

SUPREME COURT OF NIGERIA
7TH JANUARY, 2005. SC. 233/2000
CORAM:- I. L. KUTIGI, S. A. UWAIFO, D. MUSDAPHER,
I. C. PATS-ACHOLONU, S. A. AKINTAN, JJSC

MADAMALICE CHIATOGU AMADI PLAINTIFF/APPELLANT
AND

1. CHARLES ORISAKWE
2. OLIVER ORISAKWE DEFENDANTS/RESPONDENTS
3. RISING ORISAKWE

APPEALS - Concurrent findings - Where perverse - Because wrong conclusions were drawn - Supreme Court will interfere (H1)

EVIDENCE - Documents - Conveyance - Signature - Where denied by the maker - Four legal ways to resolve the issue - Was not employed by the trial court (H2)

LAND LAW - Title - Identity of the land in dispute - Being clear from the parties' survey plan - Is not in doubt (H3)

LAND LAW - Title - Claim of plaintiff - That he was not disturbed on the land - Until after the death of the vendor - Was not controverted (H4)

LAND LAW - Sale - Purchase agreement - Being wrongfully rejected by the courts below - Their concurrent decision - Is set aside (H5)

FACTS

The present plaintiff/appellant was the wife of the original plaintiff, late Lawrence Amadi, who died during the trial before the High Court of Imo State, after giving his evidence. Plaintiff claimed against the defendants/respondents declaration of title to the piece of land situate at 27 Mbaise Road, Owerri, 100 Pounds being damages for trespass and perpetual injunction. Plaintiff testified and called one witness. Four witnesses testified for the defence. Plaintiff's case was that Israel Orisakwe, father

of the defendants, leased the land in dispute to him in 1942 for 99 years. The lease was in writing and signed by the parties and their witnesses. Plaintiff farmed on the land and built a house on a portion of it in 1947. In 1961, the vendor agreed to make an outright sale of the same land to him for forty pounds. Plaintiff paid the agreed sum and a conveyance was executed in his favour. The parties, including the 1st and 2nd defendants signed the deed. P.W.1, who later became a Chief Magistrate in charge of Aba, testified to the effect that the parties signed the purchase agreement (Exhibit A) in his presence and he signed as a witness. That was when P.W.1 was in private practice.

The defendants denied the plaintiff's claim. They denied signing the purchase agreement and that their father did not sign it. They however, admitted that their late father gave a piece of land to the plaintiff measuring 50ft by 100ft. The trial court rejected the plaintiff's case and dismissed the claim. Appeal to the Court of Appeal was also dismissed. Plaintiff has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“ 1. Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant was not entitled to the plot of land measuring 50 feet by 100 feet.

2. Whether the learned Justices of the Court of Appeal were right in law in affirming the trial court as to the validity of the Deed of Conveyance, Exhibit A.

3. Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant failed to establish with certainty the area of land claimed.”

HELD (Unanimously allowing the appeal per **AKINTAN JSC**)

Concurrent findings - Where perverse

1. The law is settled that this court will not interfere with the concurrent findings of fact made by both the High Court and the Court of Appeal where the findings are reasonably justified and supported by evidence, and where no special circumstances why the court should interfere with the findings is shown or where there is no substantial error apparent on

the record of proceedings such as miscarriage of justice or violation of some principles of law or procedure. However, where such findings are shown to be perverse or patently erroneous or where, for example, the court has drawn wrong conclusions from accepted credible evidence adduced before it and a miscarriage will result if they are allowed to remain, the Supreme Court has the duty to interfere. (p. 247 H)

Documents - Conveyance - Signature

2. The position of the law is that in resolving the issue of due execution of a document where the alleged maker denies his signature, the course or option open to the court would be the following:-

(i) To receive evidence from the attesting magistrate if there is such an attestation and if it is still possible to call the magistrate;

(ii) To hear evidence from a person familiar with the signature of the alleged signatory or who saw him write the signature;

(iii) To compare the signature admitted by the alleged signatory to be his own with the one under contention under Section 108(1) of the Evidence Act

(iv) To direct the person to sign his signature for the purpose of enabling the court to compare the signature alleged to have been written by him under Section 108(2) of the Evidence Act;

