

13, 1943

No. 59 of 1946.

# In the Privy Council.

UNIVERSITY OF LONDON  
W.C. 1.

-9 OCT 1956

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

INSTITUTE OF FINANCED  
LEGAL STUDIES

BETWEEN

44447

VICTOR MADUKA, OKAFOR MOKA, ONWUZULIKE

AGWU, all of Umuori, Awka Division - - - Appellants

AND

EZEODIMEGWU on behalf of the late Chief ABOH OF

10 OROKWU - - - Respondent.

## Case for the Respondent.

RECORD.

1. This is an Appeal by the Defendants in the action (the Appellants) from a judgment of the West African Court of Appeal (consisting of Kingdon, C.J. (President), Baker, J. and Brooke, J.), dismissing with costs an appeal from a judgment of the High Court of Enugu-Onitsha Judicial Division (Waddington, J.).

p. 21.

p. 16.

2. The sole issue in the action is whether certain land coloured green on the plan marked Exhibit "A" in these proceedings belongs to the Chiefs and people of Orokwu (the Respondent), or to the people of Umuori.

20 3. The action was originally commenced in the Native Court or Judicial Council of Nobi Nigeria on the 9th October, 1942, but was transferred by an order dated the 16th November, 1942, to the High Court of the Enugu-Onitsha Division.

p. 1.

p. 2.

30 4. The Respondent, a Chief of Orokwu, suing on behalf of the Chiefs and people of Orokwu, by his Statement of Claim stated that the Appellants, the Defendants in the action (hereinafter called "the Defendants") were sued in their personal capacity, and alleged that the land in dispute had from time immemorial been the property of the Chiefs and people of Orokwu—(hereinafter referred to as "the Plaintiffs")—that the people of Adazi (strangers to this action) within recent years made attempts to encroach on the Plaintiffs' land, that in an action in the High Court of the Enugu-Onitsha Division a boundary between the people of Orokwu and the people of Adazi had been demarcated by the Court, that the Defendants with their townspeople had been given a portion of land by the Adazis in settlement of a dispute between them and

p. 3.

RESPONDENT'S CASE

the Adazis, but had occupied the land coloured green and built houses and farmed and were still farming on it and so deprived the Plaintiffs of the use of their land, and the Plaintiffs claimed possession of the said land and £150 mesne profits.

p. 4.

5. By their Defence the Defendants admitted that they were natives of Umuori, that they did not know what land was referred to in the Statement of Claim, that they denied that the people of Adazi in recent years or at any time attempted to encroach over the boundary of the Plaintiffs' land, and that this was not probable since the Plaintiffs' land was not contiguous with the land of Adazi, and that the Defendants' town 10 of Umuori lay between the Plaintiffs' land and Adazi town.

6. The Defendants further alleged that they were not parties to the said action between the Plaintiffs and the people of Adazi and that such action was a collusive one and was never contested, and was started with a view to oust the Defendants and their people from possession of their land wrongly.

7. The Defendants further alleged that they had not built or farmed on any land belonging to the Plaintiffs and that where the Defendants built and had always farmed was Umuori land and as such had been in their possession from time immemorial. The Defendants further pleaded 20 long possession, laches and acquiescence.

p. 6.

8. After several adjournments, the case came before Waddington, J., on the 30th November 1943. The plan marked Exhibit "A," showing the land in dispute coloured green thereon, and a plan marked Exhibit "E" (showing the boundary which had been demarcated on the 1st February 1941 by the Court in suit O/4/40 Orokwu versus Adazi) were tendered by the Plaintiffs and marked by consent. Counsel for the Defendants admitted that the Defendants were on the land in dispute and stated that they said that they had always been there and that it was their land.

p. 6.

p. 33.

