

# **KINGS LAW REPORTS**

## **(ALL SC/NOVEL CA)**

**(1999) KLR VOL 2 PART 78 pp. 395 - 530**

**FEBRUARY 1999**

**Dedicated to the King of kings**

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

### **INDEX OF CASES REPORTED**

#### **FEBRUARY 1999 CONTD.**

4. Attorney-General of Bendel State v. Agbafodoh p. 395
5. Agbahomovo v. Eduyegbe p. 437
6. Kutse v. Attorney-General Plateau State p. 459
7. Shell Petroleum Development Company of Nigeria Limited v. Ambah  
p. 467

#### **COURT OF APPEAL CASE**

Doma v. Ogiri p. 487

iv **INDEX OF SUBJECT MATTER IN (1999) 2 KLR**

**APPEALS** - Concurrent findings on facts - The attitude of the Supreme Court - Is not to disturb such findings - Where it is based on the lawful evidence before the lower courts. *Kutse v. Attorney-General Plateau State* p. 459

**CUSTOMARY LAW** - Modification - Declaration - Once enquiry was conducted - And it reflects substantially the custom of the people - The modified customary law shall be approved. *Kutse v. Attorney-General Plateau State* p. 459

**DAMAGES** - Special damages - Award of - Special damages not based on the facts pleaded - Cannot be allowed to stand. *Shell Petroleum Development Company of Nigeria Limited v. Ambah* p. 467

**DAMAGES** - The principle of restitution in integrum - Claim for total destruction of property - The measure of damages will be the value of the property - At the time of its destruction. *Shell Petroleum Development Company of Nigeria Limited v. Ambah* p. 467

**EVIDENCE** - Admissibility - Under s. 90(1) Evidence Act - The plans in the instant case - Were admissible under that section - When their maker was called as a witness. *Agbahomovo v. Edueyegbe* p. 437

**EVIDENCE** - Documents - Admissibility of evidence - Depends on the purpose for which it is being tendered - The trial Court was wrong - To have rejected the plans sought to be tendered in this case. *Agbahomovo v. Edueyegbe* p. 437

**FAIR HEARING** - Denial - Of fair hearing - What amounts to such a denial.

**FAIR HEARING** - Right - To fair hearing - It is a right to be heard - At every material stage of the proceedings. *Agbahomovo v. Edueyegbe* p. 437

**JURISDICTION** - Ouster - Challenge of the validity of the 1978 Edict - The jurisdiction of the learned trial judge to entertain the matter was ousted - By the provisions of S.2(2) of the 1977 Decree. Attorney-General of Bendel State v. Agbafodoh p. 395

**PLEADINGS** - Amendment - Plans - Which has been amended with leave of court - Does not cease to exist - It still forms part of the proceedings. Agbahomovo v. Eduyegbe p. 437

**PLEADINGS** - Amendment - The principle of law - Relating to the amendment of pleadings - Is that it can be granted at any stage of the Proceedings - Provided it is not prejudicial to the other party. Shell Petroleum Development Company of Nigeria Limited v. Ambah p. 467

**PLEADINGS** - Amendment - To fall in line with the evidence adduced - The Court has always granted it - Even after the completion of the trial. Shell Petroleum Development Company of Nigeria Limited v. Ambah p. 467

**PLEADINGS** - Evidence - Which is not in line with the facts pleaded - Goes to no issue. Shell Petroleum Development Company of Nigeria Limited v. Ambah p. 467

**STATUTES** - Interpretation - Bendel State Edict No. 7 of 1978 - The Edict imposed forfeiture on the respondents - As envisaged by S. 2(1) of Decree No. 18 of 1977. Attorney-General of Bendel State v. Agbafodoh p. 395

**STATUTES** - Ouster of jurisdiction - Under S. 1(2) of Decree No. 18 of 1977 - Does not apply to the present case. Attorney-General of Bendel State v. Agbafodoh p. 395

**STATUTES** - Plateau State Local Government Edict 1976 - Provisions of section 72 - Powers of the Local government to make declarations - And modifications of customary law - The reason for the provisions is that no custom is ossified. Kutse v. Attorney-General Plateau State p. 459

**STATUTES** - Purpose - Decree No.18 of 1977 - Was promulgated to provide a general validation - In respect of all enquiries instituted by the Military Governor of a State - And other consequential actions. Attorney-General of Bendel State v. Agbafodoh p. 395

**WORDS & PHRASES** - “Forfeiture” - The Ordinary meaning of the word. Attorney-General of Bendel State v. Agbafodoh p. 395

