

# **KINGS LAW REPORTS (ALL SC)**

**(1997) 2 KLR PART 48 pp. 293-468**

**FEBRUARY 1997**

**Dedicated to the King of kings**

**O. O. NOEL ESQ. Chief Editor**

## **INDEX OF CASES REPORTED**

1. Ishola v. Societe Generale Bank Ltd. p. 293
2. Governor of Imo State v. Nwauwa p. 327
3. Odebunmi v. Abdullahi p. 357
4. Ikeanyi v. ACB Ltd. p. 373
5. Kari v. Ganaram p. 391
6. Coker v. UBA PLC P. 413
7. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441
8. Idesoh v. Ordia p. 459

**ACTIONS** - Family - Representative action on behalf of the family - What an individual did will not be binding on the family. *Idesoh v. Ordia* p. 459

**ACTIONS** - Limitation period - Appellant's contention that the action is statute barred - Whether admitted or opposed by the respondent. *Ishola v. Societe Generale Bank Ltd.* p. 293

**ACTIONS** - Statute bar - Whether the respondent's claim - Is statute barred. *Ishola v. Societe Generale Bank Ltd.* p. 293

**APPEALS** - Enlargement of time to prepare the records - Where appellant has delayed in filing the record of appeal - Enlargement of time will be granted - Upon presentation of good reason. *Coker v. UBA PLC* p. 413

**APPEALS** - Findings of fact - In vicarious liability claim - Was wrongfully set aside by Court of Appeal. *Odebunmi v. Abdullahi* p. 357

**APPEALS** - Grounds of appeal - Proposed new grounds - Where they are of mixed law and fact - Leave of court must be obtained before filing the grounds. *Coker v. UBAPLC* p. 413

**APPEALS** - New point of law - That was not in issue in the pleadings - Cannot be raised - Where further evidence would be required. *Ikeanyi v. ACB Ltd.* p. 373

**APPEALS** - Grounds of law - Appeal filed pursuant to s. 213(2) of the Constitution - The grounds can only be amended - By substituting grounds of law only. *Coker v. UBAPLC* p. 413

**APPEALS** - Concurrent findings - About nature of contract - Whether justified by the evidence considered. *John Andy Sons Co. Ltd. v. National Cereals Research Institute* p. 441

**APPEALS** - Competence of grounds of appeal - Grounds that are incompetent - Should be struck out. *Coker v. UBA PLC* p. 413

**APPEALS** - Objection - Where sought to be newly raised before the Supreme Court - Leave must be obtained. *Governor of Imo State v. Nwauwa* p. 327

**APPEALS** - Grounds of appeal - Discretion of trial court - Where reviewed by the Court of Appeal - Ground questioning that exercise of discretion - Is at best one of mixed law and fact. *Coker v. UBAPLC* p. 413

**APPEALS** - Issues - That are not predicated on the grounds of appeal - Would be struck out. *Kari v. Ganaram* p. 391

**APPEALS** - Judgment - Pronounced opinion of a member of the panel - Who has ceased to be a Justice of the Court of Appeal on the date of judgment - Is not a nullity. *Ishola v. Societe Generale Bank Ltd.* p. 293

**APPEALS** - Judgment - Whether all the three Justices of the Court of Appeal - That heard an appeal - Must be present at the delivery of the judgment. *Ishola v. Societe Generale Bank Ltd.* p. 293

**BANKING** - Drawing in excess of one's credit - Is a request for loan - Where the cheque is honoured - The customer has borrowed money by way of overdraft - Irrespective of no existence of formal agreement. *Ishola v. Societe Generale Bank Ltd.* p. 293

**BANKING** - Interest on overdraft - Where there is no express agreement - Bank may only recover interest - If the borrower does not object. *Ishola v. Societe Generale Bank Ltd.* p. 293

**BANKING** - Overdraft - Cause of action - Where no specific date was agreed upon for repayment - There must be demand - Before cause of action will arise. *Ishola v. Societe Generale Bank Ltd.* p. 293

**BANKING** - Payment of money into an account - Failure to tender the bank teller - Whether the alleged payment is proved. *Ishola v. Societe Generale Bank Ltd.* p. 293

**BANKING** - Account position - Letter drawing appellant's attention to the position of his account - Cannot amount to a letter of demand. *Ishola v. Societe Generale Bank Ltd.* p. 293

**CHIEFTAINCY MATTERS** - Recognition of a chief - Withdrawal of the recognition - Whether proper. *Governor of Imo State v. Nwauwa* p. 327

**CHIEFTAINCY MATTERS** - Fair hearing - Withdrawal of the chief's recogni-

tion - Whether implemented without fair hearing. Governor of Imo State v. Nwauwa p. 327

**CHIEFTAINCY MATTERS** - Support of the community for the chief - Loss of the support - Can be measured not only by referendum. Governor of Imo State v. Nwauwa p. 327

**COMPANY LAW** - Evidence - Hearsay - Company being a juristic person - Can give evidence of a transaction vide its servant - That did not take part in the transaction - And the evidence will not be hearsay. Ishola v. Societe Generale Bank Ltd. p. 293

**CONTRACTS** - Breach of contract - Where there was no breach of contract - Whether appellant's claim to payment on quantum meruit - Has any basis. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441

**CONTRACTS** - Quantum meruit - Where there was no evidence on which to conduct the exercise - Trial court should not give an order - That the parties should determine quantum meruit out of court. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441

**CONTRACTS** - Agreement between the parties - Where found to be Exhibit 2 - And there was no evidence of agreement to review - It is wrong for court to base computation of damages - On a different exhibit. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441

