~~RC~~
~~GH4 0.2~~

33/1964

IN THE PRIVY COUNCIL No. 1 of 1964

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N : -

JONES ADEYEYE (Defendant) Appellant

- and -

E.T. ADEWOYIN & ORS. representing the Ademakin/Ademiluyi Family of Ife (Plaintiffs) Respondents

---

CASE FOR THE APPELLANT

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

IN THE PRIVY COUNCIL No. 1 of 1964

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N : -

JONES ADEYEYE (Defendant) Appellant

- and -

1. E.T. ADEWOYIN
2. JAMES LABONDE ADEBOWALE
3. JOSEPH KONKO ADEYEYE
4. GABRIEL OYEDELE ADEMILUYI
5. ADEBAYO ADEMILUYI
representing the Ademakin Ademiluyi Family of Ife (Plaintiffs) Respondents

---

CASE FOR THE APPELLANT

---

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, holden at Lagos, dated the 28th January, 1963, allowing an appeal from, and setting aside, a Judgment and Order of the High Court of Justice, Western Nigeria, Ibadan Judicial Division, dated the 30th November, 1961, whereby the action instituted by the Respondent against the Appellant for (1) a declaration that a certain piece of land situate at Omifunfun Onigbodogi Ife District, is the property of the Ademakin/Ademiluyi Family whom the Respondents represent, (2) mesne profits, and (3) an injunction restraining the Appellant, his servants and/or agents from entering or doing any act upon the said land, was dismissed.

In allowing the appeal the Federal Supreme Court ordered that the Judgment of the Court below

should be replaced by a Judgment declaring that the said land is the property of Ademakin/Ademiluyi Family and ordering the issue of an injunction restraining the Appellant, his servants and/or agents from collecting ishakole (rents) from the tenants on the land and that the said rents should be shared in the said Family.

2. The main question for determination on this appeal is, whether or not, in the circumstances of this case and on the evidence produced by both sides, the Trial Court was right in its determination that the Respondents, upon whom the onus of proof of title rested, had not discharged that onus nor established their claim to ownership of the land in dispute, which, on the other hand, was proved to have been validly granted to the Appellant in his own right by the competent authority, the Oni of Ife.

3. The facts are as follows :-

The Repondents (hereinafter, also referred to as "the Plaintiffs") instituted these proceedings against the Appellant (hereinafter, also, called "the Defendant") in the High Court of Justice, Western Nigeria, Ibadan Judicial Division, and by their Statement of Claim filed on the 21st August, 1959, stated, inter alia that: they sued in a representative capacity representing the Ademakin/ Ademiluyi Family of Ife to which the Defendant also belonged; the land in dispute described as "Omifunfun Onigbodogi" originally belonged to the Otutu Family of which the said Ademakin/Ademiluyi Family is a branch; at an Otutu Family meeting held at Ife in 1933, Otutu Family land was allotted to various branches of the Otutu Family, the land in dispute being one of two portions allotted to the children of Oba Ademiluyi, the late Oni of Ife and the head of the Ademakin/Ademiluyi Family; the allotment to Ademiluyi's children included the allotment to the children of his younger brothers, Adebowale and Adeyeye, now deceased; the Defendant is one of the sons of the said Adeyeye; in 1947, the Defendant and one Eletiku started putting tenants on the land in dispute with the consent of the Ademakin/ Ademiluyi Family on the understanding that members of the Family would share the ishakole (rents); the Defendant subsequently refused to share any ishakole with other members of the Family and has claimed the said land as his own exclusive property; and that the Defendant, representing the Family, was successful in Suit No. I/49 which was instituted by him against one Sanni Odera in the Ife Lands Court.

The Plaintiffs claimed the following relief, as stated in their Writ of Summons, dated the 7th October, 1958 : -

> "(a) Declaration that the piece or parcel of land ..... at Omifunfun Onigbodogi..... is the property of Ademakin/Ademiluyi Family of Ife.....
>
> "(b) £600 for mesne profits.
>
> "(c) Injunction restraining the Defendant his servants and/or agents from entering or doing any act upon the land in dispute."

