

13, 1957

No. 39 of 1953.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.
(LAGOS SESSIONS)

BETWEEN

ADEYINKA OYEKAN
AMUSA DOCEMO
OLOYEMI DOCEMO
10 H. A. OGUNDIMU
BABATUNDE AKITOYE
(On behalf of themselves and other members of
the House of Docemo) (Plaintiffs)

UNIVERSITY OF LONDON
W
25 FEB 1958
INSTITUTE OF ADVANCED
LEGAL STUDIES

Appellants

19798

AND

MUSENDIKU ADELE (Defendant)

Respondent.

Case for the Appellants.

RECORD.

1. This is an appeal from a judgment and an Order of the West African Court of Appeal both dated the 17th November, 1952, dismissing with costs an appeal from a judgment of the Supreme Court of Nigeria, dated the 18th January, 1951, which dismissed with costs the Appellants' claim for (i) a declaration of title in respect of No. 26 Upper King Street, Lagos, commonly known by the names of "Iga Idunganran" or (as the Appellants allege) "The House of Docemo," (ii) damages for trespass committed by the Defendant on the said property, (iii) recovery of possession of the said property. pp. 64, 71.

2. The principal question to be determined on this appeal is whether the Appellants as representatives of the House of Docemo are entitled to the said property by virtue of a Crown Grant to King Docemo, dated the 15th July, 1870. (In this paragraph, and hereinafter, the expression "the House of Docemo" means the descendants of King Docemo.) p. 48.

3. Docemo was "King of Lagos," in the sense in which the term "king" was then commonly used by Europeans in the West Coast of Africa, from the year 1853. By a Treaty of Cession dated the 6th August, 1861, he ceded his territory, the port and Island of Lagos, and the direct full and absolute dominion and sovereignty thereof to the Queen of Great Britain her heirs and successors. The head of the House of Docemo at the date of the institution of the present suit, viz., the 13th October, 1949, was the first Plaintiff, Adedoyin Docemo, who died on the 21st July, 1950, after which the present first Appellant, Adeyinka Oyekan, was p. 53, l. 21. p. 74. p. 17, l. 34.

p. 7, 1. 19.

installed as his successor. The Respondent is not a member of the House of Docemo but claims to be a member of the House of Ado. Ado was an ancestor of Docemo and it is contended by the Respondent that the House of Ado comprises his descendants and therefore includes the House of Docemo. The Respondent claims to be descended from Adele, an uncle of Docemo, and to be the head of the House of Ado, and alleges that he was "capped" on the 1st October, 1949, as "Oba of Lagos" by the Chiefs entitled to do so. None of these claims are admitted by the Appellants, though they do not deny that certain persons, whose right to cap a person as "Oba of Lagos" is not admitted, purported to "cap" 10 the Defendant on the 1st October, 1949, as "Oba of Lagos."

p. 1.

pp. 6-7.

p. 76.

4. The Suit was instituted by a Civil Summons dated the 13th October, 1949, in the Supreme Court. The Plaintiffs by their Statement of Claim dated the 8th November, 1949, relied upon a Crown Grant dated the 15th July, 1870, and further stated that the property in dispute had for a period of over 100 years been in exclusive possession of the House of Docemo and that various attempts by outsiders to challenge the rights of the House of Docemo over the property had been successfully resisted. They complained that the Respondent and his servants and agents on the 1st October, 1949, broke and entered the 20 property in dispute which was at that time in the possession of the first Plaintiff as the head of the House of Docemo together with other members of the House of Docemo, and that the Respondent had since been in wrongful possession of the property.

p. 76.

5. The Crown grant of the 15th July, 1870, is in the following terms:—

No. 74.

KNOW ALL MEN BY THESE PRESENTS, that I *John Hawley Glover Commander in Her Majesty's Royal Navy and Administrator* of the Government of the Island and Territories of Lagos, having 30 duly investigated the Claims set forth by *King Docemo* to a Piece of Land situated at *Great Bridge St. Idumuagbo* and measuring *One hundred and ten feet East Public Street, with angle of one hundred and eight feet to space by Three hundred and thirty-five feet to Lane, Four hundred and eighty-six feet West in Great Bridge Street Three hundred and forty-seven feet North to Marina, and Two hundred and seventy feet South Public Street* do hereby Grant and Assign to the said *King Docemo His Heirs, Executors, Administrators and Assigns* for ever the above specified Piece of Land.

As witness my Hand under the Great Seal of the Colony, this 40 *15th day of July, 1870.*

(Great Seal)

(Sgd.) *JOHN H. GLOVER,*
Administrator.

I do hereby certify, that I have this *20th day of August, 1870,* received a Grant under the Great Seal of this Settlement, of which the above is a true Copy.

Witness,

I. J. King.

pro. King Docemo.

