

SUPREME COURT OF NIGERIA
19TH DECEMBER, 1997. SC. 138/1991
CORAM:- M.L. UWAIS CJN, I.L. KUTIGI, M.E. OGUNDARE,
E.O. OGWUEGBU, A.I. IGUH, JJSC.

DATOEGOEM DAKAT	APPELLANT
AND		
MUSA DASHE	RESPONDENT

COURTS - *Witnesses - It is trial court's duty to asses witnesses - And form impression about their truthfulness.*

DAMAGES - *Special damages - Plaintiff's failure to prove trespass against defendant - Makes it unnecessary for trial court to consider plaintiff's evidence on special damages.*

EVIDENCE - *Burden of proof - Trespass - The onus is on plaintiff to prove exclusive possession of the farm land.*

JURISDICTION - *Title - Where the trial senior District Judge did not make any declaration as to title - Issue of jurisdiction will not arise*

LAND LAW - *Trespass - Where appellant's entrance on the land was an act of trespass - Certificate of occupancy procured by him cannot ground possession.*

FACTS

Before the Senior District Court of Plateau State holden at Shendam, the plaintiff/appellant filed an action against the defendant/respondent claiming N5,000.00 being special and general damages for trespass. Both parties are farmers. The plaintiff averred that he is the holder of Shendam Local Government Certificate of Occupancy in respect of the land in dispute. That he cleared the land, cultivated it and planted rice seedlings thereon which the defendant wrongfully destroyed

The defendant denied the claim stating that the farm belonged to him. When his warning to the plaintiff to refrain from ploughing the land was not heeded, he reported the matter to their Chief who visited the farmland and found that it belonged to him (the defendant). The defendant later planted rice on the farm. The trial Senior District Court dismissed the claim. Plaintiff's appeal to the High Court and the Court of Appeal were all dismissed. Plaintiff

has further appealed to the Supreme Court raising 4 issues.

ISSUES FOR DETERMINATION

"(a) Whether or not the Court of Appeal was right in law in confirming the decision of the trial court when the said decision was null and void for lack of jurisdiction?

(b) Whether the learned Justices of the Court of Appeal erred in law in confirming the decision of the High Court that the appellant failed to prove special damages merely because he did not produce receipts at the trial?

(c) Whether the learned Justices of the Court of Appeal erred in law in holding that despite documentary and real evidence the High Court was right in disbelieving the appellant by relying on the witnesses' demeanour?

(d) Whether it is the proper function of an Appeal Court to embark on the rewriting of judgment appealed against in order to defeat the appeal when there is no cross-appeal or respondent's notice to affirm the judgment on other grounds?"

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

Land law - Trespass

1. The appellant failed to satisfy the trial court by credible evidence that he was in exclusive possession of the farm land. His entry on the farm was no more than an act of trespass which he wanted to legalize by procuring the Certificate of Occupancy and initiating the proceedings leading to this appeal. The appellant will not secure possession by his act of trespass or by the certificate of occupancy procured after the said trespass. (p. 2059 C)

Jurisdiction - Title

2. I entirely agree with the High Court and the Court of Appeal that the Senior District Judge did not make any declaration as to title to the respondent. In the course of his evaluation of the evidence adduced by the parties, he believed the evidence of D.W. 1 and D.W. 2 that the land belonged to the defendant and that the plaintiff's witnesses are not witnesses of truth. He finally dismissed the claim of the plaintiff. After examining the entire proceedings, the evidence of the parties and the judgment of the Senior District Judge, I am unable to see how any issue of jurisdiction was raised or determined in the proceedings to attract the application of section 13(2) (a) (1) of the District Courts Law Cap. 33. (p. 2060 A)

Special damages

3. The Senior District Judge found that the plaintiff failed to prove the trespass he complained of, that his entry on the farm land was an act of trespass and that his claim failed. He believed D.W.1 and D.W.2 and held that the plaintiff's witnesses were not witnesses of truth and that the plaintiff's did not plant anything on the land. This court cannot go into the question of credibility of witnesses, an issue within the exclusive preserve of the trial judge who saw and heard them. The case of the appellant is not that there was no evidence at all to support the finding. It was therefore unnecessary for the trial court to consider the plaintiff's evidence on special damages. If he had proved that the defendant committed the alleged act of trespass, non-production of receipts would not have defeated his claim for special damages having regard to the fact that his evidence on it was not challenged. (p. 2061 A)

