*International Journal of Arts and Humanities*

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

# LEGAL PRACTITIONERS AND INTERCOMMUNITY BOUNDARY LITIGATIONS IN COLONIAL SOUTHWESTERN NIGERIA: A PERSPECTIVE ANALYSIS[1]

Olupayimo Dolapo Zacchaeus, Ph.D.

Department of History, Adeyemi College of Education, PMB 520, Ondo, Nigeria.

## ABSTRACT

For a very long time, the Colonial judiciary in Nigeria did not permit legal representation in land boundary cases in Yorubaland and in the whole of Southwestern Nigeria. The reasons for this were diverse, but one basic reason was the colonial government's anxiety about the political stability of the colonial estate if lawyers were given free hand to operate in West Africa. However, legal practitioners soon found their way around the embargo by filing their applications for transfer of cases under Section 25 1 (c) of the Native Courts Ordinance 1933. The present work is an interrogation of the activities of legal practitioners in this class of cases so as to showcase the gains or otherwise of lawyers appearance for their clients in land boundary cases. Data for the work were essentially judgments delivered in this class of case, colonial government papers deposited in National Archives, Ibadan Nigeria and private papers. The data are analysed through the use of historical method where varying documents are confronted with each other to beat down subjectivity and bring out a historically objective view. Findings revealed that lawyers were facilitators of the arms of equity in land boundary cases.

**Keywords:** Colonial judiciary, legal representation, land-boundary, Litigation

## INTRODUCTION

There are conflicting views as to whether the English legal profession was imposed on Nigeria or not. For instance, a school of thought argued that it was not imposed on the Nigerian society by the British colonial administrators as some earlier writers have opined.[2] In the words of

[1] I wish to appreciate the African Humanities Program of the American Council of Learned Society which funded this project by granting me Residential Fellowship to complete the writing at University of Dar es Salaam, Tanzania and also Profs. Betram B.B. Mapunda and Yousufu Q. Lawi who mentored me through the time of writing.

[2] Jill Cottrell, "The Role of the Legal Profession in Nigeria" *Journal of Nigerian Public Affairs.* Vol. 1,No. 1, 1970. 42

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

Adewoye a leading protagonist of that school, it was "…a natural concomitant of the European law and law-courts that came with colonialism. The profession (merely)… reinforced the emerging climate of legality.[3]"

The second school of thought made up mainly of legal practitioners simply upheld an earlier view of author like Jill Cottrell who believed that the legal profession was imposed on the Nigerian society.[4] Their argument is anchored on Ordinance No 3 of 1863 where the English law and English type of courts were introduced to the Colony of Lagos to legitimize and regularize existing practice.[5] This position is further strengthened by the Supreme Court Ordinance, 1876 which is still the first significant regulatory statute relating to the practice of the profession. It provided that "The Chief justice shall have power to approve, admit and enroll to practice as barristers and solicitors in the court such persons as shall have been admitted as solicitors… in any of the courts of London, Dublin and Edinburgh[6]"

In the opinion of the present writer, the two schools are perhaps right. For instance, there were ample evidence that the English legal system was imposed on Nigeria over and above existing customary legal system without sufficient ventilation for it to thrive.[7] Moreover, the English legal profession was described by the second school as merely a concomitant of the imposed system. The inference could therefore be drawn that, the legal profession grew in Nigeria as an accompanying subordinate of the imposed English legal culture.

The Chief Judge could, in his discretion approve, admit and enroll to practice as a barrister and a solicitor in the court any person, who was entitled to practice as a barrister in England or Ireland, or as an advocate in Scotland and who produced testimonials sufficient enough as a proof to the Chief Judge that he was a man of good character[8]. Indeed, it was sequel to the fulfillment of these conditions, that the first Nigerian Lawyer, Christopher Alexander Sapara-Williams was admitted on the 17th of November, 1879 when he was called to the English Bar.[9] Having distinguished himself on his return, on the 30th of January, 1888, he joined the Nigerian Bar Association (NBA) and on the 30th of August 1888, he enrolled at the Supreme Court, Lagos as

[3] Omoniyi Adewoye, "Legal Practice in Ibadan City, 1904-1960" in *Journal of Legal Pluralism*, No. 24 pp. 57-76.
[4] A.O. Obilade *The Nigerian Legal System* (London: Sweet and Maxwell, 1979) p. 5
[5] Ordinance No 3 of 1863
[6] Supreme Court Ordinance 1876
[7] P. Okoronwankwo, *Criminal Justice in Precolonial, Colonial and Post-Colonial Eras: Application of the Colonial Model to Changes to Severity of Punishment in Nigerian Law*.(Maryland: Maryland University Press, 2010)
[8] A.O. Obilade *The Nigerian Legal System…*p. 5
[9] The life and time of C. A. Sapara-Williams in http://abiyamo.com/christopher-alexander-sapara-williams-nigerias-first-lawyer-2/ (Accessed on 22/09/2017)

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

the first Nigerian Barrister[10]. One after the other, Nigerians began to increase in the legal profession and by 1937, there were 69 Lawyers practicing in Nigeria.[11] It must be noted that they were not required to study Nigerian Law before or after enrollment.

