

CITATION (1996) 6 KLR

ISSN 1117-0530

KINGS LAW REPORTS (ALL SC)

**(1996) 6 KLR PART 42 PP. 981-1266
JUNE 1996**

Dedicated to the King of Kings

O.O. NOEL ESQ. Chief Editor CAPRAWINO

INDEX OF CASES REPORTED

1. Olagunji v. Oyeniran p. 981
2. Ipinlaiye v. Olukotun p. 1000
3. Oladele v. Aromolaran 11 p. 1032
4. Coker v. Adetayo p. 1084
5. Ogboni v. Ojah p. 1097
6. Agidigbi v. Agidigbi p. 1124
7. Gbafé v. Gbafé p. 1144
8. Oshunrinde v. Akande p. 1169
9. Akpan v. Utin p. 1180
10. Okenwa v. Military Governor of Imo State p. 1227
11. Yusuf v. Union Bank p. 1249

iv **INDEX OF SUBJECT MATTER IN (1996) 6 KLR**

ACTIONS - Alternative claim - Where the major claim succeeds- Whether the alternative should still be considered. *Agidigbi v. Agidigbi* p. 1124

APPEALS - Findings of fact- Appellate court's power of interference with findings of fact of trial court - Is confined within narrow and limited dimensions. *Akpan v. Utin* p. 1180

APPEALS - Point of law - Relating to the effect of a chieftaincy law - Sought to be raised newly - Whether substantial. *Okenwa v. Mil. Gov. Imo State* p. 1227

APPEALS - Concurrent findings - That did not occasion miscarriage of justice- Will be affirmed. *Oshunrinde v. Akande* p. 1169

APPEALS - Point of law - Whether the issue sought to be raised - Is an attempt to raise an entirely new case. *Okenwa v. Mil. Gov. Imo State* p. 1227

APPEALS - Point of law - Where the new point sought to be raised - Relates to interpretation and effect of a statute - Whether the issue of failure to plead that point - Should arise. *Okenwa v. Military Governor Imo State* p. 1227

APPEALS - Concurrent findings of fact - Where supported by overwhelming evidence - Supreme Court will not interfere therewith - In the absence of substantial error. *Ogboni v. Ojah* p. 1097

APPEALS - Issues - Considered by the Court of Appeal - Whether sufficient for proper determination of the appeal. *Gbafé v. Gbafé* p. 1144

APPEALS - Concurrent findings - Where justified and supported by evidence. They will not be altered. *Olagunji v. Oyeniran* p. 981

APPEALS - Findings of fact of trial court - Affirmed by the Court of Appeal - Whether erroneous. *Ogboni v. Ojah* p. 1097

APPEALS - Brief of appeal- Supplementary brief- That is contained in the same document as the reply brief - Whether incompetent. *Okenwa v. Mil. Gov. Imo State* p. 1227

APPEALS - Evaluation of evidence-By the trial court-When an appellate should not substitute its own view *Gbafé v. Gbafé* p. 1144

APPEALS -Slip in judgment Must be substantial-To warrant allowing the appeal. *Ipinlaiye 11 V. Olukotun* P.1000

APPEALS - Ground of appeal -Where leave was not obtained to argue ground of mixed law and fact-Whether that ground is incompetent. *Yusuf v. Union Bank* p. 1249

APPEALS - Issues - Whether Court of Appeal was wrong-In considering the issues

raised-Instead of the grounds. *Ipinaiye II v. Olukotun* p.1000

CHIEFTAINCY MATTERS - Registered declaration - A registered declaration where it exist - Is admissible in evidence of the customary law - Relating to the appointment and selection of the chief it pertains to. *Oladele v. Aromolaran II* p.1032

CHIEFTAINCY MATTERS - Fair hearing - Where a party has been heard by the commission of Inquiry - Whether he is to be heard again by the Executive Council During its consideration of the Report. *Olagunji v. Oyeniran* p. 981

CHIEFTAINCY MATTERS - Validity of appointment - Where the nomination of appellant was invalid - Whether his installation as the Chief is null and void. *Gbafé v. Gbafé* p. 1144

CHIEFTAINCY MATTERS - Appointment of a chief - Whether defendant not being a member of the ruling house - Whose turn it is to present candidate - Is qualified for appointment, *Oladele v. Aromolaran II* p.1032

