

SUPREME COURT OF NIGERIA
13TH JANUARY, 2006. SC. 143/2001
CORAM:- I. L. KUTIGI, U. A. KALGO, D. MUSDAPHER,
A. M. MUKHTAR, W. S. N. ONNOGHEN, JJSC

1. ALHAJI ISIYAKU YAKUBU
ENTERPRISES LTD PLAINTIFFS/APPELLANTS
2. ALHAJI ISIYAKU YAKUBU
AND
1. MR. S. B. OMOLABOJE
2. MR. M. O. ALUKO DEFENDANTS/RESPONDENTS
3. MR. JACOB BIKON
-

JUDGMENTS - Damages - Slip of the pen - Where trial court vide a ruling - Confirmed that the amount of N5 million instead of N5,000.00 - Contained in the signed judgment certificate - Is a slip of the pen - The appellate court will accept it as conclusive (H1)

FACTS

The plaintiffs/appellants before the Yola High Court obtained a judgment which awarded N5,000 damages and N500 cost against the defendants/respondents. The defendants promptly paid the said sum to the plaintiffs who objected and insisted that the amount awarded as damages was N5 million as per their writ of summons. In furtherance of their claim, plaintiffs attached some of the defendants properties by virtue of a writ of execution issued by the same court. Defendants filed a motion praying the court to set aside the writ of attachment and the execution.

The trial Judge granted the prayer of the defendants. He reaffirmed that he awarded N5,000 in his earlier judgment and not N5 million contained in a judgment certificate duly signed by him which he said must be a slip of the pen and typing error. Plaintiffs being aggrieved by the ruling appealed to the court of Appeal which dismissed their appeal. They have further appealed to the Supreme Court.

HELD (Unanimously dismissing the appeal per **KUTIGI JSC**)

JUDGMENTS - Damages - Slip of the pen

1. The Court of Appeal said in the lead judgment on page 164 of the record as follows:-

“The trial judge in his Ruling stated that the amount of damages he awarded to the Appellants was N5,000. He also stated that he awarded N500 costs to the appellant. He stated that the amount of N5m as contained in the certificate of judgment he signed was a slip of the pen, it was wrong and a typing error. This is the unchallenged evidence before us. There is nothing before us which countered the statement of the trial Judge that he awarded only N5,000 damages to the appellants. My answer to the issue is that the trial Judge awarded N5,000 as damages with N500 costs and not N5m.”

I think the Court of Appeal was right in its conclusion above. I agree with it in toto. (p. 190 E)

NOTABLE POINTS OF INTEREST**ONNOGHEN JSC***1. Suo motu raising of issue does not ground a reversal in all cases*

Granted, without conceding that the issue was raised suo motu and without hearing the parties, did the act, in the circumstances of this case, lead to a miscarriage of justice or did it result in substantial injustice to the appellant. It is the law that it is not all cases where a court takes a point suo motu that will result in the reversal of the decision so reached. The appellant must convince the court that the point so taken suo motu is substantial and has led to a miscarriage of justice against the appellant. I hold the view that appellant has not discharged the burden placed on him by law. (p. 194 B)

2. Certificate of judgment & writ of attachment cannot supercede the Court's judgment

In the instant case, the trial judge did not amend his judgment neither has appellant appealed against the award stated therein. The judgment therefore still stands. It is my view that the certificate of judgment and writ of attachment cannot supercede the judgment of a court of law which binds the parties thereto. I fail to see any harm or injustice done to the appellant

by the learned trial judge setting aside the writ of attachment for a sum far in excess of what was awarded in the judgment which award has not been appealed against, and therefore subsists. (p. 194 D)

REPRESENTATION

A. O. Okeaya-Inneh Esq for the appellants/applicants

A. O. Adelodun with Y. L. Akanbi for the respondent

LEAD JUDGMENT BY KUTIGI JSC

The appeal is really a simple and straight forward one. The Plaintiffs had in the High Court, holden at Yola, obtained judgment against the Defendants which states in part:-

“.....The Defendants shall pay the N5,000 and costs of N500 as damages to the Plaintiffs on or before 12/5/1994.”

This was on 12th May 1994. There was no appeal against the judgment.

