

6,1953

In the Privy Council.

No. 3 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL 33468

UNIVERSITY OF LONDON
W.C.1.

9 - NOV 1956

BETWEEN

JOHN OJOBO AGBEYEGBE (Plaintiff) *Appellant* **FOR ADVANCED LEGAL STUDIES**

AND

FESTUS MAKENE IKOMI (Defendant) *Respondent*

AND

F. O. AMARAH (Defendant) *Pro forma Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 3 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN
JOHN OJOBO AGBEYEGBE (Plaintiff) Appellant
AND
FESTUS MAKENE IKOMI (Defendant) Respondent
AND
10 F. O. AMARAH (Defendant) Pro forma Respondent.

RECORD OF PROCEEDINGS.

No. 1.

Application for Civil Summons.

IN THE PROTECTORATE OF NIGERIA.

IN THE HIGH COURT OF WARRI JUDICIAL DIVISION HOLDEN AT WARRI.

Suit No. W/10/1938.

JOHN OJOBO AGBEYEGBE Plaintiff
1. F. O. AMARAH, and *vs.*
20 2. OMAKERE IKOMI Defendants.

In the High
Court of
Warri
Judicial
Division.

No. 1.
Applica-
tion for
Civil
Summons.
31st May,
1938.

The Plaintiff seeks to set aside the sale of all that piece or parcel of land situate at Ogbe Ijoh Market Waterside Warri, described in Crown Lease dated 19th September, 1925, and registered as No. 54 at Page 300 in Volume 176 of the Lands Registry in the Office at Lagos.

Value of land assessed for the purpose of this action is £150.

Dated this 31st day of May, 1938.

(Sgd.) OLATUNDE VINCENT,
Plaintiff's Solicitor.

Plaintiff's address : Ekurede Town, Warri.

1st Defendant's address : c/o John Holt & Co., Ltd., Owo and at Warri.

30 2nd ,, ,, : Alder's Town, Warri.

In the High
Court of
Warri
Judicial
Division.

No. 2.
Civil Summons.

PROTECTORATE OF NIGERIA.

No. 2.
Civil
Summons.
8th June,
1938.

IN THE HIGH COURT OF THE WARRI JUDICIAL DIVISION.

No. 18
A78

Suit No. W/10/1938.

(Title as in No. 1.)

To :

1. F. O. AMARAH c/o John Holt & Co. Ltd., Owo and at Warri.
2. OMAKERE IKOMI of Alder's Town, Warri.

YOU are hereby commanded in His Majesty's name to attend ¹⁰
this Court at Warri on Thursday the 7th day of July, 1938, at 9 o'clock
in the forenoon to answer a suit by John Ojobo Agbeyegbe of Ekurede
Town, Warri, against you.

The Plaintiff seeks to set aside the sale of all that piece or parcel of
land situate at Ogbe Ijoh Market Waterside, Warri, described in Crown
Lease dated 19th September, 1925, and registered as No. 54 at page 300
in Volume 176 of the Lands Registry in the Office at Lagos.

Value of Land assessed for the purpose of this action is £150.

Issued at Warri the 8th day of June, 1938.

(Sgd.) J. JACKSON, ²⁰
Assistant Judge.

Take Notice : That if you fail to attend at the hearing of the suit or
at any continuation or adjournment thereof, the Court may allow the
Plaintiff to proceed to Judgment and execution.

No. 3.
Court
Notes.
7th July,
1938.

No. 3.
Court Notes.

PROTECTORATE OF NIGERIA.

IN THE HIGH COURT OF THE WARRI JUDICIAL DIVISION HOLDEN AT WARRI.

Before His Honour Sir DONALD KINGDON, Chief Judge,
Thursday the 7th day of July, 1938.

W/10/38.

(Title as in No. 1.)

30

Claim to set aside a sale.

No appearance by or for Plaintiff.

2nd Defendant in person—says he has briefed Wright.

1st Defendant not served—no appearance.
Letter from Alakija and Alakija asking for pleadings—presumably for Plaintiff.

In the High Court of Warri Judicial Division.

Telegram from Vincent for Plaintiff asking for pleadings and adjournment.

Wright informs Court that there has not yet been any sale.

No. 3. Court Notes. 7th July, 1938—*continued.*

2nd Defendant bought subject to the approval of the Governor and that approval has not yet been given, so there has been no sale.

Applies for case to be struck out. Order 18 Rule 1.

10 ORDER :

The case is struck out with costs to 2nd Defendant assessed at 5 guineas.

(Sgd.) DONALD KINGDON,
Chief Judge.

No. 4.

Motion and Affidavit to Relist Case.

In the Supreme Court of Nigeria.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF WARRI JUDICIAL DIVISION.

No. 4. Motion and Affidavit to Relist Case. 8th June, 1947.

Suit No. W/10/1938.

20

(Title as in No. 1.)

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court of Warri will be moved on Monday the 15th September, 1947 at the hour of nine o'clock in the forenoon or so soon thereafter the Plaintiff can be heard for an order of Court for the relisted Suit No. W/10/38 struck out on the 7th day of July, 1938 per attached Affidavit.

More particulars of claim are coming.

Dated at Warri this 8th day of June, 1947.

(Sgd.) J. O. AGBEYEGBE,
Plaintiff.

30 Plaintiff's address : Ekurede Town, Warri.

Defendant's ,, : Urhobo Street, Alder's Town, Warri.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF WARRI JUDICIAL DIVISION.

Suit No. W/10/1938.

No. 4.
Motion and
Affidavit
to Relist
Case.
8th June,
1947—
continued.

(Title as in No. 1.)

AFFIDAVIT.

1. I, J. O. AGBEYEGBE, the Plaintiff, of Ekurede Town Warri, make oath and say as follows:—

2. That I am applying to the Court to relist the Suit No. W/10/38 which has been struck out on the 7th day of July, 1938, during my absence.

3. That on the 28th day of May, 1938, I received information from 10 Warri to me at Lagos that my lease dated the 19th day of September, 1925, has been sold to the Defendant Ikomi on the 27th day of May, 1938.

4. That as I am the Defendant under Suit No. W/122/37 am entitled to 20 or 21 days to take action to set aside the sale if there is any sale at all.

5.—That on the 31st day of May, 1938, I took action to set aside after 4 days only when the information was received. Both Defendants were served in June, 1938, before the 20 or 21 days. The case was heard on the 7th of July, 1938, during my absence.

6.—That late Lawyer Alakija and Alakija and Lawyer Olatunde Vincent whom I engaged applied for pleading and adjournment of the 20 case. I come from Lagos in March 1942 and I investigated from the records to know what happened before the case was struck out. I got the copies of the judgment of the case.

7.—That Lawyer Wright who appeared for Ikomi Defendant informed the Court that no approval for sale from Government as yet and applied to the Court that the case be struck out.

8.—That from July 1938 to September, 1938 or August 1938 to October 1938, the land and property were not sold to the Defendant Ikomi before he took possession of all the property thereon and the order of Court did not say that any purchaser was to give deposit pending the approval of the 30 sale. He has been on the land since 1938 collecting rents from all the tenants up to date. The Defendant must vacate from the land. The order of Court dated 30th November 1937 or December, 1937 was not carried out accordingly.

9.—That my delay to bring up the case was due to all the documents about the case with Lawyer Alakija. I got only few of the documents.

10.—That I have subpoenaed all the Civil Record Books.

11.—That more particulars of claim are forthcoming.

Dated at Warri this 17th day of July, 1947.

(Sgd.) J. O. AGBEYEGBE,
Applicant.

Sworn at the Supreme Court }
Registry, Warri, this 19th }
day of July, 1947.

In the
Supreme
Court of
Nigeria.

No. 4.
Motion and
Affidavit
to Relist
Case.
8th June,
1947—
continued.

Before me,

10 (Sgd.) D. SAGIÈDE ODIGIE,
Commissioner for Oaths.

No. 5.
Court Order.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE WARRI JUDICIAL DIVISION (HOLDEN
AT WARRI.

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

Monday the 15th day of September, 1947.

20 W/10/38.

(Title as in No. 1.)

Motion to relist Suit No. W/10/38 which was struck out on the 7.7.38.

Plaintiff in person.

Defendants in person.

Affidavit filed.

Leave granted.

(Sgd.) S. B. RHODES,
Judge, 15.9.47.

No. 5.
Court
Order.
15th
September,
1947.

In the
Supreme
Court of
Nigeria.

No. 6.
Court Notes.

No. 6.
Court
Notes.
3rd
November.
1947.

Monday the 3rd day of November, 1947.

W/10/38—J. O. AGBEYEGBE *vs.* F. O. AMARAH & ANOR.

IDIGBE for Plaintiff.

F. M. Ikomi in person.

F. O. Amarah in Hospital.

Adjourned to 12.11.47.

(Sgd.) S. B. RHODES,
Judge, 3.11.47. 10

Plaintiff's
Evidence.

PLAINTIFF'S EVIDENCE.

No. 7.
John Ojobo
Agbeyegbe.
18th
December,
1947.

No. 7.
Evidence of John Ojobo Agbeyegbe.

Thursday the 18th day of December, 1947.

W/10/38—JOHN O. AGBEYEGBE *vs.* F. O. AMARAH, 2 Omakene Ikomi.

Plea : 1st Defendant not liable the matter was in the hands of the Deputy Sheriff.

2nd Defendant. Property was sold in Public Auction by the Deputy Sheriff.

IDIGBE for Plaintiff.

Both Defendants in person.

20

Examina-
tion.

