

**SUPREME COURT OF NIGERIA**  
19TH SEPTEMBER 1995. SC. 15/1989  
**CORAM:- S.M.A. BELGORE, I.L. KUTIGI,**  
**M.E. OGUNDARE U. MOHAMMED, Y.O. ADIO, JJSC**

HALADU DADI	..... APPELLANT
AND	
IDI GARBA	..... RESPONDENT

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***APPEALS*** - Error of lower court - That did not occasion miscarriage of justice - Will not lead to reversal of judgment.

***APPEALS*** - Collapse of Appeal - Main ground of appellant's case - Failure to establish it - Leads to collapse of the appeal.

***CUSTOMARY LAW*** - Joinder of parties - And their capacity to sue - Improper application thereof - Whether fatal to customary court proceedings.

***CUSTOMARY LAW*** - Laches and acquiescence - Raising an issue thereto - Will only be effective - Where applicable customary law recognizes same.

***JUDGMENTS*** - Court of Appeal - Provisions of s. 258(2)(3) of 1979 Constitution - Verdict of absent justice can be delivered by another justice.

***LAND LAW*** - Ownership - Where proved by defendant - Plaintiffs claim from a party that has no title - Cannot succeed.

**FACTS**

The appellant sued the respondent claiming ownership of a house which belonged to the respondent's father incontrovertibly. An appeal went from the trial Grade 1 Civil Area Court to the Upper Area Court, Pankshin, which court remitted the case back to the trial court citing procedural irregularities. The Upper Area Court noted that one Jibir Musa should have been joined as a party in the suit, as he was the one who sold the property to the appellant. The retrial was done without Jibir Musa being joined as a party. He, however, testified for the defence. The appellant led evidence in show that the house belonged to his grandfather and his father and now belongs to his family. Jibir Musa sought to lead evidence to the contrary, but the trial court discountenanced his evidence. The trial civil area court then found in favour of the respondent.

On appeal, the Customary Court of Appeal, Plateau State reversed findings of the trial court. Respondent appealed to the Court of Appeal, Jos, which restored the ruling of the trial court. The appellant has now appealed to the Supreme Court raising six issues for determination.

***ISSUES FOR DETERMINATION***

*“(a) Whether the Court of Appeal, Jos was right in confirming the judgment of the trial court when the said judgment was a nullity for lack of jurisdiction in that:-*

*(i) Jibir Musa was not joined as a party to the proceedings as ordered and/or*

*(ii) The action was constituted and prosecuted in the Respondent’s personal capacity.*

*(b) Whether the judgment of the Court of Appeal, Jos, dated 9th December, 1987 was not a nullity itself for want of jurisdiction in that:- .*

*(i) Two instead of the three Justices of the Court of Appeals sat to deliver the said judgment. Etc see p. 1760*

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

***Joinder of parties***

1. Joinder of parties or their capacity to sue which, if not properly applied in a common law action, may be a factor to be considered in an appeal are not necessary elements in the proceedings before a customary court. Except in such customary courts with laid down and written procedure, for example, Islamic Law in Area Courts, there are no rules governing proceedings before customary courts. So long as those courts act in good faith, listen fairly to both sides and give fair opportunity to the parties adequately to present their case and to correct or contradict any relevant statement prejudicial to their view, they cannot be accused of offending against till, rules of natural justice. What is essential in examining the trials in a customary court is to look into the entire evidence in the proceedings in order to discover the precise nature and subject matter in controversy between two parties. The form of wording of the claim and the parties capacity should not be a germane issue for the impeachment of a customary court’s judgment. (p. 1761 A)

***Judgments - Court of Appeal***

2. Mr. Garba Paul, learned counsel for the respondent referred to the complaint of Mr. Amen, SAN., in respect of issue (b) and quite correctly, pointed to the provisions of section 258(2) and (3) of 1979 Constitution. I think if

Mr. Amen had bothered to read the Law Reports he would have seen many instances where after hearing of an appeal if a justice is unavoidably absent, his opinion would be pronounced or read by another justice, as is provided under s. 258(2) of 1979 Constitution. (p. 1761 E)

