~~GHC.92.~~

(24), 1963

IN THE PRIVY COUNCIL

No. 24 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

G.O. LAJA (Defendant) Appellant

- and -

M.A. OKUPE (Plaintiff) Respondent

R E C O R D O F P R O C E E D I N G S

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.

IN THE PRIVY COUNCIL No. 24 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

G.O. LAJA (Defendant) Appellant

- and -

M.A. OKUPE (Plaintiff) Respondent

RECORD OF PROCEEDINGS

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Motion on Notice	21st June 1960
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Affidavit of G.O. Laja in support of Motion	28th March 1961
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Application for stay of Execution	22nd May 1961
Affidavit of Means by M.A. Peters	17th August 1961
Affidavit of Means by E.B. Okusanya	17th August 1961
Bond for Costs and for prosecution of Appeal	17th August 1961

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Affidavit of G.O. Laja in support	30th August 1961
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IN THE PRIVY COUNCIL No. 24 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

G. O. LAJA (Defendant) Appellant

- and -

M. A. OKUPE (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1

In the Supreme Court

No. 1

Particulars of Claim.

1st September, 1959.

PARTICULARS OF CLAIM

IN THE HIGH COURT OF LAGOS

UNDEFENDED LIST Suit No. LD/278/59

BETWEEN

M. A. OKUPE ... Plaintiff

- and -

G. O. LAJA ... Defendent

The plaintiff's claim against the defendant is for £10,047.5/- for a consideration which has wholly failed.

The defendant received from the plaintiff between December, 1955 and August, 1956 a total amount of £10,047.5/- for the purpose of purchasing timber logs and with a promise to deliver the logs to the plaintiff in Lagos.

The defendant failed to deliver the logs and neglected to repay the plaintiff the said £10,047.5/- despite repeated demands.

Dated this 1st day of September, 1959.

(Sgd.) S.O.O. Abudu
Plaintiff's Solicitor,
116, Victoria Street,
Lagos.

Address for Service:
Plaintiff c/o His Solicitor Or
1, Baddeley Avenue, Yaba.
Defendant: c/o The Superintendent of Prisons,
Lagos.

In the Supreme Court

No. 2

Plaintiff's Affidavit in support of Claim.

2nd September 1959.

No. 2

AFFIDAVIT IN SUPPORT OF CLAIM

(Title as No.1)

Affidavit in support
Pursuance to Order III Rule 9 Cap.211

I, MATTHEW ADEKOYA OKUPE Company Director of 1 Baddeley Avenue, Yaba, Yoruba, do hereby make oath and say as follows :-

1. That I am the plaintiff in the above matter.

2. That the action is for £10,047.5/- being money advanced by me to the defendant for the supply of timber logs for export in Lagos.

3. That between the months of December, 1955 and August, 1956 the defendant received and cashed cheques issued by me on Agbonmagbe Bank Limited for the total amount of £10,047.5/- as per exhibit 'A' attached herewith.

4. That the defendant failed to deliver any logs to me contrary to our agreement.

5. That the defendant was charged and convicted for defrauding me of a total sum of £42,000 in connection with the exports of timber logs reference charge No.LA/100/58 the Queen Vs. G.O. Laja and Abdul Raheem Ligali.

6. That the defendant has not refunded my money in spite of repeated demands.

7. That the defendant has no defence to my claim.

(Sgd.) M.A. Okupe
deponent.

Sworn to at the High Court Registry, Lagos this 2nd day of September, 1959.

Before Me,

(Sgd.) D.A. Banjoko.
Commissioner for Oaths.

No. 3

In the Supreme Court

No. 3

Exhibit A to Plaintiffs Affidavit.

2nd September, 1959.

EXHIBIT 'A' to PLAINTIFF'S AFFIDAVIT

Exhibit "A":

LIST OF CHEQUES ISSUED BY CHIEF M.A. OKUPE TO G.O. LAJA.

G.O. LAJA

	Date	Cheque No.	Amount
1.	28/12/55	04817	£1,473. 15. -
2.	15/2/56	0809	2,293. 10. -
3.	5/3/56	0816	3,080. -. -
4.	4/4/56	2703	2,200. -. -
5.	20/8/56	1894	1,000. -. -
		Total:	£10,047. 5. -

This is Exhibit 'A' referred to in the affidavit of Chief M.A. Okupe sworn to this 2nd day of September, 1959.

Before Me.

(Sgd.) D.A. Banjoko.
Commissioner for Oaths.

No. 4

No. 4

Writ of Summons.

12th September, 1959.

WRIT OF SUMMONS

(Title as No.1)

To: G.O. Laja
of c/o The Superintendent of Prisons, Lagos.

You are hereby commanded in Her Majesty's name to attend this court at High Court, Lagos on Monday the 21st day of September, 1959, at 9 o'clock in

In the Supreme Court

No. 4

Writ of Summons.

12th September, 1959 - continued.

the fore-noon to answer a suit by M.A. Okupe c/o Mr. S.O.O. Abudu, 116, Victoria Street, Lagos against you.

The plaintiff's claim against the defendant is for £10,047.5/- for a consideration which has wholly failed.

The defendant received from the plaintiff between December, 1955 and August, 1956 a total amount of £10,047.5/- for the purpose of purchasing timber logs and with a promise to deliver the logs to the plaintiff in Lagos.

The defendant failed to deliver the logs and neglected to repay the plaintiff the said £10,047.5/- despite repeated demands.

Issued at Lagos the 12th day of September, 1959.

(Sgd.) J. Bennett.
Judge.

	£	s.	d.
Summons	35.	-.	-
Oath		5.	7
Service		2.	1
Filing		3.	6
Mileage		3.	-
Exht.		1.	4
	£35.	15.	6d

Pd. on CR.No.D283076 of 2/9/59.

TAKE NOTICE. - That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No. 5

In the Supreme Court

No. 5

Motion for Interim Attachment.

12th September, 1959.

MOTION FOR INTERIM ATTACHMENT

(Title as No. 1)

MOTION ON NOTICE:
Order XX Rules 1(b)(ii) &
2 Supreme Court Rules Cap.211

TAKE NOTICE that this Honourable Court will be moved on Monday the 14th day of September 1959 at the hour of Nine o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above named plaintiff for an Order:

(a) granting an interim attachment of the sum of £3,000 now due and payable to the defendant by the Century Mortgage Company Limited of 11/17, Tinubu Street, Lagos

(b) granting an interim attachment of the house and landed property situate lying and being at Brickfield Road, Ebute-Metta adjoining 143, Brickfield Road, Ebute-Metta registered as No.57 at page 57 in Volume 810 of the Land Registry in the office at Lagos pending the determination of the above matter AND for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Dated this 12th day of September, 1959.

(Sgd.) S.O.O.ABUDU.
Plaintiff's Solicitor,
116, Victoria Street,
Lagos.

On Notice to:
The Defendant,
c/o Her Majesty's Prisons, Ikoyi,
And the Century Mortgage Company Ltd.,
11/17, Tinubu Street, Lagos.

In the Supreme Court

No. 6

Plaintiff's Affidavit in Support of Motion.

12th September, 1959.

No. 6

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION

(Title as No. 1)

AFFIDAVIT IN SUPPORT OF MOTION

I, MATTHEW ADEKOYA OKUPE, Business Director of 1, Baddeley Avenue, Ebute-Metta, Yaba, Nigeria do hereby make oath and say as follows :-

1. That I am the plaintiff in the above matter.

2. That I sued the defendant for £10,047.5/- being amount received by the defendant from me between December, 1955 and August, 1956 for the purchase of timber logs which were never supplied by the defendant.

3. That the defendant is the owner of two properties namely:

   No.12 Ibikunle Street, Yaba registered as M00 292 registered on 16th January, 1957.

   No.141, Brickfield Road, Ebute-Metta registered as No.57 at page 57 in Volume 810 of the Register of Deeds.

