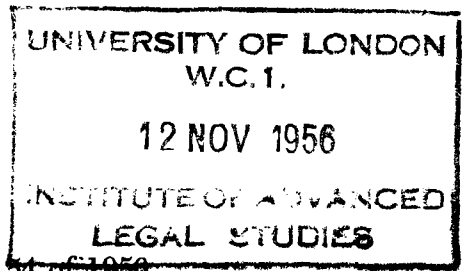


11, 1152



No. 54 of 1956.

15256

# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

I. YESUFU ABIODUN, Chief Oniru ... .. *Defendant/Appellant*  
 AND  
 THE CHIEF SECRETARY TO THE GOVERNMENT  
*Plaintiff/Respondent.*

### RECORD OF PROCEEDINGS.

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11, 1952

# In the Privy Council.

No. 54 of 1950.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

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BETWEEN

1. YESUFU ABIODUN, Chief Oniru ... .. *Defendant/Appellant*  
AND  
THE CHIEF SECRETARY TO THE GOVERNMENT  
*Plaintiff/Respondent.*

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10

### RECORD OF PROCEEDINGS

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No. 1.

Crown Counsel's Letter.

In replying please  
quote number and  
date of this letter.

The Chief Registrar,  
Supreme Court,

No. L.281,  
Attorney-General's Chambers,  
Lagos, Nigeria.  
5th September, 1947.

In the  
Supreme  
Court of  
Nigeria.

No. 1.  
Crown  
Counsel's  
Letter, 5th  
September,  
1947.

ACQUISITION OF LAND SITUATED SOUTH OF FIVE COWRIE CREEK.

20 In accordance with the provisions of Section 10 of the Public Lands Acquisition Ordinance, please cause copies of the attached summons to be served on the person whose names are set out therein, including F. S. James of 10 Okoyo Street, Lagos.

2.—Three copies of the plan referred to in paragraph (a) of the summons are forwarded herewith and it is further requested that a copy of this

In the  
Supreme  
Court of  
Nigeria.

No. 1  
Crown  
Counsel's  
Letter 5th  
September,  
1947—  
*continued.*

plan should be annexed to each of the summons served upon Yesufu Abiodun and upon F. S. James.

3.—Owing to shortage of plans it is not possible to provide sufficient to attach a plan to every summons.

(Sgd.) D. L. BATE,  
*Crown Counsel.*

No. 2.  
Writ of  
Summons,  
8th  
September,  
1947.

No. 2.  
Writ of Summons.

Suit No. 255/1947.

10

IN THE SUPREME COURT OF NIGERIA.

IN THE MATTER OF THE PUBLIC LANDS ACQUISITION ORDINANCE.

Let all parties attend at the Supreme Court on the 29th day of September 1947, at nine o'clock in the forenoon on the hearing of an application on the part of Chief Secretary to the Government for the determination of the following questions:—

- (a) The persons entitled to that part of the lands situated south of Five Cowrie Creek described in Government Notice No. 600 dated 15 May 1944 which is verged pink on the plan attached hereto, and contains an area of 1073.25 acres. 20
- (b) The amount of compensation payable for the said lands excluding the buildings erected, and the economic crops growing thereon. The Governor is willing to pay as compensation the sum of £23,503.

N.B.—If any of the persons claiming to be entitled to the lands is willing to accept the compensation above mentioned he shall notify his assent to the Chief Secretary to the Government on or before the 15th day of October 1947.

If any of the persons is unwilling to accept such compensation he shall on or before the said day inform the Chief Secretary of the amount which he is willing to accept. 30

If any person fails to comply with these instructions the Court may order him to pay the cost of the proceedings.

Dated the 8th day of September, 1947.

This summons was taken out by the Chief Secretary to the Government to

(1) Yesufu Abiodun, Chief Oniru, Iru Palace, Victoria Beach Road,

(2) (a) Okun Abisogun Oniru 1 Jonah Lane Lagos

(b) Salu " " 3 Akafo Street "

(c) Asani " " 19 Bridge " "

(d) Akanbi " " 124 Victoria " "

(e) Wahabi " " Moloney Bridge St. Lgs.

10 (f) Salami " " 1 Jonah Lane Lagos

The descendants of the late Abisogun Oniru Son of Akinsemoyin, whose agent is F. S. James 10 Okoyo Street, Lagos. No. 2. Writ of Summons, 8th September, 1947—continued.

(Sgd.) F. W. JOHNSTON, Puisne Judge.

No. 3.

Answer of First Claimant.

No. 3. Answer of First Claimant, 15th October, 1947.

IN THE SUPREME COURT OF NIGERIA.

Suit No. 255 of 1947.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... .. Plaintiff

20 and

YESUFU ABIODUN Chief ONIRU and others ... .. Defendants.

ANSWER OF THE 1ST CLAIMANT.

This claimant is an Idejo Chief and as the titular Head and the accredited representative under Native Law and Custom of the Oniru Chieftaincy Family is the owner of the Lands which the Government of Nigeria is acquiring under Government Notice No. 600 dated the 15th day of May, 1944, being portion of the stool land of the said Family.

30 2. The Plaintiff's offer of £23,503, without the necessary particulars, for the acquisition of the said lands comprising an area of 1073.25 acres is not accepted by this Claimant as the said offer is unfair and unreasonable and out of all proportion to the present market value of the said lands.

3. This Claimant claims and will accept 1s. 6d. per square yard for dry land, £10 per acre for swamp and a sum of £6,500 for loss of income and profits on mangrove trees, etc., for five years.

In the  
Supreme  
Court of  
Nigeria.

No. 3.  
Answer of  
First  
Claimant,  
15th  
October,  
1947—  
*continued.*

4. This Claimant is unwilling to accept compensation for the whole area of the dry land which the Government is acquiring on the ground that several members of the said Family now occupying same will be rendered homeless and thereby exposed to great privation and hardship.

5. This Claimant requests that the Government shall reserve at least 100 acres of the said land for the use and occupation of the said Oniru Chieftaincy Family.

Delivered for filing this 15th day of October, 1947.

(Sgd.) JIBRIL MARTIN.  
H. O. DAVIES,  
*1st Claimant's Solicitors.* 10

No. 4.  
Proceed-  
ings, 10th  
November,  
1948.

No. 4.  
Proceedings.

Wednesday, the 10th day of November, 1948.

Before His Honour OLUMUYIWA JIBOWU, Esquire, Puisne Judge.

THE CHIEF SECRETARY TO THE GOVERNMENT. *Vs.* 1. YESUFU ABIODUN, Chief Oniru, 2. F. S. JAMES representing Okun Abisogun Oniru and 5 others.

BATE for Plaintiff.

JIBRIL MARTIN for 1st Defendant with H. O. Davies.

BODE THOMAS for 2nd and 5th Defendants.

KAYODE for 3rd and 4th and 6th Defendants. 20

BODE THOMAS informs the Court that his own clients have not been served with a copy of the 1st Defendant's Statement of Interest. Kayode associates himself with this observation.

The Second Group of Defendants to be served with 1st Defendant's Statement of Interest now and the Second Group of Defendants are given 3 days to file their Statement of Interest.

Evidence will now be read as to what compensation is payable.

The 1st Defendant is to start as already agreed upon.

MARTIN says that he and the other group of defendants are asking for 30 1s. 6d. per square yard for dry land, £10 per acre for swamp and £6,500 for loss of income and profits on mangrove trees, etc., for 5 years.

MARTIN says Government offers £23,503 compensation for the first time in this Court.



BATE : Crown Counsel, says area is 1074.6 acres, whereof 390.2 acres is dry land and the rest, 684.4 acres, swamp. Compensation offered raised to £23,611.

MARTIN says Defendants' Surveyor has made a survey of the land which shows 556.44 acres as dry land and 532.7 as swamp.

Agreed that the whole average is 1074.6 acres.

MARTIN says dry land is 541.94 acres.

BATE does not agree to this—swamp 532.7 acres.

In the  
Supreme  
Court of  
Nigeria.

No. 4.  
Proceed-  
ings, 10th  
November,  
1948—  
*continued.*

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## DEFENDANT'S EVIDENCE.

10

No. 5.

Victor Coker.

Defendant's  
Evidence.

No. 5.  
Victor  
Coker.  
Examina-  
tion.

EXAMINED BY MARTIN.

1st Defendant's Witness : VICTOR COKER male, Yoruba sworn on the Bible, states in English language :—

I am a licensed Surveyor. I am the most Senior licensed Surveyor in Nigeria. I was first licensed in 1910. I see the two Government plans now tendered and marked Exhibits A. and B. I received instructions from Chief Oniru to go on the land shown in the two plans and survey the dry and the swamp lands thereon. I was the Chief Surveyor in the Survey Department between 1910 and 1912. I was in the Survey Department between 1900 and 1912. In 1912 I was Town Warden of Lagos. I was Town Warden up to 1927. I have been practising on my own since 1927.

My instructions from the 1st Defendant was to survey the dry land and swamp lands on the plans. I had with me then Exhibit A. I made a plan of my survey. I tender it, marked Exhibit C. Exhibit C is on scale of 200 feet to an inch, done as in Exhibit A. There is a difference in Exhibits A. and C. as to the positions of swamps.

Swamp marked 1 on Exhibit A. is smaller than the swamp marked 1 on Exhibit C.

30 Swamp marked 2 on Exhibit A. is longer than swamp marked 2 on Exhibit C. The rest are nearly the same.

The land north west of Shitu Village in Exhibit A. is shown as swamp, but it is shown as dry land on Exhibit C. These are the main differences in the two plans.

I made my survey between 9th July and 30th August, 1948. July is accepted as rainy season.

I see Exhibit B. and the ones marked A., B., C. With exception of D. 2 and D.3 in the other dry lands are occupied. All the dry lands shown on Exhibit C. are above the sea level. D. 4 is marked 2 feet out its edge, as also C. 3 ; it denotes 2 feet above water level. Level is taken between high and low water.

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 5.  
Victor  
Coker.  
Examina-  
tion—  
*continued.*

Land 2 feet above sea level is not useless. The average height of the dry lands is 6 feet above sea level. I did not take level of the lands I surveyed.

I have some experience of the value of land in Lagos. Ikoyi land is more valuable as it is nearer the cemetery. I know the area acquired recently at Ikoyi by Government. It is of less value than land at Victoria beach. The acquisition is near Onikoyi Village. I don't know how much compensation Government paid for it.

Adjourned to 9 a.m. on the 11th instant.

(Sgd.) O. JIBOWU, 10  
J.  
10/11/48.

Thursday the 11th day of November, 1948.

C. S. G. *vs* YESUFU ABIODUN, Chief Oniru (from above).

EXAMINED BY MARTIN *continued.*

VICTOR COKER : Warned that he is still on his oath, states as follows :

I see Government plan of a portion of the land in dispute now shown to me. By consent of both Counsel, it is tendered and marked Exhibit D. I saw Exhibit D. after my survey and a day before the case, i.e. on the 9th November, 1948. It agrees in parts with plan Exhibit C. 20  
I see the portion marked " High ground " on Exhibit D. A portion of the land so marked in Exhibit D. is not shown as high ground in Exhibit A.

Cross-exam-  
ination.

CROSS-EXAMINED BY BATE.

I made my survey last July. I knew at the time that the land belonged to the Crown. I did not ask for permission to go on the land. I surveyed the land personally I had assistance in making the survey. Mikaila, Egwale, Samuel and others helped me. About 12 men including chainmen helped in the survey. None of them is a qualified surveyor. I obtained some information from the Survey Department. I made use of outlines from other survey plans and put " P.O " on my plan, meaning " per 30  
" original." I obtained information that the west and south side of Exhibit C. they are marked " X." I surveyed the northern outline myself ; as also the east and the south. I surveyed all excepting the western and a portion of the southern side.

The western and southern outline taken from Government plan are accurate.

I am familiar with Survey Ordinance and Regulations. Refers to Section 6 (a) Cap. 90 Laws of Nigeria. The words " P.O " is an acknowledgment. The marks on the plan are Government ; hence it is not known which Surveyor made the survey for Government. I surveyed 40

the edge of the swamps myself. It is a compass work and not a theodolite survey hence it did not take a very long time. I am 65 years of age.

Between 1946 and 1947, about 7 plans of mine were rejected by the Survey Department. Within the last 6 months application was made to Court to suspend my licence because, it was alleged, I did not comply with certain regulations.

I was not suspended. The application was made under Section 6 (b) Cap. 90 Laws of Nigeria. The Judge gave me a stern warning and told me to work less harder. I did not make any error deliberately.

10 Section 10 (2) Cap. 90 makes it obligatory for me to send a copy of my plan I have made to the Director of Survey I sent a copy of Exhibit C. as required.

I tender the copy of plan Exhibit C. forwarded to the Director of Surveys, marked Exhibit E. The writings on the right-hand corner of Exhibit E. is not the same as that on Exhibit C. There is more writing on Exhibit E.

I referred to boundary plan on Exhibit A.

20 I had the boundaries and followed them. I surveyed the boundaries for the purpose of my plan with exception of the portion marked " P.O " on Exhibit C. The outlines of Exhibit C. don't coincide with the outlines of the land in dispute in Exhibit A ; there is some difference, but the difference is not great. The difference is not practically negligible. I saw drains had been cut in the land ; it is all over the district and about half the area.

I did not take any level of the land. It is not necessary to take a level to find out if a land is swamp or dry. What is covered by water, I call swamp ; but what is not covered by water is dry land. I see area marked " B " on Exhibit B. There is no water at all in it as it is dry land. I can build a house on land 2 feet above main sea level.

30 All dry lands on the land in dispute are of the same value.

I see plan Exhibit D. and the portions marked high ground with lead pencil. Some portion of it is marked swamp in Exhibit C. I did not go on the land in 1944. I cannot say if there have been changes in the nature of the land since then.

40 There is no serious difference in the outlines of the land in dispute in Exhibits C. and A. There is a great divergence in the internal details between my plan and Government's. I think the Government plan was prepared on a different principle from mine. The Government plan was prepared by taking several level sections and joining up those of the same heights. I went on the site with my client and surveyed the edges of land submerged by water. This is the cause of the difference. The Survey Ordinance requires us to keep Field Notes and computations. I made Field Notes but they are not here.

RE-EXAMINED BY DAVIES.

I am still a licensed Surveyor entitled to practise as such. The high tide marks are always there all the year round. I show as dry land on

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 5.  
Victor  
Coker.

Cross-exam-  
ination—  
continued.

Re-exam-  
ination.

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 5.  
Victor  
Coker.  
Re-exam-  
ination—  
*continued.*

Exhibit C. all lands exposed at high tide. Unless there is an extraordinary flood the lands shown as dry on Exhibit C. should not be submerged at any time of the year.

Drains on dry land improves it ; drains on swamps will not convert it to dry land. If the drained swamp is near the lagoon, the water comes back when the tide is high. There are tidal drains in Lagos ; they are drains under sea level ; you find instance of this at Oko Awo, Anikantamo and Idumagbo.

It is not possible to convert swamps into dry land by means of drains. The only way of converting swamps into dry land is by filling. 10

Rain water can be collected by means of drain from swamp. It will remain on the land for some time if not drained and either percolate or get dried up through action of the sun.

A land 100 feet above sea level will require drains to drain it to the lower portion.

Swamps in several places in Lagos are being filled to make the lands dry. Near the boundary between the land in dispute and the former acquisition swamp are being filled.

I am quite prepared to take the Court to see all the lands marked "dry" on Exhibit C. at any time. 20

I see level marks on Exhibit A. levels of those points were taken. Others not so marked were joined up with the marked ones. Certain marks are usually made on plans in the office.

In some places I got more swamps than shown in Exhibit A. and in some other places I got more dry land than is shown in Government plan.

"H.W.O.T." means "High Water Ordinary Tide" and "H.W.S.T." means "High Water Spring Tide." Spring tide is higher tide than ordinary high tide. We take levels from H.W.O.T.

Levels in Exhibit D. were taken from "H.W.O.T." The levels in Exhibit A. were based on main sea level—that is between low and high tide. 30

Exhibits A. and B. are the same on the point of levels.

No. 6.  
Yesufu  
Abiodun.  
Examina-  
tion.

No. 6.  
Yesufu Abiodun.

EXAMINED BY MARTIN.

2nd Defendant's Witness : YESUFU ABIODUN male, Yoruba, sworn on Koran, states in Yoruba Language as follows :—

I am Chief Oniru. I live at Iru in Victoria Beach. I am an Idejo Chief of Lagos. I am the head of Oniru Chieftaincy Family. I became Chief Oniru in 1936.

I know the land in dispute. I was born on it. The land in dispute belongs to Chief Oniru.

I remember the Acquisition Notice of 1944 in respect of the land in dispute. There had been three previous acquisitions of my land before this one in question. The Government first acquired Mekunwen. The second one was the old Iru, and the third one was the Dry Dock Acquisition. The Government acquired the lands for public purposes but the lands have been leased out and not used for the purposes for which they were acquired.

10 The Dry Dock was leased to Elder Dempster Lines Limited. Old Iru was leased to Mr. Little, who fishes there. Mekunwen is leased to tenants on rental basis.

I instructed Surveyor Coker to survey the land in dispute. I was with him for 31 days while the survey was being made. People living before at the sea port were driven away by the sea and I gave them lands on which to stay with the consent of members of my family. The area was surveyed at the request of the Lagos Town Council. Lagos Town Council officers plotted out the area and we paid for their service. The area is included in the land in dispute.

20 Some of the people driven away from the sea port took up the area plotted out by the L.T.C., but others went away to another area.

The land was plotted out about 14 years ago. Some of the plotted areas were leased and sold out. I gave Biney land to make road to Kuramo Waters. Between 14 years ago and the time notice of the acquisition was published I sold some land at the sea front to several people. We sold so that big houses might be built on them and the place populated by important people. Some important people who could afford to put up modern buildings were given lands free. We did not sell at prices prevailing in town; they paid some money first as a mere token. The sale was not

30 conducted by licensed auctioneers.

I want the Government to pay 1s. 6d. per square yard of dry land and £10 per acre for swamp.

I remember the time Ikoyi lands were acquired. Chief Onikoyi got 1s. per square yard for dry land. My land is more valuable as it abuts on the sea and people go there for sea breeze. Europeans live at Ikoyi but spend most of their time at the beach; they go as far as Olukotun Village now. I have European tenants on the land near Kuramo Waters. I cannot say how much was paid for swamp at old Iru in 1912. I claim £6,500 for loss of income from mangrove trees. We sell the trees to brickmakers, fishermen,

40 firewood men and bakers.

There are Ikate, Ayunren trees on the land; also palm trees and Oshere and Ogbun trees for making charcoal. Gold Coast people also buy Ogbun trees for making salt. I have Iroko trees also on the land; also Ologuadede trees for making charcoal, mango trees, cashew trees, coconut trees.

The swamps are let out to fishermen during the rainy season.

The Government did not make any offer of compensation to me before bringing me to Court. I was not given the opportunity of negotiating for the compensation.

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 6.

Yesufu  
Abiodun  
Examina-  
tion—  
*continued.*

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 6.  
Yesufu  
Abiodun—  
*continued.*  
Cross-exam-  
ination.

CROSS-EXAMINED BY BATE.

I did not know of the acquisition before the Notice was published. A copy of the Notice was sent to me. The Government and I did not discuss about the compensation. No offer of compensation was made to me before a summons was issued.

No correspondence passed between us about compensation. An offer was made to me in the summons for the first time.

Drains have been made on the land since May, 1944. No embankment has been made on the land in dispute.

I was with Surveyor Coker for 31 days while the land was being surveyed. I reckoned the days on which I went on the land with the Surveyor. 10

In 1934 victims of the flood approached me for land. I gave them land free. The people live on a place known as Oko Kuku. It is on the left side of the road leading to the sea.

I sold to other people at nominal prices. £10 or £20 is nominal price for an area of land. I gave the lands out at nominal prices because I wanted people to populate the place. The people I sold to at nominal prices are men who could build on the land.

To my knowledge 408 feet square makes an acre. 20

Lands sold were registered. Not many lands were sold. They would be 32 plots. If I had been after money I would have asked for a reasonable sum of money. I would have sold an acre for £200. Anyone who could not pay that price would have to leave it. It is not our practice in our family to sell our lands. I once asked for £200 per acre but the men could not pay so much. £100 per acre is a nominal price. £10 or £20 was paid for land 100' × 50'. The lands so sold were registered. Hotonu Wusu bought a plot of land from me more than four years ago. One Euzebio also bought before the acquisition. I don't remember how much Wusu paid for the two plots he had. Each plot was 100' × 50'. 30

I consider £200 per acre or more a nominal price.

I sold to Wusu at a nominal price. Duckworth is my tenant near Kuramo Waters; he is not my only European tenant there; there are about 6 or 7 others including a Frenchman. I cannot differentiate between European Government Officials and others. Some of them built substantial houses and not merely bathing huts. There are about 3 or 4 decent bungalows on the land.

I sell 200 coconuts for 10s.; sometimes I make £15-£20 in some villages a quarter from coconut. There are 4 quarters. Magbon, Ipehun, Ikoya, 40 Itirun, Inupa, Oroke, Ilabore abound in coconut. Iru, Abule Folami also have a few coconut trees.

I keep no account books. I cannot tell how the figure of £6,500 is arrived at. I get about £400 a year from coconut trees; £50 a year from Ikate trees, £60 a year from mangrove trees; £110 a year on trees burnt to charcoal; £100 a year from palm nut reapers £20 a year from fishermen; £30 a month from mangrove trees by Gold Coast people; this is not regular. I get over £800 a year from the land.

I realise about £50 a year from mangoes. I get about £10 a year from cashew trees. I hold the money in trust for the family.

I remember attending a meeting at the Lands at which Mr. Hewett, Mr. Clover, Aromire, A. L. Williams were also present. I did not then say I got about £800-£1,000 for 12 years past from mangrove trees.

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

RE-EXAMINED BY MARTIN.

I reckoned my yearly earnings before putting up a claim for £6,500. My clerk and I made the reckoning.

No. 6.  
Yesufu  
Abiodun.

10 I know Pappas of P.Z., he is one of my tenants at the beach of a piece of land 50' x 100'; he has built a house on it. I cannot say off hand how much rent he pays yearly. I know Mr. Blyden; he is one of my tenants; his land is also 50' x 100'; he has built a house on it.

Cross-examination—  
*continued.*

Re-examination.

No. 7.

Musa Kaka

No. 7.  
Musa  
Kaka.  
Examination.

EXAMINED BY MARTIN.

3rd Plaintiff's Witness: MUSA KAKA, male, Yoruba, sworn on Koran, states in Yoruba Language as follows:—

20 I live at Victoria Beach. I am a fisherman. I am not a Chief but son of a chief. The 1st Defendant is the head of my family. I am a member of Oniru Chieftaincy Family. We hold councils of the family. I am a member of the Council. I remember when lands near the sea were plotted out for us to stay on. I was by the sea side before then and I was driven away by flood.

Other people not driven by flood also took some of the plots. The 1st Defendant and the family authorised the plotting out of the land.

Some lands were sold out to people from Lagos; they were well-to-do people. The whole family approved of the sale. No auctioneer conducted the sale.

CROSS-EXAMINED BY BATE.

30 The lands were sold to wealthy people. We did not get good prices as we wanted people to populate the place. The place was then bush and there were many thieves about. We believed we would be benefited if the land was developed.

Cross-examination.

No Re-examination.

Adjourned to 13th instant.

(Sgd.) O. JIBOWU,

J.

11/11/48.

In the  
Supreme  
Court of  
Nigeria.

