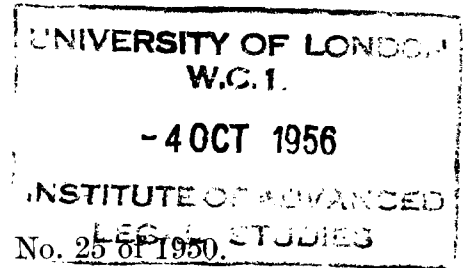


10. 1952.



CASE FOR THE APPELLANT

In the Privy Council.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL

BETWEEN

MEMUDU LAGUNJU (Plaintiff) APPELLANT

AND

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE (Defendants) RESPONDENTS.

CASE FOR THE APPELLANT

1.—This Appeal which is brought from a Judgment of the West African Court of Appeal primarily concerns the right of succession to the Stool of Timi of Ede following upon the death on the 24th January, 1946, of Sanusi Akangbe of the Ruling House of Ajenju. RECORD
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p. 127

2.—Certain privileges are attached to the Stool of Timi, which is the Nigerian Head Chieftainship of Ede Town in the Ibadan District of Oyo Province and a salary is paid to the holder of the office. The loss of the title and of the honour and privileges of this Stool, to which the Appellant was duly elected, forms the basis of the proceedings herein and the Appellant claims, *inter alia*, an injunction to restrain the second Defendant J. A. Laoye from performing the duties of Timi and from receiving the salary or stipend aforesaid. 10

3.—The facts as to the method of selection of a Timi are, as found by Jibowu J. as follows :— p. 104, l. 27

(1) There is a body of chiefs known as Kingmakers who meet and decide which ruling house should be called on to recommend a candidate for appointment to the Stool of the Timi when vacant.

(2) Selection of the candidate is made by his ruling house which forwards his name to the Kingmakers.

(3) The Kingmakers then consult Ifa oracle to see if he is acceptable.

(4) If acceptable to Ifa, sacrifice has to be performed.

(5) The Kingmakers then appoint him, and inform the minor chiefs and the townspeople but there must be unanimity among the Kingmakers in making the appointment.

(6) The approval of the Olubadan is then sought and customary gifts sent to the Olubadan for himself, his son or Prime Minister and his household.

(7) The selected candidate is installed when approval of the 10
Olubadan is received.

(8) The Timis are not appointed from the same house.

(9) A man with a living father through whom he claims a right to the Stool is not appointed a Timi.

The reference in (8) above is to the custom that Timis are not successively appointed from the same house or family within the Township.

4.—The first Defendant-Respondent is the Council over which the Chief known as the Olubadan aforesaid presides. This Council was the Native Authority for Ibadan and District by virtue of the Native Authority Ordinance No. 17 of 1943 and the Timi of Ede presides over the Ede District 20
Council which was subordinate to the Olubadan-in-Council.

5.—The point of law in this case is as to the construction of Section 2 (2) of the Appointment and Deposition of Chiefs Ordinance, Cap. 12 of The Laws of Nigeria 1948 (No. 14 of 1930 as amended by No. 20 of 1945). The Text of the Ordinance is as follows :—

AN ORDINANCE TO PROVIDE FOR THE APPOINTMENT AND
DEPOSITION OF CHIEFS.

1. This Ordinance may be cited as the Appointment and Deposition of Chiefs Ordinance and shall apply to the Colony and Protectorate (including the Cameroons under British Mandate). 30

2. (1) Upon the death, resignation or deposition of any chief or of any head chief, the Governor may approve as the successor of such chief or head chief, as the case may be, any person appointed in that behalf by those entitled by native law and custom so to appoint in accordance with native law and custom : and if no appointment is made before the expiration of such interval as is usual under native law and custom, the Governor may himself appoint such person as he may deem fit and proper to carry out such duties incidental to the Chieftaincy as it may be necessary to perform.

(2) In the case of any dispute the Governor, after due inquiry and consultation with the persons concerned in the selection, shall be the sole judge as to whether any appointment of a chief has been made in accordance with native law and custom.

3. The Governor may grade head chiefs as first, second, third, fourth or fifth class according to their importance.

10 4. The Governor, after due inquiry and consultation with the persons concerned in the selection, may depose any chief or any head chief whether appointed before or after the commencement of this Ordinance, if after inquiry he is satisfied that such deposition is required according to native law and custom or is necessary in the interests of peace, or order or good government.

