by Adam[19] with regard to the crisis that erupted in Lafia in 2014. More was reported regarding the Fulani and Tiv land crisis[20]Olayinka[21] while writing on the clashes between farmers and herdsmen stated that;

> *as fireworks were lighting up the skies to usher in the New Year across the world, gunfire was echoing out in Nigeria's Benue State. On this night alone,73 people were killed and hundreds were injured after herdsmen unleashed terror in two local government areas mostly populated by farmers.*

[18]Idrisu, J. *Understanding Nigerian Land Law* (Zaria: ABU Press, 1990), p.21

[19] Adam, M., "Dusk to Dawn Curfew imposed on Lafia, Nasarawa after Deadly Violence". Premiumtimes.ng.com/news/headlines. Accessed on 28/11/2014; "Seven Confirmed Killed in Nasarawa Crisis". M.news24.com/...nasarawa. Accessed on 22/11/2014; Akawu, N. "Nasarawa Crisis: Let the Truth Be Told..." www.facebook.com/.../10151481055.Accessed on 22/11/2014.

[20] "Why Tiv/Fulani Crisis Keeps Erupting-Suswan". Newsfield.net/index.php/news-analysis. Accessed on 22/11/2014; Nigeria: Benue's Tiv/Fulani Crisis" - The Inside Story allafrica.com/.../201403031622.htm/. Accessed on 22/11/2014

[21]Olayinka A. Why clashes are on the rise between Farmers and Herdsmen in the Sahel; https://www.google.com/the-convesation. Accessed on 2nd May 2019

> *Clashes between farmers and nomadic herdsmen date back to the pre-colonial era. But they reached an alarming level in 2017 when 1000 people were killed in more than 50 clashes since 2011 in Nigeria, Ghana, Mali, Niger, Mauritania, Ivory Coast and Senegal. The dramatic rise in the number, frequency and intensity of attacks in recent years is increasingly been seen as a major source of concern in the region. There were 67 clashes between farmers and herdsmen in Nigeria between 2007 and 2011, there were 716 clashes between 2012 and 2018.*

Similar reports were contained in the Gilden Surveillance Work[22]. The Wikipedia[23] also reported the incidence of the herder and farmers conflicts in Nigeria which they strongly believe that trespass to land is at the bane of the matter and usually involve disputes over land and or cattle grazing. The crisis is usually between the Herders in particular, (the Fulani and Hausa) and Farmers (for example the Tiv or Tarok). The report also stated that the most impacted states are those of the Nigerian Middle Belt like Benue, Taraba and Plateau.

The Vanguard Nigeria[24] in an article by Adekunle on the Nigerian herdsmen crisis stated that;

> *Violence between Fulani herdsmen and Farmers is one of Nigerians most persistent security problems and has left thousands of people dead in recent decades.*
>
> *The clashes are driven by a range of factors from the environmental to political but at their core is the problem of trespass to land due to land scarcity. In recent years, the violence has increased with some herdsmen carrying heavy arms and the farmers assembling militias. Both sides are now engaged in a devastating cycle of reprisal attacks, particularly in the central region. Each time there is an outbreak of violence, the Nigerian government has promised to crack down on the perpetrators. But the recent reality has seen herdsmen and farmers take matters into their own hands to settle scores.*

Nigerian Working Group on Peace Building and Governance[25]in their report released in January 2018 discussed at length and dissected the current crises between the farmers and the herdsmen. They recommended solutions that ranged from the creation of new grazing reserves and deployment of modern technology like the use of modern technology like an electronic chip to track animals. Furthermore, they stated that;

> *Pastoralists and farmer's conflict in Nigeria have grown, spread and intensified over the past decade and today pose a threat to national survival. Thousands of people have been killed, communities have been destroyed and so many farmers and pastoralists have lost their lives and property in an extended orgy of killings and destruction that is not only continuously destroying livelihood but also affecting national cohesion.*
>
> *Nigerian's population has grown from 33 million in 1950 to about 192.3 million today. The phenomenal increase of the population has put enormous pressure on*

[22]Gilden, S. Ranchers v Farmers-simcalos-Google site; https://sites.google.com>thegilded-ages.
[23] Herder-farmer conflict in Nigeria https://en.m.wikipedia.org
[24]Adekunle Nigeria herdsmen crisis: what's at stake? Vanguard News Nigeria Https://www.vanguard.ngr.com>...Accessed on 10th April 2019
[25] Reported by premiumtimesng...; Https://www.google.com – Accessed on 10th April 2019

