

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2004) KLR VOL 5 PART 179 pp. 1365 - 1486

MAY 2004

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

MAY CONTD.

6. Ebri v. State p. 1365
7. Ubwa v. Yaweh p. 1387
8. Agbana v. Owa p. 1395
9. Adelusola v. Akinde p. 1413

COURT OF APPEAL CASES

1. Inter-Bau Construction Limited v. Ike p. 1437 CA
2. Nnolim v. State p. 1463 CA

ii INDEX OF SUBJECT MATTER IN (2004) 5 KLR

ACTIONS - Claim - Land matters - To ascertain the exact claim of a plaintiff - Writ of summons, entire statement of claim and plans filed - Will be examined (H4) *Adelusola v. Akinde* p. 1413

ACTIONS - Non-suit - Land matters - Claim - On which the parties joined issue - Where there is concurrent finding against defendants - Non-suit order is not justified (H7) *Adelusola v. Akinde* p. 1413

APPEALS - Acquittal - Co-accused - Where acquitted on same inextricable evidence - Court of Appeal was bound - To also acquit the appellant (H3) *Ebri v. State* p. 1365

APPEALS - Brief writing - Issues - It is against the practice - For one ground of appeal to be split into two issues - Supreme Court can re-frame the issues (H3) *Adelusola v. Akinde* p. 1413

APPEALS - Briefs of appeal - Filing time - Contention that brief was filed out of time - Without showing specific dates from the records - Is of no use (H3) *Agbana v. Owa* p. 1395

APPEALS - Briefs of appeal - Record of proceedings - Index thereof - Definition of - A record that contains table of contents - Is not void for not using the expression index in context of O. 7 r. 7 (H1) *Agbana v. Owa* p. 1395

APPEALS - Ground of appeal - Competence of - Omnibus ground in a civil case - Framed as if in a criminal case - Is incompetent (H1) *Adelusola v. Akinde* p. 1413

APPEALS - Grounds of appeal - Additional ground - That is not seen in the record of proceedings - Will be ignored by Supreme Court (H2) *Agbana v. Owa* p. 1395

APPEALS - Issue for determination - Competence of - Contention that

issue 2 - Is not derived from any ground of appeal - Is misconceived (H2)
Adelusola v. Akinde p. 1413

APPEALS - Judgment - Nullity of - Panel of the Court of Appeal - That delivered judgment - Being different from that that heard the appeal - Renders the proceedings a nullity (H2) Ubwa v. Yaweh p. 1387

APPEALS - Judgments - Absence of a party - On the day of judgment - Will not invalidate the judgment (H4) Agbana v. Owa p. 1395

CHIEFTAINCY MATTERS - Appointment - Claim by plaintiff - That he was appointed chief - Without proving it - Will be dismissed (H5) Agbana v. Owa p. 1395

CHIEFTAINCY MATTERS - Appointment - Exhibit - That appointed 1st respondent as Chief - Allegation that it is contrary to Chiefs law - Is not substantiated (H6) Agbana v. Owa p. 1395

COURTS - Constitution of - Judgments - Court of Appeal - For purpose of delivering judgment - Panel of 3 justices - One of whom did not hear the appeal - Is properly constituted (H1) Ubwa v. Yaweh p. 1387

COURTS - Substantial justice - Being the interest of the court - Inelagantly formulated claim - Will not be allowed to defeat justice (H5) Adelusola v. Akinde p. 1413

CRIMINAL PROCEDURE - Alibi - Evidence - Failure to investigate alibi - Will not secure an acquittal - Where evidence pins an accused - To the scene of crime (H2) Ebri v. State p. 1365

CRIMINAL PROCEDURE - Evidence - Acquittal - Of one of jointly charged accused persons - Based on same inextricable evidence without more - Demands discharge of the others (H1) Ebri v. State p. 1365

iv **INDEX OF SUBJECT MATTER IN (2004) 5 KLR**

JUDICIAL PRECEDENTS - Acquittal - Supreme Court - Stare decisis - Umani's case - Being a binding precedent - Grounds acquittal of appellant - Who should have been held guilty (H4) Ebri v. State p. 1365

LAND LAW - Title - Identity of land claimed - Burden of proof is on the plaintiff - But it will not arise - Where identity was never in issue (H6) Adelusola v. Akinde p. 1413

LAND LAW - Title - Injunction - Boundaries - Where both parties know the land in issue - Refusal to grant injunction and title - Is misconceived (H8) Adelusola v. Akinde p. 1413

COURT OF APPEAL

APPEALS - Competence - Leave - Objection to appeal on grounds of leave not being obtained - Is unfounded - Since the appeal is as of right (H2) Inter-Bau Construction Ltd v. Ike p. 1437 CA

