

Jurisdiction of Court Where Issues in the Case are No Longer Alive

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 17th Day of January, 2025

Before Their Lordships
Uwani Musa Abba Aji
Adamu Jauro
Obande Festus Oguinya
Habeed Adewale O. Abiru
Mohammed Baba Idris
Justices, Supreme Court

SC/741/2015

Between

1. Mrs. Dorcas Ada Iheme
2. Oguzie Iheme
3. Anthony Iheme
4. Aguguo Iheme

----- APPELLANTS

And

1. Attorney-General, Rivers State
2. Permanent Secretary, Lands Division
Governor's Office, Rivers State
3. Rivers State Housing and Property
Development Authority
4. Mr. Francis Akanni Tella

-----RESPONDENTS

(Lead judgement delivered by Honourable Obande Festus Ogbuinya, JSC)

Facts

The dispute which resulted in this appeal involved ownership of a state land known as Plot 134 Oromineke Layout, also designated as Nos. 6 and 6A Wogu Street, Port Harcourt. The land was originally leased in 1962 to Mr. Arua Kalu, who subsequently transferred his interest *via* a Power of Attorney to Mr. Frederick Nwosu Iheme, the predecessor-in-title to the Appellants. Mr. Iheme developed and occupied the property, and by a 1972 Will, he bequeathed the land to the Appellants.

In 1972, the Rivers State Government purportedly cancelled the lease *via* the State Lands (Cancellation of Leases) Edict, and in 1986, sold the property to the 4th Respondent. The 4th Respondent thereafter attempted to take possession of the property by bringing down some structures in the property, prompting the Appellants to commence an action for trespass and other reliefs against the Respondents in 1982. Owing to the delays the suit suffered, parties agreed to dispense with the need to call oral evidence and proceeded based on documentary evidence and written addresses. The trial court delivered judgement on 2nd April 2012 and found that the State Lands (Cancellation of Leases) Edict had been declared void by the Supreme Court. Thus, the court held that the 1986 sale to the 4th Respondent was null and void. The trial court also found that the irrevocable power of Attorney did not vest on the Appellants valid legal title because there was nothing showing that the consent of the Governor was obtained either prior or subsequent to its execution as provided for in the Lease Agreement. Nonetheless, the trial court entered judgement in favour of the Appellants with respect to the claims for trespass and perpetual injunction against the 4th Respondent only.

Dissatisfied with the findings of the trial court on the invalidity of their title, the Appellants appealed to the Court of Appeal. The appellate court, however, questioned the procedure adopted at the trial court and held it to be improper. The Court of Appeal therefore set aside the judgement of the trial court and dismissed all the claims of the Appellants for lack of proof. This prompted the Appellants' appeal to the Supreme Court.

PRELIMINARY OBJECTION OF THE 1ST, 2ND AND 4TH RESPONDENTS.

The 1st, 2nd and 4th Respondents raised preliminary objection to the hearing of the appeal on the ground that it is purely academic. They argued that the subject matter of the appeal, being the 40-year building lease granted to Mr. Arua Kalu in September 1962 and commencing on 1st January 1962, had expired on 1st January 2002. According to counsel for the 1st and Respondents, the appeal no longer presents any live issue and is therefore moot.

Arguments

Counsel for the 1st and 2nd Respondents, in support of the preliminary objection, argued that jurisdiction is the lifeblood of adjudication and that where a court lacks jurisdiction, its decision is a nullity. He contended that the appeal does not disclose any live issue against the Respondents, because the original lease for 40 years granted to Mr. Arua Kalu had expired without renewal. Counsel further argued that although there was a live issue in 1986 when the action was commenced, by 2012 and 2015 when the lower courts delivered their respective decisions, the lease had already expired in 2002, thereby rendering the matter academic. Counsel also submitted that the issue of jurisdiction can be raised at any time, even for the first time before the Supreme Court. And that although a court may have jurisdiction at the commencement of a suit, it may lose it during the proceedings due to certain occurrences, as is the case in this appeal. He therefore, urged the court to dismiss the appeal.

In response, counsel for the Appellants argued that the limitation period for a suit halts during the pendency of a suit. Counsel submitted that the Appellants' rights arose under the Land Use Act, which must be construed strictly against the 1st to 3rd Respondent. The 1st to 3rd Respondent, being public officers, cannot rely on limitation clauses to shield their unlawful acts from judicial scrutiny. Counsel argued further that a live issue remains in the case, as the expiration of the lease occurred during the pendency of the suit. And that the alleged illegal actions of the Respondents, as well as the claim for a perpetual injunction, remain unresolved. He urged the court to dismiss the objection.

