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15, 1963

IN THE PRIVY COUNCIL

No.5 of 1963

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ALHAJI D. S. ADEGBENRO  
(joined by Order of Court  
dated 25/5/62) (Defendant) Appellant

- and -

HON. S. L. AKINTOLA  
PREMIER, WESTERN NIGERIA (Plaintiff) Respondent

HIS EXCELLENCY SIR ADESOJI  
ADEREMI GOVERNOR OF WESTERN  
NIGERIA (Defendant) Respondent  
Pro Forma

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
19 JUN 1964  
25 RUSSELL SQUARE  
LONDON, W.C.1.

RECORD OF PROCEEDINGS

74146

HATCHETT JONES & CO.,  
90, Fenchurch Street,  
E.C.3.  
Solicitors for the Appellant.

A.L.BRYDEN & WILLIAMS,  
53, Victoria Street,  
S.W.1.  
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo.5 of 1963ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N

ALHAJI D. S. ADEGBENRO  
 (joined by Order of Court  
 dated 25/5/62) (Defendant) Appellant

- and -

HON. SAMUEL LADOKE AKINTOLA  
 PREMIER, WESTERN NIGERIA (Plaintiff) Respondent

HIS EXCELLENCY SIR ADESOJI  
 ADEREMI GOVERNOR OF WESTERN  
 NIGERIA (Defendant) Respondent  
 Pro Forma.

RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT OF JUSTICE</u> <u>WESTERN NIGERIA</u> <u>IBADAN JUDICIAL DIVISION</u>		
1	Writ of Summons	21st May 1962	1
2	Claim	21st May 1962	2
3	Motion on Notice for Interim injunction	21st May 1962	3
4	Affidavit of A.O.Adeyi in support of Motion	21st May 1962	4
5	Motion Ex Parte to amend Claim and for joinder of Adegbenro as Co-Defendant	22nd May 1962	5
6	Affidavit of Asani Amodu in support of Motion Ex Parte	22nd May 1962	6

No.	Description of Document	Date	Page
7	Exhibit A (Attached to Affidavit of Asani Amodu) (Proposed Amendments of Claim)	-	7
8	Motion Ex Parte for further interim injunction	22nd May 1962	8
9	Affidavit of Asani Amodu in support of Motion Ex Parte	22nd May 1962	8
10	Exhibit A to Affidavit of Asani Amodu Sworn 22nd May 1962 (Letter, Respondent to Governor Western Nigeria)	20th May 1962	10
10A	Exhibit A to an Affidavit by Chief Awolowo dated the 25th day of May 1962 (not printed) (Letter and enclosure from Chief Awolowo to His Excellency Sir Adesoji Aderemi)	21st May 1962	11
11	Exhibit B to Affidavit of Asani Amodu sworn 22nd May 1962 (Letter, Respondent to Governor, Western Nigeria)	20th May 1962	14
12	Statement of Claim	29th May 1962	15
13	Defence and Counterclaim	5th June 1962	20
14	Court Notes	5th June 1962	23
	<u>IN THE FEDERAL SUPREME COURT OF NIGERIA</u>		
15	Court Notes on Constitution Point	25th June 1962	25
16	Court Ruling	26th June 1962	27
17	Court Notes on Reference	26th June 1962	31
18	Opinions (1) Ademola C.J.F. (2) Taylor & Bairamian F.J.J. (3) Brett, F.J.	7th July 1962	36
19	Answer on Reference	7th July 1962	53

No.	Description of Document	Date	Page
20	Notice of Motion by Alhaji D.S. Adegbenro for Conditional Leave to appeal to Her Majesty in Council	7th July 1962	54
21	Affidavit in support of No.20	9th July 1962	55
22	Court Notes on Motion for Conditional leave to appeal to Her Majesty in Council	16th July 1962	57
23	Ruling on Motion for Conditional Leave to appeal to Her Majesty in Council	19th July 1962	59
24	Order granting Alhaji D.S. Adegbenro conditional leave to appeal to Her Majesty in Council	19th July 1962	62
25	Order granting Alhaji D.S. Adegbenro Final Leave to Appeal to Her Majesty in Council.	29th October 1962	63

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Court Proceedings	23rd May 1962
Court drawn Order on Motion	23rd May 1962
Motion by Chief Rotimi Williams Q.C. for an Order that the decision or Order of Court to the effect that the Applicant do retire from conducting the case as Counsel for the Defendants be varied or discharged	25th May 1962
Affidavit in support of Motion	25th May 1962
Affidavit of Chief Awolowo (to which the Annexure to this Record were exhibited)	25th May 1962
Counter Affidavit of Asani Amodu	29th May 1962
Court Proceedings	30th May 1962

Description of Document	Date
Court Ruling	1st June 1962
Court Drawn Order on Motion	1st June 1962
Motion on Notice for extension of time to deliver pleadings	4th June 1962
Affidavit in support of Motion	5th June 1962
Court drawn Order on Motion	5th June 1962
Affidavit of Means of Chief Shonibare and Solanke Onasanya	28th August 1962
Bond for Costs on Appeal	28th August 1962
Motion with Affidavit for final leave to appeal to Her Majesty in Council	13th October 1962
Hearing of Motion	29th October 1962
Settlement of Record of Proceedings	29th December 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ALHAJI D. S. ADEGBENRO  
(joined by Order of Court  
dated 25/5/62) (Defendant) Appellant

and

10

HON. SAMUEL LADOKE AKINTOLA  
PREMIER, WESTERN NIGERIA (Plaintiff) Respondent

HIS EXCELLENCY SIR ADESOJI  
ADEREMI GOVERNOR OF WESTERN  
NIGERIA (Defendant) Respondent  
Pro Forma

RECORD OF PROCEEDINGS

No. 1

In the High  
Court

WRIT OF SUMMONS

IN THE HIGH COURT OF JUSTICE  
WESTERN NIGERIA  
IBADAN JUDICIAL DIVISION

No.1  
Writ of  
Summons  
21st May  
1962

20

Suit No.1/161/62

BETWEEN

HON.SAMUEL LADOKE AKINTOLA Plaintiff

and

HIS EXCELLENCY SIR ADESOJI  
ADEREMI GOVERNOR WESTERN  
NIGERIA Defendant

Elizabeth II, by the grace of God, of the

In the High Court

No.1

Writ of Summons  
21st May 1962  
continued

United Kingdom of Great Britain and Northern Ireland and her other realms and territories, Queen, Head of the Commonwealth, Defender of the Faith:

To His Excellency Sir Adesoji Aderemi, Governor Western Nigeria of Governor's Office, Ibadan.

We command you to attend this Court holden at Ibadan on Wednesday the 23rd day of May, 1962 at 9 o'clock in the forenoon to answer a suit by Hon. S.L. Akintola of Premier's Lodge, New Reservation Ibadan, against you.

10

The Plaintiff's claim is indorsed on the reverse side hereof.

Take notice that if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

Signed and Sealed this 21st day of May, 1962.

WRIT OF SUMMONS

20

INDORSEMENTS

1. The Plaintiff's claim is Declaration & Injunction as specified on the writ attached overleaf.
2. The Plaintiff's address for service is Premier's Lodge, New Reservation, Ibadan.
3. The address of the Plaintiff's Solicitor is 109 Agbeni St., Abadan.

(Sgd.) Ayoola Bros.

Solicitors for Plaintiff.

30

No.2

Claim

21st May 1962

No. 2

CLAIM

(TITLE AS NO.1)

The Plaintiff claims against the Defendant :-

(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.

10

(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.

20 Dated this 21st day of May, 1962.

(Sgd.) Olu Ayoola  
Solicitors for Plaintiff

No.3

MOTION ON NOTICE

(TITLE AS NO.1)

MOTION ON NOTICE :

Take Notice that this Honourable Court will be moved on Wednesday 23rd day of May 1962 in the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiff can be heard for an order of interim injunction to restrain the Defendant from purporting to relieve the Plaintiff of his office as Premier of the Western Region in the absence of a resolution of the House of Assembly to the effect that he no longer commands the support of the majority of members of the House of Assembly pending the decision of this suit and for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

30

40 Dated this 21st day of May 1962.

(Sgd.) Olu Ayoola  
Plaintiff's Solicitors.

In the High Court

No.2

Claim  
21st May 1962  
continued

No.3

Motion on Notice  
21st May 1962



In the High  
Court

No.4

AFFIDAVIT OF A.O.ADEYI IN SUPPORT OF  
MOTION

No.4

(TITLE AS NO.1)

Affidavit of  
A.O.Adeyi in  
Support of  
Motion  
21st May 1962

A F F I D A V I T

I, Adebisi Omowonuola Adeyi, Minister of Agriculture and Natural Resources, Western Nigeria, residing at Quarter 754 Links Reservation, Ibadan, Nigeria make oath and say as follows :-

10

1. That I am a Member of the Western House of Assembly.
2. That I have the authority of the Plaintiff to swear to this Affidavit.
3. That the Plaintiff has requested the Governor to declare a session of the Western House of Assembly to commence sitting on 28th May 1962 for the purpose of considering a motion of confidence in the Government of Western Nigeria Headed by the Plaintiff and of which I am a member.
4. That I verily believe that some people are requesting some members of the House to sign a document purporting to show that they have no confidence in the Plaintiff and his Government.
5. That I verily believe that it is intended to take this document straight to the Defendant in order to persuade him to announce the removal of the Plaintiff from his office as Premier without waiting for any resolution of the House of Assembly as demanded by the Plaintiff.
6. That the announcement by the Defendant of Plaintiff's removal can come any moment unless there is an interim injunction.
7. That the main issue in the above suit is whether the Plaintiff can be relieved of his

20

30



In the High Court

No.6

AFFIDAVIT OF ASANI AMODU IN SUPPORT OF MOTION EX PARTE

No.6

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

Affidavit of  
Asani Amodu  
in Support of  
Motion Ex  
Parte  
22nd May 1962

Suit No.1/161/62.

