

4, 1952

No. 50 of 1950.

# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL. 31396

BETWEEN

DR. AKINOLA MAJA (Claimant)

AND

THE CHIEF SECRETARY TO THE GOVERNMENT  
(Plaintiff)

UNIVERSITY OF LONDON  
W.C.1.

App<sup>la</sup> NOV 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

Respondent.

APPELLANTS CASE

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## Case on behalf of the Appellant.

RECORD.

1. This is an Appeal by Special Leave from an Order of the West African Court of Appeal (Blackall P. Verity C.J. and Lewey J.A.) dated the 4th day of December 1948 affirming a Judgment of the Supreme Court of Nigeria dated the 7th day of November 1947 whereby, on the Respondent's summons, the Supreme Court of Nigeria determined the amount of compensation to be paid to the Appellant in respect of the compulsory acquisition by the Respondent of certain land.

2. The relevant Nigerian Ordinances relating to compensation for the compulsory acquisition of land are the Public Lands Acquisition Ordinance of Nigeria (Chapter 88) (hereinafter referred to as "the Principal Ordinance") and the Public Lands Acquisition (Amendment) Ordinance of Nigeria (No. 6 of 1945) (hereinafter referred to as "the Amendment Ordinance"). The Amendment Ordinance came into force on 19th April 1945.

3. The principal questions involved in this appeal are : whether the provisions of section 5 of the Amendment Ordinance exclude from the said compensation all compensation in respect of disturbance : whether the said provisions exclude from such compensation the whole of the potential value of the land to the vendor : whether the law which should properly have applied to the assessment of such compensation was the law in force at the date of service of notice of intention to acquire, viz. the principles set out in section 15 of the Principal Ordinance : and whether under the provisions of sections 10 and 15 of the Principal Ordinance, or of

section 1 (1) of the Interpretation Ordinance of Nigeria (Chapter 2), the Supreme Court was bound so to assess the compensation notwithstanding agreement between the Parties that the proper law was as provided by the Amendment Ordinance.

4. The material provisions of the above Ordinances are as follows :—

#### PUBLIC LANDS ACQUISITION ORDINANCE.

5. Whenever the Governor resolves that any lands are required for a public purpose a Lieutenant-Governor shall give notice to the persons interested or claiming to be interested in such lands, or to the persons entitled by this Ordinance to sell or convey 10 the same or to such of them as shall after reasonable inquiry be known to him (which notice may be in Form A in the Schedule or to the like effect).

10. If for six weeks after the service and publication as aforesaid of such notice no claim shall be lodged with the Secretary in respect of such lands, or if the person who may have lodged any claim and the Governor shall not agree as to the amount of the compensation to be paid for the estate or interest in such lands belonging to such person, or which he is by this Ordinance enabled to sell and convey, or if such person has not given satisfactory 20 evidence in support of his claim or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Supreme Court, which shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Lieutenant-Governor or any person holding or claiming any estate or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by this Ordinance to sell and convey the same.

15. In estimating the compensation to be given for any lands 30 or any estate or interest therein or for any mesne profits thereof, the Supreme Court shall—

- (A) assess the same according to what it shall find to have been the value of such lands, estate or interest or profits at the time when the Lieutenant-Governor served notices to acquire the same, and without regard to any improvements or works made or constructed thereafter on the said lands.
- (B) where part only of the lands belonging to any person is taken under this Ordinance, take into consideration any 40 enhancement of the value of the residue of the lands by reason of the proximity of any improvements or works made or constructed or to be made or constructed by the Government

- (c) have regard not only to the value of the lands required for public purposes but also to the damage, if any, to be sustained by the owner by reason of the severance of such lands from other lands belonging to such owner or other injurious affecting of such other lands by the exercise of the powers conferred by this Ordinance.

