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Appeal
No 32 of 1963

Judgment 23/1964

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL SUPREME COURT OF

NIGERIA

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

v.

1. ATANG EDEM ABASI)
2. ASUQUO EFFIONG) of Eyo
3. OKON AKPE) Abasi

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

78599

CASE FOR THE RESPONDENTS

HATCHETT JONES & CO.,
90, Fenchurch Street,
LONDON, E.C.3.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

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

and

10 1. ATANG EDEM ABASI)
2. ASUQUO EFFIONG) of Eyo
3. OKON AKPE) Abasi
Respondents

CASE FOR THE RESPONDENTS

- | | <u>Record</u> |
|---|----------------------|
| 1. This is an Appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, dated the 24th May 1963, pursuant to leave granted by the said Court on the 6th August 1963. | p.76
p.86
p.87 |
| 20 2. The Order dated the 24th May 1963 allowed with costs the Respondents' appeal from a judgment of the High Court of Calabar Judicial Division, dated the 30th October 1959, and ordered that the proceedings in the High Court be set aside as a nullity. | p.52 |
| 30 3. The primary question for decision on this Appeal is whether, as the Respondents contend and the Federal Supreme Court (Taylor F.J. dissenting) have held, the judgment of the High Court of the Calabar Judicial Division, dated the 30th October 1959, should be set aside as a nullity on the ground that the High Court had no jurisdiction to determine by way of retrial a dispute as to title to land which had been the subject of a suit in the Native Court of Oron, because that suit related to land acquired by the Crown under the Public Lands Acquisition Ordinance. | |

Record

- p.2 4. The Appellant commenced proceedings against the Respondents in the Native Court of Oron by a Civil Summons issued on the 7th July, 1954 and by his Particulars of Claim he claimed:
- "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" etc. 10
After hearing evidence on behalf of the Appellant and the Respondents and making an inspection of the land in question the Native Court gave judgment in favour of the Respondents.
- p.1. 5. The Assistant District Officer of the Eket Division at the request of the Appellant made an order on the 31st January 1955 under section 28 (1) (b) of the Native Courts Ordinance that the Native Court suit should be retried before the Supreme Court of Nigeria. The reasons 20
p.1 for retrial specified by the Assistant District Officer were :-
- p.2 "1. 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,
2. The land in dispute is crown land.
3. The Plaintiff wishes to call a witness who is not subject to the jurisdiction of the Native Court."
- p.3 6. Pleadings were ordered and the Appellant delivered a Statement of Claim dated the 27th June 1955 whereby he 30
pleaded that he was a member of the Esin Family of Eyo Abasi and was authorised to bring the proceedings on behalf of the Esin family. It was further pleaded as follows :-
- p.5 "2. The land is subject matter of this action (hereinafter called the land in dispute) is known as "EKPE OLUHU" and comprises 4 contiguous portions. The said land is situate at Esin Ufot, Eyo Abasi, Oron and is particularly delineated and shown on the plan filed in this Action". 40

I was further pleaded as follows :-

Record

"The various portions comprising the land in dispute are marked for identification purposes 'A', 'B', 'C' and 'D' on the said plan.

p.5
line 26

It was further pleaded that a dispute as to title arose between the Respondents and the Appellant in or about 1952

10 "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 further pleaded that the Respondents claimed the land in dispute and

20 "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".

p.6
line 42

The claim was for a declaration of title to land delineated on the Appellant's plan and an injunction against the Respondents.

p.7
line 10

30 7. By their Defence dated the 25th August 1955 the Respondents admitted the situation of the land set out in the Appellant's plan but denied that it had at any time been known as "EKPE OLUHU" or comprised A, B, C and D as separate or distinct portions. The Respondents pleaded that they filed a plan with their Defence. It was further pleaded that the Appellant's title to the land in dispute was denied and it was admitted that the Respondents had appeared before the Supreme Court held at Eket and had claimed the compensation in respect of the land acquired by the Court and that the claim was
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line 19

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line 16

"in the exercise of the defendant's right of ownership of the piece of land in issue in the compensation case referred to".

p. 9
line 18

Record

p. 9
line 34 It was further pleaded that the Respondents would at the trial contend, inter alia, that the transfer of the suit from the Native Court of Oron was bad in law.

