

Adeyinka Oyekan and others - - - - - Appellants

v.

Musendiku Adele - - - - - Respondent

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 26TH JUNE, 1957

Present at the Hearing:

EARL JOWITT

LORD COHEN

LORD DENNING

[*Delivered by* LORD DENNING]

The principal question on this appeal is to whom does the royal palace at Lagos belong? Its modern description is No. 26, Upper King Street, Lagos, but it has been known for over 200 years as the Iga Idunganran. It is claimed by the present Oba of Lagos as his official residence but it is claimed by the descendants of a previous Oba as their own property. The Oba has sometimes been described as the King of Lagos, but this is hardly a correct rendering. His position has no exact parallel in English institutions. He is a very influential person whose standing is shown by the fact that he is *ex officio* President of the Lagos Town Council.

The dispute is a family one. The first Oba or King from whom all others have descended was named Ado. He ruled from 1630 to 1689 A.D. One important branch of his descendants is the family of Docemo who was Oba or King from 1853 to 1885: From Docemo's accession in 1853 down to 1949 every Oba (save one for 3 years) was a member of Docemo's family. The last of Docemo's line to be Oba was Falolu who was Oba from 1932 to 1949 and died on 2nd September, 1949.

On the death of Falolu the Chiefs met together to select his successor. Various names were submitted to them. The family of Docemo presented one of their men as a worthy successor but the chiefs did not select him. They selected Adeniji Adele who was not a member of the family of Docemo. He was descended from the first Oba Ado but by a different line from that of Docemo. The announcement of his succession was made public in these words:—

“It is officially announced that Adeniji Adele, having been properly selected in accordance with customary law and tradition, is recognised by the Government as Head of the House of Ado.”

The new Oba Adele claimed to occupy the Iga Idunganran: but the members of the family of Docemo resisted the claim. The supporters of Adele put up notices on the verandah of the Iga saying that he was

coming. They also put them outside on the walls. At about 6 o'clock in the afternoon of 1st October, 1949, Adele came in a car followed by the chiefs and many others and sought to enter the Iga. The family of Docemo opposed them. They pushed them back and locked the gates. Adele's brothers got a crowbar and a hammer and forced a way in. Adele's car was then driven into the compound followed by the chiefs and many people. They went to the shrine in the Iga. The family of Docemo slipped out and got away in cars.

Twelve days later, on 13th October, 1949, the family of Docemo brought this action against Adele in the Supreme Court of Nigeria in which they claimed a declaration of title to the Iga, £2,000 damages for trespass, and recovery of possession. The defence was that Adele was duly "capped" on 1st October, 1949, as the Oba of Lagos by the chiefs entitled to do so and occupied the Iga in accordance with ancient custom. The action was tried by Reece, J., who dismissed the claim. The family of Docemo appealed to the West African Court of Appeal (Foster Sutton, P., Verity, C.J., and Coussey, J.A.), who dismissed the appeal. The family of Docemo now appeal to Her Majesty in Council. The family of Docemo rest their claim on a Crown grant. They say that in 1861 Docemo made a Treaty of Cession with Britain whereby the territory of Lagos, including the Iga, passed to the British Crown and that in 1870 the Crown granted the Iga to the Docemo and his family for ever. They say that since the Treaty of Cession, 1861, there has been no Oba of Lagos except as a courtesy title, and that no rights have attached to it.

The contest is therefore between the family of Docemo who claim by grant from the Crown of England, and the defendant Adele who claims by native custom as Oba of Lagos.

Their Lordships find it fully established by the evidence and by the concurrent findings of the Courts below that, before the Treaty of Cession, the Oba of Lagos by native custom had a right to live in the Iga. He had this right by virtue of his office. On his death the Iga did not pass to his heirs or to his family but to his successor in office. It was the traditional home of the Obas where each one of them lived. But the chiefs were also entitled to make proper use of it. For instance the weekly meeting of chiefs was held there and other ceremonies.

What then was the effect of the Treaty of Cession in 1861? Did it pass the property in the Iga to the British Crown? The Treaty was made "in order that the Queen of England may be the better enabled to assist defend and protect the inhabitants of Lagos and to put an end to the slave trade": by Article I Docemo King of Lagos on the part of himself and chiefs made this cession: "I do with the consent and advice of my Council give, transfer and by these presents grant and confirm unto the Queen of Great Britain her heirs and successors for ever the port and Island of Lagos with all the rights profits territories and appurtenances whatsoever thereunto belonging and as well the profits and revenue as the direct full and absolute dominion and sovereignty of the said port island and premises with all the royalties thereof freely fully entirely and absolutely." By Article 2 Docemo was allowed the use of the title of King in its usual African signification. By Article 3 Docemo was during his lifetime to receive a pension of 1,200 bags of cowries a year.

