

SUPREME COURT OF NIGERIA
20TH DECEMBER, SC.98/1988
CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
M. E. OGUNDARE. E. O. OGWUEGBU, JJSC

CHARLES UME 2ND DEFENDANT/
APPELLANT

AND

1. GODFREY A. OKORONKWO PLAINTIFF/RESPONDENT
2. JUDE UZOZIE 1ST DEFENDANT/RESPONDENT

***APPEALS** - Findings of trial court - In a land dispute - Where amply supported by evidence - Appellate Courts shall uphold them.*

***COURTS** - Clerical mistake - Where the lower court mistakenly referred to 1st defendant as appellant - Whether any miscarriage of justice was occasioned.*

***LAND LAW** - Customary arbitration - Whether in view of the sole issue before the arbitration - It was unnecessary to grant a hearing to 2nd defendant.*

***LAND LAW** - Customary arbitration - Where a dispute on the issue of pledge - Was voluntarily submitted to a customary arbitration - Whether their decision is binding on the parties.*

FACTS

The plaintiff/respondent claimed against the defendants - declaration of title, damages for trespass and perpetual injunction, before the Imo State High Court Orlu. The 2nd defendant/appellant filed a cross action also claiming declaration of title and the cases were consolidated. The evidence revealed that the land in dispute was pledged to 1st defendant's ancestor. The 2nd defendant was 1st defendant's caretaker in respect of the land. In the course of time plaintiff took steps to redeem the land which led to a customary arbitration handling the dispute. Matters related to oath taking and other considerations made the arbitration rule that the land belongs to the plaintiff who then took possession of the land.

It was a subsequent trespass on the land by the defendants that led to the filing of the suit by the plaintiff. The trial court found in favour of the plaintiff. 2nd defendant's appeal to the Court of Appeal was dismissed. Being dissatisfied, 2nd defendant has further appealed to the Supreme Court raising 2 issues.

ISSUE FOR DETERMINATION

"1. Whether the Appellant and his predecessors-in-title were bound by the decision of the native or customary arbitration that sought to resolve the dispute between the appellant's predecessor-in-title and the Plaintiff-Respondent

2. Whether the Respondent established a valid and binding customary arbitration between his predecessor-in-title and the Appellant's predecessor-in-title. "

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

Clerical mistake

1. There was a slip when the court below referred to the appellant as the 1st defendant. The mention of the 1st defendant as appellant was a clerical mistake which did not occasion any miscarriage of justice. (p 2304 E & G)

Customary arbitration - Grant of hearing to 2nd defendant

2. Furthermore, the sole issue before the two customary arbitration tribunals was whether the land in dispute was pledged by the plaintiff to the defendant. The ownership of the said parcel of land by the 2nd defendant was not in issue during the arbitration. There was therefore no need to hear the 2nd defendant during the arbitration and that was why the learned trial Judge reasoned that a caretaker is in the same position as a privy. Accordingly, the principle of audi alteram partem was not breached by the arbitrators. (p. 2305 D)

Whether the decision of arbitration is binding

3. In this case the plaintiff and the 1st defendant voluntarily submitted the dispute as to whether or not the land in dispute was on pledge to the 1st defendant. Both parties stated their cases and on each occasion, a decision was reached. The agreement to accept the decision as final and binding was implied. Oath taking was one of the methods of establishing the truth of a matter and was known to customary law and accepted by both parties. The 1st defendant only resiled after the arbitrators had made

their awards by refusing to produce the “juju”. It was not open to him to do so at that stage. (p. 2305 G)

Findings of trial court

4. I am satisfied that on the evidence adduced at the trial, the findings of the learned trial judge are amply supported by evidence and the court below was right in affirming them. The plaintiffs traditional history and the fact of the arbitration were subjected to very rigorous cross examination and the learned trial judge found as a fact that the two customary arbitrations ended in favour of the plaintiff to the effect that the land was on pledge, that it was redeemable, that the plaintiff did in fact redeem it following the arbitration and went into possession. (p. 2306 A)

REPRESENTATION

Chief F. A. Ilobi for the Respondent

2nd Appellant/Respondent absent and not represented.