CHIEFTAINCY MATTERS - Recommendations - Made by a commission in respect of a chieftaincy declaration - Whether binding on the government. *Olagunji v. Oyeniran* p. 981

COURTS - Discretion - Exercised by the lower courts - Where not shown to be perverse - Supreme Court will not interfere. *Oshunrinde v. Akande* p. 1169

COURTS - Relief not claimed - Court must not grant to a party - A relief not sought or one more than that sought. *Ogboni v. Ojah* p. 1097

CUSTOMARY LAW - Custom - Whether the custom varies with the status - Accorded the chief by the Governor. *Oladele v. Aromolaran II* p.1032

EVIDENCE - Admissibility - Document that is not inadmissible by law - Where not objected to when tendered in evidence - Whether admissible *Ipinlaiye II v. Olukotun* p. 1000

EVIDENCE - Burden of proof - Where it shifted to the defendant who made an assertion - The onus of adducing further evidence is on him. *Gbafé v. Gbafé* p. 1144

EVIDENCE - Wrongful exclusion of evidence - Whether a ground for reversal of a decision - In all circumstances. *Gbafé v. Gbafé* p. 1144

EVIDENCE - Weight or value - Admissible evidence - May not have any probative value of weight, *Gbafé v. Gbafé* p. 1144

EVIDENCE - Admissibility - Document admissible in law - Is properly received in evidence - Where objection to its admissibility is not raised - Immediately it

vi INDEX OF SUBJECT MATTER IN (1996) 6 KLR

is offered. *Ipinlaiye II v. Olukotun* p. 1000

EVIDENCE - Inference - Exhibits - Matters upon which the parties could not agree justifiable- Whether to be resolved by drawing inference. *Gbafe v. Gbafe* p. 1144

B EVIDENCE - Admissibility - Hearing date endorsed on counsel's file Stumbled upon by trial judge in the course of proceedings - Whether admissible. *Oshunrinde v. Akande* p. 1169

EVIDENCE - Finding of fact - Where evidence is led to support that succession is by rotation - Finding of fact to that effect - Cannot be faulted. *Oladele v. Aromolaran* 11 p. 1032

C EVIDENCE - Document - Admissibility – Exhibit 1A is admissible in proof of Customary Law relating to selection and appointment of chief. *Oladele v. Aromolaran* 11 p. 1032

EVIDENCE - Evaluation of Evidence - Whether court of Appeal failed - To properly evaluate the totality of evidence. *Akpan v. Utin* p. 1180

D EVIDENCE - Admissibility - Whether Exhibit E is admissible - As evidence of act of ownership by plaintiffs. *Akpan v. Utin* p. 1180

E EVIDENCE - Admissibility - Exhibit - Whether rightly held admissible by Court of Appeal - For the purpose of discrediting evidence of appellant. *Ipinlaiye II v. Olukotun* p. 1000

EVIDENCE - Admission - Contents of a chieftaincy declaration Where admitted, in evidence - Whether there is need to tender it. *Olagunji v. Oyeniran* p. 981

F EVIDENCE - Relevant fact - Entry on counsel's file about hearing date Whether admissible as a relevant fact. *Oshunrinde v. Akande* p. 1169

EVIDENCE - Findings of Court - Supported by evidence on record Enabled court of Appeal to dismiss appellant's appeal. *Ipinlaiye II v. Olukotun* p. 1000

G FAIR HEARING - Disciplinary proceedings - Person that may be affected thereby Nature of notice that must be given to him. *Yusuf v. Union Bank* p. 1249

JUDGMENTS - Review - Whether Supreme Court will overrule its previous decision - Where complaint is only against dicta therein - Not the correctness of the final decision. *Oladele v. Aromolaran II* p.1032

H JUDGMENTS - Findings on possession - By trial court - Is not based on proceedings in district court suit alone - But other evidence adduced before the court *Akpan v. Utin* p. 1180

JUDGMENTS- Reliefs sought - Plaintiffs are entitled to reliefs sought -If allegations

in their statement of claim are established. Akpan v. Utin p. 1180

JUDGMENTS- Hypothetical questions -In respect of a chieftaincy dispute - Whether high court has Jurisdiction to determine it. Gbafé v. Gbale p. 1144

LAND LAW- Title - Technical language of s. 40 Land Use Act - Where not employed by a party - Whether the Judgment is vitiated. Oghoni v. Jah p. 1097 **B**