Their Lordships desire to point out that the Treaty of Cession was an Act of State by which the British Crown acquired full rights of sovereignty over Lagos. In these circumstances the Courts of Law will not take it upon themselves to construe the Treaty. The effect of the Act of State is to give to the British Crown sovereign power to make laws and to

enforce them, and therefore the power to recognise existing rights or extinguish them or to create new ones. In order to ascertain what rights pass to the Crown or are retained by the inhabitants, the Courts of Law look, not to the Treaty, but to the conduct of the British Crown. It has been laid down by their Lordships' Board that "Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of his predecessors avail him nothing." See *Vajesingji Joravarsingi v. Secretary of State for India* (1924) L.R. 51.I.A. at p. 360 by Lord Dunedin, *Hoani Te Heuheu Tukino v. Aotea District Moari Land Board* [1941] A.C. 308 at pp. 324-5. In inquiring, however, what rights are recognised, there is one guiding principle. It is this: The Courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected. Whilst therefore the British Crown, as Sovereign, can make laws enabling it compulsorily to acquire land for public purposes, it will see that proper compensation is awarded to every one of the inhabitants who has by native law an interest in it: and the Courts will declare the inhabitants entitled to compensation according to their interests, even though those interests are of a kind unknown to English law, see *Amodu Tijani v. The Secretary, Southern Nigeria* [1921] 2 A.C. 399, *Sakariyawo Oshodi v. Moriamo Dakolo & Ors.* [1930] A.C. 667. Furthermore if a dispute arises between the inhabitants as to the right to occupy a piece of land, it will be determined according to native law and custom, without importing English conceptions of property law, see *Sunmonu v. Disu Raphael* [1927] A.C. 881, *Idewu Inasa & Ors. v. Sakariyawo Oshodi* [1934] A.C. 99: except, of course, in those cases, now growing in number, where English conceptions of individual ownership have superseded previous conceptions.

The present case sets their Lordships a new problem. It concerns, not the rights of the inhabitants, but the rights of the previous ruler himself. It concerns his official residence. Did this pass to the British Crown or not? Mr. Dingle Foot says that it did. This is an essential preliminary to his contention that the British Crown afterwards granted it to the family of Docemo. In order to get the title in the British Crown, he relies particularly on a recital in the Crown Grant (Township of Lagos) Ordinance No. 18 of 1947 which says "the effect of the Treaty was that, while the private rights of property of the inhabitants were to be fully respected, there passed to the Crown *whatever rights the Oba possessed* including whatever proprietary rights the Oba possessed beneficially and free from the usufructuary qualification of his title in favour of his subjects."

Their Lordships regard that recital as an authoritative statement by the British Crown of the effect of the Treaty. It is, however, not easy to interpret. Their Lordships are inclined to think that the only rights of the Oba which passed to the Crown were the rights which he possessed in his official capacity as Oba, and not those which he possessed in his private capacity. Suppose for instance he had personal property of his own, such as silks, or bags of cowries which are used as money. Their Lordships do not think that these would pass to the Crown, and this view is supported by the fact that the British Consul on the 11th February, 1862, received King Docemo and his chiefs and explained to them that far from depriving them of their private property, the "Cession will render it more valuable" to them.

Accepting, however, that the only rights which passed to the Crown were the rights which the Oba possessed as Oba, the question is what were those rights? They would clearly comprehend any right which he had to exact tribute and revenue, to issue land certificates, and so forth. But was the right to occupy the Iga a right which he possessed as Oba? Their Lordships are inclined to think that it was. It was his official residence. It was, so to speak, public property occupied by him by

virtue of his office. Their Lordships see no valid distinction in law between the official residence of the Oba and any other public property which he possessed in his capacity of Oba. It all passed to the British Crown. It is true that he did not possess the Iga "beneficially and free" from the rights of others. The Chiefs had the right to use it for meetings and ceremonies. But that does not mean it did not pass to the Crown. The words "beneficially etc." in the Ordinance are taken from the judgment of Viscount Haldane in *Amodu Tijani, supra*, at p. 407, and appear to be inserted so as to protect the rights of the subjects, not to limit the nature of the property which passed to the Crown. Their Lordships are therefore disposed to approach the case on the basis that the Iga passed to the British Crown under the Treaty of Cession.

