

SUPREME COURT OF NIGERIA
MONDAY 25TH FEBRUARY, 2002. SC. 172/1996
CORAM:- M. L. UWAI S CJN, M. E. OGUNDARE,
S. U. ONU, U. A. KALGO, S. O. UWAI FO, JJSC

CYPRAIN ONWUNAMA APPELLANT
AND
LOUIS EZEOKOLI RESPONDENT

COURTS - Native Courts - Proceedings of the courts - Are to be considered liberally - To determine whether substantial justice has been done to parties - Within the permitted procedure (H1)

LAND LAW - Title - Evidence of possession - Is one of the ways of asserting title - And is independent of claim on traditional history (H2)

APPEALS - Concurrent findings - Supreme Court will not interfere - Since the findings are not perverse - And has not led to miscarriage of justice (H3)

LAND LAW - Title - Proof - Plaintiff must succeed on strength of his case - And not on weakness of defence - Otherwise the case is liable to be dismissed (H4)

LAND LAW - Title - Proof - Standard of - Plaintiff is to prove its case on preponderance of evidence - And not beyond reasonable doubt (H5)

FACTS

Plaintiff/respondent and defendant/appellant were in dispute over a piece of land situated at Nanka, Anambra State. The case for respondent is that the land belonged to his grand father who received tribute of food items from appellant's grand father till appellant's father's death. The agreement was that appellant's father can farm but not to harvest economic trees or erect permanent structures on the land. However, appellant defaulted in payment of the tribute even after his father's death. This prompted respondent to report

the matter to Council of Elders who decided that the land belonged to respondent's father. Nevertheless, appellant continued to trespass on the land.

Consequently, respondent instituted this action at the Customary Court of Agudo, where he claimed damages for trespass, injunction against appellant, declaration of title and order to quit appellant from the disputed land. Respondent called three witnesses in support of his case. Appellant's version was that his father owned the land but that his uncle pledged ten palm trees to respondent's father which was redeemable pending when appellant paid back what was borrowed. Appellant also called three witnesses to prove his case. At the end, the court gave judgment in favour of respondent and barred appellant from entering the land by perpetual injunction. Appellant aggrieved by the decision lodged an appeal to the High Court of Anambra State, Awka. The court dismissed the appeal which led appellant to file another appeal at the Court of Appeal, Enugu Division. The court also dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"Whether the proof of title to land on mere preponderance of evidence or on a higher standard, if on mere preponderance of evidence, whether the respondent deserved judgment in his favour both at the trial and at the appellate courts.

Was the High Court Awka competent to hear and determine the appeal in respect of customary right of occupancy over land lying in rural area (Nanka), straight from the Customary Court Nanka?"

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

Native Courts - Proceedings of the courts

1. It must be remembered that this case was tried in a Customary Court where pleadings are unknown. The proceedings in such court are to be considered upon a broad view as to whether they were conducted in pursuit of the justice of the case presented by both parties. In other words, appellate courts are to consider the substance of the proceedings of

native, customary or area courts liberally and this is done by reading the record to understand what the proceedings were all about so as to determine whether substantial justice has been done to the parties within the procedure permitted by such courts. (p. 394 H)

LAND LAW - Title - Evidence of possession

2. What was led by either side was evidence of possession which is one of the ways of asserting title to land and is regarded as separate from and independent of claim of title based on traditional history. (p. 395 F)

APPEALS - Concurrent findings

3. In the circumstances, since the findings were not shown to be perverse and cannot be said to have led in any way to a miscarriage of justice, this court is not entitled to, and will not interfere with such concurrent findings of fact. (p. 396 C)

LAND LAW - Title - Proof

4. The authorities he referred to establish the familiar principle that the burden on the plaintiff to prove title to land does not shift. That remains, of course, a correct principle which goes further to say that a plaintiff must succeed on the strength of his case for title and not on the weakness of the defence. Where in a claim for a declaration of title the plaintiff fails to discharge the onus on him, his case is liable to be dismissed. (p. 396 F)

