

SUPREME COURT OF NIGERIA
FRIDAY 11TH JANUARY, 2002. SC. 94/1999
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
U. MOHAMMED, A. I. IGUH, E. O. AYoola, JJSC

THE REGISTERED TRUSTEESAPPELLANT
OF THE DIOCESE OF ABA
AND
HELEN NKUME RESPONDENT

LAND LAW - Title - Proof - Since plaintiff failed to lead evidence of inheritance of the disputed land - In prove of its root of title - Its claim must fail (H1)

LAND LAW - Title - Root of - When pleaded - Where a party's root of title is pleaded - Same must be established for a proper exercise of acts of ownership (H2)

APPEALS - Issues - Consideration of - Resolution of key issue - Has made consideration of other issues unnecessary (H3)

FACTS

This action commenced at the High Court of Abia State Holden at Umuahia. Plaintiff/appellant claimed inheritance of the land in dispute from the Registered Trustees of the Synod of the Diocese on the Niger which had leased the land from the then Government of Eastern Nigeria. Defendant/respondent contended that she inherited the said plot of Land from her Father.

Appellant claimed the sum of N10,000 from respondent as special and general damages for trespass and an injunction to stop respondent, her agent and workmen from interfering with the said plot of land. Two witnesses testified for appellant while eight witnesses testified for respondent. At the end of trial, judgment was entered for appellant. The court granted special damages of N600. Being aggrieved respondent appealed to the Court of Appeal, sitting at Port Harcourt. The court allowed the appeal. Dissatisfied, appellant filed appeal at the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Diocese of the Niger extended to the Diocese of Aba and whether the latter succeeded the former.

HELD (Unanimously dismissing the appeal per **KUTIGI JSC**)

LAND LAW - Title - Proof

1. As I said I have myself studied the record in this case. I entirely agree with the findings and conclusion of the Court of Appeal recited above. There is clearly no iota of evidence that the Plaintiff inherited the land in dispute from the Diocese of the Niger which the latter leased from the Government of Eastern Nigeria as per Exhibit B. Consequently the Plaintiff completely failed to prove its root of title and therefore its claims must fail. (p. 133 C)

LAND LAW - Root of title - When pleaded

2. It is settled law that where a party's root of title is pleaded as for example a grant, a sale, or conquest etc., that root of title has to be established first, and any consequential acts following therefrom can then properly qualify as acts of ownership. Where the title pleaded has not been proved, then it will be unnecessary to consider acts of possession, for the acts then become no longer acts of possession but acts of trespass. (p. 133 D)

APPEALS - Issues - Consideration of

3. The Plaintiff having failed to prove its title as pleaded has failed to prove its claims. I therefore resolve Plaintiff's issue (3) against them. This also means that issue (4) must also fail. And having resolved these two issues against the Plaintiff, there is absolutely no need to consider the remaining two issues. The resolution of issues 3 & 4 in my view sufficiently dispose of the appeal. I hasten to say that even if the remaining issues are resolved in favour of the Plaintiff they will not be sufficient to win it the appeal as they will still fail to prove its title. (p. 133 G)

REPRESENTATION

Chief M. I. Ahamba SAN with Chidi Nwuke and Okey Ajunwa for the Appellant

B. E. I. Nwofor for the Respondent

CASES REFERRED TO

Obioha v. Duru (1994) 8 NWLR (pt. 365) 631

Fasoro v. Beyioku (1998) 2 NWLR (pt. 76) 263

Balogun v. Akanji (1988) NWLR (pt. 70) 301

George v. Dominion Floor Mills (1963) 1 All NLR 71

National Invest. & Properties Co. Ltd. v. Thompson Org. Ltd. (1969) NMLR 99

Emegokwe v. George (1973) 4 SC. 113

LEAD JUDGMENT BY KUTIGI JSC

In the High Court of Imo State holden at Umuahia, the Plaintiff claimed from the Defendant jointly and severally as follows-

“(a.) N10,000.00 (Ten Thousand Naira) being special and general damages for trespass.

(a.) An injunction permanently to restrain the defendants, by themselves, their agents and workmen from in any way dealing or interfering with the said plot of land.

PARTICULARS OF SPECIAL DAMAGES

The value of 1,000 moulded blocks of cement destroyed by the Defendants

	N600.00
General Damages	9,400.00
	N10,000.00"

Two Defendants were originally sued. The first Defendant Comfort Nkume died leaving Helen Nkume as the only Defendant.

