

SUPREME COURT OF NIGERIA

6TH APRIL, 2001. SC.132/1997

**CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU, S. U. ONU,
U. A. KALGO, S. O. UWAIFO, JJSC.**

1. MADAM HELEN OBULOR APPELLANT
2. RIVERS STATE
HOUSING & PROPERTY DEFENDANT/RESPONDENT
DEVELOPMENT AUTHORITY
AND
LINUS WESO OBORO PLAINTIFF/RESPONDENT

***APPEALS** - Duty of appellate court - Is to take a dispassionate look at the real issue - So as to arrive at the justice of the matter - As it rightly did in this case (H 1)*

***APPEALS** - Reversal of judgment - Of trial court - Was rightly done - Because it was not supported by evidence (H 2)*

***JUDGMENTS** - Pleadings - Judgment of a court - Must be based on only things pleaded - And supported by clear evidence (H 3)*

FACTS

The Respondent instituted the suit leading to this matter in the High Court of Rivers State Holden at Port Harcourt. He claimed to be entitled to statutory right of occupancy over a property known as No.18th Alozie street, Diobu Port Harcourt. He also prayed for injunction restraining the 1st appellant and her agents from acts of trespass on the said property and also claimed arrears of rent totalling N20,000 collected by the 1st appellant. In their evidence in court both the appellants and respondent asserted claim to the house. The respondent/plaintiff tendered a registered deed of conveyance from the original owner of the land and testified of being in possession since acquiring the property in 1978 and of his having tenants therein who pay rents to him. He had in 1989, been

shocked to learn that the conveyance to him was purportedly cancelled by the 2nd appellant and offered to 1st appellant to purchase. The appellants contended that the property was an abandoned property after the civil war and that the original owner - one Charles Ehirim had been paid compensation. The appellants however failed to lead evidence to prove their assertions and even failed to prove the purported purchase of the property by the 1st appellant from the 2nd appellant.

The trial judge in his judgment dismissed the claim of the plaintiff/respondent on a matter totally not in issue and not adverted to by the parties. On appeal by the plaintiff/respondent the court of Appeal found in his favour in the appeal and allowed it. Thus this appeal from the Court of Appeal by the appellants with the following issues for determination.

ISSUES FOR DETERMINATION

“(I) Whether the learned Justices of Court of Appeal were right in holding that the grounds 1, 2, and 3 of the grounds of Appeal filed before them in this suit were competent.

(II) Whether the learned Justices of Court of Appeal were right to have considered and relied on a ground of appeal it rightly observed did not form part of the judgment of the trial court appealed against.

(III) Whether the learned Justices of Court of Appeal were right to have held that Exhibit C, was authentic and reliable having regard (sic) to the apparent contradictions on the face of it and the evidence of the Respondent himself and the Respondent's failure to call evidence of his vendors when the validity of Exhibit C was put in issue.

(IV) Whether the learned Justices of Court of Appeal were right to have interfered with and/or disturbed the findings of fact made by the trial court when there were no (sic) shown exceptional circumstances for such interference. (sic)”

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

Duty of appellate court

1. The duty of an appellate Court is to take a dispassionate look at the real issues based on all the facts of a case and the laws supporting them so as to

arrive at the justice of the matter before it. The grounds of appeal before Court of Appeal were perfectly competent as they really touched the kernel of the case and the issues formulated on them were in order. The appellant never proved any right to the property at trial court and it will be a judicial magic if Court of Appeal had allowed the judgment of trial court to stand. (p.1076 D)

Reversal of judgment

2. The appellant never proved any right to the property at trial court and it will be a judicial magic if Court of Appeal had allowed the judgment of trial court to stand. The basis of trial court dismissing the plaintiff's case was not supported by any evidence. The 1st appellant's case was simply that the property was offered to her by 2nd appellant; nothing more. It was not that Exhibit C was a forgery, or was obtained by fraud. Trial judge imported fraud into the case. The trial court never explained why Exhibit C was unreliable. There was no evidence before the trial Court to indicate why the deed of conveyance Exhibit C was unreliable. (p. 1076 E)

