

CITATION (2009) 4 KLR

ISSN 1117-0530

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2009) KLR VOL 4 PART 265 pp. 773 - 972

APRIL 2009

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

Nnabuike S. Orji Esq. Managing Editor

INDEX OF CASES REPORTED

1. Aderigbigbe v. Abidoye p.773
2. Almu v. State p. 797
3. Amadi v. Chinda p. 819
4. Fasel Services Limited v. Nigerian Ports Authority p. 843
5. Federal Ministry of Health v. Comet Shipping Agencies p. 859
6. Jinadu v. Esurombi-Aro p. 883
7. Oduko v. Government of Ebonyi State of Nigeria p. 915
8. Olagunju v. Adesoye p. 937

ii INDEX OF SUBJECT MATTER IN (2009) 4 KLR

ACTIONS - Claims - Binding effect - A judge is bound by claims of the parties - He should not go beyond them - For doing so will be granting reliefs not claimed (H5) Amadi v. Chinda p. 819

ACTIONS - Counter claim - Dismissal of - Propriety - It was properly dismissed as there was no basis for granting it - In view of the evidence before the trial Court (H8) Jinadu v. Esurombi-Aro p. 883

ADMIRALTY - Carriage - Loss of goods - Liability of an agent - In view of the failure of the respondent - To produce evidence of warehousing the goods with NPA PLC - Trial judge was right to have invoked s. 16 (3) of the Act against him (H1) Fed. Min. of Health v. Comet Shipping Agencies p. 859

ADMIRALTY - Loss of goods - Apportionment of liability - S. 16 (1), (2) & (3) of Admiralty Jurisdiction Act - The subsections provide for separate, specific & distinct situations - They do not need to be read together (H3) Fed. Min. of Health v. Comet Ship. Ag p. 859

APPEALS - Concurrent findings - Interference - Basis - Appellate court will not interfere - Unless findings are shown to be perverse - Which is not the case herein (H3) Olagunju v. Adesoye p. 937

APPEALS - Concurrent findings - Supported by evidence - Fate of -Such findings - As the customary tenancy status of 1st to 12th appellants - Will not be interfered with by appellate court (H3) Jinadu v. Esurombi-Aro p. 883

APPEALS - Grounds of appeal - Abandonment - By implication - Where no brief of argument has been filed in respect of an appeal - The appeal is deemed abandoned - And must be struck out (H1) Aderigbigbe v. Abidoye p.773

APPEALS - Grounds of appeal - Additional grounds - Competence - Additional grounds all become naught - Though filed within time extended - Where there exists no valid appeal (H3) Aderigbigbe v. Abidoye p.773

APPEALS - Issues - Raised suo motu - Propriety of - There was proper pleading of special damages - This obviates the need to consider propriety or otherwise of suo motu raising of the issue - By Court of Appeal (H3) *Amadi v. Chinda* p. 819

APPEALS - Judgments - Misconceived - Fate of - Where it is a product of a misconception of the case contained in the records - It is liable to be set aside (H6) *Fed. Min. of Health v. Comet Ship*. Ag p. 859

APPEALS - Notice of appeal - Validity - There is no longer a valid notice of appeal - Where all grounds therein are struck out as incompetent - As a bare notice of appeal is valueless & incompetent (H2) *Aderigbigbe v. Abido*ye p.773

APPEALS - Record of proceedings - Where incomplete - Appellant's duty - It is the duty of appellant's counsel to obtain supplementary record - If important documents affecting his appeal were omitted (H2) *Amadi v. Chinda* p. 819

BAILMENT - Action for breach - Presumption of fault - The loss of or damage to goods in bailee's possession - Places the onus of proof on the bailee - To show that it occurred without his fault (H5) *Fed. Min. of Health v. Comet Shipping Agencies* p. 859

COMPANY LAW - Investments - Illegality of - Trustee Investments Act, s. 2 - Purpose of - It is meant to safeguard investments against abuse of power - Not to make them illegal for ignoring the Provisions thereof (H3) *Fasel Ltd v. Nigerian Ports Authority* p. 843

