

SUPREME COURT OF NIGERIA
 26TH SEPTEMBER 1995. SC. 164/1989
CORAM:- M. L. UWAI, A. B. WALI, I. L. KUTIGI
U. MOHAMMED, A. I. IGUH. JJSC.

SPASCO VEHICLE AND PLANT HIRE CO. LTD.PLAINTIFF/APPELLANT
AND	
ALRAINE (NIGERIA) LIMITEDDEFENDANTRESPONDENT

APPEALS - *Finding of Court of Appeal - Where supported by ample evidence - Supreme Court will not disturb it.*

APPEALS - *Mistake of lower court - Where no miscarriage of justice is occasioned thereby - Supreme Court will not interfere.*

CONTRACTS - *Consideration for sale of goods - Whether inadequate - To amount to strong evidence of fraud.*

CONTRACTS - *Irregularity and illegality - Alleged in respect of sale of goods - Where not pleaded - Evidence thereon goes to no issue.*

COMPANY LAW - *Sale of Company's property - By the managing director - Whether valid - Under the circumstances of this case.*

EVIDENCE - *Admissions - In statements not by way of testimony in court - Where no evidence was led to establish its invalidity or weightlessness - Legal implication.*

EVIDENCE - *Proof - Party not bound to produce all the evidence in the world - Where proof of a fact can be established otherwise.*

PLEADINGS - *Reply - Where a new issue was pleaded by the defendant - Appropriate case when plaintiff should plead its defences in a reply.*

PLEADINGS - *Joining of issues - Where issue was not joined - With regard to production of purchase receipt - That issue cannot be canvassed.*

FACTS

Before the High Court of Lagos State, the plaintiff/appellant claimed a total sum of N1,701,000 against the defendant/respondent, being special

and general damages accruing from hire of appellant's crane by the defendant. Appellant also claimed return of the crane. The respondent averred that the said crane was subsequently sold to it by the appellant's managing director. The respondent pleaded and tendered the transfer of ownership document (Exhibit N).

The trial court found in favour of the appellant. Respondent's appeal to the Court of Appeal was upheld as that court found that ownership of the crane has been transferred to the respondent. Being dissatisfied, appellant has now appealed to the Supreme Court raising four issues (see p. 1920) which the court reduced to a single main issue.

ISSUE FOR DETERMINATION

Whether there was a valid sale of the Crane by the appellant to the respondent on the 25th October, 1983 or whether the sale was otherwise illegal and invalid.

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

Pleadings - Reply

1. In the present case, the appellant nowhere in its Statement of Claim pleaded the sale of the Crane in issue. It was the respondent which clearly pleaded this sale by the appellant giving particulars thereof. In my view, this is an appropriate case where the appellant, if it intended to rely on the vital facts that Mr. Ian Usher who sold the equipment was a mere Workshop Manager of the appellant company and not its Managing Director, that he had no authority to sell the Crane, that the said sale was illegal, fraudulent or improper, or that the sale was ultra vires the powers of the appellant company, ought to have positively and distinctly pleaded these powerful and substantial defences in a reply which, to all intents and purposes, will amount to the plaintiffs defence to the new fact raised by the defendant in its defence to the plaintiffs Statement of Claim. This, the plaintiff failed to do. (p. 1924 D)

Consideration for sale of goods

2. The law is settled that consideration must be real but need not be adequate although a patently or grossly inadequate consideration may in an appropriate case amount to strong evidence of fraud. In the present case, however, the appellant per paragraph 10 of the Statement of Claim gave the value of the crane as N50,000.00. Indeed P.W. 1, Basil Adenrele Adu, a director of the appellant company testified before the court on the 16th December, 1986 to the effect that the crane was purchased by this company in February 1983 at

the price of N50,000.00. The same Crane was sold four years thereafter at the price of N40,000.00 and I ask myself whether this latter price after four years of use can by any stretch of the imagination be described as ridiculous or inadequate. I think not. (p. 1926 E)

Joining of issues

3. It does not appear to me that the appellant's case was that the respondent did not purchase the Crane from the appellant company for N40,000.00. The case of the appellant from Exhibit A, a letter from P.W.1 to the respondent's Managing Director, is that the crane was in fact purchased by C the respondent from Mr. Ian Usher but only for a "meagre N40,000.00". At all events, issue was certainly not joined in the pleadings of the parties with regard to the said receipt and it seems to me too late in the day now to make any fuss about it. (p. 1926 G)

Evidence - Proof

4. In this connection, it cannot be over emphasized that there is no onus on a party to produce all the evidence in the world in proof of a single averment of fact if such a fact can otherwise be established. In the present case, Exhibit N. transfer of ownership of the Crane from the appellant to the respondent was tendered without objection by the appellant at the hearing. The Court of Appeal was satisfied that the document was sufficient proof of the sale to an ownership of the Crane by the respondent from the date it bore. I think the court below was right on the point. (p. 1927 B)

