**MR. GRANT KAYODE YANKEY**

**V.**

**FLORENCE AUSTIN**

IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 18TH DAY OF MARCH, 2020

CA/L/954/2016

**LEX (2020) - CA/L/954/2016**

**OTHER CITATIONS**

3PLR/2020/31 (CA)

(2020) LPELR-49540 (CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, JCA

UGOCHUKWU ANTHONY OGAKWU, JCA

JAMILU YAMMAMA TUKUR, JCA

**BETWEEN**

MR. GRANT KAYODE YANKEY - Appellant(s)

AND

FLORENCE AUSTIN - Respondent(s)

**ORIGINATING COURT(S)**

HIGH COURT OF LAGOS STATE

**REPRESENTATION**

Yinka Ajana, Esq. - For Appellant

AND

Olufemi Abiodun, Esq. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW – DIVORCE – SETTLEMENT ORDERS - JOINT PROPERTY:- Claim for declaration that property secured by husband before marriage is joint property - Burden of proof thereto – On whom lies – Failure to discharge same – Proper order for court to make

FAMILY LAW – DIVORCE – ORDER OF COURT:- Judgment of foreign court given in default of evidence – Where terms of settlement based on consent document between parties to dissolved marriage (Marital Termination Agreement and Findings Of Fact, Conclusions Of Law, Order For Judgment And Judgment And Decree Of Dissolution) – Originating Petition For Dissolution of Marriage filed by the claimant – Whether it is the Originating Petition for Dissolution of marriage that dictates what is deemed to be the petition before the Court - Legal implication for any order or agreements in the other consent documents

FAMILY LAW – DIVORCE – SETTLEMENT ORDERS OF A FOREIGN COURT:- Duty of a Nigerian Court petitioned to enforce orders connected with divorce proceeding of a foreign court – Whether Nigerian court can discountenance pleadings in the originating/instituting process that led to the eventual dissolution of the marriage between the parties in favour of terms of consent settlement consequentially endorsed by the Court – Whether Nigerian court duty bound to be guided by the issues specifically pleaded before the foreign court

FAMILY LAW – DIVORCE – SETTLEMENT OF PROPERTY:- Application to distribute property in Nigeria based on a foreign judgment – Claim that property is jointly-owned property either as a property acquired in the course of the marriage or as a property available in the course of settlement of the property of the parties to the marriage – Where such claim not asserted and proved with evidence in originating process filed before the foreign court – Whether Nigerian court can affirm the existence of such an order as arising by way of a consequential relief or consent of parties

FAMILY LAW – DIVORCE – ORDER OF A FOREIGN COURT:- Divorce proceedings concluded in a foreign court – Whether foreign court has jurisdiction to pronounce on the ownership of property based in Nigeria - Principle of lex situs and the jurisdictional competence of a Court to adjudicate on subject matter of a case within its jurisdiction – Attitude of Nigerian court thereto

FAMILY LAW – DIVORCE – ORDER OF FOREIGN COURT:- Ruling that the distribution of an identified property in Nigeria was reserved for adjudication in a Court in Nigeria – Meaning of – Whether amounts to declaration that it is a jointly owned property

INTERNATIONAL LAW – FOREIGN JUDGMENT:- Enforcement of settlement order of a foreign court in Nigeria – Primary document(s) a Nigerian Court must advert its mind on – Originating process – Duty of a Nigerian Court to uphold principles recognized in Nigerian courts regarding pleadings and jurisdiction

INTERNATIONAL LAW – FOREIGN JUDGMENT:- Principle of lex situs – Asserted order of a foreign court in relation to a property in Nigeria – Validity of – Proper treatment of by a Nigerian Court

REAL ESTATE AND FAMILY LAW – DECLARATION OF OWNERSHIP IN PROPERTY:- Claim for declaration of part ownership of property covered by a Certificate of Occupancy in another person’s name – When founded on divorce settlement – Need for claimant to show a clear and valid decree of court consistent with the state of originating pleading – Effect of failure thereto

CHILDREN AND WOMEN LAW – DIVORCE AND JUSTICE ADMINISTRATION:- Claim by woman of being entitled to joint ownership of property held in ex-husband’s name – Where claim based on order of a foreign court – Conditions precedent that must be satisfied - Effect of failure thereto

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ISSUE(S) RAISED IN PLEADINGS:- Principle that the issues in an action are ascertained and based on the pleadings – Duty of court in examining the pleadings of a party – Duty to determine that issues are joined on the pleadings, not in the evidence – Effect of failure thereto

APPEAL - INTERFERENCE WITH EVALUATION OF EVIDENCE:- Duty of trial Court to evaluate evidence - Meaning and essence of Attitude of appellate Court to invitation to interfere with trial court’s evaluation of evidence

COURT:- Duty to receive and properly evaluate evidence before it – Failure thereto – When an appellate Court would deem itself in as good a position as the Court of trial to evaluate the evidence

JUDGMENT AND ORDER- CONSEQUENTIAL ORDER:- Power of a Court to can grant a consequential order in order to give effect to its judgment – Basis and essence of – Need for a consequential order to be granted as a relief incidental to the main relief – Whether an issue that was not in the pleadings before the Court can ground a consequential relief

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Appellant got married to the Respondent after his first wife died in childbirth. However, the Respondent later commenced proceedings for the dissolution of the marriage in the Family Court Division, of the District Court of the Fourth Judicial District, County of Hennepin, State of Minnesota, United States of America. Appellant did not contest the dissolution of the marriage allowing for both parties to enter into a Marital Termination Agreement (Terms of Settlement). The US Court adopted the Agreement as its judgment ensuring that there was no plenary trial, and that no evidence was adduced. As part of the agreement, the couple’s homestead at 4104 Lakeside Avenue, Brooklyn Center, Minnesota was awarded to Respondent exclusively.

