

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2005) KLR VOL 5 PART 197 pp. 1285 - 1484

MAY 2005

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

MAY CONTD.

8. A.I.C. Limited v. Nigerian National Petroleum Corporation p. 1285
9. Iloabachie v. Iloabachie p. 1335
10. International Messengers (Nig.) Ltd. v. Pegofor Industries Limited p. 1371
11. Kano Textile Printers Ltd. v. Gloede & Hoff (Nig.) Ltd. p. 1393
12. Magna Maritime Services Limited v. Oteju p. 1405
13. Solola v. State p. 1429
14. Tiza v. Begha p. 1461

ii INDEX OF SUBJECT MATTER IN (2005) 5 KLR

ACTIONS - Appeals - Proof - Is the responsibility of the appellant - Who has not been consistent - In the presentation of his case here (H6) Iloabachie v. Iloabachie p. 1335

APPEALS - Courts - Decision of - Where right - But based on wrong reasons - Will not be set aside - By appellate court (H8) A.I.C. Ltd v. N.N.P.C. p. 1285

APPEALS - Courts - Jurisdiction - Where appeals do not comply with statutory requirements - Appellate court - Will lack jurisdiction (H1) Tiza v. Begha p. 1461

APPEALS - Ground of Appeal - Nature of - Where it raises issue of law - Based on accepted facts - It is a ground of law - But where it is based on facts in dispute - Then it is one of mixed law and fact (H2) Kano Textile Ltd v. Gloede Ltd p. 1393

APPEALS - Grounds of appeal - Appeal from Court of Appeal to Supreme Court - On facts alone or mixed law and fact - Is subject to leave of court - In order to be competent (H1) Kano Textile Ltd v. Gloede Ltd p. 1393

APPEALS - Grounds of Appeal - Where no issue of customary law is raised - There will be no right to appeal - From Customary Court of Appeal - To Court of Appeal (H4) Tiza v. Begha p. 1461

APPEALS - Issues - Where fresh - Must be a substantial point of law - And leave of Court must be obtained (H2) A.I.C. Ltd v. N.N.P.C. p. 1285

APPEALS - Issues for determination - Validity of - It must be derived from grounds of appeal - Which must relate to decision of the court - Against which appeal is lodged - Not trial court's decision (H3) Kano Textile Ltd v. Gloede Ltd p. 1393

INDEX OF SUBJECT MATTER IN (2005) 5 KLR iii

APPEALS - Judgments - Finality of - Absence of counsel - Where judgment of trial court is final - Appeal is an appropriate remedy (H4) Magna Maritime Ltd v. Oteju p. 1405

APPEALS - Judgments - Mistake in Judgment - Appeal will not be allowed in all cases - Except there is miscarriage of justice (H4) Solola v. State p. 1429

APPEALS - Objection - Courts - Where Court of Appeal fails to consider preliminary objection - Supreme Court is in a position to examine it (H1) Magna Maritime Ltd v. Oteju p. 1405

APPEALS - Pleadings - Case put forward before trial court - Cannot be changed on appeal - Contrary to a party's pleadings or evidence (H5) I.M.N.L v. Pegofor Industries Ltd p. 1371

CONTRACTS - Breach - Exemption clause - Effect of - Fundamental breach - Where a party is guilty of fundamental breach - Exemption clause cannot be relied upon - To escape liability (H2) I.M.N.L v. Pegofor Industries Ltd p. 1371

CONTRACTS - Illegality - Pleadings - Where a respondent relies on illegality as a defence - The facts are to be stated in his pleadings (H1) A.I.C. Ltd v. N.N.P.C. p. 1285

CONTRACTS - Liability - Limitation clause - That ridiculously limits amount of liability - Is as good as a clause exempting from liability (H3) I.M.N.L v. Pegofor Industries Ltd p. 1371

CONTRACTS - Nature - Agreement - Where in a written document - Oral evidence may not be allowed to contradict it (H1) I.M.N.L v. Pegofor Industries Ltd p. 1371

COURTS - Judgments - Legal practitioners - Where a party's case fails

iv INDEX OF SUBJECT MATTER IN (2005) 5 KLR

- For negligence of Counsel - It does not amount to - Visitation of Counsel's sin on the client (H3) *Magna Maritime Ltd v. Oteju* p. 1405

COURTS - Judgments - Manner of writing - Ratio decidendi - Is the binding part of a decision - Obiter dicta - Is not necessary for the decision (H3) *A.I.C. Ltd v. N.N.P.C.* p. 1285

COURTS - Jurisdiction - Appeal - From Customary Court of Appeal - To Court of Appeal - Is limited to questions of customary law - Or as may be prescribed by an Act of National Assembly (H2) *Tiza v. Begha* p. 1461

COURTS - Orders - Injunction - Is an Equitable Remedy - And can only be granted - In support of rights known to law or equity (H7) *A.I.C. Ltd v. N.N.P.C.* p. 1285

COURTS - Orders - Interim injunction - Duration - Where order of dismissal - Is set aside on appeal - Restoration of interim injunction is not implied (H4) *A.I.C. Ltd v. N.N.P.C.* p. 1285

