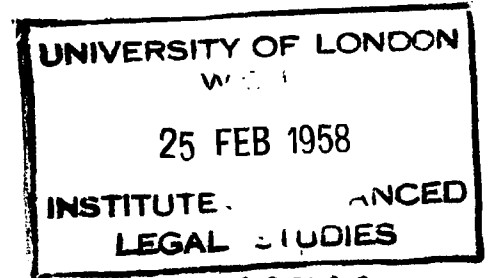


13, 1957

In the Privy Council.

No. 39 of 1953.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL
(LAGOS JUDICIAL DIVISION)



BETWEEN

1. ADEYINKA OYEKAN
2. AMUSA DOCEMO
3. OLUYEMI DOCEMO
4. H. A. OGUNDIMU
5. BABATUNDE AKITOYE

(On behalf of themselves and other members of the House of Docemo) ... (Plaintiffs) APPELLANTS

AND

MUSENDIKU ADELE ... (Defendant) RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment and Order of the West African Court of Appeal (Foster Sutton, P., Verity, C.J., and Coussey, J.A.) given and dated respectively the 17th November 1952 dismissing the Appeal of the present Appellants from the judgment of the Supreme Court of Nigeria in the Lagos Judicial Division (Reece J.) given on the 18th January 1951 in favour of the present Respondent in Suit No. 276/1949.

pp. 64-70
p. 71

pp. 48-58

10 2.—The Appellants are members of the Family or House of Docemo otherwise Dosunmu. The Respondent was on the 1st October 1949 and has since been the duly recognised Oba of Lagos. The substantial question in this Appeal is whether certain property situate at No. 26 Upper King Street Lagos commonly called Iga Idunganran (hereinafter called "the Iga") which forms part of the lands granted to King Docemo his Heirs Administrators Executors and Assigns by a Crown Grant dated the 15th July 1870 (hereinafter called "the 1870 Crown Grant") (a) is held

RECORD

beneficially by the Family of Docemo or (b) is held as the traditional official residence of the Obas of Lagos of which the Respondent as such Oba was at all material times entitled to possession.

p. 1

3.—Suit No. 276/1949 was instituted by Civil Summons dated the 13th October 1949 on the part of one Adedoyin Docemo (since deceased) and the Appellants Amusa Docemo, Oluyemi Docemo, H. A. Ogundimu and Babatunde Akitoye (hereinafter called “ the Original Plaintiffs ”) on behalf of themselves and other members of the House of Docemo as Plaintiffs against the Respondent as Defendant whereby the Original Plaintiffs claimed :—

10

- (1) Declaration of Title in respect of the Iga ;
- (2) The sum of £2,000 being damages for trespass committed by the Respondent on the Iga ;
- (3) Recovery of Possession of the Iga.

p. 6

4.—By an Order of the Supreme Court of Nigeria Lagos Judicial Division dated the 25th October 1949 it was ordered that the Original Plaintiffs should represent the members of the House of Docemo as Plaintiffs in the prosecution of the said Suit. The First of the Original Plaintiffs Adedoyin Docemo died on the 21st July 1950. By an Order of the said Court dated the 15th November 1950 it was ordered that the Appellant Adeyinka Oyekan be substituted for the said Adedoyin Docemo deceased. The expression “ the Appellants ” when hereinafter used refers to the Original Plaintiffs for the period down to the 21st July 1950 and to the present Appellants thereafter.

20

p. 17, 1. 34
pp. 18, 19

pp. 6, 7

5.—The Appellants’ Statement of Claim was delivered on the 8th November 1949. Shortly stated their allegations were that the Iga was part of the land covered by the 1870 Crown Grant ; that the Iga had for over 100 years been in the exclusive possession of the House of Docemo which had successfully resisted the challenges of outsiders to its rights ; that on the 1st October 1949 the Respondent with his servants and agents broke and entered the Iga which was then in the possession of members of the House of Docemo ; and that since that date the Respondent had been in wrongful possession of the Iga.

