

SUPREME COURT OF NIGERIA
29TH SEPTEMBER, 1995. SC. 170/1989
CORAM:- M.L. UWAI, A.B. WALI, M.E. OGUNDARE,
E.O. OGWUEGBU, U. MOHAMMED, S.U.
ONU, Y.O. ADIO, JJSC.

CHRISTIAN UDE & ANOTHER

(For themselves and on behalf of the
Ude Ono Family of Okwojo Ngwo of Udi Local
Government Area)

..... PLAINTIFFS/
APPELLANTS

AND

JOHN NWANGWU & 15 OTHERS

(For themselves and on behalf of Okwojo
Ngwo people of Udi Local Government Area)

..... DEFENDANTS/
RESPONDENTS

APPEALS - *Concurrent findings of fact - Whether circumstances for interference exist.*

ACTIONS - *Constitution of action - Where plaintiffs are members of the general community - That defended action in representative capacity - Whether plaintiff are also defendants - So as to complain that action was not properly constituted.*

CONSTITUTIONAL LAW - *Judgments - Three months limitation for the delivery of judgment - Whether breached.*

FACTS

The plaintiffs/appellants sued, on behalf of themselves and their particular family. The defendants/respondents are representatives of their general community, the Okwojo Ngwo community in Udi Local Government Area of Enugu State. The defendants obtained a formal order of court under Order 4, rule 3 of the High Court (Civil Procedure) Rules of Eastern Nigeria to defend in that representative capacity. The plaintiffs claimed that the land in question belongs to their particular family to the exclusion of the general community. The defendants on the other hand claimed that the land is a communal land.

The trial judge found that the land is communal land and dismissed the plaintiffs' claim. Aggrieved, the plaintiffs appealed to the Court of Appeal, Enugu which struck out their claim. They have now appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

“(a) Was the action properly constituted?

(b) Was the judgment of the trial court a nullity and if so was the Court of Appeal right in confirming the same?

(c) In view of the undisputed facts and circumstances of this case and the evidence properly before the trial court was the Court of Appeal right in dismissing the Plaintiffs/Appellants’ appeal?”

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

Constitution of action

1. Plaintiffs sued the Defendants as representing the Okwojo Ngwo people. The Defendants obtained a formal order of court under the Rules of Court to defend in that capacity. The Plaintiffs’ case is that the land belongs to their family exclusive of the community. The defence is that the land belongs to the community as a whole and not to any individual family. In such a case, leave was properly granted them to represent the interests of the community. The Plaintiffs cannot be part of the community being represented by the Defendants in the action, they have opted out by claiming an interest adverse to that of the community. (p. 1875 D)

Three months limitation for delivery of judgment

2. It is clear from the Notice of Appeal that judgment was delivered on 21/6/83. This date was well within 3 months of 29/3/83. There was, therefore, no breach of section 258(1) of the 1979 Constitution. The first part of Question (b) is answered in the negative. (p. 1876 B)

Concurrent findings of fact

3. There are concurrent findings of the two courts below against the Plaintiffs. These findings are adequately supported by the credible evidence adduced at the trial. The attitude of this court to such concurrent findings has been laid down in a long line of cases and that is, that this Court will not disturb such findings without any substantial error apparent on the record of proceedings or such findings are perverse. Plaintiffs have failed woefully to satisfy me that special circumstances exist in this case to justify my interfering with the findings of fact made by the two courts below. (p. 1876 C)

NOTABLE POINT OF INTEREST

OGWUEGBU JSC

1. In law no one can be a plaintiff and defendant at the same time

There is no principle by which a man can be at the same time plaintiff and defendant. There is also no such situation in the present proceedings. The Plaintiffs/Appellants by their own volition excluded themselves from Okwojo Ngwo community being represented by the Defendants. They cannot turn round to say that they are Plaintiffs and Defendants at the same time and in the same suit. This contention is not borne out by the pleadings and the evidence. (p. 1877 F)

