Privy Council Appeal No. 7 of 1962

Osele and others for themselves and on behalf of the people of Onicha-Ibabu – – – – – – – – *Appellants*

v.

Olisedozie Nwokeleke and others for themselves and on behalf of the people of Iselegu – – – – – – – *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JANUARY 1964

Present at the Hearing:
VISCOUNT RADCLIFFE.
LORD MORTON OF HENRYTON.
LORD GUEST.
[*Delivered by* VISCOUNT RADCLIFFE]

This is an appeal from a judgment of the Federal Supreme Court of Nigeria dated the 24th February 1958, which allowed in part the respondents' appeal from a judgment of Onyeama, Ag.J. dated the 30th April 1956 and given in the High Court of Justice, Western Region, Warri Judicial Division.

The action in which these judgments were given was one instituted by the respondents, on behalf of the people of Iselegu, in which they claimed against the appellants as representing the people of Onicha-Ibabu certain relief consisting of a declaration of title to some land called Mbuboagbala, damages for trespass on the land, forfeiture of possession as against three of the appellants, and an injunction against entering the said land without the permission of the Iselegu people. It will be convenient to refer to this action as " the present action " and to the Mbuboagbala land as " the disputed land."

The trial Judge, after hearing the evidence as to title called on behalf of the respondents, dismissed their action with costs. He was not satisfied that they had proved their case. The grounds of his judgment are expressed in the following extract from its concluding passage:—" Before the plaintiffs can get a declaration of title in their favour they must prove acts of ownership numerous and positive enough and of sufficient duration to warrant the inference that they are exclusive owners . . . From the evidence before me all I can say is that both parties are in occupation of some portions of the area in dispute and farm the area . . . The plaintiffs having failed to discharge to my satisfaction the onus placed on them, I dismiss the claim, with costs assessed at 20 guineas."

This judgment was reversed on the appeal to the Federal Supreme Court to the extent that the respondents were granted a declaration of title to the disputed land, the action was remitted to the Court below for further investigation of their claim to forfeiture, and the appeal was dismissed so far as concerned the claims for trespass and injunction. The ground upon which the Federal Supreme Court reversed the trial Judge on the question of title was that they thought that he had wrongly rejected or refused to be bound by certain findings of fact or conclusions of law which had been arrived at by the Courts in the course of earlier litigation between the same parties. This earlier litigation consisted of two consolidated actions instituted in 1953, in which the appellants had been asking for a declaration of title against

the respondents and the respondents had been claiming damages for trespass against some of the appellants. These consolidated actions will be referred to as " the 1953 action ".

The appellants have now appealed to this Board on the question of the admissibility and force of the findings made in the 1953 action. The Federal Supreme Court, they say, were wrong in law in allowing these findings to be imported into the present action, whether as constituting estoppel per rem judicatam or in any other form. The respondents were not represented to argue their case before the Board. The point itself is a short one, not admitting of any lengthy exposition, and their Lordships, although they have given their critical scrutiny to the views of the Supreme Court, would differ from their conclusion with regret, since they are well aware how difficult it is in many cases to ensure that the application of the rules of estoppel, while admitting a fair ascertainment of the real facts, does not leave determined suitors altogether too free to fight again and again over issues that, in substance, have been decided before.

It is necessary now to turn to the 1953 action and explain what it was about. It was stated by Abbott F. J. in giving the judgment of the Federal Court that it was common ground that " the land and parties concerned in the earlier law suits are the same as those concerned in this appeal ". Their Lordships then proceed to consider the matter on the same basis and they would not feel entitled to adopt another one, even if they saw any good reason for doing so.

The 1953 action accordingly was an action in which the Ibabu people were suing the Iselegu people for a declaration of title to the disputed land and the Iselegu people on the other hand were claiming damages against some Ibabu people for trespass on at any rate part of that land. To take first the hearing of the action in the Supreme Court of the Warri Judicial Division, the presiding Judge was Mbanefo, J. On the 10th December 1953 he delivered his judgment in the consolidated suits, in which, after a detailed review of the evidence called before him, as to tradition, boundaries and user, he ended by saying " I am satisfied that the land in dispute was farmed extensively by Iselegu people and that if any Ibabu farmed it before this dispute began, he did so with the permission of Iselegu. I find that the plaintiffs' claim in W/16/53 [the Ibabu action] fails and is dismissed with costs and I find for the plaintiffs (Iselegu) in W/18/53 and award £5 damages against each defendant. The plaintiffs in W/18/53 will have an injunction against the defendants ".

The Ibabu therefore lost and failed to get a declaration of their title. The Iselegu got damages for trespass. There are however two points that have been stressed on behalf of the appellants as limiting the import of this judgment for the purposes of estoppel. The Iselegu had not counter-claimed, as they might have done, for a declaration of their title, and, as the learned trial Judge observed in the present action, in refusing a declaration to the Ibabu Mbanefo, J. had not by inference conferred a title on the Iselegu. Secondly, he had stated explicitly in his judgment that on the evidence before him he could not find that the Iselegu had title. There was a third possible claimant, a tribe known as Umuokpala. " Whether the land ", he said, " where Iselegu live belongs to Umuokpala or Iselegu or to both of them I am not prepared to say. The fact is that Iselegu has been on the present site of their town for a long time and I am unable to accept Peter Nwaka's evidence of the boundary between Ibabu and Umuokpala ".

