

11, 1952

31401

No. 54 of 1950.

# In the Privy Council.

UNIVERSITY OF LONDON  
 W.C.1.  
 12 NOV 1956  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

APPELLANTS CASE

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

YESUFU ABIODUN, Chief Oniru (Defendant/Appellant) *Appellant*

AND

THE CHIEF SECRETARY TO THE GOVERNMENT  
 (Plaintiff/Respondent) . . . . . *Respondent.*

## 10 Case on behalf of the Appellant

RECORD.

1. This is an Appeal from an Order of the West African Court of Appeal (Blackhall P., Verity C.J., and Lewey J.A.) dated the 22nd day of November, 1949, varying a Judgment of the Supreme Court of Nigeria, Lagos Division (Jibowu J.) whereby, on the Respondent's summons, the Supreme Court of Nigeria estimated the amount of compensation to be paid to the Appellant in respect of the compulsory acquisition by the Respondent of certain land. p. 60.  
p. 37.

20 2. The principal questions involved in this Appeal are: whether compensation was estimated on a proper basis, regard being had to the evidence and to the circumstances of the case and, if not, on what basis and in what amount it should be determined: and whether the Appellate Court should have substituted its own estimate of the amount of compensation for the estimate of the Court below, if the Court below had estimated the same on a proper basis.

3. The relevant Nigerian Ordinances relating to compensation for the compulsory acquisition of land are the Public Lands Acquisition Ordinance of Nigeria (Chapter 88), and the Public Lands Acquisition (Amendment) Ordinance of Nigeria (No. 6 of 1945) which came into force on the 19th day of April, 1945. The material provisions thereof are as follows:—

### 30 PUBLIC LANDS ACQUISITION ORDINANCE (Chapter 88).

10. If for six weeks after the service and publication as aforesaid of such notice no claim shall be lodged with the Secretary in respect of such lands, or if the person who may have lodged any claim and the Governor shall not agree as to the amount of the compensation

to be paid for the estate or interest in such lands belonging to such person, or which he is by this Ordinance enabled to sell and convey, or if such person has not given satisfactory evidence in support of his claim or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the Supreme Court, which shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Lieutenant-Governor or any person holding or claiming any estate or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by this Ordinance to sell and convey the same. 10

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15. In estimating the compensation to be given for any lands or any estate or interest therein or for any mesne profits thereof, the Supreme Court shall—

(a) assess the same according to what it shall find to have been the value of such lands, estate or interest or profits at the time when the Lieutenant-Governor served notices to acquire the same, and without regard to any improvements or works made or constructed thereafter on the said lands. 20

\* \* \* \* \*

(c) have regard not only to the value of the lands required for public purposes but also to the damage, if any, to be sustained by the owner by reason of the severance of such lands from other lands belonging to such owner or other injurious affecting of such other lands by the exercise of the powers conferred by this Ordinance.

PUBLIC LANDS ACQUISITION (AMENDMENT) ORDINANCE (No. 6 of 1945).

5. Section 15 of the principal Ordinance is hereby repealed and the following substituted therefor:— 30

“ 15. In estimating the compensation to be given for any lands or any estate or interest therein or for any mesne profits thereof the Court shall act on the following principles:—

(a) no allowance shall be made on account of the acquisition being compulsory;

(b) the value of the land, estate, interest or profits shall, subject as hereinafter provided, be taken to be the amount which such lands, estate, interest or profits if sold in the open market by a willing seller might be expected to realise; 40

\* \* \* \* \*

(d) the Court may have regard not only to the value of the lands, estate, interest or profits to be acquired but also to the damage if any, to be sustained by the owner by reason of the severance of such lands from other lands belonging to such owner or other injurious circumstances affecting such other lands by such acquisition :

10 Provided that the Court in estimating such compensation shall assess the same according to what it finds to have been the value of such lands, estate, interest or profits at the time when notice of intention to acquire was served and without regard to any improvements or works made or constructed or to be made or constructed thereafter on such lands : ”

