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15/1963

Appeal No. 5 of 1963

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL SUPREME COURT  
OF NIGERIA

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

19 JUN 1964

25 RUSSELL SQUARE  
LONDON, W.C.1.

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B E T W E E N:

ALHAJI D. S. ADEGBENRO Appellant

- and -

CHIEF S. L. AKINTOLA First Respondent

- and -

SIR ADESOJI ADEREMI Second Respondent

74143

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CASE FOR THE APPELLANT

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HATCHETT JONES & CO.,  
90, Fenchurch Street,  
LONDON, E.C.3.

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ON APPEAL FROM THE FEDERAL SUPREME COURT  
OF NIGERIA

B E T W E E N

ALHAJI D. S. ADEGBENRO Appellant  
(Second Defendant)

- and -

CHIEF S. L. AKINTOLA First Respondent  
(Plaintiff)

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- and -

SIR ADESOJI ADEREMI Second Respondent  
(Pro Forma)  
(First Defendant)

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CASE FOR THE APPELLANT

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1. This is an appeal from a decision of the Federal Supreme Court of Nigeria pursuant to Section 108 of the Constitution of the Federation of Nigeria whereby, by a majority of 3 to 1, the Court held in favour of the First Respondent on an issue referred to the said Court by the High Court of the Western Region sitting at Ibadan.

2. The issue for determination in this appeal is whether on the true construction of the Constitution of the Western Region of Nigeria the Governor of the Region, who exercises executive authority on behalf of Her Majesty the Queen, may remove a Premier from

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office when it appears to him that the Premier no longer commands support of a majority of the members of the House of Assembly although there has been no adverse vote in the House.

Section 108 of the Constitution of Federation of Nigeria and the material sections of the Constitution of Western Nigeria are annexed hereto.

p.1 3. The reference arose out of an action commenced by Writ of Summons dated the 21st day of May 1962 whereby the First Respondent claimed as against the Second Respondent :- 10

p.3 1.1 " (i) A Declaration that there is no right in the Defendant to relieve the Plaintiff of his office as Premier of the Western Nigeria under S. 33(10) of the Constitution of Western Nigeria in the absence of a prior resolution/decision of the Western House of Assembly reached on the floor of the House to the effect that the Plaintiff no longer commands the majority of the members of the House of Assembly. 20

(ii) An injunction to restrain the Defendant from purporting to relieve the Plaintiff of his office as Premier of Western Nigeria under S. 33(10) of the Constitution of Western Nigeria in the absence of a prior resolution/decision reached on the floor of the House of Assembly to the effect that the Plaintiff no longer commands the support of a majority of the members of the House of Assembly. " 30

4. At the time of issuing the writ the First Respondent was Premier of the Western Region of Nigeria but on the same day he was removed from office by the Second Respondent the Governor of the Western Region and the Appellant appointed in his place. The Appellant was thereupon joined as a Defendant.

p.15 1.36 5. By his Statement of Claim the First Respondent alleged that he had been dismissed from the office of Premier by the Second Respondent on representations made by one Chief Obafemi Awolowo, a member of the Action Group Party to which the First Respondent also belonged, and without any vote in the Regional House of Assembly; he also alleged Mala Fides on the part of the Second Respondent. In addition to the declaration and injunction claimed 40

10 in the Writ the First Respondent also claimed a declaration that his purported removal by the Second Respondent as Premier of Western Nigeria was invalid and of no effect and an injunction restraining the Appellant and the Second Respondent from usurping or permitting anyone to usurp the duties of the First Respondent as Premier for Western Nigeria unless and until the First Respondent resigned or was constitutionally relieved of the office.

6. By their Defence, the Appellant and the Second Respondent, denied mala fides and alleged that the removal of the First Respondent from office was constitutional and counterclaimed a declaration that this removal was valid and effective and that the appointment of the Appellant was valid and lawful. p.20 1.14

20 7. At a hearing before Sir Samuel Quashie-Idun, Chief Justice of the Western Region, on the 5th day of June, 1962, it was agreed by Counsel for all parties that the following issues be referred to the Federal Supreme Court pursuant to Section 108 of the Constitution of the Federation of Nigeria :- p.23 p.24 1.38

30 " (1) Can the Governor validly exercise power to remove the Premier from office under Section 33 Sub-section 10 of the Constitution of Western Nigeria without prior decision or resolution on the floor of the House of Assembly showing that the Premier no longer commands the support of a majority of the House?

