

pc.

Judgment  
29, 1964

IN THE PRIVY COUNCIL

No. 4 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

NWANKWO UDEGBE  
AJUTUORA OBEGBUNA  
ADOLBERT ASOKWU  
AKAIKE IKEGBUNA and  
NWAWARE UDEOZO

Plaintiffs/Appellants

- and -

ANACHUNA NWOKAFOR  
ONONIWU  
CHIKWUMA MGBE  
CHINWEUBA OBIEZE  
OKONKWO NNEUKWU and  
EFOBINI EGBUNONU

Defendants/ Respondents

RECORD OF PROCEEDINGS

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

- 78615

FIELD ROSCOE & CO.,  
52, Bedford Square,  
London, W.C.1.  
Solicitors for the Appellants

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

NWANKWO UDEGBE  
AJUTUORA OBEGBUNA  
ADOLBERT ASOKWU  
AKAIKE IKEGBUNA and  
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- and -

ANACHUNA NWOKAFOR  
ONONIWU  
CHIKWUMA MGBE  
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OKONKWO NNEUKWU and  
EFOBIRI EGBUNONU

Defendants/Respondents

RECORD OF PROCEEDINGS

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E X H I B I T S

Exhibit Mark	Description	Date	
1	Plan	-	Reproduced separately
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v.

E X H I B I T S

EXHIBITS TRANSMITTED BUT NOT REPRODUCED

Exhibit Mark	Description	Date
3	Udoka Native Court Proceedings No. 68/55	-
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1.

IN THE PRIVY COUNCIL

No.4 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

NWANKWO UDEGBE  
AJUTUORA OBEGBUNA  
ADOLBERT ASOKWU  
AKAIKE IKEGBUNA and  
NWAUBU UDEOZO Plaintiffs/Appellants

10 - and -

ANACHUNA NWOKAFOR  
ONONIWU  
CHIKWUMA MGBE  
CHINWEUBA OBIEZE  
OKONKWO NNEUKWU and  
EFOBIRI EGBUNONU Defendants/Respondents

RECORD OF PROCEEDINGS

NO.1

CIVIL SUMMONS

20 IN THE NATIVE COURT OR JUDICIAL COUNCIL OF UDOKA  
NIGERIA

In the  
Native Court

No.1

BETWEEN: 1.NWANKWO UDEGBE 2.AJUTORA OBEGBUNA  
3.ADOLBERT ASOKWU 4.AKAIKE IKEGBUNA  
5.NWAUBU UDEOZO for themselves and  
Others of Umanugwo quarter of  
Ifite Ukpo Plaintiffs

Civil Summons  
No.2979  
20th June 1955

Vs.

30 1.ANACHUNA 2.ONONIWU 3.CHIKWUMA MGBA  
4.CHINWEUBA OBIEZE 5.OKONKWO NNEUKWU  
6.EFOBIRI EGBUNONU for themselves and  
Others of Uruowelle quarter of  
Umuodioka Defendants

YOU are commanded to attend this Court at  
Udoka on the 20th day of September, 1955 at 9

In the  
Native Court

o'clock a.m., to answer a suit by Plaintiff of  
Umudioka against you.

No.1

Civil Summons  
No.2979  
20th June 1955  
continued

The Plaintiff Claims Declaration of title to  
the communal land of Umuanugwu called "Agbagolu"  
or "Mpiti" which contains tomo field valued £100,  
and £50 for damages done on the said land.

Dispute arose at Ifite Ukpo about two months ago.

Issued at Udoka the 20th day of June, 1955.

(Sgd). P.N.Okeke

(signature of President or Vice  
President).

10

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

(a) State Plaintiffs claim  
clearly.

Service is requested within the area of juris-  
diction of Ogidi Native Court in Onitsha  
Division.

(Sgd) ? ? ?

Ag. District Officer  
i/c Awka Division.

20

No.2

NO.2

Order of  
Transfer  
3rd October,  
1955

ORDER OF TRANSFER

PROTECTORATE COURT OF NIGERIA

IN THE UDOKA NATIVE COURT - AWKA DIVISION

ORDER MADE UNDER SECTION 28(1) (c).

THE NATIVE COURT'S ORDINANCE CAP. 142.

I, Charles Stanley Grisman, District Offi-  
cer, Awka Division, by virtue of the powers  
vested in me under Section 28(1)(c) of the Native  
Courts Ordinance, Cap.142 hereby order that the

30

following suit be transferred from the Udoka Native Court of the Awka Division to the Supreme Court, Onitsha.

In the  
Native Court

Udoka Native Court Civil Suit No.68/55.

No.2

Parties: (1) Nwankwo Udegbe (2) Ajutora Obegbuna (3) Adolbert Asokwu (4) Akaike Ikegbuna (5) Nwawube Udeoso for themselves and Others of Umuanugwo quarter of Ifite-Ukpo

Order of  
Transfer  
3rd October  
1955  
continued

10

Versus

(1) Anachuna (2) Ononiwu (3) Chikwuma Mgba (4) Chinweuba Obieze (5) Okonkwo Nneukwu (6) Efobiri Egbunonu for themselves and others of Uruowelle quarter of Umudioka.

CLAIM: Declaration of title to the communal land of Umuanugwuo called "Agbagolu" or "Mpiti" which contains tombo field valued £100, and £50 for damages done on the said land. Dispute arose at Ifite Ukpo about two months ago.

20

The Original of the Native Court Summons is attached.

Reason: Legal arguments are likely to arise on the interpretation of a judgment given in 1908 which the Native Court would find it difficult to decide.

30

I certify that the Order of Transfer of the above mentioned civil suit from the Udoka Native Court to the Supreme Court was made by me on the application of Mr. Chuba Ikpeazu, Solicitor for Defendants.

DATED at Awka this 3rd day of October, 1955.

(Sgd) C.S.Grisman  
District Officer,  
Awka Division.

---

In the  
High Court

NO.3

STATEMENT OF CLAIM (SUIT NO.0/72/1955).

No.3

Statement of  
Claim (Suit  
No.0/72/1955)  
9th May 1956

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA  
IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION  
HOLDEN AT ONITSHA  
SUIT NO. 0/72/1955

BETWEEN:

1.NWANKWO UDEGBE, 2.AJUTORA OBEGBUNA, 10  
3.ADOLBERT ASOKWU, 4.AKAIKE IKEGBUNA,  
5.NWAWUBE UDEOZO for themselves and others  
of Umuanugwo quarter of Ifite-Ukpo  
Plaintiffs

Versus

1.ANACHUNA, 2.ONONIWU, 3.CHIKWUMA MGBE,  
4.CHINWEUBA OBIEZE, 5.OKONKWO NNEUKWU  
6.EFOBIRI EGBUNONU for themselves and  
others of Uruowelle quarter of Umudioka  
Defendants 20

STATEMENT OF CLAIM

1. The Plaintiffs are the people of Umuanugwo family of Ifite-Ukpo and sue for themselves and as the representatives of Umuanugwo family of Ifite-Ukpo.

2. The Defendants are the people of Uruowelle family of Umudioka and are sued for themselves and as the representatives of the said Uruowelle family of Umudioka.

3. The Plaintiffs are the descendants of Anugo the owners from time immemorial of the land in dispute known as "AGBAGOLU" or "MPITI" being and situate at Ifite-Ukpo in Awka District and bounded as follows :- 30

On the North by the land of the Plaintiffs not in dispute.

On the South by the Nkissa Stream.

On the East by the land of Awka people.

On the West by the Ekpuana Stream.

In the  
High Court

No.3

Statement of  
Claim (Suit  
No. 0/72/1955)  
9th May 1956  
continued

The said portion of the Plaintiffs' land in dispute as described above is delineated and edged purple in the plan filed with this Statement of Claim. The Plaintiffs as the descendants of Anugo have inherited the said land where they founded their village for generations past.

10 4. The Nkissa Stream has been accepted as the natural boundary between the Plaintiffs and the Defendants from time immemorial. The Plaintiffs as the owners have been in absolute possession of their own side of the land in dispute for generations without any let or hindrance from the Defendants or anybody else.

20 5. The Plaintiffs as owners in possession have from time immemorial been cultivating on the land and reaping the products of palm and tombo trees growing on the said land, together with other economic trees thereon.

6. The Defendants in share disregard of this ancient boundary encroached on the Plaintiffs' side of the stream and started to farm as of right without any permission knowledge and/or consent of the Plaintiffs. The said area of trespass is edged "purple" on the plan filed in this action.

sic

30 7. As a result of this encroachment, the Defendants are molesting the lives of the Plaintiffs and their people and making it impossible for the Plaintiffs and their people to have quiet and peaceful enjoyment of their land.

8. The Plaintiffs therefore claim as against the Defendants :-

40 "Declaration of title to the communal land of Umuanugwo called "Agbagolu" or "Mpiti" which contains tombo field valued £100, £50 for damages done on the said land. Dispute arose at Ifite-Ukpo about two months ago."

Dated at Onitsha this 9th day of May, 1956.

(Sgd) A.Mbanefo  
PLAINTIFFS' SOLICITOR.

In the  
High Court

NO.4

STATEMENT OF DEFENCE (SUIT NO.0/72/1955)

No.4

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA  
IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION  
HOLDEN AT ONITSHA

Statement of  
Defence (Suit  
No.0/72/1955)  
31st July 1956

SUIT NO. 0/72/1955

B E T W E E N :

- |                     |   |                     |    |
|---------------------|---|---------------------|----|
| 1. NWANKWO UDEGBE   | ) | For themselves and  | 10 |
| 2. AJUTORA OBEGBUNA | ) | others of Umuanugwo |    |
| 3. ADOLBERT ASOKWU  | ) | quarters of Ifite-  |    |
| 4. AKAIKE IKEGBUNA  | ) | Ukpo ... PLAINTIFFS |    |
| 5. NWAUBU UDEOZO    | ) |                     |    |

- AND -

- |                     |   |                     |    |
|---------------------|---|---------------------|----|
| 1. ANACHUNA         | ) | For themselves and  |    |
| 2. ONONIWU          | ) | others of Uruowelle |    |
| 3. CHINKWUMA MGBA   | ) | quarter of Umudioka |    |
| 4. CHINWEUBA OBEZE  | ) | DEFENDANTS          |    |
| 5. OKONKWO NNEUKWU  | ) |                     | 20 |
| 6. EFOBIRI EGBUNONU | ) |                     |    |

STATEMENT OF DEFENCE:

1. Save as is herein expressly admitted, the Defendants deny seriatim the allegations of fact contained in paragraphs 3,4,5,6 and 7 of the Statement of Claim as if each allegation has been separately taken up and specifically traversed.

2. The Defendants admit paragraphs 1 and 2 of the Statement of Claim. 30

3. The land in dispute is called MPITI and not Agbagolu and is not the property of the Plaintiffs or their ancestors at any time whatever. The boundaries of the said MPITI land is shown on Defendants' plan and edged pink and is not as described by the Plaintiffs in paragraph 3 of

the Statement of Claim and/or on the plan filed by them.

In the  
High Court

No.4

Statement of  
Defence (Suit  
No.0/72/1955)  
31st July 1956  
continued

4. The Nkisi stream is a very small stream and is not the boundary between the land of Plaintiffs and that of the Defendants at any part at all. The said Nkisi stream lies entirely within the Defendants' land on the south of the land in dispute and forms the boundary between the people of Umunya and Ukpo mili on the West and South respectively.

10

5. The said land in dispute is only a part of the Defendants' land which continues from the eastern edge as shown on Plaintiffs' plan until the mili Onyekwena stream which forms the boundary between the Defendants' land and that of the Ukpo mili people.

6. The Defendants are owners in possession of the land in dispute from time immemorial and as such owners Defendants have been exercising maximum acts of ownership. The Defendants cultivate the land, reap the economic trees thereon without let or hindrance. Defendants also put tenants on the land on payment of rent and tribute which tenants were never disturbed by Plaintiffs or by anyone whatever.

20

7. In 1908 the people of AKWA entered the northern portion of Ofi land which adjoins MPITI land as shown on Defendants' plan. The Defendants sued them and the case was heard by Mr. Douglas then District Officer who in his judgment demarcated the boundary between the Defendants and the people of AKWA. Boundary trees were accordingly planted along the Douglas boundary and are as shown on the Defendants' plan.

30

8. The Plaintiffs never laid any claim on the land in dispute or on the adjoining Ofi land and never exercised any acts thereon neither have they any land near the MPITI land or the Ofi land.

40

9. The Defendants have a juju called OKWU-SHIEJEOKU on Ofi land north of the portion of MPITI in dispute which they worship at the commencement of every farming season. The

In the  
High Court

Plaintiffs have no connection with this and do not worship it neither do they enter the MPITI land.

No.4

Statement of  
Defence (Suit  
No.0/72/1955)  
31st July 1956  
continued

10. The Defendants also have another shrine on the Ofi land which is called OKWUANA OFI. This they also worship at the commencement of every farming season. The Plaintiffs have no rights or interest on the land in dispute or the adjoining Ofi land.

11. The Plaintiffs are not entitled as claimed and their claim being vexatious and speculative. 10

Dated at Onitsha this 31st day of July, 1956.

(Sgd) CHUBA IKPEAZU  
Defendants' Solicitor.

No.5

NO.5

Proceedings  
20th August  
1956 to  
21st September  
1959

P R O C E E D I N G S

At Onitsha: Monday the 20th day of August, 1956.

0/72/55: NWANKWO UDEGBE & ORS.

Vs.

ANACHUNA; ONONIWU & ORS.

Motion for an order of Interim Injunction etc.

Case adjourned till next civil sessions.

(Sgd) V.A.SAVAGE  
Ag; Judge.

At Onitsha: 16th August, 1957.

Suit No. 0/72/55: NWANKWO UDEGBE & OTHERS

Vs.

ANACHUNA & OTHERS.

M.O.Balowu (for Mbanefo) for the Plaintiffs 30  
P.C.Ikpeazu for the Defendants.

To 14th October for mention.

(Sgd) H.M.S.BROWN  
16.8.57.



In the  
High Court

At Onitsha: Wednesday the 19th day of February,  
1958.

No.5

0/72/55: NWANKWO UDEGBE & 4 Ors. Plaintiffs

Vs.

ANACHUNA & 4 Others Defendants

Proceedings  
20th August  
1956 to  
21st September  
1958  
continued

No appearance of Plaintiffs.

Ikpeazu for Defendants.

Ikpeazu: I have not seen the Defendants and cannot say whether this matter has been settled. I suggest adjournment and ask that parties be informed of date.

10

Adjourned to Thursday 3rd April, 1958, for mention: if no settlement has been reached then matter to be fixed for hearing. Parties to be informed.

(Sgd) H.J.HUGHES  
19th February, 1958.

At Onitsha: Thursday 3rd April, 1958.

0/72/55: UDEGBE & ORS. ... Plaintiffs

Vs.

ANACHUNA & ORS. ... Defendants

20

Mbanefo: Udo with him, for Plaintiffs.

Offiah: holding for Ikpeazu, for Defendants.

Fixed for hearing on 27th May, 1958 and if necessary, on the two succeeding days.

(Note: It is explained to counsel that another matter has been fixed for hearing on 28th May, and if there are not two Judges then at Onitsha; this case (0/72/55) may have to be further adjourned).

30

(Sgd) H.J.HUGHES  
Judge.  
3rd April, 1958.

0/72/55: Tuesday the 27th day of May, 1958.

UDEGBE & 4 OTHERS

V.

ONONIWU & 4 OTHERS

Parties present.

Ikpeazu for Defendants.

Mbanefo for Plaintiffs.

10

Ikpeazu: I am engaged before Betuel, J. in a part-heard matter which certainly last for the next two days (and probably longer). I shall be going to Lagos on Thursday of this week for about twelve days.

I have spoken to counsel for the Plaintiffs and he offers no objection to my application for an adjournment. Adjourned for hearing to Tuesday 14th October, 1958, and on the two following days, if necessary.

(Sgd) H.J.HUGHES  
27th May, 1958.

20

At Onitsha: Tuesday the 14th day of October, 1958.

0/72/55: UDEGBE & 4 ORS.

Vs.

ANACHUNA & 4 ORS.

Mbanefo for Plaintiffs.

Udoh (with him Emodi), holding for Ikpeazu, for Defendants.

30

Mbanefo: The Plaintiffs' plan has been sent for counter-signature by the Director of Surveys but has not yet been returned and without it the Plaintiffs cannot proceed with the hearing.

Udoh: The Defendants are in a similar position as regards their plan.

(Court points out that a glance at the two

In the  
High Court

No.5

Proceedings  
20th August  
1956 to  
21st September  
1959  
continued

In the  
High Court

No.5

Proceedings  
20th August  
1956 to  
21st September  
1959  
continued

plans which have been prepared by the same surveyor, shows some marked differences in distances between fixed points, after making allowance for the fact that the scale of one plan is twice that of the other)

Fixed for hearing (Before Betuel, J. if convenient to him) on Monday 1st December, 1958 and on the two following days.

(Sgd) H.J.HUGHES

14th October, 1958.

