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7,1956

No. 15 of 1954.

# In the Privy Council.

ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL.

UNIVERSITY OF LONDON  
W.C. 1.  
19 FEB 1957  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

45858

BETWEEN

AKINOLA ADEFOLALU, the Alawe of Ilawe for  
himself and the people of Ilawe (Plaintiff) . *Appellant*

AND

- 10 1. ALADESANMI II, the Ewi of Ado-Ekiti for  
himself and the people of Ado-Ekiti
- 2. ADETOKUNBO ATOMOBASE (Defendants) . *Respondents.*

## Case for the Respondents

RECORD

1. This is an appeal from the Judgment of the West African Court of Appeal dated the 18th May 1953 affirming the Judgment of the Supreme Court of Nigeria dated 9th October 1951 which dismissed the Appellant's suit against the Respondents. p. 91. p. 65.

2. The suit giving rise to this appeal was brought by the Appellant against the Respondents for a declaration of title to land in the possession of the Respondents.

20 The Appellant adduced a large body of evidence, oral and documentary, in support of his claim.

Both the Trial Court and the West African Court of Appeal reviewed the evidence and arrived at concurrent findings of fact against the Appellant's claim.

3. The sole question for determination in this appeal is whether there are any special circumstances which would justify a departure from the practice of the Judicial Committee to decline to review the evidence for a third time.

4. The Appellant instituted

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### THE PRESENT SUIT

on the 18th June 1949 in the Native Court of Judicial Council of Ekiti, Nigeria, against the Respondents for (1) declaration of title to the land p. 1

p. 2. situate and being between the town of Ilawe and Ado-Ekiti in Ekiti Division, Ondo Province, Nigeria, (2) £100 as damages for trespass on the said land, and (3) an Injunction to restrain such trespass.

p. 2. 5. The suit was transferred to the Supreme Court of Nigeria on the 3rd December 1949.

p. 3. 6. The Appellant filed his Statement of Claim on the 22nd July 1950.

The Appellant alleged *inter alia*—

p. 4, ll. 9-13. (1) that the Appellant's predecessor in title, the first Alawe left Ife with his mother and several followers to found a kingdom of his own and discovered and settled with his followers on the 10 place now known as Ilawe ;

p. 4, ll. 14-16. (2) that there was an extensive area of ownerless and unoccupied forest land adjoining and surrounding the site of Ilawe town which the Appellant appropriated to himself for the use and benefit of himself and his people ;

p. 4, ll. 17-20. (3) that the land in dispute formed part of the land over which the first Alawe had exercised dominion and rights of ownership at the time when Ilawe was founded ;

p. 4, ll. 21-35. (4) that the First Respondent's predecessor in title and his followers migrated from Ife and after settling in succession at 20 different places came to the Appellant's predecessor in title and begged for land and were given land on which they settled ;

p. 4, ll. 36-40. (5) that the boundary between the land granted to the First Respondent's people and the remaining land of the Appellant and his people was marked by prominent trees ;

p. 4, ll. 41-44. (6) that in a dispute some twenty-five years ago between the people of Igede who claim through the First Respondent and the Appellant's people a District Officer was appointed arbitrator and he marked out a boundary which followed the ancient boundary between the Appellant's people and the First Respondent's people ; 30

p. 5, ll. 13-22. (7) that it was only some sixteen years before the commencement of this suit that the First Respondent's people and the people of Igede wrongfully entered the land in dispute and succeeded in some cases in depriving the Appellant's people of their holdings and continue to remain on those land ;

p. 5, ll. 23-29. (8) that the Appellant and his people have been cultivating the land and reaping the palm-fruits on the land in dispute ; and

p. 5, ll. 30-31. (9) that the royalties for timber felled on the land in dispute are paid into the Ilawe revenue.

p. 6. 7. The Respondents filed their Statement of Defence on the 40  
p. 37. 1st September 1950 and their Additional Defence on the 15th March 1951.

The Respondents pleaded *inter alia*—

p. 6, l. 15. (1) that the town of Ilawe was traditionally part of the Ekiti kingdom owing allegiance to the First Respondent as the Oba (Crowned Head) of Ado-Ekiti ;

(2) that by tradition the Appellant is the Village Head or Bale of the town of Ilawe ; p. 6, l. 14.

