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Judgment
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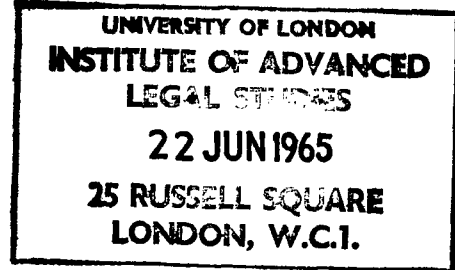
IN THE PRIVY COUNCIL

No. 42 of 1961

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

1. ~~EMMANUEL~~ ~~EKWUNO~~
2. IKEBIFE IBENEWEKA
3. NATH OBIEFUNA
4. ADEZE JIBIKE
5. ANENE IKEBIFE
6. OGBUNBI EFOBI
7. NWACHUKWU AKUNNA
8. ORANEFO MBATU
9. ILOMJIANYA EZEMENYIBA
10. OFO EBONIKWU
11. ANAMAONYEIWE EJIKEME
12. NWOKOYE IZUORA
13. NATHANIEL ANIKPE
14. FRANCIS AMANOCHUKWU
15. JOSEPH A. ORAKPO
16. JABEZ C. NWANGWU
17. ALFRED E. OKOMA
18. DAVID U. ODIBE
19. DR. JONAS IWEKA
(all of Obosi) (Defendants)



78525

Appellants

- and -

1. ~~N.O. IFEJIKA~~ PETER EGBUNA
2. ~~FRANCIS OBIGBO~~ JULIUS ARINZE
(For themselves and on behalf
of the Ukwa family of Umuasele
Onitsha) (Plaintiffs)

Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellants

REXWORTHY, BONSER & SIMONS
83-85, Cowcross Street,
London, E.C.1.

Solicitors for the Respondents.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

1. ~~EMMANUEL IKWUNO~~
2. IKEBINE IBENEWEKA
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5. ANENE IKEBIFE
6. OGBUNBI EFOBI
7. NWACHUKWU AKUNNA
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9. ILOHANYA EZEMENYIBA
10. OFO EBOMIKWU
11. ANAMAONYEIVE EJIKETE
12. NWOKOYE IZUORA
13. NATHANIEL ANIKPE
14. FRANCIS AMANOCHUKWU
15. JOSEPH A. CRAKPO
16. JABEZ C. NWANGWU
17. ALFRED E. OKOMA
18. DAVID U. ODIBE
19. DR. JONAS IWEKA
(all of Obosi) (Defendants)

Appellants

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- (For themselves and on behalf
of the Ukwa family of Umuasele
Onitsha) (Plaintiffs)

Respondents

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No. 1
CIVIL SUMMONS

In the Native
 Court, Onitsha

77/52
 No.27032

NATIVE COURT OR JUDICIAL COUNCIL OF NIGERIA
 NIGERIA.

No.1

Civil Summons
 26th May 1952

1. Egbuna Ozoma for and on behalf of Ukwa family
2. Francis Obigbo of Umuasele, Osha. Plaintiffs

A N D

- | | | | |
|----|--------------------------|-----|---------------------|
| 10 | 1. Emmanuel Ekwuno | (m) | of Obosi Defendants |
| | 2. James Mozie | (m) | " " |
| | 3. Ikebife Ibeneweka | (m) | " " |
| | 4. Nath Obiefuna | (m) | " " |
| | 5. Jonathan Udegbo | (m) | " " |
| | 6. Adeze Jibike | (m) | " " |
| | 7. Anene Ikebife | (m) | " " |
| | 8. Ogbunubi Efobi | (m) | " " |
| | 9. Nwachukwu Akunna | (m) | " " |
| | 10. Oranefo Mbatu | (m) | " " |
| | 11. Ilomuanya Ezemenyiba | (m) | " " |
| | 12. Ofo Ebemikwu | (m) | " " |
| | 13. Anamaonyeiwe Ejikeme | (m) | " " |
| | 14. Nwokoye Izuora | (m) | " " |
| | 15. Nathaniel Anikpe | (m) | " " |
| | 16. Francis Amanchukwu | (m) | " " |

CLAIM: (1) Plaintiffs claim a declaration of title to all those pieces or parcels of Ugborimili land known as "NKETAKU" and "AKPURIKPU" which situate in Onitsha. (Value of lands about £100 each).

(2) £50 damages for trespassing on the said lands.

(3) An injunction to restrain the defendants, their servants and/or agents from further trespassing on the said lands. Dispute arose about 2 years ago.

Date of Summons ... 26. 5. 52
 " " Hearing ... 27. 6. 52

Fees Paid £6.15/- vide C.R.No.4094 of 26.5.52.

(Sgd) G.A. Maduagwu.

for (Signature of President or Vice-President.

In the Native
Court, Onitsha

No. 2

PROTECTORATE COURT OF NIGERIA.

No.2

IN THE NATIVE COURT OF ONITSHA - ONITSHA DIVISION:

Order of
Transfer
7th July 1952.

ORDER MADE UNDER SECTION 28 (1) (c) OF THE
NATIVE COURTS ORDINANCE CAP. 142 OF THE LAWS
OF NIGERIA 1948 EDITION.