4. By his Statement of Defence, dated the 21st September, 1960, the Defendant denied all material allegations contained in the said Statement of Claim. He stated that the Otutu Family had, at one time, claimed ownership of portions of land in Ife District on the ground that it had hunting rights over the lands in question but "later judicial pronouncement had stated that hunting rights in a forest do not confer title or ownership over the land in Ife". He denied the truth of the allegation in the Statement of Claim as to the allotment of land at the meeting of the Family in 1933 in which year, he said, the land in dispute was "thick virgin bush unknown and unfarmed."

5. As to the allegation in paragraph 10 of the Statement of Claim that following the alleged allotment of land in 1933, a petition, signed by the Defendant and others, was addressed to the Native Authority, Ife, so that that Authority could be informed of the allotment, the Defendant, in his said Statement of Defence, said : -

> "7. ..... All that the Otutu Family did was that a petition was sent to the Oni of Ife and Council in 1950 praying that the Family hunting rights be recognised as title to all portions of land over which the Family had hunting rights.
>
> "7a. A reply was sent to the petititoners saying that the matter was sub-judice" [an appeal against the decision in Suit No. I/49 that the Plaintiffs owned the land in dispute was then pending].
>
> "11. The Defendant states that the Judgment

in Suit No. I/49 has been reversed in the subsequent Courts of Appeal in that under Ife Native Law and Custom hunting rights in a forest do not confer title or ownership of the forest land.

"12..... It was as a result of the failure of Suit I/49 that the petition referred to in paragraph 7 above was sent to the Oni of Ife and Council."

6. Explaining how he had come to acquire the said land, of which he had for long been in peaceful possession exercising thereon acts of ownership, the Defendant, in paragraphs 18 to 21 of his Statement of Defence, said : -

"18. Believing that the Otutu Family who had hunting rights over the land also had title to the said land the Defendant started to cultivate the said area of land and put tenants in various parts of the land.

"19. In the case instituted by the Defendant against one Sanni Odera" (i.e. Suit No. I/49) "it was held on appeal that the Defendant's family's hunting rights did not confer right of ownership or title over the land - a distinction being drawn between hunting and agricultural rights in Ife Native Law and Custom.

"20. Thereafter the Defendant approached the Oni of Ife Sir Adesoji Aderemi for a grant and confirmation of title of his holding of the land delineated in Plan No. L & L/A 3563. The Oni of Ife as the custodian of unoccupied virgin forest land in Ife has the right to allocate or grant the land. The confirmation of title was accordingly made.

"21. Before and after the grant of title by the Oni of Ife the Defendant has been in peaceful open and undisturbed possession of the land described in his plan, cultivating the land, putting in tenants and exercising thereon all acts of ownership."

7. At the trial which followed oral and documentary evidence was produced by both sides.

In support of his case, the Defendant, in

examination-in-chief, referred to the circumstances which had led to his acquisition of the land in dispute and to the petition of 1950. He said :-

"I had litigation over the land for a long time and I spent my money on it: no member of the Family contributed to it. The Oni also sent a senior Emese (Itiaran) to mark out the boundary between me and Agbakuro Family. The boundaries are still the same as originally marked out. My father Adeyeye did not put tenants on any farm before he died and I struggled to get this one in dispute. I did not acquire it for the Family.

"I am a signatory to the petition of 1950 - Exhibit 'A'. We wrote the petition because members of other Families were worrying me over this land in dispute, and there was also other dispute between Layade and Eman Adewuyi separately; it was said that Otutu had only hunting rights over the farm lands in which I was; and the same thing was said about Layade and Eman Adewuyi.

"I fought my case in the Land Court and failed and so I decided to approach the Oni direct to grant me title to the farmland in dispute and he did so.

"No member of the Family helped me financially or otherwise.

"According to Native Law and Custom unoccupied virgin forest belongs to the Oni and Council.

"The allotment sheet attached to the petition of 1950 was not the true state of affairs then; we simply got that up to present our case to the Oni and Council.

"I approached the Oni for a grant of the farmland after the 1950 petition and the grant was made to me personally."

This version of events was not shaken in the cross-examination which followed.

