

SUPREME COURT OF NIGERIA
14TH MAY, 1999. SC. 324/1990
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, G. O. ACHIKE, U. A. KALGO, JJSC

DR. E. A. ADEBO	PLAINTIFF/APPELLANT
AND		
1. SAKI ESTATES LIMITED	DEFENDANTS/
2. PASTOR OLUKAYODE KOLEOSHO		RESPONDENTS

LAND LAW - Appeals - Damages - Where trial court awarded N250.00 general damages - And there is no appeal against that award - Appeal Court will not alter it.

LAND LAW - Customary sale of land - Evidence of handing over ceremony - Is not necessary before title under customary law could pass - Plaintiff established sale to him under customary law.

LAND LAW - Title - Conveyances - Based on the conveyances - Both parties failed to establish title to the land in dispute.

TRESPASS - Title - Having been established in the plaintiff's favour - His claim for damages for trespass and injunction will succeed.

FACTS

The plaintiff/appellant bought a piece of land from one Alhaji Isiba who executed a deed of conveyance in plaintiff's favour. Alhaji Isiba on his part bought the land from Bamgbola Amao who bought from the Owodina family. Plaintiff later repurchased the land from the Bamgbola Amao family by paying N6,000.00 to them and collecting a receipt. He took possession, built a walled fence round the land and commenced building operations. The defendants came on the land and pulled down plaintiff's building. The defendants relied on a conveyance that they traced via several purchasers down to the same Owodina family. Whilst the plaintiff

claimed N250,000.00 as special and general damages for trespass and injunction the defendants counter claimed for entitlement to statutory right of occupancy, perpetual injunction and N355,689.00 being special and general damages.

The trial judge found that both parties failed to establish title to the land in dispute. He found for the defendants in trespass and awarded N500.00 general damages and an injunction in their favour. He found the plaintiff's claim not proved and dismissed it. Being displeased, both sides appealed to the Court of Appeal. Plaintiff's appeal was dismissed by the court below which allowed the defendant's appeal granting N105,689.00 as special damages. Being dissatisfied, the plaintiff has further appealed to the Supreme Court raising 7 issues while the defendants cross appealed on 2 issues. But the apex court decided the appeal on a single issue.

ISSUE FOR DETERMINATION

Whether any of the parties established title to the land in dispute.

HELD (Unanimously allowing the plaintiff's appeal per lead judgment of **OGUNDARE JSC**)

Title - Conveyances

1. Based on the conveyances, therefore, both parties would appear to have acquired land not belonging to their respective vendors. In my respectful view, therefore, both parties failed to establish title to the land in dispute based on their conveyances. I must observe that the court below did not bear this in mind when it found in favour of the Defendant on the issue of title. Had that court given a close scrutiny to the position of the land in dispute vis-a-vis the land allegedly conveyed to Labode, it could not have found that the Defendant proved title to the land in dispute. (p. 1205 C)

Customary sale of land

2. By the evidence of the Plaintiff and PW9, Plaintiff has established that he purchased the land in dispute from Bamgbola Amao family and that he paid the purchase price of N6, 000.00. The learned trial Judge however,

found that sale under customary law was not proved because on the authority of Cole v. Folami 1 FSC 66, there was no evidence that the Plaintiff was put in possession in the presence of witnesses. In effect there was no evidence of a ceremony of handing over. I think the learned trial Judge was wrong here. As this Court pointed out in Karimu Ayinla v. Sifawu Sijuwola (1984) 5 SC 44; it was not necessary to adduce evidence of a ceremony of handing over before title under customary law could pass. On the evidence of the Plaintiff and PW9, therefore, a case of sale of land under customary law was, in my respective view, established. The Plaintiff paid the purchase price and was in possession of the land he bought from his vendors. This is sufficient evidence of sale of the land in dispute by the Bamgbola Amao family to the plaintiff. (p. 1206 E)