Pleadings were ordered filed and exchanged between the parties. These were later amended. The Plaintiffs fought their case on the basis of their *“Amended Statement of Claim”* filed on 6th October, 1986, while the Defendant relied on her *“further Amended Statement of Defence of 2nd Defendants”* filed on 12th January, 1989.

The Plaintiffs in paragraph 4 of their Amended Statement of claim described the land in dispute as -

“a piece or parcel of land known as PLOT of land East of Block 48 Umuahia situate and lying at Niger Street in the Umuahia Township within the Umuahia Judicial Division.”

At the trial the Plaintiffs called two witness in support of their claims while a total of eight witnesses testified for the Defendant including the Defendant herself. The facts are not difficult to understand. The Plaintiffs claim to have inherited the land in dispute from the Registered Trustees of the Synod on the Diocese of the Niger which had leased the land from the then Government of Eastern Nigeria, and are thus lessees in possession (see paragraph 4 of their Amended Statement of Claim reproduced hereunder).

The Defendant on the other hand contended that the land in dispute called ONU MIRI UZO UBI belonged to her father from whom she inherited it. She stated how her father's patient, one Mr. John D Iroanya, could not pay for native treatment by her father. So John Iroanya gave the land in dispute to her father in lieu of money. She was born on the land, and being the only child of his late father, she inherited it and has always been in possession (see paragraph of the Further Amended Statement of Defence set out hereunder.)

At the conclusion of the trial, the learned trial Judge in a reserved judgment found for the Plaintiffs' when he said as follows-

“In the final result, in the light of my findings, the Plaintiffs' are entitled to succeed and I hereby enter Judgment for the Plaintiffs against the Defendant for special damages of N600.00 for the one thousand cement blocks destroyed by the Defendant. I order perpetual injunction restraining the Defendant her agents and or servants from committing any further acts of trespass in the Plaintiffs' land which lies at Umuahia Urban and verged Pink in Exhibit C in these proceedings.”

Being aggrieved by the judgment of the learned trial judge, the Defendant appealed to the Court of Appeal holden at Port-Harcourt on a number of Grounds of Appeal. In a unanimous judgment, the Court of Appeal found merit in the appeal and accordingly allowed it. It dismissed Plaintiff's action or claims. The Court concluded its lead judgment as follows-

“From whatever aspect which the facts of this case are considered, I am satisfied that the Respondents (Plaintiffs) failed to make out a clear case against the Appellant (Defendant). The Appellant

(Defendant) who was therefore in exclusive possession of the land in dispute was entitled to maintain that possession by getting rid of the cement blocks unlawfully brought to the land, and cannot be liable for their value. I find merit in this appeal and accordingly allow it. The Respondents' (Plaintiffs') action having failed is hereby dismissed. I award N1,500.00 as costs in the Court below and N2,500.00 as costs in this Court in favour of the Appellant (Defendant)." (Words in bracket supplied by me). Dissatisfied with the judgment of the Court of Appeal the Plaintiffs have now appealed to this Court. Four grounds of appeal were originally filed. Another three were later added by leave of this Court.

The parties filed and exchanged briefs of argument in accordance with the Rules of the Court. At hearing of the appeal these briefs were adopted and counsel on both sides made additional oral submissions in amplification thereof. In Plaintiffs' brief four issues were identified as arising for determination in this appeal. They read thus-

"1. Whether the Court of Appeal considered in its judgment, the evidence of D.W.3 namely Bernard Okeke proved and admitted on the printed record, which supported the case of Appellant against the Respondent?"

2. Whether the Court of Appeal suo motu made a new case for the Respondent and introduced new issues not raised by the Respondent and/ or parties herein. If the answer is in the affirmative, whether the Court of Appeal was right in not calling upon the Appellant to address it on same.

3. Whether the Diocese of the Niger extended to the Diocese of Aba and whether the latter succeeded the former.

4. Whether the Appellant was not entitled to the land in dispute in terms of the Amended Statement of Claim at pages 62 to 65 of the Record."

The Defendant's counsel on the other hand has identified only one issue on page 4 of his brief as arising for determination in the appeal thus-

"Whether the Court below was right in holding that the Plaintiff/Appellants failed to prove their case and in dismissing it."

