

SUPREME COURT OF NIGERIA

6TH JULY, 2012. SC.29/2004

**CORAM:- F. F. TABAI, J. A. FABIYI, O. O. ADEKEYE,
B. RHODES-VIVOUR, O. ARIWOOLA, JJSC**

1. A. O. AFOLABI
2. A. A. NWANZE
3. A. ADERIBIGBE
4. L. OTUNLA

5. S. ANIFOWOSE

..... APPELLANTS

(for themselves and on
behalf of the other employees
of the first defendant)

6. IRON & STEEL WORKERS
UNION OF NIGERIA

(for and on behalf of the entire
members of the Western Steel
Works Ltd, Lagos Branch Union)

7. IRON & STEEL SENIOR STAFF
ASSOCIATION OF NIGERIA

(for and on behalf of the entire
members of the Western Steel
Works Ltd, Lagos Branch Union)

AND

1. WESTERN STEEL WORKS LTD

2. MR. HERBERT SUM

..... RESPONDENTS

3. EUREKA METALS LTD

EVIDENCE - Evaluation - Appeals - Where trial court fails to properly evaluate evidence - Court of Appeal can evaluate - And come to a correct and fair decision to parties (H1)

APPEALS - Judgments - Determination - Basis - Supreme Court determines whether Court of Appeal's judgment was correct - And not really whether its reasons were right or wrong (H2)

APPEALS - Retrial - When to order - Where High Court and Court of Appeal were partly wrong and right - Retrial is necessary - But

where the latter corrects errors of the former - Retrial is unnecessary (H3)

COMPANY LAW - Acquisition - Proof - Person who asserts acquisition of a company by another - Must inter alia place before court - Instrument of transfer obtained from the CAC (H4)

PROPERTY LAW - Property - Ownership - Proof - Evidence Act s.146 - Possession of disputed property - Is good title against anyone who cannot prove better title (H5)

FACTS

1st defendant/respondent originally employed plaintiffs/appellants and subsequently laid them off. Consequently, appellants instituted this action at the High Court of Lagos State, seeking inter alia, for nullification of their sack by 1st respondent. It was the belief of appellants that 3rd respondent bought 1st respondent. Appellants called five witnesses in support of their case, while respondents did not call any witness in their defence.

In his judgment, the learned trial judge held that appellants failed to call sufficient evidence to show that 3rd respondent had acquired the liabilities of 1st respondent. Appellants' suit was thus dismissed. On appeal by appellants to the Court of Appeal, Lagos, a sole issue of whether or not appellants called sufficient evidence in proof of their case was determined. The court agreed with the trial court and dismissed appellants' claims. Aggrieved further, appellants filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Whether having agreed that the learned trial judge made contradictory and inconsistent findings on the status of the 3rd respondent vis-a-vis the 1st respondent, the lower court was right not to have resolved these findings to determine who was actually liable to the Appellants claims and thereby occasioning a miscarriage of justice.

2. Whether upon the pleadings; the uncontradicted evidence of the appellants' with the clear provisions of section 146 of the Evidence Act, the lower court was right to have held that the appellants' failed to discharge the burden of proving that the 3rd respondent

had acquired the liabilities of the 1st respondent.

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

EVIDENCE - Evaluation

1. If a trial court fails to or does not evaluate evidence properly the Court of Appeal is expected to evaluate the evidence and come to a decision that is correct and fair to the parties. The Court of Appeal observed quite rightly that there was a conflict between the earlier and later findings made by the lower court. The Court of Appeal proceeded to evaluate evidence and I have no difficulty agreeing in part with the trial judge and completely with the Court of Appeal that the 3rd respondent had not acquired the 1st respondent. (p. 2511 B)

Judgments - Determination - Basis

2. This appeal is against the judgment of the Court of Appeal and not against the judgment of the High Court. It is the duty of this court to determine whether the Court of Appeal's judgment was correct and really not whether its reasons were right or wrong. (p. 2511 E)

APPEALS - Retrial - When to order

3. Where both courts below are/were partly right and/or partly wrong, justice will demand a retrial of the case, but where as in this case the High Court was partly right and partly wrong, but the Court of Appeal proceeds to correct the errors of the High Court in a flawless manner, there would be no need for a retrial as no miscarriage of justice would have occurred. After all miscarriage of justice is all about failure on the part of the court to do justice. (p. 2511 E)