The Ibabu parties appealed to the West African Court of Appeal, and judgment in the consolidated suits was delivered on the 15th November 1954. Their appeal against the dismissal of their action for declaration of title was dismissed. The Court, whose judgment was delivered by De Comarmond, Ag. C. J., held that there was no ground for interfering with the decision of the trial Judge to the effect that the Ibabu had not made out their title. On the other hand, they allowed the appeal against the judgment in trespass against the Ibabu farmers. In the Court's view the Judge's findings regarding the position of the Ibabu farmers on the land in dispute was not consonant with a decision that they were trespassers. He had, apparently, accepted

evidence that they were there as tenants of the Iselegu people, farming what parts they occupied with Iselegu permission. and on that basis they could not be treated by the Iselegu as unlawfully on the land and liable to pay damages for trespass.

The point raised by the plaintiffs (the Iselegu) in the present action was that the 1953 action had concluded the issue of title between themselves and the Ibabu. The trial Judge rejected this proposition, holding that the issues before him (as to the Iselegu title) were at large and there was no estoppel operating against the Ibabu. It is not clear to their Lordships from the terms of his judgment just how the Iselegu case was presented to him on this point. It could hardly have been based on the mere dismissal of the Ibabu action in the earlier proceedings, for this by itself would not have shown that the Iselegu had a good title. Neither side might have had what was needed. There was, of course, the cross-action. in which the trial Judge's decision giving damages for trespass against the Ibabu farmers was reversed on appeal. The Court of Appeal's decision on that appeal might well be said to have decided between the two parties that the Ibabu people had been allowed on the disputed land as tenants or at any rate in some permissive capacity by the Iselegu and that they were. as Counsel argued. " estopped from denying their tenancy ": but such a decision is not in itself the same thing as an objective decision that the Iselegu are the people who have title to the land.

It seems however to be clear that the Federal Court, in reversing the trial Judge in the present action, accepted the proposition that the 1953 action really involved a decision between the two parties as to the Iselegu title. Their judgment, as has been said, was delivered by Abbott F. J. The Court's view was that the effect of the decision of the West African Court of Appeal in favour of the Ibabu in the trespass action was that they were tenants of the Iselegu. Further, they held, the reversal on appeal of the trial Judge's judgment on that issue " did not wipe out the findings of fact in that suit but in fact reinforced them ". It was on this point that they effectively differed from the view of the trial Judge, who seems to have thought that the success of the Ibabu on the cross-appeal had annulled all adverse findings against them. Dealing then with the evidence in support of the Iselegu claim to have a declaration of title in the present action, the learned Federal Justice proceeded:— " I am in agreement . . . that, in the absence of the evidence provided by the 1953 litigation and had this been the first attempt of either party to obtain a declaration of title to the land the evidence produced by the Iselegus before Onyeama J. might well have failed to discharge the onus lying upon them as claimants to title. But when one takes the 1953 decisions into account the position is greatly changed. Concurrent findings by two Courts, that the Ibabus are tenants of the Iselegus is very cogent evidence indeed of the ownership of the latter. A very large part of the onus is, in my view, discharged by these decisions and such additional evidence as the Iselegus desired to adduce need be little (if anything) more than formal ".

The Federal Supreme Court accordingly allowed the Iselegus' appeal so far as concerned the declaration of title, dismissed it in respect of the claim for damages for trespass and injunction, and remitted the case to the Court below for investigation and decision of the forfeiture claim, which had not been fully considered.

It was argued that the Federal Court had illegitimately introduced the evidence in the 1953 action into the evidence in the present action. Their Lordships do not accept this. Despite a possible ambiguity in the language used, they are sure that the Court did not regard the evidence given in the 1953 action before Mbanefo, J. as being in itself capable of being imported into and used as evidence in the hearing of the present action by Onyeama, J. What the Court must have had in mind was that the judgment or judgments in the earlier action were sufficient to set up an estoppel per rem judicatam between these two parties on certain points which, taken with the other evidence, entitled the Iselegu to a declaration of title for which otherwise they would have had insufficient evidence.

Now it is true that Mbanefo, J. did not decide in terms that the Iselegu owned the disputed land. But that was because he could not determine what the position was as between them and the Umuokpala people. If an action for a declaration of title as between A and B could ever properly be regarded as an action in rem, judgment in which would establish A's title against C and others, there would be force in the appellant's contention that no estoppel as to the Iselegu's title could arise from the 1953 action. In their Lordships' opinion however it would be contrary to all precedent to treat such an action as the 1953 action as an action in rem. If so, the position of the Umuokpala is not prejudiced and the present action is simply a dispute between Iselegu and Ibabu as to which of them has title to the land against the other.

From that point of view there is much force in what the Federal Court have said. It was certainly settled in the 1953 action that the Iselegu could not treat as wrongful the presence of Ibabu farmers on their land because, as between those two parties, the Ibabu were there with the status of tenants or licensees of the Iselegu. Their Lordships agree that that finding necessarily implies that the Iselegu possessed the superior ownership, and, since it is the accepted principle that a tenant cannot deny his own landlord's title, they see nothing to object to in the Federal Court's view that the estoppel, which could be treated as a binding admission for the purposes of the present action, sufficiently supplements the other evidence to justify the Iselegu in getting their declaration of title against the Ibabu.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the respondents' costs (if any) of this appeal.

(89153) Wt. 8052/97 100 2/64 Hw.

In the Privy Council

OSELE AND OTHERS FOR THEMSELVES AND ON BEHALF OF THE PEOPLE OF ONICHA-IBABU

v.

OLISEDOZIE NWOKELEKE AND OTHERS FOR THEMSELVES AND ON BEHALF OF THE PEOPLE OF ISELEGU

DELIVERED BY
VISCOUNT RADCLIFFE

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