

Judgment
28, 1964

IN THE PRIVY COUNCIL

No.3 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

S.M. OGUNDIPE-ALATISHE
(Trading under the name
and style of French
Medicine Stores)

(Plaintiff) Appellant

- and -

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A. FRANKLIN

(Defendants) Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78611

T.L. WILSON & CO.
C, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant

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

IN THE PRIVY COUNCILNo.3 of 1964ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N :

S.M. OGUNDIPE-ALATISHE
 (Trading under the name
 and style of French
 Medicine Stores)

(Plaintiff)

Appellant

- and -

1. THE LAGOS EXECUTIVE
 DEVELOPMENT BOARD
 2. E.A. FRANKLIN

(Defendants)

RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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Motion on Notice for extension of time	12th October 1961
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Affidavit in support	27th May 1963
Motion for Notice for Stay of Execution	25th May 1963
Affidavit in Support	27th May 1963

Description of Document	Date
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IN THE PRIVY COUNCIL

No.3 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

S.M. OGUNDIPE-ALATISHE
(Trading under the name
and style of French
Medicine Stores) (Plaintiff) Appellant

- and -

10 1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A. FRANKLIN (Defendants) Respondents

RECORD OF PROCEEDINGS

NO. 1

CIVIL SUMMONS

IN THE HIGH COURT OF LAGOS

CIVIL SUMMONS

In the
High Court

No. 1

Suit No.LD/270/61.

Civil Summons
7th June 1961

BETWEEN:

20 S.M.OGUNDIPE ALATISHE (Trading)
under the name and Style of)
French Medicine Stores)) Plaintiff

- and -

1. L.E.D.B. and E.A.FRANKLIN }
2. To L.E.D.B. and ANOTHER } Defendants Sic

of Reclamation Road, Lagos, 2 Franklin Street,
Ebute-Metta.

30 You are hereby commanded in Her Majesty's
name to attend this Court at High Court, Lagos
on Monday the 3rd day of July, 1961, at 9 o'clock

In the
High Court

in the forenoon to answer a suit by S.M.Ogundipe Alatishe of 42 Glover Street, Ebute-Metta against you.

No.1

The Plaintiff's claims against the Defendants are as follows :-

Civil Summons
7th June 1961
continued

1. For a declaration that as between himself and the 2nd Defendant and/or any other person or persons claiming jointly with him (the 2nd Defendant), under and by virtue of the same title, the Plaintiff is better entitled to the re-allocation and conveyance of ALL THAT PIECE OR PARCEL OF LAND situate, lying, and being at the junction of Breadfruit and Martin Streets, Lagos, and known as Plot No.1 in Sub-area 5 of the Lagos Central Planning Scheme, 1951. 10
2. For an Order setting aside any purported re-allocation of the said PIECE or PARCEL OF LAND to any person or persons other than the Plaintiff. 20
3. For an Order directing the 1st Defendants to re-allocate the said PIECE or PARCEL of LAND, known as Plot 1 in the Sub-area 5 of the Lagos Central Planning Scheme, 1951 to the Plaintiff.
4. For an Injunction restraining the 1st Defendants from re-allocating and/or conveying the said land to the 2nd Defendant or to the 2nd Defendant jointly with any other person or persons claiming under and by virtue of the same title. 30

Annual rental value for purposes of Court Fees: £36. -- --.

Issued at Lagos the 7th day of June, 1961.

(Sgd.) Alexander Bellamy.
ACTING CHIEF JUSTICE.

Take Notice - That if you fail to attend at hearing of the suit or any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment execution. 40

NO. 2

ORDER FOR PLEADINGS

In the
High Court

No.2

IN THE HIGH COURT OF LAGOS

MONDAY THE 3RD DAY OF JULY, 1961

Order for
Pleadings
3rd July 1961

BEFORE THE HONOURABLE MR. JUSTICE COKER.

LD/270/61.

S.M.OGUNDIPE ALATISHE
Trading under the name and
Style of French Medicine
Stores Plaintiff

10

Vs.

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A.FRANKLIN Defendants

L.V.DAVIS for Plaintiff.

2nd Defendant in person.

1st Defendant absent. Okunu for 1st Defendants.

V. Esan for 2nd Defendant.

Counsel asks for pleadings.

20

COURT: Pleadings ordered. Plaintiff to
file and deliver his Statement of Claim within
30 days hereof; the Defendants to file and
deliver their statement of Defence within 30
days after service on them of the Plaintiff's
Statement of Claim. Service may be effected
by or upon the respective Solicitors.

(Sgd.) G.B.A.COKER
JUDGE
3/7/61.

In the
High Court

NO.3
STATEMENT OF CLAIM

No.3

IN THE HIGH COURT OF LAGOS

Statement of
Claim
29th July 1961

Suit No.LD/270/61.

BETWEEN :

S.M.OGUNDIPE ALATISHE
(trading under the name
and style FRENCH MEDICINE
STORES ... Plaintiff

AND

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A.FRANKLIN ... Defendants

10

STATEMENT OF CLAIM

1. The Plaintiff who resides at No.48 Glover Street Ebute Metta, is a trader and carries on his business under the name and style of FRENCH MEDICINE STORES, at No.112 L.E.D.B. shop in Breadfruit Street, Lagos.
2. The 1st Defendants are a Development Board having their offices at Reclamation Road, and are responsible, among other things, for the implementation of the Lagos Central Planning Scheme of 1951. 20
3. The 2nd Defendant is a retired Civil Servant, and is a Barrister-at-Law and Solicitor of the Federal Supreme Court of Nigeria, and has his residence at No.2 Franklin Street, Ebute Metta.
4. The whole area covered by the said Lagos Central Planning Scheme of 1951, is divided into sub-areas and No.8 Bucknor Street, Lagos to which reference will be made later in this Statement of Claim is in Sub-Area 1; Nos.12 and 14 Murray Street, Lagos, are in Sub-Area 3, and Nos.18 and 20 Breadfruit Street, Lagos, in Sub-Area 5. 30

In the
High Court

No.3

Statement of
Claim
29th July 1961
continued

5. No.18 Breadfruit Street, Lagos, a property measuring 115.03 square yards, and situated at the date of its acquisition at the junction of Breadfruit Street, and Daddy Oboso Lane originally belonged to one Agbesi.
6. The said Agbesi, after having been seised in FEE SIMPLE of the said property for some years, sold and conveyed the same to one James George Garber by a Deed dated the 15th April, 1886, and registered as No.93 at page 286 in Vol.10 of the Register of Deeds kept at the Federal Lands Registry in the office at Lagos.
7. By a Deed dated the 31st day of May, 1892, the said James George Garber sold and conveyed the said property to Caroline Edith Cowan, Elizabeth Elfrida Cowan, and Sarah Maria Cowan in FEE SIMPLE.
8. The said property was mortgaged to the estate of Fred Williams deceased by deed dated the 13th of December, 1928, and registered as No.3 at page 3 in volume 252, which mortgage was later transferred to one Adeyemo Alakija by Deed dated the 6th of February, 1931, and registered as No.7 at page 7 in Volume 307 of the REGISTER of Deeds kept in the Federal LANDS REGISTRY in Office in Lagos.
9. The said property (i.e. No.8 Breadfruit Street, Lagos), was sold by the said Adeyemo Alakija to one Joseph Bolarin Abimbola and conveyed by Deed dated the 12th day of February, 1932, and registered as No.12 at page 12 in volume 329 of the Register of Deeds kept at the Federal Lands Registry in the office at Lagos.
10. On the 31st day of August, 1949, Christiana Abiodun Abimbola, Hannah Agbeke Oni, and Joshua O. Adenekan Craig as BENEFICIAL OWNERS, sold and conveyed the said 18 Breadfruit Street to one Thomas Olarewaju Abimbola by a Deed bearing that date and which was submitted for first registration. The title of the said Thomas Olarewaju to the said land was duly registered as No. LO 1825 (EREKO DISTRICT).
11. The said Thomas Olarewaju Abimbola sold the said property to the Plaintiff and executed a

