4, 195

P.C. Appeal No. 96 of 1947.

# In the Privy Council.

31954

## ON APPEAL

*FROM THE WEST AFRICAN COURT OF APPEAL.*



BETWEEN

AKISATAN APENA OF IPORO
LAWANI OF IPORO and
I. A. SODIPO OF IKEREKU (Defendants) *Appellants*

AND

1. AKINWANDE THOMAS
2. OKE SOGBESAN
3. AIYE SAKOTUN
4. OKE SANYAOLU
5. SANNI FALOLA
6. YESUFU OJODU
7. J. A. SOYOYE
8. ADEKUNLE COKER
9. M. J. BAMGBOLA

For themselves and on behalf of that section of the Iporo Community Abeokuta, known as Iporo No. 2

(Plaintiffs) *Respondents*

AND

OBA ALAIYELUWA ADEMOLA II (Defendant) Pro forma *Respondent.*

# Case on behalf of the Appellants.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal dated the 12th November 1946 varying a judgment of the Supreme Court of Nigeria dated the 15th November 1945. p. 86. p. 51.

2. The suit was instituted by the Respondents (Plaintiffs) against the Appellants (2nd, 3rd and 4th Defendants) and Oba Alaiyeluwa Ademola II (1st Defendant) pro forma Respondent for a declaration that the installation of 2nd and 3rd Appellants in the offices of Oluwo of Iporo and Balogun of Iporo respectively by the 1st Appellant and the pro forma Respondent was contrary to Native Law and Custom and for an injunction restraining the 2nd and 3rd Appellants from performing the duties of the office.

In the original suit the pro forma Respondent Oba Alaiyeluwa Ademola II was joined as 1st Defendant. On appeal to the West African p. 1.

CASE FOR THE APPELLANTS

p. 94, l. 27. Court of Appeal it was held that he was entitled to the protection of the Public Officers' Protection Ordinance and should have been dismissed from the suit.

3. The main question in this appeal is :—

Whether the Supreme Court of Nigeria had jurisdiction to try the case, as under Section 12 of Ordinance No. 23 of 1943 Laws of Nigeria there was in existence a Grade A Native Court competent to try such cases ?

p. 61, l. 1. On this question the Trial Court held that no Grade A Native Court
p. 88, l. 32. was in existence. The finding of the West African Court of Appeal was in the affirmative, though it held that the finding of the Trial Court with
p. 87, l. 22. regard to the non-existence of a Grade A Native Court was erroneous.
p. 91, l. 16.

On the main issue as to whether the installation of the 2nd and
p. 64, l. 40. 3rd Appellants in the office of Oluwo of Iporo and Balogun of Iporo
p. 70, l. 40. respectively was contrary to Native Law and Custom the findings both of
p. 94, l. 8. the Trial Court and the Appeal Court were in the affirmative.

4. The relevant Section 12 of Ordinance No. 23 of 1943 Laws of Nigeria is set out below :—

" 12. Subject to such jurisdiction as may for the time being be vested by Ordinance in native courts, the jurisdiction by this Ordinance vested in the Supreme Court shall include all His Majesty's civil jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be exercisable in Nigeria, for the judicial hearing and determination of matters in difference, or for the administration or control of property and persons, and also all His Majesty's criminal jurisdiction which at the commencement of this Ordinance was, or at any time afterwards may be there exercisable for the repression or punishment of crimes or offences or for the maintenance of order ; and all such jurisdiction shall be exercised under and according to the provisions of this Ordinance and not otherwise.

Provided that, except in so far as the Governor may by Order in Council otherwise direct and except in suits transferred to the Supreme Court under the provisions of section 25 of the Native Courts Ordinance, 1933, the Supreme Court shall not exercise original jurisdiction in any suit which raises any issue as to the title to land or as to the title to any interest in land which is subject to the jurisdiction of a native court nor in any matter which is subject to the jurisdiction of a native court relating to marriage, family status, guardianship of children, inheritance or disposition of property on death."

5. The facts leading up to the case are as follows :—

61, l. 30. The Town of Abeokuta is composed of several townships. In each township, there has existed for very many years an Ogboni Society. No member of any Ogboni Society is without a title. In each Ogboni Society, there are various bodies. Only two of these bodies need be specially referred to. They are the Iwarefa and the Ologun.

