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30, 1961

63526

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

B E T W E E N

CHIEF FAGBAYI OLOTO for himself and on behalf of  
the other members of the OLOTO Chieftaincy Family  
since deceased substituted by Chief Imam Ashafa  
Tijani ... (Plaintiff)  
Appellant

- and -

10 THE ATTORNEY GENERAL (Defendant)  
Respondent

C A S E FOR THE RESPONDENT

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- 1. This is an appeal, by leave of that Court, from a Judgment of the Federal Supreme Court of Nigeria delivered on the 16th day of December, 1957, and the Order of the same date made pursuant thereto dismissing an appeal from the Judgment delivered on the 17th day of January, 1953, of the Supreme Court of Lagos Judicial Division dismissing the claim of the Plaintiff (Appellant) as head of the Oloto Chieftaincy Family for £630,000 compensation for the user by the Government of Nigeria of certain landed properties alleged to be owned by the Oloto Chieftaincy Family from time immemorial. P.117  
Pp.94-115  
P. 116  
Pp.64-82
- 20 the claim of the Plaintiff (Appellant) as head of the Oloto Chieftaincy Family for £630,000 compensation for the user by the Government of Nigeria of certain landed properties alleged to be owned by the Oloto Chieftaincy Family from time immemorial. Pp. 1-3
- 2. The Plaintiffs' claim being analagous to a Petition of Right, the proceedings were commenced by a Statement of Claim, to which the Governor had given his fiat unconditionally, delivered on the 14th day of September, 1948, pursuant to the Petitions of Right Ordinance Cap.167 of the Laws of Nigeria, which provides inter alia as follows:- Pp. 1-3  
P. 64 1.14
- 30 "3. All claims against the Government ... being of the same nature as claims which may

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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 ...

4. The claimant shall not issue a Writ of Summons, but the suit shall be commenced by the filing of a Statement of Claim in the Supreme Court and the delivery of a copy thereof at the office of the Attorney-General ...

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8. So far as the same may be applicable, and except in so far as may be inconsistent with this Ordinance, all the powers, authorities and provisions contained in the Supreme Court Ordinance, or in any enactment extending or amending the same, and the practice and course of procedure of the Supreme Court shall extend and apply to all suits and proceedings by or against the Government, and in all such suits costs may be awarded in the same manner as suits between private parties."

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Pp. 1-3

3. As originally framed, the Plaintiff's claim was that the landed properties in question (set out in Paragraph 6 of the Statement of Claim under headings lettered (a) to (k) inclusive, and hereinafter separately referred to as Area "A", Area "B" and so on; the claim in respect of Area "J" having been abandoned this Area is not hereinafter referred to) formed part of the land owned by the Chieftaincy Family from time immemorial; that the Government of Nigeria were then using the same lands and had paid no compensation to the family for the user thereof; and claiming such compensation. It was later admitted by the Plaintiff in the Federal Supreme Court of Nigeria that this claim was in law demurrable.

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P.64. 11.42-  
P.65 1.1

P. 106. 11.  
11-23

P. 90 1.17  
P. 63 11  
30-31;  
P. 87 11  
32-33  
Pp. 1 - 2;  
P. 89 11  
37-46.

4. As amended by the leave of the Federal Supreme Court of Nigeria, the Plaintiff's case was that the Government of Nigeria (whose present title to the landed properties in question was admitted) had acquired the same under the Public Lands Ordinance of 1876, (No. 8 of the Colony of Lagos) but had paid no compensation therefor to the said Chieftaincy

Family, and that in these circumstances an implied contract arose to pay the Plaintiff compensation for the deprivation of the use of the same landed properties. And the Plaintiff claimed by way of such compensation substantially the present value of the freehold of the same landed properties.

P. 2 11 20-  
48;  
P. 62 11  
37-40

5. The Public Lands Ordinance of 1876 of the Colony of Lagos provides inter alia as follows:-

10 "7 (6) Compensation shall not be awarded to any party in respect of unoccupied lands.

