

SUPREME COURT OF NIGERIA
FRIDAY 23RD MAY, 2003. SC. 92/1999
CORAM:- I. L. KUTIGI, M. E. OGUNDARE,
E. O. AYOOOLA, N. TOBI, D. MUSDAPHER, JJSC

DR. N. A. IRAGUNIMA

..... APPELLANT

AND

1. RIVERS STATE HOUSING & PROPERTY
DEVELOPMENT AUTHORITY

2. MRS. ABIGAE UCHENDU

..... RESPONDENTS

3. ATTORNEY-GENERAL OF RIVERS STATE

LAND LAW - Leases - Equity - Application - As evidence shows that 2nd respondent's predecessor-in-title did all he was required to do - Equity treats the parties as if the lease had been granted (H1)

LAND LAW - Deed of assignment - Governor's consent - Time to obtain - Failure to obtain consent before deed is executed - Does not render such assignment null & void (H2)

FACTS

The case for plaintiff/2nd respondent is that the land in dispute was originally leased by the Government of the then Eastern Nigeria to one Felix Nwosu for a term of seven years. Felix later assigned his interest to James Okoro (2nd respondent's predecessor-in-title) which assignment was duly registered in the Deeds Registry. Thereafter, Okoro applied for a renewal of the lease and was asked to pay the necessary fees which he did pay. Though the Governor of the then Rivers State approved the renewal for a term of 60 years, the formal lease was not drawn up for execution. Nonetheless, Okoro built on the land. Subsequently, Okoro assigned his interest in the property to 2nd respondent and a deed of assignment was duly executed and forwarded to the Ministry of Lands for Governor's consent.

The necessary fees as advised was paid by 2nd respondent through Okoro and 2nd respondent had thenceforth started paying the ground rent and property rates. However, upon 2nd respondent's inquiry as to reason for delay in receiving copies of deed endorsed

with consent, she learnt that the property has been sold by 1st respondent to appellant. Hence, 2nd respondent instituted this action at the High Court of Rivers State claiming declaration of title, damages for trespass and perpetual injunction. At the trial, appellant relied on the case of 2nd respondent. At the end of hearing, the court held in favour of 2nd respondent. Aggrieved, appellant appealed to the Court of Appeal, Port Harcourt. The appeal was dismissed. Hence, appellant filed appeal at Supreme Court, contending that in the absence of the execution of a formal lease between the said Okoro and 1st respondent, no valid title was assigned to 2nd respondent. Appellant stated further that the assignment by Okoro to 2nd respondent was invalid as Governor's consent was not obtained before the transaction.

ISSUE FOR DETERMINATION

“(i) Whether the 2nd respondent (plaintiff) succeeded in proving her case for declaration of title, trespass, injunction and nullification of the sale of the property in dispute to appellant and

(ii) Whether the Court of Appeal made a correct approach to the facts and legal issues placed before it having regard to the state of the law and the approach adopted.”

HELD (Unanimously dismissing the appeal per Ogun-dare JSC)

LAND LAW - Leases - Equity - Application

1. There is evidence that Okoro paid all the sums he was required to pay and obtained receipts, which were all tendered in evidence. What remained was for the 2nd defendant to execute the new lease in favour of Okoro. This was not done. Equity regards that as done which ought to have been done.

James Okoro was in possession under the agreement for a new lease for a term of 60 years from 1/1/64; he and the 2nd defendant are treated in equity as being in the same position with respect to their respective rights as if a lease had been granted. Consequently, James Okoro had, at least, an equitable interest in the property in dispute. This interest he could, and he in fact did, assign to the plaintiff. (p. 1463 H)

LAND LAW - Deed of assignment - Governor's consent

2. Consent of the Governor was sought to the Deed of assignment between James Okoro and the plaintiff. Okoro was called upon to pay the necessary consent fee, which he did. I think it is a misconception to argue that as the prior consent of the Governor was not sought, nor obtained, before the deed of assignment was executed, the assignment was null and void. That cannot be correct.