I, ERNEST GORDON LEWIS, District Officer,
Onitsha Division, by virtue of the powers vested
in me under Section 28 (1) (c) of the Native
Courts Ordinance, Cap. 142 of the Laws of Nigeria 1948 edition, hereby order that the following case 10
be transferred from the Onitsha Native Court to
the Supreme Court, Onitsha.

Onitsha Native Court Suit No.77/52.

Between:-

1. Egbuna Ozoma) for and on behalf of Ukwu
2. Francis Obigbo) Family of Umuasele Osha.
Plaintiffs

and

Emmanuel Ekwuno (m) and 15 Ors. of Obosi 20
Defendants

CLAIMS: 1. A declaration of title to all those
pieces or parcels of Ugborimili land
known as NKETAKU and AKPURIKPU which
situate in Onitsha (value lands about
£100 each).
2. £50 damages for trespassing on the said
lands.
3. An injunction to restrain the
defendants their servants and/or agents 30
from further trespassing on the said
lands.

REASONS FOR TRANSFER:

1. The plaintiffs and the defendants belong to
two different towns and to two different
Native Courts.

3.

- 2. A similar action brought by the 1st Plaintiff over the same piece of land was transferred to and tried by the Supreme Court.
- 3. Important points of law beyond the competence of the Native Court will arise during the trial.

In the Native Court, Onitsha

No.2

Order of Transfer
7th July 1952
continued

I certify that the Order of Transfer of the above mentioned case from Onitsha Native Court to the Supreme Court, Onitsha, was made on the defendants solicitor's motion.

10

Dated at Onitsha this 7th day of July, 1952.

(Sgd.) E. G. Lewis.

No. 3

ORDER FOR PLEADINGS.

In the Supreme Court

No. 3

Order for Pleadings
8th December 1952.

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA

20

MONDAY THE 8TH DAY OF DECEMBER, 1952.

BEFORE HIS LORDSHIP,

THE HONOURABLE MR. JUSTICE WILLIAM JOHNSTON,
POISNE J.

SUIT NO. 0/44/52

Balonwu for Plaintiffs

Ajegbo for Defendants.

Pleadings: 90 days each party and plan.

(Sgd.) W. Johnston
JUDGE.

In the
Supreme Court

No.4

STATEMENT OF CLAIM

No.4

Statement of
Claim
8th March 1953

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA

SUIT NO. 0/44/1953.

BETWEEN:

1.Egbuna Ozoma)) for themselves and on behalf
2.Francis Obigbo) of Ukwa family of Umuasele 10
Onitsha ... Plaintiffs.

and

1.Emmanuel Ekwuno	9.Nwachukwu Ajunna	
2.James Mozie	10.Oranefo Mbatu	
3.Ikebife Ibenemeka	11.Ilomuanya Ezemenyiba	
4.Nath Obiefuna	12.Ofo Ebemikwu	
5.Jonathan Udegbe	13.Anamaonyeiwe Ejikeme	
6.Adeze Jibike	14.Nwokoye Izora	
7.Anene Ikebuife	15.Nathaniel Anikpe	
8.Ogbunbi Efobi	16.Francis Amanchukwu.	20
(All of Obosi) Defendants.		

STATEMENT OF CLAIM

1. The Plaintiffs are natives of Onitsha and sue on behalf of themselves and as representing the members of the Ukwa family of the Umuasele village of Onitsha.
2. The Defendants are natives of Obosi village and are sued on behalf of themselves and as representing the people of Obosi village.
3. The land in dispute comprises three contiguous parcels of land called NKITAKU or AKPRIKPU and OKPOKO respectively which land lies within the area of land generally referred to or described as UGBO ORUMILI land. These three parcels of land are in short described as NKITAKU and AKPRIKPU LANDS. 30
4. The said land in dispute is situated at Onitsha and is particular delineated and edged pink on the plan attached and is marked Nkitaku and

Akprikpu and Okpoko lands on the plan.

In the
Supreme Court

No.4

Statement of
Claim
8th March 1953
continued

- 10 5. The land in dispute is bounded on the South West (as amended by order of Court of 16/8/52) by the Idemili River or Creek, on the North and North West by Ogbuorimili land of Ogbu family of Umua-sele village of Onitsha whose head and representative is one Anatogu. This land stretches from the borders of the land in dispute to the River Niger and was subject matter of the suit 0/3/49 between the Ogbu family as Plaintiffs and Chief Kodilinye representing the Obosi people as Defendants. The said Ogbu family got judgment against the Obosi people for declaration of title to the said land which judgment was confirmed on appeal by the West African Court of Appeal. The Defendants therein appealed further to the Privy Council before which the case is still pending.
- 20 6. On the West the land in dispute is bounded by OGBOULO LAND of Isiokwe village of Onitsha. The said Ugbo Ulo land was the subject matter of a dispute in the Supreme Court of Onitsha between the Isiokwe people and the Obosi people for title of the said land. The case was heard and determined in 1951 in favour of the Isiokwe people for title to the land and injunction to restrain the Obosi people from interfering with the land. On the East and North East the land in dispute is also bounded by lands belonging to certain individuals and family of Onitsha.
- 30 7. The Defendants' village of Obosi lies six miles from the land in dispute and in between this land and the Obosi village lies a vast stretch of land which comprise various parcels of land all of which belong to various individuals or families of Onitsha. Nowhere in this intervening land does any individual or family of Obosi own any piece or parcel of land.
- 40 8. Certain parcels of this intervening land have now and again formed the subject matter of dispute for title between the Onitsha owners and the Obosi people. In all these cases the Onitsha people had always got judgment either for title or for damages for trespass against the Obosi people.

