

SUPREME COURT OF NIGERIA
FRIDAY 7TH JUNE, 2002. SC. 56/1997
CORAM:- I. L. KUTIGI, M. E. OGUNDARE, S. U. ONU,
A. I. IGUH, U. A. KALGO, JJSC

PIUS ADAKA & 23 ORS APPELLANTS
(For themselves and on behalf
of the people of EMEHABA
Family of Umuopia, Akokwa)
AND
CHRISTOPHER ANEKWE & Ors RESPONDENTS

JUDICIAL PRECEDENTS - Authorities - Uhunmwangbo v. Okojie & Hart v. Hart - Decisions in - Supreme Court did not change the law - As to the enforcement of mandatory and restrictive injunctions - But gave proper interpretation of relevant law and rule on the subject (H1)

ACTIONS - Orders of court - Enforcement of - Applicable laws - Uhunmwangbo v. Okojie - The relevant laws are Sheriff and Civil Process law s.71 & Judgment Enforcement Rules O.9 r.13 - Hence trial court and Court of Appeal were wrong to have relied on English rules of procedure (H2)

FACTS

Plaintiffs/respondents instituted this action against 1st – 5th defendants/appellants at the High Court of Imo State, Orlu wherein they claimed an order of injunction and damages for trespass committed by appellants on the disputed land. The parties conducted their cases in representative capacities. At the end of hearing, the court entered judgment for respondents and appellants appealed to the Court of Appeal, Enugu Division. The court allowed the appeal, set aside the decision of the trial court and dismissed respondents' claim. Respondents being dissatisfied, filed appeal at Supreme Court. However, the parties settled their disputes out of court and drew up the terms of settlement which became the order and judgment of Supreme Court in the case.

Thereafter there was an alleged disobedience of the order by

appellants. As a result, the respondents filed an application for contempt proceedings against appellants at the aforesaid High Court. Appellants on the other hand raised preliminary objection to the application. In its ruling, the trial court overruled the preliminary objection and ordered that the contempt application be heard on its own merit. Against this order, appellants appealed to the Court of Appeal which also dismissed the appeal and remitted the committal application to the trial court for hearing on the merits. Appellants have therefore appealed to Supreme Court.

ISSUES FOR DETERMINATION

*"1. Whether the Court of Appeal was right in holding that the Supreme Court had by its decision in *Osayande Uhunwangbo V.P.I. Okojie & another* (1989) 5 NWLR 9 Part 126) 276 changed the law as to the enforcement of mandatory and restrictive injunctions and in failing to apply the said decisions to the present matter so as to hold that foreign rules of court were not applicable to this matter?"*

2. Whether the Court of Appeal was right in holding that Order 42 Rule 7 of the Rules of the Supreme Court of England 1956 was applicable to the application for committal before the trial court in this matter by virtue of Section 16 of the High Court Law of Eastern Nigeria, 1963 and in ordering the remittal of the application for committal to the trial court of hearing on the merits under the said foreign court rules?"

HELD (Unanimously allowing the appeal per **KALGO JSC**)

JUDICIAL PRECEDENTS - Authorities

1. The Supreme Court decided in *Uhunmwangbo* case (*supra*) that the combined effect of the provisions of Section 63 of the Sheriff and Civil Process Law of Bendel State and Order 9 Rule 13 (1) of the Judgment Enforcement Rules made under the same law, shows that no distinction between mandatory and restrictive injunction was contemplated, more so as to the procedure for their enforcement. The Supreme Court did not by this decision, or even the one in that *Hart v. Hart* (1990) 1 NWLR (Pt. 126) 276, change or attempt to change any

existing law or procedure for the enforcement of mandatory or restrictive injunctions. It was only interpreting the relevant existing law on the subject, in my respectful view. I therefore agree with the learned counsel for the appellant when he said in his brief of argument that the Supreme Court did not change the law but only gave the interpretation and application of the relevant law and rules made thereunder which it considered to be correct. I therefore find that the Court of Appeal was wrong when it held in its judgment on page 156 of the record that:-

“...the law has now been changed by the Supreme Court decision in Uhunmwangbo’s case (supra) as well as the decision in Hart v. Hart (1990) 1 NWLR (pt. 126) 276 at 278.”

