IN THE SUPREME COURT OF NIGERIA

Suit No: SC329/2001

Petitioner: David Mbani
And
Respondent: Mbiabe Bose & 3 ors

Date Delivered: 2006-05-12

Judge(s): Umaru Atu Kalgo , Akintola Olufemi Ejiwunmi , Dahiru Musdapher , Mahmud Mohammed , Walter Samuel Nkanu C

Judgment Delivered

In suit No BHC/2/77 the Appellant for himself and as representing the Ndakaa family, took out a Writ of Summons against the Defendants/Respondents at the Port Harcourt Division of the Rivers State High Court. Following the Order for pleadings, parties filed and exchanged their pleadings. By paragraph 15 of the Appellant's Statement of Claim, the Appellant claimed against the Respondents jointly and severally for: -

'(1) A declaration of title to the said land known as 'Lueboghi' situate at Lusue Sogho, in Bori Local Government Area; and

(2) A perpetual injunction restraining the Defendant, her agents or servants from claiming or selling the land in dispute and the 2nd, 3rd and 4th Defendants from entering or in any way interfering with the Plaintiff's ownership of the said land.'

The facts leading to this action may be put thus: The Appellant and the Respondents are both natives of Lusue Sogho. The piece of land in dispute forms part of the land that the Plaintiffs' ancestor, Berekara Ngaa, had acquired by original occupation. He exercised such acts of ownership as farming on and giving portions of it to needy settlers who arrived the area later than he did. It is his claim that one of such settlers was Agoo Bosi, an ancestor of the 1st Respondent who emigrated from nearby village of Kaani. The grant made to the said ancestor of the 1st Respondent was on the condition that the grant would revert back to the Appellant should the grantee decide to leave the land. It is further claimed by the Appellant that sometime in or about 1976, the 1st Respondent sold part of the disputed land granted to him to the 2nd Respondent. And sometime in 1977, the 1st Respondent sold another portion of the disputed land to the 2nd Respondent. All these transactions took place, according to the Appellant, without his consent. However, Appellant claimed that following each of these transactions, he reported same to the Chief and Elders of Lusue Sogho. Sequel to his reports, he claimed that with the consent of the parties who in accordance with their customary method of investigating title to land, consulted the Chief Juju Priest at Bianu. The priest upon consulting his oracle revealed to them that the land belonged to the family of the Appellant. Therefore, the Appellant had to commence this action to stem the activities of the 1st Respondent in respect of the disputed land.

On the other hand, it is the case of the 1st Respondent that she is the owner of the disputed land by original acquisition as it was founded many centuries ago by her ancestor named Beeanaa. That the land eventually devolved down to her according to Khana native law and custom. She admitted selling part of the land to the 3rd Respondent. Furthermore, she admitted that the oracle was consulted as claimed by the Appellant but with regard to the claim of the Appellant, that the oracle revealed that the land belonged to his family, it is the claim of the 1st Respondent that the revelation of the oracle was that the land belonged to her family and it had never belonged to the Appellant.

On the basis of the evidence led at the trial Court, the learned trial Judge rejected in his judgment the Appellant's evidence in support of the traditional evidence, he rested his case upon. Judgment was therefore given in favour of the Respondent. As the Appellant was not satisfied with that decision of the trial Court, he appealed to the Court below, and as he also lost his appeal in that Court, he has further appealed to this Court.

In this Court, two grounds of appeal were filed to challenge the judgment of the Court below. And in accordance with the Rules of the Court, briefs were filed and exchanged between the parties. It is interesting to note that in their respective briefs, only one issue was raised by both parties for the determination of the appeal. As the issues so framed are similar in terms, I will however consider the merits of this appeal upon the issue as framed for the Appellant in his brief. It reads: -

'Whether the Court below was right by confirming the decision of the trial Judge in this suit' Or whether the decision of the trial Court was properly confirmed by the Court below''

For the basis of his argument in the Appellant's Brief, learned Counsel for the Appellant proceeded to raise a question as to whether the Court below was correct by upholding the judgment of the trial Court. He then responded to his own question by submitting that the Court below was wrong. In his view therefore, the Court below misconstrued the judgment of the trial Court and referred to the judgment reached thereon thus and I quote:

'without equivocation, the trial Court after meandering through the plethora of available evidence did not outrightly reject the Appellants' evidence in relation to the grant of the land by the ancestor of the Appellants to that of the Respondents.'

