

The Colonial and Post-colonial Judicial Positions on Land Boundary Matters in Yorubaland (1946-2006): A Retrospective Explanation

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Abstract- *The imposition of colonialism in Yorubaland impacted greatly so many areas of life of the people. One crucial area which is the focus of the present author is land boundary matters which attracted litigation both during the colonial and post-colonial era. Each time a decision was made in land boundary case, a number of existing social institutions are redefined. The present effort is an attempt to look at the institution of land holding a manifold system which include: land tenure system, land allocation and distribution as well as land utilization amongst others. The paper focuses on a few of the things redefined in purposively selected land boundary cases which attracted litigation. The study, using these cases examines the impact of the entire gamut of the institution of land holding bringing to fore the impact of colonial and post-colonial judicial decisions in those cases on the communities and the institutions so affected. The study adopts qualitative methods of data gathering and analysis. Data used were drawn from both primary and secondary sources. Primary data include archival documents deposited at the National Archives, Ibadan and a few private repertoire. Oral interviews were also conducted with resource persons drawn from legal luminaries and jurists directly involved in land boundary matters. Secondary data were also drawn from published articles in books and journals. Findings revealed that colonial and post-colonial judicial positions left a lot of indelible impact on land boundary matters and affiliated institutions across Yorubaland in the period of study. The author here concludes that land boundary dispute has therefore remained trans-generational due majorly to the approach of the Courts in their various interventions.*

Keywords: *Land Boundary, Post-colonial, Social institution, Retrospective Explanation*

I. INTRODUCTION

Boundary disputes were rare in Yorubaland, Nigeria during the pre-colonial period.¹ The few communities that had to grapple with inter-community boundary disputes had the option of relocating to another virgin land since land was abundant at that time. They also had the option of merging with existing communities adjudged to be either friendlier or considered a closer relation than the opposing group. Consequently, the

idea of judicial intervention in boundary disputes was almost entirely a development of the British colonial period.² This could be explained from various stand points. For instance, there were very few cases of inter-community boundary conflict in the whole of Yorubaland until the outbreak of the 19th century upheavals.³ This partly accounted for the sporadic migrations and relocations of people and redefinition of the various existing culture and customs that governed the society in the area before the imposition of colonialism.

The various redefinitions of the period changed the status of the land ownership and gradually introduced among other things the commoditization of land by attaching new economic values to it. This made litigation in land and boundary matters to be more desirable. The impact of the British variety of court and its judicial decisions on land holding, control, management, distribution and several other land administration procedures were, therefore, significant. One reason for this was the finality with which every judgment was passed that impacted the institution of land holding, traditional judicial procedure and the communities, particularly those living at the boundaries. The impact of judicial intervention in boundary disputes could further be seen on the inter-personal relationships, institutional engagement of the society and the political atmosphere of the communities. Indeed, the impact was also obvious on the judiciary, particularly in the attitude of the judiciary in similar cases within or beyond Yorubaland in post-colonial Nigeria.

This article therefore, attempts an examination of the various ways in which judicial pronouncements in boundary matters impacted the existing land-related institutions and boundary administration in the traditional Yoruba societies of Southwestern Nigeria between 1946 and 1996.

Conceptual Clarification

The key concept germane to our discourse in this article is the concept of boundary. One simple definition of a boundary states that a boundary is "...a line that separates one object from the other or a dividing line between two or more objects or political jurisdiction."⁴ Like many other multidimensional concepts, the definition of a boundary is actually fluid and multi operational.⁵ Any discussion of the idea of a boundary should therefore make adequate allowance for this fluidity of its meaning. Again, aside from the popular meaning of a boundary where emphasis is placed on its spatial nature, there is also the functional and symbolic definition of a boundary.⁶ This is exemplified by perceived limits of social and organizational entities such as race, ethnicity, culture, religion, industry, Business Corporation, profession, to mention a few.⁷

The concept of boundary has been described as one that touches directly on one of man's fundamental capabilities to do all his basic things which include among other things, his ability to: define, analyze, differentiate, discriminate, exclude, and disintegrate or breakdown, deconstruct as well as unite, integrate, harmonize, accommodate, include, assemble, build, construct and reconstruct.⁸ A boundary is further described as a reference to man's binary disposition as human beings, to cooperate and make peace or engage in conflicts and wars. As noted by Asiwaju: "...this disposition is biologically seated in the right and left cerebral spheres of the human brain. The one or the other specifically stimulated depending on whether the dominant pressure is to find similarities, harmony, unity and continuity or it is to discover differences, diversity, contrast and division."⁹ Further still, the capacity to make and unmake boundaries has been explained as having to do with human ability to hate or love, to preserve or destroy life. Boundary could, therefore, be seen essentially as a matter of consciousness and of experience rather than just of fact of law.¹⁰

