

CITATION (1998) 10 KLR

ISSN 1117-0530

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(1998) KLR VOL 10 PART 72 pp. 2327-2464

OCTOBER 1998

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

1. Yusuf v. Oyetunde p. 2327
2. Ude v. Chimbo p. 2353
3. Elendu v. Ekwoaba p. 2385
4. Ude v. Osuji p. 2413
5. Abasi v. Braimah p. 2427

[NO SC JUDGMENT IN NOV. HENCE NO (1998) VOL. 11
KLR]

COURT OF APPEAL

Wey v. Wey p. 2453

ACTIONS - Locus standi - Where the plaintiffs have ready interest in a raging controversy - They had the locus standi to institute the action. *Elendu v. Ekwoaba* p. 2385

APPEALS - Complaint of appellant - That alleged error of trial court - Was not considered by the Court of Appeal - Is not justified - In spite of a slip by that court. *Yusuf v. Oyetunde* p. 2327

APPEALS - Concurrent findings of fact - Which have not been shown to amount to a miscarriage of Justice - Or in any way perverse - Will not be interfered with. *Elendu v. Ekwoaba* p. 2385

APPEALS - Interference with findings of fact - Will not ordinarily be done by appellate court - Save in some exceptional circumstances - Such as where the findings are perverse. *Ude v. Chimbo* p. 2353

APPEALS - Observation by Court of Appeal - Does not amount to a reversal of trial court's finding - That 1st defendant was not a witness of truth. *Yusuf v. Oyetunde* p. 2327

CONSTITUTIONAL LAW - Freedom of association - The case of the parties - Was not fought on the constitutional right of freedom of association. *Elendu v. Ekwoaba* p. 2385

CONTRACTS - Contract for the sale of land - Rescission - Where the conduct of the plaintiff was an unequivocal rescission of the contract - He is estopped from contending that the original contract still subsists. *Ude v. Osuji* p. 2413

COURTS - Issue - Not placed before the Court - Should not be dealt with - To avoid denial of right to fair hearing. *Ude v. Chimbo* p. 2353

EQUITY-Estoppel-Where the plaintiff by his conduct led the defendant to believe that the contract would not be enforced-It would be inequitable to allow the Plaintiff to enforce his claim.*Ude v.Osuji* p.

2413

ESTOPPEL-Estoppel by conduct-Definition of the principle. Ude v. Osuji p. 2413

ESTOPPEL - Estoppel by conduct - It's qualification - Is that it can only be invoked by a defendant - And can never stand alone as giving a cause of action. Ude v. Osuji p. 2413

EVIDENCE - Proof - Civil cases - Onus of adducing further evidence – Is on the party who would fail- If such evidence were not produced. Abasi v. Braimah p. 2427

INJUNCTIONS - Relief sought - As an injunction follows the natural cause of events in a case - It was proper to grant the injunction in the circumstances of this case. Elendu v. Ekwoaba p. 2385

LAND LAW - Conveyancing - Forgery allegation - Is proved beyond reasonable doubt - And the forged conveyance exhibit 2 being vitiated transferred no title. Abasi v. Braimah p. 2427

LAND LAW-Conveyancing - Plaintiff's failure to sign the document as purchaser - Would not affect the fact of conveyance of the plot to her - In view of the uncontradicted evidence that plaintiff paid for same. Abasi v Braimah p. 2427

LAND LA W - Locus standi - Family land acquired by government - Portion thereof subsequently released - Was released to the 14 sections of the family - And they all have standing to sue. Yusuf v. Oyetunde p. 2327

LAND LA W - Possession - Trespass - Is essentially a tort against possession - Failure of claim for title - Does not mean claim for trespass must also fail. Ude v. Chimbo p. 2353

4 INDEX OF SUBJECT MATTER IN (1998) 10 KLR

LAND LAW - Possession - Trial court's finding of possession and better title in favour of appellants - Was erroneously interfered with by the Court of Appeal. Ude v. Chimbo p. 2353

