

16,1958

UNIVERSITY OF LONDON
W.C.1.
No. 17 of 1957 JAN 1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE FEDERAL SUPREME COURT OF NIGERIA

52088

B E T W E E N

- 1. MAURICE GOUALIN LIMITED and
- 2. BARTHOLOMEW KOOVI DE SOUZI

(Defendants) Appellants

- and -

WAHABI ATANDA AMINU

(Plaintiff) Respondent

10

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal from a judgment of the Federal Supreme Court of Nigeria (Foster Sutton F.C.J., Verity Ag. F.J. and Irwin Ag. F.J.) dated the 21st June 1956, reversing a judgment of the Supreme Court of Nigeria (Lagos Judicial Division) (Abbott J.) dated the 14th June 1954.

20

2. The action is a consolidated action comprising what were originally two separate actions both brought by the Respondent as Plaintiff in the Supreme Court of Nigeria (Lagos Judicial Division). One of such separate actions (begun by particulars of claim dated the 9th December 1953) was an action against the first above-named Appellant for damages for acts of alleged trespass on certain land situate at Abule Nla Village, Ebute Metta in the mainland of Lagos in the Colony of Nigeria, for an injunction restraining the continuance of such acts, and for a declaration of title that the Respondent was the owner of the said land. The

p.1 (13)

30

other such separate action (begun by particulars of claim dated the 10th December 1953) was against the second above-named Appellant for similar relief in respect of certain other land also situate at Abule Nla Village and adjoining the first-mentioned land. The said separate actions were consolidated by an Order of the said

p. 7 (13)

RECORD
p.13 (17)

Supreme Court (Abbott J.) dated the 12th April 1954.

p.16 (22)

3. The pieces of land respectively the subject-matters of the said two separate actions (hereinafter together referred to as "the land in dispute") are shown on the plans Exhibits C and D, which were prepared (one of them for the purpose of each of the separate actions) on behalf of the Respondents by a surveyor one E.O. Aiyede and were referred to by the said Aiyede in his evidence at the trial of the action. The said plans (except for differences arising from the fact that they relate to different parts of the land in dispute) are identical. The purple verge line on each plan purports to be the boundary of the land in dispute, but in fact the land in dispute extends on the South-East side beyond the purple line to the pink verge line, and on the North-West side beyond the purple line to the strip of white containing the figures 32.5 and 32.4.

10

20

4. The land in dispute has been divided (as shown on each plan) into two plots of approximately equal size, one of which (forming the north-easterly part of the land in dispute) was the subject-matter of the separate action against the first above-named Appellant, and the other of which (forming the south-westerly part of the land in dispute) was the subject-matter of the separate action against the second above-named Appellant.

30

5. The main questions at issue in this appeal are:-

(i) Whether the Respondent, on the documentary and other evidence adduced by him at the trial of the consolidated action, and having regard to the general law and the statutory provisions hereinafter mentioned, has established a title to the whole of the land in dispute which ought to prevail over the respective claims of the Appellants to be entitled to the several plots (parts of the land in dispute) hereinbefore referred to, and

40

(ii) Whether the Respondent has established by the evidence that he or his predecessors in title enjoyed at any material time or times such possession of the land in dispute as to give him

a right of action against the Appellants for trespass.

RECORD

6. The documents of title of the Appellants to their said respective plots (parts of the land in dispute) are as follows:-

10 (i) A Conveyance (Exhibit Q) dated the 25th June 1952 and made between Chief Tiamiyu Oduntan Fagbayi Oloto of the first part Moses Oni Ajayi of the second part and Amodu-Tijany Akanbi Imoru of the third part whereby the whole of the land in dispute (with other land) was conveyed on sale to the said Imoru in fee simple; p.77 (1)

(ii) A Conveyance (Exhibit P) dated the 27th August 1952 and made between the said Imoru of the first part and Joshua Oladipo Oni of the second part whereby the whole of the land in dispute was conveyed on sale by the said Imoru to the said Oni his heirs and assigns; p.75 (1)

20 (iii) A Conveyance (Exhibit O) dated the 31st December 1952 and made between the said Oni of the one part and the first above-named Appellant of the other part whereby the whole of the land in dispute was conveyed on sale by the said Oni to the first above-named Appellant in fee simple; and p.73 (1)

