

Privy Council Appeal No. 38 of 1962

Faweze Moukarihm – – – – – *Appellant*

v.

Abolade Olatunji Coker and others – – – – – *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL, 1964

Present at the Hearing

LORD EVERSLED

LORD HODSON

LORD DONOVAN

[*Delivered by LORD HODSON*]

This is an appeal from the Federal Supreme Court of Nigeria at Lagos setting aside a judgment of Quashie-Idun J. (as he then was) given at Ibadan in the Ibadan Judicial Division of the High Court of Justice, Western Region of Nigeria, on April 22nd 1960.

The issue in the appeal is as to the ownership of land situate at the junction of Onireke Street and Oke Padre Street, Ibadan. There is no dispute as to the identity of the land which is clearly shown on a plan which is the plaintiff's Exhibit 'A', the land being verged pink thereon.

The first respondent A. O. Coker, referred to hereafter as the plaintiff, began the proceedings on the 13th December 1957 by a summons issued against F. Moukarihm, referred to hereafter as the appellant, claiming a declaration of title to the land and an injunction to restrain the appellant from coming on the land, the position being that the appellant had been in possession since before the year 1953. He had built a concrete wall on the land in 1951 without anyone obstructing him in order to keep water from coming on to the land but, when in 1957 he started to build a petrol station, the plaintiff brought his proceedings.

The appellant held under a lease from one Johnson Aina dated November 16th 1953 with the consent of the traditional authorities under customary tenure to which the land is subject. Johnson Aina was joined as second defendant in the suit. He in turn alleged that in September 1951 the Ibadan Native Authority placed him in possession. This authority is the predecessor in title of the Ibadan District Council which was joined as third defendant in the suit. The Council alleged that they or their predecessors in title owned the land, having been in possession since 1916, and had become seized of it as a result of the surrender of part of the interest of one Seidu Williams to the Native Authority the predecessor in title of the Ibadan District Council, Seidu Williams having been granted the land by a memorandum of agreement drawn up in accordance with a report made by Chief Justice Speed on April 10th 1916. They also alleged acquisition by reclamation.

The plaintiff claimed that the land originally belonged to the Balogun Ibikunle family of Ayeye, Ibadan, who sold it to one Rosiji on the 16th December 1950; that Rosiji reconveyed the land to the Ibikunle family in 1952 who on the 27th March 1957 sold and conveyed it to the plaintiff.

It appeared clearly at the end of the hearing that the second and third defendants had no interest in the land and ultimately they were dismissed from the suit although named in the subsequent appeal proceedings as persons affected by such appeals.

Mr. Justice Quashie-Idun gave judgment in the suit on the 22nd of April 1960 dismissing the plaintiff's claim. He reviewed the evidence and was not satisfied that the Ibikunle family had any interest in the property to convey to the plaintiff at the time they purported to do so even though they might have been the owners of the adjoining lands. He himself made an inspection of the land and concluded that there was no doubt that it had been reclaimed with much difficulty. He accepted the evidence which had been given to prove the acquisition of the land by the Council.

The Federal Supreme Court reversed the decision of the trial judge. The judgment of the Court was delivered by Taylor F. J. with whom the other members of the Court concurred. This Court found certain misdirections of fact in the judgment of Quashie-Idun J. and felt itself able to arrive at a conclusion in favour of the plaintiff upon its own review of the evidence.

The main question is whether the evidence adduced by the plaintiff was sufficient to establish his title. He relied on traditional evidence to show that the vendors from whom he bought the land, the Ibikunle family laid claim to the land over a long period the land having been originally acquired by conquest by one of their ancestors. He sought also to prove that this family had exercised acts of ownership over the property prior to the date of the conveyance of the land to him.

The plaintiff in his evidence said that the land originally belonged to the Ibikunle family, that he was a friend of the family and their surveyor, that before 1953 people were selling boards on the land and paying rents to the family and that others planted vegetables on the land. In 1957 he saw that the appellant had fenced it. He said that he knew all the lands claimed by the family and had assisted his brother who had made a plan for the purpose of a suit in 1949 between that family and the Ibadan Native Authority.

