

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

34,1960

IN THE PRIVY COUNCIL

50084

No. 5 of 1958

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

BETWEEN

ANOJE IGWE & OTHERS, for themselves and on
behalf of their people of Umunahu Uratta
(Plaintiffs) Appellants

— and —

OPARA UKWEJE & OTHERS for themselves and as
representing their people of Umuofa Uzoagbe
(Defendants) Respondents

— and —

OKE ADAKONYE & OTHERS for themselves and as
representing the people of Umunahu Uratta
(Defendants) Appellants

— and —

MARK IHEOMA & ANOTHER for themselves and as
representing the people of Umuofa Uzoaba
(Plaintiffs) Respondents

— and —

NDULU & ANOTHER for and as representing the
people of Umundala-Uratta
(Plaintiffs) Appellants

— and —

MBARA ENWERE & OTHERS all of Umualumaku-Uzoaba
(Defendants) Respondents

(Consolidated Appeals)

CASE FOR THE APPELLANTSRecord

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- p.90
- pp.81-86
- p.13 1.12
- p.14 1.27
- p.85 11.32-
- p.85 1.34³³
- p.86 1.7
1. This is an Appeal from a Judgment of the Federal Supreme Court of Nigeria dated 20th June, 1956, dismissing with costs the Appellants' Appeal from a Judgment of Dove Edwin J. in the Supreme Court of Nigeria dated 2nd April, 1954, in three consolidated Actions whereby the Learned Judge dismissed the Appellants' claim for a declaration of title to a piece or parcel of land and granted to the Respondents a declaration of title in respect of the said land and an injunction restraining the Appellants their servants or agents from in any way interfering therewith. The land in dispute was described by the Appellants as Egbulu Ube Agba and by the Respondents as Egbelu-Umuofa land. 10
- The Appellants are hereinafter referred to as the Plaintiffs and the Respondents as the Defendants.
2. In these actions the Plaintiffs represented the people of Umunahu Uratta and the Defendants the people of Uzoagba. Both parties claimed to be the owners of the land in dispute according to Native Law and Custom. 20
3. The principal issues to be decided in these consolidated appeals are:
- (a) Whether the learned trial judge misdirected himself regarding the evidence called for the Plaintiffs;
- (b) Whether the Courts below should have granted the Plaintiffs a declaration of title; and
- (c) Whether the Courts below erred in granting a declaration of title to the Defendants. 30

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4. In 1935 Oke of Uratta brought an action in the Uratta Native Court claiming £10 damages for trespass against Mbara of Uzoaba for going on his Ekwuru land without permission. The action was dismissed on the ground that the land had been pawned to Mbara's grandfather and that Oke could if he wished sue the persons who so pawned the land. Okorie Ofoha who was afterwards called as a witness for the Plaintiffs in these proceedings, was a member of the Court.
- 10
5. In the following month, i.e. July, 1935, Oke of Uratta brought a further action in the Uratta Native Court claiming against five other persons of Uratta £10 damages for unlawfully handing over Uratta land to Mbara. He obtained judgment for £2 damages and costs and an order that the Defendants in the action should "revert the land to Plaintiff; after they have dug all the cassava they planted there."
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- Okorie Ofoha was the President of the Court in these proceedings.
6. In 1940 Opara of Uzuoaba brought an action in the Native Court of Ikeduru against five Urattas claiming £4 damages for trespass on his land at Eke Egbelu. In his evidence he deposed that he received the land in pledge from one Nwachuku of Oparaugo of Libie Uratta. The Court gave judgment in his favour for 10/- damages stating that the Opara did not claim ownership of the land but merely that it was pledged to him, as admitted by witnesses on both sides, and that whichever Oratta (sic) should establish title to the land should repay to Opara the amount of the award.
- 30
- This decision was upheld by the District Officer on review on the ground that "Plaintiff cleared the land in good faith and Defendants should pay for his labour."

Exhibit "D"
pp.93/97

p.97, 1.40

Exhibit "E"
pp.98/104

Exhibit "F"
pp.104/109

p.109, 1.9.

p.109, 1.34.

