

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1959
25 RUSSELL SQUARE
LONDON, W.C.1.

23, 1959

IN THE PRIVY COUNCIL

No. 30 of 1958

55491

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

B E T W E E N :

TEJUMADE ONITIRI (for and on behalf
of herself and other children of
the late LAWANI IDOWU ONITIRI
deceased) (Plaintiff) Appellant

-and-

1. SAMUEL A. OYADIRAN
 2. T. I. ONITIRI
 3. S. A. ONITIRI
- (Defendants) Respondents

C A S E FOR THE APPELLANT

1. This is an appeal from a judgment and
Order of the Federal Supreme Court of Nigeria
(Sir Stafford Foster Sutton, F.C.J. and de
Lestang and Abbott, F.J.J.) whereby that Court
dismissed the Appellant's appeal and affirmed
the judgment of the Supreme Court of Nigeria
Lagos Judicial Division (Jibowu J.) whereby
the learned Judge dismissed with costs an
action in which the Appellant claimed to have
set aside on the ground of fraud the sale by
the Second and Third Respondents to the First
Respondent of a piece of land known as Onitiri
Brickfield, Yaba on the mainland of Lagos.

Appendix

pp. 34-36
p. 37

pp. 23-29

Appendix

p.9
ll.12-15

2. The Appellant is one of the children of the late Lawani Idowu Onitiri (hereinafter called "the deceased") who died intestate and in these proceedings the Appellant represents herself and the other children of the deceased by virtue of an order of the Supreme Court of Nigeria made on the 15th December 1954. The Second and Third Respondents (hereinafter called "the Administrators") are the administrators of the estate of the deceased by virtue of a Grant of Letters of Administration made by the said Supreme Court on the 24th December 1947.

10

3. The only questions in issue on this appeal are whether upon the pleadings it was in the courts below and is in this appeal open to the Appellant to contend that on the sale by the Administrators as such to the First Respondent of the piece of land known as Onitiri Brickfield, Yaba on the mainland of Lagos (hereinafter referred to as "the brickfield") the price was so far below the true value thereof as to be itself evidence of fraud; and if so whether the said sale ought to be set aside or alternatively an order ought to be made for a new trial.

20

4. At the date of his death the deceased was the owner in fee simple of land situate on the mainland of Lagos which included the brickfield and also included the villages of Onitiri, Onike and Araromi. In the year 1947 the Supreme Court of Nigeria ordered that all the undivided properties of the estate of the deceased be sold by the Administrators by public auction. Pursuant to that order on the 27th January 1948 the said undivided properties

30

Appendix

were offered for sale by auction by the Administrators through the agency of one Sammy Crowther in accordance with an auction notice dated the 19th January 1948 wherein the said properties (hereinafter referred to as "the auctioned land") were described as "freehold landed property in a very good locality situated at Onitiri Village popularly known as Onitiri Brickfield and Village, Yaba, including Onike and Araromi Villages". The auctioned land included the brickfield. The said auction notice provided (by condition 3) that the highest bidder should be the purchaser subject to the approval of the vendors and (by condition 6) that if the reserve price should not be obtained "hammer would not be down but the highest bidder should sign and bid submitted for seller's consent".

10

pp.39, 40

p.39
ll.37, 38

p.40
ll. 6-8

20

5. At the said auction sale the First Respondent proved to be the highest bidder with a bid of £3,800; but a sale at that price was not approved by the Administrators on the ground that the reserved price had not been reached. Subsequently, on the 9th March 1948 the Administrators issued a notice inviting any person interested in the sale of the auctioned land to see their agent, the said Crowther, within 30 days of the date thereof. On the 21st March 1948 the First Respondent agreed with the Administrators by private treaty to purchase the brickfield at the price of £650. On the 3rd March 1948 the said Crowther had given to the first Respondent a receipt for £450 as a deposit for the