In the
Supreme Court

No.4

Statement of
Claim
8th March 1953
continued

9. Sometime ago the head Chief of Obosi village namely one J.M.Kodilinye took out an action against Erokwu of Onitsha claiming title to a large portion of land which includes the Ugbo Orimili land in dispute in Suit O/3/49 as aforesaid and also the land now in dispute in conjunction with at least twenty other parcels of land belonging to diverse Onitsha owners. The said case was determined by the Supreme Court of Onitsha which dismissed the claim of the Obosi people. 10
10. The Plaintiffs are owners in possession of the land in dispute from time immemorial and as owners in possession have always exercised maximum acts of ownership by farming on the land and placing tenants thereon notably the people of Obosi on payment of rent and tribute. The Obosi people as Plaintiffs' tenants regularly paid their rent and tribute to Plaintiffs family for farming on the land until 1926 when their head Chief J.M. Kodilinye compelled the Obosi people to swear a juju never to recognise the title of Onitsha people to the land stretching from Obosi village to the River Niger including the land in dispute but to set up title in the Obosi people instead. 20
11. Thereafter some Obosi people farming on the land in dispute as tenants became unwilling to pay rent and several actions were taken against them by Plaintiffs demanding tribute due from them as tenants on the land. The said suits Onitsha Native Court No.12/38 and No.13/38 ended in Plaintiff's favour. 30
12. The Obosi people then desisted from interfering with the said land in dispute without Plaintiff's express permission until recent time when the Obosi people again entered on the land by show of force and violence despite Plaintiffs' protestation.
13. Thereafter the Obosi people in order to establish their false claim began to farm on the land and to put up temporary structures and what is more to interfere with Plaintiffs' tenants on the land. 40
14. By the said act of the Defendants and other

people of Obosi the Plaintiffs have been deprived of the benefit of exclusive user of their property namely the land in dispute.

In the
Supreme Court

No.4

Statement of
Claim
8th March 1953
continued

15. Wherefore the Plaintiffs claim from the Defendants as follows :-

(a) Declaration of title to the Plaintiffs' land called Nkitaku and Akprikpu that is to say Nkitaku, Akprikpu and Okpoko.

(b) £50 damages for trespass.

10 (c) Injunction to restrain the Defendants, their agents and servants from interfering with the said land.

(d) The Recovery of possession (Added by Order of Court 26th day of June, 1957) (Sgd) H.Betuel Ag: Puisne Judge.)

Dated at Onitsha this 8th day of March, 1953.

(Sgd.) Chuba Ikpeazu
PLAINTIFFS' SOLICITOR.

20

No. 5

DEFENCE OF 1ST, 3RD TO 7TH, 9TH
TO 16TH DEFENDANTS

IN THE SUPREME COURT OF NIGERIA
IN THE ONITSHA JUDICIAL DIVISION

SUIT NO. 0/44/1952:

BETWEEN:

1. Egbuna Ozoma
2. Francis Obigbo
(For themselves and on
behalf of Ukwa Family
of Umuasele Onitsha Plaintiffs

30

A N D

No.5

Defence of 1st,
3rd to 7th, 9th
to 16th
Defendants
28th April 1953

In the
Supreme Court

No. 5

Defence of 1st,
3rd to 7th, 9th
to 16th
Defendants
28th April 1953
continued

1. Emmanuel Ekwuno	9. Nwachukwu Ajunna
2. James Mozie	10. Oranefo Mbatu
3. Ikebife Ibenemeka	11. Ilomuanya Ezemenyiba
4. Nath Obiefuna	12. Ofo Ebemikwu
5. Jonathan Udegbe	13. Anamsonyeiwe Ejikeme
6. Adeze Jibike	14. Nwokeye Izuora
7. Anen Ikebuife	15. Nathaniel Anikpe
8. Ogbunbi Efobi	16. Francis Amanchukwu.
(All of Obosi) Defendants.	

