

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2004) KLR VOL 1 PART 170 pp. 1 - 222

JANUARY 2004

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

1. Okolo v. Union Bank p. 1
2. Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37
3. Archibong v. Ita p. 73
4. Aiguoreghian v. State p. 129
5. Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

COURT OF APPEAL CASE

1. Okon v. Bob p. 199 CA

JUSTICES OF THE SUPREME COURT OF NIGERIA

THE HON. JUSTICE MUHAMMADU LAWAL UWAIIS - CHIEF
JUSTICE OF NIGERIA

THE HON. JUSTICE SALIHU MODIBBO ALFABELGORE

THE HON. JUSTICE IDRIS LEGBO KUTIGI

THE HON. JUSTICE UTHMAN MOHAMMED

THE HON. JUSTICE SYLVESTER UMARU ONU

THE HON. JUSTICE ANTHONY IKECHUKWU IGUH

THE HON. JUSTICE ALOYSIUS IYORGYER KATSINA-ALU

THE HON. JUSTICE UMARU ATU KALGO

THE HON. JUSTICE SAMSON ODEMWINGIE UWAIFO

THE HON. JUSTICE AKINTOLA OLUEFMI EJIWUNMI

THE HON. JUSTICE NIKI TOBI

THE HON. JUSTICE DAHIRU MUSDAPHER

THE HON. JUSTICE DENNIS ONYEJIFE EDOZIE

THE HON. JUSTICE IGNATIUS CHUKWUDI PATS-ACHOLONU

JUSTICES OF THE COURT OF APPEAL

THE HON. JUSTICE UMARU ABDULLAHI

- PRESIDENT OF THE COURT OF APPEAL

ABUJA DIVISION

THE HON. JUSTICE GEORGE ADESOLA OGUNTADE

THE HON. JUSTICE IBRAHIM TANKO MUHAMMAD

THE HON. JUSTICE Z. A. BULKACHUWA

THE HON. JUSTICE A. G. ODUYEMI

BENIN DIVISION

THE HON. JUSTICE RABIU DANLAMI MUHAMMAD

THE HON. JUSTICE MUHAMMAD S. MUNTAKA-COOMASSIE

THE HON. JUSTICE KUMAI BAYANG AKAHHS

THE HON. JUSTICE AMINAA. AUGIE

THE HON. JUSTICE NWALI SYLVESTER NGWUTA

CALABARDIVISION

THE HON. JUSTICE RAPHAEL OLUFEMI ROWLAND

THE HON. JUSTICE OKWUCHUKWU OPENE

THE HON. JUSTICE S. O. EKPE

THE HON. JUSTICE ISTIFANUS THOMAS

ENUGU DIVISION

THE HON. JUSTICE MAHMUD MOHAMMED

THE HON. JUSTICE S. A. OLAGUNJU

THE HON. JUSTICE J. A. FABIYI

THE HON. JUSTICE CLARA BATA OGUNBIYI

THE HON. JUSTICE MONICA DONGBAN-MENSEM

IBADAN DIVISION

THE HON. JUSTICE MURTALA AAREMU OKUNOLA

THE HON. JUSTICE SAKAADEYEMI IBIYEYE

THE HON. JUSTICE VICTOR AIMEPOMO O. OMAGE

THE HON. JUSTICE F. F. TABAI

THE HON. JUSTICE O. O. ADEKEYE

ILORIN DIVISION

THE HON. JUSTICE SYLVANUS ADIEWEREN SOFOR

THE HON. JUSTICE P. I. AMAIZU

THE HON. JUSTICE W. S. N. ONNOGHEN

THE HON. JUSTICE JAFARU MIKAILU

JOS DIVISION

THE HON. JUSTICE A. M. MUKHTAR

THE HON. JUSTICE OLUDADE OLADAPO OBADINA

THE HON. JUSTICE AMIRU SANUSI

THE HON. JUSTICE I. C. NZEAKO

THE HON. JUSTICE I. F. OGBUAGU

KADUNA DIVISION

THE HON. JUSTICE I. A. SALAMI

THE HON. JUSTICE DALHATU ADAMU

THE HON. JUSTICE BABAALKALI BA'ABA

THE HON. JUSTICE J. J. UMOREN

THE HON. JUSTICE STANLEY SHENKO ALAGOA

LAGOS DIVISION

THE HON JUSTICE JAMES OGENYI OGEBE

THE HON. JUSTICE S. GALADIMA

THE HON. JUSTICE P. O. ADEREMI

THE HON. JUSTICE M. DATTIJO MUHAMMAD

THE HON. JUSTICE C. M. CHUKWUMA-ENEH

THE HON. JUSTICE ABUBAKAR ABDULKADIR JEGA

PORT HARCOURT DIVISION

THE HON. JUSTICE SUNDAY AKINOLA AKINTAN

THE HON. JUSTICE MICHAEL EYARU OMAAKPIROROH

THE HON. JUSTICE A. J. IKONGBEH

THE HON. JUSTICE DAVID ADEDOYIN ADENJI

ACTIONS - Claim - Language that flows freely - Is necessary in putting across a clear claim - Devoid of confusion (H7) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

