NANA DARKO FREMPONG II v. MANKRADO K. EFFAH

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

20 TH APRIL, 1961

CORAM: LORD RADCLIFFE, LORD KEITH OF AVONHOLM AND LORD GUEST

Estoppel | Res judicata | Unsuccessful claimant in action for declaration of title to land is estopped from litigating over title to smaller area which is part of the whole | Immaterial whether boundaries are clearly defined.

Forest Reserves | Claims to interests in land in Reserve Settlement Commissioner's Court | Commissioner must adjudicate on the claims he has received | Forests Ordinance, Cap. 157 (1951 Rev.), ss. 4, 5, 7, 9 and 15.

CASE SUMMARY

Proceedings were commenced in the court of the Reserve Settlement Commissioner on the 16th April, 1953, to enquire into claims in respect of certain land (hereinafter called Block I) proposed to be constituted as a forest reserve under the Forests Ordinance, Cap. 157, (1951 Rev.). There were two claimants only, the Ohene of Aperade, the appellant herein, and the Ohene of Achiasi, the respondent. Previously, in 1951, the Ohene of Aperade had commenced legal proceedings against the Ohene of Achiasi for declaration of title to an area of land which included the lesser area, Block I, to which he laid claim before the Reserve Settlement Commissioner. The 1951 action went as far as the Privy Council, which on the 2nd July, 1956, held that the Ohene of Aperade had failed to discharge the burden of proving that he was entitled to the declaration he sought.

Following the judgment of the Privy Council, the matter was taken up again by the Reserve Settlement Commissioner, who, by section 9(6) of the Forests Ordinance, is directed to accept and adopt the judgment of the native court or Supreme Court, where such courts have adjudicated over the disputed claims to title, for the purposes of the enquiry and his judgment. The Commissioner gave his judgment on the 12th February, 1957. He found it unnecessary for the Ohene of Aperade to produce any plans since the area he claimed was included in the larger area claimed before the Privy Council and the lower courts. He further found that the Ohene of Aperade had by the decision of the Privy Council lost all the area he claimed, and "that as no other stool had yet contested the ownership of Block I indicated that it belonged to either Aperade or Achiasi; that as Achiasi were already occupying portion of the land it is

assumed the area they claim . . . belongs to them." He thus held that the land belonged to Achiasi.

By a minority judgment this was reversed by the Court of Appeal, which declined to accept the plea of res judicata since the subject-matter of the decision in the Privy Council was not identical with the subject-matter of the decision by the commissioner. Ollennu, J. dissenting, was of opinion that the Ohene of Aperade was estopped per rem judicatam from asserting claim to the land for in the legal sense "a part of a subject-matter is identical with the whole. Unless that legal term is so interpreted anomalies will occur and the law relating to res judicata will become ridiculous."

Ollennu, J. continued:

"If what I have stated is not the proper legal interpretation to be placed on the term, what will happen is that a man who sues for a declaration of his title to Black Acre and loses, will divide the same Black Acre into two or more parts which are together co-extensive with Black Acre, and sue separately for declaration of his title to each of them, and when he fails again, sub-divide the divisions or divide the said Black Acre under another scheme and litigate his title to them ad infinitum. In my opinion if this were permitted, as Knox, C.J. put it in Hoystead v. Commissioner of Taxation [1926] A.C.155 at. p.165, 'litigation would have no end, except legal ingenuity is exhausted'."

The Ohene of Achiasi appealed to the Privy Council. Counsel for the respondent, the Ohene of Aperade, conceded that the majority judgment of the Court of Appeal could not be supported, and that where a claimant to a portion of land has failed after an enquiry into the merits of his claim, and his claim has been dismissed, he is estopped per rem judicatam from asserting in future proceedings a claim to a part of the larger whole in respect of which his claim has failed. He also conceded that Block I was part of the larger area claimed by the Aperade in the previous proceedings.

Counsel further contended, however, that the boundaries of the land claimed by Aperade in the previous proceedings were not sufficiently clearly defined so as to provide a decision upon the area of land to which estoppel could operate, and that it was not clear from the previous proceedings which was the area of ground ownership of which was being disputed by Achiasi, and accordingly estoppel could not operate with regard to Block I.