Contracts - Irregularity and illegality

5. The third reason is an attack on Exhibit N on grounds of irregularity and illegality. None of these vitiating elements in so far as the contract of sale is concerned was pleaded by the appellant. And, as I have already pointed out, evidence not pleaded goes to no issue and must be discountenanced. I think the point must be stressed that it is not the function of a trial Judge by his own exercise or hindsight to invoke or supply evidence neither pleaded nor positively testified to by the parties. With profound respect, the trial court fell into a serious error when it held that the sale of the Crane was illegal, irregular or that the same was not established. (p. 1927 D)

Sale of Company's property

6. In the present case, it was neither pleaded nor established that the sale was contrary to the appellant's Memorandum or Articles of Association, that the internal regulations of the appellant company were not complied with before

the sale or that there were suspicious circumstances surrounding the said sale which ought to have put the respondent on an inquiry with regard to the transaction, that Mr. Ian Usher, the Managing Director of the appellant company in fact exceeded his actual or ostensible authority by selling the Crane, that the respondent knew that the said Mr. Usher has no authority to sell the Crane, that he was not validly appointed the Managing Director of the appellant company or that Exhibit N which was executed by the appellant's Managing Director on behalf of the appellant is a forgery. In these circumstances, it seems to me that the respondent was perfectly entitled to assume that the said Mr. Ian Usher, being the Managing Director of the appellant's company, possessed the necessary authority to sell the crane pursuant to the well established principle of law enunciated in *Royal British Bank v. Turquand*. I agree entirely with the Court of Appeal that the sale of the Crane by the appellant's Managing Director to the respondent on the 25th October, 1983 is altogether valid and unimpeachable. (p. 1928 A)

Finding of Court of Appeal

7. In my view, the Court of Appeal was right when it found from the issues joined in the suit that there was a hiring of the Crane to the appellant from the 12th October, 1983 but that this was followed by an outright sale of the Crane to the respondent on the 25th October, 1983. There was ample evidence in support of this view and I can find no reason to disturb this finding of the court below which in my opinion is sound and entirely justifiable. (p. 1928H)

Evidence - Admissions

8. The law is well settled that in civil cases, admission in statements made otherwise than by way of testimony in court by a party to the proceedings are evidence of the fact asserted against but not in favour of such a party. They are however not estoppels or conclusive against the part against whom they are tendered as the value and weight of an admission depends on the circumstances in which it was made. Accordingly evidence of such circumstance is always receivable in evidence to affect the weight of the admission. In the present case, no evidence of vitiating circumstance was led by the appellant to establish its invalidity or weightlessness and I fully endorse the view of the court below that considered along with the other facts of the transaction, Exhibit N is sufficient evidence in proof of the sale and transfer of ownership of the Crane in issue. (p. 1929 D)

Mistake of lower court

9. I think I ought finally to point out that although the court below was clearly in error when it observed that Exhibit N was tendered by the appellant, it is not each and every mistake or error in a judgment that must result in the appeal being allowed. It is only when such an error or mistake is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. The error alluded to in the present case is merely as to which party that tendered the document, Exhibit N. The error was not established to be substantial or to have occasioned any miscarriage of justice and the same is hereby discountenanced. (p. 1929 G)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Judgment to be confined to the issues raised in parties' pleadings

It is an elementary and fundamental principle of the determination of disputes between parties that judgment must be confined to the issues raised by the parties in their pleadings. It is not competent for the trial court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before him. (p. 1922 F)

2. When filing a reply is necessary

It cannot be disputed that where no counterclaim is filed by a defendant to a suit, as in the present case, further pleadings by way of a reply to a Statement of Defence is generally unnecessary if the sole purpose is to deny the averment contained in the defendant's Statement of Defence. Where, however, because of the nature of the Statement of Defence filed and the averments therein contained, the plaintiff proposes to lead material evidence in rebuttal or to raise new issue of fact not covered by his Statement of Claim or the Statement of Defence already filed, then it is prudent and, indeed desirable in such circumstance for the plaintiff to file a reply in answer to the new issued raised. (p. 1924 A)

3. Companies - Regularity of internal proceedings

The principle is well established that 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 - the indoor management, and may assume that all is being done regularly. Accordingly a third party, such as the respondent, may

in appropriate circumstances be liable to hold the company responsible for acts of the directors, though unauthorized, but within their usual or ostensible powers. (p. 1927 G)

REPRESENTATION

Chief Olisa Chukwura, SAN., Rasaq Olkesiji with for the Appellant
Ademola Akinrele Paul Jing, with for the Respondent

B

CASES REFERRED TO

Emegokwu v. Okadigbo (1973) 3 E. C.S.L.R.267

Odumosu v. A.C.B. Ltd. (1976) 11 S.C. 261 at 261 at 264

Aderemi v. Adedire (1966) N.M.L.R. 398

Ochonma v. Unosi (1965) N.M.L.R. 321 at 323

Ogunlowo v. Prince Ogundare (19931) 7 N.W.L.R. (Part 307) 610 at 624

Akeregolu v. Akinremi (1989) 3 N.W.L.R. (Part 108) 164 at 172

Royal British Bank v. Turquand (1856) 6 E. & B 327

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D

LEAD JUDGMENT BY IGUH JSC

In the Ikeja judicial Division of the High Court of Lagos State, the plaintiff, who is now appellant, instituted an action against the respondent, who therein was the defendant, claiming *as follows:-*