4. That the defendant mortgaged the house at No. 12, Ibikunle Street, Yaba to the Century Mortgage Company Limited of 11/17, Tinybu Street, Lagos for £1,500 on the 28th January, 1958.

5. That the Mortgagees sold the said property at No.12, Ibikunle Street, Yaba for £5,000 and conveyed the information to me today through one of their Directors Mr. Georgius Cole.

6. That £3,000 more or less is now remaining in the hands of the mortgagees to be paid to the defendant.

7. That I have information from property dealers who are customers of Agbonmagbe Bank Limited of which I am the Director, that the defendant has made necessary arrangements to dispose of the property at No.141, Brickfield Road, Ebute-Metta.

8. That the defendant is now unemployed he being a convict serving a term in Her Majesty's Prisons, Ikoyi, Lagos.

9. That the defendant has no other means of refunding my money.

10. That the defendant has failed to pay despite repeated demands.

(Sgd.) M.A. Okupe
Deponent.

Sworn to at the High Court Registry, Lagos this 12th day of September, 1959.

Before Me,

(Sgd.) D.A. Banjoko.
Commissioner for Oaths.

In the Supreme Court

No. 6

Plaintiff's Affidavit in support of Motion.

12th September, 1959 - continued.

No. 7

No. 7

Counter Affidavit by Madam Peters

18th September, 1959.

COUNTER AFFIDAVIT BY MADAM PETERS

(Title as No.1)

COUNTER-AFFIDAVIT

I, MARIA ADEBOWALE PETERS, Trader, British Protected Person residing at 59, Great Bridge Street, Lagos, make oath and say as follows:-

1. That the defendant is my brother-in-law.

2. That from 1956 to 1958 the said defendant borrowed from me various sums of money amounting to £5500 (Five thousand five hundred pounds) and he the defendant on 16th July, 1958 deposited the document referred to in paragraph 3 of the Plaintiff's Affidavit as No.57 at Page 57 in Volume 810 of the Register of Deeds in the Federal Land Registry, Lagos.

3. That I have not been paid any part of the said sum of £5500.

4. That I exhibit to this affidavit and mark Exhibit "A" a copy of the receipt which was

In the Supreme Court

No. 7

Counter Affidavit by Madam Peters.

18th September, 1959 - continued.

given to me by the defendant in 1958.

SWORN to in the High Court Registry Lagos this 18th day of September, 1959 the foregoing having been read over and interpreted into Yoruba Language by me (Sgd.) K.A. Abbas, when she appeared perfectly to understand the same before affixing her thumb impression hereto.

+
Maria Adebowale Peters.
Her left hand thumb.

Before me,

(Sgd.) S.A. Macaulay,
COMMISSIONER FOR OATHS.

No. 8

Exhibit "A" to Madam Peter's Affidavit.

18th September, 1959.

No. 8

EXHIBIT "A" to MADAM PETER'S AFFIDAVIT

R E C E I P T

RECEIVED from Madam Maria Ade Peters the sum of £5500.-.-. (Five thousand five hundred pounds only) in various sums returnable after discharge from the Court Case - Queen Vs. Ligali & Laja for which total sum my property at 141, Brickfield Road is tendered in Security.

In the event of failure to arrange refund, the sum of £5500 (Five thousand Five hundred pounds) shall be regarded as sale price for the property, 141, Brickfield Road for which documentation shall be duly executed.

(Sgd.) G.O. Laja.
Two pence Stamped.
16th July, 1958.

(Sgd.) G.B. Laja.
Witness.

This is the document marked Exhibit "A" and referred to in the Counter-Affidavit of Madam Maria Adebowale Peters Sworn to in the High Court Registry Lagos this 18th day of September, 1959.

Before me,
(Sgd.) S.A. Macaulay.
Commissioner for Oaths.

No. 9

In the Supreme Court

No. 9

Counter Affidavit by G.B. Laja.

18th September, 1959.

COUNTER AFFIDAVIT BY G.B. LAJA

(Title as No. 1)

COUNTER AFFIDAVIT

I, GEORGE BONOJO LAJA, Yoruba, Trader, British Protected person of 6, Imaro Street, Lagos, Nigeria make oath and say as follows :-

1. That I am an Attorney and brother to the Defendant.

2. That the defendant is at the moment serving a term of three years in a Lagos prison.

3. That paragraph 4 of the Plaintiff's Affidavit is true but with reference to paragraph 5 thereof the defendant has not been informed of the same of the property nor of any sum due to him in consequence of any sale.

4. That the defendant's property known as 141, Brickfield Road, Ebute Metta, Lagos was mortgaged in July, 1958 to my wife Madam Maria Adebowale Peters of 59, Great Bridge Street, Lagos for the sum of £5500 by the document of title pertaining thereto and referred to in paragraph 3 of the Plaintiff's Affidavit being deposited with her in July, 1958.

5. That the said document has been in her possession ever since.

6. That to my knowledge and belief the defendant has not refunded any part of the said sum of £5500 to my aforementioned wife.

(Sgd.) G.B. Laja.
Deponent.

SWORN to in the High Court Registry this 18th day of September, 1959.
Before me,
(Sgd.) S.A. Macaulay,
COMMISSIONER FOR OATHS.

In the Supreme Court

No. 10

Further Counter Affidavit by G.B. Laja.

22nd September, 1959.

No. 10

FURTHER COUNTER AFFIDAVIT BY G.B. LAJA

(Title as No. 1)

FURTHER COUNTER-AFFIDAVIT

I, GEORGE BONOJO LAJA, Yoruba, Trader, British Protected Person of 6, Imaro Street, Lagos, Nigeria make oath and say as follows :-

1. That I am an Attorney and brother to the Defendant.

2. That the sum claimed on the Writ in this action is not owing by the defendant who denies liability absolutely,

3. That the defendant does not owe the Plaintiff any other sum.

4. That the defendant and the Plaintiff never entered into the contract alleged in the Writ.

(Sgd.) G.B. Laja.
Deponent.

SWORN to in the High Court Registry this 22nd day of September, 1959.

Before me,

(Sgd.) S.A. Macaulay,
COMMISSIONER FOR OATHS.

No. 11

COURT NOTES

(Title as No. 1)

In the Supreme Court

No. 11

Court Notes.

25th September, 1959.

ABUDU for applicant.

ODESANYA for Respondent.

ABUDU:

Application under Order XX Rule 1 (a).

Affidavit of plaintiff.

Counter-affidavit supports application.

No affidavit by defendant.

ODESANYA:

Not called upon.

ORDER: I am not satisfied that the defendant is about to dispose of his property with a view to obstruct or delay the execution of any decision that may be obtained against him. The application is dismissed with costs assessed at £5.5.0d.

(Sgd.) M.C. Nageon de Lestang.
Chief Justice.

ORDER: By consent pleadings ordered.

15 days Statement of Claim.

15 days thereafter defence.

(Sgd.) M.C. Nageon de Lestang.
Chief Justice.

In the Supreme Court

No.12

Statement of Claim.

7th October, 1959.

No. 12

STATEMENT OF CLAIM

(Title as No.1)

STATEMENT OF CLAIM

1. The plaintiff is the Managing Director of Agbonmagbe Bank Limited of 168, Strachan Street, Ebute-Metta and he is also a financier and director of two other limited liability companies.

2. The defendant was a Paymaster of the Nigerian Railway Corporation, Ebute-Metta, a trader in timber logs and Managing Proprietor of J. Ogunlabi Brothers.

3. During the year 1955 the defendant agreed with the plaintiff to supply the plaintiff with 10,000 tons logs for export.

4. The defendant made the plaintiff to understand that the logs would be supplied by his (defendant's) logs-men from Ejirin.

5. The defendant further agreed with the plaintiff that delivery would be by instalments and that every quantity available would be delivered to one Abdul Raheem Ligali for shipment for and on behalf of the plaintiff.