30 (iv) A Conveyance (Exhibit R) dated the 13th April 1953 and made between the first above-named Appellant of the one part and the second above-named Appellant of the other part whereby the aforesaid plot forming the south-westerly part of the land in dispute was conveyed on sale by the first above-named Appellant to the second above-named Appellant in fee simple. p.80 (1)

Each of the said documents was duly registered under the Land Registration Ordinance hereinafter mentioned the date of registration of the said Conveyance dated the 31st December 1952 being the 11th February 1953, and the date of registration of the said Conveyance dated the 13th April 1953 being the 23rd May 1953. p.74 (20)

40 7. After having purchased their said respective plots as aforesaid, the Appellants took possession of the same respectively and commenced building operations thereon. p.81 (30)

RECORD 8. In support of his claim to be entitled to the land in dispute the Respondent relies upon the following documents all of which were produced at the trial:-

p.50 (1) (i) A Mortgage (Exhibit E) (hereinafter called "the Mortgage of 1923") dated the 29th May 1923 and made between Adeoye Desalu (therein and hereinafter called "the Borrower") of the one part and the Scottish Nigerian Mortgage and Trust Company Limited (therein and hereinafter called "the Company") of the other part whereby the Borrower conveyed or purported to convey certain lands to the Company in fee simple by way of mortgage for securing the principal sum of £400 with interest thereon as therein mentioned; and 10

p.64 (21) (ii) A Conveyance (Exhibit K) (hereinafter called "the Respondent's Conveyance") dated the 25th June 1953 and expressed to be made between the Company of the first part Michael Obafemi Adewunmi of the second part Bandele Oshire, Ebun Adeyebi Oshire and Abiola Oshire of the third part and the Respondent of the fourth part purporting to be a Conveyance on sale of certain lands to the Respondent in fee simple. 20

9. The lands expressed to be comprised in the Mortgage of 1923 were described therein as follows:-

p.51 (6) "ALL THOSE three pieces of land Firstly All that piece of land covered by Deed of Gift dated the 6th day of August 1896 from Simon Jacobs to the Borrower situated at Abule Nla Ebute Metta Lagos Nigeria with the messuage and other buildings thereon Secondly All that piece of land covered by the registered Deed of Gift No. 53 Page 170 Volume 31 dated the 19th day of July 1897 from Simon Jacobs to the Borrower and situated at Victoria Road Lagos Nigeria with the messuage and other buildings thereon known as No. 55 Victoria Road Lagos and more particularly delineated with their respective dimensions and abuttals on the Plans marked A and B respectively drawn on these presents and thereon coloured yellow and Thirdly All that piece of land covered by registered Conveyance No. 79 Page 323 Volume 158 dated the 20th day of July 1922 from Chief Ajayi Oloto to the Borrower situated at Apapa Road Ebute Metta Lagos Nigeria with the messuage and other buildings 30 40

thereon and more particularly delineated with its dimensions and abuttals on the plan coloured pink drawn on the said registered Conveyance of the 20th day of July 1922".

RECORD

10 Neither the whole nor any part of the land in dispute was within the description either of the said properties secondly and thirdly mentioned in the Mortgage of 1923, or was included in the land delineated and coloured yellow on the plan marked B drawn thereon. In the submission of the Appellants, it follows that neither the whole nor any part of the land in dispute was comprised at all in the Mortgage of 1923, unless the same was within the description of the property first therein mentioned, or was included in the land delineated and coloured yellow on the plan marked A drawn thereon. The Deed of Gift dated the 6th August 1896 (by reference to which the said property first mentioned in the Mortgage of 1923 was described) has not been produced or exhibited in the action; and although the land delineated and coloured yellow on the said plan marked A appears to be land in the vicinity of and may have included some part of the land in dispute, it is in the Appellants' submission apparent from inspection of the said Plan A that a substantial part (if not the whole) of the land in dispute was not so included.