B

LAND LAW - Purchaser for value - Without notice of any fraud - On the proved facts - The defence of purchaser for value does not avail. Abasi v. Braimah p. 2427

C LAND LAW - Sale of family land - By some members of the family - At a time the land was acquired by government - Is null and void. Yusuf v. Oyetunde p. 2327

D LAND LAW - Sale of family land - Where declared void - Court cannot order return of the purchase price - As there was no counter claim to that effect. Yusuf v. Oyetunde p. 2327

E LAND LAW - Sale of Family Land - Where declared void for nemo dat quod non habet - It is immaterial that the vendor acted as family head or agent. Yusuf v. Oyetunde p. 2327

F LAND LAW - Title - Burden of Proof - Plaintiff having proved purchase through her husband - Onus shifted to the 1st defendant to prove the original purchaser - As averred by him. Abasi v. Braimah p. 2427

G LAND LAW - Title - Reliance on a particular mode of acquisition of title - Where not proved - It is not permissible to substitute other matters such as acts of possession - To warrant inference of the ownership not pleaded as root of title. Ude v. Chimbo p. 2353

H PLEADINGS - Evidence - Lower courts holding that appellants' evidence was at variance with their pleadings - Is a total misconception of their case. Ude v. Chimbo p. 2353

H PLEADINGS - Admission - Failure by defendant - To admit or deny an averment- Amounted to admission - And the fact of acquisition in 1976 stands proved - As no issue was joined on that averment. Yusuf v. Oyetunde p. 2327

PLEADINGS - Evidence - At variance with pleadings - Issues are tried on parties' pleadings and the parties are bound thereby. Elendu v. Ekwoaba p. 2385

PLEADINGS - Proof - Abandonment of plaintiffs's averment - By failing to call evidence - Defendant cannot call evidence on that averment - Which was not his case. Yusuf v. Oyetunde p. 2327

PLEADINGS - Traverse - To be proper - Must deny specifically each allegation of fact in the statement of claim. Elendu v. Ekwoaba p. 2385

D

E

COURT OF APPEAL

COURTS - Evidence - Consideration by trial judge of evidence he ruled should be excluded - Is justified in view of a later contrary indication - And special circumstances of the case. Wey v. Wey p. 2453 CA

EVIDENCE - Consideration of a party's evidence - Failure by a party to give evidence on a point - Cannot be a cause of complaint - Where he was given free scope to give evidence. Wey v. Wey p. 2453 CA

MATRIMONIAL CAUSES - Separation - Evidence - Outside the fact of the 3 years separation - Was rightly admitted. Wey v. Wey p. 2453 CA

MATRIMONIAL CAUSES - Maintenance - Awarded by the Court - That respondent did not complain about lower amount she earlier received from appellant - Will not deny her the higher award made by court. Wey v. Wey p. 2453 CA

H

MATRIMONIAL CAUSES - Maintenance - Claim for a higher amount than
was awarded by trial court - Cannot be granted by appeal court - Without
B evidence of rate of inflation. Wey v. Wey p. 2453 CA

C

D INDEX OF STATUTES & RULES

Constitution of Nigeria 1979 s. 258 (1) Abasi v. Braimah p. 2427

Constitution of Nigeria 1979 amended by Decree No. 1 of 1984, s. 37 Elendu v.
E Ekwoaba p. 2385

Evidence Act. Cap. 112 Laws of the Federation of Nigeria, 1990, s. 136 Elendu
v. Ekwoaba p. 2385; ss. 135, 137, 138 Abasi v, Braimah p. 2427

F High Court Rules, Cap. 61 of the Law of Eastern Nigeria 1963 Order iv Elendu
v. Ekwoaba p. 2385

Registration of Titles Law Cap 121 Laws of Lagos State
ss. 61 (1) (d), 53 (1) & (2) Abasi v. Braimah p. 2427
G

H