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19 FEB 1957  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council.

No. 15 of 1954.

45957

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL

BETWEEN

AKINOLA ADEFOLALU, the Alawe of Ilawe for  
himself and the people of Ilawe ... .. APPELLANT

AND

ALADESANMI II, the Ewi of Ado-Ekiti, for himself  
and the people of Ado-Ekiti and ADETOKUNBO  
ATOMOBASE ... .. RESPONDENTS.

CASE FOR THE APPELLANT

1.—This is an appeal from a judgment of the West African Court of Appeal dated the 18th May, 1953, dismissing the Appellant's appeal against a judgment of Jibowu, J. in the Supreme Court of Nigeria dated the 9th October, 1951, which dismissed the Appellant's claim for a declaration of title to a certain parcel of land between the town of Ilawe and Ado Ekiti in Ekiti Division, Ondo Province, Nigeria and damages for trespass on the said land committed by the Respondents through their people of Ado-Ekiti and an injunction to restrain such trespass.

RECORD  
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10 2.—The Appellant, who is hereinafter referred to as the Plaintiff, is the Alawe of Ilawe. As such he is the Head of the Ilawe people although whether his status is or is not that of a paramount ruler is in dispute. The 1st Respondent, who is hereinafter referred to as the 1st Defendant, is the paramount ruler of Ado-Ekiti. The 2nd Respondent who is hereinafter referred to as the 2nd Defendant, is a native of Ado-Ekiti.

3.—The principal grounds of appeal are as follows :—

- (a) The learned trial judge in arriving at a decision adverse to the Plaintiff relied upon certain records and documents which ought not to have been admitted in evidence.

RECORD

- (b) Even if the said records and documents were rightly admitted the learned trial judge was wrong in holding that they were of any evidential value against the Plaintiff.
- (c) The Plaintiff relied upon the existence of a boundary line between the land in dispute and the land belonging to the 1st Defendant and himself consisting of certain trees and heaps of stones. The learned trial judge, while correctly holding that if the Plaintiff could prove the said line he must succeed, further held that the Plaintiff and his people either discovered these trees or planted them and waited until they were fully grown to pass them off as a boundary line and for the same purpose placed the stones on the land. It is submitted that the learned judge was not entitled to arrive at such a conclusion since there was no evidence to support it and since no suggestion to this effect was made to the Plaintiff or to any of the witnesses called on his behalf. 10
- (d) The learned trial judge in arriving at his decision as aforesaid wrongly relied upon certain earlier proceedings in relation to the said land to which the Plaintiff had not been a party.

4.—By a Native Court summons dated the 18th June, 1949, the Plaintiff for himself and the people of Ilawe instituted 20

#### THE PRESENT SUIT

claiming—

p. 2

- (1) A declaration of title to all that piece and parcel of land situate and being between the town of Ilawe and Ado-Ekiti in Ekiti Division Ondo Province, Nigeria bounded on the first side by "Igbo Amadin" and on the second side by "Ile Pupa" on the third side by "Agbe," and on the fourth side by "Oke Isapa."
- (2) £100 being damages for trespass on the said land committed 30 by the Defendants through their people of Ado-Ekiti, and
- (3) An injunction to restrain such trespass.

On the 3rd December, 1949, pursuant to Section 25 (1) (c) of the Native Courts Ordinance the resident of Ondo Province ordered the transfer of the suit to the Supreme Court of the Benin Judicial Division.

p. 3, l. 20

By his Statement of Claim dated the 22nd July, 1950, the Plaintiff pleaded *inter alia* that he was the paramount ruler of Ilawe; that the 1st Defendant was the paramount ruler of Ado-Ekiti; that the 2nd Defendant was a native of Ado-Ekiti but claimed undefined portions of the land in dispute in his own right; that the land which was the subject 40 matter of this action was bounded on the west and south by the remaining land of Ilawe people, on the north and north-west corner respectively by

the lands of Igede and Ara people, on the east by the land of Ado-Ekiti people, and was shown more particularly defined in the survey plan attached and filed therewith edged in pink; that some centuries ago the first Alawe of Ilawe left Ile Ife with his mother and succeeded in discovering the present place now known as Ilawe and settled thereon; that the Alawe then appropriated to himself for the use and benefit of himself and his people an extensive area of ownerless and unoccupied forest land; that thereafter the Alawe and his people granted to the Head of Ado and his people absolutely a portion of the latter's land; that the boundary between the portion of land granted to the Ado people and the remaining land of the Ilawe people was marked by Peregun Trees, Atori Trees, Irosun Trees, and other prominent trees like Iroko, these boundary marks being shown along the violet-pink edge in the plan; and that from time immemorial when the original boundary was made, the Alawe and his people had been in exclusive possession of and had been and were still exercising rights of ownership over the whole land in dispute.

