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Judgment  
1964  
No. 20 of 1962

IN THE PRIVY COUNCIL

ON APPEAL FROM  
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ABUDU GBADAMOSI IJALE  
(Plaintiff)

Appellant

- and -

B.A. SHONIBARE  
(Defendant)

Respondent

RECORD OF PROCEEDINGS

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

- 78533

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.  
Appellant's Solicitors

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
London, W.C.2.  
Respondent's Solicitors.

IN THE PRIVY COUNCILNo. 20 of 1962ON APPEAL FROM  
THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E NABUDU GBADAMOSI IJALE  
(Plaintiff)Appellant

- and -

B.A. SHONIBARE  
(Defendant)RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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"E"	Ledger
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ON APPEAL FROM  
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ABUDU GBADAMOSI IJALE (Plaintiff) Appellant  
- and -  
B.A. SHONIBARE (Defendant) Respondent

RECORD OF PROCEEDINGS

No. 1  
PARTICULARS OF CLAIM AND CIVIL SUMMONS  
(PARTICULARS OF CLAIM)

In the High Court  
of Lagos

No.1

10

IN THE HIGH COURT OF LAGOS

Suit No. LD/231/56

BETWEEN: A.G. IJALE ... Plaintiff  
and  
B.A. SHONIBARE }  
Yinusa L. Goodluck } Defendants  
S.O. Hassan }

Particulars of  
Claim and Civil  
Summons.

11th and 27th  
September 1956

Particulars of  
Claim.

11th September  
1956

20

The plaintiff claims against the defendants jointly and severally the sum of £1,500 (One thousand and five hundred pounds) being amount advanced by the plaintiff to the defendants at Lagos for the supply of cocoa and palm kernels by defendants at Lagos.

The 1st defendant signed for and received the amount for himself and on behalf of the 2nd and 3rd defendants on the 22nd day of February, 1952.

(Amended by Order of Court)  
(Sgd.) A.R.F. Dickson, J.

30

The defendants failed to supply the required produce and they have neglected or refused to pay the said £1,500 despite repeated demands.

Dated at Lagos this 11th day of September, 1956.

(Sgd.) S.O.O. Abudu  
Plaintiff's Solicitor.

In the High Court  
of Lagos

(CIVIL SUMMONS)

No.1

(Title as Particulars of Claim ante)

Particulars of  
Claim and Civil  
Summons.

To B.A. Shonibare, Yinusa L. Goodluck & S.O. Hassan

11th and 27th  
September 1956

You are hereby commanded in Her Majesty's name to attend this court at Race Course Road Lagos on Monday the 22nd day of October 1956, at 9 o'clock in the forenoon to answer a suit by A.G. Ijale of c/o His Solicitor, 19, Ojo-Giwa Street, Lagos against you.

Civil Summons.

27th September  
1956

The Plaintiff claims against the defendants jointly and severally the sum of £1,500 (One thousand and five hundred pounds) being amount advanced by the plaintiff to the defendants at Lagos for the supply of cocoa and palm kernels by defendants at Lagos. 10

The 1st defendant signed for and received the amount for himself and on behalf of the 2nd and 3rd defendants on the 22nd day of February, 1956. The Defendants failed to supply the required produce and they have neglected or refused to pay the said £1,500 despite repeated demands. 20

Issued at Lagos the 27th day of September, 1956.

(Sgd.) G.L. Jobling.

J U D G E.

No.2

Statement of  
Claim.

9th December  
1957

No. 2

STATEMENT OF CLAIM

(Title as No. 1)

Statement of Claim

1. The plaintiff was a Nigerian Produce Buyer (Cocoa and Palm Kernels) at all material times during the period 1951 to 1953 and a buying Agent 30

for Messrs. A.G. Leventis and Co. Limited, Lagos.

In the High Court  
of Lagos

\_\_\_\_\_  
No.2

Statement of  
Claim.

9th December  
1957

- continued

2. The defendants were sub-buying Agents supplying the plaintiff with produce on cash advanced by the plaintiff.

3. On the 22nd day of February, 1952 the 1st defendant received the sum of £1,500 from the plaintiff for the purchase of Nigerian Produce for and on behalf of himself and for the 2nd and 3rd defendants.

10 4. The said 1st defendant acknowledged receipt of the sum of £1,000 for himself and 2nd defendant, also £500 for the 3rd defendant all on a sheet of paper duly prepared by the 1st defendant and signed by him.

5. The defendants delivered produce on separate accounts for which each of them received cash payments.

6. The 1st, 2nd and 3rd defendants failed to deliver produce to meet up the cash advance.

20 7. Despite repeated demands the 1st, 2nd and 3rd defendants failed or neglected to pay the said sum of £1,500.

Whereof the plaintiff claims as per writ of Summons.

(Sgd.) S.O.O. Abudu.

Plaintiff's Solicitor,  
5, Bangbose Street,  
Lagos, Nigeria.

\_\_\_\_\_  
No. 3

DEFENCE OF 1st DEFENDANT

(Title as No. 1)

STATEMENT OF DEFENCE

No.3

Defence of 1st  
Defendant.

31st December  
1957

30

1. The 1st defendant hereinafter called 'the



In the High Court  
of Lagos

No.3

Defence of 1st  
Defendant.

31st December  
1957

- continued

defendant' is not in a position to admit or deny paragraph 1 of the Statement of Claim.

2. The defendant denies paragraphs 2, 3, 4, 5, 6 and 7 of the Statement of Claim.

3. The defendant was a produce buyer in 1952 selling to any licensed buying agents of his choice and has since 1955 become a licensed buying agent.

4. In further denial of paragraph 4 of the Statement of Claim the defendant avers that £500 was received by him clearly in part payment for produce already sold and delivered by him to the plaintiff. 10

5. The defendant says that he handed over on or about 22/2/52 the sum of £500 each to the 2nd and 3rd defendants at plaintiff's request.

6. The defendant further says that at all material times when he was dealing with the plaintiff the procedure was to deliver produce to the latter for which payments are either made on delivery or by subsequent instalments and that this continued to a date subsequent to 22nd February 1952. 20

7. The defendant says that he never throughout the period covered by the transactions mentioned above received any cash advance from the plaintiff as alleged or at all nor did he have any separate accounts with him.

8. The defendant states that the whole transactions between him and the plaintiff are contained in the latter's produce record book which had always remained in his (plaintiff's) possession. 30

9. The payment referred to in paragraph 4 above was not separate from and indeed formed part of the series of transactions mentioned in paragraphs 6 and 8 hereof.

10. The defendant was shocked to learn for the first time on 14th November 1955 that he was owing plaintiff a three-year old debt.

11. The defendant will contend at the trial that the allegations contained in paragraphs 3 and 4 40

of the Statement of Claim are not in conformity with the custom of the produce trade.

In the High Court  
of Lagos

12. In the foregoing circumstances the defendant says that the plaintiff is not entitled to the relief sought.

No.3

Defence of 1st  
Defendant.

Dated the 31st day of December, 1957.

31st December  
1957

(Sgd.) M.O. Oseni.

- continued

1st Defendant's Solicitor,  
205, Igbosere Road,  
Lagos, Nigeria.

10

No. 4

DEFENCE OF 2nd and 3rd DEFENDANTS

(Title as No. 1)

No.4

Defence of 2nd  
and 3rd  
Defendants.

Statement of Defence

30th January  
1958

The 2nd and 3rd defendants are produce dealers in Nigeria and are resident in Ibadan, Western Region Nigeria.

20

1. The 2nd and 3rd defendants deny paragraphs 2, 3, and 4 of the plaintiff's statement of claim in so far as they relate to either of the 2nd and 3rd defendants in the transaction.

2. The 2nd and 3rd defendants separately and individually admits paragraph 5 of the plaintiff's statement of claim with the qualification or addition at the end of the word "payment" thereon of the words "for produce sold and delivered to the plaintiff".

30

3. The 2nd and 3rd defendants say that the plaintiff subsequently paid to each or either of them the balance of the price of produce so sold and delivered to the plaintiff.

4. The 2nd and 3rd defendants each deny paragraphs 6 and 7 of the plaintiff's statement of claim and put the plaintiff to the strict proof thereof.

In the High Court  
of Lagos  
            
No.4  
Defence of 2nd  
and 3rd  
Defendants.  
30th January  
1958

5. The 2nd and 3rd defendants each says that he was never an agent of the plaintiff for the purchase of produce nor did he receive at any time any cash advance from the plaintiff for the purchase and delivery of produce to the plaintiff.  
6. The 2nd and 3rd defendants each says that he is not owing the plaintiff any sum of money as the plaintiff alleged and that the action be dismissed with heavy costs to the defendants.

- continued

Dated the 30th day of January 1958.

10

(Sgd.) G. Harison Obafemi.

Solicitor for 2nd and 3rd  
Defendants.

No.5  
Court Notes.  
25th April 1958

No. 5  
COURT NOTES

Friday the 25th day of April, 1958  
Before the Honourable,  
Mr. Justice Dickson  
J u d g e.

Suit No. LD/231/56:

20

A.G. Ijale

vs.

B.A. Shonibare & Ors.

Abudu for plaintiff.  
Oseni for 1st defendant.  
Obafemi for 2nd and 3rd defendants.

Oseni: ..... On a point of law Court is referred to paras. 3/4 of the Statement of Claim, and the Writ of Summons.

According to the Writ of Summons, this is a claim against the defendants jointly and severally. If judgment is given against the defendants, it can therefore be recovered from either of them for the whole sum. 30

It does appear from para. 3 of the Statement

of Claim that the £1,500 was received for himself and the other two defendants. If para. 4 is examined, it will be seen that at worst the plaintiff is saying the 1st defendant is not liable at all for £500. How on earth can my Learned friend say the 3rd defendant is liable for £1,500, jointly and severally, neither can the 1st defendant.

In the High Court  
of Lagos

\_\_\_\_\_  
No.5

Court Notes.

25th April 1958

- continued

10 The defence deny paras. 3/4 specifically. It is submitted the case should be struck out because the Statement of Claim does not support the Writ of Summons.

Obafemi: I support my Learned friend's submission in toto.

Abudu: I would ask that "1956" in the 3rd line of the 2nd para. of the Writ be deleted and 1952 substituted.

No objection.

Court: Amendment made.

20 Abudu in reply: Para. 2 of the Writ is exactly the same as that of the Statement of Claim. Para. 4 of the Statement of Claim explains para. 3 - it shows how the 1st defendant acknowledged the receipt of £1,500 for himself and the 2nd defendant, and £500 for the 3rd defendant.

Court points out that the inconsistency is clear.

Abudu: I will seek to amend the 1st para. of the Writ as follows :-

30 The plaintiff claims against the defendants as follows :-

As against the 1st and 2nd defendants £1000 jointly and severally; as against the 3rd defendant £500. The total amount of £1,500 being an amount advanced by the plaintiff through the 1st defendant, to the 1st, 2nd and 3rd defendants, at Lagos, for the supply of Cocoa and palm kernels, by the defendants to the plaintiff at Lagos.

40 Oseni: I would certainly object to the amendment because Your Lordship will see that para. 2 of the application of the Writ of Summons contained also

In the High Court the proposed amendment.  
of Lagos

No.5

Court Notes.

25th April 1958

- continued.

Abudu: When I said Writ of Summons - I meant application for summons.

Oseni: The whole thing is in a muddle. The Writ issued by the court still stands. At this stage, the best thing for my Learned friend to do is to withdraw the action.

Abudu: Para. 5 of the defence of the 1st defendant admits receiving £1,500 which he distributed to himself, and the 2nd and 3rd defendants equally. 10

Obafemi: Abudu has not amended para. 3 of the Pleadings. We must have an opportunity of amending our Statement of Defence.

Abudu: I would ask that the 2nd para. of the application for the Writ of Summons be amended by deleting the whole paragraph and substituting therefor the following:

"The 1st defendant signed for and received the sum of £1,500 on the 22nd day of February, 1952". As a result, I seek to delete the whole of para. 3 of the Statement of Claim. Also to substitute a comma for the fullstop at the end of the last line of para. 4 of the Statement of Claim, and add the following "on the 22nd day of February, 1952". 20

Oseni: Just as I know the court has a wide discretion, the application should be refused.