No. 8.

A. O. Somorin.

Defendant's  
Evidence.

Saturday the 13th day of November, 1948.

No. 8.  
A. O.  
Somorin.  
Examina-  
tion.

Before His Honour OLUMUYIWA JIBOWU, Esquire, Puisne Judge.

C. S. G. *vs.* YESUFU ABIODUN & OTHERS.

EXAMINED BY DAVIES.

4th Plaintiff's Witness: ADOLPHUS OLAYINKA SOMORIN, male,  
Yoruba, sworn on the Bible, states in English language as follows:—

I am a clerk and live at Idumagbo Avenue. In 1944 I bought a piece of land from Sir Adeyemo Alakija. I tender the conveyance, marked 10 Exhibit "F." The land is about 100' × 100' and I paid £50 for it. It might have cost me more if I bought from somebody else. I might have had to pay £100 for it. Sir Adeyemo is my friend. I saw the land before I paid for it.

I know Iru Village. The land I bought is a corner piece. I would not pay as much for the land if it were in Iru Village. The land I bought is on the main road. I would not have bought the land if it were at Iru Village.

I was paid compensation of £60 for the land by the Government. 20  
I don't now remember when I was paid. It was between 1944 and 1945.

Cross-exam- CROSS-EXAMINED BY BATE.  
ination.

I work for Debs Brothers. The land faces Victoria Beach Road. I wanted to erect there a house. I asked Sir Adeyemo for a plot of land at the beach. I did not ask anybody else. I made no other enquiries. I don't know when Sir Adeyemo bought the land nor the price he paid for it himself. I am a friend of Sir Adeyemo's. I don't know he paid £121 for 1,998 square yards in 1943, including the land. I accepted £60 compensation from Government.

No Re-examination.

30



No. 9.

T. Savage.

In the  
Supreme  
Court of  
Nigeria.

EXAMINED BY MARTIN :

5th Plaintiff's Witness : TIAMIYU SAVAGE, male, Yoruba, sworn on Koran, states in English language as follows :—

I live at 12, Obun Eko Street, Lagos. I am a Licensed Auctioneer. I have been a licensed auctioneer since 1940. I was born in Lagos 61 years ago. I have always lived in Lagos. In 1933 lived at Suru Lere, 50' x 100' would have fetched between £30-35. Early in 1944 the same land would have fetched about £40-55. Today the same land would fetch between £70-100. The rise in price of land is general in Lagos since 1933.

I have no plot of land at Victoria Beach. The land at the beach is more valuable than the one at Suru Lere. The land at Victoria Beach is more valuable than Ikoyi land.

I have never had instructions to sell land at Victoria Beach.

CROSS-EXAMINED BY BATE :

There are roads at Mushin and Suru Lere. There were no roads at Suru Lere in 1933 but there was a mainroad (Lagos—Abeokuta) through Mushin in 1933. Mushin lies on either side of the mainroad. There were small roads branching from the mainroad at Mushin in 1933.

The mainroad was the only way of getting down to Lagos.

There are no Government roads yet at Suru Lere. The Railway runs near Suru Lere. There is a road from the Railway line about 100-200 yards long. One can get to Suru Lere by car ; the road is a good one.

I did not sell land in 1933 at Suru Lere but I negotiated for a land then.

There is a mainroad to the Victoria Beach and a private road up to Kuramo Waters. I am familiar with the Land in dispute. I saw it last week. I have not seen a map of the land in dispute. The mainroad to the Beach is on the land in dispute. I don't know if there is a swamp at Mushin, nor can I say if there are swamps on the land in dispute. I have walked off the mainroad to the beach but I did not look for swamps on the land. I have never examined the land. I cannot say how much dry land and how much swamp are there.

Lands at the beach are more healthy on account of sea breeze than land at Ikoyi or Suru Lere ; that's my only reason.

RE-EXAMINED BY KAYODE :

What I call roads at Mushin are mere footpaths. I don't know the road between Iru Village and Itirin.

I have some cows at the beach. I pass by the 1st Defendant's house to get to the place where the cows are being tended. I don't know the name of the village. I go over dry land to get to the place.

The road leading to Suru Lere is just like the road leading to the beach and is not like the modern roads in Lagos town.

Cross-exam-  
ination.Re-exam-  
ination.

In the  
Supreme  
Court of  
Nigeria.

No. 10.  
O. L. Williams.

Defendant's  
Evidence.

EXAMINED BY MARTIN.

6th Plaintiff's Witness: OSENI LAWANI WILLIAMS, male, Yoruba, sworn on Koran, states in English language as follows:—

No. 10.  
O. L.  
Williams.  
Examina-  
tion.

I live at 19, Koseh Street, Lagos. I am a Land Agent. I have been in the business for about 13 years. I have had dealings with the Lagos Executive Development Board over land acquisitions in Lagos. I know the value of lands in Lagos.

I have had something to do about Oniru lands with the Lands Department. I represented about 11 people in applying for compensation in respect of this acquisition. I represented 9 people in respect of Ikoyi Lands Acquisition.

I know Onigbongbo Land, now being acquired. I represent five people there. I represented 6 people in connection with the land acquisition at Ikeja. I represented 15 people in Igbobi acquisition.

I am familiar with Ikoyi Lands also with lands at Victoria Beach. Government offered me 1s. per square yard for dry land in respect of Ikoyi Acquisition. My clients at first refused it but later on accepted it; that was before Onikoyi's case. All my 9 clients were offered 1s. per square yard and each accepted the offer. I tender two letters written to two of the men, marked Exhibits G. and G. 1.

They were given 10 per cent. compensation for compulsory acquisition.

Victoria Beach land is more valuable than Ikoyi lands. £20 per acre works 1d. per square yard. £80 per acre works 4d. per square yard.

My clients were offered 9¼d. per square yard for Victoria beach land. The offer was not accepted. I represented 5 people but I was offered 9¼d. per square yard in respect of only one of them whose name is Akinwajo. I tender the letter containing the offer, marked Exhibit H. I know Somorin's land; he was paid £60 for 100' × 100', which works out at more than 1s. per square yard. I asked for 2s. per square yard for the 1st Defendant's land, i.e. for the land in dispute. I consider that a fair and reasonable compensation for land in that area; especially for all the dry land in that area.

I don't know how much was paid per acre of swamp land at Ikoyi. £60 per acre appears reasonable for swamp land at Victoria Beach and it works out at 3d. per square yard. I don't know of any place in Lagos or Lagos District where £60 was paid for an acre of swamp land.

I know of Chief Oluwa's land Acquisition at Apapa. He was paid 3d. per square yard, which works £60 per acre of swamp land. 1s. 6d. per square yard of dry land and £10 per acre of swamp land are very reasonable in the circumstances.

Cross-  
Examina-  
tion.

CROSS-EXAMINED BY BATE.

I work on commission basis. It is in my best interest that a good compensation be paid. I represented 9 persons in the Ikoyi Acquisition.

The land is in the neighbourhood of the new Ikoyi Settlements ; it is near the mainroad and electricity.

There is no tap water there ; there is a main water system at Ikoyi. The plots of land are about the same distance to Lagos as the Victoria Beach land.

Victoria Beach is further away than the new Ikoyi Settlement. I know the land in dispute. I am very familiar with it. There are no roads on the land. There is only one road approach to the land. There is electricity on the mainroad but not on the land.

10 I have been to the 1st Defendant's Iga ; there is no electricity there. In 1945 Nwanji refused 9½d. per squareyard ; he is a civil servant ; he is not a wealthy man ; he has a car costing him £400. He had no house on the land acquired by the Government. He had not made any foundations for a house on the land.

I don't know when he bought the land ; his conveyance was registered. He would have got £23 if he had accepted the offer made to him in 1945. He turned it down on my advice. It is not a surprise to me to hear that he paid £15 to Chief Oniru for the land in 1943. The price of land has gone up, hence I advised him to turn the offer down. In my view the same price should be paid the Chief for all the dry lands on the land in dispute. We sometimes reach Ipewu Village partly by walking and partly by canoe. One can get there by walking or by canoe. If one goes by Chief Oniru's Iga, he goes direct to Ipewu. I have done it several times and I can take you there. One does not get his feet wet by going that way.

20 I know Magbon Village ; one can get there by walking. I have been going to the area since 1944. What I say now was true of 1944. There is a swamp on the way to Magbon ; we by pass the swamp. It is a good road ; the ground is soft on either side of the road.

30 Building materials can be conveyed by foot to Magbon. A road has to be built for cars.

Oluwa's Apapa Acquisition was in 1924. I was not a Land Agent then. I was a school boy then. Everything I told the Court about the acquisition is hearsay.

RE-EXAMINED BY MARTIN.

40 I know what is meant by hearsay. It is what one is told. Acquisition of 1944 was not in respect of Ikoyi Cemetery. The cemetery to the land acquired is very far ; would be about 1½ miles. There is no electricity on the land acquired at Ikoyi in 1944 nor is there any pipe borne water on it. There are no roads on the land apart from foot paths. I don't know how Nwaji got his land from Chief Oniru. In my view £15 was not a fair market value of the land.

One can reach Magbon by canoe. The ground on either side of the road to Magbon is not soft. The ground is sandy almost all over the land in dispute. On one occasion my client withdrew his instruction because I could not get the price he wanted. The client was one Ojo Babber. He wrote to me and copied the Lands Department. I tender his letter, marked Exhibit J.

In the  
Supreme  
Court of  
Nigeria.

Defendant's  
Evidence.

No. 10.  
O. L.

Williams.  
Cross-exam-  
ination—  
*continued.*

Re-exam-  
ination.

In the  
Supreme  
Court of  
Nigeria.

## No. 11.

O. Thomas.

Defendant's  
Evidence.

EXAMINED BY THOMAS.

No. 11.  
O. Thomas.  
Examina-  
tion.

7th Plaintiff's Witness : OMOSALEWA THOMAS, male, Yoruba, sworn on the Bible, states in English language as follows :—

I am a licensed auctioneer. I belong to the firm of A. W. Thomas & Co., established in 1890. I have been in the business for 14 years.

I know the land at Victoria Beach. I sold a piece of land there for one Buxton Cole in 1939. The land was 50' × 100'. I sold it for £45. It is almost on the road after one has passed the Oniru Village. I know the Iga of the Oniru. A land 50' × 100' on the village should fetch between £25–£30. I have gone further in land near the swamp. The value of land there should be less. I cannot tell how much it is worth now. 10

I know about swamp lands in Lagos Ebute Metta and Apapa. I am not in a position to say the value of swamp land at Apapa. The land I sold in 1939 for £45 would have fetched more money in 1944. It would have fetched about double the price.

The price of land has gone up generally since 1929.

Cross-exam-  
ination.

CROSS-EXAMINED BY BATE :

I sold for Buxton Cole. I don't remember the purchaser. I conducted the auction personally. I don't remember the name of the purchaser. I went on the land myself. A good deal of the land behind the Chief's house is swamp. I believe I may find firms of builders to buy the swamp land for purpose of reclamation. I may get about £100–£200 per acre. I have never sold swamp areas. No Re-examination. 20

No. 12.  
Proceed-  
ings, 13th  
November,  
1948.

## No. 12.

Proceedings.

BATE opens his case—refers to Cap. 88 Laws of Nigeria Section 15 (b) Lands required for public purposes for development. The Government is not to be in a worse position than a buyer in open market. Compensation should therefore be on basis of price at open market to a willing seller. 30

Government has made offer in accordance with the provisions of the Ordinance. Claimants want about £11,000 odd more. Claim unsupported by figures. Government worked amount. Says land as shown in Exhibit B. shows that the land differs in quality and should be paid for at various prices. Land has since been drained. Value of lands in the

vicinity to be taken into consideration in assessing compensation. Refers to Land Development Ordinance No. 35 of 1933 Section 9 (1). In the Supreme Court of Nigeria.

Government proposes to pay £80 per acre for A1, A2 £90 per acre. B (grazing ground) £40 per acre ; C-C10 (fishing villages) £40 per acre ; D1-D5 £30 per acre. The rest is swamp 684 acres in 1944, £5 per acre. Ikoyi land paid for at the same rate. No. 12. Proceedings, 13th November, 1948—continued.

*Loss of profits on mangrove, etc.* Difficult to assess values—no figures. Evidence of Forestry and Agriculture will be implemented.

10 File of reports from the Commissioner of Lands, Land Officer, Senior Agricultural Officer, Assistant Conservator of Forests and Government Surveyor is tendered and marked Exhibit K. A copy is handed to the other side.

Adjourned to 30th instant.

(Sgd.) O. JIBOWU,  
J.

13/11/48.

**PLAINTIFF'S EVIDENCE.**

No. 13.

L. Chwatt.

Plaintiff's Evidence.

No. 13.  
L. Chwatt.  
Examination.

20 IN THE SUPREME COURT OF NIGERIA.

Tuesday the 30th day of November, 1948.

Before His Honour OLUMUYIWA JIBOWU Esquire, Puisne Judge.

Suit No. 255 of 1947.

THE CHIEF SECRETARY TO THE GOVERNMENT

*vs.*

Y. ABIODUN, CHIEF ONIRU and Others.

EXAMINED BY BATE.

LEONARD CHWATT, male, English, sworn on the Bible, states in English language as follows :—

30 I am connected with the Yellow Fever Research, Yaba. I am on the Medical Unit, Headquarters, Lagos.

I was acting in the capacity of Medical Entomologist. I was employed in this country in the Army as Malariologist. I am familiar with the land between Five Cowrie Creek and Victoria Beach. I had to carry out a survey of this piece of land as an Entomologist in connection with malarial control

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 13.  
L. Chwatt.  
Examina-  
tion—  
*continued.*

programme. I saw the land first in April, 1945. Most of the land was a swamp. The nature of the land has been altered by reclamation scheme.

By swamp I mean land covered by water, periodically with the tides. The methods used was to make a trench or dyke along the low foreshore ; after this drains or channels were constructed throughout the low lying ground. The drains or channels were connected with two sluice gates made in the dyke. The purpose of the dyke or trench is to prevent water getting on the land during high tide. Water could not flow over the dyke on to the land owing to the height of the dyke. The sluice gates were kept open during low tide and closed during high tide ; therefore water 10  
accumulating in the drains was let out during the low tide.

The work was commenced in May 1945 and completed in December of the same year.

The total area reclaimed was 550 acres.

The total length of the dyke is almost 20,000 feet. The total length of the drain system is about 14 miles.

We used a survey map at first to plan our system of drains. Exhibit A. is the plan we used. The contours on the plan were very useful to us. We could not have proceeded with the work without them. The plan is correct. We made a plan of our own which I now tender, marked Exhibit L. 20  
It was prepared from Exhibit A.

The blue marks on Exhibit L. show the system of drains on the land. The effect of the reclamation was slow but in six months the area had become dry land.

Cross-exam- CROSS-EXAMINED BY DAVIES.  
ination.

The area is no longer swamp area. Swamp is land covered by water. There may be pockets of water on the land after heavy rains but they disappear within two days. I am an Entomologist and not a Surveyor or Engineer.

I was asked by the Medical Authority to make an Entomological 30  
Survey while I was connected with the Army. I did not use a theodolite but I used simple instruments for topographical survey. I used a prismatic compass in the early days. There are crude instruments but good enough for any kind of topographical survey. I acted as adviser. The plans were taken to the field and I found them correct by my findings. Merely digging drains on the land would not drain such land as water comes on it and settles during high tide. To prevent this a dyke was necessary to prevent the tide from coming inland and the drains were connected with sluice gates to release water on the land during low tide. It is not the drain alone that dries the land but the combined action of the drains, sluice gates and dyke. 40

The foreshore is a little higher than the land inland. The highlands on the area are not covered by water when the tide comes in but the low area is. I accept the principle that water will find its level.

When I made the survey the land was covered with at least 6" of water. It is not the dyke alone that drains the land. There is no swamp on the area shown in plan Exhibit L. which is only a part of the land on Exhibit A.

Water which comes on a high land during high tide will not go back when the tide is low without drains being cut to make its exit possible.

Ordinary tide is a tide that comes in every six hours. Spring tide is a tide that is higher than ordinary tide and comes in every 14 days. High water runs twice daily and high spring tide every fortnight. Spring tide is higher than ordinary tide.

Equinoxial tide occurs every 6 months. This is higher than the highest spring tide and occurs in spring and autumn. Land lower than the height of the spring tide will normally be under water every fourteen days.

10 Any land higher than the highest spring tide will be dry land.

Owing to the configuration of Lagos the contours of the foreshore are higher than those of the land inland, so that when water covers the land at spring time, the water cannot get out with the receding tide.

The shallow areas covered with water retain water all the time and become potential habitation for mosquitoes ; this led us to reclaim such areas.

20 The purpose of the work was to free Lagos from Malaria carrying mosquitoes. The work was started in May, 1945. I was to look for areas where mosquitoes were being bred and to advise as to the means for their destruction. My draughtsman prepared plan Exhibit L. on the basis of plan Exhibit A. It covers only the eastern part of Exhibit A.

The plan Exhibit L. covers area east of line A B run through Exhibit A. The whole area on Exhibit L. is dry land.

RE-EXAMINED BY BATE.

The drains don't slope towards the sluice gates.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 13.  
L. Chwatt.  
Cross-exam-  
ination—  
*continued.*

Re-exam-  
ination.

---

No. 14.

A. V. Gibberd.

EXAMINED BY BATE.

30 2nd Defendant's Witness : ALAN VERNON GIBBERD, male, English,  
solemnly affirms as follows :—

I am Acting Deputy Director of Agriculture, Western Provinces.

CROSS-EXAMINED BY MARTIN.

I have been on the land in question on many occasions and I made my report on the 27th November 1947. I visited the site on many occasions between 1931 and 1942 both officially and unofficially.

Officially in connection with agricultural activities in the district. I visited the land for the purpose of my report in November 1947.

40 I remember seeing a plan like Exhibit A. in the office but I cannot swear that Exhibit A. is the plan. I did not visit all the villages on the land on the last occasion before my report.

No. 14.  
A. V.  
Gibberd.  
Examina-  
tion.

Cross-exam-  
ination.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 14.  
A. V.  
Gibberd.  
Cross-exam-  
ination—  
*continued.*  
Re-exam-  
ination.

Since I made my report there have been draining operations on the site. I saw a drain on the site. The report shows the condition of the land at the time of my survey.

I did not consider the drain I saw very poor.

I cannot give the names of the places I visited. I walked over the site and don't remember the names of the villages. I was concerned with the nature of the land and not with the names of the villages. I spoke to some of the inhabitants of the villages but did not ask for the names of the villages.

I did not go over the whole area shown in Exhibit A.

10

RE-EXAMINED BY BATE.

I left Agege in 1941 October. I was the Agricultural Officer at Agege and in that capacity I visited Victoria Beach Area frequently. The names of the villages on the land were irrelevant to my inquiries. I visited the site several times as Agricultural Officer, Agege and on the 26th November 1941, with a view to making my report in Exhibit K. I did not go round the whole area on the 26th November, 1947.

No. 15.  
R. T. Gray.  
Examina-  
tion.

No. 15.

R. T. Gray.

EXAMINED BY BATE.

20

3rd Defendant's Witness: ROBERT THEOBALD GRAY, male, English, sworn on the Bible, states in English language as follows:—  
I am the Provincial Forest Officer, Abeokuta.

Cross-exam-  
ination.

CROSS-EXAMINED BY MARTIN.

I came to Nigeria on 1st January, 1946. I have not been to any other British Colony. I was first stationed at Ibadan.

There is no Forestry Officer stationed in the Colony of Lagos.

I have visited the land in dispute and that was in October last. I knew it was acquired by Government. I went there by myself. My assistant ranger, Jemme, a Cameroonian, went with me. I was there for four hours on the first day and three hours on the second. 30

The statements I made were of my own knowledge excepting paragraph 2(2) about Ibeju clan area. The mangrove referred to in para. 2 was about 15 years old in my opinion. I got confirmation of my own opinion, hence I used the word "Reported." My experience of African fruit is only 2 years old. I had a previous experience of forests in the United Kingdom. I saw mangrove trees only in Victoria Beach. I formed opinion about them after my two visits to the site.

Mangrove trees don't grow in United Kingdom. I had only two days experience of mangrove trees. My para. 3 is the result of my two days inquiry. 40



RE-EXAMINED BY BATE.

I am B.Sc. Forestry, Edinburgh University. It took me three years study to get the degree. My lectures included instructions in Tropical Forestry. I had practical experience in cutting down trees and looking at trees at Edinburgh and at Greghoum Castle 2 miles from Edinburgh. I had over a year's practical experience as a student. I had experience in calculating the age of trees.

10 I did not imply any scientific method to arrive at the age of the mangrove trees cut at the Victoria Beach but from the appearance of the trees and their general habits and from experience of other trees in this country I estimated the age of the mangrove trees as in my Report.

I did discuss the matter with Mr. Wimble Conservator of Forests : he had had many years experience of mangrove trees in East Africa.

BY COURT.

I discussed the matter with my Conservator before and after writing the report.

The Conservator did not go with me to see the mangrove trees at Victoria Beach.

BATE continued : I did not change my report after the discussion.

In the Supreme Court of Nigeria. — Plaintiff's Evidence.

No. 15. R. T. Gray. —continued. Re-examination.

20

No. 16.

D. O. Ogunnekan.

No. 16. D. O. Ogunnekan. Examination.

EXAMINED BY BATE.

4th Defendant's Witness : DANIEL OLALEYE OGUNNEKAN, male, Yoruba, sworn on the Bible, states in English language as follows :—

30 I am a Surveyor in the Survey Department. I was qualified in 1928. I am familiar with plan Exhibit A. I made the Survey and the plan on the instructions of the Director of Surveys. I commenced the work on the 3rd January 1944 and completed on 27th June, 1944. I was solely engaged on the work all the time. I had 2 chairmen and 8 labourers to assist me in the work ; they were with me throughout. It was an arduous task because of the swamp. I am 43½ years old. It is not possible to do the survey in a month with the same number of men.

There were plots previously surveyed on the land. Posts of the old surveys from parts of the boundaries. There were old survey pillars and cadastral pillars on the land. I used theodolite traverse based on the old pillars. I made computation of the theodolite traverse and later used compass traverse based on theodolite points. I used 8 miles theodolite traverse and 20 miles of compass traverses. The land is mostly swamp. I

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 16.  
D. O.

Ogunnekan.  
Examina-  
tion—  
*continued.*

Cross-exam-  
ination.

judge swamp by the nature of the ground—the land was either covered with water or muddy and soft. I gauge the swampness by the vegetation—some parts were covered with mangrove and others with grass—peculiar to swamps and not pond on dry land.

I took heights and levels in connection with my survey. The area of contour on the land was 1 foot. I used levels to run heights along my old points, these were deduced and closed on old points.

(N.B. Exhibit C. is superimposed on Exhibit A). The northern boundaries agree; the boundaries agree mostly with minor differences. The details as to dry land and swamp don't agree. This is remarkable. 10

#### CROSS-EXAMINED BY DAVIES.

I am a fully qualified Surveyor. By this I mean I was trained in the Survey School for 4 years and passed all the examinations in the school before I was qualified. I shall not be entitled to practise if I leave the Survey Department today. I know of cases of surveyors like myself who failed to pass the Licensed Surveyor's Examination. Mr. H. A. S. Thompson was my instructor in the Survey School. He sat thrice to the Licensed Surveyor's Examination before he passed. I don't agree that a licensed surveyor is superior to me. We have European Government Surveyor. My work has to be checked by surveyors in the office. A senior officer 20 comes round to inspect the work being done in the field. Every surveyor in the Department works under supervision.

