

ON APPEAL

50988

FROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN

- (1) LAWAL BURAIMAH FATOYINBO
(2) JARINATU BURAIMAH FATOYINBO
(3) AMINATU BURAIMAH FATOYINBO and
(4) SHITTU BURAIMAH FATOYINBO (Plaintiffs) Appellants

- and -

- 10 (1) SELIATU ABIKE WILLIAMS alias
SANNI
(2) ADIJATU AYINKE WILLIAMS alias
SANNI
(3) ABIBATU AYOKA WILLIAMS alias
SANNI
(4) NUSIRATU ABEKE WILLIAMS alias
SANNI
(5) ALJU SANNI WILLIAMS alias
SANNI DAWODU and
20 (6) SUNMONU AKENBI WILLIAMS alias
SANNI (Defendants) Respondents

CASE FOR THE APPELLANTS

1. This is an appeal by Special Leave granted by Order in Council dated the 31st day of July 1957 from a Judgment of the Federal Supreme Court of Nigeria (Jibowu Acting F.C.J., Nageon de Lestang, F.J. and Hubbard Acting F.J.) dated the 15th day of November 1956, allowing the Respondents' appeal from a Judgment of the High Court of Lagos (Jobling J.) dated the 27th day of June 1955. Record p.62.. pp.54-59
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2. The Appellants are all members of one family being the children of one Buraimah Fatoyinbo deceased and claimed against the Respondents who are the children of one Sanni deceased as Defendants for a declaration that both they (the Appellants) and the Respondents were jointly the owners as tenants in common under native law and custom of certain freehold properties known as 42 and 44 Ereko Street, Lagos, Nigeria. The Respondents claimed to be
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sole owners of the said properties. It was common ground between the parties that the said properties had been owned many years ago by a woman named Opo or Opoola, now deceased. It was also common ground that the Respondents were descended from and were entitled to the estate of a woman named Aina, also deceased, and that the Appellants were descended from and entitled to the estate of a woman named Dada, also deceased. Further it was common ground that the said Aina was a daughter of Opo, and that Opo had another child, a son named Oniyoku who had died leaving no issue. The Respondents claimed that apart from Oniyoku, Aina was Opo's sole child and entitled to her entire estate including the said properties. The Appellants claimed that Dada who admittedly survived Opo was also her daughter and entitled to half her estate and that therefore Aina and Dada, and subsequently their respective heirs, the parties to the action, were joint owners of the said property as claimed by the Appellants. It was not disputed that, if Dada was Opo's daughter, the Appellants' claim should succeed. The sole issue between the parties therefore was whether Dada was Opo's daughter.

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3. On this issue the learned Trial Judge found for the Appellants and on the said 27th day of June 1955, gave judgment for the Appellants and awarded them their costs of the action which he assessed at 60 guineas.

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4. The Respondents appealed against the judgment. The appeal came before the Federal Supreme Court of Nigeria. In a judgment delivered by de Lestang F.J. on the said 15th day of November 1956, the Federal Court, notwithstanding that the issue between the parties was admittedly a pure question of fact, reversed the finding of the learned Trial Judge and allowed the appeal dismissing the Appellants' suit with costs both in the trial court and in the Federal Court which were assessed respectively at £10.10.0. and £42.3.0.

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5. The Appellants will submit that the Federal Supreme Court of Nigeria was wrong in interfering with the decision and judgment of the Trial Judge.

6. The case for the Appellants at the trial which appears from the Notes of Evidence and the Exhibits annexed to the Record is summarised

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in paragraphs 7 to 16 below.

