Mr. Moses Bunge & Anor v. The Governor Of Rivers State & Ors

(2006) 6 SC 81

L. O. Alimi*

Facts

This is a chieftaincy action by the appellants as plaintiffs against the respondents as defendants. The appellants are the representatives of Otari Community of Abua in Rivers State and contended that they are solely entitled to produce the candidate to the highest Chieftaincy stool in Abua as against the Agana family of Omalem Community also of Abua in Rivers State whose representatives are sued as 3rd – 6th defendants in the action. Pleadings were exchanged by the parties and after a trial in which several documents were tendered, the trial Court dismissed the action. An appeal by the plaintiffs was also dismissed by the Court of appeal, Port Harcourt Division. The plaintiffs being dissatisfied then appealed to the Supreme Court. The gravamen of the plaintiffs/appellants' appeal was that having found that the plaintiffs' ancestor, Obunge was once king of Abua and the defendants having admitted that their ancestor was a juju priest, the trial Court and the Court of Appeal were wrong to have dismissed the case of the appellants. The Supreme Court unanimously allowed the appeal and upheld the contention of the appellants above based on the state of pleadings and evidence adduced at the trial by the parties. The leading judgment was delivered by Honourable Justice G. A. Oguntade.

Comment

In allowing the appeal, the Supreme Court had to interfere with the concurrent finding of facts by the two lower courts and embark on re-evaluation of evidence adduced before the trial court. The law is settled that the Supreme Court will not interfere with concurrent finding of fact except where the finding is perverse or has occasioned a miscarriage of justice.[1] Also, the Court does not engage in evaluation of evidence except where the lower courts failed to properly evaluate the evidence adduced before the trial court.[2]

---

* L.O. Alimi, LL.M., Lecturer, Nigerian Law School, Victoria Island, Lagos.

[1] Oyebamiji v Lawanson (2008) 6 – 7 SC (Pt. I) 243 at 252, 257 & 271; Nwizu v Onuorah (2002) 2 SC (Pt. I) 67.

[2] Lagga v Sarhuna (2008) 6 -7 SC (Pt. I) 101 at 141; Military Governor of Ondo State v Kolawole 92008) 4 – 5 SC (Pt. II) 158 at 181

The central issue which necessitated the interference by the Supreme Court in this case was the failure of the two lower courts to properly consider the effect of the pleadings filed by the parties on the burden of proof in the case. Although there are other collateral issues, this was the pith of the decision of the Court especially the leading judgment of Oguntade JSC. We will therefore focus our comment on this issue.

Relationship between pleadings and burden of prove in civil cases

In **Adimora v Ajufo**,[3] the Supreme acknowledged that pleadings play central and crucial role in civil proceedings. This conclusion is inevitable in view of the varied but fundamental roles which pleadings play in civil cases. In the first place, issues in dispute in civil proceedings are determined by the pleadings of the parties.[4] This is because facts admitted or deemed admitted in the pleadings are no longer in issue and evidence will only be limited to the disputed facts.[5] Secondly, pleadings serve as notice to the parties as to the case they will meet at the trial thereby ensuring fair trial as parties are not taken by surprise but given the opportunity of adequate preparation.[6] This is more so as parties are bound by their pleadings.[7] Also, it is the pleadings that guide the court as to the issues the court is called upon to determine between the parties. The court does not have jurisdiction to decide an issue not raised by the pleadings of the parties.[8] In this wise, not only the parties but also the courts are bound by the pleadings.[9] Pleadings serve as permanent record of issues raised and decided in a case so as to prevent further litigation on the same issues between the same parties or their privies thereby constituting the basis for the plea of *res judicata*.[10] Pleadings also determine the proper steps that may be taken by the parties. Based on the state of pleadings, a party may apply for further and better particulars,

---

[3] [1988] 1 NSCC 1005. See also Salami v Oke [1987] 4 NWLR (PT. 63) 1; Onobruchere v Esegine [1986] 1 NWLR (Pt. 19) 799

[4] Olufosoye v Olorunfemi (1989) 1 NSCC 21 at 28, Awuse v Odili [2003] 18 NWLR (Pt. 851) 116 at 161, Atolagbe v Shorun (1985) 4 SC (Pt. I) 250 at 265.

[5] See Highgrade Marine Service Ltd FBM LTD [1991] 1 NWLR (Pt. 167) 290; Bello v Eweka (1981) 1 SC 101 at 102.

[6] George v Dominion Flour Mills Ltd (1963) 1 All NLR 71, Odogwu v Odogwu [1990] 4 NWLR (Pt. 143) 224 at 234, Union Bank v Oghoh (1995) 2 SCNJ 1

[7] NIPC v Thompson Organisation (1969) NMLR 99 at 103; Lewis & Peat Ltd v Akhimien (1976) 7 SC 167; Woluchem v Gudi (1981) 5 SC 291; Olorunfemi v Asho (1997) 1 SCNJ 1 at 8.

[8] Balogun v Adejobi [1995] 1 SCNJ 242 at 264; Onyeweuzor v Opusunji [2002] 6 NWLR (Pt. 672) 72.

[9] Ogbogu v Ugwuegbu [2003] 10 NWLR (Pt. 827) 189 at 209; Enang v Adu (1981) 11-12 SC 25 at 36.

[10] Oduka v Kasunmu (1966) NMLR 28.

the defendant may bring application in lieu of demurer and the plaintiff may bring application for judgment on admission amongst other steps that may be taken.

