

COURT OF APPEAL LAGOS DIVISION
WEDNESDAY 28TH MAY, 2014. CA/L/424/08
CORAM:- J. S. IKYEGH, C. E. IYIZOBA, S. C. OSEJI, JJCA

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| 1. ALHAJI ABDULA-RAUF TIJJANI | |
| 2. TUNDOKUN INVEST CO. LTD | APPELLANTS |
| 3. TUNDOKUN NIG. ENT. LTD | |
| AND | |
| 1. FIRST BANK OF NIGERIA LTD | |
| 2. YETUNDE KESHINRO | RESPONDENTS |
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EVIDENCE - Credibility - Test of - It is at trial that witnesses are called
- Examined in chief and cross examined - To test the veracity of their claims and contentions (H1)

ACTIONS - Perjury - Allegation of - Being a criminal offence provided under the CC - The allegation is not determined by mere affidavit evidence - But by filing a charge in court (H2)

FACTS

Before the High Court of Lagos State, plaintiffs/appellants commenced this action against defendant/1st respondent, claiming the sum of N700,000.00 as damages for defamation. 1st and 2nd appellants are customers of 1st respondent. The said appellants applied for credit facility. By an internal memorandum of 1st respondent, a query was issued to one Mrs. Adisa to explain why disciplinary action would not be taken against her for recommending that fresh application of 1st appellant as the prime mover of 2nd appellant for credit facility be granted when the said 1st appellant had under a different name (Abdul Rauf Ademola Adedokun) applied for loan under the name of 3rd appellant which loan was not repaid and was written off.

2nd respondent was not a party to the case at trial, but as sole witness to 1st respondent, swore to a witness statement wherein she denied some allegations of facts asserted by appellants. Upon the sworn depositions of 2nd respondent, appellants by Motion on Notice supported by affidavit sought for commitment of 2nd respondent for contempt of court and expunging of 2nd respondent's statement on oath from records of the court. In its counter-affidavit, 1st respon-

dent denied the allegation of contempt and contended that appellants followed a wrong procedure in the application for contempt. In his ruling, the learned trial Judge dismissed the application. He held that it is unjust to strike out the statement of sole witness of 1st respondent before commencement of trial. The court also held that appellants did not follow proper procedure for application for contempt. Aggrieved, appellants appealed to the Court of Appeal, wherein 1st appellant who is not a lawyer took over the prosecution of the appeal.

ISSUE FOR DETERMINATION

Whether the Ruling of Honourable Justice L. G. A. Marsh delivered on the 17th day of April, 2008 was not correct in holding the 2nd Respondent not liable for perjury her witness statement having not been admitted in evidence?

HELD (Unanimously dismissing the appeal per

YIZOBA JCA)

EVIDENCE - Credibility - Test of

1. From the facts before the court, it is clear that at the stage the Appellants filed their application for committal of the 2nd Appellant to prison for perjury and for expunging of her sworn deposition from the records of court on the ground that they are false, trial has not commenced in the matter. At this stage parties have only filed the necessary processes as required under the Rules of Court to give each other notice of the case they are to meet at the trial. It is at the trial of the case that witnesses will be called, examined in chief and cross-examined to test the veracity of their claims and contentions of each side. It is at the end of this that the trial court will form its opinion as to who is telling the truth and whom to believe. Prior to trial, it will be wrong and premature for the court or any other person to make up its mind about which of the two sides is correct and credible and who is telling lies. It therefore means that at the stage the Appellants filed their application for committal of the 2nd Respondent, it was premature for them to do so. It is also very wrong for a party, prior to

trial, to allege that the contents of the witness deposition of his opponent are false and for that reason seek that the said witness deposition be expunged from the records. That will amount to shutting out the adverse party from presenting his case before the court and may even amount to breach of the right to fair hearing. Parties must be afforded the opportunity of presenting their case before the court at trial and have their matters determined on the merits.

It is after the case is presented that the trial Judge will not only assess the evidence given and determine its veracity but will also apply the rules of procedure and evidence at the trial to determine which is admissible and credible and which is not. It will thereafter make up its mind about the veracity of each parties case.

