

33/1964

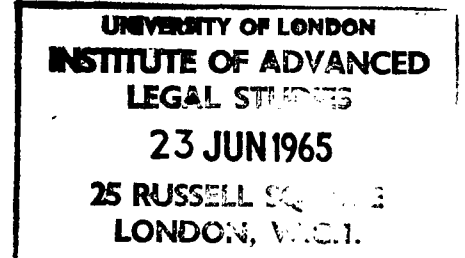
IN THE PRIVY COUNCILNo. 1 of 1964ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIAHOLDEN AT LAGOSB E T W E E N :-

JONES ADEYEYE

Defendant/Appellant

- and -

1. E.T. ADEWOYIN
2. JAMES LABONDE ADEBOWALE
3. JOSEPH KONKO ADEYEYE
4. GABRIEL OYEDELE ADEMILUYI
5. ADEBAYO ADEMILUYI



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Plaintiffs/Respondents


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CASE FOR RESPONDENTS

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Record

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (Ademola, F.C.J., Taylor, F.J., and Bairamian, F.J.) dated the 28th January, 1963, setting aside a Judgment of the Ibadan High Court (Oyemade Ag.J.) dated the 30th November, 1961, dismissing the Respondents' claim for:-
  - 20        "(a) Declaration that the piece or parcel of land situate lying and being at Omifunfun Onigbodogi, Ife District and more particularly described and delineated in a plan to be filed later in this action is the property of Ademakin/Ademiluyi Family of Ife. Annual rent for purpose of the action £5.
  - (b) £600 for mesne profits.
  - 30        (c) Injunction restraining the defendant, his servants and or agents from entering or doing any act upon the land in dispute."

pp. 58-67

pp. 38-50

pp. 2-3

Record

2. The principal question arising in this appeal is whether the land in dispute is owned by the Ademakin/Ademiluyi family, of which it is not in issue that the Appellant is a member, or by the Appellant individually and in his own right.

pp. 4 - 7  
pp. 3 - 4

3. In their Statement of Claim the Respondents, who were suing in a representative capacity on behalf of the Ademakin/Ademiluyi family, which is a branch of the Otutu family, alleged that the land in dispute was called Omifunfun Onigbodogi and originally belonged to the Otutu family; that at a meeting of the Otutu family in 1933 Otutu family land was allotted to various branches of the Otutu family and the land between Omofunfun and Idiako was one of the two portions of land allotted to the children of Oba Ademiluyi, the late Oni of Ife; that the allotment to Oba Ademiluyi's children included allotment to the children of his younger brothers, namely, Adebowale and Adeyeye now deceased; that the Appellant is one of the children of Adeyeye; that after the 1933 meeting a petition was addressed to the Ife Native Authority, to keep the Authority informed of how the Otutu family land was allotted, and the Appellant was one of those who signed the petition for the family. The Respondents alleged further that in 1947 the Appellant and one Adeyemo Eletiko, as representatives of the Ademakin/Ademiluyi family, started putting tenants on the land in dispute with the consent of the family on the understanding that all the members of the family would be entitled to share the Ishakole; that upon the death of the said Adeyemo Eletiko the Appellant carried on as representative of the family on the land in dispute but, despite early promises to pay, had refused to share any Ishakole with other members of the family, and had claimed the land in dispute as his personal property; and that the Appellant as representative of the family took an action against one Sanni Odera in Suit I/49 in the Ife Lands Court and it was decided in favour of the family.