In practice, it is on the deed of assignment that the Governor's consent is usually endorsed. 1st defendant wrote on 26/2/87 to the plaintiff conveying approval of the assignment to her of the property in dispute by Okoro. (p. 1464 C)

REPRESENTATION

J. N. Igbikiberesima, Esq., for the Appellant

Respondents are absent and are not represented

CASES REFERRED TO

Affar v. Ladipo (1969) ANLR 160

Fasoro v. Beyioku (1988) 2 NWLR (Pt. 76) 263

Ogundiani v. Araba (1978) NSCC 334 (Vol.11)

Ezeoke v. Nwagbo (1988) 1 NWLR (Pt. 72) 616

Omoregbe v. Idugiemwanye (1985) 2 NWLR (Pt. 5) 41

Osagie v. Oyeyinka (1987) 2 NSCC 840 (Vol.18)

Okpuruwu v. Okpokam (1988) 4 NWLR (Pt. 90) 554

Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR (Pt. 7) 393

Idundun v. Okumagba (1976) 9-10 SC 227

Awojugbagbe Light Ind. Ltd. v. P.N. Chinukwe (1995) 4 NWLR 379

LEAD JUDGMENT BY OGUNDARE JSC

This is a further appeal from the judgment of the Court of Appeal given on 9/6/95 wherein the appeal of the present Appellant to that court was dismissed and the judgment of the trial High Court was affirmed.

The plaintiff Mrs. Abigael Uchendu had sued the Rivers State Housing and Development Authority, the Attorney-General of Rivers State and Dr. N. A Iragunima as 1st, 2nd and 3rd defendants respectively, claiming, as per paragraph 31 of her amended Statement of Claim, as follows:

“(1) A declaration that the Plaintiff is the rightful owner of

Plot 9, Orije Layout in Block 254 otherwise known as No.3, Oloibiri Street, Orije Lay out, Port Harcourt, having purchased the same for the sum of N40,000. 00 from Mr. James Okoro who had a valid lease of the property at the time of sale and to whom the property was validly released.

B (2) A declaration that the 3rd defendant is not entitled to the ownership of the said Plot 9, Block 254/No. 3 Oloibiri Street, Orije Layout, having not purchased same from the rightful owner.

C (3) A declaration that any purported sale of the said property by the 1st defendant to the 3rd defendant is void and of no effect.

(4) N100,000.00 special and general damages for trespass, from the defendants.

(5) A perpetual injunction restraining the defendants their servants and or agents from further acts of trespass upon the said property.”

D Pleadings having been filed and exchanged the matter went to trial upon the plaintiff’s amended Statement of Claim and the Statements of Defence of the 2nd and 3rd defendants respectively. The 1st defendant did not file any pleading. At the trial evidence was given in support of plaintiff’s case; the defendants did not adduce
E any evidence but rather rested their case on that of the plaintiff. In effect they did not deny any of the evidence given by the Plaintiff and her witness, James Okoro. The learned trial Judge, in a reserved judgment, found plaintiff’s case proved and adjudged as hereunder:

F “I am satisfied that the plaintiff has proved her case and I hereby enter judgment in her favour, and against the defendant jointly and severally as follows:

1. I hereby declare that the plaintiff is the rightful owner and therefore entitled to the grant of a certificate of occupancy of Plot 9, Orije Layout in Block 254, otherwise known as No. 3, Oloibiri Street,
G Orije Layout, Port Harcourt, having purchased the same for the sum of N40,000.00 from James Okoro.

2. I declare that the 3rd defendant is not entitled to the ownership or grant of Certificate of Occupancy, of the said Plot 9, Block 254/No.3 Oloibiri Street, Orije Layout, Port Harcourt, having
H not purchased same from the rightful owner.

