**GANIYU KALE**

**V.**

**MADAM T. COKER AND OTHERS**

IN THE SUPREME COURT OF NIGERIA

10TH DAY OF DECEMBER, 1982

SUIT NO. SC 33/1982

LEX (1982) - **SC 33/1982**

OTHER CITATIONS

(1982)12 S.C.252

2PLR/1982/26 (SC)

**BEFORE THEIR LORDSHIPS:**

AYO GABRIEL IRIKEFE, J.S.C.

MOHAMMED BELLO, J.S.C.

CHUKWUNWIKE IDIGBE, J.S.C.

ANDDREWS OTUTU OBASEKI, J.S.C.

KAYODE ESO, J.S.C.

**BETWEEN**

GANIYU KALE – Appellant

AND

MADAM T. COKER AND OTHERS – Respondents

**ORIGINATING COURT**

THE HIGH COURT OF LAGOS STATE, IKEJA

**REPRESENTATION**

H.A. LARDNER, Esq. S.A.N. with A. ADEKOYA, Esq., P.O. JIMOH LASISI, Esq., and SHOLA RHODES, Esq.) for Appellants.

F.G. ADEWOLE, Esq. for Respondent.

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

REAL ESTATE AND PROPERTY LAW - LAND:- Registrable Instruments under the Lands Instruments Registration Law Cap. 64 Laws of Lagos State - Land instruments which are pleadable in Lagos State – Unregistered Lease and Sale Agreements in Lagos State– Effect of Regulation 4 (a) made pursuant to Section 34 of the Land Instruments Registration Law Cap. 64 of Lagos State 1973 on Section 15 – Whether unregistered lease and sale agreements are pleadable in courts of law in Lagos State – Whether uniform rule applies in every State of Nigeria in relation to agreement to lease/sale of land

REAL ESTATE AND PROPERTY LAW - LAND:- Proof of title – Agreement evidencing lease - Requirement for unambiguous identity of land - Where agreement evidencing lease lacks any description of the land (intended to be leased) – Whether cured by the evidence of admission into possession of the land in pursuance of the agreement

CONSTITUTIONAL LAW:- Supreme Court – Appellate jurisdiction over questions of fact – Need to obtain leave of Court of Appeal – S. 123 (3) of the 1979 Constitution

**PRACTICE AND PROCEDURE ISSUES:-**

APPEALS:- Concurrent findings of facts of lower courts – Attitude of Supreme Court to invitation to interfere therewith – Relevant considerations

APPEALS: Questions of Fact and Supreme Court – Need to obtain leave of court – Effect of failure thereto

APPEAL:– When Supreme Court will allow questions of facts to be re-opened

COURT: Determination of issues – Duty of court to rely on legally admissible evidence – whether court has no discretion to act on evidence made inadmissible by the express provision of a statute even by consent of parties

INTERPRETATION OF STATUTE:- Section 15 and 34 of the Land Instruments Registration Law Cap. 64 of Lagos State 1973 – Effect of Regulation 4 (a) thereon

**MAIN JUDGMENT**

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

The appellant was the defendant in suit No. IK/162/68 instituted on the 4th day of December, 1968 by one Emmanuel Iyiola Oniteru (deceased) now substituted by the respondent and one Madam Tayo Coker as plaintiffs in the High Court of Lagos State, Ikeja, claiming:

“(1) £200.00 damages for trespass of their parcels of land lying and being at Orona Street, Oshodi, Ikeja, in respect of which they are leasehold owners; and

(2) injunction restraining the defendant from further acts of trespass.”

Pleadings were filed and served and the Issues joined eventually came up for trial before Ishola Oluwa, J. At the conclusion of the hearing, Ishola Oluwa, J. in a well considered judgment delivered on the 20th day of June, 1979 found in favour of the respondent. He awarded the respondent N200.00 (Two Hundred Naira) damages for trespass in respect of the two plots to which Oniteru deceased) was entitled as shown in the composite plan exhibit ‘E’ and made an order of perpetual injunction restraining the appellant from further acts of trespass in respect of the said land shown in exhibit ‘E’ and therein edged red and comprising plot ‘C’ and plot ‘1 C.

