

**SUPREME COURT OF NIGERIA**  
7TH APRIL, 1995. SC.56/1991  
**CORAM:- UWAIS, I.L. KUTIGI, M.E. OGUNDARE,**  
**E.O. OGWUEGBU, U. MOHAMMED, JJSC.**

A. OBANOR & CO. LTD	..... APPELLANT
AND	
COOPERATIVE BANK LTD	..... RESPONDENT

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**APPEALS** - *Concurrent findings - Company Law - Rejection of appellant's case - That its director that signed a mortgage was mentally unsound - Whether Supreme Court will interfere.*

**COMPANY LAW** - *Liability for loan advanced to a company - Assuming the signatory to the mortgage had been removed as a director - But the loan paid into the company's account was used for its business - Whether the Company is liable.*

**EQUITY** - *Discretionary nature - Of all equitable remedies - Whether courts can resort to equitable remedies suo motu.*

**EQUITY** - *Company law - Where a company takes benefit from a loan paid into its account - It cannot deny liability in equity.*

**FACTS**

The defendant/respondent advanced a loan to the plaintiff/appellant which executed a mortgage agreement signed by its director Mr. J. A. Obanor. The plaintiff defaulted in repaying the loan and the defendant sought to sell the mortgaged property. The plaintiff then filed this action against the defendant seeking to stop the advertised sale of its mortgaged property. Plaintiff also sought to establish that the signatory to the mortgage was mentally unsound and had been removed as a director at the time he executed the mortgage. It claimed other reliefs, a declaration that the mortgage is of no effect and not binding on the plaintiff.

The defendant filed a counter-claim seeking an order of the trial court for the sale of the mortgaged property. The trial court dismissed the plaintiffs claim and granted the counter-claim. Plaintiffs appeal to the Court of Appeal was dismissed. Being dissatisfied, the plaintiff has further appealed to the Supreme Court to determine inter alia, whether the Court of

Appeal was right in upholding the trial court's judgment, and in invoking an equitable doctrine that was not placed before it.

**HELD** (Unanimously dismissing the appeal per lead judgment of **MOHAMMED JSC**)

***Appeals - Concurrent findings***

1. It is plain from the pleadings and evidence adduced that the case of the appellant hinged on the acceptance of the submission that J. A Obonor was mentally unsound when he negotiated and signed Exhibit "B". However since the two lower courts have both rejected the contention of the appellant that J. A Obonor was insane when he negotiated with the respondent and signed Exhibit "B" can I disturb such concurrent findings? Now, was there anything categorically established by the appellant's counsel in respect of this issue showing any of the decisions of the two lower courts, in this appeal, falling within the exception to the general rule which would invite the interference of this Court? The answer is definitely in the negative The appeal in respect of this issue has therefore failed (p. 771 H)

***Liability for loan advanced to a Company***

2. It is clear that the wording of Exhibit "R 1" is indicative of the fact that the appellant was aware of the loan of N250,000 00 and that the amount had been used in the running of the business of the appellant company. For the above reasons, even if the respondent has the knowledge (which has not been proved) that Mr. J A Obonor had been removed as a director, under the rule enunciated in the case of *Royal British Bank v. Turquand* (1843-1860) A E R Rep 435 at 437 to 438, the appellant would still be liable for the amount advanced to the company I do not see how the appellant can run away from the liability of a loan advanced to the company, paid into the company's account and used by the company to run its business. (p. 773 F)

***Whether courts can resort to equitable remedies suo motu***

3. It is elementary to write about the relationship of equity and common law. It is plain however to say that the characteristic common to all equitable remedies and which distinguishes them from common law remedies is their discretionary nature. Courts in this country can have resort to equitable principles and establish a remedy where strict adherence to common law rules would cause injustice and hardship to parties. The Court of Appeal applied the principles of equity after being satisfied that appellant

company had received and benefited from the N250,000.00 loan advanced by the respondents bank to the company following the agreement the respondent signed with Mr. J.A. Obanor. ( p. 774 D)

***When a Company cannot Deny liability in equity***

4. This appeal falls within the ratio decided in the above cases and in equity the appellant cannot deny taking benefit from a loan paid into the Company's account. (p. 775 F)

