

# In The Supreme Court of Nigeria

On Friday, the 30<sup>th</sup> day of March 1973

SC. 179/1970

## Before Their Lordships

Taslim Olawale Elias ..... Chief Justice of Nigeria  
Sir Udo Udoma ..... Justice, Supreme Court  
Dan Ibekwe ..... Justice, Supreme Court (Acting)

## Between

R.G. Okuwobi ..... Appellant

## And

Jimoh Ishola ..... Respondent

## Judgement of the Court

Delivered by

Taslim Olawale Elias. CJN

**I**n Suit No. MIK/347/67 before Gomez, Chief Magistrate, Ikeja, the plaintiff claimed the sum of £400 as outstanding balance against the defendant "in respect of money received by the defendant from the plaintiff between June and August 1962 for a consideration which totally failed".

The plaintiff's brother had testified that one Salu Kayaoja had sometime in 1962 introduced the defendant to him as desirous of selling a house, and that he thereupon introduced the defendant to his brother, the plaintiff. The house in question was then still in the course of construction and the plaintiff agreed to purchase it for £2,000, at the same time paying £600 as the first instalment and agreeing to pay the balance on completion of the house. When the plaintiff attempted to tender two receipts - one purchase receipt for £500, and another for £100, the learned Chief Magistrate rejected them as inadmissible, but the one for £100 was later on admitted. It is common ground that the attempted sale failed. According to the plaintiff's witness, plaintiff demanded the return of the sum of the £600 he had paid, but the defendant repaid £200 only. The defendant, however, testified that he had received a total of £500 from the plaintiff to whom he had refunded the entire sum. The plaintiff thereupon brought an action to recover his money from the defendant. The learned Chief Magistrate dismissed the plaintiff's claim on the grounds that the receipt was inadmissible because *inter alia* it was not stamped and that the contract being one relating to land was unenforceable because there was no memorandum in writing as required by s. 67 of the Property and Conveyance Law, 1959, of the Western State of Nigeria.

On appeal to the High Court, Lagos, Sowemimo, Ag. C.J. as he then was, dismissed the appeal and upheld the learned Chief Magistrate's decision. The present appeal has been brought against this judgment on the following seven grounds-

1. That the learned judge erred in law when he upheld the rejection by the learned trial magistrate of documentary evidence tendered at the trial as he wrongly held that the *jurat* on the document does not satisfy section 3 of the Illiterates Protection Law.
2. That the learned judge failed to direct his mind properly on the evidence as contained in the records of proceedings and wrongly held that there was no evidence that the rejected documents were prepared by a third party when the records contained such evidence at page 10 of the records of proceedings.
3. That the learned judge erred in law to have upheld the decision of the learned magistrate that the action is not maintainable as he wrongly held there was no memorandum as required by section 67 of the Property and Conveyance Law (Western State) when there is such memorandum.
4. That the decision of the learned judge is against the weight of evidence as contained in the records.
5. The learned Acting Chief Justice, Lagos State, as he then was erred in law in holding that sec. 67 of the Conveyancing and Property Law, 1959, could be relied on by the defendant in defending the claim before the learned trial magistrate, when both in his writ of summons and the evidence adduced by him in support, the plaintiff/appellant (the plaintiff in the court below), was not seeking to enforce a contract concerning land or

any interest in land, but only to recover money paid for a consideration that had failed.

6. Having found that the learned Chief Magistrate, as he then was, had not made any finding of fact on a vital issue, namely whether or not he accepted the evidence of the plaintiff or that of the defendant as to the amount that had been paid by the plaintiff to the defendant and what amount, if any, had been refunded, the learned Acting Chief Justice should have remitted the case to the lower court for such finding to be made or for a re-trial.
7. On the 11<sup>th</sup> day of July, 1968, when the learned trial magistrate gave judgment in the suit before him, the Property and Conveyancing Law of 1959 of the Western Region (The Western State), on which great reliance was placed, was not one of the applicable Laws in the Lagos State, and in confirming the judgment of the learned trial magistrate in that regard, the Acting Chief Justice of the Lagos State, erred or misdirected himself in law.

Mr Davis, learned counsel for the appellant, chose to argue grounds 5 and 7 together first. He submitted that the learned appeal judge erred in law in holding that s. 67 of the Property and Conveyancing Law 1959 applied to render un-enforceable the appellant's claim which he wrongly regarded as being based on a contract concerning land or an interest in land concerning which there must be a memorandum in writing. It was his contention that the appellant was merely seeking to recover money he had paid to the respondent for a consideration that had failed, and that this claim was in quasi-contract for money had and received to the appellant's use. He also pointed out that when on 11<sup>th</sup> July, 1968, the learned trial Chief Magistrate gave his decision, the Property and Conveyancing Law of 1959 of the Western State of Nigeria, on which he relied, was not one of the applicable Laws in the Lagos State and that the Acting Chief Justice of the Lagos State erred in law in confirming the learned Chief Magistrate's decision based upon that Law. We think that there is merit in this submission of learned counsel, and observe that, although s. 1. (3) of the Lagos State (Applicable Laws) Edict, 1968 which came into force on 1<sup>st</sup> May, 1968, made the existing Laws applicable in any proceedings pending immediately before the commencement date, s. 3 (b) of the same Edict expressly disappplies all enactments specified in Schedule 2 to the Edict being enactments which "have become obsolete, unnecessary or spent" and which "shall, on the commencement of this Edict, cease to have effect in Lagos State or any part thereof". As the Property and Conveyancing Law 1959 is included as item 128 of Schedule 2, we think that the learned Ag. Chief Justice was clearly in error when he confirmed the judgment of the lower court on the basis that this Law applied to the appeal before him.

Learned counsel for the appellant next argued ground 6 by submitting that the Acting Chief Justice should have remitted the case to the lower court for a re-trial or to make a specific finding of fact as to whether or not he, learned Chief Magistrate, accepted the evidence of either the plaintiff or the defendant as to the amount actually paid originally and what amount, if any, was still outstanding. We think that there is force in this submission, as the Acting Chief Justice himself found as follows:

The learned Chief Magistrate made no findings of facts as to which of the two versions he had accepted. All that he did in his judgment was to set out the two versions . . ." And we think that he was again in error when, later on in his judgment, he said-

I agree that the Chief Magistrate did not resolve the conflicts but it had not been shown that failure on his part would have affected his conclusions.

Mr Davis, learned counsel for the appellant, submitted that the learned appeal judge is wrong to have upheld the learned Chief Magistrate's rejection of the document tendered at the trial on the ground of failure to have it duly stamped. We think that it was wrong of the learned Chief Magistrate to have held a document inadmissible merely on the ground of non-stamping, since the purpose of the requirement of stamping is to ensure that Government does not lose revenue thereby. The learned Chief Magistrate could have directed the document in question to be duly stamped and then received it in evidence. Mr Oluwa, learned counsel for the respondent, merely attempted to defend the judgment appealed against for the same reasons as he had advanced in the courts below.

For the various reasons we have given we think that the appeal succeeds and it is hereby allowed. We set aside the judgment of the High Court of Lagos State on appeal as well as the judgment of the Chief Magistrate, Ikeja, in Suit No. MIK/347/67 delivered on 1st July, 1968, including the order as to costs. We remit the case back to the Chief Magistrate's Court, Ikeja, for it to be re-tried in the light of this judgment. We assess costs in this appeal at ₦80 payable to the appellant in this appeal.

#### **Counsel**

L. V. Davis    .....    For the Appellant

I. I. Oluwa    .....    For the Respondent