**CLARA EREWA**

**V.**

**J.I. IDEHEN**

FEDERAL SUPREME COURT

28TH DAY OF MAY, 1971

SUIT NO. S.C. 130/1969

**LEX (1971) - S.C. 130/1969.**

OTHER CITATIONS

2PLR/1971/24 (SC)

**BEFORE THEIR LORDSHIPS:**

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

ATANDA FATAI-WILLIAMS, J.S.C.

SODEINDE SOWEMIMO, J.S.C.

**BETWEEN**

CLARA EREWA (FOR HERSELF AND ON BEHALF OF THE FAMILY OF EREWA MAGGISON) – Appellant

AND

J.I. IDEHEN (CARRYING ON BUSINESS AS J.I. IDEHEN & SONS) - Respondent

**ORIGINATING COURT**

HIGH COURT, BENIN CITY (Suit No. B/32/64) (Ighodaro, Ag. J., Presiding)

**REPRESENTTION**

COLE for the Plaintiff/Appellant.

IDEHEN for the Defendant/Respondent.

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

ESTATES ADMINISTRATION AND PLANNING- Whether the acts of an Administrator binds other co-administrators - Whether Administrators of Personal property can also administer Real property

REAL ESTATE AND PROPERTY LAW – LAND:- Ownership of land – Who can alienate family land

CUSTOMARY LAW:- Title to land - Benin customary law of land tenure – duty of purchaser

CHILDREN AND WOMEN LAW: Women and Administration of property of deceased father – Woman as co-administrator of estate with two brothers – Bini Customary Law relating to land

**MAIN JUDGMENT**

**FATAI-WILLIAMS, J.S.C.** (DELIVERING THE JUDGEMENT OF THE COURT):-

The appellant, who was the plaintiff in the High Court, Benin City (Suit No. B/32/64), has appealed against the judgement of Ighodaro, Ag. J. (as he then was) in an action in which she had sued the respondent, then defendant, for declaration of “possessory title” to a piece of land at Ikpoba Road, Benin City, possession of the said piece of land, and an injunction to restrain the defendant and his agents and servants from entering on the land and committing any acts of trespass thereon.

In the High Court, the plaintiff pleaded and adduced evidence which may be summarised as follows. Her father, an Itsekiri by name Erewa Maggison, first came to Benin during the Benin expedition of 1897. After the expedition, he stayed on in Benin as an interpreter; some time after this, he asked the then Oba of Benin for a plot of land on which to build a house. He was accordingly allotted a plot for this purpose at Ewaise Street and he built a house there. That house still stands.

Later still, Erewa Maggison again approached the Oba for land on which to establish a rubber plantation. After he had chosen a spot himself, a surveyor was commissioned by the Oba to mark out the area of the land. The surveyor duly marked out the land along the slopes of the Ikpoba River and produced the sketch plan Ex. “B” which the Oba (Eweka II) duly endorsed on 12th November, 1926. He then planted rubber, cocoa and coffee on the land. Nobody disturbed Erewa Maggison on the plantation until his death in 1946. He was survived by sixteen children one of whom is the present plaintiff.

In 1959, that is, about 13 years after Maggison’s death, Solomon Jegede, the caretaker of the plantation, informed the plaintiff that the Benin City Council had directed that the trees in the plantation which was then bush should be cut down because they wanted to “plot” the area after paying compensation to the family of Maggison. The plaintiff, through her solicitor, wrote to the members of Ward 10 of the Council asking them to stop cutting down the trees and informing them that the laying out of the plantation in plots would be undertaken by the children of Erewa Maggison themselves. When the activities of the members of Ward 10 of the Council did not cease, the plaintiff reported to Oba Akenzua. The Oba thereupon wrote to the Committee on 19th October, 1960. The letter (Ex. “K”) addressed to the Chairman and Members of the Building Plots Allocation Committee of Ward 10E reads:

“I send you, attached herewith, the copy of the letter dated 19/10/60 I have addressed to the members of the family of the late Erewa Maggison, Government Interpreter of Benin City, regarding their father’s rubber plantation on Benin-Agbor Road on the slopes of Ikpoba River.

No plots should be allocated to any persons in the aforementioned Rubber plantation for the building of dwelling and/or residential houses unless the receipts for the purchases of and/or documents showing that the rubber trees and/or other crops on the plots to be acquired in the aforementioned plantation have duly and properly been transferred by the owners of the plantation aforementioned have been presented to and verified by you.

