

SUPREME COURT OF NIGERIA
31ST JANUARY, 1997. SC. 180/1990
CORAM:- A.B. WALI, I.L. KUTIGI, M.E. OGUNDARE,
U. MOHAMMED, S.U. ONU, JSSC.

MICHAEL OLANREWAJU & ANOR.... DEFENDANTS/APPELLANTS
AND
ISAAC ADE OGUNLEYE PLAINTIFF/RESPONDENT

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

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

***APPEALS** - Ground of Appeal - That complains about admission of inadmissible evidence - Is a ground of law - And therefore competent.*

***LAND LAW** - Registrable documents - Whether a farm cultivation agreement - Is subject to registration.*

FACTS

The plaintiff/respondent sued the defendants/appellants for wrongfully reaping his palm trees. The palm trees were planted on the plaintiff's farm land in Ife that was let to the 1st defendant orally and later witnessed in writing by an agreement.

The trial Court found in favour of the plaintiff. Defendants' appeal to the Court of Appeal was dismissed. Being dissatisfied, defendants have further appealed to the Supreme Court on one ground of appeal, and 5 additional grounds without obtaining leave of court. The plaintiff raised a preliminary objection praying that the appeal be struck out for being incompetent.

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

Grounds that are of mixed law and facts

1. I have carefully examined all the six grounds contained in the Appellants' Brief and I take the firm view that the objection is well taken in respect of grounds 2 to 6. Suffice it to say that these five grounds, it would appear clear, are either grounds of facts or at best of mixed law

and facts. For such grounds to be allowed to be argued in this court, leave of either the Court of Appeal or of this Court ought to be first sought and obtained before filing them pursuant to section 213(3) of the Constitution of the Federal of Republic of Nigeria, 1979, as amended. (p. 231 D)

Grounds that each allege error in law and misdirection.

2. Further, in respect of grounds 2 to 6, were leave to have been sought and obtained to argue grounds, 2, 3 and 6, I would still have struck them out for the sheer fact that each of them alleges both error-in-law and misdirection in them which, in my respectful view, is palpably incongruous. Such grounds would intrinsically be incompetent and unarguable. (p. 231 G)

Ground that complains about admission of inadmissible evidence

3. Now, it is trite that a ground of appeal which complains that “the learned trial Judge admitted inadmissible evidence and acted upon it” as in the instant case, is obviously a ground of law. Thus, Ground 1 is a ground of law and I so hold. (p. 232 C)

Registrable documents

4. In the instant case if it is realized that the document (exhibit 1) that the appellants have elevated to the status of a lease is but only “a Farm Cultivation Agreement” between the plaintiff’s father and the 1st Appellant, it is not a document affecting land that may be subject of registration. (p. 233 A)

REPRESENTATION

Appellants absent. Not represented.

J.A. Tijani for the respondent.

CASES REFERRED TO

Obijuru v. Ozims (1985) 2 NWLR (Part 6) 167 at 176

Ogbechie v. Onochie No. 1 (1986) 2 NWLR (Part 23) 484

Welli v. Okechukwu (1985) 6 SC 132

Nalsa & Team Associates v. NNPC (1991) 8 NWLR (Part 212) 652

In Re; Otuedon (1995) 4 NWLR (Part 392) 665

Cross River State Newspaper Corporation v. Oni (1995) 1 KLR 170

STATUTES REFERRED TO

Constitution of Nigeria 1979 s. 213 (3)

Land Instruments Registration Law of Oyo State Cap.59of1978s.16(2)

LEAD JUDGMENT BY ONU JSC

In the High Court of Oyo State, Ife Judicial Division, holden at Ile-Ife the plaintiff, herein respondent claimed against the defendants now appellants jointly and severally the following reliefs:-

“(a) The sum of Ten thousand Naira (N10,000) as General Damages for the wrongful destruction and destructive and or wrongful reaping of the plaintiff’s palm trees between February and March, 1983 on a portion of the plaintiff’s farm-land at Iponrin Adegoroye Ogunleye farm-land in Ife District let to the 1st defendant orally and later witnessed in writing by an Agreement dated the 28th day of December, 1964.