8. The Defendant's case was supported by Sir Adesoji Aderemi, the Oni of Ife who said, in examination-in-chief :-

"I am the Oni of Ife. I ascended the throne in 1930. I know the Defendant. As the Oni of Ife I have control of all the virgin forest in Ife Division. According to Native Law and Custom I settle land disputes brought before me. In the late thirties I knew that people were going to farm in the virgin forests in Ife Division without my authority and I took steps to stop that practice ..... The Defendant and the Plaintiffs belong to the Otutu Family which had hunting rights in the forests. The Defendant later came to me to ask for permission to go to Omifunfun forest to go and farm there and I agreed. It is illegal for anyone to go and farm in the virgin forest without my permission according to Native Law and Custom. The Defendant came and asked me to allow him to farm in the forest i.e. Omifunfun area where his Family (Otutu) had hunting rights... I sent Emeses" (Messengers) "to the farmland to settle boundary disputes between the Defendant and other families.

"When once the Oni grants virgin forest to a person, such farmland belongs to the grantee and his descendants.

"The method of granting farmland to people is that if the applicant is from a hunting Family the Oni grants to such a person permission to go and farm within the area where his Family had hunting rights; in the case of applicants from other Families, I would send for the head-hunter in the area and informhim of the request of the applicant and later send Emeses" (Messengers) "to go with them to the virgin forest and cut sufficient forest for the applicant for farming purposes."

9. Continuing his evidence in support of the Defendant, Sir Adesoji Aderemi, the Oni of Ife, said : -

"I remember there was a dispute between the Defendant and one Odera; the dispute was a long-drawn one ending in a Court action" (No. I/49). "After that case the Defendant came to me to confirm his farming rights at Omifunfun; I told him I had

already granted him permission there and that he could carry on; the dispute between him and Odera stemmed out of the Defendant's argument that Odera's farmland belonged to him and I said no.

"I had granted farming rights to other persons in Omifunfun area. People to whom I had granted farming rights in the forest can bring tenants to their farmland."

10. In cross-examination, the Oni of Ife said :-

"At the time the Defendant approached me I knew the area was a forest. I was assured that the area was not under cultivation then. The Defendant was the first person to whom I granted farmland in that area. As the Oni I have no right to grant farmland which had been under cultivation because such land would have been granted by me or my predecessors.

"When the Defendant first approached me for a grant of the farmland I did not send any Chief or Emese" (Messenger) "to go and mark out the boundaries of the area granted him but when there was dispute with other Families about boundaries I sent Chiefs and Emeses to go and demarcate the boundaries for them.

"The grant of virgin forest takes effect from the time the grant was made."

In the Appellant's submission it is reasonable to suppose that when this witness said that at the time when the Defendant approached him for a grant, he (the witness) was assured that the area was not under cultivation he meant that the Defendant had assured him that the area was not officially under cultiviation - in other words no grant enabling the area to be cultivated had been made.

11. As to the 1950 petition, Sir Adesoji Aderemi, the Oni of Ife said, in cross-examination :-

"I remember seeing the petition, Exhibit 'A', but I did not agree with the contention of the petitioners that their rights were not hunting rights. At one time members of Families having hunting rights in the forests claimed that they had Family rights over the area where they hunted but I made it clear that that view was wrong."

12. In re-examination Sir Adesoji Aderemi, the Oni of Ife, said : -

> "If someone had gone to farm in the forest illegally i.e. without the permission of the Oni, there is nothing to prevent the Oni from making a grant to that person later and regularise the position."

13. Giving evidence in support of the Plaintiff's case, Plaintiff No. 4 said, in examination-in-chief, that the land in dispute was "given" to his branch of Otutu Family in 1933, following the decision to allot the farmlands among all the members of the Family - a decision which was arrived at because the Family did not approve of the sole use of those lands by one Soko Ademarkinwa. Subsequently the Defendant and one Eletiku were authorised by the Family to put tenants on the land and when Eletiku died the Defendant "carried on". After about three or four years, when the cocoa trees had begun to yield the Defendant was asked, but failed to account, for the tributes he had collected. In 1957, the Defendant informed a meeting of the Family, to the surprise of those present, that he had put tenants on his own portion of the farmland which he claimed and which, in area, is 14 miles by 14 miles. The Family then decided to "take action" against the Defendant.

In cross-examination, the witness said that the Defendant had built a house on the land in dispute "after 1933 when tenants had come on to the land". He did not dispute the Defendant's right to the house because "we all own the land in dispute". He said also that "we are not asking him not to go on the land but we must share the ishakole" (rents) "together".