Trespass - Title

3. From all I have been saying above, it is clear that the Plaintiff has title to the land in dispute whilst the Defendants do not have. In the circumstance, it will be wrong to find for the Defendant in trespass. There is abundant evidence that the 2nd Defendant, as agent of the 1st Defendant took workmen unto the land and destroyed structures put thereon by the plaintiff. Plaintiff having been found to have title to the land in dispute has a right to possession of the land and his claim in trespass ought to succeed. See Amakor v. Obiefuna (1974) 3 SC 67. Ayoola v. Adebayo (1969) A All NLR 159. (p. 1207 E)

Appeals - Damages

4. The conclusion I finally reach is that the Plaintiff has succeeded in his claim for damages for trespass and injunction. The learned trial Judge made a finding of N250.00 general damages and dismissed Plaintiff's claim for special damages. There has been no appeal against this finding. I, therefore, award to the Plaintiff N250.00 general damages for trespass committed by the defendants on his land. I also award in his favour an order of injunction restraining the defendants, their servants or agents from further trespass to the land situate at 84/86 Allen Avenue and edged

red on the composite plan (Exhibit 10). (p. 1208 A)

REPRESENTATION

P. O. Jimoh Lasisi, for the Appellant/Cross-Respondent

B C.J. Chukura, for the Respondents/Cross-Appellants

CASES REFERRED TO

Cole v. Folami 1 FSC 66,

C Karimu Ayinlsa v. Sifawu Sijuwola (1984) 5 SC 44;

Amokor v. Obiefuna (1974) 3 SC 67.

Ayoola v. Adebayo (1969) A All NLR 159.

LEAD JUDGMENT BY OGUNDARE JSC

D The plaintiff who is the Appellant now before us bought a piece
or parcel of land from one Alhaji Alli Isiba who executed a deed of con-
veyance in his favour. This was in 1977. The land in dispute is the land
sold by Alhaji Isiba to the plaintiff and was said to form part of the land
E Alhaji Isiba bought from Bamgbola Amao. Bamgbola Amao for his part
had bought from the Owodina family a large piece of land part of which
he sold to Alhaji Isiba. On entering into possession the family of Bamgbola
Amao disturbed the plaintiff on the land claiming that the land was theirs
F and threatening to quit the plaintiff from the he land. The plaintiff made
his peace with the Bamgbola Amao family by repurchasing the land from
them for the sum of N6,000.00. The family issued him with a receipt
dated 15th December 1977 tendered in evidence as Exhibit 3 at the hear-
G ing of the action leading to this appeal. On the plaintiff paying the pur-
chase money, the Bamgbola Amao family allowed him to retain posses-
sion of the land.

Following his purchase of the land the plaintiff took possession,
built a walled fence round the land and commenced building operations
H on it. While his building operations were going on the original 2nd De-
fendant, Adefolu Koleosho who was Managing Director of the 1st De-
fendant came on the land, pulled down plaintiff's building and commenced
a new building on the land. Both sides made reports to the police and in

the end the plaintiff instituted the action leading to this appeal.

The Defendants claimed that the land in dispute was part of the land which one Hashimi Adekunle Smith sold to the 1st Defendant. Their case is that Owodina in 1904 sold a large piece of land of which the land now in dispute forms part to one Olukotun. Olukotun was in possession until his death in May 1918. Olukotun left a will. The executors of his will after proving the will conveyed Olukotun's land to his widow Moroundiya Labode and executed a Deed of Conveyance in her favour; this was in 1920. Labode in 1960 sold her land to one Suleman Thanni Balogun and executed a Deed of conveyance in the latter's favour. It was this land Balogun sold to Adekunle Smith by virtue of a Deed of Conveyance dated 2/10/65. Adekunle Smith in turn sold the said land to the 1st Defendant in November 1969 by virtue of a Deed of Conveyance. The Defendant were put in possession and fenced round the land. In 1977 one Bashorun disturbed them on the land and they drove him off. In 1982 the plaintiff came on the land, disturbed their possession and burnt the plants they had on the land ,that is, mechanical excavator and a tipping truck. A report was made to the police and plaintiff later instituted an action against them.