Court: It is with some hesitation I grant the amendments asked for. The plaintiff will have to pay costs and the hearing will be adjourned to enable the defence, if it so desires to amend their statements of defence, and for the plaintiff to reply if necessary. 30

Amended Application for Writ and Statement of Claim to be filed within 7 days hereof, and to be served within that time on the solicitors for the defendants. The defendants are at liberty to file amended Statement of Defence if necessary within 14 days of service. The plaintiff to reply within 7 days of service of amended Statement of Defence, if necessary. 40

Oseni and Obafemi point out their clients have come from Ibadan.

Plaintiff to pay £7.7/- costs to each defendant.

Adjourned to 26/5/58 for Mention and hearing date.

(Sgd.) A.R. Dickson.  
Judge.

25/4/58.

In the High Court  
of Lagos

No.5

Court Notes.

25th April 1958

- continued.

10

No. 6  
AMENDED PARTICULARS OF CLAIM

(Title as No. 1)

Amended Particulars

The plaintiff claims against the defendants as follows :-

20

£1000 as against the 1st and 2nd defendants jointly and severally £500 as against the 1st and 3rd defendants jointly and severally; total sum of £1500 being the amount advanced by the plaintiff through the 1st defendant at Lagos for the supply of Cocoa and Palm-kernels by the defendants to the plaintiff at Lagos.

The 1st defendant signed for and received £1000 for himself and on behalf of the 2nd defendant and also for £500 on behalf of the 3rd defendant on the 22nd day of February, 1952.

The defendants failed to supply the required produce and they have neglected or refused to pay the said £1,500 despite repeated demands.

Dated at Lagos this 26th day of April, 1958.

30

(Sgd.) S.O.O. Abudu  
Plaintiff's Solicitor.

In the High Court  
of Lagos

No.7

Amended Statement  
of Claim.

28th April 1958

No. 7  
AMENDED STATEMENT OF CLAIM

(Title as No. 1)

Amended - Statement of Claim

1. The plaintiff was a Nigeria Produce Buyer (Cocoa and Palm Kernels) at all material times during the period 1951 to 1953 and a buying Agent for Messrs. A.G. Leventis and Co. Limited, Lagos.

2. The defendants were Sub-Buying Agents supplying the plaintiff with produce on cash advanced by the plaintiff. 10

3. The 1st defendant acknowledged receipt of the sum of £1,000 for himself and for the 2nd defendant also £500 for the 3rd defendant. The whole amount of £1,500 was signed for on a sheet of paper duly prepared by the 1st defendant and signed by him on the 22nd of February, 1952.

4. The defendants delivered produce on separate accounts for which each of them received cash payments. 20

5. The 1st, 2nd and 3rd defendants failed to deliver produce to meet up the cash advance.

6. Despite repeated demands the 1st, 2nd and 3rd defendants failed or neglected to pay the said sum of £1,500.

Dated this 28th day of April, 1958.

(Sgd.) S.O.O. Abudu  
Plaintiff's Solicitor.

No.8

Amended Defence  
of 1st Defendant.

8th May 1958

No. 8  
AMENDED DEFENCE OF 1st DEFENDANT

(Title as No.1)

Amended Statement of Defence

1. The 1st defendant hereinafter called 'the defendant' is not in a position to admit or deny 30

paragraph 1 of the amended statement of claim.

2. The defendant denies paragraphs 2, 3, 4, 5 and 6 of the amended statement of claim.

3. The defendant was a produce buyer in 1952 selling to any licensed buying agents of his choice and has since 1955 become a licensed buying agent.

10 4. In further denial of paragraph 3 of the amended statement of claim the defendant avers that £500 was received by him clearly in payment for produce already sold and delivered by him to the plaintiff.

5. The defendant says that he handed over on or about 22/2/52 the sum of £500 each to the 2nd and 3rd defendants at plaintiff's request.

20 6. The defendant further says that at all material times when he was dealing with the plaintiff the procedure was to deliver produce to the latter for which payments are either made on delivery or by subsequent instalments and that this continued to a date subsequent to 22nd February 1952.

7. The defendant says that he never throughout the period covered by the transactions mentioned above received any cash advance from the plaintiff as alleged or at all nor did he have any separate accounts with him.

30 8. The defendant states that the whole transactions between him and the plaintiff are contained in the latter's produce buying books and ledgers which had always remained in his (plaintiff's) possession.

9. The payment referred to in paragraph 4 above was not separate from and indeed formed part of the series of transactions mentioned in paragraph 6 and 8 hereof.

10. The defendant was shocked to learn for the first time on 14th November 1955 that he was owing plaintiff a three-year old debt.

40 11. The defendant will contend at the trial that the allegations contained in paragraphs 3 and 4

In the High Court  
of Lagos

—  
No.8

Amended Defence  
of 1st Defendant.

8th May 1958

- continued



In the High Court of Lagos of the amended statement of claim are not in conformity with the custom of the produce trade.

No.8  
Amended Defence  
of 1st Defendant.  
8th May 1958  
- continued

12. The defendant will urge at the trial that the action be struck out as the amended particulars do not support the amended statement of claim.

13. In the foregoing circumstances the defendant says that the plaintiff is not entitled to the relief sought.

Dated the 8th day of May, 1958.

10

(Sgd.) M.O. Oseni  
1st Defendant's Solicitor.

No.9  
Amended Defence  
of 2nd and 3rd  
Defendants.  
9th May 1958

No. 9  
AMENDED DEFENCE OF 2nd and 3rd DEFENDANTS

(Title as No.1)

STATEMENT OF DEFENCE

1. The 2nd and 3rd defendants admit paragraph 1 of the amended statement of claim.

2. The 2nd and 3rd defendants each deny, paragraphs 2, 3, 4, 5 and 6 of the amended statement of claim, and each puts the plaintiff to the strict proof thereof.

20

3. The 2nd and 3rd defendants each says that he was never an agent of the plaintiff for the purchase of produce nor did he receive at any time any cash advance from the plaintiff for the purchase and delivery of produce to the plaintiff.

4. The 2nd and 3rd defendants each says that he is not owing the plaintiff any money at all and that the action be dismissed with costs.

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Dated and served this 9th day of May, 1958.

(Sgd.) O. Harrison Obafemi.  
Solicitor for 2nd and 3rd Defendants.

PLAINTIFF'S EVIDENCE

No.10  
ABUDU GBADAMOSI IJALE

1st Witness: ABUDU GBADAMOSI IJALE (m) Sworn on  
 Koran states in Yoruba:-

10 I live at No.8 Bishop Street, Lagos. Produce  
 Buyer. During 1951/1953, was produce buyer for  
 A.G. Leventis & Co. I know the defendants. The  
 2nd defendant is my nephew. I have known the 1st  
 and 3rd defendants when they were children. We  
 have all come from Ijebu-Ode. When I was a produce  
 buyer for A.G. Leventis & Co. I had transactions  
 with the defendants concerning £1,500. On 22/2/52,  
 the 1st defendant came to me and said he had produce  
 but it was not yet dry. It was Cocoa. He requested  
 £1,500. He said £500 was for himself, and £500 for  
 each of the other defendants. The three defendants  
 were my customers. I gave the 1st defendant £1,500  
 20 at 8 Bishop Street, Lagos. At that time I carried  
 on my business at Alakoro - Marina, Lagos.  
 There was a document in respect of the money. It  
 is the paper attached to the inside of cover of  
 the book.

Harrison Obafemi:

Objecting to the document being admitted - not  
 stamped. Receipt for £2 and over should be stamped.  
 Therefore cannot be admitted.

30 Oseni: Support my Learned friend's objection.  
 Go further to say on the face of it - has no con-  
 nection with the case.

Abudu: Section 89 (3) Cap. 209 refers.

Court: The English practice is that an Officer of  
 the Court takes objection and not counsel.

Abudu: Can be admitted in evidence under section  
 89(3).

By Court: I cannot write English, can read and  
 write in Yoruba. My Clerks write the receipts  
 which are stamped. The 1st defendant wrote the  
 receipt which is in the book.

40 Court: There are other receipts in the book which

In the High Court  
 of Lagos

Plaintiff's  
 Evidence

No.10

Abudu Gbadamosi  
 Ijale.

22nd and 23rd  
 October 1958

Examination

Objection

Ruling

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.10

Abudu Gbadamosi  
Ijale.

22nd and 23rd  
October 1958

Examination

- continued

are stamped - it cannot be said that the witness was ignorant of the necessity of stamping receipts. I will not exercise my discretion under section 89 (3) - but will admit the document if the terms under section 21 (1) are complied with. That is to say, the unpaid duty which is 2d must be paid, plus the penalty for stamping and £1 in addition.

1st witness: ABUDU GBADAMOSI IJALE re-sworn and continues:

10

Before I gave the 1st defendant and he issued the receipt he said that himself the 2nd and 3rd defendants had cocoa which had not yet been dried and required £1,500. I gave the 1st defendant £1,500. The defendants had previously received monies from me for cocoa - The Cocoa had been supplied for the previous account. I received no cocoa at all with respect of the advance of £1,500. After the advance none of the defendants came to me about the money. I made attempts to demand the money or produce. The money was not paid back. I asked the 1st defendant. I asked him to return the money. He said the 2nd and 3rd defendants had not paid theirs. I interviewed the 2nd and 3rd defendants. The 2nd defendant said he would be seeing the 1st defendant. The 3rd defendant said the same thing. Have not up to now had the money.

20

Cross-examination XXd Oseni:  
for 1st Defendant

The 1st defendant was a produce buyer between 1951/1952 selling produce to many persons. Have been a produce buyer for a very long time. In the trades buyers keep "buying books" in which are entered records of names of customers. In the record is entered the amount advance and the quantities delivered, against the name of the person (customer). It is the custom in the business that at the end of the month, a balance is struck in the record book, and the customer signs for the balance outstanding. It is this record I would show to the licensed buying agents e.g. A.G. Leventis or any other firm. I made advances to the 1st defendant about 3 times in all. The advance the subject matter of this case is one

30

40

of the three. I wrote down the advances made to the 1st defendant in the ledger (now says he wrote down the advances on a slip of paper) and when the account closed would tear it out from the file and give it to the 1st defendant.

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.10

Abudu Gbadamosi  
Ijale.

23rd October 1958

Cross-examination

- continued

10 Court: It may be convenient at this stage to deal with the receipt sought to be tendered yesterday. The document will be admitted on the payment of £10.0.0d penalty; 2d unpaid duty; and £1 further sum. (Mr. Oseni proceeds to ask questions about the ledger in which the receipt is contained and therefore Court thinks it advisable to admit the document at this stage).

EX. A. Receipt dated 22/2/52 admitted and marked  
EX. A.

Ex. A.

(Note: Said yesterday officer of Court to take stamp objections strictly means the Judge, Arbitrator, Referee - similar to Section 14 Stamp Duty Act 1891).

20 (Payment made).

This is my Ledger - admitted and marked EX. B.

Ex. B.

(Note: Ex.A a loose sheet of paper has been pasted on the inside cover of Ex.B).

30 I pasted Ex.A into Ex.B. The advances (3) made to the 1st defendant were made on slips of paper as on each occasion the 1st defendant came to my house for the money and not to my office. All the 3 advances were made in my house. I did not paste the other 2 receipts in Ex.B, because when the 1st defendant had paid I returned them (slips of paper) to him. I did not paste the receipts in Ex.B, because I kept a file for them in my house. The receipts in Ex.B, are written by my clerk, but the 1st defendant wrote Ex.A, himself. Before and after 22/2/52, there were a series of transactions between the 1st defendant and myself dealing with the delivery of produce. Each of these documents shown me, is signed by me. They are from my Produce Sales Book - 6 delivery sheets tendered - admitted and marked  
40 EXS. C to C5. The 1st, 2nd and 3rd defendant would Exs. C-C5 come separately and deliver their produce.

The 1st defendant told me he would be giving

In the High Court of Lagos  
Plaintiff's Evidence  
No.10  
Abudu Gbadamosi Ijale.  
23rd October 1958  
Cross-examination  
- continued

£500 to each of the other defendants. I agreed with that Scheme of distribution. I first discussed the matter with the 2nd and 3rd defendants within 1 month of the money being given to the 1st defendant. I asked the 2nd and 3rd defendants if they had each got the £500 from the 1st defendant. They did not tell me whether they received it or not, but that they would be seeing the 1st defendant. I was surprised at the answer. I felt sure the money would be returned to me for I trusted the 1st defendant. I have discussed the matter with the 2nd and 3rd defendants whenever I saw them. On each occasion I asked them about the money they got for the purpose of buying cocoa, they said they would be seeing Shonibare. They did not tell me on each occasion that the money received was not for advance, but in payment of produce supplied to me. Ex. A was meant for cash advance for produce. It is not a fact I was paying other customers through the 1st defendant and that is why the monies were paid to the 1st defendant. After 22/2/52, the 1st defendant brought produce to me, for which I paid him cash - more than once but cannot remember the number of times. The 1st defendant ceased selling produce to me around May, 1952. I have books showing produce delivered to me by various customers - these are they - 3 produce delivery or buying books put in and marked EX. D to D2.