14. Also in support of the Plaintiffs' case, one Layade, an elderly member of the Otutu Family, and a member also of the Plaintiffs' branch of that Family (Ademakin/Ademiluyi), said that, in 1950, he was one of the signatories to a petition which was addressed to the Oni of Ife and Council and which stated that the land in dispute was allotted to Ademiluyi's children in accordance with an attached list of allotments.

15. By his Judgment, dated the 30th November, 1961, the learned Trial Judge (M.O. Oyemade J.) found that the land in dispute had been validly

granted in 1952 by the Oni of Ife to the Defendant in his own right and the Oni had thus regularised its previous irregular occupation by the Defendant. He held therefore that the action of the Plaintiffs (who had failed to discharge the onus of proof of title which was upon them) must be dismissed.

The learned Judge arrived at his conclusion after a careful assessment of all the evidence, oral and documentary, before him.

He referred to the petition which, in 1950, was addressed to the Oni and Council by the Otutu Family and in which members of that Famuly had claimed that their rights on the land in dispute were not limited to mere hunting rights but were rights of ownership - the land having belonged to their ancestors from time immemorial. Continuing, he said : -

> "The case between Jones Adeyeye and Sanni Odera (I/49) was referred to in the petition because in that case Jones Adeyeye contended that he was on Omifunfun farmland because it belonged to the Otutu Family of which he is a member; while the case was still in progress" (i.e. an appeal from the decision in favour of the Otutu claim was pending) "the petititon was got up to buttress the claim of Jones Adeyeye."

16. The learned Judge set out the allotment list attached to the said petition and, in further reference to the said Suit I/49 (Jones Adeyeye v. Sanni Odera) he referred to the finding in that suit, in favour of the present Plaintiffs, to the effect that the land in dispute belonged to the Otutu Royal Family of Ife of which the Plaintiff (Jones Adeyeye) was a member and that he, as the head of the Family, was the owner of the land. The learned Judge pointed out that the present Defendant had stated that the Judgment in the said suit, which was relied on by the Plaintiffs, had been reversed on appeal. Continuing, he said : -

> "Copies of subsequent proceedings were tendered in evidence.
>
> "The Defendant in Suit I/49 (Sanni Odera) appealed against the Judgment of 22/3/49 to the Resident's Court, Oyo Province. Certified copy of proceedings in the Resident's Court is tendered as Exhibit F. The Appeal

Court recorded the following opinion on 31/5/50:

> 'It seems unusual that a party should be able to convert hunting forest to agricultural purposes without the permission of the community as a whole as expressed by its head. It is ordered by this Court that the question be addressed to the Ife Land Court as to whether their Judgment in favour of the plaintiff was intended to confer absolute ownership of the land in dispute on the plaintiff or only to confirm his hunting rights over the whole.'

"As a result of the above reference the Ife Land Court took further evidence from Chiefs who were knowledgeable in Native Law and Custom and on 7/11/50 the Land Court gave the following Judgment (Exhibit G):

> 'The Resident on hearing the appeal of the defendant - appellant passed an interim order to this Court to say whether our Judgment in favour of the plaintiff was intended to confer absolute ownership of the land in dispute on the plaintiff or only to confirm his hunting rights.
>
> 'We have taken fresh evidence on the question and it is clear that title to forest land like the one in question rests with the Oni of Ife in trust for the Chiefs and people of Ife. Hunters have only hunting rights.
>
> 'We are satisfied that our Judgment of 22/3/49 was wrong and we hereby revise it on the evidence before us and on the fact that hunting right on the land in dispute was originally granted by the Oni and Council to plaintiff's forefather.
>
> 'We recognise that plaintiff's father had hunting rights when the land was a virgin forest. That right of course ceases now that the forest has been cleared.

'We give no title to the plaintiff; but that does not mean that defendant either has the title'."

17. Still, on the subject of the ultimate or second decision in the said Suit I/49 (Jones Adeyeye v. Sanni Odera), the learned Trial Judge said :-

"It is interesting to note that although the members of the Land Court were laymen their clear-cut Judgment was in accordance with legal principles as laid down in the case of Kodilinye v. Mbanefo Odu 2 W.A.C.A. 336, which says :-

'The onus lies on the plaintiff to satisfy the Court that he is entitled, on the evidence brought by him, to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant he not having sought the declaration.'

