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Judgment  
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.

S. M. OGUNDIPE-ALATISHE

- and -

78613

1. THE LAGOS EXECUTIVE DEVELOPMENT BOARD
2. E. A. FRANKLIN

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CASE FOR THE FIRST RESPONDENTS

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HATCHETT JONES & CO.,  
90, Fenchurch Street,  
LONDON, E.C.3.

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :-

S. M. OGUNDIPE-ALATISHE

(Plaintiff)  
Appellant

- and -

1. THE LAGOS EXECUTIVE DEVELOPMENT  
BOARD

2. E. A. FRANKLIN

(Defendants)  
Respondents

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CASE FOR THE FIRST RESPONDENT

Record

1. This is an Appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (Ademola C.J., Brett and Taylor J.J.) dated the 17th day of April 1963 dismissing the Appeal of the Appellant from a Judgment of the High Court of Lagos (Onyeama J.) dated the 22nd day of January 1962 whereby the said High Court dismissed the action brought by the Appellant against both Respondents. Final leave to appeal to the Privy Council was granted to the Appellant by the said Federal Supreme Court by Order dated the 7th day of August 1963.

p.32

pp.23-38

p.33

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2. The principal question raised in this Appeal is whether an allocation of land by the first Respondent to the second Respondent can be impugned by the Appellant and if so, whether the Appellant should be substituted by Order of the Court for the second Respondent.

3. On the 7th day of June 1961 the Appellant issued a civil summons against both Respondents in which he asked for the following relief : -

pp.1-2

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1. For a declaration that as between himself and the 2nd Defendant and/or any other person or persons claiming jointly with him (the 2nd Defendant), under and by virtue of the same title, the Plaintiff is better entitled to the re-allocation and conveyance of ALL THAT PIECE OR PARCEL OF

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LAND situate, lying, and being at the junction of Breadfruit and Martin Streets, Lagos, and known as Plot No. 1 in Sub-area 5 of the Lagos Central Planning Scheme, 1951.

2. For an Order setting aside any purported re-allocation of the said PIECE or PARCEL OF LAND to any person or persons other than the Plaintiff.
3. For an Order directing the 1st Defendants to re-allocate the said PIECE or PARCEL of LAND, known as Plot 1 in the Sub-area 5 of the Lagos Central Planning Scheme, 1951 to the Plaintiff. 10
4. For an Injunction restraining the 1st Defendants from re-allocating and/or conveying the said land to the 2nd Defendant or to the 2nd Defendant jointly with any other person or persons claiming under and by virtue of the same title.

p.3 4. By an Order dated the 3rd day of July 1961 the High Court ordered pleadings to be delivered and 20  
pp.4-8 29 accordingly upon the 29th day of July 1961 the Appellant delivered a Statement of Claim. This consisted of some twenty-five paragraphs in which the history of the titles to two properties in Lagos were set out, namely, number 18, Breadfruit Street and number 8, Bucknor Street. The Appellant alleged that the former was conveyed to him upon the 31st day of December 1953 while the latter was bought by him in 1947 but put in the name of his mother. The Appellant further alleged that 8, Bucknor Street had 30  
been acquired by the first Respondents by virtue of their powers under the Lagos Central Planning Scheme of 1951. Neither the Appellant nor his Mother was allocated any plot of land in return but the Appellant alleged that the first Respondents had promised that his beneficial interest in 8, Bucknor Street would be taken into consideration when plots of land in sub-area 5 which included 18, Breadfruit Street were re-allocated. 8, Bucknor Street came within sub-area 1. (later in the pleading it seems 40  
to be alleged that it came within sub-area 2)

5. In his Statement of Claim the Appellant also referred to the claim to title by the second Respondent in number 20, Breadfruit Street which as a result of the Planning Scheme had become part of the highway while number 18 had become a corner piece. When the first Respondents re-allocated the plots in sub-area 5 the second Respondent obtained Plot 1 which was alleged to be substantially the same as 18,

Breadfruit Street while the Appellant was allocated land known as Plot 3. The Appellant protested to the first Respondents about these allocations but obtained no redress. His contentions were summarized at the end of the Statement of Claim of which the first six appear to be relevant to this Appeal and were in the following terms : -

pp.7-8

- 10 (i) That as he was the original owner of the plot or a substantial portion thereof it should have been re-allocated to him.
- (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.
- 20 (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.
- 30 (vi) That the 2nd Defendant is entitled only to compensation for his land which has become part of the highway.