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pp. 7-11

4. In his Statement of Defence, the Appellant averred that he was the owner of the land in dispute, and denied that it originally belonged to the Otutu family. He further pleaded that at one time the Otutu family alleged that certain portions of land in Ife District belonged to them because the family had hunting rights therein but that later court decisions stated that hunting rights in a

forest did not confer ownership over the land in Ife. Record  
 The Appellant admitted that there was a meeting  
 in 1933 but stated that it was in respect of a  
 dispute between Soko Ademakinwa and C.A.Layade  
 over a farm at Osa Soko and that the land in dis-  
 pute was then unknown virgin forest and was not  
 mentioned. The Appellant denied that he put  
 tenants on the land in 1947 on the family's behalf  
 or promised to share the Ishakole. He alleged that  
 10 since 1938 he had been farming and putting tenants  
 on the land in his own right and not as a represent-  
 ative of the Respondents and that before 1938 the  
 land was unfarmed virgin forest. The Statement of  
 Defence continued as follows:-

"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  
 20 land.

19. In the case instituted by the defendant  
 against one Sanni Odeera it was held on  
 appeal that the defendant 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  
 30 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  
 40 peaceful open and undisturbed possession  
 of the land described in his plan, culti-  
 vating the land, putting in tenants and  
 exercising thereon all acts of ownership.

22. At a time when certain people - viz.  
 Lujumo Ologiri family, Jagunosin family  
 and Agbakuro family were disputing

Record

boundaries with the defendant, the Oni of Ife, after investigations sent emissaries to demarcate the boundaries between the defendant and the aforesaid families.

23. The defendant and his tenants cultivated the land from pure virgin forest and built up villages and markets within the land. The markets were set up with the authority and consent of the Oni of Ife." 10

5. At the hearing in the Ibadan High Court a number of witnesses gave evidence on behalf of the Respondents.

pp. 12-16

The 4th Respondent, Gabriel Oyedele Ademiluyi, testified that the Otutu family consisted of the following branches (1) Ademakin/Ademiluyi, (2) Soko Apete, (3) Soko Ademakinwa, (4) Aseri Agba. The Appellant, he said, was a member of the Ademakin/Ademiluyi branch and his first cousin. His evidence went on:- 20

p.13, 1.4 -  
p.14, 1.5

"I know the land in dispute; it is called Omifunfun Onigbodogi and it was given to Ademakin/Ademiluyi branch by Otutu family in 1933. Before 1933 the Otutu family had various farmlands namely: Osi, Ara, Owena, Eleja Ogbo, Omifunfun Onigbodogi, Idiako. Before 1933 any member of Otutu family could go into any of the farmlands to farm. I know Soko Ademakinwa; before 1933 he used to put tenants in any part of the various farmlands mentioned. In 1933 members of the Otutu family went to the Osi farm and held a meeting with Soko Ademakinwa. We decided that the farmlands should be distributed among all children of Otutu because we did not approve of his making use of the farmlands alone. We returned home and had another meeting in which the farmlands were distributed among members of the family. I was present at both meetings. 30 40

Osi farmland and Omifunfun Onigbodogi farmland were given to Ademakin/Ademiluyi branch of Otutu family. The defendant was present at the meetings held at Osi farm and at home: others present were: Okero Ademiluyi, C.A.Layade, Adewole Ademiluyi

and many others. Eleja and Oke Osi farm-lands were given to C.A. Layade who belongs to Soko Apete branch. I cannot remember the farmland given to E.T. Adewoyin. The Oni Ademiluyi was the head of Ademakin/Ademiluyi family. Adebowale and Adeyeye were brothers of the Oni Ademiluyi. Adeyeye's children are Jones Adetoro Adeye (defendant), Joseph Konko Adeyeye (3rd plaintiff) among others. The children of Adebowale are Adeleke Adebowale, Lagbondo Adebowala (second plaintiff) among others. Some years after the meetings of 1933 the family appointed the defendant and one Eletiku to put tenants on the land in dispute - Omifunfun; they put tenants there accordingly. When Eletiku died the defendant carried on. We asked the defendant about the tribute (Ishakole) collected from the tenants and he said it was not yet time for tributes to be collected. We waited for three or four years for cocoa trees to begin to yield and thereafter we asked the defendant for the tributes but he failed to give any account. We held several meetings but to no avail. In 1957 we had a meeting at which the defendant said that he put tenants in his own portion of the farmland; we were surprised that the defendant could alone claim a portion of the farmland which is 14 miles by 14 miles. We decided to take action against him."