(P. 1) JOHN OJOBO AGBEYEGBE (m) on Bible sworn states in English : In November, 1937 the 2nd Defendant Amarah brought an action against me in the Warri High Court claiming £330 for buildings materials and damages. Judgment was entered in his favour for £212.

On the 29th December, 1937 a Judgment Debtor Summons was served upon me to be examined as to my ability to pay this amount. I produce a certified copy of the order that was made by the Judge tendered admitted marked Ex. P.1.

- There were only two publications made in the Nigeria Gazette not three. I had offers of £2,000 made to me for the purchase of the land but they were waiting for the completion of the Gazette Notices. I was not informed by the Deputy Sheriff Warri that the sale had been carried out. I then consulted Barrister Alakija to commence action to set aside the sale. This was done and the case listed for hearing on the 7th of July, 1938 prior to that date my Counsel wrote to the Court applying for pleadings the letter was received at this Registry on the 4th July 1938 before the hearing date but no action taken by the Court. It was instituted just 4 days after the sale. My action to set aside the sale was struck out by the Court despite my Counsel's application for pleadings. This is a certified copy of the order tendered admitted marked P. 2. I consulted my Counsel who said the case can be listed he then fell ill and died and I could not get my papers from his estate. I succeeded in getting the papers in 1942. I became ill this is my Hospital ticket tendered admitted marked Ex. P.3. I returned to Warri in March, 1942. I made investigations and discovered that 2nd Defendant was in possession of the land and had sued some one in the Magistrate's Court in connection with this land. I applied for a copy of the proceedings tendered admitted marked P. 4 (against 2nd Defendant) I then asked the Local Authority how came the 2nd Defendant to be in possession of my land. I was referred to the Resident where I obtained a certified copy of the Certificate of the Title issued by the Court, this is it tendered admitted marked Ex. P.5. When I came to Warri in 1943 I went to see the 2nd Defendant who informed me that the amount he had paid was a deposit but if I could get it back for him he will withdraw from the sale. 2nd Defendant agreed to remain on the land and collects the rents from tenants of the land until he can recover his money then hand to me. In 1944 2nd Defendant removed some of the buildings on the land and rebuilt others on the site.
- XXD by AMARAH. The sale took place 9 years ago. Sale was not made in a public place. The last time I paid the rent for the land was in 1939 after that the Local Authority refused to accept my rent when tendered. I was investigating about the land for 7 years.
- XXD by IKOMI. I took action against you in 1938 and it was struck out. You told me in Lagos that you deposited £680 to the Deputy Sheriff Warri for me.

In the
Supreme
Court of
Nigeria.

Plaintiff's
Evidence.

No. 7.
John Ojobo
Agbeyegbe.
18th
December,
1947.
Examina-
tion—
continued.

Cross-exam-
ination
by 1st
Defendant.

Cross-exam-
ination
by 2nd
Defendant.

No. 8.

Evidence of Samuel Aina Falola.

No. 8.
Samuel
Aina
Falola.
18th
December,
1947.
Examina-
tion.

- 40 (P. 2) SAMUEL AINA FALOLA (m) on Bible sworn states in English. Bailiff Warri on the 15th January, 1938 received a Writ of Fi Fa for the sale of the property of one John Ojobo Agbeyegbe situate in Warri. An Order of the High Court was attached to the Writ The sale was carried out on the 29th of May, 1938.

In the
Supreme
Court of
Nigeria.

Plaintiff's
Evidence.

No 8.
Samuel
Aina
Falola
18th
December,
1947—
continued.

Cross-exam-
ination
by 1st
Defendant.

The Superintendent of Police Mr. E. S. Shuel carried out the sale. Notice of the Sale was published in Gazettes Nos. 22 of 21.4.38 and 23 of 28.4.38. There were only two insertions. No other Notice was inserted anywhere but bell was rung on the day of the sale. I was the Bailiff. Agbeyegbe knew about the sale but he was not informed by us either before or after the sale but a telegram was sent to him on the 28th of May informing him of the sale. £680 was realised it was paid to the Deputy Sheriff on the 27th of May, 1938. I do not know whether any condition was attached to the payment. It was a deposit.

XXD by AMARAH. Money is never deposited before sale. Purchaser 10 usually pay after sale.

No Xx by Ikomi.

IDIGBE: I now apply for leave to amend the Writ of Summons on terms. Both Defendants object to any amendment at this stage.

Application granted with 5 guineas to each of the Defendants to be paid before the case proceeds any further.

Case adjourned *sine die*.

(Sgd.) S. B. RHODES,
Judge, 18.12.47.

No. 9.

20

Amended Claim.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE WARRI JUDICIAL DIVISION HOLDEN
AT WARRI.

Suit No. W/10/38.

(Title as in No. 1.)

AMENDED CLAIM.

The Plaintiff seeks to set aside the sale of all that piece or parcel of land, situate at Ogbe Ijoh Market, Waterside Warri described in a Crown lease dated 19th September 1925, and registered as No. 54 at page 300 30 in Volume 176 of the lands Registry in the office at Lagos, by the Deputy Sheriff in pursuance of an order of the High Court of the Warri Judicial Division made on the 30th December 1937, on the ground that there was substantial irregularity in execution of the aforesaid order of the High Court of Warri Judicial Division in that the Deputy Sheriff did not comply with the essential conditions precedent to the sale required by the aforesaid order of 30th December, 1937 made by the High Court of Warri Judicial Division.

(Sgd.) CHUKWUNWEIKE IDIGBE,
Plaintiff's Solicitor. 40

Dated at Warri this 8th day of January, 1948.

No. 10.

Motion and Affidavit by Second Defendant to Levy Execution on Plaintiff.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE WARRI JUDICIAL DIVISION HOLDEN
AT WARRI.

Suit No. W/10/1938.

(Title as in No. 1.)

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court will be moved on Saturday
10 the 13th day of March, 1948, at the hour of 9 o'clock in the forenoon or so
soon thereafter as the Applicant can be heard for an Order to levy execution
on the Order of this Honourable Court dated the 7th day of July, 1938,
in accordance with the provisions of Rule 8 (2) of Order IV of the Judgments
(Enforcement) Rules 1945, or for any other Order that this Honourable
Court may seem fit to make.

Dated at Warri this 18th day of February, 1948.

(Sgd.) F. M. IKOMI,
Applicant
2nd Defendant.

20

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE WARRI JUDICIAL DIVISION HOLDEN
AT WARRI.

Suit No. W/10/1938.

(Title as in No. 1.)

AFFIDAVIT.

I, FESTUS MAKENE IKOMI, Trader of Alder's Town, Warri,
Itsekiri, make oath and say as follows:—

1.—That I am the second Defendant in the above-named action.

2.—That on the 7th day of July, 1938, this Honourable Court struck
30 out the action instituted by the above-named Plaintiff with costs to the
second Defendant assessed at 5 guineas.

3.—That since the order was made, the Plaintiff has not paid the cost
of £5 5s. awarded to me. That at the time the order was made the Plaintiff
had no means whereby to pay the costs awarded by the Court.

No. 10.
Motion and
Affidavit
by 2nd
Defendant
to Levy
Execution
on Plaintiff.
18th
February
1948.

In the
Supreme
Court of
Nigeria.

4.—That on the 5th day of August, 1947, the Plaintiff filed a motion praying for an order to relist the case for hearing and leave was granted on the 15th day of September, 1947 for the case to be relisted. The case is now pending before this Honourable Court.

No. 10.
Motion and
Affidavit
by 2nd
Defendant
to Levy
Execution
on Plaintiff.
18th
February,
1948—
continued.

5.—That it appears that the Plaintiff has now means to prosecute this case and that he is represented by Counsel at the hearing of the suit since it has been relisted.

6.—That this application is made in accordance with the provisions of Rule 8 (2) of Order IV of the Judgment (Enforcement) Rules, 1945—
No. 4 of 1945.

10

Sworn at the Supreme Court,
Warri, this 18th day of February,
1948.

(Sgd.) F. M. IKOMI.

Before me,

(Sgd.) S. A. SAMUEL,
Commissioner for Oaths.

No. 11.

Court Notes on Motion.

No. 11.
Court Notes
on Motion.
13th
March,
1948.

Saturday the 13th day of March, 1948.

W/10/38—J. O. AGBEYEGBE vs. IKOMI.

20

Motion to levy execution out of time on an Order dated 7.7.38.

Mover in person.

Affidavit filed.

Application refused.

(Sgd.) S. B. RHODES,
Judge, 13.3.48.

PLAINTIFF'S EVIDENCE (continued).

No. 12.

Evidence of Richard Okeme.

Tuesday the 16th day of March, 1948.

W/10/38.

(Title as in No. 1.)

NELSON-WILLIAMS now appears for second Defendant.

In the
Supreme
Court of
Nigeria.

Plaintiff's
Evidence.

No. 12.
Richard
Okeme.
16th
March,
1948.

Each Defendant served with a copy of the amended claim. (As in No. 9.)

10 (P. 3) RICHARD OKEME (m) On Bible sworn states in English.
Lands Clerk Warri. I produce the Land Deeds Record Book for the Warri-
Township at page 29 is shown an entry of a lease to John O. Agbeyegbe
by Government dated 19th September, 1925 for a period of sixty years ;
there is no number attached to the plot. I produce a Certificate of purchase
by the Assistant Judge of the High Court of Nigeria for the Sale of this
land dated 22nd day of August, 1938 from the description of the land sold
I can say it is the same land as covered by a Government Lease dated
19th September, 1925 to one J. O. Agbeyegbe. There is no record that the
Governor ever gave his consent to the purchaser. I know of no Notice
given to Lessee for the termination of this Lease. Land Deeds Record
20 Book page 29 tendered admitted marked P. 6.