CASES REFERRED TO

Ellis v. Kerr (1910) 1 Ch. 529, 537
 Chinwendu v. Mbamali (1980) 3-4 SC. 31 C
 Ibodo v. Enarofia (1980) 5-7 SC. 42
 Sobakin v. The State (1981) 5 SC 75
 Enang v. Adu (1981) 11-12 SC. 25
 Kale v. Coker (1982) 12SC. 252
 Fatoyinbo v. Williams (1956) SCNLR 274 D
 Otogbolu v. Okeluwa 91981) 6-7 S.C. 99
 Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718
 Akinsanya v. U.B.A. (1986) 4 NWLR (Part 35) 273
 Nwangu v. Okonkwo (1987) 3 NWLR (Part 60) 314 at 321

REPRESENTATION

A. Williams (Mrs.) for the Appellants
 C.N. Oguagha for the Respondents

STATUTES AND RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, s. 258 (1)
 High Court (Civil Procedure) Rules of former Eastern Nigeria 0. 4 r. 3

LEAD JUDGMENT BY OGUNDARE JSC

The Plaintiffs (who are appellants herein) sued the Defendants (now 4 Respondents) claiming, as per paragraph 20 of their Amended Statement of Claim:-

“1. Declaration of Title to a customary right of occupancy to all that piece or parcel of land shown on plan No. (sic) situate at Okwojo Ngwo in Udi Local Government Area.

2. N500 (five hundred naira) being general damages for trespass committed by the defendants on the land between 30th May 1978 and 10 June, 1978.

3. A perpetual injunction restraining the defendants, their serv-

ants, agents and or privies from entering the land in dispute or in any manner whatsoever interfering with the said land in dispute. “

Both parties are members of the Okwojo Ngwo community. The Plaintiffs claim the land in dispute as belonging exclusively to their family, Udr Ono Family whom they represent in the action. The Defendants on the other hand, B who represent the community, claim that the land is communal land.

Pleadings having been filed, exchanged and amended, the action proceeded to trial. After addresses of counsel for the parties, the learned trial judge found that the land is communal land and dismissed Plaintiffs' claims. The Plaintiffs appealed unsuccessfully to the Court of Appeal and have further, with leave, appealed to this Court upon five original and one additional grounds of appeal. In their brief of argument, the Plaintiffs set out the following questions:-

“(a) Was the action properly constituted?

(b) Was the judgment of the trial court a nullity and if so was the D Court of Appeal right in confirming the same?

(c) In view of the undisputed facts and circumstances of this case and the evidence properly before the trial court was the Court of Appeal right in dismissing the Plaintiffs/Appellants' appeal?”

Question (a)

E The Plaintiffs sued in a representative capacity “for themselves for and on behalf of the Ude Ono Family of Okwojo Ngwo of Udi Local Government Area.” They sued the Defendants also in a representative capacity “for themselves for and on behalf of Okwojo Ngwo people of Udi Local Government Area.” In their Amended Statement of Claim, Plaintiffs pleaded *inter alia* F as follows:-

“1. The Plaintiffs come from and are natives of Okwojo Ngwo in Udi Local Government Area and take this action for themselves and for and on behalf of Udo Onoh Family of Okwojo Ngwo community of Udi Local Government Area.

G *2. The defendants come from various other families of Okwojo Ngwo and are sued for themselves and for and on behalf of those various families of Okwojo Ngwo community. “*

In paragraphs 1 and 2 of their Amended Statement of Defence the Defendants pleaded thus:-

H *“1. The Defendants admit that the Plaintiffs come from and are natives of Okwojo, Ngwo, but deny the rest of paragraph 1 of the Amended Statement of Claim.*

2. The defendants admit paragraph 2 of the Amended Statement of Claim. “

In the course of the proceedings the Defendants moved the trial court ex parte under Order IV rule 3 High Court Rules for leave

for Okwojo community to defend the above case in a representative capacity (by the defendants on record defending the above case for themselves and for and on behalf of Okwojo community”

The application was granted as prayed.

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The Plaintiffs now complain in the appeal before us that the action was not properly constituted in that they being members of the Okwojo community are equally being represented by the Defendants thus making them Plaintiffs and Defendants at the same time in the same suit. It is contended that a party cannot be both Plaintiff and Defendant in the same time. C Ellis v. C Kerr (1910) 1 Ch. 529, 537 is cited in support. It is further submitted that the constitution of a case is fundamental to an adjudication and where a case is improperly constituted it ought to be struck out. This court is urged to allow the appeal on this ground and strike out the case.