E

“(i) *The sum of N1,476,000.00 (One million four hundred and seventy six thousand Naira) being the cost of hire of one Coles LH 1000-110 Ton Crane by defendant from the plaintiff between 12th October, 1983 and 31st August, 1985, (492 days), at the rate of N3,000 (three thousand naira) per day, (8 hour day/5 day week, at N375.00 per hour).*

F

(ii) *For the return of the plaintiff’s Coles LH 100 - 110 Ton Crane unlawfully detained and still being detained by the defendant from the plaintiff from 1st October, 1985, despite repeated demands for the return of same.*

(iii) *For special and general damages for the unlawful detention of the said Coles LH 1000 - 110 Ton Crane from 1st September, 1985.*

G

(iv) *For any other order/orders as this Honourable Court may deem fit to make in the circumstance.*

Particulars of Damage

1. *Special Damages* N

H

(a) *Value of the Crane* 50,000.00

(b) *Loss of use of the crane from 1st September, 1985, to 15th November, 1985 (55 days) at the rate of N3,000 per day (8 hour day/5 day week at*

N375 per hour) 10,000.00

2. General Damages

10, 000.00

25,000.00

=====

B Total Fiscal Claim = 1,70 1,000.00"

Pleadings were ordered in the suit and were duly settled, filed and exchanged. At the subsequent trial, the parties testified on their own behalf and called witness."

The main planks upon which the plaintiff's case rested were pleaded C in paragraphs 5, 6, 7, 8 and 9 of its Statement of Claim as follows:-

"5. By an oral agreement of 12th October, 1985, the plaintiff let a Coles LH 1000 - 110 Tons Crane to the defendant on hire and the defendant agreed to pay the plaintiff during the hiring created by the said agreement, by way of hire rental, the sum of N3,000.00 (Three thousand Naira) per day D (8 hour day/5 day week at N375 per hour) with effect from 12th October 1983.

6. In breach of the said agreement the defendant failed to pay any of the installments of hire rental which accrued payable from 12th October,1983 until 31st August, 1985, totaling in the aggregate the sum of N1,476,000 E (One million four hundred and seventy six thousand Naira) which still remains in arrears and unpaid.

7. By notice in writing dated the 30th day of September, 1985 sent to the defendant, the plaintiff, as it was entitled to do, terminated the said agreement and the hiring thereby constituted, and demanded delivery up of F the said crane, and equally demanded the full payment of all arrears of rental payments.

8. The plaintiff demanded the payment of arrears of the rental and the return of the crane, which the defendant failed, refused and neglected to do. The plaintiff will, at the trial of this action rely on the bills dated 15th G October, 1984, 1st March, 1985 and 2nd September, 1985 and letters dated 29th November, 1983, 13th October, 1984, 1st March, 1985, 2nd September, 1985 and 30th September, 1985, written to the defendants.

9. Notwithstanding that the said agreement and hiring have been duly terminated as aforesaid, the defendant has wrongfully failed (and re- H fused) to deliver up the said crane to the plaintiff despite repeated demands, and has wrongfully detained and still detains the same and has wrongfully converted the same to its own use) and by reason whereof the plaintiff has suffered loss and damage:"

The defendant replied to the above averments in paragraphs 6, 7, 8

and 9 of its Statement of Defence as follows:-

“6 With regard to paragraphs 5 and 6 of the Statement of Claim, the defendant says it purchased a Coles LH 1000 -110 Tons Crane from the plaintiff sometime in October 1983 for the sum of N40,000.00 (Forty thousand Naira). The defendant will rely on the transfer of ownership paper issued by the plaintiff and dated 26th October, 1983 and also the letter ref. BAA/CW/1983/123 dated 29th November, 1983 addressed to the defendant by the plaintiff. B

7. The defendant admits paragraphs 7 and 8 of the Statement of Claim only to the extent that the letter referred to therein were received. The defendant further says that since it did not enter into any agreement with the plaintiff, there was nothing to terminate. C

8. The defendant will contend that the plaintiff's claim herein is frivolous, vexatious and an abuse of court's process and ought to be dismissed with substantial cost.”

