

SUPREME COURT OF NIGERIA

3RD. JULY, 1998. SC. 302/1991

**CORAM: S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, JJSC.**

POPOOLA OLADELE & 4 OTHERS DEFENDANTS/
APPELLANTS

AND

MADAM ALICE ANIBI PLAINTIFF/RESPONDENT

***APPEALS** - Concurrent findings of facts - Will not be disturbed by the Supreme Court - Save where the findings are perverse or substantially erroneous.*

***APPEALS** - Findings by the trial judge - Affirmed by the Court of Appeal - Will not be interfered with - As no just cause was shown.*

FACTS

The plaintiff/respondent sued the defendants/appellants in respect of a piece of land situate at Ibadan. She claimed N1,000.00 damages for trespass and sought an injunction restraining the appellants from committing further acts of trespass on the land in dispute. Respondent traced her root of title to the descendants of one Aro, who after leasing the land to her for some years, made an outright sale to her as shown in the registered deed of conveyance she relied upon. The appellants conceded that the land was let to respondent's cherubim and Seraphim Society members for some years but stated that the society vacated the land in 1978 and delivered possession to the Aro family.

The trial court found for the respondent and rendered judgment in her favour. Appellants' appeal to the Court of Appeal was dismissed. Being dissatisfied, they have further appealed to the Supreme Court upon 13 grounds of appeal flowing from an improperly drafted brief of appeal.

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

Concurrent findings of fact

1. The attitude of this Court to concurrent findings of facts made by Courts below has been restated in many cases. This Court will not disturb concurrent findings of fact by the lower courts where such findings are supported by sufficient evidence. See Njoku v. Eme (1973) 5 SC. 293, 306. This Court will only interfere with such findings where there is any substantial error apparent on the record of proceedings or where it is shown that the findings are perverse. See Sobakin v. The State (1981) 5 SC. 75; Chinwendu v. Mbamali (1980) 3-4 SC. 31. (p. 1666 D)

Findings by the trial judge

2. I have examined the evidence adduced in this case. I am not satisfied that the Defendants/Appellants have shown that there is any just cause to interfere with the findings made by the trial Judge based on the evidence and affirmed by the Court of Appeal. Consequently I see no merit whatsoever in this appeal. (p. 1667 F)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Brief writing - Need for counsel to conform with the rules

I must however, remark that the Brief filed by learned counsel for the Appellants can hardly be described as a Brief. It does not in any way conform with the rules of proper Brief writing. For instance, rather than set out the issues for determination which issues must arise from the grounds of appeal filed, it is written in the Brief as follows:

"The issues for determination in this appeal are the same as issues set out in the Appellants' Brief of argument in the Court of appeal at pages 57-73 of the record. I respectfully adopt the treatment of all issues and arguments set out in the said Brief of argument in the Court of Appeal."

Surely, as the judgment appealed against is that of the Court of Appeal, I

cannot see how arguments on appeal from the Court of Appeal to this Court can be in line with the arguments on appeal from the High Court to the Court of Appeal. (p. 1662 G)

BELGORE JSC

2. Issues argued before the Court of Appeal cannot be adopted by the Supreme Court

Brief of argument in an appeal must be based on and related to grounds of appeal, especially the issues for determination formulated. Obviously grounds of appeal to the Court of Appeal are not necessarily the same as those to the Supreme Court and therefore the issues to be determined will differ. To blandly write in a brief of argument that the issues in the Court of Appeal are adopted for the Supreme Court is unfair as it imposes a duty on the Supreme Court which is not theirs; that is to say, to start searching backwards. (p. 1667 B)

REPRESENTATION

T. Osipitan for the Respondent

Appellants absent and not represented by counsel

CASES REFERRED TO

Njoku v. Eme (1973) 5 SC. 293, 306

Sobakin v. The State (1981) 5 SC. 75

Chinwendu v. Mbamali (1980) 3-4 SC. 31

Ibodo v. Enarofia (1980) 5-7 SC. 42

Enang v. Adu (1981) 11-12 SC. 25

Ogunde v. Ojumu (1972) 4 SC. 105 at 106

Kponuglo v. Kodadja 2 WACA 24

Aromire v. Awoyemi (1972) 1 ALL NLR 101

Nzekwu v. Nzekwu (1989) 2 NWLR (Part 104) 373

Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718

Akinsanya v. U.B.A (Nig.) Ltd (1986) 4 NWLR (Part 35) 273

Fatoyinbo v. Williams (1956) SCNLR 274; (1956) 1 FSC. 87

Kofi v. Kofi 1 WACA 87

Otogbolu v. Okeluwa (1981) 6-7 SC. 99.