Examina-
tion.

XXD by NELSON-WILLIAMS. I did not make the entries on P. 6.
I understand the entries to be made in connection with the dealings of each
particular land. The Certificate of Purchase was issued by the Court.

Cross-exam-
ination
by 2nd
Defendant.

No Re-examination by Idigbe.

Case for Plaintiff.

Adjourned to 18.3.48.

(Sgd.) S. B. RHODES,
Judge, 16.3.48.



In the
Supreme
Court of
Nigeria.

No. 13.

Court Notes on Submissions of Counsel.

Thursday the 18th day of March, 1948.

No. 13.
Court Notes
on Sub-
missions of
Counsel.
18th March,
1948.

W/10/38—JOHN OJOBO AGBEYEGBE vs. 1. F. O. AMARAH
2. OMAKENE IKOMI.

There is no case made out against 1st Defendant Amarah to answer the case against him is therefore dismissed with costs assessed at 7 guineas.

(Sgd.) S. B. RHODES,
Judge, 18.3.48.

NELSON-WILLIAMS : Proper parties not before the Court. Property sold by Sheriff therefore he should have been a party to the action. Ex. P. 5 dated 22.8.38 Court has already declared second Defendant the purchaser. Ex. P. 1 gave leave to judgment Debtor to issue writ of Fi Fa in respect of that land. P. 1 read in conjunction with P. 5 gives second Defendant an unresistible right Title and interest over the land. See Crown Lands Ordinance Cap. 84 Sec. 11. Sale was made with the approval of the Governor. At the time of the approval of the Chief Commissioner Ex. P. 5. There was no case before the Court therefore the approval was good. Nothing pending to set aside sale before any Court. On the 18.3.38 this Court varied its Order by substituting Shuel for Austin. 10

IDIGBE : Although Deputy Sheriff not a party to this action he is a witness. See page 87 of Vol. 3 Laws of Nigeria. Order 45 Rules 31, 32 and 34. Action struck out on 7.7.38 on ground that there has been no sale since then no Notice was given to the Plaintiff that the Governor has approved of Ikomi as the Purchaser. The paper referred to as a Certificate is not a Certificate of the Court as it did not comply with the conditions precedent to the issuing of the Certificate. Order 45 Rule 32 Cap. 3 Laws of Nigeria. When did the 21 days start to run if sale by Deputy Sheriff is only conditional subject to Governor's approval. Certificate is no Certificate and as a Court the very Court that issued the Certificate can declare it null and void. The Chief Commissioner was misled into signing that paper as a Certificate of purchase. I did not subapæna the Bailiff but the Deputy Sheriff ; it was he who sent the Bailiff to appear for him. Court ordered Shuel to conduct the sale in person he did not. 30

NELSON-WILLIAMS : Judges have concurrent jurisdiction ; the act of one Judge cannot be questioned by another Judge.

Adjourned to 25.3.48.

(Sgd.) S. B. RHODES,
Judge, 18.3.48.

PLAINTIFF'S EVIDENCE (continued).

No. 14.

Evidence of Samuel Aina Falola—recalled.

Thursday the 25th day of March, 1948.

W/10/38—JOHN O. AGBEYEGBE *vs.* OMAKENE IKOMI.

I would like to hear the Defence of this case and therefore hold there is a case to answer.

(Intld.) S. B. R.
25.3.48.

In the
Supreme
Court of
Nigeria.

Plaintiff's
Evidence.

No. 14.
Samuel
Aina
Falola.
25th March,
1948.

10 SAMUEL AINA FALOLA (m) On Bible sworn states in English recalled for cross-examination by leave of the Court. Bailiff of this Court. I took over the duties of Bailiff in March, 1938. Know the Parties in this case. I have here the file dealing with the sale of the Plaintiff's property. I have seen Ex. P. 1 before to-day. Captain Austin was ordered to carry out the sale. This is an order of the Court substituting Mr. Shuel for Austin admitted marked D.1. This is my office copy of the letter to the Government Printer admitted marked D.2. I was present at the sale. There were other bidders at the sale apart from Ikomi. This is the record of the sale it is in the handwriting of Mr. Shuel. I know his writing admitted
20 marked D.3. This is the copy of a letter to the Resident communicating the result of the sale admitted marked D.4. This is a letter of the Resident, Warri approving of Mr. Ikomi as the purchaser, admitted marked D.5.

Cross-exam-
ination
by 2nd
Defendant.

Re-examined by IDIGBE. I do not know whether Plaintiff was informed that Ikomi has been approved of as the purchaser.

Re-exam-
ination.

Case for defence.

NELSON-WILLIAMS : I do not propose to address the Court any further.

IDIGBE : It is not a question of negligence or diligence, it is whether the sale was conducted in accordance with the Order of the Court. Last publication in Gazette was 28th April, 1938 no further publication after
30 that day. Section 11 of Cap. 184 says purchaser must be approved by Governor before sale. When does 21 days to set aside sale begin to run. Sale cannot be said to be inchoate.

See *Government of Ashanti versus Adjua Korkor* W.A.C.A. Vol. 4 page 83 in that case plaintiff claim to set aside was based upon collusion and fraud.

Defendant was not cross-examined on the question of the £2,000 offer and no evidence to the contrary. Caveat Emptor should apply.

Judgment reserved.

(Sgd.) S. B. RHODES,
Judge, 25.3.48.

In the
Supreme
Court of
Nigeria.

No. 15.
Judgment.

Friday the 2nd day of April, 1948.

No. 15.
Judgment
delivered
by Rhodes,
J.
2nd April,
1948.

W/10/1938—

JOHN OJOBO	AGBEYEGBE	...	...	...	...	...	...	<i>Plaintiff</i>
		<i>versus</i>						
1.	F. O. AMARAH,							
2.	OMAKENE IKOMI	...	...	...	...	...	...	<i>Defendants.</i>

JUDGMENT

One Amarah on the 30th day of November, 1937, obtained judgment 10
 against the present Plaintiff for the sum of £200 plus 12 guineas costs in an
 action for Breach of Contract. (Page 304 Warri High Court Civil Record
 Book Volume 2.) On the 30th day of December, 1937, by an Order of this
 Court made by Jackson, A.J., and a Writ of execution issued to sell the
 property of the present Plaintiff by the Deputy Sheriff Warri, Captain
 Austin, the property as described on page 311 Volume 2 Warri High Court
 Civil Record Book is Crown Lease dated 19th September, 1925 and registered
 as No. 54 at page 300 in Volume 176 of the Lands Registry in the Office at
 Lagos.

On page 312 of this same Volume 2, it was stated by the Assistant 20
 Judge that the sale is to be made subject to the provision of Section 11 of the
 Crown Lands Ordinance (Laws of Nigeria Cap. 84). There was a further
 Order on this page by the same Assistant Judge which reads as follows :—

“ I do order further that prior to the auction a Notice of sale
 “ and a description of the land so put up for auction shall be
 “ published by three consecutive publications in the Nigeria
 “ Gazette’s Notice.”

Captain Austin, the Deputy Sheriff, left Warri before the date of the
 Sale and the Court on the 18th day of March, 1938 amended its order by
 substituting Mr. Shuel Superintendent of Police Warri for Captain Austin. 30

On the 1st of April, 1938 a letter No. 077/X/869 exhibit “ D. 2 ” was
 addressed to the Chief Secretary to the Government Lagos, requesting that
 Notice of the auction sale be published in three consecutive publications of
 the Nigeria Gazette, and the sale fixed for the 27th of May, 1938. Only two
 publications were made in the Nigeria Gazette ; on the 27th of May, 1938
 Mr. Shuel carried out the sale without a third publication in the Nigeria
 Gazette according to the Order of the Court. (In fact there has never to
 this day been a third publication.)

The defendant Ikomi was declared the highest bidder at the auction
 he having offered £680. Vide exhibit “ D. 3.” On the 12th day of June, 40
 1938 the Plaintiff by a writ of Summons, applied to this Court to set aside
 the sale under Order 45 Rule 31 of the old Supreme Court Rules which
 reads as follows :—

“ At any time within twenty-one days from the date of the sale of any immovable property application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.”

In the
Supreme
Court of
Nigeria.

No. 15.
Judgment
delivered
by Rhodes,
J.
2nd April,
1948—
continued.

Upon the case coming up for hearing before Kingdon, C.J., the following is the Record of the Court on page 419 of Volume 2 High Court Civil Record Book “ Wright informs Court there has not yet been any sale. Defendant (Ikomi) bought subject to the approval of the Governor and that approval has not yet been given so there has been no sale. Applies for case to be struck out Order 18 Rule 1. Order.

“ The case is struck out with costs to the Defendant assessed at 5 guineas.”

On the 22nd day of August, 1938 Pearson, A.J., signed a Certificate of Purchase in favour of Festus Makene Ikomi declaring him the purchaser. Exhibit “ P.5 ” and according to Exhibit “ P.5 ” the Acting Chief Commissioner of the Southern Provinces to whom the Power of the Governor has been delegated, approved of Ikomi as Purchaser on the 19th day of September, 1938. The Plaintiff was never officially informed of this approval by any one.

