

IN THE HIGH COURT OF THE REVER'S STATE OF NIGERIA
IN THE HIGH COURT OF THE PORT-HARCOURT JUDIVIAL DIVISION
HOLDEN AT PORT HARCOURT
BEFORE CHF. THE HONOURABLE JUSTICE O. INKO-TARIAH, JUDGE.
ON TUESDAY THE 28TH DAY OF MAY, 1974.

SUIT NO. P/15/57.

Between:

1. Gbo Doode Biragbira
2. Diidi Ngwuele
3. Nathan A. Nka
4. Israel L. Mato
(For themselves and on
behalf of the people of
Yeghe, Ogoni.) }
... Plaintiffs

AND

1. Walter Gbarazia Kip
2. Khana District Council,
Ogoni. }
... Defendants.

Parties in Court.

Mr. Graham Douglas for the Plaintiffs.

Mr. Dappa for 1st Defendant

Mr. Sagbe, State Counsel for the 2nd Defendants.

J U D G M E N T

of

The Plaintiffs are natives of Yeghe and sue for themselves and as representing the people of Yeghe. The 1st defendant is sued in his personal capacity and the 2nd defendants were a Local Government Council.

Plaintiffs are claiming from the defendants (a) title to the lands known as and called 'Wii Yeghe', 'Wii Bori' which includes a portion known as and called 'Barabe Nukpor'. (b) £500 damages for trespass and (c) Perpetual Injunction.

The plaintiffs contend that Bori, one of the six villages of Yeghe was founded by Yeghe people and remained part of Yeghe until the Cheesman Commission of 1932 made it an independent settlement - that is, independent of, and having nothing in common with, Yeghe. They claim Bori to be Yeghe land. They claim to have farmed on the land, tapped wine, built houses, made grants of land to the Methodist Mission and for the Birabi Grammar School. They also claim to have granted to 2nd defendants the lands on which the Council's offices were built also the portion on which oil palm

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demonstration was carried out. According to plaintiffs Chief Nka Teyiranwa of Yeghe received compensation for these grants up to 1943 when the Administrative Officer stopped the payment of compensation. Chief Doode and Nka Teyiranwa, on behalf of Yeghe people gave the lands to the Methodist Mission and 2nd defendants respectively. The plaintiffs say that the signature of 1st defendant's father on the document of grant to the Methodist Mission was intended to be that of a witness to the document and not of a grantor as now appears on the document. One Ebegbu Kipp of Bori also signed. They say Gbarazia Kipp the 1st defendant's father was a stranger from Ka- no - Tai. They did not know he signed as grantor up to the time this case started. Gbarazia Kipp came from Nukpor to Bori in 1927.

There were series of Court actions which 1st defendant's father instituted against Yeghe people such as challenging Teriyanwa's right to compensation, for demarcation of boundary, and claiming ownership to Wii Bori and other areas. Then to assert his claim to Wii Bori 1st defendant's father settled Ibo tenants on Wii Bori in 1946 and again in 1954 sold lands to Ibos. To this plaintiffs made a newspaper release Exhibit B. 1st defendant too sold lands in 1954.

The complaint of the plaintiffs now is that in 1956 2nd defendants entered the land in dispute and erected pillars, destroyed crops, and served notices to Yeghe people on the land to quit. 2nd defendants claimed they got the land from 1st defendant's father. Continuing their evidence plaintiffs stated that each of these six Yeghe villages has its own separate parcel of land within the area in dispute and added that 1st plaintiff's family of Gaga are the owners of Bori.

1st defendant's father gave lands to several people but plaintiffs who claimed to be owners did not do anything because "he was a crook".

Plaintiffs deny that they farmed the land with permission of 1st defendant's father or that defendant's father gave lands

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to 2nd defendants. Plaintiffs did not sue in the life time of 1st defendant's father when 2nd defendants entered the land but sued after his death. 1st defendant's father claimed to be the owner of Bori and was present when 2nd defendants entered on the land and built but plaintiffs did not do anything and this was because 1st defendant's father claimed to be the owner of Bori. The plaintiffs waited until he died and then brought this action.

Plaintiffs also admitted through P.W. 1 that all plaintiffs except the 1st came from one family; they also admit that they built houses on the land in dispute in 1971 and farmed the land and erected other houses while this suit was still pending in Court.

The evidence of P.W. 4 who claimed to be the co-ordinating head of all the villages told us in his evidence that they were 1st defendant's father and Doode who gave land to the Methodist Mission although on second thought he stated that the land belonged to Doode who gave it to the Methodist Mission and received payments of money for it. According to P.W. 4 the 2nd defendants exceeded the boundary given them and hence this action.

It is also in plaintiffs evidence that defendants' tenants were on the land at the time S.P.W. did the survey. Plaintiffs concluded their evidence with 6-7-8, from these evidence it appears clear that both Doode and 1st defendant's father were alive when 2nd defendants built the Court Hall and other buildings. That 1st defendant's father, Igbeba Njoro and Doode gave land to the Methodist Church in their capacity as owners of the land and on behalf of Bori. According to 7-7-6 the grant of land by 1st defendant's father to 2nd defendants use the cause of this action.

