

***Failure to Specifically Setout and Plead Limitation Law in Statement of Defence
- Effect Thereof***

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 7th Day of June, 2024

Before Their Lordships

Uwani Musa Abba Aji
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar
Mohammed Baba Idris
Justices, Supreme Court

SC. 147/2019

Between

1. MRS. FUNMILAYO MUBO ADENIRAN
2. MR. ADEMOLA ADENIRAN
3. MR. ADEBISI ADENIRAN
4. MR. ABAYOMI ADENIRAN
5. MR. BOLAJI ADENIRAN
6. MR. OLUWOLE (DEVELOPER)

APPELLANTS

AND

1. MR. SIKIRU ADIO
2. MR. WAHEED ADIO

RESPONDENTS

(Lead judgement delivered by Honourable Uwani Musa Abba Aji, JSC)

Facts

The Respondents' late father purchased the land in question on 30/9/1936 from the Lagos Building Society Limited, at a public auction. A Deed of Conveyance was executed in favour of their father in this regard, and the land was registered as No. 18 at page 18 in Volume 455 of the Lands Registry, Lagos. The land initially

belonged to one Josiah Adewumi Daniel who purchased it on 20/1/1912, whose title was registered as No.92 at page 342 in Volume 74 of the Register of Deeds kept in the Lands Registry, Lagos. The said Josiah Adewumi Daniel took a loan from Lagos Building Society Limited and used his land as security for the loan. Consequent upon his failure to repay the loan, the Mortgagee in exercise of its power of sale put up the land for sale and the Respondents' father emerged the highest bidder. The land was thus sold to him for the sum of £165.

Before the Respondents' father died in 1960, he had two buildings on the land. He resided in the building at the back with his family, while the one in front was let out to the father of the 1st to 5th Appellant, one Mr. Samuel Abolarin Adeniran. The Respondents' uncle, Alhaji Busari Ayinde, was collecting rent on behalf of the family until he died in 1978; then Mr. Gbolahan Alamu Adio, the eldest son of the Respondents' father took over the rent collection until he also died in 2003. Subsequently, Alhaja Iyabo Adio, the Respondents' eldest sister took over collection of the rent until she died in 2005. Thereafter, the 1st to 5th Appellant refused to pay their rent. In a turn of events, the Appellants demolished the house on the land on 9/11/ 2008 and began to erect an illegal structure thereon claiming a portion of the land belonged to them. This act of trespass led to the suit between the parties with the Respondents suing the Appellants at the trial court, seeking declaration of title to the land as well as injunctive reliefs, monetary reliefs and possessory rights.

The Appellants, as Defendants, however claimed that the land in dispute was bought in 1936 by two brothers i.e. Alhaji Busari Ayinde, the Respondents' uncle and Alhaji Sulaimon Layiwola Adio, the Respondent' father. That Alhaji Busari Ladejo Ayinde subsequently transferred his own interest in the land to the Appellants' father, Mr. Samuel Abolarin Adeniran vide a deed of conveyance allegedly executed between the legal representatives of Alhaji Busari Ladejo Ayinde and Mr. Samuel Abolarin Adeniran and another deed of conveyance allegedly executed between Alhaji Sulaimon Layiwola Adio and Samuel Abolarin Adeniran. That the 1st to 5th Appellant, sometime in 2008, met and agreed to redevelop the property. Consequently, they invited the 6th Appellant, a developer, to embark on the re-development process.

At the end of the trial, the trial court gave judgement in favour of the Respondents, which was affirmed on appeal to the Court of Appeal. The Appellants, who were further dissatisfied with the decision, appealed to the Supreme Court.

Issues for Determination

The apex court considered two issues for determination of the appeal to wit:

1. Whether the suit which is now the subject of this appeal is not statute-barred.
2. Whether the Justices of the lower court were right to affirm the decision of the trial court granting an order of declaration of title in favour of the Respondents when the latter have failed to prove their claim and the trial court only relied on the perceived weakness of the defence of the Appellants.

Arguments

On the first issue, counsel for the Appellants submitted that by the provisions of Section 16(2) of the Limitation Laws of Lagos State, which prescribes twelve (12) years for action for recovery of land from the date on which the right to action accrued, the Respondents' action was statute-barred on the grounds that the date of accrual of the cause of action could be taken as 1960 when the Respondents claimed their father let out the property to the 1st to 5th Appellant's father as tenant; or, better still, in 1976 when the 1st to 5th Appellant took possession of the property through inheritance, and in which case, the action is statute barred. Responding, counsel for the Respondents argued that the defence of statute barred being a special defence must be specifically pleaded and where not so specifically pleaded, it is incompetent and bound to fail. The Appellants herein did not plead this specific defence in their pleadings. Counsel also submitted that in determining whether a suit is statute barred, the court is enjoined to look at the Writ of Summons and Statement of Claim for the Claimant/Plaintiff's alleged cause of action and compare it with the date of filing the suit to determine if the suit is caught up by the limitation law. Section 16(2) of the Limitation Law of Lagos State provides a statutory period of 12 years in an action for recovery of land from the date on which the right of action accrued to the person bringing it. Hence, the date the cause of action arose was in 2008 when the Appellants posed a challenge to the Respondents' ownership by the Appellants claiming to be the owner of a portion of the said land and demolishing a structure thereon.

