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Nigeria Judgment
30, 1956

UNIVERSITY OF LONDON
W.C.1.

20 FEB 1957

INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 9 of 1955.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL AT LAGOS

BETWEEN

1. PATIENCE KASUMU
 2. MOSES ADELEYE KASUMU
 3. JAMES BASANYA FERGUSON ODUWOLE
 4. ARTHUR TAIWO OLUKOYA
- as the Administratrix and Administrators of the
Estate of C. O. KASUMU deceased *Appellants*

AND

GBADAMOSI BABA-EGBE *Respondent.*

RECORD OF PROCEEDINGS

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20 FEB 1957

In the Privy Council

46049

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL AT LAGOS

BETWEEN

1. PATIENCE KASUMU
2. MOSES ADELEYE KASUMU
3. JAMES BASANYA FERGUSON ODUWOLE
4. ARTHUR TAIWO OLUKOYA
as the Administratrix and Administrators of the
Estate of C. O. KASUMU deceased *Appellants*

AND

GBADAMOSI BABA-EGBE *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Application for Summons, Suit No. 42 of 1950.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950.

No. 1.
Application
for
Summons,
Suit No. 42
of 1950.
30th
January
1950.

Between

GBADAMOSI BABA-EGBE *Plaintiff*
and

PATIENCE KASUMU
 10 MOSES ADELEYE KASUMU
 JAMES BASANYA FERGUSON ODUWOLE
 ARTHUR TAIWO OLUKOYA
 as the Administrator of the Estate of C. O. Kasumu
 (Deceased) *Defendants.*

The Plaintiff's claim against the Defendants is

(1) for an order for the redemption of the property at No. 55, Great Bridge Street, Lagos mortgaged by the Plaintiff to the late C. O. Kasumu by deed dated the 22nd August, 1945 and registered as No. 65 at page 65 in Volume 620 of the Register of Deeds kept at the Lands Registry in the

In the
Supreme
Court of
Nigeria.

No. 1.
Application
for
Summons,
Suit No. 42
of 1950.
30th
January
1950—
continued.

Office at Lagos. In the alternative the Plaintiff claims for a declaration that the said Deed of Mortgage is void.

(2) The Plaintiff claims an account of all rents and mesne profits received by the late C. O. Kasumu from the said property and by the Defendants since the death of the said C. O. Kasumu.

(3) Recovery of possession of the said property.

The Defendants are sued as the Administrators of the Estate of the late C. O. Kasumu, Deceased.

Value of the property is £3,000.

Dated at Lagos this 30th day of January, 1950.

10

THOMAS, WILLIAMS AND KAYODE,
Solicitors for the Plaintiff.

Plaintiff's Address : c/o His Solicitors, 41, Idumagbo Avenue, Lagos.

Defendants' Address : c/o 1, Balogun Street West, Lagos.

No. 2.
Writ of
Summons,
Suit No. 42
of 1950.
14th
February
1950.

No. 2.
Writ of Summons, Suit No. 42 of 1950.

IN THE SUPREME COURT OF NIGERIA.

Book No.

U 41

Civil Summons.

U 4003

Suit No. 42 of 1950: 20

GBADAMOSI BABA-EGBE *Plaintiff*
Between
... ..
and

1. PATIENCE KASUNMU
2. MOSES ADELEYE KASUMU
3. JAMES BASANYA FERGUSON ODUWOLE
4. ARTHUR TAIWO OLUKOYA *Defendants.*

To 1. Patience Kasunmu

2. Moses Adeleye Kasumu

3. James Basanya Ferguson Oduwole

4. Arthur Taiwo Olukoya

of c/o 1, Balogun Street West, Lagos.

30

You are hereby commanded in His Majesty's name to attend this Court at Tinubu Square, Lagos on Monday the 13th day of March, 1950,

at 9 o'clock in the forenoon to answer a suit by Gbadamosi Baba-Egbe of c/o His Solicitors, 41, Idumagbo Avenue, Lagos, against you.

The Plaintiff's claim is as per particulars attached.
Issued at Lagos the 14th day of February 1950.

Sgd. C. W. REECE,
Puisne Judge.

In the
Supreme
Court of
Nigeria.

No. 2.
Writ of
Summons,
Suit No. 42
of 1950.
14th
February
1950—
continued.

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.

10

No. 3.

Application for Summons, Suit No. 77 of 1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 77 of 1950.

PATIENCE KASUMU }
M. A. KASUMU } Suing as Administratrix and
J. B. F. ODUWOLE } Administrators of Estate of
A. T. OLUKOYA } C. O. Kasunmu Plaintiffs

versus

GBADAMOSI BABA-EGBE
20 MOMODU BALOGUN Defendants.

No. 3.
Application
for
Summons,
Suit No. 77
of 1950.
28th
February
1950.

The Plaintiffs are the Administrators and Administratrix of the Estate of Christopher Olatunji Kasumu (Deceased) by virtue of Letters of Administration dated the 4th day of October 1948.

That on the 22nd day of August, 1945 the 1st Defendant mortgaged his Leasehold interest in all that piece or parcel of Land with an uncompleted Building thereon situate and being at No. 55, Great Bridge Street, Lagos and known as Plot 10 in Block 21 Oko-Awo to the aforesaid C. O. Kasumu (Deceased) by a Deed of Mortgage duly registered as Number 65 at page 65 in Volume 620 of the Lands Registry Lagos.

30 The said Deed of Mortgage was executed for a Loan of £2,000, with interest at the rate of 15 per cent. per annum.

That the principal together with interest has not been paid by the said 1st Defendant. That on the 20th October 1945 the 1st Defendant agreed to assign his Leasehold interest in the aforesaid property to the aforesaid Deceased for a consideration of £2,250, which was then the principal and interest due and owing. That the said 1st Defendant communicated this to the Lagos Executive Development Board the Lessors of the 1st Defendant.

In the
Supreme
Court of
Nigeria.

No. 3.
Application
for
Summons,
Suit No. 77
of 1950.
28th
February
1950—
continued.

That in or around the 16th November 1948 the 1st Defendant purported without the consent or approval of the Plaintiffs to sell the said property and all his interest therein to the 2nd Defendant for a consideration of £2,700. (Two thousand Seven hundred Pounds Sterling.)

The Plaintiffs say that a Deed of assignment has been prepared and that by a letter dated the 26th September 1949 the 1st Defendant was called upon to execute same but that by a letter of even date he refused and still refuses to execute same.

WHEREOF THE PLAINTIFFS CLAIM :—

- (i) That the 1st Defendant be made to execute the said Deed 10 of Assignment.
- (ii) That the purported sale of the 16th November 1948 be set aside.

Dated at Lagos this 28th day of February, 1950.

Sgd. JOHN TAYLOR,
Plaintiffs' Solicitor.

Plaintiffs' Address : Care 9, Victoria St. Lagos.
1st Defendant's Address : 14, Doherty Street, Lagos.
2nd Defendant's Address : 71, Docemo Street, Lagos.

No. 4.
Writ of
Summons,
Suit No. 77
of 1950.
7th March
1950.

No. 4.

20

Writ of Summons, Suit No. 77 of 1950.

IN THE SUPREME COURT OF NIGERIA.
Book No.

U. 41.

Civil Summons.

U 4035.

Suit No. 77 of 1950.

Between

PATIENCE KASUMU

MOSES ADELEYE KASUMU

JAMES BASANYA FERGUSON ODUWOLE

ARTHUR TAIWO OLUKOYA

... .. and

1. GBADAMOSI BABA-EGBE and

2. MOMODU BALOGUN

To. 1. Gbadamosi Baba-Egbe and

2. Momodu Balogun

of 14 Doherty Street, Lagos and 2.71 Docemo Street, Lagos.

... .. Plaintiffs 30

... .. Defendants.

You are hereby commanded in His Majesty's name to attend this court at Tinubu Square, Lagos, on Monday the 20th day of March, 1950, at 9 o'clock in the forenoon to answer a suit by Patience Kasumu, Moses

Adeleye Kasumu, James Basanya Ferguson Oduwole, Arthur Taiwo Olukoya
of c/o Their Solicitor, 9 Victoria Street Lagos against you.

In the
Supreme
Court of
Nigeria.

The Plaintiffs' claim are as per particulars attached.
Issued at Lagos the 7th day of March, 1950.

No. 4.

Sgd. C. W. REECE,
Puisne Judge.

Writ of
Summons
Suit No. 77
of 1950.
7th March
1950—
continued.

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.

10 (Note : The Particulars attached are the same as No. 3 Application
for Summons, 28th February 1950.)

No. 5.

Order for Pleadings, Suit No. 42 of 1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

No. 5.
Order for
Pleadings,
Suit No. 42
of 1950.
13th March
1950.

Monday the 13th day of March, 1950.

Before His Honour COURTENAY WALTON REECE, Esq., Puisne Judge.

Suit No. 42/1950.

GBADAMOSI BABA EGBE

20

v.

PATIENCE KASUNMU, Etc.

F. R. A. WILLIAMS for Plaintiff.

J. I. C. TAYLOR for Defendants.

Pleadings ordered—14 days to each side as from 13/3/50.

Sgd. C. W. REECE.

In the
Supreme
Court of
Nigeria.

No. 6.

Order for Pleadings, Suit No. 77 of 1950.

No. 6.
Order for
Pleadings,
Suit No. 77
of 1950.
20th March
1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Monday the 20th day of March, 1950.

Before His Honour COURTENAY WALTON REECE, Esq., *Puisne Judge*.

Suit No. 77/1950.

P. KASUNMU, Etc. v. GBADAMOSI BABA-EGBE.

TAYLOR for Plaintiff.

F. R. A. WILLIAMS for 1st Defendant—
DAVID for second Defendant—

10

Pleadings ordered—14 days to each side.

Sgd. C. W. REECE.

No. 7.
Statement
of Claim,
Suit No. 42
of 1950.
25th March
1950.

No. 7.

Statement of Claim, Suit No. 42 of 1950.

Filed at 10.30 a.m. on 27/3/50 (Intld.) ?

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION.

Suit No. 42 of 1950.

Between

20

GBADAMOSI BABA EGBE Plaintiff

and

1. PATIENCE KASUMU
2. MOSES ADELEYE KASUMU
3. JAMES BASANYA FERGUSON ODUWOLE
4. ARTHUR TAIWO OLUKOYA
(as the Administrators of the Estate of C. O. Kasumu
(Deceased)) Defendants.

STATEMENT OF CLAIM.

In the
Supreme
Court of
Nigeria.

No. 7.
Statement
of Claim,
Suit No. 42
of 1950.
25th March
1950—
continued.

(1) The ownership in fee simple of the property situate at and known as No. 55 Great Bridge Street, Lagos is vested in the Lagos Executive Development Board (hereinafter called the "L.E.D.B").

(2) Under and by virtue of a Deed of Lease dated the 13th day of August, 1943 and Registered as No. 32 at Page 32 in Volume 632 of the Lands Registry in the Office at Lagos the Chairman of the L.E.D.B. on behalf of the L.E.D.B. leased the said property to the Plaintiff for a term of 99 years.

10 (3) (a) The said Lease between the L.E.D.B. and the Plaintiff was made subject to the covenants and conditions contained in Sections 6 (excepting Sub-Section (ii) (A) thereof) and 7 of the Crown Lands Ordinance.

(b) One of the covenants and conditions thus governing the Lease is that the Lessee shall not assign, sublet or otherwise part with the possession of the land comprised in the lease or any part thereof, without the previous consent in writing of the Chairman of the L.E.D.B.

20 (4) Under and by virtue of a Deed of Mortgage dated the 22nd day of August, 1945 the Plaintiff mortgaged the said property to one Christopher Olatunji Kasumu with the necessary consent of the Chairman of the L.E.D.B.

(5) The said Christopher Olatunji Kasumu was at all material times a Licensed Money-lender carrying on business at No. 27, Omidudun Street, Lagos.

(6) It is the practice of the Money-lenders in this country to advance, if their clients so desire, the Principal amount stipulated in the mortgage deed by instalments especially where the loan is required for building.

30 (7) The Deed of Mortgage referred to in paragraph 4 above was executed by the Plaintiff to the said C. O. Kasumu so that the latter might be able to supply funds from time to time to the Plaintiff as and when required for the expenses of putting up a Storey building upon his said leasehold property.

(8) The said C. O. Kasumu in accordance with the said practice of money-lenders issued out the capital stipulated in the said deed of mortgage to the Plaintiff by way of instalments up to a total sum of £1,150.

(9) As evidence of receipt of these various advances, the said C. O. Kasumu made out for the Plaintiff various receipts which he represented to him (the Plaintiff) as receipts for the said advances received in respect of the said mortgage deed and to which he affixed his thumb impression as such.

In the
Supreme
Court of
Nigeria.

No. 7.
Statement
of Claim,
Suit No. 42
of 1950.
25th March
1950—
continued.

(10) As the said C. O. Kasumu kept no book in which the principal amount advanced by the Plaintiff is entered, the Defendants have since his death assumed that the principal amount is £2,000.

(11) The building which was being erected with the advances received on the said Deed of mortgage was completed in September, 1946.

(12) The said C. O. Kasumu has been in possession as mortgagee since the said September, 1946, and after his death in June, 1948, the Defendants have been in possession.

(13) From September, 1946, up to date, the property has been let out by the late C. O. Kasumu to various tenants who are paying rents to him 10 and after his death to the Defendants.

(14) The Defendants are the administrators of the estate of the said C. O. Kasumu deceased.

(15) The Plaintiff avers that the late C. O. Kasumu has been fraudulent in his relationship with the plaintiff in that while representing to the Plaintiff that the receipts mentioned in paragraph 9 of this Statement of Claim are receipts for the advances made on the said mortgage deed which they were understood to be by the Plaintiff, the said C. O. Kasumu in fact made out the receipts as evidence of part payment of the purchase price of the building and not as evidence of advances on the mortgage deed. 20

(16) The said receipts purported to have been signed by the Plaintiff and to be in respect of the sale of the Plaintiff's house at Great Bridge Street, whereas in fact the said Plaintiff never at any time agree to sell his said property to the late C. O. Kasumu nor was he ever told by the said C. O. Kasumu or anybody that he was executing a document of the type that he did in fact execute.

(17) The L.E.D.B. never at any time gave its consent to the Plaintiff to assign his equity of redemption to the said C. O. Kasumu.

(18) The Plaintiff has applied to the Defendants for a Statement of Account so that he might pay off the mortgage and release the property. 30

(19) The Defendants however maintained that the property had been "sold" to them and refused to submit an account.

Whereupon the Plaintiff claims as per the Writ of Summons.

Dated at Lagos this 25th day of March, 1950.

THOMAS, WILLIAMS & KAYODE,
Solicitors for the Plaintiff.

No. 8.

Statement of Claim, Suit No. 77 of 1950.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 77 of 1950.

No. 8.
Statement
of Claim,
Suit, No. 77
of 1950.
29th March
1950.

PATIENCE KASUMU M. A. KASUMU J. B. F. ODUWOLE A. T. OLUKOYA	}	Suing as Administratrix and Administrators of Estate of C. O. Kasumu <i>Plaintiffs</i>
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versus

GBADAMOSI BABA EGBE MOMODU BALOGUN	} <i>Defendants.</i>
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STATEMENT OF CLAIM.

1.—The Plaintiffs are the Administratrix and Administrators of the estate of C. O. Kasumu (Deceased) by virtue of Letters of Administration dated the 4th day of October 1948.

2.—The 1st Defendant was the vendor of the leasehold interest in that piece or parcel of land situate at and being at No. 55 Great Bridge Street Lagos on the 16th November 1948.

20

3.—The 2nd Defendant was the purchaser of the aforesaid leasehold interest in the said piece or parcel of land at 55 Great Bridge Street Lagos on the aforesaid date.

4.—That on the 22nd August 1945 the 1st Defendant mortgaged his leasehold interest in all that piece or parcel of land with an uncompleted building thereon situate at 55 Great Bridge Street aforesaid and known as plot 10 in block 21 Oko Awo to C. O. Kasumu deceased.

5.—That the said deed of mortgage was duly stamped and registered as number 65 at page 65 in volume 620 of the register kept at the Lands Registry Lagos.

30

6.—That the said deed of mortgage was executed for a loan of £2000. 0. 0. with interest at the rate of 15% per annum, and that the said C. O. Kasumu completed the building for and with the consent of the said 1st Defendant.

7.—That the principal together with interest thereon has not been paid by the said 1st Defendant and the mortgage remains unsatisfied.

8.—That on the 20th October 1948 the 1st Defendant agreed to assign his leasehold interest in the aforesaid property to the aforesaid deceased

In the
Supreme
Court of
Nigeria.

No. 8.
Statement
of Claim,
Suit No. 77
of 1950.
29th March
1950—
continued.

for a consideration of £2,250. 0. 0. which then represented the principal and interest due and owing and had actually surrendered the aforesaid plot to the deceased but no deed of assignment was prepared.

9.—That the 1st Defendant by a letter of that date communicated the aforesaid assignment to the Secretary Lagos Executive Development Board.

10.—That till this day the 1st Defendant has not executed a deed of assignment though he has been requested to do so as per letter dated 26th September 1949 and still refuses to do so.

11.—That in spite of the above named paragraphs 8, 9 and 10 the said 1st Defendant without the consent or approval of the Plaintiffs purported to sell the said leasehold interest in the said property to the 2nd Defendant for a consideration of £2,700. 0. 0. 10

12.—That the said £2,700. 0. 0. was paid over by the said 2nd Defendant to the 1st Defendant and or his agent.