The defendant was dissatisfied and unsuccessfully appealed to the Federal Court of Appeal (Adenekan Ademola, Nnaemeka-Agu and Uthman Mohammed, JJ.C.A.). In the judgment delivered by Uthman Mohammed, J.C.A. and concurred in by Adenekan Ademola and Nnaemeka-Agu, JJ.C.A., the learned Justice of the Court of Appeal said:

“I entirely agree with the findings of the trial judge where he said-

‘The issues in this case fall into the usual groove. The plaintiff was in possession while the defendant disturbed the possession; the defendant claims he has right to do so because he has a deed. But in this case the family itself by its Head and one of the Arotas had put plaintiff in possession and leased the land to him. The family had nothing to transfer by exhibit ‘G’ to the defendant. The defendant leased nothing from the family for the period it purports to do so.’

I agree with the conclusion of the learned trial judge that the first plaintiff had no case against the defendant since the defendant was not on the land of the 1st plaintiff.

Accordingly, the appeal fails and it is hereby dismissed:’

The appeal now before this Court is against that judgment. The two grounds canvassed before us both in appellant’s brief and orally by counsel are as follows:

The Federal Court of Appeal misdirected itself in law and on the evidence when in upholding the judgment of the High Court it failed to observe that although the plaintiff pleaded in paragraph 2 of the amended statement of claim that “by separate agreement dated 11th November, 1959 the Oshodi and Arotas family leased the plaintiff for a term of 25 years at a premium of (£28) N56.00 and ground rent of two Naira (N2.00) per annum, each parcel of land measuring 50' x 100' ...” the evidence produced and tendered in proof of such lease was exhibit ‘A’ which is inadmissible.”

Particulars

The document is inadmissible in evidence by virtue of section 15 of the Land Instrument Registration Law Cap. 64 Laws of Lagos State.

(2) The Federal Court of Appeal misdirected itself in law and on the evidence when in upholding the judgment of the High Court it failed to observe that

(i) it was the appellant’s case that exhibit ‘A’ was neither executed by the proper person nor did it contain sufficient description of any land much less of the land the subject matter of exhibit C which is the land in dispute.

(ii) that whatever land may have been in contemplation of the parties to exhibit ‘A’ it cannot be the land covered by exhibit C the plan whereof is the subject matter of the claim.

Particular

(a) Exhibit C makes no reference to exhibit A

(b) The grantors and terms in both documents are different.”

Ground 1 raises an issue which was not canvassed either before the High Court or before the Federal Court of Appeal and as such counsel sought and obtained leave of this Court to raise it as the determination of the issue did not involve any need for additional evidence to that on record and the non registration of the instrument was alleged to have brought it within the class of instruments absolutely barred by the said statute from being pleaded or given in evidence before any court of law. Courts of law determine issues before them on legal admissible evidence. They have no discretion to act on evidence made inadmissible by the express provision of a statute. A court of law cannot admit such piece of evidence by consent. Where the lower court has erroneously admitted such inadmissible evidence and the attention of an appeal court is drawn to the error at any stage of the proceedings, it will consider the Issue and ensure that the court acts only on the legal admissible evidence available. See Olukale v. Alade (1976) 2 S.C. 183.

Two issues although not expressly stated in the appellant’s brief arise for determination in this appeal. They are firstly whether exhibit A falls within the class of instruments registrable under the Lands Instruments Registration Law Cap. 64 laws of Lagos State which if not registered cannot be pleaded and admitted in evidence in any proceedings by virtue of the prohibition contained in section 15 of that Law; and, secondly, whether there is sufficient description of the land in respect of which exhibit A was executed to identify the land in dispute in these proceedings as the land covered by exhibit A and exhibit C.

Before considering the Issues, I consider a brief resume of the facts of this case desirable as they are indispensable to the proper determination of the above issues. I now set down hereunder the very material facts.

In 1959, Emmanuel Iyiola Omiteru expressed a desire to Mr. Ekundayo Olusegun Coker to get building plots of land from the Oshodi chieftaincy family consisting of Oshodi members and the Arota section of the family. On the request being made by Mr. Ekundayo Olusegun Coker, p.w.1, the family allocated two plots each measuring 50 by 100 feet at Oshodi, Ikeja District of Lagos State to the said Emmanuel Iyiola Omlteru. Mr. Emmanuel Iyiola Omiteru in company of Mr. Ekundayo Olusegun Coker met the family and an agreement exhibit A was entered into on the 19th day of November, 1959, Clauses 2 and 3 of which read:

“It is mutually agreed as follows

2(a) That the owners are having a land situate, lying and being at Oshodi in the district of Ikeja, Nigeria, and agreed to lease it and the tenant agreed also to lease the undermentioned dimension of land and (that the) for the period of 25 years from the date above immediately after the payment in a lump sum of £50.00 (fifty pounds) and to be paying annual rental of the rate of £2.00 payable at the end of January in every year.

