

**SUPREME COURT OF NIGERIA**

15TH DECEMBER, 2000. SC. 5/1994

**CORAM:- A. B. WALI, U. MOHAMMED, A. I. KATSINA-ALU,  
U. A. KALGO, A. O. EJIWUNMI, JJSC.**

1. DAMIAN ANYANWU ..... 1ST APPELLANT  
2. CLETUS OPARA ..... 2ND APPELLANT  
AND  
BRENDAM IWUCHUKWU ..... RESPONDENT

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***EVIDENCE*** - Pleadings - Evidence led not in conformity with the pleadings - Goes to no issue.

***PLEADINGS*** - Function - Parties and the courts are bound by the pleadings.

**FACTS**

In the High Court of Imo State, the plaintiff/respondent took out a writ against the defendants/appellants, and claimed for a declaration of title to land, damages for trespass, and an order for perpetual injunction restraining the appellants by themselves, their servants and agents from entering the said land. The case of the respondent was that he purchased the land in dispute by customary sale from the 1st appellant. After the purchase of the property, the respondent went into possession and since 1965, had been in possession. But in May 1977, the 1st appellant informed the respondent, that the property sold to the latter by the former belonged to the 2nd appellant. The respondent did not believe the appellant that the property belonged to the 2nd appellant, hence the respondent commenced this action claiming as aforesaid. The appellants filed a joint Statement of Defence.

The 1st appellant for his part admitted that he sold the property in dispute to the respondent, but claimed that having inherited the property on the death of his father, he did not know that the property was on pledge. The 2nd appellant for his part stated that he did not know when

the disputed property was sold to the respondent, but that as soon as he became aware of the transaction, he told the 1st appellant that the property in dispute belonged to him as it was pledged by his father to the father of the 1st appellant. And that after the 1st appellant was convinced that the property was so pledged, he redeemed it from the 1st appellant. Beside raising the issue of pledge in their pleadings, the appellants however omitted to plead the facts they would place reliance upon to prove the pledge they alleged.

At the conclusion of hearing, the learned trial judge took the view that as the subject matter of the suit was on pledge before it was sold, the 1st appellant cannot sell it to another person, and therefore dismissed the claims of the respondent. Dissatisfied, the respondent appealed to the Court of Appeal, which upheld the appeal and reversed the judgment of the trial Court. The appellants have now appealed to the supreme Court raising three issues but the appeal was determined on a single issue.

**ISSUE FOR DETERMINATION**

*Whether the disputed land was pledged land when it was sold to the respondent by the 1st appellant.*

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

***Pleadings - Function***

1. Once pleadings are ordered, filed and exchanged, the parties and the courts are bound by the pleadings so filed. (p. 2974 H)

***Evidence - Pleadings***

2. Evidence must be led in accordance with the pleadings. Evidence led not in conformity with the pleadings, and/or upon facts not pleaded went to no issue. See Nkanu v Omen (1977) 5 SC 13; Ekpoke v Usilo (1978) 6 - 7 SC 187.

In the instant case, it is the failure of the appellants to have properly pleaded the facts that they would place reliance upon to prove the pledge they alleged in their pleadings that had misled the trial Court. In

the first place, beyond alleging that the land in dispute was pledged land, nothing was said of the incidents of the pledge and how it was established. It follows that all the evidence led with regard to those facts went to no issue. They should therefore have been disregarded by the trial Court and the court below. It is therefore my view that if such evidence which were not pleaded, and which go to the root of the claim of the appellants with regard to the pledge are disregarded, there is really no evidence to establish the claim of the appellants that the land in dispute was pledged as alleged at the time of their sale to the respondent. (p. 2975 A)

### **REPRESENTATION**

Dr. S. Unaegbu for the Appellants.

Respondent absent and not represented.

### **CASES REFERRED TO**

Nkanu v Omen (1977) 5 SC 13

Ekpoke v Usilo (1978) 6 - 7 SC 187

Ataye v Ofili (1986) 1 NWLR (pt. 15) 134

Egbue v Araka (1988) 3 NWLR (pt. 84) 598

Overseas Construction Ltd. v Creek Enterprises Ltd. (1985) 3 NWLR (pt. 13) 407

Eze and Ors v Atasie and Ors (2000) 79 LRCN 1998

### **LEAD JUDGMENT BY EJIWUNMI JSC**

The main issue that has arisen in this appeal is whether the disputed land was pledged land when it was sold to the respondent by the 1st appellant.

