

KINGS LAW REPORTS (ALL SC)

(1997) KLR PART 47 pp. 1-292

JANUARY 1997

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

1. Egbo v. Agbara p.1
2. Madu v. The State p. 26
3. Onamade v. African Continental Bank Ltd p. 48
4. Koya v. United Bank for African Ltd p. 73
5. Ejindu v. Obi p. 113
6. Ibeh v. The State p.134
7. Usman v. Kusfa p. 179
8. Anabaronye v. Nwakihe p. 190
9. National Electric Power Authority v. Onah p. 201
10. Edokpolor & Co. Ltd. V. Bendel Insurance Co. Ltd p. 214
11. Olanrewaju v. Ogunleye p. 225
12. Ihenacho v. Uzochukwu p. 241
13. Akinnubi v. Akinnubi p. 257
14. Nwosu v. Offor p. 272
15. Nyambi v. Osadim p. 281

iv INDEX OF SUBJECT MATTER IN (1997) 1 KLR

ACTIONS - Limitation period - Infancy or unsoundness of mind of plaintiff - May extend the limitation period. *Nwosu v. Offor* p. 272

ACTIONS - Preliminary objection - Limitation and issue of ownership of the property - Are matters to be determined on the evidence. *Nwosu v. Offor* p. 272

ACTIONS - Limitation - Fraud - Where right of action is concealed by fraud - Period of time commences only when the fraud is discovered. *Nwosu v. Offor* p. 272

ACTIONS - Representative action - Objection to being sued in representatives capacity - Should be raised at the preliminary stage. *Anabaronye v. Nwakaihe* p. 190

APPEALS - Delay in proceedings - Before the trial court - Will not per se warrant appellate court's interference. *Egbo v. Agbara* p. 1

APPEALS - Grounds of Appeal - Where each ground allege error in law and misdirection - They would be struck out for being incompetent. *Olanrewaju v. Ogunleye* p. 48

APPEALS - Issue - That is against trial court's judgment - Cannot be entertained by the Supreme Court. *Onamade v. African Continental Bank Ltd* p. 48

APPEALS - Error in judgment - Must be substantial - To warrant appellate court's interference. *Onamade v. African Continental Bank Ltd* p. 48

APPEALS - Issues - Not formulated in the parties' pleadings - And not forming any ground of appeal - Cannot be dealt with by the Court of Appeal. *Ejindu v. Obi* p.13

APPEALS - Decision of Court of Appeal - Where misconceived but not challenged - Remains the settlement of the issue between the parties. *Koya v. United Bank for Africa Ltd* p. 73

APPEALS - Ground of appeal - That was not raised at trial - May be allowed on appeal - Where it raised substantial issue of law. *Koya v. United Bank For Africa Ltd* p.73

APPEALS - Ground of appeal - That complains about admission of inadmissible evidence - Is a ground of law - And therefore competent *Olanrewaju v. Ogunleye* p. 225

APPEALS - Grounds of facts or mixed law and facts - Where the appeal is interlocutory - Failure to obtain leave - Renders all the three grounds incompetent. *Nwosu v. Offor* p. 272

APPEALS - Issue - That does not arise out of the ground of appeal - Is incompetent. *Nvambi v. Osadim* p. 281

APPEALS - Grounds of appeal - That are of mixed law and facts - Are incompetent where no leave was obtained. *Olanrewaju v. Ogunleye* p. 225

APPEALS - Grounds of appeal - Where they are of mixed law and fact - And no leave was obtain - Those grounds and issues predicated on them - Will be struck out for being incompetent. *Nyambi v. Osadim* p. 281

APPEALS - Retrial - Where appellants' case was wrongfully upset by Court of Appeal - Retrial will not be upheld. *Ejindu v. Obi* p. 281

BANKING - Bank draft - Where negligently delivered by the appellant - Respondent cannot be held liable. *Koya v. United Bank for African Ltd* p.73