There is therefore no doubt that the Supreme Court decision in Uhunmwangbo and Hart cases did not change the law as to the enforcement of mandatory and restrictive injunctions. It only gave proper interpretation of the application of relevant law and rule on the subject i.e. Section 63 of the Sheriff and Civil Process Law and Order 9, Rule 13 of the judgment (Enforcement) Rules made there-under. I therefore answer issue 1 in the negative. (pp. 1698 E/1699 D)

Orders of court - Enforcement of - Applicable laws

2. Therefore the procedure to be followed in the Uhunmwangbo (Bendel State) case must be the same as in the instant case in the enforcement of court orders, whether it is for mandatory or restrictive injunction. That is to say that the relevant law and rules available locally must apply to the instant case i.e. Section 71 of the Sheriff and Civil Process law of Eastern Nigeria 1963 (cap. 118) and order 9 Rule 13 of the Judgment (Enforcement) Rules made there-under. It is therefore wrong for the learned trial judge in this case to import and apply Order 42 Rule 7 of the English Rules of the Supreme Court 1956, and for the Court of Appeal to uphold his decision. I find that the local law and rules on the matter are applicable and there is therefore no need to rely on Section 16 of the High Court Law of Eastern Nigeria applicable to Imo State, in order to import the English rules of procedure. I therefore

find that the Court of Appeal was wrong in holding that Order 42 Rule 7 of the English Supreme Court Rules 1956, applied in the instant case, and in remitting the application back to the trial court for hearing on the merits. I also answer issue 2 in the negative. (p. 1699 H)

B

REPRESENTATION

G. R. A. Egonu SAN, with C. U. Ekomaru and L. M. Okoye for the appellants

C J. M. Eyisi Esq., for the respondents

CASES REFERRED TO

Uhunmwangbo v. Okojie (1989) 5 NWLR (Pt. 122) 471

Hart v. Hart (1990) 1 NWLR (Pt. 126) 276

D Doherty v. Doherty (1964) L.L.R. 226

Adebutu v. City Engineer Lagos City Council (1968) NMLR 133

STATUTES & RULES REFERRED TO

High Court Law of Eastern Nigeria, s.16

E Sheriff and Civil Process Law Cap.118 Laws of Eastern Nigeria 1963, s. 71

Sheriff and Civil Process Law Cap.151 Laws of Bendel State 1976, s. 63

F English Rules of the Supreme Court 1956 O. 42 r. 7

Judgment Enforcement Rules O. 9 r. 13(1)

LEAD JUDGMENT BY KALGO JSC

This is an appeal from the decision of the Court of Appeal, G Port-Harcourt Division delivered on 9th day of April, 1997. In the trial court, High Court of Justice Orlu, the respondents commenced committal proceedings against the appellants for disobedience to the terms of settlement agreed to between the parties and made an order and judgment of the Supreme Court. The appellants raised a H preliminary objection to the application for the alleged contempt. The trial court heard counsel for the parties on the objection and in a considered ruling delivered on 9th March, 1988, the learned trial judge, Ononuju J. over-ruled the preliminary objection and ordered that the contempt application be heard on its own merit. Against this

order, the appellants appealed to the Court of Appeal which also dismissed the appeal and remitted the committal application to the trial court for hearing on the merits. The applicants then appealed here.

