

SUPREME COURT OF NIGERIA

20TH MAY, 2011. SC.96/2002

CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, B. RHODES-VIVOUR, JJSC

MR. SUNDAY ADEGBITE TAIWOAPPELLANT
AND

1.SERAH ADEGBORO

2. SOCIETE GENERAL BANK NIG. LTD.....RESPONDENTS

3. ALHAJI TIJANI ASHIRU

STATUTES - Interpretation - S. 19 of Auction Law of Northern Nigeria - Court is to seek the intention of the legislature - And the words used in a law are to be literally interpreted (H1)

PROPERTY LAW - Auction sale - Seven days notice to sell - Condition precedent - Before an auction can be held to be valid - There must be 7 days notice to sell before the auction is held (H2)

PLEADINGS - Facts - Denial - Need for proper traverse - Traverse must either be by denial - Or by non admission expressly or by implication (H3)

PROPERTY LAW - Auction sale - Validity of - Notice of only one day given by auctioneer - Before auction sale of the property - Is contrary to s.19 Auction Law (H4)

EVIDENCE - Admission - S. 75 of Evidence Act - Conclusiveness of - Where a party agrees to a fact in issue - Proof is no longer necessary - No further dispute on the fact admitted should be entertained by court (H5)

COURTS - Issues - Determination of - Court is to determine only live issues - And not to engage in academic exercise - The issue of sale of the property herein at gross under value is incompetent - As the auction sale was invalid (H6)

APPEALS - Concurrent findings - Supreme Court does not interfere
- Save where they are perverse - The findings in this instance are not
perverse (H7)

FACTS

By a Legal Mortgage Deed executed on the 20th of March, 1983 between Adegboro Constructions (Nig) Ltd in Ilorin, Kwara State, as the borrower, Late Michael Adegboro, as the surety, on one part, and the defunct Societe Generale Bank (Nig) Ltd Plc as the lending Bank on the other part, the Late Michael Adegboro secured a loan of N80,000.00 (Eighty thousand naira) for his company by agreeing to mortgage his property situate at Ilorin, Kwara State. The property is registered with Customary Right of Occupancy No.1579 dated the 30th of July, 1976. In that property lived his wife and children. The company and the surety defaulted in the payment of the loan, and at the time of his (surety's) death on the 16th of September 1984 the loan was still unpaid. Owing to the company's default to meet its obligations to the bank, the bank as unpaid mortgagee exercised its right of sale under the Deed of Mortgage. It appointed an Auctioneer, 3rd respondent to sell the property by public auction. On the 16th of June, 1989, 3rd respondent pasted a Notice of sale on the property which indicated that the property would be sold by public auction the next day, i.e. 17th of June, 1989. On 17th of June, 1989, Mr. Sunday Adegbite Taiwo, appellant, bought the property for the sum of N140,000.00 (One hundred and forty thousand Naira).

1st respondent, Mrs. Sarah Adegboro widow of late Mr. Michael Adegboro quickly filed this action at High Court of Kwara State, Ilorin challenging the sale of the property to appellant. Her prayer, inter alia, was for a declaration that the purported sale of the property was in violent breach of Section 19 Auctioneers Law (Cap. 10) Laws of Kwara State, and as such it is void; and an order to set aside the purported sale. 1st respondent also complained that the house was sold at gross under value for N140,000.00. She testified that on 16th of June, 1989 she heard on Radio Kwara at 4pm that the house in which she lived with her children would be sold on 17th of June, 1989 at 9.a.m. Defendants defended the exercise carried out by the Auctioneer. Their contention is that 1st respondent was

not a party to the transaction. As such, she has no locus standi to bring the action. The learned trial judge entered judgment in favour of 1st respondent. Dissatisfied with the judgment, appellant lodged an appeal at the Kaduna Division of Court of Appeal. The Court affirmed the decision of the trial Court. Aggrieved further, appellant has finally appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether having regard to the 1st respondent's claim and pleadings before the court, the learned justices of the Court of Appeal were right in holding that the 1st respondent had Locus standi to institute this action?

2. Whether having regard to the evidence adduced by the parties at trial in this case, and the state of the Law the learned Justices of the court of Appeal were right in affirming that the auction sale and the transfer of the property to the appellant was null and void and in contravention of Section 19 of Auction Law of Kwara State?

3. Whether from the totality of the evidence led at trial regarding the value of the property, can the learned Justices of the Court of Appeal be right in their decision that the property was sold at undervalue price which renders the auction sale unlawful?

HELD (Unanimously dismissing the appeal per **RHODES VIVOUR JSC**)

STATUTES - Interpretation of s. 19 of Auction Law

1. It is apposite section 19 of the Auction Law Cap 10 of the Laws of Northern Nigeria, 1963 applicable in Kwara State is reproduced and examined. It states that:

"19. No sale by auction of the land shall take place until after at least seven days public notice thereof made at the principal town of the district in which the land is situated, and also at the place of the intended sale. The notice shall be made not only by printed or written documents, but also by beat of drum or such other method intelligible to uneducated person as may be prescribed or if not prescribed as the divisional officer of the district where such sale is to take place may direct, and shall state the name and place of residence of the seller."

