

~~P.C.~~
~~G.H.L. 62~~

Judgment
15, 196x

IN THE PRIVY COUNCIL

No. 38 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUE
LO

B E T W E E N:

FAWEZE MOUKARIHM (Defendant)
Appellant

- and -

ABOLADE OLATUNJI (Plaintiff)
COKER Respondent

- and -

JOHNSON AINA AND IBADAN (Defendants)
DISTRICT COUNCIL Respondents

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C A S E FOR THE PLAINTIFF/RESPONDENT

Record

- 1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria at Lagos (Ademola C.J.F. and Unsworth F.J. and Taylor F.J.) dated 15th March 1961, setting aside a Judgment dated 22nd April 1960 of the High Court of Justice, Western Region of Nigeria, Ibadan Judicial Division at Ibadan (Quashie-Idum J.) in an action in which the First Respondent (hereinafter called the Plaintiff Respondent) was Plaintiff and the Appellant and the Second and Third Respondents were Defendants pp.47-59
- 20 2. The issue in this Appeal is a dispute as to the ownership of land situate at the junction of Onireke Street and Oke Padre Street, Ibadan. pp.34-38
- 30 3. The Plaintiff/Respondent bases his claim on a purchase from the Ibikunle Family of Ibadan on 27th March 1957, as witnessed by a Deed of Conveyance duly registered. The Plaintiff/Respondent further contends that the Ibikunle Family has exercised acts of ownership over the land in dispute for a period of over 100 years before 1950. p.2-3

Record

p.18-22

p.4

The Appellant (who is a Lebanese Trader) on the other hand avers that he is a lessee of the land in dispute from one Johnson Aina, the Second Respondent, and that he - the appellant - has been in possession since 1953.

p.7-8

The Second Respondent claims that the Olubadan of Ibadan agreed to convey the fee simple of the land to him and that he has been in possession since September 1951 and that the Appellant is his lessee.

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p.8-9

The Third Respondent Council in its amended Statement of Defence averred that the Council was the owner of the land in dispute and that it became seised of the land by acquisition of the interest of one Seidu Williams, who derived his Title from one Kasumu Alli, who in turn derived his title from Bale Fajinmi of Ibadan. It also averred that the interest of the Council was derived from its act of reclamation of the area in dispute.

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p.1

p.2-3

4. The said action was begun by a writ dated 13th December 1957 and Statement of Claim dated 11th June 1958 whereby the Plaintiff Respondent claimed judgment against the Appellant for :

(1) A Declaration of title to all that piece or parcel of land lying situate and being at the junction of Onireke Street and Oke Padre Street, adjoining Ogunpa Stream, Ibadan, more particularly described on the plan attached to the Statement of Claim, No. CK68/58 (Exhibit 'A') and thereon verged pink

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(2) An injunction to restrain the Appellant his servants, agents and privies from coming on the said land.

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p.5

5. By Order of the Court dated 20th October, 1958 Johnson Aina and the Ibadan District Council were joined as Defendants in the said action.

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6. The Plaintiff/Respondent claimed that the land in dispute had originally belonged to the Balogun Ibikunle family who sold it to one Ayotunde Rosiji on the 16th December 1950, the deed of conveyance thereof being registered as No.56 in Volume 29 in the Lands Registry Office at Ibadan. The said Ayotunde Rosiji had reconveyed the said land to the Ibikunle family in 1952 and the reconveyance is registered as No.63 in Volume 36 at the said Lands Registry Office.
7. The said land was sold and conveyed to the Plaintiff on 27th March 1957 the Conveyance being registered as No.6, Volume 190 at the said Lands Registry Office.
8. The trial of the action took place at Ibadan on 14th, 15th, 23rd and 29th April, 7th May, 8th and 15th July 1959 before the Honourable Mr. Justice Quashie-Idun. On 23rd April 1959, Johnson Aina, Second Respondent, was granted leave to amend his Statement of Defence by adding to paragraph 6 the words:
- "and the Ibadan District Council the successor of the Native Authority executed a Deed of Conveyance dated 8th December 1958 in favour of the 1st Co-Defendant".
- On 7th May 1959 the learned Judge decided that Issa Akangbe Williams should be joined as a party in view of his evidence and adjourned the Court. However, on 8th July, Mr. Williams stated that as the Ibadan Council had agreed to pay compensation to him in respect of the acquisition of the land, he did not wish to be joined.
- On 22nd April, 1960 the learned Judge delivered a reserved judgment dismissing the Plaintiff/Respondent's claim with costs to the Appellant. The Second and Third Respondents were dismissed from the suit as having no interest in the property at the time of the institution of the action with no order as to costs as far as they were concerned.
- Record
- p.89-90
- p.91-92
- p.95-97
- p.20
p.8
- p.27
- p.27
- pp.34-38
- p.38

