Privy Council Appeal No. 15 *of* 1962

Aminu Akindele Ajani Ojora and others – – – – *Appellants*

v.

Lasisi Ajibola Odunsi – – – – – – – *Respondent*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL, 1964

Present at the Hearing:
LORD EVERSHED
LORD GUEST
LORD DONOVAN
[*Delivered by* LORD EVERSHED]

A reading of the cases of the appellants and of the respondent before their Lordships (to whom they will hereafter respectively refer as the defendants and the plaintiff) upon the face of them appears to show that there were two distinct issues raised before the Board, namely (1) whether the plaintiff had been duly appointed Chief Ojora of the Ojora Idejo Chieftaincy Family and (2) who was now entitled to deal with the Family property. For reasons which will later appear their Lordships are satisfied that under the terms of the Act of the 1st October 1963 establishing and making provision for the Constitution of the Federal Republic of Nigeria (and section 158 of that Act in particular) it is now not competent for their Lordships to entertain or express a judgment upon the first of the above questions. It may be added that when the case came before the Federal Supreme Court (which it did in June 1961) it appeared not then to have been disputed on the defendants' part that the plaintiff had in fact been capped and had therefore the title of Chief Ojora. It was not however suggested before the Board on the plaintiff's part that the Board had thereby no jurisdiction to entertain the second question above stated in some form. It was indeed on the plaintiff's part very naturally contended that the order made by the Federal Supreme Court which had the effect of restraining the defendants from any dealings with the Family property and of making them accountable to the plaintiff for anything which they had received from such dealings on their part ought to be affirmed. One of the great difficulties with which, however, the Board has been faced, has been the proper form of this second question—and it may indeed be that, stated as their Lordships have deliberately stated it in very general language, more than one question is in truth involved. In the circumstances, it has seemed necessary for their Lordships to narrate in some detail the history of the present proceedings and the steps taken in them including the nature of the plaintiff's original claim and of the defendants' defences.

The proceedings were commenced by writ of summons dated as long ago as the 30th January 1956. In the title to the action the plaintiff expressly sued as " Chief Ojora of Lagos for himself and on behalf of the Ojora Chieftaincy ". The defendants were sued in their respective individual capacities. The claim upon the writ was as follows:

> " The Plaintiffs' (sic) 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 Plaintiffs. (sic)

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. (sic)."

By his statement of claim the plaintiff alleged that he was the duly capped Chief Ojora of Lagos; that as such Chief he was the accredited representative and trustee of the Family properties; but that the defendants had, in spite of warnings, dealt with and threatened to continue to deal with Family properties. By their defence the defendants denied that the plaintiff was the Chief Ojora, claiming that the first defendant was the head of the Family and president of the Ojora Family Council as created by the Terms of Settlement in another action, Suit No. 11 of 1947; that the first defendant had been installed Chief Ojora " by more than 90 per cent 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 "; and that the plaintiff not being a member of, or recognised by the Chieftaincy Family Council, could not sustain the action. Their Lordships add that after the close of pleadings upon an *ex parte* motion made by the plaintiff in the month of May 1956 an order was made by the High Court (which was not however included in the record before the Board) giving to the plaintiff the right to sue in a representative capacity in the form expressed in the writ. Their Lordships further add that (as they were informed by the learned Counsel before them) a receiver had on 23rd April 1956 been appointed for the purpose of collecting the rents of the Family properties and that such receiver was still so acting; and further, that a sum of £7,000 which had been received by the defendants (or one or more of them) upon a lease by them of certain Family property in favour of a body called in the evidence " Total Oil " had been paid into Court and such money still stands in court pending (presumably) directions in regard to it by the court.

The action came on for trial in the High Court of Lagos before Bennett J. nearly three years later mainly in the month of March 1959. As appears from the judgment of the Federal Supreme Court delivered by Sir Lionel Brett the hearing of the evidence took no less than fifteen days in March and July 1959. The arguments appear also to have been of very considerable length and the record before their Lordships includes notes both of the evidence and of the arguments.