30 10. The Respondent's Conveyance contained recitals to the following effect:-

(i) That by a Deed of Gift dated the 6th August 1896 the hereditaments a portion of which was expressed to be thereby conveyed were conveyed by one Simon Jacobs to the Borrower in fee simple;

p.65 (4)

40 (ii) That by the Mortgage of 1923 the Borrower conveyed the said hereditaments (with other hereditaments) in fee simple by way of mortgage to the Company for securing the principal sum of £400 with interest thereon;

p.65 (12)

(iii) That the Borrower made default in repayment of the said principal sum and the Company in exercise of their power of sale caused the said hereditaments to be put up for sale by auction and at the said sale on the 27th July 1931 the said Adewunmi (party of the second part to the

p.65 (25)

- RECORD Respondent's Conveyance) was the highest bidder and was declared the purchaser for the sum of £25;
- p.65 (39) (iv) That the said Adewunmi had agreed to an absolute sale to one Ezekiel Akinwande Oshire of the whole of the said hereditaments for the sum of £50 as per receipt of purchase dated the 23rd December 1931 when payment was made and possession given but no Deed of Conveyance was executed to him;
- p.65 (48) (v) That the said Ezekiel Akinwande Oshire died on or about the 6th April 1951 leaving the said Bandele Oshire, Ebum Adeyebi Oshire and Abiola Oshire (expressed to be parties of the third part to the Respondent's Conveyance) his children and heirs-at-law him surviving; 10
- p.66 (4) (vi) That by a Receipt of Purchase dated the 1st June 1953 the said Bandele Oshire, Ebum Adeyebi Oshire and Abiola Oshire had agreed to sell a portion of the said hereditaments to the Respondent. 20
- p.66 (17) By the operative part of the Respondent's Conveyance, the Company together with the said parties thereto of the second and third parts were expressed to grant convey and confirm to the Respondent certain lands at Abule Nla therein described by reference to the plan drawn thereon, which lands as shown on the said plan included the land in dispute. But the Respondent's Conveyance, although executed by the Company (by their attorney) and by all the said parties thereto of the second and third parts except the said Abiola Oshire, was not executed by the said Abiola Oshire. 30
- p.47 (2) 11. As regards the reference in the Respondent's Conveyance to a sale by the Company to the said Adewunmi the Respondent produced an "Advertisement Notice" (Exhibit "A") of an intended sale by auction on the 27th July 1931 in which the particulars of the property to be sold were as follows:-
- p.47 (15) "All that most desirable piece or parcel of land, situate, lying, and being at Abule-Nla, adjoining the Properties of Our Townsmen Hon. E.O. Moore, Mr. S. Green & others. A health Resort suitable for both Poultry and Farming purposes, to be sold in three convenient lots as follows:- 40

1st Lot :- 4.7 Acres. More or Less
 2nd " 4.6 " " " "
 3rd " 1.19 " " " "

RECORD

Covered by Deed of Mortgage dated 29th May 1923,
 Registered as No. 110 Page 468 volume 167."

The said Advertisement Notice was not
 accompanied by and did not refer to any plan.

10 The Respondent also produced in evidence a
 document (Exhibit B) purporting to be a counter-
 foil initialled by the auctioneer) of a receipt by
 Adewunmi dated the 13th August 1931 for the
 payment by the said Adewunmi of the sum of £25
 "being payment of full purchased for lot no. 3
 Abule nla opposite Rly line Apapa". p.49 (1)
 p.49 (8)

12. The Land Registration Ordinance (cap.108) of
 the Colony of Nigeria, which was made on the 1st
 January, 1925, contains (amongst others) the
 following provisions:-

20 S.2 (an interpretation clause) comprises
 (inter alia) the following definition (that is to
 say): "Instrument" means a document affecting
 land in Nigeria, whereby one party (hereinafter
 called the grantor) confers, transfers, limits,
 charges or extinguishes in favour of another
 party (hereinafter called the grantee) any right
 or title to, or interest in, land in Nigeria, and
 includes a certificate of purchase and a power of
 attorney under which any instrument may be
 executed, but does not include a will.

30 S.3 provides for a land registry for Nigeria
 with an office at Lagos.

S.6 is as follows:- Subject to the provisions
 of this Ordinance, every instrument executed after
 the commencement of this Ordinance shall be
 registered.

S.7 is as follows:- Subject to the provisions
 of this Ordinance, every Instrument executed
 before the commencement of this Ordinance, and not
 already registered, shall be registered.

40 S.15 is as follows:- No instrument shall be
 pleaded or given in evidence in any court as

RECORD affecting any land unless the same shall have been registered.

