G1H-G12

8,1961

IN THE PRIVY COUNCIL No. 42 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN

CHIEF OKRO ORUKUMAKPOR (for himself and Ajamatan family of Gbumidaka) ... ... Appellant

and

1. ITEBU,
2. IDOGHALE,
3. EGHOMITSE,
4. AWIENI,
5. EDORUEGWARE,
6. ATSEMIJURE,
7. AMARHAVEV,
8. IMUWE,
9. EMADAMESHEYE,
10. EYETAN,
11. ERHABO,
12. UMIGBORHIEMVO,
13. ESHOWAN,
14. MUKORO,
15. MEBRADU,
16. EGHERTIVE,
17. GBADUDU,
18. GBAMIDOBO,
19. DODOYO,
20. BOY DAMTSE,
21. ENINEVWRO,
22. DAMIGORU,
23. OVWIE,
24. ITSAVO,
25. OYIBO,
26. TAJERUO,
27. BOY MABAMIJE,
28. SAJINI MATA,
29. JOSINYOTA,
30. ARIBORO,
31. OBOSHERI,
32. SAJINI YANUGHU,
33. MANAYERUE,
34. OWONOWARE,
35. ASAMA,
36. SAJINI and
37. SUKURU.

(for themselves and on behalf of the people of Elume) Respondents

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment, dated the 3rd March, 1958, of the Federal Supreme Court of Nigeria (de Lestang, Ag.C.J., Abbott, F.J. and Cousse, Ag.F.J.) allowing an appeal from a judgment, dated the 18th August, 1956, of the High Court of the Western Region of Nigeria (Onyeama, Ag.J.) awarding the Appellant: p.32 p.23

(a) against each of the 5th to 37th Respondents, judgment for four tins of palm oil being tribute for the 1954/55 season;

(b) a declaration that the Appellant, as representing the Ajamatan family, was entitled to collect four tins of palm

oil each season from each of the persons entering on Idale Iand to collect palm fruits.

2. The case turns upon the proper interpretation of the terms of settlement reached in an earlier action between the Appellant and the first four Respondents representing the people of Elume. These earlier proceedings were started in the Supreme Court of Nigeria in 1953. On the 11th November, 1954, when the proceedings were before the West African Court of Appeal, the parties agreed upon terms of settlement, which were made an Order of the Court of Appeal on the 15th November, 1954. These terms included the following ("the Respondents" in that case were the first four Respondents to the present appeal, representing the people of Elume, and "the Appellants" were the Appellant in this appeal and the Ajamatan family):

pp.39-40

"2. The Respondents agree that the Appellants are the owners of the land known as Idale the subject matter of this appeal.

3. The Appellants agree to permit the Respondents and their people of Elume to enter at all times upon the said land to farm and during the season when the bush is declared open to collect palm fruits on payment of the customary tribute.

.....

5. The Respondents' people who continue to enter into the land to collect palm fruits agree to pay four tins of oil per season as tribute to the Appellants.

6. Those people of Elume who are entering the said Idale land for the first time will have to pay the usual entrance fee of Shs.14."

3. The parties to those proceedings subsequently disagreed about the meaning of paragraphs 5 and 6 of these terms. On the 19th October, 1955 the Appellant applied to the West African Court of Appeal for an Order amending the terms of settlement by

pp.41-42

the insertion in paragraphs 5 and 6 of words to make it clear that each member of the Respondents' people entering the Idale land was required to pay the tribute mentioned. This application was dismissed, the Court holding that it had no power to vary the terms of a settlement unless the parties consented, which the Respondents had not done.

4. On the 6th February, 1956 the Appellant issued a writ in the High Court of the Western Region of Nigeria originating the present proceedings. The relief claimed was the following: pp.1-2

(1) A declaration that the Appellant was entitled to collect four tins of palm oil per person per season from the Respondents and their people who entered the Appellant's land known as Idale, to collect palm fruits, in accordance with the Order of the West African Court of Appeal of the 15th November 1954;

(2) against the 5th to 37th Respondents, four tins of palm oil and Shs.14 per person per season as tribute payable for entering the Appellant's land and collecting palm fruits there during the seasons of 1954 and 1955.

