

SUPREME COURT OF NIGERIA
FRIDAY 28TH JUNE, 2002. SC. 94/1996
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE,
S. U. ONU, S. O. UWAIFO, A. O. EJIWUNMI, JJSC

YIOLA MASKALA APPELLANT
AND
DIMBRIWE SILLI RESPONDENT

COURTS - Area courts - Composition - The courts must not all be made up of panel of judges - As there are sole area court judges in all States - That were parts of former Northern Nigeria (H1)

APPEALS - Fresh issue - Raised without leave - Fate - Composition of Area court is new issue - And failure to obtain leave in respect of same - Renders ground of appeal on the issue incompetent (H2)

COURTS - Area courts - Constitution - Presumption of regularity - The court is presumed to be properly constituted - As there was no indication that it was not so constituted (H3)

FACTS

Plaintiff/appellant and defendant/respondent were involved in a dispute over a piece of farmland. The dispute led to the institution of this action at the Area Court, Shelleng-Adamawa State. Appellant called four witnesses to support his claim over the land. Respondent on his part claimed that he has been on the land for over 50 years and that the land was given to him by one Salami (now deceased). At the end of hearing, the court relied on the evidence of respondent.

The court held that preponderance of evidence tilts in favour of respondent and that appellant was unable to prove his claim of the disputed land. Dissatisfied, appellant appealed to the Upper Area Court which found nothing wrong with the decision of the trial court and dismissed the appeal. This led appellant to appeal to the High Court of the State. The court allowed the appeal and set aside the decision of the Upper Area Court. Respondent was thus dissatisfied. He filed appeal at the Court of Appeal, Jos Division. The court found merit in the appeal by setting aside the decision of the High Court

and restoring that of the Upper Area Court. Aggrieved, appellants appealed to Supreme Court wherein he raised a fresh issue on the composition of the trial Area Court.

ISSUES FOR DETERMINATION

“(i) Whether the trial Civil Area Court Shelleng was properly constituted when it heard and determined this case? And if the answer is in the negative. Whether the decision of the court of appeal which restored the said judgment did not amount to a nullity?”

“(ii) Whether the grounds of appeal filed and argued before the lower court did not all raise issues of mixed law and facts? And if the answer is in the affirmative, can it be said that the leave granted by a single judge of the Adamawa high Court to the Respondent herein to appeal against the said judgment was valid? and if not, did the Court of Appeal have jurisdiction to hear and determine the said appeal?”

HELD (Unanimously dismissing the appeal per lead

judgment of **BELGORE JSC**)

Area courts - Composition

1. Looking at subsection (3)(b) of section 4, the only provisions adverted to by learned counsel for the appellant, one could fall into grave error of believing all Area Courts are made up of panels i.e. presiding area judge and members except as provided in subsection (2) of Section 4 where Islamic personal law is involved. This is far from the truth and I believe the learned counsel perhaps acted in ignorance of the entire law. Not all the Area Courts are of members type, there are sole area court judges in all the States that were parts of former Northern Nigeria. The Edict on Area Courts replacing the Native Courts Law that was repealed in the States created in 1967, created for each state Area Courts. The Area Courts Edict 1968, now law, provides clearly in section 4 subsection (1) as follows:

“S. 4(1) An area court shall consist of: (a) an area court judge sitting alone; or

(b) an area court sitting with one or more members, and the Upper Area Court shall consist of three judges any two of whom sitting together shall form a quorum.” (p. 1851 D)

APPEALS - Fresh issue - Raised without leave - Fate

2. At any rate the issue of whether the court was properly constituted or not has never been raised in any of the four courts below. Being a new issue being raised on appeal to this Court, leave is needed under section 213(3) of the Constitution of Federal Republic of Nigeria 1979, applicable when the appeal was filed, to raise and argue it. As no leave was obtained the ground of appeal on this issue of the composition of the trial court is incompetent. The preliminary objection by the respondent therefore succeeds. The same applies to issue 1.
(p. 1852 C)

Area courts - Constitution - Presumption of regularity

3. There is nothing to indicate, in the printed record, that Shelling Civil Area court that heard this case at the beginning was not properly constituted. The presumption of regularity applies that it was properly constituted. If it was a member type, the warrant establishing it must indicate clearly what type of area Court it is. (p. 1852 F)

