**AKANO FASHINA AGBOOLA**

**V.**

**ANGELINA ABIMBOLA**

SUPREME COURT OF NIGERIA

4TH DAY OF JULY, 1969

SUIT NO. S.C. 366/67

**LEX (1969) - S.C. 366/67**

OTHER CITATIONS

2PLR/1969/13 (SC)

**BEFORE THEIR LORDSHIPS:**

GEORGE BAPTIST A. COKER, J.S.C.

IAN LEWIS, J.S.C.

ATANDA FATAYI-WILLIAMS AG. J.S.C.,

**BETWEEN**

AKANO FASHINA AGBOOLA – Appellant

AND

ANGELINA ABIMBOLA - Respondent

**ORIGINATING COURT**

1. HIGH COURT, LAGOS (TAYLOR, C.J., Presiding)

2. REGISTRAR OF TITLES, LAGOS

**REPRESENTATION**

LARDNER (with him ADESHOYE) - for the Appellant

DAVIS - for the Respondent

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

REAL ESTATE AND PROPERTY LAW – LAND: - Registration of Title to Land – Registrar of Titles – Duty of the Registrar of Titles under Sections 9 and 10 of the Registration of Titles Act – Whether pleadings are filed in proceedings before the Registrar – Whether the Registration of Titles Act purports to substitute the Registry for the High Court so as to make it permissible for the Registrar to decide without formal pleadings, grave legal issues which are usually to be specifically pleaded and proved – Effect

REAL ESTATE AND PROPERTY LAW – LAND: - Title to land – Priority – Legal and equitable interests - Competing transfers of the same land to two different parties – Where none of the parties rested claim to title on native law and custom but in fee simple – Land originally secured via purchase receipt only – Whether gives equitable interest in the land only – Whether party who called in the legal estate in land by execution of deed over the land has better title than another who at no time directly or through predecessors-in-title called in the legal estate – Whether in the absence of notice, actual or constructive, of existing equities over land, if any, a person who acquires legal estate must take priority

REAL ESTATE AND PROPERTY LAW – LAND: - Identity of land – How proved – Need to trace title of land acquired under customary law to the root of the title - Where long possession is asserted as a basis for ownership in a battle of titles against acknowledged original family owners – Need to show that the original family had transferred the quantum of interest in respect of the land - Possession under section 145 of the Evidence Act – Whether gives no more than a presumption of ownership which cannot stand when another proves a good title

REAL ESTATE AND PROPERTY LAW – LAND:- Possessory rights/tenures under customary law devoid of ownership - Applicability of statutes of limitation to such land tenures

REAL ESTATE AND PROPERTY LAW – LAND: - Principles of law expressed in cases like Akpan Awo v. Cookey-Gam, 2 N.L.R. 100 and Saidi v. Akinwunmi, 1 F.S.C. 107 - Whether equity would refuse to assist a real owner of land who had failed to assert his rights timeously against person in long possession – Duty of court thereto – Whether none of the cases has ever been applied in favour of a plaintiff claiming title thereby as opposed to being applied in favour of a defendant resisting the claims of the proper owner

ADMINISTRATIVE AND GOVERNMENT LAW:- Registration to freehold title before the Registrar of Titles - Section 8(4) and 10 of the Registration of Titles Act - Whether law clearly lays down specific provisions for the treatment of applications and objections - Propriety of the treatment of an application as an objection – Whether the Registration of Titles Act purports to substitute the Registry for the High Court so as to make it permissible for the Registrar to decide without formal pleadings, grave legal issues which are usually to be specifically pleaded and proved – Attitude of court thereto

CHILDREN AND WOMEN LAW: - Women and Land/Real Estate – Women and Justice Administration – Registration of title over land with Registrar of Titles – Where competing claims arises – Advantages of having a legal title instead of an equitable one – Relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - ESTOPPEL: - Estoppel by deed – A person who joined in the execution of a deed is estopped from denying the contents of exhibit which he had joined in executing – Settled principle that a solemn and unambiguous statement in a deed must be taken as binding between parties and privies – Legal effect – Whether open to court to admit any contradictory evidence in rebuttal thereof

WORDS AND PHRASES – LATIN MAXIM: - Estoppel in pais - Effect

**MAIN JUDGEMENT**

**COKER, AG. C.J.N.:-**

Akpao Fashina Agboola has appealed a second time from the decision of the Registrar of Titles given against him in proceedings in which he had sought to be registered as the proprietor of the freehold title to a piece or parcel of land “situate at the junction of Oko-Bada and Abeokuta Streets, Ebute-Metta.” His first appeal was to the High Court, Lagos, where it was heard and dismissed by Taylor, C.J. This second appeal is from that judgment.