13.—The Plaintiffs contend that the sale is void and inoperative.

Whereof the Plaintiffs claim as per Writ of Summons.

Dated at Lagos this 29th day of March, 1950.

Sgd. JOHN TAYLOR,
Plaintiffs' Solicitor. 20

No. 9.
Statement
of Defence.
Suit No. 42
of 1950.
31st March
1950.

No. 9.
Statement of Defence, Suit No. 42 of 1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42 of 1950.

Between

GBADAMOSI BABA EGBE *Plaintiff*
and

PATIENCE KASUMU
MOSES ADELEYE KASUMU
JAMES BASANYA FERGUSON ODUWOLE
ARTHUR TAIWO OLUKOYA
(As the Administrators of the Estate of C. O. Kasumu
(deceased) *Defendants.* 30

STATEMENT OF DEFENCE.

In the
Supreme
Court of
Nigeria.

1.—The Defendants admit paragraphs 1, 2, 4, 5, 14 and 19 of the Plaintiff's Statement of Claim.

2.—The Defendants are in no position to admit or deny paragraphs 3 (a) (b); 6, 7, 8, 9 and 11 of the Plaintiff's Statement of Claim and put the said Plaintiff to their very strict proof.

3.—The Defendants deny each and every allegation of fact contained in paragraph 15 of the Plaintiff's Statement of Claim and will contend that the said paragraph be struck out.

10 4.—With regard to paragraph 10 of the Plaintiff's Statement of Claim the Defendants admit that there was no book in which the principal amount advanced by the Plaintiff was entered but deny that the averment of £2000.0.0. (Two thousand pounds) as the principal is an assumption.

5.—The Defendants will rely on the deed of mortgage in which the principal sum was stated as £2000.0.0. which said deed was duly agreed and interpreted to the Plaintiff before a Magistrate.

20 6.—With regard to paragraphs 12 and 13 of the Plaintiff's Statement of Claim the Defendants say that they are in no position to admit or deny the date September 1946 but admit that the late Kasumu was in possession of the said building as mortgagee after the completion of the building and that since his death they have been in possession.

7.—The Defendants will rely on the building completion certificate dated 5th day of September 1947.

8.—That further the late C. O. Kasumu did let out the said premises to various tenants who paid him rents and are now paying to the Defendants.

9.—With regard to paragraph 16 of the Plaintiff's Statement of Claim the Defendants will rely on the letter of the 20th October 1945 written by the Plaintiff to the Lagos Executive Development Board.

30 10.—The Defendants say with regard to paragraph 17 of the Plaintiff's Statement of Claim that the Lagos Executive Development Board are prepared to consent to the said assignment.

11.—The Defendants say with regard to paragraph 18 of the Plaintiff's Statement of Claim that the Plaintiff was never prepared to pay off the said loan as by paragraphs 8 and 10 he has always assumed the principal to be £1,500 in spite of the £2000. stated in the deed of mortgage.

12.—The Defendants will rely on the Plaintiff's letter dated the 3rd November 1948 for the above.

40 13.—The Defendants say that the Writ of Summons and the Statement of Claim disclose no cause of action in respect of the 1st part of the claim and the alternative.

No. 9.
Statement
of Defence.
Suit No. 42
of 1950.
31st March
1950—
continued.

In the
Supreme
Court of
Nigeria.

No. 9.
Statement
of Defence,
Suit No. 42
of 1950.
31st March
1950—
continued.

14.—With regard to the 2nd part of the claim the Defendants say that they are not an accounting party by virtue of the surrender of the said plot to the late C. O. Kasumu on the 20th day of October 1945 for a consideration of £2,250.0.0. (Two thousand, two hundred and fifty pounds).

15.—With regard to the 3rd part of the claim the Defendants say it discloses no cause of action as it is based on the 1st part of the Claim.

16.—The Defendants say that the property in dispute was sold to him on the 20th October 1945 for a consideration of £2,250 and that the Plaintiff by a letter of even date informed the Lagos Executive Development Board that he had surrendered the plot to the Defendants.

10

Dated at Lagos this 31st day of March, 1950.

Sgd. JOHN TAYLOR,
Defendants' Solicitor.

No. 10.
Statement
of Defence
of 1st
Defendant,
Suit No. 77
of 1950.
6th April
1950.

No. 10.

Statement of Defence of 1st Defendant, Suit No. 77 of 1950.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Suit No. 77/50.

2/6 paid on CR. No.
446306/109/11.4.50 at 12.40 p.m.

20

PATIENCE KASUMU	}	Suing as Administratrix and Administrators of Estate of C. O. Kasumu <i>Plaintiffs</i>
M. A. KASUMU		
J. B. F. ODUWOLE		
A. T. OLUKOYA		

versus

GBADAMOSI BABA EGBE
MOMODU BALOGUN *Defendants.*

STATEMENT OF DEFENCE OF THE 1ST DEFENDANT.

1.—Save and except as are hereinafter specifically admitted the 1st Defendant denies each and every allegation of facts contained in the 30 Plaintiffs' Statement of Claim as if each were set out seriatim and separately denied.

2.—The 1st Defendant admits paragraph 1 of the Statement of Claim.

3.—The 1st Defendant denies paragraph 2 of the Statement of Claim.

4.—The 1st Defendant denies paragraph 3 of the Statement of Claim.

5.—With further reference to paragraphs 2 and 3 of the Statement of Claim, the 1st Defendant avers that there was an arrangement between him and the 2nd Defendant for the sale of the property at No. 55, Great Bridge Street, Lagos, sometime in November, 1948, by the 1st Defendant to the 2nd Defendant.

6.—The 1st Defendant denies paragraph 4 of the Statement of Defence but admits that on the 22nd of August, 1945, he mortgaged his leasehold interest in the said property at 55, Great Bridge Street, Lagos to the late C. O. Kasumu, deceased.

10 7.—The 1st Defendant admits paragraph 5 of the Statement of Defence.

8.—With reference to paragraph 6 of the Statement of Claim, whilst admitting that a sum of £2000 (Two thousand pounds) was indicated on the deed of mortgage, the Defendant will contend that in accordance with the established practice of money lender in this country regarding building loans, only a total sum of £1,150 (One thousand, one hundred and fifty pounds) was advanced to the Defendant being the amount actually expended to complete the building on the said premises.

9.—The 1st Defendant denies paragraph 8 of the Statement of Claim.

20 10.—The 1st Defendant denies paragraph 9 of the Statement of Claim and says that if a letter such as is described is written to the L.E.D.B. it was written without his knowledge consent or authority.

11.—The 1st Defendant denies paragraph 11 of the Statement of Claim.

12.—The 1st Defendant admits that the second Defendant paid £2,700 (Two thousand, seven hundred pounds) in pursuance of the arrangement referred to in paragraph 5 above.

13.—The 1st Defendant avers that he is the owner of the leasehold interest in the property situate at No. 55, Great Bridge Street, Lagos.

30 14.—The 1st Defendant avers that the owner in fee simple of the said property is the L.E.D.B. who leased it to him.

15.—The said lease between the 1st Defendant and the said L.E.D.B. was made subject to the provisions of section 6 and 7 of the Crown Lands Ordinance.

16.—One of the covenants thus incorporated in the lease is that the lessee (i.e. 1st Defendant) shall not assign, sublet or otherwise part with the possession of the property without the written consent of the Chairman, L.E.D.B.

17.—That no consent by the L.E.D.B. has been obtained for any sale or transfer to the late C. O. Kasumu.

40 18.—Alternatively to the matter set out above, the 1st Defendant will rely on the statutes of fraud and will say that there is no memorandum

In the
Supreme
Court of
Nigeria.

No. 10.
Statement
of Defence
of 1st
Defendant,
Suit No. 77
of 1950.
6th April
1950—
continued.

In the
Supreme
Court of
Nigeria.

No. 10.
Statement
of Defence
of 1st
Defendant,
Suit No. 77
of 1950,
6th April
1950—
continued.

in writing signed by him such as would entitle the Plaintiffs to any decree for specific performance.

19.—The 1st Defendant will contend at the trial of this action that the Plaintiffs' claim is frivolous, vexatious and without any substance whatever.

Dated at Lagos this 6th day of April, 1950.

THOMAS, WILLIAMS & KAYODE,
Solicitors for the 1st Defendant.

No. 11.
Order for
Consolidation.
17th April
1950.

No. 11.

Order for Consolidation.

IN THE SUPREME COURT OF NIGERIA.

10

IN THE LAGOS JUDICIAL DIVISION.

Monday the 17th day of April, 1950,

Before His Honour STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

GBADAMOSI BABA EGBE

vs.

PATIENCE KASUMU AND ORS.

To be consolidated with 77/50.

To be mentioned on 1/5/50.

Intld. S. B. R. 20

Monday the 1st day of May, 1950.

Before His Honour STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

GBADAMOSI BABA EGBE *vs.* P. KASUMU AND ORS. } Suit No. 42/50.
P. KASUMU AND ORS. *vs.* BABA EGBE AND ANOR. } „ „ 77/50.

Adjourned to 14/6/50.

Intld. S. B. R.

No. 12.
Notice to Produce.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950 and 77/50.

Between

GBADAMOSI BABA-EGBE *vs.* PATIENCE KASUMU AND 3 OTHERS
PATIENCE KASUMU AND 3 ORS. *vs.* GBADAMOSI BABA-EGBE
(Consolidated)

No. 12.
Notice to
Produce.
30th May
1950.

10

NOTICE TO PRODUCE

TAKE NOTICE that you are hereby required to produce and show to the Court at the trial of the above actions all Books, Papers, Letters, Copies of letters and all other writings and documents in your custody possession and power containing any entry, memorandum or minutes relating to the matter in question in this action and particularly :—

1.—The deed of lease dated 13th day of August, 1943 made between the Plaintiff and the Chairman of the L.E.D.B. and registered as No. 32 at Page 32 in Volume 632 of the Lands Registry.

2.—The deed of mortgage dated 22nd August 1945 made between the 20 Plaintiff and the late C. O. Kasumu.

Dated at Lagos this 30th day of May, 1950.

THOMAS, WILLIAMS & KAYODE,
Solicitors for Gbadamosi Baba-Egbe.

No. 13.

Statement of Defence of 2nd Defendant, Suit No. 77 of 1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 77 of 1950.

30 PATIENCE KASUMU } Suing as Administratrix and
M. A. KASUMU } Administrator of Estate of
J. B. F. ODUWOLE } C. O. Kasumu Plaintiffs
A. T. OLUKOYA }

Versus

GBADAMOSI BABA EGBE }
MOMODU BALOGUN }

Statement of Defence of the 2nd Defendant.

No. 13.
Statement
of Defence
of 2nd
Defendant,
Suit No. 77
of 1950.
— June
1950.

In the
Supreme
Court of
Nigeria.

No. 13.
Statement
of Defence
of 2nd
Defendant,
Suit No. 77
of 1950.
—June,
1950—
continued.

1.—The 2nd Defendant admits paragraphs 1 and 11 of the Plaintiffs' Statement of Claim.

2.—The 2nd Defendant denies paragraphs 2 and 3 of the Plaintiffs' claim and further says that there was arrangement between the 1st and 2nd Defendants for the purchase of the property situate at 55 Great Bridge Street Lagos.

3.—The 2nd Defendant is not in a position to admit or deny paragraphs 4–10 of the Plaintiffs' Statement of Claim.

4.—The 2nd Defendant will further say that he had no notice of any interest of the Plaintiffs in the said property. 10

5.—The 2nd Defendant pleads S4 of the Statute of Frauds. Whereof the Plaintiffs are not entitled to the relief sought for as per writ of summons.

Delivered this day of June, 1950.

Sgd. V. O. MUNIS,
For : JAMES E. DAVID,
2nd Defendant's Solicitor
Intld ?

No. 14.
Proceed-
ings.
15th June
1950.

No. 14.
Proceedings.

IN THE SUPREME COURT OF NIGERIA. 20
IN THE LAGOS JUDICIAL DIVISION.

Thursday the 15th day of June, 1950.

Before His Honour STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

42/50 } 1. G. B. BABA-EGBE v. P. KASUMU AND ORS.
77/50 } 2. P. KASUMU AND ORS. v. G. B. BABA-EGBE AND ANOR.

WILLIAMS :—I delete paragraph 4 of the Statement of Defence in Suit 77/50 and undertake not to raise the point of notice in my address on behalf of the 2nd Defendant.

J. I. C. TAYLOR for Patience Kasumu and Ors. 30
F. WILLIAMS for Gbadamosi Baba Egbe.

EVIDENCE.

No. 15.

Gbadamosi Baba Egbe.

In the
Supreme
Court of
Nigeria.

Evidence.

No. 15.
Gbadamosi
Baba Egbe.
15th June
1950.Examina-
tion.

GBADAMOSI BABA EGBE on Koran, Sworn. States :

Live at 14 Doherty Street, Lagos, know the property 55, Great Bridge Street, which is now in dispute. The land was leased to me by L.E.D.B. and I erected a building on it. This is the Deed of Lease admitted marked " A " (It came from the custody of Taylor).

10 In August 1945 I executed a Deed of Mortgage in favour of the late C. O. Kasumu. This is it. Admitted marked " B " (From Mr. Taylor's custody) At the time of this deed there was no building on the land. I mortgaged the land in order to erect a building on it. At the time of the execution of this deed I received from Kasumu £1,150 out of £1,300 due to me.

TAYLOR objects to this evidence as deed shows £2,000. Overruled as fraud is pleaded. The £1,150 was given me by instalment. I usually sign receipts for every instalment received.

I did not sell the property to Kasumu.

20 I obtained no permission from L.E.D.B. to sell to Kasumu. The building was completed on 5/9/47.

After completion of the building Kasumu collected the rents and used it in liquidating the principal and interest on the mortgage. I was not told that any document I fixed my thumb impression was a sale to Kasumu of the land and building.

30 Know M. D. Alli Balogun, 2nd Defendant in 77/50. I received £2,700 from him as purchase money for the same building now in dispute as I sold it to him. But I have not executed a conveyance in his favour yet. I now want to redeem my property from Defendants I am also asking for an account of the rents collected. Do not know how much was being paid as rents : I also want recovery of possession.

Xxd. by TAYLOR—I executed Exhibit " B " before a Magistrate. It was read over to me by a Yoruba Interpreter before I affixed my thumb impression on it. I agreed it was correct before inserting my thumb impression. Cross-examination.

There were two mortgage deeds. The first one was read to me and it was for £1,300, the second was for £2,000 but it was not read to me. Both mortgages were not executed on the same day.

40 This is my thumb impression on Exhibit " B " it was after the completion of the building that I knew I was signing a mortgage deed for £2,000. I gave evidence at a criminal trial over this property. I did say there was only one mortgage for £1,300. I mortgaged the property only once to Kasumu. Both deed were prepared by Kasumu and I sign

In the
Supreme
Court of
Nigeria.

Evidence.

No. 15.
Gbadamosi
Baba Egbe,
15th June
1950.

Cross-exam-
ination—
continued.

all documents he asked me to sign, Kasumu died in June 1948 he was collecting the rents up to his death, and after his death his administrator continued I did put my finger impression on a document to the L.E.D.B. on 20/9/45 but it was Kasumu who prepared it and said it was the " Deliver " I understand the word " Deliver " to mean that I placed my house in his care. Kasumu told me the letter was addressed to the L.E.D.B. I was roofing the building when I wrote to L.E.D.B. about the " Deliver" I was on the roofing when the mortgage for £2,000 was executed.

The first mortgage deed was in respect of the land. Dosumu is Belo Rajli's clerk. Belo Raji was my contractor. Dosumu witnessed my thumb impression on the document. I do not know whether this is the letter which I wrote to the L.E.D.B.—tendered rejected by Williams on ground that writer is illiterate—upheld. A letter was shown to me at the criminal trial which I wrote to the L.E.D.B. but I explained all documents are prepared by Kasumu and I sign. Do not know the contents of some of them. My contractor receives money from Kasumu for the work and I sign the receipts. Do not know about £79 paid to my contractor by Kasumu. I sign receipts for monies paid to Belo Raji by Kasumu. My contract with Belo Raji was for £1,150 and that was what he received from Kasumu. At the time of the execution of the mortgage for £2,000 Belo Raji had received £1,150 from Kasumu. I cannot say how much Belo Raji received from Kasumu at the time I executed the mortgage for £2,000, 2nd Defendant in Suit 77/50 has sued me to recover his purchase money at the time I sold to Balogun (2nd Defendant) in 77/50 he knew that I had mortgaged to Kasumu and the land was leased. Kasumu did not know that I was selling to Balogun because Kasumu was dead at the time. I did not inform the Administrators that I was going to sell the property I did instruct my solicitor to write Defendants in 42/50 that I owed £1,150 and not £2,000. My solicitor did inform me that a deed of assignment was for my execution but I refused to execute because I sold no house to them.

Adjourned to 16.6.50.

Sgd. S. B. RHODES,
J.



No. 16.

Sumonu Niriwa.

In the
Supreme
Court of
Nigeria.

SUMONU NIRIWA on Koran, Sworn. States :

Evidence.

Live at 30 Kosoko Street, Lagos, knew the late C. O. Kasumu. I had a transaction with him over the building of a house. I mortgaged a land to him to erect a building on the land. It was for £1,400. but I only received £400 which was paid to Belo Raji my contractor. The house has not been completed it is not plastered or roofed.

No. 16.
Sumonu
Niriwa.
16th June
1950.
Examina-
tion.