10

At Onitsha: Monday the 1st day of December, 1958.

0/72/55: NWANKWO UDEGBE & 4 ORS. ... Plaintiffs

- and -

ANACHUNA ONCONIWU &

4 ORS.

... Defendants

A.O.Mbanefo: for Plaintiffs.

Ikpeazu for Defendants.

Ikpeazu: Plan not yet countersigned by Director of Surveyors. Adjourned 6th - 11th April, 1959 for hearing without fail before Reynolds J.

20

(Sgd) HERBERT BETUEL

Puisne Judge

1/XII/58.

At Onitsha: Monday the 21st day of September, 1959.

0/72/55: NWANKWO UDEGBE & ORS. ... Plaintiffs

- and -

ANACHUNA & ORS.

... Defendants

A.O.Mbanefo for Plaintiffs.

Udoh for Defendants.

30

Adjourned 3rd - 5th November, 1959 for hearing.

(Sgd) HERBERT BETUEL

Puisne Judge

21/9/59.

PLAINTIFFS EVIDENCENO.6

At Onitsha: Tuesday the 23rd day of February 1960.

A.O.Mbanefo: for Plaintiffs.

Ikpeazu, Agwuna & Ofodile for Defendants.

In the  
High Court

Plaintiffs  
Evidence

No.6

2ND PLAINTIFF: Sworn on Gun, States in Ibo  
AJUTORA OBEGBUNA - Male - Ibo - Farmer - live at  
Umuanugwa Ifite-Ukpo - I bring this action on be-  
half of myself and Umuanugwo, the Defendants  
belong to the Uruowelle Family. I have filed  
pleadings and plan. This is the plan (Exhibit  
I put in by Plaintiffs MEC 17/55). We call  
the land in dispute "Agbagolu" or "Mpiti". I  
know the boundaries of the land; road on  
Eastern Boundary with Ogilisi trees along it, on  
the Southern Boundary the Nkissa Stream, on the  
Western side, the Ekpuana Stream; elsewhere, is  
the land of the Plaintiffs, not in dispute. We  
cultivate this land, planting yams, cassava,  
coco-yams, and so on, and lease parts of it to  
tenants. The Nkissa Stream is perennial. We  
use its waters for domestic purposes and is our  
boundary with the Defendants. About 5 years  
ago, the Defendants crossed the stream and began  
to farm on our land, so we sued them in the Udoka  
Native Court and the case was transferred to this  
Court. This land has been ours since time  
immemorial from our ancestor Amunwe Anugwo. We  
are Umu-Anugwo. Our raffia is only the stream  
on our side, there are also some economic trees  
e.g. Ukpaka. No jujus on this portion of the  
land in dispute.

Ajutura  
Obegbuna  
23rd February  
1960  
Examination

CROSS-EXAMINED by IKPEAZU for Defendants Onyek-  
wena Stream, I know. It does not flow into  
the Nkissi Stream but into "Ngene Agu" which  
flows into a stream of Umudioka not near the  
Nkissi Stream. From our settlement we reach  
that stream before we reach the Nkissi stream.  
We call it Mili Umudioka because it flows into  
Umudioka. I do not know where the "Ngene Agu"  
flows into the "Mili Umudioka". I think it  
flows into the Mili Umudioka. I only know  
Ngene Agu not Mili Umudioka. We do not call  
Nkissi, Mili Umudioka. I know nothing about  
that. I do not know into what stream the  
Ngene Agu flows, it is adjacent to the Onyekwuna

Cross-  
examination

In the  
High Court

Plaintiffs'  
Evidence

No.6

Ajutora  
Obegbuna  
23rd February  
1960  
Cross-  
examination  
continued

Stream. I do not know whether the Onyekwuna Stream flows into the Nkissi. I am about 60 years. I have heard of District Officer Douglas, he was in charge of Ifite-Ukpo, his duties included the settlement of land disputes. In about 1908, there was a land dispute between Akwa people and the Defendants in which Douglas did not intervene. The land concerned was called Agbagolu and Mpiti, and a road runs through the land dividing our portion from that of Akwa, which is called Ofi. The dispute was between Akwa and the Defendants concerning Ofi in Douglas time, it did not concern our portion of the land. Ofi land goes from the Onyekwelam Stream right up to this road. If we cross Ofi land and the Nkissi Stream, we reach the Defendants' settlements. Douglas demarcated the boundary of Ofi land between Akwa and the Defendants. There was no dispute pending at the same time between ourselves and the Defendants which Douglas settled.

10

20

The road our boundary with Ofi is a motor road. The road was constructed by Plaintiffs and Defendants i.e. by Ifite people as a whole about 4 years ago, there was no road there in Douglas time only an ancient narrow footpath with Ogilisi trees all along. Road is not part of our agreement with Akwa. I have not joined with Akwa to claim Defendants' land. I do not know the Nkpu or Ant Hill on Mpiti, there is no Nni Okili at all. It was not a special boundary feature seized on by Douglas as a boundary and the Okpuana Stream as the other boundary and awarded to the Defendants.

30

We did not intervene in the Douglas case because it did not concern us, and, the alertness which exists now did not exist in those days.

We did not know precisely the area in dispute, nor did we try and find out what it was, nor were we informed of the area.

40

Ndunukofia is the ancestor Ukpo Akpu, Ifite Ukpo, Umunachi, Umudioka Anugwo is a sub family of Ifite Ukpo, so are the Akwa, the Defendants are not of Ifite Ukpo but of Umudioka, but we are all brothers.

About 18 years ago this dispute was not referred to the Ndunukofia, a different dispute was settled.

I knew Chief Eme of Akwa, of Ifite Ukpo.

I knew James Akukwe of Ukpo Akpu.

I knew Uzouwulu of Umuanugwo.

I knew Ukpoabia of Ukpo Akpu.

I knew not Timothy Anakpua of Umunachi.

10 There was a meeting at Ndunukofia Hall about 8 years ago but I was not present at the meeting. Not called upon to give up land or swear juju. I had no case with them at all. The case was between Akwa and Ugwu people, not between us, and concerned Ofi land, not the whole of the land. I do not know how the settlement was effected, I did not go, we are not called the "non alert Umuanugwo". Northern boundary based on furthest point Defendants have trespassed.

20 Defendants do not own land on both sides of the Nkissi, including whole land we claim and beyond to the boundary fixed by Douglas. Have not conspired with Akwa to bring this action. No Okwu Shiejeoku or Okwuona Ofi on land claimed on Mpiti land.

30 RE-EXAMINED by A.O.MBANEF0 for Plaintiffs. Sued by Akwa people in respect of this land. Not invited by Douglas to go on the land, hence did not go, after Douglas decision, used our land as usual, no disturbance or dispute until about 5 years ago, after Douglas decision did not notice any boundaries being placed on our land. Douglas dispute was, I thought between Ugwu and Akwa, if present Defendants claim to have been parties, I cannot dispute it. Same dispute, between same parties, rose again 8 years ago, not interested or invited and did not go. Ugwu is a family of Umudioka. Uzoewulu was selected to attend the meeting not to represent Umuanugwo.

In the  
High Court

Plaintiffs'  
Evidence

No.6

Ajutora  
Obegbuna  
23rd February  
1960  
Cross-  
examination  
continued

Re-examination

In the  
High Court

NO.7  
ACHANYE EJIOFO

Plaintiffs'  
Evidence

1st Witness for Plaintiffs Sworn on Gun, states  
in Ibo.

No.7

Achanye Ejiofo  
23rd February  
1960  
Examination

ACHANYE EJIOFO - Male - Umunya - Okpo Umuna is  
my family. I am a farmer. I know Plain-  
tiffs and Defendants and the land in dispute  
Agbagolu and Mpiti, we have a boundary with the  
Plaintiff, the Milli Okpuana; I never seen  
Defendants farming there until 5 years ago.  
Have our own toambo and raffia groves on our side  
of the stream.

10

Cross-  
examination.

CROSS-EXAMINED by OFODILE for Defence:

Agbagolu means hill. Mpiti means valley.  
Mpiti runs from Nkissi up to the higher land  
which connects with Plaintiff's village. Agbag-  
olu is in dispute i.e. the higher land. The  
land in dispute lies between Nkissi to Aniga  
streams and thence to Plaintiffs settlements.  
The Defendants land is on the other side of the  
Nkissi stream. I do not know what other  
members of my family, will say, I can only speak  
for myself. I have not explored the land in  
dispute. I have never farmed in the land in  
dispute. I do not know who farm inland of the  
Okpuana stream, I only see those who farm on the  
banks.

20

No Re-examination by A.O.Mbanefo for Plaintiffs.

Adjourned 1st March, 1960 for continuation of  
trial.

30

(Sgd) Herbert Betuel  
Puisne Judge  
23/2/60.

No.8

Proceedings  
1st March 1960

NO.8  
PROCEEDINGS

Tuesday the 1st day of March, 1960

Udoh for A.O.Mbanefo for Plaintiffs.

Ofodile for Defendants

Udoh: Having just received file, note that I have taken statements from the Defendants.

In the  
High Court

A.O.Mbanefo would have no knowledge of this if I handed file over to anyone bound to be an oral discussion.

No.8

Ofodile: Most inconvenient but in the circumstances must agree to an adjournment on terms favourable to us.

Proceedings  
1st March 1960  
continued

10

Adjourned 19th - 20th April, 1960 for continuation of hearing.

(Sgd) HERBERT BETUEL  
Puisne Judge  
1/3/60

Tuesday the 19th April, 1960.

Suit No. 0/72/55: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants.

Adjourned 3rd June, 1960 for continuation of trial.

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(Sgd) HERBERT BETUEL  
Puisne Judge  
20/4/60.

At Onitsha: Friday the 3rd day of June, 1960.

0/72/55: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants

Adjourned 13th June, 1960 for continuation of trial.

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(Sgd) HERBERT BETUEL  
Puisne Judge  
3/6/60.

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In the  
High Court

NO.9

MATTHIAS CHUKWURAH

Plaintiffs'  
Evidence

At Onitsha: 13th day of June, 1960.

No.9

Suit No. 0/72/1955: NWANKWO UDEGBE & ORS.  
Plaintiffs

Matthias  
Chukwurah  
13th June 1960  
Examination

- and  
ANACHUNA & ORS.  
Defendants.

A.O.Mbanefo for Plaintiffs.

Agwuna for Ikpeazu for Defendants.

10

2nd Witness for Plaintiffs Sworn on Bible states  
in English.

MATTHIAS CHUKWURAH - Male - Ibo - Licensed Sur-  
veyor carrying on business at 63 Market Road,  
Onitsha. I see Exhibit 1. I made it for  
the Plaintiffs. On Eastern side there are  
trees along a footpath and on the Western  
boundary the Ekpuana Stream, the Southern bound-  
ary is the Nkissa Stream, no features on  
Northern portion, and it does not run in a  
straight line, I marked it as shown to me by  
clients, as their boundary with a portion of  
their own land not in dispute. The area in  
dispute is shown in the plan verged purple.  
The area is farm land.

20

Cross-  
examination

Cross-examined by Agwuna for Defence. I saw the  
trees on the Eastern Boundary and inserted all  
the trees shown to me along the footpath as  
ogilisi trees. North - South between 4th -  
5th ogilisi trees, long stretch, without any  
boundary trees, had any been shown to me, I  
would have inserted them. I know the Defen-  
dants in this case, they also instructed me to  
make a plan for them, and, I made one for them.  
This is it. (Exhibit 2 put in by Defence) In  
the Western side of the plan, the Okpuana stream  
is the boundary on Southern side Nkissi Stream,  
on the Eastern side, Mili Onyekwena, on the  
Northern side, the boundary is between a number  
of trees. Entire area verged pink, shown to  
me by Defendants as their land. A road almost

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40

cuts the Northern boundary in two. Show an alleged important boundary mark put there by D.O.Douglas, it is ant hill (nkpu) and a tree growing on top of it, "Nniokili", road from Umudioka to Ifite Ukpo; on left of road, have marked Mpiti land and on right, Ofi, or entire area, verged pink, are scattered farms. I was shown juju shrines, and I marked them eg. Okwuawa Ofi a bit North of that tree, inserted site of the stump of an Oji tree, allegedly felled by Obiekwe of Uruowelle, Mpiti land is divided into 2 parts, I see Exhibit 1, drawn to scale 100 feet to 1 inch. Exhibit 2 200 feet to 1 inch. I have superimposed Exhibit 1 on Exhibit 2, it is the area verged purple in Exhibit 2, same as area verged purple in Exhibit 1. On South Western portion, green line in Exhibit 2 shows scattered cassava farm by Uruowelle Umudioka as shown in Exhibit 1, beyond the Southern bank of the Nkissi Stream are houses of the Uruowelle Umudioka.

In the  
High Court  

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Plaintiffs'  
Evidence  

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No.9

Matthias  
Chukwurah  
13th June 1960  
Cross-  
examination  
continued

A.O.Mbanefo: I ask leave to remove plan (Exhibit 1) have it amended and re-certified.

Agwuna: Have misled us?

A.O.Mbanefo: Same extent of trespass.

Order: Leave granted.

Adjourned 26th July 1960 for continuation of trial. £10:10: Od. costs of adjournment to Defendants.

(Sgd) HERBERT BETUEL

Puisne Judge  
13/6/60.

At Onitsha: Tuesday the 26th day of July, 1960.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants

Mbanefo for Plaintiffs.

Oyudo for Ikpeazu for Defendants.

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In the  
High Court

Adjourned 29th August, 1960 for continuation of hearing.

Plaintiffs'  
Evidence

(Sgd) HERBERT BETUEL  
Puisne Judge  
26/7/'60.

No.9

At Onitsha: Monday the 29th day of August, 1960.

Matthias  
Chukwurah  
13th June 1960  
Cross-  
examination  
continued

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants.

A.O.Mbanefo for Plaintiffs.

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Agwuna for Ikpeazu for Defendants.

Adjourned 20th September, 1960 for continuation of trial.

At Onitsha: Tuesday the 20th day of September, 1960.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants.

A.O.Mbanefo for Plaintiffs.

Agwuna for Defendants.

20

2nd Witness for Plaintiffs resworn:

Matthias Chukwurah: - Male. Licensed Surveyor at Onitsha.

Cross-  
examination  
continued  
20th September  
1960

CROSS-EXAMINED BY AGWUNA for Defence continued.

I inserted in the plan natural features and boundaries, area shaded pink in Exhibit 2 represents farm land, I do not show trees as recently planted or of ancient origin. I saw some scattered farms on land claimed by Defendants. I saw the pathway across land almost bisecting it, and West of the path, the farms on Mpiti land.

30

I saw the boundary trees on the Northern Boundary of Exhibit 2. I see a village

in Exhibit 1 just above land in dispute, the houses are not drawn to scale, they are habitations, there are also habitations South of the land in dispute.

In the  
High Court

Plaintiffs'  
Evidence

No.9

Re-examined by A.O.Mbanefo for Plaintiffs. I know the Niger, the Nkissi stream is a perennial stream. Okpuana stream is a lesser stream compared with the Nkissi Stream. Okpuana streams forms the boundary between Umunya and the land in dispute.

10

Matthias  
Chukwurah  
20th September  
1960  
Cross-  
examination  
continued

On Eastern side of Exhibit 2, I see the Onyekwena stream, also a lesser stream than the Nkissi stream. Onyekwena stream forms the boundary between Ukpomili and land claimed by Defendants not within the land in dispute. South East Exhibit 2, extension of Nkissi Stream shown thus between 2 blue lines, forms boundary between Defendants and people of Ukpomili, the village of the Defendants is situate South of the Nkissi stream. Plaintiffs village is situate North of the land in dispute. I did not conduct a Survey beyond the Northern pink verge in Exhibit 1. I was shown a shrine "Okwushiezioku" North of and outside the land in dispute. All the shrines entered in Exhibit 2 are outside the areas in dispute. Along the Eastern side of Exhibit 1 are Ogilisi trees along the boundary near the footpath.

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Re-examination

On the Western side of Exhibit 1 is the Okpuana stream and the Nkissi stream forms the Southern Boundary of the land in dispute.

30

On the Northern Boundary of the land in dispute in Exhibit 1, there are no features, I do not know why that boundary was inserted. In Exhibit 1, the area of trespass starts from the Nkissi Stream to the Northern Boundary of the land in dispute, in this area, I have marked scattered cassava farms of the Defendants, the cassava was sprouting out of the soil.

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NO. 10

No.10

CHIKELUE AMAEGBU

Chikelue  
Amaegbu  
20th September  
1960  
Examination

3rd Witness for Plaintiff, Sworn on Gun states in Ibo

In the  
High Court

Plaintiffs'  
Evidence

No.10

Chikelue  
Amaegbu  
20th September  
1960  
Examination  
continued

CHIKELUE AMAEGBU - Male - Ibo - live Akwua -  
farmer. I know the land in dispute. Case  
transferred from Udoka Native Court to this  
Court. The case was partly heard in the  
Native Court, and I gave evidence. There are  
4 quarters in Akwa, each quarter sent out its  
own representative to give evidence, and, they  
gave their evidence, in favour of the Plaintiffs,  
after we gave evidence, the cause was transferr-  
ed. These are the proceedings up to that  
stage (Exhibit 3 put in by Plaintiffs). Our  
boundary with the Plaintiffs is denoted by an  
ancient footpath, near the ancient foot path are  
some ogilisu trees, the foot path runs to the  
stream, where the raffia palms grow.