From the foregoing, a boundary may not exist where the items involved are not more than one or where the only one item involved required no sharing among two or more people. In a case where the item(s) being bounded possesses some distinctive properties capable of distinguishing them in a set, class or group, such item(s) already carried some elements of natural demarcations.¹¹ By implication, a boundary is the limit beyond which a phenomenon is no longer dominant, or in agreement with Adalemo, a boundary

suggests the outside limit of one object and the starting point of another.¹²

Yoruba Institution of Land Holding and Judicial Intervention Explained

The idea of land holding as conceived by this paper is a three prong fork made up of land allocation and distribution, land utilization and land tenure system. It is described as an institution because it explains the rules governing the whole of the activities surrounding land administration¹³ in the period before 1946 and thereafter. This is because land administration and control predated the era of colonialism. Moreover, each intervention of the judiciary produced a judgment which in turn affected the traditional political institution that had hitherto controlled land holding and land administration in the area of study before the colonial era. Such impact that were noticeable on the institutions governing land administrations are the object of interrogation in this paper. These include the institutions of land allocation and distribution, land utilization, land tenure system and boundary dispute settlement mechanisms.

Impact of Judicial Intervention on the Institution of Land Allocation and Distribution

The idea of land allocation in the context of the present work covers the allotment of land by the leaders of a migrant group to other divisional heads of lineages, while the idea of land distribution covers the process of sharing it out among compounds and families or other smaller units of administration in the traditional society. During the pre-colonial era, particularly because land was abundant and each group could relocate and occupy virgin land elsewhere, it was an integral part of the duties of the leaders of each migrant group to allot land to each family head based on their loyalty to him.¹⁴ He also apportioned land to his own children based on the same criterion of loyalty. However, some other rules that safeguarded land allocation and distribution included seniority, hard-work and morality.¹⁵

Invariably, land was used as a tool by the leader of each migrating group to maintain his authority over the followers where they migrated to vacant land. In other cases where the migrant group settled in a place earlier occupied by their kindred or other groups, the host community used the land as a tool of hospitality to expand their own domain and the jurisdiction of their own leader's authority.¹⁶ A ready example was

the case of Lagos where *Olofin*, the eponymous leader of the *Awori Yoruba* sub-group who first settled at *Isheri* allocated the waters and land of Lagos to the his children who became the *Idejo* chiefs.¹⁷

During this time, land did not attract any monetary value as it was not sold.¹⁸ Land acquisition was merely a function of what each family would require to survive; as such the institutional control over land might be described as liberal. Moreover, as the British penetrated the interior of Southwestern Nigeria, the use to which land was put took on new definition, while some wild trees acquired significance and attracted economic values, this include palm trees. These redefinitions affected the value of land significantly. One impact quickly noticeable on the institution of land allocation and distribution at this point in Yoruba history was that the influential who up till then held land in confidence for their respective communities began to arrogate its ownership partly to themselves and partly to their immediate families. Some of these community leaders, therefore, took actions not consistent with the existing Yoruba institution of land holding and allocation. This was indeed done either to safeguard personal benefits or put at risk the interest of the down-trodden members of their communities.

An example of this impact of judicial intervention on the institution of land allocation and distribution could be illustrated by the *Gbayo v. Shenaike* series of cases involving the inter-provincial boundaries between Ibadan and *Ijebu* Provinces.¹⁹ The background to these series of inter-community boundary cases could be traced to 1926 when *Birrel-Gray Commission* was established to demarcate the *Ibadan-Ijebu* inter-provincial boundaries.²⁰ Prior to this period, there existed a large forest between Ibadan and *Ijebu* which was largely unfarmed, but was used mainly by hunters from both sides to hunt games without quarrel. At this period, certain Ibadan prominent influential men arrogated the allocation of some part of this land to farmers who desired to cultivate cocoa that was just gaining economic relevance. Trouble started after the *Birrel-Gray Commission* demarcated some economic trees planted and controlled by some of these farmers beyond the boundary areas allocated to *Ijebu* Province.²¹

The Commission had actually recommended that there should be no eviction of farmers on both sides of the boundary.²² However, in 1928, one Shenaike brought an action against these farmers numbering about eighty before Awujale Adenuga restraining them from entering their farms again.²³ Judgment was entered for Shenaike and the *George* Gbayo-led farmers of Ibadan origin were given thirty days within which to vacate the land hosting their farms.²⁴ The judgment was presented by the Awujale to the Resident of *Ijebu* Province, Dr. Talbot who passed it as an endorsement of the verdict.²⁵

