

4, 1950

No. 96 of 1947.

In the Privy Council.

31955

ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL

UNIVERSITY OF LONDON  
W.C.1.  
9-NOV 1956  
INSTITUTION OF ADVANCED  
APPELLANTS STUDIES

BETWEEN: AKISATAN, APENA of Iporo, LAWANI of Iporo, and I. A. SODIPO of Ikerenti (Defendants)

Appellants

— AND —

- 10 1. AKINWANDE THOMAS
- 2. OKESOCBESAN
- 3. AIYE SAKOTUN
- 4. OKE SANYAOLU
- 5. SANNI FALOLA
- 6. YESUFU OJODU
- 7. J. A. SOYOYE
- 8. ADEKUNLE COKER
- 9. M. J. BAMGBOIA (Plaintiffs) Respondents

20 For themselves and on behalf of that section of the Iporo Community Abeokuta, known as Iporo, No. 2.

— AND —

OBA ALAIYELUWA ADEMOLA II  
(Defendant) Pro Forma Respondent

Case for the Respondents.

1. This is the Appeal of the three Appellants (Defendants) from a RECORD. judgment of the West African Court of Appeal given on the 12th November, p. 86. 1946. Their appeal was dismissed with costs.

30 The Court was composed of Sir John Verity, Chief Justice of Nigeria, President, J. A. Lucie-Smith, O.B.E., Chief Justice, Sierra Leone, and L. E. Vivian M'Carthy, Puisne Judge, Gold Coast.

2. The Respondents to this Appeal (Nos. 1 to 9) were duly authorised to sue by that section of the Iporo Township known as Iporo No. 2 and accordingly they sued the first Defendant Oba Alaiyeluwa Ademola II and the three Appellants. p. 3, l. 20.

Ademola II is the Alake or paramount chief ("King" in its native signification) of Abeokuta, duly elected and installed as such under native law and custom. p. 7, l. 43.

CASE FOR THE RESPONDENTS

3. The trial Judge, C. N. S. Pollard, J. had made (1) a declaration against Ademola II and one of the Appellants, Akisatan, the Apena of Iporo in the terms of the Summons hereinafter referred to (infra, paragraph 8), that the election, appointment and installation by them of Lawani of Iporo, the (second Appellant) to the chieftancy or office of Oluwo, and the election, appointment and installation of I. A. Sodipo of Ikereku (the third Appellant) to the chieftancy or office of Balogun were contrary to native law and custom; and (2) had granted an injunction restraining Lawani and Sodipo from acting as or performing any of the customary functions of the Oluwo of Iporo and of the Balogun of Iporo respectively. 10

For the reasons stated by the trial Judge (p. 70, 1.31) he made the judgment merely nominal against Ademola II with no costs to the Plaintiffs against him personally and with no costs in his favour against the Plaintiffs.

The Court of Appeal, while maintaining the trial Judge's judgment as to the declaration that the installations were contrary to native law and custom and the grant of an injunction against Lawani and Sodipo, varied the judgment against Ademola II by deleting as much thereof as purported to be a judgment against him and substituting therefor judgment for him against the Respondents and said that as the sole ground for allowing his appeal had not been argued in the Court below, no costs would be allowed of the Appeal or in the Court below. 20

The Court of Appeal was of the opinion that the act done by him was done in intended execution of a public duty within the meaning of section 2 of the Public Officers' Protection Ordinance, Cap. 25. (Laws of Nigeria, 1923.p.370) and that the section applied because the action against him had not been commenced within the prescribed period of three months. p. 94, 1. 23.

4. In the district of Abeokuta there are several native Townships. In each Township is an Ogboni Society. Each Ogboni Society is composed of various bodies such as the Iwarefa and the Ologun. (Paragraphs 6 and 7 of the Statement of Claim). 30

No member of the Ogboni Society is without a title such as, for instance, "the Oluwo" or "the Balogun" or other title as theretofore established by native law and custom.

