

Onikoyi Chieftaincy Family - - - - - *Appellants*

v.

Chief Secretary to the Government - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH DECEMBER, 1944

Present at the Hearing :

LORD THANKERTON

LORD MACMILLAN

LORD SIMONDS

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by LORD SIMONDS*]

This appeal is brought from a judgment of the West African Court of Appeal given on the 19th October, 1942, affirming a judgment of the Supreme Court of Nigeria.

The appellants claim that the land, compulsorily acquired as herein-after mentioned, formed in the year 1865 part of the family property of King Docemo, then Chief Onikoyi, and that they are his lawful successors according to native law and custom and are accordingly entitled to a part of the compensation payable upon the compulsory acquisition.

The relevant facts and the proceedings out of which this appeal arises can be briefly stated.

On the 5th April, 1941, a notice was issued on behalf of the Government of Nigeria under the provisions of the Public Lands Acquisition Ordinance (Chapter 88 of the Laws of Nigeria, 1923) that certain land at Ikoyi, Lagos, therein particularly described, was required for public purposes absolutely. The notice required any person claiming to have any right or interest in the said land to send in a statement of his interest and claim in the manner therein prescribed, and gave other directions to which it is not necessary to refer.

It is not in dispute that the lands described in this notice are in that part of Lagos Island which was originally the property of the Onikoyi Chieftaincy, one of the land-owning families of Lagos, or that they were included in the tract of land which was in the year 1865 given by King Docemo to Captain Glover, R.N., Governor of the Island, on behalf of her late Majesty Queen Victoria.

Divers claims having been made to an interest in the lands in question and in the compensation payable therefor, an originating summons was, in accordance with the provisions of the same Ordinance, issued on the 23rd February, 1942, in the Supreme Court of Nigeria upon the application of the Chief Secretary to the Government to determine the persons entitled to the lands in question and the amount of compensation payable therefor. It was therein stated that the Governor was willing to pay as compensation the sum of £6,800. No dispute as to the amount is raised in this appeal. The summons was addressed to 25 persons, among them the present appellants.

It appears that at the hearing before the Supreme Court the appellants put their case in alternative ways, claiming in the first place that the gift to Governor Glover, to which reference has been made, was not an outright gift, but made for the limited purpose of providing farming land for Hausa ex-soldiers, and that the purpose of this gift having become exhausted on the death in 1916 of the last of these ex-soldiers, the land reverted to the family of the Onikoyi Chieftaincy, and claiming in the second place that in any case the gift had been made without the consent of the family and was therefore of no effect. The second ground of claim, which was summarily rejected in the Courts below, has not been repeated before their Lordships. It is the first ground of claim upon which alone the appellants relied, and before this is examined it is necessary to refer to the Ikoyi Lands Ordinance, formerly cited as the Southern Nigeria Ordinance No. 16 of 1908, but now as Chapter 91, Laws of Nigeria, 1923. The title of that Ordinance is "An Ordinance to provide for the proper identification and demarcation of lands granted by the Crown to private owners and situated in that part of Lagos Island east of the MacGregor Canal generally known as Ikoyi." It recites that by a Treaty dated the 6th August, 1861, Docemo, King of Lagos, on the part of himself and chiefs, gave and transferred unto the Queen of Great Britain her heirs and successors for ever His Sovereign rights over the port and island of Lagos with all the rights, profits, territories and appurtenances whatsoever thereunto belonging, that the Island of Lagos was then divided into two unequal portions by the cutting known as the MacGregor Canal, that the fee simple in possession of the greater part of the portion situate to the east of that Canal (generally known as Ikoyi) was granted to the British Crown in or about the year 1865, which fact was established by a judgment of the Supreme Court of the Colony in the year 1904, that Crown grants had been made, or were alleged to have been made, from time to time of certain parts thereof, that the position of the majority of the lands alienated by such grants was not sufficiently defined and that the lands themselves had in many cases been deserted and abandoned for years, and that it was desirable that the boundaries of all private lands still occupied on that portion of Lagos Island should be defined and the areas of Crown lands clearly ascertained.