The appeal itself raises a number of procedural issues some of which will be dealt with in the course of this judgment and one of which must at the outset of this judgment be commented upon. As stated before, Agboola had applied to be registered to the freehold title. He was therefore an applicant for registration within the provisions of section 8 (1), (2) and (3) of Registration of Titles Act, cap 181. In the proceedings before the Registrar of Titles and subsequently he was regarded and referred to as an objector. This is because prior to the presentation of Agboola’s application a lady, by name of Angelina Abimbola, had presented as well an application to be registered as the proprietress of the freehold title to the same land. She was treated throughout as the applicant but will hereafter in this judgment be referred to as the respondent. When one reads the provisions of section 8(4) and 10 of the Registration of Titles Act, it is impossible to resist the suggestion that the law clearly lays down specific provisions for the treatment of applications and objections and obviously in this case the treatment of an application as an objection has combined with other matters to befog the clear issues that call for decision. Hereafter in this judgment we will refer to Agboola as the appellant.

The appellant’s case is that the land in respect of which he had sought to be registered is shown edged red on the plan attached to his conveyance which was admitted in evidence as exhibit ‘D’. The conveyance is dated the 9th July, 1963 and is expressed to have been executed in his favour by the Oloto Chieftaincy family.

The respondent, on the other hand, claims that the land is shown edged pink on a conveyance produced by her and admitted in evidence as exhibit F and dated the 4th October, 1949. According to the respondent the land was purchased as per purchase receipts dated the 4th August, 1913 and 6th August, 1919, by one Lawani Kufowora from one Kanyinde who was an Egba refugee settled on the land; that after the death on the 3rd September, 1947, of Lawani Kufowora his children instructed an auctioneer to sell the land by public auction which was held on the 18th February, 1949, by one Gilbert Oluwole Kembi and at which sale the appellant (sic) was the highest bidder and became the purchaser of the land by virtue of the auctioneer’s receipt exhibit ‘E’. The children of Kufowora thereafter conveyed the land to the respondent by means of the conveyance exhibit ‘F’. There was evidence by or on behalf of the respondent that after the auction sale of the land and indeed on the 24th February, 1949, the children of Kufowora among themselves swore to a deed of declaration declaring themselves to be absolute owners of the land. This deed of declaration was admitted in evidence as exhibit ‘C’. Later still, the children of Kufowora paid an amount of £25 to the Oloto Chieftaincy family, for the purchase of the same land and this is evidenced by a purchase receipt produced in evidence and admitted as exhibit ‘B’. It is dated the 18th March, 1949. This document, i.e. exhibit ‘B’, is posterior in date to the deed of declaration, exhibit ‘C’, and so in exhibit ‘B’ it is stated that the land thereby sold is the land described and contained in the plan attached to exhibit ‘C’.

One of the issues canvassed before the Registrar of Titles was the identity of the land claimed by the parties. There is positive evidence by the Chief Oloto, the titular head of the Oloto Chieftaincy family who had been called as a witness at the instance of the respondent, that the land sold by his family to the appellant was the land contained in the appellant’s conveyance exhibit ‘D’. The Chief Oloto was taken to the locus as he had earlier on in the course of his evidence in court suggested that the lands purchased by the parties were different parcels adjoining each other and could be separately seen at the site. His evidence at the locus confirms that the land sold by his family to the appellant is the land shown in exhibit ‘D’. In the course of his decision, the Registrar of Titles observed as follows:-

“Salisu Akanbi Alaka (8th a.w.) a licensed Surveyor gave evidence that the plan attached to exhibit `D’ is the same land as shown in the plan attached to exhibit `C’ and I find that this is true.”

This finding was not questioned on the appeal to the High Court and we entertain no doubt that learned counsel for the respondent could not, as he attempted to do before us, reopen the issue of the identity of the land.