Soguro. his
X

mark. 50

6. The Respondent by his Defence dated the 21st November, 1949, pp. 7-8.
inter alia, denied that the First Plaintiff was the head of the House of Docemo and stated that what the Plaintiffs called the House of Docemo is the House of Ado and that the Respondent is the head thereof; denied that he was in wrongful possession of the property in dispute; admitted the Crown Grant but contended that if the same was granted to "Docemo and his heirs" the grant was obtained by him in trust for the family of Ado; that the House in question from time immemorial is the official residence of the Oba who is the head of the House of Ado and is also for
10 the use of Chiefs and the descendants of Ado and slaves as a meeting place; pleaded that he would contend at the trial that the Crown Grant is inoperative and of no effect; denied the allegation that the property in dispute had for a period of over 100 years been in exclusive possession of the House of Docemo and stated that it has always been in the possession of any Oba duly installed by the Chiefs according to native custom and placed on the Stool in the House; he denied that the property was ever in the lawful possession of the First Plaintiff; stated that he had every right to enter the property and that he was not in wrongful possession thereof; averred that on the death of the previous Oba Falolu the War
20 Chiefs became the custodians of the property and that no other person had a right to the possession thereof until an Oba is installed therein; averred that the Respondent was duly capped on the 1st October, 1949, as the Oba of Lagos and was duly installed in the property and by virtue of (1) his office, (2) his position as the head of the House, and (3) his being a descendant of the Oba Ado he occupied the property in accordance with ancient custom; and averred that any Oba duly installed as the head of the House of Ado was the Head Chief of Lagos; and the Respondent alleged relationship not only to Ado but even to Docemo.

7. The action was heard by Mr. Justice Reece on various days in pp. 10-47.
30 the months of February, March, November and December in the year 1950. Fifteen witnesses were examined on behalf of the Plaintiffs and seven witnesses on behalf of the Defendant. There were no independent witnesses except certain Government or Court Officials who produced documents, two of the Plaintiffs' witnesses who produced documents and two of the Plaintiffs' witnesses as to the alleged trespass. All other witnesses were either members of the families of Docemo Akitoye or Adele, or partisans of one or other side.

8. A considerable body of evidence was led by the parties as to the family history and the history of Lagos (which are bound up together),
40 and reference was also made to history books, namely the Rev. J. Buckley Wood's "Historical Notices of Lagos" (1880) "History of Lagos" by Prince John (. . .) "History of Lagos" by J. B. Losi (1914), Payne's "Table of principal events in Yoruba History" (1893), and, drawing from the above and other sources so far as Lagos is concerned, Sir Alan Burns' "History of Nigeria" (4th Ed. 1948). Summarising the latter, pp. 33-40, it is stated that at some time (possibly in the 15th century, though Burns does not specify any date) certain Yorubas under a ruler called the Olofin crossed from the mainland to the small island of Iddo and thence to the Island of Lagos and began to farm there. The Olofin, claiming
50 title presumably by right of first occupation, divided the island between

Idejos, p. 40, l. 38.

p. 77, l. 14; p. 78, l. 34;
p. 79; p. 80, l. 15;
p. 89; p. 121, l. 21.

p. 12, l. 20; p. 23, l. 26;
p. 35, l. 26.

p. 50, l. 140 to
p. 51, l. 5.

10 of his sons who farmed there and whose descendants are the landowners forming the section of the White Cap Chiefs, known as Idejos. At or shortly after this time the powerful state of Benin established its ascendancy over Lagos, probably towards the end of the 15th century, the title however of the Idejos (White Cap Chiefs) to the land not being affected. Some time later the King of Benin appointed Ashipa, a mainland Yoruba chief, to rule the island as his representative with the assistance of advisers from Benin (whose successors are another section of the White Cap Chiefs known as Akarigbe). His title is not stated by Burns, but according to the evidence that of his successors down to one Akitoye 10 was Olowo, i.e., Collector of Money. Ashipa was succeeded as ruler under Benin by a son, the said Ado, to whom (though this is not mentioned by Burns) one Aromire, a White Cap Chief, is said to have presented a farm used for growing peppers which comprised, as part of a larger area, the disputed property. Ado was succeeded as ruler under Benin by a son and the succession continued among his descendants until the death of Idewu Osulari in or about 1832, either from father to son, brother to brother, or uncle to nephew.

p. 87, ll. 14-34.

p. 86, ll. 28-29.

p. 11, l. 24.