> *land and water resources used by farmers and pastoralists. One of the outcomes of this process has been the blockage of transhumance routes and loss of grazing land to agricultural expansion, while the increased southward movement of pastoralists has led to increased conflict with local communities. This is particularly the case in the Middle Belt, notably in Plateau, Kaduna, Niger, Nasarawa, Benue, Taraba and Adamawa states.*

The Leadership Newspaper of 23rd March, 2019 in its editorial page wrote;

> *The mindless destruction of lives and properties in some Adara communities in Kajuru Local Government Area of Kaduna State has drawn the attention of not only Nigerians, but also the global community. There have been calls from various quarters for a quick intervention from government and the global community to end the violence. The silence that attended the killings has also been condemned. The federal government and the world community need to rise up and save the besieged communities whose residents have fled their abodes in search of safety and now living in more than four Internally Displaced Persons (IDP) camps.*
>
> *It is a tragedy of monumental proportions that within a space of one month, from Sunday February 10 to March 10, 2019; hundreds of lives have been lost in attacks carried out by persons suspected to come from the herder communities. Also, the destructions of lives and properties in Adara communities is traceable to the Ungwar Barde attack by suspected herdsmen that took place on Sunday February 10,2019 which culminated in the death of 10 persons including a pregnant woman. Without reference to the February 10 attack, Governor Nasir el-Rufai was later to announce on the eve of the postponed polls, February 15, 2019, that 66 fulani were killed, a figure he later raised to 130. It is obvious the February 10 attack served as the floodgate for reprisals, as Adara communities have come under heavy attacks by gunmen. As controversies continue to surround the crisis, life in the IDP camps is a painful experience for many who have been forced to flee their communities, with their hope of returning now dimming every day. The efforts of good spirited individuals and organizations to provide succor are slowly diminishing and the absence of coordinated government response to the humanitarian crisis is unappealing. Apart from inflicting heavy economic losses on the victims and foisting insecurity that threatens farming activities, the persistent crisis has created a cloud of uncertainty in the area. As a Newspaper, we call upon the federal government to wade in and bring succor to these distressed Nigerians and to order the National Emergency Management Agency (NEMA) to intervene.*
>
> *With most of the farm produce destroyed as a result of the crisis, there is the palpable threat of hunger and starvation ahead of the affected population. Therefore, there is an urgent need for adequate security personnel to be deployed to these areas so that fleeing populations can return to their abodes to resume their farming and other economic activities.*[26]

[26] https://leadership.ng/2019/03/23/stop-further-bloodshed-in-kajuru/ Accessed on 2nd May 2019

The conflicts primarily involve Fulani pastoralists and local farming communities. Violence between herdsmen and farmers has grown and developed into criminality and rural banditry, popular narratives in the form of hate speech have exacerbated the already bad crises. Trespass to land is therefore associated with violence and other volatilities. In the case of Opoto v Anaun[27] the Court of Appeal held that;

> *it is the person in actual possession of land and the person entitled to possession of the land that can sue for trespass to the land. Even where the person in possession is not the owner, such person in possession can maintain action in trespass. Thus, a plaintiff in an action for trespass must prove possession of the land or his entitlement thereto. But a person not in possession although entitled to the reversion on the expiration of a tenancy or lease cannot sue for trespass for the disturbance of his tenant's possession which does not damage his reversionary interest. In other words, a claim in trespass pre-supposes that the plaintiff is in possession of the land at the time of the trespass. A plaintiff who cannot prove that he was in possession of the land at the time of the trespass must of necessity fail in the action.*

Similar holden was made in the cases of Onovo v Mba[28] and Aiyeola v Pedro[29] respectively.In Jitte v Okpulor[30], one of the issues was whether the Court of Appeal was right in holding that the main contention between the parties was the boundary of the land in dispute, in holding that a case of trespass has been established by the respondent and in awarding the right of occupancy to the respondent's family.

The respondent's case at the trial court was for a declaration that he is entitled to the customary right of occupancy over a parcel of land called 'Agbaraukwu Land' situate at Umuelechi Asa, in Ukwa Local Government Area of Abia State. The respondent claimed that in 1991, the appellants trespassed into the land by clearing same for farming. He further claimed to have inherited the land in dispute from his forefathers and had exercised acts of possession and ownership on the land until the appellants trespassed.

