

SUPREME COURT OF NIGERIA

11TH MAY, 2007 SC. 108/2000

**CORAM: - A. I. KATSINA-ALU, N. TOBI, F. F. TABAI,
I. T. MUHAMMAD, P. O. ADEREMI, JJSC**

MR. DAVID ODETAYO APPELLANT
AND
MR. MICHAEL BAMIDELE RESPONDENT

LAND LAW - Jurisdiction - Rural land - Land Use Act s. 41 - Cannot oust High Court's unlimited jurisdiction under s. 236 1999 Constitution - Adisa case now donates concurrent jurisdiction - To High Court and Customary Court (H1)

CONSTITUTIONAL LAW - Constitution - Supremacy - Statute that is inconsistent with the Constitution - Is to that extent void (H2)

APPEALS - Issues - Consideration - Where lower court considered only the issue of jurisdiction - Case will be remitted to it - To be determined on the merits (H3)

FACTS

Before the Omu-aran High Court of Kwara State, Plaintiff/appellant filed this action against the defendant/respondent. Plaintiff claimed a declaration that he is entitled to possession of the land in dispute, damages for trespass and injunction. The trial High Court gave judgment in favour of the plaintiff.

The defendant appealed to the Court of Appeal on a number of grounds. That court determined the appeal on issue of jurisdiction only and came to the conclusion that the High Court lacked jurisdiction as the land in question is not located in an urban area. It relied on Supreme Court's case of Oyeniran v. Egbetola which was overruled in Adisa case without the Court of Appeal's knowledge.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in law to hold as it held that the Kwara State High Court lacked original jurisdiction to entertain the suit on the authorities of Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122 and Salati v. Shehu (1986) 1 NWLR (pt. 15) 98 in the light of Adisa v. Oyinwola (2000) 6 SCNJ 290 which judgment was delivered by the Supreme Court on 23rd June 2000.”

HELD (Unanimously allowing the appeal, remitting the case to the Court of Appeal per **KATSINA-ALU JSC**)

Jurisdiction - Rural land - Land Use Act s. 41

1. By the decision of this court in *Adisa v. Oyinwola* (supra) the position now is that a State High Court has concurrent jurisdiction with Area or Customary Courts on land in rural areas. The unlimited jurisdiction of the State High Court in civil and criminal matters is only subject to the provisions of the Constitution. Neither the Land Use Act in its entirety or any other law for that matter could take away, limit, restrict or detract from that unlimited jurisdiction. It is now clear and beyond any argument that section 41 of the Land Use Act 1978 cannot oust the unlimited jurisdiction of the State High Court as provided by section 236 of the Constitution as amended. (p. 2437 A)

Constitution - Supremacy

2. I must also mention, for clarity, that the Land Use Act, not being an integral part of the constitution, where its provisions are inconsistent with those of the Constitution, then those provisions are to that extent, void. (p. 2437 D)

APPEALS - Issues - Consideration

3. As I indicated earlier, the Court of Appeal considered only the issue of Jurisdiction. There were nine (9) issues submitted before that court for determination. Eight remained unresolved. I believe that it would be in the interest of justice to remit the case to the court below for determination on the merits.(p. 2437 E)

REPRESENTATION

Ayo Jonathan Esq. for the Appellant

O. E. B. Offiong Esq. for the Respondent.

CASES REFERRED TO

Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122

Salati v. Shehu (1986) 1 NWLR (pt. 15) 98

Adisa v. Oyinwola (2000) 6 SCNJ 290

Lenboy v. Ogunsiji (1990) 6 NWLR (Pt.155) 210

Ebiteh v. Obiki (1992) 5 NWLR (Pt.243) 599

Alhaji Karimu disa v. Emmanuel Oyinwola (2000) NWLR pt. 674 page 116

Alhaji Sadikwu v. Alhaji Dalori (1996) 5 NWLR (Pt. 447) 151

Ayoola v. Adebayo (1969) 1 ALL N.L.R. 159

Abodundun v. Queen (1959) SCNLR 162

Bakare v Apena (1986) 4 NWLR (pt.33) 1

Kotoye v. C.B.N. (1989) 1 NWLR (pt.98) 419

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979 s. 236

Land Use Act 1978 ss.3, 39 and 41

LEAD JUDGMENT BY KATSINA-ALU JSC

The Respondent herein is the successor in interest to late Oba Jacob Olayiwola Omiyale. The late Oba was the Olushin of Iji Ishin. The Appellant David Odetayo brought this action in the Kwara State High Court, Omu aran for a declaration that he is entitled to possession of the parcel of land in dispute, damages for trespass and injunction. The trial High Court gave judgment in favour of the plaintiff.

