

SUPREME COURT OF NIGERIA
2ND APRIL, 1996. SC. 21/1990
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED, S U. ONU, JJSC.

SAKA OLUGBODE & ANOR. PLAINTIFFS/APPELLANTS
(For themselves and on behalf of
Olugbode family)

AND

ABIDOYE SANGODEYI DEFENDANT/RESPONDENT
(For himself and Ajayi family)

APPEALS - Concurrent findings of facts - Appellate court will not interfere therewith - Save where the circumstances justify interference.

EVIDENCE - Proof- Simply pleading laches, acquiescence and standing by - With no evidence thereto before the court - Is no proof of them.

LANDLORD & TENANT - Forfeiture - Possession - Principle guiding reliefs to be sought - By tenant who wants to retain possession -victorious landlord on title.

LANDLORD & TENANT - Customary tenant - Failure to pay tribute - Under Yoruba custom - Whether dependent on landlord's demand.

LANDLORD & TENANT - Forfeiture - Gross misconduct touching directly on the Landlord's title - Whether a compelling ground for grant of forfeiture.

LANDLORD & TENANT - Forfeiture - Relief against forfeiture claim - Should not be granted to a tenant - Who did not plead for the relief.

LANDLORD & TENANT - Forfeiture - Possession is automatically forfeited by a tenant - Who commits aggravated misconduct - By challenging his landlord's title.

FACT

The defendant/respondent, had earlier sued the plaintiffs/appellants in respect of the land now in dispute claiming a declaration of title to same land and injunction restraining the plaintiffs from coming unto the

land. The defendant lost through the Grade A customary court Ibadan to the Supreme Court which found in favour of the Plaintiffs that the defendant was customary tenant of the plaintiffs. In spite of these various judgments, the defendant continued to alienate the plaintiffs' land and refused to pay tribute to the plaintiffs. The plaintiffs, now appellants, then instituted the action leading to this appeal claiming forfeiture and recovery of possession of the land in dispute and injunction restraining the defendant. The case went to trial and against the background of the various judgments of the Court and conduct of the defendant, the trial court at the conclusion of proceedings held the plaintiffs were not entitled to their claims, granting to the defendant relief against forfeiture, which the defendant did not plead.

The plaintiffs appealed to the Court of Appeal against the trial Court's decision. The Court of Appeal affirmed the trial court's judgment. The plaintiffs have further appealed to the Supreme Court raising 5 issues.

ISSUES FOR DETERMINATION

Whether the Plaintiff's/Appellants by virtue of the pleadings exchanged between the parties, including the admitted facts and evidence led on both sides have established grounds entitling them to succeed on their claims for forfeiture and injunction against the defendants? If the answer is in the affirmative whether the Court of Appeal was right in dismissing the case of the plaintiffs

Whether the Court of Appeal was right in granting the defendant relief against forfeiture which the defendant did not specifically plead? Etc., see p. 628

HELD (Unanimously allowing the appeal per lead judgment of **BELGORE JSC**

Concurrent findings of facts

1. To my mind the respondent has made little issue of a very serious situation. It is well established in a long line of cases that an appellate Court will not interfere with findings of facts by the trial Court; a fortiori the concurrent findings of fact by the trial Court and the appellate Court below. This is the general principle dictated by the very fact that the trial Court was pre-eminently placed to hear and see the parties and their witnesses and evaluate their evidence and demeanour to arrive at what to that Court is the truth of the case. There are, however, exceptions to this rule. In the present case the bulk of the evidence is documentary, that is to say, previous judgments land in dispute, documents showing according to the trial judge that the respondent's family wrongfully alienated substantial portions of the land in dispute even during the pendency of the cases and there

after they were confirmed as customary tenants of the appellants. If the decisions of the two Courts below were allowed to stand, the appellant would have no more land. (p. 628 D)

Customary tenant - Failure to pay tribute

2. It is a pity the trial judge approached the failure to pay ishakole cavalierly by holding that after the appellants' family's victory in the Supreme Court they failed to make demand for it. It must be clearly stated that once judgment is entered between the parties, facts therein are presumed to be to the knowledge of the parties and sometimes in cases of this nature, to the world at large. Payment of ishakole is automatic; it needs not be demanded under Yoruba customary law. At any rate, the trial judge received no evidence that a demand was a condition precedent to the payment of Ishakole. The respondent family virtually admitted all that the plaintiff/appellant pleaded except their plea that the Ajayi family honestly believed they owned the land absolutely. Does this belief affect the authority of the judgment of the various Courts to the contrary. Can a party blatantly disrecognise a judgment? (p. 628 H)

Reliefs tenant must seek to retain possession

3. When a title has been clearly established, the following must be the guiding principles for the defendant:

1. if the landlord has claimed forfeiture the defending tenant must seek relief against it either in his statement of defence or by way of counter claim;

2. if the landlord has not brought an action after his victory on title, the tenant may by originating summons seek relief against forfeiture

3. a tenant seeking reliefs against forfeiture must do so unambiguously as he must join issue with the landlord on it. The principles above sine qua non for a tenant who wants to retain possession against a victorious landlord on title. The claim by plea of laches, acquiescence and standing by is like beating about the bush in the face of obvious claim. (p. 629 B)

