

Privy Council Appeal No. 18 of 1962

Abudu Gbadamosi Ijale – – – – – *Appellant*

v.

A. G. Leventis and Company Limited – – – – – *Respondent*
(and Cross-Appeal Consolidated)

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH JULY 1964**

Present at the Hearing:

VISCOUNT RADCLIFFE

LORD HODSON

LORD DONOVAN

[*Delivered by* LORD DONOVAN]

This is a dispute between Messrs. Leventis and Co. Ltd. (hereinafter called “the company”) and Abudu Gbadamosi Ijale (hereinafter called “Mr. Ijale”) whom the company employed to buy cocoa and palm kernels on its behalf in Nigeria.

The exact relationship between the two is not clear. The company seem to have regarded Mr. Ijale as its servant. He, on the other hand, calls himself “a produce buyer”. It is immaterial for present purposes, however, to know his exact status. It is clear that he bought cocoa and palm kernels on the company’s behalf, and with the company’s money advanced to him for the purpose. Against these advances of money there was credited to him the value of the produce which he bought. It might have been expected that he would be credited with the amount he had expended in the purchase of this produce on the company’s behalf, rather than its value, but it was not so.

The company, in its turn, bought the produce on behalf of the Nigerian Cocoa Marketing Board by whom, it seems, it was eventually exported.

After Mr. Ijale had bought cocoa for the company it would be graded into qualities by officers acting on behalf, apparently, of the aforesaid marketing Board. Before such grading the cocoa was stored in a store known as “No. 1 Store” at Alakoro Marina, placed at Mr. Ijale’s disposal by the company. After grading, the cocoa would be removed to another store. Mr. Ijale would then be credited with the value of such graded cocoa against the amount of the advances made to him.

Periodically a “Return of Transactions” was drawn up showing the state of the account between the company and Mr. Ijale. This would show the amount of money advanced to him, and the credits to which he was entitled. The credits would include not only the value of the produce Mr. Ijale had bought for the company, but any monies owing to him for his remuneration. It would also show any stocks of graded or ungraded produce which should still be in the store.

In order to buy cocoa the company had to be licensed, presumably by the aforesaid Cocoa Marketing Board, and in March 1953, the licence held by the company was suspended for some reason connected with the quality of the cocoa it had bought. On 10th June 1953, the company dispensed with Mr. Ijale’s services. In September 1953 the company’s licence was revived.

Whether there is any, and if so what, connexion between these events their Lordships do not know, and the fact is immaterial. It is however to be borne in mind that during the period when the licence was suspended no cocoa could be bought and delivered to the company by Mr. Ijale.

In the event it became necessary to know the state of the final account between the parties.

A document was exhibited in the action between the parties bearing the date 10th June 1953. Between that date and the end of June nothing material occurred to alter the position as it appeared to be on the face of this document (Exhibit "A"). It showed that Mr. Ijale had received from the company in cash £25,625 19s. 8d. Against this debit there is credited to Mr. Ijale the sum of £600 being his unpaid salary up to the end of June 1953. The balance of £25,025 19s. 8d. is shown as owing by Mr. Ijale to the company. Beneath this cash statement on Exhibit "A" is another described as "Produce Statement". This purports to show that on 10th June 1953 there was in stock 73.5 tons of ungraded cocoa, and some 7 tons odd of ungraded palm kernels. There is a certificate at the end by Mr. Ijale to the effect that the form as completed shows the true cash and produce position as between the parties. In particular it is certified by him that "the within mentioned produce has been bought and paid for by me and is in the store of" [the company] "at No. 1 Store Alakoro in my charge." Mr. Ijale signed this certificate. Underneath his signature there is a printed statement on the form "Return checked and found correct by" and this is signed "E. Matheron" who was a supervising officer employed by the company. The dispute between the parties is whether this 73½ tons of ungraded cocoa and 7 tons odd of palm kernels were in fact in the store on 10th June 1953. If so, it is conceded that Mr. Ijale is entitled to be credited with their value at the time (albeit that the produce had not been graded) against the figure of £25,625 19s. 8d. cash advanced to him by the company, which figure is admitted to be correct. Two other minor claims were made initially by the company against Mr. Ijale for goods and services supplied to him, but these were withdrawn at the trial. The company's claim was for the aforesaid balance of £25,025 19s. 8d. shown as due on Exhibit "A" as being a sum due on an account stated. Alternatively the same sum was claimed as being money had and received by Mr. Ijale to the company's use. In his defence Mr. Ijale (to put the matter shortly) claimed that he was entitled to have the value of the aforesaid produce when graded credited to him in order to arrive at finality in the account between himself and the company.

