

SUPREME COURT OF NIGERIA
FRIDAY 27TH SEPTEMBER, 2002. SC. 88/1998
CORAM:- I. L. KUTIGI, E. O OGWUEGBU, A. I. IGUH,
S. O. UWAIFO, E. O. AYOOLA, JJSC

KALU ONWUCHEKWA APPELLANT
AND
B.I.D. EZEUGU RESPONDENT

PLEADINGS - Binding nature of - Appellant is bound by his pleadings - And evidence which goes outside his pleadings is inadmissible (H1)

LAND LAW - Acquisition - Proof - Appellant has burden to prove that he acquired land on Kaduna Street - And that the land in dispute is that land (H2)

LAND LAW - Identity of land - Survey plan - Proof - Plaintiff has onus to show that his plan corresponds with the land - To which he lays claim (H3)

FACTS

This action bothers on dispute concerning ownership of a parcel of land situate at Umuahia, Abia State. Sequel to this, plaintiff/appellant instituted this action at the High Court of Abia (then Imo) State, claiming ownership of the land by virtue of three documents (inclusive of a survey plan – Exhibit D) which he relied on as evidence of sale to him by three separate persons, general damages for trespass on the land and order of perpetual injunction against defendant/respondent.

On the other hand, respondent contended that the said land is situate at Kaduna Street and is different from the one to which appellant is laying claim. Both parties therefore gave evidence of how they acquired the disputed land. In his judgment, the learned trial judge found for appellant and granted his claims. On appeal to the Court of Appeal, Port Harcourt Division, the court allowed the appeal and set aside the judgment of the trial court. Aggrieved, appellant filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

Whether Exhibits A, B and C relied on by the appellant refer or are referable to or have any relationship with the parcel of land in dispute at No. 11 Kaduna Street, Umuahia, or are in any way capable of being associated with that land.

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

PLEADINGS - Binding nature of

1. The appellant must be held to be bound by his pleading. The averments in his pleading do not contain any facts upon which he may be allowed to lead evidence that the land he acquired which is described to be by Arochuku Street is the same as the land in Kaduna Street now in dispute. Evidence which goes beyond or outside his pleading is inadmissible. (p. 2947 D)

LAND LAW - Acquisition - Proof

2. Issue was specifically joined by the respondent with the appellant that the land the appellant acquired was not on Kaduna Street. The burden was on the appellant to clearly and satisfactorily prove that he acquired land on Kaduna Street and that the land in dispute is that land. From the facts and circumstances of the description of the land he acquired as contained in the documents he relied on, and the state of the averments he made in his statement of claim and the “Further pleadings”, he failed to discharge the said burden. It follows that the issue so joined would have to be resolved against him. (p. 2947 E)

Identity of land - Survey plan - Proof

3. The appellant relied on a survey plan (Exhibit D) drawn in 1975, several years after those who purportedly gave him title over land (Iroha Ikoro, Ibelegbu Nwakudu and Jonah Nnochiri) had died. In other words, what is contained in the survey plan in the nature of the location of the land has not got the validation of the vendors. Learned counsel for the respondent sub-

mits in this connection that Exhibit D could only at best have been made for the purposes of this case and not for establishing the location of the land acquired by the appellant as per Exhibits A, B and C. Again, I am in no doubt that learned counsel for the respondent is right. The appellant's vendors described the location of the land by reference to some landmarks, namely, 'Arochuku Street', 'Uzonta' and 'Onuotikpiri Nwakudu/ After their death the appellant produced a survey plan which makes no reference to that landmarks but looks like placing the land in a completely different location. Such a plan is worthless in establishing the location of the land the appellant acquired by virtue of Exhibits A, b and C Those exhibits state the parcel of land sold to the appellant by the vendors in the manner its location was described. The appellant cannot by extrinsic evidence alter that description having regard to Section 132 (1) of the Evidence Act. A plaintiff has the onus of showing satisfactorily that his plan corresponds with the land to which he lays claim. The appellant failed in this regard and thus was unable to discharge the burden on him that the land he acquired is on Kaduna Street; and that it is the land in dispute. This was a major reason for the decision of the court below in overturning the judgment of the trial court. I cannot fault the court below in that decision. (p. 2947 H)

