**MADAM ABIGAIL NIKE AWOGBAMI**

**V.**

**MRS. A. A. ALLEN**

SUPREME COURT OF NIGERIA

15TH DAY OF APRIL, 1966

S.C. 438/1964

**LEX 91966) - S.C. 438/1964**

OTHER CITATIONS

2PLR/1966/40 (SC)

**BEFORE THEIR LORDSHIPS:**

SIR LIONEL BRETT, J.S.C. (Presided)

MICHAEL OGUEJIOFO AJEGBO, J.S.C. (Read the Judgment of the Court)

GEORGE BAPTIST AYODOLA COKER, J.S.C.

**BETWEEN**

MADAM ABIGAIL NIKE AWOGBAMI – Appellant

AND

MRS. A. A. ALLEN – Respondent

**ORIGINATING COURT**

HIGH COURT OF WESTERN NIGERIA (SOMOLU, J. Presiding)

**REPRESENTATION**

YINKA AYOOLA - for the Appellant

S. BAYO ODUWOLE - for the Respondent

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

TORT AND PERSONAL INJURIES: - Assault – Where rival claims are asserted by both parties – Role and advantage of trial judge to decide the question of credibility and truthfulness

CHILDREN AND WOMEN LAW: - *Women in Business* – Women entrepreneurs and relationship with bankers – Dispute management - Spouses of professional service providers for women entrepreneurs – Wife of bank manager fighting female customer of bank for quarrelling with bank manager in the office

**PRACTICE AND PROCEDURE ISSUES**

APPEAL: - Findings of fact by trial court – Attitude of appellate court to invitation to interfere with same

COURT: - Judgment – Style of writing same - Judge writing certain passages of his judgment in a language more picturesque than accurate – Whether sufficient reason to depart from his conclusion on appeal - Trial Judge not putting on record his notes of inspection – Where Judge did not make use of the notes of inspection in his judgment – Whether defendant is in no way prejudiced

**MAIN JUDGMENT**

AJEGBO, J.S.C. (DELIVERING THE JUDGMENT OF THE COURT):

Somolu, J. gave judgment for the plaintiff in an action she instituted against the defendant in the High Court of Western Nigeria claiming damages for assault. The defendant has appealed against the judgment.

The cause of action, as stated in paragraph 4 of the Statement of Claim, was that –

“on the 9th of September, 1961, the plaintiff was on the bank premises to transact business with the bank when the defendant came down to the bank, assaulted and beat the plaintiff, tore the plaintiff’s wearing apparels and stripped plaintiff naked”.

For this assault the plaintiff claimed £1,000 damages.

In her evidence the plaintiff said that she had been a customer of the bank and had been one of the bank’s tenants in its premises at 34 New Court Road, Ibadan where she had her shop for about 10 years; that on the day in question, she went to the bank to cash a cheque for £90 and that after cashing the cheque she collected a statement of her bank account; that on going through the statement she discovered a mistake and had to see the Manager to have the mistake corrected; that the Manager was not disposed to attend to her apparently because of a previous misunderstanding she had with him but that she was able to see him after an exchange of words between them. Having finished with her business with the Manager she was returning to her shop through the Bank entrance through which she went, and which she had hitherto used, when she met the defendant on the steps of the staircase and that the defendant abused her, dragged her down the steps and tore the apparel (‘buba’) she was wearing; that while she was struggling with the defendant in order not to fall down the steps her wrapper fell off and her other dresses got torn and she became half-naked.

The defendant denied assaulting the plaintiff as alleged in the statement of claim but said she was rather the victim of plaintiffs aggression. She said in her evidence that she was the wife of a man who was the Manager of the Bank at the time of the incident; that she was living with her husband on the first floor of the bank’s premises at 34 New Court Road, Ibadan; that on the day in question she was in her kitchen on the first floor when she heard the noise made by the plaintiff in her husband’s office downstairs; that she went down merely to tell her husband not to answer the plaintiff back and was on the last step of the staircase descending when the plaintiff met her and assaulted her; that she fought back and that the plaintiff tore her dress. She said she had had no quarrel with the plaintiff and that her husband had never told her of any previous trouble with the plaintiff.

The learned Judge was not impressed with the defendant’s evidence. In his view, the defendant told obvious lies. Apparently, the learned Judge was having in mind two bits of evidence given by the defendant, namely, that when she heard the abuses being hurled at her husband in his office by the plaintiff she was going down merely to ask him not to answer back and also that her husband had never told her of any previous quarrel with the plaintiff. These stories do not ring true.

Learned Counsel has criticised a number of passages in the judgment and submitted that the trial Judge drew wrong inferences from the facts before him and has urged on us either to look at the facts afresh or to send the case back for rehearing. We are aware that the course of sending the case back for a rehearing was adopted by this court in Okpiri v. Jonah (1961) All N.L.R. 102; [1961] 1 S.C.N.L.R.174. In Okpiri’s case, which was one for a declaration of title to land, the trial Judge did not make any findings at all nor did he attempt to draw inferences from the facts. The court held that the Judge did not take proper advantage of seeing and hearing the witnesses and therefore sent the case back for rehearing.

The circumstances in the present case are entirely different. This is a case of assault and the whole question, as was conceded by Counsel for both parties at the trial, was one of credibility. The function of a court of appeal on findings of fact was laid down by Lord Thankerton in his famous and oft quoted speech in Watt or Thomas v. Thomas (1947) A. C. 484 at page 487 in the following words:

“Where a question of fact has been tried by a Judge without a jury, and there is no question of misdirection of himself by the Judge, an appellate court which is disposed to come to a different conclusion in the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge’s conclusion”.

No misdirection was alleged before us. No doubt, the learned Judge wrote certain passages of his judgment in a language more picturesque than accurate but we do not see sufficient reason to depart from his conclusion. The appeal fails.

We need hardly refer to the ground of appeal which complains that the learned trial Judge did not put on record his notes of inspection. The Judge did not make use of the notes of inspection in his judgment and the defendant is in no way prejudiced.

The appeal is dismissed with costs assessed at twenty-eight guineas to the plaintiff.

**BRETT, J.S.C.:**

I concur.

**COKER, J.S.C.:**

I concur.

Appeal dismissed.

**CASES REFERRED TO:**

Okpiri v. Jonah (1961) All N.L.R. 102; [1961] 1 S.C.N.L.R.174

Thomas v. Thomas (1947) A. C. 484