

SUPREME COURT OF NIGERIA
20TH APRIL, 2001. SC. 237/1990
CORAM:- A. G. KARIBI-WHYTE, I. L. KUTIGI, S. U. ONU,
O. ACHIKE, E. O. AYoola, JJSC.

ANTHONY IBHAFIDON PLAINTIFF/APPELLANT
AND
SUNDAY IGBINOSUN DEFENDANT/RESPONDENT

APPEALS - Concurrent finding of facts - The court cannot interfere - Where the plaintiff has not adduced enough reasons (H 1)

APPEALS - Dismissal of claim - Was rightly done - As plaintiff failed in his duty - To reconcile conflicting facts in his exhibits - Which went to the root of the matter (H 2)

APPEALS - Issue that is crucial - Identity of land - Once the crucial issue of identity has failed - Plaintiff cannot succeed in his case - Even if other issues are decided in his favour (H 3)

FACTS

The Plaintiff/Appellant sued the Defendant/Respondent in the High Court holden at Benin City for a declaration of customary right of occupancy to a piece of land, damages and perpetual injunction restraining the defendant and his agents from trespassing into the said piece of land. The plaintiff's case was that he had applied to the plot Allocation committee of ISIOHOR village on 10/3/73 for a grant of a parcel of land by the Oba of Benin in accordance with Bini custom. This application was approved by the Oba on 18/5/73 and the land granted him measured 400 feet by 400 feet (Exhibit A). The grant was further confirmed by a deed of conveyance dated 19/9/77 by the Oba to the plaintiff (Exhibit B). He claimed to have remained in undisturbed possession till 1981 when the defendant began to trespass on the land leading to the present action. He filed Exhibit F as a survey plan of the area in dispute.

The defendant on his own part contended that he also applied to the ISIOHOR village plot Allocation committee on 20/12/73 for a plot of land and was granted one which received the Oba of Benin's approval on 24/4/74. The piece of land also measured 400 feet by 400 feet (Exhibit J). He contended that the land given to him per Exhibit J was not the same land given to the plaintiff per Exhibit A. He also filed his own survey plan Exhibit G.

After reviewing the facts and considering the exhibits tendered in support of the grants the learned trial judge held that the plaintiff had failed to prove that the land approved for him in Exhibit A is the same land in dispute in Exhibit F and dismissed his claims. On appeal by the plaintiff his appeal was dismissed and the findings of the trial court was upheld. The aggrieved plaintiff has further appealed to the Supreme Court formulating three issues for determination though the appeal was decided on only one issue

ISSUE FOR DETERMINATION

“1. Can it be said that the Court of Appeal was right when it held that the Appellant had not succeeded in showing that the land in dispute as shown in Exhibit “F” is the very piece of land allotted to him in 1973 and thereafter held that the plan in Exhibit “F” is the same as the plan in exhibit “B” which conveyed the land to the Appellant?

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

Concurrent finding of facts

1. Ordinarily this court ought not lightly depart from concurrent findings of fact of the two lower courts because it has no opportunity of seeing and listening to the witnesses testify. But where it is manifest that those concurrent findings were based on a wrong perspective of the case, this court has not only the right but the duty to interfere on the issues of fact (see BALOGUN & ORS VS. AGBOOLA (1974) 1 All NLR 66, EBBA VS. OGO DO (1984) 4 SC 84). The Plaintiff herein has not been able to show why we should disturb the concurrent findings of facts by the lower courts. (p. 1174 H)

Dismissal of claim - Was rightly done

2. Surely it was the duty of the Plaintiff as found by the lower courts to have shown how the land measuring 400ft by 400ft as per Exhibit A grew to become 4.599 acres measuring 602.5ft by 431.3ft by 587.4 ft by 254.5ft (see Exhibit B). Put in another way, it was the duty of the Plaintiff to have shown that the land in dispute (Exhibit F) was the same land allotted or granted to him in Exhibit A. This he failed to do. The lower courts were therefore right to have dismissed his claims. Issue (1) therefore fails. (p. 1175 F)

