

SUPREME COURT OF NIGERIA

9TH JULY, 1993. SC./1991

**CORAM:- A.G. KARIBI-WHYTE, S.M.A. BELGORE,
U. OMO, I.L. KUTIGI, E.O. OGWUEGBU, JJSC.**

COMMISSIONER OF POLICE)

‘D’ DEPARTMENT & ANOR) DEFENDANTS/APPELLANTS

AND

JIMOH OGUNTAYO PLAINTIFF/RESPONDENT

APPEALS - Raising of an issue on *detinue* - when Court of Appeal’s award was conversion - whether of any use

EVIDENCE - Shifting of burden of proof - from plaintiff to defendant and vice versa - where plaintiff had discharged his burden - when burden of proof will shift to defendant

EVIDENCE - Death of two material witnesses who could not testify - existence of cogent evidence - in proof of Plaintiff’s title to property - when alleged falsity of business name and addresses - will not affect valid proof of title

PERSONAL PROPERTY - Seizure of Plaintiff’s vehicle by the Police - valid establishment of better ownership to vehicle and possession - whether seizure of property is unlawful

TORTS - Detention of vehicle by the Police - on ground of true owner not having been found - where Plaintiff has established valid title - when action for conversion will succeed for wrongfully impounding a vehicle

FACTS

The Plaintiff/Respondent bought a Mitsubishi van from one Mr. Somorin (late) trading under a business name, at the price of N5,145.00. He was issued a receipt and delivery note (Exhs A & B). The Respondent obtained the necessary vehicle particulars from the Licensing Authority upon the presentation of his purchase documents. Respondent visited Oduduwa Police headquarters Ikeja to see a friend and the appellants seized the vehicle. Series of letters written for the

release of the van were to no avail. Whereof, the Respondent claimed against the Appellants before the High Court Lagos, the sum of #30,000.00 being special and general damages for the wrongful seizure, detention and conversion of his said vehicle. In the alternative, he claimed the release in road worthy condition of the said vehicle, loss of use and general damages for its wrongful detention. The Appellants on the other hand claimed the vehicle was unlawfully released by some police officers to Mr. Somorin - Respondent's vendor - where it was kept as a lost but found property pending the discovery of its true owner. And that their seizure and detention of the van was proper and lawful.

The trial judge dismissed the Respondent's claim as not proved upon his finding that the purchase receipt and delivery note were "suprious" since the business name under which the sale was made was not in the Business Names Registry and the address shown on the documents could not be located. Respondent's appeal to the Court of Appeal was upheld whilst the trial court's judgment was set aside. Appellants have now appealed to the Supreme Court complaining against placing of burden of proof by the lower court on the defence and seeking to know whether the Plaintiff established ownership or better right to possession of the vehicle.

HELD (unanimously dismissing the appeal)

1. Since the award of N5,145.00 by the Court of Appeal to the Respondent being the value of the vehicle at the time of the seizure was for conversion the alternative claim for detinue having been dismissed, the question whether Respondent is entitled to succeed in detinue raised by the Appellant does not arise. (p. 98 L11)
2. The Respondent has discharged the burden of establishing his title to the vehicle by tendering the purchase receipt, delivery note and the vehicle particulars that are all in his name. (p. 100 L33)
3. In civil cases, the burden of proof initially resting on the Plaintiff may shift to the defendant and vice versa in the course of the proceedings. So that the Respondent having proved he bought the vehicle from one Mr. Somorin, the Appellants have the clear burden of proving that the release of the vehicle by a divisional police officer to

the said Mr. Somorin was unlawful. The Court of Appeal was correct in finding that the Appellants failed to discharge their burden.

