**ADAMO LAWANI ADESHINA**

**v.**

**LAMIDI LEMONU**

SUPREME COURT OF NIGERIA

2ND JULY, 1965.

SUIT NO. FSC 94/1963

**LEX (1965) - FSC 94/1963**

OTHER CITATIONS

2PLR/1965/6 (SC)

BEFORE THEIR LORDSHIPS:

ADETOKUNBO ADEMOLA, C.J.N.

VAHE ROBERT BAIRAMIAN, J.S.C.

GEORGE BAPTIST A. COKER, J.S.C.

**BETWEEN**

ADAMO LAWANI ADESHINA – Appellant

AND

LAMIDI LEMONU - Respondent

**ORIGINATING COURT(S)**

LAGOS HIGH COURT (Onyeama J., Presiding)

**REPRESENTATION**

F.O. AKINRELE for the Appellant.

L.V. DAVIS for the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMINISTRATIVE AND GOVERNMENT LAW:- Attorney-General – When a right cannot be adjudicated without joinder of the Attorney General or State– Exceptions

ADMIRALTY AND MARITIME LAW:- Tidal waters of Nigeria – Control of – On whom vests – Rights of the public to fish in same – Whether can be restrained by private control – Claim of injunction to restrain interference with enjoyment of – Who may bring

AGRICULTURE AND LAW - Fishery - Common right of fishing in tidal waters – Private bid to impose a levy on same – Claim for injunction to restrain interference - Right to the order by a private citizen – Basis – Statute relating to minerals and vesting control of territory like waterways on government – Whether amounts to an implied intention to take away existing rights of fishery on the general public

CONSTITUTIONAL AND PUBLIC LAW – LEGISLATURE:- Character – Presumptions in the making of law - Presumption that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication beyond the immediate scope and object of the statute – Effect

ENVIRONMENTAL AND NATURAL RESOURCES: Natural resources - Waterways – Tidal waters and smaller water bodies - In whom vested – Control of tidal waters and creeks/other veins of larger rivers or lagoons – Whether distinction exists between natural resources for the use of public and one vested in Crown or State – Effect

REAL ESTATE/LAND LAW: Control or ownership of land abutting a waterbody – Whether confers right to levy the use of adjoining water – Nature of water body which control is vested in the Nigerian Sovereignty and thus open to her citizens to use and enforce their right to such use – Water bodies which may be privately controlled

TAXATION AND REVENUE: Private collection of levies over tidal waters of Nigeria – Legality of

TRANSPORTATION LAW – WATERWAYS TRANSPORT:- Tidal waterways as distinct from creeks and veins of streams and rivers – Control and ownership of – Implication for private bids to levy use of same for transport or fishing

**PRACTICE AND PROCEDURE ISSUES**

ACTION:- Action for injunction against interference with public right - Need vel non to join Attomey-General - Plaintiff suffering special damage – How treated

ACTION - LOCUS STANDI AND COMPETENCY OF ACTION:- Enforcement of existing rights to use of public resources which control vests n government – Locus standi and competence to bring same without joining the Attorney General or government – How treated

JUDGMENT AND ORDER- INJUNCTION: Application for an injunction in respect of a violation of a common law right – Where existence of that right, or the fact of its violation is denied – What claimant must prove – Whether under special circumstances, entitled to an injunction to prevent a recurrence of that violation even if complaints affect general public

INTERPRETATION OF STATUTES:- Statutes - Interpretation of – Amendment of existing law or state of the common law – Whether can be implied – Proper presumption to be ascribed to the Legislature – How treated

INTERPRETATION OF STATUTES - Legislation - Minerals Act (1958 Laws of the Federation cap. 121), s.3 – Interpretations of

INTERPRETATION OF STATUTES – PRINCIPLES:- Interpretation of general words and phrases however wide and comprehensive in their literal sense– Need not to give them no wider meaning other than that which was actually intended

INTERPRETATION OF STATUTES – PRESUMPTIONS: In construing the words of a statute – Duty of court to assume that the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the court to come to the conclusion that they did so intend

