

SUPREME COURT OF NIGERIA
15th DECEMBER, 2000. SC. 112/993
CORAM:- A. B. WALI, U. MOHAMMED, O. ACHIKE, U. A.
KALGO, A. O. EJIWUNMI, JJSC.

IKYEREVE IORDYE APPELLANT
AND
TOR IHYAMBE RESPONDENT

***APPEALS** - Evidence - Reevaluation of evidence - By an appellate Court - Does not mean copious reproduction of such evidence.*

***JUDGMENTS** - Civil cases - Evidence - Preponderance of - In civil cases judgments are given on preponderance of evidence.*

***LAND LAW** - Boundaries - Determination of boundaries - It is for the plaintiff to identify and prove the existing boundaries - And where none is identified and proved - The Court has no power to demarcate one.*

***LAND LAW** - Title to land - Declaration of - Boundary of land - The court should not grant a declaration of title to a piece of land - The boundaries of which are obscured.*

***LAND LAW** - Title to land - Claim for declaration of title - Exact extent of the land - Failure to prove the exact extent of the land - The action should be dismissed and not non-suited.*

FACTS

In the Grade II Area Court of Top-Danga, Benue State, the plaintiff/appellant claimed against the defendant/respondent for a declaration of title to a piece of land situate at Udam Utange. The stated that he was farming the land in dispute, when the defendant's predecessor in title began troubling him. The plaintiff the sued the latter before the clan head and elders. The clan head determined the boundary between them to be

a locus bean tree and they were both advised by the elders not to go beyond the locus bean tree. Thereafter the defendant encroached beyond the demarcated boundary, here the plaintiff instituted the action. The visit to the locus in quo by the trial Court did not throw any more light regarding the identity of the land and the boundary in dispute.

After due hearing the trial court gave judgment for the plaintiff because the elders had earlier resolved the matter. The defendant/respondent appealed to the High Court which set aside the judgment of the Area Court on the ground that the Court gave no consideration to the evidence of the defendant and his witnesses, that the only reason for which the elders asked that the plaintiff be left on the land was that his mother was their daughter. The plaintiff appealed to the Court of Appeal. Which affirmed the judgment of the High Court. He has now appealed to the Supreme Court raising three issues.

ISSUES FOR DETERMINATION

1. *Did the appellant lead evidence in the court of trial in relation to his root of title to entitle him to judgment.*
2. *Did the appellant establish identity of the land with certainty as required by law.*
3. *Was the Court of Appeal right to hold as it did that: "The Appellate High Court had in my opinion acted rightly in re-evaluating the evidence and coming to the conclusion which it did by dismissing the case of the appellant."*

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

Land law - Title to land

1. The evidence recapitulated above did not state the area in dispute or its boundaries with clarity and definitive certainty required of the appellant. See Udafia v. Afia 6 WACA 216. The court should not grant a declaration of title to a piece of land the boundaries of which are obscure and uncertain. (p. 3075 C)

Land law - Boundaries

2. In an action which seeks the determination of boundaries between the parties to the dispute it is for the plaintiff to identify and prove the existing boundaries and where none is identified and proved, the court has no power to demarcate one. See Amata v Madukwe 14 WACA 71; Akubueze v Nwakuche [1959] F.S.C 262. (p. 3075 F)

Title to land - Claims for declaration of title

3. Where the plaintiff claims for a declaration of title and fails to prove the exact extent of the land he is claiming, his action should be dismissed and not non-suited. See Rufai v Ricketts [supra]. (p. 3075 H)

Appeals - Evidence

4. Re-evaluation of evidence by an appellate court does not mean copious reproduction of such evidence. In my view there is adequate consideration and re-evaluation of the evidence in the conclusion above in which the learned trial judge, having read the evidence in the printed record, came to the right conclusion that not only did the trial court fail to consider the defendant/respondent evidence but also there was no such evidence on which its judgment in favour of the plaintiff/appellant was based, more so when the appellant was seeking to be awarded the discretionary relief of a declaration of title to land when he did not prove the root of his title and the identity of the area in dispute. (p. 3076 A/D)

Judgments - Civil cases

5. In civil cases judgments are given on preponderance of evidence. In the circumstances, I am satisfied that there was insufficient evidence which could have justified the trial court to grant to the appellant the declaration of title he sought. (p. 3076 F)

REPRESENTATION

Gwa-Jande Esq. for the Appellant.