LAND LAW - Title - Proof - Standard of

5. It must be recognized, however, that a claim for a declaration of title is none other than a civil case and by the general principle governing civil matters, proof is upon the balance of probabilities or preponderance of evidence. This does not mean that the onus to prove title shifts from the plaintiff; it does not. What has been firmly established as the law is that the plaintiff, in order to succeed in his claim for a declaration of title, must bring forward cogent evidence which must tilt the imaginary scale in his favour. He is not expected to prove his case

beyond reasonable doubt as in criminal cases, nor is there a midway in the standard of proof between criminal and civil in such a claim. All that is required is that the evidence produced by the plaintiff to support title must be such that can support a declaratory relief and which, in the end, when placed on the scale of justice, will tilt it in his favour. (p. 397 A)

NOTABLE POINT OF INTEREST

UWAIFO JSC

C 1. Reliance on traditional history - Need to plead particulars

The case of Lawal v. Olufowobi (supra) originated in the High Court and was tried on the pleadings of the parties. By such procedure any party who relies on traditional history to prove title to land must plead the particulars which support that history. (p. 395 C)

REPRESENTATION

Chief H. B. Onyekwelu for the Appellant

Chief O. B. Onyali SAN, with P. A. Onuigbo Esq., for Respondent

CASES REFERRED TO

Dinsey v. Ossey (1939) 5 WACA 177

Jumai Alhaji Zaria v. Yar Maituwo (1966) NMLR 59

Ikpang v. Edoho (1978) 6-7 SC 221

F Ibero v. Ume-Ohana (1993) 3 NWLR (pt. 277) 510

Chukwueke v. Okonkwo (1999) 1 NWLR (pt. 587) 410

Duru v. Onwumelu (2001) 18 NWLR (pt. 746) 672

Idundun v. Okwumagba (1976) 9-10 SC 277

Balogun v. Akanji (1988) 1 NWLR (pt. 70) 301

G Nwadike v. Ibekwe (1987) 4 NWLR (pt. 67) 718

Onwuka v. Ediala (1989) 1 NWLR (pt. 96) 182

Otuedon v. Olughor (1997) 9 NWLR (pt. 521) 355

Ivbienagbor v. Bazuaye (1999) 9 NWLR (pt 620) 552

Kodilinye v. Odu (1935) 2 WACA 336

H Udegbe v. Nwokafor (1963) 1 All NLR 417

Piaro v. Tenalo (1976) 12 SC 31

STATUTE REFERRED TO

Magistrate's Courts Law (Amendment) Edict No. 18 of 1974 s. 3(2)

LEAD JUDGMENT BY UWAIFO JSC

This case originated in the Customary Court of Agudo where the plaintiff/respondent in his claim sought four reliefs [as actually stated in the writ of summons] against the defendant/appellant, namely, (1) N500.00 damages for trespass to land and harvesting palm fruits; (2) injunction restraining the defendant's servants from committing further acts; (3) declaration of title to customary right of occupancy to a parcel of land known as "*Ani be Ezeokoli*"; and (4) order to defendant to quit. It is clear from the entire proceedings before that Customary Court that what was in dispute was a parcel of land which the plaintiff calls "*Ani be Ezeokoli*" or "*Ani be Ezeokoli Ezeodika*". A survey plan of the land was made by the plaintiff by order of court and admitted as exhibit A.

The plaintiff said the defendant entered upon the land and planted some yams. The history behind the land as given by the plaintiff is that the grandfather of the defendant lived on the land as customary tenant of the plaintiff's father. He said both the defendant's grandfather and father in turn paid tribute in respect of the customary tenancy to his own father in the form of 10 tubers of yam, 10 cocoyams and wine. The economic trees on the land were not harvested by the defendant's grandfather and father but by the plaintiff's father. They were also not permitted to erect permanent structures on the land. The defendant's father paid the tribute to the plaintiff's father until the latter died in 1958 and the tribute continued to be paid to the plaintiff until the defendant's father died at the end of 1969.