\* \* \* \* \*

4. The circumstances out of which this appeal arises are as follows :—

20 The land which is the subject-matter of this Appeal comprises some 1074·6 acres, consisting of approximately 390·2 acres of dry land and 684·4 acres of swamp, and is situate between Five Cowrie Creek and Victoria Beach, Lagos, in the immediate vicinity of the town of Lagos, Nigeria. The said land is shown verged pink on Plan No. L.2813 marked “ Exhibit B ” (hereinafter referred to as “ the said Plan ”). p. 39, ll. 8, 9, 10.  
p. 37, l. 37.  
Part II.

5. The land was in the ownership of the Nigerian Oniru Chieftancy Family and, by virtue of Government Notice No. 600 dated the 13th day of May, 1944, was acquired, together with adjacent land, by the Respondent under the Public Lands Acquisition Ordinance for the purposes set out in the said Notice, namely :— p. 38, l. 36.  
p. 64.

30 “ For sanitary improvements, including reclamation, for the improvement of the Township of Lagos, for obtaining control over land contiguous to the port, for obtaining control over land the value of which will be enhanced by the construction of any public works and for exclusive Government use and for the general public use.”

The said notice was first published in the *Nigerian Gazette* of 18th May, 1944, and served on the Appellant on the 22nd May, 1944. p. 64.  
p. 39, l. 35.

6. Parts of the land have frontages on the road from Lagos to Victoria Beach and are suitable for residential or other building development, being the areas marked “ A.1.” (112·5 acres) and “ A.2.” (7·7 acres) on the said Plan. p. 71, l. 20.  
p. 73, l. 1.

40 7. The area marked “ B ” on the said Plan (115·7 acres) lies lower and is less suitable for building development than areas A.1 or A.2 and, at the time of acquisition, was being used as grazing land. p. 73, ll. 21-28.

p. 73, l. 32.  
p. 41, l. 40.  
p. 41, ll. 40-44.

8. The areas marked " C.1 " to " C.10 " on the said Plan (123·9 acres) are surrounded, or mainly surrounded, by swamp but C.1 is the site of a village and adjoins solid land outside the acquired land and C.2 to C.10 (inclusive) are the sites of fishing villages on, or adjacent to, water frontages.

p. 74, l. 9.  
p. 41, l. 17.

9. The areas marked " D.1 " to " D.6 " on the said Plan (30·4 acres) are low-lying areas surrounded by swamp and were uninhabited, although not uninhabitable, at the time of acquisition of the said land.

p. 74, l. 14.  
p. 10, ll. 43-48.  
p. 11, ll. 1, 2.

10. The remainder of the land acquired (684·4 acres) is swamp land but income was derived by the owners therefrom by the sale of mangrove, coconut and other trees or their fruits.

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p. 39, l. 40.  
p. 69, ll. 1-6.

11. Between about the year 1932 and the date of acquisition of the said land the Appellant had laid out and sold off as building plots an area of approximately 13 acres situate at the South-West corner of the Area A.1 and hatched yellow on the said Plan adjoining the land which is the subject-matter of this Appeal. The said area, and the plots therein, are more particularly defined on a plan marked " Exhibit Q." A schedule of sales, dates of conveyances and prices of these plots, or plots adjacent thereto, is as follows :—

Part II.

## SALES DURING 1933 TO 1942 (INCLUSIVE)

p. 69, l. 7.  
p. 77, l. 3.

Sixteen sales totalling 4·93 acres for £499 i.e. at the rate of 20 £101 per acre.

## SALES DURING 1943

p. 69, l. 11.  
p. 78, l. 1.

Twelve sales, all during the months of January to April, 1943, (inclusive), totalling 5·165 acres for £550 i.e. at the rate of £106.10.0 per acre.

## SALES DURING 1944

p. 78, l. 22.