In the
High Court

No.3

Statement of
Claim
29th July 1961
continued

- Deed of Transfer in his favour on the 31st day of December 1953.
12. At the date of its acquisition, No.18 Breadfruit Street, had a building with a shop where the Plaintiff carried on his business for some time before the building was eventually demolished.
 13. No.8 Bucknor Street, Lagos, measuring about 96.41 square yards was originally owned by one Emanuel Olajunle sic Emelius. 10
 14. The said Emanuel Olakunle sic Emelius sold and conveyed the said land (i.e. No.8 Bucknor Street), to one Christian Emanuel Luke under a Deed dated the 5th day of March, 1929 and registered as No.57 at page 57 in volume 253 of the Register of Deeds kept in the Federal Lands Registry in the office at Lagos.
 15. The said Christian Emanuel Luke died intestate and without issue on the 12th day of June, 1942, leaving his widow, Christiana Phebean Luke him surviving. 20
 16. The said Widow caused the said property to be sold in 1947, and it was bought by the Plaintiff in the name of his mother, Mrs. Christiana Oladunjoye Alatishe.
 17. The Title of Mrs. Christiana Oladunjoye Alatishe to the said property was registered on the 26th day of July, 1947, as No.10 1530.
 18. Neither the Plaintiff nor his mother was re-allocated a plot in Sub-Area 2 in return for No.8 Bucknor Street acquired by the Board (the 1st Defendants), but they did hold out a promise to him to take his beneficial interest into consideration when re-allocating plots in Sub-Area 5. 30
 19. No.20 Breadfruit Street, Lagos, to which the 2nd Defendant lays claim, measured about 90.00 Sq.yards.
 20. This property, that is, No.20 Breadfruit Street, originally belonged to Victoria Olan-iwun George, Rowland Savage, Titilola Savage 40

and Hannah Banjoko Savage who in 1929 sold and conveyed the same to one Vidal Richmond Oladipo Cole by an Indenture dated the 10th day of September and registered as page 44 No.44 in volume 265 of the Register of Deeds kept in the Federal Lands Registry in the office at Lagos.

In the
High Court

No.3

Statement of
Claim
29th July 1961
continued

- 10 21. At the time of its acquisition by the 1st Defendants, No.20 Breadfruit Street was at the corner of Daddy Oboso Lane and Breadfruit Street, and had a building on it smaller in size than that at No.18 Breadfruit Street.
- 20 22. In implementing the said Lagos Central Planning Scheme of 1951, Martin Street was extended, and No.20 Breadfruit Street, became part of the highway, and No.18 Breadfruit Street, now known as plot No.1 in Sub-Area 5, became a corner-piece at the junction of Martin and Breadfruit Streets.
23. In re-allocating plots in Sub-Area 5, the 1st Defendants purported to allocate Plot No.1 which is substantially the same as No.18 Breadfruit Street, to the 2nd Defendant, and plot No.3 to the Plaintiff.
24. The Plaintiff protested against this purported allocation of plot No.1 to the 2nd Defendant, and as no redress seemed to be forthcoming, he instituted this action.
- 30 25. The 2nd Defendant was the owner of 12/14 Murray Street, Lagos, which has been acquired by the 1st Defendants, and a new plot substantially the same as the land acquired, has been re-allocated to the 2nd Defendant.

The Plaintiff will contend at the trial :-

- 40 (i) That as he was the original owner of the plot or a substantial portion thereof it should have been re-allocated to him.
- (ii) That No.18 Breadfruit was a bigger property than No.20, and the

In the
High Court

building on it was also larger than
at No.20.

No.3

Statement of
Claim
29th July 1961
continued

- (iii) That both properties opened out to Breadfruit Street, and were each at the corner of Breadfruit Street and Daddy Oboso Lane.
- (iv) That the Plaintiff's root of title to No.18 is longer than the Defendant's (i.e. the 2nd Defendant's) title to No.20 Breadfruit Street. 10
- (v) That the 1st Defendants failed to consider Plaintiff's beneficial interest in 8 Bucknor Street, when re-allocating plots in Sub-Area 5 as they had undertaken to do.
- (vi) That the 2nd Defendant is entitled only to compensation for his land which has become part of the highway.
- (vii) That as the 2nd Defendant had already got a plot at Balogun Street allotted to him in consideration of 12/14 Murray Street that had been acquired by the 1st Defendants, it was inequitable to deprive the Plaintiff of the Plot in Sub-Area 5 to which he is obviously entitled. 20

WHEREFORE the Plaintiff claims as per WRIT OF SUMMONS.

Dated at Lagos this 29th day of July, 1961.

(Sgd.) L. V. DAVIS
Plaintiff's Solicitor.

30

NO.4
DEFENCE OF 2ND DEFENDANT

In the
High Court

IN THE HIGH COURT OF LAGOS

No.4

Suit No.LD/270/61:

Defence of
2nd Defendant
1st September
1961

BETWEEN:

S.M.OGUNDIPE ALATISHE
(Trading under the name
and style of French
Medicine Stores ... Plaintiff

10

AND

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A.FRANKLIN ... Defendants

STATEMENT OF DEFENCE
FOR 2ND DEFENDANT:

20

1. Save and except as is hereinafter expressly admitted the 2nd Defendant denies each and every allegation of fact set out in the Statement of Claim as if every such allegation of fact were specifically set out and traversed seriatim.
2. The 2nd Defendant will, at the commencement of the hearing of the above suit and by way of preliminary objection,

30

- (i) contend that the Plaintiff's action is improper in law,
- (ii) raise all legal defences available under the Lagos Town Planning Ordinance, Cap 95, Laws of the Federation of Nigeria and Lagos 1958, the Lagos Central Planning Scheme (Approval) Order in Council, and all subsequent amendments, orders, and regulations to the aforesaid Ordinance and Order in Council, and

In the
High Court

No.4

Defence of
2nd Defendant
1st September
1961
continued

(iii) further contend that the action is misconceived in law and should be dismissed.

3. The 2nd Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim.
4. The 2nd Defendant admits paragraph 4 of the Statement of Claim only in so far as properties Nos.18 & 20 Breadfruit Street are concerned but is not in a position to admit or deny the other averments contained in the said paragraph. 10
5. The 2nd Defendant is not in a position to admit or deny paragraphs 5,6,7,8,9,10 and 11 of the Statement of Claim and puts the Plaintiff to the strictest proof thereof.
6. Further to paragraph 5 of the Statement of Claim, the 2nd Defendant avers that the property No.18, Breadfruit Street is separated from property No.20, Breadfruit Street by Daddy Oboso Street and that the former has no direct access to or connection with Martin Street. 20
7. Further to paragraph 6 above and with further reference to paragraph 5 of the Statement of Claim the 2nd Defendant says that property, No.20 Breadfruit Street, has three of its sides bounded by Public Streets, viz:- Martin Street Breadfruit Street and Daddy Oboso Street thus being a corner piece at the junction of Breadfruit Street and Daddy Oboso Street and also a corner piece at the junction of Breadfruit Street and Martin Street. 30
8. The Defendant admits that there was a building on No.18, Breadfruit Street at the time of acquisition as alleged in paragraph 12 of the Statement of Claim but says that he has no knowledge of the Plaintiff carrying on any business therein.
9. The 2nd Defendant is not in a position to admit or deny paragraphs 13,14,15,16,17 and 18 of the Statement of Claim and will, in any event, contend at the hearing of this suit 40

that the averments contained in the said paragraphs are irrelevant to the issue between the parties and should be struck out.

In the
High Court

No.4

10. The 2nd Defendant admits being the owner of property No.20, Breadfruit Street as contained in paragraph 19 of the Statement of Claim.

Defence of
2nd Defendant
1st September
1961
continued

10 11. Further to paragraph 10 above and with further reference to paragraph 20 of the Statement of Claim the 2nd Defendant says that although he acquired 20 Breadfruit Street in 1938 it has a root title dating back to 1866 as against the title of the Plaintiff to 18, Breadfruit Street which he acquired only in 1953 with a root of title commencing as from 1886.

20 12. The 2nd Defendant denies paragraphs 21 and 22 of the Statement of Claim and says with particular reference to paragraph 22 that the balance of 20, Breadfruit Street forms the frontage of Plot No.1 to Martin Street at the junction of Martin Street and Breadfruit Street and that no portion of 18, Breadfruit Street faces Martin Street as it now stands.

