

Bakare Ajakaiye and another - - - - - *Appellants*

*v.*

The Lieutenant-Governor, Southern Provinces - - - - - *Respondent*

FROM

THE SUPREME COURT OF NIGERIA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 1ST JULY, 1929.

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*Present at the Hearing :*

VISCOUNT SUMNER.

LORD WARRINGTON OF CLYFFE.

LORD ATKIN.

[*Delivered by* VISCOUNT SUMNER.]

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In October, 1924, the Governor of the Colony and Protectorate of Nigeria, requiring for public purposes certain lands round the Okepa village Ikoyi, in the island of Lagos, took steps to acquire them under the Public Lands Acquisition Ordinance, and, in accordance with section 5, gave public notice of his requirement. Thereupon the appellants, as Heads of Iga Iduntafa, lodged a claim in respect of the said lands, and in due course a summons was issued under section 10, on which the respondent was plaintiff and the appellants were claimants and defendants. This came on for hearing before Van der Meulen J. in April, 1926. The claim was for an alleged right of ownership in the lands and for a share in the money to be paid by the respondent as compensation for the lands taken. The appellants claimed as owners not as inhabitants, but no doubt their alleged right was intended to be such as is described in the judgment of their Lordships' Board in *Amodu Tijani v. Secretary S. Nigeria* [1921], 2 A.C. 399, and others besides themselves would have enjoyed usufructuary rights under them in accordance with local law and custom.

On the hearing of the summons the claim was met by a preliminary objection that the lands in question were con-

clusively deemed to be Crown lands by virtue of section 7 of the Ikoyi Lands Ordinance, 1908. If so, the alleged ownership could not avail the claimants. The objection was allowed by the learned Judge, whose decision was sustained by the Full Court. Hence the present appeal, for which leave was given, has been brought before their Lordships' Board.

The question turns on the true construction of the Ikoyi Lands Ordinance, and particularly on section 7. The matters, for which that ordinance was intended to provide a remedy, are fully stated in the preamble. At the date of the ordinance much doubt existed as to the title to various lands in the island of Lagos, lying east of the Macgregor Canal therein, within which described limits the Okepa lands in dispute admittedly lie. By treaty, dated the 6th August, 1861, Docemo, King of Lagos, transferred to Her Majesty Queen Victoria his Sovereign rights over the port and island of Lagos and in 1865 the fee simple in possession of the greater part of the portion situate to the east of the Macgregor Canal (generally known as "Ikoyi") was granted to the British Crown. In subsequent years the Crown made various grants of parts of this land, but by 1908 the position of the majority of the lands thus alienated was found to be insufficiently defined, all the more because the lands themselves had in many cases been deserted for years. Beside the lands which had been granted to the Crown there were private lands of smaller extent, and it had accordingly become desirable that the boundaries of all private lands, still occupied, should be defined, and that the areas of the Crown lands should be clearly ascertained.

The object of the ordinance was to establish a procedure, under which matters could be cleared up once for all by an investigation of rights and titles, and a survey and demarcation of any area to which rights might be established. It is obvious that this involved calling on claimants to come forward, and assert their claims, so that they might be investigated and determined. It is obvious also that cases might and would arise, in which claims, otherwise not unsubstantial, were either not asserted within the time limited (and some limitation was essential *ut sit finis litium*) or never asserted at all. It is obvious also that the land within the area named might involve questions of various sorts. Land might be (1) in the possession of private persons, or (2) included in Crown grants, or (3) held under some title not originating in a grant from the Crown, and no doubt all such descriptions of land were in need of investigation for practical purposes.

Theoretically the area might have been classed as Crown lands and private lands, Crown lands including both such as were still in the hands of the Crown and such as had been granted away by the Crown, and private lands including such as were not King Docemo's to grant to the British Crown, whether because they had already fallen into private hands by grants from him or his predecessors

prior to his transfers to Queen Victoria or because they had never been his at all, but, under native custom or otherwise, had belonged independently to private owners. Such a classification would, however, be purely theoretic unless it could be known that there actually were particular private lands owned under titles arising prior to 1861 and independently of the local Sovereigns. Historically, such a matter would be difficult to establish and, as a practical measure, the readiest road to a settlement would be to investigate all private claims and to demarcate all lands not private but remaining vested in the Crown, and the wording of the sections is strong to show that this practical course was adopted.