**NOTABLE POINT OF INTEREST**

**MOHAMMED JSC**

*1. Considering whether a ground is one of law or fact*

It is trite that labelling a ground as of law does not make it one. The ground may be examined to consider whether in fact it is a ground of law or of fact or of mixed law and fact. (p. 770 C)

**REPRESENTATION**

T. Esekody for the appellant

A. O. Egliobamien for the respondent.

**CASES REFERRED TO**

Admiora v. Ajufo (1988)1 NSCC 1005

Enang v. Adu (1981) II - 12SC 25 at 42

Alade v. Alemuloke (1988) 1 NWLR 207 at 212

Ntiaro v. Akpan (1914-23)3 N.L.R. 9 at page 10

Royal British Bank v. Turquand (1843-1860) A E R Rep 435 at 437 to 438

.Liggett (Liverpool) v. Barclays Bank (1927) A E R Rep 451 at 456

Trenco (Nigeria) Limited v. African Real Estate and Investment Co. Ltd.

Montaignac v. Shitta (1890) 15 App Cases 357

**LEAD JUDGMENT BY MUHAMMED JSC**

In this appeal, the appellant, J.A. Obanor and Co. Limited, as plaintiff at the Benin City High Court, filed an action claiming several declarations and an injunction against the respondent. In response, the respondent as the defendant before the trial High Court denied all the claims and filed a counter-claim against the appellant. The plaintiff's claim as per it's amended statement of claim is as follows:

*“(a) A declaration that the said Mr. J.A. Obanor ceased to be a Director of the plaintiff's company as from 14th July, 1976, and as such is*

*incompetent to create any obligation for and on behalf of the plaintiff's company with the defendant or any other company.*

*(b) A declaration that the plaintiff company limited in liability as a corporate body is not competent to enter into and could not enter into any contract transaction beyond its normal share capital with the defendant*

*B company.*

*(c) A declaration that the signatory, Mr. J.A. Obanor to the purported unstamped mortgage registered at the office of Lands Registry, Benin City, at No. 14 page 14 in Volume 425 between the plaintiff and the defendant was at the time of the purported agreement, incompetent to contract*  
*C on behalf of the plaintiff company.*

*(d) A declaration that the Mortgage purportedly made on 26th July 1974, executed by the said J.A. Obanor on behalf of the plaintiff in May, 1977 and upstamped to cover N250,000.00 (Two hundred and fifty thousand naira) and delivered for registration on 23rd May, 1977 and registered at No.14 page 14 in Volume 425 at the Office of the Land Registry, Benin City is false, null, void and of no effect whatsoever and is not binding*  
*D on the plaintiff.*

*(e) An order setting aside the said mortgage.*

*(f) A declaration of the court that the parcel of land situate and*  
*E lying at No.6 Dawson Road, Benin City on which resides the building of Continental Palace Hotel is the bona-fide property of Messrs J.A. Obanor and Company Limited.*

*(g) An order of injunction to restrain the defendant, its servants, agents or privies from carrying out or proceeding with the advertised sale of*  
*F the building of the Continental Palace Hotel, property of J.A. Obanor and Company Limited."*

The respondent, in a counter claim filed together with the statement of defence prayed for an order of the trial High Court for the sale of the lands. And buildings specified as per the particulars set forth hereto and  
 G all of which (properties) covered by legal mortgage dated 19th August, 1969 and registered at No. 10 at page 10 in volume 69; by legal mortgage dated 20th May, 1977 and registered at No.9 at page 9 in volume 425 and by legal mortgage dated 26th July, 1974 and registered at No. 34 at page  
 H 34 in volume 228 and No.14 at page 14 in volume 425 upstamped to cover N250,000.00 in order to harmonise excesses in the authorised overdraft. The appellant has failed to redeem the loans secured and the mortgaged properties are as follows:

*"A(i) Land and building situate and lying at No.20 Dawson Street (Sometime known as No.6 Samuel Ogbemudia Street or Dawson Street).*

