19/1964

IN THE PRIVY COUNCIL No. 39 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

AZUIKE UME
and Others

-v-

ALFRED EZECHI
and Others.

CASE FOR THE APPELLANTS

HATCHETT JONES & CO.,
90, Fenchurch Street,
LONDON, E.C.3.

IN THE PRIVY COUNCIL No. 39 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

BETWEEN

(1) AZUIKE UME
(2) REMY NWOSU
(3) RAPHAEL DIM
(4) HYCINTH ONWUGIGBO
(5) UMEANONIGWE DIM
(6) ANAEDUM DIM
(7) DANIEL OKONKWO

for themselves and as representing the people of Akpo

Defendants/Appellants

- and -

(1) ALFRED EZECHI
(2) ALBERT OBI
(3) EZEOLIO EZENWOKOLO
(4) GEORGE AMICHI
(5) EZENWEKE OKPALA
(6) OKPALA OBIEGBU
(7) PATRICK OKPALAUGO

for themselves and as representing the people of Achina

Plaintiffs/Respondents

CASE FOR THE APPELLANTS

RECORD

pp.72-79 1. This is an appeal from the judgment of the Federal Supreme Court dated the 9th day of November 1961, whereby the judgment of the trial
pp.61-65 Judge dated the 20th day of February 1960, dismissing the Respondents' action against the Appellants, was set aside and an order of non-suit substituted.

2. The action was commenced in the Mbemisi
pp. 1-3 Native Court, but by virtue of a transfer order dated the 16th day of December 1954 made by the District Officer, Awka Division the judgment of the said Court was set aside and the action transferred to the Supreme Court, Onitsha.

pp. 5-7 3. By their Statement of Claim dated the 5th day of October 1955 the Respondents on behalf of themselves and as representing the people of Achina sued the Appellants on their own behalf and as representing the people of Akpo for a declaration of title to certain land, damages for trespass to the said land and an injunction restraining the Appellants from entering on the said land. The Respondents claimed as owners in possession of the land in dispute, exercising maximum acts of ownership by living on the land, reaping the fruit of the economic trees thereon and letting the land to strangers on payment of rent and tribute and in particular relied on the following acts as showing ownership :-

(a) authorizing the erection in 1916 of a C.M.S. Church and School buildings on a portion of the said land and in 1940, at the request of the Akpo people, allowing the said Church to be described as C.M.S. "Achina-Akpo";

(b) permitting an Akpo man called Ohia Agu to build houses on a portion of the land in dispute and the fact that, in a resulting action for trespass brought by one Anabachie a person of Achina, the Akpo Defendants gave evidence that Ohia Agu bought the land from the Plaintiffs' people;

(c) that in a suit in Mbemisi Native Court No. 128/48 judgment was given for one Obiora who claimed damages for trespass

on the land in dispute against one Onyebuchi of Akpo and the Counterclaim for title to the same piece of land in suit No. 131/48 was dismissed;

(d) that in suit No. 132/48 the Achina people obtained judgment against the Akpo people for damages for 'planting on areas boundering (sic) on the Oye Market.

4. By their Defence the Appellants claimed the land in dispute as Akpo land and that they had always acted as rightful owners in possession living on the land reaping the fruit of the economic trees thereon and letting the land to strangers on payment of rent and tribute and in particular denied the claims of the Respondents and alleged: pp. 8-9

(a) that the C.M.S. Church was in 1916 transferred from Achina land to Akpo land, its present site and thereby became known as C.M.S. Achina-Akpo and in 1950 the Appellants and the C.M.S. authorities set up a boundary as a result of advice given by the District Officer to the parties to suit No. 190/49-50;

(b) that the portion of land leased to Ohia Agu is outside the land in dispute;

(c) that the action 131/48 was brought in a personal capacity and does not affect the Akpo people and further that an appeal was filed in the said case, but was adjourned sine die;

(d) that suit No. 132/48 also went on appeal to the Native Court of Appeal and there the appeal was adjourned sine die;