13. The 2nd Defendant admits paragraph 23 of the Statement of Claim.

14. The 2nd Defendant is not in a position to admit or deny paragraph 24 of the Statement of Claim.

30 15. The 2nd Defendant admits ownership of 12/14 Murray Street as alleged in paragraph 25 of the Statement of Claim but denies that the property was wholly or substantially re-allocated to him by the first defendant and will contend at the trial that reference to 12/14 Murray Street is irrelevant to the issue between the parties to this action and should be struck out. The Plaintiff's claim is frivolous mis-conceived, not brought in good faith and should be dismissed.

Dated the 1st day of September, 1961.

40 (Sgd.) V.O. ESAN & CO.,
Solicitor to 2nd Defendant.

Plaintiff's Address: 42 Glover Street, Ebute

In the
High Court

Metta or c/o His Solicitor, L.V.Davis, 157,
Bamgbose Street, Lagos.

No.4

1st Defendant's Address: Reclamation Road,
Lagos.

Defence of
2nd Defendant
1st September
1961
continued

2nd Defendant's Address: 2, Franklin Street,
Ebute Metta or c/o His Solicitors, V.O.Esan & Co.,
68, H. Macaulay Street, Ebute Metta.

No.5

NO.5

Defence of
1st Defendant
18th October
1961

DEFENCE OF 1ST DEFENDANT

IN THE HIGH COURT OF LAGOS

10

Suit No.LD/270/61:

BETWEEN:

S.M.OGUNDIPE ALATISHE
Trading under the name
and Style of French
Medicine Stores. ... Plaintiff

AND

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A.FRANKLIN ... Defendants 20

1ST DEFENDANT'S STATEMENT OF DEFENCE

1. SAVE and EXCEPT as hereinafter expressly
admitted the 1st Defendant (hereinafter referred
to as "the Board") denies each and every allega-
tion of fact contained in the Plaintiff's State-
ment of Claim as if same were herein set down and
specifically traversed.

2. The Board ADMITS paragraphs 1,2,3,4,13,17,20
and 24 of the Plaintiff's Statement of Claim.

3. With reference to paragraph 5 of the Plain-
tiff's Statement of Claim the Board AVERS that 30
No.18 Breadfruit Street measures 109.63 square
yards and comprised approximately 810 feet super.

4. The Board is NOT in a position to deny or admit paragraphs 6,7,8,9,10,11,14,15 and 16 of the Plaintiff's Statement of Claim and therefore puts the Plaintiff to a strict proof thereof.

In the
High Court

No.5

5. With reference to paragraph 12 of the Plaintiff's Statement of Claim, the Board AVERS :-

Defence of
1st Defendant
18th October
1961
continued

10

(i) That at the date of its acquisition by the Board, the property known as 18 Breadfruit Street was a Brick and Mud-brick construction, having a corrugated iron roof and cement floor.

(ii) The building comprised of 1 shop and 1 office (each) measuring 14'6" x 10'2"; 1 room, 1 passage, each measuring 8'0" x 15'7"; 1 store, measuring 14'0" x 5'9", Kitchen, E.C. and a small open yard.

20

(iii) That the Plaintiff moved his business to 18 Breadfruit Street Lagos in January 1957, when his Shop at 17/19 Martins Street, Lagos was demolished under the Scheme.

6. With reference to paragraph 18 of the Plaintiff's Statement of Claim the Board;

(i) ADMITS that no re-allocation of Plot was made to the Plaintiff in Sub-Area 5.

(ii) AVERS :-

30

(a) That 8 Bucknor Street falls in Sub-Area 1 and not in Sub-Area 2 as stated by the Plaintiff.

(b) That Mrs. Christiana Oladunjoye Alatishe and not the Plaintiff was the registered owner of 8, Bucknor Street, Lagos.

(c) That the said Mrs.C.O.Alatishe did not possess sufficient point on the Priority List of Residential Owners to warrant re-allocation of a Residential Plot in Sub-Area 1.

In the
High Court

No.5

Defence of
1st Defendant
18th October
1961
continued

(iii) DENIES holding out any promise to the Plaintiff to give 8 Bucknor Street a special consideration when allocating Plots in Sub-Area 5.

7. With reference to paragraph 19 of the Plaintiff's Statement of Claim the Board AVERS that whereas 20 Breadfruit Street measures 79.44 square yards the building comprised approximately 715 feet super.

8. With reference to paragraph 21 of the Plaintiff's Statement of Claim, the Board AVERS: 10

(i) That at the time of its acquisition by the Board, No.20 Breadfruit Street was a single storey brick building having a corrugated iron sheet roof and comprised of 6 shops. The external dimensions of the building were 51'6" x 16'7".

(ii) That the said 20 Breadfruit Street had frontages to three streets, namely Martins Street, Breadfruit Street, and Daddy Oboso Lane. 20

9. With reference to paragraph 22 of the Plaintiff's Statement of Claim the Board AVERS:-

(i) That for the widening and re-alignment of Martins Street and Breadfruit Street both Nos.18 and 20 Breadfruit Street were demolished.

(ii) That by virtue of its position at the North East Junction of Martins Street and Breadfruit Street, No.20 Breadfruit Street occupied the same relative position as is now occupied by Plot 1 Sub-Area 5. 30

10. With reference to paragraphs 23 and 24 of the Plaintiff's Statement of Claim the Board AVERS :-

(i) That in allocating plots within any Sub-Area of the Lagos Central Planning Scheme the Board adopts a points priority system in accordance with which plot 1 in Sub-Area 5 was allocated to the 2nd Defendant. 40

(ii) No.18 Breadfruit Street was not considered for allocation of a Martin Street Plot as it had no frontage to this Street.

In the
High Court

No.5

(iii) That when the Plaintiff appealed for consideration of a Martins Street Plot the Board promised him that if any plot was rejected by any of the original Martins Street owners then the Plaintiff would be the first to be offered such a plot.

Defence of
1st Defendant
18th October
1961
continued

10

(iv) That accordingly when Plot 3-Sub-Area 5 was rejected by the estate of Duro Thomas this plot was offered to the Plaintiff.

(v) That the Plaintiff rejected the said offer and asked the Board to give Plot 1 to him and plot 3 to the 2nd Defendant.

(vi) That the Board confirmed its said offer of plot 1 Sub-Area 5 to the Plaintiff (which offer still stands) but the Plaintiff still rejects the same.

20

11. With reference to paragraph 25 of the Plaintiff's Statement of Claim the Board AVERS:-

(i) That the 2nd Defendant was the original owner of 12/14 Murray Street, which had frontage to Balogun Street and was in commercial user.

(ii) That the 2nd Defendant had sufficient points on the Priority List of owners in the area to warrant the allocation to him of a Plot. Plot 13 in Sub-Area 3 was accordingly allocated to him.

30

12. The Board will contend:

(i) That the case of each original owner has to be considered on its own merits within his own area of the Scheme.

(ii) That allocation of a plot in one Sub-Area has no bearing whatever upon the allocating to the same person of any other plot or plots in other Sub-Area or Areas of the Scheme.

40

In the
High Court

No.5

Defence of
1st Defendant
18th October
1961
continued

(iii) That the 2nd Defendant is better entitled to be considered for Allocation of Plot 1 Sub-Area 5.

(iv) That the allocation of plot 1 Sub-Area 5 to the 2nd Defendant has been properly and validly made having regard to the provisions of Section 38 of the Lagos Town Planning Ordinance, Cap.95 Laws of Nigeria.

(v) That the Board has been very fair to the Plaintiff in offering him Plot 3 Sub-Area 5 in view of the fact that either 8 Bucknor Street or 18 Breadfruit Street if considered alone (as they should) had no sufficient number of points on the Priority List relative to their respective areas to warrant allocation of a plot to the Plaintiff 10

WHEREFORE the Board says that the Plaintiff is not entitled to the reliefs claimed and that the action is vexacious and misconceived and ought to be dismissed with costs. 20

Dated at Lagos the 18th day of October, 1961.

(Sgd.) A.O.A.ADEWUMI
Solicitor to the Lagos
Executive Development Board.

No.6

Proceedings
6th November
1961

NO. 6

PROCEEDINGS

IN THE HIGH COURT OF LAGOS,
MONDAY THE 6TH DAY OF NOVEMBER, 1961 30

BEFORE THE HONOURABLE MR. JUSTICE ONYEAMA,
JUDGE.

