

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2002. SC. 63/1998
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,
A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC

CHUKWUMA EZEKUDE & ANOR APPELLANTS
(For himself and on behalf of Udema
family of Umuatake Akili)

AND

OKWUEZULU ODOGWU & ORS RESPONDENTS
(For themselves and on behalf of
members of Umuofu family of Oboma
village Uchi and on behalf of Owelle family)

APPEALS - Supreme Court - Fresh issue - Raised without leave -
Fate - Since leave was not obtained to challenge representative na-
ture of the cases - The issue is incompetent (H1)

EVIDENCE - Contradiction - Effect - Since there is no contradiction
in evidence adduced - Trial court rightly held that plaintiff's case was
proved (H2)

LAND LAW - Title - Proof of - Appellants failed to prove their root of
title - And no miscarriage of justice occurred in the case - Since Court
of Appeal properly considered judgment of trial court (H3)

APPEALS - Concurrent finding of facts - Supreme Court does not
interfere with such findings - In so far as same were based on evi-
dence - Placed properly before courts (H4)

FACTS

This appeal arose out of two consolidated suits in the High Court of former Bendel State which went on appeal to the Court of Appeal, Benin City Division. Before the said High Court, plaintiffs/respondents sought inter alia, a declaration of title to an island in River Niger. At trial, respondents gave traditional history of their root of title and their various acts of possession on the land. Defendants/appellants could not establish their root of title over the land.

At the close of the cases for the parties, learned trial judge gave judgment for respondents on all their claims. Being dissatisfied, appellants appealed to the Court of Appeal which in turn upheld the decision of the trial court. Being more dissatisfied, appellants filed appeal at Supreme Court, wherein it raised a fresh issue of representative capacities of the parties in the action.

ISSUES FOR DETERMINATION

“(1) was the Court of Appeal right in holding that Suit No. HCK/11/77 was properly constituted and that the respondents proved their representative capacities by overwhelming evidence?”

“(2) was the Court of Appeal right, having regard to the manner the learned trial Judge reviewed the evidence in the case and his approach to the determination of the case, in confirming the judgment in the consolidated Suits?”

“(3) whether the Court of Appeal was right in holding that the learned trial Judge found the traditional evidence by the plaintiffs, satisfactory and cogent and that he believed it?”

“(4) whether the plaintiffs in Suit No. HCK/11/77 pleaded and proved their root of title to the land in dispute and if not, whether the Court of Appeal was right in affirming the judgment of the learned trial Judge in the case?”

“(5) was the Court of Appeal right in not giving proper consideration to Exhibits 9, 13, 14 and 15 in its determination of the appellant’s appeal?”

“(6) was the Court of Appeal right, having regard to the pleadings and the evidence in the case and the manner the learned trial Judge evaluated the said evidence, in affirming the judgment in the consolidated Suits?”

“(7) whether the Court of Appeal was right in holding that the learned trial Judge rightly took judicial notice of the customary law of forfeiture of Uchi people?”

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

Supreme Court - Fresh issue - Raised without leave - Fate

1. The issue whether there was really a case properly in court

because representative capacity of respondents to sue was not proved. This is a surprise in this matter. All through the journey of the case from trial court to Court of Appeal, there was no challenge to the representative capacity of respondents to sue; also no challenge was made as to appellants suing and being sued in representative capacity. Looking through the entire pleadings and evidence in trial court nobody challenged the representative nature of the cases for the two sides now before this Court. This is a matter that can only be argued as new issue by leave of court. No leave was obtained. At any rate, it is very apparent in the record before this Court that all parties fought the consolidated suits in a representative capacity. (At any rate), nobody in the plaintiffs' family surfaced in court to deny being not interested in the suit. Further, the plaintiffs or any one of them can always sue to protect the family property including his own interest. This issue is irrelevant, incompetent and it is wrong to argue it at this stage. It has been argued out of abundant generosity of this Court. (p. 2254 D)

EVIDENCE - Contradiction - Effect

2. The issue 2 complains of court below relying on evidence not in the printed record of proceedings. I find nothing substantial in this issue. The identity of the land in dispute is very clear, that is an Island, the more-so during the flood period of River Niger, and that at times during dry season when the river recedes one can walk on dry land to the Island which obviously at that period loses its island nature. I see no contradiction in this looking at the evidence. If there are errors by trial court on some of the points in evidence, these are not of substance to the claims of the parties. The real question should be whether the parties, on the entire evidence before the court proved their own balance of probability. The trial court held the plaintiff's case was proved. Court of Appeal did not find any reason to disturb this finding. (p. 2254 H)