Xxd. by TAYLOR :—There was a mortgage deed. The mortgage was executed a year before Kasumu died Mr. F. Williams was my lawyer in the action I against Kasumu to set aside the mortgage deed as he would not pay the whole amount. The action is still pending.

Cross-exam-
ination.

There were several lawyers who appeared for Kasumu but I do not know their names. The case came up before Justice Reece. Witness now says the action against Kasumu has been discontinued.

Belo Raji used to sign for whatever amount he received from Kasumu. Belo Raji would sign a receipt in favour of Kasumu for the amount he received he would show it to Kasumu and bring it to me to keep.

Re xd. by WILLIAMS :—Something is given to Kasumu by Belo Raji for amounts received.

Re-exam-
ination.

Case for Plaintiff in Suit 42/50.

TAYLOR informs Court that Abina is with him.

TAYLOR :—I offer no evidence as no case made out.

Suit No. 77/50.

P. KASUMU AND ORS. vs. G. BABA EGBE AND ANOR.

TAYLOR and ABINA for Plaintiff.

F. WILLIAMS for Defendant.

No. 17.

Moses Kasumu.

No. 17.
Moses
Kasumu.
16th June
1950.

30 MOSES KASUMU on Koran, Sworn. States :

Live at 1, Great Bridge Street, Lagos ; one of the Administrators of C. O. Kasumu deceased. He was my brother. Know the two Defendants. Know that 55, Great Bridge Street was mortgaged to the late Kasumu Exhibit " A " was handed to my late brother. 1st Defendant paid back

Examina-
tion.

In the
Supreme
Court of
Nigeria.

Evidence.

No. 17.

Moses
Kasumu.
16th June
1950.

Examina-
tion—

continued.

Cross-exam-
ination.

nothing since the death of my brother. My brother collected rents from the mortgaged building since 1947. This is a document I found in my brother's estate properties admitted marked "C" the witness to this document by name Asani Dosumu is now living somewhere in Lagos.

This is another document I found admitted marked "D."

This is another document found admitted marked "E."

This is another admitted marked "F."

I was not told by Baba Egbe that he was selling the property to Balogun (2nd Defendant).

I prepared a Deed of Assignment of the property to Kasumu's estate 10 and asked 1st Defendant to execute it he refused.

Xxd, by WILLIAMS :—I know nothing about the building in 1945. I saw the building in 1946 it was not then completed. The building was high up at the time. I remember seeing the building some time ago but cannot remember when. I did not visit my brother often when he was alive. Know nothing about his business methods.

I was once a money lender. I did not value the building in 1946. If my brother had paid £2,000 down on the building in 1946 it was a bad business. I was one of these who swore to the personal properties left by Kasumu when we applied for Letters of Administration. I did not declare 20 55 Great Bridge Street as a property belonging to the late C. O. Kasumu, because I had not the documents relating to it then as I do not know whether he had parted with the building. I cannot remember collecting the rents on that building in June after the death of C. O. Kasumu. I remember writing the original of this letter admitted marked "G."

I usually collect between £20 to £25 as rents from the property monthly.

Re-exam-
ination.

Re xd. by TAYLOR :—I saw only the mortgaged Deed at the time I wrote Exhibit "G."

No. 18.

Proceedings.

30

No. 18.
Proceed-
ings.
16th and
19th June
1950.

TAYLOR :—I close my case subject to Farvener's evidence being taken afterwards.

WILLIAMS :—I offer no evidence.

WILLIAMS :—I am dealing with Suit 77/50 first: If ever there was a sale to Kasumu by Baba Egbe it is void as there was a breach of covenant not to assign without previous consent of L.E.D.B. Exhibit "A" See Cap 45 Revised Laws of Nigeria Section 7 Sub (3)

Court cannot order specific performance Section 4 of Statute of Fraud. No memorandum in writing.

Possession by mortgage is not act and part performance. 40

In *Maddison v. Alderson* 8 Appeal Cases p. 467 *Chaproniere v. Lambert*

1917 2 Chancery p. 356 and 359. Exhibit "C," "D," "E" and "F" cannot be regarded as memoranda to take the case out of the Statute of Frauds. 1. They are receipts by purchase.

Beckett v. Nierse 1948 1 All England Reports p. 81-84. No agreement to convey. See bottom of p. 82 Hals 2nd edition paragraph 450 p. 390. Kasumu was money lender. These under Cap 136 Section 19 he cannot. *Cohen v. J. Lester & Co. Ltd.* 1938 4 All England Law Reports p. 188. Claim is improveable because money lender kept no book.

Adjourned to 19.6.50 for Taylor to reply.

10

Sgd. S. B. RHODES,
J.

Monday the 19th day of June, 1950. 19th June 1950.

Before His Honour STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

Suit Nos. 42/50 and 77/50.

G. BABA-EGBE *vs.* P. KASUMU AND ORS.

TAYLOR addresses Court :—

Deal with 42/50 first. Mortgage money not paid. Erecting Cheshire on property 5th Edition p. 595. No fraud proved. Mortgage deed is 20 valid and should be accepted. 1938 2 All England Reports p. 387—reading from p. 90.

Sheridan's case on system void relates to fraud only. Plaintiff and Defendant have been at variance from start therefore not entitled to an account. Validity of sale. Money Lenders' Ordinance should have been pleaded Vol. 4 Revised Laws Section 28 (1) Bullan and Lacks 1905 p. 742 Order 32—Rls 5.7.15 1938 Vol. 4 A.E.R. p. 188 *Cohen v. Leister* p. 190. *Hoare v. Smith* same book p. 283 from 284, 1938 3 A.E.R. p. 273 from p. 276 1939 3 A.E.R. p. 695 from 696. 1938 1 A.E.R. p. 193 from 194 p. 303 1940 3 A.E.R. p. 530 from 531 *In re Robinson's settlement* 81 L.J. Chancery D. p. 397 Cheshire 1945 p. 119 memorandum of contract 1939. 30 2 A.E.R. p. 406 from 409 Storyle 1893. L.J. Chancery D. p. 182 Mortgage was still subsisting at time of sale to Balogun and could only sell equity of redemption Vol. 2 Cap Section 7 Sub Section 17 (3) void

DAVID—No substance in the action. Therefore no reason to call on 2nd Defendant in Suit 77/50.

Snell on Equity 21st ed. p. 299.

Judgment reserved.

Sgd. S. B. RHODES,
J.

In the
Supreme
Court of
Nigeria.
No. 18.
Proceed-
ings.
16th and
19th June
1950—
continued.

In the
Supreme
Court of
Nigeria.

No. 19.

Summing Up and Finding.

No. 19.
Summing
Up and
Finding.
27th June
1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Tuesday the 27th day of June, 1950.

Before His Honour STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

Suit No. 42 of 1950.

Between

GBADAMOSI BABA-EGBE *Plaintiff* 10

and

- 1. PATIENCE KASUMU
- 2. MOSES ADELEYE KASUNMU
- 3. JAMES B. F. ODUWOLE
- 4. ARTHUR TAIWO OLUKOYA
(As the Administrators of the Estate of C. O. Kasumu
(deceased)) *Defendants.*

Suit No. 77 of 1950.

Between

- 1. PATIENCE KASUMU
- 2. MOSES ADELEYE KASUNMU
- 3. JAMES B. F. ODUWOLE
- 4. ARTHUR TAIWO OLUKOYA } *Plaintiffs* 20
(As the administrators of the Estate of C. O. Kasunmu
(deceased))

and

- 1. GBADAMOSI BABA-EGBE } *Defendants.*
- 2. MOMODU BALOGUN

SUMMING UP.

This is a consolidated action. In Suit No. 42/50. 30
The Plaintiff's claim is as follows :—

(1) For an order for the redemption of the property at No. 55 Great Bridge Street, Lagos, mortgaged by the Plaintiff to the late C. O. Kasunmu by deed dated the 22nd August, 1945, and registered as No. 65 at page 65 in volume 620 of the Register of Deeds kept at the Lands Registry in the office at Lagos. In the alternative the Plaintiff claims for a declaration that the said deed of mortgage is void. (2) The Plaintiff claims an account of all rents and mesne profits received by the late C. O. Kasunmu from the

said property and by the Defendant since the death of the said C. O. Kasunmu. (3) Recovery of possession of the said property.

The Defendants are sued as administrators of the estate of the late C. O. Kasunmu, deceased. Value of the property is £3,000 and in 77/50 as follows :—

The Plaintiffs are the Administrators and administratrix of the Estate of Christopher Olatunji Kasunmu (deceased) by virtue of Letters of Administration dated the 4th day of October, 1948.

10 That on the 22nd day of August, 1945, the 1st Defendant mortgaged his leasehold interest in all that piece or parcel of land with an uncompleted building thereon situate and being at No. 55 Great Bridge Street, Lagos, and known as Plot 10 in Block 21 Oko-Awo to the aforesaid C. O. Kasunmu (deceased) by a deed of mortgage duly registered as Number 65 at page 65 in Volume 620 of the Lands Registry Lagos.

The said deed of mortgage was executed for a loan of £2,000 with interest at the rate of 15% per annum.

20 That the principal together with interest has not been paid by the said 1st Defendant. That on the 20th October, 1945, the 1st Defendant agreed to assign his leasehold interest in the aforesaid property to the aforesaid deceased for a consideration of £2,250 which was then the principal and interest due and owing.

That the said 1st Defendant communicated this to the Lagos Executive Development Board the Lessors of the 1st Defendant.

That in or around the 16th November, 1948, the 1st Defendant purported without the consent or approval of the Plaintiffs to sell the said property and all his interest therein to the 2nd Defendant for a consideration of £2,700 (Two thousand seven hundred pounds sterling).

30 The Plaintiffs say that a Deed of Assignment has been prepared and that by a letter dated the 26th September 1949, the 1st Defendant was called upon to execute same but by a letter of even date he refused and still refuses to execute same.

WHEREOF THE PLAINTIFFS CLAIM :—

(i) That the 1st Defendant be made to execute the said Deed of Assignment.

(ii) That the purported sale of the 16th November, 1948 be set aside.

Pleadings were ordered in both cases and filed. It is not understood why Plaintiff in 42/50 is asking this Court to allow him to exercise his Equity of Redemption at the same time asking for recovery of possession when judgment in one will automatically affect the other.

40 Evidence was led by the Plaintiff to show that the amount on the mortgage deed of £2,000 Ex. " B " was not paid in full, but only £1,150 paid by the late Kasunmu, he called a witness in support to show Kasunmu's system in dealing with mortgagees. I must here say that from the word " go " Baba-Egbe was telling the Court nothing but deliberate lies and called a witness in support of his evidence, who was no improvement

In the
Supreme
Court of
Nigeria.

No. 19.
Summing
Up and
Finding.
27th June
1950—
continued.

In the
Supreme
Court of
Nigeria.

No. 19.
Summing
Up and
Finding.
27th June
1950—
continued.

on Baba-Egbe. It may be argued that if these two were such incorrigible liars, why were they not committed for perjury; the answer to that is if this Court will commit every litigant and witness who commits deliberate perjury, the number of litigants and witnesses that will return to their homes after a case will be very few.

These two men were so mean as to take advantage of the absence by death of Kasunmu and deny almost every transaction between themselves and Kasunmu. Although the name of Belo Raji was mentioned so many times as being the contractor for Baba-Egbe and Sumonu Neriwa and who actually received the money from Kasunmu, yet they did not deem it necessary to call him as witness. 10

The property at 55 Great Bridge Street is however on a Government lease and could not be sold until the overlord has given his consent in writing this was not done, therefore I cannot uphold the sale.

It is argued by Counsel for Baba-Egbe that Kasunmu was a money-lender and kept no books as required by our local Ordinance therefore he cannot enforce his mortgage, Counsel for the Kasunmus contended that as the Money-Lenders Ordinance was not pleaded it could not be raised. Counsel for Baba-Egbe replied that it will be an offence against the Rules of Pleadings to plead law. This seems to be the impression of almost every Counsel that has appeared before me in Lagos, if this assumption is correct, then wherein comes "Special Pleas" such as barred by the Statute of Limitations, Statute of Frauds etc. My conception of the rule that one should not plead law, is that it will be an offence against the rule to plead that under Section XX Sub. X of the Money-lenders Ordinance, etc. 20

Moreover, I am supported in this by *Cohen v. Lester Ltd.* on page 188 Vol. 4 of All England Reports 1938. I do not regard Ex. "C" as evidence of sale to Kasunmu by Baba-Egbe, in my view it was only an expression of an intention to sell as, probably Baba-Egbe did not know about his covenant not to part with the property without first obtaining the consent in writing of the Lagos Executive Development Board. 30

Finding.

FINDING:—From the evidence before me I find that there was no effective sale of the property by Baba-Egbe to Kasunmu. I also find that Baba-Egbe did execute the mortgage deed Ex. "D" in favour of Kasunmu for £2,000 and has received certain amount from Kasunmu, but such amount can only be ascertained by an account being taken of the rents collected on the property by Kasunmu, and the amount now due and owing on the principal and interest to date of judgment, and order that such account be taken by Mr. Subair of the National Bank if he is willing to act if not both Counsel should agree on an accountant, and report to this Court. 40

I cannot understand why Balogun (2nd Defendant) was sued as a Defendant in 77/50. It is a well known rule of law that anyone who buys a mortgaged property with notice of the mortgage takes over the mortgage. This notice was given him according to Baba-Egbe. Judgment is therefore entered as follows:—

Baba-Egbe to exercise his Equity of Redemption and recovery of his property after an account has been taken of the amount due on the mortgage so as to determine what is actually owing by him on the mortgage, and paid off to the Estate of C. O. Kasunmu (deceased).

In the Supreme Court of Nigeria.

The action against Balogun is dismissed with costs assessed at 10 guineas.

No. 19. Summing Up and Finding. 27th June 1950—
continued.

Costs to Baba-Egbe and the Kasunmus to abide the result of the account to be taken.

Sgd. S. B. RHODES,
Puisne Judge.

10

No. 20.

Letter, Senior Registrar to H. A. Subair.

No. 42/1950/19
Supreme Court Registry,
Lagos.

No 20. Letter, Senior Registrar to H. A. Subair. 29th June 1950.

29th of June 1950.

Sir,

Suits Nos. 42 and 77 of 1950.

Gbadamosi Baba-Egbe *vs.* Patience Kasunmu & Ors.

20 His Honour the Judge in connection with an Order dated 27th June, 1950, mentioned and would like to know if as an Accountant you would be willing to go into the account between the parties in the above-mentioned case and report thereon.

2. I should be grateful for an early reply.

Sgd. M. E. OJOMO,
Senior Registrar.

Subair, Esq.,
National Bank of Nigeria,
Lagos.

In the
Supreme
Court of
Nigeria.

No. 21.

Letter, H. A. Subair to Senior Registrar.

No. 21.
Letter,
H. A.
Subair to
Senior
Registrar.
13th July
1950.

Abiola House,
28 Apongbon Street,
Lagos.
13th July, 1950.

H. A. Subair,
Accountant and Auditor.
Ref. : EAS/SOC.

The Senior Registrar,
Supreme Court,
Lagos.

10

Dear Sir,

Suits Nos. 42 & 77 of 1950.

Gbadamosi Baba-Egbe vs. Patience Kasunmu & Ors.

I thank you for your letter of the 29th June, and in reply beg to inform you that I would be prepared to go into the accounts in the above named matters, and after examination of the documents therein, I shall say what my fees will be.

Yours faithfully,
Sgd. H. A. SUBAIR.

20

No. 22.
Motion and
Affidavit
for Con-
ditional
leave to
Appeal.
24th July
1950.

No. 22.

Motion and Affidavit for Conditional leave to appeal.

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION.

Plaint No, 42 & 77/50.

Between

GBADAMOSI BABA EGBE Plaintiff

AND

PATIENCE KASUNMU & 3 ORS. Defendants. 30

MOTION.

TAKE NOTICE that this Honourable Court will be moved on Monday the 18th day of September, 1950 or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an order granting

Conditional Leave to Appeal to the West African Court of Appeal from the Judgment of this Honourable Court delivered on the _____ day of _____ 1950, and in the meantime for Stay of execution of the said Judgment and for such further or other Orders as this Honourable Court may deem fit to make in the circumstance.

In the Supreme Court of Nigeria.

Dated at Lagos this 24th day of July, 1950.

THOMAS, WILLIAMS & KAYODE,
Solicitor for the Plaintiff.

No. 22.
Motion and Affidavit for Conditional leave to Appeal. 24th July 1950—
continued.

On Notice to Defendants.
10 At Lagos.

Motion £2.
Sueing 10/-
Filing 2/-

 £2. 12/- Paid.
Cr. No. 614916/15/12.9.50

(Intld.) ?

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42 & 77/50.

20

Between

GBADAMOSI BABA EGBE *Plaintiff*

and

PATIENCE KASUNMU & 3 ORS. *Defendants.*

AFFIDAVIT.

I, FREDERICK ROTIMI ALADE WILLIAMS, Yoruba, British Subject, Barrister-at-Law and of No. 41, Idumagbo Avenue, Lagos do hereby make oath and say as follows:—

1.—That I am a partner in the firm of Messrs. Thomas Williams & Kayode, Solicitors to the above-named Plaintiff.

30

2.—That judgment was delivered in the above-named action on the 27th day of June 1950.

In the Supreme Court of Nigeria.

3.—That the Plaintiff is dissatisfied with the said Judgment and desires Conditional Leave to Appeal to the West African Court of Appeal.

(Sgd.) F. R. A. WILLIAMS.