However, the Respondent subsequently commenced proceedings in Lagos State, Nigeria seeking -

“(a) A Declaration that the Claimant is entitled with the Defendant to equal share of the property lying, being and situate at No 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances thereof.

(b) An Order of Court partitioning equally the property lying, being and situate at No. 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances thereof between the Claimant and the Defendant herein.

(c) An Order of Court that the Claimant is entitled to 1 Wing 8 Bedroom Duplex together with its appurtenances, being half of the property lying, being and situate at 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances.

(d) An order of Court mandating the Defendant to do all that may be required legally to enable the Claimant perfect her title to the 1 wing 8 Bedroom Duplex together with its appurtenances, being half of the property lying, being and situate at No. 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State.” (See pages 79-80 of the Records)

In its judgment the lower Court, Coram Judice: Akinkugbe, J. entered judgment in hear favour and all the reliefs claimed granted.

DECISION(S) APPEALED AGAINST

The High affirmed the pleading of the Respondents that there was evidence in the records of the Family Court Division, of the District Court of the Fourth Judicial District, County of Hennepin, State of Minnesota, United States of America establishing that the Lagos based property was joint property.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. “WHETHER a Court in the United States of America has the prerequisite jurisdiction to make an order affecting a property situate in Lagos, especially when there was no claim in respect of the property before it. (Distilled from grounds (i) & (iii) of the Notice of Appeal dated 27th July, 2016.)

2. WHETHER the Court below was right in granting the reliefs sought by the Respondent having regards to the law and the preponderance of evidence before the Honourable Court. (Distilled from grounds (ii), (iv) & (v) of the Notice of Appeal dated 27th July, 2016.)”

*BY RESPONDENTS*

[The issues formulated by the Appellant were adopted by the Respondent.]

*AS ADOPTED BY COURT*

The Court adopted the issues as formulated by the Appellant

DECISION OF COURT OF APPEAL

1. The Respondent’s claim before the lower Court was anchored on the facts pleaded in Respondent’s pleadings to the effect that the Lagos property was made an issue in the United States Court and was adjudged to be jointly owned. The affirmation of that by the Court is not borne out by the evidence on record and is therefore perverse and in consequence liable to set aside.

2. The effect is that the Respondent did not establish and prove her entitlement to the reliefs claimed on the preponderance of evidence and balance of probability. In order for the Respondent to be entitled to any share of the Lagos property, it has to be established that the property was joint property. This, the Respondent failed to do. In a summation, this appeal is meritorious and it succeeds. The appeal is allowed and the judgment of the trial set aside. In its stead, an order of dismissal of the said action in its entirety is hereby made. The Appellant is entitled to the costs of this appeal which I assess and fix at N300, 000.00.

**MAIN JUDGMENT**

UGOCHUKWU ANTHONY OGAKWU, J.C.A. (Delivering the Leading Judgment):

In the beginning, they were man and wife. It was his second marriage. The first wife had died in childbirth. So he married again. There was turbulence in the union. Their ship of marriage could not stay afloat in the stormy waters of matrimony. She commenced proceedings for the dissolution of the marriage in the Family Court Division, of the District Court of the Fourth Judicial District, County of Hennepin, State of Minnesota, United States of America. The marriage had lost its saltiness. It had become tasteless; the saltiness could not be restored. There was no longer light in the marriage; it had become the eyes of darkness. So, he did not contest the dissolution of the marriage. They entered into a Marital Termination Agreement, which in the Nigerian Judicial lingo will be termed Terms of Settlement. The Court entered judgment in terms of the Marital Termination Agreement. There was no plenary trial, no evidence was adduced. Their homestead at 4104 Lakeside Avenue, Brooklyn Center, Minnesota was awarded to her exclusively. But it did not end there.

There is a property in Nigeria. It is situate at No. 12, Femi Akinfolarin Street, off Association Avenue Road, Ikotun, Lagos. She commenced proceedings in the High Court of Lagos State in respect of the said property. The proceedings were in SUIT NO. ID/1207/2012: FLORENCE AUSTIN vs. MR. GRANT KAYODE YANKEY. The Respondent herein, was the Claimant in the action. She claimed the following reliefs against the Appellant herein as Defendant:

“(a) A Declaration that the Claimant is entitled with the Defendant to equal share of the property lying, being and situate at No 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances thereof.