The plaintiff claimed to have given a two-year moratorium to the defendant not to pay the tribute owing to the death of his father. In 1972 when the plaintiff asked for the tribute, the defendant pleaded for more time on the ground that he had not recovered from the hardship of the Nigeria Civil War. He was reminded in 1973 and 1974 to pay up the tribute but in 1975 he came with only 8 tubers of yam, a fowl and wine to renew the tenancy. The plaintiff insisted that he must continue to pay the tribute annually as his father did, namely, 10 yams, 10 cocoyams and wine otherwise he would

quit him from the land. The defendant continued to default but approached the plaintiff in 1978 with a gallon of palm wine this time with a strange request asking to know what his father pledged with the land so that he would redeem it. The plaintiff felt that was a challenge to his ownership and there and then warned the defendant to quit the land.

After some three months, the plaintiff reported the matter to the Council of elders of Enugu Nanka called Omenani. Both parties appeared before the council, which, having heard from them, decided that the land belonged to the plaintiff and advised the defendant to take some wine to him for reconciliation. The defendant did not abide by that decision but rather entered the land to farm it, harvest palm nuts and later started to mould blocks there. He also destroyed the plaintiff's thatched house thereat. The plaintiff's case was supported by three witnesses, Muomegwata Ezeodika (an uncle, 95 years old), Muotuanya Ezeokoli (another uncle, 70 years old) and Okeke Ezeakpanwua p.w. 3 (a member of the council of Elders) who led a delegation of three to testify on behalf of the Council, the other delegation members being Maduekegha Okoli and Ezeihu Ezeaname.

The defendant's version was that his father owned the land and that in 1965 the plaintiff entered upon it and cut the fruits of a palm tree. He asked his father why the plaintiff did that. His father's reply was that one Aginam, his brother, (i.e. defendant's uncle) pledged ten palm trees to the father of the plaintiff which would be redeemable when what was borrowed (which he called "*Afia nabo*") was paid back. He said his father told him that any time he (defendant) was able to do so, he should redeem the pledge. He called three witnesses in support of his case. In addition, there was what was recorded as an independent witness, called at the instance of the court. He was one Obianika Ezeobi who said he was the head of the Council of Elders. He confirmed that the Council decided in favour of the plaintiff and told the defendant to continue to pay yearly tribute to the plaintiff in respect of the land he occupied as his father did. This witness was called by the court because p.w.3 (a member of the Council) had given evidence that the decision of the Council was in favour of the plaintiff while d.w.3, Clement Nwankwo, another member of the Council gave evidence to the contrary. The witness men-

tioned the three-member delegation sent to testify on behalf of the council and Clement Nwankwo (d.w.3) was not included. The court thereafter went to inspect the land in company with all parties concerned.

The trial Customary Court in its judgment given on 19 May, 1980 accepted the case presented by the plaintiff and held that from the evidence, the defendant's father paid annual tribute to the plaintiff's father as customary tenant in respect of the land in dispute. The court rejected the defendant's case and in its judgment declared the plaintiff to be entitled to the customary right of occupancy of the land, restrained the defendant by an order of perpetual injunction and awarded the sum of N74.25 to the plaintiff. The injunction was given in terms which were that it was, to use the words of the Customary Court, "*in respect of 'Ani be Ezeokoli Ezeodika' excluding the compound occupied by the defendant. The defendant will live in the compound and be paying yearly land tribute to the plaintiff in respect of the compound in which he lives.*"

The defendant lodged an appeal on ten grounds against the judgment to the High Court. The learned Judge of Appeal (Chukwuma-Eneh, J.) In considering those grounds of appeal commented as follows:

"I have also observed that the grounds of appeal in this matter relate in one way or the other to matters pertaining to evaluation of evidence. All the 10 grounds of appeal in my view might well have been taken under ground 10 of the grounds of appeal that is the omnibus ground i.e. that the decision cannot be supported having regard to the weight of evidence."

The learned Judge of Appeal, after a careful consideration of the appeal, dismissed the same in his judgment delivered on 26 September, 1991. The appeal against that judgment was dismissed by the Court of Appeal, Enugu Division, on 3 May, 1995.

The defendant has further appealed to this court and will now be referred to as the appellant while the plaintiff shall be referred to as the respondent. The appellant originally filed seven grounds of appeal but later amended the grounds and increased them to nine. When the appeal came on for hearing on 27 November, 2001 learned Senior Advocate for the respondent raised by way of preliminary objection the issue of the competency of the grounds

of appeal except grounds 5 and 9. Learned counsel for the appellant conceded that grounds 2, 3, 4 and 8 were incompetent. This court having been satisfied that the said grounds of appeal were incompetent, struck them out. Consequently, out of the 5 issues formulated for determination by the appellant, only the last two survived for argument, and they read:

“4. Whether the proof of title to land on mere preponderance of evidence or on a higher standard, if on mere preponderance of evidence, whether the respondent deserved judgment in his favour both at the trial and at the appellate courts.