LAND LAW- Communal ownership - Trial Court has jurisdiction to grant - The declaratory order of communal ownership - Under Land Use Act - As vesting of title on governor -Does not totally obliterate family ownership. Ogboni v. Ojah p. 1097 **C**

LAND LAW-Possession - Where not exclusive to the appellants - Whether user of communal land- Can ripen into personal ownership. Ogboni v Ojah p. 1097

LAND LAW- Title - Land Use Act - Whether customary right over land - Is taken away from a person or community by the Land Use Act. Ogboni v . Ojah p. 1097 **D**

LAND LAW -Communal land - Title thereto - When onus will shift to defendant- To establish exclusive ownership. Ogboni v . Ojah p. 1097

LAND LAW - Title - Since the enactment of s. 40 Land Use Act - What order can the court make-With respect to parties' right to title. Ogboni v. Ojah p. 1097 **E**

LANDLORD & TENANT - Recovery of possession - Grant of possession to the landlord overriding family convenience - Whether the lower courts can be faulted for making the grant. Coker v. Adetayo p. 1084

LANDLORD & TENANT - Recovery of premises - Notice of intention to recover possession- Circumstances under which it may be served first - Towards recovering possession from tenant. Coker v. Adetayo p. 1084 **F**

LANDLORD &TENANT - Recovery of premises - Length of notice to recover possession by the landlord - Can be as stated in the tenancy agreement. Coker v . Adetayo 1084 **G**

LEGISLATION - Chieftaincy matters - Gazetted notification of appointment or Chief- Whether capable of curing the defect in the appointment. Gbafé v. Ghafé p. 1144

LOCUS IN QUO - Visit to locus - Trial judge was in order in visiting the locus in quo- No miscarriage of justice was occasioned thereby, Ipinlaiye 11 v. Olukotun p. 1000 **H**

LOCUS IN QUO - Visit to locus - Court's decision suo motu to visit Locus in quo - Without application by either party - Whether in order. Ipinlaiye 11 v . Olukotun p. 1000

LOCUS IN QUO Visit to locus -Judge's observation at locus in quo- Not to be subsisted for sworn testimony. Ipinlaiye 11 v . Olukotun p. 1000

MASTER & SERVANT - Summary dismissal - Fair hearing - Whether appellant was summarily dismissed without fair hearing. Yusuf v. Union Bank p. 1249

B

MASTER & SERVANT - Gross misconduct - Whether employee must be tried before a court - For gross misconduct bordering on criminality - Before he can be summarily dismissed. Yusuf v. Union Bank p. 1249

C PLEADINGS - Material facts - To be admissible in evidence - Must be pleaded- Where not pleaded - They are inadmissible. Ipinlaiye II v. Olukotun p. 1000

PLEADINGS - Evidence - Documentary evidence need not be specifically pleaded - To be admissible in evidence - It is sufficient to aver the effect thereof briefly- In any pleadings. Ipinlaiye II v. Olukotun p. 1000

D

PLEADINGS - Exhibits - Statement of Defence - Where pleaded facts constitutes the main contents of Exhibit - That Exhibit is pleaded. Ipinlaiye II v. Olukotun p. 1000

PLEADINGS - Cause of action - Where no cause of action is disclosed in the pleadings

E - Trial court can not suo motu dismiss a case in limine - Without application by the defendant. Akpan v. Utin p. 1180

PLEADINGS - Appeals - Issue that was not pleaded before the trial court - Cannot be raised on appeal without leave.

F PLEADINGS - Point of law relating to a statute - Sought to be raised newly on appeal - Need not be pleaded - As only material facts are required to be pleaded. Okenwa v. Mil. Gov. Imo State p. 1227

PLEADINGS - Customary Law On rotational chieftaincy succession - Whether pleaded in the Statement of Claim. Oladele v Aromolaran 11 p. 1032

G

PLEADINGS - Material facts Covered by an Exhibit - Where expressly and fully pleaded - That Exhibit cannot be said not to be pleaded. Ipinlaiye II v. Olukotun p. 1000

H PRACTICE & PROCEDURE - Proceedings of court - In an earlier District Court suit - The importance and relevance thereof - Not exaggerated by trial judge. Akpan v. Utin p. 1180

PRACTICE & PROCEDURE - Costs - Awarded against a party that succeeded partially on appeal - whether a mistake. Agidigbi v. Agidigbi p. 1124

