

13, 1948

No. 59 of 1946

In the Privy Council.

UNIVERSITY OF LONDON
W.C. 1.
-9 OCT 1956
INSTITUTE OF ADVANCED
APPEAL STUDIES

APPELLANTS' CASE

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL

44446

BETWEEN: VICTOR MADUKA and Others -

Appellants.
(Defendants)

AND

EZEODIMEGWU on behalf of late Chief Aboh of
Orokwu - - - - -

Respondent.
(Plaintiff)

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Appellants' Case.

1. This appeal is concerned with the right of the Appellants, being of the tribe of UMUORI, to retain land at Onitsha, Nigeria which has been long occupied by them and is situate between land to the West belonging to the tribe of OROKWU (represented by the Respondent) and land to the East belonging to the tribe of ADAZI.

2. In particular the appeal raises the question as to whether the UMUORI (Appellants, who were the Defendants) can be deprived of land occupied by them, by reason of the settlement of another action by and between their
20 neighbours in which action the UMUORI were refused permission to appear as Third Parties and by which settlement the OROKWU and the ADAZI purported to agree between themselves that the land so occupied by the UMUORI should thereafter belong to the OROKWU.

3. The plans exhibited in the litigation to be referred to are at first sight confusing. The land now in dispute—hereinafter called the GREEN land—is shewn on the plan Exhibit A, lies to the North of the Nobi-Adazi road, is coloured Green and bears the legend 'Huts and Farms of UMUORI.'

4. The RED line marking the plotted Eastern boundary of the GREEN land is to be observed. Further to the East between the RED line and a short
30 broken line lies 'Land of ADAZI allowed UMUORI' bearing the legend 'UMUORI new buildings.' Further to the East lies 'Land of ADAZI.'

5. On plan Exhibit F, put in for the OROKWUS by the Respondent as Plaintiff in the present action, it will be seen that the RED line thereon corresponds with the RED line on Exhibit A, that the 'Land of ADAZI allowed UMUORI' is thereon bounded on the EAST by the plotted BLUE line, beyond which, as before, lies the 'land of ADAZI,' but that the GREEN land to the West of the RED line is thereon marked 'Land of Otta Orokwu.'

6. On plan Exhibit G the RED line on plans A and F is coloured BLUE. The RED line on G is the short dotted line on A, BLUE on F. The GREEN land is shewn on G as 'Land of UMUORI.'

7. The Transfer of the GREEN land occupied by the Appellants the UMUORI indicated on the Respondents plan F is alleged by the OROKWU to have been agreed with the ADAZI in the aforesaid settlement of their dispute to which the UMUORI were no party. 10

8. The history of litigation in the matter is as follows.

9. In 1931 the UMUORI unsuccessfully sued the ADAZI for a declaration of boundary between themselves and the land of ADAZI.

10. In 1932 by way of retaliation the ADAZI raided the land occupied by the UMUORI destroying their houses.

11. It was a matter of controversy in this action as to whether or not the UMUORI's contention is correct, *i.e.* that the raid was on the GREEN land on which they subsequently rebuilt their present dwellings on the site of those destroyed. 20

12. On this matter the Judgment of the Court of Appeal states as follows :
 " . . . the UMUORIS crossed the road and squatted North of the road. This
 " led to a dispute between the UMUORIS and the ADAZIS and in 1931 the
 " UMUORIS brought an action against the ADAZIS claiming a declaration of
 " title. They lost that action, whereupon the ADAZIS over-rating the effect
 " of their successful defence of the action riotously destroyed the houses of the
 " UMUORIS on the disputed land." 30

13. It is submitted that this statement shews conclusively that the UMUORI were on the disputed GREEN land, North of the road, at least before 1931 and at the time of the subsequent raid.

14. In 1936 the UMUORI obtained Judgment against the ADAZI in respect of the raid and were awarded damages amounting to £1,127 11s. 1d., which sum the ADAZI were unable to pay in full. p. 40

15. In 1938 the UMUORI by a memorandum of agreement accepted in lieu of the said sum, £300, and their boundary was fixed to include the 'Land of ADAZI allowed UMUORI': this being to the East of the GREEN land and, as they allege, being an extension of the Eastern boundary they contended for in 1931. 40

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p. 33
Plans
A & F

16. On this point the Judgment of the Court of Appeal states as follows: p. 22
 “ By the Agreement, which is in writing and dated the 2nd March, 1938, the
 “ UMUORIS agreed to accept £300 in settlement of the judgment debt and in
 “ consideration of this the ADAZIS agreed that the boundary between them
 “ should be that shown by the RED line in Ex. “G” (BLUE in “F”). This was
 “ allowing the UMUORIS to extend considerably further East than they had
 “ ever before claimed to do. The agreement is naturally silent as to the Western
 “ boundary of the UMUORIS land.”

17. It is relevant to the issue of acquiescence in the present action to record
 10 that at no time during these disturbances was any question raised by the
 OROKWU as to the rights of the UMUORI on the GREEN land nor was any
 such question raised with the UMUORI until the present action.

18. Moreover it is clear that after this agreement the boundary of the
 ADAZI was no longer contiguous with the RED line on plans A and F (BLUE
 on G). This fact was demonstrably known to the ADAZI. It is not apparent
 why, over a period of years during which the agreement subsisted, the fact was
 not obvious also to the OROKWU.

19. In 1940 the OROKWU sued the ADAZI for a declaration defining p. 43
 20 the boundary between them so as to include the GREEN land in the land of
 the OROKWU.