(3) that the Appellant is traditionally a member of the Ado Council and ranks seventh in seniority among the other Bales (Village Heads) and stands in the same relationship to the First Respondent as the Second Respondent who is also a Bale (Village Head) owing allegiance to the First Respondent as the Oba (Crowned Head) of Ado-Ekiti ; p. 6, l. 16.

10 (4) that the Appellant's predecessor in title was a servant of the First Respondent's predecessor in title who gave the land in dispute to the Appellant's predecessor in title when the Appellant's predecessor in title accompanied the First Respondent's predecessor in title from Ife and settled on the land in dispute ; p. 37, l. 25.

(5) that there was no boundary made at any time between the Ilawe people and the Ado-Ekiti people ; p. 38, l. 6.

(6) that the Ilawe people and the Igede people were both subjects of the First Respondent owing allegiance to him as their crowned head and there was a boundary dispute between them which was decided by the District Officer as the arbitrator ; p. 38, l. 7.

20 (7) that the Ilawe people trespassed on the land of the Igede people who obtained judgment for damages for trespass against the Ilawe people ; and p. 6, l. 38.

(8) that the First Respondent retains ownership of the land in dispute and the Appellant has always paid to the First Respondent the taxes, the tributes and the royalties in respect of the land in dispute. p. 37, l. 32.

8. Both sides adduced oral and documentary evidence in support of their pleadings.

30 It was stated in evidence that it was the duty of the Appellant's predecessor in title to wash the feet of the First Respondent's predecessor in title, that the title Alawe means one whose duty it is to wash, and that at a meeting of all the crowned heads of the Ekiti Division held on the 4th March 1925 the Appellant's father expressly admitted that he had washed the feet of the then Ewi of Ado-Ekiti.

9. The Trial Court (the Supreme Court of Nigeria) delivered judgment on the 9th October 1951. p. 65.

10. The following issues were framed—

p. 66, l. 25.

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

(2) was there a boundary made between them ?

40 (3) is Odo Ado land or Ilawe ? and

(4) what is the effect of the judgments obtained by Iged: people and the Second Respondent against Ilawe people in respect of part of the land in dispute ?

11. Before dealing with the issues the learned Trial Judge reviewed exhaustively the oral and documentary evidence.

As stated by the learned Judges of the Court of Appeal the learned Trial Judge felt obliged to record as one of his impressions of the demeanour of the witnesses that the Appellant and some of his witnesses were remarkable for their untruthfulness.

On the first issue the learned Trial Judge found no difficulty in accepting the traditional evidence adduced on behalf of the First Respondent and confirmed by evidence of admissions made by the Appellant's own father that the Alawe was originally a servant of the Ewi and that Ilawe was founded as a sub-town or village of Ado. 10

Dealing with the evidence on this issue the learned Judge made the following observations :

p. 69, ll. 7-32.

“ . . . there is on record traditional evidence as to how the ancestors of the Plaintiff and of the 1st Defendant came to settle at Ilawe and Ado Ekiti respectively.

It is common ground between the parties that the first Ewi was a son of Oduduwa and was one of the sons of Oduduwa who, according to Yoruba mythology, were given crowns and sent out of Ife to found their own kingdoms. 20

The Plaintiff alleged that the first Alawe was a grandson of Oduduwa through a female child and that Oduduwa sent him out of Ife to found a Kingdom of his own.

The Oni of Ife's evidence supported the Plaintiff's theory that the 1st Alawe was given a crown when he was leaving Ife, but differed from the evidence of the Plaintiff (1) in the relationship of the 1st Alawe to Oduduwa, as the Oni stated that he was a great grandson of Oduduwa while the Plaintiff stated that he was a grandson ; (2) as regards the person who gave him a crown ; the Oni's evidence is that the crown was given to him not by Oduduwa 30 himself as alleged by the Plaintiff, but by his successor, Ogbogbodirin oni, alias Obalufon.

The Ewis, it is admitted by the Plaintiff and his witnesses including the Oni of Ife, have always been crowned heads.

The Alawe does not wear a crown, and there is overwhelming evidence that the attempt of the last Alawe, Afinbiokin, the father of the Plaintiff, to wear a crown met with the disapproval of the Ewi of Ado Ekiti and of the other Obas of Ekiti land. When the matter was referred to the then Oni of Ife as to whether he was entitled to wear a crown, the Oni's reply was in the negative as shown at pages 399-400 of Exh. ' T1 '."

p. 151.