See: *Adenle v. Olude* (2002) 9-10 S.C 124; (2002) 18 NWLR (Pt.799) 413. In the instant case, the plaintiff called the attesting Chief Magistrate as a witness. The defendants on the other hand, did not lead any evidence other than the mere denial that their late father did not sign the document. The 2nd defendant who gave the evidence the defence relied on in respect of the execution of the document, failed to present to the court his correct signature and that of his father for comparison with the disputed signatures or present any other evidence that could assist the court in confirming if in fact, his denial could be accepted as required by law as declared above. The lower trial court was therefore wrong when it preferred the evidence led by the defence on the point to that of the plaintiff. (p. 249 A)

Title - Identity of the land in dispute

3. The respondents’ description of the land as shown on their survey plan, Exhibit B, shows that the plot is bounded to the South by Mbaise Road and to the East by Tetlow Road. The survey plan in the Deed of Conveyance, Exhibit A, also shows that the appellant’s plot is bounded in the South by Mbaise Road and Tetlow Road to the East. It is therefore not correct, as contended by the respondents, that the plot given to the appellant never abutted Tetlow Road. Similarly, the respondents’ plan, Exhibit B, confirmed the structures which the appellant claimed that he erected on the land after he took possession. Although it was the defendants’ case that their father also gave a plot to Ejioogu, no eyewitness evidence was led to show that the plot given to Ejioogu was of equal size to that of the plaintiff. It follows therefore that the contention by the respondents that the identity of the land was unknown to the parties is incorrect. (p. 249 H)

Title - Claim of plaintiff

4. Similarly, the respondent failed to controvert the claim by the plaintiff that he was not disturbed on the land until after the death of the respondents’ father from whom he bought when the respondents started interfering with his peaceful enjoyment of the land. (p. 250 D)

Sale - Purchase agreement

5. The sale of the plot at 27 Mbaise Road to the plaintiff is therefore clearly confirmed in the document (Exhibit A). As I have held earlier above that the rejection of the sale agreement was improper, the dismissal of the appellant’s appeal by the Court of Appeal is therefore also improper. In the result, the appellant has satisfactorily established the existence of the conditions that could warrant interfering by this court with the concurrent findings of fact made by both the High Court and Court of Appeal in the case. I therefore, for the reasons given above, allow the appeal. I hold that the appellant had led sufficient credible evidence in support of his claim.

In the result, I allow the appeal and I hereby set aside the orders of

the High Court and the Court of Appeal dismissing the plaintiff's claim. (p. 250 H)

NOTABLE POINT OF INTEREST

PATS-ACHOLONU JSC

B

1. Where forgery is not alleged - Standard of proof required

The learned counsel for respondent had rhetorically asked at what date Israel Orisakwe signed Exhibit A. They should have provided an answer to that. They did not aver that Exhibit A is a forgery and fraudulently made. It was not part of their case. It must be emphasized that in a civil matter, the standard of proof required is that of preponderance of evidence only. When such a matter is put on an imaginary scale and it tilts to one side, the side to which it is tilted has the weightier material and the facts and law elicited would then preponderate in favour of the facts that the party is putting across. (p. 255 H)

REPRESENTATION

A. O. Okeya, (with him, Inneh and Ndukwe Chukwu), for the Appellant. Chief Enechi Onyia, SAN., (with him, C. O. Ike (Mrs.)), for the Respondents.

CASES REFERRED TO

F

Adenle v. Olude (2002) 9-10 S.C 124; (2002) 18 NWRL (Pt.799) 413
 Chinwendu v. Mbamali (1980) 3-4 S.C. (Reprint) 21; (1980) 3-4 S.C. 31
 Lamai v. Orbih (1980) 5-7 S.C. (Reprint) 20; (1980) 5-7 S.C. 28
 Woluchem v. Gudi (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291
 Ezeonwu v. Onyechi (1996) 3 NWLR (Pt. 438) 499
 Arowolo v. Ifabiyi (2002) 2 S.C. (Pt. I) 71; (2002) 4 NWLR (Pt.757) 356
 Layinka v. Makinde (2002) 2 S.C. (Pt. I) 109; (2002) 10 NWLR (Pt.775) 358

G

H

STATUTES REFERRED TO

Evidence Act s. 108(2)