6. The defendant also agreed with the plaintiff to accept payment for any quantity of logs so delivered after measurement and checking had been confirmed by the said Abdul Raheem Ligali who would in turn advise the plaintiff.

7. Between December 1955 and August, 1956 the defendant falsely mis-represented to the plaintiff that he had delivered 1,508 tons logs to Abdul Raheem Ligali.

8. The said Abdul Raheem Ligali falsely misrepresented to the plaintiff that he had taken delivery of 1,508 tons logs from the defendant after having measured and checked the logs.

9. Between December 1955 and August, 1956 the plaintiff made certain payments by cheques to the

defendant for logs reported to have been supplied by the defendant for shipment to Oslo.

10. The plaintiff made payments to defendant by cheques issued on Agbonmagbe Bank Limited as shown hereunder:-

	Date	Cheque No.	Amount
1.	28/12/55	04817	£ 1,473. 15. -d
2.	15/2/56	0809	£ 2,293. 10. -d
3.	5/3/56	0816	£ 3,080. -. -
4.	4/4/56	2703	£ 2,200. -. -
5.	20/8/56	1894	£ 1,000. -. -
			£10,047. 5. -d

11. The defendant cashed the cheques for the total amount of £10,047.5/-.

12. The plaintiff issued each of the cheques listed in paragraph 8 at the request of the defendant for payment against alleged delivery made by the defendant to Abdul Raheem Ligali for and on behalf of the plaintiff.

13. The defendant did not deliver any logs at all.

14. The defendant induced the plaintiff to part with possession of his money namely £10,047.5/- under false pretence that 1508 tons logs had been delivered to Abdul Raheem Ligali on behalf of the plaintiff for shipment to Oslo.

15. The amount of £10,047.5/- is part of a total sum of £42,000 the subject matter of criminal charges against the defendant and Abdul Raheem Ligali at the Lagos Assizes in 1958.

16. The defendant has failed or neglected to repay the said £10,047.5/- to the plaintiff despite repeated demands.

WHEREOF the plaintiff claims against the defendant for £10,047.5/-.

Dated the 7th day of October, 1959.

(Sgd.) S.O.O. Abudu.
Plaintiff's Solicitor.
116, Victoria Street,
Lagos.

In the Supreme Court

No. 13

Motion for Interim Attachment.

7th October, 1959.

No. 13

MOTION FOR INTERIM ATTACHMENT

(Title as No. 1)

MOTION ON NOTICE: ORDER XX
Rules 1(b)(ii) & 2 Supreme Court Rules
Cap 211

TAKE NOTICE that this Honourable Court will be moved on Monday the 2nd day of November 1959 at the hour of Nine o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above named Plaintiff for an Order:

(a) granting an interim attachment of the sum of £3,000 now due and payable to the defendant by the Century Mortgage Company Limited of 11/17 Tinubu Street, Lagos.

(b) granting an interim attachment of the house and landed property situate lying and being at Brickfield Road, Ebute-Metta adjoining 143, Brickfield Road, Ebute-Metta registered as No.57 at page 57 in Volume 810 of the Land Registry in the office at Lagos pending the determination of the above matter AND for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Dated this 7th day of October, 1959.

S.O.O. Abudu
Plaintiff's Solicitor,
116, Victoria Street,
Lagos.

On Notice to:
The defendant,
c/o Her Majesty's Prisons, Ikoyi.
And the Century Mortgage Company Limited,
11/17, Tinubu Street, Lagos.

No. 14

In the Supreme Court

No. 14

Plaintiff's Affidavit in Support of Motion.

8th October, 1959.

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION

(Title as No.1)

AFFIDAVIT IN SUPPORT OF MOTION

I, MATTHEW ADEKOYA OKUPE, Business Director of 1, Baddeley Avenue, Ebute-Metta, Yaba, Nigeria do hereby make oath and say as follows :-

1. That I am the plaintiff in the above matter.

2. That I sued the defendant for £10,047.5/- being amount received by the defendant from me between December, 1955 and August 1956 for the purchase of timber logs which were never supplied by the defendant.

3. That the defendant is the owner of two properties namely:-

No.12, Ibikunle Street, Yaba registered as M00 292 registered on 16th January, 1957.

No.141, Brickfield Road, Ebute-Metta registered as No.57 at page 57 in Volume 810 of the Register of Deeds.

4. That the defendant mortgaged the house at No. 12, Ibikunle Street, Yaba to the Century Mortgage Company Limited of 11/17, Tinubu Street, Lagos for £1,500 on the 28th January, 1958.

5. That the Mortgagees sold the said property at 12, Ibikunle Street, Yaba for £4,500:

6. That £3,000 more or less is now remaining in the hands of the Mortgagees to be paid to the defendant.

7. That I have information from one Maggie Davies, Licensed Auctioneer and who is also a customer of Agbonmagbe Bank Limited of which I am the Director, that the defendant has made necessary arrangements to dispose of the property at No.141, Brickfield Road, Ebute-Metta.

8. That the defendant is now unemployed he being a convict serving a term in Her Majesty's Prisons, Broad Street, Lagos.

9. That the defendant has no other means of refunding my money.

In the Supreme Court

10. That the defendant has failed to pay despite repeated demands.

(Sgd.) M.A. Okupe
Deponent.

No. 14

Plaintiff's Affidavit in Support of Motion.

8th October, 1959 - continued.

SWORN to at the High Court Registry Lagos this 8th day of October, 1959.

Before Me,
(Sgd.) D.A. Banjoko.
Commissioner for Oaths.

No. 15

Counter Affidavit by G.B. Laja.

26th October, 1959.

No. 15

COUNTER AFFIDAVIT BY G.B. LAJA

(Title as No. 1)

COUNTER AFFIDAVIT

I, GABRIEL OLUWOLE LAJA, British Protected Person, Yoruba, at present serving a term of imprisonment in the Convict Prison at Broad Street, Lagos make oath and say as follows :-

1. That I am the defendant in the above mentioned suit.

2. That I have not instructed anybody to sell or advertise either of my properties for sale.

3. That the mortgagees of 12, Ibikunle Street, Yaba have not given me any notice that they intend to sell the property.

4. That I do not intend to sell the properties until this case is disposed of.

SWORN to in the Convict Prison at Broad Street, Lagos this 26th day of October, 1959.

(Sgd.) G.C. Laja
Deponent.

Before Me,
(Sgd.) D.A. Banjoko.
Commissioner for Oaths.

No. 16

In the Supreme Court

No. 16

Further Affidavit by Plaintiff.

26th October, 1959

FURTHER AFFIDAVIT BY PLAINTIFF

(Title as No. 1)

FURTHER AFFIDAVIT

I, MATTHEW ADEKOYA OKUPE, Business Director of 1, Baddeley Avenue, Ebute-Metta, Yaba, Nigeria, Yoruba, do hereby make oath and say as follows :-

1. That I am the plaintiff in the above matter.

2. That the defendant has appointed Messrs. Joshua Gbolade Laja of 3, Aro Street, Lagos and Anthony Idowu George of 69, Campbell Street, Lagos as Attorneys as per the copy of a certified true copy of Power of Attorney herewith attached and marked Exhibit 'A'.

3. That the said Attorneys have applied to the Century Mortgage Company to withdraw the sum £3,000 belonging to the defendant and representing the balance from the sale of his property situate at 12, Ibikunle Street, Yaba.

4. That information has been received that the said Attorneys have offered for sale the defendant's property situate at 141, Brickfield Street, Ebute-Metta.

(Sgd.) M.A. Okupe.
Deponent.

Sworn to at High Court Registry, Lagos this 26th day of October, 1959.

Before Me,

(Sgd.) D.A. Banjoko.

Commissioner for Oaths.

In the Supreme Court

No. 17

Exhibit "A" to Plaintiff's Further Affidavit dated 26th October, 1959.

No. 17

EXHIBIT "A" to PLAINTIFF'S FURTHER AFFIDAVIT

This is Exhibit 'A' referred to in the Affidavit of M.A. Okupe Sworn to at High Court Registry, Lagos this 26th day of October, 1959.