The Ibadan man who allocated the land to the farmers, one Motesho, had collected gratification once and for all and the farmers had planted cocoa which had just started to yield, but which had fallen astride the inter-provincial boundary.²⁶ Indeed, the Acting Resident in 1934 noted in one of his administrative minutes that "...I consider the 1928 judgment wrong and at variance with government policy of demarcation of boundaries... If they were to be evicted, then they were entitled to compensation based on the number of their cocoa trees and taxes paid..."²⁷

The activities of Awujale Adenuga in this case revealed that he was willing to maintain the inter-provincial boundaries with Ibadan at the expense of any common man's property located in the area. In fact, the circumstances surrounding the judgment later showed that his judgment was based on some other covert reasons.²⁸ He also used his influence to secure the endorsement of the Resident on a wrongly awarded case. Unfortunately, Awujale Adenuga did not live long after the judgment. His successor, Awujale Alli Ogunnaike could, however, not reverse a judgment already passed by the Resident even when an appeal was brought against the judgment.²⁹ In furtherance of this paper's analysis of this particular impact, the Awujale arrogated to himself the ownership of a land he was holding on trust hence, he took actions not consistent with the existing Yoruba land allocation institutions either to protect personal interests or jeopardize the interest of less privileged members of the communities.

Another impact of judicial intervention on the institution of land allocation was that communities who hitherto had not contested the boundaries of their communities with their blood-related neighbours openly started conflicts and they began to challenge

the authority of hitherto accepted paramount rulers. In a series of inter-community boundary disputes that sprang up during this period, it could be noticed that most of the contested areas fell into the less explored territories used as either buffer zones or common hunting grounds. From this period, the basic institution for land allocation and distribution which were seniority, hard-work, morality, and loyalty to the leaders gave way to favouritism. As the cases of boundary dispute attracted more litigation in colonial court, the decisions of the court also began to redefine the institution. A number of cases decided at this early stage of colonial judicial intervention in boundary disputes would be considered to illustrate this.

One institution strongly impacted as far as land allocation and distribution was concerned was that of seniority. The institution of seniority governed many things amongst Yoruba people in Southwestern Nigeria. It was embedded in the lineage structure of the people.³⁰ By tradition, every senior was entitled to some degree of unquestioned services and submissiveness by the junior ones,³¹ this was not only an integral part of inter-personal relationship, communities were also seen in term of senior or junior based on the period of establishment, history of occupation or the age of the founder compared to the founder of other neighbouring communities. However, as inter-community boundary disputes began to attract litigation in the British variety of Courts, rulings were not just based on history of occupation and other forms of seniority rules. The facts of the cases were given adequate considerations; examined dispassionately on merit and evidence placed before the courts and the rule of courts.³²

One consequence of this on the established traditional institution of seniority and history of occupation was that in some cases, it was relegated and claims based on such facts were not upheld by the court, while in others it was given adequate consideration. This could be illustrated by the court ruling in the *Ago-Owu* versus *Ikire* and *Apomu* boundary dispute. When Mr. E. J. G. Kelly awarded the case to *Ago-Owu* in 1939, most of the facts he built his ruling upon were essentially issues of seniority.³³ For instance, he accepted the fact that *Owu* was destroyed in that location and dispersed to several other locations in the Southwestern part of today's Nigeria many years before the conflict. He was also able to deduce from the various evidence taken that *Apomu*

and *Ikire* could not claim ownership of the boundaries they desired, particularly since there were still evidence of *Owu* walls.³⁴ He accepted the fact that *Owu* earlier allocated land to *Apomu* in the area before her destruction and consequently *Apomu* could not fix boundaries for *Owu*.³⁵ The claims of *Apomu* and *Ikire* to a specified boundary with *Ago-Owu* was, therefore, not totally acceptable to Mr. Kelly, whereas his positions were hinged on the seniority argument and history of occupation which he could deduce from the evidence before him.

