

SUPREME COURT OF NIGERIA

5TH AUGUST, 1994. SC.

**CORAM:- M. L. UWAIS, I. L. KUTIGI, E. O. OGWUEGBU, S. U. ONU,
Y. O. ADIO, JJSC.**

N.O. MOTANYA & OTHERS PLAINTIFFS

For themselves and for the
entire members of Ogwugwu
Oba

AND

ELIJAH ELINWA & OTHERS DEFENDANTS

For themselves and for and on
behalf of the members of
Aboji Oba

APPEALS - *Court of Appeal's finding - That trial judge placed wrong evaluation on exhibits - When not supportable.*

EVIDENCE - *Burden of proof - Whether placing a particular burden of proof on the defendants - Is tantamount to placing the onus of proof in the case on them.*

EVIDENCE - *Previous judgments - Pleaded and properly tendered in evidence - Whether trial court rightly admitted the judgments.*

LAND LAW - *Title - Proof of better title by the plaintiffs - Failure of Court of Appeal's retrial order - Plaintiffs' case cannot be dismissed.*

PRACTICE & PROCEDURE - *Boundaries of Land - Admitted in pleadings - Whether trial court should have made any finding of fact on the boundaries.*

FACTS

The Plaintiffs before the Onitsha High Court claimed against the Defendants N50,000 general damages for trespass and perpetual injunction in respect of the land in dispute. The plaintiffs tendered Exhibits J & K previous judgment of the Onitsha High Court and the Supreme Court, which the trial court did not rely upon in giving its judgment. Defendants in denying the

plaintiffs' claim alleged that the plaintiffs' own share of land was in another location, which they failed to prove.

The trial court found in favour of the plaintiffs and awarded N10.000 damages to them. The Defendants' appeal to the Court of Appeal was partly upheld by that court which ordered a retrial of the case before another High Court Judge. The plaintiffs being dissatisfied have now appealed against the whole decision of the court below whilst the Defendants Cross-appealed against the retrial order only. The Defendants sought a dismissal of the plaintiffs claim. The Supreme Court has to determine inter alia, whether the Court of Appeal was right in holding that the trial court wrongly placed the onus of proof on the Defendants.

HELD (Unanimously allowing the plaintiffs' appeal)

Placing of burden of proof

1. The learned trial judge never put the general burden of proof of the plaintiffs' case on the defendants. The burden which the learned trial judge said the defendants had and failed to discharge was the burden of proving plaintiffs' land which the defendants called Abo-Ogwugwu and which the defendants say is different from the land in dispute. That was the burden of proving the particular issue or fact raised by the defendants in para, 17 of their pleadings above and which they had a duty or burden of proving so long as they wished the court to believe its existence. That was not the general burden which lay on the plaintiffs to prove or establish their case as disclosed on the pleadings before the court (P.315 L.10)

Admissibility of previous judgments

2. Exhibits J & K in this case are respectively the judgments of the Onitsha High Court in Suit No./0/83/56 and of the Supreme Court in FSC. 240/63 in the same case. The judgments were clearly pleaded as required by law and therefore properly tendered in evidence by Philip Okongwu (P.W. 5) who was from Isu village (a party in that suit) even though the present plaintiffs were not parties. The High Court therefore acted properly when it admitted the two documents (judgments) in evidence. (P.316 L.10)

Admitted boundaries of land

3. There was no need for the learned trial judge to have made any finding of fact on the boundaries of the land in dispute which the parties knew and unmistakably admitted in their pleadings. (P. 317 L. 6)

Court of Appeal's finding of wrong evaluation

4. The learned trial judge needed not to have resorted to Exhibit J before making the finding that in fact the land in dispute is in boundary with Isu village on the Eastern side, which fact was admitted even on the pleadings. The Court of Appeal was therefore clearly wrong when it arrived at the conclusion that the learned trial judge placed wrong evaluation on Exhibits J & K which affected its decision in the case. There was no evidence of any such wrong evaluation on record. (P.317 L.22)