Between:

The Hon. S.L.Akintola  
Premier Western Nigeria ... Plaintiff 10

- and -

His Excellency, The  
Governor Western Nigeria ... Defendant

A F F I D A V I T

I, Asani Amodu, Yoruba, Nigerian, Chief Clerk to Messrs. Ayoola Brothers Solicitors of 109 Agbeni Street, Ibadan Nigeria make Oath and say as follows :-

1. That Messrs. Ayoola Brothers are Solicitors for the Plaintiff in the above matter. 20
2. That the Writ of Summons was filed before 12 noon on 21/5/62.
3. That after the Writ of Summons and Motion for interim injunction had been filed, it was on 21/5/62 announced on the Nigeria Broadcasting Service at about 6 p.m. that the Defendant "has removed the Plaintiff from his office of Premier".
4. That it was further there announced that Chief Adegbenro be sworn in as the New Premier. 30
5. That for the just determination of the above suit Messrs. Ayoola Brothers have been instructed and it has become necessary to amend the suit to include the reliefs

(iii) and (iv) stated on Exhibit A hereto attached and to join Alhaji Adegbenro.

In the High Court

(Sgd.) A. Amodu

No.6

DEPONENT.

Sworn to at the High Court Registry Ibadan this 22nd day of May, 1962.

Affidavit of Asani Amodu in Support of Motion Ex Parte 22nd May 1962 continued

BEFORE ME

10

(Sgd.) Sydney Foresythe  
COMMISSIONER FOR OATHS.

No.7

No.7

EXHIBIT A (Attached to Affidavit of Asani Amodu)

Exhibit A (Attached to Affidavit of Asani Amodu) 22nd May 1962

EXHIBIT A

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

Suit No.1/161/62

20 Between:

The Hon. S.L.Akintola  
Premier Western Nigeria Plaintiff

- and -

His Excellency, The  
Governor, Western Nigeria Defendant

(iii) A Declaration that the purported removal of the Plaintiff by the Defendant as Premier of Western Nigeria is invalid and of no effect.

30

(iv) An Injunction to restrain the Defendants from usurping or permitting

In the High Court

No.7

Exhibit A  
(Attached to Affidavit of Asani Amodu)  
22nd May 1962  
continued

anyone to usurp the duties of the Plaintiff as Premier of the Western Nigeria unless and until he resigns or is constitutionally relieved of the office.

(Sgd.) Olu Ayoola  
PLAINTIFF'S SOLICITORS.

No.8

Motion Ex Parte  
22nd May 1962

No.8

MOTION EX PARTE

(TITLE AS NO.1)

10

MOTION EX PARTE

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 23rd day of May 1962 in the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel for the Applicant can be heard for an interim order restraining the Defendant(s) from interfering with the continued exercise of the Plaintiff's rights and privileges as Premier of Western Nigeria until argument and decision by this Honourable Court of the motion on Notice filed on 21/5/62 for an interim injunction in the above suit and for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

20

(Sgd.) Olu Ayoola  
SOLICITORS FOR PLAINTIFF.

No.9

Affidavit of Asani Amodu in Support of Motion Ex Parte  
22nd May 1962

No.9

AFFIDAVIT OF ASANI AMODU IN SUPPORT OF MOTION EX PARTE

(TITLE AS NO.1)

A F F I D A V I T

I, Asani Amodu, Nigerian, Chief Clerk to

30

Messrs. Ayoola Brothers Solicitors of 109 Agbeni Street, Ibadan Nigeria make oath and say as follows:-

In the High Court

No.9

Affidavit of  
Asani Amodu  
in Support  
of Motion Ex  
Parte  
22nd May 1962  
continued

1. That I am Chief Clerk to Messrs. Ayoola Brothers who are Solicitors for the Plaintiff in the above suit.
2. That the writ was filed on 21/5/62 before noon.
- 10 3. That shortly after filing the action, a motion on notice for an interim injunction was also filed.
4. That the Registrar informed me that he was unable yet to issue a date for the hearing of the suit as well as the motion for interim injunction as he had to obtain directions as to which Court would take the suit.
5. That at about 6 p.m., it was announced on the Nigerian Broadcasting Service that the Defendant had removed the Plaintiff as Premier and that he was going to swear in Alhaji Adegbenro as Premier.
- 20 6. That the Plaintiff informed his Solicitors that until now he has not been served with any instrument of his removal with effect from "today" nor has it so appeared in any Government Gazette.
7. That it is feared that as the notice of motion for interim injunction cannot be listed within less than 48 hours from service, serious mischief might happen in that the Defendant might proceed to prejudice and stultify the just determination of this suit by publishing an instrument purporting to remove the Plaintiff as Premier and Proceeding to permit some other person purported appointment by him to seek to exercise the rights and privileges of the Plaintiff.
- 30 8. That it is verily believed that the Defendant has suspected the institution of the above suit and is doing everything to stultify the just determination of it by not allowing a status quo - a situation which
- 40

In the High Court

may cause tension among the Plaintiff's supporters.

No.9

Affidavit of Asani Amodu in Support of Motion Ex Parte  
22nd May 1962  
continued

9. That the very issues before this Honourable Court in the above suit are the constitutionality or otherwise of Defendant's right to remove the Plaintiff in the absence of a resolution in the House of Assembly showing that he no longer enjoys the confidence of majority of members of the House.

10

10. That attached hereto are copies of letters which passed between the Plaintiff and Defendant between May 20 and now.

(Sgd.) A. Amodu  
DEPONENT.

Sworn to at the High Court  
Registry Ibadan this 22nd  
day of May 1962.

Before me

(Sgd.) Sydney Foresythe  
COMMISSIONER FOR OATHS.

20

No.10

Exhibit A to Affidavit of Asani Amodu Sworn 22nd May 1962.  
22nd May 1962.

No.10

EXHIBIT A to AFFIDAVIT OF ASANI AMODU  
SWORN 22nd May 1962.

EXH. 'A'

Your Excellency.

In view of the current crisis in the Action Group Party and the unsatisfactory way in which the Joint Executives of the Party have handled the matter, I have addressed to you a letter this day advising that you exercise your powers under Section 31 of Part 3 of the Constitution of Western Nigeria to dissolve forthwith the Legislative Houses of the Western Region of Nigeria.

30

2. I am convinced that I have a majority following among the Members of the Western House

of Assembly and that the present crisis will be resolved finally in my favour on a vote of confidence in the Government taken and decided at a meeting of the House. I have, therefore, requested the Speaker to summon a meeting of the House of Assembly for Wednesday the 23rd of May, 1962 at 10 a.m., pending action as advised in paragraph 1 above.

S. L. Akintola  
Premier.

May 20th, 1962.

In the High  
Court

No.10

Exhibit A to  
Affidavit of  
Asani Amodu  
Sworn 22nd  
May 1962.

22nd May 1962  
continued

10

No.10 A.

Letter (and Enclosure) from Chief Awolowo to His Excellency Sir Adesoji Aderemi exhibited to an Affidavit by Chief Awolowo dated 25th day of May 1962 (not printed).

No.10 A

Letter from  
Chief Awolowo  
to H.E. The  
Governor (and  
Enclosure)  
21st May 1962

21st May, 1962.

May It Please Your Excellency,

20

I forward herewith a letter addressed to you by members of the Action Group in the Western House of Assembly, declaring that they no longer support Chief S.L.Akintola and calling upon Your Excellency to remove him from office.

2. The letter has been signed in my presence by 66 (Sixty six) members of the House of Assembly and I hereby authenticate the genuineness of the signatures.

30

3. I also attach two copies of the letter for any use Your Excellency may wish to make of them.

I have the honour to be,  
Sir,

Your obedient servant  
(OBAFEMI AWOLOWO)

LEADER AND FEDERAL PRESIDENT  
OF THE ACTION GROUP OF NIGERIA.

His Excellency The Governor,  
Western Nigeria,  
IBADAN.



In the High  
Court

No.10 A

ACTION GROUP HEADQUARTERS SECRETARIAT  
P.O. BOX 136,  
IBADAN  
21st May, 1962.

Letter from  
Chief Awolowo  
to H.E. The  
Governor (and  
Enclosure)  
21st May 1962  
continued

Your Excellency,

We the undersigned being a majority of the members of the House of Assembly declare that we no longer support Chief Samuel Ladoke Akintola as Premier.

We hereby request your Excellency to remove the said Chief Samuel Ladoke Akintola from the office as Premier in accordance with powers vested in you by Section 33 (10) of the Constitution of Western Nigeria.

10

We have the honour to be,  
Sir,  
Your Obedient Servants,

<u>NAMES</u>	<u>CONSTITUENCY</u>	
1. Hon.K.S.Y. Momoh	Afenmai North East	
2. " N.A. Idodo	Afenmai South East	20
3. " J.O. Oye	Afenmai North West I	
4. " L. Edeki	Afenmai North West II	
5. " E.A. Anuku	Asaba North West	
6. " B. Edo Osagie	Benin West II	
7. " Alhaji Adenekan	Egba Central II	
8. " Chief S.O.Sogbein	Egba North East	
9. " A. Babayemi	Egba North West	
10. " Alhaji D.S.Adegbenro.	Egba South I	
11. " Vincent Aina	Egba South II	30
12. " Chief Z.A.Opaleye	Egbado South East	
13. " S.A.Akerele	Ekiti North East I	
14. " J.E.Babatola	Ekiti North East II	
15. " R.O. Areola	Ekiti South East I	
16. " S.A. Okeya	Ekiti South East II	
17. " D.A. Atolagbe	Ekiti North West I	

