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Judgment
15, 1964

IN THE PRIVY COUNCIL

No. 38 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

FAWEZE MOUKARIHM	<u>Defendant/Appellant</u>
- and -	
ABOLADE OLATUNJI COKER	<u>Plaintiff/Respondent</u>
- and -	
JOHNSON AINA and IBADAN DISTRICT COUNCIL	<i>PRO FORMA</i> <u>Defendants/Respondents</u>

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78565

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

A.L. BRYDEN & WILLIAMS,
 53, Victoria Street,
 London, S.W.1.
 Solicitors and Agents for
 Respondent.

IN THE PRIVY COUNCILNo. 38 of 1962ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N

FAWEZE MOUKARIHM

Defendant/Appellant

- and -

ABOLADE OLATUNJI COKER

Plaintiff/Respondent

- and -

JOHNSON AINA and IBADAN
DISTRICT COUNCIL*PRO FORMA*
Defendants/RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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1.

IN THE PRIVY COUNCIL

No. 38 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

PAWEZE MOUKARIHM Defendant/Appellant

- and -

ABOLADE OLATUNJI COKER Plaintiff/Respondent

- and -

10 JOHNSON AINA and IBADAN
DISTRICT COUNCIL Defendants/Respondents

RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS

IN THE HIGH COURT OF JUSTICE WESTERN REGION OF
NIGERIA

IBADAN JUDICIAL DIVISION

Suit No.1/300/1957

BETWEEN: A.O. COKER Plaintiff

- and -

20 F. MOUKARIHM Defendant

To: F. MOUKARIHM of Lebanon Street, Ibadan.

You are hereby commanded in Her Majesty's name to attend this Court at Ibadan on Monday the 3rd day of February, 1958, at nine o'clock in the forenoon to answer a suit by A.O. Coker, c/o his Solicitor, E. Akinola Cole, Esq., of N6/67CA Mokola, Oyo Road, Ibadan, against you.

The Plaintiff's claim against the Defendant is as per particulars attached.

30 Issued at Ibadan the 13th day of December, 1957.

(Sgd.) R.Y. Hedges,
JUDGE, HIGH COURT.

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.

In the
Supreme Court

No. 1.
Civil Summons.
13th December,
1957.

2.

In the
Supreme Court

No. 2.

No. 2.

PARTICULARS OF CLAIM

(Title as No. 1)

Particulars
of Claim.

9th December,
1957.

The Plaintiff's claim against the Defendant
is as follows:-

(1) Declaration of title to all that piece or
parcel of land lying situate and being at
the junction of Onireke Street, and Oke Padre
Street, adjoining Ogunpa Stream, Ibadan.

(2) Injunction to restrain the Defendant his
servants, agents and privies from coming on
the said land.

10

Annual Value - £10.

DATED this 9th day of December, 1957.

(Sgd.) E. Akinola Cole
PLAINTIFF'S SOLICITOR.

Plaintiff's address: c/o His Solicitor, E. Akinola
Cole, Esq., N6/676A Mokola, Oyo Road, Ibadan.

Defendant's address: Lebanon Street, Ibadan.

2nd Defendant: Johnson Aina, c/o U.T.C. Motors,
Ijebu Bye-Pass, Ibadan.

20

3rd Defendant: Ibadan District Council, Mapo Hall,
Ibadan.

No. 3.

Statement of
Claim.

11th June,
1958.

No. 3.

STATEMENT OF CLAIM

(Title as No. 1)

STATEMENT OF CLAIM (WITH PLAN ATTACHED)

1. The Plaintiff is a Licensed Surveyor and re-
sides at No.60, Race Course Road, Ibadan.

2. The Defendant is a trader and carries on
business at New Court Road, Ibadan.

30

3. The land in dispute is situate at the junction
of Onireke Street and Oke Padre Street, Ibadan
more particularly described on the attached plan
No. CK68/58 and thereon verged pink.

3.

4. The said land originally belonged to Balogun Ibikunle Family of Ayeye, Ibadan, who sold it to Mr. Ayotunde Rosiji on the 16th day of December, 1950, the deed of conveyance between Balogun Ibikunle family and Mr. Ayotunde Rosiji is registered as No.56 at page 56 in Volume 29 of the Lands Registry at Ibadan.

10 5. The land in dispute has been in possession of Ibikunle Family for over 100 years before the sale in 1950 to Mr. Ayotunde Rosiji and the Ibikunle Family have from time to time exercised acts of ownership on the said land, e.g. by planting vegetables on the land and at one time gave it out to tenants to sell planks.

6. In 1952 Mr. Ayotunde Rosiji reconveyed the land in dispute to the Ibikunle Family and the reconveyance is registered as No.63 at page 63 in Volume 36 of the Lands Registry at Ibadan.

20 7. The said land was sold and conveyed to the Plaintiff on the 27th of March 1957 by representatives of Balogun Ibikunle Family, and registered as No.6 at page 6, Volume 190 in the Land Registry at Ibadan.

8. The Defendant has laid a foundation for building on the land and is claiming the land as his own.

Wherefore the Plaintiff claims as per his writ of summons.

DATED at Ibadan the 11th day of June, 1958.

30 (Sgd.) E.Akinola Cole
for Cole & Chukura
Plaintiff's Solicitors.

In the
Supreme Court

No. 3.
Statement of
Claim.

11th June,
1958
- continued.

No. 4.

STATEMENT OF DEFENCE (FIRST DEFENDANT)

(Title as No. 1)

STATEMENT OF DEFENCE

Save and except as hereinafter expressly admitted, the Defendant denies each and every allegation of fact contained in the Plaintiff's Statement of Claim as if each and every such allegation were separately taken and specifically traversed.

No. 4.

Statement
of Defence
(First
Defendant)

3rd July, 1958.

In the
Supreme Court

No. 4.

Statement of
Defence (First
Defendant)

3rd July, 1958
- continued.

1. The Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim.

2. The Defendant is not in a position to admit or deny paragraph 4 of the Statement of Claim; as to the sale to Mr. Ayotunde Rosiji, the Defendant will not require any proof of it at the trial nor the subsequent reconveyance of same by Mr. Rosiji as alleged in paragraph 6 but would require strict proof of acts of ownership and possession of the land in IBIKUNLE family for the period alleged in paragraph 5 of the Statement of Claim. 10

3. With regard to paragraph 7 the Defendant makes no admission or denial of same as the allegation therein could only be within the knowledge of the Plaintiff.

4. The Defendant is a lessee of the land in dispute from one Johnson Aina of Ibadan the same having been covered by a registered Deed No.49 at page 49 in Volume 74 in the Lands Registry with the usual consent of the traditional authorities under customary tenure to which the land in dispute is subject 20

5. The Defendant has been in possession of the land since 1953 and whatever rights he exercises on the land in dispute as alleged in paragraph 8 of the Statement of Claim he does as an estate owner by virtue of the Deed of Lease referred to above in paragraph 4.

6. Johnson Aina derives his title from the Olubadan and Chiefs of Ibadan in whom the land is vested under customary tenure by an agreement between the parties dated 4th September, 1951. 30

7. The Olubadan and the Chiefs have through the machinery of the then Ibadan Native Authority Council reclaimed the area of which the present land in dispute is a part many years ago for development purpose; the Council has re-allotted several plots in the area to several people for development.

8. Whereof the Defendant says that Plaintiff's Claim against him be dismissed. 40

DATED at Ibadan this 3rd day of July, 1958.

(Sgd.) A. Ademola

For Okusaga, Ademola
Solicitors for Defendant.

No. 5.

ORDER JOINING CO-DEFENDANTS

IN THE HIGH COURT OF JUSTICE

WESTERN REGION OF NIGERIA

IBADAN JUDICIAL DIVISION

ENROLMENT OF ORDER: Court No.1 Suit No.1/300/57

BETWEEN: A.O.Coker Plaintiff

- and -

F. Moukarihm, Johnson Aina
Ibadan District Council Defendants

10

(L.S.)
(Sgd.) O.Jibowu
CHIEF JUSTICE.

(Joined by Order of Court dated 20/10/58)

Motion for an Order to join (1) Johnson Aina
and (2) Ibadan District Council, as Defendants
in the above suit.

UPON READING the Affidavit of Adenekan Ademola, Male, British Subject, Solicitor and Advocate of Messrs. Okusaga and Ademola, Solicitors of No. 23, Lebanon Street, Ibadan, sworn to and filed at the High Court Registry, Ibadan, on the 4th day of October, 1958:

20

AND AFTER HEARING Mr. Ademola of Counsel for the Defendant and Mr. Chukura of Counsel for the Plaintiff, not opposing:

IT IS ORDERED that Johnson Aina and the Ibadan District Council be joined as Defendants in the above named suit, and that the Statement of Claim and Defence filed in this suit be served on them.

30

ISSUED at Ibadan under the Seal of the Court and the Hand of the Presiding Judge this 20th day of October, 1958.

(Sgd.) Afolabi Akinosho,
REGISTRAR, HIGH COURTS.

In the
Supreme Court

No. 5.

Order joining
Co-Defendants.

20th October,
1958.

In the
Supreme Court

No. 6.

STATEMENT OF DEFENCE OF THIRD DEFENDANT

No. 6.

(Title as No.5)

Statement of
Defence of
Third Defendant.

STATEMENT OF DEFENCE

7th February,
1959.

Save and except as are herein expressly admitted the Defendants deny each and every allegation of facts contained in the Plaintiff's Statement of Claim as if each were set out seriatim and expressly denied.

1. The 3rd Defendant admits paragraphs 1, 2, 3, 10
of the Statement of Claim.
2. The 3rd Defendant denies paragraph 4 of the
Statement of Claim and put the Plaintiff to
the strict proof thereof.
3. The 3rd Defendant denies paragraph 5 of the
Statement of Claim and put the Plaintiff to
the strict proof thereof.
4. The 3rd Defendant is not in position to admit
or deny paragraph 6 nor would the 3rd Defend- 20
ant require any proof of the allegations con-
tained therein.
5. The 3rd Defendant is not in position to admit
or deny paragraph 7 and put the Plaintiff to
the strict proof thereof.
6. The 3rd Defendant or their predecessors in
title is the owner of the land and had been
in possession of the land since 1916.
7. The 3rd Defendant became seized of the land as
a result of surrender of that part of the 30
interest of one Seidu Williams to the 3rd De-
fendant who is the successor in title of the
Bale and Council of the Ibadan Native Author-
ity and the grant to Seidu Williams of a
Memorandum of Agreement by the 3rd Defendant
in accordance with the Report of Mr. Justice
Speed.
8. The second Defendant is the Lessee of the 3rd
Defendant.

7.

9. The Defendant will contend at the trial that the Plaintiff has no interest whatsoever in or on this land.
10. The 3rd Defendant will further plead laches, stale claim and acquiescence.
11. The 3rd Defendant will further contend that the claim is speculative and frivolous and should be dismissed with costs.

DATED the 7th day of February, 1959.

10

(Sgd.) Akande
3rd Defendant's Solicitor.

In the
Supreme Court

No. 6.

Statement of
Defence of
Third Defendant.

7th February,
1959

- continued.

No. 7.

STATEMENT OF DEFENCE OF SECOND DEFENDANT

(Title as No. 5)

STATEMENT OF DEFENCE

1. Save and except as is hereinafter expressly admitted the 2nd Defendant denies each and every allegation of fact in the Plaintiff's Statement of Claim and puts him to the strict proof thereof.
2. The 2nd Defendant admits paragraphs 1, 2 and 3 of the Plaintiff's Statement of Claim.
3. The 2nd Defendant denies paragraphs 4 and 5 of the Plaintiff's Statement of Claim and puts him to the strict proof thereof.
4. The 2nd Defendant is not in a position to admit or deny paragraphs 6 and 7 of the Statement of Claim but says the alleged sales if made are ineffectual to pass any interest whatsoever in the land in dispute to the Plaintiff.
5. The 2nd Defendant says that in furtherance of an agreement dated 4th day of September 1951 entered between the Olubadan of Ibadan for himself and on behalf of the Chiefs and people of Ibadan of the one part and the 2nd Defendant of the other part, the Ibadan Native Authority, in September 1951 put the 2nd Defendant into effective possession of the land in dispute.

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40

No. 7.

Statement of
Defence of
Second
Defendant.

4th March 1959.

In the
Supreme Court

No. 7.

Statement of
Defence of
Second
Defendant.

4th March 1959
- continued.

6. Under the agreement referred to in paragraph 5, it was agreed that the Olubadan shall convey in fee simple the land in dispute to the 2nd Defendant.

7. The Ibadan Native Authority the Predecessors in title of the 3rd Defendant were the former owners of the land in dispute and had for at least 35 years prior to 1951 been in effective possession of the same and had continuously exercised acts of ownership over it.

10

8. The 1st Defendant is a lessee of the land in dispute from the 2nd Defendant.

9. The 2nd Defendant will contend that Plaintiff and the persons through whom he is claiming have been guilty of laches and acquiescence.

Wherefore the Plaintiff is not entitled as per his writ of summons.

DATED at Ibadan this 4th day of March, 1959.

For Agbaje & Agbaje
Solicitors

20

(Sgd.) Olatunji Agbaje
For the 2nd Defendant.

No. 8.

Amended
Statement of
Defence of
Third Defendant.

6th April,
1959.

No. 8.

AMENDED STATEMENT OF DEFENCE OF THIRD
DEFENDANT.

(Title as No.5)

AMENDED STATEMENT OF DEFENCE

Save and except as are herein expressly admitted the Defendants deny each and every allegation of facts contained in the Plaintiff's Statement of Claim as if each were set out seriatim and expressly denied.

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1. The 3rd Defendant admits paragraphs 1, 2, 3 of the Statement of Claim.

2. The 3rd Defendant denies paragraph 4 of the Statement of Claim and put the Plaintiff to the strict proof thereof.

3. The 3rd Defendant denies paragraph 5 of the Statement of Claim and put the Plaintiff to the strict proof thereof.
4. The 3rd Defendant is not in position to admit or deny paragraph 6 nor would the 3rd Defendant require any proof of the allegations contained therein.
- 10 5. The 3rd Defendant is not in position to admit or deny paragraph 7 and put the Plaintiff to the strict proof thereof.
6. The 3rd Defendant or their predecessors in title is the owner of the land and had been in possession of the land since 1916.
7. The 3rd Defendant avers that it is a well known custom throughout Yoruba land and particular in the Ibadan Districts that lands are held at the disposal of the head and superior Chiefs in accordance with native Law and Custom and Bale Fajinmi became seized of this land in accordance with this custom.
- 20 8. That Seidu Williams derived title from one Kasumu Alli who derived title from the said Bale Fajinmi.
9. That the 3rd Defendant became seized of the land by acquiring that part of Seidu Williams interest and by reclamation.
10. The 2nd Defendant is the Lessee of the 3rd Defendant.
- 30 11. The Defendant will contend at the trial that the Plaintiff has no interest whatsoever in or on this land.
12. The 3rd Defendant will further plead laches, stale claim and acquiescence.
13. The 3rd Defendant will further contend that the claim is speculative and frivolous and should be dismissed with costs.

In the
Supreme Court

No. 8.
Amended
Statement of
Defence of
Third Defendant.
6th April, 1959
- continued.

DATED the 6th day of April, 1959.

(Sgd.) M.O. Akande,
3rd Defendant's Solicitor.

In the
Supreme Court

PLAINTIFF'S EVIDENCE

No. 9.

Plaintiff's
Evidence.

ABOLADE OLATUNJI COKER

BEFORE THE HONOURABLE MR. JUSTICE QUASHIE-IDUN,
ACTING JUDGE.

No. 9.

TUESDAY THE 14th DAY OF APRIL, 1959.

Abolade
Olatunji Coker.

(Title as No. 5)

14th April,
1959.

Chukura for Plaintiff.

Examination.

Ademola for 1st Defendant and holds Agbaje's brief
for 1st Co-Defendant.

10

Akande for 2nd Co-Defendant.

"A".

ABOLADE OLATUNJI COKER: S.B. in English:- I live
at Ibadan and I am a Licensed Surveyor. I know
the Defendant and Co-Defendants and the land in
dispute I have made a plan of the land in dispute.
It is the one filed by me and now produced. Tend-
ered in evidence - not objected to and marked "A".

"B".

The land in dispute is the area edged in pink
on the plan. The land originally belonged to
Balogun Ibikunle family. The family conveyed it
to Ayo Rosiji. It was reconveyed to the family
by Rosiji and the family conveyed it to me. I pro-
duce a Deed of Conveyance from Ibikunle family to
me. It is dated on the 27th March 1957 - Tendered
in evidence - not objected to and marked "B".

20

Before 1953 I know that people were setting
boards on the land and were paying rents to the
Ibikunle family. Other persons planted vege-
tables on the land. In 1957 I saw that the Defen-
dant Moukarihm had fenced the land. Early this
year I saw him putting up a building on the land.
I therefore instituted this action for a declara-
tion of title and for Injunction.

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Cross-
Examination.

Cross-Examined by Akande for Ademola who has asked
to be excused.

I am a relative of a woman called C.M. Coker.
She was Plaintiff in a Suit No.1/56/55 instituted
in the High Court Ibadan. C.M. Coker is my mother
and I represented her in that case. She withdrew
the action. It is not correct that the Ibikunle
family has no title to the Land in dispute. The

40

suit which my mother instituted was in respect of another land quite different from the land in dispute. It is not correct that Rosiji reconveyed the land to the Ibikunle family because he was not satisfied with the title of the family. The land in dispute was not a portion of the land in dispute between the Ibikunle family and the Ibadan District Council Suit No.1/120/49. It is not correct that the Ibadan District Council claimed the land now claimed by me in the Suit No.1/120/49 against the Ibikunle family.

10

Akande tenders in evidence Plan of area in dispute in Suit No.1/120/49 - not objected to and marked "C".

Cross-Examination continued:- The land edged pink in Exhibit "A" is outside the area of the land in dispute in Suit No.1/120/49 and shown in Exhibit "C" - I have a brother Adekunle Coker who is a Licensed Surveyor and under whom I worked for a number of years. He prepared the plan Exhibit "C" for the Ibikunle family. I am a friend of the Ibikunle family and am their Surveyor. I know all the lands claimed by that family. I assisted my brother in making the plan. When I bought the land I did not know that there was any litigation over it. I deny that the land in the present dispute was part of land acquired by the Ibadan District Council and known as Gbaji (2). I do not agree that the land now claimed by me is shown in plan now shown to me and numbered I.B.121 - Plan No.IB.121 tendered in evidence by Akande and objected to by Chukura on the ground that plan was not made by Plaintiff - it cannot be put in evidence through the Plaintiff - Akande refers to Section 108, 112, 118 of Evidence Act Cap.63 and states the Plan is an official document.

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BY COURT: There is no evidence before me that the plan tendered is an official document and I reject it at this stage.

40 BY THE COURT:

It was in 1957 that I noticed that Defendant had fenced the land. I noticed the fence after I had bought the property. The fence was made of Poles and wire.

By Akande through the Court:

In 1953 the Ibadan District Council built

In the
Supreme Court

Plaintiff's
Evidence.

No. 9.

Abolade
Olatunji Coker.

14th April,
1959.

Cross-
Examination
- continued.

By Court.

In the
Supreme Court

Plaintiff's
Evidence.

No. 9.
Obalade
Olatunji Coker.
14th April,
1959.
Cross-
Examination
- continued.

walls to stop the stream from rushing into the land. I deny that the walls were built by the Defendant Moukarihm in 1953 or 1954. I made enquiries before I bought the land, I made enquiries at the Government lands Department. I found that in 1950 the Ibikunle family granted to Rosiji and that Rosiji had conveyed the land back to the family. It was after I had sued the Defendant that I found that he had taken a lease from the 1st Co-Defendant. I did not know that the I.D.C. had interest in the land. I know that the I.D.C. has a Lands Department. I did not go there to investigate in connection with the land in dispute. As far as I know the Lands Department by the I.D.C. deals only with building plans. I know that they keep a chart of proposed buildings. I do not know that the I.D.C. keeps a record of site plans. I have never made a search in the Lands Office of the I.D.C. I know that the I.D.C. had a number of plots in Ibadan Town.

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20

Re-Examination.

Re-Examination

I would locate the land I claim in this Suit on the spot shown on Exhibit "C" as land belonging to Alapinti Family - I did not call the land Alapinto family land. I know that the I.D.C. has built several walls where water rushes into land.

No.10.
Salami Eniaiyewu.
14th April 1959.
Examination.

No. 10.

SALAMI ENIAIYEWU

SALAMI ENIAIYEWU: S.K. in Yoruba:- I live at Ibadan and I am a carpenter. I am also a farmer. I cannot tell my age. I know the Plaintiff. I know the family of Balogun Ibikunle. I know the land in dispute. Sometime ago, I obtained a grant of the land in dispute and planted sugar cane on it. This was about 50 years ago. I also planted vegetables on the land. One Oni has a building next to the land in dispute. On the other side of the land, there is a street which is called Oke Padre Street. I am not on the land now. I left the land in 1958. I left the land when I saw people disputing over the land. A man built a store on the land. He is called Gbadamosi. He had a dispute over the land with the landlord. It was Balogun Ibikunle the head of the family who

30

40

put me in possession. The building I put up on the land was a temporary workshop. It is not there now. The land still belongs to Balogun Ibikunle.

Cross-Examined by Akande:

10 I did not do any carpentry on the land in dispute. I did not build any shed on it. I planted Sugar cane and vegetables on it. My shed was built on a land near Oni's building. I left the land about 4 years ago. By this, I mean that I stopped planting sugar cane and vegetables on the land 4 years ago.

20 I know Bale Fajinmi. I did not approach him for land. He did not own land there. I know only of the Ibikunle family who had lands there. I admit that the land was marshy some time ago. It was used as a rubbish dump by the Public. I did not see lorries putting rubbish there. It was reclaimed after I had left the land. It was the Sanitary Authorities who burnt the rubbish and reclaimed the land:

Oni built his house about 3 years ago.

Cross-Examined by Ademola:

There is a stream between Alapinti family land and the land in dispute. It is not correct that I do not know the land in dispute.

Agbaje now appears for 1st Co-Defendant - No questions.

Re-Examined by Chukura:

30 I was the only person using the land. The Public threw refuse on the land and the Sanitary Inspectors burnt them.

No. 11.

RAJI ODUOLA

40 RAJI ODUOLA: S.K. in Yoruba: I live at Ibadan and I am a trader. I know the Plaintiff in this case. I know the land in dispute. It is between Oke Padre Street and Onireke Street. The land belongs to the Plaintiff. I am a great grandson of Balogun Ibikunle. The family sold the land to the Plaintiff. It was Sule Ladipo who

In the
Supreme Court

Plaintiff's
Evidence.

No.10.

Salami
Eniaiyewu.

14th April 1959.

Examination
- continued.

Cross-
Examination.

Re-Examination.

No.11.

Raji Oduola.

14th April 1959.

Examination.

In the
Supreme Court

Plaintiff's
Evidence.

No.11.
Raji Oduola.
14th April 1959.