For his part, learned Counsel for the Appellant, after referring to a portion of the judgment of the trial Court, contends that what the trial Court found are: -

'(i) That there was an actual grant by the ancestors of the Appellants to the ancestors of the Respondents.

(ii) That it was not a conditional grant,

(iii) That it was an absolute grant.

(iv) That no consideration was offered by the Respondents for the said grant.'

To him, the above which he refers to as plausible deductions from that part of the judgment, then submits that the Court below cannot be correct in holding that the trial Judge did not find as a fact any grant by the Appellant in favour of the Respondents. It is also the submission of Appellant's Counsel that in view of the inconsistencies in the findings of whether the grant to the Respondents was a conditional or an absolute grant and the inconsistency of the trial Court with regard to the evaluation of the evidence led before it, the Court below should not have upheld the judgment of the trial Court. Moreso, where the trial Judge rejected the traditional evidence of the Appellant in one breadth, and later turned round to hold that the same traditional history was not challenged. It is also his contention that the judgment of the trial Court was based on intuition and at the whim of the Judge the Court below should not have upheld that judgment of the trial Court. For this proposition, he cited the case of Sagay v. Sajore (2000) 77 LRCN 1110 at 1114 & 1123.

The first point taken for the Respondents, in the Respondents' Brief by their learned Counsel is that the learned Counsel for the Appellants clearly read out of its context that part of the judgment of the trial Court pertaining to whether a grant or conditional grant was made or not made by the Appellant in favour of the Respondents. He then submitted that reading passages of a judgment out of its context rather than reading them together to achieve the desired harmony has been held to be improper. See Bob Akaighe v. Idama (1964) ALL NLR (Reprint) p. 317 & 322.

Learned Counsel for the Respondents then submits that had the learned Counsel for the Appellant read the passage fully as expected of Counsel, he would have seen that the learned trial Judge properly identified the issues joined by the parties, and properly resolved the questions raised before him in favour of the Respondents, and that the Court below has the right to have upheld the judgment of the trial Court. Also the learned Counsel for the Respondents argued that the trial Court considered properly the questions relating to the traditional evidence led by the parties, before resolving that aspect of the dispute between the parties. It is also argued for the Respondents that it was not open to the Appellants to complain in this appeal about inconsistencies in the judgment, when no grounds of appeal were filed in nor issues raised in that regard. It is therefore his contention that the arguments of the Appellant thereon be discountenanced. In support of his several submissions, he made reference to the following cases: Adesanoye v.

Adewole (2000) 9 NWLR (Pt. 671) 127 at 144 (C-D); Garba v. State (2000) 6 NWLR (Pt. 661) 378 at 386 (A-F); Honika Sawmill (Nig) Ltd. v. Hoff (1994) 2 NWLR (Pt. 326) 252 at 262 (A-D); Kojo II v. Bosie (1957) 1 WLR 1223; Bob Akaighe v. Idama (1964) ALL NLR (Reprint) 317 at 322. And he concluded his submissions by urging that the appeal be dismissed.

Now, a very careful reading of the arguments of Counsel particularly that of the Appellants has revealed that the thrust of the arguments for the Appellant is clearly a repetition of the argument advanced before the Court below and which that Court found to be lacking in merit. In the course of his argument in this appeal, it was argued for the Appellant that the Court below was wrong in accepting the finding of the trial Court that the Appellant failed to establish that his ancestors made a grant of the land to the ancestor of the 1st Respondent. The criticism of the Appellant in this regard is that the Court below did not sufficiently advert to what appears to be the prevarications of the trial Court on the evidence led before it. In order to determine whether the contention of the Appellant has merit, I deem it necessary to refer first to the conclusion reached by the trial Court on the law and evidence at p.98 of the Record. This reads: -