The Ordinance then enacts by section 2 that all private persons claiming to be possessed of lands situated on that part of the Island of Lagos east of the MacGregor Canal should within the periods of six or 12 months therein mentioned establish their titles thereto to the Commissioner of Lands, by section 3, that all Crown grants (whether registered at the Land Registry or not) purporting to include any portion of the said land to which no claim was made and no title exhibited as provided by s. 2 should lapse as from the end of the period of 6 or 12 months as the case might be, by s. 4 that all lands specified in every Crown grant produced should be resurveyed and a fresh Crown grant issued as therein mentioned, and by s. 5 that all lands held under any other title than through an original grant from the Crown should have their boundaries demarcated as therein prescribed. By s. 6 provision is made for the determination of any unproved or disputed claims. Section 7 is in the following unambiguous terms: "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: Provided always that any owner who shall not have submitted a claim thereto within that period may nevertheless within the further period of one year, on satisfying the Supreme Court of the former validity of his claim recover the agricultural value of the land in question."

Two further facts must be stated. First (as was found by the learned Acting Chief Justice), in the years following 1865 a number of Crown grants were issued covering portions of the land acquired from King Docemo and purporting to convey an absolute interest to the grantees and the land, the subject of these proceedings, lies wholly within the area covered by five of these grants. Secondly, no claim was at any time made under the Ordinance by the Onikoyi Chieftaincy family.

The Acting C.J., upon a consideration of these facts and of the Ordinance and of a decision of their Lordships in the year 1929, to which further reference will be made, came to the conclusion that from and after the date of the Ordinance owners of Crown grants approved under the Ordinance acquired an indefeasible title to the land covered by their grants and the Crown to any land which remained unclaimed, and accordingly held that the appellants had no interest in the land to be compulsorily acquired. His judgment was affirmed by the West African Court of Appeal.

In their Lordships' opinion this decision is clearly right. The language of the Ordinance, and particularly of section 7, does not admit of any doubt. Its validity and effect have been challenged on the ground of an alleged inaccuracy in the recitals. There appears to their Lordships to be no substance in the allegation. But even if there were any such inaccuracy, the result could not be different: the enactment must still take effect according to its terms. If land was situate within the prescribed limits, then from the date of the Ordinance it belonged either to claimants who established their title or, failing such persons, to the Crown.

It was further contended by the appellants that the Ordinance had no application to such an interest as that which, as they alleged, lay in them, viz., a reversionary interest which, subject to the occupancy of the land by the Hausa ex-soldiers, for whose benefit the original grant was made, was, according to native law and custom, conserved for the appellants' family. But here again the language of the Ordinance is fatal to the appellants' contention. It is unnecessary to consider what might, apart from the Ordinance, have been the legal effect of the cession made in 1865 or whether any reversionary right or interest remained in the appellants' family. For the provisions of the Ordinance are comprehensive and conclusive and leave no room for the assertion of any such outstanding right or interest.

The view which their Lordships take of the meaning and effect of the Ordinance is in accord with that previously expressed by them in *Bakare Ajakaiye v. The Lieut.-Governor of Southern Nigeria* ([1929] A.C. 679). In that case, in which the question was whether s. 7 applied to lands held under a native title not acquired by or through any grant from the Crown, the provisions of the Ordinance were exhaustively examined, and it was determined that, since the lands there in question were within the described limits and the prescribed time had elapsed without any claim to ownership having been established, the title of the Crown was unchallengeable thereafter. Their Lordships then observed, "Such an interpretation of words, sufficient in themselves, completes the scheme of the Ordinance, for it clears up all ambiguities of title." So in this case it would be clearly inconsistent with the language and scheme of the Ordinance to hold that there is some outstanding right or interest to which it does not apply. Their Lordships will for these reasons humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council

ONIKOYI CHIEFTAINCY FAMILY

v.

CHIEF SECRETARY TO THE
GOVERNMENT

DELIVERED BY LORD SIMONDS

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