3. I further declare that the purported sale of the said property (Plot 9, Block 254 Orije Layout, Port Harcourt) by the 1st defendant

to the 3rd defendant is null and void and of no effect.

4. I award the Plaintiff N10,000.00 general damages for trespass.

5 A perpetual Injunction restraining the defendant, their servants and or agents from further acts of trespass upon the said property. B

I award the Plaintiff costs assessed at N1,000. 00.”

Being dissatisfied with the judgment the 3rd defendant appealed to the Court of Appeal and as stated above, his appeal was dismissed. He has now further appealed to this Court. The Plaintiff and the other two defendants are made Respondents to this appeal but none of them filed any brief nor did they participate at the oral hearing of the appeal. The only brief before us is that of the 3rd defendant/appellant and at the oral hearing, his counsel adopted that brief and urged us to allow the appeal. C D

Before going into the merits, or otherwise, of this appeal, I think this is an appropriate stage to state the facts, how-be-it briefly. The land in dispute was originally leased by the Government of the former Eastern Nigeria to one Felix Nwosu in 1957 for a term of seven years. Felix Nwosu later assigned the lease to James Muche Okoro. E The assignment to Okoro was registered in the Deeds Registry. In 1973 James Okoro applied for renewal of the lease. The Governor of Rivers State gave approval for the renewal of the lease for a term of 60 years with effect from 1st January, 1964. James Okoro was F called upon to pay the necessary fees for the renewal of the lease, which he did. It would appear however, that the formal lease was not drawn up for execution. James Okoro built on the land and in 1982, by an agreement entered into between him and the plaintiff, sold the property to the latter for a sum of N40,000.00 which plaintiff paid to G Okoro. A deed of assignment was executed by the parties and this Deed was forwarded to the Ministry of Lands, Rivers State, for the Governor’s consent. The Ministry of Lands replied asking Okoro to pay the sum of N1,500.00 consent fee which sum was paid by the plaintiff through Okoro. From that time on the plaintiff was paying H the ground rent and property rates on the property up to 1986. In that year plaintiff went to the Chief Lands Officer to inquire about the delay in having the deed returned with the Governor’s consent endorsed on it. It was then she learnt that the property had been

sold by the 1st defendant to the Appellant by a sale agreement dated 8/5/86. Plaintiff then wrote a petition to the Commissioner for Lands and Housing, Rivers State pointing out that the property was not an abandoned property. While waiting for a reply to her petition, she saw an advertisement in the Nigerian Tide Newspaper edition of 11/8/86, wherein the property was advertised for sale. She immediately instructed her solicitor to write to 1st defendant drawing its attention to her earlier petition to the Commissioner for Lands. Upon receipt of her letter the 1st defendant invited her for an interview at which she presented all the documents in her possession relating to the property to the interview panel. On 26/2/87 the 1st defendant wrote to the plaintiff conveying approval of the sale of the property to her by James Okoro. This however, was not the end of the matter because subsequent to this letter, the 1st defendant wrote another letter to the plaintiff inviting her for yet another interview. She attended the 2nd interview and thereafter instructed her solicitor to write to the 1st defendant reminding the latter of the implications of the 2nd interview. The solicitor's letter notwithstanding, the 1st defendant wrote another letter to the plaintiff reversing the approval conveyed in the letter of 26/2/87. The tenants in the house on the instigation of the relations of the Appellant refused to pay rents to her and she was kept from gaining access to the property. Hence the action she instituted against the three defendants.

In his notice of appeal the Appellant raised 6 grounds of appeal from which, in his brief, he distilled 2 questions as calling for determination in this appeal, that is, to say:

- “(i) Whether the 2nd respondent (plaintiff) succeeded in proving her case for declaration of title, trespass, injunction and nullification of the sale of the property in dispute to appellant and
- (ii) Whether the Court of Appeal made a correct approach to the facts and legal issues placed before it having regard to the state of the law and the approach adopted.”