CASES REFERRED TO

Ojibah v. Ojibah (1991) 5 NWLR (Pt. 191) 296

Chinwendu v. Mbamali (1980) NSCC 128

Ibodo & Ors. v. Enarofia & Ors. (1980) NSCC 195

Enang & Ors. v. Adu (1981) 11 S.C. 25

Odunsi v. Bamgbala (1995) 1 NWLR (Pt. 374) 641

Ogunjumo v. Ademola (1995) (Pt. 397) 254

Adeyeri II v. Atanda (1995) 5 KLR 1174; (1995) 5 NWLR (Pt. 397) 512

Iroegbu v. Okwordu (1995) 4 KLR 877

Ogoyi v. Umagba (1995) 10 KLR 1982

LEAD.JUDGMENT BY OGWUEGBU JSC

This is a further appeal to this court against the judgment of the Court of Appeal, Enugu Division by one of the defendants in consolidated suits. In the High Court of Imo State, Orlu Judicial Division, the plaintiff instituted an action against the defendants claiming the following reliefs:-

“(1) Declaration of title to the piece and parcel of land situate at Umuezeaha Umukegwu Akokwa within jurisdiction and shown in the Plan No. IM/GA2171/76 filed with this Statement of Claim. The annual value is N10.00

(2) *N200.00 (two hundred naira) general damages for trespass.*

(3) *Perpetual Injunction restraining the defendants by themselves and/or their agents or servants or their privies from further trespass on the land or from any further violation of plaintiff's ownership and enjoyment of the said land."*

B The suit is numbered HOR/73/76. The 2nd defendant filed a cross action (HOR/26/77) against the plaintiff claiming a declaration of title to the same parcel of land, general damages for trespass and perpetual injunction. Both suits were consolidated by the learned trial Judge at the request of counsel for both parties. The plaintiff in Suit No. HOR/73/76 became the plaintiff in the consolidated suits and the defendants continued to be defendants. C The plaintiff called the land ALA EKPE AFA situate at Umuezeaha Umukegwu Akokwa. The defendants called it ALA UMUNWOKEOCHA situate at Ikpa Umukegwu. Both parties filed and tendered survey plans of the land in dispute as Exhibits "A" and "B" respectively.

D At the close of the case, the learned trial Judge found for the plaintiff and granted all the reliefs sought. Dissatisfied with the decision, the 2nd defendant appealed to the Court of Appeal. His appeal was unsuccessful hence the further appeal to this court.

Two issues submitted for determination in the appeal by the 2nd E defendant are:

"1. Whether the appellant and his predecessors-in-title were bound by the decision of the native or customary arbitration that sought to resolve the dispute between the appellant's predecessor-in-title and the plaintiff respondent.

F *2. Whether the respondent established a valid and binding customary arbitration between his predecessor-in-title and the appellant's predecessor-in-title. "*

The plaintiff's case is that he is the owner in possession of the piece of land called Ala Ekpe Afa verged yellow in Exhibit "A" and that G the area verged pink in the said exhibit is the portion in dispute. His compound and his other land not in dispute lie on the west and south-west of the area in dispute and is verged violet.

The plaintiff's Ekpe Afa (a hollow ground for Afa ritual ceremony) lies in the centre of the land. The plaintiff performs his Afa (ritual) H worship on the hollow ground as his ancestors before him did.

The entire Ekpe Afa land has been in the ownership and possession of the plaintiff's ancestors before him until it descended by inheritance to the plaintiff who has been in ownership and possession since his father's death many years ago. It is the plaintiff's case that the portion

verged pink in Exhibit “A” was pledged by his father Ukobi to late Uzozie (1st defendant’s grand father) for “nnu ego nese” which is the equivalent for N2.00 (two naira) today.