The UMUORI sought to be joined as Third Parties to contest the suit but p. 37
 the motion to this effect was dismissed.

20. On 1st February 1941, a consent judgment in that action was recorded p. 35
 confirming a boundary purporting to have been agreed by and between the
 OROKWU and the ADAZI, being the RED line on Plan A (RED in F, BLUE
 in G).

21. This boundary manifestly ignores the transfer of ‘Land of ADAZIS
 given UMUORI’ and indeed any boundary which suggests that the lands of the
 OROKWU and ADAZI are contiguous must, it is submitted, be wrong and in
 30 contravention of the rights of the UMUORI and of the agreement of 1938.

22. By originating summons dated 9th October, 1942, the present action p. 1
 was commenced in the Native Court of Nobi Nigeria but was transferred to the
 High Court of the Enugu-Onitsha Division.

23. By their writ the Respondents claimed ‘Possession of that piece of p. 2
 land now occupied built and farmed on by the Defendants at Orokwu which
 said piece of land has been adjudged to be the property of the Plaintiff by the
 High Court of the Onitsha Division in the action between the Plaintiff and the
 people of Adazi, Awkw Division.’

40 24. By their Defence the Appellants *inter alia* denied that the lands of the p. 4
 OROKWU and the ADAZI were contiguous, alleged that the judgment in which
 they sued had been obtained by collusive agreement between the parties, that
 they were not parties to that action and were in occupation of the GREEN land.

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25. Judgment was given for the Respondent against the Appellants for possession of the GREEN land and for nominal damages.

26. In the course of his judgment Waddington J. stated " The judgment " of this Court declaring the OROKWU-ADAZI boundary in 1940 still subsists " and that boundary is binding on the parties to the action and their privies."

27. It is submitted that as the Appellants were neither parties to the action of 1940 nor privies to the settlement upon which judgment therein was founded that judgment is not binding upon the Appellants.

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28. The Learned Judge further said:

" On the evidence it is quite clear that the UMUORI people have no rights in 10 " the land North of the main road (Exhibit "A") except such as they derived " from ADAZI " and "If, as I find, UMUORI have no rights north of the main " road save as they derive from ADAZI, it must follow that UMUORI have no " rights west of the red line on Exhibit "A" the 1940 OROKWU-ADAZI " boundary, because ADAZI have none there."

p. 22

para. 12
hereof

29. It is submitted that this finding of fact was contrary to the facts already referred to as found and set out in the judgment of the Court of Appeal, which, it is submitted, clearly supports the claim of the Appellants that they were on the GREEN land before 1931 and prior to the agreement which gave them, not their first claim to territory North of the road but an Eastward extension 20 of that territory, *i.e.* of the GREEN land.

30. The Learned Judge's finding is, it is submitted, further vitiated by the fact that the boundary between the OROKWUS and ADAZI alleged to be " binding on the parties to the action and their privies " is in clear contradiction of the previous transfer by the ADAZI to the UMUORI of land to the East of that boundary.

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31. The Appellants Notice of Appeal to the West African Court of Appeal is in the record and on 3rd May, 1944, the Judgment of the Court of Appeal was given in favour of the Respondents.

32. In spite of the findings of fact stated by the Court of Appeal and 30 hereinbefore referred to, the Court nevertheless supported the findings of fact of the Learned Judge, upheld the Learned Judge's application of the 1940 judgment to the present case and did not deal with the Appellants claim based on long possession laches and acquiescence.

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33. The Appellants applied for and were granted an Order granting Special Leave to Appeal dated 4th June, 1946. The Appellants humbly submit that the Judgment of the West African Court of Appeal was wrong and should be set aside and that Judgment with Costs should be entered for the Appellants for the following amongst other

REASONS

1. Because the decision that the Appellants were bound by the consent judgment given in the 1940 proceedings between the OROKWU and the ADAZI was wrong in law.
2. Because the Appellants were not the privies of the ADAZI in relation to the agreement on which the judgment was based or at all.
3. Because the refusal of the Court in that case to join the Appellants as Third Parties in that action was unjust and wrong in law.
4. Because the Learned Judge was wrong in holding that " the judgment
10 " (of 1940) remains and it must be observed " as against the Appellants.
5. Because that judgment clearly contravenes the rights of the Appellants under the agreement of 1938 whereby the land of ADAZI had ceased to be contiguous to the alleged boundary.
6. Because any subsequent agreement made to the contrary by the ADAZI to the detriment of the Appellants was collusive and insupportable in law.
7. Because these decisions of the Learned Judge vitiated the inferential finding of fact that the Appellants had no right in the GREEN land or to any land North of the road except such as they derive from the ADAZI.
8. Because this finding was a finding of law concerning the rights of the
20 Appellants and as such was wrong.
9. Because on the facts stated by the Court of Appeal it is clear that the Appellants had been in occupation of the GREEN land since a date long anterior to 1931.
10. Because by long possession and acquiescence they had acquired a right to that land and their claim in these respects was well founded and should not have been disregarded.
11. Because there is no evidence on which it could properly be found
30 " that the UMUORI people had no rights in the land North of the main road " except such as they derive from the ADAZI " since the agreement of 1938 with the ADAZI had the effect, not of giving the UMUORI an original status on the North of the road but, as the Court of Appeal states, "allowing the " UMUORIS to extend considerably further East than they had ever before " claimed to do."
12. Because the judgment appealed from is wrong in law and in fact.

S. COPE MORGAN.

F. HOWARD COLLIER.

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Appellants' Case.

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