Again, as of this period, there was an official restriction on the appearance of lawyer over land case since it remained within the jurisdiction of the Native Court.[12] Despite all efforts of the colonial administration to prevent lawyers' appearance in land matters in particular, legal practitioners still got themselves involved in land cases courtesy of the loopholes in the Native Court Ordinance 1914 and 1933. It is against this backdrop that the present work intends to examine the activities of legal practitioners in inter-community boundary litigations in selected cases in Southwestern Nigeria in the colonial days.

## A BRIEF DISCUSSION OF THE 1933 NATIVE COURT ORDINANCE

Perhaps because of the strategic significance of the 1933 judicial reform to this discourse, it is necessary to briefly raise some questions about it for discussion as a prelude to the issue under focus. For instance, one may ask; were there no reforms before 1933? What were the new innovations introduced by the 1933 reforms? And how did these innovations affect legal practitioners?

Before 1933, there had been reforms in the judicial system of the country in 1906 and 1914.[13] Therefore what took place in 1933 was just an improvement on existing judicial structure.

One of the new innovations of the 1933 judicial reform was the establishment of High Court and Magistrate courts under the Protectorate Courts Ordinance 1933.[14] By this reform, the Provincial Court Ordinance was repealed, while the Supreme Court continued to exist for the Colony of Lagos. By this reform, jurisdiction in matters relating to English Law was shared between these courts which had original and appellate jurisdiction. One implication of this was that appeals lay from the Magistrate courts to the High Court and from the Native courts to the Magistrate Court or the High Court, while appeals from the High Court and the Supreme Court lay to the West African Court of Appeal.(WACA)[15] Other innovations included the Native Courts Ordinance and

[10] Ibid.

[11] National Archives Ibadan,- (NAI) CSO 1/32 Vol. 120 J.A. Maybin to Secretary of State for Colonies, 15th January, 1937 Enclosure.

[12]Omoniyi Adewoye, *The Judicial system in Southern Nigeria: 1854-1954*(London: Longman Group, 1977) pp.266-267

[13] O. Adewoye *Judicial System in Southern Nigeria…*p.112

[14] The Protectorate Court Ordinance 1933

[15] A.O. Obilade *The Nigerian Legal System*, (Sweet and Maxwell, 1979)

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

the West African Court of Appeal Ordinance, both of 1933. By this, there was bifurcation of jurisdiction between the Native court and English court system such that in certain matters, the English courts did not have jurisdiction. A good example of this was in land matter which is the focus of this study.[16]

One key target of the reform and the new innovations was therefore to reinforce the hitherto restriction on the appearance of legal practitioners in land cases at least. This situation was retained by the colonial administration perhaps to sustain their antipathy to legal practitioners' appearance for their clients especially in land matters.[17] One could reason this way because in the next judicial reform which took place in 1943, this restriction was removed.

The question then from perceptive minds would be why the colonial administration would mount such an impregnable road block against the appearance of legal practitioners for their clients in land and boundary matters. This shall be interrogated briefly in the next section.

## THE BRITISH COLONIAL ADMINISTRATION AND LAWYERS' APPEARANCE IN LAND BOUNDARY CASES

One institution that impacted the decision of the judiciary in respect of inter-community boundary disputes in Southwestern Nigeria was the legal profession. At the onset of judicial intervention in land and boundary actions in the British variety of courts in southwestern Nigeria, the colonial government did not allow legal representation in land and boundary cases as pointed out earlier pointed.[18] Indeed, as far back as the 1860s, the attitude of colonial government to the legal profession and the appearance of lawyers in British style-court have been described as ambivalent.[19] This situation remained relatively constant throughout the period of colonial administration in Yorubaland and the whole of Southern Nigeria.[20]

An examination of the judicial agreement negotiated between 1904 and 1908 with some prominent Yoruba rulers would confirm this. The agreement showed the introduction of certain exemption clauses to preclude legal practitioners from appearing before the colonial court, which were to operate in much of Yorubaland.[21] Adewoye opined that although there were indications

[16] E. Edefe, "History of the Nigerian Judicial System" (Lagos: University of Lagos, JIL 001-*Lecture Notes*, 2012) Accessed online 12 September, 2017.