When you are satisfied that the rubber trees and/or other crops on the plots to be acquired have been duly and properly sold or transferred by the owners of the aforementioned plantation you can proceed to allocate such plots for the building of dwelling or residential houses accordingly.” (The italics are ours).

On the receipt of the letter (Ex. “K”) the Committee stopped all activities on the land.

After this, the plaintiff instructed a surveyor to divide the whole of the rubber plantation into plots but before the assignment was completed she had to go to Lagos because her husband was seriously ill there. On her return to Benin City about nine months later she noticed that the plantation had been cleared and some buildings erected thereon. When she asked her two brothers-Humphrey Erewa and Zaccheus Erewa, both of whom have since died-who was responsible, they both replied that they knew nothing about it. Later, however, they both admitted at a meeting of the members of the family that they had sold plots on the plantation to some people including the defendant who now has a sawmill on the portion sold to him. The plaintiff then testified about the sale as follows:-

“Zaccheus was not authorised by plaintiff’s family to sell any family land. The family asked Zaccheus who authorised him. He said no one did. Humphrey told the members of the family that he was at Ologno whilst Zaccheus carried on the sale of the plot.”

Under cross-examination, the plaintiff admitted that both Humphrey Erewa and herself were administrators of the estate and that the letters of administration were granted to three of them. To further questions, the plaintiff replied as follows:-

“My late father was a foreigner in Benin City. The land given to him was not merely for farming. My father paid 1/2 a year for the houses in Benin but not for the plantation. He did not pay anything for the plantation.... Humphrey Erewa and Zaccheus Erewa admitted selling a plot of land to Idehen. It was the plot of land and not the rubber trees that Humphrey Erewa and Zaccheus Erewa deceased sold.”

In his defence, Idehen admitted knowing the father of the plaintiff, the late Erewa Maggison. He also admitted that the Oba of Benin gave Erewa Maggison land to plant rubber trees. Regarding the transaction about the rubber plantation, he testifed that in 1961, he approached Humphrey Erewa and Zaccheus Erewa in the presence of Jegede (the caretaker) with a view to purchasing the rubber trees on their land at Ikpoba Slope Hill. He paid £610 for the rubber trees and obtained a receipt (Ex. “E”) dated 9th January, 1961, from Humphrey and Zaccheus Erewa. On seeing an advertisement in the Midwest Echo of 2nd December, 1961 (Ex. “F”) by Humphrey and Zaccheus Erewa stating that they had finished selling the rubber trees on their plantation on the slopes of the Ikpoba River, he applied (See Ex. “D”) to the Oba of Benin through the Building Plots Allotment Committee of Ward 10/E for a plot of land measuring 200 ft by 500 ft for building purposes. The application was duly approved by the Oba on 28th August, 1962 as shown in Ex. “D”. According to the defendant the area approved for him by the Oba is on Ikpoba Slope and that after the approval he erected a sawmill on the land. When he was cross-examined about the authority of those who sold to him, the defendant replied:-

“I know Erewa before he died. I knew he had many children. I got a receipt for £610 which I paid. I did not ask for the other children of the late Erewa but they confirmed they had authority to dispose of the land. Jegede was present.”

The defendant then called one Hawdon Omoregbe Uwaifo, (1st D/W) aged 71 years, and a former Customary Court Member who testified as to the Benin Customary law relative to the transaction as follows:-

“I know something about Benin custom. I know also about Benin land tenure. Benin land is communal in the sense that it belongs to the Benin community as a whole. A man who farms the land is entitled to the crops there. After harvesting the crops, the land goes back to the community. The Oba of Benin is the sole trustee of Benin Communal land. ...

If a foreigner wants to acquire land in Benin, he can plant crops like rubber as he likes. If a man plants rubber trees on the land, he can reap the trees. If the land is acquired by anyone, payment has to be made for the crops to the owner. Planting crops on land does not by itself give the right of ownership to the land. This applies to Binis and foreigners alike.

I know of Wards in Benin and Plot Allotment Committees. Anybody who wants a plot in a particular area has to apply through the Ward Allotment Committee to the Oba of Benin for approval. If it is land which has crops on it, the applicant must bring a proof of having purchased the crops on the land before submitting his application through the Ward Committee to the Oba.”