20 10. The Colonial Secretary shall, at any time on production in the Supreme Court of a Conveyance to any Lands, or at any time after the expiration of Twenty-one days from the date of the service and publication of the notice mentioned in the fifth and sixth Sections of this Ordinance, upon proof of such service and publication, be entitled to receive a Certificate of Title to the Lands described in the said Conveyance, or notice, which Certificate may be in the Form C of the Schedule to 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 of any other irregularity, error or defect in the proceedings previous to the obtaining of such Certificate.

30 (2) It shall confer on the Colonial Secretary to whom such Certificate shall be given, and on every succeeding Colonial Secretary for the time being in trust for Her Majesty, an absolute and indefeasible right to the Lands comprised or referred to therein against all persons, and free from all adverse or competing rights, titles, interests, trusts, claims and demands whatsoever.

40 (3) If possession of such lands is withheld by any person, the Colonial Secretary may obtain from any Court a warrant of possession (which may be in the form D to the Schedule to this Ordinance) under which any Officer of the Sheriff or Constable may forthwith eject any person or

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persons so withholding possession, and the Colonial Secretary, or any person authorised by him, may enter upon and possess the said Lands.

(4) The production of the 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."

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Pp. 5-7

6. The Defence (as amended) admitted that the Plaintiff was the Head of the Oloto Chieftaincy Family; asserted that the landed properties described in the Statement of Claim had all been acquired for and on behalf of the Government of Nigeria, and gave (save as Area "C" as to which there was no record) the dates upon which the relevant Certificates of Title as provided by Section 10 of the 1896 Ordinance had been given (which, as finally held to be material, ranged in date from 1891 to 1903); denied that the Oloto Chieftaincy Family had any interest in the said lands or any of them; asserted that compensation had been paid to the person or persons from whom the said lands were acquired in money or by way of land in exchange in full satisfaction; pleaded the Limitation Act, 1623, the Court of Procedure Act, 1833, (which was intended to be a reference to the Civil Procedure Act, 1833), and the Plaintiff's laches.

P. 100 11.  
8 - 11.

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P.9. 1.10

7. The main witness for the Plaintiff was Chief Imam Asafa Tijani (who was born in 1887) concerning whose evidence the learned trial Judge (De Comarmond S.P.J.) said :-

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P.79 11.3  
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"No reliable dates are available to the Plaintiffs and most of the evidence given in the present case by Chief Imam Tijani can be ascribed to guesswork and wishful thinking"

and the Acting Federal Chief Justice made the following observation in the Federal Supreme Court of Nigeria:-

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P.100 1.38-  
P.101 1.19

"On the Plaintiff's own showing, Chief Imam Ashafa Tijani, the principal witness for the Oloto Chieftaincy Family, was only 4 years old

when the first acquisition was made in 1891, 6 years old in 1893, and 16 years old when the last acquisition was made in 1903. His evidence according to him, was based on hearsay which was accepted as traditional evidence. He was supposed to have collected his information from his maternal grandfather, Chief Eshugbayi Oloto, in whose time the acquisitions were made. He failed to tell the Court his grandfather's excuse for not applying for compensation when his family lands were acquired by Government although he lived for 7 years after the last acquisition. Old records produced by the Defendant show that his grandfather did not tell him the truth about the acquisitions or that he fabricated the evidence about what he was supposed to have been told by his grandfather. While it might be true that the lands claimed belonged originally to the Oloto Chieftaincy Family, there was evidence from the defence and admissions by Chief Imam Ashafa Tijani that the family had sold quite a lot of their family lands before the acquisitions. His evidence that the whole of Iddo Island belonged to his family at the time of the acquisitions is obviously untrue in the light of the information contained in the Records Exhibits P.37 11 14-25 and Z produced by the defence." 24.

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8. The learned trial Judge (De Comarmond S.P.J) formulated the issues which arose as follows:- P.66 1.39 - P.67 1. 14

- (1) Were the Areas covered by the Certificates of Title produced by the Government of Nigeria?
- (2) What was the effect of such Certificates of Title?
- (3) Assuming that the answer to (1) above was in the affirmative, could the Plaintiff establish that the Areas when acquired by the Government of Nigeria were the property of the Oloto Chieftaincy Family at the time of such acquisition?
- (4) If issues (1) and (3) were answered in the affirmative in respect of all or some of the Areas, had the said Chieftaincy Family received payment of compensation therefor?