The selection of the person to be presented to the King of Benin as successor appears from the Record to have been made by divination of the 20 Babalawo (priest) of the god Ifa from among the sons of preceding rulers born during the reign of their father, and there is authority that the succession was confined to the sons of the last ruler, others only being submitted to Ifa if the late ruler had no son. The person so selected would as a matter of course be accepted by the family as their head and by the community as their ruler but he had the duty to take the body of his predecessor to Benin for burial and would himself receive from the King of Benin the insignia of office without which his title to rule was imperfect. Upon Lagos becoming independent, the taking of the body to Benin and the confirmation by the King of Benin of the choice made 30 by Ifa ceased, Akitoye being the last ruler to receive the insignia from Benin but being buried in the Iga Idunganran and not at Benin.

Idewu Osulari, upon being ordered by the King of Benin to yield up his office, committed suicide. Burns states (p. 37) that he should, in the ordinary way, have been succeeded by his brother Kosoko, but, owing to the opposition of the Eletu (the principal Akarigbe Chief), he was in fact succeeded by his father's brother Adele, and on the death of the latter (1834) by Adele's son Oluwole (1834-1841)* who was followed by Akitoye, another brother of Adele, Akitoye being the father of Docemo. Akitoye recalled Kosoko to Lagos (vide Burns, p. 38 and p. 111). In 40 1845 Akitoye, being about to abolish the slave trade and make a treaty with the United Kingdom (Burns, 112 top), was ejected by Kosoko, who took his place as ruler and carried on the slave trade vigorously. In November, 1851, Kosoko refused (Burns, 115) to discuss with the British the abolition of the slave trade on the ground that he was not his own master but under the King of Benin (Burns 115), so at the end of December, 1851 (Burns 116-119), H.M. Naval Forces, after strong resistance, occupied

**The dates of the rulers of Lagos given in this paragraph have been taken provisionally from the Defendant's genealogical tree and down to the accession of Akitoye in 1841 are open to doubt.*

the town of Lagos, expelled Kosoko from the Island and restored Akitoye, who, on the 1st January, 1852, signed a treaty providing for the abolition of the slave trade (Burns 119), and human sacrifices and for the encouragement of Christianity, the British Forces then withdrawing.

9. With the restoration of Akitoye the connection with and suzerainty of Benin ceased. Akitoye was therefore the first independent ruler of the island. Akitoye died in 1853 and was succeeded as ruler by his son, the said Docemo (Burns 119), who was independent of Benin, and protected by Her Majesty. The statement in Burns, p. 120, footnote, that he was not King by right, but was made King by the direction of Her Majesty's Government against the wishes of his chiefs, is contrary to contemporary first-hand records. As a ruler, he was unsatisfactory to the protecting power, who decided, in 1861, to establish British sovereignty at Lagos but to provide for Docemo's material interests (vide Parliamentary Papers relating to the occupation of Lagos, p. 5). Docemo accordingly, under pressure (Burns, pp. 121-122), on the 6th August, 1861, signed with the principal chiefs the Treaty of Cession of that date. Thereafter he had no authority whatsoever, save that, as personal privileges, the Treaty permitted him to decide disputes between his former subjects with their consent and to stamp transfers of land as proof that there were no other native claims upon the land transferred.

There have been therefore 3 periods in the history of Lagos, from and including the time of Asipa.

During the first period running from the appointment of Asipa by the King of Benin as his procurator at Lagos until the restoration of Akitoye on the 1st January, 1852 (a period perhaps of upwards of 200 years), Lagos was dependency of Benin and the descendants of Asipa ruled it as governors under Benin.

The second period extended from such restoration on 1st January, 1852, to the Treaty of Cession on the 6th August, 1861, during which period Lagos and its rulers, Akitoye and Docemo, were independent of Benin and protected by Great Britain.

The third period began with the Treaty of Cession when Lagos became part of the Dominions of the Crown, Docemo being allowed to retain the title of King. Since that date it appears that certain descendants of Docemo who have occupied the property in dispute have used the title "Head of the House of Docemo" and it is to be gathered from the Record have on occasion been referred to officially, not as "Oba of Lagos," but as Oba (or Olowu) of the House of Docemo and Falolu, the predecessor of the original Plaintiff as Head of the House of Docemo, used the title of "Oba" accordingly.

By the Treaty of Cession, King Docemo ceded the port and Island of Lagos and other rights in terms as follows:—

" I Docemo do with the consent and advice of my Council give, transfer and by these presents grant and confirm unto the Queen of Great Britain her heirs and successors for ever the port and Island of Lagos with all the rights profits territories and appurtenances whatsoever thereunto belonging and as well the profits

and revenue as the direct full and absolute dominion and sovereignty of the said port island and premises with all the royalties thereof freely fully entirely and absolutely . . .”

The Treaty also provided (Article 2nd) that—

p. 74, ll. 32-35.

“ Docemo will be allowed the use of the title of King in its usual African signification and will be permitted to decide disputes between natives of Lagos with their consent subject to appeal to British laws.”