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Exs. D-D2

Exs.B and D are the only books kept by me in my business. Only the firms keep books which I referred to earlier of the kind where the balance is struck monthly. When I say firms, licensed buying agents are meant e.g. Leventis, John Holt, U.A.C. In February, 1952, I had about 3 clerks working with me. At that time I had been receiving thousands of pounds from licensed buying agents, Leventis in particular. I have no other ledger book except Ex.B. I have no other Ledger, but the firm keeps a report book which is kept for the purpose of showing the financial position between myself and the firm. The firm does not bother about monies advanced to people by me, as I am responsible to them (firm) for the monies given to me. I am not deliberately keeping behind any ledger book. It was not the arrangement that the 1st defendant would be paid at the time of delivery of produce, or paid in part and the balance subsequently paid or the whole amount

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paid subsequently. I see Exs. C1, C2 and C3. On each of these 3 occasions I agree the 1st defendant was paid only in part. I see Ex.D page dated 5/3 52 total £741.7.9d. On that day I had not paid in full, but he has since been. I paid the balance on 14/5/52 and the 1st defendant signed (witness marks X against the 1st defendant's signature). I did not pay the 1st defendant in full on 5/3/52, as I was waiting the result of the grading. My clerks are the persons responsible for writing up my books and they do not write down the monies advanced in the appropriate space in Ex.D and the other book of that kind. Recently I had reverses in my produce business running into thousands of pounds. This is not the reason why I had only instituted proceedings in September 1956. I had been asking the defendants about the money all the time, and if they had paid me, I would not have brought them to court.

20 By Court: My reverses in business began in 1954. As a result of the reverses, I did not sue the defendant of M & E. Leventis sued me. The matter has been determined in the High Court and found liable. There is an appeal pending before the P.S.C. On Ex.C3 I made the final payment 16/2/52. The 1st defendant signed. I can read in the Ex.C sums that I paid the 1st defendant. I wrote "paid" on Ex.C3.

30 By Court: I wrote the words and figure at the bottom on Ex.C3 except the 1st defendant's signature, similarly on Exs.C, C1, 2 & 5.

XXd Harrison Obafemi:

The 2nd and 3rd defendants were not present when the 1st defendant gave me Ex.A. When I said the 1st defendant, the 2nd and 3rd defendants had not given me any authority to pay the 1st defendant any money on their behalf. In Ex.D1 see slip No.1733 dated 24/4/52. It shows payment in full - it has been signed by the 3rd defendant.

40 RXD:

The delivery slips are original and duplicate - Original is given to the customer and duplicate remains in the book. When payment in full is made the original is torn out and given to the customer.

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.10

Abudu Gbadamosi  
Ijale.

23rd October 1958

Cross-examination

- continued

Cross-examination  
for 2nd and 3rd  
Defendants

Re-examination

In the High Court of Lagos I see in Ex.B under 21/X/52 advance was made to the 2nd defendant. The account has not been paid.

Plaintiff's Evidence

No.10

By Court: The letter and figures in red at the bottom of each receipt indicate books where sums of monies owed by customers are to be found. The other books are at my house.

Abudu Gbadamosi Ijale.

No further RXn.

23rd October 1958 Part-Heard and adjourned to 24/X/58.

Re-examination

(Sgd.) A.R.F. Dickson.

- continued

J u d g e.

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No.11  
Court Notes.  
24th October 1958

Friday the 24th  
day of October,  
1958.

No.11  
COURT NOTES

Abudu for plaintiff.  
Oseni for 1st defendant.  
Counsel for 2nd & 3rd defendants absent.

Court:

This case was adjourned yesterday in the presence of Mr. C. Harrison Obafemi Counsel for the 2nd and 3rd defendants. Without leave of the court Mr. Harrison Obafemi has not thought it fit to be present. The conduct of Mr. Harrison is a contempt of Court. I had least expected that conduct from such an old Member of the Bar. It is no example to the younger members. The Registrar of the High Court is asked to inform Counsel of the feelings of the Court and request an explanation for his absence. It is not fair to the defendants who retained Counsel. 20

2nd and 3rd defendants are prepared to continue without their Counsel. 30

In answer to the Court, they say they are prepared to carry on. 2nd and 3rd defendants say they do not require an adjournment. They are prepared for the case to proceed.

No.12  
AMBALI JAJI

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.12

Ambali Jaji.

24th October 1958

Examination

10 2nd Witness: AMBALI JAJI (m) Sworn on Bible,  
states in Yoruba:- I live at No.8 Bishop Street,  
Lagos. Know the plaintiff. He is my master. I  
am his clerk. I have been in his employment for  
over 10 years. Between 1951/1953, there were 3  
clerks in all employed by the plaintiff. I am the  
only clerk employed by him now. I wrote up Exs.  
D - D2. After writing the number of bags cocoa  
delivered the book would be shown to the plaintiff  
and the customer would sign in the book after  
having been paid by the plaintiff. The original  
slip from the book would be given to the customer.  
The plaintiff would write "paid" on the original  
before it is torn out. There is carbon paper  
between the Original and book copy when the plain-  
tiff writes. The writings in Ex.B are advances  
to customers. I see temporary receipt for £500  
20 under 21/X/52. The receipt is for monies advanced  
to the 2nd defendant. If an advance is made to a  
customer say in October, and he brings produce in  
November he is paid in cash, and the advance would  
still remain untouched. I see slip dated 25/X/52  
No.1911 in Ex.D2. On that day the 2nd defendant  
delivered cocoa valued at £220.4.9d. The 2nd  
defendant was paid immediately. The next slip 1912  
is dated 25/X/52 - and refers to the 2nd defendant.  
He delivered cocoa valued at £344.14.0. He was paid.

30 Q: What is the purpose of an advance?

A: The advance is given for the purpose of buying  
cocoa.

If the customer was not paid on delivery of cocoa  
he would not have any money to buy further supplies.  
I see writing in red pencil under receipt dated  
21.X.52 in Ex.B (L31 - L37). It is the reference  
to the relevant account in the Ledger. Persons to  
whom monies have been advanced for the purchase of  
cocoa, the respective advances are entered from  
40 Ex.B into the Ledger.

XXD Oseni:

Cross-examination  
for 1st Defendant

I have been attending court for about 3 years  
in respect of this case. This is the third  
occasion I have attended court in this building in  
connection with the case (Note: Building is Yoruba  
Tennis Club). I was outside when the plaintiff



In the High Court  
of Lagos

Plaintiff's  
Evidence

No.12

Ambali Jaji.

24th October 1958

Cross-  
Examination

- continued

was giving evidence yesterday. I sat under a tree. The plaintiff told me long ago that I would be required to give evidence. I wrote the receipt dated 21.X.52 in Ex.B. It was signed by the 2nd defendant. I wrote up all the Exs. D - D2. I know one Kayode. I also know Oseni; I do not know Ganiyu. I do not know Bisiriyu. I do not know Taoridi: the two I know were clerks under the plaintiff. The ticks in red in Ex.B means that the entry relating to receipts have been completed. I wrote everything in Ex.B. The ticks means that I finished with the receipt before I go to the next. Advances are not written in Exs.D - D2. I wrote the advance at 1920 in Ex.D2.

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By Court: The advances (£650 and £150) mentioned at 1920 in Ex.D2 are not to be found in Ex.B. The writing in red on slip dated 1/8/52 in Ex.D was done by writing on the original. It is a carbon impression.

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No.13  
Court Notes.  
28th October 1958

Tuesday the 28th  
day of October,  
1958

No.13  
COURT NOTES

Suit No. LD/231/56:

A.G. IJALE

v.

B.A. SHONIBARE & ORS.

Abudu for plaintiff.  
Oseni for 1st defendant.  
2nd and 3rd defendants in person.

Oseni:

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I should say at this stage have been intimated to appear for the 2nd and 3rd defendants.

Court:

The interests appear to be conflicting and Mr. Oseni may very well find that he is embarrassed. Furthermore, there is no application from Mr. Harrison Obafemi signifying his intention to withdraw by leave of the court. Will not proceed with

the case until Mr. Harrison Obafemi has indicated his position. He has treated this court with disrespect. The Registrar is to enquire from Mr. Harrison Obafemi whether he is withdrawing from the case. If so he must obtain leave from the court in the usual way. In the interests of justice will adjourn the case for mention on 5/1/59: Mr. Harrison Obafemi is to personally pay £3.3.0d. costs to the plaintiff, being costs of the day.

In the High Court  
of Lagos  
No.13  
Court Notes.  
28th October 1958  
- continued

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Monday the 5th day  
of January, 1959

5th January 1959

Abudu for plaintiff. Oseni for 1st defendant.  
Harrison Obafemi for 2nd and 3rd defendants.

Harrison Obafemi:

Ask leave to withdraw. Have not seen my clients. I have come all the way from Ibadan.

Court: Leave is granted for Mr. Harrison Obafemi to withdraw.

20 Wednesday the 28th  
day of January, 1959

28th January 1959

Adejunowo for Abudu for plaintiff.  
Oseni for 1st defendant. 2nd and 3rd defendants in person.

No.14  
AMBALI JAJI (CONTINUED)

Plaintiff's  
Evidence

2nd witness: AMBALI JAJI (Sworn).

No.14

P.C. Sunday Ajayi sworn to interpret from English into Yoruba and vice versa.

Ambali Jaji  
(Continued)

28th January 1959

30 XXn continues:

Cross-examination  
for 1st Defendant  
(Continued)

I live in the same house as the plaintiff. We live together. I know as a fact that cocoa

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.14

Ambali Jaji.

28th January 1959

Cross-examination

- continued

must be dried before sold to produce buyers. My master has a lot of customers who sell cocoa to him. I have been engaged in the buying of cocoa for the past 12 years. Customers will personally buy dried cocoa beans for sale. There are cases when customers will say they have cocoa beans for sale, but they are not thoroughly dry. In these cases I would expect the cocoa beans to be fully dried in a day or two. I am perfectly sure that would be the position. There were 3 clerks working under the plaintiff during the period 1951/1953. Their names are: Oseni Adetola, Kayode and myself.

10

(Registrar of court takes over interpretation having returned).

The other two clerks would weigh the produce when brought in. The produce would be passed on to me after weighing. By passing on to me, I mean, I would check their weight and work out the price. I would be told the weight by the other 2 clerks and work out the cost from a "Ready Reckoner". After calculating the price, I would then pass on the books with the price worked out to my master the plaintiff. I calculate the price in every case. Each produce customer has an account with us; this being so at the end of the cocoa season I would know how much has been delivered by the customer. We would know at the end of the season the state of the business. I am the person who kept such books showing the state of each customer's account at the end of the season. I am sure of what I am saying. The books are in the custody of the plaintiff. I do not know Ganiyu. I wrote everything in Ex.B. I am not prepared to support my master even at the risk of committing perjury. The receipt at the top of the page now marked X in Ex.B, in blue pencil was not written by me. That receipt was written by Kayode. I did not write the last receipt in Ex.B. I did not write the second receipt in Ex.B under which is written L 164 - L 171 on page marked "A" (in court) in blue pencil under date 1.X.52. The ticks in red under each receipt are made by me to indicate that I have finished with the receipt. The symbols in red under each receipt indicate ledger numbers. I tick to indicate that the customer has been paid. After writing the receipt and the customer has come to collect his payment on the same day I would tick.

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By Court: I do not tick receipts which I do not

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write. The tick is made when payment is made. The plaintiff pays. I write the symbols at the same time I make the tick. I make entries in the ledger. I make the entry in the Ledger before writing the receipt. I now say I enter from the receipt into the ledger. I enter into the Ledger first before writing the receipt.

In the High Court  
of Lagos

Plaintiff's  
Evidence

No.14

Ambali Jaji.

