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In the Privy Council.

No. 54 of 1950.

UNIVERSITY OF LONDON W.C.1
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INSTITUTE OF ADVANCED LEGAL STUDIES

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

YESUFU ABIODUN, Chief Oniru ... ... APPELLANT

AND

THE CHIEF SECRETARY TO THE GOVERNMENT RESPONDENT.

CASE FOR THE RESPONDENT

RESPONDENTS CASE

RECORD

1.—This is an Appeal from a Judgment and Order dated the 22nd November, 1949, of the West African Court of Appeal (Blackall, P., Verity, C.J., and Lewey, J.A.) dismissing an appeal by the Appellant and another and allowing in part a Cross-Appeal by the Respondent from a Judgment dated the 28th February, 1949, of the Supreme Court of Nigeria (Jibowu, J.) on a summons taken out by the Respondent to determine the persons entitled to certain lands and the amount of compensation payable for those lands, which were being acquired by the Government. pp. 50–59; p. 60 pp. 37–43 pp. 2–3

10 2.—The Respondent contends that the appeal raises no question of principle, and is concerned only with the valuation of the lands. Such disputed questions of principle as were raised have, in the Respondent's submission, been decided in favour of the Appellant and compensation has been assessed on that basis. The Respondent therefore respectfully submits that this appeal falls directly within the decisions in *N. R. Kapur* v. *Murli Dhar Kapur* (1944) L.R. 71 I.A. 149 and *Narayanan Chettiar* v. *Kaliappa Chettiar* (1946) A.C. 116, and that the subject of the appeal is not a proper subject for consideration by the Judicial Committee.

3.—By Government Notice No. 600 published in the Nigeria Gazette pp. 64–65
20 of the 18th May, 1944, the Government gave notice that they required certain lands on the south bank of Five Cowrie Creek for sanitary improvements, improvement of the township of Lagos, and certain other p. 65, ll. 4–8 purposes. The notice called upon any person claiming any right or interest in the land to give notice thereof to the Respondent within six weeks.

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pp. 2–3
p. 2, ll. 24–25
p. 3, ll. 3–20
pp. 30–31

4.—On the 8th September, 1947, the Respondent took out a summons in the Supreme Court of Nigeria, as mentioned in paragraph 1 hereof. It was stated in the summons that the Governor was willing to pay as compensation the sum of £23,503. The summons was addressed to the Appellant and to six other members of the Oniru family who claimed interest in the land. During the proceedings before the Supreme Court a settlement was reached between the Appellant and the other six defendants whereby the compensation was to be paid to the Appellant on behalf of the Oniru Chieftaincy family. Accordingly only the amount of the compensation remained to be decided by the Court. 10

pp. 3–4
p. 39, l. 16

5.—In his answer to the summons the Appellant stated that as titular head and accredited representative under native law and custom of the Oniru Chieftaincy family, he was the owner of the lands in question, which were part of the stool land of the family. He alleged that the offer of £23,503 was out of all proportion to the market value of the lands, and claimed 1s. 6d. per square yard for dry land, £10 per acre for swamp, and £6,500 for loss of income on mangrove trees, etc., for five years, amounting to £147,240 in all.

6.—The lands were acquired under the Public Lands Acquisition Ordinance, the relevant sections of which, as amended by the Public Lands Acquisition (Amendment) Ordinance, 1945, Section 5, are : 20

15. In estimating the compensation to be given for any lands or any estate or interest therein or for any mesne profits thereof, the Court shall act on the following principles :—

(a) no allowance shall be made on account of the acquisition being compulsory ;

(b) the value of the land, estate, interest or profits shall, subject as hereinafter provided, be taken to be the amount which such lands, estate, interest or profits if sold in the open market by a willing seller might be expected to realise ; 30

(c) where part only of the lands, estate, interest or profit belonging to any person is acquired under the provisions of this Ordinance, the Court may take into account any enhancement of the value of the residue by reason of the proximity of any improvements or works made or constructed or to be made or constructed by the Government ;

(d) the Court may have regard not only to the value of the lands, estate, interest or profit to be acquired but also to the damage, if any, to be sustained by the owner by reason of the severance of such lands from other lands belonging to such owner or other injurious circumstances affecting such other lands by such acquisition. 40

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Provided that the Court in estimating such compensation shall assess the same according to what it finds to have been the value of such lands, estate, interest or profits at the time when notice of intention to acquire was served and without regard to any improvements or works made or constructed or to be made or constructed thereafter on such lands ;

*   *   *   *   *

17. When the Governor has in pursuance of a notice under section 8 entered into possession of any lands, the court may award compensation to the owner of such lands and to all parties entitled to any estate or interest therein for loss of rents and mesne profits for the period between the time the Governor so entered into possession, and the time when the consideration due under an agreement has been paid to the persons entitled theretc, or compensation has been paid into court under the provisions of this Ordinance.

