

~~P.C.~~
GTHH.G-2

Judgment
14/1964

No. 15 of 1962

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

AMINU AKINDELE AJANI OJORA
AKINWUNMI ESURUMBI ARO
OKE ESURUMBI ARO

Appellants

78563

- and -

10 LASISI AJIBOLA ODUNSI

Respondent

C A S E FOR THE RESPONDENT

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|----|--|---|
| 20 | 1. This is an appeal from a judgment of the Federal Supreme Court of Nigeria (Brett, Taylor and Bairamian F.J.J.) dated the 8th June, 1961, setting aside a judgment of the High Court of Lagos (Bennett J.) dated the 21st September, 1959, in proceedings instituted by the Respondent in consequence of a dispute as to the right to management of the property of the Ojora Family of Lagos, of which family all the parties to this appeal are members. | p. 126
p. 90
p. 1 |
| 30 | 2. These proceedings were commenced by the Respondent's issuing a Writ of Summons, dated the 30th January, 1956, in the High Court of Lagos, by which the Respondent claimed against the Appellants jointly and severally:-

1. An injunction restraining the Appellants their servants and/or agents from selling, leasing and/or alienating any portion of the family lands and properties without the consent of the Respondent; | p. 126 1.33
et seq.
p. 1.
p. 1. 11.24-34 |

Record

2. An account of all monies received by the Appellants in respect of family property sold or leased by them; and

3. Payment over of all the amount found due on the taking of such account to the Respondent.

pp. 2-3

3. By his Statement of Claim, dated the 29th March, 1956, the Respondent averred, inter alia, that :-

p. 2 11.14-17

(i) At all material times the Ojora Family was an Idejo Chieftaincy Family of Lagos and owned lands and other property by virtue of Native Law and Custom. 10

p. 2 11.18-21

(ii) The Respondent was and remained the Chief Ojora of Lagos having been duly selected, approved by the Oba of Lagos and duly capped in accordance with Native Law and Custom.

p. 2 11.22-27

(iii) As such Chief the Respondent was the accredited representative of the Ojora Family and the trustee of the property of that family. 20

p. 2 11.28-34

(iv) The Appellants had taken upon themselves to sell, lease and otherwise alienate family property without the consent of the Respondent and other members of the family and in direct conflict to the authority of the Respondent.

pp. 3-4

p. 3 21.28

4. By their Defence, dated the 25th April, 1956, the Appellants admitted that the Ojora Family was an Idejo Chieftaincy Family of Lagos, owning lands and other property by virtue of Native Law and Custom but denied that the Respondent was the Head of the Ojora Chieftaincy Family, averring that the first named Appellant was such Head. The Appellants further averred that:- 30

p.3 29-38

p.3 36-38 -

p.4 1.9

(i) The first named Appellant was, by virtue of the Terms of Settlement and the Judgments in Suit No.11 of 1947 and Suit No.26 of 1954 (both in the Supreme Court of Nigeria), the President of the only Ojora Family Council through which the family could act and which Council was the trustee responsible for the control and management of family property. 40

p.4 11.22

- (ii) The first named Appellant, and not the Respondent, had been elected and installed as Chief Ojora of Lagos, in accordance with Native Law and Custom and the Practice and Usage of the Ojora Chieftaincy Family. p.4 10
- (iii) The Respondent was not a member of the aforesaid Ojora Family Council. p.4 25-31
- 10 (iv) The said Ojora Family Council supported the Appellants. p.4 32-38
5. At the trial of the action 15 days were devoted to the hearing of evidence, much of which was directed to establishing the circumstances leading up to the capping of the Respondent. The relevant facts (which are not in dispute in this appeal) as found by Mr. Justice Bennett are set out in the judgment of the Federal Supreme Court and are as follows:- pp. 9-90
- 20 (i) The Ojora Family of Lagos has the right to nominate its head to the Oba of Lagos for capping as an Odejo [sic] White Cap Chief with the title of Chief Ojora. p. 126 ll.33-37
- (ii) The Respondent was capped as Chief Ojora on the instructions of the Oba and was recognised by the Governor-General in 1956 as a Chief for the purposes of the Lagos Local Government Law (Western Region No. 4 of 1953). p.126 ll.
- 30 (iii) The Respondent was the choice only of a small minority of the family. p.127 ll.24-26
- (iv) The Oba, on the advice of the White Cap Chiefs, authorised the Respondent's capping in the face of a protest by a number of the leading members of the family. p.127 ll.26-29
- (v) The first named Appellant was the choice of the majority of the family. p.127 ll.29-31
6. In the course of his judgment, Mr. Justice Bennett defined the issues as follows:- p.115 ll.21-32
- 40 (i) Was the Respondent properly appointed Chief Ojora according to the Native Law and Custom?