It was further pleaded that about 25 years ago the people of Igede (a town under Ado-Ekiti) wrongfully entered the land in dispute and that after repeated complaints by the people of Ilawe to the Authorities a District Officer was appointed to arbitrate between the Igede people and Ilawe people; that after both peoples had signed an undertaking consenting to such arbitration the District Officer had marked a boundary which followed the ancient boundary between the people of Ilawe and the people of Ado and that his boundary was marked by heaps of stones shown in the plan attached; that about 16 years ago the people of Ado-Ekiti and Igede and the agents, servants or those claiming through the second Defendant wrongfully entered the land in dispute and had attempted to evict by force the Ilawe farmers on the said land and had succeeded in some cases in expropriating such farmers and their cocoa or Kola farms, or of their farm holdings; and that these people continued to remain on the land in dispute in spite of incessant protests by the Alawe and his people.

By their Defence filed on the 1st September, 1950, the Defendants pleaded *inter alia* that the Plaintiff was by tradition the Bale or Village Head of Ilawe, a town traditionally part of Ado-Ekiti Kingdom and owing allegiance to the 1st Defendant as the Oba of Ado; that the Plaintiff was traditionally a member of the Ado Council and ranked 7th in seniority in Ado following after the other Village Heads; that the Plaintiff stood in the same relationship to the 1st Defendant as the other Village Heads of Ado Community; that the arbitration between Igede people and Ilawe people was made in 1933; that the alleged trespass by Igede people on the Ilawe's land was denied; that the Ilawe people committed trespass on the Igede land and that the Igede people sued and got judgment for damages and costs against the Ilawe people; that the second Defendant succeeded in all his land cases against the Ilawe people and that the people of Ilawe who remained on the second Defendant's land were regularly paying "Ishakole" and that was why they were still on the land.

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The defence also included the following paragraph :—

p. 7, l. 6

“ 10. The second Defendant pleads *res judicata* as he had  
“ been obtaining judgments against the present Plaintiffs over this  
“ same portion of Ado-Ekiti land.”

p. 11, l. 5

5.—The Plaintiff deposed that the Ado and Igede people had a common boundary with him which was marked by Iroko, Kola, Atori, Irosun and Peregun Trees which had been planted at a time beyond living memory. He further deposed that the Ilawe people were descendants of Oduduwa and migrated from Ife. One Oniwe was the wife of Oduduwa and begot Adegunle who was the mother of the Alawe. Oduduwa commanded Alawe 10 to go and found his own dominion at Ilawe. There was nobody at Ilawe when the Alawe got there. The descendants of the Alawe had been living on the land ever since. The Ewi was also a descendant of Oduduwa and left Ife after Alawe. In due course he arrived at Ado-Ekiti where he was given land by the then Alawe. A boundary was then marked between them about which he had already spoken.

The dispute about the land in question started during the time of the Plaintiff's father Afinbiokin who was exiled to Abeokuta about 26 years ago. From the time the boundary had been made up to the time Afinbiokin left no one troubled the Ilawe about the said land but since then 20 the Igede and Ado people had been disturbing them on the said land.

p. 12, l. 12

In cross-examination the Plaintiff denied that the Ilawe had any duty to perform to the Ewi. It was not the duty of the Alawe to wash the feet of the Ewi nor did the Alawe and his people build a portion of the Ewi's palace. The Ilawes had not acknowledged overlordship of the Ewi. His father did not acknowledge the Ewi as overlord. His father refused to acknowledge the Ewi's authority and bought crowns. He was tried on these charges, found guilty and fined. He continued to give trouble hence he was deported. The Plaintiff himself had assumed the Baleship of Ilawe without the knowledge and consent of the Ewi and was sent to jail 30 for six months and detained at Ado-Ekiti for 4 years after his discharge.