CONTRACTS - Creation of - Carriage of goods - The trial judge was right to have held that a combination of the Debit note - Issued by the respondent to the appellant - And the receipt voucher - Created a contract between the parties (H4) *Fed. Min. of Health v. Comet Shipping Agencies* p. 859

CONTRACTS - Enforceability - Illegality ex-facie - Attitude of courts - Whether such illegality is pleaded or not - The court would not close its eyes against it - It has a duty to refuse to enforce the contract (H1)

Fasel Ltd v. Nigerian Ports Authority p. 843

CONTRACTS - Illegality - Purport of - Where a Statute declares a contract not only void - But also imposes a penalty for violation - The contract is illegal ab initio (H2) Fasel Ltd v. Nigerian Ports Authority p. 843

COURTS - Issues - Raised but not resolved - Propriety of - Except the Supreme Court, all Courts generally have the duty - To resolve all issues put before it (H7) Fed. Min. of Health v. Comet Shipping Agencies p. 859

COURTS - Issues - Where irrelevant - Non-reference to it - Propriety - There is nothing wrong with it, considering that an appellate Court is entitled - To formulate its own issues - If it considers those of the parties irrelevant (H8) Fed. Min. of Health v. Comet Shipping Agencies p. 859

CRIMINAL PROCEDURE - Alibi - Disproof - Whether achieved - In view of the evidence before the trial court - The prosecution has been unable to fix the appellant at the scene of crime - So the alibi was not disproved (H2) Almu v. State p. 797

CRIMINAL PROCEDURE - Alibi - Investigation of - Duty of prosecution - Once an accused pleads alibi - Giving details of his whereabouts - The prosecution has the burden of investigating it - Failure to do so is an admission of the story of the accused (H1) Almu v. State p. 797

CRIMINAL PROCEDURE - Investigations - Identification parade - Necessity of - It is not necessary in this case - Where PW7 knew the appellant before the incident (H4) Almu v. State p. 797

CRIMINAL PROCEDURE - Proof - Contradictions - Effect - If there are contradictions in evidence of prosecution - Materially affecting the charge - Doubt will be created benefit of which must be given to accused (H3) Almu v. State p. 797

EVIDENCE - Admissibility - Documents - Unsigned by their makers

- Exhibits R & S though unsigned - Do not become inadmissible thereby - But should attract little or no weight (H1) Jinadu v. Esurombi-Aro p. 883

EVIDENCE - Assessment - Documentary evidence - Effect on oral evidence - Where there is oral and documentary evidence - Documentary evidence should be used as a hanger from which to assess oral evidence (H2) Jinadu v. Esurombi-Aro p. 883

EVIDENCE - Counsel's address - Evidential value - It is not in evidence that the name 'Bashorun' is the same as 'Osinnolohun' - It is in counsel's address but his address cannot take the place of evidence (H2) Olagunju v. Adesoye p. 937

EVIDENCE - Documents - Yet to be tendered - Findings thereon - Propriety - Those findings are premature - And ought not to have been made at this stage of the proceedings (H2) Oduko v. Govt. of Ebonyi State p. 915

EVIDENCE - Facts not pleaded - Evidence thereon - Effect - Appellant did not plead the name of their first forefather to come to Offa - Evidence on that fact therefore goes to no issue (H1) Olagunju v. Adesoye p. 937

JUDGMENTS - Cross-appeals - Points not appealed on - Where a respondent did not cross-appeal on a point - He cannot raise that point on appeal as of right (H4) Aderigbigbe v. Abidoeye p.773

JURISDICTION - Courts - Determining factor - It is the claim of the plaintiff which determines the jurisdiction of a court - To entertain a suit - The Court of Appeal was therefore right to hold that trial court had jurisdiction (H1) Oduko v. Govt. of Ebonyi State p. 915

