

SUPREME COURT OF NIGERIA

16TH JULY. 2004 SC. 19/1998

**CORAM:- U. MOHAMMED, A. I. IGUH, U. KALGO, I. C. PATS-
ACHOLONU, S.A. AKINTAN, JJSC**

ALHAJI ABDULKADIR DAN MAINAGGE APPELLANT
AND
ALHAJI ABDULKADIR ISHAKU GWAMNA RESPONDENT

EVIDENCE - Credibility - Land law - Sale of house - Evidence of plaintiff not being contradicted - Should be accorded credibility (H1)

ACTIONS - Counterclaim - Weak case - Witnesses - Neglect to present relevant evidence - Court should give judgment to the other side (H2)

LAND LAW - Evidence - Sale of land - Where there was no evidence to contradict Plaintiff's claim - Defendant's appeal will be dismissed (H3)

FACTS

Before the Bauchi High Court, the plaintiff/respondent filed an action against the defendant/appellant claiming a declaration that he is the bona fide owner of the property in dispute, a house situate at GRA, Gombe. Respondent showed how he bought the property from the appellant who purchased from the original lessee, Alhaji Saleh Tango. Respondent testified that the house was originally pledged to him on a condition that where appellant failed to redeem the house at a particular date, it would be sold outright to him. A deed of assignment was prepaid in respondent's favour which was duly registered in the Lands Registry. As agreed by the parties, the Governor's consent was obtained for the Certificate of Occupancy to be made in respondent's favour through the assistance of Alhaji Tango, the original lessee.

Appellant denied the respondent's claim stating that he could not possibly resell the property he bought for N75,000.00 for N60,000.00. He filed a counterclaim and urged the court to declare that the consent

obtained from the Governor was fraudulent. But the appellant did not testify during the trial. Two witnesses he called did not give any useful evidence. The trial judge, A. Ike -Okoye J., found in favour of the respondent. Appellant's appeal to the Court of Appeal was dismissed . He has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether on the totality of the evidence on record before the lower court, the respondent has proved his claim against the appellant to warrant the dismissal of the appellant’s appeal”.

HELD (Unanimously dismissing the appeal per **PATS-ACHOLONU JSC**)
EVIDENCE - Credibility - Land law

1. It is important to restate here that the respondent had testified in his evidence that the house was originally pledged to him on a condition that where the appellant failed to redeem the house at a particular date it would be outrightly sold to him. This piece of evidence was not countered either by any of the witnesses or the appellant himself who decided to continue his frolic in Saudi Arabia. It is now settled law that where evidence is given by a party and is not contradicted by the other party who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things the court should accord credibility to such evidence. (p. 2198 E)

Neglect to present relevant evidence

2. In this case the appellant who counter-claimed had for reasons best known to him, not only refused to testify as to the veracity of the assertions in his pleadings but even failed or neglected to call any witness whatsoever to shore up and strengthen the case he strove to make in his counter-claim, (the evidence by way of defence being so weak). The only necessary inference is that he is not serious with this case and has abandoned it most probably because he felt that his case was embarrassingly weak and cannot be sustained. I hold that where a counsel for a party decides to throw in the towel on a reasoning that the case put forward by the party he represents is so manifestly weak and nigh useless and the evidence shows that

there is nothing useful to further urge on the court, the court seised with proceedings should give judgment to the other side. (p. 2199 D)

Evidence - Sale of land

3. There was no contra evidence to show how the original C of O came into the possession of the respondent or how he obtained the sale agreement which he the appellant was signatory.

In my view using the words of the counsel for the appellant, the case of the appellant is porous. It is equally abysmally weak, lacking in force or effectiveness. There is no manifest defence to the claim made and there is no pretence of any proof to the counter-claim. The findings of the court of the first instance and the Court of Appeal are not perverse but are conclusions emanating from the facts assiduously considered and apparently subjected to serious scrutiny and appraisal.