6.—The Plaintiff was further cross-examined as to the earlier proceedings referred to in paragraph 3 (d) hereof. These were as follows :—

p. 108, to  
p. 110

*Exhibit “ C.”*

This was an action in which an Igede farmer sued 3 Ilawes in the Native Court for damages for destroying cocoa and kola trees in the Plaintiff's farm at Oko Odo and recovered £20 plus 18s. costs. The decision was upheld on review by the District Officer and the Resident.

p. 123

*Exhibit “ D.”*

This was an action brought in the Ekiti Divisional Native Court on the 24th January, 1948, before the Ewi of Ado and

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7 Court Members in which the Akitipa of Odo sued 17 Defendants, 4 of whom were stated to be Ilawe, for damages for trespass on the Plaintiff's land on the Odo Igede boundary and cutting down trees and making farms without payment of Ishakole to the Plaintiff against the Resident's decision in the earlier proceedings No. 2/45 of 21/9/45. The 13th Defendant who gave evidence on behalf of the other 8 Defendants present admitted that the land in question was the land over which the decision of the Resident had been announced but they were not satisfied with the Resident's decision and affirmed that the land was theirs. The Court ordered each Defendant to pay £4 damages to the Plaintiff and thereafter regular Ishakole if they desired to continue their farms.

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*Exhibit " E."*p. 117 to  
p. 120

This was a further action in the Ado District Appeal Native Court on the 21st September, 1948, before the Ewi and Members of the Court. In this case the Akitipa of Odo sued 15 Ilawe Defendants for trespass on his farm land known as " Ahere-Isin " and " Agbeje Odo " by wrongfully entering and cutting down trees and making farms as from July 1945. In the course of these proceedings the Court called a Police Constable attached to Ado Native Court who gave evidence as follows :—

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" I am an E.N.A. Police Const. attached to Ado Native Court. On 17/9/45 I was detailed by the Court to accompany the Ado people to the place where it was alleged that the Ilawe people trespassed to their land and the Akitipa (Pltff.) sent five of his town chiefs to go with me on reaching the place the boundary made with Peregun trees were shown to me as far as to Oshun stream and also to Oruwo stream and in the boundary shown to me there I observed that the Defendants trespass to the Odo land and make new farms. I also found the new kola trees transplanted by the 8th Defendant on the land in dispute." Judgment was given for the Plaintiff for £24 damages and costs.

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*Exhibit " F."*p. 120 to  
p. 122

This was the record of the appeal to the Resident from the last decision. The Resident upheld the decision of the Court below with the proviso that he did not consider it appropriate in the course of this case to declare a boundary to complete the demarcation of the Ado-Ilawe boundary.

p. 122, l. 11

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*Exhibit " G."*p. 100 to  
p. 103

This was the record of an action brought in the Ado District Native Court on the 16th May, 1939, by the Akitipa of Odo against one Sam Oni of Ilawe for an order that the Defendant

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should quit the Plaintiff's father's farm land situated at Amugbadagbe Odo. Judgment was given for the Plaintiff with costs.

p. 103 to  
p. 105

*Exhibit "H."*

This consisted of the record of 3 Reviews made by the District Officer on the third of which leave was granted to Sam Oni to appeal out of time. It also included the record of the appeal to the District Officer. In the course of this appeal evidence was given as follows :—

p. 105, l. 12

" Sashere sworn on the matchet states : I was a member 10  
" in the case Sapetu of Odo Vs. Ojo of Ilawe and eleven others  
" No. 585/28 of 16/1/29 when the Defendants admitted that  
" they were on Odo land. I was also a member of the  
" subsequent case N.A. Vs. Sapetu of Odo No. 185/32 of  
" 5th October, 1933, I visited to demarcate the boundary  
" between Odo and Ilawe. We planted Peregun trees from  
" the point where the Ilawe paths crosses the river Oshun up  
" the stream towards the Oruwo river demarcating the  
" boundary between Odo and Ilawe.

" No questions by Defendant. 20

" Madarise s/s :—I was the Ewi's messenger and one of  
" those sent to demarcate the boundary between Odo and  
" Ilawe subsequent to the 5th October, 1933. We planted  
" the Peregun trees from the point where the Oshun river  
" crosses the Ilawe path down the Oshun stream for about  
" three miles to the Oruwo stream. I was sent out there  
" recently and saw the trees still there marking the boundary  
" between Odo and Ilawe."

The District Officer gave judgment as follows :—

p. 105, l. 30

" Judgment of Ado Court for Plaintiff for his land 30  
" upheld. The land in question is that enclosed by the  
" Oruwo Oshun and Agbeji streams. The Oshun stream  
" between its confluence with the Oruwo and Arige streams  
" is the boundary between Odo and Ilawe."

p. 106 to  
p. 107

*Exhibit "J."*

This was the appeal to the Resident from the aforesaid decision. In the course of his report on the case the Resident held that there was clear evidence that a boundary was made in case 585/28 between the Odo and Ilawe people and that this 40  
boundary ran from the point where the Oshun river crosses the Ilawe path down the Oshun stream to the confluence of the Oruwo stream. The resident held that the appeal was *res judicata* and the appeal was dismissed.