Judgments - Pleadings

3. Courts of justice must be wary of coming to conclusion on any point not in evidence. The judgment of a court must be based on all legal evidence before it; that is to say, on all that is pleaded and supported by clear evidence. Anything not pleaded goes to nothing; and anything given in evidence but not pleaded must be rejected as inadmissible evidence. It is surprising how trial judge, after the pleadings before him and the evidence which he carefully reviewed just like a sudden storm brought out an adverse conclusion on matters unpleaded and on matter not in issue between the parties. (Metal Construction (W.A.) Ltd. Vs D.A. Migliore & Ors. (1990) 1 NWLR (Pt. 126) 299, 320. Courts must confine their decisions on matters that are fought upon by the parties and it is wrong and I may also say, it is unjust, to open a new and unexpected new battle field in their judgments. This style may not only spell injustice on the parties but may also erode confidence in administration of justice. (p. 1076 G)

NOTABLE POINT OF INTEREST

UWAIFO JSC

1. Presumption as to judgment

Every valid judgment delivered by a competent court is presumed to be right. The burden is therefore on an appellant to show why the judgment he has appealed from in a civil case should be set aside. If he cannot clearly convince the appeal court or if all he has done merely raises a doubt whether the judgment is right or wrong, the judgment stays and the appeal fails. (p. 1078 A)

REPRESENTATION

E. A. Ichoku, Esq. for the Appellants

B. E. I. Nwafor, Esq. for the Respondent

CASES REFERRED TO

Mogaji v. Cadbury (Nig.) Ltd (1985) 2 NWLR (pt.7) 393

Adeniji v. Adeniji (1972) 4 SC 10

E Omoregbee v. Lawani (1980) 3-4 SC. 108

Mogaji v. Odofin (1978) 4 SC 91

Metal Construction (W.A.) Ltd. v. D.A. Migliore & Ors. (1990) 1 NWLR (pt. 126) 229, 320

LEAD JUDGMENT BY BELGORE JSC

The respondent, Linus Weso Oboro, instituted the suit leading to this matter as Plaintiff in the High Court of Rivers State holden at Port Harcourt. He claimed to be legally in possession and entitled to statutory right of occupancy over the property known and called 18th Alozie Street, Diobu, Port Harcourt. He also prayed for injunction restraining Helen Obulor (1st Appellant/Defendant) her servants, agents and privies from acts of trespass on the said property if the declaration he claimed as the person entitled to statutory right of occupancy over the land was granted. He claimed also arrears of rent which he estimated at N15,000.00; N3,000.00 general damages for trespass; and finally another N2,000.00 collected by Madam Obulor. This brings the sums claimed to N20,000.00.

Both the present appellants and respondent asserted claim to the house at 18 Alozie Street. The plaintiff/respondent claimed he acquired the property from the original owners, the Obiekwe family of Rebisi and that the transaction was evidenced by a deed of conveyance dated 29/2/78 and registered in the Registry Port Harcourt as No. 133 at page 133 in volume 5. The plaintiff, now respondent testified strictly in line with his pleadings and tendered Exhibit C, the Deed of Conveyance. He also testified that he had been in possession since he acquired the property in 1978 and put in tenants who paid him rents.

