

SUPREME COURT OF NIGERIA
30TH MAY, 1997. SC. 306/1990
CORAM:-S.M.A.BELGORE, I.L.KUTIGI, E.O.OGWUEGBU,
S.U.ONU,A.I.IGUH, JJSC

ITYOSUWE HAAV	DEFENDANT/APPELLANT
AND		
KEMA KUNDU	PLAINTIFF/RESPONDENT

APPEALS - Findings of trial area court - Appellate high court's interference therewith - Is erroneous.

APPEALS - Findings of trial court on facts - Should not be interfered with - Unless in certain circumstances.

COURTS - Fresh case - Where the local area court is presumed to know the applicable law - Formulation of a fresh case by the appellate high court - Is wrong.

FACTS

Before the Area Court Gboko, the plaintiff/respondent filed an action against the defendant/appellant claiming a right of occupancy in respect of the farmland in dispute. Respondent gave evidence of how appellant's father encroached on the land. Upon respondent's protest he was told that the encroachment was temporary. After the death of appellant's father, appellant encroached on another portion of the land. Respondent reported the matter to their clan head who ordered the appellant to leave the land but he would not.

The trial area court made a visit to the locus in quo, considered the entire evidence before it and found in favour of the respondent. The appellant's appeal to the high court was allowed in part while the respondent's claim was dismissed. Both parties appealed to the Court of Appeal which found in respondent's favour and restored the trial area court's decision. Being dissatisfied, appellant has further appealed to the Supreme Court.

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

Courts - Fresh case formulation

1. The High Court certainly missed salient facts of the plaintiff's case and went to formulate an entirely new case between the parties and this led to its erroneous decision. In all matters on customary law, otherwise referred to as "native

law and custom", the Area Court of the locality is presumed to know the applicable law. In the instant case the High Court made fresh case for the parties outside the evidence and issues fought at the trial Court. This is a grave error indeed. (p. 1083 B)

Findings of trial court should not be interfered with

2. The trial Court has the best advantage of sifting through all the evidence before it, and in the case involving native law and custom, the trial Area Court is presumed to know the law applicable to that locality and to apply the evidence to its findings on that law. That is why it is always an error to interfere with the findings of the trial Court on facts, unless in certain circumstances. (p. 1083 D)

Erroneous interference with findings

3. It is therefore clear that the trial Area Court, properly seized with the facts of the case and the custom of the locality (which is not perverse or unconscionable, and not repugnant to equity and good conscience) found for the respondent, the High court of Benue State in its appellate jurisdiction not only erred in interfering with those findings, but grossly missed the salient facts of the case and arrived at erroneous conclusion. I therefore find no merit in this appeal and I dismiss it. (p. 1083 G)

REPRESENTATION

T. Ayanniyi for the Appellant

J. A. Asongo for the Respondent

CASES REFERRED TO

Kimdey v. Military Governor, Gongola State (1988) 5 NWLR (pt. 77) 445

Oilfield Supply Centre Ltd. v. Johnson (1985) 3 NWLR (Pt.13) 372;

Omorhirhi v. Enatevwere (1988) 1 NWLR (Pt.746)

Aladegbemi v. Fasanmade (1988) 3 NWLR (Pt. 81) 129

Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484)

Chikwendu v. Mbamali (1980) 3 S.C. 31

Lokoyi v. Olojo (1983) 8 SC 61 at 68

Onobuchere v. Esegine (1986) 1NWLR (Part 19) 799 at 804

Egonu v. Egonu (1978) 11-12 SC. 1

LEAD JUDGMENT BY BELGORE JSC

The respondent was the plaintiff at the trial area Court, Gboko, Benue State. The claim was for a right of occupancy of the land, a farmland, situate

at Mbawuar-Mbara, upon which the appellant encroached. Both parties gave evidence and called witnesses. The Court paid a visit to locus in quo. The case of the respondent was that his late father, Ikutse, once made a customary grant of a piece of land to one Gbuusu (deceased), who was brother to the appellant's father. The appellant's father later came to live with Gbuusu who has erected his house on the said land, subject of the customary grant. After living for a while with his brother Gbuusu, the appellant's father moved to a portion of the land outside the land granted and made a compound. The respondent protested against this encroachment but Gbuusu intervened by explaining that the appellant's father stay was merely temporary and pleaded that he the (appellant's father) be not evicted.