The survey took me 6 months, working  $6\frac{1}{2}$ –7 hours a day. I adopted the old survey pillars and ran traverses. I ran primary traverse. The closure is 1 in 92,000. I ran this for 8 miles. I started from Mekuwen and went across to Itirin. I did my own computation. I drew the plan and it was checked. I put in all the details. The survey took me 138 days, including level and details. I see plan Exhibit C. It shows no level and details as in Exhibit A. It is not possible to draw up plan Exhibit A. in one month. Exhibit C. could not be prepared in less than 3 months. It is 30 possible to make it in less than 3 months if my points were accepted and no contours made. The dotted lines on Exhibit A. are footpaths. My traverses were mostly along footpaths. I covered the whole area with levels. I surveyed every point in which I put level marks. I made an independent survey of the land. There were old pillars of previous surveyors. I saw the plans of the previous survey. The boundaries and the pillars were useful to me.

I have made several surveys at Atanekuna area in Kabba and Yaba and have experience of swamp lands. I have also had experience of swamp lands in Ijebu Ode. In some places I saw the same kind of grass as I saw 40 on the swamp area in question. I saw coarse grass in Kabba area.

A muddy piece of land under water is swamp.

Farm land not covered with water is dry land.

I told the 1st Defendant when I was going to make my survey. I did not ask him to give me an escort.

I did not receive instructions to ask him to go with me when making the survey or to send a representative.

In the  
Supreme  
Court of  
Nigeria.

RE-EXAMINED BY BATE.

Exhibit C. might have been completed within 3 months but not in one month.

Plaintiff's  
Evidence.

CROSS-EXAMINED BY COURT.

Even if my traverses were adopted it would be difficult to finish Exhibit C. in a month.

No. 16.  
D. O.  
Ogunnekan.  
Re-examination.

No. 17.

10

S. A. I. Bucknor.

No. 17.  
S. A. I.  
Bucknor.  
Examination.

EXAMINED BY BATE.

5th Defendant's Witness : SAMUEL ALFRED ISHOLA BUCKNOR male, Yoruba, sworn on the Bible, states in English Language as follows :—

I am a qualified surveyor in charge of the examination section, Survey Department. I am a member of the Senior Service.

CROSS-EXAMINED BY MARTIN.

Cross-examination.

20

I am a licensed Surveyor. I don't do private practice as I am in Government Service. A Government surveyor is a surveyor employed under the Government. A licensed Surveyor could do private practice. Some Government surveyors who left Government Service have failed to pass the Licensed Surveyor Examination. Mr. Thompson was my inspector in the Survey School. Pupils in the Survey School passed through him. The Director has effected means of controlling the Department. Thompson failed in the theoretical test. I was not in the aeroplane from which an aerial photograph of Lagos was taken.

I was not consulted about the aerial survey. I got the cost of the aerial survey in the course of my duty.

30 I knew in course of my duty that he went to Victoria Beach. He did not go in the aeroplane.

I have experience of aerial photograph during my career in the Army. Photographs were then taken for the purpose of making maps. Photographs are always exact.

Chinograph pencil is a soft pencil for marking a photograph and can be rubbed off without leaving a mark.

N.B. At this juncture the witness is asked for plan L. 2, 813 referred to in his report ; the plan is not in Court ; he is asked to stand down to produce the plan later on.

In the  
Supreme  
Court of  
Nigeria.

No. 18.

O. E. Eyo.

Plaintiff's  
Evidence.

No. 18.  
O. E. Eyo.  
Examina-  
tion.

Cross-exam-  
ination.

EXAMINED BY BATE.

6th Defendant's Witness : OKON EDET EYO, male, Efik, sworn on the Bible, states in English Language as follows :—

I am a Government Surveyor attached to the examination Section of the Survey Department Lagos.

CROSS-EXAMINED BY MARTIN.

I computed the area marked on a plan taken from a set of photographs. I was shown a set of photographs on which " Mangroves " were marked. I computed the area. The photographs were marked with Chinograph pencil. The photographs are not here but are in the office ; they can be produced. 10

N.B. The Court and Counsel to see the photographs at the Survey Department at 8.45 a.m. on the 1st December.

Witness may stand down in the meantime.  
Court adjourns till 9.30 a.m. tomorrow.

(Sgd.) O. JIBOWU,  
J.

30/11/48. 20

Wednesday, the 1st day of December, 1948.

The C.S.G. Vs. YESUFU ABIODUN, Chief Oniru & Ors.

OKON EDET EYO recalled and warned that he is still on his oath, says as follows :—

I tender plan No. L. 2813, marked Exhibit M.

No Re-examination.

Mr. MARTIN says he no longer requires witness Bucknor.

No. 19.  
W. B.  
Hewett.  
Examina-  
tion.

No. 19.

W. B. Hewett.

EXAMINED BY BATE.

30

7th Defendant's Witness: WILFRED BERTRAM HEWETT, male, English, sworn on the Bible, states in English language as follows :—

I am the Acting Commissioner of Lands, Lagos. I tender Gazette containing Government Notice No. 600 of the 13th May, 1944, marked Exhibit N. I am familiar with the acquisition case of Chief Onikoyi and

the Chief Secretary to the Government of 1947. It was in respect of the acquisition of land at the east end of Ikoyi Island. £5 an acre was paid for swamp according to the decision of the W.A.C.A. I tender a certified copy of the W.A.C.A. judgment in the case, marked Exhibit O. I am familiar with the case of Amodu Tijani *vs.* Secretary Southern Provinces in 1923. In that case the Court awarded £2 an acre for the mangrove swamp. The Land is at Apapa, now the site of Apapa aerodrome.

There is no case in which more than £5 an acre was awarded for swamp land.

10 I had a meeting with Chief Oniru in my office in the Lands, in August, 1947. Mr. Aromire, Mr. Owen Williams and Chief Oniru were present. The Chief then told me that he had received between £800 and £1,000 from the sale of mangroves within the last 12 years.

I have read Mr. Gray of the Forestry's Report. He considers the value of the mangrove to be about £3 an acre. The most profitable minimum rotation of mangroves is 15 years. He could only cut 1/15th of the whole area in a year. The total area is 248 acres according to Gray's Report. The Chief could cut 16.5 acres a year. The income to the owner would be £3 15s. 0d. × 16.5 acres amounting to £62 1s. 0d. per annum.

20 A fair capital value would be to multiply the income by 20, amounting to £1,241.

CROSS-EXAMINED BY BODE THOMAS.

In respect of Area A1 I took an average of the sale made in the area for the last 10 years. I deducted 1/6th of the land for road. This is part of my method in arriving at my decision.

I consider the time it will take to sell off the whole area if divided into plots.

30 I am familiar with the Public Lands Acquisition Ordinance Amendment No. 6/1945 Section 5 and Section 15 of the Original Ordinance. The Ordinance deals with price of the land at the time of the acquisition. In my view the average of the sale over 10 years would be its price at the time of the acquisition. I came to an opinion as to the value of the land in 1944. In my view the value of the land in 1944 was £120 per acre.

Mr. Clover tabulated four sales in 1944—two of the sales were in May and two in June 1944. May was the time of the acquisition and the purchase price then worked between £260 and £280 per acre. I worked on average of the sales between 1943 and 1944.

40 I consider the land would be sold in plots if being sold by the owner who has to make allowances for roads. I therefore took 1/6th of the total area as the total amount to deduct for roads. No such deductions have been hitherto made. It is a well established principle but it has not been applied hitherto.

The market price, in my view, should be the amount the prospective purchaser is prepared to pay and what the vendor wants for it.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
W. B.

Hewett.  
Examina-  
tion—  
*continued.*

Cross-exam-  
ination.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
W. B.  
Hewett.  
Cross-exam-  
ination—  
*continued.*

When a vendor is selling a big piece of land by plots, it will take sometime to sell all the lots. Anyone buying the whole lot would pay less for paying immediate cash.

I expect it will be most profitable for the 1st Defendant to dispose of the land by lots. I believe the principle applies to this case. The principle will not be of general application as I may apply in some cases and not in others.

The area adjoining A1 had been sold by plots. Area A1 is similar land and I consider that the best use to which it can be put or the more profitable way in which it can be disposed of would be to extend the layout and sell 10 as residential building plots.

This is not the first case of acquisition of lands suitable for building purposes. A large part of Ikoyi lands is suitable for building purposes. I gave no evidence in that case.

I cannot now remember whether I signed the letters making offer for Ikoyi lands. I was dealing with the matter when the offer was made, I cannot say if I had the final say about the offer. I worked on the question of the value of the land. I cannot now say if I applied the principle of deferred payment.

I think the principle of deferred payment was applied in the Onikoyi 20 case but it was not accepted by the Court.

Plots can be sold according to the demand.

The compensation offered on A2 is not on the same basis as that on A1. I have compared the value of A2 with my conclusion as to the value of A1, having regard to the nature of the land itself.

I find A2 slightly more valuable than A1. I valued A1 at £80 per acre and A2 at £90 per acre. The fraction of the increase is 1/8th. I took into account the height of the land in A2. The height of the land should, in my view, add to the value of the land. I consider A2 more valuable as it is near the road and nearer to Lagos although surrounded by swamps. 30 I took into account the swamp and contour heights in arriving at the value of other pieces of land.

A swamp is a land under water, or muddy or soft. This includes land over which the tides ebbs and flows.

N.B.—Reads pages 5–6, see 6 of witness's Report.

Lands below H.W.O.S.T. are of less value than lands above, H.W.O.S.T. comes in once a fortnight. As lands are coloured for the purpose of valuation I compared the value of B with A1. I applied the same principles. I evaluate B at 50 per cent. less than the value of A1. I walked on B and got wet. This was sometime in 1944; it was between June and August, 40 1944.

I have been round the whole area in a canoe and walked right across it.

In calculating the value of C1–C10, I took into account the tributes paid and the value of other lands. I took other factors into account. Rents are indications of the worth of the land to the owner. Tributes may be nominal in value. I would not take it alone for consideration in assessing

the value of a piece of land. I took the situation of the land, inaccessibility of the land, the use to which it was then put and possible future use into account. I considered the amount it could have fetched in an open market. I don't think the Defendants would find any purchaser in the open market for these lands.

People live around Kuramo Waters ; there are huts along the beach. These lands, C1-C10, could not be used as a holiday resort. The lands are accessible by water, that takes away from its value. The lands cannot be reached by land dryshod.

- 10 I did not treat D-D6 as unoccupied land. The area are uninhabited. I consider it is worth £30 per acre after a fair calculation I took into account the situation of the land ; the fact that it is uninhabited, the fact that it is not likely to be inhabited. I don't say that they are inhabitable.

D1 is between A1 and A2 : it is near the road. A2 has access to Victoria Beach Road. D1, although it is only about two hundred feet from the road, is swamp. A1 is on the road and ? to dry land. D4 is far away from D1. I classified D1-D6 together as they have one thing in common, viz. : they have small islands of dry land completely surrounded by swamps. C7 is very near Cowrie Creek and canoes land there.

- 20 C7 is more valuable than D1 ; it is about 400 feet from the creek.

D1 is more valuable than C7. It is possible that I would have given something more for D1 if I had not grouped it with other lands. I lumped the areas together because they had something in common.

It is difficult to differentiate the value of a small dry land surrounded by swamp from the value of another small dry land in the middle of a swamp. D1 appears to be more valuable than D6, but £30 is a fair price for each.

The parcels of land lumped together are not necessarily of the same value. I have given an average value of the prices of land.

- 30 C10 is a considerable area of land ; it is close to A1, it is real solid dry land. I pay the same price for it as for C7. Both C7 and C10 are surrounded by water.

In my view, the sale ability of C10 is the same as that of C7 : I don't consider the length of swamp to be traversed before reaching each as material to the price. I find C areas of same value as they are being put to same use and D areas of no use at all as they are not being put to any use. In my view the D areas have more or little prospective use.

Anyone who buys the C areas could derive some income from the fishing villages, whereas if he bought the D areas he gets nothing.

- 40 I would have arrived at the same answer if I had valued the parcels of land in the C and D groups one by one or separately.

I offer £5 per acre of swamp land. I have grouped the swamps together and I am paying for them as "swamp." That is the usual practice.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.

W. B.

Hewett.

Cross-exam-

ination—

continued.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
W. B.

Hewett.  
Cross-exam-  
ination—  
*continued.*

In the Apapa Land Case, swamps were graded. In my own time there has been no grading.

£5 per acre is good and fair for swamp. Dry lands are graded. Dry lands are graded on account of their different characteristics. In the case of swamps, although parts of it is covered by mangrove, other parts are covered with grass; the difference in value is negligible. Any difference in the swamps is covered by the generous figure of £5 per acre. Every swamp land on Exhibit A. is not swamp.

I made no differentiation between the different kinds of swamp. Swamps have to be reclaimed by the purchaser at a cost. Filling up 10  
swamps may cost more in one case than in the other according to the sub soil.

I have no experience in estimating the costs of reclamations. It is not possible to say how much it would cost to fill one piece of swamp and what it will cost to fill others.

There is a difference between land covered with water all the year round and one just covered during high tide.

I see plan Exhibit E., the eastern side of it is shown as dry while the same side in Exhibit A. is shown as swamp. The contour height is shown in Exhibit A.—it ranges between 1·3–1·9 feet. It is above mean sea level. 20  
The place might be flooded at spring tide. There are spot heights all over Exhibit A.; these are not contours.

Soft land above spring tide level may still be swamp land.

Exhibit A. is a correct plan.

N.B.—It is agreed on both sides that the Claimants' Surveyor should meet the Surveyors of the Land Department at the Land Department to see aerial photographs of the land in question with a view to verifying the amount of swamps on the land in order to decide whether Government plan is the correct one; see Claimants' plan with regard to the swamps on the western portion of the land in question. 30

Adjourned to 14th January next.

(Sgd.) O. JIBOWU,  
J.,  
1/12/48.

*Friday the 14th day of January, 1949.*

Before His Honour OLUMUYWA JIBOWU, Esquire, Puisne Judge.

The CHIEF SECRETARY TO THE GOVERNMENT Vs. YESUFU ABIODUN, etc.,  
and others

Defendants' Surveyor did not go to see the aerial photograph and JIBRIL MARTIN for Defendant leaves everything in the hands of the Court. 40



CROSS-EXAMINATION BY BODE THOMAS—*Continued.*

In the  
Supreme  
Court of  
Nigeria.

WILFRED BERTRAM HEWETT, sworn, continues :—

I did not consider the question of severance in this case as it does not arise. All Oniru land has been acquired excepting Apese Village. The Family has other lands on the other side of Magbon Creek on the eastern side of the land in dispute. That portion has not as yet been acquired. Apese Village is on the south and crown land on the west.

Plaintiff's  
Evidence.

No. 19.  
W. B.  
Hewett.

Cross-exam-  
ination—  
*continued.*

The other side of Kuramo waters is called Igbosere.

10 All the lands were held by the Oniru family ; they form one whole. The pieces acquired are nearer Lagos.

Under certain circumstances compensation should be given for severance. I admit that I did not consider the question of severance as, in my opinion, it did not arise. I cannot recall how I came to the conclusion that the question of severance did not apply.

I did take into consideration all the facts that I should in considering the question.

20 In my experience no compensation has been paid for severance. In Ikorodu Road acquisition the principle of severance was applied and a claimant who had a small and useless portion of his land left over after the acquisition was paid off for the useless portion left. This I consider to be a case of severance.

There has been a severance as the portion acquired has been severed from other lands not acquired. The Oniru family will have to move from the land acquired and go somewhere else. The door to other side of Oniru land is through Magbon Creek ; that remains the same.

We are paying for their loss of interest in the land.

I would be paying the same amount if they had no other parcels of land.

RE-EXAMINED BY BATE.

Re-exam-  
ination.

30 I don't think other lands belonging to the Oniru family will be injuriously affected by the acquisition.

In my view, the lands will be increased in value.

I made no deduction from my offer for the possible enhancement of other lands belonging to the Oniru family by reason of the acquisition.

The principle of deferred payment is known in England but has not been applied before in Nigeria. It applied in every case of compulsory acquisition in England. I know this from my study of cases reported.

He refers to para. 4 of his statement in Exhibit K.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
W. B.  
Hewett,  
Cross-exam-  
ination—  
*continued.*

The present value stated at page 5 of my report would be £9,477 if the whole land could have been disposed of in 5 years instead of 10 and that is equivalent to £84 per acre approximately.

I tender Parry's Valuation Tables which I used in making the valuation, marked Exhibit P.

Modern Method of Valuation, by Lawrence & May, is put in by consent and marked Exhibit P. 1—(Cap. iv refers).

No. 20.  
Terms of  
Settlement,  
1st  
December,  
1948.

No. 20.  
Terms of Settlement.

IN THE SUPREME COURT OF NIGERIA IN THE LAGOS JUDICIAL DIVISION. 10

Suit No. 255/47.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... .. *Plaintiff*  
and

1. YESUFU ABIODUN, Chief Oniru
2. (a) Oku Abisogun Oniru  
(b) Salu Oniru  
(c) Asani Abisogun Oniru  
(d) Akanbi Abisogun Oniru  
(e) Wahabi Abisogun Oniru  
(f) Salami Abisogun Oniru ... .. *Defendants* 20

TERMS OF SETTLEMENT as to first part of claim i.e., to whom compensation payable.

1. Compensation to be paid to 1st Defendant Chief Oniru on behalf of the Oniru Chieftaincy Family.

2. 2nd Defendants to be given 2 (two) seats on the committee set up by the Oniru Chieftaincy Family to manage and control the distribution of the compensation received as compensation under 1 above.

3. The Oniru Chieftaincy Family to pay costs of Counsel for 2nd Defendants.

Dated at Lagos this 1st day of December, 1948.

(Sgd.) JIBRIL MARTIN.

H. O. DAVIES,  
*Solicitors for the 1st Defendant.*

(Sgd.) A. O. THOMAS,  
*Solicitor for the (2a) and (2f) Defendants.*

(Sgd.) FANI-KAYODE,  
*Solicitor for the 2(c), 2(d) & 2(e) Defendants.*

In the  
Supreme  
Court of  
Nigeria.

No. 29.  
Terms of  
Settlement,  
1st  
December,  
1948—  
*continued.*

10

No. 21.

Proceedings.

No. 21.  
Proceed-  
ings, 14th  
January,  
1949.

BATE addresses the COURT.

Question—amount of compensation payable for the land in dispute. Cap. 88 Laws of Nigeria Section 15 (a) (b) and proviso. Compensation to be paid as the market price at the date of Notice of Acquisition.

Case here in this country very scanty and gives little guidance. It gives guidance as to the value of swamp land. It has been uniform in this country for many years.

20 Refers to (1) *Amodu Tijani Vs. Secretary Southern Provinces* 4 N.L.R. 18 (p. 35) Mangrove swamp at £2 per acre ; grass swamp land £5 per acre). Swamp land does not change much in value ; they have remained at the same for the last 25 years.

*C.S.G. Vs. Chief Onikoyi*—Exhibit O page 6 of judgment—Dry land 1s. per square yard ; £5 for swamp land, page 2.

Other claimants have agreed to abide by the claim of the 1st claimant. No total sum is demanded in claimant's claim—see para. 3. Comparative average not mentioned. Total amount claimed is not obvious on claim. This was due to the fact that their plan was not made till 1948.

30 Crown plan made in 1944 between January and June. This is the plan made at a time that coincide with the date of the acquisition. No plan made after this date is of the slightest value as a reclamation has proceeded on the land since. Government plan made by a Government Surveyor of 20 years' service ; it took 6 months to make with assistance of 2 chainmen and 8 labourers. Survey made with theodolite and compass ; Government plan shows swamp and dry land. In deciding whether land was swamp or not he took into consideration two factors : (a) Nature of

In the  
Supreme  
Court of  
Nigeria.

No. 21.  
Proceed-  
ings, 14th  
January,  
1949.—  
*continued.*

the ground marshy soft or under water and (b) nature of vegetation—mangrove or coarse grass.

No definition of swamp in law ; Shorter Oxford Dictionary defines Swamp—“ A tract of low-lying ground in which water collects.”

The Surveyor's definition coincides with that of the Dictionary.

No serious difference in the outlines of plans put in by both parties.

Government plan shows higher proportion of swamp.

*Compensation assessed.* Swamp—Government values at £5 per acre : Hewett's evidence says that is the usual rate ; nothing higher in his experience, £10 is therefore fantastic in the light of the Court cases quoted 10 above.

*Dry land.* Government plan shows average 390·2—these differ in quality and various rates given value of each area given in evidence. Area A1 is close to area where there had been sales within 12–15 years. Clover's report has tabulated the sales.

(1) Sales before 1943—average price £101 4s. 0d. per acre.

(2) Sales in 1943—£106 10s. 0d. per acre on the average.

(3) 1944—4 sales—average £152 17s. 0d. per acre. Sales to Somorin and Aromire—£260 per acre. In case of Somorin—this could not be the market price. Aromire's case—he was 20 connected with Oniru family.

Price high and unusual. Other two sales were at £92 and £109 per acre respectively.

These are comparable with land in A1.

Hewett's evidence £120 per acre.

Principle of deferment and ? of roads Reserves introduced.

Principle of Deferment not known in Nigeria but is common and well established in England. Cases are sent to Arbitration and don't go before the Courts. Refers to ? Gazette Digest of Cases—M.

MARTIN submits that the book cannot be referred to—the Court 30 overrules this submission and asks Mr. BATE to proceed.

He admits the principle has never been introduced into Nigeria. Says. that every account in the Digest shows deferred payment principle applied Refers to page 52—Payment deferred for 2 years. No dispute about the principle in England.

In this case demand can be gauged from Mr. Clover's Report in Exhibit K. 5 acres sold before 1943—following your average lower. It would take about 22 years to sell area A1. Government have taken 10 years as possible time to dispose of the land. Possible interest 12½ per cent. but Government has taken 6 per cent. as their rate of interest. 40

*Road Reserves.* Some average usually reserved for roads when a large area of land is bought for development. No one will buy land unless he is guaranteed access to his land. No land saleable unless road reserved made. See Ordinance 35/33 section 4. Public interest demands that some portion of the land in question be reserved for roads. 1/6th area reasonable as

reserve. Section 9 35/33. Value of A1 is £73 12s. 0d. per acre—but Government offers £80 in calculating the total sum. The other areas had been calculated in the same basis—see Hewett's report in Exhibit K. Average taken in calculations are fair.

In the  
Supreme  
Court of  
Nigeria.

*Compensation for Economic Crops.* £6,520 on mangrove trees for 5 years what was the market value in 1944? 1st Claimant failed to prove or produce any account to prove the figure.

No. 21.  
Proceed-  
ings, 14th  
January,  
1949—  
*continued.*

On 18th August 1947—Chief Oniru met Hewett at Land Department and stated that he had received £800—£1,000 from mangrove in the first 10 12 years. This is nearer the value. Evidence exaggerated.

Area covered by mangrove shown in aerial photographs shown to the Court. Gray, Forestry Officer, saw the mangroves and marked them on the photographs. Gray worked out value at £3 15s. 0d. per acre.

Confirmed by Ibeju Land Scheme and Annual income worked by Hewett at £62 1s. 0d. per annum. This has been Chief Oniru's statement.

Government capitalised the income for 20 years and offers £1,241 for the mangroves.

Claimant's claim higher proportion of dry land in relation to swamp and produced plan by Victor Coker.