The proceedings that led to this appeal commenced in the High Court of Imo State when the plaintiff/respondent took out a writ against the defendants/appellants. The claims of the respondent were for a declaration of title to land, damages for trespass, and an order of perpetual injunction restraining the appellants by themselves, their servants and agent from entering the said land. Following the order of the Trial Court,

pleading were filed and exchanged. At the trial that subsequently took place, the parties gave oral and documentary evidence in support of their respective cases. In a nutshell the case of the respondent/plaintiff was that he purchased three pieces of land known as Ala Ikpa Anyanwu and B situate at Umuarighi Umuezeala-Ama from the 1st appellant. The said pieces of land were bought by customary sale upon three different occasions.

The transactions were evidenced in writing by documents admitted and marked as Exhibits C,D,& E. The respondent further claimed C that after the purchase of the property, commencing from 1965, he had been in possession. But in may 1977, the 1st appellant who sold the property to him came to inform him that he had just discovered that the property belonged to the 2nd appellant. The 2nd appellant in the mean- D while had come to advise him to sell the property to raise funds to run his own business. Respondent claimed that he turned down the suggestion, and also refused to believe the 1st respondent that the property belonged to the 2nd appellant. He therefore commenced this action to E assert his right as the lawful owner of the property in dispute.

With regard to the case for the appellants, though they had filed a joint Statement of Defence, it is evident from their pleadings and the oral evidence given at the trial, that though they have a common defence, F their different positions in the matter must be recognised. The first appellant for his part admitted that he sold the property in dispute to the respondent. However, it is also evident from his joint Statement of Defence and his oral evidence at the trial, that he also claimed that he did not G know that the property sold was pledged by his late father to the father of the 2nd respondent.

The 2nd respondent for his part took the position that he did not know when the disputed property was sold to the respondent. And as soon as he became aware of the transaction, he told the 1st respondent H that the disputed property belonged to him as it was pledged by his father to the father of the 1st appellant. He further said that after the 1st appellant was convinced that the property was so pledged, he redeemed it by paying the sum of 54 or N8.00 (Eight Naira) to redeem the land.

The Learned Trial judge took the view that as the subject matter of the suit was on pledge before it was sold, the 1st appellant cannot sell it to another person. For this conclusion, reliance was placed on the widely accepted principle that a pledge always remain a pledge. He therefore dismissed the claims of the respondent. As the respondent was dissatisfied with the judgment of the Trial Court, he appealed to the Court below. That Court, then reversed the judgment of the Trial Court and took the view, inter alia, that the Learned Trial judge failed and or ignored the case of the respondent in the evaluation of the evidence led at the trial. The Lower Court upheld the appeal of the respondent who was the appellant in that Court.

The appeal before this Court is against that judgment of the Court below. Pursuant thereto, the appellants filed the following grounds of appeal, which without their particulars read:-

(1) The Lower Court erred in law when it wrongly reversed a finding of fact made by the trial judge that the land was on pledge when the said finding was amply supported by evidence duly believed by the trial judge who heard and saw the witnesses.

(2) The Lower Court erred in law by giving judgment to the plaintiff on the grounds that he had been in possession for years, in this case, where the issue is one of pledge.

(3) The Lower Court misdirected it self on facts before it by holding "His decision was not supported by the evidence recorded and should be disturbed".

From the grounds of appeal so filed, three issues were identified in the appellants' brief for the determination of this appeal. Though there is evidence that the respondent was duly served with the appellants' brief, yet no respondent's brief was filed in accordance with the rules of this court. The appeal was therefore heard upon the brief filed by the appellants. In this brief the three issues raised aforesaid, read thus:-

(1) Whether the Court of Appeal was right in reversing the judgment of the trial court, thus awarding the land in dispute to the Plaintiff/Respondent when the finding of facts by the trial court clearly showed that the land was on customary pledge at the time it was sold to the

Plaintiff/Respondent.

(2) Whether the Court of Appeal was right when it considered long possession on the basis of granting judgment to the Plaintiff/Respondent.

B (3) Was the Court of Appeal right when it disturbed the judgment of the Lower Court although the weight of evidence on record supported the judgment?