10

Cross-  
examination

CROSS-EXAMINED by AGWUNA for Defence. I come  
from Umuobiara. Have a land case with Plain-  
tiffs containing the land in dispute in this  
case. I did not apply to be joined in this  
case. My family are also suing the present  
Defendants in this court. My boundary with  
the Defendants is the Nkisi stream. I know  
the Onyekwena stream, it is our stream and we  
get our water there. Our Northern boundary  
of land in dispute is with the Plaintiffs people.  
Mili Onyekwena is in our land, it does not form  
a boundary with anyone, it is Ama Akwa, we have  
a boundary with people of Ukpo Mili, the Nwao-  
fufe stream. I know of previous proceedings  
between Akwa and Defendants about 50 years ago.

20

30

I have heard of D.O.Douglas, he adjudicated  
over this dispute, I was present when the D.O.  
dealt with the dispute, he went to the scene, I  
know of many ant hills on that land, at least 3  
or 4, I do not know the Nni Okili Tree on Nkpu  
(i.e. Ant Hill), I do not know whether he traced  
a boundary between that place and the Okpuana  
Stream, D.O. used boundary of Okpuana and Nkisi  
streams. I accompanied my people on the land  
when we went on inspection, trees not planted  
along boundary marked out by D.O., I am about 60  
years old. I farm on the land in dispute ie.  
portions of land which Defendants claim. Going  
along main road up to Ifite Ukpo, Plaintiffs  
land is on the left, ours on right, if someone  
else claims, defendants land in the Southern  
portion, they will have nothing left. I

40

farmed in North Eastern part of Exhibit 1.

Adjourned 21/9/60 for continuation of trial.

(Sgd) HERBERT BETUEL  
Puisne Judge  
20/9/60

In the  
High Court

Plaintiffs'  
Evidence

No.10

At Onitsha: Wednesday the 21st day of September, 1960.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants.

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Chikelue  
Amaegbu  
20th September  
1960  
Cross-  
examination  
continued

3rd Witness for Plaintiffs resworn: Chikelue  
Amaegbu: Male - Ibo.

CROSS-EXAMINED by AGWUNA for Defence continued.  
I farm on both sides of the main road as of right. I have a farm on the land there now, on the Eastern side of the main road. Land on both sides of the road belongs to Akwa. Akwa is in Ifite-Ukpo. There are 5 quarters in Ifite Ukpo :- (1) Ukpo Mili (2) Akwa, (3) Umuanugwo, (4) Abidudu, and (5) Igbuala. We all claim descent from a common ancestor. The Defendants are neighbours but strangers. We may have disputes among ourselves, we have our own portions of land, we do not want strangers to come in and claim our land, so we close our ranks against them. We do not close our ranks to acquire our neighbours land. The land on the Eastern side of the main road is the subject matter of suit 120/56. We tried to discontinue this suit and to join as co-plaintiffs in this suit but the application was refused. We have not come through the back door to give the help we could not offer through the front door with a view to using the road as a boundary and sharing the land. These are the proceedings in respect of motion 0/120/56 (Exhibit 4 put in by Defence). This is the motion to join in 0/72/55. (Exhibit 5 put in by Defence). There is a clan meeting called Dunukofia Improvement League consisting of (1) Ukpo Akpu (2) Ifite-Ukpo, (3) Umanachi and (4) Umudioka, which inter alia, deals with land

20

21st September  
1960

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In the  
High Court

Plaintiffs'  
Evidence

No.10

dispute. About 8 years ago, Defendants reported my own family of Akwa to the Dunukofia Improvement League, in a dispute over boundaries. It was reported to the District Officer. The case was not settled by the Improvement League i.e. we did not accept it. I farmed on the land before the institution of this action.

Chikelue  
Amaegbu  
21st September  
1960  
Cross-  
examination  
continued

RE-EXAMINED by A.O.MBANEFU for Plaintiffs - The old path is the boundary between us and the Plaintiffs, there are raffia palms along this path not Ogilisi trees, there are many Ogilisi trees on the land but none were planted on the boundary. I did not notice particularly any Ogilisi trees along the boundary. I am here on subpoena not on my own accord. Adjacent to this old path we constructed a new road to Afor Igwe Market. The new road runs from Akwa to Umudioka. It is separate to the old footpath. I farm on both sides of the main road, but not on both sides of the ancient path.

10

Re-examination

20

Each section of Ifite Ukpo has its own portion of land. The ancient footpath separates our land and the Plaintiffs' land. In the Douglas case my family was involved and so were the Defendants Family. Dunukofia dispute, I do not know the name of the family of Akwa or of Umudioka involved. Umudioka have no land North of the Nkisi Stream. In O/114/59, sued Plaintiff Family in respect of land North of Nkisi stream, I have a similar dispute with the Defendants.

30

Adjourned 23rd September, 1960 for continuation of trial.

(Sgd) HERBERT BETUEL  
Puisne Judge,  
21/9/60.

No.11

Nwafo Ogbaji  
23rd September  
1960  
Examination

NO.11

NWAFO OGBAJI

At Onitsha:Friday the 23rd day of September,1960.

40

O/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs

- and -

ANACHUNA & ORS. Defendants

4th Witness for Plaintiffs sworn on Gun, states

in Ibo.

In the  
High Court

Plaintiffs'  
Evidence

No.11

10 NWAFO OGBAJI - Male - Ibo - live at Abba in Abag-  
ana in the Awka District -Farmer. I farm now  
on Abba land, I began to farm on Abba farm land  
since many years ago. I have also farmed on  
the Plaintiffs' land. I no longer farm on  
the Plaintiffs' land, because of this litigation  
between them and Umudioka. I farmed on the  
land of the Plaintiffs for about 9 years, the  
land on which I was to farm was apportioned to  
me by Nwankwo Udegbe (1st Plaintiff). I paid  
him 40 yams and a pot of wine for the right to  
farm on this land. I stopped about 5 years  
ago, so did, Raphael Ukpo of Enugu-Agidi, Asiegbe  
20 Nwobia also of Enuggu-Agidi, Nwoye Ndakauguru of  
Ukpo-Akpu, also former tenants of the Plaintiffs.  
I know the land in dispute in which I farmed,  
the portion where I farmed was close to the  
Nkissa stream south of the Nkissa River is the  
land of the Defendants, where they farm. I  
know the people called Akwa. I have seen  
them near a footpath on the Eastern side of the  
land in dispute, Ummunya people do not farm on  
the land in dispute but on the Western side of  
the Ekpuana stream. Since I have started  
farming on the land in dispute, I have not been  
disturbed by anyone. I have never farmed on  
this land with anyone from Umudioka, I farmed  
30 on Mpiti land, another section of it is called  
Agbagolu.

Nwafo Ogbaji  
23rd September  
1960  
Examination  
continued

40 CROSS-EXAMINED by AGWUNA for Defence. I was  
released from the army about 14 years ago, but  
I had farmed on Abba land before that. Abag-  
olu is the hilly section of the land Mpiti the  
other section but one portion shades into the  
other and both names represent the same portion  
of land. The land near the Nkissa stream is  
"Mpiti", the Northern portion close to the  
Plaintiffs' homesteads is called "Abagolu".  
There is an ancient footpath between Abba where  
I live and the land in dispute which runs to  
the Nkisi River and continues on to Umudioka  
and then in to Afor Igwe. I do not know  
whether there are other roads and paths in the  
land in dispute, other than a newly constructed  
which I only noticed last year. Facing  
Ukpo, I farm on the left (West) of the ancient  
footpath. I do not farm on both sides of the  
footpath. I farm also near Ekpuana stream,

Cross-  
examination

In the  
High Court

Plaintiffs'  
Evidence

No.11

Nwafo Ogbaji  
23rd September  
1960  
Cross-  
examination  
continued

it is not wide, never more than about 2 feet deep, it flows swiftly, it is perennial and flows into the Nkissi stream. The tribute is paid at the end of each yam harvest.

The portion I am to farm on could be put out or merely shown according to the size required and the number of yam seeds I had to plant. I have planted over 2000 seed yams at a time, at another time 1,500. I paid tribute of 40 yams on each occasion, irrespective of the number of seeds I planted or the area occupied by the farm. I farmed on this land on the same terms as my father.

10

The Plaintiffs live near but not actually on the land in dispute. On the other side of the old path are scattered homesteads of Akwa people. I do not know Metu Maduike a native of Umunachi, or Thomas Agbogu of Ogidi, or Chinwuba Obieze, I know the land in dispute, I have farmed there and so has my father, and I can show the court where I farmed. I have never seen the so-called tenants on the land.

20

No Re-examination by A.O.Mbanefo for Defence:

A.O.Mbanefo apply to amend paragraph 6 of Statement of Claim for area of trespass is verged "yellow" substitute purple.

Leave to amend granted and paragraph 6 of Statement of Claim amended accordingly with £3. 3. -. costs to Defendants.

PLAINTIFFS' CASE CLOSED.

30

Defendants'  
Evidence

No.12

Francis  
Akpuaka  
Examination  
23rd September  
1960

DEFENDANTS' EVIDENCE

NO. 12

FRANCIS AKPUAKA

1st Witness for Defence Sworn on Bible, states in English :

FRANCIS AKPUAKA: - Male - Ibo - Registrar of Mbailinofu Customary Court. I live at Awka, I am here on Subpoena to tender certain documents

in respect of a case between Umudioka Vs. Akwa people filed in 1908, Nwosu Anielozie (alias Madubkwete).

In the  
High Court

A.O.Mbanefo: Not party to 1908 case, no estoppel, no res judicata, not parties to case.

Defendants'  
Evidence

Agwuna: Pleaded case in paragraph 7 of Statement of Defence, it covers more than most of the land in dispute, section 45 of Evidence Ordinance (Cap.63).

No.12

10 (Exhibit 6 put in by Defendants, objected to by Plaintiffs).

Francis  
Akpuaka  
23rd September  
1960  
Examination  
continued

R U L I N G

Ruling

For present purposes, I assume that the extract in the Native Court Cause Book, embodies a judgment relating to the land in dispute, in which the Defendants asserted their rights as owners of the land as against the Akwa people.

23rd September  
1960

20 It is submitted as evidence, I take it, to show that the Defendants have asserted title and possession in litigation against those opposing them.

I hold that if it refers to the land or other land, so situated or connected therewith as to be juridically similar that it is admissible in evidence under the provisions of section 45 of the Evidence Ordinance (Cap.63).

Order: Plaintiffs objection is overruled, the entry in the Cause Book is admitted in evidence, for what it is worth.

30

(Sgd) HERBERT BETUEL  
Puisne Judge  
23/9/60

Hearing continued.

Apart from Exhibit 6, I have not been able to find the Douglas record which may have been destroyed by white ants. All matters in these areas in 1907-1908 were tried in the Old Awka Native Court, I have sought for this

In the  
High Court

Defendants'  
Evidence

No.12

Francis  
Akpuaka  
23rd September  
1960

Examination  
continued

Cross-  
examination

Re-examination

record, officially and from the parties. Some records of 1907 - 1908 are available and some are not. I could not find this record.

CROSS-EXAMINED by A.O.Mbanefo for Plaintiffs. I do not know whether such a case existed or not, I have not come across any judgment given by Douglas. I have records in the office both earlier and later than 1907. I am in charge of all records. I did not see it in the cause book.

10

RE-EXAMINED by Agwuna for Defence: My record are not complete, I have already stated that there are entries relating to people of Ukpo and Umudioka.

Adjourned 17th October, 1960 when court will take evidence of a witness who is ill in his own house.

(Sgd) HERBERT BEVEL  
Puisne Judge  
23/9/60.

20

No.13

Hector  
Maduebunam  
Emejulu  
17th October  
1960  
Examination

NO.13

HECTOR MADUEBUNAM EMEJULU

At Onitsha: Monday the 17th day of October, 1960

Suit No. 0/72/1955: NWANKWO UDEGBE & ORS.  
Plaintiffs

- and -

ANACHUNA & ORS.  
Defendants.

A.O.Mbanefo for Plaintiffs.

30

Agwuna for Defendants.

2nd Witness for Defence Sworn on Bible states in Ibo.

HECTOR MADUEBUNAM EMEJULU - Male - Onitsha - Live at 17 Emejulu Street. Government Pensioner - Ozo of Onitsha - At one time I was an Interpreter at the District Office, Onitsha. I worked with two District Officers, one of

them was H.M. Douglas, the other was A.D.O. Adam. I toured with them Onitsha and Awka, including Ifite-Ukpo. I began work as an interpreter in 1905, I retired from such work in 1913, from time to time, land in dispute was visited. I remember in 1908, there was a dispute between Umudioka and Ifite-Ukpo, I was the interpreter at the time, and I visited the land in dispute with D.O. H.M. Douglas. I have no remembrance now of the features of the land except that we entered the land from Ifite Ukpo and came to the Nkissi stream, at the stream the Umudioka people showed us their land and took us to an Ant Hill, in the centre of the ant hill there was a tree called "Nniokile". We left the ant hill and walked to Ukpomili, after we had returned to the ant hill we walked to the Umunya stream. At ant hill, facing Nkissi Stream Umunya is on the right and Ukpomili is on the left, behind us would lie Ifite Ukpo. After the inspection, we returned home, but returned three days later, and the D.O. made a boundary in the presence of the parties, from the ant hill down to the Nkissi stream then to the Awka Road, the Umudioka Boundary, the rest was for Ifite Ukpo. Boundary trees were planted on the land that day. The result is that the Nkissi stream is in Umudioka land. I have a remarkable memory for what happened in the past eg. I remember the Obosi and Onitsha and Oba Vs. Obosi cases, but not recent cases between them.

In the  
High Court

Defendants'  
Evidence

No.13

Hector  
Maduebunam  
Emejulu  
17th October  
1960  
Examination  
continued

CROSS-EXAMINED by A.O.Mbanefo for Plaintiffs:

I was one of 2 interpreters employed by Government in those years, myself and Isaac Magaji, I was attached to the District Officer. Magaji was attached more to A.D.O. Adam. This case was on appeal before Douglas from the Native Court Awka, as far as I know A.D.O. Adam had no hands in the case. No decision was taken on the first day the land was visited. I do not know whether the D.O. made any sketches, I only interpreted. I saw him making pencilled notes. 3 days later, the D.O. delivered his judgment at Awka in the presence of the parties which was to the effect that between ant hill to the Ukpo mili and the ant hill, Umunya down to the Nkissi stream lay the land of Umudioka, the other side belonged to Ifite Ukpo. I am on subpoena in this case. If there is no

Cross-  
examination

In the  
High Court

Defendants'  
Evidence

No.13

Hector  
Maduebunam  
17th October  
1960  
Cross-  
examination  
continued

record of this case in existence, that is not my fault. I do not know whether any copies of the judgment were given to any of the parties.

I do not remember the names of the families involved in the case but I can point out where they lived. The boundary between Umunya and the land in dispute, is across the Nkissi stream to the ant hill. The boundary between the land I have described and Ukpomili, is the boundary sticks from ant hill to Ukpomili and to Umunya. I do not remember any people called Ugu-Umudioka. In the case before Douglas I do not remember whether Ifite Ukpomili were Plaintiffs not the people of Akwa Umudioka. The dispute was over farming the Northern bank of the Nkissi stream. I was interpreter at the material time.

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Re-examination

RE-EXAMINED by Agwuna for Defence. 3 days after inspection, we returned to the Court, where Douglas delivered his judgment, that was the end, he ordered the sticks to be planted on the boundaries and I told them where to plant them. From ant hill were to plant boundary sticks to the Umunya stream, and to the Ukpomili stream.

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Adjourned 18/10/60 for continuation of trial.

(Sgd) HERBERT BETUEL  
Puisne Judge  
17/10/60.