9. There was also tendered by the Plaintiffs and marked Exhibit "C" 30 an agreement dated the 2nd March 1938. As appears from the judgment of the West African Court of Appeal in the present case, this agreement was entered into in the following circumstances. In 1931 the Umuoris brought an action against the Adazis claiming a declaration of title in regard to certain land (not the land in dispute in this case). The Umuoris lost that action, whereupon the Adazis, overrating their successful defence in such action, riotously destroyed the houses of the Umuoris erected on the land in dispute in that case. Certain of the Umuoris (including the 3 Defendants in these proceedings) sued the Adazis for damages and were awarded £1,127 11s. 1d. and costs. After a few years, when it appeared 40 that the Adazis could not pay such a large sum, the Umuoris and the Adazis entered into the agreement of the 2nd March 1938, under which the Umuoris agreed to accept £300 in settlement of the judgment debt, and in consideration of this, the Adazis agreed to give certain land to the Umuoris and that the boundary between them should be that shown by the red line in Exhibit "G."

p. 32.

p. 33.

10. The Hearing of the present action was continued on the 1st and 2nd December 1943 when Judgment was reserved. The Plaintiffs' case was that the boundary between Orokwu and Adazi had been fixed by the Chiefs of Nobi and Agulu in 1916 who marked it with pillars, and that such boundary was shown by the red line in Exhibit " E " which was the same as the red line shown in Exhibit " A " : that by this agreement of the 2nd March 1938 the Adazis had given to the Umuoris a portion of their land to the east of this boundary line, but that the Umuoris had gone over this boundary and encroached on Orokwu land lying to the west of this line namely on the land coloured green on the Exhibit " A " : that in 1940 in order to establish that this red line on the plan marked Exhibit " A " was the boundary which had been so marked out by the Chiefs of Nobi and Agulu, the Orokwus had sued the Adazis, and that the parties had agreed to refer the matter to a Referee (Resident O'Connor) to report what line had been marked out in 1916 by the Chiefs of Nobi and Agulu, and that the Referee had reported the red line as now on the plan marked Exhibit " E " (which was the same as the red line on the plan marked Exhibit " A ") and the parties had accepted such Report. p. 35.

11. The first witness called by the Plaintiffs (Justine Omeje) stated that he had lived on the land in dispute for 30 years, that the boundary between Orokwu and Adazi had been fixed many years ago by Nobi Chiefs and confirmed by Resident O'Connor 2 or 3 years ago, that the Defendants had houses and farms on the land in dispute and came there 3 or 4 years ago, that the Adazis had given some land to the Umuoris who had gone over the boundary on to Orokwu land and that the action in 1940 was brought to get the boundary which had been marked between Orokwu and Adazi established. pp. 7/8.

In cross-examination this witness stated there were Orokwu houses as well as Umuori houses on the land in dispute and that the Orokwus had mature trees on it, and that none of the houses which had been destroyed by the Adazis were on the land in dispute in this case, and that there was a path from the motor road (Nobi-Adazi road) to the stream (Ndide).

12. The second witness for the Plaintiffs (Ezeodimegwu Abor) stated that he represented the Plaintiffs as their chief, that he knew the three Defendants, that they were being sued because they had come on Orokwu land, built farm huts and made farms, that he remembered the Adazis destroying the Umuori houses which were not on the land in dispute in this case, that he was present in 1916 when the Chiefs of Nobi and Agulu made the boundary between Orokwu and Adazi, that on that occasion the Umuori had nothing to say because they had no land there. In cross-examination he stated that when the boundary was settled the mango tree (shown on the plan marked Exhibit " A ") was planted and there was the old path and that he lived on the land now in dispute and his house had an iron roof. pp. 8/9.

13. The only other witness for the Plaintiffs (Ademamo) stated that he was a Chief of the Adazi, that he remembered the Chiefs of Nobi and Agulu fixing the boundary in 1916 that they put some cement pillars in, p. 9, l. 35.

that the land now in dispute was not within the land given by the Adazis to the Umuoris, that he took part in the raid on Umuori houses, but that was not on the land now in dispute.

pp. 10/11.

