

28/1964

IN THE PRIVY COUNCIL

No. 3 of 1964

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

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

B E T W E E N :

S.M. OGUNDIPE--ALATISHE
(Trading under the name
and style of French
Medicine Stores)
(Plaintiff) Appellant

78612

10

- and -

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A. FRANKLIN
(Defendants) Respondents

CASE ON BEHALF OF THE APPELLANT

Record

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, dated the 17th April, 1963, affirming the Judgment of the High Court of Lagos (Onyeama J.) dismissing the action brought by the Appellant against the Respondents. p. 31.
p. 32.
p. 33.

2. The suit giving rise to this appeal was brought by the Appellant claiming a declaration that as between himself and the Second Respondent he is better entitled to the re-allocation and conveyance of Plot No. 1 in Sub-area 5 of the Lagos Central Planning Scheme, 1951, and consequential reliefs.

Both Courts affirmed the decision of the First Respondent in the allocation made by it to the Second Respondent.

3. The Appellant gave proof of title to No. 18 Breadfruit Street, Lagos, and to No. 8 Bucknor Street, Lagos, by three registered titles kept in the Register of Deeds at the Lagos Land Registry, and Exhibited in the suit as Exhibits "2", "8" and p.40.

Record
p.34.
p.35.

"1" dated respectively the 15th April, 1886, the 20th March, 1948, and the 16th February, 1954.

p.25, 1.18.

4. The Second Respondent laid claim to No. 20 Breadfruit Street, Lagos. The Trial Court recorded in its Judgment "the 2nd Defendant (i.e. the Second Respondent) has not produced to this Court any documents or deed of title to 20 Breadfruit Street".

5. The Trial Court nevertheless held that the Second Respondent was the owner of 20 Breadfruit Street at the time of the compulsory acquisition. 10

It is respectfully submitted that the Trial Court's decision is a travesty of justice.

Ex."3", p.37.
Ex."4", p.38.

6. The First Respondent, by letters dated 21st May, 1957, and 22nd July, 1957, assured the Appellant an allocation of a plot in respect of 8 Bucknor Street.

7. The Appellant instituted the present suit on the 7th June 1961 in the High Court of Lagos against the Respondents claiming, inter alia, a declaration that as between himself and the Second Respondent he is better entitled to the re-allocation and conveyance of Plot No. 1 in Sub-area 5 of the Lagos Central Planning Scheme, 1951, and consequential reliefs. 20

p. 4.

8. The Appellant filed his Statement of Claim on the 29th July, 1961, setting out his title to No. 18 Breadfruit Street, Lagos, and No. 8 Bucknor Street, Lagos.

9. Paragraph 19 thereof, relating to the claim to No. 20, Breadfruit Street, Lagos, put forward by the Second Respondent, is as follows:- 30

p.6, 11.36-38.

"19. No.20 Breadfruit Street, Lagos, to which the 2nd Defendant lays claim, measured about 90.00 Sq.yards."

10. The Appellant's contention was pleaded fully as follows:-

p.7, 1.36 to
p.8, 1.26.

"The Plaintiff will contend at the trial:-

(i) That as he was the original owner of the plot or a substantial portion

thereof it should have been re-allocated to him.

Record

(ii) That No.18 Breadfruit was a bigger property than No.20, and the building on it was also larger than at No.20.

(iii) That both properties opened out to Breadfruit Street, and were each at the corner of Breadfruit Street and Daddy Oboso Lane.

10 (iv) That the Plaintiff's root of title to No.18 is longer than the Defendant's (i.e. the 2nd Defendant's) title to No.20 Breadfruit Street.

(v) That the 1st Defendants failed to consider Plaintiff's beneficial interest in 8 Bucknor Street, when re-allocating plots in Sub-Area 5 as they had undertaken to do.

20 (vi) That the 2nd Defendant is entitled only to compensation for his land which has become part of the highway.

(vii) That as the 2nd Defendant had already got a plot at Balogun Street allotted to him in consideration of 12/14 Murray Street that had been acquired by the 1st Defendants, it was inequitable to deprive the Plaintiff of the Plot in Sub-Area 5 to which he is obviously entitled."

