

GH 1.6

IN THE PRIVY COUNCIL

1961

No.13 of 1959

ON APPEAL FROM THE FEDERAL SUPREME

COURT OF NIGERIA AT LAGOS

B E T W E E N

- 1. C.A. SAVAGE
- 2. SOLOMON KAYODE
- 3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will of
S.O.Rotibi).

UNIVERSITY OF LONDON
W.C.1.
INSTITUTE OF
LEGAL STUDIES

63487

Defendants-Appellants

- and -

M.O. UWECHIA

Plaintiff-Respondent

RECORD OF PROCEEDINGS

KNAPP-FISHERS & BLAKE &
REDDEN,
31 Great Peter Street,
Westminster, London, S.W.1.
Solicitors for the
Appellants.

REXWORTHY, BONSER &
SIMONS,
83/85 Cowcross Street,
London, E.C.1.
Solicitors for the
Respondent.

ON APPEAL FROM THE FEDERAL SUPREME COURT OF
NIGERIA AT LAGOS

B E T W E E N

1. C.A. SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will
of S.O.Rotibi)

Defendants-Appellants

- and -

M.O. UWECHIA

Plaintiff-Respondent

RECORD OF PROCEEDINGS

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PRIVY COUNCIL BUT NOT PRINTED

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Notice to all Parties for attendance before the Federal Supreme Court Registrar to settle the Record of Appeal.	26th January 1956

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IN THE PRIVY COUNCIL

No.13 of 1959

ON APPEAL FROM THE FEDERAL SUPREME COURT

OF NIGERIA AT LAGOS

B E T W E E N :

- 1. C.A.SAVAGE
- 2. SOLOMON KAYODE
- 3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will of S.O.Rotibi)
Defendants-Appellants

10

- and -

M.O. UWECHIA Plaintiff-Respondent

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA

Suit No. 0/22/55

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.1

Statement of
Claim
2nd May 1955.

20

B E T W E E N :-

M. O. UWECHIA ... Plaintiff

- and -

- 1. C.A.SAVAGE
- 2. SOLOMON KAYODE
- 3. JONATHAN SUNDAY ROTIBI
Trustees of the Will
of S.O.Rotibi ... Defendants

STATEMENT OF CLAIM

30

1. By an agreement to convey made between the plaintiff and S.O.Rotibi on the 24th day of August, 1954, at Owerri, the said S.O.Rotibi

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

agreed to convey to the Plaintiff for the sum of £780 (Seven hundred and eighty pounds) after three months from the aforementioned date his freehold property with the appurtenances thereto situate at No.6 New Market Road, Onitsha.

No.1
Statement of
Claim
2nd May 1955.
continued

2. The Plaintiff has a copy of the said agreement to convey to which the Plaintiff will at the trial refer for its full terms and effect.

3. Notwithstanding repeated requests by the plaintiff's agent, the trustees of the said S.O. Rotibi has neglected and refused, and continue to neglect and refuse to take any steps towards the completion of the said Agreement to convey the said property.

10

4. The plaintiff has performed his obligations to the said S.O. Rotibi (whose trustees the defendants are) which led to the said agreement to convey.

And the plaintiff claims.

- 1. Specific performance of the said agreement.
- 2. Further or other relief
- 3. Costs.

20

Dated at Onitsha this 2nd day of May 1955.

(Sgd.) G.C.M. Onyiuke
Solicitor.

Sums	£10
Service	4.6
Mileage	<u>4.6</u>

£10.9/- C.R.No.388582 of 6/5/55.

30

Intld. A.C.P.A. (Abomeli).

No. 2

CIVIL SUMMONS

IN THE SUPREME COURT OF NIGERIA

CIVIL SUMMONS

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.2

Book No. U 12

U 1133

Suit No.0/22/55

Civil Summons
6th May 1955

BETWEEN: M.O.Uwechia Plaintiff

and

- 1. C.A.Savage
- 2. Solomon Keyode
- 3. Jonathan Sunday Rotibi
Trustees of the Will of
S.O.Rotibi Defendants

10

To 1. C.A.Savage 2. Solomon Kayode Olaiya
3. Jonathan Sunday Rotibi
of (See below)

20

You are hereby commanded in His Majesty's name to attend this court at Onitsha on a date to be notified later o'clock in the forenoon to answer a suit by.....of..... against you

30

The Plaintiff's Claim 1. By an agreement to convey made between the plaintiff and S.O.Rotibi on the 24th day of August, 1954, at Owerri, the said S.O. Rotibi agreed to convey to the plaintiff for the sum of £780 (seven hundred and eighty pounds) after three months from the aforementioned date his freehold property with the appurtenances thereto situate at No.6 New Market Road, Onitsha.

2. The Plaintiff has a copy of the said agreement to convey to which the Plaintiff will at the trial refer for its full terms and effect.

3. Notwithstanding repeated requests by the plaintiff's agent, the trustees of the said S.O.

No. 3

ORDER FOR PLEADINGS

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL

DIVISION

HOLDEN AT ONITSHA

Before His Lordship Herbert MacCaulay Sandes Brown:

Puisne Judge.

Tuesday the 4th day of October, 1955 at Onitsha

10

Suit No.0/22/1955.

M.O. UWECHIA

Plaintiff

Versus

C.A.SAVAGE & OTHERS

Defendants

BALONWU for the Plaintiff.

DEFENDANTS absent.

ORDER: Pleadings 30 days for the Statement of Claim with 15 days for each defendant to file his defence from the date of service upon him of the Statement of Claim.

20

For hearing on 4th November, 1955.

Intld. H.M.S.B.(Brown)
4.10.55.

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.3

Order for
Pleadings

4th October 1955

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.4

STATEMENT OF CLAIMIN THE SUPREME COURT OF NIGERIAIN THE SUPREME COURT OF THE ONITSHA JUDICIALDIVISIONHOLDEN AT ONITSHA

No.4

Statement of
Claim

4th October 1955

Suit No.0/22/55.BETWEEN : M.O.UWECHIA Plaintiff

and

1. C.A.SAVAGE
 2. SOLOMON KAYODE
 3. JONATHAN SUNDAY ROTIBI
- Trustees of the Will
of S.O.Rotibi Defendants

10

No.4

STATEMENT OF CLAIM

1. The Plaintiff is a native of Onitsha and lives at Onitsha.

2. Samson Omolona Rotibi was a general merchant and prisons contractor and was residing at Owerri, in Owerri Division until his death on 9th September, 1954.

20

3. By his last Will and Testament dated 27th March, 1954, he appointed Christian Ayotope Savage, Chemist and Druggist, of 90 Waki Lane, Ekotedo, Ibadan, Solomon Kayode Olaiya of 6, Alli Street, Lagos, and Jonathan Sunday Rotibi, Pharmacist, Care Government Hospital, Akure, defendants in this Suit, to be the executors and Trustees of the said Will. Under this Will, they are to receive £50 each for acting.

30

4. In some of the clauses in the said Will the deceased Samson Omolona Rotibi stated as follows :-

"The agreement covering the land of the Storey House of Onitsha was dated 30th December, 1931, and duly signed by Mr. Wallace Lovell who sold the land to me at Onitsha.

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

10 "I have leased out my two adjoining houses at Onitsha to Mr. Uzodima for 25 years vide agreement dated 23rd November, 1953, after he would have deducted his expenses of the buildings thereon, he should be paying his annual rents to my Trustees herein named for the training of my children.

No.4

Statement of
Claim

4th October 1955
continued

"My storey house at Onitsha Market Road and other properties devised to my children should be leased out to responsible firm by my trustees, should any firm or firms require them.

20 "My prison contracts should be carried on by Isaac Akintola and Samuel Jegede, both of Owerri, and Jacob Kehinde Olaiya of Calabar, under the careful supervision of my executors and trustees named in this Will.

"My big car No. ON 2455 Austin A.125 which I bought at £1,400 should be sold, if funds are sufficient to carry on the contracts or if sufficient fund is not available to pay all above-mentioned beneficiaries."

30 5. Since the death of the deceased, the defendants i.e. executors and trustees of the deceased's Will have been carrying on the deceased's prison contractors have been collecting rents through their Solicitor at Onitsha from the storey house at No.6 New Market Road, Onitsha, and have sold the aforementioned Austin A.125 No. ON 2455.

40 6. By an agreement to convey made between the plaintiff and the deceased Samson Omolona Rotibi on the 24th day of August, 1954, at Owerri, the said deceased agreed to convey to the plaintiff for the sum of £780 (Seven hundred and eighty pounds) after three months from the aforementioned date his freehold properties with the appurtenances thereto situate at No.6 New Market Road, Onitsha.

7. The plaintiff has a copy of the said agreement to convey to which the plaintiff will at the

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.4
Statement of
Claim
4th October 1955
continued

trial refer for its full terms and effect.

8. Immediately after the death of the deceased, the plaintiff caused the fact of the agreement to be brought to the notice of the defendants i.e. the executors and trustees of the deceased's Will.

9. Notwithstanding repeated requests by the plaintiff's agent, the said trustees of the deceased have neglected and refused, and continue to neglect and refuse to take any steps towards the completion of the said agreement to convey the said properties.

10

10. The plaintiff has performed his obligations to the said deceased (whose trustees the defendants are) which led to the said agreement to convey.

Wherefore the plaintiff claims against the defendants as follows :-

1. Specific Performance of the said agreement to convey.
2. Further or other relief.
3. Costs.

20

Dated at Onitsha this 4th day of October, 1955.

Sgd. M.O.Balonwu
Plaintiff's Solicitor.

Plaintiff's address for Service:

c/o Barrister Balonwu, Onitsha.