Even so, it is quite plain that the British authorities did not take possession of the Iga. They allowed the Oba Docemo to occupy it after the Cession just as he did before. And in due course in 1870 they made a Crown grant of it to him. This brings their Lordships to the root question in the case. What was the effect of this Crown grant? Did the British Crown transfer the property to the family of Docemo absolutely? Their Lordships draw attention to the very English form of the Crown Grant. The administrator grants or assigns "to the said King Docemo, His heirs, executors, administrators and assigns for ever the above specified piece of land". Those words are familiar in English law. They would fit well into a society which had the same legal structure as England: but they do not fit at all well into the structure of Lagos. The Grant is drawn up according to the English conception whereby one man is able to have the entire ownership of land himself, with power to sell it to another absolutely, power to transfer it by his will to anyone he likes on his death, or, if he leaves it undisposed of on his death, it passed by law to his heir and now to his personal representatives. The inhabitants of Lagos in 1870 approached land in a very different fashion. No one man was entitled to own a piece of land absolutely. It belonged to the family for their use. The Chief had charge of it on behalf of the family but he could not sell it. The idea of sale did not come into the scheme of things at all. The Chief had control of the land, and any member of the family who wanted to make use of it had to go to him for it, but even the Chief could not make any important disposition of it without consulting the elders of the family. On his death the new Chief took over the rights and duties of control on behalf of the family. It was family land and always recognised as such. This all appears from the Report on Land Tenure in West Africa made in 1898 by Rayner, C.J., and on Land Tenure in Lagos by Mr. Healy, the Land Commissioner.

Many of those Crown grants were made in the English form: and much misunderstanding has arisen on that account. People have claimed rights under the Grants in English fashion as though thereby they gained a title superior to the rights of the rest of the family under the local law. Several of these cases have reached their Lordships and it has been uniformly held that these Government grants do not convey English titles or English rights of ownership. The words "his heirs, executors, administrators and assigns forever" are to be rejected as meaningless and inapplicable in their African setting. The effect of a Government grant is only to ascertain and denote the chief or headman who has charge of the land for the time being. It leaves the interests of the family or occupiers intact, to be determined, as theretofore, by the local law. The cases already cited make this quite clear, for in all of them Crown grants had been issued. Their Lordships realise that those cases were concerned only with the rights of the family or occupiers: whereas the present case concerns the rights of the Oba. But there is an Ordinance which confirms those decisions and makes them of general application. It is section 3 of the Crown Grants (Township of Lagos) Ordinance, which says that "all grants of land situate within the township of Lagos . . . shall be deemed to have been validly made: and each of such grants shall be deemed to have vested in the grantee an estate free from

competing interests and restrictions, save only such interests and restriction, recognised by native law and custom, as at the date of the grant affected such estate”.

Applying the Ordinance it appears to their Lordships that the Crown Grant to King Docemo in 1870 of 26, Upper King Street (on which the Iga stands) vested in him an estate which was subject to “such interests and restrictions, recognised by native law and custom” as affected it at that date. Their Lordships are clearly of opinion that, whatsoever estate passed to King Docemo, it was subject to the right of his successor to occupy the Iga. This right was an interest and restriction recognised by native law and custom. It was recognised at that time and has been recognised ever since. The grant to King Docemo took effect only subject to that right. Neither he nor his successors took a title to the fee simple or to the freehold (to use English conceptions). He took an estate which was more like the estate of a corporation sole than anything else. It vested in the holder of the office for the time being. It was not an estate like that of a trustee in trust for the holder of an office.

This means that the present Oba is entitled to occupy the Iga; that he was entitled to enter it as he did on the 1st October, 1949; and that the family of Docemo were wrong to resist him.

It was argued, however, that even if the Oba was entitled to occupy the Iga, nevertheless the legal title was still in the family of Docemo and they were entitled to a declaration to that effect: that the Oba was not entitled to take possession by force; that he had only an equitable interest and ought to have sought his remedy in the Courts; and that his action in turning out the legal owner was a trespass. The fallacy in this argument is that it seeks to apply the English concepts of legal owner and equitable beneficiary to cases where they are quite inapplicable. The simple fact is that by native law and custom the duly appointed Oba was entitled to occupy the Iga and did so. It is clear that no cause for action in damages lies on that account, see S. 292 of the Criminal Code and *Hemmings and wife v. Stoke Poges Golf Club*, [1920], 1 K.B. 720.

Their Lordships are aware that in several parts of Lagos the native law has been superseded by English conceptions of individual ownership. Nothing their Lordships have said here affects those parts. Suffice it to say that the Iga Idunganran is still subject to the native law and custom which gives the Oba of Lagos the right to occupy it during his life.

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

In the Privy Council

ADEYINKA OYEKAN AND OTHERS

v.

MUSENDIKU ADELE

DELIVERED BY LORD DENNING