CONSTITUTIONAL LAW - Interpretation of criminal proceedings - Guaranteed under s. 33(6)(e) of 1979 Constitutional - Whether breached in this case. *Madu v. The State* p. 26

COURT PROCESSES - Immunity for persons executing court order - Whether appellants who engaged in illegal recovery of possess - Can be protected. *Ihenacho v. Uzochukwu* p. 241

COURTS - Jurisdiction of a high court judge - There being only one state high court for Rivers State - Whether a judge lacks jurisdiction - To continue hearing of same case in another judicial division. Egbo v. Agbara p. 1

CRIMINAL LAW - Accident - Whether the defence avails the appellant - Unto acquittal in a murder charge. Ibeh v. The State p. 134

CRIMINAL PROCEDURE - Prosecution witnesses Assessment of their evidence - Whether it is proper - To divide them into official and non-official witnesses. Ibeh v. The State p. 134

CRIMINAL PROCEDURE - Interpretation - Denial of right to an interpreter - If proved by credible evidence - May be tantamount to denial of fair trial. Madu v. The State p. 26

CRIMINAL PROCEDURE - Language used at the trial - Where not understood by accused - It is his duty to notify the court. Madu v. The State p. 26

CRIMINAL PROCEDURE - Interpretation - Absence of an interpreter - May not be determined from the face of the record of proceedings. Madu v. The State p. 26

CRIMINAL PROCEDURE - Record of the proceedings - Whether s. 33(7) of the 1979 Constitution - Was violated. Madu v. The State p. 26

CRIMINAL PROCEDURE - Statement to the Police - Contradiction between it and the testimony in Court - Raises a doubt - The benefit of which goes to the accused. Ibeh v. The State p. 134

CRIMINAL PROCEDURE - Interpretation - Once the court records the swearing of an "interpreter - Failure to show the interpreter's presence on subsequent dates - Is not fatal. Madu v. The State p. 26

CRIMINAL PROCEDURE - Prosecution witnesses - Certainty and

unanimity maintained to in order to eliminate contradictions. Ibeh v. The State p. 134

DAMAGES - Reversing the awarded damages - Whether circumstances exist - To Warrant Supreme Court's interference. Ihenacho v. Uzochukwu p. 241

EQUITY - Estoppel - Whether there is any conduct from the respondent - That has misdirected the appellants unto detriment - To justify the plea of equitable estoppel. Onamade v. African Continental Bank Ltd p. 48

EQUITY - Estoppel - Where respondent made no representation - It cannot be accused of going back on any conduct. Onamade v. African Continental Bank Ltd p. 48

EQUITY - Estoppel - Illegality - No estoppel can be allowed - To stop a party from bringing statutory illegality to court's notice. Onamade v. African Continental Bank Ltd p. 48

EVIDENCE - Onus of proof - Marine Insurance Policy - Onus of proving that the vessel sailed from the stipulated port - Rests upon the party making a claim. Edokpolor & Co. Ltd. v. Bendel Insurance p. 214

EVIDENCE - Contradictions - Prosecution evidence - Believed by the trial Judge - Whether full of material contradictions. Ibeh v. The State p. 134

INSURANCE - Marine Insurance Policy - Stipulated port of loading - Where the vessel sailed from a different port - Whether appellant can recover the sum insured. Edokpolor & Co. Ltd. v. Bendel Insurance p. 214

INSURANCE - Claim as per contract of Insurance - Whether proved by the Appellant. Edokpolor & Co. Ltd. v. Bendel Insurance p. 214

INSURANCE - Marine Insurance Policy - Alteration of port of depar-

viii INDEX OF SUBJECT MATTER IN (1997) 1 KLR

ture - Burden of proof is on the respondent - Who can rely on the appellant's evidence to that effect. *Edokpolor & Co. Ltd. v. Bendel Insurance* p. 214

ISLAMIC LAW - Evidence found to be more pious and trustworthy - Was rightly relied upon - By trial court -In entering judgment for the respondent. *Usman v. Kusfa* p. 179