Date (of conveyance)	Area (sq. yds.)	Price (£)	Price per acre (£)	Purchaser	
4 May 1944 ..	934·4	50	260	A. O. Somorin.	30
17 May 1944 ..	866·6	50	280	J. A. Aromire.	
7 June 1944 ..	2,075·0	40	93	H. Wusu.	
7 June 1944 ..	1,784·0	40	109	A. E. Meadows.	

p. 76.  
p. 76, l. 8.

In addition to the above sales there were further transactions in land in the vicinity of the land acquired, the only outright sale within five years of the date of the acquisition being by conveyance dated 22nd August, 1944, to J. D. Athenaku of 759·45 sq. yds. near the road from Lagos to Victoria Beach for the sum of £30 i.e. at the rate of approximately £191 per acre.

p. 12.  
p. 67, l. 13.

12. During the years 1944 and 1945 compensation was offered by the Respondent to A. O. Somorin and one P. G. O. Nwajie as owners of two plots of 934·4 sq. yds. and 614·65 sq. yds. respectively included in the area acquired by the said notice, but outside the area which is the

subject-matter of this Appeal, in the sums of £60 and £23.15.3 respectively. The said sums included an additional sum of 10 per cent. "for early and amicable settlement" and, after deduction of the same, respectively work out at the approximate rates of £272 and £168.6.0 per acre. The said offer was accepted by A. O. Somorin. The letter dated 21st November, 1945, containing the Respondent's offer to P. G. O. Nwajie, is printed in the Record.

p. 47, l. 10.  
p. 40, l. 20.  
p. 67, l. 13.

13. By writ of summons dated the 8th day of September, 1947, and served on the Appellant and others the Respondent referred for determination by the Supreme Court of Nigeria under the Public Lands Acquisition Ordinance the following questions: (a) the persons entitled to the land which is the subject-matter of this Appeal; (b) the amount of compensation payable in respect of the said land (excluding buildings erected) and of the economic crops growing thereon. The said writ stated that the Respondent was willing to pay compensation in the sum of £23,503. The first of these questions was settled by a Memorandum of Terms of Settlement dated 1st December, 1948, whereby it was agreed between the Appellant and all other persons interested in the said land that the compensation therefor should be paid to the Appellant.

p. 2, l. 10.

p. 30, l. 10.

14. On the 15th day of October, 1947, particulars of claim were filed by the Appellant claiming 1s. 6d. per sq. yd. for dry land, £10 per acre for swamp and a sum of £6,500 for loss of income or profits from the sale of mangrove trees and other fruits of the said land. The said claim amounted to the total sum of £147,240.

p. 3, l. 16.

p. 39, l. 16.

15. In a written report dated 25th November, 1945, the Assistant Commissioner of Lands, W. B. Hewett, acting on behalf of the Respondent, made his valuation of the said land for the purposes of compensation in the sum of £23,611. The said valuation was made up as follows:—

p. 68.

(A) Area A.1 was described as suitable for development as a building estate and, on the basis of an average price of £115.5.0 per acre realised in 16 sales which took place during the years 1943 and 1944 hereinbefore set out, was valued, if sold off in plots, at £120 per acre. By virtue of a further calculation in respect of deferment and the purported requirements of the Land Development (Provision for Roads) Ordinance (No. 35 of 1933) in respect of the space required for road reservation, the said valuation was reduced to £80 per acre. The total area of A.1 was therefore valued in the sum of £9,000.

p. 71, l. 19.

p. 71, l. 14.

p. 71, l. 23.

p. 72, l. 38.

(B) Area A.2 was described as not comparable with A.1 as residential building land, being surrounded by swamp on 3 sides, but slightly nearer to Lagos and with access to Victoria Beach Road. In evidence Mr. Hewett stated that he considered A.2 as slightly more valuable than A.1 and in the said Report A.2 was valued at £90 per acre. The total area of A.2 was therefore valued at £693.

p. 73, l. 1.

p. 26, l. 26.

p. 73, l. 11.

(C) Area B was described as low-lying and possessing little prospective building value and was valued at one-half the value of A.1 or £40 per acre. The total area of B was therefore valued at £4,628.

p. 73, l. 12.

p. 73, l. 27.