Forfeiture - Gross misconduct touching on landlord's title

4. Misconduct per se will not be a reason for automatic grant of forfeiture, albeit if that misconduct is confined to just a few members of the tenant family. But gross misconduct touching directly on the title of the landlord and as in this case after the final decision in the Supreme Court has confirmed the title of the landlord is a valid, and I must say, compelling ground for granting forfeiture. (p. 629 H)

Relief against forfeiture claim

5. Therefore where a landlord claims forfeiture for gross misconduct and pleads it clearly as a claim, the tenant who has not sought and pleaded for relief against forfeiture cannot have the relief. As the person who claims equity must patently do equity, the tenant with clearly proven act of gross-misconduct has an uphill task tackling claim for forfeiture, his position is aggravated by his failure to ask for relief against forfeiture. (p. 630 B)

Evidence – proof

6. Above all there was no evidence before the trial Court of the claim of laches, acquiescence and standingby by the respondent and simply pleading these equitable reliefs is no proof of them. I find the trial Court was in error and the Court of Appeal succumbing to the same pitfall to refuse the appellants' claim. (p. 630 E)

When the tenant will automatically forfeit right to possession

7. A tenant who turns round to challenge the title of his landlord has committed a gross misconduct and the misconduct is aggravated where there is a subsisting decision of the Court that he is nothing but a tenant. In such a case he automatically forfeits his right to possession should the landlord claim it. The appellants' family have been gravely wronged by the stance of the respondent's family by their defiance and obduracy and purported alienation of the landlord's land. Their holding right from the time of their ancestor, Ajayi, had always been for agricultural purpose, they portioned out substantial parts of the land for sale to strangers and for residential holding as if they were the outright owners. The Ajayi family has also failed to put before the Court triable issues to traverse the claim for forfeiture. Had the respondent family set out in their defence prayer for relief against forfeiture, all the very large issues of misconduct by them as in the statement of claim would have been traversed. (p. 630 F)

NOTABLE POINTS OF INTEREST***BELGORE JSC******1. Defences of laches and acquiescence under Yoruba Custom***

The question of laches, acquiescence and standingby are very alien to Yoruba native law and custom because possession however long cannot be converted to title. (p. 629 H)

2. Need for customary tenant to become contrite

In this case, right to this court, the respondent's family, as customary ten

ants of the appellants, and so confirmed by the Supreme Court, remain non contrite and obdurate to their landlord and it is not in their mouth to say that they, behaved correctly to justify refusal of forfeiture even if they ask for relief against it. The respondent's family have not reneged on their
 B fake assumption of title to the extent of admitting alienation of parcels of the land in dispute to "pay the cost of prosecuting" this case. (Inverted commas, mine). This is a clear outrage against the rights of their overlord. (p. 630 C)

ONU JSC
 C ***3. Relief against forfeiture - Cannot be by Respondent's Notice***

It is trite that if an overlord brings an action for forfeiture as in the instant case, the customary tenant may seek relief from forfeiture by means of a counterclaim. It is the law also that if the overlord has not brought an action for forfeiture, the customary tenant may seek relief from forfeiture
 D by means of an originating summons. Nor can the customary tenant seeking relief from forfeiture simply amend his statement of defence and do nothing more as there would not be an opportunity for issues to be joined on the pleadings as regards relief from forfeiture. Nor further still can a customary tenant who did not claim relief from forfeiture in his statement
 E of defence claim such relief for the first time on appeal in a Respondent's Notice under Order 3 rule 14(2) of the Court of Appeal Rules as amended (p. 635 H)

REPRESENTATION

F Chief S. A. Adejumo, for the Appellants
 Respondent and counsel are absent

CASES REFERRED TO

Lasisi v. Tubi (1974) 12 S.C. 71, 74-76
 G Ude v. Ojechemi (1995) 9 KLR 1788
 Taiwo v. Akinwumi (1975) 4 S.C. 143, 170, 172
 Ladega v. Akinbiyi (1975) 2 S.C. 91
 Oniah v. Onyia (1989) 1 NWLR (pt. 99) 514, 546
 Alade v. Aborishade (1960) 5 FSC 167
 Nwani v. Akon (1928) 8 NLR 19
 H Inusa v. Oshodi (1934) A.C. 99
 Dokubo v. Bob-Manuel (1967) 1 All NLR 113

RULES REFERRED TO

Appeal Rules 0. 3 r. 14(2)

LEAD JUDGMENT BY BELGORE JSC

This appeal is in respect of a large expanse of land situate at Ajayi Orioke/Aderibigbe village along Iwo Road, Ibadan. The plaintiffs who are the appellants here and in the Court of Appeal had sued the defendant (representing himself and Ajayi Family of the same address) on the land in dispute claiming:-

- “1. *Forfeiture and recovery of possession of the land in dispute.*
2. *Injunction restraining the defendant, his servants, agents and any person claiming through him from being or doing anything on the land in dispute.*”

The land in dispute was the subject-matter of a suit before the Customary Court, Ibadan, in which the present respondent's family were plaintiffs. The background of the claim leading to this appeal may be summarised as hereunder:-

