

PC  
3/11/53

21, 1953

No. 9 of 1951.

# In the Privy Council.

33476

ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA.

UNIVERSITY OF LONDON  
W.C.1.  
- 9 FEB 1954  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

ADEGBITE, THE OWA-ALE OF IKARE (Plaintiff) . . . . *Appellant*

AND

ADU JIBRILU, THE OLUKARE ODO (Defendant) . . . . *Respondent.*

## RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,  
66A FENCHURCH STREET,  
LONDON, E.C.3,  
*Solicitors for the Appellant.*

BURCHALLS,  
9 BISHOPSGATE,  
LONDON, E.C.2,  
*Solicitors for the Respondent.*

# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA

BETWEEN

ADEGBITE, THE OWA-ALE OF IKARE (Plaintiff) . . . . . *Appellant*

AND

ADU JIBRILU, THE OLUKARE ODO (Defendant) . . . . . *Respondent.*

# RECORD OF PROCEEDINGS

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# In the Privy Council.

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**ON APPEAL**  
*FROM THE WEST AFRICAN COURT OF APPEAL*  
*LAGOS, NIGERIA*

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BETWEEN

ADEGBITE, THE OWA-ALE OF IKARE  
*Plaintiff-Respondent-Appellant*

AND

10 ADU JIBRILU, THE OLUKARE ODO  
*Defendant-Appellant-Respondent.*

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## RECORD OF PROCEEDINGS

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No. 1.

HISTORY OF APPEAL.

**ON APPEAL**

*FROM THE WEST AFRICAN COURT OF APPEAL*  
*(Holden at Lagos).*

To :—

HIS MAJESTY'S JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

20

Suit No. B/23/1948.

W.A.C.A. 3224.

Between ADEGBITE, THE OWA-ALE OF IKARE  
*Plaintiff-Respondent-Appellant*

and

ADU JIBRILU, THE OLUKARE ODO  
*Defendant-Appellant-Respondent.*

HISTORY OF THE APPEAL.

This action was heard and determined by the Supreme Court of the Benin Judicial Division sitting at Benin City which Court on 14th October, 30 1949, gave judgment in favour of the Plaintiff with costs assessed at 150 guineas.

No. 1.  
History  
of the  
Appeal.

No. 1.  
History  
of the  
Appeal,  
*continued.*

The Defendant was dissatisfied with this judgment and appealed to this Court.

The West African Court of Appeal sitting at Lagos on 12th May, allowed the appeal with £68 14s. 9d. costs in this Court, and 50 guineas in the Court below.

The Plaintiff was aggrieved by this judgment, and on 31st May, 1950, through his Counsel, filed a motion praying for conditional leave to appeal to the Privy Council, and on the 20th day of June, 1950, the Court granted Conditional leave to appeal and imposed conditions of appeal.

On the 9th day of September, 1950, the Plaintiff-Respondent-Appellant 10 deposited in Court the sum of £40 to cover the cost of making and transmitting the record of appeal to the Registrar, Privy Council, having entered into a bond with two sureties in the sum of £500 to abide the result of the appeal.

Motion for final leave to appeal was filed on 12th September, 1950, and on the 27th of November, 1950, the Court granted final leave to appeal, all conditions having been fulfilled within the time allowed.

(Sgd.) J. A. SMITH,

Deputy Registrar,

West African Court of Appeal. 20

*In the  
Supreme  
Court of  
Nigeria.*

No. 2.

**PARTICULARS OF CLAIM.**

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.

No. 2.  
Particulars  
of Claim,  
21st July  
1948.

Suit No. W/26/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

Plaintiff seeks as against the Defendant a Declaration that, as the Owa-Ale of Ikare, he is by Native Customary Law the Natural Oba and 30 Ruler of the whole Ikare and as such the only person entitled to wear a Crown and not the Defendant who is a subordinate chief under Plaintiff. The Defendant has wrongfully arrogated to himself the right of wearing a Crown and has been wrongfully ruling the Ikare people and enjoying the privileges thereto attached.

2. Plaintiff also seeks an Injunction restraining Defendant from wearing a Crown and performing the functions of Oba and Ruler and enjoying the privileges thereto attached for by Native Law and Custom no Olukare of Odo can ever wear a Crown or rule as Oba in Ikare.

*In the  
Supreme  
Court of  
Nigeria.*

Dated this 21st day of July, 1948.

(Sgd.) ANDREW O. THOMAS,  
Plaintiff's Solicitors.

No. 2.  
Particulars  
of Claim,  
21st July  
1948,  
*continued.*

Plaintiff's Address : The Owaale Palace, Ikare or  
Care His Solicitors, Yeosa Street, Ibadan.

10 Defendant's Address : Odo, Ikare.

Judicial Relief	..	..	..	..	£3	15	0
Injunction	..	..	..	..	2	0	0
Service	..	..	..	..	1	6	
Mileage	..	..	..	..	6	0	
					<hr/>		
					£6	2	6
					<hr/>		

C.R. 844518 of 24/7/48.

No. 3.

**CIVIL SUMMONS.**

IN THE SUPREME COURT OF NIGERIA.

No. 3.  
Civil  
Summons,  
24th July  
1948.

20

No. 31 A 475 Suit No. W/26/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff  
and  
ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

**CIVIL SUMMONS**

To Adu Jibrilu, the Olukare Odo of Odo Ikare.

You are hereby commanded in His Majesty's name to attend this Court at Warri on Monday the 9th day of August, 1948, at 9 o'clock in the forenoon to answer a suit by Adegbite, the Owa-Ale of Ikare against you.

30

The Plaintiff seeks as against the Defendant a declaration that, as the Owa-Ale of Ikare, he is by Native Customary Law the Natural Oba and Ruler of the whole Ikare and as such the only person entitled to wear a



*In the  
Supreme  
Court of  
Nigeria.*

Crown and not the Defendant who is a subordinate chief under Plaintiff. The Defendant has wrongfully arrogated to himself the right of wearing a Crown and has been wrongfully ruling the Ikare people and enjoying the privileges thereto attached.

No. 3.  
Civil  
Summons,  
24th July  
1948,  
*continued.*

2. Plaintiff also seeks an Injunction restraining Defendant from wearing a Crown and performing the functions of Oba and Ruler and enjoying the privileges thereto attached for by Native Law and Custom no Olukare of Odo can ever wear a Crown or rule as Oba in Ikare.

Issued at Benin the 24th day of July, 1948.

(Sgd.) F. SPENCER PROTHEROE, 10  
Ag. Puisne Judge.

Summons	..	..	£5	15	0
Service	..	..		1	6
Hearing Mileage	..			6	0
			<u>£6</u>	<u>2</u>	<u>6</u>

Cr. No. C844518 of 24/7/48.

TAKE NOTICE : That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to Judgment and execution.

No. 4.  
Order for  
Pleadings,  
10th August  
1948.

No. 4. 20  
**ORDER FOR PLEADINGS.**

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of Warri Judicial Division holden at Warri.

Before :

HIS HONOUR FRANCIS SPENCER PROTHEROE, Ag. Puisne Judge.

Tuesday the 10th day of August, 1948.

W/26/1948.

ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant. 30

Plaintiff seeks as against the Defendant a Declaration that, as the Owa-Ale of Ikare, he is by Native Customary Law the Natural Oba and Ruler of the whole Ikare and as such the only person entitled to wear a

Crown and not the Defendant who is a subordinate chief under Plaintiff. The Defendant has wrongfully arrogated to himself the right of wearing a Crown and has been wrongfully ruling the Ikare people and enjoying the privileges thereto attached.

*In the  
Supreme  
Court of  
Nigeria.*

2. Plaintiff also seeks an Injunction restraining Defendant from wearing a Crown and performing the functions of Oba and Ruler and enjoying the privileges thereto attached for by Native Law and Custom no Olukare of Odo can ever wear a Crown or rule as Oba in Ikare.

No. 4.  
Order for  
Pleadings,  
10th August  
1948,  
*continued.*

Thomas for Plaintiff.

10 Statement of Claim within 21 days.

Defence 28 days after service of Statement of Claim.

(Sgd.) F. SPENCER PROTHEROE,

Ag. Puisne Judge.

10/8/48.

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No. 5.

STATEMENT OF CLAIM.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.

Suit No. W/26/1948.

No. 5.  
Statement  
of Claim,  
27th August  
1948.

20 ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

*versus*

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

STATEMENT OF CLAIM.

(Initld.) D. O. O.

Plaintiff resides at Oke Orun in Ikare in Ondo Province and is the Owa-Ale of Ikare and the Defendant resides at Odo in Ikare and is the Olukare-Odo.

2. Plaintiff's ancestors were the Owa-Ales who reigned over the whole Ikare from time immemorial beginning from Agba-Ode.

30 3. Agba-Ode came from Ife with his Crown made of Cowries and first rested under a tree called Akere tree and founded Ikare which derived its name from this tree.

4. Agba-Ode was therefore the first Owa-Ale. He begat Rotoye who begat Olasun. Olasun begat Ojugbo who begat Agba-Ole. Agba-Ole begat Orukusuku who begat Amubirigidi, Amubirigidi begat Amunipa

*In the  
Supreme  
Court of  
Nigeria.*

No 5.  
Statement  
of Claim,  
27th August  
1948,  
*continued.*

who begat Adetiba. Adetiba begat Gbodi who begat Owa-Jimite who begat Odironoye. Odironoye begat Aranja who begat Ajiboye. Ajiboye begat Adegbite, the present Owa-Ale of Ikare.

5. All these persons wore crowns and reigned over the whole Ikare land as the Owa-Ales.

6. Plaintiff became the Owa-Ale of Ikare after his father Ajiboye's death in 1920 and since then has been the Owa-Ale of Ikare.

7. When Ikare was getting thickly populated, Owa-Ale created Rotowa the first Oluika Odo, Odo being a small quarter in Ikare. He was succeeded by Enikanselu who moved his abode to Ikela where the Oluika- 10  
Odo now live.

8. Ajagunna the eighth Oluika-Odo was Defendant's grandfather. Momo was his father. None of the Defendant's ancestors ever wore a crown.

9. In the year 1886, Owa-Ale Ajiboye the Plaintiff's father being too advanced in age could not attend public meetings or functions. He was always deputed Jagunna, the Defendant's grandfather to treat with the Europeans who used to come from Kabba.

10. Defendant's grandfather thus started the attempt to alter the state of affairs and arrogated to himself the title " Olukare " instead of 20  
" Oluika-Odo " which was the title conferred on his ancestors and himself by Plaintiff's ancestors.

11. From time immemorial Oluika-Odo now known as the " Olukare " has been a subordinate Chief under the Owa-Ale of Ikare.

12. After the death of Momo Defendant's father in 1928, Defendant became the Oluika-Odo in November 10, 1927, and was and still is a subordinate Chief under Owa-Ale, the present Plaintiff.

13. Upon the 25th day of September, 1947, Defendant for the first time arrogated to himself the right of wearing Crown and has been wrongfully ruling the Ikare people (and this with the assistance of the 30  
District Officer who even went so far as to seize the Plaintiff's Crown and bugle on the pretext of inspecting it on the 17th day of March, 1947) and enjoying the privileges and emoluments thereto attached.

14. That after the seizure of Plaintiff's Crown and bugle, Plaintiff was compelled through molestations from the District Officer and Defendant to leave the town of Ikare to lodge complaints to the Olowo of Owo, and thence to the Alafin of Oyo who are their paramount Obas.

15. Plaintiff caused a letter to be written by Solicitors to Defendant and the District Officer for the return to him of the Plaintiff's Crown and bugle. A reply was received that the Plaintiff should apply for his Crown 40  
but he must not wear it.

16. Plaintiff was never deposed by the Government.

17. Plaintiff, by the assumption by the Defendant of office of the ruler of Ikare and the arrogation of right of wearing Crown and the seizure of his Crown and bugle, has suffered great damages and has been wrongfully deprived of and ousted from his Office as the Owa-Ale and ruler of the whole Ikare and consequently the privileges and emoluments thereto attached.

*In the  
Supreme  
Court of  
Nigeria*

No. 5.  
Statement  
of Claim,  
27th August  
1948,  
*continued.*

18. And Plaintiff therefore claims as per Writ of Summons.

Dated this 27th day of August, 1948.

(Sgd.) ANDREW O. THOMAS,

Plaintiff's Solicitor.

10

No. 6.

**DEFENDANT'S MOTION AND AFFIDAVIT in Support for Extension of Time for Defence.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Benin Judicial Division.

Suit No. W/26/1948.

Filed at 9.30 a.m.

4/6/1949. (Intld.) E. D. A. J., Ag. Repr.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

20 ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on Friday the 15th day of July 1949 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel on Behalf of the above-named Defendant can be heard for an order for leave for an extension of time to file Defence to this action and for any other order or further orders as meet.

Dated at Ibadan this 1st day of June, 1949.

(Sgd.) R. A. DOHERTY,

Senior Crown Counsel

(Solicitor for the Defendant).

30

*In the  
Supreme  
Court of  
Nigeria.*

**IN THE SUPREME COURT OF NIGERIA.  
In the Benin Judicial Division.**

Suit No. W/26/1948.

Filed 9.30 a.m.

No. 6.  
Defendant's  
Motion and  
Affidavit in  
support for  
extension of  
time for  
Defence,  
1st June  
1949,  
*continued.*

4/6/1949. (Intld.) E. D. A. J., Ag. Repr.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

**AFFIDAVIT.**

I, RICHARD DOHERTY, Senior Crown Counsel of the Legal Department, 10  
Ibadan, make oath and say as follows :—

1. That I am the Solicitor for the above-named Defendant.
2. That I am informed and verily believe that pleadings were ordered to be filed in this cause sometime in 1948.
3. That the Statement of Claim has been filed and a copy was forwarded to this Chambers sometime in September 1948.
4. That there was no officer of my department stationed at Ibadan in September, 1948, and consequently the Defence was not filed.
5. That owing to inadvertence the matter was lost sight of until it was brought to my notice recently. 20
6. I therefore humbly pray that it may please this Honourable Court to grant an extension of time to file a Defence to this action.

(Sgd.) R. A. DOHERTY.

Sworn at the Supreme Court Registry,  
Ibadan, this 1st day of June, 1949.

Before me,

(Sgd.) A. A. OTUYALO,

Commissioner for Oaths.

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No. 7.

PLAINTIFF'S MOTION AND AFFIDAVIT in Support for Judgment.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. W/26/1948.

Filed 11 a.m. 9/7/49.

(Intld.) E. D. A. J., Regr.

ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff

versus

10 ADU JIBRILU, THE OLUKARE-ODO . . . Defendant.

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court will be moved on Friday the 15th day of July, 1949, at the hour of nine in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for Judgment to be entered in his favour or for such further or other Order as to this Honourable Court may seem fit.

Dated this 20th day of June, 1949.

(Sgd.) ANDREW O. THOMAS,

Plaintiff's Solicitor.

20		£	s.	d.
	Filing Motion .. ..		12	6
	Filing Affidavit .. ..		2	6
	Service .. ..		1	6
	Mlge .. ..		8	0
	Transport .. ..		5	6
			<hr/>	
		£1	10	0
			<hr/>	

C.R. No. B842202.

9/7/49

(Intld.) E. D. A. J., Regr.

In the Supreme Court of Nigeria.

No. 7. Plaintiff's Motion and Affidavit in Support for Judgment, 20th June 1949.

*In the  
Supreme  
Court of  
Nigeria.*

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of Benin Judicial Division.

Suit No. W/26/1948.

No. 7.  
Plaintiff's  
Motion and  
Affidavit in  
support for  
Judgment,  
20th June  
1949,  
*continued.*

ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff

*versus*

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

**AFFIDAVIT.**

I, ADEGBITE, THE OWA-ALE OF IKARE, Yoruba, make oath and say as follows :—

1. That I am the Plaintiff in the above-named case. 10

2. That on the 10th day of August, 1948, Pleadings were ordered by this Honourable Court—21 days for Statement of Claim and Defence 28 days.

3. That I filed my Pleadings in accordance with the order of the Court.

4. That the Defendant must have been served with a copy of the said Statement of Claim ; but since then, Defendant has not filed his Defence.

5. That I am asking this Honourable Court to enter Judgment for me in terms of my Writ. 20

ADEGBITE R.T.

(THE OWA-ALE OF IKARE) Impression.

Sworn at Supreme Court Registry Ibadan this 23rd day of June, 1949, by the within-named deponent Adegbite the foregoing having been read over and explained to him in Yoruba Language by A. A. Otuyalo when he seemed perfectly to understand same before affixing this thumb impression thereto

Oath 4s.  
C.R. No. 177235 of 23/6/49.  
(Sgd.) O. SODEINDE,  
Cashier.

30

Before me,

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



ORDER ON MOTIONS.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.

*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Order on  
Motions,  
15th July  
1949.

Before :

HIS HONOUR C. N. S. POLLARD, Ag. Puisne Judge.

Friday the 15th day of July, 1949.

B/23/48.

10 ADEGBITE . . . . . Plaintiff

*versus*

ADU JIBRILU . . . . . Defendant.

*A. O. Thomas* for Plaintiff.

*Izuora* appears to hold the papers of Doherty, Senior Crown Counsel stationed at Ibadan.

Counsel agree to take the motions together.

*Thomas* says that on 10/8/48 pleadings were ordered.

Plaintiff filed his Statement of Claim.

20 Certain Obas were seeking to arrange a meeting with the hope of having this matter settled.

As nothing materialised, the Plaintiff's motion was filed. No counter affidavit before the Court.

If Court so disposed, Plaintiff asks for judgment.

*Izuora* says that counter affidavit not filed because notice of motion was received by Defendant two days ago.

30 *Court* points out that it would like to hear argument on the new amendments to the Appointment of Chiefs Ordinance 1930 in order to decide whether the Supreme Court has any jurisdiction in the matter and also as to the effect, if any, of section 12 of the Interpretation Ordinance, 1939.

Counsel agree.

Both motions adjourned to 25th August, 1949.

Questions of costs reserved.

(Sgd.) C. N. S. POLLARD,

Acting Judge. 15/7/49.



*In the  
Supreme  
Court of  
Nigeria.*

No. 9.

**DEFENDANT'S COUNTER MOTION for Further Extension of Time to File Defence.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of the Benin Judicial Division.

No. 9.  
Defendant's  
Counter  
Motion  
for further  
extension of  
time to file  
Defence,  
22nd  
August  
1949.

Suit No. W/26/1948.

Filed 9.40 a.m.

(Intld.) E. D. A. J. 23/8/49.

Registrar.

ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

*versus*

10

ADU JIBRILU, THE OLUKARE-ODO . . . Defendant.

**COUNTER MOTION ON NOTICE.**

TAKE NOTICE that this Honourable Court will be moved on Thursday the 25th day of August, 1949, at the hour of nine in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Defendant for an order of Court for an extension of time within which to file the statement of Defence in the above-named suit or for such further or other order as to this Honourable Court may seem fit.

Dated at Benin City this 22nd day of August, 1949.

(Sgd.) J. O. IZUORA,

20

Defendant's Solicitor.

	£	s.	d.	
Filing Motion .. ..	12	6		
Filing Affidavit .. ..	2	6		
Oath .. ..	4	0		
Service & Mileage .. ..	3	0		
	<hr/>			
	£1	2	0	paid.
	<hr/>			

C.R. No. B842226.

23/8/49.

(Intld.) E. D. A. J., Regr.

30



No. 10.  
AFFIDAVIT in Support of Motion.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. W/26/1948.

ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

*versus*

ADU JIBRILU, THE OLUKARE-ODO . . . Defendant.

No. 10.  
Affidavit in  
Support of  
Motion,  
23rd August  
1949.

COUNTER AFFIDAVIT.

10 Filed 9.40 a.m. 23/8/49.  
(Intld.) E. D. A. J., Regr.

I, ADU JIBRILU, THE OLUKARE OF IKARE, Yoruba, make oath and say as follows :—

1. That I am the Defendant in the above suit.

2. That from the beginning of this action the Crown Counsel had acted and still acts on my behalf and I relied on him for the due compliance with all orders as may at all material times be made by this Honourable Court.

3. That I came to know that there was an order of Court which the  
20 Crown Counsel may not have duly complied with when I was personally served with the Plaintiff's Motion and Affidavit on the 13th July, 1949 : two days prior to the return date of the Motion.

4. That paragraph 4 of the Affidavit is not correct in part, for the Statement of Defence has been filed though belated on or about the 22nd September, 1948.

5. That this delay was, according to my Counsel, due to inadvertence.

6. I therefore humbly pray that it may please this Honourable Court to grant an extension of time for the Defence Statement which has been filed as stated in para. 4 above.

30 ADU JIBRILU,  
Deponent.

Right Thumb  
Impression.

Sworn at the Supreme Court Registry,  
Benin City this 23rd day of August,  
1949, by the within-named deponent  
Adu Jibrilu the foregoing having been  
read over and explained to him in  
Yoruba language by Layinka Akpata  
when he seemed perfectly to understand  
same before affixing his thumb impression  
40 thereto.

(Sgd.) OLA. AKPATA,  
Interpreter.

Before me,

(Sgd.) E. D. A. JAJA,  
Commissioner for Oaths.

4s. paid. C.R. No. B842226.

23/8/49.

(Intld.) E. D. A. J., Regr.

HEARING OF MOTIONS—Adjourned.

In the  
Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.

No. 11.  
Hearing of  
Motions—  
Adjourned,  
25th August  
1949.

Before :

HIS HONOUR C. N. S. POLLARD Acting Judge.

Thursday the 25th day of August, 1949.

B/23/1948.

ADEGBITE . . . . . Plaintiff 10

versus

ADU JIBRILU . . . . . Defendant.

A. O. Thomas for Plaintiff.

Izuora holding the brief of R. A. Doherty Senior Crown Counsel Ibadan for Defendant.

Izuora states that this Court has no jurisdiction to hear this matter, Cites Ordinance No. 14 of 1930 as amended by Ordinance No. 20 of 1945.

Cites *Memudu Lagunji versus Olubadan in Council and others* W.A.C.A. judgment 4/12/48 in support of his statement that the Governor shall be the sole judge in matters affecting the appointment of Head Chiefs. 20

Court refers to Ordinance No. 30 of 1948.

Izuora asks for an extension of time within which to file the defence. The reasons for asking for the extension are contained in paragraphs 4 and 5 of affidavit of R. A. Doherty Senior Crown Counsel filed on 1st June, 1949.

Counsel reads the affidavit.

Up to end of June 1948, Mr. Hay was Crown Counsel at Ibadan. Between end of June 1948 and 3/xi/48 no Crown Counsel was stationed at Ibadan. The Police did all prosecutions : no one was assigned to do the work of Crown Counsel.

From 3/xi/1948 R. A. Doherty has been stationed at Ibadan. During 30 the whole of the period mentioned when no Crown Counsel was stationed at Ibadan the office was open and clerks were there.

The order of the Court with respect to pleadings was not brought to the notice of Doherty until after the date had elapsed.

On these grounds, it is prayed that the Court will extend the time for filing the defence, especially as the defence has been filed since September, 1948.

*Court* refers to counter-affidavit of Defendant filed on 23/8/49.

*Court* points out that there is no such document in the file and asks counsel if he has any document containing any entry or note from any Supreme Court Registry to show that the defence has been filed.

*Izuora* says no. He however requests that the Defendant be permitted to file the defence.

*Counsel* states that the document in his possession which purports to be a defence has not been drafted by Counsel. It looks like a letter-writer's efforts.

*In the  
Supreme  
Court of  
Nigeria.*

No. 11.  
Hearing of  
Motions—  
Adjourned,  
25th August  
1949,  
*continued.*

10 *Court* reads to Counsel the contents of telegrams received from Counsel Ibadan on 6th August, 1948, 28/9/48, 22nd October and the replies sent on 28th September and 22/10/48.

*Izuora* says it is possible that the clerk in the office signed on behalf of Crown Counsel.

*Court* reads correspondence, which is in the file from Crown Counsel.

*Izuora* now asks for one week to file and deliver the defence.

*Thomas* for Plaintiff.

20 Plaintiff filed his Statement of Claim in time. Submits that the comparison between Doherty's affidavit and that of Defendant shows that the truth is being kept from the Court.

*Doherty* swears defence was not filed. Defendant says that defence was filed. Affidavits should not be taken lightly. The Plaintiff swore in paragraph 4 of his affidavit sworn to on 23/6/49 that the Defendant had not filed his defence.

*Thomas* says that in July, 1948, he himself had dealings with Hay Acting Senior Crown Counsel who was still at Ibadan. The document is shown to *Izuora* who says that the letter was signed by Mr. Hay on 16/7/48 and purports to come from Crown Counsel Chambers, Ibadan. Letter No. 9/62 that date. It is addressed to A. O. Thomas and A. M. F. M. Agbaj.

