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IN THE PRIVY COUNCIL

No. 33 of 1963

Judgment
40/1964

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N :-

ADERAWOS TIMBER COMPANY LIMITED

Defendants/
Appellants

- and -

1. BALE ADEDIRE
2. AWE ADENIJI
3. SAMUEL ADETUNJI
4. EMAN. ADEYEMO
5. E. T. ADEWOYIN
6. S. GIWA
7. B. F. SHOHALOJU

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

78657

Plaintiffs/
Respondents

- and -

THE CARETAKER COMMITTEE OF THE
IFE DIVISIONAL COUNCIL

Defendants/
Respondents

Proforma

C A S E FOR THE SEVEN FIRST NAMED RESPONDENTS Record

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (Ademola, F.C.J., Taylor, F.J., and Bairamian, F.J.) dated the 28th January 1963 setting aside a judgment of the High Court of Ibadan (Kester, J.) dated the 30th June, 1960, dismissing these Respondents' claim against the pro forma Respondents (1st Defendants) and the Appellant Company (2nd Defendants) which claim read as follows:-

pp. 44-56

pp. 24-33

Record
pp. 3 - 4

"The Plaintiffs, members of the Ife Community, jointly and severally claim against the Defendants jointly and severally:-

- i. A Declaration that the Deed of "Concession" dated 6th of January 1954 and registered as Instrument No.16 at page 16 volume 54, Register of Deeds, Lands registry, Ibadan purported to have been entered into by the Ife District Native Authority on the one part AND the 2nd Defendant on the other part is irregular and contrary to equity and liable to be set aside; 10
- ii. An order to set aside the aforesaid Deed.
- iii. Against the 2nd defendant, an Account of all profits derived pursuant and by virtue of the "Concession" conferred on them by the aforesaid Deed, and an order that the sum found on such account be paid into Ife Divisional Council Treasury for public use and benefit. 20
- iv. Against the 2nd Defendant, an injunction to restrain them from further exploiting of the "concession", the subject-matter of the aforesaid Deed."

2. The principal questions arising in this appeal are:-

- (a) Whether these Respondents have any interest in the property in dispute which entitles them to bring this action;
- (b) Whether the Oni of Ife was trustee of or otherwise in a fiduciary position with respect to the land at Ife which was the subject matter of the Deed of Concession dated the 6th January, 1954. 30
- (c) Whether in executing the said Deed of Concession and thereby conferring certain rights of exploitation of the said land upon the Appellant Company, in which Company he was the largest shareholder, the Oni of Ife acted in a dual capacity as grantor and grantee and in breach of his fiduciary duty. 40

- (d) Whether in the circumstances the trans- Record
action was such that it should be set
aside as being contrary to law and equity.
- (e) Whether the action is barred by virtue of
Section 62 of the Native Authority
Ordinance (Cap.140) and/or Section 242 of
the Local Government Law 1957.
- (f) Whether the Deed of Concession was made
in pursuance of powers vested in the Native
Authority by law.

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3. In their Statement of Claim these Respondents pp. 4 - 5
alleged that they were members of the Ife Commu-
nity and that a concession with respect to a
certain forest area in Ife which was the communal
property of the Ife community was granted by Sir
Adesoji Aderemi then as the Oni and Council "on
behalf of the Ife District Native Authority" to
the Appellant Company by the said Deed of
Concession (Exhibit A). These Respondents
further alleged in their Statement of Claim that:-

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- "3. The aforesaid property was held in trust
for the said community by the Ife District
Native Authority, the successor of rights
and duties of which is now the 1st
Defendant.
4. At all dates material to the Deed of
"Concession" registered as No.16 at page
16 in Volume 54 Register of Deeds, Lands
Registry, Ibadan, Sir Adesoji Aderemi,
the Oni of Ife was the trustee of Ife
Communal lands.
5. At all times material to the aforesaid
Deed of Concession, Sir Adesoji Aderemi,
the Oni of Ife was a Principal member of
the Aderawos Timber Company limited.
8. Sir Adesoji Aderemi, the Oni of Ife, con-
cluded the said Instrument on behalf of
each side to the purported contract,
purporting to act in a dual capacity.
9. The aforesaid deed of concession is in
the circumstances unfair, irregular and
contrary to equity and liable to be set

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aside in that the Oni of Ife acted on both sides in a transaction in which he had a personal interest in possible conflict with his duty as trustee of Communal lands."

p.6

4. In their Statement of Defence the pro forma Respondents (the 1st Defendants) denied all allegations contained in the Statement of Claim and in addition pleaded that the Plaintiffs' claim to relief was barred or extinguished by Section 62 of the Native Authority Ordinance (Laws of Nigeria Cap.140) and/or Section 242 of the Local Government Law, 1957.

