~~P.C. 30~~

Judgment 23, 1959

IN THE PRIVY COUNCIL No.30 of 1958

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

TEJUMADE ONITIRI
(for and on behalf of herself
and other children of the late
Lawani Idowu Onitiri deceased)
Plaintiff/Appellant

- and -

(1) SAMUEL A. OYADIRAN
(2) T.I. ONITIRI
(3) S.A. ONITIRI Defendants/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
E.C.3.

Solicitors for the Appellant

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors for the first
Respondent.

IN THE PRIVY COUNCIL No.30 of 1958

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RECORD OF PROCEEDINGS

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Notice of Motion for Final Leave to Appeal	18th June 1958
Affidavit in Support of Motion	27th June 1958

IN THE PRIVY COUNCIL No.30 of 1958

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

TEJUMADE ONITIRI
(for and on behalf of herself
and other children of the late
Lawani Idowu Onitiri deceased)
Plaintiff/Appellant

- and -

(1) SAMUEL A. OYADIRAN
(2) T.I. ONITIRI
(3) S.A. ONITIRI Defendants/Respondents

RECORD OF PROCEEDINGS

No. 1.

In the Supreme Court

No. 1.

Civil Summons.

11th June, 1954.

CIVIL SUMMONS

IN THE SUPREME COURT OF NIGERIA

BOOK NO. U 86 U 8591

CIVIL SUMMONS SUIT NO.250/54

Between Tejumade Onitiri (for and on behalf of herself and all other children of the late Lawani Idowu Onitiri (deceased) Plaintiff, and Samuel A. Oyadiran (2) T.I.Onitiri (3) S.A.Onitiri Defendants. To, Samuel A. Oyadiran (2) T.I.Onitiri (3) S.A.Onitiri of 55, Simpson Street, Ebute Metta, 2, Hotonu Lane, Lagos, 4, Oyabiyi Street, Surulere.

You are hereby commanded in Her Majesty's name to attend this Court at Tinubu Sq., Lagos on Monday the 5th day of July 1954 at 9 o'clock in the forenoon to answer a suit by Tejumade Onitiri of c/o Her Solicitors, 6A, Martins Street, Lagos against you.

The Plaintiff is one of the beneficiaries of the estate of Lawani Idowu Onitiri (deceased).

In the Supreme Court

No. 1.

Civil Summons.

11th June, 1954 - continued.

The Plaintiff's claim against the Defendants is to set aside the sale of a piece of land known as Onitiri Brickfield Yaba, in the mainland of Lagos, made to the first Defendant on the 21st March 1948, by the second and the third Defendants as Administrators of the estate of the said Lawani Idowu Onitiri (deceased) on the ground of fraud.

Value of the property	£1,800/-/-
Annual rental value £100	£ 100/-/-

Issued at Lagos the 11th day of June, 1954.

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. 2.

Statement of Claim.

4th October, 1954.

No. 2.

STATEMENT OF CLAIM

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

SUIT NO.250/54

BETWEEN: TEJUMADE ONITIRI (for and on behalf of herself and all other children of the late Lawani Idowu Onitiri (deceased)) Plaintiffs

- and -

SAMUEL A. OYADIRAN
T.I. ONITIRI
S.A. ONITIRI Defendants

STATEMENT OF CLAIM

1. The Plaintiff is the representative of the other Beneficiaries of the estate of one Lawani Idowu Onitiri (deceased).

2. The said Lawani Idowu Onitiri died intestate and Letters of Administration were granted on 24th December 1947, by the Supreme Court to the Second and Third Defendants.

3. On the 21st day of March 1948, the first Defendant fraudulently bargained with the second and third Defendants and purchased the land known as Onitiri Brickfield for £650.

Particulars of Fraud

(a) The first Defendant on 27th January 1948, was the highest bidder at a sale by Auction of the aforesaid property for £3,800.

(b) That the sale was eventually rescinded because the reserved price of £10,000 was not reached.

(c) On the 21st day of March 1948 the first Defendant purported to purchase the same piece of land for £650.

(d) That the aforesaid Onitiri Brickfield was divided into plots on or about same period and sold at £800 a plot i.e. an acre.

(e) The first Defendant now claims to have bought about 23 plots (acres) for £650. Rent on this land being about £1,000 p.a.

(f) That there was no notice of the sale to the Plaintiff.

(g) That the alleged sale was by private treaty surreptitiously concluded by the Defendants without any cause whatsoever in that the estate being solvent the sale in itself was unnecessary.

(h) The Plaintiff says that the second and third Defendants have no power to sell aforesaid property.

4. WHEREUPON the Plaintiff claims as per writ of summons.

DATED at Lagos this 4th day of October, 1954.

(Sgd.) Thompson & Coker,
SOLICITORS TO THE PLAINTIFF.

In the Supreme Court

No. 3.

Defence (First Defendant)

22nd October, 1954.

No. 3.

DEFENCE - FIRST DEFENDANT

(Title as No. 2)

STATEMENT OF DEFENCE OF FIRST DEFENDANT

1. The first Defendant denies each and every allegation of fact contained in paragraph 1 of the Plaintiffs' Statement of Claim and puts the said Plaintiffs to their very strict proof.

2. The first Defendant admits paragraph 2 of the Plaintiffs Statement of Claim.

3. The first Defendant says with regard to paragraph 3 of the Statement of Claim that apart from admitting that he bought from the second and third Defendants all that piece or parcel of Land known as Ajegunle Onitiri Brickfield for a consideration of £650 denies all the other allegation contained therein and more particularly the allegations of fraud.

4. The first Defendant will at the hearing plead:

(1) Res Judicata by virtue of Suit 55/1950 and WACA 3809.

(2) Estoppel by virtue of the legal maxim interest reipublicae ut sit finis litium.

DATED at Lagos this 22nd day of October, 1954.

(Sgd.) John Taylor.

FIRST DEFENDANT'S SOLICITOR.

No. 4.

Defence (Second and Third Defendants)

25th October, 1954.

No. 4.

DEFENCE - SECOND AND THIRD DEFENDANTS

(Title as No. 2)

STATEMENT OF DEFENCE

FOR THE SECOND AND THIRD DEFENDANTS

1. Save and except as are hereinafter specifically admitted the Defendants deny each and every allegations of facts contained in the Plaintiff's

Statement of Claim as if each were set out seriatim and separately denied.

2. The second and third Defendants are not in a position to admit or deny paragraphs 1 and 2 of the Plaintiff's Statement of Claim.

3. The second and third Defendants admit paragraphs 2, 3a, 3b and 3d of the Plaintiffs Statement of Claim.

4. The second and third Defendants plead that they sold the said property as Administrators of the Estate of Lawani Idowu Onitiri and state further that they are not bound to consult the Plaintiffs before such sale.

DATED at Lagos this 25th day of October, 1954.

(Sgd.) Thomas, Williams & Kayode,
SOLICITORS TO THE SECOND AND THIRD DEFENDANTS.

In the Supreme Court

No. 4.

Defence (Second and Third Defendants)

25th October, 1954

- continued.

No. 5A.

NOTICE OF MOTION FOR LEAVE TO AMEND STATEMENT OF CLAIM.

No. 5A.

Notice of Motion for leave to Amend Statement of Claim.

18th November, 1954.

(Title)

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Friday the 26th day of November 1954 or so soon thereafter as Counsel can be heard on behalf of the above Plaintiff for an Order that the Plaintiff be permitted to file an amended Statement of Claim and for such further Order or Orders as this Honourable Court may deem fit.

DATED at Lagos this 18th day of November 1954.

(Sgd.) Thompson & Coker,
SOLICITORS TO THE PLAINTIFF.

In the Supreme Court

No. 5B.

Affidavit in Support of Motion for Leave to amend Statement of Claim.

November 1954.

No. 5B.

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO AMEND STATEMENT OF CLAIM.

(Title as No. 2)

AFFIDAVIT

I, Adewale Thompson, Solicitor and Advocate of the Supreme Court of Nigeria, Yoruba, Male, make oath and say as follows :-

1. That I am one of the Solicitors for the Plaintiff in the above action.

2. That the Statement of Claim had been filed and the Defendants had filed the Statement of Defence.

3. That the matter was set down for hearing on 26th day of November, 1954.

4. That in the course of preparation for the 26th, I discovered that there is an important omission in the Statement of Claim.

PARTICULARS OF OMISSION

(a) After the 2nd paragraph insert as paragraph 3, the following :-

"That the aforesaid Lawani Idowu Onitiri (deceased) was the owner in fee simple of the land known as Onitiri Brickfield in the mainland of Lagos".

(Sgd.) Adewale Thompson
Deponent.

SWORN to at the Supreme Court Registry Lagos this day of November, 1954.

Before me,

(Sgd.) E. O. KOGBE,
COMMISSIONER FOR OATHS.

In the Supreme Court

No. 5C.

Court Notes of Order for Leave to amend Statement of Claim.

22nd November, 1954.

No. 5C.

COURT NOTES OF ORDER FOR LEAVE TO AMEND STATEMENT OF CLAIM

(Title as No. 2)

MONDAY THE 22ND DAY OF NOVEMBER, 1954

BEFORE THE HONOURABLE

MR. JUSTICE OLUMUYIWA JIBOWU.
Ag. Senior P. Judge.

SUIT NO.250/54.

TEJUMADE ONITIRI vs. S. A. OYADIRAN

NOTICE by Plaintiff for order to amend Statement of Claim by adding a new paragraph 3 after the original paragraph 2 and amending the original paragraph 3 as 4.

Thompson moves.

J.I.C. Taylor for first Defendant

Munis for second and third Defendants have no objection.

Order as prayed with 2 guineas costs to first Defendant and 2 guineas costs to the second and third Defendants.

(Sgd.) O. Jibowu
Ag. S.P.J.

No. 6A.

Notice of Motion for leave to sue in representative capacity

18th November, 1954.

No. 6A.

NOTICE OF MOTION FOR LEAVE TO SUE IN REPRESENTATIVE CAPACITY

(Title as No. 2)

MOTION EX-PARTE

TAKE NOTICE that this Honourable Court will be moved on the 26th day of November 1954 or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an Order that the

In the Supreme Court

No.6A.

Notice of Motion for leave to sue in representative capacity.

18th November, 1954 - continued.

above-named Plaintiff may sue on behalf of the children of the late Lawani Idowu Onitiri in the above matter and for such further Order or Orders as this Honourable Court may deem fit.

DATED at Lagos this 18th day of November, 1954.

(Sgd.) Thompson & Coker,

SOLICITORS TO THE PLAINTIFF.

No.6B.

Affidavit in Support of Motion for Leave to sue in representative Capacity.

23rd November, 1954.

No. 6B.

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO SUE IN REPRESENTATIVE CAPACITY.

(Title as No.2)

AFFIDAVIT

I, Emanuel Oke Idowu Onitiri Merchant of 2, Hotonu Street, Lagos Male, Yoruba, make oath and say as follows :-

1. That I am the eldest of the male children of the late Lawani Idowu Onitiri (deceased).

2. That I and the other children of the said Lawani Idowu Onitiri have the same interest in the above suit as the Plaintiff and we have authorised her to sue on our behalf.

SWORN to at the Supreme Court Registry Lagos this 23rd day of November, 1954.

Before me,

(Sgd.) E. O. KOGBE

COMMISSIONER FOR OATHS.

(Sgd.) ? ?

Deponent.

No. 7.

In the Supreme Court

No. 7.

Court Notes of Leave to sue in representative capacity and Arguments on preliminary point.

COURT NOTES OF LEAVE TO SUE IN A REPRESENTATIVE CAPACITY AND ARGUMENTS ON PRELIMINARY POINT

WEDNESDAY THE 15TH DAY OF DECEMBER, 1954

BEFORE THE HONOURABLE MR.JUSTICE OLUMUYIWA JIBOWU, AG. SENIOR PUISNE JUDGE.

SUIT NO.250/54

TEJUMADE ONITIRI Vs. S.OYADIRAN & OTHERS.

15th December, 1954.

Lawson for Thompson for Plaintiff

Taylor for first Defendant

Kayode for second and third Defendants.

Notice by Plaintiff to sue in a representative capacity.

Lawson moves - Taylor has no objection. Leave to sue.

Order as prayed.

Arguments on preliminary point.

Taylor on the order submits that the Plaintiffs cannot proceed with the action by reason of the property in Suit No. 55/1950 entitled S. A. Oyadiran plaintiff versus T.I. Onitiri and S.A. Onitiri sued as administrators of the estate of L.I. Onitiri deceased. In this present case, he submits that all the parties were parties to suit No.55/1950. He submits that Plaintiffs as beneficiaries of the estate were also parties to Suit No. 55/1950 because the estate was represented by the administrators.

The land, subject matter of this suit, is the same in suit 55/1950. The claims in 55/50 are at page 12 of Record put in marked Exhibit A. At page 16 paragraph 16 of Exhibit A. He pleaded he acted in good faith. Robinson, J., heard the case. See Judgment at pp. 34 & 35 - page 34 lines 13 and 24: page 35 lines 26 - 29. First Defendant in this case is shown to have paid the purchase price which has been shared by the beneficiaries. See pp. 50 and 57 from line 13.

(N.B. Record in suit 55/1950 not included in this Record)

The only dispute item was whether the present land or another was sold to him. Robinson J. had found as a fact that there was no fraud in Plaintiff's fact. The Administrators were not satisfied

In the Supreme Court

No. 7.

Court Notes of Leave to sue in representative capacity and Arguments on preliminary point.

15th December, 1954 - continued.

and went to Court of Appeal which upheld judgment of Court below.

Effect Judgment are -

(1) Oyadiran acted bona fides

(2) Administrators acted mala fides

(3) Oyadiran is the owner of the property.

Are beneficiaries privus of Administrators?

Present claim to set aside the sale on ground of alleged fraud between the first and the second and third Defendants. The Court has already made a finding on the point.

Administrator or Executor - administer the estate for and on behalf of the estate -

Beneficiaries one hand by the estate of the Administrators or Executors.

He therefore subjects that the Plaintiffs are bound by the acts of the Administrators.

The present Plaintiff purports to sue for and on behalf of other children of T. Idowu Onitiri (deceased). In suit 55/50 one of the beneficiaries Adetoun gave evidence. See page 28 Exhibit A. and page 68 her Statement to the justice was also in evidences. Another beneficiary Redem Dallas made a statement at page 69 of Exhibit A. Each and every one of them knew of this sale and as far back as 1948. According to second Defendant the purchase price was divided among them. Two of the parties were parties to 55/50 - 6 years after the sale they now came to rescind the sale.

Lawson replies. He submits that the Plaintiffs are not estopped by res judicate from bringing this action. He concludes that the Administrators represent the estate. Issues involved are different in the two cases and they were not tendered in 55/50.

He says that Administrators could not represent the beneficiaries.

In the former case the Plaintiff, now first Defendant, sued for the land he said he bought in which the Administrators said they had sold to somebody else.

He succeeded in proving that the land in dispute was sold to him. This was upheld by the Court.

In this new case the Plaintiff had not disputed the findings of the Court in 55/50. The Plaintiff here does further to allege fraud. It is true the Court found that there was no fraud in first Defendant, but that second had acted mala fide.

He submits that that does not affect the issue whether the first and second Defendants acted simultaneously in fraud of the beneficiaries. Plaintiff is not to prove that the first Defendant acted in fraud of the beneficiaries nor of the administrators. He refers to Kerr on Fraud and Mistake; 6th edition, page 188. He refers to Vol. 13 Halbury's Laws, 2nd index page 440 and also 495 and 6.

He submits that the points now raised could not have been decided in the first case. In fact it was not taken nor was it decided.

If the Beneficiaries could establish that the Administrators acted fraudulently in selling to second Defendant, then the sale should be rescinded. It follows that the Administrators did not act as their Agent when he was defrauding the beneficiaries.

He submits that the issue decided in 55/50 was whether Plaintiff or Administrators acted in fraud of one another, other issue on this is whether both the Plaintiff (knew first Defendant) jointly with the Administrators acted in fraud of the beneficiaries.

Taylor replies - He says were all interested parties before the Court in Suit 55 of 1950?

His answer is yes. The Administrators represented the beneficiaries. Interest reipublicae ut sit finis litium. The beneficiaries who gave evidence did not suggest fraud because Oyadiran and Onitiri - see page 68 Exhibit A. He says that the beneficiaries cannot now say something else.

Decision is reserved till the 21st inst.

(Sgd.) O. Jibowu

Ag. S.P.J. 15/12/54.

In the Supreme Court

No. 8.

Decision on Preliminary Point.

3rd January, 1955.

No. 8.

DECISION ON PRELIMINARY POINT

(Title as No.2)

MONDAY THE 3RD DAY OF JANUARY, 1955

BEFORE THE HONOURABLE MR. JUSTICE OLUMUYIWA JIBOWU

ACTING SENIOR PUISNE JUDGE.

DECISION

In this action the Plaintiff seeks to set aside the sale of a piece of land known as Onitiri Brickfield, Yaba, by the second and third Defendants to the first Defendant on the 21st March, 1948 on the ground of fraud.

Mr. J.I.C. Taylor, learned Counsel for the first Defendant, has raised a preliminary point that the matter is Res Judicata by virtue of the decision in Suit No. 55 of 1950 and that the Plaintiff is estopped from bringing this action in view of the legal maxim "Interest reipublicae ut sit finis litium". It should be observed that the Plaintiff is a beneficiary under the estate of Lawani Idowu Onitiri, deceased, and she has sued on her own behalf and on behalf of the other beneficiaries. The second and third Defendants are administrators of the estate of the said Lawani Idowu Onitiri, deceased.

In Suit No. 55 of 1950, the Plaintiff, who is the first Defendant in this action, sued the Administrators of the estate of Lawani Idowu Onitiri deceased.

(1) To set aside a deed of conveyance of a piece of land at Ajegunle Brickfield, dated 6th January, 1949, between the first and second Defendants of the one part and one Emanuel Ade Taiwo, of the other part, who was the third Defendant.

(2) Declaration of title to the land covered by the Conveyance referred to in (1), or in the alternative, for £2,700, whereof £650 was the purchase price of the said piece of land paid by the Plaintiff to the first and second Defendants, £50 being interest thereon and £2,000 general damages for breach of contract. The Court found in favour

of the Plaintiff, set aside the Conveyance to Emanuel Ade Taiwo, made a declaration of title in favour of the Plaintiff and ordered the Administrators to execute a Conveyance of the land in dispute to the Plaintiff. The Defence then raised by the Administrators was that the Plaintiff had procured a plan for a larger area of land than was sold to him. The Court found that there was no fraud in the Plaintiff but that the Administrators and Emanuel Ade Taiwo had fraudulently conspired to cheat the Plaintiff. The judgment of the Supreme Court was upheld by the W.A.C.A.

The land then in dispute is the same as in this case. The beneficiaries of the estate were not parties to the action although the persons representing the estate as administrators were parties.

I am inclined to agree with the submission of Lawson, Plaintiff's Counsel, that the issue raised in this action was not raised nor was it decided in Suit No. 55/1950.

It is true the Court decided an issue of fraud as between the Plaintiff and the first and second Defendants in that suit, the fraud now alleged is of a different nature and is between the beneficiaries on the one hand and the three Defendants on the other.

The Plaintiff in this case accepts the findings of the Court in Suit 55 of 1950 that the Administrators in fact sold the land in dispute to the first Defendant, but she alleges that the sale was in fraud of the beneficiaries as the same land for which the first Defendant offered £3,800 which was rejected by the beneficiaries was sold a few months later to the same first Defendant by the Administrators for only £650.

It appears to me that something was wrong somewhere. If the Court had not found that the Administrators in fact sold to the first Defendant the whole land shown in the plan attached to the Conveyance then before the Court, one would have been inclined to think that the parties were not "ad didem" as to the land being sold. However, the Court has set at rest that probability by finding as a fact that the whole land was sold for £650.

The Plaintiff accepts the findings of the Court and now raises a new issue of fraud which did not arise in the case of 1950 nor was it decided.

In the Supreme Court

No. 8.

Decision on Preliminary Point.

3rd January, 1955 - continued.

In the circumstances, I am unable to uphold the learned first Defendant's Counsel's submission that the matter raised in this new action is Res Judicata, nor can I hold also that the Plaintiff is estopped from raising the present issue. The objection is therefore over-ruled and the case is ordered to proceed.

Case to be listed for hearing on 17th February, 1955.

(Sgd.) O. Jibowu
ACTING SENIOR PUISNE JUDGE,
3/1/55.

Plaintiff's Evidence.

No. 9.

Ibrahim Sammy Crowther.

14th December, 1955.

Examination.

No. 9.

IBRAHIM SAMMY CROWTHER

WEDNESDAY THE 14TH DAY OF DECEMBER, 1955

BEFORE THE HONOURABLE MR. JUSTICE OLUMUYIWA JIBOWU
ACTING SENIOR PUISNE JUDGE

SUIT NO.250/54.

TEJUMADE ONITIRI vs. S.A. OYADIRAN AND 2 OTHERS.

Thompson for Plaintiff.

J.I.C. Taylor for first Defendant.

Examined by Thompson - first P.W. Ibrahim Sammy Crowther, male, Yoruba, sworn on the Koran, states in English language as follows:- I live at 22, Shopono Street, I am a licensed auctioneer. I have been an auctioneer since 1946. I am on subpoena. I knew parties to this action. The Plaintiff is one of the beneficiaries of the estate of L. A. Onitiri, deceased. The first Defendant is known to me. In January, 1948 I had instructions from the second and third Defendants to sell a landed property by public auction. I tender a copy of my notice of sale, marked Exhibit 'A'. The land is covered by a Deed of Conveyance referred to in Exhibit 'A'. On the 27th January, 1948 I sold the land. The highest bidder was David Awoyinfa, agent for the first Defendant at £3,800. The second and third Defendants would not accept the price, so the

Exhibit 'A'.

sale was not completed. The following day the first Defendant and Awoyinfa came to me and I told them the second and third Defendants wanted £10,000 and so did not accept the offer of £3,800. I asked them to go and see the second and third Defendants. I later sent the second and third Defendants who told me something later on the two men came with the second Defendant. The second Defendant told me he had agreed to sell the land to the first Defendant for £650. I asked how he could sell the land for that price, and he told me that the first Defendant had priced the land before. The first Defendant paid £450 that day and I prepared the receipt. He paid later the sum of £50 to the second Defendant. I tender the receipt issued by second Defendant for this amount marked Exhibit 'B'. I tender the receipt I issued in respect of the first instalment of £450, marked Exhibit 'C'. I later gave the first Defendant a receipt for £500 on the instructions of the second and third Defendants and the first Defendant returned Exhibits 'B' and 'C' to me. I don't remember the date of the receipt. The first Defendant later on paid the balance of £650 and I gave him a receipt for it. The first Defendant came to pay the balance and submitted a Conveyance for execution. I tender the Conveyance marked Exhibit 'D'. There is a plan on Exhibit 'D'. It is the plan of the land I was instructed to sell in 1948.

Exhibit 'B'.

Exhibit 'C'.

Exhibit 'D'.

Cross-Examination.

Cross-examined by Taylor: There was a case in respect of the land between the first Defendant and the other Defendants in this Court. I was not then called to give evidence. My signature is on the paper now shown to me and marked Exhibit 'E' for identification. He is asked to read through the paper (he does so) I made the statement. The paper is now tendered and marked Exhibit 'E'. It is correct that I said in Exhibit 'E' that I did not know the exact portion of land sold to first Defendant. I was not present when he bargained to buy the land in 1949 and so I did not know the exact portion of land he bought. The receipt now handed to me marked Exhibit 'F' is the receipt for £500 which I gave to the first Defendant.

Exhibit 'E'.

Exhibit 'F'.

In January, 1948, the whole Brickfield was sold for £3,800. Exhibit 'F' is for one portion of the Brickfield. I have not seen the Conveyance the Court ordered Onitiri to execute. I don't

In the Supreme Court

Plaintiff's Evidence.

No. 9.

Ibrahim Sammy Crowther.

14th December, 1955.

Cross-Examination - continued.

remember I made two statements to the police about this matter. (N.B. Arecord is passed to him to read and he was then asked if he remembers making two statements). I remember making two statements. It is true I said that I sold one portion of the Brickfield to the first Defendant and the other portion to Mr. Taiwo. I admit that a portion is smaller than the whole. The land sold to the first Defendant for £650 was smaller than the one for which he offered £3,800.

The Plaintiff came and made a complaint to me about the sale this year. Emanuel Onitiri and Madam Adetoun came and told me in 1948 that they did not agree with the sale. I was not at the Police Station when Adetoun Onitiri made her Statement to the police. She did make a complaint to me in 1948 and I reported her complaint to the second and third Defendants. I wrote the letter now tendered marked Exhibit 'G' 1949. (N.B. He reads it out)

Exhibit 'G'.

Kayode now appears for the second and third Defendants.

Cross-examined by Kayode: The land in Exhibit 'D' is the one advertised for sale in Exhibit 'A'. I had instruction to sell only land shown on Exhibit 'D'. The land in Exhibit 'D' is a portion of Onitiri land in the area. Government acquired a portion of it before the proposed sale to the first Defendant. The land in Exhibit 'D' was the remaining land unsold and/or unrequired at the time.

By Court.

Examined by Court: The land on Exhibit 'D' was the whole of the Brickfield left unsold or unacquired.

Re-Examination.

Re-examined by Thompson: The whole area including the lands acquired and already sold was known as Onitiri Brickfield. The second Defendant told me he was selling a portion of what he had asked me to sell.

No. 10.

In the Supreme Court

Plaintiff's Evidence.

No.10.

Tejumade Onitiri.

14th December, 1955.

Examination.

TEJUMADE ONITIRI

Examined by Thompson: Second P.W. - Tejumade Onitiri, female, Yoruba, sworn on the Bible, states in Yoruba language as follows:- I live at 4, Popo Street, Suru-Lere. I am a trader. I know the second and third Defendants. They are the administrators of the estate of L.A. Onitiri, deceased. Our father owned a brickfield. I don't know when the second and third Defendant sold the brickfield to the first Defendants. I have sued the three Defendants for an order setting aside the sale of the brickfield on the ground of fraud. The fraud is that the land was sold for £650 after we refused to accept £3,800 for it. I first heard of the sale about 2 years ago. I spoke to Emanuel Onitiri about it and he told me certain things. I put the matter in the hands of my Solicitor.

We had a family meeting at which the third Defendant was present. Third Defendant said the land was not sold. The second Defendant was not at the meeting. The Administrators have not tendered any account of their administration.

I referred the other beneficiaries. The second Defendant has not attended any family meeting after I got to know about the sale. The second and third Defendants did not tell me anything before they sold the land. We instructed them to sell the land.

Cross-Examination.

Cross-examined by Taylor: I cannot read a plan. I know the auctioneer Sammy Crowther. I was not present when he was instructed to sell the land.

I did not know that the second and third Defendants sued the first Defendant. I represent the beneficiaries including Adetoun. Adetoun did not tell me she gave evidence in the case.

Cross-Examined by Kayode: Our father died intestate. The second and third Defendants are the Administrators of the estate. The estate was owing money hence it was decided that the land be sold. The Defendant had not been paid before the sale.

No Re-examination.

In the Supreme Court

Plaintiff's Evidence.

No.11.

Emanuel Sosanya.

14th December, 1955.

Examination.

No. 11.

EMANUEL SOSANYA

Examined by Thompson: Third P.W. Emanuel Sosanya, male, Yoruba, sworn on the Bible, states in English Language as follows:- I live at 26, Moloney Bridge Street, Lagos. I am a licensed auctioneer and valuer. I have been an auctioneer and valuer since 1935. I am on subpoena. I know Onitiri Brickfield. I see the plan on Exhibit 'D'. It is 23.95 acres in size. I was in business in Lagos in 1948. I knew Onitiri Brickfield at the time. In 1948 it was worth between £250 and £300 per acre. It would be worth over £400 per acre in 1954.

No Cross-examination by Taylor.

No Cross-examination by Kayode.

No.12.

Emanuel Idowu Onitiri.

14th December, 1955.

Examination.

No. 12.

EMANUEL IDOWU ONITIRI.

Examined by Thompson: Fourth P.W. Emanuel Idowu Onitiri, male, Yoruba, sworn on the Bible states in English Language as follows:- I live at 14, Makanju Lane, Lagos. I am a general contractor. The late L.A. Onitiri was my father. He was the owner of Onitiri Village. The second and third Defendants are the Administrators of his estate. The third Administrator is dead.

I know the first Defendant. The land at Onitiri Village was put up for sale at public auction at which there was an offer of £3,800. We did not accept the offer. The first Defendant was then the highest bidder. The amount was too low for the area which is 23 acres in size. I later heard of the case between the second and third Defendants and the first Defendant. Then I knew the land was sold for £650. A Conveyance was presented for execution which covers the whole land sold for £650. Exhibit 'D' is the Conveyance. I was not satisfied with the sale. I questioned the second and third Defendants about the sale. The third Defendant said it was the second Defendant who sold land. The second Defendant said he sold and gave

receipt to first Defendant for only a portion of the land. The two of them refused to execute first Defendant's Conveyance. The second Defendant handed me letter now tendered marked Exhibit 'H'. I called a meeting of the beneficiaries. All but the second Defendant attended. Three others did not attend the meeting. I blamed the second and third Defendants for selling by private treaty when they had instruction to sell by public auction. I blamed him also for selling a portion of the land.

In the Supreme Court

Plaintiff's Evidence.

No.12.

Emanuel Idowu Onitiri.

14th December, 1955.

Examination - continued.

This relates to the second Defendant. Onitiri Village comprises of 238 acres of land. Land for which the first Defendant offered £3,800 was only a portion of the land. It was 23 acres of land that was sold for £650. The second Defendant told me he had referred the receipt to first Defendant as requested by Exhibit H. The second Defendant told me the amount was only a deposit for some plots of land but that he discovered the auctioneer had given him a receipt in respect of land for which he had previously offered £3,800. I put up warning notices to the effect that the sale must be by public auction and not by private treaty. This was before the private sale.

Cross-examined Taylor: I was never one of the Administrators of the estate. The second and third Defendants are the surviving Administrators. I was present when Sammy Crowther was instructed by the second and third Defendants. I cannot remember if Adetowun was there. Asia was present. After the sale the auctioneer made a report about the sale to the Administrators. It is correct that the Administrators then decided to sell the land by plots. I advised that the land be divided into plots and sold as such as there would be more money to be got that way. The beneficiaries agreed. I see Exhibit 'F'. It refers to portion of the land. I am seeing it for the first time. I heard about the case between the second and third Defendants and the first Defendant. They and I have not been on speaking terms. The second Defendant is my brother and the third Defendant is my son. There is a case in Court between them and me for ages, 23 acres of land were put up for sale in January 1948. I wanted a public auction sale. The land has not been plotted up till now.

Cross-Examination.

Cross-examined by Nicol: I see the plan on Exhibit

In the Supreme Court

Plaintiff's Evidence.

No.12.

Emanuel Idowu Onitiri.

14th December, 1955.

Cross-Examination - continued.

'D'. The plan on Exhibit 'D' shows the remaining land which could be sold after sale and requisition of other parties of it. The plan is not correct if the first Defendant bought only a portion of the land.

No Re-examination.

Examined by Thompson: fifth P.W.

By consent the Ruling on the preliminary part of law received by Mr. Taylor is put in evidence marked Exhibit 'J'.

No.13.

Counsel's Addresses.

14th and 15th December 1955.

Taylor (for first Defendant)

No. 13.

COUNSEL'S ADDRESSES

PLAINTIFF'S CASE

Taylor submits that there is no proof or fraud between the Defendants and that the action is misconceived. At last the Plaintiff's case averts to this: We did not sell January, 1948, land shown on Exhibit 'D' because we wanted £10,000 not £3,800 offered. We decided to sell the 23.95 acres of land in plots.

The Plaintiff can only succeed if she can prove that the Defendants in collusion sold and bought the land for £650. Crowther told the Court quite clearly that it was only a portion of the land that was sold in March, 1948 for £650. The basis of this case is that the second and third Defendants surreptitiously sold the whole land to the first Defendant for £650 in fraud of the beneficiaries. He refers to the Statement of Claim paragraph 3(a)-(h): 3(c) has been contradicted by Crowther. No proof of 3(d) - no proof of net of £800.

3(e) has been disproved by the Purchaser
3(f) makes no sense
3(g) has been disproved by the Plaintiff.
3(l) not proved - the beneficiaries gave second and third Defendants power to sell the land.

In the Supreme Court

Plaintiff's Evidence.

No.13.

Counsel's Addresses.

14th and 15th December 1955 - continued.

The case of 1950 shows that there was no connivance or collusion between the Defendants - he asks that the action be dismissed with costs.

Kayode does not wish to call evidence.

Thompson replies - He says that there is before the Court sufficient evidence of fraud to put the Defendants on their defence.

He says paragraph 3 should read 4 in view of the amendment made.

Taylor (for first Defendant) - continued.

He says that the first Defendant should have gone into the box to prove that he bought all the land known as Onitiri Brickfield. He refers to Exhibit 'D' and says that the plan on it shows what was operating on the mind of the second Defendant at the time. He reads paragraphs 3 - 6 of Exhibit 'D' - and says that the sale was by private treaty. By Exhibit 'D' first Defendant tried to make it appear that £650 was obtained at a public auction. Exhibit 'D' is evidence of fraud in first Defendant. The second and third Defendants are in a position of trust with reference to the estate. He refers to Phipson on Evidence, 9th Edition, page 1545. He submits that there the second and third Defendants have been guilty of improper conduct. He agrees that the second and third Defendants did not execute the Conveyance prepared by first Defendant.

Thompson (for Plaintiff)

Mr. Thompson to continue his arguments tomorrow.

Adjourned to 15th instant.

(Sgd.) O. Jibowu
Ag. S.P.J.
14/12/55.

15th December, 1955.

Thompson continues his address.

He submits that this case cannot be decided without reference to Suit No. 55/50.

He says that the Defendants are not entitled to raise the issue of the extent of land sold in 1948 in view of their Defence. He refers to W.A.C.A. Cyclostyled Reports 1953 February - May, page 61.

In the Supreme Court

Plaintiff's Evidence.

No.13.

Counsel's Addresses.

14th and 15th December 1955 - continued.

Thompson (for Plaintiff) - continued.

He asks the Court to disregard the evidence given on cross-examination by his first witness - He does not ask the Court to disregard the evidence because he was lying but because (1) the Court in suit No. 55/50 had held that the land sold shown on Exhibit 'D' was the whole of the land sold to first Defendant by second and third Defendants in March, 1948 (2) the Supreme Court had made a Declaration of Title in favour of the first Defendant which had been upheld by the W.A.C.A. (3) Exhibit 'E' in this suit was Exhibit 'P' in suit 55/50. Exhibit 'F' was also before the Court in suit No. 55/50. (4) paragraph 4 of Statement of Defence of second and third Defendants.

This is on admission that the whole property was sold.

He refers to Rennant vs. Savoy Estate Ltd., 1949 2 A.E.R. page 286.

He submits that this Court is estopped from coming to a different decision as regards the extent of land sold to the findings of the Court in 55/50. He submits that the mere fact that the first Defendant knew the land was worth more than £650, as £3,800 had been rejected for it raises a presumption of fraud, as the property was sold at undervalue. The first Defendant knows the land ought to be sold by public auction because paragraph 4 of Exhibit 'D' recites it. Paragraph 6 also suggests that the sale was by public auction. He refers to Personal Trustee Co., of New South Wales Ltd., and another vs. Bridgewater, 1936, 3 A.E.R. 501.

The onus is on the Defendants to prove that the transaction was all right. See Phipson on Evidence, 9th Edition, page 155 on Evidence in support of Fraud. See Jones vs. Sardon, 2 App Cases 616. The Plaintiff has obtained land for £650 which he could not get for £3,800.

See Johnson vs. Barnes, 1883 Weekly Nobs, 32 Humphrey vs. Olber, 1889, 28 L.J. Ch.406. He submits that the Defendants could raise issue contra to the decision in Suit 55/50, only as they were all parties to the suit. See Richard vs. McGroth, 14 App Cases, 665 1889.

By consent the proceedings in Suit No. 55/50 are put in evidence and marked Exhibit 'K'.

Mr. Taylor says he is calling no evidence.

Taylor answers points raised by Thompson.

He refers to the Defence filed.

He says the most important part of Plaintiff's case are in grounds 3(a) and 3(c).

With regard to 3(c) he says that the proof is on the Plaintiff. He refers to page 51 of Exhibit 'K' also to page 18. He says that no fraud was found against first Defendant in 55/50. Did the Defendants surreptitiously get together to defraud the estate? What did the second and third Defendants get by that deal? There was no suggestion that the first Defendant offered him a consideration.

Taylor in Reply.

He submits that the Defendants are not estopped by judgment in 55/50 from raising a point different to which was decided in 55/50. To succeed the Plaintiff must prove that no Defendants get together to defraud the estate.

Judgment is reserved.

(Sgd.) O. Jibowu
Ag. S.P.J.
15/12/55.

No. 14.

JUDGMENT

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION

FRIDAY THE 30TH DAY OF DECEMBER, 1955

BEFORE THE HONOURABLE MR. JUSTICE OLUMUYIWA JIBOWU
AG: SENIOR PUISNE JUDGE.

(Title as No. 2)

JUDGMENT

The Plaintiff and the other children of Lawani Idowu Onitiri, whom she represents, seek by this

In the Supreme Court

No.14.

Judgment.

30th December, 1955 - continued.

action, as beneficiaries of the estate of Lawani Idowu Onitiri, deceased, for an order of this Court setting aside the sale of the piece of land known as Onitiri Brickfield, Yaba, in the mainland of Lagos by the second and third Defendants as Administrators of the estate of the said Lawani Idowu Onitiri, deceased, to the first Defendant on the 21st March, 1948 on the ground of fraud.

Pleadings were ordered and filed.

The Plaintiff got her Statement of Claim amended by order of the Court with the result that the original paragraphs 3 and 4 become paragraphs 4 and 5 respectively.

Paragraph 3 merely recites that the land in dispute belonged to Lawani Idowu Onitiri, deceased.

Paragraph 4 reads:- "On the 21st day of March, 1948, the first Defendant fraudulently bargained with the second and third Defendants and purchased the land known as Onitiri Brickfield for £650".

Particulars of fraud given are -

"(a) The first Defendant on the 27th January, 1948 was the highest bidder at a sale by auction of the aforesaid property for £3,800.

(b) That the sale was eventually rescinded because the reserved price of £10,000 was not reached.

(c) On the 21st day of March, 1948, the first Defendant purported to purchase the same piece of land for £650.

(d) That the aforesaid Onitiri Brickfield was divided into plots on or about the same period and sold at £800 a plot i.e. an acre.

(e) The first Defendant now claimed to have bought about 23 plots (acres) for £650. Rent on the land being about £1,000 p.a.

(f) That there was no notice of the sale to the first Defendant.

(g) That the alleged sale was by private treaty

surreptitiously concluded by the Defendants without any cause whatsoever in that the estate being solvent the sale in itself was unnecessary.

(h) The Plaintiff says that the second and third Defendants have no power to sell the aforesaid property".

The first Defendant in his Statement of Defence denied paragraphs 1 and 4, and admitted paragraph 2 of the Plaintiff's Statement of Claim.

He further stated that he would plead at the hearing

(1) Res Judicata by virtue of Suit No. 55/1950 and W.A.C.A. 3809.

(2) Estoppel by virtue of the legal maxim interest reipublicae ut sit finis litium.

The second and third Defendants in their statement of Defence denied every allegation of fact in the Plaintiff's Statement of Claim except where it is specifically admitted. They stated that they were not in a position to admit or deny paragraphs 1 and 2 of the Plaintiff's Statement of Claim; they went further to admit paragraphs 2, 3(a), 3(b) and 3(d) of the Plaintiff's Statement of Claim. They lastly stated that they sold the land in dispute as Administrators of the estate of Lawani Idowu Onitiri and that, as such, they were not bound to consult the Plaintiff.

Mr. J.I.C. Taylor argued first the question of Res Judicata and Estoppel raised on the first Defendants defence but the point was decided against him to the effect that Suit No. 55/1950 did not preclude the Plaintiff from coming to Court to raise the question of an alleged fraud between the Defendants who were the parties to suit No. 55 of 1950. The Court ordered the case to proceed and evidence was led by Plaintiff in support of her case. The Defendants called no evidence but the first Defendant's Counsel made some submissions to the Court.

In view of the decision of the Supreme Court which was upheld by the W.A.C.A. in suit 55 of 1950, it is not now open to the Defendants to

In the Supreme Court

No.14.

Judgment.

30th December, 1955 - continued.

litigate again the question whether or not the second and third Defendants sold the land shown on the Conveyance Exhibit 'D' to the first Defendant, as that question has been definitely settled by the Court that the land shown on the Conveyance was the one sold by the second and third Defendants to the first Defendant for £650.

Now the Plaintiff alleges fraud against the three Defendants in the matter of the sale of the property in question.

The Plaintiff alleges that the land sold for £650 is identically the same as was put up for sale at the public auction at which the first Defendant was the highest bidder at £3,800 and that the sale did not go through as the reserved price of £10,000 was not reached.

There is no dispute that the sale, according to the Notice of Sale, Exhibit 'A', was subject to a Reserved Price. If, as alleged by the Plaintiff, the same land for which the first Defendant offered £3,800 which was rejected was subsequently sold by the second and third Defendants to the first Defendant for £650, at a private sale or by private treaty, that in itself would raise the question of fraud.

The first question I have to decide therefore is whether the land sold by private treaty is identically the same land for which an offer of £3,800 at a public auction had been made and refused.

The first witness called for the Plaintiff was Ibrahim Sammy Crowther, the auctioneer, who acted for the second and third Defendants in the matter. He tendered his notice of sale, Exhibit 'A', which throws light on the whole issue and is, in my view, one of the deciding factors in this case.

Exhibit 'A' gave notice of sale of "Freehold landed property in a very good locality situated at Onitiri Village popularly known as Onitiri Brickfield and Village including Onike and Araromi Villages".

It is clear from this notice that the auctioneer was selling more land than was known as "Onitiri

Brickfield" and that the land for which the first Defendant offered £3,800 was not "Onitiri Brickfield" only. The auctioneer Sammy Crowther cannot, in view of his own notice of sale, now be heard to say that he did not purport to sell more land than "Onitiri Brickfield" after excepting pieces of land already sold by the late Lawani Onitiri himself.

Exhibit 'D' purported to be a Conveyance of Ajegunle - Onitiri Brickfield, Sabo via Yaba and the plan on Exhibit 'D' shows the land to be near Onike Village. The land advertised for sale included Onike Village as well as Aroromi Village. It is clear that the plan on Exhibit 'D' shows the land sold for £650 to be smaller than the one for which £3,800 had been offered and rejected. In fact, Sammy Crowther admitted in cross-examination by Mr. Taylor that the land sold for £650 was smaller than the one for which the first Defendant had offered £3,800. An attempt was made to show that the land on Exhibit 'D' was the whole land originally advertised and offered for sale, but it is clear from Exhibit 'A' that that is not true.

It is untrue also that a smaller piece of land then shown on Exhibit 'D' was sold for £650.

A description of the land sold by private treaty was given in the receipt for £450, Exhibit 'C', which shows the sum of £450 as "being amount deposited as part for the purchase price of landed property situate and being at Ajegunle Onitiri Brickfield, Sabo via Yaba".

When the first Defendant paid £50 more as shown by Receipt, Exhibit 'B', a receipt for £500 Exhibit 'F' cancelling Exhibits 'B' and 'C' was issued to the first Defendant. Strangely enough, this amount of £500 was shown as "being amount deposited to purchase portion part of the landed property known as Ajegunle - Onitiri Brickfield, Sabo, via Yaba for the sum of Six hundred and fifty pounds (£650). Dimension to be stated after separation of the said portion part from the whole plan".

It was the first Defendant's contention in Suit No. 55 of 1950 that the land for which he offered £3,800 was larger than the one for which he paid £650 and the second and third Defendant's contention that they sold a smaller area of land than

In the Supreme Court

No.14.

Judgment.

30th December, 1955

- continued.

appeared on Exhibit 'D' for £650 was rejected by the Court.

In view of the above, the Plaintiff has failed to prove that the land on Exhibit 'D' is the same as the one for which the first Defendant has offered £3,800. The particular of fraud number 3(c) therefore fails.

With regard to 3(d), there is no proof that Onitiri Brickfield has been divided into plots nor is there proof that a plot has been sold for £800. As a matter of fact the evidence of Emanuel Onitiri is to the effect that although it was intended to divide the brickfield into plots, that intention had not been carried out up to the 14th December, 1955 when he gave evidence.

Regarding No.3(e) of the particulars of fraud, the first Defendant is justified by the judgment of the Court in Suit No. 55 of 1950 in claiming that he bought the land shown in the plan on Exhibit 'D', which is 23 odd acres for £650. The question whether rent of £1,000 p.a. might be collected on it is beside the point. With respect to ground 3(f) of the particulars of fraud, there is an obvious mistake which makes nonsense of that ground. The Plaintiff's own evidence shows that the beneficiaries agreed that the land be sold to meet debts owing by the estate, the allegation that the sale was unnecessary in particulars of fraud No. 3(g) is therefore untrue. There is no doubt that the sale was by private treaty, but whatever might have been the fault or default of the second and third Defendants in selling by private treaty while they should have sold by public auction will not, in my view, vitiate the sale to the first Defendant who apparently acted bona fide and has not been shown to have acted otherwise.

There is no substance in particulars of fraud No. 3(h) in view of the fact that the second and third Defendants were Administrators of the estate lawfully appointed by Court and empowered to administer real property for the purpose of paying off the debts of the estate.

In view of the above, this action fails and is dismissed with costs to the first Defendant assessed at 35 guineas. The second Defendant did

not appear; even if he had appeared like the third Defendant, the Court would not have been disposed to grant them costs. There will therefore be no order as to costs in their case.

(Sgd.) O. Jibowu,
AG: SENIOR PUISNE JUDGE
30/12/55.

In the Supreme Court

No.14.

Judgment.

30th December, 1955
- continued.

No. 15.

In the Federal Supreme Court.

No.15.

Notice and Grounds of Appeal.

6th March, 1956.

NOTICE AND GROUNDS OF APPEAL

FEDERAL SUPREME COURT OF NIGERIA

NOTICE OF APPEAL

SUIT NO.250/54.

BETWEEN: TEJUMADE ONITIRI
(For and on behalf of herself and all other children of the late Lawani Idowu Onitiri (deceased) Plaintiff/Appellant

- and -

SAMUEL A. OYADIRAN)
T. I. ONITIRI)
S. A. ONITIRI) Defendants/Respondents

TAKE NOTICE that the Plaintiff being dissatisfied with the judgment of the former Supreme Court contained in the judgment of His Lordship Mr. Justice Olumuyiwa Jibowu dated 30th day of December, 1955, doth hereby appeal to the Federal Supreme Court of Nigeria upon the ground set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4 and the Appellant further states that the name and address of the person directly affected by the appeal are those set in paragraph 5.

2. Part of decision of the lower Court complained of: W H O L E.

3. GROUND OF APPEAL

1. The learned Judge erred in Law when he said that the Land sold by private treaty was

In the Federal Supreme Court.

No.15.

Notice and Grounds of Appeal.

6th March, 1956 - continued.

not the same land for which the first Defendant offered £3,800 at a public Auction in view of the decision of the Court in Suit No. 55/50.

4. RELIEF SOUGHT FROM THE FEDERAL SUPREME COURT OF NIGERIA.

That the decision of the Learned Judge be reversed and that judgment be entered in favour of the Appellant.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

NAME	ADDRESS
1. Samuel A. Oyadiran	55, Simpson St. Ebute-Metta
2. T.I. Onitiri	2, Hotonu Lane, Lagos.
3. S.A. Onitiri	4, Oyabiyi Street, Suru Lere.

(Sgd.) THOMPSON & COKER,
SOLICITORS TO THE PLAINTIFF/APPELLANT

No.16.

Further Grounds of Appeal.

4th November, 1957.

No. 16.

FURTHER GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT
HOLDEN AT LAGOS

F.S.C. No.203/1956

BETWEEN: TEJUMADE ONITIRI Plaintiff/Appellant

- and -

1. S.A. OYADIRAN
2. T.I. ONITIRI
3. S.A. ONITIRI Defendants/Respondents

FURTHER GROUNDS OF APPEAL

1. The decision is wrong in law in that the learned trial Judge failed to direct himself as to

(1) The sale at undervalue

(2) The sale by private treaty as opposed to public auction

in relation to the question of fraud as claimed by the Appellant.

2. The learned Trial Judge misdirected himself on the facts and in law with respect to the size of the land sold to the first Defendant particularly with regard to the evidence of the Plaintiff's witness Sammy Crowther.

3. The learned Trial Judge erred in law when he found that the first Defendant acted bona fide without evidence to that effect.

DATED at Lagos this 4th day of November, 1957.

(Sgd.) Thompson & Coker,
Solicitors to the Appellant.

No. 17.

COURT NOTES OF ARGUMENT.

IN THE FEDERAL SUPREME COURT OF NIGERIA HOLDEN AT LAGOS

MONDAY THE 11TH DAY OF NOVEMBER 1957

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON, FEDERAL CHIEF JUSTICE
M.C.E.C. NAGEON DE LESTANG, FEDERAL JUSTICE
MYLES JOHN ABBOTT, FEDERAL JUSTICE

FSC. 205/1956

TEJ UMADE ONITIRI for and on behalf of herself and other children of late Lawani Idowu Onitiri — Appellant

vs.

1. S.A. OYADIRAN
2. T.I. ONITIRI
3. S.A. ONITIRI — Respondents

Mr. Adewale Thompson for Appellant

Mr. S.O. Lambo for first Respondent

Thompson:

Erred in holding land bid for not same as land sold.

Refers to evidence p.16. Submits CROWTHER

In the Federal Supreme Court.

No.17.

Court Notes of Argument.

11th November, 1957 - continued.

proved land sold was that shown in Exhibit 'D'. That it was the only land left unsold at time of the auction in 1948, and was in fact the land offered for sale at the auction.

Discusses facts.

Exhibit 'B' receipt.

We go through Exhibit 'K'. Counsel deals with it.

Deals with Surveyor's evidence in case - Exhibit 'K'. Urges that land in 'D' was only land left for sale, therefore he argues must be the same as was put up for sale at auction - of which 'A' was the notice.

If land not the same clear sold at gross undervalue

Taking particulars of fraud - that is to say paragraph 3 of Statement of Claim as a whole raises issue sold at gross undervalue - or any event so much below value as to amount to fraud. Evidence of E. Sosanya p. 18 not xx to.

Good faith of first Respondent presented second and third Respondents with a deed Exhibit 'D' which contains a recital to effect that sale took place at public auction. Third and Fourth Respondents declined to execute it.

Exhibit 'K' p.
Exhibit 'B' in 'K'.

We indicate to Lambo that we only wish to hear him on question of undervalue - that is to say whether it is open now to the Appellants to argue the point generally, and if so whether there was evidence that the land in question was sold at such an undervalue as to amount to fraud.

Lambo:

Submits the pleadings do not contain any allegation of sale grossly undervalue - nor do the particulars in paragraph 3 of Statement of Claim contain any such allegation (Same thing!) could have applied to amend pleadings did not do so. Cannot now be heard to argue point.

Inadequacy of price does not necessarily amount to fraud, however gross.

Circumstances have to be considered.

Bridgewater - - - - -

(1956) A.E.R. 501 at p.507. Second to last paragraph.

Note: They called evidence on undervalue without objection p.18.

Undervalue p. 15 of record.

Says perfectly straightforward transaction. No evidence that any land there was sold for £800 per acre.

Refers to judgment p.26 "There is no dispute....."

Case was not fought in Court below on undervalue GENERALLY - refers to Thompson's address before Jibowu, J.

Submits that a completely new case cannot be made before this Court. If general undervalue had been issue might have been able to call evidence to show £650, not gross undervalue.

Thompson:

Says did address on undervalue. Note: Case in Court below was "The fraud is that the land was sold

for £650.0.0. after we refused to accept £3,800 for it." p. 17 of record.

Note: Trial Judge most experienced - difficult to believe that it was an issue - general undervalue - because no mention of it in judgment.

C.A.V.

(Intld.) S.F.S., F.C.J.

11.11.57.

In the Federal Supreme Court

No.18.

Judgment.

30th December, 1957.

No. 18.

JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

MONDAY THE 30TH DAY OF DECEMBER, 1957

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON, CHIEF JUSTICE OF THE FEDERATION.
M.C. NAGEONE DE LESTANG, FEDERAL JUSTICE
MYLES JOHN ABBOTT, FEDERAL JUSTICE

Civil Appeal 1203/1956

BETWEEN: TEJUMADE ONITIRI (for and on behalf of himself and other children of the late Lawani Idowu Onitiri (Deceased)
Plaintiff/Appellant

- and -

S.A. OYADIRAN
T.I. ONITIRI
S.A. ONITIRI
Defendants/Respondents

JUDGMENT

FOSTER SUTTON, F.C.J. The Plaintiff's claim in this action was to set aside the sale, on the ground of fraud, of an area of land known as Onitiri Brickfield, Yaba, made to the first Defendant on the 21st March, 1948, by the second and third Defendants as Administrators of the estate of one Lawani Idowu Onitiri (Deceased).

The fraud alleged was that the first Defendant fraudulently bargained with the second and third Defendants to purchase the property in question for the sum of £650, he having previously made the highest bid of £3,800 for the same area of land at an Auction sale held on the 27th January, 1948, and having then had the sale to him rescinded because the reserve price of £10,000 placed on the property had not been reached.

Various other allegations were made in the "Particulars of Fraud" given in the Statement of Claim none of which were established at the trial.

The substantial issue fought out in the Court

below, between the Plaintiff and the first Defendant, who was the only one of the three Defendants who appeared at the trial, was the question whether or not the area of land purchased for £650 was the Identical area the first Defendant had previously made a bid of £3,800 for. As the Plaintiff herself put it when giving her evidence: "The fraud is that the land was sold for £650 after we refused to accept £3,800 for it".

After reviewing the evidence the learned trial Judge, Jibowu, J., as he then was, reached the conclusion that the area of land purchased by the first Defendant on 21st March, 1948 was not the same area as that bid for by him at the auction sale held on 27th January, 1948 and he accordingly entered judgment for the Defendant.

If the area had been the same, and not smaller as contended by the first Defendant, there would, of course, have been a clear case of fraud.

At the hearing of the appeal before us, Counsel for the Plaintiff/Appellant contended, firstly, that the learned Trial Judge had erred in concluding that the land bid for was not the same area as that ultimately purchased, and secondly, that he also erred in not finding that in any event the land was sold at such a gross undervalue as to constitute a fraud.

On the first point it seems clear to me that there was evidence before the learned Judge upon which he could properly reach the conclusion that the land purchased was not the same area as that bid for at the Auction Sale.

Indeed, I do not see how he could have reached any other conclusion.

The second point appears to me to raise a question of greater difficulty, because it does seem arguable that the Statement of Claim by inference raises the issue of a sale as a gross undervalue, and one witness, Emanuel Sosanya, gave evidence that in the year 1948 the land in question was worth between £250 and £300 per acre (the area purchased was 23.95 acres). This evidence was not objected to or the witness cross-examined.

In the Federal Supreme Court

No.18.

Judgment.

30th December, 1957
- continued.

After anxious consideration, however, I have reached the conclusion that the point is not now open to the Plaintiff.

No rule is more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it is not allowable to leave fraud to be inferred from the facts, Thesiger L.J. in Davy v. Garrett (1877-8) 7 Ch.D.489. It has repeatedly been held that any charge of fraud must be pleaded with the utmost particularity. The reason for this rule is obvious; it is only fair and right that the person against whom fraud is charged may have the opportunity of knowing what he has to meet, and of shaping his defence accordingly.

In the present instance it is clear that the issue of fraud was that set out with particularity in paragraph 3(a) (b) and (c) of the Statement of Claim, and which was so succinctly put by the Plaintiff in her evidence. Gross undervalue as an issue was not once referred to by Counsel for the Plaintiff during his closing address at the trial.

In these circumstances I think it would be wrong at this late stage to allow the Plaintiff to contend, for the first time, that the pleading and evidence disclosed another fraud to the one upon which the case was fought in the Court below.

For the reasons stated I would dismiss this appeal with costs fixed at £33.15.0.

(Sgd.) S. Foster Sutton, F.C.J.

I concur (Sgd.) M.C.Nageon De Lestang, F.J.

I concur (Sgd.) M.J. Abbott, F.J.

9/- pd. on ct.
D500742 of 5/3/58
Sgd.

Mr. Adewale Thompson for the Appellant.

Mr. S.O. Lambo for the first Respondent.

Second and third Respondent not represented.

No. 19.

In the Federal Supreme Court.

No.19.

Order dismissing Appeal.

30th December, 1957.

ORDER DISMISSING APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

SUIT NO. 250/1954
F.S.C. 203/1956.

ON APPEAL from the Judgment of the High Court of the Lagos Judicial Division.

BETWEEN: TEJUMADE ONITIRI (for and on behalf of herself and other children of the late Lawani Idowu Onitiri (Deceased) Appellant

- and -

1. S.A. OYADIRAN
2. T.I. ONITIRI
3. S.A. ONITIRI Respondents

Sgd. S.Foster Sutton
Chief Justice of the
Federation.

Monday the 30th day of December, 1957.

UPON READING the Record of Appeal herein and after hearing Mr. Adewale Thompson of Counsel for the Appellant and Mr. S.O. Lambo of Counsel for the first Respondent, the second and third Respondents not being present or represented:

IT IS ORDERED that this Appeal be dismissed and that the Appellant do pay to the first Respondent costs on this appeal fixed at £33.15.0d.

Sgd. S.A. Samuel,
AG. CHIEF REGISTRAR.

In the Federal Supreme Court

No.20.

Order granting Final Leave to Appeal to Her Majesty in Council.

14th July, 1958.

No. 20.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

SUIT NO. 250/1954
F.S.C. 203/1956.

APPLICATION for an Order for Final Leave to Appeal to Her Majesty in Council.

BETWEEN: TEJUMADE ONITIRI (for and on behalf of herself and other children of the late Lawani Idowu Onitiri (Deceased) Applicant

- and -

1. S.A. OYADIRAN
2. T.I. ONITIRI
3. S.A. ONITIRI Respondents

(L.S.)

Sgd. A. Ade. Ademola
Chief Justice of the
Federation.

Monday the 14th day of July, 1958.

UPON READING the application herein and the Affidavit of Tejumade Onitiri sworn to on the 27th day of June, 1958, the Applicant not being present or represented and after hearing Mr. O. Moore of Counsel for the Respondents:

IT IS ORDERED that final leave to appeal to Her Majesty's Privy Council be granted with costs to the Respondents fixed at 5 guineas.

Sgd. S.A. Samuel
AG. CHIEF REGISTRAR.

Exhibits

Plaintiff's Exhibit "A"

Auction Notice. 19th January, 1948.

E X H I B I T S

"A" - AUCTION NOTICE

A golden opportunity and sure investment of FREEHOLD LANDED PROPERTY in a very good locality Situated at Onitiri Village Popularly known as Onitiri Brickfield and Village, Yaba,

Including Onike and Araromi Villages.

MR. SAMMY CROWTHER

Licenced Auctioneer, Appraiser, Valuer, Estate Agent etc.

HAS BEEN HONOURED WITH INSTRUCTIONS BY THE ADMINISTRATORS

Of the Estate of the late Lawani Idowu Onitiri 2, Hontonu Lane, Lagos, who have been empowered by Supreme Court Order No.5780 TO SELL AND WILL SELL BY PUBLIC AUCTION On Tuesday, the 27th day of January 1948, at 5 o'clock p.m. on the spot.

ALL THAT most desirable piece or parcel of a Freehold landed property situated at Onitiri Village a well desirable spot suitable for all purposes.

Title Indisputable

TO BE SOLD AS PER BOUNDARY

This property is covered with Deed of Conveyance Dated 26th March 1950 Registered No. 81 Page 239 Volume 134. Excepting those sold and conveyed by the late Lawani Idowu Onitiri.

CONDITIONS OF SALES

1. The sale will be subject to a right for the sellers or their agents to bid.

2. The sale is subject to a reserved price subject to a reservation that the Auctioneer shall have the right -

(a) of regulating the amount of bidding.

(b) of rejecting any bid and

(c) of determining in his absolute discretion all MATTERS REGARDING the biddings or any other matter under these conditions.

3. The highest bidder shall be the purchaser subject to the approval of the Vendors.

Exhibits

Plaintiff's Exhibit "A"

Auction Notice.

19th January, 1948 - continued.

4. That no person shall advance less than FIVE POUNDS (£5) at a bid.

5. That upon the fall of the hammer the Purchaser shall sign the Auctioneer's Book meaning absolute sale.

6. That if the reserved price is not obtained hammer will not be down but the highest bidder shall sign and bid submitted for sellers consent.

7. That the Purchaser shall pay either the whole or a deposit of 25 per cent of the purchase money within 24 hours after the sale and the balance within 15 days.

8. That no person shall retract any bid once made.

9. That should the Purchaser neglect or fail to comply with any or either of the above conditions deposit money shall be forfeited and the property resold at the risk of the Purchaser either privately or by public auction and the deficiency if any arising by such second sale with all charges attending the same shall be made good by defaulter.

10. That deed of conveyance shall be prepared by and at Purchaser's expense.

11. No slander is allowed.

12. Further conditions, if any, will be notified at the sale.

"VICTORY MART & OFFICE,

22, Shopono Street, Lagos.

19th January, 1948.

Exhibits

"B" - RECEIPT BY ONITIRI FOR £50

Plaintiff's Exhibit "B"

Receipt by Onitiri for £50.

16th March, 1948.

Receipt

Received from Mr. Awoyinfa on behalf of Mr. S. A. Oyadiran the sum of £50.0.0. (Fifty Pounds) in settlement of an account re Ajegunle Brickfield Sabo.

(Sgd.) Onitiri

2d. Stamp affixed

16/3/48.

"C" - RECEIPT BY CROWTHER FOR £450

"C"

Receipt by Crowther for £450.

3rd March, 1948.

4395 Sammy Crowther, 22, Shopono St., Lagos.

Received from Mr. Samuel Adetunji Oyadiran the sum of Four hundred and fifty pounds sterling £450.0.0 being amount deposited as part of the purchase price of piece of a Landed Property situate and being at Ajegunle (Onitiri Brickfield Sabo via Yaba. This amount to be refunded by me. Should the sale is not agreeable by the Vendors Onitiri Administrators under subject of approval.

(Sgd.) S. Crowther,

2d. Stamp affixed

3/3/48.

Witness:

Onitiri

? ? ? 3/3/48.

"F" - RECEIPT BY CROWTHER FOR £500

"F"

Receipt by Crowther for £500.

24th March 1948.

SAMMY CROWTHER

Licensed Auctioneer

22, Shopono Street, Lagos.

Received from Mr. Samuel Adetunji Oyadiran the sum of Five hundred pounds (£500.0.0) sterling, being amount deposited to purchase portion part of the Landed Property known as Ajegunle-Onitiri Brick-field Sabo, via Yaba for the sum of Six hundred and fifty pounds (£650.0.0) Dimension to be stated after separation of the said portion part from the

Exhibits

Plaintiff's Exhibit "F"

Receipt by Crowther for £500.

24th March 1948 - continued.

whole plan.

DATED at Lagos this 24th day of March, 1948.

(Sgd.) S. Crowther

2d. Stamp affixed

Licensed Auctioneer and Agent to the Administrators for the Late Lawani Idowu Onitiri Estate.

Date:- 24/3/48.

(Sgd.) Awoyinfa

Witness to signature

Date: 24/3/48.

"D"

Conveyance, Onitiri & Onitiri to Oyadiran (Unexecuted)

1949.

"D" - CONVEYANCE, ONITIRI & ONITIRI TO OYADIRAN (UNEXECUTED)

(Sgd.) F.G.Peters
Ag. Registrar.

THIS INDENTURE made day of 1949 BETWEEN THOMPSON ISHOLA ONITIRI of No. 2, Hotonu Street, Lagos Nigeria and SAMUEL AKANBI ONITIRI of No. 4 Oyabiyi Road Suru Lere on the Mainland of Lagos Nigeria aforesaid Administrators of the Estate of the late LAWANI IDOWU ONITIRI (hereinafter called "the Vendors") which expression shall wherever the context so admits include their heirs successors in title and assigns of the one part and SAMUEL ADETUNJI OYADIRAN of No.9 King George V Road Lagos Contractor (hereinafter called "the Purchaser") which expression shall wherever the context so admits include his heirs legal personal representatives and assigns of other part

WHEREAS the hereditaments hereinafter and intended to be hereby conveyed for an estate of inheritance in fee simple in possession free from all incumbrances form portion of the hereditaments seised in fee simple in possession free from all incumbrances by one Lawani Idowu Onitiri (deceased) by virtue of an Indenture of Conveyance dated the 26th day of March 1920 and registered as No.81 at page 239 in Volume 134 of the Lands Registry Lagos.

Exhibits

Plaintiff's Exhibit "D"

Conveyance, Onitiri & Onitiri to Oyadiran (Unexecuted)

1949

- continued.

AND WHEREAS the said Lawani Idowu Onitiri died intestate and Letters of Administration were granted by the Supreme Court of Nigeria on the 10th of August 1946 to the Vendors herein

AND WHEREAS the said Supreme Court of Nigeria ordered in 1947 that all the undevised properties of the Estate of the said Lawani Idowu Onitiri be sold by Public Auction.

AND WHEREAS the said Supreme Court of Nigeria further ordered on the 22nd of December 1947 that all Deeds of Conveyance in respect of premises as have been or shall be sold as such in pursuance of the said Order of Court of Sale be executed by the Vendors herein.

AND WHEREAS the hereditaments were put up for sale by Public Auction on the 27th day of January, 1948 by one Sammy Crowther Licensed Auctioneer of No.22 Shopono Street Lagos AND WHEREAS the Purchaser hath been declared the Purchaser of the hereditaments hereinafter described and intended to be hereby conveyed for the price or sum of £650 (Six hundred and fifty pounds) sterling.

NOW THIS INDENTURE WITNESSETH that for the purpose of effectuating the said sale and in consideration of the sum of £650 (Six hundred and fifty pounds) sterling paid by the Purchaser to the Vendors before the execution of these presents through their Agent one Sammy Crowther Licensed Auctioneer of No. 22 Shopono Street, Lagos (the receipt whereof the Vendors hereby acknowledge) they the said Vendors as Administrators of the Estate of the late Lawani Idowu Onitiri and on behalf of Beneficiaries hereby grant and convey UNTO the Purchaser ALL THAT piece or parcel of land situate lying and being at Ajegunle - Onitiri Brickfield Sabo via Yaba Lagos within the Colony of Nigeria aforesaid and which is more particularly described and delineated with its dimensions and abuttals on Plan No.A34/1949 dated 16th day of May 1949 and made by E.O.Aiyede Licensed Surveyor drawn below these presents and edged PINK TO HOLD the same UNTO AND TO THE USE of the Purchaser his heirs and assigns in fee simple for ever and free from all incumbrances

IN WITNESS WHEREOF the Vendors have hereunto set their hands and seals at Lagos the day and year first above written

SIGNED SEALED AND DELIVERED by)
the within-named Vendors)
THOMPSON ISHOLA ONITIRI)
SAMUEL AKANBI ONITIRI)

Exhibits

Defendants' Exhibit "G"

Letter, S. Crowther to Oyadiran.

9th August, 1949.

"G" - LETTER, S. CROWTHER TO OYADIRAN

FROM SAMMY CROWTHER,
Licensed Auctioneer,
52, Palm Church St.,
Lagos, Nigeria.

To,
Mr. S.A. Oyadiran,
55, Simpson Street,
Ebute Metta.

9th August, 1949

Dear Sir,

Your letter dated 5th instant was duly received and the contents have been well perused.

2. I have to inform you that the Conveyance and all pertaining to your property have been completely finalised by me and are now lying with the families and Administrators of the late L.I.Onitiri to get same ratified before handing it over to you for further action to be taken on same.

Yours faithfully,
(Sgd.) S. Crowther,
LICENSED AUCTIONEER.

"E"

Statement by S. Crowther.

18th August, 1949.

"E" - STATEMENT BY S. CROWTHER

Statement of Witness

52, Palm Church Street,
Lagos.

18/8/49.

Name:- Sammy Crowther
Occupation:- Licensed Auctioneer
Age:- About 30 years.
Address:- 22, Shopono Street Lagos.
Tribe:- Yoruba.

The above named person voluntarily states thus:-

I am the Auctioneer to the Estate of the late Lawani Idowu Onitiri. I remember that in January 27th 1948 that I held Public Auction sale on Freehold Landed Property situated at Onitiri Village including Onike and Araromi Villages Yaba. The highest bidder that day was one Awoyinfa of 105 Osholake Street Ebute Metta who offered £3,800. This was witnessed by one Bankole Williams of 8 Labinjo Street, Lagos. When I came home I told the

Exhibits

Defendant's Exhibit "E"

Statement by S. Crowther

18th August, 1949 - continued.

Administrators to the Estate namely T. I. Onitiri and S.A. Onitiri that the highest offer was as stated above, but they did not agree to it. They decided to sell the landed property in portions. The following day 28/1/48 the said Awoyinfa came to me with one Oyadiran and I told them that the Administrators to the Estate did not agree with the amount offered and that they have decided to sell the landed property mentioned above in portions. I later directed them to the Administrators. On 24/3/48, Mr. T.I. Onitiri came to my house at 22, Shopono Street, Lagos in company of Messrs.Awoyinfa and Oyadiran. There and then Mr.Onitiri instructed me to receive £500 (Five hundred pounds) from Mr. Oyadiran as a deposit to purchase a portion part of the landed property known as Ajegunle-Onitiri Brickfield Sabo which they agreed to sell to him, Mr. Oyadiran for £650 (Six hundred and fifty pounds) I received this amount of £500 in the presence of Mr. Onitiri and issued a receipt to Mr. Oyadiran dated 24/3/48. I later paid this £500 to Messrs. T.I. Onitiri and S.A. Onitiri and they issued a receipt to me. Since after this, I did not hear anything about the purchase of the land until in July 23rd 1949 when Messrs. Oyadiran and Awoyinfa came to my house and paid a balance of £150 (One hundred and fifty pounds) to me as the final settlement for the said portion of land. The above two men also handed a Conveyance deed on the landed property to me to hand over to the Administrators. I handed both the money (£150) and the Conveyance deed over to Messrs. T.I. Onitiri and S.A. Onitiri in the presence of Mr. S.A. Shitta and they issued me with a receipt. A letter dated 5/8/49 came to me from Mr. Oyadiran as a reminder to the balance paid and the Conveyance deed. I replied to it with a letter dated 9/8/49. I remember that I got a copy of a letter dated 10/8/49 written by Mr.S.A. Oyadiran to Messrs. T.I. Onitiri and S.A. Onitiri. From the date the first deposit of £500 was paid to the date the balance of £150 was paid there was not a message either written or oral that Messrs. T.I. Onitiri and S.A. Onitiri sent through me to Messrs. Oyadiran or Awoyinfa. I do not know the exact portion of the said land sold to Mr.Oyadiran. If I hear that the same portion sold to Mr.Oyadiran has been sold to another person I will be greatly surprised.

(Sgd.) S. Crowther

18/8/49.

Exhibits

Plaintiff's Exhibit "H"

Letter, Oyadiran to I. Onitiri.

18th March, 1952.

"H" - LETTER, OYADIRAN TO I. ONITIRI

55, Simpson Street,
Ebute Metta.

18th March, 1952

Dear Ishola Onitiri,

Will you please give to bearer Mr. Alalade the purchase receipt of my land at Onike Village handed to you some years ago.

As same is need for urgent purpose.

Yours sincerely, 10

(Sgd.) S. A. Oyadiran.

IN THE PRIVY COUNCIL No.30 of 1958

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

TEJUMADE ONITIRI
(for and on behalf of herself and other children of the late Lawani Idowu Onitiri deceased) : Plaintiff/Appellant

- and -

(1) SAMUEL A. OYADIRAN
(2) T.I. ONITIRI
(3) S.A. ONITIRI : Defendants/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
E.C.3.

Solicitors for the Appellant

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors for the first Respondent.