At the time of the hearing before Bennett J. and the Federal Supreme Court the Constitution of Nigeria Act had not of course been passed or come into operation; but there appears to have been (and their Lordships deliberately use that language for reasons which are not for present purposes material) in operation an Ordinance of 1948 or an Ordinance replacing it of 1959 which prevented any court in Nigeria from entertaining " any civil cause or matter instituted for the determination of any question relating to the selection, appointment installation . . . of a chief ": but both Bennett J. and the Federal Supreme Court were of opinion that the prohibition contained in such Ordinance or Ordinances did not apply to the present case since the purpose of the suit was to establish who of the contending parties had the right to deal with the property of the Ojora Chieftaincy Family to which the question of the appointment or installation of the plaintiff (or the first defendant) as Chief was but incidental.

It cannot in their Lordships opinion be in doubt that when the action came to be tried the burden, indeed the overwhelming burden, of the evidence (and of the arguments) on each side was in fact directed to the question whether the plaintiff had ever effectively been installed as Chief Ojora. In the course of the arguments before him Bennett J. had indicated what in his view were the issues to be determined by him and in his most careful judgment (containing a full analysis of the evidence of every witness) the learned judge thus formulated those issues: (1) was the plaintiff properly appointed Chief Ojora according to native law and custom? and (2) if he was, is he compelled to administer the affairs in conjunction with the Family Council as constituted by the Terms of Settlement already mentioned? It was the view of the learned Judge that the capping of the plaintiff as Ojora Chief

by the Oba of Lagos had been obtained improperly by a very small section of the family and was therefore contrary to native law and custom, and (consequently) void and of no effect. In the view therefore of the learned Judge the plaintiff's action inevitably failed and in the circumstances he regarded it as unnecessary for him to express any view whether the Terms of Settlement already mentioned continued to be in operation although he cited a previous decision of the Federal Supreme Court in 1955 as authority for the view that such Terms of Settlement were in truth still in effective operation.

It is in the circumstances right and pertinent to note first that Bennett J. after attending carefully to all the witnesses whose evidence, as already stated, he summarised in his judgment, came to the clear conclusion that the plaintiff himself and the majority of his witnesses (unlike those called on the defendants' side) had not given truthful evidence; and, second, that the capping of the plaintiff as Chief Ojora had been obtained by a small section of the Family of which 90 per cent were adverse to the plaintiff and supporters of the defendants. In this connection it is also made clear by the terms of the judgment of the trial judge and the other papers in the record, that the Ojora Family has unfortunately for many years suffered from serious disunity and that one section of the Family now represented by the plaintiff and formerly represented by the plaintiff's predecessor as Chief, Bakare Faro, has been sharply severed from the rest (and the great majority) of the family. It was by reason of these circumstances that the former action, Suit No. 11 of 1947, had been commenced by the Chief Secretary of the Government as plaintiff against Chief Bakare Faro and another as defendants which action was settled by the Terms of Settlement already mentioned and to which their Lordships must presently refer at greater length.

The conclusion of Bennett J. adverse to the plaintiff was contained in the following passage which their Lordships think is useful to quote in full.

> " 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. 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.
>
> 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.
>
> 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, give him the relief he seeks."

Against this decision the plaintiff appealed to the Federal Supreme Court of Nigeria, the judgment of which Court Sir Lionel Brett delivered on the 8th June 1961. At the beginning of his judgment the learned Federal Justice observed that one of the plaintiff's grounds of appeal, namely that the judgment of Bennett J. was against the weight of the evidence, was not argued before the Supreme Court. He continued—" 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 ". As already observed the defendants before the Federal Supreme Court admitted that the plaintiff had been capped as Chief Ojora on the instructions of the Oba and was recognised by the Governor-General in 1956 as Chief for the purposes of the Lagos Local

Government Law 1953. The learned Federal Justice then, after referring to the Ordinances already mentioned, stated the issue before the Court to be:—

(i) what is the effect of the capping?

