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Judgment  
**38**, 1964

IN THE PRIVY COUNCIL

No. 48 of 1962

O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

- 1. AMUSA YESUFU OBA and
  - 2. RUFAI AKINHANMAI
- (Defendants)

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

Appellants - 78648

- and -

HUNMUANI AJOKE  
(Plaintiff)

Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS, *20, Old Swan Street,*  
~~53, Victoria Street,~~  
 London, S.W.1.  
 Solicitors and Agents for Appellants.

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O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

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B E T W E E N :

1. AMUSA YESUFU OBA and  
2. RUFAT AKINHANMAT  
(Defendants) Appellants

- and -

HUNMUANI AJOKE  
(Plaintiff) Respondent

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O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

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B E T W E E N :

1. AMUSA YESUFU OBA and  
2. RUFAI AKINHANMAI  
(Defendants) Appellants

- and -

10 HUNMUANI AJOKE  
(Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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No.1.

CIVIL SUMMONS

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA  
ABEOKUTA JUDICIAL DIVISION.

In the High  
Court

No.1

Civil Summons  
21st August,  
1957.

Suit No.AB/106/56.

CIVIL SUMMONS.

20 Between: Hunmuani Ajoke ... Plaintiff  
and: Amusa Yesufu Oba ... Defendant  
To: Amusa Yesufu Oba of  
24, Martins Street, Mushin.

You are hereby commanded in His Majesty's

In the High  
Court

---

No.1

Civil Summons  
21st August  
1957.

continued

name to attend this court on Tuesday the 8th day of October, 1957, at 9 o'clock in the forenoon to answer a suit by Hummuani Ajoke of c/o Her Solicitor, 68, Stranchan Street, Ebute-Metta against you.

The Plaintiff seeks against the defendant an order for the specific performance of the contract of sale and conveyance of land situate lying and being at No.33, Adeyemi Street, Mushin, Western Region of Nigeria, entered into by the Plaintiff and defendant in February, 1957, and in respect of which the defendant had received £100 (One hundred pounds) advance but which he now purports to repudiate.

10

Issued at Abeokuta the 21st day  
of August, 1957.

20

(Sgd) ? Stuart.

J U D G E.

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3.

No.2

No.2

ORDER FOR AMENDMENT

Order for  
amendment  
29th November,  
1957.

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA  
ABEOKUTA JUDICIAL DIVISION.

Suit No. AB/106/57:

Between :

Hunmuani Ajoke ... Plaintiff

- and -

10 Amusa Yesufu Oba ... Defendant

UPON READING the affidavit of Hunmuani Ajoke, Trader of 20, Agore Street, Lagos, British Protected Person, sworn to and filed on the 4th day of November, 1957: AND AFTER HEARING Olujide Somoulu of Counsel for the Plaintiff and the Defendant in person:

20 IT IS ORDERED that leave be and is hereby granted to the Plaintiff to amend her writ of Summons and to join Rufai Akinhanmi of 9, Akinola Street, Odi-Olowo, Mushin, as second defendant in this Suit subject to prove of service:

IT IS FURTHER ORDERED that the Return Day be the 30th day of January, 1958.

Dated at Abeokuta this 29th day of November, 1957.

(Sgd) W.H. IRWIN,  
JUDGE.



In the High Court

No.3

STATEMENT OF CLAIM

No.3

Statement of Claim

undated  
(6th February, 1958)

IN THE HIGH COURT OF JUSTICE  
IN THE HIGH COURT OF THE WESTERN REGION OF NIGERIA  
IN THE ABEOKUTA JUDICIAL DIVISION.

Suit No. AB/106/57

Between

Hunmuani Ajoke ... Plaintiff

- and -

1. Amusa Yesufu Oba )  
2. Rufai Akinhanmi } ... Defendants  
Joined by Order of Court. }

10

Statement of Claim:

1. By the judgment of the High Court of the Western Region of Nigeria sitting at Ikeja (in Suit No. AB/10/55) delivered on the 21st day of January, 1957, the 1st defendant was declared to be the owner of a piece or parcel of land situate lying and being at No.7 (now No.33) Adeyemi Street, Mushin, Western Region of Nigeria, on which the plaintiff had built a house worth over £1,000 (one thousand pounds) for over 11 years. 20

2. After the said judgment, the 1st defendant agreed to sell and convey the land on which the house stands to the plaintiff, at the price of £300 and got £100 advance on 9th February, 1957 (the balance of £200 being payable on or before 31st March, 1957).

3. Before the end of March, 1957, and at various times thereafter the plaintiff tendered the balance of £200 of the agreed price to the 1st defendant, who, was on various excuses, refused to accept same. 40

4. On 8/4/57, in fraud of the plaintiff, the 1st defendant purported to repudiate the agreement of sale in a letter dated 5/4/57 and sent to the plaintiff, knowing fully well that the said plaintiff was always ready and willing to pay the said balance at all times and at the same 50

time holding the £100 (One hundred pounds) part-payment made by the plaintiff to the 1st defendant.

In the High Court

No.3

Statement of Claim

undated  
(6th February, 1958)

continued

5. When all efforts by the plaintiff and her sympathisers failed to persuade the 1st defendant to take the said balance of £200 (two hundred pounds) and to execute the Deed of conveyance already prepared in her favour, the plaintiff consulted a Solicitor who sent the said £200 (two hundred pounds) to the 1st defendant under cover of a registered letter dated 9th May, 1957, but he refused to claim same and it was returned.

6. During the time when the plaintiff was approaching the 1st defendant to receive the balance of the money (£200) due to him on the agreement and sign conveyance of the property in favour of the said plaintiff, the 2nd defendant was one of those who intervened but he backed the 1st defendant in his demand for more than the £300 previously agreed upon in February, 1957; he the 2nd defendant further said that the 1st defendant had right, to deprive the plaintiff of the said property if she would not submit to the demand.

7. Despite the knowledge that the 2nd defendant had of the intention of the 1st defendant to deprive the plaintiff of the said property the 2nd defendant purported to purchase same from the said 1st defendant on or about July, 1957.

8. The plaintiff will contend at the trial that the 1st defendant's refusal to receive the balance of £200 (two hundred pounds) and convey the said land to the plaintiff (because he wanted more than the £300 (three hundred pounds) originally agreed upon), and the 2nd defendant's alleged purchase of same with full knowledge of the intention of the said 1st defendant constitute a fraud on the plaintiff by both defendants.

9. Wherefore the plaintiff claims as per writ of summons.

(Sgd.) O. Somolu,  
Plaintiff's Solicitor.

In the High Court

No. 4.

DEFENCE - 1st DEFENDANT

No.4

Defence  
1st Defendant  
26th March,  
1958

IN THE HIGH COURT OF JUSTICE  
IN THE HIGH COURT OF THE WESTERN REGION OF NIGERIA  
IN THE ABEOKUTA JUDICIAL DIVISION.

Suit No. AB/106/57

Between

Hunmuani Ajoke ... Plaintiff

- and -

1. Amusa Yesufu Oba )  
2. Rufai Akinhanmi )  
Joined by Order ) ... Defendants  
of Court. )

10

1. Save and except as is hereinafter expressly admitted, the first defendant denies each and every allegation of fact contained in the plaintiff's Statement of Claim as if the same were set out seriatim and specifically traversed.

2. With reference to paragraph 1 of the Statement of Claim, the first defendant admits that by judgment of this Honourable Court in Suit No. AB/10/55, Amusa Yesufu Oba Vs. Humuani Ajoke, he was granted an Order against the plaintiff herein for Declaration of Title and Possession of the property, the subject matter of this suit, and no more.

20

3. The first defendant admits the agreement to sell and convey as stated in paragraph 2 of the Statement of Claim, but avers that the said agreement was for both land and buildings thereon.

30

4. The first defendant denies paragraphs 3, 4, 5, 6, 7 and 8 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

5. The first defendant will contend at the hearing of this suit that by an agreement in writing dated the 14th day of February, 1957 the plaintiff agreed to buy the property in dispute for £300 on the following conditions, viz:-

- (a) plaintiff to pay the sum of £100 down;  
 (b) plaintiff to pay the balance of £200 on or before the 31st day of March, 1957 certain;  
 (c) in default of payment of the balance the first defendant to sell the said property;  
 (d) the first defendant to refund the deposit of £100 to plaintiff.

In the High  
 Court

                      
 No.4

Defence  
 1st Defendant.  
 26th March,  
 1958 .

10 6. The first defendant will further contend that on the 31st day of March, 1957 the plaintiff failed to pay the said balance of £200, in consequence whereof the first defendant by his letter to the plaintiff dated 5th April, 1957 repudiated the said contract of sale to the plaintiff of the said property.

continued

20 7. On receipt of the said letter the plaintiff called several times with one Mr. Georgious Cole on the first defendant's Solicitor, who returned the deposit of the £100 to her, but the plaintiff refused and still refuses to accept the said money.

8. In or about the month of July, 1957 the first defendant sold the said property to the second defendant and has since put him in possession thereof.

30 9. The first defendant will also contend that this suit is speculative, frivolous, misconceived and is an abuse of the process of the Court and should be dismissed with substantial costs.

10. The first defendant avers that the plaintiff is not entitled to the relief claimed in paragraph 9 of her Statement of Claim.

Dated this 26th day of March, 1958.

(Sgd.) K.A. Kotun,  
 First Defendant's Solicitor,  
 6, Idoluwo Street,  
 Lagos.

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8.

No.5.

In the High Court

DEFENCE - 2nd DEFENDANT

No.5

IN THE HIGH COURT OF JUSTICE  
IN THE HIGH COURT OF THE WESTERN REGION OF NIGERIA  
IN THE ABEOKUTA JUDICIAL DIVISION.

Defence  
2nd Defendant  
27th March,  
1958.

Suit No. AB/106/57

Between

Hunmuani Ajoke ... Plaintiff

- and -

1. Amusa Yesufu Oba }  
2. Rufai Akinhanmi } ... Defendants 10  
Joined by Order }  
of Court.

Second Defendant's Statement of Defence.

1. Save and except as is hereinafter expressly admitted the second defendant (hereinafter called the defendant) denies each and every allegation of fact contained in the plaintiff's Statement of Claim as if the same were set out seriatim and specifically traversed.

2. The defendant is not in a position to admit or deny paragraphs 1, 2, 3, 4 and 5 of the plaintiff's Statement of Claim. 20

3. The defendant denies paragraphs 6, 7 and 8 of the Statement of Claim and puts the plaintiff to the strict proof thereof.

4. The defendant will contend at the hearing of this suit that he purchased from the first defendant the property in dispute in July, 1957 for valuable consideration and without notice of any fraud, and is in possession thereof. 30

5. The defendant will further contend that this action is misconceived frivolous speculative an abuse of legal process and should be dismissed with costs.

Dated this 27th day of March, 1958.

(Sgd.) ? ? ?

2nd Defendant's Solicitor

PLAINTIFF'S EVIDENCE

No.6.

HUNMUANI AJOKEIn the High  
CourtPlaintiff's  
Evidence

No.6

Hunmuani Ajoke

21st August, 1958.

Examination

Exhibits

"A" "B" "C"

PLAINTIFF'S WITNESS 1 HUNMUANI AJOKE: SWORN on the Koran and states in Yoruba. Lives at Suru-Lere. Kolanut seller and Cloth seller. (By consent the following documents are tendered:- The Judgment is marked Exhibit "A" and the letter of 5/4/57 is marked Exhibit "B" and the receipt for £100 is marked Exhibit "C").

10 I know the land in dispute. There is a house on it. I built the house on the land.

Counsel wants to put a question as to the value, of the house and Mr. Kotun objects on the grounds that in view of the judgment - Exhibit "A" the question is irrelevant.

20 COURT: Objection overruled. I do not think the sum expected paid on the house can be said to be irrelevant where an agreement of sale of the land and the house on the specific performance of such an agreement are in issue.

I paid or expended £1000 on the house. I had been in possession of the house 11 years before the Suit as Exhibit "A". After the judgment the 1st defendant promise to sell the house on the land to me for £300. I paid £100 on 9/2/57. I got Exhibit "C" as receipt. The balance of the £200 was to be paid on or before 31/3/57. Two weeks after the payment of the £100 I collected £200 balance to 1st

30 Defendant's house but could not find him. I went again 4 days after that and did not meet him again. I went there on the 3rd occasion about 4 days after the 2nd time I could not see him. I went in company of one Adeleye who got me the money, and a relative by name Shadare (m). I offered the 2nd defendant the balance. The period within which the balance was to be paid had not expired when I went to the 1st defendant on the last occasion. I met the 2nd defendant

40 both with 1st defendant on the last occasion. He told me to go and find a sum to supplement what I had brought. I told him the agreement was for £200. The 1st defendant said I shall not listen to the 2nd defendant and said I should meet him the next day at 4 p.m. in his Lawyers house - "Mr. Kotun". On the next day,

In the High Court

Plaintiff's Evidence

No.6

Hunnuani Ajoke

21st August, 1958

Examination continued

I went to the Lawyer's house at 4 p.m. in company of my lender and my relative Shadare but we did not get the Lawyer at home. We found his Clerk in the office. The 1st defendant did not come to meet us there. I returned home. The next day, I went to the 1st defendant's house and he was not in. About 6 days after, I went to the 1st defendant's house again and met him. He said I should go and get a Conveyance prepared and to meet him in his Lawyer's house. I met the 2nd defendant in the house and he asked why I had not supplemented the sum of £200. I returned home and received a letter from the 1st defendant. I had a Conveyance prepared when Amusa told me to prepare one. I took the conveyance to the 1st defendant but he could not take it. After I received the letter from the 1st defendant, I consulted my people and as a result, I consulted my Counsel. My £100 is still with the 1st defendant. Later on, I took this action. I have left the house before this action began in July, 1957. I had been ejected by the 1st defendant. I was in possession at the time. I took the summons to my Counsel. I remember the first time we went to Abeokuta for this case. I was then still in possession. I asked my Counsel to post the money £200 to the 1st Defendant. It was when we went to Abeokuta then that 1st defendant said he had sold the property to the 2nd defendant. I had met the 2nd defendant before. I met him in the house of the 1st defendant. I know him for the first time after the Judgment in Exhibit "A" when the 1st defendant and I were bargaining over the purchase and sale of the house. When the 2nd defendant told me to supplement £200 I had brought, he suggested my paying £50. He made this suggestion in the presence of the 1st defendant. The second defendant came to the house one day while I was in possession and said that one Asibiu wanted to see me. Asibiu was a man. I did not know him but 2nd defendant told me he came to Lagos. I refused to go. I claim as per my Writ of Summons.

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Cross-examination

sic.

sic.

sic.

sic.

X-EXAMINATION BY MR. KOTUN: I do not know the man now known to me. I live at Agore Street, Idumota. I do not know the man known to me now. I have never been to your office in company of this man now known to me as Asibiu. I know Y.B. Koleoso now known to me. I also know Abudu Raimi Adesumbo also known to me.

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I know my people called Matunmori. I sent all these people to you to beg the 1st defendant to sell the house to me after the judgment in the 1st case. He did not agree to sell the property to me for £900. He agreed to sell it for £300. We made an agreement. I received Exhibit "B". It was registered. (Registration Slip tendered by consent and marked Exhibit "D"). I paid the £100 to Mr. Kotun in the presence of the 1st defendant. I came to your office after I had offered the balance to the 1st defendant but I did not find you in. I live near you. The day Judgment was given in Exhibit "A", I slept at Mushin and have not been back to Idumota. The £100 was paid in your house and not in your office. I was advised by your Clerks that I should not leave the money in the office. I know your motor call. I approached him about the sale of the land and house to me. Your mother told me on the day of the agreement that I should not fear to wait for more days within which to pay the balance if I could not find the money within the time. I know your mother is old. I know one Georgius Cole. He took money with him and followed me to Amusa's house, when we met Amusa praying. I also went with Georgius Cole to your office in order to pay the money. When I met Georgius Cole, he telephoned you - Kotun and said I was coming to pay the balance and you agreed. Georgius Cole sent me to you - Kotun to collect some papers and I did so.