20 5. For the purposes of Sections 2 and 4 of this Ordinance, the words "chief" and "head chief" mean a chief or a head chief who has been appointed to the office of native authority under the provisions of the Native Authority, Ordinance or which office is deemed to be constituted thereunder, or who is a member of a native authority constituted or deemed to be constituted under the provisions of that Ordinance or, where the office of native authority so appointed or deemed to be constituted, is a chief associated with a council, any chief or head chief who is a member of that council and any chief or head chief who is a member of an advisory council.

30 6.—Contrary to the contention of the Appellant and to the findings *Supra* p. 3 of fact as to the method of selection of a Timi, the 1st Defendant-Respondent The Olubadan-in-Council by its Defence alleged that the 1st Respondent Council has the right, *inter alia*, to approve a Candidate who was not properly elected according to native law and custom. The 2nd Defendant-Respondent, J. A. Laoye, by his Defence alleged, contrary to the findings of fact set out in paragraph 11 that he was "in accordance with native law and custom selected by a majority of the Chiefs of Ede." p. 7, l. 30 p. 8, l. 45

7.—The Appellant, on the other hand, contends that no selection which is not in accordance with native law and custom is valid; that no appointment is valid unless made in accordance therewith; and that neither the Olubadan nor the 1st Respondent Council nor the Governor, acting under the Ordinance aforesaid, has power to approve an appointment of a Timi unless such appointment has been made in accordance with native law and custom as set out above.

40 8.—The Appellant further contends that the prerequisites of the Governor's adjudication are

(1) that the appointment of a chief has been made in accordance with native law and custom, and

RECORD

(2) that due enquiry has been held and consultation taken with the persons concerned in the selection with the object of ascertaining that such selection was in accordance with native law and custom.

9.—In accordance with native law and custom it was the Appellant who was duly appointed to the Stool of Timi, the findings of fact being as follows :—

p. 109, l. 42

(1) The Kingmakers decided that Oduniyi Lagunju, or Oloro House should present a candidate for appointment.

(2) The Appellant was presented by Oduniyi Lagunju or 10 Oloro House to the Kingmakers for appointment.

(3) The Kingmakers consulted Ifa oracle about the Appellant and he was accepted.

(4) The Kingmakers unanimously selected him and recommended his appointment for approval.

(5) The Appellant sent the customary gifts to the Olubadan, his son or Prime Minister and his household through the Kingmakers.

(6) The Olubadan approved of the Appellant's appointment.

10.—The learned Judge further declared

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p. 111, l. 40

(1) That the selection of the 2nd Defendant-Respondent and his subsequent installation on the 19th December, 1946, as Timi of Ede is contrary to Native Law and Custom governing the selection of a Timi of Ede and is therefore null and void and is hereby set aside.

p. 111, l. 44

(2) that the Plaintiff-Appellant is the person qualified by Native Law and Custom to hold the post and enjoy the title of the Timi of Ede which became vacant on the 24th January, 1946.

p. 112, l. 1

(3) that the Plaintiff was duly selected by the Ede Kingmakers as Timi of Ede in April, 1946, and that the selection was 30 in accordance with the native law and custom

p. 112, l. 4 And the Court granted an injunction restraining the 2nd Respondent from performing the duties of the Timi of Ede and from receiving the salary or stipend attached to that office.

p. 109, l. 29 11.—The 2nd Respondent, J. A. Laoye, contended that he was appointed on or about the 19th December, 1946, to the Stool of Timi of Ede, but the learned Trial Judge decided that such appointment was not in accordance with native law and custom because

(1) The Kingmakers did not decide that it was the turn of Ajeniju ruling house to present a candidate. RECORD

(2) He was not presented by Ajeniju ruling house to the Kingmakers.

(3) Ifa oracle was not consulted about him by the Kingmakers before his installation.

(4) The Kingmakers did not unanimously appoint him and recommend his appointment to the Olubadan-in-Council.

(5) He had a father living.

10 (6) He belongs to Ajeniju House like the last Timi, Sanusi Akangbe, his immediate predecessor.

12.—The history of the litigation is as follows :—

(1) The Appellant issued a Civil Summons in the Supreme Court of the Ibadan Judicial Division against the Respondents on the 15th April, 1947, claiming (1) an injunction to restrain the 2nd Respondent from performing the duties of and from receiving the salary attached to the office of Timi of Ede, and (2) a declaration that (a) the 1st Respondent Council was not entitled to override the decision of the Ede Kingmakers in the selection of the Timi of Ede, (b) that the selection and installation of the 2nd Respondent as Timi by the 1st Respondent Council was contrary to native law and custom and therefore void, (c) that the Appellant is the person entitled to hold the office of Timi, and (d) that the Appellant in April or May, 1946, was duly selected by the Ede Kingmakers as Timi, and that selection was made in accordance with native law and custom. p. 4
p. 5