(p. 101 L20)

4. Although Mr. Somorin and the D.P.O. were dead at the time of trial, there was cogent evidence that the vehicle was lawfully released to Somorin by the D.P.O. as was even recorded in the Police crime diary. And Somorin confirmed that he gave the vehicle to the Respondent. (p. 102 L8)

5. The issue of falsity of the business names and addresses on the Respondent's purchase documents were clearly for late Somorin to answer and should not affect the sale to the Respondent. (p. 102 L20)

6. As the Respondent's evidence of purchase was not challenged on the record and as he is the person in possession of the vehicle, the law presumes he was the owner until the contrary was proved. (p. 102 L23)

7. Unless the Appellants were able to find the true owner, the Respondent had a better right to possession of the vehicle than they. The Court of Appeal was therefore right in holding that the Appellants were wrong to have impounded the vehicle. (p. 102 L29)

REPRESENTATION

Chief Funso Akinyosoye, for the Appellant

F. O. Shofolawe-Bakare, for the Respondent

CASES REFERRED TO

1. Sodimu v. N.P.A. (1975) 1 All NLR 153
2. Ayeni v. B.O.C.E. (1965) 2 All NLR 92
3. Kofi Gbojor v. Agbonburegui (1961) 1 All NLR 853
4. Dumuje v. Aduozo & anor (1975) 2 S.C. 1
5. Mcfoy v. U.A.C (1961) 1 All ER 1169
6. Nwabuoku v. Ottih (1961) 1 All NLR 487
7. Boshali v. Allied Commercial Exporters (1961) All NLR 917
8. Osawaru v. Ezeiruka (1978) 6 - 7 SC 135
9. Lewis & Peat v. Akhimien (1976) 7 SC 157
10. Sanyaolu v. Okeowo (1986) 2 NWLR (pt. 23) 47
11. Jeffries v. Great Western Railway Company (1856) 5 EL & BL 8

STATUTE REFERRED TO

Evidence Act ss. 134, 135, 136, 137 & 139, 146

BOOK REFERRED TO

Cleck and Lindsell on Torts 14th Edition.

LEAD JUDGMENT BY KUTIGI JSC

At the Lagos High Court the plaintiff claimed against the defendants jointly and severally the sum of N30,000.00 being special and general damages suffered as a result of wrongful act of the 2nd defendant acting as agent of the 1st defendant when on 22nd day of November, 1982, the 2nd defendant in the course of his duties as Assistant Commissioner of Police wrongfully seized, detained and converted at C.I.D. Panti Police Station, Adekunle, Yaba Lagos State the plaintiff's vehicle registration Mitsubishi LA 7993 DA without any lawful justification. Alternatively the plaintiff claimed against the defendants jointly and severally the return/release in road worthy condition of the said vehicle Mitsubishi LA 7993 DA seized and detained by the 2nd defendant acting as agent of the 1st defendant, loss of use and general damages for the wrongful detention of the said vehicle.

The plaintiff said he made several demands for the return of the said vehicle but all efforts proved abortive.

After the filing and exchange of pleadings the case proceeded to trial. At the hearing only the plaintiff testified for himself while the defendants called three witnesses.

Simply put plaintiff's case was that he bought a Mitsubishi van with registration No. LA 7993 DA from one Akinbowale Somorin trading under the name and style of "E.A. Abidogun Enterprises" for N5,145.00. He was issued a receipt (Exhibit A). The Delivery Note in respect of the same vehicle was tendered as Exhibit B. Both Exhibits A & B are dated 16/2/82. Armed with Exhs. A & B the plaintiff went to Ikeja Licensing Office and obtained the necessary vehicle particulars. These were tendered as Exhibits C-C3). He also got the vehicle insured with the American International Insurance Company (Nigeria) Limited. The Certificate of Insurance was Exhibit C4. On 22/11/82 when the plaintiff visited Oduduwa Headquarters Ikeja to see a friend, the 1st defendant seized the van and collected all the vehicle particulars from him. The van was impounded on the instruction of the 2nd defendant. He wrote series of letters to defendants for the release of the van. There was no positive result hence he instituted this action.

