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Judgment
3/6/1964

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

78642

IN THE PRIVY COUNCIL

No. 49 of 1962

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

B E T W E E N :

10 (1) NNAEGBO EKWEZE
CHINWEZE EJIOFOR and
UZODIGWE MAKIDA
(For themselves and on behalf
of People of Abube Nando) (Defendants)/Appellants
- and -

AJANA ENWELUM and
ROBERT NWEKEZE
(For themselves and on behalf
of People of Agbudu Nando) (Plaintiffs)/Respondents
- and between -

20 (2) UZODIGWE MADIKE
UDOLI IGWEZE
NNELI ANEKWE and
EGWUONWU EGBILI
(For themselves and on behalf
of Abube Nando) (Plaintiffs)/Appellants
- and between -

NWANWUBA ASIEGBU
IFEDIORA AGBAZINUO
EMESIN ENENDU
ONAEFUNA ONYEKWE and
OBIDIGWE UYAMEDU (Defendants)/Respondents
- and -

30 (3) AJANA ADUAKA
ONWUEGBUKE EGENTI
NNELI ANAKWE
EKWEOBA ARINZE
UDOBU IGWEZE and
OGUGUA UGBOAJA
(For themselves and on behalf
of the Abube Ibinagu family
of Nando) (Defendants)/Appellants
- and -

40 VINCENT EKWEALOR (For himself
and on behalf of the Umuawa
Family of Nando) (Plaintiff)/Respondent

RecordCASE FOR THE RESPONDENTS

1. This is an appeal from the Judgment and Order of the Federal Supreme Court of Nigeria, dated the 30th June, 1961 whereby the appeal of the Appellants herein from the Judgment of Mr. Justice Reynolds in the High Court of the Eastern Region of the Federation of Nigeria dated the 13th day of April, 1960 was dismissed in respect of the present respondents.
2. The case under appeal involves three suits which were consolidated at the trial by an Order of Court dated 6th August, 1959. The three suits are O/19/57, O/31/57 and O/32/57. 10
- p.26 l.30
3. The following particulars of the consolidated suits are taken from the judgment of the trial Judge:-
- p.95 l.21
- pp. 1 - 8 "Suit O/19/57 is brought by the people of Agbudu Nandu against the people of ABUBE Nando for declaration of title to a piece of land called 'Agu Okpu Ani' situate at Nando and verged pink in plan Exhibit 'A', damages for trespass thereon and an injunction in respect thereof. Suit O/31/57 is brought on behalf of the people of Abube Nando against the people of Agbudu Nando for trespass to 'Ofia Abube' land shown verged pink in plan Exhibit 'B' and for an injunction in respect thereof. The third Suit O/32/57 is brought on behalf of Umuawo people of Nando against the representatives of Abube people of Nando for a declaration of title to a piece of land called 'UDO UBIRI' (or Okpobiri) at Nando as delineated and verged purple in plan Exhibit 'A', for damages for destruction of boundary pillars and an injunction in respect of further acts of destruction. 20
- pp. 8 - 15
- pp. 17 - 23
4. At the trial it was agreed by counsel that the plaintiffs in O/19/57 should start and close their case then Plaintiffs in O/32/57 should start and close and finally plaintiffs in O/31/57 should start and close. 30
- p.27 l.10
5. Both in the Judgments of the High Court and of the Federal Supreme Court the parties were referred to as the people of Agbudu (Plaintiffs in O/19/57); the people of Umuawo (Plaintiffs in O/32/57) and the people of Abube (Plaintiffs in O/31/57).
- p.96 l.11
- p.114 l.35
6. In the Federal Supreme Court the judgment of the trial Judge in favour of the people of Umuawo against the present appellants was set aside and there was substituted therefor an order of dismissal of claim for 40
- p.123 l.10

trespass and injunction and an order of non-suit of the claim for a declaration of title. The people of Umuawo have not appealed and are not parties to the present appeal.

