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Judgments
29/1964

IN THE PRIVY COUNCIL

No 4 of 1964

O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF LAGOS,
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:

NWANKO UDEGBE
AJUTUORA OBEGBUNA
ADOLBERT ASOKWU
AKAIKE IKEGBUNA
10 NAWUBE UDEOZO

Appellants 78616

- and -

ANACHUNA NWOKAFOR
ONONIWU
CHIKWUMA MGBE
CHINWEUBA OBIEZE
OKONKWO NNEUKWU
EFOBIRI EGBUNONU

Respondents

C A S E FOR THE APPELLANTS

RECORD

- 20 1. This is an appeal from a Judgment of the Federal Supreme Court of Nigeria dated the 19th February, 1963, which allowed the Respondents' appeal from a Judgment of Betuel, J. dated the 6th June, 1961, and given in the High Court of Justice, Eastern Region, Onitsha Judicial Division.
- 30 2. The action in which these Judgments were given was one instituted by the Appellants, as representing the members of the Umuanugwo Quarters of Ifite-Ukpo, in which they claimed against the Respondents, as representing the members of the Uruowelle Quarter of Umudioka, certain relief consisting of a Declaration of Title to some land called "Mpiti" and damages for trespass on the land.
3. The Trial Court granted the Appellants the declaration of title to the land in dispute. On appeal the Federal Supreme Court allowed the appeal and set aside the Judgment of the Trial Court and

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entered judgment dismissing the Appellants' claim on the ground that the Appellants had failed to prove their case.

4. The sole question for determination in the appeal is whether the reasoning of the Trial Court's Judgment was sufficient to entitle the Appellants to a Declaration of Title to the land in dispute.

5. The Appellants instituted the present suit (No. 68/55) against the Respondents on the 20th June, 1955 in the Native Court of Udoka claiming a Declaration of Title to "the communal land of Umuanugwu called "Agbagolu" or "Mpiti" which contains tombo field valued £100, and £50 for damages for trespass".

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6. On the 3rd October, 1955, the suit was transferred to the Supreme Court and numbered 0/72/1955.

7. The Appellants filed their Statement of Case on the 10th May, 1956. The relevant pleas are:-

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P.4 line 30

The plaintiffs are the descendants of Anugo the owners from time immemorial of the land in dispute known as "AGBAGOLU" or "MPITI" being and situate at Ifite-Ukpo in Awka District and bounded as follows:-

P.5

On the North by the land of the plaintiffs not in dispute.

On the South by the Nkissa Stream.

On the East by the land of Awka people.

On the West by the Ekpuana Stream.

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The said portion of the Plaintiffs' land in dispute as described above is delineated and edged purple in the plan filed with this Statement of Claim. The plaintiffs as the descendants of Anugo have inherited the said land where they founded their village for generations past.

The Nkissi Stream has been accepted as the natural boundary between the Plaintiffs and the Defendants from time immemorial. The

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Plaintiffs as the owners have been in absolute possession of their own side of the land in dispute for generations without any let or hindrance from the Defendants or anybody else.

The Plaintiffs as owners in possession have from time immemorial been cultivating on the land and reaping the products of palm and tombo trees growing on the said land, together with other economic trees thereon.

10 The Defendants in share disregard of this ancient boundary encroached on the Plaintiffs' side of the stream and started to farm as of right without any permission knowledge and/or consent of the Plaintiffs. The said area of trespass is edged "purple" on the plan filed in this action.

P.5 line 28

8. The Respondents filed their Defence on the 31st July, 1956. The relevant pleas are:-

20 The land in dispute is called MPITI and not AGBAGOLU and is not the property of the plaintiffs or their ancestors at any time whatever. The boundaries of the said MPITI land is shown on defendants' plan and edged pink and is not as described by the plaintiffs in paragraph 3 of the Statement of Claim and/or on the plan filed by them.

