

Chief Okro Orukumakpor (for himself and Ajamatan family  
of Gbumidaka) - - - - - Appellant

v.

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

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 22ND FEBRUARY, 1961

*Present at the Hearing*

LORD DENNING

LORD MORRIS OF BORTH-Y-GEST

LORD HODSON

[*Delivered by* LORD DENNING]

The Ajamatan family are the owners of a tract of land in the Western Region of Nigeria. It is called the Idale land, that is to say, the land across the river. It is so called because it is separated from the communal land of the Elume people by a creek or river. Many of the Elume people go to the Idale land to collect palm fruits. The question in this action is, what tribute is payable by the Elume people to the head of the Ajamatan family.

Each member of the Elume people who comes on to the Idale land for the first time in his life (that is to say, who has never been before to collect palm fruits) has to pay an "entrance" fee of 14s. There is now no dispute about that. But there is also a tribute payable—by someone—of four tins of palm oil each season. And this is the dispute: Does each member of the Elume people have to pay four tins? or, Do the whole people of Elume only have to pay four tins between them?

The plaintiff Chief Okro Orukumakpor, for himself and the Ajamatan family, claims that *each person* of the Elume people who enters the Idale land to collect palm fruits must pay a tribute of four tins of palm oil each season. But the defendants, for themselves and the people of Elume, say that *the whole* of the Elume people need only pay each season one lot of four tins of palm oil for their whole community, and that this covers everyone of their people who enters to collect palm fruits. On 16th August, 1956, the High Court of the Western Region (Onyeama, J.) decided in favour of the plaintiff; but on 3rd March, 1958, the Federal Supreme Court (Nageon de Lestang, Ag. F.C.J., Abbot, F.J., and Henly Coussey, Ag. F.J.) reversed that decision and decided in favour of the defendants. The plaintiff now appeals to Her Majesty in Council.

The decision of this dispute turns on the true construction of certain Terms of Settlement dated 11th November, 1954, but before turning to them their Lordships will set out the long history of disputes between the parties because they give the background.

In 1926 the plaintiff's predecessor Iguereghe Ajomatan established his title to the Idale land in a suit in the Provincial Court against one Yalaju. Yalaju was, it would seem, not one of the Elume people, but

a representative of other tribes or communities. The Provincial Court held that "Ajomatan was the original owner of this land and that he and his descendants have controlled and owned this land, further that defendants are entitled to use the land as descendants of Igonai and Umojakpe but must pay tribute according to Native Laws and customs to the present Head of the Ajomatan family or the man appointed by him to be in charge of the land." That judgment was upheld both by the Supreme Court and by the Full Court on Appeal.

It would appear that in order to establish his title against Yalaju, the plaintiff's predecessor appealed to the Elume people for assistance. Not all of the Elume people gave assistance but some did and in return received for a time a share of the rents or tributes which the plaintiff or his predecessor collected from the land. But after a time the plaintiff stopped sharing the rents or tributes with the people of Elume. Thereupon the people of Elume claimed that the Idale land belonged to them. They brought an action in the customary court against the plaintiff claiming title to it. They succeeded in the Okpe No. 2 Court and in the Western Urhobo Appeal Court but the plaintiff appealed to the Magistrates' Court and the judgments of the customary courts were set aside. So the people of Elume took nothing by their action.

Later on, in yet a further effort to assert a title to the Idale land, the people of Elume disputed the plaintiff's right to open and close the bush for the season. They entered on the land and cut palm fruits. Thereupon the plaintiff Chief Okro Orukumakpor, for himself and the Ajomatan family, brought an action against Itebu, Ideghele, Idoghale, Eghomitse and Awieni, for themselves and on behalf of the people of Elume. The plaintiff claimed £600 damages for trespass on the Idale land and an injunction to restrain the defendants from further entering on the land. The action was tried by Mr. Justice Mbanefo (as he then was) and he gave judgment on 3rd December, 1953. In the course of his judgment he considered closely the previous history (which their Lordships have summarised above) and went on to say:

"In short my findings are that Idale land belongs to the Ajomatan family, that other Elume people have since the Provincial Court case enjoyed a share of the rents of the land by virtue of the assistance they received during that case, and that the defendants by arrogating title to themselves and entering the bush in disregard of the right of the Ajomatan family to open and close the bush are liable in trespass, for damages which I assess at £20 with costs at 25 guineas . . .

For the guidance of the parties I strongly recommend that they should get together and reach a settlement on the division of the fruits of the land as I am satisfied that the Ajomatan family have not enjoyed the land alone since the Provincial Court case."