ACTIONS - Claims - Land dispute - Where the claim on which other claims rest fails - Supreme Court need not say more about those other claims (H11) Archibong v. Ita p. 73

APPEALS - Failure to appeal - Award of transport expenses - Granted by trial court - Is still binding upon 2nd defendant - As it did not appeal (H7) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

APPEALS - Ground of appeal - Contesting an issue - Court of Appeal was wrong - In holding that amount of damages - Was not contested by the defendant (H8) Okolo v. Union Bank p. 1

APPEALS - Issues for determination - Preliminary Objection raised against them - Is out of place in this case (H5) Okolo v. Union Bank p. 1

APPEALS - Jurisdiction - Striking out - Where the appeal is incompetent - For want of jurisdiction - It would be struck out - Not dismissed (H4) Okolo v. Union Bank p. 1

BANKING - Documents - Oral evidence - Is inadmissible in this case - To neutralise appellant's commitment vide Exhibit P13 - To pay a debt on behalf of its customer (H3) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

BANKING - Pleadings - Interest rate - Unilateral increase thereof - Not supported by any pleading - Is resolved against the defendant bank (H7) Okolo v. Union Bank p. 1

BANKING - Special damages - Evidence - Claim of great loss - Where

based on approximation and expression of opinion - Without factual unassailable evidence - The claim will fail (H3) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

CONTRACTS - Guarantee - Debt - Parties - Principal debtor has to default before liability - In some cases - But in the present case - Appellant as guarantor is solely liable (H5) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

COURTS - Murder - Misapprehension - Of accused persons' extra judicial statements - And wrongful reliance on seeming denial of the statements - By Court of Appeal in affirming conviction - Is erroneous (H6) Aiguoreghian v. State p. 129

COURTS - Speculation - Documents - Where a document is speculative - Court should not rely on it (H4) Archibong v. Ita p. 73

CRIMINAL PROCEDURE - Alibi - Investigation of - Is necessary - Failure of prosecution to investigate it - Is fatal to its case here - Though it may not be fatal in some other cases (H5) Aiguoreghian v. State p. 129

CRIMINAL PROCEDURE - Confessional statement - Non est factum defence by accused - Is not a retraction - But a denial of making of the statement (H10) Aiguoreghian v. State p. 129

CRIMINAL PROCEDURE - Courts - Confessional statements - Fact as to whether made - Not founded upon by the two lower courts - Reliance on overruled cases - And on a victim's evidence - Will ground quashing of appellants' conviction (H11) Aiguoreghian v. State p. 129

CRIMINAL PROCEDURE - Manslaughter - Cause of death - Evidence of - Ambiguity in the medical reports evidence - As to cause of death - Will be resolved in favour of accused (H1) Aiguoreghian v. State p. 129

CRIMINAL PROCEDURE - Murder - Cause of death - Burden of proof
- Was wrongfully shifted to the accused - It rests squarely on the
prosecution (H3) Aiguoreghian v. State p. 129