In the final result I dismiss the appeal for being without merit.
(p. 2199 H / 2200 A)

NOTABLE POINT OF INTEREST

AKINTAN JSC

1 Concurrent findings - When not to be disturbed

As already stated above, the trial court accepted the evidence presented by the plaintiff (now respondent) at the trial. The Court of Appeal also did the same. The law is settled that evaluation of evidence is primarily the function of the trial Judge. Interference by an appellate court could only occur where and when he fails to evaluate such evidence at all or he fails to do so properly. Where, therefore, the trial court has satisfactorily performed its primary function of evaluating the evidence and correctly ascribing probative value to it, an appellate court has no business interfering with its finding on such evidence. Similarly, the Supreme Court will not ordinarily disturb concurrent findings of fact made by the High Court and the Court of Appeal unless a substantial error apparent on the face of the record of proceedings is shown or when such findings are perverse. (p. 2203 D)

REPRESENTATION

Taiwo Abe, for the Appellant.

Mohammed Bello Adoke, for the Respondent.

B CASES REFERRED TO

Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643

Omoregbe v. Daniel Lawani (1980) 3-4 S.C. 108 at 117

Obodo v. Ogba (1987) 2 NWLR (Pt. 54) 1

C Ike v. Ugboaja (1993) 6 NWLR (Pt. 301) 539

Sobakin v. The State (1981) 5 S.C. 75

Enang v. Adu (1981) 11-12 S.C. 25

Ige Olunloyo (1984) 1 SCNLR 158

D Asafa Foods Factory v. Alrairie (Nig) Ltd. (2002) 5 S.C. (Pt.1) 1; (2002) 12 NWLR (Pt. 781) at 253

Adeyemi v. Bamidele (1968) 1 NLR Pg. 31

Nwabuoku v. Ottih (1961) 2 SCNLR Pg. 232

E LEAD JUDGMENT BY PATS-ACHOLONU JSC

The appellant in this case who was a defendant in the High Court has appealed to this court against the judgment of the Court of Appeal which confirmed the judgment of the High Court. The respondent as a plaintiff **F** had instituted an action against the appellant claiming as follows:

“(a) An order of the court to declare that the house with certificate of occupancy No. NE/1647 situate at G.R.A. Gombe that the plaintiff is the bonafide owner or has title over the said house.

G *(b) An order of the court ejecting all the defendants from the said house.*

(c) Payment of the cost of this action dated this 3rd day of February, 1992.”

H His case is that he bought a property from the appellant who had bought from one Danladi Muazu and who purchased from the original lessee Alhaji Saleh Tango who was granted the certificate of occupancy in respect of that property which was transferred to him by the appellant. It was his case that he asked the appellant to contact Alhaji Saleh Tango to

apply to the Governor for consent for the certificate of occupancy to be made in his favour which the appellant agreed and which the Governor gave his consent. Pursuant thereto a Deed of Assignment was prepared and signed and the same was duly registered in the lands Registry. The appellant denied ever having sold his land to the respondent claiming that before he travelled on a pilgrimage to Saudi Arabia the respondent had given him a sum of N22,000.00 and the respondent had equally requested him to give him the sale agreement of the land in dispute in order to obtain the certificate of occupancy. It was his case that he could not possibly resell the property he bought for N75,000.00 for N60,000.00. The appellant further counter-claimed and urged the court to declare that the consent obtained from the Governor was fraudulent and is null and void and that the Deed of Assignment dated 30th October, 1986, should be declared null and void. He prayed the court to further declare that the property covered by the certificate of occupancy No. NE/1647 is his property.

In the High Court, judgment was given to the respondent and on appeal, the Court of Appeal confirmed the judgment of the High Court. Not satisfied with the judgment of the Court of Appeal the appellant appealed to this court and filed 2 grounds of appeal. The appellant had identified only one issue for consideration by this court which is:

“whether on the totality of the evidence on record before the lower court, the respondent has proved his claim against the appellant to warrant the dismissal of the appellant’s appeal”.

