

SUPREME COURT OF NIGERIA
24TH SEPTEMBER, 1999. SC.177/1993
CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU, A. I. IGUH,
A. I. KATSINA-ALU, E. O. AYoola, JJSC.

CHIEF EMMANUEL OMOSEYE PLAINTIFFS/
KULOBO & 4 ORS. APPELLANTS
(For themselves and on behalf of
KURUGBENE COMMUNITY)
AND
EBENEZER IKUOMOLA DEFENDANT/RESPONDENT

APPEALS - Land law - Concurrent findings of fact - As to the location of the land that was granted - Having sufficient evidence to support them - The findings will not be disturbed by the Supreme Court.

LAND LAW - Title - Foundation - As a result of previous Supreme Court Judgment - Plaintiff have no title they could pass to defendant - The foundation on which they built their case having collapsed.

FACTS

Before the Ondo State High Court, the plaintiffs/appellants filed an action against the defendant/respondent. They claimed a declaration of entitlement to customary right of occupancy, damages for trespass and injunction in respect of the land in dispute and injunction in respect of the land in dispute. The plaintiffs claimed that they had granted a piece of land to the defendant who left that land and went to another land not granted to him. Plaintiffs also relied on a high court suit vesting a bigger parcel of land including the one in dispute on plaintiffs.

The trial court found that the land in dispute was the one duly granted to defendant. The plaintiffs' case was dismissed. Their appeal to the Court of Appeal was dismissed while the trial court's judgment was upheld. Meanwhile the high court decision plaintiffs were relying on was subsequently decided against them by the Supreme Court. Plaintiffs have

further appealed to the Supreme Court raising a lone issue.

ISSUE FOR DETERMINATION

Whether the Justices of the Court of Appeal erred in law and failed to exercise their discretion judicially and judiciously when they dismissed the appeal of the appellants.

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

Title - Foundation - Previous Supreme Court Judgment

1. In the result, the plaintiffs/appellants herein have no title to Kurugbene land which they could pass to the defendant/respondent in the present proceedings. The foundation on which they built their case against the defendant collapsed as a result of the judgment of this court in Suit No. SC.173/1990. On this score, their claims failed and the appeal is dismissed. (p. 2687 C)

Concurrent findings of fact

2. Assuming that the decision of this court in Suit No. SC.173/1990 had not affected this appeal, It would still have failed on the facts as found by the courts below. From the facts established at the court of trial, it was common ground that the appellants granted a piece of land to the respondent. What was in dispute was whether the land is at Ajere or at Kurugbene. The courts below found that the parcel of land granted to the defendant/respondent is at Kurugbene and that the grant was validly made. These are concurrent findings of fact and there are sufficient evidence on record to support them. It is the practice of this court not to disturb such findings except there is some miscarriage of justice or violation of some principle of law or procedure. (p. 2687 E)

NOTABLE POINT OF INTEREST

OGWUEGBU JSC

1. Need for counsel to be intelligible in brief writing

The above issue is as unintelligible as the brief of argument itself. It was filed five years ago and I believe counsel has by now acquired some

experience of the art of brief writing which was totally lacking in the brief before us. (p. 2685 A)

REPRESENTATION

The appellants are absent and not represented by counsel

O. Semudara, Esq. for the Respondent

LEAD JUDGMENT BY OGWUEGBU JSC

The appellants were plaintiffs in the High Court of Ondo State, Okitipupa Judicial Division. They instituted the action for themselves and as representing Kurugbene community in the Ilaje/Ese Odo Local Government Area of Ondo state.

Their claim against the defendant is as follows:

"(a) A declaration that the Kurugbene Community are the persons entitled to the use and enjoyment under native law and custom and are the persons entitled to the customary right of occupancy of all that piece of land situate and facing and along Okitipupa/Igbokoda Road, Kurugbene on the left hand side bounded and covered by the defendant's survey pillars Nos. APA1136, APA1137, APA1138 and APA1139 bounded on all sides by the plaintiffs or their privies' land.

(b) N500.00 (five hundred naira only) special and general damages for trespass on the land described in paragraph (a) above;

(c) An order of injunction"

The case was tried on pleadings and the learned trial judge dismissed the claim of the plaintiffs. Their appeal to the Court of Appeal was also dismissed hence the further appeal to this court.

