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UNIVERSITY OF LONDON
W.C.1.
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No. 25 INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL 11209

BETWEEN

MEMUDU LAGUNJU ... (Plaintiff) APPELLANT

AND

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE ... (Defendants) RESPONDENTS.

CASE FOR THE SECOND RESPONDENT

RECORD

1.—This is an Appeal from the Judgment of the West African Court of Appeal (Blackhall, P. Verity, C.J. and Lewey, J.A.) allowing the appeal of the Respondents from the Judgment of Jibowu, J. in the Supreme Court of Nigeria holden at Ibadan entering Judgment for the said Respondents and setting aside the Judgment of the Supreme Court wherein Jibowu, J. had granted an injunction restraining the second Defendant from acting as and receiving the salary of the Timi of Ede and declared in favour of the Appellant (1) that the selection of the second Defendant and his subsequent installation on the 19th December, 1946, as Timi of Ede, is contrary to native law and custom governing the selection of a Timi of Ede and is therefore null and void, (2) that the Plaintiff is the person qualified and entitled by native law and custom to hold the post and enjoy the title of the Timi of Ede which became vacant on the 24th January, 1946, and (3) that the Plaintiff was duly selected by the Ede Kingmakers as Timi of Ede in April, 1946, in accordance with native law and custom. pp. 127-131 pp. 83-112

2.—The Respondents pleaded to the merits of the case and in their Statement of Defence raised the issue of the jurisdiction of the Court to try the case. p. O. 7-8

3.—The Respondents relied for their plea of jurisdiction upon the provisions of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance which enacts as follows :—

“ In the case of any dispute the Governor, after due enquiry

CASE FOR THE SECOND RESPONDENT

RECORD

“ and consultation with the persons concerned in the selection
 “ shall be the sole judge as to whether any appointment of a chief
 “ has been made in accordance with native law and custom.”

4.—It was not disputed by the Appellants that the Timi of Ede is a chief as defined in the Appointment and Deposition of Chiefs Ordinance (Section 5 of the Ordinance refers).

pp. 9-11 5.—Jibowu, J. heard the evidence of Fitzgerald Hadoke and dealt with the question of jurisdiction as a preliminary point. He ruled that the jurisdiction of the Court had been ousted by the provisions of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance and he accordingly 10
 pp. 12-18 dismissed the Plaintiff's claim.

pp. 25, 26 and 27 6.—The Appellant appealed to the West African Court of Appeal (Harragin, P., Verity and Lucie-Smith, C.J. J.) which in its Judgment delivered on 10th November, 1947, held that Jebowu, J. “ has placed too “ wide an interpretation ” upon the Appointment and Deposition of Chiefs Ordinance and that “ the jurisdiction of the Courts is only ousted “ after due enquiry has been made and consultation with the persons “ concerned in the selection has been held.” The West African Court of Appeal consequently sent the case back to the Supreme Court to determine the issues before it in the light of the interpretation placed by said Appeal 20
 Court upon Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance.

pp. 40-73 ; 82 7.—When the case subsequently came before the Supreme Court in accordance with the order of the West African Court of Appeal Jibowu, J. proceeded to hear evidence of witnesses on both sides on the merits of the case.

pp. 83-112 8.—The trial Judge in his Judgment reviewed exhaustively the evidence led by both sides. He dealt with the question of the jurisdiction of the Court in the light of the decision of the West African Court of Appeal of 10th November, 1947, and held that before the jurisdiction of the Court 30
 can be ousted under the provisions of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance three conditions must be fulfilled, namely :—(1) that there is a dispute ; (2) that an appointment of a chief has been made ; and (3) that due enquiries and consultation with the persons concerned in the selection has been made. The Court held that on the evidence before it condition (3) had not been satisfied and consequently the jurisdiction of the Court is not ousted.

p.111,37, 46 p. 112, l. 7 9.—The Court considered the evidence before it and gave Judgment to the effect that the appointment of the second Defendant as the Timi of Ede was contrary to native law and custom and proceeded to give 40
 Judgment in favour of the Plaintiff as indicated in paragraph 1 hereof.

10.—The Respondents appealed to the West African Court of Appeal against the Judgment of Jibowu, J. and attacked the findings of the learned trial Judge on the facts and on native law and custom. The Respondents also attacked the opinion of the learned trial Judge to the effect that because there was no “ due enquiry ” the jurisdiction of the Court was not ousted. pp. 120–121

11.—The West African Court of Appeal asked that the question of the jurisdiction of the Court be argued first, after which it came to the conclusion that the Court had no jurisdiction to try the issues involved in the Claim and consequently it was unnecessary for the Court to deal with the other points raised in the appeal. p. 123, 19.18.19

12.—The West African Court of Appeal observed that Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance ousts the jurisdiction of the Courts, and that even if the direction given by the Legislature to the Governor as sole judge by providing that there must be “ due enquiry and consultation with the persons concerned in the selection ” were not complied with the present form of action and relief sought were not the appropriate remedy. Sir John Verity, C.J. who was a member of the Appeal Court that gave the previous Judgment of 10th November, 1947, observed that the Court did not in that earlier Judgment consider whether or not the appropriate form of action had been brought to the Plaintiff. What was considered and was raised in the grounds of appeal and the arguments addressed to the Court, observed Sir John Verity, was whether the trial Judge was right in holding that in no circumstances can the matter be brought under review of the Courts. The Chief Justice remarked however that “ it is not surprising that the learned trial Judge “ may have felt that he was free to exercise jurisdiction in dealing with the “ Plaintiffs’ claim on its merits and that having found in his favour granted “ the relief sought.” pp. 127–131 p. 129, 13–47 p. 130 p. 131 1–4

13.—On behalf of the second Respondent it will be contended that the Judgment of the West African Court of Appeal to the effect that the jurisdiction of the Court to entertain this claim has been ousted is right and should be upheld. Should the Judicial Committee of the Privy Council take a different view then the second Respondent submits that the case be referred back to the West African Court of Appeal for the determination of the other points of Law and fact and Native Law and Custom raised in the other grounds of Appeal which that Court ruled should not be argued as it intended to decide on the first ground of lack of jurisdiction “ before proceedings further (if at all) ” As Judgment was in favour of the second Respondent the West African Court of Appeal did not proceed further to hear arguments on these other grounds. 30 40

14.—The second Respondent will, however, contend that the Ordinance has ousted the jurisdiction of the Court to determine the dispute, that

the Appellant's action was misconceived and that Judgment has properly been entered for the Respondents and that this Appeal should be dismissed for the following amongst other

REASONS.

- (1) BECAUSE on the true and correct interpretation of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance the Courts have no jurisdiction to entertain the Plaintiff's claim.
- (2) BECAUSE the only ground upon which the learned trial Judge based his assumption of jurisdiction—namely that there has been no “due enquiry”—is not justified by the evidence before the Court. 10
- (3) BECAUSE the learned trial Judge had unfortunately placed upon the Judgment of the West African Court of Appeal delivered on 10th November, 1947, an interpretation which it was not intended to bear.
- (4) BECAUSE the learned trial Judge's findings on the relevant facts (including his findings about native law and custom) were wrong.

A. O. THOMAS. 20

In the Privy Council.

No. 25 of 1950.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL.

BETWEEN

MEMUDU LAGUNJU
(*Plaintiff*) APPELLANT

AND

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE
(*Defendants*) RESPONDENTS.

CASE FOR THE SECOND
RESPONDENT

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