LEAD JUDGMENT BY OGUNDARE JSC

The Plaintiff sued the Defendants in respect of a piece or parcel of land situate and being at Surulere Area of Oke-Ado, Ibadan. The action was for N1,000.00 damages for trespass allegedly committed by the Defendants on the said land between 1978 and May 1986 and an injunction restraining them from committing further acts of trespass on the said land. Pleadings were filed and exchanged. The Plaintiff filed a Reply to the statement of defence. On completion of pleadings the action went to trial at which 4 witnesses, including the Plaintiff, testified in support of Plaintiff's case. 4 witnesses also testified for the defence, including the 2nd and 4th Defendants. At the conclusion of the trial and after addresses by learned counsel for the parties the learned trial Judge found in favour of the Plaintiff and entered judgment as follows:

"I award a sum of N850 (Eight hundred and fifty Naira), as damages for trespass against the defendants and in favour of the plaintiff."

I also grant perpetual injunction restraining the defendants, their servants and or agents from committing further act of trespass on the said piece or parcel of land. The plaintiff is entitled to costs of this action."

The Defendants being dissatisfied with this judgment appealed to the Court of Appeal.

The appeal to the Court of Appeal was dismissed consequent upon which the defendants have further, with leave of the Court below, appealed to this Court upon 13 grounds of appeal. Pursuant to the rules of this Court, the parties filed and exchanged their Briefs of argument. I must however, remark that the Brief filed by learned counsel for the Appellants can hardly be described as a Brief. It does not in any way conform with the rules of proper Brief writing. For instance, rather than set out the issues for determination which issues must arise from the grounds of appeal filed, it is written in the Brief as follows:

"The issues for determination in this appeal are the same as

issues set out in the Appellants' Brief of argument in the Court of appeal at pages 57-73 of the record. I respectfully adopt the treatment of all issues and arguments set out in the said Brief of argument in the Court of Appeal."

Surely, as the judgment appealed against is that of the Court of Appeal, I cannot see how arguments on appeal from the Court of Appeal to this Court can be in line with the arguments on appeal from the High Court to the Court of Appeal. The judgment that can be under attack in this Court will be that of the Court of Appeal which, for obvious reasons, cannot be the judgment on attack in the Court of Appeal. I advise that learned counsel should better inform himself about the art of good Brief Writing.

At the hearing of this appeal, counsel for the Appellants was absent but counsel for the Respondent was present. He was given leave to address us. Mr. Osipitan learned counsel for the Plaintiff/Respondent submitted that the appeal is worthless and should be dismissed. He submitted that the concurring findings of facts of the two courts below had not been shown to be wrong or perverse particularly on the issue of who had better title between the parties.

The facts relied on by the Plaintiff in support of her case run thus: The land in dispute forms part of a large piece of land settled upon by one Aro many years ago. Aro had many children among whom were Oyeyemi, Oyaye (Oyagiri), Oyadiran, Idowu, Oyaniyi and Onifade. The land settled upon by Aro devolved on his death on his children. The descendants of Aro partitioned their ancestor's land among themselves and gave the land in dispute to the Oyage section of the family who became known as Adeyi Akanji family of Amuletigbo Oke-Ado. In 1965 the Plaintiff leased the land from the family for her Cherubim and Seraphim Society Church. Adeyi Aro was the head of the family at the time and the lease was for 5 years. Adeyi Aro died in 1970 and was succeeded as the head of the family by Kehinde Ladokun Alao who renewed the lease to the Plaintiff for the use of her church for another 8 years. Ladokun died in 1975. The Plaintiff approached the family for an outright sale of the land to her, this was agreed to by all the principal members of the family. The land was sold to the Plaintiff and a conveyance

dated 27 June 1975 and registered as No. 52 at page 52 in Volume 1795 at Ibadan Lands Registry, was executed in her favour by Amusa Agboola Adeyi, Mogaji, Wolemotu Adedokun Adias, Mopelola Kehinde and Wahabi Adepeju Adeyi - all principal members of the family. The Plaintiff had
 B since 1965 built a temporary church building on the land and was not disturbed by anyone. When however, the Plaintiff wanted to commence building on the land after she had her plan drawn, the Defendants came to molest her. The dispute between the parties lasted from 1979 to May
 C 1986 when the Defendants went to fence round the land with a view to their building on it. The Plaintiff later instituted this action.