30 If Court is disposed to grant the Defendant's prayer there should be an award of substantial costs.

*Court* asks Counsel for the authority supporting his motion in default of pleadings—as contained in Order 40 Rule 1 of the Annual Practice.

40 Before giving its decision on the Defendant's motion (which is first in the list) the Court adjourns this motion to 7th September, 1949. It orders that the defence be filed and delivered on or before 3rd September, 1949. This adjournment will enable this Court to see whether there is any defence to this action so that the Court can deal with the motion and the case in such manner that justice can be done. The Court is guided by Order 27 Rule 11 of the White Book—sub-nom "Defence delivered after Default."

The Plaintiff's motion is adjourned to 7/9/49 also.

(Sgd.) C. N. S. POLLARD,

Ag. Judge. 25/8/49.

*In the  
Supreme  
Court of  
Nigeria.*

No. 12.

STATEMENT OF DEFENCE.

IN THE SUPREME COURT OF NIGERIA.

The Benin Judicial Division.

No. 12.  
Statement  
of Defence  
27th August  
1949.

Suit No. W/26/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and . . .

ADU JIBRILU, THE OLUKARE . . . Defendant.

Filed at 9.30 a.m.

29/8/49. (Intld.) E.D.A.J. Regr.

10

DEFENCE.

1. Save and except as is hereinafter expressly admitted the Defendant denied each and every allegation of fact contained in the Plaintiff's Statement of Claim as if each and every allegation were separately taken and specifically traversed.

2. The Defendant does not admit paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Statement of Claim.

3. With regard to paragraph 1 of the Statement of Claim the Defendant says that the Plaintiff resides at Oke Orun as a quarter chief under the Defendant bearing the title Ale of Oke Orun. The Defendant 20 resides at Okela known as Okela Owelukare.

4. The Defendant avers with regard to paragraph 2 of the Statement of Claim that the ancestors of the Plaintiff did not at any time in history wear crowns nor did they at any time reign over Ikare nor were they ever known or called Owa Ale.

5. The Defendant states with regard to paragraphs 4 and 5 of the Statement of Claim that the Plaintiff's ancestors were fetish priests who wore caps made of cowries during the celebration of the festivals of several idols of Ikare.

6. With regard to paragraphs 8, 9, 10 and 11 of the Statement of 30 Claim the Defendant avers that the predecessors of the Defendant were the natural rulers of Ikare and wore crowns from time immemorial. Ajaguna held office as a crowned ruler of Ikare and was recognised as such by Government. Ale Ajiboye was merely a Quarter chief and was subordinate to Ajaguna.

7. The Defendant says with regard to paragraph 12 of the Statement of Claim that he was appointed the Olukare at a public election by the majority votes of the kingmakers and people of Ikare in accordance with native law and custom, and that the Plaintiff voted for the Defendant at the said election. 40

8. With regard to paragraph 13 of the Statement of Claim the Defendant states that about the year 1946 he revived the custom of wearing crown at Ikare which fell in abeyance at the time when the natural

rulers of Akoko District being then subordinate to the Northern emirate, adopted the religion custom and style of dress of their northern overlords. It was since and because of the said revival that the Plaintiff has been agitating to wear a crown.

*In the  
Supreme  
Court of  
Nigeria.*

9. The Defendant avers with regard to paragraphs 14 and 15 of the Statement of Claim that the Plaintiff's crown and bugle were seized by the Akoko Council because the Plaintiff had ignored the warnings of that Council that the Plaintiff was not by rank entitled to a crown or a bugle. The Plaintiff was later informed to apply for the crown but must not wear it.

No. 12.  
Statement  
of Defence  
27th August  
1949,  
*continued.*

10 10. With regard to paragraphs 16 and 17 of the Statement of Claim the Defendant says that the Plaintiff left the town of his own accord for an unknown destination. The ancestors of the plaintiff never received emoluments because they were merely quarter chiefs.

11. The Defendant avers that he is a chief within the meaning of the Appointment and Deposition of Chiefs Ordinance (No. 14 of 1930); also that his appointment as the Olukare of Ikare was approved in 1928 by the Lieutenant-Governor, Southern Provinces, and that he is a member of the Olukare and Ikare Group Council which is a native authority subordinate to the Akoko Federal Native Authority.

20 12. The Defendant will contend at the trial that this Honourable Court has no jurisdiction to try this action.

Dated at Ibadan this 27th day of August, 1949.

(Sgd.) R. A. DOHERTY,

Senior Crown Counsel,  
Solicitor for the Defendant.

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No. 13.

**AFFIDAVIT of Plaintiff's Counsel in Support of Motion for Judgment in Default of Defence.**

**IN THE SUPREME COURT OF NIGERIA.**

In the Supreme Court of the Benin Judicial Division.

30 Holden at Benin City.

Suit No. B/23/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

Filed at 8.15 a.m.

7/9/49 (Intld.) Ola A. Cashier.

**AFFIDAVIT.**

I, ANDREW OLATUNJI THOMAS of Iwolade Chambers, Yeosa, Ibadan, Barrister-at-Law, Yoruba, make oath and say as follows :—

40 1. That I am the Counsel for the Plaintiff in the above-named case.

No. 13.  
Affidavit  
of Plaintiff's  
Counsel in  
support of  
Motion for  
Judgment  
in Default  
of Defence,  
29th  
August  
1949.

*In the  
Supreme  
Court of  
Nigeria.*

2. That I filed Motion for Judgment in default of the Defendant's Defence.

3. That the Defendant by his Counsel also filed Motion for extension or time within which to file his Defence.

No. 13.  
Affidavit  
of Plaintiff's  
Counsel in  
support of  
Motion for  
Judgment  
in Default  
of Defence,  
29th  
August  
1949,  
*continued.*

4. That in the course of the argument by Defendant's Counsel on the 25th August, 1949, he stated that he was instructed that there was no Crown Counsel at Ibadan as from the end of June, 1948, till about some months later.

5. That it is within my knowledge that there was Crown Counsel at Ibadan till August; as (i) there is a letter addressed to Messrs. A. O. Thomas and A. M. F. M. Agbaje signed by Mr. Hay Crown Counsel and dated 16th July, 1948, on the subject matter of this case and (ii) on the 3rd August, 1948, the Crown Counsel Mr. Hay appeared with me in Suit No. 1/54/47—Risiriyu Oyinbola versus D. A. Oparinde in the Supreme Court, Ibadan, when Judgment was delivered on that case. 10

	s.	d.
Filing Affdt.	2	6
Service	1	6
Mileage	1	6
	<u>5</u>	<u>6</u>

20

C.R. No. B842041 7.9.49 (Intld.) OLAT A. Cashier.

Sworn to at the Supreme Court Registry  
Ibadan by the within-named deponent  
this 29th day of August, 1949.

(Sgd.) ANDREW O. THOMAS,  
Deponent.

Oath 4s.

C.R. No. 180661 of 29/8/49.

(Sgd.) O. SODEINDE,  
Cashier.

30

Before me

(Sgd.) D. A. BANJOKO,  
Commissioner for Oaths.

Copy of Affidavit received,

(Sgd.) J. O. IZUORA,  
7/9/49.

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EVIDENCE of Emanuel Jaja

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.

Before His Honour C. N. S. POLLARD—Acting Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

No. 14.  
Evidence of  
Emanuel  
Jaja,  
7th  
September  
1949.

Wednesday the 7th day of September 1949.

B/23/1948.

ADEGBITE . . . . . Plaintiff

10

*versus*

ADU JIBRILU . . . . . Defendant.

*Thomas* for Plaintiff.

*Izuora* holding Doherty's papers for Defendant.

*Akerele* says that he appears for the Defendant independently of Senior Crown Counsel.

*Thomas* calls E. A. Jaja. Court acts under Order XXXIV Rule 24.

EMANUEL JAJA : sworn on the Bible states. I am the Acting Registrar of the Supreme Court in the Benin Judicial Division. I am in charge of the Records of this Court. I produce the Court file forming part  
20 of the record of these proceedings. I put in the file in W/26/1948 and renumbered B/23/1948.

Not XX-examined.

*Thomas* in answer to the Court states that he was served with a copy of the Defence which was filed on 29.8.1949.

Court reads its decision and the orders made.





*In the  
Supreme  
Court of  
Nigeria.*

No. 15.

INTERLOCUTORY JUDGMENT.

B/23/1948.

ADEGBITE

V.

ADU JIBRILU.

No. 15.  
Inter-  
locutory  
Judgment,  
7th  
September  
1949.

There are two motions before this Court—one by the Plaintiff for judgment to be entered in default of the defence not having been filed or delivered: the other by the Defendant for an order extending the time for filing the defence. From the Court's records and the file connected with this case the following matters appear, and are incontestable. The latter motion was filed in this Registry on 4th June 1949 that of the Plaintiff on 9th July 1949. The Defendant's motion was served on the Plaintiff on 14th June 1949 and as it appears that the Plaintiff's affidavit in support of his motion was sworn to at Ibadan Registry on 23rd June 1949 it is obvious that the Plaintiff's motion was instituted after he had, and as a result of his having, been served with the Defendant's motion. 10

This action was launched on 24th July 1948 in the Warri Judicial Division of the Supreme Court. The return-day was fixed by Mr. Justice Protheroe then Acting Judge for 9th August 1948. On the 6th August 1948 a telegram was received by the Registrar Warri from "Counsel Ibadan"—the official telegraphic abbreviation of Crown Counsel Ibadan—asking that pleadings should be ordered by the Court. 20

On 10th August 1948, it was ordered: that the statement of claim was to be filed and served within 21 days, and the defence within 28 days thereafter.

On 11th August 1948, the Judge at Warri received a telegram from Executive Owo. That telegram stated *inter alia* that the sender understood that Crown Counsel Ibadan had applied for pleadings by both parties to the suit. 30

The statement of claim was filed on 1st September 1948 and was in fact served on the Defendant on 14th September 1948. On the 28th September 1948, a telegram was received by the Registrar Warri from "Counsel Ibadan" i.e. from Crown Counsel at Ibadan in these terms "24/518 x Suit W/26/1948 Adegbite Owa Ale of Ikare versus Adu Jibril Olukare Odo grateful inform me date pleadings ordered and how many days each side x What date statement of claim served on Defendant." This action is now renumbered B/23/48 in the Benin Judicial Division.

According to the entry in the Court File the following telegram was despatched on the same day—28th September 1948—to Counsel Ibadan by the Registrar— 40

"Your Warri 24/518 x W/26/1948 x Adegbite Versus Jibrilu  
" x Pleadings ordered 10th August 1948 x Statement of Claim to  
" be filed within 21 days and defence within 28 days from date of  
" service of statement of claim which was served on 14th instant."

On the 22nd October 1948 a telegram was received by the Registrar Warri from "Counsel Ibadan" i.e. from Crown Counsel Ibadan asking him to expedite the reply to Crown Counsel's telegram 24/518 of 27th September. On the same 22nd October 1948, the Registrar by telegram informed Crown Counsel Ibadan that the telegraphic reply set out above had been sent on 28th September and that reply was quoted *in extenso*.

*In the  
Supreme  
Court of  
Nigeria.*

No. 15.  
Inter-  
locutory  
Judgment,  
7th  
September  
1949,  
*continued.*

10 On 8th November 1948 and 7th February 1949 the District Officer at Owo and the Resident at Akure wrote enquiring about the fixing of the hearing. On the 11th November the District Officer was informed that the case was not ready for hearing as no statement of defence had yet been filed. On 4th February 1949 Plaintiff's counsel telegraphed the Registrar Warri stating that the defence already was too late and asked for the case to be listed. Again on the 8th of April 1949 he asked the Registrar of this Court for the date of hearing.

On 27th May 1949 a telegram was received by the Registrar of this Court from "Counsel Ibadan" i.e. Crown Counsel Ibadan in these terms—

"Kindly state present position re Suit No. W/26/1948  
"Adegbite versus Adu Jubrilu."

20 On the same day Crown Counsel was informed by telegram—

"Defence not filed x Suit pending."

Seven and a half months after the statement of claim was served on the Defendant, Mr. Richard Doherty Senior Crown Counsel Ibadan sent the following letter to the Registrar of this Court. It is dated 1st June 1949:—

30 "I forward herewith attached for filing and service, two  
"copies of notice of motion with affidavit in support praying for  
"an order for extension of time to file Defence in this action. It is  
"extremely doubtful whether I or any other officer of this depart-  
"ment will be able to appear on the hearing of the motion. It  
"would be appreciated therefore if my client, the Defendant can  
"be notified of the hearing date. Will you kindly communicate  
"to this (*sic*) Chambers in due course the order made by His  
"Honour on the motion?"

40 The form of the notice which was attached stated that this Honourable Court would be moved "at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Defendant can be heard for an order for leave for an extension of time to file Defence to this action and for any other order or further orders as meet." Apart from the novelty of the legal phraseology—but then I confess I personally prefer the easily discoverable precedents in Chitty's King's Bench Forms or Daniel's Chancery Practice, or the Annual Practice—it is apparent from the form decided upon by him that Crown Counsel was aware that in a motion of this kind, the Court is usually moved by a legal practitioner. I hope I am not doing Mr. Richard Doherty an injustice when I observe that the contents of his covering letter indicate that he had, like Pontius Pilate washed his hands of his motion for the time being: that the Defendant himself and no one but the Defendant and not Crown Counsel should be served with the hearing notice: that Crown Counsel did not wish to know when the hearing day was to be: that the Court would

*In the  
Supreme  
Court of  
Nigeria.*

No. 15.

Inter-  
locutory  
Judgment,  
7th  
September  
1949,  
*continued.*

*ex proprio motu* make the order ; and that the Court would “ in due course ” communicate to this [*sic*] Chambers the order which it was obviously taken for granted the Court would make as a matter of course, and/or without further ado, and without appearance of Crown Counsel, or counsel of any kind for the Defendant.

To this letter was also attached the affidavit in support which was referred to in the letter. Considered from the legal standards of sections 87, 88 and 89 of the Evidence Ordinance 1943, this affidavit of Mr. Doherty falls short, in the following particulars of the Statutory requirements which are set out in that enactment in a mandatory and unequivocal 10 manner. The affidavit does not contain the full name, the residence or the nationality of the deponent as required by paragraph (b) of section 89 : it does not clearly show in the jurat that the affidavit was sworn before the person taking the same as the words “ before me ” which appear in the affidavit are not towards the left side of the page forming part of the jurat as required by paragraph (g) of section 89 and as shown in Form C33 in the Schedule to the Supreme Court (Civil Procedure) Rules 1945 : it does not comply with sections 87 and 88 in that the facts and circumstances forming the ground of the Defendant’s belief have not been set forth explicitly nor have the name of his informant, the time, place and 20 circumstances connected with the giving of the information been given. Paragraph 6 of the affidavit offends against section 86 of the said Ordinance in that it contains extraneous matter by way of prayer : Paragraph 3 of the affidavit which states “ that the Statement of Claim has been filed and a copy was forwarded to this [*sic*] Chambers sometime in September 1948 ” offends against section 88 in that the informant’s name and the other particulars required by the section have not been stated. That this information was apparently obtained from an informant seems clear from the contents of paragraph 4 which reads as follows :—“ That there was no officer of my department stationed at Ibadan in September 1948 and 30 consequently the defence was not filed.”

In connection with the contents of this paragraph a statement made from the Bar is of some importance. Mr. Izuora was holding the papers of Mr. Doherty and he informed the Court that he was instructed by Mr. Doherty to say that up to the end of June 1948, Mr. Hay was Crown Counsel at Ibadan. Between the end of June 1948 and 3rd November 1948 no Crown Counsel was stationed at Ibadan and that no one was assigned to do the work of Crown Counsel. It is hardly necessary to point out that unless the telegram purporting to come from Crown Counsel Ibadan and dated 6th August is spurious, and unless someone had misinformed the 40 Executive Officer at Owo on or about 11th August 1948 that Crown Counsel Ibadan had applied for pleadings, the statement made by Mr. Izuora from the Bar on the instruction of Mr. Doherty does not appear to tally with the facts as established by those telegrams. Mr. Izuora put forward the explanation that it is possible that the clerk in the chambers of Crown Counsel at Ibadan had sent those telegrams off his own bat in the absence of Crown Counsel. I can only say that I would pause for a very long time indeed before accepting as a fact that any clerk in Crown Counsel’s Chambers would take it upon himself to ask the Supreme Court to order pleadings. 50

Mr. Thomas who practises at Ibadan has thrown some light on the matter. During his argument he sought to exhibit a certain letter. He was requested to show it to Mr. Izuora for his inspection. On its examination, Mr. Izuora informed the Court that the letter in question was in fact signed by Mr. Hay Crown Counsel on 16th July 1948 and that it purported to come from Crown Counsel's Chambers at Ibadan.

*In the  
Supreme  
Court of  
Nigeria.*

No. 15.

Inter-  
locutory  
Judgment,  
7th  
September  
1949,  
*continued.*

As I was acting Judge at Enugu when Mr. Hay arrived there in his Studebaker on duty last Autumn, I sent a telegram to Crown Counsel Enugu on the 26th August in these terms:—"Grateful inform me the  
10 date when and the name and the last prior posting of the Officer who relieved Alex McKinstrey at Enugu when latter went on leave prior to retirement last year." His reply was as follows: "N. G. Hay arrived Enugu from Ibadan 4th September 1948 as McKinstrey's relief x McKinstrey went on leave prior to retirement on 5th September x Hay still on leave. Counsel."

Allowing two days and not one for Mr. Hay's Studebaker to have done the journey from Ibadan to Enugu, it would appear clear from the telegram of Crown Counsel Enugu that there was a Crown Counsel at Ibadan up to the morning of 3rd September 1948. It is capable of being  
20 implied from the telegram from Crown Counsel Ibadan dated 28th September—unless that too is spurious—that there was a Crown Counsel at Ibadan on the 27th of September—the date when the telegram was handed in—If these premises are correct then it would appear to follow that Mr. Doherty's sworn statement that there was no officer of his Department stationed at Ibadan in September 1948 is not completely correct as far as the 1st and 2nd: the 27th, 28th, 29th and 30th of September—all working days—are concerned. It will be observed that Mr. Doherty does not seek to explain—assuming that Crown Counsel was at Ibadan from 27th September and was still there on 21st October when  
30 Counsel from Ibadan had sent another telegram—why the defence was not drafted in the remaining available 16, of the 28 days. The statement of claim was delivered on the 14th September—the last day for the filing of the defence was the 13th day of October. Mr. Hay's successor had from the 27th September to 13th October to obey the order of the Court.

In his affidavit, Mr. Richard Doherty dismisses in 18 words on the score of "inadvertence" seven and a half months failure to carry out an order of the Court. If the "inadvertence" was not "negligence"—but merely "oversight" there is the telegram from Counsel at Ibadan on 22nd October 1948 to show that at that period, in any event, the matter  
40 had actually and in fact, been adverted to by Crown Counsel himself. I am, of course, assuming that Mr. Izuora in far-away Benin City must have misunderstood Mr. Richard Doherty when Mr. Izuora told the Court from the Bar that Mr. Doherty had instructed him to state that there was no Crown Counsel at Ibadan from the end of June to 3rd November 1948. There is nothing in the record to show who the Crown Counsel was who relieved Mr. Hay at Ibadan. If it was not Mr. Doherty, then quite obviously he was not the Crown Counsel who had had the case in mind when the telegrams of 28th September and 23rd October were dispatched. If contrariwise, it was Mr. Richard Doherty who relieved Mr. Hay on or  
50 about 27th September, it is a little difficult for the Court to understand how the case was not brought to his notice till recently—i.e. June 1949—as sworn to in paragraph 5 of Mr. Doherty's affidavit.

*In the  
Supreme  
Court of  
Nigeria.*

No. 15.  
Inter-  
locutory  
Judgment,  
7th  
September  
1949,  
*continued.*

On the 15th July 1949 on the motions coming up for hearing this Court pointed out to Mr. Izuora, who was holding Mr. Doherty's papers and to Mr. Thomas—and it is so entered in the record—that it would like to hear arguments on the New Amendments to the Appointment of Chief's Ordinance 1930 in order to decide whether the Supreme Court has any jurisdiction in the matter, and also as to the effect, if any, of section 12 of the Interpretation Ordinance 1930. This was imperative as the relevant ordinances were, and are, not among the books in this Registry. It should be recorded that neither in the affidavit nor in any letter does there appear, nor from Mr. Izuora (who was Mr. Doherty's representative in Court) 10 did there emanate, one word of regret far less a hint of an apology for the long protracted delay in obeying the order of Mr. Justice Protheroe. Nevertheless, despite the absence of these customary gestures of simple courtesy, this Court confessed that it felt some surprise when it read an official letter dated 25th July 1948, which Mr. Richard Doherty thought fit to address to the Registrar of this Court. It is as follows :—

“ With further reference to my letter No. 24/518/17 dated  
“ June 1949 it is understood that the motion praying for an  
“ extension of time to file the defence in this action was heard at  
“ Benin on the 15th of July and adjourned to a date in August 20  
“ next. Will you kindly supply me as early as possible with a  
“ short account of what transpired in Court at the hearing of the  
“ action? I am particularly anxious to know the reason for the  
“ adjournment.”

In order to complete the record it should be stated that the registrar was directed to and did inform Mr. Doherty that the information he required could be obtained from Mr. Izuora who was holding Mr. Doherty's papers on behalf of the Defendant in the above action.

These motions were again adjourned on 25th August 1949 up to then, no defence had been delivered or exhibited in the usual manner for the 30 Court to peruse. No amending affidavit was filed, and no leave to amend the affidavit of Mr. Doherty was asked for. Once again Mr. Doherty was absent, this time on the score that “ for reasons of health he was unable to undertake the long journey to Benin City.” This Court was of the opinion that it could not act upon the affidavit that was attached to the motion filed by Mr. Doherty, nor could it act upon the affidavit of the Defendant which was filed on the 23rd of August 1949. As this deponent is illiterate, the Court will not be too critical of the form and contents of that affidavit. Like the affidavit of Mr. Doherty, it offends 40 against the provisions of the same sections of the Evidence Ordinance 1943. The Defendant had however sworn in paragraph 4 “ that the Statement of Defence had been filed, though belated, on or about the 22nd September 1948.” On enquiry, the Court was informed by Mr. Izuora from the Bar that he had in his hand that defence which he said appeared to have been prepared by a letter-writer. He could however produce no document issuing from any Supreme Court Registry to support the allegation contained in paragraph 4 of the affidavit of the Defendant that the document had been filed. In fact, that document had not been filed. The position at the end of the arguments on the 25th day of August, 1948, was that there 50 were no merits in the Defendant's application—that is, if judged by the usual standard of juridical practice and procedure that obtain in Courts

long accustomed to British justice. This meant that unless this Court drew on its own knowledge and experience the Defendant's motion would have to be dismissed. To have withheld that knowledge would have worked a hardship on the unfortunate Defendant, who as he swore in paragraph 2 of his affidavit had relied on Crown Counsel for the due compliance with all orders as may at all material times be made by the Court. It was in order to do justice between the parties that the Court drew the attention of both Counsel to the contents of Order 27 Rule 11 of the Annual Practice. Under the sub-title "Defence delivered after 10 "Default," it is stated: "a defence delivered after the proper time cannot "be disregarded even though it is not delivered until after the plaintiff "has served notice of motion for judgment under this rule (*Gill and "Woodfin* 25 C.D. 707 C.A.). In such a case the Court will have regard "to the contents of the defence delivered out of time, and deal with the "case in such a manner that justice can be done (*Gibbings vs. Strong "26 C.D. 66 C.A., Montagu vs. Land Corporation etc.* 56 L.T. 730." In my opinion, the provisions of Order XI Rule 3 read in the light of sections 11 and 12 of the Supreme Court Ordinance 1943 enabled this 20 Court to apply those cases to this matter. And the Court accordingly ordered the Defence to be filed on or before the 3rd day of September 1949 in order that this Court should be able to discover if there is in law or in fact any defence to this action. It is greatly to be regretted that this Court should through what is laconically described as "inadvertence," have had to steer the Defendant's motion into this well-known channel of justice—particularly in a case of this kind. I make that comment because the Plaintiff has pleaded that the District Officer has assisted the Defendant and had himself been instrumental in depriving the Plaintiff of what he considers to be his right, title and dignity and the concomitant emoluments and perquisites thereunto appertaining. Certain cantankerous 30 and untrained minds precluded by passion or prejudice from making a perfectly poised appraisal of the judicial act—and there must be many such in Ikare in a dispute of this character and magnitude—might possibly venture the opinion that because it is a matter in which Government appears to be interested, this Court has gone out of its way to help the Defendant in his motion before the Court. Such partisans should be informed as to the other alternative before the Court, and its repercussions. This Court could have dismissed the motion of the Defendant and given judgment for the Plaintiff on the Statement of Claim. The Defendant would then have proceeded to the West African Court of Appeal to have that 40 judgment set aside. If the Defendant could satisfy that Court that he in fact had a good defence to this action, and if by proper affidavits he disclosed the nature of that defence, then on the payment of costs by the Defendant, that Court would make the order reinstating the entire case. Naturally, both parties would have incurred more expense—particularly the Plaintiff as he, unlike the Defendant, would himself have to pay his counsel. There would have been the resultant delay: and at that future date the parties would have been in exactly the same position as that in which they now are—i.e. with the action still awaiting trial and still undetermined.