6. The 3rd Respondent Joseph Konko Adeyeye, the Appellant's half-brother, also testified that the land in dispute belonged to the Ademakin/Ademiluyi branch of the Otutu family, and that the Appellant and Eletiko had put tenants on the land in the name of the Ademakin/Ademiluyi branch of the family. He added that the Appellant had never paid him any Ishakole.

p.17, l.14 -  
p.18, l.10

7. One Claudius Adedini Layode testified that he was the oldest member of the Otutu family and that he was a member of the Ademakin/Ademiluyi branch. This witness too gave evidence as to the allotment of the land in dispute to Ademiluyi and his brothers, and he referred to a petition addressed to the Oni and Council in 1950 by the Otutu family (Exhibit "A") of which he was one of the signatories and which, together with the allotment list which accompanied it, supported his

p.18, l.13 -  
p.19, l.42.

pp. 81-90

- Record testimony on this point. This witness also said that he knew the present Oni, but that he had nothing to do with the Otuto farmlands except if questions of boundary disputes were referred to him. He also referred in his evidence to the family meeting of 1933, at which he too said the Appellant was present.
- pp.81-9 8. The petition by the Otuto family to the Oni and Council in 1950, referred to in the evidence on behalf of the Respondents, followed certain proceedings in the Ife Native Court taken by the Appellant for himself and on behalf of the family. 10
- p.69, 11.12-19 In a suit which had been heard in February and March 1949 the Appellant claimed against one Sannie Odera a declaration of title to "a piece of farmland situated and known as Omifunfun Onigbodogi, bounded on the east by Ologiri's farmland, on the west by Agbakuro's farmland, on the north by Agbakuro's farmland and on the south by Jeje Ogunshakin's farm. 20
- The Plaintiff claims for himself and on behalf of the family".
- p.70, 11.13-25 In this suit the Appellant gave evidence that this was land which belonged to him and his family but that the tenant, the said Odera, trespassed into the farmland "when he knows that he does not relate to my family". The Appellant said that he was therefore taking action against Odera on account of his trespass into farmland belonging to him and his family. 30
- pp.73-4 On the 22nd March 1949 the Ife Native Court had found in favour of the Appellant, holding that the land in dispute belonged to the Otutu Royal family of Ife of which the Appellant was a member, but subsequently on an appeal to the Resident's Court, Ife, the case was sent back to the Native Court, which then heard further evidence and reversed its former decision, on the ground that the Appellant's family had only hunting rights on the land. 40
- pp.75-6  
pp.76-9
- pp.92-9 A further appeal against this decision of the Native Court was dismissed by the Resident's Court Ife on the 18th June 1951.

Record  
p.53, 1.28 -  
p.54, 1.11.

10 It was subsequently pointed out by the Federal Supreme Court in the present case that the proceedings in the case of the Appellant against Odera in 1949-1950 were wholly irregular, for in each of the two hearings by the Native Court the constitution of the Court had changed from time to time. The Federal Supreme Court therefore expressed its view that the decisions on the face of them were null and void and both Counsel agreed that both these proceedings in the Native Court were a nullity.

20 9. The petition referred to in the evidence was dated the 18th December 1950 and was addressed by the Otutu family to the Alaiyeluwa, the Oni and Council, The Native Authority, Ife. This petition referred to the recent case of the Appellant against Odera, which had been decided on appeal adversely to the Otutu family, and in which a further appeal was pending, (which appeal was in the event unsuccessful). The petition recited the decision in this case that the family had only hunting rights and stated that this decision had been a shock to the family. It went on to contend that the right of the family to the area in question was farming right and not hunting right. It referred to a division of the family farmland in 1933 in accordance with an Allotment List attached to it and went on to say that,

pp.81-9

p.83, 1.30

p.85, 1.32

p.82, 11.11-13

30 "While on this point, it is important to note that Obadamosi Adewuyi, a grandson of Akinmoyero Odunle, an Oni of Ife, opened this allotment with his own section at Osi, while Jones Adeyeye, a grandson of Shinlade alias Otutu closed the stretch of land with his own sectional Allotment at Omifunfun-Onigbodogi."

