Privy Council Appeal No. 96 *of* 1947

Akisatan Apena of Iporo and others - - - - - *Appellants*

v.

Akinwande Thomas and others - - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1950

Present at the Hearing :

LORD GREENE
LORD SIMONDS
LORD MORTON OF HENRYTON

[*Delivered by* LORD SIMONDS]

This appeal which is brought from a judgment of the West African Court of Appeal varying a judgment of the Supreme Court of Nigeria raises an important question in regard to the jurisdiction of the latter Court.

The suit, in which the appeal arises, was instituted by the respondents (other than a formal respondent), who claimed to be representatives of a certain section of the Iporo community in Abeokuta, against the appellants and the formal respondent claiming a declaration that the installation by the first appellant of the second and third appellants in the offices of Oluwo of Iporo and Balogun of Iporo respectively was contrary to native law and custom and for an appropriate injunction.

It was conceded by learned counsel for the appellants that in view of concurrent findings by the Supreme Court and the Court of Appeal the only contention now open to him was that the Orders of which he complained were made without jurisdiction, and that, if that question was decided against the appellants, the appeal must be dismissed. Their Lordships therefore think it unnecessary to state the facts which are fully set out in the judgments under review and deal only with the question of jurisdiction.

The present Supreme Court of Nigeria was established by Ordinance No. 23 of 1943 Laws of Nigeria and its jurisdiction was conferred and defined by section 12 in the following terms:—

> "Subject to such jurisdiction as may for the time being be vested by Ordinance in native courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty's civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty's criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Ordinance and not otherwise.

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits transferred to the Supreme Court under the provisions of section 25 of the Native Courts Ordinance, 1933, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a native court nor in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death."

It was not contended before their Lordships that the present suit raised any issue in respect of which it was specifically enacted by the proviso to the section that the Supreme Court should not exercise original jurisdiction. But it was contended that the effect of the opening words of the section " subject to such jurisdiction as may for the time being be vested by Ordinance in Native Courts " was to oust the jurisdiction of the Supreme Court and to vest exclusive jurisdiction in a Native Court in any matter in respect of which jurisdiction had been vested by Ordinance in that Native Court. It does not appear that the learned Acting Judge, who heard the case, dealt with this broad proposition. He had the mistaken impression that there was no Native Court of competent jurisdiction: it was therefore unnecessary for him to do so. But the Court of Appeal, being correctly informed that there was such a Court (of which their Lordships also are satisfied by the production of a certified copy of the Warrant establishing it), fully considered the contention and in a judgment, with which their Lordships are in complete agreement, rejected it.

The importance of the question led their Lordships to a review of the whole of the antecedent legislation by which Courts were established in the Colony and Protectorate of Nigeria. They thought it desirable to survey this background in order to appreciate the relative positions of the Supreme Court and the Native Courts. Having done so, they can entertain no doubt that the reasons given by the learned Judges of the West African Court of Appeal for rejecting the appellants' contention are unimpeachable. There is nothing in the previous history of such legislation or in the context of the relevant Ordinance which would suggest that in 1943 so drastic a measure would be taken as substantially to limit the jurisdiction of the Supreme Court in favour of the Native Court. The question then is what is the plain meaning of section 12 of the Ordinance.

Upon this question it appears to their Lordships that the language of the proviso is decisive. If it was the correct view of the substantive part of the section that it enacted that in all cases, in which a Native Court had jurisdiction, that of the Supreme Court was ousted, there would be no sense in providing by a proviso that in certain of such cases the Supreme Court should not exercise jurisdiction. If it were otherwise, then (as the Court of Appeal said in words which cannot be improved) " the Legislature by the proviso intended to limit a jurisdiction which the Supreme Court could not in any event exercise." But their Lordships would not have it thought that the effect of the proviso is to wrest the language of the section from its natural meaning. The opening words, upon which the appellants rely, do not necessarily bear the meaning for which they contend, which is in effect to read them as if they ran " Except in those matters in respect of which jurisdiction may from time to time be vested in Native Courts ". On the contrary they would, even without the proviso, be fairly susceptible of the meaning which is given to them by the Court of Appeal and which might perhaps be very briefly stated by saying that the words " subject to " are equivalent to " without prejudice to ". Nor are there lacking other considerations which point to this as the correct interpretation of the section. It is of major importance that under section 42 of the Ordinance there is a power to transfer a suit from the Supreme Court to a Native Court at any stage of the proceedings. This makes it clear that the Ordinance contemplates that there may be concurrent jurisdiction in the two Courts, for the generality of the language of section 42 makes it impossible to confine its operation to the cases which

fall within the exception to the proviso to section 12. But, if it is clear that the Ordinance contemplates concurrent jurisdiction, this is inconsistent with the vesting of exclusive jurisdiction in the Native Courts, where *ex facie* the Supreme Court would have jurisdiction. On the other hand it appears to their Lordships that, since by the terms of the Ordinance the jurisdiction vested in the Supreme Court was to include *all* His Majesty's jurisdiction, etc., the careful draftsman might well think it desirable to make it clear that this enactment was not to prejudice the Native Courts in the exercise of such jurisdiction as might from time to time be vested in them. Accordingly the section opens with words which are apt to provide that safeguard.

Further it may be observed that neither in section 12 of the relevant Ordinance nor in any other Ordinance, to which their Lordships' attention has been called, whether relating to the establishment of Native Courts or to the constitution of the High Court of the Protectorate or of the Supreme Court, is the appropriate word " exclusive " used in relation to the jurisdiction vested in native Courts. Both in the Ordinance of 1943 and in earlier Ordinances where it is intended to vest exclusive original jurisdiction in such Courts this result is achieved by a limitation of or exception from the jurisdiction of the High Court or Supreme Court.

For these reasons their Lordships are of opinion that the decision of the West African Court of Appeal was correct, and will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of the appeal.

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In the Privy Council

AKISTAN APENA OF IPORO AND OTHERS

v.

AKINWANDE THOMAS AND OTHERS

DELIVERED BY LORD SIMONDS

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