# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC114/75

**Petitioner:** Lucy Onowan & Anor
And
**Respondent:** J. J. I. Iserhien

Date Delivered: 1976-10-15

**Judge(s):** George Sodeinde Sowemimo, Ayo Irikefe, Charles Olusoji Madarikan

## Judgment Delivered

In the Calabar Judicial Division of the High Court of the then South Eastern State, the appellant herein endorsed her writ against the respondent in the following terms:

\"Plaintiff\'s claim as against the defendant is for a declaration that the property (tenement) No. 78 Egerton Street, Calabar, including the premises and appurtenances thereof is the property of the first plaintiff, value about '600 (six hundred pounds) that the transaction between first plaintiff and the defendant in respect of the said property was a mere loan to the plaintiff by the defendant in (his) the defendant\'s capacity as a money lender upon the security of the title deeds of the property, and that the defendant\'s claim in his letter dated January 28, 1970, to the first plaintiff through the Chairman South Eastern State Rehabilitation Commission that the property (tenement) No. 78 Egerton Street, Calabar, is (his) the defendant\'s property by virtue of an alleged deed of sale and conveyance is void for fraud and therefore unenforceable. An order for accounts and for the delivery of the title deeds obtained by the defendant in respect of this property from the date of the transaction based on the alleged deed of sale and conveyance referred to in paragraph (1) above in so far as the defendant has refused to accept of the mortgaged money of '400 (four hundred pounds) loaned to the plaintiff by the defendant, and payment of any amount due to the defendant be deducted on return of the said property (tenement) No. 78 Egerton Street, Calabar, to the plaintiff.\"

The above claim was subsequently whittled down in the statement of claim to read:

\"5(a) The plaintiffs therefore claim from the defendant the return of the property at No. 78 Egerton Street, Calabar, to the first plaintiff together with the appertaining title deeds thereof which had been surrendered to him (the defendant) as a security for the loan transaction as stated in paragraph 3 above.

(b) An account of all his (the defendant\'s) dealings with the property after the eight (8) year period in the terms of the agreement referred to in paragraph 3 above or in the alternative after the due collection of '400 (four hundred pounds) which were made (or ought to have been made) by the defendant from the property.\"

The second plaintiff, Bassey Edet, was dismissed from the case as having been improperly joined and is not, therefore, concerned with this appeal.

This action came about in this way. In the year 1954 or thereabouts, the appellant, then engaged in trade between Calabar and Fernando Po (Equatorial Guinea), found herself short of trading capital and appealed to the fourth prosecution witness (Asuquo Effiong Ekanem), who, in turn, put her in touch with the respondent, a financier and registered money lender.

For a loan of '200, the respondent had asked for a further sum of '200 as interest. He had also insisted on the appellant making a deposit of all her title deeds. All these conditions were met by the appellant, who, there and then, put the respondent into possession of the property (No. 78 Egerton Street) upon the understanding that the respondent should remain in possession and enjoy the rents on the property for a period of eight years in full discharge of the sum of '400. At the end of this period of eight years, the appellant sought to regain possession of her property by sending the fourth

prosecution witness to the respondent for the keys. The respondent refused to give the keys to the fourth prosecution witness and instructed him to convey to the appellant his (respondent\'s) desire to see her in person. This was how matters stood until the civil war broke out in Nigeria in 1967. When Calabar was liberated in 1968, the appellant came down from Ikom where she had remained in hiding for the duration of hostilities in that part of the country and quickly established contact with the Office of the Custodian of Abandoned Property. This was the office established by the then Government of the South Eastern State to look after properties abandoned by owners who were non-indigenes of the State consequent upon the civil war aforesaid.

The appellant laid claim to the property, but was told that the respondent was also claiming it. Both parties were then advised by the third prosecution witness (the Custodian of Abandoned Property) to go to the High Court in order to establish title. Hence this action.

On the other hand, the respondent\'s claim to the property in dispute (exhibit 14) is founded on two separate transactions, namely, the purchase by him from the appellant of the house lying to the front of the premises on April 3, 1955, for the sum of '340 (three hundred and forty pounds) and of the one lying to the rear of the premises on June 26, 1956, for '408 8s. (four hundred and eight pounds eight shillings).

Both parties called evidence during the trial in support of their conflict'ing assertions and the learned judge (Koofreh J., as he then was), after carefully evaluating all such evidence, accepted the respondent\'s case and dismissed the appellant\'s action. This appeal is against the dismissal.

The only ground of appeal argued by learned counsel appearing on behalf of the appellant is the general ground which alleges that the judgment of the learned trial judge is against the weight of evidence.

No argument of any substance was advanced to disparage the factual findings of the learned trial judge, who, in our view, had done all he could to subject the testimony offered on both sides to the minutest scrutiny.

His was the privilege of dealing with the testimony at first hand and of watching the demeanour of the various witnesses, and we are not in any doubt that the conclusions to which he came as the result of this opportunity are amply supported by the printed record.

We have stated times without number that it is not one of the functions of this Court, as indeed of any appellate court, to substitute its own views of the evidence for those of the court of trial, which court is better equipped to deal with these matters.

We would only interfere with a decision based on matters of fact when it is clear that the same is perverse or not the result of a proper exercise of judicial discretion. See Kodilinye v. Odu [1935] 2 W.A.C.A. 336, Okoye v. Ejiefo [1934] 2 W.A.C.A. 130, Kuma v. tfuma [1936] 5 W.A.C.A. 4, Dadzie v. Kojo [1940] 6 W.A.C.A. 139 and Akinloye v. Eyiyola [1968] N.M.L.R. 92.

We accordingly saw no merit in this appeal and thought that the need to hear the respondent\'s counsel in reply did not arise. Our order is that the appeal fails and it is dismissed.

The judgment of the High Court of the South Eastern State in the Calabar Judicial Division in this matter dated September 18, 1972, is affirmed. The appellant will pay costs assessed at N150 to the respondent.