

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2003. SC. 170/1999
CORAM:- M. E. OGUNDARE, U. MOHAMMED,
A. I. KATSINA-ALU, U. A. KALGO, D. O. EDOZIE, JJSC

1. NTOE USAN ISO (Deceased)
2. CHIEF ITO EKONG ETA APPELLANTS
3. CHIEF BASSEY ETE TAITA
4. CHIEF MBORA BASSEY TATAH
(For themselves and as representing
Akim Qua Town Families of Calabar)
AND
CHIEF ANSA E. A. ENO
(Substituted by Chief Ekong E. Imona RESPONDENT
(For himself and as representing Oyo
Family of Big Qua Town, Calabar)

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)

PLEADINGS - Laches and acquiescence - Need to plead - The equitable defences must be pleaded fully - And with due particularity (H2)

FACTS

Supreme Court had earlier decided in appeal no. FSC 322/1960 that plaintiff/respondent was entitled to one-third of the total amount of monies accruing from the land of one late Ikang Eta. Notwithstanding that decision, defendants/appellants refused to pay respondent's share of the proceeds from the land. Hence, respondent instituted this action against appellants at the High Court of Cross River State claiming an account of all money which appellants received in respect of the landed properties of the late Eta. Respondent also claimed entitlement to be paid one-third of amount found due after the account in accordance with the decision of the arbitration in Suit No. C/11/45 and confirmed by the Supreme Court in the above stated appeal number. Respondent further claimed an injunc-

tion restraining appellants from alienating or otherwise dealing in any fiscal manner with the land until the account and payment is made.

At the trial, appellants contended that the judgment in Appeal No. FSC 322/1960 did not cover all the lands of Ikang Eta but only a part thereof. After trial, the trial court held that the judgment covered all the lands and made orders for account and injunction as prayed by respondent. Aggrieved, appellants appealed to the Court of Appeal, Calabar Division. The appeal was dismissed. Still dissatisfied, appellants have come on a final appeal to Supreme Court arguing inter alia that respondent, as plaintiff, did not prove the identity of the land in question.

ISSUES FOR DETERMINATION

“1. Whether in the circumstances of this case the Respondent had a duty to identify the land in issue.

2. Whether the failure by the Respondent to adduce evidence regarding the identity of the land was not fatal to his claims.

3. Whether the period to be covered by the account was supported by the evidence adduced.

4. Whether the defences of laches and acquiescence were pleaded and proved.”

HELD (Unanimously dismissing the appeal per
OGUNDARE JSC)

Appeals - Findings of fact

1. The earlier suits, that is, the 1942 and 1945 actions together covered the whole of Ikang Eta land otherwise known as Akim Qua Town. The 1942 action related to a part of it which is known as Omonokor and is the dry land and in respect thereof Plaintiffs and Defendants were adjudged to be joint owners. The 1945 action related to the swampland which is the rest of the land and it is in respect of this that the Plaintiffs were adjudged entitled to one-third of the proceeds from that part of the land. At no time was the issue of identity of the land raised as an issue between the parties. The two courts below found that the two actions covered the whole of Akim Qua town. I have no reason to interfere with this concurrent

finding. There is no substance in the complaint of the Defendants on Issues (1) and (2) which issues I hereby resolve against them. (p. 2203 F)

PLEADINGS - Laches & acquiescence - Need to plead

2. In their amended Statement of Defence, the Defendants pleaded in paragraph 13 as hereunder:

“The Defendants will avail themselves of all legal and equitable defences open to them on the evidence adduced at the trial.”

The court below is clearly right in holding that this is not sufficient plea of the equitable defences of laches and acquiescence. The settled law is that all equitable defences must be pleaded fully and with due particularity.