The defendants on the other hand claimed that the vehicle was unlawfully released by some police officers at the Pedro Police Station, Shomolu to Mr. Akinbowale Somorin, the plaintiff's vendor, where it was kept as a "lost and found" property pending the discovery of its true owner. They said the vehicle was suspected to have been stolen and as such plaintiff's vendor had no title which he could pass to the plaintiff. The seizure and retention of the van by them was therefore proper and lawful.

In a considered judgment the learned trial Judge dismissed the plaintiff's claim when he held on page 161 of the record thus:-

"The property in the Mitsubishi van could not have passed to the plaintiff to enable him maintain an action in detinue as the documents he relied on as conferring title i.e. Exhibits A & B are spurious. The plaintiff's claim for a declaration that he is the owner of the vehicle and that its continued detention is wrongful.....is hereby dismissed. The claim for its delivery to the plaintiff cannot also stand and it is also dismissed as plaintiff has failed to show that ownership of the vehicle was rightly or legally vested in him - vide Sodimu v. N.P.A. (1975) 1 All NLR 153; Ayeni v. B.O.C.E. (1965) 2 All NLR 92; Kofi Gbojor v. Agbonburegui (1961) 1 All NLR 853 (Pt.IV); Dumuje v. Aduozo & Anor (1978) 2 S.C. 1."

N200.00 costs were awarded against the plaintiff. Dissatisfied with the judgment of the trial court the plaintiff appealed to the Court of Appeal, Lagos Division. Three grounds of appeal were filed as follows: "Grounds of Appeal

(i) The trial court was wrong in law by holding that the property in the Mitsubishi van could not have passed to the plaintiff to enable him maintain an action in detinue as the documents he relied on as conferring title i.e. Exhibits A & B are spurious.

Particulars of Error: Omitted

(ii) The trial court erred in law by departing from all rules of pleading and considering matters which were not pleaded and proved in evidence.

Particulars of Error: Omitted

(iii) The judgment of the court is against the weight of evidence."

In a reserved judgment the Court of Appeal allowed the appeal and found for the plaintiff. He was awarded the sum of N5,145.00 for conversion being the value of the Mitsubishi van as per his receipt (Exhibit A). He was also awarded N3,000.00 general damages, thus bringing the total awards to N8,145.00. Costs of N300.00 and N350.00 respectively in the High Court and the Court of Appeal were also awarded in favour of the plaintiff. The defendants are not satisfied with the judgment of the Court of Appeal and have appealed to this court. Three grounds of appeal were filed. They

read:-

"Grounds of Appeal

(i) *The learned Justices of the Court of Appeal erred in law when they held per Awogu, J.C.A. "The law presumes that a person in possession of a vehicle registered in his name is the owner, until the contrary is proved, if the defendants have not found the true owner; as of the date of claim, the plaintiff had a better right to possession of the vehicle than the defendants until the contrary is proved."*

Particulars of Error: Omitted

(ii) The learned Justices of the Court of Appeal erred in law, by shifting the burden of proof in this case, from the plaintiff to the defendants, when they held per Awogu, J.C.A. that:

"The release of the vehicle to the plaintiff was only effected by the D.P.O. in-charge but an entry of the release was also made in the Station Diary. This being so, the burden was on the defence to prove the unlawful release of the vehicle to the plaintiff, the more so as the true owner had not been found.....It was as if they were using Exhibits A & B, to show that the plaintiff did not purchase the vehicle from Somorin. Even here, the defence did not go the whole hog, by finding out from the Licensing Office how Exhibits C - C4 were issued with forged documents Exhibits A & B.

Particulars of Error

20

Omitted

(iii) The judgment of the Court of Appeal is against the weight of evidence."

In accordance with the rules of court, parties have filed and exchanged briefs of argument. They were adopted and relied upon at the hearing. Chief Akinyosoye learned counsel for the appellants has submitted in his brief three issues for determination in the appeal as follows:-

"(i) Whether the plaintiff has established ownership or better right to possession which is constitutive element of an action for detainue.

