

Judgment
1, 1964

IN THE PRIVY COUNCIL

No.7 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

- 1. OSELE (m) of ONICHA
- 2. UGBE (m) of ONICHA
- 3. ACHI (m) of ONICHA
- 4. EMESOLU (m) of ONICHA
- 5. OYEWIKE (m) of ONICHA
- 6. ONYEIDU (m) of ONICHA
- 7. OLO (m) of ONICHA
- 8. OFIWE (m) of ONICHA

UNIVERSITY OF LONDON
**INSTITUTE OF ADVANCED
 LEGAL STUDIES**
 22 JUN 1965
 25 RUSSELL SQUARE
 LONDON, W.C.1.

- 78510

(For themselves and on behalf
 of the people of Onicha-Ibabu) (Defendants)
Appellants

- and -

- 1. OLISEDOZIE NWOKELEKE
- 2. OKALAFOR ANIBEMA
- 3. OYEM EBIMUM

(For themselves and on behalf
 of the people of Iselegu) (Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
 53, Victoria Street,
 London, S.W.1.

Solicitors & Agents for
 Appellants.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:-

1. OSELE (m) of ONICHA
2. UGBE (m) of ONICHA
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7. OLO (m) of ONICHA
8. OFIWE (m) of ONICHA

(For them elves and on behalf (Defendants)
of the people of Onicha-Ibabu) Appellants

- and -

1. OLISEDOZIE NWOKELEKE
2. OKALAFOR ANIBEMA
3. OYEM EBIMUM

(For themselves and on behalf (Plaintiffs)
of the people of Iselegu) Respondents

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No.7 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N.-

- 1. OSELE (m) of ONICHA
- 2. UGBE (m) of ONICHA
- 3. ACHI (m) of ONICHA
- 4. EMESOLU (m) of ONICHA
- 5. OYEMIAL (m) of ONICHA
- 10 6. ONYEIDU (m) of ONICHA
- 7. OLO (m) of ONICHA
- 8. OFIWE (m) of ONICHA

(For themselves and on behalf
of the people of Onicha-Ibabu)

(Defendants)
Appellants

- and -

- 1. OLISEDZIE NWOKELEKE
- 2. OKALAFOR ANIBEMA
- 3. OYEM EBIMUM

20 (For themselves and on behalf
of the people of Iselegu)

(Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS

NATIVE COURTS

(CIVIL SUMMONS)

No. 8/126/55E

IN THE NATIVE COURT OR JUDICIAL COUNCIL OF AFOR

BETWEEN:- 1. Olisedozie Nwokele) For themselves and
 2. Okolafor Anibema) on behalf of the
 3. Oyem Ebinum) people of Iselegu
Plaintiffs

30

- and -

Onili (m) for themselves and on behalf
of the people of Onicha-Ibabu
Defendants

To Onili (m) of Onicha-Ibabu.

In the
Native Court

No. 1.
Civil Summons.
7th June, 1955.

In the
Native Court

No. 1.
Civil Summons.
7th June, 1955
- continued.

You are commanded to attend this Court at Afor on the date to be notified to answer a suit by Plaintiffs (m) of Iselegu Afor against you.

The Plaintiffs claim -

1. Declaration of title to the land known as Mbuboagbala otherwise called greater Mbuboagbala land situate at Iselegu and edged yellow on the plan to filed in this case.
2. £50 damages for trespass committed on the land by the Defendants. 10
3. Injunction to restrain the Defendants namely the people of Onicha Ibabu their servants and agents, heirs and successors from entering on the said Mbuboagbala land and making use thereof without Plaintiffs' permission.
4. Forfeiture of the possession of tenancy of the 9th, 10th and 11th Defendants. Dispute arose about 3 years now.

Issued at Afor the 7th day of June, 1955.

TAKE NOTICE - If you do not attend the Court may give judgment in your absence. 20

Chief Nzefili - His Mark
Signature of President or
Vice President.

No. 2.
Order of
Transfer.
23rd June,
1955.

No. 2.
ORDER OF TRANSFER

By virtue of the powers conferred on me by Section 28(1)(c) of the Native Courts Ordinance Cap.142 Vol.IV of the Laws of Nigeria, 1948, I, Robin Francis Benoy, District Officer, Aboh Division, Kwale, do hereby transfer Afor Native Court Suit No. 8/55A-K from Afor Native Court to the Supreme Court, Warri, for hearing and determination. 30

- | | | |
|----------------------|---|---------------------------|
| 1. Olisedozi Nwokele |) | For themselves and on be- |
| 2. Okolafor Anibema |) | half of the people of |
| 3. Oyem Ebinum |) | Iselegu |

- versus -

3.

- 1. Osele (m) of Onicha)
- 2. Ugbe (m) ")
- 3. Osedeme (m) ")
- 4. Achi (m) ")
- 5. Onili (m) ")
- 6. Enesolu (m) ")
- 7. Oyemike (m) ")
- 8. Onyeidu (m) ")
- 9. Ilo (m) ")
- 10. Oriwe (m) ")
- 11. Oneyugu (m) ")

For themselves and on behalf of the people of Onicha-Ibabu.

In the Native Court

No. 2.

Order of Transfer.

23rd June, 1955.

- continued.

10

CLAIM:- 1. Declaration of title to the land known as Mbubo-aghala otherwise called 'greater Mbubo-agbala land situated at Isel-egu and edged yellow on the plan to be filed in this case.

2. £50 damages for trespass committed on the land by Defendants.

20

3. Injunction to restrain the Defendants namely the people of Onicha-Ibabu their servants and agents, heirs and successors from entering on the said Mbubo-agbala land and making use thereof without Plaintiffs' permission.

4. Forfeiture of the possession of tenancy of 9th, 10th, and 11th Defendants dispute arose about 3 years now.

Reason for transfer:- Connected and similar cases have already been heard in the Supreme Court and I consider it more proper that this one should be heard and determined there too.

Transferred at the request of the Plaintiffs.

30

DATED this 23rd day of June, 1955.

(Sgd.) R.F. Benoy,
District Officer,
Aboh Division.

In the
High Court

No. 3.

ORDER FOR PLEADINGS

No. 3.
Order for
Pleadings.
12th August,
1955.

ORDER FOR PLEADINGS - MOTION FOR
ACCELERATED HEARING - AFFIDAVIT.

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA

IN THE HIGH COURT OF THE WARRI JUDICIAL DIVISION
BEFORE THE HONOURABLE MR. JUSTICE THOMAS, JUDGE
FRIDAY THE 12th DAY OF AUGUST, 1955.

Suit No.W/82/1955. 10

BETWEEN:- 1. Olisedozi Nwokeleke) For themselves
2. Okolafor Anibema) and on behalf
3. Oyem Ebinum) of the people of
Iselegu
Plaintiffs

- and -

- 1. Osele (m) of Onicha
- 2. Ogbe (m) "
- 3. Osedeme (m) "
- 4. Achi (m) "
- 5. Onili (m) "
- 6. Emesolu (m) "
- 7. Oyemike (m) "
- 8. Onyeidu (m) "
- 9. Ilo (m) "
- 10. Ofiwe (m) "
- 11. Onyegu (m) "

20

For themselves and on behalf of the
people of Onicha-Ibabu Defendants

- CLAIMS:
- 1. Declaration of title to land known as Mbuboagbala.
 - 2. £50 damages for trespass.
 - 3. Injunction to restrain Defendants. 30
 - 4. Forfeiture of the possession of tenancy of 9th, 10th and 11th Defendants as per writ.

Parties present.

Egbe for Ikpeazu for Plaintiffs.

Odiete for Defendants asks for Pleadings and Plans
Plan and Pleadings ordered 90/30 days.

(Sgd.) Stephen Peter Thomas
Judge.

No. 4.

In the
High Court

STATEMENT OF CLAIM

IN THE HIGH COURT OF JUSTICE WESTERN REGION OF
NIGERIA

IN THE WARRI JUDICIAL DIVISION
HOLDEN AT WARRI.

No. 4.

Statement of
Claim.

5th September,
1955.

Suit No.W/82/1955.

10 BETWEEN:- 1. Olisedozie Nwokeleke) For themselves
2. Okolafor Anibama) and on behalf
3. Oyem Ebinum) of the people of
Iselegu
Plaintiffs

- and -

20 1. Osele)
2. Ogbe)
3. Osedeme)
4. Achi)
5. Onili) For themselves
6. Emesolu) and on behalf
7. Oyemike) of the people
8. Onyeidu) of Onicha-Ibabu
9. Ilo)
10. Ofiwe)
11. Onyeugu)
Defendants

STATEMENT OF CLAIM

1. The Plaintiffs are natives of Iselegu in Kwale Division and bring this action on behalf of themselves and as representing the people of Iselegu.

2. The Defendants are natives of Onicha-Ibabu in Kwale Division and are sued for themselves and as representing the people of Onicha-Ibabu.

30 3. The land in dispute is called MBUBOAGBALA and is situate at Iselegu. It is bounded on the West by the ATU which is boundary between the Ikilike clan on whose land the Defendants live and the Afor clan to which clan the Plaintiffs belong. On the West it is bounded by land of Obikwere people, on the south by land of Umuokpara at one end and Iselegu river or Osimiri Iselegu at the other end. The land is more particularly delineated, filed in this case and edged yellow on the plan.

40 4. The said Mbuboagbala edged yellow as aforesaid comprises different portions of land known by

In the
High Court

No. 4.

Statement of
Claim.

5th September,
1955

-- continued.

different names and lying within it. One of these pieces of land is edged pink and is itself called Mbuboagbala. The latter piece of land will hereinafter be referred to as "The lesser Mbuboagbala" to differentiate it from the entire Mbuboagbala in dispute which is edged yellow on the plan.

5. In 1928 one Diani from Defendants village of Onicha-Ibabu and four other relatives of his namely Obuku, Ofiwe, Ilo and Onyeuku applied to the Plaintiffs for permission to settle and farm on a portion of the Plaintiffs' land on payment of annual rent and tribute. In pursuance of this application Plaintiffs allowed Diani and the four others aforementioned to settle and farm on a portion of the lesser Mbuboagbala on payment of 20 yams each as annual rent and tribute.

10

6. They continued to pay this until 1941 when Diani and Obuku placed a juju on the land which amounted to an act of ownership. They were prosecuted for this act at the instance of one Dike the head chief of Plaintiffs' village; and were found guilty and sentenced to a term of 3 months imprisonment which they served. In their judgment the court held as follows:-

20

"The accused plead guilty for keeping the juju in complainant's farm and again the land farm the both accused kept the juju is not belonging to them as their Okpara (head-chief) Esimbo said that the land farm is not accused own but Complainant's own".

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7. As a result of this action these tenants left the land but later were re-admitted by Plaintiffs after pleading with Plaintiffs with wine and other tributes.

8. Thenceforth these tenants resumed the payment of rent and tribute until four years ago when the surviving tenants namely Ofiwe, Ilo, Onyeuku refused to pay further rent and began to claim the ownership of lesser Mbuboagbala and other portions of the Plaintiffs land.

40

9. In 1953 one Ojea and one Egutu representing the Defendants people of Onicha Ibabu sued Okereke representing the Plaintiffs people of Iselegu claiming declaration of title to a piece of land called Odegbu by the Defendants and which land lies within the land now in dispute; £250 damages

for trespass and an injunction to restrain the Iselegu people from entering on the land Idegbu. This action was tried at Warri as Suit W/16/53 and was dismissed by the Supreme Court and on appeal by the Onicha people the West African Court of Appeal upheld the dismissal.

In the
High Court

No. 4.

Statement of
Claim.

5th September,
1955

- continued.

10 10. At the same time the Plaintiff sued the Onicha tenants namely Ofiwe, Ilo, Onyeugu the 9th, 10th and 11th Defendants in this case claiming damages for trespass and an injunction in respect of the lesser Mbuboagbala. This was tried as Suit W/18/53 which was consolidated with suit W/16/53.

20 11. The Court held that the ATU forms the boundary between the Afor clan and the neighbouring clan Ikilike on whose land the Ibabu people settle and also that the Onicha Ibabu people are not the owners of the Odegbu land and that the Iselegu people have established title to the land claimed by them in their evidence. This finding of fact was upheld by the West African Court of Appeal.

12. The trial Judge also awarded damages to the Iselegu people against the 9th, 10th and 11th Defendants herein and also granted an order of injunction. This was set aside by the appeal court on the ground that the trespass complained of on the writ was committed in 1941 but that the Iselegu people themselves had said in evidence that they had forgiven the tenants and had allowed them to return to the land.

30 13. The Defendants of Onicha Ibabu since December 1953 have gone on the whole of Mbuboagbala land in large numbers without the permission of the Plaintiffs and have set up title in themselves to the whole of the land in utter disregard of the judgment and of Plaintiffs protestations.

40 14. The Defendants of Onicha Ibabu have cut the economic trees on the land including palm trees and Ubili (raffir) trees and put plenty of tenants on the land who farmed thereon in 1954 without any rent or tribute to the Plaintiffs.

15. Further the Defendants drove the Plaintiffs from the Oshoma, Agbuku and Iyiekwe fishing ponds and fished therein themselves in December 1953 and January 1954. In addition the Defendants put many Isobo tenants who have been tapping wine from the palm trees and cutting the palm fruits.

In the
High Court

No. 4.

Statement of
Claim.

5th September,
1955

- continued.

16. Despite the effort made by the District Officer Kwale to explain to the Defendants that the judgments of the Supreme Court and the West African Court of Appeal disentitles them from claiming ownership of the land on the Iselegu side of the ATU and/or reaping the benefits therein the Defendants persisted in cultivating the land, fishing the ponds reaping the palm fruits on the whole of Mbuboagbala land.

17. The Plaintiffs never authorised the people of Onicha Ibabu as a community to farm or settle on the land but only gave permission to the five tenants Diani, Oluku, Ilo, Ifiwe and Onyeuku as aforesaid. The first two tenants namely Diani and Oluku have died and the Plaintiffs have terminated the tenancy of the others as a result of their misconduct by challenging the Plaintiffs title. Despite this, these three surviving tenants still remained on the lesser Mbuboagbala land and have gone outside it to fish on the ponds and reap the palm trees which things they were never permitted to do originally.

18. As an act of Plaintiffs ownership, the Plaintiffs granted portion of Mbuboagbala to one Akezua and another Chukwurah who have plantation thereon. The Plaintiffs also have on the land the Igabo people who number up to six and who live on the land. Plaintiffs also have some Sobo tenants who cut the palm fruits and tap palm wine on payment of rent and tribute to Plaintiffs.

19. The Defendants of Onicha have no land beyond the ATU on the Iselegu side and have no right whatever to Plaintiffs land Mbuboagbala. The Defendants by their conduct have committed acts injurious to the land and to the Plaintiffs right as owners thereof

Wherefore the Plaintiffs claim as follows:-

- (a) Declaration of title to the land called Mbuboagbala edged yellow on the plan filed in court.
- (b) £50 damages for various acts of trespass committed on the land by the Defendants.
- (c) Forfeiture of the possession originally granted to Ilo, Ofiwe and Onyeugu the 9th, 10th and 11th Defendants.
- (d) Injunction to restrain the people of

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Onicha Ibabu their servants, agents heirs and successors from entering on the said land and making use thereof without the permission of the Plaintiffs.