S. A. Orkumah, Esq. for the Respondent.

CASES REFERRED TO

Chief Frank Ebba v Chief Warri Ogodu [1984] 4 SC 84 at 98

Udafia v. Afia 6 WACA 216

Rufai v Rickett 2 WACA 95

B Amata v Madukwe 14 WACA 71

Alhaji Olakunle Elias v Chief Timothy Omo-Bare [1982] ALL NLR 75

LEAD JUDGMENT BY WALI JSC

C The appellant who was the plaintiff in Grade II Area Court of
Top-Danga Benue State, claimed against the respondent for a declaration
of title to a piece of land situate at Udam Utange. After due hearing the
trial court entered judgment for the plaintiff/appellant. The defendant/
respondent appealed to the High Court which set aside the judgment of
D the Area Court on the ground that the court gave no consideration to the
defendant's/appellant evidence and his witnesses and that the only reason
for which the elders asked that the plaintiff/appellant be left on the land
was that his mother was their daughter. The plaintiff/appellant appealed
E to the Court of Appeal which after due hearing affirmed the judgment of
the High Court. He has now appealed to this court against the Court of
Appeal judgment.

In compliance with order 6 rule 5 (1) (a) of the Supreme Court
F Rules, 1985 [as amended] learned counsel for the appellant filed brief of
argument in which he formulated the following three issues for the deter-
mination of this court :-

1. *Did the appellant lead evidence in the court of trial in rela-
G tion to his root of title to entitle him to judgment.*

2. *Did the appellant establish identity of the land with certainty
as required by law.*

3. *Was the Court of Appeal right to hold as it did that: "The
Appellate High Court had in my opinion acted rightly in re-evaluating
H the evidence and coming to the conclusion which it did by dismissing the
case of the appellant."*

On issue 1, learned counsel refereed to the evidence of PW1 on page 1 of
the record, lines 20-25 and submitted that the appellant in that evidence

had proved root of title and Court of Appeal ought to have affirmed the holding of the trial court. On the second issue learned counsel argued that the appellant at the court of trial complained of an encroachment on his land by the respondent and it was as a result of that he adduced evidence in which the issue of boundary between him and the respondent's people was settled. He submitted that the respondent as well as the appellant knew the boundary and when the trial court visited the locus in quo, the appellant in the presence of respondent identified the said boundary. B

On issue three, learned counsel submitted that the High Court did not review the evidence and that even if it did it was wrong since the exercise touched on the credibility of the witnesses. He further submitted that the High Court as an appellate court would only re-evaluate evidence where issue of witness credibility is not involved and cited Chief Frank Ebba v Chief warri Ogoto [1984] 4 SC 84 at 98, and that once that course is taken it should make an order of retrial. C D

He urged the court to allow the appeal and restore the judgment of the trial court. Learned counsel appearing for the respondent did not file respondent's brief nor did he make oral application for leave of the court to make oral submissions. As such no arguments were presented as an answer to the appellant's brief on respondent's behalf. I shall proceed to consider the three issues together as they relate to the facts in this case. E

In his evidence at the trial, the plaintiff/appellant deposed as follows:- F

"Sometime ago I was farming this area and the defendant's late brother called Danum was troubling me and I sued him before the clan head Ngokem. Then Ngokem came with the elders and kindred heads and they sued him to stop at this locus bean tree. I was asked by the district head to stop at this locus bean tree and go back to Iki stream and the defendant brother to go back to agradijo stream. After this I started to make sign on the tree as I was asked to stop. I cut some chamegh trees and on it I wrote my name on. Later the defendant left the demarcation H area and entered into my area." G

This is the description of the land or boundary for which the appellant sued the respondent.

This evidence cannot be said to have stated with clarity and certainty before the trial court what the appellant was complaining about. Is it the boundary encroachment as learned counsel stated in his brief or is it for trespass and occupation by the respondent of the undefined piece of land as complained of by the appellant?. Then appellant cannot by any stretch of imagination be said to have stated his complaint with clarity and certainty required in this type of action. The evidence of PW2 did not help matters either as it did not improve the situation.

He deposed as follows :-

"I know the plaintiff and the dependant. All the disputed area was virgin land there was no body living on it. Tor-Donga was farming this land, his brother Amagbe was also farming with him. Also Wende Avatsav was also farming with him on this area. When wende died he left his son Iordye father of plaintiff farming this area alone. The father of the defendant was down there also farming. One day the brother of the defendant came and started to work here and plaintiff's father refused. Plaintiff's father sued defendant brother called Danum at Ngokem. The kindred Head of Udam and of Mbacher came and they told the parties each to stop at this locus bean tree towards his side. From there they made mark on the trees".

PW3 also testified thus -

"I know the plaintiff and defendant. The disputed piece of land belongs to the plaintiff because his late father was farming this land and there was no trouble. There was a case before this land and the case was decided by kindred Head of Udam and Mbacher. Plaintiff's senior brother was asked to work and stop on this locus bean tree and go back east ward to Ikimi stream, but I did not know where defendant was asked to work and stop."