In consideration of the cession the Treaty further provided that Docemo should receive an annual pension. 10

10. The effect of this Treaty in relation to land in Lagos has been considered in—

Attorney-General Southern Nigeria v. John Holt & Co. [1915] A.C. 599, 2 N.L.R. 1.

Amodu Tijani v. Secretary Southern Nigeria [1921] 2 A.C. 399, 3 N.L.R. 50.

and in connection with Crown Grants—

Sonmonu v. Disu Raphael [1927] A.C. 881.

Oshodi v. Dakolo and Others [1930] A.C. 667.

Idewu Inasa v. Oshodi [1934] A.C. 94.

Brimah Balogun and Others v. Oshodi [1936] 2 A.E.R. 1632. 20

Following on these decisions the Crown Grants (Township of Lagos) Ordinance (No. 18 of 1947, now Cap. 44 Laws of Nigeria, 1948) was enacted which, in its preamble, recites, partly in the actual words used in the judgment of the Judicial Committee of the Privy Council delivered by Lord Haldane, in the case of *Amodu Tijani* [1921] 2 A.C. at p. 407, that “ the effect of the said Treaty was, that, while the private rights of property of the inhabitants were to be fully respected, there passed to the Crown whatever rights the Oba possessed including whatever proprietary rights the Oba possessed beneficially and free from the usufructuary 30 qualification of his title in favour of his subjects.”

11. With regard to the pepper farm given by Chief Aromire to Ado there was no evidence as to the extent of this farm but it is common ground that it covered much more than the present site of No. 26 Upper King Street and it was also common ground that it had been at some time or other in whole or part partitioned among certain descendants of Ado and the parts had become the family property of various sub-families descended from Ologun Kutere, who was descended from the original grantee Ado. It did not appear whether or not any part of the original grant still remained unpartitioned family land. By Yoruba customary 40 law however such original family would have had a contingent reversionary interest in the portions of the land partitioned to the sub-families if any sub-family died out.

11, 20, 21, 23,

12. It was common ground that Aromire had given the area in which the disputed property is situated to Ado but it was asserted by the Plaintiffs that his successor Ologun Kutere had divided (whether the whole or part was not said) the land given by Aromire between his sons Adele, Eshilokum,

Akitoye (all three of whom were in turn his successors as rulers of Lagos under Benin), Olusi, Akelu (otherwise Akinlolu) and Olukoya, that the share so given by Ologun Kutere to Akitoye had been, or included, the disputed property, which Akitoye in his turn had given to his own son, the said Docemo.

Witnesses for the Defendant admitted that there had been a division and that, in the near neighbourhood of the disputed property, the families of Adele, Eshilokum, Akitoye, Olusi, Akelu and Olukoya, and indeed all the children of Ologun Kutere, had lands given to them, that the respective families of the before-mentioned children still had land in the districts in which it had been stated by the Plaintiffs' witnesses that land had been given them by Ologun Kutere and that Docemo had been given property. But the witnesses for the defence denied that the disputed property had been included in any gift to Akitoye or by Akitoye to Docemo.

13. There was also a dispute as to when and by whom the buildings upon the disputed property had been erected.

Appellant Amusa Docemo alleged that Akitoye started to build the houses (presumably referring to those now upon the site) and his son Docemo completed the buildings (presumably meaning the buildings begun by Akitoye) but another principal witness for the Plaintiffs admitted that Akitoye's father had occupied the same Iga.

The Defendant's witnesses however asserted that the rulers of Lagos had resided there since the time of Gabaru, who first put a building there and that a successor, Akinsimoyin, erected a building with a tiled roof, some of the tiles alleged to have been used being exhibited (Ex. 24), these witnesses either relying upon or being supported by statements in Losi (pp. 14 and 16). Admittedly there had been some later building.

No evidence was given by either party as to the circumstances in which the Crown Grant of 1870 of the disputed area and surrounding land had been made to Docemo.

14. As to the actual possession of the disputed property at the time of the alleged trespass, admittedly it had been in the possession of Falolu, the immediate predecessor of Adedoyin Dosunmu, the original first Plaintiff, as Head of the House of Docemo for many years prior to his death on the 2nd September, 1949. There was no evidence that any person not a member of the House of Docemo or an ibiga (domestic) of that House was in occupation of any part of the disputed property at the time of Falolu's death but there was evidence that members of the House of Docemo and their ibigas then were in occupation and continued in occupation until expelled by force on 1st October, 1949, by the Defendant and his multitude of followers. The first Plaintiff was selected by the Docemo family to succeed Falolu and it was stated in evidence by Defendant's witness, Chief Ashogbon, that Adedoyin was in fact in possession of the property for about two months prior to such expulsion though, from shortly after Falolu's death, this Chief had the keys of some of the rooms in which he had deposited what he described as the properties of the deceased.