p.82, 11.13-19

40 The allotment list attached to the petition referred to the division of the family farmland said to have taken place on the 15th June 1933. Paragraph 3 of the list reads as follows:-

"3. Allotted to the entire children of Ademiluyi and section Two portions  
(a) The land from Oshi bounded by Pekeoye, Ogbo and Owena rivers - situating on the South of Oshi in the front from the mark-point. The second portion lies between Omifunfun and Idiako."

p 90, 11.18-24

Record  
p.89, l.39

The petition was signed by a number of members of the Otutu family including the appellant.

10. The main evidence called on the Appellant's behalf was summarised by Oyemade (Ag.J.) as follows:

p.45, l.30 -  
p.46, l.27

"The defendant - Jones Adeyeye gave evidence in support of the material allegations in the Statement of Defence. He said that at one time the Otutu family of which he is a member was claiming title to the farmland in dispute but it was later decided that the family had only hunting rights over the land which confer no title on the family; he said before 1938 the farmland was a virgin forest, he said that there was a dispute between C.A. Layade (4th plaintiffs' witness) and one Soko Ademakinwa sometime in 1933 about the farmlands at Osi and Ara and that dispute was the subject of discussion at the family meetings held in 1933; there was no mention of the farmland - Omifunfun now in dispute; he said it was in 1938 that a hunter called Faro showed him the land and told him that it belonged to Otutu family of which he is a member and on this belief he began to farm there; he said he informed the present Oni about it and he was told that he could carry on; later he had boundary disputes with members of Agbakuro and Lujumo families and the Oni sent Emeses to demarcate the boundaries for them and since then there had been no further disputes. In support of these settlements of boundary disputes, James Odunlade (1st defence witness) for Agbakuro family, Comfort Odesola (3rd defence witness) for Lujumo family, James Itiaran (2nd defence witness) then a Emese, and Gabriel Oratoye (4th defence witness) and Emese, gave evidence. This shows that the defendant has been working in this farm and expending his activities hence his constant clashes with his neighbours. The one person who asserted adverse title to that of the defendant was Sanni Odera whose case had been dealt with earlier on.

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As regards the purport of the 1933 family meetings at which the plaintiffs allege that allotments of lands was made the defendant said there was no such allotment and that the



allotment list attached to the petition was got up purposely to support that petition; he said the 4th plaintiff (G.O. Ademiluyi) who gave evidence in support of the allotment was not present at that meeting." Record

11. The Appellant in the course of his evidence said:- p.21, 11.19-30

10 "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 farmlands 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."

20 He also said that:

"According to Native Law and Custom any occupied virgin forest belong 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." p.21, 11.31-3

In cross-examination the Appellant said:

30 "I can read and write I read the petition before I signed it, I understand the contents of the Petition. According to the Otuto family history our ancestor had title to the farmland in dispute and was so contended in the petition; but when the petition was turned down and all litigation over the farmland proved abortive I decided to approach the Oni to obtain title to the land, I signed the Petition in 1950 because my name was mentioned that I had farmland there. I was present at the family meeting held in 1933 at home and in the farm..... the present Oni granted me the farmland in dispute in 1952. The farmland was partly cultivated in 1952 and partly virgin forest". p.22, 11.12-28

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He further said in cross-examination that: p.23, 11.32-5

Record

"at the time the action (i.e. against Odera) was taken the farmland was under cultivation. According to our family history I understand that Otutu family had produced Seven Onis".

p.24, 11.9-10

With regard to the petition of the 18th December 1950 by the Otutu family, the Appellant said in cross-examination:-

"I signed the petition because I believe the contents were correct".