As can be discerned from the above averments and the evidence before the court, the case of the plaintiff company is that on the 12th October, 1983 it hired out a Coles LH 1000 - 110 Tons Crane to the defendant 'company. This was pursuant to an oral agreement between the parties. The agreed rate of hire was N3,000.00 per day of 8 hours and a week of five working days at N375.00 per hour. The plaintiff's claims were for N 1,476,000.00 being the cost of the said hire for 492 working days covering the period, 12th October, 1983 to 31st August, 1985 at the said rate of N3,000.00 per day together with the return of the said Crane and special and general damages for unlawful detention. D E

The defendant, on the other hand, denied the said contract of hiring as claimed by the plaintiff and maintained that there was a sale of the Crane to the company by the plaintiff's Managing Director as evidenced by Exhibit N. It however admitted in evidence before the court that the Crane was initially on hire before the defendant company purchased it from the plaintiff company at the price of N40,000.00. F G

At the conclusion of trial on the 31st March, 1987, the learned trial Judge Hotonu, J., after a review of the evidence found for the plaintiff and adjudged as follows:-

“In the result the first and second claims of the plaintiff succeed while the third claim only succeeds partially. Accordingly it is the order of this court that - H

(i) On or before 8th April 1987 the defendant should return to the plaintiff Coles LH 1000 - 110 tons crane which was hired and delivered to the plaintiff on 12th October, 1983.

(ii) On or before 1st May 1987 the defendant should pay to the plaintiff the sum of N1,476,000 being rent accrued for hire of the crane for the period 12th October 1983 to 31st August, 1985.

(iii) On or before 1st May 1987 the defendant should pay to the plaintiff the sum of N165,000.00 for loss of use of the said crane for the period
B 1st September 1985 to 15th November 1985.

Being dissatisfied with this decision of the trial court, the defendant lodged an appeal against the same to the Court of Appeal, Lagos Division, which in a unanimous judgment on the 26th October, 1988 found for the respondent on the issue of the sale of the crane by the appellant to the respondent company on the 25th October, 1983. The court below accordingly allowed the appeal in part, set aside the said decision of the trial court and in its place entered judgment for the plaintiff in the sum N42,000.00 representing the cost of hire of the crane in issue for the period 12th to the 25th October, 1983.
C

Aggrieved by this decision of the Court of Appeal, the plaintiff has
D appealed to this court. I shall hereinafter refer to the plaintiff and the defendant in this judgment as the appellant and the respondent respectively.

Four grounds of appeal were filed by the appellant. These grounds of appeal, without their particulars are as follows:-

E *“(1) The Court of Appeal erred in law in the inference which it drew from the evidence of the respondents in view of the averments in the statement of defence and the evidence tendered by the respondents at the hearing.*

F *“(2) The Court of Appeal misdirected itself in the view which it took of the origin, contents and effect of Exhibit N and in basing its entire decision on this erroneous view.*

“(3) The Court of Appeal erred in law in not appreciating that since the respondents pleaded sale, the onus rested on them to prove the sale which they failed to discharge.

G *“(4) The Court of Appeal erred in law in failing to consider the submission that the purported sale of the crane by Mr. Usher to the respondent could not be valid in view of the “circumstances” in which it was alleged to have occurred.”*

H The parties, pursuant to the rules of this court, filed and exchanged their written briefs of argument. The four issues identified on behalf of the appellant which this court is called upon to determine are as follows:-

“(1) Was the Court of Appeal right in dismissing the appellant’s claims based on hire of the crane after it had concluded, against the denials of the respondent, that there was in fact a hiring.

“(ii) There being no evidence that appellant tendered Exhibit N, the

butt of the respondent's defence and the basis of its judgment, was the Court of Appeal correct in its view that the Exhibit (N), was tendered by the appellant and that the appellant was in consequence bound by it as a result of which the court set aside the judgment of the High Court?

(iii) Did the respondent on whom the onus of proof rested to establish sale of the crane as against the appellant's contention that it was a hiring, discharge the onus - and was the Court of Appeal right in not considering this requirement?

(iv) Was the Court of Appeal correct in the view which it held that the "Sale" of the crane by Mr. Usher was valid and that the appellant (and/or trial Judge) should have initiated criminal proceedings as a condition precedent to the action?"

The respondent, for its part, adopted the issues as formulated by the appellant.

At the hearing of the appeal, both learned counsel for the parties proffered additional arguments in amplification of the submissions contained in their respective written briefs of argument. It seems to me clear that the main issue for determination in this appeal is whether there was a valid sale of the Crane by the appellant to the respondent on the 25th October, 1983 or whether the sale was otherwise illegal and invalid. This question is covered by issues three and four of the issues for determination in this appeal and I propose to consider both issues first, I will also take both issues together.

The appellant's main point on these issues is that the respondent, on whom the onus of proof rested, failed to establish the sale of the Crane. It is the contention of the appellant's learned counsel, Chief Olisa Chukura, S.A.N., that Exhibit N which the respondent relied on is neither under seal nor does it disclose any consideration and that it must therefore be regarded as nudum pactum and incapable of supporting the purported sale. He argued that the Court of Appeal erred in law in holding that there was a valid sale of the crane, that the sale of the crane for only N40,000.00 was ridiculous and grossly under-valued and that this fact should have put the respondent on enquiry as to the propriety and legality of the transaction. He submitted that the alleged sale of the Crane was tainted with irregularity and illegality and he urged the court so to hold.

