

# **KINGS LAW REPORTS**

## **(ALL SC/NOVEL CA)**

**(2015) KLR VOL 2 PART 359 pp. 521-752**

**FEBRUARY 2015**

**Dedicated to the King of kings**

**O. O. NOEL ESQ. Founder/Publisher**

**C. L. Onwuegbuna Esq. Chief Editor**

## **INDEX OF CASES REPORTED**

### ***FEBRUARY CONTD.***

7. Dariye v. Federal Republic of Nigeria p. 529
8. Iliyasu v. State p. 559
9. Jev v. Iyortom p. 601
10. Kayih v. Yilbuk p. 625
11. Odom v. Peoples Democratic Party p. 677
12. Ominiya v. Alabi p. 711
13. Ugwu v. Peoples Democratic Party p. 731

ACTIONS - Injunction - Academic issue - Injunction is granted to restrain a threatened wrong to a right - But cannot be granted in the circumstance - As what is urged to be preserved no longer exist (H8) Odom v. PDP p. 677

ALIBI - Plea - Conditions - Accused must raise the defence at the earliest opportunity - Giving particulars of his whereabouts and those present with him - Otherwise it will not avail accused (H4) Iliyasu v. State p. 559

APPEALS - Actions - Consistency of - Appeal being a continuation of the original claim - CA rightly resolved issues that emanated from claim in the trial court (H13) Kayih v. Yilbuk p. 625

APPEALS - Evidence - Evaluation - Having lawfully excluded the inadmissible evidence - CA review of evidence due to failure of the trial court in that regard - Cannot be said to be perverse (H6) Odom v. PDP p. 677

APPEALS - Finding - Failure to appeal - As there is no further appeal to SC against the order made by CA - Dismissing appellant's cross appeal - The finding is binding on all the parties (H7) Kayih v. Yilbuk p. 625

APPEALS - Fresh issue - Leave - Having neither canvassed the relief at CA - Nor sought and obtained leave to raise same in SC - Appellant cannot be heard on the issue (H2) Odom v. PDP p. 677

APPEALS - Purpose of - It is to find out whether on the state of pleadings, evidence and applicable law - The lower court came to right decision - In relation to reliefs canvassed in the matter (H1) Odom v. PDP p. 677

CHIEFTAINCY MATTERS - Court - Jurisdiction - Condition for the court to assume jurisdiction in the matter - Exists with the obvious complaints lodged which received no response (H6) Kayih v. Yilbuk p. 625

CHIEFTAINCY MATTERS - Evidence - Admitted fact - Weight - The fact of rotation of the chieftaincy title having been admitted - It is deemed as proved and needed no further proof (H8) Kayih v. Yilbuk p. 625

CHIEFTAINCY MATTERS - Evidence - Unchallenged - Evidence of series of letters of complaint made without a response - Is a matter court is enjoined to act on as unchallenged evidence (H5) Kayih v. Yilbuk p. 625

CONSTITUTIONAL LAW - Constitution - Supremacy - State HC - Jurisdiction - In view of the supremacy of the Constitution - Any law which tends to limit jurisdiction of the court - Is null and void (H3) Kayih v. Yilbuk p. 625

COURTS - Issue - Suo motu raising - Court is not entitled to raise an issue suo motu - And decide on it without affording parties opportunity to be heard (H1) Ominiya v. Alabi p. 711

COURTS - State HC - Jurisdiction - Chieftaincy matter - Chiefs Law s. 3(2) that ousts unlimited jurisdiction of the court is null and void - Hence the court has jurisdiction to entertain the matter (H4) Kayih v. Yilbuk p. 625

COURTS - State HC - Jurisdiction - Constitution 1999 s. 272(1) - The court has unlimited jurisdiction to hear and determine - Any civil proceeding in which the existence of legal right is in issue (H2) Kayih v. Yilbuk p. 625

CRIMINAL PROCEDURE - Circumstantial evidence - Weight - In absence of direct evidence - Conviction may be based on circumstantial evidence - Provided it points to the guilt of accused (H5) Iliyasu v. State p. 559