*Benin City containing an area of 1377.78 square yards and*

*(ii) Land and building situate and lying at Uwa Street, Benin City containing an area of 3088.90 square yards of which properties were covered by legal mortgage dated 26th July, 1974 and registered as No.34 at page 34 in volume .228 at the Lands Registry, formerly kept at Ibadan but now in Benin City to secure an overdraft/loan of N40,000.00*

B

*B(i) Land and buildings situate and lying at ward 7/E New Benin, Benin City. ‘*

*(ii) Land and buildings situate and lying at Uwa Street, 1st East Circular, Ward 18/H, Benin City.*

*(iii) Land and buildings situate at Uwa Street containing an area C of 3058.90 square yards surrounded by a border coloured pink on the plan attached to a conveyance registered as No.52 at page 52 in volume 23 at the Lands Registry, Benin City.”*

Pleadings were ordered and delivered. At the close of the hearing the learned trial Judge, in a considered judgment, dismissed the claims of D the appellant and gave judgment to the respondent in respect of the counter-claim. Being dissatisfied with the decision of the High Court, the appellant went on appeal before the Court of Appeal. There again the appellant was not successful. The appeal was dismissed. Aggrieved by the said decision, the company with the leave of this court filed this appeal and supported it E with ten grounds of appeal. Four issues were formulated from those grounds for the determination of this appeal. The four issues are as follows:

*“(1) Whether the Court of Appeal was right in affirming the judgment of the learned trial Judge having regard to the state of the pleadings, the evidence led before the learned trial Judge and issues raised in the appeal? F*

*(2) Whether on the state of the pleadings, the evidence on the printed record and, the issues raised in the appeal, the Court of Appeal was right in holding that the appellant obtained benefit from the advance of N250,000.00 (Two hundred and Fifty thousand naira) made by the respondent to J.A. Obanor? G*

*(3) And if the answer to issue 2 is in the affirmative, was the Court of Appeal, in any event, right after holding that the respondent was not entitled to recover the sum advanced to J.A. Obanor, in invoking and applying the equitable doctrine enunciated in their Lordships’ judgment in the circumstance of this case when the issue was not placed before their H Lordships?*

*(4) If the answers to issues 2 and 3 are however, in the affirmative, is the justice of the case met by ordering the sale of the appellant’s properties?”*

In respondent's brief of argument, counsel for the respondent formulated only three issues for the determination of this appeal and these are:

*"1. Whether the Supreme Court can interfere with the two concurrent findings of facts by the trial court and the Court of Appeal.*

*2. Whether appellant did not benefit from the loan of N250,000.00 from respondent's bank*

*3. Having regard to the totality of the evidence and the finding of facts, was the Court of Appeal right in dismissing appellant's appeal?"*

Before I go through the submissions of the appellant, I find it pertinent to refer to a general submission made by Mr. Eghobamien, learned counsel for the respondent, in respect of grounds 1 to 9 which counsel says, although couched as grounds of law, are in fact grounds of fact or mixed law and fact. It is trite that labelling a ground as of law does not make it one. The ground may be examined to consider whether in fact it is a ground of law or of fact or of mixed law and fact. Mr. Eghobamien is not applying for those grounds to be struck out because as a matter of fact some of them were filed following an application which was granted by this court. What the learned counsel is urging is that since the grounds complained of facts or mixed law and fact and the two lower courts have made concurrent findings of fact on those grounds they ought to be dismissed because the appellant has failed to show that the findings of the two lower courts were perverse. I have looked at those grounds and I agree that only ground one is a ground of law. The rest are all grounds of fact or mixed law and fact. However, I will go through the submissions of the learned counsel for the appellant in respect of the four issues raised against all the grounds filed in support of this appeal and during the course of this judgment, I shall consider the above submission whenever I deal with the concurrent findings of fact made by the two lower courts on any of the issues raised for the determination of this appeal.