Record

7. The trial Judge found in favour of the present respondents (the people of Agbudu and plaintiffs in O/19/57), granted the declaration of title to the land claimed and verged pink in plan Exhibit 'A' with the exception of the portion shaded and shown in Exhibit 'D', awarded £50 damages and ordered that there should be an injunction. The cross action by the present appellants (the people of Abube and plaintiffs in O/31/57) for trespass and injunction was dismissed.

p.99 1.40

p.100 1.30

p.100 1.34

8. The people of Abube appealed to the Federal Supreme Court upon certain original and additional grounds of appeal. The appeal was dismissed on the 30th day of June, 1961.

pp.102 - 103
pp.104 - 105

9. On the 27th day of September, 1961 the appellants were given conditional leave to appeal. On the 22nd day of January, 1962 an Order was made granting final leave.

10. The present appeal is saved by sub section (3) of Section 158 of the Constitution of the Federal Republic of Nigeria.

No.20 of 1963
Laws of Nigeria

11. The following statement of facts is taken from the judgment of the trial Judge:-

"It is common-case that the parties are descendants of a common ancestor, one Ikenga of Nando who on his death left three sons, Agbudu the eldest, Umuawo and Abube the youngest among whom his lands were divided. The Agbudu case is that their share was the land claimed plus the area verged yellow in Exhibit 'A'. This latter area, they say, was given to Abube people as blood price and was confirmed as Abube land in 1917 by an Arbitration under Native Law and Custom in a dispute between Agbudu and Abube. The Agbudu people say that there were numerous disputes between the parties and various other neighbouring peoples and that a Mr. P.J.Gardiner then the District Officer Awka in order to bring peace to the area was asked by the villages concerned to settle these land disputes. That as a

pp. 96 - 97

Exhibit 'D'

Record Exhibits 'C' 'D' and 'J'

result of this request in 1917 he held a number of inquiries fixing boundaries of which some are relevant to these proceedings as being binding on the parties thereto, or by acquiescence in the awards or are admissible as being acts of possession; or as admissions contained in the record of evidence. On the land claimed by Agbudu there is a large settlement called Achalla Nteje which Agbudu claim to be occupied by their tenants who still pay annual tribute fixed by Mr. Gardiner in 1917 as £8 per annum The Abube case is that all the land delineated in their plan Exhibit 'B' and verged pink belongs to them. They say that Nteje people living South of Oyi Stream came to farm on their land (about 45 years ago) led by one Asonwu, whose mother was from Abube, came to live at the Achalla Nteje settlement after performing customary rites. That Nteje people still live there and pay Abube people annual tribute of 20 yams and 40 small ones. They denied that there had ever been a land dispute between Agbudu and Umuawo and that Abube people have given evidence for Umuawo therein or that in consequence of the dispute boundary pillars were put on the land; or that there had been at any time any boundary pillars on the land or had been removed by Abube people. Abube Anuiyi had always lived and farmed where they now live. It was untrue that they had recently (i.e. since 1917) migrated from Abube Amagu to live there. They had never paid rent for living or farming there to Agbudu, Umuawo or any one else. Ikenga land had never been divided between Agbudu, Umuawo and Abube".

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p.97 1.35

12. On the question whether the land of the common ancestor Ikenga was divided between the parties the trial Judge made the following findings of fact:-

"I am satisfied that the land of Ikenga was divided between Agbudu, Umuawo and Abube and that they took their land in that order".

13. The learned trial Judge then proceeded to determine the areas owned by the parties and dealt with the evidence before him as follows:-

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"The series of land inquiries held by the District Officers Gardiner and Lawton are in my opinion invaluable in establishing a number of facts which are in dispute in the present suits and from which areas