Sometime before the death of the 1st defendant’s grandfather Uzozie, the plaintiff and his father noticed the presence of the 2nd defendant’s father (Ume Agudosi) a non-member of Uzozie’s family on the pledged land. He was farming on it. The plaintiff and his father inquired from Uzozie why the father of the 2nd defendant was on the land. They were informed that he Uzozie had asked the 2nd defendant’s father to look after the farm land for him since he (Uzozie) lived far away from the land while the 2nd defendant’s father lived near it. Subsequently, the 1st defendant’s grandfather Uzozie, the 2nd defendant’s father Ume Agudosi and the plaintiff’s father Ukobi died.

About twenty five years from the time the suit was filed when the 1st defendant was still a child, the plaintiff in the company of one Festus Onuoha took 1pound (one pound) to one Agehi and Ikeagwuonu (relatives of the 1st defendant) for the redemption of the land in dispute. They refused to accept the redemption money. Plaintiff stated that he took the complaint about the pledge to Chief Joseph Okoli who summoned the elders. The 1st defendant, his relatives Agechi and Ikeagwuonu attended. Each party stated his case. The Chief and the elders inspected the land. They saw one Ume Obiaraeri, a mad man who lived in a hut on the land in dispute. He chased them away from the land during the inspection.

The chief and the elders decided that Agehi and Ikeagwuonu should accept the sum of 1pound (one pound) for which the land was pledged. The money was tendered but they refused to accept it. The chief advised that as long as the mad man was on the land, the plaintiff should not enter the land. Chief Okoli advised the plaintiff to keep the money until the mad man died.

When the mad man died, the 1st defendant (grandson of Uzozie) the pledgee had grown up. The plaintiff took the sum of 1pound (one pound) to him. He refused to accept it and claimed ownership of the land in dispute. The plaintiff thereupon took the matter to the council of Elders of Umukegwu. The plaintiff and the 1st defendant were invited by the elders. Each party stated his case and called witnesses. It was the plaintiff’s case that the elders after inspecting the land decided that he and six persons from his family should take oath to be presented by the 1st defendant on an appointed day in affirmation that he, plaintiff, is the owner of the land in dispute. On the appointed day, the plaintiff with six members of his family, the elders and the 1st defendant came to the land in dispute. The 1st defendant failed to produce the “juju” for the plaintiff and his men to swear. The elders then decided that the

plaintiff should take back the land in dispute as it belongs to him. They also asked the plaintiff to hand over the 1 to the 1st defendant. The 1st defendant refused to accept it. The elders, by custom, asked the plaintiff to hand it over to one Linus Ohia-an elder and he did so. It was the plaintiff's case that following this decision, he resumed possession of the land in dispute, farming B it and harvesting the economic crops on it.

After one year, the 2nd defendant entered upon the land in dispute, cut and collected cones of oil palm fruits. The plaintiff carried them away from where the 2nd defendant gathered them on the land. The matter was reported to the police by the 2nd defendant. The plaintiff was C prosecuted and the case ended in his favour. During the police investigation, the 1st defendant stated that the 2nd defendant was his caretaker over the land. The defendants made written statements to the police during the investigation.

The 1st defendant agreed that when the matter of the pledge D was taken before the chief and elders, Ikeagwuonu was his spokesman. He stated that he told the chief and elders that the land belongs to him and that the decision was that he should produce "juju" for the plaintiff to swear that the land belongs to the plaintiff. He replied that the plaintiff should instead produce "juju" for him (1st defendant) to swear. He also E agreed that when the 2nd defendant reported the plaintiff to the police for stealing cones of palm fruits, he told the police in his statement that the 2nd defendant was his caretaker and that it was Ikeagwuonu who asked him to say so. During the proceedings in the High Court, the 1st defendant changed his stand and maintained that he is not the owner of the F land and knew nothing about the land in dispute.