Burden of proof

4. Generally speaking, the burden of proof is on the plaintiff in a civil case and in this case the onus was on the plaintiff to prove the trespass he alleged and in order to succeed, he had to satisfy the trial court on the preponderance of evidence that at the time of the trespass, he was in exclusive possession of the farm land. (p. 2061 D)

Courts - Witnesses

5. It is without doubt the duty of a trial court to assess witnesses, form impression about them and evaluate their evidence having regard to the impression it formed of the witnesses. The Senior District Judge did so and came to the conclusion that the plaintiff's witnesses were not witnesses of truth and dismissed his claim. This finding was affirmed by the High Court and the Court of Appeal. These are enough reasons why this court should not disturb the findings of fact of the lower courts since it is not satisfied that they are unsound. The Senior District Judge evaluated all the evidence adequately and made findings which have not been faulted. The plaintiff did not adduce sufficient evidence to justify any judgment in his favour. (p. 2061 E)

REPRESENTATION

Parties are absent and not represented by counsel

CASES REFERRED TO

Ekpan v. Uyo (1986) 3 N.W.L.R. 63 at page 66

Salami v. Oke (1987) 4 N.W.L.R. (Pt. 63) 1 at page 13

Eboh v. Akpotu (1968) N.M.L.R. 278

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

Adebakin v. Odujebe (1972) 6 S.C. 208

Amakor v. Obiefuna (1974) 3 SC. 67

Balogun v. Agboola (1974) 10 A.C. 111

B STATUTE & RULES REFERRED TO

Supreme Court Rules 1985 0.6 r. 8(b)

District Courts Law Cap. 33 Laws of Northern Nigeria 1963 ss. 12(2) (a), 13(2) (a) (i)

C LEAD JUDGMENT BY OGWUEGBU JSC

The appellant was the plaintiff in the Senior District Court of Plateau State holden at Shendam. He claimed against the defendant who is the respondent herein, the sum of N5,000.00 being special and general damages for trespass. His claim was dismissed by the Senior District Judge and he appealed to the High Court of Plateau State. The High Court sitting in its appellate jurisdiction dismissed the appeal. His appeal to the Court of Appeal, Jos Division, was also dismissed by that court and he has further appealed to this court.

The facts leading to the proceedings can be summarized as follows:-

Both the plaintiff and the defendant are farmers residing at Kwande District of Shendam Local Government Area of Plateau State. The plaintiff in his statement of claim averred that he is the holder of Shendam Local Government certificate of Occupancy in respect of over 753.8 hectares of farm land at Kwali-Gida village dated 6th March, 1985. He averred that he cleared the said farm land, cultivated it and purchased rice seedlings which he planted on the farm. He further averred that the defendant wrongfully entered the said farm between April and May, 1985 and destroyed his rice plantation. He suffered damage and claimed as stated above.

The defendant denied liability. He led evidence in the trial court that the farm land belonged to him, that when he saw the plaintiff ploughing the land, he asked him to stop but the plaintiff went ahead ploughing the land. He reported the plaintiff to the Chief of Kwande who visited the farm and found that the farmland belonged to him (defendant). The defendant later planted rice on the farm.

From the grounds appeal filed, the plaintiff who is the appellant in this court identified the following issues for determination:

"(a) Whether or not the Court of Appeal was right in law in confirming the decision of the trial court when the said decision was null and void for lack of jurisdiction?"

(b) Whether the learned Justices of the Court of Appeal erred in law in confirming the decision of the High Court that the appellant failed to prove special damages merely because he did not produce receipts at the trial?

(c) Whether the learned Justices of the Court of Appeal erred in law in holding that despite documentary and real evidence the High Court was right in disbelieving the appellant by relying on the witnesses' demeanour?