CRIMINAL PROCEDURE - Murder - Cause of death - Medical certificate
- May not be required in all cases - But it is a necessity in this case - Where
death occurred 3 months later (H2) Aiguoreghian v. State p. 129

DAMAGES - Special damages - Proof - Submission by appellants counsel
- That it was adequately pleaded and proved - Is not correct - As the
evidence is deficient and weak (H2) Neka B.B.B. Manu. Co. Ltd. v. ACB
Ltd. p. 37

EVIDENCE - Admissibility - Confessional statements - Non est factum
plea by accused persons - Cannot stop admissibility of the statements - As
that plea is to be determined by court - At conclusion of trial (H7)
Aiguoreghian v. State p. 129

EVIDENCE - Admissions - Usefulness of - Exhibits - Purported admission
in an exhibit is useless - As it does not relate to live issues in the matter (H6)
Archibong v. Ita p. 73

EVIDENCE - Criminal procedure - Murder - Withholding of evidence - By
the prosecution as to cause of death - Doubt created thereby - Is resolved
in accused person's favour (H4) Aiguoreghian v. State p. 129

EVIDENCE - Documents - Admissibility - Confessional statement -
Challenge thereof on grounds of non est factum - Is appropriately made
when accused as witness - Denies making the statement (H8) Aiguoreghian
v. State p. 129

EVIDENCE - Documents - Guarantee - Exhibit P13 being in the form of
a guarantee - Is binding on the appellant (H4) Fortune Int. Bank Plc. v.
Pegasus Trading GmbH p. 181

EVIDENCE - Documents - Oral evidence - Cannot be admitted to contradict a document - Where it is inconsistent with the terms thereof (H1) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

EVIDENCE - Proof - Burden of proof lies on the person that asserts - Or the party that judgment will be against - If no evidence were produced on either side (H1) Archibong v. Ita p. 73

EVIDENCE - Proof - Pleadings - Land matters - Burden of proof in this case rests on the respondents - On the issue of common use but not title (H3) Archibong v. Ita p. 73

EVIDENCE - Proof - Probable certainty - Where there are specific claims - Plaintiff's duty is to prove essential facts succinctly (H4) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

EVIDENCE - Proof - Speculation - Burden of proof usually rests on plaintiff - He must prove what he asserts - Speculative observation cannot be a substitute to proof (H2) Archibong v. Ita p. 73

EVIDENCE - Unchallenged evidence - Evidence that is weak and devoid of substance - Can be safely ignored - By the other party and the court (H5) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

EVIDENCE - Uncontradicted evidence - Court's acceptance of it - Is subject to its credibility and probability (H6) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

JURISDICTION - Courts - Parties - Lack of jurisdiction - Brings a case to crumble - Parties cannot by connivance, acquiescence or waiver - Confer jurisdiction on the court (H2) Okolo v. Union Bank p. 1

JURISDICTION - Filing fees payment - Is mandatory for court to have

jurisdiction - Where not paid in respect of additional reliefs - The reliefs will be struck out (H3) Okolo v. Union Bank p. 1

LAND LAW - Common use - Boundary - Survey plan - Burden on respondents to prove certainty of land claimed - Was not discharged (H8) Archibong v. Ita p. 73

LAND LAW - Landlord and tenant - Common use claim by tenants- Is against our land tenure system - As a tenant does not share equal rights with the landlord (H10) Archibong v. Ita p. 73

LAND LAW - Survey plan - Counter plan - Where no plan was filed - An adverse party need not file a counter plan (H9) Archibong v. Ita p. 73

LAND LAW - Survey plan - Need for certainty of land in dispute - Makes survey plan necessary in this case - Though it is not a case for declaration of title (H7) Archibong v. Ita p. 73

LEGAL DRAFTING - Documents - Proviso - Its effect on a section - Is to relax limitations or throw light - But not to completely neutralise the provisions (H2) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

PLEADINGS - Claims - Interest - Averment - In respect of 11.5 percent interest rate - Claimed in respect of letters of credit - Is granted - As it was not denied (H6) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