[17] Legal Practitioners were deliberately Denied Appearance in Land Boundary Case by the Colonial Administration.

[18] O. Adewoye, "The Judicial Agreement in Yorubaland, 1904-1908" in *Journal of African History* Vol. 12 No.1 (1971) http://www.jstor.org/stable/181017 (Retrieved on 27/04/2009 pp. 611-612

[19] O. Adewoye, *The Judicial System in Southern Nigeria*…p. 112

[20] O. Adewoye, "The Judicial Agreement in Yorubaland, 1904-1908"…p.612

[21] O. Adewoye, *The Judicial System in Southern Nigeria*…p. 113

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

that Yoruba rulers expressed reservations as to the appearance of Barristers and Solicitors in the British court located in Yorubaland, the extent of their aversion in his view may never be known.[22] This was because, at this period, no lawyer had ever practiced in Yorubaland to warrant such antipathy to the legal profession.[23] More reason for the denial of the appearance of legal practitioners could be seen from the desire of the colonial government not to depart too radically from the indigenous judicial dispensation of justice. This was hinged on the argument in favour of the introduction of the indirect rule system of administration, which they argued was to further the sustenance of the traditional political structures.[24]

The reservation of British colonial administration in respect of the activities of legal practitioners also stemmed from the reputation of the few practicing legal luminaries at this early stage of the development of this newly introduced system.[25] Indeed, the reputation of lawyers were described as bad throughout West Africa.[26] In Lagos, their reputation was not particularly high as they were accused of many unprofessional activities including outright extortion, misapplication of clients' fund and withholding clients' money among others.[27]

However, in the view of Adewoye, the most fundamental explanation of the official attitude of the colonial government towards professional lawyers was their position in this typical colonial situation. An excerpt from a section of the comments of the Chief Justice of Gold Coast, Mr. Justice D.P. Chalmer whose comment predated this period would lend credence to this:

> The actual injury done by the … Attorneys consist mainly, first, in exerting excessive remuneration and second in stirring up unnecessary litigation which could aggravate class feelings and animosities.[28]

Two strong feelings were expressed in this short excerpt from Mr. Justice Chalmer. The first was in the fees charged by legal practitioners when they stood for their client which in Chalmer's view was rather high. The second was an expression of anxiety as a major cause of distrust for

[22] Ibid.

[23] The First Legal Practitioner in Yorubaland was a Greek Lawyer Mr. Efithios Hagge Lambrou and he came to Ibadan only after the passage of the 1933 Judicial Reform. See O. Adewoye *Legal Practice in Ibadan, 1904-1960...* p.64

[24]Abdulsalami Muyideen Deji, "Historical Background of Nigerian Politics, 1900- 1960" *IOSR Journal of Humanities and Social Science (IOSR JHSS)* Volume 16, Issue 2 (Sep.-Oct. 2013) pp.84-94

[25] That the reputation of lawyers was particularly low at this time may be accounted for in that the regulatory body like NBA today was not very strong to monitor their activities.

[26] O. Adewoye, "Legal Practice in Ibadan…" p.61

[27] O. Adewoye, *The Judicial system in Southern Nigeria…"* p.115

[28] The comment of Mr. Justice Chalmer is quoted from the work of Adewoye…*The Judicial...*p.115

  

the appearance of legal luminaries. The colonial administration was also of the opinion that unless legal practitioners were strictly controlled, they might constitute a big threat to the political stability of the colonial estate.[29] The British were of the view that the professional activities of lawyers might endanger a peaceful political governance of the colony and protectorate.

Another crucial issue was the social prestige of the lawyers, which was gradually beginning to infringe on that of the political officers. There was an increasing possibility of cross-examination of a white political officer by a black Barrister. As Adewoye puts it:

> A District Commissioner with no more than a smattering of legal knowledge administering justice in the rural area as an Officer of the Supreme Court could be made to appear an object of ridicule by a better trained African Lawyer defending a client before him. The lawyer might raise technical points of law which would only embarrass the political officer or show up his weakness thereby undermining his position and effectiveness as an administrator in his area of jurisdiction. [30]

The exclusion of legal representation for reasons which included, but not limited to the ones mentioned above made legal practitioners to depend extensively on the maximization of loopholes detected in the 1914 and 1933 judicial reforms. One thing that stood out in the appearance of legal practitioners in land and boundary dispute litigations was that in most of the cases, there was imminent miscarriage of justice due to technical issues that are adequately catered for under English jurisprudence. This should not be made to preclude the fact that such issues were not catered for adequately in customary law. However, they could be easily manipulated because of the structure of the Native Court system put together by the Colonial administration and court officers and personnel who were appointed to man and protect the British colonial estate.[31]

Legal practitioners depended on application for transfer of cases from the Native Courts to either the High Courts or the Supreme Court and sometimes, they apply for interim injunction to stay execution of judgment gotten from the Native Court so as to facilitate their appearance for their clients in land and boundary related causes in other courts.