Plaintiff in his action claimed N250,000.00 as special and general damages for trespass and an injunction. The Defendants for their part counter-claimed for:

"(i) A declaration that the 1st Defendant/Counter claimant is the person entitled to the statutory right of occupancy in respect of the land in dispute by virtue of a Deed of Conveyance dated 18th November, 1969 and registered as No. 69 at page 69 in volume 1306 of the lands Registry in the office at Lagos.

(ii) A perpetual injunction restraining the plaintiff, his servants, agents or privies from ever going on the land in dispute and committing further acts of trespass thereon.

(iii) N355,689.00 being special and general damages."

At the trial, evidence was led on both sides. After addresses by learned counsel for the parties, the learned trial Judge (Onalaja J) considered the competing claims to title raised by the parties and concluded that

both parties failed to establish title to the land. He found the plaintiff's claim not proved and dismissed same. He however, found for the Defendants in trespass and awarded the sum of N500.00 general damages and an injunction in their favour.

B Both sides were displeased with the judgment of the learned trial Judge and appealed to the Court of Appeal. The Court of Appeal dismissed plaintiff's appeal and allowed the appeal of the Defendants. The Court, per Akpata, JCA (as he then was) adjudged as hereunder:

C *"In conclusion, the plaintiffs' appeal fails. It is dismissed in its entirety. The cross-appeal of the defendants succeeds except as to exemplary or aggravated damages. Their appeal is accordingly allowed. Along with the order of injunction and general damages awarded in favour of the defendants by the learned trial Judge, it is also hereby declared that:*

D *(1) the first defendant is entitled to a right or certificate of occupancy in respect of the land covered by the Deed of Conveyance dated 18th November, 1969 and registered as No. 69 at page 69 in vol. 1306 of the Lands Registry in the office at Lagos, which situate at No. 84/86 Allen Avenue, Ikeja;*

E *(2) the defendants are entitled to N105,689.00 being special damages. Costs of this appeal are assessed at N450.00 in favour of the defendant."*

F It is against this judgment that the plaintiff has further appealed to this Court upon 14 grounds of appeal. The Defendants who were still aggrieved by the refusal of the Court below to award exemplary damages in their favour also cross-appealed upon one ground of appeal.

G Pursuant to the rules of this Court the parties filed and exchanged their respective briefs of arguments in respect of the main appeal and the cross appeal. The plaintiff subsequently in 1998 with leave of court filed an amended brief of argument covering the two appeals. The defendants did not consider it necessary to amend their own briefs and so they H rested on their original briefs. During the pendency of the appeal in this Court the original 2nd Defendant died and was substituted by Pastor Olukayode Koleosho, his son, who is now the 2nd Defendant/Respondent before us.

In the plaintiff's brief the following seven questions are formulated for determination in this appeal:

"1. Whether the land in dispute falls outside the defendants' root of title.

2. If so, is Exhibit 8 or 8A (defendants' Deed of Conveyance) B not void in law in so far as it purports to convey title of the land in dispute to the 1st defendant nemo dat quod non habet.

3. Did the defendant prove the extent of his purchase?

4. If, the defendant did not prove the extent of his purchase, was C the plaintiff not entitled to judgment for damages for trespass and injunction in respect of the land in dispute?

5. Whether the defendants were not barred by the equitable doctrine of laches and Acquiescence standing by from making any claim to the land in dispute against the plaintiff. D

6. Whether the award of N105,689.00 as damages made by the Court of Appeal reversing the learned trial Judge, was right in law and on the evidence before the court.

7. Whether the defendants proved their counter-claim for E N250,000.00 damages and whether they were entitled to the judgment on it in their favour.