The file did not remain with Georgius Cole for many days. It was immediately after we got the money that we came to pay and we brought the file back. He came to pay within 6 days, and I went with him and with your Clerk to the 1st defendant at Mushin. On the four occasions which the 1st defendant gave us an appointed time to meet at your place, I went with Georgius Cole. That day we did not meet you at your office. I know Yusufu's house very well. Georgius Cole asked your Clerk to follow us to the 1st defendant's place. I did go to your office with some money. The money was with Georgius Cole. At the time I went with Georgius Cole to your office. He stayed in your office while I went to your house when we did not find you in the office. The time may have passed within which the money should have been paid when we came to your office, but the fault was that of the 1st defendant because he was not

In the High  
Court

Plaintiff's  
Evidence

No.6

Hunmuani Ajoke

21st August, 1958

Cross-  
examination  
continued



In the High  
Court

Plaintiff's  
Evidence

No.6

Hunmuani Ajoke

21st August, 1958

Cross-  
examination  
continued

available when I went to him. Adetunji had taken his own loan back when I could not get the first defendant to take the money from us. I did go to the 1st defendant with Adetunji and the money. I also took money when Georgius Cole and I went there. Georgius Cole handed the money to Amusa but the latter refused, asking Georgius Cole to meet him at the Counsel's Office. Georgius Cole also took a stamp. Adetunji is not my relative at all. He gave me the money about 2 weeks after the payment of the 1st instalment. I asked him to follow me to the house of 1st defendant. We went there at about 6 p.m. We met the 2nd defendant there with him. He did not take the money. But only counted it. Shosan went with me trice to 1st defendant's house. We met Amusa in the house only and once of three occasions. I held the money when I went to Amusa's house on the day he told me to meet him in his Lawyer's office. When I went to the Lawyer's office on the next day the money was still in my possession. I returned the money to Adetunji 10 days after he had given me the money. I went to Makanju's house - my Lawyer and he said he was going somewhere and would be unable to go to the 1st defendant's house. It was when I got the money from Georgius Cole that I came to you with my daughter. I did not give the money to you when I came with my daughter as the time had passed. This was after receiving Exhibit "B". I gave my Lawyer the money to post to the 1st defendant the 5th day after I receive Exhibit "B". The time had expired by 12 days after I received Exhibit "B". The money is now with my Lawyer. The money with my Lawyer is that I loaned from Adebiyi. After I had returned Adebiyi's money to him, I approached him again, after I had gone to the house of the 1st defendant with Georgius Cole and could not find him, and he let me had the money again. The money given to me by Adebiyi the first time was in £1 Currency notes. The money brought by Cole was also in £1 Currency notes. I came to see you after receiving Exhibit "B". I did not ask you about money. I did not discuse anything with you about costs. I have not paid the costs of the first action. I did meet the 2nd defendant in the house of the 1st defendant. I entered into an agreement of purchase of the house and land with the 1st defendant. If I see it I will recognise it. I am illiterate.

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I cannot recognise the copy shown to me.

RE-EXAMINATION: Nil.

In the High Court

Plaintiff's Evidence

No.6

Hunmuani Ajoke

21st August, 1958

Cross-examination continued

No.7

P.A. ADEWUSI.

No.7

R.A. Adewusi

21st August, 1958

Examination

PLAINTIFF'S WITNESS 2. RAIMI AKANBI ADEWUSI:

SWORN on the Koran and states in English. Lives at 4, Bello Street, Suru-Lere, Yaba. Law Clerk in Mr. Jambo's Chambers. I know the plaintiff. She instructed our office on this case. I  
10 recognise what is now shown to me. So is to registration Slip addressed to the 1st defendant which I got from the Post Office. The document which I sent with this slip was returned. This is the document. Document and Slip tendered and no objection and marked Exhibit "C" and "E1". The document was returned in July, 1957. The £200 referred to in the letter is now in my hands. The £200 went with the letter. After the letter was returned we took action.

Ex. "C"  
Ex. "E1".

20 X-EXAMINATION BY MR. KOTUN: We received this parcel back after 8th July. The money is now kept in my bank account as per instruction. The postal order were in £2 denomination.

Cross-examination

RE-EXAMINATION: Nil.

In the High  
Court

No.8

Plaintiff's  
Evidence

D. ADEBIYI.

No.8

D. Adebisi

PLAINTIFF'S WITNESS 3 DANIEL ADEBIYI:  
SWORN on the Bible and states in English.  
Lives at 126, Strachan Street, Ebute-Metta.  
Trader.

21st August, 1958.

Examination

I know the plaintiff. I remember during her case with Yesufu Oba, she said the case was against her and she tried to beg Tesufu Oba to sell the land to her. We are not related. She told me she had already paid £100 to the Defendant as per an agreement. She said this about 2 weeks after the payment of the £100. She said she did not want to wait till the end of the month and asked me to find her balance of the £200. I gave her the £200. She said she would look for 1st defendant. I accompanied her there but he was not found. I asked her to go and look for him and when she found him, she should tell me and I would accompany her. She came to tell me she has found him and I followed her with one Shadare. We met the 1st defendant and the 2nd defendant with him. The plaintiff lend the money. She told them that she had brought the balance and asked for the receipt. The 2nd defendant was saying that things were getting higher now and urged the plaintiff should add sum of £50 to the sum she brought. That if she cannot do so, the 1st defendant would not take the money. The Plaintiff said the 2nd defendant should not say that. The 1st defendant said that the plaintiff should not mind the 2nd defendant and told her to see him in the Lawyer's house at 4 p.m. the next day. I went with her together with Shadare. We did not see the Lawyer from 4 p.m. till 7.30 p.m. when we left. The 1st defendant did not meet us there, and we returned home. I then asked her for the money back. The money was with the plaintiff for about 10 days. I gave the plaintiff my conveyance to get a loan later after I took this money back. She told me, certain thing about it. I gave her another £200 after I had sold the goods I bought and took my conveyance back. She has not returned my £200 and said it is with her Lawyer.

Cross-  
examination

X-EXAMINATION BY KOTUN: The first payment was made in February. She brought the document

to me and I saw it for myself. She told me she wanted to pay the balance of £200 before the beginning of March, 1957. She lived at Mushin at the time she came to me. I live at Ebute-Metta. We are both from Abeokuta. We have had other transactions together before this one. The plaintiff came to me about this matter in February and she met me at Strachan St. by 7 p.m. I gave the plaintiff the money on the 2nd day after she came to me. I gave it to her by 10 a.m. We went to the 1st defendant's house by 6 p.m. The first time we did not meet either the 1st or the 2nd defendant. 7 days after, I gave the Plaintiff the money. We went to the 1st defendant's house by 6 p.m. This time, 3 of us went and we met both defendants. Before that day, I did not know both of the defendants. The next time, I saw them again was in Court last week. I am able to recognise them. The Lawyer's office is in Lagos near Obun-Eke. I did not see the Lawyer but she said it was Kotun. I did first give the plaintiff the sum of £200 before I then gave her my conveyance. I gave the plaintiff my conveyance, I did not know where she took the loan from. She told me she was expecting a loan from Irving & Bonner. My conveyance was the security for that loan. About 1 week after giving her my conveyance, she brought the conveyance to you and Mr. Cole invited me to his house, and said the conveyance was not in order as it was a glance settlement and that he was prepared to give the plaintiff the money. I cannot remember when I gave the conveyance to the plaintiff but it was in March. She did not tell me that the time had expired and she would claim her deposit from the lawyer. I gave the second £200 to the plaintiff in April. I would wait for the repayment of my money after the transaction was completed. The Plaintiff has bought goods from me to the quantity of £200 before. I sell sugar and other things marketable with flour and broidery. I gave her the £200 to waive the forfeiture of the property. The plaintiff had the money in her bag and went down calling the 1st defendant to receive the money and then the 2nd defendant interfered.

RE-EXAMINATION: I have money and I did give money to the Plaintiff. I got my letter registered after the reacts of Georgius Cole.

In the High Court

Plaintiff's Evidence

No.8

D. Adebisi

21st August, 1958

Cross-examination continued

Re-examination

In the High Court

No. 9

Plaintiff's Evidence

E.O. SHADARE:

No.9

E.O. Shadare

PLAINTIFF'S WITNESS 4 EMANUEL OLUSOLA SHADARE:  
SWORN on the Bible and states in English.  
Lives at 118, Alakoro, Marina, Lagos. Trader.  
I know the Plaintiff. She is a relative of mine.

21st August, 1958

Examination

Cross-examination

X-EXAMINATION BY KOTUN: I am an Estate Agent. I have known you - Kotun for 15 years or more. I came to your house in order to pay you the money. When the seller did not agree to the price, when the agreement was about to be made, I came to your house with the Plaintiff. The sum talked about at first was about £300. I witnessed this document. The plaintiff signed it in my presence. This document is in request of the sale of the property in dispute. I read the document to the Plaintiff. The 1st defendant signed it in my presence. Document is brought to be tendered.

10

(Objection)

Somolu objects as the document is not registered as per S.15 of the Lands Registration Ordinance.

20

sic

KOTUN: Refers to Regulations made under S.26 & 28 of the Lands Registration Ordinance and say the document is excerpt.

SOMOLU: States that the quotation made by Mr. Kotun deals with regulations under S.26 & 28 of the Lands Registration Ordinance whence he has referred the Court to S.18.

sic

RULING: The definition of the word was heard as read in S.15 as said to be a document affecting land in Nigeria whereby the party (hereinafter called the guarantor) confess, transfers, (listened and changes or extinguishes in favour of both party (hereinafter called the guarantor) any receipt or letter to or a tree on land in Nigeria. This document does not in my mind (have matter the deposition come within the definition of the Ordinance. I overruled the objection and admit it as Exhibit and marked it "F".

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Ex.F.

The plaintiff came to me about 15 days after the making of this Exhibit "F" with the

money. This was at about 5 p.m. in the evening. We came to your office together with the money. I went with the plaintiff alone. We met Mr. Kotun in the office. We waited there about 1 hour before we left the office. You told us to go and call Amusa. The Plaintiff and I went along to Amusa's house on that very day. We met him. He said he could not go with us on that day to the Lawyer's house. He said we should come and meet him on the next day in the Lawyer's house. The plaintiff and I went to the Lawyer's office on the next day. We did not meet you or the 1st defendant. We met your Clerk. We left at about 6.45 p.m. We were then 3 in number. Mr. Adebisi went with us on this occasion. As we were going out of your office, we met P.W. 3 coming into the office. We all then left to the house of the 1st defendant at Mushin. We met him both with one stranger. We arrived there about 7.30 to 8 p.m. The plaintiff asked the 1st defendant why he failed to come and take his money at the Lawyer's office. The 1st defendant said he had no time to come. The plaintiff begged him to accept the money. The stranger was asking why she could not put £50 to the sum. The plaintiff said the stranger was one Rufai Akinhanmi and that she knew him before. We took the money as the 1st defendant would not accept it as He told us to meet him at his Lawyer's office again. On this 3rd occasion I also went to the Lawyer's office. I did not take the money. It was with the plaintiff. I did not meet you in the office. I went away. I know Georgius Cole; but I do not know what about the deal with them. I do not know how the Plaintiff got the £200. I know the 3rd Prosecution Witness. I was in town when the negotiation for the sale was going on. I came to you several times before Exhibit "F" was made. I do not know if she had not paid before the 31st March. I saw the money when it was given to the Lawyer. I have never seen Exhibit "B" before. Plaintiff told me Amusa wrote her a letter. That was in April. The money was taken to the lawyer around March and April.

RE-EXAMINATION: I went with the Plaintiff to Lawyer Somolu but did not witness the actual payment.

COURT: Case for Plaintiff closed.

Case for Defendant opens.

In the High Court

Plaintiff's Evidence

No.9

E.O. Shadare

21st August, 1958

Cross-examination continued

Re-examination

DEFENDANT'S EVIDENCE

In the High  
Court

No.10

Defendant's  
Evidence

A.Y. OBA

No.10

A.Y. OBA

21st August, 1958

Examination

AMUSA YESUFU OBA: SWORN on the Koran and states in Yoruba. Lives at 24, Martins Street, Mushin. Trader. I know the plaintiff and the property in dispute. I enter into Exhibit "F" with her. Apart from the £100 paid by the Plaintiff, I did not see her up to the 31/3/57. As a result of non-payment, I sent Exhibit "B". This is the registration slip for it - Exhibit "D". I gave the £100 to Mr. Kotun to return to the Plaintiff. I never saw the plaintiff at all or with her witness. 10

COURT: I know the plaintiff lives at Agore Street, Idumota. I did not think of something to plaintiff about payment of the balance continued. I know Asibiu. He lives at Idumota. He lives near the Plaintiff. He knows about the matter - between plaintiff and myself. After the letter - Exhibit "B", I receive no offer from the plaintiff to pay. I did not receive Exhibit "E1". I have never known or seen the 3rd Plaintiff's Witness before. I know the 4th Plaintiff's Witness before. He was present when Exhibit "F" was prepared. When I wrote and got no reply to Exhibit "B", I sold the property one day with agreement to the 2nd defendant for £800. The receipt and conveyance are both with the 2nd defendant. 20

RE-EXAMINATION BY 2ND DEFENDANT: Nil. 30

COURT: Case is adjourned till Monday the 25th August, at 10.30 a.m. for X-Examination by Plaintiff's Counsel.

(Sgd) J.I.C. TAYLOR, JUDGE.  
21/8/58.

25th August, 1958

MONDAY THE 25TH AUGUST, 1958.

AMUSA YAYA OBA: SWORN on the Koran and states in Yoruba.

Cross-  
examination

X-EXAMINATION BY SOMOLU: It was when I said I wanted £900 for the property from the Plaintiff when she asked me to sell the property to her. It was for the land and the house. I did not build the house on the land. 40

QUESTION IS PUT: The house was built on the land for 10 years before judgment was obtained.

In the High Court

KOTUN: Objects.

(Objection)

Defendant's Evidence

No.10

A.Y. OBA

COURT: In so far as the judgment is already made an Exhibit in this proceedings, I do not see how this can be said to be irrelevant for the Agreement of Sale of the house and land over as a result of the judgment in Exhibit "A", And the circumstances surrounding the agreement of sale are matters relevant to it.

25th August, 1958

WITNESS CONTINUES: I do not know the time she erected the building. I did not agree to accept £300 from the plaintiff because I realise she built the house. She sent many people to beg me. I accepted the sum because I had pity in the plaintiff. As a result of the judgment in Exhibit "A" I attached property alleged to belong to Shongodiya. I have never sued Shongodiya. I never see the plaintiff after the time she paid £100 up to the time I wrote Exhibit "B". I did not see any letter from you. After the payment of £100 the next time I saw the plaintiff was in May, 1957. She came together with Shadare and one Y.B. Koleosho (identified in Court). They said they came to beg me about the balance of the money. I said the time had elapsed. I did not see her again until I had the Writ of Summons. I did not see the plaintiff and Georgius Cole in April, 1957. I do not know Georgius Cole at all. After the payment of the £100, I did not see anyone else with the plaintiff other than the 2 persons whose names I have just given. It was only on the occasion in May, that the plaintiff came to see me and she came with Shadare and Koleosho. I sold the property to the 2nd defendant on 18/7/57. Up to this time the plaintiff was living in the premises. I ejected her from the premises in September, 1957. The 2nd defendant is not my friend. The property was sold by purchase treaty. I did not take the 2nd defendant at any time to inspect the house. A receiver got the 2nd defendant as purchaser. The receiver was one Dada Ibadan and he brought him to me. He is alive. I took the 2nd defendant to the house in July to introduce him to the tenants. I did not tell the 2nd defendant that I took £100 from the plaintiff. The plaintiff's goods were still in the house in

Cross-examination continued



In the High  
Court  
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Defendant's  
Evidence  
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No.10  
A.Y. OBA  
-----  
25th August, 1958  
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Cross-  
examination  
continued

September when the plaintiff was ejected. The 2nd defendant asked me for possession of the whole house and that was why I ejected the plaintiff. When I was not in town the tenants refused to pay so I ejected all the tenants and the plaintiff. In July, I told the 2nd defendant, when I took him to the house that I had got judgment over the woman who stayed in one of the rooms which I showed to him. I did not tell the 2nd defendant about the agreement of sale with the plaintiff. I did not at any time enquire from my lawyer whether he had repaid the £100 to the plaintiff. I did not tell the 2nd defendant that the plaintiff had paid £100 deposit for the purchase. I did not tell the 2nd defendant about the balance I had handed the sum of £100 to my Counsel to return to the plaintiff. My Lawyer did not give me a receipt for the return of the £100. I returned the £100 to my Counsel in April, 1957 after Exhibit "B". It was about Mid-April. I left on pilgrimage on 1/6/57. I am sure of these. I went by plane from Ikeja. I returned on the 4th July, 1957. I first saw the 2nd defendant on the 8th July, 1957. That was on the day he paid £800. He paid that sum on 18/7/58. I took him to the house on the 20th July, 1958. I did not want money urgently for the pilgrimage to Mecca. I had money. I do not remember the day I execute the Conveyance to the 2nd defendant. It was done before I went to Abeokuta High Court for the Case. I did not suggest to Plaintiff that she should take Exhibit "F" before her Solicitor before she thumb impressed it. I am literate. She is illiterate. The plaintiff was the one who told the lawyer what to put in Exhibit "F". She said she could not pay the money in a lump sum and she begged for time. I at first refused. Later, I agreed and she asked for one month. The Plaintiff said that if she failed to pay by the 31st March, anything should be done with her property. I have never at any time seen Plaintiff's Witness 3 before. I live at Mushin. The Plaintiff came to stay at Mushin after the judgment in the Case. The Plaintiff never come to me before May nor did she send anyone to me to beg me for her. No message was ever delivered to me that the plaintiff ever came to my house in my absence. The only day she came to my house, she met me. No money was ever handed to me.