---

[29] Ibid.

[30] O. Adewoye., *The Judicial System in Southern Nigeria…* p.117. See also Olupayimo, D.Z. *The Judiciary and Chieftaincy Institution in Osun Division, 1946-1991* (Germany: Omni Scriptum. GmbH, 2017) pp. 25-30

[31] Experts in Native Law and Customs during this period were usually colonial appointees called Assessors on the Bench of the Native Courts. Their appointments were therefore usually subject to the protection of the colonial estate.

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

**SELECTED CASES SELECTED FOR INTERROGATION:**

In selecting land boundary cases used for this work, the present writer focused on land cases that attracted litigations in the Native Court and later transferred on request to either the High Court or the Supreme Court. He also selected land cases that had strong reasons why the Native courts could not handle them very well since those situations were never anticipated in customary law. Other thing factored into the selection of cases was land cases where there seem to be obvious miscarriage of justice in the Native Courts. And land cases that involved two communities perhaps because of its location astride the boundary or because the users were from another community.

Out of all the eighty-two inter-community land boundary cases generated from the corpus of available records in the South-West geo-political zone of Nigeria for this study from the Colonial and Native Court records, only five outrightly met these selection criteria and were therefore selected for interrogation viz.

***Latunde Akanmu, Raji Odutola, Gbadamosi Lasupo, and Bello Lahan for For themselves and Ibikunle Family v. Odutola J.A. & Ishola Mosadogun.***[32]

The above case involved a land located between Ibadan and Egbaland. The plaintiffs in the case were of Oyo origin in Ibadan. They claimed that the lands belong to the Ibikunle family of Ibadan and it was never sold to the defendant, he was merely allowed to use it for some time. While the defendants, Odutola and Mosadogun were also Yoruba, they are of Egba stock. When the case was heard by the Native Court at Ibadan Land Court II, the documents conveying the land to the defendants were not accepted in evidence by the court. The case was therefore awarded to the plaintiff from Ibikunle family. The obvious reason for the award was that the presiding judges and Chiefs were all Ibadan chiefs and the Balogun Ibikunle factor in Ibadan history came to play.[33] Whereas, it has always been part of judicial ethics in most part of the world that Judicial independence is not a privilege or prerogative of judicial office. It is the responsibility imposed on each judge to enable him or her to adjudicate a dispute honestly and

[32] *Latunde Akanmu, Raji Odutola, Gbadamosi Lasupo, and Bello Lahan For themselves and Ibikunle Family v. Odutola J.A. & Ishola Mosadogun.*

[33] Balogun Ibikunle was a respected ruler of Ibadan, the 7th Baale of Ibadan who ruled from 1864 -1865. He led the Ibadan warriors against Kurunmi of Ijaye in a war that marked the end of Kurunmi and subsequently the collapse of Ijaye a major rival of Ibadan suzerainty. The war was completed by Ibikunle's successor. See, Samuel Johnson, *History of the Yorubas,* Lagos: CMS Bookshop for a detailed analysis. For a more recent discussion See also: Adeboye O. 'Death is Preferable to Ignominy', Political Motivated Suicide, Social Honor and Chieftaincy Politics in Early colonial Ibadan. Harriet Taubman Resource Centre on the African Diaspora, 2010.

  

impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone.[34] The reverse was the case in this episode.

Having lost the case, the defendants approached Lawyer Akintola Cole who stood for them to request for the transfer of the case from Lands Court II, Oke Are Ibadan to High Court of Ibadan Division with strong reasons in a letter dated 14th May 1956 and addressed to the Divisional Adviser.[35] His first grounds of request for the transfer of the case was that his clients would be required to produce legal documents like deeds of lease and conveyances and that these were better interpreted in the High Court.[36] His second ground was based on the plea of Res Judicata.[37] He claimed that an earlier suit between the first defendant and Gbadamosi Adenekan, was earlier dismissed on 30th of April, 1956[38] in Gbadamosi Adenekan, v. Jimoh Odutola and Olubadan and Council. And that this new Suit was in respect of the same land.[39]

