Privy Council Appeal No. 4 *of* 1959

Lawal Buraimah Fatoyinbo and others - - - - - *Appellants*

v.

Seliatu Abike Williams alias Sanni and others - - - *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1960

Present at the Hearing:

LORD GODDARD
LORD KEITH OF AVONHOLM
LORD HODSON

[*Delivered by* LORD HODSON]

This is an appeal by special leave from a judgment of the Federal Supreme Court of Nigeria (Jibowu, Acting F.C.J., Nageon de Lestang, F.J. and Hubbard, Acting F.J.) allowing the respondents' appeal from a judgment of the High Court of Lagos (Jobling, J.).

The appellants claim and Jobling, J. held, that they are jointly with the respondents owners of property situate at 42 and 44 Ereko Street, Lagos. The respondents claim to be the sole owners of that property and their contention was upheld by the Federal Supreme Court, who accordingly dismissed the claim of the appellants.

This appeal raises a question of pedigree and relates to the devolution under native law and custom of the property which was formerly owned by a woman named Opoola, she having derived her title from a Crown grant.

On Opoola's death in 1885 the property devolved on her surviving children if more than one in equal shares. She had without question two children, Aina, who died in 1933 and Oniyoku, who predeceased her without issue.

The appellants are the surviving children of Buraimah Fatoyinbo who died in 1912 and are the grandchildren of Dada who died in 1896, and the question is whether, as the appellants claim, Dada was a child of Opoola and a sister of Aina. The respondents are the only surviving children of Aina's son Sanni who died in 1921.

As might be expected, a body of oral evidence was called on behalf of each side directed to family history and tradition based to a great extent on hearsay.

Jobling, J., having heard this evidence, found it too contradictory to be relied upon but reached his conclusion in favour of the appellants by inferences which he drew from documents and by reliance upon an admission made by the first respondent at the trial to the effect that on one occasion he received an amount of £175 as rent of the property and paid £87 10s. 0d. (half of it) to the first appellant.

The Federal Supreme Court was of opinion that the oral evidence given on behalf of the respondents was more direct than that given by the appellants and further that the inferences to be drawn from other evidence, principally documentary evidence, carried more weight in favour of the respondents than in favour of the appellants and accordingly allowed the appeal.

As the Federal Court pointed out, the learned trial Judge did not in coming to his decision rely on the advantages of having seen and heard the witnesses and it was open to the Appellate Court to examine all the evidence and decide for itself whether the relationship claimed was established.

It is unnecessary to refer in detail to the oral evidence of family history since the trial Judge's failure to assess this in favour of one party or the other cannot be criticised. Their Lordships are of opinion that there is little to choose between the witnesses on both sides so far as direct evidence of relationship is concerned, although, as the Federal Court said, one witness for the respondents, Kasali Ipakodo, testified that he knew Opoola herself, that she had two children, Aina and Oniyoku, and that Dada was not a daughter of Opoola but of Opoola's sister Efunte.

If the appellants' case depended on evidence directed to relationship, they failed to prove it and the substantial matter for consideration is whether the other evidence in the case leads to a conclusion in favour of the appellants.

First there was produced a deed of gift made in January, 1914, between Aina and her son Sanni, wherein it was recited that Opo (i.e. Opoola) died in 1885 leaving her surviving Oniyoku and Aina her children and that Oniyoku had since died leaving Aina his sister surviving him. This statement in the recital to the deed made over forty years ago before any dispute arose strongly supports the respondents.

The deed is a formal one professionally prepared and the only explanation put forward in support of the view that the recital was false, in that Dada's name was wrongly omitted, rests on the assumption that the deed of gift which was made in favour of Sanni to enable him to raise money by mortgaging the property never had any practical effect and that it mattered not that the recital was untrue since Dada's issue never suffered any loss or were intended to be injured whereas if Dada had been named, in view of the minority of her grandchildren, of whom the first appellant, the eldest, was only twelve years of age, it would have complicated the transaction or made it impossible to carry out.