**DAMAGES** - Remitting case to trial court - For the award of damages - Is unnecessary in this case. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441

**JUDGMENTS** - Functus officio - Ones an issue has been determined - The judge becomes functus officio after the judgment - And cannot reopen the matter. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441

**JUDGMENTS** - Findings - Of trial judge in respect of an exhibit - Should not be disregarded by that judge - Unto making a wrongful award. John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 44

**LAND LAW** - Licence - Is revocable by the licensor at any time - Failure to

give notice - Would not affect the validity of a proper grant to a 3rd party. Kari v. Ganaram p. 391

**LAND LAW** - Title - Failure to prove title and possession - Appellants will not be entitled to damages for trespass or injunction. Idesoh v. Ordia p. 459

**LAND USE ACT** - Right of occupancy - Revocation of plaintiff's right - Is invalid not being made within s. 28 of the Act. Kari v. Ganaram p. 391

**LAND LAW** - Traditional evidence - Whether trial court's findings - Were rightly affirmed by the lower court. Idesoh v. Ordia p. 459

**LAND LAW** - Trespass and injunction - Claim of ownership by the defendant - Plaintiff has to prove not only possession but better title. Idesoh v. Ordia p. 459

**LAND LAW** - Title - Burden on appellants - Cannot be discharged - By alleging that their ancestors' graves and shrines were on the land - Without proving the averment by evidence. Idesoh v. Ordia p. 459

**LAND USE ACT** - Validation of Certain Laws Act Cap. 203 s. 1(2)(b) - Is not applicable to Exhibit Z. Kari v. Ganaram p. 391

**LAND USE ACT** - Temporary right of occupancy s. 46(1) (d) - Whether Exhibit Z qualifies as a temporary right of occupancy under this section. Kari v. Ganaram p. 391

**LAND USE ACT** - Certificate of occupancy s. 8 of the Act - The document in issue Exh. Z - Is not a certificate of occupancy. Kari v. Ganaram p. 391

**MORTGAGES** - Sale by auction - Exercise of power to sale mortgaged landed property - Whether valid. Ikeanyi v. ACB Ltd. p. 373

**PLEADINGS** - Consistency - Case fought on whether there was an auction sale - Plaintiff having failed to establish there was no sale - Cannot turn round to contend that sections of the Auctioneer's Law - Were not complied with. Ikeanyi v. ACB Ltd. p. 373

**PLEADINGS** - Averments - Where not proved by evidence - Are useless - And may be deemed abandoned. Idesoh v. Ordia p. 459

**PRACTICE & PROCEDURE** - Reply - Its proper function in the settlement of pleadings - Reply will be unnecessary - For the sole purpose of denying averment contained in the statement of defence. *Ishola v. Societe Generale Bank Ltd.* p. 293

**STATUTES** - Auctioneers Law - Provisions thereof - Cannot be considered in isolation from the parties case. *Ikeanyi v. ACB Ltd.* p. 373

**TORTS** - Negligence - Res ipsa loquitur - Absence of defence to the principle - Means that plaintiffs' case was not controverted. *Odebunmi v. Abdullahi* p. 357

**TORTS** - Vicarious liability - Negligent driving that led to death of the deceased - Defendant's denial of ownership of the vehicle was not established. *Odebunmi v. Abdullahi* p. 357

**WORDS & PHRASES** - Appeals - "Hearing" - As envisaged under s. 258(2) of the 1979 Constitution - Is as at the closure of the parties' addresses - And the appeal is adjourned for judgment. *Ishola v. Societe Generale Bank Ltd.* p. 293

- Auctioneer's Law of Anambra State ss. 19 & 20 Ikeanyi v. ACB Ltd. p. 373
- Commission of Inquiries Law Cap. 24 Laws of Eastern Nigeria Governor of Imo State v. Nwauwa p. 327
- Constitution of Nigeria 1979 s. 213(3) Kari v. Ganaram p. 391; ss. 226, 258(2) Ishola v. Societe Generale Bank Ltd. p. 293; s. 33(4) Governor of Imo State v. Nwauwa p. 327; ss. 213 (2) & (3) Coker v. UBA PLC P. 413
- Conveyancing Act 1881 s. 21(2) Ikeanyi v. ACB Ltd. p. 373
- Court of Appeal Act 1976 ss. 9, 11 Ishola v. Societe Generale Bank Ltd. p. 293
- English Limitation Act 1623 Ishola v. Societe Generale Bank Ltd. p. 293
- Evidence Act s. 76 John Andy Sons Co. Ltd. v. National Cereals Research Institute p. 441
- Fatal Accident Law 1963 Odebunmi v. Abdullahi p. 357
- High Court Law of Eastern Nigeria Cap. 61 s. 15(1) Ikeanyi v. ACB Ltd. p. 373
- Land Use Act Cap. 202 LFN 1990 ss. 5(1)(a) & (b), 8, 46 (1) & (2), 9, 10, 28, 12 Kari v. Ganaram p. 391
- Land Use Act (Validation of Certain Laws, etc) Act Cap. 203 s. 1 Kari v. Ganaram p. 391
- Supreme Court Rules 0.8 r. 2(5) Coker v. UBA PLC P. 413; 0. 6 r. 5(1) Kari v. Ganaram p. 391
- Traditional Rulers and Autonomous Communities Law of Imo State No. 11 1981 ss. 18, 10(e) & (f) Governor of Imo State v. Nwauwa p. 327