

KINGS LAW REPORTS

(ALL SC)

(1993) KLR VOL 7

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

- | | |
|---|-----------|
| 1. First African Trust Bank Limited & Anor v. Basil O. Ezegbu & Anor. | p. 1 SC |
| 2. Cecilia Ihuoma Nwankwo v. Emmanuel C. Nwankwo | p. 37 SC |
| 3. Nicholas Wankey v. The State | p. 52 SC |
| 4. Philip Ekpenyong v. The State | p. 67 SC |
| 5. Mazin Engineering Limited v. Tower Aluminium (Nig.) Limited | p. 78 SC |
| 6. Rasalu Oladipupo v. The State | p. 95 SC |
| 7. Maduabuchi George v. The State | p. 113 SC |
| 8. Vincent Standard Trading Co. Limited v. Xtodeus Trading Co. (Nig.) Limited | p. 128 SC |

ii INDEX OF CASES REPORTED IN (1993) 7 KLR

9. Godspower Asakitikpi v. The State p. 153 SC

10. Mrs. Hawa Gankon v. Ugochukwu Chemical Industries Limited p . 169 SC

11. Emmanuel Ugwumba v. The State p. 190 SC

SUPREME COURT JUSTICES

Hon. Justice Mohammed Bello - CJN

Hon. Justice Muhammed Lawal Uwais

Hon. Justice Adolphus Godwin Karibi-Whyte

Hon. Justice Saidu Kawu

Hon. Justice Modibbo Alfa Belgore

Hon. Justice Abubakar Bashir Wali

Hon. Justice Olajide Olatawura.

Hon. Justice Uche Omo

Hon. Justice Idris Legbo Kutigi

Hon. Justice Michael Ekundayo Ogundare

Hon. Justice Emmanuel Ogwuegbu

INDEX OF SUBJECT MATTER IN (1993) 7 KLR iii

APPEALS - Application for substantially similar prayers as in a pending appeal - whether Court of Appeal has jurisdiction. 1st African Trust Bank v. Ezebu p. 1

APPEALS - Appellate Court - to refrain from commenting on a matter pending before it - when non-prejudicial comment is declared unavoidable. 1st African Trust Bank v. Ezebu p. 1

APPEALS - Criminal defence - ground of appeal - that ought to be struck out - whether to be considered - where the defence raised is open to accused. Oladipupo v. The State p. 95

APPEALS - Trial court's sentence of death - upheld by the Court of Appeal - when to be substituted with manslaughter verdict. Oladipupo v. The State p. 95

APPEALS - Exercise of discretion by a lower court - whether to be interfered with - merely because the appellate court would have exercised the discretion differently. Vincent Standard Ltd. v. Xtodeus Ltd. p. 128

APPEALS - Order staying the execution of judgment together with costs - no appeal against costs - whether discretion in making the order - was wrongfully exercised. Vincent Standard Ltd. v. Xtodeus Ltd. p. 128

APPEALS - Concurrent findings of two lower courts - regarding identity of accused - whether perverse: Asakitikpi v. The State p. 153

APPEALS - Concurrent findings of two lower courts - is there any justification to interfere with the findings Ugwumba v. The State p. 190

CIVIL CAUSES - Fair hearing - alleged denial of - not substantiated from the records. 1st African Trust Bank Ltd. v. Ezebu p.1

iv **INDEX OF SUBJECT MATTER IN (1993) 7 KLR**

CIVIL CAUSES - Land law - vesting title in a person - whether a matter of fact or law. *Gankon v. Ugochukwu Chemical Ind. Ltd.* p. 190

CONTRACTS - Partly written and partly oral contract - how deduced. *Mazin Eng. Ltd. v. Tower Alum. Ltd.* p. 78

CONTRACTS - Sale of goods - time for delivery - whether expressly stipulated - are legal conditions under which time is taken to be of the essence of a contract present. *Mazin Eng. Ltd. v. Tower Alum. Ltd.* p. 78