Issue that is crucial - Identity of land

3. As I indicated earlier in this judgment issue (1) having failed, there is absolutely no need to consider the remaining issues. The issue of identity of the land in dispute being crucial, it is plain that since the Plaintiff had been unable to identify the land he was claiming, he cannot succeed in the case even if other issues are decided in his favour. (p. 1175 H)

NOTABLE POINT OF INTEREST**KARIBI-WHYTE JSC*****1. Leave to appeal***

As a matter of practice, where the court below has affirmed the finding of fact of the trial Court, leave to appeal against such findings of fact to this Court can only be granted in exceptional circumstances – See Order 2 rule 32 RSC 1985 as amended in 1999. (p. 1177 E)

REPRESENTATION

Mr. O Adekoya for the Plaintiff/Applicant.
Defendant/Respondent absent, not represented.

CASES REFERRED TO

Kodilinye v. Odu (1935) 2 W.A.C.A. 336
Bello v. Eweka (1981) 1 S.C. 101
Balogun & Ors v. Agboola (1974) 1 All N.L.R 66,
Ebba v. Ogodo (1984) 4 S.C. 84).

Omoborinola II v. Military Governor, Ondo State (1998) 14 NWLR 89

Kwadzo v. Adjei 10 WACA.274

Mogaji v. Cadbury (Nigeria) Ltd. (1985) 2 NWLR (part 393) at 396

Lokoyi & Ors. v. Ololo (1983) 8 SC.61

B Ojomu v. Ajao (1983) 9 SC.22 at 53

Ezeudu v. Obiagwu (1986) 2 NWLR (part 21) 208 at 215

LEAD JUDGMENT BY KUTIGI JSC

C In the High Court holden at Benin City, the Plaintiff's claims as stated in paragraph 19 of his Amended Statement of Claim read thus –

“19 (1) *A declaration of customary right of occupancy to the area verged pink on Plan CS.10/2.*

(2) *N500,000.00 general damages for trespass.*

D (3) *Perpetual injunction to restrain the Defendant, his agents and or assigns from further trespass on the said land.”*

After the filing and exchange of pleadings the case proceeded to trial. At the trial the Plaintiff testified and called two witnesses. The E Defendant also gave evidence and called four witnesses. Various documents which the parties relied upon were also tendered as exhibits at the hearing.

F At the end of the trial counsel on both sides addressed the court. In a reserved judgment the learned trial judge carefully considered the evidence before him and dismissed all the Plaintiffs claims when he concluded his judgment on page 85 of the record thus –

G “*I find as a fact that the Plaintiff has failed to prove that he is entitled to any of the reliefs sought in paragraph 19 of the Amended Statement of Claim which is hereby dismissed in its entirety.”*

Dissatisfied with the judgment of the learned trial judge, the Plaintiff appealed to the Court of Appeal holden at Benin City. The Court of Appeal in unanimous judgment considered all the issues submitted to it H for resolution and dismissed the appeal.

Aggrieved by the decision of the Court of Appeal, the Plaintiff has now further appealed to this court.

The Plaintiff's case was simply that he applied to the Plot

Allocation Committee of ISIOHOR village on 10/3/73 for a grant of a parcel of land by the Oba of Benin in accordance with Bini custom. The application was approved by the Oba of Benin on 18/5/73. The parcel of land measured 400 feet by 400 feet (see Exhibit A). The grant was further confirmed by a deed of conveyance dated 19/9/77 conveying the same B piece of land to the Plaintiffs as grantee and the Oba of Benin as the grantor/trustee. The conveyance is Exhibit B.

Its recitals read in part –

“2. By an application dated the 10th day of April, 1973 the C Grantee applied to the Grantor for a grant of the said piece or parcel of land.

3. The said application was approved by the Grantor on the 18th day of May, 1973.

The Grantor as the said Trustee hereby conveys unto the Grantee D All that piece or parcel of land at Isiohor Village in Ward II/K in Benin City, having an area of 4.599 acres demarcated by survey beacons BC.4839, BC.4880, BC.4841 and BC.4842 which piece or parcel of land is particularly delineated in PINK on Plan No. B./GA/941/76 annexed to E these presents... ”

The Plaintiff said he remained in undisturbed possession until sometime in 1981 when the Defendant began to trespass on the said land. When all efforts to settle the matter failed to achieve any positive result, he F instituted these proceedings in court. The Plaintiff also filed a survey plan of the area in dispute as Exhibit F on which he relied.