Dated at Onitsha this 5th day of September, 1955.

(Sgd.) Chuba Ikpeasu
Plaintiffs Solicitor.

In the
High Court

No. 4.

Statement of
Claim.

5th September,
1955

- continued.

No. 5.

DEFENCE

(Title as No.4)

No. 5.

Defence.

1st December,
1955.

10

1. Save as hereinafter expressly admitted, the Defendants herein deny each and every allegation of fact set out in the statement of claim as if the same were set out seriatim and specifically traversed.

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2. The Defendants are not in a position to admit or deny paragraph 1 of the Plaintiffs Statement of Claim.

3. The Defendants admit paragraph 2 of the Plaintiffs Statement of Claim.

4. The Defendants deny paragraph 3 of the Plaintiffs Statement of Claim and aver that the land in dispute is known as ODEGBU and the boundaries are as the Defendants will show in the plan to be exhibited at the hearing and that the ATU is not the boundary as alleged by the Plaintiffs.

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5. The Defendants deny paragraphs 4, 5, 6, 7 and 8 of the Plaintiffs Statement of Claim and put the Plaintiffs to the strictest proof thereof.

6. The Defendants admit paragraph 9 of the Plaintiffs Statement of Claim but aver that when their claim for declaration of title and injunction were dismissed, the Court did not grant declaration of title to the Plaintiffs nor an injunction against the Defendants.

40

7. The Defendants admit paragraph 10 of the Plaintiffs Statement of Claim and aver that when the judgment of the lower Court was taken on appeal to the West African Court of Appeal, it was upset

In the
High Court

No. 5.
Defence.
1st December,
1955
- continued.

and the Defendants appeal was allowed on the ground that the Plaintiffs evidence did not support their claim.

8. The Defendants deny paragraphs 11, 12, 13, 14, 15 and 16 of the Plaintiffs Statement of Claim but aver that they have gone on the land in dispute in the usual manner in their own rights since there was no declaration of title in the Plaintiffs nor any injunction against the Defendants to be observed.

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9. The Defendants deny paragraphs 17, 18 and 19 of the Plaintiffs Statement of Claim and put the Plaintiffs to the strictest proof thereof.

10. The Defendants aver that the land in dispute is the property of Ibabu Onicha people and has been so from time immemorial and they as owners in possession and before them their ancestors have always exercised maximum acts of ownership by farming the same and letting it out to tenants without let or hindrance from any one whomsoever

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11. The Defendants also aver that Ibabu Onicha are a section of a large people in the Kwale District known and called Onicha people the remaining section of Onicha people are Kwesi, Eko, Amoji, Ugri-Amai.

12. The Defendants ancestor Odimegwu first settled on the present site of Ibabu and from there his descendants founded the land in dispute and farmed it at a time now beyond human memory, thereafter, Defendants ancestors have always farmed it. Later Defendants people founded several settlements and villages within the land in dispute and near the land in dispute.

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13. As owners in possession the Defendants, and before them their ancestors have always exercised maximum acts of ownership on the land in dispute by farming the same, fishing the various fishing ponds therein - Oshoma fishing pond, and Iyieke fishing pond - and serving the Otiti pond as juju and letting out portions of the land in dispute to tenants without let or hindrance by the Plaintiff or any one whomsoever".

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14. About 12 years ago, one Akaezue, a native of Eziomu, who lived at Isolegu approached the Defendants people for farming land and on production of the customary Kola and wine was shown the site

in Odegbu land upon which his palm plantation now stands together with the adjoining lands extending as far as Chuwama's plantation and Ugu Camp but not beyond; later Chukwuma a relation of Akaezue was allowed by Akaezue to plant rubber, within Akaezue's portion.

In the High Court

No. 5.

Defence.

1st December, 1955

- continued.

10

15. About 5 years ago the Defendants people asked Akaezue to pay nominal rent, the said Akaezue was willing so to do when the Plaintiffs laid claim of ownership to the land asked him not to pay any rent and this was the beginning of the dispute between the parties.

16. The Defendants will at the hearing of this action contend that this action is vexatious and frivolous and will plead inter alia: ownership, laches, acquiescence and long possession and will ask that the Plaintiffs claim be dismissed as they are not entitled to their claim as per their writ of summons.

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DATED at Lagos this 1st day of December, 1955.

(Sgd.) H.U. Kaine,
Defendants Solicitor.

Plaintiffs Address:-

c/o Their Solicitor, Mr. Chuba Ikpeazu,
12, Court Road, Onitsha.

Defendants Address:-

c/o Their Solicitor, Mr. H.U. Kaine,
28, Hawley Street, Lagos.

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PLAINTIFFS EVIDENCE

No. 6.

G. OBIANWU

THURSDAY, THE 26th DAY OF APRIL, 1956

IKPEAZU for Plaintiffs.

LAIKE (ODIEME WITH HILL) for Defendants.

IKPEAZU opens his case and calls.

FIRST WITNESS FOR PLAINTIFFS: sworn on Bible states in English: My name is GEORGE OBIANWU; residing Onitsha; a licensed Surveyor: I know

Plaintiffs Evidence.

No. 6.

G. Obianwu.

26th April, 1956.

Examination.

In the
High Court

Plaintiffs'
Evidence.

No. 6.

G. Obianwu.

26th April,
1956.

Examination
- continued.

Exhibit "A".

Exhibit "B".

Cross-
Examination.

the Plaintiffs of Iselegu; I also know the people of Onicha-Ibabu the Defendants; I am aware that in 1953 the parties to this present case had a case in the Supreme Court, Warri; I made a plan for the Iselegu people then; this is it; admitted and marked Exhibit "A"; I gave evidence in the 1953 case; the present Defendants were at that time claiming ownership of a certain portion of land; they tendered a plan of the area they claimed; one licensed Surveyor made the plan; the presiding Judge ordered me to make a composite plan showing the two areas claimed by the parties in one plan; I made a composite plan showing in blue edging the area claimed by the Onicha-Ibabu people; this is the plan; Exhibit "A"; I merely showed on the plan I had made for the Iselegu people the area claimed by the Onicha-Ibabu in relation to the area claimed by the Iselegu people for the purposes of this case I copied Exhibit "A" and showed all the features; this is the plan I made; admitted and marked Exhibit "B"; on Exhibit "B" I showed the area claimed by the present Plaintiffs in yellow verge; I went on the land again before I made Exhibit "B"; I saw the details which I show on the plan; the palm and Ogolo trees appeared to me to have been out recently; the cocoa trees appeared to me to have been burnt; I saw that the Ubili trees had been recently cut down; similarly Agbono trees; the trees I referred to were on the land in 1953 and they were growing trees then.

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CROSS-EXAMINED BY KAINE: I would recognise the plan I superimposed on my original plan for the Iselegu people; this is it; admitted and marked Exhibit "C"; on the plan I made in 1953 I did not show the cocoa trees, nor the Ogolo trees, nor the Agbono trees; I merely showed farms; I did not show Ubili trees; I went to Iselegu town; I saw the Niger Company Station and the John Holt Station inside the town; I confirm that I saw the trees which I have shown on the present plan as cut down or burnt; I saw the Pioneer Oil Mill in Iselegu; I showed it on Exhibit "B"; it is within the area claimed by the Iselegu people; the Ibabu people were still living in a village which I showed as "site allowed late Biani of Ibabu by Iselegu"; I saw their wives and children; I saw the village on the road from Uguliamu to Iselegu; the buildings in it were new but the village was inhabited by the Ibabu people; the village is about three years old.

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RE-EXAMINED: On the site allowed late Biani of Ibabu which the Defendants call Odegbu village; I think there were not many houses in 1953; there were about seven houses in 1953 in the village on the Uguliamai to Iselegu road.

In the
High Court

Plaintiffs'
Evidence.

No. 6.

G. Obianwu.

26th April,
1956

- continued.

Re-Examination.

TO COURT: I did not make a new plan for this case but merely put in certain features on the 1953 composite plan; these features are those shown at the bottom of the plan - Details fixed by me and signed by me; the Plaintiffs showed me these features.

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No. 7.

O. NWOKELEKE

No. 7.

O. Nwokeleke.

26th April,
1956

Examination.

FIRST PLAINTIFF: sworn on matchet states in Ibo: My name is Olisedozie Nwokeleke; native of Iselegu; three of us are Plaintiffs in this case; we represent the whole people of Iselegu and were authorised to bring this action; we sue the Defendants as representing the people of Ibabu; this case is about our land called Mbubo-Agbala; the land belongs to the people of Iselegu; the land is in Iselegu; the land is bounded on one side by the land of Ikiliki people; between the land of Ikiliki people and Mbubo-Agbala runs a deep gully which was an ancient watercourse; this gully is ATU; it lies between Iselegu and Uguliamai; the other boundary is between us and Asagwe people and is a tree called Ohie; from this tree the boundary goes down to Akpu and then on to another Akpu tree and then to Ufi tree near Osimiri; our other neighbours are the Obikwere people; our boundary with them starts at the Atu at a point where there is an Akpu tree; from this point there is a long line of Uliadu trees which formed an ancient boundary; this line of trees ends at the Ufi tree from where the boundary continues to the Uni tree by the river; the river separates our land from the lands of Ogbuefi people; I was Plaintiff in the 1953 case; I gave evidence about our boundary then; I called witnesses to testify as to our boundary; Ukeojia gave evidence about the boundary between

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In the
High Court

Plaintiffs'
Evidence.

No. 7.

O. Nwokeleke.

26th April,
1956

Examination
- continued.

us and Obikwere; one Aje Ugbea gave evidence about our boundary at the Atu; he was an old man; the people of Ikiliki were the first on their site and the Onicha-Ibabu people came and settled among them; about 28 years ago we put Ofiwe (10th Defendant) Aluku, Biani and Onyegu (11th Defendant) on our land; they were to pay us tribute of 20 yams each year; we were also working on the land but we were paying no tribute to anyone; we leased portions of the lands to Igabo people who collected palm fruits and paid us rent; we fished on the waters on the land; we tapped raffia palm wine on the land; the four people whose names I mentioned are Ibabu people; they paid tribute until about fifteen years ago when they placed a juju on the land; this showed that they were laying claim to the land; our people of Iselegu met and sent a deputation to the Ibabu people requesting them to remove the juju; they refused and we took Court action against them; as a result of the Court action they left the land, but later returned and begged us to forgive them; we agreed and let them back on the land; After this settlement they continued to pay tribute until about five years ago; they then ceased further payment and claimed title to the land from us by Court action and they called the land on which we had placed them Odegbu whereas we know the land as Mbubo-Agbala; we also took action against Ofiwe, Onyeugu and Ilo; Ilo was one of the people we had placed on the land; the two actions were tried in the Supreme Court;

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Exhibit "D".

Certified copy of Supreme Court judgment admitted in evidence by consent; marked Exhibit "D"; the Ibabu people appealed to the West African Court of Appeal;

Exhibit "E".

Certified copy of W.A.C.A. judgment admitted by consent and marked Exhibit "E".

After the Appeal Court judgment the Ibabu people returned home rejoicing saying they had won the case and were the owners of the land; they called on their people to settle on the land; they commenced farming and building on the land and fishing on the three streams on the land; they cut down raffia palm trees and set fire to building grass in the Atu ravine; they drove me out of my own farm and drove away many other Iselegu people from the land; there were many of them armed with sticks and there were few of us; they challenged

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us to fight; they destroyed our belongings and we of Iselegu decided to see the District Officer; the District Officer said he would call a meeting of both sides; he did so and advised the Ibabu people not to trouble us; they told him he did not understand the judgment and that they had won the case; the District Officer advised us to see our lawyer; we authorised only the four Ibabu men I have mentioned to work on the land; after the appeal judgment they let in a host of their people saying the land now belonged to them; we pointed out to the four men that judgment had not been given in their favour for the land but they shouted on us and drove us away saying the land had been awarded to them; they continued to remain on the land but no longer with our permission or with our consent; they now deny our title and so we want them to leave the land; I know Akezuwa; he is not an Iselegu man; we gave him a portion of land on Mbubo-Agbala and he has a palm plantation there; he has been there about 30 years; his father lived in Iselegu; he pays us 20/- and some yams each year; I know Chukwuma; he is on our land; we placed him on the land; he pays the same rent as Akezuwa; Akezuwa gave evidence in the 1953 case; he said to the hearing of the Defendants then that he was our tenant; I claim the reliefs set out in the writ.

In the
High Court

Plaintiff's
Evidence.

No. 7.

O. Nwokeleke.

26th April,
1956

Examination
- continued.

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CROSS-EXAMINED BY KATINE: I showed the Ufi tree on our boundary with Asagwe to the Surveyor; we have a boundary with Umuokpala Asagwe; I did not call a witness from Umuokpala Asagwe to give evidence for me in the 1953 case; the people of Obikwere the people of Umuokpala Asagwe and we are the Afor people; the people of Obodo-Igbo are also Afor people; the people of Onicha-Ibabu are Ukwani (Kwale) and not Afor people; I had not been born at the time the Onicha-Ibabu came to live in their present town; I have been to Obiaruku and Amui from Iselegu; between Iselegu and Amui there are two Atus (dried up water courses); I have been to Onicha-Ibabu; there are two Atus between our village and Onicha-Ibabu; the first is our boundary with them and the second is close to their village; Iselegu village is inside Mbubo-Agbala; I know where the Pioneer Oil Mill is; it is in Mbubo-Agbala; no part of our land is called Odegbu; Umuokpala Asagwe people gave evidence in the 1953 case; they said in evidence we were their tenants

Cross-
Examination.

In the
High Court

Plaintiffs'
Evidence.

No. 7.

O. Nwokeleke.

26th April,
1956.

Cross-
Examination
- continued.

but that was false evidence; Iselegu is on our land; Umuokpala is two miles from Iselegu; there is a Niger Company Store in our village; there is also a John Holt Store there; these two firms pay rents to Umuokpala people; The Government is paying rent to Umuokpala for the site of the Pioneer Oil Mill; I was a baby when John Holt and Niger Company came on the land (Witness about 45 to 50 years); I know the people of Okorori; they are the same family with Umuokpala; about ten years ago our people complained about the rent being paid by the Niger Company; we complained to the District Officer; the District Officer referred the matter to the Obi of Abor; the Obi went into the matter

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No. 8.

Summary
punishment of
Justin Anibema
for Contempt
of Court.

26th April,
1956.

No. 8.

SUMMARY PUNISHMENT OF JUSTIN ANIBEMA FOR
CONTEMPT OF COURT

JUSTIN ANIBEMA is found prompting the witness by nodding to him to suggest what answer he is to give: He is called upon to show cause why he should not be summarily committed to prison for contempt of Court.

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HE STATES: I was not nodding to the witness but was nodding in agreement with what the Court said.

COURT: But Mr. Kaine asked a question and I had said nothing?

HE STATES: I did not nod.

ORDER: The man Justin Anibema is fined £5 or to suffer imprisonment for 21 days in default for contempt of Court.

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(Sgd.) Charles Onyeama
Acting Judge.

