

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2002. SC.39/98
CORAM:- S. M. A. BELGORE, I. L. KUTIGI, S. U. ONU,
A. I. KATSINA-ALU, U. A. KALGO, JJSC

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|---|-------------------|
| 1. NWEKE NWOKEDI | |
| 2. LAWRENCE AKPE | APPELLANTS |
| 3. UYAMMADU OGUGUO | |
| (For themselves and on behalf of all
others the people of Offianta village,
Nsugbe town Oyi Local Govt Area) | |
| AND | |
| 1. EKWENUGU OKUGO | |
| 2. NNAKE AKWOBI | RESPONDENTS |
| 3. AKPE AWALIOBA | |
| (For themselves and as representing all
others the people of Akwete Quarter of
Nneyi village, Umuleri town, Anambra
Local Government Area) | |

LAND LAW - Judgment - Conferment of title - The 1957 judgment did not vest title on respondents - Even though claims of appellants were dismissed (H1)

APPEALS - Judgment - Error - Court of Appeal was in error - When it upheld the plea of res judicata - In favour of respondents (H2)

FACTS

Plaintiffs/appellants instituted this action against defendants/respondents at the High Court of Anambra State, Otuocha, wherein they claimed inter alia for general damages for trespass and injunction restraining respondents from further trespass on the land in dispute. Thereafter, respondents filed an application against the action on the ground that the suit is caught by res judicata.

In a reserved ruling, the learned trial judge held firstly that the native court's judgment in the 1907 case No. 66/1907 which declared title in appellants was valid and subsisting. Secondly, that the plea of res judicata was not available to respondents. Dissatisfied,

respondents appealed to the Court of Appeal, Enugu Division. The court allowed the appeal and in effect upheld the plea of *res judicata*. Being aggrieved, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

The only question for determination in this appeal is whether the 1957 judgment can successfully operate as *res judicata*.

HELD (Unanimously allowing the appeal per **KATSINA-ALU JSC**)

LAND LAW - Judgment - Conferment of title

1. It seems to me plain that the plaintiffs at the trial of the 1957 case abandoned their claims for declaration of title, #300 (three hundred pounds) mesne profits, recovery of possession and injunction. These claims though directly in dispute were not adjudicated upon. In other words the trial court did not give any decision on them one way or another. It is pertinent to point out that in that suit (1957) the defendants did not counter claim. The result is this. That case did not declare title of the land in question in the defendants. In fact that decision was to the effect, more or less, that the defendants were customary tenants to the plaintiffs who are appellants herein. That judgment could not from any view be construed as decreeing title in the defendants. Plainly, even though the claims of the plaintiffs were dismissed, the apparent losers were the defendants. This is so because as I have already pointed out the decision was to the effect that the defendants were plaintiffs' customary tenants as opposed to their contention that they were owners of the land in dispute.

(p. 2393 D)

Appeals - Judgment - Error

2. The view of the two courts below that the judgment in suit No. 66 of 1907 is valid and subsisting knocks the bottom out of the contention that the judgment in the 1957 case operates as *res judicata* against the plaintiffs. The Court of Appeal was therefore in grave error when it upheld the plea of

res judicata in favour of the defendants. (p. 2394 B)

REPRESENTATION

Ifeanyi Obiakor for the Appellants

F. C. Ofodile for the Respondents

CASES REFERRED TO

Williams v. Sanusi (1961) All NLR 334

LEAD JUDGMENT BY KATSINA-ALU JSC

The plaintiffs in this action are the people of Offianta Village, Nsugbe Town, Oyi Local Government Area while the defendants are the people of Akwete Quarter, Nneyi Village, Umuleri Town, Anambra Local Government Area. The plaintiffs instituted this action against the defendants for the following reliefs:

(a) The sum of N20,000.00 being general damages for the defendants' trespass to the plaintiffs' land known as and called Achutu in the possession of the plaintiffs.

(b) Permanent injunction to restrain the defendants, their servants or agents from further trespass to the said land.

After pleadings had been ordered, filed and exchanged the defendants brought a motion to dismiss the plaintiffs' case on the grounds of *res judicata* and/or abuse of process of the court. The motion was heard by Amaizu J. In a reserved ruling delivered on 31 March 1993 the learned trial Judge held first, that the Native Court judgment in the 1907 case No. 66/1907 which declared title in the plaintiffs, was valid and subsisting. Secondly, that the plea of *res judicata* was not available to the defendants.

The defendants appealed against the ruling to the Court of Appeal, Enugu Division. The Court of Appeal allowed the appeal, in effect upheld the plea of *res judicata*.

The plaintiffs have now appealed against the decision of the Court of Appeal to this court.

In their brief of argument the plaintiffs raised one issue for determination in the appeal. It reads:

"Whether their Lordships of the Court of Appeal ought to have dismissed the respondents' appeal wholly and affirmed the decision of the Otuocha High Court or not."

The first point to note is that the defendants based their plea of res judicata on the judgment of Kaine J. in suit No. 0/73/57 - see paragraph 6 of the Statement of Defence.