LEAD JUDGMENT BY AKINTAN JSC

The dispute that led to this appeal arose over a piece of land situated at 27 Mbaise Road, Owerri in Imo State. The original plaintiff in the case was Lawrence A. Amadi, who died while the trial was on at the High Court but after he had given his evidence before the trial court. The present appellant, Madam Alice Chiatogu Amadi, was the wife of the original plaintiff who was substituted for her husband upon the man's death. The case was instituted at the High Court of Imo State, holding at Owerri, as Suit No. HOW/26/71 and the present respondents were the defendants. The plaintiff's claim against the defendants, jointly and severally, as set out in paragraph 16 of the Statement of Claim, is as follows:

“(a) Declaration of title to that piece of land situated at No. 27 Mbaise Road, Owerri in the Owerri Judicial Division as shown in the plan No. MEC/9/91;

(b) One Hundred Pounds being damages for trespass to the said land; and

(c) Perpetual injunction restraining the defendants, their servants and agents from entering the said land again”.

Pleadings were filed and exchanged and the trial finally took place before Okezie, J., (as he then was). As already stated above, the original plaintiff, Lawrence Amadi, gave evidence at the trial and called a witness in support of his case before he died. Four witnesses testified for the defence, two of whom are the 1st and 2nd defendants now respondents who respectively gave evidence as D.W.2 and D.W.3.

The plaintiff's case was that Israel Orisakwe, the father of the defendants (now respondents) leased the piece of land to him in 1942 for 99 years. The lease was in writing and signed by the parties and their witnesses. The plaintiff said he farmed on the land between 1942 and 1947. But in 1947, he built a house on a portion of the land. In 1961, the same man, Israel Orisakwe, agreed to make an outright sale of the same land to him for forty pounds. He paid him the agreed sum and a conveyance was executed in his favour. The parties, including the 1st and 2nd

respondents, signed the deed of conveyance, which was admitted as Exhibit A. The plaintiff said the house he built on the land was burnt during the civil war, but he later rebuilt it and nobody disturbed him while rebuilding the house.

It was in 1970 that the respondents came to ask the plaintiff if he had documents supporting the sale of the land to him because they claimed that they had lost their own. He did not show them his documents. But he told them he was going to search for them. The respondents thereafter entered the land and broke down some of his structures on the land. This was why the plaintiff instituted the action against them.

The only witness for the plaintiff was Innocent Ihejieto (P.W. 1), the Chief Magistrate in charge of Aba. He told the court that he had seen the purchase agreement, Exhibit A, when the parties came to sign it before him. He said the vendor, Israel Orisakwe, and the 2nd respondent signed the document in his presence and that he signed as witness.

The case for the defence was that their father, who died in 1968, did not sell any land to the plaintiff. They denied that any of them signed the purchase agreement, Exhibit A, along with their late father. They, however, admitted that their late father “*gave a piece of land to the plaintiff measuring 50ft by 100ft*” and that similar size of land was also given to one Ejiogu. The respondents said they made apian of the land in dispute which was admitted as Exhibit B. The land they admitted was “given to the plaintiff by their late father is verged blue on the plan, Exhibit B. The 2nd respondent, who gave the evidence on behalf of the defendants, denied that the signature on Exhibit A was that of his father and that he was not present when the document was signed.

The learned trial Judge rejected the plaintiff’s case and dismissed the claim. On appeal to the Court of Appeal, Port Harcourt Division (Katsina-Alu, Rowland and Onalaja, JJCA.) also dismissed the appeal. The present appeal is from the decision of the said Court of Appeal delivered in the case on 8th April, 1997, in Suit No.CA/E/173/87.

The following three issues were formulated and canvassed in the appellant’s brief in this court:

“1. Whether the learned Justices of the Court of Appeal were right

in law in holding that the appellant was not entitled to the plot of land measuring 50 feet by 100 feet.

2. *Whether the learned Justices of the Court of Appeal were right in law in affirming the trial court as to the validity of the Deed of Conveyance, Exhibit A.*

3. *Whether the learned Justices of the Court of Appeal were right in law in holding that the appellant failed to establish with certainty the area of land claimed.”*

The complete rejection of the case put across by the appellant and the rejection of the conveyance, Exhibit A, are the main points canvassed in the first two issues formulated in the appellant’s brief. References are made to portions of the pleadings as well as the evidence led in support by the parties. It is then submitted that the reasons given for the rejection of the Deed of Conveyance (Exhibit A) which are that: (i) no plan was attached to the agreement when it was executed in 1961; (ii) the plan which was eventually attached was dated 4th February, 1971; and (iii) the plan made in 1971 ought to have been endorsed by the vendor and referred to the prior agreement of 1961; are said to be totally misplaced. This is because no proper consideration was given to the other evidence placed before the court.