(2) Can the Governor validly exercise power to remove the Premier from office under Section 33(10) of the Constitution of Western Nigeria on the basis of any materials or information extraneous to the proceedings of the House of Assembly? "

40 8. Two preliminary objections were taken before the Federal Supreme Court by Counsel for the First Respondent that the reference was premature and not according to form. These objections were overruled. p.26 1.12

9. In the judgment of Sir Adettokunbo Ademola Chief Justice of the Federation dated the 7th day of July 1962 with which John Taylor F.J. and Vahe Bairamian F.J. concurred, the following passages appear :- p.36 1.35

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p.39 1.40

" Mr. Moore for the Plaintiff prefaced his arguments with what he called "three admitted facts before the Court". This was not disputed by the defence, and indeed the whole reference was based on these facts, namely:

1. Plaintiff was duly appointed Premier according to the Constitution.

2. The First Defendant in removing him as Premier acted under Section 33(10) of the Western Nigeria Constitution. 10

3. The decision by the First Defendant to remove the Plaintiff from the Premiership was based on a letter purporting to be from 66 members of the House of Assembly to the effect that they no longer have confidence in the Premier.

The matter that arises for consideration on the first question is whether the Governor would be acting in contravention of Section 33(10) of the Constitution of Western Nigeria if he by notice removed the Premier from office without giving him an opportunity of testing his popularity on the floor of the House of Assembly because he (Governor) formed the view that the Premier no longer commanded the support of a majority of members of the House of Assembly. The relevant section of the Constitution is as follows :- 20

p.40 1.24

'33(10) Subject to the provisions of sub-sections (8) and (9) of this Section, the Ministers of the Government of the Region shall hold office during the Governor's pleasure: 30

Provided that -

(a) the Governor shall not remove the Premier from office unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly; and 40

(b) the Governor shall not remove a Minister other than the Premier from office except in accordance with the advice of the Premier.'

" Mr. Moore made his submissions in two ways p.40 1.40  
stating that in either case the questions  
should be resolved in the negative. His  
submissions are :-

1. That within the basis of the Consti-  
tution itself, the position is that a  
Premier will be removed from office on a  
resolution of the House, and

10 2. That the provisions of Section 33(10)  
of the Constitution of Western Nigeria is  
an attempt to write down the constitution-  
al convention of the English Constitution,  
and therefore its interpretation should be  
based on the way the convention had worked  
historically and the stage of evolution it  
had reached when it was embodied in the  
Nigeria Constitution of 1960.

\* \* \* \* \*

20 For the Defendants, Mr. Akinyele submitted p.43 1.1  
that the answers to the two questions must be  
in the affirmative. He referred to Section  
33(10)(b) which gives the Governor power to  
remove a Minister only with the advice of the  
Premier. Section 33(10)(a) dealing with the  
removal of the Premier himself is silent and  
therefore can only mean that the Governor  
needs no advice and must use his own discre-  
tion in removing the Premier. He is not  
limited to taking the matter from the House  
and may use his own discretion. This  
30 discretion, he submitted, is absolute, and if  
it was desirable for it to be otherwise, the  
Constitution should have said so. The House,  
he said, can only react to the decision of  
the Governor if it disapproves of it.  
Section 38, which gives the Governor absolute  
discretion in the proviso to sub-section (1),  
must be read with Section 33(10).

\* \* \* \* \*

40 To my mind the conclusion is inescapable p.46 1.42  
that the framers of the Constitution wanted  
the House to be responsible at every level  
for the ultimate fate of Government and the  
Premier. The horizon must be larger than  
leaving it to one man. The Governor might  
eventually be the instrument used to effect  
this, but his position as final arbiter must

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be dictated by events in the House or events emanating from the House, and not by a letter, however well meaning, signed by a body of members of the House. Law and convention cannot be replaced by party political moves outside the House.