(b) An Order of Court partitioning equally the property lying, being and situate at No. 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances thereof between the Claimant and the Defendant herein.

(c) An Order of Court that the Claimant is entitled to 1 Wing 8 Bedroom Duplex together with its appurtenances, being half of the property lying, being and situate at 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, containing 2 Wings of 8 Bedroom duplex each and its appurtenances.

(d) An order of Court mandating the Defendant to do all that may be required legally to enable the Claimant perfect her title to the 1 wing 8 Bedroom Duplex together with its appurtenances, being half of the property lying, being and situate at No. 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State.” (See pages 79-80 of the Records)

Issues were joined on the pleadings filed and exchanged by the parties. The matter was subjected to a full dressed hearing. Testimonial and documentary evidence was adduced. In its judgment the lower Court, Coram Judice: Akinkugbe, J. entered judgment in her favour. All the reliefs claimed were granted. He was dissatisfied with the decision. He appealed against the same. So here we are. The judgment of the lower Court which was delivered on 27th May 2016 is at pages 221-233 of the Records. The Notice of Appeal which was filed on 27th July 2016 is at pages 237-242 of the Records. The Records of Appeal were compiled and transmitted and briefs of argument were filed and exchanged.

The Appellant’s brief was filed on 23rd September 2016. Two issues were therein distilled for determination, namely:

“WHETHER a Court in the United States of America has the prerequisite jurisdiction to make an order affecting a property situate in Lagos, especially when there was no claim in respect of the property before it. (Distilled from grounds (i) & (iii) of the Notice of Appeal dated 27th July, 2016.)

WHETHER the Court below was right in granting the reliefs sought by the Respondent having regards to the law and the preponderance of evidence before the Honourable Court. (Distilled from grounds (ii), (iv) & (v) of the Notice of Appeal dated 27th July, 2016.)”

The Respondent’s Brief was filed on 11th January 2017. The issues formulated by the Appellant were adopted by the Respondent. At the hearing of the appeal, the learned counsel for the parties urged the Court to uphold their respective submissions in the determination of the appeal. I will presently review the submissions of learned counsel and thereafter resolve the appeal seamlessly en bloc based on the issues distilled.

SUBMISSIONS OF LEARNED COUNSEL

The Appellant submits that the United States Court did not have the jurisdictional competence to adjudicate in respect of the property situate in Lagos, Nigeria as the subject matter was not within its jurisdiction and also on the principle of lex situs. The cases of MADUKOLU vs. NKEMDILIM (1962) 1 ALL NLR 587, AMAECHI vs. INEC (2007) 9 NWLR (PT 1040) 504, NDAEYO vs. OGUNAYA (1997) NSCC 5 among other cases were referred to. It was further stated that in the action in the United States, no reference was made to the property in Lagos and that a Court lacks power to grant a relief not sought for and therefore any order in respect of the property in the judgment of the United States Court is null and void and of no effect vide ADENUGA vs. ODUMERU (2001) 1 SC 72, AGBI vs. OGBEH (2006) 11 NWLR (PT 990) 65 and N. A. F. vs. SHEKETE (2002) 12 SC (PT II) 52.

It was contended that the Respondent had the burden of proving that the Lagos property is joint property as contended by her but that she failed to discharge the burden. It was maintained that the Marital Termination Agreement was made for the purpose of entering a consent judgment in the proceedings in the United States and ought to be confined to the facts pleaded and reliefs claimed in the said proceedings. It was asserted that the Marital Termination Agreement never stated that the Lagos property was the joint property of the parties. It was further argued that the Respondent’s main relief was for a declaration in respect of the Lagos property and that the Respondent had the onus of leading positive evidence to establish her entitlement to the declaration sought, since the declaration is not to be granted based on admission. The cases of SORUNGBE vs. MOTUNWASE (1988) 3 NCCC (VOL. 19) 252, DANTATA vs. MOHAMMED (2000) 5 SC 1, SPRING BANK PLC vs. ADEKUNLE (2011) 1 NWLR (PT 1229) 581 and BELLO vs. EWEKA (1981) 1 SC 101 were relied upon.

The Appellant opined that the lower Court did not properly evaluate the evidence and ascribe probative value thereto and consequently meted out injustice to the Appellant, thereby making it appropriate for an appellate Court to interfere. The case of OWODUNNI vs. C.C. C. (2000) 6 SC (PT III) 60 was called in aid. It was stated that where the declaration sought fails, the ancillary orders sought would perforce equally be refused vide SKENCONSULT vs. UKEY (1981) NSCC (VOL. 12) 1, MACFOY vs. UAC LTD (1962) AC 152 and UBA vs. ETIABA (2013) Q.R.R. 245. It was posited that there had been no previous litigation between the parties in respect of the Lagos property and that the rebuttable presumption afforded by the certificate of occupancy that the Appellant was the sole owner of the Lagos property was not rebutted. The case of DABO vs. ABDULLAHI (2005) 5 MJSC 57 was cited in support. It was conclusively submitted that when the evidence is properly put on the imaginary scale of justice, it tilted heavily in favour of the Appellant such that judgment should have been entered in favour of the Appellant. The case of MOGAJI vs. ODOFIN (1978) NSCC (VOL 11) 278 was relied upon.