Among such vital evidence said to have been unjustifiably ignored is the testimony by the plaintiff that he was initially granted a lease of a plot of land and later he made an outright purchase of the same land measuring 60 yards by 33 yards and which was supported by the agreement, Exhibit A. Also the evidence led in support of the execution of the conveyance by the vendor and which was witnessed by Chief Magistrate Ihejiro (P.W. 1), is also said to have been ignored without giving any reason. It is submitted that the contents of the documents, Exhibit A, ought to have been taken into consideration along with the fact that the appellant took possession after the grant, built thereon and remained in possession undisturbed until long after the death of the vendor when the children started to challenge the appellant’s title. It is submitted that had both the trial court and the Court of Appeal taken into consideration the above evidence along with the admission by the respondents that they

were aware that their late father gave a plot of land measuring 50 feet to the appellant and in support of which they tendered a survey plan, Exhibit B, which in fact confirmed the appellant's claim that he had for a long time built on the land, should have justified granting the plaintiffs claim.

The allegation that the appellant failed to prove with certainty the identity of the land he was claiming is the point canvassed in the appellant's third issue. Again, reference is made to the pleadings of the panics and the evidence led as well as the exhibits tendered and it is submitted that the identity of the land was never an issue since that was known to the parties. The issue in contention is said to be whether the appellant in fact bought the land from the respondents' father. To say that the appellant failed to prove the identity of the land he was claiming is therefore said to be totally erroneous.

It is submitted in reply in the respondents' brief that since the respondents had denied that the land given by their father to the appellant never abutted to on Tetlow Road and the signature on the document relied on by the appellant (Exhibit A) was not that of their late father, the issue of the identity of the land claimed by the appellant was therefore not proved as required by law. On the rejection of the deed, Exhibit A, it is submitted that the rejection was in order because, although the deed was pleaded, the lease of 1942, which formed part of the deed, was not pleaded. The conveyance itself was also not to be in order because no plan was attached to it as at the time it was executed in 1961 and that the plan which was later brought into it was not certified by the vendor.

Reference is made to the survey plan tendered by the defence (Exhibit B). It is submitted that since the appellant's survey plan of the land in dispute (Exhibit A) is different from that of the respondents (Exhibit B), the identity of the land claimed by the appellant was therefore in dispute and that the appellant failed to discharge the onus of proving that vital aspect of his case.

The deciding factor in this appeal is whether the appellant has made out a good case to justify or warrant setting aside the concurrent findings of fact made by both the trial High Court and the Court of Appeal. **The law is settled that this court will not interfere with the**

concurrent findings of fact made by both the High Court and the Court of Appeal where the findings are reasonably justified and supported by evidence, and where no special circumstances why the court should interfere with the findings is shown or where there is no substantial error apparent on the record of proceedings such as miscarriage of justice or violation of some principles of law or procedure. However, where such findings are shown to be perverse or patently erroneous or where, for example, the court has drawn wrong conclusions from accepted credible evidence adduced before it and a miscarriage will result if they are allowed to remain, the Supreme Court has the duty to interfere: *Chinwendu v. Mbamali* (1980) 3-4 S.C. (Reprint) 21; (1980) 3-4 S.C. 31; *Lamai v. Orbih* (1980) 5-7 S.C. (Reprint) 20; (1980) 5-7 S.C. 28; *Woluchem v. Gudi* (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 291; *Ezeonwu v. Onyechi* (1996) 3 NWLR (Pt. 438) 499; *Arowolo v. Ifabiyi* (2002) 2 S.C. (Pt. I) 71; (2002) 4 NWLR (Pt. 757) 356; and *Layinka v. Makinde* (2002) 2 S.C. (Pt. I) 109; (2002) 10 NWLR (Pt. 775) 358.