Learned counsel for the respondent, Mr. Ademola Akinrele, on the other hand, submitted that the onus of proof, having regard to the state of the pleadings rested squarely on the plaintiff/appellant to establish the hiring as alleged. He argued that the only onus on the respondent was an evidential one; to adduce evidence to buttress its contention that there was a sale. He contended that this evidential burden was conclusively discharged by the

combined effect of Exhibits A and N. In Exhibit A, the appellant's director, Mr. B.A. Adu, stated inter alia that he had discovered, contrary to his belief, that the respondent infact purchased the crane from Mr. Ian Usher, the Company's Workshop Manager "for a meager N40,000.00", Exhibit N, on the other hand, B is an acknowledgement by the appellant under the hand of Mr. Ian Usher, its Managing Director, with regard to "the transfer of ownership" of the Crane in issue to the respondent company. He argued that the respondent was entitled to assume that Mr. Ian Usher, being the Managing Director of the appellant company, possessed the necessary authority to sell the crane. He submitted C that there was no circumstance on the particular facts of this transaction under which the sale in issue may be said not to be covered by the well established principle of law in *Royal British Bank v. Turquand* (1856) 6 E & B 327. He concluded by stressing that there was no basis for the finding by the trial court that the sale of the Crane was irregular and submitted that the court D below was right in reversing the same.

Before I proceed to examine the two issues under consideration, there are certain basic principles of law which I find necessary to restate. The first is that the parties are bound by their pleadings and shall not be permitted to set up a different case from that contained in their pleadings and evidence E which is at variance with the averments in the said pleadings goes to no issue and should be disregarded or discountenanced by the court. See *Emegokwue v. Okadigbo* (1973) 3 E.C.S.L.R. 267; *Kalil Njoku and others v. Ekwu Eme and others* (1973) 5 S.C. 295; *Odumosu v. A.C.B. Ltd.* (1976) 11 S.C. 261 at 264 and *Aderemi v. Adedire* (1966) NMLR 398. In this connection it should be observed F that evidence must be directed and confined to the proof or disproof of the issues as settled by the pleadings. See *Esso Petroleum Co. Ltd. v. Southport Corporation* (1956) A.C. 218.

Secondly, it is an elementary and fundamental principle of the determination of disputes between parties that judgment must be confined to the G issues raised by the parties in their pleadings. It is not competent for the trial court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before him, See *Commissioner for Works, Benue State and Another v. Devcom Development Consultants Ltd. and Another* (1988) 3 NWLR (Pt.83) H 407. *Ochonma v. Ashirim Unosi* (1965) NMLR 321 at 323; *Nigerian Housing Development Society Ltd. & Another v. Yaya Mumuni* (1977) 2 S.C. 57; *Adeniji and others v. Adeniji and others* (1972) 1 All NLR (Pt1) 298; *A.C.B. Ltd. v. Attorney-General of the Northern Nigeria* (1967) NMLR 231 etc. This principle of law is, without doubt, in accordance with common sense as to permit trial

courts to wander out of issues raised by the parties in their pleadings and to found their judgment on such issues would not only take parties by surprise and make nonsense of pleadings, it might well result in the denial to one or the other of the parties of the right to fair hearing pursuant to the audi alteram partem rule as enshrined in the 1979 Constitution of Nigeria. See *Metalimpex v. A.G. Leventis and Co. Ltd.* (1976) 2 S.C. 91; *Kalio v. Kalio* (1977) 2 S.C. 15; *George v. Dominion Flour Mills Ltd.* (1963) 1 SCNLR 242; *Shell BP., Ltd. v. Ahedi* (1974) 1 All NLR (Pt. 1) 13; *Alhaji Ogunlowo v. Prince Ogundare* (1993) 7 NWLR (Pt.307) 610 at 624, and *J.O Idahosa and Another v. DN. Oronsaye* (1959) 4 F.S.C. 166; (1959) SCNLR 407. Having so said, I will now examine the pleadings filed by the parties. B C

A close study of the statement of claim filed in this suit discloses in no mistaken terms that the appellant's claim was simply for the cost of hire and the return of its Crane with special and general damages for alleged unlawful detention. The respondent in its Statement of Defence, however, averred that the equipment was not on hire but that it was sold by the appellant to the said respondent in the month of October, 1983 for the sum of N40,000.00. The respondent further pleaded Exhibit N, the transfer of ownership document dated the 26th October, 1983 issued by the appellant to the said respondent. The said Exhibit N reads thus - D E

"Bankers:

NIGERIAN ARAB BANK LTD.

ISOLO

LAGOS.

SPASCO LTD. VEHICLE & PLANT HIRE CO.

Civil Engineering & Road Maintenance Division

Head Office: KM 33 Abeokuta Express Road,

Alakuko, Agege, Ikeja, Lagos

Ikeja Office: Telephone 960493.

26th October, 1983

Mr. W. Thomas.

Alraine Ltd.,

Apapa.