The Iwarefa body is composed solely of chiefs and they are known as Iwarefa chiefs. Each Chief is the holder of a separate title. The titles of these Chiefs in descending rank are the Oluwo, Lisa, Odofin, Aro, Asalu, Base, Baala and Apena. As each separate Iwarefa body is composed of chiefs holding similarly intituled titles, it follows that there are as many similarly named chiefs in Abeokuta as there are townships. These chiefs are easily distinguishable by their titles because the name of the Township is added to the title, that is, the Oluwo of Iporo, the Apena of Kesi, and so forth. As will be observed, the highest ranking chief in each Iwarefa body is the Oluwo, and the lowest ranking is the Apena. This case is concerned principally with the elevation of the 2nd Appellant to the office of Oluwo of Iporo, and the elevation of the 3rd Appellant to the office of Balogun of Iporo, the highest office in the Ologun body. The 1st Appellant was at all material times the Apena of Iporo. The 1st Respondent was known as the Base of Iporo.

The duties of the Apena are numerous. He acts as the Secretary of his Iwarefa body ; he is bound to notify all the chiefs in his Iwarefa body about the time, date and place of each meeting ; he is the principal office holder who functions at the installation of every other Iwarefa chief.

When a hereditable title has to be filled in the Iwarefa, the family concerned has to nominate a person as their candidate. Their choice is communicated to the Iwarefa chiefs through the Apena, and, after consulting their convenience, he informs them of the time, date and place of the meeting that has to be called for considering the matter. If the candidate is acceptable to, and accepted by, that Iwarefa body, the family and the candidate are informed. Certain fees, determinable according to the wealth of either the family or the candidate, or both, are fixed by the Iwarefa chiefs. This fee must be produced, and paid over in due course, to the Apena. A portion of that fee is, together with the candidate, taken by the Apena to His Highness the Alake of Abeokuta, the elected King of the people of Egbaland. If the portion of the fees tendered to the Alake is accepted by him, such act of acceptance signifies that the Alake has given his approval to the candidate being installed. p. 62, l. 14.

6. With regard to the constitution and election to membership of the Ologun body the position is as follows :—

Among the chiefs in the Ologun, there are in descending rank the Balogun, Otun, Osi, Ekerin, Seriki, Bada. It is the duty of the Balogun, the highest Ologun chief, to notify all the Ologun chiefs about an impending election to their ranks. He must inform them as to the time, date and place of the proposed meeting. Those are indispensable conditions-precedent. When these Ologun chiefs, in secret conclave assembled, agree upon a candidate, their choice is to be communicated to the Apena of the Iwarefas, and he in turn is bound to act thereafter as he must act when as previously recited he has received the name of a candidate for election to the p. 63, l. 39.

Iwarefa body. The procedure thereafter as to compulsory attendance, compulsory summoning, adoption of choice, fixing of fees, payment to the Alake, acceptance of fee and candidate by the Alake is exactly the same as that above outlined. A difference however is that after the Alake has received his portion of the fee, the Iwarefa chiefs decide what their portion shall be, and after deducting their quantum, the balance, if any, is given to the Ologun chiefs who then distribute that balance, if any, among themselves. This remaining portion of the fee originally fixed by and paid to the Iwarefas by Ologun candidate is the especial perquisite of the Ologun chiefs themselves.

p. 64, l. 10. 7. The 2nd and 3rd Appellants were installed as the Oluwo of Iporo and the Balogun of Iporo respectively on the 26th January 1945. The 2nd Appellant had been the Balogun of Iporo up to that date.

p. 65, l. 3. 8. The 1st Respondent is an Egba man, belongs to Iporo Sodeke Township, and was the holder of the Iwarefa title—chieftaincy of Base of Iporo since 1934. He is an intelligent and educated man who writes and speaks the English language fluently. He is obviously a man of strong character and personality, and is sufficiently a leader of men to have been able to form a party of his own in Iporo, to split that township in twain, and to have attracted and kept to his side a strong following. In striking contrast to this man are the majority of the Iwarefa Chiefs of Iporo who speak no English, do not read or write, but who nevertheless are fine representatives of their class. They belong to a Secret Society which has in bygone years powerfully ruled Egbaland with some degree of prosperity.

