

Alfred Latunde Johnson - - - - - *Appellant*

v.

Amusa Onisiwo and others - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 3RD DECEMBER, 1945

Present at the Hearing:

LORD THANKERTON

LORD GODDARD

SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

This is an appeal from a judgment of the West African Court of Appeal, dated the 8th July 1943, which affirmed the judgment of the Supreme Court of Nigeria, dated the 1st March 1943, whereby the appellant's action against the respondents was dismissed.

In the action, which was instituted on the 20th June 1942, the present appellant sought to set aside a deed of lease dated the 1st September 1936, under which the present respondents Nos. 1, 2 and 3 leased to respondent No. 4 for a period of thirty years the premises at 68 Martins Street, Lagos, and to recover possession thereof, with mesne profits as from the 31st October 1940. Of the same date the lease of 1936 was registered in the Land Registry at Lagos pursuant to the Land Registration Ordinance, 1924, (No. 36 of 1924). Admittedly, the 4th respondent entered into possession and has since continued to possess either himself or by sub-tenants.

The Trial Judge, Lloyd J., gives a short history of the property in suit:—
“ It undoubtedly originally belonged to Chief Ajalegbe Onisiwo. In 1925 his descendants the first three defendants and their uncle Lawani Onisiwo, who at the time regarded themselves as solely entitled to the property and the adjoining one No. 70, partitioned the properties between themselves and executed cross conveyances, Lawani taking No. 70 and the first three defendants taking No. 68. In 1936 the first three defendants executed the lease of No. 68 to the fourth defendant which is now sought to be set aside. In case No. 5/1939 a third member of the family sued Lawani claiming an interest in both properties and obtained judgment for a share of the rents collected by him in his capacity as head of the family. A further claim for partition failed because the first three defendants were not parties. In case No. 153/1940 the same plaintiff brought an action for partition of No. 68 and 70 against both Lawani and the first three defendants. This action was settled on the terms that the plaintiff was given No. 70, and No. 68 was divided equally between Lawani and the first three defendants. Immediately after this partition Lawani's half share of No. 68 was attached and sold in satisfaction of the previous

judgment. The purchaser was N. J. Chacra, who obtained a certificate of title under the Registration of Titles Ordinance. Chacra subsequently transferred his interest to the plaintiff. It is to be noted that the plaintiff was the solicitor for the plaintiff in both of the cases already mentioned and that he also acted as solicitor for the original purchaser Chacra on effecting the registration."

In the course of investigation the Registrar of Titles received a letter dated the 24th April 1941 from a solicitor on behalf of the present first three respondents stating "my clients have and have always had a tenant on their portion of the premises, and the applicant for registration is well aware of this fact." This letter was passed on to the appellant, as Chacra's solicitor, and he stated to the Registrar, "I am aware of no tenant on the premises." It is true that Mr. Franklin, the solicitor, withdrew his intimation. Lloyd J. held that he could not accept the appellant's contention that he had no notice actual or constructive of the lease, as the 4th respondent had been in possession of the premises since 1936, a fact which he had not the slightest doubt was perfectly well known both to the original purchaser Chacra and the appellant. He further held that in any case Mr. Franklin's letter constituted constructive notice of the tenant's possession. The Court of Appeal agreed with the findings of Lloyd J. on this question of fact. While their Lordships are inclined to regard these findings as constituting a finding that the appellant had actual notice, as well as a finding of constructive notice, they are of opinion that the fact of actual notice is placed beyond doubt by the statement in paragraph 7 of the appellant's statement of claim that, on the 9th November 1940 (a few months prior to the registration of title) the 4th defendant was duly notified of the interest of Lawani in the property having changed hands and was requested to yield up the possession thereof forthwith, but that he refused and still refused to comply with the said request. Such being the main point at issue in the case it is also open to serious adverse comment that the appellant did not go into the witness box.

Despite this, in a statutory declaration dated the 25th November 1941, in support of his client Chacra's application, made in terms of section 13 of the Registration of Titles Ordinance 1935 (No. 13 of 1935), the appellant declared,

"3. The actual possession or receipt of the rents and profits of the said land is in accordance with the title of the applicant as deduced to the Registrar. . . .

4. That my client holds the said hereditaments in fee simple free from all incumbrances by virtue of certificate of purchase dated the 14th day of January 1941."

Their Lordships hold that, on the subsequent transfer by Chacra to the appellant, he is clearly not in a position to maintain that he was a *bona fide* purchaser for value, without notice of the tenancy, and that it is not possible for him to take advantage of his want of *bona fides*, and the statements in his statutory declaration, which, to his knowledge were inconsistent with the truth, under any of the sections of the Ordinance of 1935 on which he sought to rely.

As regards the rectification of the register under section 61 of the Ordinance of 1935, which was ordered by Lloyd J., and affirmed by the Court of Appeal, their Lordships agree with the reasoning of the Court of Appeal, and this ground of appeal also fails.

The only remaining matter relates to the action of Lloyd J., in sending the papers in the action to the Attorney-General for such action as he might think fit. Their Lordships were informed that the Attorney-General was deferring consideration until the disposal of this appeal. The Court of Appeal declined to interfere with the order of Lloyd J., or to express any opinion whatever, one way or other. Their Lordships' opinions expressed above would lead them to agree with Lloyd J. that the material in the case justified examination and consideration by the

appropriate authority, the Attorney-General, but they regret that the learned Judge went beyond this, and, without leaving the matter to the appropriate authority, expressed his opinion that an offence had been committed. As the Court of Appeal rightly thought, it was beyond their province; so also it was beyond the province of the learned Judge, and it is equally beyond the province of this Board, to express any such opinion.

The appeal, accordingly, fails, and their Lordships will humbly advise His Majesty that the appeal should be dismissed, and that the judgments appealed from should be affirmed. The appellant will pay the fourth respondent's costs of this appeal.

In the Privy Council

ALFRED LATUNDE JOHNSON

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AMUSA ONISIWO AND OTHERS

DELIVERED BY LORD THANKERTON