

~~P.C.~~  
G.H.H.C.

Assignment  
32, 1964

IN THE PRIVY COUNCIL

No.18 of 1962

ON APPEAL FROM

THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :-

ABUDU GBADAMOSI IJALE  
(Defendant) ... Appellant

- and -

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs) ... Respondents

(and cross-appeal Consolidated)

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RECORD OF PROCEEDINGS

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

- 78624

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
Westminster, London, S.W.1.  
Solicitors for the Appellant  
A.G. Ijale.

HALSEY, LIGHTLY & HEMSLEY,  
32, St. James's Place,  
London, S.W.1.  
Solicitors for the Respondents  
A.G. Leventis & Co. Ltd.

IN THE PRIVY COUNCIL

No.18 of 1962

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THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

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(Defendant)

Appellant

- and -

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs)

Respondents

- and - (by Cross-appeal)

B E T W E E N:-

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs)

Appellant

- and -

ABUDU GBADAMOSI IJALE  
(Defendant)

Respondent

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RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.18 of 1962

ON APPEAL FROM

THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

ABUDU GBADAMOSI IJALE  
(Defendant) Appellant

- and -

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs) Respondents

10 - and - (by Cross-appeal)

B E T W E E N:-

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs) Appellant

- and -

ABUDU GBADAMOSI IJALE  
(Defendant) Respondent

---

RECORD OF PROCEEDINGS

No.1

CIVIL SUMMONS

20 IN THE SUPREME COURT OF NIGERIA  
BOOK NO.  
U 81

U8072

In the Supreme  
Court of Nigeria

Suit No. 428 of 1953

No.1  
Civil Summons  
5th August, 1953

Between A.G.Leventis & Co.Ltd. .. Plaintiffs

- and -

A.G.Ijale .. Defendant

To. A.G. Ijale of 8, Bishop Street, Lagos

You are hereby commanded in His Majesty's  
name to attend this court at Tinubu Square,

In the Supreme Court of Nigeria

No.1  
Civil Summons.  
5th August, 1953  
(Continued)

Lagos on Monday the 17th day of August 1953, at 9 o'clock in the forenoon to answer a suit by A.G. Leventis & Co. Ltd. of c/o Their Solicitor, 22, Tinubu Square, Lagos against you.

The Plaintiff's claim is as per particulars attached.

Issued at Lagos the 5th day of August 1953.

Summons .. ..	£25:-:-	
Service .. ..	3:8	10
Mileage .. ..	<u>          </u>	

No. 492090/435 of 30/7/53 £25:3:8 Pd on C.R.

(Sgd.) J.R. Gregg

Puisne Judge

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.

(Sgd.) D.A. Banjoko  
Registrar

No.2.

PARTICULARS OF CLAIM

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION

SUIT No.428 of 1953

No.2  
Particulars of  
Claim  
23rd July, 1953

BETWEEN:

A.G. LEVENTIS & CO. LTD. Plaintiffs

- and -

A.G. IJALE Defendant

STATEMENT OF PARTICULARS

30

The Plaintiffs claim is for

1. £25025:19:8d being Balance found to be due from the defendant to the Plaintiffs on an account stated between them in writing and contained in a document signed by the defendant and dated 10th June 1953 or in the alternative being money had and received by

the defendant from the Plaintiffs for the use of the Plaintiffs, with interest thereon at the rate of ten per centum per annum until payment or judgment.

In the Supreme Court of Nigeria

No.2  
Particulars of Claim  
23rd July, 1953  
(Continued).

2. £57:2:4d being amount due and owing from the defendant to the plaintiffs for motor parts sold and delivered by the Plaintiffs and engineering services rendered by the Plaintiffs to the defendant.

10 3. £1065:17:5d being amount due and owing from the defendant to the plaintiffs for goods sold and delivered by the plaintiffs to the defendant.

The Plaintiffs' total claim against defendant is for £26148:19:5d with interest at the rate of ten per centum per annum on £25025:19:8 thereof until payment or judgment.

Dated at Lagos the 23rd day of July 1953.

(Sgd.) ?

20 Solicitor for Plaintiffs

Plaintiffs' Address:- c/o Their Solicitor,  
22, Tinubu Square,  
Lagos.

Defendant's Address:- 8 Bishop Street, Lagos.

No. 2a

COURT NOTES

In the Supreme Court of Nigeria  
In the Lagos Judicial Division  
Monday the 17th day of August, 1953  
30 Before the Honourable Mr. Justice Joseph Henri  
Maxime de Comarmond  
Senior Puisne Judge.

No.2a  
Court Notes  
17th August, 1953

Suit No. 428/53

BETWEEN:

A.G.LEVENTIS & CO. LTD. PLAINTIFFS

- and -

A.G. IJALE DEFENDANT

Burruke for Plaintiffs holding Nedd's brief.  
Kayode for Defendant.

In the Supreme  
Court of Nigeria

No.2a  
Court Notes  
17th August, 1953  
(Continued).

So called Statement of Claim annexed to writ is obviously a Statement of Particulars. Counsel agreeing the heading is altered. Statement of Claim 14 days, Statement of Defence 30 days usual order.

No.3

COURT NOTES

MONDAY THE 7TH DAY OF SEPTEMBER, 1953  
BEFORE THE HONOURABLE  
MR. JUSTICE OLUMUYIWA JIBOWU  
PUISNE JUDGE

10

No.3  
Court Notes  
7th September, 1953

SUIT No. 428/53

A.G. LEVENTIS & CO. LTD. VS. A.G. IJALE

MOTION by plaintiff for an Order on defendant to give security for interest or for interim attachment.

Nedd moves - Ferguson with him.

Rotimi Williams opposes.

Ferguson moves under Order 20, rules 1 and 2. He says he would be satisfied with an undertaking from Counsel on the other side that the defendant will not dispose of his properties.

20

Williams replies - onus on plaintiff to show defendant about to dispose of his properties. Refers to paragraph 7 of affidavit filed - this, he says, is defective.

Name of informant not disclosed.

He agrees that paragraph 5 is correct.

Ferguson replies that his affidavit is in accordance with the provisions of the Order 20 rule 2.

30

RULING - I think the defendant should be prevented from disposing of his properties listed until this case is disposed of. Paragraph 5 shows that he had sold a house which he had offered as a mortgage and anything may happen to other properties if the defendant is not restrained.

It is therefore ordered that the defendant should not dispose of any of his

40

properties listed in this matter until this case is heard and determined.

In the Supreme Court of Nigeria

(Sgd.) O. Jibowu  
Puisne Judge.  
7/9/53

No.3  
Court Notes  
7th September, 1953  
(Continued).

No.4

STATEMENT OF CLAIM

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION

10

SUIT No.428 of 1953

No.4  
Statement of Claim  
24th September,  
1953

BETWEEN:

A.G. LEVENTIS & CO. LTD. Plaintiffs

- and -

A.G. IJALE Defendant

STATEMENT OF CLAIM

20

1. The Plaintiff-Company carries on business in Lagos and elsewhere and at the material times held Buying Agents Licences in respect of certain categories of Nigerian produce.

2. The defendant at the material times was a licensed Store-keeper, employed in Lagos by the Plaintiff-Company and authorised to purchase produce on its behalf.

30

3. It was the practice, as between the parties, for the plaintiff-company to advance to the defendant, from time to time, monies which the defendant was expected to utilise and did in fact utilise for the purpose of buying produce on behalf of the plaintiff-company. The defendant in the usual course of business would deliver produce to the plaintiff-company and the value of the produce delivered would be set off against the advances made to the defendant. By "produce delivered" in this context is meant produce which has been graded and passed for export by the produce inspection service, and declared by the defendant on the "Return of Transactions" to which reference is made hereinafter.

40

4. It was, further, the practice for the parties to draw up, periodically, a statement

In the Supreme  
Court of Nigeria

No.4  
Statement of Claim  
24th September,  
1953  
(Continued)

of the position as between them. The statement was known as a "Return of Transactions" made by the defendant on behalf of the plaintiff-company and incorporated inter alia, a cash statement and a produce statement. The cash statement showed the balance owed to the plaintiff-company at the time of the previous return, the further monies, if any, advanced to the defendant, the monies credited to the defendant, and the balance then owed by the defendant to the plaintiff-company. The produce statement showed the stocks of ungraded and graded produce held by the defendant. The value of the quantities of graded produce shewn in the "deliveries" column of the produce statement was credited to the defendant in Cash Statement on the same return.

10

5. The said "Return of Transactions" when completed was signed by the defendant and by a servant of the plaintiff-company and constituted a statement of the account between the parties as at the date of the return.

20

6. The final "Return of Transactions" made by the defendant, signed by him and by a servant and agent of the plaintiff-company and dated the 10th day of June 1953 disclosed a balance owed by the defendant to the Plaintiff-company of £25,025:19:8d. This sum has not been paid to the plaintiff-company despite demand, and the plaintiff-company accordingly claims the said sum of £25,025:19:8d being the balance found to be due by the defendant to the plaintiff-company on the said account stated between the parties in writing as aforesaid and dated 10th June 1953.

30

7. In the alternative, the plaintiff-company says that as at 10th June 1953, that portion of the sums advanced to the defendant by the plaintiff-company (in accordance with the practice outlined in paragraph 3 hereof) which had not been off-set by the value of produce delivered by the defendant amounted to £25,025.19.8d. The defendant has not in spite of demand made, returned the said sum nor has he since 10th June 1953, delivered produce sufficient to off set the said sum or any produce at all. Accordingly the plaintiff-company, in the alternative, claims the said sum of £25,025:19:8d. as money had and received by the defendant to the use of the plaintiff-company.

40

50

8. In security of the advances to be made to him, as described in paragraph 3 hereof, the defendant granted the plaintiff-company mortgages over certain of his real properties. It was a term of each of the said mortgages that if the principal monies secured thereunder should remain unpaid one month after demand in writing, interest should commence to run thereon from the due date of payment at the rate of ten per centum per annum.

In the Supreme Court of Nigeria

No.4  
Statement of Claim  
24th September,  
1953  
(Continued)

10

9. It was in the contemplation of the parties that the monies advanced to the defendant should not exceed the sums secured under the said mortgage, but in fact greater sums were advanced to the defendant. The plaintiff-company avers that the aforesaid terms relating to interest in the said mortgage constituted an agreement between the parties that the defendant should pay interest as aforesaid at the said rate on all sums outstanding from a date one month after demand in writing until payment.

20

10. The plaintiff-company's Solicitors by letter dated 27th June, 1953 demanded payment of inter alia the sum of £25,025.19.8d. The plaintiff-company accordingly claims interest at 10% thereon from 27th July 1953 until payment or judgment.

30

11. The Plaintiff-company, through its Engineering Department, sold and delivered motor parts to the defendant and rendered engineering services to the defendant. In respect of these transactions the defendant owes to the plaintiff company a balance of £57.2.4d. which sum the defendant has not paid despite demand. The plaintiff-company accordingly claims the said sum of £57.2.4d.

40

12. The plaintiff-company sold and delivered to the defendant, provisions and general merchandise to the value of £1065:17:5d for which the defendant has not paid despite demand. The plaintiff-company accordingly claims the said sum of £1065:17:5d.

Whereof the plaintiff-company claims as per Writ of summons.

Dated at Lagos this 24th day of September, 1953.

(Sgd.) Irving & Bonmar  
Plaintiffs' Solicitors

No.5

STATEMENT OF DEFENCE

In the Supreme  
Court of Nigeria

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION

No.5  
Statement of  
Defence, 10th  
October, 1953

SUIT No. 428 of 1953

BETWEEN:

A.G. LEVENTIS & CO. LTD. Plaintiffs

- and -

A.G. IJALE Defendant

STATEMENT OF DEFENCE

10

1. Save and except as are hereinafter specifically admitted the defendant denies each and every allegation of facts contained in the Plaintiffs' Statement of Claim as if each were set out seriatim and separately denied.

2. The defendant is not in a position to admit or deny paragraph 1 of the Statement of Claim.

3. With reference to paragraph 2 of the Statement of Claim the defendant avers that he is a produce buyer.

20

4. The defendant avers that the plaintiff placed his "No.1" Store at Alakoro Marina at the disposal of the defendant but the keys of the said store are always in the custody and possession of the plaintiffs and/or his servant as from March, 1953 up to date.

5. With reference to paragraph 3 of the Statement of Claim the defendant avers that all produce bought by him are stored at the said "No.1" store until graded and the quantity, of the said produce are entered in the "Return of Transactions" and checked from time to time by the Plaintiffs.

30

6. The defendant avers further that the plaintiffs in fact accept delivery of all produce delivered at the said "No.1" store but he (defendant) is not credited until the produce has been graded.

40

7. The defendant admits paragraphs 3 & 4 of the statement of Claim, in so far as the

facts alleged therein are not inconsistent with paragraphs 4, 5 and 6 of the Statement of Defence.

In the Supreme Court of Nigeria

No.5  
Statement of  
Defence 10th  
October, 1953.  
(Continued)

10 8. The defendant admits paragraph 5 of the Statement of Claim but avers that there can only be finality in the computation of the accounts when the ungraded produce which appears in the produce statement has been graded and the defendant credited with the value thereof.