Examination
- continued.

sold the land to the Plaintiff but Latunde Akanmu conveyed it to Plaintiff. I joined in the Conveyance. There was a previous Conveyance in favour of Rosiji. Rosiji got another land and returned our Conveyance to us and we sold it to Plaintiff and paid back the money to Rosiji. We made a Conveyance to Rosiji. When the Conveyance was returned to us we prepared a Conveyance for Plaintiff and gave him the Conveyance returned to us by Rosiji. Balogun Ibikunle acquired the land by conquest. Our ancestor was a warrior and he occupied the land. From the time our ancestor settled on the land up to the present time no other person has disputed our right over the land. I know the last witness. The land stretching from Feleye Street to Oke Padre down to Ekotedo on to Gbagi area was acquired by our ancestor. The land in dispute is a portion of the land. I know T.A. Oni. We sold a portion of the land to him. The land is next to the one in dispute. I know Bello Layi. We gave him land. We also gave lands to Plaintiff's mother. Yesufu Giwa and a woman Alaga - also to Lawyer Cole. My family gave a portion of the land to Alapinti family. We also gave land to Elepo family. We also gave land to Fade-sere. In 1949 my family sued the Ibadan District Council in the High Court. The land in dispute was not part of the subject of litigation in that action. 2nd witness planted vegetables and sugar cane on a portion of our land. He did not plant on the land in dispute but on a portion of our land. He planted on a plot which was separated from the land in dispute by 4 plots of land. He was granted possession by my family. He had a temporary shed on the land. Several persons planted sugar cane and vegetables on our land by the stream. Before we sold the land to Coker we allowed a plank seller to sell boards on it. The Ibadan District Council has not at any time acquired the land in dispute; we have received no compensation from the Council in respect of the land.

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Cross-
Examination.

Cross-Examined by Ademola:

I am not the present head of my family. I am an important member of the family. I know of various actions taken by the family in respect of our property. I am a representative of the family in its public dealings. About 10 years ago we

brought an action against the Ibadan District Council. I took part in the action. The land in dispute did not form part of the subject matter of the litigation in that suit. The land in dispute is separated by a street from the one in the previous litigation. We sued the I.D.C. over the land at Gbagi. We sued the I.D.C. because it was making use of our land. They let portion out to tenants and erected buildings on the land. We did not lose the case.

Adjourned to tomorrow.

(Sgd.) S.O. Quashie-Idun
Ag. Judge.

WEDNESDAY the 15th DAY OF APRIL, 1959

Same Counsel (Cole leads Chukura) for Plaintiff.

Witness Raji Oduola still on oath.

Cross-Examination by Ademola continued:-

I said yesterday that my family granted a portion of our land to Alapinti family: It is correct that before we instituted the action in 1949 we had been petitioning the Government in respect of the land. The Government did not remedy our grievances. We then sued in respect of our land at Gbagi, Ekotedo and Okerace. I know a Surveyor called Adekunle Coker. We gave him instructions to make a plan of the land we claimed.

Cross-Examined by Akande:

I know Akadiri Akanni. He is a member and head of my family. He and others instituted the action in 1949 for the family. It is not true that the Ibadan District Council acquired our lands in 1953.

Re-Examined by Cole:

We showed the Surveyor Coker the lands we claimed before he prepared the plan Exhibit "C". The Petition we submitted did not relate to the land in dispute.

In the
Supreme Court

Plaintiff's
Evidence.

No.11.
Raji Oduola.

14th April 1959.

Cross-
Examination
- continued.

15th April 1959.

Re-Examination.

In the
Supreme Court

No. 11A.

Plaintiff's
Evidence.

RAJI DARE ALAPINTI

No. 11A.

Raji Dare
Alapinti.

15th April,
1959.

Examination.

Cross-
Examination.

RAJI DARE ALAPINTI: S.K. in Yoruba: I live at Ibadan and I am a farmer. I am a member of the Alapinti family. I know the Balogun Ibikunle family. I know the land in dispute. It belongs to Balogun Ibikunle family. My family has land in that area. My family land is separated from the Ibikunle family land by a stream called Ogunpa. I know Onireke Street. Ogunpa stream runs parallel to Onireke Street. Our family land does not extend to Onireke Street.

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Cross-Examined by Ademola:

It was only in the evening of yesterday that I knew I was to give evidence in this case. Yesterday the land in dispute was pointed out to me by the Plaintiff who asked me to give evidence. Our family land was not granted to us by the Ibikunle family. My family is an important family in Ibadan. Ibikunle family and my family are adjoining owners. The head of my family died two weeks ago and I am acting head.

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Cross-Examined by Akande - None.

By Court.

BY COURT:

The Alapinti land was acquired by our ancestor Obinwunmi Alapinti. He settled on the land several years ago. Our ancestor was a fisherman and an embroider. I cannot say whether our ancestor settled on the land before Ibikunle settled on his. I have never heard the tradition that our land was given to us by Ibikunle family. We have never paid tribute to them. I have known the land in dispute since my youth. I know that sometime ago people sold planks on the land in dispute. I live quite close to the land. As far as I know nobody did anything else on the land. I don't know Salami Eniayewu. I know the man shown to me in Court (witness Eniayewu identified) by face but not by name. He was working as a carpenter on land near to the property in dispute but not on the land in dispute.

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No. 12.

JOSIAH AGBEIn the
Supreme CourtPlaintiff's
Evidence.

No.12.

Josiah Agbe.

15th April,
1959.

Examination.

Cross-
Examination.

10 JOSIAH AGBE: S.B. in Yoruba: I live at Ibadan and I am a farmer. I used to sell planks before. I know Balogun Ibikunle family of Ibadan. I know the land in dispute. It belongs to the Ibikunle family. The land was leased to me for 25 years and sold planks on it. I obtained the land from Ibikunle family. Ishola the head of the family granted the land to me. I left the land in 1954. I used to give the family a bottle of Gin and bottle of Beer yearly.

Cross-Examined by Ademola:

20 I heard of this case in the evening of yesterday. Plaintiff came and asked me to come and give evidence for him. I went on the land in 1929. I was on the very land in dispute. I was selling planks on the land up to 1954. I ceased to sell planks in 1954. I vacated the land when the Landlord started to sell their lands. The Landlord told me that he had sold the land. In 1944 I was not told by the Native Authority to leave the land. I don't know that the Native Authority told all plank sellers to move to Oke Bola. I am a founder of the Plank Sellers Association. I know that the Native Authority proposed to move the plank sellers to Agodi. I refused to move to Agodi and so I went to Oke Bola. I don't know if the I.D.C. eventually abandoned the proposal to

30 move us to Agodi. It is not true that I was forced by the I.D.C. to vacate the land. The condition of the land in dispute at the time I was on it was marshy. It was a forest. I cleared the bush and saw a man planting sugar cane.

BY COURT:

By Court.

40 The man who was planting sugar cane did so on another portion of the land. The man who planted sugar cane is the 2nd witness. I left him on the land in 1954. I met him on the land and left him there. I did not know his name.

Cross-Examined by Akande:-Cross-
Examination.

Up to the time I left the land had not been reclaimed. There was a concrete wall built around the land. I don't know who built the concrete

In the
Supreme Court
Plaintiff's
Evidence.

No.12.
Josiah Agbe.
15th April,
1959.

Cross-
Examination
- continued.

"D" and "E".

wall. Some time ago refuse was thrown on the land. I did not see N.A. Authority burning the refuse. About 10 years ago the Ibikunle people sued me for tribute while I was away. I begged them and the case was withdrawn from the Court.

Cole applies for adjournment to recall Plaintiff.

BY COURT:- Leave granted.

Plaintiff still on oath - states in answer to Cole:-

When I bought the land I was given two documents which are conveyance from Ibikunle family to Rosiji and the one for Rosiji to Ibikunle family.

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Documents tendered in evidence - not objected to and marked "D" and "E".

Cross-Examined by Ademola - None.

Cross-Examined by Akande - None.

Case for Plaintiff closed.

Defendants'
Evidence.

DEFENDANTS' EVIDENCE

No.13.
Faweze Monharim.
15th April 1959.
Examination.

No. 13.
FAWEZE MONHARIM

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FAWEZE MONHARIM: S.K. in English:-

I am the Defendant in this case. I am a Lebanese trader and I live in Ibadan. I know the land in dispute. I bought the land in dispute from Johnson Aina the 1st Co-Defendant. I obtained a lease from him. Lease tendered in evidence - not objected to and marked "F" (dated 16th November 1953). The lease is registered on No.49. I built a concrete wall near the stream to stop water coming on the land. Nobody obstructed me when building the concrete wall. The lease was to commence from 1st October 1951. I was in possession before the lease was executed in 1953. The concrete wall was built in 1951. I am building a Petrol Station on the land. Nobody challenged me when I built the concrete wall in 1951. It was when I started building the Petrol Station that the Plaintiff sued.

30

"F".

Cross-Examined by Cole:

I started building the Petrol Station about the end of last year. I was not in the country when I was sued. My father made investigations before I took the lease. We built a fence round the wall before we commenced building the Petrol Station. We first fenced it with barbed wire and later with iron sheets.

10 Ademola applies for adjournment on the ground that he has filed application for subpoena.

Cole objects to the application and states that if the Court agrees to grant the application he asks for costs of 50 guineas.

BY COURT: I grant the application but in order to save time I call upon the 1st Co-Defendants.

In the
Supreme Court

Defendants'
Evidence.

No.13.

Faweze Monharim.

15th April 1959
- continued.

Cross-
Examination.

By Court.

No. 14.

JOHNSON AINA

JOHNSON AINA: S.K. in English:-

20 I am a representative of U.T.C. Motor Sales Department. I live at Ibadan. I know the Defendant. I granted him a lease of the property in dispute in 1951. I obtained the land from the Ibadan Native Authority in 1951. I produce an agreement between the Ibadan Native Authority Predecessors of the Ibadan Native Council and myself. Tendered in evidence - objected to by Cole on the ground that it is a document affecting interest in land and cannot be accepted in evidence as it is not registered -

30 Refers to Cap.108 Section 15.

Ademola in answer - Submits documents tendered is an agreement to grant interest in land and does not grant an estate in the land :-

BY COURT: The document tendered affects land and as it is not registered I reject it by virtue of Section 15 of Cap.108.

By Court.

Witness continues:-

I have obtained a Deed of Conveyance from the I.D.C.

No.14.

Johnson Aina.

15th April 1959.

Examination.

In the
Supreme Court

Defendants'
Evidence.

No.14.

Johnson Aina.
15th April 1959.

Examination
- continued.

23rd April 1959.

The Conveyance is at the Ibadan Land Registry.

BY COURT: Case adjourned to 23/4/59. Costs for the Plaintiff against 1st Defendant assessed at £10 and against the 1st Co-Defendant assessed at £8.8.0d.

(Sgd.) S.O. Quashie-Idun,
Judge.

THURSDAY THE 23rd DAY OF APRIL, 1959

Same Counsel

1st Co-Defendant Johnson Aina still on oath - 10

Examination of Ademola continues:-

I now produce the Deed of Conveyance given to me by the Ibadan District Council - Tendered in evidence - objected to by Cole on the ground that the document sought to be tendered was not pleaded.

Ademola applies for leave to amend paragraph 6 of the Statement of Defence filed by 1st Co-Defendant by adding the words :-

"and the Ibadan District Council the successor of the Native Authority executed a Deed of Conveyance dated the 8th December 1958 in favour of the 1st Co-Defendant". 20

Cole does not oppose the application.

By Court.

By Court: Amendment granted costs for Plaintiff assessed at £5.5.0d. against 1st Co-Defendant.

"G".

Ademola now tenders Deed of Conveyance dated 8th December 1958 from the Ibadan District Council to Johnson Aina - not objected to and marked "G".

I am a native of Ibadan. Before the execution of Exhibit "G" I had seen the land before. Before it was granted to me in 1951 there was bush near the stream. 30

The land was vacant.

Cross-
Examination.

Cross-Examined by Cole:

The land was granted to me in 1951 in exchange of another piece of land. I had sued the I.D.C.

for taking my father's land and the Council agreed to give me the land in dispute in exchange. I did not make a search in the Lands Registry. Some families own property in Ibadan.

Cross-Examined by Akande:

When I sued the I.D.C. I claimed a declaration of title and compensation.

Case for 1st Co-Defendant closed.

In the
Supreme Court
Defendants'
Evidence.

No.14.

Johnson Aina.
23rd April 1959.
Cross-
Examination
- continued.

No. 15.

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DANIEL ADEBAYO OREMULE

DANIEL ADEBAYO OREMULE: S.B. in English :-

I am Registrar, High Court Ibadan. I produce file for a case No.1/120/49. In the file there is a statement of claim filed by the Plaintiff Akadiri Akani and James Akinlola Babalola on behalf of themselves and Balogun Ibikunle family and signed by their Solicitor - Statement of Claim - tendered in evidence - not objected to and marked "H".

No.15.

Daniel Adebayo
Oremule.
23rd April 1959.
Examination.

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I also produce from the file Statement of Defence filed tendered in evidence not objected to and marked "J".

"H".

"J".

I also produce the plan filed by the Plaintiff in the case. It is Exhibit "C" and shown to me. I also produce a certified true copy of the Judgment of the High Court dated 2nd April 1958. Tendered in evidence not objected to and marked "K".

"K".

Cross-Examined by Cole - None.

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No questions by Akande.

No. 16.

JOSIAH OLADIPO LANIYONU.

JOSIAH OLADIPO LANIYONU: S.B. in English:-
(called by Defendant) I am a licensed Surveyor and I live at Ibadan. I was formerly a Surveyor

No.16.

Josiah Oladipo
Laniyonu.
23rd April 1959.
Examination.

In the
Supreme Court
Defendants'
Evidence.

No.16.
Josiah Oladipo
Laniyonu.
23rd April 1959.
Examination
- continued.

of the Ibadan District Council. I have in my hand Exhibit "C" (Plan). I know the area shown on the plan Exhibit "C". I have also been shown now plan Exhibit "A". I am also familiar with the area shown in Exhibit "C". After examining the two plans Exhibits "A" and "C" I say that the northern portion of the area in Exhibit "A" is contained in Exhibit "C". Exhibit "A" contains fuller details. The land shown in Exhibit "A" as the land in dispute is contained in Exhibit "C" -- At the request of the Court I have now marked in blue pencil on Exhibit "C" the land in dispute shown in Exhibit "A".

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Cross-Examined by Cole:

Cross-
Examination.

The spot I have marked in blue pencil is outside the area shown in Exhibit "C" as being in dispute.

No questions by Akande.

Case for Defendant closed.

No.17.
Daniel Tayo
Akinbiyi.
23rd April 1959.

No. 17.

DANIEL TAYO AKINBIYI

Akande calls Chief Akinbiyi:

Cole submits that as a Representative of the 2nd Co-Defendant (i.e. I.D.C.) has been in Court if it is the intention of Council to call him, the representative should be called first - Refers to Order 26 Rule 14.

By Court.

BY COURT: If the representative is to be called he should be called first. Akande states that Chief Akinbiyi's evidence will be short and that he is a busy man while the representative will give lengthy evidence.

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BY COURT: I allowed Counsel to call Chief Akinbiyi first.

Examination.

DANIEL TAYO AKINBIYI: S.B. in English:-

I am a trader and I live at Ibadan. I was a Councillor of Ibadan Native Authority Council from 1936 to 1952. I was also a Judge of the Native Court. I know the history of Ibadan.

Ibadan town was acquired by conquest. The

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head Chief of Ibadan used to be known as Bale of Bashorun. The meaning of "Bale" is Lord of the land. In the Township of Ibadan each quarter was ruled by a senior Chief who would introduce a new immigrant to the Bale and his Council for the allocation of land on which to reside.

10 All the lands in Ibadan are held by the Senior Chiefs as representatives of the Bale who is now the Olubadan. No land could be alienated without the authority of the Olubadan. All the Chiefs held the lands under the Olubadan who was the owner of the land. I knew Bale Fajimi who was Bashorun from 1898 to 1902. In 1937 I knew that the Ibadan Native Authority acquired land in Ibadan. The lands were those at Ijebu Bye Pass, the University Site and the land on which the present House of Assembly now stands. At the same time or thereabouts the Native Authority acquired land at Onireke - Land was acquired by giving notice to
20 the Claimants of the land to come for their compensation.

BY COURT: Adjourned to 29/4/59.

(Sgd.) S.O. Quashie-Idun,
Judge.

WEDNESDAY THE 29th DAY OF APRIL, 1959.

Same Counsel.

DANIEL TAYO AKINBIYI: still on oath - continues under examination in chief by Akande:

30 I hold in my hand plan Exhibit "A". The land in the present dispute is shown on Exhibit "A". The land in dispute is part of the land acquired by the Ibadan Native Authority in 1937. In respect of this acquisition a man was sent by the Native Authority to ring a bell and to announce that the land was being acquired. A notice was also placarded on the site and published in the Ijoba Ibile Marun the bulletin was the official organ of the Native Administration of Ibadan Oyo, Ife, Ilesha and Illa. I was the editor of the Bulletin. I
40 produce a bulletin dated July 1937 containing Notice of the acquisition of the land between Onireke Street and Ogunpa Stream - Tendered in evidence and not objected and marked "L". The notices are in English and Yoruba. As a result of the Notice several claims were made. Prior to the Notice, the land was reclaimed by the Ibadan Native Authority in 1934. Prison labour was used in reclaiming the land which was swampy.

In the
Supreme Court
Defendants'
Evidence.

No.17.

Daniel Tayo
Akinbiyi.
23rd April 1959.

Examination
- continued.

29th April 1959.

Examination
- continued.

"L".

In the
Supreme Court

Defendants'
Evidence.

No.17.

Daniel Tayo
Akinbiyi.

29th April 1959
- continued.

Cross-
Examination.

Cross-Examined by Cole:-

The Bulletin was a monthly magazine. There are records which would show that people laid claims to the land. I was a Councillor at the time. Power to acquire land was exercised under the Native Authority Ordinance Notice 1933. I cannot say if any compensation was paid to any person or persons claiming the land. Ijebu Bypass was acquired in 1937. In respect of that acquisition part had been previously acquired. In 1937 the acquisition was extended and more compensation paid to the owners. As the Council already know the owners of the land at Ijebu Bypass, the Council publish fresh Notice of Acquisition. The owners were called and the Council negotiated with them. Some of the claimants were Apanpa family. I know they were paid compensation but I don't know when. Various farmers on the land were paid compensation for the crops.

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When I say that the Olubadan is the owner of the land in Ibadan, I mean that he is the trustee of the Chiefs and people of Ibadan as far as the land is concerned. I don't know if a plan was made in 1937 showing the area of the land sought to be acquired. In 1951 I was still a Councillor, I cannot remember that the Council discussed any matter relating to the acquisition of Aina's land. I know the Ibadan land very well. I know of several families owning land at Ibadan. Wondo family does not own land in the land in dispute. The land in dispute was reclaimed. Mr. Clifford King who was the Health Superintendent used prison labour to reclaim the swamp land from Mr. Abimbola's house on the Oyo Road right up to the Ebenezer African Church by the S.C.O.A. and up to the Motor Park. A canal was made through the land from Abimbola's house to the Motor Park. Nobody was occupying the land. Various persons had land abutting the land in dispute. Yesufu Ageri was on the Western side of the stream. The land reclaimed was at the back of properties facing Lebanon Street. Between 1937 and 1952 I saw plank sellers on Onireke Street. I don't know who put plank sellers on the land. Originally people squatted on pieces of land and then claimed ownership. I know the Balogun Ibikunle family. Ibikunle was one of the greatest warriors of Ibadan. That family has a family property at Ayeye. The family house of the Apanpa family is at Isale Osi, about 2 miles from Ijebu Bypass. I have property

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at Elekuro in Ibadan. I did not have to obtain the consent of the Olubadan. But if I want a conveyance the Olubadan must sign the conveyance as a consenting party. The acquisition of the land in dispute in 1937 was for public purpose.

Q. Can you tell us for what public purpose?

BY COURT: Question is irrelevant.

Cross-Examination continued: Fadesire family I cannot say if the reclamation affected part of Fadesire family land.

Cross-Examined by Ademola:

I was trading in 1927 in the Onireke area. People owned land facing Lebanon Street with the area reclaimed at the back of the public land. Lebanon Street was formerly known Gbagi Street. That street leads to the Railway Station. It was also called Station Road.

By Cole through the Court:

The Lebanon Street is what was the ancient footpath from the Railway Station to the town.

Akande asks for leave to call a witness Williams who has come from Lagos to give evidence - By Court - Leave granted.

No. 18.

ISSA AKANGBE WILLIAMS.

ISSA AKANGBE WILLIAMS: S.K. in English:-

I live at Lagos and a Company Director. I am the son of the late Seidu Williams. He was a Merchant at Ibadan at the time the Railway Station was opened at about 1902. My father had land in Ibadan. The land commenced from Gbagi and stretched to Ogunpa Stream. My father bought the land from the late Kasumu Ali who gave him a conveyance. I produce the conveyance dated 30th September 1902 between Kasumu Ali and Seidu Williams. Akande tenders document in evidence to show that it relates to the land in dispute - not objected and marked "M". Later my father was asked to take a lease from the Native Authority and he took a lease of a portion of the land. I produce the Memorandum of Agreement from the Bale and Council to my father dated 23rd September 1930

In the
Supreme Court

Defendants'
Evidence.

No.17.

Daniel Tayo
Akinbiyi.

29th April 1959

Cross-
Examination
- continued.

No.18.

Issa Akangbe
Williams.

29th April 1959.

Examination.

"M".

In the
Supreme Court
Defendants'
Evidence.

No.18.
Issa Akangbe
Williams.
29th April 1959.
Examination
- continued.

- Tendered in evidence - not objected to and marked "N". Portion of the original land sold to my father by Kasumu Ali was later acquired by the Ibadan Native Authority for making a road which is at the back of Gbagi which is now known as Onireke Street. The remaining portion of the original land is still ours. My father applied for another piece of land to be given to him in exchange of the portion acquired. I produce a letter signed by my father. It is dated 27th July 1937. (Produced from the file of the Native Authority) and marked "O". There is further correspondence between my father and the Native Authority. I produce a copy of a letter dated 8th November 1937 - Tendered and objected to by Cole - Document rejected. After the letter Exhibit "O" I cannot find anything about the exchange. The remaining land is still there for me.

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BY COURT: Adjourned to 7/5/59.

Court informs Counsel that it would inspect the land in dispute at 9.30 a.m. on the 7th May, 1959.

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(Sgd.) S.O. Quashie-Idun,
Judge.

7th May 1959.

THURSDAY THE 7th DAY OF MAY, 1959

Same Counsel.

NOTE BY THE COURT: The property in dispute has been inspected by Court this morning in the presence of Counsel and parties and witnesses.

ISSA AKANGBE WILLIAMS: still on oath -
Examination-in-chief continued:-

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Cross-
Examination.

Cross-Examined by Ademola:

Part of the land my father bought from Kasumu Ali has been leased to El-Khalil and Moukarihm the Defendant's father. I recognise my father's signature on the document shown to me. It is a lease from my father to Khalil and Moukarihm dated on 23rd September 1938 - Tendered in evidence - not objected to and marked "P". There were buildings on the plot when it was leased to Khalil and Moukarihm. My father had a shop on the land and his family lived there. The houses have since been built on the land. The houses I showed to the Court at the inspection this morning are those built by the lessees. I know Mr. Ayotunde Rosiji. He is the Federal Minister of Health. He is a

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"P".

lawyer and used to live at Ibadan. Some time ago he approached me concerning the land in dispute. This was in or about 1952. He wanted to know if I had any interest in the land and I said yes.