PUBLIC LANDS ACQUISITION (AMENDMENT)  
ORDINANCE

10 5. Section 15 of the principal Ordinance is hereby repealed and the following substituted therefor :—

“ 15. In estimating the compensation to be given for any lands or any estate or interest therein or for any mesne profits thereof the Court shall act on the following principles :—

- (A) no allowance shall be made on account of the acquisition being compulsory ;
- (B) the value of the land, estate, interest or profits shall, subject as hereinafter provided, be taken to be the amount which such lands, estate, interest or profits if sold in the open market by a willing seller might be expected to realise ;
- 20 (C) where part only of the lands, estate, interest or profit belonging to any person is acquired under the provisions of this Ordinance the Court may take into account any enhancement of the value of the residue by reason of the proximity of any improvements or works made or constructed or to be made or constructed by the Government ;
- (D) the Court may have regard not only to the value of the lands, estate, interest or profits to be acquired but also to the damage, if any, to be sustained by the owner by reason of the severance of such lands from other lands belonging to such owner or other injurious circumstances affecting such other lands by such acquisition ;
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Provided that the Court in estimating such compensation shall assess the same according to what it finds to have been the value of such lands, estate, interest or profits at the time when notice of intention to acquire was served and without regard to any improvements or works made or constructed or to be made or constructed thereafter on such lands ;

40 Provided further that where any of His Majesty's Forces or any department of Government or of the Crown has been in possession of such land by virtue of a title less than a fee simple compensation shall be estimated without regard to any increase in value on account of works constructed or other improvements on or to such lands by any of His Majesty's Forces or by the department of Government or of the Crown.”

INTERPRETATION ORDINANCE

5. (i) The repeal of any Ordinance shall not, unless the contrary intention appear :—

- (A) revive anything not in force or existing at the time at which the repeal takes effect ; or
- (B) affect the previous operation of any Ordinance so repealed or anything duly done or suffered under any enactment so repealed ; or
- (C) affect any right, privilege, obligation or liability accrued or incurred under any enactment so repealed ; or

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- (E) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed ;

Provided that when the penalty, forfeiture or punishment imposed by the repealing Ordinance, is heavier than that imposed by the repealed Ordinance, the provisions by which the lighter penalty, forfeiture or punishment is imposed shall, unless such repealing Ordinance otherwise provides, be applied if the Court decide to inflict any punishment.

The Amendment Ordinance contains no express retrospective provisions.

pp. 1, 2.

5. The said land is situate at Victoria Beach, near Lagos and comprises approximately 8 acres and by lease dated 21st November 1941 was leased by one Chief Oniru to the Appellant and his partner, one Nicholas Diamantopulos, for a period of 25 years with an option to continue the same for a further period of 25 years.

p. 6, ll. 31, 45.

p. 23, l. 28.

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p. 7, ll. 12, 13, 14.

p. 4, ll. 20, 27.

6. Immediately after the grant of the said lease the Appellant and his said partner proceeded to erect upon the said land buildings, salt pans, ovens, sheds and other structures for the purpose of the commercial extraction of salt from sea water.

p. 23, l. 28.

“ A salt works was erected on the lands at considerable expense  
 “ to Claimant and after a few months trial, and experimenting,  
 “ it was found that salt could not be produced economically without  
 “ additional machinery, and Diamantopulos proceeded to England  
 “ to obtain the necessary machinery and have their process  
 “ investigated. Whilst in the United Kingdom he died and in  
 “ January, 1944, the Claimant proceeded to the United Kingdom  
 “ for the purpose, as he states in his statement of claim, ‘ to perfect  
 “ the arrangements and finish the investigation already commenced  
 “ by his partner.’ ”

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7. The sums then expended by the Appellant and his said partner upon the said venture amounted to approximately £10,000. Particulars of the said sums are set out in paragraph 18 of the Appellant's Statement of Claim and in Exhibits A.M.3 and A.M.4. Exhibits A.M.4 and A.M.3 respectively refer to sub-paragraph (i) and to sub-paragraphs (ii) to (ix) (inclusive) of paragraph 18 of the Statement of Claim.

p. 9, ll. 4, 7.  
p. 4, l. 18.  
pp. 39, 50.  
p. 9, ll. 4, 7.

