

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2008) KLR VOL 6 PART 257 pp. 2667 - 2842

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Dedicated to the King of kings

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APPEALS - Concurrent findings of fact - Attitude of appellate courts - Appellate courts do not generally interfere with concurrent findings - Unless they are, inter alia, shown to be perverse - Which is the case with the findings challenged herein (H4) Lagga v. Sarhuna p. 2739

APPEALS - Grounds - Vagueness - Meaning of - Purpose of ground of appeal - Is to give sufficient notice & information to respondent of the nature of appellant's complaint - A ground is considered vague only if it fails to achieve this (H2) Lagga v. Sarhuna p. 2739

APPEALS - Issues - Validity - Where predicated on omnibus ground of appeal - An omnibus ground postulates that there is no evidence to sustain the finding of a trial court - It is a competent ground of appeal - So are issues raised therefrom (H1) Lagga v. Sarhuna p. 2739

APPEALS - Judgments - Grounds of appeal - Abandonment - Contrary to allegation of appellant - Court of Appeal did not rely on abandoned ground of appeal in its judgment (H2) Joyland v. Wemabod Estates Ltd. p. 2727

APPEALS - Leave - Grounds of appeal - Whether of law or facts - Grounds of fact or mixed law and fact are incompetent - Unless prior leave is obtained - But ground 2 herein is purely of law for which leave is not required (H1) Abubakar v. Waziri p. 2667

COURTS - High Courts - Appellate jurisdiction - Constitution of - The Constitution is clear that one judge could form required quorum - Whether the High Court is sitting in first instance or in appellate jurisdiction - Appellate High Court was therefore properly constituted (H5) Lagga v. Sarhuna p. 2739

COURTS - Monetary jurisdiction - Whether exceeded - There is

uncontroverted evidence that annual rental value of property in issue is N15,000 - Trial magistrate did not exceed his powers therefore - By assuming jurisdiction (H1) Joyland v. Wemabod Estates Ltd. p. 2727

DOCUMENTS - Native Law & Custom - Applicability - Documentary evidence such as Exhibit A herein - Is unknown to native law & custom - As such it has no legal value as evidence in this proceedings (H3) Olubodun v. Lawal p. 2787

DOCUMENTS - Power of Attorney relating to land - Unregistered & not pleaded - Evidential value - It must be registered in order to be pleaded or adduced in evidence - Under land Registration Laws of Niger State s. 15 - As neither was done in this case - Court of Appeal was wrong in giving judgment to plaintiffs (H3) Abubakar v. Waziri p. 2667

EVIDENCE - Evaluation - Involvement - It entails assessment of evidence & assigning value thereto - It involves a reasoned acceptance or rejection of the evidence adduced by the parties - This is lacking in the judgment of the trial court (H3) Lagga v. Sarhuna p. 2739

EVIDENCE - Proof - Custom - It is clear that respondent led credible evidence in proof of custom relating to appointment of Obani - The two courts found this as a fact - There has not been shown any basis for Supreme Court to disturb the finding (H1) Yusuf v. Toluhi p. 2835

EVIDENCE - Proof - Custom - Requirements - In relation to adjudication custom is question of fact - Which must be pleaded & proved - But plaintiffs failed to plead the dominion of Akarigbo over the land - Which custom they rely on (H1) Olubodun v. Lawal p. 2787

FAIR HEARING - Breach - Applicability - Ruling by trial court handed down without hearing plaintiffs' counsel - Was a breach of plaintiffs' right to fair hearing - Court of Appeal ought to have pronounced thus (H6) Olubodun v. Lawal p. 2787

JUDGMENTS - Nature - Declaratory or executory - Judgment is

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executory where it not only declares rights - But also enjoins defendant to act in a certain way - As was the case with the second and third reliefs in the instant judgment (H1) Carrena v. Akinlase p. 2699

JUDGMENTS - Stay of enforcement - Without an appeal - Propriety of - Later High Court suit does not purport to question earlier judgment of the Supreme Court - It cannot therefore be a basis for a stay of enforcement of the Supreme Court judgment (H5) Carrena v. Akinlase p. 2699

LAND LAW - Title - Customary grant - Proof - In relation to adjudication custom is question of fact - Which must be pleaded & proved - But plaintiffs failed to plead the dominion of Akarigbo over the land - Which custom they rely on (H1) Olubodun v. Lawal p. 2787