- p. 73, l. 29. (D) Areas C.1 to C.10 (inclusive) were described as either completely surrounded by swamp, or surrounded by swamp behind, and valuable solely in their ability to accommodate fishing villages. These areas were valued at £40 per acre or £4,956 in respect of the whole C areas.
- p. 74, l. 7. (E) Areas D.1 to D.6 (inclusive) were described as " uninhabited patches of dry land some of them only just above swamp level and are entirely surrounded by swamp." They were valued at £30 per acre or £912 in respect of the whole D areas.
- p. 74, l. 14. (F) The remaining Area of swamp was valued at £5 per acre 10 " for the extinguishment of any rights which may exist in this area " and at a rate which " has been accepted for swamp lands in Lagos on frequent occasions in the past." The total swamp area was therefore valued in the sum of £3,422.
- p. 80. 16. In an undated written report of the Provincial Forest Officer, Abeokuta Group, R. T. Gray, acting on behalf of the Respondent, the value to the owners of mangrove trees on the said land was estimated at £3.15.0 per acre, and the area covered by the same was assessed, under the supervision of Mr. Gray, at 248 acres. The total value of the remaining trees on the said land was estimated by Mr. Gray at £10. In evidence 20 Mr. Hewett estimated the income recoverable from the said mangrove trees as £62.1.0 per annum, on the basis of the ability to cut 16.5 acres per annum, and the capital value of the same at £1,241.
- p. 80, l. 5.  
p. 82, l. 25.  
p. 80, l. 31.  
p. 25, ll. 14-21.  
p. 25, l. 20.
17. The case was tried by the Supreme Court of Nigeria (Jibowu J.) on the 10th, 11th, 13th and 30th days of November, and the 1st day of December, 1948, and the 14th and 31st days of January, 1949.
- pp. 8, 12, 13, 16. 18. On behalf of the Appellant evidence was given, *inter alia*, by the Appellant, the said A. O. Somorin, T. Savage and O. Thomas, both Licensed Auctioneers and O. L. Williams, a Land Agent of Lagos, who had acted for the said P. G. O. Nwajie in the matter of the offer of compensation 30 hereinbefore referred to. On behalf of the Respondent evidence was given by the said W. B. Hewett and R. T. Gray and others.
- p. 14.  
pp. 20, 24.
- p. 37. 19. On the said 28th day of February, 1949, Judgment was delivered by Jibowu J. estimating compensation in respect of the said land in the sum of £52,505.19.4 and the claimants were awarded costs in the sum of 200 guineas.
- p. 43.
- p. 41, ll. 27-32.  
p. 40, ll. 36-41.  
p. 42, ll. 6-30.
- p. 39, ll. 26-37. 20. Jibowu J. accepted the principle of the grading of the dry areas of the land acquired but rejected the application thereto of the principles of deferment and road reservations.
- p. 39, ll. 38, 39. Jibowu J. held that compensation should be based on the value of 40 the land on or about the date of service of notice of intention to acquire, the 22nd May, 1944, and that, in estimating the same, the ascertained value of land in the vicinity should be taken as a guide.

He estimated the value of the various areas thereof as follows :— p. 43.

				£	s.	d.
Area A.1	.. ..	112·5 acres	@ £153.17.0 per acre	17,308	2	6
Area A.2	.. ..	7·7 acres	@ £153.17.0 per acre	1,184	12	10
Area B	.. ..	115·7 acres	@ £121. 0.0 per acre	13,884	0	0
Areas C.1–C.10	.. ..	123·9 acres	@ £121. 0.0 per acre	14,868	0	0
Area D.1–D.6	.. ..	30·4 acres	@ £60.10.0 per acre	1,839	4	0
Area Swamp	.. ..	684·4 acres	@ £5. 0.0 per acre	3,422	0	0