No.14

NO. 14

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Matthias  
Chukwurah  
18th October  
1960  
Examination

MATTHIAS CHUKWURAH

3rd Witness for Defence Sworn on Bible, states in English:

MATTHIAS CHUKWURAH - Male - Ibo - Licensed Surveyor carrying on business in Onitsha. I know the Defendants in this case. They are from Uruowelle - Umudioka, they instructed me to make a plan of the land in dispute, and as result, I went on to the land and prepared a plan for them. That is the plan (Exhibit 2 put in by Defence). On the Western side of the plan, I see the stream called Okpuana, and

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on the East, Mili Onyekwena, both of these flow into the Nkissi stream, and, South of the Nkissi stream are houses belonging to Uruowelle-Umudioka, on the Northern boundary of the area verged pink, there is no natural boundary such as a stream the marks are a number of trees as shown in the plan I saw them. A main road runs from the Nkissi stream to Ifite Ukpo, bisecting the area verged pink roughly into 2 portions, on the Western side of this road, lies Mpiti land, and Ofili land lies to the East of the road. I was instructed that the land in dispute was the Southern portion of Mpiti land, and I had before a copy of Exhibit 1, while I made Exhibit 2, it was from the use of Exhibit 1, that I was enabled to demarcate the area claimed by the Plaintiffs, I noted from the Plaintiffs plan, that the Northern portion of Mpiti land was not in dispute, but the Defendants claimed the whole area verged pink as theirs. The Western neighbours of the Defendants are Umunya, their Eastern neighbours are Ukpo Mili, on the North, the Akwa Family of Ifite Ukpo on the South by the hamlets of Umuowelle-Umudioka. I showed scattered farms of Uruowelle people which I saw on the land. I saw farms both on Mpiti and Ofi land alleged to belong to Uruowelle-Umudioka. I saw the Ukwu-Shiejoku shrine on the Northern portion of Mpiti land, on the Southern portion of Ofi land I saw the Okwaoni Ofi shrine, North East from there, I saw the stump of an oji tree, allegedly felled by Obiekwe of Uruowelle. I now produce my amended plan (Exhibit 2(a) put in by Defence). I compare Exhibit 2 and Exhibit 2(a) in both plans, the areas are the same, the stream forming boundaries of area verged pink are the same, in Exhibit 2(a). I have projected the purple verged along the Ifite Ukpo Road on Exhibit 2, to the part where it intersects the Northern Boundary, so that in Exhibit 2(a) the purple verge now represents the whole of Mpiti land. I look at Exhibit 1, it is the portion shaded yellow in Exhibit 2(a). North of Mpiti land in Exhibit 2(a), I saw a stream, in Exhibit 2, I called it "Nnakwe" stream in Exhibit 2(a) it is now named "Aniga" stream, I was instructed by my clients to change the name, both Nnakwe and Aniga are the same stream, on the Southern portion of Ofi land. I see a stream called Mili Nwanna, it

In the  
High Court

Defendants'  
Evidence

No.14

Matthias  
Chukwurah  
18th October  
1960  
Examination  
continued

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In the  
High Court

Defendants'  
Evidence

No.14

Matthias  
Chukwurah  
18th October  
1960  
Examination  
continued

was not given a name in Exhibit 2. As a result of plan served on us by mistake, we made subdivisions on the Southern portion of Exhibit 2, I therefore no longer show it on Exhibit 2(a). I tender the plan served on us by the Plaintiff. (Exhibit 1 (a) put in by Defence).

Objected to by A.O. Mbanefo as uncertified. Objection overruled court will give its reasons later. When I prepared Exhibit 2, I had Exhibit 1(a) before me, and, it was in the light of the division showed in Exhibit 1(a), that I made the divisions in the Southern portion of Mpiti land as shown in Exhibit 2. When I was shown Exhibit 1, I prepared Exhibit 2(a) showing the removal of the divisions shown on Exhibit 1 (a). The entire area of the land verged pink is farm land. The nearest houses to the land verged pink are the houses South of the Nkissi Stream of Uruowelle-Umudioka.

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Cross-  
examination

CROSS-EXAMINED by Mbanefo for Plaintiffs: I did not survey any lands outside Exhibit 1 or Exhibit 2(a), except the Southern portion of the Nkissi stream. I did not survey houses of Plaintiffs because they were far away from the disputed area, I did not put in their village at their request, but after the field work was completed Okpuanna and Mili Onyekwena form natural boundaries of the land in dispute. Nkissi is wider than the other 2 streams. Exhibit 2(a) was made in my office on 14/10/60. I received my new instructions on 12/10/60. Position of Ofi land was known when Exhibit 2 was made. Nnakwo stream was a mistake on my part, I was corrected on 10/10/60, I was not surprised. Exhibit 2 was prepared on 17/1/56, some party of the Defendants must have given me this name originally and it was not a mistake on my part, I could not have invented it. Nnakwe stream is outside the area in dispute which he surveyed for Defendants and not the Plaintiffs, in the case of the Unnamo stream in Exhibit 2, I forgot to enter its name. The divisions in Exhibit 2 denoted nothing. One mixed set instructed me as to Exhibit 2, another as to Exhibit 2(a), some persons were common to both groups. All jujus outside area in dispute in Exhibit 1. Uruowelle-Umudioka live on both sides of the road expanding outwards, houses are not centrally situated in Defendants' village. Nkissi stream in the East

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forms boundary between Ukpo Mili and the Defendants.

In the High Court

RE-EXAMINED by Agwuna for Defence. I saw streams on land, I have to be told their name, I note the names. Southern portion beyond Nkissi stream is not farm land. Principal Defendants always with me on survey. I did not survey Defendants' land, south of their settlement.

Defendants' Evidence

No.14

Matthias Chukwurah  
18th October 1960

10 Adjourned 21st October, 1960 for trial at 11 a.m. part heard criminal to finish first.

(Sgd) HERBERT BETUEL  
Puisne Judge.  
18/10/60.

Cross-examination continued  
Re-examination

NO.14A

No.14A

PROCEEDINGS

Proceedings  
18th October 1960

At Onitsha: Tuesday the 18th day of October, 1960.

Suit No.0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs

- and -

20 ANACHUNA & ORS. Defendants.

A.O.Mbanefo for Plaintiffs

Agwuna for Defendants

Motion by Defendants supported by Affidavit.

Motion to file amended copies of Statement of Defence and Plan.

30 A.O.Mbanefo: Certain new features included in plan. Paragraph 12 of Defence introduces new pleas, res judicata and estoppel by conduct. Res judicata brought in late, can be compensated for in costs. Correction of old plan to accord with evidence given in this case. Ask for heavy costs. We changed no plan, only included omissions. Leave granted to amend as prayed with 25 guineas costs to the Plaintiffs.

In the  
High Court

NO.15

MOTION ON NOTICE

Proceedings

At Onitsha: Friday the 21st day of October,  
1960.

No.15

Suit No. 0/72/1955:

Motion on Notice  
and Affidavit  
21st October  
1960

BETWEEN: NWANKWO UDEGBE & ORS. Plaintiffs

- and -

ANACHUNA NWOKAFOR & ORS. Defendants.

A.O.Mbanefo for Plaintiffs.

Agwuna for Defendants.

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Adjourned 1st November, 1960 for continuation  
of trial.

(Sgd) HERBERT EMTUEL  
Puisne Judge  
21/10/60

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION

HOLDEN AT ONITSHA

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Suit No. 0/72/55.

BETWEEN:

- 1. NWANKWO UDEGBE ) For themselves and
- 2. AJUTUORA OBEGBUNA ) others of Umuanugwo
- 3. ADOLBERT ASOKWU ) quarter of Ifite-Ukpo
- 4. AKAIKE IKEGBUNA ) Plaintiffs.
- 5. NWAUBU UDEZO )

- and -

- 1. ANACHUNA ) For themselves and
- 2. ONONIWU ) others of Uruowelle
- 3. CHIKWUMA MGBE ) quarter of Umudioka
- 4. CHINWEUBA OBIEZE ) Defendants
- 5. OKONKWO NNEUKWU )
- 6. EFOBIRI EGBUNONI )

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MOTION ON NOTICE

TAKE NOTICE that this Honourable Court

will be moved on the ..... day of October, 1960, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendants to file amended copies of the Statement of Defence and plan No.MEC/163/60 in the afore-mentioned suit and for such further and/or other order as to the Court may seem just in the circumstances.

In the High Court  
Proceedings  
No.15

Motion on Notice and Affidavit  
21st October 1960  
continued

10 Dated at Onitsha this 12th day of October, 1960.

(Sgd) G.C.O.AGWUNA

Defendants' Solicitor

Plaintiffs' Address for service:  
c/o Mr.Alex Mbanefo,  
Onitsha.

Motion 15/-  
Filing 5/-  
Oath 5/-  
Service 10/-  
Mileage 2/-

Defendants' Address for service:  
c/o Chuba Ikpeazu Esqr.,  
12 Court Road,  
Onitsha.

2 Annexures 3/- = 40/-  
pd.  
CR. No.56413. of  
15/10/60

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IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION

HOLDEN AT ONITSHA

Suit No.0/72/1955.

BETWEEN:

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1. NWANKWO UDEGBE )  
2. AJUTUORA OBEGBUNA ) For themselves and  
3. ADOLBERT ASOKWU ) others of Umuanugwo  
4. AKAIKE IKEGBUNA ) quarter of Ifite-Ukpo  
5. NWAUUBE UDEOZO ) Plaintiffs.

- and -

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1. ANACHUNA )  
2. ONONIWU ) For themselves and  
3. CHIKWUMA MGBE ) others of Uruowelle  
4. CHINWEUBA OBIEZE ) quarter of Umudioka  
5. OKONKWO NNEUKWU ) Defendants  
6. EFOBIRI EGBUNONU )

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE:

I, Godfrey Chukwuma Okeke Agwuna, Legal Practitioner, of 12 Court Road, Onitsha, Ibo, Nigerian subject, make oath and state as

In the  
High Court

Proceedings

No.15

Motion on Notice  
and Affidavit  
21st October  
1960  
continued

follows:-

1. That I am one of the Defendants' counsel in this case.
2. That I came into this suit some years after the pleadings had been filed and served on the parties.
3. That while conducting this case I observed that there are some errors of fact which must be corrected to project the Defendants' case in its correct perspective. 10
4. That I have been instructed by the Defendants to make the following amendments now shown in the Amended Statement of Defence.
5. That the Plaintiffs obtained leave of the Court to amend their plan on the 13th of June, 1960.
6. That partly as a result of this amendment of their plan by the Plaintiffs, and partly because of some errors of description in Defendants own plan I find it necessary to amend the Defendants' plan to show very clearly what their case is. 20
7. That the amended statement of Defence and amended plan are now ready and will be filed as soon as leave to do so is given by this Honourable Court. A copy of the Amended Statement of Defence and plan attached hereto marked Annexure "A" and "B" respectively. 30
8. That the contents of this affidavit are true and correct to the best of my knowledge, information and belief.
9. That I swear this affidavit in support of the motion hereto attached.

Sworn to at the High Court Registry, Onitsha, this 15th day of October, 1960.

(Sgd) G.C.O.AGWUNA

Deponent.

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Before Me,  
(Sgd) E.V.C. Ebo  
Commissioner for Oaths.

NO.16

AMENDED STATEMENT OF DEFENCE

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION

HOLDEN AT ONITSHA

Suit No. 0/72/55.

In the  
High Court

Proceedings

No.16

Amended  
Statement  
of Defence  
6th October  
1960

BETWEEN:

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- |                      |   |   |
|----------------------|---|---|
| 1. NWANKWO UDEGBE    | } | For themselves and<br>others of Umuanugwo<br>quarter of Ifite-<br>Ukpo Plaintiffs |
| 2. AJUTUORA OBEGBUNA |   |   |
| 3. ADOLBERT ASOKWU   |   |   |
| 4. AKAIKE IKEGBUNA   |   |   |
| 5. NWAUBU UDEOZO     |   |   |

- and -

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- |                     |   |  |
|---------------------|---|--|
| 1. ANACHUNA         | } | For themselves and<br>others of Uruowelle<br>quarter of Umudioka<br>Defendants |
| 2. ONONIWU          |   |  |
| 3. CHIKWUMA MGBE    |   |  |
| 4. CHINWEUBA OBIEZE |   |  |
| 5. OKONKWO NNEUKWU  |   |  |
| 6. EFOBIRI EGBUNONU |   |  |

AMENDED STATEMENT OF DEFENCE:

1. Save as is herein expressly admitted, the Defendants deny seriatim the allegations of fact contained in paragraphs 3,4,5,6 and 7 of the Statement of Claim as if each allegation has been separately taken up and specifically traversed.

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2. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.

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3. The land in dispute is part of Defendants' larger piece of land called "MPITI" and not "AGBAGOLU" and is situated in Uruowelle Umudioka. The boundaries of the entire "MPITI" land is as shown on Defendants' plan and edged purple whereas the portion of the said "MPITI" land now in dispute is verged yellow. The boundaries of the said "MPITI" land are neither as described in paragraph 3 of the Statement of Claim nor as shown on Plaintiffs' plan No. MEC/117/55. The entire "MPITI" land including the portion now in dispute is the property

In the  
High Court

of the Defendants and not the property of the Plaintiffs or their ancestors at any time whatever.

Proceedings

No.16

Amended  
Statement  
of Defence  
6th October  
1960  
continued

4. The Nkissi stream is a very small stream and is not the boundary between the land of Plaintiffs and that of the Defendants at any part at all. The said Nkissi stream lies entirely within the Defendants' land on the south of the land in dispute and forms the boundary between the people of Umunya and Ukpo Mili on the west and south respectively.

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5. The said land in dispute is only a part of the Defendants' land which continues from the eastern edge as shown on Plaintiffs' plan until the mili Omyekwena stream which forms the boundary between the Defendants' land and that of the Ukpo mili people.

6. The Defendants are owners in possession of the land in dispute from time immemorial and as such owners Defendants have been exercising maximum acts of ownership. The Defendants cultivate the land, reap the economic trees thereon without let or hindrance. Defendants also put tenants on the land on payment of rent and tribute which tenants were never disturbed by Plaintiffs or by anyone whatever.

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7. In 1908 the people of Akwa entered the northern portions of "OFII" and "MPITI" lands as shown on Defendants' plan. The Defendants sued them and the case was heard by Mr. Douglas the then District Officer who in his judgment demarcated the boundary between the Defendants and the people of Akwa. Boundaries trees were accordingly planted along the Douglas boundary and are shown on Defendants' plan. This judgment of 1908 between Uruowelle and Akwa family of Ifite Ukpo will be founded upon.

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8. The Plaintiffs never laid any claim on the land in dispute or on the adjoining "OFII" land and never exercised any acts thereon neither have they any land near the "MPITI" land or the "OFII" land.

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9. The Defendants have a juju called Okwu-Shiejioku on "MPITI" land slightly north of the portion of "MPITI" land in dispute. The Defendants worship this juju at the commencement

of every farming season. The Plaintiffs have no connection with this juju and do not worship it neither do they enter the "IIPITI" land.

In the  
High Court

Proceedings

No.16

Amended  
Statement  
of Defence  
6th October  
1960  
continued

10. The Defendants also have another shrine on the "OFII" land which is called "OKWUANA OFII". This they also worship at the commencement of every farming season. The Plaintiffs have no rights or interest on the land in dispute or the adjoining "OFII" land.

10 11. The Plaintiffs are not entitled as claimed and their claim being vexatious and speculative should be dismissed with costs.

12. The Defendants will plead:

- (a) Laches.
- (b) acquiescence
- (c) standing-by
- (d) res judicata
- (e) estoppel by conduct
- (f) long possession.

20 Dated at Onitsha this 6th day of October,  
1960.

(Sgd) G.C.O.AGWUNA  
Defendants' Solicitor.

Plaintiffs' Address for service:

c/o Mr. Alex. Mbanefo, -  
Onitsha.

Defendants' Address for service:

c/o Chuba Ikpeazu Esqr.,  
12 Court Road, -  
Onitsha.

In the  
High Court

NO.17

ANACHUNA OKAFOR

Defendants'  
Evidence

At Onitsha: Tuesday the 1st day of November, 1960.

Suit No. 0/72/1955:

No.17

BETWEEN: NWANKWO UDEGBE & ORS. Plaintiffs

- and -

ANACHUNA NWOKAFOR & ORS. Defendants

Anachuna  
Okafor  
1st November  
1960  
Examination

Mbanefo for Plaintiffs.

Agwuna for Defendants.

1st Defendant Sworn on Gun states in Ibo.

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ANACHUNA OKAFOR - Male - Ibo - Native of Uruo-  
welle Umudioka, where I reside. I am the 1st  
Defendant in this suit and I represent the other  
Defendants and Umudioka. I know the land in  
dispute, we call it "MPITI", we own other lands  
adjacent to Mpiti, called "Ofi". These lands  
are one and the same piece of land and are both  
situate in Umudioka. I can describe the  
boundaries of this land, with Umunya, the Okpu-  
ana stream, the Nnakwe stream or Amiga flows  
into the Okpuana through our land, our Southern  
Boundary is the Nkissi stream, our homesteads  
are on its southern banks, on the Eastern bound-  
ary flows the Onyekwena stream, which is our  
boundary with Ukpo Mili, our Northern Boundary  
are shown by boundary sticks placed there by D.O.  
Douglas, the boundary trees are an Okpokolo tree,  
another Okpokolo Agba trees, Ogilisi tree, Njisi  
tree, Okpokolo tree, an Ugili Mmuo tree, Nkpu  
Nniokili, thence to a road and to crossing it an  
Okpokolo tree to Mgbu Ewu to an Ebenebe to an  
Ogilisi to an Echichi, cross another road and  
thence to another Egbu, Agba, Elili, trees  
cross another road to an Ufi tree and an Alkpaka  
tree down to Mili Onyekwena and our boundary  
with Ukpo Mili, Mpiti is separated from Ofi land  
by a footpath to Ifite Ukpo, from our town, this  
footpath crosses the Nkissi stream Mpiti land is  
on the Western side of the path. Ofi land is  
on the Eastern side of the path. We have  
owned and have been using the land since time  
immemorial, we still use it now. There has been

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a previous dispute with Akwa concerning this land, concerning Mpiti and Ofi, but not with the Plaintiffs' particular family i.e. Umuanugwo, the case was tried in the Awka Native Court, we were Plaintiffs' in that case.