Injunction restraining the defendants, their agents and privies from further tampering with the said palm trees.”

Pleadings were ordered, filed and exchanged by the parties. The case went to trial and after the addresses of counsel, the learned trial Judge (Oguntoye, J.) in a well considered judgment dated the 23rd day of May, 1984, found in favour of the respondent. On appeal by the appellants, the Court of Appeal (Coram: Akanbi, J.C.A. as he then was, in which Omololu- Thomas and Gambari, JJ.C.A. concurred) dismissed the appeal on 12th July, 1989.

The appellants have further appealed to this court upon a Notice of Appeal dated the 17th day of August, 1989 containing one ground which I deem pertinent to set down hereunder because of what I intend to say about it vis-a-vis the additional grounds filed in the appeal later on in this judgment.

“Ground of Appeal:

(1) The Court of Appeal erred in law in dismissing the appeal when it was clear that the learned trial Judge based his judgment on inadmissible evidence and therefore came to a wrong conclusion.

Particulars

(a) The Document admitted as Exhibit “1” is a registrable instrument under the Land Instrument Registration Law Cap. 56 Laws of Oyo State, 1958.

(b) Not having been registered, Exhibit “1” is not admissible in law.

(c) It did not matter that the appellant did not object to its admissibility at the trial.”

Parties filed and exchanged briefs of argument in accordance with the rules of court. Embedded in the appellants Brief are at pages 2 to 5 five additional grounds of which at paragraphs 3 and 3.1 the appellants have this to say:-

“3. Grounds of Appeal

3.1. *The appellant (sic) filed a Notice of Appeal containing one ground of appeal (See pages 15 to 157 of the Record) we shall before the hearing of the appeal seek leave of this Honourable Court to file and argue additional grounds of appeal included in the brief as follows:-*

Ground 2

B *The Court of Appeal erred in law and misdirected itself on the facts when it failed to find that the palm trees claimed to have been destroyed by the appellants were planted by appellants and assuming without conceding (sic) that Exhibit 1 was admissible, by a proper construction of Exhibit 1, the 1st appellant was not precluded from planting C palm trees and reaping such palm trees he planted.*

Particulars

The respondent said in Cross examination that the 1st appellant had taken up possession of the farmland since 1959. The respondents has earlier said in his examination-in-chief that the destroyed palm trees were D between 20 and 30 years old.

This shows that the appellant who had been in possession for 24 years must have planted some of these palm trees.

Clause 1 of Exhibit 1 is not exhaustive it! respect of the economic trees and crops the appellant can plant and does not preclude the E appellant from planting palm trees.

Clause 5 of Exhibit 1 provides for palm trees already in existence on the land which belonged to the respondent's father and not those that would be planted by the appellant.

(6) There was nothing in Exhibit I which would be said to pre- F clude the appellant from planting and reaping palm trees on the land.

Ground 3

The learned Justices of the Court of Appeal erred in law and misdirected themselves on the facts when they held that:-

"But this much can however be said that those findings of fact G as regards ownership of the land (which is also evidenced by Exhibit 1) and the entitlement of the plaintiff to reap the palm fruits on the land decided in Suit No. HIF/32/82 constituted 'issue estoppel' against the appellant... in any case the learned trial Judge also said that even if it was open to her 'to go behind the previous judgment' (i.e. Exhibit 2) to H make her finding on those issues, she would have come to the same conclusion. I think that, that ought to complete the argument on the point."

Particulars

(1) The said previous judgment, Exhibit 2 was clearly based on Exhibit 1, the unregistered and inadmissible lease agreement tendered in

the present case.