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(2) At the hearing of the action on the 14th August, 1947, before Jibowu, J., in the Supreme Court of Nigeria Counsel for the Respondents submitted that the Jurisdiction of the Court had been ousted by reason of the Ordinance set out in paragraph 5 above. p. 9

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(3) The learned Judge's decision on the preliminary point was given on the 28th August, 1947, and he held that the Court had no jurisdiction to try the action. He based his decision upon the view that the Senior Resident's letter approving the appointment of the 2nd Respondent was itself conclusive proof that the Appointment and Deposition of Chiefs Ordinance had been complied with and that the powers vested in the Governor thereby had been properly exercised. p. 12
p. 160
Exhibit 9

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(4) The Appellant appealed to the West African Court of Appeal on the grounds, *inter alia*, that p. 22

p. 160

(a) the Resident's said letter did not show that due enquiry had been held by the Resident (to whom the Governor's powers had been delegated) as to whether the appointment of the 2nd Respondent had been made in accordance with Native Law and Custom.

(b) the learned Judge did not consider whether the conditions laid down in the Ordinance had been performed.

(c) in fact the said conditions had not been complied with, since no due enquiry had been held and no consultation had been taken with the persons concerned in the selection. 10

(d) the Resident's letter as such could not and did not oust the Court's jurisdiction.

p. 26

p. 29, l. 38

(5) On the 10th November, 1947, the West African Court of Appeal (Sir Walter Harragin, C.J., Gold Coast President, Sir John Verity, C.J., Nigeria, and J. A. Lucie-Smith, C.J., Sierra Leone) allowed the appeal holding that the Resident's letter of approval did not sufficiently indicate that a due enquiry had been held. They further held that "clearly if it could be shown that no "due enquiry or consultation had taken place then the conditions "precedent to the Governor being vested with the powers of "sole Judge" has not been fulfilled and the Court would certainly "have the power to set aside the order." 20

p. 25

The formal order of the West African Court of Appeal dated the 10th November, 1947, repeats the last paragraph of the judgment of the same date and directs the Trial Court—"to "determine the issues before it after hearing evidence tendered "by both parties in the light of the interpretation placed by this "Court upon section 2(2) of Ordinance 14 of 1930 as amended by "Ordinance 20 of 1945."

p. 39

p. 83

p. 39, l. 33

(6) The action accordingly was re-tried before Jibowu, J., 30 on the 12th, 13th, 14th, 15th, 16th, 17th and 19th January, 1948, and a reserved judgment was delivered on the 7th February, 1948. The learned Judge heard argument as to the meaning of the West African Court of Appeal's directions to the trial Court and then held "In the issues to be tried therefor is included the question "of jurisdiction on which evidence may be led. If on hearing "evidence the Court is satisfied that enquiry had been made in "the light of the interpretation placed on s. 2(2) of Ordinance "No. 14 of 1930 as amended by No. 20 of 1945, the Court will then "dismiss the Plaintiff's action on the ground that the jurisdiction "of the Court has been ousted and, if not, the Court will give a 40 "decision on the merits."

(7) The learned Judge then decided that on the evidence no due enquiry had been held and the jurisdiction of the Court was, therefore, not ousted.

(8) The issues as to native law and custom were decided by the learned Judge in favour of the Appellants, and he declared that the Plaintiff had been duly appointed to the Stool of Timi and found the facts set out in paragraph 8 and made the declaration set out in paragraph 9 hereof. p. 111

The learned Judge granted the injunction sought and ordered that the 2nd Defendant cease from performing the duties of the Timi of Ede and from receiving the salary or stipend attached to the said office. p. 112

10 (9) The Respondents then appealed to the West African Court of Appeal in part differently constituted (Sir H. W. Butler Blackhall, K.C., President, Sir John Verity, and A. W. Lewey, K.C.). The appeal was heard on the 11th, 15th, 16th and 17th November, 1948, and reserved judgments were delivered by all three learned Judges of Appeal on the 4th December, 1948, wherein the appeal court held, contrary to its own decision dated the 10th November, 1947 (set out in sub-paragraph (5) hereof), that the Trial Judge having found as a fact that there had been no due enquiry was wrong in assuming that jurisdiction remained in the Court and in adjudicating upon the merits of the action; and further that the Trial Judge was wrong in his construction of the Ordinance and consequently in adjudicating in an action where he had no jurisdiction. p. 123 p. 127

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(10) The appeal was allowed, with costs and the Judgment in the Court below set aside. p. 131

It is from this judgment of the West African Court of Appeal that the present appeal is brought.