The case of the plaintiffs in the trial court was that the land in dispute belongs to Apoi Community and that the community had granted the defendant a piece of land near Ajere Kekere (a stream) and that he went to another site and started to build a residential house. The plaintiffs testified that as administrators of Kurugbene land, they did not grant the defendant the parcel of land where he was building the house and as a result, they instituted the present proceedings against him claiming the reliefs set out above. It was also their case that the High Court in Suit

No. HOD/2/74 vested all Kurugbene land including the land in dispute in the Kalasuwe of apoi land and that the vesting gave the Kalasuwe of Apoi land authority to deal with the land either directly or through his agents.

The defendant in his pleading and evidence claimed that he is lawfully occupying the land in dispute having bought the same from the Kurugbene Community represented by the 3rd and 4th plaintiffs who acted on the authority of the former Baale Gbajumo Anifowose. He also stated that the Jowe Enikorogha who is the over-lord of Kurugbene ratified the purchase and attended the foundation laying ceremony of his building on the land along with many other indigenes of Kurugbene. He paid a total of N640.00 for the purchase and the purchase receipts were admitted in evidence.

As stated earlier in this judgment, the claims of the plaintiffs were dismissed by the learned trial judge in a considered judgment. The plaintiffs appealed to the Court of Appeal against the judgment of the trial judge. Their appeal was dismissed hence the further appeal to this court. Briefs were filed by both parties and when the appeal came up for hearing on 5th July, 1999, the appellants were absent and not represented by counsel but were served with the hearing notice. In compliance with Order 6, rule 8(b) of the Supreme Court Rules, 1985 as amended, the court treated the appeal as argued on the briefs.

The sole ground of appeal filed by the plaintiffs/appellants without its particulars reads:

1." The Justices of the Court of Appeal erred in law and failed to exercise their discretion judicially and judiciously when they dismissed the appeal of the appellants when the Court could have exercised its power under section 16 of the Court of Appeal Act No. 43 of 1976 by non-suiting the case."

The appellants proceeded to formulate an issue from the above ground of appeal which reads:

"Whether whereas in this case the plaintiffs/appellants ought to have been non-suited and the trial court failed to do so because it failed to call on the Counsels (sic) of both parties to address the Court on it, the Justices of the Court of Appeal could not have exercised their powers

under section 16 of (sic) No. 43 of 1976 (sic) Appeal Act to order such a non-suit as in the present appeal?"

The above issue is as unintelligible as the brief of argument itself. It was filed five years ago and I believe counsel has by now acquired some experience of the art of brief writing which was totally lacking in the brief before us.

The above remark notwithstanding, this appeal, for the reasons which will be given later in this judgment, is purely academic and the learned appellants' counsel should have filed a notice of discontinuance of the appeal.

The plaintiffs/appellants pleaded in their statement of claim that the parcel of land in dispute in the present proceedings forms part of a larger parcel of land which was in dispute in Suit No. HOD/2/74 and that in the said suit, they (plaintiffs) were declared to be entitled to the customary right of occupancy over the larger parcel of land. Paragraphs 7, 8, 9 and 10 of the statement of claim are relevant and they read as follows:

"7. The plaintiffs aver that OBA SAMUEL OLADIRAN II, The Kalawuse of Apoi-Land is the head of Kurugbene Community.

8. The plaintiffs aver that the land in dispute forms part of the land upon which a declaration of title to the customary right of occupancy was entered in favour of OBA SAMUEL OLADIRAN II (For himself and on behalf of Kurugbene Community and other members of Ijaw-Apoi Community) in Suit No. HOD/2/74 dated 5th day of June, 1981.

9. The plaintiffs will at the trial rely on the judgment.

10. The plaintiffs are appointed by the said OBA SAMUEL OLADIRAN II to represent the Kurugbene Community on the area of land the subject matter of the suit in HOD/2/74 mentioned in paragraph 8 above."

The judgment in Suit No. HOD/2/74 delivered by Ojuolape, J. sitting in Ondo Judicial Division of the High Court of Ondo State was tendered through Raphael Ajiboye (5th plaintiff) and admitted in evidence as Exhibit "C". Suit No. HOD/2/74 was between:

"1. A. O. Akinboye

- 2.
- 3.

(For themselves and on behalf of Igbokoda/Mahin Ilaje Community.)

- B AND
- 1. Gbajumo Buyan
- 2.
- 3.