The plaintiff's evidence was supported by that of Salami Eniaiyewu who said he obtained a grant of the land from the Ibikunle family about 50 years ago and planted on it sugar cane and vegetables. In cross-examination he said he left the land about 4 years ago (viz. about 1955) that it was marshy some time ago and used as a rubbish dump by the public. He also said it was reclaimed after he had left the land and that it was the Sanitary Authorities who burnt the rubbish and reclaimed the land. Raji Oduola the next witness said that he was a great grandson of Balogun Ibikunle who had acquired the land including the land in dispute by conquest and that he had joined in the later of the two conveyances to the plaintiff. He however in contradiction of the witness Eniaiyewu said that the latter did not plant vegetables on the land in dispute but on a portion of other land belonging to the family separated by four plots of land from that which was in dispute. The learned judge concluded that there was no satisfactory evidence that 50 years ago Eniaiyewu had planted vegetables on the land in dispute. Raji Oduola said that the Ibikunle family had allowed a plank seller to sell boards on the land before it was sold to the plaintiff. A plank seller named Josiah Agbe, who had been asked only the night before to give evidence, said that use of the land was granted to him by the head of the Ibikunle family for 25 years, that he sold planks on it, that he left in 1954 and that at the time he was on the land it was marshy and that it had not been reclaimed when he left it. This evidence was inconsistent with the evidence of a later witness called on behalf of the appellant, Daniel Tayo Akinbiyi a former councillor of the Ibadan Native Authority and a former judge of the Native Court. He gave evidence that the land which was swampy was reclaimed by the Ibadan Native Authority in 1934 by prison labour prior to its acquisition by the Authority. This acquisition will be referred to later. Raji Alapinti a member of the Alapinti family another witness, who had been asked to give evidence for the plaintiff the night before the hearing, said that the land in dispute belonged to the Ibikunle family but in disagreement with Raji

Oduola denied that the Ibikunle family had ever granted the Alapinti family any lands.

Some years earlier, in 1949, the Ibikunle family had brought an action against the Native Authority the predecessor of the Ibadan District Council claiming a declaration of title in respect of land situate at Gbagi, Ibadan and shown on a plan which is the plan marked C to which their Lordships have been referred. In cross-examination the plaintiff admitted, as indeed the plan demonstrates, that the land in dispute lies outside the area claimed in that action by the family as Ibikunle land and is shown on the other hand as being Alapinti land. This plan is dated the 6th January 1950 shortly before the first conveyance of the disputed land to the plaintiff; it was made by the plaintiff's brother and the plaintiff, who is a surveyor, assisted in the making of it. It is a matter of significance which carries weight against the plaintiff that in these early proceedings the family not only did not include the land in the area claimed as theirs but marked it as Alapinti land.

Curiously enough the learned trial judge did not when he gave his judgment remember that the disputed land was shown in plan C in the way in which it is in fact shown. He thought that it was part of the land to which the Ibikunle family were then claiming title. He drew therefrom an inference adverse to the family, thinking that, as the land was within that portion claimed in the action brought against the Ibadan Authority in 1949, they must have been aware that the land had been acquired by the Authority before they purported to convey it to the plaintiff. On the facts as now agreed the land was outside the area claimed in the previous action, and is described on the plan used in that action as Alapinti land so that the inference against the plaintiff may be said to be even stronger when he now claims that the land was and still is Ibikunle family land. In the Federal Supreme Court attention was drawn to the mistake of the learned judge and to the adverse inference against the plaintiff which he had drawn. The Court regarded the misdirection as material and substantial, but their Lordships are of opinion that, notwithstanding the misdirection, the inference on the true facts is (as already indicated) stronger against the plaintiff than it was upon the mistaken view taken at the trial. The Federal Supreme Court also referred to the passage from the judgment of the learned trial judge in which he stated that he was not satisfied that the Ibikunle family had any interest in the property to convey to the plaintiff *at the time* they purported to do so even though they might have been the owners of the adjoining lands and drew the inference that the judge was holding that although they had some interest at some time before 1957 when they purported to convey to the plaintiff they had ceased to have an interest before conveying to the plaintiff. Their Lordships do not feel that the language used by the learned judge leads to this inference but appreciate the force of the Federal Supreme Court's comment that the trial judge had already held that the land had previously been acquired by the Ibadan Native Authority and his conclusion on that matter was affected by the mistake he had made as to the situation of the land in connection with the 1949 litigation where acquisition of Ibikunle land was the subject matter of the dispute.