To his dismay, in January 1989, by a letter dated 18/12/87 by Rivers State Housing Authority (the 2nd appellant) which is Exhibit J, the conveyance to respondent was purportedly cancelled. As if this was not enough shock to the respondent, another letter by 2nd appellant, Exhibit JI, the property was offered to the 1st appellant to purchase. The contention of the 2nd appellant, Rivers State Housing and Property Authority, is that the property in issue was an abandoned property after the Nigerian Civil War and originally belonged to one Charles Ehirim a native of Mbieri in Imo State; that this Ehirim was paid compensation by Abandoned Property Authority and the property was therefore offered to her to purchase at N30,000.00. That was the stand of the 1st appellant also during the trial, at least according to her averment in paragraphs 4-7 of her Statement of Defence. But surprisingly enough she never offered any evidence to support the averments in the said paragraphs 4-7 which the plaintiff all along denied. She also failed to tender the first letter she claimed was earlier written to her on 11/10/83 by 2nd appellant offering her the property; neither did she produce the evidence that she accepted the offer? or even paid for the property as requested in Exhibit JI. Thus there was no evidence that she bought the property. The mysterious original owner, Charles Ehirim was not called and his absence or even whereabouts was not explained. By the evidence before trial court, there was no proof that the property was an 'abandoned property' within the meaning of Abandoned Property Edict of Rivers State. In a curious judgment, with great respect, the trial judge dismissed the claim of the plaintiff/respondent on a matter totally not in issue and completely not adverted to as follows:-

“... it is my view that having regard to

(1) the unreliable nature of Exhibit C,

(2) the unresolved conflicts within the case of plaintiff, and

(3) the failure of plaintiff to adduce evidence from his property

B overlords or vendors the plaintiff cannot be said to have discharged the burden of proof placed on him”.

Exhibit C, the conveyance to the plaintiff was not in dispute and there was no doubt it was duly registered in accordance with the law with no contrary evidence having been adduced by the defendants. Rather the 2nd C defendants purported to cancel the deed. The Court of Appeal had no difficulty in disposing of preliminary objection on the competence of the plaintiffs grounds of appeal. The learned Justices looked at the merit of the appeal and found great favour in it.

D **The duty of an appellate Court is to take a dispassionate look at the real issues based on all the facts of a case and the laws supporting them so as to arrive at the justice of the matter before it. The grounds of appeal before Court of Appeal were perfectly competent as they**
 E **really touched the kernel of the case and the issues formulated on them were in order. The appellant never proved any right to the property at trial court and it will be a judicial magic if Court of Appeal had allowed the judgment of trial court to stand. The basis of trial court dismissing the plaintiff’s case was not supported by any evidence. The**
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 H **is to say, on all that is pleaded and supported by clear evidence. Anything not pleaded goes to nothing; and anything given in evidence but not pleaded must be rejected as inadmissible evidence. It is surprising how trial judge, after the pleadings before him and the**

evidence which he carefully reviewed just like a sudden storm brought out an adverse conclusion on matters unpleaded and on matter not in issue between the parties. (Metal Construction (W.A.) Ltd. Vs D.A. Migliore & Ors. (1990) 1 NWLR (Pt. 126) 299, 320. Courts must confine their decisions on matters that are fought upon by the parties B and it is wrong and I may also say, it is unjust, to open a new and unexpected new battle field in their judgments. This style may not only spell injustice on the parties but may also erode confidence in administration of justice. C

This appeal has no merit and for the reasons given above, I dismiss it with N10,000.00 costs to the plaintiff/respondent against appellant

OGWUEGBU JSC D

I have had the privilege of a preview of the judgment just delivered by my learned brother Belgore, JSC. I agree with the reasoning and conclusion. I too dismiss the appeal and make the same consequential orders as to costs as contained in the leading judgment of my learned brother E Belgore, JSC.

ONU JSC F

I am in full agreement with the judgment just delivered by my learned brother Belgore, JSC that the appeal herein lacks substance and must fail for the reasons given therein. I make similar consequential order inclusive of costs contained therein. G

KALGO JSC

I have had the privilege of reading in advance the Judgment of my learned brother Belgore JSC just delivered. I agree with the reasoning and conclusions reached therein which I adopt as mine. I have nothing useful to add. I also find no merit in the appeal and I dismiss it with costs of N10,000,000.00 in favour of the respondent. H

UWAIFO JSC

I read in advance the judgment of my learned brother Belgore JSC. I agree with it that the appeal is without merit.