“*The plaintiffs (now appellants) assert that their ancestor, one Olowu, found the land and settled there during the time of Lagelu. Olowu died and his sons: Olugbode, Aderibigbe, Adeniji and Adegbite, the descendants of Olowu (headed by Olugbode family) continued to exercise maximum right of ownership over the land. This land now in dispute forms a little part of the Olowu's land aforementioned. During his lifetime, Olugbode made a grant of the land to Bade and Tubosun families, who are still tenants of Olugbode family and their holdings form part of the disputed land's boundaries. One Samuade, a maternal relation of Aderibigbe, one of the children of Olowu, brought to Aderibigbe one Ajayi, the ancestor of the defendant family for a customary grant of the land in dispute, entailing an annual homage in the payment of tribute or Ishakole made up of maize and yams. This customary tenancy never involved absolute ownership or title to Ajayi family but subject always to good conduct and payment of “Ishakole”. Though Aderibigbe founded a village on the disputed land originally called Aderibigbe village, but when Ajayi's descendants became prominent on the land, the village is now commonly referred to as Aderibigbe/Ajayi Orioke village. Part of the land was acquired by the Ibadan District Council for building a teachers' College in 1967 and the plaintiff's family were compensated for the land whilst the Ajayi family were compensated for crops. In 1971, because some persons raised objection, in the Commissioner for Lands and Housing v Jimoh Fogebe suit 11232/1972, the plaintiffs were adjudged to be the rightful owners of a part of the land compulsorily acquired by the defunct Western State Government for television substation.*”

Dispute surfaced on the disputed land when one Raufu Olatunji became the head of Ajayi family. He refused to pay "Ishakole" or to admit the over lordship of Olugbode family over the land. He went to court, representing himself and his family and made this claim over the land:-

"1. Plaintiffs' claim (over the land) against the defendant (representing Olugbode family), declaration of the title to all that piece or parcel of land situate at Orioke village, Iwo Road Ibadan.

2. An injunction to restrain the defendant, his agents, servants or privies from coming on the said land."

He drew and tendered a plan to support his claim. He claimed ownership through one Osun that he purported to descend from. The case was at Grade A Customary Court, Ibadan and the claim was a total denial of the title of Olugbode family to the land. The appeal to the High Court of Western State in appeal No. 1130A/1968 was dismissed. There was a further appeal to the former Western State Court of Appeal (appeal No. CAW/35/1969) which was also dismissed. In appeal No. SC.286/1970 Supreme Court affirmed the decisions of the lower courts by dismissing the appeal of the plaintiff/appellant now respondent in this appeal. The crux of all the decisions in the courts below is that the Ajayi family were customary tenants of Olugbode family.

Remarkable enough, as the respondents pursued their claim as outright title holders or absolute owners of the land, with cases still pending either in the Customary Court or the Higher Courts of record, they kept on alienating parts of the land as absolute owners. Examples are:-

"That after challenging the right and ownership to the said land by the plaintiffs as landlord and after the judgments referred to above the defendants as tenants have purported to alienate substantially the whole of the said land to various people for building purposes as evidenced by:

(a) Deed of conveyance dated 7th April, 1967 and registered as No. 1 at Page 3 in Volume 992 of the Lands Registry at Ibadan;

(b) Deed of conveyance dated 7th April, 1967 and registered as No.3 at Page 3 in Volume 992 of the Lands Registry at Ibadan;

(c) Deed of conveyance dated 30th October, 1968 and registered as No. 15 at Page 15 in Volume 1101 of the Lands Registry at Ibadan;

(d) Deed of conveyance registered as No. 38 at Page 38 in Volume 1478 of the Lands Registry at Ibadan;

(e) Deed of conveyance registered as No. 39 at Page 39 in Volume 1478 of the Lands Registry at Ibadan;

(f) Deed of conveyance registered as No. 40 at Page 40 in Volume

1478 of the Lands Registry at Ibadan."

Even after the decision of the Supreme Court, the respondents have purported to alienate the entire disputed land for residential purposes and according to their statement of defence to the suit, the subject of this appeal, they had to alienate so as to raise money to prosecute their defence to this suit. (The underlining is mine for emphasis) B

Despite the previous decision of Supreme Court, in defence to this action now on appeal, the respondents insist that they honestly believed they owned the land but admitted that they stopped paying "Ishakole" which they were paying before. It is only during the present generation of the present respondent that they stopped paying Ishakole. The defendant (respondent now) claims that by virtue of equitable defences of laches, acquiescence and standing by the plaintiffs/appellants' case must fail. The learned trial Judge in a lengthy judgment inter alia found as follows:- C

"The judgments and conveyances tendered by the plaintiff reveal the following facts. On 7/4/67 the defendant's family executed two conveyances. Exhibit 15 and 16. On 12/7/68 the defendant's claim in Suit No. A2/CV/24/63 was dismissed, and the defendant's family were held to be the plaintiffs' customary tenants. Nevertheless, the defendants executed another conveyance, Exhibit 17 on 30/10/68. On 14/12/70 the defendant's appeal against the judgment in A2/CV/24/63 was finally disposed of in the Supreme Court. This notwithstanding, on the 25/4/73, about 2 1/2 years later, the defendants executed yet three more conveyances, Exhibits 12, 13 and 14. On 19/12/73 the plaintiffs brought this action." D E

However, in a conclusion that runs contrary to the above findings, learned trial Judge, having also heard the respondents say they sold portions, of the land *lis pendens* to be able to prosecute the suit, she would not order forfeiture asked for. She further held that the customary tenant can maintain an action in trespass against his landlord so far he is in possession. This is the true law but always subject to condition that the landlord's title to reversionary interest is not placed in jeopardy. She pointedly quoted Supreme Court decision in *Lasisi & Anor v. Tubi & Anor.* (1974) 12 S.C. 71, 74-76 where it was held inter alia as follows:- F G

"indeed, it will be more correct to say that, in so far as customary tenancy is concerned, our courts have always been willing and ready to grant a relief against forfeiture, except in an extreme case, where the refusal to grant it would tend to defeat the ends of justice. But such cases are few and far between." H

and also

"It is therefore obvious that, neither the overlord nor his successors-

in-title, could dispose a customary tenant except it be by means of an action for forfeiture."