REPRESENTATION

Chief J.N. Obonna, with C.M. Ezeigbo, Esq., for the Appellant
John Erameh Esq., for the Respondent

CASES REFERRED TO

National Investment & Properties Co. Ltd. v. Thompson Organisation Ltd. (1969) NMLR 99
Emegokwue v. Okadigbo (1973) 4 SC 113
African Continental Bank Plc. v. Emostrate Ltd (2002) 4 SC (Pt. II) 1
Ojibah v. Ojibah (1991) 5 NWLR (Pt. 191) 296
Union Bank of Nigeria Plc v. Ozigi (1993) 3 NWLR (Pt. 333) 388
Aro v. Obalaro (1968) NMLR 238
Odofin v. Ayooya (1984) 11 SC 72
Kodilinye v. Mbanefo Odu (1935) 2 WACA 336
Mogaji v. Odofin (1978) 4 SC 91

Motunwase v. Sorungbe (1988) 12 SC (Pt. I) 130

Onwuama v. Ezeokoli (2002) 5 NWLR (Pt. 760) 353

LEAD JUDGMENT BY UWAIFO JSC

This case concerns a rather small parcel of land of 50 ft. by 60 ft at Umuahia-Ibeku in Imo State. The plaintiff, now appellant, claims ownership of it by virtue of three documents which he relies on as evidence of sale to him by three separate persons. The defendant contends that the said land in dispute is situate at Kaduna Street and is different from the one to which the appellant lays claim. The appellant, insisting that it is the same plot sued the respondent for (a) a declaration of title to a plot of land known as and called No. III Kaduna Street, Umuahia, (b) N1,000.00 general damages for trespass and (c) perpetual injunction.

The appellant's case as pleaded and given in evidence is that he leased the land in dispute whose dimension is put at 50ft by 60ft from one Iroha Ikoro as evidence by an agreement dated 23 December, 1961. The said agreement was admitted only as a receipt for the payment of money and marked Exhibit A. The appellant asserts that it was thereafter that one Ibeledu Nwakudu and one Jonah Nnochiri each laid claim to two different portions of the said land. He had then to make separate agreements in March, 1964 and March, 1965 with the said Ibeledu Nwakudu and Jonah Nnochiri respectively for a surrender of their portions in the land to the appellant as per Exhibits B and C respectively. He claims to have exercised acts of ownership from March 1965 over the land in dispute and in 1975 surveyed it as per survey plan No. P.O./E277/75, Exhibit D. He says he remained on the land undisturbed until in February, 1976 when, the respondent trespassed thereon and finally built a house on it.

The respondent maintains that whatever land the appellant acquired was not the land in dispute which is at No. 111 Kaduna 30 Street, but, going by Exhibit A, land said to be by the side of Arochukwu Street. The respondent's claim to the land in dispute is based on the fact that Iroha Ikoro sold it to one Jonah Mogbo in 1964 who later sold to the respondent in 1974 as per Exhibit G. The evidence is that the land sold to Jonah Mogbo was at Kaduna Street while the one sold to the appellant was by Arochuku Street. As a result of the loss of the agreement between Iroha Ikoro and Jonah

Mogbo during the civil war, Mogbo asked for another agreement from Chikezie Iroha who had become the head of the family after his father, Iroha Ikoro, had died. Exhibit E was given in 1974 as a form of lease agreement. But the respondent wanted a direct lease from the landlords which he got on 2nd January, 1975 as per Exhibit F, a deed of 99- year lease registered as No. 69 at page 69 in volume 876 B of the Lands Registry in the Office at Enugu.

The suit was tried at the High Court, Umuahia, presided over by D.E. Njiribeako, J. The learned trial Judge on 21 April, 1988, in a considered judgment found for the appellant for entitlement to a statutory right of occupancy to the land in dispute, perpetual injunction and damages of N100.00 for trespass. The Court of Appeal, Port Harcourt Division, on 8 May, 1996 in a unanimous decision set aside the judgment of the trial court and dismissed the claim. An appeal against that decision has now been contested in this court. D For which purpose, the appellant set down the following issues for determination:

“1. Whether Exhibits ‘A’, ‘B’ and ‘C’ coupled with’ possession validly passed title to the Plaintiff and whether the title so acquired was defeated by the subsequent purported legal title of Defendant as contained in Exhibits ‘E’, ‘F’ and Court below rightly set aside the findings of the trial Court.