20 Survey Department rejected many plans of Victor Coker's plan between 1946-47 and applied to Court to suspend his licence. The Licence was not suspended but he was seriously warned by the Court in June, 1948.

Plan agreed with Government plan in outline. Coker stated that he took the western and southern parts of his plan from Government plan and admitted that they were accurate. Internal details disagree.

Submits Coker's plan valueless because made between July and August, 1948, more than 3 years after reclamation scheme has covered the eastern part of the land acquired.

30 Dr. Chwatt's evidence shows the whole of the eastern part was fully drained in 1945. Character of the land has been changed before Coker made his survey.

Very little reliance can be placed on Coker's statements. He stated that he carried out the survey in less than one month; he is 65 years old. No qualified Surveyor to assist him. Survey made during rainy season. A plan to be of any value must be accurate. Ogunnekan, Government Surveyor, did not think the survey be done in one month.

40 Coker's definition of swamp does not agree with the Oxford Dictionary. "What is covered by water I call swamp and what is not covered by water I call dry land." This is too narrow. He worked on the plan with this idea; his plan cannot therefore be accurate.

He said it is not possible to reclaim swamps by draining and that the only way to do it is by filling—Chwatt's evidence extended this and it was proved untrue by Apapa Reclamation Scheme 20 years ago.

Areas shown on Government plan as dry lands and swamps should therefore be accepted—claim based on Coker's plan cannot therefore be accepted. Attack on Clover's report that the valuation does not represent the time market price of the land—Chief Oniru said he sold lands cheaply to

In the  
Supreme  
Court of  
Nigeria.

No. 21.  
Proceed-  
ings, 14th  
January,  
1949—  
*continued.*

encourage population. £10–£20 said to be nominal price, later said £10–£20 for plots of 50' × 100'. Government Table of Cases go back 10 years before acquisition.

Remarkable that during that period lands were sold only at nominal prices. The number of sales small. No guarantee that the lands sold would not be sold; in fact some were sold. Best way to develop would have been by leasing the lands out and keeping them for the family.

Savage, Thomas and Williams called as experts by Claimants.

Savage says land at Victoria Beach more valuable than lands at Suru Lere or Ikoyi. Had never examined land at Victoria Beach; reason, 10 because of sea breeze. His evidence is of no value.

Thomas did not attempt to value swamp lands at Victoria Beach. Williams styles himself an Appraiser; considered 1s. a fair price for land acquired. Admitted no road, electricity and water supply at Victoria Beach. Went to extreme by saying swamp at Ikoyi valued at £60 per acre and at Apapa at £10 per acre. Statement monstrously false.

*Question of Severance* brought up for the first time today. Submits no severance at all. The only adjacent land has already been physically severed by Magbon Creek. Should Court hold there is severance Court to take note of Section 15 (d) Cap. 88. No apparent damage suffered. 20 Suggested damage, means of access. Says access still available by canoe. Damage cannot be great, if any.

Refers to 15 (c) Cap. 88—enhancement of residue of land as a result of improvement of land acquired. Government would improve land with resulting increase in value to the adjacent lands.

Mr. Hewett made no deductions nor made any increase for severance £1,201 for mangrove included in £5 per acre for swamps.

N.B.—By consent plan No. 2815 is put in evidence and marked Exhibit Q.

Refers to page 3, Exhibit O. Says it does not exclude the principle 30 of deferred payment.

However to attach too high a value to family land being acquired compulsorily—marked tendency of over-value. Claimants' claims exaggerated. Officers made impersonal valuation; they are merely guardian of public money and discharging public duty. Asks Court to accept Government valuation as the nearest approximation of the value of the land.

JIBRIL MARTIN asks for time to reply. Case is therefore adjourned to the 31st January 1949.

(Sgd.) O. JIBOWU, 40  
J.,

14/1/49.

No. 22.  
Proceedings.

In the  
Supreme  
Court of  
Nigeria.

Monday the 31st day of January, 1949.

No. 22.  
Proceed-  
ings, 31st  
January,  
1949.

The C.S.G. *vs.* Y. ABIODUN, CHIEF ONIRU and others.

JIBRIEL MARTIN replies for Claimants.

Action for compensation for land acquired at Victoria Beach. Notice in Gazette. No offer of compensation was made to Defendants before summons. Reports in evidence filed immediately matter came to Court.

10 Submits report dated 1948 should have been made long before. Submits reports prepared for case. Bate objects to this and explains that reports prepared in 1948 were prepared because the officers who prepared them were not in the country before then.

He submits that the report of Mr. Gray is of no value as he is a stranger to the Country and that he knows nothing about the matter.

He asks Court not to attach any importance to the report of Mr. Gibberd as he visited the land only once.

*Area Acquired.* Government plan Exhibit A. was made in 27/6/44. It shows area of 1074.6 acres acquired. Swamp and dry lands shown also.

20 Exhibit C. shows some acreage acquired but differs as to the dry and swamp acres—this shows more dry land than Exhibit A. Plan made 4/11/48. Submits Mr. Coker drew plan of what he found on the land at the time of his survey.

Evidence of Dr. Chwatt on record about the drainage since 1944. Says he is not in position to challenge Government plan and suggests Crown Counsel cannot challenge Exhibit C. both prepared at different dates under different circumstances.

He admits that Dr. Chwatt's work must have certain effect on the land.

Submits that mere drainage cannot convert swamp into dry land. The eastern portion still have pockets of swamp in spite of the drainage.

30 He says one is obliged to accept Government plan as Exhibit C. was not made at the time of the acquisition.

*Grading of Land by Mr. Hewett.* Submits Mr. Hewett failed to support the system adopted in grading the land.

Two principles shown by the grading—(1) Nearness to the road and (2) Nature of land—land surrounded by swamp or adjacent to swamp. Says some of the land has water frontage and Mr. Hewett overlooked possibility of access by canoe.

Suggests that difference between £10 per acre of swamp and £360 for dry land claimed could be used by Government to reclaim the area.

40 Submits all dry land whether or not surrounded by swamp should have been treated as dry land.

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ings, 31st  
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*continued.*

Asks for same rate of compensation for dry land and says the grading is artificial.

Refers to W.A.C.A. Judgment in Onikoyi's as rejecting grading principles. See page 4 from para. 2 of Exhibit O.

*Submits* that this is the first case in which the Lands Department grades land.

Says that Government should pay more than nominal compensation for the pieces of dry land on the land acquired. He says that his clients claim £360 per acre for 390.2 acres of land as per Exhibit A. amounting to £140,400. This works at 1s. 6d. per square yard. 10

For 684.4 acres of swamp, they claim £10 per acre—amounting to £6,840, bringing the total to £147,240, including compensation for severance.

Government offers only £23,611.

Mr. Hewett based the price of the land on 10 years' average ; deducted 1/6th value for roads and applied the principle of deferred payment. He did not take compensation for severance into account. He refers to Ordinance No. 6/1945. *Submits* that price based on 10 years average is contrary to spirit of Section 5 (a) of the Public Lands Acquisition Ordinance. The law requires an open market price to a willing seller at date of acquisition. Refers to Vol. IV of Burrows Words and Phrases Judicially defined, page 61—where the phrase "open market" is defined. 1914 3 K.B. page 475. 20

He refers also to Vol. V of Burrows pages 502 and 503 ; also to Halsbury's Laws, Hailsham edition, Vol. VI, page 45, see 43. The principle of 10 years' average has never been applied in Nigeria. Refers to Exhibit K. in respect of Mr. Clover part III. There are two sales in May, 1944, shortly before the notice of acquisition in this case.

Somorin's works out at £260 per acre. Aromire's works out at £280 per acre. Two sales of 7th June, 1944, work out at £93 per acre and £109 per acre respectively. *Submits* that the sale in June cannot be considered. 30

Average by Clover is £153 17s. 0d.

The price paid on 17th May, 1944, should be the governing price. The sale was between a willing purchaser and a willing seller. He agrees that the rate of compensation paid for dry land in Onikoyi case was £240 per acre and £5 per acre for swamp. Deduction for road is an innovation even according to Mr. Hewett. Says this contrary to Section 5 of the Public Lands Acquisition Ordinance (1945). L.D.P. Ordinance No. 35/1933 has nothing to do with the acquisition of lands.

Deductions made on the basis that the whole land is dry.

*Principle of Deferment.* Attempt made to introduce the principle in Onikoyi Case ; referred to at page 3 of Exhibit O. Says Government is still in the same position. This principle puts the buyer in a better position than the seller. Buyer dictates all terms. Mr. Hewett admitted he could not say to what use the land would be put by Government. 40

No evidence that the Government would divide the land into plots to lease out.



The Government is not bound to use the land for the purpose acquired. In the  
See section 3 of Ordinance 6/1945. Supreme Court of  
Nigeria.

Other lands previously acquired not used for public purpose.

*Severance.* Mr. Hewett had no regard to severance when assessing compensation. Instance referred by Mr. Hewett is covered by Section 16 of Cap. 88 Laws of Nigeria. Mr. Hewett apparently does not understand the principle of severance. The Oniru's village will have to be moved far away from the present site. Submits that Defendants are injuriously affected and Court should therefore grant compensation for severance. No. 22.  
Proceedings, 31st  
January,  
1949—  
*continued.*

10 Refers to Vol. VI of Halsbury's Laws, page 48, sec. 46. He says that £5 per acre of swamp is inadequate.

Refers to Exhibit H. and says the price offered works at £186 per acre. Judgment is reserved till the 21st July, 1949.

(Sgd.) O. JIBOWU,  
J.

31/1/49.

No. 23.

Judgment.

No. 23.  
Judgment,  
28th  
February,  
1949.

Monday, the 28th day of February, 1949.

20 Before His Honour OLUMUYIWA JIBOWU, Esquire, Puisne Judge.

Suit No. 255/of 1947.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... .. Plaintiff  
and

1. YESUFU ABIODUN, Chief Oniru

2. F. S. JAMES representing

(a) Okun Abisogun Oniru

(b) Salu Abisogun Oniru

(c) Asani Abisogun Oniru

30 (d) Akanbi Abisogun Oniru

(e) Wahabi Abisogun Oniru

(f) Salami Abisogun Oniru ... Defendants.

#### JUDGMENT.

This is a summons taken out by the Plaintiff for the determination of the question (a) The persons entitled to that part of the lands situated south of Five Cowrie Creek described in Government Notice No. 600 dated 15th May, 1944, which is verged pink on the plan filed in Court and marked

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*continued.*

Exhibit A, containing an area of 1073·25 acres, and (b) The amount of compensation payable for the said land excluding the buildings erected and the economic crops growing thereon.

The Governor has offered a compensation of £23,503.

The 1st Defendant has filed his particulars of interest in which he claims the land in question as a portion of the stool land of the Oniru Chieftaincy Family of which he, as an Idejo Chief, is the titular Head and accredited representative under Native Law and Custom.

He rejects the offer of £23,503 as being unfair, unreasonable and out of proportion to the present market value of the said lands. 10

He asks for compensation at the rate of 1s. 6d. per square yard of dry land, £10 per acre for swamp land and £6,500 for loss of income from and profits on mangrove trees, etc. for five years.

He requests that 100 acres of the land be reserved by Government for the use and occupation of the said Oniru Chieftaincy Family who now live on the land and would be rendered homeless and exposed to great privation and hardship if the whole land were acquired.

I should here observe that the request made by the 1st Defendant is not within the ambit of this inquiry and may be subject of negotiation between the parties. 20

Two statements of interest were filed on behalf of the 1st, 3rd, 4th, 5th and 6th men represented by the 2nd Defendant—the 2nd Defendant having died before service of the summons.

It is not necessary for me to state in full the particulars of the interests claimed by the second set of Defendants as they and the 1st Defendant came to a settlement of the first question which the Court is called upon to determine in the following terms:—

- “ 1. Compensation to be paid to the 1st Defendant Chief Oniru  
“ on behalf of the Oniru Chieftaincy Family.
- “ 2. 2nd Defendants to be given 2 (two) seats on the committee 30  
“ set up by the Oniru Chieftaincy Family to manage and  
“ control the distribution of the compensation received as  
“ compensation under 1 above.
- “ 3. The Oniru Chieftaincy Family to pay costs of Counsel for  
“ 2nd Defendants.”

The only question the Court has now to enquire into and decide is, what compensation is payable to the 1st Defendant on behalf of the Oniru Chieftaincy Family ?

The Defendants hereinafter called the Claimants submitted plans Exhibit C and E of the land in question made in November, 1948 and 40 Government plans Exhibits A and B of the same area were tendered in evidence. The two sets of plans agree in their general outline but differ in their particulars as to swamp and dry land in the area. The Government plans were made in June, 1944, the year of the acquisition and the Claimants' plans were made four years later. There was evidence which could not be

disputed that since 1944 the eastern half of the land had been drained under the direction of Dr. Chwatt when acting as the Army Medical Entomologist.

The claimants' plans show a higher proportion of dry land than the corresponding Government plans which obviously must be attributed to the draining scheme employed on the land since the acquisition.

Jibril Martin, Senior Counsel for the Claimants had to abandon the claimants' plans and agree that compensation should be assessed on the basis of Government plan Exhibit A. Both parties agree that dry land acquired is 390.2 acres and swamp 684.4, all amounting to 1074.6 acres.

10 Government has increased its offer to £23,611.

For the purpose of valuation the dry lands have been classified and marked A1, A2, B, C1-C10, and D-D6 on plan Exhibit B.

1s. 6d. per square yard claimed by the Claimants for dry land works at £363 per acre. The claimants therefore ask for £140,400 for the dry lands at £360 per acre. They ask for £6,840 for the swamps at the rate of £10 per acre. Their total claim is therefore £147,240, to include loss for severance.

Area marked A1 is 112.5 acres, A2 7.7 acres, B 115.7 acres, C1-C10 123.9 acres, D1-D6 30.4 acres.

20 The claimants ask for compensation for the pieces of dry land at a uniform rate, but the Government offers compensation at various rates, namely, £80 per acre for the area marked A1, £90 per acre for A2, £40 per acre for B, £40 per acre for C1-C10 and £30 per acre for D1-D6.

One sixth of the land acquired is said to be reserved for roads and not taken into account in calculating the value of the land.

30 In estimating compensation payable Section 15 (b) of the Public Land Acquisition Ordinance provides that " 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 " and the first proviso to the section states " 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, interests or profits at the time when notice of intention to " acquire was served."

It is not disputed that the notice of the intention of the Government to acquire the land in question was served on the 22nd May, 1944. Compensation should therefore be based on the value of the land on or about that date.

40 In estimating the value of the land in question, the ascertained value of land in the vicinity may be taken as a guide.

To this end, it appears, Mr. Clover of the Lands Department tabulated sales in Chief Oniru's Layout at Victoria Beach between 1932 and 1944. The average price per acre of sales between 1932 and 1942 is £101 4s. 0d.

The average price per acre of sales in 1943 is £106 10s. 0d. There were four sales between 4th May and 7th June, 1944, with the average price of £153 17s. 0d. per acre.

In my view the average price between the 4th May and the 7th June,

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*continued.*

1944, at a time very near the date of the service of notice of acquisition should be the basis of calculation of the compensation payable.

It appears to me unsatisfactory to calculate the value of the land marked A. 1 from rent reserved on a portion of the land leased out in 1941. It is a matter of common knowledge and there is evidence which I believe that the value of land has been going up steadily for some years back in Lagos and its environs. If a long lease had not been entered into in 1944, the rent that would have been asked for in 1944 would have been much higher than the one reserved in 1941.

The 12 sales in 1943 shown in Mr. Clover's tabulation took place many 10 months before the service of the notice of the acquisition and should have been excluded from the Ag. Commissioner of Lands' calculation in arriving at the average price of the lands in the vicinity at the time of the service of the notice of acquisition.

The Ag. Commissioner of Lands accepted £120 as the average price but I have in evidence his letter Exhibit H. dated the 21st November, 1945, to Mr. P. O. Nwajei in respect of this same acquisition in which he offered Mr. Nwajei £23 15s. 3d. for 614.65 sq. yds. of land acquired. The amount offered works at the rate of £187 per acre and without the 10 per cent. included to induce an early amicable settlement it works at £168 6s. per 20 acre.

In view of this letter one is constrained to ask whether the Ag. Commissioner of Lands seriously believed that £120 per acre was the value of the land at the time the notice of acquisition was published.

In Mr. Clover's report is included a sale of land near Victoria Beach Road on the 22nd August, 1944, which works out at the rate of £191 per acre.

In view of the letter Exhibit H. and of this sale of the 22nd August, 1944, it appears to me that the average price of £153 17s. per acre for sales between May and June, 1944, is a more correct approximation of the value 30 of the land than £120 per acre accepted by the Ag. Commissioner of Lands.

One would have expected that the Ag. Commissioner of Lands would have calculated the value of the land marked A. 1 on the basis of £120 per acre accepted by him but that he did not do as his offer was only £80 per acre.

According to his calculation on the principle of deferred payment he got the price at £73 12s. per acre and obviously thought it generous to offer £80 per acre.

When one sees the result of expert calculation and compares it with the average price of actual sales one cannot but come to the conclusion that the 40 average price of actual sales in the vicinity offers a more satisfactory guide than expert estimate.

With respect to the Ag. Commissioner of Lands, I am unable to accept the average price of £120 per acre which he held was the price of the land at the time the notice of acquisition was served and I hold that the average price then was £153 17s. per acre according to Mr. Clover's tabulation.

The plan Exhibit B. shows the land marked A1 to have swamp only on

one side while land A2 has swamps on three sides ; both lands are shown to abut on Victoria Beach Road.

A1 according to the Ag. Commissioner of Lands' report enjoys prevailing wind blowing direct from the ocean which A2 does not, in its locality, enjoy. A2, according to him, is not comparable to A1 as residential building land as it is surrounded by pestilential mosquito breeding swamp. The two pieces of land don't lie far apart although A2 is nearer Lagos by a few feet than A1. I am unable to share the view of the Ag. Commissioner of Lands that A2 is more valuable than A1 and that the difference in their

10 value is £10 per acre.

In my view, A1 and A2 should be paid for at the same rate. The question now is whether the other piece of dry land should be paid for at the same rate as A1 and A2 as submitted by the learned Counsel for the claimants or whether various rates should be paid according to their locality and value.

The pieces of land marked B and C1—C10 are inhabited but D1—D6 are not though they are not uninhabitable according to the Ag. Commissioner of Lands.

20 I appreciate the difficulty of differentiating between one piece of dry land and another and of estimating the difference in their value which at best can be nothing but the result of guess work.

Land C10 is said to be " good solid ground " and I fail to see how the Ag. Commissioner of Lands considers that it is worth only half the value of A1 to which it is in close proximity.

Auctioneer Omosalewa Thomas is of the opinion that lands beyond Oniru's Iga on A2 should be less valuable than a piece of land on Victoria Beach Road. With this I agree and so accept the principle of grading introduced into this case by the Ag. Commissioner of Lands.

30 It is true the principle was rejected by the W.A.C.A. in Suit No. 158 of 1946, but it was because there was no evidence to support the findings of the learned trial Judge and the W.A.C.A. did not seek to lay down a principle which will be binding in future cases.

In my view plots B and C10 which are close to each other and not far from A2 and A1 should have a slightly lower value than either A2 or A1.

The fact that Government offers £40 per acre for areas marked C1—C10, although £8 15s. is said to be the value per acre by capitalising the annual income of £52 per annum at 20 years purchase shows that Government is conscious of the fact that the true value of the land cannot be obtained by the method of calculation adopted.

40 These C areas are scattered over the land acquired ; but C2, C3, C4, C5, C6, C8 and C9 have water frontage which should enhance their value in spite of their swampy surroundings.

C1 adjoins other solid piece of land and C7 is near the water front. I estimate the value of C1—C9 areas at the same rate as B and C10.

The D areas in my view should be less in value than the C areas. I estimate the value of A1 and A2 at £152 17s. per acre ; B and C10 at £121 per acre, C1—C9 at £121 per acre and D—D6 at £60 10s. 0d. per acre.

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I am unable to accept the price of £242 per acre paid for Ikoyi Land in Suit No. 158 of 1946 as a guide in assessing the value of the land in dispute as I consider the average of actual sales of lands in the vicinity of the one now acquired offers a better basis of estimating the value of the land in dispute than the value of land not in close proximity thereto.

With regard to the deduction made for road reservation, I don't think this is justified.

According to Government Notice No. 600 of the 13th May, 1944, published in Nigeria Gazette, No. 24 Vol. 31 of the 18th May, 1944, the land in question was required by Government for "Sanitary improvements 10  
"including reclamation, for the improvement of 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 construction of any  
"public works and for exclusive Government use and for general public  
"use."

The land acquired may not, like other lands previously acquired from the Oniru Chieftaincy Family, be utilised for the purpose for which it is acquired, as provided by Section 3 (2) of the Public Lands Acquisition Ordinance, Cap. 88 Vol. 1 Laws of Nigeria.

The Ag. Commissioner of Lands admitted that this is the first occasion 20  
on which deduction is made for road reserve in an acquisition case and he claimed to make the deduction under the provisions of the Land Development (Provision for Roads) Ordinance No. 35 of 1933.

This Ordinance is intended to apply to the case of an owner of land who wishes to dispose of it by lots. He is required by the Ordinance to forward an allotment plan for the approval of the Surveyor General and the plan must make reservation for roads.

The claimants have not signified an intention to dispose of the land in question by lots nor for that matter have they given any indication of an intention to sell or dispose of the land in question. 30

The Government wanted the land and gave notice of their intention to acquire it compulsorily. The claimants have no alternative but to allow the Government to have its way subject to payment of compensation which must be fair and reasonable.

The claimants are not concerned with what the Government would do with the land they have acquired nor can any one say whether the Government would dispose of the land by lots at a future date.

I therefore hold that Ordinance No. 35 of 1933 does not apply to the claimants and that it would be unfair and improper to deprive them of a sixth of the compensation due to them. In my view, the whole land 40  
acquired must be paid for.

Coming now to the question of severance, the Ag. Commissioner of Lands admitted that he did not consider the question of severance in calculating the compensation offered but he was of the opinion that the question did not arise.

By this acquisition the claimants will be dislodged but they have more land east of Hagbon and Itirin Creeks to which if they wish, they may remove.

If they do go there, they will have moved further away from Lagos ; but it cannot be said that the acquisition has left their land across the two creeks less valuable nor can it be said to have an injurious effect on the land.

In the circumstances, I agree with the Ag. Commissioner of Lands that no compensation is payable for severance.

10 Coming on to the compensation claimed for the swamp on the land acquired, the claimants kept no book of account and could not prove their claim for £6,500.

There is abundant evidence before the Court which satisfies me that no higher than £5 per acre has ever been paid as compensation for swamp-land.

In the Ikoyi Lands case of 1946 above referred to the W.A.C.A. approved of £5 per acre for swamp. I therefore consider £5 per acre offered reasonable.

The compensation payable will be as follows :—

		£	s.	d.
20	Area A1.	112.5 acres @ £153 17s. 0d. per acre	17,308	2 6
	Area A2.	7.7 acres @ £153 17s. 0d. per acre	1,184	12 10
	Area B.	115.7 acres @ £121 per acre ... ..	13,884	0 0
	Area CI-CI0.	123.9 acres @ £121 per acre ... ..	14,868	0 0
	Area DI-D6.	30.4 acres @ £60 10s. 0d. per acre ... ..	1,839	4 0
	Area Swamp.	684.4 acres @ £5 per acre ... ..	3,422	0 0
		Total ... ..	£52,505	19 4
			£52,505	19 4

I therefore assess the compensation payable at £52,505 19s. 4d. and order it to be paid to the 1st Defendant Yesufu Abiodun, Chief Oniru, on behalf of the Oniru Chieftaincy Family.