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pp.135-139. (ii) If he was, is he compelled to administer the affairs of the family in conjunction with the Family Council as constituted in the Terms of Settlement (Exhibit 3) - that is, are these perpetual unless varied by the Ojora Family?

In respect of the first issue the learned judge found as follows:-

p.116 1.45 et seq. "In my opinion the capping of the Plaintiff was contrary to Native Law and Custom, and therefore void and of no effect, in so far as the administration of the Ojora Family property is concerned. I express no opinion on the Plaintiff's social status as a member of the Oba's Council of Chiefs. This Court cannot, therefore, give him the relief he seeks". 10

In respect of the second issue the learned judge said:-

p.117 1.7 "Having so found on the first issue, it may be said that a finding on the second is unnecessary, but in the interests of the Family in the future I think it advisable". 20

pp.118-9
pp.140-143
pp.144-148
pp.135-139. The learned judge then quoted from the judgment of Mr. Justice Johnston in the case of Oke Aro and others v. Bakare Faro, Chief Ojora, Suit No. 26/1954 and from the judgment of the Federal Supreme Court on appeal therefrom, F.S.C. 242/1955, to show that the Federal Supreme Court had found that the Family Council as constituted in the Terms of Settlement was to be a permanent body. 30

p.118 1.29 7. The learned judge accordingly gave judgment for the Appellants.

p.119 8. The Respondent, by Notice of Appeal dated the 12th November, 1959, appealed against this judgment to the Federal Supreme Court.

pp.126-131
p.131 11.5-39. 9. By a judgment delivered on the 8th June, 1961 by Federal Justice Brett, in which Federal Justice Taylor and Federal Justice Bairamian concurred, the Federal Supreme Court allowed the appeal, set aside the judgment of Mr. Justice Bennett, entered judgment for the Respondent in the terms claimed in the Writ of Summons, and 40

awarded to the Respondent one thousand guineas costs in the High Court and fifty guineas costs in the appeal.

10. The judgment of the Federal Supreme Court proceeded as a consideration of "the points of law involved on the basis of the facts as found by Mr. Justice Bennett, except so far as native law and custom is a question of fact". In the course of his judgment Federal Justice Brett said:-

p. 126 11.30-33

10 ".....in this Court the Respondents have not disputed the submission made on behalf of the Appellant that the issues are -

p. 128 1.25
et seq.

(i) what is the effect of capping?

(ii) what is the effect of recognition by the Governor-General?

(iii) what is the effect of the settlement?

20 All these issues can be settled without entering into any question relating to the selection, appointment, installation, deposition or abdication of a Chief, and it is unnecessary to consider the scope of the Ordinance ⁷The Chieftaincy Disputes (Preclusion of Courts) Ordinance, 1948 (No.30 of 1948), or the effect of its omission from the Revised Edition of the Laws of the Federation and Lagos, 1958. I would go further and say that I do not regard it as necessary in any event to consider the effect of the settlement. If the Appellant is entitled to exercise the usual powers of the Chief or family head in the management of the family property, he is also entitled to the relief he asks for, since it is not pretended that the settlement enables the Respondents, or the family Council less the Chief, to dispose of the family property without the consent of the Chief. If, on the other hand, the Appellant is not entitled to exercise any powers of management over the family property then he cannot obtain any relief, whatever the effect of the settlement may be. If this view is correct, the only question which the Court has to decide is whether the Appellant has the usual powers of the Chief or family head".

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11. As to the effect of capping, Federal Justice Brett said:-

p. 129 1.9
et seq.

