



**COMMENTARIES ON SELECTED
JUDGEMENTS OF
HON. JUSTICE M.M.A. AKANBI**



**Edited by: I. A. Yusuf
M. M. Akanbi
A. T. Shehu**

Chapter 7

IN THE FEDERAL COURT OF APPEAL

IBADAN JUDICIAL DIVISION

HOLDEN AT IBADAN

On Wednesday the 13th day of December 1978

Before their Lordships

OLAJOMPO AKINKUGBE

ANTHONY IJOMA ASEME

M. M. A. AKANBI

JUSTICE, COURT OF APPEAL

JUSTICE, COURT OF APPEAL

JUSTICE, COURT OF APPEAL

Suit No: FCA/1.75/77

Between

ISAAC ADEBOYE & PRS.....APPELLANT

And

ERSUS TADE SOKEYE.....RESPONDENT

Lead Judgement Delivered by M.M.A. Akanbi, J.C.A.

Comment by: Dr. Ibrahim Imam

INTRODUCTION

The scenarios in this case illustrates that family land disputes, whether presented in the context of a suit for sale, partition, trespass or ownership, a corporate fight, or a probate or trust case, are matters of the heart and the law. They present challenges for how emotions and family dynamics are to be weighed against and balanced with legal rights and obligations. A judicial decision or legal mandate may inadvertently address the underlying family land conflict or fully resolve the dispute. The desire to resolve disputes and preserve the family land and relationship is deeply embedded. In most family disputes there is a dissonance between wanting to win by being proven right and desiring to make peace within the family. The role of the judiciary is to help resolve the dispute within the confine of the law and allow justice prevail.

* LL.B (UDU Sokoto) BL (Abuja) LLM (OAU Ife) Ph.D. (Uni-Ilorin) Senior Lecturer, Department of Public Law, Faculty of Law, University of Ilorin

FACTS OF THE CASE

Before delving into the principles emerging from the Court of Appeal judgment in this case, it is necessary to make a brief summary of the facts of this case. The plaintiff claimed that the land in dispute was first settled upon by their great grandfather Kolombo when he arrived in Abeokuta from his Igbore homestead sometime 1830 and that upon his death his children, and after them, his grand children (the plaintiffs) became successors-in-title to the land. The plaintiffs further stated that throughout the period, they, like their forebears, enjoyed undisturbed possession of the land and it was only in 1963, that one of them, 3rd plaintiff, saw the defendant bury a corpse on the land whereupon they questioned his right to do so. The defendant informed them that he bought the land from Sunmonu Ire, himself a descendant of Kolombo. According to the plaintiff the defendant subsequently pleaded with them not to exhume the corpse and further promised not to bury any more corpses on the land. They further alleged in their statement of claim that contrary to his promise, the defendant continued to trespass on the land, built a church thereon and indeed sold portions of it. After some abortive attempts to reach an amicable settlement, the plaintiff sued the defendant in the Abeokuta High Court which, as we have stated before dismissed their claim.

The defendant had at no time denied that the land originally belonged to Kolombo, the plaintiffs' ancestor. His main contention has always been that sometime in 1941, he bought the land for N100 at a public auction which was carried out by a licensed auctioneer, Mr. Aiyola on the instruction of Sunmonu Ire, the then head of Kolombo family and with the consent of other members of the said family. Furthermore, in 1959 Isolake Akigbade and Buraimo Oderayi (who succeeded Sunmonu Ire as the head of Kolombo family) for themselves and on behalf of Kolombo family executed a deed of conveyance (Exhibit 'F') in respect of a portion of the said land which he and one Alhaji Lemboye had earmarked for a school building. The defendant went on to say that as the value of land appreciated over the years, members of the plaintiff's family demanded an additional sum of money to augment the purchase price and in consequence, he gave them N60. Still, a further demand was made and another 25 (N50) was paid to certain members of the same family.

However, when a third demand was made, the defendant bluntly refused to make any further payments. It was this refusal, according to the defendant, that sparked off litigation. The defendant denied ever building a church on the land in dispute but maintained that since 1941 when he bought the land, he entered into possession and has since been exercising acts of ownership thereon by using part of the land as cemetery and the remaining portion as a farmland. The suit No AB/53/71 filed in the

- Abeokuta High Court on 27th September 1974, dismissed it in its entirety with N150 costs awarded in favour of the defendant. Being dissatisfied with the decision of the trial court, the plaintiffs have appealed to this court.