In interpreting the above, the primary concern of the court is to

seek the intention of the legislature, and in seeking that intention the words used must be given their appropriate meaning and effect. That is to say the words used are to be interpreted as they are understood in common English usage. (p. 1503 H)

B *PROPERTY LAW - Auction sale - Seven days notice to sale*

2. It is clear that before an auction can be held to be valid there must be 7 days Notice before the auction is held.

The Notice must be in the town where the land/property is situated and also at the place of the intended sale. Apart from Notice by printed document there shall also be notice by beat of drum or such other intelligible method. (p. 1504 D)

Need for proper traverse in pleadings

D 3. It has been stated in a plethora of cases that on the exchange of pleadings by the parties, a material fact is affirmed by one of the parties but denied by the other, the question thus raised between the parties is an issue of fact. To raise issue of fact there must be proper traverse. That is traverse must be made, either by denial, or non admission either expressly or by necessary implication.

Where it is averred in the statement of claim that Notice of auction was pasted on the wall of the House on 16/6/89, the denial by the defendant in Paragraph 2 of this averment, that the plaintiff will be put to the strictest proof is not good enough. It is bad. That is a bare denial. The defendant is expected to show by his pleadings what he considers the true position as regards Notice of the auction. This he failed woefully to do in other paragraphs of his pleadings. Furthermore, in evidence the auctioneer gave evidence as DW1 he said:

“After identifying the house I pasted a poster on the property... I also make (sic) television announcement about the sale of the property...”

Nowhere in the statement of defence or in evidence on oath is it stated when Notice was pasted on the wall of the house to be auctioned or when television and Radio announcements were made - Exhibit 1 the Notice of auction is undated. (p. 1505 C)

PROPERTY LAW - Auction sale - Validity of

4. To my mind, the fact that Notice was pasted on the House on 16/6/89 and sale carried out on 17/6/89 has been established to my satisfaction. Both lower courts were correct in that regard. The Notice of only one day given by the auctioneer before the auction sale of the property on 17/6/89 was contrary to the requirement in section 19 of the Auction Law. The only reasonable conclusion is that the sale of Late Michael Adegboro's property was not valid. There was no valid sale of the deceased property on the 17th of June, 1989. B

Finally on this point in the Court of Appeal, learned counsel for the Bank and the Auctioneer, Mr. Lambo Akanbi (as he then was) agreed that the notice of only one day given by the Auctioneer before the auction sale of the property on 17/6/89 was contrary to the requirements of Section 19 of the Auctioneers Law. (p. 1505 H) C D

Conclusiveness of admission under s. 75 of Evidence Act

5. Section 75 of the Evidence Act states that:

No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have been admitted by their pleadings. E

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. Judicial admissions are conclusive. That is to say where a party agrees to a fact in issue, it is no longer necessary to prove that fact. In effect, after an admission no further dispute on the fact admitted should be entertained by the court. This is the strongest proof of the fact in issue. The fact in issue is whether 7 days notice was given by the auctioneer before the auction sale was conducted on 17/6/89. Mr. Lambo Akanbi, learned counsel for the auctioneer in the Court of Appeal conceded that only one day's notice was given by the auctioneer before the auction sale of the late Mr. M. Adegboro's house was carried out on 17/6/89. That concession is an admission under section 75 of the Evidence Act, and is conclusive on the issue. (p. 1506 C) F G H

COURTS - Issues - Determination of

6. Issue No 3 asks the question whether the property was sold at an under-value. This is no longer a live issue in view of the fact that no valid sale took place at the auction. Determining this issue, would amount to engaging in an academic exercise and courts spend time only on live issues.

The issue of sale of a property at gross under-value or at any price can only arise for consideration if the sale at the auction was valid. (p. 1506 H)

APPEALS - Concurrent findings - Interference

7. The relief of repossession would be granted if the auction sale was found to be valid, and the price paid for the property was found to be the right price. In the light of the fact that the two courts below found that there was no sale on 17/6/89, a fact affirmed by this court, any thought by the appellant of being restored into the property fades away.

This is an appeal on concurrent findings of the courts below that the auction sale of the Late Michael Adegboro's house conducted on the 17th June, 1989 was not valid as it was done contrary to the provisions of Section 19 of the Auction Law Cap. 10 of the Laws of Northern Nigeria, 1963 applicable in Kwara State.

Concurrent findings by the trial court and the Court of Appeal would not be disturbed by this court except where the findings are perverse, or there is miscarriage of Justice.

The findings of both courts below are not perverse and no miscarriage of Justice occurred. (p. 1507 G)

NOTABLE POINTS OF INTEREST
RHODES-VIVOUR JSC

1. Definition of an intervener

An intervener is a person who was not originally a party in the suit but claims an interest in the subject matter, so comes into the case to protect his right. He usually comes in at the discretion of the court. The appellant bought the subject matter, a house at an auction. Both courts below found the sale at the auction to be invalid.

Before the appeal was heard in the Court of Appeal, but after the judgment of the trial court was delivered, the estate of the late

Mr. M.A. Adegboro sold the same property to Mr. T.W. Omatsone (the intervener). On further appeal to this court by the appellant, Mr. T.W. Omatsone clearly has a right to protect his ownership of the house. He is thus an intervener properly so called. (p. 1500 C)

2. Locus standi - Rules and factors for determination

Locus standi means standing to sue or competence of a party to sue.

An objection to a plaintiff's Locus standi attacks his competence to sue as to whether he has any legal or equitable interest to protect. The rule about Locus standi developed primarily to protect the courts from being used as a playground by professional Litigants and or meddlesome interlopers, busy bodies who really have no real stake or interest in the subject matter of the Litigation.

Senator Adesanya v. The President of Nigeria 1981 5 SC p.112 laid down the rule for Locus Standi in civil cases while, Fawehinmi v. Akilu 1987 18 NSCC Pt.2 p.1269 laid down the far more liberal rule for locus standi in criminal cases.

A plaintiff satisfies the court that he has Locus Standi if he is able to show that his civil rights and obligations have been or are in danger of being infringed.

There must be a nexus between the claimant and the disclosed cause of action concerning his rights or obligations, and Locus Standi is determined by examining only the statement of claim. Furthermore in determining whether a party has locus standi the chances that the action may not succeed is an irrelevant consideration.

This court stated that there are two tests in determining locus standi of a person. They are:

1. The action must be justiciable,
2. There must be a dispute between the parties. (p. 1501 H)

MUKHTAR JSC

3. Statutory interpretation of the word "shall"

I will reproduce the provision of that law here below. It reads:-

"No sale by auction of any land shall take place until after at least seven days public notice thereof made at the principal town of the district in which the land is situated, and also at the place of intended sale..."

There is no gain-saying that the use of the word 'shall' in the

above provision connotes compulsory and mandatory nature which transcends any form of discretion. The spirit of the provision requires that it must be complied with in toto, as a duty imposed by the law that must be complied with and enforced. Ample evidence was adduced by the 1st respondent to show non-compliance with Section 19 of the Auctioneers law supra, and the learned trial Judge so found. The finding of the learned trial court was again rightly affirmed by the Court of Appeal when it found as follows:-

“On this authority therefore, the learned trial Judge was right in his finding that the sale by auction of the property by the 3rd respondent in violation of Section 19 OF THE AUCTIONEERS LAW OF KWARA STATE was invalid. This finding was quite in order as the 2nd respondent’s power of sale under the mortgage deed was not in issue in the action at the lower court.” (p. 1510 E)

REPRESENTATION

O. Idowu with E. Nkemjika for Appellant

S. Ibiwoye with T. Okunte, S. Olowolafe, L. Alawayi for Respondents

CASES REFERRED TO

Ugwu v. Agbo (1977) 10 SC p.27

Oyeneye v. Odugbesin (1972) 4 SC p- 244

U.B.N. v. Ntuk (2003) 16 NWLR pt-845 p.183

Balogun v. Adejobi (1995) 2NWLR pt.376 p- 131

Williams v. Dawodu (1988) 4 NWLR pt.87 p. 189

Iroegbu v. Okwordu (1990) 6NWLR pt. 159 p- 643

Olowosago v. Adebayo (1988) 4 NWLR pt.88 p. 275

AG Kaduna state v. Hassan (1985) 2NWLR pt.8 p.483

Fawehinmi v. A.G. Lagos (No.2) (1989) 2NWLR pt.112 P.740

STATUTES REFERRED TO

Auction Law Cap.10 Laws of Kwara State 1963, s. 19

Evidence Act Cap.112 Laws of the Federation of Nigeria 1990, s. 75

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The Late Michael Adegboro was the chairman and Managing Director of Adegboro constructions (Nig) Ltd.

By a Legal Mortgage Deed executed on the 20th of March,

1983 between Adegboro constructions (Nig) Ltd of No. 245 Ibrahim Taiwo Road, Ilorin, Kwara state, as the borrower, Late Michael Adegboro, also of No.245 Ibrahim Taiwo Road, Ilorin as the surety, on one part, and the now defunct society Generale Bank (Nig) Ltd plc as the lending Bank on the other part, the Late Michael Adegboro secured a loan of N80,000 for his company by agreeing to mortgage his property situate on Agbabiaka Road, Gaa Akanbi area, near Agba Dam Housing Estate, Ilorin, Kwara state. The property is identified with customary Right of occupancy No.1579 dated the 30th of July, 1976. In that property lived his wife and children. The company and the surety defaulted in the payment of the loan, and at the time of his death on the 16th of September 1984 the loan was still unpaid. Owing to the company's default to meet its obligations to the Bank, the Bank as unpaid mortgagee exercised its right of sale under the Deed of Mortgage.

It appointed an Auctioneer, the 3rd respondent to sell the property by public auction. On 16/6/89, the 3rd respondent pasted a Notice of sale on the property which indicated that the property would be sold by public auction the next day, i.e. 17/6/89. On 17/6/89, Mr. Sunday Adegbite Taiwo, the appellant bought the property for the sum of N140,000.00 (One hundred and forty thousand Naira).

The 1st respondent, Mrs. Sarah Adegboro, who before and at the time of the sale lived in the property with her children, claimed to be the widow of the late Mr. Michael Adegboro, she quickly filed an action in the High Court of Kwara State challenging the sale of the property to the appellant. The relief sought in the trial court were for:

1. A declaration that the purported sale by auction of the property of Mr. M.A. Adegboro (deceased) situate at Agbabiaka Road, near Agba Dam Housing Estate, Gaa Akanbi Area, Ilorin on 17/6/89 on behalf of the 1st defendant by the 2nd defendant is in violent breach of the Auctioneers Law (Cap.10) Laws of Kwara State and therefore null and void.

2. A declaration that the 2nd defendant by letting the property in question which is worth well over N340,000 go for a paltry sum of N140,000 was negligent, reckless or fraudulent and had sold in bad faith.