Having carefully read the entire record of proceedings in the case particularly the judgments of the lower Courts, I think the vital issue for determination in this appeal is the Plaintiff's/Appellants' is-

sue (3) above which will also answer issue (4) as well as provide an answer to the Defendant's single issue. This in my view will be the correct approach because the plaintiffs having pleaded the Diocese of the Niger as their root of title either stand or fall by their root of title. In other words evidence that the Plaintiffs in fact succeeded or are the successors of the Diocese of the Niger is imperative. I will now proceed to decide that issue or point. The Plaintiffs pleaded in paragraph 1,2,3,& 4 of the Amended Statement of Claim as follows-

"1. The Plaintiffs are Registered Trustees of Diocese of Aba, an Anglican Church Missionary Organisation with Headquarters at Aba.

2. The said Diocese of Aba was incorporated under the land Perpetual Succession Act, Chapter 98 with the Certificate of Incorporation dated 15th day of December, 1982. A certified true copy of the said Certificate of incorporation shall be founded upon at the hearing.

3. The Defendants are a mother and a daughter resident at 39, Lagos Street, Umuahia Township.

4. The Plaintiffs are the lessees in possession of a piece of parcel of land known as plot of land East of Block 48 Umuahia situate and lying at Niger Street in the Umuahia Township within the Umuahia Judicial Division. This piece of land is part of a larger area of land leased to the Registered Trustees of the Synod of the Diocese on the Niger by the then Government of Eastern Nigeria and by the then Governor of Eastern Nigeria and the then Minister of Town Planning Eastern Nigeria vide a Memorandum of Agreement dated 6th day of August, 1963 And registered as No. 87 on page 87 in volume 349 of the Lands Registry formally in the office of Enugu but now at Owerri. The Diocese of Aba to which St. Stephen's Anglican Church Umuahia belongs has now inherited the said piece or parcel of land. The said area of land is covered by and shown in the plan No UMA 116 annexed to the Memorandum of Agreement referred to above. The exact portion of the said land now in dispute is clearly marked and verged PINK in Plan No. VLD: 30/82 filed with this Statement of Claim. A certified copy of the said Memorandum of Agreement and the Plan shall be founded upon at the hearing."

The Defendant denies the lease which the Plaintiffs alleged is the root of their title and called for strict proof of same. She also denies that the Diocese of Aba includes St. Stephen's Anglican Church

Umuahia and that the Diocese of Aba inherited the land in dispute from the Diocese of the Niger and demanded strict proof of these averments. Paragraph 3 of the Further Amended Statement of Defence reads in part -

“4. In answer to paragraph 4 of the statement of claim, the Defendant denies that the Plaintiffs are lessees in possession of a piece or parcel of land known as plot of land East of Block 48 Umuahia at Niger Street, or that the aforementioned piece of land is a part of a larger leased to the Registered Trustees of the Synod of the Diocese on the Niger and will at the trial demand the strictest proof of the said “larger area of land” averred to be contained in the Memorandum of Agreement dated 6th August, 1963 ...

The defendant does not know that the Diocese of Aba now includes St. Stephen’s Anglican Church, Umuahia nor does she know that the said Diocese of Aba inherited the said piece of land from the Diocese on the Niger and will at the trial put the Plaintiffs to the strictest proof of both averments.

The Defendant does not know that the alleged plan UMA 116 covers the said area of the land and will put the Plaintiffs to the strictest proof of this averment at the trial.

The Defendant denies that the exact portion of the land in dispute is as shown in Plaintiffs’ Plan No. VLD/30/82 verged PINK and filed with the Plaintiff’s Statement of Claim.

In further denial of the said paragraph the defendant avers that the site plan of ST. Stephen’s Anglican Church premises Umuahia Ibeku numbered as No. IUPA/73/82 and dated the 16th day of July, 1982 clearly shows that the area of the land of the St. Stephen’s Anglican Church does not cross Niger Road and consequently does not extend to the area of the land in dispute. The defendant will reply on the certified true copy of the sketch of the said site plan in proof of her case.”

It is thus doubtless that Plaintiffs in paragraph 4 of their pleadings above pleaded the root of their title to the land in dispute to be the Diocese of the Niger. And this the record shows they did partially (not completely), when they tendered in evidence a lease dated 6th August, 1963 and registered as 87/87/349 at land Registry Enugu, now at Owerri. The lease (Exhibit B) in the proceedings, is between the Government of Eastern Nigeria on one part and the Diocese of

the Niger on the other hand. But not only that Plaintiff's claimed in their pleadings above that they inherited the land in dispute from the Diocese of the Niger. And the crucial question now is- What was the evidence of inheritance or succession at the Court of trial?