Section 2 runs : " All private persons claiming to be possessed of lands situated " in the part of the island of Lagos in question, " shall, within twelve months, exhibit their titles." These expressions are advisedly made general. The only qualifications upon " all persons " are that they shall be " private," and shall claim to be possessed, and the only way in which the lands are particularized is by their situation. Section 3 then deals not with all lands claimed by private persons, but with such of them as purport to be included in Crown grants. It says nothing of lands claimed, which do not so purport. Sections 4 and 5 prescribe the course to be pursued with lands, in respect of which titles are exhibited to the Commissioner under section 2. Lands included in old Crown grants are to be resurveyed and new grants are to issue for them. Lands held under any title, other than Crown grants, are to be demarcated and recorded on plans kept for the purpose. Section 6 provides the requisite legal procedure in case of deficiency of *prima facie* proof of title or of conflicting claims, and then comes section 7 :—" All lands situated within the limits above described, to which no claim is made within the prescribed time, shall be deemed to be Crown lands thenceforward."

In itself this section could hardly have been more explicit or clear. The lands, to which this appeal relates, were within the described limits and the prescribed time had elapsed without any claim to the ownership of them being put forward by the appellants or any other persons. Accordingly, both Courts below held themselves bound to deem them to be Crown lands, and it followed that they must dismiss the appellants' claim. Such an interpretation of words sufficient in themselves completes the scheme of the ordinance, for it clears up all ambiguities of title. The two interests concerned are those of the Crown and of private persons. Private persons are called to " establish their titles," however arising. If they succeed, old Crown grants, if any, lapse, and are replaced by new and better defined grants. If they fail, the Crown's title arising from the cession is unchallenged and unchallengeable thereafter. If they do not come forward in time the title is deemed to be in the Crown, and any outstanding Crown grant, which might be inconsistent with it, lapses. Where private persons come forward and establish

titles, otherwise than by an original Crown grant, in which case they would be entitled to the demarcation which their new Crown grants would contain, their lands are finally demarcated for them *in situ*.

The present question is entirely one of construction of the ordinance, and the appellants' argument may be summarised as follows :—(1) If the ordinance applies to lands belonging to private persons under a native title, not dependent upon or acquired by or through any Crown grant, which is the title now asserted, the interpretation placed by the Courts upon section 7 involves confiscation of property in a summary fashion without compensation. (2) To avoid such a result, it is legitimate to consider as materials for a proper construction (*a*), the title, and (*b*), the preamble of the ordinance on accepted principles of construction of statutes, and (*c*), the marginal summary of the contents of each clause, which is prescribed by Clause 27 of the Royal Instructions for Southern Nigeria of 8th February, 1906. Accordingly, as the ordinance is described in the entitling part as “an ordinance to provide for the proper identification and demarcation of lands granted by the Crown to private owners and situated, etc.,” and as the marginal caption to section 2 is “private owners to exhibit titles,” the “private persons” mentioned in section 2 must be identified as being such as are named in the title and description of the ordinance, and so are exclusive of the appellants, whose claims are not to a title granted by the Crown. In support of this construction, reliance is placed on the apparent admission contained in the preamble that there was a part, though a minor part, of the portion of the island now in question, which never had been ceded to the Crown, and that the Crown had never purported to alienate the whole of that area. If so, when the ordinance came into force, there remained private lands which, though dubiously delimited, were still occupied and had never been abandoned in the years intervening since the recited treaty was made with King Docemo. Reliance was placed on the authority of *The Commissioner of Lands v. Oniru* (2 Nigeria Law Reports, 71), decided in 1912, and on a passage in the judgment of Combe C.J. in the present case, which said that “there were certainly two classes of persons who might claim to be owners of land to the east of the Macgregor Canal—namely, (*a*), the owners of that portion of the land which had not been granted to the Crown; and (*b*), persons who had acquired title under Crown grants issued after 1865 in respect of land within the portion which had been granted to the Crown. These latter persons are referred to in the ordinance as ‘private persons.’ Provision was made in the ordinance for determining the areas, which both classes of claimants were entitled to continue to hold as owners.”