Proof of better title by plaintiffs

5. The order for a retrial having lost the legs on which it stood. The appeal and the cross-appeal are therefore both allowed. But the plaintiffs' case cannot be dismissed as contended by the defendants, the trial court having found from the facts before it that the plaintiffs have proved a better title to the land. We have no reason to disturb that finding. (P.317 L.37)

NOTABLE POINT OF INTEREST**ADIO JSC*****1. Admissibility and Competence of a witness differentiated from weight.***

It must be noted at once that the legal admissibility of a piece of evidence is one thing, while the weight the court would attach to such evidence after it has been admitted is quite another thing. Similarly the competence of a particular person to give evidence in a particular proceeding is a different thing from what weight the court will give to the evidence of such a witness. (P.316 L.19)

REPRESENTATION

Ladi Williams with Chuba Oranusi for the plaintiffs

Enyosiobi A. Nwangwu with Eyo O. Ekpo and J.C. Umenyilora for the Defendants.

CASES REFERRED TO

Kodilinye v. Odu 2 WACA 336

Kobina Ababio 11 v. Priest-in-charge of Catholic Mission Anpeyi & Anor 2
WACA 280

Okafor & Ors. Obiwo & Anor (1978)9 & 10 SC. 115)

Alade v. Aborishade (1960)5

5

LEAD JUDGMENT BY KUTIGI JSC

At the Onitsha High Court the plaintiffs claimed against the defendants jointly and severally as follows:-

10 “(a) N50,000.00 (Fifty Thousand Naira) being general damages for trespass.

(b) Perpetual injunction restraining the defendants, their servants and agents from further acts of trespass in the land in dispute.”

Pleadings were ordered, filed and exchanged. The case then proceeded to trial.

At the trial both sides led evidence in accordance with their pleadings. The learned trial Judge Awogu J., (as he then was) reviewed the evidence and argument of counsel and found in favour of the plaintiffs on page 164 of the record as follows:-

20 “I find from the facts before me that the plaintiffs have proved a better title to the land in dispute verged GREEN less the above areas lost as a result of oath-taking.

The area of trespass is shown verged PINK on Exhibit A. The trespass is not denied. What is more, the defendants also admit alienating to others portions of land within the GREEN verge. The plaintiffs put their annual income from the land at N1,000.00 per year and so claim N50,000.00 as damages for trespass. I assess the damage at N10,000.00.

I also grant a perpetual injunction against the defendants, their agents and assigns. The injunction is only in respect of the PINK verge in Exhibit A.

30 The cost of the action is assessed at N500.00 in favour of the plaintiffs.

Dissatisfied with the judgment of the High Court the defendants appealed to the Court of Appeal, Enugu. The Court of Appeal in a unanimous judgment delivered on 14th July, 1988 allowed the appeal and remitted the case to the High Court for trial de novo before another Judge. The present appeal and cross-appeal are against the decision of the Court of Appeal. The plaintiffs have appealed against the whole decision while the defendants have cross-appealed against the order for a re-trial of the case only.

Briefs were filed and exchanged by the parties. Chief Williams, learned Senior Counsel who prepared the plaintiffs' brief submitted in the brief the following questions for determination:-

“(i) Whether the court below was correct in holding that the learned trial Judge wrongly put the onus of proof on the defendants.

(ii) Were Exhibits J & K wrongly admitted in evidence? 5

(iii) What is the effect of Exhibits J & K on the issues for determination at the trial.

Mr Eyo Ekpo learned counsel for the defendants on the other hand submitted that the issues for determination both in the appeal and cross-appeal are these:-

(a) Whether Exhibits J & K were wrongly admitted; 10

(b) Whether the appellants established better title to the land in dispute; and

(c) Whether the order for a re-trial was properly made.

From the two briefs and the respective issues submitted by the parties, it can clearly be seen that the real questions for determination in the appeal and cross-appeal are:

1. Whether the court below was correct in holding that the learned trial Judge wrongly put the onus of proof on the defendants.