COMPANY LAW - Acquisition - Proof

4. The purchaser of a company buys its assets and liabilities. To prove to the satisfaction of the court that a Company had been bought by another Company, the person who asserts

must place before the court documents from the Corporate Affairs Commission to justify the assertion. Documents such as:

- (i) Instrument of transfer;**
- (ii) Documents to show acquisition of shares of the 1st respondent by the 3rd respondent**
- (iii) Filing of relevant papers.**

In the absence of documentary evidence (above), no credible evidence was led to show that the 3rd respondent acquired, or bought the 1st respondent. Such an issue is never resolved solely on testimony on oath. There must be documentary evidence to support oral testimony, thereby making oral testimony more credible. The appellants, as plaintiffs failed woefully to discharge the burden of proof placed on them by law. Section 146 of the Evidence Act is irrelevant in deciding whether a company was acquired by another company. Issues such as acquisitions, mergers are regulated by the companies and Allied Matters Act. In the absence of relevant documentary evidence, the appellants' failed to show that the 3rd respondent acquired the 1st respondent. (p. 2514 B/F)

Property - Ownership - Proof

5. Section 146 of the Evidence Act provides for the well known principle of law that possession is prima facie proof of ownership. That is to say possession of the property in dispute (the 1st defendant company) is good title against anyone who cannot prove a better title. (p. 2514 E)

REPRESENTATION

Chief Wale Taiwo with E. M. Dodo, for the Appellants

A. O. Fayemiwo for the 1st and 2nd Respondents

G. Etomi with S. A. Ebomhe, O. E. Oshinbade, for 3rd Respondent

CASES REFERRED TO

Ugo v. Obiekwe (1989) 1 NWLR (pt. 99) 566

Okonkwo v. Udoh (1997) 9 NWLR (pt. 51) 16

Odinaka v. Moghalu (1992) 4 NWLR (pt. 233) 1

OlaREWaju v. Gov. of Oyo State (1992) 9 NWLR (pt. 265) 335

Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) 527

Aigbobahi v. Aifuwa (2006) 6 NWLR (pt. 976) 270

Eseigbe v. Agholor (1993) 9 NWLR (pt. 316) 128

Kate Enterprises Ltd v. Daewoo Nig. Ltd (1985) 2 NWLR (pt. 5)

Abusomwan v. Mercantile Bank Nig Ltd (1987) 3 NWLR (pt. 60)

Imah v. Okogbe (1993) 9 NWLR (pt. 316) 159

Owoade v. Omitola (1988) 2 NWLR (pt. 77) 413

Abaye v. Ofili (1986) 1 NWLR (pt. 15) 413

Okubule v. Oyegbola (1990) 4 NWLR (pt. 147) 72

Osawuru v. Ezeiruka (1978) 6-7 SC 135

Odukwe v. Ogunbiyi (1998) 8 NWLR (pt. 561) 339

STATUTE REFERRED TO

Evidence Act Cap E14 Laws of the Federation 2004, s.146

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The appellants were the plaintiffs before the Lagos State High Court and the respondents were the defendants. The plaintiffs' claim against the defendants jointly and severally was for:

1(a) A DECLARATION that the laying-off from February of July 1982 by the 1st defendant and of the 6th and 7th plaintiffs Union members employed by the 1st defendant and numbering about 268 is illegal, wrongful, null and void as being contrary to the provisions of the Labour Act 1974.

(b) A DECLARATION that the lock-out of members of the 6th Plaintiff's Union by the 1st defendant on 27th September, 1992 is a breach of:

(i) The Agreement reached between the 1st defendant's Management and 6th Plaintiff Union at the Ministry of Labour and Productivity on 17th September, 1962 is a breach of:

(ii) The agreement made on 16th September, 1981, between the Association of Metal Products and Iron and Steel employers on the one hand and the Iron and Steel Workers Union of Nigeria on the other.

(iii) The collective Agreements between the Association of Metal Products and Iron and Steel Employers of Nigeria on the one hand and Iron and Steel Workers Union of Nigeria on the other.