STATEMENT OF DEFENCE OF 1ST, 3RD TO 7TH,
9TH TO 16TH DEFENDANTS:

10

1. The Defendants with the exception of Number 2 and 8 Defendants state that the 2nd and 8th Defendants viz James Mozie and Ogbunbi Efobi are dead.
2. The 4th and 10th Defendants say that they live at Obosi town and not on the Land in dispute nor do they farm on the Land in dispute.
3. The 1st, 3rd, 7th, 9th and 11th to 16th Defendants state that they live and farm land at Ugbomurili and not on the Land in dispute. 20
4. The Defendants say that they are not the persons to represent the Obosi People but that Chief J.M. Kodilinke who is the Head Chief of the Obosi people is the proper person to represent the said people.
5. The said Defendants state that paragraphs 1, 7, 8, 9, 10, 11, 12, 13 and 14 of the Plaintiffs' Statement of Claim are specifically denied and the Plaintiffs are put to the very strict proof of each and every allegation of fact therein contained. 30
6. The said Defendants admit paragraphs 4 and 5 of the Plaintiffs' Statement of Claim but further state that so far as paragraph 5 is concerned the Case was in connection with Land outside the Area in dispute and was not between the same parties to this suit.
7. That with regards to paragraph 2 of the Plaintiffs' Statement of Claim the Defendants say that they admit being native of Obosi Town but deny any representative character. 40

8. That with regard to paragraph 3 of the Plaintiffs' Statement of Claim the Defendants say that the Land in dispute does comprise those contiguous parcels of Land to wit Nkitaku, Akpulikpu and Ukpoko.
- 10 9. That with regard to paragraph 6 of the Plaintiffs' Statement of Claim the Defendants say that the said paragraph is admitted with the exception of the last averment as to the Land on the East and North East belonging to certain individuals and Family of Onitsha which is specifically denied and the Plaintiffs put to the strict proof of such allegation of fact.
10. The Defendants further state with regard to the said paragraph aforesaid that the said Land to the East and North East of the Land in dispute is bounded by Lands belonging to individuals and Family of Obosi.
- 20 11. That with regard to paragraph 11 of the Plaintiffs' Statement of Claim the Defendants further state that the Defendants Town of Obosi lies $2\frac{1}{2}$ miles away from the Land in dispute through the footpath.
12. The Defendants further state that with respect to paragraph 13 of the Plaintiffs' Statement of Claim that there are no Buildings on Nkitaku and Akpulikpu but only on Upoko and that such Buildings have been erected since 1934.
- 30 13. The Defendants say that one Egbeadiji the ancestor of the Defendants was the Original Owner of the Area in dispute together with other vast tracks of Land over 800 years ago.
14. That during the life time of the said Egbeadiji all the Land owned by him including the Area now in dispute was divided by him into 2 parts and granted to his Sons Obosi and Ojoto.
- 40 15. That the Land to the West was given to Obosi which Land includes the Area now in dispute and land to East to Ojoto.
16. That the said Obosi had 5 Children to wit: Ire, Ota, Ugamuma, Urowulu and Mamukwum which

In the
Supreme Court

No.5

Defence of 1st,
3rd to 7th, 9th
to 16th
Defendants
28th April 1953
continued

said Children formed the 5 quarters of Obosi
of today.

17. That during the lifetime of the said Obosi the Area in dispute was used for farming purposes by the said Obosi and 2 of his children to wit Ire and Ota as well as being let out to tenants.
18. That before the death of the said Obosi he divided his Lands into two parts granting one portion to Ire and Ota including the Land in dispute and the other portion to the afore-said Ugamuma, Urowulu and Mamukwun. 10
19. That the Land in dispute is farmed communally by the Children and descendants of Ire and Ota and tenants placed on the Land by the Head of the Family.
20. That in an action entitled Egbuna Ozoma suing as Head of Ozoma Family of the Umuasele Quarter of Onitsha against J.M.Kodilinke & 3 others of Obosi Suit No.0/32/38 the Plaintiffs claimed a Declaration of Title to the Land in dispute. 20
21. That on the 19th day of August 1939 the Plaintiffs Claim was nonsuited with Costs assessed at 25 guineas.
22. That since the said action the Plaintiffs people have not disturbed the Defendants people in the exercise of their rights of ownership over the Land in dispute.
23. The Defendants will rely on the legal and Equitable defences of laches acquiescence, standing by long possession. 30

Dated at Onitsha this 28th day of April,
1953.

(Sgd) J.I.C. Taylor

1st, 3rd-7th, 9th-16th Defendants'

Solicitor.

No.6
MOTION AND AFFIDAVIT FOR
SUBSTITUTION OF DECEASED
PLAINTIFF.

In the
Supreme Court

No.6

IN THE SUPREME COURT OF NIGERIA
IN THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA.

Motion and
Affidavit for
substitution
of deceased
Plaintiff
30th July 1954
and 5th August
1954

SUIT NO. 0/44/1952:

BETWEEN:

10 Egbuna Ozoma & anr. For themselves and on
behalf of Ukwa family of
Umuasele Onitsha
Plaintiffs

and

Emmanuel Ekwuno & 15 Ors. all of Obosi -
Defendants.

MOTION ON NOTICE

20 TAKE NOTICE that this Honourable Court will
be moved on the 23rd day of August, 1954, at 9
o'clock in the forenoon or so soon thereafter as
Counsel for the Plaintiffs can be heard for an
order of Court for Sam C. Egbuna Ozoma to be sub-
stituted for the deceased Plaintiff Egbuna Ozoma
and for the said Sam C. Egbuna and Francis Obig-
bo to pursue the case as representatives of the
Plaintiff's family.

DATED this 30th day of July, 1954.