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" The evidence of the 1st Defendant shows that Ado Town has several sub-towns under it. This is supported by the Intelligence Report of Ado District, Exh. ' B1,' and its appendices, Exhs. ' B2-B4.' Ilawe is shown as one of the sub-towns of Ado, and is referred to at pages E20-E27 of Exh. ' B2 ', pages A21-A22 of Exh. ' B3 ' and at page B6 of Exh. ' B4 '."

p. 72, ll. 3-8.

p. 133.

p. 139, p. 143.

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" Section 54 of Exh. ' B2 ' shows that Major Reeve-Tucker visited Ilawe Town on the 18th January, 1901, and spent a night there. Although Ilawe was placed under Ado, the Alawe did not then suggest that he was an independent Oba as some other Obas did : in fact, he did not assert his independence until the 23rd August 1923. There was, however, no open defiance of the Ewi until November, 1924, when the Alawe refused, when called upon by the Ewi, to contribute towards the cost of rebuilding the Ewi's palace, which was the prelude to the clash between the Alawe and the Ewi, which ultimately resulted in the deportation of the Alawe in 1925 to Abeokuta, where he died in 1929.

p. 72, l. 15-p. 73, l. 35.

It appears that the Ewi would not have called upon the Alawe and his people for a contribution towards the rebuilding of the Ewi's palace if the Alawe had been an independent Oba.

The Alawe, in fact, was not an independent Oba, but a Bale, who had to render some service to his Oba, the Ewi.

The Plaintiff's witness, the Oni of Ife, even recognised the fact that the Alawe, while under the Ewi, must be rendering the Ewi some service although he did not know what service he actually rendered.

P. 127.

Section 152 (2) at page 53 of Exh. 'B1' shows that, in 10 the past, it was the duty of Ilawe people to repair the outer court of the Ewi's palace and also the festival meeting place known as 'Ubamote.'

It appears that what the Ewi did was to ask for money in lieu of personal service.

The Plaintiff got himself installed on the death of his father as the Alawe and was prosecuted and sent to six months' imprisonment for setting himself up as the Alawe without the prior approval and consent of the Ewi.

Ilawe was separated from Ado in 1946, but in spite of this fact, 20 the Plaintiff and most of his witnesses denied that they were ever under the Ewi.

In the circumstances, I am unable to accept the evidence of the Plaintiff and of some of his witnesses that they have always been independent of the Ewi.

I accept the traditional history of the Alawe and of his people in relation to the Ewi of Ado as related by the 1st Defendant and by the Deji of Akure, and as can be gathered from the Intelligence Report of the Ado District and its appendices and confirmed by the admissions made by Plaintiff's father.

The Plaintiff alleged that Alawe Akubieleyo gave land now occupied by Ado people to Ewi Atakumase.

The 1st Defendant denied this and stated that he did not know any Ewi who went by the name of Atakumase.

10           Page 15 of Exh. ' B1 ' gives the name of the first Ewi of Ado as Awamaro. Page 17 of Exh. ' B1 ' shows that the Benins attacked Akure, Ilawe, Igbaraodo and Ado at the same time, round about 1815, which is evidence of the fact that Ado people had been on their present site before 1815.

The Plaintiff admitted that Ilawe was attacked by the Benins during the reign of Ogunbe, who was the 8th Alawe.

This is confirmed by the 1st Defendant and by section 53 of Exh. ' B2.'

20           On the Plaintiff's own showing, Akubieleyo was the 3rd Alawe after Ogunbe. He therefore became the Alawe after the Benins had overrun Ado and Ilawe and other places referred to above.

The Plaintiff's evidence and that of his witness Osokiti that Alawe Akubieleyo gave land to the 1st Ewi and marked out a boundary between them cannot, therefore, be true, and I reject the evidence.

It appears that in those early days of settlement of Ado people at Ado Ekiti, there was plenty of unoccupied land around, and that the Ewi gave permission to some of his relations and subjects to go out to the unoccupied lands and found settlements, which grew in later years to be subtowns of Ado Ekiti.

I have already accepted the evidence of 1st Defendant and of the Deji of Akure, which the admission of the Plaintiff's father confirmed, that the Alawe was originally a servant of the Ewi until he went out to found a settlement of his own, and I do not, therefore, find any difficulty in accepting the 1st Defendant's evidence that 10 Ilawe was founded in the same way as the other subtowns of Ado."