28th January 1959

Cross-examination

- continued

10 Q: From what do you enter into the Ledger?  
A: After the customer has received payment I make entry into the Ledger.

I wrote the receipt at the time of payment. When I am absent another clerk writes the receipt and makes the entry in the ledger.

XXd 2nd defendant: (Note: Should read 3rd defendant) Cross-examination  
by 3rd defendant

We have brought all the books concerning the accounts of all the customers for period 1951/1953.

Q: Where is the Ledger?  
A: There are no Ledgers.

20 This book shown me (from the custody of counsel for plaintiff) is the Ledger - put in by 2nd defendant and marked Ex.E. All the entries in Ex.E are in my handwriting.

Ex. E

Q: Show me in Ex.E all the entries concerning my account for period 1951/1953?  
A: The 3rd defendant's account is not in Ex.E. They are in Ex.B.

By Court:

Q: Relate any entry in Ex.B to any entry in Ex.E.  
A: We have just started this book.

30 Q: You said all the books concerning the accounts of all the customers for 1951/1953 are in court.  
A: I said so. Ex.E is for 1953.

40 The 3rd defendant's account is not in Ex.E. The advance of £500 to him is not in Ex.E. It is in Ex.B. I have not written the 3rd defendant's account because I have not checked it. Although the transaction took place in 1952 I have not yet written up the ledger. I enter into the ledger after writing the receipt.

In the High Court of Lagos There is no receipt in Ex.B from the 3rd defendant in respect of the 3rd defendant. There is no Ledger entry in Ex.B in respect of Ex.A.

Plaintiff's Evidence

By Court:

No.14  
Ambali Jaji.  
28th January 1959  
Cross-examination

There is an entry in Ex.E folio 31 in respect of an advance to the 3rd defendant on 13/11/52. Exhibits in the D here are the buying books.

XXd 3rd defendant (Should read 2nd defendant)

- continued

There is no other book concerning the transactions. There is no book in which the customers sign at the end of each month. There is no other book in which the customers signed except Ex.B. The weights of produce are generally put on paper. They are calculated and the customers are paid. The plaintiff does not owe the defendant any money. Looking at 1922 in Ex.D2, I would not say the plaintiff owes 2nd defendant £80. 13. The Cocoa supplied as mentioned in 1922 was of bad quality and therefore rejected. (Note: Due to the position which 2nd and 3rd defendants stood the 3rd cross-examined before 2nd re-examined).

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The plaintiff and I live in the same house but separate rooms. Folio 31 in Ex.E is the account of 2nd defendant.

Case for Plaintiff

DEFENDANTS' EVIDENCE

Defendants' Evidence

No.15  
BISIRIYI SHONIBARE

No.15  
Bisiriya Shonibare.  
2nd February 1959  
Examination

1st Defendant BISIRIYI SHONIBARE (m) Sworn on Koran, states in English:-

30

I live Oke-Ado, Ibadan. Produce trader. I know the plaintiff. Between 1951/1953 I sold produce to the plaintiff. I sold to him in the capacity of an independent seller - was not his sub-agent. I have never received at any time cash advances from the plaintiff. The plaintiff usually pays me by instalment for the produce

10 supplied by me. I remember receiving from the plaintiff £1,500; as part payment for produce sold and delivered to him. £500 being part payment to myself; and £500 each to the 2nd and 3rd defendants. The sums for 2nd and 3rd defendants were also part payments to them for produce sold to the plaintiff. On several occasions I have received monies from plaintiff as part payment of produce myself and 2nd and 3rd defendants supplied. It was only in 1955, the plaintiff first made demand for the monies in this action. When the plaintiff made the demand, I told him I did not owe him.

In the High Court  
of Lagos

Defendants'  
Evidence

No.15

Bisiriyi  
Shonibare.

2nd February 1959

Examination

- continued

20 The plaintiff kept a produce Ledger Account book in which all transactions relating to each produce buyer were put. Apart from that he kept Waybill books, wherein produce delivered by customers were entered. He also kept a Daily Produce Purchase book where produce delivered to, and weighed by his clerks were recorded. All entries in the purchase book were transferred to the Waybill books. These are all the books to my knowledge. The Ledger shows -

Abudu: He cannot say what is in the Ledger.

30 Court: The question could be put another way. The Ledger is kept in an open place in the plaintiff's store. Produce bought by me, has been recorded in that ledger in my presence. At the end of each month a balance is struck in the ledger showing the balance to be paid to me (Customer). When the balance is struck I sign the right side. I sign at the bottom. This would indicate the balance due to me and had agreed to it.

XXd Oyesanya for 2nd and 3rd defendants.

40 I know the 2 defendants. We are co-customers of the plaintiff. We trade with the plaintiff independently. There is no relationship of master and servant between the 2nd and 3rd defendants and myself. The other defendants and myself are not in partnership. The plaintiff has never told me that either the 2nd or 3rd defendant, has had cash advances from him for the purchase of produce. I have been in the produce business for over 20 years. The plaintiff is not the only produce buyer I have been dealing with. I have dealt with John Holt, P.Z. U.A.C. I am now a licensed buying

Cross-examination  
for 2nd and 3rd  
Defendants

In the High Court of Lagos  
 Defendants' Evidence  
 No.15  
 Bisiriyi Shonibare.  
 2nd February 1959  
 Cross-examination  
 - continued

agent for the W.R.P. Board. It is unusual for cash advances to be given by a produce Agent or buyer, without being signed for by the Customer. No paper was given to me for the signature of the 2nd and 3rd defendants, when I received the money. I was only told the respective amounts were part payments to the other defendants. Ex.B is not the ledger I have been referring to Ex.E is also not the ledger. The Ex.D series are the Waybill books which I have been speaking about. The transactions in the Waybill books are recorded in the Ledger to which I have referred. I cannot remember the exact date on which the £500 was given to me for the other defendants.

10

Cross-examination XXd Abudu for plaintiff.  
 for Plaintiff

As a produce buyer I keep an account of my transactions. I have nothing to show that the plaintiff owes me anything. I do not keep accounts of my transactions with buying agents persons to whom I used to sell produce. I cannot remember how many times a month I would deliver produce to the plaintiff. It would be about 6 times a month. I started to deliver to the plaintiff in 1951. I remember selling to the plaintiff up to December 1952. I do not remember selling in 1953. On each occasion there was delivery of produce by me, I would get the original of the Waybill. Ex.C - C5 are some of the Waybills given me by the plaintiff. On each of these, I signed as having received payment by instalment or in full. I have no document in my possession showing that the plaintiff is indebted to me for any amount on 22/2/52, before or after. Ex.A is my receipt.

20

Q: Is there anything in any of the Waybill books showing that the amount on Ex.A, is in payment of an outstanding amount ?

A: (Witness peruses the books in the Ex.D series. Waybill 1702 L Ex. D1.

30

I cannot show any in the Ex.D series relating to Ex.A. There were many Waybill books before Ex. A. Ex.D series refer to only the year 1952 - There is nothing among them for 1951. I have Waybills relating to Ex.A. They are Exs. C1, C & C3.

40

Q: Show the Court on Ex.C1 what relates to Ex.A?

A: There is a balance of £269.1.9. on Ex.C1.

The £269.1.9d was paid to me. I cannot produce any Waybill connecting Ex.A. On each occasion I received money from the plaintiff for produce delivered I signed the Waybill. I do not agree that Ex.A is a final receipt.

Q: Why did you not put on Ex.A that the amount was paid in settlement of previous debt?

10 A: Because the money was not received for me alone.

Q: Why did you not insert on Ex.A that your £500 was in settlement of a previous debt?

A: Because the plaintiff knew I was receiving £500 in part payment of produce sold to him.

Q: Why did you not add the particular date and delivery to which the amount referred?

A: Because the money was not intended for me alone.

Abudu:

Not asking about others - asking about yourself.

20 A: The plaintiff did not ask me to do that.

Court:

Q: You made the receipt?

A: Yes.

I am far more intelligent than the plaintiff.

By Court:

Q: You say £500 was part payment to you, did you get the balance?

A: Yes.

30 In Ex.C to C4, I was given receipts for December, 1951 to February, 1952.

The receipt Ex.A has nothing to do with the transactions in Ex.C to Ex.C4. I am not indebted to any of the firms I have mentioned John Holt, P.Z. U.A.C. I am not indebted to the W.R. Marketing Board. It is not correct that the amount on Ex.A is an advance from the plaintiff, which I should have settled and have not done so. As a produce buyer I gave advance to my customers which I

In the High Court  
of Lagos

Defendants'  
Evidence

No.15

Bisiriyi  
Shonibare.

2nd February 1959

Cross-  
examination  
- continued



In the High Court of Lagos  
 Defendants' Evidence  
 No.15  
 Bisiriyi Shonibare.  
 2nd February 1959  
 Cross-examination  
 - continued

recover at the end of the season. The season usually lasts 6 months. During that period, I pay my customers in full. There are customers still owing me, those who fail to pay me at the end of the season. All I can do after they have refused to pay me is to take them to court after several demands. The season ends with "Main" crop cocoa. We have "main" crop and "light" crop. Light crop follows "main" crop. "Main" crop ends the end of February. Light crop begins in June. There is no doubt that there can be selling and buying of cocoa after the "season", but it is confined to light crop and there is no advance for that. I do not owe the plaintiff any money on Ex.A.

10

By Court:

The plaintiff asked me to give the 2nd and 3rd defendants the money because he knew we are friends. I never kept any account of my dealings with any of the firms I have mentioned or with the plaintiff. I would know the state of my business with the buyer, agents from the balance which I sign for at the end of every month.

20

Re-examination Re-Xd

I usually sue those to whom I have advanced a few months after the end of the season, if they have not repaid the advance.

3rd February 1959  
 Recalled

On application of Oyesanya BISIRIYI SHONIBARE is recalled and is resworn.

Further cross-examination for 2nd and 3rd Defendants

By Oyesanya:

The 2nd and 3rd defendants did not receive £500 each through me on cash advance from the plaintiff, but produce delivered to the plaintiff.

30

To Abudu by leave of Court:

Q: You say the monies paid to the 2nd and 3rd defendants was for produce sold and delivered, show the Waybill for the produce said to be delivered to the plaintiff for which payment was made?

A: It can only be shown by the 2nd and 3rd defendants.

40

By Court:

I know the 2nd and 3rd defendants are sellers of produce to the plaintiff - just as I was, to purchase and deliver to the plaintiff. In the trade I would be called a buying agent.

No further questions by counsel.

To Sotuminu:

10 An agent is a customer who receives cash advance and sell to the buyer like the plaintiff or John Holt. An Agent is not supposed to deliver produce to any other person, but for whom he received the advance.

By Court:

I was not an agent. I was an independent buyer. The 2nd and 3rd defendants were also independent buyers.

To Abudu through Court:

20 I cannot say whether the 2nd and 3rd defendants received from time to time cash advances from the plaintiff.

Q: Why did you say then they are independent buyers?

A: Cannot say whether or not they are independent buyers or agents.

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No.16  
GANIYU AYANBANJO

1st witness for 1st defendant GANIYU AYANBANJO (m)  
Sworn on Koran states in English:

30 I live at 7 Palm Church Street, Lagos. Produce buyer. I know the 1st defendant. I also know the plaintiff. The plaintiff was my Master between 1952/1953. I was the plaintiff's clerk. My duties were to weigh produce; enter the weights in the

In the High Court  
of Lagos

Defendants'  
Evidence

\_\_\_\_\_  
No.15

Bisiriyi  
Shonibare.

3rd February 1959

Further cross-  
examination

- continued

Re-examination

No.16

Ganiyu Ayanbanjo.

3rd February 1959

Examination

In the High Court of Lagos  
 Defendants' Evidence  
 No.16  
 Ganiyu Ayanbanjo.  
 3rd February 1959  
 Examination  
 - continued

Waybill book; reckon the amount to be paid and passed the Waybill to the plaintiff, who would then pay the customer concerned in respect of whom the Waybill was made. I used two books, namely: the buying book and the Waybill book. There is also a Ledger book. I also used the Ledger. When produce came in the weight would be entered in the buying book and the amount to be paid would be reckoned. The amount to be paid is reckoned and entered into the buying book. The exact figures are in turn transferred to the Waybill book. The plaintiff would pay the customer and hands a copy of the relevant Waybill to him. The Ledger shows the balance of cash advanced at the end of the month to each customer. Some of the Waybills in Ex.D1 are in my handwriting. Ex.B is neither the buying book nor the Ledger to which I have referred. Ex.E is not one of the books to which I have referred. I have never seen it. I would be able to recognise the Ledger if I see it. This book shown me is not the Ledger book to which I have referred. It is not one of the books belonging to the plaintiff. I do not know if the 1st defendant owes the plaintiff any amount for the period that I worked with him. The 1st defendant never took any advance from the plaintiff. He only brought produce for sale. During 1952/1953, there were 8 clerks working for the plaintiff from day to day.