The Plaintiffs proved that for about 96 years it had been in the undisputed possession (except for the period mentioned below) of Docemo and his descendants, that is, of the House of Docemo, from the accession of Docemo in 1853 up to the 1st October, 1949, when Docemo's lineal successor, the said Adedoyin Docemo, the then head of the House of Docemo, was expelled by force therefrom by the Defendant and a multitude of people. The excepted period was the period in the years 1925 to 1931 when Eshugbayi Eleko, the then Head of the House of Docemo, was unlawfully removed from the property by the Colonial Government and deported by the Colonial Government to another part of Nigeria. In the 10 latter year however, following two decisions adverse to the Colonial Government in Privy Council Appeal Nos. 127 of 1927 *Eshugbayi Eleko v. The Officer administering the Government of Nigeria and Another*, delivered on the 19th June, 1928, and in Privy Council Appeal No. 42 of 1930 *Same v. Same* delivered the 24th March, 1931, Eshugbayi Eleko was re-instated by the Colonial Government in the property.

p. 80, l. 20.

p. 33, l. 26.

p. 33, l. 22.

p. 33, l. 17.

p. 7, l. 30.

15. The Defendant did not claim ownership of the property but his case was that he had the right to occupy it so long as he remained the properly appointed "Oba of Lagos." He said further that the property was not the personal property of Docemo as Docemo but that Docemo 20 had occupied it, as his predecessors or successors did, as the Head of the House (of Ado) as the official residence of such Head, whose title from time immemorial had been "Oba" or "Olowo" and who respectively had resided there from the time of Ado until the present time and that the Crown Grant was obtained by Docemo in trust for the House of Ado.

p. 8, l. 7.

p. 8, l. 9.

p. 8, l. 17.

p. 8, l. 20.

The Defence denied that the property had ever been in the lawful possession of the first Plaintiff or that the first Plaintiff was "the Head thereof" but said that the Defendant had lawfully entered the property, and, as Oba, was entitled to the exclusive possession of it by virtue of (i) his office (as Oba), (ii) his Headship of the House (of Ado) and (iii) his 30 descent from Ado.

pp. 48-58.

16. (A) By his judgment delivered on the 18th January, 1951, Mr. Justice Reece, after specifying the Plaintiffs' claims (as set out in para. 1 of this Case), proceeded to examine the historical evidence, which he remarked, apart from certain books, had been traditional. Apart from the books, in fact it was only in part traditional and the books were based on tradition also in large part.

p. 48, l. 33.
p. 50, l. 3.

(B) He first dealt with the evidence of the Plaintiff Amusa Docemo, a son of King Docemo. Amusa had stated that the property was given by Akitoye to Docemo, Akitoye having been given it by his father, Ologun 40 Kutere, who had other named children to whom Ologun Ketere gave other properties. He also deposed that Akitoye had given lands to another son of his, Fasinro, and that the actual distribution had been made by Docemo, as Akitoye's successor. This witness also stated that "Enu Owa" was Docemo family land, and that a son of Docemo, Falolu had resided there (Enu Owa is about 280 yards distant). From this evidence the learned Judge expressed himself satisfied that Akitoye did not give the

p. 49, ll. 27-29.

property to Docemo as family land but that Docemo succeeded to it as Oba, while his own family land was at Enu Owa. It is respectfully submitted that the evidence merely shows that there was Docemo family land at Enu Owa and that this in no way shows that the disputed property had not been given to Docemo by Akitoye as family land or was not the family land of the House of Docemo.

The learned Judge then reviewed evidence as to the succession of "Obas" (which succession he sets out substantially as given in Losi's History). p. 50, ll. 4-24.
p. 51, ll. 9-30.

10 (c) After reviewing all the evidence he was of opinion that the Plaintiffs had failed to show that they were entitled to the declaration of title claimed. He was satisfied that the Iga had been from earliest existence the traditional home of the Obas of Lagos and did not accept that it had been given by Olugun Kutere to Akitoye and by him to Docemo. Nor did he accept the argument that the Crown Grant conferred on the House of Docemo the absolute ownership of the land, but was of opinion that, upon the evidence, the proper construction of such Crown Grant was "that the land was given to King Dosunmu as trustee for his successors in the office of Oba of Lagos." That evidence, he held, established that, from the
20 time of Gabaro up to the death of Falolu, every person occupying the Iga occupied as Oba of Lagos and by virtue of being Oba of Lagos and that this included both Akitoye and Docemo. And he relied upon the observation of Chief Judge Tew in Suits 386/1927, 387/1927 and 443/1927 that it had been repeatedly held that a Crown Grant did not necessarily confer exclusive ownership upon the grantee, so as to enable his descendants to exclude members of his family and others equally entitled. p. 54, l. 34.
p. 54, l. 20.
p. 54, l. 15.
p. 52, ll. 45-48.
p. 52, l. 49 to
p. 53, l. 22.