JUDGMENTS - Foreign currency - Whether a Nigerian court can give judgment in foreign currency - Is an issue of discretion - That need not be determined being merely academic in this case. *Koya v. United Bank For Africa Ltd* p. 73

JUDICIAL PRECEDENTS - Ratio decidendi -It is only the-major principles - That bind courts of concurrent or lower jurisdiction. *NEP A v. Onah* p. 201

JUDICIAL PRECEDENTS - Stare decisis - what the cardinal principles thereof entails. *NEPA v. Onah* p. 201

LAND LAW - Registrable documents - Whether a farm cultivation agreement - Is subject to registration. *Olanrewaju v. Ogunleye* p. 225

LANDUSEACT - Applicability - Where the Land Use Act is applicable - Any other inconsistent law or Act relating to land is void *Onamade v. African Continental Bank Ltd* p. 48

LAND LAW - Trespass - Where appellants relied on trespass committed by members of their family - They cannot complain that they were sued wrongfully. *Anabaronye v. Nwakaihe* p. 190

LAND LAW - Title - Traditional evidence - Whether respondents evidence of tradition - Was rightly accepted as conclusive. *Egbo v. Agbara* p. 1

LAND LAW - Description - Where a detailed description of the land in dispute was given in the judgment - Whether that judgment is bad for vagueness. *Nyambi v. Osadim* p. 281

LANDLAW - Traditional history evidence - Led by each party - Where made the basis for the judgment - Issue of effect of oath taken by the parties - Is immaterial. *Anabaronye v. Nwakaihe* p. 190

LANDLORD & TENANT - Recovery of premises - Self help - Landlord that fails to obtain appropriate court order for possession - Before taking over possession - Is liable in trespass. *Ihenacho v. Uzochukwu* p. 241

LANDLORD & TENANT - Recovery of premises - Need to serve the appropriate notices - And thereafter proceed to recover possession according to law. *Ihenacho v. Uzochukwu* p. 241

LANDLORD & TENANT - Recovery of possession - Affidavit endorsed by a Chief Magistrate - Cannot be tantamount to court order - For purposes of recovery of premises. *Ihenacho v. Uzochukwu* p. 241

MATRIMONIAL CAUSES - Yoruba customary marriage - Whether 1st respondent stood in loco parentis - To the children of her marriage. *Akinnubi v. Akinnuhi* p. 257

MORTGAGES Governor's consent - Where not secured before transferring rights in an existing mortgage - The instrument of transfer is null and void. *Onarnade v. African Continental Bank Ltd* p. 48

MURDER - Conviction - Wrongful assessment of evidence - Whether in the face of it - Concurrent conviction of appellant can stand. *Ibeh v. The State* p. 134

PLEADINGS - Land matter - Necessary material facts - Where pleaded and established by evidence - Respondent can succeed on his traditional history evidence. *Anabaronye v. Nwakaihe* p. 190

PLEADINGS - Marine Insurance Policy - Allegation that the vessel did not sail from the stipulated port - Whether pleaded. *Edokpolor & Co. Ltd. v. Bendel Insurance* p. 214

PLEADINGS - Purpose of - Where parties have joined issues on a matter- They cannot go outside that matter. *Ejindu v. Obi* p. 113

PLEADINGS - New points - That were not pleaded nor canvassed before the trial court - Cannot be raised by the appellants. *Onamade v. African Continental Bank Ltd* p. 48

PLEADINGS - Fact that was pleaded - Whether Court can suo motu - Raise implication of that fact - Not raised by the parties. *Ejindu v. Obi* p. 113

PRACTICE & PROCEDURE - Transfer of case - By one high court judge to another judge - Whether erroneous use of the word “referred” - Can make the transfer invalid. *Egbo v. Agbara* p. 1

PRACTICE & PROCEDURE -irregularity - In the transfer of a case - Will not nullify the entire proceedings - In all cases. *Egbo v. Agbara* p. 1

PRACTICE & PROCEDURE - Delay in hearing - Whether seven years gap between hearing and judgment - Is a condemnable inordinate delay. *Egba v. Agbara* p. 1