2. Whether or not Exhibits ‘E’, ‘F’ and ‘G’ are spurious documents incapable of vesting title j “in the plot in dispute in the Defendant.

3. Whether Exhibits ‘A’ ‘B’ and ‘C’ tendered in evidence as receipts fell within Section 2 of Land Instrument Registration Law as to render them inadmissible in evidence.”

The respondent on the other hand set down the following G three issues:

“1. Whether the finding of fact by the trial Court, with regard to the location or situs of the land said to have been purchased by the Appellant by virtue of Exhibits A, B and C, was at No. III Kaduna Street, Umuahia, was not perverse, and if so, whether the Court of Appeal was wrong in faulting the trial Court’s judgment and in setting it aside.

2. Whether the learned Justices of the Court of Appeal were in error in coming to the decision that the Appellant had not discharged

the onus of showing that there had been a symbolic handing over of the land in dispute to the Appellant which is a sine qua non of a customary transfer of land.

3. *Whether the Court of Appeal was in error in coming to the decision that the Appellant had not discharge the onus of proof on him and that the trial Court did not exercise its discretion properly in granting a declaration of statutory right of occupancy to the Appellant.*”

It seems to me that issues (1) and (5) of the appellant’s issues can be made into one while issues (3) and (4) can form another. In essence, the five issues may be conveniently reduced to three. In the same way, issues (1) and (3) of the respondent’s issues may be combined, thus reducing the issues to two. Having done so, the real issue which arises for a decision is -

Whether Exhibits A, B and C relied on by the appellant refer or are referable to or have any relationship with the parcel of land in dispute at No. 11 Kaduna Street, Umuahia, or are in any way capable of being associated with that land. From the totality of the argument by both parties, this appeal can sufficiently be resolved upon that issue, which, in other words is, whether the appellant has been able to show that the land in dispute is what he claims to have acquired

To recall, the land in dispute is along Kaduna Street and is now known as No. 111 Kaduna Street, Umuahia. How did the parties plead in this regard? In para. 3 of his statement of claim, the appellant averred thus:

“3. *The plot of land now known as No. 111, Kaduna Street, Umuahia situate within this Honourable Court’s Judicial Division is hereinafter referred to as the PLOT in dispute.*”

He thereafter pleaded in paras. 4, 5, 6 and 7 how Iroha Ikoro by an agreement in writing dated 23 December, 1961, (which he called ‘a customary memorandum in writing’), leased the plot to him. This is what became Exhibit A in the proceeding. He also pleaded that two other persons, Ibelegbu Nwakudu and Jonah Nnochiri, claimed ownership of two separate portions in the said plot. He negotiated in March 1 1964 with Ibelegbu Nwakudu and in March 1 1965 with Jonah Nnochiri to buy those portions off them; and each gave him a document of purchase, namely Exhibits B and C respec-

tively.

As for the respondent, in his amended statement of defence, after admitting para. 3 of the statement of claim, he pleaded in the following paragraphs, inter alia:

"2. The defendant denies paragraph 4 of the statement of claim and will put the plaintiff to the strictest proof thereof. The defendant avers that whatever the plaintiff had as a lease was never in respect of No. 111 Kaduna Street

5. The defendant avers that the land he purchased -from Jonah Mogbo, who earlier purchased the same land from Iroha Ikoro, situate at 111 Kaduna Street, Umuahia, while plaintiff alleged to have purchasing (sic) a parcel of 'Uzonta' land from the same Iroha Ikoro at Arochukwu Street, Umuahia. Hence, it is clear that the plaintiffs alleged parcel of Uzonta and is different from the land in dispute (111) Kaduna Street, Umuahia.

6. The defendant denies paragraphs 6 and 7 of the statement of claim and will put the plaintiff to the strictest proof thereof. The defendant avers that any transaction the plaintiff might have had with Ibelegbu Nwakudu and Jonah Nnochiri is not in respect of No. 111 Kaduna Street.