30 The claimants ask for 500 guineas costs and reminds the Court that they were brought to Court without being given the opportunity of negotiating for the compensation with the Plaintiff.

The Ag. Commissioner of Lands who represents the Chief Secretary says 20 guineas will be reasonable costs in the circumstances.

The claimants are awarded 200 guineas Costs.

(Sgd.) O. JIBOWU,  
*Puisne Judge.*

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In the  
West  
African  
Court of  
Appeal.

No. 24.

Grounds of Appeal by Defendant.

No. 24.  
Grounds of  
Appeal by  
Defendants,  
16th May,  
1949.

IN THE WEST AFRICAN COURT OF APPEAL.

Suit No. 255 of 1947.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... .. *Respondent*  
and

1. YESUFU ABIODUN, Chief Oniru

2. F. S. JAMES representing

(a) Okun Abisogun Oniru

(b) Salu Abisogun Oniru

(c) Asani Abisogun Oniru

(d) Akanbi Abisogun Oniru

(e) Wahabi Abisogun Oniru

(f) Salami Abisogun Oniru

... .. *Appellants.*

10

The Appellant for himself and on behalf of the Gniru Chieftaincy Family being dissatisfied with the judgment of the Supreme Court of Nigeria in the Lagos Judicial Division delivered on the 28th day of February, 1949, and having obtained Final Leave to appeal therefrom dated the 9th day of May, 1949, hereby appeal to the West African Court of Appeal upon 20 the grounds hereinafter set forth.

GROUND'S OF APPEAL.

The learned trial Judge has misdirected himself by saying that " in my " view the average price between the 4th May and the 7th June, 1944, at a " time very near the date of the service of notice of acquisition should be the " basis of calculation of the compensation payable."

2. The learned trial Judge has misdirected himself in accepting the principle of grading introduced into this case by the Acting Commissioner of Lands and in assessing the compensation payable on the basis of that grading. 30

3. The learned trial Judge has misdirected himself by awarding only £5 per acre for swamp land for the reason that " there is abundant evidence " before the Court that no higher than £5 per acre has ever been paid as " compensation for swamp land."

4. The learned trial Judge has misdirected himself in rejecting the Appellant's claim for £6,500 for loss of income from and profits on mangrove trees etc. for five years, on the ground that " the claimants kept no book of



“ account and could not prove their claim for £6,500,” and in omitting to award any compensation at all in respect of the said claim.

5. The learned trial Judge erred in law and on the fact before the Court in finding that “ no compensation is payable for severance.”

6. The judgment is against the weight of evidence.

Dated at Lagos the 16th day of May 1949.

(Sgd.) JIBRIL MARTIN,  
*Appellant's Solicitor.*

In the West African Court of Appeal.

No. 24.  
Grounds of Appeal by Defendants, 16th May, 1949—  
*continued.*

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No. 25.

10                                      **Grounds of Appeal by Plaintiff.**

No. 25.  
Grounds of Appeal by Plaintiff, 7th June, 1949.

IN THE WEST AFRICAN COURT OF APPEAL.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT    ...    ... *Appellant*  
and

1. YESUFU ABIODUN, Chief Oniru

2. F. S. JAMES representing

(a) Okun Abisogun Oniru

(b) Salu Abisogun Oniru

(c) Asani Abisogun Oniru

20                                      (d) Akanbi Abisogun Oniru

(e) Wahabi Abisogun Oniru                      ... *Respondents.*

The Appellant, being dissatisfied with the judgment of the Supreme Court of Nigeria (Lagos Judicial Division) delivered on the 28th day of February, 1949, and having obtained final leave to appeal therefrom dated the 6th day of June, 1949, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

**GROUND'S OF APPEAL.**

1. The amount of compensation awarded was excessive having regard to the evidence.

30        2. The learned Judge misdirected himself in that :—

(a) in assessing the compensation to be paid in respect of the lands referred to as Area A1, he paid undue regard to the purchase price of two plots of land in the vicinity of the said areas conveyed by instruments dated the 4th and 17th days of May, 1944,

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West  
African  
Court of  
Appeal.

No. 25.  
Grounds of  
Appeal by  
Plaintiff,  
7th June,  
1949—  
*continued.*

respectively, and to a letter (Exhibit H.) containing an offer of compensation, and paid no regard to the purchase price of twelve plots of land in the vicinity of the said areas sold during the year 1943, and insufficient regard to the purchase price of two plots of land in the vicinity of the said areas conveyed by instruments dated June, 1944 ;

- (b) in the assessment of compensation to be paid in respect of the lands referred to as area A1 on the basis of the purchase price paid in respect of land in the vicinity sold off in lots, he directed himself that the provisions of the Land Development (Provision for Roads) Ordinance, 1933 (No. 35 of 1933) (Whereby provision is made for the reservation of land for roads where land is sold off in lots) were not to be taken into account ; 10
- (c) in assessing the compensation to be paid in respect of the lands referred to as Area A1 he failed to take into account the time which would necessarily elapse before the said lands could have been sold off in lots by the owner or owners of the said lands in the ordinary course of the development thereof as a potential building estate ;
- (d) having assessed the rate per acre of compensation to be paid in respect of the lands referred to as area A1, he failed to direct himself adequately or at all upon the evidence adduced by the plaintiff as to the value of the lands referred to as areas B, C1 to 10 and D1 to 6, and thereby directed himself that the compensation payable in respect of the said lands should be at rate per acre disproportionately high having regard to the evidence aforesaid. 20
- Dated this 7th day of June, 1949.

(Sgd.) ARTHUR RIDEHALGH,  
*Solicitor-General,*  
*Counsel for the Appellant.*

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**Proceedings.**

IN THE WEST AFRICAN COURT OF APPEAL, HOLDEN AT LAGOS, NIGERIA.

Wednesday the 9th day of November, 1949.

Before Their Honours

Sir HENRY WILLIAM BUTLER BLACKALL, K.C., President.

Sir JOHN VERITY, Chief Justice, Nigeria.

ARTHUR LEWEY, Justice of Appeal.

CHIEF SEC. *v.* ONIRU and ONIRU *v.* CHIEF SEC.

BATE Crown Counsel for Chief Secretary.

J. MARTIN (THOMAS and RAYODE with him) for Chief Oniru.

The two appeals to be argued together by agreement of Counsel.

40

MARTIN : Paragraph 45 Public Lands Acquisition. *Re* ground 4. In the Service 22 May 1944 page 39 line 36 page 39 line 47 *et seq.* page 78 date of West African Court of Appeal. onveyances of May and June '44 quoted not the date of sale but of the conveyances (Bate agrees). Paragraph 86 line 14 therefore the sales in June 1944 should not have been taken into account as the conveyance was made after 22 May.

Page 12 line 9 sales in 1944 at £260 and £280 should only be considered. Proceed-ings, 9th, 10th, 11th November, 1949—*continued.*  
 page 40 lines 15–21 Commissioner of Lands offered at £168 per acre. Judge should not have made it less. Page 12 Government paid Somorin £60 i.e. 10 £300 per acre. Page 86 1s. per square yard i.e. £240 per acre paid for land at Ikoyi. But land at Victoria beach more valuable (page 6 lines 5 and 6 and page 9 lines 33–37). Page 13 lines 10–11 (but see page 13 line 34 for reason because more breeze at beach page 14 line 25 page 74. Page 16. Pages 8–17. By taking June sales into consideration rate of compensation diminished otherwise it would be £240–80. Under paragraph 15 Judge not obliged to take averages. *Re* ground 2 (grading page 44). Page 41 lines 19–24. Submit the only safe basis is value all dry land at same price *re* ground 3.

Page 43. Because of quick reclamation of swamp land by Government 20 the Judge should award more than £5 for swamp *re* ground 4.

Pages 10–11 Chief line 43 “ I can't tell how £6,500 arrived at ” page 25 line 12.

*Re* ground 5.

We made no special claim for severance.

This is the third acquisition from same family. We cannot go to our land on left side of creek in future except by canoe though formerly we went by bush paths to Magbon Creek. By P. The only evidence about this is the plan Exhibit A.

BATE : *Re* ground 4 no evidence that parties in June 1944 were 30 influenced by knowledge that Government was acquiring. June 1944 prices tally closely with those in 1943 106 c.f. 101 also with page 76 page 10 line 25 Chief Oniru “ once asked £200 per acre but men could not pay ” line 32 £200 a nominal price.

Page 78 cf. first item Alakija's buy and his sale to Somorin page 69 line 30.

*Re* A. Aromire was Secretary to Chief Oniru (page 70 line 3) page 25 line 12 he was present at meeting with Commissioner of Lands therefore deep in Oniru's Counsel.

Date of Acquisition Notice 13th May 1944. Information given to 40 Chief on 22 May (page 39 line 36). Sale to Aromire dated 17th May. Date of Gazette 18th. Date of Acquisition Notice 13th May. Sale to Aromire shows very steep jump to £280. It has also a frontage on Victoria Beach Road though behind Somorin. Why should Chief Secretary pay such high price at this moment. Is it reliable.

*Re* Governor's offer to Nwajei (page 67) of £23 i.e. £187 per acre see page 78 item 2 shows Nwajei bought it in 1943 for £15. I can give no explanation why Government offered him so much more than he had paid

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for it. It was a very small piece of land therefore too much emphasis should not be laid on it.

*Re Ikoyi Value v. Victoria Beach.*

Savage page 13 lines 34-35 "sea breeze only reason."

Williams competence see page 14 line 31, "I asked for 2s." He thinks £60 per acre reasonable price for swamp land. Then comes down to £10. Thomas page 16 line 24. I may get £100-£200 per acre for swamp. Coker is a surveyor not a valuer. Unreliable (page 7).

By P. Our calculations were based on average of 2 years 1934-44 Statement *re* 10 years (page 25 line 35) a slip.

10th November, 1949.

10

DAVIES now appears with other counsel for Oniru.

BATE (resumes). *Re* ground 4.

Page 2 (b) only question before Court was compensation for the land. In any case no evidence *re* £6,500 profits. Hewett's figure of £5 included mesne profits. *Re* ground 5 (severance).

No legal severance. Anyhow paragraph 15 only provides for damage for severance. Claimant must prove that remaining land on other side decreased in value. There is no evidence about damage. Most convenient way of crossing creek is by taking canoe at Apesi (*vide* plan). No evidence that paths across the swamp are used. 20

*Re* Chief Secretary's grounds of appeal (page 45). Ground 1 Government took as basis sales for 2 years 1943-44 pages 25, 77, 78 page 69 para. 3. Hewett's calculation page 69. We took sales in A1 as this was the only part where they had taken place most of the rest of the land being swamp. (This was most favourable basis for claimant (Intd.) H.W.B.) Judge's acceptance of so small a basis (4 sales) for calculating compensation for such large sum is wrong particularly as 2 of them are unreliable; their prices not susceptible of explanation by general rise in values in neighbourhood. Explain partly because of situation but not altogether. 30

Judge paid too much consideration to Exhibit H. at page 67. Average of June sales and Nwajei is £123 8s. 8d. cf. Government basis £120. If this Court only takes 1944 sales the May ones should be left out.

Ground (2).

Ordinary purchaser in open market would not buy land reserved for roads therefore this consideration should be applied here as Government should not be placed in a worse position than any other purchaser.

The deduction for roads was made only in area A1, i.e. 112.5 acres page 42 line 8 Judge's reasons for rejecting not valued (a) in view of paragraph 2(2) of Ordinance 35/33 deems him to begin to sell once he has sold any plot. 40

*Re* Judge's point that we don't know what Government will do with the land. This does not matter what concerns us is what Oniru did viz. to sell plots.

No cross examination on this point. Only reference is at page 36 line 16 (Martin's address).

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- Re* ground 3.  
Only Cross-examination on deferment at page 26 line 20.  
Judge dismisses deferment in a few lines at page 40 line 41 deferment page 72 para. 4(3).  
*Re* interest Lawrence and May pages 18–19.  
Page 72 line 26 Hewett.  
BATE wishes to refer the Court to an arbitration reported in the Estate Gazette.
- 10 THOMAS objects. Objection upheld.  
Paragraph 15 of our Public Lands Acquisition Ordinance (Cap. 88 closely follows paragraph 2 Acquisition of Land Act 1919 (U.K.). Nothing in Cap. 88 to exclude application of the principle of deferment. Under Town and County Planning Act 1947 principle of deferment given statutory recognition by paragraph 52.  
Page 73—74. Judge trebled Government value of B and C and doubled Government value of D. No evidence to justify him doing this.  
C10 (page 41 line 22). A1 ripe for development Oniru already sold plots therefore more valuable than C10. It has easy access and road frontage and has swamp on one side only. Fronts on to beach.
- 20 Per contra C10 surrounded by swamp. No access by water except at one point. Consists of narrow tongues jutting into swamp. Government value B and C the same but objects giving them same value as A.  
B wholly surrounded by swamp: only just above sea level (see page 73 para. 6) very small value as prospective building land.  
*Re* C1—9 see Hewett page 74 and page 26 line 46.  
D are uninhabited patches surrounded by swamp which might well have been treated as unoccupied but Government offered £30. Judge gave £60 10s. 0d. much too high having regard to evidence.
- 11th November, 1949.
- 30 THOMAS (in reply) *re* land A1 *Horn v. Sunderland Corp.* 2 KB 1941 page 48 value must be value at very moment of service of notice. Therefore sales after the notice should be ignored. Therefore Exhibit H very important also Somorin.  
The road was there when Alakija bought in 1943, therefore rise from £121 to £280 could not be attributed to the existence of road but to the general rise in values between 1943 and 1944. Judge said there was a steady rise in values (page 40 line 7). Government acted on this view when awarding Somorin compensation and also Nwajie whom they paid 50 per cent. more than he paid in 1943 although not on main road. No sales in
- 40 1944 as Chief had no plots left. The May sales illustrated rise that took place in meantime. The June sales being after acquisition notice were only speculations the purchasers were merely buying right of compensation. Judge ought to have awarded same price as Government paid to Somorin. £286 per annum *re* deduction of 1/6 (one-sixth) for roads in A1.  
BATES assumed Oniru had sold plots in A1. But he sold none. Bates agrees no sales of land at present in dispute but says the part patched yellow was acquired under same notice and there were sales on that lay out.

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THOMAS (resumes). Fact that Chief sold plots on lay out no evidence that he intended to sell land on other part. Therefore paragraph 2 of Ordinance does not apply.

*Re grading.*

A good deal of the swamp was 2 ft. above sea and not swamp.

Agree that principle of grading right but its application was wrong.

*Re deferment.*

Principle not followed in Nigeria but if it was it could not apply to this case as no lay out on land the subject matter of appeal.

*Re amount awarded by Judge.*

10

Crown reduced original valuation of A1 to £80 by invoking deferment, etc., page 26 line 28.

In Court below we were told principle of deferment applied to whole land (page 26 line 39) page 41 line 1.

*Re claim for 5 years profits.*

Government witness agrees *re* £60 per annum for mangrove. As other figures of Chief are uncontradicted they should be accepted.

BATE: If test is moment of acquisition i.e. sale of 22 May. *Re* Government's offer to Somorin and Nwajie Government might have wished them not to be out of pocket.

20

*Re* May prices. Rise too steep to attribute to steady rise. Paragraph 2 of Ordinance 35/1933 Land Development applies to land in appeal even though Chief had sold none of it.

If we are paying building land prices we should get benefit of the paragraph.

Same argument applies *re* deferment.

Decision reserved.

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JIBRIL MARTIN (A. O. THOMAS & KAYODE with him) for Appellants.

D. L. BATES, Crown Counsel, for Respondent.

30

JUDGMENT.

(Delivered by Sir JOHN VERITY, C.J., Nigeria.)

These are appeals from a judgment of Jibowu, J., whereby he assessed the amount of compensation to be paid in respect of certain lands compulsorily acquired by the Government for public purposes.

The land comprises in all 1074.6 acres situate between Five Cowrie Creek and Victoria Beach in the Colony of Nigeria. The amount of compensation offered by the Government was not acceptable to the

claimants and a summons was taken out to determine (a) the persons entitled and (b) the amount of compensation payable for the lands excluding the buildings erected, and the economic crops growing thereon.

The first question was determined by a settlement between the respective claimants and the sole question before the Court was therefore the amount of compensation payable by the Government to the 1st claimant in accordance with the terms of the settlement.

The final offer of the Government was £23,611 ; the claimant sought to establish a valuation of £147,240 and the learned Judge assessed the amount of £52,505 19s. 4d. The claimant also sought an award of £6,500 for " loss of income and profits on mangrove trees, etc., for five years," but the learned Judge made no award under this head, holding that the claim was not proved.

Both the Chief Secretary to Government and the claimant have appealed to this Court, the former alleging that the Judge's award is excessive and the latter that it is inadequate. Both appeals were heard together, and although the claimant's appeal was first in order of time and was first argued, it will be convenient to deal firstly with certain grounds put forward by the Government which raise questions of principle as to the method of assessment.

The first of these questions with which I would deal is that raised by ground 2(c) of the Chief Secretary's grounds of appeal. It is there alleged that the learned Judge misdirected himself in that

" in assessing the compensation to be paid in respect of the lands referred to as Area A1 he failed to take into account the time which would necessarily elapse before the said lands could have been sold off in lots by the owner or owners of the said lands in the ordinary course of the development thereof as a potential building estate."

The basis of Crown Counsel's submission in this regard can best be understood I think by reference to para. 4 of the report of Mr. Hewett, Assistant Commissioner of Lands (Exhibit K) :

" In the valuation of land possessing a prospective building value it is necessary, and I quote from Chapter XII of ' Modern Methods of Valuation ' by Lawrence and May, published by The Estate Gazette Ltd., 1st Edition, 1943

" (1) to determine the best use to which a piece of land or property can be put in the future.

" (2) to estimate the market value of the land when put to this use

" (3) to consider the time which will elapse before the land can be so used

" (4) to estimate the cost of carrying out the works required to put the land to the proposed use."

The principles of valuation so enunciated are novel in so far as their application to the acquisition of land in Nigeria is concerned, in that they

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introduce a faction which, admittedly, has not up to the present time been accepted by the Courts in this country and has only it would appear been put forward once before, and that as recently as 1946 when in the suit between the Chief Secretary and Chief Onikoyi it was rejected by this Court but upon grounds which were expressly stated as not constituting a precedent. The factor to which I refer is that set out at (2) in the paragraph of Mr. Hewett's report, and involves what was termed in the course of argument the principle of "deferment." It requires a deduction from the market value of the land based upon calculations of the deferred income which would be derivable from the land if sold in lots over a given period. 10

In regard to the land described as Area A1 the Assistant Commissioner of Lands estimated that the whole area would be disposed of in 10 years, and taking the rate of interest which a purchaser of the land in open market would expect on capital invested in his purchase as 6 per cent., by the use of certain calculations based upon a set of tables known as Parry's Valuation Tables, he arrives at a figure which would reduce the immediate value of these lands from £120 per acre to £73. 12s. 0d. It was submitted by Crown Counsel that this system of valuation is accepted by the Courts in England and in support of this submission he sought to cite certain reports appearing in a journal called "The Estates Gazette." This Court, however, was 20

unable to accept such reports as authoritative and therefore declined to refer to them, and Counsel was unable to furnish us with any other authority for his submission either by reference to any text-book or report to which we could give recognition. In my view, therefore, this Court is bound to consider whether or not the system referred to is one which falls within the statutory basis upon which lands are to be valued for the purposes of proceedings under the Public Lands Acquisition Ordinance (Cap. 88) section 15, that is to say, whether the rules put forward can be applied in order to ascertain "the amount which the land, if sold in the open market 30

"by a willing seller, might be expected to realise." I bear in mind that these words are identical with those used in Section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, and that if, therefore, the principle contended for by Crown Counsel is in fact recognised by the Courts in England, it must there have been held to fall within the statutory rule of assessment. It is possible that such a principle might have been adopted in England on the ground that a willing seller in open market in that country would have to agree to this principle of "deferment" in order to obtain a purchaser and therefore it could not be expected that the amount realised in the open market would be otherwise than that arrived at in accordance with this principle. In determining this question in Nigeria, however, we 40

have to consider whether or not the application of this principle would obtain in relation to sales in open market in this country. I am of the opinion that an affirmative conclusion could only be reached if there were before this Court evidence to show that such a practice has been adopted at some time or another in regard to open market sales in Nigeria. There is no such evidence in this case and the existence of any such practice is rather negatived by the fact that at no time have the Courts in this country ever



recognised its existence in relation to the assessment of compensation under the Public Lands Acquisition Ordinance since it came into operation 32 years ago. In the absence of any such evidence I am not of the opinion that this Court would be justified in applying the principle of deferment in determining what would be the amount expected to be realised if the land were sold in the open market by a willing seller in Nigeria.

The second of the questions raised by Crown Counsel is set out in ground 2(b), and relates to an alleged misdirection of the learned Judge in that

- 10           “ in the assessment of compensation to be paid in respect of the  
               “ lands referred to as Area A1 on the basis of the purchase price  
               “ paid in respect of land in the vicinity sold off in lots, he directed  
               “ himself that the provisions of the Land Development (Provision  
               “ for Roads) Ordinance 1933 (No. 35 of 1933) (whereby provision  
               “ is made for the reservation of land for roads where land is sold  
               “ off in lots) were not to be taken into account.”