One fundamental but often ignored role of pleadings in civil cases is that they determine which of the parties has the burden of proof either generally or in respect of particulars facts.[11]

The Evidence Act,[12] in its sections 135(1), 136 and 137(1) provides, in relation to burden of proof, as follows:

> **"135(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist …**
>
> **136 The burden of proof in a suit or proceeding lies on that person who would fail, if no evidence at all were given on either side.**
>
> **137(1) In civil cases the burden of first proving the existence or non – existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regards being had to any presumption that may arise on the pleadings."**

The same Evidence Act, in its section 75, provides in relation to admission in civil cases that:

> **"No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings…"**

[11] Onobruchere v Esegine (supra)
[12] Cap E14 Laws of the Federation of Nigeria, 2004.

It is apparent from the above provisions of the Evidence Act that in identifying the facts in issue or facts in dispute between the parties and whose duty it is to prove such facts, the court must identify the allegations of facts in the case, which party is making the allegations and whether the allegations are admitted or denied. In a trial based upon pleadings, the only way by which the court can identify these crucial matters is by carefully scrutinising the pleadings of the parties.

It is settled that a fact alleged by one party in his pleadings which is admitted or deemed admitted by the other party in his own pleadings is no longer in dispute. Such a fact is no longer in issue. Such a fact is deemed to be established without further proof.[13] Evidence in support of such fact is unnecessary. In fact, evidence in support of such fact will be regarded as irrelevant and therefore inadmissible.[14] Therefore, as far as burden of proof is concerned, a party has no burden of proving a fact alleged by him in his pleadings but admitted or deemed admitted by the pleadings of the other party.[15]

This is the pivot of the decision of Oguntade JSC in Bunge's case.[16] After reviewing the pleadings of the parties, his Lordship, at page 95 of the report, summarised the position as follows:

> **"It is seen in the paragraphs reproduced above from the parties' pleadings that whilst the plaintiffs pleaded that King Obunge from Otari village of the plaintiffs was King of Abua in 1896 when the British crown signed a treaty with the Abuas, the 1st and 2nd defendants remained silent and did not specifically join issue with plaintiffs on the point. The 3rd and 4th defendants for their part started by demonstrating a measure of ambivalence. In paragraph 6(i) reproduced above, they pleaded that members of their Agana Royal Family had also reigned and been recognised as Uwema Abua from "time beyond human memory." The**

[13] But where the action is for declaration of right, the claimant must prove his case regardless of such admission as the courts do not grant declaration based on admission or default. See Bello v Eweka (1981) 2 SC 385; Motunwase v Sorungbe [1988] 5 NWLR (Pt. 92) 90
[14] Olufosoye v Olorunfemi (1989) 1 SC (Pt. I) 29; Okparaeke v Eguonu (1941) 7 WACA 53 at 55; Pioneer Plastic Containers Ltd v Commissioner of Customs and Excise (1967) 1 Ch 597 at 602.
[15] Onobruchere v Esegine (supra)
[16] Supra

> **implication of this averment is that whilst the 3rd and 4th defendants were conceding that the plaintiffs' family had been the head chief of Abua, that honour had sometimes also belonged to the Agana Royal family of the 3rd and 4th defendants. In clearer terms however, the 3rd and 4th defendants in paragraph 6(iv) of the pleading conceded that Obunge was King but not the rightful one. In paragraph 10 they made it clear that Obunge was king but that he was so recognised by the colonial government under a mistake. They also agreed that Obunge was paid annual allowance….. The implication of the admission of the 3rd and 4th defendants that Obunge had been king of the Abua clan was to remove the burden or onus of proof of the fact that Obunge was king of the Abua clan from the plaintiffs. The onus then shifted to the defendants to show that Obunge who had been king of Abua clan was not the rightful king or that he was a usurper."**

From the pleadings of the parties in this case, the plaintiffs' allegation in their pleadings that their progenitor had once been King was admitted by the defendants who in turn alleged in their own pleadings that he was wrongly recognised as king. Therefore, based on the pleadings, the fact alleged by the plaintiffs was no longer in issue having been admitted by the defendants. There was therefore no burden on the plaintiffs to prove such fact.[17] The burden was on the defendant to prove the fact alleged by them in their pleading that the plaintiff's ancestor was wrongly recognised as king.[18] Both the trial court and the Court of Appeal placed the burden of proving the fact already admitted on the plaintiffs in total disregard of the state of pleadings. Since the defendant failed to discharge the burden of proof on them, the Supreme Court had no option than to set aside the judgment of the two lower courts as the error of the lower courts went to the root of the case and has led to a total miscarriage of justice.

Conclusion

This case underscores the importance of the burden of proof and the grave consequences that may follow where the court misdirects itself as to which of the

[17] Onobruchere v Esegine (supra)
[18] Ibid.

parties has the burden or where a party fails to discharge the burden of proof where the burden lies on him. Above all, the case brings to the fore the crucial role pleadings play in determining which of the parties in civil litigation has the legal/general or evidential burden of proof.[19] In deciding this appeal, Honourable Justice Oguntade demonstrated a deep analytical capacity that is a beauty to behold. His Lordship was able to sift through the confused mesh of findings by the two lower courts and tons of documentary evidence and reduced the whole case to its basics. At the end of the day, the case appears so simple and straightforward one wonders why the lower courts failed to see the case for what it was rather than embark on fruitless evaluation of irrelevant documentary evidence.

[19] see also Onobruchere v Esegine (supra) which was heavily relied upon by the Supreme Court in Obunge's case and which case actually demonstrated that the issue of burden of proof or which party has the burden of first leading evidence is a matter that must be determined from the pleadings.