

# **KINGS LAW REPORTS**

## **(ALL SC/NOVEL CA)**

**(2001) KLR VOL 7 PART 128 pp. 2805 - 3036**

**JULY 2001**

**Dedicated to the King of kings**

**O. O. NOEL ESQ. Chief Editor**

### **INDEX OF CASES REPORTED**

#### **JULY CONTD.**

16. Chairman National Population Commission v. Chairman Ikere Local Government p. 2805
17. Korede v. Adedokun p. 2829
18. Offoboche v. Ogoja Local Government p. 2843
19. Rockonoh Property Ltd. v. Nigeria Telecommunications Plc p. 2871
20. Sparklin Breweries Ltd. v. Union Bank of Nigeria Ltd. p. 2911
21. Bamaiyi v. Attorney General of the Federation p. 2939
22. Olunloyo v. Adeniran p. 2967
23. Rufai v. State p. 2981
24. Oyefolu v. Durosini p. 2997
25. Obasohan v. Omorodion p. 3015

ii **INDEX OF SUBJECT MATTER IN (2001) 7 KLR**

**ACTIONS** - Torts - Alternative claim - In the tort of unlawful interference with business - Grounded wrongfully on breach of contract - The alternative claim must fail (H 2) Sparklin Breweries Ltd. v. Union Bank p. 2911

**ADMINISTRATIVE LAW** - Abuse of office - Public Officers Protection Law s. 2(a) - Abuse of office and bad faith - Will deprive a party of the protection of that provision - And burden of proof is on plaintiff (H7) Offoboche v. Ogoja L.G. p. 2843

**AFFIDAVITS** - Conflicts in affidavit - The authority of Nwosu v. Imo State Environmental Sanitation Authority is not applicable - And is distinguished (H 4) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

**AFFIDAVITS** - Documents - Resolution of disputed facts by documents - The weight and value of the documents tendered by the appellant - Are dependent on oral evidence of witnesses - And it was wrong to elevate documents to conclusive evidence of their contents (H 3) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

**APPEALS** - Briefs - Additional grounds of Appeal - Which are not incorporated in an Amended Notice of Appeal - Cannot be argued in the brief - Or the brief will become incompetent (H 2) Korede v. Adedokun p. 2829

**APPEALS** - Damages - General principle - Approach of the appellate court to award of damages by the trial court - When the appellate court should exercise the power of review (H13) Offoboche v. Ogoja L.G. p. 2843

**APPEALS** - Ground of appeal - Omnibus ground - Where there was no evidence to support the trial court's finding of liability - The finding can be challenged on the omnibus ground - Though not very ideal (H 3)

Sparklin Breweries Ltd. v. Union Bank p. 2911

**APPEALS** - Leave - Issue - Fresh issue - When an issue not raised in the Court below - Is sought to be raised as a fresh point in the Supreme Court - Leave to do so must be sought and obtained (H 3) Rockonoh Property Ltd. v. NITEL p. 2871

**APPEALS** - Notice of appeal - Incorporating grounds of appeal - Must have been filed at the High Court - In conformity with the Rules of Court - For an appellant to be heard (H 1) Korede v. Adedokun p. 2829

**APPEALS** - Retrial - Error of trial court - Occasioned a miscarriage of justice - And the judgment was properly set aside - And retrial ordered (H 2) Oyefolu v. Durosinmi p. 2997

**APPEALS** - Suo motu issues - Where court takes up points suo motu - Parties must be given opportunity to address the court - Before decision is made on the points (H 3) Korede v. Adedokun p. 2829

**CHIEFTAINCY MATTERS** - Chieftaincy declaration - Error of trial court - The finding of the trial court - As to membership of Iga Osolu ruling House - Is contrary to the Chieftaincy declaration - And is a fundamental error (H 6) Oyefolu v. Durosinmi p. 2997

**CHIEFTAINCY MATTERS** - Chieftaincy declaration - Error of trial court - The trial court was in error - To go outside the declaration - And invoke a principle not provided therein (H 5) Oyefolu v. Durosinmi p. 2997

**CONSTITUTIONAL LAW** - Case stated - Questions referred to the court of Appeal - S. 295(2)1999 Constitution - It is not mandatory for the court of Appeal to answer every such question (H 1) Bamaïyi v. A-G Federation p. 2939

**CONSTITUTIONAL LAW** - Case stated - Questions referred to the

iv **INDEX OF SUBJECT MATTER IN (2001) 7 KLR**

Court of Appeal - If they do not arise from proceedings before the trial court - Will not be entertained as a mere academic exercise (H3) Bamaiyi v. A-G Federation p. 2939