No. 9.

O. Nwokeleke.

Cross-
Examination
- continued.

No. 9.

O. NWOKELEKE

CROSS-EXAMINATION continues:- Niger Company pays £20 a year rent to Umuokpala; the Umuokpala people give us £5 out of it and not £3. The Obi said we were to get £5 and not £3. John Holt pays £15 a year to Umuokpala not £20; the £5 we are given

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covers the rent from Niger Company and John Holt; I agree that my people of Iselegu signed the agreement between the Umuokpala and the Government for the Palm Oil Mill site; I agree that in the 1953 case I stated that the Okpala-Uku of Obedo-Igbo gave us the area on which we are now settled; he gave us Mbubo-Agbala; the Okorori people own the land on the Southern side of the Iselegu river; we people of Afor were settled somewhere else before but we Iselegus were working on Mbubo-Agbala; the people of Umuokpala came from Asagwe and joined us in our settlement; we were there for a time with them, but in view of the pressure on accommodation we Iselegu people moved out and settled where we are now on Mbubo-Agbala land; the Umuokpala people are still on the old site; I did not personally give out the lands to the four people of Onicha-Ibabu I mentioned but my grandfather did; the Onicha-Ibabu people had not been placed on the land before the Niger Company came: I was a small boy when the Onicha-Ibabu people came but was old enough to know who was who; at no time did the Onicha-Ibabu people demand rent from Akezuwa but I know the people sued Akezuwa and us; that was the 1953 case; I deny that we are settled on Umuokpala land or that we are on the land with the permission of Umuokpala; there were about seven Ibabu people on the land before the 1953 case; they were fishing, farming, collecting palm fruits; the Igabo people have been our tenants for many years from the time of my father; we have an Igabo tenant Ugu; he had been on the land about seven years; Akezuwa has been on our land a long time and has been a good tenant; we regard him as one of our people; he had been paying us rent over five years before 1953 case;

RE-EXAMINED: Ekpese the Okpala-Uki of Obodo-Igbo settled the whole eight quarters of Afor on the lands occupied by them and not only the Iselegu people; we pay no rents or tributes whatsoever to anyone for using Mbubo-Agbala; our forefathers had never paid tribute for the land or for using the land in any way; we fish and farm the land without anyone's permission; no one had taken any action against us or our tenants before the 1953 case; we share the rents paid by the firms with Umuokpala because we had surrendered the strip close to the water to the Umuokpala people as compensation for one of their people who had been

In the
High Court

Plaintiffs'
Evidence.

No. 9.

O. Nwokeleke.

26th April,
1956.

Cross-
Examination
- continued.

Re-Examination.

In the High Court

Plaintiffs' Evidence.

No. 9.

O. Nwokeleke.

26th April, 1956

Re-Examination - continued.

Exhibit "F".
Exhibit "G".

Production of Records.

killed by our people during a quarrel; they were to occupy the land for a time;

COUNSEL tenders Native Court Proceedings No.2/54 Anibama vs. Ika and Others.

KAINE objects; Case irrelevant; nothing to show to what area the case relates;

IKPEAZU: The judgment refers to Awulu land which is shown on the plan;

RULING: Admitted and marked Exhibit "F";

MICHAEL AMENE, Registrar, High Court Warri, produces the original records in Suit W/16/53 and in Suit W/18/53 consolidated; admitted and marked Exhibit "G"; Volume 19 Civil Record Book Supreme Court Warri folios 172, 182-183, 300-301, 302-314, 315 to 330, 334 to 351, 352 to 355, 359 to 366.

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Not sworn and not cross-examined.

No.10.

A. Achinike.

26th April, 1956.

Examination.

No. 10.

A. ACHINIKE

SECOND WITNESS: sworn on Koran states in Ibo: My name is Akesuwa Achinike; born in Ezionu; a farmer residing Iselegu; my father lived in Iselegu and took me there when I was a little boy; my father was farming in Iselegu; he is dead now; my father told me the white men had driven them out of their homestead and he had come to settle in Iselegu; the land is called Mbobu-Agbala; one Onyelue permitted my father to settle on the land; he was an Iselegu man; my father used to pay tribute of yams and palm wine to the Iselegu people at harvest time; I used to carry the yams on my head to the headman; I always stayed at Iselegu; I left Iselegu to go and work as a policeman in Warri; I left the police force in 1927 and returned to Iselegu; my father had died by that time; after my father's death Onyelue permitted me to continue to stay at Iselegu; I was permitted to plant palm trees and cocoa and to farm on the land; at harvest time I would pay tribute of yams, palm wine and a sum of 20/--; I paid 20/-- because I farmed more than my father did: I have been on Iselegu land since 1927; I have never paid rent to the Defendants; I know Chukwuma; we come from the same village but we are not related;

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he lives at Iselegu; he plants rubber in Mbubo-Agbala land; he came to Iselegu after me; he came about 1930; the Iselegu people gave him land; I know Biani of Onicha-Ibabu; he is dead; I saw him on the land; he placed a juju on the land and the Iselegu people took action against him; he was farming on the land; Biani came on the land after me; he did not come alone; he came with Ilo, Aluku and Onyengu; they were permitted by the Iselegu people to be on the land; they were working for me to start with and I directed them to the Iselegu people for land; they used to pay tribute to the Iselegu people; they told me so themselves; the Ibabu people sued me about three years ago; after the Appeal Court judgment the Ibabu people claimed to have got judgment and would not let any one work on the land; they destroyed my farm and removed my yams and dug up the yams I had planted; I did not see the people who destroyed my farm and removed my yams but I was told they were Ibabu people; I reported to the police; the Ibabu people are still on the land disturbing us; it is not true the Ibabu people put me on the land; I did not ask them for my land; not true I was paying them rent; not true the Iselegu people stopped me paying rent to Ibabu people.

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In the High Court

Plaintiffs' Evidence.

No.10.

A. Achinike.

26th April, 1956

Examination - continued.

CROSS-EXAMINED BY KAIHE: The land is not called Odegbu; this name came into existence when this case commenced; the Plaintiffs call it Mbubo-Agbala; I have never heard them call it Odegbu; the Ibabu had never asked me to pay rents to them until I received a claim from them for £250; the Iselegu people and I were sued together; we had counsel in the 1953 case; I deny that in the 1953 case we pleaded that the Iselegu people called the area in dispute Odegbu; we told our lawyer the land was called Mbubo-Agbala; I also deny that I pleaded that the Ibabu people had come to me about three years before and demanded rent; I did not tell my lawyers so; I was not served a subpoena in this case; I commenced my palm plantation in 1934; I began paying for the plantation that year; I paid £1 and a quantity of yams; I agree that I did not pay £1 until the palm fruits matured and I collected them; the Iselegu people did not ask me for money; they gave me a place on which to work; I agree that as a fugitive in Iselegu my father was to take part in communal work; he was not to be treated as a stranger; as he had sought sanctuary with the Iselegu people he would

Cross-Examination.

In the High Court

Plaintiffs' Evidence.

No.10.

A. Achinike.

26th April, 1956.

Cross-Examination - continued.

Re-Examination.

not pay rents for working on Iselegu land; I also am treated as an Iselegu man and not as a stranger; my own son is a leader of an age group in Iselegu; the Iselegu people demand no tribute or rent from me; but I give it of my own free will as is done by everyone in Iselegu to mark the commencement of the yam season; I did not say in 1953 that the Iselegu people demanded rent from me or asked me to pay rent; I told the Judge in 1953 that I would only pay tribute of palm wine and would not pay money.

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RE-EXAMINED: I got permission from the Iselegu people to work on the land; I got no permission from anyone else;

CASE FOR PLAINTIFFS.

Defendants' Evidence.

No.11.

A. Biose.

27th April, 1956.

Examination.

DEFENDANTS' EVIDENCE

No. 11.

A.BIOSE

FOURTH DEFENDANT: sworn on matchet states in Ibo: My name is ACHI BIOSE; residing Ibabu; a farmer, I know the Plaintiffs of Iselegu; I know the land in dispute; my people call it Odegbu; I personally have planted yams on that land; I have also taken palm produce from the land; I have fished the pools on the land; I have been doing these things for a very long time; I did not cut down any palm trees of the Iselegu nor did my people do so; all my people of Ibabu farm this land; as far as I know none of them destroyed any palm trees on the land; we destroyed no Agbono trees; nor cocoa trees; there are no cocoa trees on the land; we cut down no rubber trees; the ponds and streams on which I fish are Iyiekwe, Osioma, Otiti; my father is alive; he still farms and fishes on the land and waters;

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Cross-Examination.

CROSS-EXAMINED BY IKPEAZU: My people of Ibabu and the Iselegu people had a dispute over this very land three years ago; we claimed this Odegbu land three years ago; a judgment was given against us in the lower Court but the West African Court of Appeal said the land belonged to us; we of Ibabu use the land because it belongs to us; we would not let the Iselegu people use the land unless they ask our permission; we would not permit the Iselegu people to put tenants on the land as the land is not their own; we have built new houses on the land since the judgment;

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Re-Examination.

RE-EXAMINED: No Court told us not to go on the land.

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No. 12.
E. ENEBELI.

In the
High Court

Defendants'
Evidence.

No.12.

E. Enebeli.

27th April
1956.

Examination.

10 SIXTH DEFENDANT: sworn on matchet states in Ibo; My name is ELISOLU ENEBELI; residing Ibabu; a farmer; I know the Iselegu people; I know the land in dispute; it is called Odegbu; I farmed on the land with my father; my father is dead; he farmed on the land in his lifetime; he used to take me on the land; my father had been farming on the land a long time; I used to cut palm fruits from palm trees on the land and fish the pools on the land; all our people of Ibabu fish on the land; my father paid no rents to the Iselegu people as the land was our own; none of our people pays tribute or rents to the Iselegu people and I have myself paid none; it is not true that we destroyed any palm trees on the land or Agbono trees or cocoa trees or any other trees belonging to the Iselegu people; there are no cocoa trees on the land; we did not cut down raffia palm trees or rubber trees;

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30 CROSS-EXAMINED BY IKFEAZU: I know Ilo, Ofiwe and Onyeagu; they have houses on the land in dispute which we describe as Odegbu settlement; the three men are Ibabu people; I know of the 1953 case; the Court was in error when it found that these three people were placed on the land by the Iselegu people and when it found that these of our people forming the land did so with permission of the Iselegu people; I know the Atu that the Iselegu people claim to be the boundary between them and the Ikiliki land; it is not a boundary; I know nothing about a meeting summoned by the District Officer for the purpose of explaining the 1953 judgment to our people and the Iselegu people.

Cross-
Examination.

RE-EXAMINATION: Nil.

40 BY CONSENT: A certified copy of the record of proceedings compiled for the purpose of the appeal to the West African Court of Appeal is W/16/53 and W/18/53 is admitted in evidence in place of the original notes on the Court record book; marked Exhibit "G".

Exhibit "G".

In the
High Court

No. 13.

E. OMUMU.

Defendants'
Evidence.

No.13.

E. Omumu.

27th April,
1956.

Examination.

FIRST DEFENCE WITNESS: sworn on matchet states in Ibo; My name is EZIEDE OMUMU; a farmer; residing Ibabu; I know the Plaintiffs in this case; I know the land in dispute; there was a case over this land three years ago and I gave evidence then; the land in dispute is called Odegbu; I described the boundary during the 1953 case.

(COURT: informs KAINÉ that the witness may, if he likes, describe the boundary now but KAINÉ says it is unnecessary). 10

We made a plan of the land; it has been put in evidence by the Surveyor (Exhibit "C"); we people of Ibabu have not gone beyond the boundary of our land as shown on Exhibit "C"; I know Iselegu town; it is on Umuokpala people's land; we do not claim it to be Ibabu land; during the 1953 case an Umuokpala man gave evidence for us; his name is Peter Nwaka; Oyem Okologume of Obikwere also gave evidence for us to describe our boundary with Obikwere; the Umuokpala man also described our boundary with his people; I have planted yams on the land in dispute, cut palm fruits from it and tapped palm wine from the trees on the land; I have also fished on three pools on the land; Iyiekwe Otiti and Osioma. 20

(COURT notes that this witness at first said that one of the pools was Odigbo):

I began working on the land as a small boy; my grandfather and my father both worked on the land in their time; none of them obtained any permission from the Iselegu people to work on the land nor did I obtain any such permission; we have never paid them any rents or tributes; I know Ilo, Ofiwe and Onyeugu; they are our people of Ibabu; I know where they live; they live on Odegbu; as far as I know they pay no rents to Iselegu people; I know Akezuwa Achinike; he has a plantation on the land; a palm plantation; our people of Ibabu put him on the land; we took action against him in 1953; before this we demanded rents from him, but he refused to pay; our people did not go on the land in dispute and destroy palm trees, Agbono trees, cocoa trees, rubber trees or raffia palm 30 40

10 trees; the District Officer called a meeting of our people last year over this land; the 1953 judgment did not say we were not to go on the land; the Iselegu people's case against Ilo, Ofiwe and Onyeugu was appealed to Lagos and the Iselegu people lost; the District Officer told me not to go on the land because it belonged to the Iselegu people; we told the District Officer the judgment did not say so; he then advised us to consult our lawyers; we did not destroy the property of the Iselegu people;

In the
High Court
Defendants'
Evidence.

No.13.

E. Omumu.
27th April,
1956.

20 CROSS-EXAMINED BY UKPEAZU: I know the Atu which the Iselegu people allege is the boundary; the land on which we of Ibabu are settled belongs to the Ikiliki people; the Ikiliki people own the land from our village up to the Atu; the Iselegu people are not Afor people; they are strangers; one Ugboma in 1953 gave evidence to the effect that the Atu was the boundary between Iselegu and Ikiliki and that Iselegu was of the Afor clan; I do not agree that the Atu is a boundary between Ikiliki and Afor clan.

Examination
- continued.

Cross-
Examination.

RE-EXAMINATION: Nil.

No. 14.

P. NWAKA.

No.14.

P. Nwaka.
27th April,
1956.
Examination.

30 SECOND WITNESS: sworn on matchet states in Ibo: My name is PETER NWAKA; residing Umuokpala; a farmer; I know the Iselegu people; I know the Onicha-Ibabu people, defendants; I gave evidence in the 1953 case; my people of Umuokpala own the land on which Iselegu town is situated; I know Niger Company Station at Iselegu; I also know John Holt Station at Iselegu and the Pioneer Oil Mill Station at Iselegu; our people collect the rents paid for these sites; Niger Company pays £20 John Holt pays £15; the payment of rent last year by Niger Company was made to us; we gave receipt; we gave the site of the Oil Mill to Government; we are paid £10 for it; Niger Company came about 50 years ago; similarly John Holt; we give 40 £3 out of the Niger Company rent and £2 out of the John Holt rent to the Iselegu people; we commenced giving them a share of the rent about ten years

In the
High Court
Defendants'
Evidence.

No.14.

P. Nwaka.

27th April,
1956.