In her submission, the Respondent concedes that the United States Court would not have jurisdiction to adjudicate in a matter on the ownership of the Lagos property; but that what was before the Court was a claim for dissolution of marriage, awarding the property in the United States to the Respondent and for such further order or relief as the Court may deem fit to make in the circumstance, which were all granted by the United States Court thereby creating res judicata vide HENDERSON vs. HENDERSON (1843) 67 ER 313 at 317 and HOYSTEAD vs. COMMISSIONER OF TAXATION (1926) AC 155 at 170. It was stated that the parties voluntarily agreed on the Marital Termination Agreement which was entered as judgment by the United States Court and that the parties cannot renege on the same. The case of SHELL PETROLEUM DEVELOPMENT COMPANY (NIG) LTD vs. X. M. FEDERAL LTD (2006) 27 NSCQR 127 at 141 was referred to.

The Respondent asserted that the issue of ownership of the Lagos property was one of the issues canvassed and agreed upon in the proceedings in the United States and that there was no appeal therefrom. The Respondent, it was stated, only resorted to litigation when the Appellant did not show any interest in the distribution of the Lagos property as determined by the Court.

The contention of the Respondent on the second issue is that the Marital Termination Agreement and the judgment of the United States Court raise the doctrine of issue estoppel as it relates to the Lagos property and that there was no need for the Respondent to prove what has already been established, id est, that the Lagos property is the joint property of the parties. The case of OGHOYONE vs. OGHOYONE (2013) 3 SMC 299 was called in aid. It was conclusively submitted that based on the preponderance of evidence and the law, the lower Court was right in granting the reliefs claimed by the Respondent.

RESOLUTION

By way of exordial, I stated the provenance of this matter. The key documentary evidence which are indispensable to the resolution of this matter are the Marital Termination Agreement, which was tendered as Exhibit FA1, the judgment of the United States Court, Exhibit FA2 and the Petition for the dissolution of the parties marriage, Exhibit FA6. It is these documents that afford the linchpin to the resolution of this matter. I have already set out the reliefs claimed by the Respondent at the lower Court. The principal relief sought is the declaration that she is entitled to equal share in the Lagos property. The action was fought on pleadings wherein issues were joined. The Respondent pleaded the facts in respect of her entitlement to equal share in the Lagos property in paragraph 3 of the Amended Statement of Claim, where it is averred as follows:

“3. The Claimant avers that pursuant to the said Marital Termination Agreement and the judgment entered thereof on the property lying, being and situate at No. 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos and covered by Certificate of Occupancy dated the 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State, was adjudged to be the joint property of the claimant and the Defendant, whose distribution was reserved to be decided in accordance with Nigeria law. The claimant shall rely on the said Certificate of Occupancy at the trial of this suit.” (See page 78 of the Records)

Further, in paragraphs 2, 3 & 4 of the Reply to the Statement of Defence the Respondent averred thus:

“2. The claimant deny the facts stated in paragraphs 7,13, 15,16,17, 18, 23 and 24 of the statement of defence and specifically contend that all issues except issues of distribution with regard to ownership of the property now known as 12, Femi Akinfolarin Street, Off Association Avenue Road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State except issue of distribution has been concluded by the Marital termination agreement, findings of facts, conclusions of laws, order for judgement, and judgement and decree of dissolution of marriage dated the 16th day of January, 2001, in the District Court of the State of Minnesota, County of Hennepin, Fourth Judicial District, Family Court Division, United States of America and same cannot be re-opened again.

3. The claimant will contend at the trial that ownership of property now known and address as 12, Femi Akinfolarin Street, off Association avenue road, Ikotun Lagos State and covered by Certificate of Occupancy dated 21st day of August, 1990 and registered as 55/55/1990Y, in the Land Registry at Alausa, Ikeja, Lagos State was made an issue in Court before the Marital termination agreement, findings of facts, conclusions of law, order for judgment, and judgment and decree of dissolution of marriage dated the 16th day of January, 2001, in the District Court of the State of Minnesota, County of Hennepin, Fourth Judicial District, Family Court Division, United States of America were arrived at. The claimant herein shall rely on copy of claimant solicitor’s letter (interrogatories) dated January, 26th 2000 and addressed to the Defendant Solicitor.

4. The claimant will contend at the trial that the only issue left unresolved by the Court is the issue of distribution of the real property adjudged to be jointly owned by the claimant and defendant.” (See pages 117-118 of the Records)

The Appellant in his Statement of Defence joined issues with the Respondent and averred as follows in paragraphs 13, 14, 15 and 18:

“13. The Defendant avers that sometime in 1973 he purchased a piece of land at Ikotun, Lagos State for the sum of Three Thousand Naira from one Alhaji Raufu Lawal. Attached herewith and marked Annextures GKY 4 and GKY 5 are copies of the Purchase Receipt and Deed of Lease respectively.

14. The Defendant avers that Certificate of Occupancy No 55/55/1990Y covering the said land has been issued to him by the Governor of Lagos State. A copy thereof is attached herewith and marked Annexture GKY 6.