9. With regard to paragraphs 6 and 7 of the Statement of Claim the defendant repeats paragraph 8 of this Statement of Defence and adds that 73.5 tons of ungraded cocoa and 7 tons 13 cwt. 2 qts. 7 lbs. of ungraded palm kernel have not been graded and the value thereof have not been credited to the defendant.

20 10. The defendant denies paragraphs 11 and 12 of the Statement of Claim and puts the plaintiffs to strict proof of the allegations therein contained.

11. On or about the 12th May, 1953, the defendant handed to the plaintiffs his lorries, J.988, J.981, G.9611 and J.961 on the understanding that the plaintiffs will overhaul them and sell them and credited his (i.e. defendant's) account with the proceeds.

30 12. The plaintiffs accepted the said lorries on the said conditions and no report has been made that the said sale has been effected.

13. The defendant avers that the plaintiffs' claim does not support the relief sought on the writ of Summons.

WHEREUPON the defendant avers that the plaintiffs' claim should be dismissed.

Dated at Lagos this 10th day of October, 1953.

(Sgd.) Thomas, Williams &  
Kayode

40

Solicitors to the Defendant

No.6

COURT NOTES

In the Supreme  
Court of Nigeria

WEDNESDAY THE 3RD DAY OF FEBRUARY, 1954.

SUIT No.428/53

No.6  
Court Notes  
3rd February, 1954

A.G. Leventis & Co. Ltd. vs. A.G. Ijale  
Ferguson for Plaintiffs.

F.R.A. Williams for defendant.

Ferguson informs Court that he does not prepare to proceed as regards item 2. of Particulars of Claim. That part of Claim is abandoned. 10

Lorries will be sold by plaintiff and proceeds credited to defendant.

Ferguson mentions that some amendment to particular No. 3 of his statement of particulars require some alteration. Court asks Counsel to hand to Court alterations desired in typewritten form. This will be done later on.

No.7

20

Plaintiff's Evidence  
No.7  
Ernest Matheron  
3rd February, 1954  
Examination

Plaintiffs Evidence  
Ernest Matheron

Ernest Matheron, Sworn on Bible. I live at 2, Willoughby Street, Ebute Metta. Employed by Leventis & Co., at present supervising produce buyers. In May and July last year I was supervising buyers' stores and check their accounts. Originally I was employed as accountant.

I know the defendant, Ijale. Ijale was in charge of produce store No.1 Alakoro Marina. Ijale was a salaried man. Ijale was a produce buyer. The routine consists in advances of money made by plaintiff company to produce buyer; the latter buys the produce and reports the fact to the Company. Defendant was produce buyer for Cocoa and Palm Kernel. 30

Cocoa and palm kernel have to be graded before export. When the produce has been graded, it is taken over by the storekeeper of the company who issues a way-bill evidencing that he, the storekeeper has made sure that the 40

graded produce is available for export. Usually, after way-bill is issued, the produce mentioned in it is removed from the produce buyer's custody, if soon available elsewhere. The produce-buyer is credited with the amount shown on way-bill.

In the Supreme  
Court of Nigeria  
Plaintiff's Evidence  
No.7  
Ernest Matheron  
3rd February, 1954  
Examination  
(Continued)

10 The defendant had the custody of the ungraded produce bought by him on the Company's behalf. He was in charge of No.1 store, had the keys, responsible for that store.

The produce bought by defendant comes under the Company's control after way-bill has been issued.

... I tender a statement of account signed by  
20 defendant and by me on the 10th June, 1953. I signed as having checked against the books (not by counting the bales of produce). (No objection. Marked A). This account shows how much money belonging to the Company is outstanding in defendant's hands (as produce buyer). The ungraded produce shown on A is known by taking the figures of the returns of purchases made and deducting what has been graded. When produce has been graded and waybills delivered therefore, the produce buyer is credited with the price fixed by the Marketing Board for the particular grade. The  
30 buyer gets a commission calculated on sale of graded produce.

Ex.A.

40 The figure of 73.5 tons of ungraded cocoa shown on Exhibit A was arrived at by deducting from the total returns of cocoa purchased, the weight of cocoa already graded. This figure was arrived at by looking at the books and records. I knew at the time exhibit "A" was made, that there was in fact no ungraded cocoa in store No.1, no ungraded palm kernels either. The returns of produce purchased are made by the buyer; i.e. defendant in present case.

Towards end of June, 1953, the Company decided to discontinue dealing with the defendant. I obtained key of store No.1 from defendant's clerk. The store was opened at the time. There was no ungraded cocoa or kernel in the store except ungraded cocoa coming from No.4 store which had been moved to store No.1 by the produce Inspectors. No graded produce was delivered to the Company by the defendant between the 10th June, 1953 and three days later in June when I visited store No.1. After 10th

In the Supreme  
Court of Nigeria  
Plaintiff's Evidence  
No.7  
Ernest Matheron  
3rd February, 1954  
Examination  
(Continued)

June no produce was bought because if it had, there would have been a return, and also, the produce would have been in store No.1. The licence held by Leventis & Co. to buy produce (cocoa) was suspended in March or April, 1953 and restored in September. During period of suspension no cocoa could be bought by defendant on behalf of Leventis & Co; at any rate he could not deliver it. It is the produce buyer who warns the produce Inspectors that there is produce for grading. Until produce has been graded it cannot be sold to the cocoa Marketing Board or the Palm Oil Marketing Board. The plaintiff Company does not control the purchases made or the price paid by its produce buyers. However when in March or April 1953 the Company's licence was suspended, the defendant could not buy any more ungraded produce for the Company. 10

Cross-examination

Cross-examined by Williams:

20

There was a written agreement between plaintiff Company and defendant when he was engaged as a produce buyer. I have not seen that agreement. I heard there was a written agreement. The plaintiff buys produce for sale to appropriate Marketing Board. The plaintiff buys as agent for the board concerned. What I stated before about plaintiff not controlling price paid by produce buyer was not clear enough; the price is in fact fixed by the Marketing Board and such price, subject to transportation charges and like, must be paid. As soon as the produce is graded it belongs to the Board. 30

The plaintiff company advances money to defendant to buy produce.

When defendant buys produce with the company's money, the company expects him to bring the produce into the company's stores. If there was no produce inspection regulation, the produce bought by defendant would be the company's property when brought into the company's store. The prices paid by the Marketing Board to the company for cocoa depends upon the grade of the produce at time of shipment: the final and definite price is known at time of shipment. 40

The plaintiff company's licence to buy cocoa was suspended because there had been complaints about the quality of the cocoa. It is not right to say that the company took over 50

the store keys after the licence had been suspended.

When I was working as accountant I did not sign documents such as Exhibit "A". I do not remember at what date I began doing so but it was before March 1953.

In the Supreme  
Court of Nigeria  
Plaintiff's Evidence  
No.7  
Ernest Matheron  
3rd February, 1954  
Cross-examination  
(Continued)

10 I wrote on exhibit "A" "except stock of bags". This does not mean that I went to count the bags or check the produce: I was checking on the books and returns. On the 10th June, 1953, I cannot remember going to store No.1 to check. I knew that everything had been graded when document "A" was signed. I signed document "A" as being correct according to books and returns. I knew that there was something wrong, however, because there was no ungraded produce in the store. I knew there would be a deficiency. This is one of reasons why the company decided to stop using defendant as a buyer. If, for the sake of argument, there had been ungraded cocoa in the store when we dispensed with the defendant's services we would have asked the defendant to have the grading done and would ultimately have credited him with the price fetched.

20

No re-examination

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No.8

Ademola Adamofe

30 Ademola Adamofe, sworn on Bible. I live at 73, Olokoro Street, Ebute Metta. I am a storekeeper employed by Leventis & Co. My duty is to receive produce bought by the company and store it when there is sufficient space. The produce is received from all our buyers. I know defendant. I used to receive produce from defendant. When I receive produce it has been graded. Defendant was at No.1 store. Defendant stopped in June last being buyer for Leventis (plaintiff). The last delivery of cocoa received from defendant was in June, 1953, or 5.6.53 (witness refreshes memory from control stock book kept by him at p. 191). The last time I received palm kernels from defendant was on 8th June, 1953. There was no ungraded produce in No.1 store after the deliveries to me I have mentioned. The defendant used to keep the key

40

No.8  
Ademola Adamofe  
3rd February, 1954  
Examination

In the Supreme Court of Nigeria Plaintiff's Evidence No.8 Ademola Adamofe 3rd February, 1954 Examination (Continued)

of No.1 store; I mean he kept the key through his clerks who used to open and close the store. I remember when store No.1 was taken over from defendant. It was on 26th June, 1953. Mr. Matheron took the key from a clerk of defendant's. I know the clerk.

Cross-examination

Cross-examined by F.R.A. Williams:

I deal only with graded produce. I have nothing directly to do with ungraded produce. At times, however, I walk round the produce-buyers' stores (four of them in Lagos) in order to get an idea of stocks. I have business to do in the buyers' stores because I receive the graded produce from them. I issue a way-bill for graded produce received by me. When Mr. Matheron took key of defendant's store I was present, so was Idowu, Gafy and one Sam (clerks of Ijale's). We were called over to witness the taking-over of the keys. Mr. Matheron sent for me. My store is almost adjacent to No.1 produce store. I remember the occasion quite well.

10

20

I know that the plaintiff company had licence suspended last year and stopped buying produce. I do not remember when licence was suspended. I remember the taking over of the key of No.1 store because I was called to witness it. I do not know whether keys of other produce stores were taken.

Re-examination

Re-examination by Ferguson:

30

My store is always sealed at night. From January, 1953 onwards the produce Inspectors started using Ijale's produce store (i.e. No.1) for regrading and they sealed it at night. (By Court) Any ungraded produce in store No.1 was graded by the dates I received last consignments from Ijale as above stated.

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No.9 Court Notes 3rd February, 1954

No.9 Court Notes of Amendment

Mr. Ferguson and Mr. Williams agree to amendment of item 3 of particulars and paragraph 12 of Statement of Claim by substituting for the sum of £1065:17:5d where that sum appears, the

40

Ex.B sum of £1583:15:6d (agreement between Counsel marked "B"). Case to be continued on 16/2/54.

(Sgd.) M. de Comarmond  
SENIOR PUISNE JUDGE.

In the Supreme Court of Nigeria  
No.9  
Court Notes  
3rd February, 1954  
(Continued)

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Defendant's Evidence

No.10  
Abudu Karimu Gbadamosi Ijale

TUESDAY THE 16TH DAY OF FEBRUARY, 1954

SUIT No.428/53

Defendant's Evidence  
No.10  
Abudu Karimu  
Gbadamosi Ijale  
16th February, 1954  
Examination

10 Abudu Karimu Gbadamosi Ijale, sworn on Koran.  
Speaks Yoruba. I live at No.8, Bishop Street,  
Lagos.

I am a produce buyer and also run a motor transport service. I was produce buyer for Leventis & Co. I signed exhibit "A"; the Produce Manager of Leventis & Co., Mr. Matheron signed Exhibit "A".

20 The stock and the money were checked before document "A" was signed. It would be a lie if anyone said that there was no cocoa in store when exhibit "A" was signed. The tonnage of cocoa mentioned in exhibit "A" has not been valued and credited to me up to now. Document "A" is dated 10/6/53. The same thing applies to the tonnage of palm-kernels shown on exhibit "A".

30 (at this stage Mr. Kayode tries to bring in the matter of the four lorries handed to plaintiff for sale on condition that sale price be credited to defendant. Ferguson points out that he gave up 2nd item of claim on last occasion. Kayode retorts that, granting that Ferguson has stated that lorries would be sold and price credited to defendant, his contention will be that claim could not be initiated until sale price of lorries have been ascertained).

40 Kayode, in short, wishes to lead evidence on paragraphs 11 and 12 of his statement of defence. Kayode asks for 5 minutes to consider position.

Mr. Ferguson waives objection to question. I handed over four lorries to the plaintiff

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.10  
Abudu Karimu  
Gbadamosi Ijale  
16th February, 1954  
Examination  
(Continued)

Company. It was before this suit was instituted. The plaintiff suggested to me that in as much as I could no longer need the lorries to convey produce to the plaintiff's store I should return the lorries to them; the lorries would be repaired and then sold; and the proceeds credited to my account. I returned four lorries to plaintiff. I had bought the lorries with my own money. The plaintiff took the lorries from me promising to credit my account with proceeds of sale thereof. 10  
This took place on 26th May, 1953. I asked the Plaintiff Company to account for the proceeds of the sale of lorries; when I asked I did not know whether lorries had been sold. The plaintiff told me that the proceeds of the sale of the lorries would be taken into account when accounts between us were finally gone into. I had bought the lorries from the plaintiff Company and owed them nothing on that score, so I was not afraid that there would be any "foul 20  
play" about the lorries.

In March, 1953, Mr. Matheron took possession of key of store No.1 when the Leventis licence was suspended. After Mr. Matheron had taken the key he used to go and sit in my seat in the Office. I still went to the Office after that but did not occupy my usual seat.