		In the High Court
		<hr/>
		No.10 A
	18. Hon.J.A. Odutuga	Epe North
	19. " C.A. Williams	Epe South
	20. " M.A. Adewumi	Ibadan Central East
	21. " B.O. Obisesan	Ibadan North East I
	22. " O. Fasola	Ibadan S/West Sub-Urban
	23. " Ayo Ajibola	Ibadan N/West Rural
	24. " M.A. Fetuga	Ijebu Central East
	25. " Solanke Anasanya	Ijebu Central West
	26. " A.A.Adesanya	Ijebu North I
10	27. " Dr.S.D.Onabamiro	Ijebu North II
	28. " S.A. Otubanjo	Ijebu South East
	29. " J.S.Olu Awopeju	Ijebu Remo North
	30. " Prince Adeleke Adedoyin	Ijebu Remo South
	31. " I. A.Ositelu	Ikeja North
	32. " S.T. Adelegan	Ijesha Rural North
	33. " B.I.G. Ewah	Ishan North East
	34. " J.O. Odigie	Ishan South East
	35. " M.O. Ijie	Ishan West Central
	36. " G.I. Akere	Ishan North West
20	37. " E.B. Arowojolu	Okitipupa South East
	38. " A.O. Akingboye	Okitipupa South West
	39. " B.O. Fawohinmi	Ondo West I
	40. " Chief S. Adekeye	Ondo West II
	41. " S.A. Layonu	Ede/Ejigbo South
	42. " J.O. Adeyemo	Oshogbe North I
	43. " Y. Adekunle	Oshogbo S/East Urban
	44. " L. Ogunleye	Oshun South East I
	45. " D.K. Olumofin	Owo North II
	46. " I.A. Olukoju	Owo South I
30	47. " S.B. Aruwajoyo	Owo South II
	48. " J.E. Otobo	Urhobo East I
	49. " J.U. Agbasa	Urhobo East II

Letter from  
Chief Awolowo  
to H.E. The  
Governor (and  
Enclosure)  
21st May 1962  
continued

In the High  
Court

No.10 A

Letter from  
Chief Awolowo  
to H.E. The  
Governor (and  
Enclosure)  
21st May 1962  
continued

	<u>NAMES</u>	<u>CONSTITUENCY</u>	
50.	Hon.Chief G.E.E.Etohie	Warri West	
51.	" A. Atie	Western Ijaw I	
52.	" A.A. Zuokumor	West Ijaw II	
53.	" N.A.B. Kotoye	Egba East II	
54.	" Chief J.A.O.Odebiyi	Egbado North East	
55.	" Chief E.A.A.Fadairo	Egbado North West	
56.	" Chief Ashiru Borokini	Egbado South West	
57.	" Chief J.O.Oshuntokun	Ekiti North West II	
58.	" B. Olaniyan	Ibarapa East	10
59.	" Dr.J.O. Onitowoju	Ife Town North	
60.	" J.O. Kehinde	Ede/Ejigbo North	
61.	" J.A.O.Ogunmuyiwa	Oshun South East I	
62.	" R.A. Olusa	Owo North I	
63.	" D.A. Popoola	Oyo South West	
64.	" O.O. Gbolahan	Oyo North West I	
65.	" I.A. Adelodun	Oyo North West II	
66.	" S.O. Akerele	Ife Ila North	
67.	" J.G. Adeniran	Ibarapa West.	

This is the exhibit referred to as "B" in the  
Affidavit of Chief the Honourable Obafemi  
Awolowo.

20

(Sgd.) Sydney Foresythe  
COMMISSIONER FOR OATHS.

No.11

Exhibit B to  
Affidavit of  
Asani Amodu  
Sworn 22nd May  
1962.

22nd May 1962

No.11

EXHIBIT B to Affidavit of Asani  
Amodu Sworn 22nd May 1962

EXH. 'B'

Your Excellency

It has come to my knowledge that certain  
signatures of Members of the House of Assembly  
are to be presented to you on which you are to  
decide whether I enjoy majority support of the  
House.

30

2. I wish to inform Your Excellency that I am disputing the genuineness of these signatures. I am convinced that some of these signatures were collected by coercion and under duress.

In the High Court

No.11

3. In the circumstances I am asking that Your Excellency will refuse any demand that may be made on you to act on any such signatures.

Exhibit B to Affidavit of Asani Amodu Sworn 22nd May 1962.

10

4. The only reliable and constitutional method to test whether my Government enjoys the confidence of the House is by a decision on the floor of the House and I hope that in the interest of justice that you will take no steps until the House of Assembly shall have taken a decision on the issue now confronting the Region.

22nd May 1962 continued

S. L. Akintola  
Premier.

May 20th, 1962.

His Excellency,

20

Sir Adesoji Aderemi, K.C.M.G., K.B.E.,  
Governor of Western Nigeria,  
Ibadan.

No.12

No.12

STATEMENT OF CLAIM

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

Statement of Claim  
29th May 1962.

Suit No.I/161/62.

Between:

30

The Hon.S.L.Akintola,  
Premier Western Nigeria ... Plaintiff  
and  
His Excellency The Governor,  
Western Nigeria & Ors. Defendants.

STATEMENT OF CLAIM

1. The Plaintiff was duly appointed Premier of Western Nigeria on 11th August 1960 as per Western Regional Notice No. 1054 published

In the High  
Court

                      
No.12

Statement of  
Claim  
29th May 1962  
continued

- in the Western Region of Nigeria Gazette No. 42 of 18th August 1960, and continued as the holder of the said office until this action was filed.
2. In consequence of disagreement between the Plaintiff and Chief Obafemi Awolowo, Chief Awolowo caused to be summoned a joint meeting of the Western and Mid West Executives of the Action Group Party, to which both the Plaintiff and Obafemi Awolowo belonged, for 19th May 1962. 10
  3. At the meeting Chief Obafemi Awolowo presided and preferred a number of accusations against the Plaintiff in consequence of which the meeting asked the Plaintiff to resign forthwith his office as Premier of Western Nigeria.
  4. In consequence of this, the Plaintiff wrote a letter on 20th May 1962 to the 1st Defendant expressing his dissatisfaction with the proceedings at the joint Executive meeting above pleaded, adding (a) that he was convinced that he had a majority following among the members of the Western House of Assembly and that the present crisis would be resolved finally in his favour on a vote of confidence in the Government taken and decided at a meeting of the House (b) that he had therefore requested the Speaker to summon a meeting of the House of Assembly for Wednesday the 23rd May 1962 at 10 a.m. pending action as advised in his paragraph 1 (Paragraph 1 advised a dissolution of the House). 20 30
  5. On the same 20th May 1962 the 1st Defendant replied that he was not ready to order a dissolution of the Western House of Assembly "particularly in order not to frustrate the holding of the meeting of the House next Wednesday".
  6. Simultaneously as the Plaintiff forwarded the letter pleaded in paragraph 4 above, he forwarded a letter on the 20th May 1962 to the Speaker requesting him to summon a meeting of the Western House of Assembly for Wednesday May 23rd 1962 to consider and pass a motion for a vote of confidence in the Government of 40

Western Nigeria "in view of the current crisis in the Action Group".

In the High Court

7. The Speaker replied on the same day, 20th May 1962 refusing to summon the meeting requested by the Plaintiff.

No.12

8. The Western House of Assembly at the material times i.e. May 20 and May 21 had 119 members of which 34 belonged to the National Council of Nigerian Citizens Party.

Statement of Claim  
29th May 1962  
continued

10 9. The Plaintiff as Premier was primus inter pares of a Government formed as a result of the Action Group having won a majority of seats in the House of Assembly in the 1960 elections to the House.

10. The Plaintiff and the other Regional Ministers formed the Executive Council of the Western Nigeria at all times material to this action.

11. The Plaintiff further wrote on 20th May 1962 to the 1st Defendant as follows :-

20 "It has come to my knowledge that certain signatures of members of the House of Assembly are to be presented to you on which you are to decide whether I enjoy majority support of the House.

I wish to inform your Excellency that I am disputing the genuineness of these Signatures. I am convinced that some of these signatures were collected by coercion and under duress.

30 In the circumstances I am asking that your Excellency will refuse any demand that may be made on you to act on any such signatures.

40 The only reliable and constitutional method to test whether I enjoy the confidence of the House is by a decision on the floor of the House and I hope that in the interest of justice that you will take no steps until the House of Assembly shall have taken a decision on the issue."

In the High  
Court

No.12

Statement of  
Claim  
29th May 1962  
continued

12. On 21st May 1962, in the morning, the Plaintiff further wrote to the 1st Defendant requesting him to use his power under the constitution to cause a meeting of the Western House of Assembly to be held on Monday 28th May 1962 for the purpose of tabling a motion for a vote of confidence in the Government of Western Nigeria, led by the Plaintiff.
13. The 1st Defendant did not reply to the letters pleaded in paragraphs 11 and 12 above. 10
14. Pursuant to rumours and boasts by supporters of Chief Obafemi Awolowo that they had advised the 1st Defendant to remove the Plaintiff from his office as Premier in order to carry out the decision of the Joint Executive Meeting of the Action Group of 19th May 1962, the Plaintiff before noon on May 21st, filed an action for Declaration that he could not be removed by the 1st Defendant from his office as Premier without a prior decision/resolution on the floor of the Western House of Assembly from which it could properly appear to the 1st Defendant whether he commanded majority support in the House or not and for an injunction to restrain his removal in the absence of such preliminary steps. 20
15. Subsequently, however, to the filing of the summons, the 1st Defendant served on May 21st 1962 a notice on the Plaintiff purporting to remove him from his office as Premier of Western Nigeria. 30
16. Other than as above pleaded, the Plaintiff received no reference or intimation of any representation from the 1st Defendant concerning the alleged issue of his not commanding majority support in the Western House of Assembly.
17. At all times material to this action, the Plaintiff was a member of the Action Group. 40
18. The 1st Defendant had prior to his purported removal of the Plaintiff as Premier been







the 21st May, 1962, but say that they ceased to form the Executive Council when the Plaintiff was removed from his office as aforesaid.

In the High  
Court

                      
No.13

Defence and  
Counterclaim  
5th June 1962  
continued

10

7. Save that the First Defendant did not reply to the letter alleged in paragraphs 11 and 12 to have been sent by the Plaintiff, the Defendants do not admit paragraphs 11, 12 and 13 of the Statement of Claim.

8. The Defendants admit that on the 21st May, 1962, the Plaintiff filed the action referred to in paragraph 14 of the Statement of Claim but otherwise do not admit the contents of the said paragraphs.

9. Paragraph 15 of the Statement of Claim is admitted.

10. The Defendants do not admit paragraphs 16, 17 and 18 of the Statement of Claim.

20

11. As regard paragraphs 19, 21, 22 and 23 of the Statement of Claim the Defendants deny that the first Defendant outstepped his constitutional rights or that he was guilty of collusion or mala fide as alleged or at all or that the order for removal of the Plaintiff from office contravened the relevant section of the constitution of Western Nigeria.