The Defendants in respect of their own cross-appeal raised two questions for determination, that is:

"1. Is the failure to use the terms 'exemplary' or 'aggravated' in F the pleadings crucial to the award of N250,000.00 (two hundred and fifty thousand Naira) claimed by the Appellants as general damages and is it not enough for the Appellants to plead facts necessary to establish G the damage?

2. Does a claim for punitive or exemplary damages not lie in the realm of civil action such as this and is its proper place in strict sense only in the criminal field?"

In view of the importance of the issue of title to the dispute between the parties, I shall first consider this issue. If title is resolved in favour of the plaintiff the Defendants will be liable to his claims and will lose their counter-claim. A consideration of the cross-appeal will then become H

unnecessary. If on the other hand title is resolved in favour of the Defendants, plaintiff will lose. It will then become necessary to consider the issue of exemplary damages in order to determine what the Defendants are finally entitled to.

B It is common ground between the parties that Owodina was the radical owner of a large area of land, of which the land in dispute forms part, in Oregun, Lagos State. Plaintiff claimed that Owodina family sold part of their land to Bamgbola Amao and executed a Deed of Conveyance dated 24/10/64 (Exhibit 4) in favour of the latter. Bamgbola Amao in turn sold part of his own land to Alhaji Isiba in 1976 and executed a Deed of Conveyance in his favour. Alhaji Isiba by a Deed of Conveyance (Exhibit 2) executed on 16/8/77 sold the land in dispute to the plaintiff purporting to be part of the land he bought from Bamgbola Amao.

The defendants on the other hand claimed that Owodina sold a piece of land to Olukotun in 1903 but there was no conveyance to Olukotun nor was any purchase receipt issued to him. Olukotun however, made a will in 1913 (Exhibit 23) in which he devised unto his wife Moroundiya Labode "2 pieces of farmland situate at Itapami bought respectively from one Owodina on the 15th day of September 1903 and one Olaseji Aluko on the 6th day of October 1904". Pursuant to this devise, this executors conveyed the land devised to Moroundiya Labode on 29/6/20 (See Exhibit 6). Labode in turn sold her land to Thanni Balogun on 2/5/60 by a Deed of conveyance (Exhibit 9). Balogun sold the land to smith by a Deed of Conveyance (Exhibit 7) executed on 2/10/65. Smith finally sold the land by a Deed of Conveyance (Exhibit 8) dated the 18th November 1969 to the 1st Defendant. It follows from the pleadings and the case put forward by each party at the trial that the land in dispute is part of the land originally belonging to Owodina. Unless either side can trace his root of title to Owodina, he cannot succeed in this case. Plaintiff apparently was aware of this situation when he claimed title also by purchase from Bamgbola Amao. PW5 Mr. M.A. Seweje a Land Surveyor produced a composite plan incorporating the lands shown on the various conveyances tendered in the proceedings and the position of the land in

dispute vis-a-vis those lands. Exhibit 10 is the composite plan. Exhibit 10 shows that the land in dispute edged red thereon is within the land of Bamgbola Amao edged brown thereon. It is equally within the land purportedly sold by Smith to the 1st Defendant and edged green. The land in dispute is however, outside the land covered by Isiba's conveyance edged blue. It is equally outside the land conveyed to Labode by the executors of Olukotun which land is edged yellow on Exhibit 10. It would appear that the land Labode conveyed to Thanni Balogun who in turn conveyed to Smith consists in part of land that was never conveyed to Labode. **Based on the conveyances, therefore, both parties would appear to have acquired land not belonging to their respective vendors. In my respectful view, therefore, both parties failed to establish title to the land in dispute based on their conveyances. I must observe that the court below did not bear this in mind when it found in favour of the Defendant on the issue of title. Had that court given a close scrutiny to the position of the land in dispute vis-a-vis the land allegedly conveyed to Labode, it could not have found that the Defendant proved title to the land in dispute.** Labode could not have validly conveyed to Balogun the land that was not conveyed to her.

The learned trial Judge in dismissing the Defendant's claim for title observed as follows:

"The defendants conduct this aspect of their case in a make believe by just tendering the documents covering the root of their title....."