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Re-examination

RE-EXAMINATION: A fair payment for the property

would be £800. My Counsel made a report to me about Georgius Cole.

In the High Court

Defendant's Evidence

No.10

A.Y. OBA

25th August, 1958

Re-examination continued

No.11

A.R. AKINHANMI

No.11

A.K. Akinhanmi

25th August, 1958

Examination

2ND DEFENDANT - AWUDU RUFAT AKINHANMI: SWORN

in the Koran and states in Yoruba. Lives at 33, Adeyemi Street, Mushin. I know the property in dispute. Carpenter by trade. I started living there in November, 1957.

10 Before then, I was at 9, Ademola Street, Mushin. I was living there in July, 1957. I know the property in dispute. I bought the house on the 18th July, 1957. I paid £800 for the property. I bought 3 properties from the plaintiff on the same day. The 3 properties adjacent each others. I bought 2 properties for £800 each and the third for £400. I obtained a receipt for all 3 properties. They were made in one.

20 I obtained a Conveyance for the property. I can identify my conveyance. This is it. Tendered and no objection and marked Exhibit "B". One Baba Ibadan from Mushin came to tell me about the sale of the property. The 1st defendant owned the house at the time of my purchase. I made investigation about the plaintiff. The 1st defendant showed me a copy of Exhibit "A". I did not obtain Counsel's advice. My son read the judgment to me. I made no other investigations. My son was only

30 13 years of age. He brings a Lawyer's Clerk to prepare my conveyance for me. I gave to him the conveyance of the owner of the land. It is not true that the plaintiff and her witnesses saw me as they alleged. I met the plaintiff for the first time after this case was begun. We met at Abeokuta. I have not met the Plaintiff's Witnesses 3 and 4 before nor have I had any dealings with them. Before I bought

In the High Court

Defendant's Evidence

No.11

A.K. Akinhanmi

25th August, 1958

Examination continued

Cross-examination

the house, I did not go to the premises to inspect the house. It was on the day I was going to pay that the receiver - Baba Ibadan - took me to the property on the 18th July. I next went to the property when the tenants were being ejected. The tenants refused to pay rent. They said they hired the house from the plaintiff. Before I bought it, I did not know the plaintiff had any more interest to the land after the judgment. I know nothing about the agreement of sale with the plaintiff. I did not know this from any other source. 10

X-EXAMINATION BY SOMOLU: The first defendant did not take me to the house and introduced me to the tenants, nor did he show me room of the plaintiff. He did not take me there in July. He took me to the house on the day the tenants were to be ejected. The plaintiff's goods are still locked up in the room in the house. The ejection was in September, 1957. On the day I saw the plaintiff, she did not say the 1st defendant had agreed to sell the house to her. She said nothing to me that day. I moved into the house in November, 1957. I wanted to erect a walled fence before I moved into the house. Baba Ibadan took me to the property before the 18th July. I did not go inside the house. I inspected the house from the outside. I paid £2000 to the defendant. I never entered the house. Shongodiya has not met me. I do not know whether she has sued the 1st defendant. He never told me. I collect rent in respect of the 2 other houses. I have known her for the past 10 years. We have never worshiped in the same Mosque. I earn £300 a year at the Railway. I paid in £1 £2000. All the money was kept by me in my house. Baba Ibadan is at home. I had exactly £2000 in my house at the time. I sold portion of my land at Mushin at Bariga Village to Inspector Shosanya for £100. The £2000 was gathered in collections from rents received. I sold the land to Shosanya in 1957. I sold land to Shosanya for £200 in 1957. I do not know the names of the purchasers. My conveyance covered all the three houses I bought. I acted purely in the judgment read to me by my son as evidence of title. I have 2 other houses at the George Village and 9, Akinola Street, Mushin. I was at 9, Akinola Street, Mushin in July. It had a yard. I have a conveyance for the property. 20 30 40 50

10 I built the property myself. Baba Ibadan came to inform me about 2 houses to be sold in February, 1957. The plaintiff was not one of them. He did not show me the plaintiff in July, but he told me in February that there was a dispute over the plaintiff's house. I could not pay for the other 2 houses before July because in February, 1957, I was looking for the money. Baba Ibadan said that if it was possible to sell me the plaintiff house he would let me know. In July, he came to me to tell me it was now for sale. He came to tell me that before July. He then told me that the person who wanted to buy it did not buy it again. I told Baba Ibadan that if I get money, I will pay. I found £2000 on the 15th July and went to meet Baba Ibadan. He took me to the owner, 1st Defendant. He said he would take £900 for the house. I said I would pay £800. I took £2000 with me on the 18th. In February, I had £1000 with me. I was able to meet up the £1000 in May. If I paid for the 2 houses in May, I would have to prepare separate conveyance so I waited for the plaintiff's house to be put in the market. I belong to Mushin Sunmurat at Mushin. I know the 1st defendant there. We have prayed there together. The plaintiff is at Mushin from the same Mosque at Mushin. I have worshipped in the same Mosque with the 1st defendant. I have no safe in my house. I keep the money in my house in the Cupboard. I have tenants, wives and children.

In the High Court

Defendant's Evidence

No.11

A.K. Akinhanmi

25th August, 1958

Cross-examination continued

RE-EXAMINATION: We have a Mosque in our area. He does not worship in that Mosque i.e. the 1st defendant. I started buying properties about 15 years ago. I have a 48 acre farm at Bariga and another of 19 acres and one of 12 acres. The properties are there and at Bariga. I sold some at £100 a plot.

Re-examination

40 COURT: By consent the following documents are tendered Statement of Claim in Suit 10/55 and is marked Exhibit "H". By consent a plan No.II/B.542 is tendered and marked Exhibit "H1". By consent the Statement of Defence in Suit 10/55 is tendered and marked Exhibit "H2".

Ex. "H"

Ex. "H2".

In the High  
Court

No.12

Defendant's  
Evidence

A.I. AROWOSHOLA:

No.12

A.I. Arowoshola

25th August 1958

Examination

ASHIBIU ISHOLA AROWOSHOLA: SWORN in the Koran and states in English. Living at 13, John Street, Lagos. Trader. I know the plaintiff. She lived at Agore Street, Lagos, last year. She is 4 houses away from mine. I used to go and play with a friend of mine near the plaintiff's house so she must know me. I know the property in dispute. Plaintiff came to my father last year. I was in the room at the time. She said that her case was against her. My father then called me from the last room and said that the plaintiff came to beg my father that I should go and see Lawyer Kotun. This was in February, 1957. It was on the 3rd February. I came with her to Mr. Kotun's house on the 9/2/57. After that, herself and her husband identified in Court came to me on the same day with £100 and said I should follow them to go and pay £100 to Mr. Kotun at Mr. Kotun's house. I followed them. There was £20 in coins, £10 in 10/- notes, £10 in £5 currency notes and the rest in £1 notes. Plaintiff's Witness 4 was also present. She paid the money and took a receipt. We then went away and the lawyer told me to go and call the 1st defendant. I went there on the 10th July. I told the 1st defendant to go and see the lawyer. I do not know if he went there that day. About 4 days after the plaintiff came to my house and asked me to follow her to the Lawyer's office to go and make the agreement. I went with her and Plaintiff's Witness 4 and her husband. We met the defendant there. This is the receipt issued to the plaintiff. I have lived in the same quarters with plaintiff for 15 years. The 1st defendant is my in-law. He married my eldest sister.

Cross-  
examination

X-EXAMINATION BY SOMOLU: The agreement was not made on the day the money was paid. I was present with the Plaintiff. Her husband Salawu Ayorinde and others when the agreement was made. The 1st defendant was present. I did not hear what the parties and Counsel were saying when the agreement was being made. I went to see the Plaintiff in Agoro Street in March, 1957, but I cannot say what day in March. Since then,

I have not seen her in the neighbourhood. Since then too she has failed to have any business with me. She has not come to my house again since then.

RE-EXAMINATION: Nil.

COURT: Case for Defence.

(Sgd) J.I.C. TAYLOR,  
JUDGE.  
25/8/58.

In the High Court

Defendant's Evidence

No.12

A.I. Arowoshola  
25th August, 1958

Cross-examination continued

10

No.13

COUNSEL'S ADDRESSES

SOMOLU for Plaintiff

KOTUN for Defence.

No.13

Counsel's Addresses

26th August, 1958

For Defendant

KOTUN ADDRESSES COURT: Reads Writ and says reference is against 1st Defendant only. Writ was later amended as per motion of 4/11/57. See paragraph 2 of the Statement of Claim. Further, see paragraph 3 of the Statement of Claim says same is very vague and no specific dates were given. I ask Court to disbelieve evidence of Plaintiff's Witness 3 and hold that he never hand the money to hand to the plaintiff and that was why he gave him the Conveyance. Evidence of Plaintiff's Witness 4 contradicts evidence of the plaintiff and her witnesses. The £100 was paid to me personally by Exhibit "C". She did nothing further until she got Exhibit "B". The letter Exhibit "E" is a mere letter - plaintiff and Lawyer Somolu's Clerk. I say that the letter was registered without the money. Evidence was given about Georgius Cole but he was not called.

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See Snells Equity 23rd Re Page 553 re lapse of time.

Fahn Vs. Ogbojologun 12 N.L.R. Page 47 re right of vender to sue for possession was after sale but before passing of legal estate.

No case proved against the 2nd defendant.

Plaintiff's case should be dismissed.

In the High  
Court

No.13

Counsel's  
Addresses

26th August, 1958  
continued

For Plaintiff

SOMOLU ADDRESSES COURT: The material issue is whether there was a letter within time, and it is only the Counsel that can resolve that by judging from the evidence of the Witnesses and these documents. There are 2 points to note about Shadare's evidence. I tendered him for X-examination purposely for the Court to see what type of cheapest fellow he is for the Court to see the type of man he is, for he was the man who followed her - plaintiff to Counsel's 10 chambers to sign the document. Even, taking the evidence of Shadare into consideration, the payment of it was the same to show a tender within time. The evidence of 1st defendant is that there was no tender within time and after time whereas that was not the case as put to plaintiff under X-Examination. 1st defendant's evidence is that plaintiff never brought money even in the middle of May whereas my letter was dated the 9th May and showed that on that day, plaintiff's brought money to me for posting to 1st defendant. The latter was keen in showing that plaintiff had no money at all and never tendered why. Plaintiff says Georgius Cole came with her to Lawyer Kotun's office. The Defence pleaded and mentioned Georgius Cole but did not call him. The 2nd defendant was willing to buy property. In February, he handed 2 of them to him. He had managed way to buy them. He did nothing. In May he had money to buy the 2, but he did not buy for he was waiting for the 3rd. The 1st defendant who was in need of money could forebear till July and yet the property was available in April. 2nd defendant wanted to show that he had never met the plaintiff till September and yet the 1st defendant said that in July he took the 2nd defendant to the house and showed him the room of the plaintiff. The 2nd defendant denies going to the house in July. This is a joint effort to deprive the plaintiff of her property. Judgment should be given for Plaintiff.

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COURT: Judgment is reserved till 9 a.m. on Friday the 29th August, 1958.

(Sgd.) J.I.C. TAYLOR,  
JUDGE.

26/8/58.

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No.14

JUDGMENTIn the High  
CourtNo.14Judgment29th August, 1958

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA IBADAN JUDICIAL DIVISION  
INCLUDING IKEJA AND BADAGRY DIVISIONS IN THE  
COLONY PROVINCE BEFORE THE HONOURABLE MR. JUSTICE  
JOHN IDOWU CONRAD TAYLOR (JUDGE).

SESSIONS HOLDEN AT IKEJA  
FRIDAY THE 29TH DAY OF AUGUST, 1958

10

Suit No.AB/106/57.

Between:

Hunmuani Ajoke ... Plaintiff

- and -

1. Amusa Yesufu Oba )  
2. Rufai Akinhanmi ) ... Defendants

Appearances: For Plaintiff: SOMOLU  
For Defendants: KOTUN

J U D G M E N T.

20 The summons taken out in this Suit on the 22nd  
July, 1957 was one against the 1st defendant only  
for specific performance of the contract of sale  
and conveyance of land situate at 33, Adeyemi  
Street, Mushin entered into between the parties in  
February, 1957 and in respect of which the plaintiff  
had paid the said defendant the sum of £100 as part  
payment of the agreed sum of £300.

30 On the 26th day of September, 1957, a motion  
was filed by the plaintiff seeking an order  
restraining the 1st defendant from selling the  
property in dispute. A Counter-affidavit was filed  
by the said 1st defendant and in paragraph 5 of  
same he disclosed that he had sold the property to  
the present 2nd defendant in July, 1957 and that  
the latter was in possession. As a result, the  
plaintiff's prayer was refused. Consequent upon  
this disclosure, the plaintiff on the 4th November,  
1957 filed a motion seeking to amend the writ of  
summons by making an additional claim for a declara-  
40 tion that any purported sale of the said property by  
the defendant to anyone was a fraud by the defendant  
as against the plaintiff and was therefore void and



In the High  
Court

No.14

Judgment

29th August, 1958  
continued

should be set aside. A prayer to join the said Rufai Akinhanmi as 2nd defendant was also added to the request for amendment. This motion was granted as prayed on the 29th November, 1957.

The plaintiff's case as gathered from the pleadings is this: that by a judgment of this Court delivered on the 21st January, 1957 in Suit AB/10/55 the 1st defendant was declared to be the owner of the land on which the house in dispute was erected by the plaintiff at a cost of over £1000. That after this judgment the parties met and the 1st defendant agreed to sell the land to the plaintiff at a figure of £300. The sum of £100 was paid by the plaintiff on the 9th February, 1957, and the balance was to be paid in accordance with the agreement on or before the 31st March, 1957. That at various times before the expiration of the given date the plaintiff tendered the balance to the 1st defendant who refused to accept same. It is important to note, in view of the submission made by Mr. Kotun for the defendants and with which I shall deal later, that paragraphs 6, 7 and 8 of the Statement of Claim aver that the 2nd defendant knew of the agreement between the plaintiff and 1st defendant and was present when the plaintiff tendered the money and therefore purchased with full knowledge from the 1st defendant. It is true that paragraph 8 went on to say that such knowledge and action of the defendants constituted fraud on their part. The defence of the 1st defendant is that the agreement between the parties was for the sale of the land and the building on it and that at no time was the balance paid or tendered before the 31st March, 1957 and as a result the 1st defendant repudiated the agreement on the 5th April, 1957 and sold to the 2nd defendant in July, 1957. The 2nd defendant in his defence pleads a purchase for value without notice of any fraud and the fact that he is in possession.

At the hearing it became clear that the issues were of a twofold nature to wit:-

1. Was a tender made before the 31st March, 1957?
2. If so, then was the 2nd defendant a purchaser with or without notice?

The question as to whether time was of the essence of the contract was not raised on the pleadings and has not been argued before me and I

refrain from commenting on same while dealing with this first issue. The contract exhibit "F" says inter alia:-

In the High  
Court

No.14  
Judgment

29th August, 1958  
continued

10 ".....and the balance of £200 (two hundred " pounds) sterling to be paid in full on or " before the 31st day of March, 1957." "Otherwise the vendor shall be at liberty" "to sell the said property to any other" "intending purchaser and refund the part" "payment to the purchaser."

