

6111-6-2

Judgment
23/1964

IN THE PRIVY COUNCIL

No. 32 of 1963

ON APPEAL FROM THE FEDERAL SUPREME COURT
OF NIGERIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

DR. ESIN ANWANA ESIN
(For himself and as
representing the Esin
Family of Eyo Abasi)
(Plaintiff) Appellant

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- and -

1. ATANG EDEM ABASI) of Eyo Abasi
2. ASUGUO EFFIONG)
3. OKON AKPE)
(Defendants) Respondents

CASE FOR THE APPELLANT

Record

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1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, dated the 24th May 1963, setting aside the Judgment of the High Court of the Calabar Judicial Division of the Eastern Region dated the 30th October 1959, whereby that Court granted the Appellant a declaration of title to the land in suit.

pp.76-86.
p.86.
pp.52-65.

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2. The subject matter of the suit giving rise to this appeal is land known as "Ekpe Oluhu" situate at Esin Ufot, Eyo Abasi, Oron, and comprises four contiguous portions, shown on the Plan filed in the Suit as Plots "A", "B", "C" and "D".

p.5, 11.1-4.

3. The Appellant represents the Esin family of Eyo Abasi, Oron, and the Respondents are natives of Eyo Abasi, Oron.

p.4, 11.23-29.
p.8, 11.5-13.

4. The circumstances in which the suit was commenced are stated in the Statement of Claim as follows:-

Record
p.6, 1.26 to
p.7, 1.7.

"6. It had all been peaceful between the plaintiff and his people on the one hand and the defendants on the other hand. The defendants had always recognised and respected the rights, title and interests of the plaintiff and his people on the land in dispute until in or about 1952 when the Crown notified its intention to acquire the portion within the land in dispute together with a portion of Eyo Abasi land verged yellow on the plan filed herein. It was then for the first time that the defendants, despite the fact that they are not in possession of the land in dispute but the plaintiff and his people are, laid claim to the same as their exclusive property.

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"7. In furtherance of the said claim the defendants appeared before the Supreme Court, Calabar holden at Eket and claimed to be exclusively entitled to the compensation payable in respect of the portion to be acquired aforementioned by the Crown. Thereupon the plaintiff and his people decided to establish by Court action their right, title and interest in and over the land in dispute.
....."

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p.2.

5. On the 7th July 1954 the Appellant instituted Suit No. 563/54 in the Oron Native Court against the Respondents.

The Particulars of Claim in that Suit were as follows:-

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p.2, 11.14-37.

"Plaintiff claims right of ownership and title for the land on which the Customs site is situated on Esin Ufot Eyo Abasi, Oron, as being his hereditary landed property the land in question having been bought and used over 40 years by the following ancestors of his: this land was bought by my grandfather, Esin Anwana Esin from Chief Anwans Nyeke both of Eyo Abasi; by, grand uncle Basseyy Anwana Esin, from Ukpaema both of Eyo Abasi; by Chief John Anwana Esin father from Chief Nya Umo both of Eyo Abasi; cost of the land about £14.10s and a cow only."

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p.84, 1.1.

No Plan was filed in the Native Court in this Suit.

6. The Appellant adduced evidence regarding the purchase of the plots comprised in the land in dispute. Record
p.84, 11.10-14.
7. The Native Court pronounced Judgment "For the Defendants. Case dismissed." p.79, 1.18.
8. On the 31st January, 1955, the Assistant District Officer made an Order "that Oron Native Court Land Civil Suit No. 563/54, particulars of which are shown in the schedule hereto, be retried before the Supreme Court of Nigeria." p.1, 11.20-24
- 10 The Order for Retrial set out the following Reason - "The parties to the case have retained the services of Lawyers and wish to submit survey plans of the area in dispute during the proceedings." p.1, 11.25-28.
9. Accordingly, the Suit came for hearing before the Supreme Court of the Calabar Judicial Division on the 2nd March, 1955, the suit being numbered C/2/1955. p.3.
10. On the 27th June, 1955, the Appellant filed his Statement of Claim praying for - p.4.
- 20 "(1) A declaration of title to all that piece or parcel of land known as "EKPE ALUHU" situate and being at Esin Ufot, Eyo Abasi, Oron, the said land being the exclusive property of the Esin Family, and delineated on the plan to be filed in this action and be produced at the hearing. p.7, 11.10-23.
- 30 (ii) An injunction to restrain the defendants, their servants and agents and each and every one of them from any further act of interference with the right title and interests of the plaintiff and his people over the said land."
11. On the 3rd September, 1955, the Respondents filed their Statement of Defence. p.7.
12. Both parties adduced oral evidence in support of their rival claims. pp.12-48.
- 40 13. Counsel's addresses on behalf of both parties were on the sole issue whether the Appellant as the pp.48-52.

