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~~CH. 67.~~

Nigeria

16, 1954

In the Privy Council.

No. 35 of 1953.

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL HOLDEN AT LAGOS

Suit No. M.4517A.  
W.A.C.A. 22/1953.

IN THE MATTER OF THE NIGERIAN FARMERS AND COMMERCIAL BANK  
LIMITED (in liquidation)

AND

IN THE MATTER OF THE COMPANIES ORDINANCE CAP 38 OF THE  
REVISED LAWS OF NIGERIA

*In re* JOHN ADEBAYO ... .. *Appellant*

AND

THE OFFICIAL RECEIVER... .. *Respondent.*

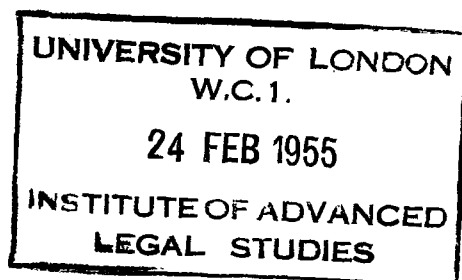
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# In the Privy Council.

No. 35 of 1953.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS

Suit No. M.4517A.  
W.A.C.A. 22/1953.

IN THE MATTER OF THE NIGERIAN FARMERS AND COMMERCIAL BANK  
LIMITED (in liquidation)

AND

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 38 OF THE  
REVISED LAWS OF NIGERIA

*In re* JOHN ADEBAYO ... .. *Appellant*

AND

THE OFFICIAL RECEIVER... .. *Respondent.*

## RECORD OF PROCEEDINGS

No. 1.

Motion and Affidavit in support by Liquidator for an Order to convene meetings of creditors for discussing and approving scheme of reconstruction.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M.4517/52.

In the Matter of the Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation).

10 Application of John Adebayo Joint Liquidator under Section 120 of  
Cap. 38 L/N.

MOTION EX PARTE.

TAKE NOTICE that this Honourable Court will be moved on Monday, the 5th day of January, 1953, or so soon thereafter as Counsel can be heard on behalf of John Adebayo Joint Liquidator for an Order that the applicant

In the  
Supreme  
Court of  
Nigeria.

No. 1.  
Motion and  
Affidavit  
in support  
by  
Liquidator  
for an Order  
to convene  
meetings of  
creditors  
for dis-  
cussing and  
approving  
scheme of  
recon-  
struction.  
31st  
December  
1952.

In the  
Supreme  
Court of  
Nigeria.

No. 1.  
Motion and  
Affidavit  
in support  
by  
Liquidator  
for an Order  
to convene  
meetings of  
creditors  
for dis-  
cussing and  
approving  
scheme of  
recon-  
struction.  
31st  
December  
1952—  
*continued.*

may be at liberty to convene meetings of creditors for the purpose of discussing and approving a scheme or schemes of arrangement (reconstruction) and compromise to be drawn up, and that directions be given as to the method of convening the said meeting, and for such further order or orders as this Honourable Court may deem to make.

Dated at Lagos this 31st day of December, 1952.

(Sgd.) THOMPSON & COKER,  
*Solicitors to the Liquidator.*

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

10

In the Matter of the Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation).

Application of John Adebayo Joint Liquidator under Section 120 of  
Cap. 38 L/N.

#### AFFIDAVIT.

I, JOHN ADEBAYO, English Accountant of 4, Coates Street, Ebute Metta, Male, Yoruba, hereby solemnly declare and affirm and say as follows :—

1.—That I am English Accountant having obtained my qualification 20  
at the Metropolitan College, St. Albans, England, I am a holder of the following diplomas (a) Fellow of the English Association of Accountants and Auditors (F.E.A.A.) (b) Fellow of the Institute of Commerce (F.C.I.) (c) Associate of the Metropolitan College.

2.—That the Nigerian Farmers & Commercial Bank Limited was incorporated on 7th day of January, 1947.

3.—That the registered place of business is at 18, Tinubu Street, Lagos.

4.—That the above Company went into Voluntary Liquidation on Friday, the 12th day of December, 1952, and I was appointed Joint Liquidator. 30

5.—That on Monday, the 29th day of December, a meeting of creditors was held in which the said appointment was confirmed by the creditors of the Company.

6.—That at this meeting it was decided by the majority of those present that the Nigerian Farmers & Commercial Bank Ltd., now in Voluntary Liquidation, be reconstructed and that it should resume duty for the benefit of the creditors.

In the Supreme Court of Nigeria.

7.—That it becomes necessary to convene meeting or meetings according to law for the purpose of discussing and approving the scheme or schemes of arrangement (reconstruction) and compromise.

No. 1. Motion and Affidavit in support by

8.—That copies of the resolution and the signatures and the particulars of creditors who voted at the meeting are attached herewith—marked Exhibits 1-7.

Liquidator for an Order to convene meetings of creditors

9.—That the purpose of reconstruction is to make it possible for all creditors to be satisfied—in full.

for discussing and approving scheme of reconstruction.

10.—That it is proposed to resuscitate the Company as Public Company.

31st December 1952—

11.—That already many people are prepared to contribute to the Capital of the Company, and to give it unflinching support.

*continued.*

12.—That it is the wish and desire of the majority of the depositors and other creditors that the Company be reconstructed.

(Sgd.) J. ADEBAYO,  
*Deponent.*

20

Declared and affirmed at the Supreme Court Registry, Lagos, this 31st day of December, 1952.

Before Me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

No. 2.

Proceedings on Motion.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

No. 2. Proceedings on Motion. 5th January 1953.

30 Monday, the 5th day of January, 1953, before the Honourable Mr. Justice James REALI GREGG, Puisne Judge.

M. 4517/52.

In the Matter of the Nigerian Farmers & Commercial Bank Limited (in Voluntary Liquidation).

In the  
Supreme  
Court of  
Nigeria.

No. 2.  
Proceedings  
on Motion.  
5th  
January  
1953—  
*continued.*

## EX-PARTE.

Thompson moves. Application under Companies Ordinance.  
Refers to Section 177 of the Companies Ordinance.  
Refers to paras. 6, 7 & 8 of affidavit in support.  
Refers to Section 179 of Companies Ordinance.

BY COURT : Copy of resolution should be before this Court. I should also like to hear what the other joint liquidator has to say. Draft direction for approval should be filed. Adjourned to 12/1/53. To enable draft direction to be filed and other joint liquidator to swear to affidavit.

(Sgd.) J. R. GREGG, 10  
*Puisne Judge.*  
5/1/53.

No. 3.  
Directions  
signed by  
Solicitors of  
Liquidator.  
10th  
January  
1953.

## No. 3.

## Directions signed by Solicitors of Liquidator.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M.4517/52.

In the Matter of the Companies Ordinance Cap. 38 L/N.

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation.) 20

## DIRECTIONS.

1.—The meeting to be held within 30 days from the making of the Order.

2.—Seven days' notice to be given to creditors by advertising such notice of meeting in the following newspapers :

1. The Daily Times.
2. The Daily Service.
3. The West African Pilot.
4. The Nigerian Tribune.

(Sgd.) THOMPSON & COKER, 30  
*Solicitors to the Defendants.*



No. 4.

Affidavit of Adewale Thompson.

In the  
Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

No. 4.  
Affidavit of  
Adewale  
Thompson.  
12th  
January  
1953.

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation.)

Application of John Adebayo, Liquidator, under Section 120 of  
Cap. 38 L/N.

10

AFFIDAVIT.

I, ADEWALE THOMPSON, Solicitor and Advocate of the Supreme Court of Nigeria, of 18, Tinubu Street, Lagos, Male, Yoruba, make oath and say as follows :—

1.—That I am one of the Solicitors representing the liquidator in this matter.

2.—That by a resolution passed at the Statutory Meeting of Creditors held on the 29th day of December, 1952, the Creditors suggested the name of Akintola Williams as Joint Liquidator in addition to the Company's liquidator Mr. John Adebayo.

20

3.—That the aforesaid Akintola Williams has refused to act and the creditors have expressed the wish that the Scheme of Reconstruction be proceeded with in spite of such refusal.

(Sgd.) ADEWALE THOMPSON,  
*Deponent.*

Sworn to at the Supreme Court Registry, Lagos, this  
12th day of January, 1953.

Before Me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.

No. 5.

Further hearing of Motion.

No. 5.  
Further  
hearing of  
Motion.  
12th  
January  
1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Monday the 12th day of January, 1953, before The Honourable, Mr. Justice  
JAMES REALI GREGG, Puisne Judge.

Suit No. M. 4517/52.

*Re* the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation.)

THOMPSON moves.

10

BY COURT: In view of the fact that motion No. 505/52 is fixed for hearing on 20/1/53 and as this motion is connected herewith, this motion is adjourned to 26/1/53.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*

No. 6.  
Petition of  
Frank  
Harland.  
Ag.  
Registrar of  
Companies  
and  
Official  
Receiver.  
23rd  
January  
1953.

No. 6.

Petition of Frank Harland, Ag. Registrar of Companies and Official Receiver.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52. 20

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation.)

and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised Laws  
of Nigeria.

The humble petition of FRANK HARLAND, Acting Administrator-General, Registrar of Companies and Official Receiver of Nigeria showeth as follows :—

1.—That the Nigerian Farmers & Commercial Bank Limited is a private Limited liability Company incorporated under the Companies Ordinance, 30 Cap. 38 of the Revised Laws of Nigeria on the 7th day of January, 1947.

2.—That the registered Office of the Company is at 18 Tinubu Street, Lagos.

3.—That the nominal capital of the Company is £300,000 divided into 1,000 Preference Shares of £1 each and 299,000 Ordinary Shares of £1 each.

4.—That the Directors of the Company are Mr. Adeboye Shobayo Olumuyiwa Coker and Mr. Tijani Afolabi Adeosun.

5.—That the issued capital of the Company is £25,194 made up of 500 Preference Shares and 24,694 Ordinary Shares.

6.—That Mr. Coker holds the whole of the 500 issued Preference Shares and 24,455 of the 24,694 issued Ordinary Shares and therefore has complete control and direction of the Company.

10 7.—That by an extraordinary resolution passed on the 12th day of December, 1952, the Company went into voluntary liquidation and appointed Mr. John Adebayo, English Accountant of 4, Coates Street, Ebute Metta, and Mr. Charles D. Gairdner, Chartered Accountant of 23 Lawrence Lane, London, to be the Liquidators.

8.—That Mr. Charles D. Gairdner will act, if at all, only in respect of the assets of the Company in the United Kingdom.

9.—That the appointment of Mr. Adebayo was made in effect by Mr. Coker by virtue of his shareholding.

20 10.—That Mr. Adebayo is a Director and Shareholder in the Nigerian Merchants Press Ltd., a private limited liability Company incorporated in Nigeria and that Mr. Coker is a shareholder in the same Company.

11.—That according to the Form E of the Nigerian Merchants Press Ltd., filed in the Companies Registration Office and purporting to show the issued capital of the Company as at the 15th day of September, 1952, the Company had issued 1917 shares of £1 each of which 1800 were stated to be held by the Nigerian Farmers & Commercial Bank Ltd., thus making the Nigerian Merchants Press Ltd., a subsidiary Company of the Nigerian Farmers & Commercial Bank Ltd.

30 12.—That in view of paragraphs 10 and 11 hereof it cannot be stated that Mr. Adebayo is an independent person.

13.—That Mr. Adebayo is not a member of any of the four generally recognised bodies of professional Accountants in England & Scotland.

14.—That a meeting of the creditors of the Nigerian Farmers & Commercial Bank Ltd. was called by Mr. Adebayo for the 29th day of December, 1952, and that this meeting was not properly convened nor was it properly conducted, and that at this meeting a resolution was purported to have been passed appointing Mr. Akintola Williams, Chartered Accountant, as joint Liquidator which appointment he has declined.

In the  
Supreme  
Court of  
Nigeria.

No. 6.

Petition of

Frank

Harland.

Ag.

Registrar of

Companies

and

Official

Receiver.

23rd

January

1953—

*continued.*

In the  
Supreme  
Court of  
Nigeria.

No. 6.  
Petition of  
Frank  
Harland.  
Ag.  
Registrar of  
Companies  
and  
Official  
Receiver.  
23rd  
January  
1953—  
*continued.*

15.—That Mr. Adebayo is not sufficiently well qualified or experienced to conduct the winding up of the Nigerian Farmers & Commercial Bank Ltd.

16.—That it is contrary to public policy and against the interest of the creditors generally that the liquidation should be conducted by a Nominee of Mr. Coker who has had complete control of the Company.

17.—That by reason of all the facts set out herein the Nigerian Farmers & Commercial Bank Limited is unable to pay its debts and that it is just and equitable that it should be wound up by this Honourable Court.

Your Petitioner therefore humbly prays as follows :—

1. That the Nigerian Farmers & Commercial Bank Limited may be wound up by the Court under the provisions of Section 132 (2) of the Companies Ordinance, Cap. 38 of the Revised Laws of Nigeria. 10
2. That your Petitioner be appointed Liquidator of the said Company.
3. That the said Mr. John Adebayo be ordered to hand over to your Petitioner all books, papers and other documents in his possession relating to the affairs of the said Company, together with an account of his dealings with the affairs of the said Company since the date of his appointment as Liquidator. 20

Dated at Lagos this 23rd day of January, 1953.

(Sgd.) F. HARLAND.

No. 7.  
Affidavit  
of Frank  
Harland.  
23rd  
January  
1953.

No. 7.  
Affidavit of Frank Harland.

IN THE SUPREME COURT OF NIGERIA.  
LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation).

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria. 30

I, FRANK HARLAND, Acting Administrator-General, Registrar of  
Companies and Official Receiver, make oath and say as follows :—

- 1.—That I am the Acting Administrator-General of Nigeria.

2.—That by Government Notices Nos. 427 and 428 published in the Nigeria Gazette No. 30 of the 2nd day of April, 1936, the Administrator-General was appointed Official Receiver and Registrar of Companies for the purposes of the Companies Ordinance.

In the  
Supreme  
Court of  
Nigeria.

3.—That the Nigerian Farmers and Commercial Bank Limited is a private limited liability Company and was incorporated under the Companies Ordinance in Nigeria on the 7th day of January, 1947.

No. 7.  
Affidavit  
of Frank  
Harland.  
23rd

4.—That the registered office of the Company is at 18, Tinubu Street, Lagos.

January  
1953—  
*continued.*

10 5.—That according to the records in the Companies Registration Office the directors of the Company are Mr. Adeboye Shobayo Olumuyiwa Coker and Mr. Tijani Afolabi Adeosun, that the nominal capital of the Company is £300,000 consisting of 1,000 Preference Shares of £1 each and 299,000 Ordinary Shares of £1 each, that the issued capital is £25,194 made up of 500 Preference Shares and 24,694 Ordinary Shares and that Mr. Coker holds all the issued Preference Shares and 24,455 of the Ordinary Shares and therefore has complete control and direction of the Company.

20 6.—That on the 12th day of December, 1952, the Company went into voluntary liquidation the grounds for this being stated to be that it “cannot by reason of its liabilities and difficulties continue its business” meaning thereby that it was unable to pay its debts and appointed Mr. John Adebayo English Accountant of 4, Coates Street, Ebute Metta and Mr. Charles D. Gairdner, Chartered Accountant, of 23, Lawrence Lane, London, to be joint liquidators—Copies of the resolutions passed on the 12th day of December, 1952, are hereto annexed and marked “A.”

7.—That I am informed and verily believe that Mr. Gairdner will act, if at all, only in respect of the assets of the Company in the United Kingdom.

8.—That the appointment of liquidators was made in effect by Mr. Coker by virtue of his shareholding.

30 9.—That Mr. Adebayo is a Director and shareholder and Mr. Coker is a shareholder in the Nigerian Merchants Press Limited, a private limited liability company incorporated in Nigeria.

10.—That according to the Form E of the Nigerian Merchants Press Limited filed in the Companies Registration Office and purporting to show the issued capital of the Company as at the 15th day of September, 1952, the Company had issued 1917 shares of £1 each of which 1800 were stated to be held by the Nigerian Farmers and Commercial Bank Limited.

11.—That a liquidator should be an independent person and that there will be a conflict between Mr. Adebayo's duties as a liquidator

In the  
Supreme  
Court of  
Nigeria.

No. 7.  
Affidavit  
of Frank  
Harland.  
23rd  
January  
1953—  
*continued.*

and his interest as a shareholder and director of the Nigerian Merchants Press Limited.

12.—That it is contrary to public policy and against the interest of the creditors generally that the liquidation should be conducted by a Nominee of Mr. Coker who has had complete control of the Company.

13.—That Mr. Adebayo is not a member of any of the generally recognised professional bodies of Accountants in England and Scotland.

14.—That a meeting of creditors was called by Mr. Adebayo for the 29th day of December, 1952, and that this meeting was not properly convened in that at least one case the notice convening the meeting was not posted until the 7th day of January, 1953. The original of this notice is hereto annexed and marked " B." 10

15.—That the said meeting of creditors was not properly conducted by Mr. Adebayo in that—

(a) No attempt was made by him to ascertain whether those present were in fact creditors and if so for what amount.

(b) He permitted the meeting to pass a resolution that the Company be reconstructed which was not within the purposes for which the meeting was convened, such purposes being laid down in Section 181 (2) of the Companies Ordinance. 20

A copy of a report of the proceedings at the alleged meeting of creditors is hereto annexed and marked " C."