(c) N5,000 (Five Thousand Naira) for each of the 6th and 7th

plaintiffs' Union members represented in this suit being general damages for the said breaches.

(a) A DECLARATION that the lock-out by the 1st defendant on 27th September, 1982 of the 6th and 7th plaintiffs Union members employed by the 1st defendant aforesaid is illegal, null and void as being contrary to both the Trade Dispute Act 1976, and the forms and conditions governing the said employment.

(b) A DECLARATION that the employees referred to in (a) above are still in the 1st defendant's employment.

(c) PAYMENT that employees referred to in (a) and (b) above and in the schedule, all the said employees salaries, wages, redundancy payment and other entitlements from February 1982, to the date of judgment in the manner shown in the schedule attached hereto.

3 (a) AN INJUNCTION restraining the defendants from transferring, alienating and paying out for any purpose whatsoever without an order of the Honourable court any portion or portions or the money in the 1st and or 3rd defendants account or any asset or assets tangible or intangible belonging to the 1st and or 3rd defendant, whether belonging to the 1st and or 3rd defendant alone or jointly with another or others pending the final settlement of any sums adjudged payable to the employees referred to in 2 (a) above.

(b) AN ORDER setting aside any transaction or deal by the 1st AND/OR 2nd defendant since February, 1982 assigning alienating or transferring any tangible or intangible asset or assets of the 1st defendant to the prejudice of the plaintiffs claim against the defendants.

Five witnesses were called by the plaintiff, while the defendants did not call any witness in their defence. In the judgment delivered on the 13th day of May, 1996 the learned trial judge held that the plaintiff failed to call sufficient evidence to show the 3rd defendant had acquired the liabilities of the 1st defendant. The plaintiff's suit was dismissed. On appeal a sole issue was determined and it was:

Whether or not the plaintiffs called sufficient evidence in support of their case to warrant the lower court give judgment in their favour.

The Court of Appeal agreed with the trial court and dismissed the plaintiffs' claims with N5,000 costs to the respondent. This appeal is against that judgment. In accordance with Rules of this court,

briefs were filed and exchanged. The appellants' amended brief was deemed filed on the 11th of January, 2012. The joint brief of the 1st and 2nd respondents on 20th of April, 2012, and the 3rd respondents brief on 13th of May, 2004. Two issues were formulated by the appellant. They are:

1. *Whether having agreed that the learned trial judge made contradictory and inconsistent findings on the status of the 3rd respondent vis-a-vis the 1st respondent, the lower court was right not to have resolved these findings to determine who was actually liable to the Appellants claims and thereby occasioning a miscarriage of justice.* B C

2. *Whether upon the pleadings; the uncontradicted evidence of the appellants' with the clear provisions of section 146 of the Evidence Act, the lower court was right to have held that the appellants' failed to discharge the burden of proving that the 3rd respondent had acquired the liabilities of the 1st respondent.* D

The 1st and 2nd respondents formulated only one issue for determination. It reads:

"1. Whether or not the appellants have discharged the burden of proof of their allegation of acquisition of the liabilities of the 1st and 2nd respondents by the 3rd respondent." E

The 3rd respondent also formulated one issue:

"1. Whether the lower court was entitled to hold as it did that there is no credible evidence before the court, showing that the 3rd respondent acquired the liability of the 1st respondent to make it liable to the plaintiffs/appellants' herein." F

The appellants' issue 2 and the respondents' sole issues are in substance the same. Appellants' issue 1 is on its own. I shall resolve this appeal by addressing the two issues formulated by appellants. G

At the hearing of the appeal on the 24th of April, 2012, learned counsel for the appellants adopted his amended appellants' brief deemed filed on 11/1/12 and urged this court to allow the appeal and order a retrial. Learned counsel for the 1st and 2nd respondents adopted the brief filed on 20/4/12, observing that the burden of proof was not discharged by the appellants. He urged this court to dismiss the appeal. Learned counsel for the 3rd respondent adopted his brief filed on 13/5/04 and urged this court to dismiss the appeal, contending that a retrial was unnecessary. H

The facts are these. 1st to 5th appellants sued for themselves and other employees of the 1st defendant/respondent. They are Union members of the 6th and 7th appellants and employees of the 1st respondent. Sometime in 1982 they were laid off without being paid their entitlements. They claim that since the 3rd respondent acquired the assets and liabilities of the 1st respondent, the 3rd respondent should be made liable for the payment of their entitlements. It is on this reasoning that they lost in both courts below and have come here on a further and final appeal on the same reasoning.