The Defendants for their part contended that the grandfather of the 1st, 2nd and 3rd Defendants was one Monmo while the father of the 4th and 5th Defendants was Aro. It was their contention that Aro and
 D Monmo were brothers of full blood and that they both hailed from Iresa via Ogbomosho and that they both came to Ibadan during the reign of Iba Oluyole. Monmo was the younger brother of Aro. During the reign of Bashorun Oluyole (or Iba Oluyole) Aro acquired by settlement and
 E occupation a large piece of land (which includes the land in dispute) at Oke-Ado, Ibadan. Aro founded Aro's compound on the land and his younger brother Monmo later came from Iresa to live with him on the land. Aro had 6 male children namely: Koseminu, Oyayomi, Oyaniyi,
 F Oyaesan, Oyadiran and Oyakeye and 3 female children. On the death of Aro and Monmo the land settled upon by Aro devolved on the descendants of the two brothers. During the reign of Okunola Alesinloye the Olubadan, the family land, less the land in dispute, was partitioned among
 G the descendants of the two brothers. The land in dispute was reversed for the Mogaji and other members of the Aro family. In 1965 the Aro family let the land in dispute to members of the Cherubim and Seraphim Society of which the Plaintiff is a member, for 5 years at an annual rent of #15 (fifteen pounds) [N30.00]. The society erected a temporary
 H wooden shed on the land for their church services. The letting was renewed in 1971 for 8 years at the same annual rent. On the expiration in 1978 of the letting, the society vacated the land and delivered possession to the family. The members of the family have been using the land ever

Aro, his great grandfather, through Oyalere, his mother whose father, Roseminu, was one of the direct issues of Aro."

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"I accept the evidence of the plaintiff and her witnesses on the issue. I hold that the land in dispute in Aro's compound was partitioned to Adeyi. That Adeyi in his life time leased same to the plaintiff's church which was paying rent to Adeyi. That after Adeyi's death, his junior brother of the same mother, Lanlokun, stepped into Adeyi's shoes, leased the same land in dispute to plaintiff's church and was collecting rent. I also hold eventually the children of both Adeyi and Lanlokun jointly sold the land to the plaintiff as family property."

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"I hold therefore that Exhibit A (that is, the plaintiff's conveyance) is valid and has validly transferred legal interest of the land in dispute to the plaintiff." (words in brackets are mine)

The Court of Appeal affirmed all the above findings made by the learned trial Judge. This appeal is an attack on these concurrent findings of fact made by the two Courts below.

The attitude of this Court to concurrent findings of facts made by Courts below has been rested in many cases. This Court will not disturb concurrent findings of fact by the lower courts where such findings are supported by sufficient evidence. See Njoku v. Eme (1973) 5 SC. 293, 306. This Court will only interfere with such findings where there is any substantial error apparent on the record of proceedings or where it is shown that the findings are perverse. See Sobakin v. The State (1981) 5 SC. 75; Chinwendu v. Mbamali (1980) 3-4 SC. 31; Ibodo v. Enarofia (1980) 5-7 SC. 42; Enang v. Adu (1981) 11-12 SC. 25. I have examined the evidence adduced in this case. I am not satisfied that the Defendants/Appellants have shown that there is any just cause to interfere with the findings made by the trial Judge based on the evidence and affirmed by the Court of Appeal. Consequently I see no merit whatsoever in this appeal which I unhesitatingly dismiss with N10,000.00 costs to the Plaintiff/Respondent

BELGORE JSC

I have read the judgment of Ogundare, JSC, in advance and I agree this appeal has no merit. The submission of the brief of argument has been a part of appellate practice for sometime and it is not encouraging that counsel still labour under ignorance of its import as well as its format. Brief of argument in an appeal must be based on and related to grounds of appeal, especially the issues for determination formulated. Obviously grounds of appeal to the Court of Appeal are not necessarily the same as those to the Supreme Court and therefore the issues to be determined will differ. To blandly write in a brief of argument that the issues in the Court of Appeal are adopted for the Supreme Court is unfair as it imposes a duty on the Supreme Court which is not theirs; that is to say, to start searching backwards.