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p.7

The Appellant Company (2nd Defendants) also denied all the allegations in the Statement of Claim and further pleaded:-

"2. The second defendants aver that the forest area comprised in the instrument described in paragraph 2 of the Statement of Claim was duly constituted a forest reserve under the Forestry Ordinance.

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3. With further reference to paragraphs 2 and 3 of the Statement of Claim the defendants aver that the plaintiffs have no right in or over the area of the land in dispute in this case.

4. The second defendants aver that the Deed described in paragraphs 2, 4 and 7 of the Statement of Claim was duly made in pursuance of powers vested in the Native Authority by law."

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5. The only witness who gave evidence in the Ibadan High Court was the 1st Respondent, who testified that:-

p.9, 1.39 -
p.10, 1.3.

"I am Adedire Ogunleye. I am also the Bale (Head) of Adedire Agbedegbede Compound, Ile-Ife. I was formerly an elephant hunter. I was a member of the Hunters Guild at Ile-Ife. I know the forest which is the subject matter of this case. I am a native of Ile-Ife. I am a tax payer at Ile-Ife. I was born and bred in that forest. I hunted and farmed some portions of the forest. This was before it was made a forest Reserve."

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In cross-examination he said:-

Record
p.11, 1.26-30

"I am the Head of the Ogunleye family. Some members of the Ogunleye family still farm in part of the reserve. Some members of the Ogunleye family are still hunting in this part of the reserve."

6. The said Deed of Concession dated the 6th January 1954 was put in by consent as Exhibit A. By the said Deed, which was therein described as an agreement made between the Ife District Native Authority and the Appellant Company, the said Native Authority granted to the Appellant Company permission to enter 53 square miles of forest area described in the schedule thereto for the purpose of felling trees, converting the same into logs and removing such logs out of the area and also making such roads, railways and bridges and erecting such buildings as might be necessary within the said area for these purposes. The said Deed also made provision for the payment by the Appellant Company of royalties to the said Native Authority.

pp. 58 - 64

p. 59

p. 61, 1.35.

The Testimonium reads:-

p.64, 11.28-34.

"IN WITNESS WHEREOF the Oni of Ife and Council for and on behalf of the Ife District Native Authority and as the traditional Authority on behalf of the Communal Owners of the land and the Aderawos Timber Trading Company Limited have hereunder set their hands and seals the day and year first above written."

The Deed was executed by the Oni of Ife with four others for the Oni and Council.

p.64, 11.35-41.

7. The register of members of the Appellant Company was also put in by consent as Exhibit B. The relevant entries in this exhibit and other company documents also put in were subsequently summarised by Taylor F.J., who delivered the main judgment in the Federal Supreme Court, as follows:

p.49, 11.36-45.

"Folio 4 and 5 show the only two members as being Sir Adesoji Aderemi - Oni of Ife and one Lasisi S.A. Awoshiyan. The Articles of Association, Exhibit "C", together with the

Record

other exhibits tendered at the hearing, i.e. T4, D4 and D5, make it abundantly clear that Sir Adesoji Aderemi holds the largest share in this Company and that in 1957 he became a Director on the cessation of one Moronfolu Adedapo Aderemi of the Afin Ife from the directorship of the Company."

pp. 12-14

8. At the hearing in the High Court of Ibadan it was argued on behalf of these Respondents that the Oni of Ife was a party to the said Deed of Concession in two capacities, viz. as head of the Ife Community and sole Native Authority on the one hand and as a member of the Appellant Company on the other hand and that in effect he was contracting with himself or with a Company in which he had a considerable interest. It was urged that the property dealt with in the said Deed was declared in the Deed itself to be communal property which is vested in the Head of the Community as trustee for the members of that Community. The Deed of Concession, it was submitted, created an estoppel by Deed binding upon the Appellant Company, insofar as the property being dealt with was therein described as communal land. It was further pointed out that in any event, by virtue of the Constitution of the Reserve Order 80 of 1941 as Amended by W.R.L.N. No.2 of 1954 (Exhibit "E" and "E1") these Respondents had reserved to them expressly and by name certain rights of hunting, farming and fishing in this area of land, which accordingly retained its basic communal nature, and accordingly these Respondents were possessed of an interest sufficient to support their taking the present proceedings.

p. 57
p. 58

p.29, 1.22.