On the other hand the case of *The Commissioner of Lands v. Kamajalodun*, decided in 1911, was set out and relied on in the judgment. It showed that, on the hearing and determination of the inhabitants' claim to fishing and other privileges in respect of the

same parcels as those to which this appeal refers, not only was no adverse ownership claim set up, but the present appellants or their predecessors did not even appear or seek to be made parties, and it was assumed and expressly stated that the Crown had, without dispute and in the exercise of a right, which was apparently proprietary, permitted to the inhabitants the enjoyment of privileges, which it would only have been competent to proprietors to allow. A declaration was thereupon made in the presence of the Crown officers that the inhabitants were so entitled as of right, and that declaration still stood.

Their Lordships are unable to adopt the reasons or the conclusions of the appellants. It can only have been by inadvertence that the learned Chief Justice expressed himself as he did. If his words in themselves mean (which is by no means certain), that persons claiming as the appellants claim are not within some limited sense to be put upon the words "all private persons" in section 2 of the ordinance, they are inconsistent with the decision of the Court and must be rejected. The *Oniru* case was not cited in the judgment appealed from and, probably for some reason not known to their Lordships, was not mentioned to the Court. At the same time, it had been so recently decided that it could hardly have failed to be in the recollection of the learned Judges, and there may well have been some fact connected with it which, in the view of all parties, made it inapplicable. At any rate, it does not bind their Lordships, and as a decision adverse to the particular point of construction now in question, but not further or otherwise, they do not follow it.

As to the ordinance itself, it is a misnomer to describe its operation in the sense adopted in the Courts below as "confiscation." No doubt in its effect, if parties concerned fail to assert in time a title which they might otherwise have established, they are divested of their property, but this is thanks to their own inaction. The same would have been the result of a statute of limitations or an ordinance making obligatory and effective a system of land registration and of proof of title by entries in the register. The ordinance itself must have been notorious to those concerned, and the community within which possible claimants could be found must have been small. The opportunity for claims appears ample, but in any case this is a matter of policy, not of interpretation.

Their Lordships think that there is little need to resort to the title or to the preamble of the ordinance in order to construe these clear sections. It is not contended that s. 7 of the ordinance is "foreign to what the title of such ordinance imports," so as to be *ultra vires* and void, as being prohibited by Clause 27 of the Instructions, but only that its limited terms affect, if they do not control, the construction of s. 7. As for the marginal captions, they are not to be taken to hold that the rules referred to are anything but directions



as to the form to be adopted and the mechanical framework to be used in drafting ordinances, but in any case the caption here carries matters no further. It does not purport to refer to the wording of the title and description of the ordinance for any purpose of limiting or construing the words "any private persons." The title of the ordinance itself, "Ikoyi Lands Ordinance," is quite general, and the following words—"proper identification and demarcation of lands granted by the Crown to private owners"—are descriptive of the major part of the purposes of the ordinance, but do not purport to be exhaustive of them. Accordingly, they cannot prevail against the enacting words. Section 5 quite clearly and in terms deals with demarcation of lands, other than such as have been granted by the Crown. This section certainly cannot be expunged or modified by the words contained in the title and description of the ordinance. The same holds good of section 2. The contention that "exhibit their titles" in the latter section assists the argument or operates to limit the "private persons" to grantees from the Crown is unsound, for the expression is quite general. The title is not defined, nor is the expression "exhibit" limited, and, for anything that appears to the contrary, it is a fit expression to cover not only written instruments but all the indicia or symbols of right that occur in such a community as that of Lagos. As for the preamble, it appears to their Lordships to go far to establish a situation, in which the exclusion from the operation of the sections of any persons interested in any way in lands within the area, would have tended to defeat the object of the ordinance, and would, for no good purpose, have perpetuated the uncertainty and confusion, which so urgently demanded an effective remedy.

Their Lordships will for these reasons humbly advise His Majesty that this appeal should be dismissed with costs.

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In the Privy Council.

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BAKARE AJAKAIYE AND ANOTHER

v.

THE LIEUTENANT-GOVERNOR,  
SOUTHERN PROVINCES.

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DELIVERED BY VISCOUNT SUMNER.

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