**MAIN JUDGMENT**

**BAIRAMIAN, J.S.C**. (DELIVERING THE JUDGMENT OF THE COURT):-

This appeal is by the defendant in the Lagos High Court Suit 169/59, who complains of the judgment given by Onyeama J. on 1 at June, 1962, when a judge of that court. The plaintiff’s claim is for an injunction to restrain the defendant from molesting the plaintiff from fishing in the Lagos lagoon near Apapa, and for damages, on the ground that on the 1st May, 1956, while the plaintiff was fishing in the part of the lagoon shown yellow on the Government Survey Sheet 6 (5th ad.) for Lagos and environs, the defendant seized the plaintiff’s net. The plaintiff is a native of Ibeshi in the Badagry district and a fisherman; he says that he and his forebears had been fishing in the Lagos lagoon and the Badagry Creek (sometimes called Porto-Novo Creek) without paying tribute to the defendant or anyone; and he contends that the Lagos Lagoon and waterways in and around Lagos are vested in the Government of Nigeria - and contention for which he relies mainly on section 3(1) of the Minerals Act, cap. 121; it reads

‘The entire property in and control of all minerals, and mineral oils, in, under or upon any land in Nigeria, and of all rivers, stream and watercourses throughout Nigeria, is and shall be vested in the Crown, save in so far as such rights may in any case have been limited by any express grant made before the commencement of this Ordinance.”

The defence is that the Onisiwo Family (of which the defendant is the Chief) owns a large area of land at Ibekun and, as appurtenant to the land, has always owned under native law and custom the Tomaro Creek (otherwise known as Lighthouse Creek), Ito Agon and Ito Maro (otherwise known as Porto-Novo Creek) Ogogoro Creek and the lagoon starting from Lagos Bar and Harbour entrance to the mouth of Abekun Creek or Ogogoro point and otherwise known as Harbours waters, as well as the fishing right over these waters, which have boundaries in the East with the Oluwa and on the West with the Oniru; that the Onistwo Family from ancient times gives annual permission to fishermen of these and other areas to fish in those waters on payment of rent; that the Family’s agent about 1st May, 1959 found the plaintiff fishing at Ogogoro point, shown yellow on map AL 144/1959, and had to report to the police to prevent a breach of the peace, and it was the police who seized nets. And there is a counterclaim for money for unlawful user of the Family’s fishing rights at Ogogoro Creek and Ogogoro point, Badagry Creek and Porto-Novo Creek and the Harbour waters, and for an injunction to restrain the plaintiff from further fishing in those waters.

There was no evidence to show that the plaintiff was, as alleged in the defence, fishing at Ogogoro point; and the evidence for the plaintiff, that he was fishing in the stretch of water which washes Apapa, far from Ogogoro point as shown in his survey sheet, remained uncontradicted. On that issue the trial judge found in the plaintiff’s favour and his finding was not seriously contested on appeal.

The trial judge also made a finding that the stretch where the plaintiff was fishing when arrested by the police was tidal water. On appeal it was argued, but not with any show of good reasons, that the finding was wrong, and the finding cannot be disturbed.

In view of his finding that it was tidal water, the trial judge followed the decision in Braide v. Adoki, 10 NLR. 15, that by reason of section 3(1) of the Minerals Act (already quoted) the plaintiff was free to fish in tidal water and the defendant had no justification to interfere; and as for the argument that even if that section applied to vest the water in the Crown an order of injunction could not be made at the plaintiff’s instance, the judge recalled that an injunction was granted to protect public fishing in tidal waters in Sowa v. Amachree and upheld on appeal: 11 NLR. 82. Therefore the judge made an order of injunction, to restrain the defendant from interfering with the plaintiff’s right to fish in the area coloured yellow on the Survey sheet he put in. It is a rather wide stretch of water along Apapa; it is named Porto Novo creek on that sheet and is shaded in yellow. The judgment is confined to that, and is silent on the defendant’s counter-claim. The appeal does not complain on the ground that the counter-claim in not dealt with in the judgment, but complains only of the judgment in favour of the plaintiff.

There are four grounds of appeal against that judgment. The fourth is that the judgment is against the weight of evidence, and the third that there is no proof that the water is tidal or, if it is, how far the tide goes. Those have been dealt with. The other two read as follows -

“(1) That the learned trial judge erred In law in granting injunction to the plaintiff when according to the Minerals Ordinance, the said area in dispute is vested in the Crown.

(2) That Braide v. Adoki, 10 NLR. 15 applied by the court was wrongly decided.

(a) In that the rights contained in section 3(1) of the Minerals Ordinance [are] vested in the Crown and not in the public.

Alternatively.

(b) That the Minerals Ordinance was applied when in fact there is no question of Minerals involved.”

Braide v. Adoki refers to Arnachree v. Kalio (1914) 2 NLR 108 (which decided that in accordance with the common law and with natural law the use of the New Calabar River, which is tidal and navigable, for ordinary purposes, including fishing, was common to all the inhabitants of the country) and then goes on to say that section 3 of the Minerals Ordinance (passed in 1916) did not affect the general right of common fishery over the tidal waterways. The argument for the appellant is that those public rights of fishing were taken away by section 3, which vested the rivers, streams and water-courses in the Crown (now in the State).