When Mr. Matheron took possession of the store keys, he took stock. After that there were no purchases of produce. When I signed 30  
document "A" I did not admit that I owed plaintiff Company £25625:19:8d.

Cross-examination

Cross-examination by Mr. Ferguson:

I do not agree that exhibit "A" was prepared from the books. What happened was that Mr. Matheron come to store No.1, checked the stock and entered it on exhibit "A"; this is what was agreed upon. I used to receive way-bills every time I delivered graded cocoa to the plaintiff; same as regards palm kernel. 40  
The graded produce I delivered to plaintiff from store No.1 was stored in store No.2 by the plaintiff up to the time that exhibit "A" was completed and signed. The stock of cocoa and kernels mentioned in Exhibit "A" was still ungraded in store No.1 when Exhibit "A" was signed; plaintiff company agreed to take the ungraded produce.

When customers brought produce for sale I used to ask for money from plaintiff Company 50  
to pay. As soon as I paid for the produce it

became the property of the plaintiff company, even before grading. After Mr. Matheron had taken key of store No. 1 and had agreed to take the ungraded produce, I was no longer in charge. It was finally on 10th June, 1953, that Mr. Matheron agreed to take over the ungraded produce. I did not have the store key until 26/6/53.

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.10  
Abudu Karimu  
Gbadamosi Ijale  
16th February, 1954  
Cross-examination  
(Continued)

10 The money received by me from plaintiff company and the produce delivered by me to plaintiff used to be shown on my account with plaintiff.

Before suspension of the Leventis licence, the routine was as follows:

20 When I had produce to pay for I used to ask the plaintiff for money; after calculation, money was given to me and I used to sign in acknowledgment; then pay the producer; I kept a book showing the quantity of produce bought and the amount advanced to me; the plaintiff kept the original return and I retained the duplicate copy.

Exhibit "A" comes from that book; it was detached after entries shown thereon had been checked; I retained the duplicate.

30 The money advanced by the plaintiff was calculated according to the produce I had to buy, plaintiff usually gave me what I asked for. At the end of every day when graded produce was delivered to plaintiff, I used to deduct the value of the graded produce from the amounts advanced by plaintiff. I received way-bills each time I delivered graded produce. The way bills showed weight and value of graded produce.

40 I do not admit any indebtedness to plaintiff until ungraded produce has been graded and credited to my account. I mean the ungraded produce shown on exhibit "A", and until all our accounts have been gone into.

I agree that the figure £25,625:19:6d shown on exhibit "A" is standing to my debit; against it is the value of the ungraded produce shown on exh. "A" and also the sale price of my four lorries.

The weights shown on exh. "A" are of ungraded produce. Mr. Matheron told me that so long as I remained as produce buyer,

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.10  
Abudu Karimu  
Gbadamosi Ijale  
16th February, 1954  
Cross-examination  
(Continued)

the plaintiff company would not be given back its licence by the Board. This was said on 10th July, 1953. Then Mr. Matheron checked the stock, found it correct and exhibit "A" was signed. There was ungraded produce in the store on that day.

I do not remember whether 8th June, 1953, was last time I delivered graded produce to plaintiff. I know I did deliver graded produce in June, before the 10th. On that day (the 10th) I handed over the stock on hand to Mr. Matheron and I left. I did deliver ungraded produce on 10th to Mr. Matheron if not he would not have signed Exhibit "A".

10

Ex. "C"

After I had delivered my 4 lorries, the manager of plaintiff's motor Department at Ebute Metta (witness tenders copy of a letter addressed to manager of engineering department) on this copy is an entry by the manager of Engineering Department; Mr. Black acknowledging receipt of four lorries. Document put in marked "C". Up to now I do not know whether the lorries have been sold. I was not told that the lorries had been repaired. The overall mentioned in exhibit "C" was suggested by plaintiff's manager and I agreed to it.

20

I wanted the manager of the Motor Works to acknowledge receipt of the lorries. He did so on document "C". My receipt for the ungraded produce handed over by me to plaintiff is exhibit "A", a duplicate of which I kept.

30

Re-examination

Re-examination

It was Mr. Leventis himself (C.P. Leventis) who suggested that I should hand over my lorries and have my account credited with their sale price. I sent my lorries to the Leventis Motor Department at Ebute Metta, accordingly.

40

I said before that on 10th June, 1953, when exhibit "A" was signed I was told about a meeting of the cocoa Marketing Board: I was then given to understand that that meeting was for July 1st, 1953.

When Matheron took key of store No. 1 on March 1953 there was ungraded produce in

50

store. Graded cocoa was delivered from store No. 1 until beginning of June. Exhibit "A" shows balance of ungraded produce in store on the 10th June.

Mr. Matheron always checked physical stock before signing a document like exhibit "A". This was his work.

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.10  
Abudu Karimu  
Gbadamosi Ijale  
16th February, 1954  
Re-examination  
(Continued)

10 The produce manager, Mr. Matheron, used to see the produce bought by me before I was given money to pay for it. Exhibit "A" marked the end of my association with Leventis & Co.; Mr. Matheron and I realised that.

Once ungraded produce had entered store No. 1 I could not take away any of it because it had become plaintiff's property.

20 Exhibit "C" was written on the day I took my lorries to the Ebute Metta motor works.

No balance has been struck between what I owe to plaintiff and what I should be credited with for value of produce shown on exhibit "A". I was acting as agent for plaintiff company. (By Court) Not true that produce inspectors graded cocoa in store No. 1 coming from another store.

To be continued on 24th February instant.

30 (Sgd.) M. de Comarmond  
SENIOR PUISNE JUDGE.

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No.11  
Christopher Omotesho Eboyiade

WEDNESDAY THE 24TH DAY OF FEBRUARY, 1954

No.11  
Christopher Omotesho  
Eboyiade  
24th February, 1954  
Examination

40 Christopher Omotesho Eboyiade, Sworn on Bible. I am a clerk employed by defendant. I live at 63 Aroloya Street, Lagos. I know defendant. I know the plaintiff company. I know Mr. Matheron. In March last year there was cocoa in the No. 1 Produce Store of Leventis & Co. The store belongs to plaintiff company. Cocoa in the store was brought there by the "customers" who sold it to Ijale, defendant. I worked for

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.11

Christopher Omotesho  
Eboyiade  
24th February, 1954  
Examination  
(Continued)

defendant in that store No. 1. The produce  
(cocoa and kernels) in store in March 1953  
was ungraded.

On 10th June, 1953, I was present when I  
saw defendant signing a paper; Mr. Matheron  
was there. Yes Exhibit "A" is the paper I  
saw him sign. There was ungraded cocoa and  
kernels in No. 1 store on that day; it was  
the balance remaining of the produce which  
was in the store in March 1953.

10

Cross-examination

Cross-examined:

In March, 1953, I know that Leventis &  
Co's buying licence was suspended. There  
was no more produce bought after the  
suspension. I knew that the produce in  
store, after the suspension, had to be  
graded and shipped. Grading was done on  
1st June, 1953, but not all the produce  
was graded on that day. I ceased work  
on 10th June, 1953. I cannot remember  
whether grading was done after the 1st June and  
before 10th June. I know the produce Register.

20

It was kept at No. 1 store. Graded produce only  
is entered in that register. When ungraded produce  
was bought by defendant, he used to enter the  
weights in a sort of ledger which was his  
personal property. I see the cocoa Register  
(cocoa Receipt Book) you show me; the  
produce graded is entered in that book; the  
produce examiner and the "buyer" in charge  
of the store sign the entries (Book tendered,  
no objection Marked "D").

30

Ex. "D"

Register "D" shows that after 1st June,  
1953, no grading took place.

I have already said that the idea was to  
grade and ship all produce in store No. 1  
in March.

On 22nd May, 1953, grading of cocoa was  
carried out. The "parcels" are numbered in  
exhibit D on the following principle; a  
quantity of cocoa is tested and is then  
bagged. The number of bags is called a  
parcel.

40

I do not agree that the reason why no  
entry appears in exhibit "D" after June 1st  
is because there was no cocoa left for  
grading. When buying stopped in March there  
was about 104 Tons of Cocoa ungraded; I do

10 not quite remember how much ungraded palm kernel was on hand. Cocoa was graded and delivered out of store No. 1 between March and 1st June, 1953. The last delivery of graded cocoa by Ijale to Leventis was made on 5th June, 1953. On 10th June, 1953, Ijale ceased to work store No. 1 Ijale and I left store No. 1 on the 10th June and I never went back. Did not see Mr. Matheron take over keys of store. Ijale had 3 clerks (including me) working in store No.1.

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.11  
Christopher Omotesho  
Eboyiade  
24th February, 1954  
Cross-examination  
(Continued)

The weights of ungraded produce shown on Exhibit "A" were ascertained after checking; there was no weighing but the bags were counted on 10th June, 1953. Mr. Matheron and Mr. Ijale count the Bags.

I cannot say whether the weight shown first on Exhibit "A" was taken from the previous return.

20 Re-examined:

Re-examination

I know that 12 bags of ungraded cocoa weigh a certain number of tons (I do not remember how many) so by counting bags, the weight can be gauged.

The register now shown to me was kept in store No. 1 by one of defendant's clerks. I know the register (tendered, no objection marked "E").

Ex. "E"

30 Looking at No. 295 in Exhibit "E"; I see the weights of ungraded cocoa, of graded cocoa, and the difference which leaves 73 T. 5.

The returns in exhibit "E" are signed by Mr. Matheron and Ijale. Matheron came to store No. 1 in March, 1953, and thereafter i.e. he began to supervise the store in March.

I see entry on folio 288 of Exhibit "E"; it is initialled by Mr. Matheron. Mr. Matheron wrote the words "stock unchecked". I see the words "except stocks" in Exhibit "E" up to entry from 7th May, 1953; that meant that stocks were unchecked. At back of return 294 I see the working out of the figures entered in return 295.

Case for defence closed.

Counsel agree that the item £1583.15.6d is not to be investigated by the Court. The parties will go into the matter and agree i.e. have an account stated.

In the Supreme  
Court of Nigeria  
No.12  
Addresses of Counsel  
24th February, 1954  
For Plaintiff

No.12  
Addresses of Counsel

KAYODE ADDRESSES

Issue as to the existence of stock of ungraded cocoa has to be decided. Relies on Exhibits "A" and "E" which show stock of ungraded produce on hand as at the 10th June, 1953. From folio 289 on Exhibit "E" to 296 no stock taken.

Exhibit "A" is not a proper account stated. 10

(See Writ of Summons).

Exhibit "A" is obviously the account stated referred to in the Writ of summons.

Once cocoa has been graded, the property passes to the produce Board. Once the produce is put into new store after grading, it is the Board's property.

See paragraph 2 of Statement of Claim.

Roscoe's evidence vol. 1 (28th edition) at p.591 - 2 Exhibit "A" shows that 73.5 Tons of Cocoa (ungraded) was in store on 10th June and value had not been credited to defendant. Value of ungraded cocoa not known on 10th June, so plaintiff cannot rely on account stated. 20

Alternative claim is for money had and received. Same difficulty; ungraded cocoa must be taken into account.

Page 561 Roscoe (same Volume).

As regards lorries, See paragraphs 10, 11 of Statement of Claim. Plaintiff could not litigate this part of the claim until the lorries had been sold. Lorries were handed over in May, 1953. Action brought in August 1953. Proceeds of sale were to be credited to Ijalo (see his evidence). 30

Had plaintiff simply claimed the amount advanced to defendant, it may be that the defendant might have used exhibit "A" for his defence; however if the course of action had been other than account stated or money had and received; the defence would or might have been quite different. 40

FERGUSON:

Court has power to order that an account be taken or inquiry made.

True that main issue is whether there was ungraded produce on 10th June, 1953 which had been bought by defendant and which was left in plaintiff's hands.

10 Exhibit "E" shows that at least on certain occasions, no physical check was made. Ijale did say that from March onwards, Mr. Matheron was in charge and that he (Ijale) had taken second place in store No.1.

Last delivery of graded cocoa was on 8th June, 1953. No ungraded cocoa left which had been bought by Ijale.

No graded produce delivered after 8th June indicates that there was no ungraded produce left on the 10th June in store No. 1.

20 The 3rd item of claim has nothing to do with the 1st or 2nd items. It will be resolved separately.

Decision reserved. Parties will be warned.

(Sgd.) M. de Comarmond  
SENIOR PUISNE JUDGE.

In the Supreme  
Court of Nigeria  
No.12  
Addresses of Counsel  
24th February, 1954  
For Defendant

No.13  
Judgment (de Comarmond J.)

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
12th March, 1954  
(de Comarmond J.)

IN THE SUPREME COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
  
FRIDAY THE 12TH DAY OF MARCH, 1954,  
Before The Honourable,  
MR. JUSTICE JOSEPH HENRI MAXIME DE COMARMOND,  
SENIOR PUISNE JUDGE.

SUIT No. 428/1953.

BETWEEN:

10

A.G. LEVENTIS & CO. LTD.            PLAINTIFFS

- and -

A.G. IJALE                                DEFENDANT

J U D G M E N T

The plaintiff Company (hereinafter called the plaintiff) claimed from the defendant a total sum of £26148. 19. 5d with interest at 10% per annum on part of the said sum (namely £25025.19.8d).