As that has not been done in this case by the Defendants, I cannot fault the decision of the court below rejecting their complaint. (p. 2204 B)

REPRESENTATION

Essien N. Andrew, Esq., for the Appellants
Orok Ironbar, Esq., for the Respondent

CASES REFERRED TO

Ibenwelu v. Lawal (1971) ANLR 24
Okagbue v. Romaine (1982) 5 S.C. 133
Okoya v. Santilli (1994) 4 NWLR (Pt.338) 256
Ogunbiyi v. Adewunmi (1988) 12 S.C. (Pt. III) 144

LEAD JUDGMENT BY OGUNDARE JSC

This appeal was argued before us on the 29th of April, 2003, and after hearing learned counsel for the Defendants/Appellants, I dismissed the appeal with N10,000.00 costs to the Plaintiff/Respondent and indicated then that I would give my reasons for the judgment on the 11th July, 2003. I now give reasons for my judgment.

This case has a chequered history in that the first action in respect thereof was instituted in 1942. It found its way to the Federal Supreme Court in 1960 when that court decided the appeal to it on 9th November, 1961. A fresh action leading to this appeal commenced

in 1976. One Ikang Eta was the original settler and founder of the settlement known as Akim Qua Town and owner of all the land constituting the settlement. The Plaintiff in this action, that is, Oyo Family are of Big Qua Town and are maternally related to Ikang Eta through the latter's brother and sister. The Defendants on the other hand are directly related to Ikang Eta and form the Akim Qua Clan. By the custom of the area, the Plaintiffs are entitled to inherit in the Estate of Ikang Eta and because the Akim Qua Clan of the Defendants denied them this right the Plaintiffs sued the latter in suit No. C/3/1942 claiming recovery of possession of the Ikang Eta land called Omonokor; Omonokor is part of Ikang Eta's land and it is dry land. The other part of Ikang Eta's land, that is, Akim Qua Town, is swamp land. That action was pending when in 1945 the Plaintiffs again sued the Defendants in suit No. C/11/1945 claiming a share in the rents paid by the Government of Nigeria for the lease of the swampland. The two Suits were consolidated by the Supreme Court (as the High Court was then known) for trial and because of the issue of customary law involved in the cases, that court referred the consolidated cases to customary arbitrators for determination according to Qua Native Law and Custom. The arbitration lasted quite some years at the end of which the arbitrators determined as follows:

"In Suit No, C/3/1942 the plaintiffs as descendants of the maternal brother and sister of Ikang Eta ...are granted the joint declaration of title with... the blood descendants of Ikang Eta..."

"In respect of case No, C/11/45, the plaintiffs as descendants of maternal brother and sister of Ikang Eta are allowed only one third of the total amount of monies accruing from the land of Ikang Eta..."

Being dissatisfied with the decision of the arbitrators the Defendants applied unsuccessfully to the High Court to have the decision set aside. They further appealed to the Federal Supreme Court in FSC/322/1960 but the appeal was on the 9th November, 1961, dismissed.

Notwithstanding the decision against them the Defendants would not pay the Plaintiffs their share of proceeds from the Ikang Eta land. They laid out part of the land into plots and started selling. The Plaintiff therefore, in 1976 sued the Defendants once again claiming as per paragraph 12 of their amended Statement of Claim:

“(i) *An account of all money which have come to the hands of the Defendants in respect of the landed properties of late Ikang Eta, founder of Akim Qua Town, Calabar from 27th day of March, 1952, and payment over to the Plaintiff of one third of amount found due after taking such account in accordance with the decision of the Arbitration in Suit No. C/11/45 (consolidated with suit No. C/3/42) as confirmed by the Supreme Court in Appeal No. FSC 322/1960 on the 9th day of November, 1961 on the issue.* B

(ii) *Injunction to restrain the defendants from alienating any part of Ikang Eta lands or collecting rents or compensation or dealing in any fiscal manner with the land till they have rendered account and paid out the one-third due to plaintiffs.* C

(iii) *The said account to be presented to court and*

(iv) *Injunction to restrain the defendants from any further dealings with Ikang Eta lands (Akim) or any part thereof without the consent and authority of the Plaintiffs.”* D

The action proceeded to trial in the course of which issues for determination were settled by the parties. These are:

“(i) *As all parties are agreed that the arbitration of C/3/1942 and C/11/1945 and Supreme Court Suit No. FSC/ 322/1960 cover this transaction do these suits cover all of Akim lands or just part of Akim lands.* E

(ii) *Is the plaintiff entitled to enforce or execute the judgment now for the payment of one third share in respect of all dealings with Akim lands to the extent determined in one above and if so from when.* F

(iii) *Is the plaintiff entitled to an order of account from the defendants in respect of its share and an order to pay over to the plaintiff whatever is due on its share.* G

(iv) *Is the plaintiff entitled to injunction to restrain the defendants from further dealings with the land as may be determined in one above without its consent and authority.”*

In a reserved judgment the learned trial Judge found:

“(i) “that the judgment in suit Nos. C/3/42 and C/11/45 and the Supreme Court suit No. FSC/322/1960 cover all of Akim lands, not just a part or parts of Akim lands,”

(ii) “that the plaintiffs in this case are entitled to one-third share of the proceeds of Akim Qua lands or Akim lands, and, that the

Defendants have failed and or neglected to pay over to the Plaintiffs their said one-third share of the proceeds relating to the said Akim lands”;

(iii) *that the action was not statute-barred;*

(iv) *“the defendants being in a fiduciary relationship with the plaintiff are liable to render account of all dealings with Akim Qua land and payment of one-third share thereof to the plaintiff.”*

(v) *that the plaintiff is entitled to the order of injunction sought.*

Consequently, the learned trial Judge ordered as follows:

“(1) That the Defendants account for all moneys which have come to their hands in respect of the landed properties of late Ikang Eta, founder of Akim Qua Town, Calabar from 2nd May, 1959, within three months of this order.

(2) It is further ordered that the Defendants pay over to the Plaintiff one-third share of the proceeds of amount found as accruing from the said landed properties of the said Ikang Eta (late) to the plaintiff in accordance with the decision of the arbitration in suit No. C.3.42 and C/11/45 (consolidated) as confirmed by the Supreme Court in appeal No. FSC/322/1960 on the 9th day of November, 1961, within three months of the taking of the account.

(3) That the Defendants be and are hereby restrained from alienating any part of Ikang Eta lands or collecting rents or compensation or dealing in any fiscal manner with the land till they have rendered account and paid out the one-third due to the plaintiff.

(4) The Defendants are further restrained from any further dealings with Ikang Eta lands (AKIM) or any part thereof without the consent and authority of the plaintiffs.

(5) The account have (sic) in ordered shall be filed in this court. I assess and fix the costs of this action at N1,000.00 in favour of the plaintiff against the Defendants.”

Being dissatisfied with this judgment the Defendants appealed to the Court of Appeal but the appeal which was based on three issues, that is, to say:

“1. Whether the Respondent had established that the Arbitration award in Suit No. C/11/1945 covered all and not part of Akim Qua land.

2. Whether from the evidence adduced the Respondent was entitled to an order for an account and an injunction against the

Appellants.

3. *Whether the Respondent is not estopped by reason of his conduct from enforcing the claim to one-third share in the land in dispute.*"

was dismissed. They have with leave of court further appealed to this court upon 8 grounds of appeal and in their Brief of Argument raised the following 4 issues as calling for determination:

"1. *Whether in the circumstances of this case the Respondent had a duty to identify the land in issue.*

2. *Whether the failure by the Respondent to adduce evidence regarding the identity of the land was not fatal to his claims.*

3. *Whether the period to be covered by the account was supported by the evidence adduced.*

4. *Whether the defences of laches and acquiescence were pleaded and proved.*"

I must observe that the question of laches and acquiescence was not one of the issues placed before the Court of Appeal. However, as it appears to have arisen from the judgment of that court, it will be considered later in this judgment.

