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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 39 of 1951.

13511

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL

BETWEEN

- 1. CHIEF J. M. KODILINYE
- 2. J. C. NWANGWU for themselves and on behalf of
the Obosi people (Defendants) APPELLANTS

AND

- 1. PHILIP AKUNNE ANATOGU
- 2. JOSEPH AKUNNIA AGBU for themselves and on
behalf of the Ogbo family of Umuasele, Onitsha
(Plaintiffs) RESPONDENTS.

CASE FOR THE RESPONDENTS

RECORD

1.—This is an appeal by the Defendants in the action from a judgment of the West African Court of Appeal dated the 11th January, 1951, dismissing with costs an appeal from the judgment of Manson, J. dated the 1st October, 1949, in the Supreme Court of the Onitsha Judicial Division.

2.—The issue in the action and in this appeal concerns the title to certain land (hereinafter called "the divested land") of which the Crown, through the Governor of Nigeria, divested itself by Order 29 of 1948.

3.—As the West African Court of Appeal rightly found, the question in issue in this case is a pure question of fact, stated by the trial Judge in these words: "To whom did the portion of land abandoned by the Governor under Order No. 29/48 revert: who are the lawful owners?"

4.—In answering this question, the learned Judge, on ample evidence, found that the Plaintiffs, i.e. the Respondents, were the lawful owners of the divested land.

5.—The history of the matter, in brief, is as follows :—

- (a) The divested land forms part of certain land called UGBO-ORIMILI (hereinafter called “ the pink land ”) which is bounded on the west by the River Niger and lies between the Ndende Stream on the north and the River Idemili on the south. The pink land is shown edged pink on the plan Exhibit 10, and the divested land “ abandoned by the Governor under Order 29/48 ” is the southern portion of the pink land below the green line running from west to east on the said plan.
- (b) As evidenced by a “ Certificate ” dated 8th October, 1884, the pink land was granted by one Odikagbue to the National African Company Limited. 10
- (c) On the 26th October, 1896, the said Odikagbue and other members of his family granted to the Royal Niger Company Chartered and Limited (in which the National African Company had been merged) further rights in respect of a strip of the pink land.
- (d) On the 1st January, 1900, the pink land became vested in the Governor of Nigeria.
- (e) On the 1st January, 1949, by an Order, the Governor abandoned all rights in the divested land, which reverted to its original lawful owners by virtue of Section 14 of the Niger Lands Transfer Ordinance (Cap. 149 of the 1948 Edition of Laws of Nigeria) which reads as follows :— 20

Exhibit 53,
p. 79

Exhibit 54,
p. 80

“ NIGER LANDS TRANSFER ORDINANCE

14. Where the Governor abandons all the right, title or interest vested in him by virtue of this Ordinance in any vested trust lands or part thereof in accordance with the provisions of this Ordinance then such abandonment shall have effect as if such vested trust lands or part thereof had never been included in the instrument, agreement or document, as the case may be, by which the same were originally transferred to the company.” 30

6.—As stated above, the learned Judge found that the Plaintiffs (Respondents) are the lawful owners.

7.—The facts upon which this main finding of fact was based were as follows :—

- (1) Odikagbue, who made the original grant, was of the Plaintiffs’ family, and was not, as alleged by the Defendants, a native doctor of the Defendants’ family. The other signatories of the 1896 agreement were also of the Plaintiffs’ family. 40

p. 57

- RECORD
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- (2) The grant reserved the right of occupation for the grantors "sons and daughters," i.e. his own family, and for his tenants the Abutshi, i.e. the Defendants. p. 79
- (3) Odikagbue was entitled to make the grant. p. 58, line 1
- (4) The Plaintiffs (Respondents) exercised rights of ownership over the pink land and received tribute for its occupation from the Defendants and other tenants. p. 60
- (5) The Defendants' (Appellants) claim that they were permitted to use the pink land without paying tribute is untrue. p. 61
- 10 (6) Regarding the issue raised in the Pleadings as to whether the Defendants occupied land in the neighbourhood of the divested land, the Plaintiffs had no common boundary with the Defendants and previous claims by the Defendants to adjoining land had always been unsuccessful. S./Claim, para. 20, p. 6 Defence, para. 20, p. 8 p. 59