9. In his judgment, Kester, J., held:-

(a) That the cases of Hastings v. Gulliver 1942 1 AER 378, Ellis v. Kerr 1910 1 Ch.D. 529 and Napier v. Williams 1911 1 Ch.361, relied upon by these Respondents did not support the proposition that an agreement is contrary to equity or voidable if it is signed by the same person acting in a dual capacity as grantor and grantee.

p.29, 1.26-
p.30, 1.15

(b) That there was no evidence that the land granted by the concession was Communal property. The learned judge considered the Testimonium but rejected the submission that

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the Defendants were estopped from denying the ownership of the property by the Ife Community and concluded that he was unable to hold that the words "communal owners in Exhibit "A" refer to the unidentified class of persons described as "Ife Community" which the Plaintiffs claim they belong and by which right they have brought this action."

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10 (c) That in view of Section 27 of the Forestry Ordinance and in the absence of evidence as to who were the owners of the forest before it was constituted into a reserve, the Oni of Ife was not a trustee in respect of the Forest Reserve and the Plaintiffs were not beneficiaries. p.30, 11.16-26

20 (d) That the Ife Divisional Council were successors of the Ife District Native Authority and that they were liable for "the acts and defaults of the Ife District Native Authority in respect of the Ife Forest Reserve as affecting Exhibit 'A'." p.31, 1.5

(e) That the cause of action in the present case accrued against the Native Authority and the Appellant Company from the time the Deed of Concession was executed in 1954 and that, since the action was not brought until 1959, it was statute barred. p.31, 1.38

30 (f) That the effect of Rule 40 of the Forestry Rules 1943 and Sections 27 and 33 of the Forestry Ordinance was to make the Ife District Native Authority the "owners of protected trees", and that as such they might grant exclusive licences to exploit the forest for timber. Hence the Deed of Concession (Exhibit "A") was validly made. p.32, 11.12-38

40 The learned judge dismissed the claim of these Respondents and awarded the pro forma Respondents and the Appellant Company 250 gns. costs. p.33

10. The Federal Supreme Court allowed the appeal and set aside Kester J's judgment with costs. Taylor, F.J., who delivered the principal judgment, stated the issues to be decided in the appeal as follows:- pp.44 - 56

Record
p.46, l.36 -
p.47, l.11.

- "(1) Have the plaintiffs a locus standi? Have they any interest in the property in dispute which will entitle them to bring this action?
- (2) If they have a right of action, did the Oni of Ife act in a dual capacity both as grantor and grantee or as one of the grantors and one of the grantees?
- (3) Is the transaction one that a Court of Equity will set aside as being contrary to well established principles or rules governing dealings between parties to a contract or persons placed in a fiduciary or quasi-fiduciary position.
- (4) Is the action barred by virtue of Section 62 of the Native Authority Ordinance Cap. 140 Laws of Nigeria?
- (5) Was the Deed of Concession made in pursuance of power vested in the 1st Defendant?"

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p.48, l.42-
p.49, l.4.

11. On the 1st issue, Taylor, F.J., said that since the action was not brought for and on behalf of the Ife Community, the rights of the Community as such need not be discussed for the Court was only concerned with the rights of the seven individual Plaintiffs.

He continued:-

p.49, ll.4-32

"As I have said, only the first appellant gave evidence and on his own showing, coupled with the reservation of certain rights to his family of farming, and of hunting rights to a guild of which he is a member, it is beyond doubt that he has certain rights over portions of the conceded area, both as head and as member of the Ogunleye family. In this case on appeal, the 1st appellant as the head of the Ogunleye family is the person in whom by established Native Law and Custom, is vested the management and control of family property. Had exhibit "A" dealt only with rights of cutting timber, the argument might be put forward that the plaintiffs' rights of hunting, fishing and farming would, in no way

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be affected by the felling of logs, but Clause 1b gives the 2nd Defendants the following additional rights over the whole area:-

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"to make such roads, railways and bridges, and to erect such buildings as are necessary within the Concession Area for the felling conversion and extraction of all such logs, timber and firewood."

10 In my view, the 1st appellant has in his own right shown that he has an interest in portions of the conceded area, and that the 2nd defendants have been granted rights of felling timber, making roads, railways, bridges, and erecting buildings where required over the whole area conceded."