Every valid judgment delivered by a competent court is presumed to be right. The burden is therefore on an appellant to show why the judgment he has appealed from in a civil case should be set aside. If he cannot clearly convince the appeal court or if all he has done merely raises a doubt whether the judgment is right or wrong, the judgment stays and the appeal fails.

The appellant in the present case raised four issues for determination, namely:

“(I) Whether the learned Justices of Court of Appeal were right in holding that the grounds 1, 2, and 3 of the grounds of Appeal filed before them in this suit were competent.

(II) Whether the learned Justices of Court of Appeal were right to have considered and relied on a ground of appeal it rightly observed did not form part of the judgment of the trial court appealed against.

(III) Whether the learned Justices of Court of Appeal were right to have held that Exhibit C, was authentic and reliable having regard (sic) to the apparent contradictions on the face of it and the evidence of the Respondent himself and the Respondent’s failure to call evidence of his vendors when the validity of Exhibit C was put in issue.

(IV) Whether the learned Justices of Court of Appeal were right to have interfered with and/or disturbed the findings of fact made by the trial court when there were no (sic) shown exceptional circumstances for such interference. (sic)”

Issues 1, 2 and 4 considered against the arguments canvassed in the appellant’s brief have not the slightest merit.

As to issue 3, the respondent tendered the deed of conveyance with which he purchased the property in question, exhibit C. The deed of conveyance was pleaded with its registration particulars. The only issue joined on this by the respondent was that the said property was an abandoned property within the Abandoned Property Edict 1969 which the Rivers State Authorities sold to her; and that the property formerly belonged

to one Mr. Charles Ehirim. What therefore called for a decision was whether the property was abandoned property which the respondent duly bought. There was no issue that the deed of conveyance, exhibit C, was not valid or genuine.

The learned trial judge virtually based his judgment on the issue B that exhibit C was unreliable when he said:

"In summary it is my view that having regard to (1) the unreliable nature of exhibit 'C' (2) the unresolved conflicts within the case of the plaintiff and (3) the failure of the plaintiff to adduce evidence from his purported overlords or vendors the plaintiff cannot be said to have C discharged the burden of proof placed on him. After a consideration of the evidence of both sides it is my conclusion that the plaintiff failed to adduce evidence to tilt the balance of probability in his favour. In my assessment the evidence of the defence that the property originally D belonged to one Charles Ehirim to whom some compensation was paid in respect thereof is more credible and I accept it."

This observation was completely outside the issue joined and therefore uncalled for. E

Earlier, the learned trial judge said the respondent failed to prove that the property originally belonged to the Mgbachukwu family from whom he bought and that it was the said family that actually sold the property to him. He placed reliance on *Mogaji v. Cadbury (Nig.) Ltd* (1985) F 2 NWLR (pt.7) 393. I think, with due respect, the learned trial judge misapplied that authority. It does not apply in this case where the issue joined is not whether the plaintiff has a valid root of title but whether the property in question was owned by another person who abandoned it and the defendant bought from the Authority to whom the property was abandoned. Civil cases are decided upon what is put as an issue by the parties: see *Adeniji v. Adeniji* (1972) 4 SC 10. The respondent relied on his deed of conveyance upon which no issue was joined. It was now up to the appellant to prove her own side of the case as pleaded, namely, that the property was abandoned. She led no evidence of any kind except her *ipsi dixit*. One would expect that the necessary Government gazette in which the property was published as abandoned property would be tendered. It G H

was not. She did not tender any document showing that the Rivers State Authorities sold the property to her.

The learned trial judge had no evidence from the appellant to place against that of the respondent to see which weighed more: see *Mogaji v. Odofin* (1978) 4 SC 91. He was therefore expected to decide on the evidence tendered by the respondent once it was not shown that the property was abandoned property: see *Omoregbee v. Lawani* (1980) 3-4 SC. 108.

I think the lower court was justified to have reversed the learned trial judge. I too find no merit in this appeal and dismiss it with N10,000.00 costs to the respondent against the appellant.

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