

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2013) KLR VOL 8-12 PART 336 pp. 3895-4152

AUGUST - DECEMBER 2013

Dedicated to the King of kings

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INDEX OF CASES REPORTED

AUGUST - DECEMBER

1. Akeredolu v. Mimiko p. 3895 (Aug)
2. Amobi v. Nzegwu p. 3953
3. Babarinde v. State p. 3995
4. Nigerian Bottling Co. Plc v. Ubani p. 4027
5. Oke v. Mimiko p. 4077 (Aug)
6. U.T.C. Nig. Plc. v. Lawal p. 4133

ii **INDEX OF SUBJECT MATTER IN (2013) 8-12 KLR**

ADMINISTRATION OF ESTATES - Court - Jurisdiction - From the address available to court - The deceased lived and owned property in Lagos - Within jurisdiction of the trial court (H3) *Amobi v. Nzegwu* p. 3953

ADMINISTRATION OF ESTATES - Letter of administration - Grant - HC has wide powers to make the grant - And where application for grant is not specific - The court may by Administration of Estate Law s. 22 - Limit the grant as it sees fit (H5) *Amobi v. Nzegwu* p. 3953

APPEALS - Concurrent findings - Damages - Award of - No ground exists for Supreme Court to interfere with award of N15 million - As there is no credible case - That the amount is ridiculously high (H17) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

APPEALS - Court - Finding - Correctness of - Supreme Court will not interfere with the finding of CA - On the available evidence before the trial court - That is not considered to be perverse (H4) *Amobi v. Nzegwu* p. 3953

APPEALS - Court - Obiter dictum - Remarks by the trial Judge on prosecuting appellant for bigamy - Constitute obiter dicta - And cannot form the basis of appeal (H10) *Amobi v. Nzegwu* p. 3953

APPEALS - Evidence - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) *Oke v. Mimiko* p. 4077

APPEALS - Evidence - Reevaluation - Appellate court would be in as good a position as trial court had been - To reappraise documentary evidence - Since doing so does not involve credibility of witness (H2) *U.T.C. Nig. Plc. v. Lawal* p. 4133

APPEALS - Fresh issue - Raised without leave - Fate - Issue 5 not having been taken in lower courts - Cannot be competently raised in SC - Without leave of the court (H19) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

APPEALS - Grounds - From which no issue arose - Fate - As no issues have been raised from grounds 5 & 6 - The grounds must be deemed as having been abandoned by appellant (H14) Nigerian Bottling Co. Plc v. Ubani p. 4027

APPEALS - Grounds of appeal - Validity - Counsel's argument - Appellant's grounds 2, 3, 6 & 10 are incompetent - Having arisen from statement of counsel - That was found incorrect by the court (H1) Akeredolu v. Mimiko p. 3895

APPEALS - Issues - Abandonment - Issue 5 is deemed abandoned as no argument was proffered by appellant under it - As such the issue is struck out having been abandoned (H18) Nigerian Bottling Co. Plc v. Ubani p. 4027

APPEALS - Issues - Basis - Issues must fall within grounds of appeal - And grounds must relate to decision appealed against - And should be a challenge to validity of ratio of that decision (H6) Amobi v. Nzegwu p. 3953

APPEALS - Issues - Different from case - Where party has premised his case on issue that does not cover his case - His arguments under the said issue literally goes to no issue - And is liable to be struck out (H16) Nigerian Bottling Co. Plc v. Ubani p. 4027

APPEALS - Issues - Failure to raise - Question of entitlement to general damages was not raised under any of appellant's issue - Hence submissions made in that regard - Go to no issue and ought to be discountenanced (H13) Nigerian Bottling Co. Plc v. Ubani p. 4027

APPEALS - Issues - Objection - Not challenged - Appellant must be deemed as having known respondent's stance on the issue - Since the brief containing the objection was served on it - And it made no effort to counter the objection (H15) Nigerian Bottling Co. Plc v. Ubani p. 4027

APPEALS - Issues - Purpose - Issues are formulated to enable parties

iv **INDEX OF SUBJECT MATTER IN (2013) 8-12 KLR**

narrow the matter in controversy in the appeal - In the interest of clarity and brevity (H2) *Akeredolu v. Mimiko* p. 3895

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused took part in the armed robbery (H5) *Babarinde v. State* p. 3995

COURT PROCESSES - Service - Defect in - By Cross River HC Rules O. 2 rr. 1 & 2 - Defect in service amounts to non compliance - And the irregularity is deemed as waived - Where party after being aware of same - Took further steps in the proceedings (H1) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

COURT PROCESSES - Service - Defect in - Waiver - Effect - Appellant having let go of its right is not allowed to resurrect same in SC - As the right is deemed waived - And it cannot rely on same to set aside service on it (H5) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

COURT PROCESSES - Service - Validity - The State HC Rules has relaxed mode of service on company - Hence service on the depot manager is proper - Since he is principal officer served within jurisdiction (H4) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

