

SUPREME COURT OF NIGERIA
31ST JANUARY, 1997. SC. 153/1991
CORAM: A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, JJSC.

S. O. NYAMBI & 6 ORS. DEFENDANTS/APPELLANTS
AND
R. O. OSADIM & ANOR. PLAINTIFFS/RESPONDENTS

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

***APPEALS** - Issue - That does not arise out of the ground of appeal - Is incompetent.*

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

FACTS

This land case in issue was commenced in 1961 before the Ikom/Olulumo/Akparabong District Court, by the plaintiff on behalf of his lyami people against the defendants. Both parties led evidence and at the close of defendants' case the trial court ordered the plaintiff to file a survey plan of the land in dispute. This was on 3-5-61. It would seem that the parties reached an accord as nothing more was done towards prosecuting the case to judgment, but the case remained in the cause list. The original plaintiff and 3 of the defendants died along the line. In 1981, the present plaintiffs/respondents reopened the case on behalf of their lyami people.

The defendants/appellants made a lot of unsuccessful attempts to thwart the hearing of the action, including applying to the High Court for the Order of Certiorari. The trial District Court after inspecting the land, found in favour of the plaintiffs. The defendants' appeals to the Chief Magistrate's Court, Cross River State High Court and the Court of Appeal all dismissed. They have further appealed to the Supreme Court raising 4 issues which were all struck out for being incompetent.

ISSUES FOR DETERMINATION

2. *Whether the judgment of the District Court was bad for vagueness and uncertainty as it failed to describe or specify the exact bound-*

aries of the land awarded and whether the Court of Appeal was right in upholding that judgment. Etc, see p. 288

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

Appeals - Grounds of appeal

1. I have given due consideration to the arguments in the Respondents' Brief. It is not shown on the record before us that leave to appeal to this Court was sought and obtained as required by section 213(3) of the Constitution. And as I am of the view that grounds 1, 3 and 4 are not grounds of law alone but, at best, of mixed law and fact, those grounds are incompetent and are accordingly struck out by me. As grounds 1, 3 and 4 of the grounds of appeal have been struck out by me, it follows that issues 1, 3 and 4 must equally be struck out as they are predicated on those incompetent grounds of appeal. (p. 288 B & G)

Appeals - issue

2. Issue (2), in my respectful view, cannot be said to arise out of ground 2. What is complained of in ground 2 is that the Court of Appeal was in error in holding that as the defendants did not complain before the appellate Chief Magistrate that they were not served with a plan of the land in dispute at the trial, they could not raise that complaint in the High Court. That is not the issue formulated in Issue (2). Issue (2) as framed does not, therefore, arise out of the grounds of appeal and it is, therefore, incompetent. (p. 288 G)

Description of the land in dispute

3. The trial District Court inspected the land in dispute and in its report embodied in its judgment, gave a detailed description of the land. In the light of all these, it is puerile indeed for anyone to claim that the judgment of the trial court was bad for vagueness and uncertainty of the land awarded to the plaintiffs. I agree entirely with the Court below, per Oguntade J. C. A. that-

"The contention of the appellants that the judgment of the District Court was bad for Vagueness and uncertainty because it failed to describe the exact boundaries of the land awarded, is not entirely correct. A first look at the claim of the plaintiffs and the judgment of the District Court conveys the impression that there was some Vagueness. But as the lower court pointed out, if indeed there had been some vagueness in the claim, this was cured by the evidence led."

In conclusion, this appeal is completely bereft of any merit and I

have no hesitation whatsoever in dismissing it.(p. 290 E)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Process of the Supreme Court must not be abused

Four courts; District, Magistrate, High and the Court of Appeal, all decided against the appellants on matters of fact, not law. Yet the appellants had to reach the Supreme Court for a final verdict. It is high time the burden on the Supreme Court is reduced by disallowing appeals, like this one, through a constitutional provision, from reaching the Supreme Court. The process of court must be used bona fide and properly and must not be abused. (p. 291 D)

ONU JSC

2. Whether the survey plan is vague

I have carefully read the entire record and can see nowhere that the last straw, if any, of vagueness and uncertainty in the respondents' Survey Plan (No. IN/24/61 of 8/9/61), can be clung to enable the appellants to swing the pendulum of success in their favour. (p. 292 B)

REPRESENTATION

E. Akomaye for the Appellants

E. Nwokoye, for the Defendants

CASES REFERRED TO

Adigun v. A-G of Oyo State (No. 2) (1987) 2 NWLR (Part 55) 197 at 231
Akanbi v. Alao (1989) 3 NWLR (Part 108) 116 at 140

LEAD JUDGMENT BY OGUNDARE JSC

This case has a chequered history. The proceedings commenced in 1961 in the Ikom/Olulumo/Akparabong District Court where Mpama Ekpong of Olumi, for and on behalf of Iyami Olumi sued S.O. Nyambi and 9 others, all of Omon-Olumi for and on behalf of the people of Omon-Olumi, claiming:-

“The plaintiffs claim is for entering and farming on plaintiff’s land thereby plaintiffs wishing you to quit.”