Examination
- continued.

ago; this was because the Obi of Abor requested us to give a share to Iselegu; we explained to the Obi of Abor that we had not been in the habit of giving the Iselegu part of the rent; Obi persuaded us to give them a share as they were settled on our land; we did not give them a share last year; we gave them no part of the Oil Mill rent; we gave the Iselegu people the area where they are settled; they did not give us land as compensation for any of our people killed; An Akpu tree stands on the boundary between us and the Ibabu people; the boundary then goes on to where a market road runs then to an Ogilisi tree then to an Abosi tree then to a mango tree; from the mango tree it extends to an Uriari tree on the Obikwere boundary; we have no boundary with Iselegu people.

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Cross-
Examination.

CROSS-EXAMINED BY IKPEAZU: I know the extent of the land we gave to Iselegu people; the land is within our own land; we defined no boundary for them; they could farm anywhere on the land; they pay us no tribute; this settlement of the Iselegu people on our land took place several years ago and I heard of it from my father; our land does not extend to the Atu; I do not know Iyikwe water; I do not know Oshoma pool; I am not aware the Iselegu people farmed up to the Atu.

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RE-EXAMINATION: Nil.

No.15.

O.Okolouguma.

27th April,
1956.

Examination.

No. 15.

O. OKOLOUGUMA

THIRD WITNESS: sworn on matchet states in Ibo; My name is OYEM OKOLOUGUMA; farmer; residing Obikwere; a native of Obikwere; I know the people of Iselegu and the people of Onicha-Ibabu; my people of Obikwere have a land boundary with Onicha-Ibabu people; on the boundary are an Akpu tree, Aliadu trees, Ekwe tree, an Ogbu tree; I have seen the Onicha-Ibabu people farming on their side of the boundary.

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CROSS-EXAMINED BY IKPEAZU: Nil.

To Court.

TO COURT: Our boundary with Umuokpala is marked by an Abosi tree, a mango tree and an Ogirisi tree; only these three trees;

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RE-EXAMINATION: Nil.

No. 16.

COUNSEL'S ADDRESSESIn the
High CourtNo.16.Counsel's
Addresses.
27th April,
1956.Kaine for
Defendants.

10 KAINE ADDRESSES COURT: The land has been subject of previous litigation; we were Plaintiffs then and sought declaration of title against present Plaintiffs, then Defendants; we lost; no counter-claim for title; our losing the case did not confer title on them; no injunction granted against us; we are estopped from again claiming title;

20 Ekpo v. Ita XI N.L.R. 68; Ntiero v. Akpan 3 N.L.R. 10; (Privy Council); the claim for trespass and injunction against three of our people in 1953 had been upset on appeal and the findings of the Court of trial have no longer any effect; case of tenancy and trespass to be proved afresh; no estoppel; no witnesses to prove anything for Plaintiffs except Surveyor, Olisedozie and Akezuwa; no evidence from Umuokpala as to boundary; no Obikwere man gave evidence as to their boundary with Plaintiffs; no evidence from Ikiliki people of their boundary with Plaintiffs; no evidence from Okorori people as to boundary on the south; rents collected by Umuokpala; only £5 to the Plaintiffs out of £35; evidence that the Plaintiffs live on Umuokpala land; refers to page 62 of Exhibit "G" line 10 why Umuokpala took part in the lease; also page 61 line 27 contrast with evidence now given about compensation for killing an Umuokpala and intervention by Ogi of Abor; plan incorrect since the area alleged surrendered to Umuokpala not shown; evidence of long user by the Defendants; even if Plaintiffs got declaration of title injunction may be refused; Olisedozie not to be believed in view of conflict of his evidence now with 1953 evidence; Akezuwa's statement of defence in 1953; pages 22 and 23 of Exhibit "G" paragraphs 1 and 9; denied now; he now admits he pays no rents and tributes and that he is treated as an Iselegu man; the yams he hands in to the family head is not tribute as every Iselegu man gives this to his family head; Akezuwa said in 1953 he was asked to pay rent; Exhibit "G" page 63 line 6 to line 25.

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IKPEAZU IN REPLY: Claim in trespass and injunction put title in issue; Kponigho v. Kodadja 2 W.A.C.A. 24; in the 1953 case (W/18/53) issue was joined as to title; see page 35 of Exhibit

Ikpeazu in
Reply.

In the
High Court

No.16.

Counsel's
Addresses.

27th April,
1956.

Ikpeazu in
Reply.
- continued.

"C" paragraph 5 W.A.C.A. judgment is to be examined to see what is accepted and what is rejected; Exhibit "E" and if the Appeal Court did not disturb the facts found by the trial Judge even though it reversed the verdict, the facts are still binding on the parties; Mr. Kaine is now estopped in view of his own concessions in the appeal Court when arguing the appeal in W/18/53 from stating that his clients are not tenants; abundant evidence for the Plaintiffs even now to support the claim; if Plaintiffs' evidence is believed we must succeed; Olisedozie gave evidence of boundary; evidence before Mbauefo, J., in 1953 is in evidence in this case; evidence of neighbours given them; Akezuwa our tenant; putting him on the land and his father before him is an act of ownership; his evidence about the Ibabu tenants Biani whom he introduced to Iselegu; Defendants cannot now say land belongs to Umuokpala; not pleaded; 4 W.A.C.A. 78 Candoso v. Doherty;

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Judgment reserved.

(Sgd.) Charles Onyeama
Acting Judge.

No.17.

Judgment.

30th April,
1956.

No. 17.

JUDGMENT.

MONDAY THE 30th DAY OF APRIL, 1956

Suit No.W/82/1955.

BETWEEN:- Olisedozi Nwokeleke and 2 Others
For themselves and on behalf of
the people of Iselegu Plaintiffs 30

- and -

Osele (m) and 10 Others
For themselves and on behalf of
the people of Onicha-Ibabu Defendants

IKPEAZU for Plaintiffs.

KAINE for Defendants.

JUDGMENT

The Plaintiffs in this case suing for themselves and on behalf of the Iselegu people claim against the Defendants representing the people of Onicha-Ibabu:

- "(1) Declaration of title to the land known as Mbuboagbala otherwise called greater Mbuboagbala land situated at Iselegu and edged yellow on the plan to be filed in this case.
- (2) £50 damages for trespass committed on the land by the Defendants.
- (3) Injunction to restrain the Defendants namely the people of Onicha-Ibabu their servants and agents, heirs and successors from entering on the said Mbuboagbala land and making use thereof without Plaintiffs permission.
- (4) Forfeiture of the possession of tenancy of 9th, 10th and 11th Defendants dispute arose about 3 years now".

10

20

The claim was filed in the Afor Native Court and was transferred to this Court by the District Officer, Aboh Division by virtue of the powers conferred on him by Section 28(1)(c) of the Native Courts Ordinance: Cap.142 Laws of Nigeria.

Pleadings and plan were ordered and duly delivered.

30

The Plaintiffs allege by their Statement of Claim that the land in dispute is called Mbuboagbala, while the Defendants by their Statement of Defence say it is called ODEGBU. The identity of the area in dispute has however been settled by the plan put in evidence for the Plaintiffs, and by whatever name it is called I find that the area in dispute in this case is all that area verged in yellow on Exhibit "B";

40

The Plaintiffs allege by their Statement of Claim that they had permitted one Diani and four others, namely: Obuku, Oziwe, Ilo and Onyeuku of the Defendants' village, to farm on portions of the area in dispute at their request and on payment by each of them of an annual tribute of twenty yams. This was in 1928 and this tribute was paid up to 1941. When default was made in payment in 1941 and Diani put a juju on the land, the five tenants were prosecuted to conviction by the Plaintiffs' Chief.

The Defendants' people then left the land, but later were re-admitted when they showed they were penitent. The Defendants' people then resumed payment of the usual tribute until about

In the
High Court

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Judgment.

30th April,
1956

- continued.

In the
High Court

No.17.
Judgment.

30th April,
1956
- continued.

four years ago when the Defendants laid claim to the land.

The Defendants by their Statement of Defence deny these allegations and put the Plaintiffs to "STRICKEST" (sic) proof thereof.

The Plaintiffs plead certain judgments of the Supreme Court which dismissed a claim for title brought by the Defendants against the Plaintiffs and which awarded damages to the Plaintiffs against the Defendants for trespass on this land in dispute, and of the West African Court of Appeal on the question of damages for trespass. 10

The Defendants by their Statement of Defence admit these judgments.

The Pleadings then launch into argument on the facts which led to the judgment of the Supreme Court and the reasons why the appeal was allowed by the West African Court of Appeal. The effect of the judgments of the Supreme Court and the West African Court of Appeal is also discussed. 20
All this appears to me quite unnecessary and to amount to prolix pleadings. By Order 32 rule 5 of the Supreme Court Rules

"Every pleading shall contain a statement of "all the material facts on which the party "pleading relies".

The Plaintiffs then allege acts of ownership in the form of leases of portions of the land to different tenants. The Defendants deny these acts. 30

The Defendants by their Statement of Defence allege that the land in dispute belongs to them, and allege certain acts of ownership.

The evidence called at the hearing was much shorter than the length of the pleadings and the number of documents and plans put in evidence would have led one to expect.

The first witness for the Plaintiffs put in evidence the plan he made for this case and the plans which were before the Supreme Court during the hearing of the case between the parties in 1953. He also stated that he saw signs of destruction by cutting and burning of certain trees, and also saw new houses built by the Defendants' people within the area in dispute. Under cross-examination he admitted that he had not indicated 40

the existence of the trees he now says were cut and burnt on the plan made in 1953.

In the
High Court

The first Plaintiff gave evidence and described the boundary of the land he and his people claim. He said his people had placed four of the Defendants' people on the land as tribute paying tenants about 28 years ago. His people were, at the same time, working on the land but acknowledging no overlord.

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1956
- continued.

10 The Defendants' people who were tenants on the land placed a juju on the land thus laying claim to the land. This was about fifteen years ago. A Court action followed, and the tenants left the land. Some time later they returned and promised to be of good behaviour for the future and were allowed to continue their tenancy on the old terms; About four years ago, they resumed their old headstrong attitude and another Court action followed. There were two Suits
20 W/16/53 and W/18/53. In the first the present Defendants claimed title to a piece of land shown on the plan (Exhibit "C"), and in the record the present Plaintiffs claimed damages for trespass from an injunction against the four persons they alleged they had put on the land. The actions were consolidated and the Defendants' claim for title against the present Plaintiffs was dismissed, while damages were given in favour of the present
30 Plaintiffs and an injunction ordered against the Defendants named in that suit.

The case went on appeal to the West African Court of Appeal which dismissed the appeal from the Supreme Court judgment in so far as it related to Suit W/16/53, and allowed it in so far as it related to Suit W/18/53.

The Defendants' people regarded the outcome of the appeal as a victory and invaded the land in dispute in large numbers driving the Plaintiffs out of it. They cut down and burnt trees and put
40 up new buildings.

The Plaintiffs testified that his people had put other tenants on the land many years before, and he referred in particular to Akesuwa and Chukwuma. These tenants paid rents and tributes to his people. Under cross-examination the first Plaintiff admitted that the Umuokpala people were receiving rents from certain firms established within the land in dispute and from Government for

In the
High Court

No.17.
Judgment.
30th April,
1956
- continued.

a Pioneer Oil Mill in the area in dispute. It was put to him that the portion of the land in dispute where his people live belongs to Umuokpala people and he denied this. No objection was taken by Plaintiffs' Counsel to this line of cross-examination which sought to introduce an issue not raised in the Statement of Defence. Nowhere in the Statement of Defence is it suggested, or stated, that the land in dispute, or any part of it, belonged to the Umuokpala people. The defence set up on the Statement of Defence is, and must remain, that the Defendants own the land themselves, or that the Plaintiffs do not own it. In Esso Petroleum Company v. Southport Corporation (1955) 3 ALL E.R. 864 (House of Lords) Lord Normand said:

10

"The function of pleadings is to give fair notice of case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them..... To condemn a party on a ground of which no fair notice has been given may be as great a denial of justice as to condemn him as a ground on which his evidence has been improperly excluded".

20

I therefore propose to disregard entirely all the evidence tending to show that the land in dispute belongs to Umuokpala people, and will confine myself to the task of determining on the other evidence, whether the land in dispute belongs to the Plaintiffs or not.

The other witness called for the Plaintiffs was one of their tenants, Akezuwa. He said he had been on the land in dispute with his father who farmed on it. They had been permitted to settle on the land by the Iselegu people and his father paid tribute to the Plaintiffs' people in his lifetime. The witness worked as a policeman at Warri for a time, and after his retirement in 1927 returned to Iselegu where he is now settled. The Plaintiffs' people permitted him to farm on the land and he paid tribute and rent. He gave evidence regarding the other tenant Chukwuma; and he also stated that he had directed the four people named in the 1953 case from the Defendants quarter who were his labourers, to request the Plaintiffs to allow them some land on which to farm.

30

40

Under cross-examination, it became clear that this witness was not telling the truth when he said he was paying rents or tributes as a tenant to the

Iselegu. The fact appeared to be that he had been absorbed into the Iselegu community and at the commencement of each yam season gave certain customary gifts to the quarter head as was done by everyone else. He was confronted with his statement of Defence and his evidence in the 1953 case, and he denied what he had said in 1953. I formed the opinion that this witness was so biased in favour of the Plaintiffs' people that he was not wholly reliable.

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High Court

No.17.

Judgment.

30th April,
1956

- continued.

10

The Defendants denied the allegations of the Plaintiffs and their witnesses and claimed the land as their own. They called two witnesses PETER NWAKA and OYEM OKOLOUGUMA who stated that their people had boundaries with the Defendants. These witnesses came from Umuokpala and Obikwere respectively. Umuokpala lands lie South-west of the land in dispute, and Obikwere lands lie East. The effect of the evidence of these two witnesses, if believed, would be to squeeze the Plaintiffs out of the land in dispute and establish that the land in dispute (except for the Plaintiffs' homestead) belonged to the Defendants. The issue has however been settled in the 1953 case and there is a valid and subsisting judgment which has denied the title of the Defendants as against the Plaintiffs to a large portion of the area in dispute.

20

It does not however follow that because the Defendants' claim to title was dismissed, the Plaintiffs' claim to it must succeed.

30

Counsel for the Plaintiffs relies to a very large extent on the findings of fact by Mbanefo, J. In the 1953 case. In his judgment then, the learned Judge said:-

"As I have said, I accept the evidence by the Defendants' witnesses that the boundary between the Afor clan and Ikilike is the Atu. I reject the Plaintiffs' evidence as to the boundary between them and Obikwere. The boundary they describe seems so unnatural and artificial that I am unable to accept it".

40

And again:-

"I am satisfied that Biani and Oloku lived in the settlement shown on the Plaintiffs' plan as old Odegbu settlement and that they settled there with the permission of the Iselegu. I find also that the other Ibabu people who live

In the
High Court

"at the settlement including Ofiwe, Ilo and Onyegu were placed there by Iselegu".

No.17.
Judgment.
30th April,
1956
- continued.

Counsel for the Plaintiffs argued that these findings concluded the issues and that the parties were bound by them notwithstanding that the Appeal Court upset the award of damages in the Plaintiffs' favour.