3. An order setting aside the purported sale by auction of the property in question to the 3rd defendant.

The 1st respondent, as plaintiff testified. There was a second witness for the plaintiff who also testified on oath. Three witnesses testified for the defendants, and two documents, to wit: Notice of sale by auction, and Report and valuation in respect of the property of Late Mr. M.A. Adegboro prepared by Toki and Co. were admitted in evidence as exhibits 1 and 2 respectively.

The complaint of the plaintiff was that the house in which she lived was sold in contravention of section 19 of the Auctioneers Act applicable in Kwara State and at gross under value for N140,000.00. She testified that on 16/6/89 she heard on Radio Kwara at 4pm that the house in which she lived with her children would be sold on 17/6/89 at 9.a.m. The defendants defended the exercise carried out by the Auctioneer.

In a judgment delivered on the 6th day of October, 1993 the learned trial judge entered judgment in favour of the 1st respondent (plaintiff). The penultimate paragraph of the judgment reads:

“In the final analysis and for the reasons I have given above, the three reliefs sought by the plaintiff as stated in paragraph 21(1-3) of the amended statement of claim are hereby granted. Judgment is hereby entered in favour of the Plaintiff...”

It was the appellant who bought the property at the Auction. Obviously, dissatisfied with the judgment he lodged an appeal in the Kaduna Division of the Court of Appeal. That court affirmed the decision of the trial court in a well considered judgment delivered on the 14th of July 1997. This appeal is against that judgment.

In accordance with Rules of this court briefs of argument were filed and exchanged. The appellant’s brief was deemed filed on the 11th of July 2007. The 1st respondents brief was deemed filed on 8th of June, 2009.

A reply brief was filed on 22nd June, 2009. An Intervener/respondents brief was filed on the 22nd of March, 2010.

The appellant formulated three issues for determination from his seven Grounds of Appeal. They are:

1. Whether having regard to the 1st respondent’s claim and pleadings before the court, the learned justices of the Court of Appeal were right in holding that the 1st respondent had Locus standi to institute this action?.

2. Whether having regard to the evidence adduced by the

parties at trial in this case, and the state of the Law the learned Justices of the court of Appeal were right in affirming that the auction sale and the transfer of the property to the appellant was null and void and in contravention of Section 19 of Auction Law of Kwara State?.

3. Whether from the totality of the evidence led at trial regarding the value of the property, can the learned Justices of the Court of Appeal be right in their decision that the property was sold at under-value price which renders the auction sale unlawful?.

Three issues were also formulated by the 1st respondent. They are:

1. Whether having regard to the 1st respondent claim and pleadings before the court, the learned justices of the Court of Appeal were right in holding that the 1st respondent had Locus Standi to institute this action?.

2. Whether having regard to the evidence adduced by the parties at the trial in this case, and the state of the Law the learned Justices of the court of Appeal were right in affirming that the auction sale and the transfer of the property to the appellant was null and void and in contravention of Section 19 of Auctioneers Law of Kwara State?.

3. Whether from the totality of the evidence led at trial regarding the value of the property, can the learned Justices of the Court of Appeal be right in their decision that the property was sold at under-value price which renders the auction sale unlawful?.

The Intervener adopted the issues formulated by the appellant and in addition to those issues formulated a sole issue. It reads:

1. Whether the relief in the Notice of Appeal to the effect that the appellant be restored into the property involved in this case can at whatever event avail the appellant?

Issue 1, 2, 3, formulated by the appellant and the 1st respondent ask the same question though differently couched. I am of the view that the issues (supra) address the grievance of the appellant. In addition, the sole issue formulated by the intervener is also relevant for the determination of this appeal. At the hearing of the appeal on the 28th day of February 2011, learned counsel for the appellant, Mr. O. Idowu withdrew his appeal against the 2nd and 3rd respondents. That explains why they did not file briefs of argument -

Learned counsel adopted the appellant's brief and Reply brief

deemed filed on 11/7/07 and 22/6/09 respectively, and urged us to allow the appeal. Learned counsel for the 1st respondent Mr. S. Ibiwoye adopted his brief filed on 8/6/09 and urged us to dismiss the appeal. Counsel said nothing in amplification of their briefs. For the purposes of clarity, I must explain the role of the parties from the trial court to this court. The 1st respondent is the widow of the Late Mr. M.A. Adegboro. She instituted the suit in the High Court. She was the plaintiff. There were three defendants. The 1st defendant was the Society General Bank (Nig) Ltd. The 2nd defendant was Alhaji Tijani Ashiru, the auctioneer, while the 3rd defendant was Mr. S.A.. Taiwo, the appellant. It was he who bought the property at the auction. After the judgment of the trial court the property was sold to Mr. T.W. Omatstone. He is the intervener in this appeal before us. An intervener is a person who was not originally a party in the suit but claims an interest in the subject matter, so comes into the case to protect his right. He usually comes in at the discretion of the court. The appellant bought the subject matter, a house at an auction. Both courts below found the sale at the auction to be invalid.

Before the appeal was heard in the Court of Appeal, but after the judgment of the trial court was delivered, the estate of the late Mr. M.A. Adegboro sold the same property to Mr. T.W. Omatstone (the intervener). On further appeal to this court by the appellant Mr. T.W. Omatstone clearly has a right to protect his ownership of the house is at stake (sic). He is thus an intervener properly so called. I shall now examine the issue.