7.—Much evidence was called by both sides to show how much of the lands in question consisted of dry land and how much of swamp ; but Counsel for the Appellant ultimately conceded that the figures of the Government must be accepted ; viz. : 684·4 acres of swamp and 390·2 acres of dry land.

p. 35, ll. 30–31
p. 74, ll. 27–28

8.—So far as relevant to the issues in this appeal, the evidence for the Appellant was as follows :

(i) The Appellant himself said that the lands were more valuable than certain Ikoyi lands for which the Government had paid compensation of 1s. per square yard of dry land. The claim for £6,500 was for loss of income from the sale of trees of various kinds growing on the lands. Cross-examined, he said he had sold land near the lands in question at the rate of £10 or £20 for a plot 100′ 50′. This was a nominal price, and he could have got £200 per acre. He kept no account books, and could not say how the figure of £6,500 had been established. He got over £800 per year from the land.

p. 9, ll. 33–35
p. 9, ll. 38–45
p. 10, ll. 16–28
p. 10, ll. 43–48

(ii) A clerk named Somorin said he had bought a piece of land 100′ × 100′ near the lands in dispute for £50 in 1944. He was a friend of the vendor and might have had to pay £100 for the land to anybody else. Cross-examined, he said he had accepted £60 compensation from the Government.

p. 12, ll. 9–12
p. 12, ll. 28–29

(iii) Tiamiyu Savage, a licensed auctioneer, said a certain plot of land 100′ x 50′ worth £30–£35 in 1933 was worth £70–£100 at the time of the trial. The land in dispute was more valuable than this. The price of land in Lagos had risen generally since 1933.

p. 13, ll. 8–13

(iv) Oseni Lawani Williams, a land agent, said he was acting for some claimants in this acqusition. The land in dispute was more valuable

p. 14, ll. 11–12
p. 14, l. 24

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p. 14, ll. 29–31
p. 14, ll. 31–36

than the Ikoyi land. The compensation paid to Somorin was equivalent to more than 1s. per square yard. The witness thought that 2s. per square yard of dry land and £60 per acre of swamp was reasonable for the land in dispute.

p. 16, ll. 8–9
p. 16, ll. 16–17
p. 16, ll. 23–25

(v) Omosalewa Thomas, a licensed auctioneer, said that in 1939 he had sold a piece of land 100′ × 50′, near the land in dispute, for £45. In 1944 it would have fetched about double that price. Cross-examined, he said he thought bidders might buy swamp at £100–£200 per acre for reclamation. He had never sold swamp.

p. 75
p. 75, l. 25
p. 17, ll. 3–5;
p. 74, ll. 21–29

9.—On a plan of the land acquired under the notice, the dry land in dispute was shown in 19 plots numbered A 1–2 ; B ; C 1–10 ; and D 1–6. There was also an area of 684.4 acres of swamp. The Government proposed to pay £5 per acre for swamp ; £80 per acre for plot A 1 ; £90 per acre for plot A 2 ; £40 per acre for plots B and C 1–10 ; and £30 per acre for plots D 1–6. 10

10.—So far as relevant to the issues in this appeal, the evidence for the Respondent was as follows :

pp. 20–21
p. 80
p. 80, ll. 28–35

(i) Robert Theobald Gray, the Provincial Forest Officer at Abeokuta, produced a report which he had made on the trees on disputed land. He thought the mangrove trees were worth £3 15s. per acre to the Appellant, and the other trees on the land £10 in all. 20

p. 25, ll. 1–3
p. 25, ll. 8–9
p. 25, ll. 20–21
p. 28, ll. 6–7
p. 29, ll. 3–4
p. 29, ll. 22–25
p. 29, ll. 31–33