Another witness called by the defendant is Cyril Athekame (2nd D/W). He is in charge of the Probate Registry of the Benin High Court and kept, at the material time, copies of letters of administration issued by the Probate Registrar in respect of property within the area of the court’s jurisdiction. The witness produced a copy of the letters of administration issued in respect of the estate of the plaintiff’s father. The copy (Ex. “G”) reads:

“IN THE HIGH COURT OF JUSTICE WESTERN REGION OF NIGERIA

Letters of Administration (Without Will)

BE IT KNOWN that on the 2nd day of August, 1957, Letters of Administration of the personal property of Erewa Ogboroju Meggison late of Benin City deceased who died on the 24th day of July, 1946, at 7 Ehondor Street, Benin City, Intestate, and who had at the time of his death his fixed place of abode at 7 Ehondor Street, Benin City, within the jurisdiction of this Court, were granted by this Court to Humphrey Akpotsemodu Erewa, Zaccheus Jemireyigbe Erewa Meggison, and Clara Tsegbeyeri Erewa of care Ehondor Street, Benin City, the children of the said Intestate, they having been first duly sworn.

Money in Bank: Nil.

(The italics are ours).

Ag. Probate Registrar.”

In calling the 2nd D/W, the defendant, no doubt, had in mind the averment in paragraph 8 of his statement of defence which reads:-

“The defendant states that he paid Humphrey A. Erewa and Zaccheus J. Erewa-Maggison (the 1st and 2nd sons of Erewa-Maggison) who were the accredited administrators of their father’s estate the sum of £610 (six hundred and ten pounds) for the rubber trees on the land in dispute.”

The last witness called by the defendant is one Joseph Osadolor (3rd D/W) who was the Secretary to the Ward Allotment Committee of Ward l0E Benin City. After describing the work of the Committee and confirming the receipt of the Oba’s directive (Ex. “K”) in connection with plaintiff’s family rubber plantation, he then proceeded to explain the allocation of the plot to the defendant as follows:-

“I know one J.I. Idehen, the defendant. I know Humphrey and Zaccheus Erewa. In the year 1961, Mr. Idehen came to us with a receipt saying that he had bought a plot in Erewa rubber plantation for a Sawmill. Delegates were sent to the plot and on inspection, we sent to the Oba for approval. J.I Idehen showed us the receipt and we gave him a paper in respect of the land after Oba’s approval. I can identify the receipt Exhibit “E” and the application approved (Exhibit “D”).”

In a reserved judgement, the learned trial judge found that the sketch plan (Ex. “B”) conferred no title to land or possessory title under Benin customary law. After stating that he accepted the evidence of Uwaifo (2nd D/W) with respect to Benin customary law as to acquisition of land rights, he then proceeded to find as follows:-

“It is also proved that three administrators of the estate were appointed including the plaintiff. On the death of Erewa Maggison, therefore, the realty and personality of the deceased vested in the administrators fully.

Learned counsel for plaintiff in his address contended that if the plaintiff did not sign any of the transaction by the other two administrators, the transaction had no legal efficacy. I was not referred to any authority for this proposition. ... ‘The law, however, is that co-executors are regarded in law as independent persons, hence subject to what is said hereafter in regard to the conveyance of real estate, the acts of any one of them done for the purposes of administration are deemed to be the acts of all’. See Williams on Executors and Administrators p. 432. It is now settled that administrators stand in the same position as executors.

But a conveyance of real estate including chattels real cannot be made without the concurrence therein of all the representatives (still living) to whom a grant has been made in respect of the property conveyed, or without an order of the court. Williams on Executors and Administrators p. 432.”

After referring to the definition of “real estate” in the Administration of Estates Law (Cap. 1 of the Laws of the Western State of Nigeria), the learned trial judge then dismissed the plaintiff’s claim after finding finally as follows:-

“I have no doubt for reasons already given that the defendant has proved a right to possession, and a right superior to whatever right the plaintiff may have had originally. And again it seems clear to me that the giving of the receipt by Erewa Meggison to the defendant does not amount and cannot amount to a conveyance of real estate or chattels real: If it had been a conveyance, the it would have been necessary to have the concurrence of all the administrators of the estate to the transaction, unless a court order was obtained to justify any departure from that rule. See Administration of Estates Law, section 4(2) Part 2, Devolution of Real Estate in Administration of Estate Law Cap. 1.”