C I think it must be recognised from the judgment of the Court below and the issues raised above that there appears to be a misconception of the reasoning of the court Below, per Ndoma-Egba, JCA, with regard to the long possession attributed to the respondent in respect of the disputed land. In his argument on this issue, learned counsel for the appellants has argued in the appellants' brief that the court below misdirected itself when it declared that "there was no protest by anyone in the family until over twenty years after the sale" It is the further submission of learned counsel that observation was a misdirection, as long possession cannot defeat the claim of the 2nd appellant whose land was pledged D to the 1st appellant. In other words, it is his submission that long possession by the buyer is immaterial as a pledge can be redeemed at any time. That the pledgers right of redemption cannot be clogged in any way by the pledge. See Okoiko & Anor v Esedalue & Anor (1974) All E NLR 409; Dong v Chollom (1992) 1 NWLR (Pt. 220) 738, Ali Mustaffer v A.A. Allen (1966) ALL NLR 96. Nor can long possession by the pledgee of land lead to the denial of the right of redemption of the pledged land by F the pledgor. See Agbo Kofi v Addo koffi (1933) 1 WACA 284.

G With due respect to the learned counsel for the appellants, I think that he totally misconstrued the reference to possession of the disputed land by the respondent which the Court below found in his favour. It is my respectful view that the finding of possession in favour of the respondent was simply an acknowledgment of the facts pleaded by the H appellant that the disputed land was sold to him some twenty years before the commencement of the instant proceedings by the 1st appellant. It must also be noted that the 1st appellant did not deny that he sold the disputed land to the respondent in his pleadings and the oral evidence

during the trial. What became the issue and which was considered by the Court below was whether the appellants established by evidence at the trial that land in dispute was pledged land.

It is in order to determine this question that the Court below at pages of the printed Record asked itself whether there was a pledge B depends on the credibility of the evidence adduced in support of the assertion of the 1st appellant as disclosed in paragraphs 8, 9 and 10 of the joint Statement of defence filed by the appellants. It is useful to reproduce them in order to appreciate the state of the pleadings and on whom C lies the burden proving that the disputed land was pledged land and that at the time of its sale to the respondent, it was so pledged.

Paragraphs 8, 9 and 10 read thus:-

"Para. 8 : *The 1st defendant admits paragraphs 8 and 9 of Statement of Claim but says that having inherited the pieces or parcels of D land on the death of his father, he honestly believed he had absolute interest over the pieces of land aforesaid. It was not until he had sold the land in dispute to the plaintiff that the 2nd defendant called his attention and informed him that the land was on pledge.* E

*Para. 9 : The 1st defendant further avers that at first he resisted the claims of the 2nd defendant over the land until the matter was adjudicated upon by the Village Elders who found as a fact that the land was pledged to his father by the father of the 2nd defendant.* F

*Para. 10 : The 2nd defendant admits paragraph 10 of Statement of Claim but denies any knowledge of the sale by 1st defendant to the plaintiff until after the transaction had long been concluded. The 2nd defendant further avers that on being informed of the sale he informed the 1st G defendant in 1965 that the land he 1st defendant sold to the plaintiff was on pledge and that he, 2nd defendant wanted to redeem the pledge. When the 1st defendant denied his rights and interests over the land he summoned the village elders who looked into the matter and found as a fact that the land was under pledge whereupon he redeemed the pledge from H 1st defendant".*

From the above pleadings of the appellants, it is self evident that the issue of pledge was raised by them. And although the respondent did

not file a reply to this claim of the appellants, it is clear that the burden of establishing the fact so pleaded rested on the appellants. At the trial court, the learned trial judge recognised that much. Hence upon finding that the appellants had discharged this burden he dismissed the claim of the respondent. He also held that as a pledge remains a pledge once it was proved the appellants were entitled to succeed. On appeal the Court of Appeal had to consider whether the trial Court was right in its conclusion with regard to whether the appellants proved the pledge they are claiming in respect of the disputed land. The Court below in order to determine this point therefore examined the evidence proffered by the appellants in support of their claim. Upon such examination of the evidence, the Court below took the view that the trial Court did not carefully weigh the contending evidence of the parties on the issue of whether there was pledge on the disputed land before it was sold to the respondent. The learned counsel in the appellants' brief has however argued in this appeal that the Court below fell into error in its conclusion having regard to the evidence before it. He then went on to submit that the appellants and their witnesses adduced clear and convincing evidence on the customary pledge of the land in dispute. He next invited this Court to hold that the Court below fell into error when it commented adversely upon the reliance of the trial Court in accepting evidence based on oath taking. The point here taken relates to the evidence that the 1st appellant refused to take an oath during the arbitration proceedings conducted by the elders of the village to determine whether the land was pledge or not to the 1st appellant's father.