I find no merit in Plaintiffs’ arguments. Plaintiffs sued the Defendants D as representing the Okwojo Ngwo people. The Defendants obtained a formal order of court under the Rules of Court to defend in that capacity. Order 4 rule 3 of the High Court (Civil Procedure) Rules of Eastern Nigeria under which the Defendants moved the court provided.-

“3. *Where more persons than one have the same interest in one suit, one or E more of such persons may, with the approval of the court, be authorized by the other persons interested to sue or to defend in such suit, for the benefit of or on behalf of all parties so interested.* “

(underlining are mine.)

The Plaintiffs’ case is that the land belongs to their family exclusive F of the community. The defence is that the land belongs to the community as a whole and not to any individual family. In such a case, leave was properly granted them to represent the interests of the community. The Plaintiffs cannot be part of the community being represented by the Defendants in the action, they have opted out by claiming an interest adverse to that of the G community.

I answer Question (b) in the affirmative.

Question (a):

Final addresses before the trial court concluded on 29/3/83. There is some confusion in the record as to what date judgment was delivered. The H heading of the judgment shows it was delivered on 22nd July, 1993. But the Court note as to when counsel were heard on costs shows that this was on 2116/83. Whatever doubt there was as to the date judgment was delivered by the trial court is however laid to rest by the Plaintiffs’ Notice of Appeal which

reads:-

“TAKE NOTICE that the Plaintiffs in the above case being dissatisfied with the judgment of the Anambra State High Court sitting at Enugu delivered by His Lordship Mr. Justice J.N.M. Onyechi on 21st day of June, 1983 doth hereby appeal to the Federal Court of Appeal”

B (underlining is mine)

When these salient facts were, pointed out to learned counsel for the Plaintiffs she did not pursue the issue but left it to the court.

It is clear from the Notice of Appeal that judgment was delivered on 21/ 6/83. This date was well within 3 months of 29/3/83. There was, there fore, C no breach of section 258(1) of the 1979 Constitution. The first part of Question (b) is answered in the negative.

Question (c):

There are concurrent findings of the two courts below against the Plain tiffs. These findings are adequately supported by the credible evidence D adduced at the trial. The attitude of this court to such concurrent finding, has been laid down in a long line of cases and that is, that this Court will not disturb such findings without any substantial error apparent on the record of proceedings or such findings are perverse - see: Chinwendu v. Mbamali (1980) 3-4 S.C. 31; Ibodo v. Enarofia (1980) 5 -7 S.C. 42; Sobakin v. The State (1981) 5 E S.C 75, Enang v. Adu (1981) 11 - 12 S.C. 25; Kale v. Cokei (1982) 12 S.C. 252. Plaintiffs have failed woefully to satisfy me that special circumstances exist in this case to justify my interferring with the findings of fact made by the two courts below.

I answer this question in the affirmative.

F In the net result, I hold that this appeal is completely devoid of any merit. I hereby dismiss it and affirm the judgment of the court below. I award NI,000.OO costs of this appeal to the Defendants/Respondents.

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UWAISJSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with it. Accordingly, I hereby dismiss the appeal with NI ,000 costs to the Responde

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WALI JSC

I have had a preview of the lead judgment of my learned brother Ogundare, J.S.C. and I agree with the reasons contained therein for dismissing the appeal. I adopt the same as mine, dismiss the appeal and affirm the

judgment of the Court of Appeal with NI, 000 costs to the Respondents.

OGWUEGBU JSC

I had a preview of the judgment just delivered by my learned brother, Ogundare, J.S.C. I agree with him that the appeal is without merit. B

The Appellants are contending in their first issue for determination that the action was not properly constituted because they cannot be plaintiffs and the defendants in the same suit. The Plaintiffs/Appellants instituted the action - (Suit No. E/176/78) in the Enugu Judicial Division of the High Court of the then Anambra State claiming various reliefs. George Ono Ude I and Chris- C
tian Ude were shown at page 5 of the record as suing *“For themselves for and on behalf of the Ude Onoh Family of Okwojo Ngwo of Udi Local Government Area.”*

*John Nwangwu and 15 others were also shown to be sued “For themselves for and on behalf of Okwojo Ngwo people of Udi Local Govern- D
ment. Area.”*