Note: Sotuminu seeks to tender book shown to witness. Court points out foundation must first be laid. Sotuminu asks leave to recall the 1st defendant. Court says this can be done later.

(Continued)

Examination in chief ends.

Cross-examination for 2nd and 3rd Defendants XXd Oyesanya for 2nd and 3rd defendants.

I was a clerk under the plaintiff between 1950/1953. I handled the Ledger of the plaintiff in common with other clerks. The ledger shows outstanding cash balances. Payments made by customers to the plaintiff are entered in the Ledger. Cash advances are entered in the Ledger. There are no cash advances that are not entered in the Ledger. All cash advances are entered in the Ledger. I have never seen Ex.B it may have been brought after I left the service of the plaintiff.

XXd Abudu for plaintiff

In the High Court  
of Lagos

Defendants'  
Evidence

No.16

Ganiyu Ayanbanjo.

3rd February 1959

Cross-examination  
for Plaintiff

10 I am a produce buyer. I buy produce for Shonny Bros. & Co. The 1st defendant is the proprietor. The Company's store is at 74 Apongbon Street, Lagos. I am not employed by Shonny Bros. & Co. I buy for them and receive a commission. I knew for the first time I was coming to give evidence yesterday. I knew in the evening of yesterday. I was not in this court yesterday. I came to the court yesterday with the 1st defendant in the same car, but did not enter the court. The 1st defendant did not tell me what happened in court yesterday and would be required to give evidence this morning.

Q: You can only recognise the first page on Ex.D1 as being in your handwriting?

A: Can also recognise Waybill Nos. 1704, 1708, 1723, 1724 and 1725, also 1731, 1732 and so on.

20 If a customer receives cash advances from the plaintiff for produce a receipt is written. I have written such advances. Cannot find my handwriting in Ex.B. I do not know if the plaintiff has ever advanced any money to the 2nd defendant. I know the 2nd defendant. I do not know the 2nd defendant's signature. I cannot recognise the 3rd defendant's signature. The 2nd defendant has been buying produce for the plaintiff for a long period - during my whole career with the plaintiff. The 3rd defendant bought for a short period. He bought for about 6 months. I can't remember if he bought produce for the plaintiff throughout 1951 and 1952. I was not called to witness cash advances to customers.

Abudu: Call any of the folio numbers in Ex.B1.

A 1 L226/L229.

It is an advance to one Ali Olusanya. The amount being £50 on 8/8/52.

Abudu:

40 Look at Ex.B under 21/3/52. You will see 2nd defendant advance of £500?

A: Yes. The folio written in Ex.B is L31-L37. In Ex.B see 13/11/52 the 2nd defendant received £500 advance. The folio is L 31 - L 37. The entry is

In the High Court  
of Lagos

Defendants'  
Evidence

No.16

Ganiyu Ayanbanjo.

3rd February 1959

Cross-examination

- continued

posted in Ex.E. For the 2 years I have not written cash advances in Ex.B, but I have written in others. I knew Oseni. He was a weighing clerk of the plaintiff. I was not his assistant. We did the same job. Oseni is a Senior to me. The parties are not all from the same town Ijebu-Ode. I would not know if any of the plaintiff's customers received cash advances from the plaintiff in his home after business hours I would not know. I can say for certain that the 1st defendant received no cash advance. All that time the 1st defendant only sold produce, received his money and went away. I am now employed to the 1st defendant. Only three of us of the 8 who wrote Waybills. Kayode did the same work as myself i.e. he wrote Waybills and weighed. Kayode wrote cash advances. Jaji also wrote in Ex.B. My handwriting is not in Ex.B, because I did not write in it.

10

Re-examination

Re-Xd:

The plaintiff would tell us when he made cash advances to customers at home. He never told me he made cash advances to the 1st defendant at home.

20

No.17

Bisiriyi  
Shonibare  
(Recalled).

3rd February 1959

Further  
Examination

No.17

BISIRIYU SHONIBARE (RECALLED)

BISIRIYI SHONIBARE is recalled and reminded of his oath.

To Sotuminu:

(Oseni takes over from Sotuminu).

To Oseni:

In my business I keep a book showing balances owed by my customers. This is the book - tendered - admitted and marked EX. F. A book similar to Ex.F was kept by the plaintiff. All produce buyers keep books like Ex.F.

30

Ex. F

To Oyesanya:

I started to keep Ex.F in 1948. I have others, besides this.

To Abudu:

Every firm has a different system of keeping accounts. U.A.C. differ from John Holt. The system of keeping cash advances is uniform. Ex.F also contains Estimated Monthly Expenditure, Salary for staff etc. Ex.F is a ledger.

By Court:

Cash advances commence from page 6 in Ex.F.

No questions by Oseni.

10 Case for 1st Defendant

No.18  
YINUSA GOODLUCK

Oyesanya calls 2nd defendant: YINUSA GOODLUCK  
Sworn on Koran states in Yoruba:-

20 I live at Ijebu-Ode. I live at 23 Idepo Street, Ijebu-Ode. Produce buyer. I know the plaintiff. I have had transactions with the plaintiff. I have been buying produce for the plaintiff since 1949. I always received advances from the plaintiff. When I received an advance I signed for it. For each advance I signed in a Ledger and in another. Ex.B is one of the books in which I signed. I signed the first receipt under 11/10/52 in Ex.B (Identified his signature).

(Note: Witness can understand English but prefers to speak in Yoruba. No doubt his Yoruba is better than his English).

30 The Ledger is not before the court. There is no time that I received a cash advance from the plaintiff and did not sign both books. The plaintiff has never sent cash advances to me through anyone. I collect my cash advances from the plaintiff myself. I did not receive £500 as cash advance from the plaintiff, through the 1st defendant. I do not owe the plaintiff £500.

In the High Court  
of Lagos

Defendants'  
Evidence

No.17

Bisiriyi  
Shonibare  
(Recalled).

3rd February 1959

Cross-examination  
for Plaintiff

No.18

Yinusa Goodluck

3rd February 1959

Examination

In the High Court XXd Sotuminu:  
of Lagos

Defendants'  
Evidence

No.18

Yinusa Goodluck.

XXd Abudu:

3rd February 1959  
Cross-examination  
for Plaintiff

From time to time I had received monies from the plaintiff through the 1st defendant. The plaintiff is still owing me for produce sold to him.

I did not hear all what plaintiff said, the 1st defendant's witness and the 1st defendant said because I was late in coming to the Court. Every time I deliver produce and it is weighed, I would get the Original of the Waybill which I take away. When I am not paid after delivery I do not receive the Original. I do not owe the plaintiff £800 apart from the claim. My signature appears under 21.X.52 in Ex.B as having received £500. I have repaid that sum. When the money is repaid the receipt is not cancelled.

10

Adjourned to 4/2/59 at 9 a.m. XXn to continue.

(Sgd.) A.R.F. Dickson,  
J u d g e.

20

4th February 1959

Wednesday the 4th day of February, 1959

9.5 a.m. Appearances as before except Abudu for plaintiff who is absent.

2nd defendant YINUSA GOODLUCK resworn.

Cross-examination XXd plaintiff:  
Continued

I do not owe the plaintiff £1000 apart from the alleged cash advance. On 13/11/52 I also signed for £500 in Ex.B. It is also entered in the Ledger.

(Abudu appears at this stage. Apologises for being late).

30

I say I do not owe the plaintiff £1000 for I have repaid in goods and not cash. When I say goods I mean Cocoa beans and palm kernels.

Abudu cross-examines:

If the Ledger is brought it will be seen that

I have repaid the £1000 in goods. There has been no agreement between the 1st and 3rd defendants and myself to say that a Ledger exists, which in fact does not. The plaintiff owes me £580. I did not tell my Lawyer the plaintiff owed me £580. I see folio 1920 of Ex.D2. I signed in two places showing I received monies for produce delivered on that Waybill. On the same Waybill I acknowledged my indebtedness to the plaintiff for £800.

10

Q: Tell the Court when you supplied produce to settle the debt of £580.

A: Part appears on folio 1922. Part of the repayment is on folio 1922 in Ex.D2.

It is not correct to suggest that the produce mentioned on Ex.D2 folio 1922, was rejected as being bad by the plaintiff, and I removed it to Apongbon Street.

20

Q: If you had not removed the Cocoa when were you paid for it?

A: I was not paid.

I did not tell my Counsel about the £580 owed by the plaintiff because it had nothing to do with this case.

Q: Tell the Court what amount of Cocoa the £500 represents, and when supplied?

A: I have not received any Cash advance from the plaintiff through the 1st defendant.

30

I cannot remember if on or after the 22/2/56 I received £500 from the plaintiff through the 1st defendant. I was served with a summons in this case. 1957. I knew I was being sued for £500. I knew that the claim was for £500 being an amount sent to me by the plaintiff through the 1st defendant, when I received the summons. After the receipt of the summons I went to the 1st defendant and discussed with him. I asked when I had sent him for £500 Cash advance. He also told me he had received similar summons and expressed surprise.

40

Q: Did you not admit then that you had received £500 from him - forget about Cash advance?

A: I did not say anything to him about receiving £500.

In the High Court  
of Lagos

Defendants'  
Evidence

No.18

Yinusa Goodluck.  
4th February 1959

Cross-examination

- continued



In the High Court Abudu:  
of Lagos

Defendants'  
Evidence

The 1st defendant has admitted receiving £500 and paying over to you - is that correct or not?

No.18  
Yinusa Goodluck.  
4th February 1959  
Cross-examination  
- continued

A: The plaintiff sends money to me through the 1st defendant and to the 1st defendant through me but not Cash advance.

I cannot definitely remember whether the plaintiff sent £500 to me through the 1st defendant on or after the 22/2/52.

10

I have not been able to produce a Waybill.

I do not owe the plaintiff the amount claimed.

Re-examination

Re-Xd:

I have not been able to produce any Waybill because it is 6 years since I have stopped supplying produce to the plaintiff, and I have changed hands several times since.

The Waybills in court are not exhaustive of my transactions with the plaintiff. The other Waybills are with the plaintiff. It is not necessary for Waybills to be delivered on every occasion produce is supplied because if we are not paid the Original is retained. Produce is entered on the Waybill after weighed, tested - found all right.

20

Court:

Q: What do you call "all right"?

A: Up to grade.

No.19  
Sule Hassan  
4th February 1959  
Examination

No.19  
SULE HASSAN

Calls 3rd defendant SULE HASSAN (m). Sworn on Koran, states in English:

30

I live at 174 Oke-Ado Ibadan. 3rd defendant in the suit. Produce buyer. Knew the plaintiff. I also know the 1st defendant. About 1952, I had transactions with the plaintiff. I sold produce to

him - Cocoa and palm kernels. I never received Cash advances from the plaintiff. When I supplied produce to the plaintiff, it would be entered on a Waybill. The entry would be transferred from the Waybill into the Ledger which shows the position of each trader.

By Court:

10 I dealt with the plaintiff from the latter part of 1951 to the early part of 1952 - a matter of about 6 months.

20 During that period I received no Cash advance from the 1st defendant sent by the plaintiff. There was a discussion between myself and the 1st defendant about Cash advance sent by the plaintiff: when I received the summons and was surprised. I went to the 1st defendant and asked him about it. He explained that he took £500 from the plaintiff on my behalf. I asked him what for. He said it was part of the money the plaintiff owed me. I told  
30 him I did not understand anything about the money for it was a long time. I see Ex.E. It is not the type of Ledger to which I have referred. My name does not appear in Ex.E. Ex.F is the type of Ledger I am referring to, but it is not ledger kept by the plaintiff. It is not in all cases the plaintiff paid me in full - at times he paid by instalment. In Ex.D, folio 1733 I supplied produce to the plaintiff. He paid by instalments on that quantity. There is no record of the 1951 trans-  
30 actions in the Ex.D series. I have been in the produce business for over 30 years. From my experience if money is to be advanced to a customer, there must be an agreement if the advance is to spread over several months. All advances whether permanent or temporary must be entered into a Ledger. When produce has been supplied by a person receiving an advance, the person who grants the advance deducts the advances. If the produce supplied does not cover the amount advanced, the  
40 person making the advance may sue the customer at the end of the season. The deductions are made at the end of the season. In the case of a temporary advance the deductions are made when the produce is supplied, if it is permanent at the end of the season.