(d) Whether it is the proper function of an Appeal Court to embark on the rewriting of judgment appealed against in order to defeat the appeal when there is no cross-appeal or respondent's notice to affirm the judgment on other grounds?"

When the appeal came up for hearing on 6-10-97, both parties were absent and were not represented by counsel. The appellant filed a brief of argument on 3:10:91 and the defendant did not file any brief. Under Order 6, rule 8(b) of the Supreme Court Rules, 1985 the appeal was treated as having been argued on the appellant's brief.

In appellant's brief of argument which was prepared by Dr. Ameh, S.A.N., it was submitted in issue number (a) that the claim before the Senior District Judge was in trespass and injunction and that the court was legally bound to confine itself to the claim as laid by the plaintiff/appellant. He submitted that the trial court had jurisdiction over the plaintiff's claim and that in order to succeed in his claim, all that the plaintiff needed to prove was possession and not ownership of the land. He relied on the cases of Ekpan v. Uyo (1986) 3 N.W.L.R. 63 at page 66 and Salami v. Oke (1987) 4 N.W.L.R. (Pt. 63) 1 at page 13. He contended that the plaintiff proved possessory right, tendered his Certificate of Occupancy No. 5197 which was admitted in evidence as Exhibit "B" and by virtue of Exhibit "B", he had exclusive possession of the land which he cultivated. It was also submitted that the appellant's evidence that cleared, cultivated and planted on the land was not challenged.

It was further submitted that the issue of title was not raised bona fide by the defendant/respondent and that the trial court should have ignored it in accordance with the principle laid down by this court in Eboh v. Akpotu (1968) N.M.L.R. 278 and that in view of Exhibit "B" - the Certificate of Occupancy, the trial court should have looked only at the claim and not the defence to determine whether the suit is within its jurisdiction or not. He referred to the case of Akinsanya v. U.B.A Ltd. (1986) 4 N.W.L.R. (Pt.35) 273. It was also contended that the High Court, Jos erred in law in confirming the decision of the Senior District Court when the said Court lacked the jurisdiction to hear the case and that the court below equally erred in law when it confirmed the

decision of the High Court which confirmed the finding of the Senior District Court which believed the evidence of D.W.1 and D.W.2 that "the farm belongs to the defendant". The learned Senior Advocate relied on section 12 (2) (a) of the District Courts Law, Cap.33, Laws of Northern Nigeria, 1963.

The finding of the Senior District Judge which gave rise to the issue B of jurisdiction is contained in the following passage of his judgment:

"Having heard the evidence of the plaintiff and his witnesses and of the defendant and his witnesses, I believe the evidence of D.W.1 and 2(sic) that the farm belongs to the defendant. Plaintiff was warned in advance not to interfere with the land but he ahead (sic) and ploughed it. I also believe C the evidence of the defence that plaintiff did not infact plant anything on the (sic). Plaintiff's witnesses are not witnesses of truth. The plaintiff's claim must fail.:

On the issue of lack jurisdiction on the part of the Senior District Judge, the High Court in exercise of its appellate jurisdiction held:

D *"On the issue of title, we do not agree with the counsel's submission that the trial Judge conferred title on the appellant when he said he believed the evidence of D.W.1 and D.W.2 that the farm belongs (sic) to the Defendant. What he believed was the evidence of these two witnesses who said that the farm belongs (sic) to the Defendant."*

E On the same of lack of jurisdiction on the part of the trial court, the Court of Appeal observed as follows:

"On the question of the trial court purporting to vest title on the respondent..... I believe there is a misconception of the above pas- sage by learned counsel as my understanding of it is that the judge was F referring to the evidence adduced. I venture also to add that there is a misconception on the application of the dictum in Eboh v. Akpotu (1968) N.M.L.R 278 relied on by learned counsel to this case, (sic). The decision of the trial court was not null and void for want of jurisdiction, and the learned judges of the High Court did not err in confirming its decision."