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pp.31-4

12. Sir Adesoji Aderemi, the Oni of Ife, also gave evidence on behalf of the Appellant. He said:

p.31, 11.28-31

p.32, 11.19-30

"As the Oni of Ife I have control of all the virgin forest in the Ife division. According to Native Law and Custom I settle land disputes brought before me..... When once the Oni grants virgin forest to a person such farmland belongs to the grantee and his descendents. 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 inform him of the request of the applicant and later send Emeses to go with them to the virgin forest and cut sufficient forest for the applicant for farming purposes."

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p.32, 1.45 -  
p.33, 1.2.

The Oni testified that the Appellant approached him after the Odera case and asked him

"to confirm his farming rights at Omifunfun."

The Oni told the Appellant that he had already granted him permission there and that he could carry on.

p.33, 11.9-16

In cross-examination the Oni 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

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granted farmland in that area. As the Oni Record  
I have no right to grant farmland which had  
been under cultivation because such land  
would have been granted by me or by my  
predecessors."

Another of the Appellant's witnesses, James p.26, 11.29-31  
Itiaran, a palace official, also testified that

"the Oni grants only virgin forest and  
not cultivated farmland".

10 13. In his Judgment, Oyemade, Ag.J., dealt with p.38  
suit No.I/49 and with the appeals therefrom. He  
concluded:-

"I have earlier pointed out that the p.45, 11.13-29  
only reference made to Suit I/49 by the  
plaintiffs in this case is the first judgment  
given by the Land Court on 22/3/49 which  
favoured the plaintiffs and I have treated the  
course of subsequent appeals in order to show  
at once the shaky foundation on which the  
20 plaintiffs' claim is based. In paragraph 4 of  
the Statement of Claim the plaintiff avers  
that the land in dispute belonged to Otutu  
family of which 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 on farming rights as shown in the court  
proceedings quoted above there is nothing in  
30 the land in dispute which the family could  
properly allot nemo dat quod non habet."

He also referred to the evidence of the Oni p.48, 11.21-5  
of Ife and concluded:-

"From the evidence before me I find p.49, 11.10-27  
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  
40 defendant had been farming on the land in  
the belief that the land belonged to 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

Record

that the claim of title to the land by the Otutu family having failed, the defendant should have negotiated the grant on behalf of the family but that is 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."

- p.54, 11.10-11 14. During argument before the Federal Supreme Court it was agreed by both Counsel for Appellants and Respondents that all proceedings in the Native Courts were a nullity. 10
- p.58, 11.18-19  
p.59, 11.15-21 15. On appeal the Respondents abandoned their claim for mesne profits and asked for an injunction not against the Appellant entering upon the land but only against his gathering Ishakole from the tenants.
- pp. 58-67 16. The Federal Supreme Court allowed the appeal and set aside Oyemade Ag.J.'s judgment with costs. Bairamian, F.J., having said that the decisions of the Native Courts in the Odera Suit were a nullity, then referred to the evidence of the Oni of Ife regarding the grant of farmland from virgin forest and said:- 20
- p.63, 11.31-41 "The distinction is invalid as in either case the grantee becomes sole owner; and as the rights of the family will be affected by being deprived of an area over which it has a right to hunt, natural justice requires that the family should be consulted. The grant which the Oni made - it was in 1952 - sinned against that rule insofar as it included virgin bush, and insofar as it was cultivated land it sinned against the rule which is acknowledged by the Oni that he has no right to grant farmland under cultivation." 30
- The learned Federal Justice continued later:-
- p.64, 1.42 -  
p.65, 1.37 "the fact remains that in 1952 the Oni made a grant of land under cultivation - that there were some bush parts does not matter upon the defendant's case; in fact his aim in approaching the Oni for a grant was to acquire title to the area under cultivation 40

in the light of the Odera Judgment. The Record  
grant was contrary to native law and  
custom and ineffectual to confer title for  
the reasons above stated (before the mention  
of the plans, in dealing with the Oni's  
evidence on grants).