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- (5) Was the claim for compensation time barred?
- (6) Was the Government of Nigeria justified in invoking the Plaintiff's laches as depriving him of the right to claim compensation?
- (7) How was compensation to be assessed if the right to it was established?

9. He proceeded to answer these questions as follows:-

\*P.72 ll 22-33;  
 P.75 ll 13-17  
 P.78 ll 2-5;  
 P.78 ll 18-20;  
 P.80 ll 20-26;  
 P.81 ll 15-21

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\*\*P.68 l.43  
 P.69 l.3

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\*P.74 ll 1-4;  
 \*\*P.76 ll 38-41;  
 P.77 ll 28-31  
 P.78 ll 11-12;  
 P.78 ll 20-24;  
 P.80 ll 16-19;  
 P.81 ll 26-28;

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\*\*P.73 ll 45-49;  
 \*\*P.76 ll 42-44;  
 P.69 l.24;  
 P.70 l.41

- \*1) Apart from Area C, they were.
- \*\*2) Such Certificates were conclusive proof of title, without proof of prior compliance with the statutory formalities. 10
- \*(3) The Plaintiff could establish the Family's prior title to some part of Area A and the whole of Area B but to no part of Areas C, D, E, F, G, H, I or K.
- (4) That compensation was paid in respect of Area A, but was not paid in respect of Area B. The learned Judge did not make any finding in respect of the other Areas. 20
- ∅(5) That the claim for compensation was time barred.
- (6) Did not therefore arise.
- (7) Did not therefore arise.

P.76 ll.33-34

10. The conclusions reached by the learned trial Judge as to the ownership of and payment of compensation in respect of Area "B" at the date when the same was acquired by the Government of Nigeria was as follows:-

"As regards Area "B", is there some cogent evidence establishing that the Olotu family were still owners when the Government acquired it? There is only Chief Imam Tijani's evidence which I have set out above. It is far from being strong and reliable evidence, but in the circumstances I am prepared to accept it as establishing that Area "B" belonged to the 30

RECORD

Olotos when Government acquired it. The defendant has not been able to establish that compensation was paid in respect of Area "B" (assuming that the area was not unoccupied land)."

10 11. It is submitted that the learned trial Judge was here in error, in that he correctly held that the Chief Imam's evidence was in general unreliable, and failed to observe that part of his evidence in relation to Area "B" could not have been true, in that he stated that the Government asked permission of the Olotos to use the area as a garden in 1893 whereas it appeared from the Certificate of Title "FF" produced by the Government which was obtained on the 14th July, 1891, that the Botanical Garden was then already established. And the learned trial Judge further failed to take into account evidence tendered on behalf of the Plaintiff to the effect that a certain Atitebi had purchased some land prior to 1891 which might well have formed part of this Parcel; also failed to take into consideration the possibility that the land might have been unoccupied land for which no compensation would have been payable under the Ordinance; and failed to consider upon whom the burden of proof with regard to the payment or non-payment of compensation lay.

P.72 11 2-12  
P.10 11 36-38  
P.75 11 13-17  
P.23 11 1-3

12. As regards the application of the Statutes of Limitation, the learned Judge held as follows:-

30 "The so called Petitions of Right Ordinance, No.19 of 1915 (now Cap: 167 of the Revised Laws 1948) makes provision relating to Suits by and against the Government of Nigeria and lays down clearly that all the powers, authorities and provisions contained in the Supreme Court Ordinance, or in any enactment extending or amending the same, and the practice and course of procedure of the Supreme Court shall extend and apply to all suits and proceedings by or against the Government etc." (Section 8 Cap. 167).

P.69 1.41 -  
P.70 1.16

40 Being given that by virtue of Section 14 of the Supreme Court Ordinance (Cap.211, Revised Laws 1948), the Statutes of general application which were in force in England on

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the 1st January, 1900, are in force within the jurisdiction of the Supreme Court of Nigeria, it follows in my opinion, that such Statutes are applicable in relation to claims made against the Government under the provisions of the Petition of Right Ordinance."