G The appellant's contention is that the Senior District Judge should have declined jurisdiction seeing that an issue of title to the farm land was raised in the case. The courts below found that the respondent had always been in exclusive possession of the land in dispute and that the entry upon the said by the appellant was an act of trespass.

H From the evidence of the respondent and his witnesses which the courts below believed, the appellant needed a loan from a bank which required him to provide a collateral. To satisfy this condition, the appellant cleared the farm and procured a Certificate of Occupancy from Shendam Local Government Council over the said land of the respondent and armed with the

certificate, he laid claim to it. The respondent reported him to the Chief of Kwande when he failed to stop his act of trespass. The Chief visited the locus in quo with the parties. It was found that the appellant had only cleared the land and had not planted any rice or maize as he claimed. It was also found that the land belonged to the respondent. The appellant was arrested and detained by the police for his act of trespass. He was later released and asked to leave the farm. The appellant agreed and later institution the action which gave rise to this appeal. B

These were the facts found by the trial Senior District Judge and affirmed by the High Court and the Court of Appeal. The trial court did not believe the evidence of the plaintiff/appellant and his witnesses. It is therefore clear that the entry of the appellant on the farm was an act of trespass having regard to the fact that the respondent had always been in possession of the farm land. C

The appellant failed to satisfy the trial court by credible evidence that he was in exclusive possession of the farm land. His entry on the farm was no more than an act of trespass which he wanted to legalize by procuring the Certificate of Occupancy and initiating the proceedings leading to this appeal. The appellant will not secure possession by his act of trespass or by the certificate of occupancy procured after the said trespass. See Adebakin v. Odunjebe (1972) 6 S.C. 208, Amakor v. Obiefuna (1974) 3 SC. 67 and Balogun v. Labiran (1988) 3 N.W.L.R. (pt. 80) 66. D E

The trial Senior District Judge did not abandon the claim before him and did not declare title ti the farm land to the respondent. The High Court and the court below correctly interpreted the purportedly offending passage in the judgment of the trial court. On the issue of title, the High Court said: F

"..... we do not agree with the counsel's submission that the trial judge conferred title on the appellant when he said he believed the evidence of D.W.1 and D.W.2 that the trial judge conferred title on the appellant when he said he believed the evidence of D.W.2 that the farm belongs to the Defendant." G

The Court of Appeal also agreed with the High Court that the Senior District Judge did not confer title to the farm land on the defendant. The Court said:

"On the question of the trial court purporting to vest title on the respondent, I also fail to see where the trial court vested title. I believe the gravamen of the appellant's complaint on this is based on the following pronouncement of the learned trial judge in the concluding part of his judgment:

"....."

I believe there is a misconception of the above by the learned counsel as my understanding of it is that the judge was referring to the evidence adduced. The decision of the trial court was not null and void for want of jurisdiction."

I entirely agree with the High Court and the Court of Appeal that the Senior District Judge did not make any declaration as to title to the respondent. In the course of his evaluation of the evidence adduced by the parties, he believed the evidence of D.W. 1 and D.W. 2 that the land belonged to the defendant and that the plaintiff's witnesses are not witnesses of truth. He finally dismissed the claim of the plaintiff. After examining the entire proceedings, the evidence of the parties and the judgment of the Senior District Judge, I am unable to see how any issue of jurisdiction was raised or determined in the proceedings to attract the application of section 13(2) (a) (1) of the District Courts Law Cap. 33, Laws of Northern Nigeria, 1963 which provides:

D *"13(2) (a) subject to the provisions of paragraph (d) of sub-section (1) and any other written law a Senior District Judge shall not exercise original jurisdiction in any suit or matter which -*

(1) raises any issue of title to land, or to any interest in land;"

E *I will consider issues (b), (c) and (d) together. It was submitted in the appellant's brief that the court below was in error in confirming the decision of the High court which held that the appellant failed to prove special damages merely because he did not produce receipts to support the items of special damages. The court below agreed with the contention of the learned appellant's counsel that a receipt is not a necessity in proving special*

F *damages.*

It held as follows:

"Oral unchallenged evidence when given on items classified as special damages when not supported by production of receipts is not fatal to the plaintiff's claim. Boshali v. Allied Commercial Exporters Ltd. (1961) 1