What in law is a tender of money? This question was fully discussed in the case of Farquarson v Pearl Assurance Company reported in 1937 3.A.E.R. 124. The views of Learned Judges in older cases were set out at Page 130 of the report and I shall here set out two of such views as follows:-

Tindall C.J. said in Finch v Brook 1834 1 Bing N.C. 253 at 256 - 257 that:-

20 "All the cases agree that, in order to " "constitute a sufficient tender, there must " "be an actual production of the money, or a " "dispensation of such production. Here, " "there was no actual production. Was there " "any actual or implied dispensation? Upon " "this point the Jury are silent; and the " "case is before us on the finding of the " "Jury only. Now, the Jury, if they are " "satisfied that there had been impliedly " 30 "a dispensation, might have found generally " "for the defendant."

and finally Lord Caranworth L.J. said in Re Farley, ex parte Danks 1852, 2 De G.M. & G 936 at Page 945 that :-

40 "Now in order to make a tender, I assume " "that the person pleading the tender must " "have either actually produced the money or " "have been ready and able to produce it, and" "only be prevented from producing it by the " "other party dispensing with his so doing. " "And in my opinion, for the reasons which " "have been very fully pointed out by my " "Learned Brother, it is clear to " "demonstration that Mr. Farley had the " "money, the exact sum; that he had it there " "for the purpose of tendering it; that he "

In the High  
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No.14  
Judgment

"came instructed by his Solicitor as to the " "  
"mode in which he was to make that tender, and" "  
"that he did make that tender; made the " "  
"offer to produce it, even supposing the " "  
"money was never out of his pocket."

29th August,  
1958  
continued

In one thing the witnesses for the plaintiff i.e., the plaintiff, P.W's. and 3 and 4 are all agreed upon and that is that at a certain time which on reckoning would appear to be in the same month as the agreement was entered into i.e. February or 10  
early in March, 1957, the plaintiff carried money which Plaintiff's Witness 3 and the plaintiff said was £200 to the 1st defendant with the object of paying him such sum in accordance with the agreement. That she offered to pay this sum and that the 1st defendant dispensed with payment and instead asked the parties to meet him at his Counsel's office next day. Further the plaintiff and Plaintiff's Witness 3 say that they went on the next day but they met neither the 1st defendant nor 20  
his Counsel. If this evidence is accepted then there is a tender in law for the defence is to the effect that the parties never came to the house of the 1st defendant at all before the month of May. The point of issue resolves itself to this:- Can I rely on the evidence of the plaintiff and her witnesses in preference to the evidence of the two defendants and the evidence of their witness for what it is worth. The issue is simple but the choice is not quite as clear cut as it may appear 30  
in words.

The plaintiff states that two weeks after the payment of the £100 she collected £200 and went to the 1st defendant's house but did not meet him i.e. on or about the 23rd February. She returned again 4 days later i.e. on or about the 27th February and still did not meet him. On the third occasion which was 4 days after the second i.e. on or about the 3rd March, 1957 she met the 1st defendant. The plaintiff said that she went in the 40  
company of one Adebiyi who lent her the £200 and the plaintiff's own relative by name Shadare. On this occasion she met the two defendants in the house and when she told them of her mission, the 2nd defendant told her to find a sum of £50 to supplement the sum of £200 she had brought. The 1st defendant however told the plaintiff to pay no attention to the 2nd defendant and fixed an appointment for the next day at 4 p.m. in the office of his Counsel Mr. Kotun. On that day i.e. 50

on or about the 4th March she went to Counsel's office accompanied by the two persons just referred to but met only his clerk in the office. On the following day i.e. on or about the 5th March she went to the house of the 1st defendant but did not meet him at home. She returned about 6 days later i.e. on or about the 11th March and met him on this occasion again with the 2nd defendant. The 1st told her to go and prepare a conveyance and meet him in his Counsel's office but did not accept any money and the 2nd defendant inquired why the sum of £200 had not been supplemented. It was after this that she received the 1st defendant's letter exhibit "B" repudiating the contract. It should be noted that this letter was signed by himself and did not pass through the hands of Learned Counsel. Under x-examination she disclosed that the lender, recovered his money from her after the expiration of ten days after the loan i.e. on or about the 5th March, 1957. After her endeavours to pay were frustrated she gave the money to her Counsel to post to the defendant, and exhibits "E" and "E1" are the result of this. This latter sum of £200 was a subsequent loan to her by Plaintiff's witness 3. Quite a great deal of matter was also elicited as to her endeavours to obtain another loan after the 3rd Plaintiff Witness had recovered the first £200 which he lent to her.

30 She was materially supported in her evidence by Daniel Adebisi Plaintiff's Witness 3, who stated that he went with the plaintiff to the house of the 1st defendant but did not meet him at home. After this he asked the plaintiff to keep a look-out for him and when seen he should be contacted and he (Plaintiff's Witness 3) would follow her to the 1st defendant's house. The next time he went with the plaintiff and Plaintiff's Witness 4, they met the 1st and 2nd defendants. The only evidence given by him and not deposed to specifically by the plaintiff was that this witness gave the plaintiff his title deed to one of his properties for the purpose of raising a loan after he had recovered his first sum. The plaintiff did however mention that she tried to raise a loan from one Georgius Cole and in this respect made reference to some documents in a file. Under x-examination, Plaintiff's Witness 3 put the time he accompanied plaintiff to the house of the 1st defendant and met him at about 7 days after he had given the money to the plaintiff i.e. on or about the 2nd

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continued

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March, 1957. The plaintiff puts it at 8 days i.e. on or about the 3rd March. He was subjected to a rigorous x-examination but did not in any material way deflect from his story; he was not shaken and as I intimated to Learned Counsels during their addresses, I found him the most impressive witness who gave evidence during this trial.

29th August,  
1958  
continued

The last witness was one E.O. Shadare who was offered for x-examination. Now he stated that the plaintiff came to him about 15 days after the making of exhibit "F" i.e. on or about the 1st March, 1957. That she came with the money and he followed her to the office of Counsel for the defence - Mr. Kotun - and met him. That Mr. Kotun told him to go and call the 1st defendant. He went with the plaintiff and met the 1st defendant who would not however come on that day but said that he would do so on the next. He then went with the plaintiff to Mr. Kotun's house on the next day i.e. on or about the 2nd March, but did not meet either the Counsel or the 1st defendant. The 3rd Plaintiff Witness met them as they were going out of Counsel's office and together they proceeded to the house of the 1st defendant. They met him and a stranger identified as the 2nd defendant. The plaintiff tendered the money but the 1st defendant would not take it and the 2nd defendant requested an additional £50. The 1st defendant however told them to meet him at the Lawyer's office and on this occasion this witness went alone but did not meet Counsel.

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Now there can be no doubt that the evidence of this last witness materially detracts from that of the plaintiff supported as it was by that of Plaintiff's Witness 3. Must I or should I on this score reject the plaintiff's version as a concocted story, in spite of the fact that the demeanour of this witness Plaintiff's Witness 4 and the manner in which he gave his evidence neither impressed me nor did he strike me as one being possessed of much or sufficient intelligence or memory for recollection of events taking place over a year ago as happened here. It is true he described himself as an estate agent but that term in this country often means nothing more than a tout for vendors of land, and, looking at this witness, I doubt whether he was more than that. Before deciding the question, I have set myself above I propose to turn to the defence first for on the evidence before me in spite of the contradiction

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quite a strong prima facie case has been made out.

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\_\_\_\_\_

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\_\_\_\_\_

29th August,  
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continued

10 The 1st defendant denies ever having seen Plaintiff's Witness 3 at any time before this case and as for Plaintiff's Witness 4 he saw him when exhibit "F" was prepared. He denies any tender by the plaintiff and says that he has sold and conveyed the property to the 2nd defendant for the sum of £800. Under x-examination he denies the receipt of exhibits "E" and "E1". He saw the plaintiff together with one Koleosho and Plaintiff's Witness 4 sometime in May when they came to plead with him about payment of the balance and he told them that the time had elapsed. He sold the property on the 18th July, 1957 to the 2nd defendant. He denied taking the 2nd defendant to inspect it but says that one Baba Ibadan did so. He further denies the existence of any friendship between himself and the 20 2nd defendant. He took the 2nd defendant to the house in July and introduced him to the tenants but made no mention of the plaintiff by name or of any transaction he had with her. He merely told the 2nd defendant that he had obtained judgment against the lady living in the room that was locked up at that time. In this he was not however supported by the 2nd defendant who says that at no time before September did the 1st defendant take him to the house or introduce him 30 to the tenants nor did he make mention of the room belonging to the plaintiff. The 1st defendant was even specific as to the date he took the 2nd defendant to the house i.e. the 20th July, having returned from pilgrimage on the 4th July.

40 The 2nd defendant gave evidence that he bought three properties from the 1st defendant on the day in question for £2000. He made investigations as to title and his investigations consisted of his 13 year old prodigy son reading and explaining to his father my judgment in suit AB/10/55. He never met the plaintiff before the present action and similarly the 3rd Plaintiff's Witness. He would have me believe that he bought these three properties for the sum of £2000 without ever going inside to see what was contained there before he purchased the properties in spite of the fact that he had been arranging for the purchase of at least two of them as far back as February, 1957. He merely looked at them

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Judgment  

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29th August,  
1958  
continued

from the street. He denies any knowledge of any agreement between the plaintiff and the 1st defendant. He admits knowing the 1st defendant for the past 10 years and at first denied ever having worshipped with him in the same Mosque but later admitted it. According to him he had been approached as far back as February about the sale of two of the three houses which he eventually bought and at that time he was told that a third i.e. the plaintiff's might be put on the market. He had enough money in May to buy two of the three houses that were ready for sale and yet he did not buy them preferring to wait till the third house was ready to save himself the costs of two conveyances. He would have me believe that in a house where there were other tenants and where he himself lived with his wives and children, having no safe, he kept £2000 in a cupboard collected as it was over a period of time. Both defendants were most unsatisfactory witnesses. I was not impressed by their evidence or demeanour and in particular the 2nd defendant, who was very evasive apart from the contradictions in his evidence. 10 20

The last witness was one Asibia Aromashodun who was called to show that the plaintiff was not a witness of truth when she denied knowing one Asibia. According to him he lived near the plaintiff and on one occasion the former's father called him and told him that the plaintiff had come to plead with him to allow Defendant's Witness 2 to follow her to Mr. Kotun's house and that in fact he went with her on the 9th February, 1957. His father was never called as witness and I wonder why the plaintiff could not have approached this witness in person if as the latter says they knew each other so well. He tried to impress me by giving the denomination of the £100 paid by the plaintiff one and a half years ago. It would have been different if all the notes had been of the same denomination, but he recounted the amount in coins, in 10/- notes in £5 currency notes and the balance in £1 notes. I regret to say that I was not in any way impressed. It transpired however that he is related to the 1st defendant by marriage, the latter having married his eldest sister. I did not form any more favourable impression about him than the two defendants. 30 40

After reviewing the whole of the evidence before me and in particular the demeanour of each witness and the way in which they shaped under examination, I still say without hesitation that 50

the plaintiff and her witness Plaintiff's Witness 3 impressed me as witnesses of truth and I accept their version to that of the defendants and their witness as well as that of Plaintiff's Witness 4. The evidence of Plaintiff's Witness 2, a clerk in the chambers of Counsel for the plaintiff does not assist much on this point beyond going to show, taken at its lowest, that the plaintiff on or about the 9th May or a little before, brought the sum of £200 to her Counsel to be posted to the 1st defendant. It should be noted that exhibits "E" and "E1" dated the 9th May bear a registered mark at Ebute Metta on the 9th May and further show that it was received at Mushin on the 10th May, 1957. This witness says that he posted the sum and letter the former being made up in postal orders. I accept this evidence though it makes little or no difference to this case for my judgment is based as against the 1st defendant on the finding that the money was tendered in law and within the accepted time and he would not accept it. As for the 2nd defendant having accepted the version of the plaintiff and Plaintiff's Witness 3, I have no doubt that he was present and made the remark credited to him by the plaintiff and Plaintiff's Witness 3. Further I find that he also knew of the arrangement and contract of sale existing between the plaintiff and the 1st defendant. He is in my view a purchaser for value but with notice not only of the contract existing between the parties but of the fact that the plaintiff made a tender of the balance within the period required. He is not entitled to any protection in law.

Finally, Mr. Kotun raised the point that in spite of the pleadings averring that the 2nd defendant is a purchaser for value with notice, yet no fraud having been proved the sale to the 2nd defendant cannot be set aside, even if it is shown that he had notice of the interests of the plaintiff. In the case of England vs. Palmer reported in Volume 14 WACA 659, quoting from the judgment of Coussey J.A. at Page 661, the Learned Justice of Appeal states as follows:-

"Their Lordships of the Privy Council laid"  
 "down in Ababio IV vs Quartey and another "  
 "that the Court ought to have allowed all "  
 "the necessary amendments that were "  
 "required for the purpose of enabling the "

In the High  
 Court  


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 No.14  
 Judgment  


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 29th August,  
 1958  
 continued

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In the High  
Court  

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No.14  
Judgment  

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29th August,  
1958  
continued

"use of evidence that had been obtained for "  
"the purpose of settling the real controversy"  
"between the parties'."  
"And in Seklin v Little on a motion for a "  
"new trial, the Court, Denman, Charles and "  
"Vaughan Williams JJ amended the Statement "  
"of Claim in an action for slander to conform"  
"with the words proved at the trial, which "  
"were not those set out in the Statement of "  
"Claim, although the Judge at the trial had "  
"offered plaintiff's Counsel an amendment of "  
"the pleadings and it had been refused". 10

The latter case is even stronger than the one before me for not only is it pleaded that the 2nd defendant had notice of the contract of sale and prior interests of the plaintiff, but it was also proved and the case was fought along on that basis as against the 2nd defendant. Now because it is not stated in the writ as amended that the contract is sought to be set aside on the additional ground that the 2nd defendant had notice of the plaintiff's prior interest, Mr. Kotun would have me dismiss the action or enter a non-suit - he did not say which. 20

Order 33 of our rules of Court covers such a case as this and of my own motion, I amend the writ to read as follows: i.e. the additional claim:-

"The plaintiff also seeks against the "  
"defendants a declaration that the purported "  
"sale of the property which is the subject "  
"matter of this action by the 1st defendant "  
"to the 2nd defendant since the 14th "  
"February, 1957 is a fraud on the part of the "  
"said defendants as against the plaintiff and "  
"therefore void and further that it should be "  
"set aside on the grounds that the 2nd "  
"defendant is a purchaser with notice of the "  
"plaintiff's prior interests". 30

In view of the existence of paragraph 9 of the Statement of Claim there is no need for the Statement of Claim to be amended. I shall of course take this into account in the assessment of costs. No fraud has been proved but the other 'leg' of the claim has been amply proved. There will therefore be judgment for the plaintiff setting aside the purchase by the 2nd defendant of the property in dispute on or by the 18th July, 1957 from the 1st defendant, and, further, it is ordered that the sum of £200 shall be brought to the registry of this 40

Court by the plaintiff on Saturday the 6th of September, 1958 between the hours of 10 and 11 a.m. together with the conveyance of the said property by the 1st defendant to the plaintiff, and, in the presence of the said Registrar of this Court, both the said sum and the conveyance shall be delivered to the 1st defendant who shall issue receipts for same. The conveyance delivered to the said defendant shall be executed by him and delivered to the plaintiff in the same registry and before the said registrar on Saturday the 13th September, 1958. Should the 1st defendant fail to accept this sum same shall be paid into Court on the same date and steps taken in respect thereof. I shall now hear Counsels on the question of costs.

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In the High Court  
 -----  
 No.14  
 Judgment  
 -----  
 29th August, 1958  
 continued

(Sgd). J.I.C. TAYLOR, JUDGE.  
 29/8/58.

No.15

ARGUMENT AND DECISION AS TO COSTS

No.15

Argument and decision as to Costs  
 -----

20

MR. SOMOLU says the money is in Court today and hands same to the Registrar asks Court to make order for possession as plaintiff's goods and the bed all are still locked up in the room. Says possession of the 2nd defendant is in least no possession at all. Further says that total out of pocket is £12.4.6d. Conveyance made for execution costs £10.10/- and says we had to go to Abeokuta on occasions. Hearing took 3 days. I ask for costs of 150 Guineas inclusive.