12. Paragraph 20 of the Statement of Claim is admitted.

30

13. The Defendants admit that the second Defendant from the 22nd May, 1962, until the 29th May 1962 (when he was served with a restriction order purporting it be made under the Emergency Powers Act, 1961), acted as Premier of the Western Region and say that he was validly appointed as Premier by the first Defendant and was entitled so to act.

40

14. Save and except as herein before expressly admitted each and every allegation in the Statement of Claim is specifically denied.

In the High  
Court

COUNTER-CLAIM

No.13

Defence and  
Counterclaim  
5th June 1962  
continued

15. By way of counter-claim the Defendants repeat paragraph 13 of the Defence and say that ever since his appointment by the first Defendant as aforesaid he has been and still is entitled to act and to exercise all the powers and discharge all the functions of Premier of Western Region of Nigeria.

16. On the 22nd day of May, 1962, after his removal from the office of Premier the Plaintiff forcibly entered the room reserved for the use of the Premier by breaking down the door.

10

AND THE DEFENDANTS CLAIM :

(1) A declaration that the removal of the Plaintiff from the office of Premier of Western Region was valid and effective.

(2) A declaration that the 2nd Defendant was validly and lawfully appointed as Premier by the first Defendant and that the second Defendant has ever since the 21st May, 1962 been entitled to act and to exercise all powers and to discharge all the functions of Premier of the Western Region.

20

(3) An injunction to restrain the Plaintiff from purporting to act as Premier of the Western Region or from exercising any of the forms or discharging any of the functions of Premier of the Western Region.

30

Dated at Lagos this 5th day of June, 1962.

(Sgd.) G.I.Akinyele  
pp. G.I.AKINYELE & CO.  
Solicitors for the Defendants,  
10, Old Yaba Road, Yaba. Lagos.

No.14

COURT NOTES

In the High  
Court

No.14

Court Notes  
5th June 1962

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

BEFORE THE HONOURABLE SIR SAMUEL QUASHIE-IDUN,  
CHIEF JUSTICE  
TUESDAY 5TH JUNE, 1962.

Suit No.I/161/62.

10 BETWEEN:

S. L. AKINTOLA Plaintiff

and

HIS EXCELLENCY SIR ADESOJI Defendant  
ADEREMI

ALHAJI D.S.ADEGBENRO Co-Defendant

Chief Moore Q.C. (with him Chief Akerele) for  
Plaintiff

Mr.Dingle Foot Q.C. (with him Mr.Akinyele) for  
Defendant.

20 Motion for leave to file statement of Defence  
out of time and also counter-claims.

Mr.Dingle Foot moves in terms of Affidavit filed  
in support.

Chief Moore states he has no objection to the  
application for extension of time to file the  
statement of defence but asks for time to file a  
defence to the counterclaim.

30 By Court. I grant the Defendants leave up to to-  
day to file their statement of defence. Plaintiff  
granted. Chief Moore asks the Court to consider  
referring the question of Law involved to the  
Federal Supreme Court under Section 108 of the  
Constitution of the Federation of Nigeria. States

In the High  
Court

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No.14

Court Notes  
5th June 1962  
continued

he withdraws the application for leave to file a defence to the counterclaim. Applies that the matter be referred to the Federal Supreme Court.

Mr. Dingle Foot states that in view of the allegation of Mala Fide it would be necessary to hear evidence before a transfer is made. Agrees that the matter is of great importance to this Region and to the whole of Nigeria and it will be necessary for a decision to be given which will bind the Courts of the whole Federation. Chief Moore submits that the most important question to be decided is whether under the Constitution of Western Nigeria, the Governor has power to act under Section 33(10) of the Constitution. Submits that it would not be necessary for the Court to hold that the Governor acted Mala Fide in exercising his powers under the Constitution before the Court can hold that he has power under the Constitution or not.

10

Court intimates to Counsel that in its opinion and from the nature of the pleadings filed a substantial question of Law and the interpretation of Section 33 Sub-Section (10) of the Constitution of Western Nigeria are involved in these proceedings which have to be determined by the Federal Supreme Court, particularly as all the Regional Constitutions have provisions similar to Section 33(10) of the Constitution of Western Nigeria and it is of supreme importance that the highest Court of the Land should give a decision which will bind all the Courts of the Federation.

20

Mr. Dingle Foot asks that counsel may be given an opportunity to agree upon the issues to be referred to the Federal Supreme Court.

Court adjourns for a few minutes and resumes.

Mr. Dingle Foot informs the Court that both he and Chief Moore have agreed that the following issues be referred to the Federal Supreme Court :-

30

40

- (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?

In the High Court

(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.

No.14

Court Notes  
5th June 1962  
continued

10 By Court - Under Section 108 Sub-Section (2) of the Constitution of the Federation of Nigeria I refer the issues for determination by the Federal Supreme Court. Both Counsel agree that the costs of today's proceedings should be costs in the Cause. By Court. Ordered accordingly.

Note by Court - Mr. Eso, Senior Crown Counsel applies for leave to withdraw from the case he having appeared originally with Chief Rotimi Williams.

By Court - Leave granted.

20 Case adjourned sine die.

(Sgd.) S.O. Quashie-Idun  
C.J.

No.15

In the Federal Supreme Court

COURT NOTES ON CONSTITUTION POINT.

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
ON MONDAY THE 25TH DAY OF JUNE, 1962

No.15

BEFORE THEIR LORDSHIPS

Court Notes  
on Constitution Point  
25th June 1962

30 SIR ADETOKUNBO ADEMOLA, CHIEF JUSTICE OF THE  
FEDERATION  
SIR LIONEL BRETT, FEDERAL JUSTICE  
JOHN CONRAD IDOWU TAYLOR, FEDERAL JUSTICE  
SIR VAHE ROBERT BAIRAMIAN. FEDERAL JUSTICE

FSC. 187/1962

BETWEEN:

HON. S.L. AKINTOLA, PREMIER, )  
WESTERN NIGERIA )  
and

40 1. HIS EXCELLENCY SIR ADESOJI ADEREMI )  
GOVERNOR, OF WESTERN NIGERIA )  
2. ALHAJI D.S. ADEGBENRO (Joined by )  
Order of Court dated 23/5/62 )

Reference on Constitution Point under

In the Federal  
Supreme Court

No.15

Court Notes  
on Constitution  
Point  
25th June 1962  
continued

section 108(2) of the Constitution.

Chief Moore, Q.C., (Chief Akerele and Mr. Ayoola  
with him) for the Plaintiff.

Akinyele for 1st and 2nd Defendants.

Court notified all the Attorneys-General in the Federation if they wish to avail themselves of the provisions of the Rules of Court Order VI Rule 4(2) of the Federal Supreme Court Rules, to appear in this matter, being of great Constitutional importance.

10

All the Attorneys decline.

Akinyele says he has two objections.

1. Reference is premature.

2. Reference is not according to form.

On No.1: Refers to FSC. 120/1961:- Otugor Gamioba and Others versus Ezezi II, etc. and Others (yet unreported).

On No.2: Refers to Order VI and Civil Form X.

MORE REPLIES TO THE OBJECTIONS.

Point 1: Matter of "good faith" or "bad faith" on the part of the Governor is quite immaterial. Whether Governor could act on extraneous matter or not is the issue. The only issue is the interpretation of Section 33(x) of the Constitution.

20

Issues not in dispute (1) Plaintiff was Premier

(2) Plaintiff was removed

(3) He was removed on account of a letter sent to the Governor purported to be signed by 66 members of the House.

30

Point 2: at page 24 Counsel agreed on what matters are to be referred to the Court - page 24 of the Record. Form agreed upon by Mr. Dingle-Foot for the Defendants and myself for the Plaintiff.

AKINYELE REPLIES: Plaintiff alleged forgery - that some signatures were forged. If this issue was tried in the High Court it might dispose of the matter.

In the Federal Supreme Court

                      
No.15

Court: There is no allegation anywhere that signatures were forged.

Court Notes  
on Constitution Point  
25th June 1962  
continued

Adjourned till 26/6/62 for Ruling.

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

10

No. 16

No.16

COURT RULING

Court Ruling  
26th June 1962

Tuesday the 26th day of June 1962

Same Representation as before.

R U L I N G

When this matter came before us yesterday, Counsel for the Defendants raised two objections. He submitted that the Reference be now not proceeded with on two grounds:

20

- (1) That the Reference is too premature, and
- (2) That the Reference is not according to form.

On the first ground Counsel referred us to the opinion given by this Court in the case F.S.C. 120/1961 - Otugor Gamioba and others versus Esezi II, the Orodje of Opke and others (yet unreported), which, he said, laid down the procedure for referring a question as to interpretation of a Constitution to this Court.

30

When proceedings are instituted in the High Court, and they involve a Constitutional question, Section 108 of the Constitution deals with the matter of interpretation.



In the Federal Supreme Court It states:

No.16

Court Ruling  
26th June 1962  
continued

"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 -

10

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

20

(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 the 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.

30

(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."

40

In the case cited to us, a Judge of the High Court transferred the case to this Court because, according to him, it involved a substantial question of law. No pleadings were ordered or filed in the case.

In the Federal  
Supreme Court

                      
No.16

In the opinion delivered, this Court made it clear that it was wrong on the part of the Judge to transfer any matter to this Court, and that in any case it was too premature to refer the question set out for the decision of this Court. The opinion continued :-

Court Ruling  
26th June 1962  
continued

10

20

30

"The matters to which we have drawn attention point to the conclusion that except where the question involves the jurisdiction of the Court or the competency of the proceedings, the proper time for referring a question as to the interpretation of a constitution to this Court will normally be after the Court below has heard and determined the other issues arising in the proceedings, since it will not be possible before then to say with certainty whether any question as to the interpretation of a constitution arises, or to formulate correctly any question that does arise. Without laying down any invariable rule in the matter, we consider the High Courts should be guided by this as a general principle, and should not make interlocutory references where it can be avoided."