owned by Agbudu, Umuawo and Abube at that time are shown or can be deduced. Exhibit 'D' the record of the dispute between Agbudu and Enuiyi village of Abube shows conclusively that the area verged yellow in Agbudu's plan Exhibit 'A' was declared the land of Abube Enuiyi in May 1917 and that the areas north west of it and south of it were owned by Agbudu. It further shows that the southern boundary of this land was marked by 3 boundary beacons corresponding to 3 of those shown in plan Exhibit 'A'. It also shows to the south eastern portion of this line a small triangular shaded area which it grants to Enuiyi in lieu of land ceded as blood money for the murder of an Enuiyi man. Exhibit 'C' the record of dispute between Agbudu and Umuawo. It finds that Enuiyi and Abube have no claim on the land in dispute save a small portion in the north east corner awarded to them in lieu of a piece of land ceded to them by Agbudu as blood money for the murder of an Enuiyi man. This obviously refers to the shaded portion mentioned in Exhibit 'D'....."The record and plan of Exhibit 'J' is relevant as showing that Abube lies to the north and both Agbudu and Umuawo to the south of the Anyafuanam Stream as shown in Exhibit 'A'. This evidence is in accord with the evidence given on behalf of Agbudu and Umuawo and contradicts the evidence given on behalf of Abube".

p.98 1.20

p.98 1.35

14. The trial Judge then found as a fact that the plan Exhibit 'A' accurately represents the area owned by each of the three parties to the suits.

p.98 1.40

15. In the Federal Supreme Court of Nigeria, Federal Justice John Taylor delivered the leading Judgment dismissing the appeal. With this Judgment Sir Lionel Brett, the acting Chief Federal Justice, and Federal Justice Edgar Unsworth concurred. The acting Chief Federal Justice in addition pointed to the inconvenience of the Rule of Court which denies the Court of trial the power to order named defendants to defend an action in a representative capacity especially in the instant case where the very persons who plead that they sue in a representative capacity in Suit O/31/57 are able to say that they are not defending in a representative capacity in O/32/57 although the two suits are so closely related that the trial Judge thought it expedient to try them as consolidated suits.

p.121 1.20

16. Mr. Justice Taylor dealt first with the complaint which attacks the order for consolidation of the three suits. He pointed out that from the pleadings

p.115
p.116 1.42

- Record
p.117 1.20 the parties to the case whether as individuals or groups derive their interest from their common ancestor Ikenga. Continuing he said "these actions in my view were to decide the extent of the boundaries of each of the three branches of this family and in my view no grounds have been shown for saying that the trial Judge exercised his discretion wrongly".
- p.118 17. Mr. Justice Taylor then dealt with the complaint which attacks the admissibility of certain documents, to wit, Exhibits 'C', 'D' and 'E' on the grounds that the trial Judge misdirected himself by admitting these documents as agreements between the parties because:- 10
- p.39 (i) Such agreements did not comply with section 23 of the Survey Ordinance. This ground applies to Exhibits 'C', 'D' and 'E'.
(ii) The people of Abube were not parties to it. This ground applies to Exhibits 'C' and 'E'.
(iii) Such agreements did not comply with the Land Registration Ordinance. This ground applies to Exhibits 'C', 'D' and 'E'. 20
(iv) Reliance was placed on these agreements by the people of Agbudu in their Statement of Claim as arbitrations according to Native Law and Custom.
18. Section 23(1)(b) of the Survey Ordinance provides that:-
- "No map, plan or diagram of land if prepared, in the case of land in the eastern or the western regions, after the 20th day of October, 1897 or, in the case of land in the northern region after the 16th day of May 1918, shall save for good cause shown to the Court, be admitted in evidence in any Court unless the map, plan or diagram is prepared and signed by a surveyor and countersigned by the Director of Surveys". The learned Federal Justice dismissed the objection based on non-compliance with the Survey Ordinance in these words:- 30
- p.119 1.40 "I am not here expressing an opinion that these sketches do come within this section but that if they 40

do then the trial Judge has a discretion in the matter by the use of the words I have outlined above. I am of the view that if this objection had been taken in the lower Court the trial Judge could for good cause shown, admit the sketches on the documents. The good cause is the matters I have already dealt with when dealing with the admission of the documents themselves".