The controversy between the parties was one of titles and it was common ground that the original owners of the land were the Oloto Chieftaincy family. It seems to us that the occupation of the land at one time or the other by Kanyinde was not seriously pursued. In any case, there was no reliable evidence of this and the learned Chief Justice on appeal made the following observations on this aspect of the case:

“Mr. L. V Davis agreed that there was no evidence of a grant to Kayinde, an Egba refugee, but that the respondent’s case rested on the knowledge of the Oloto family of the sale and possession of the land in dispute after the sale by Kayinde, by person with adverse title to theirs. Both counsel agreed that there was a misdirection by the Registrar of Titles on the law as to the effect of the purported sale by Kayinde on the title of the Oloto Chieftaincy family, but conceded that it did not effect the outcome of this case.”

The resultant position therefore is that although both parties agreed that the radical title to the land belonged to the Oloto Chieftaincy family the appellant rested his case on the conveyance exhibit ‘D’ executed in his favour by that family whilst the respondent based her claim on the fact of her long possession of the land (by herself and her predecessors-in-title), the documents exhibit ‘C’ and ‘F’ and the purchase receipt exhibit ‘B’ (dated the 18th March, 1949) issued by her by the Oloto Chieftaincy family. The conveyance of the appellant, exhibit ‘D’, contains a recital to the effect that the Oloto Chieftaincy family had sold the land to the appellant by virtue of a purchase receipt dated the 8th October, 1938.

To start with, if it is common ground, as indeed it was, that the land originally belonged to the Oloto Chieftaincy family then in order to establish title to the land a party must trace his title to the family. See Thomas v. Preston Holder (1946) 12 W.A.C.A. 78. There can be no doubt whatsoever on the evidence before the Registrar that the appellant did so clearly by the conveyance exhibit ‘D’ executed in his favour by the Oloto Chieftaincy family. On the other hand, the respondent (or his predecessors-in-title) had no conveyance from the Oloto Chieftaincy family and indeed except for the purchase receipt exhibit ‘B’ they had no documents whatsoever evidencing any transfer to them or her of the absolute interests of the Oloto Chieftaincy family. The Registrar of Titles, however, found in favour of the respondent and, in the course of his decision, observed as follows:-

“I agree with the counsel for the applicant that there is no evidence before me of any existing native law and custom affecting the land in dispute to prevent the application of the English Statutes of Limitation of 1833 and 1834 thereto. The applicant and her predecessors-in-title had been exercising rights of ownership on the land in dispute without let or hindrance from before the year 1913. The reversionary right of the Oloto family became exercisable on sale of the land by Kanyinde, the Egba Refugee, in 1913 and the purported sale in 1938 ratified by the deed of conveyance (exhibit `D’) is deemed ineffective there being no estate in the Oloto family in respect of the land in dispute transferable to the objector (Emmanuel Shonola Green v. Yesufu Owo XII N.L.R. 43).”

Thus, the Registrar disqualified the appellant from obtaining the obvious advantages of a direct conveyance from the accepted owners on the following grounds:-

(i) application of the English Statutes of Limitations;

(ii) long possession of the respondent and her predecessors-in-title; and

(iii) the extinction of the reversionary rights of the Oloto Chieftaincy family.

It is necessary to deal with these grounds of disqualification one by one. It is to be observed that the duty of the Registrar of Titles in the circumstances postulated by these proceedings is set out in Sections 9 and 10 of the Registration of Titles Act. Pleadings are not filed in proceedings before the Registrar and undoubtedly the Registration of Titles Act does not purport to substitute the Registry for the High Court so as to make it permissible for the Registrar to decide without formal pleadings, grave legal issues which are usually to be specified pleaded and proved.

Be that as it may, the Registrar held in this case that the English Statutes of Limitations 1833 and 1834 applied so as to bar the interest of the Oloto Chieftaincy family in the land. The reason he gave for this was that as far back as the year 1913 Kanyinde, an Egba refugee, had assumed a form of possession over the land which was obviously adverse to that of the Oloto’s. With respect, this is not a correct exposition of the legal situation. Assuming that this fact was not proved and was in fact later jettisoned that Kanyinde was an Egba refugee at the time that he purported to sell the land, he had no more than an interest under native law and custom. We do not consider that any authorities are now needed to show the inapplicability of Statutes of Limitations to such tenures. It is therefore not possible to support the use made herein by the Registrar of Titles of the Statutes of Limitations 1833 and 1834.