We affirm the principles laid down in that opinion and we shall apply them in appropriate and normal cases. We are of the view, however, that they do not apply in the present case. The Plaintiff in this case makes four claims, which are as follows :-

40

"(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.

In the Federal  
Supreme Court

No.16

Court Ruling  
26th June 1962  
continued

(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.

10

(iii) A declaration that the purported removal of the Plaintiff by the Defendant as Premier of Western Nigeria is invalid and of no effect.

(iv) An injunction to restrain the Defendants from usurping or permitting anyone to usurp the duties of the Plaintiff as Premier of the Western Nigeria unless and until he resigns or is constitutionally relieved of the office."

20

Claims 1, 2 and 4 are direct Constitutional issues and in the Court below no evidence need be called to determine them - in so far as the three main points have been admitted.

If the three claims are determined in favour of the Plaintiff, claim No.4 does not arise. This last claim (No.4) is linked up with paragraph 23 of the Statement of Claim which alleged mala fides on the part of the 1st Defendant. Thus, it is possible with certainty in this case to say without any evidence that questions as to the interpretation of the Constitution do arise.

30

Arguing the second objection, namely, that the reference is not according to form, Counsel referred to Order VI, Form X of the Federal Supreme Court Rules. This prescribes a pattern of form to be used in the High Court when questions are referred to the Federal Supreme Court. It is enough to say that patterns of Forms are included in the Rules for guidance and they need not be followed word for word so long as all the essentials are contained in the form submitted, as they are in this case. Besides,

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the form now before the Court was agreed upon by Counsel on both sides and so long as the questions put contain all the essential ingredients, one side cannot now complain about it.

In the circumstances the objections raised are overruled and the Reference is to proceed.

(Sgd.) A. Ade...Ademola  
Chief Justice of the Federation.  
26/6/62.

In the Federal  
Supreme Court

No.16

Court Ruling  
26th June 1962  
continued

10

No.17

No.17

COURT NOTES ON REFERENCE

Reference proceeds

Court Notes  
on Reference  
26th June 1962

MOORE OPENS: Gives facts.

20

Plaintiff was appointed Premier in August 1960. On 21st May 1962, the leader of Plaintiff's Party, namely the Action Group, sought to remove him by sending to the Governor a document purported to have been signed by 66 members of the House of Assembly stating they were no more supporting him as Premier. The strength of the House was then 119 with 5 seats vacant.

The Governor acted and removed the Plaintiff.

30  
sic

The Plaintiff brought action against 1st Defendant when he felt he was to be removed. Refers to page 18 lines 28 to 32 ; paragraph 15 of the Statement of Claim that action was brought before his removal. Paragraph 9 of the Statement of Claim at page 21 admitted paragraph 6.

Later on the 21st May, the 1st Defendant removed the Plaintiff. The 2nd Defendant was promptly made the Premier.

Three admitted facts before the Court.

1. Plaintiff was duly elected Premier

In the Federal  
Supreme Court

                      
No.17

Court Notes  
on Reference  
26th June 1962  
continued

according to Constitution.

2. 1st Defendant acted under Section 33(10) of Western Nigeria Constitution in removing the Plaintiff.
3. That the decision was based on a letter purported to be from 66 members of the House of Assembly that they no longer have confidence in the Premier.

Two questions now put before the Court are at pages 24 & 25 of the Record.-- P.2411.42-47 & P.2511.1-8. The extraneous matter is the letter sent by the leader of the Party to the Governor, purported to be signed by sixty-six members of the House.

10

Submit both questions should be answered in the negative.

Will base submission in two ways: in either case result will be the same.

1. Within the basis of the Constitution itself, the position is that a Premier will be removed from office on resolution of the House.
2. Provisions of Section 33(10) is an attempt to write down the Constitutional Convention of the English Constitution and will submit that its interpretation should be based on the way the convention has worked historically and the stage of evolution it has reached when it was embodied in the Nigeria Constitution in 1960.

20

30

#### Dealing with 1.

Refers to Section 33(2) of the Constitution of Western Region which deals with appointment of Premier :-

Then Section 33(10) refers to removal of the Premier. Note the word "seem" in Section 33(10) and word "likely" in Section 33(2) which has been left out of sub-section (10).

Once a Government or Premier is defeated in the House, there is not question of "likely" :

40

event then becomes certain. The discretion left in the Governor can only be when the Proceedings in the House are confused. When it is clear cut, there is not discretion in the Governor; he should act accordingly, e.g. where in a vote of confidence there are some abstentions, some sort of discretion depending on the numbers may arise. Governor must evaluate from the proceedings in the House.

In the Federal  
Supreme Court

\_\_\_\_\_

No.17

Court Notes  
on Reference  
26th June 1962  
continued

10 Section 38 of the Constitution (Western Nigeria) sub-section (1): Court to note the Proviso. Note the words "his own deliberate judgment" sub-section (1)(a), (b), (c) and (d) are material. Court will note that the removal from office of Premier in that section. If removal is not under section 33, then only section 38 may be used.

20 Refers to Section 33(10)(a): question to be decided by a majority. How is the majority to be decided? is it on the floor of the House? or is it to be any how?

In considering majority, reference is to be made to Section 23(2): it is a simple majority: it is to be read with Section 23(i). Majority will be of the members present and voting.

Dealing with 2nd submission:

30 Refers to Section 1 of the Constitution of the Western Region - appointment of Governor. The Governor it is submitted must act in the same way as the Queen of England. Relationship between Premier and Governor must be like that of Prime Minister and the Queen.

Conventions in England on these matters are practised here in Nigeria and may be considered as law of the land.

Section 33(10) is same as English Constitution.

40 Note Section 39 of the Constitution. It is the Premier who should keep the Governor informed of any matter concerning the general conduct of the Government.

In the Federal  
Supreme Court

No.17

Court Notes  
on Reference  
26th June 1962  
continued

Submit it was never intended to give the Governor absolute power to do what he liked.

Mr. Ibekwe, Solicitor General, Eastern Region -

Section 33(10)(a) Construction of:

No hard and fast rule can be laid down in constructing it. Each case will have to be considered on its own merit. The Court has to consider the facts upon which the Governor acted. I would submit that every exercise of the power by the Governor can be challenged in the Courts - See Section 38 of the Constitution. 10

Section 38(1)(b). This and other cases in the sub-section are cases where the Government acts in accordance with his own deliberate judgment. I would submit then that the Courts then cannot interfere.

In appropriate case, the matter will have to be determined on the floor of the House. But I would say that the Governor in exceptional case, he may go outside the House. As far as possible it should be determined on the floor of the House. 20

The issue in this matter being to test whether the Premier still commands the support of the majority of the House, I would say it is the House which must decide.

Submit that Section 31(4)(b) of the Constitution, Western Nigeria supports the view that the resolution must be on the floor of the House.

The only way the House speaks whether it lost confidence in the Government or in the Premier, is on the floor of the House, by vote. 30

On the floor of the House, the Premier may sway even those who signed documents against him or swear to affidavits against him to think again and support him.

"If it appears to him" can be taken to mean that the Governor will not be able to say for certain, but must rely on the official information supplied to him: he can judge from that.

The Section 33(10)(a) is rather strong - "The Governor shall not remove": it uses a strong word.

In the Federal  
Supreme Court

No.17

To sum up, unlike Section 38 of the Constitution Section 33(10)(a) presupposes that something obvious, something convincing must be in front of the Governor before he exercises his powers.

Court Notes  
on Reference  
26th June 1962  
continued

MR. AKINYELE FOR DEFENDANTS:

10 Refers to Section 33(2): deals with the word "likely". Says word used because immediately after election, no sworn members of the House yet; so the Governor can only appoint someone "likely".

Section 33(10)(a) covers cases when members have been sworn in; hence the word "seem".

Refers to Section 31(3), the Governor

Section 33(10)(b) of the Constitution of 10(a) and (33) (9).

20 Deals with Section 38 of the Constitution. Section 33 of the Constitution does not apply at all! The Governor acts under Section 33(10)(a) independent of Section 23; he need not take the matter to the House. Section 33(10)(a) does not limit itself to vote taken in the House.

Submission about Constitutional Convention or the English Convention should be disregarded: we have a written Constitution.

30 Submit the answer to both questions posed are 'yes'. Propose to bring forward examples. Facts in this case are not material.

Question No.1: Example will be in the case of a Premier whose various acts or proposals in the House are defeated.

The proviso does not say the Governor must act on a vote taken on the floor of the House. If it was desirable the Constitution would have said so. The Governor's discretion is absolute. It is only that there will be a sanction. The





above-named Plaintiff filed an action in the High Court at Ibadan in Western Nigeria against the 1st Defendant claiming as follows :-

In the Federal  
Supreme Court

                      
No.18

Opinions

- (1) Ademola  
C.J.F.  
(2) Taylor &  
Bairamian  
F.J.J.  
(3) Brett, F.J.  
7th July 1962  
continued

10

"(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

At the same time there was filed with the Court a Notice of Motion for an order of interim injunction to restrain the 1st Defendant "from purporting to relieve the Plaintiff of his office as Premier of the Western Region in the absence of a resolution of the House of Assembly to the effect that he no longer commands the support of the majority of members of the House of Assembly". Subsequent to the filing of the Writ and Notice of Motion, the 1st Defendant by a notice purported to remove the Plaintiff from the office of Premier and proceeded to swear in the 2nd Defendant as the Premier of the Region. The Plaintiff thereupon sought and obtained the leave of the Court to add to his claims two more reliefs as follows:-

40

"(iii) A Declaration that the purported removal of the Plaintiff by the Defendant as Premier of Western Nigeria is invalid and of no effect.

In the Federal  
Supreme Court

                      
No.18

Opinions

- (1) Ademola  
C.J.F.  
(2) Taylor &  
Bairamian  
F.J.J.  
(3) Brett, F.J.  
7th July 1962  
continued

- (iv) An injunction to restrain the Defendants from usurping or permitting anyone to usurp the duties of the Plaintiff as Premier of the Western Nigeria unless and until he resigns or is constitutionally relieved of the office."