*Exhibit " K."*

RECORD

This was the record of proceedings in the Magistrate's Court at Ado-Ekiti on the 10th May, 1946. The case was settled on terms that the Defendant, one Atomeji agreed to pay £15 to the Plaintiff (the 2nd Defendant in the present proceedings) being six years' rent in arrears and the Plaintiff withdrew his claim for possession.

p. 113

*Exhibit " L."*

p. 125

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This was the record of proceedings in the aforesaid Magistrate's Court on the 18th February, 1948, in which Atomeji sued Atomobase (the 2nd Defendant in the present proceedings) for damages for trespass. The action was struck out.

*Exhibit " M."*

p. 97 to p.99

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This was the record of proceedings in the native court of Ado on the 16th October, 1928, in which Aporio Sapetu, of Odo sued 12 Defendants, 7 of whom were stated to be of Ilawe, for an order to show cause why the Defendants should plant cocoa, kola trees and Gbanja trees on the Plaintiff's father's land. None of the Defendants disputed the Plaintiff's title. It appears from the Record that Chief Sasere, a Court Member, was sent by the Court at Ewi to see the land in question and to make the necessary boundary between the Odo people and Ilawe people. He set a boundary there consisting of Peregun trees. The Court ordered that the Defendants must obtain a permission from the Plaintiff for farming and must pay him the necessary Ishakole as they did before.

p. 99, l. 25

p. 99, l. 38

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The Plaintiff admitted knowledge of the proceedings recorded in Exhibits C, D, E, F, G, H, J, K and L but said he knew nothing about the proceedings recorded in Exhibit M.

p. 12 to p. 13

7.—The Plaintiff further deposed in cross-examination as to the names of all the Alawes stating *inter alia* that the 11th was Akubieleyo and the 14th was himself. He was later recalled and examined by the Court as to the history of the Alawes' claim to wear a crown and also by the Court and Counsel as to the boundary between Ilawe lands and Ado lands. This part of his further examination was as follows :—

p. 32, l. 1

“ A boundary was made between my ancestors and the Ewi of Ado.

p. 32, l. 17

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“ My townspeople knew about this boundary. The lands in respect of which my people were sued were within my land. I was patient then and advised my people to be patient as we have a Government. Farms extended to part of the boundary

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“ line and some part of it were in the bush. No one plants Iroko trees but if found on the boundary they are adopted as boundary marks. Atori and Irosun trees are usually planted to mark boundaries. We sometimes plant kola trees to mark boundaries and the planter and his heirs and successors reap the fruits.

“ Xn. by Awolowo by leave of the Court : I told my people to be patient because I was detained for 5 years by Government hence I did not sue personally. My father was deported on account of the crown affair. The crown question was settled about 4 years ago. It was after that that I took this action. I took action in 1949. Irosu, Atori and Peregun trees on our boundary were planted by Akutieleyo. 10

“ Xxn. by Majekodunmi by leave of Court : I have told the Court about the boundary marks. It was made between Ilawe and Ado people. It was not a boundary between Igede and Ilawe. I reported the conduct by Ado people to the D.O. and Chief Commissioner.

“ My father was the Alawe 23 years ago.”

8.—The other witnesses called on behalf of the Plaintiff deposed *inter alia* as follows :— 20

- p. 9, l. 1 (a) Adekunle Coker, a licensed surveyor, deposed that he had made the plan Exhibit “ A,” and that after the Alawe had sent about 300 people to clear the boundary he followed the line shown as violet on the plan. He found Atori, Peregun and Irosun trees at intervals and there were also heavy heaps of stone around Atori trees. The heaps of stone were at intervals along the boundary line. There were also big Iroko trees along the boundary and a sand mound—“ it is “ an old mound in a dense forest.” The heaps of stone were old and appeared to have been brought from another locality. 30
- p. 9, l. 25 The Peregun trees were between 4” and 12” in diameter. The Atori trees were fully grown and were about 9” in diameter. There were no boundary marks on the pink edge of the area.
- p. 7, l. 10 (b) Michael Ajakaiye, the Ilawe Council Clerk, deposed that a kola tree and 2 Iroko trees marked their boundary with Asa. There was a big heap of sand near the footpath between Ilawe and Igede. After further tracing the boundary he deposed that the boundary of the land in dispute was between Igbo Asaw and Oke Isegun right up to Igbo Amadin. There were no Peregun and Atori trees on this side of the boundary. 40
- He did not know how the boundary between the Ilawe and the Ado came to be demarcated.
- (d) Oluwafemi deposed that about 16 years ago a boundary had been made for the Alawe people. A District Officer had
- p. 20, l. 23



marked the boundary between the Igede and the Ilawe with heaps of stones. They had shown the District Officer their boundary.