S.16 is as follows: Subject to the provisions of this Ordinance every instrument registered under this Ordinance shall, so far as it affects any land, take effect, as against other instruments affecting the same land, from the date of its registration as hereinafter defined, and every instrument registered before the commencement of this Ordinance shall be deemed to have taken effect from the date provided by the law in force at the time of its registration. 10

SS.17 and 18 contain provisions as to the method of registration.

S.22 is as follows:- The registrar shall allow searches to be made at all reasonable times in any register book, register or file of registered documents in his custody.

13. S.129 of the Evidence Ordinance (cap.63) of the Colony of Nigeria is as follows:- 20

129.- Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

14. S.14 of the Supreme Court Ordinance (cap.211) of the Colony of Nigeria is as follows:- 30

14.- Subject to the terms of this or any other Ordinance, the common law, the doctrines of equity, and the Statutes of general application which were in force in England on the 1st January, 1900, shall be in force within the jurisdiction of the court.

By virtue of the said s.14, s.1 of the Vendor and Purchaser Act 1874 of the Imperial Parliament (whereby 40 years was laid down as the period of commencement of title which a purchaser of land might require under an open contract) forms part of the Law of Nigeria; and ss. 3 and 9 of the Statute of Frauds, 1677, of the Imperial Parliament (which require dispositions of land and of equitable 40

interests to be in writing) also form part of the said law.

RECORD

15. The action came on for hearing before Abbott J. on the 18th and 19th May and 2nd and 8th June 1954. The oral evidence given at the trial is set out on pages 14 to 26 of the Record of Proceedings.

10 16. No evidence was given at the trial as to the existence or execution of the Deed of Gift dated the 6th August 1896, by reference to which the property first mentioned in the Mortgage of 1923 was described, or as to the subject-matter contents or effect of the said Deed of Gift (if in fact it existed and was duly executed) or as to whether the said Deed was ever registered.

20 17. The witness Aiyede who prepared the plans Exhibits C and D stated that he prepared them from six deeds (being the four Conveyances mentioned in para.6 hereof and the Mortgage of 1923 and the Respondent's conveyance) but it did not appear from his evidence, nor does it appear from the said plans or either of them or from the keys thereto respectively, whether or to what extent (if at all) the land in dispute or any part thereof was included in the Mortgage of 1923. p.16 (21)

30 18. Evidence in regard to certain of the matters recited in the Respondent's Conveyance was given by one Francis (an Auctioneer), by Adewunmi (expressed to be the party thereto of the second part) and by Bolajoko Bandele Oshire (expressed to be one of the parties thereto of the third part).

The evidence of the said Francis was (inter alia) as follows:- p.14 (28)

40 "In 1931 I was entrusted with sale of a large tract of land at Abule Nla Road Ebute Metta. Irving and Bonnar told me to sell on behalf of Scottish Mortgaged Trust Company. I advertised the sale. This Exhibit A is a copy of advertisement. At sale land was sold in 3 lots. I produce Counterfoil of receipt for purchase money of lot 3 at that sale showing lot 3 was sold to M.A. Adewunmi."

The evidence of the said Adewunmi was (inter alia) as follows:- p.24 (2)

RECORD

"I know the land at Abule Nla Village - the land in dispute. I have seen Exhibit A before. It relates to sale of that land in three plots. I know something about plot No. 3. I bought it at the auction and paid the purchase price..... I bought from Mortgagees.

"Exhibit A contains all information I got about the land. I sold the plot to Oshire about 1932".

p.22 (2)

The evidence of the said Bolajoko Bandele Oshire was (inter alia) as follows:-

10

(Examined)

"I know the land in dispute. My father was former owner.

"He bought it with Adewunmi from Irving and Bonnar.

"My father is dead. I can't read..... My father died 6. 4.51. We sold some pieces of land. One piece sold to the Plaintiff Witness 5.

"We sold land in dispute to the Plaintiff."

20

(Cross-examined)

"My father and Adewunmi bought the land jointly.

"I don't know when that was..... I don't know dimensions of land sold to Plaintiff."

The last mentioned witness did not state or indicate to what person or persons other than herself the word "we" (as used in her evidence) was intended to refer.

p.19 (13)

19. The Respondent himself, in answer to questions put by the Court, gave evidence to the effect that he searched the register against the land in dispute in 1951, and made no further search until 1953, on the occasion of which latter search he obtained copies of the Appellants' documents of title referred to in para.6 hereof.