PLEADINGS - Necessity of - Facts not pleaded go to no issue - Rationale behind this principle - Is to save time (H6) Okolo v. Union Bank p. 1

PLEADINGS - Proof - General denial - Exhibits - Land dispute - As the denial here is specific - Respondents failed to prove the land in dispute (H5) Archibong v. Ita p. 73

RULES OF COURT - Appeals - Objection - Extension of time to appeal -

xii INDEX OF SUBJECT MATTER IN (2004) 1 KLR

Granted by high court registrar - Is not provided for under the rules - Appellants are entitled to object as the granted extension is void ab initio (H1) Okolo v. Union Bank p. 1

TORTS - Damages - Special damages - Compensation for loss - Where claimant alleges that he suffered special damages - It must be proved by concrete evidence (H1) Neka B.B.B. Manu. Co. Ltd. v. ACB Ltd. p. 37

WORDS & PHRASES - “Retraction” and “resile from” - Interchangeably used in decisions on plea of non est factum - Is misleading (H9) Aiguoreghian v. State p. 129

COURT OF APPEAL

APPEALS - Election petitions - Right to appeal to Court of Appeal - Striking out a petition - Does not confer right to appeal - Under s.246(1)(b) of the 1999 Constitution - As it did not determine - Whether any person was validly elected (H2) Okon v. Bob p. 199 CA

ELECTION PETITIONS - Appeals - Right to appeal - From election tribunals - To the court of Appeal - Arises only where the petition is determined on the merit - As to whether a person was validly elected - As per S. 246(1)(b) of the 1999 Constitution (H1) Okon v. Bob p. 199 CA

ELECTION PETITIONS - Locus standi - Pleadings - Election candidates - Where plaintiff in his pleadings - Averred that his name was substituted few hours to the election - He has no Locus to sue (H5) Okon v. Bob p. 199 CA

ELECTION PETITIONS - Motions - Jurisdiction - Application that challenges competence of the petition - Was rightly determine by the - Tribunal before taking any other step in the proceedings (H6) Okon v. Bob p. 199 CA

ELECTION PETITIONS - Party candidates - Nomination of - Provision of the Electoral Act - That party candidates can be changed - Not later than 30 days to the election date - Is discretionary- As the phrase “may” was used - In s.23 of the Act (H4) Okon v. Bob p. 199 CA

PARTIES - Election petition - Actions - Person whose presence is crucial - It is the plaintiff’s duty to bring such party to court (H3) Okon v. Bob p. 199 CA

INDEX OF STATUTES & RULES

Bendel State High Court (Civil Procedure) Rules 1988 O. 8 rr. 28 & 29, O. 3 rr. 20 (1) & 21 (4) Okolo v. Union Bank p. 1

Court of Appeal Rules O. 3 r. 15(1) Okolo v. Union Bank p. 1

Criminal Code, cap 48 Vol 11 Laws of Bendel State of Nigeria, 1976 SS. 319(1), 314 Aiguoreghian v. State p. 129

Evidence Act cap 112 LFN 1990 S. 149(d) Aiguoreghian v. State p. 129

Evidence Act cap. 112 LFN 1990 SS. 135 (1) & (2) 137 (1) Archibong v. Ita p. 73

Evidence Act s. 132(1) Fortune Int. Bank Plc. v. Pegasus Trading GmbH p. 181

COURT OF APPEAL

Constitution of Nigeria 1999, ss. 246(1)(b), 285 Okon v. Bob p. 199 CA

Decree No.37 of 1987, ss. 31, 34(1), 37, 36(1), para. 28(1) and (2) of Sch. 3 Okon v. Bob p. 199 CA

Electoral Act, 2002, ss. 133(1) and 134, para. 2(2) of Sch. 1 Okon v. Bob p. 199 CA

Electoral Act 2002, ss. 21, 22, 23, 24, 25, 133(1), 134(1)(d) Okon v. Bob p. 199 CA

Local Government (Basic Constitutional and Transitional Provisions)
Decree No. 36 of 1998 para. 7(2) of the 4th Sch. Okon v. Bob p. 199 CA