

CASE DIGEST

LITIGATION: RECEIVERS POWER; DOCTRINE OF LIS PENDENS; EVEN A RECEIVER CANNOT TRANSFER ANY VALID INTEREST IN PROPERTY WHILE PROCEEDINGS ARE PENDING

NIGERIAN INDUSTRIAL DEVELOPMENT BANK LTD;
M.M. ADABA v. KAN BISCUITS COMPANY LTD

SUPREME COURT OF NIGERIA

(MUHAMMAD; NWEZE; ABBA-AJI; OGUNWUMIJU; JAURO JJ.SC)

By a loan and mortgage agreement, Kan Biscuits Company Ltd. (Respondent) took a term loan of US\$921,080.00, U\$25,094.00 and N1,568,000.00 from the Nigerian Industrial Development Bank Ltd. (1st Appellant) to acquire additional plant, equipment and machinery for its biscuit factory project (Kan Biscuit Factory). In default, M.M Adaba (2nd Appellant) was appointed as Receiver. On this note, the Respondent sued the Appellants at the Federal High Court (trial Court), challenging the appointment of the 2nd Appellant by the 1st Appellant as Receiver in respect of the assets of the Respondent. Nevertheless, while the matter was pending before the trial court, the Appellants went ahead and sold the factory of the Respondent to DE-ENDY INDUSTRIAL COMPANY LIMITED. Consequently, the Respondent by a motion on notice before the Federal High Court where the matter was pending, sought to set aside the sale being made pendente lite. The trial court delivered its ruling on the motion and thus set aside the sale.

Dissatisfied, the Appellants appealed to the lower Court, which dismissed the appeal and upheld the decision of the trial court. Further aggrieved, the Appellants appealed to the Supreme Court. One of the issues for determination is *Whether with or without the application of the doctrine of lis pendens, it is legally permissible for any litigant in a pending suit to destroy the subject matter of the suit or to do anything to frustrate or make nullity of any possible court order.*

Learned Counsel to the Appellants argued that the principle of lis pendens (pending action) which was applied by both the trial and lower courts is at variance with the facts in relation to the sale of items of chattel and machinery not touching landed property, which is the subject matter of the deed of loan and mortgage agreement between the Respondent and the 1st Appellant. His submission is that lis pendens applies to real property and not personal or declaratory reliefs as in the present appeal. He heavily relied on *Barclays Bank of Nigeria Ltd v. Alhaji Adam Badejoko Ahsiru & 2 Ors* (1978) 6-7 SC at 87. He, therefore, prayed the court to allow the appeal and set aside the decision of the lower court.

Learned Counsel for the Respondent on the other hand argued that it was the assets of the Respondent that was sold, which comprised all assets with the land inclusive. He concluded that the doctrine of lis pendens does not allow litigant parties nor give to them pending the litigation, rights in the property in dispute so as to prejudice the opposite party. He, therefore, begged the court to dismiss the appeal.

Unanimously dismissing the appeal, the Supreme Court held that:

"...Under the doctrine of lis pendens, **parties to proceedings pending in court ought not to do anything which may have the effect of rendering nugatory the judgment of the court.**" ... "The personal is a distinction without a difference in this appeal. What then is the difference between real and personal property of/in KAN Biscuit Factory that was sold to De--Endy Industrial Company Limited by the Appellants during the pendency of the present suit? Without equivocation, KAN Biscuit Factory consists of the land and machinery sold during the pendency of the present suit. Whatsoever be the case, I am of the stern opinion that the sale was caught up by the doctrine of lis pendens. In essence, the sale must be set aside as void and transferring no title or property whatsoever.

Stressing this point further and agreeing with the lower Court, the Court also held that:

The doctrine is applicable to any pending suit, including personal property, to wrongful eviction of tenants by a landlord. It has equally been made applicable to tangible and intangible res as well as declaratory reliefs. The doctrine has, indeed, been applied to subject areas outside property law as it disallows any transfer of rights or interests in any subject matter being litigated upon.

Issue resolved in favour of the Respondent.

Musa N. Tolani, Esq., Fidelis Mbadugha, Esq., and Victor Iwuchukwu, Esq., for the Appellants

Ibe Ikwechegh, Esq., for the Respondent

This summary is fully reported at (2022) 5 CLRN

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