Both parties led evidence but at the close of the case for the defendants the court ordered the plaintiff to file a survey plan of the land in dispute within 60 days. This was on 3rd May 1961. On 26th day of July 1961 time was extended. It would appear that the parties reached an accord and nothing was

done anymore to prosecute the action to judgment. The plaintiff did not file a survey plan as ordered and the defendants did not move the court to strike out the action. The action, however, remained on the cause list.

Meanwhile the original plaintiff had died and three of the defendants too, died leaving 7 of them alive. Things again fell apart, necessitating, in 1981, R.O. Osadim and J.E. Okimedim, both of Iyami-Okumi to apply, on behalf of their people, for the case to be re-opened, heard and determined. On 18/8/81, the District court ordered -

(1) That the people of Iyami be represented in this case by Messrs R.O. B Osadim and J.E. Okimedim as plaintiffs in place of late Mpama C Ekpong in accordance with section 19 of the Customary Courts Edict of 1969.

(2) That the letters including the photocopy of the proceedings in case No. 122/61 be received and be filed with the court.

(3) That the plan of the land in dispute be filed with the court by D plaintiffs. That the case be resumed for hearing forthwith."

Following the order of the court, the defendants applied that they be served with the particulars of claim. On 14/9/81, the Court made the following order:-

(1) In view of what the defendants in court have said, the court E feels that the certified true copies of particulars of the claim be made available to the defendants. Since the writ of summons were already served on defendants in 1961 when the case started, it could not then be necessary to reserve the writs to defendants again.

(2) The petition be replied by the Court Registrar whenever he is F written to."

Unsuccessful attempts were made by the defendants to thwart the hearing of the action.

Hearing finally commenced de novo on 1/6/82. 1st plaintiff testified and tendered, in evidence, the survey plan of the land in dispute, that is, Plan G No. IN 124/61 of 8/9/61. One Edward Edim Oba also testified in support of plaintiffs' claim. The 4th defendant and two witnesses testified for the defence. At the close of the case for the defence the court adjourned and fixed 15/6/82 for an inspection of the land in dispute and 22/6/82 for judgment. Although both parties paid the inspection fees the defendants refused to H take part in the inspection. The court inspected the land on 15/6/82 in the presence of the plaintiffs only and adjourned for judgment to be given on 22/6/82. In the interval, however, the defendants pad applied to the High Court Ikom for certiorari. The District Court had to adjourn delivery of judgment sine die. The defendant's application for certiorari was struck out by the High

Court on 1/3/82 and the District Court on being notified of the outcome of defendants application fixed judgment for 15/9/82. The parties were served with hearing notices and on 15/9/82, the court delivered its judgment. It found in favour of the plaintiffs and ordered the defendants to quit the land in dispute on 30th December 1982. A copy of the judgment was served on the defendants who were absent in court on the day judgment was delivered. B

Being dissatisfied with the judgment of the trial District Court, the defendants appealed to the Chief Magistrate's Court, Ikom. The appeal was on 8/7/83, dismissed and the judgment of the trial court was affirmed. The defendants filed a further appeal to the High Court of Cross River State, sitting at Ikom. The defendants again lost but were granted C leave by the High Court to appeal to the Court of Appeal. Their further appeal to the Court of Appeal was again dismissed. They have now finally appealed to this court upon 4 grounds of appeal which read:

"Error in Law

The learned Justices of the Court of Appeal erred in law when D they held that:

'Exhibit 'B' in this case was correctly received in evidence and appropriate weight duly attached to it' on the ground that , The appellants themselves never contested that the decision in Suit No. 67/36 was any other than ascribed to it by the plaintiffs. The issue raised by the defendants/ appellants in relation thereto was that the Suit No. 67/36 was E fought by individuals and that therefore the respective communities of Iyami and Omon were not bound by the judgment. The authenticity of Exhibit 'B' was never put in issue.'

Particulars of Error F

1. The objection to Exhibit B was not founded on the Evidence Act but on the Customary Law (Cap. 34, of Cross River State) which prescribes certification of its records in order to ascertain their authenticity.