2. Whether Exhibits J & K were wrongly admitted in evidence;

3. Whether plaintiffs/appellants established better title to the land in dispute and 20

4. Whether the order for a re-trial was properly made.

On the burden or onus of proof Mr. Ladi Williams for the plaintiffs submitted that the Court of Appeal in the instant case confused the general burden of proof which clearly rested on the plaintiffs, with the burden of proof of particular issues raised by each party in the pleadings. He referred to the lead judgment of Ikwechegh J.C.A. at pages 279-280 and said that the expression “this burden” in the passage from the judgment of the trial court therein must be referring to the burden of proving the particular issue of the location of Abo-Ogwugwu which the defendants said was the plaintiffs' (of Ogwugwu) share of Oba land and which they alleged was located elsewhere. He said there are passages in the judgment of the trial Judge which showed clearly that he knew very well where the general burden of proof lay and that there was absolutely nothing in the judgment to suggest that the trial Judge approached the evaluation of evidence by considering the reverse of the rule in Kodilinye v. Odu (1935) 2 WACA 336.

Now, the plaintiffs pleaded in paras. 1, 2, 3,& 6 of their Amended Statement of Claim as follows:-

“1. The plaintiffs are members of Ogwugwu village in Oba within jurisdiction and bring this action for themselves and on behalf of the said

Ogwugwu village community.

2. *The defendants are members of Aboji village in Oba and are sued jointly and severally and for the members of the said Aboji village.*

3. *The plaintiffs are the owners of all that piece of land lying, being
5 and situate at Ogwugwu village in Idemili Local Government area known as and called AKABO or generally referred to as AKABO OGWUGWU land which is more particularly delineated in Plan No. ECAS 37/79 and filed with this Amended Statement of Claim.*

6. *The plaintiffs aver that Oba town is made up of 9 villages, namely
10 in order of seniority, Urueze, Umuogali, Ogwugwu, Isu, Awkuzu, Abime, Ogboenwe, Aboji and Ezele. Each of these 9 villages representing the 9 sons of Oba their common ancestor, have particular pieces of land, as the plaintiffs, which is their share of their ancestor's land."*

On the other hand the defendants pleaded in paras. 2, 3, 4 & 17 of
15 their Amended Statement of Defence thus:-

"2. *Save that the plaintiffs are members of Ogwugwu village, the defendants deny the rest of paragraph 1 of the Statement of Claim.*

3. *Paragraph 2 of the Statement of Claim is admitted.*

4. *The defendants vigorously deny paragraph 3 of the Statement of
20 Claim and will at the trial put the plaintiffs to the strictest proof thereof.*

17. *Save that the order of seniority of the nine villages that make up Oba is wrong the defendants admit the rest of paragraph 6 of the Statement of Claim. The defendants add that "Abo-Ogwugwu" land is the plaintiffs ancestor's (Ogwugwu) share of the land holdings of Oba, the ancestors of
25 the said nine villages. But the plaintiffs' ancestors later fled Abo Ogwugwu to Oraifite where the plaintiffs now live"*

The learned trial Judge in his judgment on page 160 had observed thus:"

*The present dispute has arisen because each side lay claim to the land in dispute as his share of his ancestors. The plaintiffs called it "Akabo-
30 Ogwugwu" and say it is the share of Ogwugwu. The defendants call it "Ana-Aboji" and say it is the share of Aboji. Had the defendants stopped there it would have been a case for determination of a straight issue of title but they went further to say that Ogwugwu's share is Abo-Ogwugwu land which is situate in a different location from the land in dispute. The rule of evidence
35 is that he who asserts must prove. Neither in their plan, Exhibit L, nor in their evidence did the defendants discharge this burden. They asserted but did not prove a case of mistaken identity of the plaintiffs."*

The Court of Appeal commenting on the above passage said on

page 279 of the judgment:-

“The Judge was clearly in error here. He could not put the onus of proof in this matter on the appellants who were defendants before him and had not set up a claim themselves. If the appellants raised a matter in challenge of the claims of the plaintiffs, the onus is still on the plaintiffs to defeat the defendants by showing through credible evidence that what the defendants had asserted could not be true; this is the principle of Kodilinye v. Odu”.

