In The Federal Supreme Court

On Monday, the 29th day of January 1962

Before Their Lordships

Sir Lionel Brett ...... Federal Justice
John Idowu Conrad Taylor ...... Federal Justice
Vahe Bairamian ...... Federal Justice

F.S.C. 359/1960

Between

Okoli Ojiako & Ors ..... Appellants
(On their own behalf and on behalf of the Uhuokwe Okija Community)

And

Onwuma Ogueze & Ors .... Respondents
(On their own behalf and on behalf of the Umuezeana Okija Community)

Judgement of the Court
Delivered by
Sir Lionel Brett. F.J.

This is an appeal by the defendants, who represent the people of Umuezeana Okija, against the judgment of Hughes, J., in the High Court of the Eastern Region granting the plaintiffs, who represent the people of Uhuokwe Okija, a declaration of title to a piece of land known as Okpuno Nwunyeani, £50 damages for trespass and an injunction to restrain further trespass.

The title to the land in issue was the subject matter of suit No 269/52 in the Achalla Native Court, and the question for determination on this appeal is whether the trial Judge was right in holding that there was a final judgment in that suit, and that the judgment is conclusive in favour of the respondents. The appellants submit

(a) that there was no final judgment;

(b) that if there was, the parties were not the same; and

(c) that if there was a final judgment between the same parties, the respondents cannot obtain the same relief a second time in this case.

The record of proceedings in suit No 269/52, produced as Exhibit D, shows that before any evidence was taken the hearing was adjourned with a view to a settlement and that on the 18th September, 1952, it was reported to the court that the case had been settled in favour of the plaintiff by the swearing of oaths. The record continues –

> We order that the land is for the plaintiff and his family, namely Uhuokwu and Umunonudegwa families of lfite Okija. Judgment for plaintiff for the land and cost of the action.

There follow the signatures or marks of the court members, and if the matter rested there the judgment would undoubtedly be a final one.

There is a subsequent entry, however, which reads

> "£5-5s-0d rehearing fee paid C.R. No 314 of 23rd October, 1952. Reopened, today 24th November, 1952",

followed by entries relating to proceedings of 24th November, 1952, 5th December, 1952 and 12th December, 1952. The reopened proceedings were never brought to a conclusion by the delivery of any judgment.

It is not suggested that the native court had any general power to set aside its own judgments or that there is anything on the record which would have entitled the native court to treat its judgment as a nullity. If the case

had been re-opened by virtue of an order made by the Resident or District Officer under s.28(1)(b) of the Native Courts Ordinance the reasons for the making of the order should have been recorded in writing in the court Judgment Book in accordance with s.28(3) of the Ordinance, but there is no evidence that any such order was made. On the evidence before him Hughes, J., held that the native court had quite improperly taken it upon itself to re-open the case and that it's original judgment, not having been set aside, remained in force. I agree with him. Mr Sowemimo, for the appellants, has asked us to apply a presumption of regularity and to say that the onus is on the party relying on the judgment to prove that it was not set aside, but I do not consider that he can invoke any such presumption. Where no question of nullity arises, once the judgment of any competent court is perfected it is valid until set aside by competent authority, and there can be no presumption against the validity of such a judgment. The judgment of the native court must be regarded as a subsisting one.

Mr Sowemimo's second submission is that even if the judgment in suit 269/52 is a valid and subsisting one it is not binding in the present case since the present case is a representative action on both sides whereas suit 269/52 was on the face of it a suit brought by one Chikwube Osakwe of Ifite Okija personally against the first three appellants in the present case personally. As to that, the native court evidently regarded Chikwube Osakwe as suing on behalf of his family, since its order was that the land was for him and his family. I cannot recall a case in which it has been suggested that rural land in this part of Eastern Nigeria was anything but communally owned and I have not the least doubt that it was well understood by the defendants and by the court in suit 269/52 that the defendants were sued as representing their family. The submission was made for the first time in this court and on the evidence it cannot succeed, since if there is not an *estoppel per rem judication* against the people of Umuezeana Okija, there is an estoppel by standby by.

Finally Mr Sowemimo submits that if both his previous points are decided against him the plaintiffs already have a declaration of title in their favour and cannot ask for a second one, and that as far as damages for trespass are concerned the previous action was settled and no subsequent trespass has been proved. The reason advanced by Mr Ikpeazu for asking for a fresh declaration of title is that a declaration awarded by the High Court carries more weight than a declaration awarded by a native court. This is no reason at all. It is not suggested that the Achalla Native Court was not legally competent to grant a declaration of title in suit 269/52, and in this court we cannot counter any suggestion that the decision of one competent court is of less binding effect than that of another competent court. Nevertheless, an action for the discretionary remedy of a declaration of title presents special features as regards the defence of judgment recovered, and I would uphold the grant of a declaration in this case on the ground that it was made by reference to a plan, which the declaration of the native court was not, and thus adds something to the original declaration. On the evidence, and trespass was a continuing one and I would not disturb the award of damages or of the injunction.

After the appeal had been adjourned for judgment, it was observed that the plaintiff's plan, Exhibit A, had not been counter-singed by the Director of Surveys, as required by s.23 of the Survey Act. This section is mandatory and the court is obliged to take the point of its own motion. As, however, the plan was filed in May 1955, when ignorance of s. 23 of the Survey Act was general, I would follow the course adopted in a number of previous appeals by reopening the appeal and adjoining it for six weeks to give the plaintifs the opportunity of having their plan countersigned and filing a motion to produce it as additional evidence. If this is done and the motion is granted I would dismiss the appeal with costs assessed at 25 guineas.

Judgement delivered by
John Idowu Conrad Taylor. FJ.

I concur

Judgement delivered by
Vahe Bairamian. FJ.

I concur

Counsel

Sowemimo ...... For the Appellants
with him
Umezinwa

Ikpeazu, Q.C. ...... For the Respondents
with him
Douglas