In the opinion of the learned trial Judge, the purported sales of the portions of the disputed land before and after the institution of this suit were wrongful. She took this view after adverting to the defendants' statement of defence admitting virtually every thing in the statement of claim except their plea of extenuating circumstances. It is however noteworthy that the learned trial Judge in her judgment found the respondents making futile attempt that since the promulgation of the Land Use Decree, the reversionary interests of the overlords were extinguished; to me even though it was not a point vigorously pursued, it insinuated that the respondents were still denying the title of their landlords or overlords. She then dismissed the claim for forfeiture and injunction. The dismissal was not on laches, acquiescence or standing by.

On appeal, the Court of Appeal was asked to consider the following issues raised by the appellants for determination

"1. Whether the learned trial Judge was right in dismissing the case of the plaintiffs when this was tantamount to granting to the defendant matter against forfeiture which he (the defendant) never sought in his pleadings?"

2. Whether the learned trial Judge was right in failing to grant the claims of the plaintiff notwithstanding the fact that all the matters relied upon by the plaintiffs were admitted by the defendant both by his pleading and evidence proffered?"

3. Whether the learned trial Judge was right in rejecting certain documents which were already tendered and admitted suo motu?"

4. Whether the learned trial Judge was right in refusing an application for amendment of the plaintiffs' statement of claim even when it was necessary and proper for the purpose of determining in the suit the real questions in controversy between the parties."

and the following for the respondents who contended the issues of the appellants were not germane.

"WHETHER the learned trial Judge's exercise of her discretion to refuse to grant forfeiture was improper having regard to all the circumstances of this case and whether the decision was erroneous. I will urge my lords to answer and to hold that it was a proper and judicial exercise of discretion and that her decision was right."

After adverting to the issues by the Court of Appeal and considering various authorities on forfeiture, to wit *Uwani v. Nwosu Akom* (1928)

8 NLR 19; Hamzat Amodu Onisiwo v. Gbamgboye VII WACA 69; Lawani v. Tadeyo 1944 10 WACA 37, it came to hold that each case must be determined on its special circumstance on what would be misconduct to justify forfeiture. Then Omololu-Thomas, J.C.A. in the lead judgment held those cases are apposite on the principles of forfeiture and went on to hold as follows:-

"I have examined the authorities cited by the learned appellants' counsel namely -

1. Lasisi Orile v. Adelaja (1969) 1 NMLR 132 at 133;

2. Sadiku Eletu & Ors. v. Jimoh Omolewonniya & Anor. (1962) 2 All NLR 13 and 14; and

3. Lasisi v. Tubi (1974) 12 S.C. 71 at 75.

on what constitutes such misbehaviour as to incur a liability for forfeiture. These cases are apposite on his submissions on the principles he referred to. I have no doubt that the learned trial Judge considered the principles before arriving at her conclusion.

As to the submission of the learned appellants' counsel on non-payment of Ishakole to the appellants; the learned trial Judge seems also to have considered the issue. I think that the law is clear that non-payment of tribute by itself is not inconsistent with ownership of the landlord vide Alade v. Aborishade (1960) 5 F.S.C. 167; (1960) SCNLR 398.

It is therefore not the law that where a customary tenant fails to pay tribute to his overlord that amounts to a misconduct that entails an automatic forfeiture of the tenancy. The passage to which the learned appellants' counsel referred in Lasisi v. Tubi (supra)" was, according to the learned Justice taken out of context and quoted extensively from the trial court's judgment indicating that minor misconduct should not be a ground for forfeiture.

He concluded that the acts of the respondents against their overlords were rightly held by the trial Judge not to be gross enough to justify granting the plaintiffs/appellants' prayers. It must be pointed out that when the respondents, after all the decisions confirming they were customary tenants of the appellants, failed to pay Ishakole and continued to alienate parts of the disputed land, the learned trial Judge based part of her reasons for refusal on the appellants not making demand for the same.

The appeal to this court is on this decision of the Court of Appeal.

The plaintiffs/appellants in this appeal raised the following issues for determination:-

"Whether the plaintiffs/appellants by virtue of the pleadings exchanged between the parties, including the admitted facts and evidence led

on both sides have established grounds entitling them to succeed on their claims for forfeiture and injunction against the defendants? If the answer is in the affirmative whether the Court of Appeal was right in dismissing the case of the plaintiffs?

Whether the Court of Appeal was right in granting the defendant relief against forfeiture which the defendant did not specifically plead?

Whether the Court of Appeal was right in failing to hold that in view of the fact that the defendant admitted all the facts relied upon by the plaintiffs, the plaintiffs' case against the defendant was established?