'Several legal authorities were cited in this case. I had read them and these cases do not apply in the instant case in view of my findings of fact and the decision reached. Had the plaintiff proved ownership and that the grant was made as he alleged his family did, and the conduct of the Defendants shown as he did then this claim could well had been one of fore-facture of the grant. By asking for a declaration of ownership simpliciter and not owner in reversion of the disputed area, or takes the view that Plaintiff wants to eject them through the back door. The injunction asked will then be to restrain them entering the portion they were granted to live. But this is not the case in this case. On the whole, I hold that the plaintiff had not proved his case on the balance of probabilities that his family is the owner of the land in dispute. The traditional history of the Defendants and the facts that they are in possession of the land and the findings of the Chiefs and the oracle and positive acts of ownership displayed by them had tilted the scale in favour of the Defendants. I thus hold that the Plaintiff has not proved the case and the reliefs sought cannot be granted. I therefore, dismiss the case of the plaintiff with cost in favour of the Defendants.'

It is patent from a careful reading of that passage that the view of learned Counsel for the Appellant on the judgment of the trial Court cannot be right.

Let me now refer to the judgment of the Court below at pages 182 -183 of the Record of Proceedings where that Court said thus: -

'A careful reading of the entire portions of the judgment I have reproduced, especially those parts I highlighted, shows that the Judge's ultimate conclusion on the first issue identified by him, and with which we are presently concerned, was that the plaintiff/Appellant had failed to establish that his ancestor made a grant of the land to the ancestor of the 1st Defendant. He came to this conclusion by examining the evidence proffered by the Plaintiff in this regard, especially where the Plaintiff, as PW1, testified that the 1st Defendant's ancestor and the 4th Defendant migrated from Kaani. He held this to be in conflict with the averment in paragraph 2 of the Statement of Claim that the Defendants were natives of Luusue Sogho. He reasoned that if their ancestors had migrated from Kaani to settle in Luusue Sogho they could not be described as natives of the latter place. For this reason he held the evidence of the plaintiff that the Defendant\'s ancestors were emigrants from Kaani to have gone to no issue and discountenanced it. As he saw no other evidence outside that of the plaintiff that the ancestors of the Defendants emigrated from Kaani, he held that the fact had not been proved. He then accepted the averment in paragraph 2 of the statement of claim that the Defendants were natives of Luusue Sogho. (See the concluding paragraphs of the first quotation from the judgment). It was his conclusion also that even if the evidence before him could be taken as establishing a grant, the nature of it, as disclosed by the evidence, could not have been said to be a conditional one as alleged by the Appellant but an outright gift, with no right of reversion.'

Having read that passage of the judgment quoted above, it is manifest that the learned Counsel for the Appellant clearly failed to make any valid point against the judgment of the Court below upholding the judgment of the trial Court. The Court below, apart from clearly reviewing the relevant evidence came to the right conclusion that the Appellant did not establish their primary claim that the ancestor of the Appellant, David Mbani granted the land in dispute to the ancestors of the 1st Respondent. In the course of that judgment, the Court below rightly observed that while the Appellant in their

pleadings pleaded that the Respondents were natives of Luusue Sogho, the Appellant as PW1, in the course of his evidence testified that the 1st Respondent's ancestor and the 4th Respondent had migrated from Kaani to settle in Luusue Sogho. As that evidence of the 1st PW, a pivotal witness for the Appellant should have been expunged from the Records on the principle that a party will only be permitted to call evidence to support his pleadings evidence, which was deliberately or through evidence adduced which is contrary to his pleadings, must be expunged when considering the case. See The National Investment & Properties Co. Ltd. v. The Thompson Organisation Ltd. & Ors (1969) N.M.L.R. 99. While it is clear that the evidence of PW4 was not expunged, it is manifest that such evidence led contrary to his pleadings cannot but affect the credibility of the 1st PW. It is also necessary to advert to the principle settled by a long line of cases that the duty lies on the Plaintiff seeking for a declaration of title to land to lead such evidence as would lead a Court to make that declaration in his favour. In this regard also, the Appellants bearing in mind the settled principle that there are five ways of establishing the ownership of land by any of the following five ways, viz;

(a) By traditional evidence.

(b) By acts of ownership extending over a sufficient length of time which acts are numerous and positive enough to warrant the inference that they are true owners.