13.—Final leave to appeal to His Majesty's Privy Council was granted on the 20th July, 1949. p. 137

30 14.—The Appellant humbly submits that the Judgment of the West African Court of Appeal dated the 4th December, 1948, was wrong. No appeal was brought against the first Judgment of the Court of Appeal, and that Court itself was not entitled to reverse its own decision. p. 127

15.—The Appellant humbly submits that the unappealed decision of the Court of Appeal was right in referring the matter to the Trial Judge, who, having jurisdiction, was entitled, as directed by the Court of Appeal, to find the facts and to give Judgment founded upon them. p. 26

40 16.—It is submitted that his Judgment should stand and effect should be given to his declaration that the Plaintiff was duly appointed Timi of Ede; that the Judgment of the Court of Appeal dated the 4th December, p. 83

RECORD 1948, should be set aside ; and that Judgment, with costs, should be entered
 — for the Appellant for the following, amongst other :—

REASONS.

1. BECAUSE it is the intention of the aforesaid Ordinance that the election to the Stool of Timi should be made in accordance with native law and custom.
2. BECAUSE the Respondents-Defendants have not the right, as they allege, to approve a candidate who was not properly selected according to native law and custom.
3. BECAUSE the persons concerned in the selection of a candidate for the appointment of a Chief, made in accordance with native law and custom, are, as Jibowu, J., found, the members of the appropriate Ruling House (not being the House of the last Timi) and the Kingmakers, to whom the name of the selected candidate is submitted and by whom, after the requisite ceremonial, the appointment is unanimously made. 10
4. BECAUSE it is not in accordance with native law and custom that the appointment of the Timi should be made by a "majority of Chiefs and people of Ede." 20
5. BECAUSE the learned Judge was right in his findings of fact that the Plaintiff-Appellant was duly appointed to the Stool of Timi and in his declaration that the Appellant is the person qualified and selected as Timi in accordance with native law and custom in or about April, 1946.
6. BECAUSE the learned Judge was also right in finding that the alleged appointment of the 2nd Respondent in or about December, 1946, was not in accordance with native law and custom.
7. BECAUSE under the aforesaid Ordinance in the case of a dispute such as is here in question, the Governor or his Deputy in determining the validity of an appointment of a Chief, must first hold due enquiry and consultation with the persons concerned in his selection in order to determine, as he must determine, that such appointment has been made in accordance with native law and custom. 30
8. BECAUSE the West African Court of Appeal was right in its first Judgment of 10th February, 1947, in holding that the letter ex "G" clearly did not sufficiently indicate a due enquiry and consultation with the persons concerned. 40

p. 160, l. 19

p. 160

9. BECAUSE in fact no such enquiry and consultation was held or alleged to have been held : nor was there any evidence upon which the Governor did or could hold that the appointment had been made in accordance with native law and custom. RECORD
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10. BECAUSE the West African Court of Appeal by their said Judgment, was also right in holding that the jurisdiction of the Court is only ousted by a determination of the Governor made in accordance with the Ordinance and following upon due enquiry and consultation that an appointment has been made, as it must be made, in accordance with native law and custom as aforesaid. p. 26
11. BECAUSE no such determination was made in this case and the jurisdiction of the Court was not thereby ousted.
12. BECAUSE the West African Court of Appeal was then right in allowing the Appeal of the Appellant and in returning the case to the Trial Court to determine the issues before it.
13. BECAUSE no appeal was brought against the said Judgment.
14. BECAUSE Jibowu J. was right in his findings of fact and in declaring on 7th February, 1948, that the Appellant was duly selected as Timi in accordance with native law and custom and in granting the injunction sought by the Appellant. p. 83
15. BECAUSE the West African Court of Appeal, having determined in its first Judgment that the Court had jurisdiction and that the learned Judge should determine the issues before it, was wrong in deciding by its second Judgment that the learned Judge had no jurisdiction and was wrong to consider the merits of the case. p. 26
p. 127
16. BECAUSE the West African Court of Appeal was not entitled thus to reverse its own decision. p. 127
17. BECAUSE on the facts of the case and the law applicable thereto the decision of the Supreme Court of Nigeria dated 7th February, 1948, was right and the decision of the West African Court of Appeal dated 4th December, 1948, is wrong.

S. COPE MORGAN.

F. HOWARD COLLIER.

In the Privy Council.

No. 25 of 1950.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL.

BETWEEN

MEMUDU LAGUNJU
(*Plaintiff*) APPELLANT

AND

1. OLUBADAN-IN-COUNCIL
2. J. ADETOYESE LAOYE
(*Defendants*) RESPONDENTS

CASE FOR THE APPELLANT

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