(ii) what is the effect of the recognition by the Governor-General?

(iii) what is the effect of the settlement (that is the Terms of Settlement in the 1947 proceedings):

and he held that all these questions could be determined by the Court without any contravention of the Ordinances. The judgment then contained the following highly important paragraph.

> " I would go further and say that I do not regard it is 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 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."

The rest of the judgment of the learned Federal Justice may for present purposes be shortly stated. He came to the conclusion, partly upon the authority of two Nigerian cases, and partly as a matter of probability, that if in a case where admittedly one member of a family has been capped as White Capped Chief it is submitted that some other member of the family has the management of the family property it is for the party so submitting clearly to prove his allegation; and that notwithstanding the judgment of Bennett J. the defendants had failed to discharge the onus of proof. In his penultimate paragraph Sir Lionel Brett stated:—

> " 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."

The learned Federal Justice however went on to observe that the judgment of the Federal Supreme Court in 1955 which had been cited by Bennett J. was delivered (as was the fact) in proceedings brought when Chief Bakare Faro was still alive, and could not therefore properly be said to cover the situation after Bakare Faro's death which occurred, as their Lordships were informed, at the beginning of the year 1955, but not (at any rate) until after the hearing of the suit in which such judgment was delivered.

The Federal Supreme Court therefore reversed the decision of Bennett J. and granted to the plaintiff all the relief sought by the terms of his writ of summons. There appears in fact from the record to have been no discussion or argument by counsel on the appropriateness or form of the particular relief claimed in the writ.

Their Lordships must observe two things which arise from the terms of this judgment. In the first place, they refer to the first of the passages quoted from the judgment and particularly to the phrase " it is not pretended that the settlement enables the [defendants] or the Family Council less the Chief to dispose of the family property without the consent of the Chief". Their Lordships are of course under the serious disadvantage of not knowing exactly what were the arguments (and concessions) made on the defendants' part before the Federal Supreme Court. It was however most stoutly denied by Mr. Dingle Foot on the defendants' part that any such concession had ever in fact been made and this submission certainly appears to be borne out by the notes of the arguments which are found in the record.

In the second place, their Lordships note the view expressed by Sir Lionel Brett in the passage secondly quoted above from his judgment that " it is unnecessary to express a view on the question whether the settlement is binding on the appellant ". As their Lordships understand it this conclusion proceeds upon the view that if the plaintiff be the duly capped Chief Ojora then at any rate the defendants cannot without his approval deal with the Family property and therefore that the plaintiff must be entitled to the relief claimed in the action—unless of course they clearly proved that some other person than the plaintiff had been appointed as Head of the Family with the exclusive right of dealing with the property.

Before setting out the Terms of Settlement in the 1947 proceedings which their Lordships feel it right for them to do, it is to be noted that what their Lordships have at the beginning of this judgment called the second question involved in the proceedings, (where it was deliberately stated in very general terms) was stated in the Federal Supreme Court in terms different from those employed by Bennett J. According to Bennett J. the second question was—if the plaintiff had been properly appointed Chief Ojora according to native law and custom was he compelled to administer the affairs of the Family in conjunction with the Family Council as constituted by the terms of Settlement? As stated by the Federal Supreme Court the question (simply) was—what is the effect of the Terms of Settlement? Having regard to the terms of their judgment on the other issues both Bennett J. and the Federal Supreme Court found it unnecessary to answer this second question at all for the reasons already given; and so the question (in whatever form it is put and though it always appears to have been a vital issue in the proceedings) has never been determined by either of the courts in Nigeria.