- (e) Asokiti deposed that a native and chief of Ilawe declared that the land in dispute belonged to the Ilawe people from time immemorial. His evidence included the following passage :—

“ After leaving Ife the Ewi went to Ibokun, Ushin, p. 21, l. 31  
 “ Agbado, Iworoko and Ago Elemi. Then he came to  
 “ Akubieleyo, the Oba of Ilawe, to ask for land. Atakumose  
 “ was the Ewi. He sent Osapeji to give him land. Oroko  
 “ and Adegbuleye were on the land now known as Ado  
 “ Ekiti. A boundary was then made between Ilawe people  
 “ and Ewi’s people. Peregun trees, Irosu and Atori trees  
 “ were planted to mark the boundary. The boundary marks  
 “ have never been removed.”

In Cross-examination this witness deposed that the British p. 23, l. 23  
 Government put the Ilawe under the Ewi.

- (f) John Ojumongbe, the Egbedi of Ilawe, deposed that the p. 24, l. 33  
 boundary between the Ilawe and the Ado-Ekiti people was  
 marked with Peregun trees.

- (g) Aderemi I, the Oni of Ife, whose evidence was taken on p. 26 to p. 27  
 commission before the Magistrate at Ife, deposed that  
 according to tradition Oniwe was the great grandmother of  
 the Alawe. It was not correct according to history that the  
 title “ Alawe ” was given to the person whose duty it was to  
 wash the feet of all Ekiti Obas. By tradition the Alawe was  
 and was still entitled to wear a crown. When the Alawe  
 was given a crown “ he was also asked out of Ife to found  
 “ a kingdom for himself and he did so.” According to  
 tradition all the sons of Oduduwa who were given crowns  
 were to be independent of each other. In 1903 when a list  
 was submitted to the Government in Lagos of the names of  
 all crowned Obas in Yoruba land the name of the Alawe  
 was not included as well as the names of several other Obas.

- (h) Gabriel Dada, an Ilawe farmer, deposed that his farm was at p. 28 to p. 29  
 Igbo Amifadin on the footpath to Ara. He had a boundary  
 both with Ara and Igede people. There were Peregun trees  
 and Iroko trees marking his boundary with Igede people.  
 His father, grandfather and other ancestors had worked on  
 the same farm. About 18 years ago the Igede people had  
 started to make trouble, first taking away the yams and then  
 claiming the land.

- (i) Gabriel Falade, an Ilawe farmer, deposed that his farm was p. 30 to p. 31  
 at Ajingbin. He also had a cocoa plantation at Urokin. He

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had been on these farms for about 25 years and his father before him. About 11 years ago the Akitipa claimed the land and asked this witness to pay Ishakole. This witness refused and the Akitipa did not sue him. In cross-examination this witness agreed that there were Peregun trees at Oke Sapo but in re-examination said that they were planted many years ago, he did not know by whom.

p. 33, l. 31 9.—The 1st Defendant deposed that he owned the whole area in dispute and that Ado people had been on the land for about 500 years. The Bale of Ilawe was rendering him service. Originally the Ewi of Ado gave the Ilawe people the land on which they settled after the Benin war. The Odo people got to the area before the Ilawe people. In 1933 there was a dispute between Igede and Ilawe people about land. The District Officer later on arbitrated between them but the original boundary was then properly defined. Both Ilawe and Igede lords (lands ?) belonged to him as the Ewi. He owned the whole of the land until today. The Akitipa was the head chief of Odo under the Ewi and could sue in respect of Odo land with the Ewi's permission. In cross-examination this witness stated :—

p. 34, l. 44  
p. 35, l. 10  
p. 36, l. 23 “ I know the difference between political overlordship and ownership of land covered by the political overlordship. It is possible for certain areas to be under the political overlordship of an Oba and that the land under the overlordship may be vested in the people of the areas.”