I consider that the issues were dealt with in the 1953 case, namely (1) had the then Plaintiffs proved enough to get a declaration in their favour; (2) were the named Defendants in the cross action trespassers. The learned Judge, on the evidence before him answered the first in the negative and the second in the affirmative. 10

It is clear that in refusing a declaration to the then Plaintiffs, he had not and could not have conferred it on the present Plaintiffs since they had not counterclaimed for title; Ntiaro and another v. Akpam and another 3 N.L.R.10. If the present Plaintiffs wish to get their title to the land declared, it appears to me that they have to prove their title in full, and that findings of fact at some other hearing cannot avail them, unless these facts are admitted by their adversary. 20

The onus of proof is no less on them now than it was on the Defendants in 1953. It is not open to the Plaintiffs to import into this case, evidence given before another Judge by witnesses who have not testified before me; nor can it be right that I should be bound, at first instance, by findings of fact by another Judge based on his impressions of the credibility of witnesses who are not before me. 30

I therefore hold that the Plaintiffs cannot rely on the findings of fact by the learned Judge in the 1953 case as establishing any more than that the then Plaintiffs had not proved their claim to title. Counsel for the Plaintiffs tried another line of attack. He argued that although the Appeal Court in 1953 case allowed the Appeal in respect of damages for trespass, it did so because it had been proved that the Defendants were allowed on the land by the Plaintiffs and that they were tenants of the Plaintiffs and not trespassers. In other words, this specific finding by the learned Judge had, far from being upset, been actually upheld on appeal. 40

It followed, argued Counsel, that the present Defendants (or some of them at any rate) were estopped from denying their tenancy.

I consider that this argument is ingenious and attractive, but that it is contrary to the authorities.

The learned author of Spencer Bower on Res Judicata at page 34 paragraph 45 of the book states the law on the point as follows:-

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1956

- continued.

10 "When a judicial tribunal of competent original jurisdiction had granted or refused the relief claimed in an action or other proceeding, and an appellate tribunal reverses the judgment or order of the Court of first instance and either refuses the relief granted below, or grants the relief refused below, as the case may be, the former decision till then conclusive as such, disappears altogether, and is replaced by the appellate decision, which thenceforth holds the field, to the exclusion of any other as the res judicata between the parties".

20

An Indian case applies even more exactly to the present issue. It is the case Nilvaru v. Nilvaru (1881) I.L.R. 6 Bom 110 digested at page 151 of Volume 21 English and Empire Digest; footnote r.

30 "When the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceased to be res judicata and becomes res sub judice and if the appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of Appeal".

40 In view of these authorities, I hold that the effect of allowing the appeal in Suit W/13/53 was to wipe away the findings of fact and decisions on the law by the Court of first instance. In the words of Spencer Bower "the former decision disappears altogether".

In the case before me the issues are, in my view, at large, and no estoppel operates against the Defendants.

I have considered the evidence proffered by the Plaintiffs in this case. In this Court,

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High Court

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1956

- continued.

Akezuwa states he has a cocoa plantation and the Surveyor says he saw signs of Akezuwa's cocoa trees destroyed by the Defendants. In the 1953 case (just three years ago) Akezuwa made no mention of any cocoa trees. He then talked of a palm plantation. I consider that this witness was discredited under cross-examination and that I cannot rely on his evidence.

The only other evidence before the Court therefore is the evidence of the first Plaintiff. He has not called his neighbours with whom he has boundaries or any other of his tenants on the land, apart from the unreliable Akezuwa.

10

Before the Plaintiffs can get a declaration of title in their favour they must prove acts of ownership numerous and positive enough and of sufficient duration to warrant the inference that they are exclusive owners:

EKPO v. ITA XI N.L.R. 68.

From the evidence before me all I can say is that both parties are in occupation of portions of the area in dispute and farm the area. The evidence by the first Plaintiff alone has not satisfied me that his people are exclusive owners of the land in dispute or that the Defendants or some of them were his tenants or trespassers.

20

The Plaintiffs having failed to discharge to my satisfaction the onus placed on them, I dismiss the claim with costs assessed at 20 guineas.

(Sgd.) Charles Onyeama,
Acting Judge.

30

In the Federal
Supreme Court.

No.18.

Notice and
Grounds of
Appeal.

9th May, 1956.

No. 18.

NOTICE AND GROUNDS OF APPEAL

FEDERAL SUPREME COURT

NOTICE OF APPEAL

W/82/1955

BETWEEN:- 1. Olisedozi Nwokeleke
2. Okolafor Anibema
3. Oyem Ebinum
(For themselves and on
behalf of the people
of Iselegu)

Plaintiffs

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- and -

- 10
- 1. Osele (m) of Onicha)
 - 2. Ugbe (m))
 - 3. Oseademe (m))
 - 4. Achi (m))
 - 5. Onili (m))
 - 6. Enesolu (m))
 - 7. Oyemike (m))
 - 8. Onyeidu (m))
 - 9. Olo (m))
 - 20 10. Ofiwe (m))
 - 11. Onyeugu (m))
- (For themselves and on
behalf of the people
of Onicha Ibabu))
- Defendants

In the Federal
Supreme Court.

No.18.

Notice and
Grounds of
Appeal.

9th May, 1956
- continued.

20 TAKE NOTICE that the Plaintiffs being dis-
satisfied with the decision of the Warri High Court
contained in the judgment of Mr. Justice Charles
Onyeama dated the 30th day of April, 1956 do here-
by appeal to the Federal Supreme Court upon the
grounds set out in paragraph 3 and will at the
hearing of the appeal seek the relief set out in
paragraph 4.

And the Appellants further state that the
names and addresses of the persons directly affec-
ted by the appeal are those set out in paragraph 5.

1. GROUND OF APPEAL

Misdirection: The learned trial Judge mis-
directed himself by rejecting by findings of fact
in W/16/53 when he held as follows:-

- 30 (a) "It is not open to the Plaintiffs to im-
port into this case, evidence given be-
fore another judge by witnesses who have
not testified before me; nor can it be
right that I should be bound, at first
instance by findings of fact by another
judge based on his impressions of the
credibility of witnesses who are not be-
fore me".
- (b) "I therefore hold that the Plaintiffs
cannot rely on the findings of fact by
the learned judge in the 1953 case as
establishing any more than that the then
Plaintiffs had not proved their claim to
title".

2. Non-Direction: The learned trial judge failed
to direct his mind to the effect of the judgment on

In the Federal Supreme Court.

No.18.

Notice and Grounds of Appeal.

9th May, 1956
- continued.

appeal in W/16/53 as he confined himself to W/18/53 when he held as follows:-

"I hold that the effect of allowing the appeal in Suit W/18/53 was to wipe away the findings of fact and decisions on the law by the Court of first instance".

3. Error in law: That the learned trial Judge erred in law in holding in effect that all the issues of fact conclusively settled in Suit W/16/53 should be reagitated.

10

The decision is unreasonable and unwarrantable having regard to the weight of evidence.

4. Relief sought from the Federal Supreme Court. That the said decision be set aside and judgment entered for the Plaintiffs for unencumbered entitle, possession and injunction.

5. Persons directly affected by the appeal:

1. Olisedozi Nwokeleke c/o Afor Native	} Court Afor.	} <u>Plaintiffs</u>	
2. Okolafor Aniboma			do.
3. Oyem Ebinum			do.

20

1. Osele (m) of Onicha c/o Onicha	} Native Court	} <u>Defendants</u>	
2. Ugbe (m)			do.
3. Osademe (m)			do.
4. Achi (m)			do.
5. Onili (m)			do.
6. Emesolu (m)			do.
7. Oyemike (m)			do.
8. Onyeidu (m)			do.
9. Olo (m)			do.
10. Ofiwe (m)			do.
11. Onyeugu (m)			do.

30

Dated at Oniticha this 9th day of May 1956
(Sgd.) Chuba Ikpeazu
Appellants' Solicitor.

No.19.

Revised Grounds of Appeal.

3rd April, 1957.

No. 19.

REVISED GROUNDS OF APPEAL.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT IBADAN

(Title as No. 18)

That the learned trial judge misdirected himself and erred in law in that he:-

40

- (a) Held that the effect of the judgment on appeal in Suit W/18/53 was to wipe away the findings of fact by the Court of first instance, and failed to give effect to the principle that the judgment of the Court of first instance was replaced by the appellate decision.
 - (b) Failed to direct himself as to the findings of fact confirmed by and imported into the appellate decision in Suit W/18/53, and in particular failed to direct himself as to the findings of fact of the Appellate Court that the Plaintiffs-Respondents in that case (the Plaintiffs-Appellants in this Appeal) are owners of the land known as Mbubo-Agbala.
 - (c) Held at all the issue of fact conclusively settled in Suit W/18/53 should be regitated and reconsidered by him.
 - (d) Failed to give any or any proper consideration to the effect of the decision of the Appellate Court in Suit W/16/53.
2. That the decision of the learned trial judge is unreasonable and unwarrantable having regard to the weight of the evidence.

DATED the 3rd day of April, 1957.

(Sgd.) Chuba Ikpeazu
Appellants' Solicitor.

In the Federal Supreme Court.

No.19.

Revised Grounds of Appeal.

3rd April, 1957
- continued.

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No. 20.

COUNSEL'S ARGUMENTS

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

WEDNESDAY THE 12th DAY OF FEBRUARY, 1958

BEFORE THEIR LORDSHIPS

MARIE C.B.C. MAGEON DE LESTANG,	AG. FEDERAL CHIEF JUSTICE
MYLES JOHN ABBOTT,	FEDERAL JUSTICE.
SIR JAMES HENLEY COUSSEY,	AG. FEDERAL JUSTICE

FSC. 17/1957

O. NWONNLEKE & 2 OTHERS etc.

Appellants

Vs.

OSELE & 10 OTHERS OF ONICHA etc.

Respondents

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No.20.

Counsel's Arguments.

12th February, 1958.

In the Federal
Supreme Court.

No.2Q.

Counsel's
Arguments.

12th February,
1958

- continued.

Ikpeazu for
Plaintiffs.

MR. CHUBA IKPEAZU for Appellants.

MR. H.U. KAINÉ for Respondents.

IKPEAZU Applies for leave to file additional
grounds of appeal.

KAINÉ No objection.

Order Leave to file and argue additional
grounds of appeal granted.

IKPEAZU. Plaintiffs rested claim on ownership
from time immemorial. Alleged Defendants custom-
ary tenants. Defendants also claimed ownership. 10
Denied being placed on the land by Plaintiffs.
Issue joined on ownership, possession and trespass.
Judgment p.26. Plaintiffs rely on Exhibits G and
E. Accepted parties on the same. P.31 Line 28 -
P.33 line 6 -- Judge misapplied the law. 2 WACA
p.24. Plaintiffs in 18/1953 put their title in
issue inasmuch that they claimed damages for tres-
pass and injunction. Exhibit G p. Exhibit G
p. In case No.16/53 Respondents claimed title,
damages, injunction against the Appellants. 20

In case No.18/1953 Respondents claimed damages for
trespass and injunction.

Case 16/53 was dismissed.

In case 18/53 he gave judgment for Appellants.

An appeal to W.A.C.A. (Exhibit E) it upheld the
dismissal of action in Suit 16/53. He reversed
judgment in 18/53 on the ground that Respondents
were tenants of Appellants and not trespassers.

IKPEAZU stopped

Kaine for
Defendants.

KAINÉ: P.60 - I consider that the Respondents are
estopped from avering ownership as against Appell-
ants. Still Appellants had to establish their
title and they failed to do so. I did not submit
in the appeal in 18/1953 that Respondents were
tenants of Appellants. I argued that the trial
judge had made two contradictory findings viz that
we were tenants and trespassers. So long as the
Appellants have come to court and claimed declara-
tion of title they must prove their title conclu- 40
sively. The court must therefore look at the
evidence led by the Appellants in the present ac-
tion. The only witness has contradicted himself
- great deal.

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IKPEAZU: Jus Tertii was not pleaded. Ask for declaration of title, injunction, damages for forfeiture.

In the Federal Supreme Court.

No.20.

C. A. V.

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

Counsel's Arguments.

12th February, 1958

- continued.

Ikpeazu in reply for Plaintiffs.

No. 21.

No.21.

JUDGMENT.

Judgment.

IN THE FEDERAL SUPREME COURT OF NIGERIA

24th February, 1958.

HOLDEN AT LAGOS

MONDAY THE 24th DAY OF FEBRUARY, 1958

BEFORE THEIR LORDSHIPS

M.C. NAGEON DE LESTANG AG. CHIEF JUSTICE OF THE FEDERATION

MYLES JOHN ABBOTT FEDERAL JUSTICE

SIR HENLEY COUSSEY AG. FEDERAL JUSTICE

F.S.C. 17/57

BETWEEN:- 1. Olisedozie Nwokeleke)
2. Okolafor Anibema)
3. Oyem Ebimum)
(For themselves and)
on behalf of the)
people of Iselegu))

Plaintiffs/
Appellants

- and -

1. Osele (m))
2. Ugbe (m))
3. Osademe (m))
4. Achi (m))
5. Onili (m))
6. Emesolu (m))
7. Oyemike (m))
8. Onyeidu (m))
9. Olo (m))
10. Ofiwe (m))
11. Onyeugu (m))
(For themselves and)
on behalf of the)
people of Onicha)
Ibabu)

Defendants/
Respondents.

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In the Federal
Supreme Court.

No.21.

Judgment.

24th February,
1958

- continued.

JUDGMENT.

It is convenient for reasons which hereafter appear, to refer, in giving judgment on this appeal, to the parties by the name of their respective villages, Iselegu and Ibabu.

The Iselegu people were the Plaintiffs in the Court below and are the Appellants here. The Ibabu people were the Defendants in the Court below and are the Respondents here.

The Iselegus seek to have reversed a judgment given in the Warri Division of the Western Region High Court (Onyeama J.) in favour of the Ibabus whereby the claim of the Iselegus for a declaration of title, damages for trespass, injunction, and forfeiture, against three of the Ibabus, were dismissed. In dismissing these claims the learned Judge said:- 10

"From the evidence before me all I can say is that both parties are in occupation of portions of the area in dispute and farm the area. The evidence by the first Plaintiff alone has not satisfied me that his people are exclusive owners of the land in dispute or that the Defendants or some of them were his tenants, or trespassers. 20

The Plaintiffs having failed to discharge to my satisfaction the onus placed on them, I dismiss the claim with costs assessed at 20 guineas".

The learned trial judge does not seem to have dealt specifically with the claim for forfeiture and to have only touched upon the claims for trespass and injunction. I deal with these heads of claim later in this judgment. 30

It is necessary first to detail some of the history of previous litigation between the parties and to begin by saying that it is common ground that the land and parties concerned in the earlier lawsuits are the same as those concerned in this appeal. 40

The Iselegus began the legal battle in November, 1952, alleging trespass and claiming damages therefor and an injunction. The Ibabus retorted in January, 1953, by claiming title to the land, damages for trespass, and an injunction. Each of the two actions originated in a different Native

Court, and was later transferred to the Warri Division of the former Supreme Court of Nigeria. There the action by the Ibabus became suit No. W/16/53 and that of the Iselegus suit No. W/18/53, these two suits being later consolidated.

In the Federal
Supreme Court.