Whether the Court of Appeal was right in failing to appreciate that the defendant who pleaded the equitable defences of laches, acquiescence and standing-by cannot at the time be seeking relief against forfeiture?

Whether the Court of Appeal was right in granting the defendant/respondent relief from forfeiture notwithstanding the failure of the defendant to claim and/or counterclaim for relief from forfeiture in the trial court?"

The defendant/respondent formulated only one issue to wit: Whether this court will interfere with the concurrent findings of the two courts below which refused the prayers for forfeiture and injunction.

To my mind the respondent has made little issue of a very serious situation. It is well established in a long line of cases that an appellate court will not interfere with findings of facts by the trial court; a fortiori the concurrent findings of fact by the trial court and the appellate court below. [Ude v. Ojechemi (1995) 8 NWLR (Pt.412) 152]. This is the general principle dictated by the very fact that the trial court was pre-eminently placed to hear and see the parties and their witnesses and evaluate their evidence and demeanour to arrive at what, to that court, is the truth of the case.

There are, however, exceptions to this rule. In the present case the bulk of the evidence is documentary, that is to say, previous judgments on the land in dispute, documents showing according to the trial Judge herself that the respondents' family wrongfully alienated substantial portions of the land in dispute even during the pending of the cases, and thereafter after they were

confirmed as customary tenants of the appellants. The statement of claim of the appellants is replete with the above enumerated wrongdoings going fundamentally to challenge the title of the appellants by the respondent. Clearly pleaded and admitted is the averment of the failure to pay "ishakole" by the respondent and right up to the conclusion of the trial before the High

Court, there was no iota of evidence that the respondent's family were contrite; rather in the face of the judgments against them by the Supreme Court after they lost right from Customary Court below indicating clearly they were customary tenants of the appellants, they continued acts of defiance and alienated more of the land in dispute. If the decisions of the two courts below were allowed to stand, the appellant would have no more

land. It is a pity the trial Judge approached the failure to pay ishakole

cavalierly by holding that after the appellants' family's victory in the Supreme Court they failed to make demand for it. It must be clearly stated that once a final judgment is entered between the parties, facts therein are presumed to be to the knowledge of the parties and sometimes in cases of this nature, to the world at large. Payment of Ishakole is automatic; it needs not be demanded under Yoruba customary law. At any rate, the trial Judge received no evidence that a demand was a condition precedent to the payment of Ishakole. The respondent family virtually admitted all that the plaintiff/appellant pleaded except their plea that the Ajayi family honestly believed they owned the land absolutely. Does this belief affect the authority of the judgments of the various courts to the contrary. Can a party blatantly disrecognise a judgment? B
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Again, it is remarkable that the respondent's family in all their statement of defence never for a moment prayed for relief against forfeiture. The defendant/respondent pleaded laches, acquiescence and standing by as extenuating circumstances whereby the action of the appellant claiming forfeiture and injunction should not succeed without asking for relief against forfeiture. The main plank of this action leading to this appeal is not title (that has been decided long ago in favour of the appellants), but forfeiture for serious acts of misbehaviour clearly enumerated in the statement of claim, especially when a title has been clearly established, the following must be the guiding principles for the defendant:- D
E

1. if the landlord has claimed forfeiture the defending tenant must seek relief against it either in his statement of defence or by way of counter claim; F
2. if the landlord has not brought an action after his victory on title, the tenant may by originating summons seek relief against forfeiture;
3. a tenant seeking reliefs against forfeiture must do so unambiguously as he must join issue with the landlord on it.

The principles above are sine qua non for a tenant who wants to retain possession against a victorious landlord on title. The claim by plea of laches, acquiescence and standing by is like beating about the bush in the face of obvious claim. [Asani Taiwo & Ors. v. Adamo Akinwunmi & Ors. (1975) 4 S.C. 143, 170, 172; William Ladega v. Kasali Akinhiyi & Ors. (1975) 2 S.C. 91; Oniah & Ors. v. Onyia (1989) 1 NWLR (Pt.99) 514, 546]. The question of laches, acquiescence and standing by are very alien to Yoruba native law and custom because possession however long cannot be converted to title. Misconduct per se will not be a reason for automatic grant of forfeiture, albeit if that misconduct is confined to just a few members of the tenant family. [Alade v. Aborishade (1960) 5 F.S.C. 167; Nwani G
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v. Akom (1928) 8 NLR 19; Inusa v. Oshodi (1934) A.C. 99].

But gross misconduct touching directly on the title of the landlord and as in this case after the final decision in the Supreme Court has confirmed the title of the landlord is a valid, and I must say, compelling ground
 B for granting forfeiture [Dokubo v. Bob-Manuel (1967) 1 All NLR 113; Onisiwo v. Fagbenro (1954) XXI N.R. 31].

Therefore where a landlord claims forfeiture for gross misconduct and pleads it clearly as a claim, the tenant who has not sought and pleaded for a relief against forfeiture cannot have the relief. As the person who
 C claims equity must patently do equity, the tenant with clearly proven act of gross-misconduct has an uphill task tackling claim for forfeiture, his position is aggravated by his failure to ask for relief against forfeiture.

In this case, right to this court, the respondent's family, as customary tenants of the appellants, and so confirmed by the Supreme Court, remain non contrite and obdurate to their landlord and it is not in their
 D mouth to say that they behaved correctly to justify refusal of forfeiture even if they ask for relief against it. [Oniah v. Onyia (supra)].