The "Oluwo" chief is the title of one of the Iwarefa chiefs and the "Balogun" chief is the title of one of the Ologun chiefs.

The Ogboni Society and its constituent elements may be considered as a part of the native tribal entity established in the past by native law and custom and still in being and recognised by the Administration of the Protectorate.

5. The Respondent J. A. Thomas (the first Plaintiff), is an educated native and one of the Iwarefa chiefs of Iporo; his title as chief is that of the "Base" of Iporo. Upon any proposal to instal an Oluwo or other chief of Iporo, he was entitled to be informed by the Apena (the first Appellant) of the time, date, and place of meeting for such installation. He was not so informed. 40

p. 14, 1. 18.  
p. 61, 1. 51.  
p. 15, 1. 26.

On the evidence of native law and custom the trial Judge held as a fact that he was so entitled and also that it is an indispensable condition to the choosing of a candidate that each and every living chief of the particular Iwarefa body must be informed by the Apena about the impending election of a chief to their body. p. 62, l. 35.

The Court of Appeal has affirmed the trial judge's judgment that the installation of Lawani as Oluwo of Iporo was on the evidence contrary to native law and custom.

6. R. M. Bangbola (fifth witness for the Plaintiffs-Respondents) an Ologun chief with the title of Osi of Iporo, proved that he, also, received no notice of any proposal to instal Sodipo as the Balogun of Iporo. p. 28.

Of this witness the learned trial Judge said he was satisfied that he was entitled as Osi of Iporo to be notified by the Balogun of Iporo (the 3rd Defendant, Lawani) about the impending election of Sodipo as the Balogun of Iporo; that he never received any notification of any kind on the matter; and that had he been summoned he would have gone to the secret conclave of Ologun chiefs; that he knew nothing about Sodipo's election as Balogun and took no part in it; and the learned Judge said that he believed that he was a witness of truth. At the time of the installation of Lawani as Oluwo, he (Lawani) was the Balogun of Iporo. p. 64, l. 25. p. 64, l. 14. p. 64, l. 30.

The Learned Judge's finding that the installation of Sodipo as Balogun was on the evidence contrary to native law and custom was affirmed by the Court of Appeal.

7. The action was commenced by writ of summons of the 22nd August, 1945, and thereafter pleadings were ordered to be filed and accordingly, Statements of Claim and Defence were filed (p.7 et seq).

8. The Summons claimed against the following Defendants; (1) Oba. A. Ademola II; (2) Akisatan, the Apena of Iporo (i.e. the Apena whose duty it was to give notice of the time, date and place of meetings of Iwarefa chiefs); (3) Lawani of Iporo (whose duty it was to give a similar notice to the Ologun chiefs); (4) I. A. Sodipo of Ikereku, the following relief:—

I. A declaration that the installation by the first and second Defendants—that is by Ademola II and Akisatan (the Apena of Iporo) of (a) the third Defendant—that is Lawani of Iporo—as Oluwo of Iporo Township, Abeokuta on the 26th January, 1945, and (b) of the fourth Defendant—that is I. A. Sodipo of Ikereku—as the Balogun of Iporo on the 1st February, 1945, is contrary to native law and custom of the people of Abeokuta to which the Plaintiffs and the Defendants belong; and

II. An injunction to restrain Lawani and Sodipo from acting as or performing any of the customary functions of the Oluwo of Iporo and the Balogun of Iporo respectively

The relief was granted (*vide supra* paragraph 3).

9. Having found that the installations had taken place contrary to native law and custom and that an allegation that the first Plaintiff, J. A. Thomas, had been suspended from his title of Base of Iporo and deprived of his rights as an Iwarefa chief, had not been established by the Defendants, and also that the Plaintiffs were rightly entitled to sue, the learned trial Judge decided in favour of the Plaintiffs the questions of law raised by paragraph 12 of the Defence of the 2nd, 3rd and 4th Defendants and by paragraph 12 of the Defence of the 1st Defendant Ademola II, (namely that the Supreme Court of Nigeria had no Jurisdiction in the matter). Both the learned trial Judge and the Court of Appeal decided that the Supreme Court of Nigeria had jurisdiction. 10

p. 70, l. 50.  
et seq.