7. Evidence of the family history was given by the First Appellant. According to this evidence Opo who was the great-grandmother of both the Appellants and the Respondents had three children, a son Oluyokan who died without issue during Opo's lifetime, and two daughters Aina and Dada both of whom survived Opo and who were respectively the grandmothers of the Respondents and the Appellants. Opo was the owner of 42 and 44 Ereko Street, Lagos, the property in dispute.
- At Opo's death Aina and Dada inherited 42 and 44 Ereko Street and for some time they lived together at this address.
- Dada had only one child, a son Fatoyinbo Baruwa, the father of the Appellants. He appears to have owned other properties in Lagos during his lifetime. Fatoyinbo Baruwa in the years 1909-1910 built at his own expense a two storeyed house at No. 42 Ereko Street. There was no cross-examination on this evidence and it is submitted that it is only consistent with Fatoyinbo having, or believing that he had, some interest in the property, and that it also shows that Aina recognised her interest. Aina also had only one child, a son Sanni, who erected a building at 44 Ereko Street in 1903.
- In 1911 Fatoyinbo Baruwa obtained a permit from the Lagos Municipal Office for the erection of a temporary shed in front of the property for the purpose of a wedding. The permit which was addressed to Fatoyinbo Baruwa referred to "your house". This indicates in the Appellants' submission that the Appellants' father during his lifetime claimed and exercised rights of ownership over the property. Also that he regarded this property as his ancestral home where the family wedding should be celebrated in accordance with native custom.
- Fatoyinbo Baruwa died in 1912. Under Native Law and Custom his personal property, wives and children, were inherited by Sanni, Aina's son. The Appellants case was that Sanni inherited the property wives and children solely because he was Fatoyinbo's first cousin. The First Appellant said in evidence that after
- p. 6 l. 35
- p. 6 l. 18
- p.21 l. 34
p.26 l. 10-12
- p. 8 l. 4
- p. 8 l. 1
- Ex. C.p.65
- p. 9 l. 24
- p. 7 l. 15

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- p. 13 l. 23 his father's death he lived for six years at 42/44 Ereko Street. In 1918 when Sanni was ill he and the First Appellant left Lagos and went to live in Isheri but they returned to Lagos in 1921 and in that year Sanni died.
- p. 9 l. 13 Aina survived her son Sanni. She lived at 42/44 Ereko Street but let part of the property. Out of the rents she maintained and made certain payments to the Appellants' family and also to Adamo their eldest brother, since deceased. 10
- p. 9 l. 15-20
- p.69 l. 10 8. Aina died intestate in March 1933 and in June of the same year the Fifth Respondent wrote a letter to the First Appellant suggesting that there should be a meeting of the male members of the two families, that is, the Appellants and the Respondents, "to nominate and appoint executors amongst ourselves to be collecting the rents and keeping same in the bank and, if there is any expense to be run, he will take out to this duty to do it, and record the account he has spent in a book which will be presented to us all every quarter in order to be seeing the balance remain in bank". The rents referred to were the rents of 42/44 Ereko Street and it is clear that this proposal recognised that these rents were to be collected by the appointed persons on behalf of both families and that all the members of both families should see the accounts each quarter. This proposal was, it is submitted, a clear recognition by the Fifth Respondent on behalf of his family that both families had equal interest in the property. On the 30th December 1933 Letters of Administration of the personal property of Aina were granted to the First Appellant and the Fifth Respondent. In the Grant they were described as grandsons of the deceased. The First Appellant said in evidence that it was decided at the family meeting to refer to both branches of the family as descendants of Aina "to facilitate matter". 20 30 40
- Ex. B p. 64
- p. 7 l. 28 The personal estate of Aina was divided into three parts, one for the Fatoyinbo Branch (the Appellants), one for the Sanni Branch (the Respondents), and the third part for other relations of Aina's who were not descended from Opo. The rent of 42/44 Ereko Street was divided into two parts, one for the Fatoyinbo Branch and one for the Sanni Branch. In 1934 the First Appellant and Fifth

Respondent granted a lease for 3 years of 42 Ereko Street to one Salim Nouayhid. The lessors executed the lease as the Administrators of the Estate of Aina. According to the First Appellant the rent received was divided among the two families as aforesaid. In 1937 a further lease of the property was entered into by the First Appellant and the Fifth Respondent again purporting to act as executors and the rent was according to the First Appellant divided equally between the two families.

