Privy Council Appeal No. 54 *of* 1950

Yesufu Abiodun, Chief Oniru – – – – – – *Appellant*

v.

The Chief Secretary to the Government – – – – *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH MAY, 1952

Present at the Hearing :

LORD NORMAND

LORD RADCLIFFE

LORD ASQUITH OF BISHOPSTONE

[*Delivered by* LORD ASQUITH OF BISHOPSTONE]

This is an appeal from a judgment of the 22nd November, 1949, of the West African Court of Appeal, which varied a judgment of the 28th February, 1949, of the Supreme Court of Nigeria. The appellant, Chief Oniru, had certain of his lands compulsorily acquired by the respondent representing the Government of Nigeria ; and as the result of proceedings taken by the latter in the Supreme Court, was awarded a certain sum by the Trial Judge as compensation under the statutory provisions agreed to be applicable in such a case. On appeal by the present respondent the West African Court of Appeal varied the judgment of the Supreme Court by reducing the award of compensation made by that Court. The appellant appeals from the decision of the West African Court of Appeal and prays that the judgment of the Supreme Court should be restored.

The relevant provisions of the Public Lands Acquisition Ordinance of Nigeria (Cap. 88) and of the Public Lands Acquisition Amendment Ordinance of Nigeria (No. 6 of 1945) are as follows:—

PUBLIC LANDS ACQUISITION ORDINANCE (Chapter 88).

10. If for six weeks after the service and publication as aforesaid of such notice no claim shall be lodged with the Secretary in respect of such lands, or if the person who may have lodged any claim and the Governor shall not agree as to the amount of the compensation to be paid for the estate or interest in such lands belonging to such person, or which he is by this Ordinance enabled to sell and convey, or if such person has not given satisfactory evidence in support of his claim or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Supreme Court, which shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Lieutenant-Governor or any person holding or claiming any

estate or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by this Ordinance to sell and convey the same.

* * * * *

15. In estimating the compensation to be given for any lands or any estate or interest therein or for any mesne profits thereof, the Supreme Court shall—

(*a*) assess the same according to what it shall find to have been the value of such lands, estate or interest or profits at the time when the Lieutenant-Governor served notices to acquire the same, and without regard to any improvements or works made or constructed thereafter on the said lands.

* * * * *

(*c*) have regard not only to the value of the lands required for public purposes 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 affecting of such other lands by the exercise of the powers conferred by this Ordinance.

PUBLIC LANDS ACQUISITION (AMENDMENT) ORDINANCE (No. 6 of 1945).

5. Section 15 of the principal Ordinance is hereby repealed and the following substituted therefor:—

" 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 :

* * * * *

(*d*) the Court may have regard not only to the value of the lands, estate, interest or profits 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 :

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 : "

Though, as will be seen from the dates which follow, the Principal Ordinance (Cap. 88) was in force at what was admittedly the material time, viz., 22nd May, 1944, when notice of intention to acquire was served on the appellant—yet their Lordships were informed during the hearing that the Amendment Ordinance of 1945 had by consent been treated as governing the assessment of compensation. The differences between the languages of these two enactments are for some purposes important. For the present purpose they are in their Lordships' view immaterial, and no argument was founded on them by either party.

The lands compulsorily acquired in this case consisted of the greater part of a swampy peninsula in the environs of Lagos. Most of the region is actual swamp, or land submerged by the sea water at " high water ordinary spring tides ". The patches of dry land and the morass above which they rise, often to the extent of a few feet only, are shown on the