8. During the Appellant's absence in the United Kingdom by Notice No. 600 dated 13th May 1944 the Respondent served upon the Appellant notice of intention to acquire the said land under the provisions of section 5 of the Principal Ordinance.

p. 23, l. 37.

9. During the months of June or July 1944 the Appellant claimed compensation under section 10 of the Principal Ordinance and by letters dated about 25th July 1945 and 22nd August 1945, respectively, the Appellant particularised the said claim in the sum of £9,899. The said sum represented the total of sums incurred by the Appellant and his said partner upon the establishment of the said business of commercially extracting salt from sea water to the date of service of notice of intention to acquire the said land, as set out in paragraph 7 hereof and in Exhibits A.M.3 and A.M.4 respectively.

p. 12, ll. 7-15.  
p. 53, l. 1.  
pp. 50, 54, 39.  
pp. 39, 50.

10. By letter dated 28th January 1946 compensation was offered on behalf of the Respondent in the sum of £440 as representing the break-up value of the building materials upon the said land together with an additional 10 per cent. for "early and amicable settlement."

p. 53, l. 18.

11. By a Reference dated 1st March 1946 and by Summons dated 5th March 1946 respectively, the amount of compensation was, in default of agreement, under section 10 of the Principal Ordinance referred for determination by the Supreme Court of Nigeria.

p. 1, l. 15.  
p. 2, l. 1.

12. At the hearing by the Supreme Court (Baker J.) on 26th and 27th August, 7th, 9th, 10th and 11th October 1947 it was agreed that, for the purposes of determining the said compensation, the appropriate principles were as provided by section 5 of the Amendment Ordinance.

p. 26, l. 40.

13. For the Appellant it was submitted: that the Appellant was entitled to be compensated for all injury arising to the Appellant by reason of the compulsory acquisition; that the Appellant was entitled to compensation for disturbance; that the Appellant was entitled to compensation based on the value of the potentialities of the land to the Appellant.

p. 16, l. 10.  
p. 18, l. 24.  
p. 18, ll. 3-13.

14. For the Respondent it was contended: that the principles provided by Nigerian law for the assessment of compensation on such acquisitions did not resemble those provided by the Lands Clauses Consolidation Act, 1845, but did resemble those provided by the Acquisition of Land (Assessment of Compensation) Act 1919: that Nigerian law provides that compensation shall be based on the market value of the land (with additions for severance or injurious affection where appropriate) to the exclusion of compensation for disturbance or of any additional element of value due

p. 18, l. 43.

p. 19, l. 2.

p. 19, l. 17.

p. 19, l. 13.

to the value of the potentialities of the land to the Vendor: that, by virtue of the first proviso to section 5 of the Amendment Ordinance, compensation on account of the value of the potentialities of the land to the vendor is expressly withheld.

p. 23.

p. 28, l. 25.

p. 28, l. 47.

15. On 7th November 1947 Judgment was delivered by Baker J. upholding the contentions of the Respondent. Compensation was awarded on the basis of the break-up value of the said buildings and structure as building materials and assessed in the sum of £800.

p. 27, l. 14.

p. 27, l. 20.

p. 27, l. 22.

p. 27, l. 25.

p. 27, l. 31.

p. 27, l. 35.

p. 23, l. 12.

p. 27, l. 45.

p. 28, l. 25.

p. 28, l. 27.

p. 23.