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Exhibit "C"
pp.110-116

7. In 1942 Francis Enwers of Umunahu brought criminal proceedings in the Uratta Native Court against eleven Defendants of Uzoagba for stealing tombo tree leaves and assaulting and wounding Ndukwu with a machet on the finger at Umunabu water side. In the course of the hearing the Court observed

"Since we are born, we never hear that Uzoagba people planted tombo tree in Okitankwo waterside."

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The Court found the first and third accused guilty of theft and the 2nd accused guilty of assault and charged the remaining two accused. They made the following order:

"They accused persons are not to touch plants in that river Okitankwo till they prove how they have share in that water."

p.116

On review the convictions were quashed by the District Officer on the ground that he did not believe the story of the assault.

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8. By proceedings instituted in the Ikeduru Native Court in 1944 the parties instituted

THE PRESENT ACTIONS

pp.1/4

which by Orders dated the 10th March, 1944, and the 24th March, 1944, were transferred by the Divisional Officer at Owerri to the High Court Onitsha Judicial Division pursuant to Section 25(1)(c) of the Native Courts Ordinance.

p.7, 1.39

By their Statement of Claim in Suit A/84/53 the Defendants pleaded that the

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- 10 Akitankwo stream formed the boundary between the parties; that both parties fished therein in common until 2 years ago when the Plaintiffs started for the first time to assert the claim that the stream was their exclusive property and that they were entitled to the land in dispute on the Eastern side of the stream and that the Plaintiffs for the past 2 years had crossed the stream and without the consent of the Defendants cut sticks in large quantities from the Umuofa land and disturbed the Defendants in the exercise of their fishing rights in the stream. By their Defence in this action and by their Statement of Claim in Suit A/83/53 the Plaintiffs pleaded that their ancestors first settled on the land and exercised the fullest rights of ownership thereon and that the land was eventually given by the Elders of the Plaintiffs to the Defendants people for use and occupation by them with all the incidents of Native Law and Custom.
- 20
- The three suits were consolidated by an Order of Waddington J. dated the 16th March 1945.
9. By an Order dated 14th September, 1953, the consolidated actions were transferred to the Judge at the Aba Judicial Division where the hearing began on the 5th October, 1953, and ended on 31st December, 1953.
10. The consolidated actions were tried by Brown J. who gave judgment on the 14th June 1949. On appeal to the West African Court of Appeal on the 9th November 1950 they were sent back for retrial.
- p.8, 1.8.
- p.9, 1.20
- p.11, 1.41
- p.13, 1.12
- p.44, 1.1
- p.81, 11.9-13
- pp.20-21
p.21, 11.15-18

Record

p.47, 1.35

11. The first Plaintiff deposed inter alia that the road from Emeku to Uzoagba marked the boundary of the land given by the Uratta to the Azu Ogaba.

In his evidence in chief this witness said:

p.47, 1.24

"Before N.A. took over bridges we used to be responsible for the bridges across Okitankwo near the Ohu Abosji Juju. We made it and we maintained it. The Defendants did not take part in making that bridge we have now made it of cement. Ala Ubi is a place of sacrifice we showed it to the surveyor. We have Osisi Ofo juju, also Onuagbu juju, near Okitankwo stream, we have Olumulukwa Agunda juju. All these jujus belong to us and we sacrifice to them. Before 1942 we farmed on the land edged pink."

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In cross-examination he said:

p.51, 1.18

"The Olumulukwa Agunwa juju is ours. Onuagbu juju is also ours. All these jujus are on our land and belong to us. These are the only jujus on the land in dispute and we the four families own them in common. I am the Priest for Onuagbu juju and my son is to succeed me. One Onunaiwu is the chief Priest of Olumulukwa juju. One Onyenu is the Priest for Ala-ubi juju. I am also in charge of Osisi Ofo juju. Onyenu is from Ndokwu. One family cannot put his juju on the other family land. Ala-ubi juju is a central place and it is on common ground all the roads to the different family lands of Umanahu lead to it."