At the trial of the action, which took place before de Comarmond J. evidence was given by Mr. Matheron to the effect that the 73½ tons of ungraded cocoa, and the 7 tons odd of palm kernels were produce which should have been in the store according to the books. Thus the figure of 73½ tons of ungraded cocoa was arrived at by deducting from the returns of all the cocoa purchased the weight of the cocoa already graded. He, the witness, knew that there was something wrong because in fact there was no ungraded cocoa or ungraded palm kernels in the store at the time he signed Exhibit "A". The return simply showed what the books showed. Had there been any ungraded cocoa in the store at the time, the company would have asked Mr. Ijale to have it graded and would then have credited him with its value.

A storekeeper employed by the company, one Ademola Adamofe, testified that he used to receive produce from Mr. Ijale when it had been graded. The last delivery of cocoa to him from Mr. Ijale was on 5th June 1953, and the last delivery of palm kernels on 8th June 1953. Thereafter there was no ungraded produce in No. 1 Store.

Mr. Ijale gave evidence on his own behalf and swore that the ungraded produce mentioned in Exhibit "A" was in Store No. 1 when Exhibit "A" was signed. Mr. Matheron had come to the store and checked it. Otherwise he (Mr. Matheron) would not have signed Exhibit "A".

Christopher Omotesho Eboyiade, a clerk employed by Mr. Ijale, gave evidence corroborating Mr. Ijale. In particular he said that the ungraded produce in Store No. 1 on 10th June 1953 was the balance remaining of the

produce which was in store in March 1953. A book kept by Mr. Ijale was identified by him in cross-examination which purported to show that no grading took place after 1st June 1953, but he did not agree that this showed that after that date there was no cocoa left for grading.

De Comarmond J. reserved his judgment on 24th February 1954 and delivered it on 12th March 1954. He rejected the claim that Exhibit "A" was an account stated. It could not be so, he said, since the company had failed to prove that there was no ungraded produce in store on 10th June 1953. On the alternative claim for money had and received, he held that the value of the ungraded produce in store on 10th June 1953 must be valued in order to reach a final conclusion on the company's claim. In the absence of an agreement between the parties as to the value, he would direct a reference. The parties did not agree: and on 20th September 1954 appeared before Abbott J. stating that each side wanted to call evidence as to the value of the ungraded produce.

Their Lordships interrupt the narrative at this point to examine the precise extent of the judgment of de Comarmond J. The company had asserted that Exhibit "A" was an account stated which showed that it was owed £25,025 19s. 8d. But it also purported to show that there was ungraded produce in store for which in due course Mr. Ijale would have to be credited. The company would have to prove that Exhibit "A" was wrong in this respect if its claim, based on account stated, were to succeed. The learned judge found, however, that the company had failed in its attempt to do this. On the alternative claim for money had and received, Mr. Ijale did not dispute that he had received £25,625 19s. 8d. from the company, against which £600 for salary had been credited. But he wished the balance to be further diminished in respect of the value of the ungraded produce he had bought and which he said was still ungraded and in store on 10th June 1953.

As to this de Comarmond J. rejected the argument for Mr. Ijale that the claim must fail because the value of the ungraded produce in the store was unknown. He held that the company was entitled to such of its money as Mr. Ijale had not used to buy produce. At the moment he could not say how much should be credited to Mr. Ijale "in respect of the ungraded produce in store on 10th June". Neither side had attempted to value it. This value must be ascertained. He adjourned the case to give the parties an opportunity to settle this matter between them.

The result therefore of the learned Judge's judgment was that while the company failed in its claim as upon an account stated, it succeeded in principle upon its alternative claim for money had and received, subject to an allowance for ungraded produce in store on 10th June 1953. While the company had failed, in its claim as upon a case stated, to prove there was no such ungraded produce, this did not mean that Mr. Ijale had proved the opposite. In the company's alternative claim for money had and received the onus of proving that he was entitled to the credit he claimed was upon Mr. Ijale. There is no express finding in the judgment to the effect that he had discharged it; but their Lordships agree that impliedly the learned Judge must be taken as finding that there was some such ungraded produce in the store on 10th June 1953. Otherwise his reference to the necessity to value it would be meaningless. But at no stage did he determine what the quantity of such ungraded produce was.