On the 5th of August, 1947 Plaintiff obtained leave of this Court to relist this case and on the 12th day of January filed an amended claim which reads as follows :—

“ The Plaintiff seeks to set aside the sale of all that piece or parcel of land, situate at Ogbe Ijoh Market, Waterside Warri described in a Crown Lease dated 19th September, 1925, and registered as No. 54 at page 300 in Volume 176 of the Lands Registry in the Office at Lagos, by the Deputy Sheriff in pursuance of an Order of the High Court of the Warri Judicial Division made on the 30th December, 1937, on the ground that there was substantial irregularity in execution of the aforesaid order of the High Court of the Warri Judicial Division in that the Deputy Sheriff did not comply with the essential conditions precedent to the sale required by the aforesaid Order of 30th December, 1937 made by the High Court of Warri Judicial Division.”

Plaintiff in his evidence informed the Court that he was in Lagos when the auction sale took place and before the sale he had been offered £2,000 for the very property, but that both the offerer and offeree were waiting for the third publication in the Nigeria Gazette.

Now Section 11 of Cap. 84 of the Laws of Nigeria reads as follows :—

“ No Lease under this Ordinance or under any Ordinance repealed by this Ordinance which contains a covenant, whether express or implied, by the lessee not to assign without the consent of the Governor shall be sold by or under the Orders of a Court in execution of a decree or otherwise howsoever, except to a purchaser approved by the Governor.”

In the
Supreme
Court of
Nigeria.

No. 15.
Judgment
delivered
by Rhodes,
J.
2nd April,
1948—
continued.

Reading this section with Rule 31 of Order 45 there seems to be an anomaly created, for it is not stipulated how the days are to be computed. I am certain section 11 of Cap. 84 did not anticipate Rule 21. The wording of section 11 seems to declare that the purchaser by sale of Crown Leases made by an Order of the Court is subject to a condition subsequent, that is the approval of the Governor, following this to its logical conclusion, it would mean that until such time as the Governor approves of the purchaser there is no sale. That being so, who is to inform the aggrieved judgment debtor that the Governor has approved of the Purchaser? There is no machinery anywhere provided which makes it the duty of anyone to inform 10 the judgment debtor of such approval, as in this case where it took the Governor almost three months to approve of the Purchaser.

It has been argued that as Judges have concurrent Jurisdiction, this Court will be acting as a Court of Appeal upon the action of Pearson, A.J., in issuing a Certificate of Purchase to Ikomi; that that act being one of this Court, it closes the matter subject to an appeal and there was none; I agree with Counsel that a Judge cannot interfere with the judgment or order of another Judge of concurrent Jurisdiction but, where there is revealed before him a case of gross miscarriage of justice, a Judge can review the judgment of another Judge of concurrent Jurisdiction, moreover the issuing 20 of a Certificate of Purchase by a Judge could not be said to be a Judgment or an Order.

The Order of the Court was for three consecutive publications in the Nigeria Gazette, that Order was never carried out, it was the duty of the Deputy Sheriff to have satisfied himself that the Order of the Court had been carried out before proceeding to sell, and the purchaser Ikomi should have satisfied himself that the sale was a proper one all conditions precedent to sale having been fulfilled, especially where the order used the word "shall."

The Order of the Court not being carried out before sale, all subsequent acts under the sale together with the sale must be declared a nullity. 30

I find that there was no sale, and there being no sale the approval of the Chief Commissioner was based upon nothing, as he was misled into signing a document based upon a sale which did not exist.

I also find that there has been a material irregularity in the conduct of the non-existent sale and I am satisfied from the evidence that the Plaintiff has sustained substantial injury by reason of such irregularity.

When an Order is made by a Court, it is expected that it will be carried out and not treated with indifference, otherwise there will be no need for a Court to make any Order.

There will be judgment for the Plaintiff declaring the sale of his property 40 in the Warri Township made by Mr. Shuel the Deputy Sheriff on the 27th day of May, 1938, a nullity with costs assessed at fifty guineas.

(Sgd.) S. B. RHODES,
Judge, 2nd April, 1948.

Certified True Copy,
A. W. DE VREMULE,
Ag. Registrar, Grade I.

No. 16.

Order Granting Final Leave to Appeal.

In the
Supreme
Court of
Nigeria.

No. 16.
Order
Granting
Final Leave
to Appeal.
13th July,
1948.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE Warri JUDICIAL DIVISION.

(L.S.)

Suit No. W/10/1938.

Between

JOHN OJOBO AGBEYEGBE *Plaintiff-Respondent*

and

1. F. O. AMARAH,

10 2. F. M. IKOMI

In re F. M. IKOMI 2nd Defendant-Appellant.

WHEREAS Conditional Leave to Appeal was granted to the 2nd Defendant-Appellant by this Honourable Court on the 30th day of April, 1948.

And Whereas the said Conditions were complied with.

And Whereas Motion for Final Leave to Appeal was filed in this Honourable Court on the 9th day of July, 1948.

Now This Court Doth grant to the 2nd Defendant-Appellant Final Leave to Appeal.

20 Dated at Warri this 13th day of July, 1948.

(Sgd.) F. SPENCER PROTHEROE,
Acting Puisne Judge.

No. 17.

Grounds of Appeal.

No. 17.
Grounds of
Appeal.
13th July,
1948.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE Warri JUDICIAL DIVISION HOLDEN AT Warri.

Suit No. W/10/1938.

Between

30

(Title as in No. 1)

The Appellant being dissatisfied with the judgment of the Supreme Court Warri Division, delivered on the 2nd day of April, 1948, and having obtained Final Leave to appeal therefrom on the 13th day of July, 1948, hereby appeal to the West African Court of Appeal upon the Grounds hereinafter set forth.

GROUNDS OF APPEAL.

In the
Supreme
Court of
Nigeria.

No. 17.
Grounds of
Appeal.
13th July,
1948—
continued.

1.—The Learned Judge was wrong in relisting the case order 5th August, 1947, and allowing an Amended claim to be filed on the 12th January, 1948, the original claim filed in June, 1938, having been struck out by Kingdon, J., in 1938.

2.—The original Writ having lapsed by efflux of time and no Order having been obtained extending the same there was nothing to relist.

3.—The learned trial Judge misdirected himself in those passages of his judgment which say

- (a) “ And the purchaser Ikomi should have satisfied himself that 10
“ the sale was a proper one all conditions precedent to sale
“ having been fulfilled especially where the Order used the
“ word SHALL.”
- (b) “ The Plaintiff was never officially informed of this approval
“ by any one. There is no machinery anywhere provided
“ which makes it the duty of anyone to inform the judgment
“ debtor of such approval.”

4.—The Learned Trial Judge was wrong to override and declare a nullity the act of Pearson, J., in August, 1938, granting a Certificate of Purchase in favour of Defendant-Appellant Ikomi and declaring him the 20 Purchaser thereof.

5.—The Learned Trial Judge was wrong in not giving effect to the Rule of Court that if a claim is not made within 21 days the sale shall be deemed absolute. No action or claim within the time allowed was before the Court when Pearson, J., declared Defendant-Appellant the Purchaser and the Acting Chief Commissioner Southern Provinces approved him as the Purchaser on behalf of the Government.

6.—The Learned Trial Judge was wrong in holding that the issuing of a Certificate of Purchase by a Judge could not be said to be a Judgment or an 30 Order. The presumption of regularity of Judicial process is well established and the Certificate is granted in open Court and has full force and effect as any Judgment or Order.

7.—The decision of the Learned Judge was unreasonable and cannot in all the circumstances be supported having regard to the evidence before the Court.

Dated at Warri this 13th day of July, 1948.

(Sgd.) F. O. B. BLAIZE,
for T. E. NELSON-WILLIAMS,
Appellant's Solicitor.

No. 18.

Additional Grounds of Appeal.

In the
Supreme
Court of
Nigeria.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE WARRI JUDICIAL DIVISION HOLDEN AT
WARRI.

Suit No. W/10/1938.

(Title as in No. 1).

No. 18.
Additional
Grounds of
Appeal.
7th
September,
1948.

The Appellant being dissatisfied with the judgment of the Supreme Court Warri Division, delivered on the 2nd day of April, 1948 and having
10 obtained Final Leave to appeal therefrom on the 13th day of July, 1948, hereby appeal to the West African Court of Appeal upon the Grounds hereinafter set forth :

ADDITIONAL GROUNDS OF APPEAL.

8. The learned Judge had no jurisdiction to try the suit.

9. The proceedings are a nullity.

Dated at Lagos this 7th day of September, 1948.

(Sgd.) JAMES E. DAVID,
Defendants-Appellants' Solicitor.

No. 19.

Court Notes of Arguments.

In the West
African
Court of
Appeal.

Thursday, the 4th day of November, 1948.

Before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, K.C.,
President ; Sir JOHN VERITY, Chief Justice, Nigeria ; ARTHUR
WERNER LEWEY, K.C., Justice of Appeal.

J. O. Agbeyegbe *v.* Amarah & Anor.NELSON-WILLIAMS (with him David and Taylor) for Appellant.
THOMAS for Respondent.No. 19.
Court Note
of Argu-
ments.
4th, 5th
and 8th
November,
1948.THOMAS applies to strike out grounds 1 and 2 Omololu and ors. 24.4.47
W.A.C.A. 2578.

30 TAYLOR : In Omololu's case there was a decision. But in this case it was merely an order.

In the West
African
Court of
Appeal.

No. 19.
Court Notes
of Argu-
ments.
4th, 5th
and 8th
November,
1948-
continued.

Application refused.

Taylor re grounds 1 and 2 page 3. Case properly struck out. Order 18 rule 1 non appearance by Plaintiff.