\* \* \* \* \*

p.47 1.41

I believe that the Constitution contemplated proceedings in the House as being the touchstone of whether the Premier (and his Government) commands the support of a majority of the members or no longer commands such support. 10

I think that the House of Assembly cannot be relieved of its responsibilities and duties as the House by a letter to the Governor signed by members of the House. It will be an unduly narrow and restrictive interpretation of the powers of the House, and a correspondingly unduly wide interpretation of the powers of the Governor, if in the circumstances, Section 33(10) is interpreted in any other way except in a way which makes it clear that the evidence emanates from proceedings of the House. 20

p.48 1.11

The answer to the first question therefore is that the Governor cannot validly exercise power to remove the Premier from office under Section 33 sub-section 10 of the Constitution of Western Nigeria except in consequence of proceedings on the floor of the House whether in the shape of a vote of no-confidence or of a defeat on a major measure or of a series of defeats on measures of some importance showing that the Premier no longer commands the support of a majority of the members of the House of Assembly. 30

It will therefore be unnecessary to answer the second question. "

p.48 1.32 10.

In a dissenting Judgment Brett F.J. held :-

p.51 1.1

" No doubt the clearest way in which it can possibly appear that the Premier no longer commands the support of a majority of the members of the House of Assembly is by an adverse vote, or a series of adverse votes, 40

of the House itself either expressly on the issue of confidence or on some other matter or matters of sufficient importance. That is the orthodox source of information and preferable to any other when it is available, but it does not necessarily follow that it is the only source for which the fact may lawfully become apparent to the Governor, particularly in a Region where the House of Assembly is less continuously in session than the House of Commons of the United Kingdom. To take an extreme example, suppose the Premier quarrels with his political associates to such an extent that all the other Ministers resign and he can find no members of the House of Assembly willing to serve on the Executive Council; or that there is a coalition government dependent on the support of two political parties, the parties fall out, all the Ministers from one party resign, and it is announced that that party will unite with a third party in opposing the Premier and his government. Suppose in either case that the House of Assembly has been prorogued and that the Premier declines to advise that it should be convened, so that its views may be known. If these events occurred shortly after the passing of the annual Appropriation Act, a Premier who was obstinate to the point of perversity might try to remain in office for a further twelve months or so. In such an exceptional case I cannot see why, for the purposes of Section 33(10) of the Constitution, the Governor should not be allowed to know what everyone else in the Region knows, and exercise his discretion as the public interest requires, even if it means that he has to rely on information extraneous to the proceedings of the House of Assembly in deciding whether the Premier still commands the necessary support as well as in deciding whether any other person who might be appointed Premier would be likely to command it. I agree that the greatest caution is necessary in assessing the weight to be given to reports of anything said or done outside the House of Assembly, and that the members of a political party may quarrel openly among themselves and still close their ranks against danger from outside, but a person who is competent to discharge the other duties of a Governor must be supposed to be as well aware of that as any-



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one else, and to be capable of exercising an independent judgment. In addition to more honourable motives for caution, the Governor will hardly wish to risk the personal rebuff which he would suffer if he were to dismiss a Premier who was shown later still to command the support of a majority of the members of the House.

p.52 1.12

For these reasons I would answer the first of the questions referred to us in the affirmative. In answer to the second question I would say that always assuming good faith the Constitution does not preclude the Governor from acting on any information which he considers reliable. In the present case bad faith has been pleaded and as the nature of the information on which the Governor acted is one of the matters which the Court below will have to take into consideration in deciding whether bad faith has been established I abstain from comment on it."

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11. On the 28th day of July 1962 in the High Court of Justice Western Nigeria, Ibadan Judicial Division, judgment was entered for the First Respondent on the basis of the "Opinion" of the Supreme Court. [This judgment is not included in the Record but copies will be available at the hearing.]

12. An application by the Appellant for leave to appeal to the Privy Council was heard by the Federal Supreme Court of Nigeria on the 16th day of July 1962 and was opposed by Counsel for the First Respondent on the grounds (1) that the Appellant was not himself a person aggrieved by the "Opinion" and (2) that the Opinion was not a final judgment in the case. By a ruling and order dated the 19th day of July 1962 conditional leave to appeal to Her Majesty in Council was granted and the learned Chief Justice of the Federation of Nigeria held that "in the present case it is beyond doubt that the Second Defendant (Appellant) is bound by the Opinion given by this Court in answer to the issues referred to it. We think therefore that it will be most unreasonable that he should be precluded from appealing" and that the wording of Section 114(1)(c) of the Constitution which grants a right of appeal to Her Majesty in Council from decisions of the Federal Supreme Court as of right in a case of a final decision "in any civil or criminal proceedings on questions as to the interpretation of this Constitution or a Constitution of a Region" is wide enough to include Opinions

p.57 1.30

p.58 1.8

p.59 1.12

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p.60 1.28

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given by the Federal Supreme Court in matters referred to it on the interpretation of the Constitution.

