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Judgment
14, 1964

IN THE PRIVY COUNCIL

No. 15 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

AMINU AKINDELE AJANI OJORA
AKINWUNMI ESUROMBI ARO
OKE ESUROMBI ARO

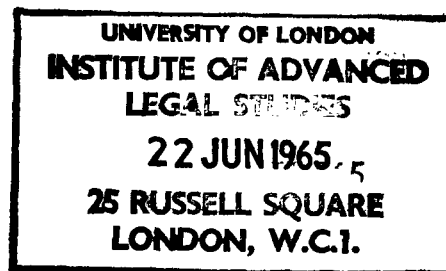
Appellants

- and -

LASISI AJIBOLA ODUNSI

Respondent

RECORD OF PROCEEDINGS



78561

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IN THE PRIVY COUNCILNo. 15 of 1962ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N:AMINU AKINDELE AJANI OJORA
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- and -

LASISI AJIBOLA ODUNSI

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Motion and Affidavit in Support for Final Leave to Appeal to Her Majesty in Council	29th August 1961

DOCUMENTS NOT TRANSMITTED

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Exhibit "9" copy of Daily Times	31st January 1956
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1.

IN THE PRIVY COUNCIL

No. 15 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

AMINU AKINDELE AJANI OJORA
AKINWUNMI ESUROMBI ARO
OKE ESUROMBI ARO

Appellants

- and -

LASISI AJIBOLA ODUNSI

Respondent

10

RECORD OF PROCEEDINGS

In the High
Court of Lagos

No. 1.

WRIT OF SUMMONS

No. 1.

IN THE HIGH COURT OF LAGOS

Suit No. LD/20/56.

Writ of
Summons.

30th January,
1956.

BETWEEN: Lasisi Ajibola Odunsi
(Chief Ojora of Lagos
For himself and on behalf
of the Ojora Chieftancy
Family

Plaintiffs

20

- and -

1. Aminu Akindele Ajayi Ojora
2. Akinwunmi Esurombi Aro
3. Oke Esurombi Aro

Defendants

The Plaintiffs' claim against the Defendants jointly and severally is for :-

30

1. An injunction restraining the Defendants their servants and/or Agents from selling, leasing and/or alienating any portion of the family lands and properties without the consent of the Plaintiffs.

2. An account of all monies received by the Defendants in respect of family property sold or leased by them.

3. Payment over of all amount found due on the taking of such account to the Plaintiffs.

DATED at Lagos this 30th day of January, 1956.

(Sgd.) G.B.A. COKER,
Solicitor to Plaintiffs.

In the High Court of Lagos

No. 1.

Writ of Summons.

30th January, 1956 - continued.

1st Defendant's Address:- 7, Ijora Oloye, Ijora.

2nd Defendant's Address:- 115, Cemetery Street, Ebute Metta.

3rd Defendant's Address:- 25, Lagos Street, Ebute Metta.

Land is within jurisdiction i.e.: IJORA - EB

Summons	...	£ 4. 10. 0
Service	...	4. 6
Mileage	...	10: 6
		<u>£ 5. 5. 0</u>

10

No. 2.

Statement of Claim.

29th March, 1956.

No. 2.

STATEMENT OF CLAIM

(Title as Document No.1.)

1. At all times material to this action, the Ojora Family is an Idejo Chieftancy Family of Lagos and owns lands and other property by virtue of Native Law and Custom.

2. The Plaintiff is the Chief Ojora of Lagos having been duly selected, approved by the Oba of Lagos and duly capped in accordance with Native Law and Custom.

20

3. The Plaintiff avers that as such Chief he is the accredited Representative of the said family and the Trustee of the properties of the Family and is prosecuting this action for himself and on behalf of the other members of the family except the Defendants.

4. The Plaintiff avers that the Defendants have taken upon themselves to deal with family properties by selling leasing and/or otherwise alienating these properties without the consent of the Plaintiff and the other members of the family represented by him and in direct conflict with the authority of the Plaintiff.

30

5. The said Ojora Chieftancy Family has several properties in Lagos including

- (1) Landed properties at Apapa, Ijora and Ebute-Metta.

3.

- (2) House and landed properties at Ijora, Ebute-Metta and Apapa
- (3) 8, Oloto Street, Ebute-Metta.
- (4) 12, Willoughby Street, Ebute-Metta.
- (5) 140, Griffith Street, Ebute-Metta and other properties.

In the High
Court of Lagos

No. 2.

Statement of
Claim.

29th March,
1956

- continued.

10 6. The Defendants have been warned several times by the Plaintiff and his Counsel to desist from interfering with the management and/or alienation of family properties, but they refused and still refuse to do so.

7. The Plaintiff avers that the Defendants will continue so to deal with family lands unless they are restrained by an Injunction by this Court.

8. Whereupon the Plaintiffs claim as per his writ of summons.

DATED at Lagos this 29th day of March, 1956.

(Sgd.) G.B.A. COKER,
Solicitor to Plaintiffs.

20

No. 3.

STATEMENT OF DEFENCE

(Title as Document No. 1.)

No. 3.

Statement of
Defence.

25th April,
1956.

(1) The Defendants admit paragraphs 1 and 5 of the Statement of Claim and say further that the said Ojora Chieftaincy Family is made up of three Chieftaincy Families, namely:- Ojora Chieftaincy Branch, (b) Aro Chieftaincy Branch, (c) Odofin Chieftaincy Branch.

30 (2) The Defendants deny the allegations contained in paragraphs 2, 3, 4 and 6 of the Statement of Claim and put the Plaintiff to the strictest proof thereof.

(3) Generally and with particular reference to paragraphs 2, 3 and 6 of the Statement of Claim the Defendants aver as follows:-

- i. The 1st Defendant and not the Plaintiff is the present Head of the Ojora Chieftaincy Family and the President of the only Ojora

In the High
Court of Lagos

No. 3.

Statement of
Defence.

25th April,
1956

- continued.

Family Council through which the Family acts and which is the Trustee responsible to the General Body of the Family for the safety, control, management and administration of the affairs and properties of the Family - real and personal - as per the Terms of Settlement and the Judgments in Suit No.11 of 1947 and Suit No.26 of 1954 and at the trial the Defendants will rely on these Judgments.

- ii. It is the 1st Defendant and not the Plaintiff who has been elected and installed CHIEF OJORA of Lagos by more than 90% of the people having the right to elect and install him according to Native Law and Custom and the Practice and Usage of the Ojora Chieftaincy Family as established and confirmed by the Result of Enquiries by the Government, to wit, No. R.C. 90/1920 dated 30/8/1921, No. R.C. 100/1919 dated 7/7/1922 and the Judgments in Suits Nos. 227/18, 266/18, 339/1922, 11/1947 and 26/1954 on which the Defendants will rely at the Trial of this Action. 10 20
- iii. The Defendants are members of the recognised Ojora Chieftaincy Family Council aforesaid but the Plaintiff is neither a member of this Council nor is he recognised by it and the general body as Chief Ojora and Representative of the Ojora Chieftaincy Family as alleged by him and he cannot therefore maintain this Action on behalf of the said Family as claimed on the Writ of Summons. 30
- iv. The only Council which can speak and act for the Ojora Chieftaincy Family in respect of its affairs and properties - real and personal - is the one referred to in the Judgments of the Court in Suit No.11 of 1947 and No.26 of 1954 and this Council supports the Defendants in this action.
- v. The question of whether the Plaintiff or the 1st Defendant is the rightful Ojora will be incidentally decided in Suit No.LD/33/56 now before the Court. 40

WHEREFORE the Defendants say that the Plaintiff is not entitled to the reliefs claimed by him as per his Writ of Summons.

DATED at Lagos this 25th day of April, 1956.

(Sgd.) L.B. AGUSTO
Solicitor for the Defendants.

5.

No. 4.

EX PARTE MOTION FOR REPRESENTATION ORDER

(Title as Document No. 1.)

MOTION EX PARTE

10 TAKE NOTICE that this Honourable Court will be moved on Monday the 11th day of June, 1956 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Plaintiff can be heard for an order granting him leave to sue prosecute and/or otherwise defend this action for himself and in a representative capacity on behalf of the other members of the Ojora Chieftaincy Family of Lagos and for such further or other orders as this Court may deem fit to make in the circumstances.

DATED at Lagos this 29th day of May, 1956.

(Sgd.) G.B.A. COKER,
Solicitor to Plaintiff.

In the High
Court of Lagos

No. 4.

Ex Parte Motion
for
Representation
Order.

29th May, 1956.

No. 5.

20 AFFIDAVIT IN SUPPORT OF EX PARTE MOTION FOR
REPRESENTATION ORDER

(Title as Document No. 1.)

AFFIDAVIT IN SUPPORT OF MOTION

WE, MUSTAPHA BURIAMOH AGORO, Yoruba, Motor Mechanic, of No. 5, Bajulaiye Street, Lagos, and JIMO OLAYINKA BURIAMOH, Trader, Yoruba, of No.28, Dawodu Lane, Ebute Metta, in Lagos, aforesaid, hereby jointly and severally make oath and say as follows:-

30 1. That we are Principal Members of the Ojora Chieftaincy Family of Lagos.

2. That the Plaintiff is the Chief and accredited representative of the family as well as Trustee and custodian of all the properties of the said Family.

3. That at our usual family meetings held during the month of December, 1955 the family decided that the Family should institute this action in order to organise properly the management of the affairs of the Family including the properties

No. 5.

Affidavit in
Support of
Ex Parte Motion
for
Representation
Order.

29th May, 1956.

In the High Court of Lagos

No. 5.
Affidavit in Support of Ex Parte Motion for Representation Order.
29th May, 1956
- continued.

and to centralise this control to the Plaintiff who is the Chief Ojora, the titular head of the Family.

4. That the Plaintiff having accepted the decision was also empowered by the said family to institute and prosecute the said action to be taken for himself and all the other members of our Family.

5. That the present Plaintiff has the mandate of the Family to represent them in all matters connected with the prosecution and defence of this action.

10

(Sgd.) M.B. AGORO
First Deponent.

SWORN to at the High Court
Registry, Lagos, this 29th
day of May, 1956

Before me,
(Sgd.) J. Bade Okusami
Commissioner for Oaths.

20

No. 6.
Court Notes of Argument as to Issues.
4th March, 1959.

No. 6.

COURT NOTES OF ARGUMENT AS TO ISSUES
WEDNESDAY, the 4th day of MARCH, 1959
Suit No. ID/20/56

L.A. Odunsi etc. vs. A.A.A. Ojora & Others.
KOTUN for Plaintiffs: am led by Martins, Q.C. and Lardner.

AGUSTO - Oseni with him for Defendants.
KOTUN -- Action as in particulars of claim.

Admitted Chief Ojora and members of Council are responsible to Family for administration of Family property. Main defence in paragraph 3 (1) to (5). They say they are Chief. 5. Chief Ojora to be decided in 33/56.

30

Not yet decided.

The issue in all matters is who is Chief Ojora.
AGUSTO: Certainly not. This Court has no jurisdiction to decide that.

KOTUN:- The defence raised is that Plaintiff not Chief but Defendant is.

I agree that Court has no jurisdiction to try chieftaincy matters. Will put in certification of Governor-General.

AGUSTO: In defence 3(1).

What we put in issue is that he is not Trustee. The Trustee is family Council with President and members.

In the High
Court of Lagos

No. 6.

Court Notes of
Argument as to
Issues.

4th March,
1959

- continued.

10 Unless Plaintiff can prove that he is President of Council which is only body responsible he is out of Court. Question of title is immaterial according to our law.

The only chief Ojora is 1st Defendant. We say the person entitled is the Chief Ojora who is the President of Council - If he agrees that that Council with its head as in terms of settlement is entitled issue will be is he member and the President.

20 COURT: It seems to me hair splitting. No nearer settling issues.

Paragraphs 1 and 4 of Terms of Settlement. Chief Ojora President.

AGUSTO: He doesn't sue as President. Let him show he is Chief. This Court has no jurisdiction.

30 COURT: This Court I think has no jurisdiction to decide between 2 Claimants which is chief but Court must be able to ascertain who is appointed chief to enable it to assist him to administer Family property if necessary.

Onisemo Case. My decision was it appealed.

KOTUN: That is so have case F.S.C. 71/1957 -

COURT: Please let me see it.

COURT: I have read the judgment.

In this instant case the Plaintiff is not asking for a decision on a question relating to the selection etc. of a Chief.

40 He is as Chief seeking an injunction to restrain Defendants from dealing with Family property and an account from them and payment over.

Before I can consider his case I must be satisfied that he is Chief Ojora.

In the High
Court of Lagos

No. 6.

Court Notes of
Argument as to
Issues.

4th March,
1959
- continued.

That seems to me the first point.

Mr. Augusto contends that by whatever name he calls himself he is not the President of the Family Council and therefore is not entitled to administer the property of Family - vide "terms of settlement".

That surely is the first and only issue.

Is the Plaintiff as Chief Ojora - if he so satisfies me - entitled with the Family Council to administer the family estates - Possibly a second issue will be have the Defendants been interfering in such a manner that they must be restrained and ordered to account.

10

KOTUN: I agree on those issues.

AGUSTO:- Subject to this he must prove that he is the President of the only Council competent to act and speak for the Family and that he represents that Council in this action.

COURT: That is a matter of interpretation of terms of settlement.

20

AGUSTO: He doesn't claim he is President.

Not only that matter of interpretation. He has not alleged President.

COURT: That is part of issue. Let us get on with the case.

KOTUN: Wish to apply under Section 191 Evidence Ordinance for production of Certification by Governor General of appointment of Plaintiff as Chief Ojora. Ask that attendance of Assistant Secretary, Governor-General's Office be dispensed with.

30

AGUSTO: I object to the production of document until shown relevant and admissible to issue before Court.

COURT: I was clearly of impression that you had already agreed to that.

AGUSTO: He seeks to produce document which is issued for special purpose. He must prove relevant Is this a document relevant to Native Law and Custom.

Is it solely to show recognition by Government.

40

COURT: This as you are well aware was settled in the Onisemo case.

AGUSTO: Very well.

KOTUN: Assistant Secretary Ministry of Lagos Affairs Office present - Has handed me certification -

Mr. Ogwuazor on Subpoena.

COURT: Admitted: Assistant Secretary may go.

AGUSTO: Object, must produce properly.

COURT: Section 191 Evidence Ordinance.

10 Letter of Recognition of 21/4/56 read and marked Exhibit 1.

LARDNER: Call Plaintiff.

In the High Court of Lagos

No. 6.

Court Notes of Argument as to Issues.

4th March, 1959

- continued.

PLAINTIFF'S EVIDENCE

No. 7.

EVIDENCE OF AJIBOLA LASISI YESUFU ODUNSI

1 P.W. AJIBOLA LASISI YESUFU ODUNSI (Muslim/Sworn)

Live at Iga Ojora.

I am a member of Ojora Chieftaincy Family of Lagos. I am the present Chief Ojora of Lagos. I am recognised as Chief Ojora.

20 I know nothing of the "Terms of Settlement in previous case 11/47". I was informed of them in my Iga. I was asked to sign them after appointment I said I would not sign as I was not a party.

I know there was a case in '47. I don't know of case. Bakare Faro's case:

Know late Chief Bakare Faro had disputes with family over money paid by government over land acquisition.

30 The family said money not distributed equitably.

Know of appointment of persons to assist Chief.

List of names read. Know of case.

These men were to assist Chief Bakare Faro. Bakare appointed them as his committee when I became chief I appointed my own committee.

Jackson (Secretary).

Plaintiff's Evidence.

No. 7.

Ajibola Lasisi Yesufu Odunsi.

4th March, 1959.

Examination.

In the High
Court of Lagos

Plaintiff's
Evidence.

No. 7.

Ajibola Lasisi
Yesufu Odunsi.

4th March,
1959.

Examination
- continued.

Sanni Odunsi Musani Aro
Alimi Ekeolere Chief Onitolo
Yesufu Akitola Chief Onikoyi
Chief Olorogun Chief Ashagbon.

These are all members of Ojora Family. They are members of my Council I appointed them myself. A chief ought to appoint his committee.

Before I was appointed the committee of the late chief received rents. Akinwunmi Aro 2nd Defendant. 3rd Defendant collected rents from family property at Ebute Metta with 1st Defendant. 10

After my recognition they still continued to collect.

I warned them by notice to desist - Paper produced is it Exhibit 2.

This was issued by my family Council.

AGUSTO: Object.

COURT: Admitted, Notice to public.

WITNESS: They still continued. I am entitled as Chief Ojora to collect and receive rents and administer property of family. 20

COURT: Alone? WITNESS: Yes.
I consulted Council.

On acquisition etc. - rents - I told them they should sue other side who still collected - I consulted with them how to bring this action.

I leased land to Biney I divided money in family and kept some to improve Iga.

LARDNER: Registrar is receiver.

WITNESS: Consulted Council - before action - Claim as per writ. 30

Cross-
Examination.

Cross-Examined: Before I came to Iga, I lived near Chief Oluwa's Palace. House was my mother's. I lived there about 54 years before I went to Iga. Now 57. Whole life lived in Lagos.

I know history of Ijora Chieftaincy family. It is a composite family of 3 Chieftaincies, the Ojora, the Aro and the Odofin. Each has its Iga. All are at Ijora.

I know of actions 227/1918, 266/1918: I know 40

that Judgments were that Ojora lands were owned by the 3 Chieftaincies in equal shares.

I know there was a perpetual injunction in 266/18 against all three chiefs restraining them from any individual dealing with land of Family.

Know that all 3 chiefs must execute alienation together with members of Council.

10 Know that Chief Ojora Bakare Faro my predecessor sold 2 houses at Ebute-Metta without consent. There was action by members of Council against Chief to set aside conveyances and they were set aside. The Defendants were members.

Know Bakare Faro considered himself chief arbiter. When Family land acquired be put in claim alone for family.

The Council sought to join the Secretary Akinwunmi-Aro as claimant with the chief.

Matter was referred to Court. Apart from this there were 2 other actions -

20 12/47 and 41/47 also brought against him.

As result of these actions I don't know if family met and arrived at a settlement.

I attended all family meetings. I don't know which you refer to.

To Court: I wasn't at meeting at which Council appointed. I know that list of names my Counsel read was the list of family members appointed to Council.

30 To Augusto: I know that agreement reached that day became the judgment of the Court.

I can't say if I was present when terms of settlement read to family. Two of names read are my full brothers.

Senni Balogun Odunsi and O.A. Alara.

KOTUN: Suggest put in by consent: Proceedings in 11/47 marked Exhibit 3.

WITNESS: Names are Nos. 4 and 11.

40 I have not obtained a copy. I haven't acquainted myself with contents. When I refused to sign it was taken away.

I don't know contents. It has never been read to me. There are many cases pending against

In the High Court of Lagos

Plaintiff's Evidence.

No. 7.

Ajibola Lasisi
Yesufu Odunsi.

4th March,
1959.

Cross-
Examination
- continued.

In the High
Court of Lagos

Plaintiff's
Evidence.

No. 7.

Ajibola Lasisi
Yesufu Odunsi.

4th March,
1959.

Cross-
Examination
- continued.

me. Terms of Settlement used to be read in Court. I don't know contents. For 2 weeks in another Court. Terms exhibited. Lawyers read it in Court. It has been read to me but I am illiterate. My lawyers have never explained the terms of settlement to me. I know the Council can select persons to fill vacancies and present names to general body of family for approval.

Know 2nd Defendant selected secretary to Council and family. Know Secretary for 40 years. 10

Know it is Council with Chief Ojora as President which is to conduct affairs of family but after death of late chief that was not in accordance with custom.

The terms of settlement doesn't bind any succeeding Chief.

Know in 54 there was another acquisition of family land.

Late Chief Ojora got the money. Action filed by Council to compel him to pay over to Council 26/54. My brothers were members of Council then. 20

I went to Court. I know judgment - Chief Ojora had to pay.

The result of judgment was not that the Council was established for all time.

AGUSTO: Produce Judgment of Supreme Court 26/54 Exhibit 4.

Produce Judgment WACA 242/1955 on appeal by consent Exhibit 5.

The Chief appointed the Council in the terms of settlement. 30

The appeal in 26/54 was pending when Chief Bakare Faro died.

After death 5 members of family applied to the Council for election as Chief.

I was not one of the 5. When news got round that Oba would cap me the Council protested. We were divided in two. I heard protest served on Oba, and other White Cap Chiefs.

Heard Oba directed Council to house of Chief Oluwa where Chiefs were meeting. 40

Chiefs said they were going to cap me. I was presented to them by family.

Election of chief is right of family in Native law and Custom no outsider. I was presented by my side. The Council was on one side. On the other side was myself and some members of family - There were members of family with Council too.

Don't agree that they were in majority.

10 Those who supported me were those who supported the late Chief. First step is selection by family council then the candidate is put before family as whole for approval.

Majority of whole family is sufficient.

20 That was done to me. The principal members of family take elected Chief to Oba if they wish him capped. A fee is paid. Whole Council and supporters objected to me being capped. When Council appointed they were accredited representatives of family. That Council was responsible for family property in lifetime of Bakare. After death stopped - Selection of successor is not important duty of Council - Duty of family.

After capping I appointed own Council.

My brother is older than me. He knows more of Native Law and Custom. He may have applied to Council, to be selected - I didn't know. The Council selected own Chief. The 1st Defendant was selected - They protested against my capping. There was mass meeting - Some members of my Council were present. Meeting didn't approve 1st Defendant as Chief.

30 Don't know of Custom that elected Chief taken to room called "Maworun" in Iga. Don't know if 1st Defendant taken there.

Not so that ordinary white housa cap placed on head there. Not so that then presented to family. May have been done so to 1st Defendant. Know late Chief was so for several years and wore ordinary hausa cap not "White Cap".

40 In Suit 339/22 family challenged his right to administer family affairs as he had not been capped. Matter referred to Resident Colony for investigation.

AGUSTO: By consent proceedings in 339/22. Exhibit 6.

WITNESS: Recognition of White Cap Chiefs came in with British Government. Were paid stipends.

In the High Court of Lagos

Plaintiff's Evidence.

No. 7.

Ajibola Lasisi
Yesufu Odunsi.

4th March,
1959.

Cross-
Examination
- continued.

In the High Court of Lagos
Plaintiff's Evidence.

No. 7.
Ajibola Lasisi
Yesufu Odunsi.
4th March, 1959.
Cross-Examination
- continued.

There was a dispute with Eleko of Lagos - Government withdrew recognition. Some white cap chiefs supported him. Government withdrew their recognition also. Eleko continued as Oba and the Chief continued as White Cap Chiefs. They lost stipends that is all.

Recently Chief Kosoko had quarrel with Oba: Oba deposed him - Kosoko retained cap. Don't know if he went to Iga with cap on.

Adjourned to 5/3/59 for further cross-examination.

4/3/59.

(Sgd.) J. BENNETT, J.

10

No. 8.
Proceedings on Objection in Cross-Examination of Plaintiff.
5th March 1959.

No. 8.
PROCEEDINGS ON OBJECTION IN CROSS-EXAMINATION OF PLAINTIFF.

Resumed this 5th March, 1959.
Appearances as before.

KOTUN: Have objection to line of cross-examination as stated yesterday.

The question as to mode in which Plaintiff appointed is irrelevant. Ordinance 30 of 1938, Section 3. The claim is for an account and payment over and an injunction.

In defence pleaded.

Plaintiff not Chief Ojora and as such cannot manage. It is admitted if Chief is entitled.

AGUSTO: No such admission.

KOTUN: Refer to Federal Supreme Court Judgment. F.S.C. 71/1957. Bello v. Onitolo.

COURT: The Onisemo case?

KOTUN: Yes. Page 6 last paragraph to end.

Blackborne v. Blackborne 18 L.T. 450.

To ask how appointed would defeat provisions of Ordinance 30. Even if Court admits this evidence and cross-examination Court cannot decide he is not a Chief.

In view of 71/1957 Court precluded from hearing this evidence.

20

30

At page 4 of Judgment, last 2 lines, "By Government Notice 1227/1950". Page 6 paragraph 2 "The Definition"

Though our claim is not within ordinance defence had raised appointment and selection of Plaintiff. The evidence should not be admitted on ground of irrelevancy - It would defeat ordinance.

10 AGUSTO: Say with respect that either learned friend doesn't understand his case or he is wasting time. He has referred to passage which puts him out of court. 71/1957. Page 8 line 9. "Although Plaintiff avers".

20 Words have not lost meaning. Before he can succeed he must satisfy court that he is chief. Because Court will listen to evidence it will not alter purpose of action. Court still has jurisdiction to hear Chieftaincy dispute and which rival is entitled to the material right which is subject of action.

Look at summons and Statement of Claim.

Adani v. Hunvoo 1 N.L.R. 74 at page 78. Page 80 last paragraph but one.

Your Lordship will see that the rule no jurisdiction now an ordinance does not preclude. Plaintiff says "I want Court to assist me to control properties of family. My right depends on my being Chief Ojora under Native Law and Custom".

30 Isn't Plaintiff asking Court to hear evidence of appointment.

As long as it is a native Chieftaincy it must be determined by rules of Native Law and Custom.

He labours under misapprehension that if Chief recognised under Local Government Ordinance there is an irrebuttable presumption that he is Chief.

COURT: The Onisemo case I accepted, recognition.

40 AGUSTO: That point was not raised in that case and evidence was led. To nail the matter. Refer to legislation in provinces. Native Authority Ordinance Cap. 140. Definition of "Chief". Lagos Local Government Law 4/43 W.R. Section 2. "Chief" means White Cap Chief of Lagos recognised. Recognition by Governor is part of qualification for purpose of ordinance. The list of traditional members for election. Chief Ojora was not elected

In the High Court of Lagos

Plaintiff's Evidence.

No. 8.

Proceedings on Objection in Cross-Examination of Plaintiff.

5th March 1959
- continued.

In the High Court of Lagos

Plaintiff's Evidence.

No. 8.

Proceedings on Objection in Cross-Examination of Plaintiff.

5th March 1959
- continued.

in spite of definition under Native Authority Ordinance. Disputes as to chieftaincy came to Court - result work of Government hampered - indirect rule then the legislature knew that unless enactment made to preclude Court would continue. So that appointment and deposition of Chiefs Ordinance Cap.12 passed. Section 2(1) Governor power to appoint. (2) In case of dispute enquiry may be held. This does not preclude Court from ascertaining whether A or B appoint in accordance with Native Law and Custom. Under Lagos Local Government law no provision.

10

Even where Governor Judge must satisfy himself appointment under Native Law and Custom. Question of fact.

Whether Governor hears enquiry or where Courts jurisdiction not taken away must listen to evidence. The legislature had to make separate law.

The appointment and Deposition of Chiefs Ordinance 2(2) precludes Court.

20

If mere recognition of Chief were enough there would have been no necessity for Cap.12.

COURT: What was necessity for No.30 of '48.

AGUSTO: M. Lagunju v. Olubadan-in-Council XII W.A.C.A. at 410 paragraph 2.

The election of a Chief is valid though no approval given.

Taiwo v. Sarumi 2 N.L.R. 103. Due enquiry -

Under local Government Ordinance - arbitrary recognition - My learned friend states that because arbitrary recognition Court precluded. Quite contrary to Privy Council decision.

30

Plain it is understood Court deprived and Governor is sole judge but he must hear evidence. The Interpretation Ordinance, Chief White Cap Chief is only of family Chief. No authority outside that -

Taiwo v. Sarumi 2 N.L.R. 106.

Recognition valueless - not part of Native Law and Custom. Plaintiff should have been precluded from producing evidence of recognition. Non recognition does not invalidate appointment. Competent to Court to listen to evidence. On admission this Appointment not in accordance with principles of Native Law and Custom.

40

Recognition irrelevant neither adds to validity or takes away.

We have said Chief or no Chief Plaintiff is not sole custodian of property construction of instrument "Terms of Settlement" "Family Council with President".

His claim to sole control this Court has jurisdiction. XIII W.A.C.A. Page 72.

10 Law plain where claim made by Chief and it is plain title to Chieftaincy asked Court has no jurisdiction. In provinces Appointment and Deposition of Chiefs and No.30 of 1948 in Federal Territory.

Where claim coupled with claim to material right Court has jurisdiction but must satisfy Court he is Chief and that has the right.

(a) We deny he is Chief.

(b) We say even if Chief he is not entitled alone to administer.

20 This "Term of Settlement" interpreted 1954 to W.A.C.A.

W.A.C.A. 242 of 1955. - 339/22.

A significant point in Native Law and Custom - acts of Chief set aside for lack of approval and consent of family. Primus inter pares.

KOTUN: I agree entirely with case law but distinguish that was possible before 1930. In 1930 law changed.

COURT: Doesn't apply to this Chieftaincy.

30 KOTUN: Out of Court. In 1948 No.30 further applied Lagos. Once we know appointed any claim precluded. Questions he was putting irrelevant in so far as they applied to appointment.

Blackborne v. Blackborne. "The claim before Court".

COURT: Have read - don't see how it helps you.

KOTUN: There was counter-claim here there is none. That Plaintiff is Chief is irrebuttable presumption evidence to reopen inadmissible.

40 Lagos Local Government Law - discretion.

Definition of Chief.

Interpretation Ordinance Section 47.

In the High Court of Lagos

Plaintiff's Evidence.

No. 8.

Proceedings on Objection in Cross-Examination of Plaintiff.

5th March 1959
- continued.

In the High Court of Lagos
Plaintiff's Evidence.

No. 8.

Proceedings on Objection in Cross-Examination of Plaintiff.

5th March 1959
- continued.

Cannot be reopened.

COURT: Will give my ruling on further cross-examination etc. in morning.

Adjourned to 6/3/59.

(Sgd.) J. BENNETT,
J.

5/3/59

No. 9.

Ruling on Objection in Cross-Examination of Plaintiff.
6th March 1959.

No. 9.

RULING ON OBJECTION IN CROSS-EXAMINATION OF PLAINTIFF

Resumed this 6th March, 1959.
Appearances as before.

10

The Plaintiff is claiming certain reliefs as Chief Ojora of Lagos and his cross-examination is directed towards shewing that he is not the proper holder of that office. He has produced his letter of recognition as an Idejo White Cap Chief by the Governor-General, for the purposes of Section 2 of the Lagos Local Government Law. Western Region, No.4 of 1953. That is his recognition as a White cap Chief, who might be selected to sit on the Lagos Town Council. As far as I can see, it has nothing to do with his recognition by the Ojora Chieftaincy family as their head and there is no provision in the Lagos Local Government Law to indicate how the Governor-General arrives at his decision to recognise; he acts in his discretion.

20

Mr. Kotun has objected to the line of cross-examination and has cited FSC/71/1957 - Bello v. Omitolo in support of his contention that I am precluded from hearing any evidence or cross-examination directed towards proving that the Plaintiff is not Chief Ojora. I do not think that the case cited helps him and I would refer to two parts of it. At page 5 of the judgment of the Federal Supreme Court the following appears - Paragraph 2: "It is also necessary to bear in mind that Chief Onisemo of Lagos (a white cap Chief as in the

30

present case), though admittedly not a Chief within the meaning of the Appointment and Deposition of Chiefs Ordinance is, etc....." I am, therefore, not precluded by that ordinance from hearing evidence challenging the Plaintiff's status. That case turned on the interpretation of the Chieftaincy Disputes (Preclusion of Courts) Ordinance 1948 and in it the appeal Court held that that Ordinance did not preclude this Court from hearing a claim, by a properly appointed Chief, to property which is part of the family assets, that is to property not in connection with the selection appointment, installation, etc. of a Chief and again I quote from the judgment of the Federal Supreme Court.

In the High Court of Lagos

Plaintiff's Evidence.

No. 9.

Ruling on Objection in Cross-Examination of Plaintiff.

6th March 1959
- continued.

"Although the Plaintiff avers that he is Chief Onisemo of Lagos and founds his claim on that averment it is perfectly clear that he is not asking the Court to determine any question relating to his selection, appointment, etc., as Chief. It is true that before granting the declaration sought the Court must be satisfied that the Plaintiff is Chief Onisemo. Nevertheless, the determination of that issue cannot have the effect of altering the purpose for which the suit was instituted".

Mr. Kotun's contention is that the letter of recognition is sufficient to prove that the Plaintiff is Chief Ojora and that as the defence has raised the question of the appointment and selection of the Plaintiff the Court is precluded from hearing evidence on this point. I am referred by Mr. Agosto to Adanji v. Hunvoo 1 NLR 74. In that case, it was held that the Supreme Court had no jurisdiction to entertain a claim which was merely to establish a title to a Chieftaincy; such a claim not being of a nature which the High Court of Justice could entertain in England but it also held that the title to a Chieftaincy might be tried as an issue in an action claiming other relief. I quote from the Judgment of Packard J.

"If rights (of property for instance) of which the Supreme Court can take cognisance were attached to the Chieftaincy of Fiyemto, I think the Court could try, or direct to be tried, the issue of fact whether the Plaintiff is de facto the Fiyemto but it does not necessarily follow that because this question can be tried as an issue of fact it can therefore be entertained as an original claim".

In the High
Court of Lagos

Plaintiff's
Evidence.

No. 9.

Ruling on
Objection in
Cross-
Examination of
Plaintiff.

6th March 1959
- continued.

Mr. Augusto also referred me to Taiwo v. Sarumi, 2 N.L.R. 106. In that it was held that in the absence of specific legislation to the contrary, the fact that a Chief, duly elected according to the accepted forms of Native Law and Custom, has not been recognised by the Governor is not sufficient to invalidate the election. The position I find myself in is that on the authority of Bellow v. Onitolo I am to satisfy myself that the Plaintiff, before I can grant him the relief he seeks, must satisfy me that he is Chief Ojora and I at this moment and subject to any additional authority that Mr. Kotun may produce later do not feel that the recognition by the Governor-General for the purposes of Section 2 of the Lagos Local Government Law deprives the Ojora Chieftaincy Family from challenging the Plaintiff's assertion that he is their Chief and thus entitled to administer their lands.

10

I have read and considered all the other cases to which I have been referred. They are on record and they confirm me in my view that not only are the Defendants entitled to challenge the Plaintiff's claims but they clearly indicate that the view I held yesterday, which I did not then express, that the Plaintiff's actions in setting up his own Council, and his efforts, according to himself, to administer the family property in an arbitrary manner are quite contrary to Native Law and Custom.

20

The cross-examination I think is quite proper.

30

No.10.

Ajibola Lasisi
Yesufu Odunsi
(Recalled)

6th March 1959.