President. Court will assume case struck out for non appearance page 1. Date of writ 31.5.38.

Page 32 Governor approved 16.8.38.

Application to relist if leave granted (page 5 line 22) on 15.9.47.

Application made 8.6.47 (p. 3) under Order 40 rule 6. No time limit under O. 40 r. 6 but submit regard should be had to time re appeal *Ogundare v. Olorunfunmi*. 6 N.L.R. 110 at 112 grounds 4 and 5 page 18 line 18. 10

Power of review Supreme Court Rules O. 47 r. 1. Judge may review judgment given by *him* and application for review must be made within 14 days.

No power of review under present Supreme Court Rules 3/1947 April, 1947. Judgment delivered 1948 i.e. when Judge had no power of review, page 16 lines 17-22. I say Pearson's, J., was an order of the Court which if not appealed against (which it was not) could not be set aside refers to Pearson's order page 33. Submit Certificate of Purchase was an Order against which Defendant (Agbeyegbe) could have appealed.

Supreme Court Ordinance 23/1943 page 951 judgment includes decree 20 order includes rule.

Protectorate Court Rules O. 33 r. 6. Execution should be regulated by Supreme Court Rules. Supreme Court Rules (old) O. 45 r. 27 and r. 34 Heading is "Sales in execution of decrees." Certificate of Pearson ancillary to order of Jackson.

59 L.J. Q.B.D. 556 *Onslow v. Inland Revenue* at 557 judgment and order of.

Defendant could have obtained leave to appeal from Pearson's J. order but did not do so or obtained leave to review up to 1946 or could have brought action to set aside the order. 30

O. 45 r. 31 provides such action must be brought within 21 days from date of sale page 31 on 27.5.38 is sale by sheriff.

O. 45 r. 32. If application not made sale deemed absolute. Judgment page 15.

If date of Sheriff's sale is taken as date of sale Defendant would be in time.

But he would not if date of Governor's approval. Chapter 84 paragraph 11. No sale of Court without Governor's approval. Affidavit page 4 para. 8 Plaintiff knew Defendant on land in 1938 yet took no action for 9 years. Page 4 para. 9 unconvincing reason for delay. O. 4 r. 2 old Supreme Court 40 Rules allows for extension of time. Until extension obtained Rhodes had no jurisdiction. O. 45 r. 31, 32 are conditions precedent to bringing action to set aside sale. Plaintiff made investigations in Warri 1942, but took no action until 1948 (p. 6). Judgment page 16 line 24.

O. 45 r. 31, 32 and 34 answer.

Adjourned.

Friday the 5th day of November, 1948

Parties as before.

TAYLOR (resumes) : Benjamin on Sale 7th Edition page 93. Sale was subject to condition. Formation of contract suspended until condition. Page 579 Conditions precedent or subsequent. Submit in present case condition precedent i.e. no sale until Governor's consent given.

10 Ground 7 O. 45 r. 31 Supreme Court Rules (old) must prove irregularity and also that substantial injury arose through result re irregularity page 7 lines 11-13, re injury page 7 line 2. £2,000 offers not XX 3 but Defendant unrepresented.

Why did not these would-be purchasers attend the sale? Gazette Notice 1938 page 305 gave date 21 April and place of auction. 2nd notice 28 April page 322. Notice 595. Sale in fact took place as advertised page 31 line 37. Debtor could have paid off the debt before sale held. If there were more than one willing to pay £2000 they would bid page 7 line 2 they were waiting. Judge refers to one offer only page 15 line 40 Plaintiff did not attend the sale.

20 *Power v. Reeves* 130 Rev. Rep. 349. Party delayed until after conveyance. H.L. precluded by statute from giving relief. 40 Emp. Digest page 64 note (h) Loss of right by delay "Where irregularity occurred re advertisement but no injury ensued."

Cwyley v. Colbert 2 Ca. page 455 record page 16 last paragraph page 33. All that was sold was right title and interest of Plaintiff. Writ page 1 amended page 8. Judgment etc. spoke of sale of land but Plaintiff had only right of occupancy.

8 W.A.C.A. 176 at 179.

30 Sum up (1) Judge wrong in relisting after 9 years. (2) After 21 days without application to set aside sale it becomes absolute r. 45. 2. no extension granted so Respondents out of Court. (3) Any injury was not as result of irregularity but because Court ordered public auction not private sale.

Thomas : re delay. Writ issued 4 days after sale. It was struck out. C.J. impressed by Wright.

No time limit for re-listing.

Privy Court Practice Bentwich 189 Rajah Deedar Hossein. Applicant estopped from raising point re irregularity. Spencer Bewer Estoppel 233 end (last 4 lines) 234 *Andrews v. Elliot* 235 237.

By COURT : Counsel appeared for Defendant at page 11 but did not object to undue delay.

40 Re absoluteness of sale. Consent of Governor not necessarily condition subsequent.

Date of sale is the date the Sheriff sold as Governor's consent might be given before or after.

Monday the 8th day of November,

Parties as before.

THOMAS (resumes) : re sale being absolute after 21 days. O. 45 r. 32 (old) "Shall be deemed absolute." "Deemed." Stroud 2nd Edition 487.

In the West African Court of Appeal.

No. 19. Court Notes of Arguments. 4th, 5th and 8th November, 1948 - continued.

In the West African Court of Appeal.

No. 19. Court Notes of Arguments. 4th, 5th and 8th November, 1948—*continued.*

1896 2 Ch. *Young v. South African and Australian Exploration and Development Syndicate* 268 at 275 meaning of "conclusive." Fact that no application before the Court does not make sale absolute. There being no time limit for challenging validity of sale, date of Governor's consent not so important.

Certificate of purchase is not order of Court which was that property be sold. No right of appeal provided re Certificate of purchase therefore fact that Plaintiff did not appeal does not shut him out. He can bring action within reasonable time and this is within discretion of trial Judge. Respondent did not object to Judge exercising jurisdiction so are now estopped from objecting. They waited to take benefit of judgment of trial Judge. Re irregularities of sale. Question of fact for trial Judge O. 45 r. 31 "proved to satisfaction of Court" means the Court below. 10

Neither the £2,000 bidders nor Plaintiff attended because if no 3rd notice natural for them to conclude sale cancelled.

Whether something is an irregularity is a question of law but whether it be "sustained substantial injury" is question of fact for trial Judge exclusively.

Verity refers to £150 in para. 2 of Statement of Claim.

Thomas a careless statement should not prejudice Plaintiff. Practice is for Court to order difference in Court fees. Amount of injury is difference between what was paid at auction and what could have been obtained, viz., £2,000. 20

Verity. The £2,000 man might get it for £685. Delay should not operate, even as a factor in deciding whether substantial injury sustained. Where case relisted original date of action stands. Therefore as case relisted there was no delay. Date of Sheriff sale is the date of sale. Date of Certificate not date of sale because it refers to purchase at Sheriff's sale. Certificate of purchase bad because made within 7 days of date of sale page 33.

Nelson-Williams in reply. Certificate does not arise as objection is irregularity by omission of 3rd publication in Gazette. Certificate merely evidence of title. 30

Page 4 line 31. Appellant on land since 1938 but Respondent did nothing. "Shall be deemed." There is a time limit within our Rules but not in the Companies Act therefore *Young v. S.A.* distinguishable. Appeal Court can look into facts. 1 N.L.R. page 36.

Re value of land. Respondent puts it at £150 page 1. He got £680, so why complain? He did not attend auction. Page 31 List of bidders including G. B. Ollivant. No requirement that would-be purchasers must get Governor's consent in advance. 40

Judgment reserved.

No. 20.
Judgment.

In the West
African
Court of
Appeal.

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

Friday the 26th day of November, 1948.

Before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, K.C.,
President ; Sir JOHN VERITY, Chief Justice, Nigeria ; ARTHUR WERNER
LEWEY, K.C., Justice of Appeal.

No. 20.
Judgment.
26th
November,
1948.

W.A.C. 2869.

Between

10 JOHN OJOB0 AGBEYEGBE *Plaintiff-Respondent*
and
1. F. O. AMARAH
2. FESTUS MAKENE IKOMI *Defendants*
Re FESTUS MAKENE IKOMI *Defendant-Appellant.*

JUDGMENT.

(Delivered by Sir JOHN VERITY, C.J.)

Verity, C.J.

This is an appeal from a judgment of Rhodes, J., declaring to be a nullity the sale by the Deputy Sheriff of certain land the property of the Respondent.

20 The facts are that on the 30th December, 1937, the Court ordered the sale of the land in an action in which the Respondent was judgment-debtor. The order provided that notice of the sale should be published in three consecutive issues of the Nigeria Gazette. The notice was published twice only, but nevertheless on 27th May, 1938, the land was sold at public auction to the appellant. On 31st May, 1938 the Respondent brought action to set aside the sale, but on 7th July, 1938 when it came on for hearing the Respondent did not appear and the action was struck out.

30 On 8th June, 1947, nine years later, the Respondent moved the Court for leave to re-list. The motion came on for hearing on 15th September, 1947. The Respondent and the Appellant together with a co-defendant appeared in person, and, as would appear from the record, leave was granted without argument on either side. The case was relisted and came on for hearing on 18th December, 1947, the Respondent being represented by Counsel but the Appellant and his co-defendant again appearing in person. After the Respondent had given evidence, leave was asked to amend the writ. This was opposed by the Appellant, but leave was granted and the hearing adjourned *sine die*. At the resumption of the hearing on 16th March, 1948, Counsel appeared on behalf of the Appellant for the first time. The hearing was concluded on 25th March, 1948, and judgment delivered on
40 2nd April, declaring the sale a nullity.