As already set out above, the appellant's case was that he at first leased the plot of land in dispute from the respondent's father in 1942. He later in 1961 made an outright purchase of the same land from the same respondent's father and that the transaction was evidenced in a deed of conveyance, duly executed by the same vendor and witnessed by a Chief Magistrate who confirmed that the respondents and their father signed the document in his presence and that he witnessed the signatures. The document was admitted as Exhibit A. The appellant took possession and later built on the plot and remained on the land undisturbed throughout the lifetime of the vendor who died in 1968. It was not until in 1971 that the respondents, as children of the vendor, started to disturb him and challenge his title. They denied that the signature on the deed was that of their father. The second respondent, who gave evidence on behalf of the other defendants and who was also said to have signed the deed, Exhibit A, also denied the signature said to be his own on the document.

The evidence presented by the defence to controvert that of the plaintiff was mere denial by the D.W.2 in the course of his evidence. No

attempt was made by the witness beyond the mere denial to show the court his father's correct signature and his own which he also denied for purpose of comparison. **The position of the law is that in resolving the issue of due execution of a document where the alleged maker denies his signature, the course or option open to the court would be the following:-**

- (i) To receive evidence from the attesting magistrate if there is such an attestation and if it is still possible to call the magistrate;
- (ii) To hear evidence from a person familiar with the signature of the alleged signatory or who saw him write the signature;
- (iii) To compare the signature admitted by the alleged signatory to be his own with the one under contention under Section 108(1) of the evidence Act
- (iv) To direct the person to sign his signature for the purpose of enabling the court to compare the signature alleged to have been written by him under Section 108(2) of the Evidence Act;

See: *Adenle v. Olude* (2002) 9-10 S.C 124; (2002) 18 NWLR (Pt.799) 413. In the instant case, the plaintiff called the attesting Chief Magistrate as a witness. The defendants on the other hand, did not lead any evidence other than the mere denial that their late father did not sign the document. The 2nd defendant who gave the evidence the defence relied on in respect of the execution of the document, failed to present to the court his correct signature and that of his father for comparison with the disputed signatures or present any other evidence that could assist the court in confirming if in fact, his denial could be accepted as required by law as declared above. The lower trial court was therefore wrong when it preferred the evidence led by the defence on the point to that of the plaintiff.

The defence admitted that their father gave a plot of land each to the appellant and one Ejiogu and they tendered Exhibit B in which the two plots said to have been given out are shown. None of them claimed to be present when their father made the gifts to the two people. **The respondents' description of the land as shown on their survey plan, Ex-**

hibit B, shows that the plot is bounded to the South by Mbaise Road and to the East by Tetlow Road. The survey plan in the Deed of Conveyance, Exhibit A, also shows that the appellant's plot is bounded in the South by Mbaise Road and Tetlow Road to the East. B It is therefore not correct, as contended by the respondents, that the plot given to the appellant never abutted Tetlow Road. Similarly, the respondents' plan, Exhibit B, confirmed the structures which the appellant claimed that he erected on the land after he took possession. Although it was the defendants' case that their C father also gave a plot to Ejiogu, no eyewitness evidence was led to show that the plot given to Ejiogu was of equal size to that of the plaintiff. It follows therefore that the contention by the respondents that the identity of the land was unknown to the parties is D incorrect. Similarly, the respondent failed to controvert the claim by the plaintiff that he was not disturbed on the land until after the death of the respondents' father from whom he bought when the respondents started interfering with his peaceful enjoyment of the E land.

The document (Exhibit A) relied on by the appellant, is made up of three documents: (i) the lease agreement of 1942; (ii) the purchase agreement made in 1961; and (iii) the survey plan. The purchase agreement, F which was duly witnessed by Chief Magistrate Ihejieta reads, inter alia, as follows:

"Agreement made this 1st of April 1961 between Mr. Israel Chanaka Orisakwe of Umuodu compound, Owerri and Mr. Lawrence Atumaonyego Amadi of Umuoronjor Compound, Owerri, certifies that I, Israel Chamaka G Orisakwe, has sold to Mr. Lawrence Atumaonyego Amadi my plot of land at 27 Mbaise Road, measuring sixty yards long by thirty-three wide and situated between Mr. N. O. Ejiogi's plot and Mr. S. O. Nnadi's plot facing the Mbaise Road, Owerri....."