Conversely, in the *Emure-Ile* v. *Supare* inter-community boundary dispute, the place of seniority was relegated in the ruling. The argument put forward by *Emure-Ile* based on history of occupation and seniority was considered by the judge as not convincing.³⁶ Whereas, the court hinged her ruling on effective occupation already established by *Supare* people in the disputed area.³⁷ Again, in the *Ada* vs. *Agba* inter-community boundary dispute, seniority was also not accepted as a valid argument.³⁸ In this case, *Agba* was accepted as the community that allocated land to *Ada* people when they first came to the location from somewhere around *Ilesha*, but the boundary fixed in the final judgment at *Oranran stream* did not seem to support the weight of evidence in respect of seniority, particularly because it placed *Ada* at a vantage position in terms of farm land and control of economic trees.³⁹

The other principle governing allocation and distribution of land which were also affected were those of allocation based on hard-work and moral uprightness. The people in Southwestern Nigeria esteemed these two values and they never condoned laziness and indiscipline. Anyone considered lazy even where he was obviously right might be denied his right.⁴⁰ Meanwhile, whoever lacked the required discipline may be excommunicated or banished from the community with his property including land confiscated and reallocated. These basic principles although were not repugnant to British legal heritage, they were relaxed since they have to be proved before the court before they were accepted.⁴¹

The allocation of more land to *Ada* in the case just cited would support this claim. Although there were no evidence before the Court that *Agba* people were lazy, the extent of farm already cultivated by the *Ada* people was given consideration in the fixing of the boundary by the Court. A number of other judgments

redefined this principle of hard-work and moral uprightness as the judiciary intervened in boundary disputes by either upholding the acceptable culture or modifying it. For instance, when *Shenaike v. Gbayo* case earlier cited was decided by the Native Court of the Ijebu Judicial Council, the Council did not consider the hard work and labour of the Ibadan farmers who farmed in the boundaries between Ijebu and Ibadan provincial boundaries. They simply ruled to protect the inter-provincial boundary.⁴² Indeed, compensations were also not approved for the farmers whose farms fell astride the boundary. However, after many years, the perceived injustice was redressed and in the final ruling, Gbayo and his other Ibadan farmers were compensated because of their labour across the boundary.⁴³

Another case which could illustrate this was the *Okuku v. Iba* boundary dispute case. The decision of the colonial Court in that regard awarded the case to *Okuku*. The new boundary fixed, therefore, seems to support the idea of seniority of *Okuku* against *Iba* and accepted the idea of history of first occupation as a guide in her decision.⁴⁴ Another relevant inter-community boundary dispute case in this regard was the *Ikirun v. Oba* boundary disputes. The impact of this on the institution of boundary fixing and administration was that the land allocated to *Ikirun* was still being claimed by *Oba* although not challenged in Court but before the National Boundary Commission.⁴⁵

The crucial issue of impact of judicial intervention in all of the cases where the ideal of seniority was adopted and the history of first occupation was allowed in boundary dispute was that most of such judgment were accepted and were less contentious. However, in those cases where the ideal of seniority was rejected and other variables like hard-work and the value of morality of a decision were adopted the cases continued to reappear in the study area.⁴⁶

Impact of Judicial Intervention on Institution of Land Utilization

Land was used basically amongst the Yoruba people for four fundamental purposes: these were, first to host their shelter after each day's work. Second, to cultivate subsistent crops meant to sustain their immediate families; third, land was reserved for fruits and herbs gathering, which the people use for the maintenance of their health. And fourth, was the land meant for hunting games.⁴⁷ It must be stressed that

these divisions of land according to purposes was not mutually exclusive in all of the places, rather the territories overlapped. There were no clear-cut boundaries between the territories as spelt out above because the quantity of land available was shared among the people based on their need and other earlier identified criteria. Maintenance of land was through joint communal effort because they were partitioned into families, clans, villages, towns and cities which happened to be the seat of the paramount rulers of the kingdoms.⁴⁸ Right to land was not in the exclusive control of any one person in the real sense of it and effective ownership of land was vested in the extended family. Meanwhile, within a given village or a town there are several land owning families because not all families are land owners. The mainstay of the traditional Yoruba economy was agriculture in its various forms as such; land was utilized essentially for agricultural purposes.

The institutional control on the utilization of land in that society still required that before an individual would open up any land for legitimate agricultural purpose, the various grades of leaders within the domain must be duly notified. This was done through the family heads that pass the permission granted to the leaders at higher level. The implication of this was that no member of the society would trespass the known fundamental boundaries of purpose designated within his community without the leaders' consent.

The traditional institution of land utilization also takes care of community interest by setting aside some portion of the land first for specific public purposes. For instance, there was the *Ile-Orisa*,⁴⁹ *Ile Oba*⁵⁰ and *Ile Oye*⁵¹ *Ile Oja*⁵² among others. It must be stressed that judicial intervention in boundary disputes also exerted its impact on this all important aspect of traditional land utilization institution.