Dear Sir,

This is to confirm the transfer of ownership of one Cole Hydraulic Crane. Model: LH 1000 Serial No. 27856
'From SPASCO VEHICLE & PLANT HIRE CO. LTD.,
KM, 33 Abeokuta Expressway, Agege, Lagos To ALRAINE LTD.
26, Creek Road, Apapa, Lagos. H

Yours faithfully

I.J. Usher

Managing Director."

It cannot be disputed that where no counter-claim is filed by a defendant to a suit, as in the present case, further pleadings by way of a reply to a Statement of Defence is generally unnecessary if the sole purpose is to deny the averment contained in the defendant's Statement of Defence. See *Aziz Akeredolu and others v. Lasisi Akinremi and others* (1989) 3 NWLR (Pt.108) 164 at 172. Where, however, because of the nature of the Statement of Defence filed and the averments therein contained, the plaintiff proposes to lead material evidence in rebuttal or to raise new issues of fact not covered by his Statement of Claim or the Statement of Defence already filed, then it is prudent and, indeed, desirable in such circumstances for the plaintiff to file a reply in answer to the new issues raised. See *Bakare and Another v. Ibrahim* (1973) 6 S.C. 205.

In the present case, the appellant, no where in its Statement of Claim pleaded the sale of the Crane in issue. It was the respondent which clearly pleaded this sale by the appellant giving particulars thereof. In my view, this is an appropriate case where the appellant, if it intended to rely on the vital facts that Mr. Ian Usher who sold the equipment was a mere Workshop Manager of the appellant company and not its Managing Director, that he had no authority to sell the Crane, that the, said sale was Illegal, fraudulent or improper, or that the sale was ultra vires the powers of the appellant company, ought to have positively and distinctly pleaded these powerful and substantial defences in a reply which, to all intents and purposes, will amount to the plaintiff's defence to the new fact raised by the defendant in its defence to the plaintiff's Statement of Claim. This, the plaintiff failed to do.

It must, in all fairness to the appellant, be pointed out that paragraph 8 of its Statement of Claim pleaded a total of 8 letters which were lumped together and said to have been written to the respondent. Exhibits A and B, in particular, contain inter alia the allegations that the said Mr. Usher did not have any authority to sell the Crane, that he was merely the appellant's Workshop Manager and not its Managing Director and that the sale which was for a "meager N40,000.00" was entirely criminal, fraudulent and illegal. But for the above very serious allegations in Exhibits A and B which, at all events needed to be proved or established as required by law, it seems to me entirely strange that none of the appellant's two witnesses gave any direct and unequivocal viva voce evidence to the effect that Mr. Ian Usher did not have the authority to sell the crane, that the sale was fraudulent, criminal or illegal or that it was otherwise ultra vires the powers of the appellant company. It is

even more strange that the respondent's sole witness was not cross-examined in whatever form on these three vital issues.

What the appellant testified to and in respect of which the respondent's sole witness and representative was cross-examined upon was simply that Mr. Ian Usher was the Workshop Manager of the appellant company and not its Managing Director. This issue, however, the learned trial Judge thoroughly considered and found in favour of the respondent. Said the learned trial Judge

"Both P.W.1 and P.W.2 said that Mr. Ian Usher was not the Managing Director of the plaintiff company. He was described as Workshop Manager. On all the exhibits there are erasures of name of a director. But in exhibit N Mr. Ian Usher is shown as Managing Director. The explanation of P.W.1 is that he erased the name Ian Usher appearing on the exhibits because he was not the Managing Director of the plaintiff Company. He said further that the company had no Managing Director while P.W.1 also said that his two Directors Messrs. Adu and Obasuyi were responsible for day to day running of the company. I found it difficult to believe evidence led by the plaintiff that Ian Usher was not its Managing Director. I believe and accept the evidence of the defendant that he was the Managing Director and was so held out until his name was later deleted as such for reason not disclosed. There is however evidence of the plaintiff which I believe, that Ian Usher, British, has returned to England."

The court below, for its part, affirmed this finding of the trial court when it stated as follows:-

"He (meaning P.W.1) claimed that Mr. Usher was their former Works Manager, but there is evidence which the learned Judge accepted that Mr. Usher was the Managing Director of the respondents."

A little later in its judgment, the court below further observed as follows:-

"The plaintiffs were paid three thousand Naira (N3,000.00) for the hiring of the crane on that day. Following this, Mr. Usher, Managing Director of the plaintiffs, visited them and wanted to 'know if they were interested in buying the crane. He told Mr. Usher that he would consult the Managing Director of the defendants' company."

I can find no reason to interfere with the above concurrent findings of the two courts below which seem to me well founded and amply supported by unimpeachable evidence before the court.

The learned trial Judge then proceeded, and quite rightly, to state

that a Managing Director is generally invested with apparent authority to carry on the company business in the usual way and to do all acts and to enter into all contracts necessary for that purpose. He observed that if a person is held out by a company to be a Managing Director, any body dealing with him as agent of the company can assume that he has powers which an agent of B that kind normally has and that the company is estopped from denying that this is so. He however concluded by holding that the sale of the crane was “not only irregular but criminal in nature, and, as such, there was no contract of sale between the plaintiff and the defendant. In other words, the plaintiff is not bound by irregular contract of sale. The position is that the C crane has been with the defendant since 12th October, 1983 on hire and the plaintiff still retains the ownership of the crane.”