The approval for the transfer of case was further quarried by the colonial administration on an unspecified ground. Jimoh Odutola, therefore, employed other lawyers; Rosiji and Ighodaro who also pressed for the transfer of the same case on the same grounds.[40] After much pressure, the approval was granted by the Assistant Divisional Adviser, Mr. Mackenzie, on the ground of Res Judicata plea made by the team of lawyers.[41] The subsequent result was that the High Court entertained the case and awarded it to the defendant asking the lower court to hear the case de novo.[42]

***Salawu Akanmu v. Adeleke Mogaji Oluokun and 2 Ors. For themselves and the Oluokun family.[43]***

[34] UNOC, *Judicial Ethics Training Manual for the Nigeria Judiciary*,( Abuja: National Judicial Institute) p.50 http://www.unodc.org/documents/corruption/publications_unodc_judicial_training.pdf (Accessed on 22/09/2017)

[35] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Request of E. Akinola Cole to the Divisional Adviser, Dated 14th May, 1956

[36] Ibid.

[37] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 *Res Judicata* was based on Suit I/112 of 1954 and another Suit I/39/54 of Lands Court II Ibadan

[38] *Gbadamosi Adenekan versus Jimoh Odutola and Olubadan* and Council . See NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Request of E. Akinola Cole to the Divisional Adviser, Dated 14th May, 1956

[39] Ibid.

[40] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Request of E. Akinola Cole to the Divisional Adviser, Dated 14th May, 1956

[41] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Rosiji and Ighodaro Request in Respect of Suit No. 28/56 for Odutola their client, Dated 2nd July, 1956

[42] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Decision of the High Court.

[43] *Salawu Akanmu v. Adeleke Mogaji Oluokun and 2 Ors. For themselves and the Oluokun family* NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

This was another very tough land case. The suit under consideration involved a very large expanse of land situated and lying between Ibadan and Ijebu Provinces. Salawu Akanmu a "land grabber"[44] allocated several parcel of land to different farmers in this location from which he receives annual gifts in return,[45] when his position was challenged by the Mogaji[46] of Oluokun family, he headed for the Lands Court to secure a judgment that would cut off other members of the Oluokun family from parcels of land that was considered the family heritage.

The Lands Court initially tilted towards the defendant, i.e. Adeleke- Mogaji Oluokun and others but gradually the grounds began to shift in the process of hearing.[47] This made Adeleke to seek the services of a legal practitioner, Busari Ola Obisesan who requested for a case transfer from the Native Court to the High Court. His grounds included that the land under contest covers a wide area and many people will be affected after the ruling from the Native Court.[48] He was of the opinion that if the case was transferred to the High Court before the final adjudication in the Native Court, multiple appeals would be averted and this will lessen the cost of litigation on both sides.[49] He further argued that the matter involved "very fine points of law", which his client would not be able to raise by themselves in the Native Court.[50]

Although the transfer was eventually granted, he was asked to explain what he meant by "very fine points of law.[51]" Doing this took him some time before he could convince the colonial officer in charge of case transfer. However, before the completion of the process of transfer, the

[44] A Land Grabber is a Nigerian description of those who lay historical claims to landed properties and allocate same as they wish in exchange for annual gifts from their clients. Today, they have the backing of the land owning-families and are in some places called 'Son of the Soil'. See R.T. Akinyele, "Contesting for Space in an Urban Centre: The Omo Onile Syndrome in Lagos in Francisca Locatelli and Paul Nugent (eds.) *African Cities* p. 112

[45] Ibid.

[46] Mogaji is the Officially recognized head of the Family in Yorubaland. It is in some respect a Chieftaincy Title and in other respect, a Title that devolves on the most elderly man in the family.

[47] Although, there was no clear evidence that gifts exchanged hands, however, in most cases handled by the Native Courts, such sudden changes has always been traced to exchange of gifts. See D.Z. Olupayimo, *"Enu Fifo Kii dun Yanmu-Yanmu" A Discussion of selected pre-colonial Yoruba Chieftaincy Political Inducement Strategies.* A paper presented at an International Conference Titled: The Yoruba Nation and Politics since the 19th Century: A Conference in Honour of Professor J.A. Atanda Jointly Hosted by the University of Texas at Austin and Olabisi Onabanjo University, Ago-Iwoye, Nigeria between October 9th and 11th 2017

[48] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Request of *Busari Ola Obisesan* in respect of *Mogaji Oluokun* to the Divisional Adviser, Dated 16th July, 1956

[49] Ibid.

[50] Ibid.

[51] *Salawu Akanmu v. Adeleke Mogaji Oluokun and 2 Ors. For themselves and the Oluokun family* NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1The D.O.'s Response

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

Native Court ruled in the case.[52] This brought in more legal complications that almost truncated the chances of his client's to access fair justice through a lawyer's representation in court. Nonetheless, approval was given and subsequently, the case was decided in favour of the clients of Busari Ola Obisesan.