(2) *The learned Justices of the Court of Appeal should not have relied on the previous judgment, Exhibit 2 as it was based on inadmissible evidence and thus decided per incuriam.*

(3) *The learned Justices of the Court of Appeal did not give any reasons why they would have come to the same conclusion as the trial Judge on the point.*

(4) *Since Exhibit 1 is inadmissible, oral evidence as to the terms and conditions of the lease agreement is also inadmissible in evidence, hence there was no legal evidence before the Court of Appeal as to the terms and conditions of the lease agreement.*

Ground 4

The learned trial (sic) Justices of the Court of Appeal erred in law in holding that:-

“For the issue is not who planted the palm fruit. It is whether the 1st appellant has a right to reap the palm fruits without the consent of the plaintiff or persons claiming through him. The sum total of the findings of the learned justice in this regard is that, the 1st appellant has no such right and with that I agree. Clearly clause 5 of Exhibit 1 sets a limit to any control or possession that the 1st appellant might have on the palm fruits.”

Particulars

(1) *There was uncontroverted evidence that the farm land in issue was leased to the appellant in 1959 by the respondent's father*

(2) *There was also uncontroverted evidence that the appellant has been in possession of the said farm land since 1959 till date.*

(3) *By virtue of the provisions of the Land Use Act, ownership of such farmland became vested in the appellant.*

(4) *It is an elementary principle of law that “quic quid plantatur solo solo cedit” i.e. whatever is affixed to the soil belongs to the soil.*

(5) *The palm trees which the respondent claimed had a life span of 100 years is definitely part of the soil.*

(6) *Whoever owns the soil is clearly the owner of whatever is affixed to it.*

(7) *The 1st appellant is the owner of the palm trees and can do as he pleases with them.*

(8) *The lease agreement Exhibit I being inadmissible in evidence for being unregistered, reference should not have been made to any of its provisions.*

(9) *With Exhibit 1 being inadmissible, oral evidence of its contents should also have been disregarded for being inadmissible.*

(10) *There was consequently no material evidence before the trial Judge and the Court of Appeal to warrant the finding that there was any agreement binding on the appellant restricting this use of the palm tress. Ground 5*

The Court of Appeal erred in law in holding that the judgment in the previous suit between the 1st appellant and the respondent (Exhibit 2) constitutes issue estoppel against the appellants when the said judgment was based on inadmissible evidence and reached per incuriam and the palm trees in issue in that suit were different from the ones in issue in this suit. Ground 6

C The Court of Appeal erred in law and misdirected itself on the facts, when it upheld the award of the sum of N7,000.00 as general damages to the respondent for the reaping and damage done to the palm trees on the land in dispute. Particulars

D (1) There was clearly evidence before the Court of Appeal that the amount of damage claimed to have been suffered by the respondent was quantifiable.

(2) The respondent ought to have claimed for special damages and thus be bound to give specific particulars of his claims.

E (3) The Court of Appeal agreed with the learned trial Judge who based the analysis of the damages on unreasonable grounds namely that a palm tree has a life span of 100 years and consequently would be productive throughout its life span.

F (4) On the evidence of the respondent which was relied on by the trial court, the palm trees destroyed were between 20 - 30 years old and the appellant has been in possession of the farmland since 1959 i.e. for 24 years, consequently the respondent could not have planted all the trees he claimed were destroyed.

G (5) The evidence of the respondent as to the effect of the wrongful reaping of the palm trees by the appellant is at variance with his Statement of Claim and goes to no issue.

H To the six grounds of appeal set out above and which are contained in the appellants' brief dated the 29th January, 1990, the respondent in his brief dated the 6th of November, 1991 as well as in a Notice of Motion of even date, raised a preliminary objection. The grounds of objection are:-

"1. That whereas by virtue of Section 213(3) of the Constitution of the Federal Republic of Nigeria, 1979 the appellants are obliged to seek and obtain leave of the Court of Appeal or of this Honourable Court before appealing on facts or mixed law and facts; the appellants

contrary to the provisions of the Constitution quoted herein have appealed on facts or mixed law and facts in grounds 1,2,3,4,5 and 6 of this (sic) grounds of appeal and to what extent the appeal as filed is incompetent and should be dismissed.

2. *That on a close look at the 6 grounds of appeal, the appellants in the main, are attacking the concurrent finding of facts of the B court below."*

On 11th November, 1996 when this appeal came up for hearing, the appellants as well as their counsel were absent while the respondent's counsel was present. The appellants appeal was taken as having been argued on the brief. Learned counsel for the respondent in his brief oral submission relied on the brief he had earlier filed and reiterated the fact that he still relied on the preliminary objection he had earlier filed and urged that the appeal be struck out as incompetent.