The respondent on the other hand formulated the same issue as the appellant. The kernel of the appellant’s case is that though he did not testify in the High Court, the success of the respondent’s case should be on the strength of the case he was able to make and not on the weakness of the defence case and he cited Mrs. Hawa Gankon v. Ugochukwu Chemical Industrial Ltd. (1993) 6 (Pt. 1) SCNJ pg 263 at 279. He further submitted that where the radical owner of the property is not in dispute the burden on the party alleging change of ownership is on the person claiming the land and cited Lamid Lawal Obawole and Anor v. Olusoji Okere (1994) 6 SCNJ pg 20. He referred to what he described as contradictions in the evidence of the respondent which he submitted showed that the appellant had equi-

table title over the land in dispute and he submitted further that there is evidence that all the documents referred to by the respondent were not registered. He argued fervently that the documents being unregistered are therefore not admissible in evidence to prove or establish title. He cited
 B Tewogbade v. Obadina (1994) 4 SCNJ (Pt. I) pg 161 at 186. He urged the court to hold that the Governor's consent and the subsequent registration of the Deed of Assignment were procured by deceit and misrepresentation and therefore of no value.

C The respondent replicando submitted that the appellant called 2 (two) witnesses in the matter in which he asked for a declaratory relief in his counter-claim but he himself did not testify. He further submitted that his testimony had shown that he discharged the onus of proof on him, to wit,
 D by exhibiting the title or ownership of the land over which he claims viz, the Certificate of Occupancy No. NE/1467, which he claimed the appellant voluntarily surrendered to him. He further referred to the sale contract between him and the appellant, Exhibit 1, the Deed of the Assignment executed between the parties, and the consent of the Bauchi State Governor
 E authorizing the assignment to him. He submitted that the appellant failed or refused to give evidence to challenge the facts he averred in his pleadings particularly in the counter-claim.

The trial court had in its judgment referred to the concession made
 F by the appellant's counsel in his judgment when he stated:

*"Addressing this court on 14/6/94 Magaji K, Esq, for the 1st defendant, told the court that the 1st defendant who could not testify called 2 witnesses but after a careful review of the evidence and in the absence of the 1st defendant, he was of the view that the defence is porous. As a
 G minister in the Temple of Justice, he had no alternative but to submit to judgment as the evidence before the court does not give room for any meaningful argument in favour of the defendants. He therefore on behalf of the defendant submitted to judgment"*.

H Further below the court stated:

"This is clearly a straight forward case. Although the 1st defendant, now the only defendant, (the 2nd to the 6th defendants having been struck off the case at the instance of the plaintiff on 30/6/92) was duly served,

entered his appearance and even filed his Statement of Defence and counter-claim, he appeared twice during the hearing of this suit before disappearing into thin air, he did not testify for himself to support his pleadings or prove his counter-claim. Counter-claim is therefore deemed to have been abandoned and is therefore dismissed against the plaintiff and the defendant to the said counter-claim”. B

The High Court ended as follows:

“I agree also with the submissions of the learned counsel for the plaintiff, Mu’azu Mohammed, Esq, that the execution and the registration of the Deed of Assignment Exhibit 4 of the property covered by the C of O No. NE/1647 by the plaintiff is a clear proof of the title of the plaintiff over the said property as held in Odubeko v. Fowler (1993) 9 SCNJ 185 at p. 200. The plaintiff’s evidence not having been challenged by the defendant and the learned counsel to the defendant having admitted of the plaintiff’s claim, I do hereby hold that the plaintiff has satisfactorily proved his case that he is the owner of the said property which he had lawfully purchased from the defendant in 1986”. C D

What is manifestly evident is that in the court of first instance the learned counsel for the appellant did not have any confidence whatsoever in their case not just on the counter-claim but also on the totality of the appellant’s case. E

The appellant had alluded to what he described as conflicting evidence of the respondent but he was not able to identify those contradictions or inconsistencies latent in them, if any. He asked that if indeed, he, the appellant, sold the house in question to the respondent why should Alhaji Saleh Tango be the person to apply to the Governor. The answer of course lies in the pleading and evidence of the respondent, which runs thus: F G