No. 21.

Judgment.

24th February,
1958

- continued.

10 At the trial of the consolidated suits Mbanefo J. dismissed the claims of the Ibabus and awarded the Iselegus damages for trespass and an injunction. The Ibabus appealed to the West African Court of Appeal. That Court, on 15th November, 1954, dismissed the appeal against the rejection by Mbanefo, J., of the Ibabus' claims, but allowed their appeal against the award to the Iselegus. The Appeal Court took the view that Mbanefo J. had misdirected himself in awarding damages for trespass and an injunction against the Ibabus, and the relative portion of the Appeal Court judgment reads as follows:-

20 "Mr. Kaine was, however, on firmer ground as regards that suit W/18/53 in which his clients were the Defendants. The two grounds of appeal relating to this part of the case were based on the submission that the learned trial Judge was wrong in law in granting damages and an injunction against the Defendants/Appellants in suit W/18/53 inasmuch as the Defendants/Appellants were tenants and not trespassers.

30 Mr. Kaine drew attention to the evidence given by Olisedosi Ogu the 3rd witness for the Iselegu people. This witness stated that the Iselegu people had, as tenants, some Ibabu Onicha persons, including Onyegu and Ofiwe who are the Defendants in W/18/53.

40 Mr. Kaine also pointed out the learned trial Judge had expressed himself as 'satisfied' that the land in dispute was farmed extensively by Iselegu people and that if any Ibabu farmed it before this dispute began, he did so with the permission of Iselegu.

I am of opinion, after giving consideration to Mr. Ikpeazu's submissions, that the appeal in W/18/53 must succeed.

The learned Judge's findings regarding the position of the Ibabu Onicha farmers on the land in dispute are not consonant with the decision that they were trespassers. What

In the Federal
Supreme Court.

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is more, there are the very important facts that the alleged trespass occurred in 1941 i.e. about eleven years before action brought, and that the 3rd witness for the Iselegu people stated that after the 1941 trouble between his people and Ibabu Onicha tenants, the latter made amends and were allowed to return to the land where they stayed and paid tribute until trouble started again some three years before the hearing of the case when the tenants failed to pay tribute for two years in succession and the Iselegu landlords took the matter to Court (i.e. claimed damages for trespass and an injunction).

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Mr. Ikpeazu made the submission that the Ibabu Onicha tenants had denied their landlords' titles and that this justifies the claim in trespass.

I need only point out that the claim of title was made in 1953 after the Iselegus had started the proceedings which became Suit W/18/53. At any rate, the Iselegus founded their action on a trespass dating back to 1941 and this averment was never amended".

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Prior to the beginning of the present proceedings, therefore, there was (and still is) subsisting a judgment of the West African Court of Appeal which decided (a) that the Ibabus were not the owners of the land in dispute, and (b) that, in their presence on the land, they were not trespassers.

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In the face and in spite of this judgment the Ibabus averred, in paragraph 10 of their Defence filed in the present action, that they were the owners of the land. That averment should have been struck out by the Court below and in any case the Ibabus are now (as then), by the judgment of the West African Court of Appeal, precluded from averring that they own the land.

The second part of the judgment of the West African Court of Appeal decided that the Ibabus were not trespassers. The first part held that they were not the owners of the land. If they were neither trespassers nor owners what else could they be but tenants? In my opinion, if A is found on Blackacre, he is there either as owner, or as a trespasser, or as a tenant (in which term I include

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persons on land by the leave or licence of the owner whether on payment of rent (in kind or in money) or not). There is no fourth alternative.

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10 That the Ibabus regarded themselves as tenants seems clear both from the second of their additional grounds of appeal to the West African Court of Appeal, and from the standpoint adopted by them before that Court, and epitomised in that part of the judgment of that Court which I have quoted above. The second additional ground of appeal reads:- "That the learned trial Judge was wrong in law in granting claim for damages of (sic) trespass when the Plaintiff's" (Iselegus) "evidence shows that the Respondents" (Ibabus) "were tenants and, therefore, that their entry was lawful" And, indeed, it was mainly on that ground of appeal that they succeeded.

Mr. Ikpeazu again appeared for the Iselegus here and Mr. Kaine for the Ibabus.

20 A number of grounds of appeal was originally filed and leave was granted to file and argue additional grounds.

Mr. Ikpeazu argued all the original grounds and the additional grounds together.

Onyeama J. in his judgment quoted from Spencer Bower on Res Judicata (page 34, paragraph 45) as follows.-

30 "When a judicial tribunal of competent original jurisdiction has granted or refused the relief claimed in an action or other proceeding, and an appellate tribunal reverses the judgment or order of the Court of first instance and either refuses the relief granted below, or grants the relief refused below, as the case may be, the former decision till then conclusive as such, disappears altogether, and is replaced by the appellate decision, which thenceforth holds the field, to the exclusion of any other, as the res judicata between the parties".

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The learned Judge also quoted an extract from the judgment in an Indian case, Nilvaru v. Nilvaru (1851) I.L.R.6 Bom 110 as follows:-

"When the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be res

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judicata and becomes res sub judice and if the appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of Appeal".

Mr. Ikpeazu contends that the learned trial Judge erred in the application of these authorities (the correctness whereof cannot be contested) to this present case. Counsel submits that the reversal by the West African Court of Appeal of Mbanefo J's decision in Suit W/18/53 (the cross-claim by the Iselegus) not only did not wipe out the findings of fact in that suit, but, in fact, reinforced them. It seems to me that Mr. Ikpeazu is on solid ground in that submission. A careful perusal of the judgment of the West African Court of Appeal shows that that Court found difficulty in understanding why Mbanefo J. awarded damages for trespass to the Iselegus in respect of the entry on and occupation of the land by the Ibabus when he had come to the conclusion that the Ibabus were on the land by the permission of the Iselegus. That was the ratio decidendi of that part of the Appeal Court's judgment which reversed Mbanefo J's. decision in Suit W/18/53.

Therefore, it seems to me that Mr. Ikpeazu's submission is correct.

At the point, Mr. Ikpeazu was stopped in his argument and Mr. Kaine was called upon. He began by pointing out, correctly, that, in the 1953 litigation, the Iselegus made no claim for title and, therefore, naturally, it could not have been awarded to them in those proceedings.

Mr. Kaine next submitted that, in the present action, Onyeama, J. had correctly held that the Iselegus had not discharged the onus cast on them in their claim for title, and particular emphasis was laid upon the rejection by Onyeama J. of the evidence before him of a witness in the 1953 proceedings.

I am in agreement with Mr. Kaine, that, in the absence of the evidence provided by the 1953 litigation, and had this been the first attempt of either party to obtain a declaration of title to the land, the evidence adduced by the Iselegus before Onyeama J. might well have failed to discharge the onus lying upon them as claimants to title.

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But when one takes the 1953 decisions into account, the position is greatly changed. Concurrent findings by two Courts, that the Ibabus are tenants of the Iselegus, is very cogent evidence indeed of the ownership of the latter. A very large part of the onus is, in my view, discharged by these decisions and such additional evidence as the Iselegus desired to adduce need have been little (if anything) more than formal.

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10 Mr. Kaine found himself in a difficulty when he was asked how the Ibabus occupation of the land could be described. He had to concede, of course, that they were not owners, and was most unwilling to say they were tenants of the Iselegus (although, as above stated, he based his successful appeal in Suit W/18/53 on the foundation that they were tenants): finally he said "We may be trespassers now" though I doubt if he fully realised the implications of that statement and it would, perhaps, not
20 be right to hold him to it.

In my judgment, the Iselegus in the present action did discharge the onus cast upon them as Claimants to title, and, so far as the claim for declaration of title is concerned, I would allow this appeal, set aside the judgment of the Court below, and award to the Appellants (the Iselegus) a declaration of title to the area verged yellow on the plan Exhibit "B" filed in this case. I would dismiss this appeal so far as the rejection
30 of the claims for damages for trespass and injunction are concerned.

There is insufficient material in the record of appeal to enable this Court to adjudicate on the claim for forfeiture and indeed this question has not been argued here, partly, no doubt, because Mr. Ikpeazu was stopped in the middle of his argument. I would, therefore, remit the case to the Court below for claim to forfeiture to be fully investigated and decided.

40 One other point needs to be mentioned. Mr. Kaine, in trying to extricate himself from the dilemma of having to specify the nature of the Ibabus occupation of the land, said, also: "We may be tenants now, but not of the Iselegus". This was a reference to certain evidence elicited in cross-examination of one of the Iselegus' witnesses in the Court below, who admitted that certain persons known as Umuokpala people were receiving

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rents from firms established on the land. The witness denied that the Umuokpala people owned the land. The Ibabus never pleaded ownership by the Umuokpala people so, strictly speaking, this line of cross-examination should not have been allowed, nor should the evidence-in-chief, from witnesses of the Ibabus seeking to prove ownership in the Umuokpala people, have been admitted. The learned trial Judge, however, in his judgment, put the matter right by disregarding this "red herring" entirely, and was, in my view, quite correct to do so. If the Ibabus wanted to counter the Iselegus' claim to title by alleging that a third party owned the land, they should have so pleaded, in order that the Iselegus could have asked to join the third party as the co-defendants.

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The Appellants have succeeded on the main issue in this appeal and I would, therefore, award them costs of this appeal assessed at £105 and costs of the trial assessed at £52.10.0d.

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(Sgd.) M. J. Abbott,
FEDERAL JUSTICE.

I concur (Sgd.) M.C.Nageon de Lestang,
AG. FEDERAL CHIEF JUSTICE

I concur (Sgd.) J.Henley Coussey
AG. FEDERAL JUSTICE.

Mr. Chuba Ikpeazu for Appellants.

Mr. H.U.Kaine for Respondents.

No.22.

Formal Order on Judgment.

24th February, 1958.

No. 22.

FORMAL ORDER ON JUDGMENT

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IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS.

Suit No.W/82/1955
F.S.C. 17/1957.

ON APPEAL from the JUDGMENT of the HIGH COURT of the WARRI JUDICIAL DIVISION.

BETWEEN:- 1. Olisedozie Nwokeleke
2. Okolafor Anibema
3. Oyem Ebimum
(For themselves and on behalf of the people of Iselegu)

Appellants

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(L.S.)

- and -

1. Osele 2. Ugbe 3. Osademe
4. Achi 5. Onili 6. Enesolu
7. Oyemike 8. Onyeidu 9. Olu
10. Ofiwe 11. Onyeugu
(For themselves and on behalf of
the people of Onicha Ibabu)

Respondents

(Sgd.) M.C. Nageon de Lestang,
ACTING CHIEF JUSTICE
OF THE FEDERATION.

In the Federal
Supreme Court.

No.22.

Formal Order
on Judgment.

24th February,
1958

- continued.

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MONDAY THE 24th day of FEBRUARY, 1958.

UPON READING the Record of Appeal herein and
after hearing Mr. Chuba Ikpeazu of Counsel for the
Appellants and Mr. H.U. Kaine of Counsel for the
Respondents:

IT IS ORDERED that the appeal is allowed so
far as the Appellants' claim for declaration of
title is concerned and that judgment be entered
for the Appellants awarding them a declaration of
title to the land verged yellow on the plan Exhibit
'B' filed in this case:

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IT IS FURTHER ORDERED that the appeal be dis-
missed so far as the Appellants' claims for tres-
pass and injunction are concerned, that the Appel-
lants' claim for forfeiture be remitted to the
Court below for investigation and decision:

AND that the Respondents do pay to the Appel-
lants costs of this appeal fixed at £105 and costs
of the trial fixed at £52.10.0d.

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

No. 23.

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOIDEN AT LAGOS.

Suit No.W/82/1955
F.S.C. 17/1957.

APPLICATION for an ORDER for FINAL LEAVE
TO APPEAL TO HER MAJESTY'S PRIVY COUNCIL.

No.23.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

10th November,
1958.

In the Federal
Supreme Court.

No.23.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

10th November,
1958

- continued.

BETWEEN:- Osele and 10 Others for
themselves and on behalf
of the people of Onicha
Ibabu

(L.S.)

Applicants

- and -

1. Olisedozie Nwokeleke
2. Okolafor Anibema
3. Oyen Ebimum

For themselves and on
behalf of the people of
Iselegu.

Respondents

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(Sgd.) A. Ade Ademola
CHIEF JUSTICE OF THE
FEDERATION.

MONDAY the 10th day of NOVEMBER, 1958

UPON READING the application herein and the
Affidavit sworn to on the 30th day of August, 1958
filed on behalf of the applicants and after hear-
ing Mr. B.N. Onyekwere of Counsel for the Appli-
cants, the Respondents not being present or
represented:

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IT IS ORDERED that final leave to appeal to
Her Majesty's Privy Council be granted.

(Sgd.) C.O.M. Madarikan
CHIEF REGISTRAR.

In the
Privy Council.

No.24.

Order in
Council
restoring
Appeal.

26th February,
1962.

No. 24.

ORDER IN COUNCIL RESTORING APPEAL

(L.S.) AT THE COURT AT BUCKINGHAM PALACE

THE 26th day of FEBRUARY, 1962

PRESENT:

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THE QUEEN'S MOST EXCELLENT MAJESTY

LORD MILLS (ACTING LORD
PRESIDENT)

MR. SECRETARY PROFUMO

SIR DAVID ECCLES

MR. BOYD-CARPENTER

MR. BOWDEN

SIR RICHARD NUGENT

SIR ROLAND ROBINSON

WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 19th day of February 1962, in
the words following, viz:-

"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 13th day of October 1909 there was referred unto this Committee a humble Petition of (1) Osele (m) (2) Ugbe (m) (3) Osedeme (m) (4) Achi (m) (5) Onili (m) (6) Emesolu (m) (7) Oye-mike (m) (8) Onyeidu (m) (9) Olo (m) (10) Ofiwe (m) and (11) Onyeugu (m) all of Onicha (For themselves and on behalf of the people of Oni-cha-Ibabu) in the matter of an Appeal from the Federal Supreme Court of Nigeria between the Petitioners-Appellants-Defendants and (1) Olisedozie Nwokeleke (2) Okalafor Anibema and (3) Oyem Ebimum (For themselves and on behalf of the people of Iselegu) Respondents-Plaintiffs setting forth (amongst other matters): that the Petitioners pray that the Appeal to your Majesty in Council which has been dismissed for non-prosecution in default of an Appearance having been entered by them as required by the Judicial Committee Rules 1957 may be restored: that the Appeal is from a Judgment and Order of the Federal Supreme Court of Nigeria dated 24th February 1958 allowing in part an Appeal from the Judgment of the High Court of Nigeria (Warri Judicial Division holden at Warri) in favour of the Petitioners who were Defendants in the action whereby the claim made against them by the Respondents for (1) a declaration of title to certain land (2) £50 damages for trespass (3) an injunction and (4) forfeiture of the possession of tenancy of the ninth tenth and eleventh Petitioners was dismissed: that the Appellants obtained leave to appeal to Your Majesty in Council from the Judgment of the said Federal Supreme Court dated the 24th February 1958: that the Record of Proceedings was received in the Registry of the Privy Council on the 7th March 1960 and duly registered as Privy Council Appeal No.8 of 1960: that because of difficulties of communication and other circumstances therein set forth no Appearance was entered in the Appeal on behalf of the Appellants and on the 24th June 1960 the Appeal was dismissed for non-prosecution under Rule 34 of the Judicial Committee Rules 1957: And humbly praying your Majesty in Council that the Appeal may be restored:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council

In the
Privy Council

No.24.