The core of the argument of the learned counsel for the appellant, Mr. Esekody, in respect of issue one is that the appellant is not bound by Exhibit "B" which was executed by Mr. J.A. Obanor after he had ceased to be a director of the appellant company by reason of (a) his mental illness and or (b) his removal as a director from the appellant company. Counsel argued that the respondent was informed of these facts and despite this knowledge of his incapacity to act on behalf of the appellant company, the respondent proceeded to advance him the sum of N250,000.00, executed a fresh mortgage deed and purportedly upstamped same as Exhibit "B". Mr Esekody further argued that the appellant pleaded that it-obtained no benefit from the advance.

It is pertinent to observe that the mental condition of Mr. J. A.

Obanor is relevant to the decision in respect of issue one. There are already two concurrent findings of fact on Mr. Obanor's mental condition. The learned trial Judge accepted the evidence of P.W.2 who was a Chief consultant Psychiatrist at Uselu Clinic, Benin City. Mr. J. A. Obanor was alleged to be a patient of P.W.2 and in his evidence the psychiatrist said:

*"I first examined him in 1974 but was examined in May, 1967. He B was admitted on 5th January, 1974 and discharged 18/1/74 and treated him with (E.C.T.). He was admitted on 26/10/67 and discharged 18/12/67. It was the trouble he had in 1967 that re-occurred in 1974. When he was discharged in January, 1974 he did not come back until 1976 when he was ill but not as severe as it was in 1974. He was treated and discharge in May, C 1977. He was not admitted then. Since 1977 May, Joshua Obanor has not showed up at the Uselu Hospital. I saw him again on 21/4/86 and at this time, he was now mentally stable. I will not take credit for his present condition after ten years of not seeing him. I would have recommended Joshua Obanor was free to go back to his duties when I discharged him in D January 1974 and we normally give them a period of two months or six months. I would have thought that when he was discharged, he could have gone back to his trading job. At the time he was brought in by one Gabriel Obanor."*

The learned trial Judge referred to this evidence and pointed out E that he accepted the view of the Psychiatrist that Mr. J. A. Obanor could have gone back to his normal duties when he was discharged in January, 1974. The learned trial judge said that he agreed with the psychiatrist's opinion because the loan of N40,000.00 which has brought about the present controversy was entered into between the plaintiff and the defen- F dant on 26th July, 1974 and that J.A. Obanor signed on behalf of the plaintiff company ..

The Court of Appeal, per Ejiwunmi, J.C.A., agreed with the learned trial Judge on this issue. The learned Justice said that, in his view, the findings of the learned trial Judge on the mental condition of Mr. J. A. G Obanor is unassailable upon the evidence before the court and continued: *"As I find no reason to disagree with the conclusion of the learned trial Judge with regard to the mental state of Mr. J. A. Obanor at all times material to this case, I also uphold his conclusion thereon."*

It is plain from the pleadings and evidence adduced that the case H of the appellant hinged on the acceptance of the submission that Mr. J. A. Obanor was mentally unsound when he negotiated and signed Exhibit "B". However since the two lower courts have both rejected the contention of the appellant that Mr. J. A. Obanor was insane when he negotiated with

the respondent and signed Exhibit “B” can I disturb such concurrent findings? I do not want to repeat what is the established practice, that this court will not interfere with concurrent findings of fact of two court below unless a miscarriage of justice or a perverse decision or improper exercise of judicial discretion has been established in the lower courts’ judgment:

B Okechukwu Adimora v. Nnanyelugo Ajufo and 2 others (1988) INS. CC 1005; (1988) 3 NWLR (Pt. 80) 1; Enang v. Adu (1981) 11 - 12 S.C. 25 at 42 and Alade v. Alemuloke (1988) 1 NWLR (Pt. 69) 207 at 212. An appellate court can also interfere with findings of fact by the lower court when there has been some violation of some principles of law or procedure: Ntiaro C v. Akpan (1914-22) 3 N.L.R 9 at page 10.

Now, was there anything categorically established by the appellant’s counsel in respect of this issue showing any of the decisions of the two lower courts, in this appeal, falling within the exception to the general rule which would invite the interference of this court? The answer is definitely in D the negative. The appeal in respect of this issue has therefore failed.