For a clear understanding of the circumstances giving rise to this appeal, it appears to me worthwhile to state albeit briefly the facts involved. B

The respondents who were plaintiffs in the trial Orlu High Court, instituted suit No. HOR/8/74 against the 1st - 5th appellants for and on behalf of their family for damages for trespass and injunction. C Both the appellants and the respondents conducted the case in representative capacity for and on behalf of their respective families. At the end of the case, the trial court entered judgment for the respondents and the appellants appealed to the Court of Appeal Enugu in appeal No. FCA/E/130/80. The Court of Appeal allowed D the appeal, set aside the decision of the trial court and dismissed the respondents' claim. The respondents appealed to the Supreme Court in appeal No. 60/1983 but the parties settled their disputes out of court and drew up the terms of settlement which became the order and judgment of the Supreme Court in the case. For the avoidance E of doubt and for clear understanding of the situation the terms of settlement and the Order of the court are set out below:-

TERMS OF SETTLEMENT

"It is agreed between the parties that for the judgment of the Court of Appeal the Supreme Court should substitute the following: F

An Order of injunction restraining the defendants-respondents, their agents and assigns from destroying economic trees or damaging crops or from removing sand, gravel and stones and from erecting new building outside the compounds occupied by them on the land G in dispute verged pink in Exhibit "A" - plan No MEC/18/97.

Dated this 31st day of October 1984'.

ORDER OF COURT

"IT IS ORDERED

1. That the parties to this appeal having settled the matter in H dispute out of court, and filed terms of settlement in this court the judgment of the court of Appeal be set aside;

2. That in its stead, judgment be entered for the appellants in terms of the settlement filed to wit;

3. *that there be an injunction restraining the defendants-respondents, their agents and assigns from destroying economic trees or damaging crops or removing sand, gravel and stones and from erecting new buildings outside the compounds occupied by them on the land in dispute verged Pink in Exhibit "A" Plan MEC/18/97 and;*

B 4. *that there be no order as to costs".*

Thereafter there was an alleged disobedience of the order by the appellants. As a result, the respondents filed an application for contempt proceedings against the appellants. With the assistance of the Chief Registrar of the High Court Orlu, the respondents issued form 48 titled "*Notice of consequences of disobedience to order of court*" to the first five (5) appellants who originally represented the Emehaba Family in the suit No. HOR/8/74 and 20 other persons who are members of the Emehaba family but who were not named as defendants in the said suit. Later, all the appellants were also served with Form 49 without any orders of the trial court.

The application then came up for hearing before the trial court and all the appellants served with forms 48 and 49 took preliminary objection as to the competence of the committal proceedings. The learned trial judge, after hearing the parties on the objection ruled that the application was competent and ordered that it be heard on its merits. These briefly are the facts involved.

The appellants identified in their joint brief the following as the issues for determination in this appeal. They are:-

F "1. *Whether the Court of Appeal was right in holding that the Supreme Court had by its decision in Osayande Uhunwangbo v. P.I. Okojie & another (1989) 5 NWLR (Part 126) 276 changed the law as to the enforcement of mandatory and restrictive injunctions and in failing to apply the said decisions to the present matter so as to hold that foreign rules of court were not applicable to this matter?*

G 2. *Whether the Court of Appeal was right in holding that Order 42 Rule 7 of the Rules of the Supreme Court of England 1956 was applicable to the application for committal before the trial court in this matter by virtue of Section 16 of the High Court Law of Eastern Nigeria, 1963, and in ordering the remittal of the application for committal to the trial court of hearing on the merits under the said foreign court rules?*

H 3. *Whether the Court of Appeal was right in holding that the*

leave of the trial court was not required before commencing committal proceedings against the 5th - 24th appellants who were not named defendants in suit No. HOR/8/74?

4. *Whether the court of appeal was right in holding that the appellants abandoned their ground of objection in the trial court and raised new issues before it?* B

The respondents, in their joint brief also adopted the issues identified by the appellants as those arising for determination in this appeal.