30

pp. 7, 8

6.—The Respondent’s defence was delivered on the 21st November 1949. Thereby the Respondent denied that he was in wrongful possession of the Iga, admitted the 1870 Crown Grant and (in substance) alleged that the 1870 Crown Grant was obtained by King Docemo in trust for the family of Ado ; that the Iga was from time immemorial the Official Residence of an Oba who was head of the House of Ado ; that since the year 1630 the Iga had always been in possession of any Oba duly installed by the Chiefs according to native custom ; that the Respondent was duly capped as the

40

Oba of Lagos by the Chiefs entitled to do so on the 1st October 1949 ; and that he had every right to enter the Iga on that date.

RECORD

7.—The Respondent's Genealogical Table was attached to his Defence and is not in dispute. Summarised it shows that King Ado reigned from 1630 to 1669 and was succeeded in turn by his son Gabaro, by his grandson Akinsemoyin and by his great-grandson Ologun Kutere ; that the Respondent is directly descended from King Ado through Adele the son of Ologun Kutere ; that Docemo was directly descended from King Ado through Akitoye also the son of Ologun Kutere ; that the last Oba (other than the Respondent) was Oba Falolu.

8.—The following matters are not in dispute :—

- (i) By the Treaty of Cession dated the 6th August 1861 King Docemo ceded to the British Crown the Port and Island of Lagos (which included the Iga) and the rights profits territories and appurtenances thereto belonging. pp. 74, 75
- (ii) By the 1870 Crown Grant the Iga (with other land) was granted by the Crown to King Docemo His Heirs Executors Administrators and Assigns for ever. p. 76
- (iii) The 1870 Crown Grant is registered as No. 74 at page 74 in Volume 6 of the Register of Crown Grants kept in the Lands Registry Lagos.

9.—The following provisions of the Laws of Nigeria are relevant :—

- (A) In the Crown Grants (Township of Lagos) Ordinance (Cap. 44) it is recited that the effect of the said Treaty was that, while the private rights of property of the inhabitants were to be fully respected, there passed to the Crown whatever rights the Oba possessed including whatever proprietary rights the Oba possessed beneficially and free from the usufructuary qualification of his title in favour of his subjects and it is provided :—

30 *By Section 3.*

“ All grants of land situate within the township of Lagos,
 “ other than those referred to in the Third Schedule to this
 “ Ordinance, which purport to have been made by or on behalf
 “ of the Crown and which come within the category of those
 “ mentioned in the First Schedule to this Ordinance shall be
 “ deemed to have been validly made ; and each of such grants
 “ shall be deemed to have vested in the grantee an estate free
 “ from competing interests and restrictions, save only such
 “ interests and restrictions, recognised by native law and
 “ custom, as at the date of the grant affected such estate.”

40

By Section 5.

“ Where the estate in any land to which the provisions of
 “ either section 3 or section 4 of this Ordinance apply has, since
 “ the date of the relevant grant, been dealt with in such a way
 “ as either—

“ (a) to free such estate from any interest or restriction
 “ which by native law and custom affected the same ; or

“ (b) to create or impose in relation to such estate, any
 “ interest or restriction recognised by native law and
 “ custom,

10

“ then, as the case may be, such estate shall be deemed to be
 “ free from or subject to such interest or restriction.”

The First Schedule to the said Ordinance includes Grants registered in Volume 6 of the Register of Crown Grants.

(B) By Section 292 of the Criminal Code (Cap. 42) it is provided (inter alia) as follows :—

“ It is lawful for a person who is in peaceable possession
 “ of any land, structure, vessel or place, or who is entitled to the
 “ control or management of any land, structure, vessel or
 “ place, and for any person acting by his authority, to use such
 “ force as is reasonably necessary in order to prevent any
 “ person from wrongfully entering upon such land, structure,
 “ vessel, or place, or in order to remove therefrom a person who
 “ wrongfully remains therein, provided that he does not do
 “ harm to such person.”

20

10.—The said Suit was heard in the Supreme Court of Nigeria Lagos
 Judicial Division before Reece, J., on a number of days between the
 13th February and the 13th December 1950 when oral evidence was given.
 On the 18th January 1951 the Learned Judge gave judgment for the
 Respondent with costs.