One notable public land affected by judicial intervention in inter-community boundary disputes in Yorubaland during the period under reference was *Ile Oja*-market square. Every community has clearly defined land allocated for the market square which, in many cases had both spiritual and social function within their society. Important festivals and community ceremonies were performed in the market square; as such any trespass on *Ile Oja*-market square was considered a violation of the sanctity of the communal economy and their social cohesion. When

judicial decision in respect of boundary definition adversely impacted the *Ile Oja* it was forcefully rejected by the entire community. An illustration in this regard might be drawn from the Akure versus Idanre boundary dispute (*Adesida Deji of Akure v. Adegbule*, the Owa of Idanre) as decided in the Supreme Court on 30th January, 1943.⁵³

In this particular ruling, the Supreme Court drew a new boundary between Akure and Idanre, which cut across the Alade market.⁵⁴ The post judgment development showed that the decision of the Court was greatly resented by both Idanre and Alade people who were of the same stock.⁵⁵ Since it was a decision of the Supreme Court, they knew they could not legally challenge it again, therefore they waited for the next available opportunity to rebel against the judgment which came in 1952.⁵⁶ This was the year they had a chance to support their Idanre relations when a request was to be made for the transfer of their village and other Idanre farmstead from Akure District to Idanre District Council. Alade people pursued this doggedly and secured their market back when in 1961 Alade was finally transferred under the Western Region government to join Idanre District Council.⁵⁷

The institution regarding *Ile Oye* was also very strongly contested in the inter-community boundary dispute between Osu and Ilesha, which was taken to Court by some members of the Odole Chieftaincy family of Ilesha. In *John Apoesho, Ayeni Togun v. Chief Awodiya (The Odole of Ilesha)*,⁵⁸ the piece of land called Iloba farm situated between Ilesha and Osu was the object of conflict. The question for decision relevant to our discourse here is whether Iloba farm land situated at the boundary was the 'Odole Stool' land or 'Odole chieftaincy family land.' The court was faced with the crucial challenge of having to determine the difference between 'Odole Stool land' and Odole Chieftaincy family land.⁵⁹

In deciding the two closely related concepts of land administration, the court attempted to distinguish between the two. Odole chieftaincy family land was described as the land, belonging to the family holding the hereditary title of Odole in Ilesha, while Odole stool land was defined as the land belonging to the Odole chieftaincy stool.⁶⁰ The implication of this definition was that, any person holding the title of Odole per time was entitled by right of occupying the stool to certain land belonging to the stool as *Ile*

Oye.⁶¹ The purpose of *Ile Oye* was to enable the incumbent occupant of the stool to cater for the 'stool expenses.' He had no right to the land, but for holding the title; he could not sell the land, but could hire it out or grant it to tenants who could use the land and pay rent to the Odole stool.⁶² Odole chieftaincy family land was to be utilized for the interest of all members of the chieftaincy family. Odole held the land in his capacity as the head of the family and was obliged to attend to any legitimate need of *bonafide* members of the Odole chieftaincy family.⁶³ This clarification was a new innovation in the definition of right to *Ile Oye*. It was actually the intervention of the judiciary in this particular boundary dispute that decimated the long period of litigation on this boundary.⁶⁴

Another aspect of this institution affected in terms of land utilization was the *Ile Oba*. This was the traditional land meant for the king or *Bale* in his capacity as head of his community. In the traditional system built-up, the authority of the community leaders might never be challenged. They were described in terms like *O kun 'mo losun kun 'mo lata*,⁶⁵ *Alase Ekeji Orisa*⁶⁶ in some communities. However, the option of litigation exposed the institution to challenge and cases were simply decided based on evidence adduced in Court. One notable case along this direction was the one in which the authority of the *Ataoja of Osogbo* was challenged in a boundary case over a land lying astride the boundary between *Osogbo and Ibokun*.⁶⁷

In this case, the Ataoja Samuel Adenle was actually taken to Court in respect of this land lying astride the boundary. He was, however, quick enough to also institute a counter suit in respect of the same land. When the plaintiff at the lower Court was pleading *estoppels res judicatam*, the Supreme Court ruled that the action was brought during the pendency of the one instituted at the lower court.⁶⁸ A similar action was brought against the Oni of Ife challenging his authority over some land utilization, allocation and granting.⁶⁹

The intervention of the judiciary in boundary disputes has also impacted the status of traditional rulers at every level in Yorubaland, Nigeria. The sanctity of leadership seems to be clearly violated due to the availability of the option of litigation. For instance, traditional rulers who in Yorubaland, were believed to be blood relations were involved in highly

contentious inter-community boundary disputes. The *Owa Obokun Adimula of Ijeshaland* was in boundary conflict with the *Ooni* of Ife at *Alakowe* and *Faforiji* villages, *Olowu of Owu* was involved in a dispute with the *Akire* and *Alapomu*, *Olufon of Ifon Orolu* was involved in a boundary dispute with *Aresa* to mention a few.