On the second issue the learned Trial Judge dealt with the numerous boundary disputes between the Ilawe people and the Igede people and observed :

p. 75, ll. 17-39

" I do not need to multiply other instances of boundary disputes between the Ilawes and the Igedes, but the significant point about the dispute is that, at the time the Ilawe people could not have known of the alleged boundary so well marked with trees, sand and stones, reference to which then would have saved both sides, the District Officers and the Ewi a lot of trouble. 20

It does not appear to me that such an alleged boundary could have existed without the traditional history of its existence being handed down from generation to generation. It does not appear likely to me that the Ilawes in those years could have been ignorant of the existence of the alleged boundary if it then existed ; yet there was no reference to any ancient boundary demarcated by an Alawe.



Furthermore, the alleged boundary includes in Ilawe land a farm settlement known as Odo, where several Ado men and women have been created chiefs. The 2nd Defendant, the Akitipa, is the head Chief of Odo.

10 In respect of Odo land, there were several Court cases between Odo people and the Ilawes, In suit No. 585/28, Exh. 'M' Aponio, the Sapetu of Odo sued 12 Ilawe men for planting cocoa and kola trees on his father's land. The Defendants admitted that the land was Odo land, and there was an injunction granted against their planting live trees on the land. A boundary was demarcated between the Odo and the Ilawe people."

" In view of the foregoing, I am inclined to accept the evidence of p. 77, l. 44-p. 78, l. 6. the 2nd Defendant that the alleged boundary line shown on Exh. 'A' did not exist between Ado and Ilawe.

20 I don't believe that the boundary line shown in purple on 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."

On the third issue the learned Trial Judge found that " Odo has p. 80, . always been a farm settlement of Odo people who are from Ado, and that the claim of Ilawe people to it is unfounded."

On the fourth issued the learned Trial Judge observed :

p. 82, l. 41  
p. 83, l. 21.

“ It is incontrovertible that the Plaintiff was not a party to any of the previous actions and it therefore follows that the judgments would not estop him from bringing the points decided by them up for the consideration of this Court.

The judgments cannot be treated as a nullity as they afford evidence of the rights of ownership exercised by the Odo people on Odo land, which is part of the land now in dispute.

I have already found as a fact that Odo land belongs to the Odo people, who are from Ado, and not to Ilawe people. 10

In so far as Odo land included in the plan Exh. ‘ A ’ is concerned, the judgments confirm the ownership of the Odo people and show that the Plaintiff has not got exclusive possession and ownership of the whole land in respect of which he sued.

The Plaintiff and his Counsel cleverly kept away from the witness box the Ilawe people against whom judgments had been recovered in respect of Odo land.

Although the names of some of them like Adubu Balogun, Olu Balogun, Akinyemi, Agbelusi, Komolafe, Oguntuwase Atomeji are shown on plan Exh. ‘ A,’ they dared not show their faces in 20 Court as the 2nd Defendant had recovered judgments against them in respect of lands shown on Exh. ‘ A ’ as being theirs.

It is quite evident that they are not the owners of the lands bearing their names as the lands had been declared to be Odo land with its southern boundary on the Oshun Stream which flows between Agdeji Stream and the Oruwo River.”

12. The Trial Judge accordingly dismissed the Appellant's action p. 86, l. 22. with costs.

13. From that Judgment the Appellant appealed to the West p. 86. African Court of Appeal.

14. The Judgment of the Court of Appeal was delivered by p. 91. Sir Henley Coussey.

The Court of Appeal concurred with the findings of fact arrived at by the learned Trial Judge and accordingly dismissed the appeal.

15. From that Judgment the Appellant has preferred this appeal to  
10 Her Majesty in Council.

The Respondents humbly submit that the appeal be dismissed with costs throughout for the following among other

### REASONS

- (1) BECAUSE the whole matter is one of the value of evidence and there are no special circumstances which would justify a departure from the practice of the Judicial Committee to decline to review the evidence for a third time.
- (2) BECAUSE the judgment of the Courts below are right for  
20 the reasons given therein.

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In the Privy Council.

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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  
(Plaintiff) . . . . Appellant**

AND

- 1. ALADESANMI II, the Ewi  
of Ado-Ekiti for himself  
and the people of Ado-Ekiti**
- 2. ADETOKUNBO  
ATOMOBASE (Defendants) Respondents**

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**Case for the Respondents**

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