30

p.41
ll. 9-23

Appendix

p.41 ll. 1-8	brickfield therein described as "piece of a landed property situate and being at Ajelgunle Onitiri Brickfield Sabo via Yaba". A receipt for a further sum of £50 was given to the First Respondent by the said Crowther on the 16th March 1948 and on the 24th March 1948 a composite receipt for the total sum of £500 was so given. The last-mentioned receipt contained the provision that dimension was to be stated after separation of the said portion part from the whole plan. The balance of the purchase price amounting to £150 was paid by the First Respondent on or about the 23rd July 1949.	10
p.41 ll. 24-34		
pp. 42, 43 p.43 ll. 34-41	6. On the 6th January 1949 the Administrators purported to convey to one Emanuel Ade Taiwo for a sum of £1,000 land described as "All that piece or parcel of land situate lying and being at Onitiri Brickfield near Onike Village Yaba District of the mainland of Lagos Nigeria" and further defined by reference to a plan. On or about the 23rd July 1949 the First Respondent tendered to the Administrators for execution a Conveyance to the First Respondent of the brickfield described as "All that piece or parcel of land situate lying and being at Ajegunle-Onitiri Brickfield Sabo via Yaba Lagos within the Colony of Nigeria" which land was delineated with its dimensions and abuttals on plan No. A.34/1949 dated the 16th May 1949 drawn on that Conveyance and thereon edged pink. The said plan showed the brickfield as having an area of 23.95 acres. The Administrators refused to execute the Conveyance so tendered by the First Respondent on the ground that the plan drawn thereon did	20
Supple- ment		30

(5)

Appendix

not represent the land agreed to be sold to the First Respondent.

10 7. In proceedings instituted in the Supreme Court of Nigeria by Summons dated the 23rd February 1950 the reference to the record whereof is "Suit No.55 of 1950" (hereinafter called "suit No.55") in which the First Respondent was Plaintiff and the Administrators and (by subsequent amendment
20 by order of the Court) the said Taiwo were Defendants, the First Respondent claimed to have the said Conveyance of the brickfield dated the 6th January 1949 to the said Taiwo set aside and a declaration of his title to the brickfield as against the Administrators with an alternative claim for damages. The contentions of the Administrators in suit No.55 were that the land which they had agreed to sell to the First Respondent was not the brickfield, which was the land described in the Conveyance tendered by him, but a wholly different part of the land belonging to the estate of the deceased. On the 4th February 1952 judgment was given in suit No.55 in favour of the First Respondent whereby it was ordered that the said
30 Conveyance dated the 6th January 1949 to the said Taiwo be set aside and it was declared that the First Respondent was the true owner of the land depicted in the survey plan attached to the said Conveyance tendered by him. The learned Judge expressed the opinion that the said Conveyance tendered by the First Respondent should be more carefully drafted before

pp.42, 43

Appendix

execution and that if the Administrators failed to execute the said Conveyance further action against them should be taken. Notice of appeal to the West African Court of Appeal in suit No.55 was served on behalf of the Administrators and the said Taiwo but the appeal was subsequently dismissed. The said Conveyance tendered by the First Respondent has never been executed by the Administrators.

pp. 1, 2. 8. The Civil Summons initiating these proceedings was issued on the 11th June 1954 and thereby the Appellant claimed to set aside the sale of the brickfield to the First Respondent by the Administrators on the ground of fraud. 10

pp.2, 3 9. By her Statement of Claim as amended pursuant to an order of the Supreme Court made on the 22nd November 1954 the Appellant, after pleading her representative capacity, the capacity of the Administrators and the ownership of the deceased of the brickfield, in paragraph 4 alleged as follows:- 20

p. 3. "4. On the 21st day of March 1948, the first Defendant fraudulently bargained with the second and third Defendants and purchased the land known as Onitiri Brickfield for £650.

Particulars of Fraud

(a) The first Defendant on 27th January 1948 was the highest bidder at a sale by Auction of the aforesaid property for £3,800. 30

(b) That the sale was eventually rescinded

Appendix

because the reserved price of £10,000 was not reached.

- 10
- (c) On the 21st day of March 1948 the first Defendant purported to purchase the same piece of land for £650.
 - (d) That the aforesaid Onitiri Brickfield was divided into plots on or about the same period and sold at £800 a plot, i.e. an acre.
 - (e) The first Defendant now claims to have bought about 23 plots (acres) for £650. Rent on this land being about £1,000 p.a.
 - (f) That there was no notice of the sale to the Plaintiff.
 - 20 (g) That the alleged sale was by private treaty surreptitiously concluded by the Defendants without any cause whatsoever in that the estate being solvent the sale in itself was unnecessary.
 - (h) The Plaintiff says that the second and third Defendants have no power to sell aforesaid property".