I must make the same observation. There is no scintilla of evidence to prove a sale from Owodina to Olukotun nor to show that the land mentioned in Olukotun's will as being situate at Itapami was the same land as the one edged yellow on Exhibit 10. All these lapses should have put the court below on its guard and should have informed it that the title of the 1st Defendant was not established.

I now turn to plaintiffs claim to title through purchase from Bamgbola Amao. There is evidence from PW9 Nasiru Amao in support of this claim. This is what he said in evidence:

"I know one Suberu Amao, my uncle. I know also Salami Akano. I know the plaintiff in this case. I know the land in dispute at Alade

village, Ikeja. The land belonged to my father originally. He was Bamigbola Amao. The land is a portion of the land owned by my father in the area. I know Owodina Family the family sold the land to my father. The Owodina family executed a deed of conveyance in favour of my father. I can identify the deed of conveyance if I see it. (Exhibit 4 identified by the witness.)

My father is now dead. My uncles aforementioned acted as caretaker of my fathers properties after his death due to the fact that we were young at the time of his death.

As at now the land belongs to the plaintiff, land and we sold it to him."

Cross-examined the witness testified thus:

"I know Alhaji Isiba sold first part of our land to the plaintiff.

The land in dispute does not form part of the land originally sold by my father to Alhaji Isiba. It is true I know the purchase about the land from the Owodina family as my father informed me and put me in confidence."

By the evidence of the Plaintiff and PW9, Plaintiff has established that he purchased the land in dispute from Bamgbola Amao family and that he paid the purchase price of N6, 000.00. The learned trial Judge however, found that sale under customary law was not proved because on the authority of Cole v. Folami 1 FSC 66, there was no evidence that the Plaintiff was put in possession in the presence of witnesses. In effect there was no evidence of a ceremony of handing over. I think the learned trial Judge was wrong here. As this Court pointed out in Karimu Ayinla v. Sifawu Sijuwola (1984) 5 SC 44; it was not necessary to adduce evidence of a ceremony of handing over before title under customary law could pass. At page 68 of the report, Nnamani JSC delivering the lead judgment of this Court in the case had this to say:

"I do not think that in order to establish when she went into possession there has to be some ceremony after which the vendor will pointedly take her to the land and say I now put you into possession. In the normal course of things the vendor would have shown the purchaser

the land in question several times during the negotiations for purchase."

On the evidence of the Plaintiff and PW9, therefore, a case of sale of land under customary law was, in my respective view, established. The Plaintiff paid the purchase price and was in possession of the land he bought from his vendors. This is sufficient evidence of sale of the land in dispute by the Bamgbola Amao family to the plaintiff. B

I think the two Courts below were clearly in error to have found that plaintiff did not prove his title to the land in dispute. Much weight was made by the learned trial Judge on the description of land claimed by the Plaintiff to be in Adegbeyemi Street. The learned Judge appears to have over-looked the evidence of PW3 John Ejikenwe Enadigbo who in his evidence testified thus: C

"The land in dispute is at a corner piece one side facing Allen Avenue the other facing Adegbeyemi Street." D

All the efforts made by the learned trial Judge on this aspect of the case was of no moment as there was no conflict between the parties as to the identity of the land in dispute.

From all I have been saying above, it is clear that the Plaintiff has title to the land in dispute whilst the Defendants do not have. In the circumstance, it will be wrong to find for the Defendant in trespass. There is abundant evidence that the 2nd Defendant, as agent of the 1st Defendant took workmen unto the land and destroyed structures put thereon by the plaintiff. Plaintiff had as early as 1977 been in possession of the land, he put caretaker on it see the evidence of DW3 Alli Abubakar who testified thus in evidence: E F

"I know the plaintiff very well. I knew the plaintiff for the 1st time in 1977. I have worked as security guard for two months in 1977 for the plaintiff." G

The plaintiff made a shed for me on the land in dispute in 1977 and I stayed with my wife pending the time I could locate the 2nd defendant. Then I stayed on the land. To my knowledge the plaintiff made a foundation. Two months later the 2nd defendant came on to the land to fence the whole land round." H

Plaintiff having been found to have title to the land in dispute has a

right to possession of the land and his claim in trespass ought to succeed. See Amokor v. Obiefuna (1974) 3 SC 67. Ayoola v. Adebayo (1969) A All NLR 159.