The plaintiff has now appealed against that decision. The main point canvassed by Mr. Cole who appeared for the plaintiff/appellant is that the rubber plantation being family property, Humphrey and Zaccheus from whom the defendant/respondent bought the rubber trees had no power to sell by virtue of the Letters of Administration (Ex. “G”). Furthermore, since there was no proof that the family of Erewa Maggison authorised the sale, it is also not valid under customary law. If the sale of the rubber trees is invalid, learned counsel submitted, the condition precedent to a valid allocation of the plot in which the trees stood by the Plot Allotment Committee of Ward 10E to the defendant/appellant had not been fulfilled and consequently the allocation was void and of no effect.

For the defendant/respondent, Mr. Idehen submitted that the two brothers had the power as administrators of the estate of Erewa Maggison, to sell the rubber trees to the defendant/respondent. He, however, conceded that there is no evidence indicating that the Erewa family gave them any authority to sell. He also conceded that it would have been prudent for the defendant/respondent to insist on seeing the letters of administration before buying from the two administrators. Finally, learned counsel conceded that the customary law is that before any allocation of land can be made in circumstances similar to the ones in the present case, the prospective allottee must first pay the occupier for the crops on the land.

This appeal raises a number of fundamental issues. Was Erewa Maggison in lawful possession of the land until his death? If so, did his children continue to be in possession after his death? Was the land or rubber plantation in dispute a portion of that land? Did the transaction deal with real or personal property? Were Humphrey Erewa and Zaccheus Erewa duly appointed Administrators of the Estate of Erewa Maggison? If so, what were their powers and did these include the power to dispose of either the rubber plantation or the land on which it was established or both?

It is not dispute that one of the Obas of Benin granted the land to Maggison, a non-native of Benin, about 1926 for the purpose of establishing a rubber plantation and that he duly established the plantation. Admittedly, under the Benin customary law, the ownership of the land could not and did not pass to him. Judging by what he established therein, there is no doubt, however, that he was until his death in 1946 in lawful possession of the land. Again, the fact that the family placed Jegede, the caretaker, on the land coupled with Oba Akenzua’s directive (Ex. “K”) regarding the allocation of the land showed clearly that his children were also in lawful possession until the time of the transaction with the defendant/respondent.

It is also not in dispute that what the defendant/respondent bought, be it the land or the rubber trees thereon, was either a portion of land or what was on that portion. We should point out, at this juncture, that it is not clear from the evidence adduced what actually the defendant/respondent bought from Humphrey and Zaccheus Erewa. The plaintiff/appellant’s testimony indicated that it was land. So also did the contents of the letter (Ex. “C”) written by the defendant/respondent to Mr. Ogbobine (the plaintiff/appellant’s solicitor) wherein he referred to “the process through which we got a piece of land from the Erewa family in 1960”, and the testimony of Joseph Osadolor (3rd D/W) in which he (3rd D/W) stated that “In the year 1961, Mr. Idehen came to us with a receipt saying that he had bought a plot in Erewa rubber plantation for a Sawmill”. The defendant/respondent himself said in evidence that it was the rubber trees he bought and produced the receipt (Ex. “D”) in support. Whatever it is, there can be no doubt that the transaction was in respect of either the land or the rubber trees threon.

The next question is whether the transaction was in respect of real or personal property. There is no doubt that the land is real property. The rubber trees, like timber and those crops other than annual crops which are part of the real property before severance, are also part of the real property, because they have, in effect, that quality of immobility which makes them akin to realty. In this connection, reference may be made to the following passage in Williams on The Law of Executors and Administrators 13th Edition Volume I paragraph 529 at page 308:-

“Unless they have been severed, trees, and the fruit and produce of them, as well as hedges, bushes, etc., from their intimate connection with the soil, follow the nature of their principal, and therefore, when the owner of the land dies, they devolve as real estate.”

For the above reasons, we are clearly of the view that the transaction regarding the rubber trees between Humphrey Erewa and Zaccheus Erewa on one hand and the defendant/respondent on the other was in respect of real estate.