It is distressing to be forced to observe that this Court's dilemma in 50 having to choose one of these two alternatives could have been avoided if Mr. Richard Doherty had, even as late as the beginning of August of this year, delivered his pleading to the other side, and/or had in June 1949

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continued.*

attached it as an exhibit to his affidavit. It is my pious hope that wherever in future there is similar so-called "inadvertence" all such inadvertence counsel will remember this particular sub-title to Order 27 Rule 11 of the Supreme Court of Judicature and, acting upon it, remove the horns of a similar dilemma from the path of justice.

This Court has now seen the Defence which was received in this Registry on 29th August 1949. In connection with paragraph 12 thereof which raises the question of this Court's jurisdiction to entertain this suit, there had previously been cited the Appointment and Deposition of Chiefs (Amendment) Ordinance 1945, the Chieftaincy Disputes (Preclusion of 10 Courts) Ordinance 1948, and the decision of the West African Court of Appeal delivered on 4th December 1948 in *Lagunji vs. Olubadan in Council and Laoye*. From what is contained in that legislation and that case, it appears to this Court to be its duty now to deal with this action in such a manner that justice can be done—following *Gibblings vs. Strong*: and *Montagu vs. Land Corporation, etc.* cited above. It appears to be proper to grant the relief for which the Defendant has moved the Court it is accordingly ordered that the time for the filing and delivery of the defence be extended to this 7th day of September 1949: that the Defendant do 20 pay the Plaintiff costs which, having regard to the three appearances of Plaintiff's counsel, are assessed at thirty-five guineas (35 guineas): that the Plaintiff be allowed 10 days within which if so advised, to file and deliver a reply; and that the 3rd day of October 1949 be fixed for the determination of the issue raised in paragraph 12 of the defence: i.e. whether or not the Supreme Court of Nigeria has any jurisdiction to hear and determine this action. It is suggested that Counsel should draw up, sign and file a document embodying the admitted facts which are agreed upon by them and which are germane to this issue. Failing such agreement within seven days, leave is hereby given for either party within five days 30 thereafter to serve on the other a Notice to Admit certain facts. There will be the consequential order that the party served do file his answers thereto within seven days of the service of that notice. Service should be effected by delivery at Counsel's Chambers in accordance with the proviso to Order IX Rule 3, as enacted by the Supreme Court Rules No. 2 of 1949. It is to be understood that the parties will be at liberty at the hearing of the issue to call such evidence as will assist the Court to ascertain those facts—and nothing else except those facts which are directed to the issue of this Court's jurisdiction. The merits of the claims of these rival claimants are not to be gone into at all—at that stage of this action.

The Plaintiff's motion is, with leave of the Court, withdrawn 40 without costs to either party in respect thereof.

(Sgd.) C. N. S. POLLARD,  
Ag. Puisne Judge.  
7.9.49.

As the Court is about to adjourn Mr. Izuora states that he regrets very much the delay on the part of Senior Crown Counsel in filing the Defence, and he says he personally regrets he himself did not tender an apology from the time he was asked to hold the brief.

(Sgd.) C. N. S. POLLARD,  
Ag. Judge. 50  
7.9.49.

No. 16.

## PLAINTIFF'S REJOINDER.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/1948.

Between ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

*In the  
Supreme  
Court of  
Nigeria.*No. 16.  
Plaintiff's  
Rejoinder,  
12th  
September  
1949.

## REJOINDER.

10 1. Plaintiff states that the allegations contained in paragraphs 4, 5, 6, 8, 10, 11 & 12 of the defendant's Defence are untrue.

2. Plaintiff states that his ancestors from Agba Odo wore crowns as stated in paragraphs 4 & 5 of his Statement of claim. On the contrary defendant's ancestors were always the subordinates of plaintiff's ancestors and the latter's messengers.

3. Neither Ajaguna nor his predecessors have ever worn Crown and they were not rulers of Ikare.

20 4. Regarding paragraph 7 of the Defence, plaintiff as defendant's Head-chief merely approved of defendant's election as Oluika Odo after the people had submitted him to plaintiff. There are several Oluikas belonging to other quarters of Ikare. The defendant is the only one who altered his own title Oluika Odo to Olukare to appear as though Olukare means Oba of Ikare.

5. Paragraph 9 of the Defence is totally untrue as will be seen from Crown Counsel's letter which will be produced at the trial.

6. The plaintiff contends that Ordinance No. 14 of 1930 or any subsequent Ordinance such as Chieftaincy Dispute of 1948 does not affect plaintiff's case.

Dated at Ibadan this 12th day of September, 1949.

30 Filing 2/6d.

Ser. & Mlge. 3/

5/6d. paid

(Sgd.) ANDREW C. THOMAS,

Plaintiff's Solicitor.

C.R. No. B842085 (Intld.) E. D. A. J., Regr.

6/10/49

Certified true copy,

E. D. A. JAJA,

Ag. Registrar,  
Grade 1.



*In the  
Supreme  
Court of  
Nigeria.*

No. 17.

RESUMED HEARING.

Resumed Tuesday the 4th day of October 1949.

No. 17.  
Resumed  
hearing,  
4th  
October  
1949.

*Thomas* for Plaintiff.

*Akerele* with Izuora holding Doherty's papers for the defence.

*Thomas* says that he calls no evidence on the issue as to jurisdiction —the onus is on the defence with regard to the issue of the Court's jurisdiction.

*Akerele* calls on that issue.

Evidence  
of Percy  
Sydney  
George  
Flint.

PERCY SYDNEY GEORGE FLINT sworn on the Bible states in 10  
English to Izuora. I am Assistant District Officer Owo Division. I know  
the Defendant : he is the Olukare of Ikare. He is the Ikare District Head.  
I have the record showing when he was appointed. His appointment as  
Olukare was approved by the Lieutenant Governor Southern Provinces on  
11/1/1928. The Defendant is a member of the Ikare Village Group Native  
Authority. I tender P.N. 113 of 1948 published in Nigeria Gazette No. 38  
dated 15/7/1948.

Tendered. Not objected to.

Put in and marked P.S.G.F.1.

I tender the letter expressing the official approval of the Lieutenant 20  
Governor dated 11/1/1928.

*Court* points out that according to the footnote at the bottom of  
page 508 of the 1933 Supplement, the Governor's powers were not delegated  
before 1930. Ordinance No. 14 of 1930 was not passed at the time  
Defendant's appointment was approved.

*Izuora* withdraws the letter.

*X.Vd.* Until this morning I had not seen the Plaintiff. There are  
references to the Plaintiff in the records I have read. He is the Head  
of his quarter to the best of my knowledge. I can't say without referring  
to the record anything about him. 30

*Court* adjourns for one hour to enable counsel to consider the position  
with regard to the proof of the Defendant's appointment prior to 1930.

On resumption Izuora refers to Gazette No. 57 dated 25/1/1934  
published in Gazette No. 4 of 25/1/1934. At page 44 of this Notice under  
Column Powers Conferred Item No. 21, Governor delegates his powers  
under Native Authorities Ordinance Caption 73, section 4 to Lieutenant  
Governor.

*Court* asks for the Gazette Notice which was effective on 11/1/28.

*Izuora* asks for an adjournment to get the necessary Gazettes and  
ordinances. 40

*Court* at this stage asks *Thomas* exactly what he is claiming in this  
action.

*Thomas* says his client wants a declaration that by Native Law and  
Custom he is the natural Oba and Ruler of the whole of Ikare and that

he is the only person entitled to wear a crown. He wants a declaration that the Defendant is not entitled to wear a crown as the Defendant is subordinate to him the Plaintiff.

*In the  
Supreme  
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Nigeria.*

His client wants an injunction to restrain the Defendant from acting as the ruler of the whole of Ikare and enjoying the emoluments and privileges which the Plaintiff had been enjoying.

No. 17.  
Resumed  
Hearing,  
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1949,  
*continued.*

*Thomas* claims that his client is the Owa Ale of Ikare but Defendant whose title is Oluka-Odo changed his title to Olukare so as to make it appear that he is the Oba of Ikare and entitled as such to wear a Crown.

10 Oluka Odo is one of the titles of Olu given by Owa-Ale to his subordinate chiefs and Olu is one of the small chiefs of different quarters. There are about eight different Olus of eight different quarters—all of them subordinate to Owa Ale. Olukare means any chief of Ikare—but by Defendant saying he is Olukare Odo he meant that he is The Chief of the whole of Ikare.

Olukare has never been synonymous with Owa-Ale.

The Plaintiff says that he recognises the Defendant to be Oluka Odo—which means the Olu of Odo which means one of the Olus under the Owa Ale of Ikare, and attached to Odo Quarter. Olukare is a shortened  
20 form of Olu-Ikare—that is the Olu of Ikare.

There has never been such a title called Olukare. It is not disputed that Olukare is a geographical name.

*Court* refers to the use of the words. The Olukare in Public Notice 113 of 1948 and *Thomas* agrees that that is the name given to a person.

Plaintiff admits that Government calls him the Olukare and that Plaintiff approved of Defendant as the Olukare. By that title Plaintiff recognises Defendant to be one of his subordinate chiefs.

*Thomas* now says that Olukare was a title of a subordinate chief under Owa Ale.

30 Odo is a quarter of Ikare. That is why Plaintiff calls the Defendant Olukare Odo.

This is an action in which the Court is asked to determine the meaning given by Government to the words The Olukare and now as to Owa Ale, the Plaintiff was since 1921 the Owa Ale. He has been recognised by Government as such. Defendant has never claimed to be Owa Ale. The Plaintiff still is the Owa Ale. That is a title which has been used by Government. That is the title of the President of the Ikare Native Court up to 1946 the Plaintiff was a member of the Court in his capacity as Owa Ale of Ikare. Documents will show that Plaintiff was addressed in that  
40 capacity by Government.

The Plaintiff's case is the Government ceased in 1946 to attach to the title of Owa Ale of Ikare its full powers and privileges—sidetracked the Plaintiff—allocated to the title Olukare the powers and privileges of the

*In the  
Supreme  
Court of  
Nigeria.*

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Resumed  
Hearing,  
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October  
1949,  
*continued.*

Owa Ale and attaching them to the title Olukare vested them in the Defendant. Up to that stage the Plaintiff alone was wearing a crown: it was seized by the District Officer, and is still with Government.

Defendant thereafter began to wear a crown—as to design of which counsel cannot say that it follows the pattern worn by the Plaintiff.

Defendant has never been appointed the Oba Ale of Ikare.

*Court* now asks Izuora to define the issues from the Defendant's point of view.

He says that the writ raises the question as to which of the parties is by Native Customary Law the Natural Oba and Ruler of the whole 10 of Ikare and as such entitled to wear a crown. Writ raises an issue as to chieftaincy.

Defendant has been ruling as the Olukare of Ikare as from 1928 and he is appointed in accordance with Native Law and Custom as the Olukare of Ikare; and that since appointment has been recognised by the Government.

Defendant was never a subordinate chief to Plaintiff. Plaintiff was a Court Member ever before the Defendant was appointed the Olukare. Defendant's predecessor in office—Olukare—has always been the President of the Ikare Native Court. 20

Defendant says the title Olukare is a title conferred on the Head Chief of Ikare and the holder of the title is the principal ruler and is not subordinate to anybody.

There is no such title as Oluka-Odo. The title Owa Ale had never been known in history. That title has always been Ale; the holder of that title ranked next after the Olukare.

The title Olukare has been known from time immemorial and it has always meant the Head Chief or Ruler of Ikare.

Adjourned to 10 a.m. 5/10/49.

(Sgd.) C. N. S. POLLARD, 30  
Ag. Judge.

No. 18.  
RESUMED HEARING.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Holden at Benin City.

No. 18.  
Resumed  
Hearing,  
5th  
October  
1949.

Before :

HIS HONOUR C. N. S. POLLARD, Acting Puisne Judge.

Wednesday the 5th day of October, 1949.

Suit No. B/23/1948.

10

ADEGBITE

*vs.*

ADU JIBRILU

Appearances as before.

*Akerele* directs Court's attention to Gazette No. 32, Vol. II, page 259, dated 26/6/1924 where the title of the Native Authority in Owo Division is given as the Olukare of Ikare in Ikare Area. *Akerele* cited section 122 of Evidence Ordinance 1943 and section 149.

PERCY SYDNEY GEORGE FLINT recalled with leave of the Court.

Evidence  
of Percy  
Sydney  
George  
Flint,  
re-called.

I have from the custody of the Resident's Office at Akure a document showing the appointment of the Defendant as the Olukare of Ikare dated 11/1/1928.

Tendered. Not objected to. Put in and marked P.S.G.F.2.

*Thomas* admits that the person named therein as Adu is the Defendant in this case.

I have the memorandum referred to in P.S.G.F.2.

Tendered. Not objected to. Put in and marked P.S.G.F.3.

*XX-examined.* I produce a certified true copy of petition dated 18/10/47 to the District Officer Owo and Resident Ondo Province.

Tendered. Not objected to. Put in and marked P.S.G.F.4.

I produce the petition dated 23/3/1946 addressed to Chief Commissioner Western Provinces by Y. A. Olarewaju for the Owa Ale Adegbite.

Tendered. Objected to : not admitted : withdrawn—*res inter alios acta applius.* *Thomas* agrees.

I produce a petition dated 24/10/1946 from one Zaccheus Adewunmi addressed to Chief Commissioner Western Provinces.

Not tendered.

*Thomas* calls no evidence on the issue as to jurisdiction.

*In the  
Supreme  
Court of  
Nigeria.*

No. 18.  
Resumed  
Hearing,  
5th  
October  
1949,  
*continued.*

*Akerele* submits that Court has no jurisdiction to entertain this action. The action is purely a chieftaincy dispute and the Governor is the sole judge in such matters.

Cites Appointment and Depositions of Chiefs Ordinance 14 of 1930. Cites W.A.C.A. decision of 4/12/48 in *Lagunji vs. Olubadan in Council and Laoye* W.A.C.A. decision 2925.

*Court* asks for earlier decision of W.A.C.A. in that case.

The decision of 4/12/48 is the judgment of the West African Court of Appeal that binds this Court.

*Court* asks Counsel what the dispute is about a chieftaincy that this 10 Court cannot try now and which alone the Governor can try.

*Akerele* replies that on writ Plaintiff is asking for a declaration that he is the Natural Ruler of Ikare, i.e., the Head Chief of Ikare and that Defendant is wrongfully ruling his people. He also asks for declaration that Plaintiff is only person entitled to wear a crown—he being the natural ruler of the whole of Ikare and that no one else has that right. The question of the wearing of a crown is part of a chieftaincy—no one else according to Native Law and Custom can wear a crown except he is a chief.

*Court* asks whether the real question is not as to the sovereign power of the two persons holding the titles of Olukare and Owa Ale respectively. 20

*Akerele* says Ordinance 14 of 1930 precludes the Court from dealing with that question. What has to be determined is whether the Olukare of Ikare is the paramount ruler over Ikare.

*Akerele* submits that the quantum of stipend paid by Government is the determining factor as to paramountcy.

*Thomas* admits that the Defendant as Olukare receives from Government a greater stipend than any other Native Chief in Ikare.

*Akerele* rests his submission on these grounds.

*Thomas* in reply.

The appointment of Defendant as Olukare is not disputed. Therefore 30 Ordinances Nos. 14/1930 and 20/1945 deal with disputes about the appointment of persons to chieftaincies.

Plaintiff admits that the Defendant was properly appointed as Olukare of Ikare and in fact voted for him.

Plaintiff complains that whether Defendant is the Olukare claiming thousands of pounds a year he is not, according to Native Law and custom entitled to wear a crown. The only person so entitled is the Plaintiff—a descendant of Owa Ales of Ikare.

There cannot be two crowned persons in the town.

Cites *Thomas and Others* 1/46/1945 versus *Ademola II and others* 40 page 78 of the judgment record.

Cites Order 25 Rule 5 of Annual Practice.

*Court* is asked to declare that Plaintiff alone and no one else by whatever title called, is entitled to wear a crown according to Native Law and Custom.

Cites Order 25 Rule 5—paragraph headed—Declaratory Judgment—Construction of Rule.

On that issue alone, this Court has jurisdiction.

*Akerele* says that Thomas's submission cannot be reconciled with the terms of his writ.

Decision as to the jurisdiction of the Court to be given on Friday  
10 7th October, 1949.

(Sgd.) C. N. S. POLLARD,  
Acting Judge.

*In the  
Supreme  
Court of  
Nigeria.*

No. 18.  
Resumed  
Hearing,  
5th  
October  
1949,  
*continued.*

No. 19.

**JUDGMENT AND PROCEEDINGS re Court's Jurisdiction.**

Resumed at 9.20 a.m. Friday 7th October, 1949.

*Thomas* for Plaintiff.

*Akerele* for Defendant.

Interlocutory judgment re jurisdiction of Court read.

Interlocutory Decision on paragraph 12 of the Defence filed on 29/8/49.

20 On 7th September, 1949, this Court when making an order that the 3rd day of October, 1949, be fixed for the hearing of the issue raised on paragraph 12 of the Defence, i.e. whether or not the Supreme Court of Nigeria has any jurisdiction to hear and determine this action, suggested that Counsel should draw up, sign and file a document embodying the admitted facts which they could agree upon and which were germane to this issue. Failing such agreement within seven days leave was given for either party within five days thereafter to serve on the other a Notice to admit certain facts. There was the consequential order that the party served should file his answers thereto within seven days of the service of  
30 that notice.

Nothing whatever was done by Counsel on either side to get the issues settled before coming to Court. Some evidence has now been led and, in reply to a number of questions by the Court during Counsel's arguments a number of admissions have been freely made by both sides. This Court is now seized of the matters in dispute which will fall for determination.

40 The parties through their counsel's admissions are agreed upon a number of matters. The Plaintiff agrees and does not dispute that the Defendant is a chief: that the Defendant holds the title of the Olukare: that he in fact approved of the Defendant as the Olukare in 1928: that he was appointed the Olukare in 1928 by the Lieutenant Governor Southern Provinces: that the Defendant is paid by Government a stipend higher than that paid to any other chief in Ikare.

No. 19.  
Judgment  
and  
Proceedings  
re Court's  
Jurisdiction,  
7th  
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and  
Proceedings  
re Court's  
Jurisdiction,  
7th  
October  
1949,  
*continued.*

There is therefore no dispute by the Plaintiff of the Defendant's official position as a member of the Ikare Group Council and that the Olukare and Ikare Group Council are members of the Native Authority duly constituted under the Native Authority Ordinance, 1943, over the Ikare village Group Area. It is also indisputable that in 1924 Olukare of Ikare was the title of a Native Authority in Ikare District contrary to N.G. 26/6/24 at page 259. The Defendant on his hand admits that the Plaintiff was a Court member before 1928 : the Defendant is not claiming to be the Owa Ale of Ikare. He says however that as the Olukare of Ikare he was never a subordinate chief to the Plaintiff : that his predecessor 10 in the office of The Olukare has always been the President of the Ikare Native Court : that he since January, 1938, is the District Head of Ikare and President of the Ikare Native Court : that the title of The Olukare is a title conferred on the Head Chief of Ikare and that the holder of that title is the Principal Ruler of Ikare and is not subordinate to anybody. As to the title Owa Ale, the Defendant says that that title has never been known in history. The proper name is "Ale" and nothing else : and that the holder of that title of "Ale" ranks next after that of the Olukare.

The other part of the Plaintiff's claim concerns the question of the right to wear a crown. The Plaintiff says that only the chief known as 20 Owa Ale has a right to wear a crown at Ikare. That is the symbol of his paramount Native Sovereignty at Ikare according to Native Law and Custom. He claims that no one else can wear a crown at Ikare but himself ; and no Olukare has ever had, according to Native Law and Custom, the right to wear a crown. What has been thus succinctly recited contains the main difference between the parties. As far as I am able to see at the moment from what has been proved and what has been admitted, the issues before the Court on the question of its jurisdiction can be summed up in these questions :—

1. Is there, according to Native Law and Custom any title in Ikare 30 formerly known as Owa Ale ?
2. Did the chief—if any—enjoying that title have according to Native Law and Custom the right to wear a crown in Ikare ?
3. If he did, had any one but him such a right according to Native Law and Custom ?
4. Had the Olukare the right, according to Native Law and Custom, to wear a crown in Ikare ?
5. Has The Olukare such a right according to Native Law and Custom ?
6. What in the order of precedence at Ikare is the rank of the chief 40 called The Olukare according to Native Law and Custom ?
7. If there were in Ikare an Owa Ale and the Olukare which of the holders of those titles was according to Native Law and Custom the recognised Native Head and Ruler of Ikare ?

As those are the main issues between the parties at this phase of the matter, it is now necessary to refer to the two Ordinances which the Defence says govern this case and also to the West African Court of Appeal's majority decision of 4th December, 1948, in order to discover what those two Ordinances enact and what that decision lays down. The Ordinances are No. 14 of 1930 as amended by Ordinance No. 20 of 1945. 50 The entire text reads as follows :—

Ordinance No. 14 of 1930 as amended by Ordinance No. 20  
of 1945.

Appointment and Deposition of Chiefs.  
(Colony and Protectorate.)

*In the  
Supreme  
Court of  
Nigeria.*

No. 19.  
Judgment  
and  
Proceedings  
re Court's  
Jurisdiction,  
7th  
October  
1949,  
*continued.*

Title.	Ordinance to Provide for the Appointment and Deposition of Chiefs.
Short Title and application.	1. This Ordinance may be cited as the Appointment and Deposition of Chiefs Ordinance, 1930, and shall apply to the Colony and Protectorate (including the Cameroons under British Mandate).
10 Appointment of Chiefs.	2. (1) Upon the death, resignation or deposition of any chief or of any head chief the Governor may approve as the successor of such chief or head chief, as the case may be, any person appointed in that behalf by those entitled by native law and custom so to appoint in accordance with native law and custom, and if no appointment is made before the expiration of such interval as is usual under native law and custom, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the chieftaincy as it may be necessary to perform.
20	(2) 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.
Grading of Head Chiefs.	(3) The Governor may grade head chiefs as first, second, third, fourth or fifth class according to their importance.
30 Deposition of Chiefs.	(4) The Governor, after due enquiry and consultation with the persons concerned in the selection may depose any chief or any head chief, whether appointed before or after the commencement of this Ordinance, if after inquiry he is satisfied that such deposition is required according to native law and custom or is necessary in the interests of peace, or order or good Government.
40 Definition.	5. For the purposes of sections 2 and 4 of this Ordinance the words "chief" and "head chief" mean a chief or a head chief who has been appointed to the office of native authority under the provisions of the Native Authority Ordinance, 1943, or which office is deemed to be constituted thereunder or who is a member of a native authority constituted or deemed to be constituted under the provisions of that Ordinance or, where the office of native Authority so appointed or deemed to be constituted, is a chief associated with a council, any chief or head chief who is a member of that Council and any chief or head chief who is a member of an advisory council.