Eventually this question came before Abbott J. in the Supreme Court of Nigeria on 29th June 1955. The company called as a witness a Mr. Welch, acting Principal Produce Officer, Port Harcourt. His evidence was to the following effect. In March 1953 he had found a lot of ungraded cocoa in No. 1 Store, and ordered that it be graded. All the gradable cocoa in the store was in consequence graded and the grading finished on 1st June 1953. There were 100 bags of Grade 1, 200 of Grade 2, and 400 of bad quality cocoa. The total weight was about 43 tons. Grading ceased on 1st June 1953 because there was then no cocoa remaining in the store which reached the lowest of the three standards. 73½ tons of such cocoa would be worthless.

Mr. Ijale then again gave evidence maintaining that the value of the ungraded cocoa in the store was £174 9s. 0d. per ton, being the figure of value of Grade 1 main crop, which, he asserted, this cocoa was.

Abbott J. believed the evidence of Mr. Welch that there was no ungraded cocoa in the store at the material time which was of any value. He concluded "I find therefore that the value of the ungraded cocoa in the store on the material date was nil. This case must now go back to the Chief Justice" (as de Comarmond J. had become) "in order that final judgment may be given."

It should be stated that before Abbott J. the company conceded Mr. Ijale's claim to a credit of £276 2s. 6d. for ungraded palm kernels as being in store on 10th June 1953. The learned Judge remarked that Counsel for the company had to do this, as there was no evidence from his witness regarding palm kernels. Their Lordships think it would be unsafe to found any conclusions of fact one way or the other upon this concession.

The case came before de Comarmond C. J. again on 29th November 1955. He referred to the fact that his previous judgment was not a final one, saying "because there remained to ascertain the value of some ungraded produce". Thus again he referred to no specific quantities. Adopting the finding of Abbott J. that the value of any ungraded cocoa was nil, he gave judgment for the company for the sum of £25,917 17s. 2d. made up as follows.

	£	s.	d.	£	s.	d.
Original claim	25,025	19	8			
Less conceded in respect of palm kernels	276	2	6	24,749	17	2
Add in respect of the company's claim for interest					1,168	0 0
					<hr/>	
Total				£25,917	17	2
					<hr/>	

As regards the claim for interest the learned Chief Justice said that the company's averments in its statement of claim that interest was payable were not challenged in the statement of defence. This however was a mistake. They were in fact challenged by a general denial in paragraph 1 of the statement of defence.

Mr. Ijale appealed to the Federal Supreme Court of Nigeria against the final judgment of de Comarmond C. J. The appeal was argued on 17th March 1959 i.e. some 3½ years afterwards, and judgment being then reserved, was delivered on 12th May 1959.

For some reason the aforesaid award of interest by de Comarmond J. was not challenged either in the notice of appeal or in argument. The same applies to a claim by Mr. Ijale that he was entitled to a credit for the proceeds of sale of 3 lorries which he had entrusted to the company for repair and sale. Both these matters are, however, now referred to in the appellant's case among his reasons why the present appeal should be allowed. In the circumstances it is impossible for the Board to deal with them; though it may be mentioned that the company through its Counsel informed the Court of Trial at the first hearing that the lorries would be sold and the proceeds credited to Mr. Ijale.

The Federal Supreme Court of Nigeria allowed Mr. Ijale's appeal to the extent of awarding him a credit for the sum of £10,657 10s. 0d. in respect of ungraded cocoa instead of the amount he claimed, namely £12,764. The Court took the view that de Comarmond J. had found that there were 73½ tons of ungraded cocoa in store on 10th June 1953, and that Abbott J. was wrong in receiving, and acting upon evidence that there was no such ungraded cocoa of any value. The lowest grade of cocoa was worth £145 per ton and since there was no evidence that the cocoa was of any higher value, Mr. Ijale would be given credit for 73½ tons at £145 per ton.

Both sides have now appealed to the Board, Mr. Ijale contending that he is entitled to the larger credit of £12,764 and the company, as its main contention, asking that he should be credited with nothing in respect of the ungraded cocoa.

Their Lordships, with regret, find themselves unable to support the reasoning of the Federal Supreme Court upon which the decision was reached that Mr. Ijale was entitled to a credit of £10,657 10s. 0d. That conclusion was based on the view that de Comarmond J. had found that there was in fact 73½ tons of ungraded cocoa in store on 10th June 1953, and that accordingly Abbott J. was not entitled to go behind this finding. In fact de Comarmond J. made no such finding either expressly or impliedly. He seems, indeed, almost studiously to have avoided doing so: for when the case came back to him after Abbott J.'s finding, he stated in his judgment, as their Lordships have already noticed, that his previous judgment was not a final one as there remained to ascertain the value of "some" ungraded produce. In neither judgment does he mention any quantity at all, and their Lordships cannot think this was mere inadvertence. The judgment of de Lestang J. F.S.C. in the Federal Supreme Court, shows how the misunderstanding arose. In that judgment it is pointed out that 73½ tons of ungraded cocoa were shown to be in store on Exhibit "A", and that de Comarmond J. had reached the conclusion that the company had failed to establish that there was no ungraded cocoa in store "as shown on Exhibit 'A'." De Lestang J. F.S.C. stressed the words "as shown on Exhibit 'A'" and continued "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."