(ii) Whether the mere fact of registration of a motor vehicle is conclusive evidence that the registered owner is the true owner thereof;

(iii) Whether the judgment of the learned justices of the Court of Appeal which placed the burden of proof on the defence was not in complete disregard of the relevant principles of the Evidence Law."

I do not think we need to waste any time on the first issue. I have already pointed out above that the Court of Appeal awarded to the plaintiff/respondent N5,145.00 being value of the vehicle at the time of the seizure. This award was for conversion. The alternative claim for detainue was dismissed. This can be seen clearly from pages 245-246 of the judg-

ment where the Court of Appeal (per Awogu, J.C.A.) said:-

"No doubt where an action is brought in detinue, conversion may be inferred from the demand and refusal to deliver the chattel, which is the case in the instant appeal. Accordingly, the measure of damages due to the plaintiff will be the value of the vehicle at the time of the seizure, special
5 damages resulting there from and general damages... There was no evidence of depreciation before the lower court, and so the plaintiff is entitled to the amount on Exhibit A and not the N17,000 claimed... I would however allow the sum of N3,000.00 which the plaintiff claimed as general damages. Accordingly... there will be judgment for the plaintiff in the sum
10 of N8,145.00. The alternative claim in detinue is dismissed."

There being no appeal against the dismissal of alternative claim in detinue, the first issue is incompetent, it is hereby struck out. I shall proceed to deal with the other issues.

Arguing issues (ii) & (iii) together learned counsel submitted that
15 since the appellants had shown that the vehicle was unlawfully released to Somorin by the former Divisional Police Officer of Somolu Police Station. Somorin acquired no title to the van which he could have passed to the respondent. The principle is *Nemo dat quod non habet*. It was further submitted that the trial court having found as a fact that the purported
20 document of title of the respondent were spurious and fraudulent, the respondent had no title sufficient to ground the action. That since the respondent had no title, the mere fact of registration with the Licensing Authority cannot confer ownership on him. The fact of registration cannot cure any defect in the respondent's title. That Exhibits C-C4 cannot cure
25 the defect in title if Exhibits A & B on which they were based were spurious. He cited the case of *Macfoy v. U.A.C.* (1961) 3 All ER 1169 at 1172.

It was also submitted that the principle of the law of evidence being that "*He who asserts must prove*" the Court of Appeal was wrong to have held that the appellants did not prove that the release
30 of the vehicle to Somorin was unlawful and that the respondent had the onus to establish his own title as well as the title of his vendor, Somorin. He referred to Sections 134 & 135 of the Evidence Act. We were urged to allow the appeal and restore the judgment of the trial court which dismissed respondent's claims.
35

Responding Mr. Shofolawe-Bakare learned counsel for the respondent submitted that the respondent having bought the van from Somorin as per his receipt Exh. A, and having registered it and obtained the necessary particulars as per Exhibits C-C4 and having also

used it for a period of over 9 months before it was seized by the appellants, the respondent had proved that he was the true owner of the vehicle thereof. He said the respondent's evidence of ownership was not challenged and the onus was discharged on a minimal of proof. He referred to the cases of Nwabuoku v. Ottih (1961) 1 All NLR 487; and Boshal v. Allied Commercial Exporters (1961) All NLR 5 917 at 921.

It was also submitted that in civil cases the burden of proof is not static and it may shift from one party to the other according to the nature of the case and pleadings of the parties. That in this case the respondent having proved that he registered the vehicle following its purchase and had been using same, the onus shifted on the appellants to prove that seizure of the vehicle which was in the respondent's possession was lawful and justified. That according to their pleadings the appellants could only successfully justify their action if they could show that the vehicle was either stolen or unlawfully handed over to the respondent at the time of its purchase. The appellants alleged stealing and or unlawful handing over, and they had the duty of proving them. He referred to paragraphs 6,7,8,10 & 11 of the Amended Statement of claim and to paragraph 9 of the Amended Statement of Defence No.2. He said the appellants having woefully failed to prove the allegations, their defence rightly failed. He referred to sections 136, 137 & 139 of the Evidence Act and the following cases - Osawaru v. Ezeiruka (1978) 6-7 S.C. 135; Lewis & Peat v. Akhimien (1976) 7 S.C. 157; Sanyaolu v. Okeowo (1986) 2 NWLR (Pt.23). We were urged to dismiss the appeal.

