

Knut Knutson - - - - - *Appellant*

v.

The Attorney-General - - - - - *Respondent*

FROM

THE SUPREME COURT OF NIGERIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 7TH NOVEMBER, 1929.

Present at the Hearing :

LORD BLANESBURGH.
LORD WARRINGTON OF CLYFFE.
SIR CHARLES SARGANT.

[*Delivered by* SIR CHARLES SARGANT.]

In order to succeed on this appeal, it is, of course, necessary for the appellant to show that the allegations in his statement of claim are sufficient to raise a sustainable cause of action against the Crown. And for this purpose the first, and perhaps the most crucial, question to be determined is whether there is to be found in the claim an allegation, either express or by necessary intendment, that the land in question ever came into the possession of the Crown or of some agent for the Crown.

Now, in the statement of claim itself, there is a singular absence of any allegation as to possession. In that document there is no averment that the appellant ever acquired any possession of the land, still less that he was in possession in the year 1916, when the British forces occupied the country, or in the year 1924, when the sale by the Nigerian Custodian of Enemy Property took place. The statement of claim is quite consistent with the assertion by the appellant of a mere paper title to the land, entirely divorced from any kind of possession.

Further, the statement of claim nowhere alleges that the Crown or any alleged agent of the Crown, or even the Nigerian

Custodian of Enemy Property, ever took possession of the land. The nearest approach to such an allegation is to be found in the averment in para. 9 of the claim that "in November, 1924, the Nigerian Custodian of Enemy Property, by the authority of a proclamation of the Governor of Nigeria, approved by His Majesty's Secretary of State for the Colonies, caused the aforesaid lands to be sold by auction in London." This in itself is obviously not a sufficient allegation of possession. And, even if the reference to the proclamation is enough to bring into the statement of claim the whole of the provisions of the proclamation, those provisions themselves do not go beyond a vesting of the land in the Custodian and a direction that he shall sell—provisions which do not involve any vesting in him of possession or any taking by him of possession. The whole of the duties of the Custodian under the proclamation could be performed without possession; and therefore no allegation of possession is involved in the embodiment of the proclamation in the statement of claim.

This conclusion is arrived at after taking into account in the appellant's favour a proclamation which he in fact repudiates, and is quite independent of the many other difficulties in the appellant's path, such, for instance, as that of establishing the view that the Custodian was an agent of the Crown or that of showing that his claim was not one in tort. On all these points their Lordships have heard no arguments and express no opinion whatever. They base their decision against the appellant on this one ground of the absence of allegation of possession.

Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.



KNUT KNUTSON

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THE ATTORNEY-GENERAL.

DELIVERED BY SIR CHARLES SARGANT.

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