But de Comarmond J.'s reference to Exhibit 'A' related to the company's first claim as upon an account stated, where it was for the company to prove that Exhibit A was incorrect in so far as it related to ungraded cocoa. This the company failed to do; but, as their Lordships have pointed out already, this did not involve that Mr. Ijale in respect of the company's alternative claim for money had and received, had proved the existence of 73·5 tons of ungraded cocoa in store at the time. Nor did de Comarmond J. find that he had done so by any evidence of his own.

In these circumstances their Lordships are unable to share the view that Abbott J. went beyond the proper scope of the task he was set. To ascertain the value of the ungraded cocoa he has to know the amount of it, and the grades of which it consisted, neither of which matters had up to that point been determined. He was right therefore to receive the evidence of Mr. Welch. Having seen and heard that witness, and having seen and heard Mr. Ijale, Abbott J. preferred the evidence of Mr. Welch, and found accordingly that the value of the ungraded cocoa was nil.

That finding justified the final judgment of de Comarmond J. in so far as it related to the value of the ungraded cocoa; and, if there were no more in the case, would mean that in their Lordships' view the company's cross-appeal should succeed in full. But the evidence of Mr. Welch proved other things besides the value of the ungraded cocoa. In March 1953 (when the company's licence to buy cocoa was suspended and not restored till the following September) he found a lot of ungraded cocoa in Store No. 1, and proceeded to have it graded. The grading was completed on 1st June 1953. Altogether there was some 43 tons of cocoa divided between the 3 grades. Mr. Eboyiade, clerk to Mr. Ijale, had already spoken to this grading in his evidence for Mr. Ijale at the trial before de Comarmond J. and had added that the last delivery of *graded* cocoa by Mr. Ijale to the company took place on 5th June 1953. Mr. Ijale ceased to work for the company on 10th June 1953 and the question naturally arises whether he had been credited by the company with the value of the cocoa graded under the orders of Mr. Welch. The company, of course, should know: but nevertheless advances as an alternative contention that Mr. Ijale should be credited at the most with the sum of £6,500 the value of this graded cocoa.

It should have been easily capable of proof whether this sum had already been credited to Mr. Ijale, but the matter has hitherto not been canvassed at all. Had it been credited it seems likely that the credit would have been reflected in Exhibit "A" which is not confined to matters arising simply between 5th June and 10th June 1953. There is a credit for salary going back to July 1951. The case is moreover not one where the full facts have been

elicited with precision or where the possibility can be excluded that confusion has arisen between the cocoa graded under the orders of Mr. Welch and the ungraded cocoa alleged by Mr. Ijale to have been in the store when he left. The company, moreover, would hardly advance a contention that Mr. Ijale should, as an alternative to his claim, be credited with £6,500 if its books showed that he had had this credit already.

Doing their best with the materials before them, their Lordships feel that the best solution of this melancholy case is to allow Mr. Ijale the credit of £6,500 as being the value of the cocoa graded under the orders of Mr. Welch. This figure, as a figure, is not contested. This means that the figure of £6,500 should be substituted for the figure of £10,657 10s. 0d. allowed as a credit in the Federal Supreme Court: and that the company should recover judgment for £19,418 2s. 2d. arrived at as follows:—

	£	s.	d.	£	s.	d.
Amount of Judgment in Federal Supreme Court of Nigeria				15,260	12	2
Add difference between	10,657	10	0			
and	6,500	0	0	4,157	10	0
				<hr/>		
				£19,418	2	2
				<hr/>		

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed; and that the cross-appeal should be allowed to the extent indicated. The appellant must pay to the respondents three-quarters of the aggregate of the costs before the Board of the appeal and the cross-appeal.

In the Privy Council

ABUDU GBADAMOSI IJALE

v.

A. G. LEVENTIS & COMPANY LIMITED
(and CROSS-APPEAL CONSOLIDATED)
NIGERIA

DELIVERED BY

LORD DONOVAN