(Sgd.) Chuba Ikpeazu
PLAINTIFFS' SOLICITOR

30 MOTION AND AFFIDAVIT FOR
SUBSTITUTION OF PARTY

We, Julius Arinze and Benard Obigbo both of
Ukwa family and Umuasele village, Onitsha farmers,
British protected persons make oath and say as
follows :-

In the
Supreme Court

No.6

Motion and
Affidavit for
substitution
of deceased
Plaintiff
30th July 1954
and 5th August
1954
continued

1. That we are members of the Ukwa family.
2. That before the action was taken all the members of the family authorised Egbuna Ozoma and Francis Obigbo to institute the above action on behalf of the family.
3. That the said action was taken in the Onitsha Native Court by the before mentioned persons.
4. That the 1st Plaintiff, Egbuna Ozoma is now dead.
5. That members of the family have now selected and authorised Sam C.Egbuna to be substituted for the said deceased Plaintiff.
6. That the land in dispute is family property in which all the members of the family have come on interest.
7. That the interest of the said Sam C. Egbuna and in the present suit is the same as the deceased Plaintiff had in the case.
8. That we make this affidavit in support of a motion for the approval of the court that the said Sam C. Egbuna be substituted for the deceased Plaintiff Egbuna Ozoma to pursue the case on behalf of the family.

10

20

(Sgd) Julius Arinze
(Sgd) Benard Obigbo ,

Sworn to at the Supreme Court Registry,
Onitsha this 5th day of August, 1954.

Before me,
(Sgd). S.A.Macaulay
COMMISSIONER FOR OATHS.

30

No.7

Substitution
Order
23rd August 1954

No.7

SUBSTITUTION ORDER

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA
MONDAY THE 23RD DAY OF AUGUST, 1954,
BEFORE
THE HONOURABLE MR.JUSTICE HURLEY PUISNE JUDGE
SUIT NO. O/44/52:

40

Motion Ikpeazu to move.
Ajegbo for Defendants does not oppose.
Order as prayed.

No.8

COURT NOTES

In the
Supreme Court

No.8

For trial date: Ikpeazu: Much of our evidence, consists of Original record and copies, in 0/3/49 is before P.C. I would ask for an adjournment to next January for mention.

Court Notes
23rd August
1954

Adjourned to 10/1/55 for mention.

(Sgd.) W.H.Hurley
J. 23/8/54.

10

No.9

COURT NOTES

No.9

Court Notes
10th January
1955.

AT ONITSHA, MONDAY THE 10TH DAY OF JANUARY, 1955.

SUIT NO. 0/44/52.

EGBUNA OZOMA & ANOR.

versus

EMMANUEL EKWUNO & ORS.

Araka holding Ikpeazu's brief for Plaintiffs.

Ajaegbo for Defendants.

20

By consent, adjourned sine die, parties to apply when P.C. appeal decided.

(Sgd.) W. H. Hurley.

In the High
Court
Eastern Region

No.10

REPLY TO DEFENCE

No.10
Reply to
Defence
2nd April 1956

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

SUIT NO. 0/44/52.

BETWEEN:

SAM C. EGBUNA & ANOR.
for themselves and on behalf
of Ukwa Family of Umuasele
Onitsha -

10

PLAINTIFFS

and

EMMANUEL EKWUNO & 15 ORS.
ALL OF OBOSI -

DEFENDANTS.

A REPLY

1. In reply to paragraph 5 of the Statement of Defence denying paragraph 10, of the Statement of Claim, the Plaintiff say that in Suit No. 12A/28: Kodilinye on behalf of himself and the inhabitants of the Town of Obosi versus Anachebe and Egbuna of Umuasele Quarter of Onitsha, Kodilinye, the head of the Defendants' people of Obosi brought suit against the head or Okpala of the Plaintiffs' people in respect of the land in dispute and other lands, and judgment was given for the Plaintiffs' people with 25 guineas costs. The Plaintiffs further say that the Defendants and their people of Obosi are estopped from denying that the land in dispute belong to the Plaintiffs' people. The Plaintiffs will therefore, plead estoppel, in so far as title to and possession of the land is concerned.
2. In further reply to paragraph 5 of the statement of Defence denying paragraphs 7 and 8 of the Statement of Claim, the Plaintiffs say that in Onitsha Native Court Case No.215/A.

20

30

O. Achebe of Umuanumudu, Umuasele, Onitsha, sued Anazonwu of Obosi for trespass to his land Okpoko and obtained judgment. Also in Onitsha Native Court case No.130, Abadom of Ogbodogwu, Onitsha, sued one Anigbogu and 11 others of Obosi for trespass in respect of Iyiukwu land which has a common boundary with the land in dispute on the north-east and the only judgment given was for the Plaintiff of Ogbodogwu. The Plaintiff will rely on the evidence given by the Obosi witnesses in this case, as well as on suit No.9 of 1932. Kodi-lyne Vs. Erokwu for Isiokwe which was dis-
missed.

