

SUPREME COURT OF NIGERIA
5TH MARCH, 1993. SC 8/1989.
CORAM:- S. M. A. BELGORE, A. B. WALI,
I. L. KUTIGI, E. O. OGWUEGBU. S. U. MOHAMMED, JJSC.

JINADU AJAO & 4 OTHERS APPELLANTS

AND

BELLO ADIGUN RESPONDENT

CIVIL PROCEDURE *-Locus in quo - when court should accede to application for visit to -*

COURTS *- Order for retrial - whether appropriate or not*

COURTS *- Discretion to visit locus in quo - how to be exercised*

EVIDENCE *- Wrongful rejection of evidence - when decision will be reviewed - order for trial de novo*

LAND LAW *- Registrable instruments under land instruments registration law of Oyo State - does not include documents that spell out existing rights*

LAND LAW *- Description of land - technical survey terms to be employed - not to say left or right hand side.*

FACTS

The Appellants were plaintiffs before the High Court of Oyo State and claimed against the Defendant now Respondent, damages for trespass to a piece of land and a perpetual injunction to prevent

2 AJAO V. ADIGUN (1993) 3 KLR 1; (1993) 3 NWLR

further trespass on the same land by the Defendant. The Appellants sued on behalf of themselves and Alasa family. Pleadings were filed and exchanged and evidence taken. The trial Judge dismissed their claim on the ground that they failed to prove their case.

The Appellants appealed to the Court of Appeal, Ibadan Division which allowed their appeal in part; holding that the trial Judge erred in rejecting in evidence a document marked “exhibit A rejected”, being a document setting out the holdings of each party after a previous case between them and other parties on a separate adjoining land. The trial Court had held that the document to be admitted in evidence, must be registered as it was caught by s. 2 of the Land Instruments Registration Law of Oyo State, erroneously construing it to be an instrument. The Appellants also appealed against the refusal of the trial court to visit the Locus in quo which was applied for by them.

The Court of Appeal ordered a retrial. The Appellants further appealed to the Supreme Court, who upheld the court of Appeal’s decision.

HELD (Unanimously dismissing the appeal)

1. A document that does not pretend to confer, transfer, limit or extinguish any right in favour of any body but merely defined the purported existing rights of each party in the large land area is completely out of the ambit of ss. 2 & 16 of the land Instrument Registration Law that defined an instrument. (P. 7 L. 11).

2. “Exhibit A Rejected” is a very important document and its import on the final decision in the trial court would have been of great significance for that document was made for preservation of peace between the parties. (P. 8 L. 12).

3. Since the Document is not an instrument within the meaning of s. 2 of the Land Instrument Registration Law, its rejection from evidence was in error. (P. 8 L. 20).

4. As it is impossible to now surmise what effect that wrongfully excluded document would have had on the final fate of the case, the only reasonable and just decision of the appellate court was to order trial de novo. (P. 9 L. 11)

5. The language of the court must always follow the technical survey descriptions by referring to directions such as North, South, etc. The use of such description as “to the right” or “to the left” are confusing and incompatible with proper decision making to manifest justice in cases tried before the court. (P. 9 L. 18).

6. The Court should not only accede to application for visit to Locus in quo, it should do so suo motu. (P. 9 L. 30).

7. It is in the discretion of the court to accede to application for visit to the scene but such discretion should be exercised judicially and must be acceded to if only so doing will give certainty to the land the parties refer to. The fact of confusing description ought to have prompted the learned trial Judge to undertake the visit to Locus in quo. (P. 9 L. 31)

REPRESENTATION

Kehinde Sofola SAN with Dayo Sokunbi, for the Appellants.
Chief M. Esan for the Respondent.

CASES REFERRED TO

1. Bamidele Elegbe v. Jacob Babalola (1986) ALL NLR 337
2. Asani Taiwo & ors. v. Adamo Akinwumi & ors (1975) ALL NLR 202

STATUTES

1. Land Instruments Registration Law of Oyo State ss. 2, 16
2. Trustees Law Cap 128 s. 27
3. Evidence Act s. 226 (2)

LEAD JUDGMENT BY BELGORE JSC

The appellants were plaintiffs before the High Court of Oyo State sitting at Ogbomosho and claimed against the respondent as defendant, damages for trespass to a piece of land at Ajeja (Adeja) Otafa, Ogbomosho and perpetual injunction to prevent further trespass on the same land by respondent. The appellants were suing on behalf of themselves and Alasa family. At the end of all evidence after the pleadings by the parties, trial Judge dismissed the appellants' case holding that they failed to prove their case. An appeal was thereupon lodged before Court of Appeal Ibadan Branch, which in a considered judgment allowed the appeal in part by holding that trial Judge erred in rejecting in evidence a document, marked "Exhibit A Rejected", being a document setting out the holdings of each party after a previous case between the other parties on adjoining land. The document seems to explain the portion of a wider land perhaps including part or whole of the land now in dispute. The trial Court held it was a document caught by Land Instruments Registration Law of Oyo State in section 2 thereof wherein it is provided as definition of registrable instrument as follows:

"2....a document affecting land in the State whereby one party (hereinafter called the grantor) confers, transfers, limits, charges, or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in land in the State and includes –

- (a) an estate contract;
- (b) a certificate of purchase;
- (c) a power of attorney under which any instrument may be executed;
- (d) a deed of appointment or discharge of trustees containing expressly or impliedly a vesting declaration and affecting any land to which section 27 of the Trustee Law extends but does not include a will."

