

17/1962

IN THE PRIVY COUNCIL

No. 11 of 1959.

On appeal from The Federal  
Supreme Court of Nigeria

B E T W E E N

- 1. Nwuba Mora
  - 2. Nwangene
  - 3. Onwuughasi Okeke
  - 4. Mmaneke on behalf of  
themselves and the  
people of Awka (Defendants)
- Appellants

— and —

- 1. H.E. Nwalusi
  - 2. Okoye Okongwu
  - 3. Nwonu Oraekie
  - 4. Patrick Ogwu for themselves  
and all others the people  
of Amawbia (Plaintiffs)
- Respondents

C A S E    F O R    T H E    R E S P O N D E N T S

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1. This is an appeal from the Judgment and Order of the Federal Supreme Court of Nigeria dated the 18th day of March, 1957, whereby the appeal of the Appellants herein from the Judgment of Mr. Justice Hurley in the Supreme Court of Nigeria dated the 28th day of April, 1954, was dismissed.

10      2. The case under appeal is of a representative action between the people of Amawbia as Plaintiffs and the people of Awka as Defendants. The claim is for a declaration of title to a plot of land called Agu Norgu, damages for trespass and an injunction.

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- p.104, 1.36 The trial Judge found in favour of the Plaintiffs, granted the declaration, awarded £300 as damages, and ordered that there should be an injunction.
- pp.116-7 3. The Defendants appealed to the Federal Supreme Court of Nigeria upon certain amended grounds of appeal, some of which appear to have been abandoned or not argued upon the hearing of the appeal. The appeal was dismissed on the 18th March, 1957. 10
- pp.118-20
- p.129 4. The value of the land in dispute being over £4,000, there is under the relevant Order in Council a right of appeal to Her Majesty in Council. On the 22nd May, 1957, the Defendants were given conditional leave to appeal. On the 18th November, 1957, an Order was made granting final leave.
- p.87, 1.24 5. The following statement of facts is taken from the judgment of the trial Judge:- 20
- "The land in dispute under the name of AGU NORGU in this action is part of a larger tract which is also named AGU NORGU. The larger AGU NORGU is the former territory of the Norgu people, who in the traditional past were driven away from it by war, and I shall refer to it as the NORGU 30

territory. On the south east  
the land in dispute adjoins the  
land of the Plaintiffs, the  
AMAWBIA people (which I shall  
call AMAWBIA land), where the  
Plaintiffs live and farm and  
have, according to themselves,  
lived and farmed from time  
immemorial. On the north east  
10 the land in dispute, according  
to the Plaintiffs' plan, adjoins  
land of the Defendants, the AKWA  
people; according to the  
Defendants themselves, this land  
on the north east is part of the  
NORGU territory. The Plaintiffs'  
case in this action is that they  
were neighbours of NORGU at the  
time of the war, took part in  
20 the war in alliance with other  
peoples (including AWKA) against  
NORGU, acquired the land now in  
dispute as their share of the  
conquered territory and remained  
in undisturbed possession and  
enjoyment of it from then until  
recently, when in 1941 the  
Defendants surveyed it in con-  
30 nection with a land dispute  
between them and a third party,  
and in 1948 and 1949 trespassed  
on it again and more seriously.  
In fact, the land in dispute  
between the Defendants and the  
third party was another portion  
of the NORGU territory, and  
the Defendants' claim to it was  
asserted for the purpose of

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enforcing part of their general claim to the whole NORGU territory. The Defendants say that the Plaintiffs trespassed on the land in 1948 and the Defendants resisted them, being themselves in possession as owners; the Plaintiffs were never in possession or enjoyment of the land, had no right or interest in it whatever, took no part in the NORGU war, were not on AMAWBIA land at the time of the war, and are not owners of AMAWBIA land or indeed of any land, but were put on AMAWBIA land, which is part of AWKA land, by the Defendants when they, the Plaintiffs, came as strangers after the war." 10

pp.82-84 6. The learned trial Judge held an inspection view with parties and Counsel present. 20

pp.88,1.22 7. In his Judgment the trial Judge first considered the traditional evidence about the war against the Norgu, whether it had been fought by the Awka alone against Norgu (as the Defendants contended) or whether the Amawbia, the Awka and others had fought against the Norgu as allies, which was the Plaintiffs' contention. The trial Judge found the Plaintiffs' account of these traditional matters preferable to the Defendants'. He gave three main reasons for this conclusion:- 30

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- (i) It was common ground that the Norgu war was waged when Norgu refused to hand over a man to be hanged in expiation for Norgu's having killed a man belonging to their opponents' people. In these circumstances it seemed natural that the neighbouring peoples should ally themselves with the object of enforcing respect for customary law and preserving order by exacting retribution, and of winning land out of the conquered territory.
- (ii) In cross-examination it had been put to some of the Defendants' witnesses that the war was described by those talking of it as "OGU AMAKOM", and that these words meant "the war of those joining together". One of these witnesses (Maduku) said that he had never heard the phrase and did not know what "Amakom" meant. Another (Agu) said that he had never heard that word. Another (Ezeodo) said that he had never heard it and did not know what it meant. Another (Nweke) said the same as Ezeodo. The trial Judge said that though he had no evidence to what the phrase is used to describe, he had received the settled impression that it was an expression well known and well understood and that he believed
- p.92, 1.5
- p.92, 1.36
- p.72, 1.30
- p.74, 1.16
- p.74, 1.16
- p.76, 1.11
- p.79, 1.26
- p.93, 1.4

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it denoted a war fought in alliance. Because he was clear that the witnesses were lying about the matter, and because one of the reasons why they lied could have been that the Norgu war had been in a fact a war of alliance, he was for this reason the more ready to infer that it had been such a war.

- p.79,1.33    [According to the interpreter at the trial the word "OGU" means "fight". According to the Registrar of the Federal Supreme Court who comes from the region here in question, the word "AMAKOM" is a well known Ibo word in that region meaning "group of people"] 10
- p.109,1.11
- p.93,1.36    (iii) The Defendants' account of the war was improbable in certain respects described by the Judge. 20
- p.94,1.3    8. The learned trial Judge next considered the effect of evidence given by the Defendants of judgments in their favour in other proceedings to which the Plaintiffs had not been parties. He held that these cases established that the Defendants had been asserting claims to other parts of the Norgu territory (i.e. the larger territory of which Agu Norgu here in dispute is also a part) for many years and that they are at present in lawful enjoyment of the ownership of those other parts. He also held that as the Plaintiffs had not been parties to these earlier 30
- p.96,1.45

cases they were not estopped by the judgments in these cases, and that he was obliged to disregard particular findings arrived at in those cases about the Norgu war.

10 9. He went on to consider evidence about certain mounds of earth, known as "EKPE", built with the help of the Plaintiffs in 1946 and of the remains on the same site of what might be very old mounds. He thought that this evidence supported the Plaintiffs' case and ran counter to the Defendants'.

p.99,1.6  
p.100,1.13

20 10. He next considered the evidence about the boundaries of the land in dispute. He referred to the oral evidence upon this point of three witnesses called by the Plaintiffs:-

"Their evidence was full and there was a very large measure of agreement between them."

p.100,1.27

He contrasted this evidence with the meagre evidence given by two witnesses called by the Defendants. He added:-

30 "At the land inspection, the Defendants did not know where to look for the boundary features to the south west of the Enugu Agidi road. And the evidence of both these witnesses that the

p.100,1.37

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south east boundary of Norgu territory was the Uvunu river is in gross contradiction of the evidence of their 1941 plan Exhibit B. Apart from this, there is nothing in Awka's evidence about the boundaries which could not have been given in evidence by people who had never set foot on the land in dispute."

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11. The next passage in the Judgment was in these words:-

"Turning to evidence dealing directly with possession and enjoyment, evidence of farming and use, each side says they farm in the area to the exclusion of the other. I find the weight of evidence greatly in favour of the Plaintiffs.

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12. He considered certain evidence offered by the Defendants to prove that the Plaintiffs were newcomers to the neighbourhood of the disputed lands, and had indeed been put in the Amawbia land by the Defendants after the Norgu war. He stated his conclusion in these words:-

p.103,1.19

"On the evidence as a whole on the question, I am not satisfied that Amawbia were not the original owners of Amawbia lands or that Awka were the original owners, or that they put Amawbia there.

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Even if they established their allegations in this regard, there would still be no satisfactory evidence to show that Amawbia came after the Norgu war.

10 Defendants' case on that point came to grief on the evidence of 1st Defendant himself, who said he did not know whether it was before or after."

p.103,1.28

13.He summarised his reasoning in favour of the Plaintiffs in the following passage towards the end of his Judgment:-

20 "It seems to me that the weight of evidence is in their favour at all points relative to the question, except for the evidence of the Defendants' earlier claims to the whole territory and the decisions in the earlier actions fought successfully by them against other people about other, but adjacent and almost surrounding, parts of the territory. The Plaintiffs have satisfied me that within living memory at least they have been in possession, disturbed only by the 1941 survey, to the exclu-  
30 sion of Awka until 1948. Their account of the Norgu war is given by witnesses who on the whole seemed of greater credibility than Awka's, and in my judgment it is a more likely account than Awka's. This account clearly

p.103,1.34

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receives more support than otherwise from the evidence about the Ekpe on the Enugu Agidi boundary. Against it stands the evidence of the Defendants' long assertion of their claims to all the Norgu territory, and of the fruition of those claims in judgments which have given them present enjoyment of the ownership of the greater part of the territory they have claimed. But the value of the Defendants' assertions of their claims, for all that they have resulted elsewhere in positive enjoyment of ownership, must so far as this part of Norgu territory is concerned be gravely affected by the ignorance or dishonesty (it does not matter which) displayed by them in now claiming the Uvunu river as the south east boundary of Agu Norgu when in 1941 as their plan Exhibit B shows they put the boundary away to the north east of that river.

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In the final result, I am satisfied that the Plaintiffs have proved their title to the land in dispute as owners, and they will succeed in that part of their claim."

p.104,1.19

14. In the Federal Supreme Court of Nigeria, Federal Justice Jibowu delivered the leading Judgment dismissing the appeal. With this Judgment Sir Stafford Foster Sutton, Federal Chief Justice, and Federal Justice Nageon de Lestang concurred.

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10 15. Mr. Justice Jibowu dealt first with a complaint that the trial Judge had tied the declaration of title which he had granted to the Plaintiffs' plan No. GA 62/49 and not to another plan LD 9/51. He pointed to the trial Judge's observation that the boundaries of the land in dispute shown in plan No. GA 62/49 had been copied by the Defendants on their plan Exhibit D, and that they must be taken thereby to have accepted the boundary shown by the Plaintiff's plan, No. GA 62/49. Mr. Justice Jibowu thought that the learned Judge was therefore justified in tying the decree to that plan.

20 16. He was of opinion that in the absence of any evidence showing that the Defendants' witnesses did in fact know the word "Amakon" and its significance, or of any evidence that that word was well known and used, the trial Judge was not justified in finding that the Defendants' witnesses had lied in this respect.

30 17. Mr. Justice Jibowu did not find in this last matter any reason for reversing the Judgment under appeal. The issue fell for determination by consideration of the traditional evidence and the evidence of possession and exercise of

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rights of ownership. It could not be said that the learned Judge was wrong in preferring the Plaintiffs' version of the Norgu war. He reviewed the trial Judge's findings about the boundaries and about the Plaintiffs' possession of the land in dispute. He continued as follows:-

p.124,1.48

"After considering all the evidence, the learned Judge stated: 'the Plaintiffs have satisfied me that within living memory at least they have been in possession, disturbed only by the 1941 survey, to the exclusion of Awka until 1948'. This finding of fact is, in my view, amply supported by the evidence before him, and the finding will not, in my view, have been affected by the misdirection on Ogu Amakom." 10 20

"It would have been surprising", Mr. Justice Jibowu said, "if in the face of the satisfactory proof of evidence and exercise of rights of ownership over the land in dispute for a long period of time, the respondents were not declared the owners of the land in dispute." 30

18. The Respondents submit that this appeal should be dismissed for the following (among other)

R E A S O N S

1. BECAUSE there are concurrent findings of fact in the Plaintiffs' favour by the trial Judge and by the Appellate Court.
2. FOR the reasons given by the trial Judge.
3. FOR the reasons given by Mr. Justice Jibowu.

B. MCKENNA

THOMAS O. KELLOCK