LAND LAW - Title - Proof of

3. Thus the matter not admitting any further argument because

the record is replete with clear evidence of respondents being in physical possession of the disputed land and also in control of it. The appellants, on the record never got near to proving their root of title to the satisfaction of trial court. What Court of Appeal did was to look through the entire record and decide the rationale on which trial court based its judgment. It never overstated what was before trial court and did not invent any new evidence. There was no miscarriage of justice. (p. 2255 D)

APPEALS - Concurrent findings

4. This case was a result of a clear issue of facts revealed at the trial. It is entirely based on facts, which Court of Appeal never found reason to disturb. In this Court also, the appellants have not adduced enough argument to change the fate of this case as it has been from trial court. It is not the duty of this court to interfere with concurrent findings of fact by courts below; in so far as the findings were based on the evidence properly before those Court. (p. 2255 H)

REPRESENTATION

G. R. I. Egonu, SAN with P. O. Okonkwo Esq., for the appellants Respondents and counsel were absent, but brief for respondent was filed by P. I. Nsolo Esqr. from Prof. A. B. Kasunmu's Chambers

CASE REFERRED TO

Melifonwu & Ors v. Egbuyi & Ors (1982) 9 SC 145

LEAD JUDGMENT BY BELGORE JSC

This appeal arose out of two consolidated suits in the High Court of former Bendel State which went on appeal to Court of Appeal, Benin Branch. The two suits were first heard at Kwale but for reasons not found in the record, and not explained in this Court, the matter was transferred to Ogwashi-Uku Division of the High Court, on the very date the Kwale High Court was to deliver judgment in the matter. The respondents herein were the plaintiffs in the consolidated suit while the appellants were made the defendants. The plaintiffs called the land in dispute "Agwe Umuofu" and the defen-

dants called it “Agwe Udemā”. But the land is the same; there is no dispute as to its identity. In the course of trial at Ogwashi-Uku the respondents intermittently called the same land “Agwe Uchi” and in a motion amended their claim to include declaration of title. Thus the plaintiffs claimed:

- (i) title to the land which is an Island in River Niger, B
- (ii) order to defendants to render account for rents, realities collected by defendants on the land,
- (iii) order for payment of the said rents etc., as in (ii) above to plaintiffs, C
- (iv) order for eviction of the defendants from the said land including the ponds therein and an order for perpetual injunction restraining the defendants (now appellants) their agents, privies, servants from further entry into the land in dispute. C

The appellants represented by Chukwuma Ezekude are descendants of one Udemā of Umuatake village, Akili (also known as Akili-Ogidi) now in Anambra State. This much is admitted by both parties. The respondents (plaintiffs) relied on traditional history, acts of possession and ownership; they also claimed not only use by them of the Island but also acts of granting rents and fishing rights from time immemorial. The appellants on the other land claimed absolute ownership of the land from time immemorial through their ancestor. At the close of the case for the parties; learned trial judge gave judgment for plaintiffs (now respondents) on all their claims. Defendants appealed to Court of Appeal which in turn upheld the decision of the trial Court and this gave rise to the appeal to this Court. F

The appellants formulated the following issues for determination:

“(1) was the Court of Appeal right in holding that Suit No. HCK/11/77 was properly constituted and that the respondents proved their representative capacities by overwhelming evidence?” G

“(2) was the Court of Appeal right, having regard to the manner the learned trial Judge reviewed the evidence in the case and his approach to the determination of the case, in confirming the judgment in the consolidated Suits?” H

“(3) whether the Court of Appeal was right in holding that the learned trial Judge found the traditional evidence by the plaintiffs, satisfactory and cogent and that he believed it?”