No. 22. Motion and Affidavit for Conditional leave to Appeal. 24th July 1950—continued.

Sworn to at the Supreme Court Registry, Lagos this 12th day of September 1950.

Before me,

(Sgd.) N. E. OJOMO.

Commissioner for Oaths.

4/- Paid on CR, No. 615100/147/12.9.50.

(Intld.) ?

10

No. 23. Motion and Affidavit for Conditional leave to Appeal. 3rd August 1950.

No. 23.

Motion and Affidavit for Conditional leave to appeal.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/50.

GBADAMOSI BABA EGBE Plaintiff/Respondent

versus

PATIENCE KASUNMU

M. ADE. KASUNMU

J. B. F. ODUWOLE

A. T. OLUKOYA

(As the Administrators of the Estate of C. O. Kasunmu (Deceased))

Defendants/Appellants.

20

MOTION FOR CONDITIONAL LEAVE TO APPEAL.

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 8th day of August 1950 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Defendants/Appellants for Conditional Leave to Appeal from the decision of this Honourable Court given in the above matter on the 27th day of 30 June 1950 and for such further or other order, as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 3rd day of August 1950.

Motion 40/- paid on Cr. No.
Sealing 10/- 613732/6/3.8.50
Filing 2/- (Intld.) ?

In the
Supreme
Court of
Nigeria.

(Sgd.) JOHN TAYLOR,
Defendants/Appellants' Solicitor.

—
No. 23.
Motion and
Affidavit
for Con-
ditional
leave to
Appeal.
3rd August
1950—
continued.

Filed at 8.35 a.m.
(Intld.) ?
4/8/50.

(Intld.) ?

10 IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950.

GBADAMOSI BABA EGBE Plaintiff/Respondent
versus

PATIENCE KASUNMU
M. ADE. KASUNMU
J. B. F. ODUWOLE
A. T. OLUKOYA
(As the Administrators of the Estate of C. O.
Kasunmu (Deceased))

} Defendants/Appellants.

20

AFFIDAVIT.

I, MOSES ADELEYE KASUNMU of Number 122, Great Bridge Street, Lagos,
Nigeria British Subject, make oath and say as follows :—

1.—That I am a General Trader and one of the Defendants in the
above matter.

2.—That on Tuesday the 27th day of June, 1950 this Honourable Court
gave a decision in the matter in favour of the Plaintiff.

3.—That I know the Defendants/Appellants in the matter.

4.—That the said Defendants/Appellants are dissatisfied with said
30 Decision and desire to appeal therefrom to the West African Court of Appeal.

5.—That it may please this Honourable Court to grant the said
Defendants/Appellants Conditional Leave to Appeal.

(Sgd.) ?

Sworn to at the Supreme Court,
Registry, Lagos this 4th day of
August, 1950.

Before me,

(Sgd.) ?

Commissioner for Oaths, etc.

4/- Paid on Cr. No. 614460/60/3.8.50.
(Intld.) ?

40

In the
Supreme
Court of
Nigeria.

No. 24.

Proceedings on Motion for Conditional leave.

No. 24.
Proceed-
ings on
Motion
for Con-
ditional
leave.
8th, 14th
August
and 11th
September
1950.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Tuesday the 8th day of August, 1950.

Before His Honour, ADETOKUNBO ADEGBOYEGA ADEMOLA Esquire,
Puisne Judge.

Suit No. 42/1950.

GBADAMOSI BABA EGBE *Versus* PATIENCE KASUNMU & ORS.
Motion for Conditional Leave. 10

ABINA moving.

Adjourned till 14/8/50.

(Intld.) A.A.A.
J.

Monday the 14th day of August, 1950.

Before His Honour, ADETOKUNBO ADEGBOYEGA ADEMOLA Esquire,
Puisne Judge.

Suit No. 42/1950.

GBADAMOSI BABA EGBE *Versus* PATIENCE KASUNMU & ORS.
ABINA moving : asks for adjournment. 20

Adjourned till 11/9/50.

(Intld.) A.A.A.
J.

Monday the 11th day of September, 1950.

Before His Honour, STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge.

Suit No. 42/1950.

G. BABA EGBE *Vs.* P. KASUNMU & ORS.

J. I. C. TAYLOR moving for Leave to appeal from an unfinished decision.

The Affidavit does not disclose reasons why this appeal should be 30
granted as the matter is still unfinished.

Motion dismissed.

(Sgd.) S. B. RHODES,
J.

No. 25.

Proceedings on Motion for Conditional leave.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Monday the 18th day of September, 1950.

Before His Honour, ADETOKUNBO ADEGBOYEGA ADEMOLA Esquire,
Puisne Judge.

Suit No. 42/50 & 77/50.

In the
Supreme
Court of
Nigeria.

No. 25.
Proceed-
ings on
Motion
for Con-
ditional
leave.
18th
September
1950.

10

GBADAMOSI BABA EGBE

v.

PATIENCE KASUNMU & 3 ORS.

Motion for Conditional Leave.

A. O. THOMAS moving.
J. I. C. TAYLOR on Notice.

Court Adjourned till 25/9/50 before Rhodes, J.
(Intld.) A.A.A.
J.

No. 26.

Motion and Affidavit for Special leave to appeal.

20 IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/50.
,, 77/50.

No. 26.
Motion and
Affidavit
for Special
leave to
appeal.
19th
September
1950.

GBADAMOSI BABA EGBE Plaintiff/Respondent

Versus

- 1. PATIENCE KASUNMU
 - 2. M. A. KASUNMU
 - 3. J. B. F. ODUWOLE
 - 4. A. T. OLUKOYA
- 30 (As the Administrators of the Estate of
C. O. Kasunmu (Deceased))

Defendants/Appellants.

MOTION.

In the
Supreme
Court of
Nigeria.

No. 26.
Motion and
Affidavit
for Special
leave to
appeal.
19th
September
1950—
continued.

TAKE NOTICE that this Honourable Court will be moved on Monday the 25th day of September, 1950 at the hour of 9 o'clock in the forenoon or so soon thereafter as the Counsel can be heard on behalf of the above-named Defendants/Appellants for Order for Special Leave to appeal against the Interlocutory Judgment of this Honourable Court given on Monday the 11th day of September, 1950, and for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 19th day of September, 1950.

(Sgd.) JOHN TAYLOR, 10
Defendants/Appellants' Solicitor.

Certified true copy

(Sgd.) OLA SCOTT,
for Senior Registrar.

Motion £2.
Sealing 10/-
Filing 2/-

£2.12/- paid on
CR. No. 614934/32/20.9.50.
(Intld.) ?

Filed at 11.50 a.m. on 20.9.50. (Intld.) ?

IN THE SUPREME COURT OF NIGERIA. 20
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/50
& „ „ 77/50

GBADAMOSI BABA EGBE *Plaintiff/Respondent*
versus

PATIENCE KASUNMU & OTHERS }
(As the Administrators of the Estate of C. O. } *Defendants/Appellants.*
Kasunmu (Deceased)

AFFIDAVIT.

I, MOSES ADELEYE KASUNMU of Number 1. Balogun Street West, British 30
Subject, Trader make oath and say as follows :—

1.—That I am one of the Defendants/Appellants in the above matter.

2.—That on Tuesday the 11th day of September 1950 this Honourable Court made an Interlocutory Order in the above-matter refusing the Defendants Leave to appeal from the Judgment of the 27th June, 1950.

3.—That the Defendants/Appellants are dissatisfied with the said Order and desire to appeal therefrom to the West African Court of Appeal.

In the Supreme Court of Nigeria.

4.—That I am informed by my Counsel J. I. C. Taylor that before making the order the Learned Trial Judge remarked in effect that the Case was not completed as the Accounts were not completed.

No. 26. Motion and Affidavit for Special leave to appeal.

5.—That I am advised by my Counsel J. I. C. Taylor that the Judgment of the Learned Trial Judge was both final and Interlocutory in parts.

19th September 1950—*continued.*

10 6.—That part of the Judgment reads as follows :—

“ The action against Balogun is dismissed with Costs assessed “ at 10 Guineas.”

7.—That I am informed by my said Counsel that that is a final Order.

8.—That a further part of the Judgment reads as follows :—

“ Judgment is therefore entered as follows :—
“ Baba Egbe to exercise his Equity of Redemption and “ recovery of his property after an Account has been taken of the “ amount due on the Mortgage, etc.”

20 9.—That I am further informed that a final order has been made for Redemption and taking of an Account as against our defence and cross action that the Plaintiff is not entitled to any of these remedies.

That in view of the above I crave the indulgence of the Court to grant special Leave to appeal from this Order of the 11th September, 1950.

(Sgd.) M. A. KASUNMU.

Sworn to at the Supreme Court }
Registry, Lagos this 20th day of }
September, 1950.

Before me,

(Sgd.) ?

Commissioner for Oaths, etc.

30

4/- Paid on CR. No. 615180/277/20.9.50.

No. 27.

Proceedings on Motions for Special and Conditional leave to appeal.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Monday the 25th day of September, 1950.

Before His Honour STEPHEN BANKOLE RHODES, C.B.E., Puisne Judge.

No. 27. Proceedings on Motions for Conditional and Special leave to appeal. 25th September 1950.

Suit No. 42/1950
& „ „ 77/50

40

G. BABA EGBE vs. P. KASUNMU & ORS.

MOTION.

In the
Supreme
Court of
Nigeria.

KAYODE moving.
J. I. C. TAYLOR on Notice.

No. 27.
Proceed-
ings on
Motions
for Con-
ditional
and Special
leave to
appeal.
25th
September
1950—
continued.

Motion for Conditional Leave to appeal from an unfinished judgment.
Hols. Vol. 19 p. 206 Section 508.
Senior Registrar to see to my Order being carried out as to Mr. Subair's
appointment.

Kayode—See *Shubrook v. Tuppal* Vol. 66 L.T. p. 749 for appeals on
such judgments see *ex-parte Chibury* Vol. 50 L.T.R. p. 343.
Application refused.
Motion dismissed.

10

(Sgd.) S. B. RHODES,
J.

Mr. Taylor notice for Special leave is also refused.
Motion dismissed.

(Sgd.) S. B. RHODES,
J.

No. 28.
Statement
of Rents
and
Expenses.
— October
1950.

No. 28.
Statement of Rents and Expenses.

IN THE SUPREME COURT OF NIGERIA.
LAGOS JUDICIAL DIVISION.

20

Suit Nos. 42 & 77 of 1950.

2/6d. Paid on CR. No.
A 015914/214/11.x.50.
(Intld.) ?

PATIENCE KASUNMU & ORS. vs. GBADAMOSI BABA EGBE
—Consolidated.

and

GBADAMOSI BABA EGBE vs. P. E. KASUNMU & ORS.

Herewith attached statement of account of rents collected and expenses 30
in respect of the property No. 55, Great Bridge Street, Lagos the subject
matter of the above named Suits.

Dated at Lagos this day of October, 1950.

(Sgd.) S. AYINLA ABINA,
Solicitor to Kasunmu & Ors.

GBADAMOSI BABA EGBE IN ACCOUNT WITH LATE C. O. KASUMU
(DECEASED).

		£	s.	d.	In the Supreme Court of Nigeria.
	1945				— —
	Aug. 22nd to Cash Advanced	2,000	0	0	No. 28.
	To Interest Account for Sept. 30th 1945 ...	25	0	0	Statement
	To Int. A/C for Oct. 1st to Dec. 31st	75	0	0	of Rents
					and
	Cash to Balance in December 31st 1945 ...	£2,100	0	0	Expenses.
	Int. A/C for 1st Jan. to March 31st 1945 ...	75	0	0	— October
10	" " " April to June 30th 1946	75	0	0	1950—
	" " " July 1st—Sept. 30th 1946	75	0	0	<i>continued.</i>
	" " " Oct. 1st—Dec. 31st 1946	75	0	0	
	Cash to Balance in December 31st 1946 ...	£2,400	0	0	
	Int. A/C for Jan. 1st—March 31st 1947	75	0	0	
	" " " April 1st—June 30th 1947	75	0	0	
	" " " July 1st—Sept. 30th 1947	75	0	0	
	" " " Oct. 1st—December 1947	75	0	0	
	Cash to Balance in December 1st 1947 ...	£2,700	0	0	
	Int. A/C for January 1st 1948	75	0	0	
20	" " " April 1st—June 30th 1948	75	0	0	
	" " " July 1st—Sept. 30th 1948	75	0	0	
	" " " Oct. 1st—Dec. 31st 1948	75	0	0	
	Cash to Balance in December 31st 1948 ...	£3,000	0	0	
	Int. A/C for Jan. 1st—March 31st 1949	75	0	0	
	" " " April 1st—June 30th 1949	75	0	0	
	" " " July 1st—Sept. 30th 1949	75	0	0	
	" " " Oct. 1st—Dec. 31st 1949	75	0	0	
	Cash to Balance in December 31st 1949 ...	£3,300	0	0	
	Int. A/C for Jan. 1st—March 31st 1950	75	0	0	
	" " " April 1st—June 30th 1950	75	0	0	
30					
	Total Cash to be balanced	£3,450	0	0	

E. & O.E. (Sgd.) ? *Accountant,*
9, Tinubu Square, Lagos.

(Sgd.) M. A. KASUMU,
Executor of late C. O. Kasumu.

55 Great Bridge Street, Lagos.

In the
Supreme
Court of
Nigeria.No. 28.
Statement
of Rents
and
Expenses.
— October
1950—
continued.

**PAYMENTS OF WATER RATES IN RESPECT OF THE ABOVE PREMISES—
AS FROM JULY 1948 TO APRIL 1950.**

Receipt Nos.		£	s.	d.	
B. 43781	of 17th July, 1948	20	19	9	
B. 39230	of 8th June, 1948	4	1	9	
B. 47167	of 28th March, 1949	25	1	6	
B. 50423	of 16th November, 1949	25	1	6	
B. 78152	of 31st August, 1949	25	1	6	10
B. 95252	of 11th April, 1950	25	1	6	
Total		£125	7	6	
		£125	7	6	

(Sgd.) M. A. KASUNMU,
Rents Collector,
for Executors of late C. O. Kasunmu.

55 Great Bridge Street, Lagos.

**ACCOUNT OF RENTS COLLECTED FROM AUGUST 1948 TO JULY 1950,
IN RESPECT OF THE ABOVE PREMISES.**

	£	s.	d.	
August 1948 to December 1948 ...	79	17	6	20
January 1949 to December 1949 ...	262	15	0	
January 1950 to July 1950 ...	126	1	6	
Total Altogether ...	£468	14	0	
		£468	14	0

(Sgd.) M. A. KASUNMU,
Rents Collector
for Executors of late C. O. Kasunmu.

55 Great Bridge Street Lagos.

Re ACCOUNT OF RENT COLLECTED IN RESPECT OF THE ABOVE PREMISES,
FROM JANUARY 1950 TO JULY 1950.

In the
Supreme
Court of
Nigeria.

	NAME	PER MONTH	RATE			TOTAL			No. 28. Statement of Rents and Expenses. — October 1950— <i>continued.</i>	
			£	s.	d.	£	s.	d.		
	1. A2 Jinadu T. A. Bello	Jan. to July 1950	at	2	12	6	18	7	6	
	2. Joseph Opaleye	Jan. to June 1950	at	5	0	0	30	0	0	
	3. Peter Olanipekun	Jan. to June 1950	at	3	10	0	21	0	0	
	4. Samuel Adefila	Jan. to May 1950	at	2	0	0	10	0	0	
10	5. J. O. Oyedele	Jan. to May 1950	at	3	0	0	15	0	0	
	6. Raimi Kadiri	Jan. to May 1950	at	1	10	0	7	10	0	
	7. Peter Oyeyiola	Jan. to June 1950	at	1	10	0	9	0	0	
	8. M. A. Odusanya	May to July 1950	at	1	5	0	3	15	0	
	9. S. A. Odutaye	May to June 1950	at	4	0	0	8	0	0	
	10. T. A. Bello	May to July 1950	at	1	3	0	3	9	0	
Total Collection in 1950							£126	1	6	

(Sgd.) M. A. KASUNMU,
Rents Collector,

For Executors of late C. O. Kasunmu.

20 55 Great Bridge Street Lagos.

ACCOUNT OF RENTS COLLECTED FROM JANUARY 1949 TO DECEMBER 1949
IN RESPECT OF THE ABOVE PREMISES.

	TENANT'S NAME	MONTHS PAID	MONTHLY			TOTAL				
			£	s.	d.	£	s.	d.		
	1. A2 Jinadu T. A. Bello	Jan. -Dec. 1949	at	2	12	6	31	10	0	
	2. Joseph Opaleye	Jan. -Dec. 1949	at	5	0	0	60	0	0	
	3. Peter Olanipekun	Jan. -Dec. 1949	at	3	10	0	48	0	0	
	4. Samuel Adefila	Jan. -Dec. 1949	at	2	0	0	24	0	0	
	5. Bello Shitta	Jan. -Dec. 1949	at	2	5	0	27	0	0	
30	6. S. P. Fibresmer	Jan. -Nov. 1949	at	1	5	0	13	15	0	
	7. J. O. Iyedele	Jan. -Dec. 1949	at	3	0	0	36	0	0	
	8. Raimi Kadiri	Mar. -Dec. 1949	at	1	10	0	15	0	0	
	9. Peter Oyeyiola	April -Dec. 1949	at	1	10	0	13	10	0	
Total Collection in 1949							£262	15	0	

(Sgd.) M. A. KASUNMU,
Rents Collector,

For Executors of Late C. O. Kasunmu.