The 2nd defendant in his evidence in the High Court stated that he is the owner of the land in dispute, that he inherited it from his brother Nnaji Ume who inherited it from Ume Obiaraeri, his uncle. When Ume Obiaraeri died without leaving any issue, the land passed to Nnaji Vine G and Nnaji gave the land to him as "Ala Obi" (dwelling place). He denied that Ume Obiaraeri was a mad man. It was his case that Ume Obiaraeri inherited the land from one Nwagu (2nd defendant's grandfather) and that Nwokocha was their ancestor who founded the land. He agreed that he reported the plaintiff to the police when the latter carried away the H cones of oil palm fruits which he (2nd defendant) cut and gathered on the land in dispute and that the daughters of Umukegwu settled the matter and asked the plaintiff to return the sum of 3pounds (N6.00) he realised from the sale of the oil palm fruits to him. He said that after this incident, the plaintiff entered the land again, cut and collected cones of ripe oil

palm fruits. He reported the matter to the police. It was his evidence that he never told the police that the 1st defendant was the owner of the land and that he (2nd defendant) was his caretaker.

On the two arbitrations, the learned trial Judge found as follows:

‘The first and the second arbitration (sic) established that the land in dispute was on pledge in the hands of the 1st defendant. In the first arbitration the first defendant through his relatives Agehi and Ikeagwuonu claimed ownership of the land in dispute. In the second arbitration the first defendant by himself claimed title to the land in dispute. He has not seriously denied all this in his evidence. It has not been satisfactorily established in evidence that the second defendant participated in the second arbitration and gave evidence for the first defendant. There is only vague evidence that he did. If these two arbitrations are binding on the first defendant then the sense in which they can bind on the second defendant is not that he was present but that if his caretakership for the first defendant is established he will be bound since in the opinion of this court a caretaker is in the same position as a privy. A privy need not be present at the hearing before a decision in respect of land against his predecessor can bind him. Once the decision is established that the first defendant had no title there was nothing the second defendant could take further care of. In the present case the parties and the Elders met on the appointed day on the land in dispute. The first defendant did not produce the juju. The elders asked the plaintiff to take back his land because the first defendant shied away, as it were, from producing a juju and in such circumstances by their custom the land is adjudged the plaintiff’s. The plaintiff said by that time he went into possession. I believe him Going back to the question of caretakership evidence shows that the family of the second defendant came to be connected with the land in dispute from the time of Umeagugosi as caretakers all the way from the time of Uzozie, grandfather of the first defendant, who was the original pledgee. The second defendant is bound by the two arbitrations.’

The court below after considering the above findings of the learned trial Judge on the arbitrations came to the conclusion that the complaints of the 2nd defendant on the arbitrations have no basis and dismissed the grounds of appeal dealing with them.

The two issues are argued together in the 2nd defendant/appellant’s brief. His main complaint is that his father and predecessor-in-title (Edward Ume) who was the 2nd defendant in the consolidated suits was not present before the Chief and Elders who deliberated on the land dispute and gave a decision that the land was on pledge. Learned

counsel for the 2nd defendant submitted that the arbitrators gave their decision without hearing from the 2nd defendant/appellant. He referred to the finding of the learned trial Judge where he said that it was not satisfactorily established that the 2nd defendant participated in the second arbitration and gave evidence and that despite his finding, the learned trial Judge held that B the 2nd defendant had no title once the title of his principal terminated.

The learned counsel for the 2nd defendant/appellant also referred to an observation by the court below that:

“The appellant as first defendant and D.W.1 in his evidence admitted the second arbitration.”