I think the Court of Appeal was clearly wrong when it held as it did above. The learned trial Judge never put the general burden of proof of the plaintiffs’ case on the defendants. The burden which the learned trial Judge said the defendants had and failed to discharge was the burden of proving plaintiffs’ land which the defendants called Abo-Ogwugwu and which the defendants say is different from the land in dispute. That was the burden of proving the particular issue or fact raised by the defendants in para. 17 of their pleadings above and which they had a duty or burden of proving so long as they wished the court to believe its existence. That was not the general burden which lay on the plaintiffs to prove or establish their case as disclosed on the pleadings before the court. This much was clear from the portion of the judgment of the learned trial Judge already reproduced above and there is nothing in the passage above which suggests that the learned trial Judge reversed the rule in Kodilinye v. Odu (supra).

The next issue to be considered is whether or not Exhibits J & K were wrongly admitted in evidence and whether the learned trial Judge placed wrong evaluation on these exhibits. I have searched the record of proceedings in vain trying to locate where the Court of Appeal said Exhibits J & K were wrongly admitted in evidence. But clearly on page 287 line 24-27 it is stated thus-

“The appeal succeeds on the issue that the Judge had failed to make a proper assessment and evaluation of evidence both oral and documentary, as he placed the wrong evaluation on Exhibits J & K.”

It had earlier observed on page 285 lines 27-30 as follows:-

“This latter portion culled from page 161 of the record of proceedings shows manifested that the Judge’s view in this matter was largely influenced by his use of Exhibits J & K which in law do not affect this litigation,”

Again the plaintiffs in their Amended Statement of Claim paras. 16 & 17 pleaded as follows:-

“16. In Suit No. 0/83/56 between Nwilo Igbanugo and others of Isu Oba against Igbonekwu Uyaelumuo and 6 others of Aboji Oba, the claim

was for a declaration of title, trespass and injunction. The Onitsha High Court found as a fact that Ogwugwu people put Aboji people on their land as tenants and that the said land is the one adjacent to the Western Boundary of the land in dispute in the said suit. Plan No. MEC/12/54 filed in the said suit refers. The Aboji defendants in 0/83/56 appealed to the Supreme Court FSC.240/63 refers - and the findings of fact of the Onitsha High Court were confirmed. The area disputed by the Isu and Aboji people are shown on the Eastern boundary of the land in dispute in plan No. ECAS 37/79. The said suits No. 0/83/56 and FSC.240/63, *Uyaelunmuo v. Igbamugo* delivered 18-11-64 (unreported) are hereby pleaded.”

Exhibits J & K in this case are respectively the judgments of the Onitsha High Court in Suit No. O/83/56 and of the Supreme Court in FSC.240/63 in the same case. The judgments were clearly pleaded as required by law and therefore properly tendered in evidence by Philip Okongwu (P. W.5) who was from Isu village (a party in that suit) even though the present plaintiffs were not parties. (See *Kobina Ababio II v. Priest-in-Charge of Catholic Mission, Ampenyi & Anor* (1934-35) 2 WACA 380; *Okafor. & ors v. Obiwo & anor* (1978) 9 & 10 S.C.115. The High court therefore acted properly when it admitted the documents (judgments) in evidence. It must be noted at once that the legal admissibility of a piece of evidence is one thing, while the weight the court would attach to such evidence after it has been admitted is quite another thing. Similarly the competence of a particular person to give evidence in a particular proceeding is a different thing from what weight the court will give to the evidence of such a witness.

I have referred to a passage from the judgment of the Court of Appeal above where it came to the conclusion, rightly in my view that “Exhibits J & K do not in law affect this litigation.” So the question to ask now is: Did Exhibits J & K affect the judgment of the High Court? In other words, did the learned trial Judge put any reliance on these exhibits before arriving at his conclusions as he did? A careful reading of the judgment of the learned trial Judge showed on pages 161-162 how he summarised the evidence of P.W.5 (Okongwu) who tendered Exhibits J & K in evidence. the relevant paragraphs of the plaintiffs pleadings thereon and the finding of the learned trial Judge in Exhibit J regarding the Western boundary between the disputants in that case. And on page. 162 the learned trial Judge said:-

“Both sides agree that the land in dispute is in boundary with Isu village on the East..... Not being parties or privies to Exhibits J & K. I am not so sure that the defendants of Aboji are estopped by the judgment in question from saying that they are tenants of the plaintiffs in the land to the East. Accordingly I accept the evidence of the

plaintiffs and find as a fact that they are in boundary on the East with Isu village.”