30

11.—In the course of his Judgment the Learned Judge made the following findings of fact :—

- p. 49, l. 27 (i) Akitoye did not give the Iga to Docemo as family land but Docemo succeeded to it as Oba.
- p. 49, l. 30 (ii) There were four Obas between Ologun Kutere and Akitoye, namely Adele 1775, Eshilokun 1780, Idewu Osulari 1819 and Oluwole 1834 all of whom occupied the Iga as Obas.
- p. 50, l. 25 (iii) The Iga passed from Ologun Kutere 1749 through succeeding Obas to Docemo 1853 and not from Akitoye 1841.

- (iv) The land on which the Iga stands was given to King Ado by Aromire : the Iga was the residence of the Obas from the time of Gabaro who was the first to put a building there, while Akinsemoyin first erected a building with a roof of tiles. p. 50, l. 33—p. 51, l. 16
- (v) There was no evidence that the House of Docemo had successfully resisted the challenge of outsiders to their rights in the Iga. p. 51, l. 49
- 10 (vi) From the exile of Eshugbayi Eleko in 1925 to his return in 1931 the Iga was occupied by Sanusi Olusi who was Oba of Lagos but not a member of the House of Docemo ; accordingly the House of Docemo had not been in exclusive possession of the Iga. p. 52 ll. 2-13
- (vii) From the time of Gabaro right up to the death of Falolu every person who occupied the Iga occupied it as Oba of Lagos and by virtue of being Oba of Lagos. p. 52, l. 49
- (viii) The Iga started with a gift of land to King Ado by Chief Aromire ; Gabaro first erected buildings on and lived on the land ; the buildings were brought to their present state by Akinsemoyin save for the building erected by Akitoye. The Iga was not given by Ologun Kutere to Akitoye or by Akitoye to Docemo. p. 54 ll. 11-18
- (ix) The Iga is the traditional home of the Obas of Lagos. p. 54, l. 42
- 20 (x) The Respondent is the duly recognised Oba of Lagos in succession to Falolu. p. 55, l. 21
- (xi) The Respondent forcibly entered the Iga accompanied by the Chiefs on the 1st October 1949 but there was no damage to any part of the buildings of the Iga. p. 56, l. 36
- (xii) Oba Falolu died on the 2nd September 1949. p. 57, l. 20
- (xiii) The Original Plaintiff Adedoyin Docemo was in possession of and occupied part but not the whole of the Iga before the 1st October 1949 but such occupation was not as of right. p. 56, l. 1
p. 57, l. 23
- 30 12.— Upon the foregoing facts the Learned Judge held that the proper construction to be placed upon the 1870 Crown Grant was that the Iga was given to Docemo as Trustee for his successors in the office of Oba of Lagos ; that the Appellants were not entitled to the recovery of possession of the Iga ; and that having regard to the provisions of Section 292 of the Criminal Code (Cap. 42) the Respondent being entitled to control or management of the Iga *virtute officii* as Oba was entitled to use such force as he did to gain entrance to the Iga for the purpose of removing Adedoyin Docemo therefrom and that the Appellants' claim in trespass failed. Accordingly, as hereinbefore stated, the Learned Judge gave judgment for the Respondent with costs. p. 52, l. 45
p. 55, l. 26
p. 58 ll. 15-23
p. 58, l. 24
- 40 13.— On the 23rd January 1951 the Appellants filed a Notice of Appeal to the West African Court of Appeal dated the 22nd January 1951 against

p. 59

the whole decision of the Supreme Court of Nigeria and sought an Order allowing the Appeal and substituting judgment for the Appellants as per their Writ of Summons.

pp. 60-63

14.—The said Appeal came on for hearing in the West African Court of Appeal (Foster Sutton P., Verity C.J. and Coussey J.A.) at Lagos on the 22nd and 23rd October 1952 when argument was heard at the conclusion of which the judgment of the Court was reserved.

pp. 64-70

15.—On the 17th November 1952 the Judgments of the West African Court of Appeal were delivered when Foster Sutton P. and Coussey J.A. concurred in the judgment of Verity C.J. and the Court unanimously 10 dismissed the Appeal with costs.