Defendants' Address for Service:

1. Christian Ayotope Savage, Chemist and Druggist, 90, Waki Lane, Ekotedo, Ibadan.
2. Solomon Kayode Olaiya, 6, Alli Street, Lagos.
3. Jonathan Sunday Rotibi, Pharmacist, Government Hospital, Akure.

30

No.5

STATEMENT OF DEFENCE

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL

DIVISION

HOLDEN AT ONITSHA

SUIT No.0/22/1955

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.5

Statement of
Defence

October 1955

BETWEEN: M.O.UWECHIA Plaintiff

and

- 1. C.A.SAVAGE
 - 2. SOLOMON KAYODE
 - 3. JONATHAN SUNDAY ROTIBI
- Trustees of S.O.Rotibi Defendants.

STATEMENT OF DEFENCE

1. Save as herein expressly admitted, the Defendants deny each and every allegation of fact contained in the Plaintiff's particulars of claim in the Plaintiff's particulars of claim as if each has been separately set out and specifically traversed.

2. Paragraph 1 of "Statement of Claim":
plaintiff's nativity and abode are not in issue and are irrelevant.

3. Paragraph 2 of Statement of Claim: Late S.O. Rotibi died at Owerri on 3/9/54 and not 9/9/54.

4. Paragraph 3 of S/C. is admitted.

5. Paragraph 4 of S/C: Defendants admit that Late S.O.Rotibi at the time of his death was the owner in fee simple of the Storey house at Onitsha.

6. Defendants say that Will of late S.O. Rotibi

10

20

30

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.5

Statement of
Defence

October 1955
continued

has not been proved, and that they have not obtained probate yet.

7. Defendants will further say that a Caveat has been entered against the Will in the Supreme Court Lagos and the Caveat has not been heard.

8. Paragraph 5 of S/C: Defendants deny carrying on deceased's Prison Contracts. Defendants agree collecting rents from the said Storey House at No.6, New Market Road Onitsha in order to preserve the property from wastage and loss.

10

9. Paragraph 6 of S/C: The Defendants plead that the said Agreement was in essence a Mortgage for money lent. A claim for specific performance does not therefore arise.

10. Defendants will, however, contend that plaintiff's right of action was to sue the Executor and Trustees when duly appointed either to pay the loan or to ask for an order for Foreclosure Nisi with an interval of six months. These have not been done.

20

11. Paragraph 8 of S/C: 2nd and 3rd Defendants will contend they were never informed of the Agreement as alleged.

12. Paragraph 9 of S/C: Defendants will further contend that they cannot act as Executors and Trustees until they have been granted probate of the Will of the late S.O.Rotibi.

13. Paragraph 10 of S/C: Defendants will say they are not at present the lawfully appointed Executors and Administrators until the Probate is obtained. Such acts they perform at present are purely to preserve the estate of the deceased from wastage and loss.

30

14. Defendants will contend that this action is too premature. At any event (a) Defendants will resist the claim for specific agreement as the loan was in the nature of mortgage.

Defendants also are not liable to pay any costs.

Dated at Onitsha this day of October 1955.

Sgd. J.C.Anyaduba
Defendants' Solicitor.

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.5

Statement of
Defence

October 1955
continued

Plaintiff's Address for Service:

c/o M.O. Balonwu, Esqr.,
Barrister-at-Law, Onitsha.

Defendants' Address for Service:

c/o J.C.Anyadube, Esqre.,
Barrister-at-Law, Onitsha.

10

No.6

COUNSEL'S SUBMISSIONS

At Onitsha the 4th day of November, 1955.

Matthew Uwechia

vs.

1. Christian Savage
2. Solomon Kayode
3. Jonathan Sunday Rotibi

G.C.ONYIUKE (with him Balonwu) for the Plaintiff

J.C.ANYADUBA for all the defendants

ONYIUKE Executor can intermeddle and commence an
action before probate.

Executor derives title from the Will not from
probate. (19th Tristram and Coote's page 77.)

Executor can make a conveyance or an assign-
ment before probate.

20

No.6

Counsel's
Submissions

4th November
1955

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.6

Counsel's
Submissions
4th November
1955
continued

Executor can be sued before probate if he elects to act but not if he still has opportunity of renouncing executorship Bluit vs. Bluit 23rd English and Empire Digest 478.

ANYADUBA: Executors have never acted as such. Their acts to prevent wastage. Will is subject to a caveat and probate held up.

Executor not liable at his death. Had the debt matured they could sue. At the moment no authority to act executors cannot be sued.

ONYIUIKE: Nature of document.

10

Mortgage does not arise. None of the ingredients of a mortgage. Agreement to convey only effective on non-payment of debt.

An equitable contingent interest.

Option to sell the property resides in executors. Interest of Plaintiff survives the death. Executors are bound, having had notice, after death of Testator. Agreement to convey (Walsh and Lonsdale).

Anyadube Construction of document: The Conveyance is only an alternative to the payment of debt.

20

Plaintiff is "Creditor" (a second condition) for the sum borrowed which was due at the death but not now due to be paid.

Plaintiff has an option to purchase after default.

PLAINTIFF'S EVIDENCE

No.7

EVIDENCE OF LASISI ROTIBI

30

Plaintiff's
Evidence

No.7

Lasisi Rotibi
4th November
1955

Lasisi Rotibi called by Plaintiff having been sworn states :- I am Lasisi Rotibi, I knew Samson Omolona Rotibi. I was the manager of his business in Owerri and Onitsha since 1930.

When he died on 3rd September, 1954, I was at Owerri.

Christian Savage, Solomon Kayode and Jonathan Rotibi I knew. They are the Executors of his estate and named in his Will.

I knew about the agreement between the Plaintiff and the deceased Rotibi. Savage now has the agreement.

10 After death we all went to Owerri about a week after the death including the Defendants.

One Isaac Akintola handed over the keys to Savage (1st Defendant) about four days later. When safe opened I was present. All papers were examined there and then in presence of all.

I wrote a letter to Plaintiff which I now identify (marked Exh. "A"). This is true, that is to say, that I showed the agreement referred to to the trustees (the Defendants) on the 14th September.

20 I now identify the copy of the agreement belonging to Rotibi deceased. (Marked Exh. "B").

Cross Examined by Anyaduba: I showed them the document (Exh. "A") to the trustees on 14th September.

(The certified copy of Will of deceased is admitted by consent and marked Exh. "C"). to 14th December, 1955, for Judgment.

Sgd. H.M.S.Brown

JUDGE

4/11/55.

30

No.8

JUDGMENT OF TRIAL JUDGE H.M.S.BROWN

At Onitsha Wednesday the 14th day of December, 1955. M.O.Uwechia vs. C.A.Savage & Ors.

J U D G M E N T

In this case the executors named in the

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

Plaintiff's
Evidence.

No.7

Lasisi Rotibi

4th November
1955
continued

No.8

Judgment of
Trial Judge
H.M.S.Brown

14th December
1955.

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.8

Judgment of
Trial Judge
H.M.S.Brown
14th December
1955.
continued

Will of Samson Omolona Rotibi are sued on an agreement made by the deceased Testator on 24th August, 1954, entitled "Promissory Note", to pay to the Plaintiff three months after the date of the note the sum of £780, or in default to convey to him certain premises described as No.6, New Market Road Onitsha. This sum was not paid by the deceased who died in September, 1954.

The Plaintiff now seeks specific performance of the conveyance of the premises so described on the grounds that the agreement was to convey these premises to the Plaintiff for the sum of £780 on the completion of three months calculated from the 24th August, 1954.

10

The executors, although the Will has not yet been proved, have already intermeddled and so can be sued if that were considered necessary, and this claim is not therefore premature in that sense, and the estate of the deceased is certainly liable for his debts. At his death on 3rd September, 1954, the deceased was not yet liable for the payment of the sum of £780 nor could he repay it on 24th November, 1954, since he was dead. The Defendants have never repudiated the debt.

20

The Plaintiff is not however suing for repayment of the sum of £780 to which he is certainly entitled if the estate of the deceased is sufficient to satisfy this amount in due course, when the amount available for the payment of debts is ascertained. He has chosen to rely on the contingent interest he may have had in the premises described as No.6, New Market Road in the note in question.

30

He says in effect, that the contingency has now arisen, that is to say before the day he took action on 6th May, 1955, though he puts it in a way entirely different from the wording of the Agreement, both in the particulars of his Claim and in his Statement of Claim, because apparently he upon the document upon which he relies as an agreement to convey the premises, for the sum promised, after a period of three months. I cannot so construe it.

40

The document is described as a "promissory note", the wording is that of a

promissory note, the promise is now impossible of fulfillment owing to the death of the promisor. The conveyance of the property is said in the note to be contingent on the default of the promisor.

The promisor was not in default at his death nor liable for payment until 24th November, 1954 by which date it was no longer possible. I must presume that at the time of his death the deceased was intending to fulfil his obligations in accordance with his undertaking and had every prospect of being able to avoid the contingency of default and so at no time was the Plaintiff entitled to this conveyance which he has sought.

The claim as presented therefore is dismissed with costs assessed at fifteen guineas.

Sgd. H.M.S.Brown
Judge.

In the
Supreme Court
of Nigeria
Onitsha Judicial
Division at
Onitsha

No.8

Judgment of
Trial Judge
H.M.S.Brown

14th December
1955
continued

10

No.9

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

ONITSHA HIGH COURT

Suit No.0/22/55

BETWEEN :

M.O.UWECHIA PLAINTIFF/APPELLANT

- and -

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will
of S.O.Rotibi)

DEFENDANTS/RESPONDENTS

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court.