Ordinance No. 14 of 1930 was amended by Ordinance No. 20 of 1945 as from 19th April, 1945. They are the statutory law of this country



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as far as the Colony and Protectorate are concerned with the exception of the Western Provinces to which as from 6th September 1948 Ordinance No. 30 of 1948 applies. Section 5 of the last-mentioned Ordinance enacts that nothing in that Ordinance shall prejudice or prevent the trial of any cause pending before the Supreme Court or Magistrate's Court on 6th September, 1948, or any appeal in any cause then pending or any proceedings for giving effect to a judgment in any such tried, [*sic*] or previously obtained. This action was filed in July, 1948. Sub-section (1) of section 2 of Ordinance 14 of 1930 clearly recognises that the appointment of any chief or head chief is to be by those persons entitled by native law and custom so to appoint in accordance with native law and custom. The governor has no power to appoint a chief or head chief. He has statutory authority only to *approve* a successor of a chief or head chief on the death, resignation or deposition of a chief or head chief. The Governor therefore cannot approve as a successor any person who has not been appointed in accordance with native law and custom by those persons so entitled to appoint. Even when no appointment is made before the expiration of the time when according to native law and custom such appointment should have been made the Governor still has no power to appoint a chief or head chief. His powers are clearly limited by sub-section (1) of section 2 to appointing a person to carry out only such of those duties incidental to the chieftaincy as it may be necessary to perform. That also clearly means that if and when a chief is appointed later on according to native law and custom by the persons so entitled to make the appointment, the Governor then will under the ordinance have to consider the question of approving that delayed appointment. 10

The Governor is under no compulsion to approve any person who has been appointed. He may, not must, approve. If he does not approve that cannot as the subsection reads affect the appointment already made under native law and custom, by the persons so entitled to appoint. The subsection is also silent as to the position which would arise if the chief appointed is not approved by the Governor. The position may arise also as to the legal status of a person temporarily appointed by the Governor to carry out those necessary duties referred to in subsection (1) of section 2. If after a period of time, a person is appointed according to native law and custom by those entitled so to do, and the Governor does not approve, nice questions on which the Ordinance is silent will arise because the vacancy which led to the Governor appointing a person temporarily to carry out incidental and necessary chieftaincy duties has been filled; and no legal authority would therefore exist for the continuance in temporary office of that person so temporarily appointed by the Governor. 20 30 40

There comes subsection (2). There is only one class of dispute of which the Governor has been made the sole judge. That dispute is as to whether any appointment of a chief as defined in section 5 has been made in accordance with native law and custom. It is not a dispute as to whether the person has been appointed by those entitled by native law and custom so to appoint in accordance with native law and custom. Those words which occur in subsection (1) are for some reason not repeated in subsection (2). The dispute is as to whether any appointment has been made in accordance with native law and custom. I do not know enough about native law and custom to rule that this is a distinction without a 50

difference. If it is then the need for particularising an appointment by those entitled by native law and custom to appoint which occurs in subsection (1) is unexplained.

The second point to be noticed with regard to subsection (2) is that the Governor only becomes the sole judge of that particular kind of dispute when and only when a dispute has arisen; and a dispute can only arise after an appointment *has been made*—not is about to be made, or is going or is likely to be made; but *has been made*.

The third point is that it is only after the Governor has made due  
 10 enquiry and has held consultation with the persons concerned in the selection, that he is made the sole judge. The subsection makes it obligatory upon the Governor himself to hold due enquiry and have consultations. A comparison with the original amended subsection makes that perfectly obvious. That read—“the Governor shall be the sole judge as to whether any appointment—has been made in accordance with native law and custom.” The additional words in the amending section “after due enquiry and consultation with the persons concerned in the selection” must be given effect to and in my opinion can bear only one meaning—  
 20 The amended section in my opinion means the Governor is required by law to do so and has to do so only with the persons concerned in the selection. I pause here to point out that this word “selection” is an entirely different word from “appointment.” Nowhere is it stated who the persons are who are concerned in, not with, the selection. Who are these persons? The Ordinance does not define them or indicate who they are. If selection does not mean appointment, then who is to determine the identity of these selectors? The Ordinance does not say. But I think a slip in drafting caused the use of the word “selection” instead of the word “appointment”; if that is correct then the Governor is required to hold enquiry and have consultation with the persons entitled  
 30 by native law and custom to appoint in accordance with native law and custom. The subsection means that it is only after due—that is, proper—enquiry and consultation *with* those persons that the Governor is to be the sole judge. That is a *sine qua non* unless the additional words have no meaning. Unless and until the Governor has made that enquiry and held those consultations, he is not in law the sole judge.

That is what in my opinion subsection (2) means. The persons concerned in the selection could only mean the persons having the right to make the appointment. It can only mean those persons who by native law and custom are the persons entitled to appoint chiefs in accordance  
 40 with native law and custom.

The fourth point is that the Governor is to be the sole judge. The words “the sole judge” mean that the Governor is required to perform the functions of a judge he has to make enquiry and hold consultations with particular persons and having done so to judge the sole issue that can arise out of the dispute. That power to judge cannot in my opinion be delegated. I have not had an opportunity to read the case of *R. vs. Lloyd* [1906] 1 K.B. 22, but that case is cited in the 10th edition of Broom’s Legal Maxims at page 571 in support of the text that an individual clothed with judicial functions cannot delegate the discharge of those functions  
 50 to another unless as in the case of a County Court Judge he be expressly

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empowered to do so. For the ordinary rule is that, although a ministerial officer may appoint a deputy a judicial officer cannot: See also *Shelgrove vs. Ellringham Colliery Co.*, for meaning of "Sole agent" (45 J.F. 408) referred to in Stroud's Judicial Dictionary, page 1901, and *A.-G. Canada vs. A.-G. Ontario* [1898] A.C. 700, for the meaning of "The exclusive Right," referred to at page 659 of Stroud's. Apart from that, the subsection uses the word "sole." The words are "the sole judge." Those words not only contain no express power to delegate but they clearly remove any power to delegate such for instance as is given by subsection (1) of section 28 of the Interpretation Ordinance, 1939. As thereafter the subsection makes 10 the Governor in certain ascertainable circumstances "the sole judge" no other person but the Governor himself can adjudicate upon a dispute. If, as in *Lagunju's* case as stated by the West African Court of Appeal on 10th November, 1947, the Resident gave the approval and the Legislature fully intended that a Resident and not the Governor should do so, then the Legislature has in these Ordinances used the most extraordinary words to say so. I am at pains to add that this part of my construction of subsection (2) *has nothing to do* with the other major question about the ouster of the jurisdiction of the Supreme Court. It is concerned at this stage with the single point that the Governor cannot delegate to any 20 administrative or other officer the powers conferred upon him by subsection (2). The analysis of section 2 shows the circumstances under which, and the stages which are to be reached before, the Governor is declared to be, and becomes, vested with the power solely to adjudicate under the Ordinances.

It follows to my mind that before that stage has been arrived at the authority of the Courts remains supreme to entertain litigation on all disputatious matters.

Counsel for the defence have cited the second decision of the West African Court of Appeal delivered on 4th December, 1948, in *Lagunju vs. 30 Olubadan-in-Council and Laoye*. It was a majority decision of the present president Mr. Justice Blackall and Mr. Justice Lewey, Justice of Appeal. The learned Chief Justice of Nigeria delivered a dissenting judgment which followed the lines of an earlier decision of the West African Court of Appeal delivered on 10th November, 1947, on the same issue between the same parties. The members of that tribunal were the then President the learned Chief Justice of the Gold Coast, and the learned Chief Justices of Nigeria and Sierra Leone. In my very humble opinion I propose to adopt the construction placed upon subsection (2) by the West African Court of Appeal in the decision given on 10th November, 1947. Apart 40 from the fact that Mr. Justice Blackhall, and Mr. Justice Lewey are in the minority when both decisions are read together as the judicial pronouncements on the same matters of five of the Judges of the West African Court of Appeal, there are more weighty reasons for my decisions.

This Court is entitled to look for guidance on the construction of this Ordinance to any cases that have dealt with the construction of similar enactments. They do not appear to have been cited to the West African Court of Appeal. My past experience in private practice in Trinidad, where four of the five West African Court of Appeal judges have sat at different times and in different capacities has enabled me to pray in aid 50

certain decisions of the House of Lords in the interpretation of section 27 of the Friendly Society Act (10 Geo. 4c, 56) and section 68 of the Friendly Society's Act, 1896 (59-60 Vict., Chapter 25).

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Under the earlier Friendly Societies Act (10 Geo. 4, c. 56) section 27 provided that disputes between the Society and any member shall be referred to arbitration. The Benefit Building Societies Act (6 and 7 Will 4, c. 32) provided by section 4 that the provisions of 10 Geo. 4, c. 56, shall extend to Benefit Building Societies so far as the same may be applicable. In *Mulkern and Another vs. Lord (House of Lords)*, 40 Law Times 594, the effect of section 4 was considered. In that case the respondent was a member of a Building Society formed under 6 & 7 William 4, c. 32, and not registered under the Building Societies Act, 1874 (37 and 38 Vict., c. 42). As such member he had mortgaged property to the society to a large amount. In a Suit brought by him for a redemption of the property and an account, the Defendants asked that the matter be referred to arbitration in accordance with the rules of the society under 10 Geo. 4, c. 56, s. 27. It was held that the provisions of section 27 were not applicable to a dispute where the relation of mortgagor and mortgagee existed. The point taken that the arbitrators were not properly appointed under the rules and the Act was not adjudicated upon. Lord O. Hagan laid it down very clearly that the onus is on the party who is denying the right, to show that the right to maintain an action in a Court of law has been expressly forbidden by law and has been taken away by clear and express legislation. The privilege of appeal to a Court of Justice remains unless the Court's jurisdiction is statutablely superseded. The House of Lords emphasised two important principles. The first is that where the Act contained provisions for the cheap and easy settlement of disputes between members of the Friendly Society in reference to matters within the scope of their operations, and where in such a dispute as to such a matter a rule of the Society ousting the Court's jurisdiction is framed according to the Statute, that rule would be of binding force—and there must be a reference to arbitration and to no other tribunal. The second is that where the dispute gives rise to matters which involve the adjustment of rights or other questions which cannot properly be sifted unless the parties went to a court which had all the means and the powers of sifting, dealing with, and enforcing them, then the Society's domestic tribunal has no jurisdiction to deal with disputes of that kind. In the case under review, the rights involved were those between mortgagor and mortgagee; rights of foreclosure and redemption; reconveyance of property; and rights relating to accounts. Only a Court of Law and a Court of Law alone could exercise jurisdiction in disputes involving questions of that kind.

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This case is of importance where rights are involved in these ordinances which the Governor has not the means and powers of sifting and which he has not the power of dealing with or enforcing.

*Andrews and Others vs. Mitchell* (1904), 91 Law Times 537, is the next decision of the House of Lords which should be noticed. It dealt with section 68 of 59 and 60 Vict., Chapter 25, which reads as follows:—

“ Every dispute between a member . . . and the Society . . . shall be decided in manner directed by the rules of the Society, and the decision so given shall be binding and conclusive on all

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parties without appeal, and shall not be removable unto any Court of Law, or restrainable by injunction, and application for the enforcement thereof may be made to the County Court."

It was held by the House of Lords that section 68 of the Friendly Societies Act, 1896, does not give to the domestic tribunals of the Societies absolute power to pronounce decisions which shall be exempt from examination in Courts of Law. To be protected from review, a decision must be given in accordance with the rules of the Society. Therefore, where the arbitration committee of a Friendly Society proceeded to expel a member summarily without first making a charge against him in the manner provided by the rules it was held that he could bring an action for damages for wrongful expulsion. The Lord Chancellor Lord Halsbury said: "There are some principles of justice which it is not possible to disregard and after giving every credit to the desire on the part of this arbitration Court to do justice, I think it manifest that they proceeded far too hastily in this case; and, without imputing to them any prejudice or any desire to do wrong, I think that the mode in which the whole question was raised and was disposed of was so slipshod and irregular that it might lead to injustice . . . In this case the charge was never made as provided by the rules, and if no power is given under the rules to expel a member except upon a charge made and tried according to the rules there is no power to expel in a case like this . . . This most important principle ought to be brought home to the minds of the Courts presided over as they are by comparatively uneducated men, that some of these forms are matters of substance and that they must summon a man and give him time to consider what he has got to do and give him the charge against him in writing. These are all matters of substance and not mere matters of form. They are the foundation of the subsequent litigation between the parties and if they were neglected in this case it appears to me that there was no jurisdiction to entertain the charge at that time." Lord Robertson said: "The Act of 1896 has not given *carte blanche* to the tribunal of these societies to pronounce decisions which shall be exempt from examination in Courts of Law. The decisions protected from review are constitutional decisions—decisions pronounced according to the rules which are as we know registered under the Friendly Societies Acts . . . The invasion of his rights most clearly transcends the class of irregularities and calls for the intervention of the Court." The next House of Lords' decision is the well known case of *Catt vs. Wood and Another* (1910), 102 Law Times 614, in which section 68 was again considered. This was an action to restrain the Society from expelling the Plaintiff-Appellant and for damages. The Lord Chancellor Lord Loreburn stated:—

"There is no case of misconduct alleged against those who administered this society such as was acted upon. (I speak of misconduct in its technical sense) in the case of *Andrews vs. Mitchell* . . . I do not wish to suggest that either of the decisions of this society which had been complained of were invalid in law as contrary to fairness, but even if they were erroneous in point of law it seems to me that Your Lordships and the Courts below have no authority at all to interfere."

His Lordship read section 68 and continued:—

"Now there can be no doubt that upon both the occasions on which decisions were made by this Society in the case there was

10 a dispute between the appellant and the society. The appellant was a member ; the appellant was also a person claiming under the rules of a Registered Society, and it seems to me that we have the most express enactment forbidding courts of law from interfering in a matter of that kind, and I must say myself that I think that it is most necessary that we should obey loyally the enactments which are made in order to prevent multitudinous litigation, and to give effect to the decisions, if they be honest and not open to the charge of misconduct of those who are deciding, rightly or wrongly, within the jurisdiction which is confident then by the laws of this country."

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The next decision is that of the Appeal Court in the King's Bench Division which reversed a decision of a judge in Chambers : *Wayman vs. Perseverance Lodge of the Cambridgeshire Order of United Brethren Friendly Society* (1917), 116 Law Times 14. The head note is as follows : " The appellant was the Secretary of the respondent friendly society, and had been a member thereof for nearly thirty years. While he was absent on military duties in June, 1915, the respondents without giving the appellant any notice of an intention to hold any enquiry, and [*without*] formulating  
20 any charge against him, and without *charging* him, passed a resolution by their management committee that the appellant be expelled under rule 3 (2) of the society which provides that " any officer misapplying the funds shall repay the same and be expelled." The appellant claimed in the County Court a declaration that the resolution was *ultra vires* and void, that he was still a member of the society, an injunction, and damages in his favour. The respondents then obtained in Chambers a writ of prohibition on the ground that the learned judge had no jurisdiction to try the action, and that under the rules of the society the dispute must be settled by arbitration.

[*sic*]  
[*sic*] *hearing*

30 " Held that either the management committee had, by their resolution expelling the appellant, taken upon themselves to decide the dispute as to the appellant's guilt in which case they were not the authorised tribunal and even assuming that they were, had not acted judicially ; or else they had proceeded to expulsion before the appellant's guilt had been established by the only competent body—namely the arbitrators ; and the learned judge had therefore jurisdiction to declare the resolution void. The decision of the judge in Chambers was reversed."

In this case the respondents relied on section 68 as amended by section 6 of the Friendly Societies Act, 1908, which defines the word " dispute."  
40 The decisions of Mr. Justice Lush and Mr. Justice Bailhache proceeded on the grounds that the committee had been guilty of misconduct either by acting in violation of natural justice or in breach of their rules. " Natural justice," said the latter judge " is a vague term but the particular violation complained of here was that the committee had decided against the appellant without hearing him." *Andrews vs. Mitchell* which was stated to be recognised by Lord Loreburn, L.C., in *Catt vs. Wong* was followed and applied. The question as to whether the rules had been violated on the election of an officer and whether a Court had jurisdiction was decided in the Scotch case of *M'Gowan vs. City of Glasgow Friendly*

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*Society* which is noted in footnote "O" at page 323 of volume 25 of the English and Empire Digest and which reads as follows:—

"In an action by a member of a friendly society against the society for declaration that the appointment was void in respect that under the rules of the society he was ineligible for election, it was in defence denied that he was ineligible, and it was also pleaded that the action was excluded by a rule of the society that all disputes between the society and any member as such may be determined by arbitration. This rule was passed under the Friendly Societies Act, 1896, which provides that every dispute between a member and the Society shall be decided in manner directed by the rules of the society without appeal and shall not be removable into any Court of Law . . . Held: The action was competent in respect that the jurisdiction of the Court was not excluded in a case where the averment was that the Society had acted in violation of its rules and constitution."

In my humble opinion these Friendly Societies Acts cases are of major importance. Just as the Courts in England have a right to exercise their jurisdiction where there has been a breach of the Societies rules in matters of substance as therein stated, or where there has been a denial of natural justice, or where the procedure laid down in the rules of the Society has not been followed even innocently or where rights are involved which the Society's domestic tribunal has not the means and powers of sifting and which it has not the powers of dealing with and enforcing, so in my considered opinion has the Supreme Court of Nigeria jurisdiction to entertain causes which are based on violation, however innocent, of subsection (2). There is to my mind neither distinction nor difference between a society not observing its rules of procedure or in condemning a member unheard and the Governor refraining from making due enquiry and holding consultation with the persons concerned in the selection or appointment, or in his doing so, to use with respect some of the words of Lord Halsbury in *Andrews vs. Mitchell* "far too hastily or in so irregular a manner that it might lead to injustice," or in his delegating to even a high-ranking and experienced Administrative Officer the power to decide disputes of which the Ordinance says the Governor is to be the sole judge. To adopt Lord Robertson's words, the decisions protected from review are constitutional decisions—decisions pronounced according to the provisions of subsection (2). As in *Wayman's* case, the intervention of the Supreme Court can be obtained if there is a breach of subsection (2). The inherent jurisdiction of His Majesty's High Court of Justice in England remains paramount. The Supreme Court of Nigeria is possessed of, and is required by section 11 of The Supreme Court Ordinance to exercise, that inherent jurisdiction.

The final matter to be considered is—what have these two Ordinances to do with the dispute between these parties? I repeat my summary of the outstanding questions between the parties as they are now known to the Court:—

1. Is there according to Native Law and Custom, any title in Ikare formerly known as Owa Ale?

2. Did the chief, if any, enjoying that title have according to Native Law and Custom, the right to wear a Crown in Ikare?

3. If he did, had anyone except him a right according to Native Law and Custom ?

4. Had the Olukare the right, according to Native Law and Custom to wear a crown in Ikare ?

5. Has the Olukare such a right according to Native Law and Custom ?

6. What in the Order of precedence at Ikare is the rank of the Chief called the Olukare according to Native Law and Custom ?

10 7. If there was in Ikare an Owa Ale and The Olukare, which of the holders of those titles was according to Native Law and Custom the recognised Native Head and Ruler of Ikare ?

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As not a single one of those questions could by the most elastic stretch of the most fertile imagination come within the provisions of those two ordinances, only one decision is possible and that is that this Court has full and unfettered jurisdiction to deal with this action, I order that the Defendant whatever the final result of this action may be, shall in any event pay the Plaintiff's costs on this issue, which having regard to the three separate days devoted to this determination I assess at twenty guineas and I further order that those twenty guineas shall not be paid till the  
20 action is finally disposed of by this Court. It is also ordered that in the event of the Defendant succeeding on the whole action, this sum of 20 guineas is to be set off against his costs, if any.

(Sgd.) C. N. S. POLLARD,

Ag. Puisne Judge.

*Court* rules that the Supreme Court has jurisdiction to hear this action, and orders that 20 guineas costs be paid to the Plaintiff in any event. Execution stayed till determination of the action. In the event of judgment being entered finally for the Defendant the sum of 20 guineas is to be set off against the Defendant's costs, if any.

30 *Akerele* says that he is instructed to appeal on the question as to whether or not *this* Court has any jurisdiction to hear the case.

The question of jurisdiction is a point of law ; any decision given on that point is a judgment of the Court and is not an interlocutory decision. Defendant has therefore every right to appeal within the time prescribed by law.

Until the Defendant fails to appeal within the prescribed time, this Court cannot hear this case as the decision goes to the very root of the whole case.

To proceed with the case would be a waste of time.

40 *Court* asks for authorities.

*Akerele* says he is not citing any authorities.

*Ruling* : An interlocutory decision as far as I can say without reserving the question is any decision of the Court on any matter arising during the case.



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If Mr. Akerele's contention is correct then it would mean that whenever any Court decided any question relating to its jurisdiction—or as he puts it on any point of law, the action has automatically to be stopped ; adjourned for a sufficient length of time for the Court to discover if the affected person has filed an appeal ; and then continue or not with the trial according to what has emerged as a result of waiting. As I do not agree with this contention, I do not adjourn the trial to await the decision of a Court of Appeal.

I can well understand that if this Court had any doubt about the law and it ventured an opinion—and had the desire to get a decision of a higher tribunal on a difficult point even of jurisdiction that it should adjourn the trial generally till that decision was obtained. 10

But in this case I am without any doubt at all about the law in this case and the application is refused.

*Court* is informed by Akerele that his client has instructed him to take no further part in the proceedings ; that as the question of jurisdiction has been decided against him, his client has instructed him to appeal.

*Court* asks Akerele if he wishes to be given leave personally to withdraw. He says Yes, and the Court accordingly grants him that leave. 20

*Akerele* now asks that an adjournment be granted till to-morrow when he will have communicated with the Defendant's other counsel Izuora who is holding Crown Counsel's papers.

*Thomas* suggests that the depositions of the Alafin of Oyo and the Olowo of Owo be taken first and the cause resumed on Wednesday.

Court adjourns for 30 minutes.

Resumed.

Appearances as before.

*Court* orders that Mr. Vincent Savage, Magistrate Grade I Benin City do take the depositions at the Afin Oyo of the Alafin of Oyo at 9 a.m. on Monday 10th October 1949 and at 3.30 p.m. on 10/10/49 at the Afin at Ife of the Oni of Ife and at 10 a.m. on Tuesday 11th October at the Afin at Owo of the Olowo of Owo : counsel for the parties to be present to examine and cross-examine these First Class Chiefs. 30

The trial to continue in this Court on Wednesday the 12th October, 1949, at 10 a.m.

Order made under Section 183 of the Evidence Ordinance, 1943.

NOTE.—Akerele had applied when the Court had begun to write the order that the depositions of the Oni of Ife be taken on behalf of the defence. 40

(Sgd.) C. N. S. POLLARD,  
Acting Judge.

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No. 20.

**DEFENDANT'S MOTION for Conditional Leave to Appeal.**

**IN THE SUPREME COURT OF NIGERIA.**  
**The Benin Judicial Division.**

*In the  
Supreme  
Court of  
Nigeria.*

Suit No. B/23/1948.

No. 20.  
Defendant's  
Motion for  
Conditional  
Leave to  
Appeal,  
12th  
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Between **ADEGBITE, THE OWA-ALE OF IKARE** . . . Plaintiff

and

**ADU JIBRILU, THE OLUKARE** . . . Defendant.

Filed 9.15 a.m.

10 12/10/49

(Intld.) E.D.A.J., Regr.

**TAKE NOTICE** that this Honourable Court will be moved on Wednesday the 12th day of October, 1949, at the hour of 9 o'clock in the forenoon or soon thereafter as Counsel on behalf of the above-named Defendant can be heard for an order for conditional leave to appeal against the ruling given in this cause on or about the 7th day of October, 1949, or for any other order as meet.

Dated this 12th day of October, 1949.

(Sgd.) **R. A. DOHERTY,**  
Senior Crown Counsel,  
Solicitor for the Defendant.

20

No. 21.

*In the  
Supreme  
Court of  
Nigeria.*

**AFFIDAVIT of Richard Doherty in Support of Motion for Conditional Leave to Appeal.**

**IN THE SUPREME COURT OF NIGERIA.  
The Benin Judicial Division.**

No. 21.  
Affidavit in  
Support of  
Motion for  
Conditional  
Leave to  
Appeal,  
11th  
October  
1949.

Suit No. B/23/1948.

**Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff**

**and**

**ADU JIBRILU, THE OLUKARE . . . Defendant.**

Filed 9.15 a.m.

12/10/49.

10

(Intld.) E.D.A.J., Regr.

**AFFIDAVIT.**

**I, RICHARD DOHERTY of the Legal Department, Ibadan, Senior Crown  
Counsel, make oath and say as follows :—**

1. That I am the solicitor appearing for the Defendant in the above-named cause.

2. That pleadings have been ordered and filed.

3. That on or about the 7th day of October 1949 this Honourable Court gave a ruling that it had jurisdiction to hear the case.

4. That I am dissatisfied with the said ruling.

20

5. I humbly pray therefore for conditional leave to appeal against the said ruling.

(Sgd.) R. A. DOHERTY.

Sworn at Benin this 11th day of October,  
1949.

Before me,

(Sgd.) V. A. SAVAGE,

Commissioner for Oaths.



No. 22.

**DEFENDANT'S MOTION for Special Leave to Appeal against Interlocutory Judgment.**  
**IN THE SUPREME COURT OF NIGERIA.**  
The Benin Judicial Division.

*In the  
Supreme  
Court of  
Nigeria.*

Suit No. B/23/1948.

No. 22.  
Defendant's  
Motion for  
Special  
Leave to  
Appeal  
against  
Inter-  
locutory  
Judgment,  
12th  
October  
1949.