The above finding was critically examined by the court below which found itself unable to affirm the same. I have myself considered the issues joined by the parties in their pleadings and the relevant evidence connected D therewith and fully endorse the finding of the Court of Appeal on the point.

The trial court adduced three main reasons for holding that the sale of the crane was a nudum pactum ex quo non oritur actio and therefore not legally binding on the appellant. These are:-

- E (1) The inadequacy or ridiculousness of the consideration, namely N40,000.00 which it considered unreasonable
- (2) That the receipt was not produced before the court
- (3) That the sale was irregular and illegal.

With regard to the first reason, the law is settled that consideration must be real but need not be adequate although a patently or grossly inadequate F consideration may in an appropriate case amount to strong evidence of fraud. In the present case, however, the appellant per paragraph 10 of the Statement of Claim gave the value of the crane as N50,000.00.

Indeed P.W.1, Basil Adenrele Adu, a director of the appellant company testified before the court on the 16th December, 1986 to the effect that the G crane was purchased by his company in February 1983 at the price of N50,000.00. The same crane was sold four years thereafter at the price of N40,000.00 and I ask myself whether this latter price after four years of use can by any stretch of the imagination be described as ridiculous or inadequate. I think not.

On the second reason, it does not appear to me that the appellant’s H case was that the respondent did not purchase the crane from the appellant company for N40,000.00. The case of the appellant from Exhibit A, a letter from P.W.1 to the respondent’s Managing Director, is that the crane was in fact purchased by the respondent from Mr. Ian Usher but only for a “meager N40,000.00 “ Said P.W.1 in Exhibit A-

.....I have also discovered, contrary to my earlier belief, that you infact purchased the said Crane from Mr. Ian Usher, the Company's workshop Manager for a meagre N40,000.00....."

At all events, issue was certainly not joined in the pleadings of the parties with regard to the said receipt and it seems to me too late in the day now to make any fuss about it. B

In this connection, it cannot be over emphasized that there is no onus on a party to produce all the evidence in the world in proof of a single averment of fact if such a fact can otherwise be established. In the present case, Exhibit N, transfer of ownership of the crane from the appellant to the respondent was tendered without objection by the appellant at the hearing. The Court of Appeal was satisfied that the document was sufficient proof of the sale to and ownership of the crane by the respondent from the date it bore. I think the court below was right on the point. C

The third reason is an attack on Exhibit N on grounds of irregularity and illegality. None of these vitiating elements in so far as the contract of sale is concerned was pleaded by the appellant. And, as I have already pointed out, evidence not pleaded goes to no issue and must be discountenanced. I think the point must be stressed that it is not the function of a trial Judge by his own exercise or hindsight to invoke or supply evidence neither pleaded nor positively testified to by the parties. See George Ikenye & Another v. Akpala Ofune and others (1985) 2 NWLR (Pt.5) 1. With profound respect, the trial court fell into a serious error when it held that the sale of the crane was illegal, irregular or that the same was not established. D

There can be no doubt that the Managing Director of a company is generally invested with wide implied or apparent authority to carry on the company's business in the usual way and to do all acts and enter into all contracts necessary for that purpose. Mr. Ian Usher was accepted by both courts below to be the Managing Director of the appellant company at all times material to the sale under consideration. The principle is well established that 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 - the indoor management, and may assume that all is being done regularly. Accordingly a third party, such as the respondent, may in appropriate circumstances be liable to hold the company responsible for acts of the directors, though unauthorized, but within their usual or ostensible powers. See generally Royal British Bank v. Turquand (1956) 6 E & B 327. E F G H

In the present case, it was neither pleaded nor established that the sale was contrary to the appellant's Memorandum or Articles of Association, that the internal regulations of the appellant company were not complied with before the sale or that there were suspicious circumstances surrounding the said sale which ought to have put the respondent on an inquiry with regard to the transaction, that Mr. Ian Usher, the Managing Director of the appellant company in fact exceeded his actual or ostensible authority by selling the Crane that the respondent knew that the said Mr. Usher had no authority to sell the crane, that he was not validly appointed the Managing Director of the appellant company or that Exhibit N which was executed by the appellant's Managing Director on behalf of the appellant is a forgery. In these circumstances, it seems to me that the respondent was perfectly entitled to assume that the said Mr. Ian Usher, being the Managing Director of the appellant's company, possessed the necessary authority to sell the crane pursuant to the well established principle of law enunciated in *Royal British Bank v. Turquand* supra. I agree entirely with the Court of Appeal that the sale of the Crane by the appellant's Managing Director to the respondent on the 25th October, 1983 is altogether valid and unimpeachable.