After tarrying for a while on this portion of the land, the appellant's father died and the appellant moved his compound and settled on another portion of the respondent's land. The respondent reported to their clan head, Mede Achie, who ordered the appellant to leave the land; but he refused. At this stage the appellant's relations living with him left him for their own kindred. But the appellant and his brother who seemed now to be claiming ownership of the land persisted and remained on the land. There was clear evidence that the respondent's father used to lease out parts of the land to some families for farming purposes and that the appellant was a stranger on the land in dispute. In rebuttal of this plaintiff's evidence, the appellant's posture was that the land in dispute belonged to his father, Haav, who was born on the land to his grandfather named Gbur while he was staying with his late brother named Gbuusu. When his grandfather died his father continued staying with Gbuusu. But later Gbuusu advised him to build his own homestead around 1950. It was this move to another place that caused the respondent's brother, Ajir, to report the matter to Mede, the Clan Head. Who ordered the appellant's father to demolish his compound which he disobeyed.

Trial Area Court after a thorough review of the evidence, came to the conclusion that the case for the plaintiff/respondent was proved and that he was the true owner of the land. Against this there was an appeal to the High Court of Benue State. In a remarkable judgment due to its built-in contradiction, the High Court held as follows:

"We ourselves have read the record of proceedings in the lower court. We are satisfied that the trial court's findings of fact are amply supported by the evidence before it. The trial court found as a fact that the father of the appellant was given the land in question by a brother of the father of the respondent. It also found as a fact that not only the appellant but also his father had lived on the land in question.

The court also properly directed itself on the question of dispos-

sessing the appellant of the land on which he build his compound. The court however failed to take into consideration the fact that the appellant, being a farmer, cannot be reasonably expected to live in his compound without cultivating the land surrounding that compound.

Of the disputed piece of land as shown by the trial court in its sketch map on page 13 of the record of proceedings it is clear that most of the acts of development carried on the land are by the appellant. Only one farm is shown in the sketch map to belong to the plaintiff.

It is now settled law that the court will not allow a plaintiff to invoke a rule of customary law to dispossess another of land held in possession of such other's family for a reasonable length of time. See Awo vs Cookey Gam (1913) 2 NLR 100.

The trial court having found that the appellant, and indeed, his father had been in possession of the land for upward of forty or more years ought to have declared the appellant the owner of the land. To the extend D therefore, where the court declared the titled to the piece of land in favour of the respondent, we are of the view that it misdirected itself. To that extent therefore, we vary the decision of the trial court by declaring the land found to be in possession of the appellant, his land. We allow the appeal and declare the title to the piece of land in favour of the appellant."

E By this incomprehensible passage, the High Court reversed the entire decision of the trial Court on facts and deprived the plaintiff of any victory, not a millimeter of his land encroached upon was left to him; even though the defendant was left in the status of a tenant which made him cross-appeal to the Court of Appeal just as the plaintiff did.

F Court of Appeal, in considering the appeal on the issues raised before it came to the conclusion, inter alia, that a possession however long cannot solely be the basis for declaration of title, there must be acquiescence by the owner of the adverse possession of his land by another person. In this case, the respondent (plaintiff), lodged his protest all along. Further, the G Court of Appeal was at a loss to find anywhere in the judgment of the Area Court in which it found that the father of the defendant was given the land in dispute by the plaintiff's father; it was the defendant's uncle that was given the land as a customary farming tenant. None of the parties at the trial court led any evidence along the line found by the Court of Appeal on this issue.

H The Court of Appeal then admonished as follows:

"What the appellate High court did, which was an error, was to make a case for the parties by formulating its own (appellate High Court's) case and then proceeding to give judgment. A judgment must be confined to the issues raised on the evidence led at the trial. Where it is otherwise, the

court will be making a case for the parties by formulating its own case from the evidence and proceeding to give judgment. See Oniah's case, supra. That sort of thing is not right. There was no evidence before the trial area court to warrant the appellate High Court to hold that the respondent, in Appeal No. CA/J/156/88, was a customary tenant of the appellant or that the aforesaid respondent derived his title, if any, to the land in dispute from the family of the appellant."