It is therefore clear that the Plaintiffs/Appellants sued the defend-
ants/ respondents in a representative capacity. Paragraphs 1 and 2 of the Amended Statement of Claim confirm the capacities in which the action was instituted. Having been sued for and on behalf of Okwojo Ngwo people, the E
defendants/appellants on record pursuant to Order IV rule 3 of the High Court Rules, Cap. 61, Laws of the former Eastern Nigeria, obtained the leave of the court for Okwojo community to defend the case in a representative capacity. The parties and the court were not in any doubt as to who were the plaintiffs and the defendants in the suit. F

There is no principle by which a man can be at the same time plaintiff and defendant. See *Ellis v. Kerr* (1910) 1 Ch. 529. There is also no such situa-
tion in the present proceedings. The Plaintiffs/Appellants by their own voli-
tion excluded themselves from Okwojo Ngwo community being represented
by the Defendants. They cannot turn round to say that they are Plaintiffs and G
Defendants at the same time and in the same suit. This contention is not borne
out by the pleadings and the evidence.

On issue (b), there was no breach of section 258(1) of the Constitu-
tion of the Federal Republic of Nigeria, 1979 as amended. The final addresses
of counsel were taken on 29/3/83 and the learned trial judge delivered his H
judgment on 21/6/83 which was within three months after the conclusion of
evidence and final addresses. The learned trial judge, Onyechi, J. at page 159
of the record, signed the judgment on 21/6/83 after reading the same and
hearing both counsel on costs.

At page 114 lines 1 - 3 of the record before the judgment started, the Clerk of Court recorded as follows:-

"Resumed At Enugu Before His Lordship, Hon. Justice J.N.M. 011\1-1" On Friday 2nd day of July, 1983."

This was obviously a mistake. The learned appellants' counsel who filed the notice of appeal on 5/9/83 stated in the notice of appeal (pages 154-155 of the record), that he was appealing against the judgment deliver. 0 on 21st June, 1983.

Again at page 157 of the record where the appellants gave security for the costs of the appeal, it was stated in lines 18 - 19, that the judgment was delivered by the trial court on 21/6/83.

From all these, there is no doubt whatsoever that the judgment was delivered on 21/6/83 which was within three months. In raising these issues, the appellants were trying anything that offers the least hope.

This appeal is a worthless and wasteful exercise from whatever angle one looks at it. I too dismiss it and affirm the judgment of the court below I make the same order for costs as contained in the judgment of my learned brother Ogundare, J.S.C.

MOHAMMED JSC

I agree entirely with the judgment of my learned brother, Ogundare, JSC., that this appeal has failed. For the reasons given in the lead judgment which I adopt as mine, I too hereby dismiss the appeal. I make same order as to costs.

ONUJSC

The rationale for empanelling the full court in the instant case to wit: the determination of the Constitutional question of whether the judgment of the trial court was a nullity for being delivered outside three months and if so whether the Court of Appeal was right in confirming the same vide Section 258(1) of the Constitution of the Federal Republic of Nigeria, 1979, having collapsed yielding place to an unequivocal answer in the negative in the first plank and positive in the second plank of issue (b), thus leading to both being resolved against the appellants - issues (c) and (d) which overlap grounds 8 and .7 respectively, having been struck out by us at the oral hearing of the appeal on the 3rd of July, 1995 - I see no merit in this appeal which is the culmination of concurrent findings of facts by the two lower courts. The Appellants not having demonstrated that these decisions are erroneous either in law or procedure or constitute perverse findings, I will not disturb them

in the absence of any special circumstances. See Fatoyinbo y, Williams (1956) SC NLR, 274; Ootobolu v. Okeluwa (1981) 6 - 7 S.C. 99; Nwadike v. Ibekwe (1987) 4 NWLR (Part. 67) 718; Akinsanya v. U.B.A. (1986) 4 NWLR (Part 35) 273 and Nwangwu v. Okonkwo (1987) 3 tNWLR (Part 60) 314 at 321.

For these and the fuller reasons contained in the judgment of my learned brother Ogundare, JSC, a preview of which I had before now, I too, will dismiss the appeal and make the same consequential orders as contained in the said judgment. B

ADIOJSC

I have had the opportunity of reading, in draft, the judgment just read by learned brother, Ogundare, J.S.C., and I agree with him that the appeal does not succeed. Accordingly, I dismiss it and I abide by the order to costs. D

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