

Case Review (No. 2)

Alhaji Karimu Adisa v. Emmanuel Oyinwola and 4 Others (2000) 6 S.C.N.J. 290

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Introduction

The Land Use Act ("the Act") was enacted in 1978 amongst other reasons, to unifying the law governing the incidence of land holding in Nigeria. To a large extent the Act extended the position under the Land Tenure Law, which at that time was applicable to Northern Nigeria, to the other parts of the federation. For example the requirement of Governor's consent and the grant of a term of years to a certificate holders were imported from the provisions of the Land Tenure Law. The Act that was meant to simplify land holding in Nigeria soon after its promulgation was faced with serious problems of interpretation. To mention a few, the courts have had to determine the effect of not obtaining the consent of the Governor under the Act; the position of the Customary Tenant and whether Civilian Governors are successor to Military Governors?

Unfortunately the problem of interpretation that bedeviled the Act from inception is still very much around. The most current problem deals with the jurisdiction of the High Court of a State to entertain a dispute arising from a customary right of occupancy issued under the Act. The issue is so fundamental in Nigerian legal system because "jurisdiction" is the foundation of the power of the court to exercise judicial power in an action brought before it for adjudication. It is for this reason that our legal jurisprudence permits the court to raise the issue suo motu while parties may raise the issue of jurisdiction for the first time even on appeal. The jurisdictional issue under the Act arises from the interpretation of Sections 39 and 41 of the Act.

Section 39(1) of the Act provides —

"The High Court shall have exclusive jurisdiction in respect of the following proceedings:

- (a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under the Act and for the purpose of this paragraph, proceedings

include proceedings for a declaration of title to a statutory right of occupancy.

- (b) proceedings to determine any question as to any person entitled to compensation payable for improvements on land under this Act.

(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modification as would enable effect to be given to the provisions of this section."

Section 41 of the Act provides —

"An area court or customary court or other court of equivalent jurisdiction in a state shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purpose of this paragraph proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court, practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section."

Section 41 of the Act is adopted from section 41(2) of the Land Tenure Law. But section 41(3)(b) of the Land Tenure law makes provision for a situation where there is no native court, it provides that in such situations the High Court and District Courts shall have jurisdiction. This was the setting when the problem of the jurisdiction of the High Court under the Act came for interpretation. It all started like a joke, in *Salati v. Shehu* [1986] All N.L.R. page 53, [1986] 1 N.W.L.R. part 15 page 198 the issue was whether an area court had jurisdiction in a matter in respect of land subject to statutory right of occupancy? The Supreme Court was unanimous in its decision that the Area Court lacks jurisdiction. But Karbi Whyte, learned Justice of the Supreme Court, said obiter:

"...the exclusive original jurisdiction in respect of land held under statutory right of occupancy is vested in the High Court of the state, whereas jurisdiction in respect of customary right of occupancy is vested in the Area or Customary

Courts; the exercise of these jurisdiction being mutually exclusive."

In *Alhaji Abubakar Sadikwu v. Alhaji Abba Dalori* [1996] 4 S.C.N.J. page 20; [1996] 5 N.W.L.R. part 447 page 151, the issue was whether the Borno State High Court had jurisdiction in respect of land not designated urban land. The Supreme Court unanimously adopted the obiter of Karibi Whyte, J.S.C. in *Salati v. Shehu* (supra); the court relied on sections 39(1) and 41 of the Act, it held that the High Court lacks jurisdiction in a matter in respect of land under customary right of occupancy. Henceforth it ceased to be a joke it is now reality, therefore when *Oyeniran v. Egbetola & Anor.* [1997] 5 S.C.N.J. page 94; [1997] 5 N.W.L.R. part 504 page 122 came before the Supreme Court to decide whether the Oyo State High Court had jurisdiction in respect of land under customary right of occupancy, the Supreme Court had no qualms in following *Sadikwu v. Dalori* (supra), the court held that the High Court lacks jurisdiction. At this stage frustration was almost setting in because it was clear to legal practitioners and the academia that the reasoning of the apex court on this issue ought to be revisited. The occasion presented itself in this case under review.

The fact of the Case

The facts of this case that is relevant to this review are that the plaintiffs/respondents claimed against the defendant/appellant a declaration of customary right of occupancy to the land in dispute in this case pursuant to the Land Use Act. The trial court entered judgement for the plaintiff on grounds not relevant to this review. The appeal by the defendant was dismissed, now he has brought this appeal to the Supreme Court where he raised the issue of jurisdiction for the first time. There were three issues for determination but only one of the issues is relevant here, that is—

"Whether the Court of Appeal was not in error in failing to see that the trial court lacks jurisdiction over claims as formulated by the plaintiff having regard to the provisions of the Land Use Act particularly Sections 39 and 41 thereof?"