CRIMINAL PROCEDURE - Institution of - Powers of A-G Federation - The offences being federal indictment - The A-G may by himself or through an agent - Prosecute the offences alleged (H3) Dariye v. FRN p. 529

CRIMINAL PROCEDURE - Trial - Jurisdiction - The appropriate means to determine in which jurisdiction to try accused - Is to identify what element of the offence occurred where (H2) Dariye v. FRN p. 529

CRIMINAL PROCEDURE - Trial - Venue - As the key witnesses and appellant are resident within jurisdiction of the trial court - To move the trial to another location is an exercise in forum shopping (H4) Dariye v. FRN p. 529

DOCUMENTS - Public document - Admissibility - Evidence Act ss. 111 & 112 - For the admissibility of exhibits E, 1, 2 & 3 - There must be certified true copy of each of them (H10) Kayih v. Yilbuk p. 625

ELECTIONS - Pre election - SC - Order - Amendment of - The order made by this court in the earlier appeal is set aside - As SC is not one of the courts regulated by Electoral Act s. 141 (H3) Jev v. Iyortom p. 601

ELECTIONS - Primaries - Jurisdiction - Where dispute arises as to which of the primaries produced candidate for a political party - The matter is taken outside Electoral Act 2010 s. 87(4)(b)(ii), (c)(ii) & (9) (H2) Ugwu v. PDP p. 731

ELECTIONS - Primaries - Relief - The injunctive relief sought against 2<sup>nd</sup> respondent cannot be made - As 1<sup>st</sup> respondent can no longer submit appellants' name as the party's candidate (H3) Ugwu v. PDP p. 731

EVIDENCE - Consent document - Admissibility - Reliance is not totally placed on document put in evidence by consent - As court must still consider the weight to be attached to same (H12) Kayih v. Yilbuk p. 625

EVIDENCE - Contradiction - Weight - Where there are material contradictions - Court is enjoined to reject the entire evidence - As it cannot pick and choose which of the conflicting versions to follow

(H15) Kayih v. Yilbuk p. 625

EVIDENCE - Oral evidence - Admissibility - If oral evidence given in witness box is unchallenged - It must be accepted as establishing the facts therein stated (H11) Kayih v. Yilbuk p. 625

EVIDENCE - Prima facie case - Proof - Facts alleged against appellant discloses a prima facie case - That if not contradicted and if believed - Will be sufficient to prove the case against him (H1) Dariye v. FRN p. 529

FAIR HEARING - Breach - Effect - Decision of CA arising from the issue raised suo motu - And without hearing the parties is a nullity - For being a breach of constitutional right to fair hearing (H2) Omoniyi v. Alabi p. 711

JURISDICTION - Fundamentality of - It is so fundamental that the absence of same renders any proceeding conducted - As null and void and without any legal effect whatsoever (H1) Kayih v. Yilbuk p. 625

JURISDICTION - Rules of court - Non compliance with - Court will not abandon its jurisdiction because of non compliance - As the rules should not be means of compromising right of appeal (H3) Odom v. PDP p. 677

JURISDICTION - Sources of - Jurisdiction is a matter of law and is statutorily conferred - And neither the court nor parties can confer jurisdiction (H7) Odom v. PDP p. 677

MURDER - Confession - Veracity of - From appellant's positive account - Lower courts rightly resolved fact of the death of deceased - And that it was appellant's gruesome act that caused it (H2) Iliyasu v. State p. 559

MURDER - Ingredients - Proof - Prosecution must prove that deceased died - And that his death was caused by accused - Who in-

tended to kill or cause grievous bodily harm to deceased (H1) Iliyasu v. State p. 559

MURDER - Intention - Dangerous weapon - Where such weapon was used - Court will infer that death was a probable - And not just a likely consequence of accused act (H3) Iliyasu v. State p. 559

MURDER - Proof - Doctrine of last seen - In absence of explanation as to cause of death - A person last seen with deceased bears full responsibility for his death (H6) Iliyasu v. State p. 559