The trial Customary Court after deliberations held that the main issue between the parties was the boundary of the land and entered judgment in favour of the respondent. The Customary Court of Appeal allowed the appeal on the ground that the respondent had no right to sue or 'locus Standi' to sue and did not comply with Order 5 rule 2 of the Customary Court Rules by failing to indicate on the summons that he sued in a representative capacity. Upon an appeal by the respondent to the Court of Appeal, the judgement was set aside and that of the trial court was affirmed.

The court held that the respondent had the 'Locus Standi' to bring the action in the protection of his family land in his possession. Also, that the non-compliance with the rules of the Customary Court was not fatal to the claim. The court agreed that the boundary of the disputed land was the

[27] (2016) 16 NWLR (Pt.1539) 451
[28] (2014) 14 NWLR (Pt.1427) 397
[29] (2014) 13 NWLR (Pt.1424) 409
[30] [2016] 2 NWLR (Pt.1497) 545

main problem. Dissatisfied, the appellant appealed to the Supreme Court which unanimously dismissed the appeal and held among others that;

> *A plaintiff as an allottee in possession of family land has a right to institute an action for damages for trespass in respect of such land. A family member can himself alone or with other family members sue in defence of the family land in possession. In the instant case, the respondent had been in possession of the land since 1980, which fact was proved by the trial court. Therefore, as a person in possession, he had the right to sue and defend the estate against intruders and trespassers. Thus the respondent showed sufficient interest being the person directly responsible for the land which was in his immediate possession and which was trespassed into by the appellants.*

Similar decisions were reached by the Supreme Court in the cases of Lengbe v Imale[31]; Sapo v Sumonu[32] and Layinka v Gegele[33] respectively.

Criminal Trespass

Although trespass is often viewed as a tortuous act, sometimes it could be crime and is dealt with as a criminal trespass under the Criminal Law. In the case of Spiess v Oni[34], the respondent filed a direct criminal complaint against the appellant at the Chief Magistrate's Court Makera Kaduna State in 1999 on allegations of criminal trespass and theft contrary to section 348 and 287 of the Penal Code, Law of Kaduna State respectively. The appellant a German citizen resident in Nigeria was the Managing Director of Condemn Nigeria Limited, a satellite dish manufacturing company. The respondent was a former employee of the appellant's company. The appellant had gone to the respondent's house when he was not around and had removed his satellite dish alleging same to belong to his company.

The trial magistrate acquitted and discharged the appellant on the count of theft since the same was not proved. However, the appellant was found guilty of the first count charge of criminal trespass. The appellant appealed to the High Court dismissed the appeal and affirmed the judgment of the trial Magistrate. On a further appeal to the Court of Appeal, the appeal was dismissed and the appellant still proceeded to the Supreme Court being aggrieved. In determining the appeal, the Supreme Court considered the provisions of section 342 of the Penal Code Law[35] which provides that;

> *Whoever enters into or upon a property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property; or having entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy such person or with intent to commit an offence is said to commit criminal trespass.*

The court held among other things that;

> *Possession in land matters is the backbone against all other claims to land if not accentuated by the owner of the land who has a better title. Consequently, trespass to land consists in any unjustifiable intrusion by one person upon the*

[31] (1959) SCNLR 640.
[32] (2010) 11 NWLR (Pt.1205) 374.
[33] (1993) 3 NWLR (Pt.283) 518.
[34] [2016] 14 NWLR (Pt.1532) 239
[35] Penal Code Law, Cap 89, Laws of Northern Nigeria, 1963

> *land in possession of another. Also trespass is actionable at the suit of the person in possession of the land who can claim damages or injunction, or both.*

Furthermore, the Supreme Court held that the necessary intendment of the two ingredients of the offence of criminal trespass under section 342 of the Penal Code presupposes as follows;

a) *There must be an actual entry by the person as constructive entry by a servant, for instance acting on the orders of his master is not an entry, within the meaning of the section;*

b) *The use of force is not necessary;*

c) *The entry, and or remaining, on the property must be unlawful;*

d) *The existence of a 'bona fide' claim of right ordinarily excluded the presumption of criminal intention. However, a person may attempt to enforce his right in a wrong way, for example by using unnecessary force or intending to wrongfully restrain the person in possession;*

e) *The section covers both movable and immovable property. For instance, there can be criminal trespass to motor car as well as to land;*

f) *The possession is clearly in possession at the time of entry and it does not imply that the person in possession must be present at the actual time of the entry (as was the situation in the instant case when the appellant, illegally entered the respondent's compound while the respondent was away to church service).*

g) *The section does not protect a trespasser in possession as against a party lawfully entitle to possession. The party lawfully entitled to possession has a right to private defence of his property by virtue of section 60 of the Penal Code Law;*

h) *The word 'annoy' as used in the section should be taken to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.*