C **ISSUE 1**

Whether having agreed that the learned trial judge made contradictory and inconsistent findings on the status of the 3rd respondent vis-a-vis the 1st respondent, the lower court was right not to have resolved these findings to determine who was actually liable to the appellants' claims and thereby occasioning a miscarriage of justice.

Learned counsel for the appellants' submitted that where inconsistent and contradictory findings are made both of which were relied on to reach a decision, a retrial ought to be ordered. He further submitted that this court should hold that a miscarriage of justice has occurred and order a retrial. Reliance was placed on *Ugo v. Obiekwe* 1989 1 NWLR pt.99 p.566, *Okonkwo v. Udoh* 1997 9 NWLR pt.51 9 p.16.

F Learned counsel for the 1st and 2nd respondents, Mr. A. O. Fayemiwo observed that since the findings of the Court of Appeal are not perverse, the issue of miscarriage of justice or a retrial does not arise. He urged this court to dismiss the appeal.

G Learned counsel for 3rd respondent, Mr. F. R. A. Williams argued that there was no need for a retrial because the case did not turn on the credibility of the witnesses but on the character of the evidence required to prove merger, acquisition or takeover of a company, contending that the Court of Appeal was in as good a position as the trial court to evaluate the evidence. He submitted that unless **H** the finding of the Court of Appeal is perverse it should be upheld by this court.

The argument of the learned counsel for the appellants in issue No 1 is that since the trial court made inconsistent and contradictory finding of fact as confirmed by the Court of Appeal, an order of

re-trial ought to be made. Now, what are the inconsistent and contradictory findings made by the trial court. The trial court said:

“... There isn’t legal evidence to establish the fact that the company has taken over the assets and liabilities of the 1st defendant...”

The learned trial judge also said:

“The evidence is overwhelming that the 3rd defendant had taken over (or purchased the 1st defendant company)...” B

These are inconsistent and contradictory findings. ***If a trial court fails to or does not evaluate evidence properly the Court of Appeal is expected to evaluate the evidence and come to a decision that is correct and fair to the parties.*** See *Odinaka v. Moghalu* 1992 4 NWLR pt.233 p.1, *Olarewaju v. Gov. of Oyo State* 1992 9 NWLR pt.265 p.335. ***The Court of Appeal observed quite rightly that there was a conflict between the earlier and later findings made by the lower court. The Court of Appeal proceeded to evaluate evidence and I have no difficulty agreeing in part with the trial judge and completely with the Court of Appeal that the 3rd respondent had not acquired the 1st respondent.*** C

This appeal is against the judgment of the Court of Appeal and not against the judgment of the High Court. It is the duty of this court to determine whether the Court of Appeal’s judgment was correct and really not whether its reasons were right or wrong. Where both courts below are/were partly right and/or partly wrong, justice will demand a retrial of the case, but where as in this case the High Court was partly right and partly wrong, but the Court of Appeal proceeds to correct the errors of the High Court in a flawless manner, there would be no need for a retrial as no miscarriage of justice would have occurred. After all miscarriage of justice is all about failure on the part of the court to do justice. See *O. Sanusi v. O. I. Ameyogun* 1992 4 NWLR pt.237 p.527, *E. Aigbobahi & ors. v. E. Aifuwa & ors.* 2006 6 NWLR pt.976 270. Furthermore, once the inconsistent and contradictory’ findings were not based on demeanor of the witnesses, the Court of Appeal is in as good a position as the trial court to evaluate the evidence before it. After observing quite rightly in my view that the trial judge made inconsistent and contradictory findings, the Court of Appeal was correct to state the true E

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position after reviewing evidence led and dismissing the appeal.