At this stage leave was obtained by the Plaintiff to join the 2nd Defendant in the action. Subsequently, the 2nd Defendant obtained the leave of the Court to file a counterclaim. 10

On the 29th May, 1962, the Plaintiff, in accordance with the Order of Court, filed a Statement of Claim to which a statement of Defence and Counterclaim were filed jointly on behalf of the two Defendants. The Counterclaim reads :

"The Defendants claim:

- (1) A declaration that the removal of the Plaintiff from the office of Premier of Western Region was valid and effective. 20
- (2) A declaration that the 2nd Defendant was validly and lawfully appointed as Premier by the first Defendant and that the second Defendant has ever since the 21st May 1962 been entitled to act and to exercise all powers and to discharge all the function of Premier of the Western Region. 30
- (3) An injunction to restrain the Plaintiff from purporting to act as Premier of the Western Region or from exercising any of the forms or discharging any of the function of Premier of the Western Region."

Upon this matter coming up for hearing before the High Court, Ibadan, on 5th June, 1962, after a preliminary argument, including an application under Section 108 of the Constitution of the Federation to have certain points referred to the Federal Supreme Court, it was 40

decided to refer the matter and Counsel on both sides agreed that the following issues be so referred :-

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.
  - (2) Taylor &  
Bairamian  
F.J.J.
  - (3) Brett, F.J.
- 7th July 1962  
continued

- 10
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?

20 The learned Chief Justice of the High Court, Western Region, accordingly referred the two issues to this Court under Section 108(2) of the Constitution of the federation of Nigeria which provides:

30 "108(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 the 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."

At the hearing before us, Mr. Akinyele for the Defendants raised a preliminary objection to the Reference being heard at this stage on the grounds (1) that it was too premature, and (2) that the Reference was not according to form. We overruled the two objections and the Reference continued.

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:

In the Federal  
Supreme Court

No.18

Opinions

(1) Ademola  
C.J.F.  
(2) Taylor &  
Bairamian  
F.J.J.  
(3) Brett, F.J.  
7th July 1962  
continued

1. Plaintiff was duly appointed Premier according to the Constitution.
2. The 1st Defendant in removing him as Premier acted under Section 33(10) of the Western Nigeria Constitution.
3. The decision by the 1st 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.

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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:-

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"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.

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

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- |    |  |   |
|----|--|---|
| 1. | That within the basis of the Constitution itself, the position is that a Premier will be removed from office on a resolution of the House, and   | In the Federal<br>Supreme Court   |
|    |  | No.18   |
| 2. | That the provisions of Section 33(10) of the Constitution of Western Nigeria is an attempt to write down the constitutional 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. | Opinions<br>(1) Ademola<br>C.J.F.<br>(2) Taylor &<br>Bairamian<br>F.J.J.<br>(3) Brett, F.J.<br>7th July 1962<br>continued |

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Arguing on the 1st submission, Counsel invited us to note the difference in the wordings of Section 33(10) and Section 33(2) of the Constitution, which deals with the appointment of a Premier, and is as follows :-

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"33(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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When a Government or Premier is defeated in the House, Counsel observed, there is no question of likely; the event becomes certain. The discretion left in the Governor, it was submitted, can only be exercised when the proceedings in the House are confused. When it is clear, there is no discretion and the Governor has to act accordingly. Reference was made to Section 38(i) of the Constitution of Western Nigeria which deals with the exercise of the Governor's powers. The sub-section, after providing that the Governor shall act in accordance with the advice of the Executive Council, continues :-

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"Provided that the Governor shall act in accordance with his own deliberate judgment in the performance of the following functions -

(a) in the exercise of the powers relating to the dissolution of the Legislative Houses

In the Federal  
Supreme Court

No.18

Opinions

(1) Ademola  
C.J.F.

(2) Taylor &  
Bairamian  
F.J.J.

(3) Brett, F.J.

7th July 1962  
continued

of the Region conferred upon him by the proviso to subsection (4) of Section 31 of this Constitution;

(b) in the exercise of the power to appoint the Premier conferred upon him by subsection (2) of Section 33 of this Constitution;

(c) in the exercise of the powers conferred upon him by Section 37 of this Constitution (which relates to the performance of the functions of the Premier during absence or illness) in the circumstances described in the proviso to sub-section (2) of that section; and

(d) in signifying his approval for the purposes of Section 63 of this Constitution of an appointment to an office on his personal staff.

In arguing the second submission, Mr. Moore referred to the conventions in England on these matters which are adopted in Nigeria. Section 33(10), which relates to the tenure of office as Premier or as a Minister, and to removal from office, he said, is the same as the English constitutional convention.

Mr. Ibekwe, Solicitor-General of the Eastern Region, whose Attorney-General was invited with other Attorneys-General by the Court under Order VI Rule 4(2b) of the Federal Supreme Court Rules, gave the Court the benefit of his views in the matter. Starting off with a general proposition that in an appropriate case the matter must be determined on the floor of the House and only in exceptional cases should the Governor act outside the House, Mr. Ibekwe submitted that Section 31(4)(b) of the Constitution of Western Nigeria supports the view that the removal of a Premier should depend on the vote taken on the floor of the House. The learned Solicitor-General then examined Section 33(10) and referred to the words "if it appears to him" (the Governor) and "shall not remove", the former words, he said, connote that the Governor must only judge from official information supplied to him, and the latter words, he observed, are very strong words.

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For the Defendants, Mr. Akinyele submitted 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 discretion in removing the Premier. He is not limited to taking the matter from the House and may use his own discretion. This 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 subsection (1), must be read with Section 33(10).

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Now, there can be no doubt that the Court is called upon to perform a difficult duty. For the interpretation of Section 33(10) of the Constitution of Western Nigeria, no precedent can be found. The meaning of the subsection and the scope of its application must be read in the light of convention and, of course, other relevant sections of the Constitution must be looked at. As we stated earlier in our ruling on the preliminary objection, three of the four main points in the claim made by the Plaintiff have been admitted by the defence and this Court acts on matters referred to it, only when facts as admitted, or as found, are before it.

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The truth is that Mr. Moore was right when he said that Section 33(10) was an attempt to write down the constitutional convention of the English Constitution. It is also true that in England political processes have a flexibility and easy adaptability to the moods of the country. The English tradition, which is emulated in Nigeria, goes very far; but circumstances in Nigeria are so different and life is so much more complex that it is difficult to accept in a generation what England has learnt through the centuries by bitter experience both in and out of Parliament. Cabinet Government or Representative Government in Nigeria has taken the form of the English Cabinet. In England the Crown is

In the Federal  
Supreme Court

                      
No.18

Opinions

- (1) Ademola  
C.J.F.
- (2) Taylor &  
Bairamian  
F.J.J.
- (3) Brett, F.J.

7th July 1962  
continued



In the Federal  
Supreme Court

No.18

Opinions

(1) Ademola

C.J.F.

(2) Taylor &  
Bairamian

F.J.J.

(3) Brett, F.J.

7th July 1962  
continued

the fixed point from which almost everything emanates and around which everything revolves. Nigeria has not yet found it possible to settle and find for herself her own doctrine, her own form of Government and what form Cabinet Government will take. With England, there are conventions of the Constitution. Nigeria has a written Constitution; some of the English conventions are put into writing as part of this Constitution.

Section 32 of the Constitution of Western Nigeria vests the Executive Authority of the Region in Her Majesty, and subject to the provisions of the 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. The Governor is appointed by the Queen, but on the recommendation of the Premier. He (the Governor) may be removed by the Queen presumably on the recommendation of the Premier. Under Section 33(2) of the Constitution of Western Nigeria, the Governor appoints the Premier. He is the head of Government; he and his Ministers (who are appointed by the Governor on the advice of the Premier) have collective responsibility to the Legislative Houses of the Region (Section 35(1)). For the Premier's removal, the Constitution makes a provision under Section 33(10), and in an extreme case under Section 31(4) (b). A careful examination of Sections 31 to 39 of the Western Nigeria Constitution reveals that they are based on the constitutional conventions of the English system of Cabinet Government.

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The Premier, like the Prime Minister of England, depends upon the support of a majority in the House, and ultimately on the electorate. In the year 1841 in England Government was defeated in the House of Commons on the budget but preferred to stay in office. Sir Robert Peel, the leader of the Opposition, moved a resolution that their continuance in office in such circumstances was at variance with the spirit of the Constitution; this was carried by one vote and a dissolution followed. It will be observed that the Queen did not remove the Prime Minister when his Government was defeated and he refused to leave office, the matter was left for a decision on the floor of the House.

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In England the Sovereign acts exclusively on the advice of the Cabinet, tendered, as a rule, through the Prime Minister. By a convention of the Constitution, not only must the Sovereign act on that advice, but may accept no other. Also the Sovereign must be kept informed of the general run of Government and of political events, particularly the deliberations of the Cabinet, and it is the duty of the Prime Minister to do this. In the same way, Section 39 of the Constitution of Western Nigeria lays the duty on the Premier to keep the Governor informed of these matters.

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.
- (2) Taylor &  
Bairamian  
F.J.J.
- (3) Brett, F.J.

7th July 1962  
continued

An examination of some sections of the Constitution of the Western Nigeria, in so far as they are relevant, will be useful. Section 31 deals with prorogation and dissolution of legislative Houses. Sub-sections (4) and (4)(b) are relevant. Sub-section 4 reads:

"(4) In the exercise of his powers to dissolve the legislative Houses of the Region, the Governor shall act in accordance with the advice of the Premier: Provided that -

sub-section (b) to 4 reads:

(b) if the House of Assembly passes a resolution that it has no confidence in the Government of the Region and the Premier does not within three days either resign or advise a dissolution, the Governor may dissolve the legislative Houses."

That proviso gives the Governor a discretion, but it is clear that the Government or the Premier must have suffered a defeat on the floor of the House before the Governor could act.