16.—That I have received a letter from Mr. Akintola Williams Chartered Accountant Lagos who was appointed a joint liquidator by the said meeting of creditors stating that he does not propose to accept the appointment. A copy of this letter is hereto annexed and marked " D."

17.—That in view of the facts set out in paragraphs 13, 14 and 15 hereof Mr. Adebayo is neither sufficiently well qualified or experienced to undertake the liquidation of the Nigerian Farmers and Commercial Bank Limited. 30

18.—That the Company is unable to pay its debts and that it is just and equitable that it should be wound up by the Court.

Dated at Lagos this 23rd day of January, 1953.

Sworn at the Probate Registry, Lagos, this }  
23rd day of January, 1953. }

Before Me,

(Sgd.) ? SOGUNRO,  
*Commissioner for Oaths.*

Annexure " A "

THE COMPANIES ORDINANCE.

In the Matter of the Nigerian Farmers and Commercial Bank Limited :  
18 Tinubu Street, Lagos, Nigeria.

At an Extra Ordinary General Meeting of the above-named Company held at No. 18, Tinubu Street, Lagos, Nigeria, on Friday, 12th day of December, 1952, at 10 a.m. the following Extra Ordinary Resolutions were duly passed :—

- 10 (1) That the Nigerian Farmers and Commercial Bank Limited cannot by reason of its liabilities and other difficulties continue its business and that it is advisable to wind up the same and that the Company be wound up voluntarily, accordingly.
- (2) That Mr. John Adebayo, English Accountant of No. 4, Coates Street, Ebute Metta, Nigeria and Mr. Charles D. Gairdner, Chartered Accountant of No. 23, Lawrence Lane, London, W.C.2, be and they are hereby appointed Liquidators of the Company to conduct the winding up.

Dated 12th day of December, 1952.

A. S. O. COKER,  
*Chairman.*

20

This is the Exhibit marked " A " referred to in the Affidavit of Frank Harland sworn this 23rd day of January, 1953.

Before me,  
(Sgd.) ? SOGUNRO,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.

No. 7.  
Annexure  
" A " to  
Affidavit  
of Frank  
Harland,  
dated 23rd  
January,  
1953.

In the  
Supreme  
Court of  
Nigeria.

No. 7.

Annexure  
" B " to  
Affidavit  
of Frank  
Harland,  
dated 23rd  
January,  
1953.

Annexure " B "

To Mr. O. O. Johnson,  
5, Onikepo Street,  
Lagos.

The Nigerian Farmers and Commercial Bank Limited.  
(In Voluntary Liquidation.)

NOTICE IS HEREBY GIVEN, pursuant to section 181 of the Companies Ordinance, 1948, that a meeting of the Creditors of the above named Company will be held at No. 18, Tinubu Street, Lagos, Nigeria on Monday the 29th day of December, 1952, at 10 a.m. before noon. 10

Dated 12th December, 1952.

JOHN ADEBAYO,  
*Liquidator.*

This is the exhibit marked " B " referred to in Affidavit of Frank Harland sworn this 23rd day of January, 1953.

Before me,  
(Sgd.) ? SOGUNRO,  
*A Commissioner for Oaths.*

Annexure  
" C "

Annexure " C "

Irving & Bonnar  
Lagos.

Dunedin Chambers, 20  
Tinubu Street,  
P.O. Box 289  
Lagos, Nigeria.

The Official Receiver,  
16-24 Ikoyi Road,  
Lagos.

9th January, 1953.

Dear Sir,

The Nigerian Farmers & Commercial Bank Ltd.  
(In Voluntary Liquidation) :

In response to your request for information I have to report that I attended the creditors meeting held in connection with the voluntary liquidation of the above Bank at 2, Alli Street, Lagos, on Monday 30



29 December, 1952. I represented a number of overseas creditors who had forwarded Bills for collection by the above Bank through the Bank of British West Africa Limited. Their claims, which at that time, exceeded £15,000 are now in the region of £20,000 and it seems likely that this figure will increase as more claims are notified.

I wish to place on record my dissatisfaction at the manner in which the above mentioned meeting was conducted. The purpose for which such a meeting must be convened and the extent of the business which may be considered at the meeting are clearly laid down in Section 181 of the Companies Ordinance. Briefly the meeting must appoint a Liquidator or Liquidators and if a Liquidator is appointed other than, or in addition to the Liquidator nominated by the Company, application must be made to the Supreme Court to confirm the appointment. At the meeting the Liquidator Mr. Adebayo, having read Section 181 (1) and (2) to the assembly, completely ignored it and proceeded to suggest to the meeting that the Bank should be reconstructed. I do not propose to go into details concerning the harangues and counter-harangues, proposals and counter-proposals, which occupied the better part of two hours, but at the end a "resolution" was written out appointing John Adebayo and Akintola Williams to be Joint Liquidators and resolving that the Bank be reconstructed. I do not know if this resolution was signed by all the creditors present as I recorded in the book containing the resolution a protest on behalf of my client and left the meeting at the stage. Nor do I know at what stage the meeting agreed to a reconstruction as I cannot recall that a vote was taken.

As regards the vote taken on the appointment of the Liquidators I must hold this to be irregular. The vote was taken by a show of hands, no effort having been made to ascertain that all the persons voting were, in fact, creditors or for what sums. I pointed out this fact to Mr. ADEBAYO before the vote was taken.

I have since seen in the Supreme Court List an application by the Liquidators, for leave to convene meetings with a view to a reconstruction. I have not yet seen an application for confirmation of the appointment of the Liquidators as required by Section 181 (2) of the Companies Ordinance, nor, so far, as I am aware, was a creditor appointed at the meeting to make such application as required by that Section. I cannot, therefore, understand on what authority the Liquidators make their application.

I am deeply disturbed at the manner in which the suggested reconstruction was put before the meeting. No attempt was made to explain to the creditors, the majority of whom were presumably unfamiliar with such matters, the full implications of a reconstruction.

No facts or figures were produced to shew what was the then financial position of the Bank and I cannot see how a reconstruction can be considered, if at all, until all the information has been gathered and sifted. Nor was it explained, how if the Bank is unable to pay its creditors in full, funds can be found for reconstruction.

In the  
Supreme  
Court of  
Nigeria.

No. 7.  
Annexure  
"C" to  
Affidavit  
of Frank  
Harland,  
dated 23rd  
January,  
1953—  
*continued.*

In the  
Supreme  
Court of  
Nigeria.

No. 7.  
Annexure  
" C " to  
Affidavit  
of Frank  
Harland,  
dated 23rd  
January,  
1953—  
*continued.*

In my opinion it is essential, in the interest of creditors in Nigeria and overseas, that this liquidation should be carried out with the greatest care and in my view, that can best be done by yourself. I understand that there is a petition for your appointment pending before the Court and I have the authority of my clients to give this petition their support.

Yours faithfully,  
(Sgd.) A. M. FERGUSON.

This is the Exhibit marked " C " referred to in the Affidavit of Frank Harland sworn this 23rd day of January, 1953.

Before me, 10  
(Sgd.) ? SOGUNRO,  
*Commissioner for Oaths.*

Annexure  
" D "

Annexure " D "

Akintola Williams & Co.,  
Chartered Accountant.  
A. Williams, B.Com., A.C.A.

63, Toyan Street,  
Obalende, Lagos.  
Nigeria, W. Africa.

Telephone :

8th January, 1953.

File No. AW/4.

The Ag. : Registrar of Companies,  
Administrator-General's Department,  
16-24, Ikoyi Road,  
Lagos.

20

Nigerian Farmers & Commercial Bank Ltd.  
(In Liquidation).

I have to acknowledge receipt of your letter R.C. 617 of 7th January, 1953.

With reference to your paragraphs 1 and 2 I have only yesterday received from Mr. Adebayo a written notification of my appointment as Joint Liquidator, although the information has previously been communicated to me orally. At an interview which I had on Tuesday, 30th December, 1952 with Mr. Adebayo, Mr. Coker, the former Managing Director of the bank and Mr. Adewale Thompson, the bank's solicitor, I explained that by reason of other commitments I was unable to accept the appointment. 30

In the circumstances I did not consider it necessary to notify you of the appointment. As I have now received a written notification from Mr. Adebayo I am writing to him to say that I cannot and do not propose to accept the appointment.

Your paragraph 3. I was not consulted before the resolution appointing me as Joint Liquidator was passed.

Yours faithfully,  
(Sgd.) A. WILLIAMS.

This is the exhibit marked " D " referred to in the Affidavit of Frank Harland sworn this 23rd day of January, 1953.

Before me,  
(Sgd.) ? SOGUNRO,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.  
No. 7.  
Annexure  
" D " to  
Affidavit  
of Frank  
Harland,  
dated 23rd  
January,  
1953—  
*continued.*

---

No. 8.

**Affidavit of Service of Petition on the Nigerian Farmers and Commercial Bank Limited.**

Judicial C 27.

IN THE SUPREME COURT OF NIGERIA.

**AFFIDAVIT OF SERVICE.**

20

Suit No. M. 4517 of 1952.

Between

THE REGISTRAR OF COMPANIES AS OFFICIAL RECEIVER OF  
NIGERIA ... .. Plaintiff

and

THE NIGERIAN FARMERS & COMMERCIAL BANK LTD. ... Defendant.

I, AUGUSTUS BABATUNDE ABOSEDE of the Administrator-General's Department, Lagos, make oath and say, that on the 23rd day of January, 1953, at 9.33 a.m.

30

I served upon The Nigerian Farmers and Commercial Bank Ltd., a copy of Petition issued out of this Court at Lagos upon The Nigerian Farmers and Commercial Bank Ltd., upon the complaint of The Registrar

No. 8.  
Affidavit of  
Service of  
Petition  
on the  
Nigerian  
Farmers  
and Com-  
mercial  
Bank Ltd.  
23rd  
January  
1953.

In the  
Supreme  
Court of  
Nigeria.

No. 8.  
Affidavit of  
Service of  
Petition  
on the  
Nigerian  
Farmers  
and Com-  
mercial  
Bank Ltd.  
January  
23rd  
1953—  
*continued.*

16

of Companies as Official Receiver of Nigeria by delivering the same personally to Adewale Thompson Esq., B.L. (Bank Solicitor) at his Office, Tinubu Street, Lagos.

Before the day I served the document, I did know Adewale Thompson Esq., personally.

Sworn at the Probate Registry, Lagos, } (Sgd.) A. ABOSEDE,  
this 23rd day of January, 1953. } *Adm. General's  
Special Bailiff.*

Before me,

(Sgd.) ? SOGUNRO,  
*Commissioner for Oaths.*

10

No. 9.  
Hearing of  
Motion of  
Liquidator  
and  
Petition by  
Official  
Receiver.  
26th  
January  
1953.

No. 9.

**Hearing of Motion of Liquidator and Petition by Official Receiver.**

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Monday the 26th day of January, 1953, before The Honourable,  
Mr. Justice JAMES REALI GREGG, Puisne Judge.

Suit No. M. 4517B.

In *re* Matter Nigerian Farmers & Commercial Bank Ltd., *re* Voluntary  
Liquidation.

In *re* Application by the Official Receiver.

20

THOMPSON moves for Company in liquidation. Points out that  
two motions listed under same number.

Did not know about Official Receiver's application.

Suit No. M. 4517A.

Petition of Official Receiver.

BY COURT: Both applications adjourned to 27/1/53. Official  
Receiver's to be taken first on ground that if it should be granted Mr.  
Thompson's application will be unnecessary.

(Sgd.) J. R. GREGG,  
*Puisne Judge.* 30  
26/1/53.

## No. 10.

## Further Hearing of Petition by Official Receiver.

In the  
Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

No. 10.  
Further  
Hearing of  
Petition by  
Official  
Receiver  
27th  
January  
1953.

Tuesday, the 27th day of January, 1953, before the Honourable Mr. Justice  
James Reali Gregg, Puisne Judge.

M. 4517A.

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
*Re* Official Receiver.

10 HARLAND Official Receiver presents petition.

THOMPSON for Company in liquidation.

Thompson on notice for liquidator. States he was served as Solicitor for Nigerian Farmers and Commercial Bank Ltd., but not on behalf of liquidator. Liquidator not served. If I had been served for liquidator I would have accepted service ; but I have only been served on behalf of the Company. Liquidator should be before Court. Only person who can file a counter affidavit is liquidator.

20 To COURT : I have appeared for liquidator in other matters when service has been directed to him. States that he is prepared to accept service now so as to file a counter affidavit.

Thompson asks for adjournment 1 week to file a counter affidavit to Official Receiver's petition and to call witnesses to refute allegations in petition.

At this stage he asks for 3 weeks.

BY COURT : I can see no justification for an adjournment for 3 weeks ; I shall grant an adjournment for 1 week only as originally asked for by Mr. Thompson Counsel for the Company in liquidation.

30 This will allow service to be effected on the liquidator and the filing of a counter affidavit by him if necessary. It will also allow the calling of witnesses if he sees fit. Petition adjourned to February 4, 1953, for hearing.

(Sgd.) J. R. GREGG.

27/1/53.

---

No. 11.

## Counter Affidavit of Liquidator.

In the  
Supreme  
Court of  
Nigeria.

No. 11.  
Counter  
Affidavit of  
Liquidator.  
3rd  
February  
1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517 of 1952.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

10

## AFFIDAVIT.

I, JOHN ADEBAYO, English Accountant, of 4, Coates Street, Ebute Metta Liquidator of the Nigerian Farmers & Commercial Bank Limited (in Voluntary Liquidation) solemnly and sincerely affirm as follows in reply to the affidavit of Mr. Frank Harland, Acting Administrator-General, and Official Receiver.

1.—That I was appointed Liquidator by resolution passed at an extraordinary general meeting of the Nigerian Farmers and Commercial Bank Limited, held at 18, Tinubu Street, Lagos, on Friday, the 12th December, 1952, and not by Mr. A. S. O. Coker.

20

2.—That the Nigerian Farmers and Commercial Bank Limited was not a shareholder of the Nigerian Merchants Press Limited at the time I was appointed Liquidator.

3.—That I am a fellow of the English Association of Accountants and Auditors (F.E.A.A.).

4.—That I am also a fellow of the Institute of Commerce in England (F.C.I.) and Associate of the Metropolitan College of England A.M.C. (Eng.).

5.—That I have been practising as Accountant and Auditor in Nigeria since 1st January, 1930.

6.—That I have acted as Auditor to over 100 companies, partnerships and individual merchants.

30

7.—That at present I am Auditor to over 30 companies, partnerships and individual merchants.

8.—That I have been appointed Liquidator of at least 2 Companies, viz. (a) The Nigerian Home Industries Ltd. 1945 (b) Kasid Coy. Ltd. 1946.

In the  
Supreme  
Court of  
Nigeria.

9.—That the Registrar of Companies, the Administrator-General and Official Receiver were duly informed of my appointment.

—  
No. 11.  
Counter  
Affidavit of  
Liquidator.  
3rd  
February  
1953—  
*continued.*

10.—That the Official Receiver then did not query my qualification as Accountant.

11.—That Notices of the meeting of Creditors of the 29th December, 1952, were published in the Western Region of Nigeria Gazette of the Northern Region of Nigeria Gazette in the Daily Times, Lagos, the Daily Service Lagos the Eastern State Express Aba, the Southern Nigerian Guardian Port-Harcourt, and in the Nigerian Mercantile Guardian Lagos and the Sunday Star Lagos.

12.—Notices of this meeting referred to in paragraph 11 *supra* were served on those persons whose names appeared as creditors in the Books of the Bank.

13.—That I checked the list of persons who attended the meeting and was satisfied that all those who attended the meeting were creditors or representatives of creditors.

14.—That after the meeting I checked up the list of those who voted in favour of the resolution, and found out that they were all creditors (see Exhibit 1 to 7).

15.—That the meeting of the 29th December, 1952, Mr. Ferguson of Messrs. Irving and Bonnar moved that the Official Receiver be appointed Liquidator and the motion was defeated.

16.—That this fact deposed in paragraph 15 was omitted in the letter of Mr. Ferguson addressed to the Official Receiver and marked " Exhibit C " in the Affidavit of Mr. Frank Harland.

17.—That I have since requested Mr. Ferguson to submit full list of his clients, and that he is not in a position to give particulars of all his clients who were deemed by him to be creditors.

18.—That the majority of creditors wish that the Bank be reconstructed and have communicated this to the whole world in an informal resolution passed by them on the 29th day of December, 1952 (see affidavit of Abayomi Ajayi attached marked Exhibit 8 and Augustus Olusola Aina, marked Exhibit 9).

In the  
Supreme  
Court of  
Nigeria.

No. 11.  
Counter  
Affidavit of  
Liquidator.  
3rd  
February  
1953—  
*continued.*

19.—That I have since taken steps to convene a meeting of creditors for the purpose of discussing and approving schemes of arrangement under a scheme of reconstruction.

20.—That my application was filed on the 31st day of December 1952 and the application is still before this Honourable Court.