5. By his Statement of Claim, dated the 8th May, 1956, the Appellant said that he was the Head of the Ajamatan family and brought the action in a representative capacity on behalf of the family. The Respondents were sued for themselves and as representing the people of Elume. The Idale land had been founded by the Appellant's people, and was in his care as Head of the Ajamatan family. For several years the Respondents had collected palm fruit from this land, paying to the Appellant rent or tribute at the rate of four tins of palm oil each person per year for doing so. The Statement of Claim set out the proceedings of 1953 and the terms of settlement embodied in the Order of the West African Court of Appeal. It then alleged that the Respondents had failed to pay the entrance fee of Shs.14 and the customary tribute of four tins of palm oil per person per season, in spite of this Order and of repeated pp.3-6

demands made by the Appellant. The 5th to 37th Respondents had continued to collect palm fruits from the Idale land without paying either the entrance fee or the four tins of palm oil per person per season.

pp.6-10 6. By their Defence, dated the 6th June, 1956, the Respondents denied that they had ever paid tribute to the Appellant at the rate of four tins of palm oil each person per year for the right to collect fruits from the Idale land. They alleged that all of them together paid four tins of palm oil per season as tribute to the Appellant, which, they claimed, was the effect of paragraph 5 of the terms of settlement reached in 1954. They alleged that since 1926 they had been enjoying the fruits of the Idale land together with the Appellant. Paragraph 6 of the terms of settlement, they said, required only new entrants to pay the entrance fee of Shs.14; the 5th to 37th Respondents had been on the land for many years, were not new entrants, and so were not liable to pay the entrance fee. They denied that they had ever agreed to pay four tins of palm oil per person per season.

p.12 7. The action came on before Onyeama, Ag.J. on the 15th August, 1956. Counsel for the Appellant proposed to call evidence to explain the terms of settlement of 1954. After hearing an objection by Counsel for the Respondents, the learned Judge held that paragraphs 5 and 6 of the terms of settlement were ambiguous, and admitted the evidence.

8. The following provisions of the Evidence Ordinance (Laws of Nigeria, 1948, cap.63) are relevant to this point:-

'132.(1) .....

(2) .....

(3) .....

(4) In order to ascertain the relation of the words of a document to facts, every fact may be proved to which it refers, or may probably have been intended to refer, or which identifies any person or thing

mentioned in it. Such facts are hereinafter called the circumstances of the case.

(5) .....

(6) .....

(7) .....

(8) If the language of the document, though plain in itself, applies equally well to more objects than one, evidence may be given both of the circumstances of the case and of statements made by any party to the document or to his intentions in reference to the matter to which the document relates.'

9. The Appellant gave evidence that he allowed Elume people to come on the Idale land on payment of tribute. It had been agreed that on the first occasion each of the Elume people came he would pay Shs.14. At the beginning of each palm fruit collecting season each person was to pay four tins of palm oil as tribute. They had not paid the dues for the last year. One of the Elume people, named Ikoro Akpoigbe, gave evidence that he collected palm fruits from the Appellant's land. He had paid Shs.14 before he had been admitted to it, and for about thirty years he had always paid four tins of palm oil each season. He was not the only Elume man paying in this way. The first Respondent gave evidence that, when the earlier proceedings had been before the West African Court of Appeal, he had been present and had agreed to the consent Order. The agreement had been that each person coming on to the land for the first time would pay Shs.14 to the Appellant. The first Respondent said that the collectors of palm fruits did not pay any palm oil at all, but allowed four tins of oil out of the total oil collected to the Appellant. A witness named Dominic Pemu, one of the Elume people, gave evidence to the same effect.

p.13,ll. 12-20

p.13,l.32

pp.15-16

p.17

pp.17-18

10. The learned Judge delivered judgment on the 16th August, 1956. He said that the dispute had arisen because of different interpretations of paragraph 5 of the terms of settlement. The Appellant contended that

p.20.l.30-p.21,l.5

RECORD

it meant that each Elume person to continue to enter the Idale land to claim palm fruits was to pay four tins of oil. The Respondents contended that all of them together were to pay four tins of oil. The

p.21,ll.5-16 learned Judge said that the clause was ambiguous, but in view of the evidence given he was satisfied that the Appellant's interpretation should be upheld. The whole

p.21,ll.17-38 of the terms of settlement, particularly paragraph 5, implied that the Respondents as a community would be permitted to enter the Idale land, and during the season to collect palm fruits, on payment of customary tribute. Paragraph 5 stated that it was those people "who continue to enter into the land to collect palm fruits" who would pay the tribute. It thus appeared that, while the whole community was free to enter the land to collect palm fruits, only those who actually entered, and not the community as a whole, would pay tribute. The learned Judge therefore held that the Appellant was entitled to the declaration which he

p.21,l.39-p.22,l.6 sought. He dismissed the claim for an entrance fee of Shs.14 from the 5th to 37th Respondents, holding that none of them was a "person entering on the said Idale land for the first time". The claim for tribute of four tins of oil from each of those Respondents for the 1954 and 1955 seasons had been clearly established.