The plaintiffs and the defendants have had a series of court actions in respect of Achutu land. The first case was in 1907 in suit
 B No. 66/1907: Obi Chukura, representing the plaintiffs' family against Ifugha of Umuleri representing the defendants people. Judgment in that case was given in favour of the plaintiffs' family. See paragraph 37 of the Statement of Claim which reads:

C “37. *The first case was in 1907: Obi Chukura, representing the plaintiffs' family; sued Ifugha of Umuleri, representing the defendants' people, in respect of Achutu land and Otuonya - the former waterside market. Judgment was given in favour of the plaintiffs' people as being owners of Achutu, including Otuonya. This case, D No. 66 of 1907, of the Native Council Court of Onitsha will be relied upon as res judicata.*

In contrast paragraph 6 of the statement of defence states as follows:

“6. *The answer to paragraphs 36, 37, 38, 39 and 40 of the Statement of Claim the defendants assert as follows:*

E (i) *The cases therein referred to were all reviewed among other cases in the High Court case 0/73/57 between the same parties; to wit, OSILI NNACHO & Others for OFFIANTA NSUGBE versus ONUORA MECHIE & Others for AKWUATE NNEYI - UMULERI in F respect of the same portion of land as in this case and judgment was entered for the present defendants in that case dismissing the present plaintiffs' claims for a declaration of title to the land in dispute, L400 damages for trespass, L300 for mesne profits, recovery of possession and injunction. This judgment which is hereby pleaded will be founded G upon.”*

The only question for determination in this appeal is whether the 1957 judgment can successfully operate as res judicata.

The plaintiffs have contended that the 1957 case did not give a decision on any of the claims raised therein. Judgment in the 1947
 H case was received in evidence and marked Exhibit 5. In the concluding part of his judgment the learned trial Judge stated as follows:-

“*I am also of opinion that despite the items of claim as contained in the Statement of Claim, the plaintiffs should, while giving evidence in the court, tell the court on oath what they are claiming.*

In this case the claims as contained in the Statement of Claim are declaration of title; L300 means (sic) profits, recovery of possession and an injunction but all that P.W.1 - Obi Nwoye, who represents the plaintiffs, said in his evidence is that they sued the defendants because they stopped paying them as customary tenants; that they want the defendants to pay them L400 for fishing on their waters, quarrying their stones and collecting palm fruits and putting tenants on the land and they have continued to do so since this action began. No mention was made of the declaration of title, L300 means (sic) profits, recovery of possession and injunction. His evidence covers only L400 damages for trespass but if it is true the defendants were their customary tenants on the land as they said, then the tenants are no trespassers on the land and should pay no damages for farming and fishing on the land and there is no former judgment for forfeiture.”

It seems to me plain that the plaintiffs at the trial of the 1957 case abandoned their claims for declaration of title, L300 (three hundred pounds) mesne profits, recovery of possession and injunction. These claims though directly in dispute were not adjudicated upon. In other words the trial court did not give any decision on them one way or another. It is pertinent to point out that in that suit (1957) the defendants did not counter claim. The result is this. That case did not declare title of the land in question in the defendants. In fact that decision was to the effect, more or less, that the defendants were customary tenants to the plaintiffs who are appellants herein. That judgment could not from any view be construed as decreeing title in the defendants. Plainly, even though the claims of the plaintiffs were dismissed, the apparent losers were the defendants. This is so because as I have already pointed out the decision was to the effect that the defendants were plaintiffs’ customary tenants as opposed to their contention that they were owners of the land in dispute.

It is also significant to point out that both the trial court and the Court of Appeal have held that the judgment in the 1907 case which declared title in the plaintiffs is valid and subsisting. The trial Judge in his judgment held as follows:

“It is trite that a judgment not appealed against and or set aside by a Higher Court is a valid and subsisting judgment. Williams

v. Sanusi (1961) All NLR p. 334. As I have not been referred to any decision of a higher court setting aside the judgment of 1907, I hold that it is still a valid judgment and subsists."

With this, the Court of Appeal agreed. It said:

B *"Be that as it may it is clear from the records that the lower court in this appeal only decided that the judgment in suit No. 66 of 1907 was not on appeal before the court in Suit No. 0/73/1959. It is also the view of that court that and I agree with that submission that the judgment in suit No. 66 of 1907 is still subsisting."*

C ***The view of the two courts below that the judgment in suit No. 66 of 1907 is valid and subsisting knocks the bottom out of the contention that the judgment in the 1957 case operates as res judicata against the plaintiffs. The Court of Appeal was therefore in grave error when it upheld the plea of***
D ***res judicata in favour of the defendants.***

In the result this appeal succeeds and is allowed by me. Accordingly I set aside the judgment of the Court of Appeal, Enugu Division, given on 18 June, 1997. I restore the ruling of the trial court. It is ordered that the main suit still pending in the Otuocha
E High Court be heard and determined speedily in view of its age. There shall be costs of N10,000.00 in favour of the Appellants.

BELGORE JSC

F I agree with my learned brother, Katsina-Alu, JSC, that this appeal has merit. I also allow it. I make no order as to costs.

KUTIGI JSC

G I read in advance the judgment just delivered by my learned brother Katsina-Alu JSC. I agree with his reasoning and conclusions. I will also allow the appeal, set aside the judgment of the Court of Appeal and restore the Ruling of the trial High Court. I also order
H speedy trial of the substantive suit still pending in the trial Court. I endorse the order for costs.

ONU JSC

I had the privilege of a preview of the judgment of my learned brother, Katsina-Alu, J.S.C. just delivered. I am in entire agreement therewith that the appeal is meritorious and ought therefore to succeed.

Accordingly, I too allow the appeal, set aside the judgment of the Court of Appeal, Enugu Division given on 18th June, 1997 and I restore the judgment of the trial Court while ordering that the main suit still pending in the Otuocho high Court be heard and determined thereat speedily in view of its age.

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KALGO JSC

I have the privilege of reading in advance the judgment just delivered by my learned brother Katsina-Alu J.S.C. in this appeal. I agree with him that there is merit in the appeal for the reasons which he has given therein which I adopt as mine. In the result I also allow the appeal, set aside the decision of the Court of Appeal and restore the judgment of the trial court. I abide by the consequential orders in the leading judgment including the order as to costs.

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