CONTRACTS - Frustration - when further performance will be excused - whether from the circumstances the contract was frustrated. *Mazin Eng. Ltd. v. Tower Alum. Ltd.* p. 78

CONTRACTS - Breach of contract - can breach arise where there is frustration - whether plaintiff is entitled to damages for breach. *Mazin Eng. Ltd. v. Tower Alum. Ltd.* p. 78

COURTS - Grant of relief not sought - generally forbidden - where a party is entitled to the relief in the circumstances - different consideration to be made. *1st African Trust Bank Ltd. v. Ezeogu* p. 1

COURTS - Jurisdiction - disciplinary power to undo what has been done - whether court had jurisdiction or not. *1st African Trust Bank Ltd. v. Ezeogu* p. 1

COURTS - Findings and holdings of Court of Appeal on affidavit evidence - when to be upheld by the Supreme Court. *1st African Trust Bank Ltd. v. Ezeogu* p. 1

COURTS - Offer of explanation by trial court for contradictions in Evidence - not based on any evidence before it - whether proper. *Wankey v. The State* p. 52

COURTS - Invitation to Supreme Court - to follow its former decision - when facts of the two cases are not the same - whether proper *George v. The State* p. 133

INDEX OF SUBJECT MATTER IN (1993) 7 KLR v

CRIMINAL LAW - Defence raised by accused - alleged to be contradictory or inconsistent - whether adequate consideration will be denied. *Oladipupo v. The State* p. 95

CRIMINAL LAW - Defence of accident - finding that accused intended the harm - whether the defence will avail. *Oladipupo v. The State* p. 95

CRIMINAL LAW - Provocation - what act is provocative - the test the court must apply - factors that should be considered - when defence of provocation does not avail. *Ekpenyong v. The State* p. 67

CRIMINAL LAW - Self-defence - no indication of an attack on the accused - whether the issue of self-defence can arise. *Ekpenyong v. The State* p. 67

CRIMINAL LAW - Murder - issues of self defence - provocation - insanity - standard of proof - when held to have been properly dealt with - by the two lower courts. *Wankey v. The State* p. 52

CRIMINAL LAW - Severe application of matchet cut - whether tantamount to an intention to kill. *George v. The State* p. 113

CRIMINAL LAW - Provocation - misunderstanding between two brothers - whether enough to cause temporary loss of self control - when retaliation is not proportionate to provocation - whether any miscarriage of Justice is occasioned - by lower court's failure to consider provocation. *George v. The State* p. 113

CRIMINAL LAW - Insanity - epilepsy - no fits during and after the offence - whether accused can be excused - failure of trial court to comment on the issue of epilepsy - is there any miscarriage of justice. *George v. The State* p. 113

CRIMINAL LAW Armed robbery - accused person's defence in denial of the charge - whether considered by the trial court. *Ugwumba v. The State* p. 190

vi INDEX OF SUBJECT MATTER IN (1993) 7 KLR

CRIMINAL LAW - Armed robber charge - good and cogent evidence linking accused to the robbery- whether conviction was proper. Ugwumba v. The State p. 190

CRIMINAL PROCEDURE - Armed robbery - commencement of trial - when is a trial deemed to be commenced - alleged delay during trial - whether fair hearing is denied. Asakitikpi v. The State p. 153

CRIMINAL PROCEDURE - Serious omission by trial court - to indicate that accused was present in court - on the day of judgment - whether trial will be vitiated thereby. Asakitikpi v. The State p. 153

EVIDENCE - Affidavit evidence - conflict therein - how properly resolved. 1st African Trust Bank Ltd. v. Ezeogu p.1

EVIDENCE - Murder - Defence of provocation - No evidence of any act of provocation. Oladipupo v. The State p. 95

EVIDENCE - Of premeditated intention to kill - or inflict hurt - whether consistent with the defence of provocation. Ekpenyong v. The State p. 67