“That the plaintiff avers that in order to comply with the statutory requirement of S.22 of the Land Use Act., both the plaintiff and the 1st defendant went to Alh. Saleh Tango who was the original owner of the land and as no proper transfer of the land to other aforementioned persons the 1st defendant intimated Alh. Saleh Tango that, he has sold the house which Alh. Danladi Mu’azu sold to the 1st defendant and the certificate of the said house bore the name of Alhaji Saleh Tango on it, as such the 1st H

defendant mandated Alh. Saleh Tango to apply on behalf of the 1st defendant for the consent of the Governor that he has sold the house to the plaintiff, since it was the name of Alh. Saleh Tango that is on the certificate of occupancy No. NE/1647 and the said Alh. Saleh Tango applied for the
 B said consent as directed him by the 1st defendant and subsequently the consent was granted in a letter with Ref: No. BS/MGO/DLS/LAND 956/24 dated 10th October, 1986 consenting to the sale as agreed and at the trial we shall contend and rely on the aforesaid consent during the trial of this case”.

In his evidence the respondent stated as follows:
 C “He handed over to me the original C of O No. NE/1647 bearing the name of one Saleh Tango, another sale agreement with which he purchased the house from one Alh. Danladi Mu’azu. The title holder disclosed to the Governor’s office the true source of his title before the Governor’s consent
 D was obtained. I bought this house from the 1st defendant directly. The consent and the Deed of Assignment were not obtained by fraud. I urge the court to dismiss the counter-claims per para 9 of the counter-claim”.

The appellant’s grouse was that there was no such sale at all. Two
 E witnesses testified for him. The first witness was a tenant in the house and another a woman apparently the wife of the appellant. She testified that her husband told her he owed a sum of N50,000.00 to the respondent. **It is important to restate here that the respondent had testified in his evidence that the house was originally pledged to him on a condition that
 F where the appellant failed to redeem the house at a particular date it would be outrightly sold to him. This piece of evidence was not countered either by any of the witnesses or the appellant himself who decided to continue his frolic in Saudi Arabia. It is now settled law that where evidence is given by a party and is not contradicted by
 G the other party who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things the court should accord credibility to such evidence.** See *Omogegbe v. Daniel. Lawani* (1980) 3-4 S.C. 108 at 117 and *Okoebor v. Police Council* (2003) 5 S.C. 11; (2003) 12 NWLR (Pt. 834) Pg. 444, *Asafa Foods Factory v. Alrairie (Nig) Ltd.* (2002) 5 S.C. (Pt.1) 1; (2009) 12 NWLR (Pt. 781) at 253. See also *Adeyemi v.*

Bamidele (1968) 1 NLR Pg. 31 and Nwabuoku v. Ottih (1961) 2 SCNLR Pg. 232.

On the issue of sale agreement, Exhibit 1, and C of O, Exhibit 2, the Court of Appeal held as follows:

“The transfer of ownership by Alhaji Danladi to the appellant and from the appellant to the respondent without the prior approval of the Governor did not make it void. Once the said documents, C of O, sale Agreement were taken to the Governor after the transaction for his subsequent approval that is enough and sufficient. The consent of the Governor transferring the property to the respondent in Exhibit 3 rectified everything. Moreso when the respondent caused a Deed of Assignment to be executed based on the C of O, sale Agreement and letter of consent by the Governor, now Exhibit 4. All these were done by the active participation of the so-called original owner of the property in dispute Alhaji Saleh Tango before his demise”.

In this case the appellant who counter-claimed had for reasons best known to him, not only refused to testify as to the veracity of the assertions in his pleadings but even failed or neglected to call any witness whatsoever to shore up and strengthen the case he strove to make in his counter-claim, (the evidence by way of defence being so weak). The only necessary inference is that he is not serious with this case and has abandoned it most probably because he felt that his case was embarrassingly weak and cannot be sustained. I hold that where a counsel for a party decides to throw in the towel on a reasoning that the case put forward by the party he represents is so manifestly weak and nigh useless and the evidence shows that there is nothing useful to further urge on the court, the court seised with proceedings should give judgment to the other side. The appellant strove to be clever by half by suddenly whipping up a defence that the documents were not registered. He forgot that he had earlier urged the court to hold that the registration was fraudulent and ought to be declared null and void. **There was no contra evidence to show how the original C of O came into the possession of the respondent or how he obtained the sale agreement which he the appellant was signatory.** His case reminds me of the saying

in Macbeth which runs thus:

“It is like a tale told by an idiot full of sound and fury signifying nothing.”