In *Ayoola v. Ogunjinmi*, the status of the *Ooni* was challenged by a subject in Court. In this case, the *Ooni* had granted a particular land to *Ayoola's* ancestors. After some years, the *Ooni* granted a portion of the same land to *Ogunjinmi* who also began to establish effective occupation despite the regular payment of *Ishakole* by the *Ayoola* group. The Supreme Court ruled in favour of *Ayoola* that the *Ooni* might not have the right to allocate or utilize the land without a prior consent of the existing grantee.⁷⁰ The status of the *Ooni* was also challenged in *Adewoyin and ors. v. Adeyeye*.⁷¹ It was held that the *Ooni* could not without consulting the *Adewoyin* family, grant portion of their land to others for cultivation having not defaulted in the payment of their *Ishakole*.⁷² There was also the inter-lineage and intra-lineage conflicts engendered by the various boundary disputes being litigated in Court by ruling families. For instance, the *Samuel Adenle* case earlier cited was against members of *Laro* Chieftaincy ruling house of *Osogbo*. The *Odole* chieftaincy farm land that fell at the boundary in *Iloba* farm, which was keenly contested by other members of the *Odole* Chieftaincy lineage of *Ilesha* was also citable.

Impact of Judicial Intervention on Institution of Land Tenure System

Land tenure in itself is a system of rule invented by each society to regulate the behaviour of members in relation to land. The institution of land tenure defines how property rights to land are to be executed within any named society.⁷³ It is an institution which defines ways of obtaining legitimate access to land, its control, its transfer, associated responsibilities and restraints. In simple terms, land tenure determines who can use land and under what conditions. It could be a well-defined and enforceable legal and formal structure in a community, and it could also be a relatively poorly organized system with ambiguities open to exploitation.⁷⁴

The concept of land tenure has also been described by one legal expert, Rudolph James, as the name commonly given particularly in common law to the

system of the legal regime in which land is owned by an individual or a community who is said to hold the land.⁷⁵ The significance of land tenure in every society might be explained in terms of the social, political, economic and religious institutional engagement. Indeed, it is the proper coordination of the land tenure system of any named society that intersects the structure and immunizes it from the risk of collapse.⁷⁶ Under the traditional Yoruba land tenure system, land was communally owned and it was held in trust for the community by their leaders.⁷⁷ Indeed, the leaders knew that they were accountable to the ancestors for any mismanagement of the community land; land was, therefore, inalienable.⁷⁸

The system of land tenure in Yorubaland spelt out certain functions of land within the social structure, which made the sanctity of boundary prominent and consequently its violation was frowned at by the entire community of towns and villages. Land functioned in the traditional Yoruba society as an instrument of cohesion and a rallying point of family and community unity.⁷⁹ It also functions as a religious element which the people propitiate at certain period of the year.⁸⁰ Again, land functioned as a medium of economic resource to guarantee the sustenance of human existence.⁸¹ Invariably, every decision of the colonial variety of Court in respect of land and the associated boundary had profound impact on the entire fabric of the society and the institution of land tenure.

In Yorubaland, the social structure of the society was built around the family and community land, this made land to assume the status of a fundamental agent that knitted the community together. Judicial intervention in inter-community boundary disputes, therefore, left a remarkable impact on land and boundary administration. One of such judicial decisions that impacted the institution of land tenure system in Yorubaland was the decision in *Ijanna v. Ibese* inter-community boundary dispute.⁸² This case involved a fairly large expanse of land lying between the two communities in a place called *Komi*. *Ajayi*, the *Balogun* of *Ijanna*, who championed the cause, felt that many *Ijanna* people who farmed at *Komi* were not sufficiently secured since *Ibese* people had earlier won a Court case in respect of the land. The plaintiff in this case had sued in a representative capacity for himself and *Ijanna* people in the then *Abeokuta* District.⁸³ The history of litigation in the case showed that the case was earlier entertained by

the Native Court of *Ilaro* in *Ilaro* Division of *Abeokuta* Province. The District Officer ordered the transfer of the case under section 25 of the Native Court Ordinance 1933 to the High Court for another hearing on request.⁸⁴ When the case was heard at the High Court, the defendant pleaded *Res judicata* basing his plea on the judgment of the Native Court where the land was duly credited to *Ibese* community. In the present action, instituted at the Supreme Court, the trial judge examined all the evidence adduced and awarded the case again to *Ibese*.

