Privy Council Appeal No. 15 *of* 1954

Akinola Adefolalu - - - - - - - - - *Appellant*

v.

Aladesanmi II and another - - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1956

Present at the Hearing:

LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

This appeal concerns a dispute as to the title to certain land situate between the town of Ilawe and Ado Ekiti in the Ekiti Division of Ondo Province, Nigeria. The appellant was the plaintiff in the action which was heard by Mr. Justice Jibowu in the Supreme Court of Nigeria between December, 1950 and March, 1951. He sued as the Alawe of Ilawe for himself and the people of Ilawe. The first respondent is the paramount ruler of Ado-Ekiti and he was sued personally and as representing the people of Ado-Ekiti and Igede. The second respondent was sued personally, but he is in fact the Akitipa of Odo, a sub Chief of the first respondent, and he and the first respondent were granted leave to defend the suit on behalf of all the Chiefs and people of Ado-Ekiti. The action was therefore in substance one between the peoples of Ilawe and Ado-Ekiti. The claim was for a declaration of title to the disputed territory, damages for trespass and an injunction.

The appellant's case was that his ancestor was the first occupier of the land in dispute and that some centuries ago he and his people had established themselves thereon before the first Ewi of Ado and his people migrated from Ile Ife to the place now known as Ado-Ekiti and were granted land by the appellant's predecessor Alawe Akinfieleyo. He alleged that a boundary was then marked out by Peregun and other trees customarily used to define boundary lines. This line was shown edged violet and pink on the plan Exhibit A used at the trial.

The respondents' case was that the first Ewi was a son of the Oduduwa, a well known figure in Yoruba legend, and that the first Alawe was a servant in his train who was granted the site now known as Ilawe on which to settle, the whole area, including that now in dispute, having some years earlier been occupied by the Ewi and his people who had accompanied him in his exodus from Ile Ife.

The respondents denied that a boundary line was marked out in the circumstances alleged by the appellant and said that the boundary line now relied on by the appellant was marked out in 1933 to divide the lands of the Ilawe and Igede people, who were both subjects of the Ewi of Ado. (See para. 16 of the Additional Defence at page 38 of the Record.)

The above summary of the issues is taken in substance from the judgment of Sir Henley Coussey J.A. in the West African Court of Appeal.

The determination of these issues involved questions of fact dependent upon evidence of tradition and more recent acts and admissions of the parties and their predecessors. For example the appellant in his evidence stated in answer to questions in cross-examination: "My father did not acknowledge the Ewi as overlord. My father refused to acknowledge Ewi's authority and he bought crowns. He was tried on those charges. He was found guilty and fined. He continued to give trouble hence he was deported."

On the other hand there was evidence in the minutes of the Ekiti Judicial Council of 4th March, 1925 (Exhibit T.10), which was put in evidence without objection, that the appellant's father had admitted before the Council in answer to the Resident that he had told the District Officer that he was the man who had been washing the feet of the Ewi of Ado.

After a lengthy trial the learned Judge delivered a careful and detailed judgment in which he rejected the appellant's claim. On the question of the wearing of a crown which had been much canvassed at the trial, he stated that the Alawe does not wear a crown and that there was overwhelming evidence that the attempt of the last Alawe, Afinbiokin, the appellant's father, to wear a crown, met with the disapproval of the Ewi of Ado Ekiti and of the other Obas of Ekiti land. He found that the evidence that the first Alawe had a crown which entitled him and his successors to wear crowns was not convincing and the fact that successive Alawes from 1815 onwards had not worn crowns appeared to him proof positive that the Alawe was and is not a crowned head.

The learned Judge stated that the plaintiff and some of his witnesses were remarkable for their untruthfulness and gave him the impression that they were prepared to tell lies and fabricate evidence in order to achieve success.

He accepted the evidence of the first respondent with regard to the traditional history of the Alawe and his people in relation to the Ewi of Ado and rejected the appellant's evidence with regard to the creation of the boundary line.

The West African Court of Appeal considered that no grounds had been established for interfering with the findings of fact of the trial Judge based as they were largely upon his view as to the veracity of the witnesses who had given evidence before him.

This is therefore a case where there are concurrent findings of fact adverse to the appellant which according to the well established practice of the Board cannot be re-opened unless they can be shown to be founded upon some fundamental legal defect.

Counsel for the appellant in these circumstances admits that the only remedy he can ask for is a new trial.

He put his case on four grounds: —

1. That the trial Judge's findings were in part based upon a number of documents of no evidential value.

2. That the trial Judge relied on certain statements appearing in these documents as having been made by the appellant's predecessors or other persons although such statements had never been put to the appellant or his witnesses when they gave evidence.

