

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2003) KLR VOL 7 PART 165 pp. 2065 - 2308

JULY 2003

Dedicated to the King of kings

O. O. NOEL ESQ. Founder/Publisher

C. L. Onwuegbuna Esq. Chief Editor

INDEX OF CASES REPORTED

1. Abudu v. Eguakun p. 2065
2. Adake v. Akun p. 2073
3. Afolabi v. Governor Osun State p. 2083
4. Amoo v. Alabi p. 2095
5. Araka v. Egbue p. 2111
6. Auta v. Ibe p. 2131
7. Dalhatu v. Turaki p. 2151
8. Edem v. Orpheo Nigeria Ltd. p. 2179
9. Iso v. Eno p. 2197
10. Okeahialam v. Nwamara p. 2207
11. Owoniboye Tech. Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221
12. State v. Oladimeji p. 2257
13. Udengwu v. Uzuegbu p. 2273
14. Usman v. Garke p. 2287

ii INDEX OF SUBJECT MATTER IN (2003) 7 KLR

ACTIONS - Counter-claim - Failure to defend - Effect - Since the counter-claim was not established by appellant - Failure of respondent to file defence thereto - Is of no moment (H4) Usman v. Garke p. 2287

ACTIONS - Proof - Burden of - Appellant has not led sufficient evidence - To shift the onus of proof of any particular point - To respondent (H4) Owoniboye Tech. Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221

ACTIONS - Representative action - Parties - Status - Plaintiff suing defendant in a representative capacity - Must be deemed to have excluded himself - From those represented by defendant (H5) Okeahialam v. Nwamara p. 2207

APPEALS - Courts - Findings of fact - Court of Appeal erred in setting aside correct findings of trial court - Made on the facts pleaded (H3) Abudu v. Eguakun p. 2065

APPEALS - Courts - Hearing - Jurisdiction - Once the record of appeal has been received by Court of Appeal - The High Court from which the appeal emanated - Will cease to have jurisdiction over same (H4) Amoo v. Alabi p. 2095

APPEALS - Filing - Extension of time - Time prescribed in the Court of Appeal Act is not relevant - For purposes of filing appeal - After extension of time has been granted (H3) Amoo v. Alabi p. 2095

APPEALS - Filing - Time limit - Court of Appeal Act s.25 - Appeal must be filed within time prescribed in the section - Whether ground is of law or mixed law and fact (H1) Owoniboye Tech. Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221

APPEALS - Fresh issues - Raised without leave - Fate - Leave must be sought and obtained to raise such issues - Otherwise same must be discountenanced (H2) Adake v. Akun p. 2073

APPEALS - Hearing - Manner of - Appellate court is not bound to

consider appeal before it as a trial court - But determines whether trial court considered dispute between parties (H1) *Usman v. Garke* p. 2287

APPEALS - Hearing - Miscarriage of justice - Proof - Appellant must show that he suffered miscarriage of justice - As a result of the approach adopted by court - In consideration of his case (H2) *Usman v. Garke* p. 2287

APPEALS - Interlocutory appeals - Filing of - 1979 Constitution & Court of Appeal Act s.25 provisions - Must be complied with - And not be disregarded as mere technicality (H2) *Owoniboy Tech. Serv. Ltd. v. Union Bank of Nig. Ltd.* p. 2221

APPEALS - Judgment - Slip - Effect - Erroneous comment that is not material to issue in an appeal - Cannot affect the conclusion therein (H1) *Okeahialam v. Nwamara* p. 2207

APPEALS - Land law - Title - Possession - Grant - Court of Appeal rightly resolved the right to possession of the land - In favour of respondent (H3) *Usman v. Garke* p. 2287

APPEALS - Retrial order - Justification - Retrial is ordered inter alia where there has been error in substantive law - Or where trial court made no finding on conflicting material evidence - Adduced by parties in an issue (H3) *Udengwu v. Uzuegbu* p. 2273

CHIEFTAINCY MATTERS - Appeal - Right of - Limit - Imo State Traditional Rulers Law s.25 - The right is restricted to interested party - And does not imply a restriction of jurisdiction of court - For judicial review (H3) *Okeahialam v. Nwamara* p. 2207

CHIEFTAINCY MATTERS - Res judicata - Applicability - Sameness of issues - Issues in previous suit as in present suit - Question powers of Governor to amend the Chieftaincy Declaration - The issues are therefore same (H3) *Afolabi v. Governor Osun State* p. 2083

CHIEFTAINCY MATTERS - Statutes - Jurisdiction - Ouster clause -

iv **INDEX OF SUBJECT MATTER IN (2003) 7 KLR**

Imo State Traditional Rulers Law s.25 did not oust jurisdiction of court
- And is not in conflict with 1999 Constitution ss.6(6)(b) & 272 (H2)
Okeahialam v. Nwamara p. 2207