11. The Respondents appealed to the

pp.24-25 Federal Supreme Court of Nigeria. By their Notice of Appeal, dated the 31st August, 1956, they alleged that Onyeama, Ag.J. had misinterpreted paragraph 5 of the terms of settlement, and had erred in law in holding that the claim to tribute of four tins of oil from each of the 5th to 37th Respondents for the 1954 and 1955 seasons had been clearly established, because in so holding he had interpreted customary tribute as meaning seasonal tribute, contrary to the terms of settlement.

12. The appeal was heard on the 17th

pp.28-29 February, 1958, and judgment was given on the 3rd March, 1958. de Lestang, Ag.C.J.

set out the terms of settlement of 1954. He said that where a judgment, or any contract, had been reduced to the form of a document, oral evidence could not be admitted to contradict, alter or vary it, unless the document was ambiguous in such a way as to be unmeaning. The real question for decision, therefore, was whether there was any ambiguity in paragraph 5 of the terms of settlement. In his view there was none. Paragraph 5 meant exactly what it said, i.e. that the Respondents' people must pay four tins of oil. This the learned Acting Chief Justice understood to mean that the Respondents' people must make a collective payment of four tins of oil per season. It did not follow that, because under paragraph 6 the entrance fee was to be paid by each new entrant, the tribute under paragraph 5 was also to be paid by each such person. The language used in both paragraphs was, in his view, clear, so there was no room for speculation as to what the parties might have intended. Accordingly, he held that Onyeama, Ag.J. had erred in hearing extrinsic evidence as to the intention of the parties to the terms of settlement. It followed that the appeal should be allowed and the judgment of the High Court set aside. The other learned Justices of the Court of Appeal agreed with this judgment.

p.30,ll.19-30

p.30,ll.31-46

p.31,ll.10-15

p.31,ll.21-22

13. The Appellant respectfully submits that Onyeama, Ag.J. was right in holding that paragraph 5 of the terms of settlement was ambiguous. The language of that paragraph was capable of meaning either that each of the Respondents' people entering the land was to pay four tins of oil per season, or that those people collectively were to pay that tribute. The existence of this ambiguity is borne out even by the judgment of the learned Acting Chief Justice in the Federal Supreme Court; for, having said that paragraph 5 meant exactly what it said, he felt obliged to go on to explain what he understood it to mean. Accordingly, the Appellant submits that the extrinsic evidence was rightly admitted for the purpose of identifying "the Respondents' people", in accordance with Section 132(4) of

the Evidence Ordinance, and also under Section 132(8) because the phrase "the Respondents' people" applied equally well both to the people entering the Idale land collectively and to each one of those people.

14. The Appellant respectfully submits that if, as the Federal Supreme Court held, paragraph 5 of the terms of settlement is not ambiguous, the proper and natural meaning of its language is that for which the Appellant contends. Paragraph 6 of the terms of settlement provides that "those people of Elume" who enter the Idale land for the first time must pay a entrance fee of Shs.14, and the clear meaning of this is that each person entering for the first time, and not those entering for the first time collectively, is to pay the entrance fee. Accordingly, the same meaning should be given to the phrase, "the Respondents' people" in paragraph 5, with the result that four tins of oil per season is due from each of those people and not from them all collectively.

15. The Appellant respectfully submits that the judgment of the Federal Supreme Court of Nigeria was wrong and ought to be reversed, and the judgment of the High Court of the Western Region of Nigeria ought to be restored, for the following (amongst other) -

R E A S O N S

(1) BECAUSE extrinsic evidence was rightly admitted to identify the persons mentioned in paragraph 5 of the terms of settlement.

(2) BECAUSE extrinsic evidence was rightly admitted on the ground that the langusge of paragraph 5 of the terms of settlement apply well to more objects than one.

(3) BECAUSE Onyeama, Ag.J. was right in holding that the evidence showed that the meaning of paragraph 5 of the terms of settlement was that each of the

(3) Respondents' people entering the Idale land to collect palm fruits was individually to pay four tins of oil per season to the Appellant.

(4) BECAUSE that was the plain and ordinary meaning of the language of that paragraph.

(5) BECAUSE of the other reasons given by Onyeama, Ag.J.

J.G.Le QUESNE

No. 42 of 1959

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... ... Appellant

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... ... Respondents

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