The Defendant on the other hand said he also by application dated 20/12/73 applied to the same ISIOHOR Village Plot Allocation Committee G for a plot of land. He got one. And the Oba of Benin gave his approval on 24/4/74. The piece of land also measured 400 feet (see Exhibit J) He said the land given to him as per Exhibit J was not the same land given to the Plaintiff as per his Exhibit A or at all. The Defendant also filed and relied on the survey plan of the area in dispute. This was Exhibit G in the H proceedings.

After a review of the facts and after considering all the exhibits tendered in support of the grants by both sides the learned trial judge held

that the plaintiff had failed to prove that the land approved for him in Exhibit A is the same land now in dispute in Exhibit F. That finding was confirmed by the Court of Appeal as shown above, hence this appeal.

B So much for the facts of the case. The parties filed and exchanged briefs of argument in the appeal. In the Plaintiff's brief four issues have been identified for determination. They read as follows:-

C *"1. Can it be said that the Court of Appeal was right when it held that the Appellant had not succeeded in showing that the land in dispute as shown in Exhibit "F" is the very piece of land allotted to him in 1973 and thereafter held that the plan in Exhibit "F" is the same as the plan in exhibit "B" which conveyed the land to the Appellant?"*

D *2. Can it be said that the Court of Appeal was right when it held that the Respondent's equitable interest was first in time and that any subsequent legal interest of the same piece of land would be invalid when as a fact Exhibit "A" the Appellant's Approval Form was dated 10th April 1973 while the Respondent's Approval form – Exhibit "J" was dated 20th December, 1973 and both approvals were contained in Exhibits "B", "F" and "G" as the land in dispute?*

3. Was the Court of Appeal right in holding that legal conveyance is relevant in transferring a full and valid title to an allottee as contained in Exhibit "B" when both parties had expressly agreed to be so bound?

F *4. Were the proper principles of law followed in evaluating the evidence?"*

G In view of the judgments of the two lower courts which I have carefully studied, I consider only issue (1) necessary for consideration in this appeal. It is only when that issue fails, that it will be necessary to consider the other issues. Issue (1) relates to the identification of the land in dispute and as I said if it succeeds, there will be no need to consider other issues because there will be no land to which those issues can be connected or related. It would then be a mere academic exercise to treat them. Put in H another way the issue is simply whether the Court of Appeal was right when it held that the Plaintiff has not succeeded in showing that the land in dispute as shown in Exhibit F, is the very piece of land allotted to him in 1973 or that the Plan in Exhibit F is the same as the Plan in Exhibit B which

conveyed the land to the Plaintiff.

It is clear from the judgments of the lower courts that the crucial issue before them was simply that of the identity of the land in dispute. The learned trial judge in his judgment on page 83 of the record said amongst others that:-

“From the evidence adduced in this case, the Plaintiff has not succeeded in proving that the land referred to in Exhibit A is the land in dispute as shown in the dispute survey plan Exhibit F tendered by the Plaintiff. Clearly the land in dispute is not in Isiohor/Egbaen Road (as shown in Exhibit F).”

The judgment continued on page 84 thus –

“Finally, I wish to stress that the beacon blocks marking the boundaries of the land approved in Exhibit J (The Defendant’s approved application) are Nos. WIJK547, WIJK548, WIJK549 AND WIJK550. These beacons are quite different from those inserted in Exhibit A (The Plaintiff’s approved application), which are B.T. P.B.B. Nos.1031, 1032, 1033, 1034, 1035 and 1036 respectively. The two sets of beacons cannot in the absence of fraud, be inserted in respect of the same land in the same ward. No fraud has been proved by the Plaintiff against the Defendant.”

