IN THE SUPREME COURT OF NIGERIA

Suit No: FSC350/1961

Petitioner: Abiodun, Bailiff, Ondo Herbert Ademeso Francis Adeogbe (for themselves and on behalf of the Aderoloye Family of Okitipupa) Chief Joseph Okanrepo (for himself and on behalf of the Okeraye Family of Okitipupa)

And

Respondent: Chief Kogun Ogunyomi Adehin (for himself and on behalf of the Adehin Family, Ararami, Idepe Okitipupa)

Date Delivered: 1962-11-05

Judge(s): Sir Adetokunbo Ademola, Sir Lionel Brett, Charles Dadi Onyeama

Judgment Delivered

This is an appeal from a judgment of the High Court of the Western Region of Nigeria (Doherty J.) whereby it was ordered that the sale of the plaintiff\'s farm land allegedly wrongly attached by the bailiff be set aside.

The plaintiff, who is the respondent in this appeal, had claimed judicial relief and sought an order setting aside the sale of a farm of land situated at Odunlewe said to have been sold by a Court bailiff under a writ of fieri facias at the instance of the second and third defendants, who are two of the appellants.

It appears that the second and third defendants obtained judgment in a court action against one Robert Inawo Akinnubi. This Akinnubi was in possession of an area of land called Ahakoh Forest as successor of his father who has been put in possession of the land by the plaintiff. In execution of the judgment of the Court, the first defendant who was the bailiff of the court proceeded to attach a piece of land which was pointed out to him by the second and third defendants, the judgment creditors, and said to be the property of the judgment debtor, Akinnubi. The land was sold to the fourth defendant, the other appellant.

The respondent who claimed ownership of the land raised a claim in the High Court and obtained the judgment from which this appeal has been brought.

Mr Adeyefa for the appellants argued two grounds of appeal. The first was that since the learned trial judge was unable to determine the identity of the land which was sold, he could not properly set aside the sale. The second was that, in any case, the relief claimed by the plaintiff was inappropriate since the purported sales only transferred to the purchaser the right, title and interest of the judgment debtor in the property sold. If the plaintiff was right in his claim that the land belonged to his family and not to the judgment debtor then, of course, the purchaser got nothing.

The first contention put forward in support of the appeal appears to me a sound one. The learned judge left no doubt in anyone\'s mind that the plaintiff had not established the identity of the land said to have been sold.

He said:'
The next point is, what is the identity of the land which the defendants allege was in fact sold on the day in question' I confess that I am unable to answer the question with any degree of certainty on examination of the evidence adduced on the point.

And also:'

Now it is common ground that according to the evidence adduced in these proceedings the land which is in dispute between the parties is known as Odolawe Egedege and it is the vast area depicted on both plans exhibits A and E and thereon edged pink. It is obvious from the evidence of the bailiff that this was not the land which was sold. According to

him the land which he sold was at Abusoro ....

And finally:

In these circumstances I am quite unable to determine what land was sold. Since the defendants were responsible for the sale the onus is on them to establish the identity of the land which they sold beyond all possible doubt.

It is, perhaps, unnecessary to point out that to obtain judgment the onus is on a plaintiff to prove the facts on which he relies. There is no doubt that the plaintiff in the case under consideration had failed to establish the identity of the land he claimed was unlawfully sold and that the land belonged to his family.

It is not easy to see how an order setting aside a sale can be made without clear evidence of the subject matter of the sale.

The second ground of complaint of the appellants appears to me equally valid. When a claim is brought seeking an order to set aside a sale it is postulated by such a claim that the sale attacked is prima facie valid and would remain effective if it was not set aside. If, as appears to have been the case in the suit before the High Court, the complaint is that no valid sale has taken place because the judgment debtor has no title to the property sold, the remedy available to the party claiming ownership of the property would be a claim for a declaration of title to the property and/or damages for trespass depending on what action the supposed purchaser has taken to give effect to the purported purchase. An application for the sale to be set aside under the Sheriffs and Civil Process Act in such circumstances would be inappropriate: see O. Odejoke and others v. John Holt & Co. Ltd. and Another 8 W.A.C.A. 152, and also AM. Shoti v. Paul and Others UN.L.R. 120.

The present case illustrates the importance of compliance with the Sheriffs and Civil Process Act. Section 50 of the Act provides that after a sale of immovable property has become absolute the court shall grant a certificate of purchase. The certificate is to be in the Form 46 in the First Schedule to the Judgments (Enforcement) Rules, which provides for a description of the land, and the proper procedure for the sheriff to follow is contained in Order VII, rule 5(a) and Order I, rule 13. If he follows this procedure the certificate should be issued as a matter of course. The certificate requires to be registered under the Land Registration Act, for which purpose a plan of the land would be required, and once the certificate is issued oral evidence of the sale would be excluded under section 131 of the Evidence act. If this procedure had been followed after the sale with which the present case is concerned no question could have arisen as to what land was sold, but it is for consideration whether the certificate of purchase should not expressly refer to a plan. In this connection, the possibility of amending the Rules of Court accordingly needs to be examined.

For the reasons already stated I would allow the appeal with costs of the appeal assessed at 76 guineas.

Order proposed:

That the judgment of the High Court of the Western Region be set aside and in substitution therefore judgment be entered for the defendants with costs assessed at '52-10s-0d.

Sir Adetokunbo Ademola. C.J.F.

I concur.

Sir Lionel Brett. F.J.

I concur.