principal plan, collectively, as an area verged in pink. This area consists in all (omitting fractions) of 1,074 acres, of which 684 acres are swamp and 390 acres dry land. The dry areas are classified on the plan under five categories :—A1, A2, B, C and D ; C being subdivided into 10 parts and D into 6. In the first instance the expropriated appellant claimed an equal rate per acre for all these areas. But this contention was plainly unmaintainable, and the descent in the alphabetical scale from land classified as " A " to land classified as " D ", admittedly corresponded with a progressive diminution in eligibility for purposes of development, or (what amounts for valuation purposes to much the same thing) in the eligibility of those purposes themselves. High in the scale of such purposes came the building of bungalows, and similar dwellings. Lands A1, A2 and B were thought suitable for this purpose, and according to some of the evidence, C10. At the lower end of the scale lay a number of uninhabited knolls, rising barely above swamp or sea levels, but such that there was a speculative chance of establishing fishing villages on them. Lands D1-6 fall mainly if not wholly in this category. Many of lands " C ", intermediate between these extremes, are the sites of existing fishing villages. The above summary deliberately eschews details immaterial to the real issues raised.

The notice of acquisition, dated the 13th May, 1944, was published in the Nigerian Gazette on the 18th and served on the 22nd of that month. *Ex concessis*, this last date is the material one for the assessment of compensation. On the 8th September, 1947, the respondent issued a writ of summons in the Supreme Court of Nigeria for such assessment, the initiative in this matter resting with the acquiring authority. In this document it was stated that the Governor was prepared to pay £23,503 for the land. On the 15th October, 1947, the appellant filed an answer rejecting this offer and claiming a flat rate of 1s. 6d. per square yard—viz., £363 per acre—for the area so far as it consisted of dry land, and £10 an acre so far as it consisted of swamp. The total claim under these heads amounted to £147,000, plus £6,500 for loss of income on mangrove trees for five years ahead.

The learned Trial Judge rejected this last claim—for £6,500—on the ground that it was wholly unproved. In so doing he was upheld by the Court of Appeal for Western Africa. On the first two items he awarded £52,505 19s. 4d. in all, on the following basis:—

						£	s.	d.
Area A1.	112·5 acres at	£153	17s.	0d.	per acre	17,308	2	6
„ A2.	7·7 „	£153	17s.	0d.	„ ...	1,184	12	10
„ B.	115·7 „	£121	0s.	0d.	„ ...	13,884	0	0
„ C1–C10.	123·9 „	£121	0s.	0d.	„ ...	14,868	0	0
„ D1–D6.	30·4 „	£60	10s.	0d.	„ ...	1,839	4	0
„ Swamp.	684·4 „	£5	0s.	0d.	„ ...	3,422	0	0
					Total ...	£52,505	19	4

Their Lordships will examine the computation on this basis hereinafter.

The respondent appealed to the Court of Appeal which reduced the award from £52,505 to £30,656. For the time being their Lordships also defer consideration of the manner in which this total is built up. It is against this reduction that the appellant now appeals, asking that the Trial Judge's figure may be restored.

The main evidence on which both courts proceeded was evidence of the price which lands more or less comparable in quality and situation, and sold at roughly the same time, fetched in the market. Far the most full and detailed evidence under this head was given by a Mr. W. B. Hewett, Acting Commissioner of Lands at Lagos. Mr. Hewett submitted three tables (Record pp. 77, 78) relating to sales of lands in some degree comparable to the material land. The first table covered 16 sales before

1943 (at an average price of £101 4s. 0d. per acre). The second, twelve sales during the year 1943 (at an average price of £106 10s. 0d.); the third, four sales in the year 1944, at an average price of £153 17s. 0d. All of these sales, except one, were of land in "Chief Oniru's Layout, Victoria Beach" an area adjacent to lands A1 and hatched in yellow on the main plan. The only "comparable" plot not in this area was an indentation in the western boundary of A1. Mr. Hewett, though in one passage in his evidence he purports to have taken into account an average of sales over ten years, appears (p. 71) in the end to have based his average on the (16) sales of 1943 and 1944; this average was £115 5s. 0d.; and he seems to have computed the value of the material land or the price which the Government would have offered for it, at a figure which if the land had been "ripe" for development would have been £120 an acre, and then to have made deductions from this gross figure in respect of (*a*) "deferment" (measured by the degree of "unripeness" of the land and the probable expense of maturing it); and (*b*) "road reservation". The result of this calculation was to yield a net figure for land A1 of £80 per acre, and for land A2 of slightly more, viz., £90 per acre. He valued B, C and D in the main by applying percentages to the value of A1; e.g., area B was valued at half the value per acre of A1, and so on. The two courts in West Africa both disagreed with him in so far as he differentiated between the value of A1 and A2; they thought no appreciable difference existed between the value of these areas; but they embraced his method in so far as it involved reckoning the values of B, C and D by way of percentages of that of land "A" and adopted the same percentages. As has been indicated, the total at which Mr. Hewett arrived for the 390 acres of dry land was £20,189, and for the 684 acres of swamp (at £5 an acre) £3,422; making a total compensation of £23,611. There was in their Lordships' opinion nothing appreciable in the other evidence to discredit or displace the evidence of Mr. Hewett, which in substance held the field.

