

**SUPREME COURT OF NIGERIA**  
31ST JANUARY, 1997. SC. 63/1991  
**CORAM:- M. L. UWAIS CJN, I. L. KUTIGI, E. O. OGWUEGBU,**  
**U. MOHAMMED, Y. O. ADIO, JJSC.**

CHIEF A. O. NWOSU & ANOR. .... DEFENDANTS/APPELLANTS  
AND  
CHUKWURAH OFFOR ..... PLAINTIFF/RESPONDENT

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

***ACTIONS** - Limitation period - Infancy or unsoundness of mind of plaintiff - May extend the limitation period.*

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

***APPEALS** - Grounds of facts or mixed law and facts - Where the appeal is interlocutory - Failure to obtain leave - Renders all the three grounds in - competent.*

**FACTS**

Before the Jos High Court, the plaintiff/respondent filed an action against the defendants/appellants in respect of a landed property of his deceased father's estate. Plaintiff sued in his capacity as administrator of the estate in issue. The defendants filed a motion for preliminary objection on the ground that the Certificate of Occupancy of the deceased has been revoked and that the plaintiff has no locus standi to file the action.

The trial court after hearing argument on the preliminary objection dismissed the application. The defendants appealed to the Court of Appeal which dismissed the appeal both on the merits and on the preliminary objection raised by the plaintiff. Being dissatisfied, the defendants have further appealed to the Supreme Court raising 4 issues. But the apex court found issues 1 & 4 filed by the plaintiff's efficient for the determination of the appeal.

**ISSUES FOR DETERMINATION**

*“(1) Is the issue of locus standi raised by the Defendants/Appellants in the appeal based on law alone or facts or mixed law and facts?*

*(4) Whether the Justices of the court of Appeal were not right in*

*holding that for the Defendants/Appellants interlocutory appeal from the High Court to the Court of Appeal to be competent, it required leave of court as all the three grounds of appeal before them were grounds of facts and mixed law and facts although each of the grounds purports to be grounds of law alone."*

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

***Where right of action is concealed by fraud***

1. Where a cause of action is based on fraud as in this case, or the right of action is concealed by fraud, the period of time does not commence until the fraud is discovered or could reasonably have been discovered (p.278 C)

***Limitation period - Infancy or unsoundness of mind***

2. The period of limitation is also extended in the case of disability of a plaintiff either from infancy or unsoundness of mind. These are matters to be ascertained by evidence before the trial court can decide whether the right of action is barred by the limitation law or other special enactments. (p. 278 C)

***Actions - Preliminary objection***

3. Having determined the issue of locus standi, what is left of the two grounds of objection set out at the beginning of this judgment is the effect of the limitation law on the claim of the plaintiff having regard to the date of revocation of the Certificate of Occupancy of late Offor and the date of the grant of letters of Administration. These are matters which cannot be decided at that stage of the proceedings without going into the merits of the case. The third ground of appeal lacks substance. The ownership of the property and the fraudulent sale of the said property are matters to be determined by the court on the evidence. They cannot be decided on the pleadings alone. (pp. 278 G & 278 B)

***Appeals - Failure to obtain leave.***

4. The decision is interlocutory. Consequently, appeal on those grounds could not possibly have been as of right under section 220 of the Constitution. An appeal on those grounds required leave under section 221(1) of the Constitution. The court below was right when it held that all the three grounds of appeal are incompetent. In the result, the court below was perfectly right in dismissing the appeal of the defendants both on the merits and for non-compliance with section 221(1) of the Constitution. (p. 279 H)

**REPRESENTATION**

Chief I. Tagbo Nwogu for the Appellants

Chief L. Chidube Ezebilo for the Respondent

**CASES REFERRED TO**

Kowo v. The State (1983) 5 S.C. 17

Rabiu v. Kano State (1980) 8-11 S.C. 130

Ajani v. Giwa (1989) 3 N.W.L.R. (Pt. 32) 796 at 803-804

Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Pt. 67) 718 at 721

Blay v. Solomon 12 W.A.C.A. 175 at 176

Akinsanya v. U.B.A. Ltd. (1986) 4 N.W.L.R. (Pt. 35) 273

**STATUTES REFERRED TO**

Constitution of Nigeria 1979 ss. 221(1), 220(1)

Court of Appeal Decree 1976s. 15(1)

**LEAD JUDGMENT BY OGWUEGBU JSC**

The plaintiff filed an action in the High Court of Justice, Plateau State holden at Jos claiming the following: reliefs from the defendants jointly and severally:

*“(a) A declaration that the defendants are not entitled to enter or remain in or use the said premises.*

*(b) An order setting aside the Certificate of Occupancy covering the premises fraudulently procured by the defendants.*

*(c) Possession of the said premise:—.*

*(d) (i) Damages or mesne profits of N 1,000,000 at the rate of N4,000 per annum from 1st January, 1962 until possession is delivered up.*

*(ii) General damages.*

*(e) An injunction.*

*After filing their joint statement of defence, the defendants moved the court to dismiss the plaintiffs claim on the following grounds:—*

*“(a) The Certificate of Occupancy or title which Mr. Offor (deceased) had in No. 24 Wilberforce Avenue (now No. 24 Zik Avenue) Jos determined, after nine month immediately following Offor’s death.*

*The revocation of the Certificate of Occupancy by the Local Authority divested late Offor’s estate of all proprietary interest in and title to the said property (sic) has no title or interest to protect, neither has he a locus standi in this case.”*

The plaintiff sued in his capacity as the Administrator of the estate of R.O. Offor (deceased) and the property in dispute is known as No. 24.

Zik Avenue, Jos Plateau State.

After hearing oral arguments on the motion, the learned trial Judge dismissed the application. The defendants who were dissatisfied with the ruling appealed to the Court of Appeal. The following three grounds of appeal were filed by the ‘defendants in the Court below:-

**Grounds of Appeal**

1. The learned Chief Judge misdirected himself in law, in holding that a mere complaint of an alleged infringement of his civil right, coupled with a grant of Letters of Administration in 1981, without more, clothed the plaintiff with “legal trappings” (i.e. gave him *locus standi*) to sue. when by operation of law and also by the act of revocation. the title of Late R.O. Offor to the property in question determined eighteen (18) years before the grant of the Letters of Administration and 23 years before plaintiffs action was filed.

**Particulars**

(a) Plaintiff avers in paragraph 1 of the Amended Statement of Claim that R.O. Offor died on 5th January. 1960. Owing to lack of devolution, and in accordance with Regulation 15(1)2 of the Land Tenure (Local Authority-Right of Occupancy) Regulations 1962. the title of R.O. Offor to the property in question determined nine months after his death, and twenty (20) years before the grant of Letter of Administration to plaintiff in 1981, pleaded in paragraph 16 of the Amended Statement of Claim.

(b) The Revocation of the Right of Occupancy of Late R.O. Offor by the Jos Local Authority admitted in paragraph 2 of the Amended Statement of Claim divested laic Offor’s estate of all proprietary interest in and title to the property in question - No. 14 Zik Avenue Jos.

(c) The fact of sale of the property in 1962 at a public auction subsequent to the revocation of late Offor’s Right of Occupancy is admitted by plaintiff in paragraphs 4, 7, 19 and 12 of the Amended Statement of Claim.

2. The learned Chief Judge misdirected himself in law in holding that “all the other arm” of the objection, it is not possible to decide on them now without delving into the merits of the whole case” when a decision on the “other arms of objection” one way or the other is a decision on the threshold issue of *locus standi*, which decision is a condition precedent to the determination of the matter on its merits, and this misdirection occasioned a substantial miscarriage of justice.

**Particulars:**

(a) A determination by the court as to whether or not, the title of

Late R.O. Offor to the property in question determined by operation of law and/or by Acts of Revocation and Sale in 1962, would be a determination either that plaintiff competent or incompetent to sue, and not a determination of the case on its merits.

(b) A judgment/ruling of a court must not only be confined to the issues as presented by the parties, but must demonstrable in full, a dispassionate consideration all the issues properly raised and must reflect the result of such an exercise.

3. The learned Chief Judge erred or misdirected himself in law in holding that plaintiff is competent to sue when plaintiff did not show in his pleadings that he (plaintiff) is the owner of the property in dispute.

Particulars:

Plaintiff, in an action for declaration of title to land, must show that he is the owner of the land (property) in dispute, before he can be said to have a right to sue.