9. On the 1st October 1952 all the Respondents executed a further lease of 42 Ereko Street for a term of ten years from the 15th March 1953 to one Fouad H. Shour. This was done without the knowledge of the First Appellant. The Respondents executed the lease in the name of Williams a name which they used on occasions but not the name in which the Fifth Respondent had executed the earlier leases. Under the terms of the lease three years' rent was paid in advance before execution. When the First Appellant found out about the lease he demanded from the First Respondent the share of rent due to his branch of the family but this was refused and he was told by the First Respondent that under a Will (presumably of Aina) this property had been devised to the Sanni branch exclusively. As a result the Appellants brought the action for a declaration that they and the Respondents were jointly the owners as tenants in common.

10. The First Appellant also said in evidence that Aina had told him that Dada was her sister, and that he had lived at 42/44 Ereko Street from 1932 to 1933. He also said he had lived for 22 years at 50 Great Bridge Street, Lagos, by right of descent from Opo and that the Respondents had not disputed his right to that property. He also described how the rent from 42/44 Ereko Street had been paid on one occasion to him and the Fifth Respondent in goods.

11. In the course of his cross-examination the First Appellant said that he knew that in 1914 Aina had executed a Deed of Gift in respect to 50 Great Bridge Street to Sanni. He said that this was done with his consent and also with the consent of his elder brother

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Adamo, since deceased. According to the First Appellant there was not in reality any gift of the property to Sanni. He explained that the Deed was executed in Sanni's favour so that he could give it as security for a loan from one Coker to discharge a debt due from his (the First Appellants') father's estate. The Appellant said that he wished that this should be done to avoid the sale of a house owned by his father. The fact that the property was used by Sanni as security for a loan of £100 from Coker was confirmed by the terms of the receipt for the repayment of a loan and of a Promissory Note given by Sanni in respect of the loan. This Note was dated the 8th December 1914. Sanni never took possession of the property. This confirmed the Appellants version of the transaction. Further under Nigerian law it invalidated this gift, if there ever had been one. The First Appellant also admitted that in 1947 he knew the Fifth Respondent was called Williams and wrote a letter to him in that name.

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Ex. J p. 75
Ex. M p. 76

12. The Fourth Appellant gave evidence of the family history to the same effect as his brother. He said that after Aina's death there was a family meeting and the First Appellant and Fifth Respondent were appointed to collect the rent of 42/44 Ereko Street and thereafter the rent was divided in equal shares among the two families. In cross-examination it was put to him that Opo had four sisters, Ade-Elenu, Efunte, Elepo, Bodukale. He said he knew that Bodukale was the sister of Opo but he had never heard of the others. He also said that Aina was at her death in possession of 42/44 Ereko Street and managing it for the family and the property did not belong to her.

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p. 14 l. 18

p. 15 l. 40

13. Lamidi Onadipe Dada Anifowose (P.W.3) also gave evidence of the family history. He said that Aina had told him of her brother Olukykun, and her sister Dada. In cross-examination it was put to him that one Adebayo was a brother of his grandmother but he said he had never heard of Adebayo.

p. 17 l. 32

14. Tiamiyu Bolaji Braimo (P.W.4) said he knew Aina and that his uncle S.J. Williams collected rents in respect of 42/44 Ereko Street after Sanni's death and took care of both branches of the family, that is, the