In the West
African
Court of
Appeal.

No. 20.
Judgment.
26th
November,
1948—
continued.

There are several grounds of appeal, the first being that the learned Judge erred in relisting the case and in allowing an amended claim to be filed nine years after the original claim had been struck out. I must confess some surprise that the case should have been re-instated after so long a delay and upon the inadequate grounds set out in the Respondent's affidavit, but the issue before us is not whether we should have exercised our discretion in like manner, but whether the learned Judge exercised his discretion properly and whether, if not, this Court now has power to intervene and allow the appeal on this ground.

Leave to re-list appears to have been granted under Order XL rule 6 10 of the Supreme Court (Civil Procedure) Rules 1945, which provides that

“ any cause struck out may, by leave of the Court, be replaced on
“ the cause list on such terms as to the Court may seem fit.”

It is to be observed that this rule prescribes no time limit within which application for leave is to be made. The English rule most nearly analogous (Order XXXVI rule 33 R.S.C.) requires that application should be made within ten days (until 1940, within six days). Under Order LXIV rule 7 R.S.C. however the Court may in its discretion enlarge the time. While there is no time limit fixed by the local rule it is obvious that the granting of leave is not as of course, but is in the discretion of the Judge, a discretion 20 which must not be exercised arbitrarily but judicially, “ according to the rules of reason and justice ” (as was said in *Rooke's case* so long ago as 1598 and approved by Lord Halsbury, L.C. in *Sharp v. Wakefield* (1891) A.C. 173). In the exercise of this discretion the Judge is to take into consideration all the circumstances, including such questions as the extent of the delay in making the application, the reasons therefor, the nature of the claim and the effect of granting leave upon the rights of the other party. It is clear that in the present case the learned judge either failed to consider or disregarded these factors when he exercised his discretion in favour of the Respondent. The delay of nine years upon grounds which as set out in the affidavit 30 supporting the motion are patently inadequate, the fact that the suit affected the ownership of land, to which the Appellant had acquired a certificate of title and in undisturbed possession of which he had remained for many years—these are factors to which due consideration should have been given and which should not have been lightly disregarded. Regard should have been had, moreover, to the fact that under the Rules of Court in force at the date of the sale (Order XLV rules 31 & 32. Cap. 3) and that statute in force at the date when leave was sought (The Sheriffs and Enforcement of Judgments and Orders Ordinance 1945, Sections 46 and 47) purchasers at execution were and are protected against delayed actions to set aside sales 40 for irregularity, by the requirement that applications to set aside such sales must be made within 21 days, and that if no such application be made within the prescribed time the sale shall be deemed absolute. Whatever may be the meaning of the word “ sale ” in the present case and no matter what distinction may be drawn between the words “ shall be deemed

“ absolute ” and “ shall be absolute ” (about which we have heard much argument) there can be no doubt that by the order of the Court granting leave to re-list this case the Appellant has been deprived of the protection which the legislature intended to afford him.

In my view then, the learned Judge erred in exercising his discretion in favour of the Respondent in that he did not apply his mind to the proper considerations or else did not give effect to the rules of reason and justice applicable thereto.

10 It was submitted, however, on behalf of the Respondent that, even if the learned Judge should not have granted leave to re-list, this Court cannot give any relief in the present appeal inasmuch as such leave was not opposed by the Appellant at the time and no appeal was brought from the order granting it.

20 It is true as was held in *London S.S., etc., Corporation v. Russian Volunteer Fleet* (1926) W.N. 193, that any objection that such an application was out of time must be made at the earliest possible moment. It must be remembered, however, that the Appellant was not at the material time represented by Counsel and that the circumstance of so belated an application was so extraordinary that the Court itself should have given due consideration to the facts and to the principles upon which its discretion was to be exercised, and should have refused leave even in the absence of opposition, which could not in the circumstances be held to have operated as consent. It would be monstrous to allow the Respondent to sleep on his rights for nine years and yet penalise the Appellant because, not being represented by counsel, he did not raise objection “ at the earliest possible moment ” in a literal sense.

As to failure to appeal against the order, we think that this is covered, in the circumstances of this case, by Rule 30 of the West African Court of Appeal Rules which provides that

30 “ No interlocutory order from which there has been no appeal shall operate so as to bar or prejudice the Court from giving such decision on the appeal as may seem just.”

As was said by Jessel, M.R., in *Laird v. Briggs*, a case in which liberty to appeal out of time from an interlocutory order was sought after notice of appeal from the judgment had been given.

“ As you have appealed from the whole judgment the whole case will be open on the appeal.”

40 It must not be thought that in no circumstances will failure to appeal against an interlocutory order bar an appellant from raising an issue which should have been dealt with by appeal from an interlocutory order for, as was said by James, J., in *White v. Witt* (5 Ch. D.589) in relation to the similar English rule (order LVIII rule 14) :

“ It was never intended that an interlocutory order which amounts to a finding or verdict, should be open to appeal after the twenty-

In the West African Court of Appeal.

No. 20.
Judgment.
26th
November,
1948—
continued.

In the West
African
Court of
Appeal.

“ one days, because the time for appeal from the final order founded
“ on it has not expired.”

No. 20.
Judgment.
26th
November,
1948—
continued.

Jessell, M.R., in the same case said :

“ This rule was only intended to prevent the right of appeal
“ from being interfered with by the existence of an interlocutory
“ order which incidentally involved a decision of the point.”

The present case, however, clearly falls within that intention and to hold otherwise would be to defeat the purpose of the rule. The interlocutory order does not amount to a finding or verdict, but upon its validity the whole of the subsequent proceedings including the final judgment must stand or 10 fall.

In holding that the appeal must succeed I am not unduly impressed by the view of the learned Judge in the Court below that the case “ revealed before him a case of gross miscarriage of justice ” for I am at a loss to understand how, upon the vague and extremely unsatisfactory evidence before him, he can have held that by reason of the irregularity in the conduct of the sale the Respondent sustained substantial injury.

In my opinion, the appeal should therefore be allowed, the Order of the Court below granting leave to replace the cause on the cause list and consequently all proceedings thereafter should be set aside and judgment 20 entered for the Appellant in the Court below with costs. The Appellant should have his costs of this appeal.

(Sgd.) JOHN VERITY,
Chief Justice, Nigeria.

Blackall, P.

BLACKALL, P. : I have the advantage of reading my brother Verity’s judgment. I find myself in entire agreement with it and have only this to add. The learned trial Judge has stated that the Respondent gave evidence that he had been offered £2,000 for the property, but that the offerer and offeree were waiting for the third publication in the Gazette. From this it would appear that he was under the impression that the Respondent had 30 one such offer only. But in fact the Respondent said : “ I had offers of “ £2,000 made to me for the purchase of the land but they were waiting for “ the completion of the Gazette notices.” Had the learned Judge realised this he might not have been so ready to accept without corroboration the inherently improbable story put forward by the Respondent. He might have enquired who these anonymous gentlemen were, and why, if they were prepared to pay nearly three times the price obtained at a brisk auction sale, they were not sufficiently interested to attend the sale themselves. He might also have enquired whether any of these would-be purchasers 40 subsequently approached the Appellant with a view to a re-sale. Seeing that they were willing to pay a price so greatly in excess of what he had paid for the property, they were in a position to make him a very tempting offer—one which he would hardly have refused at that time. During the

nine years that have elapsed since the sale, property values have however risen considerably, and it well may be that at the present time the Respondent could obtain a higher price than it was sold for in 1937. This offers a possible clue to the present belated proceedings.

(Sgd.) H. W. BLACKALL,
President.

LEWEY, J.A. : I concur and have nothing to add.

(Sgd.) ARTHUR LEWEY,
Justice of Appeal.

In the West African Court of Appeal.

No. 20.
Judgment.
26th
November,
1948—
continued.
Lewey, J.A.

- 10 ORDER : Appeal allowed. Order of the Court below granting leave to replace the cause on the cause list and proceedings in the Court below subsequent thereto set aside. Judgment entered for the Defendant in the Court below with costs fixed at 25 guineas. The Appellant to have his costs of the appeal assessed at £31 4s. 9d.

(Sgd.) H. W. BLACKALL,
President.

No. 21.

Order Granting Conditional Leave to Appeal to H.M. Privy Council.

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

20

W.A.C. 2869.
Suit No. W/10/1948.

No. 21.
Order
granting
Conditional
Leave to
Appeal to
H.M. Privy
Council.
20th April,
1949.

Between

JOHN OJOBO AGBEYEGBE *Plaintiff-Respondent-Appellant*

and

1. F. O. AMARAH
2. FESTUS MAKENE IKOMI *Defendants*

In re FESTUS MAKENE IKOMI *Defendant-Appellant-Respondent.*

(L.S.)

(Sgd.) H. W. B. BLACKALL,
President.

- 30 IT IS HEREBY CERTIFIED that on the 20th day of April, 1949, the West African Court of Appeal sitting at Lagos, Nigeria, Ordered that leave to appeal to His Majesty's Privy Council be granted to the above-named Plaintiff-Respondent (now Appellant) upon the conditions following :—

1. That the Appellant do pay into Court within three months a sum of £25 for the preparation and despatch of records.

In the West
African
Court of
Appeal.

No. 21.
Order
granting
Conditional
Leave to
Appeal to
H.M. Privy
Council.
20th April,
1949—
continued.