21.—That I believe that the Official Receiver has been conducting subversive activities against the success of Voluntary Liquidation as per the following particulars—

- (a) The statutory notice of liquidation was forwarded to the Government printer in Lagos and in the three Regions. 10
- (b) The said notice was published in the Northern Region of Nigeria Gazette and in the Western Region of Nigeria Gazette.
- (c) That the copy forwarded to the Government printer Lagos was not published—the Government Printer by letter of 18th December informed me that the publication should be forwarded through the Administrator-General (see Exhibit 10 attached).
- (d) That the said notices were accordingly forwarded to the Administrator-General.
- (e) That by a letter received by me from the Official Receiver as Registrar of Companies dated 22/12/52 the Official Receiver 20 informed me to communicate with the Chief Secretary to the Government, if I wish to get any notice inserted in the Gazette (see Exhibit 11 attached).
- (f) That I forwarded the said notice to the Chief Secretary to the Government, and up till date, I have not received any reply and the notice has not been published as requested.
- (g) That by a letter received from the Superintendent of Press Western Region dated 9th January, it is stated that no further notices will be published in the Western Region Gazette, unless such notice or notices were passed through the Administrator- 30 General. (The said letter is hereby attached and marked Exhibit 12.)

22.—That to my knowledge, the Official Receiver has been appointed liquidator of the following Banks who went into liquidation as from September 20th 1952.

- (i) The Standard Bank of Nigeria Ltd.
- (ii) The Afroseas Bank Ltd.
- (iii) Provincial Bank Ltd.
- (iv) Union Bank Ltd.

23.—That the Official Receiver has not yet concluded the liquidation 40 of any of these Banks.



24.—That to my knowledge, the liquidation of the Standard Bank has been handed over by the Official Receiver to the firm of Casselton Elliot a firm of British Accountants.

In the Supreme Court of Nigeria.

25.—That in a publication in the Daily Times, the Official Receiver has notified creditors of the Standard Bank of Nigeria that they should not expect to get their money in full and that they should not expect a speedy conclusion of winding up.

No. 11. Counter Affidavit of Liquidator. 3rd

26.—That the purpose of our Scheme of reconstruction is to make it possible for creditors to get their money in full.

February 1953—*continued.*

10 27.—That so far there is no complaint from any creditor regarding my integrity and conduct in Voluntary winding up.

28.—That my appointment as liquidator was confirmed by creditors at the meeting of 29th December 1952.

29.—That if the Official Receiver should take over, those who intend to finance the Company in reconstruction will lose interest in the business.

30.—That if the order for compulsory liquidation is made, that would mean an end to the creditor's hope of better and equitable treatment.

(Sgd.) J. ADEBAYO,  
*Declarant.*

20 Affirmed at the Supreme Court Registry, Lagos this 3rd day of February, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

---

Exhibit " 8 "

Exhibit " 8 "

IN THE SUPREME COURT OF NIGERIA.  
LAGOS JUDICIAL DIVISION.

Suit No. M. 4517.

30 In the Matter of the Nigerian Farmers and Commercial Bank Limited (in Voluntary Liquidation).

I, ABAYOMI AJAYI Former Staff of the Nigerian Farmers and Commercial Bank Ltd., make oath and say as follows :—

1.—That I am creditor of the Bank having £200 claim from the Bank.

2.—That when the Bank went into Liquidation I attended the creditors meeting of the 29th December, 1952.

In the  
Supreme  
Court of  
Nigeria.

No. 11.  
Exhibit  
" 8 " to  
Counter  
Affidavit of  
Liquidator,  
3rd  
February,  
1953—  
*continued.*

3.—At the meeting Mr. Ferguson of Irving & Bonnar said to represent Bank of British West Africa Ltd. moved motion that official receiver be appointed Liquidator and that the Company be wound up by the Court. He was supported by only one vote while over 400 votes were against.

4.—A motion that the Bank be resuscitated or reconstructed and resume duty were accepted by a majority of over 400 against Mr. Ferguson and his one supporter.

5.—That the appointment of John Adebayo as Liquidator was accepted and confirmed by creditors on the meeting of 29th December, 1952.

6.—That as Creditor I believe that Compulsory Liquidation is not to my best interest and I prefer the Company to be wind up Voluntary so as to make room for reconstruction. 10

Dated at Lagos this 27th day of January, 1953.

(Sgd.) A. AJAYI,  
*Deponent's Signature.*

Sworn to at the Supreme Court Registry,  
Lagos, this 27th day of January, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

20

This is the Exhibit marked " 8 " referred to in the Affidavit of John Adebayo this 27th day of January 1953.

Before me,  
(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

Exhibit  
" 9 "

---

**Exhibit " 9 "**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517 of 1952.

In the Matter of the Nigerian Farmers and Commercial Bank Limited 30  
(in Voluntary Liquidation).

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

## AFFIDAVIT.

I, AUGUSTUS OLUSOLA AINA, Former Staff of the Nigerian Farmers & Commercial Bank Limited make oath and say as follows :—

- 1.—That I am creditor of the Bank having £200 claim from the Bank.
- 2.—That when the Bank went into liquidation I attended the creditors meeting of the 29th December, 1952.
- 3.—At the meeting Mr. Ferguson of Irving & Bonnar said to represent Bank of B.B.W.A. moved a motion that the Official receiver be appointed Liquidator and that the Company be wound up by the Court. He was supported by only one vote while over 400 votes were against.

4.—A motion that the Bank be resuscitated or reconstructed and resume duty were accepted by a majority of over 400 against Mr. Ferguson and his one supporter.

5.—That the appointment of John Adebayo as Liquidator was accepted and confirmed by creditors on the meeting of 29th December 1952.

6.—That as creditor I believe that Compulsory liquidation is not to my best interest I prefer the Company to be wound up Voluntary so as to make room for the reconstruction.

(Sgd.) A. O. AINA,  
*Deponent.*

20

Sworn to at the Supreme Court Registry  
Lagos, this 27th day of January, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

This is the exhibit marked "9" referred to in the affidavit of John Adebayo this day of January, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

30

In the  
Supreme  
Court of  
Nigeria.

No. 11.  
Exhibit  
"9" to  
Counter  
Affidavit of  
Liquidator,  
3rd  
February,  
1953—  
*continued.*

In the  
Supreme  
Court of  
Nigeria.

No. 11.  
Exhibit  
" 10 " to  
Counter  
Affidavit of  
Liquidator,  
3rd  
February,  
1953.

**Exhibit " 10 "**

All communications to  
be addressed to the  
Government Printer,  
Telephonic Address :  
Printer Lagos.  
Telephone : Lagos 134.

No. 0123/623.

Printing and Stationery Dept.,  
Lagos,  
Nigeria.

Date : 18th December, 1952.

Mr. John Adebayo,

4, Coates Street,  
Ebute-Metta.

10

Sir,

I have to return herewith the copy of the resolution and a notice in connection with the Nigerian Farmers and Commercial Bank Ltd. which accompanied your letter of 15th December, 1952, and to request that they be submitted through the Administrator-General.

Yours faithfully,  
(Sgd.) A. O. AYORINDE,  
for Ag. : *Government Printer.*

This is the exhibit marked " 10 " referred to in the affidavit of John 20  
Adebayo this 3rd day of February, 1953.

Before me,  
(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

**Exhibit " 11 "**

Exhibit  
" 11 "

In replying please quote  
the number and date of  
this letter.

No. R.C. 617/93.

Registrar of Companies,  
16-24, Ikoyi Road,  
Lagos.

30

22 December, 1952.

Sir,

Nigerian Farmers and Commercial Bank Limited.

With reference to your letter of the 5th instant, I have to advise that the Notice for insertion in the Gazette be forwarded through the Honourable the Chief Secretary to the Government.

2. The Notice with Nigerian Farmers & Commercial Bank Ltd. In the cheque No. 1303 for 17/6d. is returned herewith. Supreme Court of Nigeria.

I have the honour to be,

Sir,

Your Obedient Servant,

(Sgd.) F. HARLAND,  
Ag. : Registrar of Companies.

The Secretary,  
John Adebayo,  
4, Coates Street,  
Ebute Metta.

10

No. 11.  
Exhibit  
" 11 " to  
Counter  
Affidavit of  
Liquidator,  
3rd  
February,  
1953—  
*continued.*

This is the exhibit marked " 11 " referred to in the affidavit of John Adebayo this 3rd day of February, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
Commissioner for Oaths.

---

Exhibit " 12 "

Exhibit  
" 12 "

Airgram

Ref. : I.P. 14/S.4/

Date : 9th January, 1953.

From  
20 The Supt. of Press,  
Western Region,  
Ibadan.

To  
Mr. John Adebayo,  
Liquidator,  
18, Tinubu Street,  
Lagos.

Dear Sir,

Publication of Legal Notices.

In W.R. Gazette.

I have to refer to your letters dated 31st December, 1952, received hereon 8th and 9th January, 1953, and inform you that since publishing two legal notices in W.R. of Nigerian Gazette No. 42/1952 I have been 30 instructed that copy for legal notices should be accepted only from the Administrator-General, Lagos.

2. As enclosures are not accepted by this form of mail I am unable to return the copy sent with your letters.

GB/JOB.

(Sgd.) GEO. BROMHEAD,  
Ag. : Superintendent of Press.

This is the exhibit marked " 12 " referred to in the Affidavit of John Adebayo this 3rd day of February, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
Commissioner for Oaths.

40

In the  
Supreme  
Court of  
Nigeria.

No. 12.

Application for civil subpoena.

No. 12.  
Application  
for civil  
subpoena.  
Undated.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517 of 1952.

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation.)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

10

The Senior Registrar,  
Supreme Court,  
Lagos.

Dear Sir,

Please cause to issue on the witnesses whose names are hereby subjoined civil subpoena, requesting each one of them to come and give evidence in the above matter, on behalf of the Nigerian Farmers & Commercial Bank Limited now in Voluntary Liquidation.

This application is made by the liquidator Mr. John Adebayo who is the principal defendant in the above matter.

20

Please make the subpoenas, returnable for Wednesday the 4th day of February 1953, before his Lordship Mr. Justice J. R. Gregg sitting at St. George's Hall at 9 a.m. in the forenoon.

<i>Names of Witness</i>	<i>Address</i>
1. J. O. Oladiran ... ..	P.O. Box 100, Ogbomosho.
2. J. J. Eweka & Co. ... ..	P.O. Box 61, Benin City.
3. Mrs. F. K. Ransome Kuti ...	Teacher, c/o Abeokuta Grammar School.
4. E. A. Sosanya ... ..	26, Moloney Bridge St., Lagos.
5. Prince Osula ... ..	2, Lagos Street, Benin City.
6. G. O. Sagay ... ..	Sapele, c/o Post Master.
7. Ogunmokun Williams ... ..	Alake's Office, Abeokuta.
8. Madam A. Aba ... ..	P.O. Box 46, Kano.
9. Urhobo College ... ..	Warri.
10. A. Chukura ... ..	Gusau.
11. Olowu Industrial Works ...	1, Ikpoba Road, Benin City.
12. Akanni Ido-Ibadan ... ..	Ibadan.
13. Samuel Adekunle Oje ... ..	P.O. Box 339, Ibadan.
14. Francis Olofu ... ..	P.O. Box 339, Ibadan.
15. Ajayi Popoola Odeide ... ..	Gada Market, Ilorin.
16. Arowolo Belo Ajeleye ... ..	Native Court, Iwo.

30

40

	<i>Names of Witness</i>	<i>Address</i>	<i>In the</i>
	17. St. John's Iloro New Church Building Committee ...	P.O. Box 35, Ilesha.	Supreme Court of Nigeria.
	18. T. J. A. Williams (Executor Williams Estate) ...	3, Akanni Street, Lagos.	—
	19. Odusanwo R.S.S. Board of Governors ...	Shagamu.	No. 12. Application for civil subpoena.
	20. S. O. Fregena ...	Warri, c/o Post Master, Warri.	Undated—
	21. R. S. Durowoju ...	Warri, " " " " "	<i>continued.</i>
10	22. Mr. Mayegun ...	10, Balogun Street, Lagos.	
	23. L. A. Ogundele ...	16, Saba Court, Lagos.	
	24. O. Lakpo ...	47, Old Yaba Road, E.B.	
	25. Sule Alarape ...	36A, Great Bridge Street, Lagos.	
	26. Salau Adejumo ...	32, Bridge Street, Lagos.	
	27. F. E. Ayodele ...	21, Daddy Alaja St., Lagos.	
	28. Shitu Ajisejini ...	25, Princess Street, Lagos.	
	29. Saka Salu ...	55, Apapa Road, Ebute Metta.	
	30. Gafaru Bisiriyu ...	5, Oke Arin Street, Lagos.	
	31. M. Jemilu ...	15, Holloway Street, Lagos.	
20	32. Okitipupa Union ...	14, Oil Mill Street, Lagos.	
	33. A. Kalajo-Lamilisa ...	23, Ibadan Street, East E.B.	
	34. F. A. Onafowora ...	132, Strachan Street, Ebute Metta.	
	35. Hadji Mohamed ...	c/o Rufai 11, Savage Lane, Lagos.	
	36. Salau Amolegbe ...	27A, Shitta Street, Lagos.	

The above persons are all traders.

Yours faithfully,

(Sgd.) THOMPSON & COKER,  
*Solicitors to the Applicant.*

30 Issued by me  
(Intld.) "Z.O.D."  
3/2/53.

No. 13.

Declaration of J. A. Odejimi in support of reconstruction.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance 1948  
and

40 In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

No. 13.  
Declara-  
tion of  
J. A.  
Odejimi  
in support  
of recon-  
struction.  
4th  
February  
1953.

In the  
Supreme  
Court of  
Nigeria.

No. 13.  
Declara-  
tion of  
J. A.  
Odejimi.  
in support  
of recon-  
struction.  
4th  
February  
1953—  
*continued.*

I, JACOB AKINLAWON ODEJIMI, Yoruba, 1 Abeokuta Street, Ebute-Metta, Nigeria make oath and say as follows :—

- 1.—That I am a Creditor of the above Bank.
- 2.—That I support a scheme of reconstruction in Voluntary Winding Up.
- 3.—That I am opposed to the Official Receiver's taking over.
- 4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) J. A. ODEJIMI.  
*Deponent's Signature.* 10

Sworn to at the Supreme Court Registry,  
Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

No. 14.  
Affidavit  
of A. O.  
Coker in  
support of  
recon-  
struction.  
4th  
February  
1953.

No. 14.

**Affidavit of A. O. Coker in support of reconstruction.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52. 20

In the Matter of the Companies Ordinance 1948  
and

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

**AFFIDAVIT.**

I, ABOLADE OLATUNJI COKER, of 60, Salvation Army Road, Ibadan, Yoruba, make oath and say as follows :—

- 1.—That I am a Creditor of the above Bank to the sum of £420.



2.—That I support a scheme of reconstruction in Voluntary Winding Up.

3.—That I will not support such schemes if the Official Receiver should take up.

4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) A. O. COKER,  
*Deponent.*

Sworn to at the Supreme Court Registry,  
10 Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.  
—  
No. 14.  
Affidavit  
of A. O.  
Coker in  
support of  
recon-  
struction.  
4th  
February  
1953—  
*continued.*

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No. 15.

Affidavit of J. Aihevba in support of Voluntary Liquidation.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance 1948  
and

20

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

No. 15.  
Affidavit  
of J.  
Aihevba in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953.

AFFIDAVIT.

I, JOSEPH AIHEVBA, of 65, Forestry Road, Benim City, Nigeria, Benin,  
make oath and say as follows :—

1.—That I represent all the creditors of the above Bank at Benin City.

2.—That at a meeting of all the creditors at Benin City it was decided  
that the creditors should support the Voluntary Liquidation of the Bank

In the Supreme Court of Nigeria.

with a view to reconstruct and to oppose Compulsory Winding Up because they believe it will be injurious to their interest.

3.—That I travelled to Lagos from Benin City to give evidence on request.

(Sgd.) J. AIHEVBA,  
*Deponent's Signature.*

No. 15.  
Affidavit of J. Aihvba in support of Voluntary Liquidation.  
4th February 1953—  
*continued.*

Sworn to at the Supreme Court Registry, Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

10

No. 16.

Affidavit of L. Osula in support of Voluntary Liquidation.

No. 16.  
Affidavit of L. Osula in support of Voluntary Liquidation.  
4th February 1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance 1948  
and

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

20

AFFIDAVIT.

I, LAWAL OSULA, of 32, Lower Lagos Street, Benin City, Nigeria, Benin, make oath and say as follows :—

1.—That I represent all the creditors of the above Bank at Benin City.

2.—That at a meeting of all the creditors at Benin City it was decided that the creditors should support the Voluntary Liquidation of the Bank with a view to reconstruct and to oppose Compulsory Winding Up because they believe it will be injurious to their interest.

3.—That I travelled to Lagos from Benin City to give evidence, on request.

(Sgd.) LAWAL OSULA,  
*Deponent's Signature.*

30

Sworn to at the Supreme Court Registry, Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

No. 17.

Affidavit of M. G. Ejaife in support of Voluntary Liquidation.

In the Supreme Court of Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/1952.

In the Matter of the Companies Ordinance, 1948  
and

In the Matter of the Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation).

No. 17.  
Affidavit of M. G. Ejaife in support of Voluntary Liquidation.  
4th February 1953.

10

AFFIDAVIT.

I, MACNEIL GABRIEL EJAIFE, Principal, Urhobo College, Warri, make oath and say as follows :—

1.—That I am a Creditor of the above Bank.

2.—That I support a scheme of reconstruction in Voluntary Winding Up.

3.—That I am opposed to the Official Receiver's taking over.

4.—That I have arrived from Warri in answer to a request to give evidence in this matter.

(Sgd.) M. G. EJAIFE,  
*Deponent's Signature.*

20

Sworn to at the Supreme Court Registry,  
Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

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No. 18.