p. 64, l. 44

16.—The Learned Chief Justice considered the case upon the facts found by the Learned Trial Judge from which upon the evidence he saw no reason to differ and set out the history of the Iga as so found and the conclusions of the Learned Trial Judge in the following terms:—

p. 65 ll. 4-33

“ The Iga Idunganran originated in a gift of land by Chief Aromire to King Ado, who was the Oba of Lagos between 1630 and 1669. It was not, however, till the time of King Gabaru (1669-1704) that buildings were erected on the land and occupied by the Oba. The buildings were completed by King 20 Akinsemoyin (1704-1749) save for one erected by King Akitoye (1841-45). From the time of King Gabaru the Iga has been the residence of the Obas of Lagos, save as it would appear for a brief period (1931-32) when Eleko Eshugbayi after a period of exile was permitted by the Government to reside in the Iga although not recognised as ‘ the head of the House of Ado ‘ (sometimes known as the house of Docemo or Docemo- ‘ Oyekan) ’ or ‘ as holding any position which might entitle him ‘ to official recognition from the Government.’

“ The position would appear to be, therefore, that in 1861 30 “ at the date of the Treaty of Cession the premises in question “ had for a period of over a century been used as the residence of “ the Oba of Lagos, who was, as indeed each has been to this day, “ a descendant of King Ado. King Docemo remained in occupa- “ tion of the Iga, notwithstanding the Treaty, until 1870 when “ the Crown Grant to which I have referred purported to grant the “ premises to him and his heirs, executors, administrators and “ assigns forever. Thereafter his successors as Oba have occupied “ the Iga in due course and save for a short period (1928-31 or “ perhaps 1932) the Oba has been a descendant of King Docemo 40 “ until the time of the Respondent who was recognised as Oba in “ 1949. Both Sanusi Olusi who was recognised as Oba in 1928 “ and the Respondent are descendants of King Ado but not of “ King Docemo. Upon these facts the learned trial judge reached

“ the conclusion that the premises in dispute are not the absolute
 “ property of King Docemo’s descendants and that the proper
 “ construction to be placed upon the Crown Grant of 1870 is that
 “ the land was given to King Docemo as trustee for his successors
 “ in the office of Oba of Lagos.”

- 17.—The Learned Chief Justice, in considering Section 3 of the Crown Grants Ordinance (Cap. 44) held, on the authority of *Amodu Tijani v. Secretary Southern Nigeria* ([1921] 2 A.C. 399); *Idenu Inasa v. Oshodi* ([1934] A.C. 99) and *Oshodi v. Dakolo* (IX N.L.R. 13), that immediately
- 10 prior to the enactment of the said Ordinance each Crown Grant was no more than a grant in trust leaving the beneficial or usufructuary interest as it had previously been; and that there was no distinction between grants to Head Slaves such as those with which the cases aforesaid were concerned and Crown Grants such as the 1870 Crown Grant. The Learned Chief Justice rejected a submission made on behalf of the Appellants that under Section 5 of the said Ordinance the Iga had been freed from any restrictions upon the ownership thereof in favour of the Obas of Lagos because of the permission granted to Eleko Eshugbayi to occupy the Iga when he was not recognised by the Government as Oba. His Lordship
- 20 held that the Iga was to be treated as “ stool land ” or “ royal estates ” as defined in *Amodu Tijani v. Secretary, Southern Nigeria* (*supra*) namely land which the Chief holds in his representative or constitutional capacity as distinguished from land which he and his family hold individually; and that under the general law, which had been confirmed by the Crown Grants Ordinance (Cap. 44), when the Treaty of Cession passed any proprietary rights they were rights which the ceding King possessed beneficially and free from the usufructuary qualification of his title in favour of his subjects. The Learned Chief Justice concluded that, since prior to the Treaty of Cession the Obas of Lagos did not hold the Iga beneficially or
- 30 free from the usufructuary qualification of their title in favour of their subjects the proprietary rights in the Iga did not pass to the Crown under the Treaty of Cession, and that the 1870 Crown Grant vested in Docemo and his heirs an estate subject to the right of the Oba of Lagos during his term of office to hold the same in a representative and constitutional capacity as his official residence.

p. 66

p. 67, l. 48

p. 68, l. 15

pp. 74, 75

p. 68 ll. 24-40

p. 69, l. 45

p. 69, l. 45

p. 69, l. 46—p. 70,

l. 3

18.—By an Order of the West African Court of Appeal dated the 17th November 1952 it was ordered that the said Appeal be dismissed and that the Appellants do pay to the Respondent his costs in the Appeal.