16. It was held by Baker J. as follows: The principles provided by the Amendment Ordinance did not resemble those contained in the Lands Clauses Consolidation Act, 1845, but did resemble those contained in the Acquisition of Land (Assessment of Compensation) Act 1919 with the following qualifications: (A) section 2 rule 2 of the 1919 Act referred only to the value of the land whereas section 5 (b) of the said Ordinance referred not only to the value of the land but also to the value of any estate or interest therein or any mesne profits thereof; (B) section 5 of the said Ordinance contained no counterpart to section 2 rule 6 of the 1919 Act which refers to compensation for disturbance or any other matter not directly based on the value of the land; (C) section 2 of the 1919 Act contained no provision similar to the first proviso to section 5 of the said Ordinance. No compensation was provided by the Amendment Ordinance in respect of disturbance. By virtue of the first proviso to section 5 of the Amendment Ordinance, no compensation was recoverable on account of the potentialities of the land to the vendor dependent upon the installation or erection thereon of new machinery or structures which would have been brought on to the said land after the date of service of notice of intention to acquire. The amount of compensation should be limited to the value which the land, estate or profits, if sold in the open market, might be expected to realise at the time when notice of intention to acquire was served. The only person likely to purchase the same would do so with the object of using the material thereon as building materials. Compensation should be limited to the value of the said structures as stone work which could only be used as building material. The full text of the Judgment is printed in the Record.

p. 29.

17. By Notice of Motion dated 9th February 1948 the Appellant appealed against the said Judgment and the appeal was heard by the West African Court of Appeal (Blackall P. Verity C.J. and Lewey J.A.) on 12th and 15th November 1948.

p. 32.

p. 35, ll. 1, 14.

p. 35, ll. 5, 8.

18. On 4th December 1948 the Judgment of the West African Court of Appeal was delivered by Lewey J.A. dismissing the appeal and ordering that the judgment of the Court below be affirmed. Blackall P. and Verity C.J. concurred in the said Judgment.

p. 33, l. 29.

19. The material passage of the said Judgment is as follows:—

“ On this appeal, the evidence as to the facts of the case and  
 “ the basis of the Appellant’s claim have to be considered in the  
 “ light of the relevant statute which, in Nigeria, is the Public

“Lands Acquisition Ordinance (Cap. 88). The principles governing the assessment of compensation are more particularly set out in section 15 of that Ordinance as amended by the Public Lands Acquisition (Amendment) Ordinance, 1945 (No. 6 of 1945).

10 “This Court has listened to able arguments by Counsel for the Appellant and the Crown respectively as to the various aspects of the Appellant’s claim and as to their merits, having regard to the provisions of the Nigerian Ordinance. More particularly it was strongly argued before us on behalf of the Appellant that section 15 of the Ordinance (as amended in 1945) should be read as providing for compensation for ‘disturbance,’ and that the learned Judge in the Court below was wrong in holding otherwise. In support of that argument it was sought to draw an analogy between section 15 of the Nigerian Ordinance when read with the provisions of the Lands Clauses Consolidation Act, 1845, and section 2 (6) of the Acquisition of Land (Assessment of Compensation) Act, 1919, in so far as it can be said to preserve rights conferred by the 1845 Act. We were also referred, in this connection, to certain passages in the judgments in the case of 20 “*Horn v. Sunderland Corporation* reported in [1941] 1 All E.R. at page 480.

“Dealing first with that contention, I have come to the conclusion that I cannot accept it. Section 15 of the Nigerian Ordinance contains no reference to ‘disturbance’ and nothing which corresponds with section 2 (6) of the English Act of 1919. It appears to me, therefore, that there is no good foundation for the argument that the Nigerian law must be construed as having the same effect as the present English law in providing for 30 “compensation for ‘disturbance.’ It follows therefore in my view, that the learned Judge was quite right in excluding the element of ‘disturbance’ from his consideration.