The claim was made up as follows:

20

(1) £25025.19.8d being balance found to be due by the defendant to the plaintiff on an account stated contained in a document signed by the defendant on the 10th June, 1953, or in the alternative being money had and received by the defendant from the plaintiff for the use of the plaintiff with interest at 10% per annum until payment or judgment.

(2) £57.2.4d being amount due and owing by the defendant for motor parts sold and delivered to the defendant by the plaintiff and engineering services rendered by the plaintiff to the defendant.

30

(3) £1056.17.5d being amount due to the plaintiff by the defendant for goods sold and delivered to him by the plaintiff.

In his statement of defence, the defendant 40 denied owing the sums claimed as set out in items (2) and (3) above.

As regards item (2) the defendant averred that he had handed over to the plaintiff on the 12th May, 1953, four lorries on the understanding that the plaintiff would overhaul them, sell them, and credit defendant with the proceeds.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

10 At the beginning of the trial, Mr. Ferguson for the plaintiff stated that he abandoned that part of the claim i.e. item (2) and he added that the lorries would be sold and the proceeds credited to the defendant.

20 As regards item (3) Mr. Ferguson stated that he would have to amend the figures. Subsequently a written agreement signed by the solicitors on both sides was put in and marked B. It is to the effect that the parties agreed that the plaintiff company was at liberty to amend item (3) of the particulars endorsed on the writ and paragraph 12 of the Statement of claim by substituting £1583.15.6d for £1065.17.5d.

At the close of the case, Counsel agreed that item (3) need not be gone into by the Court. They proposed to go into the matter and have an account settled.

The position therefore is that the first item is the one that has to be examined by the Court.

30 The first question is whether there was a proper account stated i.e. evidence that the parties, after a series of mutual dealings, had agreed to make up their accounts, to set up one item against another, and to be answerable only for the balance. If there is such evidence and if it discloses a balance in plaintiff's favour of £25025.19.8d, the present claim is clearly based upon a genuine consent and is based on contract.

40 The plaintiff relied on a document (Exhibit A) which bears the heading "Return of Transactions made on behalf of Messrs. A.G. Leventis & Co. Ltd."

A "Return" is not an appropriate designation for an account stated, but I propose to examine exhibit A in order to find out whether, in spite of its name, it is an account stated.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

The first part of the document shows a sum of money brought forward to the defendant's debit; on the credit side appears two sums of £575 and £25, being respectively, defendant's salary for July 1951 to May, 1953, and his salary for June 1953. The balance is the sum mentioned in the claim i.e. £25625.19.8d.

Exhibit A was signed by the defendant and by Mr. Matheron. The latter undoubtedly acted as the employee and representative of the plaintiff company. 10

Had Exhibit A contained nothing else, it might well have been an account stated. However it also contains a section called "Produce Statement" with columns for the weights of ungraded cocoa and palm kernel, the weights of graded produce, and the stock on hand at the date of the "return". Exhibit A also contains a section dealing with the stock of bags, but this particular item is of no importance for the purposes of this case. 20

In order to understand Exhibit A, it is necessary to explain that the plaintiff Company is a buying agent licensed by the Nigerian Cocoa Marketing Board for the purchase of cocoa for sale to the Board, and that the defendant was employed by the plaintiff for the purpose of buying ungraded cocoa. The expression "licensed buying agent" in the Nigeria Cocoa Marketing Board Ordinance, Cap 151, includes a servant or employee of a licensed buying agent duly authorised in writing by that licensed buying agent under the provisions of the Ordinance. 30

The defendant carried on his work in a store known as Store No. 1, Alakore, Lagos. His salary was £25 per month and he also received commission on the sale of graded produce. Whenever he needed money to purchase ungraded cocoa, he used to apply for it and the plaintiff company supplied the money. The cocoa was then kept in Store No. 1 until graded by the appropriate officials. After grading, the cocoa was transferred to Store No. 2 and the Storekeeper in charge of Store No. 2 issued a way-bill for the graded cocoa thus received by him. At that stage, the defendant's account was credited with the value of the graded produce. 40 50

Palm Kernels were also bought and dealt with in a similar manner.

In the Supreme  
Court of Nigeria  
No.13

10 We may now return to Exhibit A. In the section called "Produce Statement" are entries to the effect that the stock of ungraded cocoa at the beginning was 73.5; no entry appears in the graded cocoa column, and the stock at end is therefore unchanged. The position regarding palm kernels is the same; the weight 7.13.2.7 remaining unchanged.

Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

I was given to understand that these weights are in tons, hundredweights etc.

What is called the beginning of the period means the day when the last return was made.

20 Exhibit A comes from a book (Exhibit E) containing the printed forms of "return", numbered consecutively in pairs. The idea is that the carbon copy of a return remains in the book while the original or top copy is torn out and kept by the plaintiff.

Exhibit A was signed on the 10th June, 1953, by the defendant. Mr. Matheron also signed it under the words "Return checked and found correct by". Under the defendant's signature, and above Mr. Matheron's, appear the words "except stock of bags", written by Mr. Matheron.

30 The disputed issue in this case is that the defendant maintains that the weights of ungraded produce shown on Exhibit A were in the store when the return was made and checked, whereas Mr. Matheron's evidence was that the return was, as usual, compiled from book entries and documents and showed what the position should be according to the books. Mr. Matheron stated that there was no produce in Store No. 1 on the 10th June and that he knew quite well that the stock shown  
40 on Exhibit A was inexistent.

This statement is rather surprising. It is not easy to understand why an incorrect return should be accepted. I gathered, however, from Mr. Matheron that it was an accepted routine: the idea, perhaps, being to keep abreast of the position as shown on the books. There are, however, three facts which have to be weighed against Mr. Matheron's evidence.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

The first is that Exhibit E reveals that several of the returns in Exhibit E, up to folio 294, contain the mention "except stocks" or "except ungraded stock" - for example, folios 290, 292, 293, 294. Folio 295 bears no such mention, and folio 296 (Exhibit A) bears only the words "except stocks of bags".

From this fact it would appear that when the stock was not checked, an entry to that effect was made. On Exhibit A the only articles mentioned as not checked are the bags. This certainly gives support to the defendant's evidence that the stock of ungraded produce was checked. On this point, the defendant was supported by his clerk Eboyiade who stated that some of the ungraded produce in the store, when buying ceased in March 1953, was graded but that some was still there on 10th June when Exhibit A was signed. He said that the last grading was on the 1st June and that the last delivery of graded cocoa from Store No. 1 was on the 5th June. 10

He was positive that there were stocks of ungraded cocoa and kernels in store on the 10th June and that they were checked. 20

While this clerk was being cross-examined, another exhibit (D) was put in. This is the Cocoa Register which is signed by the store-keeper, the examiner, and the checktaster. Not much use of this book was made at the trial. While examining Exhibit D I noticed that after page 11 the book is blank until page 51, where there are entries running from the 27/4/53 to the 1/6/53. 30

This last date bears out the clerk's evidence on the point that grading was done on the 1st June. 40

Whether or not some light might have been thrown on this case by analysing page 51 of Exhibit D, I cannot say. I had no evidence in this connection. I see under the heading "No grade - Stock on hand" on the 1st June, 1953, the figure 423, but I cannot hazard a guess whether this means "tons" or something else.

The storekeeper of Store No. 2 where graded produce is stored was called by the plaintiff. He supported Mr. Matheron's evidence that there was no produce in Store 50

No. 1 on the 10th June. He said that he received the last consignments of graded cocoa and kernels on 5th June and 8th June respectively.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

10 The second fact which has to be weighed against Mr. Matheron's evidence is that he and the storekeeper of Store No. 2 stated that the produce examiners used No. 1 Store to grade produce brought from another store. Mr. Matheron said that when he took over the keys of store No. 1 towards the end of June, 1953, there was ungraded produce in it but such produce had been brought in from No. 4 store. The storekeeper of store No. 2 said that Produce Examiner using Store No. 1 for re-grading used to seal it at night.

20 This evidence about produce brought in from other stores is absolutely denied by the defendant and his clerk. It is regrettable that the Produce Examiners concerned were not called; they must have given useful evidence and the plaintiff should have called them in order to try and establish conclusively that any produce in the store on or after the 10th June was not produce bought by the defendant for the plaintiff.

30 I should mention that there was a conflict of evidence as to whether Mr. Matheron took over the keys of Store No. 1 in March, 1953, or whether it was towards the end of June that he did so. I do not attach importance to this point. It is clear enough that on the 10th June, both sides knew that the defendant's employment was being terminated: Exhibit A shows that he was paid his salary for that month on that day.

40 This third fact is that paragraph 4 of the Statement of claim sets out that a "Return of Transaction" (like Exhibit A) contains a Produce Statement which shows the stocks of ungraded and graded produce held by the defendant. Such an averment in the statement of claim can hardly be reconciled with the evidence that the Produce Statement is a mere "paper entry" which does not reveal the actual position.

50 On the evidence before me, I have reached the conclusion that the plaintiff has failed to establish that there was no ungraded produce as shown on Exhibit A in the store on the 10th June, 1953.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

This being so, Exhibit A cannot possibly be regarded as an account stated, because the value of that produce has to be credited to the defendant.

The plaintiff must therefore fall back on his alternative claim of money had and received.

The learned counsel for the defendant submitted that the plaintiff's claim based on an account stated must fail and that his claim for money had and received by the defendant for the use of the plaintiff must also fail because the value of the ungraded produce in the store is unknown. 10

In the absence of some special contract between the parties, it seems to me that the plaintiff is entitled to sue on quasi-contract for the return of any money entrusted to the defendant to buy produce where such money has not been soused. 20

The defendant himself, conceded when giving evidence that the position was that he had to pay back money not used by him to buy produce, but he added that the ungraded produce in store on the 10th June had not been credited to him.

I cannot say, at the present stage, how much should be credited to the defendant in respect of the ungraded produce in store on the 10th June. 30

No attempt has been made by either side to set a value for such produce. The plaintiff, of course, did not do so because his case was conducted on the lines that there was no produce in the store. The defendant seems to be waiting to be told what the value is.

Now that I have found against plaintiff as regards the existence of ungraded produce on the 10th June, 1953, it seems to me that the value of the ungraded produce must be ascertained in order to reach a final conclusion on the 1st item of the claim. 40

I have, while counsel were addressing me, tentatively mentioned that an inquiry or account must be ordered.

Plaintiff's counsel agreed, but defendant's counsel did not seem satisfied that this could be done.

In the Supreme  
Court of Nigeria  
No.13  
Judgment  
(Continued)  
12th March, 1954  
(de Comarmond J.)

10 I am of opinion that an order for an inquiry can be made even at this late stage. In this connection, I would point out that Order 43 rule 3 of the Supreme Court Rules is almost a verbatim reproduction of Order 33 rule 2 of the Rules of the Supreme Court in England. Under Order 33 rule 2 in England orders for account, and inquiries have been made after judgment; see Taylor v Mostyn 33 Ch. Div.226; Barber v Macknell 12 Ch. Div.534.

20 It is true that our Order 43 deals with referees, and that it is perhaps not essential in the present suit to have recourse to a referee. However, some step must be taken to settle the sole remaining point, namely the value of the ungraded produce in store on the 10th June. By doing so further unnecessary litigation will no doubt be avoided.

In Taylor v. Mostyn (above referred to) the Court, in order to settle the question between the parties cheaply and expeditiously directed a reference.

30 The parties may agree that the matter may be settled between them, or they may suggest an inquiry before the Court, instead of a reference.

I shall decide what order to make after hearing learned counsel.

The question of costs is reserved.

(Sgd.) M. de Comarmond

SENIOR PUISNE JUDGE.

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In the Supreme  
Court of Nigeria  
No.14  
Court Notes  
19th March, 1954

No.14

COURT NOTES

Friday the 19th day of March, 1954  
Before the Honourable,  
Mr. Justice Joseph Henri Maxime de  
Comarmond, Senior Puisne Judge.

Suit No. 428/53

A.G. Leventis & Co. Ltd. vs. A.G. Ijale

Ferguson for Plaintiff

F.R.A. Williams for Defendant

10

Court asks counsel whether they have considered the question of necessity for inquiry or reference.

Williams stated that he cannot agree to inquiry being made as to value of ungraded produce because he is of opinion that plaintiff cannot succeed on claim of money had and received unless it is for a specific sum claimed. It may be, Williams says, that defendant will appeal against final judgment.

20

Fixed for 12th May next to hear evidence as to the value of the ungraded stock.

(Sgd.) M. de Comarmond  
S.P.J.  
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No.15  
Court Notes  
15th June, 1954.

No.15

COURT NOTES

In the Supreme Court of Nigeria  
In the Lagos Judicial Division,  
Before the Honourable,  
Mr. Justice Myles John Abbott, Puisne Judge.  
Tuesday, the 15th day of June, 1954.

30

Suit No. 428/53

A.G. Leventis & Co. Ltd. vs. A.G. Ijale

Ferguson for plaintiff

Davies for R. Williams for defendant.