Record

9. The ground upon which Quashie-Idun J. based his decision may be summarised as follows :-

- p.36, 38 (1) Although evidence had been given as to user of the land by the Plaintiff's Vendors, it was insufficient to show that they had ~~any~~ interest in the property to convey to the Plaintiff/Respondent.
- p.38 (4-11) (2) In a claim for a declaration of title to land, the onus is on the Plaintiff to satisfy the Court that the evidence is sufficient to satisfy his claim. If the Court is not satisfied that this onus has been discharged, then it must refuse the Plaintiff the declaration, even though there is weakness in the case for the Defendant. 10
- p.37 (3) He accepted evidence that the land in dispute formed part of land acquired by the Council and that it was also part of land unsuccessfully claimed by the Ibikunle family in previous litigation 20
- p.38 (4) The Plaintiff/Respondent must have been aware that the land he purchased was part of the land in dispute in the said litigation and that he must have been aware also of the existence of a concrete wall round the land.
- pp.38-41 10. On 19th May 1960 the Plaintiff/Respondent appealed to the Federal Supreme Court of Nigeria and the said appeal was heard on 26th and 27th January 1961 at Lagos. On 15th March 1961 the Federal Supreme Court (Sir Adetokunbo Ademola, Chief Justice of the Federation, Unsworth F.J. and Taylor F.J.) gave judgment, setting aside the judgment of Quashie-Idun J., in favour of the Plaintiff/Respondent in terms of the writ. The Second and Third Respondents had not appealed against the order of Quashie-Idun J. dismissing them from the suit. However they had been served with the Notice of Appeal and were represented at the hearing by Counsel. Costs were awarded to the Plaintiff/Respondent to be paid by the Appellant and the other Respondents jointly or severally. 30
- p.48
- p.58
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11. The judgment of Taylor, F.J.; with which the other members of the Court agreed, may be summarised as follows :

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- 10 (1) He accepted the submission of Counsel for the Plaintiff/Respondent that the learned Trial Judge had misdirected himself in accepting the evidence of the acquisition of the land by the Council and also in accepting that the land in dispute was a portion of the land so acquired. The fact that the learned Judge directed that Mr. Williams should be joined a as a party and that later Mr. Williams declined on the grounds that "the Ibadan Council has agreed to pay compensation to him in respect of the acquisition of the land" is evidence against any acquisition of the land by the Respondent Council in 1937. No other evidence of acquisition of the land by the Council was tendered. pp.51-2
- 20 (2) The learned Judge misdirected himself in respect of the evidence of the surveyor, Raji Oduola, since the latter clearly indicated that the land in dispute in the present case is outside the area of land claimed by the Ibikunle family in earlier litigation pp.52-3
- 30 (3) These "material and substantial misdirections" led to "certain deductions unfavourable to the Plaintiff/Respondent and his predecessor in title" p.53(30-31)
p.53(5-6)
- (4) "There can be no doubt that all the facts were before the Court" and that, after a consideration of precedents, there was no case for ordering a new trial. p.54(28)
- 40 (5) That the Plaintiff/Respondent's predecessor-in-title was the original owner of the land in dispute and the adjacent land in dispute in previous litigation and that the said predecessor-in-title had at least one tenant on the land for a period of 25 years. p.57(47)
- 58(3)

6.

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(6) That there was no evidence before the learned Trial Judge that the land shown on the title deed of Seidu Williams, from whom the Respondent Council derived title and consequently the Appellant and the Second Respondent, is the land now in dispute.

pp.59-60

12. The Appellant was given final leave to appeal to Her Majesty in Council from the judgment and order of the Federal Supreme Court of Nigeria by an Order of that Court dated 22nd January 1962

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13. The Plaintiff/Respondent will respectfully submit that the reasoning and conclusions of the Federal Supreme Court of Nigeria were correct.

14. The Plaintiff/Respondent humbly submit that this Appeal ought to be dismissed and the Judgment and Order of the Federal Supreme Court of Nigeria affirmed for the following, among other,

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R E A S O N S

1. BECAUSE the Plaintiff/Respondent has produced sufficient evidence in support of his claim and of the title of his predecessor-in-title.

2. BECAUSE all the facts concerning the land in dispute were before the Court

3. BECAUSE neither the Appellant nor the other Respondents have substantiated their claims to interests in the land in dispute

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4. BECAUSE there is no evidence that the land shown on the title deed of Seidu Williams, from whom the Respondent Council, and consequently the Appellant and other Respondent, claim title is the land now in dispute.

5. BECAUSE the Appellant, being an alien, had no legal right to be on the land in dispute without the approval required by the Native Lands Acquisition Ordinance

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6. BECAUSE the Second Respondent, through whom the Appellant claims, had no legal interest in the said land in 1953 and could not grant a valid lease to the Appellant.
7. BECAUSE the title to the land of the Ibikunle family, the Plaintiff/Respondent's vendors, cannot be defeated in law by their failure to exercise exclusive possession of it or because buildings or walls were erected by others on it.
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8. BECAUSE the Plaintiff/Respondent's instruments of title to the land in dispute have been duly registered with the Land Registry as required by the Land Registration Ordinance.
9. BECAUSE the Judgment and Order of the Federal Supreme Court of Nigeria were correct and ought to be affirmed.

F.W. MULLEY

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- and -

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COUNCIL Respondents

C A S E

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