6. Upon the 1st day of September, 1961 the second Respondent delivered his Defence and raised a preliminary objection that the action was improper in law and he referred to the relevant Town Planning Legislation. He also disputed the locus in quo and the effect of the Planning Scheme thereon as set out in the Statement of Claim. He admitted that he was the owner of 20, Breadfruit Street which he stated he acquired in 1938 and also admitted the re-allocations of land as in the Statement of Claim.

pp.9-12

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7. The first Respondents delivered their Defence upon the 10th day of October 1961 and (inter alia) admitted that they had acquired 18,

pp.12-16

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Breadfruit Street where the Appellant had been carrying on business since 1957 and that no re-allocation of land had been made to him in sub-area 5. According to the first Respondents, 8, Bucknor Street came within sub-area 1 and not sub-area 2 as stated by the Appellant. The registered owner was Mrs. Christiana Oladunjoye Alatishe (the Appellant's Mother). In guiding them in re-allocation the first Respondents operated a points system and Mrs. Alatishe did not possess sufficient points to warrant a re-allocation of a residential plot in sub-area 1. The first Respondents expressly denied making any promise to the Appellant that the position with regard to 8, Bucknor Street would be taken into account when re-allocations in respect of sub-area 5 were considered. The points system had been operated for the Appellant and the second Respondent for sub-area 5 as both 18 and 20, Breadfruit Street had been acquired by the first Respondents and demolished.

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pp.15-16 8. The first Respondents summarized their Defence by setting out the following contentions : -

- (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.
- (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.
- (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.

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9. The hearing of the action commenced upon the 10th day of January 1962. The Appellant gave evidence and produced the land certificate and title deeds relating to 18, Breadfruit Street. In respect of 8, Bucknor Street which was in his Mother's name he stated that this had been acquired by the first Respondents in about 1956 and which time he took her to see the Chief Executive Officer of the First Respondents, Mr. Henderson, who explained that there would be no re-allocation of land as the Appellant had only scored 20 points but these would be taken into account when sub-area 5 was re-allocated. The Appellant produced certain letters he has received from the first Respondents of which the following extracts appear to be the most material to this Appeal : -

May 21 1957.

20 "..... Provisional allocation of plots in Sub-Area 1 has already been completed and the Committee have found that your interest in 8, Bucknor Street, did not give you sufficient points to be eligible for a plot. However, you will be considered for a plot in Sub-Area 3 when your previous holding in sub-Area 1 will also be taken into consideration.

30 2. I am sorry that I cannot help you further at the time being but I assure you that your case will be most carefully considered at the time of re-allocation of plots in Sub-Area 3. As you are aware, No. 18, Breadfruit Street, is in Sub-Area 5 of the Scheme and is not vested in the Board until 1st of June, 1957."

22 July 1957.

40 ".....  
2. With regard to your premises at 17 and 19 Martins Street, as you are already aware, only freeholders are considered for re-allocation of plots but I assure you that your original holding in Sub-Area 1 will be taken into consideration when re-allocation of Sub-Area 5 is carried out."

10. The Appellant further stated in evidence that when 18, Breadfruit Street was acquired he

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- pp.19-20 again saw Mr. Henderson who said that he had scored 30 points but that the second Respondent had scored 40. Mr. Henderson explained how the calculations were made but when the Appellant asked about the 20 points in respect of 8, Bucknor Street he made a further explanation which the Appellant did not understand. Subsequently the Appellant received an offer for plot 3 in the sub-area which he refused. The Appellant's mother also gave evidence and produced the Certificate of Title to 8, Bucknor Street which was in her name. She explained that the purchase price was paid by the Appellant and that she had informed the first Respondents that they should consult the Appellant in all matters relating to this property. 10
- pp.20-21 11. Mr. J.F. Offen, an Estate Officer, gave evidence on behalf of the first Respondents. He was familiar with the points system which he said was "used by the Estates Department to advise the Board about re-allocation". He produced the Records relating to 18 and 20, Breadfruit Street and in cross-examination explained that "the policy of the L.E.D.B. was as far as possible to offer back to original dispossessed owners of land, plots corresponding to their original holding". The second Respondent gave evidence of ownership of 20, Breadfruit Street since 1938 which does not appear to have been challenged. 20
- pp.21-22
- pp.22-23 12. In their addresses to the learned trial judge counsel for the Respondents referred to and sought to rely upon Section 38 of Chp. 95 Vol. iv of the Laws of Nigeria of which sub-section (c) appears to be most relevant to this Appeal and is in the following terms : - 30
- (c) by the assignment, so far as is practicable, to as many original owners as is possible, having regard to the provisions of the scheme, of one or more final holdings, equivalent or proportionate in extent and value, or both combined, to their respective holdings; 40
- p.23 On behalf of the Appellant it was argued that the re-allocations should be to the original owners of the land "as far as possible" and that the Court had power to enquire into the exercise of the discretion that was vested in the first Respondents.
- pp.23-28 13. The decision of the learned trial judge was given upon the 22nd day of January 1962 who after

reviewing the pleadings and noting that the Appellant did not contest the title of the second Respondents to 20, Breadfruit Street, referred to Clause 4 (f) of the Schedule to the Lagos Central Planning Scheme (Approval) Order-in-Council (No.3 of 1952) which contains the following as one of the methods of implementation of the Scheme :-