Adjourned 20/9/54. In the meantime parties will endeavour to settle the value of

the ungraded produce found by de Comarmond J. to have been in the store.

(Sgd.) M.J. Abbott.

In the Supreme Court of Nigeria No.15 Court Notes 15th June, 1954 (Continued)

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No.16

COURT NOTES

No.16 Court Notes 20th September, 1954.

Monday the 20th day of September, 1954.

A.G. Leventis & Co. Ltd. vs. A.G. Ijale .

Suit No. 428/53

Ferguson for Plaintiff

10 Kayode for Defendant.

Both sides want to call evidence on value of ungraded produce.

They may do so on 19/11/54 and as judgment of Ag. C.J. dealt only with Item 1 on the Writ the other two items can also be dealt with on 19.11.54.

(Sgd.) M.J. Abbott

Monday the 25th day of October, 1954.

Kayode for defendant moves.

25th October, 1954.

20 Ferguson for plaintiff opposes.

Kayode When reason for interim order has gone, Court has power to discharge it.

Adjourned 1/11/54 to Jibowu J. who made the order for attachment. Leave to Ferguson to file Counter affidavit.

(Sgd.) M.J. Abbott.

In the Supreme  
Court of Nigeria  
No.16  
Court Notes  
1st November, 1954.

Monday the 1st day of November, 1954.  
Before the Honourable  
Mr. Justice Olumuyiwa Jibowu,  
Acting Senior Puisne Judge.

Motion by the defendant for an order releasing the defendant's properties in the attached list from the Order of interim injunction.

Ajose-Adeogun for the defendant.

Ferguson for the plaintiff.

10

Adjourned for a week to enable the defendant's Solicitor to consider the counter-affidavit filed.

(Sgd.) O. Jibowu  
Ag. S.P.J. 1/11/54.

Friday the 19th day of November, 1954.

19th November, 1954. Motion

Kayode moves.

Ferguson on Notice.

Kayode asks that premises No.27, Princess Street and 8, Bishop Street, Lagos be retained and returned to be released.

20

Case is part heard by De Comarmond, Ag. C.J. It is therefore adjourned for completion by him to 26th inst.

(Sgd.) O. Jibowu  
Ag. S.P.J.  
19/11/54.

26th January, 1955  
Wednesday the 26th day of January, 1955  
Before the Honourable,  
Mr. Justice Olumuyiwa Jibowu,  
Ag. Senior Puisne Judge.

30

Motion

Kayode moves.

Prescott on notice.

Kayode says that the properties at 27, Princess Street and 8 Bishop Street, Lagos, already

given to the plaintiffs for £15,000 and that they should cover judgment which might be given in their favour. He asks that other properties to be released as the plaintiff could not get judgment for more than £11,984.17.6. The plaintiffs have also in their possession 4 lorries belonging to the defendant valued at £4,500.

In the Supreme Court of Nigeria  
No.16  
Court Notes  
26th January, 1955  
(Continued)

10 Prescott says that the cocoa was of no commercial value.

Order: That properties listed as Nos. 5 and 11 on Exhibit X, and properties at 27, Princess Street and 8, Bishop Street, Lagos be retained as security along with the three lorries in possession of the plaintiffs, and that the other properties listed on Exhibit X as Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 & 17 be released from attachment.

20 No order as to costs.

(Sgd.) O. Jibowu.  
Ag. S.P.J.  
26/1/55

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No.17

COURT NOTES

Wednesday the 29th day of June, 1955  
Before the Honourable,  
Mr. Justice Myles John Abbott, Judge.

No.17  
Court Notes  
29th June, 1955

Suit No. 428/53

30 A.G. Leventis & Co. Ltd. v. A.G. Ijale

Ferguson for plaintiffs.

Kaine says Kayode is before W.A.C.A.

Nicol now appears for defendant and says Kayode will be here shortly. I inform him the evidence must proceed now.

Ferguson: I see no reason why this Court cannot deal with this matter in spite of the fact that C.J. has been dealing with it hitherto.

In the Supreme  
Court of Nigeria  
Plaintiff's Evidence  
No.18  
Richard Joseph Welch  
29th June, 1955  
Examination

No.18

Plaintiff's Evidence  
Richard Joseph Welch

P.W.1. Richard Joseph Welch sworn, acting Principal Produce Officer, Port Harcourt. I know both parties to this case. I know defendant's produce store at Alakore. I knew it well in June, 1953. I was then Senior Produce Officer, Lagos and I was investigating certain offences in relation to cocoa in defendant's store.

10

(Value of) 73 tons 5 cwt. of ungraded cocoa would have no value, quite worthless. Because when I went to store at end of March, 1953 I found a lot of ungraded cocoa. I ordered its examination by my staff as a large quantity, I could see was of inferior quantity. All gradable cocoa in the store was graded, including some cocoa of no grade quality but not sufficiently bad to warrant a prosecution under S.14(1) of Produce Inspection Regulations 1951 (Regulations 28/51). On 1/6/53 we completed grading and bagging all gradable cocoa including that of bad quality as above. I believe the quantities were about 100 bags of Grade 1, 200 of Grade 2 and 400 of bad quality cocoa. Even that bad quality cocoa was exportable. Total weight about 43 tons.

20

On 1/6/53 grading ceased because there was no more cocoa in the store which ever reached the lowest of the three standards. Value of cocoa which does not reach that lowest standard is nil.

30

I am a produce expert by declaration of the Governor G.N.1645 18/12/52 Gazette.

Cross-examination

XX Cocoa of low quality ("nograde" cocoa) was £145 per ton. Grade 2 - £150 per ton. Grade 1 - £160 per ton. These were the prices to the best of my recollection. I agree that Grade main crop was £170 per ton but this was grade 1 light crop - £160 per ton. Defendants cocoa was not main crop but light crop.

40

Rex: None.

Kayode for defendant now arrives.

Ferguson: We must assume there 7 tons 13 cwt. 2 qrs. 7 lbs. of Grade 1 main crop palm Kernels at £36.3.6d. per ton was in the store - £276.2.6.

I am prepared to concede this figure should be deducted from the claim.

In the Supreme Court of Nigeria  
Plaintiff's Evidence  
No.18  
Richard Joseph Welch  
29th June, 1955  
Cross-examination  
(Continued)

Kayode: All evidence given is inadmissible because plaintiff said at certain trial that there was no ungraded produce in the store. I propose to call defendant to give his version. If the evidence of Welch is inadmissible defendant must be believed.

-----

No.19

10

Defendant's Evidence  
Abudu Gbadamosi Ijale

Defendant's Evidence  
No.19  
Abudu Gbadamosi  
Ijale  
29th June, 1955  
Examination

D.W.1 Abudu Gbadamosi Ijale. Sworn, 8, Bishop Street, Lagos. Produce Buyer. I am defendant in this case. I had transactions with plaintiffs regarding produce. They advanced money and I delivered cocoa.

20

(Kayode now wants to lead evidence that defendant delivered all the cocoa which he was supposed to deliver. I inform him that I cannot see that such evidence has anything to do with the value of the ungraded produce and that I cannot allow him to lead such evidence.) (Intd.) M.J.A.

I received this letter from plaintiffs (Exh. F).

Ex.F.

I deny delivering bad quality cocoa to the store.

30

I was never challenged by Welch about quality of cocoa in store. Value of cocoa delivered to store was £174.9.0. per ton. Value of Kernels delivered to store was £36.3.6. per ton.

XX Welch does not grade cocoa. I heard his evidence. When he gave evidence he never mentioned my name. He should have said it was my cocoa.

Cross-examination

40

I agree cocoa can deteriorate in storage but mine never did. I know the cocoa in question was graded by Produce Officers. I don't say I don't accept their grading. I say that all my cocoa there was grade 1 main crop. When I put a value of £174.9.0. on my cocoa I was relying on Ex. F.

In the Supreme  
Court of Nigeria  
Defendant's Evidence  
No.19

Abudu Gbadamosi  
Ijale  
29th June, 1955  
Re-examination  
(Continued)

Rex There are about 12 produce buyers using the store. £174.9.0. per ton was the agreed price for the produce.

By Court: All of us were using the store in 1953.

Kayode does not wish to address Court.

Kayode says I cannot go back and look at evidence taken before C.J.

Ferguson: This evidence shows defendant was in charge of store. Exhibit F - values therein are meaningless or hypothetical - refer to shortages. Ex. F deals with graded produce - we are here dealing with ungraded produce. No case for any deduction for ungraded produce.

10

C.A.V. 4/7/55.

Ferguson now wants to call evidence to prove 3rd item of claim. I ask him why he did not call this evidence when his witnesses were giving evidence this morning. He says it did not occur to him to do so because it is a separate issue. He says he withdraws this and will bring it again.

20

Decision: I cannot allow Mr. Ferguson to call evidence about this now. If that were to be allowed it would mean that a writ containing several items of claim would be in fact a separate writ for each item. The multiplicity of suits if that were allowed can easily be imagined.

(Sgd.) M.J. Abbott.

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No.20

Finding as to value of ungraded  
produce (Abbott, J.)

In the Supreme  
Court of Nigeria  
No.20  
Finding as to value  
of ungraded produce  
4th July, 1955

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE LAGOS JUDICIAL  
DIVISION  
MONDAY THE 4TH DAY OF JULY, 1955  
BEFORE THE HONOURABLE  
MR. JUSTICE MYLES JOHN ABBOTT.  
10 PUISNE JUDGE.

Suit No. 428/53

Between:

A.G. Leventis & Co. Ltd. Plaintiffs

- and -

A.G. Ijale Defendant

FINDING AS TO VALUE OF UNGRADED  
PRODUCE

20 This action was originally heard by the  
learned Chief Justice some 15 months ago and  
an interim judgment was given wherein the  
Chief Justice stated that he found against the  
Plaintiffs' contention that there was no un-  
graded produce whose value had to be deducted  
from the first item of claim. On 12.3.54 the  
Chief Justice adjourned the case to 12.5.54  
for the taking of evidence regarding the value  
of the ungraded produce.

30 For various reasons, which need not be  
gone into here, the Chief Justice was unable  
to hear this evidence and it was heard before  
me on 29.6.55, during the Chief Justice's  
absence on leave. A former Senior Produce  
Officer gave evidence for the plaintiffs and  
the defendant gave evidence on his own behalf.

40 Mr. Kayode submitted, for the defendant,  
that all the evidence on behalf of the  
plaintiffs was inadmissible because, at the  
hearing before the Chief Justice, it had been  
their contention that there was no ungraded  
produce in the store at the material date,  
and that if that submission were upheld, the  
defendant's evidence should be believed as  
being the only evidence available.

In the Supreme  
Court of Nigeria  
No.20  
Finding as to value  
of ungraded produce  
4th July, 1955  
(Continued)

I do not agree with either submission. As regards the first, the Chief Justice has said that final judgment cannot be given until the value of the ungraded produce be ascertained. It cannot be seriously contended, in my view, that the Court can listen only to what the defendant and witnesses on his behalf have to say on this subject and it is clear that a produce Officer, an independent person, can give valuable evidence. Furthermore the evidence given by the Produce Officer amounts to very much the same thing as saying there was no ungraded produce in the store. He says that the value of what was there was nil.

10

As to the second submission, I think Mr. Kayode knows very well where the fallacy lies.

Were this submission to be upheld, it would mean that it would never be of any use to submit, at the end of a plaintiff's case, that he had failed to prove his case, because the Court ought to believe the only evidence given, no matter how unreliable it was.

20

I have carefully considered the evidence of both witnesses and I have come to the conclusion that I believe the evidence given for the plaintiff where it conflicts with that given by the defendant. The only point in the defendant's evidence which I need deal with specifically is his statement (and that part of his evidence, I accept, may well be true) that other produce buyers besides himself used the store in question and his complaint that the plaintiff's witness never mentioned his (the defendant's) name. These points are disposed of by the evidence of the produce Officer that on 1.6.53 there was no cocoa in the store which was of any value whatever.

30

At the close of the evidence Mr. Kayode submitted that I am not entitled to look at the evidence given before the Chief Justice. How he can say that only a short while after submitting that the Produce Officer's evidence is inadmissible because of certain evidence given before the Chief Justice, I do not understand.

40

In any case, as it happens, I have not found it necessary to refer to the earlier evidence.

The only other matter to which I need refer is Ex. F, a letter from Plaintiff's

50

Solicitors to the defendant.

In the Supreme  
Court of Nigeria  
No.20  
Finding as to value  
of ungraded produce  
4th July, 1955  
(Continued)

I am asked to accept this as some evidence against the plaintiffs claim. I cannot do so. It speaks of shortages. Mr. Ferguson, however, concedes that the figure of £276.2.6d. must be deducted from the plaintiffs' claim. This he had to do, as there was no evidence from his witness regarding palm kernels.

10 I find therefore that the value of ungraded cocoa in the store on the material date was nil.

This case must now go back to the Chief Justice in order that final judgment may be given.

20 At the end of the evidence about the ungraded produce Mr. Ferguson for the plaintiffs wanted to call evidence about item 3 of the claim. I did not agree he could do so. A plaintiff cannot have separate trials of each item of his claim. On my making my ruling, Mr. Ferguson said he would withdraw this item and bring a fresh action for it. Why he wanted to bring evidence in support of it at that particular moment, and, when this was not allowed, to bring a fresh action, I do not know. The Chief Justice said in his judgment that the parties had agreed that item (3) need not be gone into by  
30 the Court.