(For themselves and on behalf of Kurugbene Community)

- C 4. Oba Samuel Oladiran II (For himself and on behalf of Kurugbene Community and other members of Ijaw-Apoi Community.)"

The 4th defendant in that case - (Oba Samuel Oladiran II) was granted leave by the trial court to be joined as 4th defendant. He appeared for himself and as representing Kurugbene community. After the joinder, he filed a counter-claim and prayed the court for the following reliefs:

- E "(a) Declaration of title as absolute owner under Ijaw-Apoi Native Law and Custom of all that piece or parcel of land situate at, lying and being at Igbanran, Kofawe and Kurugbene with the exception of Igbokoda,
- (b) N200.00 being special and general damages for trespass.
- F (c) Injunction.

The claims of the plaintiffs in that suit were dismissed and the counter-claim of the 4th defendant succeeded. In Exhibit "C" the learned trial judge ordered as follows:

- G "(1) It is hereby declared that all that piece or parcel of land situate at lying and being at Igbanran, Kofawe, Kurugbene, up to Ibila portion of Ijaw-Apoi land in Okitipupa Division and which is particularly shown and delineated in survey Plan No. WP419c, dated 18th November, 1979 and therein edged 'BLUE' belonged to the 4th Defendant's
- H community under Ijaw-Apoi Native Law and Custom.
- (2)
- (3)

The plaintiffs appealed to the Court of Appeal, Benin Division.

Their appeal was allowed on 27:5:88 and the judgment of the learned trial judge dated 5th June, 1981 was set aside by the court below. The defendants who were dissatisfied with the judgment of the court below appealed to this court. The appeal was dismissed by this court on 7-5-99. (See the judgment of this court in Suit No. SC.173/1990 delivered on 7th May, 1999). The effect of that judgment is that the customary right of occupancy which Ojuolape, J. granted to the 4th defendant's Community (Exhibit "C") in respect of Kurugbene land is no longer in them but in Igbokoda/Mahin Ilaje community who were the plaintiffs in that case. C

The plaintiffs in the present proceedings were represented by the 4th defendant (Oba Samuel Oladiran II) in the proceedings which terminated in this court as SC. 173/1990. **In the result, the plaintiffs/appellants herein have no title to Kurugbene land which they could pass to the defendant/respondent in the present proceedings. The foundation on which they built their case against the defendant collapsed as a result of the judgment of this court in Suit No. SC.173/1990. On this score, their claims failed and the appeal is dismissed.** D

Assuming that the decision of this court in Suit No. SC.173/1990 had not affected this appeal, It would still have failed on the facts as found by the courts below. From the facts established at the court of trial, it was common ground that the appellants granted a piece of land to the respondent. What was in dispute was whether F the land is at Ajere or at Kurugbene. The courts below found that the parcel of land granted to the defendant/respondent is at Kurugbene and that the grant was validly made. These are concurrent findings of fact and there are sufficient evidence on record to support them. It is the practice of this court not to disturb such findings except there is some miscarriage of justice or violation of some principle of law or procedure. G

The appeal is dismiss with N10,000.00 costs in favour of the respondent. H

BELGORE JSC

I read before hand the judgment of my learned brother, Ogwuegbu, JSC., and I agree entirely with his reasoning and conclusions in this appeal. It is the concurrent findings of fact of the two lower courts that
B is the issue here and I am not convinced by the appellants why I should interfere with the decisions of those courts. I also find no merit in this appeal and I dismiss it with N10,000.00 costs in favour of respondents against the appellants.

C **IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ogwuegbu, J.S.C. and I agree entirely that this appeal lacks substance and ought to be dismissed.

D For the same reasons as are contained in the said judgment, I too, dismiss this appeal and abide by the same order as to costs as is therein made.

E **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother Ogwuegbu, JSC in this appeal. I entirely agree with him that this appeal has no merit whatsoever. I would dismiss it for the
F reasons he has given. I would also award N10,000.00 costs in favour of the respondent.

AYOOLA JSC

G I have had the advantage of reading in draft the judgment delivered by my learned brother, Ogwuegbu, JSC. I entirely agree with him that there is sufficient evidence on record to support the concurrent findings of fact by the trial court and the court below. I would dismiss the appeal for that reason.

H In the result, I too would dismiss the appeal with N10,000.00 costs to the respondent.