(ii) Wilfred Bertram Hewett, the Acting Commissioner of Lands, said that when the Ikoyi lands were acquired £5 per acre was paid for swamp. In no case had more than that been paid for swamp. The Appellant had told him that he had received £800–£1,000 from the sale of mangroves in the previous twelve years. On Mr. Gray's figures, he thought the annual income from mangrove trees would be £62 1s. and their capital value £1,241. In cross-examination Mr. Hewett said £5 per acre was a generous figure covering any difference between one kind of swamp and another. He had not considered the question of severance, as in his opinion it did not arise. 30 There had been a severance of Oniru family land ; the rest of their land was on the other side of Magbon Creek. Re-examined, he said he thought the remaining Oniru land would be increased in value by the acquisition, but he had made no deduction from the compensation for that.

pp. 68–82
p. 77
p. 78, ll. 1–21
p. 78, ll. 22–32
p. 71, ll. 16–18

(iii) A file of written reports was also in evidence. These reports showed the basis of the Government valuation and that between 1931 and 1942 the Appellant had sold sixteen parcels of land near the lands in dispute, at an average price of £101 4s. per acre. During 1943 he sold twelve parcels at an average price of £106 10s. per acre. During 1944 he sold four parcels at an average price of £153 17s. per acre ; of these four, two sold on the 4th 40 May and the 17th May fetched £260 and £280 per acre respectively, and the other two sold on the 7th June fetched £93 and £109 respectively. Mr. Hewett stated in his report that the market price of building plots in

RECORD

this district at the time of the acquisition was £120 per acre. Applying the principle of "deferment" (which the Respondent does not now seek to justify) and having regard to the characteristics of the different plots, he valued the land to be acquired as set out in paragraph 9 hereof. He omitted from his valuation one-sixth of the area acquired as needed for load reserves ; the Respondent does not now seek to justify this.

p. 71, l. 23—p. 74, l. 29

11.—Jibowu, J., delivered a reserved Judgment on the 28th February, 1949. After setting out the facts, he held that the average price of the land per acre between the 4th May and the 7th June, 1944, viz., £153 17s., should be the basis of the compensation since £168 6s. per acre had been offered for another plot in this same acquisition, and a plot near the land in dispute had been sold in August, 1944, at £191 per acre, £153 17s. was a closer approximation for the value per acre than £120. The average price of actual sale was a more satisfactory guide than the calculation on "deferment." The learned Judge then considered the comparative values of the different plots and arrived at the following conclusions :

pp. 37–43
p. 39, l. 44—p. 40, l. 2
p. 40. ll. 15–31
p. 67, ll. 11–36
p. 40, ll. 32–42
p. 41, ll. 3–47

Plots A1 and A2 :	£153 17s. per acre
Plots B and C1–C10 :	£121 per acre
Plots D1–D6 :	£60 10s. per acre

The Respondent was not entitled to deduct one-sixth of the area for road reserves ; but since the acquisition did not leave the Oniru land across the Hagbon and Itirin Creeks less valuable, nothing was payable for severance. The Appellant, having kept no books, could not prove his claim for £6,500 ; and £5 per acre was a reasonable offer for swamp. On these findings the learned Judge assessed the compensation payable at £52,505 19s. 4d.

p. 42, ll. 6–41
p. 42, l. 42—p. 43, l. 8
p. 43, ll. 9–16
p. 43, ll. 17–25

12.—From this Judgment the Appellant appealed to the West African Court of Appeal, on the grounds that the learned Judge had been wrong in holding that the average price between the 4th May and the 7th June, 1944, should be the basis of compensation, in accepting the principle of grading the plots of dry land, in awarding only £5 per acre for swamp, and in rejecting the claims for loss of income and severance. The Respondent aslo appealed, on the grounds that the learned Judge had paid undue regard to the two sales in May, 1944, and to the offer for another plot (Exhibit H) and insufficient regard to the sales in 1943 and June, 1944, had been wrong in refusing to allow a deduction for road reserves and rejecting the principle of "deferment," and had awarded disproportionately high compensation for plots B, C1–C10 and D1–D6.

