

Judgment
5/19/64

IN THE PRIVY COUNCIL

No. 42 of 1961

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

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

78526

- 2. IKEBIFE IBENEWEKA
 - 3. NATH OBIEFUNA
 - 4. ADEZE JIBIKE
 - 5. ANENE IKEBIFE
 - 7. NWACHUKWU AKUNNA
 - 10. ORANFEO MBATU
 - 10. OFO EBOMIKWU
 - 11. ANAMAONYETWE EJIKEME
 - 12. NWOKOYE IZUORA
 - 13. NATHANIEL ANIKPE
 - 14. FRANCIS AMANOCHUKWU
 - 16. JABEZ C. NWANGWU
 - 17. ALFRED E OKOMA
 - 18. DAVID U. ODIBE
 - 19. DR. JONAS IWEKA
- (All of Obosi) (Defendants) Appellants

Nos. 1, 6, 9 and 15 being deceased their names were struck out (and no others substituted) by Order of the Federal Supreme Court of Nigeria, dated the 17th December, 1962)

- and -

- 1. PETER EGBUNA
 - 2. JULIUS ARINZE
- (substituted as Respondents in place of M.C. Ifejika and Francis Obigbo deceased by Order of the Federal Supreme Court of Nigeria, dated the 18th day of February 1963) for themselves and on behalf of the Ukwa family of Umuasele Onitsha)
- (Plaintiffs) Respondents

C A S E FOR THE APPELLANTS

Record

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (holden at pp.103-108 p. 108

Record
pp.88-98

Lagos), dated the 24th June, 1960, dismissing an appeal from the Judgment and Order of the High Court, Eastern Region (sitting at Onitsha) dated the 16th May, 1958, whereby in an action instituted by the present Respondents (hereinafter also called "the Plaintiffs") against the present Appellants (hereinafter also called "the Defendants") and certain others since deceased, for: (a) a declaration of title to certain land situate in Onitsha, (b) damages for trespass on the said land, (c) an injunction to restrain the Defendants from interfering with the said land and (d) recovery of possession of the said land, it was held that the Plaintiffs were entitled to the declaration of title but not to any of the consequential reliefs prayed for.

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2. The main question for determination on this appeal is whether in the circumstances of this case the decision of the Courts below that the Plaintiffs were entitled to the said declaration against the Defendants but not to any of the said consequential reliefs which they had prayed for was in accordance with law.

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3. Relevant portions of the High Court Law, 1956, and Order IV rule 3 of the High Court Rules, 1955, are included in an Annexure hereto.

4. The facts, so far as relevant to this appeal, are as follows:-

pp.4-7
p. 4, ll.
23-26,
27-29

By their Statement of Claim, dated the 8th March, 1953, the Plaintiffs, suing on behalf of themselves and as representing the members of the Ukwa family of the Umuasele village, Onitsha, said that they sued the Defendants "on behalf of themselves and as representing the people of Obosi village". They did not, and could not, refer to any authorisation from the Obosi community enabling the Defendants to defend the proceedings as its representatives which in such cases is essential. They referred to previous and pending proceedings between the Obosi people and themselves on questions of title and alleged that they had been in possession of the land in dispute since time immemorial and had exercised acts of ownership in relation thereto, e.g. "placing tenants thereon notably the people of Obosi".

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p.5, ll. 6-30
39-45
p.6, ll. 1-9
p.6, ll. 10-15

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Continuing, they said that since 1926 the Obosis had disputed their title until the decision of certain suits in their favour following which there was a period during which the Obosis had not interfered with the land in question. Recently, however, the Obosis had, in order to establish their claims, begun farming, erecting temporary structures, and interfering with the Plaintiffs' tenants, on the land, thereby depriving the Plaintiffs of the benefit of exclusive user of their property.

Record
p.6, 1.16 to
p.7, 1.3

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5. The Plaintiffs' claimed the following reliefs:-

"(a) Declaration of title to the Plaintiffs' land called Nkitaku and Aprikpu that is to say Nkitaku, Aprikpu and Okpoko.

p.7, 11.6-15

"(b) £50 damages for trespass.

"(c) Injunction to restrain the Defendants, their agents and servants, from interfering with the said land.

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"(d) Recovery of possession (Added by Order of Court, 26th day of June, 1957)".