It is significant to observe here now that Plaintiff's issue (3) above is the same as the Defendant's issue (2) in the Court of Appeal which reads:

"2. Is there proof that the Plaintiffs/Respondents are the successors-in-title to the Synod of the Diocese on the Niger?"

There is no doubt that the learned trial judge had found on page 154 of his judgment as follows-

"There is evidence which I accept as true that the Plaintiff's the Registered Trustees of the Diocese of Aba are the successors-in-title to the Niger Diocese and are now owners in possession of the said land and have always maintained continuous possession."

Reacting to the above finding, the Court of Appeal in the lead judgment on pages 227 and 228 of the record stated as follows-

"The evidence as to their (plaintiffs) ownerships of the land was given on behalf, of the Respondent (plaintiffs) by a Rev. Canon Uju Obinya (P.W.1) of the Diocese of Aba. That aspect of his evidence is incredibly scanty. It reads:

"I know the land in dispute. It lies along Niger Street, Umuahia. It belongs to the Plaintiffs. The land originally belonged to the Diocese of the Niger which extended to the present Aba Diocese. It was leased to the Church by the Government of Eastern Nigeria."

"The lease agreement was then tendered and admitted as Exhibit B. There is nothing pleaded in the Statement of Claim to the effect that the Diocese of the Niger extended to the Diocese of Aba as the evidence above quoted seems to suggest. That part of the evidence must be discountenanced: See GEORGE v. DOMINION FLOUR MILLS (1963) 1 ALL NLR 71 at 77; NATIONAL INVESTMENT & PROPERTIES COLTD v. THOMPSON ORGANISATION LTD (1969) NMLR 99 at 104; EMEGOKWE v. GEORGE (1973) 4 SC. 113 at 117. What was pleaded was that the Diocese of Aba inherited from the Diocese of the Niger the land the latter leased from the Government of Eastern Nigeria as per Exhibit B. There is no shred of evidence as to how the said inheritance took place. There is no document in this regard transferring ownership from one to the other, or

showing that by the incorporation of the Diocese of Aba, the assets of the Diocese of the Niger became owned by the Diocese of Aba. There is no evidence of succession as between the two so as to establish a nexus of continuity of ownership."

The judgment continued on page 231 of the record thus:-

"It has been shown that there is no evidence that the Respondents (Plaintiff's) succeeded the Registered Trustees of the Synod of the Diocese of the Niger in regard to the land leased as per Exhibit B. In other words, they have failed to prove title thereto." (Words in brackets supplied by me)

As I said I have myself studied the record in this case. I entirely agree with the findings and conclusion of the Court of Appeal recited above. There is clearly no iota of evidence that the Plaintiffs inherited the land in dispute from the Diocese of the Niger which the latter leased from the Government of Eastern Nigeria as per Exhibit B. Consequently the Plaintiff's completely failed to prove their root of title and therefore their claims must fail. It is settled law that where a party's root of title is pleaded as for example a grant, a sale, or conquest etc, that root of title has to be established first and any consequential acts following therefrom can then properly qualify as acts of ownership. Where the title pleaded has not been proved, then it will be unnecessary to consider acts of possession, for the acts then become no longer acts of possession but acts of trespass (see for example *OBIOHA v. DURU* (1994) 8 NWLR (PT. 365) 631, *FASORO & ANOR v. BEYIOKU & ORS* (1998) 2 N.W.L.R. (PT. 76) 263, *BALOGUN v. AKANJI* (1988) NWLR (PT. 70) 301.

The Plaintiffs having failed to prove their title as pleaded, has failed to prove their claims. I therefore resolve Plaintiffs' issue (3) against them. This also means that issue (4) must also fail. And having resolved these two issues against the Plaintiffs, there is absolutely no need to consider the remaining two issue. The resolution of issues 3 & 4 in my view sufficiently dispose of the appeal. I hasten to say that even if the remaining issues are resolved in favour of the Plaintiffs they will not be sufficient to win them the appeal as they will still fail to prove their title.

The appeal therefore fails. It is hereby dismissed with N10,000.00 costs to the Defendant. The judgment of the Court of Appeal is confirmed.

B **BELGORE JSC**

C The Anglican Diocese of Aba has not been proved to be inheritor of the Diocese of the Niger. It is not a matter to take judicial notice of. In the absence of any linkage between the two diocese the case of Aba Diocese cannot be proved. It is for this reason and the fuller reasons in the judgment of my learned brother, Kutigi JSC, with which I am in full agreement that I also dismiss this appeal with N10,000.00 costs to the respondent.