Affidavit of C. Ayo Savage in support of Voluntary Liquidation.

No. 18.  
Affidavit of C. Ayo Savage in support of Voluntary Liquidation.  
4th February 1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

30

In the Matter of the Companies Ordinance, 1948  
and

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

In the  
Supreme  
Court of  
Nigeria.

No. 18.  
Affidavit  
of C. Ayo  
Savage in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953—  
*continued.*

I, Mr. CHRISTIAN AYO SAVAGE, Yoruba, Druggist & Chemist, Oke Padre Ibadan, Nigeria, make oath and say as follows :—

- 1.—That I am a Creditor of the above Bank.
- 2.—That I support a scheme of reconstruction in Voluntary Winding Up.
- 3.—That I will not support such Scheme if the Official Receiver should take up.
- 4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) C. A. SAVAGE, 10  
*Deponent's Signature.*

Sworn to at the Supreme Court Registry,  
Lagos, this 4th day of February, 1953.

Before me,  
(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

No. 19.  
Affidavit  
of S. A.  
Akintude  
in support  
of  
Voluntary  
Liquidation.  
4th  
February  
1953.

No. 19.

**Affidavit of S. A. Akintude in support of Voluntary Liquidation.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52. 20

In the Matter of the Companies Ordinance, 1948  
and

In the Matter of the Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation).

I, SAMUEL ADEYEMI AKINTUDE, of Isale Osun Ibadan, Yoruba, make oath and say as follows :—

- 1.—That I am a Creditor of the above Bank.
- 2.—That I support a scheme of reconstruction in Voluntary Winding Up.

3.—That I will not support such Scheme if the Official Receiver should take up.

4.—That I have arrived from Ibadan in answer to a request to give evidence in this matter.

(Sgd.) S. A. AKINTUDE,  
*Deponent's Signature.*

Sworn to at the Supreme Court Registry,  
Lagos, this 4th day of February, 1953.

Before me,

10 (Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.

No. 19.  
Affidavit  
of S. A.  
Akintude  
in support  
of  
Voluntary  
Liquida-  
tion.  
4th  
February  
1953—  
*continued.*

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No. 20.

**Affidavit of S. B. Olorode in support of Voluntary Liquidation**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance, 1948  
and

20 In the Matter of the Nigerian Farmers & Commercial Bank, Limited  
(in Voluntary Liquidation).

No. 20.  
Affidavit  
of S. B.  
Olorode in  
support of  
Voluntary  
Liquida-  
tion.  
4th  
February  
1953.

**AFFIDAVIT.**

I, SAMUEL BABAJIDE OLERODE, of New Court Road, Ibadan, Nigeria, Yoruba, make oath and say as follows :—

1.—That I am a Creditor of the above Bank to the sum of £100 (One Hundred Pounds).

2.—That I support a scheme of reconstruction in Voluntary Winding Up.

3.—That at a meeting of the Creditors of the Bank it was decided that the Official Receiver should not conduct the winding up as we believe such  
30 a move will be injurious to our interests as creditors.

In the  
Supreme  
Court of  
Nigeria.

4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) S. B. OLORODE,  
*Deponent's Signature.*

No. 20.  
Affidavit  
of S. B.  
Olorode in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953—  
*continued.*

Sworn to at the Supreme Court Registry,  
Lagos, this 4th day of February, 1953.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

No. 21.  
Affidavit of  
S. Salu in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953.

No. 21.

10

**Affidavit of S. Salu in support of Voluntary Liquidation.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance 1948  
and

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

**AFFIDAVIT.**

20

I, SAKA SALU of No. 55, Apapa Road, Ebute Metta, Nigeria, Yoruba,  
make oath and say as follows :—

1.—That I am a Creditor of the above Bank to the sum of  
£434 1s. 6d. (Four Hundred & Thirty Four Pounds One Shilling and  
Six pence).

2.—That I support a scheme of reconstruction in Voluntary  
Winding Up.

3.—That I am opposed to the Official Receiver's taking over.

4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) SAKA SALU,  
*Deponent's Signature.*

Declared at the Supreme Court Registry this 4th day of February 1953. The foregoing having been read over and explained to the Deponent in Yoruba language by me

(Sgd.) MICHAEL ELEDOMO OJOMO.

Sworn Interpreter when he seemed perfectly to understand same before appending his Signature.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

In the  
Supreme  
Court of  
Nigeria.

No. 21.  
Affidavit of  
S. Salu in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953—  
*continued.*

---

No. 22.

**Affidavit of Mrs. F. Ransome Kuti in support of Voluntary Liquidation.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of the Companies Ordinance 1948

20

and

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

I, MRS. FUNMILAYO RANSOME KUTI, Principal of a School, Abeokuta and President of Nigerian Women Union, Yoruba, make oath and say as follows :—

1.—That I am a Creditor of the above Bank.

2.—That I support a Scheme of reconstruction in Voluntary Winding Up.

No. 22.  
Affidavit of  
Mrs. F.  
Ransome  
Kuti in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953.

In the  
Supreme  
Court of  
Nigeria.

3.—That I am opposed to the Official Receiver's taking over.

4.—That I have arrived in answer to a request to give evidence in this matter.

(Sgd.) F. RANSOME KUTI,  
*Deponent.*

No. 22.  
Affidavit of  
Mrs. F.  
Ransome  
Kuti in  
support of  
Voluntary  
Liquidation.  
4th  
February  
1953—  
*continued.*

Sworn to at the Supreme Court Registry,  
Lagos this 4th day of February, 1953.

Before me,

(Sgd.) M. E. OJOMO,  
*Commissioner for Oaths.*

10

No. 23.  
Further  
Hearing of  
Petition by  
Official  
Receiver.  
4th  
February  
1953.

No. 23.

**Further Hearing of Petition by Official Receiver.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Wednesday the 4th day of February, 1953, before The Honourable  
Mr. Justice JAMES REALI GREGG, Puisne Judge.

M. 4517A.

*In re* Matter of the Farmers & Commercial Bank.

*In re* Official Receiver.

Petition by Official Receiver.

20

HARLAND for Official Receiver.

THOMPSON and COKER for Respondent. Counter-affidavit filed by liquidator.

Thompson states he wishes to raise an objection on a question of practice and procedure.

Harland states no such objection taken at previous hearing.

By COURT : Objection will be heard.

Thompson refers to Order 2 Rule 1 of the Supreme Court Rules. Every suit shall be commenced by a writ of Summons. Refers to Supreme Court Ordinance S.1. A Suit must be commenced by a writ. Petition of Official Receiver should be commenced by writ. Writ should be 30 accompanied by the Petition referred to in S. 132 (2) of Cap. 38.

Petition is a Suit not a motion.



In England the practice is to proceed by way of memorandum. This is not the practice here. Refers to Section 15 of Supreme Court Order. Asks that petition be struck out as it is not properly before the Court.

Harland states objection cannot be taken now.

BY COURT: Having regard to the wording of Section 132 (2) of the Companies Ordinance and to the Practice that has hitherto prevailed in these Courts I over-rule the objection raised.

(Sgd.) J. R. GREGG.

In the  
Supreme  
Court of  
Nigeria.

No. 23.  
Further  
Hearing of  
Petition by  
Official  
Receiver.  
4th  
February  
1953—  
*continued.*

10 Thompson states he wishes that Mr. Ferguson be called.  
Harland: addresses Court in support of petition. This Company a one-man Company. Liquidator is his nominee. Places matter in a difficult position. If after a meeting of Creditors is held they wish to replace Official Receiver by present liquidator they can do so. It is in the public interest and in the interest of Creditors that this matter be wound up by Court.

Thompson refers to Counter affidavit. The purpose of the Voluntary Liquidation is to enable Company to evolve a scheme of re-construction.

We wish to contest this case. Asks for adjournment.

20 TO COURT: Subpœnaes for witnesses applied for yesterday. Evidence should be called.

COURT: Registrar informs Court that application for subpœnaes received by him only this morning.

THOMPSON TO COURT: I do not consider it necessary to file a list of Creditors.

States an affidavit in support of a petition is only *prima facie* evidence. States allegation of fraud.

Harland objects. No allegation of fraud.

Thompson continues: Creditors should come to Court.

30 Refers to Exhibit "C" in affidavit of Official Receiver. This states opinions.

The whole purpose of our Voluntary Liquidation is re-construction. We preferred this method to re-organizing the Company without going into liquidation.

Asks for adjournment.

Harland objects to adjournment. States scheme of re-construction can be presented to Court for approval by Company after Official Receiver takes over.

40 BY COURT: I shall give my decision on whether evidence will be taken in this matter or whether the Official Receiver's petition should be granted forthwith on Friday morning. Adjourned to 6 February 1953.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*  
4/2/53.

No. 24.

In the  
Supreme  
Court of  
Nigeria.

**Motion and Affidavit for Leave to Appeal against Interlocutory Decision.**

No. 24.  
Motion and  
Affidavit  
for Leave to  
Appeal  
against  
Inter-  
locutory  
Decision.  
5th  
February  
1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517/52.

In the Matter of The Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation)

In the Matter of the Companies Ordinance Cap. 38 L/N.

Application under Sec. 174 of the Companies Ordinance Vol. 1 Cap 38 L/N.  
Section 3 (b) of West African Court of Appeal Ordinance Vol. 6 Cap 229 L/N. 10  
Section 39 (1) Supreme Court Ordinance Vol. 6 L/N.

**MOTION ON NOTICE.**

TAKE NOTICE that this Honourable Court will be moved on Friday the.....day of February 1953 or so soon thereafter as Counsel can be heard on behalf of the above named..... for an Order (1) That Leave be granted to the respondents to appeal against an order of the learned presiding Judge on 4/2/53 in the above matter that he would decide whether evidence would be called or whether he should grant the application of the Official Receiver forthwith and that in any event the learned presiding Judge do transfer the petition and all suits 20 in the same Cause or matter before another judge of the Supreme Court and that all further proceedings in this matter be stayed in the meantime.

Dated at Lagos this 5th day of February, 1953.

(Sgd.) F. A. THOMPSON,  
*Solicitors to the Applicant.*

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517A/52.

In the Matter of The Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation)

30

and

In the Matter of the Companies Ordinance.

**AFFIDAVIT.**

I, ADEWALE THOMPSON, Solicitor and Advocate of 18, Tinubu Street, Lagos, Yoruba, Male, make oath and say as follows :—

1.—That I am one of the Counsel representing the Respondents in the Petition for Compulsory order brought by the Official Receiver.

2.—That the said petition came before this Honourable Court on Wednesday 4/2/53.

3.—That before the opening of the Official Receiver's case a preliminary objection was raised on behalf of the respondents that the petition be struck out as it has not complied with the Rules of Court in that it being a suit, it was not issued on accordance with the provisions of Order 2 Rule 1 Vol. X L/N.

10 4.—That the above objection was overruled by the Court.

5.—That the Official Receiver was then called upon to open his case.

6.—That after the Official Receiver was heard by the Court Counsel for the Respondents informed the Court that he would like the Official Receiver to produce Mr. Ferguson of Messrs. Irving & Bonnar, for cross examination.

7.—That the judge remarked that counsel's application was recorded.

8.—Counsel for the Respondents then informed the Court that he was not ready to go on as most of his witnesses were not in Court. The following facts were brought to the knowledge of the Court.

20 (a) That subpœnæ were already filed requesting the presence of 36 witnesses ;

(b) That a counter Affidavit has been filed disputing every allegation of fact relied upon in the Affidavit of the Petitioner.

(c) That the cross-examination of Mr. Ferguson would be essential because he has given an opinion (already in evidence and marked Ex. "C" in the Affidavit of the Official Receiver) calculated to prejudice the Respondents' motion for reconstruction also listed for hearing on the same date and marked M. 4517.

30 (d) On the 27th January 1953 the suit was adjourned till 4th February 1953 for 2 reasons

(i) That the Respondents be allowed to file a counter Affidavit.

(ii) That the Respondents be given time to call their witnesses.

9.—That as a result of the facts contained in paragraph 8 (d) (ii) above the Respondents filed the subpœnæ already referred to in paragraph 8 (a) of this Affidavit.

10.—That the learned judge stopped counsel for the Respondents abruptly in the middle of his speech and asked the Official Receiver whether he opposed adjournment.

In the  
Supreme  
Court of  
Nigeria.

No. 24.  
Motion and  
Affidavit  
for Leave to  
Appeal  
against  
Inter-  
locutory  
Decision.  
5th  
February  
1953.

—continued.

In the  
Supreme  
Court of  
Nigeria.

No. 24.  
Motion and  
Affidavit  
for Leave to  
Appeal  
against  
Inter-  
locutory  
Decision.  
5th  
February,  
1953—  
*continued.*

11.—That the Official Receiver said he opposed adjournment.

12.—That the judge then gave the following decision, that he would adjourn the case to 6/2/53 for decision whether evidence is necessary or the Official Receiver's application be granted forthwith.

13.—That by the terms of the decision the Respondents will be precluded from defending the petition should the judge decide that evidence would not be necessary.

14.—That counsel was going to explain that until the application to call Mr. Ferguson is overruled the Petitioner Official Receiver has not closed his case, but he was rebuked by the Court and had to sit down obediently. 10

15.—That the Respondents believe that they have not been fairly treated, in that no safe scope is afforded them in the terms of the decision of 4/2/53 permitting them to be heard in answer to the petition.

16.—That the Respondents are altogether dissatisfied with the decision and have given us instruction to appeal against it and in the alternative to request that the matter be transferred before another judge of the Supreme Court.

(Sgd.) ADEWALE THOMPSON,  
*Deponent.*

Sworn to at the Supreme Court Registry,  
Lagos, this 5th day of February 1953.

20

Before me,

(Sgd.) A. BAMGBOYE,  
*Commissioner for Oaths.*

No. 25.  
Hearing of  
Motion for  
Leave to  
Appeal.  
6th  
February  
1953.

No. 25.

Hearing of Motion for Leave to Appeal.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Friday the 6th day of February, 1953, before The Honourable,  
Mr. Justice JAMES REALI GREGG, Puisne Judge. 30

M. 4517A.

*In re* Matter of the Nigerian Farmers & Commercial Bank Limited.

*Re* Official Receiver.

HARLAND for Official Receiver.

THOMPSON for liquidator.

Thompson intimates that there is a motion before Court asking leave to appeal from an interlocutory order made on 4/2/53 by which this Court adjourned this matter for the purpose of making a decision. States he has filed a motion for leave to appeal against this order; but as it is listed for Monday he wants it heard before the decision of this Court.

BY COURT: I shall hear the motion.

Thompson moves: Refers to affidavit in support of motion. Reads affidavit.

BY COURT: Having heard the application I am of the opinion that the order referred to by applicant is not an interlocutory order and I refuse the application accordingly. Application refused.

(Sgd.) J. R. GREGG.

In the  
Supreme  
Court of  
Nigeria.

No. 25.  
Hearing of  
Motion for  
Leave to  
Appeal.  
6th  
February  
1953—  
*continued.*

---

No. 26.

Decision of Court on Petition of Official Receiver.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Friday the 6th day of February, 1953, before The Honourable  
Mr. Justice JAMES REALI GREGG, Puisne Judge.

M. 4517A.

In the Matter of the Nigerian Farmers & Commercial Bank Limited.  
(In Voluntary Liquidation)

20

and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised  
Laws of Nigeria.

*In re* Application by the Official Receiver.

DECISION.

The petition of the Official Receiver in this matter first came before me on the 26th of January, 1953. At that time Mr. Thompson, Counsel for the Company in liquidation, who was appearing in another matter which concerned the affairs of the said Company, stated that he did not know about the petition. The Court then adjourned both matters until the 27th of January, 1953 and stated, for reasons given, that on the said date the Official Receiver's Petition would be taken first.

30

No. 26.  
Decision of  
Court on  
Petition of  
Official  
Receiver.  
6th  
February  
1953.

In the  
Supreme  
Court of  
Nigeria.

No. 26.  
Decision of  
Court on  
Petition of  
Official  
Receiver.  
6th  
February  
1953—  
*continued.*

On the 27th of January, 1953, Mr. Thompson Counsel both for the Company in voluntary liquidation and for Mr. John Adebayo the local liquidator of the said Company stated, in effect, that while he had been served with the petition as Counsel for the Company in liquidation he had not been served with it as Counsel for the liquidator and that the liquidator had not been served. He, however, undertook to accept service for the liquidator then and asked for an adjournment to file a Counter-Affidavit and to call witnesses to refute allegations contained in the Official Receiver's petition.

The Court granted an adjournment of one week and stated that this will allow service of the petition on the liquidator and the filing of a Counter-Affidavit by him if necessary and that it will also allow the calling of witnesses if he sees fit. The hearing of the petition was then adjourned to February 4, 1953. 10

On February 4, 1953, a Counter-Affidavit, filed by the liquidator, was before this Court ; but no witnesses were produced by Mr. Thompson. In this connection the Court was informed in effect that application for witnesses subpoenas had only been made on 3.2.53 and that the registrar of this Court had only received the application on the morning of February 4, 1953. 20

I have, however, now got the liquidator's application for subpoenas before me and see that in fact it was submitted to the Registry on 2/2/53, but even so this shows delay and delay for which no explanation has been offered. Before this Court heard submissions concerning the petition Mr. Thompson raised a preliminary objection regarding the procedure adopted by the Official Receiver in presenting his petition supported by an affidavit signed by him.