The learned trial judge had before now identified clearly the dispute between the parties when he said on page 77 that:-

“The facts adduced in evidence have been sufficiently set out in great detail in the court of this judgment. It seems to me that from the evidence, there is no dispute that Exhibit A, the Plaintiff’s approved document and Exhibit J., the defendants approval document, were regularly recommended by the same ward and for the Oba’s approval and that the Oba’s approval was regularly indicated in the two documents. There is also no dispute between the parties as to Exhibit A being earlier in point of time than Exhibit J. What seems to be in dispute between the parties is whether the two documents or either of them is in respect of the land in dispute which is clearly delineated in Exhibit F tendered by the Plaintiff and Exhibit G tendered by the Defendant.”

And as earlier stated, the learned trial judge had no difficulty in coming to the conclusion that the Plaintiff had failed to prove that the land

allotted to him as per Exhibit A is the land now in dispute as shown in the Plaintiff's dispute survey plan Exhibit F

One of the issues submitted by the Plaintiff for resolution in the Court of Appeal reads:-

B *"Whether it was proper for the learned trial judge to dismiss the Plaintiff's claim not on the basis of comparison of the competing titles of the parties but on the ground that the Plaintiff did not show that the land in dispute is the same as that granted to him by the Oba, when the Plaintiff had the land surveyed and conveyed and identity was not really the issue."*

C The Court of Appeal considered the issue and in the lead judgment held as follows:-

"It is trite law that in an action for a declaration of title the onus of proof is on the party seeking the declaration to prove same and on the strength of his own case, not on the weakness of the other vide KODILINYE VS ODU (1935) 2 WACA 336; BELLO VS EWEKA (1981) 1 SC 101. If some doubt has been introduced as to the location of the land and dimensions thereof, surely the onus rest squarely on the appellant to introduce evidence (even if in rebuttal), to clear those doubts..... It is for example the duty of the appellant to produce a plan that would leave the issue as to whether the land in dispute can be described as "situate at Isiohor on the right of the road when going from Isiohor to Egbaen" in no doubt. So also it is the task of the appellant to produce evidence to explain how a land described as 400 feet by 400 feet became 137.47 metres by 175.03 metres by 77.57 metres by 183.64 metres... The onus is on the appellant to show that the present land in dispute was allotted to him. This I must repeat he has failed to do."

H The Court of Appeal therefore dismissed Plaintiff's appeal. It is thus the same issue of identity of the land in dispute that has been settled by both the trial High Court and the Court of Appeal that this court has been called upon to have another look. This is clearly an issue of facts. All the salient findings of facts made by the High Court in its judgment were confirmed by the Court of Appeal which then dismissed Plaintiff's appeal as shown above. **Ordinarily this court ought not lightly depart from**

concurrent findings of fact of the two lower courts because it has no opportunity of seeing and listening to the witnesses testify. But where it is manifest that those concurrent findings were based on a wrong perspective of the case, this court has not only the right but the duty to interfere on the issues of fact (see BALOGUN & ORS VS. AGBOOLA (1974) 1 All NLR 66, EBBA VS. OGODO (1984) 4 SC 84). The Plaintiff herein has not been able to show why we should disturb the concurrent findings of facts by the lower courts. And how could he had succeeded anyway? The facts above clearly show that the Plaintiff was:-

(i) allotted or granted a plot of land under Bini customary law measuring 400 feet by 400 feet with B.T.P.B.B. Nos. 1031, 1032, 1033, 1034, 1035 and 1036 as per Exhibit A in 1973. There is no plan attached to Exhibit A.

(ii) the allotment or grant above, was confirmed by a deed of conveyance in 1977 (Exhibit B). It has a survey plan attached to it showing the piece of land having an area of 4.599 acres demarcated by survey beacons BC 4839, BC 4840, BC 4841 and BC 4842 and measuring 602.5 feet by 431.3 feet by 587.4 feet by 254.5 feet.

(iii) Exhibit F is the survey plan of the land in dispute prepared by the Plaintiff. It shows the land as measuring 394.82 feet by 416.50 feet by 376.57 feet by 192.55 feet by 431.33 feet by 185.99 feet.