29th August, 1958

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MR. KOTUN says that the claim is for specific performance. Court may raise damages on specific performance. On the 2nd claim of setting aside the conveyance. There is no claim for possession and the Court should refuse from today any order for possession. Says out of pocket was £4.2.6d for services and 2/6d for Statement of Claim. Says defendants are entitled to costs on the motion for Writ. The trial before the Court took only 2 days. If anyone is responsible for this case I am the one for persuading the defendant to sell land and the property to the Plaintiff.

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COURT: It would not be wise for me to make an order for possession without same being well sought in view of the fact that the Court's

In the High Court

No.15

Argument and decision as to Costs

29th August, 1958 continued

No.16

Enrolment of Judgment

29th August, 1958

assistance has already been granted to the plaintiff by way of amendment of the Writ and I refrain from making such an order in this suit. In the matter of costs, I would assess costs as against the 1st defendant in the sum of £4.5/- being the plaintiff out of pocket expenses and against the 2nd defendant in the sum of 50 guineas.

(Sgd) J.I. TAYLOR-JUDGE.  
29/8/58.

No.16

10

ENROLMENT OF JUDGMENT

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA  
IBADAN JUDICIAL DIVISION  
HOLDEN AT IKEJA

ENROLMENT OF JUDGMENT

Suit No. AB/106/57.

Hunmuani Ajoke ... Plaintiff

-- and --

1. Amusa Yesufu Oba )  
2. Rufai Akinhanmi ) ... Defendants

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UPON THE following claim of the Plaintiff against the defendants to wit :-

"The Plaintiff seeks against the defendants an order for the Specific Performance of the contract of sale and conveyance of land situate lying and being at No.33, Adeyemi Street, Mushin, Western Region of Nigeria, entered into by the Plaintiff and defendant in February, 1957 and in respect of which the defendant had received £100 advance but which he now purports to repudiate.

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The Plaintiff also seeks against the defendants a declaration that the purported sale of the property which is the subject matter of this action by the 1st defendant to the 2nd defendant since the the 14th February, 1957 is a fraud on the part of

the said defendant as against the Plaintiff and therefore void and further that it should be set aside on the grounds that the 2nd defendant is a purchaser with notice of the Plaintiff's prior interests."

In the High  
Court

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No.16

10 COMING UP for hearing before the Honourable Justice John Taylor on the 21st, 25th and 26th days of August, 1958 in the presence of Mr. Somolu Counsel for the Plaintiff and Mr. Kotun for the 1st defendant and Mrs. Oshodi with him for the 2nd defendant, the Court, after hearing the evidence of both parties, their witnesses and their Counsels thereon, adjuges and orders as follows:-

Enrolment of  
Judgment

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29th August,  
1958

continued

20 "There will therefore be judgment for the Plaintiff setting aside the purchase by the 2nd defendant of the property in dispute on or by the 18th July, 1957 from the 1st defendant, and further, it is ordered that the sum of £200 shall be brought to the registry of this Court by the Plaintiff on Saturday the 6th of September, 1958 between the hours of 10 and 11 a.m. together with the conveyance of the said property by the 1st defendant to the Plaintiff, and in the presence of the said Registrar of this Court, both the said sum and the conveyance shall be delivered to the said 1st defendant who shall issue receipts for same. The conveyance

30 delivered to the said defendant shall be executed by him and delivered to the Plaintiff in the same registry and before the said Registrar on Saturday the 13th September, 1958. Should the 1st defendant fail to accept this sum, same shall be paid in to Court on the same date and steps taken in respect thereof.

40 It would not be wise for me to make an order for possession without same having been sought in view of the fact that the Court's assistance has already been granted to the Plaintiff by way of amendment of the Writ and I refrain from making such an order in this Suit.

On the matter of costs, I award costs against the 1st defendant in the sum of

In the High Court

£4.5/- being out of pocket expenses of the Plaintiff and against the 2nd defendant in the sum of 50 guineas."

No.16

Enrolment of Judgment

Issued at Ikeja under the Seal of the Court and the Hand of the Presiding Judge this 29th day of August, 1958.

29th August, 1958

(Sgd). AFOLABI AKINOSHO,  
Registrar, High Court.

continued

No.17

Order for stay of execution, etc.

24th November, 1958.

No.17

ORDER FOR STAY OF EXECUTION etc.

10

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA  
IBADAN JUDICIAL DIVISION  
HOLDEN AT IKEJA

ENROLMENT OF ORDER

Suit No. AB/106/57.

Between:

Hunmuani Ajoke ... Plaintiff

- and -

1. Amusa Y. Oba )  
2. Rufai Akinhanmi ) ... Defendants

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W.T.CHARLES,  
JUDGE.

UPON READING the Affidavit of Madam Hunmuani Ajoke trader of 46, Karimu Street, Surulere, Lagos, sworn to and filed at the High Court Registry, Ikeja on the 25th of September, 1958 AND the Affidavit of Mr. Amusa Yesufu Oba trader of 24, Martins Street, Mushin, sworn to at the Magistrate Court Registry, Lagos on the 11th day of October, 1958 and filed at the High Court Registry, Ikeja on the 14th of October, 1958: 30

AND AFTER HEARING Mr. Ketun of Counsel for the Defendant and Mr. Onalaja (vice Mr. Somolu) of Counsel for the Plaintiff, the Plaintiff having withdrawn the motion

praying for committal of the 1st defendant to prison for having neglected to obey the Order of Court dated 29/8/58:

BY CONSENT IT IS HEREBY ORDERED that costs of this action paid into Court by the Defendant and the deed of conveyance executed by the 1st defendant do remain in the Court until further Order.

In the High Court

No.17

Order for stay of execution, etc.

24th November, 1958

continued

10 AND THAT Stay of Execution of the judgment in this case pending the hearing of the appeal until further order of this Court or the Federal Supreme Court be and is hereby granted. Costs of both applications fixed at 5 guineas awarded to the Plaintiff.

Issued at Ikeja under the Seal of the Court and the Hand of the Presiding Judge this 24th day of November, 1958.

(Sgd). A. AKINOSO  
Registrar High Court.

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No.18

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA  
NOTICE OF APPEAL (RULE 12)

Suit No.AB/106/57.

Between:

Hunnuani Ajoke ... Plaintiff

- and -

1. Amusa Yesufu Oba }  
2. Rufai Akinhanmi } ... Defendants

In the Federal Supreme Court

No.18

Notice and Grounds of Appeal

4th September, 1958.

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TAKE NOTICE that the defendants being dissatisfied with the decision of the High Court, Ikeja, contained in the judgment of the Honourable Mr. Justice J.I.C. Taylor dated the 29th day of August, 1958 do hereby appeal to the Federal Supreme Court of Nigeria upon the grounds

In the  
Federal  
Supreme  
Court

No.18

Notice and  
Grounds of  
Appeal

4th September,  
1958  
continued

set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the appellants further state that the name and address of the person directly affected by the appeal are those set out in paragraph 5.

2. Part of the decision of the lower Court complained of: Whole decision.

3. Grounds of Appeal:

(1) The learned trial Judge erred in law and in fact in holding that "the question as to whether time was of the essence of the contract was not raised on the pleadings and has not been argued before me and I refrain from commenting on same while dealing with this first issue" having regard to paragraph 5 of the first defendant's Statement of Defence. 10

(2) The learned trial Judge misdirected himself in holding that "I find that he (2nd defendant) also knew of the arrangement and contract of sale existing between the plaintiff and the 1st defendant. He is in my view a purchaser for value but with notice not only of the contract existing between the parties but of the fact that the plaintiff made a tender of the balance within the period required. He is not entitled to any protection in law" when there was no such evidence before him. 20 30

(3) The learned trial Judge erred in law in amending the writ by adding an additional claim which was never asked for.

(4) The learned trial Judge having found that no fraud has been proved against the 2nd defendant erred in law and in fact in holding that on the 14th February, 1957 the said 2nd defendant bought the property in dispute with notice of the plaintiff's interests. 40

(5) Judgment is against the weight of evidence.

4. Relief sought from the Federal Supreme Court of Nigeria -

That the judgment of the Court below be set aside and that the plaintiff's claim be dismissed: and for such further or other Order or relief as may in the circumstances seem meet.

In the  
Federal  
Supreme  
Court

Person directly affected by the appeal:-

No.18

Name: Hunmuani Ajoke, 20, Agoro Street, Lagos.

Notice and  
Grounds of  
Appeal

Dated this 4th day of September, 1958.

10

(Sgd) K.A. Kotun,  
Appellants' Solicitor, 6, Idoluwo  
St., Lagos.

4th September,  
1958  
continued

No.19

No.19

COURT NOTES OF HEARING

Court Notes of  
Hearing

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
ON TUESDAY THE 16TH DAY OF JANUARY, 1962  
BEFORE THEIR LORDSHIPS

16th January,  
1962.

20

SIR LIONEL BRETT  
EDGAR IGNATIUS GODFREY  
UNSWORTH, C.M.G.,  
SIR VAHE ROBERT BAIRAMIAN

FEDERAL JUSTICE  
FEDERAL JUSTICE  
FEDERAL JUSTICE

Amusa Yesufu Oba & anor. Appellants

-v-

Hunmuani Ajoke Respondent

Appeal against judgment of Western Region High Court for specific performance of sale of land etc.

K.A. Kotun for both appellants with Masha & M.A. Kotun

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D.O. Coker for respondent.

Kotun arguing appeal: Writ p. 1. Original claim only for specific performance. Further



In the  
Federal  
Supreme  
Court

claims added at p.4. Declaration that any  
purported sale void for fraud on part of 1st  
defendant, 2nd defendant joined. S/c page 4.  
S/D 6 & 8 .

No.19

G/A 2, 3 & 4.

Court Notes of  
Hearing

Judgment page 27. G/A page 41 & S/D page  
6 para.5.

16th January,  
1962.  
continued

G/A 5 weight of evidence.

Pl. page line Cf. page line  
contradictory. Again page line . Adeleye & 10  
Shadare not Adetunji. Page line Shosan.  
line .

Exhibit E1 page 73 para.2. "Since the end  
of March".

The envelope could not have contained 100 £2 Postal  
Orders. Page line .

Page 12 line 1 "Adebiyi" not "Adetunji" -  
Pl. says they found 1st defendant on fourth occasion  
of looking, witness says second.

Shadare page 16 . 20

Page line . Why did she not tender the  
balance to me?

Georgius Cole not called. I agree he did not  
speak to tender before end March.

Plaintiff & Adebiyi contradict each other.

Adebiyi did not lend money until after March.  
Page 15.

Defence evidence. Denial - page . Judge  
disbelieved.

G/A 4. Wrong to hold fraud not proved against 2nd 30  
defendant but at the same time that he bought on  
14th February with notice of pl's interest.

Even if 2nd defendant present at time of  
tender as alleged, no evidence he knew what  
property was involved.

G/A 2. Same argument.

G/A 3. Error in law in adding claim not asked for. Wrong use of discretion. Parties not given the chance of being heard.

In the  
Federal  
Supreme  
Court

New issue of fact raised - as to knowledge of second defendant. (S/C para. 8. S/D paras. 3 & 4)  
(At request of court) - Time is of the essence.  
Harold v. Ferris (1935) 2 KB 198.

No.19

Court Notes  
of Hearing

Steedman v. Drinkle (1916) 1 AC 275.

16th January,  
1962

10 We say there was never any tender made until the 9th May. 1st defendant had been served with writ in this case before conveyance to 2nd defendant.

continued

Coker for respondent:

Court - Issues appear to be. 1. date of various tenders & particularly first tender of £200, and question whether 2nd defendant was present.

2. Exhibit F - was time of the essence.  
20 3. Propriety of amendment of writ during judgment.

Coker: Tenders. Ample evidence to justify finding as to tender before 31st March.

Plaintiff page line - p. ,. In time.  
Page line - also within time. Judge relied on tender made in Adebisi's presence and referred to at page . He found Adebisi the most reliable of the witnesses - p. line .  
"After reviewing."

Adebisi's evidence read.

30 As to 2nd defendant's knowledge, apart from plaintiff and Adebisi, his own evidence at page 23 line 5 & page 23 line 23 "I waited for plaintiff's house to be put in the market." He knew of a "dispute" - must have been the dispute over payment.

Fry on Specific Performance 6th edition  
ss. 206-7.

This court should order both defendants to convey the property to the plaintiff. Case as

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against 2nd defendant is to be taken as at the date  
of the filing of the original writ.

Oyediran v. Onitiri. 26.5.53. WACA 3809.

No.19

Evidence of fraud.

Court Notes  
of Hearing

Exhibit F. - Time not of essence. S/D 1st Defendant

16th January,  
1962  
continued

Paragraph 6, page 7. Claim to have "repudiated"  
contract. If time was of essence defence would  
have been that contract was "discharged". Until  
property sold to third party, plaintiff could  
still tender money. 10

Chitty contract 21st edition page 185 -  
S.352. Time not expressly made a condition in  
Exhibit F. "at liberty to sell" means "to offer  
to sell".

Amendment of writ. Nothing improper; only to give  
effect to pleadings and evidence. High Court  
Western Region Law s. 15.

Issues on the pleadings. Both defendants  
pleaded to the S/C and no further evidence became  
necessary on amendment of writ. Fully pleaded  
that 2nd defendant knew of plaintiffs interest. 20

Court: Conveyance to 2nd defendant means 1st  
defendant has parted with legal interest.

Coker Ask court to set aside conveyance to 2nd  
defendant and order 1st defendant to convey. As to  
whether court can set aside conveyance entered into  
after writ issued, submit it can. Alternatively,  
order 2nd defendant to join in conveyance.

Kotun in reply:

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Tender, page 9 - (lines 35 & 36 counsel agree  
"2nd defendant" should read "1st defendant"). "last  
occasion" see page line seq was in company of  
Georgius Cole. Adebisi's evidence totally untrue.

Time: Bernard v. Williams 139 LT Report 24.

Amendment is only possible where proceedings  
defective. O.33 Supreme Court (Civil Procedure)  
Rules. This was a new claim.

Judge could not have made his order without amending.

Court: can this court properly order both defendants to join in conveyance, or set aside conveyance to 2nd defendant?

Kotun: court has wide powers, can make any order, but only one which court below could have made. Court below could not have ordered 2nd defendant to join in conveyance, nor could it have set aside conveyance to 1st defendant; conveyance not in existence when writ issued.

Appeal court can only alter judgment by itself amending the writ further. Submit it should not. Ambrosini v. Allen (1928) 8 NLR 24,31. Do not dictate to parties how to frame their case. In Judicial Committee 9 NLR 12, I agree that here this court has given me opportunity of dealing with the two possible forms of judgment.

Coker: on fresh authority cited. Ambrosini not an authority for Kotun's proposition. Bernard v. Williams time expressly stated as of the essence.

Judgment reserved.

(Sgd) L. Brett.  
FEDERAL JUSTICE

No.20. JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
MONDAY THE 5TH DAY OF FEBRUARY, 1962  
BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT  
EDGAR IGNATIUS GODFREY UNSWORTH  
SIR VAHE BAIRAMIAN  
FEDERAL JUSTICE  
FEDERAL JUSTICE  
FEDERAL JUSTICE  
F.S.C. 11/1961

BETWEEN:

HUNMUANI AJOKE Plaintiff/Respondent  
- and -  
AMUSA YESUFU OBA & OR. Defendants/Appellants

J U D G M E N T

This is an appeal by the defendants against BRETT, F.J.

In the  
Federal  
Supreme  
Court

No.19

Court Notes  
of Hearing

16th January,  
1962  
continued

No.20

Judgment

5th February,  
1962

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In the  
Federal  
Supreme  
Court

No.20

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the judgment of Taylor, J., as he then was, given on the 29th August, 1958 in what was at the time the Abeokuta Division of the High Court of the Western Region. For reasons arising out of the re-organisation of the Judicial Divisions the appeal has taken an unusually long time to be ready for hearing, and it may be that the same reasons account for the large number of manifest errors in the typing of the record.