I shall now deal with issue (1). It deals with whether the decision of the Supreme Court in *Uhunmwangbo v. Okojie & Anr.* (1989) 5 NWLR (pt. 122) 471 and *Hart v. Hart* (1990) 1 NWLR (pt. 126) 276 have changed the law as to the enforcement of mandatory and restrictive injunctions and whether the Court of Appeal was right in holding that those decisions do not apply to this case. C

It is very essential first to understand the ratio decidendi of a decision before considering whether it applies to any particular case. The decision in the *Uhunmwangbo* case (*supra*) was based on whether a restraining order of injunction not being an order of mandatory injunction, can be enforced under section 63 of the Sheriffs and Civil Process Law Cap. 151, Laws of Bendel State 1976, and order 9 Rule 13 of the Judgment Enforcement Rules made there-under. The Supreme Court considered the provisions of Section 63 above and order 9, Rule 13 made under it, and came to the conclusion that there is no distinction between mandatory and restrictive injunctions under the said law and rules and hence there is no distinction in the procedure for the enforcement of either of them under Section 63 and Order 9, Rule 13 made there-under. D

In considering the provisions of Section 63 of cap. 151 of Laws of Bendel State 1976, and order 9, Rule 13 made thereunder, the court, per Nnamani JSC said:- E

“In Section 63 of Cap. 151, the operative word appears to be “Order” made against him (such was made against the 1st “respondent in SC/43/81). The only order excepted from the order to which Section 63 is applicable, is an order for payment of money. That is not the order in this case. I have also adverted my mind to that part of Section 63 which says:- F

‘may order... until he has obeyed the order in all things that

are to be immediately performed’.

which it was contended showed that what was in contemplation was a mandatory injunction or order-things to be performed. After looking at that section closely, I am of the view that “things to be performed” relate to the second order in that section i.e. the order
 B by the court to commit to prison until he has obeyed the order in all things to be performed. It does not qualify the “order” in Section 63 which is not hedged in any way and from which only an order for payment of money is excepted”.

C The learned Justice, then proceeded to consider the provisions of Order 9, Rules 13 made under Section 63, and he said:-

“Again Order 9, Rules 13(1) contains the important words... “if the order... is in the nature of any injunction. Rule 13(2) speaks simply of “order”. Again there is no distinction between restraining or
 D mandatory order”.

He then concluded by saying that the position is the same with Form 48 and Form 49 both of which can be used whether the order sought to be enforced was a restraining injunction or a mandatory one. In coming to this conclusions, the Supreme Court over-ruled
 E the decision in Doherty v. Doherty (1964) L.L.R. 226 and Adebutu v. City Engineer Lagos City Council (1968) NMLR 133, in which the High Court of Lagos State decided that the committal procedure using Forms 48 and 49 are not applicable where the order sought to be enforced is not a mandatory order. **The Supreme Court decided
 F in Uhunmwangbo case (supra) that the combined effect of the provisions of Section 63 of the Sheriff and Civil Process Law of Bendel State and Order 9 Rule 13 (1) of the Judgment Enforcement Rules made under the same law, shows that no
 G distinction between mandatory and restrictive injunction was contemplated, more so as to the procedure for their enforcement. The Supreme Court did not by this decision, or even the one in that Hart v. Hart (1990) 1 NWLR (Pt. 126) 276, change or attempt to change any existing law or
 H procedure for the enforcement of mandatory or restrictive injunctions. It was only interpreting the relevant existing law on the subject, in my respectful view. I therefore agree with the learned counsel for the appellant when he said in his brief of argument that the Supreme Court did not change the law**

but only gave the interpretation and application of the relevant law and rules made thereunder which it considered to be correct. I therefore find that the Court of Appeal was wrong when it held in its judgment on page 156 of the record that:-

“...the law has now been changed by the Supreme Court decision in Uhunmwangbo’s case (supra) as well as the decision in Hart v. Hart (1990) 1 NWLR (pt. 126) 276 at 278.”

As for the last part of this issue, it is pertinent to observe that the Supreme Court did not say in Uhunmwangbo’s case that no reference should be made by our courts where the law in this country is deficient or inadequate or no local provisions are made. What it said was that the decision in Doherty case (supra) had been wrongly followed for about 25 years, and during this period, our courts had to resort to English rules of practice whenever restrictive order of injunction was involved, instead of applying the existing and available local laws and rules.

There is therefore no doubt that the Supreme Court decision in Uhunmwangbo and Hart cases did not change the law as to the enforcement of mandatory and restrictive injunctions. It only gave proper interpretation of the application of relevant law and rule on the subject i.e. Section 63 of the Sheriff and Civil Process Law and Order 9, Rule 13 of the judgment (Enforcement) Rules made there-under. I therefore answer issue 1 in the negative.