Question (i):

On Question 1, it is the appellant's contention that the plaintiff did not succeed in proving her case for a declaration of title, trespass and an injunction as well as a further declaration that the sale by the 1st defendant of the property in dispute to the appellant is null and void. The thrust of the arguments in support of this first question is

on the deed of assignment between James Okoro and the plaintiff, which was never registered. Having failed to produce in evidence the deed of assignment, it is contended for the Appellant, the plaintiff failed to prove her case. The Appellant attacked the findings of the court below to the effect that there was a valid sale by Okoro to the plaintiff of the property in dispute under customary law. It is argued B in the Appellant's brief that the issue of the validity of sale under customary law was neither pleaded nor was any evidence led on it and that it was never raised before the court below. Neither was the parties given the opportunity to address the court below on it. C Again, it is contended that the court below was in error to hold that there was a renewal of the original lease. It is submitted that as there was no deed of renewal of the lease executed in favour of Okoro, he had no interest to assign to the plaintiff and that, therefore, the latter had no interest to enable her sue for the reliefs claimed by her. It is D contended, therefore, that the finding of the court below to the effect that the plaintiff had a valid lease is erroneous. It is argued in the alternative that even if James Okoro had the original lease assigned to him by Nwosu renewed, the plaintiff would still not have any good E title to the property as the prior consent of the Governor was not given before the deed of assignment in her favour was executed. It is submitted that the plaintiff remained a stranger who had no locus standi to question the sale of the property in dispute by the 1st defendant to the Appellant.

F A number of authorities are cited in the brief in support of the above submissions. I have considered all the authorities cited and the submissions of the learned counsel for the Appellant; I regret, I find no substance in these submissions. James Okoro applied for a renewal of the lease which was assigned to him by Nwosu. There G is evidence on record that approval was given by the Governor for the renewal of the lease in favour of Okoro for a term of 60 years from 1/1/64 the date the original lease expired. There is evidence on record that Okoro was called upon to pay all necessary fees relating to the new lease, that is arrears of rent from 1964-1973, the H preparation, execution and registration of the new lease (see Exhibit L in these proceedings). There is evidence that Okoro paid all the sums he was required to pay and obtained receipts, which were all tendered in evidence. What remained was for the 2nd defendant

to execute the new lease in favour of Okoro. This was not done. Equity regards that as done which ought to have been done - see *Ogundiani v. Araba* (1978) NSCC 334 (Vol.11). James Okoro was in possession under the agreement for a new lease for a term of 60 years from 1/1/64; he and the 2nd defendant are treated in equity as being in the same position with respect to their respective rights as if a lease had been granted. Consequently, James Okoro had, at least, an equitable interest in the property in dispute - see: *Jaffar v. Ladipo* (1969) ANLR 160. This interest he could, and he in fact did, assign to the plaintiff, see: *Osagie v. Oyeyinka & Anor.* (1987) 2 NSCC 840 (Vol.18). Again, consent of the Governor was sought to the Deed of assignment between James Okoro and the plaintiff. Okoro was called upon to pay the necessary consent fee, which he did. I think it is a misconception to argue that as the prior consent of the Governor was not sought, nor obtained, before the deed of assignment was executed, the assignment was null and void. That cannot be correct - see *Awojugbagbe Light Industries Ltd. v. P.N. Chinukwe & Ano.* (1995) 4 NWLR 379. In practice, it is on the deed of assignment that the Governor's consent is usually endorsed. 1st defendant wrote on 26/2/87 to the plaintiff conveying approval of the assignment to her of the property in dispute by Okoro. The fact that the deed of assignment was never returned to her would not, in my respectful view, derogate from the equitable title that James Okoro passed to her. I agree that it is an error on the part of the court below to resort to validity of a sale under customary law - that was never canvassed in this case - but this error is of no moment as it has not occasioned any miscarriage of justice.