1. Whether having regard to the 1st respondent's claim and pleadings before the court, the learned justices of the Court of Appeal were right in holding that the 1st respondent had Locus Standi to institute this action?

After listening to submissions of counsel the learned trial Judge ruled that the plaintiff has Locus standi to institute this action because her civil rights and obligations are in danger of being infringed.

The Court of Appeal had this to say on this issue:

"The mere fact that the 1st respondent was in possession and occupation of the house in dispute at the time it was sold by the 2nd and 3rd respondents to the appellant on 17/6/89, that alone in my view was enough to have given the 1st respondent a standing to institute an action to challenge the validity of the sale of her late hus-

band's house in which she and her children lived at the time of the sale. Having regard to the facts averred in the statement of claim and reliefs claimed by the 1st respondent, it was quite clear that the 1st respondent was not claiming as a beneficiary of the mortgage deed of which she was not a party. For the foregoing reasons, I hold that the 1st respondent has Locus standi to institute and maintain her claims at the lower court and the learned trial Judge was right in his finding as such..."

And so the Court of Appeal agreed with the learned trial Judge that the 1st respondent has locus standi to institute the suit. Learned counsel for the appellant observed that the mortgage agreement was entered into solely by her late husband and the Bank, she not being a party to the transaction is a busy body or a passer-by with no visible interest or right in the subject matter. Relying on Section 6(6)(b) of the 1999 Constitution. *Fawehinmi v. A.G. Lagos State* (No.2) 1989 2 NWLR pt.112 P740; *U.B.N. v. Ntuk* (2003) 16 NWLR pt-845 p-183

He submitted that both courts below were wrong to hold that the 1st respondent has locus standi to institute the suit. Learned counsel for the 1st respondent observed that 1st respondent's claim was based on a combination of:

- (a) Her marriage to late Michael Adegboro
- (b) Joint development of the property with the deceased.
- (c) Residence of the 1st respondent with her children in the mortgage property.

- (d) House being the only property left behind by her late husband.

- (e) Improper sale by public auction of the property in breach of the Auctioneer's law.

Contending that any one of the above is enough to give her locus standi to institute the suit. Learned counsel for the intervener adopted the submissions of learned counsel for the 1st respondent, and referred to the cases of

Olawoyin v. A.G of Northern Nigeria 1961 2 SCNLR P-2; *Owodunni v. Reg Trustees Celestial Church of Christ* 2000 FWLR H pt.9 p. 1455

Contending that the 1st respondent has locus standi to institute the suit.

Locus standi means standing to sue or competence of a party to sue.

An objection to a plaintiff's Locus standi attacks his competence to sue as to whether he has any legal or equitable interest to protect. The rule about Locus standi developed primarily to protect the courts from being used as a playground by professional Litigants and or meddlesome interlopers, busy bodies who really have no real stake or interest in the subject matter of the Litigation.

Senator Adesanya v. The President of Nigeria 1981 5 SC p.112 laid down the rule for Locus Standi in Civil cases while, Fawehinmi v. Akilu 1987 18 NSCC Pt.2 p.1269 laid down the far more liberal rule for locus standi in criminal cases.

A plaintiff satisfies the court that he has Locus Standi if he is able to show that his civil rights and obligations have been or are in danger of being infringed.

There must be a nexus between the claimant and the disclosed cause of action concerning his rights or obligations, and Locus Standi is determined by examining only the statement of claim. Furthermore in determining whether a party has locus standi the chances that the action may not succeed is an irrelevant consideration. See-Ejiwunmi v. Costain (W.A.) PLC 1998 12 NWLR pt.576 p. 149; Williams v. Dawodu 1988 4 NWLR pt.87 p- 189; In AG Kaduna state v. Hassan 1985 2NWLR pt.8 p.483.

This court stated that there are two tests in determining locus standi of a person. They are:

1. The action must be justiciable,
2. There must be a dispute between the parties.

In evidence, it was established that the 1st respondent married her late husband in 1960 and she was his only wife. She lived in the property with her children.

My lords a member of a family can sue to protect the family property. See Ugwu v. Agbo 1977 10 SC p.27; Olowosago v. Adebayo 1988 4 NWLR pt.88 p. 275.

Selling the family property at an auction raised a justiciable issue, and also a dispute between the parties.

In my view, the 1st respondent passed the two tests laid down by this court in AG Kaduna State v. Hassan (supra). Both courts below were correct to grant locus standi to the 1st respondent. The right of the 1st respondent to her home was infringed by the sale of the home at an auction. She had every right to sue to rectify the

action of the defendants. She, in the circumstances had locus standi to institute the suit. She had sufficient interest in the subject matter of the dispute. By the sale of her home at an auction, her civil rights and obligations were infringed and there would have been disastrous consequences if she was denied access to the court to seek redress. The 1st respondent has Locus Standi. B

2. Whether having regard to the evidence adduced by the parties at trial in this case, and the state of the Law, the learned Justices of the court of Appeal were right in affirming that the auction sale and the transfer of the property to the appellant was null and void and in contravention of section 19 of Auctioneers Law of Kwara State. C

In agreeing with the trial court that the sale of the property by auction was invalid, the Court of Appeal reasoned thus:

“...based on the evidence on record, the finding of the learned trial judge that the auction sale of the property was done in contravention of Section 19 of the Auctioneers Law of Kwara State which requires 7 days notice before the sale, is indeed unassailable having regard to the decision of this court in case of *Oseni v. American International Insurance Co. Ltd* 1985 3 NWLR pt.11p.229 and with that the sale of the property by auction was found to have been invalid. D

Learned counsel for the appellant observed that since the 1st respondent, as plaintiff said on oath that she does not listen to Radio Kwara for that 24 hours, she obviously could not have heard the announcement about the sale of the property. He further observed that television announcement was made and agents announced around with Local hand bell. Concluding, he submitted that both courts were in grave error to hold that the sale did not comply with section 19 of the Auctioneers law. E

Learned counsel for the 1st respondent observed that at the Court of Appeal, the counsel for the Auctioneer made a clean breast of the issue by conceding that only one day auction notice was given, further observing that the said counsel rightly submitted that the sale was indeed contrary to the Auctioneers Law. He submitted that the said concession by the counsel is an admission under section 75 of the Evidence Act. He urged us to hold that the findings of the courts below on the advertisement and auction sale were correct. ***It is apposite section 19 of the Auction Law Cap 10 of the Laws of*** F

Northern Nigeria, 1963 applicable in Kwara State is reproduced and examined. It states that:

“19. No sale by auction of the land shall take place until after at least seven days public notice thereof made at the principal town of the district in which the land is situated, and also at the place of the intended sale. The notice shall be made not only by printed or written documents, but also by beat of drum or such other method intelligible to uneducated person as may be prescribed or if not prescribed as the divisional officer of the district where such sale is to take place may direct, and shall state the name and place of residence of the seller.”

In interpreting the above the primary concern of the court is to seek the intention of the legislature, and in seeking that intention the words used must be given their appropriate meaning and effect. That is to say the words used are to be interpreted as they are understood in common English usage. (See Estate of Soule v. Johnson 1974 12 SC p. 121)

It is clear that before an auction can be held to be valid there must be 7 days Notice before the auction is held.

The Notice must be in the town where the land/property is situated and also at the place of the intended sale. Apart from Notice by printed document there shall also be notice by beat of drum or such other intelligible method.

The issue is whether the auction sale was conducted after 7 days Notice was given. Paragraphs 11 and 13 of the 1st respondent's pleading reads:

11. The plaintiff avers that at about 4 o'clock in the afternoon of Friday 16/6/89, she heard over Radio Kwara Ilorin that her deceased husband's house at Ilorin/Offa Roadwas to be sold at 9 O'clock on Saturday 17/6/89.

13. The 2nd defendant in furtherance of his Radio Advertisement came to the property in question to paste some undated Auction Notices on the same 16/6/89 at about 6.p.m.

A copy of the said Auction Notice is hereby pleaded.

In support of the above the 1st respondent, as plaintiff testified on oath thus:

“At about 4.p.m. on 16/6/89 I heard over the Radio Kwara

that the house was to be sold.

It was then announced that the house would be sold on 17/6/89 at 9.a.m. There has been no news about the sale earlier. There was no announcement in the newspapers or television. By 6.p.m. on 16/6/89, the 2nd defendant came to paste some papers on the wall of the house. It reads "Auction". "Auction"...

Paragraph 2 of the statement of defence reads:

3. The defendants deny paragraph 1,3,5,6,7, 8,10,12,13,14,15,16,17,18,19 and 20 of the statement of claim and put the plaintiff to the strictest proof of the averments therein.

It has been stated in a plethora of cases that on the exchange of pleadings by the parties, a material fact is affirmed by one of the parties but denied by the other, the question thus raised between the parties is an issue of fact. To raise issue of fact there must be proper traverse. That is traverse must be made, either by denial, or non admission either expressly or by necessary implication. (See Lewis and Peat (N.R.I.) Ltd v. Akhiman 1976 1 ANLR pt.1 p. 469.)

Where it is averred in the statement of claim that Notice of auction was pasted on the wall of the House on 16/6/89, the denial by the defendant in Paragraph 2 of this averment, that the plaintiff will be put to the strictest proof is not good enough. It is bad. That is a bare denial. The defendant is expected to show by his pleadings what he considers the true position as regards Notice of the auction. This he failed woefully to do in other paragraphs of his pleadings. Furthermore, in evidence the auctioneer gave evidence as DW1 he said:

"After identifying the house I pasted a poster on the property... I also make television announcement about the sale of the property..."

Nowhere in the statement of defence or in evidence on oath is it stated when Notice was pasted on the wall of the house to be auctioned or when television and Radio announcements Were made-

Exhibit 1 the Notice of auction is undated. To my mind, the fact that Notice was pasted on the House on 16/6/89 and sale carried out on 17/6/89 has been established to my satis-

faction. Both lower courts were correct in that regard. The Notice of only one day given by the auctioneer before the auction sale of the property on 17/6/89 was contrary to the requirement in section 19 of the Auction Law. The only reasonable conclusion is that the sale of Late Michael Adegboro's property was not valid. There was no valid sale of the deceased property on the 17th of June, 1989.

Finally on this point. In the Court of Appeal, learned counsel for the Bank and the Auctioneer, Mr. Lambo Akanbi (as he then was) agreed that the notice of only one day given by the Auctioneer before the auction sale of the property on 17/6/89 was contrary to the requirements of Section 19 of the Auctioneers Law. Section 75 of the Evidence Act states that:

No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have been admitted by their pleadings.