The appellants have unfortunately not responded by filing a reply D brief. I have carefully examined all the six grounds contained in the appellants brief and I take the firm view that the objection is well taken in respect of grounds 2 to 6. I shall come to ground 1 later on. Suffice it to say that these five grounds, it would appear clear, are either grounds of facts or at best of mixed law and facts. See Ogbechie v. Onochie No.1 (1986) 2 NWLR (Pt.23) 484; Welli v. Okechukwu (1985) 2 NWLR (Pt.5) 63; (1985) 6 S.C. 132. For such grounds to be allowed to be argued in this court, leave of either the Court of Appeal or of this court ought to be first sought and obtained before filing them pursuant to section 213(3) of the Constitution of the Federal Republic of Nigeria, 1979, as amended. See also Obijuru v. Ozims (1985) 2 NWLR (Pt.6) F 167 at 176; Nalsa & Team Associates v. NNPC (1991) 8 NWLR (Pt.212) 652; Owoniboy Technical Service Ltd. v. JohnHolt (1991) 6 NWLR (Pt.199) 550; In Re: Otuedon (1995) 4 NWLR (Pt.392) 665 and Cross River State Newspaper Corporation v. Mr. JJ. Oni & 6 ors. (1995) 1 NWLR (Pt.371) 270 at 285.

Further, in respect of grounds 2 to 6, were leave to have been sought G and obtained to argue grounds, 2, 3, and 6, I would still have struck them out for the sheer fact that each of them alleges both error-in-law and misdirection in them which, in my respectful view, is palpably incongruous. Such grounds would intrinsically be incompetent and unarguable. See Nwadike v. Ibekwe (1987) 4 NWLR (Pt.67) 718 (supra) and Sylvanus Obi v. Chief Ola H Owolabi (1990) 5 NWLR (Pt. 153) 702.

Grounds 4 and 5 in my judgment, are clearly grounds of mixed law and facts albeit that they are christened as grounds of law. Their characterisation as one, would ipso facto not convert them into grounds

of law. See Nwadike v. Ibekwe (supra) Ogbechie v. Onochie No. 1 (supra); Adili v. The State (1989) 2 NWLR (Pt.1D3) 305; S.U. Ojemen & 3 ors v. His Highness William Momodu (1983) ISCNLR 188; (1983) 3 S.C. 173 and Metal Construction (W.A.) Ltd. v. Migliore (1990) 1 NWLR (Pt.126) 299.

Consequently, grounds 2, 3, 4, 5 and 6 are declared incompetent and they are accordingly struck out.

Coming to Ground I, this having been filed on 17/8/89 when the judgment against which it is complaining was delivered on 12/7/89 and so statutorily within time, it is prima facie competent. The ground without its particulars states:

C *“The Court of Appeal erred in law in dismissing the appeal when it was clear that the learned trial Judge based his judgment on inadmissible evidence and therefore came to a wrong conclusion.”*

Now, it is trite that a ground of appeal which complains that “the learned trial Judge admitted inadmissible evidence and acted upon it” as in the instant case, is obviously a ground of law. Thus, Ground 1 is a ground of law and I so hold. See Nwadike v. Ibekwe (supra) at page 733. The issue which overlaps Ground 1 asks:

E *“1. Whether the lease agreement Exhibit 1 made between the respondent’s father and the 1st appellant is admissible in evidence when the document is unregistered.”*