Again, the Registrar of Titles took the view that the respondent has established her title because of the long possession of the land by her and her predecessors-in-title. It is correct that there was evidence which if accepted, as indeed it was accepted, clearly established that the respondent, whether by herself or her predecessors-in-title, had been in possession of this land for a considerable length of time. The Registrar of Titles however erred in regarding the long possession of the respondent as conferring title to the land on her. She had agreed that the original owners of the land were the Oloto Chieftaincy family and she must prove in a battle of titles that that family had transferred to her the quantum of interest in respect of which she sought to be registered as the proprietress. In Da Costa v. Ikomi, S.C. 733/66 of the 20th December, 1968, we observed dealing with the issue of long possession, vis a vis a claim for title, as follows:-

“Not only was this not her case as presented to the High Court on her pleadings, but, even if it had been it would have no merit when seeking to rely on long possession to establish effectively a right to a declaration of title against another person who proved a good title from the original owner. Possession may under section 145 of the Evidence Act give a presumption of ownership, but it does not do more and cannot stand when another proves a good title.”

The proceedings before the Registrar were not an action for a declaration of title and even if they were, long possession will only avail as a weapon of defence against an ostensibly clear title but will not by itself constitute a basis of title. See also Ayodele v. Olumide S.C. 260/67 of 23rd May, 1969. The Registrar took the view that the respondent had by proving her long possession of the land established an absolute title from the Oloto Chieftaincy family. We have no doubt that this is an erroneous view of the legal position and this ground of disqualification of the appellant’s title must also fail.

Finally, the Registrar thought that the reversionary rights of the Oloto Chieftaincy family had become extinguished in the events that happened, so that the sale in 1938 to the appellant and the transfer by virtue of exhibit ‘D’ were invalid. In the events that happened in this case, especially the failure to prove the introduction of Kanyinde to the land, the question of the reversionary rights of the Oloto Chieftaincy family does not, strictly speaking, arise. However, the Registrar seemed to have dealt with the position even on the assumption that Kanyinde was a mere squatter. The Registrar then held that on the principles of law expressed in cases like Akpan Awo v. Cookey-Gam, 2 N.L.R. 100 and Saidi v. Akinwunmi, 1 F.S.C. 107, equity would refuse to assist a real owner of land who had failed to assert his rights timeously. The principles enshrined in the cases cited, together with a long list of others, exemplify some of the most sacrosanct of legal principles and they are well known and universally accepted. We too are in agreement with these principles and do not propose to shift one inch away from their authority. But none of the cases has ever been applied in favour of a plaintiff claiming title thereby as opposed to being applied in favour of a defendant resisting the claims of the proper owner.

All the grounds of disqualification employed against the appellant should not in our judgment have been so regarded. The Registrar of Titles was in error when he held that these grounds of disqualification were valid; they were not.

The Chief Oloto, in the course of his evidence and in the course of what was undoubtedly a heated and embarrassing cross-examination, attempted to resile from his evidence that the land sold to the appellant was the land shown on the plan attached to the conveyance exhibit ‘D’. He was attempting to do this because:

(a) the plan attached to the conveyance exhibit ‘D’, was only loosely attached thereto and was not gummed down on to the document;

(6) the plan was only counter-signed by the Director of Federal Surveys on the 23rd November, 1963,

and these reasons led the Registrar to observe as follows in the course of his decision:-

“The executant gave evidence that it was not the land in dispute that was sold to the objector or in other words that the plan in exhibit `D’ is not the plan of the land sold to the objector. I find that the deed (exhib-it ‘D’) was not in a form as to estop the executant. I also find that the deed (exhibit ‘D’) was executed on 9th July, 1963 but the plan made by the Surveyor on 3rd July, 1963 was countersigned by the Director of Federal Surveys on 23rd November, 1963 (about four months after the execution by the vendor).”

We point out first of all that at no time did the Chief Oloto say that the land he sold to the appellant was different from that on the plan attached to exhibit ‘D’. On the contrary, the Chief Oloto, although he expressed some qualms about the receipt dated the 8th October, 1938, recited in the conveyance exhibit ‘D’, maintained that he executed exhibit ‘D’ and that he would not say “anything contrary to my execution”. To say that he gave evidence “that it was not the land in dispute that was sold to the objector” is a misdirection of a most serious nature and at the least this finding is not supported by any recorded evidence. Besides, the evidence of the Chief Oloto is to the effect that he considered himself estopped by the contents of exhibit ‘D’ which he had joined in executing. In Greer v. Kettle [1938] A.C. 156 at p. 171, Lord Maugham, in the course of his speech in the House of Lords, stated as follows:-

“Estoppel by deed is a rule of evidence founded on the principle that a solemn and unambiguous statement or engagement in a deed must be taken as binding between parties and privies and therefore as not admitting any contradictory proof.”

