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Dedicated to the King of kings

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COURT OF APPEAL

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2. Nitel Trustees Ltd. v. Syndicated Investment Holdings Limited p. 2837 CA

CORAM: We apologise for the error in the back covers of 2014 Pts. 347 & 348 KLR that contain "SUPREME COURT - Original jurisdiction -" which is a subject index of 2014 Pt. 345 KLR.

ACTIONS - Computation of time - Saturday - It is not one of the days designated as a public holiday - Under Public Holidays Act - It is only a work free day (H6) Etsako West L.G. Council v. Christopher p. 2699

ACTIONS - Computation of time - The day of happening of an event is excluded - Where a period is reckoned from that event - As Computation starts from the next day after the event (H5) Etsako West L.G. Council v. Christopher p. 2699

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ACTIONS - Proof - Standard of - Civil cases are based on balance of probabilities - And onus rests on party who asserts the affirmative - Except in peculiar instances (H3) Okoye v. Nwankwo p. 2717

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APPEALS - Court of Appeal - Power - Court of Appeal Act s. 16 - CA can exercise its full jurisdiction over the whole proceedings - As if the same has been instituted in the court - As court of first instance (H8) Etsako West L.G. Council v. Christopher p. 2699

APPEALS - Courts - Findings - Correctness of - Trial court's findings with respect to the disputed land and the one in 1957 suit - Was based on pleadings and evidence before it (H12) Onovo v. Mba p. 2761

APPEALS - Criminal procedure - Fair hearing - Appellant was not denied fair hearing - Since while considering respondent's issue 2 - CA considered appellant's defences in his issues 3, 4 and 5 (H2) Emeka v. State p. 2675

APPEALS - Date - Jurisdiction - Proceedings of CA on 7/5/2005 in the matter is a nullity - As the court was bereft of jurisdiction in the matter on that day - Two days service interval not having elapsed (H7) Etsako West L.G. Council v. Christopher p. 2699

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EVIDENCE - Material contradictions - Effect - The various contradictions in appellants' case - And their admission in favour of respondents - Constitute an admission against appellants' interest (H10) Onovo v. Mba p. 2761

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LAND LAW - Possession - Proof - By admitting that plaintiff is in possession of disputed land - Onus of proving that those in admitted possession were not the owners - Shifted to defendants (H6) *Okoye v. Nwankwo* p. 2717

LAND LAW - Title - Original owner - Onus of proof - The parties having agreed that original ownership is in plaintiff - Burden of proving that they have been divested of title - Rests upon defendants (H7) *Okoye v. Nwankwo* p. 2717

LAND LAW - Title - Possession - CA rightly stated that judgment in the 1957 suit did not confer title on appellants - Hence the suit cannot sustain plea of *res judicata* - Or be relied upon as evidence of acts of possession (H15) *Onovo v. Mba* p. 2761

LAND LAW - Title - Proof - Means - *Idundun v. Okumagba* - Title can be established by traditional evidence - Acts of ownership - Production of document of title - Long possession - And possession of adjacent land (H7) *Onovo v. Mba* p. 2761

LAND LAW - Title - Proof - Onus - Is on plaintiff who seeks declaration of title - To start the process of testimony - Thereafter defendant proffers his evidence in defence (H2) *Okoye v. Nwankwo* p. 2717

LAND LAW - Title - Proof - Onus lies on plaintiffs to establish their claim on the strength of their own case - And not rely on the weakness of defendants (H2) *Onovo v. Mba* p. 2761

LAND LAW - Title - Proof - Possession - A person in possession is presumed the owner - But an adverse claimant must show that the party in possession - Occupies without consent - Or is a tenant (H8) Onovo v. Mba p. 2761

LAND LAW - Title - Traditional history - Weight - Where plaintiff and defendant prove ownership by traditional history - Court is to appraise their evidence - And determine which side is weightier (H13) Onovo v. Mba p. 2761

LAND LAW - Title - When in issue - With appellants' claim originating in trespass and injunction - Title of the subject matter is automatically put in issue (H5) Onovo v. Mba p. 2761

LAND LAW - Trespass - Possession - Proof - Plaintiffs in a claim for trespass - Must prove exclusive possession of the land in dispute - Otherwise their claim fails (H14) Onovo v. Mba p. 2761

MOTIONS - Hearing - Time - General practice in courts is that two clear days interval - After confirmation of service on defendant - Must lapse before motion can be entertained (H2) Etsako West L.G. Council v. Christopher p. 2699

PLEADINGS - Purpose of - It affords opponent opportunity of knowing the case to meet at trial - And all facts relied upon by party before court - Must be pleaded in numbered paragraphs (H4) Okoye v. Nwankwo p. 2717

RES JUDICATA - Land law - Title - Proof - Appellants must inter alia prove - That respondents have no share of Akpa land - That the disputed land and parties in both suit are same (H6) Onovo v. Mba p. 2761

