

10, 1953

IN THE PRIVY COUNCIL

Appeal No.29 of 1952

33575

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
AND FROM THE SUPREME COURT OF NIGERIA

UNIVERSITY OF LONDON
W.C.1.
9 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N

J.O. IZUORA ... Appellant

- and -

THE QUEEN ... Respondent

CASE FOR THE APPELLANT

RECORD

10 1. This is an appeal from an order of the West African Court of Appeal dated 23rd November 1951 which (on the ground that the Court had no jurisdiction) struck out an appeal from a judgment and sentence of Manyo-Plange J. sitting in the Supreme Court of the Benin Judicial Division of the Supreme Court of Nigeria holden at Okene dated 18th September 1951, whereby the Appellant who is a practising Barrister had been sentenced to a fine of £10 or two months imprisonment for alleged
20 contempt of Court.

2. The appeal raises firstly a personal question of great moment to the Appellant, namely whether he has been guilty of contempt of Court, and secondly a question of principle of special importance to the Courts of West Africa, namely whether the West African Court of Appeal has jurisdiction to hear appeals from sentences such as that imposed on the Appellant.

30 3. On the 4th September 1951, at the conclusion of the hearing of a Divorce case in which the Appellant appeared as Counsel, judgment was reserved till the next morning; and the Appellant, in the special circumstances which were known to the learned judge and are set out in the Appellant's Affidavit in support of his appeal, asked to be excused from appearing in Court on the 5th September 1951. This application was granted

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by Manyo-Plange J.

4. Thereafter the Appellant's opponent also asked to be excused, whereupon the learned Judge withdrew the permission granted to the Appellant and said that counsel for both parties were to attend on the morrow.

p. 6-10. 5. The Appellant, for the reasons given in his Affidavit in support of his appeal was not present in Court on the 5th September 1951.

p. 5. 6. On the ground of his absence for which the learned Judge had originally given permission and notwithstanding the Appellant's apology, the Appellant was on the 18th September 1951 found by the Judge to be guilty of contempt of Court and he was sentenced as aforesaid. The learned Judge added: "But for the Respondent's inexperience I would not hesitate to commit him to prison". 10

7. The Appellant humbly repeats the apology then made for the discourtesy thus shown to the Court by his absence, but submits that his conduct - to use the words of the Judgment in Parashuram Detaram Shamdasani v. King Emperor 1945 A.C. at p.269 - did not and could not amount to a contempt of Court and consequently there was no jurisdiction in the learned Judge to exercise his summary powers in respect thereof. 20

p. 5. 8. The Appellant appealed to the West African Court of Appeal by notice dated 27th September 1951, but on the 23rd November 1951 his appeal was struck out upon the following grounds:- 30

p. 11. "In view of the judgment of this Court in the matter of Poku & Another, it is apparent that no appeal can be brought under section 10 of the West African Court of Appeal Cap. 229 in such a matter as the present. There is no appeal therefore before this Court and the proceedings are struck out."

pp.12-18. The judgment in the case of Poku and Another is set out in the record. The facts of the case are not stated in the judgment but it is said that p.12. 1.35 "the petition in the present matter has reference to the committal of the Petitioner by the Supreme Court for a contempt of Court in the nature of what is known as 'criminal contempt'". 40

10. It is submitted that in the present case the judgment of the West African Court of Appeal was wrong:

- (i) in not considering whether the facts of the case amounted to contempt of Court.
- (ii) in not considering whether such contempt, if any, was "in the nature of what is known as 'criminal contempt'".
- 10 (iii) in wrongly assuming that the answer to both such questions is in the affirmative, and
- (iv) in deciding that in this, and indeed in any, case of alleged contempt of Court, the West African Court of Appeal has no jurisdiction to entertain an appeal.

11. The special importance of the last matter lies in the frequency with which Judges of first instance in West Africa are apt to invoke proceedings for contempt of Court and it is humbly submitted that it is desirable to make clear that 20 the powers of the West African Court of Appeal do enable that Court to entertain an appeal in such proceedings.

12. The jurisdiction of the West African Court of Appeal in respect of Nigeria is derived from the following ordinance namely Chapter 229 of the 1948 Revised Edition of the Laws of Nigeria. The relevant sections are as follows:-

"APPEALS IN CIVIL CASES

- 30 9. Notwithstanding anything hereinbefore contained the Court of Appeal may entertain any appeal from a court below on any terms which it thinks fit.