Record

10 19. The learned Federal Justice dismissed the objection based on the ground that the Abubes were not parties to Exhibit 'C' in these words:-

20 "But be that as it may, these documents (Exhibits 'C', 'D' and 'E') should be read together. They are all made on the 7th April, 1917 with the exception of the second folio to Exhibit 'D' which was made some fifteen months later by T.G. Lawton, another District Officer, confirming the boundary struck on the 7th April, 1917. These documents were also made by the same District Officer, Mr. Gardiner. These two District Officers, on the notes of the trial Judge as to admissions made by Counsel, are out of Nigeria and the parties to the documents, on the evidence of Ajana Enwelum in O/19/57 are all dead. The documents are evidence of transactions which, like most dealings in land under Native Law and Custom at the time of their making were made orally, are admissible as memoranda of the past acts and oral transactions between parties recorded by responsible officers relating to the ownership of Ikenga land dating back to 1914. Some of these documents bear references to Native Court cases and in one instance to admissions made by warrant Chief of Abube before the District Officer who prepared the documents. They were all made with a view to their user in the Native Courts and to shut them out when they have been acted upon for the past 40 years would in my view work more injustice than prevent injustice".

p.118 l.40

40 20. The learned Federal Justice also dismissed the objection which alleges, in effect, that the ground on which the trial Judge admitted these documents (as agreements or by acquiescence in awards or as acts of possession) was different from that relied on in the Statement of Claim (as arbitrations according to Native Law and Custom) for the reason that the documents were pleaded and the facts therein contained were also pleaded and for the reasons given by the learned Federal Justice as to their admissibility.

Record

21. The Federal Justice dismissed the objection based on non-compliance with Land Registration Ordinance for the same reasons and for the further reason that some of these documents were no more than written expressions of boundary demarcations made by the District Officer on the 7th April, 1917 and an agreement by the parties to be bound by such demarcation.

22. The learned Federal Justice dealt with the last objection urged in the appeal which was that the learned trial Judge erred in law to have granted the people of Agbudu declaration of title when from the judgment they were not entitled to the whole of the area verged pink in Exhibit 'A' and that furthermore there was no evidence as to the extent of the shaded area to be excluded. This ground of appeal refers to the following portion of the judgment of the trial Judge:-

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p.99 1.37

"With regard to the Agbudu claim (0/19/57) I find that they are owners of all land verged pink in Exhibit 'A' with the exception of the shaded area shown in the sketch attached to Exhibit 'D'. Mr.Araka submitted that as the boundary of this area was not shown on Exhibit 'A' the Court could not grant the declaration sought. A surveyor would in my opinion experience no difficulty in inserting that area in the plan Exhibit 'A' nor in actually marking it out on the land and I accordingly make a declaration of title in favour of Agbudu of the land delineated and verged pink in the plan Exhibit 'A' with the exception of this portion shaded and shown in Exhibit 'D'".

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Mr. Justice Taylor dismissed this ground of appeal for the reasons given by the trial Judge.

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23. The ground of appeal which alleges that the Judgment was against the weight of evidence was 'not given any separate treatment by Counsel' and would appear to have been abandoned.

24. The Respondents submit that this appeal should be dismissed with costs for the following reasons:-

R E A S O N S

(1) For the reasons given by the trial Judge.

(2) For the reasons given by Mr.Justice Taylor.

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GABRIEL C. M. ONYIUKE

FREDERICK O. ANAEGBUNAM

No.49 of 1962

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

B E T W E E N :

1. NNAEGBO EKWEZE & OTHERS
(for themselves and on behalf
of People of Abube Nando)
(Defendants) Appellants
- and -
AJANA ENWELUM & ANOTHER
(for themselves and on behalf
of People of Agbudu Nando)
(Plaintiffs) Respondents
- and between -
2. UZODIGWE MADIKA & OTHERS
(for themselves and on behalf
of Abube Nando)
(Plaintiffs) Appellants
- and -
NWANWUBA ASIEGBU & OTHERS
(Defendants) Respondents
- and between -
3. AJANA ADUAKA & OTHERS
(for themselves and on behalf
of the Abube Ibinagu family
of Nando)
(Plaintiff) Respondent

CASE FOR THE RESPONDENTS

T. L. WILSON & CO.,
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