(e) the Appellants without any interference from the Respondents leased out a portion of the land in dispute to the Salvation Army;

(f) in a case No. 116/53-54 the Appellants sued the Respondents for demarcation of the boundary to the market and judgment was given in their favour;

(g) in suit No. 106/38 the Appellants sued the C.M.S. authorities for exceeding the boundary given to them, judgment being entered in favour of the Appellants and twelve Achina people being among the judges;

(h) the Respondents sued one Andrew Nwosu of the Akpo people in suit No. 197/52-53 claiming title to a portion of the land in dispute and the said action was dismissed;

(i) the Respondents sued Andrew Nwosu of Akpo for trespass in suit No. 172/52-53, this action also being dismissed.

And the Appellants denied trespassing on any of the Respondents' land.

pp. 10-32 pp. 33-56

5. Six witnesses were called by the Respondents, who in addition to giving evidence of the boundaries of the area claimed, gave evidence of the exercise of acts of ownership over particular areas. These areas included land occupied by the C.M.S. and land occupied by the Salvation Army and Oye Market, the Ezekolo Juju and certain small areas the subject of litigation in the Native Courts. Eleven witnesses for the Appellants gave evidence on the same subjects.

p.63 ll.41 -43 p.64 ll. 4 -8

6. The learned trial Judge held as a fact that the land occupied by the C.M.S. and that occupied by the Salvation Army Mission belonged to Akpo, the Appellants. He further found as a fact that the Ezekolo Juju, which the Respondents claimed was exclusively worshipped and owned by Achina was on the boundary between Achina and Akpo land and was worshipped by both communities, as the Appellants alleged.

7. The learned trial Judge found as follows:

p.64 l. 8 -65 l. 3

"With regard to the ownership of the Oye market the Plaintiffs relied on the judgment of the Mbemisi Native Court in case No. 132/48 Exhibit "D" giving Achina people £5 damages against 5 persons from Umuachalla-Akpo for planting yams on the Oye market. The Defendants rely on the fact that one of

"the objects of a combined meeting of Achina and Akpo was the management of the market as shewing that the market is owned by Achina and Akpo in common.

Plaintiffs also relied on two other cases as being evidence of acts of ownership by them over parts of the land in dispute namely the suit between Simon Obiora of Achina against Jacob Onyebuchi and another of Akpo. Mbemisi Native Court Suit No. 128/48 and cross action Suit No. 131/48 (Exhibit "C") in which Simon got damages for trespass and Jacob's claim for title in respect of land in area in dispute and verged blue in Plaintiffs' plan Exhibit "A". The second suit is Chiagu's case which the Defendants say (and which I find) is outside the land they claim as shewn in their plan (Exhibit "O").

The findings in these cases are far from being clear or conclusive of the rights of the communities over the areas affected by these decisions particularly as they were suits between individuals. Having regard to this and to the unsatisfactory nature of the Plaintiffs' evidence and that of their witnesses which I considered unreliable I have come to the conclusion that the Plaintiffs have failed to prove acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the Plaintiffs are exclusive owners of the land in dispute. Consequently the Plaintiffs' claim is dismissed with costs. I would like to state, however, that the effect of this judgment is not to overrule the decisions of the Native Courts relating to parts of the disputed area given in favour of persons from Achina but simply that the Plaintiffs' claim as a community to the land in dispute is dismissed; nor will it deprive Achina persons living on the land in dispute of any rights acquired by long possession to remain there."

8. The Respondents appealed to the Federal Supreme Court and their argument was summarised by Taylor F.J. in his Judgment as follows :-

"(i) That on the evidence before the trial

p.72 l.30 -73 l.32

Judge, of the boundaries of the land in dispute, the Appellants' evidence which followed a natural boundary was the more likely one and should have been accepted and were so when certain features, like the Ube Okpoko tree on the western boundary, and the Juju on the eastern boundary were well established and accepted landmarks on both plans filed in Court.