In the  
High Court  
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Defendants'  
Evidence  
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No.17

Mbanefo: I object to this evidence, Defendant should abandon paragraph 7 of his Amended Statement of Defence.

Anachuna  
Okafor  
1st November  
1960  
Examination  
continued

10 Agwuna: Relied on judgment tried to get records, not available, eaten by white ants, hence interpreter gave evidence. Section 96(1)(c) Evidence Ordinance.

Court: Holds evidence admissible.

20 This dispute with Akwa people was about 52 years ago. Nwosu Alozie was our spokesman, he came from my family of Uruowelle, the Defendants in that suit. Tabo was their spokesman. They were represented by Tabo and Tabansi. D.O. Douglas decided the case, he visited the land, we showed the area of the land in dispute as shown to the Court, he gave decision in that suit, he started from Nkpu Nni Okili tree near an ant hill and planted sticks to the Okpuana stream, and again from the same point to Milif Onyekwena, all the boundary sticks were planted in one day. We were awarded land south of those boundaries and down to the various rivers to our home.

30 After this decision, we had no trouble about the land, until about 8 years ago when Akwa people invaded our land and destroyed all our raffia palms, over the Nkissi stream, we reported their actions to the police at Onitsha and at the Ogidi Native Court, a Court Messenger came and saw the damage, but we did not sue them as we are related. Dunukofia consists of Ifite Ukpo, Ukpo-Akpu, Umunachi, Umudioka, it is the larger kindred which embraces us all and they attempted a settlement and visited the land but would not interfere with the Douglas decision.

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Afterwards we continued farming our land, until 5 years ago the Plaintiffs sued us. In this same year Akwa people sued us in respect Ofi land, while Plaintiffs sued me for Mpiti.

In the  
High Court

Defendants'  
Evidence

No.17

Anachuna  
Okafor  
1st November  
1960  
Examination  
continued

The Akwa people tried to discontinue their action but the Court refused. The Akwa people sought to join the Plaintiffs in this action, in this very court but joinder was refused.

Court: All in record, evidence inadmissible or time wasting.

Ifite Ukpo consists of 5 quarters :

(1) Akwa, (2) Umuanugo, (3) Ukpo-Mili, (4) Abaigwugwu, (5) Igbuala. After I was sued by

Plaintiffs, I employed Mr. Chukwurah to survey our land, about 20 of us accompanied him on to the land and we showed him our portions of Ofi and Mpiti and all the streams, I showed him the Douglas boundary and the trees, and the road dividing Mpiti and Ofi land. On Exhibit 2, inserted a stream flowing into Nkissi stream but it was left unnamed, we call it Mili Nwannu, another stream on Mpiti land is not called Nnakwe but Aniga. Mr. Chukwurah also made a plan for

Plaintiffs, hence possible confusion in names. Mili Nnakwe is not on our land but on the Ifite Ukpo side. We do not live on land in dispute but farm there, the whole land is farming land. We had tenants on the land but since this case they have run away, e.g. Umunachi, from Ogidi but not Ifite Ukpo. One of our tenants Metu is from Umunachi, Anywana of Ogidi, Yam, cassava and pea nuts are planted on the land. Along the

Nkissi stream are our raffia groves and palm trees. Our tenants pay rent, 8 yams, palm wine and kola nuts, 20 years ago, after that they paid in each 5/- yearly to me and Nathaniel. We have jujus on the land, Owu-Sheyioku on Mpiti land and Okwuana on Ofi land, Chinwuba Obieze serves these shrines, which are trees, with stones underneath and feathers. I know Obiekwe, he is my brother, he farmed on this land, and felled an oji tree, and had it sawn up. I showed the surveyor the stump of that irokō tree. In 1908, Plaintiffs knew of our dispute with Akwa, the whole of Dunukofia knew about it.

Cross-  
examination

CROSS-EXAMINED by A.O.Mbanefo for Plaintiffs.

Cause of present dispute is that our section is small and Plaintiffs are larger. They want to build on our land that is the immediate cause of the present dispute. The area is a farming and not a residential area, but they were attempting

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to put up a school first and then their houses. I was on the land hunting when I saw Plaintiffs and others surveying the land, and I heard them discussing their plan, that is all they did, until a month later they sued me, I reported to my people, we went to farm on the land, they rushed at us and we ran away.

In the  
High Court

Defendants'  
Evidence

No.17

10 There are 5 quarters in Umudioka. In 1956, showed our farms on land in dispute, area verged yellow in Exhibit 2. Plaintiffs not shown as farming in that land, then. They took action against us in 1955, did not enter land 1955-56 by way of trespass. Plaintiffs came into our land and started to farm, not shown on our plan. Plaintiffs farms shown on land in Exhibit 1A. Defendants farms shown on Southern portion of land in dispute. Plaintiffs entered our land and sued us in the Native Court. The Northern boundary of our land before the Douglas boundary in 1908, was Elili and Agba trees on our bound-  
20 ary, Douglas accepted our old boundary according to the trees, and we put sticks between them. On day Douglas came planted Ogilisi and Echichi trees. Ogilisi lasts a long time but burns quickly every year there is a forest fire on that land, but the boundary Ogilisi is still there, it reproduces itself as the Echichi does. Boundary North-South, East-West, Ukpaka, Ufi, footpath, Elili etcetera.

Anachuna  
Okafor  
1st November  
1960  
Cross-  
examination  
continued

30 Streams and rivers do not form natural boundaries in these parts, footpaths do not form boundaries, only trees. Boundary between Ukpo-Mili and land in dispute is a palm grove. Onyekwena of our family first planted raffia palms in that area, so the Mili Onyekwena is our stream. Each of us have our groves on different banks. Mili Onyekwena therefore is a boundary, but not Nkissi which is in the middle of our land. Nkissi continuing Eastward is fed by the Mili  
40 Onyekwena its flow is Westward into Umunya land, where it forms our boundary with Umunya; in the East, it forms our boundary with Ukpo Mili, where it meets Mili Onyekwena. 3 villages abut on land in dispute as shown in my map, in each case, principal boundary feature is a stream, the only exception is the Northern Boundary. Of all these streams, the Nkissi is the widest, deepest and faster flowing, most

In the  
High Court  
Defendants'  
Evidence

No.17

Anachuna  
Okafor  
1st November  
1960  
Cross-  
examination  
continued

important stream. D.O.Douglas only came to decide cases in our area only once, but on another occasion he collected the guns in 1907-1908. I do not think he tried any other land case, I have not heard of it. Case started in Awka Native Court. Igbokwe of Umudioka, I know but not Amechina of Ukpo, Igbokwe sued some people of Ukpo in connection with this land in dispute now, but it was not the case that went to Douglas. Igbokwe's case was before the Douglas case.

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Before Akwa people filed a motion to be joined, I had already filed Exhibit 2 in Court. Plan filed by me stretches from Okpuana to Onyekwena and is much larger in area than the area of land claimed by the Plaintiffs. Area in dispute only a part of Urowelle land, we own land behind our houses South of Nkissi. Footpath between Mpiti and Ofii land has been there since time immemorial. Wherever Mili Nnakwe is situate the land belongs to Ifite-Ukpo. Showed surveyor 5 streams on the land including the Aniga stream, not making use of Douglas judgment to encroach on this land, not changing names to support my case. Trespass in Douglas case was on both Mpiti and Ofii. I did show area of 1908 Trespass to my surveyor, they trespassed over the whole area of land, invading it like an army. Jujus mentioned not in land claimed by Plaintiffs. Akwa people claiming a part of the land with Plaintiffs. Douglas case was concerned with this land in dispute.

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Adjourned 2nd November, 1960 for Re-examination of Witness at 9 a.m.

(Sgd) HERBERT BETUEL  
Puisne Judge  
1/11/60.

2nd November  
1960

At Onitsha: Wednesday the 2nd day of November, 1960.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs 40  
- and -  
ANACHUNA NWOKAFOR & ORS. Defendants.

Onyekwuluje for A.O.Mbanefo for Plaintiffs.

Agwuna for Defendants.

1st Defendant resworn:

In the  
High Court

ANACHUNA OKAFOR - Male - Native of Umudioka.

Defendants'  
Evidence

No.17

Anachuna  
Okafor  
2nd November  
1960  
continued

10 RE-EXAMINED by Agwuna for Defence Our home-  
steads are near the land in dispute i.e. Mpiti  
land, plan is deceptive in this respect 1908 dis-  
pute between ourselves and Akwa people and not  
between ourselves and present Plaintiff but they  
knew about it. The Akwa people invaded our  
land from the North. We have 6 families in  
Umudioka but only two quarters, I belong to the  
Adabe quarter. Adabe consists of 6 families,  
(1) Okpuru, (2) Uruowelle, (3) Uruagu, (4)  
Umueze-Ekwo, (5) Umuigha, and (6) Ugwu. We are  
not as numerous as Ifite-Ukpo. More taxpayers  
among Plaintiffs, make a greater contribution to  
the public weal. Plaintiffs trespassed into  
our land and planted yams and cassava, hence we  
sued.

Re-examination

20 I was present when D.O.Douglas gave his  
judgment in 1908, the Interpreter was Emejulu.  
There are more than 10 ant hills on the land in  
dispute, some of 6 on Ofii and some on Mpiti,  
and plant bamboo sticks along it some rivers and  
streams do form boundaries others do not, the  
Nkissi stream is not a boundary between our land  
and Ofii and Mpiti.

NO.18

No.18

THOMAS ANYANWA AGBAOGU

Thomas Anyanwa  
Agbaogu  
2nd November  
1960  
Examination

30 4th Witness for Defendants Sworn on Bible states  
in Ibo.

40 THOMAS ANYANWA AGBAOGU - Male - Native of Ogidi -  
Live at Ogidi - Farmer - I know the people of  
Uruowelle and the Defendants. I know the land  
in dispute in this case between the Plaintiffs  
and Defendants, the land is called Mpiti and Ofii,  
it is just North of the Nkissi stream, and a road  
separates Mpiti from Ofii, going Mpiti is on the  
left, Ofii on the right, with the consent of the  
Defendants of Uruowelle-Umudioka. I have farm-  
ed about 3 times on this land, the first time  
about 30 years ago, the last time about 8 years  
ago, when I tried to farm 5 years ago, I had to  
leave because the land was in dispute, and

In the  
High Court

Defendants'  
Evidence

No.18

Thomas Anyanwa  
Agbaogu  
2nd November  
1960  
Examination  
continued

Cross-  
examination

returned to my home in Ogidi. Each season that I farmed on the land I paid the Defendants 5/-, and after harvest 8 yams, palm wine and some kola nuts. The 1st Defendant and Nathaniel would show me the land. I farmed on the part of Mpiti land near the main road to Ifite Ukpo, say about 40 feet from it. I have never paid rent to any other party except the Defendants I have never disturbed when farming on this land.

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CROSS-EXAMINED by Onyekwuluje for Plaintiffs:  
A portion of land is left fallow for 3 years, before being farmed on again. The rent of 5/- and the customary tribute was cheap but that did not prevent me from farming on other not necessarily dearer land; the rent charge is an individual matter, when I was not farming on this land I farmed at Agbor Ogidi free, the landlord was my friend, I have also farmed on my own family land; second time I farmed on Defendants' land was in 1939, the last time in about 1953, I do not always farm on the same portion of land. Each season every portion of Mpiti land not due to lie fallow is not necessarily farmed, all I know is that others farm at the same time as myself. I have not picked on the time 30 years as giving an impression of a long time. The Defendants were the same people 30 years ago as they are today. The portion allotted to me would be 40 feet wide. I do not know what rent the other tenants paid. Each tenant paid his rent individually and not in the presence of the other tenants, the land could be apportioned in advance. Sometimes I farmed close to the Nkissi stream, sometimes much further Northwards. 30 years ago, I farmed in the centre of the land i.e. about half way up the road not near Okwu-Shiejioku shrine as I do not know where that juju is, because I have never been there. I do not remember the names of neighbouring tenants 30 years ago, I only greeted them, never shared kolanuts or took snuff with them, I did not know their towns. I have farmed on this land.

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Re-examination

RE-EXAMINED by Agwuna for Defence: Tenants of Uruowelle and Uruowelle people farmed on this land.

NO.19

METU MADOBOIKEIn the  
High Court5th Witness for Defendants Sworn on Gun states  
in Ibo.Defendants'  
Evidence

No.19

10 METU MADOBOIKE - Male - Ibo. Native of Nkwelle  
Umunachi - Live at Nkwelle - Farmer. Ozo. I  
know Defendants in this suit, and also Plaintiffs  
as members of the Dunukofia clan, I know the land  
in dispute between these parties, because I have  
been and farmed on that land, it is called Mpiti,  
I follow the main road from Afor Igwe to Ifite  
Ukpo, I cross the Nkissi stream, and my farm is  
on the left hand side of the road, Ofii land is  
on the right. I farm on this land as a tenant  
of the Derendants, the land was, at first, shown  
to me by Amota and Chinweze, the persons who show  
us the land these days are the 1st Defendant and  
Nathaniel. I first went on the land about 40  
20 years ago. 1st Defendant and Nathaniel began  
to show me the land more than 15 years ago, per-  
haps long as 30 years ago. At end of farming  
season paid 3 yams, palm wine and 4 kola nuts,  
afterwards we paid 5/- a year. I have been  
farming on this land for about 40 years. I have  
farmed on Ofii land and on Mpiti, at intervals of  
3 years. Defendants show me what land to farm  
on the Ofii land, I no longer farm there now,  
since 5 years ago when the dispute arose. Never  
30 disturbed by Plaintiffs or anyone else while  
farming on this land or paid rent to anyone other  
than the Defendants.

Metu Madoboike  
2nd November  
1960  
ExaminationCROSS-EXAMINED by A.O.Mbanefo for Plaintiffs:Cross-  
examination

40 I am from the quarter of Umunachi called Nkwelle.  
Dunukofia has 3 quarters. Umunachi is one of  
them. Each quarter has its own land. Whole  
of Dunukofia was divided into 4 equal areas, with  
their own villages and farmlands, each quarter  
may not have sufficient land to farm in rotation  
every 3 years, its own area. No one has come  
from Ukpo-Akpu to Umunachi to farm. Ifite-  
Ukpo have farmed in Umunachi but I do not know  
their names. Some people come from Umudioka  
to Umunachi to farm but I do not know their  
names. Nkwelle Umunachi has its own land but  
we have no tenants, because our land is not suf-  
ficient for our farming needs Umunachi has 5

In the  
High Court

Defendants'  
Evidence

No.19

Metu Madoboike  
2nd November  
1960  
Cross-  
examination  
continued

quarters (1) Ozu, (2) Umuapiti, (3) Nkwelu, (4) Ngbuke and (5) Nagbana. I do not know whether they go to other families asking for land on which to farm. A member of one family of Dunukofia can be a tenant of another family. I knew these people although I do not know their names. I have not merely come to support the Defendants. There is the Okwu Shiejioku Shrine, in the Northern part of Mpiti land, I have never been to the shrine or seen it. I know the Okpuana stream, I do not know the Nnakwe stream or the Nwanna stream or the Aniga stream. I know the whole of Ofii and Mpiti land. There are streams in this land Onyekwena, is a boundary. I only know the area where I have farmed. I have farmed on land 20 paces wide, and harvested 2,000 seedling yams, after cutting them in half. The length could be about 3 poles. I take same area in extent each time, I have neighbours when I am farming. Defendants' people and others whom I do not know, Ilo Ugwe of Defendants' family is still alive. I never seen Plaintiffs' farm on this land. I recognise Ifite-Ukpo on sight and Umunya or Ogidi on sight.

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Re-examination RE-EXAMINED by Agwuna for Defence: Immediately I see an Umudioka man I can place him by his ichi mark or even without ichi mark. Surrounding towns inter marry. I also visit their festivals, hence I can know e.g. an Umunioka man without knowing his name and we all live close together. Our family in Mkwelu has only a small portion of land, hence cannot afford to have tenants.

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I do not know whether the land of Dunukofia was divided equally or whether Umunachi land is as extensive as Ifite Ukpo. I have farmed next to an Ogidi man but I do not know his name. Thomas was once my neighbour.

Adjourned 4th November, 1960 for continuation of trial.

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(Sgd) HERBERT BETUEL  
Puisne Judge  
2/XI/60.

NO.20

ELOSIE AZODOIn the  
High CourtAt Onitsha: Friday the 4th day of November, 1960.Defendants'  
Evidence

0/72/1955: NWANKWO UDEGBE &amp; ORS. Plaintiffs

No.20

- and -

ANACHUNA NWOKAFOR &amp; ORS. Defendants.