10. By his Defence the First Respondent denied the Appellant's representative capacity, admitted the capacity of the Administrators and that he bought the

Appendix

p.4 ll. 19-22. pp.4, 5.	brickfield from the Administrators for £650 and denied all other allegations in the Statement of Claim and particularly the allegations of fraud. The First Respondent also pleaded res judicata by virtue of suit No.55 and estoppel. By their joint Defence the Administrators made no admissions as to the Appellant's representative capacity, admitted their own capacity and sub-paragraphs (a), (b) and (d) of paragraph 4 of the Statement of Claim but denied every other allegation contained therein. The Administrators also pleaded that they sold the brickfield as administrators and that they were not bound to consult the Appellant before such sale.	10
pp.9-11	11. The First Respondent's pleas of res judicata and estoppel were heard by the Supreme Court on the 15th December 1954 as preliminary points and on the 3rd January 1955 the Honourable Mr. Justice Jibowu delivered a reserved judgment on both points adversely to the First Respondent.	20
pp.12-14	12. The action was heard in the Supreme Court of Nigeria before the Honourable Mr. Justice Jibowu on the 14th and 15th December 1955 when oral evidence was given on behalf of the Appellant. That oral evidence was primarily directed to seeking to establish that the brickfield was identical with the auctioned land with the result that the First Respondent had agreed by private treaty to purchase from the Administrators for £650 a piece of land which he had failed to acquire at auction for £3,800 because the reserved price had not been reached. In addition one	30

Appendix

	Emanuel Sosanya, a licensed auctioneer and valuer, gave evidence that he knew the brickfield, which was 23.95 acres in size, and that the brickfield in 1948 was worth between £250 and £300 per acre and would be worth over £400 per acre in 1954. No objection to that evidence was taken on behalf of any of the Respondents and the said Sosanya was not cross-examined.	p.18 ll.1-15
10	evidence was given that the brickfield had been divided into plots and sold at £800 per acre or as to the rent on the brickfield. At the conclusion of the Appellant's evidence Counsel for the First Respondent, without calling evidence, submitted that there was no proof of fraud and that the action was misconceived. Counsel for the Administrators did not call evidence or address the court. No reference was made	p.18 ll.14-15.
20	by any of the Counsel engaged to the evidence of the said Sosanya and the submission of Counsel for the Appellant (summarised) was that the mere fact that the First Respondent knew the land was worth more than £650 as £3,800 had been rejected for it raised a presumption of fraud as the property was sold at an under-value.	pp.20, 21 pp. 21, 1.4. pp.21, 22
30	13. On the 30th December 1955 the learned Judge delivered a reserved judgment finding as a fact that the Appellant had failed to prove that the brickfield was the same as the auctioned land. The learned Judge pointed out that there was no proof that the brickfield had been divided into plots or that a plot had been	p.22 ll.22-26 pp.23-29 p.28 ll.3-7 p.28 ll.8-22

Appendix

- p.28
ll.22-42
p.28 1.43-
p.29 1.4.
- sold for £800 and held that the question whether a rent of £1,000 per annum might be collected on the brickfield was beside the point. He also rejected on grounds that are not now material the allegations in subparagraphs (f), (g) and (h) of paragraph 4 of the Statement of Claim and in the result dismissed the action with costs to the First Respondent and no order as to the costs of the Administrators.
- 10
- pp.29, 30.
p.30
pp.34-36
14. On the 6th March 1956 notice of appeal against the judgment of the learned Judge was served on behalf of the Appellant on the ground that the learned Judge was wrong in holding that the brickfield was not the same land as the auctioned land. Subsequently on the 4th November 1957 notice was served on behalf of the Appellant adding as further grounds of appeal (inter alia and so far as now material) that the learned judge failed to direct himself as to the sale at under-value in relation to the question of fraud as claimed by the Appellant and erred in law when he found that the First Respondent acted bona fide without evidence to that effect. Judgment upon the said appeal was given on the 30th December 1957 when the Federal Supreme Court of Nigeria unanimously dismissed the appeal with costs.
- 20
- p.35
ll.28-34
15. In his judgment Sir Stafford Foster Sutton, F.C.J. (with whom de Lestang and Abbott, F.J.J. concurred) first affirmed the conclusion of the fact of the learned judge that the brickfield was not the same land as
- 30

Appendix

the auctioned land. The learned Chief Justice then considered the question whether the Statement of Claim raised the issue of a sale at a gross under-value on the basis of the evidence of the said Sosanya that in the year 1948 the brickfield was worth between £250 and £300 per acre. In the result he concluded that the point was not then open to the Appellant on the grounds that fraud must be distinctly alleged and as distinctly proved, that it was not allowable to leave fraud to be inferred from the facts, that any charge of fraud must be pleaded with the utmost particularity, that gross under-value as an issue was not once referred to by Counsel for the Appellant during his closing address at the trial and that it would be wrong at that stage to allow the Appellant to contend for the first time that the pleading and evidence disclosed another fraud to the one upon which the case was fought in the court below.

p. 35 l. 35.

p. 36
ll. 1-27

10

20

16. In this appeal the Appellant does not challenge the concurrent findings of fact that the brickfield was not the same land as the auctioned land.