pp. 44–45
pp. 45–46
p. 67, ll. 11–36

13.—In the Court of Appeal, Verity, C.J., delivered a reserved Judgment in which Blackall, P., and Lewey, J.A., concurred, on the 22nd November, 1949. The learned Chief Justice first dealt with the questions of "deferment" and road reserves (on these questions the Court of Appeal affirmed the view of the Supreme Court, and the questions do not arise on this appeal), and held that it was not open to the Respondent

pp. 50–59
p. 54, ll. 15–41

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p. 54, l. 48—p. 55, l. 3
p. 55, ll. 3–25

at that stage to say that the land should be assessed as agricultural land and not as building land. The objection to the grading of the plots of dry land had not been pressed by Counsel for the Appellant. On the question of the average price, the learned Chief Justice held it was not necessary in order to value the land to seek for a sale at the very moment of acquisition, but sales of similar and similarly situated properties constituted the best test. On the valuation of plot A1 he thought the two sales in May were too narrow a basis, particularly in view of their peculiar circumstances and the great excess of the prices over any paid before or afterwards. On the figures given by the Respondent he did not think 10 there had been a steady rise in the value of land in the neighbourhood but considered the Respondent's figure of £120 per acre to be fair. The learned Chief Justice then considered the values of the other plots, pointing out that Mr. Hewett's evidence was not contradicted by any other reasonable expert evidence, and arrived at the following conclusions :

p. 55, l. 26—p. 56, l. 13

p. 56, l. 14—p. 58, l. 12

p. 57, ll. 12–18

Plot A1 :	£120 per acre
Plot A2 :	£120 per acre
Plot B :	£60 per acre
Plots C1–C10 ;	£40 per acre
Plots D1–D6 :	£30 per acre
Swamp :	£5 per acre

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p. 58, ll. 13–25

He rejected the claim for severance saying there was no evidence that severance had caused the Appellant any loss. As to the claim for £6,500, the learned Chief Justice thought the Appellant's evidence very obviously exaggerated, but held him to be entitled under Section 17 of the Ordinance to mesne profits at the rate of £100 per annum. On these findings, he assessed the compensation payable at £30,646 plus mesne profits from the date of the Governor's entry on the land to the date of payment of the compensation into Court.

p. 47, l. 7

14.—The Respondent submits that the Court of Appeal was right in 30 rejecting the Appellant's contention that the valuation should be based solely on the two sales in May, 1944. Such exceptional prices could not indicate the amount which the land if sold in the open market by a willing seller might be expected to realise. In order to arrive at that figure, it was necessary to consider the prices obtained in sales both before and after the acquisition, as the Court of Appeal did. The Appellant offered very scanty evidence of such sales. The Respondent further submits that there was no evidence at all of any damage to be sustained by the Appellant by reason of severance. Severance was never mentioned until Counsel for the Appellant was cross-examining the Respondent's last 40 witness. The Respondent further submits that the claim for £6,500 could have no legal foundation except Section 17 of the Ordinance, and under Section 17 the sum awarded by the Court of Appeal was fair. As to the comparative values of the different plots, the Respondent submits that that is pre-eminently a matter for the local courts, and the findings of the Court of Appeal thereon should not be disturbed.

15.—The Respondent respectfully submits that this appeal should be dismissed with costs and that the Judgment of the West African Court of Appeal was right and should be affirmed for the following amongst other

REASONS

1. BECAUSE the appeal falls within the decisions in *N. R. Kapur* v. *Murli Dhar Kapur* (1944) L.R. 71 I.A. 149 and *Narayanan Chettiar* v. *Kaliappa Chettiar* (1946) A.C. 116.

2. BECAUSE the West African Court of Appeal properly determined the amount which the land, if sold in the open market by a willing seller, might have been expected to realise.

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3. BECAUSE there was no evidence of damage sustained by the Appellant by reason of the severance of the land.

4. BECAUSE a reasonable amount was awarded to the Appellant as mesne profits.

5. BECAUSE of the other reasons given by the West African Court of Appeal.

FRANK GAHAN.

In the Privy Council.

No. 54 of 1950.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

YESUFU ABIODUN, Chief Oniru ... APPELLANT

AND

THE CHIEF SECRETARY TO THE GOVERNMENT ... RESPONDENT.

CASE FOR THE RESPONDENT

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