D **MOHAMMED JSC**

E I agree that this appeal has failed. For the reasons given by my learned brother, Kutigi, J.S.C, in the judgment just read I will also dismiss the appeal. The appeal is therefore dismissed by me. I award N10,000.00 costs in favour of the defendant/respondent.

IGUH JSC

F I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kutigi, J.S.C. and I entirely agree that this appeal is without substance and ought to be dismissed.

G In the first place, the appellants claimed to have inherited the piece or parcel of land in dispute said to have been leased originally by the now defunct Government of Eastern Nigeria to the Registered Trustees of the Anglican Diocese on the Niger. Although this averment in the appellants' Statement of Claim was stoutly denied in paragraph 4 of the respondent's Statement of Defence, no particulars were pleaded and no evidence whatsoever was adduced by the H appellants as to the precise details, nature or manner of the alleged inheritance. No document in this regard was tendered by the appellant in proof of the transfer of ownership of the land in dispute from the Registered Trustees of the Anglican Diocese on the Niger to the Registered Trustees of the Diocese of Aba. It seems to me that whether

or not there was such a transfer or inheritance is a matter of fact which the appellants must establish before the trial court. Although paragraph 7 of the appellants' amended Statement of Claim avers that the appellants were in undisturbed possession of the land "*since it was given on lease to them*" no such lease was tendered at the trial. No other document was also tendered by the appellants to establish that by their incorporation, the assets of the Diocese on the Niger and, in particular, the land in dispute, was transferred to the appellants, the Registered Trustees of the Diocese of Aba. In other word, there was no evidence of succession or nexus as between the two corporations soled with regard to the ownership and possession of or title to the land in dispute.

In the second place, the appellants' alleged cause of action as per paragraphs 7 and 8 of their amended Statement of Claim arose on the 6th day of June, 1980. The case of the appellants is that at all material times, they were in undisturbed possession of the land in dispute as owners thereof when on the said 6th day of June, 1980, the respondent broke and entered therein and did extensive damage to their building materials thereon. The appellants, the Registered Trustees of the Diocese of Aba, were registered and came into existence on the 15th December, 1982. The appellants as at the 6th June 1980 had therefore no interest over the said land in dispute as they did not come into existence until the 25th December, 1982.

It is for the above and the more detailed reasons contained in the judgement of my learned brother, Kutigi, J.S.C. that I find no merit in this appeal. I, too, dismiss it with costs as assessed in the leading judgment.

AYOOLA JSC

I have had the privilege of reading in advance the judgment delivered by my learned brother, Kutigi, JSC. I agree that this appeal should be dismissed. I agree with him that vital issue is whether there was evidence that the Diocese of Aba was the successor to the interest of the Diocese of the Niger in the land in dispute. Unless that fact is established the claim of the appellant based on ownership of the land could not stand. Uwaifo, JCA, (as he then was) who delivered the leading judgment of the court below was of the opinion in regard

to the “*inheritance*” by the Diocese of Aba of the land from the Diocese of the Niger or the transfer of ownership by the latter to the former that: “*There is no evidence in this regard transferring ownership from one to the other, or showing that by the incorporation of the Diocese of Aba, The asset of the Diocese of Aba. There is no evidence of succession as between the two so as to establish a nexus of continuity of ownership.*”

Learned counsel for the appellant in challenging the above view missed the real issue when he submitted in the appellant’s brief that “*from the pleadings and evidence led at the trial, the appellant established and proved through PW 1 that at all material times, the area now constituting the Diocese of Aba was part of the Diocese on (sic) the Niger*”. The question was not whether the land was in the area of the jurisdiction of the Diocese of Aba but whether that Diocese had that title in the land transferred to it. On the evidence that had not been established. The finding of the court below on this issue cannot be faulted. The appellant not having established its title in that particular aspect, the question of the title of its claimed predecessor in title, the Diocese of the Niger, did not properly arise. The consequence of a plaintiff failing to prove that his claimed predecessor in title had transferred title to him is that he is not competent to put the claimed predecessor’s title in issue. It is for this reason that the question whether the land was State land or not or the competence of the Government to grant a lease of the land to the Diocese of the Niger did not arise.

Although this appeal will be dismissed it is probably expedient to note, in the interest of justice, that the ground of the decision is really narrow. If the Diocese of the Niger has valid title to the land I am inclined to believe that a judgment dismissing the appellant’s claim will not ipso facto deprive that Diocese of such title.

Be that as it may I too would dismiss this appeal with costs of N10,000.00 to the respondent.

H