12. On the 2nd issue, the learned Federal Justice p.49, 1.33 - referred to the Register of Members (Exhibit "B"), p.50, 1.11. the Articles of Association (Exhibit "C") and other documents of the defendant Company, and the Testi-
20 monium of the Deed (Exhibit "A") and concluded that "there can therefore be no doubt..... that the Oni of Ife did execute this Deed in a dual capacity being one of the grantors and at the same time the major shareholder of the grantee Company."

13. On the 3rd issue, the effect of the trans-
action in equity, Taylor F.J. quoted with approval p.50, 1.13 - passages from Lord Green's judgment in Regal v. p.51, 1.23. Gulliver 1942 1 AER 378, and from Clauson J.'s judgment in Thomson in re Thomson v. Allen 1930
30 1 Ch. 203. Having quoted certain sections of the Forestry Ordinance (Laws of Nigeria) Cap.75), he p.51, 11.40-6 continued:-

40 "In my view, the position of the Oni of Ife and Council vis-a-vis the 1st appellant is covered by the two cases to which I have made references; and equity will not allow him so to put himself in a position in which his interests as the major shareholder of the 2nd respondent Company, will be or may be in possible conflict with the duties imposed on him and his Council, as already indicated. He is placed in a quasi-fiduciary position as the Oni of Ife in the Ife District Native Authority which executed

Record

the Deed Exhibit "A" through the Oni of Ife and Council."

p.52, l.23

14. Taylor F.J., finally considered the fourth issue - whether the claim is barred by virtue of Section 62(1) of the Native Authority Ordinance, which provides that:-

"When any suit is commenced against any Native Authority for any act done in pursuance, or execution, or intended execution of any Ordinance, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority such suit shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in a case of a continuance of damage or injury, within six months next after the ceasing thereof."

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It had been submitted by Counsel for these Respondents that this section did not apply in this case, because, inter alia, an act in breach of a trust cannot be one done in the execution of a duty. The learned Federal Justice upheld this submission. Dealing with this matter and the final issue in the appeal, he said:-

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p.54, l.41 -
p.55, l.16.

"As I have said earlier, the Oni of Ife in particular and the respondents in general did not choose to give evidence at the Court of Trial. On the other hand, the appellants have shown that the Oni of Ife is benefited, as the substantial shareholder in the 2nd Respondent Company, by the contract entered into between the respondents. Equity looks upon such a contract with disfavour in the words of Clausen J. to which I have already referred, equity does not allow questions to be raised as to the fairness of the Agreement for the inability to contract depends not on the subject matter of the Contract, but the relationships of the parties. In my view, the Native Authority Ordinance does not protect an act such as this, done not in execution of an Ordinance, but in pretended execution of an Ordinance. The Ordinance was never meant to allow a member or members

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of a Public Authority through whom such
Public Authority acts to put on the cloak
provided by such Ordinance in order to
enter into private contracts to the benefit
of such member or members."

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15. It is respectfully submitted that this appeal
should be dismissed for the following among other

R E A S O N S :-

- 10 1. BECAUSE the land dealt with in the Deed of
Concession of the 6th January 1954 retained
its character of communal land.
2. BECAUSE the Appellant Company is estopped
by the said Deed of Concession from denying
that the land dealt with therein was
communal land.
3. BECAUSE the Respondents in any event have
an interest in the property in dispute which
entitled them to bring the action.
- 20 4. BECAUSE the Oni of Ife acted in a dual
capacity as grantor and grantee and in
breach of his fiduciary duty in executing
the Deed of Concession.
5. BECAUSE the Deed of Concession is contrary
to law and equity in that the Oni of Ife acted
on both sides in a transaction in which he had
a personal interest in possible conflict with
his duty as trustee of or otherwise in a
fiduciary position with respect to the land at
30 Ife which was the subject matter of the said
Deed.
6. BECAUSE the action was not barred by virtue
of Section 62 of the Native Authority
Ordinance.
7. BECAUSE the Deed of Concession was not made
in pursuance of a power vested in the
Native Authority.
8. BECAUSE the judgment of the High Court was
wrong.

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9. BECAUSE the judgment of the Federal Supreme Court was right for the reasons therein stated and should be upheld.

NEIL LAWSON

MONTAGUE SOLOMON.

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T. L. WILSON & CO.,
6, Westminster Palace Gardens,
Victoria Street, S.W.1.