14. The Defendants called five witnesses namely the Defendants Victor Maduka and Okafor Moka, Obi Agwu (brother of the Defendant Onwuzulike who was stated to be ill in hospital), Unegbu Obo (of Adazi) and Philip Achikeh (who produced Exhibits marked "K" and "L").

p. 10.

15. The Defendant Victor Maduka stated that he had been on the land in dispute for 12 years and had never been interfered with by any Orokwu man. He said he was there when the Adazis destroyed their houses. He said that the Adazis gave the Umuori land instead of the £1,200 compensation but that it was the same Umuori land. He said he remembered Resident O'Connor coming to settle the boundary but later said that he did not know about it as he had gone on a visit. 10

p. 12.

16. The Defendant Okafor Moka stated that he had a house on the land in dispute and had been there four years when the Adazis destroyed their houses in 1932, that he put it up again in the same place and his being there had never been challenged. He said that his house was part of the land given to the Umuori by the Adazis, but later said it had always been Umuori land. 20

p. 13.

17. The Defendant Obi Agwu stated that he and his brother the Defendant Onwuzulike lived on the land in dispute. He remembered his brother's house being destroyed by the Adazis, and that his brother rebuilt it in the same place. He said that Orokwu people lived next door to his own house.

p. 13.

18. Unegbu Obo (of Adazi) said that the houses of the Defendants Victor Maduka and Okafor Moka were amongst those destroyed by the Adazis and that the land where such houses were was the land over which the Adazis had the dispute with the Umuori. He said that the Umuori had no rights in the land now in dispute except what they got from the Adazi, and that if the Adazi had not given them any land the Umuori would be where they were before, namely on the other—that is to say the south—side of the Nobi-Adazi road. 30

p. 14, l. 31.

pp. 16, 17.

Judgment was given by Waddington, J., on the 31st December, 1943. He said that he found no difficulty whatever in reaching a decision, that the judgment of the Court declaring the Orokwu-Adazi boundary in 1940 still subsisted, and that boundary was binding on the parties to the action and their privies. He said that it was idle for Counsel to criticise that suit as collusive and that so long as the judgment remained it must be observed, and that he found it difficult to see how any collusion could have arisen since the parties agreed to accept a boundary which had been laid down in 1916 and which it was the referee's function to discover. He said that he noted the Defendant Victor Maduka as shifty, and that Obi Agwu was a bad witness. He pointed out that the Defendant Okafor Moka's evidence was contradictory, and accepted the evidence of the Defendants' witness Unegbu Obo that if Adazi had paid their debt the Umuori would be on the 40

other side of the road—that is to say on the south side of the Nobi-Adazi road—and that the Umuori had no rights in the land in dispute save what they got from the Adazi. p. 17, l. 18.

He found that the Umuori had no rights north of the Nobi-Adazi road save such as they derived from the Adazi, and that it followed that the Umuori had no rights west of the red line on Exhibit “A” the 1940 Orokwu-Adazi boundary because the Adazis had none there.

He therefore gave judgment for the Plaintiffs for possession and £10 damages.

10 19. On the 4th March, 1944, the Defendants obtained leave to appeal p. 18.  
to the West African Court of Appeal. In their grounds of Appeal dated p. 19.  
the 6th March 1944 the Defendants contended in substance that the  
learned Judge erred in law in holding that the Defendants were bound by  
the judgment of the High Court case of 1940 between the Orokwus and the  
Adazis, that the learned Judge was wrong in holding that the Umuoris  
were the privies of the Adazi and had no land save what the Adazis gave  
to them, and that he was wrong in saying that the High Court case of 1940  
was not a collusive action, that there being evidence that the Defendants  
had been on the land for more than 12 years, the learned Judge was wrong  
20 in that he did not consider the questions of laches and acquiescence.