6. By their Defence, dated the 28th April, 1953, the Defendants (excepting Nos.2 and 8 since deceased) denied all the material allegations in the Statement of Claim, and in particular denied that they could be sued as representatives of the Obosi people. They explained that they did not live on the land in dispute nor did they carry on any farming activities thereon. Paragraphs in their Defence, relevant to this appeal, were as follows:-

pp.7-10

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"2. The 4th and 10th Defendants say that they live at Obosi town and not on the land in dispute nor do they farm on the land in dispute.

p.8, 11.16-18

"3. The 1st, 3rd, 7th, 9th and 11th to 16th Defendants state that they live and farm land at Ugbomurili and not on the land in dispute.

p.8, 11.19-21

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"4. The defendants say that they are not the persons to represent the Obosi people but that Chief J.N. Kodilinye who is the Head Chief of the Obosi people is the proper person to represent the said people.

Record
p.8, 11.39-42

"7. That with regard to paragraph 2 of the Plaintiffs' Statement of Claim" /in which the Plaintiffs said that they sued the Defendants personally and as representing the Obosi people/ "the Defendants say that they admit being natives of Obosi Town but deny any representative character."

p.9, 1.30
p.10, 11.13-29

In further paragraphs the Defendants referred to the Obosi claims to the land in question which, they said, was farmed by the children and descendants of Ire and Ota who were the children of Egbeadiji the Defendants' ancestor. They referred also to previous proceedings by the Plaintiffs against the Obosi Chief and others in which the Plaintiffs' claim to a declaration of title was, on the 19th August, 1939, nonsuited, subsequent to which the Plaintiffs had not disturbed the Defendants' people in their ownership over the land in dispute.

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pp.21-22

7. On the 20th August, 1956, the Plaintiffs applied to join five persons, whom they named in their application, as co-defendants representing the people of Obosi Town.

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Refusing the application Savage J. (who was not the Trial Judge) referred to the relevant law and said:-

p.22, 11.27-33

"This Court cannot join the five persons as representing the people of Obosi Town without their being so authorised by the people of Obosi Town. The Plaintiffs' application in this respect must fail.

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"I however order that the five persons named in the application be joined as co-defendants in their personal capacity."

pp.88-98
p.89, 11.10-13

p.97, 11.4-16

8. After an examination of the evidence which both sides had produced in support of their respective cases, the learned Trial Judge (Betuel J.) by his Judgment, dated the 16th May, 1958, held that there was no evidence that any of the Defendants had trespassed on, or was in possession of, any of the land in dispute (to which indeed none of the Defendants had laid any claim) and therefore no order for the payment of damages, or injunction or order of eviction could be made against any of them, but as they had, in their Defence, "raised" the title of the title of the Obosi people and had failed to substantiate it, the Plaintiffs had thereby become entitled to a declaration of title against them.

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Record

9. The learned Trial Judge (Betuel J.) said that the Plaintiffs, suing in a representative capacity, had instituted the suit against the Defendants in their personal capacity. He explained that following the deaths of certain of the original Defendants their names had, by consent, been struck out, but that the original numbering of each of the Defendants had been retained for convenience. He then continued as follows:-

p.88, 1.55
to
p.89, 1.4

10 "The Plaintiffs are not anxious to obtain the remedies sought, declaration of title, injunction, trespass and the recovery of possession against the Defendants in their personal capacity; they seek these remedies against the Obosi community.

"So far as the trespass is concerned, it has not been shown that any of the Defendants have in person farmed or trespassed or built houses" [on] "or been in possession of the land.

20 "The trespass proved is a community trespass
.....

30 "It is, I conceive, for the Plaintiffs to bring the right Defendants before the Court and sue them in their proper capacity; on the other hand there was nothing to prevent the Obosi community" (who were not a party to the proceedings) "appointing proper persons to represent them in addition or in lieu of those before the Court by way of joinder or substitution e.g. the 17th, 18th and 19th Defendants who are members of the Obosi Land Council.

p.89, 1.29
to
p.90, 1.5

"In England, the Court may authorize persons to sue or defend in a representative capacity, even though it is against the will of the persons whom they are authorized to represent (R.S.C.Ord. 16, r.9)

40 "In our law, although the approval of the Court is required the authorisation proceeds from the persons to be represented (Order 4, Rule 3, High Court Rules, 1955; Adegbite v. Lawal 12 W.A.C.S.398).