21. In respect of the various areas Jibowu J. held as follows :—

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(I) Area A.1. The average price of sales of land in the vicinity during 1943 was £106.10.0 per acre. There were 12 such sales in 1943 which took place many months before service of the notice of acquisition. There were four such sales between 4th May and 7th June, 1944, with average price of £153.17.0 per acre, and the average price of these sales represented a more correct approximation of the value of the land at the time of service of the notice of acquisition than £120 per acre put forward by the Respondent. It was a matter of common knowledge, and there was evidence which he believed, that the value of land had been going up steadily for some years in Lagos and its environs. There was a sale of land near Victoria Beach Road on 22nd August, 1944, at the rate of £191 per acre. By letter dated 21st November, 1945, compensation had been offered by the Respondent to the said P.O. Nwajie at the rate of £168.6.0 per acre. The average price of £153.17.0 between 4th May and 7th June, 1944, at a time very near the date of service of the notice of acquisition should be the basis of compensation.

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(II) Area A.2. On reference to the said Plan, both A.1 and A.2 abutted on the Victoria Beach Road but A.1 had swamp on one side only whereas A.2 had swamp on three sides. According to the said report of the Assistant Commissioner of Lands, although A.2 was nearer to Lagos by a few feet than A.1, it did not enjoy the prevailing sea wind enjoyed by A.1 and was not comparable to A.1 as residential building land. He was unable to share the view of the Assistant Commissioner of Land that A.2 was more valuable than A.1 by £10 per acre and estimated that A.2 should be paid for at the same rate as A.1 of £153.17.0 per acre.

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(III) Areas B and C.1–C.10. According to the opinion of auctioneer Thomas, lands beyond Oniru's village on A.2 were less valuable than land on the Victoria Beach Road. C.10 was stated in evidence to be "good solid ground." B and C.10 were close to each other and not far from A.2 and A.1 and should have a slightly lower value than A.2 or A.1. The value of Both B and C.10 should be estimated at £121 per acre. C.2, C.3, C.4, C.5, C.6, C.8 and C.9 had water frontages which should enhance their value in spite of swampy surroundings. C.1 adjoined another solid piece of land and C.7 was near the water front. He estimated the values of C.1–C.9 at the same rate as B and C.10, and the value of all these areas at £121 per acre.

p. 41, l. 17.

(IV) Areas D.1-D.6. These areas were uninhabited at the time of acquisition but were not uninhabitable according to the evidence of the Assistant Commissioner of Lands, and their values should be estimated at the rate of £60.10.0 per acre.

p. 41, ll. 45, 47.

p. 43, ll. 12-16.

(V) Swamp Area. There was abundant evidence that no more than £5 per acre had ever been paid for swamp land and the value thereof should be estimated at the rate offered by the Respondent of £5 per acre.

p. 43, l. 9.

On the Appellant's claim for loss of profits from mangrove and other trees on the said land and their fruits Jibowu J. stated "Coming on to the compensation claimed for swamp on the land acquired, the claimants kept no book of account and could not prove their claim for £6,500." He therefore made no award in respect of this claim. 10

pp. 44, 45.

22. By notices dated the 16th day of May, 1949, and the 7th day of June, 1949, respectively, the Appellant and the Respondent respectively appealed and cross-appealed against the said judgment to the West African Court of Appeal. The said notices are printed in the Record.

23. The appeals were heard together by the West African Court of Appeal (Blackall P., Verity C.J. and Lewey J.A.) on the 9th, 10th and 11th days of November, 1949. 20

p. 49, l. 31.

p. 47, l. 7.  
p. 49, l. 32.

p. 48, ll. 27-29.

pp. 47, 48, 49, 50.

24. For the Appellant it was contended that the value to be estimated by the Supreme Court was the value of the land acquired at the moment of notice of acquisition and that, in estimating the same by reference to sales of similar land, the Supreme Court should have considered only such sales as took place immediately prior to the date of service of the notice of acquisition, that is to say the sales which took place during May, 1944, at the rate of £260 and £280 per acre. For the Respondent it was contended that the Supreme Court was wrong in considering four sales only of similar land as a basis for the estimation of the value of the land acquired, since two of the same were unreliable being not susceptible of explanation by a general rise in land values in the vicinity of Lagos. The remaining contentions of both the Appellant and the Respondent were directed to the values of the various areas of the said land and to the applicability thereto of the principles of deferment and road reservations. The West African Court of Appeal heard no further evidence. 30

p. 50.

p. 60.