Cross-
Examination
- continued.

No. 10.

EVIDENCE OF AJIBOLA LASISI YESUFU ODUNSI (Recalled)

l.P.W. (Reminded on same oath)

Cross-Examination (Continued)

There are 3 Chieftaincies in the Ojora Chieftaincy family. I heard that the family council elected a Chief Ojora from amongst the five candidates whose names were put forward. It was the 1st Defendant.

I heard he was presented to a mass meeting of family and approved. Some of my supporters went to that meeting.

40

I have never attended a meeting of the family council set up by Terms of Settlement.

The children of late Chief are among my supporters. They gave me the keys to Iga. Rabiun gave me keys. Jackson is one of my supporters. I don't know if they are all against the "terms of Settlement".

In the High
Court of Lagos

Plaintiff's
Evidence.

No.10.

Ajibola Lasisi
Yesufu Odunsi
(Recalled)

6th March 1959.

Cross-
Examination
- continued.

10 It is not that I don't want the "Terms of Settlement" I never saw the paper. I don't accept them. I don't agree. I don't claim to be the President mentioned in that Settlement. The document was brought to me. I was asked to sign it. I refused. I called a meeting to settle our affairs - I was asked to sign the Terms - I refused - Then they selected another Chief.

Called everybody including the members of the Council.

20 I showed the terms to someone I was told it was not good so I refused. By people who had read it. They explained the contents to me and said it was not good. The management of family property is vested in that Council. I have my own Council. I manage the affairs of the family with my own Council. I don't comply.

30 I'm not prepared to have affairs of family managed as in "Terms". There is no Chief Aro or Chief Odofin. I have not appointed anyone. The two men in Court (indicated) are so called Chief Aro and Chief Odofin. I don't recognise them. They were appointed by Council. The family elected them. They are on side of 1st Defendant. They are against me in this action. The Council are against me. Some members of the family are with me.

40 I gave my Solicitors instructions what to claim. It was read to me. Said representing all family except the 3 Defendants. Paragraph 3 Statement of Claim not correct. There are 3 Igas. Aro occupied one Odofin occupied other. The late Chief's children have not yet paid judgment and costs recovered against them in '54 case. The lease to Biney was done without the knowledge of the Council set up in "Terms of Settlement", Exhibit 3. Admitted the 3 Defendants are members of Council in Exhibit 3.

In answer to protest of family Council I caused disclaimers to be published.

Daily Service of 7/5/55 produced by consent.
Exhibit 7.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.10.

Ajibola Lasisi
Yesufu Odunsi
(Recalled)

6th March 1959

Cross-
Examination
- continued.

The majority of signatories to notice are children of late Chief. This was published because they troubled us. Before I was capped. We were supporters of late Chief. When a Chief dies before the appointment of a new Chief the eldest member will take his place as the head of the family until appointment of new Chief. He will preside over the family Council. There is one person older than 3rd Defendant. He did not become head. Lawani Sunmonu Obide was oldest he became head.

10

3rd Defendant did not act as head before appointment of new Chief. Lawani is oldest among my followers. It is so that 2nd and 3rd Defendants have figured in all the family cases which have come to Court.

They got deeds of conveyance made by late Chief set aside in this Court. People who take an active part in family affairs are entitled to be members of family Council.

20

Re-Examination.

Re-Examined:

When a Chief dies there will be a general meeting of all members of family and a committee say of about 12 will be elected to say who is right person to be next Chief and from which branch he is to come. There are five houses from which Chief can be selected.

Faro, Oyegbe, Adejiyu, Asaba and Ajayi.

After committee is selected they will consult the Ifa Oracle it will say who should be selected. Of the 5 houses Ajayi and Faro have reigned.

30

AGUSTO: Object to this - Had this been put in Examination-in-Chief could have destroyed it.

COURT: You cross-examined as to validity of appointment.

WITNESS: It was Asaba's turn when Faro died. My father's house. After Faro's death a bell man called family meeting - Defendants didn't attend. I know they got notice.

Two people from my house were nominated - myself and another.

40

Abudu Alago is known as Abudu Handu.

I was presented to the family Council and then to the general meeting. To the relatives of the

12 elders. There was a general family meeting. I don't know if Defendants were invited or not but the bell man went round.

I didn't see Defendants at meeting.

The meeting agreed it was my turn. There was no disagreement. They took me to all Chiefs. The white Cap Chiefs. The Idejo etc. etc. They agreed. I was taken to Oba on Sunday. I was delayed about 6 weeks in case someone else was elected. When no one else got up the Oba agreed.

10

The day before my capping the Defendants objected to me. The Oba told them I had been selected. It was 3 months between my selection and capping. They didn't object. The Oba authorised capping. The paper produced has photo of my Council. Daily Service 29/February/1956. Exhibit 8. O.A. Alara is a member of my Council he agreed to this action. So did S.B. Odunsi. He is a member of my Council also.

20

No Chief Aro or Odofin has been appointed for 25 years. Oba has not approved chieftaincy of 1st Defendant. He was appointed by Aro's Council. Exhibit 3.

This Council is not perpetual. Ajayi had his own. Bakare Faro had his own.

No. 11.

EVIDENCE OF LAMIDI KALIFO II

2 P.W. LAMIDI KALIFO II (M/S) Chief Olumegbon. No.6, Olumegbon Street, Lagos. I am Idejo White Cap Chief. I am the Head.

30

A Chief is appointed by the family. When he is appointed and there is agreement he will be taken before Oba and the white Cap Chiefs for recognition and capping.

Without capping he does not become a Chief of the Oba. He cannot be called a Chief. 4 or 5 persons are nominated and the oracle is consulted and decides.

The selection is not always unanimous.

40

After capping there is a family meeting at which the misunderstanding is settled. If there is disagreement before capping they go to Oba -

In the High Court of Lagos

Plaintiff's Evidence.

No.10.

Ajibola Iasisi
Yesufu Odunsi
(Recalled)

6th March 1959.

Re-Examination
- continued.

No.11.

Lamidi Kalifo II.

6th and 11th March, 1959.

Examination.

In the High Court of Lagos

Plaintiff's Evidence.

No.11.

Lamidi Kalifo II.

6th and 11th March, 1959.

Examination - continued.

He listens and tells them to go and agree. If they fail to agree no Chief will be appointed.

There is a Council of Chiefs to whom disputes are referred. We settle on the rightful person. If the family still don't agree he will be capped anyway.

I know Plaintiff. I was instructed by the white Cap Chiefs and the Oba and I capped - He is Chief Ojora.

The 1st Defendant is not a member of Idejo Chiefs. Not a white Cap Chief. Chief Ojora is an Idejo Chief. 1st Defendant was not presented by Ojora family as their Chief. The family have never complained that Plaintiff was not selected. The Ojora family presented Plaintiff to Chiefs and Oba. He was capped. He has since then taken part in community matters. Oba and Chiefs hold meetings. The paper produced contains photo of Oba and Chiefs. Plaintiff and I are there Daily Times 31/1/56 Exhibit 9.

10

20

Adjourned to 11/3/59.

(Sgd.) J. BENNETT, J.

WEDNESDAY, the 11th day of MARCH, 1959

Appearances as before.

2 P.W. Lamido Kalifo II (on same oath).

Cross-Examination.

Cross-Examined:

To call a white Cap Chieftaincy Idejo means that the Chieftaincy owns land.

The appointment of Chief rests with the family.

If it is shown that a family have appointed a Chief he would be an Idejo Chief. The Oloto is an important Idejo Chieftaincy.

30

Akinlolu Oloto was at one time Chief Oloto. Chief Imam Ashafa Tijani, Ogundimu and others were Councillors with whom he managed Oloto affairs. When Akinlolu died Tihamiyu Fagbayi Oloto was appointed Chief Oloto.

Not all the Councillors who were with Akinlolu continued with Tihamiyu.

Those mentioned continued with him.

40

When Tihamiyu died recently, Ashafa Tijani, as he was oldest became head of family and continued

to administer affairs of family with the Council. In December last Ogundimu was selected Chief Oloto - I don't know how he was selected.

When a Chief is appointed, a regent no more acts as Head. He steps down.

Ogundimu has not yet been capped. He is nevertheless Chief Oloto. It is not so that in November, '55, news first got out that Plaintiff was to be Chief. I don't know that 5 persons had approached Ojora family Council to be considered for selection as Chief Ojora on Bakare's Faro's death.

Know of Ojora Chieftaincy Council. It is characteristic of all of our families. I don't know what the Ojora family did. He was brought to Oba and I was instructed to cap him.

I don't know of internal squabbles. If the family brings a Chief I cap on the instructions of Oba and fellow Chiefs.

It is customary that there is dispute on title.

At that time 5 families were contending for title Ojora. Plaintiff belonged to Asaba House. Each house desiring to be considered presents a candidate.

Know Yaya Alara full brother of Plaintiff. I don't know if he applied to Ojora Council to be considered.

(Counsel quotes Evening Times of November 8, 1955).

Whether the Plaintiff approached the Council to be considered or not I don't know.

I do not know if Yaya Alara was the candidate put forward by the Asaba family. The capping was on 27/11/55. We received a protest on 26th not 25th. The letter is not with me - it was sent to Oba and other Chiefs - from members of Ojora family.

On 26th we Chiefs held a meeting in Chief Oluwa's house. Know 2nd Defendant well. Know Secretary to Ojora Family Council for years.

He came with family Council and made a protest at meeting of Chiefs that the Plaintiff was not the choice of the family. We said that Lasisi had been selected 3 weeks earlier and they had not protested.

We said that Lasisi had been presented 3

In the High Court of Lagos

Plaintiff's Evidence.

No.11.

Lamidi Kalifo II.

6th and 11th March, 1959.

Cross-Examination - continued.

In the High
Court of Lagos
Plaintiff's
Evidence.

No.11.

Lamidi Kalifo
II.

6th and 11th
March, 1959.

Cross-
Examination
- continued.

weeks earlier by family and some white Cap Chiefs without protest and now protests made a day before capping. That is what we said to protesting Family Council. Plaintiff was presented to us by Chief Onitolo, Chief Onikoyi and some members of Plaintiff's family whose names I don't know.

About 50 people brought him. I don't know if any of people who later protested were there. I didn't count. A crowd may gather but they are apart. We can recognise the proper people. 10

I know how many people in my family but not in others. Know 3 Chieftaincies in Ojora family.

I can't say how many in Ojora family. We don't necessarily follow the majority - We follow the choice of important personalities in family. Chief Onitolo and Chief Onikoyi are members of Ojora family.

Onikoyi is from Bakare Faro's section. I don't know where Onitolo comes from. Chief Onikoyi is head of Onikoyi Chieftaincy Family. The part a man plays in family affairs is not considered in selecting Chief. 20

I am in position to know important people in my family. All the family select the family Council.

The qualities looked for are leading members of the family who are active in the affairs of the family.

The members of council are principal and important member of the family. 30

I have a committee but I selected them myself. My predecessor had a committee but I didn't agree with them. I was not satisfied with them. There were about 15. My predecessor died in 1936. I was selected to succeed in 1952. I and family administered family affairs in those 16 years.

The members of family will select a committee who will receive the names put forward from the various branches to be considered as Chief. 40

The committee will consult the oracle with those names.

I and my predecessors committee managed the affairs of our family before I was appointed Chief. The appointment of successor is most important. 3 of my family wanted to be Chief. Some of the Councillors were against me.

The members of family will consider the names submitted and select Chief. I and rest of family administered family affairs before I was appointed - worked hand in hand. I capped Plaintiff on instructions of Oba and Chiefs - I had heard the protests - The Ifa Oracle will decide who is to be Chief. The family will select some people who will be given the names of candidates. They will present these and the Oracle will select. I am a Muslim. I believe in Ifa Oracle. If Ifa says a particular person is unfit to be Chief I will agree.

10

The Ifa has been consulted from beginning. The family will follow the Ifa's choice to go against it would be bad for family. The Ifa usually forecasts what will happen during a Chief's time. The Ifa will say what will happen if the man he rejects is appointed. The man rejected should never be made Chief. I contested our Chieftaincy with my predecessor Gbadamosi. The Ifa selected me but Gbadamosi was appointed Chief. In spite of advice. My parents disagreed and I was taken away. They didn't support me. In 1952 I contested Chieftaincy with Sule - I was selected. Sule spent money to get himself appointed. Gave family money. He has no rights. Was not selected.

20

He bribed members of family to choose him. I don't know that Plaintiff bribed the people who brought him to us. Don't know that he raised money from Mr. Biney.

30

I don't know Yesufu Dosumu. I know Oke 3rd Defendant (identified). He is an important member of Ojora family.

I don't know if he acted as head on Faro's death. Know 2nd Defendant well. Know Secretary to Ojora family for 40 years. They were among people who came to protest to Plaintiff's capping. I know Jimo Onisemo - He may be important member of Ojora family. Can't say if he was member of Bakare Faro's Council. Don't know Bisiriyu Akiyemi (produced). Do know him. He came to protest. Don't know Bisiriyu Batula. Know Tiya miyu Chief Odo fin - I didn't see him at protest.

40

Re-Examined:

Chief Olorogun was present at our meeting. He was out of town - He did not attend. Chief

In the High Court of Lagos

Plaintiff's Evidence.

No.11.

Lamidi Kalifo II.

6th and 11th March, 1959.

Cross-Examination - continued.

Re-Examination.

In the High Court of Lagos

Plaintiff's Evidence.

No.11.

Lamidi Kalifo II.

6th and 11th March, 1959.

Re-Examination - continued.

Ashogbon was amongst those who presented Plaintiff. He is member of Ojora Family - important.

I know Yaya Alara.

Don't know Sanni Balogun. (Produced). I know this man. Alara and this man came with Plaintiff.

I don't know if O.A. Alara - Yaya - was put forward by Asaba section.

TO COURT: I said I select my own Council. The family do not select family Council. The command of Chief is supreme. Can appoint committee against family wishes. In defiance of majority of family. He can dispose of family land. He will have one or two others with him when doing so.

Q. Even against the wishes of the majority of family?

A. Yes: They have nothing to do with it.

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No.12.

Edwin Ayoli Bajulaiye. 11th March 1959.

Examination.

No. 12.

EVIDENCE OF EDWIN AYOLI BAJULAIYE

3 P.W. EDWIN AYOLI BAJULAIYE: Chief Onikoyi of Lagos (C/S) 44, Porter Street, Lagos.

I know Plaintiff - Chief Ojora. I know Aminu Ajayi (identifies). Know 2nd Defendant. I am member of Ojora Chieftaincy Family. I am from Faro Ojora Section. After Bakare's Fari death Oba Adele sent all white Cap Chiefs to sympathise with family.

We met the children at the Iga Ojora. We asked of remaining members of family. We were told they were at Iga Aro. We sent a message of our mission. They said they could not come to Iga Ojora because not on terms with Chief Ojora.

We said sent by Oba and if they would come we were ready to settle the quarrel. They did not come.

We sympathised with those we saw and left.

After funeral I was at Iga Ojora as a member of family.

I was with 3 other Chiefs and members of family - We decided to send a bell man to summon a meeting of the whole family to decide how affairs of family would be run.

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All people came. Some members of the public were there - but not all the members of the family. We decided how to choose the head and how the family affairs should be run. We considered Lawani Sunmonu to be oldest and the head of family. We chose some elderly women and men to be his Council. From that day we started holding meetings. At one we decided to elect a Chief.

10 We considered - We knew 5 houses from where Chief should have been selected - 2 had been Chief who were dead: Three remained.

We selected people to consult Oracle from which of the 3 houses the Chief should come and who he should be.

When the house is selected the name of the person from that house is learnt to be Chief. All the children of that house are named before the Oracle who will select who is to be Chief. The children of the founder.

20 There might be 50. They will be named one by one. The house of Asaba was chosen. The name of the person was mentioned. The Ifa had already told them. The names of members of family were mentioned. A family meeting was held we were told of outcome of Oracle and we agree.

30 We selected some elders to go to Oba and Chiefs to inform them of the choice of a Chief. They went with me. Many I can't remember the names. Chief Onitolo. Chief Olorogun, Ashogbon, Lawani Sowunmi. I know Yaya Alara - he went with us. We presented Plaintiff as the next Chief selected. We presented him as the selection of family. We were sent by the members of the family remaining at the Iga. Their selection - we were met by Oba and Chiefs. We presented Chief Ojora - We were sent away and told to return later.

40 On the second occasion about 6 of us went - Lawani Sowunmi, Chief Onitolo, Chief Olorogun and some female members. It was $1\frac{1}{2}$ months between 1st selection and the capping. All the Chiefs were present. No one at Iga Ojora had any complaint against the person chosen. I was present at meeting of Chiefs a day or two before the capping. We received a protest against it. A day before. We heard that some members of the Council were against the appointment of Plaintiff. It was the Council of the late Chief Ojora.

In the High Court of Lagos

Plaintiff's Evidence.

No.12.

Edwin Ayoli Bajulaiye.

11th March 1959.

Examination - continued.

In the High Court of Lagos

Plaintiff's Evidence.

No.12.

Edwin Ayoli Bajulaiye.

11th March 1959.

Examination - continued.

After the capping the Chief will call family meeting and tell them he wants to choose his Councillors. He chooses his Councillors and the committee. After Chiefs death his Council dies:

There is nothing to prevent new Chief choosing members of the old Council. The complaint we received was that members of old Council were not in favour of Plaintiff.

They had the right to object but they should have lodged complaint at Iga Ojora. They should have complained at Iga not Oba's Palace.

10

They should have come when we sent a bellman. The white Cap Chiefs didn't agree with their protest. They were told that Plaintiff had been presented 6 weeks earlier and they hadn't objected and that they waited till 5 on eve of capping. They did not tell us of protest before. 4 days after capping Chief called a meeting at Iga. He told us that people from the other side did not come to Iga at all and he was summoning this meeting to call them. I was present throughout. The 2nd Defendant was there - 3rd Defendant was there. They prostrated to the Chief. Chief saluted in return and told them he had succeeded to their ancestors.

20

He said he had called meeting because he hadn't seen them since he was capped. 2nd Defendant knelt as he was in coat and trousers. The others prostrated. They did not voice any protest. The Chief instructed someone to put £2.2.0 in a plate and handed it over to them as was the Yoruba custom.

30

They accepted it. Many people were present at that meeting over 100. I heard that 2nd Defendant visited Plaintiff later.

As a member of the family I accept Plaintiff as he was accepted by the oracle.

He is the choice of the family.

Adjourned to 12/3/59.

11/3/59.

(Sgd.) J. BENNETT, J.

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Order: The evidence of the Oba Adele will be taken in Chambers on 12/3/59 at 9 a.m., in the form of a deposition.

11/3/59.

(Sgd.) J. BENNETT, J.

No. 13.

EVIDENCE OF OBA ADENIJI II

Resumed 12th March, 1959.

Appearances as before.

Order read. Counsel agree.

The Deposition of the Oba Adele of Lagos taken in accordance with Section 183 Cap.63 in Chambers.

10 4 P.W. OBA ADENIJI II (M/S). Oba of Lagos. Iga Idungaran. I know Plaintiff. He was brought to me in 1955 by a group headed by Lawani Abiade. He was known as Lawani Sowunmi. Many were known to me including Lawani.

20 They belonged to the Ojora family. Before he was brought the family sent a letter to Chief Oluwa the senior Chief asking for my approval of Lasisi as the candidate for the vacant stool of Ojora. I said that I could not say anything at that stage that they should go and come back the following week. The Chiefs had brought the letter to me. I thought another candidate might come forward.

30 A week later they came again with the letter alone. The Chiefs came at least on 6 successive weeks urging me to approve his candidature. I was reluctant as there might have been someone else. At the end I consulted the Chief Administrative Officer of the Colony Mr. Barker. I related the whole matter to him. He advised me to get the Chiefs to call a meeting of the Ojora Family. I told the Chiefs to do so they told me it was none of their business to go searching for candidates. Only one had been put forward.

Chief Oluwa the senior told me he had sent for Alhaji Akiyemi a senior member of the Ojora family. He told me that Akiyemi had said that all 11 senior members wanted to be Chief and it was impossible to select a rival to Lasisi.

This was confirmed to me at a meeting at my Iga at which all 3 Defendants were present.

40 Before that when Chief Oluwa reported this to me I consulted Mr. Barker again. He advised me to get the Chiefs to put it into writing that they were unanimous which they did. They put into writing that in view of the fact that Lasisi had no rival he should be accepted as Chief Ojora.

AGUSTO: Object where is letter?

In the High Court of Lagos

Plaintiff's Evidence.

No.13.

Oba Adeniji II.
12th March 1959.
Examination.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.13.

Oba Adeniji II.
12th March 1959.

Examination
- continued.

WITNESS: I have said my records have all been stolen I have offered a reward of £50.

COURT: See no reason why evidence of contents should not be given.

WITNESS: The procedure of selection is by his family. He is selected at a family meeting. Then he is presented to me and the Chiefs. The practice of selection is common to all Chieftaincy families.

The grown-up members of the family will meet at their Iga and select a candidate. If they agree upon one. 10

If they do not agree they submit to me the several candidates the several sections of the family have agreed upon. They submit the names through the Chiefs. Then I and Chiefs hold meetings with the different branches of family. We listen to each side and pick a candidate for them. That is final. After going through the merits and demerits of each. That is Native Law and Custom. 20

In this case there was no other candidate.

They may consult the Ifa Oracle in their own house - I am not concerned with that. I only deal with the facts presented to me.

I asked the members of Ojora family who presented Plaintiff if he was their choice. They confirmed it.

After I had given approval the Defendants came to me. They said they should have been asked for other candidates. I said it was not my business. I asked them who were their candidates. Mr. Aro, 2nd Defendant narrated a long story the substance was that it was turn of his house to select candidate. The others jeered. I asked him if he was putting himself forward. He wouldn't say yes or no. The others jeered and said he had no candidate. 30

I advised them to co-operate with Lasisi.

They never suggested that he was not elected according to Native Law and Custom. 40

Later Lasisi brought a document to me it was Exhibit 3. I told him to refuse to sign it.

I consider this is monstrous to expect a Chief to sign such a thing. It was then that they capped Aminu the 1st Defendant without any authority.

They placed a White Cap on his head. As far as I am concerned he is not a White Cap Chief. The Oba is the only authority to order the capping of a Chief in Lagos.

Had the Plaintiff signed Exhibit 3 there would have been no suggestion of another Chief.

The capping was to give a lease to a firm. Only the Chief can let family land. The Chief is all in all. In olden days he was chief arbiter -
 10 Once he becomes chief he does nothing else and he lives on what the family produces.

Only in recent years the Chief had to select some members of family to advise him and to approve his actions in dealing with family land.

Once the Chief dies that meeting dies with him.

I knew the late Bakare Faro. According to Exhibit 3 he had a Council of 20. When he died it died with him.

20 The 1st Defendant was never presented to me by Ojora family as Chief by candidate.

On contrary Aminu's uncle told me that they had been advised that it was not his family's turn. That I told the Defendants and others at a meeting at the Iga. I asked them what they wanted me to do when they could not agree.

30 This was after I had given approval and they came to me to try to suspend installation. Just a few days before capping. I told them that I knew the history of their family and that it was the turn of Lasisi Odunsi's house to present a candidate.

Any candidate from any other house would not have been approved by me.

Lasisi came from Asaba house. His grandfather was Chief and reigned for 3 months only. After him was Oyegbemi Branch. Then Ajayi Ojora, Aminu's grandfather who reigned for 42 years.

40 Then Bakare Faro reigned. It is therefore again the turn of the Asabi house. I had no hesitation in approving Plaintiff's appointment. The Defendants did not even present a candidate.

Without any approval a person cannot be a Chief he can only be a candidate. He cannot even be a Chief elect. He becomes that when I approve

In the High Court of Lagos

Plaintiff's Evidence.

No.13.

Oba Adeniji II.
 12th March 1959.

Examination
 - continued.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.13.

Oba Adeniji II.
12th March 1959.

Examination
- continued.

- until his installation - when he is capped. In case of Plaintiff everything was done according to Native Law and Custom.

After approval I send my staff with the person I have approved to the head Chief, that is Chief Olumegbon - He will not cap anyone if I do not send my staff. That is the Idejo Chief. A long time afterwards I heard that they had capped 1st Defendant

I would not call it capping. It was mockery. 10
It was never brought to my notice that he was going to be capped. Since that I have seen them for first time today.

I have not seen Defendants since Lasisi's installation. After Plaintiff had been installed I reported to Government.

It was approved by Governor-General. I was notified.

Cross-
Examination.

Cross-Examined:

The Plaintiff is not practically my own choice. 20
I approved. I would not have approved anyone from another house.

After I had approved Plaintiff and before capping I received protests in writing and orally. In spite of protests I did the capping.

I am the custodian of Native Law and Custom in Lagos.

I am aware that for last 40 years the Ojora Family has been in litigation in Court. I am not aware of a 1922 case. I am aware that for many 30
years Bakare Faro did not wear the White Cap.

There was no Oba at the time - He was not recognised by Government. I don't know that family get him recognised.

He was head of family not chief. Some Chiefs received stipends from Government.

A Chief is recognised for all purposes. The Chief is selected by the family and presented for recognition. The first step in the appointment of a Chief is the selection of a candidate by the 40
adult members of the family.

Don't agree that first step is selection by family council and then presentation to whole family at mass meeting.

The selection must be presented to me. It is compulsory otherwise he is not a Chief. Without capping he cannot be a Chief he can only be head of family. I do not know who acted as head of family before Bakare Faro was appointed.

10 I know Chief Asajon - There is no Chief Kosoko. Oba Falolu did not approve of his being capped. The Chief Administrator Colony refused to authorise. The late Chief Obanikoro carried out the capping himself in defiance of Oba.

He was later recognised as Chief Oloja Ereko. It is the family to decide on land administration with the Chief. If the majority of family do not want a particular Chief they cannot be forced to have him. I don't know of the case on the Ojora family Council.

I can't remember date when Plaintiff was first brought to me.

20 When he came first I did not see him. When I finally agreed I called for him. He was brought by some hundreds of his family. The majority of my Chiefs were present with me. I can't remember if Chief Olumegbon was there. I cannot say now which individual Chiefs were present.

30 I don't remember having seen the Evening Times of 8/11/55 before. Exhibit 10 - (By consent). I don't remember having seen the Evening Times of 23/11. Exhibit 11 (by consent). I don't remember the notice in Daily Service of 24/11 - Exhibit 12 (by consent). I don't remember the photo in Daily Service of 26/11 - Exhibit 13 (by consent). The only ceremony on the final occasion was that the man is handed to the senior Chief and then he is presented to me.

40 When finally came to me on 26th I told them definitely it was too late. I did not direct them to Chief Oluwa. The Chief selects his own Council. Don't agree that Chief must have Council's approval. He cannot dispose of family property without consent of leading members of his family in his Council. When Odunsi was capped there was no rival. I didn't send 4 Chiefs to a meeting of Ojora Family later. They are members of that family. I am not aware of their attendance. I don't remember seeing notice of an Ojora family meeting. There is a fee "Ikaro" on capping. When it is paid authority is given to cap.

In the High Court of Lagos

Plaintiff's Evidence.

No.13.

Oba Adeniji II.
12th March 1959.

Cross-
Examination
- continued.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.13.

Oba Adeniji II.
12th March 1959.

Cross-
Examination
- continued.

I know Yesufu Dosumu. He came to me and said he wanted to become Chief. I told him must be put forward by family.

He did not deposit Ikoro with me.

I did not tell him Plaintiff would refund his deposit. Know Ojora is a composite family. I don't know that it is Ojora practice for Council to select candidates for Chieftaincy who they present to a mass meeting. I don't know of the Chief elect being taken to "Marorun" where cap is placed on his head. 10

The Council dies with Chief. I don't know that Ashafa became head of Lotos before Chief appointed. Ogundimu has been selected as next Chief Oloto. I am considering recognition. Recently there was dispute between myself and Asajon. I deposed him - He didn't challenge my authority. The majority of his family wished him deposed.

I reinstated him after intervention of Alake etc. One of my predecessors had trouble with Government. Recognition was withdrawn - The country was divided. His family deposed him with Government support. He was also deported - He did not contest deposition but he did contest deportation - when the case was on, Sir D. Cameron brought him back. But not recognise as Oba. His supporters did recognise him. A person recognised and approved by Oba, by Government and occupies Iga administers family property to exclusion of any other. 20 30

Majority alone does not decide a Chieftaincy issue. The person the majority want may not be entitled to be chief. We consider the merits of each applicant.

It is impossible at times for a family to choose a Chief. The Oba and Chiefs decide for them.

All the members of the Ojora Council came to me with some others - They had no candidate - There was no need to summon the whole family as no rival candidate. Chief Onitolo did not bring Plaintiff direct to me. 40

I didn't tell Onitolo matter had to be rushed.

I don't know Plaintiff's full brother contested - Yaba Alara. I don't remember if they were signatories to the protest. I don't know that they defected and joined Plaintiff after capping.

The protest was made at last minute - I know Yaba. I do not remember seeing him when protest made. The Plaintiff's name was forwarded to Government for recognition through the Chief Administrative Officer.

In the High Court of Lagos
Plaintiff's Evidence.

Not Re-Examined.

No.13.

TO COURT: It was after Lasisi's installation and after they had made obeisance to him that they asked him to sign Exhibit 3.

Oba Adeniji II.
12th March 1959.

10 I think it monstrous because he was bound hand and foot.

Cross-Examination
- continued.

(Sgd.) ADENIJI ADELE II
Oba of Lagos.

(Sgd.) J. BENNETT, J.

Adjourned to 13/3/59.

FRIDAY THE 13th day of MARCH, 1959

Suit No.ID/20/56

Appearances as before.

20 The deposition of the Oba Adele II taken on the 12/3/59 is admitted by consent.

No. 14.

No.14.

EVIDENCE OF EDWIN AYOLI BAJULAIYE (Recalled)

Edwin Ayoli
Bajulaiye.
(Recalled)

3 P.W. Recalled for cross-examination - reminded on oath.

13th March 1959.

Cross-Examined:

Cross-Examination.

At the Iga Ojora we found on 6/12/54 only those who supported the late Chief.

We informed the Oba of what we found.

30 I was a Government produce examiner before I became a Chief.

COURT: Would it not save time if you gave evidence in English.

WITNESS: It is difficult to speak English in Court.

AGUSTO: You gave evidence in Kosoko case in English.

WITNESS: Yes but I find it easier to speak in Yoruba.

In the High
Court of Lagos.

Plaintiff's
Evidence.

No.14.

Edwin Ayoli
Bajulaiye
(Recalled).

13th March 1959.

Cross-
Examination
- continued.

After funeral I and 3 other Chiefs, Chiefs Ashogbon, Olorogun, Onitolo went to Iga Ojora the 2nd time.

We were active members of the Ojora family.

It is not so that head of family orders bell to be rung to summon family meeting.

The secretary of family may order bell to be rung on Chief's instructions.

The Council and majority of family ignored our summons. I knew of the "terms of settlement" in the 1947 case but I never read them. Don't know contents. Many of the family didn't support them. Since I didn't support them I didn't bother to read them.

10

COURT: How can you say you support them or not if you didn't know what they were.

WITNESS: I was at the meeting when the settlement was made but I didn't agree.

COURT: You were present when they were drawn up? They were read?

20

WITNESS: Yes. But I don't know what was in the document.

COURT: Please stop telling lies.

TO AGUSTO: I believe a Chief is sole arbiter. He must not be fettered.

I sold 41 Onikoyi Lane with the consent of my committee. My committee with whom I sold land signed conveyance. Some others did not. They didn't agree. The sale was set aside.

My family owns an island behind Ikoyi. I sold it for £10,000 to the National Bank of Nigeria. I and the Committee sold it.

30

There were objections by committee. They were going to set aside. Onisemo intervened - The Bank paid an extra £1,000 to get committee to ratify. I didn't squander it. The £10,000. I didn't spend the money myself. Myself and the family spent it. The family was divided in two - I shared the money with those who supported me. Those who didn't complained to the Bank. They were given compensation £1,000.

40

I can't say how much was in family Bank account when I was installed. In June, 1956 Ojora family received £8,000 advance rent from Biney. It was after installation of Plaintiff. He got it.

I don't dispute that we received the money. I agree I received the money. I signed the lease. It was late Chief who agreed to give lease. The Plaintiff and I received the money. I am not member of Council of old Chief.

I am member of Council of new Chief. (Referred Exhibit 7). 7th May, '55 Daily Service. Public Notice - My name is not there - I didn't attend all meetings - I know where Lawani Sunmonu lived and died. Apongbon Street, Jackson lives there - It is their family house.

I know Lawani, Jackson and his mother to be members of Ojora family.

I've heard of Bada a slave of Aro. I don't know personally if he was a slave. I didn't attend meetings at Apongbon Street. I didn't hear that Plaintiff chosen at meeting at Apongbon Street.

Didn't hear that Lawani and Jackson took Plaintiff to Chief Onitolo in November, '55. Didn't know they told Onitolo that Oluwa was willing to take Plaintiff to Oba for capping. (Referred Exhibit 10). I buy Daily Service. All that was done at Apongbon was not to my knowledge. Only what took place at Iga. Rabiun held key of Iga. He was requested by Oba to return it.

We held meetings in October, November and December in Iga. In the year of installation.

The Council and the part of family supporting them never attended our meetings. Plaintiff's appointment was by faction who supported him. Know Yaya Alara well - full brother of Plaintiff. Asaba House. Know Sanni Balogun. Also Asaba. He is head of house of Asaba. I don't know if Yaya was one of 5 names put forward. I was not one of their Council.

I received protest from Council at Plaintiff's appointment against capping. I received as a white cap Chief. They came to meeting of Chiefs at Chief Oluwa's house the day before the capping. Protested. I read the protest I received. Sanni Balogun and Yaya Alara signed the protest.

In my own family I have a committee. Akinyemi Adeshiya, Babatunde Onikoyi and others - The same people who were members of my 2 predecessors' Councils are not members of mine -

A Chief selects his own. It so happens I

In the High Court of Lagos.

Plaintiff's Evidence.

No.14.

Edwin Ayoli
Bajulaiye
(Recalled)

13th March 1959.

Cross-
Examination
- continued.

In the High
Court of Lagos.

Plaintiff's
Evidence.

No.14.

Edwin Ayoli
Bajulaiye
(Recalled)

13th March 1959.

Cross-
Examination
- continued.

selected from the former committee. My predecessor did the same. The Chief alone appoints his committee from the members of the family.