It will be seen from paragraphs 12 to 14 of the Appellants affidavit set out above that the Appellants only show that the case being presented by the Respondents is contrary to their case. That is not sufficient for a court to find that the 2nd Respondent perjured until her evidence is tested at trial and found to be false. (p. 2653 G)

ACTIONS - Perjury - Allegation of

2. Even if the Appellants want the 2nd Respondent to be punished for perjury after trial, it should not proceed against the 2nd Respondent merely by filing a Motion on Notice but must lodge a formal complaint against her with the appropriate law enforcement agency which should follow the due process in investigating and prosecuting her by filing a charge against her in a court of law. It follows that the trial Judge was very right when he held that:

“The mode in which the Applicant wants the alleged contemnor to be committed, to me, is unknown to law. To ask that the Applicant be committed to prison for perjury without a proper charge having been preferred against her and being given an opportunity to state her case and the alleged perjury not having been tried and confirmed by a trial Judge, is to me jungle justice.”

It must be stated that perjury is a criminal offence pro-

vided for in the criminal code. Such serious matters are not determined merely by affidavit evidence as the Appellants wanted the trial court to do in this case.

In the light of what I have said above, this issue is answered in the negative. I find this appeal unmeritorious. It is hereby dismissed. I make no order as to costs. (p. 2654 G)

REPRESENTATION

ALHAJI A. R. TIJJANI (in person), for the Appellants

C IKECHUKWU EGWU ESQ., for the Respondents

RULES REFERRED TO

High Court of Lagos State (Civil Procedure) Rules 2004

LEAD JUDGMENT BY IYIZOBA JCA

D This is one among the several disputes that have arisen between the parties herein arising from banker customer relationship which has turned sour. The 1st and 2nd Appellants are customers of the 1st Respondent and applied for some credit facility. By an internal memorandum of the 1st Respondent dated 28th November, 2002, a query was issued to a certain Mrs. M. Adisa to explain why disciplinary action would not be taken against her for recommending that fresh application of the 1st Appellant as the prime mover of the 2nd appellant for credit facility be granted when the said 1st Appellant had under a different name: Abdul Rauf Ademola Adedokun applied for loan under the name of the 3rd Appellant which loan was not repaid and was written off. Upon becoming aware of this internal memorandum, the Appellant sued the 1st Respondent for libel claiming
E N700, 000,000.00 as damages for the defamation. Parties, in accordance with the High Court of Lagos State (Civil Procedure) Rules 2004 applicable at the time front loaded their documents. The 2nd Respondent in this appeal was not a party to the case but as the sole witness of the Respondent swore to a witness statement dated 27th
F September, 2007 wherein she denied some allegation of facts asserted by the Appellant in their pleadings and sworn statement.

H Following the filing of the sworn deposition of the 2nd Respondent, the Appellants by a Motion on Notice dated 24th October, 2007 applied to the trial court for the following reliefs:

“1. An Order of this Honourable Court committing Yetunde Keshinro for contempt of court.

2. An order of this Honourable Court expunging the statement on oath of Yetunde Keshinro sworn on 24th September, 2007 from the records of this Honourable Court.”

In the affidavit in support of this application, the Appellants referred to certain averments in their pleadings and depositions and the documents they front-loaded in support of their case and then deposed further as follows:

“12. That in spite of the foregoing facts which are verifiable and well established and settled in the various documents referred to in paragraphs 7 to 12 above the person sought to be committed acting in concert with the Defendant and its Solicitors falsely stated in her Statement on Oath as follows:

‘4. The Defendant has no record of the existence of any such account referred to in paragraph 6 of the Statement of Claim.

9. I state categorically that the statements contained in paragraphs 14, 15, and 16 of the statement dated 28th February 2007 are not true. Our Bank never agreed with any of the Claimants to work out any interest on any fixed deposit, let alone putting the value of N2.2 Million let alone using it to amortize the indebtedness of the 2nd Claimant.’

13. That the person sought to be committed deliberately swore to the false facts reproduced in paragraph 12 above with the sole aim of deceiving and misleading the Presiding Judge in this Suit in performing his judicial duty of ensuring a just and effective administration of justice.

14. That the person sought to be committed by knowingly swearing to the aforesaid false facts reproduced in paragraph 12 above intended to interfere with the effective administration of justice in this Suit and thereby impede and pervert the course of justice.”