It is to be noticed that although the plaintiff claimed £600 damages, he was only awarded £20 damages: and he was not awarded an injunction. He was on this account dissatisfied with the result and he appealed to the West African Court of Appeal. No doubt he wished to get more damages and an injunction, if he could, to stop the people of Elume coming on to the land. The appeal was heard on 3rd November, 1954, but during the hearing of the appeal a settlement was reached. Terms of settlement were drawn up and signed on 11th November, 1954, by the solicitors for each side: and on 15th November, 1954, they were made an Order of Court. As the decision of this case turns upon these, their Lordships set them out in full:—

*"Terms of Settlement*

1. The parties to the above appeal agree to the undermentioned terms of settlement and pray that they be made an Order of this Honourable Court.
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.

4. The Appellants further agree not to withhold their consent unreasonably or to unreasonably delay the opening of the said bush.

5. The Respondents' people who continue to enter into the land to collect palm fruits agree to pay 4 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 14s.

7. The judgment of the lower Court is hereby confirmed.

8. Each party bears his own costs in the appeal.

9. The Appellants agree that the said tribute of 4 tins hereby reserved will not be subject to any further increase in the future."

Those terms of settlement were agreed in November, 1954. But soon the parties were at variance again. Some of the Elume people entered the Idale land and collected palm fruits: and although some of them entered it for the first time, they did not pay the entrance fee of 14s.: nor did they pay the 4 tins of palm oil each. So the plaintiff charged them in the customary court (Okpe Court No. 2) with "stealing by entering into the complainant's palm bush known as 'Idale' and thereby collected palm fruits to the value of £91 16s., without the knowledge and consent of the complainant". They were convicted and fined 10s. each or in default two weeks' imprisonment. The customary appeal court confirmed this decision. But on 10th August, 1955, the Acting District Officer quashed the decision. He held that "there is a genuine dispute concerning the interpretation of those terms of settlement. The case should never have been dealt with criminally. . . . If complainant wishes to proceed in the case, he may do so, by civil action".

So the plaintiff returned to the civil courts. His first step was taken on 19th October, 1955. He made an application to the West African Court of Appeal asking them to insert words into the terms of settlement so as to make it clear that *each member* of the Elume people who enters the land known as "Idale" is required to pay "4 tins of oil per season": whereas the defendants said these 4 tins covered the whole group of Elume people. The Court of Appeal refused to insert any such words, holding that they had no power to vary the terms of a settlement reached by the parties.

Finally, on 6th February, 1956, the plaintiff brought this action against 37 members of the Elume people for and on behalf of themselves and all the Elume people. He claimed against all 37 of them a *declaration* that he was entitled to collect 4 tins of palm oil per person per season: but he only claimed tangible relief from 33 of them because it was only those 33 who had actually entered the Idale land and collected palm fruits from them. The case was tried before Onyeama, J. He held that the terms of settlement were ambiguous and he admitted extrinsic evidence to help him interpret them. In the result, on 11th August, 1956, he gave judgment for the plaintiff against *each* of the 33 defendants for 4 tins of palm oil (being tribute for the 1954-55 season) and declared against all the defendants that the plaintiff, as representing the Ajomatan family, was entitled to collect 4 tins of palm oil each season from each person entering on Idale land to collect palm fruits. The Judge added that a tin of oil is a tin containing 4 gallons of oil. The defendants appealed to the Federal Supreme Court who, on 3rd March, 1958, allowed the appeals. The Federal Supreme Court held that the terms of settlement were clear and unambiguous and that the judge had erred in hearing extrinsic evidence. They held that Clause 5 meant that the people of Elume must make a *collective* payment of 4 tins of oil per season.

Their Lordships take a different view of the Terms of Settlement from that taken by the Federal Supreme Court. If the terms are to be construed

without the aid of extrinsic evidence, their Lordships would construe them differently from the Federal Supreme Court. The crucial issue is whether the payment provided by Clause 5 is individual or collective: and in this respect their Lordships cannot see any valid distinction between the wording of Clause 5 and the wording of Clause 6.

Clause 6 says that "Those people of Elume who are entering the said 'Idale' land for the first time will have to pay the usual entrance fee of 14s." That can only mean that *each individual* person who is entering the land for the first time has to pay 14s.: and this was admitted in the Courts of Nigeria. The whole group never enters the land for the first time. Only individuals do so. And accordingly each individual must pay 14s. when he enters for the first time. Clause 6, therefore, means that "*such of*" those people of Elume who are entering for the first time must pay 14s.

Clause 5 says that "The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the Appellants". It seems to their Lordships that the phrase "who continue to enter" in Clause 5 has a similar bearing on the rest of the clause as the phrase "who are entering" has in Clause 6. It refers not to all the people of Elume but only to those *who continue* to enter. Just as Clause 6 must be taken to refer to *such of* the Elume people who are entering for the first time, so Clause 5 must be taken to refer to *such of* the Elume people who continue to enter. Their Lordships notice that the Federal Supreme Court do not mention the words "who continue to enter". The Federal Supreme Court says that the clause means that "the respondents' people must make a collective payment of 4 tins of oil per season"; thus missing out the words "who continue to enter" which seem to their Lordships to be of considerable significance.