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".....the Appellant relies on the judgments of Petrides J., in Akodu v. Omidiji (1927) 8 N.L.R.55, and Graham Paul J., in Aiyedun v. Oresanya (1938) 14 N.L.R. 116, as showing the powers possessed by a White Cap Chief as such, and as explaining the circumstances in which, if for any reason no member of the family has been capped as a White Cap Chief, there may be a head of the family exercising powers of management over the family property. Native law and custom being a question of fact in an action in the High Court, it is true that the findings in these cases are not binding as precedents, and it is also true, as has been pointed out by Mr. Oseni on behalf of the Respondents, that however learned and experienced the Judges whose judgments are relied on may have been, they could only act on the evidence which the parties in the cases concerned chose to call before them. Nevertheless, both on the authority of those decisions, and as a matter of probability I would say that the burden of proving that there may be simultaneously in one family a Chief who has been capped but has no rights of management over the family property, and another Chief with the same title who has not been capped but manages the family property, was on those who asserted it, and I am unable to agree with Bennett J. that the Respondents discharged that burden. It is one thing to show that a person may have the powers of management of a family head without having been capped, and quite another thing to show that capping confers nothing but social status. The Respondents have been able to point to no precedent for the state of affairs which they contend is permitted by native law and custom, although family disagreements of this kind have not been uncommon, and the novelty of the submission tells strongly against it".

12. Federal Justice Brett further held that:-

p.130 11.7-12

- (i) Whether or not the other White Cap Chiefs were over-hasty in advising the Oba of Lagos to approve the capping of the Respondent, that was a matter which the Court could not correct and which did not alter the effect of capping.

(ii) On the question of public policy it was just as important that members of the public should know that they might safely deal with a White Cap Chief as the person empowered, subject to the usual consents, to dispose of the family land, as that the interests of the family should be secured. p.130 11.17-23

10 13. As to the effect of recognition by the Governor — General, Federal Justice Brett said:-

"If the effect of capping is as I have said it is immaterial what effect the recognition of the Appellant by the Governor-General for the purposes of Section 2 of the Lagos Local Government Law had, and I need not consider it." p.130 11.29-33

20 14. By an order dated the 23rd October, 1961, the Federal Supreme Court granted to the Appellants final leave to present this appeal to Her Majesty in Council. p.133

30 15. It is respectfully submitted that, as Federal Justice Brett said in his judgment, the learned trial judge "may have allowed his feeling that the Appellant had no right to have been capped to influence his decision as to the effect of capping" and that, in consequence, the learned trial judge failed adequately to distinguish between the administration of family affairs through the family "Council or Committee of Elders under the Head of the family..... without its White Cap Chieftaincy being filled" and the administration of such family affairs at a time when the relevant White Cap Chieftaincy had been filed. p.130 11.4-6
p.116 11.22-25

15. The Respondent respectfully submits that the judgment of the Federal Supreme Court of Nigeria was right and ought to be affirmed for the following (among other):

R E A S O N S .

40 (1) BECAUSE the capping of the Respondent as an Idejo White Cap Chief with the title of Chief Ojora is a fact admitted by the Appellants and any question as to the selection, appointment or installation of the Respondent

as such Chief is excluded from the jurisdiction of the High Court of Lagos and the Federal Supreme Court by the Chieftaincy Disputes (Precedence of Courts) Ordinance No. 30 of 1948 as applied to Lagos by the Oba and Chiefs of Lagos Ordinance, No. 22 of 1959.

- (2) BECAUSE the onus of proving that there may be simultaneously in one family a Chief who has been capped but has no rights of management over the family property and another Chief with the same title who has not been capped but is entitled to manage the family property was on the Appellant to discharge and was not discharged by the evidence given at the trial. 10
- (3) BECAUSE the relief sought by the Respondent does not amount to a claim that he is entitled alone to deal with family property but merely to a claim that without his consent no other party is entitled in law to alienate such property. 20
- (4) BECAUSE the aforesaid Terms of Settlement do not dispense with the necessity of obtaining to the alienation of any family property the consent of the Chief having the customary powers over the management of the family property. 30
- (5) BECAUSE there is nothing contrary to either natural justice or public policy in granting to the Respondent the relief sought by him.
- (6) BECAUSE the judgment of the Federal Supreme Court is right and ought to be affirmed for the reasons given therein.

JAMES MITCHELL.

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... .. Appellants

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Respondent

C A S E FOR THE RESPONDENT

EDWARD FAIL BRADSHAW & WATERSON,
Royal London House,
16 Finsbury Square,
London E.C.2.

Solicitors for the Respondent