The Respondents filed a counter-affidavit denying the allegation of contempt. Arguing the application before the trial court the Appellants’ learned counsel contended that the 2nd Respondent by falsely swearing to the statement on oath has committed perjury. This according to him amounted to contempt in the face of the court which the trial court must punish as prayed in the Motion paper. The Respondents on their part argued that the Appellants followed a

wrong procedure and ought to have issued forms 48 and 49 instead of applying for committal by mere Motion on Notice. They also argued that there was no contempt actually committed by the 2nd Respondent. In his ruling the trial Judge dismissed the application holding that it will be unjust to strike out the statement of the sole witness of the 1st Respondent in the circumstance and that the Appellants did not follow the proper procedure in seeking to commit the 2nd Respondent for contempt.

The Appellants being dissatisfied filed a notice of appeal with three grounds of appeal. Thereafter the 1st Appellant who is not a legal practitioner took over the prosecution of the appeal. Parties filed and exchanged their briefs of arguments and the Appellant filed a reply brief. The Appellants formulated four issues for determination in the appeal which are as follows:

“1. *Whether the Court of Appeal has power to entertain the Ruling delivered out of jurisdiction in the instant appeal?*

2. *Whether the provision of law is formulated to facilitate serious accusation of criminal offences against fellow citizens in courts made recklessly, carelessly whether the allegations are true or false?*

3. *Whether or not the Appellants/Claimants have right to institute an action and prosecute the person sought to be committed to prison in the court of law and in this Appellate Court?*

4. *Whether this Hon. Court of Appeal have competence and jurisdiction to re-hear the Argument of both parties on this perjury charge against the contemnor and give final Judgment?”*

The Respondent on their part formulated two issues for determination which are as follows:

1. Whether the issues as formulated by the Appellants in their brief of argument dated 28th February, 2012, emanates from the extant Grounds of Appeal?

2. Whether the Ruling of Honourable Justice L. G. A. Marsh delivered on the 17th day of April, 2008 was not correct in holding the 2nd Respondent not liable for perjury her witness statement having not been admitted in evidence?

As contended by the Respondents in their brief of argument, all the issues formulated by the Appellants did not arise from their grounds of appeal. This is a direct consequence of the decision of the 1st Appellant who is not a legal practitioner to conduct this appeal by

himself. It has been very difficult to follow the trend of the arguments made by the Appellants in support of the appeal. For instance under issue 1, the Appellants argued that the Respondents filed their defence out of time and that when their counsel moved motion to regularize which was not opposed, he undertook to pay the penalty within twenty four hours subsequently but failed to do so until he was compelled by the trial Judge to pay the penalty much later. He then contended that this has rendered null and void the processes filed by the Respondents and the ruling of the trial court in the appeal in this case. Also arguing issues 2 and 3 together, the Appellants contended that every citizen has the right to institute action to protect his reputation. These have nothing to do with the subject matter of this appeal. Under issue 4 the Appellants made reference to certain sections of the Central Bank of Nigeria Act, 2007 and the Banks and Other Financial Institutions Act, 1991 as amended on the consequence of person giving false information to argue that the 2nd Respondent knowingly made false declarations which amounted to criminal offences.

Ordinarily one should have simply struck out this appeal on the ground that the grounds of appeal have been abandoned as the arguments canvassed in the Appellants' brief do not relate to the grounds of appeal but having regard to the fact that the 1st Appellant is not a lawyer, I will overlook this defect and examine the merits of the appeal as much as I can do based on the materials before me particularly as the arguments of the Appellants do not relate to the real issues in contention.

In doing so I will adopt the second issue formulated by the respondent for determination in this appeal which is:

Whether the Ruling of Honourable Justice L. G. A. Marsh delivered on the 17th day of April, 2008 was not correct in holding the 2nd Respondent not liable for perjury her witness statement having not been admitted in evidence?

From the facts before the court, it is clear that at the stage the Appellants filed their application for committal of the 2nd Appellant to prison for perjury and for expunging of her sworn deposition from the records of court on the ground that they are false, trial has not commenced in the matter. At this stage parties have only filed the necessary processes as

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In the light of what I have said above, this issue is answered in the negative. I find this appeal unmeritorious. It is hereby dismissed. I make no order as to costs.

IKYEGH JCA

I read before now the judgment prepared by my Learned brother, Chinwe Eugenia Iyizoba, J.C.A., with which I agree with nothing extra to add.

OSEJI JCA

I have had a preview of the lead judgment just delivered by my learned brother, C.E. Iyizoba JCA. I am in complete agreement with the reasoning and conclusion reached therein.

For the same good reasons articulated in the lead judgment which I adopt as mine, I hold that this appeal lacks merit and it is accordingly dismissed. I abide by the consequential orders made in the lead judgment including the order as to costs.

H