**CONSTITUTIONAL LAW** - Interpretation - S. 295(2) 1999 Constitution - Meaning of 'decision' as used in the section (H 2) Bamaiyi v. A-G Federation p. 2939

**CONSTITUTIONAL LAW** - Question referred - That amounted to putting the cart before the horse - The Court of Appeal is right - To refuse to answer the question (H 5) Bamaiyi v. A-G Federation p. 2939

**CONSTITUTIONAL LAW** - Reference of questions to appeal court - The right to refer - Arises only if there is a substantial question of law - Before the High Court (H 4) Bamaiyi v. A-G Federation p. 2939

**COURTS** - Error of trial court - It was a fundamental error - For the Court to present facts - Which were not the case - Of either of the parties (H 1) Oyefolu v. Durosinmi p. 2997

**COURTS** - Judgments - Pleadings - It is not for a court to speculate what defences - May have been available to a defendant (H11) Offoboche v. Ogoja L.G. p. 2843

**CRIMINAL PROCEDURE** - Arraignment - The plea of the accused - Was taken without explaining the charge to him - In the only language he understands - And the trial was therefore null and void (H1) Rufai v. State p. 2981

**CRIMINAL PROCEDURE** - Retrial - Where trial of the appellant was nullified - Proper order to make is for a fresh trial (H2) Rufai v. State p. 2981

**CUSTOMARY LAW** - Chieftaincy declaration - Which is registered -

And made pursuant to the law - Is proof of the customary law - In relation to that chieftaincy (H 4) Oyefolu v. Durosinmi p. 2997

**DAMAGES** - Assessment - Special and general damages - Principle in regard to the assessment and award of special damages - Differentiated from that of general damages (H 11) Rockonoh Property Ltd. v. NITEL p. 2871

**DAMAGES** - General damages - Trespass to land - When general damages are sought on the basis of trespass to land - They would represent payment for the tort of trespass - Not the value of the land (H 2) Rockonoh Property Ltd. v. NITEL p. 2871

**DAMAGES** - General Damages - Quantum - General damages are always made as a claim at large - The quantum need not be pleaded and proved (H 1) Rockonoh Property Ltd. v. NITEL p. 2871

**DEFAMATION** - Libel - Continuous publication - There is no concept of continuous publication in the law of defamation - Every publication and republication is complete in itself - In founding a cause of action (H1) Offoboche v. Ogoja L.G. p. 2843

**DEFAMATION** - Libel or slander - Defamatory materials - Reading it out to an audience - That know it was written - Such publication is libel and not slander (H9) Offoboche v. Ogoja L.G. p. 2843

**DEFAMATION** - Limitation - Qualified privilege - A person who claims that the action is statute-barred - Does not need to establish a defence of qualified privilege - In order to succeed in his plea (H7) Offoboche v. Ogoja L.G. p. 2843

**DEFAMATION** - Qualified privilege - Pleading - Where a defendant raises a defence of privilege - He should as a matter of pleadings aver the facts on which the defence is based (H8) Offoboche v. Ogoja L.G. p. 2843

**DEFAMATION** - Single publication - Cause of action - Pleading - A party who makes one single publication the foundation of his cause of action - Cannot extend the period of accrual of cause of action - Merely by pleading further publications (H2) *Offoboche v. Ogoja L.G.* p. 2843

**EVIDENCE** - Affidavits - Resolving conflicts in affidavits - The principle laid down in *Falobi v. Falobi* - Applies to a variety of proceedings - And is not restricted (H 1) *Chairman N.P.C. v. Chairman Ikere Local Govt.* p. 2805

**EVIDENCE** - Affidavits - Whether a case may be heard entirely on affidavit evidence or not - Is determined by the nature of the issues - Whether they are of contentious facts or not (H 2) *Chairman N.P.C. v. Chairman Ikere Local Govt.* p. 2805

**EVIDENCE** - Evaluation - Basic qualities - Which evidence must possess - Before a court can act upon it (H 10) *Rockonoh Property Ltd. v. NITEL* p. 2871

**EVIDENCE** - Evaluation - Probative value - Evidence which has no probative value - Cannot be relied upon to support a claim (H 9) *Rockonoh Property Ltd. v. NITEL* p. 2871

**INJUNCTIONS** - Consequential order - Main claim - Where the main claim was not granted - The order of injunction which was consequential cannot stand (H12) *Obasohan v. Omorodion* p. 3015

**INTERLOCUTORY APPLICATIONS** - Stay of execution - Discretion - In exercising the discretion to grant or refuse same - The competing rights of the parties should be considered (H 2) *Olunloyo v. Adeniran* p. 2967