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p. 19 l. 7

- Appellants and the Respondents. The witness said that he knew that Dada was a sister of Aina. After the death of Aina both branches of the family demanded an account from S.J. Williams in respect of the property of Aina and Dada, that is, 42/44 Ereko Street. The witness also said that the rent of the property was divided equally between the two families. In cross-examination he said he was the grandchild of Efunlate who was related to Opo and the mother of S.J. Williams on the mother's side. p. 19 l. 13
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15. Abu Bakare (P.W.5) said he was known as Eletu Ijebu, the Chief of Ijebu tribe. He knew Dada and Aina, they were sisters being daughters of Opo. He had heard of another child of Opo, Oluyoke who died a long time ago. Dada had died 58 years ago, that is in 1896. It was put to him in cross-examination that Oluyoke died 56 years ago that is in 1898. He said he did not know this. He also said under cross-examination that Opo's father was Olufinran. p. 21 l. 32
p. 21 l. 38
- 20
16. Amodu Tijani Chief Oluwa (P.W.6) gave evidence at his own house, as a Doctor's certificate was produced to say that he was senile. All he could say was that the mothers of Fatoyinbo and of Aina were of the same family, they lived together at Ereko Street, and that they were the owners of the house having inherited it from their father. p. 26 l. 12
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17. The case for the Respondents was not based on any Will by Aina or any other person bequeathing the property in dispute to their branch of the family. They called no evidence to suggest that there had ever been such a Will or that anybody had reason to believe that such a Will had existed, although the First Appellant's evidence that he had been told by the Respondents that there was such a Will had not been challenged in cross-examination. 40
18. The Respondents admitted that the Appellants were descended from Dada and conceded that if Dada was a daughter of Opo the Appellants would have a good claim to a share in the property. The case put forward by the Respondents was that Dada was not a daughter of Opo and therefore not Aina's sister and that the Appellants' side of the 50

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family had never shared in the rents of the property.

p. 4 l. 36 19. On the vital question of the relationship between Dada and Opo the Respondents' case at the trial was quite different to their case as pleaded. Paragraph 6 of the Statement of Defence read as follows :-

"6. The Defendants plead that the said Dada referred to by the Plaintiffs is a child of one Dada a native of Ikorodu and his mother one Efunite also of Ikorodu, distant relatives to the aforementioned Opo (Deceased.)" 10

The Respondents' case as presented at the trial was that Dada was the daughter of Efunite, or Efuntate or Efunte, who was herself a daughter of Adebayo, the father of Opo. Therefore Dada was the sister of Opo and not in any sense of the word a "distant relation" of Opo as alleged in the Statement of Defence. 20

20. Evidence to support the Respondent's case of the relationship between Dada and Opo was given by three witnesses.

(1) The Fifth Respondent, gave evidence that there were 5 children of Adebayo one of whom was Opo and another Efunte or Efunite who was the mother of Dada.

p. 34 l. 25 (2) Situ Afinju Adaba (D.W.2) said that Ade-Elenu was the son of Adebayo and his (the witness's) grandfather. He also said Dada was a daughter of Efunte who was born of the same father as Opo. The witness later said in re-examination that Ade-Elenu was his grandmother and a sister of Efunte. 30

p. 38 l. 6 (3) Kasali Bale Ipakodo (D.W.3) said at first that Dada and Aina were the children of the same father but different mothers. He then said that Dada's mother and Aina's mother were children of the same father. He said that he knew Sanni but did not know who his mother was. He then repeated that the mothers of Fatoyinbo (Dada) and of Sanni (Aina) were children of the same father. He said that he himself was about 150 years old.

p. 38 l. 12
p. 38 l. 22
p. 38 l. 26
p. 38 l. 32

He also said that Ade-Elenu was a female and left (as children) Ajayi, Agidi Adaba and Efunte who he had previously said was Adelenu's sister. (This evidence also omitted any reference to D.W.2 father as a son of Adelenu). This witness also said that Adebayo was Aina's father, then that he was Opoola's father.