The post judgment development in the case under review showed as reported by the press that *Ijanna* community had lost all right to the land.⁸⁵ Indeed, *Ijanna* farmers hitherto using the land at *Komi* to farm would either have their means of livelihood terminated or have their continuous stay at *Komi* redefined. Prior to the judgment, the approval to use the land had come from the Balogun family of *Ijanna*. But from the date of the judgment the permission was invalidated. They were to re-negotiate the land and seek the protection of their interest from the judgment creditor.

Another case similar to this was the boundary dispute between *Ikorodu* and *Remo*, which got escalated in 1948 after a judgment.⁸⁶ The communities were known to be friendly before the administrative demarcation that led to the creation of *Remo* Division and *Ikorodu* District.⁸⁷ The disputed area was located at *Ogijo*. The *Akarigbo* of *Remo* had claimed that he owned the land even to the Lagoon but his boundaries were reduced due to European penetration.⁸⁸ The *Ayangburen* of *Ikorodu* also claimed his boundary was with *Shagamu*. In the judgment handed down by the District Officers in charge of the two communities after a mass meeting between the feuding communities, *Ogijo* was given to *Ikorodu* Division.⁸⁹ One of the post judgment developments, that was given wide publicity by the press after the first decision was the mysterious death of the *Balogun* of *Ikorodu* Chief *Jaiyesinmi* on 28th June 1948. His death was credited by *Ikorodu* people to the on-going dispute between the two communities.⁹⁰ But for the quick intervention of the colonial government police, there would have been a breakdown of law and order mainly because of the initial judgment.

Another impact of judicial intervention on inter-community boundary dispute was in the area of

separating or dividing natal communities from their parent community. Every judicial decision, which separated one village from the natal community was strongly contested and indeed was usually seen as an assault on the unity of their society. Moreover, land tenure in the traditional Yoruba society never permitted land alienation and land speculation. Indeed, the sale of land was a violation of ancestral link in most of the communities in Yorubaland and this was maintained through the instrumentality of land tenure system and certain religious rites. However, as cases were won in Courts by individuals and communities who contested their boundaries with others, the judgment creditors could manage their land in any legally acceptable way.

II. CONCLUSION

The position of the judiciary in land and boundary actions in Yorubaland left a significant impact on the lives and institutions of the Yoruba people including their societal structures. While the inter-community and intra-community relationships of many of the sub-groups were adversely affected, various institutions of land administration were also redefined. For instance, the entire institution of Yoruba traditional land administration, which encompassed land allocation and distribution, land utilization and land tenure system were seriously altered. Many principles governing the system of land administration were either redefined or relaxed in the interest of modernism, while some of the fundamental ideals of adjudication in land matters gave way to new realities.

Land allocation was no longer a function of ancient migration history, while distribution of land gradually shifted from being a duty of the family heads to that of the judgment creditors. Land utilization that was hitherto mainly for agricultural purposes and particularly subsistent farming shifted to the inclusion of planting and harnessing wild economic trees, while certain portion of community land (*Ile Oye, Ile Oja, Ile Oba, Ile Orisa*) that attracted litigation took on judicial definition based on Court ruling. The present author also found that judicial pronouncement also promoted commoditization of land which gradually set in.

The social, political and economic life of the Yoruba people of Southwestern Nigeria was also impacted by each judicial intervention. This study found that

wherever the judicial verdict affected a named community, the judgment creditor-community adopted a lot of social description to describe the judgment debtors. There were obvious situations where the creditor employed derogatory terms to describe his opponent. There were also cases where Yoruba *Obas* known in history to be kinsmen litigated in boundary causes to the extent of almost becoming arch-enemies. Politically, many judgments in inter-community boundary disputes led to political witch-hunting of opponents. While the judgment debtor never accepted judicial verdict in boundary action, the judgment creditors would always use the judgment to secure cheap political goals against the opponent.