ISSUE 2

Whether upon the pleadings; the uncontradicted evidence of the Appellants with the clear provisions of section 146 of the Evidence Act, the lower court was right to have held that the appellants' failed to discharge the burden of proving that the 3rd respondent had acquired the liabilities of the 1st respondent.

Learned counsel for the appellants' observed that the appellants' case is that the 3rd respondent went into possession of the premises and took over the assets that used to belong to the 1st respondent. He submitted that the fact that the signboard of the 1st respondent was removed and replaced with that of the 3rd respondent was clear evidence that the 3rd respondent was in possession. Reliance was placed on Section 146 of the Evidence Act. He contended that take-over strictly speaking need not be pleaded. Relying on *Ewo & ors v. Anor. & Ors* 2004 3 NWLR pt.861 p.611, *Eseigbe v. Agholor* 1993 9 NWLR pt.316 p.128. He submitted that both courts below placed on the appellants a burden of proof not required in civil cases. He urged this court to allow the appeal.

Learned counsel for the 1st and 2nd respondents observed that the appellants' case failed because they were unable to prove by credible evidence that the 3rd respondent acquired the liability of the 1st respondent. Relying on *Kate Enterprises Limited v. Daewoo Nig. Ltd* 1985 2 NWLR pt.5 p.118. He submitted that the judgment of the Court of Appeal should be upheld by this court contending that issue of retrial does not arise anymore as the evaluation of the evidence and the finding of the Court of Appeal superseded that of the trial court.

Learned counsel for the 3rd respondent observed that in this appeal the findings of the lower court is not dependent on the demeanor of witnesses and so the Court of Appeal was correct to evaluate evidence. Reliance was placed on *Abusomwan v. Mercantile bank Nig Ltd* 1987 3 NWLR pt.60 p.196, *Imah v. Okogbe* 1993 9 NWLR pt.316 p.159. Referring to paragraph 34 of the appellants' pleadings he observed that evidence led fell far short of establishing the allegation of fact contained in the said paragraph (supra). He urged this court to dismiss the appeal. If pleadings are to be of any use parties must be held bound by them. See *Owoade v. Omitola* 1988 2 NWLR

pt.77 p.413, Abaye v. Ofili 1986 1 NWLR pt.15 p.413. Paragraph 33 (a) and (b) of the appellants' pleadings reads:

"(a) The plaintiff aver that Eureka Metals Limited, the 3rd defendant has either merged with or acquired Western Steel Works Limited;

(b) The plaintiffs' state that Eureka Metals Limited has taken over the assets and liabilities of Western Steel Works Limited." B

The 3rd defendant/respondent in its pleadings denied being merged with or having acquired the 1st defendant/respondent's assets or liabilities and further stated categorically that it purchased certain assets, plants and machinery through a third party. C

The central issue in this case is whether the 3rd respondent merged with or acquired Western Steel Works Limited (the 1st respondent). This is very important because the object of the plaintiffs/appellants' pleading is to establish that the 3rd respondent had acquired the 1st defendant's (the company that laid them off) assets and liabilities and so the 3rd respondent was liable to pay the terminal benefits due to the appellants'. That explains the plaintiff/appellants' action and this appeal. In proof of its pleadings PW.1 testified thus:- *"...the reason why we filed this action is because the companies had changed hands..."* And in cross-examination he said: E

"The 1st defendant Company has been transferred to Eureka Metals (3rd defendant). We were sitting in front of the factory when the 1st defendant was replaced with Eureka Metals." F

The PW2 testified as follows:- *"After few years, 3rd defendant bought the 1st defendant company."*

And PW3 said: *"3rd defendant has now bought the Defendant company"*

The legal burden of proof that the 3rd respondent acquired or bought the 1st respondent is on the appellants. The question is whether the plaintiffs/appellants discharged the burden of proof. The Court of Appeal answered the question as follows: G

"The acquisition of shares in companies and take-over of one company by another are matters regulated by Company and Allied Matters Acts. The transfer of shares or allotment of shares on a limited liability company must be registered and appropriate papers filed. It is not just a question of removing one company's signboard and replacing it with another. It was therefore to be expected that docu- H

ments from the Corporate Affairs Commission would be placed before the lower court to enable it determine whether or not the 1st defendant company had been acquired by the appellant."