Elosie Azodo  
4th November  
1960  
ExaminationA.O.Mbanefo for Plaintiffs.Agwuna & Onyechi for Defendants.6th Witness for Defendants: Sworn on gun, states  
in Ibo.

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ELOSIE AZODO - Male. Ibo. Live Umunya. Farmer. I know Defendants in this suit. I know the land in dispute called Mpiti which belongs Uruowelle, I have a boundary with them. The Okpuana stream, which is a no man stream each of us enjoying a portion of it. Our land adjacent to the stream is called "Afolo". We farm on one side of the Okpuana stream, the Defendants on the other, I have seen the 1st Defendant farming there and others of his people e.g. the 2nd Defendant. I have never seen any person from Umuanugwo farming on that land. The cause of the present dispute between Plaintiffs and Defendants is over this land, and the Plaintiffs are claiming it because Defendants are a small family.

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CROSS-EXAMINED by A.O.Mbanefo for PlaintiffsCross-  
examination

I do not know how many taxable males are in various families even my own. I do not know how many houses Plaintiffs or Defendants or my people have, I have not counted them. What I mean is that I think the Plaintiffs are more powerful than the Defendants because they are trying to take away their lands. I am not supporting Defendants' case at any cost. I know Nkissi stream, it is one of our boundaries with Umudioka but not the present Defendants. I do not know the Onyekwena stream, I know the whole of Mpiti land, I do not know our boundary with Ifite-Ukpc, it is another section of Umunya.

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<p>In the High Court</p> <hr/> <p>Defendants' Evidence</p> <hr/> <p>No.20</p> <p>Elosie Azodo 4th November 1960 Cross- examination continued</p>	<p>I do not know a portion of land called "Ofii" I come from the Umu-Adum Family of Umunya. Our land is called Agu Ofolo. It is adjacent to the land in dispute. I know Achonye Ejiofor and Obiazie Amuze, they are of Umu-Adum, I know Nwafor Ekunabo of Ogidi, formerly living at Umudioka, my family sued him in respect of a part of Agu Ofolo near the Nkissi, Achonye Ejio- for and Amuze were selected to represent our family in that case, I was not chosen. I am not specifically authorised by my family to represent them. Achonye Ejiofor is a more representative person than myself. I know of no stream called Aniga or Nnakwe. We have seen Defendants tapp- ing raffia wine in the palm groves. I do know where they actually farm. I have seen them clearing the land. No farming goes on in the raffia grove, the raffia grove is brushed. I do not know where the farm of Uzo Egbu is situated.</p>	<p>10</p> <p>20</p>
<p>Re- examination</p>	<p>The Defendants farm in a straight line every three years, each on his respective area. Nkissi is a bigger stream than Okpuana. I cannot see people farming on the other side of the Nkissi stream. Achonye Ejiofor and Obiazu Amuze are in charge of our lands &amp; allot them to tenants.</p> <p><u>RE-EXAMINED</u> by Agwuna for Defence: Achonye Ejiofor and Obiazie Amuzie are head men and representatives of my family. I have never farmed on Mpiti land. I have worked for Nwokoye Obieze of Defendants family on Mpiti land twice one for Mobi. Mobi is dead so is Nwokoye but his son Chinwuba is alive. I work- ed for Nwokoye Obieze about 12 years ago, for Mobi in the same year. I have not come to deceive the court.</p>	<p>30</p>
<p>Cross- examination (continued)</p>	<p><u>A.O.Mbanefo</u>: Does not arise out of cross-examin- ation. Leave given to cross-examine witness.</p> <p><u>CROSS-EXAMINED</u> by A.O.Mbanefo for Plaintiffs. Cannot remember when Nwokoye Obieze died. I cannot remember when I first saw him alive. Mobi died about 7 years ago. Mobi is of Defen- dants family. I am about 50 years old. I worked for Mobi about 10 years ago. Nwokoye and Mobi farms were not adjacent to each other. I was paid 6d a day. I worked for Mobi for only one day. I offered my services to him.</p>	<p>40</p>

NO.21  
CHINWUBA OBIEZE.

In the  
High Court

7th Witness for Defence: Sworn on Gun, states  
 in Ibo.

Defendants'  
Evidence

No.21

10 CHINWUBA OBIEZE - Male - Ibo. Live Uruowelle.  
 Farmer. My father was Obieze Madawe, Nwoko-  
 ye Obieze is my half brother, I am not his son,  
 I know the land in dispute. It is divided  
 into 2 parts, Mpiti and Ofii. I am a juju  
 priest, I serve Okwu Shiejioku in Mpiti and  
 Okwu Ana in Ofii land. I serve Okwu shie-  
 jioku once a year, after the yams have been har-  
 vested during the Christmas season, Uruowelle  
 alone worship the Okwu shiejioku and the other  
 jujus, these jujus are trees and stones. I last  
 served this jujus before Christmas last year, I  
 will serve them again, this Christmas, I sacri-  
 fice fowl to the jujus and prepare food, the  
 20 previous juju priest was Nwokoye Obiesie, my half  
 brother, he is dead now, our family serve the  
 jujus. Plaintiffs do not serve them or worship  
 them. I have been serving them for about the  
 last 9 years after Nwokoye Obiese died.

Chinwuba Obieze  
 4th November  
 1960  
 Examination

CROSS-EXAMINED by A.O.Mbanefo for Plaintiffs:

Cross-  
 examination

30 Juju is a land juju, worshipped for a good  
 harvest in the following year, not necessarily  
 in the area where the juju is situate. The  
 juju is not in our homes, it is on the land. We  
 also appeal to it for the avoidance of accidents  
 during the farming season. We must worship the  
 juju even when we do not farm on the land where  
 it is situate. We farm whole of Mpiti and  
 leave it fallow for 3 years ditto with Ofii.  
 Last time we farmed on Mpiti was 5 years ago.  
 Been serving jujus even though work ceased  
 since 5 years ago. Go there in secret other-  
 wise Plaintiffs will kill us, we go in the  
 evening.

40 The trees of the jujus are being cut down by un-  
 known persons. As I found out yesterday, my  
 first visit since last Christmas to the shrines.  
 Any yams can be used to make food for the juju  
 even in the farm, not necessarily yams dug on  
 the farm. Not necessary to give the juju back  
 some of its own yams, the sacrifice is made to

In the  
High Court

Defendants'  
Evidence

No.21  
Chinwuba Obieze  
4th November  
1960  
Cross-  
examination  
continued

the juju could consist of kola nuts not grown on land, chicken, etcetera, the sacrifice is not limited to farmers, our tenants do not worship nor do I offer sacrifice on their behalf, so the jujus are not merely tied to the soil but are for the benefit of the whole of Uruowelle. I take a fowl, I kill it, I cook it, but no longer cook it at the spot, since this dispute, eat kola and drink wine at the site, return home to cook fowl. I am the chief priest of jujus common to the whole of Uruowelle but not of family jujus. I am a priest learned in "jujuology". I do not know why the Okwu Shiejioku was removed from our homes and planted on the land, I only saw it there.

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Re-  
examination

RE-EXAMINED by Agwuna for Defence: Our tenants do not worship the juju. Some jujus can be attached to a group, others, to soil, others generally worshipped e.g. Umudioka has its own juju, served jujus last on land, last year.

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Defence closed:

Adjourned 7th November, 1960 for visit to locus.

(Sgd) HERBERT BETUEL  
Puisne Judge.  
4/XL/60

No.22

NO.22

Court's  
Inspection  
Note  
7th November  
1960

COURT'S INSPECTION NOTE.

At Onitsha: Monday the 7th day of November, 1960.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA & ORS. Defendants.

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Inspection Note: (Read out to parties and their Counsel in open court).

The Court visited the land in dispute, in the company of the Court Clerk and Interpreter, the Court and Judge's Orderly, the parties and their respective counsel and other persons.

The Court started its peregrinations, from the Plaintiffs Village, Umuanugwo, and, after proceeding a considerable distance, saw the Nnakwe stream, which it is now admitted is not on land claimed by the Defendants, but in Ifite-Ukpo, the soi-disant Nnakwe on Exhibit 2, is now called by the Defendants Aniga, still outside the portions of land claimed by either party, I saw where Nnakwe flows into the Okpuana stream.

In the  
High Court

No.22

Court's  
Inspection  
Note  
7th November  
1960  
continued

10 I entered on the Northern portion of the land called Mpiti, and claimed by the Plaintiffs in this suit. The Defendants showed me an Agba tree which they said formed their boundary with Akwa, the Agba tree may have been the one on the Northern Boundary of the Northern part of Mpiti as shown on the line verged pink in Exhibit 2. I saw what appeared to be farms cultivated by the Plaintiffs all over the Northern part of Mpiti land. We followed the banks of the Okpuana stream in a southerly direction and saw the Shiejioku juju, it is to an onlooker, just a tree.

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I also saw farms alleged to have been cultivated by the Plaintiffs people in the southern part of Mpiti, which is in dispute.

I saw an alleged old footpath and a line of Ogilisi trees as shown in Exhibit 1 which extended to the Nkissi stream, the Plaintiffs claim that these trees denote their boundary with Akwa, but the Defendants said these were boundaries as among the Defendants themselves; inter se.

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We crossed the Nkissi stream and walked along Ifite Ukpo road and saw farms and houses belonging to the Defendants. We then returned over the Nkissi stream and followed a path said by the Defendants to be their boundary between their Mpiti and Ofii land. This path, a mere path, is shown in Exhibit 2, between double lines.

There is, as between the Plaintiffs and Defendants, no actual dispute as to the extent of the land claimed by the Plaintiffs.

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I saw some farms of the Defendants but the Plaintiffs claim they were in Ofii land.

I saw the alleged Douglas Boundary, it does

In the  
High Court

No.22

Court's  
Inspection  
Note  
7th November  
1960  
continued

consist of a distinctive line of trees and this is not denied by the Plaintiffs, all they say is that in reality this is not a boundary at all.

Adjourned 16th May, 1961 for hearing of Counsels' addresses.

Court going on leave is flooded with judgments to prepare and deliver.

On return from leave, some arrangements will have to be made at whatever place I am posted, to come to Onitsha for this purpose.

10

The land is poor land only fit for the planting of cassava and no hardship will be caused to the parties.

I have made my notes and will retain a lively remembrance of the dispute between the parties and the evidence already given.

(Sgd) Herbert Botuel  
Puisne Judge  
7/11/60.

No.23

NO.23

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Counsels  
Addresses  
16th May  
1961

COUNSELS ADDRESSES

At Onitsha: Tuesday the 16th day of May, 1961.

0/72/1955: NWANKWO UDEGBE & ORS. Plaintiffs

- and -

ANACHUNA & ORS. Defendants

A.O.Mbanefo for Plaintiffs.

Ofodile for Defendants.

Ofodile arguendo: Long case. Refresh Court's memory. Exhibit 2(a), one of plans filed by Defendants, like Exhibit 2, but unlike Exhibits 1 and 1(a), plans filed by the Plaintiffs. 2(a) shows not only land in dispute verged yellow, but other lands, North and East of the land in dispute. Plaintiffs claim area verged

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yellow, Defendants claim portion now in dispute and lands North and East. Defendants land, say Plaintiffs, is land, South of the Nkissi Stream, which is not in dispute at present. Plaintiffs based their claim to the land on user since time immemorial. Defendants say not only were they owners since time immemorial but they were granted title, over whole land as shown in Exhibit 2(a) by a judgment of 1908 by an Administrative Officer, called Douglas, and they own all land South of Boundary trees shown to Court on inspection, which runs from Okpuana stream to Onyekwena stream, small part now claimed, included in the greater whole over which they were awarded title. Judgment of 1908, Plaintiffs say their land was not involved and they were not parties to the dispute, if parties were not parties to the 1908 land dispute, it was because they had no lands there, if they were privy to the decision, they are estopped from challenging now Defendants' title.

In the  
High Court

—————  
No.23

Counsels  
Addresses  
16th May 1961  
continued

If Defendants were granted title by a valid judgment in 1908, not appealed against, Plaintiffs cannot after the elapse of 40 years, come and challenge the Defendants' title. Analysis of judgment of 1908. Oral evidence of it (section 45 of the Evidence Ordinance). Evidence admitted. Exhibit 6, for present purposes, embodies a judgment relating to land in dispute(?). Evidence of 1st Witness for Defence, Registrar of Customary Court, searched for original record of proceedings, probably destroyed by white ants, records not complete. Not disputed in 1908 dispute between Akwa and Defendants, and the Defendants' obtained judgment and Defendants gave oral evidence of that judgment from best source available, Hector Emejulu, the original interpreter, who went with Douglas to the land, who arbitrated and demarcated the land (Section 96(c) of Evidence Ordinance). Independent and official witness, respectable person, titled man in Onitsha, present when boundary trees were planted. Page 9 of 1924 Edition of Spencer and Bower on Res Judicata. 6 conditions. Submit decision of 1908 in fact pronounced Folios 104 - 106 Volume 61. Dispute between Umudioka and Ifite Ukpo. Akwa and Plaintiffs 2 of 4 families in Ifite Ukpo Decision Final. Involved same question, land as shown in Exhibit 2(a) verged pink,

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In the  
High Court

No.23

Counsels  
Addresses  
16th May 1961  
continued

includes portion in dispute (See evidence of Defendant). Plaintiffs do not deny that they were privy to this judgment, all they say our land was not involved, involves short point whether land was included in 1908 decision or not? Must have present at Inspection, Inspection by European in 1908, left their brothers to fight their battle, when that failed, many years later sued themselves, stale claim, equitable remedy. Eastern portion of land of Defendant being claimed by Akwa family. Decision deemed to be such, tribunal had jurisdiction, no averment or proof to the contrary. Spencer and Bower ibidem Page 16 paragraph 19 D.Os decision as good as High Court Decision. 10

Chukwunka V. Nwalu Achukwu 14 W.A.C.A. 341 (2).

Absence of record of proceedings = unrecorded decision.

Unrecorded decision can operate as a res judicata. 20

1 W.A.C.A. 192 (Chief Kweku V. Kweku & Anuaku) Page 193, res judicata dealt with exhaustingly: sic page 195 and following. Plaintiffs stood by and allowed Akwa family to fight their battle for them. Plead estoppel. 3 W.A.C.A. 29 (Santos V. Ikosi Industries Ltd.) page 347. Defendants farming on land since 1908, put tenants on land some called as witnesses. Claim to disturb us after at least 47 years of undisturbed possession. Court will not allow such evidence to be taken into account to oust equity and bolster up a stale claim. 30  
Awo V. Gam 2 Nigerian Law Reports 100 at 101. Exhibit 2a. Trees on boundary as stated by 1st Defendant (1st November 1960 Vol. 67 28-33.) Okwu Shiejioku Shrine owned by the Defendants, Court saw house of Okeke Obiese Vol. 67 Folios 68-69. After crossing Nkissi stream anthills close to which were planted Otosi trees. Northern Boundary of Plaintiff shows no natural feature. Ask Court to dismiss Plaintiffs' case. 40

A.O.Mbanefo replicando: Claim: Declaration of title of land shown in Exhibit 1 and Exhibit 1a, Exhibit 1a, corrects Exhibit 1, shows area of

trespass. Title claimed by user and possession, judgment of 1908 did not affect us. Res judicata valueless unless we were parties or privy to it. 4 Villages in Ifite Ukpo, we happen to be one, far from having community of interest with Akwa, we are in litigation, and an effort to join in this suit by them was resisted, not shown any knowledge of 1908, not representative action by whole of Ifite-Ukpo. Paragraph 7 of Statement of Defence. Defendants sued Akwa, boundary with Akwa, judgment founded upon. Nor parties did not stand by. Area in dispute in 1908, area in dispute then, not shown. Exhibit 2(a) and in pleadings, amendments made to suit Defendants' case Ofi land adjoins Mpiti land and not entered Northern portion of Ofi land but also Mpiti land, put in Exhibit 2, to show ancient footpath, boundary between Plaintiffs and Akwa people. Dispute between Akwa people and Defendants Northern portion of Ofii land. Exhibit 2. Akwa owner of Northern Area, Nnakwe Stream, led to amendment, Nnakwe called Aniga, to put area of land in their area. See Courts Inspection Note, Court not shown any other Nnakwe. Evidence of Emejulu cornerstone of Defendants' case. Dangerous to admit such evidence, judgment may be traced, Emejulu gave secondary evidence of a document, put to him, there was another interpreter, that he did not interpret these proceedings, evidence sic he was interpreter, ipse dexit. Section 96 of the Evidence Ordinance 1(c), Emejulu called under (c). Where was search made? No search made in District Office at Awka or Onitsha? Because document would be adverse to their case, no evidence document destroyed, earlier records intact and not destroyed. Search in one place not enough especially in wrong place (Halsbury 3rd Edition. Vol. 15, paragraph 646 from pages 358-359, footnote (k)). Court should not have admitted such evidence, exception to rule, strict proof required (Barber V. Roe (1948) 2 All E.R. 1050) Exhibit 6 only document produced. Number of case not gun, parties involved not same as in 1908 case, where did it take place, before 1908.