65, l. 1. The 1st Respondent was drummed out of the Iwarefa body at the Ogboni House in September 1943.

65, l. 30. 9. There had been a series of differences between the Iwarefa Chiefs and the 1st Respondent over a period of years. The Alake (pro forma Respondent) had advised them, to be patient but certain Iwarefa Chiefs took matters into their own hands and without informing the Alake (pro forma Respondent) drummed the 1st Respondent out of their body at the Ogboni House.

68, l. 11.
68, l. 40.
69, l. 2.
69, l. 11. 10. The Alake (pro forma Respondent), a ruler who had occupied the throne of Egbaland for 25 years, tried to effect a settlement and invited the 1st Respondent to apologise to avoid the concentrated wrath and hatred of the Chiefs. He had hoped to end a feud.

69, l. 17. 11. The 1st Respondent agreed but later retracted his promise and the Alake informed him that he was suspended and as such could not take part in any of the proceedings in Ogboni House and was not entitled to receive any communication about any election. The 1st Respondent never returned to the Ogboni House after the 29th March 1944.

64, l. 10. 12. As stated above in paragraph 7 the 2nd and 3rd Appellants were installed as the Oluwo of Iporo and Balogun of Iporo on the 26th January 1945.

13. On the 21st August 1945 the Respondents instituted THE PRESENT SUIT in the Supreme Court of Nigeria for a declaration that the installation by the 1st Appellant and the pro forma Respondent of the 2nd and 3rd Appellants as the Oluwo of Iporo Township, Abeokuta and the Balogun of Iporo Township, Abeokuta was contrary to the Native Law and Customs of the people of Abeokuta and also for an injunction restraining the 2nd and 3rd Appellants from acting as or performing any of the functions of the Oluwo of Iporo and the Balogun of Iporo respectively. p. 1. p. 2.

14. On the 24th September 1945 the Respondents delivered a Statement of Claim in which they alleged *inter alia* :—

(12) and (13) That upon the instructions of the pro forma Respondent the 1st Appellant caused ceremonies to be performed at the Ogboni House at Iporo (without consulting the Iwarefa or the Ologun Society) declaring in the course thereof that the 2nd Appellant had been installed as the Oluwo of Iporo and the 3rd Appellant as the Balogun of Iporo. p. 8, l. 27.

(14) That the pro forma Respondent claimed that he had the prerogative under Native Law and Custom to appoint and confer Iwarefa and Ologun titles in Iporo Township which is contrary to Native Law and Custom. p. 8, l. 37.

(15) and (16) That the appointments of the 2nd and 3rd Appellants were contrary to Native Law and Custom for reasons stated. p. 8, l. 41.

15. On the 8th October 1945 the Appellants delivered their Defence in which they denied the allegations of facts contained in paragraphs (12) (13) (14) (15) and (16) of the Statement of Claim and further alleged *inter alia*, p. 10, l. 21.

" 12. The Defendants (Appellants) will contend at the hearing of this action that this Honourable Court has no jurisdiction in a matter like this. p. 11, l. 1.

" And that the Plaintiffs (Respondents) are not entitled to claim as per the Writ of Summons."

16. On the 19th October 1945 the pro forma Respondent delivered his Defence, in which he denied the allegations of facts contained in the Statement of Claim and further alleged :— p. 11, l. 32.

" 13. The Defendant (pro forma Respondent) avers that being a Public Officer, notice should have been served on him and this suit should therefore be struck out." p. 12, l. 38.

17. On the 15th November 1945 the learned Acting Judge delivered judgment. p. 51.

On the question of jurisdiction he held as follows :—

" I take the view that in the cases which the Supreme Court will not try because they involve merely a title to a dignity or honour and nothing else, the Native Court of the area is given full jurisdiction. If the succession to a chieftaincy has to be determined p. 54, l. 47.

according to Native Law and Custom, then the relevant Native Court is given the necessary jurisdiction provided as will be seen, no additional claim is made for, or relates to, money or other property. In those cases which involve a title to a position of mere dignity and honour plus any additional claim for, or relating to, money or other property, no native court except a Grade A Native Court has been given any jurisdiction. According to the schedule to the Native Courts Ordinance 1933, the civil jurisdiction of each grade of Native Courts may be summarised thus—subject of course to any limitations prescribed in the warrant of the particular native court, or to any extensions made under the provisions of section 11A, or otherwise—