18. The learned Trial Judge then examined the further appeal by the plaintiff in the said Suit I/49 against the Judgment of the Lands Court, dated the 7th November, 1950 - the plaintiff "still contending that in years gone by all Ife land was allocated to Families and that the land in issue together with the large area of surrounding country was allocated to his Family". After referring to the evidence as to the Oni's rights, by Native Law and Custom, to make grants, which was given in the further appeal, the learned Judge said :-

" On 18/6/51 the Appeal Court confirmed the Judgment of the Ife Land Court given on 7/11/50. Portion of the Judgment of the Appeal Court reads :-

'The plaintiff-appellant's argument that his family has had the right to farm the land since the days of Olofin is not reasonable. Even 50 years ago it is extremely unlikely that any person held farming rights more than five miles from his place of settlement.The only way in which the plaintiff-appellant's Family, or defendant

-respondent's Family for that matter, could have obtained valid farming rights over this land would be from the grant of a recent Oni. Plaintiff-Appellant has not attempted to assert this. Defendant-Respondent has done so, but has brought no evidence to support his assertion. The claim must fail. The judgment of the Land Court given on 7/11/50 is upheld.'

"Thus ended the chapters of the battle for the ownership or title to the land Omifunfun Onigbodogi, the battle which was fought by way of petition and legal process between 1949 and 1951."

19. The learned Trial Judge pointed out that the only reference made to the said Suit I/49 by the Plaintiffs (in their Statement of Claim) was a reference to the first judgment of the Land Court given on the 22nd March 1949, which supported the arguments of the Plaintiffs in the present case. He continued as follows :-

"I have treated the course of subsequent appeals in order to show at once the shaky foundation on which the Plaintiffs' claim is based. In paragraph 4 of the Statement of Claim the Plaintiffs aver that the land in dispute belonged to the Otutu Family of which the Ademakin/Ademiluyi Family is a branch but there is no evidence to show how Otutu got the land; and if Otutu had only hunting rights over the land in dispute which confers no farming rights as shown in the Court proceedings quoted above there is nothing in the land in dispute which the Family could properly allot - nemo dat quod non habet."

Investigating the genuiness of the allotment list attached to the said 1950 petition which was addressed to the Oni and Council he found that "at that time the land in dispute was a virgin forest over which the Otutu Family had only hunting rights and which they could not validly allot"

20. The learned Trial Judge then referred to the prominent part played by the Defendant in the said Suit I/49 and said that there was no evidence that the Family had financed the litigation. He continued as follows :-

"In any case a grant of the farmland in dispute was made to the Defendant personally by the Oni in 1952. The Oni gave evidence on behalf of the Defendant and said that the Defendant told him about the farmland in question in the late thirties and he told the Defendant that he could carry on his farming there; this appears to support the Defendant's

contention that he went on the land as a result of the information he obtained from a hunter that the land belonged to Otutu Family and not as a result of any Family allotment as alleged by the Plaintiff; but, if this is true, it is strange that both in the petition (Exhibit 'A') of 1950 and in the Court case No. I/49 the Defendant was vocal and insistent that the Otutu Family's right over the land was not merely hunting right. The position then, to my mind, was that the Defendant did not mean what he was saying and was merely following his Family (Otutu) in the wrong path while he was secretly paving way for his personal acquisition of the farmland. However morally reprehensive this may be on the part of the Defendant, the Plaintiffs cannot call on him to account for what he did on the land because there is no evidence to support the view that the Defendant was an agent of the Plaintiffs."

21. On the evidence before him, and on an application of the relevant law, the learned Trial Judge held that -

> "the Otutu Family was not competent legally or by Native Law and Custom to allot the farmland as stated and therefore the allottees had no title and cannot bring an action in respect thereof."

In conclusion, the learned Judge referred to "the evidence" of the Oni which simply confirms the decision given in the proceedings in the Ife Land Court already referred to and the fact that he granted the land in dispute to the Defendant in his own right". For reasons that he gave the learned Judge rejected the Plaintiffs' allegation that "all the members of the Family had been rendered homeless".