H The sale of the plot at 27 Mbaise Road to the plaintiff is therefore clearly confirmed in the document (Exhibit A). As I have held earlier above that the rejection of the sale agreement was improper, the dismissal of the appellant's appeal by the Court of Appeal is

therefore also improper. In the result, the appellant has satisfactorily established the existence of the conditions that could warrant interfering by this court with the concurrent findings of fact made by both the High Court and Court of Appeal in the case. I therefore, for the reasons given above, allow the appeal. I hold that the appellant had led sufficient credible evidence in support of his claim. B

In the result, I allow the appeal and I hereby set aside the orders of the High Court and the Court of Appeal dismissing the plaintiff's claim. In their place, I hereby: C

- (a) Grant the declaration sought by the plaintiff;
- (b) Award N200 as damages he claimed for trespass and;
- (c) Make an order restraining the defendants, their agents and servants from entering the plaintiff's said plot of land. I award the appellant N500.00, N3,000.00 and N10,000.00 as costs in the High Court, D Court of Appeal and in this court respectively.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Akintan, JSC. I agree with him that the appeal is meritorious and ought to succeed. I allow it and set aside the judgments of the trial court and that of the Court of Appeal. In their places an order granting plaintiff's claims is substituted. I endorse the order for costs. F

UWAIFO JSC

I entirely agree. G

MUSDAPHER JSC

I have had the opportunity to read before now the judgment of my Lord, Akintan, JSC., with which I entirely agree. For the same reasons contained in the said judgment which I adopt as mine, I too allow the appeal and set aside the judgments and orders of the lower courts dis- H

missing the appellant's claims. In their place, I hereby enter judgment in favour of the appellant as per his Statement of Claim. I abide by the order of costs contained in the aforesaid leading judgment.

B

PATS-ACHOLONU JSC

I have read the judgment in draft of my learned and noble Lord, Akintan, JSC., and I agree with him.

C Sometime in 1942, the appellant's father took a lease of a piece of land measuring 60 yards by 90 yards from the predecessor of the respondents for a term of years. However, years later it was said that the land was thereafter sold outright to him. To this effect, a Deed of Conveyance was prepared and was duly registered and there was a survey D plan of the area made afterwards. Prior to the Deed of Conveyance, the appellant had erected a structure on the land. The appellant complained that some years after the Nigerian Civil War, respondents who appeared to have lost their documents in relation to the sale made forceful ingress E into the land and the appellant reported the matter to the Police. The alleged interference with the property led to this case.

The respondent's case is that the land given or sold to the appellant was not more than 50ft by 100ft and they maintained that in 1954 F when the appellant had built in an area that extended beyond the piece sold to him, their family had protested.

There is no dispute that a piece of land was sold or alienated to the father of the appellant sometime in the past. The question really is this:- What was, or, is the measurement of the land sold to the father of the G appellant? A careful reading of the plan attached to the deed shows that the measurement of the land in question tallied with the measurement of the land for which a lease was made in 1942. When Exhibit A (which contains the lease and conveyance) was tendered, it was not objected to H by the respondents. The deed had a survey plan to describe its dimensions and features. In fact, by the operation of Section 9 of Land instrument Registration Law Cap 72 Laws of Eastern Nigeria and the subsidiary reflation made thereunder which states as follows:

“Section 9 of the Law, in so far as the section directs that an instrument should not be registered unless it contains a plan of the land affected shall not apply to the following..... Instrument affecting land, the boundaries of which are defined in a plan attached to an instrument registered after 1st June, 1918 and referred to in the instrument”, B

it would seem that for valid registration of the deed, plan needs not be attached.

There is something screwy in the judgment of the trial court. In respect of the plan and the deed, the learned trial Judge held as follows: C

“The plan is headed “Land in dispute”. There is evidence of the plaintiff that it was made for this dispute and registered for this case. It was not endorsed by the vendor or his executor administrators that it referred to the agreement of 1st April, 1961. It did not come into existence until 4th February, 1971 almost ten years after the proposed conveyance. No plan was made in 1961 showing the identity of the land conveyed to the plaintiff. D

It is therefore not in compliance with Section 9 of Lands Instrument Registration Law”. E

In the Court of Appeal, that court per Katsina-Alu, JCA., (as he the was) said in reference to the case:

“.....In the instant case evidence of pledge and that the land in question is situate in Tetlow Road goes to no issue. The consequence is that the plaintiff has not proved his case” F

It went on:

“It is this piece of land which the plaintiff claimed was leased to him by the father of the defendants that he said he bought outright. The defendants however denied that their father even made a freehold grant at anytime to the plaintiff. What is more the defendants claimed that the area in dispute is outside the portion leased to the plaintiff. At this stage I think it is necessary to say that the failure of the plaintiff to establish the area leased to him has contaminated through and through his claim for a freehold grant. This is so because it is his case that it is the parcel of land leased to him that was subsequently sold to him. The case of out- G H

right sale of the land, the foundation of the present action, fails”.