STATUTES - Coverage - Ondo state High Court Rules 0.14. r. 15 - Provision thereof has wide coverage - Under which Exhibit A I becomes admissible, Ipinlaiye 11 v. Olukotun p. 1000

STATUTES – Evidence Act s. 210 - Admissibility of document in evidence - Whether document is admissible under s. 210 - To discredit appellant. Ipinlaiye 11v. Olukotun p. 1000 B

SUCCESSION - Bini customary law - Whether all or just one or the three houses - constitute the Igiogbe in this case, Agidigbi v. Agidigbi p. 1124

SUCCESSION - Bini customary law - Testator cannot dispose of his Igiogbe by Will - Save to his eldest surviving son. Agidigbi v. Agidigbi p. 1124 C

SUCCESSION - Wills - Where a defendant IS estopped from denying the validity of a Will - Whether he is estopped from a taking a benefit under the will. Agidigbi v. Agidigbi p. 1124 D

WILLS- Executors of a will - Proposed executor within a will - Must apply to the Probate Registrar - Before he can become an executor in place of an existing executor Agidigbi v. Agidigbi p. 1124

WILLS -Validity - Where a defendant is estopped from denying validity of a will - Whether trial court need consider evidence of proper execution of the will. Agidigbi v. Agidigbi p. 1124 E

WORDS & PHRASES - Wills - “Subject to any customary law relating thereto” proper effect of the phrase. Agidighi v. Agidighi p. 1124 F

INDEX OF STATUTES & RULES

Chiefs Law Cap. 21 Laws of Oyo state 1978, ss. 4, 7, 9, 10, 11, 12, 15, 16, 20, 25, G
Oladele v. Aromolaran 11 p.1032; ss. 7 (2) (b), 25, 10(1) Olagunji v. Oyeniran p. 981

Civil Procedure Rules of South Eastern state of Nigeria (applicable to cross – Rivers State) Order 29, Rule 1, 2, Order 33. rule 19 Akpan v. Utin p. 1180 H

Constitution of Nigeria 1979 ss. 213(3) 33 Yusuf v. Union Bank p. 1249; s. 236, Ogboni v.Ojah p 1097

x INDEX OF STATUTES & RULES IN (1996) 6 KLR

Court of Appeal Rules 1981 0.6 rr. 5. 3(a). 2 Okenwa v. Mil. Gov. Imo State p. 1227

Court of Appeal Act. 1976. s. 16 Ogboni v. Ojah p. 1097

Evidence Act ss. 222. 169 Oshunrinde v. Akande p. 1169: ss 151, 226(2), 137(1)
B & (2) Gbafé v. Gbafé p. 1144

Evidence Act cap 112 L.F.N. 1990, ss. 19,20,53,54.198 Akpan v. Utinp. 1180; ss. 76,199.209 & 210 Ipinlaiye II v. Olukotunp. 1000; s. 14 Oladele v. Aromolaran II p.1032; ss. 73, 74 Okenwa v. Mil. Gov. Imo State p. 1227

C
High Court (Civil Procedure) Rules of Western Nigeria. Order 14, Rule 19 Akpan v. Utinp. 1180

High Court (civil Procedure) Rule 1977, Ondo State; Order 14, Rule 15. Ipinlaiye D II v. Olukotun p. 1000

Imo State chieftaincy Law No. 22 of 1978 s. 9 Okenwa v. Mil. Gov. Imo State p. 1227

Lagos State (Civil Produce) Rules 1972 0.32 r. 4 Oshunrinde v. Akande p. 1169

E
Land Use Act. 1979, s. J6 and x 40 Ogboni v Ojah p. 1097

Oyo State Legal Notice (OY SLN) 18 of 1978 (applicable in Oshun State) Oladele v Aromolaran II p 1032

F
Recovery of Premises Law (Cap 18 vol. 6) Laws of Lagos State 1973 Coker v. Adctnyo p. 1084

Rent Control and Recovery of Presidential Premises Edict 1976 ss. 40, 25(1),
G Schedule 2 (i) Coker v. Adetayo p 1084

Supreme Court Act. 1990. s. 22 Ogboni v Ojah p. 1097

Supreme Court Rules 1985 O. 6 r 8(6) Olagunji v. Oyeniran p. 981

H
Traditional Rulers and Autonomous Communities Law No. 11 of 1981 Okenwa v. Mil. Gov. Imo State p. 1227