p. 71

19.—By an Order of the West African Court of Appeal dated the 16th February 1953 it was ordered that Final Leave to appeal to Her Majesty’s Privy Council from the said Judgment dated the 17th November 1952 be granted to the Appellants.

p. 73

20.—The Respondent humbly submits that the Order of the West African Court of Appeal is right and should be affirmed for the following, among other

REASONS

- (1) BECAUSE “ Stool Lands ” or “ Royal Estates ” according to the applicable Native Law and Custom are lands on which a Chief holds in his representative or constitutional capacity.
- (2) BECAUSE prior to the Treaty of Cession of 1861 lands held by a Chief in his representative or constitutional capacity were not held by him beneficially or free from the usufructuary 10 qualification of his title in favour of his subjects.
- (3) BECAUSE the Treaty of Cession did not affect the proprietary rights in lands held by the ceding Chief in his representative or constitutional capacity.
- (4) BECAUSE Crown Grants of land in Lagos vested in the grantee an estate subject to such interests and restrictions recognised by Native Law and Custom as at the date affected such estate.
- (5) BECAUSE the rights in land of an Oba of Lagos in his representative or constitutional capacity have at all times 20 been interests in and restrictions on the land recognised by Native Law and Custom.
- (6) BECAUSE from the time of Gabaro (1669–1714) to the death of Oba Falolu on the 2nd September 1949 the Iga was the official residence of the successive Obas of Lagos save only for a short period in 1931 and 1932 when the Iga was occupied by Eleko Eshugbayi.
- (7) BECAUSE the Iga was so occupied as aforesaid by the successive Obas of Lagos in their representative and constitutional capacities and not beneficially or free from the 30 usufructuary qualification of their title in favour of their subjects.
- (8) BECAUSE the proprietary rights of the Obas of Lagos in the Iga were not affected by the Treaty of Cession.
- (9) BECAUSE the 1870 Crown Grant vested in Docemo and his heirs an estate in the Iga subject to the right of the Oba for the time being of Lagos to hold the same in a representative and constitutional capacity as his Official Residence.

- (10) BECAUSE the occupation of the Iga by Eleko Eshugbayi was not a dealing with the estate in the Iga in such a way as to free such estate from the restriction aforesaid in favour of the Oba for the time being of Lagos within the meaning of Section 5 of the Crown Grants Ordinance (Cap. 44).
- (11) BECAUSE Docemo obtained the 1870 Grant so far as it related to the Iga in a fiduciary capacity and he and his heirs were and are bound in equity to give effect to the rights of occupation of the successive Obas of Lagos.
- 10 (12) BECAUSE after the death of Obal Falolu the Respondent became and is the duly recognised Oba of Lagos.
- (13) BECAUSE the Iga was at all material times and is vested in the heirs of Docemo subject to the right of the Respondent to occupy the same as his Official Residence.
- (14) BECAUSE the Respondent was at all material times and is entitled to possession and control and management of the Iga.
- (15) BECAUSE the Appellants are not entitled to a Declaration of Title in respect of the Iga as absolute owners free from competing interests and restrictions.
- 20 (16) BECAUSE the Appellants are not entitled to possession of the Iga.
- (17) BECAUSE the Respondent on the 1st October 1949 was entitled to use such force as he did to gain entrance to the Iga.
- (18) BECAUSE the Appellants are not entitled to recover damages for trespass against the Respondent.
- (19) BECAUSE the judgments of the Supreme Court of Nigeria Lagos Judicial Division and of the West African Court of Appeal were correct and ought to be affirmed.

ARTHUR BAGNALL

In the Privy Council.

No. 39 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL (LAGOS JUDICIAL DIVISION).

BETWEEN

1. ADEYINKA OYEKAN
2. AMUSA DOCEMO
3. OLUYEMI DOCEMO
4. H. A. OGUNDIMU
5. BABATUNDE AKITOYE
(On behalf of themselves and other
members of the House of Docemo)
(Plaintiffs) APPELLANTS

AND

MUSENDIKU ADELE
(Defendant) RESPONDENT.

CASE FOR THE RESPONDENT

HATCHETT JONES & CO.,
110 Fenchurch Street,
London, E.C.3,
Solicitors for the Respondent.