In view of the admission of the plaintiff/appellant herself, and the testimony of both the defendant/respondent and of Cyril Athekame (the 2nd D/W and officer-in-charge of the Probate Registry), not to mention the contents of the copy of the letters of administration (exhibit “C”), we agree with the learned trial judge that Humphrey Erewa, Zaccheus Erewa, and the plaintiff/appellant were on 2nd August, 1957 duly appointed administrators of the “personal property” of their father, the late Erewa Oghroju Maggison who died on 24th July, 1946. In view of the limitation placed on the grant, we are in no doubt whatsoever that they had no power to administer the real property (which included the rubber trees) of the deceased. Part II of the Administration of Estates Law (Cap. 1 of the Laws of the Western State) to which the learned trial judge adverted at some length, does not apply to the grant for the following reasons. In the first place, the Law came into force on 23rd April, 1959, almost two years after the grant of the letters of administration. Secondly, there is provision in section 1(2) of the said Law that, save as otherwise provided, the Law does not apply in any case where the death occurred before the commencement of the Law on 23rd April, 1959. Erewa Maggison, it must be remembered, died on 24th July, 1946. Unlike the provision in section 7(2) of Part III of the Law, it is not stated in Part 11 that the sections therein apply whether the “testator died before or after the commencement of the Law.” In our view, the Law applicable to this estate at the material time is the Administration (Real Estate) Ordinance (Cap. 2-Laws of Nigeria 1948), the second proviso to section 2 of which states that:-

“the real estate shall not be administered unless the administrator shows to the satisfaction of the court that the personal estate is insufficient to pay the intestate’s debts and the expenses of his funeral, and of taking out administration.”

That Ordinance was repealed by section 60 of the Administration of Estates Law (Cap. 1 of the Laws of the Western State) which, as we have said earlier, came into force on 23rd April, 1959. The section reads:

“60. The Administration (Real Estate) Ordinance, is hereby repealed:

Provided that where any estate is, at the commencement of this Law, being administered in accordance with the provisions of that Ordinance, that estate shall, notwithstanding the provisions of this Law, continue to be administered in accordance with the provisions of that Ordinance.”

From this, it is clear that the administrators of Erewa Maggison’s personal property cannot sell any portion of the real estate without the authority of the court. There is no evidence that the court’s authority was obtained before the sale of the rubber trees. Not having the power to dispose of the real estate of their father, the sale of the trees, if indeed there was a sale, by two of the three administrators to the defendant/ respondent, is void and of no effect.

Having found that the sale of the rubber trees is void, the next question is, how does this affect the allocation of the land in dispute on which the trees were planted to the defendant/respondent, bearing in mind the Oba’s directive in Exhibit “K”? On a close examination of the contents of Exhibit “K”, it seems to us that before any valid allocation of any portion of the rubber plantation of the Erewa family could be made by the Plots Allotment Committee of Ward 10E to the defendant/ respondent, the person applying for allocation must produce:

(a) a receipt for the purchase of the rubber trees issued by the lawful owners;

and/or

(b) documents showing that the rubber trees have been duly and properly transferred by the owners of the plantation.

In other words, the sale and transfer of the rubber trees is a condition precedent to any valid allocation of the land. As there was no valid sale or transfer of the trees, the condition precedent had not been fulfilled; as a result, the subsequent allocation of the land to the defendant/ respondent is also void and of no effect.

Consequently, the Erewa Maggison family retained their right to the possession of the land. The learned trial judge was therefore in error in holding that the defendant/respondent had proved a right to possession. That being the case, the plaintiff/appellant is entitled to the declaration asked for.

The appeal therefore succeeds and it is allowed. We make the following orders:-

(1) the judgement of Ighodaro, Ag. J. in the Benin High Court in Suit No. B/32/64, together with the order for costs, is hereby set aside;

(2) judgement is entered for the plaintiff/appellant:-

(a) for a declaration of possessory title to the land in dispute measuring 2.739 acres and edged pink in the plan No. OM.1272 (Ex. “A”);

(b) possession of the said piece of land;

(c) for an injunction restraining the defendant/respondent, his servants and/or agents from entering the said land;

and this shall be the judgement of the Court;

(3) the defendant/respondent shall pay to the plaintiff/appellant the costs of this appeal fixed at 86 guineas, and the costs in the court below fixed at 100 guineas.

Appeal allowed:

Judgement of High Court set aside: Judgement entered for Plaintiff/Appellant.