I move now to issue 2. In Uhunmwangbo case (supra) Section 63 of the Sheriff and Civil Process Law of Bendel State, 1976 Cap. 151 was considered together with the rules made thereunder. In the Hart case (supra) Section 71 of the Sheriff and Civil Process Law (Cap. 118) Laws of Eastern Nigeria 1963 was also considered. It is pertinent to note that the provisions of section 63 of Bendel State Sheriff and Civil Process Law 1956 and those of section 71 of the Sheriff and Civil Process Law of Eastern Nigeria 1963, are in pari materia and so are the rules made under them. In the instant appeal, the relevant law is the Sheriff and Civil Process Law, Laws of Eastern Nigeria, 1963 (Cap. 118) Section 71 and the Rules are Order 9, Rules 13 of the Judgment (Enforcement) Rules made thereunder. Also the Form 48 and Form 49 are the same in this case as in the Bendel State case. **Therefore the procedure to be followed in**

the Uhunmwangbo (Bendel State) case must be the same as in the instant case in the enforcement of court orders, whether it is for mandatory or restrictive injunction. That is to say that the relevant law and rules available locally must apply to the instant case i.e. Section 71 of the Sheriff and Civil Process law of Eastern Nigeria 1963 (cap. 118) and order 9 Rule 13 of the Judgment (Enforcement) Rules made there-under. It is therefore wrong for the learned trial judge in this case to import and apply Order 42 Rule 7 of the English Rules of the Supreme Court 1956, and for the Court of Appeal to uphold his decision. I find that the local law and rules on the matter are applicable and there is therefore no need to rely on Section 16 of the High Court Law of Eastern Nigeria applicable to Imo State, in order to import the English rules of procedure. I therefore find that the Court of Appeal was wrong in holding that Order 42 Rule 7 of the English Supreme Court Rules 1956, applied in the instant case, and in remitting the application back to the trial court for hearing on the merits. I also answer issue 2 in the negative.

Having resolved issues 1 and 2, against the respondents, I do not think that the resolution of issues 3 and 4 in either way, will affect the case of the appellants in anyway. It is my respectful view that the main issues in contention in this appeal are issues 1 and 2 and issues 3 and 4 are merely supplementary. I do not therefore find it necessary to consider them in this appeal. In sum, I find that the decision of the Court of Appeal affirming the ruling of the trial court is wrong and cannot stand. I allow the appeal as being meritorious and set aside the decisions of the trial court and the Court of Appeal. The application in the trial court is hereby struck out. I award N10,000.00 costs in favour of the appellants.

KUTIGI JSC

I read in advance the judgment just read by my learned brother Kalgo, J.S.C. I agree with his reasoning and conclusions. The appeal is meritorious and it is hereby allowed. The judgment of the Court of Appeal and the Ruling of the trial High Court are both set aside. An order striking out the application before the High Court are both set

aside. An order striking out the application before the High Court is hereby substituted. I endorse the order for costs.

OGUNDARE JSC

I agree entirely with the judgment of my learned brother kalgo J.S.C. just delivered. I adopt his reasoning as mine. I, too, allow the appeal and abide by the consequential orders, including the order as to costs, made by him.

ONU JSC

Having had the opportunity of reading before now the judgment of my learned brother Kalgo, JSC just delivered, I am in entire agreement with him that the decision of the Court below affirming the ruling of the trial Court is wrong and cannot be allowed to stand.

Accordingly, I too allow this appeal as being meritorious, set aside the decision of the Court below and award N10,000.00 costs to the Appellants.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Kalgo, J.S.C. and I agree that there is merit in this appeal and that the same ought to be allowed.

Accordingly, for the same reasons as are contained in the leading judgment I, too, allow this appeal and set aside the decision and orders of the court below. The substantive application pending before the trial court is hereby struck out. I abide by the order as to costs made in the leading judgment.