***Ownership - Where proved by the defendant***

3. It is evidently clear that the house in dispute belonged to the father of the indent. All the witnesses for the respondent gave direct evidence on the fact that the father of the respondent permitted the two District Heads lived in the house to stay therein. The appellant tried to prove that Jibir Musa sold to him the house in dispute, but the trial area court after careful analysis of the evidence before it found that the sale had not been proved. The Court of Appeal observed that even if the sale was proved it could not be valid because Jibir Musa did not claim to be the original owner of the house. Since Jibir Musa had no title to the house he could not pass any title to the appellant - *Nemo dat quod non habet*. (p. 1761 G)

***Collapse of appeal***

4. The argument of counsel on this issue is nothing but chasing red herrings, because the main ground of appellant's case is based on ownership through sale. Once he could not establish that the sale of the disputed house to him has been proved, his appeal, in my view has collapsed. (p. 1762 C)

***Error of Lower Court***

5. It is correct that the learned justice of the Court of Appeal had got mixed tracing the chain of appeals from the Area Court to the Customary Court of Appeal of Plateau State. Being conscious of that error I endeavour to put the record straight at the beginning of this judgment. The error of the Court of Appeal is not material at all to be made an issue for the prosecution of this appeal. In any event it did not occasion any miscarriage of justice. The Court of Appeal dealt with the appeal from the Customary Court of Appeal and not the Upper Area Court. (p. 1762 D)

***Laches and acquiescence***

6. In the last issue learned counsel for the appellant tried to reopen the issue of sale which had not been proved before the trial Area Court. The equitable doctrine of laches and acquiescence, which has been introduced in this issue, could only apply if there is proof that under native law and custom which is binding between the parties, delay for a particular period of time sue will affect the right of the plaintiff to claim for the recovery of

the disputed property. The appellant has failed to supply any evidence in proof of the existence of such customary law or procedure. (p. 1762 F)

### **REPRESENTATION**

Dr. S.S. Ameh SAN, M.U. Okerefor, with him for the appellant  
 B B G.S. Pwul, E.S. Munlang with him for the respondent

### **CASES REFERRED TO**

Chief Ajagunjeun v. Sabo Oso of Yeku Village (1977) N.S.C.C. 275 at 282  
 Attorney-General of Imo State v. Attorney-General of Rivers State (1983)  
 C N.S.C.C. 370 at 377  
 Thomas v. Preston Holder (1946) 12 WACA, 78

### **STATUTE REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1979; s. 258 (2)(3)  
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### **LEAD JUDGMENT BY MOHAMMED JSC**

On 25th October, 1982, the Upper Area Court Pankshin, Plateau State, sitting at Pankshin, delivered a judgment in respect of an appeal brought before it by Haladu Dadi, the appellant in this appeal, against the  
 E decision of Grade I, Civil Area Court, Kanam Dengi. The subject matter in dispute was a house which Idi Garba, the respondent, in this appeal, claimed to belong to his late father. Idi Garba sued Haladu Dadi for the recovery of the said house.

In its judgment, the Upper Area Court Pankshin found that the  
 F lower court did not consider some vital issues during the proceedings before it. It suggested that one Jibir Musa who was alleged to have sold the house to the appellant be joined as a party in the suit. Thereafter the Upper Area Court ordered for a retrial of the action before the same court.

The retrial was concluded without Jibir Musa being made a party.  
 G He was however called as a witness for the defence. The evidence before the trial Civil Area Court, in a nutshell is in the following narrative:

The house in dispute was originally the property of the grandfather of the respondent. On the grandfather's death, his father, Garba Mai-Goge, took possession of the house. When Kanam Local Government sent one  
 H Shehu as the first District Head of Kam, he was accommodated in the house of the respondent's father. Respondent's father lived with the new District Head in the same house for nine years.