Cross-Examined by Cole:

10 I saw the land in dispute this morning. The whole of the land is my property. As far as I am aware, the portion on which the road in front has been situated was the portion acquired by the local Council. I saw the land on the last occasion about 2 years ago. I found a building on the land. It is the one next to the one in dispute. I asked who had built it. I was told that it was Defendant who built it. I am not sure if the land on the left side of Moukarihm's property facing Lebanon Street was part of my father's property. My family is still collecting rents from EL-Khalil and Moukarihm. Before I saw the land two years ago I had not seen it for a long time.

20 BY COURT: It was only two weeks before I came to give evidence that I found the conveyance from Kasumu to my father Exhibit "M". Before I found the document I had consulted Lawyer Akerele and showed him letter Exhibit "O" and others. I would lay a claim on the land.

30 NOTE BY THE COURT: At this stage Court informs Counsel that it would be necessary to join witness Issa Akangbe Williams as a party to the Suit in view of his evidence and under Order 7 Rule 10(2) of High Court Rules.

Case is adjourned to 25/5/59 for mention.

Costs not for Defendants in any event.

(Sgd.) S.O. Quashie-Idun,
Judge.

WEDNESDAY THE 8th DAY OF JULY, 1959

Same Counsel present.

40 Witness Williams states that as the Ibadan Council has agreed to pay compensation to him in respect of the acquisition of the land he does not wish to be joined.

ISSA AKANGBE WILLIAMS: still on oath.

No further Cross-Examination or re-examination.

In the
Supreme Court

Defendants'
Evidence.

No.18.

Issa Akangbe
Williams.

7th May 1959.

Cross-
Examination
- continued.

By Court.

8th July 1959.

In the
Supreme Court

No. 19.

SULE SUMMOLA BRIMOH.

Defendants'
Evidence.

Akande calls SULE SUMMOLA BRIMOH S.K. in English:-

No.19.
Sule Summola
Brimoh.
8th July 1959.
Examination.

I am a Technical Assistant employed in the Survey Section, Ibadan District Council. I have been employed in the Department since 1933. I know the land in dispute I have in my possession a record of the land in dispute. It is contained in file EO.392 and other files in my office. File EO.392 is an official file. In that file I produce an application form for a Memorandum of Agreement from one Seidu Williams and dated 29th December 1916 - Tendered in evidence not objected to and marked "Q".

10

"Q".

A plan is attached to Exhibit "Q". The plan shows the area granted to Seidu Williams. Plan tendered and marked "Q1". Seidu Williams was granted a Memorandum of Agreement which is in evidence as Exhibit "N". A copy of Exhibit "N" is in the official file. I also produce a letter dated on the 5th December 1928 and signed by Seidu Williams and addressed to the District Officer, Ibadan which was discovered in the file and which relates to the land. Tendered in evidence - objected to by Mr. Cole on the ground that it has not been proved to have come from Seidu Williams.

20

By Court.

BY COURT: The document has been produced from official custody and I admit it - Exhibit "R". Exhibit "R" refers to a letter addressed to Seidu Williams. I produce a copy of the said letter from the file. Copy dated 30th October 1928 tendered in evidence - not objected to and marked

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"S".

"S". In 1916 following the enquiry held by Mr. Justice Speed into the situation of lands in Lebanon Street that Ibadan Native Authority decided to grant what was known as Speed leases to owners of land in that area. This is why Seidu Williams put up his claim to the land. In 1937 the Ibadan Native Authority decided to acquire all lands between Onireke Street and Ogunpa Stream. The Ogunpa Stream had been diverted and had claimed certain family lands. Notices were posted to warn owners of lands to put forward their claims. Many people laid claims. Seidu Williams put forward a claim as per Exhibit "O". Seidu Williams was not paid any compensation because he had already surrendered his claim to the Ibadan Native Authority. By that

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I mean that Seidu Williams had surrendered part of the land to the Native Authority and had only taken a lease in respect of part of it, as shown in Exhibit "Q". The Ibadan District Council which succeeded Native Authority has reached an agreement with the son of Seidu Williams who is the last witness in respect of the land taken over from his father.

In the
Supreme Court
Defendants'
Evidence.

No.19.

Sule Summola
Brimoh.

8th July, 1959.

By Court
- continued.

Cross-
Examination.

Cross-Examined by Cole:-

10 Looking at Exhibit "A" (Plan) I say that the portion of land edged red is the land in dispute about 75 per cent of that land was surrendered by Seidu Williams to the Ibadan Native Authority that portion faces the stream and the Street. It is bounded on one side by the property of Oni and Sons, on one side by Onireke Street, on one side by Ogunpa Stream. Seidu Williams was a non-native of Ibadan. I gave evidence in the case of E.A. Cole v. Belo Adeleke and Others before
20 Taylor, J.I said something about the Speed Report. Cole tenders in evidence copy of the Speed Report - not objected to and marked "T". The portion given to Seidu Williams according to Exhibit "Q" and "Q1" is the one between Onireke Street and Lebanon Street. The portion surrendered to the Council is between Onireke Street and Ogunpa Stream. We have no deed of Surrender from Seidu Williams except the letter Exhibit "R".

"T".

30 By the Court: The Council has no record of any claim laid by the Ibikunle family to the land in dispute although there is a record of a claim by the family to other land.

By Court.

Cross-Examination continued -

40 I cannot say what families owned land in the area in dispute before the grant to Seidu Williams. It was because of the diversion of the Ogunpa stream that notices of compensation were put out by the Council. This was in 1937 (See Exhibit "L"). Other families submitted claims apart from Seidu Williams. They were Alapinti family and others. Some of the families were paid compensation - The Native Authority had decided to layout the area. The plot in dispute is part of the land reclaimed by the Sanitary Authority under the Ibadan Native Council. I know Josiah Agbe who gave evidence for the Plaintiff. I don't know him as the plank seller. The portion reclaimed included the portion acquired.

Cross-
Examination
- continued.

In the
Supreme Court
Defendants'
Evidence.

Re-Examined by Akande:

The land in dispute has been granted by the Ibadan District Council to Johnson Aina in exchange of land taken from him.

No.19.
Sule Summola
Brimoh.
8th July, 1959
- continued.
Re-Examination.

No.20.
Samuel Babajide
Olorode.
8th July, 1959.
Examination.

No. 20.
SAMUEL BABAJIDE OLORODE.

SAMUEL BABAJIDE OLORODE: S.B. in Yoruba -

I lived at Gbagi in Ibadan and I am a contractor. I am a member of the Wondo family. I know the land in dispute. My family has land in the Gbagi area. Our family land is not far from the land in dispute. Our land stretches from the New Court Road to the Ogunpa Stream. I know the history of the land in the area including my family land and the land in dispute. The whole land in the area including the land in dispute originally belonged to the Wondo family. When Railway came to Ibadan the Olubadan came and asked the head of my family to grant portion of the land to strangers for commercial purposes. The head of my family granted portion of the family land to the Olubadan who in turn made grants to the strangers. In the portion of land acquired by the Olubadan is the one in the present dispute. I cannot say to whom the Olubadan granted the land in dispute.

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Objection.

Cole objects to the evidence on the ground that it is not pleaded in the Statement of Defence. Akande refers Court to amended Statement of Defence paragraph 7.

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Ruling.

By Court: Objection overruled.

Witness continues -

I do not know that any other family claimed the land as its family land. I know the Ibikunle family. The family live at Ayeye. The land in dispute is at Gbagi. The Ibikunle family have no land in Gbagi.

Cross-Examined by Cole -

I am the Mogaji of the Wondo family.

My family granted land from the area now Lebanon Street to Ogunpa. This was when the Railway first came to Ibadan. Akande was the Head or Mogaji of my family. Akande was the son of Wondo and was not a domestic staying with the Olubadan. Wondo was not an Hausa man. He was a native of Ibadan. Wondo is a nickname. His proper name was Akinlolu. He was not a chief of Ibadan. He was a warrior. He had followers. He took part in all the wars fought at Ibadan and other places. One Fadeshire, Alapinti, Elepo were people living beyond the Ogunpa Stream. Other families lived at Oke Bola. Iba family and Aromona lived near the site facing what is now the Railway. I have known the history. I have told the Court from my youth. It is not true that my ancestor Wondo was a domestic or slave. My family has granted land to Aboderin family and also to chief Agbaje the late father of the Agbaje family - also to the Vaughan family, Orukunle family. It was my father who granted land to Aboderin in Lebanon Street. It is on the right hand side of Lebanon Street, when facing Mapo Hall. The land given to Vaughan is in the New Court Road and is now occupied by the West African Drug Co. The plot given to Orekunle is on the New Court Road. My family gave plots of land at Lebanon Street and New Court Road to the late Agbaje. As far as I know no compensation was paid by the Olubadan who was landlord to our family.

Case for 2nd Co-Defendant closed.

By Court: Adjourned to 15/7/59 for addresses.
(Sgd.) S.O. Quashie-Idun,
Ag. Judge.

No. 21.

COUNSELS ADDRESSES.ADEMOLA FOR FIRST AND SECOND DEFENDANTS.

40 Same Counsel

ADDRESSES:

Ademola addresses Court.

In the
Supreme Court

Defendants'
Evidence.

No.20.

Samuel Babajide
Olorode.

8th July, 1959
- continued.

Cross-
Examination.

By Court.

No.21.

Counsels
Addresses.

(a) Ademola for
First and Second
Defendants.

15th July, 1959.

In the
Supreme Court

No.21.

Counsels
Addresses

(a) Ademola for
First and Second
Defendants.

15th July, 1959
- continued.

Claim is for a declaration of title and Injunction. Submits the nature of claim is not clear as to whether it is for fee simple etc. Refers to the Deed of Conveyance from Ibikunle family to Plaintiff. Refers to Thomas vs. Holder, 12 W.A.C.A. page 78; Boulos v. Adeola Odunsi 1958 W.R. N.L.R. part 4 page 169 - No evidence that the Ibikunle family held the property under English Law. The Ibikunle family transferred estate in fee simple which was not in them.

10

Refers to Exhibit "C" (plan) used in a suit in which Ibikunle family claimed a large area of land from Ibadan District Council. According to the evidence of the Surveyor called by the 1st Defendant that the land in the present suit was described in Exhibit "A" by the Ibikunle family as the property of the Alapinti family. This was after the plan "A" has been superimposed on Exhibit "C". Exhibit "C" was filed by Ibikunle family in Suit No.1/120/49 by the Ibikunle family against the Ibadan District Council. The Plaintiff was associated with the Ibikunle family in making the plan Exhibit "C".

20

AS TO POSSESSION - There is evidence of possession of the property by 1st Defendant since 1951. See Exhibit "F" dated on the 16/11/53. Defendant built a wall on the land in 1952. As to long possession - Refers to Exhibit "M". Conveyance from Ali to Seidu Williams dated in 1902 - Refers Akuru v. Olubadan in Council, 14 W.A.C.A. p.523. Refers to evidence that no claim was made by the Ibikunle family when the area was acquired.

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Akande addresses Court -

Refers to amended Statement of Defence filed by 3rd Defendant - The property was acquired by the Ibadan Native Authority which was succeeded by the Ibadan District Council which transferred the land to 2nd Defendant. Refers to evidence of the head of Wondo family (Olorode). Refers to the case of Akuru v. Olubadan - in Council, 14 W.A.C.A. 523 - also to the case of Akadiri Akanni and Another on behalf of the Ibikunle family v. Olubadan in Council 1958 W.R.N.L.R. (page 3) page 98 - Refers to the case of Ibadan Native Authority vs. Ososami, 5 W.A.C.A. 5th January 1955 refers to evidence of the Acquisition of their land. The Ibikunle family has failed to prove exclusive acts of possession over the property in dispute. Refers to Ado v. Wusu, 4 W.A.C.A. page 96.

40

Cole addresses Court:-

Before addressing the Court Cole applies for leave to amend the claim under High Court Rule Order 14 by adding the words "under Native Law and Customs" after the words "declaration of Title".

10 Ademola objects to application and refers to Boulos v. Odunsi 1958 W.R.N.L.R. part 4 page 170 and also to Johnson v. Ojo Baro, W.A.C.A. Judgments July - October - December 1950, page 72 at page 74 - Submits that in the evidence the Plaintiff cannot rely on Native Customary Law.

Cole - It is for the Court to grant the application or not.

By Court: In view of the evidence before me, I cannot see how the Plaintiff in this case can claim a declaration under Native Law and Custom as the Ibikunle family is not a party to this Court - The application is refused.

20 Cole addresses Court: The Plaintiff's case is that he bought the land from the Ibikunle family under a Deed of Conveyance Exhibit "B" - Evidence that the Ibikunle family was the original owner of the land under Native Law and Custom. Submits that the Ibikunle family put tenants on the land. Refers to the Plank seller - Evidence of Alapinti head. Refers to plan Exhibit "A". Evidence of sale by Ibikunle family to other persons now in the adjoining land. Refers to Exhibit "M". Submits that in 1953 Johnson Aina had no legal right in the property to pass to Moukarihm. Submits that Exhibit "B" Conveyance from the Council to Aina is of no legal effect. Refers to Local Government Law W.R. No.12 of 1957 (All3).

40 Refers to paragraphs 6 and 9 of Statement of Defence filed by 3rd Defendant. No evidence that 3rd Defendant acquired the land in 1916 or at any other time. Refers to recommendation of Speed Commission - page 8 of Exhibit "T". (Section 31 of Report) Refers to Exhibit "Q" and Exhibit "N". Refers to Exhibit "M". Conveyance to Kasumu Ali. Submits that the land in dispute is not part of the land granted to Seidu Williams - No evidence that the land was reclaimed. Bassey v. Cobham, 5 N.L.R. Page 92 - Halliday v. Alapatire, 1 N.L.R. page 1. Refers to evidence of the head of Wondo

In the
Supreme Court

No.21.

Counsels
Addresses.

(a) Ademola for
First and Second
Defendants.

15th July 1959
- continued.

(c) Cole for
Plaintiff.

Application.

Objection.

Ruling.

In the
Supreme Court

No.21.

Counsels
Addresses.

(c) Cole for
Plaintiff.

15th July 1959
-- continued.

family. Refers to evidence of Chief Akinbiyi that Wondo family had no land in that area. No evidence of adverse possession - Submits the onus is not on the Plaintiff to prove positive acts of ownership.

Refers to Aina Edu and Another v. Aina Oba and Another. W.A.C.A. 26th May 1953. (Selected Judgments of W.A.C.A. April - May 1953 page 57 at page 60.)

By Court: Judgment reserved.

(Sgd.) S.O. Quashie-Idun,
A. Judge.

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No.22.
Judgment.
22nd April 1960.

No. 22.

JUDGMENT.

IN THE HIGH COURT OF JUSTICE WESTERN REGION OF
NIGERIA.

IBADAN JUDICIAL DIVISION

HOLDEN AT IBADAN

BEFORE THE HONOURABLE MR. JUSTICE S.O. QUASHIE-IDUN,
JUDGE

20

ON FRIDAY THE 22nd DAY OF APRIL, 1960.

Suit No.1/300/1957.

BETWEEN:- A.O. COKER

Plaintiff

- and -

1. F. MOUKARIHM

Defendant

2. JOHNSON AINA

3. IBADAN DISTRICT COUNCIL

Co-Defendants

Cole for Plaintiff.

Ademola for Defendant and 1st Co-Defendant.

G. Agbaje for 2nd Co-Defendant.

30

JUDGMENT.

The Plaintiff's claim is for a declaration of title to all that piece or parcel of land lying and being at the junction of Onireke Street and Oke Padre Street and adjoining Ogunpa Stream, Ibadan, and an injunction to restrain the Defendant,

his servants or agents and privies from trespassing on the said land.

10 The Plaintiff alleged in his statement of claim that the said land originally belonged to the Balogun Ibikunle family of Ayeye, Ibadan who sold it to Ayotunde Rosiji on the 16th December, 1950; that the land has been in possession of the Ibikunle family for over 100 years and that the family executed acts of ownership on the said land by planting vegetables on it and by giving it out to tenants to sell planks on it.

In 1952 Rosiji reconveyed the land to the Ibikunle family which conveyed it to the Plaintiff on the 27th March, 1957.

20 The 1st Defendant alleged in his Statement of Defence that he is a lessee of the land in dispute from the 2nd Defendant with the consent of the traditional authorities under customary tenure to which the land in dispute is subject and that the 1st Defendant has been in possession of the land since 1953; that the 2nd Defendant derived title from the Olubadan and Chiefs of Ibadan and that the Olubadan and the Chiefs though the Ibadan Native Authority Council reclaimed the area of which the land in dispute is part many years ago for development purposes, after which the Council re-allocated several plots in the area to people for development.

30 The 2nd Defendant alleged in his Statement of Defence that in September 1951 the Ibadan Native Authority placed the 2nd Defendant in possession of the land in dispute; that the Ibadan Native Authority, the predecessors in title of the Ibadan District Council (3rd Defendant) were the former owners of the land in dispute and had for 30 years prior to 1951 been in effective possession of the same and had continuously exercised acts of ownership over it; that the Plaintiff and the persons through whom he claims are guilty of laches and acquiescence.

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The 3rd Defendant's material averments in their Statement of Defence are that the 3rd Defendants or their predecessors in title are the owner of the land and had been in possession since 1916; that the 3rd Defendant became seized of the land as a result of surrender of that part of the interest of one ~~Saidu~~ Williams to the 3rd Defendant and

In the
Supreme Court

No.22.
Judgment.
22nd April 1960
- continued.

In the
Supreme Court

No.22.
Judgment.

22nd April 1960
- continued.

the grant to Seidu Williams of a Memorandum of Agreement by the 3rd Defendant in accordance with the report of Mr. Justice Speed and that the 2nd Defendant is the lessee of the 3rd Defendant. The 3rd Defendant further pleaded laches and acquiescence.

During the hearing of case, the Court inspected the land in dispute with parties and their Counsel. There is no doubt that the land appears to have been reclaimed with much difficulty. The Plaintiff relies on the title of his vendors and before he can succeed it must be proved that the Plaintiff's Vendor has exercised exclusive acts of ownership over the property prior to the date on which they purported to convey the property to the Plaintiff. The Plaintiff called as witness Salami Eniaiyewu who testified that about 50 years ago he obtained a grant of the land in dispute from the family of the Plaintiff's vendors and that he planted sugar cane and vegetable on the land. He said he left the land 4 years ago. The Plaintiff's witness Raji Oduola, a member of the Ibikunle family who sold the land to the Plaintiff told the Court in his evidence that although the land in dispute belongs to his family, the witness Salami Eniaiyewu did not plant vegetables on the land in dispute but rather on a portion of the family land. There is therefore no satisfactory evidence that 50 years ago the Plaintiff's witness planted anything on the land in dispute. Raji Oduola who said he was not the head of the Ibikunle family but had represented the family in its dealings with the public, admitted that about 10 years ago, the family sued the Ibadan District Council over land at Gbagi but denied that the land in the present dispute formed part of the land in that litigation. The witness also admitted, that before his family sued the Ibadan District Council, the family had been petitioning the Government in connection with the land in that dispute. The Ibikunle family was non-suited by Ademola, C.J., for reasons given in his judgment Exhibit "K". Another witness Josiah Agbe testified that he used to sell planks on the land in dispute with the leave and licence of the Ibikunle family and that he left the land in 1954 when the landlords told him that they had sold the land. This witness admitted under cross-examination that up to the time he left the land there was a concrete wall around the land but that he did not know who built

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the wall. He also admitted that refuse was thrown on the land.

10 The Defendant, Moukarihm, has told the Court that he bought the land in dispute from the 1st Co-Defendant and obtained a lease from him in 1953. The lease was to commence from the 1st October, 1951 and that he was in possession before the lease was executed in 1953. He built a concrete wall near the stream to stop water coming on the land and that nobody challenged him when he was building the concrete wall in 1951.

The 1st Co-Defendant has stated in his evidence that the land in dispute was granted to him in 1951 by the Ibadan District Council in exchange of a piece of land belonging to his father which the Council had taken.

20 On behalf of the 3rd Co-Defendant, the Ibadan District Council, evidence has been given by Williams Akinbiyi that the land was acquired by the Ibadan Native Authority, the predecessors of the Ibadan District Council, in 1937 and that it is a portion reclaimed by that Council.

30 I accept the evidence of the acquisition of the land by the Council and also accept the evidence that the land in dispute is a portion of the land so acquired. Although Raji Oduola denies that the land in the present dispute formed part of the land in the former dispute between the Ibikunle family and the 3rd Co-Defendant, I am satisfied from the evidence of the Surveyor, Laniyonu, that in the land in the present dispute as shown in Exhibit "A" is a portion of land claimed by the Ibikunle family in Exhibit "C" against the Ibadan District Council. That being so, it is clear that the Ibikunle family was aware that the land in dispute had been acquired by the Ibadan District Council. They were aware of this fact before they brought their action against the Council in 1949 and before they purported to convey the property to the Plaintiff.

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The Plaintiff who is a learned Surveyor and who claims to be the surveyor of the Ibikunle family has not been able to satisfy the Court that he was unaware of the area contained in the plan Exhibit "C" which he admits was prepared by his brother also a surveyor of the Ibikunle family. He must have been aware at the time he was purchasing the property that it had been the subject of

In the
Supreme Court

No.22.

Judgment.

22nd April 1960
- continued.

In the
Supreme Court

No.22.

Judgment.

22nd April 1960
- continued.

litigation between his vendors and the Ibadan District Council. He must have also been aware of the existence of the concrete wall round the land.

In a claim for a declaration of title to land, the onus is on the Plaintiff to satisfy the Court that the evidence he has led is sufficient to establish his claim. If the Court is not satisfied that this onus has been discharged, then it must refuse the Plaintiff the declaration even though there is weakness in the case for the Defendant (Kodilonye v. Mbanefo Odu 2, W.A.C.A. page 336).

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On the evidence before me, I am not satisfied that the Ibikunle family had any interest in the property to convey to the Plaintiff at the time they purported to do so even though they might have been the owners of the adjoining lands. The Plaintiff's claim is accordingly dismissed with costs to the 1st Defendant. The Co-Defendants are dismissed from the suit as they had no interest in the property at the time of the institution of this action. I make no order as to costs as far as they are concerned.

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Costs for 1st Defendant assessed at 100 guineas.

(Sgd.) S.O. Quashie-Idun,
Judge.

In the Federal
Supreme Court.

No. 23.

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

NOTICE OF APPEAL
(RULE 12)

30

Suit No.1/300/57.

No.23.
Notice and
Grounds of
Appeal.

19th May, 1960.

BETWEEN:- A.O. COKER

Appellant

- and -

1. F. MOUKARIHM
2. JOHNSON AINA
3. IBADAN DISTRICT COUNCIL Respondents

TAKE NOTICE that the Plaintiff being dissatisfied with the decision that part of the decision more particularly stated in paragraph 2 of the

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Whole Judgment. Court contained in the Judgment of Mr. Justice Quashie-Idun dated the 22nd day of April, 1960 doth hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

In the Federal
Supreme Court.