It cannot therefore be true to say that the learned trial Judge placed wrong evaluation on these exhibits as demonstrated above. He in fact realised his limitations on the use to which he could put the exhibits. I may have to add that in fact there was no need for the learned trial Judge to have made any finding of fact on the boundaries of the land in dispute which the parties knew and unmistakably admitted in their pleadings. The plaintiffs pleaded in para.4 of their Amended Statement of Claim that:-

“4. The plaintiff aver that the land in dispute is bounded in the south by Ekulo Stream, in the East by the land of Isu village Oba, in the North by land of Umuogali village of Oba and a small strip of Aboji land to the North-East tip and in the West by Ngbo land also of Ogwugwu Oba.”

The defendants replied on para. 10 of their Further Amended Statement of Defence thus:-

“10. In answer to para.4 of the Statement of Claim the defendants state that the land in dispute is bounded in the South by Ekulo stream, in North by the land of Umuogali village, in the East by the land of Isu village of Oba, Ezele quarter of Oba and a portion of defendants land, on the West by “Mgbo” or raffia swamp”

So the learned trial Judge needed not to have resorted to Exhibit J before making the finding that in fact the land in dispute is in boundary wit Isu village on the Eastern side, which fact was admitted even on the pleadings. The Court of Appeal was therefore clearly wrong when it arrived at the conclusion that the learned trial Judge placed wrong evaluation on Exhibits J & K which affected its decision in the case. There was no evidence of any such wrong evaluation on record.

It is clear from the record as correctly submitted by Mr Ladi Williams that the Court of Appeal allowed the defendants’ appeal and ordered a retrial relying on the sole authority of *Alade v. Aborishade* (1960) SC NLR 398; (1960)5 FSC. 167, because of the mistaken view it took of the burden of proof in the case and the evaluation (if any) of Exhibits J & K and the reliance (if any) placed on those exhibits.

Having shown above that its conclusions in respect of these issues were wrong I believe this appeal must succeed. The cross-appeal by the defendants also succeeds automatically the order for a retrial having lost the legs on which it stood. The appeal and the cross-appeal are therefore both allowed. But the plaintiffs’ case cannot be dismissed as contended by the

defendants, the trial court having found from the facts before it that the plain-
tiffs have proved a better title to the land. We have no reason to disturb that
finding. Consequently the judgment of the Court of Appeal is set aside while
the judgment of the Onitsha High Court delivered by Awogu J. on the 21st day
5 of November, 1983 is hereby restored.

Each side shall bear its own costs.

UWAIS JSC

I have had the opportunity of reading in advance the judgment read
10 by my learned brother Kutigi J.S.C. I entirely agree with the judgment and do
not wish to add anything more.

Accordingly the appeal by the plaintiffs is allowed and so also the
appeal by the defendants. There is no order as to costs. Therefore each party
shall bear its costs.

15

OGWUEGBU JSC

I have been privileged to read in advance the judgment of my learned
brother Kutigi, J.S.C. I agree entirely with him and I have nothing useful more
to add.

20 I too allow both appeals. The judgment of the Court of Appeal is set
aside while the judgment of the Onitsha High Court delivered on 21:11:83 is
hereby restored. I make no order as to costs.

ONU JSC

25 I am in complete agreement with the judgment of my learned brother
Kutigi, J.S.C. the draft of which I had the privilege of reading before now. I too
will allow the appeal and cross-appeal. Accordingly, I order that the judgment
of the Court of Appeal be set aside while that of the trial court be restored with
the same order as to costs as contained in the lead judgment.

30

35

ADIO JSC

I have had the advantage of reading, in draft, the judgment just delivered by my learned brother, Kutigi, J.S.C., and I agree with it. I allow the appeal and the cross appeal. I abide by the consequential orders.

5

10

15

20

25

30

35