

Privy Council Appeal No. 35 of 1963

Egonekwu Dim and others – – – – – – – – – *Appellants*

v.

Anusionwu Duru and others – – – – – – – – – *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

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

Present at the Hearing:

LORD REID.

LORD HODSON.

SIR BENJAMIN ORMEROD.

[*Delivered by* SIR BENJAMIN ORMEROD]

This appeal is from a judgment in the Federal Supreme Court of Nigeria on appeal from a judgment of Mr. Justice Betuel of the High Court of the Eastern Region which granted the plaintiffs a title in respect of certain land. The ground of appeal has been reduced to very short terms and the issue between the parties is whether the plaintiffs in this action were estopped by their conduct from setting up any wrongful act by the defendants in respect of the land.

The plaintiffs in this action were people called Amanantos and the defendants were another family by the name of Amanano. The land in question was a piece of land known as Ugwu. The claim by the plaintiffs was that the defendants had trespassed on the land and thereby caused damage.

The defendants' answer was that the land belonged to them and that they had not entered on the land other than as defined by a particular boundary marked on the land.

The issue in the appeal today—which as has been said already is founded on the question of estoppel—relates to earlier proceedings which took place between the same parties in respect of a claim with regard to the same land or boundaries of the land. In consequence, there was an order by Mr. Justice Waddington, who tried that action in 1942, in which he said that there would be a non-suit because of the finding of the Referee, to whom the matter was referred, that he was unable to discover the boundary between the land claimed by the plaintiffs and the land claimed by the defendants.

It was not possible therefore, to say that the plaintiffs had been guilty of any trespass and in those circumstances he was not called upon to consider the further question of the amount of damage which had been referred to him.

It has been said in these proceedings that because the learned judge who tried this matter in the first case paid attention to evidence given by the parties, which either amplified or contradicted evidence given before the learned Referee in the earlier proceedings, there should be an estoppel and the learned judge should not have given consideration to evidence of that kind.

It was first argued that the learned judge was bound by the principle of *res judicata*, but it became clear in the course of the argument—and indeed it is said on page 59 of the Record—that when the earlier case came back to the High Court for judgment or argument on the Referee's report a non-suit was entered and it was agreed by Mr. Khambatta that in those circumstances he could not argue that the principle of *res judicata* could apply. He fell back

therefore on the submission that in the particular circumstances of this case the plaintiffs could not now argue or deduce evidence to satisfy the court as to the position of the boundary in question because they were estopped, presumably by their conduct in not producing to the court evidence which was now available and therefore failing to do something which they might well have done, and by their conduct they had caused the defendants to act in such a way that they had been induced to change their position. There was no evidence before the court, so far as their Lordships have been told, that the plaintiffs had available and called at the second hearing evidence which may have been available and was not called at the first hearing. It was clear to their Lordships in the course of the argument that the submission put forward by Mr. Khambatta in those circumstances was without substance.

It is the view of their Lordships that here there was certainly no question of *res judicata* and equally it is extremely difficult to see how there could be established any estoppel which would prevent the plaintiffs from pursuing their action as they did.

In the circumstances their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of the respondents.



In the Privy Council

EGONEKWU DIM AND OTHERS

v.

ANUSIONWU DURU AND OTHERS

DELIVERED BY
SIR BENJAMIN ORMEROD

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
HARROW
1964