10. Those questions appear to have been as follows: —

(1) That the jurisdiction of the Supreme Court was ousted by subsection 2 of section 2 of the Appointment and Deposition of Chiefs Ordinance, 1930, as amended by the Appointment and Deposition of Chiefs (Amendment) Ordinance No. 20 of 1945, which provided that in the case of any dispute, the Governor, after due enquiry and consultation with the persons concerned in the selection shall be the sole judge as to whether any appointment of a chief has been made in accordance with native law and custom. 20

(As to this point, the learned trial Judge found that the above Ordinance applied to a different class or rank of chiefs, and, on appeal to the West African Court of Appeal, the point was abandoned without argument.)

p. 74, l. 37.

(2) That the Native Court, under Section 8, (1) and section 10, (1) of the Native Courts Ordinance, No. 44 of 1933 and the opening words of Section 12 of the Supreme Court Ordinance, 1943 (No. 23 of 1943), had exclusive original jurisdiction in the matter, and

(3) Apparently alternatively that the titles of Oluwo and Balogun are titles of dignity and honour and that questions arising simply as to native titles and dignities are not justiciable by the Supreme Court but by the Native Court only, and reliance thereon was placed on the decision in *Cowley v. Cowley*, L.R. 1901, A.C. 450 and *Adanji v. Hunvoo*, 1 *Nigeria Law Reports*, 75. In the latter case the local Court in Nigeria purported by analogy to apply to native chieftainships, the law as stated in *Cowley v. Cowley* as to peerages or dignities connected with the House of Lords and the exclusive jurisdiction of that House through its Committee of Privileges. 30

In reference thereto it may be proper to point out that minor chieftainships (e.g. the office of Oluwo, etc.) are the creations of native law and custom and do not proceed from the exercise of any prerogative power 40 vested in any native king or potentate.

11. The Respondents' reply to contentions (2) and (3) was, as to (2) that on the true construction and interpretation of sections 11 and 12 of the Supreme Court Ordinance, No. 23 of 1943 and the relevant sections of the

Native Courts Ordinance, No. 44 of 1933, (infra paragraph 13), the Supreme Court of Nigeria had concurrent original jurisdiction in the matter and as to (3) that pecuniary rights cognisable by the Supreme Court were involved as pleaded in paragraphs 17, 18, 19 and 20 of the Statement of Claim and proved by the evidence, and that *Dick v. Green*, 1 *Nigeria Law Reports*, 114 and *Oke Lanipekum Laoye and others v. Amos Oyetunde*, L. R., 1944, A.C. 170 were authorities which established that the Supreme Court has jurisdiction in the matter in the circumstances.

Both points were decided in favour of the Plaintiffs.

10 12. One further point was raised by the Defendants, resting upon the words of section 12 of the Supreme Court Ordinance, hereinafter set out, namely, that the Supreme Court shall not exercise any original jurisdiction in "any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a Native Court."

The rent referred to in paragraph 20 of the Statement of Claim is payable to a body of people and the holders of certain offices share in the distribution. This right to a share does not give the recipients any title to an interest in land and no title to any land or to any interest in land is in issue. The trial Judge and the Court of Appeal have decided this point  
20 of law in favour of the Plaintiffs. p. 88, l. 52.

13. For convenience, the relevant sections of the Supreme Court Ordinance, No. 23 of 1943, and of the Native Courts Ordinance, No. 44 of 1933, are here set out.