No.9

Notice and
Grounds of Appeal
19th January 1956

20

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TAKE NOTICE THAT the Plaintiff/Appellant being dissatisfied with the decision contained in the judgment of the Onitsha High Court of the Eastern Region of the Federation of Nigeria

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court.

dated the 14th day of December 1955 doth hereby
appeal to the Federal Supreme Court of Nigeria
upon the grounds set out in paragraph 3 and will
at the hearing of the appeal seek the relief set
out in paragraph 4.

No.9

Notice and
Grounds of Appeal
19th January 1956
continued

And the Appellant further states that the
names and addresses of the persons directly af-
fected by the appeal are those set out in para-
graph 5.

2. PART OF THE DECISION OF THE LOWER COURT
COMPLAINED OF : The whole decision. 10
3. GROUND OF APPEAL:
 - (a) NON DIRECTION: That the learned trial
Judge failed to direct his mind to the
nature of the interest created in the
Plaintiff's favour by the document
Exhibit "B".
 - (b) ERROR IN LAW: That the learned trial
Judge erred in Law to hold that Exhibit
"B" is a promissory note. 20
 - (c) ERROR IN LAW: That the learned trial
Judge erred in law to hold that the
promisor and/or his personal represen-
tatives were not in default and/or
that the contingency contemplated by
Exhibit 'B' had not arisen at the time
action was brought.
 - (d) That the decision is against the weight
of evidence.
4. RELIEF SOUGHT FROM THE FEDERAL SUPREME
COURT: 30
That the decision of the High Court be set
aside and judgment entered for the Plain-
tiff in the terms of his claim.
5. PERSONS DIRECTLY AFFECTED BY THE APPEAL :
 - (a) CHRISTIAN AYOTOPE SAVAGE
CHEMIST AND DRUGGIST,
90, WAKI LANE,
EKOTEDO,
IBADAN. 40

- (b) SOLOMON KAYODE OLAIYA,
6, AJILI STREET,
LAGOS.
- (c) JONATHAN SUNDAY ROTIBI,
PHARMACIST,
GOVERNMENT HOSPITAL,
AKURE.

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court.

No.9

Notice and
Grounds of Appeal
19th January 1956
continued

DATED at Onitsha this 19th day of January, 1956.

Sgd. G.C.M. Onyiuke
Appellant's Solicitor.

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No.10

NOTICE OF MOTION TO INTRODUCE NEW EVIDENCE
IN THE FEDERAL SUPREME COURT OF NIGERIA
(RULE 30)

SUIT NO.0/22/55:

No.10

Notice of Motion
to introduce new
evidence

1st September
1956.

BETWEEN :

M.O.UWECHIA PLAINTIFF/APPELLANT

- and -

- 1. C.A.SAVAGE)
 - 2. SOLOMON KAYODE)
 - 3. JONATHAN SUNDAY)
 - ROTIBI.)
- Trustees of the Will
of S.O.Rotibi.
DEFENDANTS/RESPONDENTS.

20

MOTION ON NOTICE

TAKE NOTICE that the Federal Supreme Court at Lagos will be moved on Tuesday the 5th day of March, 1957 at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the applicant for leave to introduce new evidence by affidavit namely, the Probate and Plan, and for any further and/or other order which to the Honourable Court may seem just.

30

This application is made under Rule 30 of the West African Court of Appeal Rules, 1950.

Dated at Onitsha this 1st day of September, 1956.

Sgd. M.O.Balonwu
APPLICANT'S SOLICITOR.

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

No.11

AFFIDAVIT IN SUPPORT OF MOTION TO
INTRODUCE NEW EVIDENCE

IN THE FEDERAL SUPREME COURT OF NIGERIA

(RULE 30)

Suit No. 0/22/55:
FSC. 1 1

No.11
Affidavit in
Support of Motion
to introduce New
Evidence.
24th August 1956

BETWEEN:-

M.O.UWECHIA ... Plaintiff-Appellant

- and -

10

- | | | |
|------------------------------|---|--|
| 1. C.A.SAVAGE | } | Trustees of the Will
of S.O.Rotibi. |
| 2. SOLOMON KAYODE | | |
| 3. JONATHAN SUNDAY
ROTIBI | | |
| |) | Defendants-Respondents. |

A F F I D A V I T

I, Mathew Obiemeka Uwechia, Ibo, farmer,
resident at 27, Isiokwe Road, Onitsha, British
Protected person, make oath and say as follows:-

1. That I am the Plaintiff-Appellant in the
above-named suit. 20
2. That judgment in the said suit was given at
Onitsha on Wednesday, the 14th day of Decem-
ber, 1955.
3. That at the time the suit was heard and de-
termined, probate had not been obtained.
4. That probate has now been granted.
5. That a certified copy of the said probate is
attached hereto and marked Exh.1.
6. That copies of the Agreement and Plan of the
land, specific performance of which is sought, 30
are attached hereto and marked Exh.2.
7. That the area of No.6 New Market Road covered

by the Agreement and Plan referred to in paragraph 6 herein, is not in dispute.

8. That I make this Affidavit to the best of my knowledge and belief and in support of the Motion attached hereto.

Sworn to at the High Court)
Registry, Onitsha, this) (Sgd.)
24th day of August, 1956.) M.O.Uwechia
DEPONENT.

10 BEFORE ME:

(Sgd.) ?

COMMISSIONER FOR OATHS.

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

No.11

Affidavit in
Support of Motion
to introduce New
Evidence.

24th August 1956
continued

No.12

EXHIBIT REFERRED TO IN THE AFFIDAVIT OF
MATHEW OBIEMEKA UWECHIA IN SUPPORT OF
MOTION.

Judicial C 14.

IN THE HIGH COURT OF EASTERN REGION OF THE
FEDERATION OF NIGERIA

20

P R O B A T E

IN THE MATTER OF SAMSON OMOLONA ROTIBI
DECEASED.

No.12

Exhibit referred
to in affidavit
of Mathew
Obiemeka Uwechia
in Support of
Motion

24th August 1956
(1st August 1956)

30

BE IT KNOWN that on the 28th day of July, 1956, the last Will and Testament (a copy whereof is hereto annexed) of SAMSON OMOLONA ROTIBI late of Owerri; deceased, who died on the 3rd day of September, 1954 at Owerri, and who at the time of His death had His fixed place of abode at Owerri within the jurisdiction of this Court, was proved and registered in this Court, and that the administration of the property of the said deceased was granted by this Court to

1. Christian Ayotope Savage
2. Solomon Kayode Olaiya
3. Jonathan Sunday Rotibi

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

the said Executors named in the said Will, they
having been first duly sworn.

Sworn under £3830: -: -: and that the
Testator died on or about the 3rd day of Sep-
tember, 1954.

No.12

Exhibit referred
to in Affidavit
of Mathew
Obiemeka Uwechia
in Support of
Motion

Money in Bank: £276: 7: 6:

Dated at Enugu this 1st day of August, 1956.

(Sgd.) W. J. Palmer

PROBATE REGISTRAR.

24th August 1956
(1st August 1956)
continued

This is the Exhibit marked 1
referred to in the affidavit of
Matthew Obiemeka Uwechia sworn
to this 24th day of August, 1956.

10

HIGH COURT REGISTRY

(Sgd.) ?

Commissioner for Oaths.

This is the last Will and Testament of me,
Samson Omolona Rotibi, General Merchant and
Prisons Contractor; a native of Ikole, Ado
Ekiti District, Ondo Province, residing at
Owerri in the Eastern Region of Nigeria.

20

I hereby revoke all Wills and Testamentary
instruments heretofore made by me.

I hereby appoint Christian Ayotope Savage,
Chemist and Druggist, of 90 Waki Lane; Ekotedo,
Ibadan and Solomon Kayode Olaiya of 6, Ali
Street, Lagos and Jonathan Sunday Rotibi; Phar-
macists, Care Government Hospital, Akure, to be
the executors and trustees of this my Will. To
each of them for so acting, I give a sum of £50
(fifty pounds).

30

I devise to Rachael Adenrele Rotibi, my
legally married wife, my house Number 5, situ-
ated at Owerri. I also bequeath the sum of
£400 (four hundred pounds) to her

I devise to my thirteen surviving children my other houses, number 1,2,3 and 4 situated at Owerri as tenants in common.

10 I further devise my storey house at Market Road at Onitsha, commonly known and called "Olaiya Brothers house" to all my 13 children as tenants in common. The agreement covering the land of the storey house at Onitsha was dated 30th December, 1931, and duly signed by Mr. Wallace Lowell who sold the land to me at Onitsha.

I devise my house at plot C91 containing 12 rooms at Abakaliki to all my children as tenants in common.

I devise the other house containing 4 rooms at Abakiliki to my younger brother, Isaac Akin-tola and I bequeath to him the sum of £200 (Two hundred pounds).

20 I bequeath to Samuel Jegede the sum of £100 (One hundred pounds)

I have leased out my two adjoining houses at Onitsha to Mr. Usodima for 25 years vide agreement dated 23rd November, 1953, after he would have deducted his expenses of the buildings thereon, he should be paying his annual rents to my Trustees herein named for the training of my children.

30 I also devise my house and landed property situated at 65, Jebba Street East at Ebute Metta to all my children as tenants in common.

I hereby charge my Trustees to erect decent buildings on my lands for my children if and when funds are available.

My storey house at Onitsha Market Road and other properties devised to my children should be leased out to responsible firms by my Trustees should any firm or firms require them.

40 My thirteen children should be fed, clothed and educated with the rents thereof until the last child should be 21 years of age.