The respondent's family have not reneged on their fake assumption of title to the extent of admitting alienation of parcels of the land in dispute to "*pay the cost of prosecuting*" this case. [Inverted commas, mine]. This is
 E a clear outrage against the rights of their overlord.

Above all, there was no evidence before the trial court of the claim of laches, acquiescence and standing by the respondent and simply pleading these equitable reliefs is no proof of them. I find the trial court was in error and the Court of Appeal succumbing to the same pitfall to refuse the
 F appellants' claim.

A tenant who turns round to challenge the title of his landlord has committed a gross misconduct and the misconduct is aggravated where there is a subsisting decision of the court that he is nothing but a tenant. In such a case he automatically forfeits his right to possession should the
 G landlord claim it. The appellants' family have been gravely wronged by the stance of the respondent's family by their defiance and obduracy and purported alienation of the landlord's land. Their holding right from the time of their ancestor, Ajayi, had always been for agricultural purpose, they portioned out substantial parts of the land for sale to strangers and for residential holdings as if they were the outright owners. The Ajayi family
 H has also failed to put before the court triable issues to traverse the claim for forfeiture. Had the respondent family set out in their defence prayer for relief against forfeiture, all the very large issues of misconduct by them as in the statement of claim would have been traversed.

In the final analysis, this appeal has great merit. I allow the appeal and set aside the judgments of the Court of Appeal and the High Court. I therefore grant all the prayers of the plaintiffs/appellants on behalf of Olugbode family for forfeiture and injunction against the respondent who stood in for B
Ajayi family. I award N1,000.00 as costs of this appeal.

KUTIGI JSC

I have had the opportunity of reading before now the judgment of C
my learned brother Belgore, J.S.C. just delivered. I agree with his conclusion that this appeal has merit and ought to succeed. I accordingly allow it. The judgments of the lower courts dismissing plaintiffs' claims both for D
forfeiture and injunction are set aside. In their places an order granting plaintiffs' claims for forfeiture and injunction against the defendant is substituted. I also award N1,000.00 costs to the plaintiffs.

OGUNDARE JSC

For the reasons given by my learned brother Belgore, J.S.C. which E
reasons I hereby adopt as mine -I too allow this appeal and set aside the judgment of the two courts below. The defendant not having claimed relief against forfeiture and still remaining in defiance of the rights of the plaintiffs as overlord, it was wrong of the two courts below to refuse plaintiffs' F
claims. I hereby enter judgment for the plaintiffs in terms of their claims in the trial court.

I, too, award N1,000.00 costs of this appeal to the plaintiffs.

MOHAMMED JSC

I agree that this appeal ought to be allowed for the reasons given in G
the judgment of my learned brother, Belgore, J.S.C. I have had the preview of the draft of the judgment before now. It is quite clear from the decision of the Ibadan City Grade A Customary Court No.2 that the main issue which was fought by the parties was, whether the Ajayi family were absolute owners or tenants in regards to the land in dispute. The decision of the H
President of the Customary Court that Ajayi family were customary tenants on the land in dispute and therefore could not sue for a declaration of title, was affirmed by the High Court, the Western State Court of Appeal and the Supreme Court. Thus putting a final seal against any claim to title to the land in dispute by Ajayi family.

In spite of this decision the Ajayi family continued to alienate and sell part of the land in dispute. They even admitted alienating part of the land in dispute in order to pay for their legal fees in defending the suit filed by their acknowledged landlords, the Olugbode family. Furthermore, they stopped payment of “Ishakole”. It is for the above reasons that the appellants filed this action and claimed for forfeiture, recovery of possession of the land in dispute and injunction.

It is instructive to point out that a misbehaviour by a customary tenant in denying the title of his overlord incurs the penalty of forfeiture. See *Erinle v. Adelaja and ors.* (1969) N.S.C.C. 212 at 216. If a tenant wants to remain in possession against a claim by a landlord for forfeiture the tenant must specifically seek relief against it. In the case of *William Ladega v. Kasali Akinyili* (1969) N.S.C.C. 409 at 413 this court held:

“On the complaint about the order for both forfeiture and possession, we agree with the contention of Mr. Lardner for the plaintiffs/respondents that, notwithstanding the clear averment regarding the liability of a customary tenant for forfeiture in paragraph 7 of the Statement of Claim, the defendant and his people did not ask in their pleadings, even in the alternative, for relief against forfeiture. They have decided on a straight fight, basing all on title or nothing; they must now be prepared to take the consequences”

I therefore agree with my Lord Belgore in the lead judgment that the respondent’s family having failed to claim a relief against forfeiture are not entitled to such an award. For the above reasons and the fuller reasons in the lead judgment I too will allow this appeal. I hereby set aside the judgments of the trial High Court and the Court of Appeal. Judgment is entered for the plaintiffs/appellant’s in terms of their writ of summons and this shall be the Judgment of the court. I abide by the order made in the lead judgment on costs.

ONU JSC

I have been privileged to read before now the judgment of my learned brother Belgore, J.S.C. and I agree with him that this appeal must perform succeed and it is accordingly allowed by me.

I only wish to amplify briefly my reasons for agreeing entirely with the judgment of my learned brother, Belgore, J.S.C.