SUIT NO.LD/270/61:

S.M.O. ALATISHE ETC. ... PLAINTIFF
VS.
L.E.D.B. & ANOR. ... DEFENDANTS

L.V. Davis for Plaintiff:

Esan for 2nd Defendant:

In the
High Court

L.E.D.B. not represented:

No.6

To 24th November, 1961.

(Sgd.) CHARLES ONYEAMA
JUDGE
November 6, 1961.

Proceedings
6th November
1961
continued

FRIDAY THE 24TH DAY OF NOVEMBER, 1961

Davis for Plaintiff:

24th November
1961

Akinrele for 1st Defendant:

10

Esan for 2nd Defendant:

To January, 10, 1962. for hearing.

(Sgd.) CHARLES ONYEAMA
JUDGE.

November 24, 1961.

PLAINTIFF'S EVIDENCE

Plaintiff's
Evidence

NO.7

WEDNESDAY THE 10TH DAY OF JANUARY, 1962

No.7

Davis for Plaintiff:

Simeon M.O.
Alatishe
10th January
1962
Examination

Akinrele for first Defendant:

Esan and Sobodu for second Defendant:

20

Davis calls:

30

PLAINTIFF; Sworn on Bible, examined by Davis states in English: My name is Simeon Moteshe Ogundipe Alatishe; residing 48 Glover Street, Ebute-Metta; a trader; carrying on business under the name and style of French Medicine Stores; I know the property which was 18 Breadfruit Street; it belonged to me: this is my land certificate covering it: admitted and marked Exhibit 1: (Title L01825); I also produce the copy of the original title deed of my predecessor in title; admitted and marked Exhibit 2. I also know the property 8 Bucknor

In the
High Court

Plaintiff's
Evidence

No.7

Simeon M.O.
Alatishe
10th January
1962
Examination
continued

Street, Lagos; I bought it in my mother's name; this was in 1947; I received rents from the tenants in the house; about 1956 the Lagos Executive Development Board (L.E.D.B.) compulsorily acquired an area of land including 8 Bucknor Street; I took my mother to the L.E.D.B. office and saw the Chief Executive Officer, Mr. Henderson; my mother told Henderson that 8 Bucknor Street was really my property and that all negotiations pertaining to the property were to be carried on with me; no plot was subsequently re-allocated to me or my mother in lieu of 8 Bucknor Street; I therefore went to see Henderson again his Office. When I got there I asked Henderson about the re-allocation of a plot as he had promised me; this re-allocation was to be of a plot in Sub-Area 1 (one); he said I had not scored sufficient points to entitle me to a plot; he said I had scored only 20 (twenty) points; he promised that when plots were to be re-allocated in Sub-Area 5 (five) he would take these 20 (twenty) points into account; subsequent to this discussion I received these letters from the L.E.D.B.; admitted in evidence and marked Exhibit 3 and 4 No.18 Breadfruit Street was later acquired by the L.E.D.B.; no plot was re-allocated to me; I therefore went to see Henderson; I asked him what had happened; he said that I had again failed to score enough points as I scored only 30 (thirty) points; he said that Mr. Franklin, 2nd Defendant, to whom it was proposed to re-allocate a plot had scored forty points; He said that my points were determined as follows: Area of original ownership of 18 Breadfruit Street - 10 points: freehold in possession - 20; period of ownership - nil; for Franklin the points were correspondingly - nil; freehold first term tenancy - 10; period of ownership over twenty years - 30.

I told Henderson that the calculation was wrong; I asked him about the 20 (twenty) points I had scored in respect of 8 Bucknor Street; he said something in explanation which I did not understand and with which I was not satisfied; I subsequently received a letter from the board; letter produced by Davis; admitted and marked Exhibit 5, I rejected the offer of plot 3 in

Sub-Area 5 and insisted on getting 18 Breadfruit Street back; plot 1 in Sub-area 5 comprises principally 18 Breadfruit Street; I produce a survey plan of the area in question.

In the High Court

Plaintiff's Evidence

By Consent of parties:- Admitted in evidence AND MARKED Exhibit 6;

No.7

10 Witness continues:- In spite of my insistence I was not given plot 1 in Sub-area 5, I therefore notified the L.E.D.B. of my intention to seek redress in Court; I claim the relief set out in my Writ and in Statement of Claim.

Simeon M.O. Alatishe 10th January 1962 Examination continued

20 Cross-examined by Akinrele:- My mother did not write to the L.E.D.B. but spoke with Henderson; 20 Breadfruit Street has about twenty feet frontage on Martin Street; 18 Breadfruit Street does not front on Martin Street; I know Sub-area 5 well; plots 1, 2, 3 and 5 in the sub-area have frontages on Martin Street; French Medicine Store was situated in 17 and 19 Martin Street; I did not own that property; I moved the business to 18 Breadfruit Street about 1957; I cannot say how the idea of awarding points came into being:

Cross-examination

Cross-examined by Esan:- A plan of L.E.D.B. Lagos Central Plan Sub-Area 5 is produced by the L.E.D.B. Surveyor:

30 By Consent:- (Admitted and marked Exhibit 7) Witness Continues:- 18 Breadfruit Street fronted on Breadfruit Street and Daddy Oboso Lane; 20 Breadfruit Street fronted on Martin Street, Breadfruit Street and Daddy Oboso Lane;

Re-Examined by Davis:- No questions.

NO.8

CHRISTIANA O. ALATISHE

No.8

Christiana O. Alatishe 10th January 1962 Examination

40 FIRST Witness for Plaintiff (female) sworn on Bible, examined by Davis, states in Yoruba: My name is Christiana Oladunjoye Alatishe; residing 48, Glover Street, Ebute-Metta; I am the Plaintiff's Mother; I know 8 Bucknor Street, Lagos; it belonged to my son although my name

In the
High Court
Plaintiff's
Evidence

No.8

Christiana
O. Alatishe
10th January
1962
Examination
continued
Cross-
examination

appears on the title deeds; this is the Certificate of Title; admitted and marked Exhibit 8 (Title No.L01530): my son paid the purchase price of the land; about six years ago my son and I went to the L.E.D.B. we took our title deeds to L.E.D.B. and I told them that "they" were to consult the Plaintiff in any matters concerning the land as he had bought it;

Cross-Examined by Akinrele:- My son took me to the L.E.D.B. 10

Cross-Examined by Esan:- No questions.

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Case for Plaintiff

Defendants'
Evidence

No.9

James F.
Offen
10th January
1962
Examination

DEFENDANTS' EVIDENCE

NO.9

JAMES F. OFFEN

Akinrele calls:-

FIRST Witness for first Defendant: Sworn on Bible, examined by Akinrele, states in English: My name is James Frank Offen: residing 3 Cooper Road Ikoyi; Estate Officer of the L.E.D.B. I am familiar with the system of re-allocation of plots by the Board to their original owners; I know the owner of 20 Breadfruit Street, Lagos, the second defendant was the owner. I also know 18 Breadfruit Street, Lagos; it belonged to the Plaintiff; I am familiar with the points system; it is used by the Estates Department to advise the Board about re-allocation; we deal with the Scheme Sub-Area by Sub-Area; within each Sub-area freeholders are awarded points depending on the area of their original interest, the degree of their interest and period of ownership; I was not concerned with points allocation in respect of either 18 or 20 Breadfruit Street as this was done long before I was employed by the L.E.D.P.; I have Official

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30

records of the points awarded; as far as I know an Officer David Greenwood awarded points in respect of 18 Breadfruit Street and 20 Breadfruit Street; he is no longer with the L.E.D.B.; he is at present in Herefordshire in England; I produce the score-card in respect of 18 Breadfruit Street; (Akinrele refers to section 90 of the Evidence Ordinance) it is in David Greenwood's own writing; no objection; admitted and marked Exhibit 9; I have not a sheet corresponding to Exhibit 9 in respect of 20 Breadfruit Street but I have since calculated the points which would be awarded following the formulae set out in Exhibit 9 and the points would be 40; I produce my calculations admitted and marked Exhibit 10;

In the
High Court

Defendants'
Evidence

No.9

James F.
Offen
10th January
1962
Examination
continued

CROSS-EXAMINED BY ESAN:- No questions.