2. That the Appellant shall within three months enter into a bond for £500 with two sureties to be approved by the Solicitor for the Respondent (formerly Appellant) for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the appeal.
3. Stay of execution refused. Costs £31 4s. 9d. to be paid into Court to abide result of appeal.
4. That the Appellant do give notice of the appeal to the Respondent within three months.

10

Given at Lagos, Nigeria, under the Seal of the Court and the hand of the President this 20th day of April, 1949.

(Sgd.) J. A. SMITH,
Acting Deputy Registrar.

No. 22.
Order
granting
Final Leave
to Appeal
to H.M.
Privy
Council.
28th July,
1949.

No. 22.

Order Granting Final Leave to Appeal to His Majesty's Privy Council.

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

W.A.C.A. 2869. 20
Suit No. W/10/1948.

Between

JOHN OJOBO AGBEYEGBE ... *Plaintiff-Respondent-Appellant*
and
1. F. O. AMARAH ...
2. FESTUS MAKENE IKOMI ... *Defendants*
In re FESTUS MAKENE IKOMI ... *Defendant-Appellant-Respondent.*

(L.S.)

(Sgd.) JOHN VERITY,
Presiding Judge.

IT IS HEREBY CERTIFIED that on Thursday, the 28th day of July, 30 1949, the West African Court of Appeal sitting at Lagos, Nigeria, Ordered that Final Leave to appeal to His Majesty's Privy Council be granted.

Given at Lagos, Nigeria, under the Seal of the Court and the hand of the Presiding Judge, this 28th day of July, 1949.

(Sgd.) W. H. HURLEY,
Acting Deputy Registrar,
West African Court of Appeal.

Exhibits. " D.1."—Certified Copy of Courts Order in Suit W/22/37—Amarah vs. Agbeyegbe.

" D.1." Certified Copy of Court's Order in Suit W/22/37—Amarah vs. Agbeyegbe. 18th March, 1938.

PROTECTORATE OF NIGERIA.

IN THE HIGH COURT OF THE WARRI JUDICIAL DIVISION HOLDEN AT WARRI.

Before His Honour JOHN JACKSON, Assistant Judge, Friday, the 18th day of March, 1938.

Suit No. W/22/1937.

F. O. AMARAH Plaintiff 10
versus
 J. O. AGBEYEGBE Defendant.

Application made by Mr. Shuel, Superintendent of Police, Warri for directions regarding the publication in the Nigeria Gazette of a Notice of sale in respect of Crown Lease No. 54. I do not understand what business it is of the Sheriff in Lagos to query the Order made by the Court on the grounds set up by him as stated in his memorandum No. 077/X/852 of the 28th January, 1938, handed to me by the Deputy Sheriff, Warri.

Capt. Austin has proceeded on leave and I do make the following amendment to the Order dated the 30th December last, i.e. by deleting the words " Capt. J. B. G. Austin " and substituting therefore the words 20 " Mr. Ronald Stuart Shuel."

A copy of this minute and Order to be sent to the Deputy Sheriff, Warri.

(Sgd.) J. JACKSON,
Asst. Judge at Warri.

Certified true copy. 18.3.1938.
 (Sgd.) A. S. OCONOR WILLIAMS,
Registrar.

" D.2."—Letter, Sheriff to Chief Secretary to the Government.

" D.2." Letter, Sheriff to Chief Secretary to Government 1st April, 1938.

077/X/869. 1st April, 1938. 30

The Honourable
 The Chief Secretary to the Government,
 Lagos.

FRANK O. AMARAH vs. JOHN OJOBO AGBEYEGBE.

In accordance with a request received from His Honour the Assistant Judge of the High Court of the Warri Judicial Division, I have the honour

to ask that the attached Notice be published in three consecutive publications of the Nigeria Gazette.

(Sgd.) T. H. WILSON,
for Sheriff.

No. 077/X/869a.

1st April, 1938.

Copy :

The Deputy Sheriff, Warri.

For your information with reference to your letter No. W.B.
10 72/2/Vol.8/769 of 19th January, 1938.

(Sgd.) T. H. WILSON,
for Sheriff.

Exhibits.

“ D.2.”
Letter,
Sheriff to
Chief
Secretary
to Govern-
ment.
1st April,
1938—
continued.

“ D.3.”—List Showing Bidders.

AUCTION OF PLOT AT OGBE IJOH.
AMARAH *versus* AGBEYEGBE.

Held at Police Office at 10 a.m. on 27th May, 1938.

BIDDERS.

Tom Eshepe—£120(4), £280(9).

J. A. Obahor—£100(2), £250(7), £350(12), £400(14), £470(17), £520(19),
20 £550(21), £600(24), £610(26), £630(28), £640(30), £650(32), £670(34).

F. M. Ikomi—£200(6), £300(10), £380(13), £450(15), £500(18), £530(20),
£580(23), £605(25), £620(27), £635(29), £645(31), £660(33), £680(35).

Mr. Racine (Representing G.B.O. Ltd.)—£150(5), £310(11).

R. C. M. Asimah—£110(3), £260(8), £460(16), £560(22).

H. O. Hameed—£10(1).

(Sgd.) RONALD SHUEL, SP
Deputy Sheriff,
Warri, 27.5.38.

“ D.3.”
List
Showing
Bidders.
27th May,
1938.

“ D.4.”—Letter, Deputy Sheriff, Warri to the Resident, Warri Province.

30

Deputy Sheriff,
Warri.

W.B. 478/57.

30th May, 1938.

The Resident,
Warri Province, Warri.

AMARAH *versus* AGBEYEGBE.

Sale of Defendant's land.

Reference—Your letter No. W.P.2663/74 dated 26th May, 1938.

I have to inform you that the sale of the above mentioned land took

“ D.4.”
Letter,
Deputy
Sheriff
Warri to
the
Resident,
Warri
Province.
30th May,
1938.

Exhibits.
 "D.4."
 Letter,
 Deputy
 Sheriff
 Warri to
 the
 Resident,
 Warri
 Province.
 30th May,
 1938—
continued.

place at the police office, Warri, on 27th instant at 10 a.m. and was conducted by me.

2.—Mr. F. M. Ikomi was the highest bidder and the amount £680 received from him has been deposited to Treasury in favour of the Registrar, High Court, Warri, against Treasury Receipt No. C254103/254 dated 28th May, 1938.

3.—The instructions contained in your letter under reference were complied with before the sale and the provisions of section 11 of the Crown Lands Ordinance, Cap. 84 were read and explained to the prospective purchasers. 10

4.—The particulars of the auction, giving the names of the bidders and the amounts bid are attached for your information. The figures in brackets indicate the order of bids.

(Sgd.) ?
Deputy Sheriff,
 Warri.

"P.2."
 Certified
 Copy
 Proceedings
 Suit
 W/10/1938.
 7th
 July, 1938,

"P.2."—Certified copy Proceedings on 7th July, 1938.

(See No. 3 on page 3.)

(Not reprinted.)

"D.5."
 Letter.
 Acting
 Resident,
 Warri
 Province
 to Local
 Authority,
 Warri.
 16th
 August,
 1938.

"D.5."—Letter, Acting Resident, Warri Province to Local Authority, Warri. 20

The Local Authority,
 Warri.

W.P. 2663/97.
 16 August, 1938.

Mr. J. O. AGBEYEGBE : Land held on Deed of Lease D.21 Vol. IV sold by order of Government and purchased by Mr. F. M. Ikomi.

With reference to your letter No. W.T. Lands/501/Vol. I/S.902/61 of the 6th August, I have to inform you that the purchaser has been approved under Section 11 Chapter 84 of the Laws of Nigeria.

2.—Please inform Mr. F. M. Ikomi accordingly.

(Sgd.) E. N. MYLIUS, 30
Acting Resident,

Warri Province.
 No. W.P2663/97.
 Warri, 16 August, 1938.

Copy to :
 The Deputy Sheriff,
 Warri.

For Information.
 (Sgd.) E. N. MYLIUS,
Acting Resident,
 Warri Province.

“ P.5.”—Copy of Certificate of Purchase.

Exhibits.

This is to certify that the within is a true and correct copy of a Certificate of Purchase dated 22nd August, 1938, and registered as No. 21 at page 21 in Volume 550 of the Register of Deeds kept in the Lands Registry, Lagos, Nigeria.

“ P.5.”
Copy of
Certificate
of Purchase.
22nd
August,
1938.

(Sgd.) J. J. HUNTER,
Deputy Registrar.

No. 21. Volume 550. Page 21.

Protectorate of Nigeria.

10 Certificate of Purchase of Land.

IN THE HIGH COURT OF THE WARRI JUDICIAL DIVISION.

No..... Suit No. W/22/1937.

Between

F. O. AMARAH Plaintiff

and

JOHN OJOB O AGBEYEGBE Defendant.

20 This is to certify that Festus Makene Ikomi of Alder's Town, Warri, has been declared the purchaser of the right title and the interest of John Ojobo Agbeyegbe the above named Defendant in the land, messuages, and tenements hereinafter mentioned ; that is to say :—

All that parcel of land situate at Ogbe-Ijoh in the Warri Province containing an area of 4,465.66 square yards registered as No. 54 at page 300 in Volume 176 of the Register of Deeds kept in the Lands Registry at Lagos, Nigeria.

which said land, messuages and tenements were sold in execution of a decree in the above suit by order of this Court dated the 30th day of November, 1937, and 30th December, 1937.

Dated at Warri the 22nd day of August, 1938.

(Sgd.) C. B. PEARSON,
Assistant Judge.

30

Fee :—£7.
£680.

Approved the 19th day of September, 1938.

