

16, 1958

UNIVERSITY OF LONDON
W.C.1.
24 JAN 1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN

52087

1. MAURICE GOUALIN LIMITED
2. BATHOLOMEW KOOVI DE SOUZA
(Defendants) Appellants

- and -

WAHABI ATANDA AMINU
(Plaintiff) Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a Judgment of the Federal Supreme Court of Nigeria (Foster Sutton, F.C.J., Verity and Irwin, Acting F.JJ) dated 21 June 1956 allowing an appeal from a Judgment of Abbott, J., dated 14 June 1954, in the consolidated actions hereinafter mentioned.

10 2. In an action, which was commenced in the Lagos Judicial Division of the Supreme Court of Nigeria by Writ dated 17 December 1953 under Suit No.639/1953 the above named Respondent claimed against the above named Appellant Company Maurice Goualin Ltd. (hereinafter called "the Appellant Company") damages for trespass upon the land (hereinafter called "the disputed Plot No.1") edged green on the plan annexed to the Statement of Claim delivered in that action, (Exhibit "C") an injunction restraining further acts of trespass upon the same land and a declaration of the Respondent's title thereto. p. 2

20 3. In a separate action, which was commenced in the said Division by Writ dated 16 December 1953 under Suit No. 641/1953, the Respondent claimed against the above named Appellant Batholomew Koovi de Souza (hereinafter called "the Appellant de Souza") damages for trespass upon the land (hereinafter called "the disputed Plot No.2") edged green on the plan annexed to the Statement of Claim delivered in that action (Exhibit "D") an injunction restraining further acts of trespass thereon, and a declaration of the Respondent's title thereto. p. 3

RECORD

p.18, 1.1.

4. The disputed Plot No.1 and the disputed Plot No. 2 adjoin one another and are hereinafter together referred to as "the disputed Plots". The dimensions of the disputed Plots together are 65'0" x 102'2" x 64'9" x 103'2".

pp.4,10.

5. Separate Pleadings were delivered in the two actions but the Statement of Claim was in substantially identical terms in each case save that the allegations of trespass related in each action to the Defendant in that action and to the disputed Plot in question in that action. The Respondent alleges that he is the owner of the disputed Plots under a registered conveyance dated 25 June 1953 and that he and his predecessors in title have (save as next mentioned) been in uninterrupted and undisturbed possession thereof since the year 1931, and that in the year 1953 the Appellants wrongfully entered upon and cleared the disputed Plots and carried out certain building operations thereon. 10 20

pp.5,11

6. The Appellants delivered in the said actions respectively Defences which were substantially in identical terms. By their Defences the Appellants denied the Respondents title to and possession of the disputed Plots. The Appellant Company admitted entering on the disputed Plot No.1 and clearing it and carrying out building operations thereon in 1953. From the Appellant de Souza's Defence, although he admits entry upon the disputed Plot No.2 and that it was cleared and that building operations were carried out thereon, it is not clear whether these admissions relate to his own acts or to those of the Appellant Company. The Appellants by their said Defence assert a title to the disputed Plots under - 30

(a) a Conveyance on sale dated 25 June 1952 by Chief Tihamiyu Oduntan Fagbayi Oloto for and on behalf of the Oloto Chieftain Family to Tijani Akanbi Imoru; 40

(b) a Conveyance on sale dated 27th August 1952 by Tijani Akanbi Imoru to Joshua Oladipo Oni;

(c) a Conveyance dated 31 December 1952 by Joshua Oladipo Oni to the Appellant Company.

The Appellant de Souza further alleges that by a Conveyance on sale dated 13 April 1953 the

disputed Plot No.2 was conveyed by the Appellant Company to himself.