(Sgd.) M.J. Abbott

P.J.

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In the Supreme  
Court of Nigeria  
No.21  
Judgment  
29th November, 1955

No.21  
Judgment  
(de Comarmond, J.)

IN THE SUPREME COURT OF NIGERIA  
IN THE SUPREME COURT OF THE LAGOS JUDICIAL  
DIVISION  
TUESDAY THE 29TH DAY OF NOVEMBER, 1955  
BEFORE THE HONOURABLE,  
MR. JUSTICE JOSEPH HENRI MAXIME DE COMARMOND  
ACTING CHIEF JUSTICE

10

SUIT No. 428/53

BETWEEN:

A.G. LEVENTIS & CO. LTD. PLAINTIFFS

- and -

A.G. IJALE DEFENDANT

J U D G M E N T

On the 12th March, 1954, I gave a judgment in this suit. The judgment was not a final one because there remained to ascertain the value of some ungraded produce. Such value, when ascertained, was to be credited to the defendant.

20

Abbott, J. after hearing evidence, decided that the ungraded produce (cocoa) was of no value.

The matter has been referred back to me to pronounce final judgment.

Of the three items of claim set out in the Statement of Particulars which accompanied the writ of summons, only the first one has to be considered: by agreement of the parties the other two items have been withdrawn from the consideration of the Court in this present action.

30

The first item of claim was for a sum of £25,025.19.8d. Learned counsel for the plaintiff conceded in the course of the inquiry before Abbott J. that a sum of £276. 2.6d. (advances for palm kernels shown in exhibit F) had to be deducted from the amount claimed. This is the only deduction that has to be made, being given that the value of the ungraded

40

produce in the store had been found to be of no value. The balance i.e. £24749:17:2d is therefore due to the plaintiff and he is entitled to judgment in that principal sum.

In the Supreme  
Court of Nigeria  
No.21  
Judgment  
29th November, 1955  
(Continued)

Interest at ten per centum per annum was also claimed as from the 27th July, 1953, until payment or judgment.

10 The plaintiff set out clearly in paragraphs 8 and 9 of the Statement of Claim his grounds for claiming interest. These grounds were that there was an agreement by deed that the defendant would pay interest at ten per centum per annum on the amount remaining due by the defendant one month after a demand in writing for payment had been made. It was conceded in paragraph 9 of the Statement of Claim that the parties had not contemplated that advances of money to the defendant would at any time exceed £5,000, but it was averred  
20 that advances having in fact been made in excess of £5,000, the agreement about payment of interest should be construed as applying to any sum advanced even if in excess of £5,000.

30 Demand for payment was made on the 27th June, 1953. The averments contained in paragraphs 8 and 9 of the Statement of Claim were not challenged in the statement of defence. However, I am not prepared to agree that the provisions regarding payment of interest contained in the Deed or deeds of mortgage can be held to have been extended by tacit agreement. I therefore allow interest calculated at ten per centum per annum on £5,000 monthly from the 27th July, 1953 to date of this judgment that is £1,168 in round figures.

I give judgment for plaintiff in the sum of £25,917:17:2d including interest.

40 As regards costs, Counsel for Plaintiff asked for 200 guineas. Mr. Kayode submits that Mr. Ferguson's estimate should be halved. I take into consideration the fact that the issue of account stated took up time and that plaintiff lost on that issue, and I assess costs including out-of-pocket expenses at 100 guineas.

(Sgd.) M. de Comarmond.

Ag. Chief Justice

In the West African  
Court of Appeal  
No.22  
Notice and Grounds  
of Appeal  
30th November, 1955

No.22  
Notice and Grounds  
of Appeal

CIVIL FORM 1  
IN THE WEST AFRICAN COURT OF APPEAL

NOTICE OF APPEAL

Suit No. 428/53

BETWEEN:

A.G. LEVENTIS & CO. LTD.	PLAINTIFFS/ RESPONDENTS	10
- and -		
A.G. IJALE	DEFENDANT/ APPELLANT	

TAKE NOTICE that the defendant being dissatisfied with the judgment of the Supreme Court, Lagos, contained in the judgment dated the 29th day of November, 1955 do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. 20

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.

2. Whole judgment.

3. Grounds of Appeal:-

- (1) The learned trial Judge erred in Law in failing to dismiss plaintiffs' claim at the stage he gave his interim judgment. 30
- (2) The learned trial Judge erred in Law and on the facts in giving judgment for the plaintiffs when the plaintiffs had admitted the quantum of produce in dispute.
- (3) Judgment against weight of evidence.
- (4) The trial was not a nullity inasmuch as two judges of the Supreme Court tried the issue in dispute. 40

(5) The learned trial judge erred in Law in giving judgment for the plaintiffs when the claim of the plaintiffs was based on an account stated or in the alternative a claim for money had and received by the defendant for and on behalf of the plaintiff and neither claim was supported by the pleadings and the evidence.

In the West African  
Court of Appeal  
No.22  
Notice and Grounds  
of Appeal  
30th November, 1955  
(Continued)

10

(6) The learned trial judge erred in Law and on the facts in giving judgment for the plaintiffs without taking into account the valuation of lorries belonging to defendant in plaintiff's possession and crediting same to the defendant's account.

20 4. Relief sought from the West African Court of Appeal:

That the judgment of the Court below be set aside and for any further or other orders as the Court may deem fit to make in the circumstances.

5. Persons directly affected by the Appeal:

Name	Address:
A.G. Leventis & Co.Ltd.	Marina, Lagos, Nigeria

Dated at Lagos this 29th day of November, 1955.

(Sgd.) Thomas, Williams & Kayode

APPELLANT'S SOLICITORS

In the Federal  
Supreme Court of  
Nigeria  
No.23  
Additional Grounds  
of Appeal  
23rd November, 1957

No.23  
Additional Grounds  
of Appeal

IN THE FEDERAL SUPREME COURT OF NIGERIA

Suit No.fsc.60/1957

BETWEEN:

A.G. Ijale Defendant/Appellant

- and -

A.G. Leventis & Co. Ltd. Plaintiff/Respondent

ADDITIONAL GROUNDS OF APPEAL

10

3(1) That Mr. Justice de Commarmond and/or Mr. Justice Abbott were wrong in law and/or in fact in failing to assess the value of 73½ tons ungraded cocoa at the valuation put on the same by the Plaintiffs.

8. Alternatively and without prejudice to the foregoing that Mr. Justice de Commarmond and/or Mr. Justice Abbott were wrong in law and/or in fact in failing to give credit to the Defendant for the 73½ tons ungraded cocoa at the figure at which the Defendant purchased the same. 20

Dated at Lagos this 23rd day of November, 1957.

(Sgd.) S.A. Lambo  
DEFENDANT/APPELLANT'S SOLICITOR

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No.24

Court Notes

In the Federal  
Supreme Court of  
Nigeria

No.24

Court Notes  
17th March, 1959

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
TUESDAY THE 17TH DAY OF MARCH, 1959  
BEFORE THEIR LORDSHIPS

10

SIR ADETOKUNBO ADEMOLA KT,, FEDERAL CHIEF  
JUSTICE  
M.C. NAGEON DE LESTAND JUDGE OF THE  
FEDERAL SUPREME  
COURT  
LOUIS NWACHUKWU MBANEFO FEDERAL JUSTICE

FSC.60/1957

A.G. Ijale

Appellant

V.

A.G. Leventis & Co. Ltd.

Respondent

Motion for leave to argue additional  
grounds of appeal filed.

20

Norman Richards, Q.C. (Lambo) with him to  
move.

Impey for Respondents: no objection.

Court. leave granted to argue additional  
grounds filed.

Case itself to be argued.

Norman Richards, Q.C. argues

Deal with the facts.

Refers to Exh. A - Return of Transactions.

30

Signed by the appellant and a representative  
of the plaintiff/respondent. The court below  
was concerned with this document Exh. A.

Licence to buy produce was withdrawn on a  
date about March 1953.

On 10th June, 1953 the appellants appointment  
as produce buyer was terminated.

On 27th June 1953 after appellant had handed  
over completely, a letter now Exh. F. was

In the Federal  
Supreme Court of  
Nigeria

No.24  
Court Notes  
17th March, 1959  
(Continued)

written to him by Messrs. Irving & Bonnar  
Solicitors to the Plaintiff/Respondent;  
alleging outstanding balances.

Issue before de Comarmond J. on 12th  
March 1954 resolved that there was in store  
on 10th June 1953 73.5 tons of cocoa and some  
kernels? If there was, was the cocoa  
ungraded? He found there was ungraded cocoa  
but the value was not resolved. Parties were  
to agree on this but it was not possible to  
come to an agreement on the value. de  
Comarmond J. then didn't hear the matter again.  
It found its way to Mr. Justice Abbott and in  
June 1955, Abbott J. said he would hear the  
case. He later proceeded to hear the case and  
in July 1955 he gave judgment to the effect  
that the cocoa (ungraded) was valueless but  
with regard to the palm kernels, the plaintiff/  
Respondent conceded the figure at £276 odd.

10

Abbott J. then sent the case back to Mr.  
Justice de Comarmond who by then had become the  
C.J.

20

The position then was that one Judge tried  
one issue and another tried a second issue.

Then the whole matter came up before de  
Comarmond again who then gave what is now the  
final judgment including the two issues tried.

Grounds 3 & 3(1) & 3(2)

Issue now is that the appellant must have  
credit for the ungraded cocoa of 73.5 tons.

30

Refers to the Evidence at the second hear-  
ing before Abbott J. at page 36 of the record.

Evidence of Mr. Richard Joseph Welch. In  
March 1953 he saw ungraded cocoa in the store.  
He did say they were of inferior quality. He  
later stated that the cocoa was graded includ-  
ing some not sufficiently bad to warrant  
prosecution.

This evidence is contrary to judgment  
already given by de Comarmond J. and it is  
submitted, it must be disregarded.

40

It appears and it is submitted that evi-  
dence of Welch about the examination of the  
cocoa was hearsay.

The enquiry made by Abbott J. it is  
submitted was not that contemplated by de

Comarmond Acting C.J. at the time. That enquiry, it is submitted is worthless.

Submit the case must be sent back for a re-hearing on that point.

Plaintiff has set value of ungraded cocoa at £12,764.19.3 in Exh. F.

Ground 4 - abandoned -

Grounds 5 & 6 should not have been part of proceedings.

10 Impey argues in reply

Refers to page 29 of the Record: submit that de Comarmond J. never found that there was 73.5 tons of ungraded produce in the store. It appears he found there was ungraded produce but not the quantity.

Court refers Counsel to page of the Record.

Impey continues

20 If that is accepted, the 73.5 tons must be the ungraded cocoa. There is no evidence accepted by the Court.

The matter of being credited with amount on the ungraded produce was a question of counter claim or set-off. It is submitted that the defendant appellant had not followed the rules of Court as to pleadings in such a case.

Court But you agreed to it at the time and also you have not appealed against the judgment in that ground or any other.

Ground 2

30 If Plaintiff/Respondent admit the quantum of produce, there is still the fact that there is the matter of money had and received.

It no doubt appears that Mr. Justice Abbott's judgment is a conflict to the findings made by Mr. Justice de Comarmond's findings.

40 Evidence led by both sides; Abbott J. arrived at certain conclusions on the evidence. Submitted de Comarmond J. could not have arrived at that judgment as there was no evidence before him.

In the Federal  
Supreme Court of  
Nigeria

No.24  
Court Notes  
17th March, 1959  
(Continued)

In the Federal  
Supreme Court of  
Nigeria

No.24  
Court Notes  
17th March, 1959  
(Continued)

What is the value of ungraded 73.5 tons  
cocoa?

Court. Your letter Exh. F. put value on it.

Impey. I can only accept it as Exh. F. has  
stated; but I will come to it later. There  
are errors in the proceedings and I would  
suggest that the whole case be sent back for  
retrial.

The value of 73.5 tons of cocoa shown in  
Exh. F. merely states the amount of money  
advanced for cocoa which were never received  
or graded.

10

That is borne out by evidence of Mr. Welch  
at page 36 line 46.

Cocoa in the store is ungraded as shown in  
Exh. A. The figure £174.9.0. per ton cannot  
relate to ungraded cocoa.

Court Welch at page 36 line 40 mentioned £170  
(and not £174.9.) per ton for main crop cocoa.

Impey. This is correct, but £174.9.0. cannot,  
it is submitted, relate to ungraded cocoa.

20

Norman Richards Replies

Refers to Evidence Ordinance: Cap.63;  
Sec.150. The plaintiff had the cocoa in the  
store all the time and defendant had no access  
to it. If the plaintiffs referred to the cocoa  
in their own letter Exh. F. as £174.9.0. per  
ton, it is submitted they are estopped from  
denying that.

The defendant himself in his evidence  
supports the figure of £174.9.0. per ton.

30

Judgment reserved.

(Sgd.) A. Ade. Ademolo

F.C.J.

