Privy Council Appeal No. 18 *of* 1953

Chief Joseph Wobo and others - - - - - - - *Appellants*

v.

The Attorney-General for the Federation of Nigeria and another *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH OCTOBER, 1956

Present at the Hearing :

VISCOUNT SIMONDS

LORD OAKSEY

MR. L. M. D. DE SILVA

[*Delivered by* VISCOUNT SIMONDS]

In this appeal, which is brought from a judgment of the West African Court of Appeal affirming a judgment of the Supreme Court of Nigeria, the appellants are the representatives of the people, and successors of the Chiefs and Headmen, of Abali and Ogbum Diobu and they claim in effect (*a*) a declaration that they are the owners of a large area of land in the Rivers Province commonly known as Port Harcourt and (*b*) cancellation of two agreements dated the 18th May, 1913, and the 2nd May, 1928, by which their predecessors purported to dispose, or to agree to dispose, of the land in question to the then Deputy Governor of the Colony and Protectorate of Southern Nigeria. The respondents are the Attorney General for the Federation of Nigeria and the Attorney General for the Eastern Region of Nigeria who have been substituted for the original defendant, the Attorney General of Nigeria.

Numerous issues were raised in the course of the proceedings, but upon the appeal before their Lordships, learned counsel for the appellants said that the single question was whether they could make good their contention that, when the appellants' predecessors as Chiefs or Headmen of Diobu affixed their marks to the documents in question, they had no intention of selling the land but thought that they were merely granting to the Governor certain occupancy rights over it in accordance with native law and custom. This appears to raise a question of fact upon which there are concurrent findings by the Courts below and in accordance with their long-established practice their Lordships would not think it proper to disturb such findings unless the appellants could clearly show that those Courts had fallen into some serious error. The circumstances in which concurrent findings will be disturbed have been recently restated and need not be further elaborated. But their Lordships would add that the rule applies with peculiar force in a case such as the present where the learned judges in the Courts below from their familiarity with the customs and sentiment of the natives of Nigeria have an advantage for dealing with the evidence which is not shared by them: see *Atta Kwamin* v. *Kobina Kufuor* Appeals from the Gold Coast Colony (1874–1925) 28 at p. 29.

It is, then, for the appellants to establish that in their appraisement of the facts the Courts below have fallen into serious error, and their Lordships will at once say that, so far from this being the case, they have after a careful consideration of the relevant evidence formed the clear opinion that no other conclusion could reasonably have been reached.

The so-called Agreement of the 18th May, 1913, was made between five Chiefs and two Headmen representing the Diobu tribe and representatives of other tribes occupying other areas of land, with which this appeal is not concerned, of the one part and the Deputy Governor of the Colony and Protectorate of Southern Nigeria for and on behalf of His Majesty the King of the other part. Thereby after recitals that certain land therein described, including the land now in dispute, was required for the services of the Colony and Protectorate and that there were many native occupiers on the land so required and that it was just and expedient that all such native occupiers should be paid compensation for their right title and interest upon such land, the Chiefs and Headmen and others agreed in consideration of the payment of the sums of money set out in the Schedule on behalf of themselves and their people to grant and sell to the said Deputy Governor all the right title and interest to which they and their people were entitled by native law and custom in the said land and they further agreed that should any person or persons dispute their sole right to the disposal of all interests in the said lands any claims that might be made would be settled by them. The sum payable to the Chiefs and Headmen of Diobu was stated in the Schedule to be £2,000. This document, which after a statutory extension was duly registered under the Land Registration Ordinance (No. 15 of 1907), contained a Certificate by a Mr. Yellow, a District Interpreter, that the document was correctly read over and interpreted by him to the Chiefs and Headmen in question who appeared clearly to understand the same and made their marks in the presence of himself and others and an Oath of Proof by Mr. Yellow to the same effect. These formalities appear to have been in accordance with the prescriptions of the same Ordinance.

It is common ground that after the execution of this agreement the Government went into possession of such part of the land referred to in the Agreement as was from time to time required for the development of what is now Port Harcourt and that this was done without objection from the native occupiers until the happening of the events which gave rise to these proceedings. It is also common grounds that the sum of £2,000 was not in fact paid. The reason for this is uncertain: it may well be that it was refused because second thoughts suggested to the Chiefs that a larger sum should be paid. However this may be, it is certain that after some discussion and negotiation a supplemental agreement was made between the then Chiefs and Headmen of Diobu and the Deputy Governor for the variation of the terms of the earlier agreement. This agreement appears to have been prepared in 1926 and to have been executed by the Chiefs and Headmen in 1927 and by the then Governor and Commander-in-Chief of Nigeria on the 2nd May, 1928. It recited in some detail the earlier agreement and the fact that the Chiefs and Headmen and the Governor desired to vary its terms in manner thereinafter appearing and then proceeded:—

> "Now it is hereby agreed as follows:
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> "The purchase money to be paid to those Chiefs and Headmen shall be an immediate payment of the sum of £7,500 and thereafter a sum of £500 per annum payable on the 18th day of May in each year commencing on 18th day of May, 1928, and continuing for all time hereafter instead of the purchase money fixed by the original agreement.
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> "And it is further agreed and the Chiefs and Headmen hereby indemnify the Governor against all claims and demands in respect of the said purchase money by themselves and their people or any person or persons claiming through or under them.