The Defendants promptly paid the sum of N5,500.00 awarded to the Plaintiffs who objected and insisted that the amount awarded as damages was N5,000,000 (five million Naira) as per their writ of summons and not N5,000 (five thousand Naira). In furtherance of their claim the Plaintiffs attached some of the Defendants' properties by virtue of a writ of execution issued by the same court. In a reaction, the Defendants filed a motion praying the court to set aside the writ of attachment and the execution. The Plaintiffs opposed. In his Ruling of 30/12/94, the learned trial Judge granted the prayers of the Defendants and re-affirmed his earlier judgment of 12/5/94, that he only awarded the Plaintiffs N5,000 (five thousand Naira) as damages and not N5,000,000 (five million Naira) as claimed by the Plaintiffs. The Ruling reads in part:-

“..... From both the affidavit and counter-affidavit both sides agree with me that page 7 lines 13, 14, 15 specifically says damages of N5,000 and N500 costs totaling 5,500. There is also no doubt that the judgment debtor has paid this sum since 30/6/94. The judgment creditor however relies on a judgment certificate duly signed by me on 1st November 1994. This so called certificate was dated 1/11/94 while the judgment

on page 7 lines 13, 14 and 15 is dated 12/5/94. Certainly these two are in conflict and with all due respect to the Respondent's judgment creditor this certificate which is only a photocopy and there I ore may not be the same with original cannot supersede the early clear expressed judgment which was N5,000 damages and N500 costs dated 12/5/94. Even if the original certificate of judgment reads N5m not N5.000 (I doubt if it is N5m) I say that was a slip of the pen and is wrong and is a typing error." (emphasis are mine).

The Plaintiffs aggrieved by the above Ruling then appealed to the Court of Appeal holden at Jos. The Court of Appeal in a unanimous judgment dismissed the appeal and now a further appeal is lodged in this Court.

The issue before the Court of Appeal as in this Court now, was what was the actual amount of damages awarded by the trial High Court to the Plaintiffs? Was it N5,000,000 (five million Naira) or N5,000 five-thousand Naira) as stated and confirmed by the trial judge himself?.

The Court of Appeal said in the lead judgment on page 164 of the record as follows:-

"The trial judge in his Ruling stated that the amount of damages he awarded to the Appellants was N5,000. He also stated that he awarded N500 costs to the appellant. He stated that the amount of N5m as contained in the certificate of judgment he signed was a slip of the pen, it was wrong and a typing error. This is the unchallenged evidence before us. There is nothing before us which countered the statement of the trial Judge that he awarded only N5,000 damages to the appellants. My answer to the issue is that the trial Judge awarded N5,000 as damages with N500 costs and not N5m."

I think the Court of Appeal was right in its conclusion above. I agree with it in toto.

I ought to mention that the Preliminary Objection filed by the Defendants/Respondents was withdrawn and struck out at the commencement of hearing of the appeal. The appeal is devoid of merit. It is accordingly dismissed with N10,000.00 costs in favour of the Defendants against the Plaintiffs.

KALGO JSC

I have had the opportunity of reading in draft the judgment of my learned brother Kutigi JSC just delivered. I entirely agree with his reasoning and conclusions reached therein. I find no substance in the appeal and I dismiss it with costs as assessed in the said judgment.

MUSDAPHER JSC

I have had the honour to read before now, the judgment of my Lord Kutigi, JSC just delivered with which I entirely agree. There is no doubt that the judgment, entered in favour of the appellants was in the sum of only N5,000.00 and not N5,000,000.00. There is no merit in this appeal. I also dismiss it and I award costs of N10.000.00 the respondents.

MUKHTAR JSC

I have had a preview of the judgment delivered by my learned brother Kutigi, JSC. The issue in controversy in this appeal is the actual damages awarded in the judgment of the Adamawa State High Court, and the damages allegedly awarded because of the figures in the writ of attachment and the certificate of judgment. The appeal to the lower court is against the trial court's order amending the judgment debt in the certificate of judgment signed by the learned trial judge, wherein the sum of N5 million appeared, instead of N5,000.00. The appeal before this court is the refusal of the Court of Appeal to hold that the trial judge erred in his ruling, and advanced the following reasoning.

"The trial judge in his ruling stated that the amount of damages he awarded to the appellants was N5,000.00. He also stated that he awarded N500.00 costs to the appellant. He stated that the amount of N5m as contained in the certificate of judgment he signed was a slip of the pen, it was wrong and a typing error. This is the unchallenged evidence before us. There is nothing before us which countered the statement of the trial

judge that lie awarded only N5,000.00 damage to the appellants.”