Order in
Council
restoring
Appeal.

26th February,
1962

- continued.

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In the
Privy Council

No.24.

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Council
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Appeal.

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1962
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have taken the humble Petition into considera-
tion and having heard Counsel in support there-
of no one appearing at the Bar on behalf of the
Respondents Their Lordships do this day agree
humbly to report to Your Majesty as their opin-
ion that the Appeal ought to be restored but
that the Respondents be at liberty to apply for
this Order of Restoration to be revoked:

HER MAJESTY having taken the said Report in-
to consideration was pleased by and with the ad-
vice of Her Privy Council to approve thereof and 10
to order as it is hereby ordered that the same be
punctually observed obeyed and carried into execu-
tion.

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

W. G. AGNEW.

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E X H I B I T S

"D" - JUDGMENT OF MBANEFO J., IN CONSOLIDATED
SUITS W/16/53 and W/18/53

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IN THE SUPREME COURT OF NIGERIA

"D".

IN THE SUPREME COURT OF THE WARRI JUDICIAL
DIVISION
HOLDEN AT WARRI

Judgment of
Mbanefo J., in
Consolidated
Suits
W/16/53 and
W/18/53.

Before His Lordship Mr. Justice Louis Nwachukwu
Mbanefo, Puisne Judge

10th December,
1953.

10 THURSDAY THE 10th DAY OF DECEMBER, 1953.

Suit No.W/16/53)
Suit No.W/18/53) Consolidated.

1. Ojea (Okpara Uku of Ibabu Onicha)
2. Egutu
3. Ezeli Umuonu (joined by order of
Court dated 2/12/53)) Plaintiffs

Versus

20 1. Okeleke Okpara of Iselegu for
himself and Iselegu people)
2. Ekezue of Ezionun)
3. Chief Ojido of Ugri-Amai (joined
by Order of Court dated
5/5/53)) Defendants

and

Okpara Okeleke (m) of Iselegu for
himself and on behalf of the
late Dike's family and the
people of Iselegu) Plaintiff

Versus

30 1. Ofiwe (m) of Onicha at Iselegu)
2. Ilo (m) of Onicha at Iselegu)
3. Onye-Ugu of Onicha at Iselegu) Defendants

Idigbe for the Plaintiffs.

Ikpeazu for the Defendants.

J U D G M E N T

These two actions were by consent of the parties consolidated and tried together. Suit No. W/16/53 started with a summons issued in the Onicha Native Court and was transferred to this Court by

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an Order of the District Officer, Aboh Division dated the 6th of February, 1953. In it the Plaintiffs claim title to Odegbu land, £250 damages and injunction. The summons in the other Suit - W/18/53 - was issued in the Afor Native Court and by the same Order of the District Officer referred to above transferred to this Court for hearing and determination.

The first two Plaintiffs in W/16/53 are the two most senior elders in Ibabu Onicha a town in the Aboh Division of the Delta Province. In the Native Court summons as transferred to this Court they appear to be suing in their personal capacities. In their Statement of Claim they are described as suing for themselves and on behalf of the people of Ibabu Onicha and in paragraph 2 thereof it is stated that they sued in that capacity, a description and statement which the Defendants admit in their Statement of Defence (paragraph 1). Accordingly I allowed an amendment of the writ in order to bring out clearly the capacity in which they in fact sued. 10 20

The Defendant in W/16/53 is the Okpara-Uku (most senior elder) of Iselegu and is sued as representing the Iselegu people. The second Defendant is from Ezionu but residing at Iselegu and is sued in his personal capacity. After the case was transferred to this Court the 3rd Defendant representing Ugri-Amai applied to join as a Defendant as he stated that their land was included in the land claimed by the Plaintiffs. After pleadings and plans were filed it became clear that that was not so. The land claimed by Ugri-Amai is not within the area claimed in this action, and, although the Plaintiffs in their plan showed that portion as being Ibabu Onicha land, both parties are agreed that it is outside the area for which the Plaintiffs claim title in this case. Accordingly he was by consent of the parties dismissed from the case before hearing began. With elimination of the 3rd Defendant issue was joined between the Plaintiffs representing Ibabu Onicha and the 1st Defendant representing Iselegu with the 2nd Defendant claiming to be on the land as the tenant of the 1st Defendant. 30 40

In W/18/53 the Plaintiff representing Iselegu claims from the Defendants personally £130 damages and Injunction. The Defendants are admittedly natives of Ibabu Onicha and they allege that they

are on the land because it is the communal property of Ibabu-Onicha. The Plaintiffs in W/16/53 are referred to in the proceedings and in this judgment as the Plaintiffs, Ibabu-Onicha or Ibabu. The 1st Defendant in W/16/53 who is also the Plaintiff in W/18/53 is referred to as the Defendants or Iselegu. Each side filed a plan showing the area they claim. The Plaintiffs' plan is Exhibit "P1" and the Defendants' which covers a larger area is Exhibit "D1". They were made by different surveyors. At the request of the Court the Defendants' Surveyor superimposed Exhibit "P1" on Exhibit "D1" and it is shown thereon as the almost rectangular piece in the middle bordered in blue pencil. There is no doubt that the land which the Plaintiffs claim is included in the area which the Defendants claim as their own.

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The Plaintiffs call the land in dispute Odegbu and say that it was first founded and farmed by their ancestor Odimegwu at a time beyond human memory and that from that time they have farmed it till today; later they founded several settlements on the land. They say that about 12 years ago they placed the 2nd Defendant Akaezue to farm and showed him the site where his plantation stands extending as far as Chukwuma's plantation. The dispute arose because about three years ago they asked Akaezue to pay a nominal rent. The Defendants asked him not to pay and then claimed ownership of the land. The Plaintiffs further say that Iselegu own no land and that Iselegu town is on Umuokpala land given to Iselegu by Umuokpala.

The Defendants on the other hand say that the land belongs to them and that they call it Mbubu-Agbala (see Statement of Claim in W/18/53 paragraph 3). They say that they farm it and that they allowed some members of Plaintiffs' town to settle on it about 20 years ago and farm on payment of annual tributes in yams.

In support of the Plaintiffs' case the 3rd Plaintiff gave evidence. He described the boundaries of the land as set out in their plan Exhibit "P1". He said that the original ancestors of Ibabu came from Onicha-Oloru in Asaba Division. They migrated first to Nsukwa and from there to the present site of Ibabu town about two miles from the land in dispute. They have boundaries with Umuokpala on whose land Iselegu live and with Obikwere. Both Umuokpala and Obikwere belong to

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the Afor clan and Ibabu is a part of the Onicha clan. He said that some natives of Ibabu-Onicha went to the land in dispute about 40 years ago and founded the old Odegbu settlement shown in the north in Exhibit "P1". He said that they gave Akaezue where he made his palm plantation about 12 years ago and that he gave them kola nuts and tobacco in return. Later, after his palm plantation began to bear fruits about 4 years ago, they asked him to pay 10/- per annum. He agreed to pay but later changed his mind after the Defendants had told him not to. Chukwuma, according to him, was brought there by Akaezue, and he made a rubber plantation about the same time as Akaezue. Apart from the old Odegbu settlement other settlements were established about five years ago by other natives of Ibabu. He said that the three fishing ponds in the land belonged to Ibabu. In support of the 3rd Plaintiff's evidence the Plaintiffs called 8 other witnesses four of whom including the three Defendants in W/18/53 are natives of Ibabu who say that they live at Odegbu Old Settlement; one witness each from Obikwere and Umuokpala who gave evidence of boundaries, and two tenants from Utagba Ono who said that they were living in the new settlements shown immediately north of the area claimed in Exhibit "P1" but within the land claimed by the Defendants in Exhibit "D1".

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The Defendants called seven witnesses. One of them (Ajie Ugboma) is from Obodoigbo admittedly the first of the Afor towns to settle in that part of the world and whose head, the Ekpese, is said to have given the Afor towns respectively where they live. This old man, Ajie Ugboma, said that all the Afor towns settled by the river shown in Exhibit "D1" as Osimiri Iselegu and farmed the land behind them up to the "ATU" (i.e. the desert) shown to the north of Exhibit "D1". He said that the ATU formed the boundary between the Afor clan and the neighbouring clan of Ikilike. He named Iselegu as one of the seven towns of Afor, and said that they had their own land and were not living on the land of Umuokpala. This witness is about 75 years of age and I regard him as the most honest of all the witnesses called on both sides. He was ready to testify to what he knew and to confess his ignorance on matters outside his knowledge. The witness Uke Ojea comes from Obikwere and gave evidence that Obikwere and Iselegu have a

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common boundary. His evidence is in flat contradiction of the evidence of Oyem Okologume (7th Plaintiffs' Witness). As between the two I prefer the evidence of Uka Ojea. He spoke with an air of greater knowledge than Oyem Okologume. Apart from Olisadozi Ogu the other witnesses called by the Defendants including Akaezue and tenants of Iselegu.

10 I shall deal with the main evidence in the case under three heads: Traditional, Boundaries and User.

Traditional: I see no reason to disbelieve the Plaintiffs' story that their ancestors came from Onicha-Olona and Nsukwa; but, whether they came from there or not is to my mind immaterial in determining the ownership of the land in dispute. They claimed that their ancestors farmed from their town to the land in dispute and that was how they came to own it. The evidence is strong and I accept it that the Atu (desert) forms the boundary between Ikilike, on whose land Plaintiffs' principal witness Ezeadi Omumu admits Ibabu lives, and Afor, I find Ezeadi unimpressive when he tries to explain that although Ikilike gave them where they live, and where they farm they own where they farm because they were the first to farm it. Pressed under cross-examination he said that Ikilike told them to farm the land in dispute but added that they (Ikilike) were not the owners of it. It is strange that Ikilike would give them land to farm which they (Ikilike) did not own.

40 Peter Nwaka the Plaintiffs' witness from Umuokpala said that Iselegu were strangers to the Afor clan and that Umuokpala gave them where they live and supported that evidence by stating that the leases to U.A.C. and John Holts of the plots occupied by these firms in Iselegu town were given to them by Umuokpala. I have not the leases before me and I would not ordinarily accept oral testimony of witnesses as to who are the parties to them in the absence in evidence of the leases. It is however admitted by the Defendants' principal witness Olisadozi Ogu that the rents paid in respect of the plots are shared by Umuokpala and Iselegu. Whether the land where Iselegu live belongs to Umuokpala or Iselegu or to both of them I am not prepared to say. The fact is that Iselegu has been on the present site of their town for a long time and I am unable to accept Peter Nwaka's evidence of the boundary between Ibabu and Umuokpala.

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It seems to me that that boundary was invented for the purpose of this case. I accept the evidence of Ajie Ugboma (1st Defendants' Witness) and Uke Ojea (2nd Defendants' Witness) that Iselegu settled on their present site before Obikwere and that they are recognised as of the Afor clan.

Boundaries: As I have said I accept the evidence by the Defendants' witnesses that the boundary between the Afor clan and Ikilike is the Atu. I reject the Plaintiffs' evidence as to the boundary between them and Obikwere. The boundary they describe seems so unnatural and artificial that I am unable to accept it. Plaintiffs' southern boundary as shown on Exhibit "Pl" is too close to Iselegu town to be acceptable. Ajie Ugboma said that all Afor towns face the river and use the land right up to the Atu for farming. He said that every town has its own Atu which forms the boundary between it and Ikilike. The Atu is a more likely boundary than what the Plaintiffs and their witnesses allege is the boundary. 10 20

User: A strong evidence of this is the old Odegbu settlement which the Plaintiffs say was founded about 40 years ago. Akaezue said it was started in 1928 (25 years ago) a year after he retired from service as a Police constable. The Defendants say that it was started by Biani, Oloku, Ilo, Ofiwa (with Onyegu joining them not long afterwards) all natives of Ibabu with their permission. The last three are the Defendants in W/18/53. The Plaintiffs deny that Biani and Oloku ever lived there. Ilo (5th Plaintiffs' witness) and Onyegu (6th Plaintiffs' witness) say they have been there 17 years and Ofiwa 14 years. It is not disputed that the settlement was a farm settlement and that it is inhabited by Ibabu people. Close to the settlement is the palm plantation of Akaezue and a little further away the rubber plantation of Chukwuma. Akaezue said that he started his plantation 14 years ago and that before that he had farmed the land. He said that his father farmed in the area before him and that when he died in 1927 he took over farming on the land. He farmed there until he began his palm plantation 14 years ago. Both of them said they obtained permission from Iselegu just as Akaezue's father did before he died. Both Akaezue and Chukwuma live in Iselegu. I accept their evidence that they were placed on the land by Iselegu. 30 40

The Defendants put in evidence copy of the 50

record of the Afor Native Court Case No.23/41 between Dike of Iselegu as complainant and Oloku and Biani as the accused. It was a criminal case in which Dike charged Oloku and Biani for rooting out his yams and keeping juju in his farm. The Court found that the land where the accused placed the juju belonged to Dike and fined the accused £5 each or 3 months I.H.L. in default of payment. The case makes no reference to any land by name. The Defendants say that it is in respect of a portion of the land in dispute. In their plan Exhibit "D1" they showed the site of the area in dispute in that case as close to the Atu. Olisadozi's evidence describing the plot of land on which the case took place is not convincing. Consequently I find the case Exhibit "D2" is not helpful. I am satisfied that Biani and Oloku lived in the settlement shown on the Plaintiffs' plan as old Odegbu settlement and that they settled there with the permission of Iselegu. I find also that the other Ibabu people who live at the settlement including Ofiwa, Ilo and Onyegu were placed there by Iselegu. The other settlements including Ugu camp (Exhibit "P1") are of recent origin. I am satisfied and do find that they were all started since the dispute began. I am satisfied that the land in dispute was farmed extensively by Iselegu people and that if any Ibabu farmed it before this dispute began he did so with the permission of Iselegu. I find that the Plaintiffs' claim in W/16/53 fails and is dismissed with costs and I find for the Plaintiffs (Iselegu) in W/18/53 and award £5 damages against each Defendant. The Plaintiffs in W/18/53 will have an injunction against the Defendants.

Costs in W/16/53 ... 25 guineas.

Costs in W/18/53 ... 60 guineas.

(Sgd.) L.N. Mbanefo
 PUISNE JUDGE.

40 Certified true copy,
 (Sgd.) A. Etim
 Registrar,
 Supreme Court,
 Warri.

Exhibits
 Plaintiffs'
 Exhibits.

"D".

Judgment of
 Mbanefo J., in
 Consolidated
 Suits
 W/16/53 and
 W/18/53.

10th December,
 1953

- continued.

Exhibits
Plaintiffs'
Exhibits.

"E" - JUDGMENT OF WEST AFRICAN COURT OF APPEAL
IN SUITS W/16/53 and W/18/53

IN THE WEST AFRICAN COURT OF APPEAL
HOLDEN AT LAGOS.