In the court below, the plaintiff who was the respondent filed a notice of preliminary objection to the appeal. The grounds of the objection are:

*“1. That each and everyone of the three grounds of appeal, filed by the appellants is one of facts or mixed law and facts and is therefore contrary to the provisions of section 221(1) of the Constitution of the Federal Republic of Nigeria and section 15(1) of the Court of Appeal Decree 1976 and deserves to be struck out.*

*2. That each of three (3) grounds of appeal deals with facts and mixed law and facts although each of them purports to be based on law.*

*3. That leave of the court ought to be obtained before filing the grounds of appeal.*

*The court below heard arguments on the appeal and the preliminary objection together. The defendants’ appeal was dismissed both on the merits and on the preliminary objection. They have further appealed to this court. From the four grounds of appeal filed, four issues are Formulated in the appellants’ brief of argument for determination:*

*“(1) Is the issue of “Iocus standi” raised by the defendants/appellants in the appeal an issue of law, fact or of mixed law and fact?*

*(2) Was the action of the plaintiff/respondent not statute barred or could his obtaining letters of Administration clothe him with “Iocus standi” to bolster a stale claim?*

*(3) Can the mere pleading of fraud without particulars be enough to sustain a statute barred action or an action in which the plaintiff has no “locus standi” ?*

*(4) Did the defendants/appellants, given the facts of this particular case require leave of court for their interlocutory appeal?”*

The plaintiff identified four issues in his brief of argument. I will adopt his first and fourth issues which are better framed than those of the defendants. They are:

*“(1) Is the issue of locus standi raised by the defendants/appellants in the appeal based on law alone or facts or mixed law and facts?”*

*(4) Whether the Justices of the Court of Appeal were not right in holding that for the defendants/appellants interlocutory appeal from the High Court to the Court of Appeal to be competent, it required leave of court as all the three grounds of appeal before them were grounds of facts and mixed law and facts although each of the grounds purports to be grounds of law alone.”*

I will first consider the fourth issue which touches on the competence of the appeal before the Court of Appeal. If there was no competent appeal before that court, its proceedings would be a nullity. See: *Owhotemu-Kowo & Ors. v. The State* (1983) 5 SC 17 and *Nafiu v. Kano State* (1980) 8-11 SC 130.

The learned counsel for the plaintiff submitted that the ruling being an interlocutory order or decision, an appeal against it should be with leave since the three grounds of appeal are of facts or mixed law and facts. He referred the court to sections 220(1) and 221 (1) of the Constitution of the Federal Republic of Nigeria, 1979 and the cases of *Ajani v. Giwa* (1986) 3 NWLR (Pt.32) 796 at 803-804; *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt.67) 718 at 721 and *Metal Construction W.A. Ltd v. Migliore* and *In Re Miss Ogundare* (1990) 1 NWLR (Pt. 126) 299 at 314.

The learned defendants' counsel conceded that the decision is interlocutory but contended that the grounds of appeal are of law alone and in that case, no leave is required argued as follows in their brief:

*“On the basis of the arguments advanced above in support of issue one and two, it is respectfully submitted that this interlocutory appeal being on law alone, no leave of court was required:*

The defendants having conceded that the appeal before the court below was interlocutory I will therefore examine the grounds of appeal. If any of the grounds is on question of law alone, the appeal would have been saved at least for that ground and the incompetent grounds would be struck out. Should all the three grounds be on facts or on mixed law and facts, the notice of appeal would be incompetent and the appeal would be struck out.

The Court below found all the grounds of appeal to be on facts

or on mixed law and facts and therefore incompetent because leave of the High Court or of that court was not obtained.

In the first ground of appeal before the court below, the defendants are saying the plaintiff's claim is statute barred by operation of law because the letters of administration was obtained twenty three years before the action was filed and that the title of Late R.O. Offor to the property was revoked eighteen years before the Letters of Administration was granted. The plaintiff in most paragraphs of his statement of claim and in particular, paragraphs 4, 5, 8 and 11 alleged fraud against the 1st defendant in the acquisition of the said property. In paragraph 11 of the statement of claim, the plaintiff also pleaded infancy.

**Where a cause of action is based on fraud as in this case, or the right of action is concealed by fraud, the period of time does not commence until the fraud is discovered or could reasonably have been discovered. The period of limitation is also extended in the case of disability of a plaintiff either from infancy or unsoundness of mind. These are matters to be ascertained by evidence before the trial court can decide whether the right of action is barred by the Limitation Law or other special enactments.**

The learned counsel for the defendants/appellants misconstrued the purport of the observation of the learned trial Judge and quoted him out of context in an attempt to give ground two of the grounds of appeal a semblance of a ground of law. At the end of his ruling on the motion to dismiss the action, the learned trial Judge said:-

*"On the other arms of the objection, it is not possible to decide on the (sic) now without delving into the merits of the whole case."*

Just before the above quotation, the learned trial Judge held:

*"As I said earlier, the plaintiff is complaining of the infringement of his civil rights by the defendants, to administer the estate of his deceased father. The plaintiff says he is armed with Letters of Administration. To my mind, the plaintiff is properly clothed with legal trappings, technically referred to as the locus standi, to sue, maintain and prosecute against the defendants and I so hold."*

Having determined the issue of locus standi what is left of the two grounds of objection set out at the beginning of this judgment is the effect of the Limitation Law on the claim of the plaintiff having regard to the date of revocation of the Certificate of Occupancy of Late Offor and the date of the grant of Letters of Administration. These are matters which cannot be decided at that stage of the proceedings without going into the merits of the case.