PRACTICE & PROCEDURE - Delay - Though found to be inordinate - Did not lead to any miscarriage of justice - As issue of credibility and demeanour of witnesses did not arise. *Egbo v. Agbara* p. 1

PRACTICE & PROCEDURE - Capacity to sue - Where appellants sued as guardian ad litem - Whether court can amend the writ & pleadings - To show she was suing as next friend. *Akinnubi v. Akinnubi* p. 257

PRACTICE & PROCEDURE - Capacity to sue - Where appellants sued as guardian ad litem - Whether court can amend the writ & pleadings - To show she was suing as next friend. *Akinnubi v. Akinnubi* p. 257

PRACTICE & PROCEDURE - Opposition - Where a particular prayer was not opposed - Whether appellants can now oppose it on appeal. *Akinnubi v. Akinnubi* p. 257

PRACTICE & PROCEDURE -Writ of summons - Service thereof outside the court's jurisdiction-Without complying with ss. 97 & 99 of the Sheriffs & Civil process Act - Renders both the writ and service thereof null-and void. NEPA v. Onah p. 201

PRACTICE & PROCEDURE - Fraud - Allegation of fraud in a civil matter - That was neither pleaded nor proved - Goes to no issue. Onamade v. African Continental Bank Ltd p. 48

PRACTICE & PROCEDURE - Juristic person - Issue of party not being a juristic person - Whether abandoned - As no submission was presented on that issue. Akinnubi v. Akinnubi p. 257

RES JUDICATA - Final judgments - In three past cases - Whether they constitute a bar to the present action. Usman v. Kusfa p. 179
High Court Law (Cap. 61 Laws of Eastern Nigeria 1963) ss. 46, 47
Egbo v. Agbara p. 1

RES JUDICATA - Ingredients - Where parties and subject matters are not the same - Past judgments sought to be relied upon - Cannot ground resjudicata. Usman v. Kusfa p. 179

TORTS - Detinue - Or wrongful ejectment - Landlord and tenant relationship - Need not exist before any of these actions can be maintained. Ihenacho v. Uzochukwu p. 241

INDEX OF STATUTES & RULES

Constitution of Nigeria 1979 s. 33 *Madu v. The State* p. 26; s. 213 (3), *Olanrewaju v. Ogunleye* p. 225; ss. 221(1), 220(1) *Nwosu v. Offor* p. 272; ss. 234, 236, 33, 258, *Egbo v. Agbara* p. 1; s. 274 (5) *Onamade v. African Continental Bank Ltd* p. 48

Constitution of Nigeria 1960 s. 21(5) (e) *Madu v. The State* p. 26

Court of Appeal Decree 1976 s. 15(1) *Nwosu v. Offor* p. 272

Criminal Procedure Law s. 207. *Ibeh v. The State* p. 134

Evidence Act ss. 49, 54 *Usman v. Kusfa* p. 179

Criminal Procedure Code ss. 241, 242 *Madu v. The State* p. 26

District Courts Law Cap. 33 Laws of Northern Nigeria 1963 s. 83(1) *Ihenacho v. Uzochukwu* p. 241

High Court Civil Procedure Rules of Oyo State 0. 23 rr. 2 & 3, 0. 21 r. 1 *Land Use Act* ss. 22, 26 *Onamade v. African Continental Bank Ltd* p. 48

Land Instruments Registration Law of Oyo State Cap. 59 of 1978 s. 16 (2) *Olanrewaju v. Ogunleye* p. 225

Marine Insurance Act 1961 ss. 46, 44 *Edokpolor & Co. Ltd. v. Bendel Insurance Co. Ltd.* p. 214

Penal Code s. 221(b) *Madu v. The State* p. 26

Property and Conveyancing Law Cap. 99 Laws of Oyo State s. 135 (2) *Onamade v. African Continental Bank Ltd* p. 48

Supreme Court Rules 0.6 r. 8(6) *Onamade v. African Continental Bank Ltd* p. 48