Courts decision and rationale

In resolving the preliminary objection, the Supreme Court relied on its previous decision in **PLATEAU STATE v A-G., FED (2006) 3 NWLR (PT. 967) 346 AT 419**, where His Lordship, Tobi, JSC (as he then was), explained the issue of law succinctly thus: *“A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity”*. The Supreme Court held further that *it is a settled law that a court is divested of the necessary jurisdiction to adjudicate over academic dispute which is a monopoly of those in the ivory towers. This is so, even if its determination will enrich the legal jurisprudence. An academic question is drained of any live issue which engages the adjudicative attention of the courts.*

The Supreme Court, relying on the decision in **SOUTH ATLANTIC PET. LTD v MIN., PET. RESOURCES (2023) 7 NWLR (PT. 1882) 135 AT 166**, held that *the doctrine of mootness postulates that a court cannot exercise its jurisdiction where issues presented for adjudication are no longer alive or when the parties' cognisable interest in the outcome had vapourised or ceased to exist*. In this case, the parties are in agreement that the building lease granted on 14th March 1962, expired on 31st January 2001 because it commenced retrospectively on 1st January, 1962. A thorough review of the building lease also revealed that there was nowhere in the lease where the original lessee, Mr. Arua Kalu was given a right or option of renewal. In essence, after 31st December 2001, the reversionary interest returned to the Rivers State Government. Although a live issue existed at the commencement of the Appellants' action in 1986, there was no longer a live issue by the time the lower courts delivered their judgements in 2012 and 2015. The expiration of the lease in 2001, which left the Appellants without any enforceable rights over the property, constituted a fundamental change in circumstances. This change affected their interest in the disputed property, notwithstanding that it was the subject of ongoing litigation (*lis pendens*).

The apex court held that *it is a hallowed principle of law, known for its antiquity, that a court of law may be clothed with the jurisdiction to entertain a matter at its commencement, but may be drained of jurisdiction in the course of the proceedings owing to any radical change in the circumstances over the case*. Indubitably, to equip the court with the requisite jurisdiction, a live issue or an

actual controversy must exist between the parties from the commencement of an action and throughout the gestation period of the lawsuit. The Supreme Court held that the expiration of the lease in 2001, during the pendency of the Appellants' suit, emasculated its lifespan, rendered it lifeless and drained the appeal of any live issue. Thus, even if the appeal is allowed, the judgement of the trial court, which was against the Appellants on the basis that the transfer of interest in the lease was without the mandatory consent of the Governor of Rivers State, will continue to haunt the Appellants within the four walls of academic dispute.

The Supreme Court, in distinguishing the case of **CHIADI v AGGO (2018) 2 NWLR (PT. 1603) 175** relied upon by counsel for the Appellants from the facts of this case, held that in the Chiadi's case, the lease expired on the 30th April, 1971, and it was not renewed. However, the property in dispute, which had been declared an abandoned property, was released to the Appellant in that case, Mrs. Grace Chiadi, by the Rivers State Government *vide* Rivers State Government Notice No. 451 published in the Rivers State Official Gazette No 56 vol. 4 of 1st November 1974. The return of the property to the Appellant in the Chiadi's case creates a significant difference between it and the instant appeal. Therefore, the facts of the present appeal not being on all fours with the case relied upon by counsel for the Appellants made it impossible for the court to adopt the principle of *stare decisis*.

In conclusion, the Supreme Court held that there was no live issue in the appeal that will bestow a proprietary right or benefit on the Appellants which the appeal seeks to address. It follows that the Supreme Court is not clothed with the requisite jurisdiction to entertain an academic appeal. The preliminary objection was thereby, upheld.

DISSENTING OPINION OF HONOURABLE HABEEB ADEWALE O. ABIRU, JSC.

His Lordship dissented from the majority decision on the preliminary objection and opined that it was wrong for the lower court to have completely ignored the complaints of the Appellants, which were essentially against the trial court's findings on the validity of the Appellants' title to the subject property, when it proceeded to set aside the entire judgement of the trial court, including portions

not appealed against. His Lordship also opined that the judgement of the trial court was based on the tort of trespass; and trespass is a violation of possessory rights, an unlawful interference with exclusive possession. Thus, the fact that a person does not have valid title does not necessarily affect their right of possession to the land. The expiration of the lease agreement in 2001 could not and did not affect the substance of the judgement of the trial court. Consequently, the contention of counsel for the 1st and 2nd Respondents that the live issue for determination in the appeal disappeared with the expiration of the lease agreement was incorrect. His Lordship found no merit in the preliminary objection.

Appeal dismissed by a majority of 4:1.

Representation

Ledum Mitee, Esq. for the Appellant.

F. G Warmate, Esq. for the 1st and 2nd Respondent.

D. Tella Attoni, Esq. for the 4th Respondent

No appearance for the 3rd Respondent.

Reported by Optimum Publishers Limited

Publishers of the Nigerian Monthly Law Reports (NMLR)

(An affiliate of Babalakin & Co.)