Cross-
examination

CROSS-EXAMINED BY DAVIS:- I cannot lay my hands on the very paper from which I took the second defendant's interest as dating from 1938; it may be seen from Bellamy's judgment or from the second defendant's affidavit; I awarded 10 points to second defendant for degree of interest because he had a freehold estate subject to short term tenancies under three years; if a freehold interest was subject to a lease no points would be awarded; I took up appointment with the L.E.D.B. on the 3rd of August, 1960; I am not aware of any decisions of the Board to the effect that plot 1 in Sub-area 5 was to be re-allocated to the plaintiff; the policy of the L.E.D.B. was as far as possible to offer back to original dispossessed owners of land plots corresponding to their original holding;

RE-EXAMINED BY AKINRELE:- No questions.

CASE FOR FIRST DEFENDANT

NO.10

EBENEZER A. FRANKLIN

No.10

Ebenezer A.
Franklin
10th January
1962
Examination

ESAN CALLS:

SECOND Defendant:- Sworn on Bible, examined by Esan, states in English: My name is Ebenezer Akinola Franklin, residing 2 Franklin Road, Ebute

In the
High Court

Defendant's
Evidence

No.10

Metta; a retired Magistrate; I was the owner of 20 Breadfruit Street, Lagos, at the time it was compulsorily acquired by the L.E.D.B.: I became the owner in March 1938; I have been receiving the rents from the premises since then;

CROSS-EXAMINED by AKINRELE:- No questions:

Ebenezer A.
Franklin
10th January
1962
Examination
continued

Cross-
Examination

CROSS-EXAMINED BY DAVIS:- The property was mortgaged to the Lagos Building Society by Mr. Vidal Cole; I paid off the mortgage debt in the name of Vidal Cole who was the mortgagor but on my own account as Cole had sold the land to me; I have no documents from Cole to prove this sale to me; at the time of the sale Cole sent me the copy of a letter he wrote to the mortgagees informing them he had sold the land to me; I obtained receipts from the mortgagees for payments made to them; I believe I took these receipts with the other documents I got from the mortgagees to the L.E.D.B. at the time of the acquisition; there was no reconveyance of the property to Cole as he had transferred his rights and obligations to me; the mortgagees did not execute a conveyance to me; the administrator of Cole's estate did not execute a conveyance to me; I have no document before this Court to show I acquired the property in March 1938;

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20

MY LETTER from Vidal Cole was in evidence before Bellamy J.

RE-EXAMINED BY ESAN:- No questions.

No.11

Counsel's
Addresses
10th January
1962

NO.11

COUNSEL'S ADDRESSES

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AKINRELE ADDRESSES:- There is no legal right in the Plaintiff such as would be protected by the relief claimed; S.38 of Cap.95 Vol.IV Laws of Nigeria; particularly subsection (c) and (d): "as far as practicable" Awele V. L.E.D.B. and another LD 336/58 (unreported). S 39 of Cap.95 see also definition of "owner" in Cap.95:

ESAN ADDRESSES:- Section 38 of Cap.95: can it be said that the L.E.D.B. was wrong in giving the

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plot to 2nd Defendant; Plaintiff rejected offer of land; all the land vested in the L.E.D.B.; Section 39 no cause of action; remedy provided in section 31;

In the High Court

No.11

10 DAVIS IN REPLY:- Scheme was to acquire the land develop it and hand it back to the original owner; if board had discretion then it should be exercised in keeping with certain principles Court can enquire into exercise of discretion; original owners in section 38 mean plots should as far as possible be re-allocated to those who owned them before acquisition.

Counsel's Addresses
10th January 1962
continued

C.A.V.

To 22nd January, 1962.

(Sgd.) Charles Onyeama
JUDGE.

JANUARY 10, 1962.

NO.12

No.12

J U D G M E N T

Judgment
22nd January
1962

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IN THE HIGH COURT OF LAGOS

HOLDEN AT LAGOS, NIGERIA

ON MONDAY, THE 22ND DAY OF JANUARY, 1962

BEFORE THE HONOURABLE

MR. JUSTICE ONYEAMA

JUDGE

SUIT NO:LD/270/61:

S.M.OGUNDIPE ALATISHE
(Trading under the name
and style of French Medicine
Stores)

...

Plaintiff

30

Vs.

1. L.E.D.B.
2. E.A.FRANKLIN

...

Defendants

J U D G M E N T

The Plaintiff was the owner of a house

In the
High Court

No.12

Judgment
22nd January
1962
continued

known as 18 Breadfruit Street, Lagos and of another house, 8 Bucknor Street, Lagos. His title to the former was covered by a land Certificate under title No. LO.1825 (Exhibit 1) and to the latter by a Land Certificate under title No. LO.1530 registered in the name of his mother (Exhibit 8).

Both properties were included in areas affected by a scheme prepared by the Lagos Executive Development Board (hereinafter referred to as L.E.D.B.) under the provisions of the Lagos Town Planning Ordinance Cap.95 Laws of Nigeria relating to the town planning scheme, and were compulsorily acquired. 10

The 2nd defendant claimed that he was the owner of a house 20 Breadfruit Street, Lagos similarly affected by the town planning scheme.

It is pleaded in the Plaintiff's statement of claim as follows:-

"19. No.20 Breadfruit Street, Lagos, to which the 2nd Defendant lays claim, measured about 90.00 sq.yards. 20

20. This property, that is, No.20 Breadfruit Street, originally belonged to Victoria Olaniwun George, Rowland Savage, Titilola Savage and Hannah Banjoko Savage who in 1929 sold and conveyed the same to one Vidal Richmond Oladipo Cole by an Indenture dated the 10th day of September and registered as page 44 No.44 volume 265 of the Register of Deeds kept in the Federal Lands Registry in the office at Lagos. 30

21. At the time of its acquisition by the 1st Defendants, No.20 Breadfruit Street was at the corner of Daddy Obose Lane and Breadfruit Street, and had a building on it smaller in size than that at No.18 Breadfruit Street. 40

22. In implementing the said Lagos Central Planning Scheme of 1951, Martin Street

was extended, and No.20 Breadfruit Street became part of the highway, and No.18 Breadfruit Street; now known as Plot No.1 in sub-area 5, became a corner-piece at the junction of Martin and Breadfruit Street."

In the High Court

No.12

Judgment
22nd January
1962
continued

The Plaintiff will contend at the trial:-

x x x x x x x x x x x x x x x x x

10 "(vi) That the 2nd Defendant is entitled only to compensation for his land which has become part of the highway."

From these pleadings it would appear that the Plaintiff does not deny the second Defendant's title to 20 Breadfruit Street, and, for the purposes of this case only, I hold that the 2nd Defendant was the owner of 20 Breadfruit Street at the time it came under the L.E.D.B. scheme. I record, however, that the 2nd Defendant has not produced to this court any documents or deeds of title to 20 Breadfruit Street.

I hold that the 2nd Defendant was the owner of 20 Breadfruit Street because his title was not an issue in this case between the parties. The Plaintiff's contention is that he was better entitled than the 2nd Defendant to a re-allocation of plot 1 in sub-area 5 of the Lagos Central Scheme. He does not contest the 2nd Defendant's title to the original 20 Breadfruit Street.

30 The Lagos Central Planning Scheme (Approval) Order-in-Council which affects the area in question (Order-in Council No.3 of 1952) sets out in a schedule the Planning Scheme which was approved. Clause 4(f) of the Schedule provides as one of the purposes included in the Scheme:

40 "(f) The offer of land within the replanned area to the original owners thereof, as far as it is possible to do so, at the gross cost of acquisition plus a surcharge of 20 per cent in accordance with section 59(4) of the Ordinance."

This purpose is within the provisions of the Ordinance relating to the redistribution of holdings,

In the
High Court

particularly Section 38(c) of Cap.95 Laws of the
Federation of Nigeria and Lagos: Volume IV.

No.12

It is provided in Section 59(4) of the
Ordinance as follows:-

Judgment
22nd January
1962
continued

"4. Whenever the board decides to let, hire, lease or sell any land acquired by it in pursuance of the provisions of section 43 from any person the board shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land at a rate to be fixed by the board, if the board, considers that such a right can be given without detriment to the carrying out of the purposes of this Ordinance."