"SUPREME COURT ORDINANCE

PART III

(page 11)

30 S.11. The Supreme Court shall be a superior Court of record, and in addition to any other jurisdiction conferred by this or any other Ordinance shall, within the limits and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities which are vested in or capable of being exercised by His Majesty's High Court of Justice in England.

40 "S.12. Subject to such jurisdiction as may for the time being be vested by Ordinance in Native Courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty's civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty's criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order; and all such jurisdiction shall be exercised under and according to the provisions of this Ordinance and not otherwise.

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits transferred to the Supreme Court under the provisions of s.25 of the Native Courts Ordinance, 1933, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a Native Court nor in any matter which is subject to the jurisdiction of a Native Court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death."

Reference will be made to s.17 (1) of the Supreme Court Ordinance 10 which relates to the application of native laws and customs.

"NATIVE COURTS ORDINANCE

No. 44 of 1933, Sections 8 (1) and 10 (1) (p.p. 175 & 6)

8(1). Every Native Court shall have full jurisdiction and power, to the extent set forth in its warrant and subject to the provisions of this Ordinance, in all civil and criminal cases in which all the parties belong to a class of persons who have ordinarily been subject to the jurisdiction of native tribunals."

10 (1). Subject to the provisions of this Ordinance a Native Court shall administer 20

(a) the Native law and custom prevailing in the area of the jurisdiction of the Court, so far as it is not repugnant to natural justice or morality, or inconsistent with any provisions of any other Ordinance."

14. At page 88 of the Record the Court of Appeal dealt with the question of jurisdiction of the Supreme Court. As to the proviso to section 12, the Court said that the plain meaning of the proviso is that the Supreme Court shall not exercise in a limited class of cases the jurisdiction which it otherwise has power to exercise; that it appeared to the Court that no other reasonable interpretation could be given to the words than that the Supreme Court should exercise its jurisdiction subject to that of the Native Courts so that where a Native Court has exercised or is exercising the jurisdiction vested in it by Ordinance, the jurisdiction of the Supreme Court should not supersede it and should not be exercised in the same matter, a limitation, the Court said, obviously desirable wheresoever there might exist Courts of equal and concurrent jurisdiction within the same area and that such an interpretation gave coherence to the whole of section 12 and meaning to each part of it. 30

p. 88, l. 25.

In this matter no action had been commenced or was pending in a Native Court. 40

15. The Respondents respectfully submit that this Appeal should be dismissed with costs for the following amongst other

## REASONS:

1. Because on the true construction and interpretation of the Supreme Court Ordinance, No. 23 of 1943, and of the Native Courts Ordinance, No. 44 of 1933, the Supreme Court has jurisdiction in the matter of the suit.
2. Because if there is any supportable rule of law established relating to native minor offices or dignities in the case of *Adanji v. Hunvoo* 1. Nigeria L.R. 75, it has no application to the present case in the circumstances
- 10 3. Because according to the decisions in *Dick v. Green*, 1 Nigeria L.R. 114 and *Oke Lanipekun Laoye and others v. Amos Oyetunde*, 1944, A.C. 170 the Supreme Court had jurisdiction in this case.
4. Because there are concurrent findings of fact in favour of the Respondents Nos. 1 to 9 and concurrent decisions of law which are correct in law.
5. Because on the facts of the case and the law applicable thereto the decisions of the two Courts below making the declaration and granting the injunction prayed are right.

HORACE DOUGLAS

F. H. COLLIER

**In the Privy Council.**

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*ON APPEAL FROM  
THE WEST AFRICAN COURT OF APPEAL*

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AKISATAN, APENA of Iporo,  
LAWANI of Iporo,  
I. A. SODIPO of Ikereku (Defendants)  
*Appellants*

— AND —

1. AKINWANDE THOMAS
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8. ADEKUNLE COKER
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(Plaintiffs)  
*Respondents*

— AND —

OBA ALAIYELUWA ADEMOLA II  
(Defendant)  
*Pro Forma Respondent*

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**Case for the Respondents.**

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