(d) He also held that the Plaintiffs were not entitled to recover possession because, to obtain this, they must show a better title than the Defendant and that they could only do so by showing that they required
30 such possession to enable a properly installed Oba to take up his residence there. And he held that this was disproved because the original first Plaintiff Adedoyin had not been appointed Oba by "the Chiefs" but the Defendant had been so appointed and had been recognised by Government as Oba. (The actual recognition however was quoted by him and was as "Head of the House of Ado.") p. 54, l. 25.
p. 53, ll. 40-46.
p. 55, ll. 4-17.

(e) The learned Judge also rejected the Plaintiffs' claim for damages for trespass. He held that Adedoyin was in fact in possession of the Iga though not of all the rooms, the elders of the House of Docemo having called in two chiefs upon Falolu's death to lock up the part of the Iga
40 where the paraphernalia was kept and to take charge of it, because they were not allowed by custom to go near the body. p. 58, l. 23.
p. 56, ll. 1-12.

He also found as a fact that the Defendant forcibly entered the Iga on the 1st October, 1949, breaking down the fence and the gate but not damaging the buildings inside. But he expressed himself satisfied that Adedoyin's occupation was not of right and therefore unlawful (presumably for the same reason as the learned Judge had rejected the Plaintiffs' claim for recovery of possession, though this is not here stated). p. 56, ll. 19-39.
p. 57, l. 24.

p. 58, ll. 1-12.

He therefore held, in consequence of section 292 of the Criminal Code, that the Defendant, being entitled to the control or management of the Iga *virtute officii* as Oba, was entitled to have used such force as he did to gain entrance to the Iga for the purpose of removing Adedoyin Dosunmu therefrom, no harm having been done to him. He had in fact quitted the Iga with other members of the House of Docemo in face of overwhelming force when the wall and gate were broken down.

p. 12, ll. 40-48, etc.

(F) The learned Judge therefore gave judgment for the Defendant with costs.

p. 59.

17. The present Appellants duly appealed to the West African Court of Appeal upon three grounds of appeal. Ground 1 was that the learned Trial Judge had not applied sections 3 and 5 of the Crown Grants (Township of Lagos) Ordinance (which is Ordinance No. 18 of 1947 and Chapter 44 of Laws of Nigeria 1948). Ground 2 was not and is not now relied upon. Ground 3 was that the judgment was against the weight of the evidence.

p. 60.

p. 64.

18. (A) The West African Court of Appeal (Sir John Verity, C.J., Nigeria, Sir Foster Sutton, President, and Sir Henley Coussey, Justice of Appeal), upon the 17th November, 1952, dismissed the appeal with costs, the judgment being delivered by the Chief Justice and assented to by both the other members.

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p. 64, ll. 11-19.

(B) The judgment shortly stated the Plaintiff's claim, that their claim was based upon averments that the premises were the property of the descendants of King Docemo and that reliance was placed upon the Treaty of 1861 and the Crown Grant of 1870.

p. 64, ll. 20-27.

The judgment then stated that the Respondent was the duly recognised Oba of Lagos, sued personally and not in that capacity, and that he contended that the premises were not the absolute property of the Plaintiffs or of the descendants of King Docemo but were the traditional residence of the Oba of Lagos, wherefore the Respondent contended that the Appellants were not entitled to a declaration of title nor to possession of the premises nor could they recover damages against the Respondent for his entry in exercise of his alleged right to occupation as Oba of Lagos.

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(C) The judgment then stated that the conclusion of the learned trial Judge had been that the premises were in fact the traditional residence of the Obas or Kings of Lagos, that the Crown Grant was not an absolute grant to King Docemo and his heirs but in trust to the use of the Obas of Lagos and that consequently all three heads of the Plaintiff's claim failed.

p. 64, ll. 36-46.

(D) The judgment then said that Appellant's Counsel had taken little objection to the learned Judge's findings of fact but had almost entirely rested his argument upon criticism of the inferences drawn by the learned Judge from the facts found by him and his conclusions as to the legal consequences. That the learned Chief Justice therefore did not attempt to narrate or analyse the evidence but proposed to deal with the case upon the facts found by the learned trial judge.

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p. 65, ll. 1-15.

He then summarised what he considered the essential facts found by the Trial Court as to the history of the premises, namely, the gift by

Aromire to Ado, the subsequent erection of buildings by Gabaru, Akinsemoyin and Akitoye (all of whom he referred to as Kings and Obas of Lagos), that the Iga had been the residence of the Obas of Lagos from the time of Gabaru up to date save (he said) "for a brief period 1931-32 when Eleko Eshugbayi after a period of exile was permitted," (he said) "by the Government to reside in the Iga, although not recognised 'as the head of the House of Ado (sometimes known as the House of Docemo or Docemo-Oyekan)' or 'as holding any position which might entitle him to official recognition from the Government.'"