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p.13 8. The High Court of the Eastern Region Calabar Judicial Division dealt with the question of transfer of the suit from the Native Court and assumed jurisdiction. The trial commenced at Uyo on the 23rd September 1959. The Appellant called one Ekpo Ekpenyong who stated that he was a Licensed Surveyor and he produced plans on behalf of the Appellant and the Respondents showing the land in dispute. 10

p.14
line 5 9. The Appellant gave evidence to the effect that the land in dispute comprised four pieces bought at different times and that

line 6 "These four portions are indicated by the letters A, B, C, D in Ex. "B" and the letters were inserted by the Director of Surveys on my instruction and in my presence". 20

p.14
line 32
line 43
p.15
line 1 The Appellant stated that the portion of the land indicated by "A" in Exhibit A had been acquired by his father John Anwana Esin in 1919, that the portion indicated by "B" had been purchased by his grandfather Chief Esin Anwana Esin long before 1919, that the portion indicated by "C" had been purchased by his uncle Abasi Anwana Esin in 1925 and that the portion indicated by "D" had been purchased by his father in 1914. The Appellant agreed that he had given evidence concerning the land in dispute in the Native Court and that the Government had announced its intention to acquire the land in 1952. The Appellant called five witnesses to support his claim. The Respondent Asuquo Effiong gave evidence disputing the purchase of plots A, B, C and D and called six witnesses on behalf of the Respondents. 30

3 p.18
line 43
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pp.24-33
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pp.41-48

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p.61
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line 24
p.65
line 14 10. By his Judgment dated the 30th day of October 1959 the learned trial Judge (H.U. Kaine J.) found that the Appellant had not proved the claim to plot 'A' but that he had proved the title of the Esin family to plots B, c and D. He therefore granted a 40

"declaration of title to the plaintiffs on plots 'B', 'C' and 'D' and also an

injunction against the defendants restraining them from interfering with the plaintiffs' rights in plots 'B', 'C' and 'D' without the consent of the plaintiffs".

p.65
line 16-21

The Appellant's claim to plot A was dismissed and costs were awarded against the Respondents.

p. 65
line 22

11. The Respondents gave notice of appeal against the judgment of the High Court of the Calabar Judicial Division on the 26th November 1959 and the appeal came on for hearing in the Federal Supreme Court before Brett Taylor and Bairamian, F.J.J. on the 24th May 1963. The Federal Supreme Court granted leave to the Respondents to rely on an additional ground of appeal and the Court heard argument as to the jurisdiction of the Native Court of Oron in which the proceedings were instituted. The contentions of the Respondents were and still are :

p. 74
line 27

(i) That the proceedings in the Native Court of Oron related to land acquired by the Crown under the Public Lands Acquisition Ordinance.

(ii) That the Native Court had no jurisdiction to determine a dispute as to title in respect of such land.

(iii) That the Assistant District Officer had no jurisdiction to order that the suit in the Native Court be retried before the Supreme Court.

(iv) That the proceedings in the High Court of the Calabar Judicial Division, the successor of the Supreme Court, were a nullity and ought to be set aside.

12. On the 24th May 1963 the Federal Supreme Court (Taylor F.J. dissenting) allowed the appeal with costs and set aside the proceedings in the High Court as a nullity. Bairamian F.J. in the course of his judgment stated:

p. 87

"From the pleadings of the parties in the suit now on appeal it is clear that after Government gave notice of acquisition, a dispute arose between the Esins and the

p.77
line 33

Record

Abasis on which of them was entitled to the compensation; each claimed to be the owner of the land acquired; and their pleadings show that each made a claim of title to the land. That is equally apparent from Exhibit L - the notes of Brown J., at the hearing on 26th April 1954 at Eket of the summons taken out by the Lieutenant-Governor of the Eastern Region, in which the respondents were -

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1. Chief Atang Edem Abasi
2. Doctor Esin Anwana Esin
3. Chief Ekpo Esin.