And with that, the Court of Appeal held that the 3rd respondent had not acquired the 1st respondent. I agree with the Court of Appeal. ***The purchaser of a company buys its assets and liabilities. To prove to the satisfaction of the court that a Company had been bought by another Company, the person who asserts must place before the court documents from the Corporate Affairs Commission to justify the assertion. Documents such as:***

- (i) ***Instrument of transfer;***
- (ii) ***Documents to show acquisition of shares of the 1st respondent by the 3rd respondent***
- (iii) ***Filing of relevant papers.***

In the absence of documentary evidence (above), no credible evidence was led to show that the 3rd respondent acquired, or bought the 1st respondent. Such an issue is never resolved solely on testimony on oath. There must be documentary evidence to support oral testimony, thereby making oral testimony more credible. The appellants, as plaintiffs failed woefully to discharge the burden of proof placed on them by law.

Section 146 of the Evidence Act provides for the well known principle of law that possession is prima facie proof of ownership. That is to say possession of the property in dispute (the 1st defendant company) is good title against anyone who cannot prove a better title. Section 146 of the Evidence Act is irrelevant in deciding whether a company was acquired by another company. Issues such as acquisitions, mergers are regulated by the companies and Allied Matters Act. In the absence of relevant documentary evidence, the appellants' failed to show that the 3rd respondent acquired the 1st respondent.

Furthermore I must observe that PW1 said:

"The reason why we filed this action is because the companies had changed hands."

The action was filed with one clear motive, and that is to make the 3rd respondent responsible for paying the appellants' terminal

benefits. If on the other hand the 3rd respondent acquired the liability of the 1st respondent, there must be a written agreement between both companies showing liability that was transferred. In the absence of a written agreement the appellants' case is not credible. I agree partly with the judgment of the High Court and completely with the Court of Appeal. It is sufficient to say that the issue as to whether the 3rd respondent acquired the 1st respondent, the central issue in this appeal, was examined meticulously and rightly in my view rejected by the learned justices of the Court of Appeal for reasons upon which I find it difficult to improve. The issue which has again been taken in this court does not justify any interference with the findings and decision of the Court of Appeal.

Accordingly, I am of the firm view that the appeal has no merit and it is hereby dismissed with no order on costs.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Rhodes-Vivour, JSC. I am completely at one with all the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

The facts which are relevant to the determination of this appeal have been pungently stated in the lead judgment. The 1st to 5th appellants were employees of the 1st respondent and Union members of the 6th and 7th appellants. Sometime in 1982, they were laid off without being paid their entitlements. They claimed for themselves and on behalf of other employees that since the 3rd respondent acquired the assets and liabilities of the 1st respondent, the 3rd respondent should be made liable to pay their entitlements. The learned trial judge garnered evidence adduced by witnesses and was duly addressed by learned counsel for the parties. In his judgment delivered on 13th May, 1996, he made contradictory findings. In one breath, he said:- *"...There isn't legal evidence to establish the fact that the company has taken over the assets and liabilities of the 1st defendant..."* The trial judge equally found that -

"The evidence is overwhelming that the 3rd defendant had taken over (or purchased the 1st defendant company)..."

The above reproduced-findings by the learned trial judge in

respect of a crucial determinant issue are clearly inconsistent. However, the trial judge at the end dismissed the plaintiffs' suit.

In their appeal to the court below, the goof committed by the trial court was put right and the appeal was dismissed. This is a final appeal to this court. I only wish to chip in a few words in respect of issue B 2 couched on behalf of the appellants. It reads as follows:-

"Whether upon the pleadings, the uncontradicted evidence of the appellants with the clear provisions of section 146 of the Evidence Act, the lower court was right to have held that the appellant failed to discharge the burden of proving that the 3rd respondent had acquired the liabilities of the 1st respondent."