- 10 The words as to non-recognition as head appear to have been taken by the learned Chief Justice from Exhibit 9, the "Nigeria Gazette" of the 2nd July, 1931, though not exactly, and the words as to not holding any position officially recognised from Ex. 10, the "Nigeria Gazette" of the 8th December, 1920. The learned trial Judge, though he had referred to Eshugbayi, had not referred to these Exhibits.

The learned Chief Justice completed his summary of the facts as follows :—

- 20 "The position would appear to be, therefore, that in 1861 at the date of the Treaty of Cession the premises in question had for a period of over a century been used as the residence of the Oba of Lagos, who was, as indeed each has been to this day, a descendant of King Ado. King Docemo remained in occupation of the Iga, notwithstanding the Treaty, until 1870 when the Crown Grant to which I have referred purported to grant the premises to him and his heirs, executors, administrators and assigns for ever. Thereafter his successors as Oba have occupied the Iga in due course and save for a short period (1928-31 or perhaps 1932) the Oba has been a descendant of King Docemo until the time of the Respondent who was recognised as Oba in 1949. Both Sanusi Olusi who was recognised as Oba in 1928 and the Respondent are descendants of King Ado but not of King Docemo. Upon these facts the learned trial judge reached the conclusion that the premises in dispute are not the absolute property of King Docemo's descendants and that the proper construction to be placed upon the Crown Grant of 1870 is that the land was given to King Docemo as trustee for his successors in the office of Oba of Lagos."

- 30 (G) The learned Chief Justice then dealt with the submission that sections 3 and 5 of the Crown Grants (Township of Lagos) Ordinance (Chapter 44) had not been correctly applied and, referring to the judgments of the Privy Council in *Amodu Tijani v. Secretary Southern Rhodesia* [1921] 2 A.C. 399; *Idenu Inasa v. Oshodi* [1934] A.C. 94 and *Oshodi v. Dakolo and others*, 9 Nigerian L.R. 13, he held it to be clear that, immediately before the enactment of Chapter 44, the Courts had held that, while the Crown Grants themselves purported to vest in the grantee an absolute title, each was in fact no more than a grant in trust leaving the beneficial or usufructuary interest as it had been before the issue of the grant.

- 40 (H) He rejected any distinction in principle between grants made to "Head Slaves" which the Oshodi decisions specifically dealt with, and Crown Grants such as the present, and held that no support for such

cf. p. 60, ll. 28-38.

a contention could be derived from the Epetedo Lands Ordinance (Chapter 60, which had been enacted on the same day as Chapter 44) and he considered that, if such a distinction were to be drawn, it was not apparent what construction could be placed upon the last sentence of s. 3 of Chapter 44.

p. 67, ll. 16-32.

(I) He also rejected the argument that, even if the Crown Grant to Docemo was originally subject to a right of occupation vested in the Oba of Lagos, while holding that office, this right had been extinguished by Eshugbayi's occupation at a time when he was not recognised by the Government as Oba. (This period extended from 1920 to 1925 when he was deported and from 1930 to 1931 upon his returning to Lagos.) 10

cf. p. 63, ll. 24-30.

p. 67, l. 33.

(J) He finally considered and rejected the argument that, by the Treaty of 1861, all rights of the Oba of Lagos were transferred to the Crown and that the Grant to King Docemo in 1870 was therefore then subject to no such interests and restrictions recognised by native law and custom as are preserved by s. 3 of Chapter 44.

The grounds upon which he rejected this argument were:—

p. 67, l. 42.

(1) The trial judge had found that the land upon which was later built was granted as long ago as the middle of the 17th century by Aromire to Ado. 20

p. 67, l. 45.

(2) The nature of the estate and interest then created was to be determined by reference to native law and custom.

p. 67, l. 47.

(3) Having regard to the user of this land during the past 300 years in his view it was a "royal estate."

p. 68, ll. 2-23.

(4) Basing himself upon an observation of Deane, C.J., of the Gold Coast in a Gold Coast Appeal as to a Gold Coast (Akan) Stool being a judicial entity of a perpetual nature in contradistinction to its fleeting occupants and upon an observation as to the indefinite meaning of the term "Stool Lands" made by Lord Haldane in *Amodu Tijani v. Secretary, S. Nigeria* [1921] 2 A.C. 399 at p. 410, he considered "therefore that the estate or interest vested in the ruler in royal estates or stool land is to be distinguished on the one hand from land vested in him beneficially as absolute owner alienable by him at will and upon the other hand (from) land vested in himself and his family beneficially and of which the Chief or head of the family is sometimes referred to as a 'trustee'." And he considered that the nature of the estate or interest vested in the Oba of Lagos at the date of the Treaty of 1861 in respect of the land under consideration was that he held it in his representative and constitutional capacity as distinguished from the two classes of land he had previously referred to. 30 40

p. 68, l. 24.

p. 68, l. 29.