p. 39 l. 18

p. 39 l. 13

p. 39 l. 11,12

- 10 21. The Fifth Respondent also gave evidence that the rents had never been shared between the two families as the Appellants alleged. He said that the First Appellant kept the money he received as rent and that the Respondents would apply to him for money when they wanted it. In cross-examination he said that he had never asked the First Appellant for monetary help, that it was impossible for him to have done so as the First Appellant had no work and that he only asked the Appellant for money from the rents which had been collected. A series of begging letters written by him to the First Appellant were then put to him together with a letter thanking the First Appellant for all his "financial assistance". As to the goods which the First Appellant alleged had been received in lieu of rent, the Fifth Respondent alleged that the First Appellant had taken all the goods and used the money and had promised to pay the money back. This had taken place in 1940 and the money had never been paid back. He (the witness) thought that the First Appellant became dishonest in 1947. He admitted that he had himself received a cheque from the tenant for £175 in July 1950 for rent and had paid exactly half (£87. 10. 0.), to the First Appellant. He denied that this was the half-share due to the Appellants' family. His explanation was that he had been told by the First Appellant to keep the balance of the expenses as the First Appellant was going out of town. He said he later paid £80 to the First Appellant in cash, for which he got no receipt. He said he relied on the First Appellant's honesty at this time although he also said that 3 years earlier he had decided that the First Appellant was not honest.

p. 29 l. 16

Exhibits
N - S

p. 32 l. 21

p. 32 l. 36

p. 34 l. 6

22. Stephen Aderibighe Olurebi (D.W.4.) a Clerk in the Rates Office of Lagos Town Council, said that between 1945 and 1950 the rates for 42/44 Ereko Street were paid by one

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Sonem Nonayhij and that during one period the rates had been paid by the First Appellant.

23. Michael Nathaniel Bright Wilson (D.W.5.) a Solicitor said that he had acted for Aina a year or two before she died in respect of a claim for rent due in respect of 42 Ereko Street and that Aina sued in her own name as owner of the property. He admitted in cross-examination that "it is not uncommon for an uncle or aunt to act as regards property owned by herself and other members of the family. He also said that after Aina's death he advised the First Respondent to get an older relation to join in taking out Letters of Administration and that as a result the First Appellant came into the matter. He said the Letters of Administration were taken out in respect of personal property and have nothing to do with real property in this country. Finally under cross-examination the witness said :

p. 42 l. 25
p. 43 l. 15
p. 43 l. 7
p. 43 l. 36
p. 44 l. 4

"Aina told me she had given the property at Great Bridge Street to her sister's son. There was no question of 1st Plaintiff being entitled to the property. That was made quite clear to 1st Plaintiff and Defendant".

Two things are quite clear from this evidence, namely, that Aina told the witness that she had a sister who had a son, and that Aina said she had given or allotted the Bridge Street property to that son. This remark was made in the last years of her life and could not have referred to the Deed of Gift to Sanni in 1914, Sanni was of course her own son and in any event was dead long before. The trial judge who heard the evidence interpreted it as meaning that Aina told the witness that she had allotted the Bridge Street property to the First Appellant who had certainly lived there from this period to the date of the trial. The Appellant submits that this is the correct interpretation.

24. The Respondents further relied on the terms of the Deed of Gift made in 1914 by Aina to Sanni of the Great Bridge Street property. In this Deed no reference is made to Dada as being a child of Opo. It is submitted that the Deed has very little evidential value. The Appellants' evidence was that the Deed was prepared so that Sanni

could raise money which was to be used for the benefit of the Appellants and that the Appellants consented to this course. The purpose of the Deed was simply to provide a document of title for Sanni to use in raising a loan. It is submitted that no great weight should be attached to the omission of Dada. The Appellants could not be said to have accepted the truth of the contents of the recital to the Deed. The First Appellant was only 12 years old at the time. What Sanni or Aina chose to put in the Deed could not be binding on the Appellants nor could it be of any evidential value. It should be remembered that the Appellants' case was that the purpose of the Deed was simply to give Sanni a title so that he could use the property as security for a loan from which the Appellants' family would benefit. For that purpose it was necessary for Aina to show that she had a title so that she could make a gift. If the Deed had referred to Dada's interest in the property it would have been manifest that Aina could not make a gift of the property because of the interest of Dada's descendants who were minors.

25. The Trial Judge gave judgment for the Appellants. In the course of this judgment he said:-

"It is not disputed that Dada was Plaintiff's grandmother and that if Dada was Aina's sister the Plaintiffs have a good claim to share in the property. But Defendants state that Opoola had only two children, Aina and Oniyoku and that Dada was the daughter of a sister of Opoola and therefore acquired no interest in the property.

p. 46 l. 13

The sole question in the case is therefore whether Dada was sister of Aina or not. The evidence on this point consisted of contradictory version of family history, and the surrounding facts must be examined to see if they threw any light on this matter.