I had to make an apology to my family in November, 1956. Tendered through the committee. The document produced is my apology - Exhibit 14 - It was when this dispute was to be settled that the members of the family appointed this new committee. They are not the members I appointed myself.

10

When things not going well family can draw up document to put things on good basis. Agree I and others including Plaintiff received £8,000 from Biney. All the members of the committee had £100 each and the rest of the money was distributed among the family and other expenses were taken out of the money.

When I say family I mean that part which supports the Plaintiff. I went to Biney's with Chief. Before we signed lease - Got money. Got £100 each.

20

Know Yesufu Dosunmu one of signatories. I don't know Plaintiff paid him £60 refund of Ikaro deposit. It wasn't the prospect of this money that made me support Chief. When Chief gets money all family well benefit.

After the capping we were instructed by Plaintiff to call all members of other side as he had not seen them since capping. Members of family resident at Ijora - Not all members of the family did not go to greet him.

30

The majority of them did not go to greet him. The majority do not live at Ijora. I have never lived at Ijora. I have attended meetings at Ijora since Faro's time.

I have never figured in any of the family cases. I didn't say that Defendants attended this meeting we called.

COURT: Remind you of evidence yesterday -

WITNESS: It was 4 days after capping he invited them and they prostrated. I know that almost from Faro's death there were claims and counter-claims and disclaimers published in press.

40

It is true they prostrated. I can give names of people who attended meetings in October, November, Chiefs Onitolo, Ashogbon, Onikoyi, Lawani

Sanni, a woman Iya-Offin and another woman - other members of family. Iya-Offin is sister of Lawani.

Mustapha Aguru, P. Jackson, Rabiú Faro, Nosiru Faro - Isa Braimoh Otun - Females were Salamotu Molade - I know many but I don't know names. There were always over 100 but I didn't know names.

Not only 15 or 16.

10 I was not among those who received £1,500 before capping. After capping £8,000 received. I never held any meeting with them at Apongbon Street. I don't know what went on there. It was in Council of Chief after capping that we went to Biney and got £100 each.

20 I haven't heard people spend money to get Chieftaincy. One can become Chief whatever way he pleases. Plaintiff was a carpenter and brick-layer before he became Chief. He was living in family house. I don't know how much paid to Chief Oluwa for capping, I am not in support of terms of settlement.

The Chief collects money and distributes it to family. Exhibit 14 contains similar provisions to terms of settlement Exhibit 3. The Chieftaincy Family is the owner of the family property. Together with the Chief.

All are entitled but all are not entitled to the same amount. All members of the family have an equal right of ownership in family lands.

30 When land disposed of it must be with approval of the principal members of the family. If Chief disposes of family property without approval it will be set aside by the Court.

Re-Examined:

The family knew about the lease to Biney - About 8 people executed Biney's lease.

Dosunmu signed lease. He received £100 like us and signed for it. He is one of Defendants' camp. The meeting at which Plaintiff was selected was at Iga Ojora.

40 Bell was rung. Defendants didn't attend but they knew. Some members of family took Plaintiff to Oba. The Defendants' protest against Plaintiff's appointment was the day before the capping. (Referred Exhibit 14).

In the High Court of Lagos.

Plaintiff's Evidence.

No.14.

Edwin Ayoli
Bajulaiye
(Recalled)

13th March 1959.

Cross-
Examination
- continued.

Re-Examination.

In the High
Court of Lagos.
Plaintiff's
Evidence.

No.14.

Edwin Ayoli
Bajulaiye
(Recalled).

13th March 1959.

Re-Examination
- continued.

Babatunde Onikoyi was one of the committee members. I appointed him. The family added some members to my committee. I didn't at any time receive £1,500 from Biney. The £8,000 was paid at one time.

Never knew of meeting at Apongbon Street.

TO COURT: I attended a meeting at which 1st Defendant was selected as Chief.

I didn't go to cap him as Chief. January '56. We warned them not to cap him. When we first went to present Chief we were sent away. The Oba had learnt that there was a misunderstanding in the family and he would not cap Plaintiff as there might be another candidate.

10

Adjourned to 17/3/59.

13/3/59.

(Sgd.) J. BENNETT, J.

TUESDAY the 17th day of MARCH, 1959

Resumed.

Suit No.ID/20/56

Lardner for Plaintiff.

Oseni for Defendant

20

No.15.

Olatunde
Ade Alara.

17th March 1959.

Examination.

No. 15.

EVIDENCE OF OLATUNDE ADE ALARA

5 P.W. OLATUNDE ADE ALARA (M/S)

I am known as Yaya Alara. Onike Village, Yaba, Trader. I know Plaintiff and Defendants. I am a member of Ojora Chieftaincy Family. My name is No.11 in Family Council in Exhibit 3.

After the death of Chief Bakare Faro the Council continued but was not functioning well. After the capping of Plaintiff a bellman was seen round to call the members of family.

30

I was sent together with one Oye Ajayi by the Council to the Plaintiff to fetch the bell. We sent the bell round a second time to say the Council would attend the Chiefs' meeting. We went to him; to his meeting we greeted him - After the talks he welcomed us - the Council as strangers and gave us two guineas.

As by custom we prostrated before him. 1st Defendant was not there. The 2nd and 3rd Defendants were there. Then we departed. We went back

40

to Iga Odifin. The Committee brought up the suggestion to collect £1,000 from Total Oils. They had leased land from us. I asked why they should go and collect money from them and I asked further we had been collecting from Ajegunle. I was told that the money collected had been spent - Joe Oke, the 3rd Defendant said that.

10 I said I was a member of committee but I was not told how money had been spent. Oseni who is dead and Jimo Onisemo prepared an account of how they spent money. Oseni is Oseni Handu. They refused to show it to me.

20 We discussed that we could not get money from Total without the new Chief signing - agreeing to our getting it. They said they didn't want him to sign. I said the late Chief whose Council we are is dead and the Council was dead too. They said they would get the money in any event. They appointed a new Chief. They took decision to appoint a new Chief about a month after Plaintiff's capping by then I have left the Council. The Plaintiff has a Council. That was selected about a week after his capping.

I am a member of it. My brother Sanni Odunsi is also a member. Lawani Sunmonu was a member. He is now dead. The new Council is working with Plaintiff. After Bakare Faro died at least 7 members of his Council wanted to become Chief.

30 2nd and 3rd Defendants were Council members they too were struggling to become Chief - We discussed this - 1st Defendant too.

40 When we saw we could not reach agreement we decided to consult the Ifa Oracle - We selected 3 branches of family. Asaba, Oyegbe and Aro - Aro was not entitled. Because 1st Aro was a stranger at Ijora. After the oracle was consulted it decided on Asaba. The secretary, the 2nd Defendant disagreed. He said he wanted his brother the 3rd Defendant. The Council said he was not entitled - his branch of family was not entitled - There was confusion. A man with only Aro blood cannot be Chief Ojora, because the Aros are strangers to Ojora family. The first Aro was Ajimosu - he came from Isolo - He was received as a stranger - Ojora liked him and granted him favours as Chief Aro - He had son Oduntan. He was father of Ereko my grandmother. She had Eyisimi.

In the High Court of Lagos.

Plaintiff's Evidence.

No.15.

Olatunde Ade Alara.

17th March 1959.

Examination - continued.

In the High Court of Lagos.

Plaintiff's Evidence.

No.15.

Olatunde Ade Alara.

17th March 1959.

Examination - continued.

Cross-Examination.

My father Odunsi married Eyisimi. He was from Asaba family. Asaba branch has Odofin Aro and Ojora blood.

An Aro can only become Chief Ojora if he has Ojora blood in his veins. An Odofin can become Chief Ojora. I became member of Chiefs' Council the day he appointed it.

Cross-Examined: (Agusto arrives).

I and Sanni Balogun are full brothers of Plaintiff. Chief Onitolo is older than Sanni - Kotiye is older - She is oldest. Ashimowu Oduti is older than Sanni, I remember the action of 1954. Judgment went against the chief. He appealed and died while it was pending. I was still member of Council.

10

When Chief died 7 of us asked to be considered to be Chief. Joe Oke Akinwunmi-Aro, O.A. Alara (self) Abudu Laisis Ajayi Ojora, Aminu Akindele Ajayi (1st Defendant), Oseni (deceased) Jimo Onisemo, all were members of the Council.

20

We were considered by the Council.

At that time there was no news that Plaintiff claimed to be appointed. I heard that he was going to be capped the day before the capping. I was not among those who sent letters of protest against Plaintiff's appointment. I was not at the meeting when it was decided to protest.

I was not among those who sent to the Oba to protest on the 26th.

AGUSTO: Have representative from Chief Administrative Officers with files.

30

ALALOJI-FABI - Administrative Officer - Lagos Affairs. Produce Ojora Family File.

Page 143 is protest against appointment of Plaintiff. The photostat produced is copy. Produced by consent Exhibit 15, Letter dated 25/11/55.

Exhibit 15.

WITNESS: The letter produced was signed by me. Kotiseye is oldest member Ashimowu Oduti is older. Sanni also is older than me. They sent a protest also to Oba and Chief Administrative Officer.

40

(Letter of 18/11/55 produced) - Photostat admitted by consent) Exhibit 16.

Exhibit 16.

WITNESS: Signed by heads of my family. The Asaba. Opposition is customary.

The family council was meeting. On the question of an access road to Ijora town in 1955 the Chief Administrative Officer met and treated with the family Council.

10 Before Chief died there was another acquisition of family land. It is still pending. Chief claimed compensation. The Council didn't conduct affairs properly. They were embezzling family money. After death of Chief there was suggestion in Council, that £1,000 should be collected. I was still a member of Council then.

3rd Defendant usually occupied chair at Council meetings. When we were fighting late Chief Lawani Sunmonu had defected and supported him. Someone else was appointed in his place by the secretary.

20 Lawani Sunmonu was a descendant of a domestic of Aro. His great grandfather was Bada a slave of Aro. Agree rights of domestic limited - Rights of descendants also limited in property. I went to a meeting to which Oba sent Chiefs to warn not to cap 1st Defendant. It was meeting of Ojora family. They went on and capped 1st Defendant. Chiefs Olorogun, Ashagbon and Onitolo were sent.

Agree 2nd and 3rd Defendants important members of Ojora family but of the Aro branch.

30 Remember action when they had sale by Chief set aside. Many a time the Council was at logger heads with the Chief. He could have dissolved the Council but he did not.

Council is to watch the family's interest against unscrupulous acts of Chief. I remember case when Chief gave land to someone and we gave it to someone else. In Court the view of Council prevailed.

Re-Examined:

40 According to Yoruba Native Law and Custom Arotas have a say in the selection of Chief. We didn't regard ourselves as permanent. Another Council was to be selected after death of Faro.

In the High Court of Lagos.

Plaintiff's Evidence.

No.15.

Olatunde Ade Alara.

17th March 1959.

Cross-Examination - continued.

Re-Examination.

In the High Court of Lagos.

No. 16.

Plaintiff's Evidence.

EVIDENCE OF PETER JACKSON

6 P.W. PETER JACKSON (C/S)

No.16.
Peter Jackson.
17th and 18th March, 1959.

95, Apongbon Street, Contractor. Know the parties. I am member of Ojora family. The present Chief has Council selected by him. I am the General Secretary. The Council is working with Chief.

Examination.

After Bakare's death and burial the elders of the family summoned a meeting of the Ojora family at Ojora Iga to discuss and prepare for selection of new Chief Ojora. Several meetings were held until the elders were appointed for the selection according to Native Law and Custom the rightful candidate for Chief Ojora. 10

The selection committee selected Plaintiff. He was presented to the Lagos Chiefs. He was presented to the family first. They approved. Then family requested us to present him to Lagos Chiefs. I was present at family meeting at Iga Ojora meeting of general family and the elders. 20

The family approved unanimously. I didn't notice Defendants there. After capping there was a meeting. I saw 2nd and 3rd Defendants there. They came to Chief to pay obeisance. All of us were there. They called themselves the Council of the late Chief. We received them. They prostrated all of them - including 2nd and 3rd. in my presence. Chief gave them £2.2.0 kola. They didn't say then Chief not properly selected. 30

About 3 months after that I first heard that 1st Defendant was capped. I am principal member of family. I know of terms of settlement in 11/47. As we understood these were between late Chief and family. There was a peace meeting with Bakare Faro.

The 2nd Defendant told the meeting that it was a settlement between Bakare Faro and his own Council. 11/47 was dispute between Bakare Faro and 2nd Defendant. 40

Cross-Examination.

Cross-Examined:

(Exhibit 5 handed to witness W.A.C.A. 242/55) I remember this. I was a supporter of late Chief.

I was referred to in judgment. I gave evidence. I understand the judgment, and the appeal.

In the High Court of Lagos.

Plaintiff's Evidence.

No.16.

Peter Jackson.

17th and 18th March, 1959.

Cross-Examination - continued.

The Council is not perpetual. I held view that terms of settlement meant only for that action. I don't mean that supporters of old Chief selected Plaintiff. I did not have meetings at my place on Chief's death. I have no group in family. Mariamo Onikoyi supports Plaintiff. L. Sunmonu, Mustapha Agoro, myself, Rabiou B. Faro, Mosu B.Faro, Salamotu Molade Humun, Olayide Onisemon Salamotu B. Faro. Salutiyyu B. Faro. They are supporters of Plaintiff. Isa Buraimoh Otun also.

10

I didn't go to Onitolo and tell him had selected Plaintiff. Didn't with Onitolo take him to Chief Oluwa. He did not tell to see Oba. Oba did not tell us to go and ring bell if Plaintiff true family's choice. Chief Onitolo didn't say could not ring bell.

20

I didn't return later to Oba to say Plaintiff had rung bell. Chief Oluwa didn't say must cap quickly.

Whole thing not done within week.

Adjourned to 18/3/59.

(Sgd.) J. BENNETT,
J.

WEDNESDAY the 18th day of MARCH, 1959

Suit No.ID/20/56

Kotun for Plaintiff.

Agusto for Defendants - Oseni with him.

6 P.W. Cross-Examined (Continued):

30

The Council or committee is not the only body entitled to select a successor of late Chief. The elders selected at a general meeting held for purposes of selection of a Chief are those entitled to select.

If there is an existing family committee of elders they are not entitled to select a candidate as new Chief. There must be a special committee for the purpose.

40

If a special committee is appointed for the purpose the right to select belongs to them and no one else.

That committee must be set up by the members

In the High
Court of Lagos.

Plaintiff's
Evidence.

No.16.

Peter Jackson.
17th and 18th
March, 1959.

Cross-
Examination
- continued.

of the family. It would select from candidates put forward by those houses entitled to nominate. Houses which are eligible would submit a candidate.

Ojora family consists of 3 Chieftaincies - Ojora, Aro, Odofin. The Ojora is senior and has the right when there is a Chief to appoint the Chiefs of Aro and Odofin.

After the selection of Chief Ojora properly made the next step is to present the selection to the family in mass meeting. 10

Nowadays in addition to the bellman meetings are called by placard and notices in the press.

The right to summon family is in the governing body of the family. When the selection is confirmed by family person selected becomes head of family and Chief Elect or de facto - Whoever has been acting as head steps down for him. He is entitled to reside in Iga. He is entitled to wear a cap inside the Iga which no one else can.

He is not entitled to administer family property with the Council. 20

He is entitled with the elders of family to administer the family property. The cap he will be entitled to wear in Iga has not to be placed formally on his head by elders. I don't know that a long time may elapse between selection and capping by Oba.

Know for years late Chief Bakare Faro wore only Hausa white cap. He administered family affairs and property with family council during that period. A Chief has control over own family and property only. 30

No act of any member of family even the Chief is valid without the consent of the family obtained through its accredited representatives. It has not been my ambition for years to be Secretary to this family.

I have recently put out posters as general Secretary of family.

Poster produced issued by me Exhibit 17. Calling meeting for 15/3/59. Members of Ojora Chieftaincy Family attended. The question of what evidence to give was not discussed. 40

I am not a descendant of Bada a slave of Aro. My mother was Hunmu daughter of Adisatu - Adisatu

was a daughter of Bada. I am descendant of Bada. He was not a slave of Aro. Do not know of 1917 case. If Court found he was a slave of Aro I would not agree.....

My mother was sister of Lawani Sunmonu. Mother, self, Lawani live in same house, 95, Apongbon Street.

Plot to make Plaintiff Chief not hatched in that house. (Referred Exhibit 16).

10 I don't know if house of Asaba disapproved Plaintiff's selection. Agree that during this turmoil over appointment there were many publications in press from both sides. Common knowledge in Lagos that there was a dispute.

I did not attend meeting at which 1st Defendant selected as Chief. (Referred Judgment of Court 9/1/1917). Exhibit 18. I don't agree with this. I don't know if Lawani ceased to be member of Council during '54 case. Yaya Alara would
20 know more than I do about the Asaba House.

Re-Examined:

Two days after I issued Exhibit 17 I saw another disclaimer by Aros. Daily Service of March 16/59 - produced Exhibit 19.

No. 17.

EVIDENCE OF SULA BOLAJI

7 P.W. SULA BOLAJI (M/S)

Chief Ashogbon of Lagos. 73, Idumagbo Road.

30 I am connected with the Ojora Chieftaincy family. My grandfather was Oyegbe - was an Ojora. I knew the late Chief Bakare Faro. After his death the family did not appoint any successor. After the final funeral ceremonies another person was appointed. About 6 months or more after death. The Plaintiff was selected. I am one of those who selected him.

I was at my house when Plaintiff came to me he said he wanted to become Chief. I told him to consult the family. He did so. He returned to me.
40 I told him the turn of our side to select candidate. The Oyegbe family. He came a third time

In the High Court of Lagos

Plaintiff's Evidence.

No.16.

Peter Jackson.
17th and 18th March, 1959.

Cross-Examination
- continued.

Re-Examination.

No.17.

Sula Bolaji.
18th March 1959.

Examination.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.17.

Sula Bolaji.

18th March 1959.

Examination
- continued.

and told me he had been appointed by all the members of family. I asked who were members who appointed him. He never answered. He went away.

He returned - I asked again. He gave me some names. Among them was Lawani Alade Sunmonu and Jackson; and all the members of family at Ijora.

When a Chief dies the oracle will be consulted by the members of the family. The family will select those who will consult Oracle.

The person nominated by the Ifa Oracle will be elected by the people. They will report to members of family and the people at Ijora. The report will be made to the head of the family which put up the candidate.

10

A candidate is put forward from each house. May be 5 or 6. They are presented to Oracle. The person selected is presented to all members of family who will elect him as Chief.

The head of each house which has presented a candidate consults the Oracle. The head of each house presents a candidate to the head of the whole family. The head of house presents name to the Committee who will consult Oracle and report the result to the general family.

20

Before Committee is appointed there will be a mass meeting. I heard that there was a meeting. I didn't attend because I was at home - confined by tradition - I didn't attend any meeting to elect Plaintiff. I took no part in his election. I agreed with it. I know he was capped. I wasn't present. It is customary for Chief to have Council of elders. I am member of Chief Ojora's Council. The Council has been long in existence.

30

I was member of former Council before I was made Chief. I was appointed to the existing Chief's Council by Lawani Sunmonu and Peter Jackson.

I was not appointed by Chief Ojora. I have since functioned as member of Plaintiff's Council. I got some money from Biney. 1st Defendant is my relative. From my branch of family.

40

He was not appointed by my family. He belongs to the Odunsi House. There are 5 houses. Oyegbe Odunsi, Adeji, I've forgotten remainder.

First Defendant is from Ajayi House. An Ajayi reigned before Bakare Faro, 3 houses left. It is

our turn not the Plaintiff's family. When he has been nominated I agree. Faro's house had no right to present candidate to succeed to Bakare Faro.

Ajayi could not present candidate. My house did not present anyone.

Cross-Examined:

10 I succeeded Chief Ladejo Ashogbon. The Ashogbon Chieftaincy Family has no Council. There is no family Council. If any matter arises we call meeting of family and discuss and decide. All the family not only the elders. If any matter arises we call the elders.

COURT: Please make up your mind.

WITNESS: When anything arises I call people like Buraimoh Alebosu, Buraimoh Akeso, they are at present the two elder members of the family. They used to sit with my predecessor to manage the affairs of the family.

20 Majolagbe was Chief Ashogbon before Ladejo. They also sat with him to administer the affairs of the family.

30 They were appointed by the members of the family. I know the Ojora Chieftaincy has a standing Family Council. Know 2nd Defendant and his brother Oke. They were members of the family Council when Chief Ajayi Ojora was alive. They continued to be members during Bakare Faro's reign. There are 20 members of the Council apart from the Chief. When I was appointed I met them as members - I don't know who appointed them. I know of 47 action but I was not present in Court.

I am not a member of that Council of which Defendants are members. I don't know anything about 5 members of Ojora family presenting their names to Council for consideration as Chief. I heard of it. It is about 3 years since Plaintiff came and told me he wanted to become Chief.

40 Between the time he told me and his capping was 2 weeks or more - up to 3 weeks. He came to me 3 times before he told me he had been appointed by Lawani and Jackson and other members.

It didn't come to my knowledge that they held meetings at Apongbon Street. When he mentioned

In the High Court of Lagos

Plaintiff's Evidence.

No.17.

Sula Bolaji.

18th March 1959.

Examination - continued.

Cross-Examination.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.17.

Sula Bolaji.
18th March 1959.

Cross-
Examination
- continued.

Lawani and Jackson he didn't say how many others selected him. He said many. I didn't trouble to find out how many.

I know before Bakare Faro's death family was divided into 2 camps. I heard of Plaintiff being presented to Chiefs and Oba.

That was about 4 weeks after Plaintiff had been to me third time. The capping was about two weeks after Plaintiff came to me. I was presented to Chiefs and Oba.

There were many members of Ojora family there. They were countless. The Defendants were not there. I didn't hear of any protest by the Council and Defendants. I received a protest. I was present at a meeting of Chiefs at Chief Oluwa's Iga the day before capping.

I saw members of Council and the family led by 2nd and 3rd Defendants who came to protest against Plaintiff being capped. I didn't hear of a mass meeting which selected 1st Defendant as Chief. I attended the meeting. The Oba sent us to warn them not to select 1st Defendant as Chief; we left and went to Plaintiff's house.

There were many members of the Ojora Chieftaincy Family at that meeting. I can't say how many. The Iga was packed full. It was at Iga Odofin. I know Rabiun son of Bakare Faro.

I know Oba asked him to deliver keys of Iga Ojora after Bakare's death and he refused: I became a member of Plaintiff's Council about two months after his capping. It was the turn of my own house to present Chief. Plaintiff doesn't belong to us but to Asaba House.

In spite of that he has been appointed by a section. There was no one coming from our side so we agreed. All other members of Ojora apart from the section which appointed Plaintiff refused to accept him.

Onisemo and Yesufu belonged to my house. They were among those the Council were considering, as candidates for Chieftaincy.

There were candidates from our house.

When we can't make up minds another set of family can present one. Plaintiff's full brother was a candidate. He and other brother Sanni Balogun protested against Plaintiff's capping. I'm

10

20

30

40

not aware of protest from Asaba House. (Referred Exhibit 16). This was 9 days before capping.

Re-Examined:

There were more members of family at Iga Odofin than followed Plaintiff to Oba.

I am member of Ojora family not of Council.

I was member of Ajayi's Council.

In the High Court of Lagos

Plaintiff's Evidence.

No.17.

Sula Bolaji.

18th March 1959.

Cross-Examination
- continued.

Re-Examination.

No. 18.

EVIDENCE OF SANNI BALOGUN ODUNSI

10 8 P.W. SANNI BALOGUN ODUNSI (M/S)

Fisherman. I live at Iga Ojora. I am a member of Ojora Family Council. Bakare Faro's Council.

I belong to Odofin House. No I belong to Asaba House.

COURT: You too need to make up your mind.

20 WITNESS: Know Odofin is junior Chief to Ojora. The Odofin was son of Chief Ojora - The original. Aro was a stranger at Ojora. He came from Isolo. Ojora tried to make him prominent by giving him Chieftaincy of Aro. He was a messenger for Ojora. Ojora gave him nothing. Odofin can become Chief Ojora - Aro cannot.

When Bakare died Oba advised us to present a candidate. The Oba advised the Council to present a candidate but we couldn't as 7 members of it were contesting to become Chief.

I can give some names.

30 Yaya Alara, Jo Oke, 2nd Defendant, Jimo Onisemo, Oseni (now dead)

I can't remember any more.

Before Oba sent for us we could not do anything as there was quarrelling. I know Plaintiff. He is my brother. He is Chief Ojora now. Before the Oba sent for us the Plaintiff was entitled to any of the 3 Chieftaincies.

No.18.

Sanni Balogun Odunsi.

18th March 1959.

Examination.

In the High
Court of Lagos

Plaintiff's
Evidence.

No.18.

Sanni Balogun
Odunsi.

18th March 1959.

Examination
- continued.

Before Oba sent for us the family had done nothing to Plaintiff. They held meetings at Iga Ojora about 6 times - Bellman. We members of the Council did not attend because we didn't belong to their group. Bell is customary to convene meeting. I know purpose of meeting. To call in members of family together - The bellman has no duty to tell people the purpose of the meeting. We didn't attend. After Bakare's death some Chiefs came to call us to attend his funeral ceremonies - We didn't go, that was start of quarrel.

10

We didn't have any Council meetings before bell called meeting.

I don't know result of meeting. I knew Plaintiff had been selected as Chief the day before capping. We protested against it. No other member of the family had been selected up to date of capping.

Know 1st Defendant Aminu. He was capped in 3rd month after capping of Plaintiff. There are only 5 houses in Ojora Chieftaincy.

20

Oyerokun, Asaba, Ajayi Ojora, Oyegbe - can't remember the other, I belong to Asaba as is Plaintiff. 1st Defendant is Ajayi. The Chief Odofin is Ojora. The present Odofin is Asaba.

The Chief Aro is not from any of the 5 houses. After Plaintiff's capping Family Council did nothing.

The Plaintiff sent a bellman to summon family. The three Defendants and members of Council attended including me - The Plaintiff spoke

30

He said not there to fight but to settle family dispute. He gave members of Council £2.2.0. they prostrated.

The 1st Defendant and the present Odofin were present. Nothing happened for 3 months then 1st Defendant was capped. No one selected him. I just saw a white cap on his head.

When I was Council member we held meetings at Odofin but later held at Ebute Metta. We also held meetings at Mr. Augusto's house. He told us we should elect a candidate within 3 months. We didn't.

40

I'm now a member of Plaintiff Council.

Chief Ajayi had no Council. He had elders.

After Chief's death the elders continued but

2nd Defendant stopped them and founded a meeting himself. The Plaintiff appointed me to his Council.

The Chief can't appoint a Council himself. He does it together with members of the family. He appoints in presence of the family. The Defendants' Council originally belonged to Bakare Faro. We worked with him until he did something wrong. We set it right through the Court. We got judgment.

10

The Council dies with the Chief.

Cross-Examined:

AGUSTO: Late prefer to wait. to cross-examination

COURT: I am now off to Cameroons on circuit and unlikely to return before June, suspect at least another week in this.

KOTUN: More. I haven't finished and Defendant will take a week.

20

COURT: Will adjourn to 1/6/59 for mention before another Judge. The Registrar will know date of my return by then and this case can be fixed for first week after my return.

18/3/59.

(Sgd.) J. BENNETT, J.

MONDAY the 6th day of JULY, 1959

Suit No.LD/20/56

L.A. Odunsi vs. A.A. Ojora and 2 Others.

AGUSTO for Defendants. Oseni with him.

LARDNER for Plaintiffs.

30

LARDNER: Owing to Mr. Kotun's illness Mr. Moore will now lead me.

8 P.W. SANNI BALOGUN ODUNSI (M/S)

Cross-Examined: AGUSTO:

Q. When you said the Oba advised the Council you meant the Council referred to in the Terms of Settlement?

A. I don't understand the question. I was a member of Family Council before death of Chief.

40

Q. The Council was referred to in Terms of Settlement?

In the High Court of Lagos

Plaintiff's Evidence.

No.18.

Sanni Balogun Odunsi.

18th March 1959.

Examination - continued.

6th July 1959.

Cross-Examination.

In the High
Court of Lagos
Plaintiff's
Evidence.

No.18.

Sanni Balogun
Odunsi.

6th July, 1959.

Cross-
Examination
- continued.

A. You are referring to the letter to Bakare Faro. Know in 1947 action against Bakare Faro. Know it was settled by terms of Settlement. The Council made the terms of Settlement.

The Oba asked the Council which had been functioning during lifetime of Bakare Faro.

We couldn't select a candidate because 7 members of Council wanted to be selected.

We could not go back to meet the Oba because we had not agreed. 10

Ojora is an Idejo Chieftaincy. Land owing. Those are 3 others -

Akariberi Class
Ogalade "
Abagbon "

I don't know Obas belong to Akariberi Class.

I don't know history of Lagos.

I know about Obas who have reigned.

When Akotoye died can't tell that son Docemo succeeded because I was not born. 20

I remember saying we did not attend meeting as we did not belong to their group.

The family was divided - One was on side of Bakare Faro.

By "their group" I mean the supporters of late Bakare Faro.

The capping of Plaintiff was to be on a Sunday. On Saturday we signed a letter protesting against capping.

I wanted his senior brother to become Chief. 30

Yaya Alara I wanted.

The capping was done on Sunday in spite of our protest.

We knew before the Saturday of the selection of Plaintiff.

It was 3 months before that Saturday that we knew Plaintiff had been selected as Chief.

I belong to Asaba House.

Asaba house sent protest to Oba and Chief Administrative Officer off against selection of Plaintiff. 40

We wrote letter on the Saturday the Chiefs refused to accept it.

I signed protest from our Family.

(Referred Exhibit 16 Asaba letter of protest dated 18/11).

Q. Capping on 25/11 so you knew 7 days before of selection?

A. I am not a member of party who selected him - I am principal member of Asaba house.

10 Signatures to Exhibit 16 are also principal members.

Q. If an Asaba is to be put forward as Candidate you are the people to select him?

A. They didn't allow us to send a candidate forward.

Q. (Repeated about 4 times)

A. Yes. I remember action 227/1918. I don't know the decision in that case.

(Certified copy by consent Exhibit 20).

20 (Last paragraph read to witness)

WITNESS: I understand this.

Re-Examined:

I never signed my signature. I only thumb print. Didn't sign 16.

I can write Sani.

I can't write Odunsi.

I don't know who made signature on Exhibit 16.

Apart from the signatures in this there are other important members in Asaba family.

30 TO COURT: Plaintiff is Asaba.

LARDNER: That is case for Plaintiff.

Adjourned to 7/7/59.

(Sgd.) J. BENNETT,
J.

In the High Court of Lagos

Plaintiff's Evidence.

No.18.

Sanni Balogun Odunsi.

6th July 1959.

Cross-Examination - continued.

Re-Examination.

In the High Court of Lagos

DEFENDANTS' EVIDENCE

No. 19.

Defendants' Evidence.

OPENING ADDRESS BY DEFENCE COUNSEL

TUESDAY the 7th day of JULY, 1959.

No.19.

Opening Address by Defence Counsel.

7th July, 1959.

LARDNER for Plaintiff with MOORE.

AGUSTO - OSENI with him for Defendants.

D E F E N C E

AGUSTO opens

The Claim 1. Injunction to restrain dealings without Plaintiff's consent.

10

2. An account of moneys received.

3. Payment over.

Your Lordship has listened to Plaintiff and witnesses and but for the fact that we would like to nail whole thing on counter once and for all would say Plaintiff out of Court.

The irregularities in appointment.

ISSUES: Refers to rulings.

This brings us almost to the sole issue.

Is the Plaintiff de facto Chief and as such is he entitled to administer family property.

20

From evidence before Court clear he is not choice of family.

There is the document which has been interpreted. Terms of Settlement upheld.

Plaintiff says not president nor member.

Claims solely entitled to administer.

Page 19 of type of previous evidence to 20, the ruling on Cross-Examination.

I shall call evidence to confirm that 1st Defendant was one chosen by family as Chief.

30

He is functioning in Council up to this morning.

Not a vestige of evidence has been produced that Defendants are doing anything with land.

They are part of Council which is administering -

He has not sued in that capacity.

I will call evidence to show competent to administer in Council.

40

3. Branches in family.

Lands belong to 3 in equal shares.

No. 20.

EVIDENCE OF MOMON JIMOH ONISEMO1 D.W. MOMON JIMOH ONISEMO (M/S)

5, Olugbani Square, Lagos, Trader. I am an important member of Ijora Chieftaincy Family. I am also important member of Onikoyi Chieftaincy Family and Onisemo Chieftaincy Family.

10 I am a member of the Family Council in accordance with Terms of Settlement Suit 11/47 No.13 in list.

I know history and custom in appointment of Chiefs.

Chief administers affairs and land of family along with the Council or Committee of the Family or Council of elders of family.

When a Chief dies his Council will continue to administer the affairs of the family.

I have read the Terms of Settlement.

20 When Chief Bakare Faro died we continued to administer the Ojora properties.

The head of family takes the chair in Chief's place. In this case Oke E. Aro - the 3rd Defendant took the chair. He is head of family as distinguished from being Chief.

There was the dispute between Chief Bakare Faro and the Council. We reported to Oba. Over rent collection.

30 We showed the Oba our papers showing our powers - I mean the Terms of Settlement drawn up between Bakare Faro and the Council.

When the Oba saw the Terms of Settlement he said we were right and that we should collect the rent.

When the Chief Bakare Faro died the other White Cap Chiefs came to ceremonies. We did not treat them well because of the differences between us.

They complained to the Oba. The Oba called us and the Chiefs.

40 The Family Council - The Chiefs said they would like 100 guineas from us. That money was paid to the Oba by our Council.

That was to pacify them for the indignity - It was part of the funeral ceremony.

In the High
Court of LagosDefendants'
Evidence.

No.20.

Momon Jimoh
Onisemo.7th and 8th
July, 1959.

Examination.

In the High
Court of Lagos

Defendants'
Evidence.

No.20.

Momon Jimoh
Onisemo.

7th and 8th
July, 1959.

Examination
- continued.

After the funeral we said we were going to select another Chief. Candidates were sending letters to the Council - there were about 5.

Yaya Alara - Brother of Plaintiff.

Oseni Andu - Aminu Akidele Ajayi Ojora -
1st Defendant. Myself.

Yesufu Dosumu.

The Plaintiff was not one of those who put themselves forward for consideration.

