

CASE DIGEST

COMMERCIAL LAW: AGENCY; ESTOPPEL; A PERSON WHO HOLDS OUT ANOTHER IS PREVENTED FROM DENYING EXISTENCE OF AN AGENT RELATIONSHIP

ACMEL NIGERIA LIMITED; BODE AYENI v. FIRST BANK OF NIGERIA PLC & 2 ORS.
SUPREME COURT OF NIGERIA

(PETER-ODILI; ARIWOOLA; EKO; GARBA; OGUNWUMIJU, JJ.SC)

Sometime in March 2005, Acmel Nigeria Ltd & Bode Ayeni (Appellants) were informed by Wemi Shada & Associates (2nd Respondent), the agent of First Bank Nigeria Plc. (1st Respondent), that the 1st Respondent intended to sell its property. The asking price was fixed at 20,000,000.00. The Appellant, on the information of the 2nd Respondent, promptly issued a banker's cheque for the sum of 20,000,000.00 in favour of the 1st Respondent. After 10 months it returned the cheque to the Appellants claiming that its management had raised the asking price to 25,000,000.00. The Appellant raised another cheque for the additional 5,000,000.00 in favour of the 1st Respondent. The two cheques totalling 25,000,000.00, were given to the 2nd Respondent, as the agent of the 1st Respondent. Sequel to the payment of the 25,000,000.00 the Appellants were let into the possession of the property by the 2nd Respondent in his capacity as 1st Respondent's agent. The Appellants believing the transaction to be a done deal proceeded to spend an additional sum of 5,000,000.00 renovating the property. After 7 months of the receipt of the cheques for 25,000,000.00, the 1st Respondent again returned the two cheques for 25,000,000.00 stating that they still needed the consent of the Central Bank of Nigeria before completing the sale. Upon obtaining formal approval of the CBN authorizing the sale of the property, the 1st Respondent informed the 2nd Respondent that the property was going to be sold through competitive bidding, and then instructed the 2nd Respondent to bid on behalf of the Appellants (as the 2nd Appellant was away abroad and was not aware of the bidding on their behalf). Upon the 2nd Appellant's return, he was told that the property had been sold to the highest bidder and that their bid was not the highest. All efforts made by the 2nd Appellant to have the matter settled amicably fell through. At this juncture the Appellants were constrained to sue the Respondents, seeking specific performance and injunctive reliefs. After trial, the trial Court dismissed the Appellants' claim.

Dissatisfied, the Appellants appealed to the Court of Appeal, which also dismissed their appeal. Further aggrieved, the Appellant appealed to the Supreme Court. One of the issues for determination is: *Whether the Court of Appeal erred in law when it held that the 1st Respondent was not bound by the act of the 2nd Respondent in handing over the keys of the property in dispute to the Appellants when the 2nd Respondent was a double agent to the Appellants and 1st Respondent?*

Learned counsel for the Appellants argued that at all material times, the 2nd Respondent has transacted on behalf of the 1st Respondent, and it was based on all of the information received from the 2nd Respondent upon instructions of the 1st Respondent, that they acted therein. Learned counsel also stated that all transactions and correspondences were carried out through the 2nd Respondent, and it was on the observance of the same that they were let into the possession of the property by the 2nd Respondent in his capacity as the 1st Respondent's agent. Counsel further stated that the unchallenged testimony of the 2nd Respondent before the trial court showed eloquently that he acted as the agent of the 1st Respondent when he gave possession of the property to the Appellants and that he did so with the consent of the 1st Respondent.

On the other hand, Learned counsel for the 1st and 3rd Respondents contended that the 1st Respondent never authorised the 2nd Respondent to hand over the keys to the Appellants at the time he did. Counsel further stated that having not authorised the 2nd Respondent to give the keys to the Appellants, the Appellants were trespassers and as such liable to damages for on the disputed property.

The Supreme Court on this issue held that:

Regard must be had to the ordinary or usual course of events as it concerns transactions for the sale of property. Since in the usual and ordinary course of things, the power to hand over possession of a property which is the subject matter of a contract of sale resides in the vendor or owner of the property and since a vendor can exercise his power of sale through his agent, it only stands to reason that in the circumstances of this case, the 2nd Respondent acted for the 1st Respondent who was the vendor in the sale transaction. Going further, the Supreme Court stated that **where one person holds another out as being his agent or allows a person to represent himself as his agent (even where no such agency exists in law) the other person will be precluded from denying the existence of this agent's authority to act on his behalf.** This is an agency created by estoppel. See *Saul Raccah v. Standard Co. Nig.* 4 NLR 48; *Leventis Technical v. Petrojessica Enterprises* (1999) LPELR - 1781 (SC). The 2nd Respondent in the circumstances of this case having concluded the sale of the property by the 1st Respondent to the Appellants by lawfully putting the Appellant in possession with the consent of the 1st Respondent after money had passed hands, the 1st Respondent is estopped from denying the existence of an agency.

Issue resolved in favour of the Appellants.

Olaniran Obebe for the Appellants

Teslim Adewuyi with R. O. Adekole for the 1st & 3rd Respondents

Victoria Alonge with Olawunmi Oluleye for 2nd Respondent

This summary is fully reported at (2022) 7 CLRN

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