Privy Council Appeal No. 1 *of* 1964

Jones Adeyeye – – – – – – – – *Appellant*

v.

E. T. Adewoyin and others representing the Ademakin/Ademiluyi Family of Ife – – – – – – – – – *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH JULY, 1964

Present at the Hearing:
LORD MORTON OF HENRYTON.
LORD COHEN.
LORD DONOVAN.
[*Delivered by* LORD DONOVAN]

This appeal concerns certain land in Nigeria at a place known as Omifunfun Onigbodogi. The appellant claims that it is his and that he is, therefore, entitled to retain for himself the rents (called ishakole) which he collects from tenants he has put upon part of the property. The respondents (who appear in a representative capacity for themselves and other members of their family, called the Ademakin/Ademiluyi family) claim that all the land is family land and that these rents must, therefore, be shared among the family, of whom the appellant is himself one.

The facts do not appear to be comprehensively or precisely ascertained. For example, the area of the land in dispute is not exactly known. From the judgment of the Federal Supreme Court of Nigeria there would appear to be about 3,000 acres, which is part of a much larger area measuring about 14 by 14 miles. Again, in the evidence, the word " farmland " is used at times to denote cultivated land and at times virgin forest before it became cultivated.

The essential facts, however, appear to be these. In 1933 the members of the Otutu family, believing that the entire property, inclusive of Omifunfun, belonged to that family, called a family meeting to straighten out certain difficulties which apparently had arisen with regard to the land, and allotted the land between members of the family. The land at Omifunfun was allotted to " the entire children of Ademiluyi ". These were treated as inclusive of the children of his younger brothers, namely, Adebowale and Adeyeye, who are now deceased. The appellant is one of the children of Adeyeye. The respondents were also entitled under the same allotment to the same land, they say, " as members of the Ademakin/Ademiluyi family "; and their Lordships presume that this embraces " the entire children of Ademiluyi," the specified allottees. There is no dispute that the parties to this litigation are members of the family to whom the land at Omifunfun was thus allotted in 1933. The appellant's version of this meeting is that it referred to different land altogether, and that in 1933 he did not know where the Omifunfun land was.

Nothing material seems to have happened after this allotment in 1933 until the year 1938. Then, according to the appellant, he was taken to the land by a hunter, who told him that the land belonged to the Otutu family. So he came home and told the Oni about it, who said that he, the appellant, could put his tenants on the land; and he did so.

Thereafter, there were boundary disputes between the appellant and others on neighbouring land, which the appellant settled at his own expense by invoking the offices of the Oni, who sent officials to mark out the boundaries in dispute. The appellant built himself a home on the land.

The respondents to the present appeal say that, " some years after " the meeting in 1933 (which in fact appears to be the year 1938) the family whom they represent allowed the appellant and one Adeyemo Eletiko to put tenants on the land, apparently to farm it, on the understanding that, when the tenants started to pay rent, the rent would be shared between members of the family. Then Eletiko died, and the appellant continued the arrangement as representative of the family.

However, when rent was paid, the defendant did not share it, but kept it for himself; and, after making various promises, which he did not keep, finally asserted that the land was his and that no member of the family was entitled to share in the land.

That precipitated the present litigation. The respondents, as plaintiffs, sued the appellant, as defendant, in the High Court of Western Nigeria. They claimed, first, a declaration that the land was family land; second, mesne profits; and, third, an injunction restraining the present appellant from entering or doing any act upon the land. In the High Court they were unsuccessful. In the Federal Supreme Court, they succeeded, though the claim to mesne profits was abandoned, and the injunction secured was limited to preventing the present appellant from collecting the rents. They could not prevent him going on the land, because he was a member of the family.

The appellant now appeals to the Board.

Their Lordships must here go back a little in point of time to the year 1949. In that year there was a dispute concerning the land, or some part of it, between the appellant and one Sanni Odera, each claiming title to the land. The dispute came first before the Ife Native Land Court in February 1949. There the present appellant was successful. Odera appealed to the District Officer, who dismissed his appeal in April 1949. He appealed further to the Resident's Court at Ife in May 1950. That court ordered a remit to the Ife Native Court, inquiring whether its judgment was meant to declare absolute ownership of the land in the present appellant, or only to declare that he had hunting rights over it. That court did not answer the question, but tried the case afresh on additional evidence and concluded that its previous decision was wrong. It now held, in effect, that the Otutu family had hunting rights only over the land. The present appellant appealed against this finding to the District Officer's Court at Ife in 1951, but unsuccessfully.