Now, the first observation that must be made is that the appellants have not shown that the lower Court was wrong in its evaluation of the evidence led at the trial. And in addition to what I will say presently the Court below was right to have reversed the judgment of the trial Court. Earlier in this judgment reference was made to the pleadings particularly with regard to the defence of the appellants that the land in dispute was under a pledge. In this respect it must be borne in mind that **once pleadings are ordered, filed and exchanged, the parties and the courts are bound by the pleadings so filed.** It therefore follows



remorselessly that **evidence must be led in accordance with the pleadings. Evidence led not in conformity with the pleadings, and/or upon facts not pleaded went to no issue.** See Nkanu v Omen (1977) 5 SC 13; Ekpoke v Usilo (1978) 6 - 7 SC 187; Ataye v Ofili (1986) 1 NWLR (pt. 15) 134; Egbue v Araka (1988) 3 NWLR (pt. 84) 598; Overseas Construction Ltd. v Creek Enterprises Ltd. (1985) 3 NWLR (pt. 13) 407; Eze and Ors v Atasie and Ors (2000) 79 LRCN 1998. B

**In the instant case, it is the failure of the appellants to have properly pleaded the facts that they would place reliance upon to prove the pledge they alleged in their pleadings that had misled the trial Court. In the first place, beyond alleging that the land in dispute was pledged land, nothing was said of the incidents of the pledge and how it was established. It follows that all the evidence led with regard to those facts went to no issue. They should therefore have been disregarded by the trial Court and the court below. It is therefore my view that if such evidence which were not pleaded, and which go to the root of the claim of the appellants with regard to the pledge are disregarded, there is really no evidence to establish the claim of the appellants that the land in dispute was pledged as alleged at the time of their sale to the respondent.** C D E

I must therefore hold for the reasons given above that this appeal must fail, and it is hereby dismissed in its entirety. F

The appeal having failed, the judgment of the Court below is upheld with no other as to costs.

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#### WALI JSC

I have had the privilege of seeing in advance, a copy of the Lead judgment of my learned brother Ejiwunmi JSC and I agree with him that the appeal has no merit and ought to fail.

I hereby dismiss this appeal and affirm the judgment of the Court of Appeal with no order as to costs in favour of Respondent who neither filed brief of argument nor appeared in court in person or through his counsel. H

**MOHAMMED JSC**

I agree with the opinion of my learned brother, Ejiwunmi JSC, as expressed in the judgment just read that this appeal has failed. I have had the privilege to read the judgment in draft before now. The appeal is dismissed. I abide by the order made on costs.

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**KATSINA-ALU JSC**

I had the privilege of reading in advance the judgment of my learned brother Ejiwunmi, JSC in this appeal. I agree with it.

Paragraph 8, 9 and 10 of the joint Statement of defence of the appellants aver as follows:

8. The 1st defendant admits paragraphs 8 and 9 of Statement of Claim but says that having inherited the pieces or parcels of land on the death of his father, he honestly believed he had absolute interest over the pieces of land aforesaid. It was not until he had sold the land in dispute to the plaintiff that the 2nd defendant called his attention and informed him the land was on pledge.

9. The 1st defendant further avers that at first he resisted the claims of the 2nd defendant over the land until the matter was adjudicated upon by the Village Elders who found as a fact that the land was pledged to his father by the father of the 2nd defendant.

10. The 2nd defendant admits paragraph 10 of Statement of Claim but denies any knowledge of the sale by 1st defendant to the plaintiff until the transaction had long been concluded. The 2nd defendant further avers that on being informed of the sale he informed the 1st defendant in 1965 that the land the 1st defendant sold to the plaintiff was on pledge. When the 1st defendant denied his rights and interests over the land he summoned the village elders who looked into the matter and found as a fact that the land was under pledge whereupon he redeemed the pledge from 1st defendant.

It will be observed that beyond alleging that the land in question was pledged land, nothing was pleaded of the incidents of the pledge and

how it was established. It must be remembered that parties are bound by their pleadings. So that evidence led with regard to facts not pleaded goes to no issue. That evidently was the flaw in the case of the defendants/appellants.

I agree with my learned brother Ejiwunmi, JSC that this appeal must fail. For the reasons he has given I also would dismiss this appeal with N10, 000.00 costs against the appellants in favour of the respondent.

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### **KALGO JSC**

I have had the privilege of reading before now, the judgment just delivered by my learned brother Ejiwunmi JSC and I agree with him that the appeal should be dismissed. The main issue in the appeal which this court is to determine is whether the land in dispute was on customary pledge at the time it was sold to the respondent. My learned brother Ejiwunmi JSC has meticulously examined the relevant pleadings and evidence produced at the trial and the law applicable to the situation and I am in agreement with him that there is no merit in the appeal. I adopt his reasoning and conclusion as mine and I accordingly dismiss the appeal with N10,000.00 costs in favour of the respondent.

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