The question raised in issue 2 is whether on the state of the pleadings, the evidence on the printed record and the issues raised in appeal, the Court of Appeal was right in holding that the appellant obtained benefit from the advance of N250,000.00 signed by Mr. Mr. J. A. Obanor? It is E instructive to explain that Exhibit “B” was an agreement between J. A. Obanor and Company (Nigeria) Limited and Cooperative Bank Limited. Any payment made through this agreement would obviously go to the account of J. A. Obanor and Company Nigeria Limited who were the signatories to the agreement and not to Mr. J. A. Obanor as a person.

F The two lower courts, on this issue, referred to a communication between the appellant and the respondent over the indebtedness of the company in the two accounts it operated in the respondent’s bank. The letters were admitted in evidence as Exhibits “R and “R1”. Exhibit “R1” is the reply written by the appellant to Exhibit “R” and it was written on 27/7/83. G It is pertinent to point out that the respondent clearly explained the position of the appellants indebtedness in Exhibit “R” in the following manner:

“Mr. J. A. Obanor,  
Managing Director,  
Continental Palace Hotel Limited,  
H No.6, Dawson Road,  
Benin City.  
RE: J. A. Obanor - C/A. 26  
2. Continental Palace Hotel F/C 158

We draw your attention to your above mentioned accounts which have for



sometimes now been badly operated. It is prudent at this juncture to itemise your total indebtedness which are as follows;

(a) FIC 158 N35,909.80 Debit

(b) CIA 26 N328.189.90 Debit

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N364,099.71 Debit

B

In view of the poor position of the accounts and the apparent stand still of your business, we are forced to call in the total facility by demanding immediate settlement of the outstandings on the two accounts within 30 days from now. Kindly pay up within the ultimatum given as failure shall lead us to actions likely to embarrass you. Please treat this letter with all the seriousness it deserves. You are advised to co-operate.

Yours faithfully,

For: Co-operative Bank Limited.

(SGD)

J.O.Olaleye

Branch Manager.”

D

The two lower courts referred to this document in their respective judgments. The Court of Appeal pointed out that the tenor of the letter showed that the appellant company and its subsidiary were indebted to the total sum of N364,099. 71 to the respondent's bank. In the reply written by the appellant company in Exhibit “R1”, it admitted receiving Exhibit “R” and appealed for more facilities from the respondent for the running of the business of the appellant company. It is clear that the wording of Exhibit “R1” is indicative of the fact that the appellant was aware of the loan of N250,000.00 and that the amount had been used in the running of the business of the appellant company.

For the above reasons, even if the respondent had the knowledge (which has not been proved) that Mr. J. A. Obanor had been removed as a director, under the rule enunciated in the case of *Royal British Bank v. Turquand* (1843-1860) A.E.R Rep 435 at 437 to 438, the appellant would still be liable for the amount advanced to the company. The learned trial Judge applied the rule in *Royal British Bank v. Turquand* (supra). The rule is reproduced as follows:

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*“According to this rule, while persons dealing with a company are assumed to have read the public documents of the company and to have ascertained that the proposed transaction is not inconsistent therewith, they are not required to do more; they need not inquire into the regularity of the*

*internal proceedings - what Lord Hatherley called "the indoor management."*

I do not see how the appellant can run away from the liability of a loan advanced to the company, paid into the company's account and used by the company to run its business. The argument made in respect of issue B 2 is also not helpful to the appellant.

Issue 3 was formulated against the Court of Appeal's resort to equitable doctrine. The appellant raised the issue from ground ten and argued that the respondent did not plead facts and circumstances making the invocation of equitable principle in their favour. Counsel argued that for C the principle to apply it must be pleaded and proved that the appellant obtained benefit from the advance, and that by discharging appellant's liability the respondent should be placed in the position of appellant's creditor. I have already agreed with lower courts' finding that Mr. J. A. Obanor validly entered into a loan agreement with the respondent in which D N250,000.00 was advanced to J. A. Obanor and Company Limited. I have also accepted in this judgment that appellant company had benefited from the advance.