It occurs to me that the appellants; in a bid to prove their case, asserted that the 3rd respondent acquired the liabilities of the 1st respondent. They have the burden of proof to establish same as dictated by the provision of the applicable section 135 of the Evidence Act. It is novel that he who asserts must prove same. See *Okubule v. Oyegbola* (1990) 4 NWLR (Pt.147) 72; *Osawuru v. Ezeiruka* (1978) 6-7 SC 135 at 145; *Odukwe v. Ogunbiyi* (1998) 8 NWLR (Pt.561) 339 at 352. The legal proof of the fact that the 3rd respondent bought E the 1st respondent company is not one that can just rest on mere viva voce evidence. Such is just not enough. There must be documents from the Corporate Affairs Commission placed before the court to sustain oral evidence of purchase of one company by another F company. The court below- considered the core issue and found as follows:-

"The acquisition of shares in companies and take over of one company by another are matters regulated by Company and Allied Matters Act. The transfer of shares or allotment of shares in a limited liability company must be registered and appropriate papers filed. It is not just a question of removing one company's signboard and replacing it with another..."

To put it bluntly, there was no credible evidence that the 3rd respondent acquired the liability of the 1st respondent. And so, the H basic fabric of the appellants' claim collapsed. The appellants who had the burden of proof to establish their claim failed to do so. The claim was rightly dismissed by the trial court and duly affirmed by the court below. See: *Elias v. Disu* (1961) All NLR (Pt.1) 215.

For the above reasons and the detailed ones set out in the lead

judgment, I too feel that the appeal has no chance for success. I hereby dismiss the appeal, as well, with no order on costs.

ADEKEYE JSC

I have read in draft the judgment just rendered by my learned brother Bode Rhodes-Vivour, JSC. The common factor and the core issue in the appeal of the appellants before this court is to determine whether the appellants discharged by credible evidence before the two lower courts that the 3rd respondent Eureka Metals Limited acquired the liability of the 1st respondent to make it liable to the plaintiffs/appellants.

The 1st respondent-Western Steel Works Limited originally employed the appellants - 268 in number and laid them off on the 1st of July, 1982. The appellants filled this action on the assumption that the companies had changed hands. The 1st defendant had been transferred to Eureka Metals Limited (3rd defendant). They were sitting in front of the factory when the 1st defendant's name was replaced with Eureka Metals Limited. The appellants believed that the 3rd defendant bought the 1st defendant.

I regard the central issue in this appeal as simple and straight forward. It is indeed not necessary to belabor the issue. The answer is not to be based on conjecture or speculation as it is a clear issue of company Law. A body corporate is a juristic person. It has a legal personality and can be an occupier of premises. It can sue and be sued in its corporate name. It also has the capacity to enter into any agreement in its corporate name. In order to prove this corporate status of a Company, one must produce a Certificate of Incorporation in respect of the company. It has to be ascertained whether the 1st respondent simply changed its name, or the 3rd respondent completely bought over the assets and liabilities of the 1st defendant. There are steps to be taken to this effect under the Company and Allied Matters Act, with the approval of the Corporate Affairs Commission. The appellants failed to adduce particularly documentary evidence in support of their propriety to sue the 3rd respondent based on the latter's acquisition of the 1st respondent. There is no credible evidence before the court that the 3rd respondent bought the assets and liabilities of the 1st respondent. *Anyaegbunam vs. Osaka (2000)*

3 SC 1, N.N.P.C vs. Lutin Investment Ltd. (2006) 2 NWLR pt.965, pg. 506, A.C.B Plc vs. Emostrate Ltd (2002) 8 NWLR, pt.770, pg.501.

Section 146 of the Evidence Act Cap E14 Laws of the Federation 2004 stipulates that:-

B *“When the question is whether any person is owner of any thing of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.*

C The foregoing Section of the Evidence Act is conspicuously irrelevant to the issue under consideration.

I cannot but quote from the judgment of the Court of Appeal, that portion of the findings which answers the question raised in this appeal that:-

D *“The acquisition of shares in Companies take-over of one company by another are matters regulated by Company and Allied Matters Act. The transfer of shares or allotment of shares in a limited liability company must be registered and appropriate papers filed. It is not just a question of removing one company’s signboard and replacing it with another. It was therefore to be expected that documents from Corporate Affairs Commission would be placed before the lower court to enable it determine whether or not the 1st defendant company had been acquired by the appellant”.*

F With fuller reasons given in the lead judgment, I agree that the appeal lacks merit. I also dismiss it with no order as to costs.

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