The Plaintiffs alleged that the rent of the property had been shared between the Defendants and themselves up to 1952 and it is clear that on at least one occasion when 1st Defendant received an

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amount of £175 as rent, he paid £87.10.0. of it to the 1st Plaintiff. It is also clear that 1st Plaintiff collected the rent and kept charge of it advancing amounts to Defendants when requested. There is nothing to show whether he paid out only half of the rent received or was merely acting as the Defendants' banker for the full amount, but it is undoubted that 1st Defendant wrote a number of begging letters to 1st Plaintiff which are inconsistent with the claim that he was only demanding payment from his own funds.

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It also appears that when Letters of Administration for Aina's estate were taken out by 1st Plaintiff and 1st Defendant, they were both described as the grandsons of the deceased.

And finally there is evidence of one of the Defendants' witnesses that Aina told him that certain property had been given to her sister's son. It is not in dispute that the property in question was given to 1st Plaintiff.

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Against this there is the fact that Aina in a deed of gift to her son recited that Opoola died "leaving her surviving Oniyuko and the said Aina and her children". There is also the further fact that a lease of the premises was (exhibit "D") signed by 1st Plaintiff as administrator of the estate of Aina which would be unnecessary if he was joint owner of the property. Both these facts are open to explanatory comment, the recital to the comment that it was in Aina's interest to declare herself the sole owner of the property she was making a gift of to her son, and the signing of the lease to the comment that both 1st Plaintiff and 1st Defendant signed in the capacity of Administrators of the Estate and the signature in that capacity is as much an admission against 1st Defendant as against 1st Plaintiff.

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There is one other matter that should be mentioned. Plaintiff and 1st Defendant as administrators of Aina's estate jointly leased the property at 42 Ereko Street in 1938 to a tenant for a

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term of 15 years expiring in March 1953. But 6 months before the expiration of this lease the Defendants in their own names without informing the 1st Plaintiff leased the property for a further period of 15 years and received three years rent in advance. This conduct is not one would expect from persons who had a clear title to the property.

10 In this case the family history is too contradictory to be relied upon, but the other evidence to which I have referred is consistent with Plaintiffs' claim and the facts relied on by the Defendants do not throw any doubt on it.

20 I find therefore that Dada was the sister of Aina and that the Plaintiffs are entitled to a declaration that they are jointly with Defendants the owners of the property at 42 and 44 Ereko Street. Declaration to issue accordingly."

p. 47 l. 43

26. The Respondents appealed against this judgment to the Federal Supreme Court of Nigeria. The grounds of appeal were as follows:-

"(1) The judgment of the learned trial Judge is against the weight of evidence.

p. 48 l. 14

30 (2) The learned trial Judge erred in law in granting a declaration of title to the Plaintiffs when the Plaintiffs had failed to discharge the onus placed on them in law in order to succeed.

40 (3) The learned trial Judge misdirected himself on the evidence by failing to direct his mind to the evidence of the 5th Defendant and Mr. Wilson and thereby arrived at an erroneous decision.

(4) The learned trial Judge misdirected himself in law in holding that the recitals contained in the Deed of Gift tendered by the Defendants are not evidence against the Plaintiffs."