In my view using the words of the counsel for the appellant, the case of the appellant is porous. It is equally abysmally weak, lacking in force or effectiveness. There is no manifest defence to the claim made and there is no pretence of any proof to the counter-claim. The findings of the court of the first instance and the Court of Appeal are not perverse but are conclusions emanating from the facts assiduously considered and apparently subjected to serious scrutiny and appraisal.

In the final result I dismiss the appeal for being without merit.

I affirm the judgment of the Court of Appeal. I award N10,000.00 costs to the respondent.

MOHAMMED JSC

I have had a preview of the judgment written by my learned brother, Pats-Acholonu, JSC., and I agree with him that this appeal has no merit at all. The evidence is overwhelming that the appellant sold the house in dispute for a price of N60,000.00 to the respondent. After the sale, the appellant helped the respondent in obtaining consent from the Governor of Bauchi State for the transfer of the property to him (the respondent).

I agree that the Court of Appeal is right to affirm the judgment of the trial High Court. The appeal is dismissed. I too award N10,000.00 costs to the respondent.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Pats-Acholonu, JSC., and I am in entire agreement that this appeal is lacking in substance and ought to be dismissed.

Essentially, this appeal concerns concurrent findings of fact of both courts below. Nothing has been established by the appellant to show that the

said findings are perverse or unsupported by the evidence or that they were arrived at as a result of a wrong approach to the evidence. It is also not shown that the findings were reached at as a result of a wrong application of any principle of substantive law or procedure or that they are patently erroneous and that a miscarriage of justice will result if they are allowed to remain. In these circumstances, this court cannot interfere with them. See Enang v. Adu (1981) 11-12 S.C. 25 at 42, Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718, Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561 at 576 etc.

This appeal accordingly fails and it is hereby dismissed with costs as assessed in the leading judgment.

KALGO JSC

I have had the privilege of reading in advance the judgment of my learned brother, Pats-Acholonu, JSC., just delivered in this appeal. I agree with him that there is no merit in this appeal, and it ought to be dismissed. I agree with his reasoning and conclusions reached therein.

It is not in dispute that the appellant himself sold the property in dispute to the respondent for N60,000.00 in 1986. The appellant himself earlier bought the same property from one Alhaji Saleh Tango. The respondent, with the cooperation of the appellant and Alhaji Saleh Tango jointly applied for and obtained the relevant consent of the Governor of Bauchi State for transferring the land to the respondent as required by the Land Tenure Law. The deed of transfer (Deed of Assignment) was properly stamped and executed in favour of the respondent. At the trial, the respondent called evidence to prove the sale contract agreement between him and the appellant - (Exhibit 1); the Certificate of Occupancy in respect of the land No. NE/1467 -(Exhibit 2); Deed of Assignment duly executed transferring the house to him - (Exhibit 3) and the relevant consent of the Governor of Bauchi State authorizing the assignment or transfer - (Exhibit 4). The appellant was unable to challenge any evidence in respect of these documents or their validity. The trial court accepted the evidence gave judgment for the respondent and dismissed the appellant's counter-claim. On

appeal to the Court of Appeal, the appellant's appeal was again dismissed. The totality of the evidence adduced by the respondent at the trial is in full support of his title to the property in dispute and this is in line with the decision of this court in *Idundun v. Okumagba* (1976) 9-10 S.C. 227.

B It is very clear that this appeal was on concurrent findings of fact by the 2 lower courts. For the appellant to succeed and this court to interfere, he must show that those findings were perverse and special circumstances shown to that effect. See *Ogunbiyi v. Adewunmi* (1985) 5 NWLR (Pt. 93) 217; *Akeredolu v. Akinremi* (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 164; *Ibodo v. Enarofia* (1980) 5-7 S.C 42; *Eholor v. Osayande* (1992) NWLR (Pt. 249) 524. No such circumstances were shown in this case to justify any interference with the decisions of the lower courts.

