

***Inconsistency or Contradiction in Facts and Evidence – When Same will be Deemed
to be Fatal to the Case***

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 8th Day of March, 2024

Before Their Lordships

Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Adamu Jauro
Tijjani Abubakar
Emmanuel Akomaye Agim
Justices, Supreme Court

SC.69/2010

Between

1. MR. SATURDAY DIBIA

2. CHIEF BROTHER OKAGWA

(For themselves and as representing
The OTO-EKEDI family of Ogbora Village in Abua Central)

APPELLANTS

AND

1. MAXWELL O. TUBONIMIA

2. HENRY EBI AKARI

3. ISRAEL ELI T. PHESI

(For themselves and as representing
The OTO-ADOGHANY family of Amalem Village in Abua Central)

RESPONDENTS

(Lead judgement delivered by Honourable Mohammed Lawal Garba, JSC)

Facts

By the Amended Statement of Claim dated 27th September, 1984, the Respondents filed an action against the Appellants at the High Court of Rivers State for trespass. They sought declaration of title to a piece of land referred to as “Ade-Ikobo Adoghany, Omalem” situated at Amalem Abua Village in the Abua-Odua District of Ahoada, L.G.A. They also claimed damages and injunction against the Appellants. The Appellants, as Defendants, denied the claims against them in their Amended Statement of Defence dated 9th May 1994. The matter proceeded to trial during which the Respondents called four (4) witnesses in proof of their case, while the Appellants called five (5) witnesses in Defence. Survey plans were tendered by consent at the trial and admitted in evidence as Exhibit “A” - for the Respondents and Exhibit “B” - for the Appellants.

At the end of trial, judgement was entered in favour of the Respondents as per their Writ of Summons. Dissatisfied with the judgement of the trial court, the Appellants filed a Notice of Appeal to the Court of Appeal, Port Harcourt Division on six (6) grounds. In its judgement delivered on 10th December 2009, the court below dismissed the Appellants’ appeal for lacking in merit and affirmed the decision of the trial court.

Further dissatisfied with the decision of the Court of Appeal, the Appellants appealed to the Supreme Court on 4th May 2010, pursuant to the leave of the court granted on 28th April 2010.

Issues for Determination

The four issues submitted by the Appellants to the apex court for determination are as follows:

- 1. Whether considering the pleadings, survey plan and evidence of the Respondents, there was no inconsistency or uncertainty on the location of the land which was claimed by them (Respondents).*
- 2. Whether the Court of Appeal was right to conclude/find that the Respondents proved title to the land in dispute and their claims in this case.*

3. *Whether the Court of Appeal was right and fair in its consideration/treatment of the evidence/case of the Appellants vis-à-vis that of the Respondents.*
4. *Whether the findings and conclusions of the Court of Appeal in its judgement in this suit are proper/justified in law.*

Arguments

On issue one

Counsel for the Appellants made references to paragraph 3 of the Respondents' Amended Statement of Claim, evidence of PW1, PW3 and PW4, Exhibit "A" wherein the land claimed is said to be situate at Amalem, Abua and paragraph 5(b) of the Amended Statement of Claim and evidence of PW1 where it is said that the land in dispute was situated at Ikobo Village from where the Respondents migrated to Amalem, Abua, thereby showing inconsistency and uncertainty on the location of the land claimed by the Respondents. Counsel submitted that the lack of explanation of how the land claimed to have been founded in Ikobo Village was now located in a different place, Amalem, Abua, was fatal to the Respondents' claim. And since the Respondents claimed title to the land and the Appellants did not make a counter claim, the Appellants have the burden to establish the location of the land with certainty, on the authority of **UKAEGBU v NWOLOLO (2009) 1 SCNJ 49 AT 77 - 78**. Responding, counsel for the Respondents submitted that their pleadings in paragraph 3 of their Amended Statement of Claim and the evidence of PW1; the star witness, PW2, PW4 in respect of the location of the land they claimed, consistently show the land called "Ade-Ikobo Adoghany Omalem", is situate at Amalem, Abua, with defined boundaries. It is then argued that the only weakness in the evidence of PW4 who said that the land in dispute is known as "Oharamon" owned by "Oto-Adoghany" family is not a material contradiction since his evidence on the ownership and boundaries of the land is in line with the Respondents' claim. Counsel submitted on the authority of **JOHN v STATE (2011)18 NWLR (PT. 1278) 353) AT 374**, that for any inconsistency or contradiction in evidence to negatively affect its veracity, it must be materially significant to impact the case of a party and that is not the position in the case of the Respondents.

On issues two, three and four

The Supreme Court noted that Appellants issue two for determination covers and encompasses issues three and four; thus, the issues were considered together.