Section 38(i) has already been referred to above. The proviso gives the Governor power to act in accordance with his own deliberate judgment in four cases; one of them (b) concerns the powers to appoint the Premier under Section 33(2). The subsection is very important. Whilst it empowers the Governor to use his own deliberate judgment in appointing a Premier, it

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.
  - (2) Taylor &  
Bairamian  
F.J.J.
  - (3) Brett, F.J.
- 7th July 1962  
continued

does not state that he (the Governor) shall use his deliberate judgment in removing him. It seems this is a pointer that something more would be necessary before the Governor could remove. He must have the House with him. The question might be asked why the Governor was given power to use his own judgment in the exercise of the power to appoint. The reasons are not far to seek. It is because circumstances may arise in which on a Premier's death or resignation on personal grounds, either of two party leaders would be able to form a Government and command the support of the House. There is also the question of personal ambition.

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Section 39 is designed to keep the Governor abreast of political events and the temper of the House, as appearing from its proceedings, all through the Premier.

It reads:

"39. The Premier shall keep the Governor fully informed concerning the general conduct of the government of the Region and shall furnish the Governor with such information as he may request with respect to any particular matter relating to the government of the Region."

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It appears this is the section which affords the Governor an opportunity of evaluating from the trend of the proceedings in the House whether the Premier still commands the support of a majority of the House. It gives a chance for discussion with the Premier himself. When, for instance, various measures of Government are defeated from time to time, the Governor is in a position to suggest to the Premier to resign or test his popularity on the floor of the House. As it was put by the learned Solicitor-General, Eastern Nigeria, "The only way the House speaks whether it lost confidence in the Government or in the Premier is on the floor of the House by vote."

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To my mind the conclusion is inescapable 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 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.

10           Ours is a constitutional democracy. It is of the essence of democracy that all its members are imbued with a spirit of tolerance, compromise and restraint. Those in power are willing to respect the fundamental rights of everyone including the minority, and the minority will not be over obstructive towards the majority. Both sides will observe the principle as accepted principles in a democratic society.

20           Further, there are, in a democratic society, certain accepted conventions in responsible Government and tenure of office; when those forming the Government of the day find that they no longer command the support of the majority in the House, they resign; alternatively, the Premier asks for a dissolution and fresh elections in the belief that he and his supporters will get a majority in the elections. I think that the Constitution was framed in the light of normal constitutional practice and should be interpreted in that light rather than by a consideration of an extremely unlikely possibility that one can only imagine as being adopted by a Premier who would then, in truth, be entering the path of dictatorship, for if a Premier were to go on although he knew that he did not command a majority, he would be departing from the democratic principle of majority rule which pervades the Constitution - a departure which public opinion would not tolerate and which I think was not contemplated by the framers of the Constitution.

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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.

I think that the House of Assembly cannot be

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.
  - (2) Taylor &  
Bairamian  
F.J.J.
  - (3) Brett, F.J.
- 7th July 1962  
continued

In the Federal  
Supreme Court

No.18

Opinions

(1) Ademola  
C.J.F.

(2) Taylor &  
Bairamian  
F.J.J.

(3) Brett, F.J.  
7th July 1962  
continued

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.

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The answer to the first question therefore is that the Governor cannot validly exercise power to remove the Premier from office under Section 33 subsection 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.

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It will therefore be unnecessary to answer the second question.

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

I concur

(Sgd.) John Taylor  
FEDERAL JUSTICE

I concur

(Sgd.) Vahe Bairamian  
FEDERAL JUSTICE.

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DISSENTING OPINION OF BRETT, F.J.

BRETT, F.J.:

I have had the privilege of reading the judgment which has just been delivered by the Chief Justice of the Federation. In his general comments on the relationship between the written constitution of Nigeria and the unwritten constitution of the United Kingdom he speaks with authority, and it would be presumptuous on my part to

do more than express my respectful assent. I should be glad to feel able to agree with him also as to the specific questions referred to us, but after careful consideration I remain, with all diffidence, of a different view.

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.
  - (2) Taylor &  
Bairamian  
F.J.J.
  - (3) Brett, F.J.
- 7th July 1962  
continued

10 I accept the submission made on behalf of the Plaintiff that the Constitution of Western Nigeria embodies the essential characteristics of responsible government, as developed in the United Kingdom, in a Ministry collectively (except on a few clearly defined issues) responsible to the Legislature (S.35) and a Governor exercising the executive authority of the Region on behalf of Her Majesty (S.32) and required to act on ministerial advice except in the strictly limited cases where he is expressly empowered to act in accordance with his own deliberate judgment (S.38). The resemblance does not extend, however, to the matters with which this reference is concerned, and what we have to do is to construe a written Constitution, not to apply a set of unwritten conventions.

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30 Paragraph (a) of a proviso to S.33(10) of the Constitution lays down a condition for the exercise of the power of dismissing the Premier, but it does not prescribe, as it might have done, the matters to which the Governor is to have regard in deciding whether the condition is satisfied. I do not feel able to say that its wording entitles the Court to hold that the Governor must in every case look to the proceedings of the House of Assembly and to no other source of information before coming to and acting on the conclusion that the Premier no longer commands the support of a majority of the members of the House, or even that the information on which he forms his conclusion must in every case include something done in the House of Assembly. It is not on record that a situation analogous to the one with which we are now concerned has ever arisen in the United Kingdom, and it does not appear to me that there is a sufficiently clear convention as to what Her Majesty might with propriety do in such a situation to justify any presumption as to what the Governor of Western Nigeria may lawfully do.

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That nature of the responsibilities entrusted to the Governor personally in the various sets of

In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.  
(2) Taylor &  
Bairamian  
F.J.J.  
(3) Brett, F.J.  
7th July 1962  
continued

circumstances in which he is empowered to act in accordance with his own deliberate judgment under the four paragraphs of the proviso to S.38(1) of the Constitution seems to me significant. Apart from the approval of members of his own personal staff under paragraph (d), which is a mere matter of ordinary courtesy to him, he has the responsibility not only of appointing the Premier in the first place under paragraph (b) but, under paragraph (c), of choosing another member of the Executive Council to discharge the Premier's functions in the Premier's absence or illness if it is impracticable to obtain the Premier's advice. Paragraph (a) empowers him in certain circumstances to make up his mind whether or not to dissolve the Legislative Houses contrary to the Premier's advice or in spite of the lack of it. These are functions of high importance for the welfare of the Region. They only fall to be discharged at a crisis in the affairs of the Region, and to discharge them in the way which best serves the public interest requires not only complete impartiality of judgment but the nicest assessment of political facts and possibilities. For the purpose of deciding how wide a discretion is left to the Governor at a crisis of a different kind by paragraph (a) of the proviso to S.33(10) of the Constitution, the extent of the discretion allowed to him in those other matters affords no ground for a presumption that he may not act on any information which he considers reliable. I have used the word "crisis" in its primary sense of a turning-point, but it may well also be a crisis in the secondary sense of a moment of danger or suspense, when the maxim salus populi suprema lex has special force.

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In considering the extent of the discretion entrusted to the Governor, it is also pertinent to remember that both the Constitution and the Statute Law of Western Nigeria presuppose that the Region will never be left without a Premier, so that even an adverse vote of the House of Assembly does not necessarily involve the immediate removal of the Premier. The task of finding an alternative Premier is left to the Governor and he may well think it right to defer removing one Premier until he is in a position to appoint a successor, whether after a dissolution and a general election or otherwise.

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In the Federal  
Supreme Court

                      
No.18

Opinions

- (1) Ademola  
C.J.F.
  - (2) Taylor &  
Bairamian  
F.J.J.
  - (3) Brett, F.J.
- 7th July 1962  
continued

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, 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 a Executive Council; or suppose 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 S.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



In the Federal  
Supreme Court

No.18

Opinions

- (1) Ademola  
C.J.F.  
(2) Taylor &  
Bairamian  
F.J.J.  
(3) Brett, F.J.

7th July 1962  
continued

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 anyone 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.

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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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(Sgd) L. Brett

FEDERAL JUSTICE.

Chief O. Moore, Q.C. (Messrs. O. Akerele and Olu Ayoola with him) for Plaintiff.

Mr. G.I. Akinyele for Defendants.

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No.19In the Federal  
Supreme CourtANSWER ON REFERENCENo.19

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
ON SATURDAY THE 7TH DAY OF JULY, 1962.

Answer on  
Reference  
7th July 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA	CHIEF JUSTICE OF THE FEDERATION
SIR LIONEL BRETT	FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE
SIR VAHE ROBERT BAIRAMIAN	FEDERAL JUSTICE

F.S.C. 187/1962

Hon. S. L. Akintola etc.

versus

His Excellency Sir Adesoji  
Aderemi etc. & Another.

Reference from the High Court, Western  
Region Opinion of the Court read by the Honour-  
able the Chief Justice of the Federation.

"Answer to the 1st question is that the Governor  
cannot validly exercise power to remove the  
Premier from office under Section 33(10) of the  
Constitution of Western Nigeria except conse-  
quence of proceedings on the floor of the House  
whether in the shape of no confidence or of a  
defeat in a major measure or of a series of De-  
feats 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.

It will therefore be unnecessary to answer  
the second question.

Minority judgment delivered by Brett, F.J.

The 1st question is answered in the  
negative.

In the Federal  
Supreme Court

No.19

Answer on  
Reference  
7th July 1962  
continued

2nd question: "In answer to the 2nd ques-  
tion, I would say that always  
assuming good faith, the Con-  
stitution 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 decid-  
ing whether bad faith has  
been established. I abstain  
from commenting on it."

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Costs to the Plaintiff in the cause. The  
High Court at the end of the case is to assess  
costs in this Reference in favour of the  
Plaintiff.

20

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

No.20

Motion on  
Notice  
7th July 1962

No.20

NOTICE OF MOTION

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

FSC 187/1962

BETWEEN :

HONOURABLE S.L.AKINTOLA

Plaintiff

30

and

1. HIS EXCELLENCY SIR ADESOJI  
ADEREMI Governor of Western  
Nigeria

2. ALHAJI D.S. ADEGBENRO  
(joined by Order of Court  
dated 23/5/62)

Defendants

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court  
will be moved on Monday the 16th day of July 1962

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at the hour of nine o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Second Defendant for an Order granting conditional leave to appeal to Her Majesty in Council against the answers of this Honourable Court delivered in the above matter on the 7th day of July 1962 and for such further or other orders as this Honourable Court may deem fit to make.