The gravamen of appellants argument centres upon the admissibility of Exhibit 1 which is submitted, is a lease agreement made as far back as 1964 but which was unregistered. It is purported to be a lease agreement between respondent’s father and the 1st appellant in respect of the farmland on which the palm trees in issue are. Reliance was placed on sections 16 and 2 of the Land Instruments Registration Law of Oyo State Cap. 59 of 1978 as well as the case of Ojugbele v. Olosoji (1982) 4 S.C. 31, for the proposition that a registrable instrument which is not registered should not be pleaded as it is inadmissible by statute. It is appellants further contention that it is now settled law that where evidence is under no circumstance admissible, it does not matter whether no objection was taken as to its admissibility or that it was admitted by consent. Such evidence, it is argued, remains inadmissible for all intents and purposes. The cases of NIPC v. Thompson Organisation Ltd. (1969) 1 All NLR 138 and Ajayi v. Fisher (1956) 1 F.S.C. 90; (1956) SCNLR 279 were cited in support thereof. In addition, it was argued that if, however, such inadmissible evidence is admitted and relied upon by the trial Judge, the appeal court has a duty to expunge such document or evidence from the records vide Anyaebosi v. R.T. Briscoe Ltd. (1987) 3 NWLR (Pt.59) 84

and NIPC v. Thompson Organisation (supra), adding that in the instant case, the court below ought to have expunged Exhibit I and with it out of the way, there would be no legs on which the case of the respondents could rest.

In the instant case, if it is realised that the document (Exhibit 1) that the appellants have elevated to the status of a lease is but only “a Farm Cultivation Agreement” between the plaintiff’s father and the 1st appellant, it is not a document affecting land that may be subject of registration. The court below effectively answered the point, thus putting the nail in appellants coffin as follows:-

“I have examined Exhibit 1 in the light of the provisions of the law under which the appellant now seeks to avoid the contract he freely and voluntarily entered into or to have the document to which he took no objection at the trial expunged from the record; and say at once that I do not think it is such a document that can be said to be inadmissible at all events. I am satisfied that the document did not purport to transfer or convey any right, title or interest in land as to make it registrable as a land instrument. If anything, it constituted an acknowledgment of the plaintiffs undisputed title to the farmland and of the fact that the defendant, under the hire agreement was allowed to use part of it, upon the terms and conditions spelt out thereunder. In the circumstances, I agree with respondent’s counsel that Exhibit I is a mere record of the transaction between the parties and does not fall within the ambit of those documents required to be registered under the Land Registration Law. It is therefore admissible.” (Italics is mine for emphasis)

I cannot agree more.

With the foregoing, my answer to this issue is in the affirmative.

In the result this appeal fails and is accordingly dismissed with N1,000 costs to the respondent.

WALI JSC

I am privileged to read in advance the lead judgment of my learned brother Onu, J.S.C. and I agree with his reasoning and conclusion that the appeal lacks merit and it must therefore fail.

I agree with the conclusion in the lead judgment that additional grounds 2 to 6 are incompetent since they are in contravention of S. 213(3) of the Constitution of Nigeria 1979 and were never filed. They are accordingly hereby struck out. See Moses v. Ogunlabi (1975) 4 SC 81; Obijuru v. Ozims (1985) 2 NWLR (Pt.6) 167; Akwiwu & Anor. v. Sangonuga (1984) 5 SC 184; Tilbury Construction Co. Ltd. & Anor. v.

SundayOgunniyi (1988) 2 NWLR (Pt.74) 64 at70 and Erisi v. Idika(1987) 4 NWLR (Pt.66) 511.

As for the original ground of appeal which complains of wrong admission of evidence, I hold the view that it is a ground of law. See Ogbechie v. Onochie (1986) 2 NWLR (Pt.23) 484. This ground therefore sustains the appeal. But this will have no effect on the conclusion I have on this appeal, having regard to the finding of Akanbi, J.C.A. (as he then was) on Exhibit 1, which is the instrument in issue wherein he opined in the lead judgment of the court that:-