The respondent pleaded in paragraphs 2, 5, 7, 8, & 10 of the Amended Statement of Claim as follows:- "2. That the plaintiffs the owner of the vehicle Registration Mitsubishi LA 7993 DA. 5. That the plaintiff avers that the vehicle LA 7993 DA was sold to the plaintiff by one Mr. Akinbowale Somorin (trading under the name and style of "E.A. Abidogun Enterprises Motor Dealer") and a receipt No. 136 dated 16/2/82 for N5,145.00k was issued to the plaintiff.

The plaintiff will rely at the trial of this suit on the said receipt. 35
7. That the plaintiff was on the very 22nd November, 1982 arrested by the first defendant and was questioned about the Mitsubishi LA 7993 DA which the plaintiff had brought to the station of the first defendant. 8. That the plaintiff gave the receipt issued to him for the

said *Mitsubishi Bus and other particulars to the second defendant.*

10. *That the vehicle was impounded by the second defendant on the instructions of the first defendant and it is still in custody of the second defendant who is acting on instructions of the 1st defendant."*

The respondent as shown above clearly pleaded and led evidence to the effect that in February 1982 he bought the vehicle in question from Mr. Akinbowale Somorin trading under the name and style of 'E.A. Abidogun Enterprises' (see Exhibits A & B). He thereafter went to the Licensing Office and obtained all the necessary particulars including an Insurance Cover (see Exhibits C-C4). He was using the vehicle for 9 months when in November 1982 the appellants impounded the vehicle as he, the respondent, went to visit a friend at the Oduduwa Police Headquarters, Ikeja. There is no doubt that the respondent had the onus of proving that he bought the vehicle from Mr. Somorin. This he did by producing Exhibits A & B. He even went further and produced the necessary vehicle particulars which were all in his name vide Exhibits C - C4. I am therefore of the view that on the facts, the respondent did discharge the burden of establishing his title to the vehicle. And prima facie he is the true owner of the vehicle, unless and until the contrary is proved. Section 146 of the Evidence Act reads: "146 *When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.*"

The appellants themselves in fact conceded that the vehicle was released to Somorin, respondent's vendor, by one Mr. Adedeji the then Divisional Police Officer at Somolu Police Station but only contended that the vehicle was originally brought to the police station as "lost and found" property and that its release was unlawful. They pleaded in paragraphs 9 & 12 of the Amended Statement of Defence (No.2) thus:- "9. *The said Mitsubishi van was reasonably suspected by the police to have been stolen and unlawfully handed over to the plaintiff. The said van was therefore kept at the police station pending the discovery of the owner. 12. The vans were kept pending the verification of true owners. None of the vans belonged to the late Mr. Akinbowale Somorin but later one of the said vans was unlawfully released to the said Mr. Akinbowale Somorin by the*

late DPO, Mr. Edward Adedeji at Somolu Police Station."