ORDERS OF COURT - Justice - Need to uphold - Pursuant to Plateau State HC Rules O. 47 r. 1 - Order made by CA did not make new case for the parties - Rather it was made to do justice (H14) Kayih v. Yilbuk p. 625

PLEADINGS - Binding nature - In view of the state of the pleadings and evidence adduced - CA rightly held that allegation relating to murder was baseless - And that trial court's finding was perverse (H9) Kayih v. Yilbuk p. 625

PLEADINGS - Binding nature of - Evidence led by a party which conflicts with his pleadings - Goes to no issue and should be discountenanced - As court and parties are bound by the pleadings (H5) Odom v. PDP p. 677

PLEADINGS - Brevity of - Averred facts in pleadings relied on by parties - Should be concise and unambiguous - In order to avoid element of surprise in litigation (H4) Odom v. PDP p. 677

SUPREME COURT - Appeals - Hearing - Limit - The court hears appeals from valid judgments of CA - And having held a part of CA's decision as nullity - It has no jurisdiction to determine appellant's issue (H3) Ominiya v. Alabi p. 711

SUPREME COURT - Judgment - Amendment of - SC Rules O. 8 r. 16 - SC can in appropriate cases vary its judgment - To give effect to the judgment and in the interest of justice (H2) Jev v. Iyortom p. 601

SUPREME COURT - Judgment - Supremacy of - The court cannot sit on appeal over its judgment - And its power in appropriate cases to set aside its judgment - Does not amount to appellate jurisdiction (H1) Jev v. Iyortom p. 601

## **INDEX OF STATUTES & RULES**

Chiefs (Appointment & Deposition) Law Cap 20 LFN 1963, s. 3(2) Kayih v. Yilbuk p. 625

Constitution of the Federal Republic of Nigeria 1979, s. 236(1) Kayih v. Yilbuk p. 625

Constitution of the Federal Republic of Nigeria 1999, s. 285(1) Odom v. PDP p. 677, s. 36(6) Ominiya v. Alabi p. 711, ss. 174, 211, 257(1), 299(a)(b)(c) Dariye v. FRN p. 529, ss. 5, 6, 272(1) Kayih v. Yilbuk p. 625, ss. 6(6), 235 Jev v. Iyortom p. 601

Court of Appeal Act 2004, s. 15 Kayih v. Yilbuk p. 625

Criminal Procedure Act Cap C41 LFN 2004, s. 64 Dariye v. FRN p. 529

Criminal Procedure Code, ss. 185(b), 315 Dariye v. FRN p. 529

Electoral Act 2010 (as amended), ss. 33, 87(1)(4)(9) Ugwu v. PDP p. 731, ss. 87(9), 141, 133(2) Jev v. Iyortom p. 601, ss. 140, 68(1) Odom v. PDP p. 677

Evidence Act Cap 112 LFN 1990, ss. 75, 91, 109, 111, 112 Kayih v. Yilbuk p. 625

Evidence Act Cap E14 LFN 2004, ss. 131, 132 Odom v. PDP p. 677

Federal High Court (Civil Procedure) Rules 2009, O. 29, O. 48 r. 4  
Ugwu v. PDP p. 731

High Court (Civil Procedure) Rules of Plateau State 1987, O. 47 r. 1  
Kayih v. Yilbuk p. 625

High Court of Osun State (Civil Procedure) Rules, O. 25 r. 6 Ominiya  
v. Alabi p. 711

Penal Code, ss. 4, 309 Dariye v. FRN p. 529, ss. 97, 221 Iliyasu v.  
State p. 559

Supreme Court Act, ss. 22, 27(2)(3)(4) Jev v. Iyortom p. 601

Supreme Court Rules 1999 (as amended), O. 6 r. 16 Jev v. Iyortom  
p. 601, O. 2 r. 30, O. 6 r. 4, O. 8 r. 11, O. 10 r. 1(1)(2) Odom v. PDP  
p. 677, O. 22 Ugwu v. PDP p. 731