30 11. The Second Respondent filed his Defence on the 1st September, 1961. p. 9.

Paragraph 10 is as follows:-

"10. The 2nd Defendant admits being the owner of property No.20, Breadfruit Street as contained in paragraph 19 of the Statement of Claim." p.11, 11.4-7.

40 12. It is respectfully submitted that the Appellant by paragraph 19 of his Statement of Claim did not admit the title of the Second Respondent to 20 Breadfruit Street, Lagos, but simply pleaded the allegation of ownership put forward by the Second Respondent.

- Record
- p.11, 11.8-15. 13. Paragraph 11 is as follows:-
- "11. Further to paragraph 10 above and with further reference to paragraph 20 of the Statement of Claim the 2nd Defendant says that although he acquired 20 Breadfruit Street in 1938 it has a root title dating back to 1866 as against the title of the Plaintiff to 18, Breadfruit Street which he acquired only in 1953 with a root of title commencing as from 1886." 10
14. The Second Respondent's contention was pleaded in paragraph 15 as follows:-
- p.11, 11.28-38. "15. The 2nd Defendant admits ownership of 12/14 Murray Street as alleged in paragraph 25 of the Statement of Claim but denies that the property was wholly or substantially re-allocated to him by the first defendant and will contend at the trial that reference to 12/14 Murray Street is irrelevant to the issue between the parties to this action and should be struck out. 20
The Plaintiff's claim is frivolous misconceived, not brought in good faith and should be dismissed."
- p.12. 15. The First Respondent filed its Defence on the 18th October, 1961.
- The principal contention was pleaded in paragraph 12 as follows:-
- p.15, 1.32 to p.16, 1.18 "12. The Board will contend: 30
- (i) That the case of each original owner has to be considered on its own merits within his own area of the Scheme.
- (ii) That allocation of a plot in one Sub-Area has no bearing whatever upon the allocating to the same person of any other plot or plots in other Sub-Area or Areas of the Scheme.
- (iii) That the 2nd Defendant is better entitled to be considered for Allocation of Plot 1 Sub-Area 5. 40

(iv) That the allocation of plot 1 Sub-Area 5 to the 2nd Defendant has been properly and validly made having regard to the provisions of Section 38 of the Lagos Town Planning Ordinance, Cap.95 Laws of Nigeria.

10 (v) That the Board has been very fair to the Plaintiff in offering him Plot 3 Sub-Area 5 in view of the fact that either 8 Bucknor Street or 18 Breadfruit Street if considered alone (as they should) had no sufficient number of points on the Priority List relative to their respective areas to warrant allocation of a plot to the Plaintiff."

16. The hearing commenced on the 10th January 1962 before Onyeama J. Evidence was adduced by all the parties.

20 For the First Respondent, Mr. James Offen, the Estate Officer of the First Respondent, said in cross-examination:-

30 "CROSS-EXAMINED BY DAVIS:- I cannot lay my hands on the very paper from which I took the second defendant's interest as dated from 1938; it may be seen from Bellamy's judgment or from the second defendant's affidavit; I awarded 10 points to second defendant for degree of interest because he had a freehold estate subject to short term tenancies under three years; if a freehold interest was subject to a lease no points would be awarded; I took up appointment with the L.E.D.B. on the 3rd of August, 1960; I am not aware of any decisions of the Board to the effect that plot 1 in Sub-area 5 was to be re-allocated to the plaintiff; the policy of the L.E.D.B. was as far as possible to offer back to original dis-possest owners of land plots corresponding to their original holding;"

p.21, 11.17-33.

40 The Second Respondent stated in evidence that he was a retired Magistrate and became the owner of No. 20 Breadfruit Street, Lagos, in March, 1938. In cross-examination he admitted that he could produce no document before the Court to prove his acquisition of the property in March, 1938.

p.22, 1.24.

Record
p. 23.