In the present case, the Federal Supreme Court took the view that the foregoing proceedings, on the face of them, were nullities. This was apparently because the constitution of the Native Court changes from time to time, so that one court could hardly say what another court, differently constituted, meant by its decision. But, however this may be, after discussion, counsel on both sides treated all the proceedings to the Native Court and before the Resident as a nullity; and the appeal to the Federal Supreme Court proceeded on that basis.

The importance of the matter, for present purposes, lies in the admission of the present appellant when before the Native Court, namely, that he claimed " for himself and on behalf of the family "; that in his evidence he testified that " this farmland belongs to me and my family "; and that he said nothing at all about a grant to him by the Oni in 1938 of permission to put tenants on the land.

What happened next was this. The appellant, who has hitherto thought that the land was owned by the Otutu family and now found it declared that the family had only hunting rights, went off to the Oni and secured what he regarded as a grant to the land himself; and this was in 1952.

In the present case, the Oni gave evidence on behalf of the appellant in the High Court to the effect that at some time prior to the litigation with Odera

he had given permission to the appellant to go and farm in the Omifunfun forest. No particular part of the forest was specified. It is not in issue that the Oni has the right to grant farming rights in virgin forest. After the Odera case, the Oni said that the present appellant asked him to confirm his farming rights at Omifunfun, and he did so in 1952.

When the dispute came before the High Court, in which proceedings the Oni gave the evidence their Lordships have just outlined, Acting Judge Oyemade decided in favour of the present appellant on grounds which he expressed as follows: " From the evidence before me, I find that, according to traditional history, the Otutu family, of which the plaintiffs are descendants, had only hunting rights over the land in dispute and as such that family could not have validly allotted the land to anyone. I believe that the defendant had been farming on the land in the belief that the land belonged to the Otutu family and that in 1952 the Oni regularised the position by making a grant of land to the defendant. One would have thought that, the claim of title to the land by the Otutu family having failed, the defendant should have negotiated the grant on behalf of the family, but that is mere conjecture, because, the right of the Oni to grant the land having been established, he could have granted it to anybody else besides the defendant and the plaintiff would have no right of action against such other person. The plaintiffs' claims are therefore dismissed ".

Two observations may be made. First, it will be seen that the learned Acting Judge did not in any way rely upon the alleged earlier granted permission by the Oni in 1938. He found his judgment exclusively on the grant of 1952. Second, that, at the time he gave his judgment, it had not been established that the proceedings in the Native Court, which decided that the Otutu family had hunting rights only, had not been treated as a nullity.

The Federal Supreme Court, on an appeal by the present respondents, treated the purported grant of 1952 as a nullity. In the leading judgment, Federal Justice Bairamian treated it as such on two grounds: first, that it offended against natural justice, in that it deprived the Otutu family at least of the hunting rights it possessed over the land, and did this without giving them any opportunity of being heard; second, that it purported to grant cultivated land as opposed to virgin forest, which the Oni had himself admitted in evidence he could not do.

It is not now contended on behalf of the appellant that the permission of the Oni given in 1938 conferred any title on the appellant. It follows, in their Lordships' opinion, that the only grant of the Oni that can be relied upon is the grant of 1952—indeed, that is expressly conceded—but that grant was of cultivated land, which the Oni had no power to grant; and, in their Lordships' view, this makes it unnecessary to consider the first ground upon which the Federal Supreme Court treated that grant as a nullity, namely, that it was contrary to natural justice.

One arrives, therefore, at this situation. The proceedings of the Native Court declaring that the Otutu family held hunting rights only over the land are treated, by consent, as a nullity. The purported grant of permission by the Oni to the present appellant in 1938 is not found by the trial court to have taken place, is not made the foundation of its judgment, and is not relied upon for title by the appellant. The grant of 1952 by the Oni is relied upon, but is found to be a nullity by the Federal Supreme Court.

All this is destructive of the appellant's claim; but, as his counsel rightly stressed, it does not establish title in the respondents; and he criticises the decision of the Federal Supreme Court as being a decision, in effect, that the destruction of the appellant's case *ipso facto* establishes the case of the respondents. He urges that there was no evidence that, before the allotment of 1933, the Otutu family owned the land; it was not proved, therefore, that that family had any land to allot; and no acts of ownership before the allotment were proved.