This witness further agreed that Yoruba people had trees used for marking boundaries. Peregun trees were used, and also Iroko trees and Atori might be used between two farmers. He had never heard of Irosin being used as boundary marks. Peregun were used as boundaries between Igede and Ilawe. This witness further deposed in cross-examination :—

p. 37, l. 10 “ The boundary runs from Igbo Oroke to Oke Isapa. I see Exh. ‘ A ’ and Peregun trees shown on the boundary from Igbo Amadin down to Igbo Asaw. I see heaps of stones shown on the plan. I cannot explain how they got there. I agree that Mr. Swayne put heaps of stones on the boundary in 1933.”

\* \* \* \* \*

p. 39, l. 14 “ The District Officer made a boundary between Igede people and the Ilawes ; it followed the original boundary. The D.O. put a heap of stones near Okuta Olomo to demarcate the boundary. In our area it is not usual to plant so many Peregun trees and other trees on the boundary line. This is the only case where I have heard of such a thing being done.”

In answer to the Court this witness said :—

p. 41, l. 35 “ I have never been on the land edged purple on Exh. ‘ A ’ from its junction with the land edged pink, right down to just

“above Ilepupa. I see Peregun, Atori, Irosu, heap of stones all along the purple line. I cannot explain how the trees and stones got there. There was no dispute in 1933 as to the land in the area.” RECORD

10.—Further evidence was called on behalf of the Defendant as follows :—

- 10 (a) Stephen Oyelola Adedeji, the District Officer’s interpreter at Ado-Ekiti deposed that he came to represent the District Officer on subpoena. He produced a number of documents including a record of a proceeding before the Ekiti Judicial Council on the 7th January, 1925 (J.10) when the Alawe of Ilawe (Plaintiff’s predecessor) had been charged with refusing to recognise the authority of the Ewi overlord by using insulting language to him in his Afin and setting himself up as District Head and purchasing 2 crowns and with contempt of Court by refusing to prostrate to the District Heads of Ekiti and calling himself an Oba. It appeared from the Record that the Alawe claimed that he was an Oba himself. The Judicial Committee decided *inter alia* that the Alawe should be fined £50 on each charge, that his two crowns should be brought to the next meeting and that the beads should be pulled off from his hands and feet. p. 43  
p. 161 to  
p. 163
- 20 (b) D. W. Ademesan, the Ologotun of Ogotun, deposed that he had a common boundary with the Ewi at Oke Agbe. p. 44, l. 10
- (c) Adelusi Arasowole, the Alara of Ara, deposed that he had a common boundary with the Ewi at Oke Asa. It was marked with a Peregun tree. In answer to the Court this witness stated :— p. 45, l. 30
- 30 “ The Ilawe people occupy land up to the footpath, in front. I know the land belonged to the Ewi, although it is occupied by the Ilawes. The Ilawes have no crowned Oba.” p. 46, l. 16
- (d) David Ajenifuja deposed as to the existence of Odos living at Ilawe who refused to come home. He further deposed that the boundary between Odo and Ilawe was at milestone 8 on the motor road from Ado-Ekiti (i.e. at Oke Isapa). There were there Peregun trees planted in rows along the boundary line but the witness did not know who planted them. They were planted before he was born. p. 46 to p.48
- 40 (e) Adeshida, the Deji of Akure, deposed as to the traditional evidence. He himself had a boundary with the Ewi and not with the Alawe who was within the territory of the Ewi. p. 49 to p. 50

RECORD  
p. 50, l. 40

(f) The second Defendant deposed that there was a boundary between Odo and Ilawe at Oke Isapa. In cross-examination this witness stated that there was a boundary between Odo and Ilawe and between Odo and Igede. The boundaries were planted with Peregun trees at close intervals. The Peregun trees were still there. He could not say if the boundary shown on Exhibit " A " from Igbo Amadin to Okuta Olomo correctly represented the Igede boundary with Ilawe as he had never been there.

p. 56, l. 16

p. 66, l. 26

11.—The learned Trial Judge held that the questions the Court was 10 called upon to decide were as follows :—

" (1) which of the two parties gave land to the other ?

" (2) Was there a boundary made between them ?