This case presented the opportunity to the Supreme Court to revisit the principle in *Sadikwu v. Dalori* (supra) and *Oyeniran v. Egbetola* (supra) the appellant invited the Court to overrule its earlier decisions. The appeal was heard by a full court of the Supreme Court (seven Justices of the

Supreme Court). Apart from hearing the arguments of the learned counsel in the case, the Court heard the arguments of the learned Attorneys-General of the Federation, Osun and Abia States, K. Sofola, S.A.N., C.O. Akpamgbo, S.A.N. and Abdullahi Ibrahim, S.A.N. as amici curiae. The submissions of the amici curiae may be summarized as follows:

- (i) Since Section 41 omitted the word 'exclusive' to qualify the jurisdiction granted to the courts mentioned in that section, the intention of the legislature was not to confer exclusive jurisdiction on those courts.
- (ii) The opinion expressed by Karibi-Whyte, J.S.C. in *Salati v. Shehu* (supra) that the jurisdiction of the High Court and the Area and Customary Court under the Act are mutually exclusive having been given obiter, should not have been relied on in *Sadikwu v. Dalori* (supra)
- (iii) Had the court considered the effect of Section 236(1) of the 1979 Constitution, Section 41 of the Act would have been differently interpreted.
- (iv) The Act was not an integral part of the 1979 Constitution, therefore such of its provisions that are inconsistent with the provisions of the Constitution are void to the extent of such inconsistency.
- (v) The unlimited jurisdiction which the High Court of the state had before the commencement of the Act cannot be taken away by implication, and the court should approach the question of the jurisdiction of the High Court on the footing that it exist to determine any suit whatsoever except what is expressly excluded.

For clarity we reproduce Section 236 of the 1979 Constitution —

"Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

From the foregoing the Supreme Court unanimously held inter alia —

- (a) The Supreme Court is entitled to depart or overrule its previous decision in an appropriate situation when invited to do so. The attitude of the Supreme Court is that the court will not adhere to the rule of stare decisis but will depart from its previous decision if such decision is inconsistent with the provision of the Constitution or if it is erroneously reached per incuriam and will if followed, perpetrate hardship and considerable injustice or it will cause temporary disturbance of rights acquired under it or will continue to fetter the exercise of judicial discretion of a court. The court has not laid down a hard and fast rule exhausting the area within which to warrant a departure from a previous decision. Each case must be decided on its special facts and circumstances with a view to avoiding perpetuating injustice, which is the paramount determinant factor in this respect.
- (b) There are compelling reasons why the decision in *Oyeniran v. Egbetola* should be overruled and departed from. First, the decision was given without regard to Section 236(1) of the 1979 Constitution. Secondly, it was given in reliance on the decision in *Sadikwu v. Dalori* whereas that decision was based upon Northern Nigerian Laws, which were not relevant for the determination of the ambit of the jurisdiction of the High Court of Oyo State. Those Northern Nigerian Laws were not the same as the laws applicable in Oyo State. Thus while, for instance, Section 17(1) of the High Court Law of Northern Nigeria which was applied in *Sadikwu v. Dalori* expressly excluded the jurisdiction of the High Court in respect of land matters subject to the provisions of the Land Tenure Law, that was not the position in Oyo State.
- (c) The law presumes against construing statutes so as to oust or restrict the jurisdiction of a superior court of record unless there is explicit expression to that effect in the legislation.
- (d) The decision of the Supreme Court in *Oyeniran v. Egbetola* was erroneous and made pre incuriam. The Supreme Court should not be bound by that decision which would create unnecessary problems and difficulties in States where Area Court and Customary Courts or courts of equivalent jurisdiction do not exist and may lead some state Governors to resort to designating land in all areas of the State as urban land contrary to the spirit and intention of the Act.

Conclusion

We congratulate the Supreme Court for acknowledging and correcting the error in the earlier cases on the subject. It was long over due; commentators have written a lot on the principle in Sadikwu and Oyeniran cases. See "The Land Use Act Aftermath of Sadikwu's Case" by C. O. Akpamgbo, S.A.N. Published by Tabansi Press Limited (1997). Sadikwu and Oyeniran cases were not in consonance with established principles of interpretation and in violation of the Constitution. The general rule of interpretation of statutes is that where the words used are clear and unambiguous, they should be given their ordinary meaning. There was no reason for importing extraneous words into Section 41 of the Act. The case under review vindicate the position of the Court of Appeal in *Ebiteh v. Obiki* [1992] 5 N.W.L.R. part 243 page 599 and *Nelson v. Ebianga* [1998] 8 N.W.L.R. part 563 page 701. The Court of Appeal in Nelson's case considered Section 41 of the Act vis a vis Section 236(1) of the 1979 Constitution and held that previous Supreme Court decisions were reached *per incuriam*.

Credit should also go to the counsel for the appellant Olaseni Okuneye (with him Olayinka Bolanle) for their insistence on the correct position of the law. It is the tradition of this profession that a legal practitioner should prosecute his client's case with diligence and present his client's case fearlessly. But for the insistence of the appellant this principle may well still be part of our laws. The amici curiae in this case also did an excellent job. This case exposes the weakness of the common law doctrine of *Stare decisis*, particularly as it affects lower courts.