Before Me,
(Sgd.) D.A. Banjoko
Commissioner for Oaths.

Exh.1/4d Pd. on CR.No.D284107 of 26/X/59.

No. 37 Volume 1141 Page 37

Nigeria
One pound
Stamp Duty
26/2/59.

BY THIS POWER OF ATTORNEY I, GABRIEL OLUWOLE LAJA of 34A. Odunfa Street, Lagos, hereby appoint Josiah Gbolade Laja, Civil Servant of 3, Aro Street, Lagos and Anthony Idowu George an official of the Nigerian Railway Corporation and of 69, Campbell Street, Lagos my Attorney in my name and on my behalf to do and execute all or any of the acts and things following namely:-

1. To take possession of all freehold or leasehold properties of or to which I am now or pay hereafter possessed or entitled to manage mortgage charge, lease, let, sell and otherwise to dispose of them or any of them and to enter into contracts covenants and arrangements of all kinds in relation to the same.

2. To sign and give notices to tenants and occupiers of my said properties to quit to repair or to abate a nuisance or to remedy a breach of covenant or for any other purpose whatsoever and to enforce all remedies open to me in respect thereof and to enter upon all such properties whether for the purpose of viewing the state thereof or in exercise of any rights of re-entry or other right of entry vested in me.

3. To warn off and prohibit and if necessary proceed against any trespassers on my properties.

4. To take care, maintain and educate my children

and any other person or persons for whose maintenance and education I am responsible.

5. To settle compromise or submit to arbitration all accounts claims and disputes between me and any other person or persons.

AND I HEREBY AGREE and undertake to ratify and confirm all and whatsoever that my said Attorneys shall lawfully do or cause to be done by virtue of this Deed and I declare that this Power of Attorney shall be irrevocable for twelve months from the date hereof.

AS WITNESS my hand this 19th day of February, 1959.

SIGNED SEALED AND DELIVERED by the within-named GABRIEL OLUWOLE LAJA in the presence of :-) (Sgd.) G.O. LAJA 19/2/59

(Sgd.) M.O. Folayan
Supt. of Prison Office,
Lagos.

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with a duty of ONE POUND £1 and the Duty thereon has been assessed accordingly. (Sgd.) A.H. Soliner 25/2/59
COMMISSIONER OF STAMP DUTIES.

1.2, 4395
25 Feb. 1959.

In the Supreme Court

No. 17

Exhibit "A" to Plaintiff's Further Affidavit dated 26th October, 1959 - continued.

No. 18

STATEMENT OF DEFENCE

(Title as No. 1)

STATEMENT OF DEFENCE

No. 18

Statement of Defence.

2nd November, 1959.

Save and except as is hereinafter expressly admitted the defendant denies each and every allegation of fact contained in the Statement of claim as if the same had been set out seriatim and specifically traversed.

1. The defendant admits paragraph 1 of the Statement of Claim.

In the Supreme Court

No. 18

Statement of Defence.

2nd November, 1959 - continued.

2. The defendant also admits paragraph 2 in so far as it relates to his office as Paymaster General but denies that he was a dealer or trader in timber logs or the Managing Director of J. Ogunlabi Brothers.

3. The defendant denies in toto paragraphs 3, 4, 5, 6, 7 and 9 of the Statement of Claim.

4. With reference to paragraphs 10 and 11 of the Statement of Claim the defendant avers that one Abdul Raheem Ligali and the plaintiff arranged with logs men for the supply of logs to the said Abdul Raheem Ligali and the defendant merely accepted instructions from the Plaintiff from time to time to pay the monies represented by the cheques to men who according to the Plaintiff had delivered logs to him or to Abdul Raheem Ligali on his behalf.

5. The defendant denies paragraph 12 of the Statement of Claim and avers that the receipts issued by the various payees are in the possession of the Plaintiff who improperly collected them from the Registry of the High Court of Lagos after they had been tendered by the defendant in a criminal matter.

6. The defendant admits paragraph 13 of the Statement of Claim and avers that he was under no obligation whatsoever to deliver any logs to the Plaintiff or to any one else on his behalf.

7. The defendant denies paragraphs 14 and 15 of the Statement of Claim.

8. The defendant admits paragraph 16 of the Statement of Claim and avers that his failure or neglect to pay was lawful and justifiable.

WHEREUPON the defendant contends that this action is misconceived and speculative.

Dated the 2nd day of November, 1959.

(Sgd.) M.A. ODESANYA.
Defendant's Solicitor,
11, Custom Street, Lagos.

For service on Plaintiff,
c/o S.O. Abudu Esq.,
116, Victoria Street,
Lagos.

No. 19

In the Supreme Court

No. 19

Court Notes on Motion.

2nd November, 1959.

COURT NOTES ON MOTION

MONDAY THE 2ND DAY OF NOVEMBER, 1959

BEFORE THE HONOURABLE,
NAGEON de LESTANG Esquire:
CHIEF JUSTICE

(Title as No.1)

ABUDU for applicant.

ODESANYA (OCHINIBI & ATIBA) for Respondent.

ABUDU:

Order XX Rule 1 (a) Applies in terms of motion.

Reads affidavits page page

Paragraph 1 page Irrevocable Power of Attorney made in February 1959 but registered in October, 1959. Paragraph 2 of counter-affidavit page clearly false.

Had letter produced by G.E. Cole as per page (Ex.A).

ODESANYA:

(a) Interim attachment of money in hands of 3rd party cannot be granted. Does not come under rule.

XVI N.L.R. 34.

(b) Not fully instructed, concedes defendant has given irrevocable power of attorney and no longer enters the property.

In the circumstances I would consent to an order for interim attachment of the property.

ABUDU:

There is power to attach the money in hands of 3rd party.

ORDER: By consent interim attachment to be issued on 143, Brickfield Road Ebute Metta as prayed in (b) of application.

Decision re (a) to be given on 4/XI/59.

Costs reserved till then.

(Sgd.) M.C. Nageon de Lestang.
Chief Justice.

In the Supreme Court

No. 20

Court Ruling.

4th November, 1959.

No. 20

COURT RULING

The plaintiff applied by way of motion for the interim attachment of (a) a sum of money due and payable by a third party to the defendant, and (b) a property belonging to the defendant, viz. a house adjoining No.143, Brickfield Road, Ebute Metta. The defendant consented to the order being made in respect of (b) and it was accordingly made on the 2nd November, 1959.

As regards (a) it was contended for the defendant that the order sought could not be made under Order XX. Mr. Odesanya relied in support of his contention on Sella Are & Ors. v. Anima Are, XVI N.L.R. 34. It was held in that case that there could be no interim attachment of a debt before judgment. I agree with this decision and hold that the application for interim attachment in so far as it relates to (a) alone is misconceived, and I make no order on it. The plaintiff having been particularly successful will have the costs assessed at £5. 5. 0d.

(Sgd.) M.C. Nageon de Lestang.
CHIEF JUSTICE.

Plaintiff's Evidence

No. 21

Matthew Odekoya Okupe.

1st December, 1959.

Examination.

PLAINTIFF'S EVIDENCE

No. 21

MATTHEW ODEKOYA OKUPE

(Title as No. 1)

ABUDU for Plaintiff.

ODESANYA (ATIBA) for defendant.

ABUDU opens his case and calls.

P.W.1. MATTHEW ADEKOYA OKUPE Sworn.