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

No.12

Exhibit referred
to in Affidavit
of Mathew
Obiemeka Uwechia
in Support of
Motion

24th August 1956

(1st August 1956)
continued

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

No.12

Exhibit referred
to in Affidavit
of Mathew
Obiemeka Uwechia
in support of
Motion

24th August 1956
(1st August 1956)
continued

My prison Contracts should be carried on by Isaac Akintola and Samuel Jegede, both of Owerri and Jacob Kehinde Olaiya of Calabar, under the careful supervision of my executors and Trustees named in this Will.

I lease my land at the Western side of the road at Owerri from Achododu's family at £7 (Seven pounds) annual rent, to be used by me and my children from generation to generation.

The empty land at Owerri, I devise to all my children as tenants in common. 10

I also leased my land on the Eastern side of the road at Owerri from Oparanozie and Oke of Umuroma Compound as per our agreement dated 10th February, 1928, to be used by me and my children from generation to generation. I devise the property to my children as tenants in common.

The annual rent which I am paying for leasing the Eastern side is only 30/-. 20

These are the names of my surviving children. I recognise no other.

1. Lawrenda Olulana Rotibi
2. Solomon Sunday Kayode Rotibi
3. Gracy Boyede Rotibi
4. Marian Taiwo Rotibi
5. Margaret Larohunbi Rotibi
6. Luna Jemiseye Rotibi
7. Lawande Rotibi
8. Abbott Sogunro Rotibi
9. Daniel Lajiga Rotibi
10. Ajotola Rotibi
11. Moses Tojo Kehinde Rotibi
12. Ajisola Rotibi
13. Gboyega Rotibi.

30

I bequeath the following legacies :-

- (1) Beatrice Ajeyigbe £200 (Two hundred pounds)
- (2) Leah Omiyale £150 (One hundred and fifty pounds)
- (3) Dorcas Aina £100 (One hundred pounds)

40

- (4) Matilda Omojogbe £100 (One hundred pounds)
- (5) Victoria Tinuola £100 (One hundred pounds)
- and (6) Emily £70 (Seventy pounds)

In the
Federal Supreme
Court of Nigeria
Onitsha High
Court

No.12

Exhibit referred
to in Affidavit
of Mathew
Obiemeka Uwechia
in support of
Motion

24th August 1956
(1st August 1956)
continued

10

The total amount to be distributed among the various beneficiaries are £1,570 (One thousand five hundred and seventy pounds) which should be paid out of my savings in the bank to the recipients. My seven ton lorry No. ON 2461 which I bought at £1,025 should continue to be used for the services of my prison contracts.

My small car No. OW 4296 which I bought at £750 should be used by Isaac Akintola and Samuel Jegede and others as usual in the interest and execution of my prison contracts.

20

My big car No. ON 2455 Austin A.125 which I bought at £1,400 should be sold, if funds are sufficient to carry on the contracts or if sufficient fund is not available to pay all above mentioned beneficiaries.

I solemnly charge and beseech my three executors and Trustees named in this Will to carry out my earnest wish and desire as contained in this Will.

Witness my hand at Owerri this 27th day of March, 1954.

(Sgd.) Chief S.O.Rotibi

30

Signed by the above testator as his last Will in the presence of us both, being present at the same time, who in his presence and in the presence of each other subscribed our names as witnesses.

(Sgd.) S. O. Rotibi.

Witness:

Victoria T. Rotibi
S.O.Jegede,
P.O. Box 19,
Owerri.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.13

HEARING OF MOTION AND APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

TUESDAY THE 5TH DAY OF MARCH, 1957

BEFORE THEIR LORDSHIPS

No.13

Hearing of Motion
and Appeal.

5th March 1957

SIR STAFFORD FOSTER SUTTON

FEDERAL CHIEF
JUSTICE

OLUMUYIWA JIBOWU

FEDERAL JUSTICE

M.C.NAGEON DE LESTANG

FEDERAL JUSTICE

10

F.S.C. 153/1956

M. O. UWECHIA ...

Appellant

and

1. C.A.SAVAGE

2. SOLOMON KAYODE

3. J.S.ROTIBI

(Trustees of the Will of
S.O.Rotibi)

Respondents

Mr. G.C.M.Onyiuke with him Mr.M.O.Balonwu for
Appellant

20

Mr. Olowofoyeku for Respondents.

MOTION:

Motion to put in new evidence by affidavit.

Onyiuke Moves - Olowofoyeku does not oppose.

The Probate was not granted at time of trial.

Order in terms of Motion. No order as to costs.

5.3.57. (Sgd.) S. Foster Sutton, F.C.J.

APPEAL:

Onyiuke: Refers to pleadings, judgment, grounds
of appeal and agreement. Nature of document.

Judgment - reads from p.17 of record.

Submits it was not a Promissory Note - and trial

40

Judge erred in holding that default could not arise because of death.

Promissory Note - Cap.18 - sec.83(1). This was not an unconditional promise to pay money. Smith v. Boheme (1714) 92 E.R. 387 - at p.400.

Submits agreement was a conditional contract to convey. Cites Tappy v. Shrather (1862) 7 L.T. 298.

10 Submits debtor had an option to pay or to convey property. If he had been sued he could have said I am going to convey.

Refers to Williams on Executors 13th Edition - Vol.2, 997 para. 1636. Personal contracts - here not impossible of performance. Submits not personal.

(1949) Ch. D.517. Kennewell v. Dye, at p.521.

Kelsey v. Kelsey (1922) 91 L.J. Ch. 382.

20 Ahmed v. Estate and Trust Agencies (1938) A.C. 624.

Submits there was a breach here, default, therefore entitled to a decree of specific performance.

Did they know - p.19. They did know in September. Refers to evidence of Lasisi Rotibi p.14 and 15 of record. Olowofoyeku:

Effect of document - Debt payable any time within 3 months. At time of death what devolved on Executors was £780.

30 Note: The executors did in fact act, and knew of the agreement.

Note: Surely trial Judge erred in holding promisor was not in default.

Submits should not exercise discretion - equitable relief.

Onyuike: Nothing to add.

5. 3. 57. C.A.V.
(Intld.) S.F.S., F.C.J.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.13

Hearing of
Motion and
Appeal

5th March 1957
continued

In the
Federal Supreme
Court of Nigeria
at Lagos

No.14

ORDER GRANTING LEAVE TO INTRODUCE NEW
EVIDENCE

No.14
Order Granting
Leave to
Introduce New
Evidence.
5th March 1957.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.0/22/1955
F.S.C.153/1956

Application for an order for
leave to introduce new evidence.

BETWEEN:

M.O.UWECHIA ... Applicant 10

and

- 1. C.A.SAVAGE
- 2. SOLOMON KAYODE
- 3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will of
S.O.Rotibi. ... Respondents.

(Sgd.) S. Foster Sutton
CHIEF JUSTICE
OF THE FEDERATION.

Tuesday the 5th day of March, 1957. 20

UPON READING the application for an order
for leave to introduce new evidence and the
affidavit sworn to on the 24th day of August,
1956, filed by the Applicant and after hearing
Mr.G.C.M. Onyuike of Counsel for the Applicant
and Mr. Olowofoyeku of Counsel for the Respon-
dents not objecting :

IT IS ORDERED that the Applicant be at
liberty to introduce new evidence :

AND the Court doth make no order as to 30
costs.

(Sgd.) W. A. H. Duffus
CHIEF REGISTRAR.

No.15

JUDGMENT OF THE FEDERAL SUPREME
COURT OF NIGERIA

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE 18TH DAY OF MARCH, 1957

BEFORE THEIR LORDSHIPS

10	SIR STAFFORD FOSTER SUTTON	CHIEF JUSTICE OF THE FEDERATION
	OLUMUYIWA JIBOWU	FEDERAL JUSTICE
	M.C.NAGEON DE LESTANG	FEDERAL JUSTICE

F.S.C. 153/1956

BETWEEN :

M.O.UWECHIA ... Plaintiff-Appellant
and

20	1. C.A.SAVAGE 2. SOLOMON KAYODE 3. JONATHAN SUNDAY ROTIBI (Trustees of the Will of S.O.Rotibi).	Defendants-Respondents
----	---	------------------------

J U D G M E N T

FOSTER SUTTON F.C.J. In this case the Plaintiff sued the Defendants as Executors and Trustees of the Will of Mr.S.O.Rotibi deceased, claiming specific performance of an agreement entered into by the latter on the 24th August, 1954. The document in question reads as follows :-

" PROMISORY NOTE

£780: -: -:

Owerri.
24th August, 1954

I promise to pay to Mathew Uwechia or order three months after date the sum of

In the
Federal Supreme
Court of Nigeria
at Lagos

No.15

Judgment of the
Federal Supreme
Court of Nigeria

18th March 1957.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.15

Seven hundred and eighty pounds for value received or in default to convey to him all those messuages together with appurtenances thereto situate at No.6 New Market Road in the township of Onitsha, to hold the same unto the said Mathew Uwechia or order in fee simple.

(Sgd.) S.O.Rotibi. "

Judgment of the
Federal Supreme
Court of Nigeria

18th March 1957
continued

Mr. S.O. Rotibi died on the 3rd September, 1954, and payment of the sum of £780 not having been made within the period of three months stipulated by the agreement, the Plaintiff claimed the right to have conveyed to him the premises No.6 New Market Road, Onitsha, in default of such payment.

10

The action came for trial before Brown, J., in the then Supreme Court, Onitsha, who dismissed the Plaintiff's claim, and it is against that decision that the Appellant now appeals.

At the time of the hearing before Brown, J., the Defendants had not yet obtained Probate of the Will (they have now done so), but the learned Judge found as a fact that they had inter-meddled with the estate and could properly be sued if any action lay.