Oftentimes, when there has been a trespass upon the land of an aggrieved person, the defendant or the person being accused may raise defences of a bonafide claim of right or that he acted in good faith. The Supreme Court in the Spiess v Oni's Case[36] further held that;

> *The phrase 'bona fide' claim of right' is an amalgam of the Latin and English Language. In Latin, anything bona fide connotes 'good faith'. Thus for a claim of right to qualify as bona fide claim to right, it must be made in good faith, without fraud or deceit. It must be sincere and genuine. In the instant case, it was clear as found by the lower courts that that claim was not established by the appellant. The trial Magistrate, however found that it was the respondent who established that he was in possession of the satellite dish and that bydecided authorities his possession had to be protected. The respondent was presumed in law to hold better title against the appellant. The bona fide claim ofright could*

[36] Ibid at P. 243-244

> *not therefore succeed to defeat or negative the appellant's intention to annoythe respondent. The appellant's bona fide claim of right therefore failed.*

The Supreme Court referred and followed the ruling of the court in the land-mark case of Da Costa v Ikomi[37] when it stated that;

> *In criminal law, unless a thing is done with due care and attention, it cannot be held to have been done in good faith. The mere fact that it was done with a pure motive or without any impure intention, or that the actor had been quite honest and without malice, would not justify his action and make it one done in good faith, unless it is shown that he has taken due care and paid due attention. That was not the case in the instant case.*

Similarly in Eneh v Ozor[38], the appellant claimed ownership of a shop known as No.3, Akwata, Ogbete Market, Enugu which he claimed was allocated to him by the Enugu Local Government's sole Administrator. According to him sometimes in 1997 the respondents trespassed into the land which led to his instituting a suit in the High Court of Enugu State. On their part, the respondents claim to be the true owners of the open space beside the appellant's shop and denied any act of trespass. At the end of trial, the court entered judgment for the appellant and awarded him his claim for damages. The defendants successfully challenged the decision at the Court of Appeal which set aside the decision of the High Court. Being dissatisfied, the appellant appealed to the Supreme Court. The Supreme Court unanimously dismissed the appeal and held inter alia that;

> *a claim or complaint of trespass connotes interference with or injury to possession. In the instant case, the evidence led by the appellant at the trial court fell short of proof of any injury to his possession of shop 3 Akwata, Ogbete Main Market.*
>
> *Trespass to land is a wrongful entry into the land in actual or constructive possession of another. In effect, a person who cannot prove that he is in possession cannot sue in trespass. That must be so, for trespass is rooted or based on exclusive possession or right to possession.*

While delivering the lead judgement, Sanusi. J.S.C.[39] stated equivocally that a plaintiff claiming damages for trespass must establish the identity of the land in dispute and also prove that he is in exclusive possession. The appellant ought to have established the boundaries of the shop by filing a plan depicting exact boundaries. He further stated that;

> *Any unlawful interference with possession however slight, amounts to trespass. Being rooted in exclusive possession, all a plaintiff needs to prove is that he had exclusive possession of the land in dispute. The tort of trespass is so inextricably tied to possession that a person in possession of land, even as a trespasser, can sue another person who thereafter comes upon the land. In other words, a person who have no title over a piece of land, but who is in possession, may successfully sue for trespass if an entry is made into the land without his consent. However,*

[37] (1968) SCNLR 537
[38] [2016] 16 NWLR (Pt.1538) 221
[39] Ibid at 226

> *such a person cannot succeed against the owner or someone who shows some title which gives him a better right to be on the land.*

Some other cases referred and relied upon by the Supreme Court in reaching its decision include Tumo v Murana[40]; Eze v Atasie[41]; Olaniyan v Fotoki[42]Oyebanji v Fabuyi[43] and Dantosho v Mohammed[44] respectively.