- Pp.82-85      13. From this Judgment the Plaintiff appealed to the West African Court of Appeal by Notice dated April, 1953. The main grounds of the said appeal were that the Judgment was wrong in law and on the facts in holding that the Government of Nigeria could rely upon the Statutes of Limitation (particularly the Limitation Act, 1623 and the Civil Procedure Act, 1833) and that the Plaintiff's claim was time barred; and in not holding that the matter before the Court was a Petition of Right. The judgment was also challenged in detail on the law and the facts in relation to the admissibility of certain evidence, and the conclusions as to the ownership of the various Areas of Land at the relevant dates; and as being against the weight of evidence in respect of each area claimed and in respect of the whole of the Plaintiff's claim. 10 20
- P. 86      14. On the 15th day of October, 1956, Chief Imam Ashafa Tijani was substituted as Plaintiff in place of Chief Fagbayi Oloto, deceased.
- P. 87      15. The Federal Supreme Court of Nigeria (formerly the West African Court of Appeal) began to hear the said appeal on the 12th day of June, 1957, and in the course of such hearing the Plaintiff was given leave to and did amend his Statement of Claim by adding thereto the claim referred to in paragraph 4 of this Case. 30
- P.89 1.34 -  
P.90 1.17
- Pp. 94-115      16. The Federal Supreme Court of Nigeria (Jibowu Acting FCJ, Nageon de Lestang, and Abbott FJJ) by its Judgment delivered on the 16th day of December, 1957, dismissed the Plaintiff's said appeal. The Court unanimously up-held all the learned Trial Judge's findings of facts, except those in relation to Area "B". So far as this area was concerned, substantially for the reasons set forth in paragraph 11 of this Case, each member of the Court came to the conclusions that the Plaintiff 40
- P.102 1.44-  
P.103 1.32  
P.109 11 9-  
15  
P.115 11 12-  
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had failed to establish the Oloto Chieftaincy Family title thereto.

10 17. The learned Acting Federal Chief Justice held however that the provisions of the Limitation Act, 1623, did not apply to the Plaintiff's claim. In his view although the Petitions of Right Ordinance dealt with other matters, it was intended to deal with Petitions of Right and laid down the procedure to be adopted in presenting such petitions, and proceedings thereunder were both a suit and a Petition of Right. He then pointed out that the proceedings did not fall within the definition of "action" in the Supreme Court Ordinance as it was not commenced by a Writ of Summons. He referred to Rustomjee v. The Queen (1876) L.R. 1 Q.B.D. 485 in which it was held that the Limitation Act, 1623 did not apply to a Petition of Right, and after distinguishing Attorney General v Tomline (1880) L.R. 15 Ch. D. 150, a case 20 in which the Crown was held to have become the freehold owner of the property in dispute by virtue of the Statute of Limitations, on the ground that the case was not a case of a petition of right, followed Rustomjee's Case and decided that the Crown could not take advantage of the Statute of Limitations in the present case.

P.96 1.12-  
P.99 1. 3

30 18. He however was in favour of dismissing the appeal, first, on the ground that it was impossible to imply in the case of compulsory acquisition any such contract as the Plaintiff sought to reply upon. Further, he was of the opinion that the equitable doctrine of laches ought to be invoked to bar the Plaintiff's claim. And finally, upon an examination of the evidence in relation to each particular Area, he came to the conclusions already set forth in Paragraph 16 of this case, with the result that he was of the opinion that the Plaintiff's case ought to be dismissed purely on the question of facts. He also pointed out, in case the case should go 40 further, that if any compensation had (contrary to his opinion) been payable, it should have been calculated having regard to the value of the various Areas as at the date of their respective acquisition by the Government of Nigeria, which he assessed (accepting the evidence of a Mr. Glover) in the total sum of £1,891.13s.5d.

P.99 1.27-  
P.100 1.3

P.100 11 4-  
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P.103 1.44-  
P.104 1.24

RECORD

P.108 11.13-  
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19. Federal Justice Nageon de Lestang concurred in the Acting Federal Chief Justice's opinion that the amended Statement of Claim disclosed no cause of action. He also concurred in his findings of fact, including the proper figure for compensation if any were payable.