15. The Defendant avers that the subject property was purchased before he met and married the Claimant, and that the Claimant made no contribution whatsoever towards the development of the same. Attached herewith and marked Annextures GKY 7, GKY 8, GKY 9 and GKY 10 are copies of Lagos State Government Treasury Receipt No. 150433 dated 1/9/2000 and Revenue Receipt No. 201330198152 dated 19/04/13, Receipt of payment issued by NEPA dated 02/03/05 and Quotation/Receipt dated 06/12/04 from Doak Alumetal Products espectively.

18. In specific response to the averment contained in paragraphs 3, 4, 5, 6 and 7 of the Statement of Claim the Defendant avers that in Petition No. DW 251235 before the District Court of the State of Minnesota, County of Hennepin the Claimant made no claims in respect of the subject property and the same was not adjudged to be the joint property of the Claimant and the Defendant in the judgment of 16th January, 2001 or in any order(s) made in the course of the proceedings.”

From the joinder of issues, it is clear that the parties were in the cross hairs as to whether the Lagos property was an issue before the United States Court and whether the Lagos property was adjudged to be jointly owned by the parties based on the finding of facts made by the United States Court. Let me hasten to iterate that there was no trial in the proceedings in the United States Court, no evidence was led, so any findings of facts made by the United States Court would necessarily derive from the Petition filed before it, Exhibit FA6 and the Marital Termination Agreement, Exhibit FA1.

In holding that the Lagos property was the joint property of the parties, the lower Court reasoned as follows at pages 230 of the Records:

“I find and hold in view of the foregoing extracts of Exhibits FA1 and FA2 as reproduced above, that the defendant had agreed that he and the claimant are joint owners of the property at Ikotun and that by reserving the distribution for the Nigerian Courts to be adjudicated upon in Nigeria means that the Nigerian Courts would act on the binding agreement of parties which forms the basis of the judgment. I do not agree with submissions of the defendant’s counsel that the terms adjudication should be translated to mean what would amount to re-litigation in respect of the ownership of the property. The ownership of the property I find and hold has been settled by paragraph VII of Exhibit FA2.”

It continued and stated thus at page 232 of the Records:

“However in this instant case I find as stated above that the Judgment is quite clear on the consent of parties and the pronouncement that it is a joint property. On that basis I find that the issue of contributions of parties is not a fact in issue. I find that the issue of contributions made by the claimant in the course of the marriage do not hold any weight here in view of the consent of parties that the property in issues is jointly owned...”

The lower Court from the periscope above arrived at its decision based on its interpretation of Exhibits FA1 and FA2, having at page 229 of the Records held that it would not ascribe much weight to Exhibit FA6, the Petition for dissolution of marriage which, in fact, spawned Exhibits FA1 and FA2. Hear the lower Court at page 229 of the Records:

“I have looked carefully at all the exhibits especially Exhibits FA1, the Marital Termination Agreement and Exhibit FA2 which comprises of the Findings Of Fact, Conclusions Of Law, Order For Judgment And Judgment And Decree Of Dissolution as well as Exhibit FA6, the Petition For Dissolution of Marriage filed by the claimant.

Exhibit FA6 as stated above is the petition no DW 2511235 on the 8th of September 1999 by the claimant in the District Court Fourth Judicial District, Family Court Division, County of Hennepin USA instituting the divorce that led to the eventual dissolution of the marriage between the parties. While it is correct to state as submitted by the defendant’s counsel that the said document did not refer to the property in Ikotun I find that although it is a precursor to Exhibits FA1 and FA2 it is not part of the Judgment of Judgment of dissolution of the marriage and I can therefore not ascribe much weight to it. All it does I find is to establish that CW1 was the one who filed the petition of divorce.”

So for the lower Court all Exhibit FA6 does is show that the Respondent filed the petition for divorce.

Now, it is rudimentary law that the issues in an action are ascertained and based on the pleadings; so it is the Petition, Exhibit FA6, that would show the issues that were before the United States Court. In my deferential view, the lower Court was wrong to treat the Petition, Exhibit FA6, as merely showing that it was the Respondent that filed for divorce. No. Exhibit FA6, more importantly, showed the issues that were before the United States Court. In DALEK (NIG) LTD vs. OMPADEC (2007) LPELR (916) 1 at 32, Onnoghen, JSC, (later CJN) stated:

“It is very important to note that it is settled law that in an action based on pleadings, issues are joined by the parties on the pleadings, issues are joined by the parties on the pleadings. It is also settled law that evidence on facts not pleaded go to on issue.”