-----

No.25

Judgments

In the Federal  
Supreme Court of  
Nigeria

No.25

Judgments

- (1) Ademola F.C.J.
- (2) Mbanefo F.J.
- (3) de Lestang J.F.S.C.

- (1) Ademola F.C.J.
- (2) Mbanefo F.J.
- (3) de Lestang  
J.F.S.C.

IN THE FEDERAL SUPREME COURT OF NIGERIA  
 HOLDEN AT LAGOS  
 TUESDAY THE 12TH DAY OF MAY, 1959  
 BEFORE THEIR LORDSHIPS

12th May, 1959

10 SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE  
 FEDERATION  
 M.C. NAGEON DE LESTANG JUDGE OF THE FEDERAL  
 SUPREME COURT  
 LOUIS NWACHUKWU MBANEFO FEDERAL JUSTICE

F.S.C. 60/1957

A.G. LEVENTIS & CO. LTD. PLAINTIFFS/  
 RESPONDENTS

AND

20 A.G. IJALE DEFENDANT/  
 APPELLANT

J U D G M E N T

This is an appeal from the decision of  
 de Comarmond, J., as he then was, in the then  
 Supreme Court of Nigeria in the Lagos  
 Judicial Division. The original claim was  
 as follows:-

ADEMOLA, F.C.J.

30 "1. £25025.19.8d being Balance found to  
 be due from the defendant to the  
 plaintiffs on an account stated  
 between them in writing and con-  
 tained in a document signed by the  
 Defendant and dated 10th June, 1953  
 or in the alternative being money  
 had and received by the defendant  
 from the plaintiffs for the use of  
 the Plaintiffs, with interest thereon  
 at the rate of ten per centum per  
 annum until payment or judgment.

40 2. £57.2.4d. being amount due and owing  
 from the defendant to the plaintiffs  
 for motor parts sold and delivered by  
 the plaintiffs and engineering ser-  
 vices rendered by the plaintiffs to  
 the defendant.

In the Federal  
Supreme Court of  
Nigeria

No.25

Judgments

(1) Ademola F.C.J.

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J.F.S.C.

12th May, 1959

(Continued)

3. £1065.17.5d. being amount due and owing from the defendants to the plaintiffs for goods sold and delivered by the plaintiffs to the defendant. "

At the trial, claims under (2) and (3) were settled and the only claim which proceeded to judgment was under (1).

The learned Judge entered a final judgment for £25,917.17.2d. including interest after not only a trial by him of the issues involved in the 10 case, but also on a trial of part of the issues raised, by Abbott J. (as he then was), in circumstances hereinafter mentioned.

The plaintiff-respondent Company was a produce licensed buying agent for the Nigeria Cocoa Marketing Board and the defendant-appellant was employed by the plaintiff Company to buy ungraded cocoa on payment of salary and commission. The practice was for the plaintiff-Respondent company to supply the defendant-appellant with 20 money whenever he made a requisition for the same to buy ungraded cocoa. The ungraded cocoa, according to practice, was kept in a store known as No.1 Store until graded by Officers responsible for grading; after grading it was transferred to No.2 Store by the defendant-appellant who was then credited with the value of the graded cocoa.

On the 10th June, 1953, the appellant's appointment as Produce Buyer was terminated. He was later sued for outstanding balances.

The whole case before de Comarmond J., hinges on a document, Exhibit "A", called "Return of Transactions". This document was signed by both parties and shows transactions between the parties, salaries, produce statements, columns showing graded produce, ungraded produce, stock on hand and date of the return. 30

The issue resolved by de Comarmond, J. on the 12th March, 1954, was that on the 10th March, 1953, as shown on Exhibit "A", there was in the appellant's store 73.5 tons of ungraded cocoa. The learned Judge, however, was unable to ascertain the value of these 73.5 tons. The appellant's account having been credited with the value of graded cocoa, the effect of the learned Judge's findings was that the appellant's account was also to be credited with the value of 73.5 tons of ungraded cocoa. Any balance remaining would then be the amount due to the plaintiff-respondent from the defendant-appellant. 40 50

At that stage the learned Judge left it to the parties to settle the value of the 73.5 tons of ungraded cocoa. Attempts to set a value by the parties proved abortive. For some unknown reason, the part heard case was not listed before the learned Judge again. It then went before Jibowu, J., as he then was, who, rightly in my view, adjourned it for further hearing by de Comarmond J. The case somehow found its way before Abbott J., who, despite Counsels' protests, proceeded to hear the case. The only issue left at that stage that could be heard, was the market value of the 73.5 tons of ungraded cocoa as either side made no attempt to set a value for such cocoa. Abbott, J., however, heard evidence and adjourned for judgment. He later gave a judgment in which he found that the value of the ungraded cocoa in the store on the 10th March, 1953, was NIL. In coming to this conclusion he relied on the evidence given by the Produce Officer, Mr. Welch, which he said "amounts to very much the same thing as saying there was no ungraded produce in the store".

In the Federal Supreme Court of Nigeria

No.25

Judgments

(1) Ademola F.C.J.  
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(3) de Lestang  
J.F.S.C.

12th May, 1959  
(Continued)

After the judgment, Abbott, J. remitted the case back to de Comarmond, then Acting Chief Justice, for final judgment. The latter, without much ado, gave judgment for the plaintiff-respondent for £24,749.17.2d. plus £1,168, in round figures as interest, making a total of £25,917.17.2d.

The appellant has now appealed against this judgment and of the various grounds of appeal filed as well as the additional grounds filed later, only grounds 3, 3(1) and 3(2) were argued by Counsel for the appellant.

These grounds of appeal are as follows:-

- " 3. Judgment was against the weight of evidence.
- 3(1) That Mr. Justice de Comarmond and/or Mr. Justice Abbott were wrong in law and/or in fact in failing to assess the value of 73½ tons ungraded cocoa at the valuation put on the same by the plaintiffs.
- 3(2) Alternatively and without prejudice to the foregoing that Mr. Justice de

In the Federal  
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Nigeria

No.25

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(1) Ademola F.C.J.

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(3) de Lestang

J.F.S.C.

12th May, 1959

(Continued)

Comarmond and/or Mr. Justice Abbott were wrong in law and/or in fact in failing to give credit to the defendant for the 73½ tons ungraded cocoa at the figure at which the defendant purchased the same. "

The issue argued by Counsel was that the appellant must have credit for this 73.5 tons of ungraded cocoa.

It is clear that Abbott, J., went beyond the terms of enquiry before him, for a specific finding had been recorded by de Comarmond, J. on the issue whether or not there was ungraded produce in the store. In a detailed judgment on the point on the 12th March, 1954, de Comarmond, J. has, for various reasons, accepted the entry made on Exhibit "A" and signed by both parties showing 73.5 tons of ungraded cocoa. The evidence of Mr. Welch before Abbott, J. about the non-existence of the cocoa in the store, was, in my view, out of place; it should not have been accepted as they were in conflict with the findings already made by de Comarmond, J.

Before us, Mr. Impey for the plaintiffs-respondents argued strenuously that if it is accepted that there were 73.5 tons of produce in the store, the matter of being credited with the amount of the ungraded produce was a question of counter-claim or set-off. As there was no counter-claim or set-off filed in accordance with the Rules of Court, he submitted, there could be no question of crediting the appellant with the amount of the ungraded cocoa.

This argument, in my view cannot be sustained as Counsel did not raise it in the Court below; also there is no appeal before us on this point by the respondent.

It has been suggested that the case should be sent back for retrial. I think not. I think this Court is in a position to determine the value of 73.5 tons of ungraded cocoa from the material before the Court below. The letter, Exhibit "F", from the respondents' Solicitor to the appellant refers to the cocoa in the store at £174.9.0d. per ton: the defendant-appellant himself in his evidence admitted this figure as correct. There is also evidence that the minimum value of ungraded cocoa at the time was £145 per ton.

I will therefore assess the 73.5 tons of

ungraded cocoa in the store at £145 per ton and will credit the appellant with that amount. This works out at £10,657.10.0d. This sum will be deducted from the amount of £25,917.17.2d.

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No.25

Judgments

(1) Ademola F.C.J.

(2) Mbanefo F.J.

(3) de Lestang

J.F.S.C.

12th May, 1959

(Continued)

10

In the circumstances the judgment of the High Court will be amended by reducing the sum of £25,917.17.2d. to £15,260.12.2d. Subject to this amendment, the appeal will be dismissed. The order as to costs (100 guineas) in the Court below stands. As the appellant has partially succeeded he is entitled to some costs which we assess at 50 guineas.

(Sgd.) A. Ade. Ademola.  
CHIEF JUSTICE OF THE FEDERATION

I concur (Sgd.) L.N. Mbanefo  
FEDERAL JUSTICE

20

I agree, and I have very little to add. As the learned Chief Justice has pointed out the case was tried partly by one Judge and partly by another, and the appeal is against the final decision, which is a combination of both trials.

(2) Mbanefo F J.

(3) de Lestang,

J.F.S.C.

30

One of the points for decision in this appeal is whether de Comarmond, J., found that there was 73½ tons of ungraded cocoa in the store for which credit ought to be given to the appellant. It was contended for the respondent that there is no such finding and that what the learned Judge found was merely that there was an unspecified quantity of ungraded cocoa in the store. In my view this contention is not well founded. One of the issues which the learned Judge had to try was whether there was 73½ tons of ungraded cocoa in the store as alleged by the appellant. That this was the issue appears clearly from the following passage in his judgment:

40

"the disputed issue in this case is that the defendant maintains that the weights of ungraded produce shown on Exhibit A were in the store when the return was made and checked, whereas Mr. Matheron's evidence was that the return was, as usual, compiled from book entries and documents and showed what the position should be according to the books. Mr. Matheron stated that there was no produce

In the Federal  
Supreme Court of  
Nigeria

No.25

Judgment  
(3) de Lestang

J.F.S.C.

12th May, 1959

(Continued)

in Store No.1 on the 10th June and that he knew quite well that the stock shown on Exhibit A was ~~in-existent~~ "in-existent".

Having stated what the issue was the learned Judge then analysed the evidence critically and concluded "On the evidence before me, I have reached the conclusion that the plaintiff has failed to establish that there was no ungraded produce as shown on Exhibit A in the store on the 10th June, 1953". I stress the words "as shown on exhibit A". According to that exhibit there were 73½ tons of ungraded cocoa in the store on the 10th June, 1953. It follows, therefore, inferentially that the learned Judge's finding though it does not say so in so many words can only mean that there were 73½ tons of ungraded cocoa.

10

This interpretation of the judgment is, in my view, fortified by the following further passages in the judgment:

20

"I cannot say, at the present stage, how much should be credited to the defendant in respect of the ungraded produce in store on the 10th June.

"No attempt has been made by either side to set a value for such produce. The plaintiff, of course, did not do so because his case was conducted on the lines that there was no produce in the store. The defendant seems to be waiting to be told what the value is.

30

"Now that I have found against plaintiff as regards the existence of ungraded produce on the 10th June, 1953, it seems to me that the value of the ungraded produce must be ascertained in order to reach a final conclusion on the 1st item of the claim."

.....

"However, some step must be taken to settle the sole remaining point, namely the value of the ungraded produce in store on the 10th June."

40

Is it not significant that there is no mention in the judgment of any enquiry to ascertain the quantity of the cocoa and that it is always the value which is always mentioned? Finally, when the parties could not agree amicably as to the value and an order for an enquiry was made a few days later, the order read "fixed for 12th May, next to hear evidence

as to the value of the ungraded stock". Here again it is the value of the ungraded cocoa which is made the subject of the enquiry, and not the quantity. Surely had there been no finding as to the quantity one would have expected the order to have taken another form and to have expressly directed an inquiry into the quantity as well as the quality of the cocoa.

In the Federal  
Supreme Court of  
Nigeria

No.25

Judgment

(3) de Lestang

J.F.S.C.

12th May, 1959

(Continued)

10           The respondent has not appealed against  
the learned Judge's finding on this issue and  
whether it is right or wrong he cannot now be  
heard to question it. Nor can he, at this  
stage, deny liability to give credit for the  
ungraded cocoa. Although this was one of the  
issues raised on the pleadings the respondent  
must be taken to have abandoned it having  
regard to his conduct and the course the  
proceedings took. Not only was it not  
20 referred to in his Counsel's address in the  
Court below but he has always acquiesced in  
the value of ungraded cocoa being ascertained.

The other point for decision in this appeal is whether Abbott, J., was right to hold that the value of the ungraded cocoa was nil. In my view he was not in the circumstances of this case, because that finding was really based on evidence that there was no cocoa in the store at all, evidence completely inconsistent with the finding of de Comarmond, J., that there was  $73\frac{1}{2}$  tons. On the other hand there was evidence that none of the cocoa in the store was ungradable because had there been any it is fair to assume that a prosecution would have been instituted by the Produce Controller and we know that no such action was taken. The minimum value of gradable cocoa is £145 per ton, and there being no evidence that the ungraded cocoa in the store was of superior quality I consider that it should be valued on that basis.

I agree with the orders proposed by the learned Chief Justice.