COMPANY LAW - Actions - Libel - Joinder of parties - Correctness of
- 1st & 2nd plaintiffs were rightly joined - Since any libelous imputation
on professional competence of the company - Refers to both
(H3) Edem v. Orphee Nigeria Limited p. 2179

COMPANY LAW - Legal personality - Defamation of company - A
company is entitled to award of damages - Once it is proved that libel
complained of - Is defamatory of its reputation (H2) Edem v. Orphee
Nigeria Limited p. 2179

COMPANY LAW - Legal personality - Torts - Nature of - Duyile v.
Ogunbayo - A company can be injured by libel as to its monetary
earnings - And not as to its feelings (H1) Edem v. Orphee Nigeria
Limited p. 2179

CONTRACTS - Mortgage deeds - Binding nature of - Since the parties
have agreed to be bound by terms in Exhibits 4 D1 & 5 - Court
cannot make a different contract for them (H5) Owoniboy Tech.
Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221

CRIMINAL LAW - Murder - Conspiracy - Where two persons form
common intention to prosecute unlawful act - Which resulted in commission
of an offence - Each of the persons is deemed to have committed
the offence (H2) State v. Oladimeji p. 2257

CUSTOMARY LAW - Administration of estate - Benin custom - Upon
the death of a father - eldest son takes over his estate - As trustee for
the deceased's children - Pending the performance of final burial
rites (H1) Abudu v. Eguakun p. 2065

ELECTIONS - Nomination - Power of political party - Onuoha v.
Okafor - Political party determines who should be its candidate at
election - And such issue is not justiciable in court (H1) Dalhatu v.
Turaki p. 2151

ESTOPPEL - Res judicata - Applicability - Sameness of subject matter - It is obvious from the reliefs claimed in previous and in present suits - That subject matter for adjudication in both suits are same (H2) Afolabi v. Governor Osun State p. 2083

ESTOPPEL - Res judicata - Plea - Ingredients - It must be shown that parties are same - As well as issues and subject matter - And the previous decisions must have finally decided the issues between the parties (H1) Afolabi v. Governor Osun State p. 2083

EVIDENCE - Facts not pleaded - Weight - Such evidence goes to no issue - And cannot therefore be relied on - In discharge of the onus of proof (H1) Adake v. Akun p. 2073

EVIDENCE - Public documents - Admissibility - By the provision of s. 97(2)(c) Evidence Act - The only acceptable secondary evidence - Is a certified true copy of the document (H1) Araka v. Egbue p. 2111

EVIDENCE - Public documents - Evidence Act s. 97(2)(c) - Purpose - The section seeks to ensure authenticity of the document - Tendered viz -a-viz the original (H3) Araka v. Egbue p. 2111

EVIDENCE - Witnesses - Contradictions - Effect - Evidence by appellant and her witnesses are contradictory in material particular - And as such must raise doubt about the veracity of her case (H3) Auta v. Ibe p. 2131

FUNDAMENTAL RIGHTS - Fair hearing - Breach - 1999 Constitution s.36 - Any breach of the provisions of fundamental rights - Renders the act subsequent to that breach - A nullity (H2) Amoo v. Alabi p. 2095

JUDGMENTS - Basis of - Judgment must demonstrate that court considered issues - Properly raised by parties in their pleadings - As supported by evidence (H1) Udengwu v. Uzuegbu p. 2273

JUDGMENTS - Perverse decision - Instance - Such decision arises

vi **INDEX OF SUBJECT MATTER IN (2003) 7 KLR**

inter alia where court ignored evidence - Or misconceived the thrust of case presented to it (H2) *Udengwu v. Uzuegbu* p. 2273

JUDICIAL PRECEDENTS - Foreign authorities - Binding nature - Foreign decisions are of persuasive nature - And may be invoked by Nigerian courts where applicable (H5) *Araka v. Egbue* p. 2111

JURISDICTION - Issue - Fundamentality of - Once the competence of a procedural step is challenged - Court is duty bound first to consider same - And rule on it (H1) *Amoo v. Alabi* p. 2095

LAND LAW - Appeals - Courts - Judgment - Basis - The judgment was not based on tampering with beacons - Rather it was based on the failure to prove the identity of land (H6) *Auta v. Ibe* p. 2131

LAND LAW - Appeals - Findings of fact - Since issue of identity of the land was never raised by parties - Supreme Court will not interfere with findings made by the lower courts (H1) *Iso v. Eno* p. 2197

LAND LAW - Customary right of occupancy - Allocation - Proper authority - By s.41 Land Use Act 1978 - Allocation of such right belongs to Local Government - And does not call for any Emir's stamp (H4) *Auta v. Ibe* p. 2131