Annexure

"The Defendants deny that they have any authority to do so or to represent the Obosi community

"I do not think that the authorities as they stand go as far as to permit me to regard the Defendants as being sued in their representative

p.90, 11.31-36

Record

capacity so as to permit me to grant the remedies prayed for against them as a community."

10. Nevertheless, the learned Trial Judge (Betuel J.) held as follows:-

p.97, 1.4

"In this case there is no proof of trespass or of being in possession by any of the Defendants who are sued in a personal capacity, but as they raise in their Defence the title of the Obosi community to the land in dispute, and have failed to substantiate it, I am entitled, I think, to give the Plaintiffs who have proved their title a declaration of title against them.

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"As they are not individual trespassers and deny any intention to trespass, I do not think any injunction would, or should lie; and as they are not in possession as individuals they cannot be evicted."

11. Against the said Judgment and Order of the High Court, Eastern Region, the Defendants appealed to the Federal Supreme Court of Nigeria (holden at Lagos) upon the several grounds of appeal set out in their Notice and Grounds of Appeal, dated the 3rd July, 1958, of which the following ground is relevant to this appeal:-

pp.98-99

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p.99, 11.11-17

"The learned Trial Judge erred in law and in fact by granting declaration of title when he found as a fact that no evidence of trespass was given against the Defendants and therefore dismissed the claim for trespass, recovery of possession and injunction."

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12. The appeal came up for hearing in the said Federal Supreme Court before a Bench consisting of Ademola C.J., Abbott F.J. and Hubbard Ag. F.J. who, by their Judgment, dated the 24th June, 1960, dismissed it.

pp.103-108

p.103, 1.31
to p.104, 1.2

p.104, 11.4-15

13. Delivering the main Judgment of the Federal Supreme Court, Hubbard Ag. F.J. (with whom Ademola C.J. and Abbott J. agreed) said that the only ground of appeal was that "it was improper for the learned Judge to grant a declaration by itself when the Respondents' claims to consequential relief had entirely failed." In his view the only relevant matters were (1) that none of the Defendants had trespassed upon the land in question and therefore

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the Plaintiffs were not entitled to damages or an injunction or an order for the recovery of possession; and (2) that by their pleadings the Defendants had denied the Plaintiffs' averment that they (the Plaintiffs) were owners in possession of the said land and had alleged that the Obosi people, to which community they belonged, are the owners. He referred to the decision in Earl of Dysart v. Hammerton & Co. [1914] 1 Ch. 822, C.A.; [1916] A.C.57 which the Appellants' Counsel had cited in support of the said ground of appeal, and continued as follows:-

p.104, l.16 to
p.105, l.33

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"It appears to me that Dysart's Case fully supports the proposition for which Mr. Gratiaen contended. Dysart's Case, however, is not the last word on the matter, nor is it universally true that no declaratory decree can be made where the claim for consequential relief - that is to say, relief claimed on the basis of an alleged right of action completely fails. In London Association of Shipowners and Brokers v. London and India Docks Joint Committee

p.105, ll.36-45

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[1892] 3 Ch. 242, a declaration was made although the claim for consequential relief had failed On a careful consideration of the India Docks Case it appears to me to establish the principle that the Court has a discretion to grant to applicants a declaration where the relief sought is to establish a right which may be adversely affected in the future by something wrongful already done by the Defendants at the time the declaration is asked for.

p.107, ll.39-46

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"On the facts of the case now before this Court there is indeed no present wrongful act of the Defendants which may later affect the title of the Plaintiffs to the land in dispute. On the other hand, however, the defendants have alleged that the ownership of the land is in their own community, the Obosi. The Obosi are not a legal entity, they are a large number of natural persons, and the Defendants are seventeen of them.

p.108, ll.1-37

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"The only reason why this action was not brought against the Obosis as a community is that it is impossible under the relevant rules to compel them to be represented by named members of the community. The authority to

Record

Annexure

defend must come from the community and they cannot be compelled to give such authority (Eastern Region High Court Rules, 1955, O.4, r.3). The Defendants are seventeen of a large number of persons to whom they say the land in dispute belongs. They so pleaded and they called evidence to support this contention. The question of title was litigated as between the seventeen Defendants and the Plaintiffs, and in view of the allegation of the Defendants and of the evidence called in support, there is good reason to anticipate that the Obosis, including the seventeen Defendants, may at some future time challenge the Plaintiffs' title. In these circumstances, and upon a careful consideration of the authorities, I have come to the conclusion that, as against the seventeen Defendants, the Plaintiffs are entitled to this relief, that their ownership of the land be established by a declaration to that effect." 10 20

p.109

14. An Order in accordance with the Judgment of the Federal Supreme Court was drawn up on the 24th June, 1960, and against the said Judgment and Order this appeal is now preferred, the Appellants having obtained Final Leave to Appeal to Her Majesty in Council by an Order of the Federal Supreme Court (holden at Lagos) dated the 4th April, 1961.