The Council considered the 5 candidates -
Consulted Ifa - The oracle fell on Aminu Akidele
the first Defendant -

10

While we were considering the 5 candidates we heard that the Plaintiff was going to become Chief.

On hearing this the Council and some members of the family went to see the Oba.

We told him we had heard that the Plaintiff had come to him and said he wanted to be Chief Ojora.

We told Oba that if that was so Ajibola the Plaintiff was not one of the 5 candidates claiming to be considered for Chief. The Oba said we should repeat what we said before the Chiefs.

20

We went to Chief Oluwa - He asked us to come following day.

Following day Council and members of family, about 200, went to Chief Oluwa and repeated what we told the Oba.

We said that we did not want the nomination of the Plaintiff as Chief Ojora, we said we had no hand in his selection and did not want him as Chief.

30

We said this to Chief Oluwa and other Chiefs in Chief Oluwa's house.

Chief Ojon was the spokesman for the Chiefs. He said that the Chiefs heard what we had said but in spite of that the Plaintiff would be capped as Chief.

We said they had no right to make the Plaintiff to Chief of our family and he said they would do it.

40

Apart from that was a written protest to the Oba and Chiefs. This was published in the Daily press.

Exhibit 15. I signed this.

All signatories are members of Council.

We also went to Sadiku Sarumi - an important Chief. Also Dr. Doherty - Dr. Maja -

Each of them assured us that they would see the Oba and the Chiefs on the matter.

Sadiku Sarumi was made.

Asoju - Oba of Lagos by the Oba it means one who represents Oba.

10 The other two also had titles from Oba - I don't remember them.

Each house in family can put forward candidates. According to Native Law and Custom.

A candidate can be put forward from the house from which the dead Chief came.

When Akintoye Oba of Lagos died his son Dosunmu succeeded.

When Dosunmu died his son Esugbayi succeeded him.

20 When Esugbayi died Falolu another son of Dosunmu became the Oba.

The Obas belong to the Akarigbo Class of Chiefs.

In the Onikoyi Chieftaincy Family - Idejo Class - When Chief Muti died his son Ogunlana became Chief.

When Ogunlana died Abudu Layeni, son of Muti was made Chief.

When A. Layeni died Mustapha Layeni became Chief. He was son of Muti.

30 In the Onikoro Chieftaincy Family - Ogalade Class of Chiefs - When Chief Ilumo died his son Ajayi was made Chief.

When Ajayi died Adamu another son of Ilumo became Chief - The present Chief Onikoro Ogunlana is also son of Ilumo.

In each Chieftaincy Family there are several houses but the families choose whom they like.

40 Lawani Abiade's relationship to the Ojora Family is that the mother of his father was a slave to Aro Egimosu Chief Aro.

Peter Jackson is the grandchild of Bada who was a domestic of Chief Aro.

In the High Court of Lagos

Defendants' Evidence.

No.20.

Momon Jimoh Onisemo.

7th and 8th July, 1959.

Examination - continued.

In the High
Court of Lagos

Defendants'
Evidence.

No.20.

Momon Jimoh
Onisemo.

7th and 8th
July, 1959.

Examination
- continued.

In this sense they are members of the Ijora Chieftaincy Family as descendants of domestics of the family.

The mother of Lawani Abiade was a daughter of Bada, Peter Jackson's mother and Lawani's mother were sisters - daughters of Bada -

They are members of the family but have a restricted right in it.

I remember a case Bada was engaged in (Referred Exhibit 18) (Judgment). 10

A slave has no right on the land more than to cultivate it -

Where family fetish Elegba is to be worshipped only descendants' sons can worship - Slaves or descendants may not.

There is a place of worship Owana where slaves also are not allowed.

There is another fetish Aluku - when it is out slaves are not allowed to see it. They have no right to have a say in selection of new Chief. 20

They can sit on family Council but still have no say in nomination of Chief.

Third Defendant was head of the family and he functioned as chairman of the Council after death of Bakare Faro.

He is aged about 88 or 89 years.

I knew Lawani Abiada well.

Third Defendant was older than him.
He is dead.

The Council met - considered the case of the five candidates and decided on the first Defendant. 30

They called a mass meeting of the whole family and told them that the 1st Defendant had been selected as Chief Ojora. All shouted that they agreed. The following day there was sacrifice. After we had consulted Ifa Oracle we held a mass meeting.

The following day 1st Defendant was taken to a room called "Mawarun" in the Iga - There he was capped Chief Ojora. This was on 15/1/56. 40

He has since then been president of the Family Council.

Cross-Examined: LARDNER:

I put my name forward.

I know history and customs of my family.

I put my name forward because I am a member of the family and have the right. I am full-blooded member.

First Defendant put his name forward because he wanted to be Chief.

The Council selects who shall be Chief.

10 If the name put forward is of member of family and if the Oracle says a good person he will be selected.

We go by the Oracle - not by section of family.

If a Chief from one house dies and there is another candidate from that house who is good he can be elected. (Referred Obas evidence).

What the Oba has said is not correct. He is not a member of our family.

Plaintiff comes from Asaba house.

20 His grandfather was Chief and reigned for 3 months only.

Oyegbe Branch provided Chief before Plaintiffs grandfather.

Akiosi was Chief after Plaintiff's grandfather. He was not Oyegbe Branch - He was Olumokun Branch.

After Akiosi, Chief Ajayi Ijora reigned - He was Olumokun Branch.

After Ajayi Branch Faro was Chief - I don't remember his Branch.

30 Each branch does not take Chieftaincy in turn.

In other families each house does not put forward a Chief in turn.

The Council presents each candidate to the Oracle - The best one is presented to the whole family.

I gave evidence before Bellamy J. in another case.

(Evidence is read to witness).

Support of majority of members of family is necessary.

In the High Court of Lagos

Defendants' Evidence.

No.20.

Momon Jimoh Onisemo.

7th and 8th July, 1959
- continued.

Cross-Examination.

In the High
Court of Lagos

Defendants'
Evidence.

No.20.

Momon Jimoh
Onisemo.

7th and 8th
July, 1959.

Cross-
Examination
- continued.

The Council consults the Oracle. Then go to general body of family.

If candidate is rascal the general body would not assent - Council would reconsider then. One of the remaining candidates would be considered.

Next best would be considered. Sacrifices would be made. Oracle consulted again.

I didn't consult Ifa before putting my own name forward.

I was a pagan before but I have been a Muslim for a long time. Since Youth - since then I have never consulted an Ifa. 10

I am member of family Council.

When the Chief dies Council remains.

In our family it is not Oba who caps our Chiefs. We cap Chiefs ourselves.

There is a Chief Onisemo of Lagos. He is my brother. He was capped by Chief Onikoro.

There is difference between Ojora Families and others - In Ojora family capping is done by family. In others the capping is done by assembled Chiefs on instructions of Oba of Lagos. 20

Other White Cap Chiefs would be aware of the difference.

When capping is complete the Ojora Chief would be sent to the other Chiefs who would demand something from him. The family would send to the other Chiefs who would demand something from us. Then the Oba would be informed about it.

If there is no dispute capping could take place the day after family acceptance one two or three weeks later. 30

The letter read is faked.

(Letter said to be by Chiefs to Oba)

I knew nothing about it. When Onisemo capped they did not write.

This is not the custom and they have no right to do this.

It was when we protested against Chiefs putting up Plaintiff this letter was written. 40

This case has been in Court since 1956.

I knew would be called to give evidence -

I told lawyer Chiefs asked for 100 guineas.

About a week or so before 25/11 before we went to Oba we first heard of the proposal to cap the Plaintiff.

The Plaintiff had not been capped before opposition arose.

First Defendant was capped on 15/1/56. We later received money for lease from Total Oil. It would be 26/1. I signed the lease.

10 I don't remember amount of down payment of rent in advance.

Document produced to me is lease signed by me as Council member.

Exhibit 21.

Council negotiated the lease - All went to Total Oil.

I can't say how long it was between first proposal and execution of lease.

20 We called the whole family and told them the amount we were getting. Some of the money was spent for the family and the remainder was distributed amongst family.

The Council got £50 each.

Don't remember what 2nd Defendant got.

20 Council got £1,000.

I don't remember what Chief got.

Over 1,000 people in family received shares.

COURT: Will adjourn at that stage to tomorrow 9 a.m.

7/7/59.

(Sgd.) J. BENNETT, J.

30

WEDNESDAY the 8th day of JULY, 1959

Appearances as before.

1 D.W. Cross-Examination (Continued)
(Reminded on Oath).

The balance of the money for Total Oil lease was distributed to the family.

We made many expenses on the amount.

Some was used in capping Chief. Some used in repairing Iga Aro and Iga Odofin.

In the High Court of Lagos

Defendants' Evidence.

No.20.

Momon Jimoh Onisemo.

7th and 8th July, 1959.

Cross-Examination
- continued.

In the High
Court of Lagos

Defendants'
Evidence.

No.20.

Momon Jimoh
Onisemo.

7th and 8th
July, 1959.

Cross-
Examination
- continued.

Some of the money for the lease was received before the capping of 1st Defendant.

We needed money to carry out the capping. That was one of the reasons for giving the lease. The Council has a bank account.

The Secretary 2nd Defendant signs cheque. The account is kept at Barclays Broad Street.

I am a prominent member of the Council.

I cannot say how much there is in Bank.

When we want money we inform the Secretary. We sit down make a decision on the amount needed and instruct Secretary to make the withdrawal.

10

Second Defendant Secretary keeps the books. I know nothing about the books they are with him.

If Mr. X wants to be Chief he would meet head of family and tell him.

The Council considers the application. An Applicant/member of Council will not be present when his application is considered.

I was not present when my application was considered, or when the other 4 applicants were considered.

20

I was not present in Maworun's room when 1st Defendant was capped. Only the elderly people were there.

I was waiting with others outside the room. I saw him come out capped.

In Onisemo family Buraimoh Onitole was not chosen as Chief by family Council.

When Chief Onisemo died 3 candidates came up, Buraimoh, Lasisi and Tawaliu.

30

Buraimoh installed himself in Iga I supported Tawaliu.

Tawaliu reported to Dr.Doherty, Dr.Maja, etc.

When they went into matter they supported Tawaliu. Tawaliu took action in this Court and won.

Chiefs Odofin and Aro belong to Idejo Class.

If Chief Aro said that he did not belong to any one of the 4 Classes of Chiefs in Lagos it would be ignorance. The Idejo Chiefs are so called because they are landowning.

40

I can point out Aro land.

Ijora land is jointly owned by the Aro family.

COURT: There is a judgment in evidence to that effect.

LARDNER: Yes, my Lord.

WITNESS: Descendants of slaves can be members of Council.

When 1st Defendant selected one or two arotas were members.

10 Gbalambi (18) was one.

Abudu Eku was a member. He is not arota - He is Aro Branch.

I only remember Gbalambi at that time.

The Secretary can tell how many meetings held from 1949 - 56 from the minutes.

We didn't fight with Bakare Faro after the Terms of Settlement. But if he did anything not in accordance with them we called him to order.

20 The Council sued Lasisi Ajibola (Plaintiff). I am one of those suing. We sued him as Council is custodian of family property and he should leave it.

There is another action against Mr. Biney to set aside a lease. I am one of Plaintiffs.

The Plaintiffs are all members of the Council.

I know Buraimoh Kabala he is a Plaintiff. He is descendant of Ojora. His mother's father is descendant of Ojora.

30 Osotan was one of the Chiefs of Ojora. He reigned as Chief Ojora. There is still a Council

Kabala is great grandchild of Osotan.

I can't tell how many grand children Osotan had.

My father told me this.

Re-Examined: AGUSTO:

There are other items on which money was spent on besides those I have given. We bought 2 motor cars for Chiefs and engaged 2 drivers.

We engaged a watchman to watch the cars. We engaged an office boy.

In the High Court of Lagos

Defendants' Evidence.

No.20.

Momon Jimoh Onisemo.

7th and 8th : July, 1959.

Cross- Examination - continued.

Re-Examination.

In the High Court of Lagos

Defendants' Evidence.

No.20.

Momon Jimoh Onisemo.

7th and 8th July, 1959.

Re-Examination - continued.

We cleared bush on family property.

There are about 9 cases before Court at moment.

Counsel are engaged:

The rent was paid into Court.

The balance of the lease money has also been paid into Court - £7,000.

When anyone is nominated we cap him in our own Iga.

If there is no misunderstanding between ourselves and the Oba we go to him. Then Oba would tell us what we have to pay to allow our Chief to move with the other Chiefs. We have to pay them "Ikaro" and then he will move with the others. He is then capped as a White Cap Chief. It is the same cap.

MOORE: Do not know if Defendants being called. They are in Court listening to this evidence as case goes on. They know Plaintiff's case. Should be called first.

COURT: I cannot force them to give evidence first or put them out of Court.

OSANI: We have no objection to their going out of hearing.

COURT: Does that satisfy you?

LARDNER: Yes, my Lord.

The Defendants leave Court on their Counsel's instructions.

10

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No.21.

Isa Buraimoh Otu.

8th July 1959.

Examination.

No. 21.

EVIDENCE OF ISA BURAIMOH OTU

2 D.W. ISA BURAIMOH OTU (M/S).

Contractor - No. 4 Cole Street, Lagos.

I am a member of Ojora Chieftaincy Family. Know Plaintiff and Defendants. Know Plaintiff has been capped Chief Ojora.

Know the family was divided at that time.

I was on the side of the Plaintiff and knew how he was capped.

One day I was at Iga Onisemo and Muriamo Onikoyi called me. She said that the Plaintiff

30

had been taken as Chief Ojora and she said I should attend the meeting of his supporters. I asked where it was. She informed me that it was at 95, Apongbon Street. I went there and attended meeting. The meeting was held in Jackson's mother's house and Lawani Abiade was living there.

In the High
Court of Lagos

Defendants'
Evidence.

No.21.

Isa Buraimoh
Otu.

8th July 1959.

Examination
- continued.

10 I met Mustapha Aguru, Jackson, his mother, his Aunt, Lawani Abiade, Muramo Onikoyi, Nomota Onisemo, Olaide Onisemo. There were others I didn't know. There were not more than 20.

We discussed how our choice would be made Chief and how he would be sent before the family. We dispersed and held a meeting the following week.

We discussed how he would reach the whole family. Mustapha Aguru said had seen other members of family.

20 Delegates would be chosen to see the family and to report. They said they were to receive some money before the Saturday and when they got it they would give us some to do the capping.

Mustapha and Jackson spoke.

We dispersed and I called the Plaintiff. He was at the meeting. He attended all the meetings.

The Plaintiff was our choice.

When we left the meeting I called him outside I told him that our family is strong and I wanted to know how he would be presented to other members of family.

30 He said he was going to see Chief Onitolo and he would settle all. I went home and he went to Chief Onitolo.

The 3rd week we were asked to meet in Plaintiff's house which is very near Iga Oluwa.

Plaintiff said he would follow him to Iga Oluwa to meet Chiefs there. There were about 20 of his supporters.

40 We went - they the Chiefs were upstairs - I stayed downstairs. Plaintiff went up. He came down after about 30 minutes. We went to his house. He said that the Chiefs had told him they would send for him, when he would go to meet Oba.

The following evening I went to Plaintiff's house alone. I asked Plaintiff why I didn't see

In the High
Court of Lagos

Defendants'
Evidence.

No.21.

Isa Buraimoh
Otu.

8th July 1959.

Examination
- continued.

Yaya Alara and Sani Balogun with him as they were his elder brothers.

He said "You know that my brothers are members of the Council. He said that since he had been on the side of the late Chief Bakare Faro they were not on terms with him.

I told him that I was related to other Chieftaincies as well as Ijora and when a Chief is to be installed all the members of the family should support him. 10

He said that his brothers didn't like him and would do anything to kill him.

I told him that I was only one supporting him from the Asaba house.

He said that I should not worry about that that Chief Oluwa would settle that for him.

I left him.

The following week we went to Apongbon Street where we held meetings - There were the 20 of us. Plaintiff was there - He give us money. Mustapha Aguru distributed it. I was given 15/-. This was to show he had the Chieftaincy. It was for the preparation of the Chieftaincy - The capping ceremony. 20

Plaintiff said we should meet at his house on the following Saturday.

That the Oba had asked the Chiefs to bring him. Later I went to tell Mr. Jackson that I would not be available the following Saturday but would come to hear the outcome. 30

On the Sunday I went to see Jackson. He said capping would take place on the following Saturday. I said all right that I would meet them there - At the Plaintiff's house.

The following Saturday I went to Plaintiff's house - In the evening the Plaintiff and the others went to the Iga Olumegbon - I went too. The Plaintiff was capped there. I did not enter - Only certain people were allowed to enter.

The Plaintiff came out capped with Chief Olumegbon and he was taken to Enu-Owa. He was then taken to Oba's palace in a car. The Chiefs and others followed. There were about 20 present on this occasion who were members of the family but there were other onlookers. 40

Then we discussed how he would be taken to Ijora. There were the 20 of us and Chiefs. This was when he came out from Oba's palace.

I approached Jackson I asked him if there would not be trouble if Plaintiff went to Ijora. Jackson pointed to two lorries - He said if there should be any trouble there are two lorries of hooligans.

10 I approached my brother Chief Olorogun. I told him, going home for fear of trouble breaking out at Ijora.

I didn't go with them. I feared trouble because we had not discussed Chieftaincy with the family at Ijora and other members of the family in Lagos didn't know about it.

Cross-Examined: LARDNER:

20 I belong to the Asaba house. I was convicted of stealing. I was sentenced to term of imprisonment, at Apapa Magistrate's Court - More than 4 years before the capping.

At time this was happening I did not think that the procedure was proper. That is the reason I discussed these things with the Plaintiff.

It was 1½ months from the first meeting to the capping.

I knew at the beginning the procedure was wrong. That was why I discussed it with Plaintiff. When he told me that he would find a way out I stayed with him.

30 I ceased to support him about 5 months after the capping.

I knew selection and capping was in manner contrary to Native Law and Custom.

40 About a week after the capping I went to him. I told him since he had got in to Iga peacefully he should go out at night without his white cap and go round the elders of the family to appease them. I told him his reign would never be successful unless he had support of the family behind him. I told him when the late Bakare Faro had a dispute with the family - the family gave the family Council in the Terms of Settlement full powers. I told him no Chief could continue without the support of the Council.

In the High Court of Lagos

Defendants' Evidence.

No.21.

Isa Buraimoh Otu.

8th July 1959.

Examination - continued.

Cross-Examination.

In the High
Court of Lagos

Defendants'
Evidence.

No.21.

Isa Buraimoh
Otu.

8th July 1959.

Cross-
Examination
- continued.

From Asaba house we have two representatives on Council, his brothers, Yaya and Sani.

He said "Thank you" that he would follow the advice.

When next I saw him he said he was still at it but the elders were not satisfied with it. I was still in support. The Plaintiff said that he was still begging the elders.

This was about 2 months after capping.

On a day I was going to see Plaintiff I met Yaya Alara his brother, he told me there would be a meeting at Iga Odofin the following Saturday.

When he had told me he was still begging elders I told him to continue.

I ultimately broke from him because he did not take my advice.

Q. Would a good way to appease have been to prostrate and give them money?

A. I wouldn't disapprove of any method he adopted. That is his business.

(Witness at Counsel's request signs his name).

Q. When did you know you would be giving evidence?

A. Since I left his side.

Q. When?

A. The family elected me to come and give evidence before your Lordship went on leave.

COURT: In March last?

A. Yes. I attended Court in March. I used to stand outside because Court is too cold. I was not installed in back at Court all time.

I shared money received from Biney for Chieftaincy land - I received it from Plaintiff.

My signature is 254 at page 290 in book produced - Exhibit 22. I received 50/- 21/4/56.

I still supported Plaintiff at that time.

The lease was being negotiated for months before the capping.

I learnt later that lease was executed by Chief and Council.

I knew there was still division in the family

10

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when I received 50/- I was on Plaintiff's side.

I knew the members of the old Council were on one side and the Chief on the other.

I don't know who signed Biney's lease.

I have not discussed anything with the lawyers.

The 2nd Defendant didn't give me anything for coming to give evidence.

10 I was here in March. I sometimes come when I was not busy. I am contractor - I supply sand. Supplied last about 7 months ago. Dig from fore-shore.

I have not collected rents in defiance of Court's order.

Not Re-Examined. AGUSTO:

Adjourned to 9/7/59.

8/7/59.

(Sgd.) J. BENNETT,
J.

In the High Court of Lagos

Defendants' Evidence.

No.21.

Isa Buraimoh Otu.

8th July 1959.

Cross-Examination - continued.

No. 22.

EVIDENCE OF AMINU KOSOKO

THURSDAY THE 9th day of JULY, 1959

20 OSENI with AGUSTO for Defendants.

MOORE with LARDNER for Plaintiff.

3 D.W. AMINU KOSOKO (M/S).

Trader. 32, Kosoko Palace - Ereke Street, Lagos. I am a White Cap Chief. My title is Chief Asajon, Oloja Ereko.

Am acquainted with Native Law and Custom relating to appointment of White Cap Chiefs.

30 When Chief dies after burial ceremonies members of family when ready summon a meeting and choose members of family to become Chief.

After selection he will be brought before Council of White Cap Chiefs to show us. Candidate is choice of family.

Then family will take candidate before Oba.

If no trouble in family new Chief will pay Ikaro to Chiefs. Then later he will pay another amount of Ikaro to Oba.

No.22.

Aminu Kosoko.

9th July 1959.

Examination.

In the High
Court of Lagos

Defendants'
Evidence.

No.22.

Aminu Kosoko.
9th July 1959.
Examination
- continued.

If there is a dispute Chiefs and Oba will summon meeting of family at Iga to know how dispute arose.

Both sides will state case and we shall look into the matter. We will decide in favour of the person who is not a stranger to the family and who has the majority of the family in his favour.

If the family Council and majority of family do not want a candidate the Oba cannot force them to accept him. 10

The Ojora Chieftaincy Family has a family Council which manages the affairs of the family.

When late Chief Ojora died the White Cap Chiefs went to Iga Ojora as customary. I was not present but I received a report.

The "Oloto" (Family Council) came to Iga to meet the Oba and Chiefs. 2nd and 3rd Defendants were there - The four men in front row in Court. (Identifies Lawani Aro, Aminu Maku, Oyewole Ojora, Momon Jimoh Onisemo, Alhaji Bisiriyu Akinyemi). Aliya Ikabala, Joseph Oke Aro, Aminu Akindele 1st Defendant - Tiamiyu Odofin. These all came - They told us they wanted to select their Chief. 20

The other Chiefs present at Iga said "You now come - we shall have our own back for your discourtesy to us at the Iga". We told them "remember you disgraced us when we went to the funeral ceremony at your Iga - You come to meet us here - We told you". They begged us and we fined them £20 - They paid. 30

We gave £10 to Oba Adele and the Chiefs had the remainder. They paid another £100 but I was not present then.

The £100 was shared between Oba and Chiefs - 50-50. They said they were going to select a new Chief. We told them to go home make their arrangements sacrifice and everything and make their choice and bring him. Later some of them brought Plaintiff to our Council and said he was their choice. 40

The people I have identified their Council were not there.

We presented him to Oba and capped him.

Before the capping the "Olotu" came and said they were against it. They wrote a protest to us.

They said they did not want him as their candidate. They served us with protest. We did not pay any attention to the protest. He was capped. I cannot say why.

When the Oba says a ceremony is to be performed no one can say it is not. I haven't power to overrule him.

10 The two sides were not summoned. It is not within my power to hear both. It is within Oba's power.

On some occasions the Oba summons both sides and hears them - If he does not we cannot force him.

I cannot offer an opinion.

Subsequently the family selected and appointed another man as Chief.

20 It would be correct in Native Law and Custom for the family and the "Olotu" to choose a Chief - The majority of the family and the "Olotu" - The "Olotu" did not bring their own candidate to the Oba.

In 1938 my predecessor Mohammadu Kosoko was chosen by our family and capped by Chief Obanikoro without the consent of the Oba - Against his wishes.

He was head of our family our Chief and administered our family property - There was a reconciliation afterwards. He reigned for 10 years.

30 Not long ago I had a difference with Oba - He wrote saying he deposed me. I told him at once he could not depose me. I continued as Chief.

My family published a refutation saying he had no right to depose me.

There was trouble between Esugbayi Eleko, Oba of Lagos and the Government. Some Chiefs sided with Eleko and some with Government.

He declared those were no longer Chiefs. They still remained as Chiefs and heads of their families.

40 The practical value of the capping by Oba is social.

You cannot go to Iga or mix with the Chiefs or accompany the Oba anywhere. But you remain the head of your family.

In the High Court of Lagos

Defendants' Evidence.

No.22.

Aminu Kosoko.
9th July 1959.

Examination
- continued.

In the High
Court of Lagos

Defendants'
Evidence.

No.22.

Aminu Kosoko.
9th July 1959.
- continued.

Cross-
Examination.

Cross-Examined: LARDNER:

If there is no trouble the new Chief pays Ikaro to us and Oba: The Plaintiff did that.

If dispute the rival faction are summoned and heard - then we decide - that is final - the Oba's decision.

We decide which of the candidates has the majority of the family behind him then the Oba recognises and caps him.

They protested against the Plaintiff's capping. We had approved of him and were about to cap him when the protest came. They did not have an alternative choice. 10

They said they did not approve Plaintiff. They said they were not ready. When they were ready they would bring their choice.

It was only about 3 days before capping - I don't know if the Defendants side knew of Plaintiff's selection.

I was not there when he was presented to Chiefs. 20

It is unusual to write to us telling us there is a candidate unless there is trouble. Usual to come in person.

When I was selected there was no objection, but some of my family said wanted accounts. The Oba called us. I said I kept no accounts.

The Obas accepted me when there was no other candidate.

My predecessor was not recapped after reconciliation. We cap in our family in our own room. 30

Our own Iga. I was capped by Obanikoro with approval of Oba - After my dispute with Oba I apologised. I prostrated to Oba. He was my brother. He is my father as Oba.

The dispute was our collection of rents - I insisted I was entitled to administer family property.

My family said I could not dispose of it. I was brought before the Oba. He deposed me. I protested. 40

I paid a fine of £50 and gin.

The Alake of Abeokuta interceded. I did not ask him.

I can't say that I was satisfied with Plaintiff's appointment. I cannot go against Oba.

When Plaintiff brought no other was brought I joined them in capping.

Within my mind did not think selection improper.

Nothing has happened since then which would make me change mind. It is not within power. It is not in my family.

10 Document produced bears my signature. A memo signed by all Chiefs approving Plaintiff's candidature. It was written in Iga - Exhibit 23.

My signature is No.11.

I don't remember how many of the Ijora came with the protest.

I don't know names of Ojora Chieftaincy Council members or how many.

I don't know if some of those brought by Aro were not members of the Council.

20 The family choose the people to work with the Chief.

I carried on with my predecessors Council, trustees. I had no cause to say I didn't want them.

If member of Council damages family property Chief can reject him.

Chief Olumegbon caps Idejo Chiefs with approval of Oba.

Plaintiff is Idejo.

30 Re-Examined:

I signed Exhibit 23.

It is not usual for Oba to ask Chiefs to put their recommendation in writing like this.

This is first time in my experience.

The Chief alone cannot remove a member from "Olotu" (Family Council) for misconduct.

In the High Court of Lagos.

Defendants' Evidence.

No.22.

Aminu Kosoko.
9th July 1959.

Cross-Examination - continued.

Re-Examination.

In the High
Court of Lagos

No. 23.

Defendants'
Evidence.

No.23.

Joseph Oke
Esurombi Aro.
9th, 10th and
13th July 1959.
Examination.

EVIDENCE OF JOSEPH OKE ESUROMBI ARO

4 D.W. JOSEPH OKE ESUROMBI ARO (C/S).

I live at Ebute Metta, 25, Lagos Street,
Ebute-Metta. Shoemaker.

I am member of Ojora Chieftaincy Family.

I am aged 91. Was 14 years old when Ahayi
Ojora was made Chief. That was in 1882.

I am the oldest member of the Ojora Chief-
taincy Family. 10

I knew Lawani Abiade. I was older than him.

I am conversant with rules of Native Law and
Custom on the appointment of Chiefs.

When a Chief dies, after burial ceremonies
when new Chief selected. Ijora is a town by it-
self. There has always been a Council in the
family its meetings are held in the Iga.

From early times when a Chief dies there is
a Council of elders and anyone who wished to be
considered as Chief submits his name. 20

Each house will support its own representative,
and the names will be considered by the Council.

A ceremony is held and the Ifa oracle is con-
sulted. On whom the Ifa falls is selected as
Chief. We then call the whole family together at
Iga. We tell them so many members have been
considered and this is the man the Ifa fell upon.
The family must accept him.

Then we prepare for the capping ceremony which
takes place at Iga. At the Maworun room. 30

A sacrifice would be made in room by elders.
There would be prayers and the candidate would be
capped by the elders.

There is a chair for Chief in Iga. When he
comes out he will be installed in it. There will
be feasting and dancing.

There will be feasting etc., again on the 3rd,
7th, 14th days and on the 3rd month.

The next thing is the Iwuye ceremony - corona-
tion. There is a place along Iganmu called Oju-
Olokun; the Chief will be taken there and a sacri-
fice performed. Then he will be brought back
home. 40

I took part in Chief Akin Asi's and Chief Ajuse's ceremonies and Chief Ajayi Ojora's. Also Bakare Faro's. I performed the ceremonies in respect of family's choice. The 1st Defendant

Ogunfunmi did capping of Bakare Faro - He was then head of family. This was in "Maworun" room.

Apart from Chief Ojora there are other Chiefs in family - they are Aro, Odofin, Abore, Eleshi, Olumoleira, Olumolaiyewa, Erelu, Orisa - Adogia Ilabe, Odu.

10

After selection, acceptance and capping candidate becomes Chief Ojora.

No one outside the family can select and cap a Chief Ojora - including the Oba of Lagos.

It was during reign of Chief Ajayi Ojora that he expressed the wish to join the Council of the White Cap Chiefs as he had come from Lagos.

20

The Elders of Ojora family came to meet the Chiefs of Lagos. It was during reign of Dosunmu. He called the other Chiefs and told them about the Ojora's desire.

The Elders brought Chief Ajayi to Iga they met the White Cap Chiefs - they gave them money and he was allowed to join the White Cap Chiefs.

Bakare Faro joined the Lagos White Cap Chiefs after we had capped him.

The third month after he had been capped he joined the Council of Lagos chiefs.

30

It was after 1918 that Bakare Faro joined White Cap Chiefs.

When he was chosen he wore the White Hausa Cap.

He moved about with the other Chiefs wearing this.

There was a meeting before one Birrel-Gray - Commissioner of Colony - Bakare Faro attended with other Chiefs - Chief Onikoro objected as he did not wear White Cap.

40

Birrel-Grey said he should sit with Chiefs since family had appointed him.

After Bakare Faro's death there was a representative from each house who wished candidate from his house to be considered.

The Plaintiff was not among those put forward. He is Asaba.

In the High Court of Lagos

Defendants' Evidence.

No.23.

Joseph Oke Esurombi Aro.

9th, 10th and 13th July 1959.

Examination - continued.

In the High Court of Lagos

Defendants' Evidence.

No.23.

Joseph Oke Esurombi Aro.

9th, 10th and 13th July 1959.

Examination - continued.

Yaya Alara was put forward from Asaba house. Five candidates were put forward.

After Bakare Faro's death we were considering affairs of family who to instal as Chief.

The Secretary brought a newspaper from Lagos and said that in paper that Plaintiff would be capped Chief Ojora. On the same day every member of Council was called.

We asked them to write a letter of protest. The Council went to see the Oba. The protest was published in press.

10

All members went to Oba took protest to him.

He said he had not seen the publication. We wrote to him and the Chiefs in protest. To Dr. Maja, Dr. Doherty, Sarumi. We said person to be chosen must be chosen in Iga and Arotas have no say.

The Plaintiff was not brought to Ojora. He was not presented to family at Iga. Nothing of the sort.

20

When we went to see Oba he told us to see Chief Oluwa - head of all Chiefs. We went to Chief Oluwa on Friday. He told us to come to meet the Chiefs on Saturday.

On Saturday about 200 of the family went to Chiefs. It was a sudden meeting. When we got there we met Chief Oluwa and Chiefs. He told them about our matter.

Chief Ojon was in chair. He said they had settled the Chieftaincy in respect of the Plaintiff. Chiefs Oluwa asked any others to speak on it. Chief Ojon, alone spoke. He said they the Chiefs had settled the matter and the capping would be done the following day. The place became rowdy.

30

The women told the Chiefs that that had never been the practice at Ojora.

We had written to them earlier.

In spite of our protests the capping took place the next day. I was not present.

Plaintiff was brought to Ojora Town on Sunday evening by the other Chiefs. I was present I saw them. Chief Ojon was in front followed by others.

40

Adjourned to 10/7/59.

9/7/59.

(Sgd.) J. BENNETT, J.

FRIDAY, the 10th day of JULY, 1959

MOORE for Plaintiff.

AGUSTO for Defendants OSENI with him.

4 D.W. (Examination-in-chief continued):

On same Oath. I did not sign any letter to Chief Oluwa asking for Plaintiff's candidature to be approved. No letter was sent by Ojora Council.

10 We did not have a meeting with the Oba when he told us that Akinyemi had told Oluwa that 11 of us wanted to be Chief and that it was impossible to select a candidate to oppose Lasisi.

There were 5 candidates.

Incorrect to say no other candidates but Lasisi. He did not ask us to produce any other candidates.

My brother 2nd Defendant did not put himself forward. He did not want to be Chief.

We didn't discuss appointment with Oba.

20 We told Oba when we protested about Plaintiff that we did not want him that we knew nothing about his selection.

We did not give Plaintiff Terms of Settlement to sign.

It is not true to say that a Chief's Council dies with him. When he dies the Council continues.

The Oba didn't say that it was not Aminu's family's turn.

He told us that we should go and see Chief Oluwa.

30 Members of the family who are White Cap Chiefs came to our family meeting when 1st Defendant was presented.

We have not sold any family land as individuals. We have not leased any family land as individuals.

We executed the lease Exhibit 21, as members of the family Council we have authority from the family. That was said 12 years ago in the case. The 3 Chiefs have signed, Ojora, Aro and Odofin.

40 The Council in Terms of Settlement Exhibit 3 exists. Not for Bakare Faro alone.

In the High Court of Lagos

Defendants' Evidence.

No.23.

Joseph Oke Esurombi Aro.

9th, 10th and 13th July 1959.

Examination - continued.