G *All N.L.R. 917. I also agree that the evidence neither controverted nor contradicted remains but to be believed. (sic) Modupe v. The State (1988) 4 N.W.L.R. (pt. 87) 130."*

The court below further held:

"The above view notwithstanding, the trial court has the right to

H *ascribe whatever probative value it wishes to ascribe to the evidence before him. The trial judge in his judgment on page 12 of the record had this to say on the credibility of the witnesses and his belief on them:-*

'I also believe the evidence of the defence that the plaintiff did not in fact plant anything on (sic) the plaintiff's witnesses are not witnesses of

truth.'

The High court was right in holding that the plaintiff/appellant did not prove special damages as to entitle him to the award."

The Senior District Judge found that the plaintiff failed to prove the trespass he complained of, that his entry on the farm land was an act of trespass and that his claim failed. He believed D.W.1 and D.W.2 and held that the plaintiff's witnesses were not witnesses of truth and that the plaintiff's did not plant anything on the land. This court cannot go into the question of credibility of witnesses, an issue within the exclusive preserve of the trial judge who saw and heard them. The case of the appellant is not that there was no evidence at all to support the finding. It was therefore unnecessary for the trial court to consider the plaintiff's evidence on special damages. If he had proved that the defendant committed the alleged act of trespass, non-production of receipts would not have defeated his claim for special damages having regard to the fact that his evidence on it was not challenged.

Generally speaking, the burden of proof is on the plaintiff in a civil case and in this case the onus was on the plaintiff to prove the trespass he alleged and in order to succeed, he had to satisfy the trial court on the preponderance of evidence that at the time of the trespass, he was in exclusive possession of the farm land. See Amakor v. Obiefuna (supra) and Balogun v. Labiran (supra).

It is without doubt the duty of a trial court to assess witnesses, form impression about them and evaluate their evidence having regard to the impression it formed of the witnesses. The Senior District Judge did so and came to the conclusion that the plaintiff's witnesses were not witnesses of truth and dismissed his claim. This finding was affirmed by the High Court and the Court of Appeal. These are enough reasons why this court should not disturb the findings of fact of the lower courts since it is not satisfied that they are unsound. See Okafor v. Idigo (1984) 1 S.C.N.L.R. 481, Balogun v. Agboola (1974) 10 A.C.111 and Balogun v. Labiran (supra). The Senior District Judge evaluated all the evidence adequately and made findings which have not been faulted. The plaintiff did not adduce sufficient evidence to justify any judgment in his favour.

In the result the appeal fails and accordingly, it is dismissed. The judgment of the Senior District Judge in favour of the respondent which was affirmed by the High Court and the Court of Appeal is hereby further affirmed. I make no order as to costs in view of the fact that the respondent neither filed any brief nor appeared either in person or through counsel since the case terminated in the Senior District Court.

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 that the appeal has no merit and that it should be dismissed.

Accordingly I too hereby dismiss the appeal and adopt the order as
B to costs as contained in the said judgment.

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother,
C Ogwuegbu JSC. I agree with him that the appeal has no merit and ought to be dismissed. It is accordingly dismissed with no order as to costs. The judgment of the lower courts are hereby affirmed.

OGUNDARE JSC

I agree with the judgment just delivered by my learned brother,
Ogwuegbu JSC. The appeal is completely bereft of any merit. The trial District Court heard the evidence and came to its decision based, as it were, on the credibility of the witnesses. The two appellate High Court and Court of Appeal saw no reason to disturb the conclusion reach by the trial court. After a
E consideration of the arguments contained in the appellant's brief, I am not persuaded that all these Courts were wrong. Consequently, I too dismiss this appeal and make no order as to costs.

IGUHJSC

I have had the privilege of reading in draft the reading judgment just delivered by my learned brother, Ogwuegbu, J.S.C. and I agree entirely that this appeal is totally devoid of substance.

For the same reasons as are contained in the said Judgment, I, too,
G dismiss this appeal. I abide by the order for costs therein made.

H