(c) By acts of long possession and enjoyment of the land in dispute.

(d) By the production of documents of title which must be authenticated.

(e) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owners of such connected or adjacent land would in addition, be the owners of the land in dispute.

See Idundun v. Okumagba (1976) 9-10 SC 227; (1976) 1 NMLR 200; Qmoregie v. Idugienwanye (1985) 2 NWLR 41 at 54 - 59; Piaro v. Tenalo (1976) 12 SC. 31 at 37 and Achiakpa v. Nduka (2001) FWLR (Pt. 71) 1804 SC. at page 282.

As I had previously observed above, the learned trial Judge duly considered whether he proved his claim as pleaded upon the evidence before it. Apart from the conflict in the evidence of the 1st PW and the pleadings noted above, the trial Court also found that PW3, Mmama Ngbogbara lied in his testimony with regard to what he claimed he did concerning the oracle he allegedly consulted for the parties to discover the true owner of the disputed land. The Court below upheld that finding and the Appellant has not in this appeal showed in his argument that the Court below was wrong to have upheld that finding of the trial Court.

In any event, it must be borne in mind that this Court will not interfere with the concurrent findings of fact made by the trial Court and the Court of Appeal unless such findings are perverse or are not supported by the evidence or are reached as a result of a wrong application of evidence of any principle of substantive law or procedure. See Enang v. Adu (1981) 11-12 SC. 25; Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718; Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561; Afegbai v. Attorney General Edo State (2001) FWLR (Pt. 69) 1352; (2001) 14 NWLR (Pt. 733) 425; Arabambi v. Advance Beverages Ind. Ltd (2006) ALL FWLR 581.

It is thus clear from the above authorities that the Appellant bears the duty of persuading this Court to interfere with the concurrent findings of the Lower Court and the trial Court. However, from what I have said above, it is my humble view that the Appellant has not discharged that burden. It follows that this appeal has to be dismissed as it lacks merit. I therefore dismiss it accordingly, and affirm the judgment of the Court below. As costs follow the event, the Respondents are awarded costs in the sum of N 10,000.00.

Judgement delivered by
Umaru Atu Kalgo. J.S.C.

I have read in draft the judgment of my learned brother Ejiwunmi J.S.C. just delivered. I entirely agree with his reasoning

and conclusions and find no merit in the appeal. The learned trial Judge was right in rejecting the traditional evidence adduced by the Appellant and the Court of Appeal properly, in my view, affirmed that decision on appeal. There were therefore concurrent findings, which this Court will not ordinarily interfere with except where special reason was shown. The Appellant showed no such reason here. The appeal must therefore fail. It is accordingly dismissed with costs as assessed in the leading judgment.

Judgment delivered by
Dahiru Musdpaher. J.S.C.

I have had the opportunity to read before now the judgment of my Lord Ejiwunmi, J.S.C. just delivered with which I entirely agree. For the same reasons so lucidly set out, which I adopt as mine, I too find no merit in this appeal I dismiss it and affirm the judgment of the Court below. I abide by the order for costs contained in the aforesaid judgment.

Judgment delivered by
Mahmud Mohammed. J.S.C.

I have read in draft the judgment of my learned brother Ejiwunmi J.S.C which has just been delivered. I agree with his decision that there is no merit at all in this appeal.

The lone issue formulated in the Appellants\' brief of argument for the determination of this appeal reads:

'Whether the Court below was right by confirming the decision of the trial Judge in this suit' OR whether the decision of the trial Court was properly confirmed by the Court below''

In the action filed by the Appellants at the trial High Court, the Appellants as Plaintiffs claimed title to the piece or parcel of land in dispute between the parties. The claim was based on traditional history of the Appellants' ancestors being the founders and first settlers on the land in dispute. The evidence called by them could not establish their claim for title resulting in their action being dismissed by the trial Court. The judgment of the trial Court was affirmed on appeal by the Court of Appeal. Since the only issue raised by the Appellants, in their further appeal to this Court is not complaining against the judgment of the Court below being perverse or that there was a miscarriage of justice in the decision of that Court, their appeal must fail.

Accordingly I also hereby dismiss the appeal with N10, 000.00 costs to the Respondents.