The last witness to testify for the appellant was PW4 whose evidence was as follows -

"The piece of the disputed land belongs to the defendant's late father Iordye. Defendant brother late [sic] was boardering with the plaintiff's brother. One day defendant's brother and plaintiff's father had a dispute over this piece of land. Defendant's brother sued at Ngokem.

Imborvungu and Iorkegh asked both parties to work and stop at this locus bean tree. After their judgment there was mark on the trees. That is all".

The visit to the locus in quo by the trial court did not throw any more light as regards the identity of the land and the boundary in dispute as B what was recorded there reads as follows-

"Court moved to the disputed farm area in Company of both parties, the plaintiff showed us a big locus bean tree as his common boundary, the defendant also showed the court the place where he farmed C and ended with the plaintiff. On going there court followed the Tor-Donga Kasar road and branched from left and reached the piece of farm land".

The evidence recapitulated above did not state the area in D dispute or its boundaries with clarity and definitive certainty required of the appellant. See Udafia v. Afia 6 WACA 216. The court should not grant a declaration of title to a piece of land the boundaries of which are obscure and uncertain.

See Rufai v Rickett 2 WACA 95. The Court of Appeal was in my view E right when it stated that-

"The onus is on a plaintiff seeking for a decree of declaration of title to show clearly the area to which his claim relates the plaintiff can do this by such oral description of the land that any surveyor acting F on such description can produce a plan of the land he claim."

The only evidence given as regards the boundary of the land in dispute is the mention of the locus bean tree. It is vague and incomprehensible. **In an action which seeks the determination of boundaries G between the parties to the dispute it is for the plaintiff to identify and prove the existing boundaries and where none is identified and proved, the court has no power to demarcate one. See Amata v Madukwe 14 WACA 71; Akubueze v Nwakuche [1959] F.S.C 262.**

Where the plaintiff claims for a declaration of title and fails H to prove the exact extent of the land he is claiming, his action should be dismissed and not non-suited. See Rufai v Ricketts [supra].

In issue three, learned counsel contented that the Court of Appeal was

wrong in affirming the judgment of the High Court as the latter did not re-evaluate the evidence adduced in the trial court. This argument is misconceived. **Re-evaluation of evidence by an appellate court does not mean copious reproduction of such evidence.** The learned trial High Court judge after reviewing the oral submissions made by learned counsel in this case on the evidence adduced, it concluded-

"I think there is merit in this complaint. The court gave judgment for the respondent because merely the elders had earlier resolved the matter. The court gave no consideration to the evidence of the appellant and his witnesses. That the only reason for which the elders asked that the respondent be left on the land was that his mother was their daughter. The respondent should have gone beyond this and prove the root of title."

In my view there is adequate consideration and re-evaluation of the evidence in the conclusion above in which the learned trial judge, having read the evidence in the printed record, came to the right conclusion that not only did the trial court fail to consider the defendant/respondent evidence but also there was no such evidence on which its judgment in favour of the plaintiff/appellant was based, more so when the appellant was seeking to be awarded the discretionary relief of a declaration of title to land when he did not prove the root of his title and the identity of the area in dispute.

In civil cases judgments are given on preponderance of evidence. The absence of oral evidence showing the extent of the land in dispute and its boundaries as separating the same from that of the defendant/respondent, are fundamental impediments to the appellant succeeding in his claim to a declaration of title in this case. See Alhaji Adebola Olakunle Elias v Chief Timothy Omo-Bare [1982] ALL NLR 75.

In the circumstances, I am satisfied that there was insufficient evidence which could have justified the trial court to grant to the appellant the declaration of title he sought. The Court of Appeal was therefore right in its decision that the appeal before it be dismissed as lacking in merit. I hold that there is no substance in this appeal which is hereby dismissed with N10,000 costs to the defendant/respondent.

MOHAMMED JSC

I have had the privilege of reading the judgment of my learned brother, Wali, JSC, in draft, and I agree with him that this appeal has no merit and ought to be dismissed. The appeal is dismissed. I abide by the orders made in the lead judgment on costs.

ACHIKE JSC

I have had the opportunity of reading, in draft the judgment just delivered by my learned brother, Wali, JSC and I agree with him that the appeal lacks merit and has failed. Accordingly, I dismiss the appeal with N10,00.00 costs to the respondent.

KALGO JSC

I have read in advance the judgment of my learned brother Wali JSC in this appeal and I am in full agreement with him that there is no merit in the appeal. The appellant has clearly failed to proved his case on the evidence on record and the High Court and the Court of Appeal, are in my view right in dismissing his appeal. I therefore agree that the appeal should be dismissed and I do so accordingly. I have nothing useful to add.

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

EJIWUNMI JSC

Having had the pleasure of reading before now the judgment just delivered by my learned brother wali, JSC, I agree for the reasons given in the said judgment that the appeal lacks merit.

The appeal is therefore dismissed by me, and I also award N10,000.00 cost to the respondent.