See also Bowker v. Burdekin (1843) 11 M. & W. 128 and also Xenos v. Wickham (1867) L.R. 2 H.L. 296.

It is clear therefore as between the parties to the document exhibit ‘D’ there is estoppel in pais and it is inconceivable to suggest that a party is not estopped. The Chief Oloto did not deny his execution of exhibit ‘D’. What is being ascribed to him is that he denied the accuracy of the plan attached to it. Again, in Hunter v. Walters (1871) 7 Ch. App. 75, Lord Hatherley, L.C., dealing with a similar point, observed at p. 82 as follows:-

“I apprehend that if a man executes a solemn instrument by which he conveys an interest, and if he signs on the back a receipt for money-a document which, as the Vice-Chancellor observes, could not be mistaken-he cannot claim not to know what he was doing, and it is not enough for him afterwards to say that he thought it was only a form. That merely amounts to saying that a misrepresentation was made to him, under which he executed a deed; still the deed may have been exactly what he intended to execute, though he intended it to be used for a totally different purpose. But this does not affect the deed. The fraud of the person who used the deed for a different purpose does not make it less the deed of the person who executed it.”

We cannot but repeat that the Chief Oloto was not, as he did not attempt to do, entitled to deny that the plan attached to exhibit ‘D’ was inaccurate unless he could establish the plea of non est factum. The Registrar seemed to have exaggerated the effect of the lateness of getting the plan attached to exhibit ‘D’ counter-signed by the Director of Federal Surveys in pursuance of the provisions of the Survey Act. Clearly on the face of it and as indeed was found by the Registrar, the plan was made by the appellant’s surveyor on the 3rd July, 1963. The conveyance was executed on the 9th July, 1963, so that when exhibit ‘D’ was executed the plan was already in existence although not yet counter-signed. The requirements for counter-signature relate to matters of evidence and the production of the document in evidence and a non-compliance, at any rate at that stage, with the Survey Act does not render the plan void or useless.

In the High Court, the arguments did not cover any wide areas. After reciting the long possession of the respondent and the title of the appellant, the learned Chief Justice observed as follows:-

“The issue is whether at the time exhibit `D’ was executed, the Oloto family had any interest to convey and in my view the Registrar came to the correct conclusion in holding that the family had nothing they could convey by exhibit `D’. On their own evidence they had sold the land or to be more precise they had ratified the sale of the land in 1949 and had ratified the possession of the purchaser; they had issued a receipt showing that they had received monetary benefit for such trans-action. In addition to all they have acquiesced in the adverse title and possession as far back as 1942.”

He then dismissed the appellant’s appeal with costs. Before us it was contended on behalf of the appellant that these findings were unjustified in as much as the respondent did not prove, whilst the appellant did prove, a transfer to the respective applicant of the title which he or she is seeking to register. Neither of the parties in this case rested his title on native law and custom. (See Griffin v. Talabi (1948) 12 WA.C.A. 371.) By exhibit ‘C’ the respondent’s predecessor-in-title claimed that the interest of Kufowora was an estate in fee simple. The evidence shows that the Oloto Chieftaincy family had sold the land to the appellant in 1938 by virtue of a purchase receipt only. As from that day the appellant secured an equitable interest in the land. He had called in the legal estate in 1963 when exhibit ‘D’ was executed. The respondent at the highest always had merely the equitable interest and at no time did she or her predecessors-in-title call in the legal estate.

Unless it is shown that the appellant had notice, actual or constructive, of the equities, if any of the respondent or her predecessors-in-title, his legal estate must take priority. The learned Chief Justice on appeal did not give consideration to these facts and the legal consequences that must follow from their incidence.

We are satisfied that all the grounds canvassed on this appeal must succeed and it is allowed. The judgment of the learned Chief Justice in Lagos High Court appeal No. LD44A/66, including the order for costs, is set aside. It is ordered that the appeal of the appellant from the Registrar of the Titles be allowed and that this should be the judgment of the Court. We direct that the appellant be registered forthwith as the proprietor of the free-hold title to the land in dispute. The respondent shall pay the costs of the appeal fixed in this Court at 84 guineas and in the court below at 30 guineas.

Appeal allowed: appellant registered with free-hold title.