I wish also to refer to the evidence of the 2 P.I. who said in evidence that he was the 1st defendant's father who gave the lands to 2nd defendants and the Methodist Church respectively but that he "stole" these lands and gave to them.

Plaintiffs now ask the Court (i) to declare title to "Mii Bori" and "Barmbo Lukpor" in them. (ii) To award £300 damage to plaintiffs for trespass acts committed by defendants.

The defence taken together is that the land the subject matter of the suit was the property of 1st defendant's father and he gave it to the 2nd defendants in 1933. Defendants deny that they had ever gone beyond the boundary marked out for them by 1st defendant's father or that 1st defendant had given land to the 2nd defendants in excess of that granted by his father. To confirm his late father's claim to ownership of the land 1st defendant gave evidence of how (1) his father, Doode and Egbebu Kipp gave land to the Methodist Mission. (2) Farmed on the land and also gave lands to Ibo tenants. (3) Poured libations to introduce each farming season on the land. (4) Collected payment of compensation for the land. (5) His father gave to 2nd defendants the land on which they are now and which forms the subject matter of this suit. The contention of the defendants is that plaintiffs belong to a separate and distinct village unconnected with and not having anything to do with Bori land which itself is a village on its own.

Each side to the suit tendered documents in support of its case - the plaintiffs tendering Exhibits A - E and the defendants Exhibits F - J.

Exhibit A, I believe, was tendered to show that where the Postal Agency was established was Yeghe which was plaintiffs village. This, on the face of it, does not show a reference to Bori as land of Yeghe. In any case this release does not in any way conclude that Bori land belonged to Yeghe village.

Exhibit B was a warning by Yeghe people against any dealing with Bori land which they claimed to be their own. Line 12 of the publication admitted that this Bori land was "formerly usurped by Mr. Mgbarazia" but had, from the date of that publication, become the property of Yeghe people who had come to claim it from the date of the publication.

Exhibits C and D were Court actions that did not determine any rights in any of the parties to those suits.

Exhibit F was defendants' plan of the land tendered in this case.

Exhibit G was the conveyance to the Methodist Mission signed by 1st defendant's father, Doode Biragbara and Egbebu Kipp as lessors.

Exhibit H was the proceedings and summing up of the Arbitration held under the Chairmanship of Mr. W. J. W. Cheesman, an Administrative Officer.

Exhibit J, that is suit 173/56 was an action by 2nd defendants against Mene Naaben of Yeghe for injunction re part of the land in dispute in which the Council had judgment in their favour.

I find, from plaintiffs Exhibit B that the 1st defendant's father Gbarazia Kipp in his life time exercised all rights of ownership over this Bori land and was in possession and control of the same up to the time of his death. The plaintiffs did not do anything other than satisfying themselves with a mere newspaper publication purporting to be taking over the land only on the column of a newspaper. This goes to support the defence case that Gbarazia Kipp the father of 1st defendant had been controlling the use of the land as owner thereof.

This exercise of right of ownership by Gbarazia Kipp, the 1st defendant's father, is also confirmed and supported by Exhibit G - the grant of land to the Methodist Mission the conveyance of which was signed by Gbarazia Kipp, Doode Biragbara and Egbebu Kipp all of Bori. There is no signatory from Yeghe of the plaintiffs.

In further support of this I refer to Exhibit H the report of the Cheesman Arbitration. In that record Doode who, I believe was Doode who joined in signing Exhibit G and the father of P.W.6, told the Arbitration panel that he was a Bori man, and that he was born at Yeghe where his father was at the time as a fugitive from the ravages of civil war. His father later returned to their home village Bori. It is therefore clear why he became a joint signatory to Exhibit F as representing the people of Bori; he was a Bori man. From the report I find too that Doode claimed Bori land for Bori. The finding of the Arbitration was that Yeghe the

plaintiffs were not to farm on Bori land except by the permission of the Bori people. Yeghe people who are plaintiffs in this suit did not do anything about this arbitration finding. Exhibit J in which 2nd defendant successfully sued a Yeghe man Mene Naaben, is also something against any interest which plaintiffs appear to claim in respect of the land in dispute and in support of the defence case.

Plaintiffs evidence also supports the defence that 1st defendant's father, in his life time, exercised all rights of ownership and control over Bori land, in some cases in conjunction with Doode Biragbara and Egbebu Kipp. It is in plaintiffs evidence by 1 P.W. that 1st defendant's father sold lands and settled Ibo tenants but plaintiffs did not do anything because "he was a crook". Plaintiffs did not do anything even though 1st defendant's father claimed to their knowledge, his ownership of Bori land; they did not do anything when 2nd defendants were settled on the land in dispute. I also refer to the evidence of 2 P.W. and 4 P.W. that 1st defendant's father gave or joined in giving lands to the 2nd defendant and the Methodist Mission.