P.6 line 31

P.7

30 The Nkissi stream is a very small stream and is not the boundary between the land of plaintiffs and that of the defendants at any part at all. The said Nkisi stream lies entirely within the defendants' land on the south of the land in dispute and forms the boundary between the people of Umunya and Ukpo mili on the West and south respectively.

40 The said land in dispute is only a part of the defendants' land which continues from the eastern edge as shown on plaintiffs' plan until the mili Onyekwena stream which forms the boundary between the defendants' land and that of the Ukpo mili people.

The defendants are owners in possession of the land in dispute from time immemorial and as such owners defendants have been exercising maximum acts of ownership. The defendants

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P.7 line 21

cultivate the land, reap the economic trees thereon without let or hindrance. Defendants also put tenants on the land on payment of rent and tribute which tenants were never disturbed by plaintiffs or by anyone whatever.

In 1908 the people of AKWA entered the northern portion of Ofi land which adjoins MPITI land as shown on defendants' plan. The defendants sued them and the case was heard by Mr. Douglas then District Officer who in his judgment demarcated the boundary between the defendants and the people of AKWA. Boundary trees were accordingly planted along the Douglas boundary and are as shown on the defendants' plan. 10

The plaintiffs never laid any claim on the land in dispute or on the adjoining Ofi land and never exercised any acts thereon neither have they any land near the MPITI land or the Ofi land. 20

P.8

The defendants have a juju called OKWU-SHIEJEOKU on Ofi land north of the portion of MPITI in dispute which they worship at the commencement of every farming season. The plaintiffs have no connection with this and do not worship it neither do they enter the MPITI land.

P.8 line 9

The defendants also have another shrine on the Ofi land which is called OKWUANA OFI. This they also worship at the commencement of every farming season. The plaintiffs have no rights or interest on the land in dispute or the adjoining Ofi land. 30

9. The hearing of the trial commenced on the 23rd February, 1960.

10. Both parties adduced evidence on the main fact in issue namely whether the boundary dividing the lands of the Appellants and the Respondents is the Douglas Boundary, as alleged by the Respondents, or the Nkissi stream, as alleged by the Appellants. 40

11. After the Appellants' evidence had been given and the Respondents' evidence had commenced, and while it was being adduced, the Respondents filed an amended Statement of Defence on the 6th October, 1960.

The relevant pleas are:-

10 The land in dispute is part of defendants' P.37 line 31
larger piece of land called "MPITI" and not
"AGBAGOLU" and is situated in Uruowelle
Umudioka. The boundaries of the entire
"MPITI" land is as shown on defendants' plan
and edged purple whereas the portion of the
said "MPITI" land now in dispute is verged
yellow. The boundaries of the said "MPITI"
land are neither as described in paragraph
3 of the Statement of Claim nor as shown on
plaintiffs' plan No.MEC/117/55. The entire
"MPITI" land including the portion now in
dispute is the property of the defendants and P.38
not the property of the plaintiffs or their
ancestors at any time whatever.

20 The Nkissi stream is a very small stream
and is not the boundary between the land of
plaintiffs and that of the defendants at any
part at all. The said Nkissi stream lies
entirely within the defendants' land on the
south of the land in dispute and forms the
boundary between the people of Umunya and
Ukpo mili on the west and south respectively.

30 The said land in dispute is only a part of
the defendants' land which continues from the
eastern edge as shown on plaintiffs' plan until
the mili Omyekwena stream which forms the
boundary between the defendants' land and that
of the Ukpo mili people.

40 The defendants are owners in possession
of the land in dispute from time immemorial
and as such owners defendants have been
exercising maximum acts of ownership. The
defendants cultivate the land, reap the
economic trees thereon without let or
hindrance. Defendants also put tenants
on the land on payment of rent and tribute
which tenants were never disturbed by
plaintiffs or by anyone whatever.