Their Lordships find support for their interpretation of Clause 5 by reference to the other clauses of the Terms of Settlement. Clause 3, for instance, says "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". What is the meaning of "customary tribute" in that clause? That is capable of being proved by evidence. It comes within what is known to English law as the "surrounding circumstances" or in the law of Nigeria as the "circumstance of the case". Section 132 (4) of the Evidence Ordinance says:

"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."

There was ample evidence before the trial judge to show what the customary tribute was. It was 4 tins of oil per person per season. The trial judge summarised it in this way: "The plaintiff gave evidence and called witnesses who all stated that it was customary for each tenant to pay 4 tins of oil a season". And although the defendants denied that this custom applied to them, they admitted that other people had to pay 4 tins of oil each. As the judge said: "From the defendants' own evidence it appears that 'strangers' entering on the land pay 4 tins of oil each. No distinction was drawn in the terms of settlement between the defendants and other people." It seems clear from this observation that the judge was prepared to hold and did hold that the customary tribute was 4 tins of oil per person per season. And accordingly clause 3 provides that the people of Elume are to pay it.

Such is the interpretation which their Lordships put upon the Terms of Settlement apart altogether from any evidence of the intention of the parties. But they wish to say that, if it were right to consider the document to be ambiguous, then they think that evidence would be



admissible under the laws of Nigeria to explain it. There are two relevant subsections in the Evidence Ordinance on the point:

Section 132 (3) says that "If the words of a document are so defective or ambiguous as to be unmeaning, no evidence can be given to show what the author of the document intended to say." That subsection has no application to this case. Clause 5 certainly has some meaning. The sole question is, what is its meaning?

Section 132 (8) says that "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 circumstance of the case and of statements made by any party to the document as to his intentions in reference to the matter to which the document relates." This subsection does seem to fit this case: because, on the footing on which their Lordships are now proceeding, the language of Clause 5 must be considered to be ambiguous and to apply equally well both to the people of Elume taken collectively as a group, and to the people of Elume taken individually as separate persons. Accordingly, under section 132 (8), evidence is admissible both "of the circumstances of the case" (such as of the customary tribute): and also "of statements made by any party to the document as to his intentions". The trial judge admitted such evidence and their Lordships think that, on the footing that the document is ambiguous, he was entitled so to do. In particular he admitted the evidence of the plaintiff, who said:

"The Elume people come on Ajomatan land to collect palm fruits; I permitted them to come on the land on payment of tribute; it was agreed that on the first occasion each of the Elume people came on the land he would pay 14s.; at the beginning of each palm fruit collecting season, each person was to pay four tins of palm oil as tribute to me; anyone who had no oil to pay would pay £2. . . . When we were in Lagos Itebu came to me and told me they were prepared to pay the usual tribute. I agreed and terms of settlement were drawn up by our lawyers and after we had signed the settlement it was made an Order of Court."

The trial judge accepted this evidence. He said that he was "satisfied that the plaintiff's interpretation ought to be upheld for the reason that it is supported by the evidence before me". Their Lordships see no reason to reject this finding: and, if the document is ambiguous it affords good reason for holding that the tribute payable by the people of Elume is 4 tins of oil per person per season.

The Federal Supreme Court were of opinion that the Elume people were entitled to special consideration because they had in the past helped the Ajomatan family to fight a case about the Idale land (the Provincial Court case) and had since been sharing in the fruits of that land. Their Lordships realise the force of this observation (which incidentally involves the use of extrinsic evidence). But they think it is met by the fact that the Elume people obtained substantial benefit from the Terms of Settlement. One particular benefit was that the plaintiff gave up his claim to an injunction and the people of Elume obtained the *right* to enter the Idale land to farm and to collect palm fruits. Another is that the tribute of 4 tins could not be increased at any time in the future.

In the result their Lordships are of opinion that the plaintiff's interpretation of the Terms of Settlement is correct. They will therefore humbly advise Her Majesty that this appeal should be allowed, the judgment of the Federal Supreme Court set aside and the judgment of the High Court of the Western Region restored. The respondents must pay the costs of the plaintiff here and below.

In the Privy Council

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CHIEF OKRO ORUKUMAKPOR (for himself  
and Ajamatan family of Gbunhidaka)

v.

ITEBU AND OTHERS (for themselves and on  
behalf of the people of Elume)

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DELIVERED BY LORD DENNING

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