3. That the Judge having found that the boundary relied on by the appellant existed, went on to hold that it had been "faked" by the appellant and his people. No such allegation having been pleaded or made at the trial.

4. That the Judge relied on certain earlier proceedings in the Native Courts and an appeal therefrom to which the appellant had not been a party.

The first ground was not one of the 12 grounds of appeal in the appellant's notice of appeal to the West African Court of Appeal, and it was not argued before that Court or referred to in the judgement. Their Lordships do not consider that the appellant should now be entitled to rely upon it. All the documents complained of were put in evidence without objection. Some of them and their contents were referred to in argument at the trial by Counsel on both sides, and it may well be that it was appreciated that in view of the conduct of the trial this objection could not be substantiated. Furthermore the evidential value of some of the documents would appear to depend upon the provisions of the Nigerian Evidence Ordinance, as to which their Lordships have not had the advantage of the opinion of the Courts below. Even if some of the documents or statements appearing therein may be open to question their Lordships are far from satisfied that the use made of them by the trial Judge vitiated his findings of fact which were based on his view of the veracity of the witnesses and the admissions of the appellant's predecessors.

The second ground appeared originally in the appellant's notice of appeal to the West African Court of Appeal but was struck out as embarrassing and not argued. Their Lordships do not know for what reasons it was considered embarrassing but in this respect also they are at a disadvantage in not having the views of the Court of Appeal thereon. However the matter was fully argued before the Board and their Lordships do not consider that there is any substance in the point. The documents were put in at a late stage of the defence without objection and no application was made to re-call any of the appellant's witnesses to deal with them. Moreover it is difficult to see how, for instance, the appellant could deal with admissions said to have been made by his father not in his presence. This was one of the matters particularly complained of.

Passing to the fourth ground, and leaving No. 3 to be dealt with later, it is clear that the trial Judge merely treated these proceedings as evidence of acts of ownership by the Odo people. But it is now said that the claims of the Odo people are consistent with a usufructuary title as distinct from the radical title or ownership. No objection was taken to the admission of the records of these proceedings. It was not contended in either of the Courts below that the claims were merely based on a usufructuary title and here again their Lordships have not the advantage of the views of the local Courts on this matter. They would, however, observe that the record of the proceedings in Exhibit M have every appearance of being founded on ownership which was not disputed.

As to ground No. 3, the words used by the learned Judge are as follows:—

> "I do not believe that the boundary line shown in purple on Exhibit A is genuine, and it appears to me that the plaintiff and his people either discovered the Iroko, Irosun, Peregun, Atori, Obi Edun and Ekika trees which are of natural growth in the thick bush or forest, or planted them or some of them, and so waited until they were fully grown to enable them to pass them off as a boundary line between themselves and the Ado people.
>
> As for the heaps of stones, with the exception of the heaps of stones placed near Okuta Olomo in 1933 by the District Officer, Mr. Swayne, there is no proof as to how the other heaps of stones shown in Exhibit A got on the alleged boundary line; but in view of my findings above, it appears to me that the plaintiff and his people, without the knowledge of the defendants, placed the stones on the land."

The references to "the plaintiff and his people" would appear to include his predecessors and the Ilawe people for many generations. Throughout the proceedings the terms "plaintiff" and "defendant" were frequently so used. (See for example the Additional Defence at page 37.)

Their Lordships do not consider that the Judge was in this passage necessarily imputing fraud to the appellant personally. None the less the finding was unnecessary to his decision and difficult to follow in view

of the admitted existence of the line of trees on the disputed boundary which must have existed for very many years. No such allegation had been made at the trial and their Lordships agree with Counsel for the appellant that in the circumstances the finding was not justified. They do not, however, consider that this unnecessary finding in any way vitiates the Judge's other findings of fact which are summarised at the conclusion of his judgment as follows: —

> "In the result the plaintiff's claim for declaration of title to the land edged pink on Exhibit A fails because he has failed to prove that by tradition the land belonged to him and the Ilawe people, and because he failed to prove that the boundary line coloured purple in Exhibit A was made by Alawe Akubieleyo."

It would be remarkable if in the course of a trial of this nature and length some criticisms could not be directed against some of the language used by the trial Judge or the use that he has made of certain documents put in evidence without objection, but their Lordships do not consider that any case has been made out to justify them in departing from their long established rule with regard to concurrent findings of fact.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

(39614) Wt. 8064—69 120 3/56 D.L.

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