It is elementary to write about the relationship of equity and common law. It is plain however to say that the characteristic common to all E equitable remedies and which distinguishes them from common law remedies is their discretionary nature. Courts in this country can have resort to equitable principles and establish a remedy where strict adherence to common law rules would cause injustice and hardship to parties. The Court of Appeal applied the principles of equity after being satisfied that appellant F company had received and benefited from the N250,000.00 loan advanced by the respondents bank to the company following the agreement the respondent signed with Mr. J. A. Obanor. The learned Justice of the Court of Appeal, Ejiwunmi, J.C.A., who wrote the leading judgment supported his decision by reference to a very relevant English case to wit. Liggett (Liverpool) G v. Barclays Bank (1927) A.E.R. Rep. 451 at 456. Ejiwunmi, J.C.A., summarised the facts of that decision in the following manner:

*"In that case the facts revolved round the payment by the respondent Bank of certain cheques which were signed by someone who described herself as a director of the plaintiff company. It was found in that case that H the respondent Bank had notice that the persons who signed the cheques had not been properly appointed as a Director of the plaintiff company. In deciding whether the respondent Bank was entitled to succeed in its claim, in spite of the fact that the respondent Bank was found negligent by the payment of the sums of money represented on the various cheques pre-*

*sent to the respondent Bank, Wright J., at pages 457-458 said:-*

*“But the matter must now be decided in a court which take cognisance of principles of both law and equity, and the question now is whether the equitable principle does apply to the facts of this case. The equitable principle has been applied beyond question over and over again to cases where an agent without the authority of his principal has borrowed money on behalf of his principal. In those circumstances at common law the principal cannot be sued and cannot be made to repay the amount so borrowed, but in equity it has been held that to the extent that the amount so borrowed has been applied in payment of the debts of the principal, the quasi lender is entitled to recover to that extent from the quasi borrower.”* C

In *Trenco (Nigeria) Limited v. African Real Estate and Investment Co. Ltd. and Anor.* (1978) 4 S.C. 9, this court referred to the case of *Mantaignac v. Shitta* (1890) 15 App Cases 357 where it was decided that where an agent under Power of Attorney possessed implied authority to raise money by loan for the purpose of carrying on the business affairs entrusted to him, which authority under circumstances of emergency must be deemed to include power to borrow in exceptional terms outside the ordinary course of business, the lender was not bound to inquire whether in the particular case the emergency had arisen or not, and that he was entitled to recover from the principal if he lent to the agent bona fide and without notice that the agent was exceeding his mandate. Following the above decision, this court resorted to the principles of equity and held that the plaintiffs, on the evidence, made out a case in equity against the 1st defendant who cannot be heard to deny the transaction evidenced by Exhibit “I”. This appeal falls within the ratio decided in the above cases and in equity the appellant cannot deny taking benefit from a loan paid into company’s account. Issue 3 also fails. D

Issue 4 was made dependent on issues 2 and 3 and since the arguments in both issues have failed to make any impact on the judgment of the Court of Appeal, the argument in issue 4 cannot help the appellant in this appeal. E

In sum, this appeal has failed and it is dismissed. The judgment of the Court of Appeal wherein it upheld the judgment and order of the trial High Court is hereby affirmed. The appellant shall pay the respondent costs of this appeal assessed at N1,000.00 F

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### **UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed; J.S.C. I entirely agree that this appeal

has no merit. I accordingly dismiss it and uphold the decision of the Court of Appeal with N1,000.00 costs to the respondent.

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***KUTIGI JSC***

B            I have read in advance the judgment just delivered by my learned brother Mohammed J.S.C. I agree with the conclusion that the appeal fails. It is accordingly dismissed with N1,000.00 costs to the respondent.

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***OGUNDARE JSC***

C            I have had the advantage of the preview of the judgment of my learned brother Mohammed, J.S.C. just delivered dismissing the appeal. I too dismiss the appeal as I find it lacking in merit. I abide by the order for costs made in the lead judgment.

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***OGWUEGBU JSC***

              I have had the advantage of reading the judgment prepared by my learned brother Mohammed, J.S.C. I entirely agree with what he has said.  
E I have nothing to add. I will also dismiss the appeal and affirm the judgment of the Court of Appeal.

              I abide by the order as to costs made in the lead judgment.

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