20. On the question whether the Respondent or his predecessors in title were at any material time in

possession of the land in dispute, evidence was given on the Respondent's behalf as follows:-

RECORD

Ogumokun (a sub-Contractor)

(Examined)

"I know land in dispute. Mrs. Moore entrusted adjoining land to me in 1935. Then land in dispute was owned by Oshire. Whenever I went to Mrs. Moore's land I used to see him on land in dispute, supervising the clearing of it."

p.15 (24)

10 (Cross-examined)

"I now say I saw Oshire on the land in dispute in 1949.

p.16 (5)

"I don't know who was on the land in dispute between 1935 and 1949....."

"I never saw anybody on the land in dispute between 1935 and 1949. I say land in dispute was still thick bush in 1949....."

The Respondent

20 "When I bought the land I was put in possession.

p.18 (15)

"When I went on the land before I bought it I found nobody there".

Bolajoko Bandele Oshire

(Examined)

30 "My father made round niches on the land. He erected no building. He planted yam and maize. We stopped doing this when neighbours stopped us reaping the crops. We don't know who they were but they used to steal the crops. We have kolanut and mango trees on the land....."

p.22 (8)

"Nobody ever disturbed us on the land."

(Cross-examined)

"I don't know when the yams and maize were planted. It was more than 15 years ago."

p.22 (21)

- RECORD Adewunmi
 (Examined)
- p.24 (8) "I took possession, cleared the land, and
 grew corn. Before I cleared the land there were
 palm trees being tapped. The tappers paid rent to
 me. They were tapping already when I bought the
 land."
 (Cross-examined)
- p.24 (18) "When I bought the land in 1931 it was thick 10
 bush. I cleared the land and cultivated the land
 by planting and reaping corn before I sold to
 Oshire."
21. Evidence on the question of possession was
 given on the Appellants' behalf as follows:-
- Maurice Goualin (a director of the first
 above-named Appellant)
- (Examined)
- p.25 (16) "As soon as defendant Company bought the 20
 land, it was cleared....."
- "I inspected land before I bought it. It was
 then thick bush. I found nobody in possession or
 claiming the land."
 (Cross-examined)
- p.25 (40) "I began clearing the land in January 1953."
- The second above-named Appellant
 (Examined)
- p.26 (7) "I saw the land before Goualin bought it.
 Then I saw tree-stumps and grass on it. No sign
 of farming or cultivation."
 (Cross-examined) 30
- p.26 (11) "There were small palm trees on the land.
 They were cut down before building began".
- pp.27 to 22. Abbott J. in his judgment dated the 14th June
 29. 1954 dismissed the action with costs. He thought
 that it was reasonably plain from an examination
 of the plans on the Mortgage of 1923 and the

- Respondent's Conveyance that they both dealt with an area which included the land in dispute, but he took the view that the Mortgage of 1923 was defective because it was not executed by Abiola Oshire, and because, having regard to the equitable interest outstanding in Abiola Oshire, it would be impossible for the Respondent to pass a clear title to a purchaser. He held accordingly that the Respondent's title was defective and that the defect was not cured by the registration of the Respondent's Conveyance. He also took the point that "all the defendants' documents of title were registered before the plaintiff took his conveyance and, therefore, had the plaintiff made proper searches at the proper time, he would have discovered the defendants' documents of title registered against part of the land comprised in Exhibit K".
- 10
- RECORD
p.28 (27)
- p.28 (38)
- 20 As regards the Respondent's claim for alleged trespass, the learned Judge held that trespass was an offence against possession, and that, for the Respondent to succeed under this head, he must satisfy the Court that he was in possession at the time of the alleged trespass. The learned Judge, not being satisfied on this point by the evidence, rejected the claim for damages for trespass and for injunctions.
- p.29 (13)
23. The Respondent on the 30th July 1954 gave notice of appeal from the decision of the learned Judge, and the said appeal came on for hearing before the Federal Supreme Court of Nigeria (Foster Sutton F.C.J. Verity Ag. F.J. and Irwin Ag. F.J.) on the 22nd May 1956. On the 21st June 1956 judgment was delivered allowing the appeal, and it was ordered that judgment be entered for the Respondent for the declarations of title and injunctions sought by him, for £1 damages against each of the Appellants, and for costs.
- 30
- p.30 (2)
- p.32 (3)
- pp.34-38.
24. The leading judgment in the said Federal Supreme Court was delivered by Verity Ag. F.J. The learned Judge stated that the Respondent sought to trace his title to a deed of gift granted in 1896 by Simon Jacobs to Adeoye Desalu and, after referring to the Mortgage of 1923 and the Respondent's Conveyance, said that "the deed of gift was not produced but its grant on the 6th August 1896 is recited in the mortgage deed of 1923 and by virtue of s.129 of the Evidence Ordinance
- 40
- p.34 (3)
- p.34 (11)
- p.34 (18)