p.110

On the 17th December, 1962, the said Court made an Order to the effect that the names of Appellants Nos.1 (Emmanuel Ekwuno), 6 (Ogbunbi Efobi) 9 (Ilomuanya Ezemonyeiba) and 15 (Joseph A. Orakpo) be struck out, the said persons having died on various dates following the said grant of Final Leave to Appeal. 30

On the 18th February, 1963, the said Court made an Order that Peter Egbuna and Julius Arinze be substituted on the Record as Respondents in place of N.O. Ifejika and Francis Obigbo (in the said Order named "F.U.Obi") who died subsequent to the grant of Final Leave to Appeal. 40

The Appellants respectfully submit that this appeal should be allowed, with costs throughout, for the following among other

R E A S O N S

1. BECAUSE in the circumstances of this case the grant of the declaration of title to the Respondents was contrary to law and natural justice.

2. BECAUSE the said declaration which affects the rights of the Obosi community (of whom the Appellants are admittedly members) to the land in question was granted despite the absence of any lawful representation of the said community.
- 10 3. BECAUSE there was admittedly no evidence that any of the Appellants had at any time been in possession of, or had at any time trespassed on or threatened to trespass on, any portion of the said land and the institution of the action against them in their present capacity was therefore misconceived.
4. BECAUSE without any lawful authorisation from the Obosi community the Appellants could not have defended, and did not in fact defend, the suit against them in other than their individual capacity - and not as members of the Obosi community.
- 20 5. BECAUSE the statement made by the Appellants in their Defence as to the claims of the Obosi community to the ownership of the said land was quite insufficient to place them in the category of lawfully authorised representatives of the Obosi community against whom a declaration of title could lawfully be made.

E.F.N. GRATIAEN

R.K. HANDOO.

A N N E X U R E

The High Court Law, 1956

3rd Jan. 1956

(No. 27 of 1955)

2. In this Law unless the context otherwise requires:-

"the Court" or "the High Court" means the High Court of Justice for the Region as established by the Constitution Orders;

"the Region" means the Eastern Region of the Federation of Nigeria. 10

3. On the coming into operation of this Law, the Court shall be called -

"The High Court of the Eastern Region of the Federation of Nigeria."

10. (1) The Court shall be a Superior Court of Record and in addition to any other jurisdiction conferred by this Law or any other written law shall, within the limits and subject as is mentioned in this Law or any other written law, possess and exercise all the jurisdiction, powers and authorities vested in the High Court of Justice in England. 20

.....

14. Subject to the provisions of this Section and except in so far as other provision is made by any law in force in the Region, the common law of England, the doctrines of equity and the statutes of general application that were in force in England on the first day of January, 1900, shall in so far as they relate to any matter for which the Legislature of the Region is for the time being competent to make laws, be in force within the jurisdiction of the Court. 30

15. The jurisdiction vested in the Court shall be exercised (as far as regards practice and procedure) in the manner provided by this Law and in any other written law by such rules and Orders of Court as may be made pursuant to this Law or any other written law, and, in default thereof, in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice. 40

100. (1) Notwithstanding the provisions of Sections 98¹ and 99² the first rules of Court shall be made by the Governor and shall come into force on the date on which this Law comes into operation.

¹Constitution of the High Court Rules Committee.

²Powers of High Court Rules Committee to make rules of Court.

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The High Court Rules, 1955

Order IV

Parties

3. Where more persons than one have the same interest in one suit, one or more of such persons may, with the approval of the Court, be authorised by the other persons interested to sue or to defend in such suit, for the benefit of or on behalf of all parties interested.

No. 42 of 1961

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL SUPREME COURT
OF NIGERIA

BETWEEN:

IKEBIFE IBENEWEKA and Others
(Defendants) Appellants

- and -

PETER EGBUNA and Another
(Plaintiffs) Respondents

C A S E

FOR THE APPELLANTS

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