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. (See Cardoso v. Daniel 1986 2 NWLR pt.20 p.1.)

Judicial admissions are conclusive. That is to say where a party agrees to a fact in issue, it is no longer necessary to prove that fact. In effect, after an admission no further dispute on the fact admitted should be entertained by the court. This is the strongest proof of the fact in issue. The fact in issue is whether 7 days notice was given by the auctioneer before the auction sale was conducted on 17/6/89.

Mr. Lambo Akanbi, learned counsel for the auctioneer in the Court of Appeal conceded that only one day's notice was given by the auctioneer before the auction sale of the late Mr. M. Adegboro's house was carried out on 17/6/89. That concession is an admission under section 75 of the Evidence Act, and is conclusive on the issue.

Issue No 3 asks the question whether the property was sold at an under-value. This is no longer a live issue in view of the

fact that no valid sale took place at the auction. Determining this issue, would amount to engaging in an academic exercise and courts spend time only on live issues. (See Global Trans Oceanico S.A. v. Free Ent. (Nig) Ltd 2001 5 NWLR pt. 706 p. 426, Oyeneye v. Odugbesin 1972 4 SC p- 244.)

The issue of sale of a property at gross under-value or at any price can only arise for consideration if the sale at the auction was valid.

Issue No. 4 formulated by the Intervener reads:

1. "It is noted from the Notice of Appeal that the appellant asked to be restored into the possession of the property involved in this case. Submit that this relief is fraught with a number of vitiating factors by reason of which same ought not to be granted by this Honourable court.

2. Learned counsel for the intervener, Mr. S. Olowolafe observed that this prayer was not asked for at the trial court, or the lower court, and there was no counterclaim, contending that the relief of repossession is unfounded. Reference was made to Okoya v. Santilli 1990 3SC pt.11 p.1

He urged us to dismiss the appeal in its entirety. The appellant filed a Reply Brief, but did not respond to the above.

In the Notice of Appeal filed on 29/6/96, it reads under reliefs sought:

1. Allow the appeal.

2. Order the dismissal of the 1st respondent's case in its entirety.

3. Restore possession of the property to the appellant.

This issue relates to (3) above. Appeals are decided on issues formulated or distilled from the Grounds of Appeal in the Notice of Appeal. The reliefs sought must be related to the issues for determination.

The relief of repossession would be granted if the auction sale was found to be valid, and the price paid for the property was found to be the right price. In the light of the fact that the two courts below found that there was no sale on 17/6/89, a fact affirmed by this court, any thought by the appellant of being restored into the property fades away.

This is an appeal on concurrent findings of the courts below that the auction sale of the Late Michael Adegboro's house conducted on the 17th June, 1989 Was not valid as it

was done contrary to the provisions of Section 19 of the Auction Law Cap 10 of the Laws of Northern Nigeria, 1963 applicable in Kwara State.

Concurrent findings by the trial court and the Court of Appeal would not be disturbed by this court except where the findings are perverse, or there is miscarriage of Justice. See Balogun v. Adejobi 1995 2NWLr pt.376 p- 131; Iroegbu v. Okwordu 1990 6NWLr pt. 159 p- 643

The findings of both courts below are not perverse and no miscarriage of Justice occurred.

I find no merit in this appeal. It is accordingly dismissed with costs of N50,000.00 to the 1st respondent.

D **MUKHTAR JSC**

Initially, this appeal was against four respondents, but the appellant withdrew his appeal against Societe Generale Bank Nigeria Ltd, and Alhaji Tijani Ashiru, with the leave of court, leaving the above named two respondents as the only respondents. In her amended statement of claim before the High Court of Kwara State, the plaintiff, who is the 1st respondent in this appeal claimed as follows; as per the amended statement of claim.

1. A declaration that the purported sale by auction of the property of Mr. M. A. Adegboro (deceased) situate at Agbabiaka Road, near Asa Dam Housing Estate Iga Akanbi Area, Ilorin on 17/6/89 on behalf of the 1st defendant by the 2nd defendant is in violent breach of the Auctioneer's law (Cap 16) Laws of Kwara State and therefore null and void.

2. A declaration that the 2nd defendant by selling the property in question which is worth well over N340,000.00 go for a paltry sum of N140,000.00 was negligent, reckless or Fraudulent and had sold in bad faith.

3. An order setting aside the purported sale by auction of the property in question to the 3rd defendant."

The defendants filed their own defence denying most of the plaintiff's claim, and both parties adduced evidence which were appraised by the learned trial judge. The learned trial Judge found the plaintiff's claim proved and arrived at the following conclusion:-

"In the final analysis and for the reasons I have given above, the three reliefs sought by the plaintiff as stated in paragraph 21(1-3) of the amended statement of claim are hereby granted."

Unhappy with the above decision the 3rd defendant appealed to the Court of Appeal Ilorin Division, which dismissed the appeal. He has again appealed to this court. An intervener who is now the 2nd respondent was appointed. Learned counsel for the parties exchanged briefs of argument to wit an appellant's reply brief of argument was also filed. The issues formulated in the briefs have been reproduced in the lead judgment.