In the High
Court
Eastern Region

No.10

Reply to
Defence
2nd April 1956
continued

10

3. In reply to paragraph 6 of the statement of Defence, the Plaintiffs say that the title to Ogborimili land which bounds the land in dis-
pute to the north and north west has, follow-
ing the appeal to the Privy Council in Suit
No. 0/3/49, been adjudged to the Ogbo Family
of Umuasele, Onitsha.

20

Dated at Onitsha this 2nd day of April,
1956.

(Sgd.) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

No.11

MOTION AND AFFIDAVIT FOR JOINDER
OF PLAINTIFF

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

30

SUIT NO. 0/44/52.

No.11

Motion and
Affidavit for
joinder of
Plaintiff
4th and 5th
April 1956

BETWEEN:

SAM C.EGBUNIKE & ANOR. for them-
selves and on behalf of Ukwa Family
of Umuasele Onitsha Plaintiffs
and

EMMANUEL EKWUNO & 15 ORS.
All of Obosi Defendants

40

MOTION

TAKE NOTICE that this Honourable Court

In the High Court Eastern Region

No.11

Motion and Affidavit for joinder of Plaintiff 4th and 5th April 1956 continued

will be moved on Saturday the 14th day of April 1956 at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs in the above-named suit for an order of Court approving that Napoleon Ofodile Ifejika be joined as a co-plaintiff in the said suit in place of Sam C. Egbuna and for any further and/or other order which to this honourable court seem just.

Dated at Onitsha this 4th day of April, 1956. 10

(Sgd) M.C.Balonwu Plaintiffs' Solicitor

A F F I D A V I T:

We, Francis Ubaka Obigbo, Julius B. Arinze, and Bernard Nwachukwu Obigbo, farmers and contractors, native of Onitsha, and resident thereat, British Protected persons, each severally make oath and say as follows:-

- 1. That Francis Ubaka Obigbo is one of the Plaintiffs in the above-named suit. 20
- 2. That Sam C. Egbuna, another of the Plaintiffs, is now dead.
- 3. That Napoleon Ofodile Ifejika is the head or Okpapa of our family, i.e. The Ukwa family of Umuasele, Onitsha.
- 4. That the said Napoleon Ofodile Ifejika has the same interest in the land in dispute as the present Plaintiffs.
- 5. That at a family meeting held a few weeks after the death of Sam C. Egbuna on 16th November, 1955, it was unanimously decided that we should seek the approval of the Court for the said Napoleon Ofodile to be joined as Co-plaintiff in this suit. 30
- 6. That we make this affidavit to the best of our knowledge and belief, and in support of the Motion attached hereto.

(Sgd) 1. Francis Obigbo
(Sgd) 2. J.B.Arinze
(Sgd) 3. B.N.Obigbo
DEPONENT.

40

Sworn to at the High Court Registry, Onitsha this 5th day of April, 1956.

BEFORE ME,
(Sgd) F.C.Edeogu
COMMISSIONER FOR OATHS.

No.12

COURT NOTES

In the High
Court
Eastern Region

IN THE SUPREME COURT OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
BEFORE HIS LORDSHIP MR.JUSTICE V.A.SAVAGE AG: P.J. 14th April 1956
SATURDAY THE 14TH DAY OF APRIL, 1956.

No.12

Court Notes
14th April 1956

SUIT NO. 0/44/52:

Egbuna Ozoma & Anor.

10

Versus

Emmanuel Ekwuno & 15 Ors.

Araka with Balonwu with Ikpeazu for Plaintiff.

Ajegbo for the Defendants.

Case adjourned till 7/5/56.

(Sgd.) V.A.Savage

AT ONITSHA, MONDAY THE 7TH DAY OF MAY, 1956.

7th May 1956

SUIT NO. 0/44/52:

Egbuna Ozoma & Anor

20

Versus

Emmanuel Ekwuno & 15 Ors.

Mbanefo for Balonwu for Plaintiffs.

Ajegbo for the Defendants.

Court: Motion adjourned till 29/6/56.

(Sgd) V.A.Savage

Ag: Puinse Judge.

In the High
Court
Eastern Region

No.13

FURTHER DEFENCE

No.13
Further Defence
12th June 1956

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

SUIT NO. C/44/52:

BETWEEN:

Sam C.Egbunike & Anor. For them-
selves and on behalf of Ukwa
Family of Umuasele Onitsha - Plaintiffs 10

and

Emmanuel Ekwuno & 15 Ors. All
of Obosi Defendants

FURTHER DEFENCE:

1. A portion of the land referred to in the State-
ment of Claim was conveyed to the African
National Company by Instrument dated 8th Octo-
ber, 1884 and filed as No.72 in Volume 2 of
Niger Land Agreements. The African National
Company was later merged in the Royal Niger
Company. On the 1st day of January 1900 the
said portion of land was vested in the Crown
by the Niger Lands Transfer Ordinance. On the
1st day of January, 1949, pursuant to the
Niger Lands Transfer Ordinance the Crown divest-
ed itself of a part of the said portion while
retaining the remainder of the said portion. 20
2. The Defendants will contend that no action lies
at the suit of the Plaintiff in respect of the
part of the said land still retained by the
Crown. 30
3. As regards the part of the said land surrender-
ed by the Crown the defendants will contend
that since 1882 the Obosi people have occupied
and farmed the said land with the knowledge and
consent of the Crown and with the knowledge of
the Onitsha people (of whom the Plaintiffs are

a part) and that the plaintiffs must be deemed to have acquiesced in the said user of the said land by the Obosi people and are therefore estopped from maintaining the present action.