" (3) Is Odo Ado land or Ilawe land ? and

" (4) What is the effect of the judgments obtained by Igede people  
" and the 2nd Defendant against Ilawe people in respect of  
" part of the land in dispute ? "

p. 73, l. 34

He further held that Ilawe was founded in the same way as the other sub-towns of Ado.

p. 74, l. 3

The learned Judge next considered whether a boundary had been 20 demarcated between the Alawe and the Ado people. He held that it appeared from the evidence of the surveyor who made the plan and from the evidence of his assistant that about 250 to 300 Ilawe people looked in the forest for their marks before they cut out the boundary which they surveyed for this case. On one side of the land in dispute, i.e. the side coloured pink and purple the land was well marked with Iroko, Atori, Irosun and Peregun trees as well as with heaps of stones. The judgment then included the following passage :—

p. 74, l. 35

" The fact that a heap of stones was placed at Okuta Olomo  
" is no proof of the alleged boundary line from the Kola tree on 30  
" the way to Ara up to that point.

" There are other heaps of stones and sand mounds shown on  
" the purple coloured boundary, but there is no evidence as to  
" the person or persons who placed them there.

" It is a matter of common knowledge that, before the advent  
" of the Europeans in this country, rivers, streams, hills, rocks,  
" and trees were used as boundary marks, and the marking of  
" boundaries with stones and mounds were unknown."

The learned Judge next referred to earlier disputes between the Ilawe and Igede peoples regarding the boundary and to the Court cases between the 40 Odo people and the Ilawes. He referred in particular to Exhibits, " M," " G," " H," " J," " K," " E," " D," " C " and " L " and arrived at the following conclusion :—

p. 76, l. 40

" The position then is that the Plaintiff has included in his

“ plan lands which courts of competent jurisdiction had declared  
 “ to be Odo land and not Ilawe land. RECORD

p. 77, l. 8

“ It is significant that in all the cases in which the 2nd  
 “ Defendant figured as Plaintiff, there was no suggestion that there  
 “ was an old boundary made between Ilawe and Ado people which  
 “ put Odo land within the land of Ilawe people, although Ex. ‘ A ’  
 “ now shows that the farms of Elero, Olu Balogun, Adubu abut  
 “ on the alleged boundary put up in this case.

10 “ Farm of Oguntuase Atomeji is shown as being bound on  
 “ the eastern side by the alleged boundary planted thickly with  
 “ Iroko, Peregun, Irosun trees and heaps of stones, but in spite  
 “ of these, he withdrew the action he took against the 2nd  
 “ Defendant and submitted to judgment on the counterclaim  
 “ brought by the 2nd Defendant against him.”

The learned Judge stated that he was inclined to accept the evidence of  
 the 2nd Defendant that the boundary line shown on Exhibit “ A ” did not  
 exist between Ado and Ilawe. The judgment proceeded as follows :—

20 “ I don’t believe that the boundary line shown in purple on p. 78, l. 1  
 “ Exh. ‘ A ’ is genuine, and it appears to me that the Plaintiff and  
 “ his people either discovered the Iroko, Irosun, Peregun, Atori,  
 “ Obi Edun and Ekika trees which are of natural growth in the  
 “ thick bush or forest or planted them or some of them, and so  
 “ waited until they were fully grown to enable them to pass them  
 “ off as a boundary line between themselves and the Ado people.

30 “ As for the heaps of stones, with the exception of the heaps  
 “ of stones placed near Okuta Olomo in 1933 by the District  
 “ Officer, Mr. Swayne, there is no proof as to how the other heaps  
 “ of stones shown on Exh. ‘ A ’ got on the alleged boundary line ;  
 “ but in view of my findings above, it appears to me that the  
 “ Plaintiff and his people, without the knowledge of the Defendants,  
 “ placed the stones on the land.

“ This brings me to the question whether Odo land belongs  
 “ to Ilawe people or to Ado people.

“ If the Plaintiff has succeeded to prove the alleged purple  
 “ boundary line, it would have been possible to hold otherwise  
 “ than that all lands south of the boundary line, including Odo  
 “ land, belong to the Plaintiff and his people of Ilawe, but as the  
 “ boundary line has not been proved, the Court must look for  
 “ other facts pointing to the ownership of Odo land.”

40 The learned Judge after considering the other evidence held that he p. 80, l. 7  
 was satisfied that Odo had always been a farm settlement of the Odo people  
 who were from Ado and that the claim of the Ilawe people to it was  
 unfounded.