In the Federal Supreme Court

No.20

Motion on Notice  
7th July 1962  
continued

10 DATED at the 7th day of July 1962.

Signed G.I.Akinyele  
Solicitor to the Defendants  
10 Old Yaba Road  
Ebute Metta, Lagos.

For service on:-  
The Plaintiff,  
c/o His Solicitors,  
Ayoola Brothers & Co.  
109 Agbeni Street,  
Ibadan,  
Nigeria.

20

No.21

No.21

AFFIDAVIT IN SUPPORT

Affidavit in Support  
9th July 1962

TITLE AS LAST

AFFIDAVIT IN SUPPORT OF MOTION

I GILBERT IRANOLA AKINYELE Christian Yoruba Nigerian Legal Practitioner, residing at No.10, Old Yaba Road, Ebute Metta, Lagos, Nigeria, make oath and say as follows:-

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1. That I am the Solicitor to the above named Defendants in the above-mentioned suit.
2. That the Action is for four claims in the Court below (i.e. IBADAN HIGH COURT) for
  - (i) A Declaration that there is no right in the Defendant to relieve the Plaintiff of his

In the Federal  
Supreme Court

No.21

Affidavit in  
Support  
9th July 1962  
continued

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.

- (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. 10
- (iii) A Declaration that the purported removal of the Plaintiff by the Defendant as Premier of Western Nigeria is invalid and of no effect. 20
- (iv) An injunction to restrain the Defendants from usurping or permitting anyone to usurp the duties of the Plaintiff as Premier of the Western Nigeria unless and until he resigns or is constitutionally relieved of the Office.
3. The claims involve the interpretation of the constitution of Western Nigeria. 30
4. That certain questions were referred to this Honourable Court viz:-
- (1) Can the Governor validly exercise power to remove the Premier from Office under Section 33 subsection (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? 40
- (2) Can the Governor validly exercise power to



In the Federal  
Supreme Court

No.22

Court Notes on  
Motion for  
Conditional  
Leave  
16th July 1962  
continued

Akinyele to move.

Moore Q.C. (Agusto with him) opposing

Akinyele: Application is under Section 114(1) (c) of the Constitution of the Federation of Nigeria, refers to Chike Obi's Case FSC 56/1961 Dr. Chike Obi v. Director of Public Prosecutions.

Moore: Opposes on two points:

(1) Applicant has no right in himself;

(2) This is not a final decision

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Questions submitted to this Court material.

The only person aggrieved by the answer given by this Court is the Governor and not the second Defendant. Four claims were made by the Plaintiff. The first three against the first Defendant; the fourth against the second Defendant. The Constitutional point referred arose only on the first three claims. If the first Defendant is satisfied with the answer and has not appealed, it is submitted the second Defendant cannot appeal as he is not thereby aggrieved.

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Second Submission: No trial of any issue in this case. Section 108 (3) of the Constitution definite. Matters have not been gone into. Next step to take is under Section 108 (3) of the Constitution. The High Court should dispose of the case.

In Chike Obi's case, a final judgment had been reached. The Defendant had been adjudged guilty: it was a gamble to bring about a constitutional point.

30

Akinyele: First Contention: The Defendant was joined by Plaintiff himself. He certainly is an aggrieved person. The second Defendant is an aggrieved party because he was made a Premier.

Adjourned till 19/7/62 for Ruling.

Signed A. Ade Ademola

Chief Justice of the Federation.

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In the Federal  
Supreme Court

No.23

Ruling on Motion  
for Conditional  
Leave to Appeal  
to Her Majesty  
in Council  
19th July 1962  
continued

Section 114 (1) reads :-

"Subject to the provisions of this Constitution, an appeal shall lie from decisions of the Federal Supreme Court to Her Majesty in Council as of right in the following cases -

- (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of five hundred pounds or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of five hundred pounds or upwards, final decisions in any civil proceedings; 10
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution or the constitution of a Region; and 20
- (d) such other cases as may be prescribed by Parliament."

Section 114 (1)(c) of the Constitution was considered by this Court in a similar application made to it in F.S.C. 56/1961 - Dr. Chike Obi v. Director of Public Prosecutions.

The Court then held that the wording of the section is wide enough to include opinions or decisions given by this Court in matters referred to it on the interpretation of the Constitution. We still abide by this decision and in the circumstances, the second objection made by Counsel fails. 30

On the first ground of his objection Counsel argued that of the four claims in the Writ of Summons filed in the High Court, only the fourth claim referred to the two Defendants jointly and the first three claims were against the first Defendant alone; the issues referred to the Federal Supreme Court for interpretation, 40

he said, have no bearing on the fourth claim and specifically referred to the first three claims only.

In the Federal  
Supreme Court

No.23

10 We are in agreement with Counsel that it cannot be seriously disputed that the opinion given by this Court relates to the first three claims only and bears no semblance whatsoever to the fourth, but there can be no doubt that the second Defendant's position is prejudiced by that opinion; he is therefor injured by it. We do not think, therefore, it is a valid answer by saying that the first Defendant, who is mor aggrieved by the opinion given by the Court, does not complain or does not wish to appeal.

Ruling on Motion  
for Conditional  
Leave to appeal  
to Her Majesty  
in Council  
19th July 1962  
continued

sic

20 In Beckett v. Attwood (1881) 18 Ch. D. at p.p.56-57 it was held that any party to the action may appeal. And in the case The Mill-wall (1905) p.155 it was said (Collins M.R.) that a third party may appeal, but only if an order was made that he should be bound by the result of the proceedings between the Plaintiff and the Defendant.

It is clear that in the present case it is beyond doubt that the second Defendant 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.

30 Conditional leave is therefore granted in the usual terms.

There is no application before us for a stay of execution - and we doubt if one would be granted in the present circumstances - we therefore do not consider the matter.

Sgd. A. Ade Ademola  
Chief Justice of The Federation.

Chief O.Moore Q.C. (Mr.B.A.Agusto with him) for  
Plaintiff

40 Mr. G.I. Akinyele for the Defendants.

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In the Federal  
Supreme Court

No.24

ORDER GRANTING CONDITIONAL  
LEAVE TO APPEAL

No.24

Order granting  
Conditional  
Leave to  
Appeal  
19th July 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

Suit No.1/161/62  
F.S.C.187/1962

Application for an Order for Conditional leave  
to appeal to the Privy Council.

BETWEEN:

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- 1. His Excellency, Sir  
Adesoji Aderemi - Governor of  
Western Nigeria
- 2. Alhaji D.S.Adegbenro  
(L.S.) (joined by Order of Court dated 23/5/62)

In Re Alhaji D.S. Adegbenro ... Applicant

And

Hon. S.L. Akintola ... Respondent  
(Premier of Western Nigeria)

A.Ade Ademola  
Chief Justice of  
The Federation

Thursday the 19th day of July 1962

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Upon Reading the application herein and the  
affidavit sworn to on the 9th day of July 1962,  
and filed on behalf of the Applicant and after  
hearing Mr. G.I.Akinyele of Counsel for the  
Applicant, and Chief O. Moore Q.C. (Mr. B.A.  
Agusto with him) of Counsel for the Respondent:

It is Ordered that the Appellant be at  
liberty to appeal to Her Majesty in Council from  
the judgment of this Court dated 7th day of July  
1962, upon fulfilment within 3 months from the  
date hereof of the following conditions namely:

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- 1. That the Applicant does enter into good  
and sufficient security to the satisfac-  
tion of the Court in the sum of £500 for  
the due prosecution of the appeal and the  
payment of all such costs as may become  
payable to the Respondent in the event of  
the Appellant not obtaining an "order"  
granting him final leave to appeal, or of

the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal (as the case may be);

In the Federal Supreme Court

No.24

- 2. That the Appellant does deposit in Court the sum of £50 for the preparation of the Record of Appeal and do take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England;

Order granting Conditional Leave to Appeal  
19th July 1962  
continued

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And That the costs of this Application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

(Sgd) J.A.Adefarasin  
Chief Registrar.

No.25

No.25

ORDER GRANTING ALHAJI D.S.ADEGBENRO  
FINAL LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL.

Order granting Alhaji D.S. Adegbenro Final Leave to Appeal to Her Majesty in Council  
29th October 1962

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IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

Suit No. I/161/62  
F.S.C.187/1962

Application for an order for Final Leave to appeal to the Privy Council.

Between:

- 1. His Excellency Sir Adesoji Aderemi (Governor of Western Nigeria)
- 2. Alhaji D.S. Adegbenro (Joined by Order of Court dated 23/5/62) Defendants

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In RE:

Alhaji D.S.Adegbenro	Applicant
and	
Honourable S.L.Akintola	Plaintiff/ Respondent.

(SGD)A.Ade.  
Ademola  
CHIEF JUSTICE OF  
FEDERATION

Monday the 29th day of October, 1962

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UPON READING the Application herein, and the

In the Federal  
Supreme Court

                      
No.25

Order granting  
Alhaji D.S.  
Adegbenro Final  
Leave to Appeal  
to Her Majesty  
in Council  
29th October  
1962  
continued

Affidavit sworn to on the 13th day of October,  
filed on behalf of the Applicant, and after  
hearing Mr.A.O.Akintoye of Counsel for the  
Applicant and Chief Abiodun Akerele of counsel  
for the Respondent:

IT IS ORDERED that Final Leave to appeal  
to the Privy Council be granted.

(Sgd) O.R.I. George  
AG. CHIEF REGISTRAR

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ALHAJI D. S. ADEGBENRO  
(joined by Order of Court  
dated 25/5/62) (Defendant) Appellant

- and -

HON. S. L. AKINTOLA  
PREMIER, WESTERN NIGERIA (Plaintiff) Respondent

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HIS EXCELLENCY SIR ADESOJI  
ADEREMI GOVERNOR OF WESTERN  
NIGERIA (Defendant) Respondent  
Pro Forma

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RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,  
90, Fenchurch Street,  
E.C.3.  
Solicitors for the Appellant.

A.L.BRYDEN & WILLIAMS,  
53, Victoria Street,  
S.W.1.  
Solicitors for the Respondent.