LAND LAW - Identity of land - Proof - Plaintiff must prove with certainty - The defined area of land to which his claim is attached - Otherwise such claim must fail (H1) *Auta v. Ibe* p. 2131

LAND LAW - Title - Grant - Limitation of - By granting title to respondent - The authority has divested itself of interest in the land - Hence it cannot make subsequent grant of same land to appellant - Without revoking the prior grant (H5) *Auta v. Ibe* p. 2131

LAND LAW - Title - Proof - Certificate of occupancy - Weight of - The mere production of the certificate by party - Does not by itself entitle the party - To a declaration of title (H2) *Auta v. Ibe* p. 2131

LAND LAW - Trust property - Sale - A trustee is entitled to sell land

he holds on trust - In so far as the sale is not tainted with fraud or illegality (H2) Abudu v. Eguakun p. 2065

MORTGAGES - Merger - An intention to create merger must be stated in documents executed by parties - Or such evidence that indicates such intention (H3) Owoniboyas Tech. Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221

PLEADINGS - Laches and acquiescence - Need to plead - The equitable defences must be pleaded fully - And with due particularity (H2) Iso v. Eno p. 2197

STATUTES - Interpretation - Literal rule - Where the words used are clear and unambiguous - Court must give same their simple meaning (H4) Araka v. Egbue p. 2111

STATUTES - Interpretation - Manner of - Where an enactment can be construed so as to avoid inconsistency with Constitution - Such construction should be preferred to any other that leads to inconsistency (H4) Okeahialam v. Nwamara p. 2207

STATUTES - Interpretation - Principles - Where a court is exposed to a general and a specific provision - The court will fall upon the specific provision - In the event of apparent conflict (H2) Araka v. Egbue p. 2111

SUPREME COURT - Judgments of - Binding nature of - All courts and authorities in Nigeria are bound by them - And a refusal by judge of lower court to be so bound - Is gross insubordination (H2) Dalhatu v. Turaki p. 2151

SUPREME COURT - Orders - Appeals - Notice of Appeal - By ordering that notice be filed in Court of Appeal - Supreme Court has clothed that court with jurisdiction - To look into competency of the notice (H5) Amoo v. Alabi p. 2095

viii INDEX OF STATUTES & RULES

- Chiefs Law, Cap. 21, Laws of Oyo State, 1978, ss. 4, 7, 10 and 25
Afolabi v. Governor Osun State p. 2083
Constitution of Federal Republic of Nigeria 1999, ss. 251, 255, 257
Dalhatu v. Turaki p. 2151
Constitution of the Federal republic of Nigeria 1979, ss. 220, 221 &
222 Owoniboy Tech. Serv. Ltd. v. Union Bank of Nig. Ltd., 1979
ss.6 & 236 Okeahialam v. Nwamara p. 2207
Court of Appeal Act, 1976 Cap. 5 LFN 1990, s. 25 Amoo v. Alabi p.
2095, s. 25 Owoniboy Tech. Serv. Ltd. v. Union Bank of Nig. Ltd.
Court of Appeal Rules, O. 3 Amoo v. Alabi p. 2095
Criminal Code Cap. 30 Vol. II Laws of Oyo State 1978, s. 319 State
v. Oladimeji p. 2257
Criminal Procedure Law of Oyo State, s. 215 State v. Oladimeji p.
2257
Evidence Act Cap. 112 L.FN. 1990, ss. 97(1) (e) and (2) (c) Araka v.
Egbue p. 2111
Evidence Act Cap. 62 L.FN. 1958, ss. 96(1) (e) and 96(2) (c) Araka
v. Egbue p. 2111
Federal Capital Territory High Court Rules, 0.10 r. 4 Dalhatu v. Turaki
p. 2151
Land Registration Law Cap 58 Laws of Northern Nigeria 1963, s. 18
Owoniboy Tech. Serv. Ltd. v. Union Bank of Nig. Ltd. p. 2221
Land Tenure Law Cap 59 Laws of Northern Nigeria 1963, s. 27
Owoniboy Tech. Serv. Ltd. v. Union Bank of Nig. Ltd.
Land Use Act 1978, s. 22 Owoniboy Tech. Serv. Ltd. v. Union Bank
of Nig. Ltd.
Land Use Act Cap 202 LFN 1990, ss.2, 5, 9 & 45 Usman v. Garke p.
2287
Local Government Edict of Plateau State 1976, s. 75 Adake v. Akun
p. 2073
Mangu Emirate/Traditional Council (Modification of Native Law and
Customs relating to the selection of the District Head of Mangu Dis-
trict) Order 1978, PLSG No. 11 of 1978 Adake v. Akun p. 2073
Traditional Rulers & Autonomous Communities Law No. 11 of 1981,
of Imo State, ss.7 & 25 Okeahialam v. Nwamara p. 2207