After Shehu's death, another District Head, Ubandoma Shagayya succeeded him. He too, lived in the disputed house until his death. The most

vital evidence for the respondent in this case was given by Sule Masoyi who told the trial court that he and the respondent's father lived in the same house with both the first District Head, Shehu, and Ubandoma Shagayya. It was during Shagayya's reign that the local Community built a "Zaure" (a round hut at the frontage of the house) for their chief. The people of Gagai, as was customary in those days, also through communal effort, built three rooms for the use of their District Head. All these were done in the presence and during the life-time of the father of the respondent. B

When Ubandoma Shagayya died, the appellant was made the new District Head. He did not take up residence in the house. He however demolished the three rooms built by Shagayya and erected six rooms in their place. The appellant thereafter gave one Banna Gar permission to stay in the house for one year. When Banna Gar left, the appellant sold the house away. C

The defence of the appellant was that he bought the house from one Jibir Musa who was the son of Ubandoma Shagayya and that the respondent witnessed and signed the purchase agreement. What is most damaging evidence against the appellant was when Jibir Musa gave evidence for the defence and said: D

*"After my father's death, I called the plaintiff and gave him back his father's house since it was given to my father to stay free and since both his father and my father have died, I don't need to keep the house, after sometimes the plaintiff came and told me that the defendant has packed into the house and demolished the Zaure (front room) after he (the defendant) was made the District Head of the area without his plaintiff (sic) consent..."* E

Later at the end of the proceedings, in a reply to a statement made by the appellant on the evidence of sale, Jibir Musa now said: F

*"..... but what I know is that the house actually belongs to the plaintiff's father but the plaintiff's father sold the house to my father Shagayya though nobody witness (sic) the purchase between my father and the plaintiff's father because they were friends....."* The trial Civil Area Court, quite rightly, rejected Jibir's testimony and, in a considered judgment, found in favour of the respondent. It therefore declared that the disputed house belonged to late Garba, the father of the respondent, and that only late Garba's children have the right to claim possession of it. G

The appellant appealed against the Area Court's decision to the Customary Court of Appeal, Plateau State. The customary Court after considering the grounds filed in support of the appeal, reversed the decision of the trial area court and declared ownership of the house in dispute in favour of the appellant. H

Dissatisfied with that decision, the respondent went before the

Court of Appeal, Jos Division, on three grounds of appeal. In a considered judgment the Court of Appeal, whose lead judgment was written by Akanbi, J.C.A., (as he then was), reversed the decision of the Customary Court of Appeal and restored the judgment of the trial Civil Area Court, Kanam Dengi. The Court of Appeal ordered that the judgment of the trial Area Court be restored to the effect that the house in dispute being originally the property of the appellant's deceased father, Garba, reverts to the appellant and the other heirs of the late Garba.

Aggrieved by the decision of the Court of Appeal, the appellant filed six grounds of appeal and, with leave of this court, his counsel added two more grounds. The following six issues have been raised by Dr. S. Ameh, learned Senior Advocate, for the determination of this appeal.

*"(a) Whether the Court of Appeal, Jos was right in confirming the judgment of the trial court when the said judgment was a nullity for lack of jurisdiction in that:*

*(i) Jibrin Musa was not joined as a party to the proceedings as ordered and/or*

*(ii) The action was constituted and prosecuted in the respondent's personal capacity.*

*(b) Whether the judgment of the Court of Appeal, Jos dated 9th December, 1987 was not a nullity itself for want of jurisdiction in that:*

*(i) Two instead of the three justices of the Court of Appeal sat to deliver the said judgment and/or*

*(ii) The Justices of the court below were not learned in customary law; and*

*(iii) The judgment is inchoate having not finally determined the rights of the parties hereto.*

*(c) Whether on the state of evidence adduced at the trial, the court below was right in reversing the judgment of the Plateau State Customary Court of Appeal on the facts?*

*(d) Whether the court below was right in law in casting the burden proving his title on the appellant who was the defendant-in-possession at the trial?*

*(e) Whether the vision of the court below was not beclouded when it stated that the appellant was still not satisfied and appealed against the judgment of the Upper Area Court, Pankshin when nothing of that nature ever happened?*

*(f) Whether in the circumstances of the case, it is just and equitable to deprive the appellant the protection of his interest in the property in dispute?"*

Learned counsel for the respondent adopted the issues formulated above and gave his reasons why the appeal ought to be dismissed.