PRINCIPLE OF LAW EMERGING FROM THE JUDGEMENT OF THE COURT

It is apposite to note from the outset that most land in Nigeria is either held under statutory or customary tenure. In the realm of customary ownership as in the case under review, thus that is when the owners (family) have no papers for their land, they are still the legal owners of the land. The law of Nigeria provides that this kind of land must be run according to Native Law and Custom prevailing and always accepted by the people. This means that land under customary tenure particularly family land is still subject to customary law, which is in turn recognised officially.⁵⁸ It is trite that customary ownership of land and customary rules have been recognized in Nigeria, except where the customary laws are against the Constitution or some other laws. Customary laws vary a little from place to place in Nigeria, but most systems are based on the same principles.

ROLE OF FAMILY HEAD IN THE MANAGEMENT OF FAMILY LAND

In customary law, rights and responsibilities are not organised the same way. This does not mean that people are not 'really' the owners of their land. They do 'really' own their land, but 'owning' land means something slightly different. Some people have the responsibility to administer land on behalf of the family. This is usually the family head or clan elders.⁵⁹ However, they also have the right to say who can sell land or deal with the land. That is because they have the responsibility to protect the land for all the family or clan. They also have the responsibility to make sure that everyone is given rights to land.

~~It is beyond dispute that valid allocation of family land requires the grant or transfer to be made by the head of family with the principle members concurring therein.⁶⁰ Where, however, the transfer is made by the head of family alone acting for and on behalf of the family, such a transfer is only prima facie voidable and not valid and the family may set aside such disposition of their land if the non-consenting members act timeously.⁶¹ A transfer of family land other than by the head thereof or the head and principal members of the family is absolutely void ab initio.⁶² So, too as the head of a~~

58 Kolajo, A. A Customary Law in Nigeria Through the Cases, (Spectrum Book, Limited, Ibadan, 2001) P 77

59 Nwabueze B. O. Nigeria Land Law, (Nwamife Publisher Limited, Enugu, 1972) P 3-4

60 Ejilemele v Opara (2003) S. C 39 AT 44-46

61 See Ekpendu v Enka (1959) 4 FSC 79 at 81; Mogaji & Ors v Nuga (1960) 3 WACA 62

62 Lloyd P.C. Yoruba Land Law (Oxford University Press, London, 1964), p. 11. See Agblov v Sappor (1947) 12 WACA 187. Akinfolarin v Akinola (1994) 3 NWLR (pt 335) 659 at 682

family cannot transfer family land by his own exclusive personal property, such a transfer by him is void ab initio.⁶³

In the case under review the Court of Appeal properly confirm the position of the trial court that not only was there evidence that as pleaded by the defendant Sunmonu Ire was at the time of sale the family head of Kolombo family but there was abundant evidence that he and other important members of the family authorized and consented to the sale of the land to the defendant. The court was thus right when it held further that; we are therefore satisfied that the defendant has shown by overwhelming evidence that that the plaintiffs have long divested themselves of their title to the land.⁶⁴

In the present case, both parties (plaintiffs and defendant) from their pleadings and evidence before the court were ad idem that the land in dispute belong to the Kolombo family. They were also in agreement that the land in dispute was the property of the said Kolombo family. What seems to be the *campus bellum* was that whereas the defendant's claim to the land in dispute was upon an auction sale by Mr Ayiola a licensed auctioneer, and subsequent deed of conveyance executed by Isolake, Aligbede and Buraimon who succeeded Summon Ire as the head of the family, the plaintiffs on their part asserted beneficial owner from their forefather who came onto the land in early 1941. One cannot but agree with the finding of the court that there was a proper transfer of the land in dispute to Sunmonu Ire in compliance with customary practice.

RIGHT OF INDIVIDUAL FAMILY MEMBERS ON FAMILY LAND

The family head usually manages the land on behalf of the family. He is the steward of the land. His rights to manage the land go together with the responsibility to look after the rights of others to use the land, and to make sure that the next generation will also be able to enjoy the land.⁶⁵ Notwithstanding, individual members of the family equally have rights to use the land. This is why it is not so easy to answer 'who owns the land?' The land really belongs to the family within the clan, but the rights are shared out in a complex way. We try to make clear below who has which rights and responsibilities regarding the land.