The Defendant, late Oba Omiyale appealed against the decision of the High Court to the Court of Appeal, Ilorin Division upon a number of grounds from which nine (9) issues were distilled.

During the pendency of the appeal at the Court of Appeal, Oba Omiyale died and was substituted by his son Michael Bamidele as the

Appellant. The Court of Appeal heard and determined the appeal before it on issue of jurisdiction only and came to the conclusion that the Kwara State High Court lacked jurisdiction to determine the suit, the land in question not being in an urban area. The court below relied on the cases B of *Oyeniran v. Egbetola* and *Salati v. Shehu* (1986) 1 NWLR (Part 15) 92.

The plaintiff has now appealed to this court. The parties filed their respective briefs of argument. The Appellant (Plaintiff) raised a lone C issue for determination in his brief of argument. It reads:

“Whether the Court of Appeal was right in law to hold as it held that the Kwara State High Court lacked original jurisdiction to entertain the suit on the authorities of Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122 and Salati v. Shehu (1986) 1 NWLR (pt. 15) 98 in the light of D Adisa v. Oyinwola (2000) 6 SCNJ 290 which judgment was delivered by the Supreme Court on 23rd June 2000.”

For the Respondent, a similar issue was submitted, which reads:

“Whether having regard to the decision of this Court in Alhaji E Karimu disa v. Emmanuel Oyinwola (2000) NWLR pt. 674 page 116, the decision of the Court of Appeal denying the competence of the Kwara State High Court to exercise original jurisdiction over the claims of the appellant on the ground that the claims relate to title covered by a cus- F tomary right of occupancy is maintainable.”

It is common ground that the land the subject matter of the dispute between the parties is located in Iji in Irepodun Local Government Area of Kwara State a non-urban area and thus land subject to a custom- G ary Right of Occupancy.

The contention of the appellant is short. In the light of the decision of the Supreme Court in the case of *Adisa v. Oyinwola* (supra) a State High Court including Kwara State High Court Omu-aran has concurrent jurisdiction with Area Courts to hear and determine questions and or H issues relating to land notwithstanding whether the land is located in an urban or non-urban area.

The Respondent rightly in my own view, conceded that having regard to the case of *Adisa v. Oyinwola* (supra), the decision of the

Court of Appeal in this case is wrong. He urged on the court to send the case back to the Court of Appeal for determination of the remaining issues not determined by that court.

By the decision of this court in *Adisa v. Oyinwola* (supra) the position now is that a State High Court has concurrent jurisdiction with Area or Customary Courts on land in rural areas. The unlimited jurisdiction of the State High Court in civil and criminal matters is only subject to the provisions of the Constitution. Neither the Land Use Act in its entirety or any other law for that matter could take away, limit, restrict or detract from that unlimited jurisdiction. It is now clear and beyond any argument that section 41 of the Land Use Act 1978 cannot oust the unlimited jurisdiction of the State High Court as provided by section 236 of the Constitution as amended.

I must also mention, for clarity, that the Land Use Act, not being an integral part of the constitution, where its provisions are inconsistent with those of the Constitution, then those provisions are to that extent, void. See *Lenboy v. Ogunsiji* (1990) 6 NWLR (Pt.155) 210; *Ebitech v. Obiki* (1992) 5 NWLR (Pt.243) 599 among others.

As I indicated earlier, the Court of Appeal considered only the issue of Jurisdiction. There were nine (9) issues submitted before that court for determination. Eight remained unresolved. I believe that it would be in the interest of justice to remit the case to the court below for determination on the merits.

As I noted earlier on, the Respondent has conceded the appeal. In the result this appeal succeeds and I allow it. Consequently I set aside the decision of the Court of Appeal given on 6 July 2000. I however order that the case be remitted to the Court of Appeal for determination on the merits. There shall be cost of ₦10,000.00 in favour of the Appellant.