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This witness was also cross-examined about churches on the land in dispute and said:

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- 10 "The two churches were built by Uzoagba people on the Umundula portion of the land. The Churches are C.M.S. and R.C.M. The C.M.S. church is on the left hand side of the road and the R.C.M. church is on the left hand side of the old N.A. road going towards the market. There were over 100 houses belonging to Uzoagbas on the left hand side of the road on Umundula portion before the two churches were built. The Umundulas gave Defendants the right to build the houses and churches." p.49, 1.28
- The third Plaintiff deposed that the Umundulas (Urattas) permitted only three persons and Onysuku to build left of the road. "They gave us chicken, tombo wine, sheep and food. Today there were over 100 houses there most of them built in 1944 when this case started." In cross-examination this witness stated that the Emeku-Uzoagbo road was made during the time of District Officer Douglas who was the first District Officer to come to Owerri (about 50 years ago). The boundary was marked by trees before the District Officer made the road. His family had farmed lands on the other side of the Okitankwo where his compound was. The other three farmers of Okitankwo had land there as well. In re-examination this witness stated that there was an original path and this was what Mr. Douglas widened it into a road. p.53, 1.15
p.53,
11.23-27
p.54,
11.21-29
- 20 Oke Adakonye gave evidence as to the proceedings which he had brought in the Uratta Native Court in 1935 and tendered copies of the proceedings (Exhibits "D" and "E"). He stated that the Native Court inspected the area and that one of the Native Court Judges was still alive. He also produced a record of the proceedings of the Opara in 1940. p.54, 1.20
p.57, 1.9.
- 30 p.58, 1.29
p.58, 1.34

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In examination in chief this witness said:

p.53, 1.44

"We sacrifice to Alaubi juju. We divide the land into three portions and farm on them in rotation."

This witness was cross-examined as to the existence of a R.C.M. Church and replied as follows:

p.55, 1.1

"There is an R.C.M. Church on the land in dispute in this area edged pink the church was built by Uzoagbas. It was built without our permission but when we asked them to quit the three people we permitted begged us and said our children would benefit from the church. There were not many houses around the area in which the church was built before it was built. Only the three people we permitted were there with their wives and children. The people who built the church were living on the right hand side of the road. There is also an R.C.M. Church and C.M.S. Church on the right hand side of the road built by Ndukwu Obokwe people. It was the Umualumaku people of Uzoagba that built them we on the left. The three persons we permitted were Umualumaku people. The tribute that was paid was to us Umundulas."

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p.60, 1.39
p.61, 1.16
p.61, 1.3

Okorie Ofoha aged over 70 years deposed that he was one of the sitting members in Owerri Court. He remembered the case taken out by Oke. He was President in Exhibit "E" and also sat in Exhibit "D", he went on to say :

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p.61, 11.6-8

"I remember going to inspect the land in dispute. We had to cross the Okitankwo before we got to it. We cross the stream from the Uratta side."

In cross-examination this witness said:

"I cannot say whether any of those in Court were from Uratta. I have forgotten."

p.61,
11.13-16

This was the whole of the extent of the cross-examination and no questions were put to the witness by the Court.

10 Maurice Ijiaku, Ikwebu Anosie, Wogu Anyanwu and Orji Ibeawuchi all deposed that the Uratta people were accustomed to farm on the land but they had never seen the Defendants farming there until 9 years ago.

pp.61-66

20 12. For the Defendants Mark Ikeonu (the second Plaintiff in A/84/53) deposed inter alia that the Ekwuru land referred to in Exhibits "D" "E" and "F" might relate to the Ekwuru on the other side of Okitankwo where the Plaintiffs lived. It was not in Egbelu Umuofa. The chief who said they crossed the stream and came to the Defendants land to inspect Ekwuru was not speaking the truth. The Emekuku Uzoagba road was made by District Officer Douglas to get communication with their then Warrant Chief Chief Ndabirinze. He was then living at Umueziogu. The Plaintiffs had no farms on the left hand side of the road. Further oral evidence was given by three witnesses who deposed (inter alia) that the Uzoagba and not the Uratta had been accustomed to farm on the land in dispute. Two of them further deposed as to
30 jujus on both sides of the road.

p.66, 1.42

p.68, 1.23

pp.70-75

13. As regards Exhibit "C" the Learned Trial Judge referred to the wording of the Native Court Judgment where it said:

p.84, 1.35

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"the accused persons are not to touch plants in that river (Okitankwo) till they prove how they have share in that water."