D For the above and the more detailed reasons given in the leading judgment, I also find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal confirming that of the trial court. I abide by the order of costs made in the leading judgment.

E

AKINTAN JSC

The present respondent, Alhaji Abdulkadir Ishiaku Gwamna, instituted this action as the plaintiff at Bauchi High Court as Suit No. BA/30/92. The present appellant, Alhaji Abdulkadir Dan Mainagge, was originally the 1st defendant. There were 5 other defendants whose names were however later struck out during the course of the hearing at the High Court. The plaintiff had sought from the court, inter alia, an order to declare him the legal owner of the house at G.R. A. Road, Gombe with Certificate of Occupancy No. NE/1647; and an order ejecting all the defendants from the said house.

H Pleadings were filed and exchanged between the plaintiff (now respondent) and the 1st defendant (now appellant). The plaintiff gave evidence in line with his pleadings and tendered documents in support of his case. The defendant however did not testify at the trial. But two witnesses testified for the defence. The first of the two witnesses that testified for the defence was the defendant's wife who was also living in the

house in dispute. The second defence witness was also living in the disputed house. The sum total of the evidence of the two defence witnesses was that none of them was aware of any sale of the house by the 1st defendant to the plaintiff.

The learned trial Judge, (A. Ike Okoye, J.), accepted the evidence led by the plaintiff and accordingly entered judgment for the plaintiff as per his claim. An appeal to the Court of Appeal against the judgment was dismissed. The present appeal is from the judgment of the Court of Appeal.

The only issue canvassed by the appellant boils down on findings of fact. It is “*whether on the totality of the evidence on record before the lower court, the respondent has proved his claim against the appellant to warrant a dismissal of the appellant’s appeal.*” In other words, the appellant is attacking the judgment of the Court of Appeal on the ground that it was against the weight of evidence.

As already stated above, the trial court accepted the evidence presented by the plaintiff (now respondent) at the trial. The Court of Appeal also did the same. The law is settled that evaluation of evidence is primarily the function of the trial Judge. Interference by an appellate court could only occur where and when he fails to evaluate such evidence at all or he fails to do so properly. Where, therefore, the trial court has satisfactorily performed its primary function of evaluating the evidence and correctly ascribing probative value to it, an appellate court has no business interfering with its finding on such evidence: See *Abisi v. Ekwealor* (1993) 6 NWLR (Pt. 302) 643; *Atolagbe v. Shorun* (1985) 1 NWLR (Pt. 2) 360; and *Obodo v. Ogba* (1987) 2 NWLR (Pt. 54) 1. Similarly, the Supreme Court will not ordinarily disturb concurrent findings of fact made by the High Court and the Court of Appeal unless a substantial error apparent on the face of the record of proceedings is shown or when such findings are perverse: See *Ike v. Ugboaja* (1993) 6 NWLR (Pt. 301) 539; *Sobakin v. The State* (1981) 5 S.C. 75; *Enang v. Adu* (1981) 11-12 S.C. 25; and *Ige Olunloyo* (1984) 1 SCNLR 158.

The facts of the instant case clearly show that the appellant, as the defendant, failed to controvert the evidence led by the respondent in sup-

port of his claim before the trial court. Such evidence led included documentary evidence tendered by him in support of his claim. The two witnesses that gave evidence for the defence merely told the court that they were not aware that the appellant sold the house in dispute to the respondent. In other words, the evidence presented by the respondent, as plaintiff, was not controverted. Both the trial court and the appellate court accepted the evidence presented by the plaintiff. The appellant has failed to show in this court that there was a substantial error on the face of the record of proceedings now before us in this court or show that the concurrent findings of fact made by the two lower courts are perverse. There is therefore no cause or justification whatsoever for this court to interfere with the findings of fact made by the two lower courts in the case.

For the above reasons and the fuller reasons given in the leading judgment just delivered by my learned brother, Pats-Acholonu, JSC., the draft of which I was privileged to have read, I also agree that there is totally no merit in the appeal. I accordingly dismiss it with costs as assessed in the leading judgment.