1, Baddley Avenue Yaba. Bank Director and General trader. Bank's name is Agbonmagbe Bank Ltd. Know defendant for past 20 years. Very friendly. Defendant was Paymaster in Nigeria Railway Corporation

at Ebute-Metta. He was also trading in logs. Between 1955 and 1956 defendant agreed to supply me with 10,000 tons of logs which I agreed to purchase. It was arranged that he should supply the logs to one Ligali for export to Europe. Ligali is also a close friend of mine and had agreed to export the logs on my behalf. From time to time defendant telephoned me that logs had been delivered to Ligali, I also saw him after telephone conversations and paid him by cheques for the number of the logs delivered by him to Ligali I gave him in all five cheques. These are the cheques (Ex.A1 - A5). Issued on my bank. Defendant cashed the cheques and endorsed them. Total amount £10,047.5/-. After payment I enquired after the logs - Defendant said they had been delivered to Ligali who had shipped them to Oslo. I discovered subsequently that all this was not true. I reported matter to police and defendant was charged. I never instructed defendant to pay any money to Ligali, I never bargained to buy logs from Ligali. I asked defendant for my money back. He has not paid me.

Cross-examined.

Myself, defendant and Ligali were present when the contract was entered into. Both Ligali and I were directors of Ligali Commercial Syndicate Ltd. I supplied a lot of money direct to Ligali to pay the defendant whenever Ligali reported that defendant had supplied logs and he had measured them. This money had nothing to do with the money I am claiming now. The cheques were given by me to defendant direct. I paid over £30,000 direct to Ligali, to be paid over to Defendant. Ligali paid me about £62,000.

I wrote them two letters to Ligali in connection with this claim (Ex. B1 - B2).

Out of the transaction concerning the 10,000 tons of logs I have received from Ligali £62,000 approximately. I gave money to Ligali to be paid to defendant and not vice versa.

Defendant undertook to supply logs to Ligali who would ship them to Europe on my behalf. Price of logs varied between £4. and £5.10.0 per ton. Ligali should have a record of logs and price. He did not give me any statement of account. Hence Ex.B1 and B.2. As far as I know defendant delivered no logs and none was shipped by Ligali. When I

In the Supreme Court

Plaintiff's Evidence

No. 21

Matthew Odekoya Okupe.

1st December, 1959.

Cross-examination - continued.

Re-examination.

wrote Exhibit B1 and B2 I was under the impression that defendant had supplied logs to Ligali. The money I gave Ligali was in the form of cheques issued in Ligali's name, I issued no other cheques or money in respect of this transaction.

Re-examined.

To my knowledge defendant did not supply any logs to Ligali and Ligali did not ship any.

CASE FOR PLAINTIFF CLOSED.

No. 22

Counsels' Addresses.

No. 22

COUNSELS' ADDRESSES

ABUDU:

Proved Defendant received the money claimed for logs alleged supplied to Ligali for plaintiff.

Para. 4 of defence not substantiated. No evidence that anybody but defendant got the money.

Proved no logs were supplied.

Therefore plaintiff has proved his case.

ODESANYA:

Writ of Summons. Consideration wholly failed.

Common ground that defendant received money in pursuance of an agreement to supply a 10,000 tons of timber.

Consideration not failed because plaintiff has received £62,000 in respect of the 10,000 tons logs.

To succeed plaintiff must prove that he has received no benefit from the transaction.

Chitty on Contract p.101 para. 201.

C.A.V. 7/XII/59.

(Sgd.) M.C. Nageon de Lestang.
Chief Justice.

No. 23

In the Supreme Court

No. 23

Judgment.

7th December, 1959.

J U D G M E N T

IN THE HIGH COURT OF LAGOS

HOLDEN AT LAGOS, NIGERIA

ON MONDAY THE SEVENTH DAY OF DECEMBER, 1959

BEFORE THE HONOURABLE,
MR. JUSTICE de LESTANG.
CHIEF JUSTICE

(Title as No.1)

J U D G M E N T

In this action the plaintiff claims from the defendant the return of £10,047.5.0d on the ground that the consideration for which the money was paid has wholly failed. The facts are very simple and are not in dispute. There was an agreement between the plaintiff and the defendant whereby the plaintiff agreed to purchase from the defendant who agreed to supply to the plaintiff 10,000 tons of logs. The logs were to be delivered to one Ligali, who was a business associate and friend of the plaintiff, for shipment to Europe. From time to time the defendant informed the plaintiff that he had delivered logs to a stated value to Ligali, and received payment therefor from the plaintiff. The defendant received altogether £10,047.5.0d. From time to time also Ligali informed the plaintiff that the defendant had delivered logs for the plaintiff and he too received from the plaintiff money in cash and cheques in order to pay for those logs. Ligali received in that way over £30,000. It was later discovered that the defendant had not delivered a single log to Ligali and that Ligali had not shipped any logs at all. Nevertheless, the plaintiff received from Ligali about £62,000 purporting to be the proceeds of the sale of the logs or some of them under the above-mentioned contract. There is no evidence where this money came from but it is a fair assumption to make that the defendant and Ligali were engaged in a gigantic fraud.

The Question for decision is whether in these

In the Supreme Court

No. 23

Judgment.

7th December, 1959 - continued.

circumstances the plaintiff's action on the ground that the consideration has wholly failed is well-founded or not. Mr. Odesanya, for the defendant, contends that since the plaintiff has received some benefit from the transaction, i.e. £62,000, the consideration cannot be said to have wholly failed. In my view this contention is sound. Failure of consideration is defined in 8 Halsbury's Laws of England, Third Edition, para. 421, as follows:-

> ".....
> ".....
> " A complete failure of the consideration of a contract occurs where one of the contracting parties fails to receive some benefit or valuable consideration which springs from the root and is in the essence of the contract. If, however, he once receives such a benefit then he has no remedy in this form of action".
> ".....
> ".....
> "....."

I cannot see how the plaintiff can come to the Court and say that he has derived no benefit in this transaction when he admits having received £62,000 under it. It is perfectly true that under the contract what he should have received are logs but those logs were not to be retained by him as logs indefinitely. They were to be resold at a profit and he has received, and still holds, £62,000 as being the alleged proceeds of the resale of those logs.

The plaintiff cannot, in my view, have it both ways. He cannot both retain the £62,000 and claim over and above the return of the payments he has made under the contract. There is another reason why this claim in the form in which it is made cannot succeed. In an action for the return of money on the ground of failure of consideration a plaintiff is only entitled to recover what he has paid and no more. If he has received any payment in respect of the transaction such payment must be deducted in order to ascertain what is due to him. In the present case it is not known for certain how much the plaintiff paid for the non-existent logs.

The evidence itself only refers to two total payments of approximately £30,000 to Ligali, and £10,047.5.0d. to the defendant. Since the plaintiff

has received £62,000 which he still retains it has not, in my view, been established that anything is owing to him. It may be that the plaintiff has a good claim in damages against the defendant or some other action against Ligali but it seems to me that the present action in its present form cannot succeed.

It is dismissed with costs assessed at 30 guineas.

(Sgd.) N.C. Nageon de Lestang.
CHIEF JUSTICE.

In the Supreme Court

No. 23

Judgment.

7th December, 1959
- continued.

No. 24

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

Suit No. LD/278/1959

BETWEEN

M. A. OKUPE ... Plaintiff

- and -

G. O. LAJA ... Defendant

In the Federal Supreme Court of Nigeria

No. 24

Notice and Grounds of Appeal.

21st December, 1959.

NOTICE OF APPEAL

TAKE NOTICE that the Plaintiff being dissatisfied with the decision more particularly contained in the judgment of Mr. Justice de Lestang, Chief Justice of the High Court of Lagos dated 7th December, 1959, doth hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph three and will at the hearing of the appeal seek the relief set out in paragraph four:

AND the appellant further states that the name and address of the person directly affected by the appeal is set out in paragraph five.

2. Part of the decision of the lower Court complained:

In the Federal Supreme Court of Nigeria

No. 24

Notice and Grounds of Appeal.

21st December, 1959 - continued.

"Nevertheless, the Plaintiff received from Ligali about £62,000 (Sixty-two thousand Pounds) purporting to be proceeds of the sale of the logs or some of them under the under-mentioned contract. There is no evidence where this money came from but it is a fair assumption to make that the defendant and Ligali were engaged in a gigantic fraud".