1. Grade A Native Courts have full jurisdiction in all civil actions."

On the powers of the different Native Courts the learned Acting Judge held :—

59, l. 25. "A Magistrate's Court will certainly have jurisdiction concerning property the value whereof comes within the monetary limits of its jurisdiction. A Grade A Native Court has full jurisdiction. The relevant Grade B, C or D Native Court may have jurisdiction to award damages only in cases of the tortious detinue or conversion of that property, if and only if, the words 'Debt demand or damages' are capable of including personal actions of tort. If those words 'debt, demand or damages' as used in the Schedule to the Native Courts Ordinance do not include personal actions for tort, then, no native court except a Grade A Court has any jurisdiction because the words common to Courts of Grades B, C, and D are: 'full jurisdiction in cases in which no claim is made for and which do not relate to, money or other property.' No jurisdiction to grant an injunction to stay waste or alienation or for the detention and preservation of any property is vested in any Grade B, C, or D Native Court."

The learned Acting Judge further held that there was no Grade A Native Court in Abeokuta and said as follows :—

60, l. 51. "This cause concerning these 2 chieftaincies involves claims which relate to money and other property. The jurisdiction therefore of every Native Court in Abeokuta is ousted. There is no Grade A Native Court in Abeokuta. These particular perquisites attaching to the office of title holders cannot be described as 'a debt' or 'a demand' or 'damages' and cannot come within the scope of the Schedule to the Native Courts Ordinance 1933. No order of the Governor in Council has been exhibited to this Court as having been made under the provisions of Section 11A of the Native Courts Ordinance 1933, as enacted by Ordinance No. 8 of 1938. No existing Native Court in Abeokuta has statutory jurisdiction to make a declaration or grant an injunction."

In conclusion the learned Acting Judge held that he was entitled to hear the case and said as follows :—

61, l. 15. "I am satisfied that the titles to chieftaincies are involved and that pecuniary interests cognisable by the Supreme Court are also

involved. In my considered opinion, a Judge of the Supreme Court is by the law of the land and on the authority of *Laoye & Others* vs. *Ojetunde* (*supra*), which included a claim to landed property and also chattels, the sole judge who has jurisdiction to hear and determine this matter, and I now propose to decide it, undeterred by the provisions of Section 39 of the Native Courts Ordinance 1933."

On the question of the appointments of the 2nd and 3rd Appellants as Oluwo and Balogun of Iporo the learned Acting Judge found that they p. 70, l. 40.
10 were contrary to Native Law and Custom and granted the injunction p. 64, l. 40.
prayed for.

With regard to the pro forma Respondent (1st Defendant) the learned Acting Judge said :— p. 70, l. 31.

"As I am completely satisfied that the Alakes (pro forma Respondent) part in this matter was far from all criticism other than that which I have made, and that he was actuated by the highest motives for the good of his people, there will be merely nominal judgment against him with no costs either to the Plaintiffs (Respondents) against him personally, and with no costs in his
20 favour against the Plaintiffs (Respondents)."

In the result judgment was entered for the Respondents with costs p. 71, l. 1.
against the Appellants.

18. Against the above judgment the Appellants appealed to the West African Court of Appeal and an Order granting final leave to appeal was granted on the 31st May 1946. p. 71, l. 10.

19. The appeal came on for hearing before Verity C.J. Lucie-Smith C.J. and M'Carthy J. A joint judgment was delivered on the 12th November p. 86.
1946.

In the course of their judgment their Honours said :—

30 "It was also submitted that the Supreme Court had no p. 87, l. 16.
jurisdiction to entertain the action by reason of the opening words of section 12 of the Supreme Court Ordinance 1945, this case being one in which a Native Court has jurisdiction. This point was raised before the learned trial Judge who held that he had nevertheless jurisdiction. It is true that the learned Judge, as alleged by one of the grounds of appeal, appears to have made a slip in finding that there was no native Court entitled to exercise jurisdiction in this case. Reference to the Warrant of the appropriate Grade 'A' Native Court assures us that that Court has in fact such jurisdiction.
40 The erroneous finding of the trial Judge, however, does not affect the main question for he did not base his decision as to his assumption of jurisdiction upon this finding.