This procedure of presenting a petition supported by an affidavit signed by the petitioner follows both local and English practice but Mr. Thompson contended, in effect, that the petition should have been presented in the form of a writ. His objection was overruled. 30

The Court then listened to argument both for and against the petition.

Mr. Thompson in reply to the Official Receiver referred to the liquidator's affidavit and stated that the purpose of the voluntary liquidation was to enable the Company to evolve a scheme of reconstruction. Mr. Thompson then said that he wished to contest this case and asked for an adjournment and that creditors should be brought to Court.

Finally this Court announced that it would give its decision on whether evidence should be taken in this matter or whether the Official Receiver's petition should be granted forthwith on February 6, 1953 (today). 40

In the affidavit filed by the local liquidator Mr. John Adebayo there is no denial of certain important averments made by the Official Receiver in his petition.

These are :

1. That the directors of the Company are Mr. Adeboyo Shobayo Olumuyiwa Coker and Mr. Tijani Afolabi Adeosun ;

2. that the issued capital of the Company is £25,194 made up of 500 preference shares and 24,694 ordinary shares.
3. that Mr. Coker holds the whole of the 500 issued preference shares and 24,455 of the 24,694 ordinary shares.

In the  
Supreme  
Court of  
Nigeria.

This last averment means in effect that the Nigerian Farmers & Commercial Bank Ltd., is virtually a one-man Company.

Further it is not denied by the liquidator that he was the nominee of Mr. Coker for the position of liquidator. He denies that he was appointed by Mr. Coker ; but I can see no denial in his affidavit of the statement  
10 in paragraph 16 of the petition to the effect that he is the nominee of Mr. Coker who has complete control of the Company.

No. 26.  
Decision of  
Court on  
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Official  
Receiver.  
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February  
1953—  
*continued.*

On these facts which are in themselves sufficient, in my opinion, to justify a winding up by the Court I see no reason to call evidence ; and that being so I do not think it necessary to allow evidence to be called in relation to other matters ; and accordingly I order a refund of the fees paid for witness subpoenas by the local liquidator.

No fraud is alleged by the Official Receiver ; but in my opinion it would be contrary to public interest and against the interest of creditors generally to allow a Company to continue a voluntary winding up under the  
20 circumstances mentioned.

On the 12th of December, 1952, the Company passed an extra-ordinary resolution. In this it was resolved that the Nigerian Farmers & Commercial Bank Ltd. cannot by reason of its liabilities and other difficulties continue its business and that it is advisable to wind up the same and that the Company be wound up voluntarily. It was also resolved that Mr. John Adebayo be appointed liquidator.

If as stated by Counsel for the liquidator the purpose of the voluntary liquidation is to enable the Company to evolve a scheme of re-construction it seems extremely odd to me that the reason for winding up should be as  
30 stated in the resolution.

If the Company has in fact a scheme of re-construction in view there is nothing in my opinion to stop this being considered by creditors after the Official Receiver takes over.

Having carefully considered the petition filed together with the affidavit of the local liquidator Mr. Adebayo and having heard the submissions of Counsel I am satisfied in accordance with S.132 (2) of the Companies Ordinance that the present voluntary winding up of the Nigerian Farmers & Commercial Bank Ltd., cannot be continued with due regard to the interests of creditors and I order :

- 40 1.—That the Nigerian Farmers & Commercial Bank Ltd. be wound up by this Court.
- 2.—That the Official Receiver of Nigeria be appointed liquidator of the said Company ; and
- 3.—That the local liquidator of the said Company Mr. John Adebayo hand over to the Official Receiver all books, papers and other documents in

In the  
Supreme  
Court of  
Nigeria.

No. 26.  
Decision of  
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Petition of  
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*continued.*

his possession relating to the affairs of the said Company together with an account of his dealings with the affairs of the said Company since the date of his appointment as liquidator, namely, December 12, 1952.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*  
6/2/53.

Certified true copy,  
(Sgd.) OLA SCOTT,  
*Senior Registrar.*

DECISION DELIVERED.

Thompson asks for time—1 month—within which the directors and 10 liquidator of the Company can comply with the order of the Court as to the handing over of documents, books and accounts, etc., to the Official Receiver.

BY COURT: One month allowed from to-day within which the directors and liquidator of the Nigerian Farmers and Commercial Bank Ltd. will hand over documents, papers, books, etc., to the Official Receiver in accordance with the order of the Court.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*  
6/2/53. 20

No. 27.  
Formal  
Order of  
Court on  
Decision.  
6th  
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No. 27.  
Formal Order of Court on Decision.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517A.

In the Matter of the Nigerian Farmers and Commercial Bank Ltd.  
(in Voluntary Liquidation).  
and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised Laws  
of Nigeria. 30  
and

*In re* FRANK HARLAND, Esquire, Official Receiver ... .. *Applicant.*

UPON READING the Petition of Frank Harland, Esquire, Official Receiver for Nigeria, sworn to and filed on the 23rd day of January, 1953, and after hearing Frank Harland, Esquire, on behalf of the Official Receiver for Nigeria and Adewale Thompson, Esquire, of Messrs. Thompson and Coker, Solicitors to the present liquidator (Mr. John Adebayo).

AND having carefully considered the Petition filed together with the affidavit of the Liquidator Mr. Adebayo and having heard the submissions of Counsel it is ordered in accordance with Section 132 (2) of the Companies 40



Ordinance that the present voluntary winding up of the Nigerian Farmers and Commercial Bank Ltd. cannot be continued with due regard to the interests of creditors.

In the  
Supreme  
Court of  
Nigeria.

THE COURT DOTH ORDER AS FOLLOWS :—

- 10 (1) That the Nigerian Farmers & Commercial Bank Ltd. be wound up by this Court.
- (2) That the Official Receiver of Nigeria be and is hereby appointed Liquidator of the said Company, and
- (3) That the local liquidator of the said Company Mr. John Adebayo be and is hereby ordered to hand over to the Official Receiver for Nigeria, the liquidator appointed by this Court, all books, papers and other documents in his possession relating to the affairs of the said Company together with an account of his dealings with the affairs of the said Company since the date of his appointment as liquidator, namely, December 12, 1952.

No. 27.  
Formal  
Order of  
Court on  
Decision.  
6th  
February  
1953—  
*continued.*

Dated at Lagos this 6th day of February, 1953.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*

No. 28.

20 Order of Court for Refund of fees paid for Subpoenas.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517A.

In the Matter of the Nigerian Farmers and Commercial Bank Ltd.  
(in Voluntary Liquidation).

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

and

30 *In re* FRANK HARLAND Esquire, Official Receiver ... *Applicant.*

WHEREAS on the 6th day of February, 1953, in making an order for the winding up by the Court of the Farmers and Commercial Bank Limited (in Voluntary Liquidation) the Court held that sufficient facts were before it to justify making the said order without calling witnesses :

NOW THEREFORE IT IS hereby ordered that a refund of fees for witnesses subpoenas paid by the local liquidator of the above mentioned Company be made.

Dated at Lagos this 6th day of February, 1953.

(Sgd.) J. R. GREGG,  
*Puisne Judge.*

No. 28.  
Order of  
Court for  
Refund of  
fees paid for  
Subpoenas.  
6th  
February  
1953.

In the  
Supreme  
Court of  
Nigeria.

No. 29.

Order of Court refusing leave to appeal.

No. 29.  
Order of  
Court  
refusing  
leave to  
appeal.  
6th  
February  
1953.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. M. 4517A.

In the Matter of the Nigerian Farmers and Commercial Bank Ltd.  
(in Voluntary Liquidation)  
and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria. 10

UPON READING the affidavit of Adewale Thompson, Solicitor and Advocate of the Supreme Court of Nigeria and of 18, Tinubu Street, Lagos, sworn to and filed on the 5th day of February, 1953, and after hearing Mr. Adewale Thompson of Messrs. Thompson and Coker, Solicitors for the Liquidators and Frank Harland Esquire for and on behalf of the Official Receiver for Nigeria in this matter.

IT is hereby ordered that the motion be and is hereby refused.

Dated at Lagos this 6th day of February, 1953.

(Sgd.) J. R. GREGG,  
*Puisne Judge.* 20

In the West  
African  
Court of  
Appeal.

No. 30.

Notice of Appeal.

Appendix A.

Civil Form 1.

No. 30.  
Notice of  
Appeal.  
13th  
February  
1953.

IN THE WEST AFRICAN COURT OF APPEAL.  
NOTICE OF APPEAL.

(Rule 12)

M. 4517A.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)  
and 30

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria. *In re* JOHN ADEBAYO (Liquidator) ... .. *Appellant.*

TAKE NOTICE that the Respondent-Applicant being dissatisfied with the decision of the Supreme Court Lagos contained in the order of the said Court dated the 6th day of February, 1953 doth 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.

In the West African Court of Appeal.

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.

No. 30. Notice to Appeal. 13th February 1953—*continued.*

- 2. Part of decision of the lower Court complained of :
- 3. Grounds of Appeal : attached.
- 4. Relief sought from the West African Court of Appeal : setting aside order and dismissing Affidavit of the Official Receiver's petition.
- 10 5. Persons directly affected by the appeal :

*Name* *Address*

(1) The Official Receiver of Nigeria,  
Administrator-General's Office, etc.,  
16-24, Ikoyi Road, Lagos, Nigeria.

Dated this 13th day of February, 1953.

(Sgd.) THOMAS, WILLIAMS & KAYODE.

(Sgd.) OLADIPO MOORE.

*Appellant's Solicitors.*

20

No. 31.

Grounds of Appeal.

No. 31. Grounds of Appeal. 13th February 1953.

GROUNDS OF APPEAL.

The learned trial Judge erred in law in allowing the petition of the Official Receiver and ordering compulsory winding up by the Court when no sufficient reason in law was given for making such an order.

2.—The Official Receiver not having alleged fraud or misfeasance in his petition the learned trial Judge erred in law in granting the prayer asked for in the said petition.

3.—The learned trial Judge erred in law in refusing to take evidence of the Creditors who went against the compulsory liquidation of the  
30 Company.

4.—The learned trial Judge misdirected himself on the effect of the affidavits sworn to by the Official Receiver and Liquidator in the following passage of his judgment " Further it is not denied by the liquidator that

In the West African Court of Appeal.

“ he was the nominee of Mr. Coker, for the position of Liquidator. He denies that he was appointed by Mr. Coker but I can see no denial in his affidavit of the statement in paragraph 16 of the petition to the effect that he is the nominee of Mr. Coker who has complete control of the “ Company.”

No. 31. Grounds of Appeal. 13th February 1953— continued.

5.—The learned trial Judge erred in law in appointing the Official Receiver of Nigeria as Liquidator to the Company contrary to Sections 144 3 (b) and 147 (1) (a) and (b) of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

(Sgd.) THOMAS, WILLIAMS & KAYODE. 10  
(Sgd.) OLADIPO MOORE.

No. 32. Motion and Affidavit for Order for stay of execution. 13th February 1953.

No. 32. Motion and Affidavit for Order for stay of execution.

IN THE WEST AFRICAN COURT OF APPEAL.

M. 4517A.  
W.A.C.A. 22/1953.

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria. 20

*In re* JOHN ADEBAYO ... .. *Appellant*

and

THE OFFICIAL RECEIVER ... .. *Respondent.*

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court will be moved on Monday the 23rd day of February, 1953, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Applicant

for an Order for a stay of execution in the above-mentioned matter pending the determination of the Appeal and for such further or other order or orders as this Honourable Court may deem fit to make.

In the West African Court of Appeal.

Dated this 13th day of February, 1953.

(Sgd.) THOMAS, WILLIAMS & KAYODE.

(Sgd.) OLADIPO MOORE

*Applicant's Solicitors.*

No. 32.  
Motion and Affidavit for Order for stay of execution.  
13th February 1953—  
*continued.*

On notice to :—

10 The Official Receiver,  
Administrator-General's Office,  
16-24, Ikoyi Road,  
Lagos, Nigeria.

IN THE WEST AFRICAN COURT OF APPEAL.

M. 4517A.

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation).

and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised Laws  
of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant*

and

20 THE OFFICIAL RECEIVER ... .. *Respondent.*

AFFIDAVIT.

I, JOHN ADEBAYO, English Accountant, of 4, Coates Street, Ebute Metta, Male, Yoruba, hereby solemnly declare and affirm and say as follows:—

1.—That I am the Appellant in the above-mentioned matter.

2.—That upon a Petition of the Official Receiver the Supreme Court (Lagos Judicial Division) ordered the winding up to the Company by the Court.

In the West  
African  
Court of  
Appeal.

No. 32.  
Motion and  
Affidavit  
or Order  
for stay of  
execution.  
13th  
February  
1953—  
*continued.*

3.—That a certified true copy of the said Decision dated 6th February, 1953, is herewith attached and marked “ A.”

4.—That on the 13th day of February, 1953, I filed my Notice of Appeal against the said Order and I have caused this said Notice to be served on the Official Receiver.

5.—That the Official Receiver has been appointed to act within a month of the said Order.

6.—That the Creditors have a Scheme of Reconstruction whereby the Company can be resuscitated.

7.—That those interested in financing the Company will not supply 10 the necessary funds if the Company is to be wound up by the Court.

8.—That it is in the interest of the Creditors and Contributors of the Company if the Company is resuscitated when they stand a chance of being paid in full.

9.—That I am informed and verily believe that the next sitting of this Honourable Court will be in April or May next.

10.—That if a stay of execution is not granted, then Appeal would be of only academic interest and would lose all its practical effects.

11.—That the document attached herewith and marked Exhibit “ B ” is a true copy of the Notice of Appeal lodged in this matter.

20

(Sgd.) J. ADEBAYO,  
*Declarant.*

Declared and affirmed at the Supreme Court  
Registry, Lagos, this 13th day of February, 1953.

Before me,

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

---

No. 33.

Hearing of Motion for stay of execution.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

No. 33.  
Hearing of Motion for stay of execution.  
23rd February 1953.

Monday, the 23rd day of February, 1953, before His Lordship Joseph Henri Maxime DE COMARMOND, Senior Puisne Judge, Nigeria, sitting as a Single Judge of the Court.

W.A.C.A. 22/1953.

10 In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)  
and  
In the Matter of Companies Ordinance, etc.

*In re* JOHN ADEBAYO ... .. *Applicant*  
and  
THE OFFICIAL RECEIVER ... .. *Respondent.*

Mr. O. MOORE to move on behalf of J. ADEBAYO with WILLIAMS.  
SAGOE for Official Receiver & Liquidator.

20 Moore moves for stay of execution. Appeal to W.A.C.A. has been entered. Relies on affidavit of Adebayo to which decision is annexed. Reads last paragraph on p. 2 of decision and top of page 3 (Record p. 51). There has been a resolution for voluntary liquidation and the Liquidator was Mr. Adebayo.

Official Receiver petitioned under Section 132 (2) of Cap. 38 (1899) 2 Ch. 204. *In re* 1897 Jubilee Sites Syndicate.

In present case no fraud was alleged by Official Receiver (Court points out that this is not the hearing of the appeal).

If stay not granted, the Official Receiver may sell assets. If he does so all hope of refloating bank would disappear. What applicant asks for is an order "freezing" the position as it now stands.

30 SAGOE :

The Official Receiver did not, and could not, allege fraud because he had not at the time had access to the books.

Judge mentioned the circumstances which in his view called for the order prayed for.

If stay granted as prayed for, the creditors will have to wait a long time, there are assets to be realised, liquidation would be "frozen."

If Official Receiver goes on with liquidation why could scheme of reconstruction not be put forward at a meeting of creditors ? No meeting called yet because the notice of motion was filed.

In the West African Court of Appeal.

No. 33. Hearing of Motion for Stay of Execution. 23rd February 1953—*continued.*

As to paragraph 10 of Adebayo's affidavit it is obvious that liquidation will not be completed by time appeal heard.

F. R. A. WILLIAMS replies.

There is a substantial question for decision of Appeal Court. If liquidation goes on, all assets may disappear before appeal decided.

No counter-affidavit to support argument that there are goods in sufferance at Customs or assets to be realised.

Court asks whether applicant would be satisfied if liquidation goes on subject to order to Official Receiver that bank buildings will not be sold. Williams answers in negative. Applicant wants to carry on the liquidation. 10

There was no allegation that appointment of voluntary liquidator was objected to by creditors.

Right of voluntary liquidator should carry weight.

Court will decide this motion on the 26th instant.

(Sgd.) M. DE COMARMOND,  
S.P.J.

No. 34. Further Hearing of Motion for stay of execution. 26th February 1953.

No. 34.

Further Hearing of Motion for stay of execution.

W.A.C.A. 22/53.

In the Matter of Nigerian Farmers & Commercial Bank Limited, etc. 20

*In re* JOHN ADEBAYO ... .. Applicant

and

THE OFFICIAL RECEIVER ... .. Respondent.

Mr. F. R. A. WILLIAMS for Appellant (Applicant) with Mr. MOORE.

Mr. SAGOE for Respondent.

Decision read out. Stay of execution refused.

No costs asked for. No order as to costs.

(Sgd.) M. DE COMARMOND,  
S.P.J.



No. 35.

Decision on Motion for stay of execution.

In the West African Court of Appeal.

No. 35. Decision on Motion for stay of execution. 26th February 1953.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS.

Thursday, the 26th day of February, 1953, before His Lordship Joseph Henri Maxime DE COMARMOND, Senior Puisne Judge, Nigeria, sitting as a Single Judge of the Court.

W.A.C.A. 22/1953.