Held:

(1) when it is admitted that the lesser area (Block I) lies within the larger area which was the subject-matter of the decision of the Privy Council, it is immaterial whether or not the outer boundaries of that area were clearly defined;

(2) Achiasi joined issue with Aperade in regard to the whole area and it was this plea which was upheld by the Privy Council. Aperade were thus estopped per rem judicatam from claiming the land in Block I in any contest with Achiasi;

(3) in accordance with the provisions of the Forests Ordinance, the commissioner in giving judgment must adjudicate upon the claims which he has received. The claimants to the land in Block I were Aperade and Achiasi. Aperade were estopped from claiming the land and as Achiasi were the only other claimants the commissioner was right in holding the land belonged to them.

Obiter: if this had been an ordinary litigation for declaration of title such a result could not have followed because estoppel by itself can never set up the title of the party pleading it.

Judgment of the Court of Appeal set aside.

NATURE OF PROCEEDINGS

APPEAL (No. 34 of 1959) from the majority judgment of the Court of Appeal (Ollennu, J. dissenting) delivered on the 26th November, 1957 (unreported) which reversed the judgment of P. M. Riley, Esq., Reserve Settlement Commissioner, given on the 12th February, 1957, at the conclusion of an enquiry into claims to interests in land in the area of the proposed Bemu River Forest Reserve.

JUDGMENT OF LORD GUEST

Lord Guest delivered the judgment of their Lordships. This appeal is concerned with a dispute as to the ownership of a parcel of land in the Bemu River Forest Reserve of the then Gold Coast.

In 1951, the Ohene of Aperade in an action against the Ohene of Achiasi for their respective stools claimed a declaration of title to certain lands called Amanfupong and Aperade and more particularly described in the writ of summons, and £G500 damages for mesne profits. On the 11th August, 1951, Dennison J. gave judgment in favour of the plaintiffs and awarded nominal damages of £G5. The ground of his judgment was that of the two parties only the plaintiffs could be said to have acted timeously in asserting their rights. The West African Court of Appeal allowed the appeal of Achiasi holding that the onus of proving that they were entitled to the declaration lay on the plaintiffs, Aperade, and as they had failed to discharge the onus, they were not entitled to the relief. Aperade appealed to the Privy Council, and the Board on the 2nd July, 1956, delivered judgment dismissing the appeal. There is no substantial difference between the ground of judgment in the Privy Council and in the West African Court of Appeal.

In the interval between the decision of the West African Court of Appeal and the judgment of the Privy Council proceedings were commenced in the court of the Reserve Settlement Commissioner of the Gold Coast on the 16th April, 1953, in regard to the proposed Bemu River Forest Reserve. These proceedings were taken under the Forests Ordinance, 1927.1 By section 4, the Governor is empowered to constitute certain lands as a forest reserve and by section 5 notification of intention to create a forest reserve must be given in the Gazette and a Reserve Settlement Commissioner appointed. By section 7, the commissioner must give notice of the enquiry, stating the

time and manner in which claims affecting the land may be made. The commissioner is directed by section 9 (1) to enquire into the existence, nature and extent of the rights in respect of which he has received claims. By section 9 (2) if a dispute arises as to the ownership of any land within the proposed forest reserve, the commissioner may refer the dispute to the native court, "provided that it shall not be necessary to refer any dispute which has already been decided by any Native Court or other Court." If the dispute is not within the jurisdiction of the native court, it is to be referred to the Supreme Court (section 9 (4)). The commissioner is directed by section 9 (6) to accept and adopt the judgment of the native court or Supreme Court for the purposes of the enquiry and of his judgment. By section 15, when the commissioner has completed his enquiry he must deliver judgment which shall, inter alia, (c) specify the rights in respect of which the commissioner has received claims and any other rights alleged to exist, (d) specify the claims which he considers not to have been established, and (e) admit or prohibit the exercise of all rights which he considers to have been established.

The area of land which was the subject of the dispute in the action between Aperade and Achiasi already referred to was excluded by Commissioner Pullen from the enquiry at that time by dividing the Reserve into two blocks. No question arises regarding Block II and the matter of Block I was taken up again by Commissioner Riley on the 25th October, 1956, after the decision of the Privy Council had been given. He was satisfied from the plans produced that Aperade were claiming all the Reserve as part of their whole claim, while Achiasi only claimed a part. The boundaries of Achiasi claim were not clear and Achiasi were ordered to have their boundary cleared and cut.

After this had been done the commissioner gave judgment on the 12th February, 1957. He found it unnecessary for Aperade to produce any plans "since the land they had claimed before the Privy Council and lower courts included all Block I". He also had before him a plan which the Board saw (exhibit F) showing the land claimed by Achiasi. The commissioner held that Aperade, by the Privy Council decision, had lost all the area they claimed which is shown on exhibit H, the plan produced to define the land claimed by Aperade in 1951; that Block I lay within this area; "that as no other stool had yet contested the ownership of Block I indicated that it belonged to either Aperade or Achiasi; that as Achiasi were already occupying portion of the land it is assumed the area they claim in Block I belongs to them". He then decided that the land claimed by Achiasi on exhibit F belonged to them.