"Lastly, subject only to the variations herein contained the principal agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted therein by way of addition or substitution as the case may be."

This document also was duly registered with a similar Certificate and Oath of Proof that it had been read over and interpreted to the Chiefs and Headmen who appeared clearly to understand the same.

It is not disputed that the sum of £7,500 was forthwith paid or that the sum of £500 was annually paid thereafter or that thenceforward the Government continued to go into possession and occupy the land in question as the development of the Port required. It may be further noted that on the same 2nd May, 1928, on which he executed the supplemental Agreement the Governor executed a deed by which he conveyed to Chief Wobo an area of land comprising about 3·5 square miles, being the northernmost part of the land described in the original Agreement to hold unto and to the use of the grantee, his successor in office the Chiefs, Headmen and people and his and their assigns for ever free from all convenants and conditions whatsoever implied by virtue of the Crown Lands Ordinance and the Regulations thereunder.

The year 1928 had now been reached and, if it were necessary to determine whether at that date the native chiefs and headmen understood what they had done, it appears to their Lordships that, giving full weight to the principle that it was for the Crown as grantee to establish that the native and illiterate grantors knew the purport and effect of the documents to which they had affixed their marks, they must conclude that no case could then be made for setting the documents aside. But if any legitimate doubt existed upon the evidence then available, it must have been dispelled by the events of the following years. It would be superfluous to refer to much of the evidence oral or documentary, but reference should be made to at least one document upon which the Courts below relied. On the 19th July, 1934, the Chiefs and Headmen through their legal adviser, a Mr. Alakija, addressed a petition to the Governor in which, after stating that they received "annual rent of £500 for the lease of our land within the area known as Port Harcourt Township" and that this sum was absolutely inadequate at the present day and would continue to be so in the future for various reasons, that they had need for educating their children and that their main source of income was their land rent, prayed that His Excellency might graciously grant that the agreement between the Government and themselves as contained in the written instrument No. A.17, Vol. I, of the 2nd May, 1928, be subject to another revision, variation and modification. And they further stated that this was their third petition in that matter which was of grave importance to them and on which hung the destiny and future of their people. This petition was rejected by the Governor who in a letter of the 12th September, 1934, made the position clear beyond all doubt and explained why in his view the annual sum of £500 in perpetuity was an adequate payment.

Notwithstanding that they then, if not before, had the benefit of legal advice, the chiefs did not assert that they were ignorant of what they had done but continued in the same course of conduct, reiterating their demand for a higher rent, until in the year 1947 they received a twelve months' notice to quit certain land which, as it was not yet ripe for development, the chiefs and people had been permitted to farm but which beyond question lay within the area comprised in the original and supplementary agreements. It appears to their Lordships that the conduct of the appellants and their predecessors over a long period of years was consistent only with their sufficient understanding of the agreements, and that the Courts below were fully justified by the evidence in taking this view.

Learned counsel for the appellants laid stress on the importance of native law and custom in regard to the disposal of land, alleging alternatively that customary law made it impossible to sell such land or that a sale was so unprecedented a measure that it could not be supposed that the chiefs understood what they were doing. Neither alternative can prevail. Their Lordships see no reason to doubt the view of the learned trial Judge that native law and custom was not so inflexible as to render a sale of land to the Government illegal nor can they suppose that this aspect of the matter was not fully considered in determining the question of fact whether or not the chiefs understood what they were doing. Criticism was directed to other points in the evidence and in the judgments under review but their Lordships do not find it necessary to deal with them in detail. Having reviewed the whole case they are satisfied not only that the Courts below have fallen into no such error as would justify the disturbing of concurrent findings but also that they could not fairly have reached any other conclusion. They will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of the appeal.

39838) Wt. 8069—3 110 11/56 D.L.

In the Privy Council

CHIEF JOSEPH WOBO AND OTHERS

v.

THE ATTORNEY-GENERAL FOR THE FEDERATION OF NIGERIA AND ANOTHER

DELIVERED BY VISCOUNT SIMONDS

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1956