27. The Federal Supreme Court gave judgment on

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the 15th November 1956. The Court considering correctly that this was an appeal on fact referred to the judgment of Lord Thankerton in the case of Watt or Thomas -v- Thomas 1947 A.C. 484. The Court then turned to the judgment of the trial Judge in this case and set out the other evidence which the trial Judge referred to as being consistent with the Appellants' case as follows :-

p. 55 l. 34

- "(1) That on one occasion defendant 5, shared the rent with plaintiff 1., 10
- (2) that it was plaintiff 1 who collected the rent and kept charge of it, advancing amounts to the defendants when requested.,
- (3) that defendant 5 wrote a number of begging letters to plaintiff, which in the opinion of the learned Judge were inconsistent with the claim that the was demanding payment from his own funds., 20
- (4) that in applying for letters of administration to the estate of Aina, plaintiff 1 and defendant 5 described themselves as the grandsons of Aina.,
- (5) that there was evidence (that of the witness Wilson) that Aina had told him in her lifetime that she had given the property in Bridge Street to her sister's son, which property had in fact been given to plaintiff 1., 30
- (6) that whereas in 1937 plaintiff 1 and defendant 5 had jointly leased one of the properties of the estate, in 1953, six months before the expiry of that lease, the defendants alone re-leased the property. In the learned Judge's view the defendants' conduct there was inconsistent with their having a clear title to the property." 40

p. 56 l. 13

28. The Court then held that as to the matters set out in items (1) to (3) it must be borne in mind that the First Appellant was a much older man than the Fifth Respondent and that for this and other reasons it was

accordingly dangerous to draw adverse conclusions merely from the fact that the First Appellant received and paid out monies belonging to Aina's estate. The Court considered that in relation to the sum of £175 the explanation of the Fifth Respondent was not very convincing and the learned Trial Judge was entitled to rely on the incident as some evidence that the First Appellant was entitled to share in Aina's estate. But the Court held that this was not conclusive being only one occasion in 20 years. As to item (4) the Court held that this did not help the Appellants as the First Appellant was not a grandson of Aina. That is correct but the importance of this statement is that it was done by arrangement with the two families "to facilitate the matter". The Appellants' submission was that by permitting this erroneous description of the Appellants the Respondents conceded that the Appellants were entitled to share in the estate.

29. As to item (5) the Court held that Wilson's evidence cannot be right as there was no evidence that Aina had given the property to the First Appellant but had given it to her son by Deed some years earlier. The Appellants submit that the Federal Court ignored the true significance of this evidence and was not entitled to hold that it should have been rejected.

30. As to item (6) the Federal Court held that it was manifestly incorrect.

31. The Federal Court held that this case came within the first and third of Lord Thankerton's principles and further held that the preponderance of direct evidence was in favour of the Respondents and that the recital in the Deed of Gift carried more weight than the dubious inferences sought to be drawn from the other evidence. The Appellants submit that this appeal should be allowed for the following (among other)

REASONS

- (1) BECAUSE the Federal Court was wrong in holding that this case came within any of the rules set out in the case of Watt or Thomas -v- Thomas

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- (2) BECAUSE the Federal Court was wrong in holding that any of the evidence relied on by the Judge did not support the Appellants' case.
- (3) BECAUSE the Federal Court was wrong in holding that any of the said evidence had no foundation in fact.
- (4) BECAUSE the Federal Court was wrong in holding that the evidence of Wilson could not be right. 10
- (5) BECAUSE the Federal Court was wrong in holding that the preponderance of evidence on the relationship between Dada and Aina was in favour of the Respondents' case.
- (6) BECAUSE the Federal Court was wrong in rejecting the other evidence relied on by the learned Trial Judge.
- (7) BECAUSE the Federal Court was wrong in holding that Exhibit H was of greater evidential value than the said other evidence. 20
- (8) BECAUSE the Federal Court was wrong in interfering with the judgment of the learned Trial Judge on a question of fact.
- (9) BECAUSE there was sufficient evidence to justify the findings of fact by the learned Trial Judge.
- (10) BECAUSE on the evidence the Appellants had made out their case.
- (11) BECAUSE the evidence called by the Respondents did not rebut the Appellants' case.
- (12) FOR the reasons given by the learned Trial Judge.

D. A. GRANT.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL SUPREME COURT
OF NIGERIA

B E T W E E N:

LAWAL BURAIMAH FATOYINBO
and OTHERS Appellants

- and -

SELIATU ABIKE WILLIAMS
Alias SANNI and OTHERS
Respondents

CASE FOR THE APPELLANTS

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