2. The requirement of certification of records even if not an express rule of customary law must be deemed a rule of customary practice to avoid fraud and uncertainty. G

3. The question which arose for determination was not as to the contents of Exhibit 'B' (which could not arise before its admission) but whether on the face of it Exhibit 'B' bore the marks of authenticity required by law, customary practice and commonsense. H

4. The authenticity of a public document is a matter of law and is automatically put in issue once on the face of it (sic) fails to bear the marks of genuineness required by law.

Ground 2: Error in Law and Misdirection

The learned Justices of Appeal erred in law and misdirected themselves when they said

“.....it is clear that the appellant did not complain at the Chief Magistrate’s Court that they were not served with a plan of the land in dispute even though one was tendered.”

B *And on account of which they proceeded to hold that:*

“The appellate jurisdiction of the High Court is in respect of appeals from the Magistrate Courts and if the particular matter had not been raised in the Magistrate’s Court which was the intermediate court of appeal between the District Court and the High Court could not possibly entertain such matter as it would be tantamount to the High Court hearing appeals directly from the District Court.

Particulars of Error

Under Ground I of the Additional Grounds of Appeal before the Chief Magistrate it was contended that

D *.....the judgment and order of the District Court are vague and bad, the land subject of the order and judgment not being specifically identified nor its boundaries ascertainable with certainty.’*

Under which ground the point could be and was taken that the plaintiffs/respondents had failed to comply with the rule in Olakunle

E *Elias v. Omo-Bare (1982)5 SC. 25 at 29 by not serving a copy of the plan of the disputed land on the appellants.*

3. Error In Law

The learned Justices of Appeal erred in law when they held that the plaintiffs/respondents could and did rest their case on the issue estop-

F *pel arising from Exhibit ‘B’*

Particulars of Error

1. Exhibit ‘B’ was inadmissible not having been certified as required by law and having nevertheless been wrongly admitted should never have been considered.

G *2. The parties and subject matter in Exhibit B were not the same as those in the instant case.*

4. Error in Law

The learned Justices of Appeal erred in law when they held that the judgment and order of the District Court were not bad for vagueness

H *and uncertainty even though it failed to specify the land subject of the judgment and the people affected by it.*

Particulars of Error

1. There is no reference in the judgment to the plan Exhibit ‘D’ tendered by the plaintiffs/ respondents in proof of the identity of the land.

2. Exhibit 'D' was returned to the plaintiffs/respondents and no longer forms a part of the court's records.

3. *Arabe v. Asanlu* (1980) 5-7 SC.78 decided that judgment in such an action must show the definite and precise boundary of the land awarded.

4. The judgment should have specified the persons affected by the order to quit as not all the Omon people were alleged to have been in trespass nor was it all of Iyami land that was alleged to have been trespassed upon."

It has become necessary to set out the grounds of appeal in extenso in view of the preliminary objection to three of the grounds raised in the plaintiff's brief.

Pursuant to the rules of this court, the parties filed and exchanged their respective briefs of argument. In the respondent's Brief the plaintiffs raised and argued a preliminary objection to grounds 1, 3 and 4 above. The following passage appears in the Brief: .

2. Notice of Preliminary Objection

Take Notice that the plaintiffs/respondents hereby and herein rely on a preliminary objection that the defendants/appellants Grounds of appeal numbered 1, 3 and 4 raise questions of mixed law and fact for which the leave of the court or the Court of Appeal is required to make them competent consistent with section 213(3) of the 1979 Constitution of the Federal Republic of Nigeria. Not having obtained the needed leave, the said grounds of appeal are incompetent and should be struck out.

The particulars of the objection are as follows:-

(a) Ground 1 - The particular of error numbered 2 in support of this ground makes it clear that the requirement of certification of record is not an express rule of Customary Law but must be deemed 'a rule of Customary Practice' Which is a question of fact. Furthermore, the particular of error numbered 4 deals with the face of the public document, namely, Exhibit B, failing to bear the marks of genuineness which is another question of fact.

(b) Ground 3 - Whether or not issue estoppel arose from Exhibit 'B' is a question of mixed law and fact. This is underscored by the particular of error numbered 2 in support of this ground of appeal which contends that the 'parties and subject matter in Exhibit B were not the same as those in the instant case.'

(c) Ground 4- The contention in this ground of appeal is that the judgment and order of the District Court is bad for vagueness and uncertainty because of the fact that it did not refer to the Plan Exhibit 'D' and

also because of the fact that ‘Exhibit ‘D’ was returned to the plaintiffs/respondents.’ The other facts canvassed in the particular numbered 4 are that ‘not all the Omon people were alleged to have been in trespass’ ‘nor was it all of lyami land that was trespassed upon.”