TOBI JSC

I have read in draft the judgment of my learned brother, Katsina-

Alu, JSC, and I agree that the appeal be allowed. The appeal falls into a narrow area and it is whether the High Court of Kwara State has jurisdiction to determine questions and or issues relating to land located in urban or non-urban area.

B The case law was in some state of disdain and near appal before this court came out with the decision in *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 116. Let me take the historical stuff by way of previous decisions. That will certainly throw the desired light in the judgment of the Court of Appeal.

C In *Alhaji Salati v. Alhaji Shehu* (1986) 1 NWLR (Pt. 15) 198, where the land in dispute was a developed land situated in the urban part of Benue State, this court held that it is only the State High Court that has jurisdiction over the land. Accordingly, the proceedings before the Mushin D Area Court in respect of the land, and its subsequent judgment, were null and void *ab initio*. This court also held that from the commencement of the Land Use Act (28th March, 1978), the jurisdiction now exercised by Area Courts in the Northern States of Nigeria in land matters is limited to E disputes on lands, which are subject to Customary Right of Occupancy, granted by Local Governments. They have no jurisdiction-at all to entertain disputes on lands subject to statutory right of occupancy granted by the Governor.

F In *Alhaji Sadikwu v. Alhaji Dalori* (1996) 5 NWLR (Pt. 447) 151, where the land in dispute was allocated to the parties at different times by the Metropolitan Local Authority or Maiduguri Metropolitan Authority, this court held that the Maiduguri High Court lacked jurisdiction to entertain the suit; rather it is an Area or Customary Court which has jurisdiction. G The court followed its earlier decision in *Salati v. Shehu* (supra).

In *Oyeniran v. Egbetola* (1997) 5 NWLR (Pt. 504) 122, this court held that until a declaration is made by the Governor of a State pursuant to the powers given by him under section 3 of the Land Use Act that an H area is an urban area, all disputes relating to land the subject of a customary right of occupancy granted by a Local Government is to be determined only by an Area or Customary Court where such courts are available. Thus, under section 41 of the Land Use Act, the High Court of a

State has no original jurisdiction in proceedings in respect of customary right of occupancy granted by a Local Government in that State. The matter can only reach the High Court on appeal. The court referred to its earlier decisions in *Salati v. Shehu* (supra) and *Sadikwu v. Dalori* (supra).

The above was the position of the law until *Alhaji Adisa v. Oyinwola* B (supra) when the position of the law changed. The case involved title to land in Igbetti in Oyo State by the plaintiff. The learned trial Judge gave judgment to the plaintiff. An appeal to the Court of Appeal was dismissed. At the Supreme Court, the issue of jurisdiction was raised for the first C time. Counsel for the appellant relied on sections 39 and 41 of the Land Use Act and the three cases I have examined above. In a panel of seven Justices, this court held that both the High Court and the Area or Customary Courts have concurrent jurisdiction in land situate in rural areas.

Overruling its decision in *Oyeniran v. Egbetola* (supra), Ayoola, D JSC, in his lead judgment said at page 172:

“In this case there are compelling reasons why the decision in Oyeniran v. Egbetola should be overruled and departed from. First, the decision was given without regard to Section 236(1) of the 1979 Constitution. Secondly, it was given in reliance on the decision in Sadikwu v. Dalori (supra) whereas that decision, as has been discussed earlier in this judgment, was based upon Northern Nigerian laws which were not relevant for the determination of the ambit of the jurisdiction of the High F Court of Oyo State. Those Northern Nigeria Laws were not the same as the laws applicable in Oyo State. Thus, while, for instance, Section 17(1) of the High Court Law of Northern Nigeria which was applied in Sadikwu v. Dalori (supra) expressly, excluded the jurisdiction of the High Court in G respect of land matter subject to the provisions of the Land Tenure Law, that was not the position in Oyo State, In my judgment the decision of this court in Oyeniran v. Egbetola (supra) was erroneous and Trade per incuriam. This court should not be bound by that decision which would H create much unnecessary problems and difficulties in states where area courts and customary courts or courts of equivalent jurisdiction do not exist and may lead some State Governors to resort to designating land in all areas of the State as urban land contrary to the spirit and intention of

the Act. I hold that the High Court had jurisdiction to try the proceedings and resolve the jurisdictional issue against the defendant.”