"It was the contention of the appellant's Counsel that the learned trial Judge should not have relied on Exhibit 1 even though no objection was taken to its admissibility at the time it was tendered. The document, it is said, is a registrable instrument under and by virtue of Section 16 of the Land Instrument Registration Law Cap. 56 Laws of Oyo State 1958, and not having been so registered, it is not admissible in law. For that reason, it was argued, it should have been expunged from the record. Section 2 of the aforesaid Law instrument Registration Law defines or spells out the type of documents affecting land that may be subject of registration. I have examined Exhibit 1 in the light of the provisions of the law under which the appellant now seeks to avoid the contract he freely and voluntarily entered into or to have the document to which he took no objection at the trial expunged from the record; and say at once that I do not think it is such a document that can be said to be inadmissible at all events. I am satisfied that the document did not purport to transfer or convey any right, title or interest in land as to make it registrable as a land instrument. If anything, it constituted an acknowledgement of the plaintiffs undisputed title to the farmland and of the fact that the defendant, under the hire agreement was allowed to use a part of it, upon the terms and conditions spelt out thereunder. In the circumstances, I agree with respondent's counsel. That Exhibit I is a mere record of the transaction between the parties and does not fall within the ambit of those documents required to be registered under the land Registration Law. It is therefore admissible."

I agree with this finding and conclusion on Exhibit 1. There was therefore no error of law by the learned trial Judge in admitting Exhibit 1 in evidence and considering the same in arriving at his conclusion in the judgment.

The appeal fails and it is hereby dismissed. The judgments of both the trial court and the Court of Appeal are further confirmed.

The appellant is awarded N1,000.00 against the respondent.

KUTIGI JSC

The appellants who had lost both in the trial High Court and in the Court of Appeal have finally appealed to this court on one original ground of appeal as shown on pages 156 - 157 of the record. It reads:-

“Ground of Appeal:

(1) The Court of Appeal erred in law in dismissing the appeal when it was clear that the learned trial Judge based his judgment on inadmissible evidence and therefore came to a wrong conclusion.

Particulars

(a) The document admitted as Exhibit 1 is a registrable instrument under the Land Instrument Registration Law Cap. 56 Laws of Oyo State, 1958.

(b) Not having been registered, Exhibit “1” is not admissible in law.

(c) It did not matter that the appellant did not object to its admissibility at the trial.”

The Notice of Appeal which was filed on 17/8/89 was well within time because the judgment of the Court of Appeal being appealed was only delivered on 12/7/89. Whether or not leave was needed before filing the Notice of Appeal vide section 213(3) of the 1979 Constitution will be discussed later. It was indicated in the same Notice of Appeal that “other grounds of appeal will be filed on receipt of the record of appeal”.

The record shows that the appellants received their record of appeal on 26/6/90. But they have filed no additional grounds of appeal to date. However, in their appellants Brief of argument which was filed in this court on 29/1/91, it was indicated on page 2 therein that before the hearing of the appeal leave of this court would be sought to file and argue five additional grounds of appeal numbered 2 - 6 as set out also on pages 2 - 5 of the brief.

When this appeal came up for hearing on 11th November 1996 the appellants and their counsel (Chief Afe Babalola, SAN & Co.) were all absent. It was then observed that the appellants have not sought leave of this court to file and argue the five additional grounds of appeal as stated in their brief and which they had argued in their brief. In fact these grounds 2 - 6 were never filed. This is against the clear provisions of order 8 Rule 2(5) and order 8 rule 4 of the Supreme Court Rules, 1985 as amended. They read thus -

“2(5)The appellant shall not without the leave of the court urge or be heard in support of any ground of appeal not mentioned in the notice of appeal, but the court may in its discretion allow the appellant to amend the grounds of appeal upon payment of the fees prescribed for

making such amendment and upon such terms as the court may deem just.

(4) A notice of appeal may be amended by or with the leave of the court at any time."

I hasten to say that under the above rules, the question whether the additional grounds sought to be filed are of facts or mixed law and facts or law alone does not arise as long as there is a subsisting competent appeal.

In the absence of an application for leave of this court to file and argue the additional grounds of appeal nos.2-6 therefore the said grounds 2-6 are not properly before the court. They are incompetent and ought to be struck out. I hereby strike them out accordingly. Consequently issues C 2-6 covering those grounds of appeal in the appellants brief must also be struck out. And I do strike them out. We are therefore only left with the single original Ground of Appeal filed on 17/8/89 and set out above. It is issue (I) in the appellant's brief

Now, before 11th November, 1996 when the appeal came up for D hearing, the respondent had filed a Notice of Preliminary Objection on 6th November, 1991, challenging the competence of the appellants Grounds of Appeal Nos. 1,2,3,4, 5 & 6. All of them. The objection is also contained in the respondent's brief filed on the same day (6/11/91). It was contended that all the grounds of appeal are of facts or of mixed law and E facts which required prior leave of the Court of Appeal or of this court as provided under section 213(3) of the 1979 Constitution. He said that since no leave was obtained, the appeal as filed is incompetent and should be dismissed.