10

It is clear from the evidence that the L.E.D.B. did decide to re-allocate the area which included 18 Breadfruit Street and 20 Breadfruit Street and which had been designated sub-area 5. The terms of such re-allocation were not in evidence. I have no means of knowing whether the reallocation was to be by way of letting, hiring leasing or sale. In any event, the plots on which the two houses were built had gone into the scheme as two separate plots on opposite sides of Daddy Obose Lane, but had emerged therefrom for re-allocation as part of one plot straddling the Lane and re-numbered plot 1 in sub-area 5: see Exhibit 7.

20

30

As a result of the development scheme a little less than half of the original 20 Breadfruit Street was taken up by the widening of Martins Street, while a corner piece of 18 Breadfruit Street was taken away in the redefinition of plots.

It is to be noted that plot 1 in sub-area 5, in addition to what is left of 18 and 20 Breadfruit Street takes in what is left of No. 8 Martins Street and a triangular piece of 10 Martins Street. Clearly, without cutting up plot 1 into four small plots and thus altering the plan of development, or creating a new joint ownership in the land, the L.E.D.B. could not offer to the persons from whom the plots making

40

up plot 1 were originally acquired "a prior right to take on lease or purchase such land."

In the
High Court

No.12

Judgment
22nd January
1962
continued

10 I had thought at one stage that there could be no right of action in the Plaintiff, but on further consideration I think that the combined effect of section 38(c) and section 59(4) of the Ordinance is to impose a duty on the Board to offer to a person from whom land had been acquired "a prior right to take on lease or purchase" such land, if the Board decides to "let, hire, lease or sell" it. If I am right in this view then there is a corresponding right in the person from whom the land was acquired to require the Board to make the offer to him, or to restrain them from putting it out of their power to make such offer by disposing of the land to someone else.

20 This right is of course subject "to the provisions of the scheme" and must be exercised "without detriment to the carrying out of the purposes of the Ordinance." It follows, in my judgment, that in a proper case, for example, where the area acquired coincided with the area as redefined for re-allocation, the original owner would have a right of action to enforce the right to a prior offer of re-allocation of the land to him.

30 In the present case, however, there were many original owners whose land made up plot 1 and the Board considered the conflicting rights of the persons from whom the area in question was acquired and decided that, in all the circumstances, the 2nd Defendant was the original owner to whom an assignment should be made. Nothing that has been said in evidence has shown that the Board acted in other than good faith, or otherwise than after a fair and honest appraisal of the rights and interests of the several owners whose former holdings made up the new area, in
40 deciding to assign the area to the 2nd Defendant.

In view of the foregoing I think that this claim fails and the action is therefore dismissed.

Costs to the first Defendant assessed at

In the
High Court

twenty guineas and thirty guineas to the 2nd
Defendant.

No.12

(Sgd.) C.D.ONYEAMA
JUDGE.

Judgment
22nd January
1962
continued

L.V.DAVIS for Plaintiff

AKINRELE for 1st Defendant.

V.O.ESAN & SOBODU for 2nd Defendant.

In the Federal
Supreme Court

NO.13

NOTICE AND GROUNDS OF APPEAL

No.13

IN THE FEDERAL SUPREME COURT OF NIGERIA

10

HOLDEN AT LAGOS, NIGERIA

Notice and
Grounds of
Appeal
24th February
1962.

Notice Appeal
Order VII rule 2

Suit No.LD/270/61:

BETWEEN:

S.M.OGUNDIPE ALATISHE ... Plaintiff

AND

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD

2. E.A.FRANKLIN Defendants

TAKE NOTICE that the Plaintiff being dis-
satisfied with the decision of the High Court,
Lagos, contained in the Judgment of the
Honourable Mr. Justice Onyeama dated the 22nd
day of January, 1962, doth hereby appeal to the
Federal Supreme Court of Nigeria upon the
grounds set out in paragraph 3, and will at the
hearing of the appeal, seek the relief set out
in paragraph 4.

20

And the Appellant further states that the
names and addresses of the persons directly

30

In the Federal
Supreme Court

No.13

Notice and
Grounds of
Appeal
24th February
1962
continued

re-allocating or in deciding to re-allocate the said plot (No.1 in Sub-area 5), --- a plot comprising of various holdings, ---- to the 2nd Defendant.

- (iii) The Learned Trial Judge erred in Law in holding that the only inference that could be properly drawn from the Plaintiff's Statement of Claim, relevant to portions of which were quoted in the Judgment of the Court was that the Plaintiff was not denying the 2nd Defendant's title to No.20 BREADFRUIT STREET. 10
- (iv) The 2nd Defendant failed to prove his title to No.20 Breadfruit Street, Lagos, portion of which is comprised in the said Plot No.1 in sub-area 5 of the Lagos Central Planning Scheme, and neither he nor the 1st Defendants adduced sufficient evidence to justify the re-allocation of the said plot to him. 20
- (v) The decision is against the weight of evidence.
4. Relief sought from the Federal Supreme Court of Nigeria:-
- i. That the Judgment of the Lower Court be set aside.
 - ii. That Judgment be entered by the Court for the Plaintiff in terms of his Writ.
 - iii. Such other relief as may be just in the circumstances. 30

5. Persons directly affected by the Appeal:

	<u>Names</u>	<u>Addresses</u>
1.	The Lagos Executive Development Board.	Reclamation Road, Lagos, Nigeria.
2.	Mr.E.A.Franklin	2 Franklin Road, Ebute-Metta.

Dated this 24th day of February, 1962.

(Sgd.) L.V.Davis
Appellant's Solicitor
157 Bamgbose Street,
Lagos, Nigeria.

In the Federal
Supreme Court

JUDGMENT

We see no substance in this appeal; it is dismissed with 25 guineas costs to each Respondent.

No.14

Proceedings,
including
Judgment.
17th April 1963
continued

(Sgd.) A.A.ADEMOLA
CHIEF JUSTICE OF THE FEDERATION

(Sgd.) L. BRETT
FEDERAL JUSTICE

(Sgd.) JOHN TAYLOR
FEDERAL JUSTICE

10

No.15

Order
17th April 1963

NO.15

O R D E R

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.LD/270/61
F.S.C. 255/1962

On appeal from judgment of the High Court of Lagos.

BETWEEN:

S.M.OGUNDIPE ALATISHE
(Trading under the name
and style of French
Medicine Stores).

20

Appellant

A N D

1. THE LAGOS EXECUTIVE DEVELOPMENT BOARD
2. E.A.FRANKLIN

Respondents

(Sgd.) A.Ade Ademola
CHIEF JUSTICE OF
THE FEDERATION.

Wednesday the 17th day of April 1963..

UPON READING the Record of Appeal herein, and after hearing Mr. L.V. Davis of counsel for the Appellant and without calling upon Mr. F.O. Akinrele of counsel for the 1st Respondent and Miss Franklin of counsel for the 2nd Respondent:

30

IT IS ORDERED that this appeal be dismissed with costs to each Respondent assessed at 25 guineas.

(Sgd.) J.A.Adefarasin
CHIEF REGISTRAR.

NO.16

ORDER GRANTING FINAL LEAVE TO
APPEAL TO PRIVY COUNCIL.

In the Federal
Supreme Court

No.16

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Order Granting
Final Leave
to Appeal to
Privy Council
7th August 1963

Suit No.LD/270/1961
F.S.C. 255/1962

Application for an Order for Final Leave to
Appeal to the Privy Council.

10 BETWEEN:

S.M.OGUNDIPE-ALATISHE
(Trading under the name
and style of French
Medicine Stores)

Applicant

A N D

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E. A. FRANKLIN

Respondents

Wednesday the 7th day of August, 1963.

(Sgd.) L. BRETT
AG.CHIEF JUSTICE
OF THE FEDERATION

20 UPON READING the application herein and
the affidavit sworn to on the 19th day of
July, 1963, filed on behalf of the Applicant
and after hearing Mr.L.V.Davis of Counsel for
the Applicant and Mr. S.O. Sogbetun of Counsel
for the first Respondent and the second Respon-
dent not being present or represented:

IT IS ORDERED that final leave to Appeal
to the Privy Council be granted.