10                   "(f) The offer of land within the replanned area to the original owners thereof, as far as it is possible to do so, at the gross cost of acquisition plus a surcharge of 20 per cent in accordance with section 59 (4) of the Ordinance."                   p.25  
11.35-40

20                   The learned trial judge held, it is submitted correctly, that this sub-clause came within the provisions of Chp.95 particularly Section 38(c) as set out in paragraph 12 above. He then referred to Section 59 (4) of the same Ordinance which is as follows : -

30                   "4. Whenever the board decides to let, hire, lease or sell any land acquired by it in pursuance of the provisions of section 43 from any person the board shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land at a rate to be fixed by the board, if the board, considers that such a right can be given without detriment to the carrying out of the purposes of this Ordinance."                   p.26  
11.5-16

40                   The learned trial judge held, again it is submitted correctly, that these two sub-sections must be read together so that there was "a duty on the Board to offer to a person from whom land had been acquired 'a prior right to take on lease or purchase' such land, if the Board decides to 'let, hire, lease or sell' it" but he also observed that "this right is of course subject to the provisions of the Scheme and must be exercised 'without detriment to the carrying out of the purposes of the Ordinance'".                   p.27  
11.7-11

14.                  In the course of his Judgment, the learned trial judge referred to the development scheme and observed that part only of 20, Breadfruit Street was taken up with road-widening and a corner piece only of Number 18 was taken away in                   p.26 1.17  
p.27 1.2



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the redefinition of plots. Therefore, the area acquired did not coincide with the area available for re-allocation. He then proceeded as follows:-

p.27  
11.28-40

"In the present case, however, there were many original owners whose land made up plot 1 and the Board considered the conflicting rights of the persons from whom the area in question was acquired and decided that, in all the circumstances, the 2nd Defendant was the original owner to whom an assignment should be made. Nothing that has been said in evidence has shown that the Board acted in other than good faith, or otherwise than after a fair and honest appraisal of the rights and interests of the several owners whose former holdings made up the new area, in deciding to assign the area to the 2nd Defendant."

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p.27  
11.41-43

15. The claim of the Appellant was dismissed with costs. It is respectfully submitted that the conclusion of the learned judge as set out in the preceding paragraph was one that was open to him to come to upon the evidence and further that it was correct.

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pp.28-30

16. The Appellant filed Notice and Grounds of Appeal in the Federal Supreme Court upon the 24th day of February 1962. A number of Grounds were set out in detail but upon the hearing of the Appeal upon the 17th day of April 1963 two points only appear to have been argued on behalf of the Appellant, namely : -

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p.31  
11.23-32

(1) That the first Respondents had acted "mala fide" in view of the letters part of which are set out in paragraph 9 above.

(2) That there was no proof of ownership by the second Respondent of 20, Breadfruit Street.

p.31 1.33  
p.32  
11.1-3

The Respondents were not called upon to argue and the whole of the Judgment of the Court was as follows : -

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"We see no substance in this appeal: it is dismissed with 25 guineas costs to each Respondent."

17. Against the Judgment of the Federal Supreme Court of Nigeria, this Appeal to Her Majesty in Council is now preferred.

The first Respondents humbly submit that this Appeal should be dismissed with costs for the following amongst other

R E A S O N S

1. Because the learned trial judge made findings of fact which he was entitled to do upon the evidence and the Federal Supreme Court was correct in refusing to disturb such findings.
- 10 2. Because there are concurrent findings of fact in favour of the first Respondents.
3. Because the learned trial judge correctly applied the relevant law, in particular the duties imposed upon the first Respondents in the implementation of the Lagos Central Planning Scheme of 1951 and was further correct in holding that such duties had been properly discharged in respect of the matters pleaded.
- 20 4. Because of the reasons given in the judgment of the High Court of Lagos.

DINGLE FOOT

JOHN A. BAKER

IN THE PRIVY COUNCIL

No. 3 of 1964

ON APPEAL

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- and -

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