Issues are joined on the pleadings, not in the evidence: BAMGBOYE vs. UNILORIN (1999) LPELR (737) 1 at 30-31, LONGE vs. FBN PLC (2010) LPELR (1793) 1 at 23, LEWIS & PEAT (NRI) LTD vs. AKHIMIEN (1976) 7 SC 157 and ATOLAGBE vs. SHORUN (1985) 1 NWLR (PT 2) 360 at 367. It is equally hornbook law that in the determination of disputes between parties in Court, the decision must be confined to the issues properly raised by the parties. When an issue is not properly placed before the Court, the Court has no business whatsoever to deal with it. See OSOLU vs. OSOLU (2003) SCNJ 162 and BANKOLE vs. DENAPO (2019) LPELR (46444) 1 at 35-36. An issue not raised before a Court is not a subject matter for adjudication before the Court:LEWIS & PEAT (NRI) LTD vs. AKHIMIEN (supra) at 169, R. LAUWERS IMPORT-EXPORT vs. JOZEBSON INDUSTRIES COMPANY LTD (1988) LPELR (2934) 1 at 40-41 and EJINDU vs. OBI (1997) LPELR (1066) 1 at 18.

In order to ascertain the issues that were before the United States Court, I will set out the Respondents’ Petition, Exhibit FA6, verbatim ac literatim. It reads:

“In Re the Marriage of:

Florence O. Yankey - Petitioner,

and

Grant K. Yankey - Respondent.

PETITION FOR DISSOLUTION OF MARRIAGE

Petitioner alleges and represents to the Court the following:

1. Petitioner’s full name is Florence O. Yankey who resides at 4104 Lakeside Avenue, Hennepin County, Minnesota 55429 Petitioner’s attorney is Loveday E. Ekeh.

2. Respondent’s full name is Grant K. Yankey who resides at 1420 Portland Avenue, South, Apartment 307, Hennepin County, Minnesota 55404.

3. Petitioner was born April 27, 1953 and is 46 years of age; respondent was born May 4, 1936 and is 63 years of age.

4. Petitioner’s social security number is … Respondent’s social security number is unknown.

5. Petitioner and respondent were married to each other in Lagos, Nigeria on May 13, 1975, and have been husband and wife ever since.

6. Petitioner has been a resident of the State of Minnesota for more than 180 days immediately preceding the commencement of this action.

7. There are no children born of this marriage who are currently minors.

8. Petitioner is not now pregnant.

9. The parties own real property located at 4104 Lakeside Avenue, Brooklyn Center, Hennepin County, Minnesota, and legally described as: Lot 001, Block 001, Dover’s Lakeview Addition.

10. There has been an irretrievable breakdown of the marriage relationship between petitioner and respondent pursuant to Minnesota Statutes Annotated 518.06, as amended.

11. Petitioner knows of no separate proceeding for dissolution of marriage which has been commenced by respondent and is currently pending in any court in this state or elsewhere.

WHEREFORE, the petitioner prays for an Order of this Court as follows:

1. Granting a dissolution of the marriage relationship between petitioner and respondent.

2. Awarding petitioner the real property located at 4104 Lakeside Avenue, Brooklyn Center, Minnesota, and legally described as: Lot 001, Block 001, Dover’s Lakeview Addition.

3. For such other relief as the Court may deem just and equitable.”

It is effulgent that there is no mention whatsoever of the Lagos property in Exhibit FA6, whether as a jointly-owned property, as a property acquired in the course of the marriage or as a property available in the course of settlement of the property of the parties to the marriage. Pungently, there was no such issue before the United States Court. The Appellant’s contention on the principle of lex situs and the jurisdictional competence of a Court to adjudicate on subject matter of a case within its jurisdiction is good law, but there was no issue raised in the pleadings before the United States Court on the subject matter of the Lagos property and it therefore could not have adjudicated on the same. But did it?

The Respondent argued, and the lower Court agreed with her, that Exhibit FA1, the Marital Termination Agreement, which the United States Court entered as judgment in Exhibit FA2, adjudged the Lagos property to be joint property and for the same to be reserved for distribution for adjudication in a Court in Lagos State. At the expense of prolixity, I restate that issue of the Lagos property was not before the United States Court. The Respondent however argued that part of the reliefs before the lower Court and in respect of which judgment was entered was the relief “for such other relief as the Court may deem just and equitable”. By all odds, a Court can grant a consequential order in order to give effect to its judgment. It is a relief granted as incidental to the main relief. It is inconceivable and incomprehensible how an issue that was not in the pleadings before the Court can ground a consequential relief in the circumstances of this matter. See AWONIYI vs. REGD TRUSTEES OF AMORC (2000) LPELR (655) 1 at 20-21, OBAYAGBONA vs. OBAZEE (1972) LPELR (2159) 1 at 7-8, EZE vs. GOVERNOR OF ABIA STATE (2014) 7 SCNJ 38 at 57 and 60 and NOEKOER vs. EXECUTIVE GOVERNOR OF PLATEAU STATE (2018) LPELR (43350) 1 at 41-42.

Let us turn to the Marital Termination Agreement, Exhibit FA1, which the lower Court stated as showing that the Lagos property was their jointly-owned property. Paragraphs 6 and 7 of the said Exhibit FA1 are relevant. They read:

“HOMESTEAD:

6. Petitioner shall receive all right, title, and interest to the homestead of the parties located at 4104 Lakeside Avenue, Brooklyn Center, Minnesota, and legally described as follows:

Lot 001, Block 001, Dover’s Lakeview Addition.