***Okumade Senjiren v. Suberu Alade***

This was one of the series of cases in Ibadan versus Ijebu boundary disputes,[53] the issues involved in the case had to do with certain Ibadan farmers, whose farmland fell across the boundary between Ibadan and Ijebu after the colonial inter-provincial boundary demarcation of 1926.[54] The farmers enjoyed their freedom until one Shoyemi, an Ijebu man instituted an action against Ola, an Ibadan man and won.[55] Thereafter, other Ijebu farmers began to depend on the proceed of the Shoyemi judgment to molest other Ibadan farmers.

When the representative of the Ibadan farmers, who stood as the defendant in the Okumade Senjiren v. Suberu Alade, observed that the final decision in the appeal case brought before the Native Court, Ijebu Province, might not favour them, they applied for the transfer of their case to the Supreme Court, Ibadan judicial division through Mr. Lambrou, a foreign legal practitioner, based in Ibadan.[56] The application was made and granted initially by the District Officer based on Section 25 (1) (c) of the Native Court Ordinance, depending on the use of judicial discretion. The District Officer had a rethink and decided to deny Mr. Lambrou and his client the earlier granted transfer without communicating him.[57]

Mr. Lambrou petitioned the Resident Officer who upheld the District Officer's denial of the transfer.[58] After much pressure, Mr. Lambrou got his way through and in 1948 as Mr. Dickenson, the Resident agreed to forward the case to the Supreme Court sitting in Ibadan on transfer. This case was unique because it was an inter-provincial transfer and also from the

[52] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Native Court Judgment in *Salawu Akanmu versus Adeleke Mogaji Oluokun and 2 Ors.*

[53] NAI Ijebu Prof/J397/Vol.IV/475 Ibadan-Ijebu Boundary Dispute

[54] NAI CSO 26/31615 Report of Mr. Nesbitt on the Proposed Inter-Provincial Boundary, June 15, 1926 pp.xii.

[55] NAI Ijebu Prof. J/1772 Ibadan-Ijebu Boundary Dispute: *Shoyemi versus Ola* in Suit No. 82/33

[56] Mr. Lambrou was the first legal practitioner to start practicing in Ibadan, he came in slightly after the Judicial reform of 1933. See O. Adewoye "Legal Practice in Ibadan City, 1904-1960…"

[57] NAI Ijebu Prof. J/1772 Ibadan-Ijebu Boundary Dispute: Protest letter of Mr. Lambrou a counsel in respect of his client, Suberu Alade to the Resident.

[58] NAI Ijebu Prof. J/1772 Ibadan-Ijebu Boundary Dispute: Reply of the Resident to Mr. Lambrou in Respect of Senjiren v. Suberu Alade's case transfer to the Supreme Court.

  

Native Court to the Supreme Court.[59] The doggedness with which Mr. Lambrou pursued the transfer of the case to the Supreme Court greatly impacted the final decision of the court in the case that had a long litigation history beginning from 1926 to 1948.[60]

***Muniratu Adedewe v. Mustafa Lawoyin***

The case under consideration was one in which the Native Court obviously ran into a problem that was not provided for in the rule of Court. And it was the appearance of a legal practitioner that saved the litigants. This was a claim of title and possession of a farm land at Agangan in Ibadan District and the suit was the same as the present suit. The present case was tried and determined in favour of the plaintiff on 29th May, 1957 disregarding the pleas of *res judicata* in judgment on the same cause of action in favour of the defendants' ancestors.[61] Shortly after the judgment in 1957, the plaintiff *Muniratu Adedewe* died. The defendant then appealed to the Chief Judge of the Native Court against the judgment. During hearing, nobody showed up to stand for the late plaintiff and her family rejected any letter of administration or executorships.

As such, the case lied in this form till the intervention of a legal practitioner, Barrister Adewumi. The lawyer began by making moves to substitute members of her family who refused outrightly.[62] Thereafter, he applied for transfer of the case to the High Court on the grounds which include that there were no remedies in the circumstances available within the jurisdiction of the hierarchies of Native Courts for his client.[63] This transfer was granted and the case was decided in favour of *Mustafa Lawoyin* at the High Court.

***Lawani Mogaji Koloko v. Ladebo and Raji***

This was a case in respect of certain land around the boundary between Ibadan and Iwo. The history of litigation in these series of boundary disputes could be traced to some period before 1924 when one Ogunrinade an Iware man but of Oyo natality allocated certain parcels of land between Iware and Iroko to one Ajadi and Mamu.[64] This same parcel of land had been allocated

[59] *Ibid*

[60] The case which started as a farmers' protest in 1926 against the colonial inter-provincial boundary adjustment continued to attract legal attention in one form or the other until 1948 NAI CSO 26/31615 Report of Mr. Nesbitt on the Proposed Inter-Provincial Boundary, June 15, 1926 pp.xii

[61] Oral Interview with Barrister Ogundere Joel 2nd September, 2017.