(4) *whether the plaintiffs in Suit No. HCK/11/77 pleaded and proved their root of title to the land in dispute and if not, whether the Court of Appeal was right in affirming the judgment of the learned trial Judge in the case?*

B (5) *was the Court of Appeal right in not giving proper consideration to Exhibits 9, 13, 14 and 15 in its determination of the appellant's appeal?*

C (6) *was the Court of Appeal right, having regard to the pleadings and the evidence in the case and the manner the learned trial Judge evaluated the said evidence, in affirming the judgment in the consolidated Suits?*

(7) *whether the Court of Appeal was right in holding that the learned trial Judge rightly took judicial notice of the customary law of forfeiture of Uchi people?"*

D ***The issue whether there was really a case properly in court because representative capacity of respondents to sue was not proved. This is a surprise in this matter. All through the journey of the case from trial court to Court of Appeal, there was no challenge to the representative capacity of respondents to sue; also no challenge was made as to appellants suing and being sued in representative capacity. Looking through the entire pleadings and evidence in trial court nobody challenged the representative nature of the cases for the two sides now before this Court. This is a matter that can only be argued as new issue by leave of court. No leave was obtained. At any rate, it is very apparent in the record before this Court that all parties fought the consolidated suits in a representative capacity. (At any rate), nobody in the plaintiffs' family surfaced in court to deny being not interested in the suit. Further, the plaintiffs or any one of them can always sue to protect the family property including his own interest. Melifonwu & Ors v. Egbuyi & Ors (1982) 9 SC 145. This issue is irrelevant, incompetent and it is wrong to argue it at this stage.***
 F
 G
 H ***It has been argued out of abundant generosity of this Court.***

The issue 2 complains of court below relying on evidence not in the printed record of proceedings. I find nothing substantial in this issue. The identity of the land in dispute is very clear, that is an Island, the more-so during the flood period of

River Niger, and that at times during dry season when the river recedes one can walk on dry land to the Island which obviously at that period loses its island nature. I see no contradiction in this looking at the evidence. If there are errors by trial court on some of the points in evidence, these are not of substance to the claims of the parties. The real question should be whether the parties, on the entire evidence before the court proved their own balance of probability. The trial court held the plaintiff's case was proved. Court of Appeal did not find any reason to disturb this finding.

On issue 3, the evidence before trial court was considered by learned judge who at the end found the case for plaintiffs proved and that of defendants short of being proved. Court of Appeal found:

"The trial judge found the traditional evidence of the plaintiffs satisfactory and cogent. He believed it, and ipso facto rejected and disbelieved the version of the evidence of the appellants' root of title as pleaded. Therefore cadit questio"

Thus the matter not admitting any further argument because the record is replete with clear evidence of respondents being in physical possession of the disputed land and also in control of it. The appellants, on the record never got near to proving their root of title to the satisfaction of trial court. What Court of Appeal did was to look through the entire record and decide the rationale on which trial court based its judgment. It never overstated what was before trial court and did not invent any new evidence. There was no miscarriage of justice.

The issues 4, 5 & 6 addressed the question of who the parties were at the trial court. To my mind learned senior advocate seems to make a big issue as to the parties to this case. I must restate that the contending parties are those listed as plaintiffs and defendants, now in this Court as Appellants and Respondents. The judgments of the courts below state clearly that the respondents are the ones entitled to judgment on their claim to the land or island in dispute. The plaintiffs are clear on the record, just as the appellants are also.

This case was a result of a clear issue of facts revealed at the trial. It is entirely based on facts, which Court of Appeal never found reason to disturb. In this Court also, the appel-

lants have not adduced enough argument to change the fate of this case as it has been from trial court. It is not the duty of this court to interfere with concurrent findings of fact by courts below; insofar as the findings were based on the evidence properly before those Court.

B I find no substance in this appeal and I hereby dismiss it as lacking in merit. I affirm the decision of Court of Appeal which upheld the judgment of trial High Court. I award N10,000.00 as costs in this appeal for respondents against the defendants/appellants.

C

KUTIGI JSC

I have had a preview of the judgment just read by my learned brother, Belgore, JSC. I agree with him that the appeal lacks merit and should be dismissed. It is accordingly dismissed with costs as assessed.

ONU JSC

E Having been privileged to read before now the judgment of my learned brother Belgore, JSC just delivered, I am in entire agreement with him that the appeal lacks merit. Accordingly, I dismiss the appeal and affirm the decision of the Court of Appeal, which confirmed the decision of the trial High Court. I, too similarly award costs of N10,000.00 for Respondents against Defendants/Appellants.

F

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother BELGORE JSC. I agree that the appeal is without merit and for the reasons given by him, I also dismiss the appeal with costs of N10,000.00 in favour of the Respondents.

EJIWUNMI JSC

H Being privileged to have read in advance the judgment just delivered by my learned brother Belgore JSC, I agree for the reasons stated in the said judgment that this appeal lacks merit. In the result, this appeal is dismissed by me and I abide with the order made as to costs in the said judgment of Belgore JSC dismissing the appeal.