Between **ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff**

and

**ADU JIBRILU, THE OLUKARE . . . Defendant.**

Filed 9.15 a.m.

10 12/10/49.

(Intld.) E.D.A.J., Regr.

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 12th day of October, 1949, at the hour of 9 o'clock in the forenoon or soon thereafter as Counsel can be heard on behalf of the above-named Defendant for an order for special leave to appeal against the interlocutory judgment delivered in this cause on or about the 7th day of October, 1949, or for any other order as meet.

Dated this 12th day of October, 1949.

(Sgd.) R. A. DOHERTY,

Senior Crown Counsel,  
Solicitor for the Defendant.



No. 23.

**AFFIDAVIT of Richard Doherty in Support.***In the  
Supreme  
Court of  
Nigeria.*IN THE SUPREME COURT OF NIGERIA.  
The Benin Judicial Division.

Suit No. B/23/1948.

No. 23.  
Affidavit  
of Richard  
Doherty in  
Support,  
11th  
October  
1949.Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff  
and  
ADU JIBRILU, THE OLUKARE . . . Defendant.

Filed 9.15 a.m.

12/10/49.

10

(Intld.) E.D.A.J., Regr.

## AFFIDAVIT.

I, RICHARD DOHERTY of the Legal Department, Ibadan, Senior Crown  
Counsel, make oath and say as follows:—

1. That I am the solicitor appearing for the above-named Defendant.
2. That by his writ of summons the Plaintiff in this cause asks for a declaration in the following words:—"The Plaintiff seeks as against the Defendant a Declaration that, as the Owa-Ale of Ikare, he is by Native Customary Law the Natural Oba and Ruler of the whole Ikare and as such the only person entitled to wear Crown and not the Defendant who is a 20 subordinate Chief under Plaintiff. The Defendant has wrongfully arrogated to himself the right of wearing a crown and has been wrongfully ruling the Ikare people and enjoying the privileges thereto attached."
3. That the Defendant in his defence to the action contended that this Honourable Court had no jurisdiction to hear the case.
4. That by a ruling given herein on or about the 7th day of October, 1949, this Honourable Court decided that it had jurisdiction.
5. That I am dissatisfied with the said ruling on the point of jurisdiction.
6. I therefore humbly pray that it may please this Honourable Court 30 to grant special leave to appeal against the said ruling.

(Sgd.) R. A. DOHERTY.

Sworn at Benin this 11th day of October,  
1949.

Before me,

(Sgd.) V. A. SAVAGE,  
Commissioner for Oaths.

\_\_\_\_\_

No. 24.

## HEARING OF MOTION for Leave to Appeal.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.

Before :

HIS HONOUR C. N. S. POLLARD, Acting Puisne Judge.

Wednesday the 12th day of October, 1949.

B/23/1948.

10

ADEGBITE

Vs.

ADU JIBRILU.

*Thomas* for Plaintiff.*Akerele* for Defendant.

Motion for leave to appeal.

*Akerele* moves the Court for special leave to appeal against the interlocutory judgment. Defendant has the right to ask for special leave to appeal. Court gave a ruling on 7/10/49 and motion filed on 12th October.

20 *Court* draws attention to paragraph 5 of the affidavit in support and *Akerele* asks for leave to file an amended affidavit. He says the deponent has left for Ibadan.

Motion is dismissed. I see no reason to grant special leave to appeal on a simple point of this kind. As the hearing is fixed for to-day in order that the matter can be determined before I leave Benin Judicial Division, no order as to the costs of the motion will be made.

*Akerele* states that there will be no appearance of the Defendant and/or his counsel.

*Thomas* calls the Plaintiff.

30 ADEGBITE sworn on iron states in Yoruba. I live at Ikare. I know the Defendant. He is my sub chief. My title is Ale Owa Ale of Ikare. I have been Owa Ale about 30 years. I succeeded Ajiboye who was my father. He was the Oba of Ikare. His title was Owa Ale of Ikare. Before me, there were fourteen Owa Ales. The first Owa Ale was Agbode. I know this through the cap which he wore from Ife.

The Defendant is Olukado—that is his title. There were about nine (9) Olukados before the present Defendant. They were not superior in title to Owa Ale.

40 I know a person named Momo. He was the father of the Defendant. His title was Olukare Odo. I know Ajaguna. He was the senior brother

*In the  
Supreme  
Court of  
Nigeria.*No. 24.  
Hearing of  
Motion for  
Leave to  
Appeal,  
12th  
October  
1949.Evidence  
of Plaintiff  
Adegbite.

*In the  
Supreme  
Court of  
Nigeria.*

No. 24.  
Hearing of  
Motion for  
Leave to  
Appeal,  
12th  
October  
1949,  
*continued.*

of Momo. He had the title of Olukado. There was an European who resided at Ikamu : it is near Likoja and is a district in our town. He built a house at Ikamu and lived there. My father used to send Ajaguna to this European. After the death of Ajaguna, Momo used to be sent. I was born when Ajaguna was being sent to this European. I had children of my own when Ajaguna died. Momo reigned about 6 years before he died. I replaced Momo with the Defendant Adu Jibrilu.

When Defendant was put in his father's place there was peace and no quarrel. I put him in that position to do all what his father used to do— to go to the European. He took presents to the European when the latter 10 came there for 3 or 4 days at a time.

As Owa Ale I was first paid £5 a month. It was brought from Owo from the European. He left Ikamu for Kabba : and then to Igbirra : then to Ifon and then to Owo. The £5 was my salary. I do not get those £5 now. A clerk of the Native Court Ikare used to bring me the £5. I used to go to the Native Court Ikare. I did not give judgment. Olukado used to give judgment according to my instructions. When evidence is given in Court, 7 of us give judgment Olukado pronounced the judgment after we consulted. Adu Jibrilu was made the President of this Court. Momo was the President before him. Before Momo, Ajaguna was the 20 President : and before Ajaguna there was no President as there was no European at that time.

The Olukados never wore a crown. Except my father, no one wore a crown. He was the only one to wear a crown when he was the Owa Ale. I produce the Crown of Agbode ; it is made of Cowries. I met this crown on my father's head. I am entitled to wear this crown because I inherited it from my father. I first wore it when I inherited it. The person appointed Owa Ale is entitled to wear it.

Oluposere and Oshode were the persons to appoint. They put this crown on my head. The European who resided at Ifon called Lamotte 30 came to Ikare on my father's death. I told him of my father's death and that I wished to take up his post. He asked whose duty it was to crown. I told him it was the duty of Oluposere and Oshode. After that I was crowned before Lamotte and took up the title of Owa Ale. It was after that I received £5 a month.

This crown was taken from me about 1½ years ago. Olukado together with his counsellors and an European man came and seized my crown. The crown was seized in the Court.

I do not always wear the crown when I go to Court. I was called from my house on this day. A messenger came to my house and told me 40 that the European is calling me in the Office. I went to his office. He was the District Officer who came all the way from Owo. He asked me whether the quarrel between me and Olukado has been settled. I told him no. I was asked to go home. When I was getting from my car a P.C. told me I was being called again. I went to the Barracks to meet the District Officer, the Olukado and councillors.

The District Officer told me to come near him : I did so and he removed the crown from my head that I was wearing. I told him that that crown is not to be removed from my head : I am telling you that.

That crown was one worn by me on a special occasion or special occasions.

The District Officer seized my bugle also.

On this day I left Ikare to report the matter to the Olowo of Owo. I also went to report to the Deji of Akure. I went to the Resident to report but he was on tour to Ondo. I went to report to Osemowe of Ondo. I went to the Resident at Ondo with a messenger from the Osemowe of Ondo. The Resident told me to go home and he would investigate the matter.

10 I went back to Ikare. The day after I got back to Ikare I went to report to the Olumesi of Imese. Then I went to report to all Obas including the Oni of Ife and the Alafin of Oyo. They were crowned chiefs. They gave me my own. They were the same. That is why I went to report to all of them.

After the seizure of my crown, the Olukado started to wear a crown. He wore it to Court. He had never worn a crown before my crown was seized.

I wrote several complaints to the Resident and the District Officer at Owo. I asked my children to do so. I have come to Court because  
20 I could not get satisfaction.

Olukado has no right to wear a crown in my country where I am. I am not receiving any salary any more. I last received it about seven years ago. That was before my crown was taken away from me. I cannot read or write.

Zaccheus is my son ; he used to write for me to Government.

2nd W. Plaintiff: ZACCHEUS ADEWUMI BAYEGUN, sworn on the Bible states in English :—

I am a motor mechanical driver and am a native of Ikare. The Plaintiff is my uncle. The Plaintiff's title is Ale Owa Ale. I have written  
30 several complaints for the Plaintiff. I received this letter and read its contents to the Plaintiff and also the enclosure with it.

Put in and marked Z.A.B.1 and Z.A.B.2. This letter was also received from the District Officer by me in reply to my petition on behalf of the Plaintiff.

Put in and marked Z.A.B.3.

Since I knew myself I have seen only the Plaintiff wearing a crown up to 1947 and then the Defendant for the first time began to wear one.

3rd W. Plaintiff: SAMUEL TUNOLASE, sworn on the Bible :—

I am a farmer from Ikare and am the Oshode of Ikare. I can read  
40 and write. As a chief at Ikare I am under the Owa Ale of Ikare the Plaintiff who is in Court. The function of Chief Oshodi at Ikare is to assist the Owa Ale. The ceremony of recognition of an Owa Ale is that an Ifa oracle is consulted, according to olden Native Law and custom.

*In the  
Supreme  
Court of  
Nigeria.*

No. 24.  
Hearing of  
Motion for  
Leave to  
Appeal,  
12th  
October  
1949,  
*continued.*

Evidence of  
Zaccheus  
Adewumi  
Bayegun .

Evidence  
of Samuel  
Tunolase.



*In the  
Supreme  
Court of  
Nigeria.*

No. 24.  
Hearing of  
Motion for  
Leave to  
Appeal,  
12th  
October  
1949,  
*continued.*

Then according to what the oracle says the person named by him is informed. That named person would accept and he would be appointed. He would be shown to the public and the public would agree if he should be appointed. After public approval that person would be installed as Owa Ale. These ceremonies were performed in the case of the Plaintiff.

I know this crown in Court. It now belongs to the Plaintiff. It used to belong to the Plaintiff's ancestors. This is the oldest crown among the crowns which the Plaintiff has.

The crowning ceremony is performed by the King-makers. I was present at Plaintiff's installation. Elders from the town were there, also from Ogbagi. I did not crown the Plaintiff. I was not yet made a chief. It is a person from a house different from that of the Plaintiff who puts the crown on Plaintiff's head. That person is the Oluposere. The Oshodi also takes a part in the ceremony. The District Officer was there at the installation. 10

Adu Jibrilu I know ; he is the Defendant. He is a chief under the Owa Ale. His title is Oluka-Odo. That is his quarter. There are many quarters ruled by Olus in Ikare.

When the Defendant wanted to assume more power he assumed the title of Olukare. 20

Defendant was appointed Olukare in 1924. I am not sure. I don't remember well.

Between Plaintiff and Defendant, the one entitled to wear a crown is the Plaintiff. The Owa Ale is the right person to wear crown. Till Defendant started to wear a crown no Olu ever wore one from time immemorial.

Evidence  
of Alhaji  
Salawu.

4th W. Plaintiff : ALHAJI SALAWU, sworn on the Koran states in Yoruba :—

I live in Ikare and am a native of Ikare. I know the Plaintiff in this case. He is a crowned chief in Ikare. Owa Ale is his title and his ancestors have worn crowns. I recognise this crown in Court. It is the crown of the Plaintiff's ancestors and he now owns it. It has been the duty of my ancestors to crown the Oba Ales. My father is dead. I am the one whose duty it is to crown any Owa Ale if it becomes necessary. My title is Iregbe. The last Oluposere was called Iregbe. My father came next to Iregbe. The present title of Oluposere is now vacant. I saw Plaintiff crowned as Owa Ale by my father in the presence of the whole town. Europeans were there including Mr. Lamotte. Only one European was there. 30

No Oluka Odo in Ikare can wear crowns. Their ancestors never did so. 40

The Oshodi and several Olus in Ikare such as Olu-Okanja-Olu-Edo-Olu-Shakunme are present at the crowning.

When the Owa dies the next Owa will be presented to the Olus and the Olus will perform necessary ceremonies for him. We, my family, Oluposere's family have to present the Owa Ale to the Olus. After presentation the

public would be present and the Oluposere's family will perform further ceremonies. If the public accept then ceremonies would be performed. All these ceremonies were done in the case of the Plaintiff in the presence of the European.

*In the  
Supreme  
Court of  
Nigeria.*

Between Plaintiff and Defendant the Plaintiff as Owa Ale is the superior chief.

No. 24.  
Hearing of  
Motion for  
Leave to  
Appeal,  
12th  
October  
1949,  
*continued.*

*Thomas* at this stage tenders the depositions taken by Mr. Vincent Savage, Magistrate, Benin City, in accordance with the Court's order of :—

- 10 (a) The Alafin of Oyo ;  
(b) The Oni of Ife ;  
(c) The Olowo of Owo.

They are produced by the Court Registrar and put in and marked " A," " B " and " C " respectively.

They are read in open Court.

LACHLAND AUGUSTUS LENNON, sworn on the Bible :—

Evidence of  
Lachland  
Augustus  
Lennon.

I am an Archdeacon of the Church of England stationed at Ikare since 1920. I was born in Jamaica. I know the Plaintiff and the Defendant. Since I have been at Ikare, the Plaintiff has of the two been wearing a crown. I knew the Plaintiff's father.

20 To my knowledge the Olukare, the Defendant has never worn a crown.

In 1947 I called a meeting as I understood there was a misunderstanding between the parties to the action. I advised both of them. I told the Olukare that anything that brought disruption should be buried for the progress of the town. That was a reference to the Defendant's wearing of the crown. I told him it was better to wear no crown in Ikare than to have trouble there. I thought I had succeeded in settling their differences.

30 The misunderstanding was a contention between the parties about the wearing of a crown. The Defendant wanted to have a crown. The Plaintiff objected.

Adjourned to 10 a.m. on 13/10/49.

(Sgd.) C. N. S. POLLARD,

Actg. Judge

**EVIDENCE of Jacob Bayode and Andrew Thomas.**

No. 25.  
Resumed  
Hearing,  
13th  
October  
1949.  
Evidence  
of Jacob  
Bayode.

Resumed 13th October, 1949.

*Thomas* for Plaintiff.

No appearance of Defendant.

JACOB BAYODE, sworn on the Bible states in English :—

I am now a farmer and live at Owo. I am a retired Native Court Clerk, Owo Division, Ondo Province. I was stationed at Ikare in 1919 as the Court Clerk of the Ikare Native Court.

10

In 1919 the President of the Ikare Native Court was Owa Ale ; his name was Ajiboye. The Court was held in his house and the Court Clerk lived in his compound. There was no Native Court Building in existence then. The stationery used in the Court and the Court Records were kept in the compound of the Owa Ale.

I know the Plaintiff—Adegbite. His father the same Ajiboye lodged me in Plaintiff's house. The title of the Plaintiff is Owa Ale. I was transferred from Ikare and returned back at the end of 1919. I was there for August and September, 1919 ; left and returned back at the end of 1919 ; worked in Ikare in 1920 to 1922. Ajiboye died in latter part of 1921, I think. After Ajiboye died I continued to work as Native Court Clerk. One Alaja an elderly chief acted as President because the present Plaintiff could not according to Native Law and Custom come out as he had newly taken the title. In the interval one Ajagunna returned from prison ; and he and the present Ale the Plaintiff attended Court together Momo came from prison from Lokoja to Ikare and he too attended Court. Momo held no title ; but he said he was the Oba of the whole of Ekiti.

In Ikare, there were 14 quarters, divided into four or five groups. Each group had an Olu—the chief over each group. Olu-Karedo ; Olurun ; Olu Okeoje ; Olu-edo ; Olu-Okerua are some of the Olus I can remember. They were all under the Owa Ale.

The persons who attend Ikare Native Court get sitting fees. The President gets a salary. The President of the Ikare Native Court gets more than the other judges. The Owa Ale according to Native Law and Custom is the President of that Court. I am a native of Owo. As an Owa Ale the Plaintiff would have to perform many ceremonies. He would as a consequence receive many gifts : oil, fowls and so on.

Evidence  
of Andrew  
Thomas.

ANDREW THOMAS, sworn on the Bible states :—

I know the handwriting of Noel Hay at one time Acting Senior Crown Counsel at Ibadan. I produce a letter from him to me and Agbaje, Barristers-at-Law, dated 16/6/48, in connection with the crown and bugle belonging to the Plaintiff. This was in reply to a letter written to the District Officer Owo by us as solicitors for the Plaintiff.

Put in and marked A.T.1.

Case for the Plaintiffs.

Defendant's name is called ; there is no reply.

*Thomas* asks for judgment. He asks for a declaration that Plaintiff is the natural ruler of Ikare and as such the only person entitled to wear a crown in Ikare, and that the Defendant is not entitled to wear a crown.

He asks for a declaration that the Defendant is not entitled to wear a crown and to enjoy the privileges of a natural ruler in Ikare.

He asks for an injunction to restrain him from acting as a natural ruler and wearing a crown and enjoying the privileges and emoluments thereto attached.

*In the  
Supreme  
Court of  
Nigeria.*

No. 25.  
Resumed  
Hearing,  
13th  
October  
1949,  
*continued.*

10 That includes the drawing of the salary as the President of the Ikare Native Court.

Submits that Plaintiff has proved his salary as Owa Ale was £5 and he has not been receiving that : He has been deprived of his salary as the Owa Ale.

The evidence is that the Defendant has lately assumed to himself the right to wear a crown.

20 Of the depositions put in evidence the Court is asked to accept that of the Alafin of Oyo and that portion of the evidence of the Oni of Ife that stated that the Defendant had no right to wear a crown. This evidence in that regard is valuable because it was given at the instance of Akerele's request for the defence.

The Court should judicially notice that the Alafin of Oyo and then the Oni of Ife ranks highest among the paramount Oba in Yoruba land.

Judgment reserved to 9.30 a.m. 14/10/1949.

(Sgd.) C. N. S. POLLARD,

Acting Judge.

13/10/1949.

Resumed Friday the 14th day of October, 1949.

*Ilori* holding *Thomas*' papers for Plaintiff.

30 No appearance of Defendant.

Judgment read.

Resumed  
Hearing,  
14th  
October  
1949,

No. 26.

In the  
Supreme  
Court of  
Nigeria.

DEPOSITION taken by V. A. Savage, Magistrate at Ife, of Adyemi II the Alafin of Oyo.

Exhibit " A " in Suit No. B/23/48 :

*Adegbite, etc. vs. Adu Jibrilu, etc.*

(Sgd.) J. OLU SODA, Ct. Regr.  
12/10/49.

No. 26  
Deposition  
taken by  
V. A.  
Savage,  
Magistrate  
at Ife, of  
Adyemi II  
the Alafin of  
Oyo, 10th  
October  
1949.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/48.

ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff 10

*vs.*

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

*A. O. Thomas* for Plaintiff.

Counsel for Defendant absent.

Defendant also absent.

Evidence of Adyemi II The Alafin of Oyo taken in accordance with section 183 of the Evidence Ordinance No. 27 of 1943 and in accordance with the order of His Honour the Acting Puisne Judge Benin City, dated the 7th of October, 1949.

Witness called by Plaintiff. 20

Ebenezer Afolabi Fasohin, duly sworn on Bible to interpret English into Yoruba and *vice versa*.

Witness sworn on Koran states in Yoruba : My name is Adeyemi II The Alafin of Oyo. I know a place called Ikare. I know the Owa Ale to be the Oba and the natural ruler of Ikare. I know the present Owa Ale of Ikare but I do not remember his name, The Oluka Odo of Ikare is the next in rank to the Owa Ale of Ikare. There is no such title as the Olukare. From time immemorial the Owa-Ale wears a crown. The crown was given to him by Oranyan our ancestor. All Owa Ale wear a crown up till to-day from the time of Agba Ode the first Owa-Ale. The present holder of the title 30 is entitled to wear a crown. In fact he has been wearing it. The holder of the title of Oluka Odo who now calls himself the Olukare has no right to wear a crown. About two years ago when the news reached me that the Oluka Odo was wearing a crown I discussed the matter with the Resident as the Oluka Odo has no right to wear a crown. I and the other Obas went about to hold a meeting over the matter when the trouble of the Alake arose. This trouble prevented us from holding that meeting. Sometime last year I received a letter from the Deji of Akure over the matter of crown wearing by the subordinate chiefs. If the letter is read to me in Yoruba I will recognise it. (Letter interpreted to the witness 40 into Yoruba by Fasohin). (Witness acknowledges the letter as the one he received from the Deji of Akure.) Letter tendered and marked Exhibit " A." The Deji of Akure is the Oba of Akure. He is a paramount

ruler. I also received a letter from the Olowo of Owo over the same matter. The Olowo came to see me personally. In the letter the Olowo mentioned the Olukare wearing crown. When the Olowo came personally to me he mentioned the matter to me. The Olowo attached to his letter to me a copy of his petition to the Chief Commissioner over the Olukare wearing a crown. The Olowo wrote me two letters over the Olukare wearing crown. (1st letter interpreted to the witness in Yoruba by Fasohin.) Witness acknowledges the letter as the 1st one he received from the Olowo. Letter tendered and marked Exhibit "B." During the 1st Chiefs' conference at 10 Oyo the Oluko Odo attended the conference and he wore turban and not a crown. (Letter of the Olowo with petition to the Chief Commissioner read to the witness in Yoruba and acknowledged by the witness as the one he received from the Olowo). Letter with petition tendered and marked Exhibit "C." The Owa Ale is not a Quarter Chief. He is the natural ruler of Ikare and he wears a crown. Sometime ago the Owa-Ale came to Oyo to see me. He made a certain report to me about his crown. In consequence of that report I asked the Oni of Ife why the crown of Owa-Ale was seized. The Oni of Ife suggested that all the paramount chiefs should investigate the matter. The Oluka Odo never wore a crown. From 20 time immemorial and according to native law and custom the Owa Ale had been wearing a crown and he is still the only one entitled to wear a crown in Ikare according to native law and custom. The Oluka-Odo is a subordinate chief under the Owa Ale. The Oluka Odo who now calls himself the Olukare used to be sent by the Owa-Ale to represent him the Owa Ale before the Government Officials. I am conversant with the Native Laws and Customs pertaining to Natural Rulers in Yoruba Land. Ikare is in Yoruba land. The Attah of Igbira can confirm all the statement made by me this morning. The Attah and I agreed to take steps against anybody who authorised the Oluka-Odo to wear a crown. The Oluka Odo 30 has no right to wear a crown.

ADEYEMI II

His Right  
Thumb Impression.

The foregoing statement have been interpreted by me from English into Yoruba when he seemed perfectly to understand the same before affixing his thumb impression.

E. A. FASOHIN,

Sworn Interpreter. 10/10/49.

Taken before me this 10th day of October, 1949.

(Sgd.) V. A. SAVAGE,

Magistrate.

40

*In the  
Supreme  
Court of  
Nigeria.*

No. 26.  
Deposition  
taken by  
V. A.  
Savage,  
Magistrate  
at Ife, of  
Adyemi II  
the Alafin of  
Oyo, 10th  
October  
1949,  
*continued.*

DEPOSITION taken by V. A. Savage, Magistrate at Ife, of Aderemi the Oni of Ife.

In the Supreme Court of Nigeria.

Exhibit " B " in Suit No. B/23/48.

Adegbite etc. vs. Adu Jibrilu, etc.

(Sgd.) J. OLU SODA, Ct. Repr. 12/10/49.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/48.

ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

vs.

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

A. O. Thomas for Plaintiff.

Counsel for Defendant absent.

Defendant also absent.

Evidence of Aderemi the Oni of Ife taken in accordance with the Evidence Ordinance No. 27 of 1943 and in accordance with the Order of His Honour the Acting Puisne Judge Benin City, dated the 7th of October, 1949.

Witness sworn on Bible states in English—my name is Aderemi the Oni of Ife. As far as my knowledge goes there is no title at Ikare according to Native Law and Custom, known as Owa-Ale. I know a man called Adegbite Ale who came to me with a complaint and alleged that he is Owa Ale in the town of Ikare. There is an Olukare of Ikare. I do not know when the title of Olukare was created. The holder of the title of Olukare has no right to wear a crown. He has never had the right to wear a crown. The Olukare is the recognised natural ruler of Ikare since he is known to be the ruler of the people there.