(5) The true effect of the Treaty was as laid down in the *Amodi Tijani* Case:—

"When the cession passed any proprietary rights they were rights which the ceding King possessed beneficially and free from the usufructuary qualification of his title in favour of his subjects."

And this interpretation had not been changed but had been confirmed by the Ordinance and particularly by the second paragraph of the preamble. (That paragraph however reads as follows :—

“ And whereas the effect of the Treaty was that, while the private rights of property of the inhabitants were to be fully respected, there passed to the Crown *whatever rights the Oba possessed including* whatever proprietary rights the Oba possessed beneficially and free from the usufructuary qualification of his title in favour of his subjects.”

10 The learned Chief Justice has omitted the words in italics, which omission it is submitted vitiates his argument.)

(6) The last paragraph of the preamble having stated the intention of the Ordinance was to declare and confirm the effect (and not the terms) of the Crown Grants, that intention had been carried out by s. 3, whereby each grant (in words he took from the Ordinance) was to be “ deemed to vest an estate free from competing interests and restrictions save those recognised by native law and custom which affected the estate at the date of the grant.” p. 68, l. 2.

20 (7) The question therefore was : Were the rights of the Oba in these premises possessed by him beneficially and free from the usufructuary qualification of his title in favour of his subjects ? p. 69, l. 9.

(8) The premises were intended to be vested and were indeed vested in Ado and his successors in a “ representative or constitutional capacity ” and were neither in the absolute beneficial ownership of the Oba nor family land. p. 69, ll. 17-25.

19. By an Order dated the said 17th November, 1952, the appeal was dismissed with costs. p. 71.

20. Upon the 16th February, 1953, final leave was granted by the West African Court of Appeal to the Appellants to appeal to Her Majesty in Council from the judgment dated the 17th November, 1952. p. 73.

21. The Appellants respectfully submit that this Appeal should be allowed with costs throughout and the judgments of the lower Courts set aside and judgment entered for the Appellants as claimed in the Summons for the following amongst other

REASONS

- 40 (1) BECAUSE by the Treaty dated the 6th day of August, 1861, there passed to the Crown whatever rights King Docemo possessed whether personally or as Oba including the rights of control, management and occupation of the property in suit.
- (2) BECAUSE by the said Treaty there passed to the Crown whatever proprietary rights King Docemo possessed beneficially and free from the usufructuary qualification

of his title in favour of his subjects whether personally or as Oba and because the right to occupy the said property was such a beneficial right possessed by him and was free from any usufructuary qualification of his title in favour of his subjects.

- (3) BECAUSE the West African Court of Appeal erred in holding that if King Docemo did not hold the land beneficially whether personally or as Oba it did not pass to the Crown.
- (4) BECAUSE the West African Court of Appeal failed to 10 have regard to or failed correctly to interpret the second paragraph of the preamble to the Crown Grants (Township of Lagos) Ordinance.
- (5) BECAUSE the Courts below failed to apply or alternatively misinterpreted Sections 3 and 5 of the said Ordinance.
- (6) BECAUSE since the date of the said treaty there have been no rights attaching to the title (if any) of Oba of Lagos.
- (7) BECAUSE even if the Courts below were right in holding 20 that the grant to King Docemo was merely a grant in trust and that the property was given to King Docemo as trustee for his successors in the office of Oba of Lagos they should still have granted to the Appellants, as the legal owners, a declaration of title to the said property.
- (8) BECAUSE even if the Courts below were right as aforesaid and the Appellants were in possession of the said property merely as trustees they erred in dismissing the Appellants' claim for damages to trespass and for recovery of possession of the said property. 30
- (9) BECAUSE it was admitted by the Defence that the property given by Aromire to Ado had been partitioned and the Courts below should have held that, as the result of such partition, the property in suit was that of the Akitoye family or the Docemo family and not of the whole Ado family.

DINGLE FOOT.

RALPH MILLNER.

In the Privy Council.

ON APPEAL

*from the West African Court of Appeal
(Lagos Sessions)*

BETWEEN

**ADEYINKA OYEKAN
AMUSA DOCEMO
OLOYEMI DOCEMO
H. A. OGUNDIMU
BABATUNDE AKITOYE**
(On behalf of themselves and other members
of the House of Docemo)
(Plaintiffs) *Appellants*

AND

MUSENDIKU ADELE
(Defendant) *Respondent*

Case for the Appellants

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