20

After discussing the facts the judgment concludes with the following passage :-

" The promisor was not in default at his death nor liable for payment until 24th November, 1954 by which date it was no longer possible. I must presume that at the time of his death the deceased was intending to fulfil his obligations in accordance with his undertaking and had every prospect of being able to avoid the contingency of default and so at no time was the Plaintiff entitled to this conveyance which he has sought.

30

The claim as presented therefore is dismissed."

40

The learned trial Judge would appear to have proceeded on the footing that the only

liability under the agreement which survived the death of the promisor was to pay the sum of £780 whenever the Executors chose to do so, and that the estate was absolved from the liability to convey the premises No.6 New Market Road if that amount was not paid within three months period stipulated in the agreement, a somewhat novel idea.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.15

Judgment of the
Federal Supreme
Court of Nigeria
18th March 1957
continued.

10 The general rule has been established
from early times that, prima facies it is the
duty of a legal personal representative to
perform all the contracts of his testator or
intestate, as the case may be, that can be
enforced whether by way of specific perform-
ance or otherwise. This does not, of course,
apply to personal contracts, that is to say
one which depends for its performance on the
personal skill of the promisor, but it cer-
tainly applies to any contract which can be
20 vicariously performed, which is the position
in the present case. That this is the law was
clearly re-stated by the Judicial Committee of
the Privy Council in its judgment in Ahmed
Angullia Bin Hadjee Mohamed Salleh Angullia v.
Estate and Trust Agencies (1927), Limited and
Others, (1938) A.C. 624.

30 The breaking of an enforceable contract
is an unlawful act, and it is not the duty of
an Executor or Administrator to commit such
an act. They so completely represent their
testator or intestate that every contract with
the deceased (not being a contract personal to
the deceased) includes them, though they are
not named in the terms of it; for the execu-
tors or administrators of every person are im-
plied in that person.

40 Specific performance is an equitable
remedy and the position might have been dif-
ferent if it could have been shown that the
Defendants were not aware of the agreement, but
that is not the case. Evidence was led that
they were shown the document on the 14th Sep-
tember, 1954, so that they had ample time in
which to comply with the term regarding pay-
ment, had they chosen to do so.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.15

Judgment of the
Federal Supreme
Court of Nigeria
18th March 1957
continued

Some time was occupied before us on a submission that the document in question was not a promisory note, but it does not appear to me to be material what label is attached to it. It certainly is not a mortgage. It is an agreement to pay a specific sum by a certain date, and in default of such payment to convey the property referred to.

I would allow this appeal, set aside the judgment of the Court below, and enter judgment for the Plaintiff for specific performance of the agreement, with costs in the Court below to be taxed. The Appellant is also entitled to his costs on this appeal which I would fix at £48. 8. Od.

10

(Sgd.) S. Foster Sutton, F.C.J.

I concur

(Sgd.) O. Jibowu, F.J.

I concur

(Sgd.) M.C. Nageon de Lestang,
F.J.

20

Counsel for Appellant - Mr. G.C.M. Onyuike with
him Mr. M.O. Balonwu.

Counsel for Respondents - Mr. Olowofoyeku.

No.16

ORDER ON JUDGMENT OF THE FEDERAL SUPREME
COURT OF NIGERIA

In the
Federal Supreme
Court of Nigeria
at Lagos

No.16

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.0/22/1955
F.S.C. 153/1956.

Order on Judgment
of the Federal
Supreme Court of
Nigeria
18th March 1957

10 On appeal from the judgment
of the High Court of the
Onitsha Judicial Division.

BETWEEN:

M.O.UWECHIA Plaintiff-Appellant

and

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will
of S.O.Rotibi) Defendants-Respondents

20 (Sgd.) S.Foster Sutton
CHIEF JUSTICE
OF THE FEDERATION.

Monday the 18th day of March, 1957.

UPON READING the Record of Appeal herein
and after hearing Mr. G.C.M. Onyuike, with him
Mr.M.O. Balonwu, of Counsel for the Plaintiff-
Appellant and Mr. Olowofoyeku of Counsel for
the Defendants-Respondents:

30 IT IS ORDERED that this appeal be allowed,
judgment of the Court below set aside and judg-
ment entered for the Plaintiff-Appellant for
specific performance of the agreement entered
into between the Plaintiff-Appellant and S.O.
Rotibi on the 24th day of August, 1954:

IT IS FURTHER ORDERED that the Plaintiff-

In the
Federal Supreme
Court of Nigeria
at Lagos

Appellant shall have his costs in the Court below to be taxed and that the Defendants-Respondents do pay to the Plaintiff-Appellant costs of this appeal fixed at £48. 8. Od.

No.16

Order on Judgment
of the Federal
Supreme Court of
Nigeria

18th March 1957
continued

AND that both the costs in the Court below and in this Court be paid out of the estate of S.O.Rotibi deceased.

(Sgd.) W.A.H.Duffus

10

CHIEF REGISTRAR.

No.17

Order on Judgment
of the
Federal Supreme
Court of Nigeria

18th March 1957

No.17

ORDER ON JUDGMENT OF THE FEDERAL SUPREME
COURT OF NIGERIA

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE 18TH DAY OF MARCH, 1957.

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON	FEDERAL CHIEF JUSTICE	
OLUMUYIWA JIBOWU	FEDERAL JUSTICE	
M.C.NAGEON DE LESTANG	FEDERAL JUSTICE	20

F.S.C.153/1956

M.O.UWECHIA

Plaintiff-Appellant

and

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. J.S.ROTIBI
(Trustees of the Will
of S.O.Rotibi) Defendants-Respondents

Judgment delivered by Foster Sutton, F.C.J.

30

Order: Appeal allowed. The judgment of the Court below is set aside and judgment

for the Plaintiff for specific performance of the agreement entered into between the Plaintiff and S.O.Rotibi on the 24th day of August, 1954. The Plaintiff to have his costs in the Court below to be taxed and his costs on this appeal fixed at £48: 8:). The costs in the Court below and on this appeal to be paid out of the estate of S.O.Rotibi, deceased.

In the Federal Supreme Court of Nigeria at Lagos

No.17

Order on Judgment of the Federal Supreme Court of Nigeria
18th March 1957
continued

10

18. 3. 57.

(Sgd.) S.Foster Sutton, F.C.J.

No.18

NOTICE OF MOTION FOR CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.FSC.153/1956.

BETWEEN:

M.O.UWECHIA ... Plaintiff-Appellant

and

20

- 1. C.A.SAVAGE
 - 2. SOLOMON KAYODE
 - 3. JONATHAN SUNDAY ROTIBI
- Defendants-Respondents.

The Nigeria (Appeals to Privy Council) Order in Council 1955 Sec.4.

30

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 22nd day of May, 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the Defendants-Respondents for an order granting conditional leave to appeal to the Privy Council from a judgment of this

No.18

Notice of Motion for Conditional Leave to Appeal to Her Majesty in Council
24th April 1957.

In the
Federal Supreme
Court of Nigeria
at Lagos

Honourable Court dated the 18th day of March,
1957 and for such further order or orders as
the Court may deem fit.

Dated at Ibadan this 24th day of April,
1957.

No.18

Notice of Motion
for Conditional
Leave to Appeal
to Her Majesty
in Council

24th April 1957
continued

(Sgd.) B.O.Olowofoyeku

Solicitor for the Defendants.

Plaintiff's Address:

c/o His Solicitor,
M.O.Balonwu Esq., B.L.
The High Court,
Onitsha.

10

Defendants' Address:

c/o Their Solicitor,
B.O.Olowofoyeku Esq.,
361 Ekotedo Street,
P.O. Box 430,
Ibadan.

No.19

Affidavit in
support of Motion
for conditional
leave to appeal
to Her Majesty
in Council.

25th April 1957

No.19

AFFIDAVIT IN SUPPORT OF MOTION FOR
CONDITIONAL LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL.

20

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.F.S.C.153/1956.

BETWEEN:

M.O.UWECHIA ... Plaintiff-Appellant

and

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will
of S.O.Rotibi) Defendants-Respondents.

30

A F F I D A V I T

I, Christian Ayotope Savage, of 97 Patey
Street, Ebute-Metta, a British Subject make oath
and say as follows :-

1. I am the First Defendant in the above-
named case.

- 2. The Court gave judgment in the case on 18th March, 1957 and found in favour of M.O.Uwechia the Plaintiff-Appellant.
- 3. The Defendants including me are not satisfied with the said judgment of the Court given on the 18th day of March, 1957.
- 4. The house which is subject matter of litigation yields a rent of £62.10/- a month or £750 per annum.
- 5. I make this Affidavit in support of an application for leave to appeal to the Privy Council.

In the Federal Supreme Court of Nigeria at Lagos.

No.19

Affidavit in Support of Motion for Conditional Leave to Appeal to Her Majesty in Council.

25th April 1957 continued

SWORN to at the Federal Supreme Court Registry, Lagos, this 25th day of April, 1957.

(Sgd.) C.A.Savage
DEPONENT.

BEFORE ME: (Sgd.) E.O.H.Okusogu
COMMISSIONER FOR OATHS.

No.20

HEARING OF MOTION FOR ORDER GRANTING
CONDITIONAL LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.0/22/1956

No.20

Hearing of Motion for Order granting Conditional Leave to Appeal to Her Majesty in Council.

22nd May 1957.

Application for an order granting conditional leave to appeal to the Privy Council.