5th February,  
1962  
continued

The course which the trial took in the High Court was in some respects unusual, and it will be necessary to set out the facts and the course of the proceedings at some length before coming to the issues on which the appeal turns. On the 21st January, 1957, the first defendant in the present case, Amusa Yesufu Oba, obtained judgment in the High Court of the Western Region against the present plaintiff for a declaration of title to, and possession of, a piece of land on which she had erected a building. Thereafter negotiations took place between the two and on the 14th February, 1957, they entered into a written agreement, Exhibit F, by which the first defendant agreed to sell the piece of land to the plaintiff for £300, £100 of the purchase money was paid the same day, payment being acknowledged in the agreement, and as regards the remainder the agreement provided - the balance of £200 (two hundred pounds) sterling to be paid in full on or before the 31st day of March, 1957. Otherwise the vendor shall be at liberty to sell the said property to any other intending purchaser and refund the part payment to the purchaser".

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There is a conflict of evidence as to whether the balance was tendered before the 31st March, or at all, but it is common ground that it was never both tendered and accepted, and that on the 5th April the first defendant wrote a letter to the plaintiff, Exhibit B, saying that since the balance had not been paid up to the 4th April he had taken possession of the property, and inviting her to claim the part payment of £100 from his solicitor. The plaintiff's solicitor addressed a registered letter to the first defendant on the 9th May, enclosing £200 in postal orders, but it was returned undelivered.

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On the 22nd July the plaintiff applied for a writ of summons against the first defendant, asking

for specific performance of the contract of sale, and the writ was issued on the 21st August, giving the 8th October as the return date. On the 26th September the plaintiff filed a Notice of Motion for an order to restrain the first defendant from disposing of the property. On the 9th October the first defendant appeared, and the application for an injunction was refused, but no order appears to have been made in the action itself. On the 4th November the plaintiff filed a Notice of Motion for an order allowing her to amend her writ by adding a further claim, and also permitting her to join Rufai Akinhanmi as the second defendant. The motion was granted on the 29th November, and the relief claimed then read :-

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5th February,  
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continued

"The plaintiff seeks against the defendant an order for the specific performance of the contract of sale and conveyance of land situate lying and being at No.33, Adeyimi Street, Mushin, Western Region of Nigeria, entered into by the plaintiff and defendant in February, 1957, and in respect of which the defendant had received £100 (one hundred pounds) advance but which he now purports to repudiate.

"The plaintiff also seeks against the defendant a declaration that any purported sale of the property which is the subject-matter of this action by the said defendant to any other person since 14th February, 1957, is a fraud on the part of the said defendant as against the plaintiff and therefore void and should be set aside".

It is now submitted that the writ, as amended, claims no relief against the second defendant, to whom the first defendant had conveyed the property on the 26th November, 1957, in pursuance of an agreement entered into on the 18th July, but no application was made for the second defendant to be dismissed from the suit, and he entered a defence traversing the Statement of Claim. It was alleged in the Statement of Claim that the balance of £200 had been tendered and refused both before the 31st March and at various times thereafter, that the second defendant was "one of those who intervened but he backed the first defendant in his demand for more than the £300 previously agreed on" and "further said that the first defendant had right to deprive the

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continued

plaintiff of the said property if she would not submit to the demand", and that he purported to purchase the property despite the knowledge that he had "of the intention of the first defendant to deprive the plaintiff of" the property. The last two paragraphs read:-

"8. The plaintiff will contend at the trial that the first defendant's refusal to receive the balance of £200 (two hundred pounds) and convey the said land to the plaintiff (because he wanted more than the £300 (three hundred pounds) originally agreed upon), and the second defendant's alleged purchase of same with full knowledge of the intention of the said first defendant constitute a fraud on the plaintiff by both defendants.

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"9. Wherefore the plaintiff claims as per writ of summons."

It will be observed that paragraph 8 of the Statement of Claim repeats the allegation of fraud and specifies the acts on the part of each defendant which are said to constitute fraud. It has at no time been submitted on behalf of the appellants that the acts in question did not amount to fraud and no application was made to strike out the pleading. When the case came up for trial the plaintiff gave evidence on her own behalf, of which the material parts may be summarised thus. She had not £200 available in cash, and she began by borrowing it from a friend whose name has been variously transcribed by the typist as Adeleye, Adetunji or Adebiyi but is clearly Adebiyi. She went to the first defendant's house on a number of occasions to try to find him and pay the money, but did not find him in until the fourth visit, when she was accompanied by Adebiyi and a relative named Shadare. When she did find the first defendant in, which was on a date earlier than the 31st March, she tendered the money, but the second defendant, who was also there, told her to go and find something to supplement what she had brought. The first defendant told her not to listen to the second defendant, and made an appointment to meet her at his solicitor's office the following day. She kept the appointment but the first defendant did not. Six days later she went to the first defendant's house again, and he told her to have a conveyance prepared; the second defendant was

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again present and asked her why she had not supplemented the sum of £200. She had a conveyance prepared but the first defendant refused to execute it.

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At some stage after the interview at which Adebiyi was present, the plaintiff said she gave Adebiyi his cash back, and obtained from him a document, described by him as a conveyance, on the strength of which she was able to borrow the sum of £200 from one Georgius Cole. This and the second tender may have taken place after the 31st March, 1957. Later she returned his money to Georgius Cole and borrowed £200 again from Adebiyi to provide her solicitor with funds to enable him to enclose £200 in postal orders in his letter of the 9th May.

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continued

Adebiyi gave evidence in corroboration of the plaintiff's evidence. Shadare, who was tendered for cross-examination by the plaintiff, did not corroborate her story, but the trial judge, who saw him in the witness-box, regarded him as being of poor intelligence and memory, and treated his evidence as worthless. The two defendants gave evidence denying the evidence of the plaintiff and Adebiyi, and called another witness whose evidence also the trial judge regarded as unsatisfactory.

In his judgment, the trial judge accepted the evidence of the plaintiff and Adebiyi in preference to that of the defendants, and held it proved that the sum of £200 had been tendered by the plaintiff to the first defendant before the 31st March, 1957, and that the second defendant was aware of the tender and of the plaintiff's interest in the property. He then went on to consider whether, on the pleadings, it was open to him to give the appropriate relief to the plaintiff. He came to the conclusion that fraud had not been established, but he regarded it as a proper case for the exercise of his power to amend the writ of his own motion under Order XXXIII of the Supreme Court (Civil Procedure) Rules, which were then still in force in the Western Region High Court. He therefore proceeded, without calling on counsel to address him further, to amend the second claim in the writ, as added by the order of Court of the 29th November, 1957, to read:-



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continued

"The plaintiff also seeks against the defendants a declaration that the purported sale of the property which is the subject matter of this action by the first defendant to the second defendant since the 14th February, 1957, is a fraud on the part of the said defendants as against the plaintiff and therefore void and further that it should be set aside on the grounds that the second defendant is a purchaser with notice of the plaintiff's prior interests."

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The judge then went on to give judgment setting aside the purchase of the property by the second defendant on or by the 18th July, 1957, and directing that the sum of £200 and the conveyance to the plaintiff should be brought to the registry of the court on a stated date and the conveyance executed by the first defendant. He made no reference to the conveyance from the first to the second defendant, Exhibit G, which had not been mentioned in the pleadings and was first referred to when the second defendant came to give evidence.

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It is now possible to turn to the issues involved in this appeal. The appellants say, as regards the trial judge's findings of fact, that he ought not to have found it proved that the sum of £200 was tendered at all, and that in any event there was no satisfactory evidence that a tender was made on or before the 31st March, 1957. As a corollary they submit that on the proper construction of the agreement, Exhibit F, time was of the essence of the contract and the first defendant was within his rights in rescinding the agreement. The respondent relies on the evidence of the tender made in the presence of Adebiyi, not only as showing that a tender was made before the 31st March, 1957, but as proving the second appellant's knowledge of the respondent's interest, which is a vital part of the respondent's case. Mr. Kotun, for the appellants, has drawn our attention to certain respects in which he says the evidence of the plaintiff is obscure or self-contradictory or fails to tally with that of Adebiyi; in particular he says that two witnesses disagree as to the number of times they visited the first defendant's house together. Much of his criticism dealt with the discrepancy between the names Adeleye, Adetunji and Adebiyi, which I have already described as a mere error in transcription,

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and I do not regard the other matters to which he has drawn attention as sufficient to outweigh the trial judge's considered opinion that the plaintiff and Adebisi were witnesses of truth and that the two defendants were not. There is nothing inherently improbable in the account of the prevaricating tactics adopted by the two defendants and I would uphold the trial judge's finding that the plaintiff had tendered the sum of £200 to the first defendant before the 31st March, 1957, and that the second defendant knew of her interest in the property. I would reject the suggestion that the plaintiff's evidence, even if it is accepted, does not show that the second defendant knew what property was concerned.

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This finding makes it unnecessary to decide whether, as a matter of construction, time was of the essence of the agreement, Exhibit F.

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It remains to consider first the appellant's submission that the learned judge made a wrong use of his discretion in amending the plaintiff's claim in the course of his judgment without giving the parties the opportunity of addressing him on the matter, and secondly the respondent's request, made in the course of the hearing of the appeal, that this court should vary the judgment either by setting aside the conveyance from the first to the second appellant or by directing the second appellant to join in the conveyance to the plaintiff.

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As regards the amendment made by the trial judge, Mr. Kotun's complaint was that it raised a new issue of fact, as to the knowledge of the second defendant, and he drew our attention to the judgment of the Privy Council in Ambrosini v. Tinko (1929) 9 N.L.R.8. In that case, various sets of accounts had been produced in evidence, and in the course of preparing his judgment the judge observed certain facts about them to which no reference had been made by either party in the pleadings or in the course of argument. He formed the mistaken view that these facts could have only one legal consequence, and gave effect to this view in his judgment, without allowing the parties to address him, or to call evidence to show the real consequence of these fresh facts. The Full Court upheld his view and allowed the plea to be amended, but the Privy Council held that

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5th February,  
1962  
continued

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1962

continued

he and the Full Court were wrong. It is well settled that neither party will be allowed to raise an issue which has not been pleaded and on which the full facts are not before the Court, and this decision merely recognises the existence of a similar limit to the judge's powers.

In the present case it was fully pleaded in paragraphs 6, 7 and 8 of the Statement of Claim that the second defendant know of the plaintiff's interest in the property, and of the first defendant's intention to defeat that interest, indeed the fraud alleged against the second defendant in paragraph 8 consists in purchasing the property with that knowledge. The present cash, therefore, has nothing in common with Ambrosini v. Tinko, and there is no substance in the submission that a fresh issue of fact was raised. What happened in this case was that the judge held that the facts pleaded in the Statement of Claim had been proved, and constituted a good cause of action against both defendants, but that they were wrongly described as fraud. As to that, no argument has been addressed to us, any more than it seems to have been to the trial judge; there is no doubt that in the older reported cases the Court of Chancery applied the word "fraud" to a transaction of this nature: see, for example, Willoughby v. Willoughby (1756) 1 T.R. 763. In any event, since the defendants did not take exception to the word, and were fully aware of the sense in which it was used, I would hold that it was unnecessary to amend the writ, and that the relief asked for could have been given on the writ as it stood after it had been first amended. 10 20 30

If this is the correct view, it is perhaps unnecessary to consider the submission that the judge ought not to have amended the writ without allowing the parties to address him on the proposed amendment. For reasons which must already be plain, I should not have held, in the present case, that the defendants had suffered any actual prejudice from the course which was followed, but the decision in Ambrosini v. Tinko illustrates the dangers of such a course and, with respect, I think prudence requires that it should be an invariable rule of practise for the judge to invite the parties to address him before he amends the writ or pleadings of his own motion. 40

10 Finally there is the question whether this Court should vary the order made by the trial judge. This is a case in which we ought to make such a variation as may be necessary to avoid a multiplicity of proceedings and make the judgment effective, so far as that can be done without injustice, and Mr. Kotun was unable to advance anything to show that injustice would result to the second appellant if he were ordered to join in conveying the property to the respondent. There is power to order a purchaser in the position of the second appellant to join in the conveyance: see Potter v. Sanders (1846) 6 Hare, 1, and the relief sought in the writ is wide enough to cover such an order. I would vary the judgment accordingly, with a provision that the High Court should have power to give any further directions necessary for enforcing the judgment as varied. The exact terms of the order of this Court should be settled in chambers after consultation with counsel on both sides. The respondent should have costs which I would assess at 31 guineas.

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(Sgd) L. Brett  
FEDERAL JUSTICE

I concur

(Sgd) E. Unsworth  
FEDERAL JUSTICE

Unsworth F.J.

I concur

30 (Sgd) Vahe Bairamian  
FEDERAL JUSTICE

Bairamian F.J.

Mr. K.A. Kotun (A.O. Masha and M.A. Kotun with him) for Appellants.

Mr. D.O. Coker for Respondent.

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In the  
Federal  
Supreme  
Court

No.20

Judgment

5th February,  
1962  
continued

In the  
Federal  
Supreme  
Court

No.21

ORDER

No.21

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

Order

Suit No. AB/106/57  
F.S.C. 11/1961

5th February,  
1962

On appeal from the judgment of the High  
Court of Ikeja Judicial Division.

Between:

- |                |    |                  |                |    |
|----------------|----|------------------|----------------|----|
|                | 1. | Amusa Yesufu Oba |                | 10 |
|                | 2. | Rufai Akinhanmi  | ... Appellants |    |
| (Sgd) L. Brett |    | - and -          |                |    |
| FEDERAL        |    | Hunnuani Ajoke   | ... Respondent |    |
| JUSTICE        |    |                  |                |    |
| (PRESIDING)    |    |                  |                |    |

Monday the 5th day of February, 1962.

UPON READING the Record of Appeal and after hearing Mr. K.A. Kotun (Messrs. A.C. Masha and M.A. Kotun with him) of counsel for the Appellants and Mr. D.O. Coker of counsel for the Respondent IT IS ORDERED that

1. This appeal be dismissed 20
2. The judgment of the Court below be varied so that the second appellant shall be ordered to join in conveying the property to the respondent, for which purpose the parties shall attend at the Registry of the High Court of the Western Region at Ikeja on Saturday the 14th day of April, 1962, between the hours of 10 and 11 a.m., and in the presence of the Registrar of the said Court the sum of £200 now in the custody of the said Registrar shall 30 be handed to the first Respondent and a conveyance of the property from the two appellants to the respondent shall be handed to the two appellants who shall execute the same and deliver the same to the respondent in the presence of the said Registrar.
3. The High Court shall have power to give any

further directions necessary for enforcing the judgment as varied.

- 4. The appellants shall pay to the Respondent the costs of this appeal assessed at 31 guineas.

(Sgd) S.A. Samuel  
AG. CHIEF REGISTRAR

In the  
Federal  
Supreme  
Court

No.21

Order

5th February,  
1962  
continued

No.22

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER  
MAJESTY IN COUNCIL

No.22

Order granting  
Final Leave  
to Appeal to  
Her Majesty in  
Council.

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

Suit No.AB/106/1957  
FSC. 11/1961

25th June, 1962

Application for an order for final  
leave to appeal to the Privy Council.

Between:

- 1. Amusa Yesufu Oba )
- 2. Rufai Akinhanmi ) ... Appellants

- and -

Hunmuani Ajoke Respondent

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

Monday the 25th day of June, 1962.

UPON READING the Application herein and the affidavit of the Appellants sworn to on the 5th day of June, 1962, and after hearing Mr. K.A. Kotun of counsel for the Appellants and Mr. E.A. Peter Thomas (holding Mr. D.O. Coker's brief) of counsel for the Respondent:

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

(Sgd) J.A. Adefarasin  
CHIEF REGISTRAR.

EXHIBITS

EXHIBITS

Defendant's

"H". STATEMENT OF CLAIM IN SUIT AB/106/57

"H"

Statement of  
Claim in Suit  
AB/106/57.

IN THE HIGH COURT OF JUSTICE  
IN THE HIGH COURT OF WESTERN REGION OF NIGERIA  
ABEOKUTA JUDICIAL DIVISION  
(SITTING AT IKEJA)

March, 1956

Suit No. AB/10/55.

Amusa Yesufu Oba ... Plaintiff

- and -

Hunmuani Ajoke ... Defendant

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STATEMENT OF CLAIM

1. The land which is the subject matter of this suit, is situated at Adeyemi Street, Mushin and is described and edged Green in the Plan accompanying this Statement of Claim.