Petitioner will indemnify and hold harmless Respondent from any responsibility for any mortgage payments, tax payments, insurance payments, and any other expenses or liabilities associated with the homestead. Respondent shall forthwith execute a quit claim deed conveying his interest in said homestead to the petitioner.

OTHER REAL PROPERTIES

7. That Petitioner and Respondent shall reserve the distribution of the property located at Ikotun Village, Mushin Local Government Area, Lagos State, Nigeria, No. 55/55/19907, Area 1532.558 Square Meters, for adjudication in a Court in Lagos State, Nigeria. This Court is divested from having jurisdiction over the distribution of said property located in Nigeria.”

The words used in Exhibit FA1 are clear and unambiguous; the law is that being clear and unambiguous, they are to be given their plain, ordinary and natural meaning: AMIZU vs. NZERIBE (1989) 4 NWLR (PT 118) 755, ADETOUN OLADEJI vs. NIGERIAN BREWERIES PLC (2007) LPELR (160) 1 at 14, CITY ENGINEERING (NIG) LTD vs. FHA (1997) LPELR (868) 1 at 42, LEWIS vs. UBA (2016) LPELR (40661) 1 at 25, HOME PAGE INDUSTRIES LTD vs. TNT COURIER SERVICES LTD (2018) LPELR (45117) 1 at 12-15 and SHEDOWO vs. A-G LAGOS STATE (2019) LPELR (46886) 1 at 15-16. There is nothing, when the afore-stated paragraph 7 of Exhibit FA1 is given its plain and ordinary meaning, which would conduce to a construction that it was therein agreed that the Lagos property was jointly-owned by the parties. The stipulation in paragraph 6 of Exhibit FA1 for the Appellant to execute a deed conveying his interest in the United States property (which was in issue in the Petition Exhibit FA6) shows that the said property was jointly-owned; there is nothing in respect of the Lagos property (which I iterate was not in issue before the United States Court) on the basis of which it can be concluded that it was jointly-owned. The distribution of the Lagos property was reserved for adjudication in a Court in Nigeria.

It is further based on the findings of facts and conclusions of law made by the United States Court in its decision, Exhibit FA2, that the lower Court held that the parties were joint owners of the Lagos property. Exhibit FA2 the decision of the United States Court, is predicated on the Marital Termination Agreement, Exhibit FA1. There was no trial before the United States Court, the parties having agreed for the Petition for dissolution of their marriage to be granted by default. As I have already demonstrated, there is nothing in Exhibit FA1 to the effect that it was agreed that the Lagos property was jointly-owned. The findings of facts of the United Stated Court in paragraph VII of Exhibit FA2, that the parties own real property in Lagos, going by the stipulations of paragraph 7 of Exhibit FA1, the Marital Termination Agreement, does not equate to a finding of fact on joint ownership of the Lagos property, in the light of the fact that the Lagos property was not an issue before it and it could therefore not adjudicate upon the same, coupled with the fact that even if it was an issue before it, it could not have adjudicated upon the same based on the principle of lex situs and the fact that the subject matter was not within its jurisdiction. The same applies with equal force to the conclusion of law that the distribution of the property is to be adjudicated in Lagos, even having conceded that it had no jurisdiction in respect of property in Nigeria. It is my respectful view in the light of the foregoing that it is a mis-appreciation and mis-apprehension of the issues before the United States Court and the thrust of Exhibits FA1 and FA2, which must ineluctably be confined to the issues before the United States Court, for the lower Court to have held that the ownership of the Lagos property had been settled by Exhibit FA2 and that it is clear on the consent of the parties and the pronouncement that the Lagos property is a joint property.

Exhibits FA1, FA2, and FA6 were in evidence before the lower Court. It is the trial Court that has the duty of evaluation of evidence and ascription of probative value thereto. There is a duty on the trial Court to receive all available relevant evidence on an issue. This is perception of evidence. After that there is another duty to weigh that evidence in the context of the surrounding circumstances of the case. This is evaluation of evidence. A finding of fact will entail both perception and evaluation. See OLUFOSOYE vs. OLORUNFEMI (1989) 1 SC (PT I) 29 or (1989) LPELR (2615) 1 at 9, GUARDIAN NEWSPAPER LTD vs. AJEH (2011) 10 NWLR (PT 1255) 574 at 592 and WACHUKWU vs. OWUNWANNE (2011) LPELR (3466) 1 at 50-51.

There is little or no difficulty with perception of evidence, id est, receive all available relevant evidence. Evaluation of evidence on the other hand is basically the assessment of the facts by the trial Court to ascertain which of the parties to a case before it has more preponderant evidence to sustain his claim. See ONWUKA vs. EDIALA (1989) 1 NWLR (PT 96) 182 at 208-209, OYADIJI vs. OLANIYI (2005) 5 NWLR (PT 919) 561 and AMEYO vs. OYEWOLE (2008) LPELR (3768) 1 at 9. The evaluation involves a reasoned belief of the evidence of one of the contending parties and disbelief of the other or a reasoned preference of one version to the other. A Court of trial has the duty to consider the evidence adduced in respect of any facts on which issues were joined, decide which evidence to prefer on the basis of how the evidence preponderates and then make logical and consequential findings of facts. See ADEYEYE vs. AJIBOYE (1987) 1 NWLR (PT 61) 432 at 451 and STEPHEN vs. THE STATE (1986) 5 NWLR (PT 46) 978 at 1005.

