

IN THE PRIVY COUNCIL

No. 42 of 1961

O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

- 2. IKEBIFE IBENEWEKA
- 3. NATH OBIEFUNA
- 4. ADEZE JIBIKE
- 5. ANENE IKEBIFE
- 7. NWACHUKWU AKUNNA
- 10 8. ORANEFO MBATU
- 10. OFO EBOMIKWU
- 11. ANAMAONYEIWE 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
- 20 (All of Obosi) (Defendants) Appellants

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

78527

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 ARINZA
- 30 (substituted as Respondents in place of N.O. IFEJIKA and FRANCIS OBIGBO deceased by Order of the Federal Supreme Court of Nigeria, dated the 18th February 1963) for themselves and on behalf of the Ukwa family of Umuasele Onitsha)
- (Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

Record :-

1. This Appeal is from a Judgment of the

p.103.

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- p.88 Federal Supreme Court of Nigeria dated the 24th day of June, 1960, dismissing an Appeal from a Judgment of the High Court of the Eastern Region of the Federation of Nigeria (Onitsha Judicial Division) dated the 16th day of May, 1958, whereby a Declaration of title to certain land situate in Onitsha was made in favour of the Plaintiffs.
- pp. 97, 108. p. 7. 2. The question which arises for consideration on this Appeal is whether the Courts below were right in holding that the Plaintiffs are entitled to a Declaration of title to the land in question, notwithstanding that their claims to other relief, viz. damages for trespass, an injunction and recovery of possession, were dismissed. 10
- p. 1. 3. The suit was commenced by a Civil Summons dated the 26th day of May, 1952, in the Native Court of Onitsha. The original Plaintiffs' were Egbuna Ozoma and Francis Obigbo who sued in a representative capacity for and on behalf of the Ukwa family of Onitsha. The Defendants were 16 members of the Obosi people. The claim was for :- 20
- p. 1. (1) A declaration of title to land known as "Nketaku" and "Akpurikpu".
(2) £50 damages for trespassing on the land.
(3) An injunction to restrain the Defendants their servants and/or agents from further trespassing on the land. 30
- p. 2. p. 3. 4. On the 7th day of July, 1952, the suit was transferred to the Supreme Court, Onitsha, by Order of the District Officer. Pleadings were ordered on the 8th day of December, 1952.
- p. 4. 1.28. 5. By a Statement of Claim dated the 8th day of March, 1953, the Plaintiffs stated inter alia that the Defendants were sued "on behalf of themselves and as representing the people of Obosi village". The Statement of Claim alleged the Plaintiffs' title to the land in the following terms (in paragraph 10 thereof) :- 40
- p.6. 1.12. "10. The Plaintiffs are owners in possession of the land in dispute from time

immemorial and as owners in possession have always exercised maximum acts of ownership by farming on the land and placing tenants thereon, notably the people of Obosi, on payment of rent and tribute . . ."

6. The conduct complained of was alleged in paragraphs 10, 11, 12 and 13 of the Statement of Claim, as follows :-

- 10 (a) It was alleged that, although the Obosi people paid their rent and tribute to the Plaintiffs' family until 1926, in that year their head chief J.M. Kodilinke compelled the Obosi people to swear never to recognise the title of the Plaintiffs' people but to set up title in the Obosi people instead (paragraph 10). p.6. 1.18.
- 20 Thereafter some Obosi tenants became unwilling to pay rent and tribute and certain actions were brought against them by the Plaintiffs in the Onitsha Native Court, which actions (suits Nos. 12 and 13 of 1938) ended in the Plaintiffs' favour (paragraph 11). p.6. 1.27.
p.138.
- 30 (b) After the said proceedings the Obosi people desisted from interfering with the land without the Plaintiffs' express permission, "until recent time", when the Obosi people "again entered on the land by show of force and violence . . ." (paragraph 12). p.6. 1.34.
- (c) Thereafter the Obosi people in order to establish their false claim began to farm on the land and put up temporary structures and interfere with the Plaintiffs' tenants on the land (paragraph 13). p.6. 1.40.
- 40 7. The relief claimed in the Statement of Claim was as set out in the Summons (i.e. a declaration of title, damages and an injunction) and in addition recovery of possession, the claim for which was added by leave of the Supreme Court granted on the 26th day of June, 1957. p.7.
p.7. 1.13.
p.27. 1.34.