P.109 11.9-  
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P.111 11.  
35-38

20. With regard to the payment of compensation, the learned Federal Justice observed as follows:-

P.109 11.24-  
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"It was, in my view, for the appellant, who was alleging that he had not received compensation, to prove his allegation, and on the view which the learned Judge took of the evidence of the appellant's star witness, he clearly failed to do so. In such a case as this the presumption onnia praesumuntur rite esse acta applies with particular force, as it would be unreasonable and indeed inequitable after the lapse of so many years to expect the respondent to be able to prove payment."

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P.109 1.35-  
P.111 1.34

21. The learned Federal Justice however disagreed with the Acting Federal Chief Justice's opinion in relation to the applicability of the Statute of Limitations. He held that the Statutes of Limitation apply to a Petition of Right, and that the Crown could take advantage of those statutes even if they did not apply against the Crown. In his view a suit brought under the Petitions of Right Ordinance was an "action" in the sense of that term as used in the Statutes of Limitation, and he referred on this point to parts of the speeches of the Lord Chancellor, the Earl of Selborne and Lord Blackburn in Bradlaugh v Clarke (1882) 8 App. Case 354 at pp. 361 and 374 respectively to the effect that the word "action" included suits by the Crown.

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Pp.112-115

22. Federal Justice Abbott concurred with the opinion of Federal Justice Nageon de Lestang on all points.

P.117

23. The Federal Supreme Court of Nigeria accordingly dismissed the Plaintiff's appeal. From this dismissal the present appeal is now preferred final leave so to do having been granted by the Federal Supreme Court of Nigeria on the 5th day of May, 1958.

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24. The Respondents humbly submit that the Judgments of the Supreme Court of the Lagos Judicial Division and of the Federal Supreme Court of Nigeria were correct and that the present appeal ought to be dismissed for the following among other

R E A S O N S

- (1) BECAUSE the Plaintiff's Statement of Claim as amended discloses no cause of action.
- 10 (2) BECAUSE the Plaintiff failed to establish that the ownership of any of the areas set out in the Statement of Claim herein (other than a portion of Area "A") was in the Olotu Family immediately prior to the acquisition thereof by the Government of Nigeria and it was established that in respect of Area "A" Compensation had been duly paid by the Government of Nigeria.
- 20 (3) BECAUSE in relation to all Areas except Area "B" there are concurrent findings of fact of the Supreme Court of the Lagos Judicial Division and of the Federal Supreme Court of Nigeria that the Plaintiff had failed to establish the title of the Olotu Family thereto and such findings ought not to be disturbed.
- (4) BECAUSE in relation to the Plaintiff's claim of title to Area "B" the Judgment of the Federal Supreme Court of Nigeria was right and ought to be affirmed.
- 30 (5) BECAUSE the Plaintiff failed to prove in relation to any Area either that compensation ought to have been or that it was not paid by the Government of Nigeria.
- (6) BECAUSE a proceeding under the Petitions of Right Ordinance is an "action" within the meaning of that term as used in the Limitation Act, 1623, and Court Procedure Act, 1833, and the Plaintiff's claim is barred by the provisions thereof accordingly and the decision of the majority of the Federal Supreme Court of Nigeria on this point was correct.
- 40 (7) BECAUSE even apart from the application of the Statute of Limitation the Plaintiff's claim is barred by lapse of time.

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- (8) BECAUSE, for the reasons therein given the Judgment of the Supreme Court of the Lagos Judicial Division was (except in relation to its finding as to the ownership of Area "B" immediately prior to the acquisition of the same by the Government of Nigeria) correct.
- (9) BECAUSE, for the reasons therein given the Judgment of the Federal Supreme Court of Nigeria was correct.

RAYMOND WALTON

No. 6 of 1959

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE FEDERAL SUPREME COURT OF  
NIGERIA HOLDEN AT LAGOS

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B E T W E E N:

CHIEF FAGBAYI OLOTO for himself  
and on behalf of the other  
members of the OLOTO Chieftaincy  
Family since deceased substituted  
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... .. (Plaintiff)  
Appellant

- and -

THE ATTORNEY GENERAL (Defendant)  
Respondent

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C A S E FOR THE RESPONDENT

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CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand, W.C.2.

Solicitors for the Respondent