XXd. by Thomas for Plaintiff. When I see that the title of Olukare bears the name of the town Ikare I consider he must be the ruler of Ikare from the foundation of the town. I first heard of the title of Olukare before I assumed Office as the Oni of Ife. I became the Oni of Ife just over 19 years ago. I cannot remember how many years before I took up office as the Oni of Ife.

(Sgd.) ADEREMI, Oni of Ife.

(Sgd.) ? ? ?

Witness to signature.

Taken before me at Ife this 10th day of October, 1949.

(Sgd.) V. A. SAVAGE,

Magistrate.

No. 27. Deposition taken by V. A. Savage, Magistrate at Ife, of Aderemi the Oni of Ife, 10th October 1949.

10

30

No. 28.

**DEPOSITION taken by V. A. Savage, Magistrate at Ife, of Olagbegi II the Olowo of Owo.**

Exhibit " C " in Suit No. B/23/48.

*Adegbite, etc. vs. Adu Jibrilu, etc.*

(Sgd.) J. OLU SODA, Ct. Regr. 12/10/49.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/48.

ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff

10

*vs.*

ADU JIBRILU, THE OLUKARE ODO . . . Defendant.

*A. O. Thomas* for Plaintiff.

Counsel for Defendant absent.

Defendant also absent.

Evidence of Olagbegi II the Olowo of Owo taken in accordance with section 183 of the Evidence Ordinance No. 27 of 1943 and in accordance with the Order of His Honour the Acting Judge Benin City, dated the 7th of October, 1949.

Witness called by the Plaintiff.

20 Witness sworn on Bible states in English, my name is Olagbegi II the Olowo of Owo. I am conversant with the history of Ikare. I know that there is a title of Ale in Ikare according to Native Law and Custom. There is a title of Olukare in Ikare. The holder of the title of Ale used to call himself Ale Oba Akoko District. According to history the Akoko people used to bring annual tributes to the Olowo of Owo during festivals. They used to come with the tributes to Owo and we celebrate the one festival together. This was before the advent of the British Government. When the British Government took over the British Government used to pay me annual subsidy of £20. The Owo people were dissatisfied with  
30 this subsidy after some years and they asked the British Government to stop the subsidy and in exchange to bring our people back to Owo. This was in 1918. The British Government granted the request. During this

No. 28.  
Deposition  
taken by  
V. A.  
Savage,  
Magistrate  
at Ife, of  
Olagbegi II  
the Olowo  
of Owo,  
11th  
October  
1949.



*In the  
Supreme  
Court of  
Nigeria.*

No. 28.  
Deposition  
taken by  
V. A.

Savage,  
Magistrate  
at Ife, of  
Olagbegi II  
the Olowo  
of Owo,  
11th  
October  
1949,  
*continued.*

time the leader of the Ikare people who brought them back to Owo was known as Olukare Ajaguna. After the death of Olukare Ajaguna, Olukare Momo became the leader. The present Olukare who is the son of Olukare Momo succeeded his father Olukare Momo. Olukare Ajaguna never wore a crown. No Olukare ever wore a crown except the present Olukare. I sent Exhibit " B " to the Alafin of Oyo. I sent this copy of the petition part of Exhibit " C " to the Alafin.

*To the Court.* 1. The holder of the title Ale styles himself now as the Owa Ale. The Owa Ale had no right to wear a crown, but he wore a headgear made of straw and cowries. Since 1918 the Olukare has been known as the natural ruler of Ikare. I do not know if Ale has been changed to Olukare because Ale has not been recognised as a ruler since 1918. I know the history of Ikare only as far back as 1918. Nobody in Ikare has a right to wear a crown. If the Court wants to know more about crowns, the Court should refer to the Oni of Ife as he is the Spiritual Head of the Yoruba Obas. 10

(Sgd.) OLAGBEGI OLOWO of Owo.

(Sgd.) V. A. SAVAGE,  
Magistrate.

(Sgd.) S. A. OLAWOYE,  
Witness.

Taken before me at Owo this 11th day of Oct., 1949.

20

(Sgd.) V. A. SAVAGE,  
Magistrate.

No. 29.  
Judgment  
and  
Declara-  
tions,  
14th  
October  
1949.

No. 29.

#### JUDGMENT AND DECLARATIONS.

The evidence given by, and on behalf of, the Plaintiff establishes that he has discharged the onus which is on him of proving that according to Native Law and Custom—

- (a) there was and is a title in Ikare as Owa Ale ;
- (b) the holder of that title has the right to wear a crown in Ikare ;
- (c) no one else except him ever had such a right ;
- (d) the Owa Ale ranks higher than any other chief in Ikare ;
- (e) the Plaintiff is the Owa Ale of Ikare ;

30

(f) no chief or person holding the title of Olukare ever had the right to wear a crown in Ikare ;

(g) the chief or person holding the title of The Olukare and/or Olukare Odo ranks lower than the Owa Ale ;

(h) there are certain moneys and perquisites estimable in money attaching to the office of Owa Ale when the Owa Ale functions in the Ikare Native Court and performs ceremonies appertaining to the Owa Ale-ship.

*In the  
Supreme  
Court of  
Nigeria.*

No. 29.  
Judgment  
and  
Declara-  
tions,  
14th  
October  
1949,  
*continued.*

The Court therefore on the evidence led declares that according to  
10 Native Law and Custom—

(1) that the Plaintiff is the Owa Ale of Ikare and is, as such, the only person entitled to wear a crown in Ikare ;

(2) that the Plaintiff as the holder of that hereditary title ranks higher than the Defendant or any other chief among the chieftaincies in Ikare ;

(3) that the Defendant has wrongfully taken upon himself to wear a crown and by virtue of that invasion of the Plaintiff's exclusive privilege has been wrongfully enjoying those privileges which attach to the wearing of a crown ;

20 (4) that in so far as Native Law and Customs are concerned and totally irrespective of any office held by the Defendant under any Ordinance in force in Nigeria—the Plaintiff as Owa Ale is the natural Oba and ruler of the whole of Ikare.

The Court on the evidence led grants an injunction against the Defendant to restrain him from wearing a crown and performing the functions, ceremonies and offices appertaining to a crowned Owa Ale and enjoying the privileges and perquisites which according to Native Law and Custom exclusively attach to a crowned Owa Ale.

30 It must be pointed out that at no time during the trial itself has the Plaintiff sought to question the title of the Defendant as either the Oluke Odo or as a member of the Native Authority appointed under the Native Authorities Ordinances past and present. This judgment therefore does not affect any of the powers conferred upon the Defendant under those Ordinances. The judgment is concerned solely with the respective rights and privileges of a Crowned Owa Ale in Ikare according to Native Law and Custom.

The Plaintiff is entitled to the costs of this action which I assess at 150 guineas.

(Sgd.) C. N. S. POLLARD,

Actg. Puisne Judge.

14/10/49.

*In the  
Supreme  
Court of  
Nigeria.*

No. 29.  
Judgment  
and  
Declara-  
tions,  
14th  
October  
1949,  
*continued.*

*Court* declares on the evidence led that according to Native Law and Custom—

(1) that the Plaintiff is the Owa Ale of Ikare and is, as such, the only person entitled to wear a crown in Ikare ;

(2) that the Plaintiff as the holder of that hereditary title ranks higher than the Defendant or any other chief among the chieftaincies in Ikare ;

(3) that the Defendant has wrongfully taken upon himself to wear a crown and by virtue of that invasion of the Plaintiff's exclusive privilege has been wrongfully enjoying those privileges 10 which attach to the wearing of a crown ;

(4) that in so far as Native Law and Custom are concerned and totally irrespective of any office held by the Defendant under any ordinance in force in Nigeria—the Plaintiff as Owa Ale is the Natural Oba and Ruler of the whole of Ikare.

*Court* grants an injunction against the Defendant to restrain him from wearing a crown and performing the functions, ceremonies and offices appertaining to a crowned Owa Ale and enjoying the privileges and perquisites which according to Native Law and Custom exclusively attach to a Crowned Owa-Ale. 20

Plaintiff entitled to costs of this action—assessed at 150 guineas.

(Sgd.) C. N. S. POLLARD,  
Actg. Judge.

14/10/49.

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No. 30.

**NOTICE OF MOTION by Plaintiff for Conditional Leave to Appeal against Final Judgment.**

Filed 10 a.m. 20/10/49.

(Intld.) E. D. A. J., Regr.

**IN THE SUPREME COURT OF NIGERIA.**  
The Benin Judicial Division.

Suit No. B/23/48.

Between **ADEGBITE, THE OWA-ALE OF IKARE** . . . Plaintiff

and

10 **ADU JIBRILU, THE OLUKARE** . . . Defendant.

TAKE NOTICE that this honourable Court will be moved on Wednesday the 2nd day of November, 1949, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Defendant can be heard for an order—

(a) for conditional leave to appeal against the final judgment given in this cause on or about the 14th day of October, 1949 ;

(b) for a stay of execution of the said judgment ; and

(c) for any other order or further orders as may be considered necessary.

20 Dated this 17th day of October, 1949.

(Sgd.) R. A. DOHERTY,  
Senior Crown Counsel,  
Solicitor for the Defendant.

*In the  
Supreme  
Court of  
Nigeria.*

No. 30.  
Notice of  
Motion by  
Plaintiff for  
Conditional  
Leave to  
Appeal  
against  
Final  
Judgment,  
17th  
October  
1949.



No. 31.

**AFFIDAVIT in Support of Motion for Leave to Appeal.**

*In the  
Supreme  
Court of  
Nigeria.*

Filed 10 a.m. 20/10/49.

(Intld.) E. D. A. J., Regr.

No. 31.  
Affidavit in  
Support of  
Motion for  
Leave to  
Appeal,  
17th  
October  
1949.

**IN THE SUPREME COURT OF NIGERIA.  
The Benin Judicial Division.**

Suit No. B/23/1948.

Between **ADEGBITE, THE OWA-ALE OF IKARE** . . . Plaintiff

and

**ADU JIBRILU, THE OLUKARE** . . . Defendant. 10

**AFFIDAVIT.**

I, **RICHARD DOHERTY** of the Legal Department, Ibadan, Senior Crown Counsel, make oath and say as follows :—

1. That I am the Solicitor appearing for the Defendant in the above-named cause.
2. That pleadings have been ordered and filed.
3. That on or about the 7th day of October 1949 this Honourable Court decided that it had jurisdiction to hear and try the case.
4. That consequent on the said ruling on the point of jurisdiction the Defendant ceased to take any further part in the proceedings of the 20 case.
5. That I am informed and verily believe that this Honourable Court delivered a final judgment herein on or about the 14th day of October, 1949.
6. That I am dissatisfied with the said judgment.
7. I therefore humbly pray that it may please this Honourable Court to grant conditional leave to appeal against the said judgment.

(Sgd.) **R. A. DOHERTY.**

Sworn at the Supreme Court Registry,  
Ibadan, this 17th day of October, 1949.

Before me,

(Sgd.) **D. A. BANJOKO,**  
Commissioner for Oaths.

No. 32.

DECISION of Judge Jibowu.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.No. 32.  
Decision  
of Judge  
Jibowu, 2nd  
November  
1949.

Before :

HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

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Wednesday the 2nd day of November, 1949.

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B/23/48.

10

ADEGBITE, OWA ALE OF IKARE

*vs.*

ADU JUBRILU, OLUKARE ODO.

Motion by Defendant for conditional leave to appeal and stay of execution.

*Akerele and Izuora* for Defendant.

*Ilori* holds *A. O. Thomas's* brief for the Plaintiff and opposes stay of execution.

Leave to appeal is granted to the Defendant on the following conditions :—

20 The Defendant shall within a month—

(1) pay into Court the sum of £50 to cover the costs of appeal records ;

(2) give security for costs that may be awarded against him by the West African Court of Appeal by a bond for 100 guineas with a surety to be approved by the District Officer, Owo ;

(3) give notice of appeal to the other side.

Execution is stayed subject to the payment into Court within a month of the costs awarded against the Defendant in this Court. Stay of execution refers to and includes the order for injunction.

30

(Sgd.) O. JIBOWU,

Judge.

2/11/49.

No. 33.

**ORDER granting Conditional Leave to Appeal.**

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

No. 33.  
Order  
Granting  
Conditional  
Leave to  
Appeal, 2nd  
November  
1949.

Suit No. B 23, 1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

and

ADU JUBRILU, THE OLUKARE ODO . . . Defendant.

UPON READING the affidavit of Richard Doherty, Senior Crown Counsel, Ibadan, filed on the 20th day of October, 1949, in the above 10 action, and after hearing Alaba Akerele, Esquire, Counsel, on behalf of the Senior Crown Counsel, for the Defendant in support :

IT IS ORDERED that leave to appeal from the judgment delivered herein on the 14th day of October, 1949, to the West African Court of Appeal be and is granted to the said Defendant on the following conditions :

The Defendant shall within a month—

(1) pay into Court the sum of £50 to cover the costs of appeal records ;

(2) give security for costs that may be awarded against him by the West African Court of Appeal by a bond for 100 guineas 20 with a surety to be approved by the District Officer ;

(3) give notice of appeal to the other side.

Execution is stayed subject to the payment into Court within a month of the costs awarded against the Defendant in this Court.

Stay of execution refers to and includes the order for injunction.

Dated at Benin City this 2nd day of November, 1949.

(Sgd.) O. JIBOWU,

Puisne Judge.

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No. 34.

## NOTICE OF APPEAL by Defendant.

*In the  
Supreme  
Court of  
Nigeria.*

Filed 10.55 a.m. 2/- paid.

C. R. N. B 842157 (Intld.) E. D. A. J., Regr.

12/11/49.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

No. 34.  
Notice of  
Appeal by  
Defendant,  
8th  
November  
1949.

Suit No. B/23/48.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff

10

and

ADU JIBRILU, THE OLUKARE OF IKARE . . . Defendant.

## NOTICE OF APPEAL.

TAKE NOTICE that this Honourable Court has on the 2nd day of November, 1949, granted to the Defendant conditional leave to appeal against the judgment of the Court delivered on or about the 14th day of October, 1949, and that the following are the conditions:—

(1) Defendant shall within one month pay to the Court £50 costs of records.

20

(2) Defendant to give security for cost to be awarded against him at the West African Court of Appeal by a bond in the sum of 100 guineas. Such bondsman to be approved by the District Officer, Owo.

(3) Notice of Appeal to be served on the other side.

(4) Execution is stayed subject to payment within one month of cost awarded to the Court.

(5) Stay of execution includes stay of injunction.

2. The conditions have all been perfected.

Dated at Benin City this 8th day of November, 1949.

(Sgd.) J. O. IZUORA,

30

Defendant's Solicitor.

Odiaso Chambers, Benin City.

Filing 2/-.

Service 1/6.

Mileage 8/-.

Transport 10/-.

C.R. No. B 842157

12/11/49.

(Intld.) E. D. A. J.,

Regr.

£1.1.6d.



*In the  
Supreme  
Court of  
Nigeria.*

No. 35.

**DEFENDANT'S NOTICE OF MOTION for Extension of Time to File Motion for Final Leave to Appeal.**

No. 35.  
Notice of  
Motion for  
Extension of  
Time to File  
Motion for  
Final Leave  
to Appeal,  
13th  
December  
1949.

Filed 12.30 p.m. 13/12/49.  
(Intd.) E. D. A. J., Regr.

**IN THE SUPREME COURT OF NIGERIA.**  
Benin Judicial Division.

Suit No. B/23/48.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent 10  
and

ADU JIBRILU, THE OLUKARE . . . Defendant/  
Appellant.

**NOTICE OF MOTION.**

TAKE NOTICE that this Honourable Court will be moved on Monday the 16th day of January 1950, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Defendant/Appellant for an Order for extension of time within which to file Motion for Final Leave to appeal from the judgment of this Honourable Court dated the 14th October 1949 and for such further order or orders 20 as to the Court may seem fit to make.

Dated at Benin this 13th day of December, 1949.

(Sgd.) E. A. AKERELE,

One of the Solicitors to the  
above-named Defendant.

On Notice to ADEGBITE, The Owa-Ale of Ikare.

Filing Motion	£10	
Service	1/6d.	
Mileage	8/-	
Transport	10/-	30
Drawing up Order	1. 5/-	
	<u>£12. 4. 6d.</u>	paid.

C.R. No. B 842158.

13/12/49.

(Intld.) E. D. A. J., Regr.



No. 36.

**AFFIDAVIT of Ekundayo Alaba Akerele.***In the  
Supreme  
Court of  
Nigeria.*

Filed 12.30 p.m. 2/- paid.

C.R. No. 842159.

13/12/49.

(Intld.) E. D. A. J., Regr.

IN THE SUPREME COURT OF NIGERIA.  
In the Benin Judicial Division.No. 36.  
Affidavit of  
Ekundayo  
Alaba  
Akerele,  
13th  
December  
1949.

Suit No. B/23/1948.

10 Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent.  
and  
ADU JIBRILU, THE OLUKARE . . . Defendant/  
Appellant.

**AFFIDAVIT.**

I, EKUNDAYO ALABA AKERELE, Solicitor of the Supreme Court of Nigeria, of Upper Lagos Street, Benin City hereby make oath and say as follows :—

1. That I am one of the Solicitors to the above-named Defendant.

20 2. That Conditional leave was granted by this Honourable Court to the above-named Defendant on 2nd November to appeal from the judgment of this Honourable Court dated the 14th October 1949.

3. That all the conditions have been perfected within time.

4. That Motion for Final Leave to Appeal has not been filed within the prescribed time due to my absence from Benin to Lagos.

5. That I now ask for leave for an extension of time to file Motion for Final Leave to appeal under section 15 of the West African Court of Appeal Rules.

(Sgd.) E. A. AKERELE.

30 Sworn to at the Supreme Court, Benin,  
this 13th day of December, 1949.

Before me,

(Sgd.) E. D. A. JAJA,

Commissioner for Oaths.

4/- paid C.R. No. B 842260.

13/12/49.

(Intld.) E. D. A. J., Regr.

*In the  
Supreme  
Court of  
Nigeria.*

No. 37.

DECISION of Judge Jibowu.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.  
Holden at Benin City.

No. 37.  
Decision  
of Judge  
Jibowu,  
16th  
January  
1950.

Before :

HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

Monday the 16th day of January, 1950.

B/23/48.

ADEGBITE, THE OWA OF IKARE

10

*versus*

ADU JIBRILU, THE OLUKARE.

Motion for extension of time within which to file motion for final leave.

*Akerele* moves.

*Ilori* does not oppose.

Order. Extension granted up to 17th January, 1950, with £2 2/- costs to the other side.

(Sgd.) O. JIBOWU,

Judge.

20

16/1/50.

No. 38.

**ORDER extending time.**

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant/  
Appellant.

10

UPON READING the affidavit of Ekundayo Alaba Akerele, Esquire, Counsel for the above-named Defendant, filed on the 13th day of December, 1949, and after hearing the said Counsel :

IT IS ORDERED that extension of time within which to file motion for final leave to appeal in the above-named action, be and is hereby granted up to the 17th day of January, 1950, with £2 2/- costs to the other side.

Dated at Benin City this 16th day of January, 1950.

(Sgd.) O. JIBOWU,  
Puisne Judge.

20

No. 39.

**DEFENDANT'S NOTICE OF MOTION for Final Leave to Appeal.**

Filed 9 a.m. 17/1/50.

(Intld.) E. D. A. J., Regr.

IN THE SUPREME COURT OF NIGERIA.

In the Benin Judicial Division.

Suit No. B/23/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent

and

ADU JIBRILU, THE OLUKARE . . . Defendant/  
Appellant.

30

**NOTICE OF MOTION.**

TAKE NOTICE that this Honourable Court will be moved on Monday the 6th day of February 1950 at the hour of 9 o'clock in the forenoon or so soon thereafter as counsel on behalf of the above-named Defendant can be heard for an order for Final Leave to appeal from the judgment of this Honourable Court dated the 14th day of October, 1949.

Dated at Benin this 17th day of January, 1950.

(Sgd.) E. A. AKERELE,  
One of the Solicitors to the  
above-named Defendant.

40

*In the  
Supreme  
Court of  
Nigeria.*

No. 38.  
Order  
extending  
time, 16th  
January  
1950.

No. 39.  
Defendant's  
Notice of  
Motion for  
Final Leave  
to Appeal,  
17th  
January  
1950.

*In the  
Supreme  
Court of  
Nigeria.*

**No. 40.**  
**AFFIDAVIT of E. A. Akerele.**

Filed 9 a.m. 17/1/50.

(Intld.) E. D. A. J., Regr.

No. 40.  
Affidavit  
of E. A.  
Akerele,  
17th  
January  
1950.

**IN THE SUPREME COURT OF NIGERIA.**  
**In the Benin Judicial Division.**

Suit No. B/23/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent

and

10

ADU JIBRILU, THE OLUKARE . . . Defendant/  
Appellant.

**AFFIDAVIT.**

I, EKUNDAYO ALABA AKERELE, Solicitor of the Supreme Court of Nigeria of Upper Lagos Street, Benin City, hereby make oath and say as follows :—

1. That I am one of the Solicitors to the above-named Defendant.

2. That Conditional Leave to appeal was granted by this Honourable Court to the Defendant on 2nd November 1949, to appeal from the judgment of this Honourable Court dated the 14th October, 1949. 20

3. That all the conditions have been perfected within time.

4. That I now ask for Final Leave to Appeal to the West African Court of Appeal.

(Sgd.) E. A. AKERELE.

Sworn to at the Supreme Court Registry,  
Benin, this 17th day of January, 1950.

Before me,

(Sgd.) E. D. A. JAJA,

Commissioner for Oaths.

4s. paid.

30

C.R. No. 402201.

17/1/50.

(Intld.) E. D. A. J., Regr.



No. 41.

DECISION of Judge Jibowu.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Holden at Benin City.

Before HIS HONOUR OLUMUYIWA JIBOWU, Puisne Judge.

No. 41.  
Decision  
of Judge  
Jibowu,  
6th  
February  
1950.

Friday the 6th day of February, 1950.

Suit No. B/23/48.

ADEGBITE, THE OWA-ALE OF IKARE . . .

*versus*

ADU JIBRILU, THE OLUKARE ODO . . .

10

Motion by Defendant for final leave to appeal.

Akerele moves.

Final leave is granted.

(Sgd.) O. JIBOWU,  
Judge,

6/2/50.

No. 42.

ORDER Granting Final Leave to Appeal.

No. 42.  
Order  
granting  
Final Leave  
to Appeal,  
6th  
February  
1950.

20 IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Benin Judicial Division.

Suit No. B/23/1948.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant/  
Appellant.

30 UPON READING the affidavit of Ekundayo Alaba Akerele Esquire  
Counsel for the above-named Defendant, filed on the 17th day of January,  
1950, and after hearing the said Counsel :

IT IS ORDERED that Final Leave be and is hereby granted to the  
above-named Defendant-Appellant to appeal from the judgment of this  
Honourable Court dated the 14th day of October, 1949.

Dated at Benin City this 6th day of February, 1950.

(Sgd.) O. JIBOWU,  
Puisne Judge.

*In the  
West  
African  
Court of  
Appeal.*

No. 43.

**GROUNDS OF APPEAL.**

**IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos.**

No. 43.  
Grounds of  
Appeal, 6th  
February  
1950.

Suit No. B/23/1948.

Filed 10 a.m. 6/2/50.

(Intld.) E. D. A. J., Repr.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Respondent

and

10

ADU JIBRILU, THE OLUKARE ODO . . . Defendant/  
Appellant.

The Appellant being dissatisfied with the judgment of the Supreme Court, Benin, delivered at Benin on the 14th day of October, 1949 and having obtained final leave to appeal therefrom dated the 6th day of February, 1950, hereby appeals to the West African Court of Appeal upon the Grounds hereinafter set forth :—

**GROUNDS OF APPEAL.**

1. The Court below was incorrect in law in ruling that it possessed jurisdiction. 20

2. Error and misdirection in splitting up the Plaintiff-Respondent's claim into two separate and distinct parts for the purpose of the Court's ruling on jurisdiction.

3. The circumstances surrounding the making of the Order for the evidence of certain witnesses to be taken on commission as well as the actual taking of the said evidence, were wholly irregular in law.

4. That the judgment is against the weight of evidence.

Dated this 6th day of February, 1950.

(Sgd.) N. G. HAY,

Acting Senior Crown Counsel,  
Solicitor for the Appellant.

30

No. 44.

## HEARING of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos, Nigeria.

*In the  
West  
African  
Court of  
Appeal.*

Monday, the 1st day of May, 1950.

No. 44.  
Hearing of  
Appeal, 1st  
May 1950.

Before THEIR HONOURS

SIR HENRY WILLIAM BUTLER BLACKALL, President.  
CECIL GERAINT AMES, Ag. Chief Justice of Nigeria.  
ARTHUR WARNER LEWEY, Justice of Appeal.