From Exhibit A, the lease agreement made in 1942, and the deed made in 1961 unaccompanied by a plan, the description of the land mentioned therein conformed with the description of the land in dispute. The part of Exhibit A, id est the deed, was signed by Mr. Ihejieta then a private solicitor who years later testified in the case as a Chief Magistrate. His evidence runs thus:-

“I was equally based here because I come from near Owerri town. The document Exhibit “A” was signed in the house of the plaintiff. It was signed in the daytime. I did not sign any other document in respect of this transaction. At the time the signing was going on I was there in the capacity as a solicitor to either party”.

Part of the evidence of Mr. Innocent Ihejieta further reads thus:
“The vendor Israel Orisakwe whose witness to his signature I was, signed in my presence. The 2nd defendant signed it in my presence. Davies Amadi the son of the plaintiff signed in my presence. This document was signed in 1961.”

It is interesting to observe that while the respondents insisted they never signed any deed i.e. part of Exhibit A, they did not aver in their Statement of Defence that the signature said to be that of their father was forged and therefore the document was a fraud. Although the learned counsel for the respondents tried to raise the issue of fraud in the course of the hearing of the appeal in this court, he was stopped when he could not pm-point any averment in the Statement of Defence alleging fraud or forgery.

On another point the appellant’s father, the original buyer, said that in 1942, there was no Tetlow Road but in 1961 there was a passage meaning that by 1961 a Road had been carved out of that area.

Now, even if the document when signed was not accompanied by a plan, it is not necessarily void. The appellant submitted that though a survey plan was desirable, it is not essential. It must be understood that the appellant’s case was that they have been living or working on the land, and had erected a structure on this land, and at no time did the father of the respondents interfere with their enjoyment of that property.

To the issue of a plan, clause 3 of Land Instrument Registration Regulation stated as follows:

“3. Section 9 of the Law, in so far as that section directs that an Instrument shall not be registered unless it contains a plan of the land affected, shall not apply to the following instrument:-

B

“(a)

(b) Instrument affecting land boundaries of which are defined in a plan attached to an instrument registered after the 1st June 1918 and referred to in the instrument presented for registration.”

C

I must confess that I am at a loss to discover on what basis Exhibit A was spurned by the lower court. Exhibit A needs not have a plan to make it registrable.

To over labour the issue that when the land was registered, there was no plan of the land attached to the deed, does not in any way adversely affect the fact that strictly speaking, the parties know the area in dispute. The contention that nobody from the respondents' family signed Exhibit A is a red herring. If they contend that it is forged, where is it in the pleadings? It is not correct to say that the identity of the land in question was not defined. It was properly defined and understood and known by the parties.

The learned counsel for the respondents tried to make bones about the land being situate at Mbaise Road while the appellant stated it is in Tetlow Road. It seems the learned Court of Appeal with greatest respect failed to appreciate the evidence of the appellant to the effect that in 1942, there was no Tetlow Road. My understanding of the lower court's stand is that if the land is not in Mbaise Road then the claim of the appellant that it is situate in Tetlow Road is false. Streets can be renamed and a plot of land can face two roads or streets if it should be a corner plot of land. In such a case the land could face both A and B roads. There is nothing sacrosanct or obtuse about two streets being mentioned as where a land is situated.

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The learned counsel for respondent had rhetorically asked at what date Israel Orisakwe signed Exhibit A. They should have provided an answer to that. They did not aver that Exhibit A is a forgery and fraudu-

lently made. It was not part of their case. It must be emphasized that in a civil matter, the standard of proof required is that of preponderance of evidence only. When such a matter is put on an imaginary scale and it tilts to one side, the side to which it is tilted has the weightier material and the facts and law elicited would then preponderate in favour of the facts that the party is putting across.

In my view, the appeal should succeed. I allow it and set aside the judgment of the lower court. I abide by the consequential order in the leading judgment.

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