C It was submitted that the only appellant at the court below was the 2nd defendant and the 1st defendant did not appeal against the judgment of the trial court. Counsel argued that from the above passage, the court below was under the mistaken belief that the 1st defendant appealed hence it considered his evidence at both proceedings of the arbitration and came to conclusion that there is no evidence that the appellant D (1st defendant) and his witnesses never attended the proceedings and was therefore bound by the award made by the arbitrators that the land was on pledge. We were urged to hold that the court below fell into an error which led to a miscarriage of justice because it relied on this conclusion to affirm the judgment of the trial court. E

There was a slip when the court below referred to the appellant as the 1st defendant. That court was dealing with the validity of customary arbitration at the time it made that slip. Strictly speaking, the court was referring to the evidence of the 1st defendant who was F D.W.1 in the trial court. Referring to the 1st defendant as appellant was a clerical mistake. This is borne out by a portion of the evidence of the 1st defendant quoted in the judgment immediately after the offending sentence. The Court of Appeal when it considered the appeal before it was not limited to the evidence of the 2nd defendant who was the appellant G but had to consider the whole evidence adduced including that of the 1st defendant who was the principal actor in the arbitration proceedings. **The mention of the 1st defendant as appellant was a clerical mistake which did not occasion any miscarriage of justice.**

H The fact that there was a pledge of the land and its redemption loomed large during the customary arbitrations and trial in the High Court. The learned trial Judge found that there was a pledge based on the evidence before him. It was not necessary for the 2nd defendant/appellant to appear and testify before the customary arbitration proceedings because his title to the land in dispute was not an issue before the arbitrators. His name was only mentioned

as a caretaker of the 1st defendant. The learned trial Judge put the position of the 2nd defendant/appellant clearly when he said:

"If these two arbitrations are binding on the first defendant then the sense in which they can bind on the second defendant is not that he was present but that if his caretakership for the first defendant is established he will be bound since in the opinion of this court a caretaker is in the same position as a privy. A privy need not be present at the hearing before a decision in respect of land against his predecessor can bind him." B

As to the caretakership of the 2nd defendant/appellant, P.W.2 (Eleazar Nwigbo) a police sergeant then attached to Ihitenansa Police Post in Orlu Local Government Area of Imo State and formerly in charge of Akokwa Police Post told the trial court of the report of stealing made by one Edward Ume (2nd defendant) against the plaintiff. He investigated the report, recorded the statements of the parties including those of the 1st defendant and one Ikeagwuonu in respect of the complaint. He tendered the statements of the 1st defendant and Ikeagwuonu as Exhibits "C" and "D". In those exhibits the 1st defendant and his relation Ikeagwuonu claimed the land in dispute as their own and that the 2nd defendant was their caretaker. C D

Furthermore, the sole issue before the two customary arbitration tribunals was whether the land in dispute was pledged by the plaintiff to the defendant. The ownership of the said parcel of land by the 2nd defendant was not in issue during the arbitration. There was therefore no need to hear the 2nd defendant during the arbitration and that was why the learned trial Judge reasoned that a caretaker is in the same position as a privy. Accordingly, the principle of audi alteram partem was not breached by the arbitrators. E F

One of the many methods of settling disputes under the customary law is to refer the dispute to the family head or an elder or elders of the community for a compromise solution. When the dispute has been investigated at the meeting and in accordance with customary law and a decision is given, it is binding on the parties. There is as a rule an agreement that the decision of the arbitrators would be accepted as final and binding. In this case the plaintiff and the 1st defendant voluntarily submitted the dispute as to whether or not the land in dispute was on pledge to the 1st defendant. Both parties stated their cases and on each occasion, a decision was reached. The agreement to accept the decision as final and binding was implied. Oath taking was one of the methods of establishing the truth of a matter and was known to customary law and accepted by both parties. The 1st defendant only resiled after the arbitrators had made their awards by refusing G H

to produce the “juju”. It was not open to him to do so at that stage. See Ojibah v. Ojibah(1991)5 NWLR (Pt.191) 296; Oline & Ors. v. Obodo & Ors. (1958) SCNLR 298. **I am satisfied that on the evidence adduced at the trial, the findings of the learned trial Judge are amply supported by evidence and the court below was right in affirming them. The plaintiff’s traditional history and the fact of the arbitration were subjected to very rigorous cross examination and the learned trial Judge found as a fact that the two customary arbitrations ended in favour of the plaintiff to the effect that the land was on pledge, that it was redeemable, that the plaintiff did infact redeem it following the arbitration and went into possession.**