I do not admit the claim of the plaintiff. I have no business with the 1st defendant.

In the High Court  
of Lagos

Defendants'  
Evidence

No.19

Sule Hassan.

4th February 1959

Examination

- continued

In the High Court  
of Lagos

Q: What business are you in partnership?  
A: We do not do business together.

Defendants'  
Evidence

There has been no master and servant relationship between myself and the 1st defendant.

No.19

Sule Hassan.  
4th February 1959

XXd Sotuminu:

Examination  
- continued

I have on several occasions received money from the 1st defendant sent to me through the plaintiff. I cannot remember any occasion that the plaintiff has sent money to me through the 1st defendant and I have not received it.

10

Cross-examination  
for 1st Defendant

Cross-examination XXd Abudu:  
for Plaintiff

I did not admit to the 1st defendant that I had received the £500. I disagreed with him. I do not know anything about the £500 said to have been paid to me on or about 22/6/52. I did not send the 1st defendant on or about 22/6/52 to receive £500 for me. I started buying for the plaintiff in 1951. I ceased buying in 1952. I have taken a temporary advance only from the plaintiff. That was £500. It has been repaid. I made a temporary receipt for the advance - This is the receipt - put in - marked EX. G. I wrote the receipt myself and signed it. I put "temporary receipt" which meant temporary advance. It is not correct I took the advance on Ex.G at the home address of the plaintiff - 8 Bishop Street. It is not because the receipt was written at home that it was marked temporary receipt. In December 1956, I did not pay the plaintiff £100 in Cash. I supplied the plaintiff about 4 times each month.

20

Ex. G

30

Court:

I have been looking at Ex.G. The stamp bears an inscription of H.M. the Queen. The receipt is dated 8/X/51. H.M. did not ascend the throne in 1951. It was in 1952.

Undoubtedly the receipt was stamped after the 8/X/51. Sections 87/89 Cap.209 relevant. Abudu agrees that it should be expunged. Ex.G is expunged from the record.

40

I cannot remember if I received any money from the 1st defendant on 22/2/52 or after.

The 1st defendant, 2nd defendant and myself have not agreed to deny the receipt of the money.

Re-Xd:

No questions.

In the High Court  
of Lagos

Defendants'  
Evidence

No.19

Sule Hassan.

4th February 1959

Cross-examination

- continued

No-Re-examination

No.20  
YINUSA GOODLUCK (RECALLED)

10 2nd defendant YINUSA GOODLUCK recalled and is reminded of his oath.

No.20  
Yinusa Goodluck  
(Recalled)

4th February 1959

Examination

By Court:

I have not sued the plaintiff for the amount he owes. I will not sue the plaintiff; because he is my friend. The plaintiff owes me £580.

Q: £580 is a large sum, why not recover it?

A: He is my friend.

I am not a wealthy man.

No further questions by counsel.

In the High Court  
of Lagos

No.21  
ADDRESSES BY COUNSEL

No.21

Oyesanya addresses:

Addresses by  
Counsel.

4th February 1959

For 2nd and 3rd  
Defendants

2nd and 3rd defendants categorically denied receiving £500 each. No document tendered where-  
by 2nd and 3rd defendants acknowledging receiving £500 each. Ex.E was not in existence at the material time - see evidence of 1st defendant's witness. Ex.E covers chiefly 1952. Plaintiff has kept real Ledger out of the way. Waybills for 1951 not before the Court - not without design.

10

Plaintiff gave no evidence that 2nd and 3rd defendants received any money from him. Plaintiff must fail against 2nd and 3rd defendants. When party is in possession of document and fails to produce it is presumed against him.

For 1st  
Defendant

Sotuminu addresses:

Court to believe the 1st defendant that he was not a sub-agent of the plaintiff. If the transaction is correct as alleged, it would have appeared in Ex.E; because receipt was given at the time Ledger purported to have been in existence. All the receipts in Ex.B mention "Advance". Ex.A does not.

20

There is evidence there is a book which customers sign every month. It has not been produced. Supressed.

Ex.F shows proper relation-ship between customer and dealer (See page 50).

Refers para. 2 Statement of Claim. 1st defendant denies he is sub-buying agent and that is why his name does not appear in any of the books.

30

Delay in bringing action.

For Plaintiff

Abudu Addresses:

The summons read as exactly as is stated in Ex.A. The 2nd paragraph of Statement of Claim has been proved. 2nd defendant admits dealing with plaintiff on Cash advance basis Ex.B. 3rd defendant later admit received advance in 1951 though at first denied. Therefore proved sub-

40

buying agent. 1st defendant in para. 4 Statement of Defence avers £500 received by him was for produce he sold and delivered. In para. 5 does not say the money was for produce sold and delivered by 2nd and 3rd defendants. Therefore his evidence that the money was for that purpose is an after-thought - agreement between them.

10 2nd and 3rd defendants evade what happened on 22/2/52. Ex.A written at plaintiff's home - special receipt - written by 1st defendant - cannot be compared with normal receipt therefore entries could not be made in the normal books except supported by a statement from the writer. An accountant would be puzzled in entering the receipt. Until 1st defendant pleaded, no one could have known in what parts the sum was divided.

20 Witness for 1st defendant not to be believed. If Court looks at Ex.E it would be seen not prepared for this case.

Waybills Ex.D series are not the only Waybill books used by plaintiff, but those only produced as relevant to this case.

Court:

Will notify solicitors of a day when judgment will be given. Am now clearing up some judgments of cases concluded when I was about leaving for the Southern Cameroons.

Adjourned for judgment.

30

(Sgd.) A.R.F. Dickson.

J u d g e

4/2/59.

In the High Court  
of Lagos

          
No.21

Addresses by  
Counsel.

4th February 1959

For Plaintiff

- continued

In the High Court  
of Lagos

No.22  
J U D G M E N T

No.22  
Judgment.  
23rd April 1959

IN THE HIGH COURT OF LAGOS  
THURSDAY THE 23rd DAY OF APRIL, 1959  
BEFORE THE HONOURABLE  
MR. JUSTICE DICKSON

SUIT NO. LD/231/56

BETWEEN: A.G. IJALE . . . Plaintiff

and

B.A. SHONIBARE  
YINUSA L. GOODLUCK  
S.O. HASSAN } Defendants 10

JUDGMENT

The plaintiff claims against the defendants as follows:-

"£1000 as against the 1st and 2nd defendants jointly and severally. £500 as against the 1st and 3rd defendants jointly and severally; total sum of £1500 being the amount of advances by plaintiff through the 1st defendant at Lagos for the supply of cocoa and palm kernels by the defendants to the plaintiff at Lagos. 20

"The 1st defendant signed for and received £1000 for himself and on behalf of the 2nd defendant and also for £500 on behalf of the 3rd defendant on the 22nd day of February, 1952.

"The defendants failed to supply the required produce and they have neglected or refused to pay the said £1,500 despite repeated demands." 30

The plaintiff was at the material time a produce buyer for A.G. Leventis & Company, licensed buying agents. The defendants bought and sold produce to the plaintiff.

The 1st defendant admits that he received the sum of £1,500 as claimed. By paragraph 4 of his

amended statement of defence he avers that £500 was received by him in payment of produce which he had already sold and delivered to the plaintiff. He avers by paragraph 5 that he handed over £500 to each of the 2nd and 3rd defendants at the plaintiff's request but does not state the purpose of the payment. In his evidence before the court he repeats the averment set out in paragraph 3 and for the first time contends that the sums paid to the 2nd and 3rd defendants were in payment of produce sold and delivered to the plaintiff and not advances. The 2nd and 3rd defendants in paragraph 3 of their amended statement of defence, deny they were agents for the plaintiff for the purchase of produce and that they ever received at any time any cash advance from the plaintiff for the purchase and delivery of produce. Each of them in his evidence in chief denies receiving any money whatever from the 1st defendant.

20 I have approached the consideration of this case with anxiety and much concern in order to ascertain in so far as I can where is the truth. There has been lying by everyone who gave evidence.

There is no doubt whatever that at one time and another each of the defendants had transactions with the plaintiff in the matter of the sale of produce to him.

30 The plaintiff appears to be slightly literate and does not impress me as a shrewd businessman.

Exhibit A, upon which the claim is founded, is a receipt made by the 1st defendant and signed by him. It reads:

"I received £1000 for myself and Y.L. Goodluck also £500 for S.O. Hassan to-day 22.2.59."

sic      1952

Then follows his signature.

40 Exhibits C - C5 are original waybills issued by the plaintiff's office and tendered by the 1st defendant. They show that between the 6th December, 1951 and the 5th March, 1952, he had on 6 occasions delivered produce to the plaintiff for which he had been paid, and which had no relation with Exhibit A whatever. The duplicate of

In the High Court  
of Lagos

No.22

Judgment.

23rd April 1959

- continued



In the High Court  
of Lagos

No.22

Judgment.

23rd April 1959

- continued

Exhibit C5, is found in waybill book Exhibit D. Subsequent waybills are to be found in Exhibit D vouching sales of produce by the 1st defendant and payments made to him; the last of which bears the date 6th April, 1952. Exhibit D1 contains one transaction in the name of the 1st defendant. This is shewn on waybill No. 170 dated the 16th April, 1952. According to the evidence of the plaintiff, the 1st defendant on the waybills. If his allegation is correct, the produce for which he received £500 as payment must be anterior to the 6th December, 1951. In view of his defence as set out in his pleading, namely: that the sum of £500 was payment for produce and not an advance (it is to be observed that in his evidence he does not say payment, but part payment) he would have shewn a waybill prior to December, 1951. When asked by Mr. Abudu, Counsel for the plaintiff whether he had any waybills relating to Exhibit A, he replied that they are Exhibits C1 and C3. These could not by any stretch of imagination relate to Exhibit A. When asked by the same Counsel to show the court what is there on Exhibit C1 to indicate that it relates to Exhibit A, he said that there is a balance of £269.1.9d. On looking at Exhibit C1 which is dated the 26th January, 1952, this again could not have possibly have any connection with Exhibit A. The first defendant knew that and when confronted with the absurdity of his answer, had to admit that the sum of £269.1.9d had already been paid. In fact, it shows produce to the value of £769.1.9d. had been delivered on the 26th January, 1952; £500 paid on the 31st January, 1952, and the balance of £269.1.9d paid on the 7th February, 1952.

It would appear that the wording on Exhibit A was not without design. A series of significant questions were put to the 1st defendant about exhibit A. I quote the questions and answers:

Q: Why did you not put on exhibit A that the amount was paid in settlement of previous debt?

A: Because the money was not received for me alone.

Q: Why did you not insert on exhibit A that your

£500 was in settlement of a previous debt?  
 A: Because the plaintiff knew I was receiving  
 £500 in part payment of produce sold to him.

In the High Court  
 of Lagos

          
 No.22

Q: Why did you not add the particular date to  
 which the amount referred?

Judgment.

A: Because the money was not intended for me  
 alone.

23rd April 1959

- continued

ABUDU: Not asking about others asking about your-  
 self.

10 A: The plaintiff did not ask me to do that.

Q: You made the receipt?

A: Yes.

He admitted that he was by far more intelligent  
 than the plaintiff. The witness who is by no  
 means a fool could not have been serious in his  
 answers.

It may be convenient at this stage, to  
 advert to the 2nd and 3rd defendants.

20 In my view the 2nd defendant in examination  
 in chief modifies what he says in paragraph 3 of  
 the statement of defence. He admits having  
 transactions with the plaintiff, and says he has  
 been buying produce for the plaintiff since 1949.  
 By saying this, he is undoubtedly admitting that  
 he was a buying agent of the plaintiff. He admits  
 he always received advances for the plaintiff. He  
 categorically denies ever receiving £500 cash  
 advance from the plaintiff through the 1st defendant.  
 He says that the plaintiff has never sent cash  
 30 advances to him through anyone. It is worthy of  
 note that in answer to counsel for the 1st defendant  
 he admits receiving monies from the plaintiff  
 through the 1st defendant, thereby contradicting  
 what he has said earlier.