—————
No.23.

Notice and
Grounds of
Appeal.

19th May, 1960
- continued.

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

3. Grounds of Appeal:

20 1. The learned trial Judge was wrong in law in giving judgment in favour of the 1st Defendant when in law, the 1st Defendant being an alien, had no legal right to be on the land in dispute in 1951 except under an instrument which has received the written approval of the Authorities as required by Section 3 of the Native Land Acquisition Ordinance and the 2nd Defendant through whom the 1st Defendant claims, had no legal interest in the land in dispute in 1953 to enable him grant a lease to the 1st Defendant as the Conveyance was not executed until December 1958 and the Conveyance has never received the consent of the Minister of Lands as required by S.220 of the Local Government Law 1957.

30 2. The learned trial Judge erred in law in failing to direct his mind to the fact that Mr. Justice Speed did not recommend the surrender of interest in land to the native authority and that the onus then shifted on the 3rd Defendant to discredit by evidence claim of ownership by Plaintiff's vendors to the land in dispute by proving the surrender to the Council by Mr. Seidu Williams.

40 3. The learned trial Judge erred in law and misdirected himself when he held "I accept the evidence of the acquisition of the land by the Council and also accept the evidence that the land in dispute is a portion of the land so acquired", when the evidence of Mr. Issa Williams, a witness for the Council is that the land in dispute

In the Federal
Supreme Court.

No.23.

Notice and
Grounds of
Appeal.

19th May, 1960
- continued.

belongs to his family and it has not been acquired by the Council and that of Mr. Buraimoh, a representative of the Council, was that the land in dispute became the property of the Council, not by acquisition but by surrender of that part of the interest of Seidu Williams to the Council.

4. The learned trial Judge erred in law and misdirected himself when he held that the land in the present dispute as shown in Exhibit "A" is a portion of the land claimed by Ibikunle Family in Exhibit "C" against the Ibadan District Council when Exhibit "C" clearly shows that it is not part of the land in dispute in that case. 10
5. In consequence of the misdirection referred to in paragraph 4 above, the learned Judge erred in law in holding that the Ibikunle family was aware that the land in dispute has been acquired by the Ibadan District Council and that they were aware of this fact before they brought the action against the Council in 1949 and before they purported to convey the property to the Plaintiff. 20
6. The learned trial Judge erred in law in holding: "I am not satisfied that the Ibikunle family had any interest in the property to convey to the Plaintiff at the time they purported to do so even though they might have been the owners of the adjoining lands" when there is no evidence that before the conveyance to the Plaintiff the Ibikunle family had divested themselves of any interest they might have had in the land in dispute. 30
7. The learned trial Judge erred in law and misdirected himself in holding that the Plaintiff must have been aware at the time he was purchasing the property that it had been the subject of litigation between his Vendors and the Ibadan District Council when there is no evidence to support this finding. 40
8. The learned trial Judge erred in law and misdirected himself when he held that before the Plaintiff can succeed he must

prove that the Plaintiff's Vendors have exercised exclusive acts of ownership over the property prior to the date on which they purported to convey the property to the Plaintiff thus placing a greater burden of proof on the Plaintiff than is required by law.

In the Federal Supreme Court.

No.23.

Notice and Grounds of Appeal.

19th May, 1960
- continued.

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9. The learned trial Judge erred in law and misdirected himself when he held: "In a claim for declaration of title the onus is on the Plaintiff to satisfy the Court that the evidence he has led is sufficient to establish his claim. If the Court is not satisfied that this onus has been discharged, then it must refuse the Plaintiff the declaration even though there is weakness in the case for the Defendant".

20

10. The learned trial Judge erred in law by adopting irregular procedure in allowing witnesses for the 3rd Defendant to be called before the 3rd Defendant's representative gives evidence thus stultifying the advantage of the Plaintiff for cross-examination.

11. The decision is against the weight of evidence.

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4. Relief sought from the Federal Supreme Court of Nigeria: That the Judgment be set aside and judgment entered in favour of Plaintiff in terms of his writ.

5. Persons directly affected by the Appeal:

<u>Name</u>	<u>Address</u>
1. A.O. Coker	60, Race Course Road, Ibadan.
2. F.Moukarihm	Lebanon Street, Ibadan.
3. Johnson Aina	U.T.C. Motors, Ibadan.
4. Ibadan District Council:	Mapo Hall, Ibadan.

DATED at Ibadan this 19th day of May, 1960.

40

(Sgd.) E. Akinola Cole,
Cole & Chukura.
Appellant's Solicitors.
N6/676A, Mokola, Oyo Road,
Ibadan.

In the Federal Supreme Court.

No. 24.

No.24.
Notes of Counsel's Arguments.
26th January, 1961.

NOTES OF COUNSEL'S ARGUMENTS
IN THE FEDERAL SUPREME COURT OF NIGERIA.
HOLDEN AT LAGOS
THURSDAY THE 26th DAY OF JANUARY 1961
BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA KT., CHIEF JUSTICE OF THE FEDERATION.
~~LIONEL BRETT,~~ ^{JOHN Down CONRAD TAYLOR} FEDERAL JUSTICE
EDGAR IGNATIUS GODFREY UNSWORTH, C.M.G., FEDERAL JUSTICE
F.S.C. 218/1960.

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A.O. Coker Plaintiff/Appellant

v.

F.Moukarihm and 2 others Defendants/Respondents

Appeal against judgment of Quashie-Idun, J., dated 22/4/60.

E.A. Cole for Plaintiff/Appellant.

Adenekan Ademola for Defendants/Respondents.

20

Cole argues

Ground 1

Refers to Exhibits "F" and "G".

Under Exhibit "F" the 1st Respondent took a lease in 1953 of the land. The grantor to him took his lease, Exhibit "G" in 1958. He had nothing to transfer at the time he took his lease.

Non-native: previous consent before he can own land. Cannot be in possession unless he got previous consent of Governor to own land.

30

Viesa and Others v. Asinor 14 W.A.C.A. 419.

Denning v. Edwards, (1960) 3 W.L.R.801 at pages 805 and 806.

Jenning v. Woodman, (1952) 2 T.L.R. 409. Exhibit "G" in this case, it is submitted is legally unenforceable. Onus on the party producing the document to prove that consent of the Governor or the Minister had been obtained.

Read out Section 224 Local Government Law.
Section 3 Laws of Western Nigeria p.373.

In the Federal
Supreme Court.

Ground 2

No.24.

Refers to the Record of Appeal, at page 28 lines 44-48. Refers to amended Statement of Defence at pages 8 and 9. Paragraphs 5, 6 and 7 of the Statement of Defence: Sham: not proved. Evidence of Akinbiyi at page 24 lines 20 and 23. This does not mean that the land is owned by Ibadan District Council.

Notes of
Counsel's
Arguments.

26th January,
1961

- continued.

10

Refers to paragraph 9 of Statement of Defence at page 9. No evidence that the land was acquired as so stated: See page 28 line 44 to page 29 line 4.

Refers to speed lease Exhibit "T" at page 63 line 28. Seidu Williams, a non native of Ibadan: he was granted land - See Exhibit "N" made in 1930. In 1937 if acquisition was made of the land from Williams, he had no interest in the land which the Ibadan District Council could take.

20

Grounds 3 and 4:

No evidence of any valid acquisition. Williams said he surrendered the land, learned trial Judge called it acquisition. No proof of acquisition.

Refers to Exhibit "A" the plan in this case. Compare with Exhibit "C" which is the plan tendered in the case. Exhibit "K". See Judge's reference to Lanionu's evidence at page 37 line 29: it is submitted that Lanionu's Evidence at page 22 lines 8 to 10 is not what the Judge said in his judgment at page 37 line 29. Land in dispute is outside the area in dispute in Exhibit "K". That was what the Surveyor said.

30

Submit Seidu Williams passes no title as he possessed none. See Adeshoye v. Shiwoniku 14 W.A.C.A. 86.

Ground 5:

Follows previous arguments. The true owner not bound by acquisition between Williams and I.N.A. if there was one.

40

Ground 6:

Learned trial Judge accepted evidence that Ibikunle family are owners of adjoining land. Section 45 of Evidence Ordinance should be called to play.

In the Federal
Supreme Court.

Ground 7: Argued already in ground 5.

Ground 8:

Greater burden, it is submitted, is being placed on the Plaintiff unnecessarily. Plaintiff need not prove title against all the world.

Boulos v. Odunsi

Thomas v. Holder 12 W.A.C.A. 78 Evidence was that Ibikunle family had tenants on the land - see page 24 and evidence of the plank seller at page 17 line 3 et seq.

10

Evidence of concrete wall erected by the 3rd Respondent was relied on by the trial Judge. Submitted this does not take away right of possession.

Leigh v. Jack, 1879 5 Exhibit "D" 260 at page 271: the last sentence.

Williams Bros. Ltd. v. Raftery (1957) 3 All E.R. 593. If it is admitted land in Ibadan is communal land, but a certain section has a right over certain parts.

Eze v. Igiliegebe and Others 14 W.A.C.A. 61. But Ibadan land is not even community land at present.

20

Ground 9 - abandoned.

Ground 10:

Refers to Order 26 Rule 14 of High Court Rules 2 Western Region Laws, page 458.

Ground 11: Weight of Evidence.

Plaintiff although must rely on the strength of his case and not on the weakness of Defendant's case. This was modified in the case.

30

Aina Edu v. Aina Oba: W.A.C.A., cyclostyled Rep; April - May 1953, page 57.

What Evidence have the Defendants brought to discredit the Plaintiff's case. None whatever.

Adenekan Ademola for the Respondents

Ground 4:

"I agree with the Appellants Counsel that the learned trial Judge is in error in saying that the land in the present case was part of the land in dispute in the Suit I.120/49 (Exhibit "k"), but this should make no difference to the Plaintiff's claim".

40

No.24.
Notes of
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26th January,
1961
- continued.

Claim: This means that page 37 lines 26 to 40 and page 36 line 49 to page 37 line 11 are wrong conclusions.

Adenekan Ademola: "I agree" "but that will make no difference".

The case is that in 1949 plan Exhibit "C", the present land in dispute was described by the Ibikunle family that the land is Alapinti family land. How can the Plaintiff now claim the land through Ibikunle family.

10 See Plaintiff's Evidence at page 12 lines 21 to 26.

See page 15 lines 4 to 6.

The Plaintiff in his evidence did say he was associated with the drawing of the plan Exhibit "C" in 1949 and 1950. See page 11 line 18.

Ground 1:

20 That in Exhibit 9, there must be consent of the Minister, there can be no doubt, but the Judge did not dismiss the case on the strength of Exhibit 9. The document was put in by consent.

The document Exhibit 9 did state that the Council was seized of the land in 1958 and they were transferring this to the 2nd Respondent, but that is not borne out by facts because 2nd Respondent had already got the land from 3rd Respondent (I.D.C.) in exchange for his land. At least then there was agreement to sell to him.

Refers to page 27 lines 6 to 17: page 27 lines 37 to 40.

30 If acquisition was not fully proved there were Defences of laches and acquiescence. Evidence of putting refuse on the land by I.D.C. labourers. Plaintiff did not question this.

There is also Exhibit "M" which is 1902 Conveyance. Land on Exhibit "M" is the same on Exhibits "P" and "Q".

Court: This was not proved in the Court below and this court cannot assume this.

"P" and "Q" look the same, but certainly not "M". No evidence upon which this can be accepted.

Adjourned till 27/1/61.

(Sgd.) A. Ade Ademola,
C.J.F.

In the Federal
Supreme Court.

No.24.

Notes of
Counsel's
Arguments.

26th January,
1961

- continued.

In the Federal
Supreme Court.

FRIDAY THE 27th DAY OF JANUARY, 1961

Same appearances

No.24.

Notes of
Counsel's
Arguments.

27th January,
1961
- continued.

Adenekan Ademola for Respondents, continues:

Refers to evidence of Williams at pages 26
and 27 of the Record page 27 lines 6 to 30.

Apart from the claim of the I.D.C. (3rd Re-
spondent) on acquisition of the property, the Ap-
pellant will have to reckon with the claim of
Seidu Williams.

10

Court:

But Seidu Williams and those who claim through
him are not in the case now although they know
about it?

Counsel:

At page 27 line 37 et seq: Williams states
he has no more interest in the case as the Ibadan
District Council paid him his compensation during
the hearing of the case.

Refers to page 29 line 29 et seq.

20

Area called Gbagi in Exhibit "C" which is ad-
jacent to the land in dispute was acquired in 1902
as shown in the case Exhibit "E". That is not
disputed by the Ibikunle family. The 1937 acqui-
sition is the one now in dispute. Evidence at
page 29 line 29 et seq.

Plaintiff's claim set out at page 2 of the
record: it was refused. Statement of Claim at
pages 2 and 3.

Paragraphs 5, 6 and 7 are the main ones.

30

Note that there was no claim for possession.

What sort of title did the Plaintiff want was
not shown in his Statement of Claim.

Claim was discussed as he did not show the
sort of declaration he wants. Since he relied on
Exhibit "B" as foundation of his claim, the Court
could have granted only a declaration according to
Exhibit "B" fee simple in possession.

Hassan Rilawi v. Liadi Aromashodun 14 W.A.C.A. 204.

40

Cole for Appellant replies:

Claim is for declaration of title simpliciter.

Rihawi v. Aromashodun (supra) does not apply.

Refers to Thomas v. Holder, 12 W.A.C.A. 78: nature of Appellant's claim not open to doubt if even the words "fee simple" was misused in the Conveyance (Exhibit "B").

The Alapinti family is not claiming the land in dispute.

10 First Respondent cannot take advantage of what was in the plan Exhibit "C". He is a stranger to the land. A stranger cannot take advantage of an estoppel as he was not a party.

15 Halsbury, 3rd Edition page 174, article 343. Also page 229; Article 431.

20 Refers to Exhibit "D": this same piece of land in dispute was in 1950 conveyed by the Plaintiff's predecessor in title to Mr. Rosiji. They were not claiming the land any more as their land. The plan Exhibit "C" was made in February 1950; transfer to Rosiji Exhibit "D" was in December 1950. It may seem queer but it shows that the Ibikunle family had not given up the land as their land. No other family claims the land.

Judgment reserved.

(Sgd.) A. Ade Ademola,
C.J.F.

In the Federal
Supreme Court.

No.24.

Notes of
Counsel's
Arguments.

27th January,
1961

- continued.

No. 25.

JUDGMENT.

IN THE FEDERAL SUPREME COURT OF NIGERIA.

HOUDEN AT LAGOS

30 ON WEDNESDAY THE 15th DAY OF MARCH, 1961.

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA

CHIEF JUSTICE OF THE
FEDERATION

EDGAR IGNATIUS GODFREY
UNSWORTH

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE

F.S.C. 218/1960.

No.25.

Judgment.

15th March 1961.

10 root of title which was tendered at the hearing and marked Exhibit "G", which purports to convey the land in fee simple to him. Finally, the 3rd Respondent Council in its amended Statement of Defence averred that the Council was the owner of the land in dispute, and this in spite of its deed Exhibit "G". It further averred that the 3rd Respondent became seised of the land by acquisition of the interest of one Seidu Williams, who derived his title from one Kasumu Alli, who in turn derived his title from Bale Fajinmi of Ibadan. It is also averred that the interest of the 3rd Respondent was derived from its act of reclamation of the area in dispute. It will be seen from this summary that the interest of the 2nd and 3rd Respondents clash. I shall have more to say about this later in this judgment.

20 During the hearing of the Appeal Learned Counsel for the Appellant referred to several passages in the judgment of the Learned Trial Judge, which he urged amounted to serious misdirection, and I think it would be convenient to deal firstly with these. The first is contained in ground 3 of the grounds of appeal, which complains of the following passage in the Judgment of the Trial Judge, which reads thus:-

30 "I accept the evidence of the acquisition of the land by the Council and also accept the evidence that the land in dispute is a portion of the land so acquired".

In an earlier part of the judgment the Trial Judge says:-

"On behalf of the 3rd Co-Defendant, the Ibadan District Council, evidence has been given by Williams Akinbiyi that the land was acquired by the Ibadan Native Authority, the predecessors of the Ibadan District Council, in 1937 and that it is a portion reclaimed by that Council".

40 The evidence of acquisition of this particular area in dispute amounted to no more than that a notice was placarded in a newspaper. There was no evidence that any particular claimant received any compensation in respect of the area, or that any particular claimant was notified that such land was acquired. In short, the evidence led by the defence through one I.A. Williams was that the

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961
- continued.

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961
- continued.

area in dispute was still his land and that he had received no compensation in respect thereof. The alleged notice of acquisition, which was Exhibit "L", said no more than this:-

"Any person laying claim to ownership of the land lying between Onireke Street and Ogunpa Stream should inform the District Officer, or the Lands Registry Clerk, Oke Are, within 30 days".

By Order of the Native Authority.

10

Throughout the case for the 3rd Respondent this Exhibit was the only documentary evidence of the alleged acquisition tendered, and this in spite of the evidence of Daniel Tayo Akinbiyi that:-

"There are records which would show that people laid claims to the land".

There was no plan tendered to show the area covered by the acquisition, nor was there evidence led to show that any compensation was paid for this land. This is what Sule Brimoh, who was an official of the 3rd Respondent Council, said:-

20

"In 1937 the Ibadan Native Authority decided to acquire all lands between Onireke Street and Ogunpa Stream. The Ogunpa Stream had been diverted and had claimed certain family lands. Notices were posted to warn owners of lands to put forward their claims. Many people laid claims. Seidu Williams put forward a claim as per Exhibit "O". Seidu Williams was not paid any compensation because he had already surrendered his claim to the Ibadan Native Authority. By that I mean that Seidu Williams had surrendered part of the land to the Native Authority and had taken a lease in respect of part of it as shown in Exhibit "Q".

30

Exhibit "O" is a letter written by Seidu Williams in answer to the Notice Exhibit "L" and is dated the 27th July, 1937. Prior to this, however, and on the 29th December, 1916, by virtue of Exhibit "Q" Seidu Williams applied for a lease of his land measuring approximately 102' x 320', and it is to be noted that there is said to be a building erected on the land. The importance of this will become more apparent later. Exhibit "N" is the memorandum of agreement between the Bale and Council and Seidu Williams, dated the 23rd September, 1930. It is a lease for 20 years and is the answer to the

40

application of 1916 by Seidu Williams for a lease. I fail to see the full force of the evidence of Sule Brimoh quoted by me above, for whether Seidu Williams was the owner or the lessee, he was surely entitled to compensation for his interest if, in fact, this area was acquired by the 3rd Respondent in 1937. This is what Issa Williams, the son of Seidu Williams, says on this point:-

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Judgment.

15th March 1961
- continued.

10 "Portion of the original land sold to my father by Kasumu Alli was later acquired by the Ibadan Native Authority for making a road which is at the back of Gbagi which is now known as Onireke Street. The remaining portion of the original land is still ours. My father applied for another piece of land to be given to him in exchange for the portion acquired. I produce a letter signed by my father. It is dated 27th July, 1937 (Exhibit "O")

20 Under cross-examination the witness went on to say:-

"I saw the land in dispute this morning. The whole of the land is my property. As far as I am aware, the portion on which the road in front has been situated was the portion acquired by the local Council".

And when questioned by the Court he said further that:-

"I would lay a claim on the land".

30 We then have the following note by the Court:-

"At this stage Court informs Counsel that it would be necessary to join witness Issa Akangbe Williams as a party to the suit in view of his evidence"

The case was then adjourned and on the next hearing date the record begins as follows:-

40 "Witness Williams states that as the Ibadan Council has agreed to pay compensation to him in respect of the acquisition of the land, he does not wish to be joined".

The effect of this evidence of Issa Akangbe Williams is that the whole of the land shown in Exhibit "A" as the land in dispute is his and that the area acquired by the Ibadan Council was the area to the west of it, which was used to construct Onireke Street. He therefore laid claim to the land.

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961
- continued.

This, to my mind, coupled with the notes recorded by the Trial Judge, is evidence against any acquisition of the land by the 3rd Respondent in 1937. The suit was adjourned for him to be joined as a party having an interest in the subject matter of the action and the fact that the Ibadan Council in 1959 agreed to pay him compensation cannot relate back and be evidence of an alleged acquisition in 1937. I am of the view that there is substance in this ground of appeal.

10

I now go on to ground 4, which reads thus:-

"The learned Trial Judge erred in law and misdirected himself when he held that the land in the present dispute as shown in Exhibit "A" is a portion of the land claimed by Ibikunle family in Exhibit "C" against the Ibadan District Council, when Exhibit "C" clearly shows that it is not part of the land in dispute in that case".

The relevant part of the judgment reads thus:-

20

"Although Raji Oduola denies that the land in the present dispute formed part of the land in the former dispute between the Ibikunle family and the 3rd Co-Defendant, I am satisfied from the evidence of the surveyor, Lanionu, that the land in the present dispute as shown in Exhibit "A" is a portion of land claimed by the Ibikunle family in Exhibit "C" against the Ibadan District Council".

It is clear from the evidence on record that in this passage the learned Trial Judge has misdirected himself, for the evidence of Lanionu is to the effect that the land in dispute in this appeal is outside the area in dispute in Exhibit "C". The witness went on to mark in blue pencil in Exhibit "C", to the south east of the land there in dispute, the area in dispute in this appeal. The relevant passage in the evidence of the witness is as follows:-

30

"After examining the 2 plans Exhibits "A" and "C" I say that the northern portion of the area in Exhibit "A" is contained in Exhibit "C" The land shown in Exhibit "A" as the land in dispute is contained in Exhibit "C" - At the request of the Court I have now marked in blue pencil on Exhibit "C" the land in dispute shown in Exhibit "A".

40

Cross-Examined by Cole:-

"The spot I have marked in blue pencil is outside the area shown in Exhibit "C" as being in dispute.

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961
- continued.

10 Following upon this misdirection are certain deductions and inferences unfavourable to the Appellant and his predecessor in title, made by the Trial Judge as flowing from his earlier finding, and these have been made specific grounds of appeal in grounds 5 and 7. The relevant passage in the Judgment complained of is as follows (it follows on from the last quotation from the judgment):-

"That being so, it is clear that the Ibikunle family was aware that the land in dispute had been acquired by the Ibadan District Council in 1949 and before they purported to convey the property to the Plaintiff.

20 The Plaintiff who is a learned surveyor and who claims to be the surveyor of the Ibikunle family has not been able to satisfy the Court that he was unaware of the area contained in the plan Exhibit "C" which he admits was prepared by his brother also a surveyor of the Ibikunle family. He must have been aware at the time he was purchasing the property that it had been the subject of litigation between his vendors and the Ibadan District Council".

30 These grounds of appeal must also succeed. In my view there can be no doubt that these are material and substantial misdirections, and the only point for consideration is whether a new trial should be ordered or whether judgment should be entered for the Appellant. The Court of Appeal in the case of Darko v. Agyaduna 9 W.A.C.A. 163 at page 167, after setting aside a judgment in the Plaintiff's favour refused to dismiss the Plaintiff's claim as requested by the Appellants, and ordered a new trial remarking that :-

sic.