10

W.A.C.A. 3224.

ADEGBITE

*versus*

ADU JIBRILU.

*Sir Adeyemo Alakija and Egbuna, Crown Counsel, for Appellant.*

*A. O. Thomas, jr. (Awolowu, F. R. A. Williams, Kayode and Abina with him) for Respondent.*

*Awolowu objects to ground 3 for vagueness, and asks it to be struck out.*

*Alakija : I am not proceeding with this ground.*

*Order : Struck out.*

20 *Alakija : Pollard Ag. J. should be guided by Lagunju versus Olubadan in Council—W.A.C.A. 4 Dec. 1948. Adanji versus Hunvoo I.N.L. R75. Title of dignity not triable p. 37.*

*Respondent asked Court to restrain Defendant from acting as ruler ; that is chieftaincy dispute.*

*Wearing a crown. What kind of Crown ? Who can define it. Order of Precedence.*

*Thomas : Do not support Pollard J. in attempting to overrule judgment in Olubadan case.*

30 *But W.A.C.A. only deals with section 2 (2) Ordinance only deals with appointment of chiefs.*

*In present case "no death, resignation or deposition" of chief, so section 2 (2) inapplicable. Section 2 (2) : The dispute must arise out of appointment that whether a particular post has been properly made. What chieftaincy is in dispute ? Two titles involved. Both agree that the other's appointment was in accordance with native custom. Question of appointment not in dispute : only precedence p. 50, l. 8.*

*Court must look at what Court below gave Respondent, and had he jurisdiction to do so ? Governor approved both appointments. p. 6, para. 9 ; p. 50, l. 12.*

40 *Thomas v. W.A.C.A. No. 1946, 82 at 87 citing P.C. judgment. The privileges that attaches to title of Owa Ale are the wearing of Crown.*

*See also p. 54 gifts of oil and fowls.*

*p. 6, l. 33 emoluments.*

Adjourned.



*In the  
West  
African  
Court of  
Appeal.*

No. 45.  
Resumed  
Hearing of  
Appeal, 2nd  
May 1950.

No. 45.

**RESUMED HEARING of Appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL.**  
Holden at Lagos, Nigeria.

—————  
Tuesday, the 2nd day of May, 1950.  
—————

Before THEIR HONOURS

Sir HENRY WILLIAM BUTLER BLACKALL, President.  
CECIL GERAINT AMES, Ag. Chief Justice, Nigeria.  
ARTHUR WARNER LEWEY, Justice of Appeal.

W.A.C.A. 3224. 10

ADEGBITE

*versus*

ADU JIBRILU.

Parties as before.

*Thomas* (resumes) : p. 92 l. 32 & 33 deprived me of getting salary and land 98 L. & R. 151.

*Moore* (in reply) : Respondent merely says I am not fighting appointment but I am the Chief. p. 3 & 4. Appellant seeks declaration that he is the ruler and Head chief.

Who is the Head Chief ? See D.O. p. 28 l. 11, p. 90 para. 12 Re p. 89. 20 Shows that Appellant was recognised as District Head. Respondent in effect asks that he be deposed.

President refers to Ordinance 30/1948 mentioned at p. 36.

*Moore* : This has no application.

p. 56 l. 4. Judge held Respondent ranks higher than any other Chief including Appellant.

p. 54. Witness does not know.

—————

No. 46.  
JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos.

*In the  
West  
African  
Court of  
Appeal.*

Friday, the 12th day of May, 1950.

No. 46.  
Judgment,  
12th May  
1950.

Before THEIR HONOURS

SR HENRY WILLIAM BUTLER BLACKALL, President.  
CECIL GERAIN AMES, Ag. Chief Justice Nigeria.  
ARTHUR LEWEY, Justice of Appeal.

10

W.A.C.A. 3224.

THE OWA ALE OF IKARE

V.

ADU JIBRILU THE OLUKARE

JUDGMENT

(Delivered by BLACKALL P.)

This is an appeal against a declaratory judgment of Pollard Ag. J. and an injunction against the Appellant. The question at issue is whether the acting judge had jurisdiction to entertain the suit or whether he was precluded from doing so by section 2 of the Appointment and Deposition of Chiefs Ordinance cap. 12. Section 2 (1) of the Ordinance empowers the Governor to approve a successor of a chief. The appointment of any chief is to be made by those persons entitled by native law and custom so to appoint in accordance with a native law and custom, and sub-section 2 provides that in the case of any dispute, the Governor, after due enquiry, shall be the sole judge as to whether any appointment of a chief has been made in accordance with native law and custom. To determine whether the subject matter of the present action concerns such a dispute, the first step, it seems to me is to examine the pleadings.

Now in the writ of summons the Plaintiff seeks against the Defendant, a declaration that he is, by Native Customary Law, the natural Oba and ruler of the whole of Ikare. He alleges that the Defendant has been wrongfully ruling the Ikare people and he seeks an injunction restraining the Defendant from wearing a crown and performing the functions of Oba and ruler. Turning to the statement of claim, we find in para. 13 an allegation that the Defendant has been wrongfully ruling the people and enjoying the privileges and emoluments attached thereto.

In paragraph 17 it is stated that the Plaintiff by the assumption by the Defendant of the office of ruler of Ikare, has been wrongfully deprived of and ousted from his office as ruler of the whole Ikare, and consequently the privileges and emoluments thereto attached, and at the end of the case we find the learned counsel for the Plaintiff stating that his client asks for a declaration that he is the natural ruler of Ikare, and an injunction

*In the  
West  
African  
Court of  
Appeal.*

No. 46.  
Judgment,  
12th May  
1950,  
*continued.*

to restrain the Defendant from acting as a natural ruler and enjoying the emoluments, which, he said, include the drawing of the salary as President of the Native Court.

Before proceeding further I should like to make an observation upon the expression "natural ruler." That is a popular, not a legal term; it is used in local parlance as a somewhat grandiloquent appellation for native chiefs, but it has no legal significance whatever. The only native ruler is a person who has been appointed by native law and custom, and who is vested with such powers of administration as the law provides. There is no other kind of native ruler, natural or otherwise; it is, therefore, 10  
unfortunate that the acting Judge should have made use of an expression which is incorrect, because it gives credence to the argument put forward that there is a distinction between those chiefs to whom section 2 of cap. 12 applies, and so-called natural rulers, as though the former were mere Government appointees and the latter the genuine article.

Now it is true that in the early days of British occupation in the Oil Rivers there was a class of chiefs known as Warrant Chiefs, who might be correctly described as Government nominees, though that is not said in derogation of them, for they included some fine types. But it is true to say that they held office by virtue of their Warrants and not by native 20  
law and custom. But that is not the position with which we are dealing, for under cap. 12 the Governor appoints only if those in whom the power of appointment is vested under native law and custom fail or neglect to do so. In all other cases the Governor merely approves and in the present case there was evidence that the Defendant was appointed Olukare by native law and custom, and that his appointment was approved by the Governor.

But the Plaintiff's claim is that he is the only rightful chief of Ikare by native law and custom and that the Defendant is not; in other words he challenges the validity of the appointment of the Defendant as not being 30  
in accordance with native law and custom, and that, it seems to me, is precisely the kind of dispute of which the Governor is made sole judge by section 2 (2) of cap. 12.

Mr. Thomas sought to get over this difficulty by arguing that the question of appointment is not in dispute, but only that of precedence. In my opinion that argument is inconsistent with his pleadings, but apart from this it has been held in the case of *Adanji v. Hunvoo* (I.N.L.R. p. 75) that the Courts will not entertain an action to establish title to a chieftaincy only, that is, where it is a mere dignity or a position of honour or of primacy 40  
among a particular section of the native community. But this is what the learned acting judge did in paragraph 2 of his judgment where he declared that the Plaintiff ranks higher than the Defendant or any other chief among the chieftaincies (*sic*) in Ikare. The decision in *Adanji v. Hunvoo* accords with the well-known English case of *Cowley v. Cowley* (1901 A.C. 446) where it was decided that a peer could not prevent his former wife from using the title she attained on marriage because the law of England allows a person to assume any name he wishes. In the same way there is nothing to prevent anybody walking along Piccadilly wearing a coronet—if he is prepared to incur ridicule—but if on the strength of wearing it he attempts to take his seat in the House of Lords, he will 50

not be allowed to do so. So also the wearing of a crown in this country is not a matter for the Courts to adjudicate upon unless it can be shown that by wearing it, definite material rights are derived.

*In the  
West  
African  
Court of  
Appeal.*

Mr. Thomas endeavoured to surmount this obstacle by relying upon the evidence of the witness Bayode, who said that the Plaintiff "as an Owa-Ale" would have to perform many ceremonies. He would, as a consequence, receive many gifts, oil, fowls and so on. The ceremonies were not specified and the rights seem to be rather nebulous, but apart from this, that witness, who is a retired Native Court clerk, asserted that  
10 the Plaintiff is, according to native law and custom, President of the Native Court, which he must know perfectly well is a statutory office. I am not therefore disposed to attach any value to his evidence.

No. 46.  
Judgment,  
12th May  
1950,  
*continued.*

To sum up. The Plaintiff, in my view, was asking the Court for a decision on the validity of the Defendant's appointment as chief of Ikare and it was held by this Court in *Aminu Abasi v. Olubadan in Council* (W.A.C.A. judgments 4th December, 1949) that the Courts are precluded from deciding whether the appointment of a chief has been made in accordance with native law and custom. The acting Judge, by a peculiar process of reasoning, conceived himself entitled to disregard that decision,  
20 but the decision is binding on all Courts in this Colony, unless and until it is overruled by higher authority, which term does not include an acting Judge sitting alone.

The learned Judge also made a somewhat unorthodox order for costs by purporting to award them to the Plaintiff whatever the final result of the action might be. The Court below has, of course, no power to tie the hands of this Court in that manner.

In my opinion this appeal should be allowed with costs.

AMES, AG. C.J.

I agree that this appeal should be allowed, for the reasons stated by  
30 the President. I should like to make one comment only.

The Respondent, who was the Plaintiff in the Court below, had to face two difficulties, which lay in the way of his instituting this action. The first was the Appointment and Deposition of Chiefs Ordinance, No. 20/1945 (as it then was). He tried to get over this difficulty by including in his claim a right to wear "a crown." (During the argument before us Mr. Thomas, on behalf of the Respondent, said that it was a specific crown; so apparently the claim should have been about "the crown," and not "a crown.")

The second difficulty was the principle of law referred to, and applied,  
40 in the case of *Adanji v. Hunvoo* (1 N.L.R. 75) by the Full Court of the Supreme Court of this country in 1908. The principle is that the Courts cannot entertain claims to establish a claim to a bare title, dignity or chieftaincy, apart from any rights to property or pecuniary rights connected therewith. The Plaintiff tried to get over this difficulty by claiming "privileges" which he claimed were attached to the wearing of the crown and the ruling of the people of Ikare.

In the Ogbomosho case of *Laoye and Others v. Oyetunde* (1944 A.C. 170) which went to the Privy Council, although there was a dispute as to a

*In the  
West  
African  
Court of  
Appeal.*

No. 46.  
Judgment,  
12th May  
1950,  
*continued.*

chieftaincy which was held to be outside the limits of the Ordinance as it was at the time, there was a claim for possession of the house or palace (I think it was called the Sohun) which by tradition and custom was possessed by the chief while he was chief.

In the Abeokuta case of *Akinwande Thomas and Others v. The Alake and Others* (1946 Nov. W.A.C.A. p. 82) the statement of claim alleged that the holder of the office or chieftaincy was entitled to certain fees and rents.

In this present case before us the claim is about "privileges." These were unspecified in the statement of claim, and Mr. Thomas explained 10 that they are traditional privileges of monetary value, "moneys and perquisites estimable in money" as the learned Judge stated in his judgment. The only evidence about the actual money was about official salary of the District Head and President of the Native Court. The claim is quite untenable as to this, as it is not a traditional privilege but salary paid from Native Treasury funds to the holder of these offices. Apart from that there was mention at the very end of the evidence for the Plaintiff that as Owa Ale (as the Plaintiff claimed himself to be) "he would as a consequence receive many gifts, oil, fowls and so on." That is the evidence of the privileges on which his case rests, and by which he 20 sought to overcome the second difficulty. To my mind this is quite unreal and is no more than an attempt to hang on to the tails (so to speak) of the Ogbomosho and Abeokuta cases and so get over this second difficulty.

It was said by the great Francis Bacon that "consequence does not draw consequence, but the extension should stop within the next cases; otherwise there will be a gradual lapse into dissimilar cases, and sharpness of wit will have greater authority than law."

That was said over three hundred years ago but it is still true to-day, and the ingenuity of lawyers in drafting their claims cannot be allowed 30 to over-ride the authority of law.

As I said before, I agree that the appeal should be allowed.

LEWEY, J.A. : I concur.

Costs assessed at £68 14s. 9d.

---

No. 47.

**PLAINTIFF'S NOTICE OF MOTION for Conditional Leave to Appeal to H.M. Privy Council.**

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

Holden at Lagos.

(Suit No. B/23/1948.)

W.A.C.A. No. 3224.

Between ADEGBITE, THE OWA ALE OF IKARE .

Plaintiff/  
Appellant

and

10

ADU JIBRILU, THE OLUKARE ODO .

Defendant/  
Respondent.

*In the  
West  
African  
Court of  
Appeal.*

No. 47.  
Plaintiff's  
Notice of  
Motion for  
Conditional  
Leave to  
Appeal to  
H.M. Privy  
Council,  
29th May  
1950.

Motion on Notice Under  
Article 3 (B) of the Privy Council  
Order in Council, 1930.

20 TAKE NOTICE that this Honourable Court will be moved on Tuesday the 20th day of June, 1950, at the hour of 9 o'clock or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff/Appellant for an Order Granting Conditional Leave to Appeal to His Majesty's Privy Council from the Judgment of this Honourable Court delivered on the 12th day of May, 1950, and in the meantime for a Stay of Execution of the said Judgment and for such further or other Orders as this Honourable Court may deem fit.

Dated at Lagos this 29th day of May, 1950.

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
Solicitors for the Plaintiff/Applt.

Motion £5  
Filing 2 :—  
—————  
£5 2  
—————

447102/52/31.5.50

*In the  
West  
African  
Court of  
Appeal.*

No. 48.

**AFFIDAVIT of Akanbi Olabode Thomas.**

**IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos.**

No. 48.  
Affidavit of  
Akanbi  
Olabode  
Thomas,  
31st May  
1950.

Filed at 12 noon  
on 31.5.50.

Suit No. B/23/1948  
W.A.C.A. No. 3224.

Between ADEGBITE, THE OWA ALE OF IKARE . . . Plaintiff/  
Appellant  
and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant/ 10  
Respondent.

**AFFIDAVIT**

I, AKANBI OLABODE THOMAS, Barrister and Solicitor of the Supreme Court of Nigeria, The Balogun of Oye British subject of No. 41, Idumagbo Avenue, Lagos do hereby make oath and say as follows :—

(1) That I am one of the Counsel representing the Plaintiff, Appellant in the above mentioned matter.

(2) That on the 12th day of May, 1950 judgment was delivered in favour of the above-named Defendant, Respondent.

(3) That the said Appellant is dissatisfied with the said Judgment 20 and desire to Appeal to His Majesty's Privy Council and in the meantime ask for a stay of execution of the said judgment.

(4) That this application is brought under Article 3 (b) of the Privy Council Order-in-Council.

(5) That the claim is for (A) a declaration that the Plaintiff is the person entitled to wear a Crown in Ikare District (B) an Injunction to restrain the Defendant from wearing a Crown.

(6) That the point which the Appellant desires to raise at the Privy Council deals with (1) Interpretation of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance Cap. 12. (2) The authority of *Adanji* 30 vs. *Hunvoo* 1 N.L.R. at page 75 and its applicability to cases governed by Native Law and Custom.

Sworn to at the Supreme Court Registry, Lagos this 31st day of May, 1950.

(Sgd.) A. O. THOMAS.

Before me,

(Sgd.) M. E. OJOMO,

Commissioner for Oaths.

4/- paid C.R. 447073/473/31.5.50.

No. 49.  
MOTION.

*In the  
West  
African  
Court of  
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos, Nigeria.

No. 49.  
Motion,  
20th June  
1950.

—  
Tuesday, the 20th day of June, 1950.

Before THEIR HONOURS

CECIL GERAINT AMES, Ag. Chief Justice, Nigeria—

Presiding Judge.

STEPHEN BANKOLE RHODES, Puisne Judge, Nigeria.

10 COURTENAY WALTON REECE, Puisne Judge, Nigeria.

MOTION.

W.A.C.A. 3224.

ADEGBITE, THE ETC.

*vs.*

ADU JIBRILU, THE ETC.

Application under Article 3 (*b*) for leave to appeal by Plaintiffs.

*Thomas* for Appellant.

*Egbuna & Moore* for Respondent.

*Thomas*—Application under 3 (*b*).

20 Appeal deals with right of wearing crown and enjoying certain customary privileges.

Refers to para. 6 of affidavit.

Appeal raises construction of Sec. 2 (2) of Appointment and Deposition of Chiefs Ordinance, Cap. 12 (2). There is already an appeal pending before Privy Council on interpretation of same section. (The Timi of Ede's case.)

Also propose to test applicability in Nigeria of English law about assumption by a person of a title.

Refers to judgment of W.A.C.A. in the appeal, reads portions of the President's judgment.

30 *Egbuna*: My instructions are not to oppose the appeal apart from any question of stay of execution.

*Thomas* (Ref. stay of execution): It only refers to costs. There was an amount in the judgment; which paid into the Court; afterwards registrar said there was another £50, which will be paid.



*In the  
West  
African  
Court of  
Appeal.*

No. 49.  
Motion,  
20th June  
1950,  
*continued.*

*Egbuna* : Oppose stay, ref costs. In court below costs were paid over; £150. The amount is now £

Would not oppose amount being paid into Court.

Court decides to grant leave to appeal, on following conditions :—

(1) Appellant to deposit £40 for record.

(2) Bond for £500 with 2 sureties to be approved by Deputy Registrar.

(3) Any costs ordered by this Court and not yet paid to be deposited in Court.

(4) Notice to other side when application for final leave to 10 appeal granted.

Nos. 1, 2 and 3 to be completed within 3 months.

(Sgd.) C. G. AMES,

Actg. Chief Justice, Nigeria,  
Presiding Judge  
20.6.50.

No. 50.  
Order  
granting  
Conditional  
Leave to  
Appeal to  
H.M. Privy  
Council,  
20th June  
1950.

No. 50.

**ORDER Granting Conditional Leave to Appeal to H. M. Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos, Nigeria.

W.A.C.A. 3224

Suit No. B/23/1948.

ON APPEAL from the judgment of The West African Court of Appeal to His Majesty's Privy Council.

Between ADEGBITE ALE, THE OLUKARE OF IKARE . Plaintiff/  
Respondent/  
Appellant

and

ADU JIBRILU, THE OLUKARE ODO . . Defendant/  
Appellant/  
Respondent. 30

(Sgd.) C. G. AMES,  
Presiding Judge.

Tuesday the 20th day of June, 1950.

UPON READING the Motion for Conditional Leave to appeal to the Privy Council and the affidavit in support thereof filed on the 31st day of

May, 1950 and upon hearing Mr. A. O. Thomas of Counsel for the Appellant and Mr. E. Egbuna, Crown Counsel (Mr. Moore with him) of Counsel for the Respondent.

*In the  
West  
African  
Court of  
Appeal.*

IT IS ORDERED that leave to appeal to the Privy Council from the judgment dated the 12th day of May, 1950, be granted to the Appellant upon the fulfilment of the following conditions :—

No. 50.  
Order  
granting  
Conditional  
Leave to  
Appeal to  
H.M. Privy  
Council,  
20th June  
1950,  
*continued.*

1. That within three months from the date hereof, the Appellant do pay into Court £40 for making and transmitting the Record of Appeal to the Privy Council.

10 2. That within three months from the date hereof, the Appellant do enter into a Bond for £500 with 2 Sureties to the satisfaction of the Chief Registrar for the due prosecution of the appeal before the Privy Council and to abide the costs which may be awarded after the hearing of the appeal or for non-prosecution of the said appeal.

3. That within three months from the date hereof, all costs awarded in favour of the Respondent by this Court and the Supreme Court be deposited in Court by the Appellant pending the result of the said appeal.

And that the Appellant do give Notice of this Appeal to the Respondent when Final Leave is obtained.

20

(Sgd.) W. H. HURLEY,  
Deputy Registrar,  
West African Court of Appeal.

**No. 51.**

**MOTION for Final Leave to Appeal to Privy Council.**

IN THE WEST AFRICAN COURT OF APPEAL  
Holden at Lagos.

W.A.C.A. 3224.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Appellant

30

and

ADU JIBRILU, THE OLUKARE ODO . . . Defendant/  
Respondent.

**MOTION.**

TAKE NOTICE that this Honourable Court will be moved on the 27th day of November, 1950 at the hour of 9 o'clock or so soon thereafter as Counsel can be heard on behalf of the above-named Appellant for an order for Final Leave to appeal to the Privy Council and for such further or other orders as this Honourable Court may deem fit.

Dated at Lagos this 6th day of September, 1950.

40

	£	s.	(Sgd.) THOMAS, WILLIAMS & KAYODE,
Motion	5	0	Solicitors to the Appellant.
Sealing	2	0	
Filing		2	

£ 7 2 paid.

C.R. 614915/14/12.9.50.

No. 51.  
Motion for  
Final Leave  
to Appeal  
to Privy  
Council, 6th  
September  
1950.

*In the  
West  
African  
Court of  
Appeal.*

**No. 52.**

**AFFIDAVIT in Support of Aaron Olajide Adeyeye.**

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

Holden at Lagos.

W.A.C.A. 3224.

No. 52.  
Affidavit in  
support of  
Aaron  
Olajide  
Adeyeye,  
12th  
September  
1950.

Between ADEGBITE, THE OWA-ALE OF IKARE . . . Plaintiff/  
Appellant  
and  
ADU JIBRILU, THE OLUKARE ODO . . . Defendant/  
Respondent.

**AFFIDAVIT.**

10

I, AARON OLAJIDE ADEYEYE of No. 47, Tokunboh Street, Lagos, Yoruba, British Protected Person, make oath and say as follows:—

1. That I am a Clerk engaged in the Chambers of Messrs. Thomas, Williams & Kayode, Solicitors to the Plaintiff/Appellant in the above-mentioned matter.

2. That Conditional Leave to appeal in the above matter was given on the 20th day of June, 1950.

3. That all the conditions imposed have been fulfilled.

Sworn to at the Supreme Court Registry,

Lagos, this 12th day of September, 1950.

20

(Sgd.) A. O. ADEYEYE.

Before me ;

(Sgd.) D. SAGIEDE ODIGIE,  
Commissioner for Oaths.

4s. paid in C.R. No. 615042/139/12.9.50.

**No. 53.**

**HEARING OF MOTION.**

No. 53.  
Hearing of  
Motion,  
27th  
November  
1950.

IN THE WEST AFRICAN COURT OF APPEAL, Holden at Lagos, Nigeria, Monday the 27th day of Nov., 1950, before THEIR HONOURS SIR JOHN VERITY, Chief Justice, Nigeria, Presiding Judge, ARTHUR WARNER LEWEY, K.C., Justice of Appeal, JOSEPH HENRI MAXIME DE COMARMOND, Senior Puisne Judge (N).

30

ADEGBITE

W.A.C.A. 3224.

*versus*

ADU JIBRILU

Motion for Final Leave to Appeal to His Majesty's Privy Council.

*F. R. A. Williams to move*

*Moore on notice.*

*Williams* : all conditions complied with.

*Moore* does not oppose.

40

*Order* : Final Leave granted.

(Sgd.) JOHN VERITY,  
Chief Justice,  
Nigeria Presiding Judge.

No. 54.

**ORDER granting Final Leave to Appeal.**

**IN THE WEST AFRICAN COURT OF APPEAL.**  
 Holden at Lagos, Nigeria.

Suit No. B/23/1948.

W.A.C.A. 3224.

An application for Final Leave to Appeal to His Majesty in  
 Council from the judgment of the West African Court of  
 Appeal, Lagos, dated 12th May, 1950.

*In the  
 West  
 African  
 Court of  
 Appeal.*

No. 54.  
 Order  
 granting  
 Final Leave  
 to Appeal,  
 27th  
 November  
 1950.

10 Between ADEGBITE, THE OWA-ALE OF IKARE . Plaintiff/Respondent/  
 Appellant

and

ADU JIBRILU, THE OLUKARE ODO . Defendant/Appellant/  
 Respondent.