- Record Plaintiff had discharged the onus of proving the purchases pleaded by him.
- p.49, 11.10-12. Counsel for the Respondent described the land in dispute between the parties to this suit as the land "described in para. 2 of the Statement of Claim and marked A, B, C and D in Ex. "A"."
- pp.52-65. 14. The High Court delivered Judgment on the 30th October, 1959.
- p.61, 1.32. The learned Trial Judge held that the Appel-
p.62, 1.40. lant had discharged the onus of proving the
p.63, 1.23. purchases as to Plots B, C and D, and failed as to
p.63, 1.15. Plot A. 10
- p.65, 11.24-26. The Appellant was accordingly granted a declaration and injunction as to Plots B, C and D, and the claim to Plot A was dismissed.
- pp. 66-74. 15. The Respondents appealed to the Supreme Court.
- p.76. 16. The Judgment of the Supreme Court (Brett F.J., Taylor F.J. and Bairamian F.J.) was delivered on the 24th May, 1963, Taylor F.J. dissenting. 20
17. The majority Judgment (Brett F.J. and Bairamian F.J.) was delivered by Bairamian F.J.
- The ratio decidendi of the majority judgment is in the passage following:-
- p.80, 1.10 to ".....Did the suit in the Native Court relate
p.81, 1.16. to a larger area?
- The terms of the claim in the Native Court are not clear, but when one reads the inspection note and the Finding below it (page 175 of the typed record) one sees that the Native Court understood the dispute relate to the "Customs Site", that is to say the land acquired by Government. The inspection note suggests that the perambulation asked for by the parties went no further south than the road which is the southern boundary of the land acquired by Government. The Finding relates to that land only. If the inspection note is not absolutely clear, it is not 30

unreasonable to read it in the light of the Finding. In my view the Native Court suit related to the land acquired by Government. (There is no need to consider whether the Native Court could have entertained a claim to a larger area including that land.)

10 In my judgment therefore, the defendants' objection succeeds. I have to add that the matter is not so simple as it might appear; although it is the High Court which adjudicated on title, it did so in proceedings which it could not have entertained. Section 10 of the Public Lands Acquisition Ordinance confers jurisdiction in these terms - (as in the original text) -

20 'The amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Supreme Court, which Court shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Chief Commissioner or, if the lands are situated in the Colony, the Chief Secretary, or any person holding or claiming any estate or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by the Ordinance to sell and convey the same.'

30 A summons was taken out by the Lieutenant-Governor (the successor of the Chief Commissioner); there was already a dispute between Dr. Esin and Atang Edem Abasi, and both were respondents to the summons. The Supreme Court had jurisdiction to hear and determine their dispute upon a summons taken out under that Ordinance; it had no jurisdiction to hear it in a suit between Dr. Esin and Abasi brought in the Native Court contrary to law and invalidly ordered to be retried in the

40 Supreme Court."

18. The dissenting Judgment was delivered by Taylor F.J.

p.82.

The ratio decidendi of the dissenting judgment is in the passage following:-

Record
p.85, 11.1-39.

"There can in my view be not the slightest doubt that the area the subject matter of the Native Court suit was the land shown as edged red in Exhibit "A". To say that because the claim begins by saying that the area is the one on which the Customs site is situated therefore that claim relates and relates only to the area edged yellow on Exhibit "A" is to say that in a claim for title to land on which a certain premises is situate, the area in dispute is just a mere strip of land which houses the four corners of the particular erection. I am fortified in the view I hold by the fact that the area edged brown in Exhibit "A" is not a part and parcel of the land in red claimed by the plaintiff, and part of the Customs Site is included in that area. The Customs Site is contained in an area measuring 10.67 acres whilst the total area of land claimed by the plaintiff is 19.39 acres. Of the 10.67 acres comprising the Customs Site an area of 2.67 acres contained in the area edged brown is outside the area claimed by plaintiff and edged red. The net result being that the area of land remaining after the Customs Site has been excised is larger than the latter. It cannot and has not been contended that the Native Court has no jurisdiction over the larger area of land. Further the area remaining after the Customs Site has been excised is, as shown in Exhibit "A", a defined area. In my view the proper course to take is to excise the Customs area, the smaller area over which the Native Court had no jurisdiction for the reasons already stated, from the rest of the land in dispute and hold that there was jurisdiction to entertain the suit."

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p.87.

19. The Appellant obtained leave to appeal to Her Majesty in Council on the 6th August 1963.

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20. The Appellant humbly submits that the appeal be allowed with costs and that the appeal be remitted to the Federal Supreme Court for further hearing on the merits for the following

R E A S O N S

- (1) BECAUSE the suit to title to the lands in dispute was properly heard de novo in the

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Supreme Court in accordance with the provisions of the Public Lands Acquisition Ordinance, Section 10.

- (2) BECAUSE in any event the dissenting Judgment of Taylor F.J. is correct for the reasons therein stated.

S.P. KHAMBATTA.

MERVYN HEALD.

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CASE FOR THE APPELLANT

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