In the High
Court of Lagos

Defendants'
Evidence.

No.23.

Joseph Oke
Esurombi Aro.

9th, 10th and
13th July 1959.

Examination
- continued.

There had been frequent litigation in the past and Exhibit 3 was made intended to be permanent to manage the affairs of the family.

On the day the Plaintiff was brought to Ojora Chief Ojon lead the other Chiefs and behind there were 2 lorries filled with hooligans.

It is not true to say that when a new Chief is to be selected the old Council is discarded and a new set of people do the selection.

TO COURT: The family Council "Olotu" normally comprises the elders of the particular family. 10

TO AGUSTO: One or two of the members of our Council are Arotas.

The Arotas have a head who is called to any meeting. He will tell the other Arotas what is discussed.

Cross-
Examination.

Cross-Examined LARDNER:

I have been a member of the family Council for 42 years. I was a junior member at beginning. There were others older. 20

I know contents of Terms of Settlement Exhibit 3. It was to be perpetual to settle disputes in the family. It is in the document but I don't know which particular part.

The Council has a Bank Account. I don't know which Bank. The Council instructs the Secretary.

The Secretary signs cheques on our instructions. We have given him the power.

In Bakare Faro's time 3 members of the Council signed cheques. After Bakare Faro's death we authorised Secretary to sign. 30

I was head of family. Even during his reign I was head. We are masters in our own house.

I remember that Aminu sued Plaintiff in another case for recovery of Iga. This was discontinued.

COURT: Matter of record.

LARDNER: Have had difficulty in getting copies. It is in F.S.C. now.

WITNESS: I am one of Plaintiff's in another suit one of Council suing Plaintiff. 40

21 Plaintiffs.

94/58 - Exhibit 24. Writ, Aminu alone had no right to bring the first action. It is the Council that has the right. He didn't tell us when he issued the Writ.

I don't know if my brother testified.

I don't know if Momo Jimoh gave evidence. Aminu as Plaintiff is bound to give evidence. Don't know if Chief Aro gave evidence. I know nothing about it.

10 They are all members of the Council.

Agree have given one example of Aminu acting without consulting Council. That was only one.

I don't collect rents or ground rents.

I didn't collect rents at Ajegunle Apapa between beginning of suit and Registrar's appointment as receiver.

I didn't collect rents at Willoughby Street, Ebute Metta in same period.

20 I know nothing of collection of rents before receiver appointed.

As regards the house you mention, I do not know.

Council supervises family property.

The Council directed collection of rents at Ajegunle before appointment of receiver.

Appointed people to collect rents of all family properties.

I still claim right of Council to collect.

30 Not since appointment of receiver. We did not go to collect since then.

I am one of signatories to Exhibit 21 lease to Total Oil.

All members of Council have hand in it.

Money paid to Council on execution.

There was money in Bank then already. I do not know how much.

I do not know how much is in Bank today. But I know there is money.

40 I do not know how many years the Aro and Odo-fin Chieftaincies were vacant before the present Chiefs were appointed.

In the High Court of Lagos

Defendants' Evidence.

No.23.

Joseph Oke Esurombi Aro.

9th, 10th and 13th July 1959.

Cross-Examination
- continued.

In the High Court of Lagos

Defendants' Evidence.

No.23.

Joseph Oke
Esurombi Aro.
9th, 10th and
13th July, 1959.
Cross-
Examination
- continued.

My house is Olumokun.

Applicants were Yaya Alara from Asaba House. Oseni Auddu from Asaba - Jimoh Onisemo from Oyegbo house - Joseph Dosunmu from Oyegbe and Aminu himself.

There are other houses in family. I can't remember their names.

Not practice to ask other houses to put forward candidates. Only houses which wish to put forward a candidate.

10

Applicants were not present at Council meeting when they were being considered.

One or two of the Council members may have been absent.

Adjourned to 13/7/59.
10/7/59. (Sgd.) J. BENNETT, J.

MONDAY the 13th day of JULY, 1959

MOORE with LARDNER for Plaintiff.

AGUSTO - OSENI with him for Defendants.

4 D.W. Cross-Examination continued:

20

On same Oath.

The Council continues after the death of Chief. That is Native Law and Custom. It is in the Terms of Settlement.

LARDNER: Court to construe.

WITNESS continued:

I don't know who supports who. All the members of Asaba house did not support Plaintiff. All of them signed that they did not want him. Refers to document signed by Sanni Balogun and another. Don't know of House of Adejiyan whether it supports him or not. Don't know which house supports who. I only know I don't support anyone.

30

Don't know present head of Adejiyan.

Don't know present head of Oyegbe.

Chief Olorogun is in Lagos, he may be.

I know of Colonel Moorhouse. He was an important man. He came to Ojora to settle a dispute in family. It was split in 2 sections over Chieftaincy. B etween Akindele 1st Defendant's

40

father and Bakare Faro. Col. Moorhouse was Lieutenant Governor Southern Provinces.

A meeting of whole family was called. I was present.

During Faro's time Council instructed 2 or 3 members to sign cheques.

10 (Referred Exhibit 3 on appointment of new members). I cannot say how many new members there have been since Terms of Settlement drawn up. This is a very important thing. Minutes of important meetings are kept - period 1950 - 1955.

The Council appoint people to collect rents.

Oke E. Aro, Alhaji Akeru Jimoh Onisemo, Sann-it Odunsi, Yaya Odunsi, Oyewale Ajayi Ojora Tihamiyu Fafunmi, Aloyu Kabala Oseni Audu, they are nine members of the Council who collect rents.

They were chosen to do so in the presence of Chief at Iga Ijora. Bakare Faro.

20 No members of Council collected rents between Plaintiff's capping and appointment of Receiver. We didn't send to collect we said would leave it to Court.

We have an office at Ojora and 9 members of the Council can receive rents there.

We didn't go out to collect after capping because there was a split in the family.

I was pleased with appointment of receiver. Plaintiff didn't apply for appointment of receiver. I don't know who did.

30 Remember - Plaintiff did - We opposed.

Know Buraimoh Kabala member of Council.

L.S. Aro is supporter of Council, my younger brother. M.J. Onisemo is member.

Re-Examined AGUSTO:

Council permitted Aro alone to operate Bank Account.

40 When there was a dispute, this new dispute, we left the Bank we went to before and put money in another Bank and gave Secretary the authority to operate.

He has been Secretary to family for past 45 years and he is honest.

In the High Court of Lagos

Defendants'
Evidence.

No.23.

Joseph Oke
Esurombi Aro.
9th, 10th and
13th July 1959.

Cross-
Examination
- continued.

Re-Examination.

In the High
Court of Lagos

No. 24.

EVIDENCE OF SANUSI SULE OBA.

Defendants'
Evidence.

5 D.W. SANUSI SULE OBA (M/S)

No.24.
Sanusi Sule Oba.
13th and 14th
July, 1959.
Examination.

Live at 4 Akinjufe Street, Otto, Fisherman.

I am a member of Oloto Chieftaincy Family. We have a family Council. I am a member. Have been since 1934. Akinlotu Oloto was Chief then. He died in 1944. Tiamiyu Fagbayi, succeeded him. The Council continued to look after the Oloto properties those who died. The present Chief Oloto is Emmanuel Jaiyesimi Ogundimu. We are still members of the Council.

10

I was appointed by the family in 1934 to serve on Council.

When a Chief dies the Council does not die with him. It continues to serve.

Before Tiamiyu Fagbayi was appointed as Chief Oloto, Chief Imam Ashafa Tijani acted as head of the family.

I knew the Oba Adele very well.

20

The Chief Imam is the head of the Princes at Iga Idunganran. He is Oba's best friend.

After Fagbayi died before present Chief was appointed the same Chief Imam Ashafa acted as head of the family.

The Oba must not say that he didn't know Ashafa was head of Olotos when Chief died. He knew. Ashafa went with us as head of family when Council went to Oba.

I have heard of Ojora document Terms of Settlement. The new Chief Oloto signs a document with us that he and the members of the Council will work hand in hand.

30

We and our present Chief have executed such a document. I can produce it.

Exhibit 25 - An Agreement of 18/5/59 between members of Oloto Family Council and new Chief -

I have signed copy would like original.

LARDNER: Object to the copy going in.

COURT: Please examine it.

40

LARDNER: Am satisfied with copy.

COURT: Let the Registrar copy in stamps etc. and certify copy then it can be returned.

WITNESS continues:

Oloto Chieftaincy Family is Idejo Chieftaincy.

I know a little of Native Law and Custom pertaining to Chieftaincy families.

There is nothing in Native Law and Custom to prevent a Chief signing such a document as Exhibit 25.

10 I am now serving on the Council with the 3rd Chief. The other two Chiefs signed such a document as Exhibit 25. Akinlolu and Fagbayi.

Adjourned to 14/7/59.

13/7/59.

(Sgd.) J. BENNETT, J.

TUESDAY the 14th day of JULY, 1959

Appearances as before.

5 D.W. On same Oath:

Cross-Examined LARDNER:

I am a member of Ojora Chieftaincy Family, as well as Oloto.

20 I had a share of the rents of the Total Oil lease.

I am supporter of the Family Council of which Aro is Secretary.

I received £5 of rents of Total Oil lease.

I don't know the persons who signed the lease.

I am 51. In 1934 I was 26.

I was member of Council for last 3 Chiefs the third being the present one.

30 Akinlolu and Fagbayi signed a document similar to Exhibit 25. I was member. I signed.

I cannot remember all the names of Akinlolu's Council. Akinsanya Mogaji, Bakare Oshiro, Ayeni were members. Don't remember remaining. All have died.

Chief Imam Ashafa is alive. He signed with Akinlolu. No one else except me is alive.

40 Ashafa Tijani was the leader with Fagbayi Tiamiyu. I also signed with him. Yesufu Fadairo also, he is dead. Karimu Akinlolu signed. He had died before then. He didn't sign with Fagbayi. Our present Chief Emmanuel signed. Those are the names I remember.

In the High Court of Lagos

Defendants' Evidence.

No.24.

Sanusi Sule Oba.

13th and 14th July, 1959.

Examination - continued.

Cross-Examination.

In the High Court of Lagos

Defendants' Evidence.

No.24.

Sanusi Sule Oba.

13th and 14th July, 1959.

Cross- Examination - continued.

I can't remember the year Fagbayi signed. It is not with me. I didn't have a copy. Can't remember how many made.

I can't remember now what year Akinlolu's Agreement was signed or how many copies.

I was not appointed staff bearer to Akinlolu in 1938.

I went to live in Otto in 1932.

I was never a staff bearer to Akinlolu.

A Chieftaincy Council cannot be dissolved. If the whole family don't want it that is the only way. It can be dissolved by family. 10

I don't know of the capping of Plaintiff Chief Ojora - I only heard.

I heard of capping of 1st Defendant as Chief but I was not present.

When Omidiji became Chief Oloto there was a dispute with Akinlolu. Akinlolu installed himself in Iga and was thrown out. The family was divided in two. 20

After Omidiji's death Akinlolu became Chief Oloto. Akinlolu remained Chief of his own faction even when Omidiji was in Iga.

Not Chief Oloto of Lagos.

Chief Fagbayi and certain members of the family joined in executing conveyances. Later he claimed to sign alone with certain members witnessing. The Council refused to accept this and summoned a whole meeting of family. What happened he signed in company of one person only. The Council called family meeting and reported this. 30

The family then decided that the Chief could sign and convey alone and that the deed should be witnessed by a number of the Council.

It was the documents which he signed alone which caused the trouble.

Know of Chiefs Aro and Odofin appointed by the Council I support.

I can't say how long the Odofin and Aro Chieftaincies were vacant before these appointments. 40

I can't remember when I last saw a Chief in Aro Iga. It may be 30 years since there was a Chief Aro.

The present Chief Oloto was capped last Thursday by Chief Olumegbon. On instructions of Oba.

Chief Olumegbon caps Idejo Chiefs.

I have not read the Terms of Settlement of the 1947 case.

A Council continues after death of Chief. The new Chief works with the old Council - must do so. My father told me so and I have seen it happen myself.

10 I haven't seen a document signed by Ogundimu in December saying, if we supported him as Chief he would retain us as his Council. We selected him in December. Oba approved him in June this year.

Chief Imam Ashafa would not say that Fagbayi had not signed a document similar to Exhibit 25.

I would like to be in our Council for life.

There was no dispute in family before Exhibit 25 was signed.

20 I don't know of previous suit between Defendant and Plaintiff.

I heard there was a case in which 1st Defendant was Plaintiff; I don't know what was claimed.

This is a dispute in the family in this case.

I was not promised £10 for giving evidence, I only saw the subpoena: I have it.

LARDNER: Let me have it please.

(Witness produces it) -

30 I am not looking forward to a financial reward for giving evidence.

Re-examined:

From the time of our selection of Ogundimu in December until Oba's approval in June he was in the Iga and he was our Chief Oloto.

I do not know where the documents signed by Akinlolu and Fagbayi are now. It is a long time.

AGUSTO: I wish to make an application.

At page 8 of record line 1.

40 At that time we referred to a copy of the Judgment 266/18 which was filed in Motion. I

In the High Court of Lagos

Defendants' Evidence.

No.24.

Sanusi Sule Oba.

13th and 14th July, 1959.

Cross-Examination - continued.

Re-Examination.

In the High Court of Lagos

Defendants' Evidence.

No.24.

Sanusi Sule Oba.

13th and 14th July, 1959.

Re-Examination - continued.

now wish to put in a certified copy of the judgment if learned friend will consent.

LARDNER: No Objection (Judgment in 266/1918 marked Exhibit 26 by consent).

AGUSTO: Case for Defendant.

No.25.

Judgment.

21st September, 1959.

No. 25.

JUDGMENT

IN THE HIGH COURT OF LAGOS

MONDAY THE 21st day of SEPTEMBER, 1959

BEFORE THE HONOURABLE MR. JUSTICE BENNETT

Suit No. LD/20/56

10

BETWEEN:- LASISI AJIBOLA ODUNSI
(Chief Ojora of Lagos)
For himself and on behalf of the Ojora Chieftaincy Family

Plaintiff

- and -

1. AMINU AKIDELE AJANI OJORA
2. AKINWUNMI ESUROBI ARO
3. OKE ESUROMBI ARO

Defendants

20

J U D G M E N T

The Plaintiff's claim against the Defendants jointly and severally is for:-

1. An injunction restraining the Defendants their servants and/or Agents from selling, leasing and/or alienating any portion of the family lands and properties without the consent of the Plaintiff.
2. An account of all monies received by the Defendants in respect of family property sold or leased by them.
3. Payment over of all amounts found due on the taking of such account to the Plaintiff.

30

It is not in dispute that the Ojora Family is an IDEJO Chieftaincy Family and as such owns lands and other property by native law and custom, and it is not in dispute that the Defendants have been dealing with family property without the consent of the Plaintiff, but it is in dispute that the Plaintiff is Chief Ojora and has, therefore, authority over the Defendants.

10 The Plaintiff avers that in fact he is Chief Ojora of Lagos having been duly selected, approved by the Oba of Lagos, and duly capped in accordance with Native Law and Custom and that he is, therefore, the accredited representative of the Ojora Family and the Trustee of the properties of the family and as such is prosecuting this action for himself and on behalf of the other members of the family, except the Defendants.

20 The Defendants aver that the first Defendant and not Plaintiff is the present Head of the Ojora Chieftaincy Family and the President of the Ojora Family Council through which the family acts and which is a trustee responsible to the general body of the family for the control, management, and administration of the affairs and properties of the family, in accordance with the Terms of Settlement and the judgments in Suits No. 11 of 1947 and No. 26 of 1954. Those Terms of Settlement are contained in Exhibit 3.

30 The Defendants further aver that it is the first Defendant, and not the Plaintiff, who has been elected and installed Chief Ojora by more than 90% of the people having the right to instal him according to Native Law and Custom and the practice and usage of the Ojora Chieftaincy Family. They do not dispute, however, that the Plaintiff was, in fact, capped as an Idejo White Cap Chief by the Oba of Lagos, and that the first Defendant was not. They contend, however, that as the capping by the Oba was against the wishes of the family and in spite of protests it is of no effect
40 in so far as the family is concerned.

The Defendants also aver that they are members of the Ojora Chieftaincy Family Council and that the Plaintiff is neither a member, nor is he recognised by it, or the general body of the Family, as Chief Ojora, and that he cannot, therefore, maintain this action on behalf of the family as claimed in his Writ.

In the High
Court of Lagos

No.25.

Judgment.

21st September,
1959

- continued.

In the High
Court of Lagos

No.25.

Judgment.

21st September,
1959

- continued.

As the Terms of Settlement in Suit No.11 of 1947 are of such importance in this case it is, I think, necessary to set them out in full -

WHEREAS consequent upon the many sittings of Ojora Family Council which have taken place over the matter of the dissension in the Ojora Family AND WHEREAS in view of the amicable settlement thereby effected by the members of Ojora Family Council composed of the representatives of all the sections of Ojora Family AND WHEREAS the Chief Ojora Bakare Faro now agrees to co-operate with the Council in the management of the affairs of the Ojora Family Chieftaincy, the said Family Council therefore hereby resolves as follows :-

1. The Council of the Ojora Family shall consist of twenty members with Chief Ojora as the president and shall administer the affairs of the family and be responsible to the general body of the family.
2. The following are the twenty members selected namely :-

1. A.W. Savage	11. O.A. Alara
2. Joseph Jose Maku	12. Aliyu Kabala
3. Oke Esurombi-Aro	13. Jimo Onisemo
4. Sanni Balogun Odunsi	14. Jimo Akidele Ojora
5. Bisiriyu Akiyemi	15. Disu Afuwape Osho
6. Rufayi Kumolu	16. Disu Dosunmu Feji
7. Bisiriyu Batula	17. Lawani Sunmonu
8. Oyewole Ajayi Ojora	18. Sunmaila Gbolambi
9. Abudu Handu	19. Brimah Ajose
10. Tiyanmiyu Fafuni Giwa	20. Akinwunmi Esurombi-Aro.

and in the event of any member dying or the place of any member being rendered vacant due to any other cause whatever it will be proper for the other members to appoint a new one whose name will be submitted to the general body for approval.

3. The name last mentioned in paragraph 2 supra, that is the said Akiwunmi Esurombi-Aro is hereby re-appointed Secretary to Ojora Family Chieftaincy.
4. The Chief Ojora and his Family Council shall be responsible to the general body of the family for the safety of the Family properties - real and personal.
5. The Council shall appoint two or three members including the Chief Ojora to deposit and withdraw monies from the Bank as may be instructed by the Council.

6. The monies belonging to the family shall be deposited in any recognised Bank in Lagos.

7. The Court cases pending in the Supreme Court, namely Suits Nos. 11/47 and 41/47 shall be withdrawn from the Court and be reported as "settled out of Court".

8. Suit No.12/47 may be settled out of Court if parties so wish.

10 9. The money for compensation for lands acquired by Government shall be paid to Chief Ojora for and on behalf of the Ojora Family Council who are responsible to the general body of the family. But this provision shall not apply to matters of execution of Conveyance of the family lands.

20 10. The remuneration due to the Solicitors on both sides, namely, Messrs. Alakija and Alakija and L.B. Augusto in the Compensation case, that is Suit No.11 of 1947, payable by the Government shall be paid by the Chief Ojora and his Family Council.

11. Chief Ojora, the Family Council, and the general body of the family shall from the date of this document resume their customary and normal way of dealing with Family matters.

12. A copy of this Document shall be deposited in Court in both Suits Nos.11 of 1947 and 41 of 1947.

30 IN WITNESS whereof the said Family Council in an assembly of the whole Family which confirms the above resolutions hereunto set their hands (by signatures, pen-marks and left thumb prints) this 19th day of February, 1949.

There was some difficulty in settling the issues but during the course of a very long case, unnecessarily so, I think, these clarified themselves to the following -

- 40 (1) Was the Plaintiff properly appointed Chief Ojora in accordance with Native Law and Custom?
- (2) If he was, is he compelled to administer the affairs of the family in conjunction with the Family Council as constituted in the above Terms of Settlement, that is, are these Terms of Settlement perpetual?

During the cross-examination of the Plaintiff, objection was taken to questions directed to showing

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that he was not properly appointed as Chief in accordance with Native Law and Custom. I had already said, on the authority of the Onisemo case, Bello v. Onitola F.S.C. /17 of 1957, that before I could consider the Plaintiff's case I must satisfy myself that in fact he is the Chief Ojora.

In spite of this there was long and involved argument on the cross-examination and I gave a ruling which is at page 17 of the record. I held that I must satisfy myself that before I can grant the Plaintiff the relief he seeks he must satisfy me that he has been properly appointed Chief Ojora of Lagos. In view of the pleadings the second issue naturally follows, that is as to the present validity of the Terms of Settlement.

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THE PLAINTIFF'S CASE OPENED WITH HIS OWN EVIDENCE.

He was not impressive. After saying that he was Chief Ojora of Lagos he denied any knowledge of the Terms of Settlement. He said he was asked to sign them and refused as he was not a party and he denied at one stage that he ever had a copy of them. These denials were quite untrue. He admitted knowledge of the late Chief Bakare Faro's disputes with the family and of the appointment of the Council. His contention was that that Council was to assist Chief Bakare Faro only and died with him. He said that he appointed his own Council on his appointment as Chief. It transpired quite clearly in evidence that the persons he appointed to his own Council were those who supported Bakare Faro in his lifetime, and who were against the authority of the Family Council as set up in the Terms of Settlement. To me he said that as Chief Ojora he was entitled to collect and receive rents and administer the property of the family alone. He leased land to one Biney and received a large sum of money as rent in advance which he divided amongst the family, keeping some to improve the Iga. It was clear that that distribution was to persons who supported him and not to his opponents in the family. It is also clear from the authorities cited that such a distribution of family capital is quite contrary to Native Law and Custom. I quote from the judgment of Pennington J. in Suit No.266 of 1918 Exhibit 26, which illustrates a mistaken idea apparently still held by both sides in this case, each of which has either distributed, or attempted to distribute, large sums of money received by way of rent in advance on long leases of family property:-

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Pennington J. said (at page 7 of Exhibit 26) :-

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10 "I must now call attention to a mistaken idea, which seems to be ingrained in the minds of both Plaintiffs and the Defendant Chief Ojora. The Chief is only elected for life and his family have no right to succession. The members of the family have only a right of occupation of their land, too a right to occupy so much land as is required for the support of themselves and their families. They have none of them a right to sell and appropriate the proceeds of the sale. The price paid is, to use a term of English law, capital money and the vendors have only a right to the interest therefrom.

20 "It is possible that for certain purposes expenditure of the capital sum or part thereof might be legitimate if authorised, but that is quite another matter. If the process of sale continues there will soon be a Chief Ojora without any land or any money and Ojora, Odofin and Aro Families without any land or any money.

"There is a further aspect of this case. The Chief is in a fiduciary position not only with regard to his successors but with regard to his family and people".

30 The Plaintiff agreed in cross-examination that the Ojora Chieftaincy family is a composite family of three chieftaincies - The Ojora, the Aro and the Odofin, and that the judgments in cases No.227 of 1918 and 266 of 1918 established the fact that Ijora lands were owned by the Chieftaincies in equal shares. He also had to admit knowledge of long standing disputes between Chief Bakare Faro and the family which led to the Terms of Settlement and the establishment of the Council. He denied that he had ever received a copy of the Terms of Settlement or that he had any knowledge of its contents and denied that his lawyers had explained these to him. He admitted knowledge of 40 the last case in which Bakare Faro was concerned in which judgment on appeal was given in W.A.C.A. 242 of 1955, Exhibit 5, to which I shall refer later. He contends that the result of this judgment was not that the Family Council was established for all time.

He was cross-examined at length on his

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appointment and capping as Chief. He said that he was not one of the five members of the family who applied to the Family Council for election as Chief on Bakare Faro's death. He said that when the news got round that the Oba would cap him, the Council protested. He heard that the protest was served on the Oba and on the White Cap Chiefs, and that the Oba directed the Council to the House of Chief Oluwa the senior of the White Cap Chiefs, where the Chiefs were meeting. The Chiefs told the Council that they were going to cap him. He agreed that the election of a Chief is the right of the Family by Native Law and Custom and that he was presented as Chief by his own side only. The Council and members of the Family were on one side and on the other side was himself and some members of the Family. Those who supported him were those who supported Chief Bakare Faro. He contended that he had the majority of the Family with him, but I must say not very strongly. He agreed that the principal members of the Family should take the elected Chief to the Oba if they wish him capped, and that a fee is paid. He agreed that the whole Council and their supporters objected to him being capped. He also agreed that when they were appointed as members of the Council they were the accredited representatives of the Family, responsible for Family property, but as I have said he contended that their appointment was for the lifetime of Bakare Faro only. He agreed that the Council selected the first Defendant as Chief and that he was presented to a mass meeting of the Family which protested against his own selection and capping and then he denied that that mass meeting approved the first Defendant as Chief.

At this stage, I may say that I don't think I am interested in the appointment or otherwise of the first Defendant. The issue is the appointment of the Plaintiff and, while the first Defendant might have been appointed as Chief elect or de facto Chief of the Family, the procedure followed in his case does not make him a White Cap Chief.

Then followed the long argument on cross-examination to which I have referred and on which I gave a ruling. The cross-examination continued and I must say the Plaintiff, possibly after some advice, over the adjournment, was much more frank. He admitted that he had heard that the family Council elected a Chief Ojora from among the 5 candidates who had been put forward. It was the

first Defendant. He admitted that he had heard that the first Defendant was presented to a mass meeting of the family and approved; some of his own supporters went to that meeting.

10 He said that when the Terms of Settlement were presented to him he was asked to sign it and he refused. Then another Chief was selected. He refused to comply with the Terms of Settlement, which he admits were explained to him but he was
 20 advised that they were not good. He will not comply with them and proposes to manage the affairs of the family himself with his own Council. He stated that there is no Chief Aro or Chief Odofin as he has not appointed anyone. The two men who had been attending Court with the first Defendant he says are so-called Chief Aro and Chief Odofin, whom he does not recognise. He admits, however, that they were appointed by the Family and are on the side of the Defendants. "Some" members of
 20 the Family, he said, are with him.

He agreed that the lease to Biney of Family land was done without the knowledge of the Council set up in the Terms of Settlement; it was arranged apparently by Chief Bakare Faro and his supporters before his death: he said that in answer to the protests of the Family Council he caused disclaimers to be issued. He admitted that published in the 'DAILY SERVICE' of the 7th April, 1955, Exhibit
 30 7, which is signed by children and supporters of the late Chief. This, he said was published because the Family Council troubled them before he was capped. It was, indeed, before he was capped; that did not take place until November 1955. He admitted that in the interregnum, after the death of a Chief and before a new Chief is appointed, the oldest member of the Family takes the place of the Chief as the Head of the Family until the appointment of a new Chief. He will preside over the Family Council. That is, in fact, what hap-
 40 pened in the case.

In re-examination he gave details of what he regards as the correct procedure for the appointment of a new Chief. The whole family he said elect about 12 elders who say who is the right person to be Chief and from which branch of the Family he shall come. The Ifa Oracle will be consulted and it will say who should be selected. The selection will then be presented to the whole Family for approval. It was the turn of his, the

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Asaba House, to present a new Chief, according to him, but there is no doubt whatever that his own house disclaimed him and the whole family did not accept him. He said that the proper procedure was followed in his case and that he was approved at a general Family meeting and presented to the White Cap Chiefs of Lagos who presented him to the Oba who capped him. The objection to him, he said, was made only the day before his capping. That last piece of evidence I do not accept.

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THE SECOND WITNESS WAS LAMIDI KALIFO II,

Chief Olumegbon, an Idejo White Cap Chief. He said that a new Chief is appointed by his family and if there is agreement he would be taken before the Oba and the White Cap Chiefs for recognition and capping, but without capping he does not become a Chief of the Oba. The selection, he agreed, is not always unanimous, but after capping there is usually a meeting at which misunderstandings are settled. If there is disagreement in the family before capping they go to the Oba who listens and tells them to go and agree, and if they fail to agree no Chief will be appointed. There is a Council of Chiefs, that is of the White Cap Chiefs to which disputes are referred and which settles the matter. The witness went on to say -

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"If they don't agree we enquire and settle on the rightful person. If the Family still don't agree, he will be capped anyway" I know the Plaintiff. I was instructed by the White Cap Chiefs, and the Oba and I capped, he is Chief Ojora"

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That to me seems to be a pretty arbitrary procedure and certainly not in accordance with the evidence of Native Law and Custom on the appointment of a Chief.

He said the first Defendant is not a Member of the Idejo Chiefs - that is he is not a White Cap Chief and was never presented by the Ojora Family as their Chief. That is not in dispute. The Defendants do not say that the first Defendant is a White Cap Chief. They merely say that he is the Head of the Family. That finished the witness's evidence-in-chief and I adjourned to the 11th March.

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On the 9th March, I heard a Motion on Notice by the Plaintiff for leave to sue in a representative

capacity. This was objected to by the defence but I recollected having seen on the file a similar Motion having been dealt with by Hubbard J., searched the file and found that on the 11th June, 1956, leave was given on a Motion ex-parte in conformity with the heading on the Writ.

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10 On the 11th March the second witness's cross-examination commenced. He agreed that to call a White Cap Chieftaincy Idejo means that the Chief-
tancy owns land, and he agreed that the appoint-
ment of a Chief rests with the Family. He agreed
that if it is shewn that a Family have appointed a
Chief he would be an Idejo Chief. This rather
contradicts the end of his evidence-in-chief. He
was cross-examined on the present position in the
Olotu Family, also an important Idejo Chieftaincy
Family. He agreed that when the late Tiamiyu
Chief Olotu died, Chief Imam Ashafa Tijani, as the
20 eldest member of the Olotu Family became Head of
the family and continued to administer the affairs
of the Family with the Council. He agreed that
in December last one Ogundimu, a Member of the
Olotu Family Council, was selected Chief Olotu and,
although he has not yet been capped, he is, never-
theless, Chief Olotu.

30 He was cross-examined at some length on the selection and capping of the Plaintiff: he agreed that he knew of the Ojora Chieftaincy Council which he said is characteristic of all the Idejo Families. He admitted that he did not know what the Family did with regard to the selection of the Plaintiff, but merely that the Plaintiff was brought to the Oba and he was instructed to cap him. He knew nothing of the internal squabbles of the Family. He said that if a family brings a Chief, he personally caps on the instructions of the Oba and his fellow Chiefs.

40 As far as he was concerned the protest was not brought to his notice until the 25th or 26th November; the Plaintiff's capping was on the 27th. He does not dispute that the Defendants are leading members of the Ojora Family and that the 2nd Defendant has been Secretary to the Family for very many years.

An indication of the attitude of the Oba and Chiefs in this affair is clear from the next piece of this witness's evidence which I quote:

"He (the 2nd Defendant) came with Family

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Council and made a protest at meeting of Chiefs that the Plaintiff was not the choice of the family. He said that Lasisi had been selected 3 weeks earlier and they had not protested.

"We said that Lasisis had been presented 3 weeks earlier by family and some White Cap Chiefs without protest and now protests made a day before capping. That is what we said to protesting Family Council. Plaintiff was presented to us by Chief Onitolo, Chief Onikoyi and some members of Plaintiff's family whose names I don't know.

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"About 50 people brought him. I don't know if any of people who later protested were there.....

"We don't necessarily follow the majority - We follow the choice of important personalities in family".

Again that seems to me to be pretty arbitrary procedure. The witness mentioned only two important personalities of the Ojora Family as against the 20 Members of the Family Council, and it is clear that one of these two important personalities at least has only recently taken an interest in the affairs of the Ojora Family when it appeared that there might be some financial benefit from it. He agreed that there was an interregnum in his own family between the death of his predecessor in 1936 and his own selection as Chief in 1952, during which he and a Family Council administered the affairs of the Family without the appointment of a White Cap Chief. All his Family selected the Family Council with which he worked. Again, he said that he capped the Plaintiff on the instructions of the Oba and Chiefs in spite of the protests which he had heard.

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After cross-examination, he said to me that he selected his own Council, that the Family do not, and that the command of the Chief is supreme. He said that he could appoint his committee against the family wishes in defiance of the majority of the family. He said that the Chief can dispose of family land but that he would have one or two others with him when doing so. I asked if he could do that even against the wishes of the majority of the family. His answer was: 'Yes, they have nothing to do with it'. That is entirely

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contrary to Native Law and Custom and it has been adjudicated upon and decided upon in these Courts on too many occasions for me to feel it at all necessary to refer to any authorities on the subject. A Chief cannot dispose of family land against the wishes of his family.

10 There are, in my view, two conclusions to be drawn from this witness' evidence. The first is that the Plaintiff was capped as a White Cap Chief against the wishes of a substantial majority of the leading members of his Family, and the Oba and Chiefs entirely disregarded the dissention within the family.

20 The second conclusion is that the appointment of the Plaintiff was made with undue haste and that there was nothing whatever in Native Law and Custom to prevent the Family Council, irrespective of the interpretation of Exhibit 3, the Terms of Settlement, from continuing to administer the affairs and property of the family under the chairmanship of the oldest member as Head of the Family, until the majority of the family were prepared to put forward a new Chief for capping.

THE THIRD WITNESS WAS EDWIN AYOLI BAJULAIYE

30 Chief Onikoyi of Lagos, who is a member of the Ojora Chieftaincy Family from the Faro section. He told of going on the Oba's instructions with the other White Cap Chiefs to the Iga Ojora to sympathise with the family on the death of Bakare Faro. At the Iga they found only the children of the late Chief and they were told that the remaining members of the family were at the Iga Aro. They sent a message of their mission but these people refused to come to the Iga Ojora as they were not on terms with Chief Ojora. Rabiou Faro son of Bakare Faro was then in possession of the Iga. There is no doubt that both the Chiefs and the Oba regarded this refusal to obey the Oba's summons as an insult.

40 The witness told of a meeting at the Iga Ojora, at which people were selected to consult the Ifa Oracle as to which house a new Chief should come from. The House of Asaba he said was chosen and the name of the person selected was mentioned. That, according to him was the Plaintiff, but it is perfectly clear from his evidence that if he was selected at the Iga at all it was only by the members of the family remaining at the Iga. The

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witness and other Chiefs went to the Oba to present the Plaintiff as the selection of the family. He said that no one at the Iga Ojora had any complaint against the person chosen.