7. The said actions were consolidated by an Order dated 12 April 1954 of the said Supreme Court and were tried with oral evidence on 18 and 19 May and 2 and 8 June 1954 by Abbott J., who delivered judgment on 14 June 1954. p.13

10 8. The Respondent called evidence to prove that the disputed Plots form part of certain land which (having been mortgaged (with other property) on 29 May 1923 by one Adeoye Desalu in favour of the Scottish Nigerian Mortgage & Trust Company Ltd. by a Mortgage of that date, which referred to the said land as covered by a Deed of Gift dated 6 August 1896 from one Simon Jacobs to the said Desalu) was - Exhibit E, p.50 P.51, 1.7

(a) sold on 27 July 1931 by the said Scottish Nigerian Mortgage & Trust Company Ltd. to Joseph Michael Obafemi Adewunmi; pp.14-15 p.24

20 (b) sold in about 1932 by the said Adewunmi to one Oshire; p.24

(c) sold to the Respondent in June 1953 by the beneficiaries of the estate of the said Oshire, who died in April 1951; p.18, p.21; p.22

30 (d) conveyed to the Respondent by a Conveyance (hereinafter called "the Respondent's Conveyance") dated 25 June 1953 and made between (1) the said Scottish Nigerian Mortgage & Trust Company Ltd. (2) the said Adewunmi (3) the beneficiaries of the estate of the said Oshire and (4) the Respondent. The Respondent also called evidence to prove that his predecessors in title had entered into possession of the disputed Plots and exercised rights of ownership thereon, that he himself had taken possession thereof, and that when in 1953 he saw labourers and the Appellant de Souza on the land he told them to stop operations because the land was his. Exhibit K, p.64 p.15 1.24; p.22;p.24; p.18

35 9. The Appellants called evidence to prove that the disputed Plots - p.25; p.26

(a) were conveyed on sale to Amodu Tijani Akanbi Imoru by a Conveyance dated 25 June 1952 and made between (1) Chief Tiamiju Oduntan Fagbayi Oloto (2) Moses Oni Ajayi and (3) the said Imoru; Exhibit Q, p.77

(b) were conveyed on sale to Joshua Oladibo Oni by a Conveyance dated 27 August 1952 and made between (1) the said Imoru and (2) the said Oni; Exhibit P, p.75