2. The Plaintiff avers that this land is portion of the land bought at a Public Auction conducted by E. Ayo Kembi, Licensed Auctioneer, on the 10th day of January, 1926, by one Raji Olanipekun, who had since he purchased entered into possession thereon exercising all rights of ownership and all acts of possession thereon without any disturbance or hindrance from or by anyone continuously. 20

3. The plaintiff avers that the said E. Ayo Kembi sold under and by virtue of instructions received from the Mortgagees, that is to say, the late Michael Daniel Elliott and his representatives.

4. The plaintiff avers that on the 23rd day of January, 1954 the said Raji Olanipekun sold the said land portion whereof is in dispute in this suit as aforesaid to him and conveyed the same by a Deed of conveyance dated the 4th day of May, 1955 and registered as No. 68 at Page 68 in Volume 11 of the Register of Deeds kept in the 30

Lands Registry in the office at Lagos.

5. The plaintiff avers that he and his predecessors in title have been in undisturbed and continuous possession and ownership of the said land until the act of trespass by the defendant were discovered.

6. The plaintiff avers that in or about the year 1955 defendant wrongfully entered into the said land and claimed the same to be her own.

10 7. On the 18th of July, 1955, the plaintiff did through his Solicitor write to the defendant a letter asking her to desist from further acts of trespass on the said land, but the defendant despite this still persists in the said acts of trespass and threatens to continue so to do if not restrained by this Court.

8. The defendant has no right, title or interest in or to the said land.

Whereupon the plaintiff claims

- 20 (a) £50 damages for trespass on the said land;
- (b) An Injunction restraining the defendant from any further act of trespass
- (c) Declaration that he is the owner in fee simple of the said land; and
- (d) Possession of the said land.

Dated this            day of March, 1956.

(Sgd)    K.A. KOTUN,  
          PLAINTIFF'S SOLICITOR.

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EXHIBITS

Defendant's

"H"

Statement of  
Claim in Suit  
AB/106/57.

March, 1956

continued



EXHIBITS

"H2"

Plaintiff's

DEFENCE IN SUIT AB/106/57.

"H2."

Defence in  
Suit AB/106/57

4th August, 1956

IN THE HIGH COURT OF WESTERN REGION OF NIGERIA  
ABEOKUTA JUDICIAL DIVISION  
(SITTING AT IKEJA)

Suit No. AB/10/55.

Between:

Amusa Yesufu Oba                      Plaintiff

- and -

Hunmuani Ajoke                      Defendant

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STATEMENT OF DEFENCE.

1. Save and except as is hereinafter expressly admitted, the defendant denies each and every statement of fact in the Statement of Claim as if the same were set out seriatim and specifically traversed.

2. The defendant does not deny or admit paragraph I of the Statement of Claim, but says that when she bought the land in dispute in 1945 there was only one street in the district where the land is situated and that was Kosobameji Road, Ojuwoye, Mushin, which remains to this day, on which stands the land, and in reference to which it is being described. 20

3. The defendant avers in reply to paragraph 2 of the Statement of Claim that she is not in a position to deny or admit that the land was sold and bought at a public auction, but denies that neither the plaintiff nor his predecessor in title was ever in possession, and puts the plaintiff to strict proof of this. 30

4. The defendant avers that she is not in a position to deny or admit paragraphs 3 and 4 of the Statement of Claim.

5. The defendant denies paragraphs 5, 6 and 8 of the Statement of Claim and puts the

plaintiff to strict proof of them.

EXHIBITS

6. The defendant in answer to paragraph 7 of the Statement of Claim admits receiving a letter from the plaintiff's Solicitor, but denies having committed any acts of trespass and avers that the land in dispute belongs to her in fee simple.

Plaintiff's

"H2."

Defence in  
Suit AB/106/57

7. The defendant avers that one W.A. Dawodu, deceased was the original owner of a large tract of land at Ojuwoye, Mushin, part of which is the subject-matter of this Suit.

4th August, 1956

continued

8. The said W.A. Dawodu mortgaged his land to some persons, who in exercise of their power as mortgagees, sold it by plots at public auction conducted by one Ezekiel Ayo Kembi, licensed auctioneer, on their instructions.

9. The defendant avers that at the said public auction, one Jinadu Jenlegbe Shongodiya, her predecessor in title, bought in 1925 five plots, Nos. 87, 88, 89, 90 and 91 and was issued with a receipt by the said auctioneer dated 27th of July, 1925. This receipt was lost by Shongodiya's Solicitor, the late Jenkins Harrison, Esq. and another one was issued by the same auctioneer to replace it.

10. The defendant avers that the said Shongodiya has no conveyance executed to him by the mortgagees, but possesses a Statutory Declaration of Title in respect of the five plots.

11. The defendant avers that she bought part of plot 91 in 1945 from the said Shongodiya by private treaty, and on her instruction she was issued with a receipt in the name of her granddaughter Aolatu Adeyinka Agbeke, aged 14, to whom she intended to make a gift of the land.

12. The defendant avers that on her instruction, Shongodiya conveyed the land to her granddaughter, the said Aolatu by a deed of conveyance dated 10th of May, 1945 and registered as No.103 at page 103 in Vol. 667 of the Register of Decds kept in the Lands Registry at Lagos.

13. The defendant avers that she has since 1945

EXHIBITS

Plaintiff's

"H2."

Defence in  
Suit AB/106/57  
4th August, 1956

continued

entered into possession of the land, built a house containing ten rooms thereon, admitted tenants therein, and has been collecting rent on it without interruption to this day, thus exercising acts and rights of ownership thereon without disturbance or hindrance from anyone.

14. The defendant avers that the said Shongodiya in Suit No.105/1948 in the Supreme Court at Lagos, on the 27th of April, 1949 obtained judgment for declaration of title in fee simple to the aforementioned plots 87, 88, 89, 90 and part of 91, against (1) S.A. Fasanya, (2) L. Sanni Ajenifuja, (3) Adamo Akinwunmi, (4) Odewale Bada and (5) Disu Adebiyi, the last four defendants representing the Ojomo-Esha family. 10

15. The defendant avers that again in 1950, her said predecessor in title obtained another judgment in respect of the same plots against one Amudalatu Akanke for trespass in the Supreme Court, Lagos, in Suit 358/1950. 20

16. The defendant avers that she is the owner of the land in fee simple.

17. The defendant pleads estoppel, laches, acquiescence, and standing-by on the part of the plaintiff, and his predecessor in title.

18. The defendant will contend that the action of the plaintiff is frivolous, vexatious and speculative, and should be dismissed with substantial costs. 30

Dated this 4th day of August, 1956.

(Sgd) T.A. Makanju,  
Defendants Solicitor.

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"A"

EXHIBITSJUDGMENT IN SUIT No. AB/106/57

Plaintiff's

IN THE HIGH COURT OF JUSTICE  
WESTERN REGION OF NIGERIA  
IN THE HIGH COURT OF THE ABEOKUTA JUDICIAL DIVISION  
HOLDEN AT IKEJA  
BEFORE THE HONOURABLE MR. JUSTICE JOHN IDOWU CONRAD  
TAYLOR, JUDGE.

"A"  
Judgment in  
Suit No. AB/  
106/57

MONDAY THE 21ST DAY OF JANUARY, 1957.

21st January,  
1957

10

Suit No. AB/10/55.

Amusa Yesufu Oba ... Plaintiff

versus

Hunmuani Ajoke ... Defendant

Appearances: For Plaintiff: Nil.

For Defendant: Solanke for Makanju

J U D G M E N T

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The plaintiff originally claimed the sum of £50 being general and special damages for trespass committed by the defendant on the plaintiff's land on the 23rd July, 1955 and an injunction restraining the defendant from further acts of trespass. On the 20th July, 1956 an application came before this Court for an amendment of the Writ of Summons by adding a declaration of title in fee simple and also possession of the land in dispute. An order was made in terms of the motion.

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On the filing of pleadings it appeared both from the statement of claim and statement of defence that both contestants admit that their respective title was derived from a sale made by one E. Ayo Kembi, an auctioneer instructed by the executors of the estate of the late Michael Daniel Elliott, who was before his death the mortgagee of the property in dispute. The plaintiff by virtue of his paragraph 2 of the statement of claim avers that on the 10th January, 1926 one Raji Olanipekun bought the property in dispute and sold it to him on the 23rd January,

EXHIBITS

Plaintiff's

"A"

Judgment in  
Suit No. AB/  
106/57

21st January,  
1957

continued

1954 and executed a conveyance to him dated the 4th May, 1955 duly registered. By the defence it transpired that the defendant was not in fact the person claiming to be vested with the legal title to the land, for by paragraphs 11 and 12 of the statement of defence she avers that she bought the land for and conveyed it to her grand-daughter by name Aolatu Adeyinka Agbeke. As a result an application was brought seeking an order that Aolatu Adeyinka Agbeke be joined as co-defendant. An order was made on the 21st November, 1956 joining the said applicant after which she filed a statement of defence on the 5th of December, 1956 on much the same lines as the 1st defendant averring title or purchase through Jinadu Jenlegbe Shongodiya who bought 5 plots Nos. 87 to 91 inclusive in 1925. The land was purchased by the 1st defendant for the 2nd defendant in 1945.

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When the case was called both Counsels tendered documents of title in evidence by consent which were marked as exhibits "A" to "E" and further stated that they only intended to call one witness who was the auctioneer Mr. Kembi as the allegation is that he sold to the predecessor-in-title of both parties. After these statements of Counsels at the Bar, Mr. Kembi the auctioneer was called and gave his evidence after which Mr. Kotun proceeded to call his other witnesses in proof of his case oblivious of his former statement to the Court. Turning to the plaintiff's case I will say right at the outset that it was just as well that Counsel did not adhere to his former statement to the Court though I must not be misunderstood as in any way sanctioning or encouraging Counsels making a statement at the Bar and not adhering to it, for I can place no reliance on the evidence of the auctioneer as to whom he sold the plot in dispute for this reason: that as far as Olanipekun is concerned the auctioneer cannot remember if he sold to him unless the receipt is produced and the evidence led was that this receipt was lost by the plaintiff as will later appear in this judgment. As far as Shongodiya is concerned the evidence of Kembi and that of Shongodiya contradict themselves on a very important particular in that Kembi stated that he had previously issued a receipt for the 5 plots bought by Shongodiya in 1925 but the receipt was lost. Further that his own account book, receipt books and all records

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of the sales kept by him at the back of the house of one Karimu Kotun were burnt in or about 1932. As a result of this the purchasers of the plots including Shongodiya later came for fresh receipts. That from certain recordings alleged to have been made by one Mr. Duffin a Clerk to Shogbesan he was able to satisfy himself as to who were the actual purchasers and as a result he issued a second receipt. That was his explanation for the receipt exhibit "D" being dated the 25th July, 1932. This is supported by paragraphs 9 of the Statement of Defence of the 1st defendant and 8 of the defence of the 2nd defendant. But Shongodiya himself did not support this for he stated as follows:-

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"In 1925 I bought some plots of land from "Kembi. I bought 5 plots. I do not know the number of the plots. I bought the plots for £2.10/- each. I was given a receipt when I bought. Nothing happened to my receipt ..... I received a receipt from Kembi similar to exhibit "D", when I bought the land this receipt was issued to me. This was a long time ago"

It is important to note that by exhibit "D" the purchase price of 5 plots was £10 at £2 a plot and not £2.10/- and secondly the date is not 1925 but 1932. Shongodiya gave no explanation as to this variance.

Again I cannot rely on Kembi's evidence for this further reason that all his records of sales alleged to have been made by him in 1925 were burnt in 1932 and from then on he relied on documents made not originally by himself but copied by him from entries made by other persons who were never present at the sales. I reject the evidence of this witness in its entirety.

The plaintiff himself gave evidence as to his purchase and tendered this conveyance exhibit "A". After purchase he went on the land and met tenants there and it was then that he learnt of the claim of the defendant for they told him that they were paying rent to her. That was in 1955. He gave evidence as to the land in dispute. Being at Adeyemi Street and stated that Kosobameji road was far from the land in dispute and was not within Dawodu's allotment. He tendered exhibit "C" a letter written by his solicitor on the 18th July,

EXHIBITS

Plaintiff's

"A"

Judgment in  
Suit No.AB/  
106/57

21st January,  
1957

continued

EXHIBITS

Plaintiff's

"A"

Judgment in  
Suit No. AB/  
106/57

21st January,  
1957

1955 to the defendant complaining of the trespass to the property in dispute. He also tendered exhibit "H" his receipt of the 23rd January, 1954 from Raji Olanipekun and said that Raji Olanipekun was not resident in the Gold Coast. Under cross-examination he said that he saw the receipt of Olanipekun and that it was signed by Kembi. He further said that the receipt was stolen from him and he tendered exhibits "J" & "J1" showing the adverts he inserted in the daily papers when they were lost. I found this witness a reliable witness and have no hesitation in accepting his evidence.

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continued

Though strictly speaking the 1st defendant was divested herself of all interest to the second defendant, I propose to take their case together for their interest is bound together and though the case against the 1st defendant on the issue of title must be dismissed there is evidence of possession by her through tenants who pay to her. She therefore has a case to answer on the second part of the claim for possession, for Mr. Kotun later abandoned all his other claims with the exception of these two claims. The 1st defendant opened the case and from her evidence I formed the impression that she either did not know which land was purchased by her or was trying to deceive the Court as to the whereabouts of same. She stated that she knows her land at Kosobameji Road Mushin and that she bought it for £30 from Shongodiya. She then said that the land faces Kosobameji Road and is near Adeyemi Street but does not abut on either of them. Looking at Exhibits "A" & "F" it is quite clear that the plots 90 and 91 do abut on Adeyemi Street. She testified to the erection of a building by her on the land about a year ago and the purchase of the land for her granddaughter and she further stated that the church on Exhibit "A" is far from her land. I did not form a favourable impression of this witness. She contradicted herself on some material points, the most important of which was as to the situation of the land in relation to Adeyemi Street and Kosobameji Road and the Church referred to.

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Next came Jinadu Shongodiya whose evidence I have partly dealt with, but he also stated that he did not know Kosobameji road and yet the land conveyed by him to the defendant and the conveyance executed by him before a Magistrate after having

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been duly read over and interpreted to him is described as:-

"a portion of plot No.91 of a piece or " "parcel of land situate lying and being at" "Kosobameji Road Ojuwoye Mushin."

EXHIBITS

Plaintiff's

"A"

Judgment in  
Suit No.AB/  
106/57

21st January,  
1957

continued

10 This same description appears on the receipt dated the 22nd February, 1945 issued on behalf of Jinadu Shongodiya to the 2nd defendant. The next witness called was the surveyor Henry Ajayi Thompson who surveyed land both for Shongodiya and for the defendant. He stated that exhibit "F" was an improved copy of the plan L.D.2 which was never produced. He said that at the time he made his survey for the defendant there were no streets and this was in 1945. This witness in spite of his being asked to survey land for the defendant and for Shongodiya and in spite of the fact that he must or should have seen the receipt which described the land sold said that he did  
20 not know Kosobameji Street and said that the land in dispute was flanked by Martin Street and Adeyemi Street. Exhibit "F" shows that he was wrong for Martin Street is far away from the land in dispute. The statement that the whole thing was in a muddle correctly sums up his evidence and the evidence led by the defendant as to the area purchased by her. He contradicted himself in cross-examination and re-examination when taken  
30 together and I regret to say that I can find little or no assistance from the evidence of this surveyor.

40 The last witness called by the defence was a tenant of the defendant on the land in dispute and he was an interested party. He contradicted the surveyor when he said that as far back as 1945 Adeyemi Street was in existence for he lived at 1, Adeyemi Street: I preferred to believe his evidence on this matter to that of the surveyor. The main reason for calling this witness was to show that there was a Kosobameji Road originally but that since 1948 part of the road called Kosobameji Road is now called Akintan Road and that an entirely new road is now named Kosobamiji Road. Before I can accept evidence of this nature and more so after the conflicting evidence given by the other parties in this respect coupled with the documentary exhibit "F" and the interest of this witness already stated by me, I would



EXHIBITS

Plaintiff's

"A"Judgment in  
Suit No. AB/  
106/57

require it to come from the particular constituted authority vested with the necessary powers for numbering and naming of streets and roads, unless there was satisfactory evidence as to why this evidence could not be produced. This was not forthcoming and I reject it. This witness also contradicted the defendant as to the length of time the house erected by the defendant has been in existence. I prefer to believe the evidence of the defendant in this respect.