13. ...The defendant avers that the plaintiff has no document to support his title and will at the trial show that the purported lease agreement including his receipt have no nexus with 111 Kaduna Street, or Aguiyi Iron si Street and will urge the court to ignore them..."

It would appear that the respondent having distinctly joined issue with the appellant as to which land he purchased, the appellant in apparent reaction filed what he called "Further pleadings" -probably a reply to that issue - as follows:

"12A(i) The plaintiff further to the statement of claim says that he will lead evidence at the trial to show that Kaduna Street, Umuahia-Ibeku was already marked out and clearly indicated and identified by the Authorities in or about 1953 and has since then not been expanded.

(ii) That the said Kaduna Street, Umuahia Ibeku was in existence and well known as at 23rd December, 1961 when plaintiff first acquired a lease of the plot in dispute from Iroha Ikoro and no part thereof was taken up or affected by Kaduna Street.

(iii) Some documents concerning the marking out of the said

street may be founded upon at the trial.”

In Exhibit A dated 23 December, 1961, which is the document relied on by the appellant, Iroha Ikoro described the plot measuring 50 feet by 60 feet to be on an area of land known and commonly called Uzonta (by the side of Arochuku Street).....” While in
 B Exhibit C dated 13 March, 1965, Jonah Nnochiri described the land he sold to the appellant as my piece of land at UZONTA.... to use and complete his single plot which he bought from Iroha Ikoro of Amaokwe Ugba”. In Exhibit B dated 29th March 1964 the land sold by Ibelegbu
 C Nwakudu to the appellant is described as “the piece of land at Onuotikpiri Nwakudu to complete his plot of land so as to make a full plot.”

There can be no doubt that so far, as seen from the foregoing, there is nothing to connect the land bought by the appellant to Kaduna
 D Street. Moreover, there is no indication that ‘Uzonta’ is the same as ‘Onuotikpiri Nwakudu’ or that they are close to each other. This is particularly pertinent having regard to the fact that Exhibits B and C purportedly relate to tiny portions of land out of an obviously small
 E parcel of land 50 ft by 60 ft and yet those tiny portions are said to lie in locations or areas described differently.

Learned counsel for the appellant has submitted that the appellant and his witnesses identified the land in dispute. He contends that the fact that the land was called by its local name and the seller making reference to its location as being “*by the side of Arochuku*
 F *Street*” which was the street known to him when Kaduna Street had not been constructed even though the streets had been marked out, did not preclude the appellant from giving oral evidence as to the actual location of the land. In my opinion, this contention might have
 G been pursuable if it had been in line with statement of claim and the evidence in support. Throughout the length and breadth of the statement of claim and the “*Further pleadings*” of the appellant, not a single mention was made of Arochuku Street. Nothing therefore was
 H pleaded about its relationship with Kaduna Street. In my candid view, the “*Further pleadings*” was a complete betrayal of the appellant’s case.

The appellant averred in his said further pleading that Kaduna Street was in existence, already marked out, clearly indicated and identified by the Authorities as at 1953, and well known as at 23

December, 1961, when the appellant first acquired land from Iroha Ikoro.

But learned counsel for the respondent submitted that since Kaduna Street was so marked out and identified as far back as 1953, why was it that Iroha Ikoro described the land he sold to the appellant as being by the side of Arochuku Street instead of naming Kaduna Street if the land sold was on that street. As learned counsel further contends, the survey plan No. PO/E277/75 (Exhibit D) relied on by the appellant does not indicate the proximity and relationship between Arochuku Street to Kaduna Street, and so there is nothing by which to infer or conclude that a parcel of land said to be by the side of Arochuku Street might also be reasonably described as being on Kaduna Street. I am in complete agreement with learned counsel for the respondent.