The settled legal position is that where a trial Court unquestionably evaluates and justifiably appraises the facts, it is not the business of an appellate Court to substitute its own views for the views of the trial Court, however, an appellate Court can intervene where there is insufficient evidence to sustain the judgment; or where the trial Court fails to make proper use of the opportunity of seeing, hearing, and observing the witnesses; or where the findings of facts by the trial Court cannot be regarded as resulting from the evidence or where the trial Court has drawn wrong conclusions from accepted evidence or has taken an erroneous view of the evidence adduced before it or its findings are perverse in the sense that they do not flow from accepted evidence or not supported by the evidence before the Court. See FHA vs OLAYEMI (2017) LPELR (43376) 1 at 69-71, EDJEKPO vs. OSIA (2007) 8 NWLR (PT 1037) 635 or (2007) LPELR (1014) 1 at 46-47, ARE vs. IPAYE (1990) LPELR (541) 1 at 22, WOLUCHEM vs. GUDI (1981) 5 SC 291 at 320 and FASIKUN II vs. OLURONKE II (1999) 2 NWLR (PT589) 1 or (1999) LPELR (1248) 1 at 47-48.

The decision of the lower Court to close its eyes to and shut out the evidence afforded by Exhibit FA6 and merely treat it as showing that the Respondent filed a Petition for divorce impacted on the lower court drawing wrong conclusions from the evidence and making findings of facts that do not result from the evidence. If the lower court had ascribed due probative value to Exhibit FA6, it would have been apparent to it that the Lagos property, on the pleadings, was not an issue before the United States Court and not being an issue, the United States Court could not have validly adjudicated on or made any findings or orders in respect thereof. Indubitably, having taken an erroneous view of the evidence, the findings which the lower Court arrived at are perverse as they do not flow from and are not supported by the evidence on record. In such circumstance, the lower Court having failed to properly evaluate the evidence, an appellate Court is duty bound to intervene and set aside the perverse findings in order to obviate miscarriage of justice: SAPO vs SUNMONU (2010) LPELR (3015) 1 at 54-55, ATOLAGBE vs. SHORUN (1985) 1 NWLR (PT 2) 360 and ABISI vs. EKWEALOR (1993) LPELR (44) 1 at 51-55. Where there has been non-evaluation of evidence, like in this matter where the lower Court failed to put Exhibit FA6 on the imaginary scale of justice, or improper evaluation of evidence, as in this case where there is a misapprehension and mis-appreciation by the lower Court of the effect of Exhibits FA1 and FA2; and the question of evaluation of evidence not involving the credibility of witnesses, the appellate Court is in as good a position as the Court of trial to evaluate the evidence: NARUMAL & SONS NIG LTD vs. NIGER BENUE TRANSPORT COMPANY LTD (1989) 2 NWLR (PT 106) 730 at 742 and ABISI vs. EKWEALOR (supra) at 52-53.

The Respondent’s claim before the lower Court is anchored on the facts averred to in paragraph 3 of the Amended Statement of Claim and paragraphs 2, 3 & 4 of the Reply to the Statement of Defence, which I have already reproduced in this judgment, to the effect that the Lagos property was made an issue in the United States Court and was adjudged to be jointly owned. I have held that the findings of the lower Court that the Lagos property was adjudged to be joint property by the United States Court is perverse and is not borne out by the evidence on record and it is in consequence set aside. The concomitance is that the Respondent did not establish and prove her entitlement to the reliefs claimed on the preponderance of evidence and balance of probability. The lower Court therefore arrived at the wrong decision when it entered judgment in favour of the Respondent. In order for the Respondent to be entitled to any share of the Lagos property, it has to be established that the property was joint property. This, the Respondent failed to do. In a summation, this appeal is meritorious and it succeeds. The appeal is allowed and the judgment of the High Court of Lagos State in SUIT NO. ID/1207/2012 delivered on 27th May 2016 is hereby set aside. In its stead, an order of dismissal of the said action in its entirety is hereby made. The Appellant is entitled to the costs of this appeal which I assess and fix at N300, 000.00.

**MOHAMMED LAWAL GARBA, J.C.A.:**

My learned brother Ugochukwu Anthony Ogakwu, JCA., has lucidly considered the crucial issues which call for decision in this appeal. In the lead judgement which I read before now, His Lordship has comprehensively dealt with the material points in appeal leaving no gaps to be filled and so I agree that the appeal for the reasons set out therein, deserves to succeed and be allowed.

I join in allowing the appeal in terms of the lead judgement.

**JAMILU YAMMAMA TUKUR, J.C.A.:**

My learned brother UGOCHUKWU ANTHONY OGAKWU JCA afforded me the opportunity of reading in draft before today the Judgment just delivered and I agree with the reasoning and conclusion contained therein, adopt the Judgment as mine with nothing further to add.