COURT OF APPEAL

APPEALS - Multiple filing - Several appeals can be filed in a case - It is for parties to raise the issue before court - To proceed either by way of consolidation or as separate appeals heard together (H1) Nitel Trustees Ltd. v. Syndicated Inv. Holdings Ltd p. 2837 CA

APPEALS - Respondent's notice - Filing - Respondent cannot challenge judgment of lower court given in his favour - Without first filing a cross appeal or respondent's notice (H7) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Liability - Declaration of value - Form of - The declaration is more than mere presentation of sales invoice - But ought to be in writing on airway bill (H6) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Liability - Is limited to 17 special drawing rights per kilogram - Unless consignor made special declaration of interest - In delivery at destination (H2) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Liability - Negligence - Is inapplicable under Montreal Convention - Hence it was wrong to hold that there was no limitation of liability - On failure to rebut negligence (H4) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Liability - Negligence - Proof - Claimant must plead and prove act that amounted to negligence - And that carrier knew that damage would probably result (H5) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Limitation of liability - Extent of - Respondents' entitlement is in accordance with Montreal Convention s. 22(3) - And also cost for freight charges - Properly pleaded and proved (H11) Emirate Airlines v. Aforka p. 2807 CA

CARRIAGE BY AIR - Freight - Limitation of liability - When applicable - Where carrier has taken control of cargo and issued airway bill - Any loss from then on is covered by the convention and limitation clause (H3) *Emirate Airlines v. Aforka* p. 2807 CA

CARRIAGE BY AIR - Freight - Regulations - Montreal & Warsaw conventions had objectives of - Unifying the applicable Rules to ensure inter alia - A uniform standard of international air transport (H1) *Emirate Airlines v. Aforka* p. 2807 CA

CARRIAGE BY AIR - Negligence - Res ipsa loquitur - Pleadings - The doctrine is pleaded either specifically - Or by making it known that plaintiff intends to rely on the loss - As evidence of negligence (H12) *Emirate Airlines v. Aforka* p. 2807 CA

CONTRACTS - Breach - Damages - Claims for both special and general damages are not appropriate - In action for breach of contract - Except where there is agreement by parties to that effect (H9) *Emirate Airlines v. Aforka* p. 2807 CA

CONTRACTS - Breach - Special and general damages - Award of both damages amounts to double compensation - And is not allowed (H10) *Emirate Airlines v. Aforka* p. 2807 CA

CONTRACTS - Debt - Interest - Interest is not recoverable at common law on ordinary debt - In the absence of express or implied contract - Or some mercantile usage (H2) *Nitel Trustees Ltd. v. Syndicated Inv. Holdings Ltd* p. 2837 CA

CONTRACTS - Interest - Failure to plead - Award of 21% interest rate is erroneous - As respondent neither pleaded nor led evidence - On its entitlement to the interest (H5) *Nitel Trustees Ltd. v. Syndicated Inv. Holdings Ltd* p. 2837 CA

DAMAGES - General damages - Failure to claim - Award of the general damages not claimed by respondents is wrongful - As there is no indication as to how the trial Judge arrived at figures awarded (H8)

Emirate Airlines v. Aforka p. 2807 CA

EQUITY - Contracts - Debt - Interest - Where there is breach of contract - In which debtor unjustly holds on to creditor's money - It is equitable that the money be returned with interest (H3) Nitel Trustees Ltd. v. Syndicated Inv. Holdings Ltd p. 2837 CA

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INDEX OF STATUTES & RULES

Constitution of the Federal Republic of Nigeria 1999, s. 36 Etsako West L.G. Council v. Christopher p. 2699

Court of Appeal Act, s. 16 Etsako West L.G. Council v. Christopher p. 2699

Court of Appeal Rules, O. 3 r. 23, O. 6 r. 10 Etsako West L.G. Council v. Christopher p. 2699

Evidence Act 2011, ss. 131-133 Onovo v. Mba p. 2761

Evidence Act LFN 1990, ss. 131-140 Okoye v. Nwankwo p. 2717

High Court of Edo State (Civil Procedure) Rules 2012, r. 1(2) Etsako West L.G. Council v. Christopher p. 2699

High Court Rules of Anambra State 1988, O. 24 rr. 17(1) - 17(3) Okoye v. Nwankwo p. 2717

Interpretation Act Cap 123 LFN 2004, s. 15 Etsako West L.G. Council v. Christopher p. 2699

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Robbery & Firearms (Special Provisions) Act Cap. 398 LFN 1990, s. 1(2)(G) Emeka v. State p. 2675

Uniform High Court (Civil Procedure) Rules, O. 8 r. 17 Etsako West L.G. Council v. Christopher p. 2699

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Civil Aviation Act 2006, s. 48(1) Emirate Airlines v. Aforka p. 2807 CA

Montreal Convention 1999, s. 22(3) Emirate Airlines v. Aforka p. 2807 CA

Warsaw Convention Emirate Airlines v. Aforka p. 2807 CA