

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2005) KLR VOL 5 PART 196 pp. 1085 - 1284

MAY 2005

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

1. Adecentro (Nigeria) Limited v. Council of Obafemi Awolowo University p. 1085
2. A-G Anambra State v. A-G Federation p. 1113
3. Azuokwu v. Nwokanma p. 1181
4. Cooke v. Fombo p. 1203
5. Martchem Industries Nigeria Ltd. v. M. F. Kent West Africa Ltd. p. 1227
6. Okere v. Amadi p. 1251
7. Ugoji v. Onukogu p. 1265

ii INDEX OF SUBJECT MATTER IN (2005) 5 KLR

ACTIONS - Cause of action - Motion to dismiss suit - For non disclosure of reasonable cause - Was determined rightly - Without reference to a proposed amended Statement of Claim (H1) Cookey v. Fombo p. 1203

ACTIONS - Claims - Cause of action - Where an objection is raised - As to statement of claim - Not disclosing reasonable cause of action - That statement of claim has to be examined (H2) Cookey v. Fombo p. 1203

ACTIONS - Claims - Proof - Where plaintiff fails to establish a prima facie case - The claims cannot succeed (H3) Ugoji v. Onukogu p. 1265

ACTIONS - Constitutional law - Declaration confirming s.215(4) 1999 Constitution - As to a Governor's power to give direction - To his Commissioner of Police - May be reluctantly granted by the Supreme Court (H3) A-G Anambra v. A-G Federation p. 1113

ACTIONS - Counter claim - Concession by the counter claimant - Puts issue of retirement age of the Chief Judge to rest (H7) A-G Anambra v. A-G Federation p. 1113

ACTIONS - Counter claim - Resignation of Governor - Trial Court's findings that there was no resignation - Remains valid - As there was no appeal against it (H8) A-G Anambra v. A-G Federation p. 1113

ACTIONS - Detinue - Unchallenged evidence - Claim in detinue - In order to succeed - Must meet certain requirements of law (H2) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

ACTIONS - Reliefs - Dispute - Where reliefs are merely hypothetical - And raised no dispute - Court will not grant them (H5) A-G Anambra v. A-G Federation p. 1113

APPEALS - Courts - Issues - Where raised Suo motu - Without attention

of counsel - It amounts to travesty of justice - In the circumstances of this case (H1) Okere v. Amadi p. 1251

APPEALS - Orders - Retrial - Where appeal court ordered a retrial - It rightly declined to rule - On the issue of whether the claim - Disclosed a reasonable cause of action (H3) Cookey v. Fombo p. 1203

CONSTITUTIONAL LAW - Chieftaincy matters - Right of Citizens - Is not infringed - Where government prescribes time - For the challenge of chieftaincy appointment (H2) Okere v. Amadi p. 1251

CONSTITUTIONAL LAW - Evidence - Admission - Federation account - Deductions from share of Anambra State - As evidence justifying the deductions was not controverted - It is presumed to have been admitted (H6) A-G Anambra v. A-G Federation p. 1113

CONTRACTS - Building - Termination of contract - Where contractor abandons work - Pre-termination notice need not be given (H3) Adecentro Ltd v Council of O.A.U. p. 1085

CONTRACTS - Building - Where a contractor requests for extension of time - Silence by the Architect - Does not amount to an approval (H1) Adecentro Ltd v Council of O.A.U. p. 1085

COURTS - Actions - Declaration that seeks advisory opinion - Will not be granted by the court (H2) A-G Anambra v. A-G Federation p. 1113

COURTS - Evidence - Evaluation - Judgments - Where trial Court does not properly evaluate evidence - Appellate court cannot set the judgment aside - Without evaluating the evidence (H3) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

COURTS - Evidence - When unchallenged - Judge is still expected to examine - Whether or not it was sufficient - To establish the claims made

iv INDEX OF SUBJECT MATTER IN (2005) 5 KLR

by the party - Who made it (H1) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

COURTS - Judge - Bias - Where alleged against the court or judge - It should not be based on favouring one side - But on the impression of an onlooker (H3) Azuokwu v. Nwokanma p. 1181

COURTS - Judgments or orders - Remains binding until set aside - By due process of law - Even where the order is irregular or void (H1) A-G Anambra v. A-G Federation p. 1113

COURTS - Orders - Governor of Anambra State - Order by an Enugu High Court Judge - That he be removed from office - Cannot be Considered by the Supreme Court - Without an appeal from the Court of Appeal (H4) A-G Anambra v. A-G Federation p. 1113

DAMAGES - Special damages - Claim of - Must be specifically proved - Proof must be characterized by testimony - Which ties each item with evidence led (H4) Adecentro Ltd v Council of O.A.U. p. 1085

EVIDENCE - Affidavits - Where there is a conflict therein - It is to be resolved - By calling evidence (H1) Azuokwu v. Nwokanma p. 1181

EVIDENCE - Proof - Written contract - Claim of right - Where terms are varied by parties conduct - Evidence of oral variation is admissible (H2) Adecentro Ltd v Council of O.A.U. p. 1085

LANDLAW - Possession - Title - Eviction - Unless plaintiff shows a better title - He cannot evict the defendant (H4) Ugoji v. Onukogu p. 1265

LAND LAW - Title - Proof - Where a party relies on a grant - Origin of the grant - Must not only be averred in pleadings - But also proved by evidence (H2) Ugoji v. Onukogu p. 1265

PLEADINGS - Averments - Do not amount to evidence - Which Court can rely on (H5) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

PRACTICE & PROCEDURE - Courts - Pleadings - Where matters are not pleaded - Trial Judge should not decide on such points (H4) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

PRACTICE & PROCEDURE - Evidence - Cross examination - Witnesses - Where called to explain an issue - May be cross examined by the parties (H2) Azuokwu v. Nwokanma p. 1181

PRACTICE & PROCEDURE - Pleadings - Averment - Where evidence is at variance with averment - Then it goes to no issue - And should be disregarded (H1) Ugoji v. Onukogu p. 1265

SUPREME COURT - Appellate jurisdiction of - Is limited to appeals from the Court of Appeal - As per s.233 1999 Constitution (H4) A-G Anambra v. A-G Federation p. 1113

TORTS - Bailment - Possession - Where plaintiff had paid for goods - And taken delivery of part of them - Constructive bailment contract exists between the parties (H6) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

TORTS - Detinue - Claimant is to establish his title - Or right to immediate possession - In order to succeed (H7) Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

INDEX OF STATUTES & RULES

Constitution of the Federal Republic of Nigeria 1999, ss. 5, 11, 176, 180(1)(c), 185(1), 215, 232, 233, 285, 291(2), 305 & 306 A-G Anambra v. A-G Federation p. 1113

Constitution of the Federal Republic of Nigeria 1979, ss. 6(1)(2)& (4) Okere v. Amadi p. 1251

Court of Appeal Act Cap. 75 Laws of the Federation of Nigeria 1990, s.16 Martchem Ind. Ltd v. M.F. Kent Ltd p. 1227

Evidence Act 1990, s.132 Adecentro Ltd v Council of O.A.U. p. 1085

High Court of Rivers State (Civil Procedure) Rules, O. 43 rr. 3(2)(b) & 6(1) Azuokwu v. Nwokanma p. 1181

Imo State Traditional Rulers & Autonomous Communities Law 1981, s.25(2) Okere v. Amadi p. 1251