The Court of Appeal thereby set aside the decision of the appellate High Court and restored the trial Area Court's judgment. Upon all the facts before the trial Area Court, it found for the respondent as plaintiff. **The High Court certainly missed salient facts of the plaintiff's case and went to formulate an entirely new case between the parties and this led to its erroneous decision. In all matters on customary law, otherwise referred to as "native law and custom", the Area Court of the locality is presumed to know the applicable law. In the instant case the High Court made fresh case for the parties outside the evidence and issues fought at the trial Court. This is a grave error indeed. The trial Court has the best advantage of sifting through all the evidence before it, and in the case involving native law and custom, the trial Area Court is presumed to know the law applicable to that locality and to apply the evidence to its findings on that law. That is why it is always an error to interfere with the findings of the trial Court on facts, unless in certain circumstances.** If the findings of the trial Court are in contradiction to the evidence before it, the appellate Court will set it aside [*Kimdey v. Military Governor, Gongola State* (1988) 5 NWLR (pt 77) 445; *Oilfield Supply Centre Ltd. v. Johnson* (1985) 3 NWLR (Pt 13) 372; *Omorhirhi v. Enatevwere* (1988) 1 NWLR (Pt 746); *Overseas Construction Ltd. v. Creek Enterprises Ltd.* 3 NWLR (Pt 13) 407]. Whatever findings of the trial Court on facts will be set aside by the appellate Court if those findings are based on unpleaded matter or inadmissible evidence or on trial without jurisdiction. [*Aladegbemi v. Fasanmade* (1988) 3 NWLR (Pt 81) 129; *Ogbechie v. Onochie* (1986) 2 NWLR (Pt 23) 484]. **It is therefore clear that the trial Area Court, properly seized with the facts of the case and the custom of the locality (which is not perverse or unconscionable, and not repugnant to equity and good conscience) found for the respondent, the High court of Benue State in its appellate jurisdiction not only erred in interfering with those findings, but grossly missed the salient facts of the case and arrived at erroneous conclusion. I therefore find no merit in this appeal and I dismiss it. I uphold the decision of the Court of Appeal. I award N1,000.00 as costs against the appellant in favour of the respondent.**

KUTIGIJSC

I read before now the judgment just delivered by my learned brother, Belgore, JSC. I agree with him that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed with N1,000.00 costs against the appellant.

B

OGWUEGBUJSC

I had the advantage of reading in draft the judgment just delivered by my learned brother Belgore, J.S.C. I agree with the reasoning and conclusions. I too agree that this appeal should be dismissed.

C

ONU JSC

I had the advantage to read in advance the judgment just read by my learned brother Belgore, JSC. I am in entire agreement with his reasoning and conclusion that this appeal lacks merit and ought to fail.

D

The Area Court which is presumed to know the custom of the area in which the land adjudicated upon is situated after a thorough appraisal and evaluation of the evidence adduced at the trial following a visit to the locus in quo, arrived at a sound decision which ought not, in my view, to be lightly interfered with. Thus, in the case on appeal, the High court was palpably wrong to have disturbed the decision of the trial Area Court which with the decision of the Court of Appeal, constitute concurrent findings of fact by the two courts. This is the *moreso*, when those decisions have not been shown to be perverse or shown to be in breach of any rule of law, substantive or procedural as to amount to a miscarriage of justice. See Mogo Chikwendu v. Mbanegbo Mbamali (1980) 3 S.C. 31; Lokoyi v. Olojo (1983) 8 SC. 61 at 68; Onobruhere & anor v. Esegine & anor. (1986) 1 NWLR (Part 19) 799 at 804; Asani Balogun v. Alimi Agboola (1974) 10 SC. 111 and Egonu v. Egonu (1978) 11-12 SC. 1 to mention but a few.

It is for these and the more detailed reasons given by my learned brother Belgore J.S.C. that I too dismiss the appeal. I subscribed to the consequential orders made inclusive of costs.

G

IGUJSC

I have had the advantage of a preview of the leading judgment just delivered by my learned brother, Belgore, J.S.C.

H

I agree entirely with him and I have nothing more to add.

The appeal accordingly fails and it is hereby dismissed with costs as assessed in the leading judgment.