It will be remembered that this was at a time when the Ojora family Council had won Suit No. 26 of 1954, against Bakare Faro, for the return of a large sum of money paid to him by way of compensation for a Government acquisition of family land. In that suit the learned Judge found that because of illness the late Chief had permitted the control of his affairs to pass largely into the hands of his son Rabiou and Peter Jackson who had seized the compensation money and made a selfish distribution to suit their personal needs, regardless of the Council and regardless of the interest of the Family as a whole. Peter Jackson, the learned Judge found, was not called as the risk was too great. An appeal against that judgment was then pending.

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The witness, Chief Onikoyi told of a protest received against the Plaintiff's capping. He said that the White Cap Chiefs did not agree with that protest and that they (the persons protesting) were told that the Plaintiff had been presented six weeks earlier and they had not objected and they waited until 5 p.m. on the eve of the capping. I do not believe this evidence that the Chiefs were unaware that there was opposition to the Plaintiff. At the end of the witness's cross-examination, he said to me: "The Oba had learned that there was a misunderstanding in the family and he would not cap the Plaintiff as there might be another candidate". This was to explain why the Plaintiff had not been accepted immediately by the Oba on first presentation.

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At this stage, there was introduced to the Plaintiff's case a piece of evidence intended to show that the Defendants accepted him as Chief. Chief Onikoyi said that four days after his capping the Plaintiff called a meeting at the Iga Ojora because the people from the other side had not come to the Iga at all and he was summoning them specially. He said the second and third Defendants were there and they prostrated to the Plaintiff who saluted in return and told them that he had succeeded to their ancestors. He said that the Defendants accepted the gift, in accordance with custom, of two guineas. I have no hesitation whatever in rejecting that evidence as untrue.

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This witness's cross-examination commenced after the evidence of the Oba had been taken. He Chief Onikoyi agreed that on the 6th of December, 1954, when they went to the Iga after Bakare Faro's death they found there only those who supported the late Chief and he also agreed that the Council and the majority of the Family ignored the summons of the Chiefs to attend at the Iga.

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10 He said he knew of the Terms of Settlement but had never read them and didn't know the contents, although he was present when they were drawn up and read. I asked him to stop telling lies. He said that the Chief was the sole arbiter in the family and must not be fettered in any way; but he immediately had to admit that a sale by himself of some of his family's property without the consent of the family was set aside by the Court.

20 He agreed that in 1956, £8,000 advance rent was received from Biney for a lease of Ojora land, after the installation of the Plaintiff. He agreed that he signed that lease which had been agreed upon by the late Chief, whose Council he was not a member of, and he agreed that he and the Plaintiff received this money. He spoke of meetings which were held to choose the Plaintiff but he agreed that these were never attended by the Council and the part of the Family which supported them. The Plaintiff's appointment was by the faction which supported him only.

30 On the question of the administration of Family property by the Chief, on which he was so definite, and the appointment of a Family Committee or Council, he was unfortunate. A very telling document was produced to him. It is Exhibit 14 and it is an apology from him to his own Family for his maladministration. In it he agrees that the management of the Family affairs should be undertaken by the executive members appointed by the Family and confirmed by the Supreme Court.

40 He said that all the members of the Plaintiff's Committee had received £100 each out of the Biney lease money and that the rest of the money was distributed among the Family. By Family, he said that he meant that part which supported the Plaintiff. This is perfectly clearly contrary to Native Law and Custom. He admitted that the majority of the Ojora Family did not go to greet the Plaintiff when called and he denied having said that the Defendants attended this meeting. I reminded

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him of his evidence-in-chief. He then said that they did attend and prostrated. He admitted that he knew that since Bakare Faro's death there were claims and counter-claims and disclaimers published in the Press. He said that he was not one of those who received £1,500 from Biney before the capping. This is probably the reason for his sudden interest in the Ojora Family affairs as he was certainly not active in these during B. Faro's lifetime.

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Again from this evidence it is quite clear that the Plaintiff's appointment had not the approval of the majority of the Family and in fact the majority of the principal members were against it.

I WILL DEAL NEXT WITH THE EVIDENCE OF OBA
ADENIJI II, THE OBA OF LAGOS.

The Plaintiff he said was brought to him in 1955 by a group headed by Lawani Abiade, also known as Lawani Sowunmi. He had previously been given a letter addressed to Chief Oluwa, the senior Chief, asking for his approval of the Plaintiff as a candidate for the vacant Chieftaincy of Ojora. He deferred approval as there might have been someone else as a candidate. The Chiefs came to him on at least six successive weeks urging him to approve the candidature but he was reluctant. He then consulted the Chief Administrative Officer of the Colony who advised him to get the Chiefs to call a meeting of the Ojora Family. He told the Chiefs to do so, but they said it was no business of theirs to go searching for candidates, that only one had been put forward. Chief Oluwa, he said, advised him that it would be impossible to select a rival to Lasisi, the Plaintiff. This, he said, was confirmed to him at a meeting at the Iga at which all three Defendants were present. The Oba, I may say, at that time did not explain to me that that meeting was the one at which the Defendants protested against the Plaintiff's capping. When he received this report from Chief Oluwa he consulted Mr. Barker again who advised him to get the Chiefs to put it into writing that they were unanimous. He said they put it into writing, that in view of the fact that Lasisi had no rival, he should be accepted as Chief Ojora. The Oba was unable to produce the original of that letter but a copy was later produced which is Exhibit 23. It is an interesting document, and possibly in the

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Oba's eyes justified him in capping the Plaintiff, but in my view it says no more than that the Chiefs themselves wanted the Plaintiff appointed as Chief Ojora. In it he is referred to as Chief Ojora elect but there is nowhere any mention of the Ojora Chieftaincy Family having elected him. It is signed by 19 of the 24 White Cap Chiefs of Lagos and it may or may not be significant that Chief Onikoyi did not sign it.

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10 The Oba then went on to give evidence of Na-
tive Law and Custom in the selection of a Chief.
This is done by the grown-up members of the Family
if they agree upon one; if they do not agree, they
submit to him, through the Chiefs, the names of
the several candidates the several sections of the
Family have agreed upon. Then he and the Chiefs
hold meetings with the different branches, listen-
ing to each side, and, after going through the
merits and demerits of each, they select a candi-
20 date. That, according to the Oba, is final.
This piece of evidence was followed by the signifi-
cant statement that, in this case, there was no
other candidate.

When he had given approval, and before cap-
ping, the Defendants came to him and said that
they should have been asked for other candidates.
He said it was none of his business, and, as they
were unable to agree, he advised them to co-
operate with Lasisi.

30 He went on to say that Lasisi had brought to
him Exhibit 3 and he advised him to refuse to sign
it. This the Oba considers was a monstrous sug-
gestion.

40 He knew that the capping was to give a lease
to Biney, and he went on to say that only the
Chief, who is all in all, can let family land. He
also said that, in his view, Bakare Faro's Council
died with him. He considered that it was the turn
of the Asaba House to present a candidate to be
the Chief Ojora and he would not have approved any
candidate from any other House. After capping the
Plaintiff he reported to Government and the appoint-
ment was recognised, as indicated in Exhibit 1,
for the purposes of the Lagos Local Government Law
(Western Region) No. 4 of 1953.

In cross-examination, the Oba admitted that
after he had approved the Plaintiff and before the
capping, he received protests in writing and orally,

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but in spite of these he did the capping. He said that without capping a person cannot be a Chief. He can be Head of the Family.

Then followed a most significant admission. I quote -

"It is the Family to decide on land administration with the Chief. If the majority of the Family do not want a particular Chief, they cannot be forced to have him".

That, it appears to me, is exactly what happened in this case. 10

In spite of his view, expressed earlier, that the Chief is all in all and must be unfettered, he had to agree that the Chief cannot dispose of Family property without the consent of the leading members of the Family in his Council. He repeated again that when the Plaintiff was capped there was no rival and he denied a piece of evidence given by other witnesses, that is that he had sent several Chiefs to a meeting of the Ojora Family: that is the meeting at which the Chiefs who gave evidence, said they attended to warn against the selection of the 1st Defendant. He went on to say that all the members of the Ojora Council came to him with other members of the Family to protest but they had no candidate. There was no need, therefore, according to him to summon the whole Family. That, in my view, is an extraordinary piece of reasoning. Surely the advice given by the Chief Administrative Officer was right? Surely the Family should have been summoned to confirm or deny their acceptance of the Plaintiff as Chief Ojora? 20 30

The conclusions I draw from the Oba's evidence is that he was rushed into this capping by his Chiefs who misled him into believing that the Plaintiff was the Chief Ojora that, properly presented by the Ojora Family. I do not for a moment think that had the Oba believed otherwise, he would have capped the Plaintiff; and I do not for a moment accept the tentative suggestion made by the defence that he had any financial interest whatever in the capping, other than the traditional gifts in accordance with Native Law and Custom. His last answer to me, a propos of Exhibit 3, was that he thought it monstrous because the Chief was bound hand and foot. With the suggestion that this document is monstrous I am unable to agree and it 40

appears to me that the Federal Supreme Court was unable to agree either.

10 THE 5th WITNESS WAS OLATUDE ADE ALARA, KNOWN AS YAYA ALARA. He is a member of the Ojora Chieftaincy Family Council, No.11 on Exhibit 3. He said that, after the death of Bakare Faro, the Council continued but was not functioning well. After the capping of the new Chief, he left the Council and joined the Plaintiff's Council. He told of the selection of the Plaintiff and there is no doubt whatever that it was opposed.

20 In cross-examination, he admitted that he was one of seven who asked to be considered to be Chief, and he agreed that at that time there was no news that the Plaintiff wished to be considered. He said that he heard that he was going to be capped the day before the capping, but denied that he was one of those who protested, either personally or in writing. He was immediately confronted with Exhibit 15 which is a photostat copy of a protest made by the Ojora Family Council, to the Oba, the Chief Administrative Officer, all the Chiefs and several other persons against the appointment of the Plaintiff. This protest, he had to admit was signed by himself and all the other members of the Ojora Chieftaincy Family Council. It is dated the 25th November, 1955.

30 He was then confronted with exhibit 16. This is a letter of the 18th November, 1955, to the Oba from the Asaba Family, of which the Plaintiff and the witness are members, disassociating the Family from the irregular and unconstitutional act of the Plaintiff in installing or holding himself out as Chief Ojora without the knowledge and approbation of the Family. He agreed that this was signed by the Heads of his Family, but he brushed it aside as of no importance, by saying that this opposition is customary. He admitted that after Bakare Faro's death the Family Council was operating and that there were negotiations by it with the Chief Administrative Officer on the question of an access road to Ijora town.

40

He said that the 3rd Defendant usually occupied the chair at Council meetings, and that when they were fighting the late Chief Bakare Faro, Lawani Sunmonu, who was one of those who presented the Plaintiff to the Oba, had defected and supported the late Chief.

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He also said that he went to the meeting to which the Oba sent Chiefs to warn the Defendants not to cap the first Defendant. This he said was a meeting of the Ojora Family. "They went on and capped the 1st Defendant".

Again there is clear evidence of considerable opposition by the majority of the leading members of the Ojora Family to the Plaintiff's capping; and there is a singular lack of evidence that a majority of the family led by some of the elders of the family elected the Plaintiff.

10

THE 6th WITNESS WAS PETER JACKSON WHO CLAIMS to be a member of the Ojora Family but who is undoubtedly a descendant of Bada, a slave of the Ojoras and, therefore, an Arct. He states that he is the General Secretary of the Plaintiff's Council. He told of the Plaintiff's election as Chief, and, according to him in his evidence-in-chief, it was a perfectly straightforward matter and unanimously approved by the family; but he did admit the Defendants were not present. He also told the story of the 2nd and 3rd Defendants paying obeisance to the Plaintiff after his capping without any objection to his election. I have already said that I do not believe this story. He said that he knew of the terms of Settlement in case No.11 of 1947 which he understood to be between the late Chief and the Family. He said that at the peace meeting at which that case was settled the 2nd Defendant, the Secretary to the Council, said that it was a settlement between Bakare Faro and his own Council. That last piece of evidence, I think, is a piece of nonsense.

20

30

In cross-examination, he admitted knowledge of the judgments in Suit No. 26 of 1954 and in the appeal W.A.C.A. 242 of 55, and said that he understood them but he went on to say that he held the view that the Council was not perpetual and that the Terms of Settlement were meant only for that action, No.11/1947. A view with which the Court of Appeal did not agree. He denied that only the supporters of the old Chief selected the Plaintiff and he denied that the plot to have him capped was organised by him and his immediate faction at his home at Apongbon Street. He denied that the Oba sent them away to ring the bell to ascertain if the Plaintiff was the family's true choice. He denied that it is the right of an existing Family Committee of Elders to select a candidate as a new

40

Chief. According to him a special Committee must be formed for that purpose. I cannot for the life of me see why, if a Committee of Elders exists, it cannot organise the proceedings for the selection of a Chief who would be submitted to the family at a mass meeting. He agreed that the right to summon the Family is in the governing body of the Family and it seems to me that in this case, in the interregnum, the governing body was the Council of the late Chief. He agreed that when the selection is confirmed by the Family, the person selected becomes Head of the Family and Chief elect or de facto and that whoever has been acting as Head steps down for him. He immediately afterwards said -

"He is not entitled to administer Family property with the Council. He is entitled, with the Elders of the Family, to administer the Family property".

20 He agreed that no act of any member of the Family, even a Chief, is valid without the consent of the Family, obtained through its accredited representatives. He also agreed that it was common knowledge in Lagos that there was a dispute as to the succession to the Ojora Chieftaincy.

30 This witness is a man whom this Court found in the 1954 case to be untruthful and I may say that he did not impress me in any way. I consider that the evidence of the 2nd defence witness, Isa Buraimoh Otu, with which I shall deal later, gives the true story of the Plaintiff's selection and Jackson's part in it.

40 THE 7th WITNESS WAS SULU BOLAJI. Chief Ashogbon of Lagos, who is also a member of the Ojora Chieftaincy Family. He said that about 6 months or more after B. Faro's death, the Plaintiff was elected and that he was one of the persons who did this. If so, I must say according to his own evidence, it was at every long range and his knowledges of the selection was very much hearsay.

He said that he was at his house when the Plaintiff came and told him that he wanted to become Chief. He told the Plaintiff to consult the Family. He said the Plaintiff did so and returned to him; he then informed the Plaintiff that it was the turn of his own House, the Oyegbe, to select a candidate. He went on to say that the Plaintiff came a third time and told him that he

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had been appointed by all the members of the Family. The witness asked who those members were but the Plaintiff never answered - he went away. He came back again and the witness asked again. The Plaintiff gave him some names, among which were Lawani Sunmonu and Jackson and the Members of the Family at Ojora. He then went on to give evidence of custom on the selection of a Chief, which I need not detail, but he said "I didn't attend any meeting to elect the Plaintiff. I took no part in his election. I agree with it. I know he is capped. I wasn't present".

10

He said that he was a member of the former Council but was appointed to the existing Chief's Council by Lawani Sunmonu and Peter Jackson, not by Chief Ojora.

That evidence, as I have said, is very much hearsay but it indicates the part Jackson played in the Plaintiff's appointment. The witness is another of those who received money on the signing of Biney's lease.

20

In cross-examination, he was evasive and contradictory. I do not propose to detail his contradictions they are on record. I will refer to only one or two. Having said that he did not hear of the mass meeting which selected the 1st Defendant as Chief, on being reminded, he said that he attended that meeting and that he had been sent by the Oba to warn them not to select the 1st Defendant as Chief. He said there were many members of the Ojora Chieftaincy family at the meeting which was held at the Iga Odofin - the Iga, he said was packed full.

30

Having repeated that it was not the turn of the Asaba House to present a candidate, he went on to say - I quote:

"In spite of that he has been appointed by a section. There was no one coming from our side but the section which appointed the Plaintiff, refused to accept him".

40

He finally had to admit that in fact there were other candidates being considered by the Council, two of whom were from his own House.

In re-examination, he made a significant admission. He said that there were more members of the Family at the Iga Odofin that followed the Plaintiff to the Oba.

THE 8th WITNESS, SANNI BALOGUN ODUNSI, lives at the Iga Ojora and was a member of Bakare Faro's Council. He too had to be told to make up his mind.

He was not at first too sure which House of the Ojora Family he belonged to.

He said that when Bakare died, the Oba advised them to elect a candidate but they were unable to do so as seven members of the Council were contesting to become Chief.

10 He told of the quarrel with the Chiefs after Bakare Faro's death, and of learning that the Plaintiff, his own brother, had been approved as Chief the day before the capping. He joined the other members of the Council to protest against it.

He did not say why he changed sides but he went on to tell the story of the prostration and to say that he is now a member of the Plaintiff's Council. He admitted that a Chief can't appoint a Council himself but must do it, together with
20 members of the Family, in their presence.

That completed his examination-in-chief and his cross-examination commenced some months later in July, on the resumption of the case on my return from the Cameroons Circuit.

When asked if when he had said that the Oba advised the Council he meant the Council referred to in the Terms of Settlement, he professed not to understand the question and it took some little time to get an answer from him that in fact it was
30 that Council which the Oba asked to select the Chief. He agreed that at that time he personally wanted Yaya Alara, the Plaintiff's elder brother to be Chief and, after having made it perfectly clear that they did not know of the Plaintiff's selection until just before his capping, he told one flagrant lie. That was that they had known three months before the capping that the Plaintiff had been selected. He then became very evasive and difficult in answer to questions, on the protests made, but he was forced to admit that, as a
40 principal member of the Asaba House, he should have been one of the people to put their candidate forward. Having admitted in cross-examination that he was one of the signatories to Exhibit 15, the protest from the Asaba Family, in re-examination he said: "I never signed my signature"
"I only thumb print"
"I didn't sign Exhibit 16"

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"I can't write Sanni"
"I can't write Odunsi".

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I simply do not understand why this manifest untruth was extracted from him.

Here again there is very clear evidence that the Plaintiff was not the selection of the Family.

That completed the case for the Plaintiff and I think I could decide the issues on the Plaintiff's case alone but I feel I must make some reference to the defence.

10

THE 1st DEFENCE WITNESS WAS MOMOM JIMOH

ONISEMO a member of the Ojora Chieftaincy Family and No.13 on the list of the Family Council in Exhibit 3. He told quite simply of the Council, under the chairmanship of the oldest member of the Family, the 3rd Defendant continuing to administer the affairs of the family after Chief Bakare Faro's death and he told of the Oba, during B. Faro's lifetime, having accepted the Terms of Settlement as a valid document. I see no reason to disbelieve him.

20

He told of the quarrel with the Chiefs and the Oba after B. Faro's death, and the payment of one hundred pounds to the Chiefs and Oba to pacify them for the indignity. I saw no reason to disbelieve this evidence either.

He told of the consideration by the Council of 5 candidates for the Chieftaincy and of their hearing that the Plaintiff was to be capped. He told of their protests to the Oba and to the Chiefs and of the manner in which these were disregarded.

30

He gave considerable evidence of succession in Chieftaincy families, illustrating that a son can follow a father and that therefore two successive Chiefs can be from the same House. Again I see no reason to disbelieve him. He told of the selection of the 1st Defendant as Chief in accordance with the custom of the Ojora Family and of his capping in accordance with this custom. According to him, in the Ojora Family, the capping is done by the Family and there is no doubt that for very many years Chief Bakare Faro wore a white Hausa cap, as the Chief or Head of his family, and administered the affairs of his family for all those years before he was capped as a White Cap Chief. He was cross-examined at very great length

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indeed but he seemed to me to be an honest witness.

10 THE 2nd DEFENCE WITNESS WAS ISA BURAIMOH OTU,
 a member of the Ojora Family who was formerly on
 the side of the Plaintiff and who gave evidence of
 how he was capped. He was called to a meeting at
 95, Apongbon Street, where Jackson and Lawani Sun-
 monu lived with Jackson's mother. There were about
 20 people there and it was discussed how they would
 reach the whole family. One, Mustapha Abuni said
 that he had seen the other members of the Family,
 but it was decided that delegates were to be chosen
 to see the Family and report. Mustapha and Jack-
 son both spoke. They said they were to receive
 some money and when they got it some would be given
 to do the capping. After the meeting he asked
 the Plaintiff how he would be presented to other
 members of the family. The Plaintiff said Chief
 Onitolo would settle all. About three weeks
 20 later, he went with the Plaintiff and about 20 of
 his supporters to meet the Chiefs at the Iga
 Oluwa. After meeting the chiefs, the Plaintiff
 told them that the Chiefs had told him that he
 would be sent for to meet the Oba.

30 The following evening, the witness went to
 the Plaintiff and asked why Yaya Alara and Sanni
 Balogun, Plaintiff's elder brothers, were not with
 him. The Plaintiff told him that they were mem-
 bers of the Council and were not on his side. The
 witness told the Plaintiff that he was the only
 one supporting him from the Asaba House and the
 Plaintiff told him not to worry that Chief Oluwa
 would settle that for him. He told of the Plain-
 tiff's capping and of the Plaintiff and his party
 leaving for the Iga Ojora with Jackson and two
 lorry loads of hooligans. He did not go as he
 feared trouble because the Chieftaincy had not
 been discussed with the family at Ijora and other
 members of the Family in Lagos did not know about.

40 That completed his evidence in chief and
 there was much in the same strain in his cross-
 examination which commenced with his admission of
 a conviction for stealing.

I consider that he was quite unshaken in
 cross-examination and that he was a truthful wit-
 ness. It is perfectly clear from his evidence
 that the Plaintiff's selection was a very under-
 hand affair by a minority of the family. It was
 carried out almost in secret and completely dis-
 regarded the rights of most of the Elders.

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THE NEXT WITNESS WAS AMINU KOSOKO, CHIEF
ASAJON. Oloja Ereko. He gave evidence at length on custom and he said at a very early stage if the Family Council and the majority of the Family do not want a candidate the Oba cannot force them to accept him.

He told of the trouble between the Council and the Chiefs, of the capping of the Plaintiff and the protests. He said, "we did not pay any attention to the protest, he was capped". That was a matter for the Oba against which he could not protest. It is not disputed that the capping of a White Cap Chief is a matter for the Oba, but he cannot force a family to accept a Head they do not want.

10

He said that it would be correct in Native Law and Custom for the Family and the "Olotu" or family Council to choose a Chief - that is the majority of the Family and the "Olotu". He said that the practical value of the capping by the Oba is social. Unless a Chief is capped he cannot go to the Iga or mix with the Chiefs or accompany the Oba anywhere but nevertheless he remains Head of his family. He was cross-examined but was unshaken and it was during this that Exhibit 23, the memorandum signed by all the Chiefs approving the Plaintiff's candidature, was produced. While he signed this he said that it is unusual for the Oba to ask Chiefs to put their recommendation in writing like this. This is, in his experience, the first time it has happened.

20

30

I consider that he was a truthful witness.

4th DEFENCE WITNESS WAS THE 3rd DEFENDANT.

He is aged 91 and he told of his family customs in the selection of a Chief. He said that it was during the reign of Chief Ajari Ojora that the Chief Ojora first joined the Oba's Council of the White Cap Chiefs.

Ajayi had come from Lagos and wished to be a White Cap Chief and this was approved by the other Chiefs and the then Oba. Dosunmu.

40

He also told of the protests by the Family Council and others and how summarily these were rejected by the Chiefs. He said the place became rowdy. The Plaintiff was capped in spite of their protests. He said that it is not true that the Chief's Council dies with him.

This witness also was cross-examined at great length but was unshaken, and I consider that he was truthful. The substance of his evidence is that the Plaintiff was appointed Chief and capped, against the wishes of the Family or the majority of the Ojora Family, whereas the 1st Defendant was selected and capped in accordance with Ojora Family custom, with the support of the majority of the principal members of the Family.

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- continued.

10 THE 5th DEFENCE WITNESS, SANUSI SULE OBA, is a member of the Oloto Chieftaincy Family and that Family's Council, as well as of the Ojora Chieftaincy. He was an impressive witness and he produced Exhibit 25, which is an agreement between Chief Oloto and his Council on the conduct of the affairs of the Oloto Family rather on the lines of Exhibit 3, which the Oba regarded as monstrous.

20 This evidence was elaborated in cross-examination and I accept that for many years the Oloto Chiefs have had such agreements with their Council.

That completed the evidence, but the addresses were almost as lengthy and they strayed at times, as did the evidence, far from the issues.

I repeat them:-

- 30 (1) Was the Plaintiff properly appointed Chief Ojora according to Native Law and Custom?
- (2) If he was, is he compelled to administer the affairs of the family in conjunction with the Family Council as constituted in the Terms of Settlement - Exhibit 3, that is are these perpetual unless varied by the Ojora Family?

40 I have indicated in the course of my consideration of the evidence what I thought of the Plaintiff's appointment; it was, in my view, engineered by a small minority of the Ojora Family, led by Jackson, whose right to play such a part is extremely doubtful who got the support of one or two leading members of the family who are White Cap Chiefs. They in their turn obtained the support of all the White Cap Chiefs who persuaded the Oba, somewhat, I think, against his will, to approve the capping of the Plaintiff as a White Cap Chief. He was then recognised by the Governor-General as an Idejo White Cap Chief, for the purposes of the Lagos Local Government Law, 1953, which merely means that he can be appointed as a traditional member of the

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Lagos Town Council; it has nothing whatever to do with the headship of the Ojora Family or the administration of its property.

Before the Plaintiff was capped the Oba and all the Chiefs knew that the leading members of the Ojora family opposed the Plaintiff. They quite arbitrarily rejected their protests. The Oba did not even follow what he said was his procedure in the case of Chieftaincy disputes. He did not listen to both sides and select a candidate. That was because according to him there was no other except the Plaintiff. 10

That was an entirely mistaken view. It is clear from his own evidence and from the evidence of other witnesses for the Plaintiff that there were other candidates.

That the family were unable to decide as between these candidates at that time was, in my view no justification for foisting the Plaintiff on them. 20

It has, as I have said earlier, been long established that a family can, through its Council or Committee of Elders under the Head of the family, continue to administer its affairs without its White Cap Chieftaincy being filed. *Aromire v. Oresanya*, XIV N.L.R. 116 is a case in point. There Graham Paul J. set that out quite clearly at page 118, (3). There was, I consider, an unseemly haste about this whole affair and the reason is not difficult to find. Ojora lands are booming in value and the Faro faction which supports the Plaintiff has long sought absolute control over them, without success. 30

I repeat one portion of the Oba's evidence which I have referred to before. He said:-

"If the majority of a family do not want a particular Chief they cannot be forced to have him".

Other witnesses for the Plaintiff agreed with that opinion but unfortunately that is exactly what has been attempted in this case; to force the Ojora Family to have the Plaintiff as their Idejo White Cap Chief against the wishes of the majority, certainly of the leading members of the family. 40

In my opinion the capping of the Plaintiff was contrary to Native Law and Custom, and therefore void and of no effect, in so far as the

administration of the Ojora Family property is concerned. I express no opinion on the Plaintiff's social status as a member of the Oba's Council of Chiefs.

This Court cannot, therefore, given him the relief he seeks.

Having so found on the first issue, it may be said that a finding on the 2nd is unnecessary, but in the interests of the Family in the future I think it advisable.

I am asked to interpret the Terms of Settlement, Exhibit 3, which are set out in full at the beginning of this Judgment. In my opinion, these have already been interpreted by this Court, and the Federal Supreme Court, in the Judgments in :-

Oke Esurombi Aro & Others

v.

Bakare Faro, Chief Ojora.

Suit No. 26/1954, and F.S.C.242/1955.

Exhibit 4.

In the judgment of the Court of first instance Johnston J., said, speaking of the Terms of Settlement:-

"I am in agreement with Mr. Augusto's submission on this point. The Council is the representative committee of the numerous members of the family. They are as stated in paragraph 9 of Exhibit "A", "responsible to the General body of the Family for the safety of the Family properties real and personal" as stated in paragraph 4 of Exhibit A. This settlement which has not been discarded or replaced is in my opinion, in full effect today.

Its terms provide for the future as well as a Settlement of the differences between the Defendant and the Family as resolved by the Settlement in 1949. I find that the Suit is properly conceived and that the claim stated is well founded by reason of the terms of Settlement in Exhibit "A".

In delivering the judgment of the appellate Court, Nageon de Lestang, F.J., as he then was, said:-

"No good purpose would be served by criticising the wording of the settlement which is obviously not as clear as one would wish it

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Court of Lagos

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to be, but in interpreting it, it is well to bear in mind its object which, according to the preamble, was clearly to put an end to dissensions in the Family. With that end in view, by Clause 1 it appointed a Family Council to administer the affairs of the Family. Now it seems clear to me that this Council was to be a permanent body since not only are detailed provisions made for the filling of vacancies on it in the future, but also duties are imposed on it to be performed in the future (see in particular Clauses 4 and 5 and 11). Clauses 7 and 8, it is true, deal with the cases then pending before the Court, but Clause 9, though not very clear, must, it seems to me, have been intended to include future compensation, otherwise it is difficult to see why it refers to payment being made to Chief Ojora and not to the Appellant by name".

10

That is the interpretation of this document by the Federal Supreme Court; it is unambiguous, and until it is upset by the Privy Council it must be the interpretation by this Court.

20

I have not dealt with the perpetual injunction, Suit No.266 of 1918, Exhibit 26. I do not think it necessary and in any event its validity or otherwise now should, I think, be a matter for a separate suit.

There will be judgment for the Defendants.

21st September, 1959.

(Sgd.) J. BENNETT,
Judge.

30

Judgment read and signed.

COURT: Can Counsel agree on costs.

AGUSTO: My Learned friend spoke of 1,000 Guineas before Your Lordship came into Court.

MOORE: Suggest 600, but ask that costs be paid out of money in Court both sides. Plaintiff's appointment not set aside. Both sides should have costs out of that.

AGUSTO: Quite unreasonable. Would mean we as representatives of family paid:

40

COURT: There were 31 days of hearing. I had in mind 1,000 Guineas not excessive. The Plaintiff L.A. Odunsi will pay to Defendants 1,000 Guineas inclusive costs.

21st September, 1959.

(Sgd.) J. BENNETT,
Judge.

No. 26.

GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

Suit No.LD/20/56

In the Federal
Supreme Court
of Nigeria.

No.26.

Grounds of
Appeal.

12th November,
1959.

BETWEEN:- LASISI AJIBOLA ODUNSI
(Chief Ojora of Lagos)
for himself and on be-
half of the Ojora
Chieftaincy Family Plaintiff

10

- and -

1. AMINU AKIDELE AJANI OJORA
2. AKINWUNMI ESUROMBI ARO
3. OKE ESUROMBI ARO Defendants

GROUNDS OF APPEAL

1. The learned trial judge erred in law in as-
suming jurisdiction to enquire into the appoint-
ment of the Plaintiff as Chief Ojora.

20

2. The Plaintiff having obtained an Order to sue
in a capacity representing the Ojora Chieftaincy
Family which Order has not been set aside the
learned trial Judge erred in law in admitting and
acting on evidence directed to show that the
Plaintiff in fact did not represent the said Family.

3. The Learned trial Judge erred in law in hold-
ing that the terms of Settlement in Suit No.III/1947
are perpetual.

4. Judgment against the weight of evidence.

30

5. The costs of 1,000 guineas awarded are ex-
cessive and unreasonable and in view of the action
being in a representative capacity the learned
trial Judge erred in law in Ordering any costs
awarded to be paid by L.A. Odunsi personally.

DATED at Lagos this 12th day of November,
1959.

(Sgd.) DAVID & MOORE,
Plaintiff/Appellant's Solicitors.



In the Federal
Supreme Court
of Nigeria.

No. 27.

JUDGES NOTES OF ARGUMENT
IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
MONDAY THE 15th DAY OF MAY, 1961
BEFORE THEIR LORDSHIPS

No.27.
Judges Notes of
Argument.
15th May 1961.

FSC.297/1960

LIONEL BRETT
JOHN IDOWU CONRAD TAYLOR
SIR VAHE ROBERT BAIRAMIAN

FEDERAL JUSTICE
FEDERAL JUSTICE
FEDERAL JUSTICE

10

LAISISI ODUNSI Appellant

v.

AMINU AJORA & OTHERS Respondents

Appeal against decision of Lagos High Court in case involving right to dispose of family land.

For Appellant: Fani Kayode, Kotun, Lardner, Sowemimo and Duduyemi.

For Respondents: L.B. Augusto and Oseni.

Court draws attention to omission of Chieftaincy Disputes (Preclusion of Courts) Ordinance from 1958 edition of the Laws. Will wish argument later from Counsel.

20

Oseni submits G/A 2 cannot be argued - p.359. Akunne v. Ekwuno 14 W.A.C.A.59.

Ruled Appeal to go on.

Fani Kayode opens appeal: Three main issues:

1. What is effect of capping of White Cap Chief by Oba?
2. What is effect, if any, of recognition by Governor-General? Appointment and Deposition of Chief Ordinance.

30

Chieftaincy Disputes (Preclusion of Courts) Ordinance.

3. What is effect of agreement of 1947 on native law and customs in the proceedings.

Judgment p.246. Findings pages 280 and 282.

G/A 1. Jurisdiction to inquire into appointment of Plaintiff as Chief Ojora.

Akilolu Akodu v. Yesufu Omidiji 8 N.L.R. 55: Full Court. Person chosen and capped as White Cap Chief has right to enter Iga.

In the Federal Supreme Court of Nigeria.

Judge wrongly held 1st Defendant claimed only to be Head of Family, not to be Chief

No.27.

Page 247 lines 9-19. Page 257 Lines 10-12. Pleadings-Defence. Page 40 paragraph 2. Page 41 lines 3-13.

Judges Notes of Argument.

15th May 1961

- continued.

10 Elo Aiyedun v. Yesufu Oresanya 14 NLR 116 (Aromire) at page 119 as to position of Head of Family as interregnum appointment only, when there is no capped Chief.

Lagos Local Government Ordinance. (Laws, 1958, Vol.IV Cap.93). As originally enacted section 2 defined "Chief" recognition "for purposes of this Law". Amendment by Ordinance 35 of 1956, which also amended Section 13.

Absurd if person can be Chief for some purposes, not for others.

20 Oba's approval is what makes the appointment not the ceremony of capping. If so native law and custom entitles us to succeed.

Oba and Chiefs of Lagos Ordinance, 1959 (No. 22 of 1959) Section 9, commencing 8th October, 1959, repealed Appointment and Deposition of Chiefs Ordinance (Laws 1948 Cap.12). If it applied in Lagos it strengthens our case - Governor-General sole Judge - but in Onitolo v. Bello, 3 FSC, the Court held it did not apply.