LAND LAW - Tenancy - Grantor's title - Denial - By a plea of jus terti - Attitude of courts - License will not be grated to tenants to deny their grantors' title - Through a plea of jus terti (H5) Jinadu v. Esurombi-Aro p. 883

vi INDEX OF SUBJECT MATTER IN (2009) 4 KLR

LAND LAW - Title - Declaration of - Judicial precedents - Where title is in a 3rd party - Court will not grant such declaration - But instant facts are distinguishable from Dada case - As evidence show that appellants are customary tenants of respondents (H4) Jinadu v. Esurombi-Aro p. 883

LAND LAW - Title - Proof - Evidence of acquisition - Effect - Acquisition of part of the land in Exhibit A from the respondents by government - Strengthens the respondents' claim of title to the land in dispute (H7) Jinadu v. Esurombi-Aro p. 883

LAND LAW - Title - Proof - Sufficiency of - Appellant sufficiently proved his case before trial court - Court of Appeal was therefore wrong - To hold that he is not the holder of statutory right of occupancy over the land (H6) Amadi v. Chinda p. 819

LAND LAW - Title - Traditional history - Proof - Though 13th appellant pleaded traditional history of their title to the land in dispute - There is evidence accepted by trial court contrary to that pleading (H6) Jinadu v. Esurombi-Aro p. 883

PLEADINGS - Statement of claim - Amendment - Whether effective - The original statement of claim is the extant statement of claim - As the proposed amendment - Which counsel said was deemed properly filed - Was in fact not filed (H1) Amadi v. Chinda p. 819

PLEADINGS - Statement of claim - Averments - Sufficiency of - In spite of non-filing of amendment -The original statement of claim is unassailable - As far as the pleading of special damages is concerned (H4) Amadi v. Chinda p. 819

PRACTICE & PROCEDURE - Joinder - Document not produced - S. 149 (d) Evidence Act - Respondent ought to have applied to join NPA as 2nd defendant - If indeed it delivered the goods to them - Failure to do so justifies the invocation of s. 149 (d) (H2) Fed. Min. of Health v. Comet Shipping Agencies p. 859

INDEX OF STATUTES & RULES

Admiralty Jurisdiction Act, 1991, s. 16 (1), (2) & (3) Fed. Min. of Health v. Comet Shipping Agencies p. 859

Cap 167 L. F. N., 1951, ss. 3, 5, 8 and 9

Evidence Act, s. 149 (d) Fed. Min. of Health v. Comet Shipping Agencies p. 859; s. 74 Olagunju v. Adesoye p. 937

High Court (Civil Procedure) Rules of Rivers State, 1987, O. 25 r. 4(1) Amadi v. Chinda p. 819

High Court Law, Cap 49, Laws of Northern Nigeria, 1963, s. 17 Aderigbigbe v. Abidoye p. 773

Imo State High Court (Civil Procedure) Rules, 1988, O. 24 Oduko v. Govt. of Ebonyi State p. 915

Land Tenure Law, Cap 59, Laws of Northern Nigeria, 1963, s. 41 Aderigbigbe v. Abidoye p. 773

Land Use Act, 1978, s. 2 Amadi v. Chinda p. 819

Native Rights Ordinance, 1916 Olagunju v. Adesoye p. 937

Public Lands Acquisition (Ordinance) as amended by No. 18 of 1918, Olagunju v. Adesoye p. 937

Public Officers (Special Provision) Decree No. 17, 1984, s. 1 Oduko v. Govt. of Ebonyi State p. 915

Robbery and Firearms (Special Provisions) Act No 5, cap. 398, L.F.N., 1990, s. 1(2) (a) Almu v. State p. 797

Supreme Court Act, s. 22 Oduko v. Govt. of Ebonyi State p. 915

Supreme Court Rules, O. 8 r. 12(1) & (5) Oduko v. Govt. of Ebonyi State p. 915

Trustee Investments Act, Cap 449, Laws of the Federation of Nigeria, 1990, ss. 2 & 3 Fasel Ltd v. Nigerian Ports Authority p. 843