Their Lordships do not however with all respect to the Federal Supreme Court agree that the decision of the trial judge as to the acquisition of the land in dispute depends on any mistaken view of the facts. The evidence of acquisition given at the trial is cogent. Daniel Akinbiyi, above referred to, who had been a councillor from 1936-1952 said that the land in dispute was acquired in 1937 by the Council, that a man went round with a bell to announce that the land was being acquired and that notices were placarded on the site and published in the official bulletin. He knew that compensation was claimed but did not know if any were paid. Sule Brimoh however, an employee of the Council, who had been employed in the Survey Section since 1933, said that some of the families were paid compensation, but that no claim was made on the part of the Ibikunle family. He made it clear that in 1937 the Council decided to acquire all the lands between Onireke Street and the Ogunpa Stream. All the lands so situate includes the land in dispute. It is true that no plan was tendered to show the area covered by the acquisition but no plan was necessary and the absence of a plan in the Council records

does not outweigh the evidence of acquisition. The ringing of the bell and announcement by word of mouth are appropriate methods to convey to the notice of illiterate people that their land is being acquired. Placards were placed on the land for those who could read. The bulletin notice referred to by the Court instructed any person laying claim to ownership of the land lying between Onireke Street and Ogunpa Stream to inform the District Officer, or the Lands Registry Clerk, Oke Are, within 30 days. There seems therefore to their Lordships no reason sufficient to reverse the trial judge on his finding that the land in dispute had been acquired by the Ibadan Native Authority.

It was submitted on behalf of the plaintiff that, since acquisition by the Native Authority could only be validly effected for public purposes, therefore, when this land in dispute had been reclaimed, the purpose was exhausted and the land would revert to the original owner, the acquisition if any being then of no effect. This point was never raised at the trial or before the Federal Supreme Court and their Lordships were not prepared to give it consideration particularly as, if the point were one of substance, evidence as to the use to which the land was put at the material times would be appropriate to be given before a conclusion could be reached.

It is unnecessary to consider in detail a contention raised by the appellant that one Seidu Williams was in possession of the land in dispute from 1902 onwards which, if true, would be inconsistent with the plaintiff's claim. This contention stems from a plan exhibited to a conveyance dated the 30th September 1902 by which land in this district was conveyed to Seidu Williams whose son Issa Williams gave evidence and claimed the land in dispute as his. The plan however which was annexed to the conveyance shows a piece of land which, if the plan is accurate, cannot be identified with any land which includes the land in dispute if only because of the way the course of the Ogunpa Stream is marked. It is shown as a single stream running northwards for about 500 feet from the eastern side of the land conveyed whereas on the plans A and C (to which reference has been made) the stream divides into two parts at a point which appears to be less than 50 feet from the northern edge of the land in dispute. This matter was not dealt with by the trial judge but their Lordships do not dissent from the view taken by the Federal Supreme Court that the land conveyed to Seidu Williams has not been identified as including the land in dispute.

The appellant himself did not rely upon his own documents of title for reasons into which it is unnecessary to enter but relied on his possessory title and in refusing a declaration the learned judge rightly said that the onus was on the plaintiff to satisfy the Court that the evidence he had led is sufficient to establish his claim and if not satisfied that the onus had been discharged the Court must refuse the plaintiff the declaration even though there is weakness in the case for the defendant.

The Federal Supreme Court at the end of its judgment gave some weight to the language of section 45 of the Evidence Ordinance (Cap 62) which reads thus:

“ Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land.”

It does not appear that the plaintiff can gain assistance from this section since, as is shown by the plan marked C already referred to, the land in dispute marches with the lands of other families besides that of Ibikunle. It is there shown as Alapinti land but in any event it marches with the land of that family as well as with the land of the Wondo family shown on that same plan. Samuel Olorode, a member of the Wondo family, gave evidence that the whole land in the area including the land in dispute originally belonged to his family and denied that the Ibikunle family had any land in Gbagi.

As was observed by Webber J. in *Ekpo v. Ita*, XI Nigeria Law Reports p. 68:—“ In a claim for a decree of declaration of title the onus is on the

plaintiff to prove acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that the plaintiffs were exclusive owners—if the evidence of tradition is inconclusive the case must rest on question of fact ”.

This statement of principle was cited with approval by the Board in the unreported case of *Idoko Nwabisi and another on behalf of themselves and the Umeleri people v. R. A. Idigo and another on behalf of themselves and the Aguleri people*, Privy Council Appeal No. 4 of 1958.

Their Lordships therefore agree with the conclusion of the learned trial judge that the plaintiff had not by the traditional evidence adduced on his behalf coupled with the evidence purporting to show acts of ownership by the Ibikunle family proved his right to a declaration of title to the land and that on a review of the whole of the evidence including that called on behalf of the defendants the same conclusion ought to be reached.

They will humbly advise Her Majesty that the appeal be allowed the Order of the Federal Supreme Court set aside with costs and the judgment of the High Court restored. The first respondent must pay the costs of this appeal.

In the Privy Council

Faweze Moukarim

v.

Abolade Olatunji Coker and Others

DELIVERED BY
LORD HODSON