The position then is that at the time the 1st defendant sold the property to the appellant, plaintiff had equitable title to the property. But there is no evidence on record of the title, whether legal or equitable, that the 1st defendant had in the property which it could pass on to the appellant. As stated earlier in this judgment, none of the defendants led evidence in support of the averments in their pleadings. The Appellant, therefore, acquired no interest whatsoever in the property. Plaintiff's equitable interest, in my respectful view, is sufficient to support her claims in this case. I, therefore, resolve Question (i) against the Appellant.

Question (ii):

The appellant's main contention is that the court below did not make correct approach to the facts and legal issues placed before it and adopts the submissions made in respect of Question (i).

Having resolved Question (i) against the Appellant, therefore, his main contention in Question (ii) must fall to the ground. I have, however, considered also the additional submissions made by him. B
Regrettably, I find no substance in any of them. They all keep dancing round the earlier submissions made in respect of Question (i). I, therefore, equally resolve Question (ii) against the Appellant.

I am not persuaded that there is any justification for interfering C
with the concurrent findings of the two courts below. Consequently, I find no merit in this appeal. I hereby dismiss it. As the Respondents filed no brief nor participated at the hearing of the appeal, I make no order as to costs.

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KUTIGI JSC

I had a preview of the judgment just read by my learned brother, Ogundare, JSC. I agree with him that the appeal lacks substance and ought to be dismissed. It is accordingly dismissed with no order as to costs. E

AYOOLA JSC

I agree entirely with the judgment just delivered by my learned brother, Ogundare, JSC. I too would dismiss the appeal and make no order as to costs. F

TOBI JSC

In the often cited ease of Idundun v. Okumagba (1976) 9-10 SC 227; (1976) 1 NMLR 200, this court enumerated five ways in which title or ownership of land could be proved. These are: (1) By traditional evidence. (2) By production of documents of title duly authenticated and executed. (3) By acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference of true ownership. (4) By acts of long possession and enjoyment, and (5) Proof of possession of connected or adjacent H

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land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition be the owner of the land in dispute.

The five ways mentioned above are disjunctive in the sense that a party who proves any of the above is entitled to the ownership of the land. See *Mogaji v. Cadbury (Nigeria) Ltd.* (1985) 2 NWLR (Pt.7) 393; *Omogbe v. Idugiemwanye* (1985) 2 NWLR (Pt.5) 41; *Ezeoke v. Nwagbo* (1988) 1 NWLR (Pt.72) 616; *Fasoro v. Beyioku* (1988) 2 NWLR (Pt.76) 263; *Okpuruwu v. Chief Okpokam* (1988) 4 NWLR (Pt. 90) 554. It is clear from the evidence before the trial Judge that the plaintiff/respondent proved title to the land in dispute in the second way, that is, by the production of document, which is the deed of assignment. Where the Court of Appeal wrongly evaluates the evidence before the trial court and arrives at a wrong conclusion not borne out from the evidence before the court, the Supreme Court will intervene on the ground that the finding is perverse. But where the finding of the Court of Appeal is borne out from the evidence adduced in the trial court, this court cannot intervene. I do not see any reason for intervention in this appeal. The law is trite that this court can hardly intervene with the concurrent findings of the two courts below. Both the trial court and the Court of Appeal found, as a matter of fact, a valid deed of assignment. Appellant wants us to reverse that finding. With respect, I cannot do that.

It is for the above reasons and the more detailed reasons given by my learned brother, Ogundare, JSC., in his leading judgment, that I too, dismiss the appeal. I also make no order as to costs.

MUSDAPHER JSC

I have read in advance the judgment of my learned brother, Ogundare, JSC., with which I entirely agree. For the same reasons so admirably and lucidly set out in the judgment which I respectfully adopt as mine, I too dismiss the appeal and affirm the concurrent findings of the two courts. Since the respondents filed no briefs nor appeared at the hearing of the appeal, I make no order as to costs.

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