Dr. Esin was absent, the other two were present; the Court took evidence on the acquisition, and looked at the Land of Officer's report, and made this order -

'Order: Amount of rent payable annually to be £50 as offered by the Lieut-Governor and is now payable to the persons entitled as landlords'".

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Bairamian F.J. considered the pleadings in detail and stated :

p.79
line 43

"Thus it is clear that the parties had conflicting claims, and the proper course for the Esins was to prosecute their claim of title upon the summons in the compensation proceedings".

p. 97
line 43

Bairamian F.J. considered the Appellant's contention that the suit in the Native Court was not about compensation and held that the argument had no substance because the Appellant and Respondents were parties to the compensation summons and the dispute as to title should have determined upon that summons in the former Supreme Court. He then considered the Appellant's argument that the suit in the Native Court related to a larger area than that acquired by the Government and said :

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p. 80
line 2

"The terms of the claim in the Native Court are not clear, but when one reads the inspection note and the Finding below it ... one sees that the Native Court understood the dispute to relate to the "Customs Site", that is to say the

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10 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 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)".

Bairamian F.J. referred to section 10 of the Public Lands Acquisition Ordinance (1948 edition of the Laws of Nigeria) and held that :

20 "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 Supreme Court". p.81 line 9

Brett F.J. concurred with the judgment of Bairamian F.J.

13. Taylor F.J. in a dissenting judgment stated:

30 "It cannot be disputed that if, at the time the suit was instituted in the Native Court of Oron the whole of the land in dispute had been the subject matter of acquisition by the Government, any question relating to compensation and indeed any conflicting claims to title must be determined by the High Court and not the Native Court. The point, and in my view, the sole point for our consideration at this stage of the appeal is whether the land the subject matter of the claim, was land over which the Native Court had jurisdiction". p.83 line 12

40 Taylor F.J. considered the Particulars of Claim in the Native Court and the Appellant's plan and concluded that the area which was the subject matter of the Native Court suit was the land shown as edged red in the Appellant's plan. He then stated : p. 83 p. 84

Record

p.85
line 18

"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 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. The effect is that the evidence relating to Plot C, which is wholly taken up by the Customs Site, will be discountenanced. As for plots A, B and D, only portions have been acquired for the Customs and the evidence relating to the purchase of all the plots would be material".

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14. The Respondents respectfully submit that Taylor F.J. erred in stating that the land acquired by the Crown could be severed from the remainder of the land in dispute so as to confer jurisdiction on the Native Court because the title to the remainder could not be determined without reference to the land acquired by the Crown and the title to the latter should first have been determined by the Supreme Court.

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15. The Respondents respectfully submit that the Native Court had no jurisdiction to determine the title to the land acquired by the Crown or the title to a larger area of which such land formed a part until the title to the land acquired by the Crown had been determined in accordance with section 10 of the Public Lands Acquisition Ordinance which provides, inter alia :-

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"if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every case of disputed interest or title

10 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".

Conflicting claims as to title had been made by the Appellant and the respondents after publication of the notice of acquisition by the Crown in 1952 and these claims should have been determined in the High Court as successor to the Supreme Court.

20 16. The Respondents respectfully submit that the majority of the Federal Supreme Court were correct in holding that the Native Court had no jurisdiction to determine the dispute relating to land acquired by the Crown and that the subsequent proceedings in the High Court were a nullity.

17. The Respondents humbly submit that this Appeal should be dismissed with costs for the following among other

R E A S O N S

1. BECAUSE the Native Court of Oron had no jurisdiction to determine the dispute as to title to the land acquired by the Crown or to other land of which it formed a part.
- 30 2. BECAUSE the Assistant District Officer had no jurisdiction to order the suit in the Native Court to be retried in the High Court so that the proceedings in the High Court of the Calabar Judicial Division were a nullity or alternatively were irregular in which event they sought to be set aside.
3. BECAUSE the Order of the Federal Supreme Court which is appealed from is right.

SHEILA CAMERON.

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