40 "..... the whole case is so confused that it is impossible to decide what are the rights and wrongs of it".

Again in Bueze and others v. Nwakuche 4 Selected Judgments F.S.C. page 266 at page 266, where a new trial was ordered, the Court held that:-

"I have considered the authorities, but it is my view that the issues raised between the

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961

- continued.

parties and in particular between the Plaintiff and the 2nd Appellants, were not properly pleaded before the Trial Court and that the Court could not have properly adjudicated on the case before it, having regard to the nature of the plans filed by the Plaintiff and by the 2nd Appellants"

Finally on this point I would refer to the case of Akerblom v. Price, Potter, Walker & Co., 1881 50 L.J.Q.B.N.S. 629, where Brett, L.J., said at the same page that:-

10

"Upon a rule for a new trial, on the ground of misdirection and as for a verdict against evidence, the Divisional Court made the rule absolute. The appeal is against that order. Upon the hearing, it appearing to us that we had all the materials before us upon which to decide the case - that is to say, that we had all the evidence of direct facts before us, and that there remained only the question of what inferential fact ought to be drawn from those facts - we considered ourselves bound to go further that the Divisional Court and to order that the verdict for the Defendants should be set aside, and the judgment should be entered for Plaintiff without another trial".

20

There can be no doubt that all the facts are before us. The documents on which the parties rely as their root of title and the plans relating to the area claimed by them are before us. I now have to go on and see whether on the evidence the Appellant is entitled to judgment in his favour. I shall say no more on grounds 2, 8, 9 and 10 of the grounds of appeal other than that they lack substance and must be dismissed. I will now deal with grounds 6 and 11. The former complaints of the following passage in the judgment of the Trial Judge, which reads thus:-

30

"I am not satisfied that the Ibikunle family had any interest in the property to convey to the Plaintiff at the time they purported to do so even though they might have been the owners of the adjoining lands".

40

It is reasonable to infer from this passage that although the Ibikunle Family had some interest at some time before 1957, when they purported to convey to the Plaintiff, they had for reasons

contained in the earlier parts of the judgment ceased to have any interest before conveying to the Plaintiff. That reason would be the acquisition which the Trial Judge held had taken place. This view is supported by the earlier misdirection to which I have made reference where the Trial Judge found that the land in dispute in this appeal was part of that in dispute in Exhibit "C", for in the suit in which Exhibit "C" was tendered -

10 1/120/49 - the Trial Judge held that, inter alia:-

"The Plaintiffs (Ibikunle family) have satisfied me that in the distant past they owned all the land shown in the plan Exhibit "A" (Exhibit "C" in these proceedings)".

20 That action was against the 3rd Respondent's predecessor-in-title. If that be the correct interpretation the onus would then shift to the Respondents, who allege an acquisition to prove it. I have said enough about the evidence of acquisition and need say no more than that it was not proved to have taken place, and the Appellant would then be entitled to judgment. In addition to what I have said about the interpretation to be attached to that passage in the judgment of the Trial Judge, the Appellant at the hearing led evidence of tradition, coupled with evidence and the inference to be drawn from it, of ownership of the adjoining and surrounding lands as shown by Exhibit "K" - the judgment in 1/120/49, the plans Exhibits

30 "A" and "C", the evidence of Raji Oduola the 3rd Plaintiff witness, and to some extent that of Raji Alapinti the 4th Plaintiff witness, where he deposed that the area in dispute was the property of the Ibikunle Family. Learned Counsel for the Appellant drew our attention to S.45 of the Evidence Ordinance, which reads thus:-

40 "Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land".

Further, there is the evidence of Josiah Agbe, the 5th Plaintiff witness, who deposed to his having sold planks on the land in dispute from 1929 to

In the Federal Supreme Court.

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Judgment.

15th March 1961
- continued.

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961

- continued.

1954 with the leave and permission of the Ibikunle Family. That various plank sellers were using the land in dispute between 1937 and 1952 was admitted by Daniel Akinbiyi, a witness for the Respondents.

As against all this is the failure of the Respondents and particularly the 2nd and 3rd, who have pleaded their ownership of the land, to relate the area of land in Exhibit "M" which is Seidu Williams' original root of title to the land in the plans Exhibit "Q" - the application by Seidu Williams for a lease - and "N" - the Memorandum of Agreement of Seidu Williams - and more important still to relate any of these areas to the land in dispute in Exhibit "A". The land in Exhibit "M" lies between Ogunpa stream and a road described as Station Road. It abuts Station Road. This plan was prepared in 1902. Then we have Exhibits "Q" and "N" to which undated plans are attached purporting to be the area surrendered by Seidu Williams and for which a lease was obtained of the same area. The land therein does not abut the main road, but lies some 20 feet off the road, which is therein described not as Station Road, but Ogunpa Road, and stretches to Onireke Road. When, however, we look at Exhibit "P" and the land attached thereto, which is a lease of land from Seidu Williams to Mohammed El Khalil and the father of the 1st Respondent in 1938, we find that the land in Exhibits "Q", "N" and "P" is the same and does not correspond with the land in "M". Here, I would like to refer to the evidence of Isaa Akangbe Williams on this point. He said that:-

"Part of the land my father bought from Kasumu Alli has been leased to El Khalil and Moukarim, the Defendant's father. I recognised my father's signature on the document shown to me. It is a lease from my father to Khalil and Moukarim dated on 23rd September 1938 - (marked "P") My family is still collecting rents from El Khalil and Moukarim".

This evidence should be read together with that of Daniel Akinbiyi, a witness for the third Respondent, who says:-

"Lebanon Street was formerly known as Gbagi Street. That street leads to Railway Station. It was called Station Road. The Lebanon Street is what was the ancient footpath from the railway station to the town".

10

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From this it becomes apparent that Station Road in Exhibit "M" and Lebanon Street in Exhibit "N", "Q" and "P" are the same, the former being the old appellation for what was then possibly no more than a footpath in places. When, however, Exhibit "A" is introduced we find that the land in dispute in this appeal neither abuts Lebanon Street nor is near it. It, in fact, abuts Onireke Street on the west and the Ogunpa Stream on the East. It therefore appears that the land in Exhibit "Q", Exhibit "N" and Exhibit "P" are between Onireke Street and Lebanon Street, but on the other side of the land in dispute being further westwards. In the result the land of Seidu Williams, as shown in his deed of conveyance Exhibit "M", his original root of title, and from which the interests of the other Respondents flow, has not been identified with the land in dispute.

Finally, Exhibits "F" and "G" are the leases made between Johnson Aina and the 1st Respondent in 1953, and the Ibadan District Council and Johnson Aina in 1958 respectively. The plans of these deeds are identical and there can be little doubt that the land therein depicted is the same as the land now in dispute, in spite of the stream being called the Ogunpa Stream in one and Onireke Stream in the other. Learned Counsel has dealt with these two deeds in Ground 1 of his Grounds of Appeal. He urges that in 1953, at the time Exhibit "F" was entered into between the 2nd Respondent and the 1st Respondent, the former had no interest to convey to or lease to the latter, for the title of the 2nd Respondent was derived from a later conveyance of 1958, Exhibit "G", which was prepared a year after the issue of summons and some two months after the joinder of the Co-Respondents. I need say no more on this ground than that nemo dat quod non habet. If the original root of title is not shown to relate to the land in dispute and is in fact shown to be land away from that in dispute, later deeds made some 50 years after cannot cure the defect in the original deed.

After a full consideration of the authorities, I am of the view that we have enough facts before us to show:-

1. That the Appellant's predecessor-in-title was the original owner of the land in dispute and the adjacent land in dispute in

In the Federal
Supreme Court.

No.25.

Judgment.

15th March 1961
- continued.

In the Federal
Supreme Court.

No.25.
Judgment.
15th March 1961
- continued.

Exhibit "C". That the Appellant's predecessor-in-title had at least one tenant on the land for a period of 25 years.

2. That there was no evidence before the Learned Trial Judge that the land shown on the title deed of Seidu Williams, from whom the 3rd Respondent derived title and consequently the other Respondents, is the land now in dispute.

For reasons of the above premises the Appellant is entitled to succeed. I would set aside the judgment of the lower Court and in its place would enter judgment for the Appellant in terms of the writ, with costs assessed in this Court at 35 guineas and costs of the lower Court assessed at £114.12.6d. These costs are payable by the Respondents jointly or severally. 10

(Sgd.) J.I.C. Taylor,
Federal Justice.

I concur (Sgd.) A. Ade. Ademola, Chief Justice of the Federation 20

I concur (Sgd.) E.I.G. Unsworth,
Federal Justice.

Mr. E.A. Cole for the Appellant.

Mr. A. Ademola for the Respondents.

No.26.
Order allowing
Appeal.
15th March
1961.

No. 26.

ORDER ALLOWING APPEAL.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS.

Suit No.1/300/1957 30
F.S.C. 218/1960.

On Appeal from the Judgment of the High Court of the Ibadan Judicial Division of the Western Nigeria.

BETWEEN:- A.O. Coker Appellant

(L.S.) - and -

(Sgd.) A.Ade. Ademola
Chief Justice of the Federation. 1. F. Moukarihm
2. Johnson Aina
3. Ibadan District Council Respondents 40

WEDNESDAY, the 15th day of MARCH, 1961

UPON READING the Record of Appeal herein and after hearing Mr. E.A. Cole of Counsel for the Appellant and Mr. A. Ademola of Counsel for the Respondents

IT IS ORDERED that :-

1. this Appeal be allowed;
2. the judgment of the lower Court be set aside and judgment be entered in its place for the Appellant in terms of the writ;
3. the costs in this Court be assessed at 35 guineas and costs of the lower Court assessed at £114.12.6d.
4. these costs be payable by the Respondents jointly or severally.

(Sgd.) S.A. Samuel,
Ag. Chief Registrar.

In the Federal Supreme Court.

No.26.

Order allowing Appeal.

15th March 1961

- continued.

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No. 27.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.1/300/57

F.S.C. 218/1960.

Application for an order for Final Leave to Appeal to the Privy Council.

BETWEEN:- F.Moukarihm & Others

(L.S.) In re: F. Moukarihm Applicant

(Sgd.) A.Ade - and -

Ademola A.O. Coker Respondent
Chief Justice of the Federation.

30

MONDAY the 22nd day of JANUARY, 1962

UPON READING the application herein, and the Affidavit sworn to on the 12th day of January 1962,

No.27.

Order granting Final Leave to Appeal to Her Majesty in Council.

22nd January, 1962.

20

In the Federal
Supreme Court.

No.27.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

22nd January,
1962

- continued.

filed on behalf of the Applicant and after hearing
Chief F.R.A. Williams, Q.C. (Mr. G.C. Nzegwu with
him) of Counsel for the Applicant and Mr.J.O.Coker
(holding Mr. E.A. Cole's brief) of Counsel for
the Respondent:

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

(Sgd.) S.A. Samuel,
Ag: Chief Registrar.

E X H I B I T S

"M" - CONVEYANCE - KASUMU ALLI TO SEIDU
JABITA WILLIAMS

Exhibits

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"M".

Conveyance
(Kasumu Alli to
Seidu Jabita
Williams).

30th September,
1902.

THIS INDENTURE made the Thirtieth day of September
One thousand nine hundred and two BETWEEN KASUMU
ALLI of Ilu Birin Lagos Trader of the one part and
SEIDU JABITA WILLIAMS of Bishop Street Lagos
aforsaid Trader of the other part WHEREAS the
hereditaments hereinafter described and intended
10 to be hereby granted for an estate of inheritance
in fee simple in possession was allotted in Janu-
ary One thousand nine hundred and two by the
Native Authorities of Ibadan to the said Kasumu
Alli AND WHEREAS the said Kasumu Alli has
contracted and agreed with the said Seidu Jabita
Williams for the absolute sale to him of the said
hereditaments at or for the price or sum of FIFTY
POUNDS Sterling NOW THIS INDENTURE WITNESSETH
20 that in pursuance of the said agreement and in
consideration of the sum of FIFTY POUNDS to the
said Kasumu Alli paid by the said Seidu Jabita
Williams (the receipt whereof is hereby acknow-
ledged) The said Kasumu Alli doth hereby grant
unto the said Seidu Jabita Williams and his heirs
The piece of land situate at Iddo Gate in Ibadan
aforsaid and measuring as per Herbert Manlay's
plan north Three hundred thirty five feet south
Three hundred feet east One hundred and six feet
30 along Ogunpa Stream west One hundred and six
feet abutting on Station Road and is more particu-
larly delineated and described by a Map or Plan
below these presents coloured pink Together with
all rights and things appurtenant or reputed to be
appurtenant thereto And all the estate and inter-
est of the said Kasumu Alli therein TO HOLD the
same unto and to the use of the said Seidu Jabita
Williams his heirs and assigns for ever And the
said Kasumu Alli doth hereby for himself his heirs
40 executors and administrators covenant with the
said Seidu Jabita Williams his heirs and assigns
that notwithstanding any act deed or thing by him
the said Kasumu Alli done or knowingly suffered to
the contrary he the said Kasumu Alli now hath good
right to grant the said hereditaments in manner
aforsaid And that the said Seidu Jabita Williams
his heirs and assigns shall quietly possess and
enjoy the said hereditaments without any interrup-
tion and free from incumbrances from or by the said

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"M".

Conveyance
(Kasumu Alli to
Seidu Jabita
Williams).

30th September,
1902

- continued.

Kasumu Alli or any person rightfully claiming under him And that the said Kasumu Alli and all persons rightfully claiming under him will at all times hereafter at the request and cost of the said Seidu Jabita Williams his heirs and assigns do all such things for further assuring the said hereditaments to him or them in manner aforesaid as may be reasonably required

IN WITNESS whereof the said Kasumu Alli to these presents hath hereunto set his hand and seal at Lagos aforesaid the day and year first above written.

10

(Sgd.) ? (L.S.)

SIGNED by the said Kasumu Alli sealed and delivered this Indenture having been first read over and explained to him in the Yoruba language when he seemed perfectly to understand it and he subscribed his names in Arabic as herein appears in presence of us

20

(Sgd.) Jas. A. Williams

Momo Saba (Sgd.) ?

(Sgd.) T.Lloyd Harrison.

RECEIVED of and from the within named Seidu Jabita Williams the sum of Fifty Pounds sterling the consideration money paid by him to me as witness my hand -)

£50. 0. Od.

30

Witnesses - (Sgd.) J.A. Williams (Sgd.) ?

Momo Saba (Sgd.) ?

(Sgd.) T. Lloyd Harrison.



"T" - SIR EDWIN SPEED REPORTREPORT OF A COMMISSION ON LAND TENURE IN IBADAN.Sir Edwin Speed - 1916

NIGERIAN SECRETARIAT LIBRARY

Press No. 218A.

ExhibitsDefendants'
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Report.

1916.

REPORT:

10 The public proceedings of the commissions commenced on the 30th March, on which day and on the 31st March and the 1st and 3rd April I examined a large number of witnesses and heard Counsel on behalf of some of them in the Court House, Ibadan.

2. I have thoroughly discussed the question with the Bale and Council and I have had the benefit of the views of the Commissioner and the District Officer, based upon the provincial records and an extensive knowledge of the history of the province.

20 3. I have also thoroughly examined the records of the Ibadan Council and especially the minutes of those meetings at which the question of land tenure was discussed.

4. The contention of the Bale and Council, which may be accepted as an accurate statement of the native law on the subject of land tenure, as it existed and was, or would have been, recognized at the time when the province came under British control, is briefly as follows :-

30 The whole of the land of Ibadan is owned by the people of Ibadan, for and on behalf of whom the Bale and Council exercise control as guardians and trustees, whose duty it is to enforce the native law and custom relating to land. Under the Bale and Council are the families, occupying the land of their own right, entitled to occupy in perpetuity during good behaviour, but with no right of transfer outside the family. Those who are not natives of Ibadan can hold land only with the consent of the Bale and Council, with no right
40 of transfer and subject to the same conditions as natives, with this exception that inasmuch

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as every Ibadan is entitled to land and strangers are not, strangers are in the last resort liable to be dispossessed in favour of natives that is to say the Bale and Council in their case retain the right to dispossess them without cause shown, which right they do not possess in the case of native occupiers. It is frankly admitted that this power would not, unless in very exceptional cases, be exercised but it is claimed, and I think rightly, that it does exist.

10

5. The case of the Bale and Council is well expressed in the letter which was written to me after the discussion, to which I have above referred, and which is annexed to this report (Appendix 1).

6. This, as I have said, may be accepted as an accurate statement of native law at the time when the question of the introduction of strangers (i.e. natives who were not native born Ibadans) first became acute.

20

7. As early as 1896 the general question of acquisition of land by aliens occupied the attention of the Lagos Government, and a notice (No.396) was published in the Gazette of 13th June, 1896, to the following effect :-

Whereas grants and concessions have been made by chiefs within the sphere of influence of the Government of Lagos without the consent of the Governor of the Colony:

Notice is hereby given that no document hereafter made purporting to grant or convey any right over or interest in land, save and except the right to occupy agricultural land for the purposes of native husbandry, or the right to occupy building land for the erection of a native house will be recognized in any way by the Government, unless it shall bear the signature of the Governor or of such officer as he shall appoint for the purpose in token of Her Majesty's approval.

30

40

Grants and concessions already made without such consent will be recognized only to such extent and on such conditions as may hereafter be determined, but the grantees of rights, in respect of which there is a reasonable prospect of efficient and continuous work

being done within a reasonable time, will receive all due consideration.

This was re-published in the Gazette of 26th June, 1897, and again in the Gazette of 5th April, 1902.

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10 8. It must be remembered that this was a general notice and had no particular reference to Ibadan, and indeed it seems to have been directed against people seeking concessions on a large scale rather than against those who desired to occupy small plots for trading purposes. It is not therefore surprising that these latter, if it were ever brought to their notice, should have considered that it did not apply to their case, and indeed a good many of them might claim to come within one or other of the exceptions mentioned in the second paragraph of the notice.

20 9. But the question was frequently discussed in the Ibadan Council, and it was laid down from time to time that no transfer of land to strangers should be recognized unless it had received the express consent of the Council.

30 10. The Ibadan Council was not a purely native institution. It met under the presidency of the Resident (or the Governor if he was in a position to attend). Too much importance must not therefore be attached to its resolutions as expressions of the genuine opinion of the assembled Chiefs. The records of the Council contain numerous instances, especially in connection with land matters, of resolutions passed unanimously at the instance of the President and unanimously repudiated on subsequent occasions, as in no sense representing the opinion of those present.

40 11. On the 30th October, 1899, the Council resolved that no land in Ibadan territory should be sold to strangers, except with the express permission of the Council. It would be unfair to fix upon the word "sold" as implying that the Council recognized the principle that land could be sold in the ordinary acceptation of the term. No native Chief would ever admit that in public, however much he might be disposed to accept it in his own private transactions.

12. Subsequently on various occasions it was

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decided to adopt the plan of leases direct from the Council, and on the 18th January, 1901, a land rental scale was adopted.

13. The proposal to borrow the services of a Surveyor in order to enable the system of leasing to be put into effect was, as usual, adopted unanimously, but subsequently met with a storm of opposition, which burst at a meeting, held under the presidency of Governor MacGregor on the 10th May, 1901, with such violence that the Governor allowed the proposal, temporarily at all events, to lapse. 10

14. Finally, on the 17th March, 1902, all the Chiefs in Council assembled, under the presidency of the Acting Resident (Mr. R.J.B. Ross) roundly declared that they utterly disagreed with the proposals releasing of land, and that they wished all land questions to be withdrawn from the Council, so that they could settle them themselves in accordance with their own traditions. 20

15. This complete volte face seems to have satisfied the Residents that there was nothing to be gained by further discussion, and it does not appear that the question of land transfer occupied much of the attention of the Council, or of the political officers, from that date till recent years.

16. Now while these discussions were taking place in the Council, and while it was publicly and officially maintained that the ancient customs with regard to the tenure and transfer of land were being maintained, and that the Bale and Council still upheld their own authority, it is unfortunately true that at least two Bales, Fajimi and Apampa, and several minor chiefs, were making, or purporting to make, large grants of land on their own authority, and without reference to the Council. 30

17. Especially was this done in the case of one N.T.B. Shepherd, a man of a very strong personality, who appears to have exercised a commanding influence over Bale Fajimi. To him, and through his introduction to others, this Bale made various grants, which form the basis of the title to many of the holdings into the origin of which the Commission is directed to inquire. 40

Some of these grants to Shepherd came before the Council, e.g. on 12th March, 1900, there is a resolution that "leases be granted to Shepherd for plots of land given to him at Iddo Gate, leases to be for terms of 50 years. "To this Shepherd objected and the matter does not seem to have been further discussed. In any case however this shows that the Council knew, and was prepared to approve, of some at all events of Shepherd's grants, in some form or other.

10

18. At the same time the family owners were undoubtedly making similar grants without due sanction, and were in many cases actually purporting to sell their land and executing formal conveyances as owners in fee.

19. Moreover land was in several cases seized and sold at public auction under a writ of fi fa, issuing from the Supreme Court in the exercise of the jurisdiction conferred upon it by the judicial agreement of 1904, and a certificate of title thereto given by the Chief Justice in accordance with the practice of the Court. It is true that the certificate states only that the purchaser has acquired the right, title and interest of the execution debtor in the land in question, but native purchasers may be excused for not being able to appreciate the difference between that and a sale outright.

20

20. But perhaps the most barefaced negation of the principles of law, which the Chiefs were supposed to be upholding, comes from Bale Apampa who, on 19th October 1908, before the Commissioner, swore to an affidavit, supported by an elaborate plan, as follows :-

30

1. That I on the 4th day of July 1908, on behalf of the Council of Ibadan, representing the Ibadan people, hereby granted unto Abudu Dania of Lagos and Ibadan his heirs executors administrators and assigns for ever all that piece or parcel of land situated near Ogunpa Stream Ibadan being formerly a portion of Alapinti's (deceased) land and more particularly delineated, etc., etc., etc.

40

2. That I say for myself and on behalf of the

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Council that the Ibadan people have no further claim whatsoever on the said land.

21. It is abundantly clear that the old law was persistently disregarded by everyone who had the desire and the opportunity to profit by breaches thereof, and inter alia by those who, by virtue of their position, were specially responsible for its enforcement.

22. It is now material to examine the position of those who have purchased or otherwise acquired this land. 10

This was well put to me by Mr. J. H. Doherty, a Lagos merchant on a large scale, who has acquired by various means several plots of land for the purpose of trading in the vicinity of the Iddo Gate. His contention is that it is quite possible, and he is not concerned to deny that in old times the sale of land was unknown. The reason for this, he would say, is obvious. Land was not sold because no one wanted it, everyone had enough of his own, and it was consequently of no value. That was the case in primitive times before commerce with the white man, which changed and was bound to change the whole situation. Ownership of land is a necessary incident of trading: ownership without the right to sell, mortgage, etc., is an absurdity. This has been recognized in Lagos for generations where practically all the land is freely dealt with, and the incidents of native land tenure have practically disappeared; and more recently in Abeokuta where the sale of land, contrary though it may be to strict native law, has been openly conducted and recognized for years, and where the system of private ownership has been to a large extent adopted by the common consent of the community. 20 30

23. Lagos traders, having lived for generations and traded under these conditions, were in due course invited, under the aegis of the British Government, to extend their operations to Ibadan. They were well aware that Ibadan was a more primitive community than many of those with whom they had been in the habit of trading, and they relied on the protection of the British Government. It was useless to ask them to trade and at the same time tell them that they could not acquire land. 40

They would want land before they could begin to trade on any but the smallest scale, and consequently they set to work to acquire it in one or other of the only methods with which they were acquainted, viz: either by grant from the recognized ruler of the place (the Bale) upon the performance of the usual conditions, or by purchase from a family or individual owner. Having acquired the land, they considered that as a matter of course they would be allowed to hold it and deal with it without interference. If the notices re grants and concessions, of which mention has been made above, were ever brought to their knowledge, which is improbable, they would not consider that they referred to the acquisition of small plots of land required for trading purposes.