RECORD (cap 63) the truth thereof is to be presumed unless there be evidence to the contrary, of which in this case there is none".

p.34 (24) The learned Judge then referred to the statements contained in the recitals to the Respondent's
 p.34 (41) Conveyance, and said that evidence in confirmation of such recitals was given by Adewunmi and by one of the children of "the second purchaser" ("the second purchaser" being Ezekiel Akinwande Oshire). He also referred to the fact that Abiola Oshire had not executed the Respondent's Conveyance.

p.35 (16) After alluding to the Appellants' documents of title, the learned Judge stated that "the
 p.35 (23) identity of the land is evidenced by certain plans prepared by a licensed surveyor for the purposes of this action" (meaning the plans Exhibits C and D).

p.35 (26) The learned Judge then considered the question of the equitable interest which Abbott J. had held to be still outstanding in the said Abiola Oshire and said in reference thereto:- 20

p.35 (39) "In considering this aspect of the matter and more particularly in regard to the supposed "equitable interest" of the third child of the second purchaser it must be borne in mind that there is, quite apart from Exhibit K, evidence of the various sales which preceded the execution or non-execution of this document, evidence upon which the Court would as it stands have made the requisite orders for specific performance of the various agreements for sale coupled with the payment of purchase money and the entering into possession by the purchaser thereunder..... I am
 p.36 (12) unable to see what equitable interest remains in any one of the heirs of the second purchasers, who, on the contrary having agreed to sell, having received the purchase money and having put the Appellant into possession are in equity bound to give him such assurance by deed as may be required to vest in him all their interest in the land whether legal or equitable." 30 40

p.36 (25) The learned Judge accordingly held that the Respondent's title commencing as he held with the said Deed of Gift of 6th August 1896) was a better title than that of the Appellants commencing with a Deed of 1952, and that the Respondent was entitled

to the declarations of title which he sought by
the action.

RECORD

The learned Judge also expressed the view
that no weight should be attached to the fact that
the Appellants' documents of title were registered
before the Respondent's Conveyance. He said in
this connexion that "Registration of the instru-
ment under the so-called Land Registration
Ordinance Cap.108 confers no title and is not
10 concerned with the creation of priorities."

p.36 (42)

After commenting on the plans Exhibits C and
D, the learned Judge addressed himself to the
Respondent's claim based on trespass, and as to
this aspect of the case he said:-

p.37 (3)

p.37 (29)

"A distinction is to be drawn as to the nature
of the evidence which is necessary to establish a
claim to ownership based upon long possession and
the exercise of acts of ownership and that
requisite in an action of trespass to establish
20 possession by the owner under recently acquired
title, and for the latter purpose I think that in
this case the learned Judge should have been
satisfied with the evidence of possession given by
the Appellant" (meaning the Respondent) "and his
witnesses, even though witnesses for the
respondents" (meaning the Appellants) "may not
upon occasion have seen any person in actual
physical occupation of the particular part of the
land upon which they entered".

p.37 (33)

30 25. Foster Sutton F.C.J. and Irwin Ag. F.J.
concurrent in the said judgment of Verity Ag. F.J.

p.38 (13)

26. By an Order of the said Federal Supreme Court
(Olumuyiwa Jibowu Ag. F.C.J.) final leave was
granted to the Appellants to appeal to Her
Majesty's Privy Council from the said judgment of
the Court dated the 21st June 1956.

p.46 (21)

40 27. The Appellants submit that the said judgment
of the said Federal Supreme Court is wrong and
ought to be reversed for the following (among
other)

