Privy Council Appeal No. 4 of 1964

Nwankwo Udegbe and others – – – – – – *Appellants*

v.

Anachuna Nwokafor and others – – – – – *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1964

Present at the Hearing

LORD REID.

LORD HODSON.

SIR BENJAMIN ORMEROD.

[*Delivered by* LORD HODSON]

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 Mr. Justice Betuel dated the 6th June 1961 and given in the High Court of Justice, Eastern Region, Onitsha Judicial Division.

The action was 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.

The appellants succeeded at the trial, but, on appeal, the judgment of the trial court was set aside, and the only question for determination on this appeal is whether the Appeal Court were right in so doing, the trial being upon a question of fact.

Their Lordships think it is unnecessary to examine in detail the facts relating to this piece of land. It was a piece of land about 1,000 by 1,200 ft.—roughly a square—of which the boundaries were agreed. There was a river called the Nkissi stream on the south, the Ekpuana stream on the west, on the eastern side a line of trees, and on the northern side there was no particular delineation of the boundary.

Counsel for the appellants has not asked their Lordships to arrive at their own decision as to the facts of this case. If their Lordships had been asked so to do they would have been of the same opinion as the trial judge showed himself to be, in that it appears that the evidence is conflicting and confused, and the difficulty which the trial judge found in arriving at a conclusion is one which is not surprising.

The point in the appeal depends entirely on the question whether, indeed, the learned trial judge did find the necessary facts in favour of the plaintiffs; in other words, whether he was really satisfied.

In these cases the onus lies on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. Their Lordships refer to the well known *Kodilinye* case, the judgment of Chief Justice Webber delivered in 1935, which has often been cited by the Board. " The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he

not having sought the declaration. So if the whole evidence in the case be conflicting and somewhat confused, and there is little to choose between the rival traditional stories, the plaintiff fails in the decree he seeks, and judgment must be entered for the defendant ".

At the conclusion of the trial the learned judge, having given careful attention to the evidence and having inspected the land, gave a judgment which, in their Lordships' opinion, is in its language inconclusive. He stated his conclusion, which was in favour of the plaintiffs, in this way. First of all he referred to the defendants' claim. This is a case in which there was a direct conflict on the evidence by both sides. The plaintiffs were claiming the land as theirs and they offered traditional evidence of user and occupation on their side while the defendants similarly offered evidence on their part to the same effect. The learned judge said, with regard to the defendants, " But I am not sure that they have satisfied me as to such user and possession either from time immemorial "—and he then goes on to refer to a case decided in 1908. That language implies that he had not come to a decision adverse to the defendants.

He then referred to the plaintiffs' case, which was that " about six years ago the defendants first crossed the Nkissi stream "—the stream which their Lordships have referred to as being on the south of the disputed land—" and trespassed on the land in dispute ". He says, with regard to that, that that case seems a little more probable, and he continues, " but it leaves unexplained the line of trees north of the land in dispute and the alleged existence of the defendants' jujus there ".

To explain the reference to the line of trees, the line of trees mentioned is a line of trees not immediately north of the land in dispute, but farther north; north of the whole of the Mpiti land which is referred to in the Douglas Award of 1908. That was regarded by the trial judge and by the Court of Appeal as not binding on the parties and, therefore, it is unnecessary to refer to it further.

The jujus are referred to because the defendants placed reliance on them as showing that the land was theirs. The learned judge found little assistance from their existence and, indeed, he in one passage shows himself uncertain as to whether these were jujus at all. In any event, neither of them were actually on the disputed land, although one was on Mpiti land just short of the undelineated boundary.

The learned judge then referred to parts of the evidence and formed the impression that the plaintiffs' witnesses were unreliable. Their Lordships say that because he continued by saying: " The defendants called some unrepresentative and even more unreliable witnesses than the plaintiffs to give evidence as to user and possession ". The use of the phrase " more ureliable " indicates he had found the plaintiffs' witnesses also unreliable.

He continues a little later in the judgment by saying: " The line of trees north of the land in dispute may be a boundary with the Akwa people, but it is not shown that it forms a boundary with the plaintiffs ". Then he uses these words, which their Lordships think are very important: " 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 ".

It seems quite clear, from the terms of that judgment, that the Court of Appeal were right in coming to the conclusion that the learned judge had misdirected himself in saying in effect that, his mind being in that state, being uncertain, in other words, as to whether the plaintiffs or the defendants were right, he could come down on the side of the plaintiffs. Their Lordships agree with the way in which the matter was put by Acting Chief Justice Brett when he said that the " trial judge gave convincing reasons for regarding the witnesses for the plaintiffs as unreliable ", and when he went on to say he was " not disposed to allow any greater credit to the case for the plaintiffs than he did ". Then he went on to consider the *Kodilinye* case and said that that " is authority for saying that the proper judgment when a plaintiff claiming a declaration of title fails to prove his case is one dismissing the claim ".

Their Lordships will, therefore, humbly advise Her Majesty that this appeal be dismissed.

(90469) Wt. 8069/113 90 8/64 Hw.

In the Privy Council

NWANKWO UDEGBA AND OTHERS

v.

ANACHUNA NWOKAFOR AND OTHERS

DELIVERED BY
LORD HODSON

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
HARROW
1964