5. Was the High Court Awka competent to hear and determine the appeal in respect of customary right of occupancy over land lying in rural area (Nanka), straight from the Customary Court Nanka?”

The last stated issue (Issue No. 5) deals with jurisdiction and seeks to know whether the High Court which heard the appeal from the decision of the Customary Court in this case had the jurisdiction to do so. Learned counsel for the appellant had argued in the appellant’s brief of argument that because section 3(2) of the Magistrates’ Courts Law (Amendment) Edict No. 18 of 1974 conferred unlimited jurisdiction on Chief Magistrates and Senior Magistrates in suits or matters relating to title or interest in land within the area of their jurisdiction, it was either of those courts to which the appeal from the Customary Court lay in the present case. However, learned counsel in oral argument before us conceded that the appeal in this case went to the proper court which is the High Court. In essence he abandoned the issue in question and I need say no more in that regard.

In regard to the other issue (Issue No. 4) it seems the appellant raises a number of grievances under it. He argues that it is not sufficient that the respondent testified that he inherited the land in dispute from his father who inherited from his own father Ezeodika; that it must be pleaded and proved how the land was originally acquired; and that evidence ought to have been led as to all the intervening descendants through whom he claims, relying on *Lawal v. Olufowobi* (1996) 12 SCNJ 376; (1996) 10 NWLR (pt. 477) 177. It has also been argued that the evidence led by the respondent was not satisfactory. ***It must be remembered that this case was tried***

in a Customary Court where pleadings are unknown. The proceedings in such court are to be considered upon a broad view as to whether they were conducted in pursuit of the justice of the case presented by both parties. In other words, appellate courts are to consider the substance of the proceedings of native, customary or area courts liberally and this is done by reading the record to understand what the proceedings were all about so as to determine whether substantial justice has been done to the parties within the procedure permitted by such courts: See Dinsey v. Ossey (1939) 5 WACA 177; Jumai Alhaji Zaria v. Yar Maituwo (1966) NMLR 59; Ikpong v. Edoho (1978) 6-7 SC 221; Ibero v. Ume-Ohana (1993) 3 NWLR (pt. 277) 510; Chukwueke v. Okonkwo (1999) 1 NWLR (pt. 587) 410; Duru v. Onwumelu (2001) 18 NWLR (pt. 746) 672. The case of Lawal v. Olufowobi (supra) originated in the High Court and was tried on the pleadings of the parties. By such procedure any party who relies on traditional history to prove title to land must plead the particulars which support that history.

The appellant has further contended that the evidence of traditional history led by the parties was in conflict with each other. It was said that because of that conflict the trial customary court had to look for how to resolve the conflict in its own way. This argument is based solely on the fact that the trial customary court called an independent witness, the circumstances of which I have already narrated. I think the submission that evidence of traditional history was led is erroneous. ***What was led by either side was evidence of possession which is one of the ways of asserting title to land and is regarded as separate from and independent of claim of title based on traditional history:*** see Idundun v. Okumagba (1976) 9-10 SC 227; Balogun v. Akanji (1988) 1 NWLR (pt. 70) 301. In the present case, the independent witness called by the trial court was not because there was conflict in any alleged evidence of traditional history. The said independent witness, if I may repeat, was the Head of the Council of Elders which looked into the dispute between the parties in respect of the land. Each side called evidence as to what the Council of Elders resolved and the evidence of one side conflicted with the one of the other side. The Head of the Council of Elders was called by the trial court in order to know which version to accept.