PARTIES - Joinder - Effect - Having been joined as parties by intervention & having prosecuted the case to finality - Chief Arowolo & those substituted for him are bound by the out come of the case (H2) Carrena v. Akinlase p. 2699

PLEADINGS - Averments - Binding effect of - Parties are bound by their pleadings - Any evidence by a party contrary to his averments goes to no issue - As does the evidence of grant led by plaintiffs herein (H4) Olubodun v. Lawal p. 2787

PLEADINGS - Averments - Clarity - Necessity of - Pleadings must not be evasive - It must be cogent and pungent - Court should not allow evidence in respect of facts not pleaded - Or those not clearly pleaded (H2) Abubakar v. Waziri p. 2667

PLEADINGS - Reply to defence - Nature - It is defence of plaintiff to the case put forward by defendant - Plaintiff must not raise new ground of claim or allegation of fact therein - For such will be bad pleading in law - As in the instant case (H2) Olubodun v. Lawal p. 2787

PRACTICE & PROCEDURE - Writ of possession - Issuance - Propriety
- In view of the subsisting judgment vesting title over the land in the plaintiffs - They were free to apply for writ of possession to give effect thereto - Court of Appeal was therefore wrong to set aside the writ (H4) Carrena v. Akinlase p. 2699

TORTS - Trespass - Possession - Incidence - The law attaches possession to title - Trespasser in possession of a land which title vests in another - Cannot acquire any possession recognised at law - By his own wrongful act (H3) Carrena v. Akinlase p. 2699

WORDS & PHRASES - Executory judgments - Meaning of - Judgment is executory where it not only declares rights - But also enjoins defendant to act in a certain way - As was the case with the second and third reliefs in the instant judgment (H1) Carrena v. Akinlase p. 2699

INDEX OF STATUTES & RULES

Area Courts Law, Cap. 10, Laws of Kaduna State of Nigeria, 1990 s. 21 (2) Lagga v. Sarhuna p. 2739

Constitution of the Federal Republic of Nigeria, 1979 ss. 33(1), 238
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Constitution of the Federal Republic of Nigeria, 1999 s. 233(1) Lagga v. Sarhuna p. 2739; s. 233 (2)&(3) Abubakar v. Waziri p. 2667

Conveyancing Laws of Property Act, 1881, ss. 47 & 48 Abubakar v. Waziri p. 2667

Court of Appeal Act, 1976 Lagga v. Sarhuna p. 2739

Court of Appeal Act, 1981, s. 16 Lagga v. Sarhuna p. 2739

Court of Appeal Act, LFN, 1960 s. 16 Abubakar v. Waziri p. 2667

Court of Appeal Rules, 1981 (as amended in 1984), O. 5 r. 3 Carrena v. Akinlase p. 2699

Court of Appeal Rules, 1981 O. 1 r. 20, O. 8 r. 2(3), (4) Lagga v.

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Evidence Act, Cap 112, LFN 1990, s. 149 (d) Abubakar v. Waziri p. 2667; ss. 14 (1), (2), & (3), 74 (1), (2), & (3), 77, 99, 111 (1), 112, 116 & 117 Olubodun v. Lawal p. 2787

High Court Law, Cap 67, Laws of Kaduna State, 1991 s. 40 Lagga v. Sarhuna p. 2739

High Court Law, Laws of Northern Nigeria, Cap. 49, 1991 ss. 40, 62 & 63 Lagga v. Sarhuna p. 2739

High Court of Niger State (Civil Procedure) Rules, O. 27 r. 8 (1) Abubakar v. Waziri p. 2667

Kaduna State High Court Law, Cap. 67, Vol. 2 of 1991 , ss. 37, 40 Lagga v. Sarhuna p. 2739

Land Instrument Registration Law, Cap 111, vol 5 Laws of Lagos State, s. 2 Abubakar v. Waziri p. 2667

Land Registration Laws of Niger State, Cap 67, ss. 2 & 15 Abubakar v. Waziri p. 2667

Magistrate Court Law, Cap 127, Laws of Lagos State, 1994, ss. 17 (1b), (c), 53(1) Joyland v. Wemabod Estates Ltd. p. 2727

Registration of Titles Law, Cap. 166, vol, 7 Laws of Lagos State, s. 85 Abubakar v. Waziri p. 2667

Supreme Court Rules O. 8 r. 2(3), (4) Lagga v. Sarhuna p. 2739

Supreme Court Rules, as amended in 1999, O. 2 r. 9 (1) Abubakar v. Waziri p. 2667