Judgment delivered by
Walter Samuel Nkanu Onnoghen. J.S.C.

This is an appeal against the judgment of the Port Harcourt Division of the Court of Appeal in appeal No CA/PH/376/86 delivered on 15th April 1999, dismissing the appeal of the Appellant against the judgment of the Rivers State High Court holden at Bori judicial division in suit No BHC/2/77.

The Appellant as Plaintiff claimed against the Defendants now Respondents jointly and severally as follows: -

'(i) A declaration of title of the land known as 'LUEBOCHI' situate at Luusue Sogho, in the Bori Local Government Authority Area;

and

(ii) A perpetual injunction restraining the Defendants, their agents or servants from entering, claiming, selling or in any way interfering with the Plaintiff's ownership of the said land.'

The facts of this case have been fully stated in the lead judgment of my learned brother, Ejiwunmi, J.S.C. and I do not intend to repeat them herein except of course to emphasise the point(s) being made. Suffice it however, to state that the claim of the Appellant is that the land in dispute forms part of the land of his ancestor who acquired same by original settlement but later granted portions thereof to the 1st Respondents' ancestor named Agoo Gbosi on condition that the land would revert to the grantor if and when the grantee or his successors decided to leave. Appellant contended that between 1976 and 1977 the 1st Respondent sold portions of the land to other Defendants/Respondents thereby denying their overlord's title, that this resulted in the matter being reported to the chiefs and elders of Luusue Sogho who in accordance with the customs of the people and the consent of the parties consulted a juju priest who determined that the land belonged to the Appellant's family but the Respondents refused to abide by that decision hence the action.

On the other hand, the Respondents' case is the opposite of that of the Appellant in that they contend that the land was originally acquired by the ancestor of the 1st Respondent which land subsequently devolved on 1st Respondent who, in exercise of her fights of ownership, sold portions thereof to others including other Respondents. 1st Respondent admitted that a juju was consulted in relation to the land but contends that the decision was rather in favour of the Respondents.

At the conclusion of the trial, the learned trial Judge rejected the version of the Appellant and dismissed his claim resulting in his appeal to the Court of Appeal, which Court, as earlier stated in this judgment, dismissed same. Upon further appeal to this Court, the issue for determination as formulated by learned Counsel for the Appellant, F.A. Oso Esq., SAN in the Appellant's Brief of argument filed on 30/10/03 and relied upon at the hearing of the appeal, is as follows: -

'Whether the Court below was right by confirming the decision of the trial Judge in this suit' OR whether the decision of the trial Court was properly confirmed by the Court below''

On the other hand, learned Counsel for the Respondents Ledum A. Mitee Esq. in the Respondents' Brief of argument filed on 10/2/06 but deemed filed and served on 13/2/06 and adopted in argument of the appeal, formulated the following issue for determination:

'Whether the Court below was right in holding that the trial Court rejected Plaintiff/Appellant's case.'

I hold the view that the issues as formulated by both Counsel are substantially the same. Going through the arguments of Counsel for the Appellant, and the grounds of appeal, it is obvious that the appeal is basically on the interpretation of the judgment of the trial Judge as confirmed by the Court below, not on evaluation of evidence by that Court. The argument of learned Counsel for the Appellant is that the Court of Appeal was wrong in its interpretation of the judgment of the trial Court particularly when the Court below held that the trial Court never found as a fact that the plaintiff\'s ancestor made a grant of the land in dispute to the 1st Defendant's ancestor and that at no time did the learned trial Judge accept the traditional history of the Plaintiff. Learned Counsel for the Appellant further submitted that from the available evidence in relation to the grant of the land to the ancestor of the respondent by Appellant's ancestor, the learned trial Judge did not out rightly reject the Appellant's evidence. The above submission of Counsel appears to be based on a passage in the judgment of the trial Court where the Judge stated thus:

'If this is true, then there had not been shown that it was a grant or kola tenancy and which reserved the reversionary interest on the Plaintiff's ancestors. It shows an out right gift which bestowed on the 1st Defendant's ancestors the ownership of that area. There was no finding that it was given with a bottle of KaiKai and that it was not an out right grant to them. It seemed to me that it was an out right grant to the 1st Defendant's ancestors and the extent of the grant was not so clear. This gave rise to each parties (sic) now giving out portions of the land and then quarrel started to ensure (sic) resulting to this litigation. See page 94 of the record.'