(b) that the said tenant further agreed with the owners to pay the said amount in manner aforesaid.

(c) The lease “(read lessee)” will be given an option of renewal subject to good behaviour regular payment of rent and such change the owners may wish to make as regards rental fees

3. The house land or plot measuring as follows (one hundred feet) 100 ft. by (one hundred feet) 100 ft.”

The language of the agreement may not be classical and elegant but it clearly expresses the agreed terms. The agreement was executed by S. D. Oshodl the head of the Oshodi family and Chief Almaro of Ewa the head of the Arotas. They had the mandate of families to do so at the time. The premium was paid and Emmanuel Iyiola Omiteru was let into possession of the land now in dispute, one Owosheni, an Arota, identifying the land to him on the instruction of the families. He took possession and proceeded to erect the foundation of a building up to DPC level.

Apparently, he took no further steps to obtain a properly drawn up deed of lease. If he did, the division in the ranks of the Oshodi family and the Arota family which surfaced in 1960 made it difficult for him to obtain one jointly executed by the two families. In the attempt, he got exhibit C executed in 1966 only by the Arota family and the trial judge properly described the document as worthless as the Oshodi family did not join in the execution. However, on the 7th day of November, 1968, following the report of one Mr. Ojo who was respondent’s caretaker of the plot, Mr. E.O. Coker, P.W. 1, went to the plot and met labourers digging up the foundation wall erected by Mr. Emmanuel Iyiola Omiteru. Enquiries revealed that they were engaged by the defendant/appellant to uproot respondent’s structure from the site. P.W. 1 subsequently met the defendant/appellant on the site and to a question why he was committing the act of trespass, he replied that the respondent had lost his rights in the land and contended that he had leased the parcel of land (measuring 100 feet by 100 feet) now in dispute from the Oshodi Estate Management Committee with one Alhaji Raji Disu Oshodi as the head of the Committee on the 5th day of July, 1968. It emerged later from the evidence that he did not get a lease executed before 11th July, 1969.

Soon after the act of trespass was committed, a report was made to the police by Mr. Emmanuel Iyiola Omiteru and Mr. Coker. Later, Mr. Emmanuel Iyiola Omiteru instructed his solicitors who on the 4th day of December, 1968 filed the action in the High Court which is now on appeal to this Court. Mr. Emmanuel Iyiola Omiteru filed his statement of claim on the 4th day of March, 1969 and the appellant filed his statement of defence on 12th day of April, 1969. This statement of defence pleaded no title apart from the traverse of all the paragraphs of the statement of claim setting up Mr. E.I. Omiteru’s tide and alleging appellant’s trespass. The lease to the defendant exhibit G was therefore executed more than 6 months after the respondent’s action was filed. The pleadings were subsequently amended to reflect the deed of lease executed after the action had been instituted.

In his considered judgment, Ishola Oluwa, J. found as a fact that before 1960 one Salisu Disu Oshodi signed documents relating to land on behalf of Oshodi family and one Almaro of Ewa signed on behalf of the Oshodi Arota and that they were the duly authorised representatives of Oshodi and Arota families in land matters. He also found that it was in 1960 that disagreement between the Oshodi and the Arota families erupted and in the concluding paragraphs of his judgment, he commented and observed as follows:

“I have no doubt in my mind that the defendant could not have been on the land before or at the time plaintiff went there. I accept exhibit ‘A’ as proof of the transaction between [the] plaintiff and the family and the plan in exhibit ‘C’ as the one made relating to the land before litigation. It is not my opinion that the defendant is truthful..... The plaintiff was in possession while the defendant disturbed the possession.... But In this case the family itself by Its Head and one of the Arotas had put the plaintiff in possession and leased the land to him, the family had nothing else to transfer by exhibit ‘G’ to the defendant. The defendant leased nothing from the family for the period it purports to do so.”

Before us, learned counsel for the appellant submitted that the only evidence of possessory title of the respondent is exhibit A and as exhibit A is an instrument within the definition of ‘Instrument’ in section 2 of the Land Instruments Registration Law Cap. 64 Laws of Lagos State, it should have been registered to make it pleadable and admissible in proceedings, i.e. before evidence about it can be given and the document admitted in evidence in a court of law. As it was not registered, learned counsel further submitted, its admission in evidence was erroneous in point of law. He therefore urged that it be held inadmissible and expunged from the record by this Court particularly as the pleadings referred to it as a lease.