In the course of the hearing of this appeal it became quite clear

that Mr. Ameh, SAN, had difficulties in looking for authorities in support of his submissions on issues (a) and (b) joinder of parties or their capacity to sue which, if not properly applied in a common law action, may be a factor to be considered in an appeal are not necessary elements in the proceedings before a customary court. Except in such customary courts with laid down and written procedure, for example, Islamic law in Area Courts, there are no rules governing proceedings before customary courts. So long as those courts act in good faith, listen fairly to both sides and give fair opportunity to the parties adequately to present their case and to correct or contradict any relevant statement prejudicial to their view, they cannot be accused of offending against the rules of natural justice. The Lieutenant-Governor, Eastern Region *ex parte* Okafor Chiaghana for the people of Amanuke (1957) SCNLR 98; (1957) FSC. 46-49. Also Chief Karimu Ajagunjeun & 5 Ors. v. Sobo Oshoof Yeku Village & 13 others (1977) NSCC 275 at 282; (1977) 5 SC 89.

What is essential in examining the trials in a customary court is to look into the entire evidence in the proceedings in order to discover the precise nature and subject matter in controversy between the parties. The form of wording of the claim and the parties' capacity should not be a germane issue for the impeachment of a customary court's judgment. Mr. Garba Paul, learned counsel for the respondent referred to the complaint of Mr. Ameh, S.A.N., in respect of issue (b) and quite correctly, pointed to the provisions of section 258(2) and (3) of 1979 Constitution. I think if Mr. Ameh had bothered to read the Law Reports he would have seen many instances where after hearing of an appeal if a justice is unavoidably absent, his opinion would be pronounced or read by another justice, as is provided under S. 258(2) of 1979 Constitution. See *Attorney-General of Imo State v. Attorney-General of Rivers State* (1983) 2 SCNLR 108; (1983) N.S.C.C. 370 at 377. Mr. Ameh, later in the hearing found the two other sub-issues in issue (b) as unmeritorious and submitted that he had withdrawn the issues.

The argument of learned counsel for the appellant on issue (c) is equally of no substance. It is evidently clear that the house in dispute belonged to the father of the respondent. All the witnesses for the respondent gave direct evidence on the fact that the father of the respondent permitted the two districts heads who lived in the house to stay therein. The appellant tried to prove that Jibir Musa sold to him the house in dispute, but the trial area court after careful analysis of the evidence before it found that the sale had not been proved. In the proceedings, Jibir Musa admitted that he had returned the disputed house to the respondent after the death of Ubandoma Shagayya (Jibir's father). Although he tried to retract from this evidence,

the court did not believe him. The Court of Appeal observed that even if the sale was proved it could not be valid because Jibir Musa did not claim to be the original owner of the house. Since Jibir Musa had no title to the house he could not pass any title to the appellant - nemo dat quod non habet.

I now turn to issue (d). What the learned counsel submitted here had been answered in my opinion above. I need not repeat that Jibir Musa could not sell the property he did not own. The Court of Appeal did not say that the respondent, in this appeal was the original owner of the house in dispute. The court mentioned original owner in reference to the authority cited in the case of Mosalewa Thomas v. Preston Holder (1946) 12 WACA, 78. Further down in the judgment of the Court of Appeal, Akanbi J.C.A, (as he then was) said:

*"As I noted before, it was common grounds that the appellant's father was the original owner of the property in dispute."*

The argument of counsel on this issue is nothing but chasing red herrings, because the main ground of appellant's case is based on ownership through sale. Once he could not establish that the sale of the disputed house to him has been proved, his appeal, in my view has collapsed.

It is correct that the learned Justice of the Court of Appeal had got mixed up in tracing the chain of appeals from the Area Court to the Customary Court of Appeal of Plateau State, Being conscious of that error I endeavoured to put the record straight at the beginning of this judgment. I have explained, above, that after the Upper Area Court had ordered for a retrial the Area Court retried the action.

After its judgment the appellant, who lost at the Area Court, appealed to the Customary Court of Appeal. The error of the Court of Appeal is not material at all to be made an issue for the prosecution of this appeal. In any event it did not occasion any miscarriage of justice. The Court of Appeal dealt with the appeal from the Customary Court of Appeal and not the Upper Area Court.