The piece or parcel of land now in dispute is situate at Ajayi Orioke/Aderibigbe Village, Iwo Road, Ibadan and is Olugbode family land from time immemorial under Native Law and Custom. The same piece or parcel

of land as part of a larger area was the original property of one Olowu, the great ancestor of the plaintiff and who settled thereon during the time of Lagelu of Ibadan. The same piece of land now in dispute was the subject-matter in Suit No. A2/CV/24/63: Raufu Olatunji (for and on behalf of Ajayi family) v. Agboade Olugbode (for and on behalf of Olugbode family). Aderibigbe of the Olugbode family had made a grant of the land in dispute to Ajayi and as incident of the tenancy, Ajayi was paying annual customary homage (Ishakole) to the Olugbode family. When Raufu Olatunji who became the family head of the Ajayi family refused to pay the plaintiffs' family the annual Ishakole as his predecessors did, and as against the plaintiffs he was frontally claiming ownership of the land on behalf of his family, thus challenging the title of the plaintiffs as overlords on the land, he instituted Suit No. A2/CV/24/63 (supra) claiming against Agboade Olugbode (Mogaji) for himself and on behalf of Olugbode family as follows:-

"The plaintiff's claims against the defendant declaration of title to all that piece or parcel of land situate at Orioke Village, Iwo Road, Ibadan.

2. An injunction to restrain the defendant his agent, servants or privies from coming on the said land."

It is common ground and indisputable that the Ibadan City NO.2 Grade "A" Customary Court, Agodi, Ibadan, on 12th July, 1968, the Ibadan High Court on 15th November, 1968, the Western State Court of Appeal and the Supreme Court in Suit No. SC.286/1970, dismissed Raufu Olatunji and his Ajayi family's action.

After challenging the plaintiff's right and ownership to the said land and sequel to the judgments referred to above, the defendants as tenants have purported to alienate substantially the whole of the said land to various people for building purposes by making and executing certain conveyances in favour of third parties. Indeed, in utter defiance of the plaintiffs' rights, the defendants have not only refused to acknowledge plaintiffs' overlordship on the said land, they refused to pay the annual Ishakole and continues even now to alienate the rest of the said land for building purposes. See paragraphs 3, 4, 8, 10, 15, 16, 19, 20, 22, 24 and 25 of the plaintiffs' statement of claim. All the averments in the plaintiff's statement of claim were substantially admitted by the defendant. For example, in paragraph 2 of the defendant's statement of defence, he averred as follows:-

"2. The defendant admits paragraphs 3, 6, 8, 14, 17, 18, 19, 20, 21 and 22 of the plaintiffs' statement of claim."

It is trite law that what is admitted need no further proof. See section 74 of the Evidence Act; Okparaeke v. Egbuonu (1941) 7WACA 53 at 55 and Lawal Owosho & ors. v. Adebowale Dada (1984) 7S.C. 149 and 163-164.

That the defendant neither showed nor did manifestly display any extenuating circumstances, but that he rather demonstrated utter contempt for the courts, the highest court of the land inclusive, can be gathered from his pleading as well as from the evidence he led at the trial court where his conduct gave him out as a refractory, obdurate and recalcitrant litigant. For instance, in paragraphs 3, 4, 6, 7, 9, 11, 13, 14 and 16 of his statement of defence the above traits became manifest when he pleaded thus:-

"3. The defendants' family have been in possession for over one hundred years cultivating the same and planting on it, cash and economic crops like Cocoa, Kolanuts, Palmtrees, Oranges and reaping them from time to time for their own benefits without any lets or hindrance and have established and built villages or houses thereon

4. About 11 years ago the plaintiffs' family by themselves or through their servants or agents wrongfully and unlawfully started to enter upon various portions of the said land cutting down the economic trees belonging to the defendant and other members of the family and without the authority of the defendant or any member of his family.

6. The defendant's family honestly believed at the time that the grant of the land was made by one Osun a full brother of Tubosun to whom the plaintiffs in paragraph 6 of the statement of claim alleged he gave land

7. During the life time of the present generation of the defendant's family no Ishakole or rent was paid and none was demanded by anybody.

9. As to paragraph 19 of the plaintiffs' statement of claim the Ibadan City No.2 Grade "A" Customary Court recognises our family's right of customary tenant to sue the landlord for trespass.

11. The defendant and his family are poor and had to dispose of portions of the land in dispute to raise money to defend their rights.

13. The defendant's family has a village on the land in dispute with over 50 houses and the population of over 250

14. The defendant and his family will at the trial rely on the equitable defences of laches, acquiescence and standing by.

15. The defendant and his family have been in undisturbed possession of the said land exercising every right of ownership on the said land without paying any rent to anyone for upwards of at least fifty years before the plaintiffs' family started to trespass upon the land as stated in paragraphs 4 and 1 above." [Underlining above is mine for emphasis].

Poised against the defendant's defence was the plaintiffs' pleading at paragraph 25 of the statement of claim wherein they averred:-

"25. That notwithstanding the various judgments referred to above the defendant refused to acknowledge the overlordship of the plaintiffs'

family on the said land, refused to pay the annual Ishakole and they continue even now to alienate the rest of the said land for building purposes.”