**WORDS & PHRASES** - “Person “- How properly defined. Attorney-General of Bendel State v. Agbafodoh p. 395

### **COURT OF APPEAL**

**CONTEMPT**- Contempt of Court - Definition and classification - How to distinguish between a criminal and civil contempt. Doma v. Ogiri p. 487 CA

**CONTEMPT**- Contempt of court - Right to be heard - The general rule - Is that a person in contempt cannot be heard- Or take proceeding in the same cause - Exceptions to the rule. Doma v. Ogiri p. 487 CA

**CONTEMPT**- Contemnor - The applicant having filed an appeal-And an application for a stay of execution of the orders of the lower court- Cannot rightly be said to be in contempt of the said orders. Doma v. Ogiri p. 487 CA

**INJUNCTIONS** - Application - For injunction - the Court will not grant it - To the applicant who has not any established legal right to protect. Doma v. Ogiri p. 487 CA

**JUDGMENTS** - Orders - The test - Between declaratory orders of court Doma v. Ogiri p. 487 CA

**STATUTES** - Court of Appeal Act, 1976 - Provisions of s. 18 - By virtue of it an appeal neither operates as a stay of execution - Nor does it prescribe in favour of an execution. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Declaratory orders - A stay of execution cannot be granted in declaratory order - Except in respect of an executory order. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Consequential order- An executory order be it consequential or collateral can be stayed - But the order in the instant case is not consequential. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Grant of - The principle governing the grant of stay of execution. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Application - Special circumstances - There does not exist one invariable way of showing special circumstances - To warrant a stay of execution. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Requirements - Recondite point of law - What it means. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Application - For stay of execution - What the court must consider. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Res - Nature of - The res in an action which a court has inherent power to preserve - May be tangible or intangible. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Status quo - The facts of the instant case and justice - Dictate maintenance of the status quo ante litem - Pending the determination of the appeal. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Res - Duty to preserve - The Court has a duty to preserve the res - To ensure that the appeal if successful is not rendered nugatory. *Doma v. Ogiri* p. 487 CA

**STAY OF EXECUTION** - Status quo - Preserving any property in status quo - Presupposes the existence of an uncontested status quo - Preceding the pending controversy. *Doma v. Ogiri* p. 487 CA

## **INDEX OF STATUTES & RULES**

Bendel State High Court (Civil Procedure) Rules Cap. 65, 1976. O. 14 *Shell Petroleum Development Company of Nigeria Limited v. Ambah* p. 487 CA

Commissions of Inquiry Law Cap. 23 of the Laws of Western Region of Nigeria, 1959 applicable in Bendel State, S.2(1) *Attorney-General of Bendel State v. Agbafodoh* p. 395 CA

Constitution (Basic Provisions) Decree No 32 of 1975 S.1 (3) *Attorney-General of Bendel State v. Agbafodoh* p. 395 CA

Constitution (Suspension and Modification) Decree No 1 of 1966 S.3(3) *Attorney-General of Bendel State v. Agbafodoh* p. 395 CA

Constitution of the Federal Republic of Nigeria 1979, s. 33 (1) *Agbahomovo v. Eduyegbe* p. 437 CA

*Ekpan and Ubeji Communities (Riots and Clashes) (Determination) Edict, No. 7 of 1978 ss 1,2, 3, 4 and 5* *Attorney-General of Bendel State v. Agbafodoh* p. 395 CA

Evidence Act, Cap. 112 Law of the Federation of Nigeria 1990, ss. 6, 90

(1) and 198 Agbahomovo v. Eduyegbe p. 437 CA

High Court (Civil Procedure) Rules Cap. 65 Bendel State Laws, 1976, O.22

2. 3. Attorney-General of Bendel State v. Agbafodoh p. 395 CA

Interpretation Act, 1964, SS 7, 8 and 18 Attorney-General of Bendel State v. Agbafodoh p. 395 CA

Plateau State Local Government Edict, 1976 s. 72. Kutse v. Attorney-General Plateau State p. 459 CA

Supreme Court Rules O.6 rr 1 and 2 Shell Petroleum Development Company of Nigeria Limited v. Ambah p. 467 CA

Tribunal or Inquiries (Validation etc) Decree No. 18 of 1977, ss 1 and 2 Attorney-General of Bendel State v. Agbafodoh p. 395 CA

### **COURT OF APPEAL**

Court of Appeal Act, 1976, s. 18 Doma v. Ogiri p. 487