In the High Court
Eastern Region

No.13

Further Defence
12th June 1956
continued

10 4. By an action Suit No. 0/32/38, Egbuna Ozoma for and on behalf of himself and members of Ozoma Family in Umuasele Quarter of Onitsha claimed as against Chief Kodilinye, representing the people of Obosi and 3 other Defendants a declaration of title to the land now claimed by the Plaintiffs in this action. By judgment dated 19th August, 1939, in the High Court of the Enugu-Onitsha Judicial Division holden at Onitsha Waddington, Asst. Judge, held that the Plaintiffs in that suit have failed to prove both elements of tradition and of facts of ownership and that the Plaintiff's claim therefore failed.

20 5. The Defendants will contend that by reason of the said judgment the issue sought to be raised by Plaintiffs in the present suit is res judicata and that the Plaintiffs are therefore estopped from maintaining their claim.

Dated at Onitsha this 12th day of June, 1956.
(Sgd) M.O.Ajegbo
Defendants' Solicitor.

No.14
COURT NOTES

No.14
Court Notes
29th June 1956

30 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
BEFORE HIS LORDSHIP MR. JUSTICE V.A. SAVAGE, AG. P. J.
FRIDAY THE 29TH DAY OF JUNE, 1956.
SUIT NO. 0/44/52:

EGBUNA OZOMA & ANOR.
versus
EMMANUEL IKWUNO & 11 ORS.

40 Araka, Obanye, Balonwu with Ikpeazu for
Plaintiffs.
Ajegbo for the Defence.
Balonwu:- I move that Napoleon Ofodile Ifejika

In the High
Court
Eastern Region

No.14

Court Notes
29th June 1956
continued

be joined as Co-plaintiff.

COURT:- Order as prayed.

Ajegbo: I am moving for leave to file further
Defence.

Ikpeazu:- We are not opposing the Motion.

Court:- Order as prayed.

Balonwu:- I am moving for leave to file reply to
the Defence.

Ajegbo:- I am not objecting.

Court: Leave is granted to Plaintiffs to file
reply.

10

Balonwu:- I am moving for leave to join (1)
Joseph Amanchukwu Orakpo, Jabez Chukwudebe Nwang-
wu, Alfred E. Okoma, David Umera Odibe, and Dr.
Jonas Iweka as co-defendants and as representing
the people of Obosi Town.

I refer the Court to paragraphs 2,3,4,5 and 6 of
the affidavit in support of their motion. There
has been no counter affidavit challenging this
amendment of facts.

20

Finally I refer the Court to Order 4 Rule 5 (1)
of the High Court Rules Eastern Region.

Ajegbo:- I have accepted service on behalf of
the 5 defendants in respect of this motion.

I have to direct the Court to the fact that this
is a case transferred from the Native Court. If
these persons were joined prior to the transfer
to the High Court I would certainly have no ob-
jection on the authority of Chief Ntuen Iboh &
Ors. vs. Chief Douglas Mach Jaja reported in
cyclostyled W.A.C.A. Report page 79. January -
February and April to May. Decision is dated
5th May, 1947. I now refer the Court to the case
of Chief Eman Kodin B Lawal & Ors. Vs. Buraimoh
Adegbite reported in 1948 July and October cyclo-
styled W.A.C.A. report page 99 decision is dated
4/12/48. Court is referred to the case of E.E.
Sillo of Oruodino Vs. Odumu Shumin reported in

30

Feb., April - June 1952 page 112 of cyclostyled W.A.C.A. Reports decision dated 2/6/52.

In the High Court Eastern Region

10 Balonwu:- I refer the Court to paragraph 2 of the Statement of Claim. I refer the Court to 6 W.A.C.A. page 173 at page 177. I also refer the Court to 7 W.A.C.A. page 164. I refer the Court to Section 21(2) of the High Court Law Eastern Region. If the Court rules that the Defendants cannot be joined as representing the Obosi people, I am respectfully asking that they be joined in their personal capacity.

No.14 Court Notes 29th June 1956 continued

Court:- Case adjourned till 20/8/56 for ruling and till 4/9/56 and from day to day till 8/9/56 for hearing.

(Sgd.) V.A.Savage
Ag: Puisne Judge

AT ONITSHA, MONDAY THE 20TH DAY OF AUGUST, 1956

20th August 1956

SUIT NO. 0/44/52:

Egbuna Ozoma & Ors.

20

Versus

Emmanuel Ekwuno & Ors.

Araka, Obanye and Balonwu with Ikpeazu for Plaintiffs.

Ajegbo for the Defendants.

Ruling:- Application to join the 5 persons named in it as co-defendants representing the people of Obosi Town as requested. They are however joined as co-defendants in their personal capacity.

30

(Sgd) V.A.Savage
Ag: Puisne Judge

Claim: A declaration of title to the piece or parcels of Ugborimili land.