30 Chieftaincy Disputes (Preclusion of Courts) Ordinance 1948, Section 3 does apply in Lagos.

Once Court is satisfied person has been capped by person having authority to do so it cannot go into whether capping was proper.

40 The agreement shows that Chief Ojora is president of family Council - this precludes 1st Defendant from saying he is president without also saying he is Chief and the jurisdiction of the Court is excluded. When is action "instituted for" a particular purpose? If Plaintiff cannot raise issue, how can it be raised by defence.

Onitolo v. Bello 3 FSC 53.

Effect of agreement.

Management of family property is normally

In the Federal
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No.27.

Judges Notes
of Argument.

15th May 1961
- continued.

vested in Chief. Asajon v. Shelley FSC 247 of 1956.

Finding at page 282 lines 10-36 and page 283 citing judgments of Johnston, J., and De Lestang, F.J. Pages 287-291 - all that was put in. Not writ or leadings - Counsel reads the agreement.

Judge relied on previous decision for holding Plaintiff was bound by agreement - pages 282-3.

Johnston, J., said settlement reached in case involving compensation and went beyond issues raised - was fully binding nevertheless. FSC confirmed this - it interpreted clause 9. Page 293 lines 20-5. "Differences between the Defendant and the family". Page 298. Page 301 lines 26-32.

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Defendants themselves departed from terms of settlement - Aro was signing cheques alone.

Summarising - 1. Once Plaintiff was capped he had right to manage property.

2. until he is removed his appointment cannot be questioned.

20

3. If Appointment and Deposition Ordinance applies, recognition by G-G and capping cannot be questioned except by petition to G-G.

4. If 30/1948 applies it precludes defence doing what Plaintiff could not do.

5. Settlement does not bind Plaintiff.

Oseni for Respondent:

As to Settlement: Clause 4. If it was to operate only between family and existing Chief no need to refer to Chief Ojora by title.

30

Bakare Faro was a trustee and the Settlement bound his successor.

Page 298 - Judgment of F.S.C. Issue was who was entitled to manage family property. Court had to interpret document as a whole.

When the agreement was made it was intended to serve as the constitution of the family. When Plaintiff became Chief, there is no evidence that Council had been dissolved. Plaintiff's evidence page 92 a. 27 shows it still existed.

40

Unless Chief Ojora is a member of the family Council he can take no part in management of family affairs.

Adjourned to 16.5.61. (Sgd.) L. BRETT, F.J.

RESUMED TUESDAY THE 16th DAY OF MAY, 1961

Counsel as before.

Oseni continues:

Effect of capping by or authority of Oba.

Nothing to do with validity of appointment as Chief nor with right to manage affairs of family.

10 Chiefs in Lagos are merely heads of families - no right outside family. Only the family can confer rights of management over family property. Oba cannot confer rights by mere capping. That is general rule.

In this case there is no evidence that capping is conclusive of due appointment.

Capping by Oba has no effect except that the person capped is entitled to become Councillor of Oba. There can be another Chief in the family at the same time with powers of management of family property. Both are called Chief Ojora. Same in Onisemo family.

20 Once a person is recognised by family he becomes Chief de facto with powers of management.

The position as I submit has always been the law of Lagos. Title is merely "dignified Appellation".

S/D page 41 we pleaded various judgments.

Evidence of Plaintiff at page 94 reference to 339/22. Exhibit 6 page 304, 307. Shows it is not capping that confers power to administer property.

30 Evidence of Oba page 129 lines 9-10. Chief cannot be forced on family.

Cases cited by Fani Kayode distinguishable.

Akodu v. Omidiji 8 NLR 55 and Aiyedun v. Oresanya 14 N.L.R. 116 were findings on the facts adduced. Do not establish that mere capping can validate an otherwise invalid appointment.

There was nothing similar to the agreement in this case. It made the position in the Ojora family different from others.

40 Council continued after Bakare Faro's death - page 159.

Here Plaintiff was not the choice of the family or even of his own house - page 141.

In the Federal Supreme Court of Nigeria.

No.27.

Judges Notes of Argument.

16th May 1961.
- continued.

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No.27.

Judges Notes of Argument.

16th May 1961
- continued.

To Court: 1st Defendant became a member of the Council when the family appointed him Chief.

In cases cited the families concerned had reached agreement on who the Chief was to be. Not so here.

Recognition by Government not part of native law and custom. Exhibit 1 recognition only for purposes of Lagos Local Government Law, 1953 (page 285).

Taiwo v. Sarumi 2 NLR 106. Lagunju v. Olubadan 12 WACA 406, 410. 10

Chieftaincy Disputes (Preclusion of Courts) Ordinance 1948 applies in Lagos.

Onitolo v. Bello decides jurisdiction and where case is framed for purpose of obtaining relief as set out in Section 3, Court will not exercise jurisdiction.

Where relief does not come in these classes, Court will exercise jurisdiction. Here claim does not come within Section 3. 20

Issues agreed at page 87 lines 17-22.

(Court: Distinguish "cause or matter instituted for" and "suit raising issue as to....." (former Supreme Court Ordinance Section 12).

Reverting to effect of capping - see evidence of Aminu Kosoko pages 178-179 Practical value "social" - judge believed this witness - page 278.

Settlement family are a "class" and all bound by terms. 1st Edition Hals. Vol. 13 page 348 Section 483 "Estoppel". 30

Clause 10. Family was to pay, not Bakare Faro. Clause 11 is to be read subject to other provisions - refers to minor social courtesies.

Intention was to provide for the future.

As to omission of Chieftaincy Disputes (Preclusion of Courts) Ordinance from 1958 Edition of Laws - omission was under Section 5 of the Revised Edition Ordinance, notwithstanding page CX.

Fani Kayode in reply

As to Revised edition, the case was pending on 1.6.58 and rights cannot be taken away. Babatunde v. Governor W.R., (1960) WRNLR 37. This is not procedure but substantive law. 40

Revised edition not brought into force until August 1960, i.e. after judgment of High Court in this case.

In the Federal Supreme Court of Nigeria.

On merits of appeal

Settlement - judge based judgment on judgments of Johnston, J., and De Lestang, F.J. Those only concerned position while original parties alive.

No.27.
Judges Notes of Argument.
16th May 1961
- continued.

10 Immaterial that candidate for Chieftaincy applied to the Council.

Capping - native law and custom can be shown by evidence or by decided cases.

Question for Court is, has Appellant been capped. If so he is Chief until removed and Court cannot inquire further. Court might be able to decide between rival candidates, neither of whom had been capped.

In Onitolo v. Bello Plaintiff had been capped - Judge held that sufficient.

20 In Aiyedun v. Oresanya Defendant had locked up Iga.

Akodu v. Omidiji 8 NLR only few persons sponsored capping.

Taiwo v. Sarunmi not relevant.

Adjourned to 17.5.61. (Sgd.) L.BRETT,
F.J.

WEDNESDAY THE 17th DAY OF MAY, 1961

17th May 1961.

Counsel as before.

Fani Kayode continuing reply:

30 FSC 71/1957 Onitolo v. Bello ID 316/1955 - reads from page 7 of record of High Court. Court accepted that Plaintiff was properly capped and recognised.

In Aiyedun v. Oresanya Defendant had not presented himself for capping.

Page 181. 14 NLR at page 123.

Omidiji case is on all four with this one. Court held capping was the essence - family's function merely to select.

Recognition - do not give interpretation that creates absurdity. Cannot have three kinds of Idejo Chief.

40 Preclusion Ordinance - if cannot come by front door, cannot come by back door.

Judgment reserved. (Sgd.) L. BRETT, F.J.

In the Federal
Supreme Court
of Nigeria.

No. 28.

JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

THURSDAY THE 8th DAY OF JUNE, 1961

BEFORE THEIR LORDSHIPS

No.28.
Judgment.
8th June 1961.

LIONEL BRETT	FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE
SIR VAHE BAIRAMIAN	FEDERAL JUSTICE

FSC. 297/1960 10

BETWEEN:- LASISI AJIBOLA ODUNSI
(Chief Ojora of Lagos)
for himself and on be-
half of the Ojora
Chieftaincy Family Plaintiff/Appellant

- and -

1. AMINU AKINDELE AJANI OJORA
2. AKINWUNMI ESUROMBI ARO
3. OKE ESUROMBI ARO

Defendants/Respondents

J U D G M E N T

20

BRETT, F.J.: This is an appeal by the Plaintiff from the decision of Bennett, J., in the High Court of Lagos, dismissing his claim for an injunction to restrain the Defendants from alienating any portion of the family lands and properties without his consent, and for an account.

One of the grounds of appeal filed was that the judgment was against the weight of evidence, but this ground was not argued before us and it is possible to consider the points of law involved on the basis of the facts as found by Bennett, J., except so far as native law and custom is a question of fact. The parties are all members of the Ojora family of Lagos, a land-owning family having the right to nominate its head to the Oba of Lagos for capping as an Odejo White Cap Chief with the title of Chief Ojora. The Appellant has admittedly been capped as Chief Ojora on the instructions of the Oba, and was recognised by the Governor-General in 1956 as a Chief for the purposes of the Lagos Local Government Law, 1953. The point at issue is whether the traditional powers of a Chief or family head in the management of the family

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property are vested in him, so as to enable him to maintain this action. The Respondents rest their case for disputing this on two grounds: first, they say that although the Appellant has been capped the first Respondent and not he is the person elected by the family to manage its property, and that it is possible under native law and custom to have two persons with the title of Chief Ojora, one of whom enjoys the social and other privileges which capping brings, and the other of whom has the management of the family property. Secondly, they say that in consequence of the Terms of Settlement agreed to by all parties and made an order of the Court in an action between Bakare Faro, the last undisputed holder of the office of Chief Ojora, and other members of the family, the holder of the office for the time being, whoever he may be, is obliged to act in conjunction with the other members of a family council consisting of Chief Ojora and twenty others, and that since the second and third Respondents are members of the family Council the action cannot succeed against them.

Bennett, J., upheld the first of the Respondents' submissions. He found as a fact that the Plaintiff was the choice only of a small minority of the family, and that the Oba, on the advice of the White Cap Chiefs, authorised his capping in the face of a protest by a number of the leading members of the family. He also found as a fact that the first Respondent was the choice of the majority of the family, and that it was in accordance with native law and custom for him to act as head of the family in managing the family property and use the title Chief Ojora. On these findings the interpretation of the settlement did not arise for decision, but Bennett, J., expressed the view that it had already been authoritatively interpreted in favour of the Respondents' submissions in the judgment of this Court in another suit between Bakare Faro, Chief Ojora, and members of the family: appeal No. W.A.C.A. 242/1955.

In the Court below the Respondents took the opportunity of canvassing the whole of the circumstances leading up to the capping of the Appellant as Chief Ojora, and, having secured from the Oba the admission that he has no power to force a Chief on a family if they do not want him, what they were really endeavouring to do was to discredit the Appellant as Chief Ojora for any purpose. The Appellant submits that once he has

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- continued.

established that he has been capped on the authority of the Oba and recognised by the Governor-General the Court is debarred from inquiring further into the matter by the Chieftaincy Disputes (Preclusion of Courts) Ordinance, 1948 (No. 30 of 1948). which was held to apply to Lagos in the judgment of this Court in Onitolo v. Bello (1958) 3 F.S.C.53. Section 3(a) of that Ordinance (which was repealed and replaced as far as Lagos is concerned by the Oba and Chiefs of Lagos Ordinance, 1959: No.22 of 1959) read as follows :-

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"Notwithstanding anything in any written law contained whereby or whereunder jurisdiction is conferred upon a Court, whether such jurisdiction is original, appellate or by way of transfer, a Court shall not have jurisdiction to entertain any civil cause or matter instituted for -

- (a) the determination of any question relating to the selection, appointment, installation, deposition or abdication of a Chief".

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As the case was contested in the High Court, it may have been material to consider how far this restriction on the jurisdiction of the Court extended, but in this Court the Respondents have not disputed the submission made on behalf of the Appellant, that the issues are -

- (i) what is the effect of capping?
(ii) what is the effect of recognition by the Governor-General?
(iii) what is the effect of the settlement?

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All these issues can be settled without entering into any question relating to the selection, appointment, installation, deposition or abdication of a Chief, and it is unnecessary to consider the scope of the Ordinance, or the effect of its omission from the Revised Edition of the Laws of the Federation and Lagos, 1958.

I would go further and say that I do not regard it as necessary in any event to consider the effect of the settlement. If the Appellant is entitled to exercise the usual powers of the Chief or family head in the management of the family property, he is also entitled to the relief he asks for, since it is not pretended that the settlement enables the Respondents, or the family Council less the Chief, to dispose of the family

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property without the consent of the Chief. If, on the other hand, the Appellant is not entitled to exercise any powers of management over the family property then he cannot obtain any relief, whatever the effect of the settlement may be. If this view is correct, the only question which the Court has to decide is whether the Appellant has the usual powers of the Chief or family head.

10 As regards the effect of capping, the Appellant relies on the judgments of Petrides, J., in Akodu v. Omidiji (1927) 8 N.L.R. 55, and Graham Paul, J., in Aiyedun v. Oresanya (1938) 14 N.L.R. 116, as showing the powers possessed by a White Cap Chief as such, and as explaining the circumstances in which, if for any reason no member of the family has been capped as a White Cap Chief, there may be a head of the family exercising powers of management over the family property. Native law and custom being a question of fact in an action
20 in the High Court, it is true that the findings in these cases are not binding as precedents, and it is also true, as has been pointed out by Mr. Osen on behalf of the Respondents, that however learned and experienced the Judges whose judgments are relied on may have been, they could only act on the evidence which the parties in the cases concerned chose to call before them. Nevertheless, both on the authority of those decisions, and as a matter of probability I would say that the burden
30 of proving that there may be simultaneously in one family a Chief who has been capped but has no rights of management over the family property, and another Chief with the same title who has not been capped but manages the family property, was on those who asserted it, and I am unable to agree with Bennett, J., that the Respondents discharged that burden. It is one thing to show that a person may have the powers of management of a family head without having been capped, and quite another
40 thing to show that capping confers nothing but social status. The Respondents have been able to point to no precedent for the state of affairs which they contend is permitted by native law and custom, although family disagreements of this kind have not been uncommon, and the novelty of the submission tells strongly against it. I have already said that the Respondents introduced a number of matters which were not strictly relevant, and although Bennett, J., did his best to define
50 the issues and restrict the parties to them I think,

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8th June 1961

- continued.

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of Nigeria.

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- continued.

with respect, that after a trial in which the evidence took up fifteen days, spread over four and a half months, and the addresses of Counsel six days, he may have allowed his feeling that the Appellant had no right to have been capped to influence his decision as to the effect of capping.

If it is correct that the other White Cap Chiefs were over-hasty in advising the Oba to approve the capping of the Appellant, that is not a matter which the Court can correct, and for the reasons which I have given I am not satisfied that it alters the effect of capping. Mr. Oseni drew attention to a passage in the judgment in Aiyedun v. Oresanya where reference was made to natural justice, but I do not think the learned Judge was using the expression in its technical sense, and as far as what I may call public policy is concerned it is just as important that members of the public should know that they may safely deal with a White Cap Chief as the person empowered, subject to the usual consents, to dispose of the family land, as that the interests of the family should be secured. The Courts have always been ready to preserve the legitimate interests of land-owning families, as many reported cases show, and I should regret it if it were necessary now to introduce a new ground of uncertainty into a matter in which sufficient uncertainty exists already.

If the effect of capping is as I have said it is immaterial what effect the recognition of the Appellant by the Governor-General for the purposes of Section 2 of the Lagos Local Government Law had, and I need not consider it.

To summarise, I would hold that on the evidence the Appellant has established his right to the relief he seeks, and that it is unnecessary to express a view on the question whether the settlement is binding on the Appellant. It is to be hoped that the absence of an authoritative decision as to the effect of the settlement will not make further litigation necessary, but a view expressed as an obiter dictum would not be an authoritative decision and I think it is wiser not to express such a view. I would only say that if any expressions used in the judgment of this Court in appeal W.A.C.A. 242/1955 were intended to imply that the settlement would be binding on the successors of Bakare Faro as Chief Ojora they were used obiter, since Bakare Faro himself was a party

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to the suit and the question cannot have arisen for decision. If the question ever arises directly, the Court will have to give its own answer and will not be bound by anything said hitherto.

In the Federal
Supreme Court
of Nigeria.

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Judgment.

8th June 1961
- continued.

10 I would allow the appeal, set aside the judgment of the Court below, including the order for costs, and enter judgment for the Plaintiff in the terms of the writ. One thousand guineas costs were awarded to the Defendants in the High Court, and as I see no ground for doing otherwise I would award that sum to the Appellant in respect of the proceedings in the High Court. As regards the costs of the appeal, the record of appeal contains 366 pages of typescript and the cost of that to the Appellant was £90. 3. 9d. Having regard to the points argued on the appeal, it would have been enough if the record had contained the writ of summons, the pleadings, the judgment, the letter notifying the Governor-General's recognition of the Appellant (Exhibit 1) and the judgment in appeal W.A.C.A. 242/1955, which sets out the terms of the Settlement in full (Exhibit 5). These take up 48 pages and in assessing the costs of the appeal I would only allow about £13 in respect of the cost of the record. I realise that the Respondents agreed to this absurdly inflated record, but in the first place there was at the time a ground of appeal filed which referred to the weight of evidence, and in the second place it has become clear that Counsel will pay no attention to protests made by this Court at unnecessarily bulky records until they see their clients being deprived of their costs on grounds of this kind. The hearing of the Appeal in this Court occupied between six and seven hours, and I would award total costs assessed at fifty guineas. The Respondents jointly and severally, should be liable personally for the costs awarded.

40 (Sgd.) L. BRETT
Federal Justice.
I concur (Sgd.) JOHN TAYLOR
Federal Justice.
I concur (Sgd.) VAHE BAIRAMIAN
Federal Justice.

Mr. R.A. Fani Kayode, Q.C., (Messrs.K.A.Kotun,
H.A. Iardner, S.A.S. Sowemimo and A.Duduyemi
with him) for the Appellant.

Mr. L.B. Agosto (Mr. M.O. Oseni with him)
for the Respondents.

In the Federal
Supreme Court
of Nigeria.

No. 29.

ORDER ALLOWING APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

No.29.

Order allowing
Appeal.

8th June 1961.

Suit No.LD/20/1956

F.S.C. 297/1960

ON APPEAL from the judgment of the High Court of
Lagos.

BETWEEN:- Lasisi Ajibola Odunsi Plaintiff/
(L.S.) - and - Appellant 10

(Sgd.) L.Brett
Ag.Chief Justice of the Federation. 1. Aminu Akindele Ajana
Ojora
2. Akinwunmi Esurombi Aro
3. Oke Esurombi Aro Defendants/
Respondents

THURSDAY the 8th day of JUNE, 1961

UPON READING the Record of Appeal herein and
after hearing Mr. R.A. Fani-Kayode, Q.C., (Messrs.
Kotun, Lardner, Sowemimo and Duduyemi with him) of
Counsel for the Appellant and Mr. L.B. Augusto (Mr.
M.O. Oseni with him) of Counsel for the Respond-
ents: 20

IT IS ORDERED that :-

1. This appeal be allowed;
2. The Judgment and order for costs of the
Court below be set aside and judgment en-
tered for the Plaintiff in the terms of
the writ;
3. The Appellant be entitled to costs in the
High Court assessed at 1,000 guineas and
costs of this Appeal be assessed at 50
guineas. 30

IT IS FURTHER ORDERED that the Respondents,
jointly and severally, be liable personally for
the costs awarded.

(Sgd.) S.A. SAMUEL,
Ag. Chief Registrar.



133.

No. 30.

MOTION AND ORDER FOR FINAL LEAVE TO APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

ON MONDAY, THE 23rd day of OCTOBER, 1961

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA, KT., CHIEF JUSTICE OF THE
FEDERATION

10 EDGAR IGNATIUS GODFREY
UNSWORTH, C.M.G.,

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR,

FEDERAL JUSTICE.

FSC. 297/1957

A.A. Ajayi Ojora & Others

Appellants/
Applicants

v.

Iasisi A. Odunsi

Respondent

MOTION for an Order for final leave to Appeal
to Privy Council.

Oseni for Applicants.

20 Kotun (Okun with him) for Respondent.

Court: Order as prayed.

(Sgd.) A. ADE ADEMOLA,
C.J.F.

In the Federal
Supreme Court
of Nigeria.

No.30.

Motion and
Order for
Final Leave
to Appeal.

23rd October,
1962.

ExhibitsE X H I B I T S

"1".

"1" - LETTER OF RECOGNITION

Letter of
Recognition.
21st April 1956.

Suit No. ID/20/56

Odunsi vs. Ojora & Others (By Plaintiff)

Tel: LAGOS 21938.

No. 52355/S10/131

Office of the Chief Secretary
of the Federation,
Lagos, Nigeria.

CONFIDENTIAL

21st April, 1956.

The Chief Administrative Officer,
Lagos.

10

Lagos Local Government Law, 1953
Traditional Members

I am directed to refer to your letter No. C. 741/108 of the 11th of November, 1955, as amended by your letter No. C. 741/109 of the 1st of February, your letters No. C. 741/117 of the 10th of March, No. C. 741/120 of the 10th April and demi-official letter to the Principal Assistant Secretary No. C. 741/127 of the 17th of April.

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2. For the purposes of Section 2 of the Lagos Local Government Law (Western Region No.4 of 1953) as amended in Legal Notice 131 of 1954, the Governor-General, acting in his discretion, hereby recognizes the following appointments:-

Akarigbere White Cap Chiefs

<u>Title</u>	<u>New Holder</u>
Eletu Iwashe	Abu Bakare Gbajumo

Idejo White Cap Chiefs

<u>Title</u>	<u>New Holder</u>
Onisiwo Ojora	Adamo Lawani Adesina Iasisi Ajibola Yesufu Odunsi

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Ogalade White Cap Chiefs

<u>Title</u>	<u>New Holder</u>
Onisemo	Tawaliu Bello

War Chiefs

Suenu	Abudu Karimu Fabiyi
Ashogbon	Sulu Bolaji Otunbi
The Erelu of Lagos.	Madam Duroorike Ajoke.

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3. It is noted that the Shasore title remains vacant and that the Suenu and Onisiwo titles are being filled for the first time for several years.

4. His Excellency would now be interested to see a comprehensive list of the formally recognized Lagos Chiefs. It will be appreciated if this could be furnished as soon as possible.

(Sgd.) ? ? ?

For Chief Secretary of
the Federation.

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Exhibits

"1".

Letter of
Recognition.
21st April 1956
- continued.

"3" - TERMS OF SETTLEMENT IN SUIT CHIEF SECRETARY
TO THE GOVERNMENT v. BAKARE FARO & ANOTHER

Suit No. LD/20/56

Odunsi vs. Ojora & Others (By Defendants)

Suit No. 11 of 1947

TERMS OF SETTLEMENT OF THE OJORA CHIEFTAINCY FAMILY
FORMING "JUDGMENT OF THE COURT"

AS SO HELD BY THE COURT

THE SUPREME COURT OF NIGERIA

SATURDAY THE 12th day of MARCH, 1949

BEFORE HIS HONOUR,

FRANCIS HORACE BAKER, Senior Puisne Judge.

Suit No. 11/1947

Chief Secretary to the
Government

Plaintiff

versus

- 1. Bakare Faro, Chief Ojora
- 2. Akinwunmi Esurombi Aro

Claimants

Mr. Augusto for 2nd Claimant.

30 Sir Adeyemo for 1st Claimant.

Terms of Settlement having been filed and having been perused by the Court and approved. These terms of Settlement will form the judgment of the Court - costs have been agreed amongst the parties and no order is made as to costs.

"3".

Terms of
Settlement in
Suit Chief
Secretary to
the Governor
v. Bakare Faro
& Another.
12th March 1949.

Exhibits

"3".

Terms of
Settlement in
Suit, Chief
Secretary to
the Government
v. Bakare Faro
& Another.
12th March 1949
- continued.

Cases 11/47 and 41/47 are hereby struck out.

(Sgd.) FRANCIS H. BAKER.
12/3/49.

Certified true copy.

(Sgd.) J. Bade Okusami
for Senior Registrar.

2 folios at 7d = 1/2d. paid on CR. No. D639571 of
5/9/58. (Certification only).

HIGH COURT OF LAGOS
Cashier's Office
Date: 5/9/58.

10

WHEREAS consequent upon the many sittings of Ojora Family Council which have taken place over the matter of the dissension in the Ojora Family AND WHEREAS in view of the amicable settlement thereby effected by the members of Ojora Family Council composed of the representatives of all the sections of Ojora Family AND WHEREAS the Chief Ojora Bakare Faro now agrees to co-operate with the Council in the management of the affairs of the Ojora Family Chieftaincy, the said Family Council therefore hereby resolves as follows:-

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1. The Council of the Ojora Family shall consist of twenty members with Chief Ojora as the President and shall administer the affairs of the family and be responsible to the general body of the family.
2. The following are the twenty members selected, namely:-

- | | | |
|----------------------|-------------------------|----|
| 1. A.W. Savage | 11. O.A. Alara | 30 |
| 2. Joseph Jose Maku | 12. Aliyu Kabala | |
| 3. Oke Esurombi-Aro | 13. Jimo Onisemo | |
| 4. Sanni Balogun | 14. Jimo Akidele Ojora | |
| Odunsi | 15. Disu Dosunmu Feji | |
| 5. Bisiriyu Akiyemi | 16. Disu Dosunmu Feji | |
| 6. Rufayi Kumolu | 17. Lawani Sunmonu | |
| 7. Bisiriyu Batula | 18. Sunmaila Gbolambi | |
| 8. Oyewole Ajayi | 19. Brimah Ajose | |
| Ojora | 20. Akinwunmi Esurombi- | |
| 9. Abudu Handu | Aro. | 40 |
| 10. Tiyamiyu Fafunmi | | |
| Giwa. | | |

and in the event of any member dying or the place of any member being rendered vacant due to any other cause whatever it will be proper for the other members to appoint a new one whose name will be submitted to the general body for approval.

3. The name last mentioned in paragraph 2 supra, that is the said Akinwunmi Esurombi-Aro is hereby re-appointed Secretary to Ojora Family Chieftaincy.

4. The Chief Ojora and his Family Council shall be responsible to the general body of the family for the safety of the family properties - real and personal.

10 5. The Council shall appoint two or three members including the Chief Ojora to deposit and withdraw monies from the Bank as may be instructed by the Council.

6. The monies belonging to the family shall be deposited in any recognised Bank in Lagos.

7. The Court cases pending in the Supreme Court, namely Suits Nos. 11/47 and 41/47 shall be withdrawn from the Court and be reported as "settled out of Court".

8. Suit No.12/47 may be settled out of Court if parties so wish.

20 9. The money for compensation for lands acquired by Government shall be paid to Chief Ojora for and on behalf of the Ojora Family Council who are responsible to the general body of the family: But this provision shall not apply to matters of execution of Conveyance of the family lands.

30 10. The remuneration due to the Solicitors on both sides, namely, Messrs. Alakija and Alakija and L.B. Augusto in the Compensation case, that is, Suit No.11 of 1947, payable by the Government shall be paid by the Chief Ojora and his Family Council.

11. Chief Ojora, the Family Council, and the general body of the family shall from the date of this document resume their customary and normal way of dealing with Family matters.

12. A copy of this Document shall be deposited in Court in both Suits Nos.11 of 1947 and 41 of 1947.

40 IN WITNESS whereof the said Family Council in an assembly of the whole family which confirms the above resolutions hereunto set their hands (by signatures, pen-marks and left thumb prints) this 19th day of February, 1949.

Witness to Chief Bakare Faro) Bakare Faro Chief
Ajora's thumb mark the above) Ojora's left thumb
being read and explained to) print and pen
him in my presence -) X mark.

(Sgd.) A. Alakija,
19/2/49.

PRESIDENT.

Exhibits

"3".

Terms of Settlement in Suit, Chief Secretary to the Government v. Bakare Faro & Another.

12th March 1949
- continued.

Exhibits

"3".

Terms of
Settlement in
Suit, Chief
Secretary to
the Government
v. Bakare Faro
& Another.
12th March 1949
- continued.

- | | | |
|--|--|----|
| 1. (Sgd.) A.Waheb Savage
19/2/49 | 2. (Sgd.) Joseph Jose
Maku his left
thumb print and
pen X mark. | |
| 3. (Sgd.) Oke Esurombi-
Aro. | 5. (Sgd.) Bisiriyu
Akiyemi's left
thumb print and
pen X mark. | |
| 4. (Sgd.) Sanni Balogun
Odunsi's left
thumb print
and pen X mark. | 7. (Sgd.) Bisiriyu
Batula's left
thumb print and
pen X mark. | 10 |
| 6. (Sgd.) Rufayi Kumulu's
left thumb print
and pen X mark | 9. (Sgd.) A. Handu | |
| 8. (Sgd.) O.A. Ojora | 10. (Sgd.) Tiyamiyu
Fafunmi Giwa's
left thumb print
and pen X mark. | |
| 13. (Sgd.) Jimo Onisemo | 16. (Sgd.) Disu
Dosunmu Feji's
left thumb print
and pen X mark. | 20 |
| 11. (Sgd.) O.A. Alara | 19. (Sgd.) Brimah
Ajose's left
thumb print and
pen X mark. | |
| 14. (Sgd.) Jimoh A. Ojora | 20. (Sgd.) A.Esurombi-
Aro. | 30 |
| 17. (Sgd.) L. Sunmonu | | |
| 12. (Sgd.) Aliyu Kabala's
left thumb print
and pen X mark. | | |
| 15. (Sgd.) Disu Afuwape
Osho's left
thumb print
and pen X mark. | | |
| 18. (Sgd.) Sunmaila
Gbolambi's left
thumb print and
pen X mark. | | |

Attestation:-

The foregoing at pages 1 to 3 (terms of Settlement out of Court) were read in the English language and interpreted into the Yoruba language by me the undersigned to the signatories at pages 3 to 4 and they all seemed perfectly to understand the full meaning thereof before affixing their signatures, thumb prints and pen-marks thereto in the presence of me. (Sgd.) A. Esurombi-Aro. Secretary to Ojora Family Chieftaincy, living at 84, Jebba Street East, Ebute Metta: 19/2/1949. Free of charge. And in the presence of the following members of the Ojora Family who, by their signatures, represent the educated members of the general body as quite distinct from the Councillors of the family:-

(Sgd.) A.T. Babalola Ashiru
Chief Olorogun Adodo of Lagos.
7, Great Bridge Street, Lagos.
19/2/1949.

(Sgd.) A.L.A. Ojora: Goldsmith,
79, Kano Street, Ebute-Metta.
19/2/1949.

(Sgd.) R.B. Ojora-Fisherman,
17C, Ijora Village,
19/2/1949.

(Sgd.) S.A. Oyadina, Pensioner,
12, Olugbani Street, Lagos.
19/2/1949.

(Sgd.) A. Ramonu Disu, Clerk,
B.B.W.A. Ltd., Lagos.
23, Disu Lane, Lagos.
19/2/1949.

Certified true Copy.

(Sgd.) J. Bade Okusami.
Senior Registrar, High Court of Lagos.

12 folios @ 7d = 7/- paid on Cr.No.D639571 of 5/9/58.

High Court of Lagos.

Cashier's Office.

Date: 5/9/58.

"4" - JUDGMENT IN SUIT: OKE ESUROMBI-ARO AND
OTHERS v. BAKARE FARO.

Suit No.LD/20/1956

Odunsi vs. Ojora & Others (By Defendant)

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION

TUESDAY the 19th day of OCTOBER, 1954

BEFORE THE HONOURABLE MR. JUSTICE FREDERICK
WILLIAM JOHNSTON, PUISNE JUDGE.

Suit No. 26/1954

BETWEEN:- 1. Oke Esurombi-Aro
2. Sanni Balogun
3. Oyewole Ajayi Ojora and
4. Akinwunmi Esurombi-Aro
For themselves and on behalf of the Ojora Chieftaincy family Council Plaintiffs
- and -
Bakare Faro, Chief Ojora Defendant

Exhibits

"3".

Terms of Settlement in Suit, Chief Secretary to the Government v. Bakare Faro & Another.

12th March 1949
- continued.

"4".

Judgment in Suit: Oke Esurombi-Aro & Others v. Bakare Faro.

19th October, 1954.

ExhibitsJUDGMENT

"4".

Judgment in
Suit: Oke
Esurombi-Aro
& Others v.
Bakare Faro.

19th October,
1954

- continued.

This suit commenced on the 3rd February, 1954, is a suit by four Plaintiffs who were approved by the Court on 26th April as empowered to represent and sue for and on behalf of the Ojora Chieftaincy Family Council. It is seen in paragraph 1 of the Statement of Claim that the four Plaintiffs together with the 16 other persons therein named are the present members of the Ojora Chieftaincy Family Council. In paragraph 2 of the Statement of Defence the Defendant, Chief Ojora, has averred that some of those named by the Plaintiffs as members "are members, some are slaves and others are strangers".

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This averment has not been substantiated by the Defendant and I find therefore that the Plaintiffs have correctly described themselves and their associates as members of the Council of the Family. I go on to say at this stage that I reject Mr. Kotun's contention in addressing the Court on behalf of the Defendant that the Plaintiffs are without capacity to sue on behalf of the Family. The Plaintiffs derive their authority to do so by virtue of the Terms of Settlement embodied in EXHIBIT "A".

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I am in agreement with Mr. Augusto's submission on this point. The Council is the Representative Committee of the numerous members of the Family. They are as stated in paragraph 9 of EXHIBIT "A", "responsible to the General body of the Family for the safety of the Family properties real and personal" as stated in paragraph 4 of Exhibit "A". This settlement which has not been discarded or replaced is in my opinion, in full effect today. Its terms provide for the future as well as a Settlement of the differences between the Defendant and the Family as resolved by the Settlement in 1949. I find that the Suit is properly conceived and that the claim stated is well founded by reason of the terms of Settlement in Exhibit "A".

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It is common ground that towards the end of October 1953 the Defendant received from the Government a sum of £2420 on behalf of the Family of which he is the head. The money was paid to him for the Family as compensation, for the acquisition of family land by the Government. I find that by the terms of paragraph 9 of Exhibit "A" the Defendant was then required to place the whole of

the money at the disposal of the Family Council whose function it was, as made manifest by the earlier distribution in 1949, to allot shares and to distribute the money. It is pertinent that Chief Ojora was awarded £1,300 by the Council in 1949. The Defendant handed over £600 only to the Secretary of the Family (P.W.1.) Akinwunmi E. Aro who is a member of and Secretary to the Council. The Plaintiffs are therefore claiming the balance of £1,820 from the Defendant which the Defendant failed to deliver to the Council.