Thus the court was right when it held that admittedly, it is the law that until partition, an individual member of a family cannot alienate family land to a stranger⁶⁶ and purported sale of family land by an individual member would not pass title to be the

⁶³ See *City Property Development Ltd v Attorney-General Lagos & Ors* (1976) 1 S C 71 at 110, (1976) All NLR 24 at 44

⁶⁴ See *Thomas v Holder* (1946) 12 WACA 78, *Bello Isiba v JT Hanson* (1967) 1 All NLR 8 and *Omoni v Biniyah* (1976) 6 SC 54

⁶⁵ *Olawoye C.O. Title to Land in Nigeria*. (Evan Brother Limited, Ibadan, 1974) P 9

⁶⁶ *Thomas v Holder* (1946) 12 WACA 78

purchaser.⁶⁷ However, contrary to the assertion of the plaintiffs in their evidence, there was over whelming proof that the land, though family land, was in accordance with law properly transferred to the defendant by Sunmonu Ire in his individual capacity but as family head with the agreement of important members of the family.

BURDEN OF PROOF OF TITLE TO FAMILY LAND

It is trite law that for land to qualify as family land, the party who so claims as in this case must not only identify the origin of the property but also its status.⁶⁸ The party must also lead evidence and show ownership i.e. by devolution, conveyance, intervivos, will or outright gift or allotment.⁶⁹ The plaintiff to succeed must also proof acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant interference that the family is the exclusive owner of the land in dispute.⁷⁰

In the case under review the appellate court not only agreed with High court findings that both the plaintiffs and the defendant were in agreement as to the ownership of the land in dispute by Kolombo family. But the plaintiffs who urge the court to nullify the sale defaulted in discharging the onus, because the defendant was able to establish his possession and ownership derived from an auction sale in accord with customary law.⁷¹

POSSESSION AS EVIDENCE OF OWNERSHIP

The principle underlying possession as evidence of ownership was painstakingly considered in this case under review. The trial court found from evidence before it that the focal point of the defence was that the land was bought at an auction sale at which the defendant was the highest bidder. The sale was duly authorized by Sunmonu Ire, who at the material time was the head of Kolombo family and that members of the family consented to the sale. It is important to note that apart from the defendant, Mr. Aiyeola the licensed auctioneer who carried out the sale, gave evidence and tendered the receipt of purchase Exhibit 'D'. It was also found that the defendant has since moved into possession in 1941 and since, has been exercising acts of ownership. Exhibit E, F and G which in each case made reference to the auction sale not only confirmed transfer of possession over the land to the defendant but that at various times and dates the plaintiffs exploited the defendant by making unjustified and extortionate demands of payment of additional sums of money which and the refusal to further advance payment, instigated this action.

⁶⁷ *Ajose v Hamsworth & ors* (1925) 6 N L R 98

⁶⁸ *Gaji 8 ors v Paye* (2003) 14 NSCQR (PTI) 617s 634

⁶⁹ *sec Olowo Saho v Alhaji Adebajo* (1988) 4 NWLR (pt 88) 275, 278

⁷⁰ *Yakubu M G Land Law in Nigeria*, (A B U Press Limited, Zaria, 1986) IP 139-14

⁷¹ *Olofin Jostiah* (2010) 11-12 MJSC 130 at 161

EVALUATION OF EVIDENCE

The evaluation of evidence and ascription of probative value is the pre-eminent primary function of the trial court that alone, had the singular benefit of seeing and hearing witnesses.⁷² In the instance case under review the Court of Appeal was right when it affirmed the trial court rejection of 4th P.W. evidence, who happened to be a great grandson of Kolombo, but at the time he gave evidence in his case; he was only 33 years old and probably would be about 6 years old when the land was sold in 1941. It is therefore not surprising when the court held that the 4th PW neither knew of, nor consented to, the sale. His evidence does not carry the plaintiffs' case anywhere. Incidentally, neither P. W. 3 nor P. W. 4 or any of the witnesses for the plaintiff mentioned who was the head of the Kolombo family at the time of the sale. Nor did they specify who the "important" members of the family were. In this regard, the court rightly refused to the ascription of probative value to his evidence having seen, heard and assessed the witnesses.

CONCLUSION

Instructively, in the totality of the case under review, the Court of Appeal's judgment is significant in that it reaffirms the position of the law in connection with the management of family land under the Nigerian Customary Law.

In this case under review a purchase from the head of family with concurrence of the important members of the family is in accordance with the law. The Court of Appeal held that the land belonged beneficially to the family in equal rights. The result was also justified on the basis of the nature of the family's relationship.

⁷² Okonkwo v Okonkwo (2010) 5-7 NJSC (pt IV) 45 at 58-59