(Sgd.) M.A.MACAULEY
CHIEF REGISTRAR.

30

Exhibits

E X H I B I T S

Exhibit 8
Land
Certificate
Title No.
LO. 1530
20th March
1948.

Exhibit 8
Land Certificate, Title No.LO.1530

IN THE HIGH COURT OF LAGOS

EXHIBIT "8" (By Plaintiff)

Suit No.LD/270/61:

BETWEEN:

S.M.O.ALATISHE ... Plaintiff

A N D

L.E.D.B. & ANOR. ... Defendants

10

LAND REGISTRY: REGISTRATION OF TITLES ORDINANCE
1935. (DISTRICT EREKO.) TITLE
NO. LO 1530.

LAND CERTIFICATE

This is to certify that the freehold land herein described is registered in the Land Registry at Lagos under title No.LO1530.

Copies of the subsisting entries in the register are within.

Dated this 20th day of March, 1948.

20

NOTICE

(1) Section 56 of the Registration of Titles Ordinance every Entry in the Register of a Disposition by the Registered Proprietor of the Land and on every Registered Transmission.

(2) No endorsement note, notice or entry made hereon other than those officially made at the Land Registry shall have any operation.

This Land Certificate was examined and (where necessary) made to correspond with the register on the following dates:-

30

(See page 2 for Cert. of Land)

NOTICE

Exhibits

This Land Certificate may be sent at any time to the Land Registry to be officially examined and (where necessary) made to correspond with the register.

Exhibit 8
Land
Certificate
Title No.
LO. 1530
20th March
1948
continued

LOST CERTIFICATE

10

Under Section 57 of the Registration of Titles Ordinance No.13 of 1935 the Registrar on being satisfied of the loss or destruction of a certificate of title, may issue a new certificate;

Provided that -

(a) before issuing a new certificate, the loss or destruction shall be advertised to the satisfaction of the Registrar at least three times in the Gazette and, if the Registrar thinks fit, in a newspaper circulating in Nigeria;

20

(b) The Registrar may, if he thinks fit, require security to be given to his satisfaction for indemnification of the Government or any person injured by the issue of the new certificate.

Exhibit 1

Land Certificate, Title No.LO.1815

IN THE HIGH COURT OF LAGOS

Suit No.LD/270/61:

BETWEEN:

30

S.M.O.ALATISHE ... Plaintiff
AND
L.E.D.B. & ANOR. ... Defendants

Exhibit 1
Land
Certificate
Title No.
LO.1825
16th February
1954

EXHIBIT "1". (By Plaintiff)

LAND REGISTRY: REGISTRATION OF TITLES

ORDINANCE 1935:

LAND CERTIFICATE: TITLE NO.LO1825

This is to certify that the freehold land

Exhibits

Exhibit 1
Land
Certificate
Title No.
LO.1825
16th February
1954
continued

herein described is registered in the Land Registry at Lagos under title No.LO1825.

Copies of the subsisting entries in the register are within.

Dated this 16th day of February, 1954.

NOTICE

(1) Section 56 of the Registration of Titles Ordinance 1935, requires this Certificate to be produced to the registrar on every Entry in the Register of a Disposition by the Registered Proprietor of the Land and on every Registered Transmission. 10

(2) No endorsement note, notice or entry made hereon other than those officially made at the Land Registry shall have any operation.

This Land Certificate was examined and (where necessary) made to correspond with the register on the following dates:-

(see page 2 on land Certificate).

NOTICE

20

This Land Certificate may be sent at any time to the Land Registry to be officially examined and (where necessary) made to correspond with the register.

LOST CERTIFICATE

Under Section 57 of the Registration of Titles Ordinance No.13 of 1935 the Registrar on being satisfied of the loss or destruction of a certificate of title, may issue a new certificate; 30

Provided that -

- (a) before issuing a new certificate, the loss or destruction shall be advertised to the satisfaction of the Registrar at least three times in the Gazette and, if the Registrar

thinks fit, in a newspaper circulating in Nigeria;

(b) the Registrar may, if he thinks fit, require security to be given to his satisfaction for indemnification of the Government or any person injured by the issue of the new certificate.

Exhibits

Exhibit 1
Land
Certificate
Title No.
LO.1825
16th February
1954
continued

Exhibit 3

Exhibit 3
Letter,
L.E.D.B. to
S.M.O.Alatishe,
21st May, 1957

10

Letter, L.E.D.B. to S.M.O.Alatishe

IN THE HIGH COURT OF LAGOS (By Plaintiff)

Exhibit "3"

Suit No.LD/270/61:

BETWEEN:

S.M.O.ALATISHE ... Plaintiff

AND

L.E.D.B. & ANOR. ... Defendants

LAGOS EXECUTIVE DEVELOPMENT BOARD

Our Ref: B91/CL.5/200/8/EO3 RECLAMATION ROAD,
LAGOS, NIG.

20

All Correspondence to Chief Executive
Officer,
Telephone No.20384/5
P.O.Box 907.

May, 21 1957.

The Manager,
French Medicine Stores,
L.E.D.B. Shop,
Ita Balogun Square,
Lagos.

30

Dear Sir,

LAGOS CENTRAL PLANNING SCHEME 1951
Re-Allocation of Plots.

I am in receipt of your letter of the 13th

Exhibits

Exhibit 3
Letter,
L.E.D.B. to
S.M.O. Alatishe
21st May 1957
continued

of May, regarding re-allocation of a plot under the Lagos Central Planning Scheme. Provisional allocation of plots in Sub-Area 1 has already been completed and the Committee have found that your interest in 8, Bucknor Street, did not give you sufficient points to be eligible for a plot. However, you will be considered for a plot in Sub-Area 3 when your previous holding in Sub-Area 1 will also be taken into consideration.

2. I am sorry that I cannot help you further at the time being but I assure you that your case will be most carefully considered at the time of re-allocation of plots in Sub-Area 3. As you are aware, No.18, Breadfruit Street, is in Sub-Area 5 of the Scheme and is not vested in the Board until 1st of June, 1957.

Yours faithfully,
(Sgd.) P.H. ABBEY
Chief Executive Officer.

10

Exhibit 4
Letter,
L.E.D.B. to
S.M.O. Alatishe
22nd July 1957

Exhibit 4

20

Letter, L.E.D.B. to S.M.O. Alatishe

IN THE HIGH COURT OF LAGOS

Exhibit "4" (By Plaintiff)

Suit No.LD/270/61:

BETWEEN:

S.M.O. ALATISHE ... Plaintiff

AND

L.E.D.B. & ANOR. ... Defendants

LAGOS EXECUTIVE DEVELOPMENT BOARD

Our Ref: B.791/CL5/200/18/EO3

30

Your Ref: EMS/532 RECLAMATION ROAD, LAGOS
NIGERIA

All Correspondence to Chief Executive Officer
Telephone No.20384/5
P.O.Box 907.

22 July, 1957.

The Manager,
French Medicine Stores,
8, Martins Street,
Lagos.

40

Dear Sir,

LAGOS CENTRAL PLANNING SCHEME 1951

Re-allocation of Plots.

I have taken due note of your letter of the

17th of June and wish to assure you that your case was duly considered by the Allocation Committee in respect of No.8 Bucknor Street and I regret that you have insufficient points to qualify for a new plot.

10 2. With regard to your premises at 17 and 19 Martins Street, as you are already aware, only freeholders are considered for re-allocation of plots but I assure you that your original holding in Sub-Area 1 will be taken into consideration when re-allocation of Sub-Area 5 is carried out.

(Sgd.) P.H.Abbey :
for CHIEF EXECUTIVE OFFICER.

Exhibits

Exhibit 4
Letter,
L.E.D.B. to
S.M.O. Alatishe
22nd July 1957
continued

Exhibit 5
Letter, L.E.D.B. to S.M.O. Alatishe.