So that the respondent having proved that he bought the van from Somorin, the appellants had the clear burden of proving that the release of the vehicle to Somorin by DPO Adedeji was unlawful. In civil cases while the burden of proof may initially be on the plaintiff, the proof or rebuttal of issues which arise in the course of proceedings may shift from plaintiff to defendant and vice versa as the case progresses (see *Osawaru v. Ezeiruka*) (supra). I find nothing against that procedure in the Evidence Act as Mr. Akinyosoye would want us to believe. The law is clearly that "he who asserts must prove." 5 10

Sections 135 of the Evidence Act provides:

"135(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(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." 15

The Court of Appeal found and I agree with it that the appellants failed to discharge their burden. In fact Sgt. Abdulai Ibrahim who testified as D.W.2 stated in evidence on page 82 that:

"During interrogation Akinbowale Somorin revealed that he gave the Mitsubishi van to the plaintiff, his father-in-law. That the vehicle was released to him by the then D.P.O. Somolu Station - Mr. Adedeji, Inspector Adewuyi and Bashiru Tijani." Under cross-examination on page 84 he continued thus:- *"The vehicle was released to Somorin on the instruction of the late D.P.O. Adedeji. By the time I investigated Adedeji had died but only saw entry of the release in the Station Diary. We have not found out who owns the vehicle."* At the time of trial in the High Court the evidence was that both Somorin and Adedeji were dead. They could not therefore have been called as witnesses. But there was cogent evidence that the vehicle was lawfully released to Somorin by D.P.O. Adedeji. The release was even recorded in the station diary as shown above. There was no contrary evidence. There was also additional evidence that Somorin confirmed that he "gave" the vehicle to the respondent. So that even if Exhibits A & B were "spurious" documents because Mr. E.A. Somoye (D.W.1) said in his evidence that he could not trace the name *"E.A. Abidogun Enterprises"* in the Business Names Registry and that the addresses 20 25 30 35

shown on these Exhibits could not be located, I do not feel that on those grounds alone one can rightly come to the conclusion that Mr. Somorin did not in fact sell the vehicle to the respondent. The issue of falsity or otherwise of the names and addresses on Exhibits A & B were clearly for late Somorin to answer and should not affect the sale
5 to the respondent. The evidence of purchase by the respondent was unchallenged on the record. Needless to say that only the dead seller, Somorin, could have effectively challenged that evidence. Furthermore as I said above, the law presumes that the respondent being
10 the person in possession of the vehicle (and registered too in his name) was the owner until the contrary was proved (see Evidence Act Section 146 above) so that until the appellants were able to find the true owner, the respondent had a better right to possession of the vehicle than the appellants (see *Okeowo v. Sanyaolu*) (*supra*). The Court of
15 Appeal was therefore right in holding that the appellants were wrong to have impounded the vehicle.

On the whole this appeal therefore fails. It is accordingly dismissed with N1,000.00 costs to the respondent.

20

KARIBI- WHYTE JSC

I have read the judgment of my learned brother Kutigi, J.S.C. in this appeal. I agree entirely with his reasoning and conclusions. I also will dismiss and hereby dismiss the appeal with N1,000.00 as
25 costs to the respondent.

BELGORE JSC

I read in advance the judgment of Kutigi, J.S.C. and I fully
30 agree with him that this appeal has no merit.

I also dismiss the appeal for the same reasons as contained in the judgment of Kutigi, J.S.C.. I make the same order as to costs.

35

OMO JSC

The respondent sued the appellants in the Lagos High Court claiming N30,000.00 damages for the wrongful detention and/or conversion of his Mitsubishi Van bought by him from one Somorin, trad-

ing as "*E.A. Abidogun Enterprises*". The van was detained by the appellants when taken to the police station, several months after purchase and use by the respondent, on a personal visit to a police officer. Appellants claim that the van was lawfully detained because it was originally a "*lost and found*" vehicle which was kept in Pedro Police Station pending completion of investigation as to its ownership. It had thereafter been released unlawfully by a senior police officer to Akinbowale Somorin, a "*dealer*" in motor vehicles and a relation by marriage of the respondent, from whom he purchased the vehicle.