EVIDENCE - Murder - contradictions in evidence of two of the prosecution witnesses - whether fatal - will an accused person be acquitted in all cases because of contradictions in the evidence. Wankey v. The State p.52

EVIDENCE - Admission of inadmissible evidence - remaining admissible evidence - enough to sustain conviction - whether accused will be acquitted. Wankey v. The State p.52

EVIDENCE - Murder - counsel's submission that deceased could not have died - if given immediate medical attention - not based on any evidence - proper time to lay foundation for such submission. George v. The State p. 113

EVIDENCE - Affidavit evidence - where averments are uncontradicted - failure to show how a deponent came about the knowledge of

INDEX OF SUBJECT MATTER IN (1993) 7 KLR vii

facts deposed to - legal implications thereof. Vincent Standard Ltd. v. Xtodeus Ltd. p. 128

EVIDENCE - Documentary evidence - Objection to admissibility of uncertified copies of documents - proper stage to raise such objection. Vincent Standard Ltd. v. Xtodeus Ltd. p. 128

EVIDENCE - Armed robbery - identification - variation in the victims' account - whether identification is poorly made. Asakitikpi v. The State p. 153

EVIDENCE - Land dispute. Claim for title - failure of plaintiff - to establish the claim - whether plaintiff can succeed on the weakness of the defence. Oankon v. Ugochukwu Chem. Ind. Ltd. p. 190

EVIDENCE - Hearsay - testimony of two prosecution witnesses - who helped in arresting accused - whether hearsay - merely because witnesses were not present at scene of crime. Ugwumba v. The State p. 190

EVIDENCE - Failure to call two material witnesses - whose whereabouts was unknown at time of trial - whether fatal to prosecution's case. Ugwumba v. The State p. 190

EVIDENCE - Conviction - whether based on the fact that accused was seen running away from scene of crime - or on evidence of eye witness - identification parade - when unnecessary. Ugwumba v. The State p. 190

EXECUTION - Application for stay - where first reason for the grant is untenable - but the second reason is sustainable - whether the grant will be set aside. Vincent Standard Ltd. v. Xtodeus Ltd p. 128

EXECUTION - Motion for stay - refused by the trial court - but granted by the Court of Appeal - whether substantial grounds, of appeal or special circumstance exist - to justify the grant. Vincent Standard Ltd v. Xtodeus Ltd p.128

INTERLOCUTORY APPLICATIONS - Execution during the pendency of properly served motion for stay - refusal of trial court to exercise its disciplinary powers to set aside the execution - because application was oral- when appellate court will intervene. 1st African Trust Bank Ltd. v. Ezeogu p.1

INTERLOCUTORY APPLICATIONS - Before the Supreme Court - application for leave to amend notice of appeal - and extension of time within which to appeal - whether to be granted. Nwankwo v. Nwankwo p. 37

INTERLOCUTORY APPLICATIONS - Motion to amend and file additional grounds of appeal - purpose - attitude of court to vague prayer. Nwankwo v. Nwankwo p. 37

INTERLOCUTORY OF STATUTES - Proper method - adherence to unambiguous ordinary plain words of a statute - correct interpretation of S.38(1) of the Land Tenure Law. Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190

LAND LAW - Claim for title - burden of proof - on whom does it lie - what the plaintiff must prove. Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190

LAND USE ACT - Title to land - applicable provisions of the Act - relationship with the Land Tenure Law - when the transitional provision of the Act (S.36) is not applicable. Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190 - Land use Act - exercise of power conferred on the governor - proper application of certain sections of the Act. Gankon v. Ugochukwu Chem. Ind. Ltd. p.190

LAND USE ACT - Land use Act - Power of the Local Government to grant customary right of occupancy - whether exercisable in respect of land within a designated urban area. Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190