In the
Supreme
Court of
Nigeria.

55 Great Bridge Street Lagos.

**Re ACCOUNT OF RENTS COLLECTED FROM AUGUST 1948 TO DECEMBER 1948
IN RESPECT OF THE ABOVE PREMISES.**

No. 28.
Statement
of Rents
and
Expenses.
— October
1950—
continued.

TENANT'S NAME	MONTHS PAID	MONTHLY			TOTAL		
		£	s.	d.	£	s.	d.
1. A2 Jinadu T. A. Bello	Aug. -Dec. 1948	at 2	12	6	13	2	6
2. Joseph Opaleye	Sept. -Dec. 1948	at 5	0	0	20	0	0
3. Peter Olanipekun	Sep. -Dec. 1948	at 5	10	0	22	0	0
4. Buramo Olota	Nov. -Dec. 1948	at 3	0	0	6	0	0
5. S. D. Fibresmer	July -Dec. 1948	at 1	5	0	7	10	0
6. Bello Shitta	Aug. -Dec. 1948	at 2	5	0	11	5	0
Total Collection in 1948					£79 17 6		

(Sgd.) M. A. KASUMU,
Rents Collector,
For Executors of Late C. O. Kasumu.

No. 29.
Motion and
Affidavit
for Appoint-
ment of a
Receiver.
13th
January
1951.

No. 29.

Motion and Affidavit for Appointment of a Receiver.

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION.

Motion 12/6 } Paid on C.R. No. Suit No. 42 & 77/50. 20
Sealing 25/- } A 017585/261/17.1.51
Filing 2/6 } Sgd. ?

Between

GBADAMOSI BABA EGBE *Plaintiff*
and
PATIENCE KASUNMU & ORS. *Defendants.*

MOTION.

TAKE NOTICE that this Honourable Court will be moved on Monday 22nd of January 1951 or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an Order that the Senior Registrar or the Registrar of this Honourable Court or some other suitable officer of the Court be appointed as a Receiver to collect the rents of the property at No. 55, Great Bridge Street, Lagos pending the final determination of the above suit and such further or other orders as this Honourable Court may deem fit to make.

Dated at Lagos this 13th day of January, 1951.

THOMAS, WILLIAMS & KAYODE,
Plaintiff's Solicitors.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suits Nos. 42 & 77/50.

In the
Supreme
Court of
Nigeria.

Between

GBADAMOSI BABA EGBE *Plaintiffs*
and
PATIENCE KASUNMU & ORS. *Defendants.*

—
No. 29.
Motion
for Appoint-
ment of a
Receiver.
13th
January
1951—

AFFIDAVIT.

10 I, CHARLES EJUONE, URHOBO, British Protected Person, Clerk of
No. 42A, Kadara Street, Ebure-Metta do hereby make oath and say
as follows :—

continued.

1.—That I am a clerk in the chambers of Messrs. Thomas, Williams
and Kayode, the Solicitors to the above-named Gbadamosi Baba-Egbe
and I am familiar with the facts in this case.

20 2.—That the claim in Suit No. 42/50 is “ for an order for the redemption
of the property at No. 55, Great Bridge Street, Lagos mortgaged by the
Plaintiff to the late C. O. Kasunmu by deed dated the 22nd August, 1945
and registered as No. 65 at page 65 in Volume 620 of the Register of Deeds
kept at the Lands Registry in the office at Lagos. In the alternative the
2. The Plaintiff claims for a declaration that the said deed of mortgage is void.
2. The Plaintiff claims an account of all rents and mesne profits received
by the late C. O. Kasunmu from the said property and by the Defendant
since the death of the said Kasunmu. 3. Recovery of possession of the
said property.

The Defendants are sued as the Administrators of the Estate of the
late C. O. Kasunmu deceased.

30 3.—That the Court has ordered redemption of the said property and
has appointed Mr. Subair of the National Bank of Nigeria Ltd., to ascertain
the amount due on the mortgage and that such amount be paid to the
Estate of C. O. Kasunmu deceased.

4.—That the Defendants in Suit 42/1950 are still collecting rents from
the said property.

Sgd. ?

Sworn to at the Supreme Court }
Registry, Lagos, this 17th day }
January, 1951. }

Before Me,
Sgd. ?
Commissioner for Oaths.

40 4/- Paid on Cr. No.
A 017585/261/17.1.51
Intld. ?

In the
Supreme
Court of
Nigeria.

No. 30.

Proceedings, Appointment of Receiver

No. 30.
Proceed-
ings,
Appoint-
ment of
Receiver.
29th
January
1951.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Monday the 29th day of January, 1951.

Before His Honour, STEPHEN BANKOLE RHODES, Esq., C.B.E.,
Puisne Judge.

Suit No. 42/1950.

GBADAMOSI BABA-EGBE *vs.* KASUNMU & ORS.

F. R. WILLIAMS moving for Receiver to be appointed.

10

J. I. C. TAYLOR objecting.

WILLIAMS :—

Affidavit filed.

See Cootes Law of Mortgages Vol. 2 p. 954 8th Ed.

TAYLOR : Court concerned with judgment date and nothing else.

I am not prepared to grant this application as I see no reason for it.

COURT : As Mr. Subair has been reported ill and cannot proceed with
the Reference, the Court by consent of both Counsel appoint Barrister
O. Moore as the Referee on the same terms and conditions as Mr. Subair.
Costs of 3 guineas to Mr. Taylor.

20

Sgd. S. B. RHODES,
J.

No. 31.
Proceed-
ings before
Referee.
4th July
1951.

No. 31.

Proceedings before Referee.

Suit Nos. 42 & 77 of 1950 (Consolidated).

GBADAMOSI BABA EGBE *versus* PATIENCE KASUMU & OTHERS.

PATIENCE KASUMU & OTHERS *versus* GBADAMOSI BABA EGBE & OTHERS.

Reference held at 18, Tinubu Street, Lagos. Sitting commenced
4.15 p.m. 4/7/1951.

F. R. A. WILLIAMS for Gbadamosi Baba-Egbe.

30

J. I. C. TAYLOR for Patience Kasumu & Others.

Both Counsel agree that Report should cover two periods namely
(1) Account of rent collected and interest due up to filing of summons
dated 14th February, 1950, (2) Account of rent collected and interest due
up to 30th June, 1951.

TAYLOR calls :

ADELEYE KASUMU—Live at 122, Great Bridge Street, Lagos. Trader, Yoruba deposes on oath in English—I am one of the Administrators of the Estate of C. O. Kasumu (deceased)—Property at 55, Great Bridge Street, Lagos, was mortgaged to the late C. O. Kasumu. The cash advanced on the mortgage was £2,000 (deed has been tendered). Total amount due up to 14th February, 1950, on interest and capital was £3,337.10.0, when Summons was issued in Suit 42 of 1950. The total amount due up to 30th June, 1951, as principal and interest £3,750.0.0.

In the
Supreme
Court of
Nigeria.

No. 31.
Proceed-
ings before
Referee.
4th July
1951—
continued.

- 10 I tender copy of account filed showing rents collected. Capital and interest due up to 30th June, 1950 (Admitted and marked Ex. "A"). Rents collected if tenant paid regularly would be £29.0.6, but tenants were not paying regularly. Total rent collected from August 1948 — February 14th 1950 is £385.12.6. The total rent collected up to 30th June, 1951, cannot be stated by me as I have not prepared my account up to that period. Ex. "A" contains statement of Water Rates and Taxes paid up to April, 1950. The half yearly Rates and Taxes amount to £25.1.6.

I have since Ex. "A" paid in Rates and Taxes the sum of £50.3.0.

- 20 XXed by WILLIAMS: All receipts for Rates and Taxes paid by us have been submitted and are still in the Office of the Administrator-General. The rate of interest is 3d. in the £1 per mensem i.e. 15% per annum.

TAYLOR: No Re-examination.

TAYLOR closes case as far as the term of Reference go.

WILLIAMS says he is calling no evidence.

Reference adjourned Thursday 12th July, at 4.30 p.m.

No. 32.

Referee's Report with Statements annexed.

Suit Nos. 42 & 77 of 1950 (Consolidated).

- 30 GBADAMOSI BABA EGBE *versus* PATIENCE KASUMU & OTHERS.
PATIENCE KASUMU & OTHERS *versus* GBADAMOSI BABA EGBE & OTHERS.

No. 32.
Referee's
Report with
Statements
annexed.
17th & 25th
October
1951.

By an Order of the Supreme Court of Nigeria dated 29th January, 1951, I was appointed the Referee in the above mentioned matters "On the same terms and conditions as Mr. Subair who has been reported ill and cannot proceed with the Reference." For the terms of reference, therefore, it is necessary to refer to the judgment of Mr. Justice Rhodes

In the
Supreme
Court of
Nigeria.

No. 32.
Referee's
Report with
Statements
annexed.
17th & 25th
October
1951—
continued.

delivered on the 27th day of June, 1950—That an account be taken of the amount due on the mortgage as to determine what is actually owing on the mortgage up to the date of judgment i.e. 27/6/50.

I have to express my regret in delaying this report, but this has been due in the main to my ill health.

THE REPORT.

Evidence was led by the Plaintiff in Suit 77/1950 and an account tendered of rent collected for August, 1948, to February 1950. The Plaintiff's witness deposed that an account of total rent collected up to 30th June, 1951, cannot be stated by him as he has not prepared the account up to that period—I have, however, to prepare my report up to that day i.e. 30th June, 1951. 10

An account of Principal amount and interest due has also been submitted. This particular statement of account is dated as from August 22nd 1945, but no reason was given why the account of Principal and interest should have commenced on that day. I have, therefore in my account shown the rents collected and the mortgage account as from 1st October, 1947, when the mortgagee got into possession after the completion of the building. I, have, however, on a different Statement shown interest due from August 22nd 1945 to 1st October, 1947, should it be decided by 20 the Court that the mortgagor was liable for this period.

I have noticed that in presenting the mortgage account interest has been reckoned at the rate of 15%—this is contrary to section 13 of the Money Lenders Ordinance cap. 135 of the Laws of Nigeria. I have, therefore, reckoned the rate of interest on the permitted rate of the Ordinance i.e. 15% on the first £500 and 12½% on the balance of £1,500. The total interest due on this basis as from 1/10/1947–30/6/1950 is £721 17s. 6d. this added to the principal amount makes a grand total of £2,721 17s. 6d.

In taking the account I have decided on 1/10/1947 as the mortgagee 30 in the defence filed in Suit No. 42 of 1950, para. 7 avers that Certificate of Building completion was obtained on 5th September, 1947, and in my view should have let out the building by the 1st October, 1947—and if he fails to do so he will be held liable to account for what he should have collected as from that day. On this basis I have started the A/c of rents collected as from 1st October, 1947, though the Executors of the mortgagee cannot give an account for the period prior to 1st August, 1948, when they actually started receiving rent after the death of the mortgagee in June, 1948.

I have rejected the "account of rent collected" as tendered by the 40 Executors of the Mortgagee. This shows the ridiculous sum of £468.14.0 as amount collected as from August, 1948, to 30th June, 1950. According to this account the sum of £125.7.6 has to be deducted as payments for Rates and Taxes leaving a nett sum of £343.6.6 on the interest "A/c" on a Capital of £2,000.0.0 for the period of almost 3 years.

In my view a Mortgagee in Possession is liable to account for not merely what rents and profits has actually accrued, but also for what rent and profit should have accrued.

I have been able to start on a total rent of £29.0.6 monthly because the witness for the Executors deposed as follows "Rents collected if "tenants paid regularly would be £29.0.6." This is the rent, which in my view the Mortgagee should account for. I have taken this as the rent collected or which should have been collected by the deceased Mortgagee, himself, as this was a new letting in 1947 and I have no reason to suppose that there has been any increase of rent as from the first letting.

The total rent for the period 1/10/1947-30/6/1951 at £29.0.6 amounts to £1,306.2.6. I have deducted this sum from the total "A/c" of Principal and interest stated above to be £2,721.17.6 and obtained a balance of £1,415.15.0. To this sum I have added the sum of £125.7.6 being payments made for Rates and Taxes.

The sum I find due on the "A/c" taken as from 1st October, 1947 to 30th June, 1950, on both the mortgage account and the rent and profits account is the sum of £1,541.2.6d.

(Sgd.) OLADIPO MOORE,

Referee.

20

Certified true copy.
Senior Registrar.

Suit Nos. 42 & 77 of 1950 (Consolidated.)

GBADAMOSI BABA EGBE *versus* PATIENCE KASUMU AND OTHERS.
PATIENCE KASUMU and OTHER *versus* GBADAMOSI BABA EGBE AND OTHERS.

Account of Interest on £2000 at 15% for the first £500 and 12½% for the rest per annum.

		12½% on £1,500	15% on £500
		£ s. d.	£ s. d.
30	1/10/1947-31/12/1947 =	46 17 6	18 15 0
	1/1/ 1948-31/12/1948 =	187 10 0	75 0 0
	1/1/ 1949-31/12/1949 =	187 10 0	75 0 0
	1/1/ 1950-30/6/1950 =	93 15 0	37 10 0
		<hr/>	<hr/>
		£515 12 6	£206 5 0
		<hr/>	<hr/>

Dated at Lagos this 17th day of October, 1951.

Sgd. O. MOORE,

Referee.

In the
Supreme
Court of
Nigeria.

No. 32.
Referee's
Report with
Statements
annexed.
17th & 25th
October
1951—
continued.

In the
Supreme
Court of
Nigeria.

Suit Nos. 42 & 77 of 1950 (Consolidated).

GBADAMOSI BABA EGBE *versus* PATIENCE KASUNMU & OTHERS.

No. 32.
Referee's
Report with
Statements
annexed.
17th & 25th
October
1951—
continued.

PATIENCE KASUNMU AND OTHERS *versus* GBADAMOSI BABA EGBE AND
OTHER.

Total Rent at £29 0s. 6d. a month for Period
1/10/1947-30/6/1951.

Total Amount = £1,306 2s. 6d.

Dated at Lagos this 17th day of October, 1951.

Sgd. O. MOORE,
Referee. 10

Suit Nos. 42 & 77 of 1950 (Consolidated).

GBADAMOSI BABA EGBE *v.* PATIENCE KASUNMU & OTHERS
and

PATIENCE KASUNMU & OTHERS *v.* GBADAMOSI BABA EGBE AND OTHERS.

<i>1st Rec.</i>	<i>Debit</i>			<i>Credit</i>			
	£	s.	d.		£	s.	d.
To Capital Loan ...	2,000	0	0	By Receipts—Rents New Recdt.	1,306	2	6
„ Interest first				„ Balance due c/d	1,541	2	6 20
Recdt.	721	17	6				
„ Payments Rates	125	7	6				
	<u>£2,847 0 0</u>				<u>£2,847 5 0</u>		

To Balance Brought Down £1,541 2s. 6d.

Dated at Lagos this 17th day of October, 1951.

Sgd. O. MOORE,
Referee.

STATEMENT OF INTEREST.

CAPITAL—£2,000.

	<i>First £500</i>			<i>Rest £1,500</i>			<i>Total</i>			In the Supreme Court of Nigeria.			
	15%			12½%						No. 32.			
	£	s.	d.	£	s.	d.	£	s.	d.	Referee's Report with Statements annexed.			
1/10/45–31/12/45	=	18	15	0	=	46	17	6	=	65	12	6	17th & 25th October
1/1 /46–31/12/46	=	75	0	0	=	187	10	0	=	262	10	0	1951—
1/1 47–30/ 9/47	=	56	5	0	=	140	12	6	=	196	17	6	<i>continued.</i>
		<u>150</u>	<u>0</u>	<u>0</u>		<u>375</u>	<u>0</u>	<u>0</u>		<u>525</u>	<u>0</u>	<u>0</u>	

10 Dated at Lagos this 25th day of October, 1951.

Sgd. OLADIPO MOORE,
Referee.

No. 33.

Proceedings.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.No. 33.
Proceed-
ings.
29th
October
1951 to 5th
February
1952.

Monday the 29th day of October, 1951.

Before The Honourable Mr. Justice JAMES REALI GREGG,
Puisne Judge.

20

Suit No. 42/1950.

GBADAMOSI BABA-EGBE *vs.* PATIENCE KASUMU & ORS.

TAYLOR for Plaintiff.

DOCEMO for Defendants.

Case referred to referee. Referee's Report filed.

BY COURT : Adjourned to November 26, 1951 for mention.

Sgd. J. R. GREGG.
29/10/51.

In the
Supreme
Court of
Nigeria.

Monday the 26th day of November, 1951.

DOCEMO for Plaintiff in 1st case.
TAYLOR for Defendants.

No. 33.
Proceed-
ings.
29th
October
1951 to 5th
February
1952—
continued.
26th
November
1951.

Case heard by Rhodes J.
Referee's report on account filed.
Parties ask to have case put down for mention on December 3, 1951.

BY COURT : Adjourned to 3/12/51 for mention.

Sgd. J. R. GREGG.

3rd
December
1951.

Monday the 3rd day of December, 1951.

KAYODE for Plaintiff in 1st Suit.
,, ,, Defendant ,, 2nd ,,
TAYLOR for Defendant in 1st Suit.
,, ,, Plaintiff ,, 2nd ,,

10

Parties ask that case be put down for mention on 17/12/51. Matter for argument only.

Sgd. J. R. GREGG.

17th
December
1951.

Monday the 17th day of December, 1951.

WILLIAMS for Plaintiff. Referee has filed Report.
Parties ask for date on which to submit argument.