Section 12 of the Ordinance referred to defines the exercise of the jurisdiction conferred upon the Supreme Court by the preceding section and enacts that this jurisdiction shall be exercised 'subject to such jurisdiction as may for the time being be vested by Ordinance in Native Courts.' It is contended on behalf of the Appellants that by reason of these words the jurisdiction of the Supreme Court is

ousted in every case in which jurisdiction is vested in a Native Court by any Ordinance. To this the Respondents reply that these words bear no such interpretation and do not impose any such limitation upon the exercise of the jurisdiction of the Supreme Court—a limitation which would, it is submitted, deprive the Supreme Court of much of its jurisdiction. The adoption of any such interpretation must certainly be approached with caution and we must be at pains to construe the words used by the legislature in no other sense than that in which they express the intention of the legislature."

* * * * *

p. 88, l. 16. "Clearly there must be some other way of construing these words in order to give effect to the intention of the legislature without straining their meaning. It appears to us that no other reasonable interpretation can be given to them than that the Supreme Court shall exercise its jurisdiction subject to that of the Native Courts so that where a native court has exercised or is exercising the jurisdiction vested in it by Ordinance the jurisdiction of the Supreme Court shall not supersede it and shall not be exercised in the same matter. This is a limitation obviously desirable wheresoever there may exist courts of equal and concurrent jurisdiction within the same area and such an interpretation gives coherence to the whole section and meaning to each part thereof."

Their Honours then proceeded to consider a number of cases relevant
p. 89, l. 5. to the jurisdiction of the Supreme Court and held that the Court had
p. 91, l. 16. jurisdiction to entertain the suit in like manner as in the case of *Laoye* v. *Ojetunde*.

Their Honours then dealt with the main issue as to the regularity of
p. 91, l. 32. the installation of the 2nd and 3rd Appellants as Olowu and Balogun of
p. 94, l. 8. Iporo respectively and held that the installation was contrary to Native Law and Custom.

With regard to the position of the pro forma Respondent their Honours held as follows :—

p. 94, l. 22. "It is unnecessary for this Court to decide whether the act of the 1st Appellant was done by him in his capacity as Native Authority or whether he comes within the protection afforded him as such, for we are satisfied that he is a person within the class protected by Cap. 25 and that the act done by him was done in intended execution of a public duty within the meaning of section 2 of that enactment. No action therefore lay against him in respect of the act alleged and he should have been dismissed from the suit."

20. The appeal was accordingly dismissed with costs against the
p. 94, l. 47. Appellants and the judgment of the Lower Court was varied in so far only
p. 95, l. 5. as the pro forma Respondent (1st Defendant) was concerned, judgment being entered in his favour.

From that judgment the Appellants appealed to His Majesty in Council.

21. An Order granting final leave to appeal to His Majesty in Council was made on the 14th April 1947. p. 97.

22. It is respectfully submitted that this appeal should be allowed for the following among other

## REASONS

(1) BECAUSE there is a Grade A Native Court in Abeokuta.

(2) BECAUSE a Grade A Native Court is vested with the necessary powers to hear this case.

(3) BECAUSE the Trial Court erred in finding that there is no Grade A Native Court in Abeokuta.

(4) BECAUSE under Section 12 of the Supreme Court Ordinance No. 23 of 1943 the original jurisdiction lay with the Native Court.

(5) BECAUSE the appointment of the 2nd and 3rd Appellants in the office of Oluwo of Iporo and Balogun of Iporo respectively was not contrary to Native Law and Custom.

(6) BECAUSE the judgment of the West African Court of Appeal is against the weight of evidence.

L. E. H. FELLOWS.

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AND

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# Case on behalf of the Appellants.

A. L. BRYDEN & CO.,
Craig's Court House,
Craig's Court,
25 Whitehall,
London, S.W.1,
*Solicitors for the Appellants.*

The Solicitors' Law Stationery Society, Ltd., Law and Parliamentary Printers
Abbey House, S.W.1. WL2158-38835