25. On the 22nd day of November, 1949, the Judgment of the West African Court of Appeal was delivered by Verity C.J. varying the Judgment of the Supreme Court of Nigeria and by Order of the West African Court of Appeal dated the said 22nd day of November, 1949, the sum of £30,646.0.0, together with a further sum for loss of profits calculated at the rate of £100 per annum from the date on which the Governor entered into possession of the said land to the date on which the said sum of £30,646.0.0 should be paid into Court, was substituted for the award of the Supreme Court as compensation payable in respect of the said acquisition. It was further ordered that the Appellants should pay to the Respondent the sum 40



of £31.10.0 as costs of the appeal and that the Order of the Court below as to costs should stand. Blackall P. and Lewey J.A. concurred in the said Judgment. p. 59, ll. 25-31.

26. Verity C.J. rejected the applicability of the principles of deferment or road reservations to the land acquired. He held that the sales of similar land during May, 1944, were "not made in such circumstances as to furnish, in my opinion, a fair test" and valued the various areas of the said land as follows:— p. 53, l. 3.  
p. 54, l. 11.  
p. 56, ll. 3-8.  
p. 59.

						£	s.	d.
10	Area A.1	.. ..	112.5 acres	@ £120 per acre	..	13,500	0	0
	Area A.2	.. ..	7.7 acres	@ £120 per acre	..	924	0	0
	Area B	.. ..	115.7 acres	@ £60 per acre	..	6,942	0	0
	Areas C.1-C.10	.. ..	123.9 acres	@ £40 per acre	..	4,946	0	0
	Areas D.1-D.6	.. ..	30.4 acres	@ £30 per acre	..	912	0	0
	Swamp Area	.. ..	684.4 acres	@ £5 per acre	..	3,422	0	0

27. In estimating the value of the various areas, Verity C.J. held as follows:—

(I) Area A.1.—The sales of land adjacent to the land acquired during May, 1944, were at prices far in excess of prices paid in the immediate past or immediate future for similar lands similarly situate and could not be accounted for by the suggestion that the value of land in Lagos and its environs had been steadily rising for some years. "Leaving out of account the two sales of May, 1944, which, as I have said, were not made in such circumstances as to furnish, in my opinion a fair test, but taking into consideration other sales of similar land similarly situate as shown in Exhibit K, I am of opinion that the learned Judge erred when he valued the land in Area A.1 at £153.17.0 per acre upon a basis which included the sales in May. On the other hand I consider the value placed upon these lands in Area A.1 by the Commissioner of Lands is a fair value having regard to the prices paid for other lands similarly situate (without deduction for deferment or road reservation) and I would value the land within this area therefore at £120 per acre." p. 55, ll. 31-40.  
p. 56, ll. 3-13.

(II) Area A.2.—Upon the evidence Verity C.J. was unable to agree with the Assistant Commissioner of Lands that A.2 should be assessed at a higher value than A.1. A.2 was nearer Lagos, enjoyed prevailing sea winds, and had access to the Victoria Beach Road, but, according to the Assistant Commissioner of Lands, was not comparable with A.1 as residential building land. He estimated that the values of the two areas as being approximately the same and valued A.2 at £120 per acre. p. 56, l. 37.  
p. 56, ll. 38-44.  
p. 56, l. 46.