[62] NAI Oyo Prof File 1/1Request of Barrister *Adewumi* addressed to Divisional Adviser, Ibadan

[63] Western Nigeria Government, *Customary Court Manual: Incorporating Customary Law, Customary Court Rules and Extracts from Law Enforceable by Customary Courts* (Ibadan: Western Nigeria Press, 1958)

[64] NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Lands Court I Suit 27/56 *Lawani Mogaji Koloko vs. Ladebo and Raji* Reply of Senior Divisional Officer Mr. K.Y.M Mackenzie to Durosaro and Akinjide dated 13th August, 1956.

  

earlier to Bepo by the Baale of Ibadan for farming.[65] While Bepo went to the Ibadan Native Court to seek redress on the land,[66] Ogunrinade went to Oyo for the same purpose.[67] The contention over the boundary dispute became serious particularly because there were eleven villages under *Oniware* at that time and any loss of Iware by the Baale of Ibadan would mean the loss of control over all those villages.[68] Moreover, Baale Ali, Oyawusi, Adeoshun and Salawu, all of *Iware* had accepted *Oluwo* as the consenting authority over their territory.[69] The quarrel over boundary taken to Ibadan and Oyo by the disputants without the knowledge of the Oluwo therefore escalated dispute between the communities.[70] From the report of Mr. Birch, the District Officer to the Resident, the target of *Oniware* was to gain the control of all farmers beyond Kubo which was the boundary between him and the *Oluwo* from the pre-colonial time.[71] On his own part, the *Oluwo* believed that both he and the *Oniware* belonged to Alaafin and any attempt to create a boundary between them was a wasted effort.[72]

This inter-community boundary dispute became escalated when some local police-*Olopa* from Ibadan came to *Iware* and arrested three people, Akanbi, Mamu and Ogunde on the count that they were serving the *Oniware* instead of the Baale of Ibadan.[73] This particular case exposed the incompetence of the quasi-judicial apparatus of the colonial government in inter-community boundary dispute. For instance, the Bale of Ibadan whose Native Court was to look at the case brought before him was going to benefit from the proceed of the judgment. Again, the *Alaafin* too who was also to preside over the other arm of the case had some stakes if the point of the Oluwo was anything to go by.

This suit had been entertained by the Lands Court I *Oke Are Ibadan* and judgment entered for the plaintiff and an appeal instituted to the Court of the chief before Lawyers Durosaro and Akinjide were brought into the action. The lawyers wished that the appeal be abandoned and that the case be transferred altogether to the High Court of Western Nigeria.

---

[65] NAI Oyo Prof. File 1/1 35/40 *Iroko Iware Area*: The District Office Ibadan

[66] NAI Oyo Prof. File 1/1 264/75 *Iware and* Ibadan Land Dispute: The District Officer Oyo

[67] NAI Oyo Prof. File 1/1 264/75 Senior Resident, Oyo's Report on the cases revealed this

[68] *Ibid*.

[69] NAI Oyo Prof. File 1/1 35/40 *Iroko Iware Area*: The District Office Ibadan to the District Officer, Oyo- This document had a list of villages attached to it: The villages include: Fabunmi, Olanla, Akinola, Aguro Ibadan, Obadina, Ogunrinde, Durojaye among others.

[70] NAI Oyo Prof. File 1/1 35/40 *Iroko Iware Area*: The District Office Ibadan to the District Officer, Oyo- The list of the Bale of Iware who did obeisance to the Oluwo was also attached to this document

[71] NAI Oyo Prof. File 1/1 35/40 Complaint of the Oluwo sent to the District Officer, Oyo in respect of the dispute

[72] NAI Oyo Prof. File 1/1 519/40/1924 Report of Mr. Birch, the District Officer to the Resident on the case

[73] *Ibid*.