I must at this point say that in proceedings in native, customary or area courts, it is not unusual for the court on its own, to call a witness it considers would help to resolve a disputed fact vital for deciding an issue. That was the procedure the trial Customary Court adopted in this case when it was confronted with conflicting versions of the same event in regard to what was decided by the Council of Elders. At the end it made findings of fact upon the overall evidence as to which party owned the land in dispute. It also found as to the payment of tribute when it said: “*We find that the bone of contention in this matter is the payment of land tribute. There is no doubt evidence has been adduced before this court that the father of the defendant paid yearly land tribute to the father of the plaintiff.*” These findings were affirmed by the appellate High Court and the Court of Appeal. ***In the circumstances, since the findings were not shown to be perverse and cannot be said to have led in any way to a miscarriage of justice, this court is not entitled to, and will not interfere with such concurrent findings of fact:*** see *Nwadike v. Ibekwe* (1987) 4 NWLR (pt. 67) 718; *Onwuka v. Ediala* (1989) 1 NWLR (pt. 96) 182; *Otuedon v. Olughor* (1997) 9 NWLR (pt. 521) 355; *Ivbienagbor v. Bazuaye* (1999) 9 NWLR (pt. 620) 552.

Now, the evidence led by both sides was carefully weighed by the trial Customary Court. From the facts it accepted, the case was weighted in favour of the plaintiff/respondent based on the balance of probabilities. Learned counsel for the appellant has submitted before us that title to land is not decided on a preponderance of evidence but on a higher standard. He did not cite any authority for that novel proposition. ***The authorities he referred to establish the familiar principle that the burden on the plaintiff to prove title to land does not shift. That remains, of course, a correct principle which goes further to say that a plaintiff must succeed on the strength of his case for title and not on the weakness of the defence: see Kodilinye v. Odu (1935) 2 WACA 336, Udegbe v. Nwokafor (1963) 1 All NLR 417; Piaro v. Tenalo (1976) 12 SC 31; Okporukwu v. Okpokam (1988) 4 NWLR (pt. 90) 554; Odife v. Aniemeka (1992) 7 NWLR (pt. 261) 25. Where in a claim for a declaration of title the plaintiff fails to discharge the onus on him, his case is liable to be dismissed:*** see *Motunwase v. Sorungbe* (1988) 5 NWLR (pt. 92) 90.

It must be recognized, however, that a claim for a declaration of title is none other than a civil case and by the general principle governing civil matters, proof is upon the balance of probabilities or preponderance of evidence. This does not mean that the onus to prove title shifts from the plaintiff; it does not. What has been firmly established as the law is that the plaintiff, in order to succeed in his claim for a declaration of title, must bring forward cogent evidence which must tilt the imaginary scale in his favour. He is not expected to prove his case beyond reasonable doubt as in criminal cases, nor is there a midway in the standard of proof between criminal and civil in such a claim. All that is required is that the evidence produced by the plaintiff to support title must be such that can support a declaratory relief and which, in the end, when placed on the scale of justice, will tilt it in his favour: see Mogaji D v. Odojin (1978) 4 SC 91. As to what is meant by standard of proof in a claim for title to land, I think the observation of this court per Ibekwe JSC in Kaiyaoja v. Egunla (1974) 12 SC 55 at 60-61 (1974) NSCC (Vol. 9) 606 at 609, is instructive. It says inter alia:

“...it is a well-established principle of law that in a claim for declaration of title, the onus is always on the plaintiff to establish his claim, and that it is not open to him to rely on the weakness of the defendant’s case. This court has always held that what is required of a plaintiff in an action for declaration of title is at least to establish his claim by preponderance of evidence. It is often enough that he has produced sufficient and satisfactory evidence in support of his claim. The test is, whether the plaintiff has been able to prove to the satisfaction of the court that he has a better title than the defendant. We think it is relevant to draw attention to the fact that ... the standard of proof in a claim for declaration of title is not different from that which is required in civil cases generally. The only difference, if we may say so, rests on the fact that the burden of proof is on the plaintiff who is claiming title, and that it never shifts to the defendant throughout the trial. The difference therefore, lies, not in the standard of proof, but on the burden of proof.”

I answer issue No. 4 by saying that the plaintiff/respondent met the standard and burden of proof required in this case and that he deserved the judgment he was given.

In the circumstances, I have come to the conclusion that the appeal is without merit and dismiss it with N10,000.00 costs in favour of the respondent.

B UWAIS CJN

I have had the opportunity of reading in draft the judgment of my learned brother Uwaifo, JSC. I entirely agree with the judgment and have nothing to add.