REPRESENTATION

A. J. Akanmode for the Respondent

No appearance for the Appellant

CASES REFERRED TO

Nwosu v. Udeaja (1990) 1 SCNJ 152

Ogbechie v. Onochie (1988) 1 NWLR (Pt. 70) 370

Idundun v. Okumagba (1969) 1 All NLR 281

Madukolu v. Nkemdilim (1962) 1 All NLR 589

Ishola v. Ajiboye (1994) 7-8 SCNJ 3

Achinekwu v. Ishagba (1988) 4 NWLR (Pt. 89) 411

Adeleke v. Serifa (1990) 3 NWLR (Pt. 136) 94

Nwanezie v. Idris (1993) 3 NWLR (Pt. 279) 1

Okpanum v. S.G.E. Nig. Ltd. (1998) 7 NWLR (Pt. 559) 537

Ladi v. Marshall (1954) 1 WLR 1489

STATUTES REFERRED TO

Area Court Edict 1968, ss. 4(1)(a)(b) & (b), (3)(b)

Constitution of the Federal Republic of Nigeria 1979, s. 213(3)

LEAD JUDGMENT BY BELGORE JSC

B The appellant was the plaintiff at the court of first instance, the
Area Court sitting at Shelleng in the former Gongola State (now
Adamawa State.) The claim was for a piece of farmland on which the
respondent as defendant was farming. Yiola Maskala as plaintiff
C deemed the farmland as his own and called four witnesses. But looking
at what he claimed before the Civil Area Court at Shelleng, the claim
is as follows:

“The farm belongs to my senior brother, which he gave to
Yasokena. Then I went and asked of it from our ward elders; there
D the defendant said he is going to show me the land.

But later when we reached home he refused to do so ...”

The case of the appellant as plaintiff was hardly more than
what is quoted above. The respondent as defendant denied knowing
any person by the name Yasokena. The respondent claimed to have
E been on the land for over fifty years and that it was given to him by
one Salami who had died and that it was JAURO i.e. ward head,
who was in charge of the land to give out to various people. Apart
from the bland statement of the appellant, his witnesses did not help
his case. His first witness, Tikilius only said:

F “The farm belongs to Yoila’s brother, Ngogulo, by the time
Ngogulo died the farm was given to Milemo. There was a
misunderstanding which took place so Milemo gave out this farm to
Surubel, then later to Yachumun. After some time, Yoila’s brother
G learnt that the farm is with Kantile.”

The second witness for the plaintiff never helped the confusing
situation of the case either, as he never clearly stated who gave the
land to the appellant and defendant refused to leave the land. Other
witnesses testified but none of them clearly stated how the appellant’s
H claim arose. Was it by inheritance or as a gift? At the end of all
evidence before the trial court, the area court judge found the case
of the plaintiff not proved. He found on preponderance of evidence
that it was the respondent, Dimbiruce, who had been on the land for
about fifty years; he took over from his dead uncle Jelimbès. The

court also found that nobody had ever seen the appellant farming on the disputed land and the respondent had been on it for about fifty years. The appellant never offered any evidence of how he came by the claim. The appellant lost at the trial court.

Dissatisfied with trial civil area court's decision, the appellant appealed to Upper Area Court which found nothing wrong with the decision of the trial court and dismissed the appeal. This led to the appeal to the High Court. B

The High Court reviewed the evidence of witnesses at the trial court by setting out in summary form what each witness said. It was the opinion of the High Court that long possession might have influenced trial court and the Upper Area Court in arriving at their decisions. It dwelt on the possibility of rent or loan of the land, which was not an issue in any of the two lower Area Courts. It finally concluded: C

“Under traditional system of ownership of land, any land “Loaned” out or rented out to another remains so no matter how long the tenant remained tilling the land” D

and therefore allowed the appeal and set aside the decision of Upper Area Court which upheld trial court's decision. This led to appeal to Court of Appeal, Jos Division. E