APPEALS - Grounds of appeal - Issue of alibi - That does not arise from any of the grounds - Will not be considered - And alibi being of major consequence - Cannot be canvassed under the omnibus ground (H1) Nnolim v. State p. 1463 CA

APPEALS - Issue of jurisdiction - That is not related to any of the grounds of appeal - Is incompetent (H1) Inter-Bau Construction Ltd v. Ike p. 1437 CA

COMPANY LAW - Meeting - Banking - Shareholders' interest - Weighs more than that of the managing director - In the matter of calling extra ordinary general meeting - To remove the managing director - From office (H8) Inter-Bau Construction Ltd v. Ike p. 1437 CA

CRIMINAL PROCEDURE - Burglary - Stealing - Receiving stolen property - Proof - Where it was not shown free from doubt - That the

alleged stolen property - Belongs to the complainant - Prosecution's case must fail - And the conviction set aside (H7) Nnolim v. State p. 1463 CA

CRIMINAL PROCEDURE - Burglary - Witnesses - Vital witness - Where from the state of prosecution's evidence - A party becomes a vital witness - Prosecution's failure to produce him is fatal (H4) Nnolim v. State p. 1463 CA

CRIMINAL PROCEDURE - Proof - Duty on prosecution - Is to prove its case beyond reasonable doubt - As failure will lead to acquittal - And lingering doubt resolved in favour of accused (H2) Nnolim v. State p. 1463 CA

CRIMINAL PROCEDURE - Stealing - Witnesses - Conflict in evidence of two witnesses - Where not material - Both witnesses should not be regarded as unreliable (H5) Nnolim v. State p. 1463 CA

CRIMINAL PROCEDURE - Witnesses - Contradiction in the evidence of two witnesses - Where doubt is created thereby - It should be resolved in favour of the accused (H6) Nnolim v. State p. 1463 CA

CRIMINAL PROCEDURE - Witnesses - Unresolved issue flowing from prosecution's evidence - If not resolved by further evidence - Prosecution would fail (H3) Nnolim v. State p. 1463 CA

INJUNCTIONS - Courts - Exparte Order - Being a serious business that may involve big losses - Should not be granted casually - Factors that should be considered (H6) Inter-Bau Construction Ltd v. Ike p. 1437 CA

INJUNCTIONS - Exparte injunction - Basis of - There is no real urgency - To warrant grant of the injunction exparte in this case (H3) Inter-Bau Construction Ltd v. Ike p. 1437 CA

INJUNCTIONS - Exparte injunction - Need to preserve the res - Does not

arise here (H4) Inter-Bau Construction Ltd v. Ike p. 1437 CA

INJUNCTIONS - Exparte Order - Vacation of - Respondents did not meet needed requirements - To oppose vacation of the Order (H7) Inter-Bau Construction Ltd v. Ike p. 1437 CA

INJUNCTIONS - Exparte Order - Vacation of the Order - Trial court's discretion in refusing to vacate the order - Was wrongfully exercised (H9) Inter-Bau Construction Ltd v. Ike p. 1437 CA

PRACTICE & PROCEDURE - Actions - Discontinuance notice - Where filed and brought to the Court's notice - No further formality should be expected (H5) Inter-Bau Construction Ltd v. Ike p. 1437 CA

INDEX OF STATUTES & RULES

Chiefs Law of Kogi State No.7 of 1992, ss. 3(1), 4(2) Agbana v. Owa p. 1395

Constitution of Nigeria 1979 ss. 226, 258 (2) Proviso Agbana v. Owa p. 1395

Constitution of Nigeria 1990 ss. 294(2) & (4), 247(1) Ubwa v. Yaweh p. 1387

Court Appeal Act No.43 of 1976, ss. 9, 10, 11 Agbana v. Owa p. 1395

Court of Appeal Act Cap. 75 (LFN 1990) s. 9 Ubwa v. Yaweh p. 1387

Supreme Court Rules O. 7 r. 7(2) & (3) Agbana v. Owa p. 1395

COURT OF APPEAL

Companies and Allied Matters Act 1990, ss.215, 262(6) Inter-Bau Construction Ltd v. Ike p. 1437 CA

Constitution of Nigeria 1979 s. 220(1) (g) (iii) Inter-Bau Construction Ltd v. Ike p. 1437 CA

Criminal Code Cap. 36 Vol.1 Laws of Anambra State 1986, ss. 495(a), 379(a), 353(9) Nnolim v. State p. 1463 CA

Evidence Act s.148(a) Nnolim v. State p. 1463 CA

Evidence Act ss.149 (d), 137 Agbana v. Owa p. 1395

Federal High Court Civil Procedure Rules O. 43 r. 1 Inter-Bau Construction Ltd v. Ike p. 1437 CA