(Sgd.) M.C. Nageon de Lestang

JUDGE OF THE FEDERAL SUPREME COURT

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In the Federal  
Supreme Court of  
Nigeria  
No.26  
Order on Judgment  
12th May, 1959

No.26

Order on Judgment

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

Suit No. 428/1953  
F.S.C.60/1957

On appeal from the judgment  
of the High Court of Lagos

Between:

A.G. Ijale

Appellant

10

and

A.G. Leventis & Co.Ltd.

Respondents

Tuesday the 12th day of May, 1959

UPON READING the Record of Appeal herein  
and after hearing Mr. Norman Richards, Q.C.,  
with him Mr. S.O. Lambo, of counsel for the  
Appellant and Mr. G.L. Impey of counsel for the  
Respondents:

IT IS ORDERED -

1. that this appeal be dismissed; 20
2. that the judgment of the High Court be  
amended by reducing the sum of  
£25,917.17.2d. awarded to £15,260.12.2d;  
and
3. that the Respondents do pay to the  
Appellant costs of this appeal assessed  
at 50 guineas.

(Sgd.) C.O. Madarikan

CHIEF REGISTRAR

No.27

Court Notes of grant of  
final leave to appeal and  
cross-appeal to Her Majesty  
in Council

In the Federal  
Supreme Court of  
Nigeria

No.27

Court Notes of Grant  
of Final Leave to  
appeal and cross-  
appeal to Her  
Majesty in Council  
12th September, 1960

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE 12TH DAY OF SEPTEMBER, 1960

BEFORE THEIR LORDSHIPS

10	SIR ADETOKUNBO ADEMOLA, KT., EDGAR IGNATIUS GODFREY UNSWORTH, C.M.G.  JOHN IDOWU CONRAD TAYLOR	CHIEF JUSTICE OF THE FEDERATION  FEDERAL JUSTICE  FEDERAL JUSTICE  <u>FSC. 60/1957</u>
----	------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

A.G. Ijale

Applicant

versus

A.G. Leventis & Co. Ltd.

Respondents

20 (1) Motion by applicant for an order granting final leave.

(2) Application by Respondents for order rescinding applicant's order for conditional leave.

(3) Motion by Respondents for final leave for cross-appeal.

Abudu for applicant.

Murray for Respondents.

30 Court: Application for final leave to appeal to Privy Council is granted in each case.  
Motion to rescind is dismissed.

(Sgd.) A. Ade Ademola  
CHIEF JUSTICE OF THE FEDERATION

In the Federal  
Supreme Court of  
Nigeria

No.28

Order granting final  
leave to appeal to Her  
Majesty in Council  
12th September, 1960

No.28

Order granting final  
leave to appeal to  
Her Majesty in Council

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

(L.S.)

Suit No. 428/1953  
F.S.C. 60/1957

Application for an Order  
for final leave to appeal  
to Privy Council

10

Between:

A.G. Ijale

Applicant

and

A.G. Leventis & Co.Ltd.

Respondents

(Sgd.) A.Ade Ademola  
CHIEF JUSTICE OF  
THE FEDERATION

Monday the 12th day of September, 1960

UPON READING the Application herein and  
affidavit of A.G. Ijale sworn to on the 27th  
day of July, 1960 and after hearing Mr. S.O.O.  
Abudu of counsel for the Applicant and Mr. M.  
Murray of counsel for the Respondents:

20

IT IS ORDERED that final leave be granted  
to appeal to Privy Council.

(Sgd.) G.S. Sowemimo

CHIEF REGISTRAR

No.29

Order in Council  
restoring Appeal

In the Privy Council  
No.29  
Order in Council  
restoring Appeal  
19th December, 1962

AT THE COURT AT BUCKINGHAM PALACE

THE 19th DAY OF DECEMBER, 1962  
(L.S.)

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD CHANCELLOR  
LORD PRESIDENT  
MR. SECRETARY BROOKE

MR. SECRETARY NOBLE  
SIR MICHAEL ADEANE

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of December, 1962 in the words following, viz:-

20

30

40

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of A.G.Ijale in the matter of an Appeal from the Federal Supreme Court of Nigeria between the Petitioner (Defendant) Appellant and A.G. Leventis and Company Limited (plaintiff) Respondent and (by Cross-Appeal) A.G. Leventis and Company Limited (Plaintiff) Appellant and the Petitioner (Defendant) Respondent (Privy Council Appeal No.18 of 1962) setting forth that: the Petitioner prays for the restoration of his Appeal which is from a Judgment of the Federal Supreme Court of Nigeria pronounced on the 12th May, 1959 whereby a Judgment of the High Court of Lagos against the Petitioner for £25,917.17s.2d. was reduced to £15,260.12s.2d. on the ground that such latter amount should be still further reduced: that the Cross-Appeal is against such reduction as adjudged: that the Record of the Appeal and of the Cross-Appeal arrived at the Privy Council Office on the 8th May 1962 and on the 10th July 1962 the Appeal was dismissed under Rule 34 of the Judicial Committee Rules 1957 for non-prosecution the Petitioner not having entered Appearance: that the failure to enter Appearance timeously in the Appeal was due

In the Privy Council  
No.29  
Order in Council  
restoring Appeal  
19th December, 1962  
(Continued)

to inadvertence: that the Petitioner's Solicitors and Privy Council Agents were instructed by cable from the Petitioner's legal advisers in Nigeria on the 20th July 1962 to enter Appearance and attended at the Privy Council Office that same day to do so when they were informed that the Appeal had been dismissed as aforesaid but that the Cross-Appeal remained standing: And humbly praying Your Majesty in Council to order that the Petitioner's Appeal may be restored upon such terms as to Your Majesty in Council may seem just: 10

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that the Petitioner's Appeal ought to be restored: 20

"AND in case Your Majesty should be pleased to approve of this Report then Their Lordships do direct that there be paid by the Petitioner to A.G. Leventis and Company Limited the sum of £78.7s.9d. for their costs of opposing the said Petition."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor-General of the Federation of Nigeria or other officer for the time being administering the Government of the Federation and all other persons whom it may concern are to take notice and govern themselves accordingly.

G. W. AGNEW

40

Plaintiff's Exhibit  
"A"  
Return of  
Transactions  
10th June, 1953

(PHOTOGRAPHIC REPRODUCTION  
PRINTED ON REVERSE)

428/50 A.C. Leventis & Co. Ltd. 76  
 A.C. Iyale  
 A No 298

RETURN OF TRANSACTIONS MADE ON BEHALF OF Messrs A.G. Leventis & Co., Limited

at LAGOS for the period of 10<sup>th</sup> June 1953.

Date	Cash Statement	Debit	Credit
	To Balance brought forward from previous return	25625 5 2	
	To Cash received from A.G. L. & Co. Ltd. <i>Adj. mt report 287/288</i>	- 11 6	
	By purchases as per Statement below		
	Salary July '51 / May '53 = 23 months @ 2 1/2% incl. June '53		575 - - 25 - -
	By Balance owing to A. G. L. & Co. Ltd.		25025 19 8
	(Twenty five thousand two hundred and fifty pounds nineteen shillings and eight pence)	£ 25625 19 8	25625 19 8

Produce Statement	Cocoa Ungr.	Cocoa Graded	PK Ungraded	Palm Kerno
Stock at beginning	73.5. - - -	-	7.13.2.7	-
Purchases	-	-	-	-
Total	73.5. - - -	-	7.13.2.7	-
Deliveries (1)	-	-	-	-
Stock at end	73.5. - - -	-	7.13.2.7	-

Miscellaneous	Stock at Beginning	Receipts	Deliveries	Transfers	Balance
Bags - New - (2)	7638				7638
Bags - Service	5022			1801	3221

(1) Including Railments Shipments or Consignments by Motor Lorries.  
 (2) and (3) To be filled in at A.G.L. Ltd., Office.  
 (4) To be filled in only if the buyer is illiterate.

(3) I certify that the above is a true statement of the Cash and Goods entrusted to me by A. G. Leventis & Co. Ltd., and further that the within mentioned produce has been bought and paid for by me and is in the Store of:- Messrs A.G. Leventis & Co. Ltd at No. 1 Pine Avenue in my charge.

(4) Signed by making his mark by the within named \_\_\_\_\_ the same having first been read over and explained to him in the \_\_\_\_\_ language by \_\_\_\_\_ and apparently perfectly understood and assented to by him in the presence of:-

*file*  
*except stocks of bags.*  
 Return checked and found correct by  
*[Signature]*  
 CERTIFIED TRUE COPY  
 SENIOR REGISTRAR

2 folios at 9a a folio = 1/6  
 Pd. ce. D6345/2 & 6349/7  
 4/11/60

"B"

Agreement to Amendment of  
Plaintiffs' Particulars

Plaintiffs' Exhibit  
"B"  
Agreement to  
Amendment of Plain-  
tiffs' Particulars  
3rd February, 1954

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

SUIT No.428/53

BETWEEN:

A.G. LEVENTIS & CO. LTD. PLAINTIFFS

- and -

10

A.G. IJALE DEFENDANT

A M E N D M E N T

It is agreed between the parties hereto that the plaintiff-company shall be at liberty to amend item 3 of the particulars endorsed on the Writ of Summons and paragraph 12 of the Statement of Claim by substituting for the sum of £1065:17:5d where that sum appears, the sum of £1583:15:6d.

20

Dated at Lagos this 3rd day of February, 1954.

(Sgd.) Irving & Bonnar

Solicitors to the plaintiff-company

(Sgd.) Thomas, Williams, & Kayode

Solicitors to the defendant

Plaintiff's Exhibit  
"C"  
Letter - Defendant  
to Plaintiffs  
12th May, 1953

"C"  
Letter - Defendant to  
Plaintiffs

A.G. Ijale Esq.,  
8, Bishop Street,  
L a g o s.

12th May, 1953.

The Manager,  
Messrs. A.G. Leventis & Co. Ltd.,  
Engineering Department,  
Ebute Metta.

1C

Dear Sirs,

LORRIES

I would be obliged if you will arrange to take my 5 lorries into your workshops and give them each a major overhaul. The cost of such overhauls should be debited to my account.

I then request you to endeavour to dispose of these 5 lorries on my behalf, at the best price which you can obtain.

2C

Any monies obtained from the sale of these lorries should be credited to my account.

Yours faithfully,

(Sgd.) A.G. Ijale

already received:

1. Citroen J.988
2. " J.981
3. Studebaker G.9611
4. Citroen J.961

3C

repairs complete on first three lorries

(Sgd.) A.G.Ijale

26/5/53.

"F"

Letter - Irving and Bonnar  
to Defendant

Defendant's Exhibit  
"F"  
Letter - Irving &  
Bonnar to Defendant  
27th June, 1953

Dunedin Chambers,  
Tinubu Street,  
P.O. Box 289,  
Lagos,  
Nigeria.

27th June, 1953

10 IRVING & BONNAR

J. Stanley Hughes, B.L. (AB)  
Ian F. Cameron, Solicitor  
D.H.E. Teesdale, Advocate

Telegram: Irving, (Lagos)  
Telephone 1331 (5 Lines)  
Code: Bentley's.

A.G. Ijale, Esq.,  
8, Bishop Street,  
L a g o s.

20 Dear Sir,

A.G. Leventis & Co. Ltd.  
- Produce Store -

On the termination of your employment with  
Messrs. A.G. Leventis & Company Limited as from  
the 24th instant your account with them showed,  
and still shows a debit balance of £28,148:19:5d.  
The details are as follows:-

1. Produce advances outstanding  
comprising physical shortages of:

30	(a) Cocoa 73.5 tons at £174:9:-d	12764:19:3
	(b) Palm Kernels 7.13.2.7 tons at £36:3:6d.	276: 2:6
	(c) Cash	<u>11984:17:11</u>
		£25025:19:8

vide report 296 of 10/6/53

(d) Bags about 18,000 at 2/3d	<u>2025: --</u>
	£27050:19:8
Less salary for July, 1953	
Credited to your account	<u>25: --</u>
	£27025:19:8

Defendant's Exhibit "F" Letter - Irving & Bonnar to Defendant 27th June, 1953 (Continued)	2. Engineering Department debtors account	27,025:19:8 57: 2: 4
	3. Marina " "	<u>1065:17: 5</u>
	Total	<u>£28148:19: 5</u>

We shall be glad to receive your proposals for settlement of this debt. Should you fail to render satisfactory proposals not later than Monday the 6th Proximo our instructions are to take immediate action for recovery of this sum without further notice to you.

10

Yours faithfully,

(Sgd.) Irving & Bonnar.

AMF/ALEX.

ON APPEAL FROM

THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

ABUDU GBADAMOSI IJALE  
(Defendant) ... Appellant

- and -

A.G. LEVENTIS AND COMPANY  
LIMITED (Plaintiffs) ... Respondents

(and cross-appeal Consolidated)

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RECORD OF PROCEEDINGS

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A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
Westminster, London, S.W.1.  
Solicitors for the Appellant  
A.G. Ijale.

HALSEY, LIGHTLY & HEMSLEY,  
32, St. James's Place,  
London, S.W.1.  
Solicitors for the Respondents  
A.G. Leventis & Co. Ltd.