The West African Court of Appeal by a majority, Ollennu, J., dissenting, allowed the appeal, set aside the decision of the commissioner and remitted the case for a hearing. Before the Court of Appeal it was argued that the commissioner was wrong in holding that Aperade were by the judgment of the Privy Council estopped from laying claim to any land in Block I. The ground of the judgment of Granville Sharp, J.A., was that the plea of res judicata failed because the subject-matter of the decision in the Privy Council was not identical with the subject-matter of the decision of the commissioner. He declined to accept the axiomatic mathematical truth that the part is included in the whole as applicable to the doctrine of res judicata. The opinion of van Lare, Ag. C.J., proceeded on the same grounds. In his dissenting judgment Ollennu, J., held that Aperade were estopped per rem judicatam by the judgment of

the Privy Council from asserting a claim to the land in Block I and he was in favour of dismissing the appeal.

In considering the arguments for Achiasi before the Board it is unnecessary to consider in detail the judgment of the majority of the Court of Appeal, because counsel for the respondent, Aperade, did not support the grounds upon which Granville Sharp, J.A., and van Lare, Ag. C.J., proceeded. He conceded that where a claimant to a portion of land has failed after an enquiry into the merits of his claim and his claim has been dismissed, he is estopped per rem judicatam from asserting in future proceedings a claim to a part of the larger whole in respect of which his claim has failed. This concession was inevitable, as it would otherwise lead to the absurd results referred to in the dissenting judgment of Ollennu, J. The effect of the plea of res judicata does not by itself substantiate the claim of Achiasi, but it operates so as to defeat Aperade's claim.

Counsel for the respondent also conceded what is implicit in all the judgments of the courts below, that Block I is part of the larger area claimed by Aperade in the previous proceedings. From the logical result of these two concessions his counsel sought to escape by two highly technical arguments with which it is necessary to deal. First, it was said that the boundaries of the land claimed by Aperade in the previous proceedings were not sufficiently clearly defined so as to provide a decision upon the area of land to which estoppel could operate. This argument comes strangely from a party who was seeking a declaration of title in relation to an area of ground, the boundaries of which were set out in the writ of summons and the extent of which was shown on a plan produced for the purposes of the action. When it is admitted that Block I lies within the area which was the subject of the decision of the Privy Council, it is immaterial whether or not the outer boundaries of that area are sufficiently clearly defined. But the boundaries were in any case described in the previous proceedings. There is in the opinion of their Lordships no substance in this argument. Secondly, it was argued that it was not clear from the previous proceedings which was the area of ground ownership of which was being disputed by Achiasi, and accordingly estoppel could not operate in regard to Block I. But the defendants, Achiasi, joined issue with the plaintiffs in regard to the whole area and it was this plea which was upheld by the Privy Council. They were entitled to put Aperade to the proof of their claim and it was on this proof that they failed.

In the opinion of their Lordships the plea of res judicata operates so as to estop Aperade from claiming the land in Block I in any contest with Achiasi.

It only remains to consider whether the commissioner was correct in proceeding further and holding that land in Block I belonged to the Achiasi. If this had been a litigation for a declaration of title, such a result could not have followed, because estoppel by itself can never set up the title of the party pleading estoppel. But this is not an ordinary litigation; it arises out of proceedings instituted under the Forests Ordinance. The provisions of the Ordinance have already been referred to. The commissioner receives claims in respect of the lands proposed to be constituted as a forest reserve. He must enquire into these claims and if there is a dispute as to

ownership, he must follow the judgment of the appropriate civil court. In giving judgment the commissioner must adjudicate upon the claims which he has received. Aperade and Achiasi were both claimants to the land contained in Block I. Aperade are estopped by the judgment of the Privy Council from claiming the land and as Achiasi were the only other claimants, it follows in their Lordships' opinion that the commissioner was right in holding that this land belonged to them.

Their Lordships will accordingly report to the President of Ghana as their opinion that the appeal should be allowed, the judgment of the Court of Appeal set aside and the judgment of the Reserve Settlement Commissioner restored and that the respondent should pay the appellant's costs in the Court of Appeal and before their Lordships' Board.

COUNSEL

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