Privy Council Appeal No. 30 *of* 1926.

Sunmonu - - - - - - - - - *Appellant*

v.

Disu Raphael, since deceased (now represented by Awanotu) - - *Respondent*

FROM

THE SUPREME COURT OF NIGERIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JUNE, 1927.

Present at the Hearing:

VISCOUNT HALDANE.
LORD ATKINSON.
LORD BLANESBURGH.
LORD WARRINGTON OF CLYFFE.

[*Deliverd by* VISCOUNT HALDANE.]

The appeal before their Lordships comes from the Supreme Court of Nigeria, and that Court affirmed a judgment of Mr. Justice Pennington, sitting as Judge of the Divisional Court. The appeal is that of the defendant, and the defendant appeals on the ground that he was entitled to enforce his right to the property in question. The original respondent is dead and he is represented by Awanotu, a daughter, but she has not appeared on this appeal, whether from want of money or otherwise is not important. Anyhow those were the parties.

The claim was to land in Victoria Road at Lagos, and the claim was that of the plaintiff, who is called Disu Raphael, now deceased. Disu Raphael said that this was property which belonged to the family, and he claimed a declaration that the property was the property of Sule Raphael, deceased, his father, and he claimed it for himself and for the rest of the family of Sule Raphael. The defendant, Sunmonu, was a half-brother of Disu Raphael. They were both sons of Sule Raphael but by different mothers. It was claimed at one time that Sule Raphael had made a Christian

marriage in Brazil with a Christian woman, and that consequently, according to the law of Nigeria, his property went according to English law, so that his eldest son, Disu Raphael, would have been exclusively entitled. This, however, was not urged at the Bar, and could not have been successfully urged because both Courts concurred in finding that the Christain marriage was not established. There was, therefore, a native marriage, and, according to the native law the property which descended, that is the estate, went for the benefit of the family.

It is very important to have clearly in mind what the native law relating to the land in Lagos really is. It is the more important because there have been various misconceptions of that law in decisions from time to time, some of which have been cited in this case, but they were finally laid to rest by the decision in *Amodu Tijani* v. *The Secretary of Southern Nigeria* (1921, 2, A.C. 399), a decision of this Board. At page 404 in the judgment of the Board the title to native lands is explained. It is stated that it is the characteristic of the native title that what has been called in native cases where similar questions arise, the radical title of the Crown applies, and the right of the native is a usufructuary right, and it is a usufructuary right which extends *prima facie* to the whole family. Their Lordships are aware that it is possible by special conveyancing to confer title on individuals in West Africa, but it is a practice which is not to be presumed to have been applied, and the presumption is strongly against it. *Prima facie* the title is the usufructuary title of the family, and whoever may be in possession of the legal title holds it with that qualification. The matter is very well stated in the report made by Chief Justice Rayner on Land Tenure in West Africa. It is a report made in 1898, and the passage to which reference is made is adopted by the Privy Council in the case of *Amodu Tijani* v. *Secretary of Southern Nigeria*, which is called the White Cap case. Chief Justice Rayner says :—

> "The next fact which it is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family."

Their Lordships are aware that that was said of the title of the White Cap Chiefs. Their title was the question in that case, but the principle applies generally.

Sunmonu was sued in the way stated by Disu Raphael, and he pleaded possession, the Statute of Limitations, and also a purchase and the grant of the primary title to it. The history

of the primary title is this: Before 1895, when Sule Raphael died, he had bought the land from Agebodeh, who had a Crown grant of it dated 1866, that is, he had a Crown certificate; he had no conveyance. It does not appear to have been usual in those days for the Crown to make grants; they granted a certificate of title. That was acquired by Sule Raphael from Agebodeh, and he took over the Crown document at the death of Sule Raphael Sunmonu and other members of the family were in possession. Shortly afterwards the others departed, leaving Sunmonu in sole possession. In 1905 Sunmonu went and got a fresh primary title for himself. He surrendered the old one and got a new document comprising the land in question and additional land.

Now various things were set up. Sunmonu said he had purchased from his mother, the widow of Sule Raphael; but the Courts below agreed in pointing out that the lady could have no right to sell, and that, more than that, the land officer of the Crown, the Commissioner, would have had no power to grant a new title which varied or superseded the old one, and the new grant must therefore be regarded as made to Sunmonu on behalf of the family, and they also said that there was no evidence of acquiescence in exclusive occupation by Sunmonu to the exclusion of the other members of the family. The usufruct remained right through, whether they exercised it or whether they did not, and it was quite usual for somebody to be in possession as trustee for his family, and, therefore, his occupation was in contemplation of their right.

The Courts agreed in finding the facts as stated, and what they say is well expressed in the concluding paragraph of the judgment of Chief Justice Van der Meulen. The result is that Sunmonu must be taken to have got in consistently with a native title and to have got in on behalf of his brother and sisters and the family generally.

In that state of things no Statute of Limitations could render any assistance to the appellant; there is no evidence about acquiescence, and the result is that their Lordships do not feel themselves able to disturb the judgments of the Court below, which are unanimous.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed. As the respondent has not appeared there will be no order as to costs.

In the Privy Council.

SUNMONU

v.

DISU RAPHAEL, SINCE DECEASED (NOW REPRESENTED BY AWANOTU).

DELIVERED BY VISCOUNT HALDANE.

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