COURT PROCESSES - Service on company - Mode of - By virtue of CAMA s. 78 - Service must comply with the rules of the particular court prevailing in the jurisdiction (H3) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

COURTS - Competence - Basis - Court is competent to hear matter - When the subject matter is within its jurisdiction - No feature in the case prevents it from exercising jurisdiction - And is properly constituted as regards its members (H2) *Amobi v. Nzegwu* p. 3953

CRIMINAL PROCEDURE - Contradictions - Effect - It is only contradictions that are substantial and fundamental to main issue - That would be fatal to prosecution's case (H7) *Babarinde v. State* p. 3995

CRIMINAL PROCEDURE - Conviction - Offensive weapon - Where such weapon was used in commission of offence - It is not essential to tender it to secure conviction - Provided there is cogent eye witness or circumstantial evidence - That points to guilt of accused (H6) Babarinde v. State p. 3995

CRIMINAL PROCEDURE - Judicial bias - Comments made by the trial Judge in his ruling on voluntariness of appellants' statements - Did not show a likelihood of bias against appellants - In respect of the substantive trial (H1) Babarinde v. State p. 3995

CRIMINAL PROCEDURE - Proof - Number of witness - Evidence of single witness can ground a conviction - Where the evidence is credible and cogent - Provided that corroboration is not required (H4) Babarinde v. State p. 3995

CRIMINAL PROCEDURE - Trial within trial - Purpose - It is mini trial conducted to determine - Whether or not confessional statement of accused was made voluntarily (H2) Babarinde v. State p. 3995

DAMAGES - General damages - Trespass - Plaintiff who has by evidence established that defendant is a trespasser - Is entitled without more to general damages for trespass (H8) Nigerian Bottling Co. Plc v. Ubani p. 4027

DAMAGES - General damages - Where plaintiff pleaded and gave particulars of special damages - He is entitled to be granted relief over and above general damages awarded (H10) Nigerian Bottling Co. Plc v. Ubani p. 4027

DAMAGES - Special damages - When plaintiff has suffered specific losses as to his income - In addition to general damages on account of trespass - He can claim the losses by way of special damages (H9) Nigerian Bottling Co. Plc v. Ubani p. 4027

DOCUMENTS - Admissibility - Mere fact that Exhibits E, F & C were prepared during pendency of suit - Does not render them inadmissible - As it has not been shown that the maker has financial or tainted

vi **INDEX OF SUBJECT MATTER IN (2013) 8-12 KLR**

interest - In the outcome of the case (H11) Nigerian Bottling Co. Plc v. Ubani p. 4027

DOCUMENTS - Made during pendency of suit - Fate - By EA s. 91 - Such document is inadmissible for it is capable of gross abuse to advantage of maker - Whose interest negates principle of fair hearing (H12) Nigerian Bottling Co. Plc v. Ubani p. 4027

ELECTION PETITIONS - Crime - Proof - Appellants are to prove criminal acts of infraction of the Electoral Act - Based on proof beyond reasonable doubt (H1) Oke v. Mimiko p. 4077

ELECTION PETITIONS - Electoral Act - Non compliance - Proof - Petitioner must not only prove that there was non compliance - But that the same substantially affected result of the election (H2) Oke v. Mimiko p. 4077

ELECTION PETITIONS - Evidence - Hearsay - Under Electoral Act s. 45(2) - PW45 is not qualified to testify to what happened in disputed units - Other than the one he was physically available (H5) Oke v. Mimiko p. 4077

ELECTION PETITIONS - Tribunal - Jurisdiction - Voters register - Trial tribunal can determine issues on the register - Since there cannot be dichotomy between the register - And what transpired at contest grounds of the election (H6) Oke v. Mimiko p. 4077

ELECTION PETITIONS - Voters register - Objection to - To impugn content of the register - Court must be presented with something - To compare with what was available and in use - And what the proper register should be (H3) Oke v. Mimiko p. 4077

ELECTIONS - Crime - Allegation of - Proof - By Evidence Act s. 135(1) - Appellant must prove the alleged manipulation of voters' register - And the effect it had on the election result (H3) Akeredolu v. Mimiko p. 3895

ELECTIONS - Tribunal - Jurisdiction - It is the use of the allegedly

manipulated voters' register at the election - As distinct from the act of the alleged manipulation - That the tribunal had jurisdiction to entertain (H5) *Akeredolu v. Mimiko* p. 3895

EVIDENCE - Admissibility - Evidence Act s. 91(3) does not support appellant's case - And Exhibits 4, 5, 6 & 7 are admissible - Since the maker acted in official capacity - And not as a person interested (H1) *U.T.C. Nig. Plc. v. Lawal* p. 4133

EVIDENCE - Expert opinion - Admissibility - Court is not bound to accept evidence of any expert - Even one who has not disclosed motive - Other than helping the court in the quest for justice (H4) *Akeredolu v. Mimiko* p. 3895