Finally, I must emphasize that this appeal is against concurrent judgments of the trial court and the Court of Appeal on pure questions of fact. It has been the practice of this court not to disturb such concurrent findings unless there were particular circumstances dictating otherwise. There are no facts on record to lead me to the contrary view. See Chief Serbeh v. Karikari (1938) 5 WACA 34; Chinwendu v. Mbamali (1980) NSCC 128; (1980) 3-4 S.C. 31 and Ibodo & Ors. v. Enarofia & Ors. (1980) NSCC 195 and Enang & Ors. v. Adu (1981) 11 S.C. 25; (1980) 5-7 S.C. 42. The plaintiff established a valid and binding customary arbitration which is binding on the 1st and 2nd defendants.

I therefore find no merit in the appeal. It must fail and I hereby dismiss it and affirm the decision of the Court of Appeal which affirmed the decision of the trial court. The respondent is entitled to costs which I assess at N1,000.00.

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BELGORE JSC

It is regrettable that the appellants still cling to the notion that by some providence this court may one day change its mind on concurrent findings lawfully arrived at by the lower courts. This court, despite the most current decisions on this very subject, has been inundated by the appellants attempting to change these line of decisions on concurrent findings of fact. In some cases, these attempts are camouflaged under the so-called “error of law” or “misdirections.” The judgment of my learned brother is cogent enough on other points raised as issues in this appeal and I am in full agreement with his conclusions which I adopt as mine. Certainly the concurrent findings of the trial court upheld by the Court of Appeal cannot be faulted and this court has no reason to inter-

fere with them. See *Odunsi v. Bamgbala* (1995) 1 NWLR (Pt. 374) 641; *Ogunjumo v. Ademolu* (1995) 4 NWLR (Pt.389) 254; *Adeyemi v. Atanda* (1995) 5 NWLR (Pt. 397) 512; *Iroegbu v. Okwordu* (1995) 4 NWLR (Pt.389) 270; *Ogoyi v. Umagba* (1995) 9 NWLR (Pt.419) 283. These are among the latest attempts to change the course of history on concurrent findings of courts below and the attitude of the Supreme Court. This attitude has got ossified - tried and tested several times - and ought to be so recognised by litigants.

I make the same order as to costs as in the judgment of Ogwuegbu, J.S.C. aforementioned. -

C

WALI JSC

I have the privilege of reading before now, the lead judgment of my learned brother Ogwuegbu, J.S.C. I agree with the reasoning and conclusion that the appeal ought to be dismissed. I also hereby dismiss it and abide by the consequential orders in the lead judgment.

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KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Ogwuegbu, J.S.C. I agree with the conclusion that the appeal lacks merit and ought to be dismissed. There was no doubt that the evidence of the pledge in this case formed part of the traditional history pleaded and evidence led thereon by the plaintiffs. This was accepted by the learned trial Judge and confirmed by the Court of Appeal. The traditional evidence in support of the plaintiff's case stood largely uncontradicted. The same cannot be said of the defendant/ G appellant's case. There is no reason for us to interfere.

The appeal is therefore dismissed with N1,000.00 costs in favour of the respondent.

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OGUNDARE JSC

I have read the draft of the judgment of my learned brother Ogwuegbu, J.S.C. just delivered. For the reasons given by him in the

said judgment which I hereby adopt as mine, I too dismiss the appeal and affirm the decision of the court below which too affirmed the decision of the trial court. I award N1,000.00 costs of this appeal to the respondent against the 2nd defendant/appellant.

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