"I cannot see how the Plaintiff can come to Court and say that he has derived no benefit in this transaction when he admits having received £62,000 (Six-two thousand pounds) under it."..... 10

3. Grounds of Appeal:

1. The learned trial Chief Justice misdirected himself on the fact and therefore came to a wrong decision in law (that there was no complete failure of consideration) when he held:-

(a) "He cannot both retain the £62,000 (Sixty-two thousand pounds) and claim over and above the return of the payments he has made under the contract." 20

(b) "Since the defendant has received £62,000 (Sixty-two thousand pounds) which he still retains, it is not, in my view been established that anything is owing to him".

The judgment is altogether unreasonable and cannot be supported having regard to the weight of evidence.

Relief sought from the Federal Supreme Court of Nigeria:- To reverse decision of the lower Court and find in favour of Plaintiff/Appellant. 30

Person directly affected by the appeal:-

Appellant	Address
M.A. Okupe	1, Baddeley Avenue, Yaba

Respondent	Address
G.O. Laja	H.M. Prison, Broad Street, Lagos.

Dated this 21st day of December 1959.

(Sgd.) Coker & Sikuade
Plaintiff's Solicitors,
40, Apapa Road, 40
Ebute-Metta.

No. 25

AMENDED GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

F.S.C. No. 109/1960

BETWEEN:

M.A. OKUPE Plaintiff/Appellant

- and -

G.O. LAJA Defendant/Respondent

AMENDED GROUNDS OF APPEAL.

1. The learned Chief Justice misdirected himself on the issues raised in the Pleadings and on the evidence adduced by the Plaintiff and erred in holding ".....that since the Plaintiff has received some benefit from the transaction i.e. £62,000 the consideration cannot be said to have wholly failed".

2. The learned trial Chief Justice misdirected himself on the evidence and erred in coming to the following conclusion. I cannot see how the Plaintiff can come to the Court and say that he has derived no benefit in this transaction where he admits having received £62,000 under it ..... he has received and still holds £62,000 as being the alleged proceeds of the resale of those logs "in that there was no evidence to support such a finding of fact.

3. The learned Chief Justice failed to direct himself to the evidence before him whe he said "In the present case it is not known for certain how much the Plaintiff paid for the non-existent logs. The evidence itself only refers to two total payments of approximately £30,000 to Ligali and £10,047. 5. - to the Defendant. Since the Plaintiff has received £62,000 which he still retains it has not in my view, been established that anything is owing to him."

4. The Defendant having failed to prove any lawful or justifiable excuse for his failure or neglect to repay the amount claimed, the learned trial Judge erred in law in dismissing the Plaintiff's claim.

5. Judgment against the weight of evidence.

DATED at Lagos, this 21st day of June, 1960.

(Sgd.) David & Moore.

In the Federal Supreme Court of Nigeria

No. 25

Amended Grounds of Appeal.

21st June, 1960.

In the Federal Supreme Court of Nigeria

No. 26

Notes taken by Lionel Brett, F.J.

7th February, 1961.

No. 26

NOTES TAKEN BY LIONEL BRETT, F.J.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

TUESDAY THE 7TH DAY OF FEBRUARY, 1961.

BEFORE THEIR LORDSHIPS

LIONEL BRETT — FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR — FEDERAL JUSTICE
SIR VAHE ROBERT BAIRAMIAN — FEDERAL JUSTICE

F.S.C.109/1960

M.A. OKUPE ... Appellant

- v -

G.O. LAJA ... Respondent

APPEAL by plaintiff from decision of Lagos High Court dismissing claim for £10,047.5.0.

O. MOORE & AKISANYA for appellant

ODESANYA for respondent.

Motion for leave to argue amended G/A. Not opposed.

Granted.

MOORE arguing appeal

G/A.1.

Issues raised on pleadings - defence never alleged appellant received any benefit under the contract.

Judgment p.25 to 27

S/C p.p. 12/13 - reads para 3 - 16.

Defence p.20 - reads paras, 3 - 8. This defence never pleaded. Plaintiffs answers in XXn. did not bear it out even if it had been. Cardozo v. Exors. Doherty 4 WACA 78, 80 as to being bound by pleadings.

Judgment - reads from p.25 l.11 - findings of fact. Judge held there was a contract & no logs were supplied under it.

Whatever benefit plaintiff derived from the contract, the consideration did not spring from the root of the contract. Court refers to Rowland v. Divart (1923) 2 K.B. 500.

Plaintiffs evidence at p.24 - answers in Xxn. If the £62,000 was the proceeds of fraud by defendant & Ligali, it was not part consideration for the contract.

Letter Exh.B1 at p.40

G/A 2 misdirection on the evidence - have dealt with.

G/A 3 Exh B shows what is due.

G/A 4 Last paragraph of defence is not a plea that.

Odesanya for respondent

Under contract deft was to supply logs to Ligali. What plaintiff wanted was his profit not the logs. There was only one contract - sums of £30,000 & £10,000 odd were both paid under it.

Deft was dealing with Ligali, not with plaintiff. Pl's "hopes were disappointed". Must come with clear hands.

Payments were not appropriated to any particular delivery. Contract not severed.

Pl. ought to have shown that demands for the repayment of the £62,000 were being made.

P.23, l.4 seq.

Defence p.20 - para 4. Pl. did not deny having obtained the receipts - I agree there was no notice to produce & it was not put in XXn.

Ligali operated the contract & paid £62,000 in accordance with it.

Form of action is important - this is not an action for breach of contract.

In the Federal Supreme Court of Nigeria

No. 26

Notes taken by Lionel Brett, F.J.

7th February, 1961 - continued.

Only Ligali could say that no logs were shipped to buyers overseas.

Having paid out £40,000 & received back £62,000 cannot in equity ask for another £10,000.

What pl. wanted was profit & he has made it. As to Rowland v. Divarr, what pl. wanted in that case was title to the car, not merely the use of it.

Pl. here has got logs. Page 23, ll.37-39.

I rely on equitable basis of this form of action.

It is open to defendant to raise this issue. In Cardozo it was the plaintiff who departed from his pleadings. Plaintiff must prove his case & deft was entitled to cross-examine about any matters that might afford a defence.

Moore in reply:

Failure to plead £62,000 was deliberate on part of the defence. Plaintiff was taken by surprise at trial.

Judgment reserved.

(Sgd.) L. Brett
F.J.

No. 27

Judgment.

16th March, 1961.

No. 27

J U D G M E N T

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON THE 16TH DAY OF MARCH, 1961

BEFORE THEIR LORDSHIPS

LIONEL BRETT	FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE
SIR VAHE BAIRAMIAN	FEDERAL JUSTICE

F.S.C.109/1960

In the Federal Supreme Court of Nigeria

No. 27

Judgment.

16th March, 1961

- continued.

BETWEEN

M.A. OKUPE Appellant/Plaintiff

- and -

G.O. LAJA Respondent/Defendant

J U D G M E N T

BAIRAMIAN, F.J.: This is an appeal by the Plaintiff against the judgment given in Suit No.LD/278/1959 of the High Court of Lagos on the 7th December, 1959, which dismissed the suit with costs.

Briefly put, the Plaintiff's claim was for the repayment of £10,047.5s.0d. which the plaintiff was deceived into giving the defendant as the price of logs which the defendant had supplied, but which in fact the defendant had not supplied at all.

The plaintiff and the defendant were old friends. The plaintiff had another friend by the name of Abdul Raheem Ligali, who was a business associate of his. The plaintiff made a contract with the defendant whereby the latter was to supply by instalments ten thousand tons of logs; these he was to deliver to Ligali, who would check the deliveries, and thereafter the plaintiff would pay. From time to time the defendant informed the plaintiff that he had delivered a certain quantity; and from time to time Ligali informed the plaintiff that the defendant had delivered a certain quantity; and on the faith of what he was informed the plaintiff gave Ligali over £30,000, and paid the defendant himself £10,047.5s.0d. Afterwards the plaintiff discovered that the defendant had not delivered a single log. Ligali was supposed to ship the logs to Europe on the plaintiff's behalf: the plaintiff discovered that Ligali had not shipped any. The plaintiff averred that Ligali and the defendant were facing criminal charges about the £42,000. The present suit was against the defendant for repayment of the £10,047.5s.0d given him direct.

