

*Privy Council Appeal No. 64 of 1932.*

**Idewu Inasa and others** - - - - - *Appellants*

*v.*

**Chief Sakariyawo Oshodi** - - - - - *Respondent*

FROM

**THE SUPREME COURT OF NIGERIA.**

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 9TH NOVEMBER, 1933.

---

*Present at the Hearing :*

LORD BLANESBURGH.  
LORD RUSSELL OF KILLOWEN.  
SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

---

The action out of which this appeal arises was brought by the appellants in the Supreme Court of Nigeria to recover possession of certain rooms and holdings in Inasa House, Inasa Court, Epetedo, from which, as they alleged, they had been forcibly and illegally evicted by the respondent Chief. Before the Trial Judge—Tew J.—the action failed. An appeal to the Full Court was no more successful. From its order of dismissal of the 26th February, 1930, appeal has now been taken by the original plaintiffs to His Majesty in Council.

The relation in which the appellants stood to the respondent at the time of their eviction from Inasa House is traceable to a transaction in the year 1862, when an area of land at Epetedo was put by the Government of Lagos into the possession of Chief Oshodi Tappa for the occupation of his family, followers and slaves. Chief Oshodi Tappa was the father and predecessor of the respondent, upon whom his rights as chief have devolved.

Oshodi Tappa divided the area into 21 Courts or Compounds. Inasa Court was one of these. Alfa Iwo Court, the rights in which were considered by the Board in *Sakariyawo Oshodi v. Moriamo Dakolo* [1930], A.C. 667, was another. The interests of the occupiers in each Compound are in principle the same. A Compound it seems normally consists of a set of houses round an internal Court, which forms the access to them. Oshodi Tappa placed a headman in charge of each Court. Nassah, a head slave of his, was the headman put in charge of Inasa Court, and the other persons assigned to that Court were also slaves of Oshodi Tappa. Nassah duly parcelled out the Compound among these slaves (including himself), each slave being allotted a portion for the exclusive occupation of himself and his family. Nassah is now dead. The appellants with Amodu, later to be mentioned, are his surviving children and grandchildren, and prior to the eviction of which they here complain they were it seems severally in occupation of separate rooms of the houses originally appropriated by Nassah to himself and his family.

In or about the year 1869 the Governor of Lagos issued Government grants in respect of each of the Courts. The different headmen were encouraged to take these grants in their own names. The grant in respect of Inasa Court was dated the 5th May, 1869, and the name inserted in it was that of Nassah. It cannot be doubted that this act of Government was a source of misunderstanding, as each grant, on its face, purported to be a disposition in absolute terms in favour of the grantee. But it was at an early stage settled, although apparently not always accepted, that these grants were only grants in trust, and that they left the interests in the properties, whether those of the occupiers or those of the chief, exactly where they had been. The interests of the occupiers were defined in the following terms by Lord Dunedin, delivering the judgment of the Board in the case already cited :—

“ These various occupiers have the right to remain and to transfer their holdings to their offspring, but in the event of the family of an occupier failing and being extinct the Chief has a right of reversion.”

Two further matters upon which the Board then pronounced may here be conveniently referred to. Their Lordships accepted as correct the view that the right of the Oshodi family and of the Chief on its behalf to control the compounds at Epetedo had always, and rightly, been judicially recognised. They held, however, that the internal Court in each compound did not remain, as had been contended by the Chief, his property in possession. The Court had never been in his actual possession. “ It was used in common by all the inhabitants of the houses, and must be considered as being held along with the houses as an undivided share.”

It is interesting, and for present purposes, helpful, to ascertain what was the question in that case at issue before the Board, and then to note how it was resolved. The Governor of Nigeria had

given notice of his intention to acquire for public purposes the Alfa Iwo Court Compound. The problem was to determine who the persons were to whom the compensation moneys were to be paid. On the one hand, these moneys were claimed by the respondent Oshodi as paramount Chief. On the other hand they were claimed by the various occupants of the houses cited as defendants. In the result their Lordships, after describing the position of the occupants in the terms already stated, held that the compensation must be distributed amongst them subject only to a reservation of some part of it to the Chief in respect of his possible right of reversion which was cut off for ever by the compulsory acquisition. The judgment proceeds as follows :—

“ The plaintiff has not exercised any rights of eviction, if he had any such, in respect of any of the present occupants, and counsel for [him] quite properly explained that he did not propose to ask anything in respect of such rights of eviction if they existed, as seems possible, from the history of the various occupants given by the trial judge.

“ It is clear that the possible right of reversion on the failure of the family of any of the occupants though not actually elusory, must be of small value.”

In the result, as has already been indicated, substantially all the compensation money for the land in question went to the occupiers.

Now it is with the Chief's eviction rights which in the Alfa Iwo Court case were so lightly regarded that the present litigation is concerned. These rights, whatever they may be, depend entirely on local law and custom and in considering both their range and the question whether they can, to the full extent, be judicially recognised, the judgment of the Board in the Alfa Iwo Court case in which the interests of the occupants in their respective holdings were described in terms very extensive must always be borne in mind. Their Lordships think it more than likely that some of the observations of the Full Court in this case would have been qualified had that Court had the advantage enjoyed by their Lordships of considering the Board's authoritative exposition of the relative positions of the two parties in the judgment referred to, delivered, in fact, nearly six months later. As will be seen, however, on the facts of this particular case, upon which there are concurrent findings in the Courts below, their Lordships have no difficulty in adhering to the conclusion there actually arrived at.