10 In the Matter of the Nigerian Farmers and Commercial Bank Ltd.  
(in Voluntary Liquidation)  
and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* JOHN ADEBAYO ... .. Applicant  
and

THE OFFICIAL RECEIVER ... .. Respondent.

This is an application for stay of execution pending the determination of an appeal to this Court. The appeal has been entered.

20 GREGG, J., heard a petition from the Official Receiver praying that an order be made for the winding up by the Court of the Nigerian Farmers & Commercial Bank Limited. The said Bank was then in voluntary liquidation and the present applicant had been appointed as liquidator.

On the 6th February, 1953, GREGG, J., ordered that the Company be wound up by the Court and appointed the Official Receiver as liquidator. On the 13th February, 1953, notice of motion for stay of execution was filed.

30 Learned counsel for the present applicant have submitted that the appeal is not a frivolous one and that if the winding-up by the Official Receiver and Liquidator is allowed to proceed, all the assets may have been realised before the appeal is decided. This would mean, said counsel, that even if the Appellant were successful, his success would not have any practical result.

In *re* 1897 Jubilee Sites Syndicate (1899) 2 Ch. 204 was cited to me in support of the submission that a compulsory winding-up order should not be made as a matter of course, and that a strong case should be made to show that it is required. Learned counsel for the applicant pointed out that no allegation of fraud had been made and that the voluntary liquidation should have been allowed to proceed.

I am not hearing the appeal and I must not be taken as expressing any opinion as to whether it should succeed or fail.

40 I have read Section 132 (2) of the Companies Ordinance which lays down that where a company is being wound up voluntarily, a petition may be presented by the Official Receiver but that the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary

In the West African Court of Appeal.

No. 35.  
Decision on Motion for stay of execution.  
26th February 1953—  
*continued.*

winding up cannot be continued with due regard to the interests of the creditors or contributories.

I have also read Gregg, J.'s decision, a copy of which is annexed to the applicant's affidavit. I note that the learned judge stated that it was not denied by the applicant that he was Mr. A. S. O. Coker's nominee and that the Company was practically a one-man company (because Mr. Coker holds all the issued preference shares and 24,455 out of 24,694 ordinary shares).

By reason of these facts the learned judge considered that it would be contrary to public interest and to the interest of the creditors to allow the voluntary winding up to continue. 10

I have therefore to consider whether I would be justified in granting a stay, thus interfering with the interest of creditors.

In this connection I would mention a decision of Vaughan Williams, J., reported in (1894) 1 Ch. 444 (*In re Medical Battery Company*) in which the learned Judge stated that it would be very prejudicial to the interests of the creditors that any one should continue to act as liquidator who is under the control of the shareholders. In that case the position was very similar to that in the present case because the control of the Company was in the hands of the managing director and his immediate family and this resulted in their nominee becoming voluntary liquidator. 20

Although an order under Section 132 (2) should not be made as of course and should not be made unless a strong case has been made, it seems to me on the authority of *In re Medical Battery Company* that a situation which is prejudicial to the interests of creditors does justify the interference of the Court.

I would therefore require some very special and convincing reason for granting a stay of execution.

One of the reasons put forward by the applicant is that the creditors have a scheme of reconstruction whereby the Company can be resuscitated, but that those interested in financing the Company will not supply the necessary funds if the Company is to be wound up by the Court. 30

I am not much impressed by this reason. First of all, I would point out that the Company went into voluntary liquidation because it could not continue its business by reason of its liabilities and other difficulties. It is not a case of a Company going into voluntary liquidation for the purpose of reconstruction. I would also point out that meetings of creditors and contributories have to be summoned (Section 147 of the Ordinance) and that the creditors and the contributories may express their wishes to the liquidator (Section 153 sub-section (2)).

I do not share the fear, voiced by learned Counsel for the applicant, that if a stay is not granted now no practical advantage would result from a successful appeal. The winding-up has not really begun yet and I do not think that any reasonable wish expressed by a majority of creditors (that certain assets be not realised too rapidly) would be lightly disregarded by the liquidator. 40

For the foregoing reasons I refuse to grant the stay prayed for.

(Sgd.) M. DE COMARMOND.  
S. P. J.

No. 36.  
Formal Order on Decision.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

Suit No. M. 4517A.  
W.A.C.A. 22/1953.

No. 36.  
Formal Order on Decision.  
26th February 1953.

Application for a stay of execution pending the result of an appeal lodged herein.

10 In the Matter of the Nigerian Farmers & Commercial Bank Ltd.  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* JOHN ADEBAYO ... .. Applicant.

and

THE OFFICIAL RECEIVER ... .. Respondent.

Thursday the 26th day of February, 1953.

UPON READING the application herein and the affidavit sworn to on the 13th day of February, 1953, filed by the Applicant and after 20 hearing Mr. Oladipo Moore appearing with Mr. F. R. A. Williams of Counsel for the Applicant and Mr. M. N. Q. Sagoe of Counsel for the Respondent :  
IT IS ORDERED that this application be refused.

(Sgd.) J. BENNETT,  
*Ag. : Deputy Registrar.*

No. 37.

Certificate that Conditions have been fulfilled.

No. 37.  
Certificate that Conditions have been fulfilled.  
20th March 1953.

IN THE WEST AFRICAN COURT OF APPEAL.

Civil Form 6.

Certificate of Registrar that Conditions of Appeal have been fulfilled.  
(Rule 19) (1) (b).

30

M. 4517.

Between

JOHN ADEBAYO ... .. Appellant

and

THE OFFICIAL RECEIVER OF NIGERIA ... .. Respondent

In the West African Court of Appeal.

I do hereby certify that the above-named Appellant has duly and punctually complied with the conditions of Appeal imposed on him in the above-named case.

Dated this 20th day of March, 1953.

(Sgd.) OLA SCOTT,  
for Senior Registrar

No. 37.  
Certificate that Conditions have been fulfilled. 20th March 1953—  
*continued.*

No. 38.

**Motion and Affidavit for Order that Decision of Mr. Justice de Comarmond be reversed.**

No. 38.  
Motion and Affidavit for Order that Decision of Mr. Justice de Comarmond be reversed. 20th March 1953.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS.

W.A.C.A. 22/1953.  
M. 4517A.

10

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in voluntary Liquidation)  
and  
In the Matter of the Companies Ordinance Cap. 38 of the Revised  
Laws of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant.*

MOTION ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on 20 Monday the 20th day of April, 1953, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Appellant for an order that the decision of Mr. Justice de Comarmond sitting as a single Judge of this Court be reversed or varied and that stay of execution be ordered pending the determination of the appeal lodged herein and for such further or other orders as this Honourable Court may deem fit to make.

Dated this 20th day of March, 1953.

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
*Appellant's Solicitors.*

On notice to :  
The Official Receiver,  
Administrator-General's Office,  
16-24, Ikoyi Road,  
Lagos.

30

IN THE WEST AFRICAN COURT OF APPEAL.

HOLDEN AT LAGOS.

M. 4517A.

In the Matter of The Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised Laws  
of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant.*

In the West African Court of Appeal.

No. 38.  
Motion and Affidavit for Order that Decision of Mr. Justice de Comarmond be reversed.  
20th March 1953—  
*continued.*

AFFIDAVIT.

10 I, JOHN ADEBAYO, English Accountant, of 4, Coates Street, Ebute-Metta, Yoruba, Male, hereby solemnly declare and affirm and say as follows :—

1.—That I am the Appellant in the above-mentioned matter.

2.—That upon a Petition of the Official Receiver the Supreme Court (Lagos Judicial Division) ordered the winding up to the Company by the Court.

3.—That a true copy of the said Decision dated 6th February, 1953 is herewith attached and marked “ A.”

20 4.—That on the 13th day of February, 1953, I filed my Notice of Appeal against the said Order and I have caused this said Notice to be served on the Official Receiver.

5.—That the Official Receiver has been appointed to act within a month of the said Order.

6.—That the Creditors have a Scheme of Reconstruction whereby the Company can be resuscitated.

That those interested in financing the Company will not supply the necessary funds if the Company is to be wound up by the Court.

30 8.—That it is in the interest of the Creditors and Contributors of the Company if the Company is resuscitated when they stand a chance of being paid in full.

9.—That I am informed and verily believe that the next sitting of this Honourable Court will be in April or May next.

10.—That if a Stay of Execution is not granted, then Appeal would be of only academic interest and would lose all its practical effects.

In the West African Court of Appeal.

No. 38. Motion and Affidavit for Order that Decision of Mr. Justice de Comarmond be reversed. 20th March 1953—*continued.*

11.—That the document attached herewith and marked Exhibit “ B ” is a true copy of the Notice of Appeal lodged in this matter. .

12.—That I applied for Stay of Execution before the West African Court of Appeal (de Comarmond, J., sitting alone) and my application was on the 26th of February, 1953, refused.

13.—That the document attached herewith and marked Exhibit “ C ” is a true copy of the Judgment of the Judgment of the said Court.

(Sgd.) J. ADEBAYO.

Sworn to at the Supreme Court Registry, Lagos, this 20th day of March, 1953.

10

Before me,

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

No. 39. Motion and Affidavit by Official Receiver for Order to call first meetings of creditors and contributories. 8th April 1953.

No. 39.

**Motion and Affidavit by Official Receiver for Order to call first meetings of creditors and contributories.**

IN THE WEST AFRICAN COURT OF APPEAL  
- HOLDEN AT LAGOS.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Compulsory Liquidation)

20

*In re* OFFICIAL RECEIVER ... .. Applicant.

*Ex Parte*

MOTION.

TAKE NOTICE that on Wednesday the 15th day of April, 1953, at the hour of nine o'clock in the forenoon or so soon thereafter as the matter may be heard the Applicant, as Liquidator of the Nigerian Farmers and Commercial Bank Limited, will move this Honourable Court for an Order allowing him to call the first meetings of Creditors and Contributories three months after the books of the Company have been handed over to him.

AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make.

Dated this 8th day of April, 1953.

(Sgd.) EDWARD G. FITT,  
*Official Receiver and Liquidator.*

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS.

In the West African Court of Appeal.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Compulsory Liquidation)

and

*In re* OFFICIAL RECEIVER ... .. *Applicant.*  
*Ex Parte*

No. 39.  
Motion and Affidavit by Official Receiver for Order to call first meeting of creditors and contributories. 8th April 1953—  
*continued.*

AFFIDAVIT.

10 I, EDWARD GEORGE FITT, Official Receiver of Nigeria, make oath and say as follows :—

1.—That on the 12th day of December, 1952, the Nigerian Farmers and Commercial Bank Ltd., a Company registered under the Companies Ordinance, by an Extraordinary Resolution went into Voluntary Liquidation and appointed John Adebayo as one of the Liquidators.

2.—That on a petition presented it was ordered on the 6th day of February, 1953, that the Company be wound up compulsorily and I was appointed Liquidator.

3.—That the books of the Company have not been handed over to me and they are still in the possession of the Voluntary Liquidator.

20 4.—That when the books are eventually handed over to me, it will require at least about three months before the lists of Creditors and Contributories are settled.

5.—That I desire the time, within which the first meetings of Creditors and Contributories are to be held, to be extended.

(Sgd.) EDWARD GEORGE FITT,  
*Official Receiver and Liquidator.*

Sworn at the Registry of Companies,  
Lagos, this 8th day of April, 1953.

Before me,

30 (Sgd.) ?  
*Commissioner for Oaths.*

In the West African Court of Appeal.

No. 40.

Motion and Affidavit for an Order for extension of time to hand over to Official Receiver.

No. 40. Motion and Affidavit for an Order for extension of time to hand over to Official Receiver. 11th April 1953.

IN THE WEST AFRICAN COURT OF APPEAL.

M. 4517A. W.A.C.A. 22/1953.

In the Matter of The Nigerian Farmers & Commercial Bank Limited (in Liquidation) and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

10

A. S. O. COKER ... } Applicants.
A. ADEOSHUN ... }

MOTION ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 15th day of April, 1953, at the hour of 9 a.m. or so soon thereafter as Counsel can be heard on behalf of the above named Applicants for an Order for extension of time for a period of one month within which to hand over to the Official Receiver all books, papers, and other documents in their possession relating to the affairs of the Company and for the purpose of preparing a statement of the affairs of the Company and for such further Order or Orders as this Honourable Court may deem fit.

Dated at Lagos this 11th day of April, 1953.

(Sgd.) THOMPSON & COKER, Solicitors to the Applicants.

IN THE WEST AFRICAN COURT OF APPEAL.

Suit No. M. 4517A. W.A.C.A. 22/1953.

In the Matter of The Nigerian Farmers & Commercial Bank Limited (in Liquidation) and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

30



## AFFIDAVIT.

We, ADEBOYE SHOBAYO OLUMUYIWA COKER, of No. 190, Clifford Street, Ebute-Metta, and TIJANI AFOLABI ADEOSHUN, of 37, Evans Street, Lagos, Directors of the Nigerian Farmers & Commercial Bank Limited, whose place of business is at 18, Tinubu Street, Lagos, Yoruba, male, make oath and say as follows :—

1.—That we are Directors of the Nigerian Farmers & Commercial Bank Limited.

2.—That on the 12/12/52, by an extraordinary resolution the Company  
10 went into Voluntary Liquidation.

3.—That on the 6th of February 1953, the Company was wound up by the Court upon a Petition filed by the Official Receiver.

4.—That the Court thereupon ordered that the Directors should hand over to the Official Receiver all books, papers, and other documents in our possession relating to the affairs of the said Company together with an account of our dealings with the affairs of the Company within a month of the date of order.

5.—On the 16th day of March, 1953, the Supreme Court made an Order  
20 granting an extension of time for one month within which to hand over in accordance with the terms stated in paragraph 4 *supra*.

6.—That after making of the said Order District Officer in the provinces or protectorates of Nigeria acting on the instruction of the Official Receiver, entered into the premises of the Bank and removed books, papers, documents and other properties into the Bailiffs Office in each respective Station.

7.—The Official Receiver also affixed seals on the premises including private residence of Managers.

8.—That these books, papers, documents, and properties are the very things required to be submitted to the Official Receiver by the Directors of the Bank in accordance with the Order of Court.

30 9.—That the statement of affairs could not be completed when the books and properties are already in the custody of the Official Receiver.

10.—That on 23/3/53 the Supreme Court made an order upon a motion filed by the Directors of the Bank, that the Official Receiver do release books, documents, and papers in the different Branches of the Bank, to their respective Managers and that Managers be allowed to remove their properties within seven days, a certified true copy of which is attached and marked "A."

In the West African Court of Appeal.

No. 40.  
Motion and Affidavit for an Order for extension of time to hand over to Official Receiver.  
11th April 1953—  
*continued.*

In the West African Court of Appeal.

No. 40. Motion and Affidavit for an Order for extension of time to hand over to Official Receiver. 11th April 1953—*continued.*

11.—That up till today the Official Receiver has not complied with the Order of Court.

12.—That at the hearing of the motion the Official Receiver was represented by Counsel Mr. M. N. Q. Sagoe in whose presence the order was made.

13.—That it is impossible for us to comply with the Order of Court when the Official Receiver has failed to surrender these properties.

14.—That for the purpose of handing over and preparing statement of affairs we intend to check the properties of the Bank before swearing to an Affidavit of their existence.

10

15.—That it is therefore impracticable for us to hand over to the Official Receiver and to prepare a statement of affairs until these properties are delivered back to us in accordance with the Court Order of 23/3/53.

16.—That we have waited for another seven days, hoping that the Official Receiver will comply with the Order of Court.

17.—That we are expected to hand over to the Official Receiver on 16/4/53.

18.—That it has become necessary that we apply to this Honourable Court for extension of time for one month, within which we hope the Official Receiver will comply with the Order of Court by releasing the 20 properties of the Bank to us aforesaid.

19.—That the Order of the Court on 6/2/53 was that properties be handed over and not that the Official Receiver should take over.

(Sgd.) A. S. O. COKER  
 (Sgd.) T. A. ADEOSHUN.  
*Deponents.*

Sworn to at the Supreme Court Registry, Lagos, this 11th day of April, 1953.

Before me,  
 (Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

30

" A "

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

M. 4517A.

In the Matter of The Nigerian Farmers & Commercial Bank Ltd.  
(in Voluntary Liquidation).

and

In the Matter of the Companies Ordinance, Cap. 38 of the Revised Laws  
of Nigeria.

10 *In re* Application by the OFFICIAL RECEIVER.

UPON READING the joint Affidavit of Adeboye Shobayo Olumuyiwa Coker of 190, Clifford Street, Ebute-Metta, and Tijani Afolabi Adeosun of 37, Evans Street, Lagos, on the mainland of Lagos Island, Directors of the Nigerian Farmers & Commercial Bank Ltd., Sworn to and filed on the 19th day of March, 1953, and the further Affidavit of Adeboye Shobayo Olumuyiwa Coker, sworn to and filed on the 21st day of March, 1953, and the Affidavit of Augustus Olushola Aina of 68, Ondo Street, (East) Ebute-Metta, on the mainland of Lagos Island, Yoruba, Manager of the Shagamu branch of the Nigerian Farmers and Commercial Bank Ltd., sworn to and  
20 filed on the 23rd day of March, 1953, and after hearing Counsel for and on behalf of the applicants and Counsel for the Official Receiver on the application :

IT IS ORDERED that the Official Receiver do release books, documents and papers in the different branches of the Nigerian Farmers and Commercial Bank Ltd., to their respective Managers AND that such Managers whose goods are still on the premises of the Bank be allowed to remove their belongings within seven days.