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21st January,  
1957

continued

At the close of the case for the defence Mr. Kotun Counsel for the plaintiff while addressing me abandoned his claim for damages for trespass and injunction and now claims only for the declaration of title and recovery of possession. Viewing the evidence as a whole the plaintiff on whom the onus rests has satisfied me on the following points:-

1. That by virtue of exhibits "A" and "B" he purchased plots 90 and 91 of Dawodu's allotment and same has been duly conveyed to him for valuable consideration. 20
2. That the land purchased by him is at Adeyemi Street and that the purchase was dated the 23rd January, 1954.
3. I am satisfied that by virtue of exhibits "J" and "J1" he originally had the receipts issued by Kembu to Olanipekun on the 10th January, 1926 but it was lost.
4. He went on the land after purchase and in fact the defendant was warned of her trespass. 30
5. By exhibit "F" I am satisfied that these plots situate at Adeyemi Street are within Dawodu's allotment.

The plaintiff having shown and proved title, one looks for but can find no better title in the defendant, for from the start she has been dogged by her inability to produce satisfactory evidence that the land bought by her at Kosobameji Road and conveyed to her as such is the same as the land at Adeyemi Street. There was not one witness called by her on whom I could place any reliance. Then there is her failure to give any satisfactory explanation as to why there was no conveyance of the

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legal estate from either Kembu if he has authority to do so or the executors or executrix of the estate of Elliott to Shongodiya. Instead of Shongodiya obtaining a conveyance of the land to himself with a declaration of ownership made on the 10th April, 1952.

EXHIBITS  
Plaintiff's

"A"

Judgment in  
Suit No. AB/  
106/57

21st January,  
1957

continued

10 Throughout I am aware that the defendant claims only a portion of plots No.91 and the plaintiff's claim is as to plots 90 and 91. I am satisfied that he has proved his title to these plots and I therefore grant him a declaration of title against the 2nd defendant for there has been no standing by or laches on his part or that of his predecessor in title to warrant my preferring the defendant to him, there being no evidence led by the defendant or Shongodiya of any physical act of possession or exercise of ownership over the land before the erection of the building which according to the defendant was done a year  
20 ago. Again though the defendant relied on judgments as contained in paragraphs 13 and 14 of the statement of defence, no evidence oral or otherwise has been led in proof of same. As for the case against the 1st defendant on this issue I dismiss the case against her in so far as she had divested herself of all interest in the land to the 2nd defendant.

30 On the claim for possession and on the evidence that the 1st defendant received warning from the plaintiff's Counsel coupled with my finding that the plaintiff is not guilty of laches or acquiescence or standing by, the plaintiff must also succeed in this claim against both defendants in so far as the act of the 1st defendant is that of the 2nd defendant the owner.

40 The judgment of this Court is that a declaration of title is hereby granted to the plaintiff of all that piece or parcel of land contained in the plan shown in exhibit "A" and possession. The date on which possession is to be given presents a little difficulty in so far as the defendants do not reside on the premises and the number of the tenants on same has not been given in evidence. The defendants are however in possession through their tenants. The tenants are not before me as parties to this action and the order is against the 1st and 2nd defendants to give up possession on or within 3 months from the date of this judgment. Taking all the circumstances into

EXHIBITS

Plaintiff's

"A"

Judgment in  
Suit No. AB/  
106/57

account including the success by the 1st defendant in the claim for declaration of title and the abandonment by the plaintiff of part of his case I award as against the defendants the sum of only 25 Guineas costs.

(Sgd) J.I.C. TAYLOR,  
JUDGE.  
21/1/57.

21st January,  
1957

continued

"F"

Agreement  
1st Defendant  
and Plaintiff

14th February,  
1957

"F"

AGREEMENT 1st DEFENDANT AND  
PLAINTIFF.

10

A G R E E M E N T

THIS AGREEMENT made this 14th day of February 1957 between AMUSA YESUFU OBA of 24, Martins Street, Mushin, (hereinafter called the Vendor) of the one part and Hunmuani Ajoke of 20, Agoro Street, Lagos (hereinafter called the Purchaser) of the other part Witnesseth that the Vendor has agreed to sell and the Purchaser has agreed to buy the property at No. 7 now changed to 33, Adeyemi Street, Mushin, the subject matter of Suit No. AB/10/1955 Amusa Yesufu Oba versus Hunmuani Ajoke for the sum of £300 (three hundred pounds) sterling, out of which sum the Purchaser has this day paid the Vendor the sum of £100 (one hundred pounds) sterling in part payment of the purchase price (the receipt whereof the Vendor hereby acknowledges) and the balance of £200 (two hundred pounds) sterling to be paid in full on or before the 31st day of March, 1957.

20

Otherwise the Vendor shall be at liberty to sell the said property to any other intending Purchaser and refund the part payment to the Purchaser.

30

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

Signed by the said Vendor  
Amusa Yesufu Oba in the  
presence of :-

(Sgd) Amusa Y. Oba

(Sgd) S. Kotun, 6, Idoluwo St., Lagos

(Sgd) E. Shadare, 118, Alakoro St., Lagos.

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Signed by the said Purchaser Hunmuani Ajoke the foregoing having been first read over and interpreted to her in the Yoruba language by me:

EXHIBITS  
Plaintiff's

"F"

Agreement  
1st Defendant  
and Plaintiff

14th February,  
1957

continued

10 S. Kotun when she appeared perfectly to understand the (Sgd) H. Ajoke, same before making her mark thereto in the presence of:- (Sgd) E.O. Shadare, 118, Alakoro, Marina, Lagos.

The within instrument is in the opinion of the Commissioners of Stamp duties chargeable with a duty of One Shilling - (1/-) and the duty thereon has been assessed accordingly.

(Sgd) ? ? ? , 2/3/57.

COMMISSIONER OF STAMP DUTIES.

Dated this 14th day of February, 1957.

20 Agreement Between:

AMUSA YESUFU OBA

and

HUNMUANI AJOKE

AGREEMENT re Property at No. 7, now 33, Adeyemi Street, Mushin.

(Sgd) K.A. Kotun,  
Solicitor &c., 6, Idoluwo Street, Lagos.

"B"

Plaintiff's

LETTER 1st DEFENDANT TO PLAINTIFF

"B"

30 24, Martins Street,  
Mushin  
5th April, 1957.

Letter  
1st Defendant  
to Plaintiff

5th April, 1957.

Madam Hunmuani Ajoke,  
20, Agoro Street,  
Lagos.

Dear Madam,

Suit No. AB/10/1955

With reference to the Agreement between us

EXHIBITS

Plaintiff's

"B"

Letter  
1st Defendant  
to Plaintiff

5th April, 1957  
continued

dated the 14th day of February, 1957, in regard to the property at 33, Adeyemi Street, Mushin. I need not call your attention to the fact that the sum of £200 is due from you payable in full on or before the 31st day of March, 1957, as this money was not paid up to the 4th of April, 1957, I was compelled to return your part payment of £100 to Mr. A.K. Kotun, Barrister-at-Law, from whom I am asking you to claim it, and to inform you that I have taken possession of the property No. 33, Adeyemi Street, Mushin.

10

Yours faithfully,

(Sgd) Amusa Y. Oba.  
Amusa Yesufu Oba.

Plaintiff's

"C"

Receipt  
1st Defendant's  
Solicitor to  
Plaintiff

9th February,  
1957.

"C"

RECEIPT 1st DEFENDANT'S SOLICITOR TO PLAINTIFF

K. AREMU KOTUN B.L., F.R.G.S.  
Solicitor and Advocate

No.33.

9th February, 1957.

Received from Madam Hunmuani Ajoke the sum of One hundred Pounds -- Shillings and ---pence Being payment in account re-7, Adeyemi Street, Mushin.

20

£100:--:--:

With thanks

(Sgd) K.A. KOTUN,  
Solicitor for claimant.

Plaintiff's

"D"

Postal  
Registration  
Certificate

5th April, 1957

"D"

POSTAL REGISTRATION CERTIFICATE.

Regn. No. 1/740 Certificate of Posting of a Registered Postal Packet. A postal packet addressed as under, upon which a Fee of fourpence has been paid, in addition to the postage of 2d has been registered and posted here this day:- (5th April, 1957).  
Madam Hunmuani Ajoke,  
20, Agoro Street, Lagos.

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Accepting Officer's Signature  
(or initials)

? ? ? ?

EXHIBITS

"E"

Plaintiff's

POSTAL REGISTRATION CERTIFICATE

"E"

Pmrs. 8

Postal  
Registration  
Certificate

Regn. No.3829 Certificate of Posting of a Registered Postal Packet. A postal packet addressed as under, upon which a Fee of fourpence has been paid, in addition to the postage of 8d has been registered and posted here this day:- 9th May, 1957

9th May, 1957.

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Amusa. Y. Oba,  
MUSHIN.

Accepting Officer's Signature  
(or initials)                   ?   ?   ?

Plaintiff's

"E.1"

"E.1."

LETTER, PLAINTIFF'S SOLICITOR TO 1st DEFENDANT

Letter,  
Plaintiff's  
Solicitor to 1st  
Defendant

Olujide Somolu  
BARRISTER-AT-LAW.

SOLICITOR & ADVICATE OF THE SUPREME COURT OF  
NIGERIA

9th May, 1957

20 Phone 44567

68, Strachan Street,  
Ebute-Metta, Nigeria.

9th May, 1957.

Mr. Amusa Yesufu Oba,  
24, Martins Street,  
Mushin.

In Re Suit No. AB/10/55  
Amusa Yesufu Oba vs. Hunmuani Ajoke:

Sir,

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I have instructions from Madam Hunmuani Ajoke, the defendant in the above matter, to forward to you the balance of £200 (two hundred pounds sterling), which herewith please find in British Postal Orders, as the value of the land which you agreed to sell to the said defendant after winning the case of declaration of

EXHIBITS  
Plaintiff's

"E.1."

Letter  
Plaintiff's  
Solicitor to  
1st Defendant

9th May, 1957

continued

title against her. You Solicitor issued receipt for the part-payment of £100 (one hundred pounds sterling) on 9th February, 1957.

2. Since the end of March, my client had offered this balance to you through various means, but it appears that owing to some hidden motive of yours you have evaded taking the said balance, and on 5th April, 1957, you wrote a letter to my client purporting to repudiate your agreement and threatening taking possession of the property. I must warn you that this trick will not pay you any dividend, except and unless you intend to cause a serious breach of the peace and/or face the legal music. You cannot eat your cake and have it. Even if you return this money, while you still hold the £100, the result will be legal action to compel you to accept it and execute a conveyance in respect of the land in favour of the poor woman.

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3. I would ask you to see reason, make out a receipt for the balance of £200 now sent, and name a date and time when you shall execute the said conveyance which is now ready. Your early attention will be appreciated.

20

Yours faithfully,  
(Sgd) Olujide Somolu,  
Solicitor to Hunmuani Ajoke.

Defendant's

"G"

Conveyance  
1st Defendant  
to  
2nd Defendant  
26th November,  
1957.

"G"

CONVEYANCE - 1st DEFENDANT to 2nd DEFENDANT

THIS INDENTURE made the 26th day of November, 1957. BETWEEN ALHADJI AMUSA YESUFU OBA of No.33, Martins Street, Mushin Western Region of Nigeria, Gentleman (hereinafter called the Vendor) of the one part and RUFAT AKINHANMI of No.9A, Akinola Street, Mushin Western Region of Nigeria, Loco Department Nigeria Railway Corporation, (hereinafter called the Purchaser) of the other part.

30

WHEREAS by virtue of a Deed of Conveyance dated the 4th day of May, 1955, and registered as No.68 in Volume 11 of the Lands Registry Lagos and made between ELLEN SULOLA KING as the

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surviving Executrix and Trustee of late M.D. ELLIOT deceased in the first part RAJI OLAONIKEKUN in the second part and the Vendor on the third part the vendor is seised fee simple of the hereditaments which are hereinafter described and expressed or intended to hereby assured And Whereas by events which happened in law before and after in Suit No. AB/10/55 Judgment was given on the 21st day of January, 1957 by Honourable Mr. Justice JOHN IDOWU CONRAD TAYLOR as follows: ". . . . . a declaration of title is hereby granted to the Plaintiff . . . . ." the Vendor herein is entitled as the Owner of the said hereditaments And Whereas the Vendor by virtue of the aforesaid deed of Conveyance and also the aforesaid judgment of the aforesaid High Court of Abeokuta Judicial division hath agreed by private treaty with the Purchaser for the absolute sale unto him of the said hereditaments for a like estate of inheritance at the price or sum of £2,000 (Two thousand Pounds Sterling) (vide receipt of purchase dated the 15th day of July, 1957) NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of £2,000 (Two thousand Pounds sterling) paid by the said Purchaser to the said vendor (the receipt whereof the said vendor hereby acknowledged) he the said vendor as Beneficial Owner do hereby grants and conveys UNTO the said Purchaser his heirs, Executors Administrators and assigns in fee simple forever ALL that piece or parcel of land situate lying and being at Adeyemi Street, Mushin with the Buildings thereon Western Region of Nigeria aforesaid and which is more particularly described and delineated with its dimensions and abuttals is more particularly described and delineated in the plan attached to the above-recited Indenture registered as No.68 at Page 68 in Volume 11 and therein Edged "RED" (shown as Plot Nos. 90 and 91 which is 100 feet by 100 feet more or less together with all rights easements and things appurtenant or reputed as appurtenant thereto TO HAVE and TO HOLD the same UNTO and TO the USE of the said purchaser his heirs Executors Administrators and assigns in fee simple for ever free from all incumbrances.

EXHIBITS  
Defendant's  
 "G"  
 Conveyance  
 1st Defendant  
 to  
 2nd Defendant  
 -----  
 26th November,  
 1957.  
 continued

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IN WITNESS whereof the Vendor hereto have hereunto set his hand and seal the day and year



EXHIBITS

first above-written.

Defendant's

"G"

Signed sealed and Delivered by )  
the within-named (Vendor) ) (Sgd) A.Y. OBA  
ALHADJI AMUSA YESUFU OBA in )  
the presence of :-

Conveyance  
1st Defendant  
to  
2nd Defendant

Victor E. Craig,  
Law Clerk,  
13, Ogungbaiye Street,  
MUSHIN.

26th November,  
1957.

DATED THE 26TH DAY OF NOVEMBER, 1957.

10

continued  
Indorsement.

ALHADJI AMUSA YESUFU OBA  
TO  
RUFAI AKINHANMI

CONVEYANCE of all that piece or parcel of land  
together with the Buildings thereon situate at  
Adeyemi Street, Mushin, Western Region of  
Nigeria Shown at Plot Nos. 90 & 91 in W.A.  
Dawodu's Allotment.

(Sgd) E.A. ? ? ?  
Barrister-at-Law,  
No.123, Bangbose Street, Lagos, Nigeria.

20

Stamp  
Assessment

The within instrument is in the opinion  
of the Commissioners of Stamp Duties chargeable  
with a Duty of Twenty pounds (£20) and the duty  
thereon has been assessed accordingly.  
(Sgd) ? ? ? , 27/11/57.  
COMMISSIONER OF STAMP DUTIES.

Registration

RGR.No.039327 of 2/1/58 for £1.10/-  
INSTRUMENT WAS DELIVERED TO ME FOR REGISTRATION  
BY: V.E. CRAIG ESQ., OF 13, Ogungbaiye Street,  
Mushin AT 12.30 O'CLOCK IN THE AFTERNOON THIS  
2ND DAY OF JANUARY, 1958. (Sgd) ? ? ?  
Assistant Registrar.  
Registrar of Deeds, Western  
Region of Nigeria, Ibadan.

30

THIS INSTRUMENT IS REGISTERED AS NO. 13 AT  
PAGE 13 IN VOLUME 234 OF THE LANDS  
REGISTRY IN THE OFFICE AT IBADAN

(Sgd) ? ? ?

Assistant Registrar

EXHIBITS

Defendant's

"G"

Conveyance  
1st Defendant  
to  
2nd Defendant

26th November,  
1957.

continued

IN THE PRIVY COUNCIL

No. 48 of 1962

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O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

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B E T W E E N :

1. AMUSA YESUFU OBA and  
2. RUFAT AKINHANMAI  
(Defendants) Appellants

- and -

HUNMUANI AJOKE  
(Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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A.L. BRYDEN & WILLIAMS, *20, Old Queen Street,*  
~~53, Victoria Street,~~  
London, S.W.1.

Solicitors and Agents for Appellants.