- 20           In the first place the record does not disclose that it was ever represented to the learned Judge that the provisions of the Ordinance had been applied (as prescribed by Section 1 thereof) to the area in dispute. I have assured myself, however, that the provisions of the Ordinance were so applied by an Order-in-Council dated the 2nd January, 1934, as amended by an Order-in-Council dated 26th May, 1936. Strictly speaking, I think that there should have been evidence to show that the area in question lies within “ the boundaries of the township and Urban District of Lagos ” but this defect in the evidence may, perhaps, be considered to be cured by reference to the Order-in-Council dated the 7th March, 1938, and made under the provisions of Section 3 of the Township Ordinance Cap. 57 (which was in force at the date of the acquisition), and I am prepared to assume, therefore, that the lands in question lie within an area to which the Land
- 30           Development (Provision for Roads) Ordinance applies. This Ordinance requires that where an owner intends to sell off his land in lots he shall submit a plan to the Surveyor General who may require him to make certain reservations for roads, and further that where the area so reserved does not exceed one-sixth of the total area the owner shall not be entitled to compensation in respect of the road reservation. I find it difficult to see how it can be argued that in the present case the provisions of this Ordinance apply either to the area referred to as A1 or to any of the land acquired from the present claimant the subject of these proceedings. There
- 40           is no evidence that prior to the acquisition the claimant had any intention of selling off any part of the land acquired in lots. Crown Counsel referred, however, to Section 2(2) of the Ordinance which provides that an intention to sell in lots shall be presumed from the sale of one lot, and argued that because the claimant had prior to the acquisition sold several lots of land situate upon an area adjacent to Area A1 therefore he must be deemed to have begun selling the whole area, including A1, in lots. If the claimant had made no scheme for the sale of any particular part of his holding in

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lots and had merely sold one or more lots of land to which Area A1 is adjacent then it might have been held that by virtue of Section 2(2) he must be deemed to have begun selling off the whole area. But it must be borne in mind that in regard to the particular area which had been sold in lots by the claimant he had made a specific lay-out as appears from the plan Exhibit Q, that prior to the acquisition he had sold all the lots comprised in the lay-out, and had sold no lots outside that area. In these circumstances I do not think that this Court should have recourse to Section 2(2) of the Ordinance so that we may deem the claimant to have begun selling in lots any land beyond the limits of that shown in his "lay-out" none of which lies within the land now acquired by the Government. I am of the opinion, therefore, that the learned Judge was right in holding that the provisions of the land Development (Provision for Roads) Ordinance were not applicable to the present proceedings. 10

In furtherance of his argument upon the grounds of appeal to which I have referred Crown Counsel submitted that if neither "deferment" nor "road reservation" is to be taken into account then the basis of valuation of the lands acquired should not be as building land but as agricultural land. Whatever else might be the appropriate basis for valuation it appears to be clear from the evidence that this land could not be valued as agricultural land. Not only is there no evidence that it has ever been used as such, but it also appears from the report of the Senior Agricultural Officer (Exhibit K.) that it is unsuitable for agriculture or farming purposes. The whole of the evidence indeed is related to the value of the land for building purposes whatever may be the values placed upon it by the parties to these proceedings. Nor am I able to agree with Crown Counsel that the rejection of certain principles which are applicable, if at all, solely to the selling of building land in lots necessarily involves the conclusion that the land is not to be valued for building purposes, for there are obviously other methods of utilizing building land besides the creation of a building estate and the sale thereof in lots. It is, moreover, to building land that the sole evidence before the Court is addressed on the question of value and it is upon the market value of the land as such that the valuation by both parties is based, as, it would appear, have similar valuations in other proceedings under the Public Lands Acquisition Ordinance been based in the past. I am unable to agree that, in such circumstances, it is open to the Chief Secretary now to contend that an entirely different basis of valuation should be adopted, merely upon the ground that certain deductions from the ascertained market value of the land as building land are not allowed. 20 30 40

Having dealt with these matters of principle raised by the Chief Secretary's grounds of appeal I would proceed to consider those raised by the claimant. In regard to the method of valuation these grounds raise two questions of principle; first, whether the learned Judge was right in accepting what is termed "the principle of grading" and secondly whether he erred when he referred to "the average price" over a certain period. As regards the first of these questions, the ground of appeal was not pressed

by counsel, very wisely, for it must be obvious that various areas of different location and quality will vary in value and that those of similar location and quality may be classed together as of similar value. In regard to the second question, however, the argument of counsel for the claimant was that the value of the land on the date of acquisition is to be determined and that this cannot be ascertained by reference to the average price of the land over any given period. Counsel referred to authority for the proposition that "at the time of the acquisition" means "at the very moment," but it is obvious that this proposition cannot be carried too far, for were the words "at the moment" to be taken literally it would be impossible to value the land at all unless there were evidence of a sale in the open market by a willing seller of similar land simultaneous with the service of the acquisition notice. I think that the basis of valuation in this connection is well expressed in the reference in the English & Empire Digest (Vol. II, p. 124 n.o.) to the Canadian case of *Falconer v. Regina* (2 Exch. C.R. 82), where it is said

20 "When lands possess a certain value for building purposes  
 "at the time of expropriation, but that value cannot be ascertained  
 "from an actual sale of any lot or part thereof, the sales of similar  
 "and similarly situated properties constitute the best test of  
 "such value."

It is to this principle to which I think the learned Judge referred when he spoke of "the average price" and it is this principle which I propose to adopt in considering the question of the actual values of the various pieces of land comprising the area which has been acquired.

Dealing firstly with the area referred to as A1, the learned Judge took into consideration sales of similar lots similarly situated during the months of May and June 1944, the date of the acquisition being 22nd May 1944.

30 Of these four sales the prices calculated per acre were £260, £280, £93 and £109 respectively. From these prices the learned Judge by calculation of the average arrived at a price of £153. 17s. 0d. per acre. The claimants urge that of these sales only those during May should be taken into consideration but in my opinion this would be far too narrow a basis more particularly having regard to the peculiar circumstances attending each of these two sales and the fact that the prices given on both occasions are far in excess of any prices paid in the immediate past or immediate future for similar lands similarly situate, an excess which cannot be accounted for even by reference to the suggestion, adopted by the learned Judge, that  
 40 "the value of land has been going up steadily for some years back in Lagos  
 "and its environs." I am unable, moreover, to accept this conclusion that the value of land has been steadily rising in this vicinity having in view the evidence in this case as to the sales of land during the period 1939 to 1942 and during the years 1943 and 1944 up to the date of the acquisition. For the purpose of determining whether there has been such a steady rise it is permissible to refer to average prices during such years as 1940, 1941, 1942 and 1943. From the figures supplied in the Schedule of Sales

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(Exhibit K.) it would appear that the average prices during those four years were £103, £123, £110 and £106 respectively, which is hardly evidence of a steady rise. Leaving out of account the two sales in 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 the opinion that the learned Judge erred when he valued the land in Area A1 at £153. 17s. 0d. per acre upon a basis which included the sales in May. On the other hand I consider that the value placed upon these lands in Area A1 by the Commissioner of Lands is a fair value having regard to the prices paid 10 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.

In regard to the area A2, there are two matters for consideration. It was submitted by Crown Counsel that in arriving at the value of A2 no consideration was given to the factors of road reservation and "deferment" which he represented had been applied to area A1 only in arriving at the value for compensation. The grounds of appeal, it is true, would give that impression, but reference to the record of proceedings in the Court below shows that in his report Mr. Hewett valued A2 at £90 per acre while 20 in his evidence he referred to A2 as "slightly more valuable than A1" and therefore valued A1 at £80 per acre and A2 at £90 per acre. The value of A1 at £80 per acre was after deduction for deferment and road reservation, and I can only assume that a similar deduction has been made in respect of A2. The same witness, moreover, in regard to the area referred to as B stated that for the purpose of valuation he compared the value of B with A1, that he applied the same principles and valued B at 50 per cent. less than the value of A1, that is to say £40, which is half the value of A1 after making the desired deductions. As far as Mr. Hewett's evidence and report are concerned it appears that different considerations affected 30 their judgment of the values of the lands C and D, although it is noteworthy that in the course of his argument in the Court below Crown Counsel after discussing the basis for the valuation of A1 at £80 per acre, observed that "the other areas had been calculated on the same basis." In these circumstances I am satisfied that the valuation of A2 at £90 per acre was arrived at by the Acting Commissioner of Lands on the basis that allowance or deduction for deferment and road reserves should be made here also. I am unable to agree with him, however, that, upon the evidence, this area should be assessed at a higher value than A1. It is apparently slightly 40 nearer to Lagos, enjoys a prevailing wind blowing straight from the ocean, and has access to the Victoria Beach road, but on the other hand the Assistant Commissioner of Lands who notes these amenities in his report, also states therein that it is not comparable with area A1 as residential building land as it is surrounded by pestilential mosquito breeding swamp. On this evidence I would balance the advantages against the disadvantages and reach the conclusion that the value of these two areas is approximately the same. I would therefore value the area A2 at £120 per acre also.

In regard to the area B it appears that here also the Acting Commissioner of Lands has arrived at his valuation of £40 per acre by making allowance for deferment and road reservation on the same basis as A1, and if his value of A1, without such deductions, is to be accepted then, if he is right in valuing B at half that of A1, the value of B should be £60 per acre. The learned Judge, however, expresses himself as unable to agree that the value of B should not be more than half that of A1, but concludes that it should have "a slightly lower value."

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No. 27.  
Judgment,  
22nd  
November,  
1949—  
*continued.*

10 There is little that is helpful in the evidence apart from that of the Acting Commissioner of Lands and the report Exhibit K., for the claimant appears to stand by his bare claim that all dry land should be valued at the same price irrespective of its location or quality. I would not say that such evidence as that of the Acting Commissioner of Lands must inevitably be accepted by this or any other court, but where it stands uncontradicted by any other reasonable expert evidence and where there is nothing in it which appears unreasonable or self-contradictory, then I consider that the Court may be safely guided by it rather than reach some more or less arbitrary conclusion as to relative values. I am prepared, therefore, to assess the value of the area B at £60 per acre.

20 As regards the Areas referred to as C1 to C10, I was at first inclined to the view that in assessing their value the Acting Commissioner of Lands had applied thereto the same principles as were applied to areas A1, A2 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 A1. Further consideration of the evidence itself, however, makes it apparent that this is not in fact so. The Acting Commissioner himself in dealing with the areas C1-C10 makes no reference whatever to area A1, save perhaps indirectly where, amongst other factors such as rents, tributes, situation, accessibility, the use to which it has been or could be put, and the improbability of finding a purchaser in the open market, he refers also to "the value of other lands."

30 Again in Mr. Hewett's report (Exhibit K) there is no reference to the valuation of Area A1, but the author considers the location, nature and possible uses of the land, the annual value from tribute and such considerations, in arriving at his valuation of £40 per acre. The claimant here again has adduced no reasonable evidence in support of his claim to £360 per acre for these pieces of land surrounded by swamp, but the learned Judge by reason of its proximity to area B values C10 at the same rate, and by reason of their having a water frontage on the Five Cowrie Creek places the same value on areas C1-9 without, so far as I can perceive, giving due consideration to other factors affecting their value. In regard to these areas also I should prefer to accept the only reliable expert evidence as to their value and assess them at the rate of £40 per acre.

40 In regard to the areas referred to as D1-6 much the same considerations arise, Mr. Hewett having valued them, not by relation to the values placed upon area A1, but upon factors directly affecting their value in the open

In the  
West  
African  
Court of  
Appeal.

No. 27.  
Judgment,  
22nd  
November,  
1949—  
*continued.*

market. He has placed the value at £30 per acre for the purpose of compensation, although in his considered opinion they are not in fact worth anything like so much. The claimant evidently values these “ uninhabited patches of dry land some of them only just above swamp level and entirely surrounded by swamp ” at the same value as that of the valuable lands in area A1, while the learned Judge, without ascribing any reason therefore values them at £60 10s. per acre or half the value of areas B and C. I am unable to find on the record any evidence upon which this calculation is based, and would again accept the only expert evidence as to the values of these areas, which I would therefore value at £30 per acre. I agree entirely 10 with the findings of the learned Judge as to the value of swamp land, which was not indeed seriously contested, and would assess it at £5 per acre.

It was argued on behalf of the claimant that in assessing the amount of compensation the Court should take into consideration, as prescribed by Section 15 of the Ordinance, damage suffered by reason of severance of the land acquired from other lands in the occupation of the claimant. It is, I think, sufficient to say that it is not enough to base such a claim upon the mere fact that a portion of the claimant’s land has been acquired and another portion left. It is necessary to show that the claimant has suffered loss thereby resulting in the depreciation in the value of his remaining land. 20 It has been argued that this follows from a certain restriction of the accessibility of the remaining land as shown by a plan exhibited in evidence, but I have looked in vain for any testimony upon the record from which it may be deduced that the claimant has in fact suffered any loss attributable to severance, and his claim in this respect must, I think, fail.

As regards the claim for £6,500 for loss of income and profits it was only with some difficulty that the learned President was able to extract from Counsel for the claimant the legal basis for his claim, but eventually the suggestion that it is based upon section 17 of the Ordinance was accepted by junior counsel for the claimant in the course of his reply. This section 30 provides that the owners of land acquired under the Ordinance shall be entitled to compensation by way of mesne profits arising between the date of the Governor’s entry into possession of the land acquired and the date of the payment of compensation into Court. The learned Judge in his consideration of this claim did not have his attention directed to the relevant section, and he says no more than that “ the claimants kept no books and “ could not prove their claim for £6,500.” His attention was evidently not drawn, moreover, to certain evidence given by the Acting Commissioner of Lands in this regard nor to the reports of the Forestry and Agricultural Officers in Exhibit K. It is apparent from that evidence, which I think is 40 more reliable than the very obviously exaggerated evidence of the claimant himself, that the claimant could derive an income of some £60 a year from mangrove, while it appears that some further small sums would be derived from mangoes and coconuts. I would assess the value of this income at £100 per annum in all and hold that the claimant is entitled to mesne profits at the rate of £100 per annum.

In accordance with the views I have expressed in this judgment, the

compensation payable to the 1st claimant under the terms of the settlement arrived at between himself and the other claimants should be calculated upon the following basis :

						£	s.	d.	In the West African Court of Appeal.
	Area A1.	112·5 acres at	£120	per acre	...	13,500	0	0	—
	„ A2.	7·7	„	£120	„ ...	924	0	0	No. 27.
	„ B.	115·7	„	£60	„ ...	6,942	0	0	Judgment,
	„ C.	123·9	„	£40	„ ...	4,946	0	0	22nd
	„ D.	30·4	„	£30	„ ...	912	0	0	November,
10	Swamp :	684·4	„	£5	„ ...	3,422	0	0	1949— <i>continued.</i>

The amount of the compensation payable is, therefore, £30,646 0s. 0d., and in addition the claimant is entitled to be paid for loss of profits at the rate of £100 per annum from the date upon which the Governor entered into possession until the date upon which the amount of compensation is paid into Court.

In regard to costs, it is apparent that the claimant has failed to establish by his appeal that the award of the Court below was inadequate and that the Chief Secretary has succeeded in establishing that it was excessive. I think, therefore, that there should be an order that the claimant pay to the  
 20 Chief Secretary costs of the appeal amounting to £31 10s. 0d. The claimants having established, however, a right to compensation exceeding in amount that which was offered by Government in the first instance, I consider that they are entitled to their costs in the court below and the order of that court as to costs should therefore stand.

(Sgd.) JOHN VERITY,  
*Chief Justice, Nigeria.*

I concur.

(Sgd.) H. W. B. BLACKALL,  
*President.*

30 I concur.

(Sgd.) ARTHUR LEWEY,  
*Justice of Appeal.*

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In the  
West  
African  
Court of  
Appeal.

No. 28.  
Order of the Court.

No. 28.  
Order, 22nd  
November,  
1949.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

W.A.C.A. 3108.  
Suit No. 255/1947.

ON APPEAL FROM THE SUPREME COURT OF NIGERIA, LAGOS DIVISION.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... *Plaintiff/Respondent*  
and

1. YESUFU ABIODUN, Chief Oniru 10
2. F. S. JAMES representing
  - (a) Okun Abisogun Oniru
  - (b) Salu Abisogun Oniru
  - (c) Asani Abisogun Oniru
  - (d) Akanbi Abisogun Oniru
  - (e) Wahabi Abisogun Oniru
  - (f) Salami Abisogun Oniru ... *Defendants/Appellants*

and  
THE CHIEF SECRETARY TO THE GOVERNMENT ... *Plaintiff/Appellant*  
and 20

1. YESUFU ABIODUN Chief Oniru
2. F. S. JAMES representing
  - (a) Okun Abisogun Oniru
  - (b) Salu Abisogun Oniru
  - (c) Asani Abisogun Oniru
  - (d) Akanbi Abisogun Oniru
  - (e) Wahabi Abisogun Oniru
  - (f) Salami Abisogun Oniru ... *Defendants/Respondents.*

[L.S.]

(Sgd.) H. W. B. BLACKALL, 30  
*President.*

Tuesday the 22nd day of November, 1949.

UPON READING the Record of Appeal herein and upon hearing Messrs. Jibril Martin and A. O. Thomas of Counsel for the Defendants/Appellants and Mr. Bate of Counsel for the Plaintiff/Respondent

It Is Ordered that the Judgment obtained in the Supreme Court dated the 29th February, 1949 for the Defendants/Appellants for £52,505. 19s. 4d. compensation payable for lands acquired by the Nigeria Government situate South of Five Cowrie Creek and described in Government Notice No. 600 dated 15th May, 1944 be varied and that an amount of £30,646. 0s. 0d. together with a further sum for loss of profits calculated at the rate of £100 per annum from the date upon which the Governor entered into possession until the date upon which the amount 40



of £30,646. 0s. 0d. is paid into Court be substituted as compensation payable on the said acquisition.

And That the sum of £31. 10s. 0d. be paid to the Plaintiff/Respondent by the Defendants/Appellants as costs in this Court and that the order of the Court below as to costs do stand.

(Sgd.) W. H. HURLEY,  
Deputy Registrar,  
West African Court of Appeal.

In the  
West  
African  
Court of  
Appeal.  
No. 28.  
Order, 22nd  
November,  
1949—  
*continued.*

No. 29.

10 Order granting Final Leave to Appeal to His Majesty in Council.

IN THE WEST AFRICAN COURT OF APPEAL, HOLDEN AT LAGOS, NIGERIA.

Suit No. 255/1947.  
W.A.C.A. 3108.

ON APPEAL FROM THE JUDGMENT OF THE WEST AFRICAN COURT OF APPEAL TO HIS MAJESTY'S PRIVY COUNCIL.

Between

THE CHIEF SECRETARY TO THE GOVERNMENT

and *Plaintiff/Appellant/Respondent*

20 YESUFU ABIODUN, Chief Oniru ... *Defendant/Respondent/Appellant.*

[L.S.]

(Sgd.) C. G. AMES,  
*Presiding Judge.*

Tuesday the 20th day of June, 1950.

UPON READING the Motion for an Order for Final Leave to appeal from the Judgment of this Court dated the 22nd day of November, 1949 to His Majesty's Privy Council, and the affidavit in support thereof filed on the 20th day of April, 1950, and upon hearing Mr. Jibril Martin (Mr. A. O. Thomas with him) of Counsel for the Appellant and Mr. E. Egbuna of  
30 Counsel for the Respondent

It Is Ordered that Final Leave to appeal to His Majesty's Privy Council from the Judgment of this Court dated the 22nd day of November, 1949, be and is hereby granted to the Appellant.

(Sgd.) W. H. HURLEY,  
Deputy Registrar,  
West African Court of Appeal.

No. 29.  
Order  
granting  
Final Leave  
to Appeal  
to His  
Majesty in  
Council,  
20th June,  
1950.

Exhibits.

**EXHIBITS.**

J.  
Letter,  
A. H. Ojo to  
O. L.  
Williams,  
24th  
September,  
1941.

**DEFENDANT'S EXHIBIT.****Letter from A. H. Ojo to O. L. Williams.****THE GRAND BARBER SALOON.**

Supplier of Hairdressing &amp; Sundry Goods.

Proprietor : A. H. OJO, Esq.

Cables and Telegrams :  
" Komadan, Lagos."

24th September, 1941.

P.O. Box.....

Lagos, Nigeria.

Mr. O. L. Williams,  
19 Koseh Street,  
Lagos.

30 Breadfruit Street, 10  
Lagos.

Dear Sir,

I have to inform you that I no longer desire you to act on my behalf treat or negotiate with the Commissioner of Lands or anybody neither receive or arrange compensation in respect of my land at Alagbon Village, Ikoyi, Lagos. I hereby withdraw the authority I gave you and warn you not to interfere.

You have treated with Dr. C. C. Adeniyi-Jones in this respect and agreed to accept on my behalf one shilling and six pence per square yard when my price for the land is seven shillings and six pence per square yard and this you did without consulting me or obtaining my consent. This is contrary to my wish. 20

Yours sincerely,  
(Sgd.) A. H. OJO.

F.  
Con-  
veyance,  
A. Alakija  
to A. O  
Somorin,  
4th May,  
1944.

**DEFENDANT'S EXHIBIT.****F.—Conveyance by A. Alakija.**

Commissioner of Stamp Duties,  
2 June, 1944.  
Lagos.

30

THIS INDENTURE made the 4th day of May, 1944, Between ADEYEMO ALAKIJA, of Akuro House, Custom Street, Lagos, Colony of Nigeria (hereinafter called the Vendor) of the one part and ADOLPHUS OLAYIMIKA SOMORIN, of 95 Aroloya Street, Lagos, aforesaid (hereinafter called the Purchaser) of the other part.

WHEREAS by an Indenture of Conveyance dated 22nd day of April, 1943, and registered as No. 23 at page 23 in Volume 623 of the Lands Registry in the Office at Lagos aforesaid, the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments in two pieces as therein described one of which is intended to be hereby conveyed.

AND WHEREAS the Vendor has agreed with the Purchaser for the absolute sale to him of one piece of the said hereditaments at the price of FIFTY POUNDS (£50) Sterling.

NOW THIS INDENTURE WITNESSETH that in pursuance of the Agreement and in consideration of the sum of £50 paid by the Purchaser to the Vendor before the execution of these presents (the receipt whereof the Vendor hereby acknowledges), the Vendor as BENEFICIAL OWNER hereby grants and conveys unto the Purchaser, his heirs and assigns, all that piece or parcel of land situate at the Victoria Beach, Lagos, with its dimensions and abuttals as the said piece of land is described and more particularly delineated on the Plan drawn at the foot of these presents and thereon coloured blue together with all things appurtenant or reputed as appurtenant thereto TO HAVE and TO HOLD the said hereditaments UNTO and TO THE USE of the said Purchaser in fee simple.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and Seals the day and year first above written.

(Sgd.) A. ALAKIJA. (L.S.)  
 ,, A. O. SOMORIN. (L.S.)

Signed, Sealed and Delivered by the within-named parties in the presence of

(Sgd.) A. AHMED ADEYEMI,  
*Clerk,*  
 5 Custom Street, Lagos.

D.R.R. No. 27150/647 of 3/6/44 for £1.

This Instrument was delivered to me for registration by Messrs. Alakija & Alakija, Barristers-at-Law & Solicitors of 5 Customs Street, Lagos, at 11.20 o'clock in the forenoon this 3rd day of June, 1944.

(Sgd.) J. J. HUNTER,  
*Deputy Registrar.*

Registry of Deeds,  
 Lagos, Nigeria.

This Instrument is registered as No. 52 at page 52 in Volume 650 of the Lands Registry in the Office at Lagos.

(Sgd.) J. J. HUNTER,  
*Deputy Registrar.*

Plan.

Exhibits.  
 F.  
 Con-  
 veyance,  
 A. Alakija  
 to A. O.  
 Somorin,  
 4th May,  
 1944—  
*continued.*

Exhibits.

## PLAINTIFF'S EXHIBIT.

N.  
Extract  
from  
Nigeria  
Gazette,  
18th May,  
1944.

## N.—Extract from Nigeria Gazette.

EXTRACT FROM NIGERIA GAZETTE, No. 24, Vol. 31,  
dated 18th May, 1944.

Government Notice No. 600.

The Public Lands Acquisition Ordinance (Chapter 88).

NOTICE IS HEREBY GIVEN that the following lands, lying between Five Cowrie Creek and Victoria Beach and between Crown Land along the Victoria Beach Road and Magbon Creek, in the Colony of Nigeria are required by the Governor for the following purposes absolutely: 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 general public use. 10

All that parcel of land the boundaries of which are described below:

Starting at a concrete pillar marked P.B.D. 248 the co-ordinates of which are 34644.53 feet South and 17597.02 feet East of a concrete pillar marked L.C.S. 165P, the origin of Lagos Cadastral Surveys, the boundary runs in straight lines the bearings and lengths of which are as follows:— 20

<i>From</i>	<i>Bearing</i>	<i>Length</i>	<i>To</i>
P.B.D. 248	282° 27'	1179.4 feet	P.B.D. 241
P.B.D. 241	282° 57'	1400.1 "	P.B.D. 135
P.B.D. 135	356° 13'	749.6 "	L.C.S. 223P
L.C.S. 223P	354° 42'	1127.2 "	L.C.S. 224P
L.C.S. 224P	357° 24'	1042.0 "	P.B.D. 297
P.B.D. 297	357° 24'	1156.3 "	P.B.D. 298
P.B.D. 298	357° 24'	1121.2 "	P.B.D. 299
P.B.D. 299	357° 24'	1072.0 "	P.B.D. 293

which is situated on the South Bank of Five Cowrie Creek, thence in a general Easterly direction along the South Bank of Five Cowrie to its junction with Itirin and Magbon Creek, thence along the West Bank of Itirin and Magbon Creek in a general Southerly direction to its junction with Kuramo Waters, then in a general South-westerly direction along the Northern Bank of Kuramo Waters to P.B.L. 5366 situated at the Western extremity of Kuramo Waters, thence in a straight line on a bearing of 251° 10' and for a length of 910.3 feet to P.B.D. 248 (the starting point). 30

All property beacons are concrete pillars.

