Privy Council Appeal No. 50 *of* 1950

Akinola Maja - - - - - - - - - - *Appellant*

v.

The Chief Secretary to the Government - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH APRIL, 1952

Present at the Hearing:

LORD NORMAND
LORD RADCLIFFE
LORD ASQUITH OF BISHOPSTONE

[*Delivered by* LORD NORMAND]

This is an appeal by special leave from an order of the West African Court of Appeal affirming an order of the Supreme Court of Nigeria which determined the amount of compensation to be paid to the appellant in respect of the compulsory acquisition of certain land by the respondent.

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, more than a year after the service on 13th May, 1944, of the notice of intention to acquire the land.

The principal contentions of the appellant were that the judgments appealed against were erroneous in law in two respects: First, they had wrongly applied to the assessment of the compensation the Amendment Ordinance which was not in force at the date of the notice of intention to acquire, instead of the Principal Ordinance which was then in force in its unamended form ; and Second, by a misconstruction of the Amendment Ordinance, they had wrongly excluded the appellant's claim in respect of disturbance and in respect of the potential value of the land to him. The appellant further and alternatively submitted that a claim in respect of disturbance or in respect of the potential value of the land was competent even under the provisions of the unamended Principal Ordinance. The first of these contentions would raise the question whether the appellant is entitled to resile from what is described in his case as an agreement of parties that for the purposes of determining the amount of the compensation the principles to be applied were those enacted by the Amendment Ordinance, and that is a question which might

in turn depend on whether the so-called agreement was not merely a joint submission of law made to the Court, from which either party might withdraw.

The legal questions involved in the appellant's submissions are of some difficulty. But there is first the question whether, assuming that under the relevant and appropriate Ordinance a claim lies in respect of disturbance or potential value, there are any facts on which such a claim could in this case be founded. If there are not, it is unnecessary to consider the provisions of either of the Ordinances or to determine any of the legal questions argued for the appellant.

The land acquired by the respondent is situated at Victoria Beach near Lagos. Its area is approximately eight acres. On 21st November, 1941, it was leased to the appellant and his partner, Nicholas Diamantopulos, for a period of 25 years with an option to renew for a further period of 25 years. Immediately after the grant of the lease the appellant and his partner proceeded to construct upon the land, buildings, salt pans, ovens, sheds and other structures, and to bring upon it engines and other machinery for the purpose of the commercial extraction of salt from sea water. The partners expended on this venture about £10,000, and to begin with they had the approval of the Government. Yet the venture was not successful. By June, 1943, when operations finally ceased there had been produced only two tons of salt which were sold for about £26. The appellant and his partner however considered that, with larger engines and other improved plant, success might yet be attained. They therefore applied to the Government for licences to enable them to import additional plant. That was in April, 1943. By that time the Government had come to hold an adverse view about the feasibility of extracting salt from sea water at Lagos and accordingly the import licences were refused on 26th May, 1943.

Mr. Diamantopulos had gone to Great Britain before May, 1943, in order to obtain the necessary machinery, and he died there in November, 1943. There is no evidence that his attempts to obtain new machinery had made any progress. After his death the appellant decided to go to England. He left Nigeria on 10th January, 1944, taking with him a sample of the salt water and of the coal which had been used in the salt extraction process. He obtained a not unsatisfactory report of an analysis of the salt water and a less encouraging report on the coal, but there is no evidence that he had even entered into negotiation for the acquisition of any machinery. While he was in England he received a cable from his brother informing him that the Government had served notice of intention to acquire his land. The appellant thereafter returned to Nigeria and tabled his claim for compensation.

In the proceedings before the Supreme Court evidence was given by the Acting Assistant Commissioner of Lands and by the Chief Executive Engineer of the Public Works department about the condition of the salt pans, engines and other plant, which they inspected in July, 1944. This evidence was accepted by the learned judge who sums it up in findings that the salt works had depreciated considerably, having for all purposes been left derelict; that they were never a profitable undertaking and that, as they stood, it was clear that no one would purchase them with a view to using them as salt works. The Court of Appeal concurred in these findings. No other conclusion was indeed possible on the evidence, and their Lordships see no justification for the submission of the appellant's counsel that these, or any of the findings of fact, were coloured or in any way affected by the opinion of the learned judge that the Amendment Ordinance did not admit of a claim for disturbance.

The project of the appellant and his partner, which had never been more than an unsuccessful pioneer venture, had thus become a total loss. The appellant claims for disturbance in his business, but there was no business in being at the time of service of notice on which such a claim could rest.

The appellant's claim considered under the head loss of potentialities is in no better case. The learned judge in the Supreme Court pointed out that that there is no evidence that the land possessed any unusual features, and he mentioned and appears to have accepted evidence given by the Government Chemist that it was impossible that salt production would be a profitable undertaking at Lagos. In addition to this, there is the refusal of the Government to grant import licences for new machinery, and the absence of any evidence that any effective step had been or could have been taken either by the appellant's partner or by the appellant himself to obtain new machinery. There is accordingly no reliable evidence that the land had any potentiality or future value as the site of a salt works, and there is much evidence to the contrary.

Their Lordships therefore hold that the claims in respect of disturbance and potentialities fail on the facts, and that an award which takes account of break up value of the structures on the land is all that the appellant is entitled to. On that basis the Supreme Court assessed the compensation due to the appellant at £800. The Court of Appeal affirmed the award and it must stand.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The respondent is entitled to payment by the appellant of the costs of the appeal.

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In the Privy Council

AKINOLA MAJA

v.

THE CHIEF SECRETARY TO THE GOVERNMENT

DELIVERED BY LORD NORMAND

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