20. The judgment of the West African Court of Appeal was given  
on the 3rd May 1944 by the President Kingdon, C.J. After referring to p. 21.  
the fact that in 1916 the Chiefs of Nobi and Agulu had settled a boundary  
line between the Orokwus and the Adazi, and to the disputes between the  
Adazis and the Umuoris, the President stated “Subsequently, the Orokwus p. 22.  
allege, the Umuoris started coming on to their land west of the strip  
marked in Exhibits ‘A’ and ‘F’ ‘Land of Adazi allowed Umuori,’  
and put up huts and cultivated farms on the area coloured green in  
Exhibit ‘A.’ Before taking action against the Umuoris in respect of  
30 this trespass, the Orokwus thought it prudent to get their ancient boundary  
with the Adazis clearly established in the Courts. They accordingly  
commenced a suit against the Adazis which became suit No. O/4/1940  
in the Enugu-Onitsha Division of the High Court. The Umuoris applied  
to be joined as Defendants to this suit but their application was refused.  
The High Court referred the question of the Boundary between the Orokwus  
and the Adazis to the Resident of the Onitsha Province as Referee. He  
pronounced in favour of the boundary fixed by the Nobi and Agulu Chiefs  
in 1916, and after being shown that boundary by some of the Nobi Chiefs,  
fixed it as shown by the red line in Exhibit ‘E’ (same as red line in ‘F’).  
40 That was the line claimed by the Orokwus and although the Adazis had  
contended for a line further west (shown in blue in Exhibit ‘E’) they also  
accepted the Referee’s report and judgment was given accordingly.”

After setting out the contentions of the Defendants, the President  
proceeded “The learned trial Judge made two findings of fact which appear p. 23, l. 24.  
to be conclusive of the question in issue. They are (1) that the suit  
No. O/4/40 was not a collusive one and (2) that the Umuori people have no  
rights to the land north of the main road except such as they derive from  
‘Adazi.’ Having carefully examined the evidence and the plans, and

listened to the able argument of Counsel we have come to the conclusion that both these findings are right and we agree with them. The second of these findings disposes of one of the main contentions of the Appellants viz. :—that the learned trial Judge was wrong in applying the 1940 judgment to the present case, since by it the Umuoris became the privies of the Adazis in the 1940 action.”

The President also stated that the second of the above findings of the learned trial Judge was sufficient to dispose of the Defendants' contention that he had not specifically dealt with their claim in respect of possession laches and acquiescence. 10

The appeal was accordingly dismissed with costs.

21. Accordingly, the Plaintiffs humbly submit that this appeal should be dismissed with costs, for the following amongst other

### REASONS.

- (1) BECAUSE there are concurrent findings of fact which there was evidence to support.
- (2) BECAUSE the Umuoris had not and have no rights in any land north of the main Nobi-Adazi Road except such as they derive from the Adazi, and the Adazis were never entitled to the land now in dispute or any 20 part of it.
- (3) BECAUSE the boundary between the Orokwus and the Adazis, as settled and marked out by the Chiefs of Nobi and Agulu in 1916 and confirmed by the judgment of the High Court of the Enugu-Onitsha Division on the 1st February 1941, was that shown by the red line in Exhibit “ A.”
- (4) BECAUSE the action No. O/4/1940 was not a collusive action.
- (5) BECAUSE the houses of the Umuori which were destroyed 30 by the Adazis were not on the land now in dispute, and no part of the land now in dispute was given or purported to be given by the Adazis to the Umuoris.
- (6) BECAUSE the Defendants have not acquired any right or title to the land now in dispute by long possession, laches, acquiescence or otherwise.
- (7) BECAUSE the judgments of Waddington, J., and of the West African Court of Appeal were right and ought to be affirmed.

HORACE DOUGLAS. 40

J. V. NESBITT.

**In the Privy Council.**

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**ON APPEAL**

*from the West African Court of Appeal.*

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BETWEEN

**VICTOR MADUKA** and  
**Others** - - - - *Appellants*

AND

**EZEODIMEGWU** - - *Respondent.*

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**Case for the Respondent.**

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