It will be convenient at this point to deal with the Board's competence, having regard to the Act constituting the Federation of Nigera and to the terms of section 158 of that Act in particular, to entertain and determine the first question posed at the beginning of this judgment namely whether the plaintiff had been duly appointed Chief Ojora. Their Lordships view upon this matter of competence has already been anticipated. Sub-section (3) of section 158 of the Act preserved for the period of one year from the 1st October 1963 the competence of this Board to determine any proceedings by way of appeal from a decision of the Federal Supreme Court pending on the date mentioned; but the sub-section was expressed to be subject to the provisions of the sub-section next following, sub-section (4). That sub-section so far as material reads as follows:—

> " where immediately before the date of the commencement of the Constitution " [that is on 1st October 1963] " any proceedings on appeal from a decision of the Federal Supreme Court are pending . . . the proceedings . . . shall abate on that date in so far as any question for determination in the relevant proceedings is (*a*) a Chieftaincy question. . . "

The phrase " Chieftaincy question " is defined by section 165 (1) to mean " any question as to the validity of the selection appointment . . . recognition installation . . . of a Chief ". It will be observed that there is a marked distinction between the terms of this Section and the terms of the Ordinances which were in operation at the dates when these proceedings came before the High Court and Federal Supreme Court in Nigeria. In the case of the Ordinances, as was pointed out by Sir Lionel Brett in delivering the judgment of the Federal Supreme Court, the question of the competence of the Courts in Nigeria depended upon the purpose for which the proceedings had been brought; so that if (as in the present case) the purpose of the proceedings was to determine proprietary rights the fact that the validity of any person's appointment as chief was involved did not take away the Court's right to determine the question of such validity since it was incidental only to the true purpose for which the proceedings had been instituted. The terms of section 158 (4) of the Act are however expressed much more widely: for by the terms of sub-section (4) it is stated that any pending proceedings shall abate " in so far as any question for determination " is a Chieftaincy question. The point was therefore taken by the Learned Counsel for the defendants as

soon as the case was called on before the Board, that according to the plain sense and meaning of the words used in the sub-section the Board could not entertain " any question as to the validity " of the plaintiff's appointment, recognition or installation as Chief. With all respect to the argument presented to their Lordships by the Learned Counsel for the defendants including his reliance on the general rights given to Nigerian citizens by such sections as 22, 27, 32 and 53 and particularly the right conferred by the first of these sections to a " fair hearing " by any Nigerian in respect of his civil rights, their Lordships find the conclusion for which Mr. Lawson contended inescapable. The terms of the relevant sub-section appear to their Lordships perfectly plain and their effect must be that so far as these proceedings involve the question of the validity of the plaintiff's appointment and installation as Chief they abated on the 1st October last. On the other hand (as already indicated) the second question posed at the beginning of this judgment, namely who is entitled to deal with the Family property is unaffected by the section even though it may involve the question, what is the *effect* of the plaintiff's appointment as distinct from its validity. Nor indeed, as also already indicated, was the contrary submitted by Mr. Lawson.

Their Lordships now set out in full the Terms of Settlement made in 1949 and in the 1947 suit already so often referred to. They are as follows:

> " 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:—
>
> [Here follow the names of the twenty members which appear to include two of the Defendants and one of the Defendants' witnesses at the trial]
>
> 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.
>
> 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.
>
> 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. The remuneration due to the Solicitors on both sides, namely, Messrs. Alakija and Alakija and L. B. Agusto 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.

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."

As already stated the Terms of Settlement disposed of an action brought against the former Chief Bakare Faro in 1947 to challenge his right to deal as he was doing with the Family property. As already also stated, notwithstanding these Terms of Settlement, a further action was later brought for similar purposes at the end of Bakare Faro's life, in which was delivered the judgment of the Federal Supreme Court already mentioned declaring that the Terms of Settlement still effectively subsisted.