The appellant must be held to be bound by his pleading. The averments in his pleading do not contain any facts upon which he may be allowed to lead evidence that the land he acquired which is described to be by Arochuku Street is the same as the land in Kaduna Street now in dispute. Evidence which goes beyond or outside his pleading is inadmissible. See National Investment & Properties Co. Ltd. v. Thompson Organisation Ltd. (1969) NMLR 99 at 104; Emegokwue v. Okadigbo (1973) 4 SC. 113 at 117. ***Issue was specifically joined by the respondent with the appellant that the land the appellant acquired was not on Kaduna Street. The burden was on the appellant to clearly and satisfactorily prove that he acquired land on Kaduna Street and that the land in dispute is that land. From the facts and circumstances of the description of the land he acquired as contained in the documents he relied on, and the state of the averments he made in his statement of claim and the "Further pleadings", he failed to discharge the said burden. It follows that the issue so joined would have to be resolved against him.*** See African Continental Bank Plc. v. Emostrade Ltd. (2002) 4 S.C. (Pt. II) 1, (2002) 8 NWLR (Pt. 770) 501 at 516.

The appellant relied on a survey plan (Exhibit D) drawn in 1975, several years after those who purportedly gave him title over land (Iroha Ikoro, Ibelegbu Nwakudu and Jonah Nnochiri) had died. In other words, what is contained in the

survey plan in the nature of the location of the land has not got the validation of the vendors. Learned counsel for the respondent submits in this connection that Exhibit D could only at best have been made for the purposes of this case and not for establishing the location of the land acquired by the appellant as per Exhibits A, B and C. He has referred to *Ojibah v. Ojibah* (1991) 5 NWLR (Pt. 191) 296. **Again, I am in no doubt that learned counsel for the respondent is right. The appellant's vendors described the location of the land by reference to some landmarks, namely, 'Arochuku Street', 'Uzonta' and 'Onuotikpiri Nwakudu/ After their death the appellant produced a survey plan which makes no reference to that landmarks but looks like placing the land in a completely different location. Such a plan is worthless in establishing the location of the land the appellant acquired by virtue of Exhibits A, b and C Those exhibits state the parcel of land sold to the appellant by the vendors in the manner its location was described. The appellant cannot by extrinsic evidence alter that description having regard to Section 132 (1) of the Evidence Act.** See *Union Bank of Nigeria Plc, v. Ozigi* (1993) 3 NWLR (Pt. 333) 388. **A plaintiff has the onus of showing satisfactorily that his plan corresponds with the land to which he lays claim.** See *Aro v. Obalaro* (1968) NMLR 238; *Odofin v. Ayooaya* (1984) 11 S.C. 72. **The appellant failed in this regard and thus was unable to discharge the burden on him that the land he acquired is on Kaduna Street; and that it is the land in dispute. This was a major reason for the decision of the court below in overturning the judgment of the trial court. I cannot fault the court below in that decision.**

I am satisfied that the appellant failed to prove his claim to No. 111 Kaduna Street, Umuahia, the land in dispute. As the plaintiff he has the burden of proof and having failed, his case was liable to be dismissed: see *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 336; *Mogaji v. Odofin* (1978) 4 SC. 91; *Motunwase v. Sorungbe* (1988) 12 S.C. (Pi. I) 130 (1988) 5 NWLR (Pt. 92) 90; *Onwuama v. Ezeokoli* (2002) 5 NWLR (Pt. 760) 353; 5 (2002) 5 NWLR (Pt. 100) 1213.' In the circumstances, I hold that the court below came to the right decision. I find no merit in this appeal and dismiss it with N10,000.00 costs to the respondent against the appellant

KUTIGI JSC

I read before now the judgment just delivered by my learned brother, Uwaifo, JSC. I agree with his reasoning and conclusion. The Plaintiff/Appellant having failed to establish the identity of the land claimed, his case ought to fail. I also j dismiss the appeal and affirm the decision of the Court below with costs of N10,000.00 against the plaintiff/Appellant.

B

OGWUEGBU JSC

(Editor's Note - The judgment of Hon. Justice E. O. Ogwuegbu, JSC, was not available as at the time of going to press. His Lordship's judgment will be published in a subsequent edition.)

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D

IGUH JSC

I have had the privilege of reading in draft the judgment of my learned brother, Uwaifo, JSC just delivered and I agree entirely that this appeal is without merit.

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I, too, dismiss it and affirm the decision of the court below. I abide by the order for costs made in the leading judgment.

AYOOLA JSC

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I am in complete agreement with my learned brother, Uwaifo, JSC., that this appeal lacks merit and should be dismissed. For the reasons he gives in the judgment which he has just delivered, I too dismiss the appeal with N10,000.00 costs to the respondent.

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