The High Court dismissed the claim after hearing the parties and counsel on their behalf, on the ground mainly that the late Somorin had no property in the van to pass to the respondent; what is more, the documents on which respondent relied are spurious. The respondent appealed to the Court of Appeal, which reversed the judgment of the High Court. It held that the respondent had enough possession to maintain an action in conversion, the alternative claim in detinue being dismissed. The appellants had failed to establish that the van was unlawfully handed over to Somorin, the onus of proving this vital averment rested squarely on them. The sale by Somorin to the respondent must be deemed lawful in the circumstances. A total of N8, 145.00 was awarded to the respondent. Dissatisfied with this judgment, the appellants have appealed to this court.

Three issues were framed by the appellants in this court. They are as follows:-

"(i) *Whether the plaintiff has established ownership or better right to possession which is constitutive element of an action for detinue.*

(ii) *Whether the mere fact of registration of a motor vehicle is conclusive evidence that the registered owner is the true owner thereof.*

(iii) *Whether the judgment of the learned Justices of the Court of Appeal which placed the burden of proof on the defence was not in complete disregard of the relevant principles of the Evidence Law."*

The respondent on the hand set out two issues for determination in his brief thus:-

"(i) *Whether a plaintiff who has brought an action for damages for conversion MUST, in order to succeed prove an OWNERSHIP,*

TITLE or whether it is sufficient if he proves a POSSESSORY TITLE;

(ii) Whether on the pleadings and the totality of admissible and credible evidence before the trial court, the Court of Appeal was right in holding that the respondent has established possessory title to entitle him to damages for conversion."

5 The main point made by the appellant here is that the onus is on the respondent to prove ownership of the van which he failed to do, and that the court below wrongly placed the onus of proof on the appellants. The respondent has countered by submitting that proof
10 of ownership is not necessary for him to succeed in a claim for conversion. All he requires is proof of possession, albeit not unlawful. The appellants having averred unlawful possession (following unlawful handing over to Somorin) and failed to prove same, the court below was right in adjudging the respondent's possession lawful. Lord
15 Campbell in *Jeffries v. Great Western Railway Company* (1856) 5 EL & BL 802 (803), stated the law as to possession thus:-

*"...the law is that a person possessed of goods as his property has a good title as against every stranger; and that one who takes them from him having no title in himself is a wrongdoer and cannot
20 defend himself by showing that there was title in some third person. For against a wrongdoer, possession is title,"*

The impounding of the car by the appellants is therefore unlawful, and their failure to deliver same after repeated demands constituted conversion. To establish conversion, the law also is that what
25 is required is no proof of ownership but proof of possession vide Clerk and Lindsell on Torts 14th Ed. paragraph 1108 at p.1106.

My learned brother, Kutigi, J.S.C. has, in his judgment which I have read in draft dealt more fully with the issues of burden of proof
30 and possession, in coming to the final conclusion that this appeal cannot succeed. I also adopt his views and conclusions arrived at as mine. For these reasons, and those set out by me hereinbefore, I also dismiss this appeal with N1,000.00 costs to the respondent.

35

OGWUEGBU JSC

I agree with my learned brother, Kutigi, J.S.C. that this appeal should be dismissed for the reasons stated in his judgment which I

adopt as mine.

One of the issues canvassed by the appellants in their written brief of argument is whether the mere fact of registration of a motor vehicle is conclusive evidence that the registered owner is the true owner.

The respondent gave evidence as to how he registered the car⁵ after purchase and was in actual possession of it for nine months before the appellants seized it. The defence of the appellants is that the vehicle was stolen and unlawfully handed over to the respondent. This they failed to prove.

At common law, mere de facto possession is, as against a stranger a sufficient title to support an action for a conversion.¹⁰ The appellants claim title on behalf of an unknown owner. They cannot plead *jus tertii* unless they are defending on behalf of or on the authority of the true owner. Since that third party is not discoverable¹⁵ and the respondent has made out a good *prima facie* case of title by possession, he has title as against all other persons including the appellants.

For the above reasons and the reasons contained in the judgment just delivered by my learned brother Kutigi, J.S.C. this appeal²⁰ fails and it is hereby dismissed with N1,000.00 costs to the respondent.

25

30

35