22. Summarising his findings, the learned Trial Judge said : -

> "From the evidence before me I find that according to traditional history, the Otutu Family of which the Plaintiffs are descendants had only hunting rights over the land in dispute and as such that Family could not have validly allotted the land to anyone. I believe that the Defendant had been farming on the land in the belief that the land belonged to the Otutu Family and that in 1952 the Oni

regularised the position by making a grant of the land to the Defendant. One would have thought that the claim of title to the land having failed, the Defendant should have negotiated the grant on behalf of the Family but that is a mere conjecture, because the right of the Oni to grant the land having been established he could have granted it to anybody else besides the Defendant and the Plaintiffs would have no right of action against such other person."

23. An Order in accordance with the Judgment of the learned Trial Judge was entered on the 30th November, 1961, and against the said Judgment and Order the Plaintiffs appealed to the Federal Supreme Court of Nigeria.

24. By their Judgment, dated the 28th January, 1963, the learned Judges of the Federal Supreme Court (Ademola C.J., Taylor F.J. and Bairamian F.J.) allowed the appeal with consequential directions as stated in paragraph 1 hereof.

25. Delivering the main Judgment of the Federal Supreme Court, Bairamian F.J. (with whom Ademola C.J. in a short concurring Judgment, and Taylor F.J. agreed) said that the Trial Judge's Judgment was "affected by the second decision of the Lands Court in the Odera Suit" (i.e. the said Suit I/49, see paragraphs 15 to 18 hereof).

Continuing he said : -

"Both parties at the hearing of the appeal agreed that (for reasons into which there is no need to enter here) the proceedings in that Court" (i.e. Suit I/49 the Lands Court) "were a nullity; it was on that basis that arguments were advanced at the hearing."

In the Appellant's respectful submission the agreement between the parties as to the nullity of the said proceedings in the Lands Court was arrived at as a result of a misapprehension of the effect of irregularities in the said Court. In the case of Suit I/49 the irregularity was concerned with the different constitution of the tribunal on different dates which might possibly have been the legitimate subject of an appeal. But no appeal was preferred and it would seem that the agreement to regard the whole of the proceedings in that Suit as completely

null and void was contrary to law and due to the erroneous view that the decision of a Court can safely be ignored because of the subsequent discovery of irregularities. But even assuming that the parties were right in the view that they agreed to take of the said proceedings in the Land Court and right to agree to argue the appeal on that basis, the persuasive value of the ultimate decision in those proceedings cannot reasonably be denied and should, in the Appellant's respectful submission, be permitted to play its part at the hearing of this appeal.

26. The learned Federal Supreme Court Judge referred to certain portions of the evidence of Sir Adesoji Aderemi, the Oni of Ife, given in support of the Defendant's case (see paragraphs 8 to 12 hereof). From these portions which indicated that the Oni's right to grant lands was confined to virgin forest lands and did not include lands under cultivation, he appears to have concluded that the grant to the Defendant was invalid as, at the date of the grant, the land in question or a portion thereof was being cultivated. The learned Judge overlooked, or did not sufficiently consider, the possibility that when the Oni referred to land under cultivation which he was not authorised to grant he was referring to land which had already been granted when it was virgin forest subsequent to which it had come under cultivation; and not to virgin forest land which was illegally or irregularly occupied (i.e. without the necessary permission of the Oni) and then cultivated - land in respect of which no previous grant had been made and which therefore could properly be made the subject of a grant, regularising thereby the illegal possession of forest land brought under cultivation, whether by a Family or an individual. The position, as outlined by the Oni in re-examination, was not, it is respectfully submitted, sufficiently considered or appreciated by the learned Judge. The learned Judge considered that the distinction which the Oni drew between applicants for grants of forest land who belonged to hunting Families and other applicants was "invalid" as in either case the grantee would, to the detriment of the rights of other members of his Family, become sole owner of the land. The reason for the judicial rejection of this portion of the Oni's evidence is difficult to understand; for there was no evidence of any custom or law which thus restricts the exercise of his rights by an Oni and no question in the cross-examination of the Oni was directed to the subject of such restriction.