In the circumstances as they appear from the full citation of the previous history of the case their Lordships have found themselves in the greatest difficulty in reaching a decision upon what order they should now make which order will so far as possible do justice between the plaintiff and the defendants and the factions in the Family represented by them, and which will be reasonably likely not to lead to further dissension and further litigation. In considering the question their Lordships cannot put out of their minds the facts as found by the learned trial Judge—and not challenged still less reversed by the Federal Supreme Court—that the evidence given on the plaintiff's part was in large measure untrue and that the plaintiff and his supporters represent a small section only of the Family to which by far the greater part of it is opposed. Further, if under the order as made by the Federal Supreme Court any monies had to be handed over by the defendants to the plaintiff it is not at all clear to their Lordships' minds how such monies would in fact be disposed of: and in this connection their Lordships have in mind what Bennett J. said as regards the distribution by the plaintiff of some £8,000 received by him in 1956 from a transaction referred to as the " Biney lease ". True it is that the plaintiff is suing in a representative capacity and should therefore deal with any monies received by him as trustee for the Family; but even so their Lordships feel no great confidence that monies in fact received by the plaintiff would be strictly so applied or so applied to the satisfaction of the rest of the Family as a whole: and indeed their Lordships feel that further litigation in such an event would be almost inevitable. In this connection their Lordships recall that the right of the plaintiff to sue in a representative capacity seems to have arisen during the hearing before Bennett J. That learned Judge, however, disposed of the matter by relying on an order which had previously been made *ex parte* as earlier stated. Their Lordships cannot help feeling that a valuable opportunity may then have been lost of getting the nature of the proceedings and the true issues involved more properly stated and defined.

It was pointed out to the Board that when the plaintiff's case at the trial had been closed there had been in fact no evidence whatever of any dealings with the Family property by any of the defendants. On the other hand it is true to say that in the course of the evidence given by and on behalf of the defendants the so-called " Total Oil " transaction emerged and it also appeared from the evidence of the third defendant that at some date (unspecified) the Family Council had appointed nine of their number to collect the rents from the Family properties and had appointed the second defendant (who did not appear as a witness himself) as Secretary of the Council to operate alone the Family account at some bank also unspecified. So far as the collection of rents is concerned, the existing receivership will provide no doubt present

security: but their Lordships have no knowledge what has happened in regard to the bank account to which they have referred.

Another great difficulty with which their Lordships are faced concerns the relevant native law and custom. It will be remembered that on the one hand Bennett J. found that the capping of the plaintiff as White Cap Chief was contrary to native law and custom. On the other hand the Federal Supreme Court appears to have held that the capping of the plaintiff as White Cap Chief being conceded the effect of native law and custom would *prima facie* at any rate be to confer upon him (whether with or without the concurrence of the Council of his own creation) a right to deal with the Family property. Mr. Lawson for the plaintiff and Mr. Dingle Foot for the defendants referred to several passages in the notes of the evidence to which their Lordships have given their most careful attention. Nonetheless their Lordships have not been able to feel satisfied that they can properly express a conclusion upon any matters of native law and custom or of any special family practice and custom. As earlier observed by far the greater part of the contest before the trial judge was related to the circumstances in which the plaintiff came to be capped as Chief. It is also true that to judge from the notes of evidence such questions as were directed, during the evidence given on the plaintiff's side, to the native law and custom relevant to the continuation of the Family Council created by the Terms of Settlement, seem upon the face of them to go only to the limited question whether such Council (or any Council appointed by a White Cap Chief in his lifetime) would cease to have any powers and duties on the death of him who was Chief when that Council was appointed, or would survive during what may be called the interregnum until a new Chief is capped. On the defendants' side the third defendant stated in his evidence that it was not true that when a new Chief is to be selected the old Council is discarded and a new set of people do the selection (see record page 82) but this was a different point: and he does not appear to have been cross-examined on the general rule in this regard on native law and custom, save to the extent that he said that " the Council continues after the death of the Chief " (record page 84). On the other hand, the fifth witness for the defendants one Sanusi Sule Oba (a member of the Oloto Chieftaincy Family) stated both on examination and under cross-examination that a newly appointed Chief works with the old Family Council and produced a document (called exhibit 25 but not before their Lordships) being apparently something comparable to the Terms of Settlement in the present case which the Chief of his own Family, that is the Oloto Family, had signed. The witness said that there was nothing in native law and custom to prevent a Chief signing such a document—though their Lordships do not think it to be at all clear what, as regards this witness's family council, would be the effect under native law and custom and any practice and usage of his Family if a newly capped Chief refused to sign such a document as exhibit 25.