(ii) The fact that the C.M.S. was first called C.M.S. Achina before it became, by consent C.M.S. Achina-Akpo, he contended, supported the claims of the Appellants to title of the land in dispute in addition to other evidence of acts of ownership exercised by the Achina people over certain portions of the land in dispute.

(iii) Thirdly, and around this Chief Okoreduu built up his argument that the following passage in the judgment of the trial Judge was a grave misdirection which dominated his findings:-

'The findings in these cases are far from being clear or conclusive of the rights of the communities over the farms affected by these decisions in particular they were suits between individuals having regard to the ... nature of the ... and that of their ... considered unreliable I have come to the conclusion that the Plaintiffs have failed to prove acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the Plaintiffs are exclusive owners of the land in dispute.'

Counsel for the Appellants (Respondents herein) sought to establish that the trial Judge misdirected himself in two respects:-

(a) In saying that the findings are far from clear of the rights of the communities, and

(b) In saying that the previous Native

(a) in not accepting the findings of fact of

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL FOR EAST AFRICA

BETWEEN

MANJULABEN daughter of LALLUBHAI CHHOTUBHAI MISTRY — Petitioner

and

BHIMJIBHAI LALLUBHAI MISTRY also known as BHIMBHAI LALLUBHAI MISTRY — Respondent

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION of the above-named Petitioner SHEWETH :-

1. That Your Petitioner prays for Special Leave to appeal to Your Majesty in Council in forma pauperis against the judgment, decree and orders of the Court of Appeal for Eastern Africa dated the 28th day of February 1961, whereby the said Court allowed the appeal of the Respondent to this Petition against a judgment and decree of the Supreme Court of Kenya at Nairobi (Miles J.), whereby the said Supreme Court dismissed with costs a Petition for dissolution of marriage presented by the Respondent to this Petition on the ground of adultery by Your Petitioner. The Court of Appeal in reversing the Supreme Court pronounced a decree nisi as prayed for.

2. That the principal grounds of the appeal are as follows:-

(a) That the East African Court of Appeal fell into error

Court proceedings were suits between individuals and not in a representative capacity between the parties to this appeal."

9. Taylor F.J. found against the Respondents on their first argument and by inference on the second argument, but held that the learned trial Judge misdirected himself when he referred to all the previous cases as being suits between individuals because suit No. 132/48 was in effect a representative action on the part of the Respondents and that the learned trial Judge had failed to take into consideration the above suit and suit No. 131/48 as evidence of acts of ownership exercised over land within the area in dispute. p.75 ll.2-5. p.77 ll.40-43 p.78 ll.15-18

10. The Federal Supreme Court set aside the judgment of the trial Judge and substituted an order of non-suit. It did not disturb the order of costs awarded in the Court below, but ordered that each party should bear its own costs in the Federal Supreme Court. p.79 ll. 9-16

11. Final Leave to Appeal to Her Majesty's Privy Council was granted on the 4th day of June 1962. pp.79-80.

12. The Appellants respectfully submit that this appeal should be allowed, the order of the Federal Supreme Court set aside and the judgment of the learned trial Judge restored with the costs in the Supreme Court and of this appeal for the following among other

R E A S O N S

1. BECAUSE the Respondents had failed to prove acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that they were exclusive owners and therefore had failed to prove their case

2. BECAUSE the learned trial Judge was correct in holding that the findings in the earlier cases were far from being clear or

conclusive of the rights of the communities over the areas affected.

3. BECAUSE the learned trial Judge was correct in paying little or no attention to those cases that were subject of an appeal.

4. BECAUSE in view of the findings of fact of the learned trial Judge the Respondents could not in any case have succeeded in establishing their title.

5. BECAUSE the order of the trial Judge involved no miscarriage of justice.

6. BECAUSE the Federal Supreme Court were wrong in ordering the Respondents to be non-suited when they had failed to prove their case.

7. BECAUSE satisfactory evidence was given entitling the Appellants to judgment in their favour.

T. O. KELLOCK

IN THE PRIVY COUNCIL No. 39 of 1962

O N A P P E A L

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and Others

-v-

ALFRED EZECHI
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