J. I. C. TAYLOR for Defendant.

20

BY COURT : Fixed for argument. February 5, 1951.

Intld. J. R. G. 17/12/51

5th
February
1952.

Tuesday the 5th day of February, 1952.

DOCEMO for Plaintiff. States he holds F. R. A. William's brief. Asks case to start.

J. I. C. TAYLOR for Defendant.

BY COURT : To stand to end of list.

Suit No. 42/1950.

In the
Supreme
Court of
Nigeria.

GBADAMOSI BABA EGBE vs. P. KASUNMU

DOCEMO for Plaintiff.

J. I. C. TAYLOR for Defendant.

No. 33.
Proceed-
ings.
29thOctober
1951 to 5th
February
1952—
continued.

TAYLOR : Plaintiff mortgaged his property to Defendant in August 1945 for £2,000. At this time there was a building being erected on property. It was not completed until September 1947. From 1945 up to 1947 the Plaintiff has paid no interest on mortgage. As from September 1947 the Defendant was collecting rent from the property.

10 Trial Judge held that there was no sale to us : Rent was collected by us from end of September 1947 i.e. October 1.

Case referred by Rhodes J. to referee refers to judgment of Rhodes J. of 27, June 1950 at bottom of p. 24.

Referee has found that a total of £1,541.2.6. is due by Plaintiff to Defendant. (See Referee's report filed.)

This is calculated on basis of rents being collected for 1st October, 1947 and also on basis of interest due on mortgage. J. Agrees with award.

Refers to paragraph 2 of referee's report.

20 Submits mortgagor liable from 22nd August, 1945 to 1st October 1947 for interest on mortgage.

If this added to amount already awarded prepared to accept.

Does not agree with finding of referee in paragraph 2 of report.

Interest should run from date of mortgage.

Mortgage deed accepted by Rhodes J.

F. R. A. WILLIAMS replies :

Referee's view was that interest should not be calculated until building was completed. Referee took view that the £2,000 was advanced to erect building. Estate total amount of £2,000 was not advanced at beginning : (To Court : There is no evidence of this.)

30 States he made application for receiver to be appointed but this refused.

States rents should be deducted from period up to which referee calculated rents i.e. 30 June 1950, up to 31st January, 1952.

States he wishes to raise formally provisions of S. 19 sub-section 4. of Money Lender's Ordinance. This requires Money Lenders to keep books. In the pleadings in this case it was admitted that no books were kept realises that this Court is bound by judgment of Mr. Justice Rhodes ; but proposes to raise provisions of Money Lender's Ordinance before W.A.C.A.

Defendant under moneylender's ordinance is not entitled to enforce anything against us.

40 Court should not, therefore, to grant the award recommended by referee.

J. I. C. TAYLOR states he wishes to object.

In the Supreme Court of Nigeria.
No. 33. Proceedings. 29th October 1951 to 5th February 1952—
continued.

States F. R. A. Williams never pleaded S. 19 of Moneylender's Ordinance.

All Court is concerned with is referee's report.

Counsel for Plaintiff cannot now rely on Money Lender's Ordinance.

F. R. A. WILLIAMS : Court can take into account rents collected up to 31st January 1952.

BY COURT : Decision to be given on February 26, 1952.

Sgd. J. R. GREGG.
5/2/52

No. 34. Judgment. 26th February 1952.

No. 34.

10

Judgment.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Tuesday the 26th day of February, 1952.

Before the Honourable Mr. Justice JAMES REALI GREGG, Puisne Judge.

Suit No. 42/1950.

GBADAMOSI BABA EGBE *Plaintiff*

versus

- 1. PATIENCE KASUMU
 - 2. MOSES A. KASUMU
 - 3. JAMES B. F. ODUWOLE
 - 4. ARTHUR T. OLUKOYA
- as the Administrators of the estate of C. O. Kasumu
(Deceased) *Defendants.*

and

Suit No. 77 of 1950.

- 1. PATIENCE KASUNMU
 - 2. M. A. KASUNMU
 - 3. J. B. F. ODUWOLE
 - 4. A. T. OLUKOYA
- as the Administratrix and Administrators of the estate of
C. O. Kasunmu *Plaintiffs*

versus

- 1. GBADAMOSI BABA-EGBE
- 2. MOMODU BALOGUN *Defendants.*

(Consolidated)

JUDGMENT.

In this matter I have heard submission by Counsel on the report of a referee filed in pursuance of a Supreme Court Judgment delivered by the late Mr. Justice Rhodes on the 27th of June 1950. The terms of reference are contained in the judgment.

The facts may be briefly stated as follows : By a mortgage deed dated the 22nd of August, 1945, the Plaintiff in Suit No. 42/50 mortgaged to the Defendant in the same suit a certain area of land for the sum of £2,000. At the time of the mortgage a building was in process of erection on the said land. The building was not completed until September 1947. From October 1, 1947, the Defendant collected rents from this building up until the date of judgment when Mr. Justice Rhodes ordered that an account be taken of the rents collected by the Defendant and that the amount due and owing as regards principal and interest up to the date of judgment be ascertained.

The referee, after taking the account ordered, has awarded the Defendant the sum of £1,541 2s. 6d. but has declined to reckon interest as from August 22, 1945, to October 1, 1947, on the ground that no reason was given why the account of principal and interest should have commenced on August 22nd. he accordingly starts his accounting as from October 1, 1947 to the date when he says the mortgagee got into possession of the building. He states, however, that he has shown on a separate statement what the interest from August 22, 1945 to October 1947 should be.

I have examined this statement but find that it commences on October 1, 1945, and not on August 22, 1945.

That being so, it still remains for the interest due from August 22 to October 1, 1945, to be calculated.

Having considered the submissions of Counsel I have decided to adopt the referee's award in favour of the Defendant of £1,541 2s. 6d. but to add thereto interest due on the principal as from August 22, 1945, to October 1, 1947. The interest from 1st October, 1945 to 30th September 1947 comes to £525. To this will have to be added interest calculated according to the scale followed by the referee from 22nd August, 1945, to 1st October, 1945.

Subject to the additions mentioned I adopt the referee's report and order that judgment be entered accordingly.

50 guineas costs to Defendant in Suit No. 42 of 1950. No order as to costs regarding Plaintiff.

Sgd. J. R. GREGG,
Puisne Judge.

In the
Supreme
Court of
Nigeria.

No. 34.
Judgment.
26th
February
1952—
continued.

In the
Supreme
Court of
Nigeria.

Motion and Affidavit for Stay of Execution

No. 35.
Motion and
Affidavit
for Stay of
Execution.
8th May
1952.

IN THE SUPREME COURT OF NIGERIA.
IN THE SUPREME COURT OF THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950.

Between

GBADAMOSI BABA EGBE *Plaintiff*

and

PATIENCE KASUNMU & ORS. 10
(as the Administrators of the Estate of C. O. Kasunmu
(Deceased)) *Defendants.*

MOTION ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on Monday the 12th day of May 1952 or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an order for stay of execution of the judgment in the above matter pending the determination of an appeal to be lodged on behalf of the Plaintiff and for such further order or other Orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 8th day of May, 1952. 20

THOMAS, WILLIAMS & KAYODE,
Solicitors to the Plaintiff.

Motion 12/6
Sealing 25/-

37/6 Paid on CR. No. A655704/118 of 8/5/52.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950.

Between

GBADAMOSI BABA EGBE *Plaintiff* 30
and

PATIENCE KASUNMU & ORS.
(As the Administrators of the Estate of C. O. KASUNMU
(Deceased)) *Defendants.*

AFFIDAVIT.

In the
Supreme
Court of
Nigeria.

I, FREDERICK ROTIMI ALADE WILLIAMS, Yoruba, British Subject, Legal Practitioner of the Supreme Court of Nigeria and of No. 41, Idumagbo Avenue, Lagos do hereby make oath and say as follows :—

No. 35.
Motion and
Affidavit
for Stay of
Execution.
8th May
1952—
continued.

1.—That I am one of the Counsel representing the Plaintiff in the above matter.

2.—That the action was for the redemption of the Plaintiff's property mortgaged to the Defendants' predecessor-in-title.

3.—That the Court has ordered redemption and that the property should be recovered to the Plaintiff upon payment by the latter of the amount due on the mortgage.

4.—That the Plaintiff was dissatisfied with the decision to pay the amount alleged to be due on the mortgage to the Defendants and intends to lodge an appeal to the West African Court of Appeal.

5.—That the amount due to the Plaintiff would work out as follows :—

	£	s.	d.
Amount awarded by Gregg J. in his judgment adopting referee's report	2,098	12	6
Deduct rents collected from 1st July 1950 to May, 1952 (i.e. from date of judgment Rhodes J.'s judgment till today at £29.0.6 a month) ...	667	11	6
Balance	1,431	1	0
Add costs	52	10	0
	£1,483	11	0

6.—That I am ready and willing to pay the amount of £1,483 11s. 0d. into Court pending the determination of the action.

Sgd. F. R. A. WILLIAMS.

Sworn to at the Supreme Court }
Registry, Lagos this 9th day }
30 of May, 1952.

Before me,
Sgd. J. T. GEORGE,
Commissioner for Oaths.

Oath 4/-
Filing 2/6

6/6 Paid on Cr. No. A655704/118 of 8/5/52.

In the
Supreme
Court of
Nigeria.

No. 36.

Proceedings re Stay of Execution.

No. 36.
Proceed-
ings re
Stay of
Execution
and Order.
12th & 19th
May 1952.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Monday the 12th day of May, 1952.

Before His Lordship Justice OLUMUYIWA JIBOWU,
Ag. Senior Puisne Judge

Suit No. 42/1950

GBADAMOSI BABA EGBE KASUMU & ORS.

Motion

10

Adjourned for a week.

Sgd. O. JIBOWU.
12/5/52.

GBADAMOSI BABA EGBE v. PATIENCE KASUMU & ORS.

19th May
1952.

Motion by Plaintiff for stay of execution of the judgment in this matter pending determination of appeal to be lodged to the W.A.C.A.

DOCEMO moves—Ibekwe for Taylor does not oppose.

ORDER that execution be stayed on condition that the Plaintiff pays into Court the judgment debt and costs in this case amounting to £1,483.11.0 into Court within a week and on condition that he enters his appeal to 20 W.A.C.A. within a week.

Sgd. O. JIBOWU,
Ag. Senior Puisne Judge.
19/5/52.

IN THE SUPREME COURT OF NIGERIA.
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 42/1950

Between

GBADAMOSI BABA EGBE Plaintiff

and

30

PATIENCE KASUNMU & ORS.

(As the Administrators of the Estate of C. O. Kasunmu
(Deceased)) Defendants.

UPON READING the Affidavit of Frederick Rotimi Alade Williams,
Yoruba, British Subject, Legal Practitioner of Supreme Court of Nigeria,

and of No. 41, Idumagbo Avenue, Lagos, sworn to and filed on the 9th day of May, 1952, and after hearing the said Counsel for and on behalf of the Plaintiff and Counsel for the Defendants on the application :

IT IS ORDERED that execution in the above-named matter be and is hereby stayed on condition that the Plaintiff pays into Court the judgment debt and costs in this case amounting to £1,483 11s. 0d. within one week from the date hereof AND on condition that the Plaintiff enters his appeal to the West African Court of Appeal within a week.

Dated at Lagos this 19th day of May, 1952.

In the
Supreme
Court of
Nigeria.

No. 36.
Proceed-
ings re
Stay of
Execution
and Order.
12th & 19th
May 1952—
continued.

10

Sgd. O. JIBOWU,
Ag. Senior Puisne Judge.

25/- Paid on
CR. No. A655704/118
of 8/5/52

No. 37.

Notice of Appeal.

In the West
African
Court of
Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.
NOTICE OF APPEAL.
(RULE 12.)

No. 37.
Notice of
Appeal.
22nd May
1952.

20

Suit No. 42/1950.

Between

GBADAMOSI BABA EGBE *Plaintiff*
and

1. PATIENCE KASUNMU
2. MOSES A. KASUNMU
3. JAMES B. F. ODUWOLE
4. ARTHUR T. OLUKOYA

(As the Administrators of the Estate of C. O. Kasunmu
(Deceased)) *Defendants.*

30

TAKE NOTICE that the Plaintiff being dissatisfied with the judgment of the Supreme Court Lagos contained in the judgment dated the 26th day of February, 1952 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND THE Appellant further states that the name and address of the persons directly affected by the appeal are those set out in paragraph 5.

2.—Whole decision.

3.—Grounds of Appeal :

In the West African Court of Appeal.

No. 37. Notice of Appeal. 22nd May —1952 continued.

1. The learned trial Judge erred in law in finding that any sum of money is due and payable to the Defendants when upon the facts admitted in the pleadings the loan by Defendants to Plaintiff is unenforceable.

4.—Relief sought from the West African Court of Appeal; that the judgment of the Court below be set aside and for any further or other order as the Court may deem fit in the circumstances.

5.—Persons directly affected by the Appeal:

Name	Address	
Patience Kasumu ...	c/o 1, Balogun Street West, Lagos	10
Moses A. Kasumu ...	c/o " " "	
J. B. F. Oduwole ...	c/o " " "	
A. T. Olukoya ...	c/o " " "	

Dated this 22nd day of May, 1952.

Sgd. THOMAS, WILLIAMS & KAYODE, *Appellant's Solicitors.*

Filing Motion of Appeal £5 0s. 0d.
Paid on Cr. No. A655865/62 of 22/5/52.
Service etc. 7/6 Paid on Cr. No. A656039/403 of 22/5/52 20

No. 38. Judge's Notes. 17th & 18th November 1953.

No. 38.

Judge's Notes.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Tuesday the 17th day of November, 1953.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.
Sir JOHN VERITY, Chief Justice, Nigeria.
Sir JAMES HENLEY COUSSEY, Justice of Appeal.

Between 30

GBADAMOSI BABA-EGBE *Appellant*

and

1. PATIENCE KASUMU & 3 ORS. }
As Administrators and Administratrix of the Estate of } *Respondents.*
C. O. Kasumu (deceased)

Mr. F. R. A. WILLIAMS for Appellants.
Mr. TAYLOR for Respondents.

In the West
African
Court of
Appeal.

WILLIAMS :

Only one point—

—O. 32 R. 13—English.—O. 19. R. 15.

Pleadings Statement of Claim p. 7.

Paragraph (10)—“ kept no book.”

Defence—paragraph 4—“ admit no book.” p. 11 of Record.

Re. Robinson's Settlement—(1912) 1 Ch. p. 717.

10 *Cohen vs. Lester Ltd.* (1938) 4 A.E.R. p. 188.

Not asking for anything more than that Judgment be set aside.

No. 38.
Judge's
Notes.
17th & 18th
November
1953—
continued.

TAYLOR :

Appellant was the Plaintiff in 42 of 1950. Statement of Claim governed by O. 32. RR. 5-7—Relief sought p. 1—Writ of Summons p. 2. A person asking for redemption or alternatively that it be declared void.—“ Shall not be entitled to enforce.” Sec. 19 (2) & (4) Moneylenders Ordinance Cap. 136.

Summons should have asked for a declaration that the mortgage is unenforceable—not void—a very different thing.

20

Adjourned.

(Intld.) S.F.S.P.,
17.11.53.

Wednesday the 18th day of November, 1953.

Counsel as before.

18th
November
1953.

TAYLOR :

In re: Robinson's Settlement, Distinction—between case where a Contract is illegal on the face of it and case where one of the parties has offended against some Statutory provision. This Contract was valid in first instance but rendered unenforceable by failure to keep books.
30 Contract here was Exhibit “ B ”—p. 68 of Record. Moneylending transaction was merged into Mortgage—£2,000. Receipt acknowledged.

Section 2 (1) (c) Moneylenders Act, 1900. Contract is merely unenforceable—was not pleaded—Appellant was the Plaintiff in this case—42/1950. Refers to *Cheshire v. Fifoot on Contracts*, p. 218, p. 219. *Harry Parker Ltd. v. Mason* (1940) Vol. 4. A.E.R. P. 199 at p. 201.

Taylor—“ I concede that Loan and Mortgage are unenforceable ” “ because Cap. 136, 19 (4) says it may not be enforced,” but the Moneylenders Ordinance should have been pleaded—not have pleaded it they must be deemed to have waived it. O. 32 R. 7—

40

Refers to p. 1.

O. 32 R. 7 Every Statement of Claim shall state specifically the relief Claimed—admits that writ and Statement of Claim asked that mortgage

In the West
African
Court of
Appeal.

No. 38.
Judge's
Notes
17th and
18th
November
1953—
continued.

be declared void—reason kept no books—submits that he should have asked that Court declared the Mortgage “unenforceable”—not void.

(1907) 1 Ch. P. 300.

Parker J. at P. 308.

Person seeking equity must do equity. If borrower comes to a Court of Equity he must do Justice himself.

Asks Court to take action under W.A.C.A. Rule 36.

WILLIAMS :

Asking that judgment ordering us to pay money be set aside.

We did not ask for an account of what we owed—we asked for an 10 account of Rents received.

Suggests we should allow appeal—set aside Judgment of Gregg J. and declare that the mortgage Exhibit “B” is unenforceable.

Void—unenforceable—only asking Court to apply the law—submits that effect of “unenforceable” as against the Moneylender is “void.”

Refers to Section 19 (3), Cap. 136.

It may be that Court in an Equitable action may—if a Contract is illegal—as distinct from unenforceable. Require the party seeking Relief to come with clean hands.