The locus standi of the plaintiff/1st respondent to institute this action is an issue in this appeal. Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1979 stipulates the legal right of a party to approach the court for its intervention thus:-

"6...(b) shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all action and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

Legal Authorities abound on the locus standi of a party who seeks reliefs and the determination of claims from a court of law. The above provision of the constitution succinctly clears and states the right of a person who wants to approach the court to exercise its power and jurisdiction in a matter. To determine whether the 1st respondent had locus standi to sue the defendants one has to look at the pleadings, and the salient averments are as follows:-

"7. The plaintiff avers that the property in question does not and has never belonged to Adegboro Constructions (Nigeria) Limited.

8. The plaintiff avers that the property in question was jointly developed by her and her deceased husband."

The above averments clearly represent the 1st respondent's interest in the property in controversy that is the subject matter of the suit. She has by the said averments state a joint ownership of the property and that she has a right over the property that was sold by the 3rd defendant through the authority of the 2nd defendant. She gave ample evidence in support of the averments thus:-

"My deceased husband and I jointly built the house before my husband formed his company. The house was the only property left

behind by my husband and that is where our children and myself are now living. The Adegboro construction company ltd. had no relation with the house."

It is instructive to note that the above reproduced evidence established that the reliefs she claimed will confer some benefits on her.

It is on record that the defendants raised the issue of locus standi by way of preliminary objection, and the addresses of learned counsel were dealt with in the judgment of the learned trial court, where it concluded thus, (on the issue of locus standi:-

"Presently and in consideration of the facts disclosed in this case, I rule that the plaintiff has locus standi to institute this action because her civil rights and obligations are in danger of being infringed."

The court below affirmed the above finding, and it did not err in doing so, for the locus standi of the plaintiff/1st respondent was sufficiently pleaded, and the pleading was sufficiently supported with credible evidence.

On the mode of the auction sale and the dissatisfaction of the plaintiff with the procedure adopted for the conduct of the auction sale and the non-compliance with the Auctioneer's law, particularly Section 19 of the said law. I will reproduce the provision of that law here below. It reads:-

"No sale by auction of any land shall take place until after at least seven days public notice thereof made at the principal town of the district in which the land is situated, and also at the place of intended sale..."

There is no gain-saying that the use of the word 'shall' in the above provision connotes compulsory and mandatory nature which transcends any form of discretion. The spirit of the provision requires that it must be complied with in toto, as a duty imposed by the law, that must be complied with and enforced. Ample evidence was adduced by the 1st respondent to show non-compliance with Section 19 of the Auctioneers law supra, and the learned trial Judge so found. The finding of the learned trial court was again rightly affirmed by the Court of Appeal when it found as follows:-

"On this authority therefore, the learned trial Judge was right in his finding that the sale by auction of the property by the 3rd

respondent in violation of Section 19 OF THE AUCTIONEERS LAW OF KWARA STATE was invalid. This finding was quite in order as the 2nd respondent's power of sale under the mortgage deed was not in issue in the action at the lower court."

I endorse the above finding. For the above reasoning and the fuller ones in the lead judgment of my learned brother Rhodes-Vivour JSC, I also dismiss the appeal for it lacks merit and substance. It is an appeal against concurrent findings of two lower courts which this court is not at liberty to disturb. It can interfere with the judgments only if the findings were not supported with credible evidence, they are perverse, and have occasioned miscarriage of justice, which is not the case in this appeal.

See Odonigi v. Oyeleke 2001 6 NWLR part 708 page 123, Aseimo & Ors v. Abraham & Ors 2001 16 NWLR part 738 page 20, and Ibodo v. Enarofia 1980 5 -7 SC page 42.

I abide by the consequential orders made in the lead judgment.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother RHODES-VIVOUR, JSC just delivered, and I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

My learned brother has dealt with the issues raised in the appeal exhaustively as a result of which I have nothing useful to add.

I therefore adopt his reasoning and conclusion as mine and dismiss the appeal.

I abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal dismissed.

MUHAMMAD JSC

My learned brother, Rhodes-Vivour, JSC, permitted me to read before now, the judgment just delivered by him. I am in full agreement with his reasoning and conclusions. The appeal, in my view, too, lacks merit.

My Lords, without necessarily re-stating the facts of this appeal which were clearly set out by My learned brother, Rhodes-Vivour, JSC, both the pleadings and evidence lay adequately in favour of the 1st respondent:

B i. She lived all her marital life as a wife to late Michael Adegboro who mortgaged the property in dispute by securing a loan of N80,000,00

ii. She claimed joint development of the property with her late husband.

C iii. That property was at the time of auction the only property being occupied by her and her children of the marriage.

iv. The auction sale of the property was improper as it evidently breached the Auctioneers Law (Cap 10) Law of Kwara State.

It is my view that the above factors are weighty enough to D confer a legal standing on the 1st respondent to sue in order to protect her late husband's property. She cannot by any stretch of imagination be described as a busy body, or an interloper. She has some vested and legal rights to protect. It is the duty of a court of law to protect the civil rights and obligations of a citizen once he shows that E such rights/obligations are in danger of being infringed. See: *Adesanya v. The President of Nigeria* (1981) 5 SC 112. The trial court found a nexus between the 1st respondent and the property of her late husband.

F This certainly is what the law requires to confer a locus standi on a party. See: *Adesanya v. The President of Nigeria* (supra).

The learned trial Judge in my view, did a very good job. His judgment is unassailable.

G For the detailed reasons given by Rhodes-Vivour, JSC in his leading judgment, I too, dismiss the appeal as lacking in merit. I abide by consequential orders made therein including order as to costs.