There is finally the contention of the appellant to the effect that the Court of Appeal upheld the sale of the Crane on the ground that the said appellant and for the trial Judge ought to have initiated criminal proceedings in respect of Exhibit N as a condition precedent to the institution of this action. With great respect, the Court of Appeal drew no such inference. All the Court of Appeal said in this regard was entirely observatory and cannot conceivably be regarded as its reason for upholding the sale of the Crane. I must in the circumstance resolve issues 3 and 4 against the appellant.

The contention of the appellant's learned counsel on the first issue is that the Court of Appeal erred in law by dismissing the appellant's claims which were based on hire after it had come to the conclusion that there was in fact a hire of the Crane. With respect, it seems to me that this argument is a misconception of the issues as disclosed in the pleadings and the evidence in support thereof. No doubt, the appellant's case as disclosed by evidence was founded on the hiring of the crane by the appellant to the respondent for a duration of at least three months. The respondent in its Statement of Defence denied the said hiring as alleged by the appellant. It admitted in evidence that the hiring was for only a day but that the crane was subsequently sold by the appellant to the respondent on the 26th October, 1983. In my view, the Court of Appeal was right when it found from the issues joined in the suit that there

was a hiring of the Crane to the appellant from the 12th October, 1983 but that this was followed by an outright sale of the Crane to the respondent on the 25th October, 1983. There was ample evidence in support of this view and I can find no reason to disturb this finding of the court below which in my opinion is sound and entirely justifiable.

The second and last issue complains that there being no evidence that the appellant tendered Exhibit N, the Court of Appeal was in error by holding that Exhibit N was tendered by the said appellant who in consequence is bound by it as a result of which the Court of Appeal set aside the judgment of the trial court. With respect, it cannot be right that the judgment of the trial court was set aside by the court below because of the latter's observation that Exhibit N was tendered by the appellant which must be bound by it. No doubt, Exhibit N was tendered by the respondent and not by the appellant. It was however tendered without any objection. Exhibit N, as earlier mentioned, is a written statement by the appellant acknowledging the transfer of ownership in the Crane to the respondent. It is a clear admission by the appellant against its interest in the subject matter of the claim.

The law is well settled that in civil cases, admissions in statements made otherwise than by way of testimony in court by a party to the proceedings are evidence of the facts asserted against, but not in favour of such a party. They are however not estoppels or conclusive against the party against whom they are tendered as the value and weight of an admission depends on the circumstances in which it was made. Accordingly evidence of such circumstances is always receivable in evidence to affect the weight of the admission. See *Nii Abossey Okai II v. Nii Ayikai II* (1946) 12 WACA 31.

In the present case, no evidence of vitiating circumstance was led by the appellant to establish its invalidity or weightlessness and I fully endorse the view of the court below that considered along with the other facts of the transaction, Exhibit N is sufficient evidence in proof of the sale and transfer of ownership of the Crane in issue.

I think I ought finally to point out that although the court below was clearly in error when it observed that Exhibit N was tendered by the appellant it is not each and every mistake or error in a judgment that must result in the appeal being allowed. It is only when such an error or mistake is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. See *Onajobi v. Olanipekun* (1985) 4 S.C. (Pt.2) 156 at page 163; *Oje v. Babalola* (1991) 4 NWLR (Pt.185) 267 at page 282; *Ukejianya v. Uchendu* (1950) 13 WACA 45 at page 46; *Azuetoma Ike v. Ugboaja* (1993) 6 NWLR (Pt.301) 539 at page 556; *Olubode v. Salami* (1985) 2 NWLR (Pt.7) 282 etc.

The error alluded to in the present case is merely as to which party that tendered the document, Exhibit N. The issue seems to me irrelevant whether or not it was the appellant that tendered the Exhibit which in fact was made by the appellant but tendered by the respondent without any objection. The error was not established to be substantial or to have occasioned any miscarriage of justice and the same is hereby discountenanced. Issue two is accordingly resolved against the appellant.

In the final result, I find no substance in any of the points urged on behalf of the appellant in this court to justify the reversal of the decision of the court below. Consequently this appeal fails and it is accordingly dismissed with N1,000.00 costs to the respondent against the appellant.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Iguh, J.S.C. I agree with the judgment and have nothing to add.

Accordingly, the appeal fails and it is hereby dismissed with N1,000.00 costs to the respondent.

WALI JSC

I have had a preview of the lead judgment of my learned brother Iguh, J.S.C. and I entirely agree with him for dismissing the appeal.

For the same reasons ably stated in the lead judgment and which I hereby adopt, I also dismiss the appeal and subscribe to the consequential orders contained in the lead judgment.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Iguh, J.S.C. I agree with him that the appeal lacks substance and ought to be dismissed. It is accordingly dismissed with N1,000.00 costs against the appellant.

MOHAMMED JSC

I have had the privilege of reading in draft the judgment of my learned brother, Iguh, J.S.C., and I agree with him that despite a slight error in the lower court over the admission of Exhibit N, at the trial court, this appeal has failed. I have nothing more to add. Accordingly, the judgment of the Court of Appeal is hereby affirmed. I abide by the order for costs made in the lead judgment.