All bearings and lengths are approximate.

All bearings are referred to True North.

A plan of the land may be inspected on application at the office of the Commissioner of Lands.

2. Any person claiming to have any right or interest in the land is required within six weeks from the date of this notice to send to the Chief Secretary to the Government care of the Commissioner of Lands at his office in Lagos, a statement of his right and interest and of the evidence thereof, and of any claim made by him in respect of such right or interest.

3. The Governor is willing to treat for the acquisition of the said 10 lands.

4. Land in respect of which no statement is received is liable to be dealt with as unoccupied land.

5. And notice is also hereby given that the Governor intends to enter into possession of the said lands at the expiration of six weeks from the date of this notice.

6. Any person who shall wilfully hinder or obstruct the Governor or any person employed by him from taking possession of the said lands is liable under the provision to a fine of twenty-five pounds or to imprisonment for three months.

20 The 13th day of May, 1944.

T. HOSKYNS-ABRAHALL,  
*Acting Chief Secretary to the Government.*

39978.

Exhibits.

N.

Extract  
from  
Nigeria  
Gazette,  
18th May,  
1944—  
*continued.*

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**DEFENDANT'S EXHIBIT.**

G.—Letter from Acting Commissioner of Lands to O. L. Williams.

*Without Prejudice.*

Mr. O. L. Williams,  
Agent for Mde. Ola. Agbaosi,  
30 19, Koseh Street,  
Lagos.

No. 03991/(3) 13.  
Land & Survey Department, Lagos.  
31st May, 1945.

G.  
Letter,  
Acting  
Com-  
missioners  
of Lands to  
O. L.  
Williams,  
31st May,  
1945.

Sir,

Claim No. 3—Madam O. Agbaosi  
Ikoyi Cemetery Extension  
Acquisition of land under P.L.A.O. Cap. 88.  
Government Notice No. 372 dated 5th April, 1941.

I have the honour to refer to your claim in respect of a portion of the above land containing 612·96 square yards and to request you to inform me as soon as possible whether you are prepared to accept the sum of £39. 17s. 4d. 40 as compensation in full and complete settlement of your claim.

Exhibit No. 2. This sum of £39. 17s. 4d. has been assessed as follows :—

		£	s.	d.
G. Letter Acting Com- missioner of Lands to O. L. Williams, 31st May, 1945— <i>continued.</i>	Land 612·96 sq. yds. @ 1s. per sq./yd. ... ..	30	13	0
	Plus 10 per cent. for early and amicable settlement	3	1	4
	Buildings ... ..	6	0	0
	Crops ... ..	0	3	0
	Total ... ..	£39	17	4

I have the honour to be,  
Sir,

Your obedient Servant 10  
(Sgd.) W. B. CHWATT,  
*For Ag. Commissioner of Lands.*

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#### DEFENDANT'S EXHIBIT.

G. 1.  
Letter,  
Acting  
Com-  
missioner  
of Lands to  
O. L.  
Williams,  
31st May,  
1945.

**G. 1.—Letter from Acting Commissioner of Lands to O. L. Williams.**

*Without Prejudice.*

No. 03991 (12)/4.

Mr. O. L. Williams,  
Agent for Mr. S. Guimaraes,  
19, Koseh Street,  
Lagos.

Land & Survey Department, Lagos.  
31st May, 1945.

20

Sir,

Claim No. 12—S. Guimaraes.

Ikoyi Cemetery Extension.

Acquisition of land under P.L.A.O. Cap. 88.

Government Notice No. 372 dated 5th April, 1941.

I have the honour to refer to your claim in respect of a portion of the above land contained 5504·90 square yards and to request you to inform me as soon as possible whether you are prepared to accept the sum of £305. 9s. 5d. 40 as compensation in full and complete settlement of your claim.

2. This sum of £305. 9s. 5d. has been assessed as follows :—

	£	s.	d.	Exhibits.
Land 5504·90 sq. yds. at 1s. per sq. yd. ... ..	275	4	11	G. 1.
Plus 10 per cent. for early and amicable settlement	27	10	6	Letter, Acting
Crops ... ..	2	14	0	Com- missioner
Total ... ..	£305	9	5	of Lands to O. L. Williams. 31st May, 1945— <i>continued.</i>

I have the honour to be, Sir,  
Your obedient Servant,  
(Sgd.) W. B. CHWATT,  
for *Ag. Commissioner of Lands.*

10

### DEFENDANT'S EXHIBIT.

H.—Letter from Commissioner of Lands to P. O. Nwajei.

No. 04268(30)/7.  
Land and Survey Department,  
Lagos.  
21st November, 1945.

H.  
Letter,  
Com-  
missioner of  
Lands to  
P. O.  
Nwajei,  
21st  
November,  
1945.

Sir,

Land Acquired by the Government at Victoria Beach.  
Government Notice No. 600 dated 13 May, 1944.

20 I have the honour to refer to your claim in respect of a parcel of land containing an area of 614·65 sq. yds. which is shown as Parcel No. 30 on Plan L.2815, and to offer you the sum of £23. 15s. 3d. as compensation in full settlement of your claim.

2. In the event of your not informing me of your acceptance of this offer before 10th December, 1945, the question of the amount of compensation to be paid for the land will be put to the Supreme Court for determination under Section 10 of the Public Lands Acquisition Ordinance Cap. 88. In this event the amount of 10 per cent. for early and amicable settlement which has been included in the above offer will be withdrawn.

30

I have the honour to be, Sir,  
Your obedient Servant,  
(Sgd.) W. B. CHWATT,  
for *Commissioner of Lands.*

To Mr. P. O. Nwajei,  
c/o O. L. Williams,  
19 Koseh Street,  
Lagos.

Certified a true copy.  
(Sgd.) E. ADE BAMGBOYE,  
for *Senior Registrar.*

Exhibits.

K.  
File of  
Written  
Reports,  
1947 and  
1948.

## PLAINTIFF'S EXHIBIT.

## K.—File containing Written Reports.

Suit No. 255/1947.

CHIEF SECRETARY TO THE GOVERNMENT

v.

YESUFU ABIODUN, CHIEF ONIRU and others.

PUBLIC LANDS ACQUISITION ORDINANCE S.12.

## WRITTEN REPORTS OF

1. Mr. W. B. HEWETT, Assistant Commissioner of Lands.
2. Messrs. LANIYONU & BUCKNOR, Government Surveyors. 10
3. Mr. C. S. CLOVER, Land Officer.
4. Mr. A. V. GIBBERD, M.B.E., Senior Agricultural Officer.
5. Mr. GRAY, Assistant Conservator of Forests.
6. Messrs. BUCKNOR AND EYO, Government Surveyors.

REPORT of the Assistant Commissioner of Lands under Section 12 of Public Lands Acquisition Ordinance Cap. 88 concerning the value of lands near Victoria Beach, Lagos, acquired under Government Notice No. 600 dated 18 May, 1944.

Copies of the following are attached hereto :—

- (a) Gazette No. 24 of 18 May, 1944, containing Government 20 Notice No. 600 dated 13 May, 1944.
- (b) Certified true copy of Plan No. L.2813 (Tracing No. 3347). Scale 400' to 1" showing a portion of the area referred to in the said Notice verged pink which contains an area of 1074.6 acres. The total area acquired was 1089.2 acres but this action is to determine the amount of compensation to be paid for the area of 1074.6 acres shown verged pink on the plan.
- (c) Certified true copy of Plan L2815, scale 88' to 1".

2. For the purpose of valuation this area has been divided as follows :—

<i>Area</i>	<i>Acres</i>	<i>Colour verged on plan</i>	30
A1	112.5	Blue	
A2	7.7	Brown	
B	115.7	Mauve	
C1—C10	123.9	Green	
D1—D6	30.4	Yellow	
<hr/>			
Total dry land	390.2 acres		
Swamp	684.4	„	
<hr/>			
Total	1074.6		
<hr/> <hr/>			



3. In or about 1932 Chief Oniru laid out an area of 13.15 acres into building plots. This area, lying at the South-West corner of Area A1, is shown on plan L2813, hatched yellow, and is shown in greater detail on Plan No. L.2815 on a scale of 88 feet to 1 inch. This plan shows the plots which were laid out and the fee simple in which were sold by Chief Oniru between the years 1933 and the date of acquisition.

Exhibits.

—  
K.  
File of  
Written  
Reports,  
1947 and  
1948—  
*continued.*

10 Before January 1, 1943, 16 separate parcels of land were sold within this lay-out, totalling 4.93 acres for the total sum of £499, an average price of approximately £101 per acre. 10 of these transactions were the subject of registered conveyances whilst Receipts of Purchase were issued for the remainder.

During the year 1943, 12 further parcels of land within the lay-out were sold, totalling 5.165 acres for the total sum of £550, an average price of £106.10s. per acre. 10 of these transactions were the subject of registered conveyances whilst Receipts of Purchase were issued for the remaining 2.

20 There were 3 sales of land within the lay-out during 1944. 2 of these sales were the subject of conveyances dated 7 June 1944 registered as Nos. 3 and 4 in Volume 654 respectively; they recite the sales of 3859 square yards (approximately 0.8 acre) for £80 a price equalling £100 per acre. The third conveyance is dated 4 May, 1944, between Sir A. Alakija, vendor, and A. O. Somorin, purchaser, of the plot containing 934.4 square yards shown on Plan L.2815 marked X and the consideration was £50, giving a figure of £260 per acre. By a conveyance dated 22 April, 1943, registered as No. 23/Volume 623 Sir A. Alakija purchased this plot together with another plot, an area of 1998 square yards in all, for £50 which works out at £121 per acre. The plot that he sold to Somorin just over a year later is the only plot in the lay-out which actually fronts on to Victoria Beach Road, which obviously makes it more valuable than those lying further back without road access. Nevertheless it is considered that Sir  
30 Alakija was extremely lucky in finding a purchaser to pay £50 for this one plot just a year after he had bought it and another slightly larger plot for the same amount.

There are 2 other nearby sales which should be taken into account. The land hatched green on Plan L.2813 was the subject of a conveyance by Chief Oniru's father to G. D. Agbebi dated December, 1926, registered as No. 24/Vol. 203 containing an area of 2.98 acres, a portion of which falls within the area acquired, the purchase price being £290 (97 per acre).

40 The other nearby sale is of the plot containing an area of 866.6 square yards marked Y on Plan L.2815 lying north of the lay-out and fronting Victoria Road, which is the subject of a conveyance dated 17 May, 1944, registered as No. 49/Volume 650 between L.I.A. Aromire and J. A. Aromire the consideration being £50, equalling £280 per acre. L.I.A. Aromire's title is derived from a deed of gift from Chief Oniru dated May, 1940, registered as No. 23/Volume 557 "in appreciation and recognition of the yeoman

Exhibits.  
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services rendered by the grantee's father to the House of Oniru." Mr. J. A. Aromire is a member of the Oniru Family and was at the time, and may still be, Secretary to Chief Oniru, the conveyance is dated 17 May, 1944, one day before the publication of the Notice in the Gazette though a copy of the Notice was not formally served on Chief Oniru until 22 May, 1944, and on J. A. Aromire until 27 May, 1944.

There is also a lease of an area of 8·037 acres within Area A1 dated 21 November, 1941, between Chief Oniru as lessor and N. Diamontupules and Dr. A. Maja trading as Diamand and Company for a term of 25 years at an annual rent of £25. The lease contains an option of renewal for a further period of 25 years at a rent of £37. 10s. per annum. Capitalising this income at a rate of interest of 5 per cent. the following is the valuation of the freehold interest in this area :—

	£	s. d.
(a) Present value of £1 per annum allowing interest on capital at 5 per cent. for 25 years—years purchase ... ..	14·094	
Annual income ... ..	£25	
	352	7 0
(b) Years Purchase as above ... ..	14·094	20
Multiply by present value of £1 receivable at the end of 25 years at 5 per cent. ... ..	0·295	
	155	18 6
Therefore present value of £1 receivable at the end of 25 years for a period of 25 years ... ..	4·158	
Annual Income ... ..	£37 10s.	
	1·744	65 8 0
(c) Reversion to income of say £37. 10s. in perpetuity at the end of 50 years. Present value of reversion to £1 per annum after 50 years at 5 per cent. ...	1·744	30
	£573	13 6

=£70 per acre approximately.

To summarise these sales of land in the open market, we have

- (a) In 1926 a sale of 2·98 acres of land near Apese Village for £290 i.e. at the rate of £97 per acre.

- (b) Between 1933 and the end of 1942, 16 sales of totalling 4.93 acres for £499 i.e. at the rate of £101 per acre.
- (c) A lease dated 21st November 1941 of the comparatively large area of 8.037 acres lying within Area A1, indicating a capital value of £70 per acre.
- (d) During the year 1943, i.e. the year before the acquisition, 12 sales totalling 5.165 acres for £550 i.e. at the rate of £106. 10s. 0d. per acre.
- 10 (e) 2 sales in June 1944, presumably negotiated before the date of acquisition, of land totalling 0.8 acre for £80 i.e. at the rate of £100 per acre.
- (f) 2 other sales in May 1944 of 2 plots fronting on Victoria Beach Road at rates of £260 and £280 per acre.

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Summarising the 16 sales in 1943 and 1944 the average price obtained was £115. 5s. 0d. per acre.

In my opinion it may be accepted that the price at which building plots in this district were being sold at the time of acquisition was £120 per acre. My valuation of the area A1 and coloured blue on Plan L. 2813 is therefore based on this potential or latent price of £120 per acre. The  
20 area contains 112.5 acres and if developed as a building estate in extension of the existing lay-out, it may be taken therefore that the sale of plots would realize £120 per acre.

4. In the valuation of land possessing a prospective building value it is necessary, and I quote from Chap. XII of "Modern Methods of Valuation" by Lawrence and May published by The Estates Gazette Ltd. 1st Edition 1943

- 30 (1) to determine the best use to which a piece of land or property can be put in the future ;
- (2) to estimate the market value of the land when put to this use ;
- (3) to consider the time which will elapse before the land can be so used ;
- (4) to estimate the cost of carrying out the works required to put the land to the proposed use.

As to (1) I think there is no doubt that the best, in the sense of the most profitable, use to which this land can be put in the future is in extension of the existing residential lay-out.

- (2) I have shewn that the market value of the land when put to this use would be £120 per acre.

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- (3) The demand for plots in the existing layout may be gauged from the fact that approximately 5 acres were sold during the year prior to the acquisition. If plots continued to sell at the same rate 22 years would elapse before all the 112·5 acres were sold and little or no return would be receivable by the owner until the sales had been effected. Allowance may be made, however, for an increase in the demand for plots and I have estimated that the whole area would be disposed of over a period of 10 years.
- (4) Little expense, other than the surveyor's charges for 10 demarcating the plots, has been incurred in developing the existing lay-out, and I have made no deduction in my valuation for costs of development. However from the total area of 112·5 acres some proportion of land must be set aside for road reserves. Approximately 1/6th of existing lay-out is taken up by road reserves and this is the proportion normally required to be set aside for roads under the Land Development (Provision for Roads) Ordinance No. 35 of 1933. I have therefore deducted 1/6th of the total area i.e. 18·75 acres, for the provision of roads and this proportion of the total 20 area must of course be regarded as unproductive, leaving 93·75 acres which can be profitably disposed of.

For the purpose of this valuation I have taken the rate of interest which a purchaser of this land in the open market would expect on the capital invested in his purchase as 6 per cent. which I consider is a low estimate taking into account the speculative nature of the investment and the rate of interest commonly expected on property investments in Lagos ; the usual mortgage rate being 12 per cent.

My valuation of Area A1 is therefore as follows :—

Present value of £1 per annum receivable at the end of each year for 10 years at 6 per cent. — Years Purchase (from Parry's valuation Tables) ... ..	30
	7·360
Multiply by annual income received from sale of plots viz. 9·375 acres at £120 per acre ... ..	£1125
	<hr/>
Present value ... ..	£8280
	<hr/> <hr/>

The present value of Area A1, containing an area of 112·5 acres is therefore estimated at £8,280 equalling £73. 12s. 0d. per acre. Government is prepared however to pay compensation at the rate of £80 per acre which for the 112·5 acres comes to £9,000.

5. I now come to Area A2 of 7.7 acres which as will be seen from the contoured plan L. 2813 is a small hump of dry land, the highest point being 11.4 feet above mean sea level whilst the major portion lies below the 6-foot contour, surrounded on 3 sides by swamp but having a short frontage to Victoria Beach Road. On the land stands Chief Oniru's Iga with a few other houses of usual native construction. It cannot be called a choice residential site surrounded as it is by pestilential mosquito breeding swamp. It is not comparable as residential building land with Area A1, which enjoys a prevailing wind blowing straight from the ocean but it is slightly nearer to Lagos and has access to Victoria Beach Road. I therefore estimate the value at £90 per acre which for the 7.7 acres comes to £693.

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*continued.*

6. Area B contains 115.7 acres and apart from one little bump is very low lying the great majority of it lying less than 5 feet above mean sea level. The rise and fall of the spring tide in Lagos is approximately 3 feet so that the contours on plan L.2813 are to some extent misleading. The Survey height datum is, as stated thereon 0.22 ft. below mean sea level, and with a tidal rise of approximately  $1\frac{1}{2}$  ft.,  $1\frac{3}{4}$  ft. must be deducted from the contour heights to obtain the height of the land above H.W.O.S.T. This means that the height of the great majority of Area B is less than 3 feet above H.W.O.S.T.

The land was at the time of the acquisition used as grazing land for a herd of cows, tended by some Fulanis whose camp is shown on the plan. The land can only be reached by a patch across Area A2 and then by a plank bridge over the intervening swamp. Even so it cannot be reached dry shod at high tide. Any value that this land may possess as prospective building land must indeed be very small. I have estimated its value as £40 per acre, that is half the value of Area A1; which for the 115.7 acres comes to £4,628.

7. The Areas marked C1—C10 inclusive on Plan L.2813, and coloured green, total 123.9 acres. Areas C2—C9 are as will be seen from the plan, separate little patches of dry land on the south bank of Five Cowrie Creek and each is surrounded by swamp behind. Areas C1 and C10 are completely surrounded by swamp the latter facing Itinrin Creek. There are fishing villages on all of them and they can only be reached by canoe or by muddy paths which are under water except at low tide. Their value lies solely in their ability to accommodate fishing villages and what this value is may be gauged from the rents and tributes paid by the inhabitants to Chief Oniru for the right to build huts thereon and to live there. Attached to a letter dated 5 July 1944 addressed to the Commissioner of Lands by the Secretary to the "Iru Chieftaincy Family Council" is a schedule giving the names of the tenants who lived on the acquired land together with the amount of rent on tribute paid by them. For the villages, namely Oniroko, Ilabere, Ikoya Magbon, Onimolu, Oroke, Ipewu, Itinrin, Abule Fulani and Mafo, which lie on Areas C1—C10 though the names do not coincide in all cases

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with the names shown on the plan, the total rents plus the maximum tributes are given as £52. Capitalising this income at 20 years purchase gives the value of the 123·9 acres as £1040 about £8. 5s. per acre. However a number of the members of the family live in these villages rent free. Government is prepared to pay at the rate of £40 per acre which comes to £4956.

8. Areas D.1—D.6, coloured yellow, contain 30·4 acres. They are uninhabited patches of dry land some of them only just above swamp level and are entirely surrounded by swamp. They might well be called “unoccupied” lands as defined in Section 13 of Ordinance No. 6 of 1945 and compensation assessed only for the loss of any rights over them. Government is prepared to pay £30 per acre for these areas, which comes to £912. 10

9. The remaining area acquired is 684·4 acres of swamp. Government is prepared to pay £5 per acre for the extinguishment of any rights that may exist in this area, which comes to £3422. This rate is the one Government has offered and which has been accepted for swamp lands in Lagos on frequent occasions in the past, and was the figure which was accepted by the W.A.C.A. in Suit No. 158 of 1946, W.A.C.2572 for swamp at Ikoyi, judgment in which was delivered on May, 1947. 20

<i>Summary of Valuation.</i>				£
Area A.1	112·5 acres at	£80 per acre		9000
Area A.2	7·7	,, £90	,,	693
Area B	115·7	,, £40	,,	4628
Areas C.1—C.10	123·9	,, £40	,,	4956
Areas D.1—D.6	30·4	,, £30	,,	912
				<hr/>
Total dry land	390·2 acres			20189
Swamp	684·4	,,		
				<hr/>
Total area	1074·6	,, Total Compensation	£23611	
				<hr/>

(Sgd.) W. B. HEWETT, 30  
*Assistant Commissioner of Lands,*  
Land Department.

Lagos,  
25th November, 1947.

AREAS OF LAND SHOWN ON PLAN NO. L.2813  
(TRACING NO. 3347).

Exhibits.

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Parcel Number on Plan	Verged	Area in acres	Total area in acres
A1	blue	112.5	112.5
A2	brown	7.7	7.7
B	mauve	115.7	115.7
10	} green	C1 } 9.9	
		C2 } 3.0	
		C3 } 5.0	
		C4 } 0.5	
		C5 } 4.8	
		C6 } 2.8	
		C7 } 7.9	
		C8 } 6.8	
		C9 } 12.5	
		C10 } 70.7	123.9
20	} yellow	D1 } 1.8	
		D2 } 7.1	
		D3 } 5.7	
		D4 } 4.5	
		D5 } 10.2	
		D6 } 1.1	30.4
Total area of dry land			390.2
Total area of swamp			684.4
Total area of land verged pink			1074.6
Remaining acreage acquired under Notice No. 600 dated 18 May, 1944			14.6
Total area acquired			1089.2

30 I certify that I have computed the above areas.

(Sgd.) J. O. LANIYONU,  
*Government Surveyor.*

25/11/47.

I certify that I have checked Mr. Lanionu's computations of the above areas and found them to be correct.

(Sgd.) S. A. I. BUCKNOR,  
*Government Surveyor, 25/11/47,*

Officer-in-Charge,  
Examination Section,  
Survey Department.

40

Exhibits. **REPORT OF INVESTIGATION** into Transactions in Land at Victoria Beach in which Yesufu Abiodun Chief Oniru is expressed as Grantor, made by Land Officer, Colony Area.

K.  
File of  
Written  
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*continued.*

In addition to the various transactions scheduled by me, entitled "Schedule of Sales : Chief Oniru's Layout, Victoria Beach," signed by me and dated 25th November, 1947, the following additional transactions are recorded in the Land Registry :

1. Conveyance dated 22nd August, 1944, registered as No. 64 Vol. 654 to J. D. Athenaku of 759·45 sq. yds. near Victoria Beach Road for £30. This is equivalent to a price of £191 per acre approximately. 10

2. Lease to Registered Trustees of Boys Holiday Camp, dated 22nd December, 1944, registered as No. 25 Vol. 653 of an area of 9·761 acres abutting in Kuramo Waters, for a term of 25 years at a rent of £10 per annum. This rental is at the rate of £1 per acre approximately.