The facts immediately antecedent to the dispute can now be shortly stated.

In 1918 Amodu (or Aworan) Inasa, already mentioned, the eldest son of Nassah, by this time deceased, purported by an indenture of the 15th November, duly registered in the register of deeds at Lagos, to sell and convey to one Alimotu Orifunke a portion of Inasa Court.

In 1925 Chief Oshodi, the present respondent, instituted an action in the Supreme Court of Nigeria in which he sought a declaration that Amodu "has lost his right, title and interest under Native Law and Custom to that piece of land which he now occupies as a descendant of a domestic at Inasa Compound at Epetedo, Lagos, by selling and/or attempting to sell or otherwise dispose of a piece or parcel of land situate at Glover Street, which forms part of Inasa Compound."

This declaration was sought for on the view that by the relevant Native Law and Custom an occupier in such a Compound as Inasa may not sell or otherwise alienate the right of occupancy or any part of the land nor may he wrongfully assert any right inconsistent with those lawfully belonging to the Chief, who is entitled as representing the Oshodi family to eject any occupier for breach of such rights and reallot his holding to others.

Accepting these views as sound, so far as they covered the case before him, Tew, J., granted against Aworan Inasa the declaration craved. No appeal against that declaration was taken and it is relevant to note that its propriety has not since been questioned in these proceedings or at all.

Now Aworan Inasa was the only defendant to the action in which the above declaration was made. No other member of the family was party to the proceedings. The respondent however at once took up the position that the extinction of Aworan's interest in the Compound by the decree against him carried with it the forfeiture of all right, title and interest in Inasa House of each and all of his relatives, and on the 21st January, 1926, five days after the judgment of the Court against Aworan, the respondent exhibited in Inasa Court a printed notice in the following terms :

" Occupiers of rooms in Inasa House are hereby notified to remove within 7 days of the date of this notice to save them being turned out unceremoniously.

" SAKA OSHODI,  
Chief.

" 21st January, 1926."

A few days later the respondent, accompanied by several of the leading members of the Oshodi family, went to Inasa Court and evicted from their rooms in Inasa House such members of Aworan's family as had not already removed themselves therefrom in compliance with the respondent's notice.

The members of Aworan's family so evicted were brothers, sisters, nephews and nieces.

It has been found, and the position is now accepted, that the removal just referred to was effected without any unnecessary violence, and it was not until the 23rd June 1928, two years and a-half later, that the present action was commenced. Thereby, the appellants, the evicted relatives of Aworan, claimed (1) recovery of possession of their rooms and holdings at Inasa Court: (2) damages for unlawful and forcible ejection and

(3) an account of all rents and profits since collected by the respondent therefrom.

The respondent's answer to claims (1) and (3)—claim (2) as has been seen was not pressed—was that the appellants by the native law and custom, as already stated, had forfeited all their rights in their respective portions of Nassah's original allotment in Inasa Court. In support of that view, he adduced evidence to the effect that where a chief has ejected a domestic for misconduct he is entitled to eject his relatives also. It is left doubtful, on that evidence, whether the custom involves all relatives in this condemnation, irrespective of whether they approved of or encouraged the misconduct complained of, or were indifferent to it or ignorant of it, or even disapproved of it. The learned Trial Judge, however, interprets the evidence as affecting only those relatives of the offender who sympathised with him and, in fact, he finds that the relatives of Aworan including the appellants had taken his side against his Chief in a long standing dispute, the claim by the family, based doubtless on the terms of the grant to Nassah, being that the Chief had no rights whatever in the Inasa Compound. In this finding, as their Lordships read its judgment, the Full Court agrees, and accepting it as a concurrent finding, as in a case of this kind their Lordships must, all difficulty disappears. When the Chief's control over the compound is recalled, to say nothing of his reversionary interest therein, it cannot, they think, be held that a native custom so limited is repugnant to natural justice, equity and good conscience, so that judicial sanction to it must be withheld.

As at present advised, their Lordships, however, are not prepared, without further argument, to uphold any native custom in this matter going beyond that which has now been affirmed.

On one point their Lordships are in full agreement with both Courts in Nigeria. In this case the respondent took the law into his own hands, putting forward no justification for his failure or omission to add the appellants as defendants in his original action against Aworan and to claim as against them the same declaration. Such procedure on the part of the respondent is to be deprecated, and it will be checked in future cases if it is made plain, as it should be, that when a defendant takes the law into his own hands and proceeds to eviction he will be required very strictly to justify his conduct when in any subsequent proceeding that conduct is called in question.

In the present case the respondent, on the facts found, has justified his claim and their Lordships will accordingly humbly advise His Majesty that this appeal be dismissed and with costs.

In the Privy Council.

---

---

IDEWU INASA AND OTHERS

vs.

CHIEF SAKARIYAWO OSHODI.

---

---

DELIVERED BY LORD BLANESBURGH.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.