Exhibits

"4".

Judgment in
Suit: Oke
Esurombi-Aro
& Others v.
Bakare Faro.

19th October,
1954

- continued.

The protracted trial yielded a considerable volume of oral and documentary evidence in the course of the hearing. Counsel for the parties addressed the Court at length and in close detail at the close of the case. It is convenient to record at this stage that I have no doubt in accepting the evidence of the Plaintiffs which with some minor discrepancies not affecting the main issues, is a truthful and reasonable narrative of the facts in dispute. I wholly reject as untrue the evidence of the Defendant and his witnesses where the facts alleged by them conflict with the evidence for the Plaintiffs. I reject the evidence of Abudu Handu (D.W.1.). This witness was most untruthful in his evidence regarding his receipt in 1949 of a sum of £141.8.9d. in compensation referred to in connection with the contents of Exhibit "C" "3". That was the measure of his testimony as a whole. I find that D.W.2. Peter Jackson, a one time member of the Council and supporter of the Defendant and his small faction was also an untruthful witness. He was asked when the meeting took place at which the Council was dissolved, as pleaded by the Defendant. I reject his answer to the question which related to what would have been regarded by the Family and the Council if such a meeting ever took place, as a meeting of major importance in deciding to undo and to jettison all that had been achieved by the Settlement of 1949, Exhibit "A" to secure the co-operation of the Defendant with the Council in the management of the affairs of the Ojora Chieftaincy Family. It is manifest that the Council never dissolved. This is a Finding which is forfeited by the answers given by the Plaintiffs' witnesses and more so by the evidence of the Defendant himself. I recall at this juncture the stage reached during the trial when I found it necessary to record that "it is apparent that the date of the

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Exhibits

"4".

Judgment in
Suit: Oke
Esurombi-Aro
& Others v.
Bakare Faro.

19th October,
1954

- continued.

dissolution of the Council is material". The date was not pleaded. Mr. Kotun was called upon to name the date. He said that the Council was dissolved on a date unknown "some-time" either in 1950 or in 1951". Paragraph 3 of the Statement of Defence was then, by consent, amended to this effect. The amendment left the paragraph in as unsatisfactory a state for vagueness as before. I refrained from striking it out. The evidence given by the Defendant and his witness on this issue makes it clear that the averment was made only for good measure to support a very weak defence. 10

The Defendant was unable to come to Court as I travelled to the Iga Ijora in order to see him and hear his evidence. I gained valuable impressions from doing so. The Defendant is an old man in failing health. His evidence as a whole emphasised the genuineness of the Plaintiffs' case. The main impressions gained from his evidence are that he was in very poor health when the money became available. Unrepentant and unreformed by the Settlement of 1949 - Exhibit "A" he still regards himself as the sole arbiter of his Family welfare but by reason of his illness he permitted his control of affairs to pass largely into the hands of his son Rabiou and of Peter Jackson. They seized the compensation money with or without the Defendant's consent. They made a selfish distribution to suit their personal needs, and the Defendant's requirements, regardless of the Council and regardless of the interest of the Family as a whole. £600 was given to the Secretary Aro and the rest of the money has been retained wrongfully. I do not believe the defence evidence of a distribution of £600 to "another side of the Family". In my opinion those who benefitted were chiefly Rabiou and Peter Jackson, and possibly the Defendant as well. Rabiou was co-opted to the Council either as a member or as a sort of witness and representative to and for the Defendant, but he disregarded the Council. It is significant that Rabiou was not called as a witness. The risk I think was too great. 20 30 40

On the Plaintiffs' side P.W.I. Aro the Secretary of the Family gave his evidence very convincingly on the whole. I would not altogether discount the submission that the batch of minutes contained in Exhibits P1 to P5 were written up since the commencement of the trial. Be that as it 50

may it does not raise doubt as to the main issues. The Plaintiffs relied mainly upon Aro but their case is placed beyond doubt by the evidence of the other witnesses whom they called. I would refer particularly to the evidence of P.W.3. Mr. S.A. Alaka, one of the two independent witnesses, and again Mr.E.Renner, P.W.4. the Inspector of Lands, the other independent witness who testified that members of the Council came with Aro about twice. There was undoubtedly a Council and its Secretary going about their proper business in discharging their obligations to the Family under the Settlement. Mr. Renner never saw the Defendant and this witness further stated that "Mr. Aro and Mr. Alaka used to come about the matter of the compensation." Other witnesses testified strengthening the Plaintiffs' case. They are P.W.2. Oke E. Aro brother of Secretary Aro, P.W.5. M.J. Onisemo member of the Council, P.W.6. Buraimoh Kabala, P.W.7 Jimoh Aromire and P.W.8 Ashimowun Aro, members of the Ojora Family. These witnesses are truthful witnesses, notwithstanding their discrepancies and some reluctance to answer certain questions under the heat of a lengthy cross-examination. The Plaintiffs have established their claim so that, I would add, Mr. Augusto accurately summoned up his case both in fact and in law.

There will be judgment for the Plaintiffs in the sum of £1,820 and costs which I shall proceed to assess.

(Sgd.) F.W. Johnston, J.
17/10/54.

Agusto: Summons fees £25 and Subpoena expenses:-
Asks for 200 guineas costs.

Kotun: We cannot oppose 200 guineas costs.

Costs 200 guineas are awarded to Plaintiffs.

(Sgd.) F.W. Johnston, J.
19/10/54.

Certified true Copy

(Sgd.) J. Bade Okusami.

Senior Registrar, High Court of Lagos.

20 folios @ 7d = 11/8 paid on CR.No.D639572 of
5/9/58, (Certification only).

High Court of Lagos
Cashier's Office,
Date: 5/9/58.

Exhibits

"4".

Judgment in
Suit: Oke
Esurombi-Aro
& Others v.
Bakare Faro.

19th October,
1954

- continued.

Exhibits

"5"

Judgment on
Appeal in Suit
Oke Esurombi-
Aro & Others
v. Bakare Faro.

14th October,
1957.

"5" - JUDGMENT ON APPEAL IN SUIT OKE ESUROMBI-ARO
AND OTHERS v. BAKARE FARO.

Suit No. LD/20/56

ODUNSI vs. OJORA & OTHERS (By Defendants)

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE 14th day of OCTOBER, 1957

SIR STAFFORD FOSTER SUTTON Chief Justice of the
Federation.

M.C. NAGEON DE LESTANG Federal Justice. 10

MYLES JOHN ABBOTT Federal Justice.

W.A.C.A.242/1955

OKE ESUROMBI-ARO AND OTHERS Respondents

- and -

BAKARE FARO, CHIEF OJORA Appellant

J U D G M E N T

NAGEON DE LESTANG, F.J. This is an appeal from a
decision of the Supreme Court of Nigeria in the
Lagos Judicial Division (as it then was), ordering
the Appellant to pay over to the Respondents (here- 20
inafter referred to as the Family Council) the sum
of £1,820, which it was alleged the Appellant had
received for and on behalf of the Family Council.

The matter arose in this way; The Appellant
is the Chief Ojora and Head of the Ojora Chieftain-
cy Family, a land owning family in Lagos. There
appears to have been in the past grave dissensions
in the family, so much so that in 1949 two cases
involving the Family were pending in the Supreme
Court of Lagos, namely, C.S.11 of 1947 and 41 of 30
1947. In that year good sense seems to have pre-
vailed, as, on the 19th February, 1949, the whole
family in general assembly approved a settlement
of the Family disputes. The Settlement was re-
duced into writing and filed in Court in the two
cases then pending, which were accordingly marked
settled. As the whole of this case turns on the
construction of this settlement, it is advisable
to reproduce it here in full. It reads as follows:

"WHEREAS consequent upon the many sittings of 40
Ojora Family Council which have taken place over
the matter of the dissension in the Ojora Family

AND WHEREAS in view of the amicable settlement thereby effected by the members of Ojora Family Council composed of the representatives of all the sections of Ojora Family AND WHEREAS the Chief Ojora Bakare Faro now agrees to co-operate with the Council in the management of the affairs of the Ojora Family Chieftaincy, the said Family Council therefore hereby resolves as follows:-

Exhibits

"5"

Judgment on
Appeal in Suit
Oke Esurombi-
Aro & Others
v. Bakare Faro.

14th October,
1957

- continued.

10 1. The Council of the Ojora Family shall consist of twenty members with Chief Ojora as the President and shall administer the affairs of the Family and be responsible to the general body of the Family.

2. The following are the twenty members selected; namely:-

- | | |
|----------------------------|-----------------------------|
| 1. A.W. Savage (Dead) | 11. O.A. Alara. |
| Rabiu B. Faro | 12. Aliyu Kabala |
| 2. Joseph Jose Maku | 13. Jimo Onisemo |
| 3. Oke Esurombi-Aro | 14. Jimo Akidele Ojora |
| 20 4. Sanni Balogun Odunsi | 15. Disu Afuwape Osho |
| 5. Bisiriyu Akiyemi | 16. Disu Dosunmu Feji |
| 6. Rufayi Kumolu | (Dead) Peter |
| 7. Bisiriyu Batula | 17. Lawani Sunmosou |
| 8. Oyewole Ajayi Ojora | 18. Sunmaila Gbalambi |
| 9. Abadu Bandu | 19. Brimah Ajose (Dead) |
| 10. Tiyamiyu Fafunmi Giwa. | 20. Akinwunmi Esurombi-Aro. |

30 and in the event of any member dying or the place of any member being rendered vacant due to any other cause whatever it will be proper for the other members to appoint a new one whose name will be submitted to the general body for approval.

3. The name last mentioned in paragraph 2 supra, that is the said Akinwunmi Esurombi-Aro is hereby re-appointed Secretary to Ojora Family Chieftaincy.

40 4. The Chief Ojora and his Family Council shall be responsible to the general body of the Family for the safety of the Family properties - real and personal.

5. The Council shall appoint two or three members including the Chief Ojora to deposit and withdraw monies from the Bank as may be instructed by the Council.

Exhibits

"5".

Judgment on
Appeal in Suit
Oke Esurombi-
Aro & Others
v. Bakare Faro.

14th October,
1947

- continued.

6. The monies belonging to the Family shall be deposited in any recognised Bank in Lagos.

7. The Court cases pending in the Supreme Court, namely, Suits Nos. 11/47 and 41/47 shall be withdrawn from the Court and be reported as "Settled out of Court".

8. Suit No.12/47 may be settled out of Court if parties so wish.

9. The money for Compensation for lands acquired by Government shall be paid to Chief Ojora for and on behalf of the Ojora Family Council who are responsible to the general body of the Family. But this provision shall not apply to matters of execution of Conveyance of the Family lands.

10

10. The remuneration due to the Solicitors on both sides, namely, Messrs. Alakija and Alakija and L.B. Augusto in the Compensation case, that is, Suit No.11 of 1947, payable by the Government shall be paid by the Chief Ojora and his Family Council.

11. Chief Ojora, the Family Council, and the general body of the Family shall from the date of this document resume their customary and normal way of dealing with Family matters.

20

12. A copy of the documents shall be deposited in Court in both Suits Nos. 11 of 1947 and 41 of 1947.

IN WITNESS whereof the said Family Council in an assembly of the whole family which confirms the above resolutions hereunto set their hands (by signatures, pen marks and left thumb prints) this 19th day of February, 1949".

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Between 1949 and 1953 certain land belonging to the Family was compulsorily acquired by the Government for public purposes, and on the 31st October, 1953, compensation in respect thereof, amounting to £2,420, was paid by the Government to the Appellant. Out of this sum, the Appellant handed over only £600 to the Family Council. Whereupon the Family Council in its own name instituted these proceedings against the Appellant. Relying on Clause 9 of the Settlement, it claimed that the compensation had been received by the Appellant for and on behalf of the Family Council which was entitled to have it paid over to it. The Appellant's defence was that the Family Council had distributed it amongst the family in accordance with Native Law and Custom. It will thus be

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seen that the real issue raised by the pleadings was whether the Family Council still existed or not. The learned Judge found that it did, and there was, in my view, abundant evidence to justify his finding. The case should have ended there were it not for the fact that two other issues not pleaded at all were tried in the course of the case, namely, whether the Council was entitled to sue in its own name and whether Clause 9 of the settlement applied to the compensation in the suit. The learned trial Judge decided both questions in favour of the Council, and the same questions fall to be decided in this appeal.

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As regards the first, Mr. Kotun for the Appellant strenuously argued that as the compensation does not belong to the Council, it has no capacity to sue for it. Mr. Augusto, on the other hand, contended that under Clause 9 of the Settlement, the Council qua Council is entitled to have the money paid over to it because it was received by the Appellant for and on behalf of the Council. There can, in my view, be no doubt that Mr. Augusto's contention is the correct one. The Council is not claiming the money for itself. It merely avers that it is entitled to receive it from the Appellant and to safeguard it pending its distribution to the members of the Family in accordance with Native Law and Custom. By the terms of the settlement, the Council is under a duty to the Family to safeguard family property, and assuming that the compensation was received by the Appellant on its behalf under Clause 9 of the Settlement it is clearly entitled to have it paid over to itself. That brings me to the substantial question in this appeal which is whether Clause 9 applies to the compensation herein. Mr. Kotun contended that the settlement was made for the purposes of Suits Nos. 11 and 41 of 1947 then pending before the Court, and that Clause 9 related to the compensation in those suits and not to compensation payable in the future. Mr. Augusto contended the opposite.

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No good purpose would be served by criticising the wording of the Settlement which is obviously not as clear as one would wish it to be, but interpreting it, it is well to bear in mind its object which, according to the preamble, was clearly to put an end to dissensions in the Family. With that end in view, by Clause 1 it appointed a Family Council to administer the affairs of the Family.

Exhibits

"5".

Judgment on
Appeal in Suit
Oke Esurombi-
Aro & Others
v. Bakare Faro.

14th October,
1947

- continued.

Exhibits

"5".

Judgment on
Appeal in Suit
Oke Esurombi-
Aro & Others
v. Bakare Faro.
14th October,
1947
- continued.

Now it seems clear to me that this Council was to be a permanent body since not only are detailed provisions made for the filling of vacancies on it in the future, but also duties are imposed on it to be performed in the future (see in particular Clauses 4 and 5 and 11). Clauses 7 and 8, it is true, deal with the cases then pending before the Court, but Clause 9, though not very clear, must, it seems to me, have been intended to include future compensation, otherwise it is difficult to see why it refers to payment being made to Chief Ojora and not to the Appellant by name.

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For these reasons I agree with the learned trial Judge that Clause 9 is still effective and applies to compensation monies in the action. That being so, the appeal fails and I would dismiss it with £41.5.0. costs.

(Sgd.) M.C.NAGEON DE LESTANG.
Federal Justice.

I concur (Sgd.) S.FOSTER SUTTON
Federal Chief Justice.

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I concur (Sgd.) M.J. ABBOTT,
Federal Justice.

Mr. K.A. Kotun for the Appellant.

Mr. L.B. Augusto (with Mr. M.O. Oseni)
for the Respondents.

Certified true Copy

(Sgd.) ? ?
Registrar.

"6" (Part)

Order appoint-
ing Resident
as Referee in
Suit: Ogunfunmi
Onitolo v.
Bakare Osunyomi
Faro & Another.
13th December
1922 - and -

Residents
Report

19th February,
1923.

"6" (Part) - ORDER APPOINTING RESIDENT REFEREE
IN SUIT OGUNFUNMI ONITOLO v. BAKARE OSUNYOMI
FARO AND ANOTHER AND RESIDENTS REPORT

30

Suit No. LD/20/56

Odunsi vs. Ojora & Others.

IN THE SUPREME COURT OF NIGERIA

WEDNESDAY THE 13th day of DECEMBER, 1922

Suit No. 339 of 1922

OGUNFUNMI ONITOLO (suing as Head
of the Ojora Family on behalf of
himself and other members of the
Ojora Family)

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- and -

BAKARE OSUNYOMI FARO and
ADOLPHUS ESUROMBI ARO

This action coming on for hearing this day in the presence of Daniel Hagley and Ephraim Michael Ekundayo Agbebi Counsel for the above named Plaintiff, and Eusebius James Alexander Taylor, Olayinka Alakija, Adeyemo Alakija and Gurney Montacute Campbell Thompson Counsel for the above named Defendants.

10 This Court doth order that this matter be referred to the Resident of the Colony as a Referee for him to report to the Court :-

- (1) As to what moneys the 1st Defendant, in the action has received from the families mentioned in paragraph 6 of the Statement of Claim, which includes other than those specifically mentioned by names.
- (2) Whether the 1st Defendant has expended the moneys so received in accordance with recognized native law and custom.
- 20 (3) Whether the approval of the members of the family has been obtained in the recognized manner for such disbursements.

And the Referee is hereby authorised to take such evidence as may be necessary for the decision of the above points it being agreed that this report shall be accepted by the parties as final on the points submitted to him.

And the further hearing of the action is adjourned to the 18th day of February, 1923.

30 (Sgd.) T.B. BUKO
Assistant Chief Registrar.

Certified true copy

(Sgd.) J. Bade Okusami
Registrar.

NIGERIA

Resident of the Colony's Office,
Lagos, Nigeria.

19th February, 1923

No.R.C. 137/1922.

Your Honour,

40 OGUNFUNMI ONITOLO (suing as Head of the Ojora Family on behalf of himself and other members of the Ojora Family)

Vs.

BAKARE OSUNYOMI FARO and ADOLPHUS
ESURROMBI ARO

Exhibits

"6" (Part)

Order appointing Resident as Referee in Suit: Ogunfunmi Onitolo v. Bakare Osunyomi Faro & Another.

13th December 1922 - and -

Residents Report

19th February, 1923

- continued.

Exhibits

"6" (Part)

Order appoint-
ing Resident as
Referee in
Suit: Ogunfunmi
Onitolo v.
Bakare Osunyomi
Faro & Another.

13th December,
1922 - and -

Residents
Report

19th February,
1923

- continued.

In obedience to the Order which the Court made on the 13th December, 1922, I have the honour to forward my report on the matters in the above action which are referred to me for enquiry.

2. The notes of evidence taken at the enquiry are attached to this report and marked A.

3. The sub-paragraphs that follow are arranged in the Order of the paragraphs of the terms of reference.

(1) I find that the amount of moneys received from different sources by the first Defendant is £3,209.14.9d. Statements of the receipts making up this amount are classified by the Secretary of the Ojora family under the Heads, A, B, C. Further statements of the particulars of the disbursements included under Head C are furnished under sub-heads C(1), C(2), C(3), C(4), C(5) and C(6). The different statements are attached to this report and marked B. 10

(2) I find on the evidence before me that the first Defendant has expended the moneys referred to in (1) in accordance with recognized native law and custom. Bakare Faro, the first Defendant, and Adolphus Esurombi Aro, the second Defendant, who is the Secretary of the Ojora family, state on oath that all the disbursements were made with the approval of the Family assembled from time to time at their general meeting of the family. The Defendants in their evidence also state that members of the family who had been present at various family meetings were waiting on the premises where the Enquiry being held in order to give evidence, if so required. These statements were made in the presence of the Plaintiff and his Counsel who expressed no desire for such evidence to be adduced. I conclude therefore that they are satisfied that the statements are true. I have no reason to doubt their correctness. 20 30 40

(2a) Under native Law and Custom the different families or chiefdoms constituting a government are related to each other in the same way as are the states of a federal government. They are co-ordinate with and independent of each other. The Government of each is independent in the management of its affairs under the

control of its Chief or head, while in matters of common interest to all the families or Chiefdoms a common government is constituted of which the Council is composed of all the heads of Chiefs of families and the President is the head or Chief of a particular one of these families which for historical or political reasons is distinguished from the rest. Each family or chiefdom is in fact a patriarchal family, the members of which are assumed to be of a common descent, but are practically held together by a common obedience to the Chief or head of the family, which, speaking strictly, is not only a group of persons united by blood-ties, but includes adopted members and slaves or domestics. Of the Ojora family there is conclusive evidence that Bakare Faro is the head or Chief. He was nominated for the office by a majority of the members and the nomination was submitted through the Resident of the Colony to Government for approval in the month of October, 1921. He was recognised by Government as Ojora elect and charged with the management of the affairs of the family on the 16th November, 1921, and on the 4th July, 1922, he was recognised by Government as Ojora or head of the Ojora family, and like his predecessor in office he was granted a stipend in that capacity. It is true that the white cap has not been formally placed on his head according to recognized custom. This is not due to any defect in his title, but it is owing to the fact that at the present time there is no recognized head or chief at the Iga Idunganran. The capping of a Chief is necessary for ceremonial purposes only, and not for the management of the affairs of the family when he is the recognized head or chief de facto.

40 (2b) The Plaintiff in this action claims to be the present head of the Ojora family, and he and those associated with him refuse to recognize Bakare Faro as the head or to obey him. Like Bakare Faro, he does not wear the white cap, but unlike Bakare Faro, he was not nominated by the majority of his family as its head or approved or recognized in that capacity by the Government. He states in his evidence
50 "I still retain the position (of head of the Ojora family). All the affairs of the

Exhibits

"6" (Part)

Order appointing Resident as Referee in Suit: Ogunfunmi Onitolo v. Bakare Osunyomi Faro & Another.

13th December, 1922 - and -

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- continued.

Exhibits

"6" (Part)

Order appoint-
ing Resident as
Referee in
Suit: Ogunfunmi
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Bakare Osunyomi
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1922 - and -

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1923

- continued.

family are managed by and through me. There is no member of the family that is above me". He also states "I do not attend family meetings convened by Bakare Faro because I am head of the family. "It is not easy to understand the workings of the mind of the Plaintiff. Whatever might have been his special position, if any, in the Ojora family, prior to the appointment of Bakare Faro as Ojora elect, there can be no doubt that he has not been duly recognised as head of the family since that date or that the management of the affairs of the family has not been in his hands since then.

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(2c) The members of a native family or Chiefdom stand under duties to their head and must perform those duties before they can enjoy any rights which they consider to be theirs in the affairs or possessions of the family. They stand under their duties to the head of the family even though those duties consist of only obeying him and assisting him with their Counsel in the management of the family affairs. The Plaintiff and his associates disown every obligation to the head of the family; it is therefore strange that they should ask the Court to assist them to enforce rights which, in consequence of their attitude to the head of the family, they cannot be in a position to enjoy under native law and custom.

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(2d) I am satisfied that the first Defendant in his capacity of head of the family has disbursed, in accordance with recognized native law and custom, the moneys he has received from the sources referred to in (1). I arrive at this conclusion because I am satisfied that for such disbursements he obtained the approval of the family in the recognized manner as will appear in (3) below.

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(2e) The Counsel for the Plaintiff raised objections to certain items of expenditure, presumably on the ground that the disbursements are considered not to have been made in accordance with recognized native law and custom. The more important of these objections are the following:-

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(1) Head C., Item 18, shewing £60 as loan to Mr.A.Tepowa, a member of the family, when in difficulty.

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- (2) Head C, Items 1, 2 and 3 shewing loan of £600 to three members of the family, in each case for "helping him to establish some trading business" and earning his livelihood.
- (3) Head C, Item 29, shewing £200 for exhumation and re-interment of the remains of Chief Ojora and others, and for the construction of new graves for the remains.
- 10 (4) Head C(2) shewing disbursement of £200, being chiefly distribution of moneys to members of the Ojora family for preparations for the capping of Bakare Faro as Ojora.

The objections to the respective items are given briefly:-

- (1) and (2) It is irregular to issue the loans especially as no security has been given. The expenditure should not have exceeded the grant in aid of £30 made by Government for the purpose, which, if necessary, should have been supplemented by the children of the deceased concerned. Moreover the expenditure should not have been incurred by the Defendants in as much as the Plaintiff had protested against the disbursement of the family fund pending the decision of the Court in the action under reference.
- 20

30 It seems to me that these objections have been satisfactorily disposed of by the Defendant. He states that all the disbursements have been made with the approval of the family regularly assembled at family meetings. To these meetings the Plaintiff and those associated with him were invited in the customary way, but they systematically refused to attend the meetings or to render obedience to the head of the family. If the Plaintiff and his associates had attended the family meetings they could have raised their objections when the different matters came up for discussion, and the family would have had the opportunity of considering those objections. The whole issue raised by the Counsel for the Plaintiff and the answer of the Defendant are more fully stated in the Notes of Evidence.

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- (2f) The powers exercisable by a chief or head of

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"6" (Part)

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"6" (Part)

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ing Resident as
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- continued.

a family over the affairs of the family are essentially the same among the different tribes of West Africa. I may be allowed therefore to quote in support of the position assumed in this report the subjoined extracts from Sarbah's "Fanti Customary Laws". (Edition 1897, page 78). "The head of a family has greater powers of alienation over moveable than he has over immoveable ancestral and family property. He can alienate such moveable property in gifts to any of the members of the family, for their education, support or getting a wife for any member of the family.

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If the family find the head of the family misappropriating the family possessions and squandering them, the only remedy is to remove him and appoint another instead, and although no junior member can claim an account from the head of the family, or call for an appropriation to himself of any special portion of the family estate or income therefrom arising, yet the customary law says they who are born and they who are still in the womb require means of support, wherefore the family lands and possession must not be wasted or squandered.

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The head of a family cannot, without the consent of all the principal members of the family or the greater part thereof, alienate any part of the family immoveable possessions, and if such consent is secured, the alienation must be for the benefit of the family, either to discharge a family obligation, or the proceeds of such alienation must be added to the family funds". It should be remarked that though the powers of the head of a family or a chief are very extensive, he is under the obligation to exercise these powers in the interests of the family and of each individual member thereof. Bakare Faro, as shown in the evidence before me, has not even exercised his powers to the extent to which he is entitled to do so by virtue of his office; but he has acted throughout as a wise and judicious ruler, and has fortified his position by making no disbursement of the fund of the family without obtaining the approval of the family assembled at their general meeting.

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(3) Apart from the fact that a head has powers to

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act on his responsibility, the recognised member in which he obtains approval for disbursement of the family fund is that he should convene a meeting of the family in the regular manner and obtain their approval to the proposed disbursement. In cases of urgency the head of the family should take counsel with his trusted advisers and subsequently obtain the ratification of the family assembled at a family meeting. From the facts before me, I have no doubt that this procedure has been followed by Bakare Faro, and I find therefore that he has obtained the approval of his family in the recognized manner for the disbursements set out in the attached statements of account.

4. Towards the end of the Enquiry it was remarked by Counsel for Plaintiff that the attitude assumed by Plaintiff is because of a misunderstanding between him and Bakare Faro. I am unable to accept this view of situation. Plaintiff and those associated with him plainly say in effect about Bakare Faro -

"We will not have this man to reign over us". Their attitude is not that of a misunderstanding but of revolt against constituted authority. Be that as it may, if they are now prepared to be in subjection to the Head of the family, I have no doubt that Bakare Faro and the Ojora family will be glad to grant them the rights of privileges to which they may be entitled as members of the family.

I have suggested to the Counsel for the Plaintiff to advise their clients to acknowledge the headship of Bakare Faro and submit to his authority. Such a course of action is to my mind the only solution of the difficulties of the present situation.

I have the honour to be,
Your Honour's Obedient servant,
(Sgd.) HENRY CARR
Resident of the Colony.

His Honour,
Sir F.A. Van Der Meulen,
Puisne Judge,
Lagos.

Certified true copy,
(Sgd.) J. Bade Okusami,
Registrar.

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"6" (Part)

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- continued.

Exhibits"14" - AN APOLOGY

"14".

ID/20/56

An Apology.

Odunsi vs. Ojora (By Defendant)

13th November,
1956.

F24411 24 Nov. 1956 NIGERIA ONE POUND STAMP DUTY

6/12/56.

I, the undersigned, EDWIN AYO BAJULAIYE the Chief Onikoyi of No.44, Porter Street, Lagos, Nigeria hereby tender my sincere and unreserved apology to the entire members of the Onikoyi Chieftaincy Family in Lagos and abroad through their representatives Messrs. Babatunde Ogunlano Onikoyi, Adamo Fagbemi Onikoyi, Akiyemi Adeseye, Ashimi Bolaji Ajose, Omobolaji Fafunwa and Samuel Ade. King (Executives and Committee Members) of the Onikoyi Chieftaincy Family to appease the entire members of the Onikoyi Chieftaincy Family for the wrongful executions and illegal performances of my official duties which I might have done contrary to Native Law and Customs since my assumption of office as a Chief.

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1. I agree that the management of the said family affairs be undertaken by the Executive Members appointed by the Family and confirmed by the Supreme Court of Nigeria together with the two other members of the Committee mentioned above.

I therefore honestly and sincerely retract my steps and assure all members of the said family that I shall hitherto recognise and respect its authority and direction through the executives and two other members of the Committee mentioned above and I shall retrieve all my misdeeds where possible.

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2. I shall respect all constitutional procedure as regards monetary, financial transactions, all expenses and commitments I shall have to run, will be done with the consent and approval of the Executives with the two other members of the Committee mentioned above. House and Landed Properties of the said family shall not be disposed of or dealt with without the expressed sanction or written approval of the Executive and two other members of the Committee mentioned above.

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3. The family fund shall be allowed to remain as properly directed and decided and no right shall be exercised by me which is likely to prejudice the interest of the family, executives and committee members of the said family in general.

DATED at Lagos this 13th day of November, 1956.

(Sgd.) E.A. BAJULAIYE.
Chief Onikoyi of Lagos.

(Sgd.) ? ? 13th November, 1956
Witness to Signature:-
Olufemi Olubajo.
35, Thomas Street,
Ebute-Metta.

Exhibits

"14"

An Apology.
13th November,
1956
- continued.

"15" - LETTER OF PROTEST

"15"

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LD/20/56

Odunsi vs. Ojora & Others (By Defendant)

Letter of
Protest.
25th November,
1955.

Odofin Palace,
Ijora New Settlement,
APAPA.

To His Highness, 25th November, 1955.
Oba Adele II of Lagos.

The Chief Administrative Officer, Lagos.

Copy to: Chief Dr. Akinnola Maja, 2 Garber Square,
Lagos.

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Chief Sir Kofo Abayomi, 2 Keffi Street,
Lagos.

Chief Dr. J. Akanni Doherty, Otun Eko,
34 Idumagbo Avenue, Lagos.

Chief Oluwa, Chief Eletu Odibo, Chief Oniru, Chief
Oloto, Chief Ojon, Chief Onilegbale, Chief Asajon,
Chief Olorogun, Chief Olumegbon, Chief Onikoyi,
Chief Onitano, Chief Modile, Chief Onisiwo, Chief
Elegunshi, Chief Modile, Chief Onitolo, Chief Baju-
laiye, Chief Saba, Chief Ashogbon, Chief Faji and
Chief Erelu.

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May it please Your Highness,

Protest against the nomination of Ajibola Odunsi
of the ASABA line in the Ojora Chieftaincy Family

In view of the rumour now afloat in Lagos and
suburbs to the effect that one Ajibola Odunsi was
yesterday presented to Your Highness by the Chiefs
as a candidate for the vacant stool of Chief Ojora,
we, the undersigned (by signatures and thumb-
prints) Councillors of the Ojora Chieftaincy Family
very humbly and respectfully solicit the indul-
gence of Your Highness to forward this communication

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Exhibits

"15"

Letter of
Protest.25th November,
1955

- continued.

as P R O T E S T against his nomination; and in doing so we further humbly ask that Your Highness may be good enough to take into consideration:

- (1) Copy of letter sent to Your Highness the medium through which Ojora Chieftaincy Family replied to the article in the Evening Times of 8/11/1955;
- (2) two copies of the Evening Times of 23/11/1955; and
- (3) two copies of the Daily Service of 24/11/1955. 10

We hereby repeat or reiterate our PROTEST against his nomination which is unconstitutional and contrary to native law and custom.

We wish to submit that Your Highness will take every step to see that this matter does not result into a constitutional crisis and settlement in the Court of Law.

We have the honour to be, Sir,

Your most humble and Obedient Servants,

(Sgd.) Oke E. Aro and 19 Others. 20

(Sgd.) A. Esurombi-Aro
Secretary to Ojora Chieftaincy
Family and Council.

"16"

Letter on
behalf of
Asaba Family
to the Oba
of Lagos.18th November,
1955.

"16" - LETTER, ON BEHALF OF ASABA FAMILY
TO THE OBA OF LAGOS.

ID/20/56

Odunsi vs. Ojora and Others (By Defendant)

NB. THE Chief Administrative Officer,
Broad Street, Lagos, Ijora Oloye,

18th November, 1955. 30

To His Highness Oba Adele II,
The Oba of Lagos,
Iga Idunganran, Lagos.

May it please Your Highness,

We, the undersigned have been instructed by the ASABA FAMILY to communicate to Your Highness the undernoted decisions of the Family at a meeting of the Asaba Family held in Iga Odofin, Ijora, on Friday 18th November, 1955, viz:

- (1) That the Asaba Family have no hands in and hereby dissociates themselves from the irregular and unconstitutional act of a member of the family named LASISI AJIBOLA ODUNSI in installing or holding himself out as Chief Ojora without the knowledge and approbation of the Family.
- (2) That the Asaba Family, whose turn to present a candidate for the Ojora Chieftaincy to fill the stool rendered vacant by the death of Chief Bakare Faro (the last Chief Ojora) has been recognized unanimously by the Ojora Chieftaincy Family have competently and adequately dealt with the selection and Your Highness will be informed of the candidate selected in course of time through the usual processes in accordance with Native Rites, Laws and Custom.

Exhibits

"16"

Letter, on behalf of Asaba Family to the Oba of Lagos.

18th November, 1955

- continued.

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Copies of this communication are, in accordance with our instructions, being forwarded to your Senior Chiefs, The Chief Administrative Officer, Lagos and the Press.

We are, Kabiyesi,
Your Obedient Servants,
KOTISEYE
her right thumb impression.
ASIMOWU OJUTI
ABU GIWA
SANI ODUNSI

For and on behalf of the ASABA FAMILY.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

AMINU AKINDELE AJANI OJORA
AKINWUNMI ESUROMBI ARO
OKE ESUROMBI ARO

Appellants

- and -

LASISI AJIBOLA ODUNSI

Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the Appellants.

EDWARD FAIL, BRADSHAW & WATERSON,
Royal London House,
16, Finsbury Square,
London, E.C.2.

Solicitors for the Respondent.