40 “Generally, with regard to the Appellant’s claim, it seems to me that the provisions of section 15 of the Ordinance are abundantly clear and that the principles of compensation there set out—more especially section 15 (b) and the first proviso to the section—necessarily exclude those parts of the Appellant’s claim which relate to the reimbursement of his outlay in the past and to compensation for interference with his plans for the future of his business. Section 15 (b) lays down an exact standard of valuation of a claimant’s interest; namely the amount which a sale in the open market by a willing seller might be expected to realise, while the first proviso requires the value to be assessed as at the time of the notice of intention to acquire and without any regard to possible future improvements or works. That seems to me to be fatal to the contentions of the Appellant, and once those aspects of the matter are ruled out, it would appear that the basis of assessment adopted by the Government valuers is in accordance with the principles laid down in the Ordinance.”

The full text of the Judgment is printed in the Record.

20. From the Judgment and Order of the West African Court of Appeal the Appellant has now appealed by Special Leave to His Majesty in Council and humbly submits that the Order of the West African Court of Appeal be reversed and that his said Appeal be allowed for the following, amongst other

## REASONS

- (1) BECAUSE it is submitted that the sound principle of compensation for the taking of land is that the person dispossessed should be compensated for all loss occasioned to him by reason of his dispossession. Any limitation on the above principle should be expressed by the compensating statute in clear terms. The Amendment Ordinance contains no such limitation in relation to compensation for disturbance. 10
- (2) BECAUSE compensation for disturbance is not a separate and independent head of compensation but is part of the general compensation for the taking of land where provided by statute. Express provision in the Amendment Ordinance was not therefore necessary in order that it should be recoverable. 20
- (3) BECAUSE Proviso (1) to section 5 of the Amendment Ordinance should be construed as doing no more than to give effect to the well-established principle of compensation that the vendor shall not be entitled to take advantage of the pressing need of a purchaser, who has obtained compulsory powers, to acquire the land for the purposes of the execution of the scheme.
- (4) BECAUSE if the construction placed upon Proviso (1) to section 5 of the Amendment Ordinance by the Court below be the proper construction, compensation based upon the value of land (under section 5 (b) of the Amendment Ordinance) would, in Nigerian law, be limited to the value of the land in its existing state on the date of notice of intention to acquire, without its potential value dependent upon improvements or works not made or carried out thereupon before that date. In effect, compensation for potential value would be almost entirely eliminated. It is submitted that such construction cannot be the proper construction if any alternative construction of the said proviso is reasonable. 30 40
- (5) BECAUSE the material date for the assessment of compensation was the date of service upon the Appellant of the notice of intention to acquire and compensation should have been assessed by the Supreme Court of Nigeria in accordance with the law in force on that date, that is to say, in accordance with the principles provided by section 15 of the Principal Ordinance.



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- (6) BECAUSE by virtue of sections 10 and 15 of the Principal Ordinance the Supreme Court should, on the said reference, so have assessed the said compensation, notwithstanding the aforesaid agreement between the Parties that the appropriate provisions were as contained in section 5 of the Amendment Ordinance.
- (7) BECAUSE the Appellant's claim was made under and in accordance with the provisions of law in force at the date of service of notice of intention to acquire and/or at the date of the making of the said claim, that is to say with sections 10 and 15 of the Principal Ordinance and, on the said reference, the Supreme Court should not have assessed compensation otherwise than on the said claim and in accordance with the said provisions, notwithstanding the aforesaid agreement.
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- (8) BECAUSE by virtue of section 5 (1) of the Interpretation Ordinance of Nigeria the Supreme Court should have assessed the said compensation in accordance with sections 10 and 15 of the Principal Ordinance and not otherwise, notwithstanding the aforesaid agreement.
- (9) BECAUSE the Judgments of Baker J. and of the West African Court of Appeal are wrong and should be reversed.

JAMES KEKWICK.

**In the Privy Council.**

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**ON APPEAL**

*from the West African Court of Appeal.*

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BETWEEN

**Dr. AKINOLA MAJA** (Claimant)  
*Appellant*

AND

**THE CHIEF SECRETARY  
TO THE GOVERNMENT**  
(Plaintiff) - *Respondent.*

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**Case on behalf of the Appellant.**

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