Court of Appeal, based on the issues before it, found merit in the appeal and set aside the decision of the High Court and restored the decision of the Upper Area Court. While agreeing that long possession simpliciter will not confer title on land, it is some evidence at least of possession and to defeat any claim for title not proved. *Nwosu v. Udejaja* (1990) 1 SCNJ 152; (1990) 1 NWLR (Pt. 125) 188; *Ogbechie & Ors. v. Onochie & Ors.* (1988) 1 NWLR (pt. 70) 370; *Idundun v. Okumagba* (1969) 1 All NLR 281. It found that on the entire evidence before the courts below the plaintiff (now appellant) never established any link or even possession to the land in dispute. It found the High Court erred in reversing the decision of trial court which was upheld by the Upper Area Court as it was clear on the record that the appellant as plaintiff never proved his claim. It found that the witnesses for the plaintiff were even not consistent in their various evidence on how the land devolved on the appellant (plaintiff). It therefore allowed the appeal. F G H

The appeal to this court is based on two grounds, the original

ground and one additional ground, to wit:

Original Ground:

“The judgment of the Court of appeal amounted to a nullity in that the trial area court whose decision it restored and confirmed was not properly constituted when it heard and determined the cases,
 B *particulars:*

Contrary to the provisions of S.4(3)(b) of the Area Courts Edict 1968 applicable to Gongola State as it then used to be, only one judge sat and heard the case at the Civil area court, Shelleng.”

Additional Ground:

C The proceedings as well as the judgment of the court of appeal amounted to a nullity in that there was no competent appeal before the said court.

Particulars

D (a) The judgment appealed against before the inner area court was that of the High Court of Gongola State sitting in its appellate jurisdiction.

(b) All the grounds of appeal contained in the Notice of Appeal against the said judgment were grounds of mixed law and facts.

E (c) Leave to appeal against the said judgment based on the grounds aforesaid was granted by a single judge of the said High Court contrary to the decision of the Supreme Court in the case of Ishola v. Ajiboye (1994) 7-8 SCNJ, 3, 37.

F The appellant on the foregoing grounds of appeal formulated the following issues for determination:

“(i) Whether the trial Civil Area Court Shelleng was properly constituted when it heard and determined this case? And if the answer is in the negative, whether the decision of the court of Appeal which
 G *restored the said judgment did not amount to a nullity?*

(ii) Whether the grounds of appeal filed and argued before the lower court did not all raise issues of mixed law and facts? And if the answer is in the affirmative, can it be said that the leave granted by a single judge of the Adamawa High Court to the Respondent herein
 H *to appeal against the said judgment was valid? and if not, did the Court of Appeal have jurisdiction to hear and determine the said appeal?”*

The respondent in his brief raised a preliminary objection to the second ground of appeal in that the ground was never raised in

the courts below. The issue in the ground was that the appeal in the Upper Area Court, High Court and the Court of Appeal were incompetent in that the trial area court was not properly constituted. The reason for this, according to the appellant, is that the provisions of Area Court Edict in S. 4(3)(b) were not satisfied. The Edict states inter alia: B

4"(3) Subject to the provision of sub-section(2), where an area court consists of more than one number:

(b) three members shall be present at the hearing of any case unless otherwise directed by the Chief Judge, and the opinion of the majority shall, in the event of the members disagreeing be deemed and taken to be the decision of the court and the member presiding shall have a casting vote" C

The subsection (2) of section 4 provides:

"All question of Islamic personal law shall be heard and determined by the area court judge or any member learned in Islamic Law" D

Looking at subsection (3)(b) of section 4, the only provisions adverted to by learned counsel for the appellant, one could fall into grave error of believing all Area Courts are made up of panels i.e. presiding area judge and members except as provided in subsection (2) of Section 4 where Islamic personal law is involved. This is far from the truth and I believe the learned counsel perhaps acted in ignorance of the entire law. Not all the Area Courts are of members type, there are sole area court judges in all the States that were parts of former Northern Nigeria. The Edict on Area Courts replacing the Native Courts Law that was repealed in the States created in 1967, created for each state Area Courts. The Area Courts Edict 1968, now law, provides clearly in section 4 subsection (1) as follows: E
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"S 4(1) An area court shall consist of:

(a) an area court judge sitting alone; or

(b) an area court sitting with one or more members, and the Upper Area Court shall consist of three judges any two of whom sitting together shall form a quorum." H