Dated at Lagos this 23rd day of March, 1953.

(Sgd.) O. JIBOWU,  
*Puisne Judge.*

30 Certified true copy.

(Sgd.) OLA SCOTT.  
f: *Senior Registrar.*

This exhibit marked " A " referred to in the paragraph 10 of the Affidavit of Messrs. Adeboye Shobayo Olumuyiwa Coker and Tijani Afolabi Adeosun Sworn this 11th day of April 1953.

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

In the West  
African  
Court of  
Appeal.

No. 40.  
Annexure  
" A. " to  
Motion and  
Affidavit  
for an  
Order for  
extension  
of time to  
hand over  
to Official  
Receiver.  
11th April,  
1953—  
*continued.*

In the West African Court of Appeal.

No. 41. Hearing of Motions.

No. 41. Hearing of Motions. 15th April 1953.

IN THE WEST AFRICAN COURT OF APPEAL, HOLDEN AT LAGOS, NIGERIA.

Wednesday the 15th day of April, 1953, before Their Lordships :

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President. Sir JOHN VERITY, Chief Justice, Nigeria. Sir JAMES HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. 22/53.

In the Matter of the Nigerian Farmers & Commercial Bank Limited etc. 10

In re A. S. O. COKER and A. ADEOSHUN ... .. Applicants.

In re OFFICIAL RECEIVER ... .. Applicant.

Motion for an Order that decision of Single Judge of the Court be varied.

Motion for an Order for Extension of time within which to hand over books, etc.

Motion for an Order allowing Official Receiver to call meeting of Creditors, etc.

Mr. MOORE, with him Mr. F. R. A. WILLIAMS for Applicants.

Mr. BURTON for Official Receiver.

20

Mr. A. THOMPSON for Applicants on second motion.

Motions adjourned until Civil Appeal No. 22 of 1953 has been dealt with.

Status quo regarding books to be maintained—books to be carefully preserved by whoever has them.

Order regarding handing over to the Official Receiver on 16th April, 1953, to be stayed pending determination of appeal.

No order as to costs of today.

15/4/53. (Intld.) S. F. S.

P.

30

No. 42.  
Order on Motions.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Suit No. M. 4517.  
W.A.C.A. 22/1953.

No. 42.  
Order on Motions.  
15th April, 1953.

Application for an Order for extension of time for a period of 3½ months within which to hand over to the Official Receiver all books, papers and other documents in possession of the Directors of the Nigerian Farmers & Commercial Bank Ltd.

10 In the Matter of the Nigerian Farmers & Commercial Bank Ltd.  
(in Voluntary Liquidation)  
and  
In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* 1. A. S. O. COKER  
2. T. A. ADEOSHUN ... .. *Applicants*  
and  
THE OFFICIAL RECEIVER ... .. *Respondent.*

(L.S.)

20 President.

Wednesday the 15th day of April, 1953.

UPON READING the application herein and the Affidavit sworn to on the 2nd day of March, 1953, filed by the Applicants and after hearing Mr. Adewale Thompson of counsel for the Applicants and Mr. C. A. Burton, Crown Counsel, of counsel for the Respondent :

IT IS ORDERED that execution of the Order of the Supreme Court, Lagos, dated the 6th day of February, 1953, be stayed until the determination of this Appeal :

AND THE COURT doth make no Order as to costs of this application.

30

(Sgd.) N. V. REED,  
*Ag. Deputy Registrar.*

In the West African Court of Appeal.

No. 43.

Counter Affidavit by Official Receiver.

No. 43. Counter Affidavit by Official Receiver. 24th April 1953.

IN THE WEST AFRICAN COURT OF APPEAL.

M. 4517A.

W.A.C.A. 22/1953.

In the Matter of The Nigerian Farmers and Commercial Bank Limited (in Liquidation)

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

COUNTER AFFIDAVIT.

10

I, EDWARD GEORGE FITT, Administrator-General and Official Receiver of Nigeria make oath and say as follows :—

1.—That the Affidavit of the Applicants A. S. O. Coker and T. A. Adeosun is not correct in several particulars, viz. :—

(a) That the District Officers were not instructed to take action on my behalf after the Supreme Court Order of the 16th March, 1953 as alleged in paragraph 6 of the Affidavit but were instructed by telegram (a copy of which is hereto annexed and marked " A ") to act on the 7th day of March, 1953, as the time granted by the Supreme Court Order of the 6th day of February, 1953, for the handing over by the applicants of the books and other documents of the Bank expired on the 6th day of March, 1953 and the Applicants failed to comply with the Order. 20

(b) That no books or documents were removed from the majority of the Branches as the Managers were stated to have left the various towns and to have proceeded to Lagos with the books and the keys. In these cases the only action taken by the District Officers was to seal the premises in order to preserve whatever assets might be left. That in four cases only did the District Officers obtain any books from the Managers, i.e., Abeokuta, Oyo, Gusau and Ibadan and that in all these cases no current books were obtained but only old books already closed off. In the cases of Abeokuta and Oyo these books are in the possession of my representative and the applicant A. S. O. Coker is aware of this and has not attempted to collect them although invited to do so even though they would be of no help to him being out of date. 30

- (c) That paragraph 11 of the said affidavit is untrue in that after the Supreme Court Order of the 23rd day of March, 1953 and in accordance therewith I instructed the District Officers to unseal the premises to allow the Managers to remove any books which were still there and their personal belongings. (Copies of my telegram and a confirming letter are hereto annexed and marked " B " and " C.")
- 10 (d) That paragraph 13 of the said affidavit is untrue as to the best of my knowledge no attempt was made by the Managers to collect the books during the seven days allowed by the Supreme Court Order of the 23rd day of March, 1953.
- 20 (e) That paragraph 15 of the said affidavit is misleading in that the work of preparing a statement of affairs should be completed within 14 days after the liquidation in accordance with Section 142 of the Companies Ordinance and that by various motions the applicants have been granted so many extensions of this time that they have already had more than two months in which to do this. That any further inspection of books the applicants wish to make can be done in my office after the books have been handed over to me.
- (f) That paragraphs 16 and 18 of the said affidavit are untrue by virtue of the facts set out in paragraph 1 (c) hereof.
- (g) That paragraph 19 of the said affidavit is correct but that the Order referred to was not complied with by the applicants and accordingly it was my duty to take such steps as I considered advisable to preserve the assets of the Bank for the benefit of the Creditors.

In the West African Court of Appeal.

No. 43.  
Counter Affidavit by Official Receiver.  
24th April 1953—  
*continued.*

2.—That the facts set out herein are based on communications I have received from the various District Officers and that these are true to the  
30 best of my knowledge information and belief.

(Sgd.) EDWARD G. FITT,  
*Official Receiver and Liquidator.*

Sworn at Lagos this 24th day of  
April, 1953.

Before me,

(Sgd.)                   ?  
*Commissioner for Oaths.*

In the West African Court of Appeal.

“ A ”

4th March, 1953.

No. 43. Annexure “ A. ” to Counter Affidavit by Official Receiver. 24th April 1953—  
*continued.*

PRIORITY

EXECUTIVE : ILARO, IKEJA, IBADAN, ABEOKUTA, ILESHA, AKURE, BENIN-CITY, SAPELE, PORT-HARCOURT, IFE, NGURU, AGBOR, ONITSHA, SHAGAMU, OGBOMOSHO, IWO, GUSAU, KANO, JOS, ILORIN, WARRI, EPE, OYO & IJEBU-ODE.

RC 617/3 STOP OFFICIAL RECEIVER APPOINTED LIQUIDATOR NIGERIAN FARMERS AND COMMERCIAL BANK STOP PLEASE SEAL PREMISES IN YOUR AREA ON SATURDAY MARCH 7 1953 AND RETAIN KEYS STOP FORWARD TO ME SOONEST INVENTORY OF CONTENTS ANY INFORMATION OF TENANCY OF PREMISES AND ANY BOOKS OF ACCOUNT AND OTHER DOCUMENTS STILL REMAINING STOP. 10

TRUSTEE.

This is the exhibit marked “ A ” referred to in the affidavit of Edward George Fitt sworn this 24th day of April 1953.

Before me,

(Sgd.)

*Commissioner for Oaths.*

Annexure “ B. ” *Copy*

“ B ”

23/3/53.

20

EXECUTIVE ILARO IKEJA IBADAN ABEOKUTA ILESHA AKURE BENIN CITY SAPELE PORT HARCOURT IFE AGBOR ONITSHA SHAGAMU OGBOMOSHO GUSAU KANO JOS ILORIN WARRI EPE OYO IJEBU-ODE.

617/3 AM TO AUTHORISE YOU TO REMOVE SEAL FROM BRANCH PREMISES FARMERS BANK STOP SUPREME COURT LAGOS TODAY ORDERED THAT MANAGERS SHOULD WITHIN SEVEN DAYS REMOVE BANK BOOKS PAPERS DOCUMENTS AND ALL PERSONAL REPEAT PERSONAL BELONGINGS STOP PLEASE SUPERVISE REMOVAL AND THEN RESEAL PREMISES WITH ALL OTHER CONTENTS STOP RETAIN KEYS WHERE ALREADY IN YOUR POSSESSION AND TAKE OVER OTHER FROM MANAGERS AFTER SEALING STOP LETTER FOLLOWS TRUSTEE. 30

This is the exhibit marked “ B ” referred to in the affidavit of Edward George Fitt sworn this 24th day of April 1953.

Before me,

(Sgd.)

*Commissioner for Oaths.*



Copy

" C "

RC. 617/3.

In the West  
African  
Court of  
Appeal.Administrator-General's Office,  
Lagos, 24th March, 1953.The District Officer,  
Ilaro, Ikeja, Ibadan, Abeokuta, Ilesha, Akure, Benin City, Port Harcourt,  
Ife, Agbor, Onitsha, Shagamu, Ogbomosho, Gusau, Kano, Jos, Ilorin,  
Warri, Epe, Oyo, Ijebu-Ode.No. 43.  
Annexure  
" C " to  
Counter  
Affidavit by  
Official  
Receiver.  
24th April  
1953—  
*continued.*Nigerian Farmers & Commercial Bank Ltd.  
(in Compulsory Liquidation).

10 I confirm my telegram sent to you yesterday, the 23rd instant :—

" 617/3 AM TO AUTHORISE YOU TO REMOVE SEAL FROM BRANCHES  
 " PREMISES FARMERS BANK STOP SUPREME COURT LAGOS TODAY ORDERED  
 " THAT MANAGERS SHOULD WITHIN SEVEN DAYS REMOVE BANK BOOKS  
 " PAPERS DOCUMENTS AND ALL PERSONAL REPEAT PERSONAL BELONGINGS  
 " STOP PLEASE SUPERVISE REMOVAL AND THEN RESEAL PREMISES WITH ALL  
 " OTHER CONTENTS STOP RETAIN KEYS WHERE ALREADY IN YOUR POSSESSION  
 " AND TAKE OVER OTHERS FROM MANAGERS AFTER SEALING STOP LETTER  
 " FOLLOWS TRUSTEE."

2.—The Court Order made on the 6th February, 1953, that the above  
 20 bank should be wound up compulsorily and that I should be appointed  
 Official Receiver and Liquidator made allowance for the proper preparation  
 of the late Directors' Statement of Affairs, and accordingly ordered that  
 books, documents and other papers should be handed over to me within  
 one month of the Order.

3.—Accordingly, and although it was within my powers to protect  
 the assets of the bank with immediate effect, I sent my first telegram to  
 you, 617/3 of the 4th instant, requesting you to seal the premises on the  
 7th March—one day after the expiration of the month granted by the  
 Supreme Court.

4.—Shortly after the 6th March, and after various adjournments of  
 30 Court Hearings, Mr. Justice Jibowu in the Supreme Court Lagos on the  
 petition of the late Directors, extended the time within which the affairs  
 of the bank should be handed over to one month from the date of his orders  
 the 16th March.

5.—There is therefore this further delay before the books, etc.,  
 may be handed over—April the 17th is now the earliest date.

In the West  
African  
Court of  
Appeal.

No. 43.  
Annexure  
" C " to  
Counter  
Affidavit by  
Official  
Receiver.  
24th April  
1953.

—continued.

6.—It has nevertheless been my duty to protect the bank's assets ; but a short while after I had authorised you to seal the Branch premises the late Directors petitioned the Court to have the seals removed to give the Branch Managers access to their premises, presumably for the purpose of removing only books of account, documents, etc., that might have remained there (though the majority, I gather, had been sent to Lagos early in the Voluntary Liquidation of the *Bank*) and any of their personal belongings. Accordingly, Mr. Justice Jibowu gave such an order yesterday that these things alone should be removed from the Premises.

7.—In order, therefore, to protect the assets (my duty arising out of 10 the original order to wind up compulsorily made on February 6th 1953) I have requested you to reseal the premises after entry by the Representatives of the Bank, and to take over the keys where these were formerly held by the Managers or Directors of the Bank ; and to retain them, of course, where they are already in your possession.

8.—After the Managers have removed any books, etc., and personal belongings, will you kindly take an inventory of the contents of the premises and forward it to me ; also please obtain any available information regarding the tenancy of these premises.

IW/M.

*Official Receiver and Liquidator.* 20

This is the exhibit marked " C " referred to in the affidavit of Edward George Fitt sworn this 24th day of April, 1953.

Before me, (Sgd) ?

*Commissioner for Oaths.*

---

No. 44.  
Hearing of Appeal.

In the West  
African  
Court of  
Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

No. 44.  
Hearing of  
Appeal.  
28th April  
1953.

Tuesday the 28th day of April, 1953, before their Lordships.

Sir STAFFORD WILLIAMS POWELL FOSTER SUTTON, President.

Sir JOHN VERITY, Chief Justice, Nigeria.

Sir JAMES HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. 22/1953.

10 In the Matter of The Nigerian Farmers and Commercial Bank Limited  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant*

and

OFFICIAL RECEIVER ... .. *Respondent.*

Mr. MOORE, with him Mr. F. R. A. WILLIAMS for Appellant.

Mr. BURTON for Respondents.

20 MOORE :

Grounds of appeal p. 47 of the record.

Deals with facts.

Submits that Official Receiver had no right at that stage to come in  
at the juncture—The Creditor had the right to come to the Court on  
Petition—but not the Official Receiver. Sec. 132 (2)—corresponds to  
Sec. 224 (2) of the 1948 and Sec. 115 of the 1862 Act. Imperial.

*In re 1897 Jubilee Sites Ltd.* (1899) 2 Ch. p. 204 ; 80 L.T. p. 869.

47 W.R.

Palmers Company Law—Winding Up—

30 Submits that it is only in the most exceptional circumstances.

Page line of Decision.

Submits wrong basis for decision—but—note.

See p. , line .

*In re Medical Battery Co.* (1894) 1 Ch. 445.

Refers to Sec. 144—(3) (b) of Cap. 38.

Note—See sub. sec. 1 of the Section.

Note—See *Re Industrial and Commercial Bank* 10 N.L.R. at p. 90.—

In the West MOORE :

African  
Court of  
Appeal.

Note—See also (1903) 2 Ch. 174.  
Cites (1892) 2 Q.B. 220, at page 228.

No. 44.  
Hearing of  
Appeal.  
28th April  
1953—  
*continued.*

BURTON :

I agree with Mr. Moore that it was unnecessary to go beyond making a winding up order. When that was made the Official Receiver automatically became provisional Liquidator. I agree with Mr. Moore that procedure under 147—would then follow.

Creditors do not know up to date what position of Company is.

Discretion—

Official Receiver's attitude was not influenced by Mr. Ferguson's Affidavit. In point of fact Mr. Ferguson said he supports the Official Receiver's Petition.

Decision to re-constitute was *ultra vires* the purpose of the meeting. That is a point—no doubt.

Minute books do not contain any note of any motion made by Mr. Ferguson—and it is admitted that he did move a motion which was defeated.

The amount owing to Creditors represented by Mr. Ferguson is stated—  
Exact amount Minute book Exhibit "5."

No scheme of reconstruction was put up to meeting of Creditors.

WILLIAMS :

Discretion. Submits that minute books were not before Court they were produced on motion for re-construction.

Deals with reasons given by Judge pp. 41-44. "On these facts"—

But—note—Exhibits "1" to "7" were before the Court. See page 19 paragraph 14.

Judge in this case declined to take evidence.

*C.A.V.*

28.4.53

(Intld.) S. F. S.,

*P.*

30

No. 45.  
Judgment  
Note by Sir  
Stafford  
Foster  
Sutton.  
18th May  
1953.

No. 45.

**Judgment Note by Sir Stafford Foster Sutton.**

Continued from above.

Counsel as before.

Judgment delivered by FOSTER SUTTON, P.

That portion of the Order of the Court below which appoints the Official Receiver Liquidator of the Bank is deleted. The appeal is otherwise dismissed.

No order as to costs on this appeal.

(Intld.) S. F. S.

*P.*

40

18.5.53.

No. 46.  
Judgment.

In the West  
African  
Court of  
Appeal.

(Delivered by Sir STAFFORD FOSTER SUTTON, P.)

No. 46.  
Judgment.  
18th May  
1953.

This is an appeal from a decision of Gregg, J. by which he ordered that the Nigerian Farmers and Commercial Bank Limited, who were in voluntary liquidation, be wound up by the Court and appointed the Official Receiver of Nigeria Liquidator.

