Privy Council Appeal No. 5 *of* 1958

Anoje Igwe and others for themselves and on behalf of their people of Umunahu Uratta - - - - - - - - - *Appellants*

v.

Opara Ukweje and others for themselves and as representing their people of Umuofa Uzoagbe - - - - - - - *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH OCTOBER, 1960

Present at the Hearing:

LORD COHEN
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* MR. DE SILVA]

This appeal concerns three cases which were consolidated and tried by the Supreme Court of Nigeria. They related to conflicting claims made to a tract of land by the appellants representing themselves and certain Uratta families and the respondents representing themselves and certain Uzoagbe families. The tract is shown edged green in a plan produced by the appellants.

The appellants say Urattas have been the owners of the tract from time immemorial. They claim the whole of the tract but say that the Urattas gave permission to the Uzoagbas to occupy the portion to the east of a road shown on the plan. They say the Uzoagbas have no right of occupation or any other right to the portion (edged pink) west of the road. The appellants ask that they be declared owners of the whole tract subject to the rights of occupation of the eastern portion by the respondents. They ask also for certain other ancillary relief.

The respondents say that the whole of the tract belongs to Uzoagbas who have for generations been in occupation without payment of rent or tribute. They ask that they be declared entitled to the land and other consequential relief.

The Supreme Court of Nigeria dismissed the appellants' claim and entered decree in favour of the respondents as prayed for by them. On Appeal the Federal Supreme Court affirmed the Order of the Supreme Court.

Traditional and other evidence was led on each side. There was a sharp conflict of evidence on the facts. With regard to the witnesses called by the appellants the Supreme Court after considering the oral and documentary evidence said:—

> "They did not impress me as witnesses of truth. Their evidence on their traditional history was not impressive and I did not consider them reliable. Neither were they impressive over matters during their lifetime."

With regard to the respondents the Supreme Court said:—

> "I find I could rely upon their evidence and that of their witnesses."

As already stated it dismissed the appellants' claim and entered a decree in favour of the respondents.

On appeal the Federal Supreme Court of Nigeria said that it was clear that the trial Judge had carefully weighed and considered the evidence given by both sides and that having done so he had rejected the evidence led for the appellants and accepted the respondents' evidence. It said further:—

> "Nothing that has been said by Mr. David on their behalf has convinced us that the learned trial Judge erred in taking the view he did, nor do we think there is any substance in the allegations of misdirection."

The main point made against the appellants is that there are in this case concurrent findings of fact against them. The Federal Court in its judgment did not refer to the questions of fact in detail or even refer to each one separately. The appellant argues that for this reason there are no concurrent findings of fact. Their Lordships do not agree. They are satisfied that the Federal Court considered the whole of the evidence, considered the points upon which argument could have been addressed to them and thereafter affirmed the findings of the trial court. In such circumstances there clearly are concurrent findings of fact.

It was sought by the appellants by reference to various matters of detail to argue that some of the findings were wrong. In the case of *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508 at p. 513 it was said by Lord Thankerton delivering the judgment of the Board:—

> "The appellant is at once faced with the concurrent judgments of two courts on a pure question of fact, and the practice of this Board to decline to review the evidence for a third time, unless there are some special circumstances which would justify a departure from the practice."

The "special circumstances" referred to are set out in the judgment in the case mentioned and need not be repeated here. It is sufficient for their Lordships to say that none of them exist in this case. The appellants have in effect invited their Lordships to "review the evidence for a third time" but to do so would be contrary to established practice.

To illustrate what has just been said their Lordships will take one instance of the submissions made to them. It was urged that the view of the trial Judge with regard to a witness called Okorie Ofaha namely "I cannot accept this witness's evidence. He struck me as most unreliable" could not be sustained. The chief ground on which this argument was based was that he had not been cross-examined upon the point to establish which he had been called. This and similar points were fit material for consideration by the Court of Appeal in the context of the whole of the evidence in the case. But when the Court of Appeal after considering the relevant material saw no reason to disturb the findings of the trial court then those findings became concurrent findings which their Lordships will not review.

It was urged for the appellants that even if the dismissal of the appellants' claim was correct the entering of a decree for the respondents was erroneous. The argument was based upon the view expressed in *Ntoe Ekpo Eta Ekpo* v. *Chief Eta Eta Ita* Nigeria L.R. Vol. XI p. 68 in the following words:—

> "In a claim for a decree of declaration of title the *onus* is on the plaintiff to prove acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that the plaintiffs were exclusive owners—if the evidence of tradition is inconclusive the case must rest on question of fact".

This view was approved by the Board in *Idoko Nwabisi and another on behalf of themselves and the Umeleri people* v. *R. A. Idigo and another on behalf of themselves and the Aguleri people* (delivered on the 28th July, 1959). In the present case there is no failure of traditional evidence but it was said that the principles laid down with regard to acts of ownership had not been applied. It is true that the decisions were not referred to but there is no reason to doubt that the courts in Africa were well acquainted with those decisions and had them in mind when forming their views. There was material upon which those courts could have arrived at the conclusions which they reached and there is no reason to disturb their judgments.

Their Lordships will humbly advise Her Majesty that for the reasons they have given this appeal should be dismissed. The appellants will pay the costs of this appeal.

(39285) Wt. 8109—53 100 10/60 D.L.

In the Privy Council

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v.

OPARA UKWEJE and others for themselves and as representing their people of UMUOFA UZOAGBE

DELIVERED BY MR. DE SILVA

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