I am surprised the learned counsel for the appellant never adverted to this all important subsection 4(1)(a) & (b). However, the

appellant has not indicated whether Shelleng civil area court is not one having a sole judge without members. The case of Achinekwu v. Ishagba (1988) 4 NWLR (pt.89) 411, 417 - 418 which was cited by counsel is not relevant to this case. Achinekwu v. Ishagba, (supra) was correctly decided by the Court of Appeal, which followed the precedent of Supreme Court in Madukolu & Ors. v. Nkemdilim (1962) 1 All NLR 589, 589. In the appeal, it was clear the court of trial was not fully constituted in accordance with the law establishing it; in the appeal now at hand there is no evidence that Shelleng civil area court was not fully constituted by the single area court judge. The only way was to indicate which one it is to produce the official Gazette showing what type of court the Chief Judge's warrant has created. **At any rate the issue of whether the court was properly constituted or not has never been raised in any of the four courts below.**

Being a new issue being raised on appeal to this Court, leave is needed under section 213(3) of the Constitution of Federal Republic of Nigeria 1979, applicable when the appeal was filed, to raise and argue it. As no leave was obtained the ground of appeal on this issue of the composition of the trial court is incompetent. The preliminary objection by the respondent therefore succeeds. The same applies to issue 1. I have to explain that even if the ground of appeal and issues raised in the appellant's brief are validly made, there is no appeal against reasons for decision of Court of Appeal which is based on the evidence before the first two courts which the High Court in its appellate jurisdiction set aside.

There is nothing to indicate, in the printed record, that Shelleng Civil Area court that heard this case at the beginning was not properly constituted; the presumption of regularity applies that it was properly constituted. If it was a members type, the warrant establishing it must indicate clearly what type of area Court it is. However, as the ground of appeal was filed without seeking leave to raise a new issue not canvassed in courts below these two issues canvassed as well as the grounds of appeal are incompetent.

On the whole, there is even no appeal against all the findings of the Court of Appeal. The appeal is devoid of any merit. It is hereby dismissed with N10,00.00 costs to respondent.

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother Belgore, JSC. I entirely agree and have nothing useful to add.

Accordingly I too dismiss the appeal with N10,000 costs to the Respondent against the Appellant.

B

ONU JSC

Having had the advantage of a preview of the leading judgment of my learned brother Belgore, JSC just delivered, I am in entire agreement with him that the appeal lacks merit.

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In the result, I too dismiss the appeal and make similar consequential orders inclusive of costs therein awarded.

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UWAIFO JSC

I read in advance the judgment of my learned brother Belgore JSC and agree with it that the appeal lacks merit.

The subject-matter is farmland. There was a dispute as to who owned it. The evidence led by the plaintiff/respondent was that the land was originally cleared by his ancestor called Nyogulo. On his death, it devolved to one Milemo. From that point on the evidence became unclear. The first witness called by the plaintiff i.e. p.w.1, Tikilius, said when the farmland was in the possession of Milemo, there was a misunderstanding which led Milemo to hand the farmland over to one Surubel and later it was given to one Yachunum. After some time the farm fell into the possession of one Kantile. When questioned by the court as to who he thought was the owner of the land, p.w.1 simply answered that it was the plaintiff.

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Then p.w.2, Kiliyonas, said Milemo gave the land to one Yasukuma who was the defendant's elder brother. The plaintiff went to the defendant in order to get the land back but that the defendant refused, saying he got it from one Jauro. The plaintiff called two other witnesses, one kantila and one Bedo. Three out of the said four witnesses gave it in evidence that the defendant had been farming the land for some 50 years. The defendant also led evidence to lay claim to the land.

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The court came to a decision that the defendant who had been known by all to farm the land for 50 years was the owner. This was a clear rejection of what looked like evidence of traditional history relied on by the plaintiff which, as I have shown, was most unreliable and unsatisfactory. The judgment was upheld by the Upper Area Court. Curiously, however, the appellate High Court in Yola held that the land was pledged or “loaned” to the defendant when there was no evidence to that effect. It then reversed the judgment of the Upper Area Court and declared title in the plaintiff. But the Court of Appeal, Jos Division, allowed the appeal against that decision in its judgment delivered on 18 April, 1996. The court pointed out, quite rightly, that the case presented by the plaintiff was full of discrepancies and inconsistencies such that he woefully failed to prove his case upon credible evidence.