Cohen v. Lester Ltd., applies (1938) 4 A.E.R. P. 188. Reads from p. 192. 20

I merely cited *Robinson's* case on point of pleadings.

I am not seeking to enforce any Contract—nor seeking to enforce Exhibit “B”—mortgage—I am claiming in spite of Mortgage—but note He claimed Redemption so to that extent anyway he was suing—relying on mortgage—

C.A.V.

18.11.53. (Intld.) S.F.S.P.

No. 39.

Judgment.

In the West
African
Court of
Appeal.IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.No. 39.
Judgment.
22nd
February
1954

Monday the 22nd day of February, 1954.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.

Sir JOHN VERITY, Chief Justice, Nigeria.

Sir JAMES HENLEY COUSSEY, Justice of Appeal.

10

WACA. 158/1953.

Between

GBADAMOSI BABA-EGBE *Plaintiff*

and

1. PATIENCE KASUMU

2. MOSES ADELEYE KASUMU

3. JAMES BASANYA F. ODUWOLE

4. ARTHUR TAIWO OLUKOYA, etc. *Defendants*

and

1. PATIENCE KASUMU

20 2. MOSES ADELEYE KASUMU

3. JAMES BASANYA F. ODUWOLE

4. ARTHUR TAIWO OLUKOYA etc. *Plaintiffs/Respondents*

and

1. GBADAMOSI BABA-EGBE

2. MOMODU BALOGUN *Defendants/Appellants.*

JUDGMENT.

(Delivered by COUSSEY, J.A.)

In the first of these actions which were consolidated for trial, the Plaintiff sued the Defendants as administrators of the estate of C. O. Kasumu deceased

30

- (i) for an order for redemption of property at 55, Great Bridge Street, Lagos, which the Plaintiff had mortgaged to C. O. Kasumu by deed dated 22nd August, 1945. In the alternative for a declaration that the deed of mortgage is void ;
- (ii) an account of all rents and mesne profits received by C. O. Kasumu and by the Defendants as administrators since Kasumu's death ;
- (iii) recovery of possession of the mortgaged property.

In the West
African
Court of
Appeal.

No. 39.
Judgment.
22nd
February
1954—
continued.

In the second action the administrators of C. O. Kasumu as Plaintiffs sued the 1st Defendant (Plaintiff in the first action) for specific performance of an agreement whereby in consideration of the sum of £2,250 being principal and interest money due on the mortgage referred to, the Plaintiff in the first action (who will hereafter in this judgment be referred to as the mortgagor) agreed to assign his leasehold interest in the mortgaged property to the deceased C. O. Kasumu.

There was a further claim that a purported sale by the mortgagor to the 2nd Defendant in the second action be set aside. The 2nd Defendant was dismissed from the suit. As nothing turns on the second claim in 10 deciding this appeal, it need not be further referred to.

As to the alternative claim under the first head of claim in the first suit, namely that the deed of mortgage is void, the Plaintiff by his Statement of Claim alleged that the true state of the mortgage account could not be ascertained as C. O. Kasumu (who will be referred to as the mortgagee) kept no book. In consequence, it was alleged, the Defendant-administrators had assumed that the principal amount lent was £2,000, being the sum expressed in the deed of mortgage whereas, according to the mortgagor, sums of money amounting in the aggregate to £1,156 were 20 advanced by the mortgagee who took receipts for these sums, not as advances on account of the mortgage, but as part payment towards the purchase-price of the property.

In the defence filed, it was admitted that no book was kept in which was entered the principal amount advanced to the Plaintiff but the Defendants relied on the recital in the deed of mortgage of the agreement to loan £2,000 as proof that £2,000 was, in fact, advanced. The administrators also claimed 15% interest.

In the second suit, No. 77/1950, the mortgagor did not plead that a book was not kept by the mortgagee in answer to the claim for specific performance by the execution of a deed of assignment of the property to 30 the administrators of the deceased mortgagee.

At the hearing of the consolidated actions, Mr. Williams for the mortgagor raised an important contention having regard to the allegations in the Statement of Claim in the first suit and the admission already referred to, namely that the mortgagee, being a money-lender and the mortgage a money-lending transaction, no claim on the mortgage was enforceable as the mortgagee, in contravention of section 19 (2-4) of the Moneylenders Ordinance Cap. 136, had not kept a book or made entries of the loan as required by the sections of the Ordinance referred to.

To this Mr. Taylor for the administrators objected that the Money- 40 Lenders Ordinance had not been pleaded and therefore the point could not be raised. The learned Judge appears to have upheld the administrators' submission. In his judgment the learned Judge in effect held that the claim on mortgage was enforceable for he ordered an account to be taken by a Referee and entered an interlocutory judgment for redemption of the mortgaged property on ascertainment of the amount due on the mortgage and payment thereof to the estate of the deceased mortgagee.

The account having been enquired into and reported upon by the Referee, the Court on the 26th February, 1952, adopted the Referee's report which found £1,541 2s. 6d. to be due and owing on the mortgage deed, added thereto interest at 15% and entered judgment accordingly in the consolidated suits.

Before judgment, however, Mr. Williams had preserved the mortgagor's attitude by raising his earlier contention that the claim on the mortgage was unenforceable for the reasons and by virtue of the Ordinance already set out. This point is not considered in the final judgment as the Court at that stage was apparently concerned with the Referee's report only. It is the only point raised in the appeal to this Court but other matters arise therefrom for the consideration of the Court.

Section 19 (sub-sections 2, 3 and 4) of the Money Lenders Ordinance Cap. 136 provide—

* * * *

“ (2) Every money-lender shall keep a book (which shall be
 “ securely bound and paged so that leaves cannot be removed or
 “ inserted without apparent damage) in which he shall enter in
 “ connexion with every loan made by him
 “ (a) the date on which the loan was made ;
 “ (b) the amount of the principal ;
 “ (c) the rate of interest ;
 “ (d) all sums received in respect of the loan or the interest
 “ thereon, with the date of payment thereof,
 “ and shall produce such book when required to do so by any
 “ court.
 “ (3) The entries in the said book shall be made forthwith on
 “ the making of the loan or the receipt of sums paid in respect
 “ thereof as the case may be.
 “ (4) Any money-lender who fails to comply with any of the
 “ requirements of this section shall not be entitled to enforce any
 “ claim in respect of any transaction in relation to which the
 “ default shall have been made. He shall also be guilty of an
 “ offence under this Ordinance and shall be liable on conviction
 “ to a fine of ten pounds or in the case of a continuing offence to
 “ a fine of five pounds for each day or part of a day during which
 “ such offence continues.”

After some argument and finally under pressure Mr. Taylor for the administrators conceded that the claim for moneys due on the mortgage could not be enforced as the above sections of the Ordinance had not been complied with by the mortgagee. He invited the Court to hold, however, that the mortgagee had failed to plead the Ordinance and that having failed to do so, he must be deemed to have waived the provisions of the Ordinance which had been enacted for his protection as a borrower. He also maintains that in any event the mortgagor should be put on terms of repaying the mortgage debt as his is an appeal to the equitable jurisdiction of the Court.

In the West
African
Court of
Appeal.

No. 39.
Judgment.
22nd
February
1954—
continued.

In the West
African
Court of
Appeal.

No. 39.
Judgment.
22nd
February
1954—
continued.

In considering the first contention, it is impossible to disregard the fact that the mortgagee's claim is admittedly unenforceable. It is true that by his writ the mortgagor sought to have the deed declared void, and that the only fact alleged in his Statement of Claim in support of that part of the claim is that the mortgagor kept no book. As, however, the administrators in their defence admit that no book was kept and it is now conceded that the claim on the mortgage is unenforceable, the point of pleading ceases to be a major matter for decision. But I would hold that in these cases, consolidated as they were for hearing, the administrators not only had sufficient notice of a fact which rendered the claim unenforceable, 10 but they themselves admitted that fact.

Moreover I would, with respect adopt the reasonings of Cozens Hardy, M.R. in *In re Robinson's Settlement* 1912, 1 Ch. p. 717 at p. 725—

“ No Court ought to enforce an illegal contract or allow itself
“ to be made the instrument of enforcing an obligation alleged to
“ arise out of a contract or transaction which is illegal, if the
“ illegality is duly brought to the notice of the Court and if the
“ person invoking the aid of the Court is himself implicated in
“ the illegality.”

He goes on—

“ I think it would be quite preposterous for us to allow the
“ Plaintiff to recover against Stevens upon this illegal contract
“ simply on the ground that he has not in terms referred to the
“ Moneylenders Act.”

20

In *Chapman v. Michaelson* 1908, 2 Ch. 612 Eve, J., at p. 621 would not take upon himself to determine whether a statutory illegality could be waived, but I think, he would have held that it could not if the question had arisen on the form of the pleadings as it does in this case.

In the present case the claim on the contract is by the Ordinance declared unenforceable; the contract is not declared illegal, but the 30 principle is equally applicable.

Section 19 (4) of the Ordinance does not impose a penalty once for all. It goes to provide that in the case of a continuing offence a person shall be liable to a fine for each day the offence continues. In such case the omission to keep a book is a prohibited act and therefore an illegal act. In framing his writ for a declaration that the deed of mortgage is void, the Plaintiff may well have reasoned that the omission to keep a book, being an illegal act it rendered the contract in respect of which the omission had been made also illegal and therefore void.

The true position, however, as stated already is that section 19 (4) does 40 not declare the transaction itself illegal or void, but provides that no claim in respect of it shall be enforced.

Coming to Mr. Taylor's second submission—this distinction between an illegal contract and an unenforceable contract was considered in the case of *Cohen v. Lester Ltd.* 1938 4 A.E.R. 188 which bears some marked similarities to the present case. In that case it was admitted that the

money-lenders did not comply with the sixth section of the Money-Lenders Act 1927 which provides that no contract for repayment of money lent and no security given in respect of such contract shall be enforceable unless a note or memorandum of the contract be made and signed by the borrower, etc.

It was conceded that the contract was unenforceable but it was contended, as Mr. Taylor has contended here, on the authority of *Lodge v. National Union Investment Co. Ltd.*, 1907, 1 Ch. 300 that as the Plaintiff was applying to the equitable jurisdiction of the Court (as the mortgagor does in the present case) he could get that relief which, in *Cohen v. Lester Ltd.* was for an order for return of jewellery deposited as security, only on the terms of paying the sum due.

In his judgment Tucker, J., said at p. 193—

“I think that distinction has to be drawn between a case like that of *Lodge v. National Union Investment Co. Ltd.* where the transaction was illegal and a transaction of this kind which the statute says shall be unenforceable.”

And earlier at p. 192 :—

“What I have to decide is whether there is a distinction between contracts which are stated to be illegal and those which are stated to be unenforceable with regard to the principle applicable to the obtaining of relief and getting repayment of money paid by way of security. It is common ground that, under sec. 6 where there has been non-compliance, the borrower can apply to the Court for relief, and amongst the relief that he can get is an order for the delivery up of promissory notes that have been given in respect of transactions, and also for the delivery up and/or cancellation of bills of sale that have been given by way of security. It has been decided, and it is accepted by Counsel as being the law, that in those cases the borrower is not put upon terms as to repayment of the money that is due, but is entitled to keep the money he has received and nevertheless have a declaration made that the contracts under which he obtained the money are unenforceable, and so he is entitled to delivery up and cancellation of the notes and/or bills of sale given in pursuance of those contracts.”

In my opinion the principles stated above apply in this case and it follows that Mr. Taylor's prayer that the mortgagor be placed on terms cannot be upheld. It is only necessary to add that in suit No. 77/50 the administrators, in praying specific performance that the mortgagor do execute a deed of assignment for £2,700 as due on the mortgage are, in my opinion, seeking to enforce a contract arising from a transaction which is declared to be unenforceable. “The statute is like a tyrant; when he comes he makes all void.” It follows that the claim in suit No. 77/50 wholly fails and the judgment of the Court below finding £1,541 2s. 6d. and interest to be due to the administrators is set aside.

In the West
African
Court of
Appeal.

No. 39.
Judgment.
22nd
February
1954—
continued.

In the West
African
Court of
Appeal.

No. 39.
Judgment.
22nd
February
1954—
continued.

In suit No. 42/50 the mortgagor is entitled to (1) a declaration that the mortgage transaction is unenforceable by reason of the mortgagee's non-compliance with the Money-Lenders Ordinance Cap. 136, and (2) recovery of possession of the premises, which involves the cancellation and delivery up of the deed of mortgage and delivery up of the mortgagor's title deeds for although this is not specifically claimed by the mortgagor, it would manifestly be inequitable for the administrators to retain the deeds.

(Sgd.) J. HENLEY COUSSEY,
J.A.

FOSTER-SUTTON, P. : I concur.

10

(Sgd.) S. FOSTER SUTTON,
P.

VERITY, C.J. (Nig.) : I concur.

(Sgd.) J. VERITY,
C.J.

ORDER.

Appeal in the consolidated suits allowed. The judgment appealed from is set aside. AND IT IS DECLARED that the mortgage transaction, the subject of the action is unenforceable. IT IS FURTHER ORDERED that the Respondents, the Administrators of C. O. Kasumu deceased shall deliver up possession to the Appellant of the premises in the Deed of mortgage and writ of summons described. AND IT IS HEREBY DECLARED that the Deed of Mortgage is cancelled and the deed of mortgage and Appellant's title deeds to the premises shall be delivered to him by the Respondents. 20

The judgment appealed from awarding the Respondents £1,541 2s. 6d. and interest is also set aside. The orders as to costs in favour of the Respondents are set aside and IT IS ORDERED that the Appellant shall have his costs in the trial Court to be taxed. Any costs already paid to the Respondents in the suit to be refunded by them. 30

Costs of this appeal for the Appellant are fixed at £61 14s.

IT IS ALSO ORDERED that any monies paid into Court as a result of the Order of Jibowu, J., made on the 19th day of May, 1952, on the motion for a stay of execution, be paid out to the Appellant.

(Sgd.) S. FOSTER SUTTON,
P.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Suits Nos. 42 & 77/1950.
WACA. 158/1953.

No. 40.
Order.
22nd
February
1954.

On Appeal from the Judgment of the Supreme Court in the Lagos
Judicial Division.

Between

10 GBADAMOSI BABA-EGBE *Appellant*
and

- 1. PATIENCE KASUMU
- 2. MOSES ADELEYE KASUMU
- 3. JAMES BASANYA FERGUSON ODUWOLE
- 4. ARTHUR TAIWO OLUKOYA

As the Administratrix and Administrators of the Estate of
C. O. Kasumu (Deceased) *Respondents.*

(L.S.)

(Sgd.) S. FOSTER SUTTON,
President.

20 Monday the 22nd day of February, 1954.

UPON READING the Record of Appeal herein and after hearing Mr. F. R. A. Williams of Counsel for the Appellant and Mr. J. I. C. Taylor of Counsel for the Respondents ;

IT IS ORDERED that the appeal in the consolidated suits be allowed and that the judgment of the Supreme Court in Suit No. 77/1950 finding £1,541 2s. 6d. and interest to be due to the Respondents, the Administrators of C. O. Kasumu, deceased, and the orders as to costs in favour of the Respondents be wholly set aside ;

30 AND IT IS FURTHER ORDERED that any costs paid to the Respondents in the suit be refunded by the Respondents.

AND THE COURT DOETH DECLARE that in Suit No. 42/1950 the mortgagor is entitled to a declaration that the mortgage transaction the subject of the action is unenforceable by reason of the mortgagee's non-compliance with the Money-lender's Ordinance Cap. 136, and to recovery of possession of the premises in the deed of mortgage and writ of summons described AND that the deed of mortgage and Appellant's title deeds to the premises shall be delivered up to him by the Respondents.

40 AND IT IS ALSO ORDERED that any monies paid into Court as a result of the order of Jibowu, J., made on the 19th May 1952 on the motion for a stay of execution be paid out to the Appellant.

AND THAT the Respondents do pay to the Appellant costs, in the Supreme Court, to be taxed, and costs of this appeal fixed at £61 14s. 0d.

(Sgd.) J. BENNETT,
Deputy Registrar.

In the West African Court of Appeal.

No. 41.

Order granting Final Leave to Appeal to Privy Council.

No. 41. Order granting Final Leave to Appeal to Privy Council. 5th July 1954.

IN THE WEST AFRICAN COURT OF APPEAL.

HOLDEN AT LAGOS, NIGERIA.

Suits Nos. 42 & 77 1950. W.A.C.A. 158/1953.

Application for an order for final leave to appeal to Her Majesty's Privy Council.

Between

- 1. PATIENCE KASUMU
 - 2. MOSES ADELEYE KASUMU
 - 3. JAMES BASANYA FERGUSON ODUWOLE
 - 4. ARTHUR TAIWO OLUKOYA
- As the Administratrix and Administrators of the Estate of C. O. Kasumu (deceased) *Appellants*
- and
- GBADAMOSI BABA-EGBE *Respondent.*
(L.S.)

(Sgd.) M. DE COMARMOND, *Presiding Judge.* 20

Monday the 5th day of July, 1954.

UPON READING the application herein and the affidavit sworn to on the 19th day of June, 1954, filed on behalf of the Appellants and after hearing Miss G. Rhodes of Counsel for the Appellants, the Respondents not being present or represented :

IT IS ORDERED that final leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated the 22nd day of February, 1954, be granted to the Appellants.

(Sgd.) J. A. SMITH, *Deputy Registrar.* 30



EXHIBITS.

Exhibit " A. "—Letter, Lagos Executive Development Board to
C. O. Kasunmu, with Lease referred to therein.