The above passage is interpreted by learned Counsel for the Appellant as follows: -

'What the learned trial Judge was saying was that-

(i) there was an actual grant by the ancestors : of the Appellants to the ancestors of the Respondents.

(ii) that it was not a conditional grant

(iii) that it was an absolute grant.

(iv) that no consideration was offered by the Respondents for the said grant.'

(see pages 8 - 9 of the Appellant's Brief).

It is settled law that in interpreting a document or judgment, the document or judgment must be read as a whole and interpreted in that light with effort being made to achieve harmony among the parts - see Akaighe vs. Idama (1964) All NLR (Reprint) 317 at 322. I hold the view that it is in the light of that principle of interpretation that the issue in controversy between the parties in the instant case can be resolved.

At page 91, the learned trial Judge set out the issue for determination relevant to the present issue on appeal, to wit:

'1. Whether the land in dispute was wholly or partly granted to the ancestors of the 1st Defendant by the ancestors of the Plaintiff and what type of grant it was, namely, whether it was one that amounts to a tenancy i.e. kola tenancy or an out right grant to the ancestors of the 1st Defendant.'

The learned trial Judge then proceeded to resolve the issue by reference to the pleadings and evidence of the Appellant to the effect that the ancestors of the 1st Defendant are strangers in Kaani who emigrated from Luusue Sogho and came to the conclusion that 'I am satisfied that the evidence of these people migrating from Kaani had not been established. They were from Luusue Sogho as was averred in the Statement of Claim paragraph'. See page 93. Still on the issue also at page 93, the trial Judge stated thus:

'Also assuming that there was a grant as alleged by the plaintiff by his ancestors to the ancestor of the 1st Defendant it has to be shown the exact area the grant was made. ..... The extent of the grant was not so stated and had not been established.'

From the record, it is very clear that it was after these specific and important findings that the learned trial Judge proceeded to state, in the passage relied upon by learned Counsel for the Appellant which was earlier reproduced in this judgment, inter alia '..... if this was true, then there had not been shown that it was a grant or kola tenancy .....' at page 94 of the record.

The opening of the passage clearly shows that, what followed was not the conclusion reached by the Judge and therefore said by the way.

At page 98, the learned trial Judge also found inter alia as follows:

'On the foregoing, the balance of the evidence as to who owns the disputed land verged Red in Exhibit 'A' is more in favour of the Defendants than the plaintiff. The plaintiff has not therefore established that the land was theirs from origin ..... The traditional history of the Defendants and the facts that they are in possession of the land and findings of the chiefs and the oracle and positive acts of ownership displayed by them had tilted the scale in favour of the Defendants. I thus hold that the plaintiff has not proved the case and the reliefs sought cannot be granted. I therefore, dismiss the case of the plaintiff with cost in favour of the Defendants.'

It must be noted that the above findings and conclusions were confirmed by the Court of Appeal conferring on the findings the legal status of concurrent findings of facts, which this Court has persistently held not to be liable to be set aside except under very exceptional or special circumstances such as an allegation that the findings are perverse or not supported by the evidence adduced and accepted at the trial, etc, etc, which is not the case in the instant appeal. The learned Counsel for the Appellant has not advanced any argument before this case as to why this Court should interfere with the concurrent findings of facts by the trial and lower Courts, and I find no legal basis for interfering.

Before concluding this judgment, it is important to note that there is no particular format in writing a judgment. What matters is the contents of the judgment on the issues and once the judgment contains the traditional elements, I hold the view that it is not the duty of an appellate Court to interfere therewith merely on the ground of style, which is personal. It is very clear as demonstrated in this judgment that the learned trial Judge, notwithstanding his style of writing the judgment, identified the issues, evaluated the evidence adduced and made clear findings of facts and arrived at definite conclusion.

In conclusion, I agree with my learned brother Ejiwunmi, J.S.C. in the lead judgment that the appeal is without merit and ought to be dismissed. I accordingly dismiss same and abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal dismissed.