REASONS

1. Because the aforesaid Deed of Gift dated the
6th August 1896 is not an admissible root or

RECORD

document of the title to the land in dispute in that (i) the reference to the said Deed in the Mortgage of 1923 was not sufficiently explicit to afford evidence of the subject-matter contents or effect thereof under s.129 of the Evidence Ordinance (cap.63); (ii) there is no other evidence of the existence or execution of the said Deed or (if in fact it existed or was duly executed) of its subject-matter contents or effect; (iii) the said Deed is in any case inadmissible in evidence by virtue of s.15 of the Land Registration Ordinance (cap.108) since there is no proof that it was ever registered under that Ordinance. 10

2. Because the Mortgage of 1923 is not an admissible root or document of title to the land in dispute since it is apparent on the face of the Mortgage of 1923 and the plans thereto that, even if part of the land in dispute was comprised therein, a substantial part of the land in dispute was not so comprised. 20

3. Because the Mortgage of 1923 even if it were in other respects such sufficient root or document of title as aforesaid is less than 40 years old and therefore does not satisfy the requirements of s.1 of the Vendor and Purchaser Act 1874 as to the period of commencement of title.

4. Because apart from any question of the identity of the land comprised in the Mortgage of 1923 the title to the said land subsequent to the said Mortgage (in so far as it depends on the matters recited in the Respondent's Conveyance) is defective or unproved in the following respects:- 30

(i) The alleged contract for sale by the Company to the said Adewunmi, consisting of the Advertisement Notice (Exhibit A) and the Counterfoil of Receipt (Exhibit B) was a nullity, since neither of those documents contained any sufficient or identifiable description of the land expressed to be thereby sold;

(ii) The evidence of the witness Francis and of the said Adewunmi (which was the sole oral evidence of any sale to Adewunmi) does not show that "Lot 3" (being the land alleged to have been sold) consisted of or included the land in dispute; 40

(iii) The evidence of the witness Bolajoko Bandele Oshire (which was the sole evidence relating to the death of Ezekiel Akinwande Oshire and the devolution thereon of any land purchased by him from the said Adewunmi) does not sufficiently show to what person or persons the beneficial interest in any such land passed on such death; and

10 (iv) Although according to the recitals to the Respondent's Conveyance Abiola Oshire had an equitable interest (as one of the children and heirs-at-law of the said Ezekiel Akinwande Oshire) in the land thereby expressed to be conveyed (including the land in dispute) she did not execute the Respondent's Conveyance, and there is no or alternatively no sufficient evidence that she ever concurred in any sale of the said land or any part thereof to the Respondent or that any part of the purchase -money on such sale was ever paid to her, and in any case having regard to ss. 3 and 9 of
20 the Statute of Frauds 1677 her said equitable interest could not have been transferred to the Respondent except by an instrument in writing signed by her or her agent.

5. Because in the premises no or alternatively no sufficient title to the land in dispute prior to the Respondent's Conveyance has been proved by the Respondent, and his title depending solely on that Conveyance is a more recent and worse title than the title of the Appellants to their
30 respective parts of the land in dispute commencing with the Conveyance dated the 25th June 1952 (Exhibit Q).

6. Because in any case since both the Conveyance dated the 31st December 1952 to the first above-named Appellant (Exhibit O) and the Conveyance dated the 13th April 1952 to the second above-named Appellant (Exhibit R) were registered under the said Land Registration Ordinance prior to the date of the Respondent's Conveyance, the respective
40 titles of the Appellant to their respective parts of the land in dispute have priority to any title of the Respondent to the land in dispute depending on the Respondent's Conveyance.

7. Because the evidence given by and on behalf of the Respondent, in so far as it was intended to show possession of the land in dispute by the Respondent or any of his predecessors in title at

RECORD any material time or times, was on the face of it vague conflicting and inadequate, and was held by Abbott J. after seeing the demeanour of the witnesses to be insufficient to found any claim for trespass by the Respondent, which finding was correct and proper and ought not have been reversed or interfered with by the said Federal Supreme Court.

8. Because the Judgment of the said Federal Supreme Court is erroneous and ought to be reversed,

10

KENNETH ELPHINSTONE.

No. 17 of 1957

IN THE PRIVY COUNCIL

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

1. MAURICE GOUALIN LIMITED
2. BARTHOLOMEW KOOVI DE SOUZA
(Defendants) Appellants

- and -

WAHABI ATANDA AMINU
(Plaintiff) Respondent

CASE FOR THE APPELLANTS

DENTON HALL & BURGIN,
3, Gray's Inn Place,
London, W.C.1.

Solicitors for the Appellants.