17. The Appellant submits that the principle applicable in this case is that where administrators or other persons have in a fiduciary capacity a duty to sell property and those persons carry out a sale at a price which is grossly below the true value of the property, the lowness of the price is itself evidence of

30

Appendix

fraud implicating the vendors and the purchaser upon which, in the absence of some explanation or contrary evidence the sale will be set aside at the instance of the persons beneficially interested in the property or the proceeds of sale thereof. At the hearing of this action at first instance the unchallenged evidence of the said Sosanya established that land worth (at the date of sale) at least £5,900 was sold by the Administrators to the First Respondent for £650; no explanation was given or other evidence adduced by or on behalf of the First Respondent or the Administrators. The Appellant therefore submits that at the trial she established a case of fraud sufficient to justify setting aside the sale. 10

p.18
ll. 1-15

18. Upon the pleadings the Appellant submits that the case alleged in her Statement of Claim was that the said sale was fraudulent in that the brickfield was sold by the Administrators at a gross under-value and that in the particulars given under paragraph 4 of the Statement of Claim (as amended) she sought to make good that allegation on two distinct grounds. The first ground (which was not proved and as to which no question now arises) was that the brickfield was the same land as the auctioned land which the first Respondent had been unable to purchase for £3,800. The second ground to which sub-paragraph (d) of the said Particulars was relevant, was that in any event the value of the brickfield was £800 an acre. It is submitted that upon that sub-paragraph the Appellant was entitled to lead evidence generally as to the true value of the brickfield and was entitled to rely upon such evidence notwithstanding that in the event it was established that the value was 20 30

p.3.

p.3
ll. 15-17

between £250 and £300 an acre and not £800 an acre.

10 19. Accordingly the Appellant respectfully submits that the learned Judge at first instance was in error in failing to direct his mind to the evidence of the said Sosanya notwithstanding that Counsel for the Appellant did not expressly draw attention to that evidence in making his submissions to the court. It is further respectfully submitted that in dismissing the Appellant's appeal the learned Federal Chief Justice and the learned Federal Justices who concurred with him were in error (a) in holding that the charge of fraud put forward by the Appellant had not been pleaded with sufficient particularity; and (b) in holding that upon appeal the Appellant was seeking to rely upon a different fraud from the fraud upon which she had relied in the court below. The Appellant submits that throughout this case she has relied upon only one fraud on the part of the Administrators and the First Respondent, namely fraud to be inferred from a sale of the brickfield at a gross under-value; and that although one of the facts by which she sought to establish that under-value (namely the identity of the brickfield with the auctioned land) was not established by the evidence, nevertheless a gross under-value was established by other clear and admissible evidence which upon her pleadings the Appellant was entitled to adduce.

p.18

20

30

Appendix

20. The Appellant humbly submits that this appeal should be allowed, that the judgments of the Supreme Court of Nigeria and of the Federal Supreme Court of Nigeria were wrong and ought to be reversed and that the said sale should be set aside or alternatively an order should be made for a new trial for the following (among other)

R E A S O N S

- (1) BECAUSE the charge of fraud alleged by the Appellant in her amended Statement of Claim was based upon a sale of the brickfield to the First Respondent at a gross under-value. 10
- (2) BECAUSE the said charge of fraud was pleaded in the amended Statement of Claim with sufficient particularity.
- (3) BECAUSE upon the pleadings it was open to the Appellant to adduce evidence generally of the value of the brickfield.
- (4) BECAUSE the evidence established that the price paid to the Administrators by the First Respondent for the brickfield, when compared with the value of the brickfield, was, in the absence of any explanation or other evidence, itself sufficient to substantiate the said charge of fraud. 20
- (5) BECAUSE the fraud relied upon by the Appellant in the Federal Supreme Court was the same as the fraud upon which she had relied in the Supreme Court, namely a fraud to be inferred from a sale at a gross under-value. 30

Appendix

- 10
- (6) BECAUSE it was before the Federal Supreme Court, and is before Her Majesty in Council, open to the Appellant to submit that the sale at a price of £650 of a property having a value of at least £5,900 was a sale at a gross under-value.
 - (7) BECAUSE at the date of the sale of the brickfield by the Administrators to the first Respondent for £650 the value of the brickfield was at least £5,900.
 - (8) BECAUSE the reasoning and conclusion of the Federal Supreme Court of Nigeria upon the matters in issue in this appeal were wrong and ought to be reversed.

ARTHUR BAGNALL.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE
FEDERAL SUPREME COURT
OF NIGERIA

O N I T I R I

v.

O Y A D I R A N

CASE FOR THE APPELLANT

HATCHETT JONES & Co.,
90, Fenchurch Street,
E.C.3.

Solicitors for the Appellant.