17. The learned Trial Judge (Onyeama J.) delivered Judgment on the 22nd January, 1962.

He held that the Second Respondent was the owner of No. 20 Breadfruit Street, Lagos, at the time it came under the compulsory acquisition scheme, and that this decision was "for the purposes of this case only". The learned Judge expressly recorded "that the 2nd Defendant has not produced to this Court any documents or deeds of title to 20 Breadfruit Street".

10

He upheld the decision of the First Respondent as having been made in good faith.

He accordingly dismissed the Appellant's claim.

18. The Appellant appealed to the Federal Supreme Court by Notice of Appeal, dated the 24th February 1962, on the grounds of appeal following:-

p.29, 1.24 to
p.30, 1.23.

"Grounds of Appeal:

(i) In coming to the conclusion that the L.E.D.B. (the 1st Defendants) had acted in good faith in this matter and that it was after a fair and honest appraisal of the rights and interests of the several owners whose former holdings had made up the said plot (i.e. No.1 in sub-area 5), the Learned Trial Judge misdirected himself in Law and on the facts by omitting to consider the effects of the breach of the undertaking given by the 1st Defendants to the Plaintiff in their letters marked Exhibits 3 and 4 in these proceedings.

20

30

(ii) The Learned Trial Judge erred in Law and on the facts when he held that the 2nd Defendants had judiciously exercised their discretion in re-allocating or in deciding to re-allocate the said plot (No.1 in Sub-area 5), --- a plot comprising of various holdings, --- to the 2nd Defendant.

40

(iii) The Learned Trial Judge erred in Law in holding that the only inference that

could be properly drawn from the Plaintiff's Statement of Claim, relevant to portions of which were quoted in the Judgment of the Court was that the Plaintiff was not denying the 2nd Defendant's title to No.20 BREADFRUIT STREET.

Record

10 (iv) The 2nd Defendant failed to prove his title to No.20 Breadfruit Street, Lagos, portion of which is comprised in the said Plot No.1 in sub-area 5 of the Lagos Central Planning Scheme, and neither he nor the 1st Defendants adduced sufficient evidence to justify the re-allocation of the said plot to him.

(v) The decision is against the weight of evidence."

19. Counsel's argument before the Federal Court is summarised in the Record of Proceedings as follows:-

20 "Davis argues

p.31, 11.22-33.

ARGUING GROUNDS 1 AND 2

Alleging 1st Respondent acted "mala fide"

Nothing was allotted to the Appellant or his mother in respect of Bucknor Street although promises were made to him in Exhibits 3 and 4.

Not keeping promises made in Exhibits 3 and 4 is said of mala fide.

30 Not before the Court that ownership of the 2nd Defendant of 20 Breadfruit Street dates back to 1938 as stated by him; no proof."

20. The Judgment of the Federal Supreme Court was delivered on the 17th April, 1963, in the single sentence "We see no substance in this appeal; it is dismissed with 25 guineas costs to each Respondent."

p.32.

21. An Order in accordance with the Judgment was

p.32.

8.

made on the 17th April, 1963.

22. The Appellant obtained final leave to appeal to Her Majesty in Council on the 7th August, 1963.

23. The Appellant humbly submits this appeal should be allowed with costs throughout for the following among other

R E A S O N S

1. BECAUSE the Second Respondent failed to prove his title to No. 20 Breadfruit Street, Lagos.
2. BECAUSE therefore the First Respondent was not justified in allocating Plot No. 1 in Sub-area 5 to the Second Respondent. 10
3. BECAUSE the First Respondent failed to prove the basis on which they exercised their discretion in favour of the Second Respondent as having been made in good faith.
4. BECAUSE the exercise of discretion by the First Respondent was not judicious and failed to consider the undertaking given by them in Exhibits "3" and "4". 20

S.P. KHAMBATTA.

HARRY LESTER.

No. 3 of 1964

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

B E T W E E N :

S.M. OGUNDIPE ALATISHE
(Trading under the name
and style of French
Medicine Stores)
(Plaintiff) Appellant

- and -

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
 2. E.A. FRANKLIN
(Defendants) Respondents
-

CASE ON BEHALF OF THE APPELLANT

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant.