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INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

No. 6 of 1959.

63531

ON APPEAL FROM THE FEDERAL SUPREME COURT
OF NIGERIA HOLDEN AT LAGOS

BETWEEN

CHIEF FAGBAYI OLOTO FOR HIMSELF AND
ON BEHALF OF THE OTHER MEMBERS OF
THE OLOTO CHIEFTAINCY FAMILY SINCE
DECEASED SUBSTITUTED BY CHIEF IMMAM
ASHAFA TIJANI

(Plaintiff) Appellant.

— and —

THE ATTORNEY GENERAL

(Defendant) Respondent.

CASE FOR THE APPELLANT

Record

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1. This is an Appeal from a Judgment of the Federal Supreme Court of Nigeria dated the 16th December, 1957 dismissing with costs the Appellant's Appeal from a Judgment of de Comarmond S.P. J. in the Supreme Court of Nigeria Lagos Judicial Division dated the 17th January, 1953 whereby the Learned Judge dismissed with costs the Appellant's claim for compensation for the user by the Government of Nigeria of certain landed properties on Iddo island and on the mainland opposite Iddo island.

The Appellant is hereinafter referred to as "the Plaintiff", the Respondent as "the Defendant", the Government of Nigeria as "the Government", and the members of the Oloto Chieftaincy family as "the Olotos".

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(2) The landed properties which are the subject matter of this suit are 10 parcels of land in Lagos as follows:-

(a) The area between Taylor Road and Oto Police Barracks on Iddo island coloured pink on a plan marked "A" (Exhibit A)

(b) Land at Botanical Gardens Ebute-Metta, where the Magistrate court and Police Barracks are erected, coloured pink on a plan marked "B" (Exhibit B)

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(c) Land at Odaliki, Ibadan and Thomas Streets Ebute-Metta, coloured pink on a plan marked "C" (Exhibit C)

(d) Land at Denton Bridge Street, coloured pink on a plan marked "D" (Exhibit D)

(e), (f), (g), Land at Ago-Ijaiye Ebute-Metta near Methodist Church and Old Printing; land upon which the Police Barracks at Jebba Street West are situate; and land upon which the Railway Traffic Training School Ebute-Metta is situate; all coloured pink on a plan marked "E G F" (Exhibit E G F)

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(h) Shemore and Ilogbo Villages by Apapa Road, Ebute-Metta, coloured pink on a plan marked "H" (Exhibit H)

(i) Land opposite (h) above, coloured pink on a plan marked "I" (Exhibit I)

(j) The area of the railway track from Iddo to Ido-Olowo, being part of the land coloured pink on a plan marked "J" (Exhibit J)

3. This suit is brought by the Plaintiff for himself and on behalf of the Olotos.

4. The main issues arising on this appeal are as follows:-

10 (i) Whether the Learned Trial Judge misdirected himself as to the evidence and should have found (a) that the Olotos were the owners of all the lands in respect of which compensation was claimed at the time of their acquisition by the Government; and (b) that no compensation was paid to the Olotos for the lands;

(ii) Whether the production by the Defendant of certificates of title relating to the lands issued under the Public Lands Ordinance No.8 of 1876 raises a presumption that notices of acquisition were served and published in accordance with the requirements of the Act;

(iii) Whether the Plaintiff's claim is, or is in the nature of, a Petition of Right;

20 (iv) Whether the Plaintiff's claim is time-barred;

(v) Whether the Plaintiff's claim is barred by reason of laches;

(vi) Whether the Plaintiff can maintain a claim for compensation for the Government's user of the lands on the basis of an implied contract between the Olotos and the Government or otherwise;

30 (vii) Whether the quantum of compensation should be determined in accordance with the value of the lands at the date of acquisition or at the present time.

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pp.1-3

5. By the statement of Claim the Plaintiff pleaded that the Olotos were one of the original owners under native law and custom of land in Lagos; that the landed properties set out above formed part of land owned by the Olotos from time immemorial; that these landed properties were now being used by the Government; that no compensation had been paid to the family thereof by the Government; that the Plaintiff had not been satisfied with the Chief Secretary's and the Commissioner of Lands' explanation over the question of compensation; and that the amount of compensation claimed was £630,560. By his Statement of Defence the Defendant denied that the Olotos had any interest in the lands in question and pleaded that they had been acquired for and on behalf of the Crown at various dates between 1891 and 1927; that the persons from whom they had been acquired had received compensation; that the Plaintiff's claims were and are barred by the Limitation Act, 1623; alternatively that any right to compensation had been waived by the Olotos' laches.

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pp.5-7

6. The relevant provisions of the Petition of Right Ordinance are as follows:-

3. All claims against the Government, or against any Government Department, being of the same nature as claims which may be preferred against the Crown in England by petition, manifestation or plea of right, may, with the consent of the Governor, be preferred in the Supreme Court in a suit instituted by the claimant as plaintiff against the Attorney-General as defendant, or such other officer as the Governor may from time to time designate for that purpose.

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the service and publication of the notice mentioned in the fifth and sixth section of this Ordinance, upon proof of such service and publication, be entitled to receive a certificate of title of the lands described in the said conveyance, or notice, which certificate may be in the form C in the Schedule of this Ordinance, and shall have the following effects and qualities

(1) The certificate shall not be questioned or defeasible by reason of any irregularity or error or defect in the notice, or the want of notice, or any other irregularity, error or defect in the proceedings previous to the obtaining of such certificate." 10

Sub-section 10(4) provides that the production of a certificate of title shall be held in every Court to be an absolute bar and estoppel to any action or proceeding by which the right of the Colonial Secretary to the land therein described is sought to be impugned or questioned. 20

8. At the trial before de Comarmond S.P.J. the principal witness for the Plaintiff was Chief Immam Tijani, a member of the Olotos family Council. In his evidence in chief he said that the Olotos originally owned the land at Otto on Iddo and the land at Ebute-Metta on the mainland and still own land at both places except parcels alienated by the family. He knew personally that the palace of the Olotos was where the Police Barracks now are on Exhibit A. The area below the Police Barracks were used for fishing and cultivating sugar canes. The Government took the upper part of the land on Exhibit A in 1897 and the lower part in 1950. The Government paid nothing to the Olotos for the upper part. The Government demolished the houses which the

p.9, 1.18
1.22
p.10, 1.1
p.10.11.10,
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p.10, 1.20

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	Olotos had on the triangle plot on Exhibit A when they took it. The land coloured pink on Exhibit B originally belonged to the Olotos. They allowed the Government to make a garden there and later between 1940 and 1941 the Government began to build on the land. The Government did not pay for the land and none of it had been sold by the Olotos. The land coloured pink on Exhibit "C" was part of the	p.11, 1.26 p.20, 1.33 p.10, 1.38
10	Oloto land at Ebute-Metta, which the Government took to make bricks. No payment was made. The Government also took over from the Olotos the land coloured pink on Exhibit D, without making any payment. Before the Government took over the land on Exhibit "E G F", the Olotos used to hire it out. The Ijaye people lived on 'E' under the protection of the Olotos, but they were given other land by the Government at Songo. The Government did not pay for the land on E though it paid compensation for the houses demolished to the persons who had erected them. The Olotos owned the Shemore and Ilogbo lands at Exhibit H but were not compensated when the Government took them over. He also stated that the land coloured pink on Exhibit I and the area of the railway track on Exhibit J had been owned by the Olotos until the Government took them over. Until 1947 neither he nor the other members of the Oloto family knew that the Government had acquired these various lands. Only when they were told that the Government had acquired them did they ask for compensation.	p.11, 1.17 p.11, 1.32 p.12, 1.19 p.12, 1.45 p.13, 1.2
20		p.13, 1.10
		p.13, 1.15
		p.14, 1.18
30		p.14, 1.30
	Under cross-examination he said he had taken an active part in proceedings of the family Council since 1915. He had the history of these pieces of land from Chief Eshugbayi Oloto who became chief in 1888 and died in 1910.	p.14, 1.41 p.15, 1.14 p.15 11.4-16

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- p.16, 1.37 He was the witness' maternal grandfather and Tijani used to stay with him. In 1897 he was 11 years old. In the case of land B he used to accompany his mother when she went to dry fish on it. He could not remember all plots of land in Ebute-Metta sold by the Olotos. He knew about the areas claimed in this suit but could not say how many plots were sold by the Olotos because he had no record.
- p.18, 1.47
- p.19, 1.4.
- p.19, 1.30 Re-examined he stated that none of the Idepo Chiefs ever challenged the Olotos right to Ebute-Metta on the mainland. 10
- p.20, 1.40 Chief Onikoyi, who said he was one of the Idepo Chiefs, deposed that the Oloto chief is one of the Idepo and that the Olotos were known to have been the sole owners originally of Otto on Idépo and of land at Ebute-Metta on the mainland.
- p.22, 1.3. Sanni Akanwo deposed that 52 years before the Ijaye had settled in the area on Exhibit "E G F", where Governor Glover got land for them and later moved to Songo. 20
- p.25, 1.17 Olabomi Olaleye gave evidence of the values he placed on the lands in question in 1949. The total value came to £227,760.
- p.37, 1.9
- p.40, 1.23 9. The principal witness for the Defendant was Charles Stuart Glover. He deposed that certificates of title Exhibits O and P, proved the Crown's title to the land on Exhibit A; certificates of title Exhibits T, T1 and T2 and F F proved the Crown's title to the lands on Exhibits B, D, E, F, G and part of the lands on H and I. There were no certificates of title 30

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- to the land on Exhibit C. Certificates of title Exhibit H H proved the Crown's title to land on Exhibits H and I. The area of the railway track on Exhibit J was covered by certificates of title Exhibits O and P, T and W. He also tendered Exhibits (Z, AA, BB, CC, DD and EE) to show that various payments had been made by the Crown and that the Olotos were aware of what was going on on the island of Iddo in the way of acquisitions by the Crown and the payment of compensation. He tendered a document purporting to show amounts of compensation that was paid to certain persons for land within Exhibit EFG acquired for the railway (Exhibit GG). Compensation was paid by the Railways but receipts at the Railway Department had been burnt. Further exhibits indicated that compensation had been paid for land acquired by the Crown on Exhibit J between Denton Causeway and Oka Ira Rd. (Exhibits II, JJ, KK, NN, NN1 and NN2). He further stated that his assessment of the value of the lands in question at the time of this acquisition was of a total value of £1891.13s.5d. Re-examined he stated that in his department they did not destroy records.
10. The Learned Trial Judge by his judgment held that in view of the provisions of the Public Lands Acquisition Ordinance 1876, the issue to the Crown of the various certificates of title implied that the Court had been satisfied as to proper service and publication of the notices of acquisition and it was not incumbent on the Defendant to prove that service and publication had preceded the issue of the certificates; further that it was improbable that the Olotos who were well known as owners of Ebute-Metta did not hear about the acquisitions.
10. The Learned Trial Judge by his judgment held that in view of the provisions of the Public Lands Acquisition Ordinance 1876, the issue to the Crown of the various certificates of title implied that the Court had been satisfied as to proper service and publication of the notices of acquisition and it was not incumbent on the Defendant to prove that service and publication had preceded the issue of the certificates; further that it was improbable that the Olotos who were well known as owners of Ebute-Metta did not hear about the acquisitions.

p.41, 1.37

p.43, 1.12

p.43, 1.25

p.40, 1.20

p.42, 1.18

p.42, 1.35

p.43, 1.35

p.46, 1.37

p.48, 1.18

p.64

p.60, 1.24

p.69, 1.3.

p.69, 1.10

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But it is humbly submitted that the presumption *omnia praesumuntur rite esse acta* cannot be relied on where the facts sought to be presumed are the bare facts on which the claim depends. Secondly the presumption is rebuttable and must yield to oral evidence unless it is itself supported by further evidence. The Chief Immam deposed that the Olotos did not know of the Government acquisition of the lands in dispute and no evidence led by the Defendant supports the presumption relied on. Further the presumption is negatived where the Defendant's Exhibit BB contains the statement "The following as to which only verbal notices were given were valued at the request of Mr. Gee", thereby showing that proper notice was not invariably served.

p.14, 1.34

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11. The Learned Judge also held that the Statutes of Limitation are applicable to claims made against the Government under the provisions of the Petition of Rights Ordinance; and further doubted whether a suit like the present one could properly be called a petition of right.

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But it is respectfully submitted that in the absence of application of the Crown Proceedings Act 1947, and on a proper construction of the Petition of Rights Ordinance, the present claim has the character of a petition of right. It is further submitted that the Statutes of Limitation do not apply to a petition of right or a claim in the nature of a petition of right and cannot in any event, in the absence of express words to that effect, be relied on by the Crown.

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p.76, 1.4

12. The Learned Judge further accepted on the evidence that the Olotos had from time immemorial

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- 10 owned the area now known as Ebute-Metta right up north to Ikeja and found that in the case of the land on Exhibit B the Olotos owned the land at the time of the acquisition by the Government. But in the case of land on Exhibits C, D, EFG and J he was not satisfied that the Olotos were the owners at the material time, nor did he attach much weight to Tijani's evidence regarding ownership by the Olotos of particular areas on Iddo island, excepting the area of the old palace.
- 20 But it is respectfully submitted that it was inconsistent for the Learned Judge to accept Tijani's evidence as to land on Exhibit B but not as to the other lands. Further the Learned Judge misdirected himself as to the onus of proof in that once the original title of the Oloto's had been accepted, it was for the Defendant to prove that the title to the lands had passed into other hands before the date of acquisition. The Learned Judge also erred in taking into account evidence of sales of Oloto lands not the subject matter of the present claim.
- 30 13. It is also submitted that the Learned Judge erred in drawing invalid inferences from certain documents and taking into account other documents which were not evidence against the Plaintiff in the present suit.
- Thus he cited Exhibits AA, BB and DD as showing that Chief Eshugbayi Oloto had knowledge of the steps taken by the Government to acquire land on Exhibit A. But it is submitted that on a true construction none of these Exhibits are evidence of such knowledge. Exhibits BB and DD are internal documents of the

p.76, 1.39

p.77, 1.29

p.78, 1.11

p.79, 1.25

p.81, 1.25

p.72, 1.6

p.81, 1.4.

p.73, 11.17-
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Government against whom relief is sought and no weight should be attached to them against the Plaintiff.

p.79, 1.8

Secondly the Learned Judge placed great reliance on Exhibit GG to show that the evidence of Chief Tijani could be ascribed to guess work and wishful thinking and was not to be believed when he stated that the areas in Exhibit EFG were owned by the Olotos at the time of their acquisition by the Government. But it is submitted that Exhibit GG does not justify such inference. Whereas the Certificates of title of the Government (Exhibits T and T2) relating to such land are dated 1899 and 1902 respectively, Exhibit GG relates to the period 1911-12. Further the Learned Judge erred in accepting as owners of the land persons who were occupiers of it by virtue of the Glover Settlement.

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p.74, 1.7
p.81, 1.29

Thirdly the Learned Judge erred in drawing inferences unfavourable to the evidence of Tijani from Exhibits EE, II, Y, Y1 and MM. Those exhibits do not justify any inference that compensation was paid for lands the subject matter of this suit, nor that the persons referred to therein were the owners of the land.

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p.14, 1.30

14. At no stage in his judgment did the Learned Judge refer expressly to the evidence of Tijani that the Olotos were not told that the Government had acquired these lands until 1947. Nor did he consider the effect of publication of the Tew Report (Exhibit PP).

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15. On the 13th June, 1957 during the hearing of the Appeal from the judgment of the Learned

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- Trial Judge to the Federal Supreme Court of Nigeria, the Court expressed the view that the Statement of Claim as originally framed did not disclose a good cause of action because once the Plaintiff had conceded that the lands in question belonged to the Government there was no basis upon which a claim for compensation in respect of the user thereof could be founded. The Plaintiff's Counsel, Mr. Shawcross then amended the Statement of Claim to plead an implied contract between the Olotos and the Government whereby the Government was to pay the Olotos compensation for the deprivation of the use of the said lands. p.89, 1.25
p.106, 1.12
- 10 16. On the 16th December, 1957 the Federal Supreme Court dismissed the Plaintiff's Appeal. p.89, 1.36
17. Jibowu Ag F.C.J. accepted the Plaintiff's contention that the present proceeding is a petition of right and that the Crown cannot take advantage of the Statute of Limitation in this case. But he dismissed the Appeal on other grounds. p.96, 1.40
p.99, 1.1
- 20 Firstly he held that no question of an implied contract could arise, but it is submitted that the Learned Ag Federal Chief Justice was wrong in holding that it could not arise under the Public Lands Acquisition Ordinance, 1876. p.99, 1.44
- 30 He further held that the Plaintiff's claims were barred by the equitable defence of laches. But it is submitted that no such defence can be raised where as in the present case the Plaintiff is not seeking any equitable relief. p.100, 1.4

Record

p.100, 1.37

Further he dismissed the Appeal as to issues of fact, on the grounds that there was evidence that parts of the Olotos' land had been sold before acquisition of the lands in dispute by the Government, that the evidence showed that compensation had been paid to a number of people, including Chief Eshugbayi Olotu and that the Chief Imam did not prove that the various persons compensated were the Olotos' tenants and did not dislodge the presumption raised by S.11 of the Public Lands Acquisition Ordinance 1876 that the persons in possession as owners must be deemed to be owners until the contrary is proved. He further held that as the Chief Imam's evidence had been proved to be unreliable, the Learned Trial Judge should not have accepted his statement that the land on Exhibit B belonged to the Olotos at the time of its acquisition by the Government.

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It is respectfully submitted that in assessing and interpreting the evidence Mr. Justice Jibowu erred for the reasons already set out in dealing with the Learned Trial Judge's Judgment.

p.104, 1.2

Mr. Justice Jibowu further held that the compensation payable if the Appeal had succeeded was the value of the lands at the date of acquisition and accepted Glover's valuation at £1891.13s.5d.

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But it is respectfully submitted that compensation should be based on the present day value of the land and that the Learned Judge should have accepted the valuation of Olaleye or directed an inquiry into value.

18. Nageon de Lestang and Abbott F.JJ. delivered concurring judgments dismissing the Appeal. They differed from Jibowu Ag.F.C.J.'s reasons in holding that the claim was barred by limitation; did not consider the question of laches and observed that the original Statement of Claim before amendment had disclosed no cause of action.

10 It is respectfully submitted that the Learned Judges erred in their conclusions as to limitation for the reasons already set out in paragraph 11 above and further erred in holding that the Statement of Claim disclosed no cause of action before amendment.

19. Nageon de Lestang F.J. further held that the onus of proving absence of payment of compensation to the Olotos lay on the Plaintiff that he had failed to discharge such onus, and that the maxim omnia praesumuntur rite esse acta applied.

20 But it is respectfully submitted that the onus of proof lay on the Defendant, that in any event the only evidence before the Court was of non-payment and that it would be wrong to apply the maxim quoted to decide the substantial claim in the action.

20. An order granting final leave to appeal to Her Majesty in Council was made on the 5th May, 1958. p.117

30 21. The Plaintiff respectfully submits that this Appeal should be allowed with costs throughout for the following amongst other

R E A S O N S

1. BECAUSE the Learned Trial Judge erred in holding that it was for the Plaintiff to prove that notices of acquisition had not been properly served and published.
2. BECAUSE the Learned Trial Judge and the Federal Supreme Court erred in rejecting the Plaintiff's evidence of the ownership of the areas of land in dispute and in holding that the Olotos had not proved their ownership when there was no evidence to the contrary before the Court. 10
3. BECAUSE the Learned Trial Judge and the Federal Supreme Court failed properly to interpret the evidential value of the exhibits produced by the Defendant except as to the Governments title.
4. BECAUSE Jibowu Ag. F.C.J erred in holding that it was for the Plaintiff to prove that persons compensated by the Government were the Olotos' tenants. 20
5. BECAUSE Nageon de Lestang F.J erred in holding that it was for the Plaintiff to prove that no compensation had been paid and that payment could be presumed.
6. BECAUSE the Supreme Court erred in holding that compensation had been paid when the only evidence before the Court was that there had been no payment of compensation.
7. BECAUSE the Learned Trial Judge and Nageon de Lestang and Abbott F.JJ. erred in holding that the Plaintiff's claim was not a petition of right or in the nature of a petition of right. 30

8. BECAUSE the Learned Trial Judge and Nageon de Lestang and Abbott F.JJ. erred in holding that the Plaintiff's claim was statute barred.

9. BECAUSE Jibowu Ag. F.C.J. erred in holding that the Plaintiff's claim was barred by laches.

10. BECAUSE Nageon de Lestang and Abbott F.JJ. erred in holding that until its amendment the Statement of Claim disclosed no cause of action.

10 11. BECAUSE the Federal Supreme Court erred in holding that no question of an implied contract to pay compensation arose.

12. BECAUSE the Federal Supreme Court erred in holding that compensation should be assessed at the value of the lands at the date of acquisition.

DICK TAVERNE.

IN THE PRIVY COUNCIL

No. 6 of 1959.

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA HOLDEN AT LAGOS.

Between

CHIEF FAGBAYI OLOTO
Plaintiff-Appellant

— and —

THE ATTORNEY GENERAL
Defendant/Respondent

CASE FOR THE APPELLANT

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