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- p.8. 8. A Defence dated the 28th day of April, 1953, was filed on behalf of all the Defendants' except two who were stated in the Defence to be dead. As regards the allegation in the Statement of Claim that the Defendants were sued as representing the people of Obosi village, the Defence stated as follows (in paragraph 4 thereof) :-
- p.8. 1.22. "4. The Defendants say that they are not the persons to represent the Obosi People but that Chief J.M. Kodilinke, who is the Head Chief of the Obosi people is the proper person to represent the said people". 10
- p.8. 1.27. 9. The Defence specifically denied those paragraphs of the Statement of Claim (paragraphs 10, 11, 12 and 13) wherein the Plaintiffs claimed title to the land and complained of trespass and other conduct on the part of the Obosi people, and put the Plaintiffs to "very strict proof" of each and every of the allegations contained therein. 20
- p.8. 1.30.
- pp.9-10. 10. The Defence contained positive averments in support of an alleged title to the land in the Ire and Ota quarters of the Obosi people (paragraphs 13 to 19 inclusive).
- p.12. 11. On the 23rd day of August, 1954, by Order of the Supreme Court, one Sam C. Egbuna Ozoma was substituted for the first-named of the original Plaintiffs, who had died. 30
- p.14. 12. In due course, the suit was continued in the High Court at Onitsha. On the 2nd day of April, 1956, a Reply was filed in that Court; p.18. on the 12th day of June, 1956, a Further p.23. Defence was filed; and on the 8th day of May, 1957, a Further Reply was filed. The contents of these pleadings are not material to this Appeal.
- p.20. 1.2. 13. On the 29th day of June, 1956, by Order of the High Court, one N.O. Ifejika was substituted for the Plaintiff Sam C. Egbuna Ozoma, who had died. 40
- p.20. 1.12. 14. On the 29th day of June, 1956, the Plaintiffs applied for leave to add 5 persons as co-defendants and as representing the people

- of Obosi town. On the 20th day of August, 1956, a Ruling was given by the High Court (Savage (Ag. J.) granting leave to add these persons as co-defendants, but in their personal capacity. Leave to add them in a representative capacity was not given because they had not been authorised by the people of Obosi town to represent them. This reason was based upon the provisions of Order 4, Rule 3 of the Rules of the High Court, which reads as follows :-
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- "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 defend in such suit for the benefit of or on behalf of all parties so interested".
- See Buraimo Adegbite and Others v. Chief Imam Quadri B. Lawal and Others, 12. W.A.C.A. 398.
- 20 15. The suit was heard on a number of days between the 27th day of June, and the 21st day of August, 1957, coram Betuel Ag. J. The Plaintiffs adduced evidence, including the oral evidence of the second-named Plaintiff, in support of their claim to title in the land and their allegations of trespass by the Obosi people, but gave no evidence to prove trespass by the Defendants individually. The Defendants also adduced evidence. Three of the Defendants
- 30 themselves gave evidence, and each asserted that the land in dispute belongs to the Obosi people, i.e. as a community - there was no evidence to support the contention that the land belongs to the Ire and Ota quarters of the Obosi people.
16. On the 14th day of August, 1957, after some evidence had been given on behalf of the Defendants, those paragraphs of the Defence wherein they set out averments in support of an alleged title to the land in the Ire and Ota quarters of the Obosi people (paragraphs 13 to 19 inclusive) were sought to be abandoned, as being irrelevant to the case, and were ordered to be struck out.
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17. The Judgment of the High Court was delivered on the 16th day of May, 1958. The learned trial Judge, after referring to the form of the action as being against the Defendants in their personal capacity, observed as follows :-

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p.90. 1.17.