Secondly, the trial Court was urged by the appellants to visit the locus in quo so as to have a proper grasp of the situation of the land in dispute. The Court rejected the application without any cogent reason. The Court of Appeal found these two matters if admit

ted into evidence might probably have tilted the decision the other way rather than the verdict of dismissal it returned and ordered a retrial. Kehinde Sofola, Esq. SAN, for the appellants before us formulated three issues as follows for determination:

"ISSUES ARISING FOR DETERMINATION IN THE APPEAL": 5

(1) In the appellants view the following issues arise for determination by the Supreme Court in this appeal.

(a) Whether the non-admission in evidence of the agreement dated November 9, 1956, and marked 'A' Rejected by the learned trial Judge was such that would properly have led to the Court below ordering a retrial of the whole suit. 10

(b) Whether the learned trial Judge was in error for refusing to accede to the request made by the Respondent to the learned trial Judge to make a visit to the locus in quo in all the circumstances of this case, and whether the Court below was right to have sent the case back to the High Court for trial de novo because of this. 15
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(c) Whether the learned trial Judge was not right upon the evidence led before him to have made an Order of dismissal of the respondent's claims, and whether the Court of Appeal was right to have ordered a retrial in view of such evidence. 25

As against these issues the respondent formulated two issues, to wit:

(a) Whether the exclusion of the document marked "A" rejected by the learned trial Judge was wrongful. If the answer is in the affirmative, whether the wrongful exclusion of the document is sufficient to justify the Court of Appeal sending the case back for re-trial. 30
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(b) Whether the learned trial Judge exercised his discretion judicially when he refused the respondent's application to

The Court of Appeal in the leading judgment of Ogundare J.C.A. (as he then was) went to great length in examining the document rejected as “Exhibit A Rejected” and held it was not a registrable instrument under S.2 Land Instrument Registration Law. It is
5 pertinent to a proper appreciation of this document to copy it out.

10 “DECLARATION OF BOUNDARY LINES BETWEEN THE
FARMLANDS BELONGING TO CHIEF ALASA AND CHIEF
ALAPA, OGBOMOSHO

THIS IS TO CERTIFY THAT WE, THE UNDERSIGNED,
Chief Larewaju Ojo Alasa and Chief Oyewale Alapa, Ogbomosho,
15 do hereby declare and state, for ourselves and on behalf of all our
families, for future reference and in order to avoid any land dispute,
in that we have common boundaries as follows-

20 *(a) That from Odo Adeja to Oke Otafa Chief Alapa’s farm
land situated at right hand side and Chief Alasa farmland at
the left hand side.*

25 *(b) That from Oke Otafa Antorun Chief Alapa’s farmland,
being and situate at the right hand side and Chief Alasa’s
farmland at the left hand side.*

30 *(c) That from Antorun to Akeran, Chief Alapa’s farmland
being and situate at the right hand side and Chief Alasa’s
farmland at the left hand side.*

35 *N.B These portions of farmland had been included in the
survey plan made and on which judgments of the Courts
stand in Chief Alasa’s favour in the case Ogungbayi, Bale
Paku v. Larewaju Alasa and they are hereby separated and
allotted to Chief Alapa, Ogbomosho, Oshun Division, Ibadan
Province, Nigeria this 9th day of the month of November,
1956 at Ogbomosho.*

AGREED PARTIES

Thumb Print: LAREWAJU ALASA'

Chief Alasa

Thumb Print: OYEWALE ALAPA

Chief Alapa

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WITNESSES

Oke His X.M.K. : Thumb Print:

For Alasa's families

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..... : Thumb Print

For Alapa's families"

The definition of "*instrument*" for the purpose of Land Instruments 15
Registration Law is very clear. There must be a party within the mean-
ing of the Law called or regarded "*grantor*" who "confers, transfers,
limits, charges or extinguishes in favour of another" also called and
known within the same Law as "*grantee*". "Exhibit A Rejected" does 20
not pretend to confer or transfer or limit any right or extinguish any
right in favour of anybody. All it did was to define exactly the pur-
ported existing rights of each family in the larger land area including
the one previously in dispute and decided upon by a court of com-
petent jurisdiction so as to "*avoid any land dispute*" between the 25
families. The document did not purport or pretend to show any of
the families as surrendering or conceding any right it had, rather it
spelt out the existing rights of each family. This document is com-
pletely out of the ambit of S.2 Land Instrument Registration Law and
it is not caught by S.16 of the same Law for it to be rejected in evi- 30
dence. As Ogundare J.C.A. (as he then was) clearly stated in his judg-
ment inter alia:

*"The said document, in my humble view and with respect to 35
the learned Judge, is not a document required by law to be regis-
tered.the document is clearly relevant to the
issues between the parties (and) I am of the further view that it should
have been admitted by the learned trial
Judge..... (and) was in error to have*

rejected the document". (brackets mine).

Sofola Esq. SAN alluded to S.226(2) of Evidence Act that the wrongful admission of evidence should not per se lead to reversal of trial Court's decision unless certain conditions are met. That provision is very clear in its purport as it states:

226(2) "*The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same.*"

With great respect, that section of Evidence Act is very clear in its purport. Had "*Exhibit A Rejected*" been admitted in evidence by trial Court, could that Court with certainty be returning the same verdict? The document was made so as to preserve peace between the two families. Alasa and Alapa and set out for the future generation" what they believed to be their respective holdings on the large piece of land, not that any of them was conceding anything. It is a very important document and its import on final decision in the trial Court no doubt would have been of great significance. The rejection of the document was in error as it is not "*an instrument*" within the meaning of S.2 Land Instruments Registration Law of Oyo State. The document confers no right, extinguishes no right: nor was it transferring any right or obligation but it merely restates what the parties believed was the existing right of the parties *Bamidele Elegbe v. Jacob Babalola* (1968) All NLR 337.350.351: *Asani Taiwo & Ors. v. Adamo Akinwunmi & Ors.* (1975) 1 All NLR (Pt.1) 202, 229, 230.

The document was pleaded and as it was tendered it was very material to the case before the trial Court. The weight on consideration of the document vis-a-vis all the evidence before the Court is another matter. But it is not an "*instrument*" for purposes of S.2 of Land Instruments Registration Law, it was wrong for trial Judge to have rejected it in evidence for trial Judge seems no doubt to have invoked the far-reaching consequences of S.16 Land Instruments Registration Law (*supra*) which states:

“16. No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper office as specified in section 3:

Provided that a memorandum given in respect of an equitable mortgage affecting land in the State executed before the 1st day of July, 1944, and not registered under this Law may be pleaded and shall not be inadmissible in evidence by reason only of not being so registered .”

As it is impossible to surmise here what effect it would have had on the final fate of the case the only reasonable and just decision by the appellate Court was to order trial de novo. That has been the only just thing to remedy the unfortunate error of learned trial Judge in rejecting the document.

Trial Judge, without visiting the locus in quo, employed just as the witnesses did, the description “right side” and “left side” This is unfortunate. The language of the Court must always follow the technical survey descriptions. The cardinal points of description in ordinance surveys are the directions, that is to say, North, South, East and West including points between them e.g. North-East, NorthNorth-East, South-South-West and so forth. The use of descriptions such as “to the right” or “to the left” or “up” or “down” are not only confusing they are incompatible with proper decision making to manifest justice in tried cases in Court. It is true that some parties are in the habit of these confusing descriptions, the Court may understand if starting points and ending points are included in such descriptions. But right in a void as to starting point and ending point locations are bluntly in the form of “to the right” or “to the left”. The Court should not only accede to application for visit to locus in quo, it should do so suo motu. It is in the discretion of the Court to accede to an application to visit the scene but such discretion should be exercised judicially and must be acceded to if only so doing will give certainty to the land the parties refer to. Failure to visit the locus in quo in the face of confusing descriptions ought to have prompted learned trial Judge

to undertake the visit. The Court of Appeal was therefore perfectly right to have frowned on the failure of the trial Judge to grant the application.

In the final result, I, for the foregoing reasons, find no reason to interfere with the judgment of the Court of Appeal and dismiss this appeal with N1,000.00 costs to the respondent against the appellants.

WALI JSC

10 I have read before now, the lead judgment of my learned
brother, Belgore, J.S.C. I entirely agree with the reasoning and con-
clusion contained therein.

For those same reasons, which I hereby adopt, I also dismiss
15 the appeal and abide by the consequential orders made in the lead
judgment.

KUTIGI JSC

20 I have had a preview of the lead judgment of my learned
brother Belgore JSC. I agree with his reasoning and conclusions. The
appeal is dismissed with costs as assessed.

OGWUEGBU JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Belgore JSC. I agree with his reasoning and conclusion.

30 I too, dismiss the appeal with N1,000.00 costs to the respon-
dents.

S. U. Mohammed JSC also agreed with the lead judgment.