In 1908 the people of Akwa entered the
northern portions of "OFII" land as shown
on defendants' plan. The defendants sued
them and the case was heard by Mr. Douglas
the then District Officer who in his judgment
demarcated the boundary between the defendants
and the people of Akwa. Boundary trees were

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P.38 line 32

accordingly planted along the Douglas boundary and are shown on defendants' plan. This judgment of 1908 between Uruowelle and Akwa family of Ifite Ukpo will be founded upon.

The plaintiffs never laid any claim on the land in dispute or on the adjoining "OFII" land and never exercised any acts thereon neither have they any land near the "MPITI" land or the "OFII" land.

P.39

The defendants have a juju called Okwu-Shiejioku on "MPITI" land slightly north of the portion of "MPITI" land in dispute. The defendants worship this juju at the commencement of every farming season. The plaintiffs have no connection with this juju and do not worship it neither do they enter the "MPITI" land.

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The defendants also have another shrine on the "OFII" land which is called "OKWUANA OFII". This they also worship at the commencement of every farming season. The plaintiffs have no rights or interest on the land in dispute or the adjoining "OFII" land.

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The plaintiffs are not entitled as claimed and their claim being vexatious and speculative should be dismissed with costs.

The defendants will plead:

- (a) Laches.
- (b) acquiescence
- (c) standing-by
- (d) res judicata
- (e) estoppel by conduct
- (f) long possession.

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P.39 line 19

The Respondents closed their evidence on the 4th November, 1960.

12. The Trial Judge inspected the land and made an Inspection Note which was read out in open Court.

13. After the close of address by Counsel for both sides the Trial Court delivered its Judgment on the 6th June, 1961.

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14. The learned Trial Judge dealt exhaustively with the Respondents reliance on the alleged "Douglas Boundary", put forward in rebuttal of the Appellants' case, and rejected the oral evidence in its support.

15. The learned Judge referred to his inspection of the land in dispute and observed as follows (references to Exhibits 2 and 2(a) are to Plans produced on behalf of the Respondents):

10 Exhibit 2(a) shows not only the portion P.60 line 9
of land in dispute but other lands to the
North and to the East of the land in dispute,
which are claimed by the Defendants.

 The land to the East of the portion of
land in dispute is called by all the parties:
"Ofii" land.

20 The Plaintiffs do not accept these
extensive claims and would confine the
Defendants to the land South of the Nkissi
Stream, where they have most of their
habitations and farms.

 Exhibit 2 shows in the North West of the
land in dispute the "Nnakwe" stream, in
Exhibit 2(a), this stream is conveniently
renamed the "Aniga" stream.

 My observations on this juxtaposition of
names is contained in my Inspection Note:

30 "saw the "Nnakwe Stream" which it is
now admitted is in Ifite-Ukpo and not on land
claimed by the Defendants, the soi disant
"Nnakwe" in Exhibit 2, is now called by the
Defendants "Aniga", which still lies
outside portions of land claimed by either
party, I saw where the Nnakwe flows into
the Okpuana stream".

40 To the best of my recollection, I was not
shown any other Nnakwe stream. An important
feature in this case is that the "Nnakwe" or
"Aniga" stream is shown on the Defendants'
plans as south of the alleged Douglas Boundary,
and to the North of the land in dispute, i.e.
on land claimed by the Defendants.

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P.60 line 40 Again, there is an old footpath and a line of
Egelisi trees, extending along the Eastern
Boundary of the land in dispute, down to the
P.61 Nkissi stream, according to the Defendants,
these trees and path constitute a boundary
between themselves, according to the Plaintiffs
it is their boundary with Ofii land and the
Akwa people, at any rate it is not disputed
that it does constitute a boundary of some
kind. 10

There is also a line of trees running
along to the North of the land in dispute,
it is well featured in Exhibit 2(a), and is
alleged to be the Northern Boundary of the
Defendants' land, the Plaintiffs deny that
it is a boundary at all, which hardly seems
a satisfactory explanation, but its mere
existence does not establish it as the
P.61 line 15 "Douglas Boundary".