This argument overlooks the presumption against implicit alteration of the law: see Maxwell on the Interpretation of Statutes (10th ed.) p. 81, and Craies on Statute Law (5th ed.) p.m 310. Maxwell puts it as follows:

“One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness, and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual, or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act. It would be ‘perfectly monstrous’ to construe the general words of the Act so as to alter the previous policy of the law. In construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the court to come to the conclusion that they did so intend.”

A number of cases are cited in the footnote. For present purposes it will be more to the point in hand to quote from what Byies, J. said in R. v. Morris (1867) 1 C.C.R. 90, 95:

It is a sound rule to construe a statute in conformity with the common law, rather than against it, except where or so far as the statute is plainly intended to alter the course of the common law.”

Learned counsel for the appellant has not referred to any provisions of the Minerals Ordinance as pointing to an intention to affect existing rights of fishery by the vesting of the rivers etc. in the Crown, and we do not think that the right of public fishing stated in Amachree v. Kalio (supra) was affected by the Ordinance. The two grounds of appeal in that respect fail.

That other argument for the defendant is that it is not competent for the plaintiff to sue, and that as the Crown is the real owner, the plaintiff cannot have an injunction without joining the Crown. This argument proceeds on the basis that there were no common law rights of fishing in tidal waters before 1916, when the Minerals Ordinance was passed - but that is a mistake, for they had been recognized by the Full Court in 1914 - or that the common law rights were taken away by the Ordinance - but that, too, is a mistake, as already stated. Learned counsel for the defendant referred to para. 740 in Halsbury’s Laws of England (3rd ed.) vol. 21, which states that -

‘The general rule is that if a plaintiff applies for an injunction in respect of a violation of a common law right, and the existence of that right, or the fact of its violation is denied, he must establish his right at law, but having done that, he is, except under special circumstances, entitled to an injunction to prevent a recurrence of that violation.” (etc., irrelevant.)

Both the existence of the right and its violation have been proved. The defendant does not claim that he is entitled to stop the plaintiff from fishing where he was fishing in the tidal water shaded yellow on the survey sheet put in by the plaintiff, but he is entitled to put up the argument that the plaintiff has no right to claim an injunction. Be it borne in mind that the defendant fought the case in the court below and is fighting it on appeal; he does not concede that the plaintiff has a right to fish there, and he does not say that he undertakes not to molest the plaintiff when fishing there. The question remains - was it imperative for the plaintiff to join the Attorney-General? The statement in Halsbury vol. 21 (3rd ed.) para. 855, is as follows:

“An injunction will only be granted at the suit of a party having sufficient interest in the relief sought. If the injury complained of affects the public interest the Attorney-General must be joined, unless the plaintiff can show that the interference with the public right involves an interference with his private rights or that, although his private rights are not interfered with, he suffers special damages, peculiar to himself, from the interference with the public right.”

(Boyce v. Paddington Borouch Council [109, at 114; 2 Ch. 556; and [190611 Ch. 556; and [1906] A.C. 1.)

The plaintiff’s evidence is that he has been a fisherman for about twelve years (before May, 1962) and that he realized about £4 a week from fishing, so he comes within the rule that “he suffers special damage, peculiar to himself, from the interference with the public right”, and is entitled to the Injunction he was granted.

It remains to add that our judgement is confined to the appeal made by the defendant from the judgement of the High Court. That judgement orders an injunction to restrain the defendant from interfering with the plaintiffs right to fish in the area coloured yellow on the Survey sheet he put in, which is the wide stretch of water along Apapa. The defendant does not claim that he is entitled to stop the plaintiff from fishing in that area; consequently no issue arose on the defendant’s counterclaim that he has fishing right over certain other waters. The trial judge left the counter-claim alone, and the defendant has not asked the Supreme Court to pronounce on his counter-claim. this must wait until it arises as a live issue, and then the courts will deal with it. Equally the plaintiff will understand that the judgment of the High Court does not pronounce in favour of his entire claim, but is limited to the area shaded yellow on the Survey sheet he put in; and in this appeal we are not concerned to pronounce on his entire claim either, but only with the limited judgment of the High Court. We hope that counsel for either side will explain to his client the limited scope of the judgment of the High Court and of the Supreme Court.

The appeal from the judgement of 1st June, 1962 in the Lagos High Court Suit No. 169/1959 is dismissed with forty guineas costs payable by the defendant to the plaintiff.

Appeal dismissed.