EVIDENCE - Pleadings - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special damages - Recoverable by respondent - As the evidence was admitted without objection (H6) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

IDENTIFICATION PARADE - When not necessary - The parade is not necessary where suspect is caught at crime scene - Where accused identified himself by his confession - Or where there is circumstantial evidence showing his involvement in the offence (H3) *Babarinde v. State* p. 3995

JUDICIAL PRECEDENTS - Stare decisis - Principle of - It states that lower courts are bound to follow principles of law - Established in prior cases by superior courts - As such helps to steady justice on its proper course (H2) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

JURISDICTION - Fundamentality - Jurisdiction is threshold issue that must first be resolved - Since if court lacks jurisdiction to hear a matter - The entire proceedings no matter how well conducted would amount to nullity (H1) *Amobi v. Nzegwu* p. 3953

MATRIMONIAL CAUSES - Family law - Divorce - Decree nisi - MC Act s. 58(4) - 1st respondent remains deceased lawful wife - As a decree nisi shall not become absolute by force of the section - Where

viii **INDEX OF SUBJECT MATTER IN (2013) 8-12 KLR**

one of the parties has died (H9) *Amobi v. Nzegwu* p. 3953

PLEADINGS - Amendment - Validity - Amendment is allowed provided that averments are material - And intends to bring out real issues in controversy between parties before court - In order to avoid multiplicity of actions (H7) *Nigerian Bottling Co. Plc v. Ubani* p. 4027

STATUTES - Interpretation - Where words of statute are unambiguous - They must be given their ordinary meaning - Except where this would lead to absurdity (H8) *Amobi v. Nzegwu* p. 3953

SUPREME COURT - Fresh issues - Raised without leave - Appellant cannot raise the issues for first time in the court without leave - And submission upon the said issues are discountenanced (H7) *Amobi v. Nzegwu* p. 3953

INDEX OF STATUTES & RULES

Administration of Estates Law Cap. 3 Laws of Lagos State 1994, s. 22 *Amobi v. Nzegwu* p. 3953

Companies & Allied Matters Act (CAMA) Cap. 220 LFN 1990, s. 78 *Nigerian Bottling Co. Plc v. Ubani* p. 4027

Constitution of the Federal Republic of Nigeria 1999, s. 241(1)(f)(i) *Amobi v. Nzegwu* p. 3953, s. 285(2) *Oke v. Mimiko* p. 4077, s. 36(4)(5) *Babarinde v. State* p. 3995

Cross-River State High Court (Civil Procedure) Rules 1987, O. 2 rr. 1 & 2, O. 12 r. 8 *Nigerian Bottling Co. Plc v. Ubani* p. 4027

Electoral Act 2010, s. 139(1) *Akeredolu v. Mimiko* p. 3895, ss. 19, 20, 21, 45(2), 138(1), 139(1) *Oke v. Mimiko* p. 4077

Evidence Act 1990, s. 91(3) *Nigerian Bottling Co. Plc v. Ubani* p. 4027, s. 91(3) *U.T.C. Nig. Plc. v. Lawal* p. 4133

Evidence Act 2011 (as amended), s. 83(1) *U.T.C. Nig. Plc. v. Lawal* p. 4133, s. 37(a) *Babarinde v. State* p. 3995, ss. 33(3), 68(1), 135(1) *Akeredolu v. Mimiko* p. 3895

Evidence Law Cap. 39 Laws of Lagos State of Nigeria 1973, s. 90(3) *U.T.C. Nig. Plc. v. Lawal* p. 4133

High Court of Lagos State (Civil Procedure) Rules 1994, O. 58 r. 1 (1) *Amobi v. Nzegwu* p. 3953

Marriage Act, s. 39 *Amobi v. Nzegwu* p. 3953

Matrimonial Causes Act, s. 58(1)(b)(4) *Amobi v. Nzegwu* p. 3953

Penal Code, ss. 96, 97 *Babarinde v. State* p. 3995

x INDEX OF STATUTES & RULES IN (2013) 8-12 KLR

Probates (Re-Sealing) Act, ss. 2, 6 Amobi v. Nzegwu p. 3953

Robbery & Firearms (Special Provisions) Act Cap. R11 LFN 2004, s. 1(2) Babarinde v. State p. 3995

Supreme Court Rules, O. 6 r. 5(i)(b) Oke v. Mimiko p. 4077

CORRIGENDA

We are sorry for some mistakes in the Last Book, (2013) 7 KLR (pt. 335) which are rectified in the present book and which we trust should not reoccur.

1. Our usual underlining especially of the first two words of HELD and NOTABLE POINTS OF INTEREST inside the text from where they are lifted were omitted.

2. Our E-mail address on the back cover was mistakenly typed by removing 1993. Our correct E-mail is - kingslawrep1993@yahoo.com

AND any other error you may observe.

We regret every inconvenience caused by the said mistakes.