COURTS - Orders - Mareva injunction - Is granted - Against defendant - Or persons in possession of defendants assets - From disposing them - Pending determination of the case (H5) *A.I.C. Ltd v. N.N.P.C.* p. 1285

CRIMINAL PROCEDURE - Arraignment - Plea - Object of s.215 CPL - Charge - When read to accused to the Judge's satisfaction - Then record of explanation is not necessary (H1) *Solola v. State* p. 1429

CRIMINAL PROCEDURE - Confessional Statement - Where made voluntarily by accused person - Is sufficient to sustain conviction (H3) *Solola v. State* p. 1429

CRIMINAL PROCEDURE - Trial - Evidence - Proof - Where trial commences with the case of defence - It does not amount to shifting of

burden of proof (H5) Solola v. State p. 1429

CRIMINAL PROCEDURE - Verdict - Where separate persons are tried together - Separate verdicts must be returned - Error in doing this - May not amount to miscarriage of justice (H6) Solola v. State p. 1429

DAMAGES - Evidence - Award of damages by trial court - Interference by appellate court - Is not allowed - Where the award is based on credible evidence - And on right principles (H6) I.M.N.L v. Pegofor Industries Ltd p. 1371

DEFAMATION - Libel - Defence of estoppel by conduct - Can be inferred in the respondent's favour - Given the circumstances (H5) Iloabachie v. Iloabachie p. 1335

DEFAMATION - Libel - Defence of privilege - That avails respondent in this case - Can only be destroyed by appellant proving malice (H4) Iloabachie v. Iloabachie p. 1335

DEFAMATION - Libel or slander - Relates to damage to character - Where facts arise which show plaintiff to be unreliable - He cannot complain (H2) Iloabachie v. Iloabachie p. 1335

EVIDENCE - Criminal procedure - Corroboration - Witnesses - Competence of a child - Where he understands questions put to him - And also understands nature of oath - Corroborative evidence is not needed (H7)

EVIDENCE - Oath - Where not administered on a witness before giving evidence - Amounts to mere irregularity (H2) Solola v. State p. 1429

EVIDENCE - Proof - Facts - Burden of proof - Is on Plaintiff - And is based on the strength of his case - Not weakness of defendant's case (H6) A.I.C. Ltd v. N.N.P.C. p. 1285

vi INDEX OF SUBJECT MATTER IN (2005) 5 KLR

JUDGMENTS - Fair hearing - Default judgment - Is justifiable - Where a party employed delay tactics holding Court to ransom - And the judgment does not amount to denial of fair hearing (H2) *Magna Maritime Ltd v. Oteju* p. 1405

JURISDICTION - Courts - Competence of - Where Challenged - Court shall deal with that issue - At earliest stage (H3) *Tiza v. Begha* p. 1461

PLEADINGS - Defence - Statutes - Need to plead facts that will bring a transaction - Within the ambit of a statute relied upon (H4) *I.M.N.L v. Pegofor Industries Ltd* p. 1371

TORTS - Libel - Defence of privilege - Facts to consider - Include interest of any of the persons - To whom the document was published (H1) *Iloabachie v. Iloabachie* p. 1335

TORTS - Libel - Reply - To defence of qualified privilege - Should show the malicious intention - Of the publisher of the Statement (H3) *Iloabachie v. Iloabachie* p. 1335

INDEX OF STATUTES & RULES

Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953 LFN 1958 *I.M.N.L v. Pegofor Industries Ltd* p. 1371

Constitution of the Federal Republic of Nigeria 1979, s.220 *Magna Maritime Ltd v. Oteju* p. 1405; s.33(5)(6)(9) *Solola v. State* p. 1429; ss. 224(1) and 247 *Tiza v. Begha* p. 1461

Constitution of the Federal Republic of Nigeria 1999, s. 233(3) *Kano Textile Ltd v. Gloede Ltd* p. 1393; s. 233(1) *A.I.C. Ltd v. N.N.P.C.* p.

1285; ss. 125 and 212 Solola v. State p. 1429

Contract Law (Cap. 32) Revised Laws of Anambra State, 1991 s. 190
I.M.N.L v. Pegofor Industries Ltd p. 1371

Court of Appeal Rules 1984, O. 3 rr. 2(2) & (3) and 15(1) Tiza v. Begha
p. 1461

Criminal Procedure Law of Ogun State 1978, ss. 2(1) and 215 Solola v.
State p. 1429

Evidence Act Laws of the Federation of Nigeria 1990, ss. 132, 135(1)(2)
I.M.N.L v. Pegofor Industries Ltd p. 1371

Evidence Act, ss. 38 (1) & (2), 155 and 183 (1) Solola v. State p. 1429

Federal High Court Civil Procedure Rules 1990, O. 39 r. 5, O. 45 r. 2
Magna Maritime Ltd v. Oteju p. 1405

High Court Law of Lagos State 1994, s.14 A.I.C. Ltd v. N.N.P.C. p. 1285

Rules of Professional Conduct, rr. 1 & 3 Magna Maritime Ltd v. Oteju p.
1405

Supreme Court Act, s.22 Magna Maritime Ltd v. Oteju p. 1405

Torts Law Cap. 135, Laws of Anambra State ss. 177 and 178 Iloabachie v.
Iloabachie p. 1335