The Appellant Bank went into voluntary liquidation on the 12th December, 1952, as a result of a resolution at an extraordinary general meeting to the effect that it could not by reason of its liabilities and difficulties continue its business, and at the same meeting one Mr. John Adebayo was appointed Liquidator.

The Official Receiver then presented a petition asking that the Company be wound up by the Court and that he be appointed Liquidator.

Three grounds were argued at the hearing of this appeal, firstly, that while it would have been in order for a creditor to lodge a Petition such as the one lodged here, the Official Receiver had no *locus standi* to do so at the present juncture, secondly, that the grounds put forward by the Official Receiver were insufficient to justify the Court in making an order for the winding up of the Company by the Court, and, thirdly, that the Court below had no jurisdiction to appoint the Official Receiver as Liquidator because by paragraph (b) of Section 144 (3) of the Companies Ordinance, Chapter 38, on an order for winding up a company being made by the Court the Official Receiver becomes *ipso facto* the provisional liquidator and that no liquidator can be appointed until a meeting of creditors has been summoned under Section 147 of the Ordinance.

The first ground is disposed of by the provisions of Sub-section (2) of Section 132 of the Companies Ordinance which clearly empowers the Official Receiver to present a petition when a company is in voluntary liquidation. It is then for the Court to say whether the voluntary winding up "cannot be continued with due regard to the interests of the creditors or contributories."

When announcing his decision to order that the Company be wound up by the Court the learned trial Judge made the following observations :

" In the affidavit filed by the local liquidator Mr. John Adebayo there is no denial of certain important averments made by the Official Receiver in his petition.

" THESE ARE :

" 1. that the directors of the Company are Mr. Adeboye Shobayo Olumuyiwa Coker and Mr. Tijani Afolabi Adeosun ;

" 2. that the issued capital of the Company is £25,194 made up of 500 preference shares and 24,694 ordinary shares.

In the West  
African  
Court of  
Appeal.

No. 46.  
Judgment.  
18th May  
1953—  
*continued.*

“ 3. that Mr. Coker holds the whole of the 500 issued preference shares and 24,455 of the 24,694 ordinary shares.

“ This last averment means in effect that the Nigerian Farmers & Commercial Bank Ltd. is virtually a one-man Company.

“ Further it is not denied by the liquidator that he was the nominee of Mr. Coker for the position of liquidator. He denies that he was appointed by Mr. Coker ; but I can see no denial in his affidavit, of the statement in para. 16 of the petition to the effect that he is the nominee of Mr. Coker who has complete control of the Company.” 10

It is a well settled principle that the Court of Appeal will not interfere with an exercise of discretion, as this was, by a lower Court unless it has proceeded upon a manifestly wrong ground. In my view the grounds stated by the learned trial Judge were sufficient to entitle him to exercise his discretion in favour of making a compulsory order, and I am, therefore, unable to agree with the Appellant's second submission. In this connection it is of interest to observe that a compulsory order was made by Vaughan Williams, J. in the case of *In re Medical Battery Company* (1894) 1 Ch. 444, on similar grounds. 20

Counsel for the Official Receiver conceded the third point taken by the Appellants and although, at first, I had some doubts about the matter I have now come to the conclusion that the better view is that contended for by Appellants Counsel. I, therefore, agree that once a compulsory winding up Order has been made the Official Receiver automatically becomes provisional liquidator until such time as a permanent liquidator is appointed and, that the latter cannot be appointed until the creditors and contributories have been consulted in accordance with the procedure laid down by Section 147 (1) of the Companies Ordinance. A similar view of the matter was taken by the Court in the case of *In re John Reid and Sons, Limited* (1900), 2 Q.B.D. 634. 30

For the reasons I have given I would delete that portion of the Order of the Court below which appoints the Official Receiver Liquidator of the Bank, but would dismiss the appeal upon the other grounds raised, and in the circumstances I would make no order as to costs on this appeal.

(Sgd.) S. FOSTER SUTTON, P.

“ I concur.”

(Sgd.) JOHN VERITY, C.J.

“ I concur.”

(Sgd.) J. HENLEY COUSSEY, J.A.

Certified true Copy,  
J. A. SAMUEL,  
*Assistant Registrar.*

No. 47.

Formal Order on Judgment.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

Suit No. M. 4517A.  
WACA. 22/1953.

No. 47.  
Formal Order on Judgment.  
18th May 1953.

10 On Appeal from the Judgment of the Supreme Court in the Lagos Judicial Division.

In the Matter of the Nigerian Farmers & Commercial Bank Ltd.  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria

and

20

*In re* JOHN ADEBAYO (Liquidator) ... .. *Appellant*

and

THE OFFICIAL RECEIVER ... .. *Respondent.*

(L.S.)

(Sgd.) S. FOSTER SUTTON,  
*President.*

Monday the 18th day of May, 1953.

30

UPON READING the Record of Appeal herein and after hearing Mr. Oladipo Moore appearing with Mr. F. R. A. Williams of Counsel for the Appellant and Mr. A. C. Burton, Crown Counsel, of Counsel for the Respondent :

IT IS ORDERED that this appeal be dismissed but that the portion of the Order of the Supreme Court whereby the Official Receiver was appointed the Liquidator of the Bank be deleted.

40

AND the Court doth make no order as to costs of this appeal.

(Sgd.) N. V. REED,  
*Ag. Deputy Registrar.*

In the West African Court of Appeal.

No. 48.

Hearing of two deferred Motions and Orders made thereon.

No. 48. Hearing of two deferred Motions and Orders made thereon. 19th May 1953.

IN THE WEST AFRICAN COURT OF APPEAL. HOLDEN AT LAGOS, NIGERIA.

Tuesday the 19th day of May, 1953, before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President. Sir JOHN VERITY, Chief Justice, Nigeria. Sir JAMES HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. 22/1953. "A."

01

In the Matter of the Nigerian Farmers and Commercial Bank Limited (in Liquidation).

In re A. S. O. COKER & A. ADEOSHUN ... .. Applicants.

Application for an Order for extension of time for a period of 1 month within which to hand over to the Official Receiver all books, etc.

Mr. A. THOMPSON for Applicants. Mr. BURTON for Respondent.

THOMPSON :

Moves—deals with facts.

We do not call upon Burton.

Extension granted of seven days from today 19th May, 1953.

No order as to costs.

19 : 5 : 53. (Intld.) S.F.S., P.

20

W.A.C.A. 22/1953. "B."

In the Matter of the Nigerian Farmers and Commercial Bank Limited (in Voluntary Liquidation).

In re OFFICIAL RECEIVER ... .. Applicant.

Application for an Order allowing him to call 1st meeting of Creditors, etc., 3 months after handing over books.

Mr. BURTON for Applicant.

Order in terms of motion—No order as to costs.

19 : 5 : 53. (Intld.) S.F.S., P.



No. 49.

Formal Order on application for extension of time within which to hand over.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

No. 49.  
Formal Order on application for extension of time within which to hand over.  
19th May 1953.

Suit No. M. 4517A.  
W.A.C.A. 22/1953.

Application for an order for extension of time for a period of one month within which to hand over to the Official Receiver all books, papers and other documents relating to the Company's affairs.

In the Matter of the Nigerian Farmers & Commercial Bank Ltd.  
(in Liquidation).  
and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* 1. A. S. O. COKER  
2. T. A. ADEOSHUN ... .. Applicants  
and  
THE OFFICIAL RECEIVER ... .. Respondent.

20 (L.S.) Tuesday the 19th day of May, 1953.

(Sgd.) S. FOSTER SUTTON,  
*President.*

UPON READING the application herein and the affidavit sworn to on the 11th day of April 1953, filed by the Applicants and after hearing Mr. A. Thompson of Counsel for the Applicants and without calling upon Mr. A. C. Burton of Counsel for the Respondent :

30 IT IS ORDERED that extension of time for seven days within which to hand over to the Official Receiver all books, papers and other documents relating to the affairs of the Company and for the purpose of preparing a statement of the affairs of the Company be granted to the Applicants from the date of this order :

AND the Court doth make no order as to costs on the application.

(Sgd.) N. V. REED,  
*Ag. Deputy Registrar.*

In the West African Court of Appeal.

No. 50.

Formal Order on application to call first meetings of creditors.

No. 50. Formal Order on application to call first meetings of creditors. 19th May 1953.

IN THE WEST AFRICAN COURT OF APPEAL. HOLDEN AT LAGOS, NIGERIA.

Suit No. M. 4517A. W.A.C.A. 22/1953.

Application for an order allowing the Official Receiver to call the first meetings of Creditors and Contributors 3 months after the books of the Company have been handed over to him.

In the Matter of the Nigerian Farmers & Commercial Bank Ltd. (in Liquidation) 10

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

In re THE OFFICIAL RECEIVER ... .. Applicant.

Tuesday the 19th day of May, 1953.

(L.S.)

(Sgd.) S. FOSTER SUTTON, President.

UPON READING the application ex parte herein and the affidavit of Edward George Fitt, Official Receiver of Nigeria, sworn to on the 8th day of April, 1953, and after hearing Mr. A. C. Burton of Counsel for the Applicant : 20

IT IS ORDERED that the Applicant be at liberty to call the first meetings of creditors and contributors three months after the books of the Company have been handed over to him.

AND the Court doth make no order as to costs.

(Sgd.) N. V. REED, Ag. Deputy Registrar.



No. 51.

Motion and Affidavit for Final Leave to Appeal.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS.

W.A.C.A. 22/53.

No. 51.  
Motion and Affidavit for Final Leave to Appeal.  
6th June 1953.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

10 *In re* JOHN ADEBAYO ... .. *Appellant.*

MOTION ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 14th day of July, 1953, at the hour of 9'oclock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Appellant for an order granting the Appellant Final leave to appeal to Her Majesty's Privy Council and for such further or other order or orders as this Honourable Court may deem fit.

Dated at Lagos this 6th day of June, 1953.

(Sgd.) OLADIPO MOORE,  
*Solicitor for the Appellant.*

20

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS.

W.A.C.A. 22/53.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Voluntary Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws  
of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant.*

30

AFFIDAVIT.

I, JOHN ADEBAYO, Accountant of 4, Coates Street, Ebute-Metta, Yoruba, hereby say and affirm as follows :—

1.—That I am the Appellant in the above-mentioned matter.

2.—That on the 26th day of May, 1953 my motion for Conditional leave to appeal to Her Majesty in Council came before this Honourable Court.

3.—That an Order was made granting me conditional leave to appeal on my said motion.

4.—That I have since perfected the conditions imposed.

40

5.—That my Counsel Mr. Oladipo Moore required this Honourable Court at the hearing of the said Motion to order that the Respondent do

In the West African Court of Appeal. furnish security under Section 8 of the order in Council (Appeals to Privy Council) 1949.

6.—That he was asked to renew this Application when the motion for Final leave comes up.

No. 51. Motion and Affidavit for Final Leave to Appeal 6th June 1953—*continued.* 7.—That in view of the fact that stay of execution was refused me when my motion came up, I am now applying under the said section that the Respondent be required to furnish security in case my Appeal to Her Majesty in Council succeeds.

(Sgd.) J. ADEBAYO.

Sworn at the Supreme Court Registry, Tinubu Square, Lagos, this 5th day of June, 1953.

10

Before me,

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

No. 52. Hearing of Motion. 14th July 1953.

No. 52.  
Hearing of Motion.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

Tuesday the 14th day of July, 1953, before their Lordships

Sir JOHN VERITY, Chief Justice, Nigeria, Presiding Judge. 20  
OLUMUYIWA JIBOWU, Acting Senior Puisne Judge, Nigeria.  
JAMES REALI GREGG, Puisne Judge, Nigeria.

W.A.C.A. 22/1953.

*In re* NIGERIAN FARMERS & COMMERCIAL BANK LIMITED.

*In re* JOHN ADEBAYO.

THOMPSON for Applicants.

BURTON for Respondent.

THOMPSON: Application for final leave to appeal to Privy Council. Conditions fulfilled.

Also question of security by Official Receiver under Article 8 of West African (Appeal to Privy Council) Order in Council 1949. 30

Appellant required to perform a duty—to satisfy Creditors as to assets of bank. If Official Receiver dissipated assets duty could not be performed nor Bank be reconstructed.

Ask for security for £500,000.

Final leave to appeal granted.

It appearing to the Court that the application for security is but an attempt to secure a stay of execution which has already been refused by this Court this application is refused.

(Sgd.) JOHN VERITY, 40  
*C.J. Nigeria,*  
Presiding.

No. 53.

Order granting Final Leave to Appeal to Privy Council.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
HOLDEN AT LAGOS, NIGERIA.

Suit No. M. 4517A.  
W.A.C.A. 22/1953.

No. 53.  
Order granting Final Leave to Appeal to Privy Council.  
14th July 1953.

Application for an order granting final leave to appeal to Her Majesty's Privy Council and for the Respondent to furnish security under Section 8 of the West African (Appeals to Privy Council) Order in Council, 1949.

10 In the Matter of the Nigerian Farmers & Commercial Bank Ltd.  
(in Liquidation)

and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* JOHN ADEBAYO ... .. Applicant

and

THE OFFICIAL RECEIVER ... .. Respondent.

Tuesday the 14th day of July, 1953.

(L.S.)  
20 (Sgd.) JOHN VERITY,  
*Presiding Judge.*

UPON READING the application herein and the affidavit filed by the Applicant sworn to on the 5th day of June, 1953, and after hearing Mr. Adewale Thompson of Counsel for the Applicant and Mr. A. C. Burton of Counsel for the Respondent :

IT IS ORDERED that Final Leave to Appeal to Her Majesty's Privy Council be and is hereby granted to the Applicant.

AND IT APPEARING to the Court that the application for security is but an attempt to secure a stay of execution which has already been refused  
30 by this Court :

IT IS ORDERED that the application for security be refused.

(Sgd.) J. A. SMITH,  
*Ag. Deputy Registrar.*

In the West African Court of Appeal.

No. 54.  
Notice to settle Record of Appeal.

No. 54.  
Notice to settle Record of Appeal.  
27th July 1953.

IN THE WEST AFRICAN COURT OF APPEAL.

W.A.C.A. 22/1953.

In the Matter of the Nigerian Farmers & Commercial Bank Limited  
(in Liquidation)  
and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

*In re* JOHN ADEBAYO ... .. *Appellant* 10  
and  
THE OFFICIAL RECEIVER ... .. *Respondent*.

In the Matter of Section 10 of the West African (Appeal to Privy Council) Order in Council 1949.

*In re* Settling of Record of Appeal.

TAKE NOTICE that you are hereby requested to attend at the Registry of the West African Court of Appeal, Lagos, on Saturday the 1st day of August, 1953, at the hour of 10 o'clock in the forenoon for the purpose of settling the record to be transmitted to the Privy Council.

Your non attendance will not prevent the settlement of the Record 20 at the date and time fixed.

Dated at Lagos this 27th day of July, 1953.

(Sgd.) J. A. SMITH,  
*Ag. Deputy Registrar.*

To :—

1. John Adebayo,  
c/o Messrs. Thompson & Coker,  
18, Tinubu Street, Lagos.
2. The Official Receiver,  
c/o The Crown Counsel,  
Lagos.



Settling of Record of Appeal.

In the West African Court of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.

W.A.C.A. 22/1953.

No. 55. Settling of Record of Appeal. 1st August 1953.

In the Matter of the Nigerian Farmers & Commercial Bank Limited (in Liquidation) and

In the Matter of the Companies Ordinance Cap. 38 of the Revised Laws of Nigeria.

10 In re JOHN ADEBAYO ... .. Appellant and THE OFFICIAL RECEIVER ... .. Respondent.

In the Matter of Section 10 of the West African (Appeal to Privy Council) Order in Council 1949.

Settling of the Record of Appeal.

Mr. Adewale Thompson, Solicitor to the Appellant (with him Mr. A. S. O. Coker) appeared before me at the hour of 10 o'clock in the forenoon for the settling of the record of proceedings.

20 The Official Receiver did not appear nor was he represented by anyone.

Mr. Adewale Thompson on behalf of the Appellant asked that all proceedings before the Supreme Court and the W.A.C.A. should go in to constitute the record of proceedings except the four motions filed in the W.A.C.A. prior to the entering of the appeal as provided under Rule 19 (2) of the W.A.C.A. Rules 1950, together with the Court notes at the hearing of the motions and the orders made dismissing the said motions.

The record is settled as stated above.

Dated at this 1st day of August, 1953.

(Sgd.) S. A. SAMUEL, Assistant Registrar, W.A.C.A.

30

(Sgd.) ADEWALE THOMPSON for THOMPSON & COKER, Solicitors to the Appellant.

In the Privy Council.

No. 35 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL HOLDEN AT LAGOS.

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Suit No. M. 4517A.  
W.A.C.A. 22/1953.

IN THE MATTER OF THE NIGERIAN FARMERS  
AND COMMERCIAL BANK LIMITED  
(in liquidation)

AND

IN THE MATTER OF THE COMPANIES ORDINANCE  
CAP 38 OF THE REVISED LAWS OF NIGERIA.

*In re* JOHN ADEBAYO ... *Appellant*

AND

THE OFFICIAL RECEIVER

*Respondent.*

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RECORD OF PROCEEDINGS

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BURCHELLS,

68 Victoria Street,  
London S.W.1,

*Solicitors for the Appellant.*

CHARLES RUSSELL & CO.,

37 Norfolk Street,  
Strand, W.C.2,

*Solicitors for the Respondent.*