Judgment of
West African
Court of
Appeal in Suits
W/16/53 and
W/18/53.
15th November,
1954.

MONDAY THE 15th DAY OF NOVEMBER, 1954
BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON	PRESIDENT	
JOSEPH HENRI MAXIME DE COMARMOND	AG: CHIEF JUSTICE NIGERIA	
SIR JAMES HENLEY COUSSEY	JUSTICE OF APPEAL	10
		W.A.C.A. 168/1954.

1. Ojea (Okpara Uku of Ibabu Onicha)	} Plaintiffs/ Appellants
2. Eguṭu	
3. Ezeli Nmuonu (joined by order of Court dated 2/12/53)	

Versus

1. Okeleke Okpara of Iselegu for himself and Iselegu people	} Defendants/ Respondents	20
2. Ekezio of Ezionum		
3. Chief Ojido of Ugri-Amai (joined by Order of Court dated 5/5/53)		

and

Okpara Okereke (m) of Iselegu for himself and on behalf of late Dike's family and the people of Iselegu	} Plaintiff/ Respondent
--	----------------------------

Versus

1. Ofiwe (m) of Onicha at Iselegu	} Defendants/ Appellants.	30
2. Ilo (m) of Onicha at Iselegu		
3. Onye-Ugu of Onicha of Iselegu		

J U D G M E N T

DE COMARMOND, AG. C.J. This is an appeal from a decision of Mbanefo, J., given at Warri, in the Warri Judicial Division, in two suits (Nos.W/16/53 and W/18/53). The two suits were consolidated by consent of the parties before the hearing of the cases began.

Suit No.W/16/53 originated in the Onicha Na-
tive Court where it was numbered No.1/53. It was
transferred to the Supreme Court, Warri. After the
transfer, a third Defendant was added but he later
was allowed to withdraw.

The Plaintiffs in Suit W/16/53 were Ojea and Egutu (Okpara Ukus of Ibabu Onicha) suing for themselves as representatives of the people of Ibabu Onicha. The Defendants were Okeleke (Okpara of Iselegu) and one Ekezie; Defendant Okel-
eke was also sued in his capacity of representative of the Iselegu people. Okpara-Uku means senior elder.

10 The summons was issued by the Native Court on the 16th January, 1953, and set out claims for a declaration of title against the 1st Defendant to a piece of land known as Odegbu, for damages against both Defendants for trespass upon the said land, and for an injunction restraining the Defendants, their servants or agents from further trespassing.

According to the summons, the cause of action arose on the 16th January, 1953.

20 The other Suit i.e. No.W/18/53 originated in the Afor Native Court. There were, in fact, three separate suits in the Native Court by Okpara Okereke of Iselegu on his own behalf and on behalf of the late Dike's family and the people of Iselegu. These three suits were begun in November, 1952, against these individual defendants respectively. Three suits were transferred to the Supreme Court as if they were one suit and the suit number W/18/53 was given to them. The position was regularised before the trial began, by
30 striking out two of the original suits and grouping the three Defendants together.

The cause of action in Suit W/18/53 deserves special mention; it is a trespass committed in or about the year 1941 on to the land called Nbudu Agbela. Special and general damages were claimed for the trespass and also an injunction. The three Defendants belong to Ibabu Onicha and they averred that the land is the communal property of the Ibabu Onicha people.

40 If one bears in mind that suits in Native Courts are often brought by or against individuals who, in fact, are intended to represent the community to which they belong, the position in the two suits tried by Mbanefo, J., may be described as being between the Iselegu people and the Ibabu Onicha people. The former started proceedings in November, 1952, alleging a trespass by the Ibabu Onicha people in 1941 on Nbudu-Agbela land. The Ibabu Onicha people retorted in January, 1953, by claiming

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Exhibits.

"E".

Judgment of
West African
Court of
Appeal in Suits
W/16/53 and
W/18/53.

15th November,
1954

- continued.

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"E".

Judgment of
West African
Court of
Appeal in Suits
W/16/53 and
W/18/53.

15th November,
1954

- continued.

title to the land called Odegbu, damages for trespass thereon, and an injunction.

At the trial it was ascertained from the plans produced by the parties, that the so-called Odegbu land is a piece of land forming part of the so-called Ndubu-Agbela land.

The learned trial Judge has set out very clearly in his judgment why he reached the conclusion that the Ibabu Onicha people had not established that they were the owners of the piece of land called Odegbu and that, the Iselegu people were the owners thereof and had allowed some Ibabu Onicha people, including the Defendants in Suit W/18/53, to farm and reside thereon.

The learned trial Judge having found as above, dismissed the claims of the Ibabu Onicha people and gave judgment in favour of the Iselegu people (Plaintiffs in W/18/53) for £5 damages against each of the three Defendants. An injunction was also granted.

The Ibabu Onicha people have appealed and Mr. Kaine has appeared for them, while Mr. Ikpeazu represented the Iselegu people.

Mr. Kaine argued very persuasively against the dismissal of his clients' claim for a declaration of title. Some of the points made by him might have convinced a trial Judge but, on appeal, Mr. Kaine's task was difficult because he had to show that the learned trial Judge's findings were not borne out by the evidence, or were unreasonable. This, Mr. Kaine, has failed to do.

I have carefully scrutinised the judgment in the light of Mr. Kaine's submissions and I am satisfied that the evidence which the trial Judge accepted as being true amply justifies his findings on the question of title. In other words, I am of opinion that the Plaintiffs' appeal in respect of Suit W/16/53 must fail.

Mr. Kaine, was, however, on firmer ground as regards the suit W/18/53 in which his clients were the Defendants. The two grounds of appeal relating to this part of the case were based on the submission that the learned trial Judge was wrong in law in granting damages and an injunction against the Defendant-Appellants in Suit W/18/53 inasmuch as the Defendants-Appellants were tenants and not trespassers.

Mr. Kaine drew attention to the evidence given by Olisadosi Ogu the 3rd witness for the Iselegu people. This witness stated that the Iselegu

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people had, as tenants, some Ibabu Onicha persons, including Onye-Ugu and Ofiwe who are the Defendants in W/18/53.

Mr. Faine also pointed out the learned trial Judge had expressed himself as "satisfied that the land in dispute was farmed extensively by Iselegu people and that if any Ibabu farmed it before this dispute began, he did so with the permission of Iselegu".

10 I am of opinion, after giving consideration to Mr. Ikpeazu's submissions that the appeal in W/18/53 must succeed.

20 The learned Judge's findings regarding the position of the Ibabu Onicha farmers on the land in dispute are not consonant with the decision that they were trespassers. What is more, there are the very important facts that the alleged trespass occurred in 1941, i.e. about eleven years before action brought, and that the 3rd witness for the Iselegu people stated that after the 1941 trouble between his people and the Ibabu Onicha tenants, the latter made amends and were allowed to return to the land where they stayed and paid tribute until trouble started again some three years before the hearing of the case when the tenants failed to pay tribute for two years in succession and the Iselegu landlords took the matter to Court (i.e. claimed damages for trespass and an injunction).

30 Mr. Ikpeazu made the submission that the Ibabu Onicha tenants had denied their landlords' titles and that this justifies the claim in trespass.

I need only point out that the claim of title was made in 1953 after the Iselegus had started the proceedings which became Suit W/18/53. At any rate, the Iselegus founded their action on a trespass dating back to 1941 and this averment was never amended.

40 I would therefore allow the appeal in respect of Suit W/18/53.

The decision of the Court below dismissing the claims in Suit W/16/53 with 25 guineas costs is upheld: the decision of the said Court awarding damages, granting an injunction and costs in Suit W/18/53 is set aside with 25 guineas costs to the Defendants in the said Suit W/18/53.

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Plaintiffs'
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"E".

Judgment of
West African
Court of
Appeal in Suits
W/16/53 and
W/18/53.

15th November,
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"E".

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West African
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- continued.

In view of the fact that the Appellant has succeeded on part of the appeal only, I would confine the costs allowed to them to their out-of-pocket expenses, i.e. £31.8s. (Thirty one pounds eight shillings).

(Sgd.) M. de Comarmond, Ag.C.J.
I concur (Sgd.) S. Foster Sutton, P.
I concur (Sgd.) J. Henley Coussey, J.A.

Certified true copy
(Sgd.) S.A. Samuel
Assistant Registrar.

10

"F".

Proceedings in
Native Court
of Appeal.
3rd February,
1954.

"F" - PROCEEDINGS IN NATIVE COURT OF APPEAL

Accused - Appellants:- 1. Ika (m) 2 Opia (m)
3. Oshagbor (m)
No.8/150/54 NIGERIA - NATIVE COURTS.

SUMMONS TO ACCUSED

In the Native Court of Ndosimili District Appl.
To Anibama (m) for himself and on behalf of the
people of Iselegu.

You are hereby commanded to appear before
this Court at Ashaka on the 24th day of May, 1954
to answer to a complaint of having (a) an appeal
against the finding of the Afor C. Court Criminal
Case No.2/54 A-C of 12/2/54.

20

(Anibama (m) Vs. 1. Ika (m) 2 Opia (m) 3 Oshaka
(m)).

Issued at Ashaka the 1st day of May, 1954.

(Sgd.) F.U. Odemetu
for Signature of Vice-President
or Member.

In the Afor Clan Court holden on Wednesday the 3rd
day of February, 1954, before the following mem-
bers:-

30

Nzefili - President
Onyeuku Abaje Kokolu Mathais Anibama
Anyabine Odili Ojea Ukpabi Ojobo.
Criminal Jurisdiction.

Criminal Suit No. 2/54 A-C.

Animaba (m) of Iselegu for himself and on behalf of the people of Iselegu

Vs.

- 1. Ika (m) of Umuokpala
- 2. Opia (m) do.
- 3. Oshagbor do.

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Plaintiffs' Exhibits.

"F".

Proceedings in Native Court of Appeal.

3rd February, 1954

- continued.

10 CHARGE:- Conduct likely to cause breach of the peace by removing Nnemuniyi juju placed by Complainant on his land for protection Action arose at Iselegu (Afor) on 4/1/54.

NOTE:- Olisadozi (m) of Iselegu appeared as Complainant in place of Anibama. The Court allowed this at the request of Olisadozi

x	x	x	x
x	x	x	x

20 MAJORITY VERDICT BY 5 (FIVE) MEMBERS.

30 COURT: The Complainant summoned the accuseds for removing unjustly the juju Nnemuniyi placed on his land "Awulu" for protection. 1st accused also sued the Complainant and his people of Iselegu for declaration of title over the same land. The 1st accused in his plea admits removing the said juju but pleads not guilty for the land in question where the juju was removed is said to be his. Here this case emanates or originates. The Complainant in support of his charge against the accuseds told the court the traditional history showing the ownership of the land that led to this case. The Complainant in his historical statements said that the Iselegus are the original owner of their present land under dispute and that the people of Umuokpala, i.e. the accuseds merely crept in as a result of one Umuokpala man killed by one Iselegu man during a wrestling match in the olden days. Secondly the 1st accused admits the facts disclosed by the Complainant and his witness Odozor (m) of Okorori - Afor that the Umuokpalas i.e. the 1st accused and his people were originally kept where they now dwell by Okpala Asagwe of Okorori. Now this same witness Odozor gave evidence showing demarcation of land i.e. boundary between Okpala Asagwe and the Complainant and his people of Iselegu which we saw during the land inspection. At the

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"F".

Proceedings in
 Native Court
 of Appeal.

3rd February,
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- continued.

southern boundary he mentioned the following:- Oil Bean tree, Ulledu tree, Ozi tree and (Abo-igbada) a pond. The eastern boundary is Ufi tree. Civil Suit No.W/16/53 and Suit W/18/53 of 10/12/53, judgment in favour of the Complainant and his people of Iselegu in a land case between them the Complainant Vs. Ibabu Onicha, Kwale, indicates that the same portion of land under dispute was included in the case referred above. We therefore see no reason to interfere. We conclude therefore that the accuseds are guilty for removing the said juju. They are seriously warned and never to have any right or possession over the land under dispute.

10

Finding: The 3 accuseds guilty and discharged and acquitted with caution.

Order: Accuseds and their people should not enter into the said land again. It is the property of the Complainant and his people of Iselegu.

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- | | | |
|--------|------------|------------------------|
| | 1. Nzefili | his x mark - President |
| (Sgd.) | 2. Ojea | do. |
| ?? | 3. Odili | do. |
| C.N.C. | 4. Akpabi | do. |
| | 5. Abaje | do. |

for the Court 12/2/54.

NOTE: It is now ordered that the 17/-- costs should be refunded to the Complainant by the accuseds.

(Sgd.) Signed Nzefili his x mark
 ?? President 19.3.54.
 C.N.C.

30

NOTE: (1) The Court member named Ojobo is neutral in the two verdicts or decisions delivered in this case.

(2) The Court members Mathiais and kokolu did not take part in this case during proceedings and consultation since they were objected by the Complainant and his people.

The Court confirmed this.

40

(3) Anibama, Chief, did not take part too being the Complainants own person who owns this case.

Minority verdict by 3 members.

COURT: This is a criminal case emanating from land dispute whereby the accuseds removed the Complainants juju placed on the Awulu land which they believe to be theirs. It is true that the accuseds and his people of Umuokpala are the owner of the land under dispute. We are satisfied with the 1st accuseds history of ownership of the said land which we have inspected. 1st accused and his people should therefore have still their land under dispute. They are therefore not guilty of the offence with which they are charged. Case is therefore dismissed.

10

This is nonsense.

You can not have two findings and sentence.

(Sgd.) F.H. Butcher
22.2.54.

Finding: 1st, 2nd and 3rd accuseds not guilty.
Case dismissed.

20

Remark: The accuseds and their people of Umuokpala are still the owners of the portion of land under dispute. Each party in this case should therefore possess his original land where each party had been inheriting or using before.

(Sgd.) 1. Onyeuku his x mark.
2. Anyabine do.
3. Onyelue do.

For the Court 12.2.54.

30

NOTE: The above three cross lines of cancellation are certified true copy. Original made by the D.O.

(Sgd.) ? ?
C.N.C. 4/4/54.

5/4 paid for 744 words vide C.R. No.12649 of
4/4/54.

Certified true copy

(Sgd.) ? Oputa
C.N.C.
4/4/54.

Exhibits
Plaintiffs'
Exhibits.

"F".

Proceedings in
Native Court
of Appeal.

3rd February,
1954

- continued.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :-

1. OSELE (m) of ONICHA
2. UGBE (m) of ONICHA
3. ACHI (m) of ONICHA
4. EMESOLU (m) of ONICHA
5. OYEMIKE (m) of ONICHA
6. ONYEIDU (m) of ONICHA
7. OLO (m) of ONICHA
8. OFIWE (m) of ONICHA

(For themselves and on behalf
of the people of Onicha-Ibabu) (Defendants)
Appellants

- and -

1. OLISEDOZIE NWOKELEKE
2. OKALAFOR ANIBEMBA
3. OYEM EBIMUM

(For themselves and on behalf
of the people of Iselegu) (Plaintiffs)
Respondents

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors & Agents for
Appellants.