The learned Judge further considered the submission made by Counsel p. 82, l. 39  
 for the Plaintiff that the judgments in earlier cases did not bind the Plaintiff

- RECORD** as he was not a party to them nor was he a privy of the Ilawes therein involved. While holding that the Plaintiff was not estopped by the said judgments from proving the points decided by them for the consideration of the Court he held that the judgments should not be treated as a nullity as they afforded evidence of the rights of ownership exercised by the Odo people on Odo land which was part of the land now in dispute.
- p. 83, l. 37 After holding that the Plaintiff and some of his witnesses were remarkable for their untruthfulness the learned Judge arrived at the following conclusion :—
- p. 85, l. 20 “ From his judgment, it is abundantly clear that the 10  
 “ descendants of Odo refugees in Ilawe came to farm at Odo with  
 “ other Ilawes who had no right to farm on Odo land. All went  
 “ well as long as the descendants of Odo refugees at Ilawe  
 “ recognised Odo’s ownership of the land, but the position naturally  
 “ changed when the descendants of the refugees affiliated  
 “ themselves with the Ilawes and claimed Odo land for Ilawe  
 “ because they lived at Ilawe and had farms at Odo. This is  
 “ a true picture of what took place.”
- p. 86, l. 22 The learned Judge therefore dismissed the Plaintiff’s claim with costs assessed at 300 guineas. 20
- p. 86 to p. 88 12.—The Plaintiff appealed from the said judgment of the West African Court of Appeal. The principle judgment in the said Court of Appeal was delivered by Sir Henley Coussey, J.A., who held that the learned Judge had come to the only conclusion possible on the unconvincing evidence of the Plaintiff.
- p. 95 13.—Conditional leave to appeal to Her Majesty in Council was granted on the 14th July, 1953, and final leave on the 26th October, 1953.
- p. 96 14.—The Plaintiff humbly submits that the judgment of the Court of Appeal should be set aside and judgment entered in his favour or that a new trial should be ordered for the following amongst other 30

### REASONS

- (1) BECAUSE certain documents, namely Exhibits “ B.1,” “ B.2,” “ B.3,” “ B.4,” and “ T.1,” “ T.2,” and “ T.6,” should not have been admitted in evidence.
- (2) BECAUSE even if the said documents were admissible or if it be held that the objection to their being admitted has been waived, the learned trial judge erred in holding that the said documents were of any evidential value as against the Plaintiff.

- (3) BECAUSE the learned trial judge erred in relying on the proceedings of the Ekiti Judicial Council meeting on the 6th to 8th January, 1925, as evidence against the Plaintiff since the 1st Defendant himself sat as a member of the said Judicial Council at the said meeting.
- (4) BECAUSE the learned trial judge erred in relying upon the statement alleged to have been made by a former Oni of Ife which was not put to the present Oni of Ife who was called as a witness in these proceedings.
- 10 (5) BECAUSE the learned trial judge erred in treating Exhibits " T.3," and " T.4," as evidence against the Plaintiff.
- (6) BECAUSE the learned trial judge erred in treating statements alleged to have been made by the Plaintiff's father and contained in Exhibits " T.10 " and " T.13 " as evidence against the Plaintiff although they had not been put to him in cross-examination.
- 20 (7) BECAUSE the learned trial judge erred in treating the fact that the Ewi called upon the Alawe for a contribution towards the rebuilding of the Ewi's palace and that the Alawe refused as evidence against the Plaintiff.
- (8) BECAUSE although the learned trial judge was right in holding that if the Plaintiff had proved the alleged purple boundary line he would be entitled to succeed, there was no evidence upon which he was entitled to hold that the Plaintiff and his people had either discovered the trees which marked the boundary or planted them in order to pass them off as a boundary line and that, without the knowledge of the Defendants, they had placed the heaps of stones on the land.
- 30 (9) BECAUSE the learned trial judge erred in holding as aforesaid although the suggestion that the boundary had been fabricated by the Plaintiff and his people had never been put to the Plaintiff or any of the witnesses called on his behalf.
- (10) BECAUSE the learned trial judge erred in relying upon earlier proceedings and in the Native Courts and on appeal therefrom to which the Plaintiff had not been a party.

DINGLE FOOT.

F. R. McQUOWN.

**In the Privy Council.**

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No. 15 of 1954.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL.

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BETWEEN

AKINOLA ADEFOLALU, the Alawe of  
Ilawe for himself and the people of  
Ilawe ... .. APPELLANT

AND

ALADESANMI II, the Ewi of Ado-Ekiti,  
for himself and the people of Ado-Ekiti  
and ADETOKUNBO ATOMOBASE  
RESPONDENTS.

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CASE FOR THE APPELLANT

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*Appellant's Solicitors.*