The defendants offered no answer to the above arguments as B they did not file a Reply Brief as required of them by the rules of this court. Nor did their counsel profer at the oral hearing of the appeal, any argument in rebuttal of the points made in the respondents’ brief.

I have given due consideration to the arguments in the respondent’s Brief. It is not shown on the record before us that leave to appeal to this court C was sought and obtained as required by section 213(3) of the Constitution. And as I am of the view that grounds 1,3 and 4 are not grounds of law alone but, at best, of mixed law and fact, those grounds are incompetent and are accordingly struck out by me.

The defendants in their appellants’ brief raise the following 4 D issues for determination:

“1. *Whether the Court of Appeal was right in holding that a document alleged to be a copy of the record of proceedings in an earlier case was admissible in proceedings in the District Court even though it was uncertified and did not bear any marks of authenticity.*

E 2. *Whether the judgment of the District Court was bad for vagueness and uncertainty as it failed to describe or specify the exact boundaries of the land awarded and whether the Court of Appeal was right in upholding that judgment.*

F 3. *Whether the plaintiffs/respondents established a case for a declaration of title in their favour.*

4. *Whether the failure of the plaintiffs/respondents to serve a copy of the Survey Plan of the disputed land on the defendants/appellants was not a violation of the appellants’ right to a fair hearing as throughout the case, the appellants did not know what case they had to meet.”*

G As grounds I, 3 and 4 of the grounds of appeal have been struck out by me, it follows that issues 1,3 and 4 must equally be struck out as they are predicated on those incompetent grounds of appeal.

H Issue (2), in my respectful view, cannot be said to arise out of ground 2. What is complained of in ground 2 is that the Court of Appeal was in error in holding that as the defendants did not complain before the appellate Chief Magistrate that they were not served with a plan of the land in dispute at the trial, they could not raise that complaint in the High Court. That is not the issue formulated in issue (2). Issue (2) as framed does not, therefore, arise out of

the grounds of appeal and it is, therefore, incompetent.

Be that as it may, the complaint that the land in dispute was vague and uncertain is without any substance. It is on record that the 1st plaintiff tendered in evidence the plan No. IN 124/61 of 8/9/61 of the land the plaintiffs laid claim to. Under cross-examination 1st plaintiff testified thus:

“Q. Does your plan cover the area of the land in dispute excluding the portion of area of land late Mpama Ekpong farmed? B

A. Our plan covered the whole area of land in the case of 1937. The land occupied by late Mpama Ekpong is indicated in our plan.

Q. Can I know the area of land which your plan covered?

A. Late Isong Otong claimed the land from Old Okuni-Ikom C read where there have old telephone poles to the beach opposite Ikom and from the beach up the river to Ikom aka stream along Egurede farm road to Ekamfu stream in Okuni town. And from Ekamfu stream to the river separating the Oman beach and Iyami beach. We have our own land on the right hand side and am on own land is on the left hand side D when one is coming towards’ Ikom.

Q. Is the land occupied by late Mpama Ekpong on right hand side or left hand side?

A. The land is by the right and is Recha land.”

Edward Edim Oba (P.W.I) showed the plan was drawn by a surveyor. He testified:

“The court in its order told the plaintiff in that case Chief Mpama Ekpong to produce Survey Plan of the land in dispute. We were given sixty days to produce the plan. We did not succeed in having the survey plan and so we reported back to the court. The court again gave us more F sixty days to file our plan. Later on we were able to have the plan which was tendered by 1st plaintiff in this case.”

This witness described the land in dispute thus:

“From Ekamfu down the river marking the boundary between your people of Omon and my people - Iyami and from the river going G upward then one takes through Okokoma - Ogurude Road to Ekum stream where there is a stand of bitter Kola tree by the left hand of Ekum aka stream flows down to the main river. There is one old Ikom Okuni road by the left when facing Okuni, from Ikom belongs to Iyami Rechia land and up to Abu the-area in dispute. The land by right from Ikom belongs to the H people’ of Omon.”