The appeal lodged against the judgment of the court below to this court appears to have been based entirely on matters of procedure. Two issues were set down for determination as follows:

“(i) Whether the trial Civil Area Court Shelleng was properly constituted when it heard and determined this case? And if the answer is in the negative, whether the decision of the Court of Appeal which restored the said judgment did not amount to a nullity?”

“(ii) Whether the grounds of appeal filed and argued before the lower court did not all raise issues of mixed law and facts? And if the answer is in the affirmative, can it be said that the leave granted by a single judge of the Adamawa High Court to the respondent herein to appeal against the said judgment was valid? And if not, did the Court of Appeal have jurisdiction to hear and determine the said appeal?”

Issue 1 is a result of appellant’s misconception of section 4 of the Area Courts Edict 1968 of former Gongola State applicable in Adamawa State. The said section provides in paragraph (a) of subsection (1) for an Area Court judge sitting alone. The Civil Area Court in Shelleng in this case was properly constituted by a single judge in conformity with the said Edict and therefore the judgment in question was not a nullity. As to issue 2, on a careful consideration of the three grounds of appeal filed to the Court of Appeal, it will be seen that they are essentially grounds of law. The first is on the right to exclusive long possession of the land in dispute said to have been exercised by the respondent. This was a period of 50 years which

was testified to by both sides. In other words, they both admitted it, and the court accepted it. That fact was not therefore in dispute, and all that was needed was to apply the consequences in law so that in raising a ground of appeal as to those consequences, it will naturally be a ground of law: See *Ogbechie v. Onochie* (1986) 1 NSCC 443 at p. 445 where this court observed as follows: B

“There is no doubt that it is always difficult to distinguish a ground of law from a ground of fact but what is required is to examine thoroughly the grounds of appeal in the case concerned to see whether the grounds reveal a misunderstanding by the lower tribunal of the law, a misapplication of the law to the facts already proved or admitted, in which case it would be question of law.” C

Grounds 2 and 3 are concerned with the reception of additional evidence by the appellate High Court without proper procedure and against the principle for admitting and acting on fresh evidence on appeal: see *Adeleke v. Serifa* (1990) 3 NWLR (pt. 136) 94; *Nwanezie v. Idris* (1993) 3 NWLR (Pt.279) 1; *Okpanum v. S.G.E. (Nig) Ltd.* (1998) 7 NWLR (pt. 559) 537; *Ladi v. Marshall* (1954) 1 WLR 1489 at 1491. What is actually in issue in both said grounds of appeal as to whether, in the course of acting in breach of the known principle to receive the fresh evidence, the court did not err? That must be a matter of law. There was no need for leave of the court to file and argue those grounds of appeal in the circumstances. The so-called leave granted by a single judge was unnecessary and has not affected the competence of the notice of appeal consequently filed. I hold that the appeal was properly before the Court of Appeal. D E F

I am satisfied that the plaintiff’s case was properly dismissed. There was nothing in his case which would have justifiably defeated the long possession the defendant has enjoyed over the land. The plaintiff failed to establish a good root of title and also at the same time did not prove that he was ever in possession of the land in dispute. The long possession of the defendant was a good defence to the claim in the circumstances: see *Ogbechie v. Onochie* (1988) 1 NWLR (pt. 70) 370; *Nwosu v. Udeaja* (1990) 1 NWLR (pt. 125) 188. The Court of Appeal was right in reversing the judgment of the appellate High Court. G H

I, too, dismiss the appeal against the judgment of the Court of Appeal, Jos Division, with N10,000.00 costs to the respondent.

EJIWUNMI JSC

I was privileged to have read in advance the draft of the judgment just delivered by my learned brother Belgore JSC, wherein he dismissed this appeal.

B In the said judgment, the issues arising from the facts having been carefully considered, I agree for the reasons given in the said judgment that the appeal lacks merit. The appeal is therefore also dismissed by me and I award costs in the sum of N10,000.00 to the respondent.

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