I have already struck out additional grounds of appeal nos. 2-6 F because as I said there was no application for leave to file them. These grounds were however wrongly argued in the brief. If they were never filed and there is no application to file them now, then they are strictly not part of these appeal proceedings. Therefore the issue of whether or not they are grounds of facts or of mixed law and facts which require leave G under section 213(3) of the Constitution does not arise at this stage there being no application to file same.

As for original ground one however, there is need to examine it to see whether or not it is a ground of facts or of mixed law and facts which needed prior leave of the Court of Appeal or of this court.

H In carrying out this exercise, I must bear in mind that a decision whether a ground of appeal raises question of law alone does not depend on the label an appellant gives to the ground in question. A decision will involve an examination of the particular ground of appeal together with its particulars (see *Ojemen & Ors. v. H.H. William O. Momodu II & Ors.*

(1983) 1 SCNLR 66; (1983) 1 sc. 173; Nwadike & Ors. v. Ibekwe & Ors. (1987) 4 NWLR (Pt.67) 718). A careful reading and analysis of the lone ground above shows clearly that it is -

(1) questioning the admissibility of Exhibit J in evidence;
(2) contending that Exhibit 1, is a registrable document or instrument under the Land Instrument Registration Law Cap. 56 Laws of Oyo State 1958; and

(3) saying that the learned trial Judge based his judgment on the inadmissible evidence (Exh. 1), and therefore came to a wrong conclusion.

To me, all these three points are points of law only. I believe it is settled that a complaint about wrongful admission of evidence is a ground of law alone. Also a ground of appeal complaining that there was no evidence or no admissible evidence upon which a decision or finding was based is a ground of law. And an issue on legal interpretation of deeds or documents, will also be a ground of law (see Nwadike & Ors. v. Ibekwe & Ors. (1987) 4 NWLR (Pt.67) 718. Ogbechie v. Onochie (1986) 2 D NWLR (Pt.23) 484.

I have therefore irresistibly come to the conclusion that the single original ground of appeal above is unquestionably, a ground of law. It is therefore valid and properly filed. The preliminary objection in respect of original ground 1 above therefore fails.

Now as I said, ground 1 is covered by issue (1) which reads -

“Whether the lease agreement Exhibit I made between the respondent’s father and the 1st appellant is admissible in evidence when the document is unregistered.”

This issue has been adequately dealt with in the lead judgment of my learned brother Onu, J.S.C. which I read before now. I agree with him that the court below was right when it held that Exhibit 1 was a mere record of the transaction between the parties and did not fall within the ambit of those documents required to be registered under the land Registration Law as the document did not purport to transfer or convey any right, title or interest in land.

The appeal therefore fails. It is hereby dismissed with N1,000.00 costs to the respondent.

OGUNDARE JSC

I have had the advantage of reading in draft the judgment of my learned brother Onu, J.S.C. just delivered. Leave of this court not having been sought and obtained (as indicated in appellant’s brief) to argue addi-

tional grounds 2 and 6, those grounds not available to the appellants in this appeal and all arguments in the Brief based on them are incompetent and are accordingly struck out.

With respect to learned counsel for the respondent however, original Ground (1) would appear to be a ground of law in that it complains that a B document relied on by the respondent in support of his case was wrongly admitted in evidence. Wrongful admission of evidence is, in my respectful view, an issue of law. Whether or not ground (1) succeeds is a different matter. As ground (1) is a competent ground, the appeal is, to that extent, competent.

Issue (1) formulated by the appellant is predicated on Ground C (1); it, therefore, calls for determination in this appeal. The issue reads:

“(1) Whether the lease agreement Exhibit 1 made between the respondent’s father and the 1st appellant is admissible in evidence when the document is unregistered.”