At the trial, the defendant had unequivocally declared in his defence, inter alia, as follows:- B

“I am a customary tenant on the land in dispute”

One of his witnesses and a member of the defendant's family, Rafiu Fasola Sangooteyi, said under cross-examination among other things that -

“We sold because the plaintiffs had been selling and there was no money to fight the case. I agree we sold to the purchasers for building purposes.” C

The learned trial Judge basing her findings on the evidence adduced before her held on the admitted facts as follows:-

“The defendant admitted and the plaintiff has established that the defendant and his family, the Ajayi family, are the customary tenants of the plaintiffs on the area verged red in Exhibit 1 By their statement of defence the defendant admits the matters relied upon by the plaintiffs but pleads extenuating circumstances “ D

It is settled law that a tenant who turns round to challenge the title of his landlord commits gross misconduct and the misconduct becomes aggravated, where as in the instant case, there is a subsisting decision of the court that he is nothing but a tenant. See Dokubo v. Bob-Manuel (1967) 1 All NLR 113; Onisiwo v. Fagbenro (1954) XXI NLR 3 and Oniah v. Onyia (1989) 1 NWLR (Pt.99) 524 at 526. The court below having in its own consideration of the case arrived at the inevitable conclusion that:- E

“There are indeed facts pleaded in the respondent's statement of defence upon which relief against forfeiture may be grounded” F

all in the face of the appellants' pleading in paragraph 25 which asked inter alia for:

Forfeiture and recovery of possession of all that piece or parcel of land situate lying and being at Ajayi Orioko/Aderibigbe Village Iwo Road, Ibadan property of the plaintiffs' family on which the defendants are customary tenants of the plaintiffs which was subject matter in Suit No. A2/CV/24/63.” G

The next logical question to ask is whether forfeiture was not the inescapable order the two lower courts ought to and should have made? H

I will begin the consideration of this point by saying that it is trite that if an overlord brings an action for forfeiture as in the instant case, the customary tenant may seek relief from forfeiture by means of a counter-claim. It is the law also that if the overlord has not brought an action for

forfeiture, the customary tenant may seek relief from forfeiture by means of

an originating summons. Nor can the customary tenant seeking relief from forfeiture simply amend his statement of defence and do nothing more as there would not be an opportunity for issues to be joined on the pleadings as regards relief from forfeiture. See *Taiwo v. Akinwumi* (1975) 4 S.C. 143. Nor further still can a customary tenant who did not claim relief from forfeiture in his statement of defence claim such relief for the first time on appeal in a Respondent's Notice under Order 3 rule 14(2) of the Court of Appeal Rules as amended,

In the instant case, where the respondents did not counterclaim against relief from forfeiture but the learned trial Judge based her refusal to order forfeiture on ground of social problems it will amount to granting the respondents relief from forfeiture in vacuo by seeking a refuge under what the learned trial Judge christened "*extenuating circumstances*". Thus, by giving cover to the respondents under paragraph 17 of the statement of defence in respect of which the learned trial Judge held among other things, without more that:-

"By paragraph 17 he pleads that the plaintiffs' claim be dismissed. In my view, this is in evidence of a plea for relief from forfeiture."

and the court below in confirming same said:-

"There are indeed facts pleaded in the respondent's statement of defence upon which relief against forfeiture may be grounded."

According to the respondent in his brief paragraphs 3 to 17 are pertinent. They read as follows The learned trial Judge was right to have considered the pleadings as forming the basis or the grounds for the granting of the relief the"

two courts were both palpably wrong. This is so because firstly, as pointed out in *Oniah v. Onyia* (supra) at page 537

"Sentiments have no place in the courts' adjudication process. (per Obaseki, J.S.C.)

Secondly, although forfeiture by law lies primarily against individuals and in exceptional cases against a community - the latter against which it has been very restrained, wary and cautious in granting forfeiture, especially where the misconduct has been caused by a few members vide *Uwani v. Akom* (1928) 8 NLR 19; *Inasa v. Oshodi* (1934) A.C. 99 the instant case stands out uniquely distinguishable.

Thirdly, the grant of the remedy being not discretionary but follows upon the breach of the condition of customary tenancy (See *Dokubo v. Bob-Manuel* (supra) and *Onisiwo v. Fagbenro* (supra). the fact that Supreme Court judgment has been subsisting against the respondent whose

entire family under his vanguard has persistently, obdurately, refractory

and defiantly refused over the years to pay Ishakole to his landlord is guilty of unmitigated misconduct, for which it is nothing other than forfeiture - a concept found in every system of jurisprudence known to the court. Concurrent findings of fact of the two courts below which are what we are here B faced with are usually not disturbed by this court but where there are weighty reasons for so doing it will not hesitate to do so. See *Larmai v. Orbih* (1980) 5-7 S.C. 28; *Mogo Chinwendu v. Mbanegbo Mbamali* (1980) 3-4 S.C. 31 and *Ezewani v. Onwordi* (1986) 4 NWLR (Pt.33) 27. In the instant case, the arrant and manifest display of misconduct by the respondent aided by C members of his family which renders the findings of fact by the two courts below as not only unsound but unsupportable by the evidence (See *Abidoye v. Alawode* (1994) 6 NWLR (Pt.349) 242, forfeiture becomes inevitable. See *Ladega v. Akinliyi & ors.* (1975) 2 S.C.91 at 97.

For the reasons given by me and the fuller ones contained in the judgment of my learned brother Belgore, J.S.C. I too allow the appeal. I D subscribe to the consequential orders made therein.

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