C Accordingly, the appeal fails and it is hereby dismissed with order as to costs as ordered in the said judgment.

OGUNDARE JSC

D I agree entirely with the judgment of my learned brother Uwaifo JSC just delivered. I have nothing to add. I, too, dismiss the appeal with N10,000.00 costs to the respondent.

E ONU JSC

Having been privileged to read before now the leading judgment of my learned brother Uwaifo, JSC just delivered, I entirely agree with his reasoning and conclusion that the appeal fails.

F This appeal, as it turns out, involves concurrent findings of fact by the lower court and the court below which the appellant has been unable to fault. See *Onowan and Anor. v. Aserifa* (1990) 3 NWLR (part 136) 94.

G KALGO JSC

H I have had the opportunity of reading in advance the judgment of my learned brother Uwaifo JSC just delivered. I agree that there is no merit in the appeal and I also dismiss it. I however wish to add a few words by way of emphasis.

This case which commenced in the Customary Court of Enugu State was a dispute on a parcel of land. The facts of the case as found by the trial court and what transpired on appeals to the High Court Awka and the Court of Appeal Enugu were fully set out

in the leading judgment and I do not intend to repeat them here. Suffice it to say that the appellant lost in the trial court, in the High Court and in the Court of Appeal. He now appealed to this court.

At the hearing of the appeal, the learned counsel for the respondent successfully challenged, by way of preliminary objection, 4 out of the 9 grounds of appeal filed by the appellant in his notice of appeal to this court. The 4 grounds were found to be grounds of facts and or mixed law and facts and were therefore incompetent and struck out. The two issues which were distilled from the remaining 5 grounds of appeal read:-

“1. Whether the proof of title to land on mere preponderance of evidence or on a higher standard, if on mere preponderance of evidence, whether the respondent deserved judgment in his favour both at the trial and at the appellate courts.

2. Was the High Court Awka competent to hear and determine the appeal in respect of customary right of occupancy over land lying in rural area (Nanka), straight from the Customary Court Nanka?”

Taking issue 2 first, it is common ground that in the course of oral arguments by counsel in this court at the hearing of the appeal, learned counsel for the appellant stated that having raised this issue in the High Court and the Court of Appeal and failed on each occasion, he now wished to abandon the issue completely thereby conceding that the appeal from the Customary Court Nanka to High Court Awka was proper and competent. This should be the end of this issue and I so hold.

On issue 1, I entirely agree with the consideration of this issue by my learned brother Uwaifo JSC I only wish to emphasize the position and the principle involved in trials before the Customary or “Native” courts in this country. The trial of this case commenced in the Customary Court where strict rules of procedure or evidence are to a great extent relaxed. This is covered in most cases by law of the area concerned because what is of paramount importance in the conduct of such cases, is evidence of substantial justice and the absence of any miscarriage of justice in general. Strict adherence to the rules of practice and procedure in trials in all Customary or Native courts in this country is practically unknown. The main reason for this is that the rationale for creating them is for the need to make the

administration of justice available to the common man in a simple, cheap and uncomplicated form. See Ekpa v. Utong (1991) 6 NWLR (pt. 197) 258; Akpan v. Utim (1996) 7 NWLR (pt. 463) 634; Mba v. Agu (1999) 12 NWLR (pt. 629) 1. So that in this case when Obianika Ezeobi was called by the trial Customary Court as an independent B witness to clear the air on the actual decision of the Council of Elders (Omenani) on the land dispute, there was nothing constituting any miscarriage of justice in the circumstances of this case. And the finding of the Customary Court thereon, was affirmed by the High Court C on appeal and subsequently the Court of Appeal. The findings, is not perverse and does not constitute any miscarriage of justice. This piece of evidence together with other credible traditional evidence accepted by the trial Customary Court and affirmed by the High Court and the Court of Appeal constituted the preponderance of the evidence D required to entitle the respondent to the judgment in his favour. I accordingly so find and answer issue I in the affirmative.

In the circumstances and for the more detailed reasons stated in the leading judgment, I find no merit in this appeal. I dismiss it with N10,000.00 costs in favour of the respondent. E

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