8.—The evidence supporting the above facts is, in brief, as follows :—

- (1) The Respondents' evidence in regard to the signing of the 1884 agreement (Exhibit 53) and the 1896 agreement (Exhibit 54) was as follows :— p. 79 p. 80
- 20 (a) The Respondent Anatogu, as a small boy, had known Odikagbue, who was not an Obosi but a descendant of the original Ogbo. Three of Odikagbue's sons are now living, including the witness Thomas Okagbue. p. 18, line 17
- (b) Thomas Okagbue deposed that his father was Odikagbue, who was of the family of Ogbo and not an Obosi man. He was present when his father made the 1896 grant, the other witnesses to which belong to the Ogbo family. He was present when the land was pointed out to his father and the witnesses. p. 22
- 30 (c) Eju Kotsi, the daughter of Kotsi (or Zeatshi) a signatory to the 1896 agreement, deposed that her father was a Chief of the Ogbo family. p. 24
- (d) Joseph Agbu, the son of Oranyi (Osayne) a witness of the 1896 agreement, deposed that his father was a member of the Ogbo family. He knew Odikagbue who was neither an Obosi nor a native doctor as alleged by the Defendants. p. 25
- (2) See agreement. Exhibit 53, p. 79
- (3) Evidence of traditional ownership by Phillip Anatogu, Thomas Okagbue, J. A. Agbu, and Okonju Akpe. pp. 16, 22, 24, 28 & 29
- 40 (4) (a) Anatogu gave evidence of the payment of tribute and deposed that he had successfully sued some of the tenants. p. 17 Exhibit 30, p. 159 Exhibit 31, p. 163

p. 23
Exhibit 32
Exhibit 28

p. 25
p. 30
pp. 31 & 32

pp. 118,
109 & 110
pp. 21 & 27

pp. 33, 34, 35,
36 & 30

(b) Okagbue deposed that the Obosis had paid tribute and he had brought actions for trespass.

(c) The witness Agbu deposed that the Obosi had paid tribute, and the witnesses Egbunike and Anwadiki admitted paying tribute to the Plaintiffs, as did O. Ese, R. Ossai, and P. Emaviwe.

(5) Exhibits 1, 3, 4 and 5.

(6) Evidence of N. Ogbuefi, M. Obanye, and F. Obigbo, owners of lands adjoining the pink land, and that of Aduba, V. Okwosa, E. Azokwu, K. Gbosa, J. Onuora and J. E. Egbunike.

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9.—There has been unreasonable delay in prosecuting this appeal, the record having been received in England on 3rd October, 1951. The consequent delay in implementing the judgment has seriously prejudiced the Respondents in dealing with the divested land.

10.—The Respondents contend that there is no substance in the grounds of appeal submitted by the Appellants, or in the additional grounds of appeal.

pp. 64, 69

11.—So far from assenting to the claim of right made by the Appellants, the Respondents had consistently protested against the trespass of the Appellants and brought their action on the 4th January, 1949, immediately after the divesting Order took effect.

Exhibits 19 to
27 (c)
p. 1

12.—Accordingly, the Respondents humbly submit that this appeal should be dismissed with costs for the following, amongst other

REASONS

- (1) BECAUSE the dispute is dependent on a question of fact found on ample evidence in favour of the Plaintiff Respondents.
- (2) BECAUSE there are concurrent findings of fact in the Respondents' favour by the trial Judge and by the Court of Appeal.
- (3) BECAUSE there was ample evidence to support all the findings of fact made in favour of the Respondents.
- (4) BECAUSE such concurrent findings are in accordance with justice and with the principles of law and procedure.
- (5) BECAUSE the divested land was from time immemorial the property of the Respondents.

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- (6) BECAUSE the agreements of 8th October, 1884, and the 26th October, 1896, were made on behalf of the family of the Respondents to whom the divested land consequently reverts.
 - (7) BECAUSE the Respondents are the rightful owners to whom the land reverted following upon Order 29/48.
 - (8) BECAUSE the Respondents have always exercised rights of ownership over the divested land.
 - (9) BECAUSE as tenants the Appellants' family and other tenants have paid tribute to the Respondents in respect of their occupation of the divested land.
 - (10) BECAUSE the Appellants have obtained no right or title to the divested land by long possession or acquiescence.
 - (11) BECAUSE the judgments of Manson, J. and the West African Court of Appeal were right and ought to be upheld.

S. COPE MORGAN.

F. R. McQUOWN.

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CASE FOR THE RESPONDENTS

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