At so the state of the law is as stated in *Adisa v. Oyinwola*. Unaware of the decision in *Adisa* the Court of Appeal followed the earlier B decision in *Oyeniran v. Egbetola* (supra) and *Salati v. Shehu* (supra) and *Sadiku v. Dalori* (supra). The court referring to *Sadiku v. Dalori*, said at page 340 of the Record: -

“I need on stress that the present case is on all fours with the facts C contained in the above stated decision. The land here is under the Irepodun Local Government Area of Kwara State and the parties are both subject to the jurisdiction of native or area courts being natives of Iju-Isin village. There is also no Edict of the State declaring it as an urban area. I cannot but bow to the direction of the apex court in the above judicial D authority. In consequence, I hold that the High Court of Kwara State lacks original jurisdiction in the instant case. See *OYENIRAN V EGBETOLA* (1997) 50 LRCN 1376; (1997) 5 NWLR (Pt. 504) 122 SC; *SALATI V SHEHU* (1986) 1 NSCC 143.”

E I cannot blame the Court of Appeal for not considering *Adisa* because it was not available to the court. *Adisa* was decided on 23rd June, 2000 and the Court of Appeal decided this case on 6th July, 2000. That was a period of about thirteen days. *Adisa* could not have been reported F and the court was not in a position to use it, as counsel did not refer to it. This is therefore not a case of the Court of Appeal refusing to follow the decision of the Supreme Court. The Court of Appeal clearly has my sympathy.

G I commend counsel for the respondent for conceding that the appeal be allowed. I accordingly allow the appeal. I abide by all other orders made by my learned brother, Katsina-Alu, JSC, in the lead judgment.

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TABAI JSC

I was privileged to read, in draft, the leading judgment of my learned brother Katsina-Alu JSC and I agree entirely with the reasoning and con-

clusion. This appeal was virtually not contested by the Respondent. In the face of the decision in ADISA v OYINWOLA (2000) 10 N.W.L.R. (Part 674) 116 the Kwara State High Court has jurisdiction to entertain the Suit. The judgment of the court below on the 6/7/2000 was wrong and same is set aside. I also abide by the order remitting the same back to the Court of Appeal for trial of the remaining issues. I assess the costs of this appeal at N10,000.00 in favour of the Appellant.

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MUHAMMAD JSC

I have had a preview of the judgment just delivered by my learned brother Katsina-Alu, JSC. I am in full agreement with him that the appeal should be allowed.

I too allow the appeal. I abide by all the consequential orders made in the leading judgment including order as to costs.

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ADEREMI JSC

I have been privileged with a preview, in draft form, of the judgment of the Hon. Justice Katsina Alu, JSC. I agree with his reasoning and conclusion that the appeal has merit and consequently, the judgment of the court below delivered on the 6th July 2000 be hereby set aside. It was further ordered that the case be remitted to the court below for the consideration of the appeal by treating all the issues raised.

I would have ended my contribution on this note but for two reasons: (1) an order of retrial has been made and (2) the court below after treating the issue relating to jurisdiction has left unattended other issues raised before, it. Generally, an appellate court must be wary in making an order for retrial of a case; such an order is not appropriate where it is clear that the plaintiffs case has failed in toto; for to do so will be according the plaintiff a second bite at the cherry. See Abodundun v. Queen (1959) SCNLR 162 and Bakare v Apena (1986) 4 NWLR (pt.33) 1. However, where there is irregularity of a substantial nature apparent on the record or shown to the court, an order of retrial is a sine qua non; indeed,

the course of justice demands it. See *Ayoola v. Adebayo* (1969) 1 ALL N.L.R. 159. In the instant appeal, the complaint is that some issues formulated for determination were not pronounced upon by the court below. This court has, on a number of occasions, said that it is trite law that
B a court or even a tribunal should consider all issues for determination brought before it. To refuse to do so will tantamount to denial of justice or fair hearing particularly when the parties have not been heard on those issues. See *Kotoye v. C.B.N.* (1989) 1 NWLR (pt.98) 419.

C For this little contribution but more in particular for the fuller reasons contained in the lead judgment, I also allow the appeal, set aside the judgment of the court below and abide by all the consequential orders contained therein, including the order as to cost.

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