**INTERLOCUTORY APPLICATIONS** - Stay of execution - Pendency

of appeal - Special circumstances which have received judicial approval (H 3) *Olunloyo v. Adeniran* p. 2967

**INTERLOCUTORY APPLICATIONS** - Stay of Execution - Grant of - Stay will be granted only if the court is satisfied - That there are special or exceptional circumstances - Which warrant it (H 1) *Olunloyo v. Adeniran* p. 2967

**JUDGMENTS** - Issue - Principles applicable in a case - Are determined by the basic issues in the case (H2) *Obasohan v. Omorodion* p. 3015

**JUDICIAL PRECEDENTS** - Ratio decidendi - Decision of the court - On issues joined by parties - Forms part of the ratio for the case (H 3) *Oyefolu v. Durosinmi* p. 2997

**LAND LAW** - Co-ownership of land - Succession - Partition - Rights of Occupancy - When land has been held in co-ownership - Partitioning is an essential prerequisite - To a claim to any separate right (H9) *Obasohan v. Omorodion* p. 3015

**LAND LAW** - Evidence - Title - Instrument conferring title - Obtaining of necessary consent - The burden of proving that the consent was obtained - Was on the party relying on the validity of the transaction (H 7) *Rockonoh Property Ltd. v. NITEL* p. 2871

**LAND LAW** - Joint acquisition of property - Succession - Rights of successors - Where the fathers of the parties have jointly acquired the property in which they lived until their death - What the rights of their successors are (H8) *Obasohan v. Omorodion* p. 3015

**LAND LAW** - Joint ownership - Proof - A party claiming to be joint owners of a property - Need not prove root of title of the joint ownership - If he can prove a joint acquisition of the property (H1) *Obasohan v. Omorodion* p. 3015

**LAND LAW** - Joint tenancy - Joint acquisition of property - Subject to customary law - Does not create joint tenancy in the meaning in which the term is known at common law (H4) Obasohan v. Omorodion p. 3015

**LAND LAW** - Joint title - Statutory right of occupancy - Where joint title of land remained unreserved - Until partition has taken place - Separate entitlement of parties - Cannot be declared (H7) Obasohan v. Omorodion p. 3015

**LAND LAW** - Land subject to customary law - S. 63(2) of the Property and Conveyancing Law - And s. 5 (3) of the Administration of Estate Law - Do not apply to land subject to customary law (H3) Obasohan v. Omorodion p. 3015

**LAND LAW** - Land Use Act - Succession - Right of Occupancy - Deemed holders - Where parties' fathers died before commencement of the Act - And the parties succeeded to the interest of their fathers - They become deemed holders of statutory right of occupancy (H6) Obasohan v. Omorodion p. 3015

**LAND LAW** - Proprietary right - Co-ownership - Identification of the rooms occupied by the co-owner - Will not be sufficient for creating absolute proprietary right - Over portions of the entire property (H11) Obasohan v. Omorodion p. 3015

**LAND LAW** - Registration - Instrument - Consent - Presumption - When consent is endorsed on the instrument - It will raise a presumption of validity of the instrument (H 5) Rockonoh Property Ltd. v. NITEL p. 2871

**LAND LAW** - Registration - Instrument - Governor's consent - Lands Instrument Registration Law s. 10 - Registrar satisfaction as to Governor's consent - Is a matter of evidence (H 4) Rockonoh Property Ltd. v. NITEL p. 2871

**LAND LAW** - Registration - Instrument - Which does not have the necessary consent endorsed on it - The mere fact that such an instrument was registered - Will not raise the presumption of regularity to the effect that the consent was given (H 6) Rockonoh Property Ltd. v. NITEL p. 2871

**LAND LAW** - Right of occupancy - Rooms - There cannot be a statutory right of occupancy in relation to rooms in a building (H10) Obasohan v. Omorodion p. 3015

**LAND LAW** - Title - Instrument - Registration - Absence of necessary consent - The fact that the instrument was registered is not helpful - Because registration does not cure the defect in an instrument (H 8) Rockonoh Property Ltd. v. NITEL p. 2871

**LAND USE ACT** - Interpretation of s. 48 - The Act does not set aside existing laws - Including customary law and common law (H5) Obasohan v. Omorodion p. 3015

**LIBEL** - Damages - Assessment - Claim for non-pecuniary loss - Elements to be taken into account (H15) Offoboche v. Ogoja L.G. p. 2843

**LIBEL** - Damages - Claim for non-pecuniary loss - Rationale for the award of damages for injured reputation (H14) Offoboche v. Ogoja L.G. p. 2843