In the court of first instance Mr. Justice Jibowu did not follow Mr. Hewett's method of basing the average price of comparable land on the 16 sales of 1943 and 1944, but based it solely on the four sales of 1944, two in May and two in June of that year. The two sales occurring in May (to which the Judge attached special significance because notice to acquire the material land was served in that month) were attended by abnormal circumstances, which tended to divest them of a representative character. For instance both of the lots sold in May abutted directly on the Victoria Beach Road, the main thoroughfare leading to Lagos; and had in addition some other exceptional advantages in respect of their site including proximity to the sea and its breezes. Their Lordships share with the West African Court of Appeal the view that no informative or helpful average can be based on so narrow a range of transactions, including as it does amongst its four items two abnormal peak figures. A wider range, if resorted to, would have yielded very different results. Nor would the learned Trial Judge appear to have been justified in his assumption that the "value of land near Lagos had been mounting steadily for some years back". As the Appellate Court point out average prices for such land for the four years preceding the material transaction were £103, £123, £110 and £106 per acre. This is not evidence of a "steady rise". However, applying his own basis, the learned Judge arrived at an average of £153 17s. 0d. for areas "A1" and "A2"; and at certain values for "B", "C" and "D" by applying percentages to the value of "A".

Many familiar authorities were cited by counsel for the appellant commending caution and reserve on the part of any Appellate Court dealing with the findings of fact of a Judge of first instance who has seen and heard the witnesses. No one questions these authorities, but nothing in the proceedings before the Trial Judge in the present case turned on the demeanour or veracity of the principal witnesses, and their Lordships consider that the Court of Appeal for Western Africa was fully justified in drawing from facts in the main uncontroversial inferences differing

from those drawn from the same facts by the Trial Judge. The Court of Appeal as has been seen arrived at the total for compensation of £30.656. This total was built up as follows:—

						£	s.	d.
Area A1.	112·5 acres at	£120	per acre	...	...	13,500	0	0
,, A2.	7·7 ,,	£120	,,	...	...	924	0	0
,, B.	115·7 ,,	£60	,,	...	...	6,942	0	0
,, C.	123·9 ,,	£40	,,	...	...	4,956	0	0
,, D.	30·4 ,,	£30	,,	...	...	912	0	0
Swamp.	684·4 ,,	£5	,,	...	...	3,422	0	0

These figures are arrived at by accepting Mr. Hewett's gross figures without any deduction, such as he made, to allow for the developmental immaturity of the land or for road reservations. In these respects their Lordships are of opinion that the Court of Appeal erred on the side of generosity to the expropriated appellant. However there is no cross-appeal by the respondent. In these circumstances their Lordships will humbly advise Her Majesty to dismiss the appeal and to uphold the figure arrived at by the West African Court of Appeal. The appellant must pay the costs of the appeal to this Board.

(15601) Wt. 8096—1 100 5/52 D.L./PI/3

In the Privy Council

YESUFU ABIODUN, CHIEF ONIRU

v.

THE CHIEF SECRETARY
TO THE GOVERNMENT

DELIVERED BY
LORD ASQUITH OF BISHOPSTONE

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1952