

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(1998) KLR VOL 9 PART 71 pp. 2191 - 2326

SEPTEMBER 1998

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

1. Ibenye v. Agwu p. 2191
2. Idowu v. The State p. 2235
3. Ezeakabekwe v. Emenike p. 2257
4. Ibeanu v. Ogbeide p. 2279

COURT OF APPEAL

Lion of Africa Insurance Co. Ltd. v. Fisayo p. 2307

iv **INDEX OF SUBJECT MATTER IN (1998) 9 KLR**

ACCIDENT - Negligence - Where established from the evidence - Doctrine of res ipsa loquitur will not apply. Ibeanu v. Ogbeide p. 2279

ACTIONS - Relief not claimed - Or which is more than what was claimed - Should not be granted - As erroneously done by the trial court. Ezeakabekwe v. Emenike p. 2257

APPEALS - Preliminary objection - Alleged error that arose in the court below - Can only be considered before the Supreme Court and not the lower Court. Ibenye v. Agwu p. 2191

APPEALS - Preliminary objection - Submission that a ground of appeal is incompetent - Because it complains against concurrent findings - Is not a matter for preliminary objection. Ibenye v. Agwu p. 2191

APPEALS - Procedural error - Contention that the lower Court should have considered the cross appeal first - Because it raised the plea of res judicata - Is irrelevant. Ibenye v. Agwu p. 2191

APPEALS - Retrial - Traditional history in land matter - Where not considered no resolved - Retrial will be ordered. Ibenye v. Agwu p. 2191

CRIMINAL LAW - Forgery - Essential ingredient - In such a charge an essential ingredient to be Proved - Is that the accused person forged the documents in question. Idowu v. The State p. 2235

CRIMINAL LAW - Forgery - Failure to detect the alterations of the cash balances in the cash sheet - Cannot be a proper ground for finding the appellant guilty of the offence. Idowu v. The State p. 2235

CRIMINAL LAW - Stealing - Conviction - Based on the finding that the property owned by the appellant is over and above his income - Is clearly untenable. Idowu v. The State p. 2235

CRIMINAL PROCEDURE - Charges that are defective - Charges for offences committed during and after appellant's employment with the complainant - Are fatally defective. *Idowu v. The State* p. 2235

CRIMINAL PROCEDURE - Counts - Duplicity - Forgeries occurring at different dates - Failure to make each forgery subject of a separate count and proved separately - The counts are bad for duplicity. *Idowu v. The State* p. 2235

CRIMINAL PROCEDURE - Evidence - Finding of fact - Must be based on credible evidence - Or reasonable inference drawn from facts presented by the prosecution. *Idowu v. The State* p. 2235

CRIMINAL PROCEDURE - Forgery - Falsification of accounts - Are not in all cases forgeries. *Idowu v. The State* p. 2235

DAMAGES - Accident - Where the vehicle is a total loss - Plaintiff is entitled to the pre accident market value less the scrap value. *Ibeanu v. Ogbeide* p. 2279

DAMAGES - Assessment - Given by an expert automobile engineer as to value of damaged vehicle - Cannot be questioned - As the issue of the vehicle being old now raised was never pleaded. *Ibeanu v. Ogbeide* p. 2279

EVIDENCE - Contradictions - Alleged in respect of evidence of some witnesses - Is unfounded. *Ibeanu v. Ogbeide* p. 2279

EVIDENCE - Exhibits - Allegation that some fresh exhibits were not considered by the lower court - Is without substance. *Ezeakabekwe v. Emenike* p. 2257

JUDGMENTS - Extrinsic evidence - Is inadmissible in substitution of judicial documents - Judgment of a superior court of record should speak

vi **INDEX OF SUBJECT MATTER IN (1998) 9 KLR**

for itself. Ezeakabekwe v. Emenike p. 2257

LAND LAW - Title - Proving the boundaries and title to a smaller parcel of land - Erroneous grant of title to the entire land verged green by the lower courts - Will be amended by the Supreme Court - By granting title to the smaller parcel verged pink. Ezeakabekwe v. Emenike p. 2257

LAND LAW - Traditional history evidence - Where cogent as in the present case - Can support a claim for declaration of title. Ezeakabekwe v. Emenike p. 2257

LAND LAW - Traditional history - Of each side - Where not considered no resolved by the trial court - Retrial ought to have been ordered by the court below. Ibenye v. Agwu p. 2191

LAND LAW - Traditional history - Resolving the issue of the parties' rival traditional history - Can only be done by the trial court and not the Court of Appeal. Ibenye v. Agwu p. 2191

PLEADINGS - Traverse - Simple denial of a major issue of ownership of vehicle in a traverse - Without pleading more facts - Lower courts rightly held that 1st respondent was owner of the vehicle. Ibeanu v. Ogbeide p. 2279

PRACTICE & PROCEDURE - Pleadings - Issue of ownership of vehicle - Where no emphasis was laid on it by counsel during trial - Mere denial in general traverse - Is not sufficient. Ibeanu v. Ogbeide p. 2279

RES JUDICATA - Subject matter - Identity of the land in dispute - Failure to establish same subject matter - Plea of res judicata was rightly rejected. Ibenye v. Agwu p. 2191

COURT OF APPEAL

ACTIONS - Claim - The court cannot give more than what is claimed - But can always give less. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

EVIDENCE - Inferences - A judge can make inferences from established facts. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

INSURANCE - Premium - Payment of - From the conduct of the parties - The appellants would be estopped from saying that the usual practice of debiting the respondent's account - With the amount did not apply. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

INSURANCE - Renewal of policy - By their conduct the appellants cannot rely on clause 6 of the Policy - Which stipulates that they are not bound to renew the policy. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

INSURANCE - Liability - Where the appellants with full knowledge agreed to revive the policy retrospectively - They are liable on it. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

INSURANCE - Claims - Clause 10 of the policy which provides for a time bar - Has nothing to do with law suits brought against the company - But is intended to give the insured a maximum period within which to lodge his claim with the company. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

PLEADINGS - Defences - Raised in the statement of defence - It is for the defendant to prove this in a court of law - And not to be deemed admitted because the plaintiff did not file a reply. *Lion of Africa Insu. Co. Ltd. v. Fisayo* p. 2307 CA

INDEX OF STATUTES & RULES

Criminal Code, cap. 30 Laws of Oyo State of Nigeria, 1978 ss.7b, 383(2) 390 (9), 465, 467 and 516. Idowu v. The State p. 2235

Evidence Act ss. 46 & 146 Ibenye v. Agwu p. 2191

Evidence Act, cap 112 Laws of the Federation of Nigeria, s. 138(1) Idowu v. The State p. 2235

Supreme Court Rules 0. 6 r. 8 (6) Ibenye v. Agwu p. 2191