13. Final leave to appeal to Her Majesty in Council was granted on the 29th day of October 1962. p.64 l.7

10 14. The Appellant humbly submits that this appeal should be allowed and the Opinion of the Federal Supreme Court of the Federation of Nigeria dated the 7th day of July 1962 be set aside and that the Federal Supreme Court be directed to answer the two issues referred to it in the affirmative for the following among other

R E A S O N S

1. BECAUSE the Constitution of Western Nigeria does not limit the power of the Governor to remove a Premier from office to a situation where a vote has taken place in the House of Assembly showing that the Premier no longer commands the support of a majority of the House.
- 20 2. BECAUSE the Governor was entitled to remove the Premier from office when it appeared to him that the Premier no longer commanded the support of the members of the House of Assembly.
3. BECAUSE the removal of the First Respondent from the position of Premier of the Western Region of Nigeria was in accordance with the Constitution.
- 30 4. BECAUSE the dissenting judgment of Brett F.J. was correct and should be affirmed.

DINGLE FOOT

THOMAS O. KELLOCK



CONSTITUTION OF THE FEDERATION OF NIGERIA

108. (1) Where any question as to the interpretation of this Constitution or the constitution of a Region arises in any proceedings in any court of law in any part of Nigeria (other than the Federal Supreme Court, the High Court of a territory or a court-martial) and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court having jurisdiction in that part of Nigeria and the High Court shall -

(a) if it is of opinion that the question involves a substantial question of law, refer the question to the Federal Supreme Court; or

(b) if it is of opinion that the question does not involve a substantial question of law, remit the question to the court that made the reference to be disposed of in accordance with such directions as the High Court may think fit to give.

(2) Where any question as to the interpretation of this Constitution or the constitution of a Region arises in any proceedings in the High Court of a territory and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Federal Supreme Court.

(3) Where any question is referred to the Federal Supreme Court in pursuance of this section, the Federal Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

CONSTITUTION OF WESTERN NIGERIA

1. (1) There shall be a Governor of the Region, who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in the Region.

(2) The Premier shall consult the Prime

Minister of the Federation before tendering any advice to Her Majesty for the purposes of this section.

32. (1) The executive authority of the Region shall be vested in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of the Region may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him.

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(3) Nothing in this section shall prevent the Legislature of the Region from conferring functions on persons or authorities other than the Governor.

33. (1) There shall be a Premier of the Region, who shall be appointed by the Governor.

(2) Whenever the Governor has occasion to appoint a Premier he shall appoint a member of the House of Assembly who appears to him likely to command the support of the Majority of the members of the House.

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(3) There shall be, in addition to the office of Premier, such other offices of Minister of the Government of the Region as may be established by the Legislature of the Region or, subject to the provisions of any Regional law, by the Governor, acting in accordance with the advice of the Premier.

(4) Appointments to the office of Minister of the Government of the Region other than the office of Premier shall be made by the Governor, acting in accordance with the advice of the Premier:

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Provided that at least two Ministers shall be appointed from among the members of the House of Chiefs.

(8) The office of the Premier shall become vacant -

(a) when, after any dissolution of the Legislative Houses of the Region, the Premier is informed by the Governor that the Governor is about to re-appoint him as Premier or to appoint another person as Premier; or

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(b) if he ceases to be a member of the House

of Assembly otherwise than by reason of a dissolution of the Legislative Houses.

(9) The office of a Minister of the Government of the Region other than the Premier shall become vacant if the office of Premier becomes vacant.

10 (10) Subject to the provisions of sub-sections (8) and (9) of this Section, the Ministers of the Government of the Region shall hold office during the Governor's pleasure :

Provided that -

(a) the Governor shall not remove the Premier from office unless it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly; and

(b) the Governor shall not remove a Minister other than the Premier from office except in accordance with the advice of the Premier.

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