Arguing the second issue, counsel for the Appellants submitted that in a claim for declaration of title to land, it is the duty of the Claimant to prove his claim on the

strength of his own evidence and not on the weakness of the defence or its admission. He argued that the fulcrum of the Respondents' case lies on Exhibit B, the Deed of Conveyance registered as 18/18/455 and the survey plan attached to it, showing that the back building on the land marked pink is the one assigned to the Respondents' father and by extension to the Respondents, and corroborated by Exhibit DW 5, the Composite Plan, tendered by the Appellants, indicating what was assigned to the Respondents was the mud building at the back. Furthermore, that the Appellants pleaded the frontage building and gave evidence of long possession and enjoyment of the property in dispute from 1960 up till 2009 when the suit was initiated by the Respondents at the trial court. Therefore, that there was nothing before the trial court to show that the 1st to 5th Appellant were tenants of the Respondents. Contrary to the submissions above, the Respondents contended that the appeal being an upshot of concurrent findings of the two courts below, the apex court ought not to interfere except there was perverseness or miscarriage of justice. Counsel for the Respondents submitted that the Respondents duly proved their title to the land in dispute by credible evidence vide exhibit B, the Deed of Conveyance/Indenture dated 30/9/1936, as their root of title, which is one of the ways of proving title to land. Counsel asserted that the Appellants failed to produce any evidence in support of their claim that the land was partitioned between the Respondents' father and the Appellants' alleged vendor.

Court's Judgement and Rationale

In deciding the first issue, the Supreme Court considered Section 16 of the Limitation Law of Lagos State which provides that *"an action for recovery of land shall not be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or if it accrued to some person through who he claims to that person."* Considering the Respondents' Statement of Claim, the court held that the act of adverse claim started when the Appellants stopped paying rent and the act of trespass was when the demolition was carried out by the Appellants and both acts took place in 2005 and 2008 respectively. The matter was instituted in 2009, and as such, whatever date the Appellants alluded to as the accrual date for cause of action, the Respondents were within time and in fact timely instituted the action against the Appellants.

The apex court also held that *it is a golden rule of pleadings that a matter of limitation law must be expressly set out or pleaded in the statement of defence. Once it is not pleaded the defendant cannot be granted the protection of that law.*

See UNION BANK OF NIGERIA PLC v PETRO UNION OIL & GAS CO. LTD & ORS. (2021) LPELR-56671 (SC); FOLARIN v AGUSTO (2023) LPELR-59945(SC).

It is elementary law that parties are bound by their pleadings and any fact that emerges from matters that are not pleaded goes to no issue and should be discountenanced. More so, *grounds for rendering transactions void or illegal in a suit are not raised out of the blues even if they are jurisdictional. They must be tied to the pleadings and specifically pleaded, otherwise they remain incompetent.* In this case, the Appellants as Defendants did not specifically plead the defence of statute barred in their Statement of Defence or amended processes nor pleaded facts sufficient enough for reasonable inference of such a special defence and as such, the issue raised was not only incompetent but factually and evidentially untrue, unproved and dismissed against the Appellants.

On the second issue, the court held that *in an action for a declaration of title to land, it is material to remember that the root of title to the land must be proved through concrete and incontrovertible evidence that the land belongs to the Claimant.* Their Lordships noted that the Respondents relied on Exhibit B, being a Deed of Conveyance/Indenture dated 30/9/1936 as their root of title. The Appellants, who claimed that the land was jointly owned by the Respondents' father and the alleged Vendor/ Seller of the land in dispute, relied on Exhibit DE 2, being a Deed of Conveyance dated 11/6/1968, allegedly executed by the Respondents' father and father of the 1st to 5th Respondent. The Appellants also relied on Exhibits DE 1, a Deed of survey dated 12/10/1967 and DE 5 a "composite" survey plan.

Their Lordships found that contrary to the contents of Exhibit B, the name of the Appellants' alleged vendor, Alhaji Busari Ladejo-Ayinde, was not included as a co-owner in Exhibit B. Similarly, and in corroboration, DW 1 admitted under cross examination that the name of the Appellants' alleged vendor, Alhaji Busari Ladejo Ayinde, was not included as a co-owner in Exhibit B. Additionally, by the evidence of CW1, CW2 and DW 2, alluding to the death of the Respondents' father in 1960, it was impossible that Exhibit DE 2, being a Deed of Conveyance purportedly dated 11/6/1968 and allegedly executed between the Appellants' and Respondents' father would have come to play or existed. Furthermore, the Appellants failed to produce any evidence in support of their claim that the land was partitioned between the Respondents' father and the Appellants' alleged vendor.

The Supreme Court held that *both the Respondents and Appellants relied on Exhibits B and DE 2 respectively to prove the ownership and title to the land in dispute. Nevertheless, the Respondents have proved better title over the Appellants. Both parties having relied on Exhibits B and DE 2 respectively, the root of title must be predicated on it and nothing else.*

Consequently, Their Lordships held that by Exhibit B, the Respondents had successfully proved their title with credible evidence.

Appeal dismissed.

Representation:

Ayodele Akinsanya, Esq. with Ibrahim Audu, Esq. and Adefolahan Adeyemo, Esq. for the Appellants.

Tahiru Adebayo, Esq. with Abdulhaleem Amu, Esq. for the Respondents.

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