Exhibit 5

Letter,
L.E.D.B. to
S.M.O. Alatishe
13th July 1960

IN THE HIGH COURT OF LAGOS

EXHIBIT "5" (By Plaintiff)

Suit No.LD/270/61:

20 BETWEEN:

S.M.O. ALATISHE ... Plaintiff
A N D
L.E.D.B. & ANOR. ... Defendants

LAGOS EXECUTIVE DEVELOPMENT BOARD
RECLAMATION ROAD, P.O.BOX 907, LAGOS

30 Chairman: Chief Executive Officer:
Chief the Hon.Sir J.W.Henderson, C.B.E.E.R.D.,
Kofo Abayomi, B.Sc.M.I.C.E.M.T.P.I.M.
P.C.M.D.LL.D.D.O. Mun.E.A.M.I.Struct.E.F.R.
M.S.F.R.S. San.I.

Secretary
O.Ajose-Adeogun LL.B.(London)
BARRISTER-AT-LAW.

Our Ref: B.791/CL.5/200/50/ Telephone:No.20384/7
DCEO. Telegrams: LEDBOARD
13th July, 1960.

40 L.V.Davis, Esq., LL.B.(London),
Barrister & Solicitor,
P.O.Box 692,
Lagos.

Dear Mr.Davis,

Appeal of French Medicine Stores for
Reconveyance of Land under the Lagos
Central Planning Scheme 1951.

I write to let you know that your appeal of

Exhibits

Exhibit 5
Letter,
L.E.D.B. to
S.M.O. Alatishe
13th July 1960
continued

the 19th March, 1960, and reaffirmed by your letter to the Chairman of the 19th May, 1960, has been duly considered by my Board who resolved that, should a commercial plot in Sub-Area 5 be rejected by any of one of the present allocatees, then such plot be offered to French Medicine Stores.

It now transpires that Plot No.3 in Sub-Area 5 has been rejected and accordingly, the Board is now in a position to make an offer of it to French Medicine Stores.

10

The plot is situated with frontage to Martins Street but as the area has not yet been completely cleared, the transaction cannot be completed immediately. Tentative offer will, however, be addressed to French Medicine Stores during the next few days.

Yours sincerely,
(Sgd.) R.A.J.CORK
Deputy Chief Executive Officer.

Exhibit 2
Deed of
Conveyance
15th April
1886.

Exhibit 2

20

DEED OF CONVEYANCE

IN THE HIGH COURT OF LAGOS

Suit No.LD/270/61:

BETWEEN:

S.M.O.ALATISHE ... Plaintiff

A N D

L.E.D.B. & ANOR. ... Defendants

EXHIBIT "2" (By Plaintiff)

(Fee paid on Receipt Voucher No.500 of
21st November, 1961 for 17/-

30

This is to certify that the within is a true and correct copy of Deed of Conveyance dated the 15th day of April, 1886 and registered as No.93 at Page 282 in Volume 10 of the Register of Deeds kept at the Lagos Land Registry.

(Sgd.) ????
Assistant Registrar.
24th November, 1961.

No.93 Conveyance

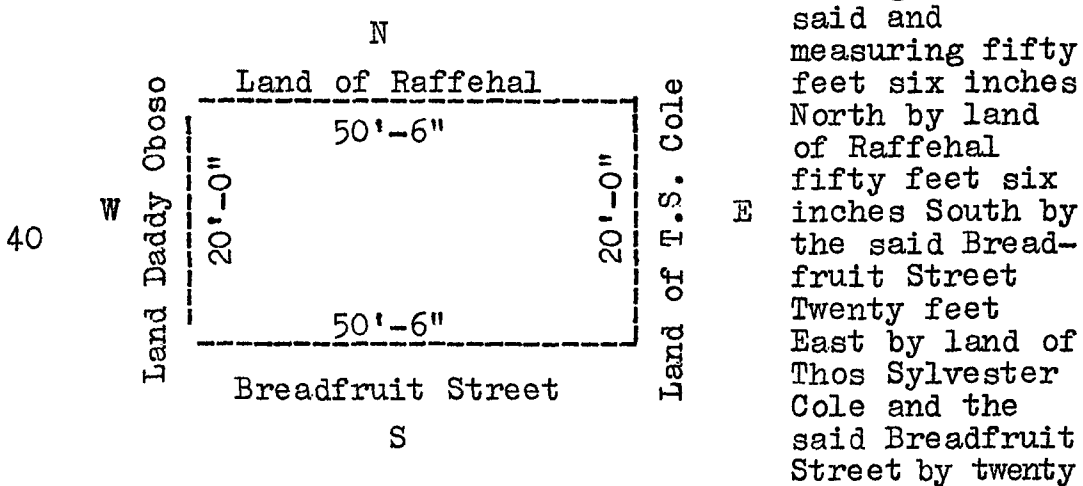
Exhibits

NIGERIA LAND REGISTRY
No.L01825 Freehold Title
Registered.

Exhibit 2
Deed of
Conveyance
15th April
1886
continued

Agbesi to James George Garber

10 This Indenture made the fifteenth day of April
A.D. One thousand eight hundred and eighty six
Between Agbesi hereinafter called the Vendor of the
one part and James George Garber hereinafter called
the Vendee of the other part both of Lagos West
Africa Whereas the said Vendor is seised of or
well and sufficiently entitled to the hereditaments
hereinafter described and intended to be hereby
granted and whereas the said Vendor had contracted
and agreed with the said Vendee for the absolute
sale to him of the hereditaments at the price of
Seven pounds sterling which was paid by the said
Vendee to the said Vendor who put the said Vendee
20 into possession of the said hereditaments without
executing a formal conveyance of same And Whereas
the said Vendee hath now requested the said Vendor
to give him a good perfect and legal title to the
said hereditaments which the said Vendor is willing
to do Now This Indenture Witnesseth that in pursu-
ance of the said agreement and in consideration of
the said sum of Seven Pounds sterling paid by the
said Vendee to the said Vendor before the execu-
tion hereof (the receipt whereof is hereby acknow-
30 ledged) the said Vendor doth hereby grant unto the
said Vendee his heirs and assigns All that piece
or parcel of land delineated on Plan in the margin
hereof situate at Breadfruit Street in Lagos afore-



Exhibits

Exhibit 2
Deed of
Conveyance
15th April
1886
continued

one feet West by a Lane leading from the said Breadfruit Street to Martin Street together with all rights and things appurtenant or reputed to be appurtenant thereto;

And all the estate and interest of the said Vendor therein To have and To hold the same unto and to the use of the said Vendee his heirs and assigns for ever And the said Vendor doth hereby covenant with the said Vendee his heirs and assigns that notwithstanding anything by him done or knowingly suffered to the contrary he the said Vendor now hath good right to grant the said hereditaments in manner aforesaid And that the said Vendee his heirs and assigns shall quietly possess and enjoy the said hereditaments without any interruption or claim from or by the said Vendor or any person rightfully claiming under him And that the said Vendor and all persons rightfully claiming under him will at all times hereafter at the request and cost of the said Vendee his heirs and assigns execute and do all such things for further assuring the said hereditaments to him or them in manner aforesaid as may be reasonably required In witness whereof the said parties hereto have hereunto set their hands and seals the day and year above written.

10

20

his
(Sgd.) Agbesi X (Seal)
mark

30

(Sgd.) J.G.Garber (Seal)

Signed Sealed and Delivered this Indenture)
having first been read over and explained)
to the said Vendor Agbesi in the Yoruba)
language which he appeared perfectly to)
understand and made his mark thereto in)
the presence of)

(Sgd.) J.A.S.George: Law Clerk

(Sgd.) J.J.Ransome Tutor C.M.S.
Female Institution.

40

Received the within mentioned consider-)
ation money Seven pounds before the) £7.--..
execution hereof.)

his
(Sgd.) Agbesi X
mark

Witnesses

(Sgd.) J.A.S.George Law Clerk

" J.J.Ransome Tutor C.M.S. Female
Institution.

This instrument was acknowledged by Agbesi
within named (after it had been read over and
explained to him by me) to have been duly
executed by him before me this 20th day of
April, 1886 at 3.25 o'clock in the afternoon.

10 (Seal of Office) Entered 5.5.86

(Sgd.) C.J.Porter
Registrar.

Exhibits

Exhibit 2
Deed of
Conveyance
15th April
1886
continued

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

S.M. OGUNDIPE-ALATISHE
(Trading under the name
and style of French
Medicine Stores) (Plaintiff) Appellant

- and -

1. THE LAGOS EXECUTIVE
DEVELOPMENT BOARD
2. E.A. FRANKLIN (Defendants) Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant

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