All these alienation or grants of lands were made by 1st defendant's father or jointly with Doode and Egbebu to the acquiescence of the plaintiffs. It could not have happened that way if plaintiffs believed or knew genuinely that the land belonged to the plaintiffs of Yeghe. Yeghe people - Councillors - were present at the spot when 1st defendant's father gave the land to the 2nd defendant and marked out boundaries. I believe the evidence of D.W.2 and D.W.3 - these witnesses having impressed me highly as witnesses of truth I dismiss the plaintiffs' evidence that Ilka Teriyawa of Yeghe or any Yeghe man gave land to the 2nd defendants.

I also accept the defence evidence supported by plaintiffs evidence by P.W.4, P.W.1 and P.W.6 that Bori, as all other villages are, is a separate and distinct village from Yeghe village - each village having its own head. It is therefore inconceivable how

one village claims to own the lands of the other independent village.

The first plaintiff appears to me a hungry man whom a morsel of bread could entice away; and so he was enticed to be a Yeghe man and 1st plaintiff in this case even though his father claimed to be a Bori man as per Exhibit H. To humour him and give him false sense of importance he was entered as the 1st plaintiff.

In paragraphs 5 and 6 of the 2nd defendants statement of defence lands were alleged granted to the 2nd defendants by Yeghe and Bori. This appears not true as seen from plaintiffs evidence given by the P.Ws 4 and 6 who stated that they were 1st defendant's father, Doode and Egbebu Kipp who gave lands to 2nd defendants and the Methodist Mission; and all these three men were of Bori. The Exhibit G is also in-consistent with this seeming admission. The only explanation I could find to this is that Doode having lived for so long at Yeghe where his father fled to, was thought to be a Yeghe man who joined in the grant to the Methodist Mission; and in fact he was a Bori man as he himself admitted in Exhibit H and confirmed by P.W.1's evidence. Even if I am to consider these paragraphs 5 and 6 as admissions by 2nd defendants then I am to come to the conclusion that the land was in common ownership of Yeghe and Bori in which case Yeghe cannot be granted title to the exclusion of Bori, but there was no common ownership.

On the whole evidence I find that the 1st defendant's father had exercised rights of ownership and possession over this land from 1933 to 1957 that he died - a period of fourteen years while the plaintiffs contented themselves with a mere newspaper protest. They acquiesced to all that 1st defendant's father did or were indifferent to what happened to the land. Whoever the founder of Bori might be it is clear from the evidence that he compromised or acquiesced over his rights to the land in favour of 1st defendant's father and/or, in any case, to the Bori people. It was waited for 1st defendant's father to die and then

to bring this action is, to me, a clear indication that plaintiffs knew they could not have established any claim against him as to the ownership of the land. All that plaintiffs did and their behaviour with reference to this land showed clear inconsistency with plaintiffs' claim to the ownership of the land and negative any claim by plaintiffs to the ownership of the land.

Defence evidence is so clear and conclusive that it brushes aside plaintiffs' evidence re their claim to the ownership of the land in dispute.

I therefore hold that plaintiffs have not established any case to warrant any finding in their favour for the ownership of the lands "Wii Bori" and "Barabe Nukpor" which they claim. Their claim therefore fails and I hereby dismiss it.

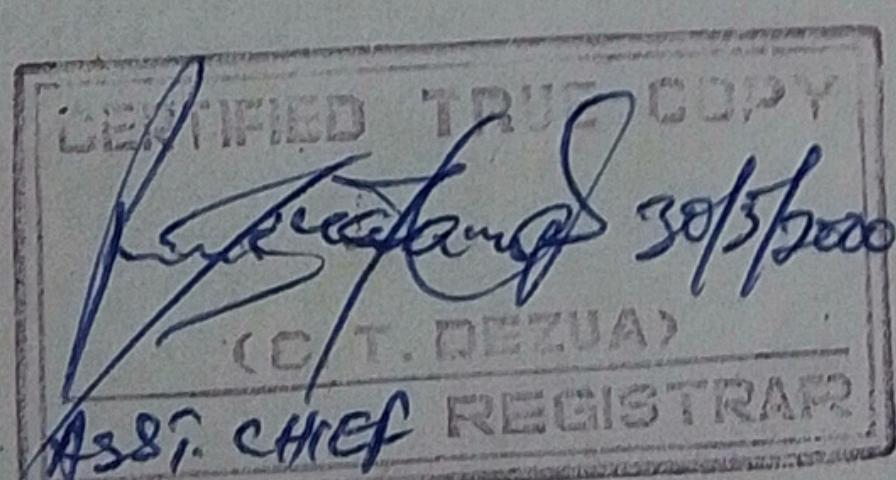
Cost to 1st defendant ₦1050.00 and to 2nd defendants ₦650.00 to be paid by plaintiffs.

~~CERTIFIED TRUE COPY~~
~~INKOKARIAH~~
~~SENIOR REGISTRAR.~~ *Chukwuebuka Okeke*
(C. INKO-TARIAH),
JUDGE.
28/5/74.

35 folios @ 20k each = ₦7.00.

₦7.00 paid on CR No 047941

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pd.
THE JUDICIAL
HIGH COURT REGIS
30/5/2000