In 2017, the Court of Appeal unanimously allowed the appellant's appeal in the case of Mokelu v Nwoye[45]. The appellants claimed that they had lived with their father now deceased in the latter's house at No.11 Calabar Street, Abakiliki prior to his death. The appellants and the represented parties had lived in the residence until sometime in March 1997 when the 1st respondent entered the premises without permission. The 1st respondent destroyed economic trees, disconnected electricity supply as well as destroying other properties of the appellants.

The 1st respondent on the other hand, claimed to have bought the land from the 2nd respondent who was one of the two wives of the deceased Eric I. Mokelu the appellant's father. The trial court after the consideration of the written address filed by the parties struck out the suit of the appellants holding that they did not have the 'Locus Stand' to bring the suit in the first place. Aggrieved the appellants appealed to the Court of Appeal.

The Court of Appeal held 'inter alia' that the term *locus standi* denotes the legal capacity of the claimant to institute or bring an action in court against a defendant. The plaintiff must therefore have an axe to grind against the action of the defendant. Where the plaintiff is unable to show that the action of the defendant has undermined his interest, he would have no 'locus standi' or legal capacity to sue.

Yakubu, J.C.A.[46] while delivering the lead judgement stated that;

> *trespass to land is actionable at the suit of the person in possession of the land. It is a violation of possessory right and does not generally involve title to land. A person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. Exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who can establish a better title.*
>
> *I have perused the writ of summons and the amended statement of claim of the appellants and it is manifestly clear to me as crystals, that the action of the appellant's border on some declarations with respect to the property situate at No.11 Calabar Street, Abakiliki.*
>
> *Furthermore, the appellants aver among other things that they are in exclusive possession of the disputed property and claim the sum of ₦50,000.00damages for trespass on the property against the 1st respondent.*

[40] (2000) 12 NWLR (Pt.681) 370
[41] (2000) 10 NWLR (Pt.676) 470
[42] (2003) 13 NWLR (Pt.837) 273
[43] (2003) 12 NWLR (Pt.834) 271
[44] (2003) 6 NWLR (Pt.817) 457
[45] [2017] 9 NWLR (Pt.1569) 4
[46] Ibid at P.6

In the circumstances of the instant case, can the appellant be said to be meddlesome interloper in a matter which does not concern them and that they are busy bodies, fighting somebody else's fight? I do not think so. The appellants, having lived in the same property under dispute with their late father - Eric I. Mokelu, prior to his death, cannot reasonably be expected to fold their hands and care no less, if a person they perceived as an intruder or trespasser came into the property and begin to do certain things as if he is the owner of the property.

Conclusion

Having regard to the issues raised in this work especially pertaining to trespass to land as being associated with so much volatility and violence in Nigeria. It becomes imperative to proffer some solutions to the problems aforementioned. The importance of land cannot be over-emphasised and its use, control and enjoyment must be given the seriousness it deserves by the government, non-governmental agencies, the community leaders and the general public at large.

Since trespass to land is actionable per-se; that is whether or not the plaintiff has actually suffered any damage, there ought to be a massive public enlightenment programme regarding the evil of trespass with emphasis on ways to avoid its committal.

On the face of the recent decided cases, it is obvious that people do not tolerate trespass to their land so much more that they often tend to take the laws into their hands violently to resist or stop it. The boundaries and delimitation of the land in Nigeria must be made certain and community policing and vigilante groups should be deployed in more susceptible areas of violence relating to land, to reduce or avoid completely the violence associated with trespass to land.

Furthermore, there ought to be a national reassessment to land use that will put into consideration all the present land needs of the people of Nigeria, including the itinerant fulani cattle rearers. This will provide succour to them and avoid the incessant land crises associated with trespass. In other words, individual lands, for private use, cattle routes and grazing grounds must be so expressly designated and made certain in our laws and practice. The 1979 Land Use Act ought to be amended forthwith to reflect the land need realities and exigencies of our time.

The court as the temple of justice is often said to be the last hope of the common man. It must at all times be welcoming to any aggrieved party or parties as the case may be and people should be encouraged to embrace resorting to the temple of justice to obtain redresses of trespass to land instead of the present self-help method often adopted with its attendant violence.

Meddlesome interlopers must be stopped using instrument if our laws from intruding and cashing in on trespass to land as a mask to perpetrate violence when the main issues at stake is social-political in nature.

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