"It is reasonably clear that the Obosi Community are aware of this suit and its implications, and are supporting the Defendants and defending the suit under cover of the non-representative character of the Defendants.

The form of the action is a suit against the Defendants in their personal capacity, but in substance it is the Obosi community

who standing behind the Defendants, will accept, if it comes, a decision in their favour, but if it goes against them, will say that it is not binding on the Community.

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(Ezeaka v. Obasogwu (1952) 14 W.A.C.A.178.
Abuakwa v. Adana (1957) 3 All E.R. 561).

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

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18. As regards the assertion by the Defendants of title in the Obosi people, the learned trial Judge stated as follows :-

p.91. 1.18.

"In this case the defence of title of the Obosi Community is not supported by any evidence of tradition, (paragraphs 13-19 of the defence have been struck out at their request together with the separatist claim of the Ire and [Ota] Quarters of Obosi).

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As the Community hides behind the Defendants in their personal capacity, so also they shift their defence in the course of the trial abandoning the claims of the Ire [Ota] Quarters and adopting that of the Community, treating this litigation as a game of chess, in order to preserve at whatever cost interest in the land in dispute."

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p.97. 1.10.

19. The learned trial Judge found that the Plaintiffs had proved their title to the land.

p.89. 1.14.

He also found that they had proved a community trespass on the part of the Obosi people, but

p.89. 1.10.

that it had not been shown that any of the

Defendants had in person farmed or trespassed or built houses or been in possession of the land. The learned Judge therefore stated his conclusion in the following terms :-

10 "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. p.97. 1.4.

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

20. Before the Federal Supreme Court (Ademola F.C.J., Abbot, F.J. and Hubbard Ag. F.J.) the only ground of appeal relied upon by the Defendants was the following :- p.103 p.100. 1.36. p.103. 1.31.

30 "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". p.99. 1.11.

40 21. The principal Judgment in the Federal Supreme Court was that of Hubbard Ag. F.J., the other members of the Court concurring. The learned Federal Justice, after referring to the following authorities, Earl of Dysart v. Hammerton & Company (1914) 1 Ch.822; (1916) 1 A.C.57, Guaranty Trust Company of New York v. Hannay and Company, (1915) 2 K.B. 536, and London Association of Shipowners and Brokers v. London and India Docks Joint Committee (1892) 3 Ch. 242, stated his conclusion in the following terms :- pp.103-108. pp.108-109. pp.104-107.

"On the facts of the case now before this Court there is indeed no present wrongful act of the Defendants which may later p.108. 1.1.

Record

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. 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 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."

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p.110.

22. Final leave to Appeal to Her Majesty in Council was granted on the 4th day of April, 1961.

23. On the 17th day of December, 1962, by Order of the Federal Supreme Court, the names of four of the Defendants, being deceased, were struck out. On the 18th day of February, 1963, by Order of the same Court, the names of the Respondents were substituted for those of the Plaintiffs, now deceased.

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24. The Respondents respectfully submit that this Appeal should be dismissed with costs, for the following amongst other

R E A S O N S

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- (1) BECAUSE the Judgment of the High Court is right for the reasons therein stated.
- (2) BECAUSE the Judgment of the Federal Supreme Court is right for the reasons stated by Hubbard Ag. F.J.
- (3) BECAUSE the question whether a Declaration of title ought to be granted to the Plaintiffs was a matter of Judicial discretion and there is no good reason for interfering with the exercise of that discretion.
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- (4) BECAUSE on the facts and in the circumstances of the case it was right that the Plaintiffs should be granted against the Defendants the Declaration of title which they sought.

ALUN T. DAVIES

RALPH MILLNER

No. 42 of 1961

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B E T W E E N :

L. IBENEWEKA and
OTHERS (Defendants) Appellants

- and -

P. EGBUNA and
ANOTHER
(Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

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