10 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. He  
objects, however, that if the land belongs  
to the Otutu family, then plaintiffs are not  
suing on behalf of the Otutu family, but as  
representing a branch, namely Ademakin/  
20 Ademiluyi family branch.

30 That objection does not come with good  
grace from a member of the family who dis-  
avows the family rights he had championed in  
the suit against Odera, nor is it available  
to him in view of his having signed the  
petition of 1950 believing that its contents  
were correct. According to paragraph 3(a)  
of the annex to that petition, the land in  
dispute was allotted to Ademiluyi and his  
brothers, and the evidence for the plaintiffs  
is to that effect. It seems to me, therefore,  
that the plaintiffs, as between themselves  
and the defendant, can maintain their claim  
against him. The court is not concerned in  
this case with any persons whom the defendant  
did not, because of the case he was putting up,  
ask to be joined: its only concern and duty  
is to adjudicate between the parties before it;  
and in my judgment the plaintiffs are entitled  
40 to succeed to the extent of the claims they  
have urged in their appeal."

Ademola, C.J.F., also referred in his judgment  
to the evidence of the Oni of Ife and rejected the p.66, l.40 -  
distinction which the Oni drew between an applic- p.67, l.23.  
ant for virgin forest land over which a family  
had hunting rights who is a member of that  
family, and an applicant who is not.

Record

17. It is respectfully submitted that this appeal should be dismissed for the following among other

R E A S O N S :-

1. BECAUSE the evidence shows that the land in dispute belongs to the Ademakin/Ademiluyi branch of the Otutu family whom the Respondents represent in the action.
2. BECAUSE the land in dispute was originally owned by the Otutu family.
3. BECAUSE from the evidence a grant of the land in dispute to the Otutu family by a predecessor in office of the present Oni is to be inferred. 10
4. BECAUSE the land in dispute was allotted in 1933 to the Ademakin/Ademiluyi family, and has been owned by the said family since then.
5. BECAUSE the Appellant's sole interest in the land in dispute derives from the Ademakin/Ademiluyi family by whom he was put on the said land and whom he for many years represented thereon. 20
6. BECAUSE the Appellant acknowledged the land in dispute as belonging to the Ademakin/Ademiluyi family by signing the Petition of the Otutu family to the Native Authority in 1950.
7. BECAUSE the Appellant brought the action against Odera in suit I/49 on behalf of the Otutu family.
8. BECAUSE the decision in the Appellant's action against Odera in suit I/49 was a nullity. 30
9. BECAUSE for the reasons given in the Judgments of the Federal Supreme Court the Oni of Ife had no power to make a grant of the disputed land to the Appellant in 1952 and therefore such purported grant was ineffectual and conferred no title upon the Appellant.
10. BECAUSE any purported grant made by the Oni of Ife to the Appellant of the disputed land could only have enabled the Appellant to hold that land on behalf of the Ademakin/Ademiluyi family. 40

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11. BECAUSE the judgment of the trial judge was wrong.
12. BECAUSE the judgment of the Federal Supreme Court was right for the reasons therein stated and should be affirmed.

NEIL LAWSON

MONTAGUE SOLOMON.

No. 1 of 1964

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF

NIGERIA HOLDEN AT LAGOS

B E T W E E N :-

JONES ADEYEYE                      Appellant

- and -

1. E. T. ADEWOYIN
2. JAMES LABONDE ADEBOWALE
3. JOSEPH KONKO ADEYEYE
4. GABRIEL OYEDELE ADEMILUYI
5. ADEBAYO ADEMILUYI

Respondents

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C A S E     F O R     R E S P O N D E N T S

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