Surely it was the duty of the Plaintiff as found by the lower courts to have shown how the land measuring 400ft as per Exhibit A grew to become 4.599 acres measuring 602.5ft by 431.3ft by 587.4ft by 254.5ft (see Exhibit B). Put in another way, it was the duty of the Plaintiff to have shown that the land in dispute (Exhibit F) was the same land allotted or granted to him in Exhibit A. This he failed to do. The lower courts were therefore right to have dismissed his claims. Issue (1) therefore fails.

As I indicated earlier in this judgment issue (1) having failed, there is absolutely no need to consider the remaining issues. The issue of identity of the land in dispute being crucial, it is plain that since the Plaintiff had been unable to identify the land he was

claiming, he cannot succeed in the case even if other issues are decided in his favour. (See for example KWADZO VS ADJEI 10 WACA 274, ARADE VS ASANLU (1980) 5-7 SC 78).

The appeal therefore fails on the issue of identify alone. It is accordingly dismissed with N10,000.00 costs in favour of the Defendant.

KARIBI-WHYTE JSC

I have had the privilege of reading the leading judgment of my learned brother Kutigi, JSC in this appeal. I agree with his reasoning and the conclusion dismissing the appeal. I also hereby dismiss the appeal.

A careful reading of the judgment discloses that the crucial issue to be determined in the dispute before the courts below is that of the identity of the land in dispute. This is obvious from page 3 of the judgment of the learned trial judge where he said;

“From the evidence adduced in this case, the Plaintiff has not succeeded in proving that the land referred to in Exhibit A is the land in dispute as shown in the survey plan Exhibit F tendered by the Plaintiff. Clearly the land in dispute is not in Isiohor/Egbaen Road (as shown in Exhibit F).”

The identity of the land in dispute was also an issue in the Court below. In considering the issue the Court below said:

“...If some doubt has been introduced as to the location of the land and dimensions thereof, surely the onus rest squarely on the appellant to introduce evidence (even if in rebuttal), to clear those doubts....”

They continued,

“... It is for example the duty of the appellant to produce a plan that would leave the issue as to whether the land in dispute can be described as “situate at Isiohor on the right of road when going from Isiohor to Egbaen” in no doubt. So also it is the task of the appellant to produce evidence to explain how a land described as 400 feet by 400 feet became 137.47 metres by 175.03 metres by 77.57 metres by 183.64 metres...”

The Court of Appeal held that it is the duty of the Appellant to show that the present land in dispute was allotted to him, and this in view of their findings he failed to discharge.

It is clearly the same issue of the identity of the land in dispute that has been submitted for determination in this Court. This is an issue of fact already settled by both courts below. The Court below has affirmed the findings of the learned trial Judge. B

It is well established principle that an Appellate Court will very rarely, if at all interfere with the findings of facts made by the trial court. This is because such findings of fact enjoy the privilege of passing through the furnace of acrimonious cross-examination, the tooth comb scrutiny of the observation of the witnesses reactions and assessment of the veracity of their testimony. Accordingly, such findings ought to be accorded due respect in Appellate Courts which did not have the advantage of the trial Judge. However, the findings are not sacrosanct. Where the conclusions made from the findings are not supported by the evidence relied upon, or the proper conclusions or inferences are not drawn from the evidence, or where the trial court has failed to evaluate the evidence, the Appellate Court will, in the interest of justice, be free to do so. The Appellate court is entitled to evaluate the evidence and come to the right decision supported by the evidence. C D E

As a matter of practice, where the court below has affirmed the finding of fact of the trial Court, leave to appeal against such findings of fact to this Court can only be granted in exceptional circumstances – See Order 2 rule 32 RSC 1985 as amended in 1999. F

This Court will undoubtedly interfere with concurrent findings of facts made by Courts below which are shown to be perverse or to contain errors of law, substantive or procedural leading to a miscarriage of justice – See Omoborinola II v. Military Governor, Ondo State (1988) 14 NWLR 89, Balogun & ors. vs. Agboola (1974) 1 All NLR. 66; Ebba v. Ogodo (1984) 4 SC. 84. G H

The Appellant has not been able to demonstrate why the concurrent findings of the lower courts should be disturbed. The facts as found show clearly that the Plaintiff was,

(i) allotted or granted a plot of land under Bini customary law measuring 400 feet by 400 feet with BTPBB Nos. 1031, 1032, 1033, 1034, 1035 and 1036 as per Exhibit A in 1973. There is no plan attached to Exhibit A.