In the last issue learned counsel for the appellant tried to reopen the issue of sale which had not been proved before the trial Area Court. The equitable doctrine of laches and acquiescence, which has been introduced in this issue, could only apply if there is proof that under native law and custom, which is binding between the parties, delay for a particular period of time to sue will affect the right of the plaintiff to claim for the recovery of the disputed property. See Taiwo & Anor v. Taiwo & Anor. (1958) SCNLR 244; ( 1958) 3 F.S.C. 80 at 82. The appellant has failed to supply any evidence in proof of the existence of such a customary law or procedure.

In conclusion, this appeal has failed and it is dismissed. The judgment of the Court of Appeal in which it restored the judgment of the Civil



Area Court, Kanam Dengi and allowed the appeal from the Plateau Customary Court of Appeal is hereby affirmed. The respondent is entitled to the costs of this appeal which I assess at N 1,000.00.

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**BELGORE JSC**

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I read in advance the judgment of my learned brother Mohammed J.S.C. with which I am in full agreement. For the reasons advanced in the said judgment which I adopt as mine I also dismiss this appeal and make same order as costs.

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C

**KUTIGI JSC**

I read before now the judgment of my learned brother Mohammed, J.S.C. I agree with him that the appeal lacks merit, and ought to be dismissed. It is hereby dismissed with N 1,000.00 costs to the respondents.

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**OGUNDARE JSC**

I have had the advantage of reading in draft the judgment of my learned brother Mohammed, J.S.C. just delivered. I agree with him that this appeal is totally lacking in merit.

The argument that the retrial at the Area Court as ordered by the Upper Area Court was a nullity in that the defendant's vendor, Jibrin Musa was not joined as a party is based on a misconception of the decision of the Upper Area Court. That court had in its judgment of 25/10/82 observed F and ordered:

*"With regards to the evidences and what the appellant stated before the lower court that he bought the house from Jibirin Musa at the cost of N70.00 and paid, the right thing was the lower court to call Jibirin Musa to defend himself as a party in the case as provided in order 23. But in this case, we found that Jibirin Musa was called as a witness to the plaintiff and called to say the truth how the appellant/defendant happened to be occupying (sic) the house. We also understood that the appellant was occupying the house for some years and made some new building as extension to the house while the respondent/plaintiff and Jibirin Musa were present and did H not protest until now. So it is proper for the lower court to investigate the case properly and know who was the owner of the house and how the appellant happened to come about (Own) (sic) the house either by sale of any how through evidences. This could be done if Jibirin Musa is made to*

*be a party to the case hence the appellant claimed that he bought the house from Jibirin Musa, with regards to the above abnormalities that head (sic) of injustice in the case we therefore set aside the judgment of the lower court Dengi and ordered for a retrial in the same court."*

That Jubrin Musa should have been made a party was only an observation of that court; it did not make any order that Musa be joined as a party at the retrial.

On plaintiff's capacity to sue, it is now well settled that any member of a family has capacity to sue to protect family property. See: Ugwu v. Agbo (1977) 10 S.C. 27.40. That is all plaintiff did in these proceedings. It is not denied that he is a son to Garba, the original owner of the house in dispute. I hold that the action was properly constituted.

Learned leading counsel for the defendant rightly withdrew Issue 2. I need say no more on it. The ground of appeal on which the issue is based is hereby struck out.

I am satisfied that the court below correctly evaluated the evidence adduced at the trial and came to the right decision in setting aside the decision of the Customary Court of Appeal of Plateau State and upholding the decision of the trial Kanem Area Court. As rightly observed by the court below the Customary Court of Appeal had no justification in disturbing the findings of fact of the trial court. I find no substance in the other issues argued in the appellant's Brief.

For the foregoing reasons and the fuller reasons given in the judgment of my learned brother, Mohammed, J.S.C. I dismiss this appeal with costs as assessed by him.

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### **ADIO JSC**

I have had the advantage of reading, in advance, the judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree that this appeal has failed. I dismiss it and I abide by the consequential orders, including the order for costs.

H