BETWEEN: 1. C.A.SAVAGE
 2. SOLOMON KAYODE
 3. JONATHAN SUNDAY ROTIBI
 (Trustees of the Will of S.O.Rotibi. ... Appellants
 and
 M.O.UWECHIA ... Respondent

(Sgd.) O.Jibowu
ACTING CHIEF JUSTICE
OF THE FEDERATION

Wednesday the 22nd day of May, 1957.

UPON READING the application herein for an

In the
Federal Supreme
Court of Nigeria
at Lagos

No.20

Hearing of Motion
for Order grant-
ing Conditional
Leave to Appeal
to Her Majesty
in Council.

22nd May 1957
continued

order granting conditional leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated the 18th day of March, 1957, and the Affidavit of Christian Ayotope Savage, sworn to on the 25th day of April, 1957, filed on behalf of the Appellants and after hearing Mr. E. A. Molajo of Counsel for the Appellants and Mr.M.O.Balonwu of Counsel for the Respondent :

IT IS ORDERED that the Appellants be at liberty to appeal to Her Majesty in Council from the judgment of this Court dated 18th day of March, 1957, upon fulfilment within 3 months of the date hereof of the following conditions, namely :-

(1) That the Appellants do enter into good and sufficient security to the satisfaction of the Court in the sum of £500 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 Appellants not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellants to pay the Respondent's costs of the Appeal (as the case may be);

(2) That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of Appeal and do take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

AND THAT the costs of this application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

(Sgd.) F.O.Lucas
AG. CHIEF REGISTRAR.

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No.21

ORDER ON MOTION FOR CONDITIONAL LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

In the
Federal Supreme
Court of Nigeria
at Lagos

No.21

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

WEDNESDAY THE 22ND DAY OF MAY, 1957.

BEFORE THEIR LORDSHIPS

Order on Motion
for Conditional
Leave to Appeal
to Her Majesty
in Council.

22nd May 1957.

OLUMUYIWA JIBOWU	AG. FEDERAL CHIEF JUSTICE
M.C.E.C. NAGEON DE	
LESTANG	FEDERAL JUSTICE
10 MYLES JOHN ABBOTT	AG. FEDERAL JUSTICE

F.S.C. 153/1956

C.A.SAVAGE & OTHERS ETC. ... Applicants

vs.

M.O.UWECHIA ... Respondent

Motion for an order for conditional leave to appeal to Her Majesty in Council against the decision of this Court dated 18th March, 1957.

E.A.Molajo for Applicant.

M.O.Balonwu for Respondent.

20 IT IS ORDERED that the Appellants be at liberty to appeal to Her Majesty in Council from the judgment of this Court dated 18th day of March, 1957, upon fulfilment within 3 months from the date hereof of the following conditions, namely :-

30 1. That the Appellants do deposit into this Court Court the sum of £500 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 Appellants not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellants to pay the Respondent's costs of the appeal (as the case may be) ;

In the
Federal Supreme
Court of Nigeria
at Lagos

No.21

Order on Motion
for Conditional
Leave to Appeal
to Her Majesty
in Council.

22nd May 1957
continued

2. That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of appeal and do take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

AND THAT the costs of this application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

(Sgd.) O.Jibowu, Ag. F.C.J.
22.5.57.

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No.22

Notice of Motion
for Order extend-
ing time for
perfection of
conditions for
Appeal to Her
Majesty in
Council.

1957

No.22

NOTICE OF MOTION FOR ORDER EXTENDING
TIME FOR PERFECTION OF CONDITIONS FOR
APPEAL TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

FSC. 153/1956.

BETWEEN:

M.O.UWECHIA Plaintiff-Appellant

20

and

- 1. C.A.SAVAGE
- 2. S.K.OLAIYA
- 3. J.S.ROTIBI Defendants-Respondents

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on Monday the 28th day of October, 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the Defendants for an order extending the time within which to perfect the

30

conditions of appeal to Her Majesty's Privy Council in this case and for such further order or orders as the Court may deem fit.

Dated at Lagos this day of
1957.

(Sgd.) B.O.Olowofoyeku
SOLICITOR FOR THE DEFENDANTS/
RESPONDENTS.

PLAINTIFF/APPELLANT'S ADDRESS:-

10 DEFENDANTS/RESPONDENTS' ADDRESS:-

c/o Their Solicitor,
B. Olowofoyeku Esq.,
361 Ekotedo Street,
P.O. Box 430,
Ibadan.

No.23

AFFIDAVIT IN SUPPORT OF MOTION
FOR ORDER EXTENDING TIME

IN THE FEDERAL SUPREME COURT OF NIGERIA

20 HOLDEN AT LAGOS

FSC. 153/1957.

BETWEEN:	M.O.UWECHIA	PLAINTIFF/ APPELLANT
	and	
	1. C.A.SAVAGE	
	2. S.K.OLAIYA	
	3. J.S.ROTIBI	DEFENDANTS/ RESPONDENTS

A F F I D A V I T

30 I, Christian Ayotope Savage Chemist of 7,
Adedapo Street, Surulere in the Mainland of
Lagos, a British Subject, make oath and say as
follows :-

In the
Federal Supreme
Court of Nigeria
at Lagos

No.22

Notice of Motion
for Order extend-
ing time for
perfection of
conditions for
Appeal to Her
Majesty in
Council.

1957
continued.

No.23

Affidavit in
Support of
Motion for
Order extending
Time.

7th September
1957.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.23

Affidavit in
Support of
Motion for
Order extending
Time.

7th September
1957
continued

1. I am one of the three Defendants who have been sued as executors in the above-named case.
2. By judgment of the Federal Supreme Court dated 18th day of March 1957 this Court allowed the Plaintiff's Appeal from the judgment of the High Court of Onitsha.
3. On 22nd May 1957 this court granted a leave to the Defendants to appeal from the said judgment of the Federal Supreme Court to Her Majesty's Privy Council, upon condition to the effect that within three months of the said date the Defendants do pay a sum of £50 for the records and provide two sureties who should enter into security in the sum of £500 for the due prosecution of the appeal. 10
4. On 15th August 1957 I saw at Ibadan my Solicitor Mr. B. Olowofoyeku, who had an attack of influenza and asked me to go to the Court Registrar to complete the conditions of appeal. 20
5. On 16th August 1957 I went to the Court Registry, paid the sum of £50 and obtained a receipt No. D.182432 dated 16.8.57.
6. On 17.8.57 informed the Acting Registrar (who gave his name as Ernest Okwusogu and said he came from Onitsha the home town of the Plaintiff) about my desire to have my bond signed by my sureties. 30
7. Mr. Okwusogu appeared very helpful and suggested that one Mr. Amobi, a person well known to him, should be one of the sureties.
8. On Monday and Tuesday 19th and 20th August 1957 respectively in my presence, Mr. Okwusogu sent many messages round purporting to summon the said Mr. Amobi, but nobody appeared.
9. On Wednesday 21st August I told the Mr. Okwusogu that I would no longer wait and that my people Yekini Ayinla Savage and Abdul Lasisi Bellow should sign the bond. 40

10. The affidavits of means prepared by my sureties were taken before the Acting Registrar for swearing.
11. I paid a sum of £3. 6/- and obtained a receipt No. D.182443 dated 21.8.57 as fees in the following manner: Bond £2, Justification 9/-; attestation 5/-; affidavits 8/-; filing 4/-.
- 10 12. Then the Acting Registrar told me that sureties had to be taken before a Chief Registrar for approval.
13. My two sureties were then taken before the Chief Registrar who disapproved of them.
14. I also produced one Saebu Tappa a Trader as surety but the Chief Registrar disapproved of him.
- 20 15. Abdul L. Bello offered to put down £250 in cash whilst Saebu Tappa produced the deed of Conveyance of his house, but the Chief Registrar said I should produce other sureties.
16. On Thursday 22nd August, I took one K. B. Savage as a surety before the Chief Registrar.
17. The Chief Registrar approved of him, but said I was a day late and could no longer allow the bond to be signed.
18. I made this affidavit in support of a Motion for extension of time within which to get the bond signed by my sureties.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.23

Affidavit in
Support of
Motion for
Order extending
Time.

7th September
1957
continued

30

(Sgd.) C. A. Savage
DEPONENT.

SWORN to at the Federal
Supreme Court Registry,
Lagos this 7th day of
September, 1957.

BEFORE ME :

(Sgd.) J.O.Akindeinde
COMMISSIONER FOR OATHS.

In the
Federal Supreme
Court of Nigeria
at Lagos

AFFIDAVIT OF ERNEST OKWUSOGU ON
MOTION FOR ORDER EXTENDING TIME

IN THE FEDERAL SUPREME COURT OF NIGERIA

No.24

HOLDEN AT LAGOS

Affidavit of
Ernest Okwusogu
on Motion for
Order extending
time.

Appeal No. FSC. 153/1956.

BETWEEN :

M.O.UWECHIA ... Plaintiff-Appellant

and

C.A.SAVAGE and
OTHERS ... Defendants-Respondents

10

9th September
1957.

A F F I D A V I T

I, Ernest Okwusogu, native of Onitsha,
Civil Servant in the Federal Supreme Court,
British Protected Person, make oath and say
as follows :-

1. That on the 19th August one Mr. Savage the Appellant approached me in the Federal Supreme Court Registry with a pathetic story that he had paid the deposit in the appeal but had no sureties to execute the Bond. 20
2. That the said Mr. Savage informed me that he had no one to assist him in Lagos as he was resident in Ibadan where he had financial and moral support from many friends among whom he mentioned the Chief Justice of the Western Region.
3. That he was advised by His Solicitor to approach me.
4. That one of his proposed sureties was an Ijesha Doctor - Dr. Mabayoje - but unfortunately for him the said Doctor was in the Government Service and cannot be asked to stand surety. 30
5. That as he said Mr. Savage informed me that he

had worked in several places in the East as a Dispenser, I suggested to him onr Mr. Amobi whom I had known before and who is also related to one Dispenser Amobi who was also in the East.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.24

Affidavit of
Ernest Okwusogu
on Motion for
Order extending
time.