16. The learned Judge concluded his Judgment
in the passage following:- 20

P.65 line 35 The Defendants claim to have made use of
the land in dispute since time immemorial,
until disturbed by the Plaintiffs, or, at
least, to have been in possession since the
judgment in their favour in the 1908 case.

In this latter case, they would plead
that they had acquired an equitable title
or defence and so defeat the Plaintiffs'
claim. (See for example as in Awo Vs. Gam
(1913) 2 N.L.R. 100-101). 30

P.66 But, I am not sure, that they have
satisfied me as to such user and possession
either from time immemorial or since the
1908 case.

The Plaintiffs case that, about six
years ago, the Defendants first crossed the
Nkissi Stream and trespassed on the land in
dispute, seems a little more probable, but
it leaves unexplained, the line of trees, North 40
of the land in dispute, and the alleged
existence of the Defendants' jujus there.

I saw the priest who was alleged to serve
the jujus, the Okwu Shiejoku Juju in particular.

I did not find his evidence very satisfactory, P.66 line 13
the juju itself did not appear to be anything
other than a tree and I am unable to find
as a fact the existence of such jujus as
alleged.

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The 2nd Plaintiff gave evidence of the
boundaries of the land in dispute, a part
of his ancestral land, on which, admittedly
there were no jujus, but when harried he
was not at his best, and he falsely discribed
the path separating Mpiti and Ofii land as
a "motor road".

He was supported as to the Western
Boundary of the land in dispute by a native
of Umunya and as to its Eastern Boundary
by a native of Akwa, the Akwa witness,
however did not appear to notice the
Egelisi trees planted along the old path,
the Eastern Boundary between Mpiti and Ofii.

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All these witnesses are agreed in
confining the Defendants' Northern Boundary
with the Plaintiffs to the Nkissi stream.

Both parties, up to the outbreak of the
dispute claim to have put tenants on the land.

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The Defendants called some unrepresentative
and even more unreliable witnesses than the
Plaintiffs to give evidence as to user and
possession, they also failed to prove the
terms of the 1908 Judgment. I have already
said that I regard implicit reliance on Mr.
Emejulu's memory as dangerous, or, if those
terms were proved that it was binding on the
Plaintiffs, nor, did they show a good
equitable title or defence.

It seems probable that the line of
Egelisi trees along the old footpath, on
the Eastern side, constitutes a boundary
with Akwa or the Defendants, according to the
terms of the 1908 Judgment.

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The line of trees, North of the land in
dispute, in Exhibit 2(a), may be a boundary
with the Akwa people, it is not shown that
it forms a boundary with the Plaintiffs.

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P.67 line 16

There seems in the absence of any better evidence, some grounds for saying that the Northern Boundary of the Defendants with the Plaintiffs is the Nkissi stream.

P.67 line 19

17. The learned Trial Judge accordingly granted the Appellants a Declaration of Title "in respect of the Mpiti land in dispute as shown in Exhibit 2(a)".

18. The Respondents appealed to the Federal Supreme Court by Notice of Appeal dated the 24th June, 1961.

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The principal ground of appeal is stated thus -

P.69

(1) NON-DIRECTION: The learned trial judge did not direct himself as to the onus of proof imposed by the law on the plaintiffs in a case of declaration of title to land as evidenced in the following passage of his judgment.

"There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the plaintiffs is the Nkissi stream. The plaintiffs therefore are entitled to the declaration sought in respect of the Mpiti land in dispute as shown in Exhibit "2" (a)". As by so holding the learned trial Judge did not consider what the plaintiffs should prove and whether they proved them neither did he make any findings of fact which should support a decision of title to land.

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(II) NON-DIRECTION: The learned trial Judge by holding as follows: "There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the plaintiffs is the Nkissi stream" did not make any findings of fact as to the grounds, on which he relied for coming to such a conclusion and did not direct his mind to the evidence in that regard at all.