EXHIBIT " A " TENDERED BY PLAINTIFF PRODUCED BY MR. J. I. C. TAYLOR.
Suit 42 & 77/50.
Sgd. ?

15/6/50.
No. B. 00244C/74/26.
Lagos Executive Development Board,
30 Marina, Lagos.
13th September, 1946.

10

Mr. C. O. Kasunmu
27 Omididun Street,
Lagos.

Sir,

Deed for lease regd. as No. 32/32/626.
for Plot 10 in Block 21 : Lagos.

I have the honour to return herewith the original of the above-named
deed duly endorsed with the building covenant extended to 31st December
20 1946.

2. Please acknowledge receipt.

I have the honour to be,
Sir,
Your Obedient Servant,

Sgd. ?

Chairman,

Lagos Executive Development Board.

Original £1
10379.

L.E.D.B. 17.

30 INDENTURE OF LEASE OF LAND BY THE LAGOS EXECUTIVE DEVELOPMENT
BOARD.

Situation :—IDUMAGBO DISTRICT, LAGOS.

Block No. 21 Plot No. 10 shewn on Deposited Plan No. NLD.C. 332 Date
of Lease 13th August 1943

Name of Lessee GBADAMOSI BABA-EGBE (who and whose heirs executors
administrators and assigns are hereinafter designated and included in the
term " the Lessee ").

40 The Chairman of the Lagos Executive Development Board (who and
whose successors in office and in title are hereinafter designated and included
in the term " the Lessor ") on behalf of the Lagos Executive Development
Board by powers conferred under the Lagos Town Planning Ordinance,

Exhibits.

" A. "

Letter,
Lagos
Executive
Develop-
ment Board
to C. O.
Kasunmu
(with Lease
referred to
therein),
13th
September
1946.

Exhibits. 1928, DEMISES the land comprised in the Plot above referred to SUBJECT
 " A." to the covenants and conditions contained in Section 6 excepting sub-section
 Letter, (ii) (a) thereof, Section 7, Section 14 to 24 inclusive and Section 33 of the
 Lagos Crown Lands Ordinance Chapter 84 provided always (a) that the term " the
 Executive Chairman of the Lagos Executive Development Board " shall be substituted
 Development Board in the said sections for the terms " the Governor " and " the Commissioner
 to C. O. of Lands " wherever they occur (b) that the term " the Lagos Executive
 Kasunmu Development Board " shall be substituted in the said sections for the terms
 (with Lease " the Crown " and " His Majesty " and the term " this lease " shall be
 referred to substituted in the said sections for the terms " every lease under this 10
 therein). Ordinance " " a lease under this Ordinance," " any lease under this
 13th Ordinance or under any Ordinance repealed by this Ordinance " or terms
 September worded similarly to them and the term " lease " shall be substituted for
 1946— the term " Ordinance " in the said sections wherever they occur except in
continued. so far as the context otherwise requires and (c) that wherever there is any
 inconsistency between the covenants and conditions implied by virtue of
 the said sections of the Crown Lands Ordinance and any of the covenants
 and conditions specifically set out in these presents the latter shall prevail
 AND SUBJECT ALSO TO the special covenants and conditions hereinafter
 contains. That is to say :— 20
 Term of Lease 99 years from 1st August, 1943
 Rent £24.9.7d. per annum.
 Revision periods every 20 years.

THE LESSEE COVENANTS with the Lessor as follows :—

- (a) To pay at the office appointed by the Lessor the said yearly rent by equal half-yearly payments on the 1st day of January and the 1st day of July in every year of the said term hereby created the first such half-yearly payment being made on the 1st day of January, 1944.
- (b) To erect and complete on the land demised buildings of a value 30 of not less than £200 : to the satisfaction of the Lessor the said buildings to be completed by 31st December, 1945.
 " The period specified in the building covenant in this lease
 " (Registered as No. 32 at page 32 in Volume 626) has been extended
 " to 31st December 1946."
- (c) To maintain all buildings and other structures on the said land in good and tenantable repair throughout the said term hereby created.
- (d) To maintain in repair to the satisfaction of the Lessor or of such officer as he may appoint in this behalf all boundary marks placed 40 or erected to denote the boundaries of the land hereby leased.

SPECIAL TERMS : 1. The plot to be used for Residential and Commercial purposes only.

2. The Plot to be fenced by 31st December, 1945, to the satisfaction of the Lessor.

3. The sum of £10.4/- being proportionate rent from 1/8/43 to 31/12/43 to be paid by the Lessee on the execution of the Lease.

This lease carried an OPTION to purchase the freehold under conditions hereinafter appearing.

Exhibits.

"A."

Letter, Lagos Executive Development Board to C. O. Kasunmu (with Lease referred to therein).
13th September 1946—
continued.

10 Signed, sealed and delivered on behalf of }
Lagos Executive Development Board }

Sgd. ?
Chairman of the Board.

Witness to signature Sgd ?
Occupation *Secretary.*
Address Lagos Executive Development Board.

20

Signed, sealed and delivered by } GBADAMOSI BABA EGBE.
the aforesaid Lessee }
His
X
Left thumb impression.

30 Witness to Signature (Sgd.) ?
Occupation Police Magistrate
Address 1, Abule Nla Village, Ebute-Metta.

OPTION TO PURCHASE FREEHOLD.

40 On compliance with the provision for Building to the satisfaction of the Lessor and on payment of all rent rates and taxes falling due up to the time of such compliance or the exercise of the option hereinafter provided for whichever is the later the Lessee shall during a period of six months after such compliance be entitled to exercise an option to purchase the freehold of the said Plot for sum of £408 upon such general terms as may be approved by the Lagos Executive Development Board and in the event of the exercise of such option within the said period of six months there shall be deducted from the sum of £408 to be paid for the purchase of such freehold as aforesaid a sum equal to the rent paid by the Lessee as hereinbefore provided in respect of the period occupied by the Lessee in complying respectively with the provisions for building and for exercise of such option to purchase as hereinbefore mentioned.

Exhibits.

Exhibit " B. "—Mortgage, G. B. Egbe to C. O. Kasumu.

" B. "
Mortgage,
G. B. Egbe
to C. O.
Kasumu.
22nd
August
1945.

EXHIBIT " B " TENDERED BY PLAINTIFF PRODUCED BY Mr. J. I. C. TAYLOR
Suit No. 42 & 77/50.

Sgd. ?
15/6/50.

THIS INDENTURE made the 22nd day of August, 1945, BETWEEN Gbadamosi Baba Egbe Trader of No. 14 Doherty Street, Lagos, Nigeria (hereinafter called "the Borrower" which expression shall wherever the context so admits include his heirs legal personal representatives and assigns) of the one part and Christopher Olatunji Kasumu Licensed Money Lender of No. 27, Omididun Street, Lagos, Nigeria aforesaid (hereinafter called "the Lender" which expression shall wherever the context so admits include his heirs legal personal representatives and assigns) of the other part. 10

WHEREAS by an Instrument of Lease dated the 13th day of August 1943 and registered as No. 32 at page 32 in Volume 626 of the Lands Registry in the Office at Lagos, Nigeria aforesaid All that Piece or Parcel of land situate at Idumagbo District in Lagos, Nigeria aforesaid and known as Plot No. 10 in Block No. 21 was demised to the Borrower for the term of 99 years from the 1st day of August, 1943, at the yearly rent of £24.9.7d. (Twenty four pounds nine shillings and seven pence) sterling and subject to the covenants by the Borrower and the conditions contained in the said instrument of Lease. 20

AND WHEREAS the Lender has agreed to advance to the Borrower the sum of £2,000 (Two thousand pounds) sterling upon having the repayment thereof with interest thereon as hereinafter mentioned secured in manner hereinafter expressed NOW THIS INDENTURE WITNESSETH and it is hereby agreed and declared as follows :—

1. IN PURSUANCE of the said agreement and in consideration of the sum of £2,000 (Two thousand pounds) sterling now paid to the Borrower by the Lender (the receipt whereof the Borrower hereby acknowledges) the Borrower hereby covenants with the Lender to pay to the Lender on the 30th day of September 1946 the sum of £2,000. (Two thousand pounds) sterling with interest thereon from the date hereof at the rate of Fifteen pounds per centum per annum. AND ALSO so long as any principal money remains due under these presents after the said 30th day of September 1946 to pay to the Lender interest thereon at the rate aforesaid by monthly payments. 30

2. FOR the consideration aforesaid the Borrower as Beneficial Owner hereby assigns unto the Lender ALL the premises comprised in and demised by the said Instrument of Lease with the messuage and other buildings erected thereon TO HOLD UNTO the Lender for the residue of the term granted by the said Instrument of Lease thereof subject to the proviso for redemption following namely that if the Borrower or the persons deriving title under him shall pay to the Lender on the 30th day of September 1946 40

the sum of £2,000 (Two thousand pounds) sterling with interest thereon from the date hereof at the rate aforesaid then the said hereditaments shall at the request and cost of the Borrower or the persons deriving title under him be duly re-assigned to him or them.

3. THE BORROWER hereby covenants with the Lender that so long as any money remains due under these presents the Borrower or the persons deriving title under him will repair and keep in good repair all buildings upon the said hereditaments and will insure and keep insured in some Insurance Office approved by the Lender all the said buildings against loss or damage by fire in the joint names of the Borrower and the Lender in the sum of £2,500. (Two thousand five hundred pounds) sterling at least and will punctually pay every sum from time to time payable for keeping in force such insurance and will forthwith deliver to the Lender the policy or policies of Insurance and also when required will deliver to him the receipt for every sum payable as aforesaid.

4. SECTION 17 and Section 18 Sub-section (1) of the Conveyancing Acts 1881, 1882 and 1892 shall have no application to these presents and the Lender shall not be liable for any involuntary losses that may happen by reason of the exercise by the Lender of the powers conferred on Mortgagees by the same Statutes.

5.—THE PERIOD of notice prescribed by Section 20 Sub-section (1) of the said statutes shall be one month instead of three months.

6. The security created by these presents shall not be considered as satisfied by any intermediate payments or satisfaction of the whole or any part of any sum or sums of money due and owing as aforesaid but shall be a continuing security and shall extend to cover any sum or sums of money which shall for the time being constitute the balance due from the Borrower to the Lender.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed by the making of his mark Sealed and Delivered by the within-named Borrower Gbadamosi Baba-Egbe the foregoing having been first read and interpreted to him in the Yoruba language by B. S. Aiyons Qualified Interpreter and apparently perfectly understood and assented to by him in the presence of :—

GBADAMOSI BABA
EGBE

His
X

Left thumb mark

Sgd. ?
Magistrate.

40 2/-
CR. No. 108244
22/8/45

Sgd. ?
Magistrate, Lagos.

Exhibits.
—
" B. "
Mortgage,
G. B. Egbe
to C. O.
Kasumu.
22nd
August
1945—
continued.

Exhibits.
" B."
Mortgage,
G. B. Egbe
to C. O.
Kasumu.
22nd
August
1945—
continued.

No. B. 00244C(74)14.
Lagos Executive Development Board,
30, Marina, Lagos.

21st August, 1945.

Mr. Gbadamosi Baba-Egbe,
c/o Mr. C. O. Kasumu,
27, Omididun Street,
Lagos.

Sir,

Plot 10 in Block 21 : Lagos.

10

I have the honour to acknowledge the receipt of your letter dated the 20th August, 1945, and to state that permission is hereby granted you to mortgage your lease hold interest in the above mentioned plot to Mr. C. O. Kasumu of No. 27, Omididun Street, Lagos.

I have the honour to be,
Sir,
Your Obedient Servant,

Sgd. ?
Chairman.

Lagos Executive Development Board. 20

" C."
Letter,
G. B. Egbe
to Lagos
Executive
Develop-
ment
Board.
20th
October
1945..

Exhibit " C."—Letter, G. B. Egbe to Lagos Executive Development Board.

EXHIBIT " C " (By Plaintiff)
Suit No. 77/50.

P. KASUNMU & ORS. vs. G. BABA-EGBE

Registrar.

Tendered and Registered Suit No. 42 & 77/50.

Sgd. ?
Registrar.
15/6/50.

14 Doherty Street,
Lagos, Nigeria. 30
20th October, 1945.

The Secretary
Lagos Executive Development
Board : Marina Lagos.

Gbadamosi Baba-Egbe
Plot No. 10 in Block 21
Great Bridge St. Lagos.

Exhibits.

“ C.”

Letter,
G. B. Egbe
to Lagos
Executive
Development
Board.
20th
October
1945—
continued.

Sir,

I have the honour to bring to your notice and knowledge the following fact : that I have this day surrendered my plot No. 10 in Block 21 at Great Bridge St. Lagos, to Mr. C. O. Kasumu of No. 27 Omididun St. Lagos, and I hope your kind goodself will take all the necessary immediate actions on the receipt of this letter.

10

I have the honour to be,
Sir,
Your Obedient Servant,

GBADAMOSI BABA-EGBE.

Signature of Surrender :—

His
X
mark

Specimen of
Signature of Surrender Taker :—

20 Sgd. C. O. KASUMU,
27 Omididun St.
Lagos.

Witness to marks and thumb impression :—

Sgd. ?
42 Orisan Street,
Lagos.

Exhibit “ D.”—Receipt.

EXHIBIT “ D ” (By Plaintiffs)
Suit No. 77/50.

“ D.”
Receipt.
23rd
October
1945.

P. KASUNMU & ORS. *vs.* G. BABA EGBE.

30

Sgd. ?
Registrar.
16/6/50.

RECEIPT.

I received the sum of £55.0.0 (Fiftyfive pounds) from Mr. C. O. Kasumu of No. 27 Omididun St. Lagos, being part payment of the sum of £200. (Two hundred pounds) balance of the £2,250 full purchase of the property at Great Bridge St. Lagos sold to him by me.

Exhibits. 2. My present balance due and payable now is £145. (One hundred
 — — and fortyfive pounds) payable after the completion of the said house by my
 "D." Contractor, Mr. Belo Raji Lagos.
 Receipt. Witness my hand this 23rd of October, 1945.
 23rd
 October
 1945
 —continued.

GBADAMOSI BABA EGBE

His
 X
 left thumb
 impression mark

Witness to marks and thumb impression : Sd. ? 10
 42 Orisan Street,
 Lagos.

"E."
 Receipt.
 29th
 October
 1945.

Exhibit "E."—Receipt.

EXHIBIT "E" By Plaintiff
 Suit No. 77/50.

Sgd.
Registrar.
 16/6/50.

RECEIPT.

Received the sum of £10 (Ten pounds) being part payment of the Sale
 of my House at Great Bridge St. Lagos leaving balance of £24.0.0 20
 (Twentyfour pounds) payable after the completion of the house.

Witness my hand 29 10 45

GBADAMOSI BABA EGBE.

His
 X
 mark

C. O. Kasumu,
 27 Omididun Street,
 Lagos.

"F."
 Receipt.
 12th
 November
 1945.

Exhibit "F."—Receipt.

30

EXHIBIT "F" (By Plaintiff)
 Suit No. 77/50.

P. KASUNMU & ORS. vs. G. BABA-EGBE.

Sgd.
Registrar.
 16/6/50.

RECEIPT.

I received the sum of £79.0.0 (Seventynine pounds) from Mr. C. O.
 Kasumu of No. 27 Omididun St. Lagos, being part payment of the sum

of £145.0.0 (One hundred and fortyfive pounds) balance of the sum of £2,250 full purchase of the property at Great Bridge St. Lagos sold to him by me. Exhibits. "F." Receipt. 12th November —1945 continued.

2. My present balance due and payable now is £66.0.0 (Sixtysix pounds) payable after the completion of the said house by my Contractor, Mr. Belo Raji Lagos.

Witness my hand this 12th of Nov. 1945.

His left hand thumb
X

10

GBADAMOSI BABA EGBE.
Impression.

Witness to mark and thumb impression.

Sgd. ?
42 Orisan Street,
Lagos.

Exhibit " G. "—Letter, M. Ade Kasumu to G. B. Egbe.

EXHIBIT " G " (By Defence)
Suit No. 77/50.

P. KASUMU & ORS. vs. G. BABA EGBE.

Sgd. E. A. BABANJI,
Registrar.
16/6/50.

" G. " Letter, M. Ade Kasumu to G. B. Egbe. 31st July 1948.

20

IMPORTANT.

Please produce your bill or your last receipt at the time of payment. All communications to be addressed to the Secretary

CHRISTOPHER C. KASUMU
27, Omididun Street,
Lagos, Nigeria.
31.7.1948.

Secretary :—M. Ade Kasumu
30 Mr. Baba Egbe Adeyemo

MORTGAGE No. 9.

Dear Sir or Madam,

We have to remind you that the undermentioned amount is due in respect of the above mortgage and to request you to make payment thereof immediately.

OUTSTANDING PRINCIPAL 31.7.48	£2000.	£.....
ARREARS OF INTEREST UP TO 22/10 45-30 6 48		
	£831.13.4.	£.....
MONTHLY INTEREST UP TO 31.7.48.	£25.	£2856.13.4.

40

Yours faithfully,

Sgd. M. A. KASUMU,
Secretary.

E. & O.E.

In the Privy Council.

No. 9 of 1955.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL AT LAGOS.

BETWEEN

PATIENCE KASUMU AND
OTHERS *Appellants*

AND

GBADAMOSI BABA-EGBE... *Respondent.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1,
Solicitors for the Appellants.

HATCHETT JONES & CO.,
Dominion House,
110 Fenchurch Street,
London, E.C.3,
Solicitors for the Respondents.