10

20

30

40

24. Now it seems to me that there is much to be said for this view of their position; but it must not be forgotten that frequent discussions have taken place on the subject of the introduction of strangers, and their acquisition of land, that the Bale and Council, in their official pronouncements, have frequently refused to recognize titles acquired in the manner above described, that it has been for years a matter of common knowledge that the question was a thorny one, and that the present situation was the cause of discontent and apprehension among the native community. Nevertheless they have persisted in obtaining titles which they knew might not be recognized by the native authorities, and have in some cases openly flouted the recognized rulers of the land. On the other hand they have in most cases paid valuable consideration for their holding, and if their hands were clean in other respects they would be entitled to the sympathy and support of Government.

25. It is quite clear that titles acquired by aliens, who were not natives of the Colony or Protectorate, subsequently to 30th March, 1908, without the consent of the Governor, are null and void by virtue of the provisions of the Native Lands Acquisition Ordinance, but the number of these is so small as to be negligible.

26. With regard to the titles of other aliens, i.e. natives who are not native born Ibadans, their origin would appear to fall under one of three heads, viz:-

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-- continued.

- (1) Acquired direct from the Bale, with or without the approval of the Council, and either through the intervention of Mr. Shepherd or independently.
- (2) Acquired direct from Mr. Shepherd.
- (3) Acquired by grant or purchase either from an original owner, i.e. an Ibadan entitled to occupy land in perpetuity, or from a person claiming directly from such an owner.

10

27. It will be seen from the foregoing paragraphs that in each of these cases, with the exception of the very limited number of cases in which grants were duly obtained from the Bale and Council, classed under (1), the title is incomplete and, but for the surrounding circumstances, I should have been prepared to recommend that it should not be recognized, and that the parties should be compelled to negotiate afresh on the basis that their original agreements were null and void.

20

28. It seems to me however that any such recommendation would be contrary to the general principles of equity, and consequently some modification is required.

29. The fact is that none of the parties come into the court with clean hands. All have been guilty of irregularities. The Bales, and perhaps the Council with them, have failed in their duty by ignoring the ancient customs of their country and purporting to make grants conferring larger interests than they had any right to confer; the owners of the soil, if the phrase may be used, have surrendered a larger interest than they themselves possessed; and the purchasers or grantees have obtained rights which they knew, or might easily have ascertained, were outside the powers of the grantors to convey.

30

30. An equitable settlement must therefore be in the nature of a compromise, and, in making the recommendations which I am about to make, I have endeavoured to secure firstly that the position of the native authorities should be vindicated and equivocally defined, and secondly that innocent people should not be deprived of the fruits of their energy and commercial acumen.

40

I am glad to say that all parties, who have appeared before me have expressed their willingness to accept some such solution of the difficulty as I am about to propose.

10 On the one hand it seems to me to be above all things desirable that the old native system should, as far as possible, be maintained till a modified system be introduced with proper legislative sanction, and on the other hand it seems essential that the development of the country should not be fettered by the moribund customs of a by-gone age.

31. I therefore recommend --

- 20 (1) That all non-Ibadans claiming to hold land whether by gift, grant or purchase in Ibadan territory be invited to come in within a limited time and report their claims, producing their documents of title, if any, or an affidavit setting forth the manner in which the land was obtained and all material facts relating thereto, and receiving in exchange a lease from the Bale and Council (if in Ibadan or the proper authority elsewhere) for an indefinite term, rent free, with no right of transfer except by consent of the lessors, such consent not to be unreasonably withheld - It being understood that such lease is no guarantee of title except as against the lessor, and no defence to an action by a third party alleging that the land was obtained without consideration, or by fraud, or by other illegal methods;
- 30 (2) That no claims maturing after the date fixed by the notice to report claims be entertained:
- 40 (3) That no further alienation to strangers be recognized unless it has been approved by the Bale and Council and a grant or lease issued in terms similar to the above, with or without rent reserved, and expressed to embody all the ordinary incidents of native land tenure:
- (4) That a small fee be charged for an original lease and a small fine be levied on each transfer:

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- (5) That a register of all grants and leases be kept by the Council or other proper authority:
- (6) That all land comprised in grants or leases so issued be liable to any taxation which may hereafter be lawfully imposed upon land or house property either by the Colonial or by the native government. With regard to farm land I see no reason why the same procedure should not be adopted but I make the further recommendation: 10
- (7) That no transfer of purely agricultural or waste land be recognized, if it can be shown that since the alleged transfer no attempt has been made within a reasonable time to work the land.
- (8) It is probable that some sort of Government control over the actions of the Bale and Council will also be required. 20

32. My recommendations apply mutatis mutandis to the other towns under the hegemony of Ibadan, such as Oshogbo, Ogbomosho, etc., where the relations of the Bale and his Council to the land are the same as at Ibadan, except that they are under the control of the Ibadan Bale and Council, such control in ordinary matters being practically nominal.

33. It will be seen that, in making these recommendations, I have assumed that the transactions whereby strangers have obtained land have been bona fide transactions, that is to say that the land has been acquired with the object of trading, or for valuable consideration, as a commercial asset, and not as a mere speculative venture. 30

34. This assumption is, I think, justified in the great majority of cases which came before me. Those who have obtained land by means which they could not, or would not, disclose to the commission will, if my recommendations be adopted, within the time limited have to come forward, and, even if they succeed in obtaining a lease from the Bale and Council, they will have to face the possibilities forshadowed in the reservation contained in the latter part of my first recommendation. 40

35. In dealing with the legal position of the Bale

and Council I have left out of consideration the position of the Alafin of Oyo, as Sovereign owner of all Yoruba land, deeming that it is immaterial to the solution of the present question:

10 36. Annexed hereto (Appendix 2) are the M.S. notes of evidence. These notes are not of course anything in the nature of a verbatim report of the proceedings, but merely express what, in the course of examining the witnesses, seemed to me to be the salient points of their evidence. A large number of documents of title remain in my possession, and are available for reference, but I am retaining them for safe keeping.

20 37. In conclusion I have to express my warmest thanks to Commissioner of the province and the District Officers for the great assistance which they have given me throughout the inquiry. Mr. Grier's knowledge of the local land laws is obviously most thorough and most carefully acquired.

(Sgd.) E.A. Speed.

Ibadan, 10th April, 1916.

"Q" - APPLICATION BY SEIDU WILLIAMS FOR LEASE.

Reference to your application for a lease, will you please answer the following questions:-

30 Name Seidu Williams.
Tribe Jebu
Place of Birth Jebu Ode
Place of Residence Lagos
From whom land obtained Kasumu Alli
Tribe Egba
Place of Birth Abeokuta
Place of Residence Ibadan
Date of application 29/12/16.

" " acquisition

For what consideration Bought

(a) If bought (for how much) £50. 0. 0

(b) If rented (for what rent and for how long) Nil

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"Q".

Application by
Seidu Williams
for Lease.

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"Q".

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Any agreement between lessee and lessor receipt
with the Government.

Situation ... Iddo Gate.

Approximate acreage (measurements) 102 x 320.

Building (whether erected by lessee or lessor)

Approximate size 102 x ?

Building erected by lessee.

N	214'5"
S	189'0"
E	116'5"
W	99'0"

10

"S".

Letter,
District
Officer Ibadan
to Seidu
Williams.

30th October,
1928.

"S" - LETTER, DISTRICT OFFICER, IBADAN to SEIDU
WILLIAMS.

EXHIBIT "S": 1/300/57: 8/7/59 (Intld.) I.S.B.

No. 76/26.

District Officer's Office,
Ibadan.

30th October, 1928.

Your property at Gbagi Street, Ibadan

Sir,

20

I have the honour to request you to supply me
with the following informations:-

- (a) Your expenses in erecting and repairing
the buildings on this land. £2000 ?
- (b) The present value of the buildings £1200 ?
- (c) The annual rent received by you for this
property. £240.
- (d) The names of your lessees: Nabhan Bros.

2. I have to inform you that your lease cannot
be proceeded with until I am in receipt of these
particulars.

30

I have the honour to be,
Sir,

Your obedient Servant,
(Sgd.) ?

Mr. Seidu Williams,
Gbagi Street,
Ibadan.

For District Officer,
Ibadan Division.

"R" - LETTER, SEIDU WILLIAMS TO DISTRICT OFFICER
IBADAN.

EXHIBIT "R": 1/300/57: 8/7/59 (Intld.) I.S.B.

13, Bankole Street,
Lagos, Nigeria.

December 5th, 1928.

Sir,

10 With reference to your letter No. 76/26 dated 30th October 1928, my personal attention which was absolutely necessary to deal with questions contained therein had, I regret to say, been prevented by indisposition. Today that I feel little better I hasten to seize the chance to answer them as follows:-

A. The original cost of improving the lands in filling big ditches, levelling hilly places, erecting buildings and subsequent extensions is £2000.

20 Note:- In addition to the above amount, about £30 average is spent annually from 1902 up to date to keep the buildings constantly in good repair. This addition as a matter of fact may be left out as allowance for Wear and Tear.

B. The present value of the buildings is same as above viz:-

£2000. Owing to the fact noted under (A) above.

30 C. £120 per annum for a portion of the buildings containing four shops as communicated to you before in my letter of 14th June 1928, and £120 per annum for the other portions thereof making £240 per annum in all.

D. Nabham Brothers.

Remarks:- This opportunity may be taken to add some relevant informations:-

40 1. That when the Railway Terminus was at Ibadan, Governor McGregor and the Bale of Ibadan invited experienced Merchant of good reputation from Lagos to acquire lands at

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"R".

Letter, Seidu
Williams to
District
Officer, Ibadan.

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"R".

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Ibadan in the vicinity of the Station with a view to commercially developing the Country both for the benefit of the Railway Traffic and of the People of Ibadan. We took the invitation in good faith and without suspicion of any future dispossession applied honestly and vigorously our financial resources and energy which resulted in a complete success of which today bears eloquent testimony.

10

2. That my Title to the land in question is based on a conveyance dated 30th September 1902 confirmed by the then Bale Fajimi which conveyance I had submitted on request from the Bale and Council to the Commission presided over by the Justice Mr. Speed, in January 1916.

3. That I obediently accepted the advice of the commission and applied for a Lease in lieu of the conveyance since 1916.

20

4. That I have been in continuous and undisturbed possession and occupation since 1902 now 26 years ago.

General:- We look up to you white people for Justice and Equity.

All my past troubles and enormous outlay over these premises in my youthful days I reckoned upon as provisions laid by for the support of my old age which has now come. But for what I derive from them now it would have been harder for me. Besides these the premises also serve my family as residence.

30

I have the honour to be,
Sir,
Your obedient Servant,
Seidu J. Williams.

The District Officer,
Ibadan Division.

"N" - MEMORANDUM OF AGREEMENT (BALE & COUNCIL TO SEIDU WILLIAMS)

In the Judicial Council of Ibadan

(Native Courts Ordinance, 1918)

MEMORANDUM OF AGREEMENT

Made this 23rd day of September, 1930

Grantor: Bale and Council on behalf of himself and his Successors as Trustees for the Tribe of Ibadan.

10 Grantee: Seidu Williams of Jebu.

Situation, name and boundaries of land:

As shown on the key plan in the Lands Registry Office Gbagi II. 5.

Term: 20 years, with power of renewal for a similar period with the approval of the Resident.

Conditions of Occupancy, including rent:

(1) Rent £10 per annum

(2) Grantee may not sublet or transfer this plot without consent of Bale and Council.

20 (3) Grantee must conform to any building line regulation made by Bale and Council.

This grant is terminable by the Grantor or his successors at 3 months notice subject to the liability of the Grantor to pay compensation for permanent improvements.

Their

	Okunola	X	Bale
	Aminu	X	Balogun
30	Signature of Grantor	Ayodabo	X Otun Bale
		Omitade	X Otun Balogun
	Witness (Sgd.) T. Laoye		Marks.
	Judicial Council Clerk.		

I agree to accept this grant in all its terms and bind myself to submit to the jurisdiction of this Court (Council) in all Criminal and Civil matters.

Signature of Grantee: Seidu J. Williams

Witness: Hugh Thompson, Ag. A.D.O.

His

40 Signature of President Okunola x Bale
mark.

Place Council Hall

Date 23rd September 1930.

Approved
(Sgd.) ?
Resident.

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Defendants'
Exhibits.

"N".

Memorandum of
Agreement
(Bale & Council
to Seidu
Williams).

23rd September,
1930.

Exhibits
Defendants'
Exhibits.

"L".
Chronicle of
Ijoba Ibile
Marun.
July 1937.

"L" - CHRONICLE OF IJOBA IBILE MARUN.

IJOBA IBILE MARUN

BEING THE CHRONICLE OF
THE IBADAN, ILLA, IFE, IWESHA AND OYO
NATIVE ADMINISTRATIONS

Vol.III Ibadan, July, 1937 No. 7

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Native Courts Ordinance.

PUBLISHED BY

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THE FIVE NATIVE ADMINISTRATIONS

Price - THREE PENCE A COPY.

PRINTED BY

THE ILARE PRESS, IBADAN.

"O" - LETTER, SEIDU WILLIAMS TO DISTRICT OFFICER
IBADAN.

Exhibits
Defendants'
Exhibits.

The District Officer,
Ibadan.

13, Bankole Street,
Lagos.

27th July, 1937.

"O".

Letter, Seidu
Williams to
District
Officer, Ibadan.

27th July, 1937.

Sir,

10

Pursuant to the Notice placarded on the land
situate at and between Onireke and Ogunpa Stream,
I have the honour to inform you that I am the owner
of the land situate at Lebanon Street (Gbagi) and
occupied by Messrs. Elkalil and Moukarim.

This land stretches from Lebanon Street to
Onireke at the back and divided by a Motor Road
leading to Ogunpa.

2. And also have to remind you about the ex-
change of land which I had agreed to, whom the
Government shall have to use part of my land for
constructing Motor Road from Lebanon Street to
Onireke.

20

I shall want the exchange to be near my re-
maining land at Onireke.

I have the honour to be,
Sir,

Your obedient Servant,

Seidu J. Williams.

L.R.C.

Please put this with the others already re-
ceived and keep them together.

30

(Sgd.) J.L. Dina
29/7/37.

"P" - LEASE (SEIDU JABITE WILLIAMS TO MOHAMMED
EL-KALIL AND R.S. MOUKARIM)

"P".

THE NATIVE LANDS ACQUISITION ORDINANCE
(Chapter 89)

Lease (Seidu
Jabite Williams
to Mohammed
El-Kalil and
R.S. Moukarim).

THIS DEED made the 23rd day of September, 1938
BETWEEN SEIDU JABITA WILLIAMS of 13, Bankole
Street, Lagos, Nigeria hereinafter called the

23rd September,
1938.

Exhibits
Defendants'
Exhibits.

"p".

Lease (Seidu
Jabita Williams
to Mohammed
El-Kalil and
R.S. Moukarim).
23rd September,
1938
- continued.

Lessor, which term includes the successors in title of the lessor where the context so admits of the first part by and with the consent of the Olubadan and Council of Ibadan hereinafter called the Ibadan Native Administration of the second part and Mohammed El-Kalil of 20 Campbell Street, Lagos, Nigeria and Ramiz Sami Moukarim of Lebanon Street, Ibadan hereinafter called the Lessees which term includes the successors in title of the lessees where the context so admits of the third part 10
WITNESSETH that in consideration of the annual rent of £173.0.0d. (One hundred and seventy-three pounds) to be paid by the Lessees as hereinafter mentioned the Lessor doth hereby demise to the Lessees ALL THAT piece or parcel of land with buildings thereon situate between the property of Salami Agbaje and the property of Michael Elias in Lebanon Street at Ibadan in the Oyo Province containing an area of 2319.50 square yards which is described in the schedule annexed hereto and more particularly delineated and shown surrounded by a border coloured pink on the plan endorsed on these presents TO HOLD the same unto the Lessees for a term of (26) Twenty-six years from the 1st day of September, 1937, the Lessees paying therefore to the Lessor without demand the said annual rent on the first day of January in each year, the proportion of rent due up to the first day of January next being paid upon the execution of these presents. 20

2. The Lessees covenant with the Lessor as follows:-

- (1) To pay the said rent at the times and in the manner aforesaid.
- (2) To pay all existing and future taxes, rates, assessments and outgoings of every description to which the premises or the Lessor or Lessees in respect of the premises are or is or shall hereafter be liable. 40
- (3) Not to assign or underlet the said premises without the consent of the Lessor the Olubadan and Council and of the Governor.
- (4) At the expiration or sooner determination of these presents to deliver up the said premises peaceably to the Lessor.

(5) To use the said premises for the purposes of carrying on their business of general merchants and residence for themselves, their families and domestic servants only, and to begin to use the said premises for such purposes within six months from the date hereof.

Exhibits
Defendants'
Exhibits.

"P".

Lease (Seidu
Jabita Williams
to Mohammed
El-Kalil and
R.S. Moukarim)
23rd September,
1938
- continued.

3. PROVIDED ALWAYS and it is hereby agreed as follows :-

10

(1) If the rent hereby reserved or any part thereof shall be in arrear for one month or if there shall be a breach or non-observance of any of the covenants aforesaid on the part of the Lessees the Lessor by himself or by the District Officer of the District on his behalf may re-enter upon the said premises and the term hereby created shall forthwith cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the Lessees to be performed or observed.

20

(2) If there shall be a breach of any of the said covenants hereinbefore contained, and if upon such breach the Lessor shall not avail himself of the powers of re-entry conferred upon him by the last mentioned proviso, the Governor may, by notice in writing, require the Lessees to make good such breach within such time as is stated in the said notice, and if the Lessees shall neglect or fail to comply with such notice, the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the Lessees to be performed or observed such notice shall be a good and sufficient notice if the same be addressed to the Lessees and delivered on the premises hereby demised

30

40

(3) If the Lessees shall not within six months from the date hereof use and continue to use the said premises for such purpose as

Exhibits
Defendants'
Exhibits.

"p".

Lease (Seidu
Jabita Williams
to Mohammed
El-Kalil and
R.S. Moukarim)
23rd September,
1938
- continued.

aforesaid a sum equivalent to twelve months rent shall be and become payable by the Lessees to the Lessor as liquidated damages and the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants or conditions on the part of the Lessees to be performed or observed. 10

(4) If the Lessees shall not use the said premises hereby demised for the said purpose at any time during the continuance of the term hereof for the space of six calendar months, then and in such case the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants or conditions on the part of the Lessees to be performed or observed. 20

(5) The said annual rent of £173.0.0d. shall be paid as follows:-
(a) £155.14.0d. to the Lessor.
(b) £17. 6. 0d. to the Ibadan Native Administration.

IN WITNESS whereof the parties hereto have hereunto set their hands or made their marks and set their seals the day and year first above written. 30

SIGNED SEALED AND DELIVERED } (Sgd.)
by the above named Seidu } Seidu Jabita Williams
Jabita Williams in the } (L.S.)
presence of:- }

(Sgd.) J.L. Dina L.C.
Divisional Officer,
Agodi, Ibadan.

SIGNED by the making of their marks, sealed and Delivered by the said Olubadan and Council of Ibadan, the foregoing having been read over and interpreted to them when they appeared to understand same in the presence of
(Sgd.) ?

Their
Okunola x Olubadan (L.S.)
Fagbimin x Balogun (L.S.)
Oyekola x Otun Balogun (L.S.)
Ishola x Otun Balogun (L.S.)
Witness to marks -
Before me,
?
Magistrate.

Exhibits
Defendants' Exhibits.
"p".
Lease (Seidu Jabita Williams to Mohammed El-Kalil and R.S. Moukarim)
23rd September, 1938
- continued.

SIGNED SEALED AND DELIVERED by the above named Mohammed El-Kalil Ramiz Sami Moukarim in the presence of
(Sgd.) J.L. Dina,
L.C.

(Sgd.) M. El-Kalil (L.S.)
(Sgd.) R.S. Moukarim (L.S.)

Occupation
Address: Divisional Office, Agodi, Ibadan.

APPROVED the 4th day of October, 1938.
(Sgd.) K.F.M.White
Acting Chief Commissioner,
Southern Provinces.

Before me:
(Sgd.) ?
MAGISTRATE.

LEASE OF MESSRS. EL-KALIL AND MOUKARIM

PLOT - GEAGI II. 5, LEBANON STREET
IBADAN.

AREA:- 2319.50 SQUARE YARDS

D E S C R I P T I O N .

Starting at a concrete pillar marked P.B.N. 2285, the Co-ordinate of which are 1924.42 feet South and 4598.57 feet West of Δ L.92, the origin of Ibadan Surveys, thence bounded by straight lines the bearings and lengths of which are as follows:-

<u>Exhibits</u>	<u>From</u>	<u>Bearing</u>	<u>Length</u>	<u>To.</u>
Defendants' Exhibits.	P.B.N.2285	62° 32'	54.3 feet	P.B.N.2287
"P".	P.B.N.2287	62° 15'	68.6 "	P.B.N.2286
	P.B.N.2286	61° 16'	95.4 "	I.N.A. 394
Lease (Seidu Jabita Williams to Mohammed El-Kalil and R.S. Moukarim)	I.N.A. 394	171° 13'	120.6 "	P.B.Z. 701
	P.B.Z. 701	253° 45'	65.2 "	P.B.Z. 700
	P.B.Z. 700	242° 24'	122.7 "	P.B.Z. 699
	P.B.Z. 699	335° 14'	28.6 "	P.B.N.2096
23rd September, 1938	P.B.N.2096	335° 18'	22.8 "	P.B.N.2095
- continued.	P.B.N.2095	338° 04'	33.6 "	P.B.N.2284
	P.B.N.2284	338° 17'	14.7 "	P.B.N.2285

the starting point

Bearings are on True North.

(Sgd.) ?

EAR/Eyo/7. Government Surveyor,
3rd July, 1937.

"H".

Statement of Claim in Suit 1/120/49.

3rd February, 1950.

"H" - STATEMENT OF CLAIM IN SUIT 1/120/49.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE IBADAN JUDICIAL DIVISION

HOLDEN AT IBADAN

Suit No.1/120/49

BETWEEN:- 1. Akadiri Akani
2. James Akintola Babalola
On behalf of themselves
and Balogun Ibikunle
Family

Plaintiffs

- and -

Olubadan-in-Council

Defendants

STATEMENT OF CLAIM

1. The Plaintiffs are members of Balogun Ibikunle Family of Ibadan Oyo Province, Nigeria, and they sue on behalf of themselves and the other members of Balogun Ibikunle Family.