He then observed that:

p.84, 1.40 "District Officer quite rightly allowed the appeal in this case."

p.115, 1.25 He made, however, no reference to the earlier observations of the Native Court when they observed that since they were born they had never heard that Uzoagba people planted tombo tree (sic) in Okitankwo waterside. 10

With reference to Exhibits D and E the Learned Judge said :

p.84, 1.45 "First witness for Plaintiffs Okorie Ofaha who claimed to be the President in Exhibit "E" and a member when Exhibit "D" was tried said they had to cross the Okitankwo stream to visit it, thereby suggesting that it was land within the land edged pink now in dispute. I cannot accept this witness's evidence. He struck me as most unreliable. The record itself does not indicate on what side of the river the dispute was." 20

The Learned Judge did not indicate in what respect he considered this witness unreliable or why he could not accept his evidence. It is submitted that, since there was no cross-examination other than that recorded in paragraph 11 above and the Court itself had put no questions to the witness, the Learned Judge was not entitled wholly to dismiss the testimony of this witness which was, it is submitted, of the greatest evidential value. 30

10 The Learned Judge next stated that the Plaintiffs did not impress him as witnesses of truth. Their evidence on their traditional history was not, in his view impressive and he did not consider them reliable. Neither were they impressive over matters during their lifetime. The Defendants were more reliable. He found that he could rely upon their evidence and that of their witnesses. The whole land in dispute was so situate that it lent colour to their contention that the Okitankwo was the boundary. In his view the boundary between the parties was the Okitankwo and not the Emekuku - Uzoagba road. He therefore dismissed the Plaintiffs claims but granted the Defendants claim in A/84/53 for a declaration of title. He did not give any damages and granted an injunction as aforesaid.

20 At no stage in his judgment did the Learned Judge refer either to the evidence that the Emekuku - Ozoagba road followed an ancient boundary or to the evidence regarding jujus. He omitted to consider whether the evidence in support of the Defendants claim in A/84/53 was sufficient to justify the grant of a declaration of title.

30 14. The judgment of the Federal Supreme Court of Nigeria was delivered by Foster Sutton F.C.J. He referred to the observations of the Learned Trial Judge regarding the reliability of the witnesses and said that nothing that had been said on the Plaintiffs behalf had convinced the Court that the Learned Trial Judge erred in taking the view he had, nor did he think that there was any substance of the allegation of misdirection.

The Learned Judges of the Federal Supreme Court did not themselves make any finding as to

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the facts of the case but merely declined to interfere with the judgment of the Court below.

p.91, 1.26

15. An Order granting final leave to appeal to Her Majesty in Council was passed on the 8th January 1957.

16. The Plaintiffs respectfully submit that this appeal should be allowed with costs throughout for the following amongst other

R E A S O N S

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| 1. BECAUSE the learned trial judge erred in rejecting without any or any apparent reason the testimony of the witness Okorie Ofoha who had not been cross-examined save in one particular and had not been questioned by the Court itself. | 10 |
| 2. BECAUSE such testimony was of the highest evidential value. | |
| 3. BECAUSE the learned trial judge failed to appreciate the evidential value of the exhibits produced by the Plaintiffs. | 20 |
| 4. BECAUSE the learned trial judge failed to consider the Plaintiffs' evidence regarding the Emekuku-Uzoagba road. | |
| 5. BECAUSE the learned trial judge failed to consider the Plaintiffs' evidence regarding jujus. | |
| 6. BECAUSE the learned trial judge misdirected himself in holding that the whole land in dispute was so situate that it lent colour to the Plaintiffs' contention. | 30 |

7. BECAUSE the Federal Supreme Court erred in holding that there had been no misdirection by the learned trial judge.
8. BECAUSE both Courts below failed to consider whether the Defendants had proved acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that they were the exclusive owners of the land in dispute.
- 10 9. BECAUSE there was no sufficient evidence to justify any Court in granting the Defendants a declaration of title.

DINGLE FOOT

S. N. BERNSTEIN

IN THE PRIVY COUNCIL

No. 5 of 1958.

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

Between

ANOJE IGWE & OTHERS for
themselves and on behalf of
their people of Umunahu Uratta

— and —

OPARA UKWEJE & OTHERS for
themselves and as representing
their people of Umuifa Ozoagbe

CASE FOR THE APPELLANTS

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