3. Conveyance dated 12th December, 1936, registered as No. 56 Vol. 455 to W. H. Biney of 5111·11 square yards lying North East of Apese Village, near Kuramo Waters for £35. This price is equivalent to £33 per acre approximately.

4. Lease dated 24th June, 1946, registered as No. 39 Vol. 689 to A. L. Bryden, Esq., of 555·5 square yards at Kuramo Waters, for a term of 10 years at an annual rent of £12, this is equivalent to a rent of £106 per acre approximately. 20

5. Conveyance dated 10th November, 1936, registered as No. 43 Vol. 484 to S. J. Coker, of 1111·11 square yards East of Apese Village and South of Kuramo Waters for £30. This is equivalent to a price of £130 per acre approximately.

6. Lease registered as No. 78 Vol. 528 to Lagos Timber Co. Ltd., of 4·995 acres South of Kuramo Waters for a term of 20 years from 1st March, 1940, at annual rent of £15. This lease contains an option to purchase freehold at a price of £50 per acre, and an option to lease a further 5 acres at the same rent and on the same conditions. 30

(Sgd.) C. S. CLOVER,  
*Land Officer,*

Land Department.

25th November, 1947.



## SCHEDULE OF SALES.

## CHIEF ONIRU'S LAYOUT VICTORIA BEACH.

## PART I. SALES BEFORE 1943.

Exhibits.

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*continued.*

Date	Registration Particulars			Area (sq. yds.)	Price paid			Price per acre	Purchaser
	No.	Page	Vol.		£	s.	d.		
June 1931 ...	61	61	468	532.1	12	10	0	113	H. Lardner
10 Feb. 1940 ...	45	45	552	1104.5	30	0	0	131	R. O. Staveley
April 1933 ...	69	69	361	532.0	10	0	0	91	Nelson Caulerick
Dec. 1939 ...	86	86	541	2660.1	30	0	0	55	Bishop N. E. Elliott
April 1941 ...	Receipt of Purchase			1102.2	28	0	0	123	Momodou Mustapha
Feb. 1939 ...	32	32	521	4444.0	88	0	0	96	J. D. Okikiola
Oct. 1942 ...	20	20	631	2825.0	60	0	0	103	E. O. Brown
Sept. 1942 ...	14	14	635	1162.0	30	0	0	125	E. A. Phillips
Oct. 1942 ...	Receipt of Purchase			826.0	15	0	0	88	Mrs. Wilkey
20 Jan. 1933 ...	No Deed			1064.1	50	0	0	121	R. A. B. Cole
Apr. 1933 ...	}	20	20	557	1111.0	20	0	87	Latunde Johnson
Apr. 1940 ...									
Sept. 1942 ...	51	51	654	568.5	15	0	0	128	Dominga Ayikole
Jan. 1933 ...	Receipt of Purchase			1062.2	15	0	0	68	D. L. Mendes
Oct. 1942 ...	do.			1295.4	28	0	0	105	J. Bankole Coker
Dec. 1932 ...	91	91	662	1064.2	20	0	0	110	Ladipo Osode
1 Feb. 1933 ...	Receipt of Purchase			2529.0	47	10	0	91	Dr. A. Maja
2 Apr. 1940 ...									

30 Total : 16 Sales : Area 23882.3 square yards (4.93 acres).

Total price paid, £499. 0s. 0d.

Average price per acre, £101. 4s. 0d.

Exhibits.

## PART II. SALES DURING 1943.

K.  
File of  
Written  
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*continued.*

Date	Registration Particulars			Area (sq. yds.)	Price paid			Price per acre	Purchaser
	No.	Page	Vol.		£	s.	d.		
6 Jan. 1943	23	23	623	1998·0	50	0	0	121	Sir A. Alakiji
22 Apr. 1943	60	60	623	614·65	15	0	0	118	P. G. O. Nwajie
29 Feb. 1943	61	61	623	3653·43	85	0	0	113	J. N. Euzebio
26 Apr. 1943	62	62	623	1312·52	30	0	0	111	Oladele Glover
29 May 1943	63	63	623	2669·60	60	0	0	109	A. C. Amajie
25 Feb. 1943	64	64	623	7973·18	165	0	0	115	J. D. Okikiola
20 Mar. 1943	22	22	631	607·52	15	0	0	120	A. Akitobi
25 Feb. 1943	21	21	631	574·25	15	0	0	127	Hunsime Bosu
31 Aug. 1943	15	15	635	896·64	20	0	0	108	Dr. A. O. Ajose
Dec. 1943	Receipt of Purchase			1024·90	25	0	0	118	R. O. Staveley
May 1943	52	52	623	2525·0	40	0	0	77	R. E. Bankole-Williams
Apr. 1943	Receipt of Purchase			1152·0	30	0	0	126	D. M. Gaba

10

12 Sales : Total Area 25001·69 square yards (5·165 acres).

Total price paid, £550.

20

Average price per acre, £106. 10s. 0d.

## PART III. SALES DURING 1944.

7 June 1944	4	4	654	2075·0	40	0	0	93	Humponu Wusu
7 June 1944	3	3	654	1784·0	40	0	0	109	E. A. Meadows
4 May 1944	52	52	650	934·4	50	0	0	260	A. O. Somorin
17 May 1944	49	49	650	866·6	50	0	0	280	J. A. Aromire (not in main layout)

4 Sales : Total Area 5660 square yards (1·17 acres).

30

Total price paid, £180.

Average price per acre. £153. 17s. 0d.

(Sgd.) C. S. CLOVER,  
*Land Officer,*

Land Department.

Lagos, 25 November, 1947.

REPORT of Mr. A. V. GIBBERD, M.B.E., Senior Agricultural Officer, under Section 12 of the Public Lands Acquisition Ordinance Chap. 88, concerning the lands near Victoria Beach acquired by Government under Notice No. 600 dated 18 May, 1944.

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I have had 18 years service in the Agricultural Department of the Nigerian Government. 11 of these years were spent at Agege as Agricultural Officer, Colony, and I know the land which has been acquired at Victoria Beach well having visited it many times in the course of my duties. I last visited it for the purpose of this report on November 26th,  
10 1947.

2. *General description of the land.* The site is very low lying and parts of it are subject to diurnal flooding at high tide with water from the Lagos Harbour. The soil generally is very sandy and over most of the acquired area is only capable of supporting very poor scrub and inferior grassland. The water table is high and there are areas of permanent swamp with very poor drainage. Patches of somewhat better soil do, however, occur on the higher ground but these represent a small proportion of the total area. There is very little evidence of cultivation of annual crops and most of the inhabitants appear to derive their livelihood from pursuits other than  
20 farming, e.g. fishing, canoe transportation, and firewood trading. Small coconut groves have been successfully established in the vicinity of the villages but these are mostly restricted to the somewhat better soils of the higher ground.

3. *Suitability of the Site for Agriculture.* Owing to the extremely poor soil conditions which obtain over most of the site, the land generally can only be considered to be of very low value for agricultural purposes. The susceptibility to flooding, especially with water of a high saline content, would render areas so affected quite unsuitable for the cultivation of most agricultural crops. The agricultural possibilities are therefore limited to  
30 the grazing of livestock on the very poor grassland or to the cultivation of a very restricted range of crops which are tolerant of the very sandy and/or swampy conditions which are typical of the area. Even on the better soils the agricultural value of the land could not be regarded as approaching even average values of farm land in the vicinity of Lagos on the mainland, e.g. Ikeja district.

4. In view of the proximity of the site to Lagos, the fact that so very little agriculture is practised throughout the area, is in itself a fairly sure indication of the unsuitability of the land for farming purposes.

(Sgd.) A. V. GIBBERD,  
Senior Agricultural Officer

27th November, 1947.

Exhibits.

VALUATION OF MANGROVE TREES—VICTORIA  
BEACH, LAGOS.

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*continued.*

On the 27th and 28th October, 1948, I inspected the whole of the land lying behind Victoria Beach, Lagos, which has been acquired by Government. As a result of this reconnaissance I was able to indicate the position and extent of mangrove trees on aerial photographs taken of the area.

2. For the purpose of obtaining the value of these mangrove trees to the owner a sample plot was cut during April 1948 in mangrove reputed to be 15 years old, cutting mangrove at shorter intervals than 15 years 10 resulting in a reduced yield and smaller returns. The produce obtained from the cutting gave a yield of 15 cords of logwood and 35 cords of brushwood per acre. Local inquiries indicated that the market value of this yield was £25 on the felling site (Logwood 16s. cord, Brushwood 7s. 6d. a cord). The value of the mangrove trees to the owner however, being what he receives from the cutter, an estimate of what percentage of the market value the owner is entitled was made as follows :—

1. Experience has shown that four men can cut and stack one cord of Logwood per day which in Lagos, where the daily paid labour rate is 2s. 7d. per day would cost a contractor 10s. 4d., plus 8d. on a cord for cost 20 of tools and other overhead expenses making a production cost of 11s. per cord. The remaining 5s. if divided equally between the owner and the cutter would give the former 15 per cent. of the market value.

2. In the Ibeju Clan Area where a fuel scheme for Lagos entailing mangrove exploitation is in operation the cutters pay the Native Administration 5s. per canoe load which has a market value of £3 to £5 a figure 8 per cent. to 5 per cent. of the market value.

3. I consider therefore that at Victoria Beach the value of mangrove to the owner be placed at 15 per cent. of the market value or £3. 15s. 0d. 30 per acre.

4. Other trees of value seen on the area include a number of Iroko and Mangoes the total value of which would not exceed £10. The remainder of woody vegetation found in the area excluding various species of palm, consisted mainly of Ficus, Esokan, Ikete, etc., small shrubs forming a valueless scrub.

(Sgd.) ROBERT T. GRAY,  
*Provincial Forest Officer,  
Abeokuta Group.*

MR. S. A. I. BUCKNOR.

Exhibits.

I am a Government Surveyor in charge of the Examination Section of the Survey Department.

K.  
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*continued.*

The whole of Lagos Township, including the area between Victoria Beach and Five Cowrie Creek acquired by Government under Notice No. 600 dated 15 May 1944, was photographed by the Aircraft Operating Company from the air during January, 1947.

This aerial survey was undertaken at the instance of the Lagos Executive Development Board, and the Survey Department was supplied  
10 with a set of the photographs at a cost of £205.

The 31 photographs covering the area acquired by Government at Victoria Beach were arranged in mosaic and shown to Mr. Gray, Assistant Conservator of Forests when he visited the Survey Department Headquarters Offices at Lagos on October 26th-28th. Mr. Gray traced on these photographs, with chinagraph pencil the extents of the areas covered by mangrove trees within the boundaries of the land acquired.

I instructed Mr. O. E. Eyo, Government Surveyor, to plot the boundaries marked by Mr. Gray on the photographs on to a copy of Plan No. L2813, and to compute the areas by taking planimeter readings.

20 The various parcels are numbered 1 to 21 and verged Green on the copy of Plan No. L2813 which I now produce.

I have checked Mr. Eyo's plotting which included the process of reduction from the scale of the photographs, which is approximately  $\frac{1}{2400}$ , to the scale of the plan which is  $\frac{1}{4800}$ . The computed areas were also checked by me and found correct as in the attached list.

(Sgd.) S. A. I. BUCKNOR,  
*Government Surveyor.*  
6.11.48.

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## MANGROVE AREA.

<i>Parcel No.</i>	<i>Area</i>	
1.	20.4	Acres
2.	3.5	„
3.	2.8	„
4.	9.2	„
5.	1.9	„
6.	0.1	„
7.	0.2	„
8.	0.3	„
9.	1.5	„
10.	84.8	„
11.	48.6	„
12.	30.9	„
13.	4.9	„
14.	1.1	„
15.	2.6	„
16.	6.6	„
17.	26.8	„
18.	0.9	„
19.	0.4	„
20.	0.2	„
21.	0.4	„

Total : 248.1 „

Checked by :—

(Intd.) SAIB,  
Government Surveyor.  
6.11.48. 30

MR. O. E. EYO.

I am a Government Surveyor working in the Examination Section of the Survey Department. On the 29th October, 1948, I was shown a set of Air Photographs on which certain areas have been marked in chinagraph pencil, and I was instructed to plot those boundaries on to a copy of Plan No. L.2813 and compute the acreage.

I plotted the areas on the copy of Plan No. L.2813 first by tracing the boundaries on tracing paper, then reduced the size to the scale of the Plan which is  $\frac{1}{4800}$ , and then transfer the figures on to the plan, guided by other fixed detail and surveyed boundaries on the plan. The areas are shown in green verges on the copy of Plan L.2813 and numbered 1-21. The acreage were computed with planimeter and stated on the list passed to the Officer-in-Charge of Examination Section to check.

(Sgd.) O. E. EYO,  
Government Surveyor.  
9th November, 1948.

## PLAINTIFF'S EXHIBIT.

O.—Judgment of West African Court of Appeal in Chief Onikoyi's Case.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Friday the 2nd day of May, 1947.

Before Their Honours

Sir WALTER HARRAGIN, C.M.G., Chief Justice, Gold Coast, President.

Sir JOHN VERITY, Chief Justice, Nigeria.

JOHN ALFRED LUCIE-SMITH, O.B.E., Chief Justice, Sierra Leone.

Suit No. 158 of 1946.

W.A.C. 2572.

10

Between

THE CHIEF SECRETARY TO THE GOVERNMENT ... *Plaintiff-Respondent*

and

OLAYEMI ONIKOYI, Chief Onikoyi ... .. *Defendant-Appellant.*

M. A. O. WILLIAMS for Defendant-Appellant.

C. W. REECE, Crown Counsel, for Plaintiff-Respondent.

## JUDGMENT.

This is an appeal from a Judgment of the Supreme Court by which was assessed the amount of compensation to be paid in respect of certain lands compulsorily acquired by the Governor for public purposes and in particular for the improvement of the township of Lagos by the extension of the Ikoyi residential area.

The area acquired amounts to 225·4 acres, of which 93·3 acres are described as swamp and 132·1 acres as dry land. The total amount of compensation offered by the Plaintiff-Respondent was £8,392. 10s. 0d., the sum claimed by the Claimant-Appellant was £64,350. The total amount of compensation awarded by the Court below was £13,792. 10s. 0d., and against this assessment the Claimant has appealed. The Plaintiff-Respondent has brought no cross appeal and we may presume, therefore, is satisfied with the Judgment of the Court below.

In the course of his Judgment the learned Judge had occasion to comment upon the paucity of the evidence presented by the Plaintiff-Respondent and upon which he was invited to determine the amount of compensation. We would state at the outset that we are in complete

Exhibits.

O.

Judgment  
of  
W.A.C.A.  
in Chief  
Onikoyi's  
Case,  
2nd May,  
1947.

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O.  
Judgment  
of  
W.A.C.A.  
in Chief  
Onikoyi's  
Case,  
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1947—  
*continued.*

agreement with the learned Judge on this point. The only evidence adduced on behalf of the Plaintiff was that of a single witness inexperienced in the valuation of land in Nigeria but who spoke from certain records as to past dealings with other lands in the vicinity of Lagos. There was in addition the mere production of certain calculations prepared by an officer of the Public Works Department. The land to which former dealings related was widely scattered, the conditions as to location, previous occupation and user are divers and no experienced witness was called by the Plaintiff who could have assisted the Court to come to a just conclusion as to relative values having regard to the weight which should properly be attached to these variations. The calculations emanating from the Public Works Department were placed before the Court without the explanation or support of any witness capable of explaining their purport and effect. The applicability of these calculations to the assessment of compensation in the case of land compulsorily acquired by the Government under the relevant Ordinance was supported by no authority. 10

This Court, in common with the Court below, is therefore placed in a position of the greatest difficulty by reason of the failure of the Plaintiff to render the assistance which a Court is entitled to expect from a public department in matters of this kind. It is to be understood that this Court in arriving at a conclusion can do so only upon the evidence such as it is, adduced in the present case. It must not be assumed that in such circumstances the finding of this Court in this case can be used in the future as the basis upon which compensation should be assessed in the same or other similar locality, for we would express the hope that in no future case of a like nature will the Court be so starved of evidence and expert guidance which is essential to an accurate determination of the point in issue. 20

Turning to a consideration of the scant evidence adduced in addition to that tendered by the Respondent the Appellant called two witnesses of some experience in matters of this kind. Figures were given of prices paid for other lands acquired and also relating to the leasehold value of certain lands in the immediate neighbourhood of those in question. 30

Both Appellant and Respondent appear to have based their assessment upon the capital value of certain leases in Cameron Road, Ikoyi, of land approximately three quarters of a mile from the land now acquired. On the one hand the Appellant arrived at his valuation of the land acquired in its present undeveloped state by deduction from the capital value of the fully developed leaseholds the estimated cost of development. On the other hand, the Respondent further deducted from this capital value a sum arrived at by an elaborate calculation of what is described as the value of Deferred Reversion, based upon an assumption that of the total area of 225 acres, 80 only will be capable of development, and of these 40 only will be leased after five years and 40 after a period of ten years from the date of acquisition. Alternatively, the Respondent appears to rely upon a similar calculation based upon the assumption that the lettings may commence in three years and be completed in seven years. In so far as we are able to extract any meaning from the brief summaries of these calculations presented 40



to the Court without comment or explanation it would appear that the Respondent sought the approval of the Court below for an assessment of compensation on the basis of the value of the deferred reversion on 80 one-acre plots only out of a total of 225 acres acquired. Crown Counsel, though invited by this Court to do so, was unable to cite any authority in support of what appears to us to be a somewhat amazing proposition ; if we have understood it aright. The learned Judge does not appear to have been prepared to accept this method of assessment and we are not prepared to accept it.

Exhibits.

O.

Judgment  
of  
W.A.C.A.  
in Chief  
Onikoyi's  
Case,  
2nd May,  
1947—

*continued.*

10 On the other hand, the learned Judge did not accept the simpler method put forward by the Appellant but based also upon the capital value of the Cameron Road leaseholds. He appears to have based his assessment rather upon the price proved to have been paid in respect of certain land previously acquired at Victoria Beach, a locality some considerable distance from the land now acquired at Ikoyi. He further took into consideration certain apparent variations in the quality of the dry land and having assessed 90 acres of dry land at £120 per acre he then assessed 42.1 acres of dry land at £60 per acre and the remaining 93.3 acres of swamp at £5 per acre.

20 In the first place we are unable to find anything in the record before us which would have justified the learned Judge in differentiating between any one area of dry land and any other. Crown Counsel informed us that in fact a witness was recalled by the Judge, after a visit to the land in question and that it was upon the evidence then adduced that the distinction was drawn between a strip of land 150 yards wide and the remainder of the dry land. There is no record of this and we are unable, therefore, to take cognisance thereof, but are bound by that which is upon the record. We must hold, therefore, that the learned Judge erred in making any distinction other than that between dry land and swamp.

30 In regard to the latter the more or less nominal figure arrived at appears to have been based upon the value of certain fishing and other rights which are extinguished by the acquisition rather than upon the problematical value of the land for building purposes. Although a witness for the Appellant stated that he would himself be willing to pay 1s. 6d. per square yard for this swamp land we are not prepared to differ from the learned Judge, and in regard to this area of 93.3 acres his assessment is affirmed.

40 We are, however, unable to accept as a basis for the valuation for the dry land the value of land at Victoria Beach in the absence of any evidence which would sufficiently relate the location, surrounding conditions and other qualities of land there to the land now in question, and we must, therefore consider afresh the available evidence in the light of the principle of valuation prescribed by the Public Lands Acquisition Ordinance (Cap. 88 Section 15), which provides that the value shall be taken to be amount which the land if sold in the open market by a willing seller might be expected to realise. The only evidence of the value of lands in that sense, relating to lands generally speaking comparable to those in question, is in regard to

Exhibits. — O. Judgment of W.A.C.A. in Chief Onikoyi's Case, 2nd May, 1947— <i>continued.</i>	three areas in Ikoyi, set out in Appendix " B " referred to in the Judgment of the Court below, as follows :—		
	1944 Part of Golf Course	1s. 0d. per square yard or £240 per acre.	
	1945 Extension of Ikoyi Cemetery ...	1s. 0d. per square yard or £240 per acre.	
	1945 Cameron Road, Ikoyi valued at 2s. 8d. per square yard, including 1s. 0d. for development charges. Capital land value ...	1s. 8d. per square yard or £400 per acre.	10

It is the last named which the Appellant invites us to adopt as the proper basis of valuation, it being in the immediate vicinity of the land now in question. While this is true we must bear in mind that the particular lots which are the subject of the lease are situated in an area already fully developed and enjoy therefore the amenities attaching thereto. The land now in question is further from the existing residential area and cannot, unless and until developed possess any of these amenities, which by reason of the proviso to Section 15 of the Ordinance are not to be taken into consideration in assessing the compensation to be paid on the basis of the value of the land at the date of acquisition. We are therefore of the opinion that it would be neither just nor reasonable to conclude that because the present value at Cameron Road, less actual cost of development, amounts to 1s. 8d. per acre therefore the land now acquired should be valued at precisely the same figure. 20

A more reasonable standard of compensation is to be found in regard to the land acquired in 1944 and 1945 respectively in the neighbourhood of the Ikoyi Golf Course and for the extension of the Ikoyi Cemetery, in relation to which no artificial appreciation in value existed at the time of acquisition to the same degree as in relation to the Cameron Road lots within the existing residential area. We are of the opinion that in so far as we are guided by the evidence in this case, we should reject the valuations put forward both by the Appellant and the Respondent and accept as a more reasonable basis the prices paid in respect of the two areas at Ikoyi to which we have last referred. 30

We find therefore that the amount of compensation to be paid to the Claimant in this matter is £32,170. 10s. 0d., being 132.1 acres of dry land at approximately 1s. 0d. per square yard that is to say, £240 per acre, and 93.3 acres of swamp land at £5 per acre. 40

The appeal is allowed with costs, and the Judgment of the Court below varied in accordance with the above finding.

We should wish to add two further observations. It may be that we ourselves share the opinion of the Court below that the figure at which we arrived upon the evidence is out of proportion to what we, as laymen in

10 this connection, think to be the real value of a stretch of undeveloped land to which little or no use is made at the present time by the Claimant and those whose interests he also represents. It may be that the value we have placed on these lands in the absence of adequate assistance from the departments concerned far exceeds that anticipated by Government at the date of the acquisition and may so seriously affect the estimated cost as to hamper the development scheme in contemplation. These are questions which we are precluded from taking into consideration and we are of the opinion that, in giving weight to them, the learned Judge erred. We are impelled to reach our conclusion in accordance with the principle laid down by the relevant statute in the light of such evidence as the parties have chosen to place before the Court.

We would further support the hope expressed by the learned Judge in the Court below that in the payment and distribution of this very considerable sum steps may be taken to safeguard the individual interest of those persons other than the Claimant himself, who were in actual and rightful occupation of the land at the date of its acquisition.

The appeal is allowed with costs assessed at £44. 15s. 9d.

(Sgd.) WALTER HARRAGIN,  
*Chief Justice, Gold Coast.*  
*President.*

(Sgd.) JOHN VERITY,  
*Chief Justice, Nigeria.*

(Sgd.) J. LUCIE-SMITH,  
*Chief Justice, Sierra Leone.*

Exhibits.  
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O.  
Judgment  
of  
W.A.C.A.  
in Chief  
Onikoyi's  
Case,  
2nd May,  
1947—  
*continued.*

In the Privy Council.

No. 54 of 1950.

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL.

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BETWEEN

I. YESUFU ABIODUN, Chief Oniru  
*Defendant/Appellant*

AND

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

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RECORD OF PROCEEDINGS

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