The defendant put in a defence, which came to this; he had no contract to deliver logs, and did not deliver any; it was true that the plaintiff

In the Federal Supreme Court of Nigeria

No. 27

Judgment.

16th March, 1961

- continued.

gave him the moneys making up £10,047.5s.0d., but it was for logs which the plaintiff told him he had received and for which he asked the defendant to pay the moneys to the persons who had supplied the logs to the plaintiff; and the defendant paid the moneys to these persons; so he was justified in not acceding to the plaintiff's claim. The defendant gave no evidence.

The plaintiff was the sole witness. In cross-examination he was asked questions about Ligali; and one of his answers was:-

> "Out of the transaction concerning the 10,000 tons of logs I have receivedfrom Ligali £62,000 approximately."

His other evidence has already been summarised.

The learned Chief Justice accepted his evidence, which proved that he had a contract with the defendant, that he paid the defendant £10,047.5s.0d for logs, and that the defendant did not supply any. The defendant had obtained the money by false pretences, and the plaintiff was therefore entitled to repayment. But the Judgment goes on to say:-

> "Nevertheless, the plaintiff received from Ligali about £62,000 purporting to be the proceeds of the sale of the logs or some of them under the above-mentioned contract. There is no evidence where this money came from but it is a fair assumption to make that the defendant and Ligali were engaged in a gigantic fraud."

So they were; and there is no evidence of the source from which Ligali paid the £62,000. But there is, with respect, some confusion of thought in saying that:-

> "the plaintiff received about £62,000 purporting to be the proceeds of the sale of the logs or some of them under the above-mentioned contract."

"The above-mentioned contract" harks back to the earlier statement in the judgment that:-

> "There was an agreement between the plaintiff

and the defendant whereby the plaintiff agreed to purchase from the defendant who agreed to supply to the plaintiff 10,000 tons of logs."

The £62,000 which Ligali paid the Plaintiff were not paid under the contract between the plaintiff and the defendant. Ligali doubtless paid that money under the contract between himself and the plaintiff, because of representations which he had made to the plaintiff. This becomes clear when one looks at the two letters which the plaintiff put in as exhibits. In the letter of the 25th January, 1957, the plaintiff, writing to J.B. Shagbola about Ligali's account, says this:-

"It appears Mr. Ligali is fooling everybody about the outcome of 10,000 under-size Obeche logs bought and delivered to him out of which he alleged shipment value £67,000."

In the letter of the 2nd April, 1957, which the plaintiff wrote to Ligali himself, he says:-

"I think it is now high time for you to submit to me without further delay a full statement of undersize logs account total tonnage of which 10,000 tons purchased by me at £5.10s.0d per ton plus duty at £1.2.6d. duly paid to you. In view of the fact that the whole 10,000 tons had now been shipped by you at a selling value of £10 per ton. I leave further comments till you are able to submit a statement showing whereabout the whole capital and net profit of about £50,000 lies. Copy of my letter of 25th Jan., 1957, to Mr. J.B. Shogbola is repeated below once more."

Ligali had alleged a shipment value of £67,000 and a sale value of £100,000: the profits would have been £33,000. Apparently the plaintiff paid Ligali £67,000 less £10,047.5s.0d. which he paid the defendant - that is nearly £57,000. In his oral evidence he said he paid Ligali over £30,000. The amount paid to Ligali is not clear; and if this had been a case between Ligali and the plaintiff, it might have been necessary to clear it up. Here it is sufficient to say that the plaintiff had a separate claim against Ligali, who had taken his money, pretending it was for logs received and shipped or to be shipped to Europe for the plaintiff's profit, but using it no doubt for his own

In the Federal Supreme Court of Nigeria

No. 27

Judgment.

16th March, 1961

- continued.

profit instead. Ligali paid the plaintiff £62,000; but that payment concerns the obligations of Ligali to the plaintiff, and I cannot see how any discharge, whether partial or entire, of Ligali's obligations by Ligali can avail the defendant.

There are cases in which a stranger to a contract between A. and B. pays A. some money in order to discharge the debt of B., which precludes A. thereafter from making any further claim against B: e.g. Hirachand Punamchand v. Temple, 1911, 2 K.B. 330. In the case in hand there is no allegation and no evidence that the plaintiff received the £62,000 from Ligali in discharge of the obligation of the defendant as well as of Ligali himself.

There was confusion in this case, which apparently arose in this way. The plaintiff was embarking on an enterprise which involved him in two separate and distinct contracts - one of sale, with the defendant, and another of agency with Ligali: the defendant was to supply 10,000 tons of logs; Ligali was to take delivery and ship the logs to Europe; and the plaintiff has kept apart his rights against each of them under his respective contract. As both contracts related to the same 10,000 tons of logs, it was perhaps a natural slip to speak of them as one "transaction" of 10,000 tons of logs. Another factor which perhaps contributed to the confusion was the fraud practised by the defendant and by Ligali apparently helping each other in representing to the plaintiff that the defendant had supplied logs - which enabled Ligali to pretend that he was shipping or had shipped them. Thus, although there were two separate and distinct contracts, the defence fused them into one "transaction" in the cross-examination of the plaintiff, as if it had been a case of one contract only between the plaintiff on the one hand and, on the other, the defendant and Ligali, and argued that the plaintiff could not sue the defendant for money had and received on a consideration which failed totally. That presentation and argument was unwarranted, but it succeeded and the confusion having been created, as I must with respect say, it pervades the judgment, which proceeds to say that, as the plaintiff received some benefit from the transaction, i.e. £62,000, the consideration cannot be said to have wholly failed, and that the plaintiff cannot both retain the £62,000 and claim over and above the return of the payments he has made

under the contract. For that view the judgment quotes a passages from Halsbury's Laws of England, 3rd edition, vol. 8, para. 421, which states that:-

> "A complete failure of the consideration of a contract occurs where one of the contracting parties fails to receive some benefit or valuable consideration which springs from the root and is in the essence of the contract. If, however, he once received such a benefit then he has no remedy in this form of action."

With respect to the learned authors, I agree: But I believe that they have in mind the parties to the contract and none others. Two cases may be cited to illustrate that statement of the law.

In Rowland v. Divali 1923, 2 K.B. 500, the Plaintiff bought a car from the defendant and had it to use for a time; but it belonged to another, to whom he had to restore it; his contract being for the purchase of the car, as he did not get what he had bargained for, namely the property in the car, he was held entitled to claim his money back.

In Hunt v. Silk, 1804, 5 East, 449, the defendant, in consideration for £10, agreed to give the plaintiff immediate possession of a house, make some repairs, and execute a lease within ten days. The Plaintiff paid the £10 and went into possession, and continued in possession beyond the ten days, and then he vacated the house on the ground that the repairs were not made and the lease was not executed within the ten days; and he sued the defendant for the return of the £10. He lost because he had derived some benefit by the intermediate possession of the house.

Both cases deal with a contract between plaintiff and defendant. Such is also the case in hand: the plaintiff bargained with the defendant for the supply of logs, paid him for a number of pretended deliveries which the defendant, told the plaintiff he had made, but got no logs; he is entitled to claim back from the defendant the money he paid him for those particular bogus deliveries. The argument for the defendant, that the Plaintiff has not been completely disappointed as he has received £62,000 from Ligali, merely creates confusion and clouds the issue in the present case.

The question in the present case cannot be

In the Federal Supreme Court of Nigeria

No. 27

Judgment.

16th March, 1961.

