*Privy Council Appeal No.* 17 *of* 1957

**Maurice Goualin Limited and another** - - - - - *Appellants*

*v.*

**Wahabi Atanda Aminu** - - - - - - - - - *Respondent*

FROM

## THE FEDERAL SUPREME COURT OF NIGERIA

## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1958

---

*Present at the Hearing:*

LORD TUCKER

LORD BIRKETT

MR. L. M. D. DE SILVA

[*Delivered by* MR. DE SILVA]

---

This appeal relates to two actions on two causes of action which can for the purposes of this case be regarded, and have been regarded by the parties, as identical. They were instituted by the same plaintiff who is the respondent to this appeal against separate defendants who are the appellants. These actions have been consolidated. As no question arises from the fact of consolidation no further reference will be made to it.

The respondent sought against the appellants in the Lagos Judicial Division of the Supreme Court of Nigeria, in respect of a tract of land shown in a plan prepared for the purposes of the case, a declaration of title, damages for trespass and an injunction restraining the appellants from committing further acts of trespass. The appellants denied the title of the respondent and set up a title of their own. They also denied the trespass.

The trial judge appears to have thought that the respondent's title should prevail but for an equitable interest which he thought was outstanding and he dismissed the action on the ground that in his view it would be impossible for the respondent " to pass a clean title to a purchaser from him " and therefore was not entitled to a declaration of title.

On appeal the Federal Supreme Court of Nigeria held that no equitable interest was outstanding, set aside the judgment of the Supreme Court and granted the respondent the declaration and injunction he prayed for, together with damages which were nominal as the result of an agreement between the parties.

The Law of Nigeria applicable to this case is by reason of Section 14 of the Supreme Court Ordinance (Laws of Nigeria Vol. VI p. 202) " the common law, the doctrines of equity and the Statutes of general application which were in force in England on the 1st January 1900."

The earliest document of title relied on by the appellants is a deed of conveyance of the 25th June 1952. This deed contains a recital that the land conveyed by it was part of a larger area " orginally seised and possessed by Oloto Chieftaincy Family " and that the land in question had been sold in 1927 to one Oni Ayaji by the late Chief Omidiji Oloto but that no deed of conveyance had been executed. By the deed of 1952 Oni Ayaji and one Fagbayi Oloto, describing himself as the " Present Titular Head of the Family " purported to convey the land in

question to one Imoru. The appellants relied on a chain of deeds which conveyed to them whatever had been conveyed on the deed of 1952. It is to be observed that the recital, being a recital in a deed of 1952, has no probative value. There was no oral or other evidence to support the title of the vendor on the deed. There was also no evidence called to establish acts of possession by the appellants or by anyone through whom they claimed prior to 1952.

The respondent relied on a deed of mortgage of the 29th May 1923 by which one Desalu conveyed to the Scottish Nigerian Mortgage and Trust Company Limited (hereafter called the Company) a tract of land which included the land in question. Desalu having made default in the payment of the sums due under the mortgage, the company under a power of sale conferred on them by the mortgage deed sold the land by public auction and it was purchased by one Adewunmi on the 27th July, 1931. No conveyance was executed. Thereafter the land appears to have been sold by Adewunmi to one Oshire and after the latter's death by his " children and heirs-at-law " to the respondent. No conveyance was executed by Adewunmi to Oshire.

In the deed of mortgage of 1923 there is a recital in the following terms:

> " Whereas the borrower is seised in fee simple in possession free from incumbrances of the several freehold hereditaments hereinafter described and expressed to be hereby conveyed "

and it is necessary to consider what the effect of this recital is. Section 129 of the Evidence Ordinance (Cap 63 Vol. III Laws of Nigeria p. 42) provides

> " Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions."

It will be seen that the recital is evidence that Desalu was the true owner in 1923 and there is no evidence which contradicts it. This evidence must prevail and Desalu must, as between the parties to this case, be considered to have been the true owner in 1923. Upon this finding there is no room for the assertion which appears in the appellants' deed of 1952 that the land was " originally seised and possessed by the Oloto Chieftaincy Family " or that it belonged to Chief Omidiji Oloto in 1927. The assertion must, in their Lordships' opinion, be rejected.

There is a reference in the deed of mortgage of 1923 to a deed of gift of 1896 which, it was argued, under section 129 of the Evidence Act furnished evidence of respondent's title from 1896. This argument was contested. Their Lordships do not propose to decide the points which arise as in their opinion the respondent is entitled to succeed without establishing that his title dated back to 1896.

It was argued that the sale to Adewunmi was ineffective on the ground that the notice of sale of the land by auction did not contain an adequate description of the land and that therefore there could not have been a valid contract with regard to it. This argument was not raised in the courts below. It is impossible to say that all the relevant facts bearing on it are on the record. Their Lordships do not feel they can entertain it.

The deed in favour of the respondent connecting his title with the title of Desalu is a deed of the 25th June 1953 in which the Company, Adewunmi and persons who purported to be the heirs and successors in title of Oshire joined in conveying the land to the respondent. As Desalu has been held to have been the true owner this deed undoubtedly conveys the legal title to the respondent. As between the respondent and the appellant, the respondent as holder of the legal title is entitled

to the declaration of title which he seeks. There may be equitable claims against him in persons other than the appellants and, if there are, they may or may not be pursued. But the existence of such equitable claims will not detract from his right to the declaration.

The learned trial judge was wrong when he thought that the respondent before he could succeed had to establish that he could " pass a clean title to a purchaser from him ". The Court of Appeal held that no equitable rights were outstanding. This may in fact be so, but it is unnecessary so to find for the respondent to succeed and their Lordships do not propose to enter upon the questions that are relevant to that finding.

Reference was made by the trial judge to the fact that the appellants' deeds were registered before those of the respondent. This fact is of no consequence because, as already observed, the appellants' deeds are not traceable to any person with title and the registration under the Land Regisration Ordinance (Cap 108 Laws of Nigeria Vol. IV p. 40) of a deed from a person without title does not give the grantee any right.

On this appeal counsel for the appellants raised the point that the land with regard to which the dispute had arisen had not been identified with the land covered by the deeds already mentioned in this judgment. A plan was prepared and produced by a surveyor. There are explanatory remarks on it which, if accepted, show that the deeds did cover the disputed land. The statements were not challenged when the surveyor was in the witness box and they do not appear to have been challenged during the addresses of counsel or at any other point in the proceedings. Their Lordships do not think that there is any substance in the point.

The appellants admittedly entered the land, cleared it and started to build on it. The respondent had as against the appellants the right to possession and the acts of the appellants constituted a trespass. The respondent is entitled to the damages which have been awarded as well as to the injunction restraining the appellants from committing further acts of trespass.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the respondent the costs of the appeal.

(39475) W. 8021—25 100 8/58 D.L.

**In the Privy Council**

---

MAURICE GOUALIN LIMITED AND ANOTHER

*v.*

WAHABI ATANDA AMINU

---

DELIVERED BY MR. DE SILVA

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

1958