(Sgd.) JOHN VERITY,  
 Presiding Judge.

Monday the 27th day of Nov., 1950.

UPON READING the Motion supported by affidavit filed on behalf  
 of the Plaintiff/Respondent/Appellant for Final Leave to appeal to His  
 20 Majesty in Council from the judgment of this Court dated 12th May, 1950  
 and upon hearing Mr. F. R. A. Williams of counsel for the Appellant and  
 Mr. Moore of counsel for the Respondent.

IT IS ORDERED that Final Leave to appeal to his Majesty in Council  
 be granted to the Appellant.

(Sgd.) J. A. SMITH,

Deputy Registrar,  
 West African Court of Appeal.

*In the  
West  
African  
Court of  
Appeal.*

**No. 55.**

**CERTIFICATE that Respondent received Notice of Order admitting the Appeal and Despatch of Record to England.**

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

**On Appeal to the Privy Council.**

Suit No. B/23/1948.

W.A.C.A. 3224.

No. 55.  
Certificate  
that  
Respondent  
received  
Notice of  
Order  
admitting  
the Appeal  
and  
despatch of  
Record to  
England,  
31st  
January  
1951.

**Between ADEGBITE, THE OWA-ALE OF IKARE . Plaintiff/Respondent/  
Appellant**

**and**

**10**

**ADU JIBRILU, THE OLUKARE ODO . Defendant/Appellant/  
Respondent.**

I, JAMES ALFRED SMITH the Acting Deputy Registrar of the West African Court of Appeal do hereby certify that the Respondent in this cause has received notice of the order of the West African Court of Appeal admitting the Appeal and has also received notice of the Despatch of the record to England.

Dated at Lagos this 31st day January, 1951.

(Sgd.) J. A. SMITH,

Deputy Registrar,  
West African Court of Appeal.

**20**

I, JOHN VERITY (Kt.) Chief Justice of the Supreme Court of Nigeria do hereby certify that the above signature " J. A. Smith " is the true and correct signature of the said JAMES ALFRED SMITH, the Acting Deputy Registrar of the said West African Court of Appeal.

Dated at Lagos this 31st January, 1951.

(Sgd.) JOHN VERITY,

Chief Justice,  
Nigeria.



## EXHIBITS.

## EXHIBIT " P.S.G.F.3."

MEMORANDUM, Resident Ondo Province, Akure to Secretary, Southern Provinces.

No. B/23/48.

*Adegbite, etc. vs. Adu, etc.*

(Sgd.) J. OLU SODA, Ct. Regr.

5/10/49.

No. 0/229/1927/14.

At Owo, 20th December, 1927.

*Exhibits.*P.S.G.F.3  
Memo-  
randum,  
Resident  
Ondo  
Province,  
Akure, to  
Secretary,  
Southern  
Provinces,  
20th  
December  
1927.

10

## MEMORANDUM.

From :

Resident,  
Ondo Province,  
Akure.

To :

The Honourable, The Secretary,  
Southern Provinces,  
Lagos.*Olukare of Ikare : Appointment of.*

I forward herewith a copy of a memorandum received from the District Officer, Owo Division, on the above subject, together with a petition written by the sons of Ajaguna, a former Olukare of Ikare.

No 43/48/  
1927 of  
2/11/1927.  
24/10/1927.  
11/3/1925.

20 2. I also attach a brief review of the history of Ajaguna, written by Captain MacKenzie, when he was Acting District Officer at Owo, in 1925, which will help you materially to understand the present situation.

3. On 15th December, 1927, I visited Ikare with the District Officer and the next day held a meeting with a view to the selection of a new Olukare.

4. Practically the whole of the adult male population of Ikare was present together with the two claimants Adu and Adesunloye.

The claimants sat on the ground in front of me and their supporters sat behind them in two large groups.

30 5. I opened the proceedings by asking if both claimants had the right, according to their native law and custom, to be candidates for the position of Olukare and was assured by both parties, that their rights were equal.

6. I next explained that the succession to the title was a matter for the people immediately concerned to decide but that, in this case, as the appointment carried with it a certain amount of responsibility to the Government their decision must first of all receive my approval.

7. As both claimants had a large number of supporters I decided to take a vote in order to see which was the more popular candidate.

8. A vote was accordingly taken and resulted as follows :—

40

(a) for Adu 965

(b) for Adesunloye 394

9. It will be noticed that Adu's supporters had increased by 185 and Adesunloye's supporters by 8 since October last, when the District Officer took account.

*Exhibits.*

P.S.G.F.3  
Memo-  
randum,  
Resident  
Ondo  
Province,  
Akare, to  
Secretary,  
Southern  
Provinces,  
20th  
December  
1927,  
*continued.*

10. I then told the people that I should recommend Adu to be the new Olukare, subject to His Honour's approval, for the following reasons:—

(a) That he had a legitimate claim to the title.

(b) That he was the popular candidate.

(c) That I considered that he would make a better Administrator of the town of Ikare than Adesunloye, who appeared to be unable to keep his supporters under proper control (vide paragraph 14 of memorandum No. 43/48/1927 of 2nd November 1927).

11. Immediately Adesunloye jumped up and said he was not going to obey Adu, which certainly strengthened my opinion as set out in the 10 proceeding paragraph 10 (c).

12. I shall therefore be glad if you will kindly obtain His Honour's approval for the appointment of Adu as the Olukare, District Head of Ikare and President of the Ikare Native Court.

(Sgd.) H. G. AVELING,

Ag. Resident,  
Ondo Province.  
On tour at Owo.

---

EXHIBIT "P.S.G.F.2."

P.S.G.F.2  
Memo-  
randum,  
Secretary of  
Southern  
Provinces  
to Resident  
Ondo  
Province,  
Akure,  
11th  
January  
1928.

MEMORANDUM, Secretary of Southern Provinces to Resident, Ondo Province, Akure. 20

In Suit No. B/23/48.

*Adegbite etc. vs. Adu, etc.*

(Sgd.) J. OLU SODA, Ct. Rgr.

5/10/49.

No. S.P. 442/13.

11th January, 1928.

MEMORANDUM.

From :  
Secretary,  
Southern Provinces,  
Lagos.

To :  
The Resident,  
Ondo Province,  
Akure.

30

*Olukare of Ikare—Appointment of.*

Your memorandum No. 0/229/1927/14 of the 20th December, 1927.

I am directed by the Lieutenant-Governor to convey His Honour's approval for the appointment of Adu as the Olukare District Head of Ikare and President of the Ikare Native Court.

(Sgd.) H. C.     ?     ?     ?  
for Acting Secretary  
Southern Provinces.

---

## EXHIBIT " P.S.G.F.4."

LETTER, Owa Ale Adegbite of Ikare to District Officer, Owo.

No. B/23/48 : *Adegbite etc. vs. Adu etc.*

(Sgd.) J. OLU SODA Ct. Repr.

5/10/49.

Copy.

Throu.

The District Officer,  
Owo.10 To the Resident,  
Resident's Office,  
Akure.

From

Owa Ale Adegbite of Ikare,  
Ikare.c/o Akoko Native Adm.,  
Owo Division.

8/10/47.

*Exhibits.*P.S.G.F.4  
Letter,  
Owa Ale  
Adegbite  
of Ikare to  
District  
Officer,  
Owo, 8th  
October  
1947.

Sir,

*Usurp of Crown (1947) & position (1886) Dispute  
Petition Re—*

I have the honour most humbly to submit this petition through the District Officer, Owo, to the Resident, Ondo Province, re the dispute of crown worn and position usurped by the Olukare very recently and in the past ; since having understood from a reliable source of the prospective  
20 visit and interview of the Resident in Owo Division.

2. The original history of Owa Ale and Ikare in brief.

First question.—*Where did Owa Ale come from ?*

&amp; How did Ikare bore its name ?

Agbode was the first Owa Ale of Ikare who came and brought his people from Ile-Ife where he had his crown made of cowries. He was of the same family with the Olowo of Owo and Asen of Oka thus our senior brother was the Olowo of Owo who shall bear me out if it is not so.

During Agbode's journey from Ile-Ife he first dwelt and had his rest under a tree where there were nest of birds and these birds are known as  
30 Akere from there Ikare got its name. (Ikare or Ikere.)

These were the Owa Ale of Ikare who had ever reigned and were crowned chiefs :—

1. Agbode, 2. Roteye, 3. Olasun, 4. Ojugbo, 5. Agbole, 6. Orukusuku, 7. Amugbitigidi, 8. Ameuinepe, 9. Adetiba, 10. Gbodi, 11. Owajimite, 12. Odironoye, 13. Aranja, 14. Ajiboye, 15. Adegbite (the present Owa Ale).

The Owa Ale Orukusuku of Ikare assisted the Olowo [or Owo Ajakaot to wage war against the Benins.

3. *How Olukado known to-day as Olukare became a chief and who  
40 created him as own chief.*

At a long run Ikare began to increase in population, the Owa Ale therefore created Rotowa the son of Oshodi as the Oluka of Odo (Olukado). Odo is quarter in Ikare. Afterwards Enikanselu ran away to Okela where he became the Olukado as his father was in the mother's house and was



*Exhibits.*  
 P.S.G.F.4  
 Letter,  
 Owa Ale  
 Adegbite  
 of Ikare to  
 District  
 Officer,  
 Owo, 8th  
 October  
 1947,  
*continued.*

how he came to live at Okela until to-day. These were the Olukados (Olukares) who ever lived:—1. Rotowa. 2. Enikanselu, 3. Atamaga, 4. Iekalu, 5. Ata, 6. Elegbe, 7. Oloniola, 8. Ajagunona. 9. Momo, 10. Adu (the present Olukare) none of all these ever wore a crown except Adu the Olukare now there. To wit, if Olukare were to have a crown from time immemorial why did his predecessors never wear one, and why did he not try to receive permission from the Government before doing so. And if was true that the Olukare had not usurped my post cunningly as you would read in the next paragraph why did he not have a crown from time to time. Can he give history of how he emerged except he tells a different story, 10  
 contrary to the history of Ikare.

4. *How did Olukare Olonola usurp Owa Ale's position in 1886 and how he changed Olukado to Olukare to the Govt.*

When the white man first came to this part of the country say Akoko, in 1886 the first District Commissioner stationed at Ikaram in the Akoko District and made there the Headquarter. Ajiboye the Owa Ale of Ikare was asked to interview the D.C. there. He (the Ale of Ikare) therefore got along, with few of his chiefs as it is customary, in which Olukado Olonola was one. Having got there during the interview as we were all illiterates except Olukado Olonola was wiser (trader before becoming a 20  
 chief) the District Commissioner asked who was the head-chief and the Ale gave the correct reply but the interpreter misinterpreted the words therefore told him that it was the Olukado and that his title was Olukare instead of Olukado. This was not known to the people of Ikare until after many years. When messages are sent to the D.C. at Ikaramu the Olukare (as he was called) was often sent and getting there would deliver messages on his name instead of the Oba. (customarily Obas never go beyond their towns) by this cunning art, Olukare gradually usurped the Owa Ale's position the then interpreter was Amadu.

5. *How Olukare in 1947 wore a crown and how all other rights of the 30  
 Ale has been usurped and deprived.*

The Olukare having usurped my position in 1886, now in 1947 Sept wore the crown just to deprive me of the lawful one. He had deprived me from getting salary ever since and of land in some respect. All privileges due to an Oba have all been deprived from me. He (Olukare) fully knows that he is not much respected according to Native Law and Custom as the Oba now because he raked money from this position, which intoxicated his wits to buy a crown. Crown was not worn by money in the far off days, before the advent of the Europeans. Then it was unlawful to do so. 40

6. *Investigation and Enquiry of the Higher Authorities necessary.*

Question 1. Who was the Oba of Ikare when Ikare came into existence—1886. Owa Ale or Olukare ?

Question 2. Who had the original crown after and before the advent of Europeans. Owa Ale or Olukare ?

These questions can be put straight to any Ikare man or woman or from any man or woman at Owo (we are close relatives). The Olowo of Owo being my senior brother in our family knows how Ikare was created

and how Oba Ale existed and things were done together from time immemorial. The Olowo is and was the sole Native (Authority) Ruler of the Division and in consequence of this, the Olowo is the right Oba in the right place to give the true facts of the history.

*Exhibits.*  
—  
P.S.G.F.4  
Letter,  
Owa Ale  
Adegbite  
of Ikare to  
District  
Officer,  
Owo, 8th  
October  
1947,  
*continued.*

7. *Conclusion.*

With this view, I shall be most grateful if your honour shall review the whole matter after careful investigation, so that I am not monopolised upon my lawful rights.

10

I have the honour to be,  
Sir,

Your obedient servant,

THE OWA ALE X  
Thumb imp.

Writer,  
MOHAMMED SUBERU,  
c/o Comm. School.

6 copies gratis.  
400 words.

20

Def/Written at the request of the petitioner, read and interpreted into Ikare dialect and having understood affixed his thumb impression in the presence of the witness E. A. Ogun.

Certified true copy.

(Intld.) ? ? ?

---

**EXHIBIT "Z.A.B.1."**

**LETTER from District Officer, Owo Division to Owa Ale Adegbite of Ikare.**

Exh. Z.A.B.1 in Suit No. B/23/48.

*Adegbite, etc. vs. Adu Jibrilu, etc.*

(Sgd.) J. OLU SODA, Ct. Regr.

12/10/49.

30

No. 141/886.

District Office,  
Owo.

3rd November, 1947.

Owa Ale Adegbite of Ikare,  
c/o Akoko Native Administration,  
Ikare.

My Good Friend,

I forward herewith the Resident's reply to your petition dated the 18th of October, 1947.

40

Your Good Friend,  
(Sgd.) ? ? ?

District Officer,  
Owo Division.

Z.A.B.1  
Letter from  
District  
Officer,  
Owo  
Division  
to Owa Ale  
Adegbite  
of Ikare,  
3rd  
November  
1947.

*Exhibits.***EXHIBIT "Z.A.B.2."****LETTER, from Ag. Resident, Ondo Province to Owa Ale Adegbite of Ikare.**

Z.A.B.2  
 Letter from  
 Ag. Resident  
 Ondo Province  
 to Owa Ale  
 Adegbite  
 of Ikare,  
 25th  
 October  
 1947.

**Exh. Z.A.B.2 in Suit No. B/23/48.**  
***Adegbite, etc. vs. Adu Jibrilu, etc.***  
**(Sgd.) J. OLU SODA, Ct. Repr.**  
 12/10/49.

No. 2173/69.

Resident's Office,  
 Ondo Province,  
 Akure.

25th October, 1947.

Sir,

With reference to your petition of the 18th of October, 1947, inquiries are being made in regard to your claim to wear a beaded crown, but I warn you that if, by your act in wearing a crown, to which your right has not been established, you thereby cause a breach of the peace, you will be held solely responsible.

I am, Sir,

Your obedient servant,

(Sgd.) ? ? ?

Ag. Resident, Ondo Province,  
 (On tour at Oka).

Owa Ale Adegbite of Ikare,  
 c/o Akoko Native Administration,  
 Ikare.

10

20

Z.A.B.3

**EXHIBIT "Z.A.B.3."****LETTER from District Officer, Owo Division to Z. A. Baiyegun.**

Letter from  
 District  
 Officer,  
 Owo  
 Division to  
 Z. A.  
 Baiyegun  
 3rd  
 November  
 1947.

**Exh. Z.A.B.3 in Suit No. B/23/48.**  
***Adegbite, etc. vs. Adu Jibrilu, etc.***  
**(Sgd.) J. OLU SODA, Ct. Repr.**  
 12/10/49.

No. 141/885.

District Office,  
 Owo.

3rd November, 1947.

Mr. Z. A. Baiyegun,  
 Okorun Street,  
 Ikare.

Sir,

*Ale Adegbite of Ikare.*

With reference to your petition of the 25th of October, 1947, I have to inform you that the Crown will remain with the Okoko Chiefs pending the result of the enquiry regarding the right of Ale Adegbite to wear it.

I am, Sir,

Your obedient servant,

(Sgd.) ? ? ?

District Officer, Owo Division.

40

## EXHIBIT "A."

LETTER the Ofin Oba Deji Akure to the Oba Alaiyeluwa Adeyemi II, the Alafin of Oyo.

Exhibit "A" tendered by Plaintiff in Suit No. B/23/48.

Ref. No. AF/OD/159A.

Confidential.

The Oba Deji,  
P.O. Box 1,  
Akure, Nigeria.

13th March, 1948.

*Exhibits.*

"A"

Letter, the  
Ofin Oba  
Deji Akure  
to the Oba  
Alaiyeluwa  
Adeyemi II  
the Alafin  
of Oyo,  
13th March  
1948.

10 The Oba Alaiyeluwa,  
Adeyemi II,  
The Alafin of Oyo,  
Oyo, Nigeria.

My Good Friend,

*Crown Wearing.*

With reference to your letter No. APO.C.130 dated 24th February, 1948, first of all I have to thank you for such deep consideration on such an important matter which you wrote me about.

20 It is really food for thought indeed, wearing of crowns by unconstitutional Bales are getting too much nowadays, in fact if I dare see unconstitutional Bale with a crown to me I shall surely seize it from him, and I shall refer the matter to all Yoruba Obas in the Western Provinces as being advised.

I shall be very pleased if you will try to arrange a special meeting of all the recognised Obas in the Western Provinces to discuss this vital matter and then pass the resolution to the Government for confirmation and have it gazetted in the Government Magazine.

I herewith extend my best regards to your Council members and the Emeses including the Oloris and all. Greetings.

30

Your Good Friend,

X Thumb Impression.

Igbara-Oke, one of my sub-villages : The Deji of Akure is worrying here, the matter is still in the hand of my administrative officers at present.

(Sgd.) ? ? ?

The Deji's Private Secretary.

*Exhibits.*

" B "

Letter,  
Olowo of  
Owo to the  
Alafin of  
Oyo, 20th  
March 1948.

## EXHIBIT " B. "

LETTER, Olowo of Owo to the Alafin of Oyo.

Exhibit " B " tendered by Plaintiff in Suit No. B/23/48.

No. OL.115/20.

Afin Oba Olowo,  
Owo.

20th March, 1948.

The Alafin of Oyo,  
Oyo.

My Good Friend,

10

*Crown.*

There is no doubt that you are cognizant of the fact that the matter of indiscriminate wearing of crown has been a vexed question lately in Owo Division.

The Olukare of Ikare has taken upon himself to wear a crown. Neither history nor evidence of past performance supports this infringement of Native Law and Custom by this intruder.

The present Olukare is the eighth of his line. None of his predecessors ever wore a crown but a *Turban*.

I believe that you will agree with me that the unlawful demands are 20 trespasses on my right in this Division, as well as those of other crowned Obas in the Western Provinces.

I am therefore suggesting that the Crowned Obas should take a definite stand in the matter by writing to His Honour the Chief Commissioner objecting to these irregularities and flagrant violation of Native Laws and Custom ; and trespasses in their hereditary rights.

Furthermore it could be legalised that any one of the other Obas who should be desirous of wearing a crown should apply to the Crowned Obas who would decide whether or not to grant such an application.

The attached is my letter to His Honour the Chief Commissioner 30 about Olukare.

Sincere Greetings,

Your Good Friend,

(Sgd.) ? ? ?

Olowo of Owo.

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## EXHIBIT "C."

LETTER, AND PETITION Olowo of Owo to Oba Alaiyeluwa the Alafin of Oyo.

Exhibit "C" tendered by Plaintiff in Suit No. B/23/48.

No. OL.122/12.

Afin Oba Olowo,  
Owo.

24th March, 1948.

Oba Alaiyeluwa,  
The Alafin of Oyo,  
Oyo.

10

My Good Friend,

*Crown.*

I have to thank you very much for your letter dated 24th February, 1948, I should have replied before now but I waited to see what I shall get to write to you about, the which I am now doing.

I append herewith a copy of my petition to His Honour about the Olukare of Ikare and also a copy of my views to all other Crowned Obas for your information.

Reference to paragraph 2 of your letter, the earlier the conference of chiefs are conveyed the better, as it is better to put a stop to these people crowning themselves. In that case His Honour may refer my petition to such a conference.

20

I advise that you should please write to His Honour as I have done to deprecate the action of the people crowning themselves without your information as well as other Obas. I hope you will send me a copy of your views to the Chief Commissioner when you do so.

Greetings,

Your Good Friend,

(Sgd.) ? ? ?

Olowo of Owo.

No. OL.122/13.

Afin Oba Olowo,  
Owo.

10th March, 1948.

30

Through : The District Officer,  
Owo Division.And : The Resident,  
Ondo Province.To : His Honour the Chief Commissioner,  
Western Provinces,  
Ibadan.

CROWN.

Your Honour,

I have the honour to forward this my humble petition through you to His Honour the Chief Commissioner, Western Provinces.

*Exhibits.*

"C"

Letter, and  
Petition  
Olowo of  
Owo to  
Oba  
Alaiyeluwa  
the Alafin  
of Oyo,  
24th March  
1948.

*Exhibits.*

“C”

Letter, and  
Petition  
Olowo of  
Owo to  
Oba  
Alaiyeluwa  
the Alafin  
of Oyo,  
24th March  
1948.

The Government is aware of the fact that Akoko District was a part of Owo, and that the Intelligence Report was the cause of their separation from Owo, a few years ago.

Now one of the chiefs of Akoko in the person of Mr. Adu, The Olukare of Ikare, has put it upon himself to wear a crown—a thing, according to traditional history to which he has no right. It is not only this but he has adopted the Royal Robes and greetings of the Olowo of Owo, and used coral beads for his crown. His chiefs have also adopted Owo chiefs' ceremonial dress and style of obeisance to the Olowo. Everyone of these is against Native Law and Custom. 10

Owo chiefs and people are full of indignation about the matter, and were it in the olden days it was more than sufficient cause for inter-tribal war.

The Olowo and council therefore humbly request His Honour The Chief Commissioner to take an immediate step to restrain the Olukare of Ikare from :—

- (1) Using Coral-beaded Crown.
- (2) Adopting the Royal Robes and greetings of the Olowo.
- (3) Allowing his chiefs to adopt Owo Chiefs' ceremonial dress and forms of obeisance used for The Olowo. 20

Your Honour's obedient servant,

(Sgd.) ? ? ?

Olowo of Owo.

---

EXHIBIT "A.T.1."

LETTER, Acting Senior Crown Counsel, Ibadan to Messrs. A. O. Thomas and A. M. F. M. Agbaje.

*Exhibits.*

A.T.1

Letter,  
Acting  
Senior  
Crown  
Counsel,  
Ibadan, to  
Messrs.  
A. O.  
Thomas and  
A. M. F. M.  
Agbaje,  
16th July  
1948.

Exh. A.T.I in Suit No. B/23/48.

*Adegbite, etc. vs. Adu Jubrilu, etc.*

(Sgd.) J. OLU SODA, Ct. Regr.

13/10/49.

No. 9/62.

Crown Counsel's Chambers,  
Ibadan.

10

16th July, 1948.

Sirs,

*Crown and Bugle belonging to the Ale of Ikare.*

I have been directed to reply to your letter of the 5th March, 1948, regarding the alleged seizure by the District Officer, Owo, of a crown and a bugle belonging to the Ale of Ikare. The facts are that after creating a disturbance at the meeting of Akoko Council by causing his bugle to be sounded, the Ale was asked to hand over his crown and bugle, which he did to a Court Messenger and these were placed on the table at which the District Officer was sitting. There was no question of seizure as the Ale handed over the crown and bugle when asked to do so.

20

2. I am to inform you further that the crown and bugle will be returned to the Ale on his application. At the same time, he should take warning that it appears he is not entitled to use either by native law and custom and that if he infringes native law and custom in this respect, he renders himself liable to an action for an injunction restraining their use.

I have the honour to be,

Sirs,

Your obedient servant,

30

(Sgd.) ? ? ? HAY,

Actg. Senior Crown Counsel.

Messrs. A. O. Thomas & A. M. F. M. Agbaje,  
Barristers-at-Law & Solicitors,  
Ibadan.





**In the Privy Council.**

---

**ON APPEAL**  
**FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA.**

---

**BETWEEN**

**ADEGBITE, THE OWA-ALE OF IKARE (Plaintiff)** . . . *Appellant*

**AND**

**ADU JIBRILU, THE OLUKARE ODO (Defendant)** . . . *Respondent.*

---

**RECORD OF PROCEEDINGS**

---

**HATCHETT JONES & CO.,**  
66A FENCHURCH STREET,  
LONDON, E.C.3,  
*Solicitors for the Appellant.*

**BURCHALLS,**  
9 BISHOPSGATE,  
LONDON, E.C.2,  
*Solicitors for the Respondent.*