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

The reason the lawyers gave included that the suit involved certain fine legal and equitable technicalities such as larches, abandonment and estoppels which could only be examined and trashed out by legal representation.[74] The complexity involved in the case under consideration was that *Durosaro and Akinjide* were asking for the transfer of a case already entered for appeal. The request for the transfer of the case was, therefore, not granted.[75] Barrister Akinjide got his way through after a closed door meeting with Mr. Mackenzie, the Senior Divisional Adviser, on 16th August, 1956. The initial letter disapproving the transfer was revoked and the transfer was endorsed vide endorsement No 2899/385A of 1956.[76]

The case was taken eventually by the High Court and the decision was favourable to the clients of *Durosaro* and *Akinjide.* The implication of this was that the legal practitioners might be described as the facilitators of the arm of equity in judicial intervention in land and boundary cases, particularly as a result of their training. From the stand point of the duties of legal luminaries to their clients, all the lawyers involved in the cases adopted for this study really proved some professionalism. For instance, the client in the course of litigation is entitled to professional advice which they all gave. As a matter of duty, the primary focus of a legal practitioner's duty is to his client and it is second only to the overall interest of justice. He is to give pieces of advice to his client out of court and also to defend him in court.[77] The legal practitioner stands in a fiduciary[78] relation to his client and should not exploit the weakness or ignorance of the client under the law. He owes his client a duty of honesty.[79] This was not possible in the colonial organized Native Court where the Chiefs defend the interest of the colonial estate first and second their personal gains as in the cases that involved the Ibikunle family, before the interest of justice.

## CONCLUSION

This study has demonstrated that the exclusion of legal practitioners for a very long time from standing in for desirous litigant in land boundary causes was a wind that never blew the colonial

[74]NAI Ibadan Div. File 2899 Ministry of Justice (W) 1/1 Lands Court I Suit 27/56 *Lawani Mogaji Koloko vs. Ladebo and Raji* Reply of Senior Divisional Officer Mr. K.Y.M Mackenzie to Durosaro and Akinjide dated 13th August, 1956

[75] Ibid.

[76] Further details recorded in few administrative minutes in respect of the closed door meeting between Barrister Akinjide and Mr. Mackenzie revealed that he made Mr. Mackenzie to realize that his client has actually withdrawn the appeal. See NAI Oyo Prof. File No. 1/1 Transfer of case vide endorsement No 2899/385A of 1956.

[77] J.O. Asein, *Introduction to Nigerian Legal System,* (Lagos: Ababa Press, 2005.) p.240

[78] Fiduciary is a legal term which means a person legally appointed and authorized to hold assets in trust for another. http://www.investopedia.com/terms/f /fiduciary/asp (Retrieved on 20th September, 2017.)

[79]Asein, J.O. *Introduction to Nigerian Legal System* (Lagos: Ababa Press Ltd., 2005) p. 241

  

ISSN: 2581-3102

Volume: 03, Issue: 10 "October 2019"

administration any good. It was like removing a vital part of the engine of judicial administration in colonial Nigeria. This has been analyzed by this study using four carefully selected cases where the arm of justice was facilitated simply by lawyers' appearance for desiring litigants.

The study has also shown that as legal practitioners began to have in-road into land and boundary actions, the Native Court system's monopoly of jurisdiction facilitated by the colonial administration gradually gave way to new order. This greatly impacted the judicial decisions both in the Native Courts and the in the higher Courts particularly since land cases could go as far as the Supreme Court as in *Okumade Senjiren v. Suberu Alade*. Issues hitherto not provided for in the dispensation of justice in the Native Courts in land matters were brought to fore and argued out in High Courts and Supreme Courts as in *Lawani Mogaji Koloko v. Ladebo and Raji.*

Moreover, unchecked land grabbers who could easily buy their way through in the Native courts as in *Salawu Akanmu v. Adeleke Mogaji Oluokun and 2 Ors. For themselves and the Oluokun Family* were put under check. Colonial Officers who could approve and disapprove at their discretion were also put on their heels as proven by Barristers Durosaro and Akinjide. These cases therefore become judicial precedence, citable in similar cases.

Those who have already suffered injustice in the hands of Native Authorities because of their natality or ethnic affiliations had their cases reviewed provided they could employ the services of legal practitioners to argue their case. This was proven in *Lawani Mogaji Koloko v. Ladebo and Raji.* The study has therefore proved that the appearance of legal practitioners for litigants in land boundary cases validates colonial stay in power rather than challenge it as envisaged.

It must be stressed that the discovery of loophole in the Native Court Ordinance which facilitated the lawyers' appearance also led in some way to escalation of land litigations through which many lawyers enriched themselves.[80] Indeed, the activities of lawyers in land and boundary matters to plead for their clients led to the relaxation of some hitherto existing colonial dispositions. What followed was the introduction of some legal ventilation considered necessary by the colonial government itself.

[80] Many legal practitioners became rich over-night when land cases began to attract litigation in Ibadan. Adewoye recounted an interview he had with Chief Obafemi Awolowo on March 2nd 1967 at Ibadan, See O. Adewoye "Legal Practice in Ibadan City, 1904-1960"…p.65

  