MAXIM - Qui prior est tempore est jure (priority of estate) - when held not to arise. Gankon v. Ugochukwu p. 169

MURDER - Mens rea - when intention to cause grievous harm or kill is not established - is conviction proper. Oladipupo v. The State p. 95

MURDER - Existence of Intention to murder - whether defence of accident avails. George v. The State p. 113

PLEADINGS - Alleged insufficient denial of certain averments in the statement of claim - whether significant - when plaintiff has treated the contract as determined by intervening events - and where court has found the contract was frustrated. Mazin Eng. Ltd. v. Tower Alum. Ltd. p. 153

PROVOCATION - Justified or unjustified desire for vengeance - can provocation be grounded thereon. Ekpenyong v. The State p. 67

INDEX OF STATUTES & RULES

1. Constitution of Federal Republic of Nigeria 1979 s. 33 (4) Asakitikpi v. The State p. 153 s. 6 (6) (a), s. 213 (4) Nwankwo v. Nwankwo p. 37 ss. 22, 33. 1st African Trust Bank v. Ezeogu. P. 1

2. Constitution of Nigeria 1963 s. 22 (7) George v. The State p. 113

3. Court of Appeal Rules Order 3 Rule 3 (4) 1st African Trust Bank v. Ezeogu p. 1

4. Criminal Code ss. 283, 284, 318, 316, 27, 28, George v. The State p. 149 SC; ss. 319, 24, 316, 283, 318, 317 Oladipupo v. The State p. 113

5. Criminal Code Cap 30. Vol. It.laws of Eastern Nig. 1963 s. 319 (1) Wankey v. The State p. 62
6. Criminal Code of Lagos State s. 402 (2) (1) Ugwumba v. The State p.190
7. Criminal Procedure Act Laws of the Federation of Nigeria 1990 Cap 80 vol 5 s. 179 (2) Oladipupo v. The State p. 95
8. Criminal Procedure Law Cap. 49 Laws of Bendel State 1976 ss. 215, 210, 100,223. Asakitikpi v. The State p. 153
9. Evidence Act. 2. 208 Asakitikpi v. The State p. 199 SC; ss. 20 (I), (26), ISO, Nwankwo v. Nwankwo p. 37
10. Federal High Court Rules Order 33 Rule 21st African Trust Bank v. Ezegbu p. 1
11. Firearms (Special Provisions) Act No 47 1970 s. 1 (2). Asakitikpi v. The State p. 153
12. Land Tenure Law Cap. 59 Laws of Northern Nig ss. 27 and 38 Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190
13. Land Use Act 1978. ss. 2, 3, 4, 5, 9, 36 and 48 Gankon Ugochukwu Chem. Ind. Ltd. p. 190
14. Laws of Eastern Nigeria Cap 30 1963 s. 284 Ekpenyong v. The State p.67
15. Laws of Eastern Nigeria 1963 Cap 49 Evidence Law ss. 198.209. Ekpenyong v. The State p. 67
16. Native Authority Law, Cap 27 Laws of Northern Nigeria s. 2. Gankon v. Ugochukwu Chem. Ind. Ltd. p. 190
17. Sale of Goods Law 1959 s. 10 (1) Mazin Eng. Ltd. v. Tower

Alum. Ltd. p. 78

18. Supreme Court Act 1990 s. 27 (4) Nwankwo v. Nwankwo. p. 37
19. Supreme Court Rules 1985 0.2 rr. 28 (3) & 31 (1). O. 6 r. 2. 0.8 rr. 2 (5) & 4. Nwankwo s- Nwankwo p. 37; 0.6 rr. 2 & 5 (1) (a) Mazin Eng. Ltd. v. Tower Alum. Ltd. p. 78; 0.6 r. 2 Wankey v. The State p.52
20. Supreme Court Act 1960 s. 26 (1) Asakitikpi v. The State p. 190
21. Supreme Court Act s. 22 Oladipupo v. The State p. 95