The 3rd defendant says in examination in  
 chief that in 1952, he had transactions with the  
 plaintiff and sold him produce. He never received  
 any cash advances. In answer to the Court, he  
 says he dealt with the plaintiff from the latter  
 40 part of 1951 to the early part of 1952 - a matter  
 of six months. It is accepted by the plaintiff  
 that he dealt with him for six months - roughly

In the High Court  
of Lagos

No.22

Judgment.

23rd April 1959

- continued

one cocoa season. This defendant also states categorically in examination in chief, that during that period he received no cash advances from the plaintiff through the 1st defendant.

Like the 2nd defendant, in answer to counsel for the 1st defendant, he admits he had on several occasions received money from the plaintiff through the 1st defendant. He cannot remember any occasion that the plaintiff sent money to him through the 1st defendant, and he had not received it. 10

Both these defendants are very untrustworthy witnesses. They are evasive on the question of receiving £500 from the plaintiff through the 1st defendant. Mr. Abudu put the following question to the 2nd defendant:

Q: The 1st defendant had admitted receiving £500 and paying over to you is not that correct or not?

A: The plaintiff sends money to me through the 1st defendant, and through the 1st defendant to me but not cash advance. 20

He is hereby saying in effect that what he receives are not advances but payments. He ends up by saying that he cannot definitely remember whether the plaintiff sent £500 to him through the 1st defendant on or before the 22nd April, 1952.

It has been submitted by Mr. Abudu that the 1st defendant in his statement of defence does not say the money handed over to the 2nd and 3rd defendants was for produce sold and delivered by them (2nd and 3rd defendants), and suggests that his evidence that the money was for that purpose was an after thought, and indicates an agreement between them all. The point to be made here is: these two defendants in examination in chief made an absolute denial of ever receiving any money from the 1st defendant; but when cross examined by counsel for the latter, without an effort on his part, each unhesitatingly admitted receiving monies from the plaintiff through the 1st defendant. Conduct of this nature brands the 2nd and 3rd defendants as liars, and would make one ponder whether the suggestion is not correct. It may very well be that the 1st defendant after receiving monies from the plaintiff as advances to the 2nd 30 40

and 3rd defendants failed to give them and when this case came about, he pleaded that the amount was not an advance to them, and may have got them to agree to say so, but exercising caution they are not prepared to go the whole way; but in order not to let him down act evasively.

In the High Court  
of Lagos

          
No.22

Judgment.

23rd April 1959

- continued

10 If the monies were in fact payments for produce the 2nd and 3rd defendants had nothing to lose in admitting it. On the other hand, if the money was intended for payment and was not paid over to them, no doubt more would have been heard about it before now from the 2nd and 3rd defendants. The 1st defendant is no doubt an intelligent man. He is by far more clever than the plaintiff and the 2nd defendant, and, to a little less extent than the 3rd defendant. In my opinion, he is one who could influence both his co-defendants and in particular the 2nd.

20 It has been stated in the defendants' pleadings that they were never buying agents for the plaintiff, but what did the 1st defendant say in answer to the court?

"I know the 2nd and 3rd defendants are sellers of produce to the plaintiff just as I was - to purchase and deliver to the plaintiff. In the trade I would be called a buying agent."

30 It has been shewn that as a rule when advances are made to produce buyers by the defendant they are recorded in a book like Exhibit B; the record taking the form of a receipt which is signed by the buying agent receiving the loan. It has also been shewn that it is the system of the plaintiff to enter the loans from Exhibit B into a ledger and when this is done the folio of the ledger is noted against the appropriate receipt in Exhibit B. Comment has been made as to the practice of keeping books amongst produce buyers and it has been suggested as the plaintiff has not followed the recognised practice his claim against the defendants cannot  
40 succeed.

In the first place, I should think that a man is entitled to keep his books as he pleases and is not bound to follow the practice of others in every detail. Standards and methods of keeping books vary with the educational standard and may be culture of the proprietor of a business. The system adopted

In the High Court by Messrs. John Holt or U.A.C. would not necessarily be the criterion for the less articulate.  
of Lagos

No.22

Judgment.

23rd April 1959

- continued

In the instant case, it is alleged by the plaintiff that he made three advances in all to the 1st defendant at his (the plaintiff's) house; the receipt of which in each case was acknowledged by the 1st defendant on a slip of paper. The plaintiff says when two repayments were made he returned the respective receipts to the 1st defendant. The third receipt is the subject matter of this case. He gives as his reason for adopting this method that the transactions took place at his home as it were after office hours. In my view there is nothing wrong with that. Is it being seriously contested that because a receipt is not made out in an office and in a particular book, it is not effective? Indeed, the 1st defendant is saying that it is effective in so far as it acknowledges payment for money made to him for produce supplied. Neither is the receipt in question nor the two others recorded in Exhibit B or the ledger. The fact that Exhibit A has not been recorded in either book would not prohibit the plaintiff from recovering on it. 10 20

The 3rd defendant who incidentally at first denied that he ever had any advance from the plaintiff, admitted under cross-examination that he received an advance from him of £500 in 1951. This was written by himself on a piece of paper.

The issue to my mind is this: was the receipt Exhibit A an acknowledgment of monies received by the 1st defendant for himself and his co-defendants as advances and not in payment of produce? The point has been made that the ledger Exhibit E is not the real ledger of the plaintiff. It appears that Exhibit E has been recently posted from Exhibit B; but the fact remains that Exhibit B is not of recent origin. The question of the ledger has only been brought in as a "red herring" across the trail. 30 40

It is my judgment that the 1st defendant received the sum of £1,500 as set out in Exhibit A as advances to himself and his co-defendants. I believe the plaintiff on this aspect. The defence of the 1st defendant is a subtle attempt to deprive the plaintiff of his money.

Apart from the evidence of the 1st defendant, there is no evidence that his co-defendants actually received the sums intended for them. It has already been pointed out that the 2nd and 3rd defendants have been vague on this question. They have never admitted receiving the money. The plaintiff deposed that when he asked them about it their reply was that they would be seeing the plaintiff.

In the High Court  
of Lagos

\_\_\_\_\_  
No.22

Judgment.

23rd April 1959

- continued

10 On the evidence, it would be a matter of conjecture whether the 2nd and 3rd defendants received the monies from the 1st defendant.

I therefore find the 1st defendant liable for the whole amount, that is to say, the sum of £1,500.

Judgment is therefore entered for the plaintiff for £1,500 against the 1st defendant. The 2nd and 3rd defendants are dismissed from the action.

20 The 1st defendant will pay the plaintiff's costs assessed at fifty five guineas inclusive of out of pocket expenses.

The plaintiff will pay costs assessed at twenty-five guineas to the 2nd and 3rd defendants jointly (both defendants have been represented by the same Counsel).

(Sgd.) A.R.F. Dickson

J U D G E.

23rd April, 1959.

---

In the Federal  
Supreme Court

No.23  
NOTICE AND GROUNDS OF APPEAL

No.23

IN THE FEDERAL SUPREME COURT OF NIGERIA

Notice and  
Grounds of  
Appeal.

NOTICE OF APPEAL

Rule 12

9th May 1959

Suit No. LD/231/56:

Between:

A.G. Ijale .. Plaintiff

And

B.A. Shonibare )  
Y.L. Goodluck } .. Defendants 10  
S.O. Hassan )

In re: B.A. Shonibare .. Appellant

TAKE NOTICE that the 1st defendant being dis-  
satisfied with the decision of the High Court of  
Lagos contained in the judgment of Mr. Justice  
Dickson dated 23rd April, 1959 doth hereby appeal  
to the Federal Supreme Court of Nigeria upon the  
grounds set out in paragraph 3 and will at the  
hearing of the appeal seek the relief set out in  
paragraph 4.

20

AND the Appellant further states that the  
names and addresses of the persons directly  
affected by the appeal are those set out in  
paragraph 5.

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

Whole decision.

3. Grounds of Appeal:-

1. The learned trial Judge misdirected himself  
in law and in fact in holding that on the  
evidence it would be a matter of conjecture  
whether the 2nd and 3rd defendants received  
the monies from the 1st defendant and there-  
by came to a wrong decision. 30
2. The decision is against the weight of the  
evidence.
3. Further grounds of appeal will be filed on  
the receipt of the records of appeal.

- 4. Relief sought from the Federal Supreme Court: Reversal of the judgment appealed against and any further order or orders as the Court may deem fit to make in the circumstances.
- 5. Persons directly affected by the Appeal:
  - 1. A.G. Ijale, 8 Bishop Street, Lagos.
  - 2. Y.L. Goodluck, 13 Idepo Street, Ijebu-Ode.
  - 3. S.O. Hassan, 174 Ijebu Bye Pass, Oke Ado, Ibadan.

In the Federal Supreme Court

No.23

Notice and Grounds of Appeal.

9th May 1959

- continued

10

Dated the 9th day of May, 1959.

(Sgd.) M.O. Oseni.

Appellant's Solicitor.

No.24

ADDITIONAL GROUNDS OF APPEAL

No.24

Additional Grounds of Appeal.

28th June 1960

20

1. The learned trial Judge erred in law in his judgment in that he failed to give any consideration whatsoever in it to a material evidence given for the defence before reaching his conclusion.

2. The learned trial Judge erred in law by failing to consider that the failure or refusal of the plaintiff to produce the Ledger Book or buying book (showing the indebtedness of the 1st defendant to him, as claimed) which he admitted was in existence was an evidence that he was hiding material fact which was against his case.

30

3. The learned trial Judge misdirected himself in law in his decision in that he applied the wrong legal test to the case in reaching his conclusion by dwelling too much on points of weakness in the defendant's evidence as if they constituted proof of plaintiff's claim.

4. The learned trial Judge erred in law in his decision in that having satisfied himself that the plaintiff lied to him (as contained in his judgment), he failed to consider whether that was not



In the Federal  
Supreme Court

material enough so as to affect his case, the onus  
being on him and not on the defendants.

No.24

Dated the 28th day of June, 1960.

Additional  
Grounds of  
Appeal.

28th June 1960

- continued

(Sgd.) Olujide Somolu,  
Appellant's Solicitor  
Olujide Somolu,  
68, Strachan Street,  
Ebute Metta.

No.25

Court Notes of  
Argument.

13th July 1960

No.25

COURT NOTES OF ARGUMENT

10

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
WEDNESDAY THE 13th DAY OF JULY 1960  
BEFORE THEIR LORDSHIPS

Sir Adetokunbo Ademola Kt., Chief Justice of  
the Federation  
Percival Cyril Hubbard: Ag. Federal Justice  
John Idowu Conrad Taylor: Ag. Federal Justice

SUIT NO. FSC.403/59

B.A. Shonibare .. Defendant/Appellant 20  
and  
A.G. Ijale .. Plaintiff/Respondent  
and  
Y.L. Goodluck }  
S.O. Hassan } .. Defendants/Respondents

Appeal against judgment of Dickson, Judge  
dated 23/4/59.

Somolu (Oseni with him) for Appellant.

Abudu for Plaintiff/Respondent

Defendants/Respondents in person.

Motion before the Court to argue additional  
grounds of appeal filed. Abudu not objecting. 30

Court to Somolu

Ground 1 additional grounds appears vague.  
What is the material evidence? Court cannot at

this stage allow amendment to the grounds.  
Ground 1 is struck out.

In the Federal  
Supreme Court

Order: Motion as prayed.

No.25

Counsel to argue grounds 2 - 4 of the additional grounds. The original grounds contain 2 grounds: Ground 1 does not appear to be in order.

Court Notes of  
Argument.

13th July 1960

Somolu: I abandon ground 1 of the original ground.

- continued

Somolu argues:

Ground 2 original and additional omnibus ground.

10 Refers to the judgment at page 48 lines 30 - 33 - this is the real issue in the case. Plaintiff gave evidence to support the averment in his amended Statement of Claim. The evidence is at page 13 lines 11 - 20.

The appellant at page 25 lines 1 - 5 denied the story of the Plaintiff/Respondent.

At page 30 is the evidence of a witness for the defence (starting at page 29) calls attention to page 30 lines 25-27 .

20 From page 29 line 30 to page 30 line 4 it will be seen that this witness is a material witness. He was the Plaintiff's clerk at the material time although he gave the evidence he gave for the defendants. It is curious the learned trial Judge gave no consideration to the evidence of this witness at page 30 lines 25- 27 . This evidence goes to the root of the case. What would the Judge's conclusion might have been if he gave consideration to this evidence? It is difficult to say.

