

# **KINGS LAW REPORTS**

## **(ALL SC PLUS MORE)**

**(1998) KLR VOL 5 PART 64 pp. 1113 - 1220**

**MAY 1998**

**Dedicated to the King of kings**

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

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### **COURT OF APPEAL CASE**

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2. Ajeyalemi v. Animashaun p. 1213 CA

**APPEALS** - Issue - Newly raised before the Supreme Court - Is incompetent - As appeal does not lie from the High Court to the Supreme Court. *Alakija v. Abdulai* p. 1135

**APPEALS** - Ground of appeal - Where its factual basis does not exist - The ground and the issue distilled from it are incompetent - As well as the arguments based on it. *Alakija v. Abdulai* p. 1135

**COURTS** - Record of Proceedings - Presumption of regularity - Where the record is complete but did not show that the parties applied for or consented to a hearing date - The presumption is not applicable. *Fawehinmi Construction Co. Ltd v. Obafemi Awolowo University* p. 1171

**ESTOPPEL** - Pleadings - It is not necessary to plead estoppel in any particular form - So long as the matters constituting estoppel are stated in such a manner - To show that the party pleading relies upon it as a defence or answer. *Alakija v. Abdulai* p. 1135

**EVIDENCE** - Witnesses - Credibility of - The appellate court can only interfere - Where the trial court decides to believe a witness quite contrary to the trend of accepted evidence - Or where oral testimony is contrary to the contents of a written document. *Ndukwe v. Acha* p. 1113

**EVIDENCE** - Pleadings - Evidence which is at variance with plaintiff's pleadings - The Court has no power to expunge the evidence - In order to save the case of the plaintiff from collapsing. *Ndukwe v. Acha* p. 1113

**EVIDENCE** - Additional evidence - Power of court to call additional evidence suo motu - The trial court will be in a serious error if it calls evidence suo motu - To establish a fact which the plaintiff fails to do in the prosecution of his claim. *Ndukwe v. Acha* p. 1113

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**LAND LAW** - Partition - The issue of partition is not established since the appellant's root of title has collapsed - Through his evidence that he is not a member of the family of the original founder of the land in dispute. *Ndukwe v. Acha* p. 1113

**LAND LAW** - Lis pendens - Where the appellants' predecessor - in - title bought the land in dispute during the pendency of litigation - He got no title as the vendors have nothing to sell. *Alakija v. Abdulai* p. 1135

**LAND LAW** - Title - Proof of roots of title - Where evidence of traditional history contradicts plaintiff's pleadings - He had not proved his root of title as pleaded. *Ndukwe v. Acha* p. 1113

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**PROPERTY LAW** - Lis pendens doctrine - The basis for its application - Is to prevent effective transfer of rights in property - Which is subject matter of an action pending in court. *Alakija v. Abdulai* p. 1135

**RES JUDICATA** - Estoppel per rem judicatam - Where the parties joined issue on the judgment in a previous suit - And the conditions precedent to the operation of the doctrine exist - The doctrine properly applies. *Alakija v. Abdulai* p. 1135

**TRESPASS** - Claim for trespass - Where the appellant had failed to establish title - And there is no evidence that he was in effective possession of the land in dispute - His claim for trespass cannot succeed. *Ndukwe v.*

Acha p. 1113

**WAIVER** - Demurrer - Appearance by way of demurrer - Is not enough to amount to a waiver - Since waiver must be clear and unambiguous. Fawehinmi Construction Co. Ltd v. Obafemi Awolowo University p. 1171

**COURT OF APPEAL**

**APPEALS** - Evaluation of evidence - Conclusion by the learned trial judge that the evidence was evenly balanced is erroneous - When a fair evaluation of the evidence of D.W. 2 depicts him as a person whose evidence is utterly unworthy of any credit. Ojosipe v. Odunsi p. 1199 CA

**ADMINISTRATION OF ESTATE** - Wills - Grant of probate - Where there is a dispute as to a will - Those who propound it must show by Prima facie evidence that all is in order - Then the burden shifts to those who attack the will to substantiate the allegations they have made. Ojosipe v. Odunsi p. 1199 CA

**ADMINISTRATION OF ESTATE** - Wills - The presumption Omina rita essa acta - Where a will is on the face of it duly executed - If the witnesses are utterly forgetful of the facts the presumption applies - But not if the recollection of the attesting witnesses is clear - In the present case the evidence of one of the witnesses is undisputably defective. Ojosipe v. Odunsi p. 1199 CA

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**JUDGMENTS** - Writ of execution - The payment of the judgment debt rendered the issue of the writ void ab initio - And the purported sale following the execution was irregular. Ajeyalemi v. Animashaun p. 1213 CA

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