The law allows a court to rectify any slip made in a judgment, as long as it is

I believe the error and or slip in the amount contained in the certificate of judgment was as a result of the content of a letter written by learned counsel of the judgment/appellant creditor, addressed to the Registrar of the High Court, after the judgment. The letter marked Exhibit AIY7 on page 104 of the printed record of appeal reads inter alia thus :-

“In its judgment the High Court No. 5 stated; I grant the 3rd prayer of the plaintiffs except the first paragraph 14(1)”.

The said third prayer was for the plaintiffs to be allowed to give evidence and judgment to be entered for the plaintiffs as per their claims No. 14(2) which was granted viz: the plaintiffs claim for the sum of N5,000,000.00 (five million naira only) against the Defendants jointly and severally.

The above extract of the application for a writ of *fifa* must have misled the registrar of the trial court in preparing and signing the certificate of judgment to contain the said amount of N5,000,000.00 against the correct sum of N5,000.00, and for the learned trial judge to have signed it. I agree that the said certificate should have been scrutinized before the signatures were appended, but then sometimes pressure of work prevents such careful scrutiny. However, the mistake was rectified by the learned trial judge, but the appellant has refused to let it be. It is pity that sometimes people do not allow common sense to prevail in matters of this nature, they would rather capitalise on errors that may be cloud their judgment. The law allows a court to rectify any slip made in a judgment, as long as it does not occasion miscarriage of justice.

I completely agree with the reasoning and conclusion reached in the lead judgment that the appeal lacks any merit and substance, and deserves to be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

ONNOGHEN JSC

I have had the privilege of reading in draft, the lead judgment of

my learned brother Kutigi JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

There is no disputing the fact that the judgment of the learned trial judge was for #5,000.00 damages for trespass and N500.00 costs. Also not disputed is the fact that in the writ of attachment and certificate of judgment, both signed by the learned trial judge, the award is stated therein as #5,000,000.00 instead of #5,000.00. Both parties and the trial and lower courts agree that the figure in the certificate of judgment and writ of attachment is at variance with what was awarded in the judgment of the trial court.

I hold the view that parties and the court are bound by the judgment of the court including the award therein.

Learned counsel for the appellant has argued that even though the trial judge has the discretion to suo motu amend or correct the record or his judgment, he can only do so after hearing counsel for both parties. That appears to be the root of his complaint in the appeal.

It must be noted that what was amended by the court was the certificate of judgment and writ of attachment and that this followed an application by the respondent to set aside the writ of attachment issued on application of the appellant for recovery of the sum of #5m. The motion was opposed but in a considered ruling the learned trial judge granted the prayers of the respondent and reconfirmed his earlier judgment of #5,000.00 and #500.00 costs. The consequences of that ruling is the appeal which eventually result in this further appeal. It must be noted that appellant has not appealed against the judgment for #5,000.00 and #500.00 costs but is claiming that the sum of #5m contained in both the certificate of judgment and writ of attachment were wrongfully amended to reflect the actual award by the trial judge. It is also instructive to note that the enrolled order of the court on the judgment also records the sum of #5,000.00 and #500.00.

I have carefully gone through the record particularly in relation to the application by the respondent to set aside the writ of attachment and it is very clear that both parties were heard by the trial court on the motion before the ruling giving rise to the appeal. The issue of the actual

sum awarded was therefore not taken suo motu neither is the argument that parties were not heard on the issue tenable.

B Granted, without conceding that the issue was raised suo motu and without hearing the parties, did the act, in the circumstances of this case, lead to a miscarriage of justice or did it result in substantial injustice to the appellant It is the law that it is not all cases where a court takes a point suo motu that will result in the reversal of the decision so reached. The appellant must convince the court that the point so taken suo motu is substantial and has led to a miscarriage of justice against the appellant. I C hold the view that appellant has not discharged the burden placed on him by law.

D In the instant case, the trial judge did not amend his judgment neither has appellant appealed against the award stated therein. The judgment therefore still stands. It is my view that the certificate of judgment and writ of attachment cannot supercede the judgment of a court of law which binds the parties thereto. I fail to see any harm or injustice done to the appellant by the learned trial judge setting aside the writ of attachment for a sum far in excess of what was awarded in the judgment which award E has not been appealed against, and therefore subsists.

In conclusion I too dismiss the appeal as lacking in merit and abide by the consequential orders contained in the lead judgment of my learned brother, Kutigi JSC including the order on costs.

F Appeal dismissed.

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