The conclusion I finally reach is that the Plaintiff has succeeded in his claim for damages for trespass and injunction. The learned trial Judge made a finding of N250.00 general damages and dismissed Plaintiff's claim for special damages. There has been no appeal against this finding. I, therefore, award to the Plaintiff N250.00 general damages for trespass committed by the defendants on his land. I also award in his favour an order of injunction restraining the defendants, their servants or agents from further trespass to the land situate at 84/86 Allen Avenue and edged red on the composite plan (Exhibit 10).

In view of the conclusion I have arrived at no useful purpose will be served in further considering the Defendants' cross-appeal since in any event their claims for declaration of title, damages for trespass and injunction must fail, they having been adjudged to be trespassers on the land. The net result is that plaintiff's appeal succeeds, it is hereby allowed. The judgments of the two Courts below are hereby set aside and in their place I enter judgment for the Plaintiff as herein-before stated. The Defendants' counter claim is dismissed. I award N10,000.00 costs of this appeal to the Plaintiff against the Defendants jointly and severally. I also award to the Plaintiff N500.00 and N450.00 as costs in the trial High Court and the Court of Appeal respectively.

G BELGORE JSC

I read in advance the lead judgment of my learned brother, Ogundare, JSC., with which I am in full agreement. There is great merit in this appeal and for the full reasons adumbrated in the lead judgment, I also allow it and set aside the decisions of the two Court below. I enter judgment for the plaintiff and a verdict of dismissal of the counter-claim of the defendants. I make the same orders as to costs in the judgment of Ogundare, JSC.

MOHAMMED JSC

I agree with the opinion of my learned brother, Ogundare, JSC, in the judgment just read that the counter-claim of the defendants for declaration of title, damages for trespass and injunction could not be granted when the basic facts of this case are carefully analyzed. It is abundantly clear that the appellant had obtained title to the land in dispute when he purchased the land from Bamgbola Amao family. He was in possession of the land in dispute as early as 1977 when he employed the services of a security guard, Alli Abubakar, and built a shed for him on the land.

Consequently the appellant's claim for damages for trespass and injunction against the defendants ought to be granted. I also award N250.00 general damages for trespass in his favour and against the defendants/respondents. The appellant's appeal therefore succeeds and it is allowed. The respondents' counter-claim is dismissed. I abide by the orders made in the lead judgment on costs.

ACHIKE JSC

I have had the privilege of reading, in draft, the judgment just delivered by my learned brother, Ogundare, JSC. and I agree entirely that this appeal has merit and succeeds. The judgments of the two courts below are hereby set aside. Judgment is entered for the appellant for N250.00 general damages for trespass against the respondents. I also award an order of injunction restraining the respondents, their servants or agents from further trespass to the land situate at 84/86 Allen Avenue and edged red on the composite plan (Exhibit 10). The respondents' counterclaim is dismissed. I abide by the order regarding costs in this court and at the two lower courts.

KALGO JSC

I have read in advance the leading judgment of my learned brother Ogundare JSC just delivered, and I agree entirely with him that there is merit in the appeal. I adopt the reasoning and conclusions reached therein and accordingly allow the appeal, set aside the decision of the trial court and the court below. I enter judgment for the plaintiff/appellant for the sum of N250.00 as damages for trespass and order an injunction restraining the defendants/respondents, their servants or agents from further trespass on the land in dispute. I also dismiss the defendants/respondents' counter-claim. I abide by the orders of cost made in favour of the plaintiff/appellant in the leading judgment.

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