Their Lordships, after careful consideration, are not able to sustain this criticism. In the first place, the decision of the Federal Supreme Court must be viewed against the background of Nigerian law and custom, whereby

prima facie an individual holds land on behalf of his family (see as to this the decisions of the Board in *Amodu Tijani v. The Secretary, Southern Nigeria*, [1921], 2. A.C. 399, and *Sunmonu v. Disu Raphael*, [1927] A.C. 881). It was objected that this presumption does not apply in the case of virgin forest land, but the distinction raises not merely questions of law but of fact; and it has not been established in the present case.

But, leaving the aforesaid presumption on one side altogether, there was other evidence which justified the Federal Supreme Court's decision, although that court did not expressly refer to it. As their Lordships have already pointed out, in the litigation between himself and Odera in 1949, the present appellant sued for himself and on behalf of the family, and swore that the land belonged to himself and his family. In December, 1950, a petition by the Otutu family, addressed to the Oni and his council, protesting against the Native Court's decision that the family held hunting rights over the land and asking that its farming rights should be recognised, was a petition to which the appellant was one of the signatories. Annexed to it was an extract dated 15th June 1953, purporting to be from the Otutu family minute book, showing how the land had been allotted in 1933, as their Lordships have stated at the commencement of this judgment.

The appellant in the present case alleged in evidence that there was in fact no minute book, so that the extract attached to the petition was really bogus; but the extract is signed by two persons, namely Layode and Conde, both of whom were called in the present case in support of the respondents. No suggestion was put to them on behalf of the appellant to the effect that there was no such minute and that the alleged extract was a forgery.

Other evidence was given on behalf of the respondents to the effect that the land was Otutu family land. This was given by one Layode, who said that he was the oldest member of the family. A witness called for the appellant, one Odunlade, said that at the time when he himself had a boundary dispute with the appellant (which he put at about ten years before his giving evidence and he gave evidence in 1961) it was called Otutu family land. In the appellant's defence in the present case, he asserted (see paragraph 18 of the defence) that, in the belief that the Otutu family had title to the land, he started to cultivate the land in dispute and put tenants on it. Evidence was also given on behalf of the respondents that, when the appellant was asked to account for his rents, he did not assert that the land was his until 1958, although the first tenants were put on the land in 1938. Another witness for the respondents, one Joseph Conko Adeyeye, deposed to the effect that the appellant, Adeyeye, and Eletiko put tenants on the land in the name of the Ademakin/Ademiluyi family.

It is true, as has been stressed, that this material does not take the case back before 1933, when the Otutu family purported to divide the land and put the appellant on it. That itself would seem, however, to be almost sufficient for the decision of the case as between the appellant and the respondents, because what was done by the family in 1933 was clearly something amounting to acts of ownership. What the appellant is asking is that the absence of evidence as to the position before 1933 should be treated as establishing absence of any title in the Otutu family before that date; and, on the materials before them, their Lordships cannot go that far.

On the evidence which their Lordships have detailed and which was before the Federal Supreme Court Federal Justice Bairamian, with whom the Chief Justice, Sir Adetokunbo Ademola, and Federal Justice Taylor concurred, said this: " With the Odera judgment and the grant of 1952 out of the way, the plaintiffs' claim that the land is family land is plain, and cannot be gainsaid by the defendant, who, until the Odera judgment, shared the family belief in the tradition that the land belonged to the family, and it was in that belief that he cultivated it and put tenants on the land (See Defence, paragraph 18) ".

The consequent Order of the Court declared that the land in dispute was family land, and an injunction was granted restraining the defendant from collecting and appropriating the rents, which should instead be shared by the family.

Their Lordships, after careful consideration of all that has been urged before them on behalf of the appellant, have reached the clear conclusion that the judgment of the Federal Supreme Court is one which they cannot disturb. They will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs.

(90470) Wt. 8069/113 90 10/64 Hw,

In the Privy Council

JONES ADEYEYE

v.

E. T. ADEWOYIN AND OTHERS representing the the Ademakin/Ademiluyi Family of Ife

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DELIVERED BY

LORD DONOVAN

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