27. The learned Federal Supreme Court Judge referred to, but did not accept, the argument for the Defendant that "as at the time when cultivation began, many years before 1952, the land did not belong to the Family but was bush, and as the Oni (who was installed in 1930 as such) did not make any grant of the bush, the Family could not acquire any rights by surreptitious cultivation of land in which they had only hunting rights, and it was competent to the Oni to make a grant to the Defendant in 1952." He said that the argument "depends on the Judgment of the Land Court in substance, which null and void". He expressed his opinion, without however referring to any evidence or law or custom in support thereof, that the Oni's grant to the Defendant was "contrary to Native Law and Custom and ineffectual to confer title". His acceptance of the Plaintiffs' title is best stated in his own words : -

> "with the Odera Judgment and the grant of 1952 out of the way, the Plaintiffs' claim that the land is family land is plain, and cannot be gainsaid by the Defendant, who until the Odera Judgment, shared the Family belief in the tradition that the land belonged to the Family and it was in that belief that he cultivated it and put tenants on the land: Defence paragraph 18."

In the Appellant's respectful submission these words show that the learned Judge misdirected himself as to (1) the very heavy onus of proof of title which was on the Plaintiffs' and (2) the discharge of that onus. The Plaintiffs who seek to dispossess the Defendant in possession were unable to point to any grant of the land in dispute in favour of their Family and did not adduce any evidence to support the theory that mere hunting rights (which is all that they ever possessed) were, or led to, rights of ownership or a right to cultivate forest land without any grant to the Family from the Oni concerned or from any other Authority. Both the Odera Judgment and the 1952 grant supported the Defendant's Case - and, it is respectfully submitted, did so adequately. But even if they were not sufficient the insufficiency could not lawfully be prayed in aid by the Plaintiffs who could only succeed by the strength of their own title.

28. An Order in accordance with the Judgment of the Federal Supreme Court was entered on the 28th

January, 1963, and against the said Judgment and Order this appeal to Her Majesty in Council is now preferred, Final Leave to appeal having been granted to the Appellant by an Order of the Federal Supreme Court, dated the 16th August, 1963.

In the Appellant's respectful submission this appeal ought to be allowed, the Judgment and Order of the Federal Supreme Court of Nigeria, dated the 28th January, 1963, should be set aside and the Judgment and Order of the High Court of Justice, Western Nigeria, Ibadan Judicial Division, dated the 30th November, 1961, should be restored, with costs throughout, for the following among other

REASONS

1. BECAUSE in this action which was for a declaration of title to land in the sole occupation of the Appellant who has farmed it exclusively for some years the onus of proof of title was on the Respondents and this they have completely failed to discharge.

2. BECAUSE on the evidence it is clear that all that the Respondents once possessed in respect of the said land were mere hunting rights which, in the absence of any grant of the land by the Oni of Ife or any evidence to show that such a grant was not necessary, is quite insufficient to establish title to the land in the Respondents.

3. BECAUSE in the absence of any evidence of title in the Otutu Family no validity or effectiveness can possible attach to the purported allotment of the said land in 1933 by the Family to certain of its members.

4. BECAUSE the ultimate or second decision in Suit I/49 (Jones Adeyeye v. Sanni Odera) which, in respect of the same land, rejected a similar claim by the Respondents is, until it is set aside or overruled by a competent Court of law, valid and binding.

5. BECAUSE the agreement between the parties as to the nullity of proceedings in the said Suit /49 is contrary to law and the Federal Supreme Court should have so regarded it.

6. BECAUSE on the evidence it is clear that any occupation of the said land for farming purposes either by the Respondents' Family or solely by the Appellant, prior to the Oni's grant to the Appellant in his own right, was illegal and, in the absence of any such grant, incapable of founding rights of ownership.

7. BECAUSE the Appellant's exclusive title to the said land by virtue of a grant by the Oni was satisfactorily established by the uncontradicted evidence of the Oni himself.

8. BECAUSE even if the evidence disclosed weaknesses in the Appellant's title these could not be lawfully prayed in aid by the Respondents who could only succeed by adducing clear evidence of their own title and this they did not do.

9. BECAUSE there was no sufficient ground for the Federal Supreme Court to set aside the findings of fact of the Court below which were arrived at only after meticulous examination of all the evidence, oral and documentary.

10. BECAUSE for reasons stated therein the Judgment of the Trial Court was right and ought to be restored.

DINGLE FOOT

R.K. HANDOO

IN THE PRIVY COUNCIL No. 1 of 1964

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

B E T W E E N : -

JONES ADEYEYE	(Defendant) Appellant
- and -	
E.T. ADEWOYIN & ORS. representing the Ademakin/Ademiluyi Family of Ife	(Plaintiffs) Respondents

---

CASE FOR THE APPELLANT

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