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(III) MISDIRECTION: The learned trial Judge having held that "It seems probable that

the line of Egelesi trees along the old footpath, on the Eastern side, constitutes a boundary with Akwa or the Defendants, according to the terms of the 1908 Judgment and that

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"The line of trees, North of the land in dispute, in Exhibit 2(a), may be a boundary with the Akwa people, it is not shown that it forms a boundary with the "Plaintiffs" misdirected himself in holding that the northern boundary of the defendants with the plaintiffs is the Nkissi stream.

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(IV) MISDIRECTION: The learned trial Judge misdirected himself as to the relevance and materiality of the Aniga or Nnakwe stream as also the footpath and line of Egelesi trees to the east of the land in dispute and the Douglas Boundary and came to a wrong judgment therefor.

(V) ERROR-IN-LAW: The learned trial Judge erred in law by rejecting parol evidence of the Douglas judgment which is admissible and which evidence if admitted would have entitled the defendants to judgment. By rejecting such evidence the learned trial Judge came to a wrong decision.

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(VI) ERROR-IN-LAW: The learned trial Judge having found that the plaintiffs were aware of the dispute which ended in the judgment of an administrative Officer Douglas in 1908 and the evidence having shown that the plaintiffs' interest was involved therein and that they stood by, was wrong in law in not holding that the plaintiffs are estopped by their conduct from disputing the title of the appellants.

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(VII) The decision is unreasonable and unwarranted and cannot be supported having regard to the weight of evidence.

19. The Judgment of the Federal Supreme Court was delivered by Brett, Ag.C.J., Taylor F.J., and Coker F.J. concurring.

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The learned Judges agreed with the Trial Judge that the Douglas award did not constitute res judicata against the Appellants. The learned Judges rested their decision not on the grounds relied on by the Trial Judge but on the fact that it was not shown in what capacity Douglas was acting when he made the award, that on the evidence he might either have been acting judicially, or as an arbitrator, or purely administratively, and unless he was acting judicially or as a judicial arbitrator his award could not create a formal estoppel.

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20. The reasoning of the decision of the learned Judges on the merits is in the passages following:-

P.76 line 34

As regards user and occupation of the land the judge described the plaintiffs' story, that the defendants first crossed the Nkissi stream six years before the case was tried as "a little more probable" than the defendants' claim to have been in occupation since 1908. He concluded by saying "The line of trees, North of the land in dispute in Exhibit 2(a)" (the defendants' plan) "may be a boundary with the Akwa people, it is not shown that it forms a boundary with the plaintiffs."

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P.77

"There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the Plaintiffs is the Nkissi stream.

The Plaintiffs therefore are entitled to the declaration sought

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With respect, it is not enough for a plaintiff asking for a declaration of title to set up a case which is "a little more probable" than the case put forward by the defence, or of which the highest that can be said is that "in the absence of better evidence" there are "some grounds" for accepting it. This is established by a long line of decisions of which the correctness has, so far as I know, never been seriously challenged. The trial judge gave convincing reasons for regarding the witnesses for the plaintiffs as unreliable, and on the written record I am not disposed to allow any greater credit to the case for the plaintiffs than he did. I would therefore set

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aside the judgment in favour of the plaintiffs.

21. The Respondents' appeal was accordingly allowed and the Judgment of the Trial Judge was set aside with costs, and Judgment was given dismissing the Appellants' claim.

22. The Appellants obtained final Leave to Appeal to Her Majesty in Council on the 16th September, 1963.

10 23. The Appellants humbly submit that the Appeal ought to be allowed with costs throughout, for the following

R E A S O N

BECAUSE the Appellants have discharged the burden of proving their title to the Land in dispute for the reasons given by the learned Trial Judge.

S. P. KHAMBATTA

RALPH MILLNER

IN THE PRIVY COUNCIL

Note of 1964

O N A P P E A L
FROM THE FEDERAL SUPREME COURT
OF LAGOS, NIGERIA

B E T W E E N:

NWANKWO UDEGBE and OTHERS Appellants

- and -

ANACHUNA NWOKAËOR and OTHERS
Respondents

C A S E F O R T H E A P P E L L A N T S

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