-- continued.

affected by Ligali's payment. I think that the plaintiff was entitled to sue the defendant and should have had judgment. Accordingly I would allow the appeal and enter judgment for the plaintiff for £10,047.5s.0d with costs here and below; the costs in this court to be forty guineas, and those below to be taxed.

(Sgd.) Vahe Bairamian
FEDERAL JUSTICE

I Concur (Sgd.) Lionel Brett
FEDERAL JUSTICE

I concur (Sgd.) John Taylor
FEDERAL JUSTICE

Mr. O. Moore (Mr. Akinsaya with him) for the Appellant

Mr. M.A. Odesanya for the Respondent.

No. 28

Order allowing Appeal.

16th March, 1961.

No. 28

ORDER ALLOWING APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.LD/278/1959
FSC. 109/1960

ON APPEAL from the Judgment of the High Court of the Lagos Judicial Division

BETWEEN

M.A. OKUPE ... Appellant

- and -

G.A. LAJA ... Respondent

FEDERAL JUSTICE
(PRESIDING)

Thursday the 16th day of March, 1961

UPON READING the record of Appeal herein and after hearing Mr. O. Moore (Mr. Akinsanya with him) of Counsel for the Appellant, and Mr. M.A. Odesanya of counsel for the Respondent:

IT IS ORDERED that:

1. this appeal be allowed with 40 guineas costs.

2. judgment be entered for the Plaintiff/ Appellant for £10,047.5/-.

3. the costs in the Court below to be taxed.

Ag. CHIEF REGISTRAR.

In the Federal Supreme Court of Nigeria

No. 28

Order allowing Appeal.

16th March, 1961

- continued.

No. 29

No. 29

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Order granting final leave to appeal to Her Majesty in Council.

23rd October, 1961.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.LD/278/1959
FSC. 109/1960

APPLICATION for an Order for Final Leave to Appeal to Privy Council

BETWEEN:

G.O. LAJA — Respondent/Applicant

- and -

M.A. OKUPE — Appellant/Respondent

Monday the 23rd day of October 1961

UPON READING the application herein and the affidavit of the Applicant sworn to on the 30th day of August 1961 and after hearing Mr. M.A. Odesanya of counsel for the Applicant, Respondent not being present or represented:

IT IS ORDERED that Final Leave to appeal to Privy Council be granted.

(Sgd.) J.A. Adefarasin
CHIEF REGISTRAR.

Plaintiff's Exhibits

"B.1"

Letter, M.A. Okupe to A.R. Ligali.

2nd April, 1957.

E X H I B I T S

EXHIBIT "B.1" - LETTER, M.A. OKUPE to A.R. LIGALI

cc: J.B. Shogbola,
127, Lewis St. Lagos.

Ref No.G30/4/57/Vol.7/90:
Chief M.A. Okupe,
P.O. Box 8, Ebute-Metta.
2nd April, 1957.

Mr. A.R. Ligali,
The Managing Director of
Ligali Commercial Syndicate Ltd.
59, Ojo-Giwa Street,
Lagos.

Dear Sir,

UNDERSIZE OBECHE LOGS ACCOUNT.

I think it is now high time for you to submit to me without further delay a full statement of undersize logs account total-tonnage of which is 10,000 ten thousand tons purchased by me at £5.10/- (Five pds Ten shgs) per ton plus duty at £1.2.6d (One Pd two shillings and six pence) duly paid to you 6,700 tons alleged shipped by you since September 1956 which you still maintain is still pending in Europe.

In view of the fact that the whole 10,000 ten thousand tons had now been shipped by you at a selling value of £10 per ton. It is therefore imperative that an immediate statement of account be submitted by you in the interest of peace. A copy of this letter is being served on Mr. Laja through whom the 10,000 tons were purchased and paid for by me, from whom or through whom you took delivery.

I leave further comments till you are able to submit a statement showing whereabout the whole capital and net profit of about £50,000 (Fifty thousand pounds) lies.

Copy of my letter of 25th January, 1957 to Mr. J.B. Shogbola is repeated below once more;

Yours faithfully,

Chief M.A. Okupe.

Plaintiff's Exhibits

"B.1"

Letter, M.A. Okupe to A.R. Ligali.

2nd April, 1957 - continued.

Ref. No.G30/1/57/Vol.7/35:

25th January, 1957.

Mr. J.B. Shogbola,
127, Lewis St. Lagos.

Dear Sir,

Re A.R. LIGALI'S ACCOUNT.

It appears Mr. Ligali is fooling every body about the outcome of 10,000 under size Obeche Logs bought and delivered to him out of which he alleged shipment value £67,000: (Sixty-seven thousand pds) since September 1956, and up to this moment he has not been able to satisfy me as to the result of Logs shipped by him and those on hand.

My patience is exhausting over this issue in which involve so much amount which Mr. Ligali appears to think little of, either bend or brake it is time I know from him through you something definite in order that unpleasantments might be avoided. You better hands off from the matter and let me face Ligali myself for a week.

Yours faithfully,

(Sgd.) M.A. Okupe.

Mr. J.B. Shogbola who acted as a middleman in this matter from time continued to tell me that you had not collected the sum of £67,000 (Sixty-seven thousand pounds) on two shipments reported by you to all of us in September, 1956, which I do not believe to be correct.

Yours Faithfully,

(Sgd.) Chief M.A. Okupe.

Plaintiff's Exhibits

"B.2"

Letter, M.A. Okupe to A.R. Ligali.

12th April, 1957.

EXHIBIT "B.2" - LETTER, M.A. OKUPE to A.R. LIGALI

Ref. No.G30/4/57/Vol.7/109.

Chief M. A. Okupe

P.O. Box 8, Ebute-Metta.

12th April 1957.

Mr. A.R. Ligali,
The Managing Director,
Ligali Commercial Syndicate Limited,
59, Ojo-Giwa Street,
Lagos.

Dear Sir,

It appears you are determined to keep the Logs account of about £100,000/ / (One hundred thousand pds) stagnant indefinitly and I hereby advise you in the interest of your-self to arrange and submit full statement of account to me and stop backing a wrong horse, if on the other hand you refuse to do this. The outcome will not suit you.

I do not see any reason why you have considered yourself safe to act in this manner, which will eventually lead to your failure the usual story that the payment had not been sent to you from United Kingdom, is bogus think twice and stop fooling yourself.

I am sending you this note of warning in my capacity as co-Director of Ligali Commercial Syndicate and also as a financier of the deal.

Beware and be careful.

I have been patient enough with you, over this issue owing to the intervention of people who believed your story, that the shipment you made through British & French Bank Lagos had not been paid for, this necessitated my going with you sometime in October 1956 to see the Manager of British & French Bank Lagos in Company of Albert Ogunnubi of 108 Evans Street, Lagos Alhaji A. Ojikutu. Chief Ayobahan of Benin & Mr. C.C. De Madeiros of 106, Patey Street, Ebute-Metta, when you made us to understand that we should allow you alone to see the Manager of the Bank this we agreed to and you

went in to see the Manager and came out to tell us that payment of 2 shipments amounted to £67,000: (Sixty-seven thousand Pounds) had not been ready, but the Manager of the Bank asked you to come back for same on Monday since then no head or tail of this matter.

Later on you made me to understand that the balance of Logs the selling value of which is £33,000. / / (Thirty-three thousand pounds) had been shipped and that payment in bulk would be made to you. It is now clear without any doubt that you have received this money and why you have not till now settled the account with me baffles any sane thinking person. Copy of your Cablegram of 22nd October 1956 sent to Oslo asking this money to be remitted to you through Lloyd Bank London is with me written in your own handwriting.

Yours faithfully,

(Sgd.) Chief M.A. Okupe

Plaintiff's Exhibits

"B.2"

Letter, M.A. Okupe to A.R. Ligali.

12th April, 1957 - continued.

IN THE PRIVY COUNCIL No. 24 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

G.O. LAJA (Defendant) Appellant

- and -

M. A. OKUPE (Plaintiff) Respondent

R E C O R D O F P R O C E E D I N G S

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.