This explanation is based largely on conjecture and there is no sufficient reason to draw the inference that the recital in the deed of gift should be regarded as false.

Their Lordships agree with the observations of the Federal Court as to the other matters which were thought by Jobling, J. to support the appellants' claim.

These other matters stem from 1933 when the fifth respondent, then about twenty-two years of age, was advised by the family solicitor to get an older relation to join in the administration of Aina's estate. He accordingly asked the first appellant to join with him and Letters of Administration were issued to both of them jointly on 30th December, 1933. It appears to be the Yoruba custom for the older man to take charge of family financial responsibilities and there was nothing inherently strange in the first appellant collecting the income of the estate and paying money to the fifth respondent on his request. Subsequently in 1934, 1935, 1939 and 1940 and on two other occasions the dates of which are not fixed the fifth respondent wrote to the first appellant asking for small sums of money. These letters are relied upon by the appellants as indicating that they were interested in the rents of the property. Each respondent's share of the rents would be small during the years covered by the dated letters and there is nothing to show whether the fifth respondent was asking for money to which he was entitled as his share of the rents or whether he was asking for assistance from the first appellant's own personal resources. In neither case is there any support for an inference that the letters show that the respondents and the appellants were jointly entitled to the property.

There was, however, an occasion in July, 1950, when, according to the fifth respondent's own admission, he received a cheque from the first appellant for £175 which he paid into his own banking account and when he gave a cheque for £87 10s. to the first appellant. He gave an explanation of this transaction and denied that the £87 10s. was the half share of rent due to the first appellant.

The curious thing about this transaction is that it formed no part of the appellants' case and indeed the appellants produced no books nor made any attempt to obtain disclosure of any books of account to support their case that each family was entitled to half the rents of the property. The appellants never gave any evidence at all about sharing rents. If this admission is to establish the appellants' case, and their Lordships are of opinion that there is nothing else which tends to do so, it is open to the comment that the admission taken as a whole does nothing of the kind and even if that part which favours the appellants is taken in isolation, it is, as the Federal Supreme Court point out, only one isolated incident and not by any means conclusive of the fact that rent was invariably shared.

The other matters relied upon by the appellants can be disposed of shortly.

A solicitor named Wilson testified that Aina at some time said she had given some property at Great Bridge Street, Lagos, to her sister's son. As a matter of fact the deed of gift shows that she had given this property to her only son Sanni and there was no other evidence that she had given it to a child of Dada. Moreover, there is to be found in more than one document exhibited loose use of words of relationship which is readily understandable in a society where relations may on the decease of one member of the family be inherited by another. There is therefore no good reason to take the word "sister" if used by Aina as meaning that Dada was in fact the child of the same mother as herself.

Reliance was placed on the fact that the first appellant and fifth respondent had dealings with Aina's estate and it was sought to prove that they were co-owners: see paragraph 5 of the Statement of Claim. It is clear, however, that when they let the property, as they did by leases dated the 3rd October, 1934, and the 29th December, 1937, they did not do so as co-owners but purported to do so as administrators of her estate (although the grant was limited to personal property). The execution of these leases, therefore, is consistent with their having treated the property as that of Aina. No inference favourable to the appellants is to be drawn from the fact that six months before the expiry of the second lease the respondents asserted their title by granting a lease themselves alone without consulting the appellants.

Accordingly their Lordships are of opinion that the other evidence adduced on behalf of the appellants including such admissions as can be extracted from the respondents' own witnesses do not advance the claim of the appellants, which must fail for want of proof.

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

(39330) Wt. 8109—53 100 12/60 D.L.

In the Privy Council

LAWAL BURAIMAH FATOYINBO and others

v.

SELIATU ABIKE WILLIAMS ALIAS SANNI
and others

DELIVERED BY LORD HODSON

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1960