Evidence of Emejulu, aged man remembers contents of judgment after the elapse of more than 46 years. 3 days absence, D.O. gave judgment on spot started to plant boundary trees, Defendant

In the  
High Court

No.23

Counsels  
Addresses  
16th May 1961  
continued

In the  
High Court

No.23

Counsels  
Addresses  
16th May 1961  
continued

says only 2 trees planted, Emejulu says judgment delivered at Awka, Defendant says at Ifite Ukpo, dangerous to accept such evidence. 4th Defence Witness, tenant, Thomas Abogu, farmed in both parts of Mpiti land never saw Shiejioku Juju; see also evidence of Metu.

7th Witness, Chinwuba Obiese, did not point out juju during inspection, all these acts of possession related to Northern area, not land in dispute, 6th, Elosie Azodo, not authorised by his family, Achonye Ejiofor night person. Matter referred to Dunokofia Union for settlement. Douglas judgment discussed, not shown 8 persons present dead, none called to give evidence, no reliable evidence of such judgment, no such judgment reached. Obiekwe felling Iroko tree outside land in dispute, witness not called. Plaintiff knew of Douglas visits, I was present Douglas did not enter our land, Ofii was land in dispute not Mpiti, planted Egelisi tree in a straight line from our village to Nkissi river, ancient footpath, Egelisi trees over 50 years old, court saw it, surveyor saw it (3rd Plaintiffs' witness), present when D.O. came, land then in dispute was Ofii land, representatives of our neighbours support our case. 5th Witness for Plaintiffs mentioned names of his neighbours, etcetera, not cross-examined on this point, perhaps a mere omission. Did Douglas actually create an artificial boundary? Between Akwa and Ukpo Mili and Defendants, Nkissi is the boundary, between Umunya and Plaintiffs, boundary is Okpuana, between Umunya and Defendants boundary is a stream, tidier claim, natural boundary to be preferred, other story pacing incredible. Area North of Mpiti extensively farmed by Plaintiffs also farms in Southern part of Mpiti in dispute. Court saw boundaries not boundaries between neighbours. Court did not see land and farm belonging to Defendants until it crossed the Nkissi stream (1956) Vol. 2 All E.R. 904) If Emejulu's evidence discarded puts an end to Douglas judgment effect of. Plaintiff has proved his case, acts of possession etcetera.

Ofodile: Plaintiffs bound by evidence given by their witness. Proceedings 20/9/60, Chikwlu Amaegbu, have land case with Plaintiffs

containing land in dispute in this case, part of Akwa land, know of previous proceedings, about 50 years ago, between Akwa and Defendants. Dispute among ourselves, close our ranks, denies Egelisi tree planted on boundaries, Douglas' case, etcetera.

In the  
High Court

No.23

Counsels  
Addresses  
16th May 1961  
continued

A.O.Mbanefo: I have tendered Exhibit 3, evidence of boundary, Egelisi trees.

Adjourned 6th June, 1961 for decision of Court.

10

(Sgd) HERBERT BETUEL  
Puisne Judge  
16/5/61.

NO.24

No.24

J U D G M E N T

Judgment  
6th June, 1961

At Onitsha: the 6th day of June, 1961.

0/72/1955; NWANKWO UDEGBE & ORS. Plaintiffs  
- and -  
ANACHUNA OKAFOR & ORS. Defendants.

A.O.Mbanefo for Plaintiffs.

20

Ofodile for Defendants.

J U D G M E N T

Although this case has been, at disjointed intervals, before the Court, many times, I retain a vivid recollection of the evidence adduced and of the issues involved.

30

The suit is between the Umuanugwo Quarter of Ifite-Ukpo and the Uruowelle Quarter of Umudioka, but standing on the side lines, though no party to this suit, are also the Akwa people of Ifite-Ukpo.

The claim is for a declaration of title to "Mpiti" land, and damages for trespass thereon, the acts constituting the alleged trespass are

In the  
High Court

No.24

Judgment  
6th June, 1961  
continued

not disputed, but it is disputed that they amount to a trespass at all.

Both parties call the land "Mpiti", and the area of alleged trespass is shown on all the plans, except Exhibit 1. The Plaintiffs filed two plans Exhibit 1 and Exhibit 1(a). Exhibit 1(a) was made to show the area of alleged trespass.

Exhibit 2(a) shows not only the portion of land in dispute but other lands to the North and to the East of the land in dispute, which are claimed by the Defendants. 10

The land to the East of the portion of land in dispute is called by all the parties: "Ofii" land.

The Plaintiffs do not accept these extensive claims and would confine the Defendants to the land South of the Nkissi Stream, where they have most of their habitations and farms.

Exhibit 2 shows in the North West of the land in dispute the "Nnakwe" stream, in Exhibit 2(a), this stream is conveniently renamed the "Aniga" Stream. 20

My observations on this juxtaposition of names is contained in my Inspection Note:

....."saw the "Nnakwe Stream" which it is now admitted is in Ifite-Ukpo and not on land claimed by the Defendants, the soi disant "Nnakwe" in Exhibit 2, is now called by the Defendants "Aniga", which still lies outside portions of land claimed by either party, I saw where the Nnakwe flows into the Okpuana stream". 30

To the best of my recollection, I was not shown any other Nnakwe stream. An important feature in this case is that the "Nnakwe" or "Aniga" stream is shown on the Defendants' plans as south of the alleged Douglas Boundary, and to the North of the land in dispute, i.e. on land claimed by the Defendants.

Again, there is an old footpath and a line of Egelisi trees, extending along the Eastern 40

Boundary of the land in dispute, down to the Nkisi stream, according to the Defendants, these trees and path constitute a boundary between themselves, according to the Plaintiffs it is their boundary with Ofii land and the Akwa people, at any rate it is not disputed that it does constitute a boundary of some kind.

In the  
High Court

No.24

Judgment  
6th June, 1961  
continued

10 There is also a line of trees running along to the North of the land in dispute, it is well featured in Exhibit 2(a), and is alleged to be the Northern Boundary of the Defendants' land, the Plaintiffs deny that it is a boundary at all, which hardly seems a satisfactory explanation, but its mere existence does not establish it as the "Douglas Boundary".

Both parties base their claim to the land on user and possession, the Defendants in addition, rely on the Douglas Judgment of 1908.

20 Exhibit 6 was adduced in evidence but does not appear to be of any relevance.

H.M.Douglas was a District Officer in charge of an area which included Ifite-Ukpo and his duties included the settlement of land disputes.

There existed such a dispute between the Defendants and the Akwa people, which led to a demarcation of the boundary between them.

30 I believe that this was as a result of a judgment which was pronounced either at Awka or at Ifite-Ukpo, and it being alleged that this judgment was lost or destroyed by white ants the question arises whether I should permit or exclude evidence of its alleged terms.

It becomes, it is argued, an unrecorded decision, and, other conditions being satisfied, parol evidence may be adduced as to its terms and it may even constitute an estoppel per rem judicatem. (Assampong v. Amuaku (1932) 1 W.A.C.A. 192, 195-197, 203).

40 Section 96 (1)(c) of the Evidence Ordinance, (Cap.62) provides that :

"Secondary evidence may be given of the

In the  
High Court

No.24

Judgment  
6th June, 1961  
continued

existence, condition or contents of a document ..... when the original has been destroyed or lost and in the latter case after all possible search has been made for it"

The explanation that the record may have been destroyed by white ants, though not impossible or improbable, must be rejected as suppositions.

It may have been lost but a search was only made in one place, at the local customary court, no search was conducted elsewhere, at the Awka or Onitsha District Offices, or at the Onitsha Provincial Office, where experience teaches us, it may or may not be. 10

The search was made where instruments of a like nature are found, although under no duty to do so, there was nothing to prevent the Plaintiff from conducting his own researches.

I appreciate that such a search need not be made in every possible place, but to search in one place only, may show a lack of diligence and an unhealthy anxiety to avail oneself of parol evidence. (Bligh v. Wellesby (1826) 2 C.P. 400, And, R.V. Kastrick (1846) 2 Cox C.C. 89). 20

I think that a case has not been made out for the admission of parol evidence, but to dispose of all matters in issue, I will treat it as if it ought not to have been excluded.

The result according to the Defendants would be, that all land including the land in dispute South of the boundary trees running from the Okpuana to the Onyekwena Streams as shown in Exhibit 2(a) was awarded to the Defendants. 30

At least two factors militate against their claim, the situation of the Nnakwe stream, and the footpath and line of Egelisi trees, the boundary between "Mpiti" and "Ofii", which is also alleged to constitute a boundary between the Plaintiffs and the Akwa people. 40

The Plaintiffs deny that the land in

dispute was involved in the 1908 case, which was a dispute between the Defendants and the people of Akwa, not in respect of Mpiti, but concerned with the Northern part of Ofii land, and, the distinct line of trees do not in reality form a boundary with the Plaintiffs.

In the  
High Court

No.24

Judgment  
6th June, 1961  
continued

10 The Plaintiffs say that the Northern Boundary of Ofii land runs from the Onyekwena stream up to the path, and is the boundary demarcated by Douglas between the Defendants and the Akwa people, they claim that they are not concerned with the unhappy apparent continuation of this boundary as they were not parties to the dispute.

The Defendants contention is, of course, that in 1908 the Akwa people entered the Northern part of Ofii land up to a point close to Mpiti land, and that the Douglas Boundary is drawn to include Mpiti as well as Ofii land.

20 The parol evidence of the judgment in that case is given by Mr. Emejulu, a stranger to the dispute, a titled man of Onitsha, a retired government official, who was at the material time, one of the District Interpreters, who actually accompanied Mr. Douglas, to the land in dispute, and, he supports the Defendants' case up to the hilt, even enlarging it although that may be a mistake, to include the whole of Ifite-Ukpo, which would of course include the Plaintiffs.

30 I cannot permit such an enlargement, the Defendants, have in their pleadings, limited their dispute to the Akwa people, and they must stick to that issue.

(Esso Petroleum Co. Ltd. Vs. Southport Corporation (1956) 2 Weekly Reports 81-93)

40 Mr. Emejulu gave the only non partisan evidence of the terms of the Douglas Judgment, but I am not happy in placing too great a reliance on an astounding remembrance of a case which he heard more than 50 years ago.

But if his evidence, is in the circumstances admissible, and accepted, on the present pleadings the boundary between the Uruowelle of Umudioka and

In the  
High Court

No.24

Judgment  
6th June, 1961  
continued

the Akwa of Ifite-Ukpo is as stated by the Defendants.

I would not hesitate to state that the decision of District Officer Douglas, once it was ascertained could amount to an estoppel per rem judicatam (Spenser Bower on "Res Judicata" (1924 ed) at page 126 paragraph 197 states:

"For the purposes of estoppel per rem judicatam, a party means not only a person named as such but also one ... who being cognizant of the proceeding and of the fact that a party thereto is professing to act in his interests, allows his battle to be fought by that party, intending to take the benefit of that championship in the event of success".

There was in the course of these proceedings an attempted joinder by the Akwa people as Plaintiffs, but this court on the 25th of November, 1959, dismissed the application as the proposed joinder would only serve to enlarge the issues, and, saddle either the Plaintiffs or Defendants with an unwelcome partner.

The Plaintiffs, the Defendants and the Akwa people all form part of the Ndunukofia Clan.

Within that Clan, the Plaintiffs and the Akwa are parts of Ifite-Ukpo, but the parts do not make a whole.

The Defendants are of Umudioka, and their kinship to the Plaintiffs or the Akwa people is not so close, it is conceivable that as against the Defendants, despite serious internal differences among themselves, they would be prepared to form an uneasy alliance.

But it is hardly likely that it goes very deep to retain Mpiti, their kinsmen of Uruowelle are ready to jettison their claim, if necessary, to Ofii, so that any conspiracy between them to share the spoils at any rate in the event, appears to me, to be highly

exaggerated.

It seems to me that the Plaintiffs must have had some sort of interest in the 1908 case.

In the  
High Court

No.24

Judgment  
6th June 1961  
continued

10 Because, in local circumstances, a lack of interest could only arise because the land they owned was not connected with or not near the land adjudicated upon, so that it appears to me, most unlikely that the Plaintiffs could have been unaware or lacking interest in the result of the case, however, the Akwa people and not the Plaintiffs, in the light of the pleadings, were the parties mostly concerned.

20 I do not think that the doctrines of standing by and identification as elaborated by the Courts, in the light of the evidence, can be so stretched as to catch the Plaintiffs in their net; mere awareness and a general sort of interest in the proceedings is surely not enough there is no sufficient evidence, that the Akwa people were asserting the Plaintiffs' interest, or that the Plaintiffs had ranged themselves on the side of the Akwa people, or, applied to be joined, or, provided witnesses for the "pray", or, financial aid, or, conducted the suit, or, in any other way by some unequivocal act, identified themselves with the interests of the Akwa people. (Santos V. Ikosi Industries limited (1942).

30 8 W.A.C.A. 29, 34-35, 37; and O/25 & 32/58, Nzekwu Vs. Nwakobi and others (1960) decision of Betuel J, delivered at Onitsha on the 12th day of May, 1960 (unreported).

I therefore hold, whatever its results may have been, that the Plaintiffs are not bound by the results of the 1908 Case.

The Defendants claim to have made use of the land in dispute since time immemorial, until disturbed by the Plaintiffs, or, at least, to have been in possession since the judgment in their favour in the 1908 case.

40 In this latter case, they would plead that they had acquired an equitable title or defence and so defeat the Plaintiffs' claim. (See for example as in Awo Vs. Gam (1913) 2 N.L.R. 100-101).

In the  
High Court

No.24

Judgment  
6th June 1961  
continued

But, I am not sure, that they have satisfied me as to such user and possession either from time immemorial or since the 1908 case.

The Plaintiffs case that, about six years ago, the Defendants first crossed the Nkissi Stream and trespassed on the land in dispute, seems a little more probable, but it leaves unexplained, the line of trees, North of the land in dispute, and the alleged existence of the Defendants' jujus there.

10

I saw the priest who was alleged to serve the jujus, the Okwu Shiejoku Juju in particular. I did not find his evidence very satisfactory, the juju itself did not appear to be anything other than a tree and I am unable to find as a fact the existence of such jujus as alleged.

The 2nd Plaintiff gave evidence of the boundaries of the land in dispute, a part of his ancestral land, on which, admittedly there were no jujus, but when harried he was not at his best, and he falsely described the path separating Mpiti and Ofii land as a "motor road".

20

He was supported as to the Western Boundary of the land in dispute by a native of Umunya and as to its Eastern Boundary by a native of Akwa, the Akwa witness, however did not appear to notice the Egelisi trees planted along the old path, the Eastern Boundary between Mpiti and Ofii.

30

All these witnesses are agreed in confining the Defendants' Northern Boundary with the Plaintiffs to the Nkissi stream.

Both parties, up to the outbreak of the dispute claim to have put tenants on the land.

The Defendants called some unrepresentative and even more unreliable witnesses than the Plaintiffs to give evidence as to user and possession, they also failed to prove the terms

of the 1908 Judgment. I have already said that I regard implicit reliance on Mr. Emejulu's memory as dangerous, or, if those terms were proved that it was binding on the Plaintiffs, nor, did they show a good equitable title or defence.

In the  
High Court

—————  
No.24

Judgment  
6th June 1961  
continued

10 It seems probable that the line of Egelisi trees along the old footpath, on the Eastern side, constitutes a boundary with Akwa or the Defendants, according to the terms of the 1908 Judgment.

The line of trees, North of the land in dispute, in Exhibit 2(a), may be a boundary with the Akwa people, it is not shown that it forms a boundary with the Plaintiffs.

There seems in the absence of any better evidence, some grounds for saying that the Northern Boundary of the Defendants with the Plaintiffs is the Nkissi stream.

20 The Plaintiffs therefore are entitled to the declaration sought in respect of the Mpiti land in dispute as shown in Exhibit 2(a) and in addition to £25 damages for trespass and costs assessed at 125 guineas.

(Sgd) HERBERT BETUEL  
Puisne Judge.  
6/6/61.

CERTIFIED TRUE COPY

HIGH COURT REGISTRAR.

30 Nwobosi.

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In the Federal  
Supreme Court  
of Nigeria

NO.25

NOTICE AND GROUNDS OF APPEAL

No.25

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Notice and  
Grounds of  
Appeal  
24th June 1961

(NOTICE OF APPEAL)

Suit No. 0/72/1955.

BETWEEN:

1. NWANKWO UDEGBE	) For themselves and others of Umuuanugwo quarter of Ifite- Ukpo. Plaintiffs/ Respondents	10
2. AJUTUORA OBEGBUNA		
3. ADOLBERT ASOKWU		
4. AKAIKE IKEGBUNA		
5. NWAUUBE UDEOZO		

- and -

1. ANACHUNA NWOKAFOR	) For themselves and others of Uruowelle quarter of Umudioka. Defendants/ Appellants.
2. ONONIWU	
3. CHIKWUMA MGBE	
4. CHINWEUBA OBIEZE	
5. OKONKWO NNEUKWU	
6. EFOBIRI EGBUNONU	

TAKE NOTICE that the Defendants/Appellants being dissatisfied with the decision of the High Court, Onitsha contained in the judgment of the said High Court dated 6th day of June, 1961, doth hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph (3) and will at the hearing of the appeal seek the relief set out in paragraph (4). 20

AND the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph (5). 30

Part of the decision of the lower Court complained of :

2. Whole Decision.

3. Grounds of Appeal:

In the Federal  
Supreme Court  
of Nigeria

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No.25  
Notice and  
Grounds of  
Appeal  
24th June 1961  
continued

- (1) NON-DIRECTION: The learned trial Judge did not direct himself as to the onus of proof imposed by the law on the Plaintiffs in a case of declaration of title to land as evidenced in the following passage of his judgment.