Alternatively, the learned counsel submitted that the agreement exhibit A was not referable to the land in dispute. The land agreed to be let out to Mr. Emmanuel Iyiola Omiteru was neither described therein nor were any particulars by which it could be identified given. He submitted that exhibit A was worthless and cited in support the case of Abdul Hamed Ojo v Primate E.O. Adejobi & Others (1978) 3 S.C. 65.

Learned counsel for the respondent in reply, submitted that the respondent pleaded an agreement for a lease and that in pursuance of that agreement Mr. Emmanuel Iyiola Omiteru was shown the piece of land in dispute and placed in or let into possession. He took possession and erected the foundation for his building up to D.P.C. level.

The submission of learned counsel for the appellant on the admissibility of exhibit A raises a very substantial issue of law which if resolved favourably in favour of the appellant would destroy the very foundation of the respondent’s claim.

An examination of the Land Instruments Registration Law Cap. 64 Laws of Lagos State 1973 is necessary in order to ascertain whether the agreement exhibit A is caught by its provisions.

Section 15 of the Land Instruments Registration Law Cap. 64 Laws of Lagos State 1973 was the statutory authority relied on by learned counsel for the appellant to found his objection to exhibit A. It reads:

“No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered;

Provided that a memorandum given in respect of an equitable mortgage executed before the 1st day of July, 1944' and not registered under this law may be pleaded and shall not be inadmissible in evidence by reason only of not being so registered.

Provided further that this section shall not apply in the case of any document which is exempted from registration under this law by virtue of section 86 of the Registration of Titles Law or the Registered Land Law and which is registered under either of those laws.”

Instrument under that law is defined in section 2 to mean “a document affecting land in the Lagos State, whereby one party (hereinafter called the grantor) confers, transfers, limits, charges, or extinguishes in favour of another party (hereinafter called the grantees any right or title to, or interest in land in the Lagos State, and includes a certificate of purchase and a power of attorney under which any instrument may be executed but does not include a will.”

Exhibit A falls within this definition and under section 15 would but for the Regulation 4(a) not be pleadable or admissible in a court of law. However, the State Commissioner is empowered by the provisions of section 34 of the Land Instruments Registration Law Cap. 64 of Lagos State 1973 to make regulations for a number of purposes and that which is of particular relevance to this appeal is item (d) which reads:

“excepting from the provisions of this law any class of Instrument’

Regulations were made under section 34 and pertinent to the point under consideration is Regulation 4(a) which reads:

“The following instruments are excepted from the provisions of the law

(a) Agreements for sale or for lease affecting land whether made before or after coming into operations of these regulations”

I have examined exhibit A. In my opinion, exhibit A in its terms is on proper classification an agreement for a lease and as it is excepted from the operation of the provisions of section 15 of the Lands Instrument Registration Law Cap. 64 Laws of Lagos State 1973, it was and is an admissible document and was properly pleaded and properly admitted by the learned trial judge in evidence.

Ground 1 of the grounds of appeal argued before us therefore fails. It might have been otherwise if the agreement for a lease had been in respect of land in any of the other States in Nigeria which have not promulgated the exemption Regulations.

The law has not been the same in all the States of the Federation. The law in Lagos State is not now the same as the law in Ogun, Oyo, Ondo, and Bendel States. Similarly, it is not the same as the law in Anambra, Imo, Rivers and Cross River States. In the case of Fakoya v. St. Paul’s Church. Shagamu (1966) 1 All N.LR. page 74, a case where an unregistered agreement for the sale of land was admitted in evidence in support of a claim for specific performance, Brett J.S.C. delivering the judgment of this Court said at page 77:

“It would fall far short of ideal justice between man and man if, where no third party had been prejudiced by the omission, a party to a contract could evade his obligations merely because the other party had not gone to a government office and registered the contract, but the courts have to administer the statute law as it stands and since the submission has been made the court must consider its validity. Two questions arise, first was the agreement, an ‘instrument’ for the purpose of the law, and secondly was it pleaded and produced as affecting land.

On the first point we uphold the appellant’s submission. Chief Okenla for the respondents relied on Yaya v. Mogoga (1947) 12 W.A.C.A. 132 where it was held that an agreement for sale was not registrable under the Land Registration Ordinance of which the land Instruments Registration Law is the regional counterpart; but an agreement for lease had previously been held registrable in Elkali v. Fawaz (1940) 6 WACA 212 and the decision in Yaya v. Mogoga turned on the fact that an agreement for sale was expressly exempted from registration by the Land Registration (Agreements) Exemption No. 2 Regulations 1944 in what now appears as regulation 5 of the regulations made under section 32 and 34 of the Land Registration Act in volume 8 of the Laws of the Federation 1958. The law in force in Western Nigeria is no longer the same as it was when Yaya v. Mogoga was decided.”