The 4th defendant described their land thus:

“The people of Oman have no common boundary with the people of Iyami or Rechia. Omon land begins from Oman beach by Cross River,

moves to the former C.S.M. School now Primary School, it continues from there through Omon farm road to Obasse Onong farm plantation and Egukwa Olua. On the land side towards Ogurude farm road and the left hand side one get to Etta Ogo farm land, there we have natural boundary at Elo stream. We have boundary with Emoro people moving ahead towards Egurude road there is one farm plantation belonging to one Oga Abang. Following Ogurude farm road one gets to a stream called Ekum Oka where we have natural boundary with Nsor Akam Oku and Effi man. The left hand side is Omon land. From Ekum Oka stream that burst at Cross River we have natural boundary with Ikom people. Nearer to Ekum Oka stream we have Nsor Ndoma plantation and ahead of it we have Nyambi Otum farm plantation, Omon man. Ahead further we have Ogo Nyambi No. II another farm plantation from Omon still ahead bridge we have Chief Nyambi Ofu of Omon his plantation. At the head bridge we have Enagu Okongho's farm plantation, where Justice Ebga is having houses. Going downward to Ndoma Enighe's farm plantation and after that there is farm plantation belonging to Okwa Agbong. Nearer to Okuni road to Ikom we have Agbong Ukwa farm plantation Omon man. Inside the land we shall show the court farm plantations belonging to Omon people. These plantations had been there ever before the R.B.B. constructed Ikom - Calabar road where the Ikom sawmill is built."

The trial District Court inspected the land in dispute and in its report embodied in its judgment, gave a detailed description of the land. In the light of all these, it is puerile indeed for anyone to claim that the judgment of the trial court was bad for vagueness and uncertainty of the land awarded to the plaintiffs. I agree entirely with the court below, per Oguntade, J.CA. that-

"The contention of the appellants that the judgment of the District Court was bad for vagueness and uncertainly because it failed to describe the exact boundaries of the land awarded, is not entirely correct. A first look at the claim of the plaintiffs and the judgment of the District Court conveys the impression that there was some vagueness. But as the lower court pointed out, if indeed there had been some vagueness in the claim, this was cured by the evidence led."

In conclusion, this appeal is completely bereft of any merit and I have no hesitation whatsoever in dismissing it. The appeal fails and it is hereby dismissed by me. I affirm the judgment of the court below with N 1,000.00 costs of this appeal to the plaintiffs.

WALI JSC

I have had a preview of the lead judgment of my learned brother Ogundare, J.S.C and I agree with him that the appeal lacks merit and it should fail.

The appeal against the Court of Appeal judgment is hereby dismissed with N1,000.00 costs to the plaintiffs/respondents. B

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Ogundare, J.S.C. I agree with his conclusion that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed with costs of N 1,000.00 to the plaintiffs/respondents.

MOHAMMED JSC

I have had the preview of the judgment just read by my learned brother, Ogundare, J.S.C., in draft, and for the reasons given I shall also dismiss the appeal. Four courts; District, Magistrate, High and the Court of Appeal, all decided against the appellants on matters of fact, not law. Yet the appellants had to reach the Supreme Court for a final verdict. It is high time the burden on the Supreme Court is reduced by disallowing appeals, like this one, through a constitutional provision, from reaching the Supreme Court. The process of court must be used bonafide and properly and must not be abused. D

I agree that this appeal has no merit and it is dismissed. I abide by all the consequential orders made in the lead judgment, including the assessment and award of costs. E

ONU JSC

I have had the advantage of a preview of the judgment of my learned brother Ogundare, J.S.C. just delivered. I agree with him that this appeal lacks merit and must fail. G

The decision of the case in hand in all the hierarchy of courts through which it traversed from 1961 to date, namely, in the Ikom/ Olulumo/Akparabong District Court holden at Ikom wherein the respondents scored a resounding victory over the appellants; in the Chief Magistrate's Court sitting at Ikom where the respondents were profoundly successful; in the High Court of Cross-River State holden in Ikom where H

the appellants appeal failed and in the Court of Appeal, Enugu Division where appellants attempt to re-open a decision based on concurrent findings of facts by the three earlier courts could not be successfully impugned and defeated by the respondents, underscores a clear need to invoke in relation thereto the maxim: *Interest rei publicae ut sit finis litium* - it is in the interest of the parties that there must be an end to litigation. See *Adigun v. A-G. of Oyo State* (No.2) (1987) 2 NWLR (Pt.56) 197 at 231 and *Bello Akanbi v. Momodu Alao & anor.* (1989) 3 NWLR (Pt.108) 118 at 140. So be it with the appellants.

I have carefully read the entire record and can see nowhere that the last straw, if any, of vagueness and uncertainty in the respondents Survey Plan (No. IN/24/61 of 8/9/61), can be clung to enable the appellants to swing the pendulum of success in their favour.

It is for these and the more elaborate reasons stated in the judgment of my learned brother Ogundare, J.S.C. that I too dismiss this appeal and make the same consequential orders as therein contained.

Appeal dismissed

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