APPEALS IN CRIMINAL CASES

RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

- 10. A person convicted by or in the Supreme Court or a native court may appeal to the court of appeal -
 - (a) against his conviction on any ground of

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appeal which involves a question of law alone; and

(b) with the leave of the court of appeal, or upon the certificate of the judge who tried him or, in the case of a person convicted by a native court, who heard his appeal to the Supreme Court, that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and

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(c) with the leave of the court of appeal against the sentence passed on his conviction unless the sentence is one fixed by law;

Provided that a person convicted by a native court etc."

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The jurisdiction of the West African Court of Appeal in appeals from the Gold Coast (relevant for consideration of the judgment in Poku and Another) is derived from Chapter 5 of the 1936 Revised Edition of Laws of the Gold Coast, sections 8 and 9 of which are similar to sections 9 and 10 of the said Nigerian Ordinance as quoted herein.

13. It is submitted that the judgment of the West African Court of Appeal in Poku and Another upon which authority the appeal in this case was struck out was wrong:-

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(i) in failing, when dealing with the authorities, to distinguish between cases of contempt which were appealable under the general right of appeal given by Section 19 of the Judicature Act of 1873 (of which R. v. Barnardo 23 Q.B.D. 305 and Barnardo v Ford 1892 A.C.326 were examples) and other cases, where under Section 47 thereof, there was no appeal because the contempt was a contempt of Court of a criminal nature, (of which O'Shea v O'Shea & Parnell 15 P.D. 59 was an example), and

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(ii) in reading into section 9 of the Gold Coast

Ordinance (corresponding to section 10 of the Nigerian Ordinance applicable to this case) the limitation on the right of appeal which appears in section 3 of the Criminal Appeal Act 1907 limiting the power of the Court of Criminal Appeal to cases of conviction on indictment: thereby ignoring the other methods of appeal available in Great Britain in cases of summary conviction.

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14. It is submitted that the terms of the ordinance applicable herein are unambiguous, and that the West African Court of Appeal has jurisdiction to hear an appeal of this nature either under Section 9 or Section 10 of the Nigerian Ordinance aforesaid.

15. By an order in Council at Buckingham Palace dated 24th June 1952 Her Majesty in Council was graciously pleased to grant leave to the Appellant to enter and prosecute his appeal against the order of the West African Court of Appeal dated 23rd November 1951 and the order of the Supreme Court of Nigeria dated 18th September 1951.

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16. The appellant humbly submits that the order made by Manyo-Plange J. sentencing the appellant to a fine of £10 or two months imprisonment was wrong and outside the scope of his jurisdiction and should be rescinded and that the order of the West African Court of Appeal striking out the appeal in this case was wrong in law and should be set aside for the following, among other,

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R E A S O N S :-

1. BECAUSE the conduct of the Appellant did not and could not amount to a contempt of Court.

2. BECAUSE the said conduct did not and could not amount to contempt of a criminal nature.

3. BECAUSE there was in fact no Order of the Court the disobeying of which could constitute a contempt.

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4. BECAUSE the Appellant's absence for which at first permission was granted, could not tend in any way to bring the Court or the

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administration of justice into disrepute.

5. BECAUSE the Learned Judge was not entitled to convict the Appellant of contempt of Court or to punish him as aforesaid.

6. BECAUSE the West African Court of Appeal had jurisdiction to hear the appeal in this case.

7. BECAUSE the West African Court of Appeal Ordinance Cap. 229 is not subject to the limitation which occurs in the Criminal Appeal Act 1907, and interpreted in its natural meaning the Ordinance gives jurisdiction to the West African Court of Appeal to try this and similar cases.

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8. BECAUSE the West African Court of Appeal, in interpreting the Ordinance upon the assumption that no such right of appeal could have been intended, was wrong.

9. BECAUSE on the facts of the case and the law applicable thereto the decision of the Supreme Court of Nigeria dated the 18th September 1951 was wrong and the decision of the West African Court of Appeal dated the 23rd November 1951 was wrong.

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S. COPE MORGAN.

F.R. McQUOWN.

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