The pith of appellants’ submissions on this issue is that Exhibit 1 D is a lease agreement that must, under section 2 of the Lands Instrument Registration Law Cap. 59 Laws of Oyo State 1978, be registered, and as it was not so registered, it was inadmissible in evidence under section 16 of the Law. *Ojugbele v. Olasoji* (1982) 4 SC 31 is cited in support. It is further submitted that it does not matter that it was not objected to at the E trial; the appeal court has a duty to expunge it from the record. It is finally submitted that -

“the said Exhibit 1 is the leg on which the respondent’s case rests and so the respondent’s case should collapse with the expunging of the said Exhibit.”

F The respondent’s reply to the submissions of the appellants run thus:

“The appellant... started to misconstrue and gave wrong interpretation to Land Instrument Registration Law, Exhibit’ 1 ‘ did not purport to transfer or convey any right title or interest in land as to make it G registrable. It is merely an acknowledgment of plaintiff’s undisputed title to the farmland and of the fact that the defendant, under the hire agreement was allowed to use a part of it upon the terms and conditions spelt thereunder”

H to say on Exhibit 1: D

“I have examined Exhibit 1 in the light of the provisions of the law under which the appellant now seeks to avoid the contract he freely and voluntarily entered into or to have the document to which he took no objection at the trial expunged from the record; and say at once that I do

not think it is such a document that can be said to be inadmissible at all events. I am satisfied that the document did not purport to transfer or convey any right, title or interest in land as to make it registrable as a land instrument. If anything, it constituted an acknowledgment of the plaintiffs undisputed title to the farmland and of the fact that the defendant, under the hire agreement was allowed to use a part of it, upon the terms and conditions B spelled out thereunder. In the circumstances, I agree with respondent's counsel that Exhibit 1 is a mere record of the transaction between the parties and does not fall within the ambit of those documents required to be registered under the Land Registration Law. It is therefore admissible."

I have myself examined Exhibit 1 and I have no hesitation in agreeing C with the court below that it is not a document registrable under section 2 of the Lands Instruments Registration Law. It is a mere memorandum evidencing a transaction under customary law and creates a customary law tenancy. This is borne out more by paragraphs 8 and 9 of the Exhibit which read:

"8. That in recognition of the title of ownership of the landlord D and in consideration of the above agreement the Tenant hereby agrees to pay Ishakole to the landlord every year not later than the 30th November, each year in the following quantities or their value in cash. Three hundred weights of cocoa or 30 yams or 600 Gbanja Nuts or N15.00.

9. That failure to pay the full quantity of Ishakole at the stipulated above shall lead to the institution of legal proceedings against the tenant refusal to pay any Ishakole will lead to forfeiture of the whole farm cultivated by the tenant." (Italics are mine) E

"Instrument" is defined in section 2 of the Law as meaning:

"'instrument' means a document affecting land in the State F whereby one party (hereinafter called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in land in the State and includes -

- (a) an estate contract; G
- (b) a certificate of purchase;
- (c) a power of attorney under which any instrument may be executed;

A deed of appointment or discharge of trustees containing expressly or impliedly a vesting declaration and affecting any land to which H section 27 of the Trustee Law extends but does not include a will;"

In my respectful view, Exhibit 1 is not a lease agreement. The appellants are not correct to call it so. The use of the words "Ishakole" and "forfeiture" in Exhibit I suggests a transaction under customary law,

This conclusion disposes of the complaint of the appellants in this appeal which, therefore, fails. It is for the reason given herein that I too, like my learned brother Onu, J.S.C, dismiss the appeal with costs assessed at N 1 ,000.00 in favour of the respondent.

B

MOHAMMED JSC

I have had the privilege of reading the judgment just read by my learned brother, Onu, J.S.C., and I agree with him that all the grounds of appeal filed by the appellant are incompetent and ought to be struck out.

C I therefore strike them out. The notice of appeal has no ground to support it. It is accordingly struck out. I abide by the orders made in the lead judgment on costs.

Appeal dismissed

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