10 "There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the Plaintiffs is the Nkissi stream. The Plaintiffs therefore are entitled to the declaration sought in respect of the Mpiti land in dispute as shown in Exhibit "2" (a)". As by so holding the learned trial Judge did not consider what the Plaintiffs should prove and whether they proved them neither did he make any findings of fact which should support a decision of title to land.

20

- (11) NON-DIRECTION: The learned trial Judge by holding as follows: "There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the Plaintiffs is the Nkissi stream" did not make any findings of fact as to the grounds, on which he relied for coming to such a conclusion and did not direct his mind to the evidence in that regard at all.
- 30

- (111) MISDIRECTION: The learned trial Judge having held that "It seems probable that the line of Egelesi trees along the old footpath, on the Eastern side, constitutes a boundary with Akwa or the Defendants, according to the terms of the 1908 Judgment and that

40 "The line of trees, North of the land in dispute, in Exhibit "2" (a), may be a boundary with the Akwa people, it is not shown that it forms a boundary with the Plaintiffs" misdirected himself in holding that the northern boundary of

In the Federal  
Supreme Court  
of Nigeria

No.25

Notice and  
Grounds of  
Appeal  
24th June 1961  
continued

the Defendants with the Plaintiffs is  
the Nkissi stream.

(IV) MISDIRECTION: The learned trial Judge  
misdirected himself as to the rele-  
vance and materiality of the Aniga or  
Nnakwe stream as also the footpath  
and line of Egelesi trees to the east  
of the land in dispute and the  
Douglas Boundary and came to a wrong  
judgment therefor. 10

(V) ERROR-IN-LAW: The learned trial Judge  
erred in law by rejecting parol evi-  
dence of the Douglas judgment which is  
admissible and which evidence if ad-  
mitted would have entitled the Defen-  
dants to judgment. By rejecting  
such evidence the learned trial Judge  
came to a wrong decision.

(VI) ERROR-IN-LAW: The learned trial  
Judge having found that the Plaintiffs 20  
were aware of the dispute which ended  
in the judgment of an administrative  
Officer Douglas in 1908 and the evi-  
dence having shown that the Plaintiffs'  
interest was involved therein and  
that they stood by, was wrong in law  
in not holding that the Plaintiffs  
are estopped by their conduct from  
disputing the title of the Appellants

(VII) The decision is unreasonable and un- 30  
warranted and cannot be supported  
having regard to the weight of  
evidence.

4. Relief sought from the Federal Supreme  
Court:

To set aside the judgment of the lower Court  
and enter judgment for the Defendants.

Further grounds of appeal will be filed when  
the record of proceedings is obtained.

5. Persons directly affected by the appeal: 40

Names

1. Nwankwo Udegbe  
 2. Ajutuora Obegbuna  
 5. Nwawube Udeozo

3. Adolbert Asokwu  
 4. Akaike Ikegbuna

Plaintiffs/Respondents.  
 c/o A.O.Mbanefo Esqr.  
 Onitsha.

In the Federal  
Supreme Court  
of Nigeria

No.25

Notice and  
Grounds of  
Appeal  
24th June 1961  
continued

1. Anachuna Nwokafor  
 3. Chikwuma Mgbe  
 5. Okonkwo Nneukwu

2. Ononiwu  
 4. Chinweuba Obieze  
 6. Efobiri Egbuonu

Defendants/Appellants.  
 c/o Messrs.Ikpeazu & Ofodile  
 3 Venn Road, Onitsha.

10

Dated at Onitsha this 24th day of June, 1961.

Sgd) Ikpeazu & Odofile  
Solicitors.

£5 CR. No.578330 of 27/6/61.  
12/- CR. No.745403 of 27/6/61.

Filing Notice of Appeal £5. - . - .  
 Service 10. - .  
 Mileage 2. - .

20

£5.12. - .

NO.26

COURT NOTES AND COUNSEL'S  
ARGUMENTS ON APPEAL.

IN THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT ENUGU  
ON TUESDAY THE 12TH DAY OF FEBRUARY 1963

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT KT. AG. CHIEF JUSTICE OF  
 THE FEDERATION  
 JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE  
 DR. G.B.A. COKER AG. FEDERAL JUSTICE

30

F.S.C.440/1961

ANACHUNA NWAKAFOR & ORS. versus NWANKWO  
UDEGBE & ORS.

Ikpeazu & Ofodile for Appellants

No.26

Court Notes  
and Counsel's  
Arguments on  
Appeal  
12th February  
1963

In the Federal  
Supreme Court  
of Nigeria

No.26

Court Notes  
and Counsel's  
Arguments on  
Appeal  
12th February  
1963  
continued

A.O.Mbanefo for Respondents.

Ikpeazu argues appeal: Judgment pp.59-67. G/A  
pp.68-71.

G/A 1,2,3 and 7. Refer to judgment P.67 l.16 -  
24. Nkissi stream Exh. 1 & Exh. 2A.  
Grounds not stated. "Some grounds" not suffi-  
cient finding that onus was discharged. Onus  
has not shifted. Issue joined on user and  
possession.

Exh.1 - Plaintiff's plea shows farmer of 10  
Defendants only on the land. Exh.1A - 5  
years later showed Plaintiffs farms - P.19 l.22-26  
P.21 l.34-39. Counsel's comments at P.57 l.1-2  
and judgment P.60 l.5-8.

In 1955, when Exh.1 made, we were in  
possession of whole area.

Exh.1 shows land to north as Plaintiff's  
land and their settlement to the north.  
Settlement not so near - Exh.2A shows land to  
north - belongs to Akpa, not Plaintiffs. 20

Douglas judgment merely confirmed existing  
boundary. I cannot say in what capacity  
Douglas was acting, whether as native court or  
arbitrator.

Plaintiffs say we never crossed the Nkissi  
- but see 2nd Plaintiff in XXN. at p.22, admitt-  
ing we own land to north of Nkissi West of land  
in dispute l.32-5. False claim as land to  
east of the road.

Douglas boundary - p.53 l.43 and p.54 l.3 30  
p.61 l.8-15, and p.67.

Not a case for retrial. Finding would  
support our case and justify dismissal.

2nd Plaintiff consider line of trees in our  
boundary with Akpa from the Onyekwena stream in  
the E to the road Ukpo - Ukwa tree p.14.  
See p.63 l.7-13.

As to order judge thought Plaintiffs' witnesses unreliable. p.66 l.36. Case has failed on merits.

In the Federal  
Supreme Court  
of Nigeria

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p.66 l.34 - p.67 l.11. Line of trees set up a doubt. (Okpiri v. Jonah (1961) 1 All N.L.R. 102).

No.26

Court Notes  
and Counsel's  
Arguments on  
Appeal  
12th February  
1963  
continued

Kodilinye v. Odu 2 WACA 336.

Onus on Plaintiff;

Kponugbo v. Kodaja 2 WACA 24

10

Mbanefo for Respondent:

Page 65 l.35.

Read judgment as a whole it is in our favour.

Statement against interest.

p.44 l.12 - 25. and judgment p.57 l.29-37.

p.67 l.17 "Some grounds."  
p.66 l.19.

Plaintiffs satisfied judge that "Douglas boundary" did not exist and that Nkissi was the boundary.

20

Ikpeazu in reply:

High Court Rules p.48 and l.

Judgment reserved.

(Sgd.) L. BRETT.  
FEDERAL JUSTICE.

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In the Federal  
Supreme Court  
of Nigeria

No.27

Judgment of  
Brett, Ag.  
C.J.  
19th February  
1963

NO.27

JUDGMENT OF BRETT, AG.C.J.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT ENUGU

ON TUESDAY, THE 19TH FEBRUARY, 1963.

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT

AG. CHIEF JUSTICE OF  
THE FEDERATION

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE

GEORGE BAPTIST AYODOLA  
COKER

AG. FEDERAL JUSTICE

10

F.S.C.440/1961

BETWEEN:

1. ANACHUNA NWOKAFOR	}	DEFENDANTS/APPELLANTS
2. ONONIWU		
3. CHIKWUMA MGBE		
4. CHINWEUBA OBIEZE		
5. OKONKWO NNEUKWU		
6. EFOBIRI EGBUNONU		

- and -

1. NWANKWO UDEGBE	}	PLAINTIFFS/RESPONDENTS
2. AJUTUORA OBEGBUNA		
3. ADOLBERT ASOKWU		
4. AKAIKE IKEGBUNA		
5. NWAUBU UDEOZO		

20

J U D G M E N T

BRETT, AG.C.J.F.:

This was a representative action originally brought in the Udoka Native Court, in which the Plaintiffs, for themselves and others of Umuanugwo Quarters of Ifite-Ukpo, sued the Defendants, for themselves and others of Uruowelle Quarter of Umudioka, claiming a declaration of title to a piece of land called

30

"Agbagolu" or Mpiti", and damages for trespass.

In the Federal  
Supreme Court  
of Nigeria

—————  
No.27

Judgment of  
Brett, Ag.  
C.J.  
19th February  
1963  
continued

10 The land in question is bounded to the East by a motor road constructed by the Plaintiffs and Defendants, to the South by the Nkissi stream, and to the West by the Okpuana stream. To the North there seems to be no visible boundary, and both parties claim to own the land stretching northward from the land in dispute to a line of trees described by the Defendants as the "Douglas boundary", to which I shall refer later. The case for the Plaintiffs is that the Defendants own no land North of the Nkissi stream, and that the land East of the motor road and North of the Nkissi stream belongs to the people of Akwa, which is another sub-family of Ifite-Ukpo. The case for the Defendants is that in 1908 there were proceedings between themselves and the people of Akwa, and that a District Officer named Douglas awarded them title to a large area of land North of the Nkissi stream, of which the area now in dispute forms the South-Western corner, and which is bounded to the East, South and West by the Onyekwena, Nkissi and Okpuana streams respectively and to the North by a line of boundary trees, which they call the "Douglas boundary". Akwa being a sub-family of the same community as the Plaintiffs, the Defendants submit that the award made by Douglas is binding on the Plaintiffs.

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40 The second Plaintiff gave evidence in the High Court, and in addition to the surveyor the Plaintiffs called one witness from Akwa and one from Umunya, the community owning the land to the West of the Okpuana stream. For the defence the first Defendant gave evidence and in addition to the surveyor and witnesses as to the Douglas award four supposedly independent witnesses were called.

The trial judge found the witnesses on both sides unreliable, and regarded those called for the defence as even less reliable than those called for the Plaintiffs. The original of the Douglas award has not been traced and the evidence with regard to it was entirely oral. The judge was of the opinion that the Defendants

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had not called evidence of a sufficiently thorough search for the original to entitle them to give oral evidence of the award, but he nevertheless admitted and considered the oral evidence. The conclusion to which he came was that it was not established that the "Douglas boundary" was where the Defendants said it was and that in any event the Plaintiffs were not bound by it since they were not parties to the proceedings and it was not shown that they came within the class of persons who, though not parties to a suit, may nevertheless be bound by its result. I would agree that the award did not constitute res judicata against the plaintiffs, though I myself would rest this decision not so much on the grounds relied on by the trial judge as on the fact that it was not shown in what capacity Douglas was acting when he made the award. On the evidence he might either have been acting judicially, or as an arbitrator, or purely administratively and unless he was acting judicially or as a judicial arbitrator his award cannot be create a formal estoppel.

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On the other hand, the judge, who had visited the land, was satisfied that what the Defendants asserted was the "Douglas boundary" did consist of a distinctive line of trees, and he did not regard the Plaintiffs' denial that it constituted a boundary at all as a satisfactory explanation; he only added that its mere existence did not establish it as the "Douglas boundary".

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As regards user and occupation of the land the judge described the Plaintiffs' story, that the Defendants first crossed the Nkissi stream six years before the case was tried as "a little more probable" than the Defendants' claim to have been in occupation since 1908. He concluded by saying "The line of trees, North of the land in dispute in Exhibit 2(a)" (the Defendants' plan) "may be a boundary with the Akwa people, it is not shown that it forms a boundary with the Plaintiffs.

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"There seems in the absence of any better evidence some grounds for saying that the Northern Boundary of the Defendants with the



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for costs, and enter judgment dismissing the claim, with costs in the Court below assessed at 100 guineas and costs in this Court assessed at 55 guineas.

(Sgd.) L. BRETT

ACTING CHIEF JUSTICE OF  
THE FEDERATION.

I concur.

(Sgd.) JOHN TAYLOR  
FEDERAL JUSTICE.

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I concur.

(Sgd.) G.B.A. COKER  
ACTING FEDERAL JUSTICE.

Mr. C. Ikpeazu, Q.C. (Mr. F.C. Ofofodile with  
him) for the Appellants.

Mr. A.O. Mbanefo for the Respondents.

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NO. 28

ORDER OF THE FEDERAL SUPREME COURT

In the Federal  
Supreme Court  
of Nigeria

No.28

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT ENUGU

Order of the  
Federal Supreme  
Court  
19th February  
1963

Suit No. 0/72/55  
F.S.C. 440/1961

ON APPEAL FROM THE JUDGMENT OF  
THE HIGH COURT OF THE ONITSHA  
JUDICIAL DIVISION.

10 BETWEEN:

ANACHUNA NWOKAFOR &  
5 ORS. Appellants

- and -

NWANKWO UDEGBE & 4 ORS. Respondents

Tuesday the 19th day of February, 1963.

UPON READING the Record of Appeal herein,  
and after hearing Mr. C. Ikpeazu Q.C. (Mr.  
F.C.Ofodile with him) of counsel for the Appell-  
ants and Mr.A.O.Mbanefo of counsel for the  
20 Respondents:

IT IS ORDERED -

1. that this appeal be allowed;
2. that the judgment of the Court below  
with order for costs be set aside,  
and judgment dismissing the claim be  
entered;
3. that the Appellants be entitled to  
costs in the Court below assessed at  
100 guineas and costs in this Court  
30 assessed at 55 guineas.

(Sgd.) J.A. ADEFARASIN  
CHIEF REGISTRAR.

In the Federal  
Supreme Court  
of Nigeria

NO. 29

ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

No. 29

IN THE FEDERAL SUPREME COURT OF NIGERIA

Order Granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council.  
16th September  
1963

HOLDEN AT LAGOS

Suit No.0/72/1955  
F.S.C. 440/1961

APPLICATION FOR AN ORDER FOR  
FINAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL.

10

BETWEEN:

- |                      |   |            |
|----------------------|---|------------|
| 1. NWANKWO UDEGBE    | ) |            |
| 2. AJUTUORA OBEGBUNA | ) |            |
| 3. ADOLBERT ASOKWU   | ) | Applicants |
| 4. AKAIKE IKEGBUNA   | ) |            |
| 5. NWAUBU UDEOZO     | ) |            |

- and -

- |                      |   |             |
|----------------------|---|-------------|
| 1. ANACHUNA NWOKAFOR | ) |             |
| 2. ONONIWU           | ) |             |
| 3. CHIKWUMA MGBE     | ) |             |
| 4. CHINWEUBA OBIEZE  | ) | Respondents |
| 5. OKONKWO NNEUKWU   | ) |             |
| 6. EFOBIRI EGBUNONU  | ) |             |

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CHIEF JUSTICE OF  
THE FEDERATION

Monday the 16th day of September, 1963.

UPON READING the application herein and  
the Affidavit sworn to on the 27th day of  
June, 1963, filed by the 3rd Applicant on be-  
half of all the Applicants and after hearing  
Mr. H.A. Lardner of counsel for the Applicants  
and Mr. O.C. Obi (holding brief for Mr. Chuba  
Ikpeazu, Q.C.) of counsel for the Respondents:

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IT IS ORDERED that the Applicants be  
granted Final Leave to appeal to the Privy  
Council.

CHIEF REGISTRAR.

IN THE PRIVY COUNCIL

No. 4 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

NWANKWO UDEGBE  
AJUTUORA OBEGBUNA  
ADOLBERT ASOKWU  
AKAIKE IKEGBUNA and  
NWAUUBE UDEOZO

Plaintiffs/Appellants

- and -

ANACHUNA NWOKAFOR  
ONONIWU  
CHIKWUMA MGBE  
CHINWEUBA OBIEZE  
OKONKWO NNEUKWU and  
EFOBIRI EGBUNONU

Defendants/ Respondents

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RECORD OF PROCEEDINGS

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FIELD ROSCOE & CO.,  
52, Bedford Square,  
London, W.C.1.  
Solicitors for the Appellants