Exhibits
Defendants'
Exhibits.

"H".

Statement of
Claim in Suit
1/120/49.

3rd February,
1950

- continued.

10 2. The two parcels of land which are the subject matter of this action are situated and being at Gbagi and Ekotedo, the one is bounded on the North by Onireke Street in the East by a Lane and Mosque, in the South by Lebanon Street and in the West by Race Course Road and, where necessary, it is hereinafter referred to as Parcel A: and the other is bounded on the North by Crown Land, in the East by Sabongeri Road and Oyo Road, in the West by Crown land and Plaintiffs' Land, in the South by Parcel A and, where necessary, it is hereinafter referred to as Parcel B. The two parcels of land are more particularly described in the plan attached and filed herewith edged therein pink.

3. The Plaintiffs say that the late Balogun Ibikunle was their great ancestor and he was one of the young warriors under Oluyole who became Bashorun in 1836.

20 4. The said Ibikunle Balogun was a hunter of Ogbomosho, and migrated therefrom to Ibadan about the year 1821, where he became a professional warrior under the said Bashorun Oluyole. After the death of Bashorun Oluyole the said Ibikunle became the Balogun and a leading and famous warrior of Ibadan.

5. In about the year 1823 the said Ibikunle Balogun took possession of an unoccupied and unappropriated virgin land, of which the entire land now in dispute forms part.

30 6. The said Ibikunle Balogun built huts on the land, and settled there together with his retainers and slaves who cultivated the said land mainly for the benefit of their master.

7. Since about 1823 when the said Ibikunle Balogun took possession of the land in dispute, the Plaintiffs' Family were, up to the year 1900 and 1917 respectively in exclusive and undisturbed ownership and possession of Parcel A and Parcel B, cultivated them and built huts thereon.

40 8. In 1900 one Fajimi the then Bale of Ibadan together with the members of his Council constituted the Authority for Ibadan.

9. In the said year 1900, the said Fajimi the Bale and his Council sought and obtained the permission and consent of the Plaintiffs' Family for a market to be established on Parcel A.

Exhibits
 Defendants'
 Exhibits.

"H".

Statement of
 Claim in Suit
 1/120/49.

3rd February,
 1950

- continued.

10. The Plaintiffs say that according to Native Law and Custom the owner of any piece of land on which a market or trading centre is established is entitled to a toll (analogous to rent) for the use and occupation of such land.

11. The Plaintiffs aver that the said Bale Fajimi and his Council did agree with and assure the Plaintiffs' Family that the latter would be entitled to collect the customary toll from persons trading in the market established on Parcel A. 10

12. The Plaintiffs further aver that it was for this consideration and for this consideration alone that their Family agreed to Parcel A being used for the establishment of a market.

13. After the establishment of a market on Parcel A the Plaintiffs' Family posted their agent to the market to collect the customary toll, but he was prevented from doing so by the agents and servants of the said Bale Fajimi and Council, and the traders in the market also refused to pay any toll to the said agent of the Plaintiffs' Family. 20

14. As a result, the Plaintiffs' Family complained to the said Bale Fajimi and Council, whereupon the latter assured the Plaintiffs' Family that they (the Bale and Council) would collect the customary toll from the traders, and after doing so, they would pay it over to the Plaintiffs' Family.

15. The Plaintiffs say that this promise was not fulfilled either by Bale Fajimi and Council or their successors in Office. 30

16. About four years after the establishment of a market on Parcel A various houses were built thereon.

17. The Plaintiffs' Family again approached Bale Fajimi and Council to demand an explanation and compensation, and the latter assured the Plaintiffs' Family that whatever toll or compensation was collected by them for the use and occupation of the land would be paid over to the Plaintiffs' Family. 40

18. The Plaintiffs aver that in spite of repeated demands from the said Bale Fajimi and Council and their successors in office, nothing has been paid to the Plaintiffs' Family for the use and occupation of Parcel A.

19. The Plaintiffs say that the Defendant is the successor in office of the said Bale Fajimi and Council.

20. The Plaintiffs also say that Bale Fajimi and Council and their successors in office as the Authority for Ibadan have since 1900 wrongfully assumed ownership of Parcel A and have demised it to various persons and corporations.

Exhibits
Defendants'
Exhibits.

21. The said Authority for Ibadan has from time to time since 1900 collected rents from various tenants on Parcel A for the use and occupation of the said land.

"H".

Statement of
Claim in Suit
1/120/49.

10 22. The Plaintiffs aver that the said Authority for Ibadan has since 1900 failed to pay to the Plaintiffs' Family all or any part of the rents collected by the said Authority for Ibadan from tenants on Parcel A.

3rd February,
1950
- continued.

20 23. In about the year 1916 or 1917, without the consent of the Plaintiffs' Family the Defendant as the Authority for Ibadan wrongfully assumed ownership of and dominion over Parcel B and started to make grants of leases thereof to various persons, from whom the Defendants collected rents periodically.

24. The Plaintiffs aver that the Defendant has not paid to the Plaintiffs all or any part of the rents thus collected from tenants on Parcel B.

25. The Plaintiffs say that they make repeated demands to the Defendant for either the rents collected by Defendant on Parcel B to be paid over, or the land itself restored, to them, but without success.

30 26. The Plaintiffs will contend at the trial that, in view of the allegations hereinabove contained, the Defendants as the Authority for Ibadan and as the successors of Bale Fajimi and Council are guilty of fraud, and undue influence.

40 27. The Plaintiffs will also contend at the trial that parcels of land belonging to Wondo Family and Bashorun Oluyole Family which were expropriated by the Defendant in the same manner as the Plaintiffs' have been restored by the Defendant to the two Families aforementioned.

WHEREFORE the Plaintiffs claim as per Writ of Summons.

DATED this 3rd day of February, 1950.

(Sgd.) Obafemi Awolowo
Plaintiffs' Solicitor.

Exhibits
Defendants'
Exhibits.

"J" - STATEMENT OF DEFENCE IN SUIT 1/120/49
IN THE SUPREME COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION

Suit No.1/120/49

"J".

Statement of
Defence in
Suit 1/120/49.
6th May, 1950.

BETWEEN:- 1. Akadiri Akani
2. James Akintola Babalola
On behalf of themselves
and Balogun Ibikunle
Family Plaintiffs

- and -
Olubadan-in-Council Defendants

10

STATEMENT OF DEFENCE

1. Save and except as is hereinafter expressly admitted the Defendants deny each and every allegation of fact contained in the Plaintiffs' Statement of Claim as if each and every such allegation were separately taken and specifically traversed.

2. The Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 8, 19, 22 and 24 of the Statement of Claim.

20

3. The Defendants deny the allegations contained in paragraphs 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 25, 26 and 27 of the Statement of Claim.

4. The Defendants aver that it is a well known custom throughout Yoruba land and particularly in the Ibadan District that Lands are held at the disposal of the head and superior chiefs on behalf of the community in accordance with native law and custom. As Ibadan town was acquired by right of conquest, all urban lands were vested in the traditional authority and if Plaintiffs' ancestor settled on such lands, these were not his sole or family property but were subject to the rights of the community.

30

5. The Defendants aver that part of Parcel A was set aside for public purposes about the year 1900 and is still being used for such purposes, part was set aside and leased to commercial firms whose trading activities would benefit the community, since about the same date and the greater part is held by private families and persons. That in certain instances, the Defendants have consented to the leases of land by such private families and persons.

40

6. The Defendants aver that part of Parcel B was set aside about forty years ago for the purpose of providing recreational facilities for Government and commercial employees who were strangers to Ibadan in order to encourage the development of Ibadan as an important Government and Commercial centre. Part of Parcel B is held by private families and persons.

Exhibits
Defendants'
Exhibits.

"J".

Statement of
Defence in
Suit 1/120/49.

6th May, 1950
- continued.

7. The Defendants plead -

- 10 (a) acquiescence by the Plaintiffs and their predecessors in title since the setting aside of the said lands.
- (b) waiver through laches.

DELIVERED at Ibadan this 6th day of May, 1950.

(Sgd.) N.G. Hay

Ag. Senior Crown Counsel

Solicitor for the Defendants.

PLAINTIFF'S EXHIBITS

"D" - CONVEYANCE - SULE LADIPO AND ANOTHER TO ROSIJI

Plaintiff's
Exhibits.

20

THIS INDENTURE made this 16th day of December, 1950, BETWEEN Chief Sule Ladipo of Balogun Ibikunle's Compound, Ayeye, Ibadan, Akadiri Akanni Farmer and Trader of Agboni Street, Ibadan, and Raji Oduola Trader of Balogun Ibikunle's Compound, Ayeye, Ibadan for themselves and on behalf of Balogun Ibikunle Family (hereinafter called "the Vendors" which expression shall where the context so admits includes their heirs executors administrators and assigns) of the one part and Ayotunde Rosiji Barrister-at-Law and Solicitor of Ijebu-Bye-Pass, Ibadan aforesaid (hereinafter called "the Purchaser" which expression shall where the context so admits includes his heirs executors administrators and assigns) of the other part

WHEREAS one Balogun Ibikunle now deceased was the absolute owner of a certain piece of land of which the piece of land hereinafter conveyed forms a portion AND WHEREAS some years ago the said Balogun Ibikunle died at Ibadan (intestate) leaving his eldest son Chief Sule Ladipo (The Mogaji) Akadiri Akanni and Raji Oduola and other children him surviving WHEREAS the above-named Chief Sule

30

40

"D".

Conveyance -
(Sule Ladipo
and Another to
Rosiji)

16th December,
1950.

Exhibits
Plaintiff's
Exhibits.

"D".

Conveyance -
(Sule Ladipo
and Another to
Rosiji)
16th December,
1950
- continued.

Ladipo is at present the Mogaji that is the Head of the Balogun Ibikunle family and as such he and the others are by Ibadan Native Law and Custom entitled to dispose of or otherwise deal with the landed property of the deceased WHEREAS with the consent and knowledge of the other members of the said Balogun Ibikunle Family AND WHEREAS at the request of the Purchaser the Vendors have agreed to convey to the Purchaser in fee simple the said piece of land NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of the sum of ONE HUNDRED POUNDS (£100.0.0d) paid by the Purchaser to the Vendors before the signing of these presents (the receipt of which is hereby acknowledged) the Vendors as the Beneficial Owners thereof and Chief Sule Ladipo as the Head and Mogaji of the said Balogun Ibikunle Family doth hereby grant and convey to the Purchaser ALL THAT piece or parcel of land situate, lying and being at Onireke Road, Ibadan, Nigeria which as to its position, dimensions and abuttals is more fully described in the plan attached hereto and is thereon edged Red TO HOLD the same UNTO AND TO THE USE of the Purchaser in fee simple free from incumbrances

10

20

IN WITNESS whereof the Vendors hereto hath hereunto set their hands and seals the day and year first above written

SIGNED by making of their marks SEALED AND DELIVERED by the within named Sule Ladipo, Akadiri Akanni and Raji Oduola the foregoing Indenture having been first read over and explained to them in the Yoruba Language by:

H. R
SULE LADIPO (L.S.)
T I
H R
AKADIRI AKANNI (L.S.)
T I
H R
RAJI ODUOLA (L.S.)
T I

30

40

(Sgd.) Osinowo qualified or sworn Interpreter and they seemed perfectly to understand the same and made their marks thereto.

Before me,
(Sgd.) Ebenezer Craig,
Magistrate.

"E" - CONVEYANCE - ROSIJI TO LAPIDO & OTHERSExhibitsPlaintiff's
Exhibits."E".Conveyance -
(Rosiji to
Ladipo & Others)26th March,
1952.

THIS INDENTURE made the 26th day of March, 1952
BETWEEN AYOTUNDE ROSIJI Barrister-at-Law of
Ijebu-Bye-Pass, Ibadan Ibadan Province, Nigeria
(hereinafter called "the Vendor" which expression
shall where the context so admits include his
heirs, legal personal representatives successors
and assigns) of the one part and Chief SULE LADIPO
of Balogun Ibikunle's Compound, Ayeye, Ibadan,
10 AKADIRI AKANNI farmer and trader of Agbeni
Street, Ibadan and RAJI ODUOLA trader of Balogun
Ibikunle compound, Ayeye, Ibadan for themselves
and on behalf of Balogun Ibikunle Family (herein-
after called "the Purchasers" which expression
shall where the context so admits include their
heirs, legal personal representatives, successors
and assigns) of the other part

20 WHEREAS by an Indenture dated the 16th day
of December, 1950 and made between the Purchasers
(then Vendors) of the one part and the Vendor
(then Purchaser) of the other part and registered
as No.56 at page 56 in Volume 29 of the Lands
Registry in the office at Ibadan a piece of land
which is hereinafter described and reconveyed was
granted and conveyed unto the Vendor

30 AND WHEREAS the said Vendor has agreed with
the Purchasers for the absolute sale to them of
the piece of land hereinafter described for a like
estate as the Purchasers conveyed to the Vendor by
the aforesaid Indenture at the price of £100 (One
hundred pounds) Sterling.

40 NOW THIS INDENTURE WITNESSETH that in pursu-
ance of the said agreement and in consideration of
the said sum of £100 paid by the Purchasers to the
said Vendor on or before the execution of these
presents (the receipt whereof the said Vendor here-
by acknowledged) he the said Vendor hereby re-
grants and reconveys unto the said Purchasers ALL
THAT piece or parcel of land situate and being at
Onireke Street, Ogunpa, Ibadan, Ibadan Province,
Nigeria aforesaid bounded by the following concrete
pillars: VC 986, VC 985, VC 984, VC 891, VC 888,
and Ogunpa Stream and more particularly described
and delineated together with its abuttals on the
plan attached to the Indenture described herein-
above and dated the 16th day of December 1950 and
thereon edged pink (copy of which is attached to
these presents).

Exhibits
Plaintiff's
Exhibits.

TO HOLD the same unto and to the use of the said Purchasers in the like estate right, title and interest as the Purchasers conveyed to the Vendor by the Indenture aforesaid.

"E".
Conveyance -
(Rosiji to
Iadipo & Others)
26th March,
1952
- continued.

IN WITNESS whereof the said party has hereunto set his hand and seal the day and year first above written

SIGNED SEALED AND DELIVERED)
by the within-named Vendor } (Sgd.) Ayotunde Rosiji
Ayotunde Rosiji in the } (L.S.) 10
presence of :-

(Sgd.) A.O. Coker,
60, Salvation Army Road,
Ibadan.

Defendants'
Exhibits.

"F" - LEASE - JOHNSON AINA AND ANOTHER TO MOUKARIM

THE NATIVE LANDS ACQUISITION ORDINANCE
(CHAPTER 144)

Lease (Johnson
Aina & Another
to Moukarim).
16th November,
1953.

THIS DEED made the 16th day of November, 1953 BETWEEN JOHNSON AINA of Ibadan (hereinafter called the Lessor which term includes the successors in title of the Lessor where the context so admits) of the first part by and with the consent of the Olubadan of Ibadan for himself and on behalf of the Chiefs and people of Ibadan of the second part and FAWZI RAMIZ MOUKARIM of Lebanon Street, Ibadan (hereinafter called the Lessee which term includes the successors in title of the lessee where the context so admits) of the third part WITNESSETH that in consideration of the annual rent of £16.13.4d. (Sixteen pounds thirteen shillings and four pence) for the first thirty (30) years and the annual rent of £25 (Twenty five pounds) for the remaining thirty (30) years, to be paid by the Lessee as hereinafter mentioned the Lessor doth hereby demise unto the Lessee ALL THAT piece or parcel of land (hereinafter referred to as the premises) situate at Onireke Street, Ibadan in the Ibadan Province containing an approximate area of 846.53 square yards and which is more particularly delineated and shown surrounded by a border coloured Pink on the plan attached to these presents TO HOLD the same unto the Lessee for a

term of Sixty (60) years from the 1st day of October, 1951, the sum of £500 (Five hundred pounds) in full discharge of the said rent up to the 30th day of September 1981, being paid upon the execution of these presents and the sum of £750 (Seven hundred and fifty pounds) in full discharge of the said rent for the period from the 1st day of October 1981 to the expiry of the Lease being paid upon the 1st day of October, 1981

10 2. The Lessee covenants with the Lessor as follows:-

- (1) To pay the said rent at the times and in the manner aforesaid.
- (2) To pay all existing and future taxes, rates, assessments and outgoings of every description to which the Premises of the Lessor or Lessee in respect of the premises are or is or shall hereafter be liable.
- 20 (3) Not to assign or underlet the premises without the consent of the Lessor, the Olubadan of Ibadan and of the Lieutenant Governor, which consent shall not be unreasonably withheld.
- (4) At the expiration or sooner determination of these presents to deliver up the premises peaceably to the Lessor.
- 30 (5) To use the premises for the purpose of carrying on his business of a General Merchant only and to begin to use the premises for such purpose within six months from the date hereof.
- (6) To erect and complete upon the premises building to the value of £2,000 within 10 years from the date of these presents.

3. PROVIDED ALWAYS AND IT IS HEREBY AGREED as follows:-

- 40 (1) If the rent hereby reserved or any part thereof shall be in arrear for one month or if there shall be a breach or non-observance of any of the covenants aforesaid on the part of the Lessee the Lessor by himself or by the District Officer of the District on his behalf may re-enter upon the premises and the term hereby created shall forthwith cease and determine but subject to the rights and remedies

Exhibits
Defendants'
Exhibits.

"F".

Lease (Johnson
Aina & Another
to Moukarim).

16th November,
1953

- continued.

Exhibits
 Defendants'
 Exhibits.

"F".

Lease (Johnson
 Aina & Another
 to Moukarim).

16th November,
 1953

- continued.

- of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the Lessee to be performed or observed.
- (2) If there shall be a breach of any of the said covenants hereinbefore contained, and if upon such breach the Lessor shall not avail himself of the powers of re-entry conferred upon him by the last mentioned proviso, the Governor may, by notice in writing, require the Lessee to make good such breach within such time as is stated in the said notice, and if the Lessee shall neglect or fail to comply with such notice, the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the Lessee to be performed or observed. Such notice shall be a good and sufficient notice if the same be addressed to the Lessee and delivered on the premises hereby demised. 10
- (3) If the Lessee shall not within six months from the date hereof use and continue to use the premises for such purpose as aforesaid a sum equivalent to twelve months rent shall be and become payable by the Lessee to the Lessor as liquidated damages and the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance or any of the covenants or conditions on the part of the Lessee to be performed or observed. 20 30
- (4) If the Lessee shall not use the premises hereby demised for the said purpose at any time during the continuance of the term hereof for the space of six calendar months then and in such case the term hereby created shall cease and determine but subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants or conditions on the part of the Lessee to be performed or observed. 40 50

IN WITNESS whereof the parties hereto have hereunto set their hands or made their marks and set their seals the day and year first above written.

SIGNED SEALED AND DELIVERED)
by the above-named Johnson } (Sgd.) J. Aina.
Aina in the presence of :-)

(Sgd.) Animashawun
Occupation - Clerk.

10 Address - A.G. Leventis, Ibadan.

SIGNED SEALED AND DELIVERED)
by the above-named Fawzi } (Sgd.) F.R.Moukarim.
Ramiz Moukarim in the }
presence of:-)

(Sgd.) R.S. Moukarim
Occupation - Trader, Lebanon Street.

20 The Olubadan of Ibadan being the person empowered by Native Law and Custom to act on behalf of the Ibadan Community hereby expresses consent to and approval of the lease set out above.

IN WITNESS whereof the)
Olubadan has set his hand } Igbintade His
by the making of his mark } x
hereto this 12th day of } Olubadan mark.
August 1953 in the presence)
of :-)

(Sgd.) William Simpson,
Magistrate/Justice of the Peace
Address: District Officer, Ibadan.

30 APPROVED the 16th day of November, 1953.

(Sgd.) J.O. Odunjo,
Minister for Lands,
Western Region.

"B" - CONVEYANCE - AKANMU & OTHERS TO COKER

40 THIS INDENTURE is made the 27th day of March 1957 BETWEEN OLATUNDE AKANMU Mogaji Balogun Ibikunle Family, GBADAMOSI OLASUPO, RAJI ODUOLA and BELLO LAHAN all representatives of Balogun Ibikunle Family, of Ayeye, Ibadan (hereinafter called "the Vendors" which expression shall where the context so admits include their heirs executors and assigns)

Exhibits
Defendants'
Exhibits.

"F".

Lease (Johnson
Aina & Another
to Moukarim).

16th November,
1953

- continued.

Plaintiff's
Exhibit.

"B".

Conveyance
(Akanmu & Others
to Coker).

27th March 1957.

Exhibits
Plaintiff's
Exhibit

"B".

Conveyance -
(Akanmu & Others
to Coker).
27th March 1957
- continued.

of the one part and ABOLADE OLATUNJI COKER
Licensed Surveyor, of 60 Race Course Road, Ibadan
(hereinafter called "the Purchaser" which expres-
sion shall where the context so admits include his
heirs executors and assigns) of the second part.

WHEREAS the said Vendors are seised of the
hereditaments hereinafter described for an estate
in fee simple in possession free from incumbrances
and have agreed with the Purchaser to sell the
same for a like estate to him for the sum of £100 10
(One hundred pounds) Sterling.

NOW THIS DEED made in pursuance of the said
Agreement and in consideration of the sum of £100
(ONE HUNDRED POUNDS) now paid by the Purchaser to
the Vendors (the receipt whereof the Vendors hereby
acknowledge).

WITNESSETH as follows :-

1. The Vendors as BENEFICIAL OWNERS hereby GRANT
AND CONVEY unto the Purchaser ALL THAT piece or 20
parcel of land situate lying and being at Onireke
Road, Ibadan more particularly described and delin-
eated with its dimensions and abuttals on Plan No.
CK 57/57 dated 18th February, 1957 attached to
these presents and thereon edged Pink.

2. TO HOLD the same unto the Purchaser in fee
simple.

3. The Vendors doth hereby for themselves their
heirs executors administrators and assigns coven-
ant with the Purchaser his heirs executors adminis- 30
trators and assigns that the said Vendors shall
from time to time and at all times hereafter well
and effectually save harmless and keep indemnified
the Purchaser from and against all losses costs
damages and expenses whatsoever by reason or in
consequence of the sale aforementioned.

4. And further that the Vendors and every person
deriving title under them and every other person
having or rightfully claiming any estate or inter-
est in the said hereditaments hereby expressed to 40
be conveyed or any part thereof hereby covenant
with the Purchaser that they shall from time to
time and at all times hereafter at the request of
the Purchaser or his successors in title but at
his or their cost execute and do all such lawful
assurances for further or more perfectly assuring
the hereditaments hereby expressed to be hereby
conveyed to the Purchaser and his successors in
title as by him or them shall be reasonably required.

IN WITNESS whereof the Vendors hereto have hereunto set their hands and seals the day and year first above written.

Exhibits
Plaintiff's Exhibit.

10 SIGNED SEALED AND DELIVERED)
by the within named Vendors) Olatunde Akanmu (L.S.)
Olatunde Akanmu, Mogaji }
Balogun Ibikunle Family, } T I
Gbadamosi Olasupo, Raji }
Oduola and Bello Lahan the } Gbadamosi Olasupo (L.S.)
foregoing having been first }
read over and explained to }
them in the Yoruba language)
by: Raji Oduola (L.S.)
(Sgd.) Adeyemo Bello Lahan (L.S.)
Sworn Interpreter.