Regarding this head, counsel for the Appellants submitted that on the authority of **ONIBUDU v AKIBU (1982), 7 SC, 60 AT 84** among other cases, the Respondents, who pleaded and relied on traditional evidence/history to claim title to the land in dispute had the burden to plead and give evidence of the history of the founder as well as the intervening successors/ancestors through whom the land devolved down to them without leaving any unexplained or mysterious gaps in the chain/line of succession. He posited that the Respondents only pleaded that the land in dispute was founded by Ikobo Adoghany, but did not plead how it was so founded, e.g., by deforestation, conquest, etc and that there are mysterious and unexplained gaps in the genealogy of succession on the successors and their relationship between one and another. It is the case of the Appellants that since the Respondents failed to prove their pleaded root of title based on traditional history, they could not turn round to rely on acts of ownership/possession for claim in trespass or injunction. Responding to this, counsel for the Respondents submitted that the court below was right to have affirmed the decision by the trial court that by their pleadings and evidence, the Respondents proved the titled claimed on the basis of traditional history evidence and acts of ownership/possession of the land in dispute. It is then argued that the evidence of DWI, the Appellants' star witness, was discredited under cross-examination by the Respondents and so the lower courts were right not to ascribe any probative value to it, on the authority of **UGBOJI v STATE (2018) ALL FWLR (PT. 925) 68**.

Court's Judgement and Rationale

Deciding the first issue, the Supreme Court held that since it was the Respondents (as Plaintiffs) who approached the trial High Court to make assertions of facts on the existence of which they predicated the claims they made on the land in dispute against the Appellants, in law, they had and owed the evidential burden of proving the fact asserted on the balance of probabilities in line with the provisions of Section 138 of the Evidence Act, 2004, to the satisfaction of that court, if judgement was to be entered in their favour. The apex court noted that from the Record of Appeal, the entire evidence of PW1, in-chief and under cross-examination, was not only consistent with, but was in unequivocal support and in line with the pleadings in paragraphs 3 and 5 of the Respondents' Amended Statement of Claim, that their ancestor founded the land in dispute, situate at Ikobo Village, which they retained after moving to the place now known as Ota-

Adoghany Omalem owing to an epidemic which caused a lot of death. This evidence was not in any material way discredited or controverted under cross-examination by the Appellants. As such, Their Lordships held that there was no inconsistency or contradiction between the pleadings and the evidence of PW1 on the location of the land in dispute.

The Supreme Court held that *an inconsistency or contradiction is said to occur between facts and/or in evidence when two versions of facts or evidence cannot be in existence or true at the same time because each of them automatically cancels the existence or the truth of the other in the peculiar circumstances of a case; contradiction in facts and evidence. Furthermore, for an inconsistency or contradiction to affect the credibility of the evidence in question, it must be material to the facts which it seeks to prove otherwise it would have no adverse effect or be detrimental and fatal to the case in which it was given.* Finally on the issue, the Supreme Court that “the duty of demonstrating material contradicting or inconsistency in facts or evidence that would affect the credibility of the evidence in a case is placed and rests on the party making the assertion or allegation of the contradiction.”

On this premise, the apex court held that the difference in the name given by PW4 was essentially a mere discrepancy that had nothing to do with the location and certainty of the land in dispute on which the Appellants have primarily predicated their arguments under this issue. With the failure by the Appellants to satisfactorily demonstrate before the court that in fact, there was a material inconsistency or contradiction and uncertainty in the pleadings and evidence of the Respondents on the location of the land in dispute, the first issue was resolved against the Appellants.

Determining the second issue, their Lordships held that “where a Claimant/Plaintiff relies on and bases his claim for declaration of ownership/title to land on traditional history evidence, he must plead and prove by credible evidence on the following: (i) who founded the land; (ii) how the land was founded by the named founder, e.g. by deforestation, conquest, first settlement, gift, inheritance, purchase, (iii) names and particulars of the intervening owners to whom the land had passed or devolved from the founder and their relationships to him down to the claimant/plaintiff in an unbroken genealogical chain in which there exists no unexplained gaps that would puncture the credibility of the claim.”

The Court proceeded to note that from the pleadings of the Appellants on the traditional history relied on by them and the material evidence of DWI, Sunday

Dibia, who was the star witness for the Appellants at the trial, the court below was right that the trial court properly evaluated the evidence placed before it by the parties, made and drew correct inferences from it by placing it on the imaginary scale of justice to find that the side of the Respondents weighed heavier and that the scale tilted in their favour.

In addition, their Lordships held that the Appellants had not been able to demonstrate that the concurrent findings by the two lower courts on the traditional history evidence adduced by the Respondents were either wrong in law, perverse or had occasioned real but not imaginary miscarriage of justice in the case to warrant interference therewith by the Supreme Court.

Ultimately, the issues were resolved against the Appellants.

Appeal dismissed.

G. Ozarah for the Appellants.

Chief K. Chuku for the Respondents.

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