30 Refers to page 15 line 34 et seq.

If it is true that an advance was made to the defendants for produce, why was the amount not deducted from further transactions between the parties: Clear evidence that there were further transactions for three months after - see page 16 lines 23 - 27. See also Exhibit 'D' and monies paid out on them between the 22/2/52 and May, 1952. Also see Exhibit 'C' and referred to by the Plaintiff himself at page 17 lines 2 and 3 .

40 It is curious that the Plaintiff/Respondent had to tell lies about his books.

In the Federal  
Supreme Court

No.25

Court Notes of  
Argument.

13th July 1960

- continued

At page 30 line 37 et seq will show there is a ledger which plaintiff himself would not produce.

Also at page 16 lines 31 and 32 where plaintiff said Exhibits 'B' and 'D' are the only books kept by him in his business. His witness Ambali - evidence starts from page 19 but see page 23 lines 3 - 6 describes that there is a ledger. Also, on further questioning another Exhibit, Exhibit 'E' came out.

At page 23 the court pressed the matter further, but with no success. 10

Refers to page 25 line 14 et seq which still deal with the ledger.

Submit page 48 from line 30 is a clear misdirection.

Ground 3: From page 43 line 25 to page 48, the learned Judge was more concerned with the case of the defendants. Why was this done and why was that not done? Submit they were unjust examination in that it was the plaintiff who had to make a case. 20

Ground 4: Refers to page 43 lines 20 - 24. If the court found that the plaintiff was lying, why did he not relate the plaintiff's lies to the claim - especially about the ledger. See page 38 line 33 et seq will show the court what plaintiff can do.

Abudu for Respondent:

General Ground

Refers to page 25 line 1 et seq. Nothing like documents to support it. No waybill to support that he supplied such produce nor can he relate any of the waybills produced to this particular supply. It is true that a shrewd businessman should have a ledger but the Plaintiff/Respondent said he kept none and the court believed him. See page 48 line 13 et seq up to page 49. 30

Refers to page 26 line 18.

Ground 3 (Additional)

Learned Judge was considering Exhibits tendered by the plaintiff. The learned Judge examined 40



In the Federal  
Supreme Court

          
No.26

Judgment.

25th July 1960

- continued

It is not disputed that each of the defendants sold produce to the plaintiff at different times in 1951 and up till May, 1952.

After a lapse of 4 years, and indeed in 1956, the plaintiff/respondent brought an action in the High Court of Lagos against the defendants jointly and severally for a sum of £1,500 alleged advanced to them for supply of cocoa and palm kernel which they had failed to deliver.

After a series of amendments, the amended claim before the Court was for "£1,000 as against the 1st and 2nd defendants jointly and severally and £500 as against the 1st and 3rd defendants jointly and severally."

10

The claim was based on a receipt, Exhibit A, signed by the defendant/appellant (1st defendant in the Court below) on the 22nd February, 1952, which reads:

"I received £1,000 for myself and Y.L. Goodluck; also £500 for S.O. Hassan today 22.2.52."

20

It was not at any time disputed, however, that the appellant had received monies, at various times, from the plaintiff/respondent on behalf of the 2nd and 3rd defendants (now defendants/respondents) which he had delivered to them.

After hearing evidence in the case in the High Court, Lagos, judgment was entered for the plaintiff/respondent against the 1st defendant only for the amount of £1,500. From that judgment he has appealed to this Court.

30

Of the three grounds of appeal argued, only ground 2 of the additional grounds of appeal need be considered for the purposes of this appeal. It is as follows:

"2. The learned trial Judge erred in law by failing to consider that the failure or refusal of the plaintiff to produce the Ledger Book or buying book (showing the indebtedness of the 1st defendant to him as claimed) which he admitted was in existence was an evidence that he was hiding the material fact which was against his case."

40

In the Federal  
Supreme Court

\_\_\_\_\_  
No.26

Judgment.

25th July 1960

- continued

To understand this ground of appeal, it is perhaps necessary to consider the background to the case. In the Court below the appellant never at any time denied receiving the sum of £1,500 from the plaintiff. He admitted receiving the amount and admitted giving Exhibit A as a receipt; but he stated that £500 of the amount was a payment to him by the plaintiff/respondent for produce he had sold and delivered to him previous to that date and that the balance was also an amount of £500 each, owed by the plaintiff/respondent to the other two defendants for produce already delivered to the plaintiff/respondent by them. He challenged the plaintiff/respondent to produce his ledger or produce book in which all transactions between him and his customers were entered, and which include all transactions with him. Before the trial, a subpoena was served on the plaintiff to produce the ledger or produce book.

20 The learned trial Judge put the issue between the parties very clearly when he said in his judgment:

"The issue to my mind is this: was the receipt, Exhibit A, an acknowledgment of monies received by the 1st defendant for himself and his co-defendants as advances and not in payment of produce ..... "

30 The defendant/appellant (1st defendant's) case was that the amount was payment for produce he had supplied; he alleged it would be so found in the plaintiff/respondent's ledger which he called for. The plaintiff/respondent in one breath admitted, under cross-examination by the appellant's Counsel, the existence of a ledger or produce book in which all his business transactions were entered: in another breath he quickly retracted this evidence. A book, Exhibit B, in which he pasted the receipt, Exhibit A, which was produced and called a ledger, is in fact cash advance book. Exhibit E, which  
40 was described by the learned Judge as "recently posted", was in fact an attempt to mislead the Court.

Having denied the existence of the produce book or ledger, the plaintiff/respondent went on to say that he only kept two books - Exhibits B and D - in his business. Exhibit B is a book showing advances made to customers. Exhibit D - D2 are delivery books.

In the Federal  
Supreme Court

          
No.26

Judgment.

25th July 1960

- continued

Later his own witness, in fact his clerk, produced more books (Exhibit E) and spoke of a ledger in which he made entries, but again which was not produced. The learned Judge himself pressed for the production of the ledger where entries of all business transactions were made, but it was not forthcoming.

The defence called one Ganiyu Ayanbanjo who was formerly a clerk to the plaintiff/respondent. This witness described a book which he called a ledger or buying book in which weight of produce which came into the store was entered, as well as the name of each customer, outstanding cash balances and payments by customers to the plaintiff/respondent. The description of the ledger or produce book by this witness was substantially the same as the description given by the plaintiff/respondent before he retracted this evidence.

10

In his judgment the learned trial Judge gave no consideration to all this evidence about the ledger or buying book.

20

There is another aspect of the matter. The plaintiff/respondent, in his evidence, admitted that after he had made the cash advance on Exhibit A to the defendant/appellant on 22/2/52, and he supplied no produce for it, he continued to trade with him up till May, 1952; that he (defendant/appellant) continued to supply him with produce for which he paid cash. He admitted that on one occasion he was unable to meet the full payment and had to pay something on account, leaving a balance. It is strange, is it not, that at that time, the defendant/appellant was owing him money on Exhibit A and yet he made no efforts to deduct the balance due on the account just mentioned from the debt due on Exhibit A. To my mind, it does not appear that the learned trial Judge directed his mind to this.

30

In another passage in his judgment he said:

"I have approached the consideration of this case with anxiety and much concern in order to ascertain in so far as I can where is the truth. There has been lying by everyone who gave evidence .....

40

Earlier, the learned Judge, had in respect of

a receipt, Exhibit G, tendered during the proceedings, recorded unfavourably about the plaintiff/respondent as follows:

In the Federal  
Supreme Court

No.26

Judgment.

25th July 1960

- continued

"I have been looking at Exhibit G. The stamp bears the inscription of H.M. The Queen. The receipt is dated 8/10/51. Her Majesty did not ascend the throne in 1951. It was in 1952. Undoubtedly the receipt was stamped after the 8/10/51 .....

10 In considering the present appeal, the words of Lord Summerville in the House of Lords in the appeal Benmax v Austin Motor Co. Ltd. (1955) 1 ALL. E.R.326 at p.330 are apt. Dealing with the premises on which the Judge in the Court below based his decision, he said:-

20 "On the other hand, there are sentences in his judgment, which indicate very probably, but not certainly, that he did not have present to his mind an answer or document which plainly affects the accuracy of a witness he has relied on, on his general conclusions .....

30 The learned Judge in the Court below in the present appeal having found that the parties to the action told lies, he did not, it appears advert his mind to whether the plaintiff's lies related to the existence or otherwise of the ledger or produce book which was the basis of the defence. Had he directed his mind to it, he would undoubtedly have asked himself why such document was not produced by the plaintiff.

The only portion in his judgment in which the learned Judge believed the plaintiff/respondent is recorded in the following words:

"It is my judgment that the 1st defendant received the sum of £1,500 as set out in Exhibit A as advances for himself and his co-defendants. I believe the plaintiff on this aspect .....

40 If there was in fact a ledger showing the transactions between the parties, as all the evidence pointed to; and it was not produced by the plaintiff/respondent, the only conclusion to be inferred is that the production of it would be unfavourable to him and



In the Federal  
Supreme Court

          
No.26

Judgment.

25th July 1960

- continued

this would have materially affected the outcome of the case. It appears to me that the learned Judge was on the facts, by virtue of Section 148(d) of the Evidence Ordinance, entitled to draw unfavourable conclusions against the plaintiff/respondent had he addressed his mind to the fact that he kept away the ledger or produce book which clearly from the whole evidence must be in existence.

I would for these reasons allow the appeal. 10

I would dismiss the plaintiff's claim against the defendants with costs in the Court below assessed at 25 guineas in favour of the 1st defendant who is the appellant in this Court.

Costs of this appeal are assessed at 45 guineas.

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

I concur.

(Sgd.) Percy C. Hubbard  
ACTING FEDERAL JUSTICE. 20

I concur.

(Sgd.) John Taylor  
ACTING FEDERAL JUSTICE.

Counsel for appellant - Mr. Olu Somolu (Mr. M.O. Oseni with him).

Counsel for respondent - Mr. S.O.O. Abudu

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No.27  
DECREE

In the Federal  
Supreme Court

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

No.27

Decree.

Suit No. LD/231/1956:  
F.S.C. 403/1959.

25th July 1960

On appeal from the judgment  
of the High Court of Lagos.

Between:

10	B.A. Shonibare	Defendant/Appellant	
	and		
	A.G. Ijale	Plaintiff/Respondent	
	Y.L. Goodluck	Defendants/Respondents	}
	S.O. Hassan		

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

Monday the 25th day of July, 1960.

UPON READING the Record of Appeal herein and  
after hearing Mr. O. Somolu (Mr. M.O. Oseni with  
him) of counsel for the Defendant/Appellant and  
Mr. S.O.O. Abudu of counsel for the Plaintiff/  
20 Respondent:

IT IS ORDERED that :-

1. this appeal be allowed:
2. the Plaintiff's claim against the  
Defendants be dismissed with costs in  
the Court below assessed at 25 guineas  
in favour of the first Defendant, the  
appellant in this appeal:
3. the costs of this appeal be assessed  
at 45 guineas.

30 (Sgd.) G.S. Showemimo  
CHIEF REGISTRAR.



In the Federal  
Supreme Court

No.28

Order granting  
final leave to  
Appeal to Her  
Majesty in  
Council.

15th May 1961

No.28

ORDER GRANTING FINAL LEAVE TO APPEAL TO  
HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

SUIT NO. LD/231/1956

F.S.C. 403/1959.

Application for an order  
for final leave to appeal  
to Her Majesty-in-Council.

10

(L.S.)  
(Sgd.) L. Brett  
FEDERAL JUSTICE  
(PRESIDING)

BETWEEN: A.G. Ijale .. Applicant  
and  
B.A. Shonibare .. Respondent

Monday the 15th day of May, 1961.

UPON READING the Application herein and the  
affidavit of the Applicant sworn to on the 6th  
day of April, 1961, and after hearing Mr. S.O.O.  
Abudu of counsel for the Applicant and Mr. M.O.  
Oseni of counsel for the Respondent:

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

20

(Sgd.) S.A. Samuel

AG. CHIEF REGISTRAR.



IN THE PRIVY COUNCIL

No. 20 of 1962

ON APPEAL FROM  
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ABUDU GBADAMOSI IJALE  
(Plaintiff)

Appellant

- and -

B.A. SHONIBARE  
(Defendant)

Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.  
Appellant's Solicitors

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
London, W.C.2.  
Respondent's Solicitors.