"B".
Conveyance -
(Akanmu & Others
to Coker).
27th March 1957
- continued.

20 when they seem perfectly to understand the same before affixing their marks/signatures thereto in the presence of:-

(Sgd.) A.A. Adesigbin
Chief Magistrate.

"K" -- JUDGMENT IN SUIT 1/120/49.

Defendants' Exhibits.

IN THE HIGH COURT OF JUSTICE

WESTERN REGION OF NIGERIA

IN THE HIGH COURT OF THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE SIR ADETOKUNBO ADEMOLA,
CHIEF JUSTICE

"K".
Judgment in
Suit 1/120/49.
2nd April 1958.

30 WEDNESDAY THE 2nd APRIL, 1958.

Suit No.1/120/49

BETWEEN :- 1. Akadiri Akani
2. James Akintola Babalola
on behalf of themselves
and Balogun Ibikunle
Family Plaintiffs

- and -

Olubadan-in-Council Defendants

Appearances: Adeyemi (led by Odunsi) for Plaintiff

40 Miss Grant for Defendant.

Exhibits

Defendants' Exhibits.

"K".

Judgment in Suit 1/120/49.

2nd April 1958
- continued.

J U D G M E N T

ADEMOLA, C.J.

This case, originally in the Land's Court, Ibadan, was transferred to the Supreme Court, Ibadan, for hearing and determination by the District Officer, Ibadan Division by powers conferred upon him under Section 25(1)(c) of the Native Courts Ordinance No.44 of 1933.

The Claim reads as follows:-

"Declaration that all that piece or parcel of land situate at Gbagi, Ibadan and bounded on the North by Onireke Stream, on the East by a lane and Mosque, on the South by Lebanon Street, and on the West by Race Course Road, particularly edged pink on plan to be produced in Court is the property of Balogun Ibikunle Family of Ibadan. 10

2. Plaintiffs also claim £80,000 damages against the Defendants for wrongfully leasing parts of the said piece of land to several firms and collecting rents thereon to the exclusion of the Balogun Ibikunle Family of Ibadan". 20

During the hearing, the second part of the claim was withdrawn and it was struck out.

Plan of the land in dispute was filed and marked Exhibit "A". The land claimed, it will be observed from the plan, embraces a large portion of the centre of Ibadan town as it is today.

The Plaintiffs are descendants of a powerful warrior named Ibikunle who was alleged to have come from Ogbomosho to settle at Ibadan during the Bale-ship (now Olubadan) of one Oluyole. According to the Plaintiffs' evidence, Ibikunle had so many retainers, slaves and followers and the extent of the land he took, or was given at Ibadan, by the then Bale, was evidenced by the 4,000 men alleged to be serving under him. He was said to have settled the different families under him on different portions of land at Ibadan which comprises of the area now claimed. 30 40

After the death of Ibikunle it was said that one of his successors in title was one Oyedeji. During his time, Ibadan, which was originally a war camp, became peaceful and non natives of Ibadan came and settled down for trading purposes. European traders also came. At this time Fajimi was

the Bale (Olubadan). The influx of "strangers" led to a meeting convened by the Bale with the object of settling the "strangers" in some parts of the town as well as to establish a commercial area. An area called parcel A in the Statement of Claim, and described as Gbagi in the plan, Exhibit "A", was marked out for market and commercial purposes with few residential for natives of Ibadan who had come from Lagos, Abeokuta and Ijebu. The Balogun Ibikunle Family, it is alleged, were asked by Bale Fajimi to give up this area for use as market and commercial area as well as for use as residential area for strangers on payment of rents and profits. This was less than 60 years ago. Sometime later, Bale Fajimi it was averred, asked for more land from the Balogun Ibikunle Family, and the area now called parcel B in the Statement of Claim, and shown in the plan as Ekotedo and including the present Race Course was asked for and granted. The two parcels or areas are shown clearly in the plan, Exhibit "A". This land, the Plaintiffs alleged, was given out to the Ibadan Recreation Club by the Defendant.

Rent of £10 a year is being paid and the Ibikunle Family are not shared in the rent.

In the same way the Ekotedo land given to "strangers" by the Plaintiffs at the instance of the Bale, rents are paid to the Ibadan Native Administration (originally Olubadan and Council, now Local District Council), but contrary to the promise made by the Bale, the Ibikunle Family derive no profits from the land taken from them for the "strangers". Instead, the monies were collected and used by the then Ibadan Native Administration. Representations were made to the Bale, to the District Officer, Ibadan, but nothing was done. In the circumstances, the Plaintiffs now claim all their lands back from the Defendants.

In the Statement of Defence filed for the Defendants it was denied that the land in dispute belongs exclusively to the Balogun Ibikunle Family. It would appear that the Defendant is not claiming the land as such but challenges the rights of the Plaintiffs exclusively to the land.

Paragraph 4 of the Statement of Defence reads as follows:-

"The Defendants aver that it is a well known custom throughout Yoruba land and particularly in the Ibadan District that lands are held at

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"K".

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the disposal of the head and superior chiefs on behalf of the Community in accordance with Native Law and Custom. As Ibadan Town was acquired by right of conquest, all urban lands were vested in the traditional authority and if Plaintiffs ancestor settled on such lands, there were not his sole or family property but were subject to the rights of the Community".

Paragraph 4 of the Statement of Claim, to my mind, is important because it appears the Defendant based its defence on this. It is followed by two important paragraphs, namely, 5 and 6 which for clarity, I will set out. 10

"5. The Defendants aver that part of Parcel A was set aside for public purposes about the year 1900 and is still being used for such purposes, part was set aside and leased to Commercial firms whose trading activities would benefit the Community, since about the same date and the greater part is held by private families and persons. That in certain instances, the Defendants have consented to the leases of land by such private families and persons. 20

6. The Defendants aver that part of Parcel B was set aside about forty years ago for the purpose of providing recreational facilities for Government and Commercial employees who were strangers to Ibadan in order to encourage the development of Ibadan as an important Government and Commercial centre. Part of Parcel B is held by private families and persons". 30

The traditional evidence of how the Plaintiffs came to be owners of the land they now claim has not been seriously challenged. In fact, witnesses for Defendants gave evidence about the prowess of the Plaintiffs' ancestor Balogun Ibikunle and there was no dispute about his ownership of land in Ibadan; it was stated he could acquire any land he wished in Ibadan because he was feared, even by the Bale. Undoubtedly, Balogun Ibikunle came to be in possession of a vast tract of land and nobody would challenge his claim to it. Perhaps it is somewhat significant that other families in Ibadan have not made a rival claim, as it is usually the case, to the land now in dispute. 40

Perhaps, at this stage, it will be convenient to consider paragraph 4 of the Defence filed for the Defendants. The onus of proving the Native Law and Custom that in Yoruba land, and particularly at Ibadan, lands are held at the disposal of the head and superior chiefs on behalf of the Community in accordance with Native Law and Custom, is in the Defendants. This, to my mind, is perhaps putting it too widely for the present stage of development, but it was the Yoruba custom, accepted throughout all Yoruba land as such. It may therefore be accepted that it is the custom in Ibadan, as stated in this paragraph of the Statement of Claim, that if a person or a family is in possession of or is settled on a piece of land, the land is not his sole or his family property but it is subject to the rights of the Community. The 15th witness for the Defendant, Chief Emanuel Adediran Akinwale, a native Court Judge tried to prove existence of this Native Court and custom at Ibadan. I accept the existence of such custom subject, however, to three qualifications:-

- (1) That the land if taken by the head Chief of Community for the benefit of the Community must be devoted solely to the purpose for which it was taken or acquired. If the purpose failed the land must be returned to the individual or Community from which it was taken or acquired.
- (2) That a different consideration arises if the land so taken without payment of compensation, which as alleged is unknown to Ibadan Native Law and Custom, is to yield profit, for example if it is given to a section of the Community who are to pay rents, as in this case.
- (3) That such land must be vacant land that is, not already built on. If it is already built on, I do not accept the existence of the Native Law and custom that it can be taken from the family, without very good reasons, for the use of the public and without adequate compensation.

Now, paragraph 5 of the Statement of Defence stated that in the area of the land known as Parcel A, part was set aside for public purposes, part was set aside and leased to Commercial firms, where trading activities would benefit the Community, and the greater part is held by private families

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- continued.

and persons. It is stated that the Defendants have consented to the leases of such private families and persons.

It was not stated or proved in evidence for what public purposes part of this land was set aside; no mention was made for what public benefit rents derived from the portion set out for Commercial purposes was devoted to as well as rents derived from the greater part leased to private families and persons.

10

Again, in paragraph 6 of the Statement of Defence, it was stated that in the area of the land known as Parcel B part was set aside for the purpose of sports and recreation, and part is held by private families and persons.

With regard to this Parcel B, it was established that the portion set out for sports and recreation was leased to the Ibadan Recreation Club on payment of £10 per annum. There is evidence, which I accept, that when it was to be taken from the Ibikunle Family they were promised rents and profits to accrue from it. This is evidenced by the demands and petitions made, from time to time, by the Plaintiffs to the Bale of Ibadan and also to the District Officer, Ibadan, that rents collected or part thereof should be paid to them.

20

The Plaintiffs are illiterates; so were their ancestors. The Defendants asked them for portion of their land to be given out on lease for sports and recreation purposes and that if rents are paid the Plaintiffs were promised such rents. The next thing is that the Defendants assumed ownership of the land, entered into a lease with a tenant and continued to collect rents without paying over or sharing the rents with the owners of the land. The Plaintiffs made as much protest as in the circumstances they are able to make and there has been no redress.

30

The remaining portion of Parcel B and the whole of Parcel A both have the same history. Originally, the position was that land was required for Commercial purposes and also land to settle non-natives of Ibadan. Portions of land were given at different times. There was a rush for land by non-natives of Ibadan and in due course, things got into a confused state. Contrary to the intentions of the Authorities at Ibadan, a few non-natives were holding land as owners without any

40

appreciable title and a few were transferring land contrary to custom. There was no right of transfer of land outside the family. The Bale and Council were anxious to protect this.

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"K".

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- continued.

10 The original family who owned the lands described in Parcel A and portion of Parcel B having given the land to the Authorities for what was described as Public use, had no more grip on the land. To stem the confusion which has arisen, a commission was appointed and the Commissioner, Sir Edwin Speed, the erstwhile Chief Justice of Nigeria, went into the matter and presented a report now commonly known as Speed Report. His recommendations were later known as Speed Leases. Non-natives who were holding lands irregularly were called upon to surrender them and in return were granted leases known as Speed Leases. No rents are payable under these Leases but the holding was guaranteed. But Speed Leases do not affect the whole of the land under consideration. Apparently, some natives of Ibadan have taken land in the area "acquired" to settle strangers and for Commercial purposes; some of the strangers or non-natives passed on their lands to natives of Ibadan. Bale and Council themselves took some vacant plots and started to lease them out. The Plaintiffs apparently remained in possession of some of the area. The result is that from plot to plot in the whole area a different history applies. The descendants of Balogun Ibikunle who claimed to be the original owner found it impossible to trace the history of every plot. The Defendants who as alleged, had taken or "acquire" the land from the Plaintiffs' ancestors, through the records of the Government, are in a position to account for the majority of the plots as records of Speed Leases have been kept. Records of some leases and transfers between trading Communities have been kept, and so it was that an Administrative Officer at one time in charge of lands at Ibadan, and who has apparently made a study of this problem, was the only one who was able to give a somewhat detailed evidence before me of different plots of land in these two areas. I shall not deal with his evidence in full, but I will for clarification, set out portion of it which is as follows:-

50 "Area marked in Exhibit "A" as Gbagi is marked on original surveys of Ibadan as Gbagi I and plots 2 and 3 in Gbagi 2. Exhibit "R" is an old original survey plan. From the Records,

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two plots in Gbagi 1 were originally occupied by foreign firms. No.1 plot is still with a foreign firm. Plot No.2 was bought by the Defendants in 1903 and it was continually occupied by them until 1953 when the Electricity Corporation occupied it. Plot called No.4 in Gbagi 1 is shown as property of one Babalola bought from one Adeogun. It is now occupied by Leventis & Company. Plot No.5 was originally two plots which were leased by one Shepherd to C.F.A.O. from 1904. Some- 10
 time between 1918 and 1926, this plot appears to be acquired from Shepherd's Executors by the present Defendants - see Exhibit "P". Since 1926 this plot has been leased to C.F.A.O. by the Defendants. Plot No.7 was in possession of a Syrian called Sarkis from about 1900. There was a Commission of Enquiry led by Sir Edwin Speed, Chief Justice of Nigeria. After the enquiry, this plot was surrendered to the present Defendant by Sarkis. Sarkis' heirs divided the plot into two; one of which was assigned to Paul Cowrie and another to A.R. Salami. Following the surrender of the land the Defendants granted Sarkis a lease of the land for a term of years. The land is still in possession of Cowrie and Salami. There are big buildings on it. Plot No.18 is shown on Record as of Mummuney Animashaun; it does not belong to the Defendants. Plots Nos. 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 came to the possession of the Defendants after the "Speed" Commission when the occupants were required after the commission to surrender their titles and receive a lease, to show their bona fide, one a form as set out by the Commissioner. Three of the Applicants, namely one Meredith and one Mrs. Davies, Madam Reis were late in making their application. In default, Madam Reis got the lease in the form set out by the Commissioner. On condition she paid 20/- a year; Meredith and Mrs. Davies were given a term of 40 years and not in accordance with the Commissioner's form. Mrs. Davies later got permission to divide her plot into two and to sell her interests. She sold the part facing Lebanon Street to Fantola whose son is still in possession. The part facing Onireke Street she sold to I.B. Ogun (deceased). On all these plots build- 50
 ings have been erected.

"Gbagi 2 in Exhibit "R" contains two plots. Plot No.1 came into the hands of the Defendants by the "Speed" Commission as I referred to earlier; Plot No.2 is a mosque. In 1916 the Imam asked for a lease under "Speed" Commission but he died before a lease was issued. Since the successive Imams have been there, three years ago the Defendants asked the Muslim community to nominate Trustees to whom they can convey that piece of land. There is an old dilapidated Mosque on the land. Two small plots Nos.21 and 22 which were given by the Defendants to Charles Suberu and Isaac Karunwi when this land they were occupying near Ogunpa river were destroyed by flood in 1924. All these covered area A claimed by the Plaintiffs in their plan Exhibit "A". The Plaintiffs receive no rents from the "Speed" Leases. They get rents from plots 1, 2, 5 and 7 only. The original lessee of Plot 3 was one Taylor; he got it on Speed lease and later transferred to Hezekiah Babalola. No.6 was transferred to I.B. Ogun by the Lessees the same Taylor. One Masha who had plot 10, surrendered his lease on receiving permission to sell half of his interest in the land. Plot No.1 in Gbagi 2 held by Momodu Keye was subject of litigation between the Defendants and Keye; lease had been set aside; the Defendants however, after a petition had been made gave a 99 year lease to Keye's Children. Original lease to Gotteschalck expired last year and they have a new term from Defendants. C.F.A.O. was also granted a new lease. No rents are collected on "Speed" leases by the Defendants".

The above portion of evidence by Mr.Simpson clearly shows the confused state of the land originally taken from the Plaintiffs allegedly for public purposes. A greater portion, and valuable portion at that, is in the hands of the Defendants for which they are receiving rents; some portions belong to private owners, and some portions still belong to the Plaintiffs themselves. It is difficult to sort out which is which.

One fact, however, is clear. the Plaintiffs do admit that they have, at the request of the Bale (now Olubadan), given the land in accordance with their duty under Native law and Custom. What they now complain of is that they were promised by

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the Defendants that when rents are collected, in respect of the Commercial Area (Parcel A) the Defendants will pay rents over to the Plaintiffs. In respect of Parcel B they were also promised rent by the Defendants. Several demands were made particularly over the area given out for Recreation ground, but the demands were not met. The Plaintiffs alleged in their Statement of Claim that this constitutes fraud and undue influence.

10

It is true that the whole position is unsatisfactory and is without benefit to the Plaintiffs. Undoubtedly, the Defendants started with very good intentions but the position had since been abused and everything has been to the advantage of the Defendants. The Native Law and Custom under which the Defendants seek umbrage gives the head Chief a right to acquire land from a family which owns it if it is required for public use.

If the land is acquired for a purpose, usually compensation is paid to the family - a mere token in the olden days - and the land must be put to the use for which it was sought. If it is no more required for that use the land is returned to the family. It is not Native Law and Custom that the head Chief and his Council should take or acquire family land without paying compensation for it and then give it out to another on payment of rents which go to the pocket of the Council. I refuse to accept that as Native Law and Custom. Nor is it Native Law and Custom for the head Chief and his Council to deprive a family of its land for no reason whatever but that the Council can make money out of it which it will put in its own pocket.

20

30

The question is, has the ownership in the land passed completely to the settlers to whom the land was given? The point hardly arises in cases of leaseholds; but in other cases, although it was not argued, I am of the view that even with long possession, the Plaintiffs are not barred from asserting their reversionary rights - see the case Chief Akinlolu Oloto v. Victor Williams & Another 17 N.L.R.27;

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The Plaintiffs have satisfied me that in the distant past, they owned all the land shown in the plan Exhibit "A". They admit in their own evidence that, at the request of the Defendants, they had given at different times, portions of this land to the Defendants in accordance with their duty under

Native Law and Custom, the Defendants having promised them certain benefits. I am satisfied that those benefits have not been accruing to them. I am also satisfied that portions of the land, which it is hard to determine, have reverted back to the Plaintiffs not by operation of law but by some reasons not made clear in evidence; also portions have, by consent or acquiescence of the Plaintiffs, been given away to non-natives of Ibadan without payment of rents under the Speed leases (which only re-establish the purposes of the original acquisition by the Defendants). Certain portions have also found their way to the hands of Natives of Ibadan by sale or otherwise. I find it difficult to determine which is which. It will, however, not be difficult to determine if a plan is made out for the purpose although as I stated earlier, the facts are in the possession of the Defendants and not the Plaintiffs which makes the position difficult for the Plaintiffs. It is, however, in the interest of justice that the Defendants should undertake to make a detailed map or plan showing each plot and the present holder or lessor. With good will on either side the whole matter could easily be settled.

I may mention that the Plaintiffs were in great difficulty in the presentation of their case. Two days after the case started, the leading Counsel in the case became suddenly ill and died. The junior Counsel, a new wig, was refused adjournment and found himself in the difficult position of carrying on unaided with this intricate case.

As I stated earlier, the Plaintiffs themselves are still exercising acts of ownership on a portion of the land they now claim. The extent of that portion is not easy to demarcate and has not been demarcated on the plan, but the fact is in evidence as well as the confused state of other portions.

Also, owing to the fact that the Plaintiffs themselves have granted the land to the Defendants, it is difficult to expect a declaration of ownership to the land shown in the plan, Exhibit "A". They cannot have what they themselves say they had given away. They may, however, be entitled to a declaration in respect of what has reverted back to them if that extent of land can be determined, and also declaration as to reversionary rights.

Exhibits
Defendants'
Exhibits.

"K".

Judgment in
Suit 1/120/49.

2nd April 1958
- continued.

Exhibits
Defendants'
Exhibits.

"K".

Judgment in
Suit 1/120/49.
2nd April 1958
- continued.

What I think they are entitled to from the Defendants may possibly be sought in another form of action and not in an action for a wholesale declaration of all the land they had given away. I do not think their action in the present form is appropriate, or if it is, evidence is insufficient to grant a declaration to the whole land claimed or to portions not specifically carved out.

In the circumstances, I am of the view that the Plaintiffs' claim should not be dismissed but that there should be a non-suit.

Okubadejo (leading Miss Grant for Defendants) asks for costs.

Adeyemi opposes costs.

Court awards 20 guineas costs only.

(Sgd.) A. Ade. Ademola,
Chief Justice.
2/4/58.

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"G".

Grant - Olubadan
of Ibadan and
Ibadan District
Council to Aina.
8th December,
1958.

"G" - GRANT -- OLUBADAN OF IBADAN AND
IBADAN DISTRICT COUNCIL TO AINA

THIS INDENTURE is made the 8th day of December, 1958, BETWEEN ISAAC BABALOLA AKINYELE the Olubadan of Ibadan and IBADAN DISTRICT COUNCIL a body established by the Western Regional Government Local Government Law 1957 for themselves and on behalf of the Chiefs and people of Ibadan (hereinafter called "the Grantors" which expression shall include its successors in title) of the one part and JOHNSON AINA of Ibadan (hereinafter called "the Grantee" which expression shall wherever the context so admit include his heirs executors administrators and assigns) of the other part

WHEREAS the Grantors are seised of and otherwise well and sufficiently entitled to the hereditaments hereinafter described and intended hereby to be conveyed for an estate of inheritance in fee simple in possession free from all incumbrances.

AND WHEREAS by an agreement dated the 4th day of September, 1951, the then Olubadan-in-Council of which the present Grantors are successors in title agreed to convey the said hereditaments to the Grantee for a like estate in possession free from all incumbrances.

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NOW THIS INDENTURE WITNESSETH that in pursu-
 ance of the said agreement the said Grantors as
 BENEFICIAL OWNERS doth hereby Grant and Convey
 unto the said Grantee ALL THAT piece or parcel
 of land situate lying and being at Onireke Street,
 Ibadan measuring 846.53 square yards and bounded
 by pillars Nos. N.4479, N.4480, N.4481, N.4482 and
 N.4483, and which is more particularly described
 and delineated on Plan No. IB.582 of 26th November,
 1951 attached to these presents prepared by S.O.
 Tokun, Survey Assistant of Ibadan and thereon
 edged Red. TO HOLD the same UNTO AND TO THE USE
 of the said Grantee as beneficial owner in fee
 simple

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IN WITNESS whereof the said Olubadan has
 hereunto affixed his hand and seal and the Ibadan
 District Council have hereunto affixed their Common
 Seal the day and year first above written.

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SIGNED SEALED AND DELIVERED }
 by the said Isaac Babalola } I.B. Akinyele (L.S.)
 Akinyele in the presence of }

(Sgd.) ?
 Private Clerk to Olubadan.

THE COMMON SEAL of the)
 within named Ibadan)
 District Council was here-)
 unto affixed in the)
 presence of)

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(Sgd.) M.F. Agbaje
 Chairman
 Ibadan District Council.

(Sgd.) M.O. Akande
 Secretary,
 Ibadan District Council.

Exhibits
 Defendants'
 Exhibits.

 "G".

Grant - Olubadan
 of Ibadan and
 Ibadan District
 Council to Aina.
 8th December,
 1958
 - continued.

IN THE PRIVY COUNCIL

No. 38 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

FAWEZE MOUKARIHM Defendant/Appellant

- and -

ABOLADE OLATUNJI COKER Plaintiff/Respondent

- and -

JOHNSON AINA and IBADAN PRO FORMA
DISTRICT COUNCIL Defendants/Respondents

RECORD OF PROCEEDINGS

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

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.
Solicitors and Agents for
Respondent.