(III) Area B.—Verity C.J. disagreed with the conclusion of Jibowu J. that B should have a slightly lower value than A.1 and accepted the evidence of the Assistant Commissioner of Lands, that the relative value of B was one-half of the value of A.1. Accordingly he assessed the value of B at £60 per acre. p. 57, l. 12.

p. 57, ll. 20-26

(iv) Areas C.1-C.10 and D.1-D.6.—“ As regards the areas referred to as C.1 to C.10, I was at first inclined to the view that in assessing their value the acting Commissioner for Lands had applied thereto the same principles as were applied to areas A.1, A.2, and B, being led to that view, perhaps, by Crown Counsel’s observation to which I have referred that the other areas, without apparent distinction, had been calculated upon the same basis as Area A.1. Further consideration of the evidence itself, however, makes it apparent that this was not in fact so.” The only reliable expert evidence as to the value of these areas was the evidence of the Assistant Commissioner of Lands which should be accepted. Accordingly he estimated the values of the C and D areas at the rate of £40 per acre and £30 per acre respectively. 10

p. 57, l. 41.  
p. 58, l. 9.

p. 58, l. 10.

(v) Swamp Area.—The estimate of the Supreme Court was accepted as being not seriously contested and the value of this area was estimated at £5 per acre.

p. 58, l. 29.

p. 58, ll. 37-40.

In relation to the Appellant’s claim for loss of income or profits from mangrove or other trees or their fruits, Verity C.J. assessed this claim as mesne profits arising between the date of the Governor’s entry into possession of the land acquired and the date of payment of compensation into Court, under section 17 of the Public Lands Acquisition Ordinance. He held that the attention of the Supreme Court had not been directed to the relevant section of the Ordinance or to the reports of the Forestry or Agricultural Officers and, in the light of the evidence of the Assistant Commissioner of Lands that an income of £60 per annum could be derived by the Appellant from the sale of mangrove trees, estimated the same in the sum of £100 per annum. 20

p. 61.

28. By Order of the West African Court of Appeal dated the 20th day of June, 1950, the Appellant was granted Final Leave to appeal therefrom to His Majesty in Council. 30

29. From the Judgment and Order of the West African Court of Appeal the Appellant has now appealed to His Majesty in Council and humbly submits that the Order of the West African Court of Appeal be reversed and that his said Appeal be allowed for the following, amongst other

## REASONS

- (1) BECAUSE the Supreme Court of Nigeria heard the evidence and valued the land according to correct principles.
- (2) BECAUSE, if the Supreme Court of Nigeria should estimate the value of the land according to the evidence, there was abundant evidence to support the estimate of the Supreme Court of Nigeria and the Supreme Court of Nigeria so estimated on correct and proper principles. 40
- (3) BECAUSE it was the duty of the Supreme Court of Nigeria to estimate the value of the land and the West

African Court of Appeal should not have so estimated in the absence of some error in law by the Supreme Court of Nigeria.

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- (4) BECAUSE the Supreme Court of Nigeria was right in having due regard to the prices obtained in May, 1944, on sales of similar land similarly situate to the land acquired and the West African Court of Appeal erred in having no or little regard to the same.
- (5) BECAUSE the Supreme Court of Nigeria should have awarded to the Appellant compensation in respect of loss of income or profits from mangrove or other trees or the fruits thereof on the land acquired.
- (6) BECAUSE the basis of valuation and (save as aforesaid) the amount of compensation in respect of the land acquired of the Supreme Court of Nigeria were correct for the reasons set out in the Judgment of Jibowu J. or for other good and sufficient reasons and the basis of compensation adopted and the amount awarded by the West African Court of Appeal were erroneous.
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- (7) BECAUSE, save as aforesaid, the Judgment of the Supreme Court of Nigeria was right and should be upheld and the Judgment of the West African Court of Appeal was wrong and should be reversed.

JAMES KEKWIKCK.

No. 54 of 1950.

In the Privy Council.

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**ON APPEAL**

*from the West African Court of Appeal.*

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BETWEEN

**YESUFU ABIODUN, Chief**  
**Oniru (Defendant/Appellant) *Appellant***

AND

**THE CHIEF SECRETARY**  
**TO THE GOVERNMENT**  
**(Plaintiff/Respondent) - *Respondent.***

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**Case on behalf of the Appellant.**

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