On ground three, one has to refer to paragraphs 16, 17 and 18 of the statement of claim to find out the nature of the plaintiff's interest in the property. How that interest arose is a matter of evidence. The plaintiff on record is not claiming the property as the owner. He sued in the capacity of Administrator of the estate of Late R.O. Offor who was the owner of 24 Zik Avenue, Jos until his death intestate. **The third ground of appeal B lacks substance. The ownership of the property and the fraudulent sale of the said property are matters to be determined by the Court on the evidence. They cannot be decided on the pleadings alone.**

I now turn to the constitutional provisions giving the aggrieved person the right of appeal against the decision of the High Court. These C provisions are set out in sections 220(1) and 221(1) of the 1979 Constitution. They read:

*"220(1) An appeal shall lie from decisions of a High Court to the Court of Appeal as of right in the following cases:-*

*(a) final decisions in any civil or criminal proceedings before the D High Court sitting at first instance;*

*(b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings:*

*(c) .....*

*(d) .....*

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*221(1) Subject to the provisions of section 220 of this Constitution. An appeal shall lie from decisions of a High Court to the Court of Appeal with the leave of that High Court or Court of Appeal."*

Under the provisions of section 220(1)(a) and (b), there is a general right of appeal as of right from the decision of the High Court to F the Court of Appeal in all final decisions both in civil and criminal proceedings before the High Court sitting at first instance; and where the grounds of appeal involve questions of law alone in non-final decisions in both civil and criminal proceedings. Section 220(1)(b) is concerned with non-final or interlocutory decisions. See *Ajani v. Giwa* (supra) and *Rabiu G v. Kano State*. (supra).

I have carefully examined the grounds of appeal. I am satisfied that the questions raised in them are of facts or at best, of mixed law and facts. Furthermore, the ruling in respect of which the grounds of appeal relate was not a final decision since it did not finally dispose of the rights H of the parties in the suit. See *Blay v. Solomon* (1947) 12 WACA 175 at 176; *Bozson v. Altrincham Urban District Council* (1903) 1 KB 547 and *Akinsanya v. U.B.A. Ltd.* (1986) 4 NWLR (Pt.35) 273.

**The decision is interlocutory. Consequently, appeal on those**



grounds could not possibly have been as of right under section 220 of the Constitution. An appeal on those grounds required leave under section 221(1) of the Constitution. The court below was right when it held that all the three grounds of appeal are incompetent.

In the result, the court below was perfectly right in dismissing the appeal of the defendants both on the merits and for non-compliance with section 221 (1) of the Constitution.

The court held as follows:

“From the foregoing, I am totally in agreement with the submissions of learned counsel for the respondent, Chief Chidube Ezebilo, that the ruling complained of is an interim decision and therefore appealable with leave of the court below or of this court as a prior condition.”

I find no merit in the appeal and I hereby dismiss it with N1,000.00 costs to the respondent. The substantive case should have finished by now but for their determined attempts to nip it in the bud. It is ordered that the substantive suit be given accelerated hearing in the High Court.

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#### **UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I entirely agree. I too will dismiss the appeal with N1,000.00 costs to the respondent.

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#### **KUTIGI JSC**

I had a preview of the judgment just delivered by my learned brother Ogwuegbu, J.S.C. and with which I agree. The appeal lacks merit and it is hereby dismissed with N1,000.00 costs to the respondent.

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#### **MOHAMMED JSC**

I also agree with my learned brother, Ogwuegbu, J.S.C. that there was no competent appeal before the Court of Appeal because leave which is prerequisite to the competency of the appeal before the Court of Appeal had not been obtained. This appeal is, for the reasons given by my learned brother which I hereby adopt as mine, struck out. I also award N1000 costs to the respondent.

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#### **ADIO JSC**

I have had the advantage of reading in advance the judgment just read by my learned brother, Ogwuegbu, J.S.C. and I agree that the further appeal is incompetent. I strike it out with N1,000.00 costs to the respondent. Appeal dismissed