The case now on appeal has been decided at the trial Court on its facts. The Court of Appeal upheld the decision. These are concurrent findings of the two lower Courts. The findings are amply supported by evidence, they are not perverse and the evidence upon which the findings were made were legally received. I therefore find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondent.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother, Ogundare, JSC. I agree with him that there is no merit in this appeal. The concurrent findings of facts by the lower courts have not been shown to be perverse or unjustified. The appeal is dismissed with costs of N10,000.00 (Ten thousand naira only) against the defendants/appellants.

ONU JSC

I had the advantage of a preview of the leading judgment of my learned brother Ogundare, JSC, and I am in complete agreement there-

with that this appeal lacks substance and must fail.

The facts and the law have been so admirably taken care of in the leading judgment that all I wish to do herein is to add a few words of mine in expatiation.

B Where, as in the instant case, the Plaintiff claims for trespass and injunction he/she puts his/her title in issue. See Ogunde v. Ojumu (1972) 4 SC. 105 at 106; Kponuglo v. Kodadja 2 WACA 24; Aromire v. Awoyemi (1972) 1 ALL NLR 101 and Nzekwu v. Nzekwu (1989) 2 NWLR (Part 104) 373, to mention but a few. Thus, the Plaintiff/Respondent herein having called four witnesses inclusive of himself while four witnesses inclusive of 2nd and 4th Defendants/Appellants testified for the defence and the conclusion arrived at by the trial court on the preponderance of evidence adduced inter alia was that:

D *"I accept the evidence of the plaintiff and her witnesses on the issue. I hold that the land in dispute in aro's compound was partitioned to Adeyi. That Adeyi in his lifetime leased same to plaintiff's Church which was paying rent to Adeyi. That after Adeyi's death, his junior brother of the same, Lanlokun, stepped into Adeyi's shoes, leased the same land in dispute to plaintiff's church and was collecting rent. I also hold eventually the children of both Adeyi and Lanlokun jointly sold the land to the Plaintiff as family property."*

F I have no evidence before me to support such contention. Throughout the trial of the case there is no evidence from both the plaintiff and defendants to support such contention that Jokotosun in Exhibit A refers to Joke, 5th defendant. I cannot accept the inference therefore. I hold therefore that Exhibit A is valid and has

G validly transferred legal interest of the land in dispute to the plaintiff."

Which conclusion the Court of Appeal affirmed. The appeal herein which therefore attacks these concurrent findings of fact of the two courts below, this court will be cautious or reluctant to interfere therewith unless the appellant can show special circumstances such as where a miscarriage of justice or a serious violation of some principles of law or procedure has occurred or that such findings are perverse. See Nwadike v. Ibekwe (1987) 4 NWLR (Part 67) 718; Akinsanya v. U.B.A (Nig.) Ltd

(1986) 4 NWLR (Part 35) 273; Fatoyinbo v. Williams (1956) SCNLR 274; (1956) 1 FSC. 87; Kofi v. Kofi 1 WACA 87 and Otogbolu v. Okeluwa (1981) 6-7 SC. 99. I can find none of these vitiating factors in the instant case to warrant my disturbance of same.

It is for these reasons and the many more reasons contained in the leading judgment of my learned brother, Ogundare, JSC that I too dismiss this appeal. I subscribe to the consequential orders inclusive of costs awarded therein.

IGUH JSC

I have had the privilege of reading in advance, the leading judgment of my learned brother, Ogundare, J.S.C. and I agree entirely that this appeal lacks merit.

Both the trial court and the Court of Appeal considered who had a better title to the land in dispute and resolved this issue in favour of the respondent.

The trial court, in particular, carefully considered the traditional evidence of both parties side by side and preferred that of the plaintiff and her witnesses which he described as conclusive, sufficient and satisfactory. It also found that Exhibit a validly transferred the legal interest in the land in dispute to the respondent. These findings were affirmed by the court below. Nothing was shown by the appellants to establish that the said findings are erroneous on point of law or otherwise perverse. This appeal lacks merit and the same is hereby dismissed by me.

I abide by the order for costs made in the leading judgment.

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