B (ii) the allotment or grant was confirmed by a deed of conveyance, in 1977 (Exhibit B). There is a survey plan attached showing the piece of land of an area of 4,599 acres demarcated by survey beacons BC4839, BC 4840, BC 4841 and BC 4842 measuring 602.5 feet by 431.3 feet by 587.4 feet by 254.5 feet.

C (iii) Exhibit F is the survey plan of the land in dispute prepared by the Plaintiff. It shows the land as measuring 394.82 feet by 416.50 feet by 376.57 feet by 192.55 feet by 431.33 feet 185.99 feet.

D The difference in the descriptions of the disputed land places the burden on the Plaintiff to satisfy the court that the land in dispute in Exhibit F was the same land allotted to him in Exhibit A. Plaintiff has failed in this regard. The Courts below were therefore right in dismissing his claims – See Kwadzo v. Adjei 10 WACA.274.

E For the reason I have stated in this judgment, and the fuller reasons in the leading judgment of my learned brother Idris Kutigi, JSC the appeal fails and it is hereby dismissed. Appellant shall pay N10,000.00 as costs to the Respondent.

F _____

ONU JSC

G I had a preview of the judgment of my learned brother Kutigi, JSC. I agree with his reasoning and conclusion that the appeal lacks merit and it fails.

H The learned trial Judge’s finding of fact i.e. as to the identity of the land in dispute which it found established and this, after a dispassionate review of the evidence adduced before him to the effect that the land contained in Exhibit A is not the same as that in Exhibit F, the confirmation thereof of the decision by the Court of Appeal, clearly amounts to concurrent findings by the two courts below.

In the case of Mogaji v. Cadbury (Nigeria) Ltd. (1985) 2 NWLR

(Part 393) at 396 it was held that the Supreme Court will not ordinarily depart from concurrent findings of fact by the High Court and the Court of Appeal unless these are shown to be erroneous. See also Lokoyi & ors. v Olojo (1983) 8 SC. 61; Mogo Chinwendu v. Nwanegbo Mbamali; Ojomu v. Ajao (1983) 9 SC. 22 at 53 and Ezeudu v. Obiagwu (1986) 2 NWLR B (Part 21) 208 at 215. In the appeal herein, as no such error has been shown to compel me to interfere, I will decline to do so.

As issue I which I consider paramount, based as it were on the identity of the land, has failed a consideration of the other issues in my view C is rendered otiose.

Accordingly, I too dismiss the appeal and make similar consequential orders contained in the leading judgment.

ACHIKE JSC

I have before now read the leading judgment of my learned brother, Kutigi, JSC. I agree with his conclusion that the appeal lacks merit and should be dismissed. E

Suffice it to say that the crucial issue in the appeal is the determination of the identity of the land in dispute. It is now trite that where the identity of a parcel of land in dispute remains disputed, the burden is undoubtedly on the plaintiff to establish same. The two lower courts have separately come to the conclusion that the plaintiff/appellant has failed to discharge this burden. Indeed, had the plaintiff/appellant succeeded in respect of the other issues raised in this appeal but remained unable to establish the question to the satisfaction of the court, his claim is bound to fail. F G

The question of identity of the land in dispute raises a question of fact. In this case, by the judgments of the two lower courts which were favourable to the respondent, the law is manifest that this Court will not ordinarily depart from those concurrent findings of fact by the two lower H courts unless such findings have been demonstrably shown to be erroneous. No such error has been made out by the appellant to persuade me to depart from those findings of fact.

In the result, this appeal lacks merit. I, too, would dismiss it with N10,000.00 costs in favour of the respondent.

B

AYOOLA JSC

I have read in advance the judgment delivered by my learned brother, Kutigi, JSC. I agree with his conclusion that the appeal should be dismissed and for the reasons he gives for that conclusion. I do not wish to add anything to the reasons he has clearly stated. In the result I too dismiss the appeal with costs as ordered by my learned brother, Kutigi, JSC.

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