Their Lordships have made the references which they have to the evidence to show that, as they venture to think, the evidence as to native law and custom generally including any special practice and usage of the Ojora Family, and (more particularly) in regard to the suggested persistence of the Terms of Settlement, is of a very slender character. If their Lordships' task were to construe the Terms of Settlement as though they were in an English document and without any regard to a background of native law and custom or family practice and usage, they would, to say the least, feel very great force in the argument that the terms were not intended to persist beyond the chieftaincy of Bakare Faro. But their Lordships do not feel it right to regard the document wholly divorced from native law and custom or the practice and usage of the Ojora Family.

What then in the circumstances is the proper order for their Lordships to make? In posing and answering this question their Lordships repeat that, as it is their duty so far as possible to do justice between the parties before them, so also (as they have already stated) they are not forgetful of the view of the learned trial Judge of the witnesses before him and no less are they anxious to reach a conclusion which will in the end assist as much as possible this unhappily divided Family. Mr. Lawson on behalf of the plaintiff was

good enough to suggest that to this end the order granted under paragraph 3 of the writ should be qualified by staying its execution for a period of two months from the date of the transmission of the Board's judgment to the Supreme Court with liberty in the meanwhile for the members of the Family Council established by the Terms of Settlement to apply to the Court as to any payment to be made to the plaintiff—he thereby not making any admissions as to their rights or title. Their Lordships have, however, in the end thought it right to go somewhat further. As it seems to them the question whether the Family Council established under the Terms of Settlement does still subsist (which was a question undoubtedly raised from the very start of the action) ought in the interest of the whole Family to be determined one way or the other, including in that regard the native law and custom and any practice and usage of the Family properly applicable. Their Lordships think therefore that the case should be referred back to such a judge of the High Court as the Supreme Court should think proper in order that that question should be determined. In the meantime the receiver already appointed will presumably continue to collect all rents and the monies in court will remain there subject to any application as to their disposal. Having regard however to the evidence about the banking account their Lordships think that the injunction ordered by the Federal Supreme Court should continue to operate until further order by the High Court (or the Supreme Court). Their Lordships do not however think in all the circumstances and on the evidence that there is sufficient justification for making now any order following the terms of paragraphs 2 and 3 of the writ of summons; though their Lordships suggest that it should be open to the plaintiff to apply for any such order to the High Court. Their Lordships add, however, that in all the circumstances, any order for an account should be for an account to be taken by the proper officer of the High Court. Their Lordships would also add finally a general liberty to either the plaintiff or the defendants to make such other applications as they may think fit to the High Court pending the final determination of the action on the case as remitted to the High Court.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed to the extent which they have indicated; that is to say that, in lieu of the order of the Federal Supreme Court dated the 8th June 1961 the case should be referred back to such judge of the High Court as the Supreme Court think proper for the determination of the question whether and to what extent the Terms of Settlement dated the 19th February 1949 of the action No. 11 of 1947 are still subsisting and effective and binding upon the respondent (plaintiff); that the injunction ordered by the Federal Supreme Court should continue until determination of the question above mentioned or until further order by the High Court (or the Supreme Court); that pending such determination the respondent and the appellants (the plaintiff and the defendants in the action) should have liberty to apply to the High Court (or the Supreme Court) for an account or otherwise as he or they may be advised; and that the costs of the respondent and the appellants of the hearing in the High Court in 1959, of the hearing in the Federal Supreme Court and of the further hearing pursuant to the order now proposed should be in the discretion of the judge of the High Court upon such further hearing. The respondent (plaintiff) must pay one-third of the costs before the Board of the appellants (defendants).

(89600) Wt. 8052/97 100 4/64 Hw.

In the Privy Council.

AMINU AKINDELE AJANI OJORA AND OTHERS

v.

LASISI AJIBOLA ODUNSI

DELIVERED BY

LORD EVERSHED

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