**LIBEL** - Damages - Claim of a single award - For several causes of action - Where the respondents were liable for only a few of the libels proved - And not entirely for the same instances of libel - Separate awards are called for (H12) Offoboche v. Ogoja L.G. p. 2843

**LIBEL** - Damages - Success of the action before the Supreme Court - When erroneous excessive award of ten million naira - Will be reduced to N100,000.00 (17) Offoboche v. Ogoja L.G. p. 2843

**LIBEL** - Express malice - Consideration of - An inquiry whether there is express malice is not necessary - Where the occasion is not privileged (6) Offoboche v. Ogoja L.G. p. 2843

**LIBEL** - Official duty - Exonerating factor - That a party had committed libel in the cause of performing his official duty - May not exonerate him from liability for libel - Unless the occasion of the publication was privileged (H16) Offoboche v. Ogoja L.G. p. 2843

**PRACTICE & PROCEDURE** - Evidence - Affidavits - Hurried proceedings - Proceedings should not be hurried at the expense of justice - As it may amount to a burying of justice (H 6) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

**STATUTES** - Applicability - Libel - Public Officers Protection Law s. 2(a) - Artificial persons - The protection of that law is available to artificial persons (H10) Offoboche v. Ogoja L.G. p. 2843

**STATUTES** - Limitation - Public Officers Protection law s. 2(a) - Defamation - Action commenced within 3 months - Of the publication of the offending materials - Is not barred by that provision (H3) Offoboche v. Ogoja L.G. p. 2843

**STAY OF EXECUTION** - Balance of justice - A litigant must show special or exceptional circumstances - By pleading the balance of justice in his favour - To succeed in the application (H 4) Olunloyo v. Adeniran p. 2967

**STAY OF EXECUTION** - Conditional stay - The courts below rightly exercised their discretion - In granting a conditional stay - As applicant did not file any affidavit of means or suggest any other conditions (H 5) Olunloyo v. Adeniran p. 2967

**TORTS** - Business - Unlawful interference with - Meaning - The tort

consists in one person using unlawful means - With the aim and effect of causing damage to another (H 1) Sparklin Breweries Ltd. v. Union Bank p. 2911

**TRIBUNALS** - Census Tribunal - The census complaint - Was not such as could be heard entirely on affidavits - And the entire proceedings were thus vitiated (H 7 ) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

**TRIBUNALS** - Fact finding tribunal - Credibility of witnesses - The procedure adopted by the tribunal - For determining credibility of witnesses it had not seen - Is unsupported by law and wrong (H 5) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

**WORDS & PHRASES** - Abuse of office - What it means (H5) Offoboche v. Ogoja L.G. p. 2843

## **INDEX OF STATUTES & RULES**

Administration of Estate law (Cap 2 Laws of the Bendel State), Section 5(3) Obasohan v. Omorodion p. 3015

Constitution of Nigeria 1999 S.295 (1)(a)(b) and (2) Bamaiyi v. A-G Federation p. 2939

Court of Appeal Rules Order 3 rule 2(1) Korede v. Adedokun p. 2829

Evidence Act, Cap. 112, LFN, 1990, SS. 7 and 12 Rockonoh Property Ltd. v. NITEL p. 2871

Land Instruments Registration Law, Cap. 72, Laws of Eastern Nigeria; S. 10 Rockonoh Property Ltd. v. NITEL p. 2871

**xii INDEX OF STATUTES & RULES IN (2001) 7 KLR**

Land Use Act, 1978, Sections 48, 34(1) & (2), 51, 15, 14 Obasohan v. Omorodion p. 3015; SS. 22 and 26 Rockonoh Property Ltd. v. NITEL p. 2871

Local Government Law (Cap. 68) Laws of Cross river State, S. 175 Offoboche v. Ogoja L.G. p. 2843

National Population Commission (Amendment) Decree 1992 (Decree No. 26) - S. 26 A(7) Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

National Population Commission Act : Cap. 270 LFN, 1990 - S. 1, S. 26 A Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805

Nigerian Coal Corporation Act, 1950 (Cap.299) Vol.18 LFN, 1990 S. 12(4), Para. 15 of the First Schedule Rockonoh Property Ltd. v. NITEL p. 2871

Property and Conveyance Law (Cap 129 Laws of the Bendel State as applicable in Edo State) Section 63(2) Obasohan v. Omorodion p. 3015

Public Officers Protection Law (Laws of Cross River State); S.2(a) Offoboche v. Ogoja L.G. p. 2843

Uniform Civil Procedure Rules - O. 39, rr. 1 & 2 Chairman N.P.C. v. Chairman Ikere Local Govt. p. 2805