9th September
1957
continued

6. That the said Mr. Savage said he did not know the said Amobi.
7. That out of sympathy I sent for Mr. Amobi, whom I spoke to on behalf of Mr. Savage.
- 10 8. That the said Mr. Amobi told me he had not known Mr. Savage sufficiently well to enter into such transaction on his behalf.
9. That I did inform Mr. Savage when he later came to the Registry that same day.
10. That the said Mr. Savage on the 21st August 1957 brought two persons as his sureties and they were directed to the Chief Registrar for approval.
- 20 11. That the sureties after careful and thorough examination were rejected as unsuitable. That I am neither a party to the case nor personally interested.

(Sgd.) E.O.H.Okwusogu
Deponent.

Sworn to at the Federal Supreme
Registry, Lagos, this 9th day
of September, 1957.

Before Me,

30

(Sgd.) J.O.Akindeinde

Commissioner for Oaths.

In the
Federal Supreme
Court of Nigeria
at Lagos.

No.25

AFFIDAVIT OF ANIEGBOKA AMOBI ON
MOTION FOR ORDER EXTENDING TIME

No.25

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Affidavit of
Aniegboka Amobi
on Motion for
order extending
time.
9th September
1957.

Appeal No. FSC.153/1956.

BETWEEN:

M.O.UWECHIA ... Plaintiff-Appellant
and

C.A.SAVAGE and
OTHERS ... Defendants-Respondents.

10

A F F I D A V I T

I, Aniegboka Amobi, native of Ogidi, Business man, of 126 Lewis Street, Lagos, British Protected Person, make oath and say as follows :-

1. That one Sam Amobi, formerly a dispenser in the Eastern Region is my cousin.
2. That I had known Mr. Okwusogu of the Federal Supreme Court for a very long time.
3. That on the 19th August 1957 the said Mr. Okwusogu sent for me and spoke to me in his Registry about one Mr.Savage who wanted me to stand surety for him.
4. That I have not known Mr.Savage sufficiently well and I declined to be his surety.

20

(Sgd.) Aniegboka Amobi
Deponent.

Sworn to at the Federal Supreme
Court Registry, Lagos, this 9th
day of September, 1957.

30

Before me,

(Sgd.) J.O.Akindeinde.

Commissioner for Oaths.

No.26

HEARING OF MOTION FOR ORDER EXTENDING
TIME

In the
Federal Supreme
Court of Nigeria
at Lagos.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

No.26

Hearing of
Motion for Order
Extending Time

MONDAY THE 26TH DAY OF OCTOBER, 1957.

26th October
1957.

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON FEDERAL CHIEF JUSTICE
M.C.E.C.NAGEON DE LESTANG FEDERAL JUSTICE
10 MYLES JOHN ABBOTT FEDERAL JUSTICE

Civil Motion
F.S.C.153/1957.

C.A.SAVAGE AND 2 OTHERS
TRUSTEES OF THE WILL OF
S.O.ROTIBI ... APPLICANTS

VS.

M.O.UWECHIA ... RESPONDENT

MR.E.A.MOLAJO for Applicants on Motion

MR. M.O.BALONWU for Respondent.

20 Molajo:

Submits we can extend time within which to
appeal under Rule 5. P.C. Rules.

Quote 4 W.A.C.A. 172.

We ask Counsel to refer as to the rules
existing at time that decision was given -
cannot - Note It is obvious that he had not come
properly prepared to argue the matter.

Now asks for an adjournment.

Balonwu. Do not object.

30 Adjournment granted costs to Respondent
on Motion - fixed at £5. 5. Od. Fixed
for hearing on 29.10.57.

(Intld.) S.F.S., F.C.J.

In the
Federal Supreme
Court of Nigeria
at Lagos

No.27

ORDER FOR ADJOURNMENT OF MOTION
FOR ORDER EXTENDING TIME.

No.27

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Order for adjourn-
ment of Motion for
Order Extending
Time.

Suit No.0/22/1955
F.S.C.153/1956

28th October 1957.

On adjournment of application
for an order extending the time
within which to perfect the
conditions of appeal to Her
Majesty's Privy Council.

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BETWEEN:

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will of
S.O.Rotibi) ... Applicants

and

M.O.UWECHIA ... Respondent. 20

(Sgd.) S.Foster Sutton
CHIEF JUSTICE OF THE
FEDERATION.

Monday the 28th day of October, 1957.

UPON READING the application herein for an
order extending the time within which to perfect
the conditions of appeal to Her Majesty's Privy
Council and the Affidavit of C.A.Savage sworn to
on the 7th day of September, 1957, and after
hearing Mr.E.A.Molajo of counsel for the Appli-
cants asking for an adjournment and Mr. M. O.
Balonwu of counsel for the Respondent not op-
posing :

30

IT IS ORDERED that adjournment be granted
till 29th October, 1957 and that the Applicants
do pay to the Respondent costs fixed at £5:5:0d.

(Sgd.) S.A.Samuel

AG: CHIEF REGISTRAR.

In the
Federal Supreme
Court of Nigeria
at Lagos.

No.28

Ruling on Hearing
of Motion for
Order Extending
Time.

29th October 1957
continued

provided. In the present case the full limited
of three months was given in the first instance,
and the applicant failed to comply within that
period. In our opinion we have no power to
extend the time beyond the period expressly
specified in the Order in Council. That being
so this motion must be dismissed. The Respon-
dent have his costs on the motion fixed at
£10: 10: 0.

29.10.57

(Sgd.) S.Foster Sutton, F.C.J.

10

No.29

Order on Motion
for Order
Extending Time.
29th October 1957.

No.29

ORDER ON MOTION FOR ORDER EXTENDING
TIME

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.0/22/1955
F.S.C.153/1956

Application for an Order
extending the time within
which to perfect the
conditions of appeal to
Her Majesty's Privy Council.

20

BETWEEN :

1. C.A.SAVAGE
2. SOLOMON KAYODE
3. JONATHAN SUNDAY ROTIBI
(Trustees of the Will of
S.O.Rotibi) ... Applicants

and

M.O.UWECHIA ... Respondent

30

(Sgd.) S.Foster Sutton
CHIEF JUSTICE OF THE
FEDERATION.

TUESDAY the 29th day of OCTOBER,1957.

UPON READING the application herein for
and order extending the time within which to

perfect the conditions of appeal to Her Majesty's Privy Council and the affidavit of C.A.Savage sworn to on the 7th day of September, 1957 and after hearing Mr.E.A.Molajo of counsel for the applicants and without calling upon Mr.M.O.Balonwu of counsel for the Respondent:

In the Federal Supreme Court of Nigeria at Lagos.

No.29

IT IS ORDERED that this motion be dismissed and that the applicants do pay to the Respondent costs on this motion fixed at £10. 10. Od.

Order on Motion for Order Extending Time

29th October 1957 continued.

(Sgd.) S.A.Samuel
AG: CHIEF REGISTRAR.

10

IN THE PRIVY COUNCIL

In the Privy Council

No.30

No.30

ORDER GRANTING SPECIAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Order Granting Special Leave to Appeal to Her Majesty in Council

At the Court at Buckingham Palace

The 22nd day of October, 1958

22nd October 1958

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

20 LORD PRESIDENT MR. MARPLES
EARL OF SELKIRK SIR HENRY WILLMER
MR. ORMSBY-GORE.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of October 1958 in the words following, viz. :-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) C. A. Savage (2) Solomon Kayode and (3) J.S.Rotibi (Trustees

30

In the Privy
Council

No.30

Order Granting
Special Leave
to Appeal to
Her Majesty in
Council

22nd October
1958
continued

of the Will of S.C.Rotibi (deceased) in the matter of an Appeal from the Federal Supreme Court of Nigeria between the Petitioners and M.O.Uwechia Respondent setting forth (amongst other matters): that on the 6th May 1955 the Respondent instituted an action in the Supreme Court of Nigeria Onitsha Judicial Division in which he sued the Petitioners as Trustees of the Will of one Samson Omolona Rotibi deceased who died on the 3rd September 1954 leaving a Will dated the 27th March 1954 in which the Petitioners were named as Executors and Trustees and in and by his said action the Respondent claimed specific performance of an alleged agreement to convey certain premises the property of the said S.O.Rotibi deceased alleged to have been made on the 24th August 1954 that is to say ten days before his death: that on the 14th December 1955 Judgment was delivered for the Petitioners and the action dismissed with costs: that the Respondent appealed to the Federal Supreme Court and that Court on the 18th March 1957 allowed the Appeal and ordered specific performance of the said agreement of the 24th August 1954; that on the 24th April 1957 the Petitioners applied to the Federal Supreme Court for an Order granting conditional leave to appeal to Your Majesty in Council: that as appeared from an affidavit filed in support of the application the property yielded rents of £750 per annum and the Petitioners were therefore entitled as of right to conditional leave under and subject to the provisions of the Nigeria (Appeals to Privy Council) Order in Council 1955 and on the 22nd May 1957 it was ordered by the Court that the Petitioners be at liberty to appeal to Your Majesty in Council upon fulfilment within three months of the date of the making of the Order of the following conditions namely :-

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(1) That the Appellants do enter into good and sufficient security to the satisfaction of the Court in the sum of £500 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 Appellants not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering

the Appellants to pay the Respondent's costs of the Appeal (as the case may be) ;