ISSUES (1) & (2) relate to the identity of the land in respect of which Plaintiffs laid their claims. It is strenuously argued both in the Appellants' brief and in oral submission of learned counsel for the Defendants that the Plaintiff failed to identify the land in respect of which they claim one-third share. I find, with respect, that the arguments based on these issues are rather puerile. ***The earlier suits, that is, the 1942 and 1945 actions together covered the whole of Ikang Eta land otherwise known as Akim Qua Town. The 1942 action related to a part of it which is known as Omonokor and is the dry land and in respect thereof Plaintiffs and Defendants were adjudged to be joint owners. The 1945 action related to the swampland which is the rest of the land and it is in respect of this that the Plaintiffs were adjudged entitled to one-third of the proceeds from that part of the land. At no time was the issue of identity of the land raised as an issue between the parties. The two courts below found that the two actions covered the whole of Akim Qua town. I have no reason to interfere with this concurrent finding. There is no substance in the complaint of the Defendants on Issues (1) and***

(2) which issues I hereby resolve against them.

ISSUE (3):

On Issue (3) I agree with the court below that the date the account was to commence is embodied in relief (1) sought by the Plaintiffs at the trial and in the evidence of P. W. 1 and that was on B 27th day of March, 1952. The trial court, however, made the effective date to be 2nd May, 1959. The Plaintiffs have not complained. I do not see any substance in the complaint of the Defendants on this issue.

C The final issue is Issue (4). ***In their amended Statement of Defence, the Defendants pleaded in paragraph 13 as hereunder:***

D ***“The Defendants will avail themselves of all legal and equitable defences open to them on the evidence adduced at the trial.”***

The court below is clearly right in holding that this is not sufficient plea of the equitable defences of laches and acquiescence. The settled law is that all equitable defences must be pleaded fully and with due particularity. See Ibenwelu v. Lawal E (1971) ANLR 24. As that has not been done in this case by the Defendants, I cannot fault the decision of the court below rejecting their complaint.

F It is for the reasons stated above that I dismissed this appeal on 29th of April, 2003.

MOHAMMED JSC

G On the 29th of April, 2003, this appeal was argued and after having perused the briefs filed by the parties and hearing the oral submissions of learned counsel for the appellants, I dismissed the appeal and announced then that I shall give my reasons on the 11th of July, 2003.

H After I have gone through the reasons given by my learned brother, Ogundare, JSC., for dismissing the appeal, I do not intend to say more or add to what my learned brother had explained in his judgment. I adopt his reasons as mine. I dismiss the appeal.

KATSINA-ALU JSC

On 29th April, 2003 after hearing this appeal, I dismissed it with N10,000.00 costs to the Plaintiff/Respondent. I indicated then that I would give my reasons for my decision on 11th July, 2003. I now give my reasons.

I have had the advantage of reading in draft the judgment of my learned brother, Ogundare, JSC., just delivered. I entirely agree with it. It is for the reasons which he has given that I dismissed this appeal on 29th April, 2003.

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KALGO JSC

On the 29th day of April, 2003, when this appeal was heard, I summarily dismissed it as being without merit and I promised to give my reasons for the dismissal today.

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There are concurrent findings of fact in the decisions of both the trial court and the Court of Appeal in this matter. The appellants were not successful in both courts, and in this court, they have not shown any special circumstance why this court should interfere especially in this case where the findings are reasonably justified and supported by evidence. See *Okoya v. Santilli* (1994) 4 NWLR (Pt.338) 256; *Okagbue v. Romaine* (1982) 5 S.C. 133; *Ogunbiyi v. Adewunmi* (1988) 12 S.C. (Pt. III) 144; (1988) 5 NWLR (Pt. 93) 217. It is also very clear from the record that the issue of the identity of the land in dispute which the appellants complained about in this court, did not arise in the trial court or the Court of Appeal. It is for the above and the more detailed reasons given by Ogundare, JSC., in the leading reasons for judgment that I dismissed this appeal on 29th April, 2003.

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EDOZIE JSC

I had a preview of the lead judgment of my learned brother. Ogundare, JSC., and for the same reasons contained in the judgment, I too will dismiss the appeal and do hereby dismiss it with costs as assessed therein.

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