(Sgd.) H. F. M. WHITE,
Acting Chief Commissioner,
Southern Provinces.

Exhibits.
 " P.5."
 Copy of
 Certificate
 of Purchase.
 22nd
 August,
 1938—
continued.

The above endorsement is dated the 19th of September, 1938, but His Honour in fact approved Mr. Ikomi as purchaser on the 15th of August, 1938, page 68 in File W.P.14804 and this approval was conveyed to Resident by Telegram No. 4179/W.P. 14804 of the 15th of August, 1938.

(Sgd.) E. N. MYLIUS,
*Acting Secretary,
 Southern Provinces.*

By Virtue of the power conferred on him under section 27 of Ordinance No. 36 of 1924, His Honour the Chief Commissioner has exempted this Instrument from the payment of the additional fee imposed by the Second 10 Schedule of Ordinance No. 36 of 1924, section 1(a)(ii).

(Sgd.) E. N. MYLIUS,
*Ag. Secretary,
 Southern Provinces,
 27.3.1939.*

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with a duty of Seven Pounds and the duty thereon has been assessed accordingly.

This Instrument is duly stamped.

(Sgd.) J. M. PRYDE, 20
*Commissioner of Stamp Duties,
 Sub-Treasurer, Enugu, 25.11.38.*

Treasury	Treasury	Treasury
25 Nov., 1938	25 Nov., 1938	25 Nov., 1938
Enugu	Enugu	Enugu
Nigeria	Nigeria	Nigeria
Five Pounds	One pound	One pound
Stamp Duties	Stamp Duties	Stamp Duties
	6682	

This Instrument was delivered to me for registration by The Com- 30 missioner of Lands at 9.25 o'clock in the forenoon this 17th day of September, 1940.

(Sgd.) J. J. HUNTER,
Deputy Registrar.

Registry of Deeds, Lagos, Nigeria.

This Instrument is registered as No. 21 at page 21 in Volume 550 of the Lands Registry in the Office at Lagos.

(Sgd.) J. J. HUNTER,
Deputy Registrar. 40

Certified true copy.

(Sgd.) J. J. HUNTER,
Deputy Registrar.

" P.6."—Copy of page 29 of Register of Land Deeds.

Exhibits.

Lessor	Lessee	Division	Place	Area	Rent	Date of Exe.	Term of years	Date of Revision
Govt.	John Ojobo Agbeyegbe	Warri	Ogbe-Ijoh	4465.66	£1	19.9.25	60 yrs.	1945, 1965 Every 20 years 19.9.45

" P.6."
Copy of
page 29 of
Register of
Land
Deeds.

(Contd.)

Vol.	No.	Page	Serial No.	Minute papers	Remarks.
10 176	54	300	D21.	Sect. C/L A12B4/23 191/2B	W474/1923 cancels lease dated 11.2.25 Regd. No. 41 P222 Vol. 176 Entd. D 16 Vol. IV Warri II Sub-leased to Gartner Gopfert & Rochholt A.G. by deed dated 1/8/26 Regd. at Lagos as No. 41 p. 41 Vol. 200 entd. as No. D(b) 3 Vol. 1 Warri.

" P.4."—Proceedings in Suit No. W/178/38—F. M. Ikomi vs. J. A. Obahor.

" P.4."
Proceedings
in Suit No.
W/178/38—
F. M.
Ikomi vs.
J. A.
Obahor.
21st
September
and 19th
October,
1938.

20 In the Magistrate's Court holden at Warri this 21st day of September, 1938, before His Worship W. K. D. MACRAY, ESQ., Magistrate Limited Powers.

W/178/38—F. M. IKOMI *versus* J. A. OBAHOR.

Claim :—£15 6s. 7d. being amount of house rent collected by Defendant from tenants residing in Plaintiff's houses from 27.5.38 to 20.8.38.

30 Plaintiff, FESTUS M. IKOMI, sworn on the Bible states on 27th May, 1938, I bought a piece of land formerly belonging to John Agbeyegbe in a public auction in Suit No. W/22/37 High Court F. O. Amarah *versus* J. O. Agbeyegbe for a sum of £680 under a writ of Fi Fa. This amount was immediately paid as soon as I was declared the purchaser by the Deputy Sheriff at 10.30 a.m. I was told by the Deputy Sheriff that the Governor's approval of the sale must be sought. I made the application through the Resident immediately. The Deputy Sheriff sent the Bailiff and a Police Corporal at once to go to

Exhibits. the plot with me to announce to the former owners tenants that I had bought
 " P.A." the property and that any rent collected from that date must be kept in
 Proceedings on Agbeyegbe's plot in question and paid no rent for the site but drew rent
 in Suit No. W/178/38— from a tenant who resided in the house. I received an information through
 F. M. the Local Authority on 16th August that the sale had been approved. I
 Ikomi vs. J. A. have applied through the Resident for the ante dating of the approval to
 Obahor. the date of the sale—27th May, 1938. I have received no reply as yet.
 21st
 September and 19th
 October, 1938—
continued.

Q. By Asifo Egbe Counsel for Defendant. Are you aware that Defendant paid £200 to Agbeyegbe for this house?—*A.* Yes, I heard it and agree that the Defendant received the houses in lieu of the loan of £200 mentioned in this agreement (Exhibit " A "). 10

Q. Are you aware that what you bought was Agbeyegbe's interest in the plot no more and no less?—*A.* I am aware of it.

Q. Did you tell Defendant that the property was yours and all rents must be paid to you?—*A.* No. But the Deputy Sheriff did so.

Q. Were you aware that the houses were handed over by Agbeyegbe to Defendant absolutely to enable him to recover the loan by collecting the rents?—*A.* No. I was not aware of it. I understood that Defendant built the houses himself on Crown land which was illegal. 20

Q. You did not go into occupation on May 27th?—*A.* No. I went on receipt of the Governor's approval on August 16th. I was told by the Deputy Sheriff that I could not take possession until the Governor's approval was received but that my title would date from the date of the sale.

Q. Have you a lease?—*A.* Not yet, there has not been time.

Witness for Plaintiff. UMUKORO sworn on the Bible states:—I have a house on the plot formerly belonging to J. O. Agbeyegbe. It was built by him and pledged to me as security for a £185 loan. Some people used to store Gari there and pay me rent. I now hand over that rent to Plaintiff: although I have not recovered my £185. 30

Q. Were you present at the auction?—*A.* No.

Q. How long after Plaintiff bought the plot did he tell you of it?—*A.* 3 days.

Q. When did you start to pay rent to the Plaintiff?—*A.* I paid 10/- one month—and I have paid £2 10s. and have now handed the house over to him. I paid over £1 which was paid to me in each for the next two months.

Q. Why did you not hand over the house when Plaintiff said he had bought it?—*A.* I wrote to the Deputy Sheriff to find out if the Plaintiff had really bought it—this was before the sale. I did not hand it over because I did not know if the information was true. 40

Adjourned to 19.10.38.

Resumed 19.10.38.

RONALD S. SHUEL, Supt. of Police, Warri., sworn on the Bible, states. On 27th I conducted a sale of property of a plot at Ogbe Ijoh, Warri.

The provisions of Section II of the Crown Lands Ordinance were read to the persons present, Tom Etsekpe, J. A. Obahor, F. M. Ikomi, Mr. Ruine representing G. B. Ollivant & Co., R. C. M. Amarah and A. O. Hamed. The provision of the section mentioned were read over three times by me and it was mentioned that the plot will not become the property of the highest bidder until the approval of the Governor to that bidder as new owner was obtained. I do not recollect that I was asked what was the position with regard to the payment of any rents in the interview, if I was asked I certainly gave no advice on the matter.

10 Q. Did you pay any money?—A. Yes. £680 paid on deposit pending the Governor's approval to the sale.

Q. Does it state on the Deputy Sheriff's receipt that the money was paid on deposit?—A. It stated that it was the money realised on the sale of the plot.

The Court finds that the provision of section II Cap. 84 L. of N. were complied with and that it was made clear to the Plaintiff at the time of the sale that until such time as the Governor's approval of the sale was received he had no title to the land or property and could not therefore claim any rents accruing therefrom. The Plaintiff applied for the ante dating of the Governor's approval to the date of the sale and this was refused. The Plaintiff's claim in this case must therefore be dismissed and also in cases 20 No. 179/38 and No. W/180/38 are identical with this claim.

Three guineas costs awarded to Defendant.

(Sgd.) W. K. D. MACRAY,
Magistrate L.P.

19.10.38.

Certified true copy.

(Sgd.) D. SAGIEDE ODIGIE,
Registrar Grade II.

30

14 folios at 8d.—9s. 4d.
CR. No. C386527 of 7.2.47.

Exhibits.
—
"P.4."
Proceedings
in Suit No.
W/178/38—
F. M.
Ikomi vs.
J. A.
Obahor.
21st
September
and 19th
October,
1938—
continued.

In the Privy Council.

No. 3 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT
OF APPEAL.

BETWEEN
JOHN OJOBO AGBEYEGBE
(Plaintiff) Appellant
AND
FESTUS MAKENE IKOMI
(Defendant) Respondent
AND
F. O. AMARAH *(Defendant)*
Pro forma Respondent.

RECORD OF PROCEEDINGS

REXWORTHY, BONSER & WADKIN,
83/85 Cowercross Street,
London, E.C.1,
Solicitors for the Appellant.

A. L. BRYDEN & WILLIAMS,
53 Victoria Street,
London, S.W.1,
Solicitors for the Respondent FESTUS MAKENE IKOMI.