In the Privy Council

(2) That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of Appeal and take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England :

No.30

Order Granting Special Leave to Appeal to Her Majesty in Council

22nd October 1958
continued

10

that on the 16th August 1957 the Petitioners complied with the second of the aforesaid conditions and on the 17th 19th and 20th August (the 18th August being a Sunday) attended upon the acting Registrar of the said Court and acting in co-operation with him took steps to obtain the required sureties and on the 21st August produced to the acting Registrar affidavits of means of the proposed sureties and tendered the two sureties to the acting Registrar who then informed the Petitioners that sureties had to be taken before the Chief Registrar for approval: that the said sureties were then taken to the Chief Registrar for approval but he declined to accept them: that

20

on the 22nd August 1957 the Chief Registrar informed the Petitioners that they were a day late in complying with the conditions of Appeal ordered by the said Federal Supreme Court on the 22nd May 1957 and that he could not allow the surety bond to be signed and deposited as the time for compliance with the conditions of Appeal had expired: that the Petitioners applied by Motion to the Federal Supreme Court for an extension of time within which to comply with the aforesaid conditions of Appeal and on the 29th day of October 1957 the Court ruled that the Nigeria (Appeals to Privy Council) Order in Council 1955 did not confer power on the Court to extend the time as prayed and dismissed the Motion: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment and Order of the Federal Supreme Court of Nigeria dated the 18th day of March 1957 and for such further or other Order as may appear fit:

30

40

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration having heard Counsel in support thereof

In the Privy
Council

No.30

Order Granting
Special Leave
to Appeal to
Her Majesty in
Council

22nd October
1958
continued

and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment and Order of the Federal Supreme Court of Nigeria dated the 18th day of March 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

"AND THEIR LORDSHIPS DO FURTHER REPORT to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same."

10

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20

Whereof the Governor-General of the Federation of Nigeria or other officer for the time being administering the Government of the Federation and all other persons whom it may concern are to take notice and govern themselves accordingly.

30

Sgd. W. G. Agnew.

E X H I B I T S

EXHIBITS

EXHIBIT "A" LETTER FROM LASISI ROTIBI TO
M. UWECHIA.

Exhibit "A"
Letter from
Lasisi Rotibi
to M.Uwechia

EXHIBIT "A" tendered by the Plaintiff in
Suit No./O/22/55 Uwechia vs. Savage & Ors.

1st November
1954

Sgd. F.E.Allagoa

4/XI/55.

Lasisi Rotibi,

Box 19, Owerri.

1st November, 1954.

10

Dear Mr. Uwechia,

I hereby confirm as requested in your letter of 24th September 1954 that besides informing Mr.C.A.Savage one of the trustees of late Chief S.O.Rotibi's Will on the 6th September, 1954 of the existence of your agreement with the late Chief S.O.Rotibi, I also showed it to all the three trustees together at Owerri on the 14th September, 1954 when the Will was read to a gathering of relatives and friends of the deceased.

20

Yours faithfully,

Sgd. Lasisi Rotibi.

EXHIBITS

EXHIBIT "B"

Exhibit "B"

PROMISSORY NOTE

Promissory
Note

24th August
1954.

EXHIBIT "B" Tendered by the Plaintiff in
Suit No.0/22/55 Uwechia vs. Savage & Ors.

Sgd. F.E.Allagoa

4/XI/55.

EN 3023

Sub Treasury, Enuga.

26 Nov. 1954.

PROMISSORY NOTE

10

£780

Owerri

24th August, 1954.

I promise to pay to Mathew Uwechia or
order three months after date the sum of Seven
hundred and eighty pounds for value received
or in default to convey to him all those
messuages together with appurtenances thereto
situate at No.6 New Market Road in the town-
ship of Onitsha, to hold the same unto the
said Mathew Uwechia or order in fee simple.

20

Sgd. S.O.Rotibi.

EXHIBIT "C"

WILL OF S.O.ROTIBI.

EXHIBIT "C" tendered by the Plaintiff in
Suit No.0/22/55: Uwechia vs. Savage & Ors.

Sgd. F.E.Allagoa

4/XI/55.

EXHIBITS

Exhibit "C"

Will of S.O.
Rotibi

27th March 1954

10

This is the last Will and Testament of me,
Samson Omolona Rotibi, General Merchant and
Prisons Contractor; a native of Ikole, Ado
Ekiti District, Ondo Province, residing at
Owerri in the Eastern Region of Nigeria.

I hereby revoke all Wills and Testamentary
instruments heretofore made by me.

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I hereby appoint Christian Ayotope Savage;
Chemist and Druggist, of 90 Waki Lane, Ekotedo,
Ibadan and Solomon Kayode Olaiya of 6, Alli
Street, Lagos and Jonathan Sunday Rotibi, Phar-
macist, Care Government Hospital, Akure, to be
the executors and trustees of this my Will. To
each of them for so acting, I give a sum of £50
(fifty pounds)

I devise to Rachael Adenrele Rotibi, my
legally married wife, my house number 5, situ-
ated at Owerri. I also bequeath the sum of
£400 (four hundred pounds) to her.

I devise to my thirteen surviving children
my other houses, numbers 1, 2, 3 and 4 situated
at Owerri as tenants in common.

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I also devise plot number 3 at Owerri with
the building thereon to all my children as
tenants in common.

I further devise my storey house at Market
Road at Onitsha, commonly known and called
"Olaiya Brothers house" to all my 13 children

EXHIBITS

Exhibit "C"

Will of S.O.
Rotibi27th March 1954
continued

as tenants in common. The agreement covering the land of the storey house at Onitsha was dated 30th December, 1931, and duly signed by Mr. Wallace Lowell who sold the land to me at Onitsha.

I devise my house at plot C91 containing 12 rooms at Abakaliki to all my children as tenants in common.

I devise the other house containing 4 rooms at Abakaliki to my younger brother, Isaac Akintola and I bequeath to him the sum of £200 (Two hundred pounds). 10

I bequeath to Samuel Jegede the sum of £100 (One hundred pounds).

I have leased out my two adjoining houses at Onitsha to Mr. Usodima for 25 years vide agreement dated 23rd November, 1953, after he would have deducted his expenses of the buildings thereon, he should be paying his annual rents to my Trustees herein named for the training of my children. 20

I also devise my house and landed property situated at 65, Jebba Street East at Ebute Metta to all my children as tenants in common.

I hereby charge my trustees to effect decent buildings on my lands for my children if and when funds are available.

My storey house at Onitsha Market Road and other properties devised to my children should be leased out to responsible firm by my Trustees, should any firm or firms require them. 30

My 13 children should be fed, clothed and educated with the rents thereof until the last child shall be 21 years of age.

My Prison Contracts should be carried on by Isaac Akintola and Samuel Jegede, both of Owerri and Jacob Kehinde Olaiya of Calabar, under the careful supervision of my executors and Trustees named in this Will. 40

I leased my land at the Western side of the road at Owerri from Achododu's family at £7 (Seven pounds) annual rent, to be used by me and my children from generation to generation.

EXHIBITS

Exhibit "C"

The empty land at Owerri, I devise to all my children as tenants in common.

Will of S.O.
Rotibi27th March 1954
continued

10

I also leased my land on the Eastern side of the road at Owerri from Oparanozie and Oke of Umuroma Compound as per our agreement dated 10th February, 1928, to be used by me and my children from generation to generation. I devise the property to my children as tenants in common.

The annual rent which I am paying for leasing the Eastern side is only 30/-.

These are the names of my surviving children. I recognise no other :-

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1. Lawrenda Olulana Rotibi
2. Solomon Sunday Kayero Rotibi
3. Gracy Boyede Rotibi
4. Marian Taiwo Rotibi
5. Margaret Larohunbi Rotibi
6. Luna Jemiseye Rotibi
7. Lawande Rotibi
8. Abbott Sogunro Rotibi
9. Daniel Lajiga Rotibi
10. Ajotola Rotibi
11. Moses Tojo Kehinde Rotibi
12. Ajisola Rotibi
13. Gboyega Rotibi.

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I bequeath the following legacies :-

- (1) Beatrice Ajeyigbe £200 (Two hundred pounds)
- (2) Leah Amiyale £150 (One hundred and fifty pounds)
- (3) Dorcas Aina £100 (One hundred pounds)
- (4) Matilda Omojlagbe £100 (One hundred pounds)
- (5) Victoria Tinuola £100 (One hundred pounds)
and

EXHIBITS

(6) Emily £70 (Seventy pounds)

Exhibit "C"

Will of S.O.
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continued

The total amount to be distributed among the various beneficiaries are £1,570 (One thousand five hundred and seventy pounds) which should be paid out of my savings in the bank to the recipients.

My seven ton lorry No. ON 2461 which I bought at £1,025 should continue to be used for the services of my prison contracts.

My small car No. OW. 4296 which I bought at £750 should be used by Isaac Akintola and Samuel Jegede and others as usual in the interest and execution of my prison contracts.

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My big car No. ON. 2455 Austin A.125 which I bought at £1,400 should be sold, if funds are sufficient to carry on the contracts or if sufficient fund is not available to pay all above mentioned beneficiaries.

I solemnly charge and beseech my three executors and Trustees named in this Will to carry out my earnest wish and desire as contained in this Will.

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Witness my hand at Owerri this 27th day of March, 1954.

Sgd. Chief S.O.Rotibi.

Signed by the above testator as his last Will in the presence of us both, being present at the same time, who in his presence and in the presence of each other subscribe our names as witnesses.

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Sgd. S.O.Rotibi.

Witness: Victoria T. Rotibi
S.O.Jegede
P.O. Box 19,
Owerri.