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- [10] *Ibid.* p.15
- [11] *Ibid.* p.15
- [12] *Ibid.* p.15
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- [27] *Ibid.*
- [28] Awujale Adenuga belongs to the generation of Ijebu people who believed that Ibadan was founded on part of their land. See Olutunde Oduwobi, *The Career of Akarigbo Oyebanjo and Awujale Adenuga* www.cairn.info/load_pdf.php (Retrieved on 26th October, 2011)
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- [33] NAI. Oyo Prof. File 1/1 Judgment Delivered by Mr. E.J.G. Kelly in *Ago-Owu versus Apomu and Ikire* Boundary Dispute Case, 1939.
- [34] *Ibid.*
- [35] *Ibid.* p.7
- [36] *T.A. Adewumi v. Chief Omotosho Ojade* Suit No. AK/27/63 Taken in High Court ado-Ekiti 24th June 1970.
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- [43] *Ibid.*
- [44] NAI Oyo Prof. File 2/28576/55 Resident Oyo Minute to District Officer The Salako land Case *Okuku v. Iba* boundary Disputes Matters Affecting.
- [45] NAI Oyo Prof File 443/56 Senior Resident Oyo to the District Officer, Ibadan Memo Reference 1875/97 *Ikirun versus Oba* boundary Dispute Matters Affecting.
- [46] The weight of this argument was obvious all through the Thesis of Dolapo Z. Olupayimo submitted to the Department of History, Obafemi Awolowo University, 2012.
- [47] Omolade Adejuyigbe, *Boundary Problems in Western Nigeria...* p. 51
- [48] 35. J. S. Eades, *The Yoruba Today...* p 57
- [49] *Ile Orisa* - This means the land allocated to the Community god or goddess. The generally accepted god/goddess of the community was given the land. For example where they worship *Oro* they had *Igbo Oro*; where they worship, *Egungun-* they had *Igbo Igbaile*. (This was corroborated by Oral Interview with Prince Segun Abidoye, 72 Years Old)
- [50] *Ile Oba* - This refer to the royal land meant for the Oba in Yorubaland. In most town this consist of the area on which the palace was situated.
- [51] *Ile Oye* - Land assigned to a particular chieftaincy order by heredity. Each of the high chiefs had land allocated to their offices
- [52] *Ile Oja* - This simply means the market land. It is traditionally dedicated to the god of commerce *Aje*, it was usually around the palaces. Many other town or village communal activities were done in the market square.
- [53] Suit NoW/40/1039 Supreme Court Benin. *Adesida Deji of Akure v. Adegbule*, the Owa of Idanre Judgment delivered on 30th January, 1943.
- [54] *Ibid.*
- [55] *Ibid.*
- [56] NAI, File LR/19 *Idanre Protest Letter to Provincial Surveyor*, dated 13th April, 1951
- [57] NAI File LR /19 *Idanre Community on the Akure /Idanre Disputed Area to the Ministry of Local Government, Western Region*, 1955. p.2
- [58] Western Region, *Western Nigerian Gazette*, Notice 464 of 6th April, 1961
- [59] (1964) NMLR *John Apoesho, Ayeni Togun v. Chief Awodiya (Odole of Ilesha)*
- [60] *Ibid.* p.6
- [61] *Ibid* p.4
- [62] *Ibid* p.6
- [63] *Ibid* p.6
- [64] *Ibid* p.6
- [65] *O kun 'mo losun kun 'mo lataan excerpt from the Olubuse family cognomen* which means 'He who was capable of applying pepper on his subject the same way face powder was applied'
- [66] *Alase Ekeji Orisa* is a Yoruba word which means the custodian of authority, second only to the gods.
- [67] *Samuel Adenle (The Ataoja of Osogbo) v. Michael Oyegbade and Lawani Sabilesu*, 1964 NMLR Dec. 1964
- [68] *Ibid.*
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- [71] (1963) IV NLR. 28 *Adewoyin and ors. v. Adeyeye*, cited by T. O. Elias, *Nigerian Land Law*, (London: Sweet & Maxwell, Fourth Edition, 1971) p.84
- [72] *Ibid* p.84
- [73] R.W. James, *Modern Land Law of Nigeria* (Ile-Ife: University of Ife Press, 1973) pp. 8-9 & 15-18
- [74] R.W. James, *Nigerian Land Use Act: Policy and Principles* (Ile-Ife: University of Ife Press, 1987) p.94
- [75] *Ibid* p.94

- [76] *Ibid* p.95
- [77] Oral Interview with Oluyin of Iyin Ekiti Oba John Ademola Ajakaiye 70+ on 28th September, 2011 at the Oluyin Palace Office. His view was also corroborated by R.W. James in *Legal Personality in Traditional Law* (Ile-Ife: University of Ife Press, 1978)
- [78] *Ibid*
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- [81] *Ajayi* (Substituted for *Salu*) the *Balogun of Ijanna v. Aina*, (the *Oba of Ibese*). (Unreported case)
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