RECORD

Exhibit O, p.73	(c) were conveyed on sale to the Appellant Company by a Conveyance dated 31 December 1952 and made between (1) the said Oni and (2) the Appellant Company;	
	and that the disputed Plot No.2 -	
Exhibit R, p.80	(d) was conveyed on sale to the Appellant de Souza by a Conveyance dated 13 April 1953 and made between (1) the Appellant Company and (2) the Appellant de Souza. The Appellants	
p.25	also called evidence to show that when the witness M.Goualin inspected the land before 31 December 1952 he found nobody in possession or claiming the land, and that the Appellant Company began clearing the disputed Plots in January 1953 and received no intimation of the Respondent's interest therein until the Appellant Company received a letter from the Respondent's Solicitor dated 14 October 1953.	10
Exhibit N, p.72		
pp.27-29	10. Abbott, J., delivered judgment on 14 June 1954 dismissing the said actions with costs. The learned judge found as a fact that the said Mortgage and the Respondent's Conveyance both deal with an area of land which includes the disputed Plots. The learned judge found, however, that the Respondent's Conveyance was not executed by Abiola Oshire, one of the beneficiaries of the estate of the said Oshire, parties thereto of the third part, and held that the Respondent's Conveyance and the Respondent's title were accordingly defective on the ground that there was an outstanding equitable interest in the said Abiola Oshire. He also relied upon the fact that all documents of title relied upon by the Appellants were registered before the date of the Respondent's Conveyance. He further stated that the evidence did not satisfy him that the Respondent had been in possession of the disputed Plots at the time of the alleged trespass. The learned Judge accordingly dismissed the said actions with costs.	20
p.28,1.27		
p.28, 1.37		
p.29, 1.16		
p.30	11. The Respondent appealed to the Federal Supreme Court of Nigeria exercising its appellate jurisdiction.	30
p.32	12. The Respondent's said appeal was heard on 22 May 1956 by the said Court of Appeal (Foster Sutton, F.C.J., Verity and Irwin, Acting F.JJ) who delivered judgment on 21 June 1956.	40
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13. Before the appellate Court the Respondent's counsel admitted that the Respondent's Conveyance had not been executed by the said Abiola Oshire P.35,1.7
14. The appellate Court in their Judgment (which was delivered by Verity, Acting F.J., and concurred in by the other members of the Court) drew attention to the facts that :- pp.34-38
- 10 (a) under the Evidence Ordinance (Cap.63), s.129, the truth of the reference contained in the said Mortgage to the Deed of Gift therein mentioned is to be presumed in the absence of contrary evidence; p.34,1.18
- (b) apart from the Respondent's Conveyance, there was evidence of the sales referred to in paragraph 7 (a)(b) and (c) hereof upon which the Court would have made orders for specific performance. p.35,1.43
- 20 The Court held that the Appellants could not show a better title than the Respondent, that there was no evidence to support the root of title to which the Appellants sought to trace their claim in the Oloto Chieftaincy Family, which in any case was later in date than either the said Mortgage or the said Deed of Gift, and that registration of the Appellants documents of title before the date of the Respondent's Conveyance conferred no title on the Appellants. The appellate Court further held that the trial judge should have been satisfied with the evidence of possession of the disputed Plots given by the Respondent and his witnesses. The appellate Court accordingly allowed the Respondent's appeal made the declarations of title claimed by the Respondent in the said actions, awarded him £1 by way of damages in each of the said actions and ordered the Appellants to pay to the Respondent his taxed costs of each of the said actions and his costs of the Appeal. p.36,1.24 P.36,1.42 P.37,1.40 p.39
- 30 40 15. By an Order dated 7 November 1956 the Hon.Mr.Justice Olumuyiwa Jibowu, Acting F.C.J., granted to the Appellants leave to appeal from the said Order of the appellate Court to Her Majesty in Council. p.46
16. The Respondent submits and will contend that the said Order of the appellate Court

ought to be affirmed for the following among other -

REASONS

1. Because the title to the disputed Plots on which the Respondent relies originates from a root of title (namely the said Deed of Gift or alternatively the said Mortgage) of earlier date than the Appellant's alleged root of title (namely the said Conveyance dated 25 June 1952) and there was no evidence upon which it could be suggested or found that the Respondent's said root of title was not a good root of title. 10
2. Because the evidence established that the legal estate in the disputed Plots was vested in the Scottish Nigerian Mortgage & Trust Company Limited by the said Mortgage and was duly conveyed to and vested in the Respondent by the Respondent's Conveyance.
3. Because Abbott, J., was mistaken in holding that the effectiveness of the Respondent's Conveyance was in any way affected by the failure of the said Abiola Oshire to execute it. 20
4. Because Abbott, J., was mistaken in holding that any equitable interest in the disputed Plots was outstanding in the said Abiola Oshire at the time of the Respondent's Conveyance.
5. Because, even if any such interest had then been so outstanding, this would have been immaterial as between the Respondent and the Appellants. 30
6. Because the registration before the date of the Respondent's Conveyance of the documents of title relied upon by the Appellants was irrelevant to the Respondent's claims in the said actions (Land Registration Ordinance, c.108, s.19).
7. Because there was ample evidence that the Respondent's predecessors in title had been in possession of the disputed Plots. 40
8. Because there was sufficient evidence that the Respondent had entered into possession of the disputed Plots.

9. Because, alternatively, it was unnecessary for the Respondent to establish that he had entered into actual possession of the disputed Plots.

10. Because the judgment of the appellate Court and the reasons given therefor by Verity, Acting F.J., were right and ought to be affirmed.

DENYS B. BUCKLEY.

No. 17 of 1957

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL SUPREME COURT
OF NIGERIA

B E T W E E N

MAURICE GOUALIN LTD. and ANOTHER
Appellants

- and -

WAHABI ATANDA AMINU Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
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