Privy Council Appeal No. 31 *of* 1930.

Sakariyawo Oshodi - - - - - - - - *Appellant*

v.

Moriamo Dakolo and others - - - - - - *Respondents*

FROM

THE SUPREME COURT OF NIGERIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1930.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD TOMLIN.
LORD RUSSELL OF KILLOWEN.

[*Delivered by* VISCOUNT DUNEDIN.]

In May, 1927, the Governor of the Colony of Nigeria gave notice that he intended to acquire for public purposes a compound known as Alfa Iwo Court, situated at Epetedo, in Lagos. This he was empowered to do under the Public Lands Acquisition Ordinance. Following upon that, summonses were taken out to determine the persons to whom the compensation money, which was payable on the acquisition by the Government, should be paid. Alfa Iwo Court consists of a set of houses set round an internal court, which forms the access to them. The claimants are, on the one hand, Oshodi, who is the head of the family of Oshodi and who claimed it as paramount chief; and on the other the various occupants of the houses. The general character of the title of natives to lands in Lagos was examined by the Board in the case of *Amodu Tijani* v. *Secretary, S. Nigeria* [1921], 2 A.C. 399. What was laid down in that case was that the cession of the territory of Lagos by the King of Lagos to the British Crown in 1861 did not affect the character of the private native rights. That case had to do with community lands held under the White Cap Chiefs; but the general principle

was held to apply to other lands not held by White Cap Chiefs in the subsequent case of *Sunmonu* v. *Disu Raphael* [1927], A.C. 881, where this was expressly stated at page 84. In general terms what the law comes to is this. The paramount chief is owner of the lands, but he is not owner in the sense in which owner is understood in this country. He has no fee simple, but only a usufructuary title. He may have some individual lands which he occupies himself, but as regards other lands they are occupied for his household, *i.e.*, before the abolition of slavery for his slaves. These various occupiers have the right to remain and to transmit their holdings to their offspring, but in the event of the family of an occupier failing and being extinct, the chief has a right of reversion.

In the lower Court each of the two parties, who for convenience sake were called plaintiff and defendants, the Chief being plaintiff and the occupants as a body the defendants, claimed the whole of the compensation money. The lower Court decided in favour of the defendants and awarded to them the whole money. On appeal the Chief modified his attitude. He no longer claimed the whole, but he said he was entitled to a share. This claim he based on two separate grounds. First, he said he was entitled to the money so far as it represented the value of the courtyard, because he alleged that the courtyard did not, so to speak, fall within the title of the various houses. Secondly, he said that he was entitled to something in virtue of his right to reversion.

The Supreme Court of Nigeria decided against him. From that judgment appeal has been taken to His Majesty in Council, and before this Board the plaintiff has maintained the same attitude as he did before the Supreme Court.

Now, the respondents first of all defend the judgment in their favour by alleging that the plaintiff has not proved his position as paramount chief in so far as this compound is concerned. That, however, was not the view of either of the Courts below. The history of the land in question was carefully enquired into by the Trial Judge. He came to the conclusion that one Oshodi Tappa, coming back out of exile, was put into possession of 21 compounds, of which this is one, for him and his household. There has been considerable litigation as to others of the 21 compounds, and the Trial Judge sums up his conclusions thus :—

> "I find that Chief Oshodi Tappa was the original 'owner' of the land, in the sense that he had the disposition and control of it, and such rights as he had have descended to the plaintiff."

And the learned Judges of the Court of Appeal in their unanimous judgment say :—

> "The right of the Oshodi family to control the land at Epetedo, where Alfa Iwo Court is situate, has been always recognised by these Courts."

And they cited a variety of cases to that effect. Now, these are concurrent findings on what is really a question of fact, and

though the conclusion as to fact may be based on inferences in law so as to prevent the rigid application of the rule as to concurrent findings, their Lordships will be slow indeed to disturb a finding which depends so much upon an appreciation of local circumstances and is arrived at by two Courts without any dissentient opinion.

One other matter here must be mentioned. A Government grant of the lands in question was passed in favour of one Okilu. Now Okilu was the head man placed in charge by the Oshodi family of this particular compound. It was the custom to put a head man in charge of each of the compounds, and when Government grants came to be issued the head men were encouraged to get a Government grant. It has, however, been decided, and their Lordships have no intention of interfering with this decision, that grants given in such circumstances were really only grants in trust, and indeed left the property exactly as it was. This is a peculiar result. In truth Government grants are in their form inconsistent with the whole idea of native rights. They point to a transition state, but it is for legislation and not for the Board to bring to an end such a peculiar state of affairs as regards title.

But the result in this case is not doubtful. It makes it impossible for the respondents either to improve their own position or detract from that of the plaintiff by pointing to the Government grant in favour of Okilu.

To turn now to the plaintiff's claim. Their Lordships have no hesitation in finding that his claim so far as put forward in respect of the Court is unfounded. The Court was never in the actual possession of the plaintiff. It was used in common by all the inhabitants of the houses and must be considered as being held along with the houses as an undivided share.

But with regard to the right of reversion the matter seems otherwise. The learned Judges of the Court of Appeal seem to have clearly appreciated the situation. They say :—

> "The Oshodi family would appear to have some contingent right, and if they can dispose of the property on the contingency arising, it must be presumed they can dispose of the land by letting it and charging rent."

And then, after pointing out that the Oshodi family did not occupy and did not receive any rent, they go on as follows :—

> "The family possess no rights which they can at present exercise—they possess the right which they might exercise on some contingent event in the future. There can be no doubt that by Government acquisition this possible contingent right has been taken away. Is compensation payable for the loss of this contingent right? We do not think, following the principles laid down in *Tijani*, that compensation is payable for possible future rights, that is to say, rights which are in embryo and may never fertilise."

It is here that their Lordships are unable to agree. The possible contingent right is admitted, and the fact is found that by the taking of the land by the Government that contingent right is

put for ever at an end. But the learned Judges think that the principles laid down in *Amodu Tijani's* case (*supra*) in this Court evaluate that contingent right at nil. Their Lordships can find no such pronouncement in *Tijani's* case. All that *Amodu Tijani's* case decided was that the compensation payable for lands held as community lands under White Cap Chiefs was not to be paid to the White Cap Chiefs as if they were giving them a fee simple right, but was to be given to them to be distributed among the usufructuary occupants whoever they were. It did not deal with rights of reversion. Their Lordships therefore are of opinion that some portion of the compensation money in this case should be allotted to the plaintiff in respect of his possible right of reversion, which is cut off for ever by the compulsory acquisition. He has not exercised any rights of eviction, if he had any such, in respect of any of the present occupants, and counsel for the plaintiff quite properly explained that he did not propose to ask anything in respect of such rights of eviction if they existed, as seems possible from the history of the various occupants given by the Trial Judge.

It is clear that the possible right of reversion on the failure of the family of any of the occupants, though not actually elusory, must be of small value. Their Lordships do not attempt by the settling of any fraction to evaluate it, because it will be much better done by the learned Judge on the spot. Their Lordships think that the case must go back in order that the Court below may allot such portion of the compensation money to the Chief as represents in their view the value of the possible rights of reversion.

As the success before their Lordships has been divided, their Lordships think there should be no costs awarded, but the respondents must repay the twenty-five guineas which were awarded to them as costs by the Court of Appeal, if they have in fact been paid.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SAKARIYAWO OSHODI

v.

MORIAMO DAKOLO AND OTHERS.

DELIVERED BY VISCOUNT DUNEDIN.

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