With regard to the 2nd ground of appeal, the issues raised in it are primarily issues of fact and in view of the concurrent findings of fact by the High Court and the Federal Court of Appeal that exhibit A was executed by the duly authorised representatives of the Oshodi family and the Arota family in whom title to the land is vested, learned counsel for the appellant set himself an uphill task to satisfy this Court that the finding was erroneous. He has in my view been unable to persuade me that the findings were not justified.

The absence of any description of the land (intended to be leased) in exhibit A is cured by the evidence of admission into possession of the land in dispute of this case in pursuance of the agreement exhibit A. Learned counsel was at pains to support this ground and virtually abandoned further effort to support the ground when the Court drew his attention to the concurrent findings of fact.

This Court will not in the absence of special circumstances indicating obvious errors in the concurrent finding of fact by two lower courts allow the question of fact to be reopened. See Mogo Chinwendu v. Nwanegbo Mbamali & Anor. (1980) 34 S.C. 31 at 75.; Lamas v Orbih (1980) s7 S.C. 28.; Ukpe Ibodo v. Enarofia & Ors. (1980) 5 S.C. 42 at 4.; Victor Woluchem v. Simon Gudi (1981) 5 S.C. 319 at 32630.

The appellant has failed to show any special circumstances which establish that it is in the Interest of Justice to reopen the question. The Supreme Court has repeatedly pointed out that it will interfere only where not to do so will occasion a substantial miscarriage of justice. Akpere v. Barclays Bank ofNigeria Ltd. & Anor. (1977) 1 S.C. 1. The appellant has failed to satisfy me that there has been a miscarriage of justice in this case.

This second ground also fails. The appeal has failed in its entirety and I hereby dismiss it with costs to the respondent assessed at N300.00 (three hundred naira).

**IRIKEFE, J.S.C.:**

I had the advantage of a preview of the judgment just read by my teamed brother Obaseki, J.S.C. I agree with the reasoning and conclusions therein, both on matters of fact and law. I also would dismiss this appeal and do so in terms set out in the lead Judgment of my teamed brother Obaseki, J.S.C. inclusive of the order as to costs.

**BELLO, J.S.C.:**

]I had the privilege of a preview of the judgment of my learned brother, Obaseki J.S.C. For the reasons stated therein, I agree the appeal should be, and is hereby, dismissed with N300.00 costs to the respondent.

**IDIGBE, J.S.C**.:

Having had the advantage of reading earlier the draft of the judgment just read by my seamed brother, Obaseki, J.S.C. with which I am in entire agreement, I would also dismiss this appeal for the reasons stated in the said judgment; and I endorse the orders proposed in the said judgment.

**ESO, J.S.C**.:

I agree with the judgment which has just been read by my learned brother Obaseki, J.S.C. a preview of which I had. I agree with the conclusion reached by my leamed brother on the first ground of appeal. On the second ground I will like to emphasise that no special circumstance has been shown in this case which indicates errors obvious enough for this Court to interfere with two concurrent findings of fact.

For this Court to interfere, the circumstance must be such that the findings of fact are patently erroneous and it would be travesty of justice to allow the findings to remain. See Mogo Chinwendu v. Nwangbo Mbamali and anor. (1980) 34 S.C. 31; Victor Woluchem v. Simon Gudi (1981) 5 S.C. 319 at 326 330.

The Supreme Court is essentially a Constitutional Court. It is to deal mainly with constitutional matters and Important Issues of law. For any issue of fact to be brought before the court in its appellate jurisdiction, leave of the Federal Court of Appeal or that of this Court is required. See s. 213(3) of the Constitution of the Federal Republic of Nigeria 1979. It is my considered view 1st neither the Federal Court of Appeal nor this Court should give such leave lightly. To my mind the establishment of an intermediate court of appeal between the High Court and the Supreme Court is to enable facts to come to rest in that intermediate court of appeal. Except there will be a miscarriage of Justice, once issue of facts has been filtered by the High Court and the Federal Court of Appeal this Court will not interfere.

There is no such miscarriage of justice in this case and the second ground of appeal fails.

Appeal dismissed.