2. £50 damages for trespass.

In the High
Court
Eastern Region

No.14

Court Notes
20th August 1956
continued

3. An injunction to restrain Defendants.
Araka, Obanye and Balonwu with Ikpeazu for
Plaintiffs.

Ajegbo for the Defence.

This is an application brought on behalf of
the Plaintiffs asking for an order of this Court
to join the 5 persons named in the application as
Co-Defendants and as representing the people of
Obosi Town.

Counsel for the Defence opposed the applica- 10
tion on the ground that the 5 persons named in
the application cannot be joined as representing
the people of Obosi Town without their being
authorised to do so by the people of Obosi Town.
He cited the case of Chief Imam Quadui Lawal and
others vs. Buraimoh Adegbite and others reported
in 1948 July and October cyclostyled W.A.C.A.
Report page 99.

That decision was based on the wording of 20
Order 4 Rule 3 of the Old Supreme Court Rules
(Nigeria). The wording of Order 4 Rule 3 of the
High Court Rules Eastern Region is exactly the
same as that of Order 4 Rule 3 of the old Supreme
Court Rules, therefore the case of Chief Imam
Quadu Lawal vs. Buraimoh Adegbite and others
still applies. It is clear on that authority
that this Court cannot join the 5 persons as re-
presenting the people of Obosi Town without their
being so authorised by the people of Obosi Town.
The Plaintiffs' application in this respect must 30
fail. I however order that the 5 persons named
in the application be joined as co-defendants in
their personal capacity.

(Sgd) V.A.Savage
Ag: Puisne Judge
20/8/56.

29th April 1957

Ikpeazu, Araka Obanye, Balonwu for Plaintiffs.

Ajegbo & Ekpunobi for Defendants.

Adjourned 3/6/57 to be heard after criminal
appeals and part heard. 40

(Sgd) Herbert Betuel
Ag: Puisne Judge
29/4/57.

No.15

FURTHER REPLY TO DEFENCEIn the High
Court
Eastern Region

No.15

Further Reply
to Defence
8th May 1957

10 1. That in Onitsha Native Court Case No.13 of 11/2/38 Egbuna Ozomma of the Plaintiffs' Family sued Onugbo Agba, J.M.Kodilinte, and M. Nwangwu - all of Obosi claiming £20 being land tribute due to the said Plaintiff's family for farming on NKEKE AKU, one of the lands now in dispute since 1937, and obtained judgment to the effect that each of the aforesaid Defendants should pay rent of £2 to the said Egbuna Ozomma, within one week of the judgment. The said Defendants of Obosi within the stipulated time paid the rent so ordered to Egbuna Ozomma. The Plaintiffs will rely on the admissions made by the Defendants' people in the aforementioned suit, especially by one Nwangwu, father of one of the Defendants in this suit, at the hearing of this suit.

20 2. That in Suit No. 0/7/1935, the said Egbuna Ozomma of the Plaintiffs' Family sued J.M.Kodilinte and 6 others including Nwangwu, one of the Defendants in this case, in the High Court of the Enugu-Onitsha Division, claiming :-

- (a) Declaration of title to the lands now in dispute, namely, Nketaku, Akpilikpu, and Udo or Okpoko
- (b) £50 damages for trespass on the said lands.
- 30 (c) An injunction to restrain the Defendants from further trespassing on the said lands.

And judgment was given in terms of the writ against Nwangwu, the 18th Defendant in the present case, and others. The Plaintiffs will rely on this suit at the hearing of the present suit.

Dated at Onitsha this 8th day of May, 1957.

(Sgd) ? ? ?

PLAINTIFFS' SOLICITOR.

24.

In the High
Court
Eastern Region

No.16

COURT NOTES

No.16

MONDAY, THE 3RD DAY OF JUNE, 1957.

Court Notes
3rd June 1957

SUIT NO. 0/44/52:

N.O. Ifejika & Anor. ... Plaintiffs

Versus

E. Ekwuno & Ors. ... Defendants

Motion intended to be opposed (Ajegbo)

Adjourned 25/6/57, for hearing of Motion in any
event and for hearing if reached.

10

(Sgd) Herbert Betuel
Ag: Puisne Judge
3/6/57.

25th June 1957

RESUMED TODAY TUESDAY THE 25TH DAY OF JUNE, 1957

SUIT NO. 0/44/52:

Ikpeazu to Move.

Ajegbo:- We will not oppose the motion.

Order as prayed in motion.

All parties and their Counsel claim to be ready
to go on.

20

AJEGBO:- We have, both sides raised a plea of
res judicata.

IKPEAZU:- Order 5 R 4 H.C. R 1955.

AJEGBO :- Defendant Chukwudobe Nwangu and all
Defendants have been served, and, I represent all
them and they all have an identical interest.
P. of File (A Reply dated 2nd April 1956)
Para.1 Estopped in so far as title to and possess-
ion of the land is concerned.

Admitted we are dealing with an identical piece of land.

In the High
Court
Eastern Region

Further defence of 12/6/56 paras 4-5.

No.16

Court Notes
25th June 1957
continued

10 Failed to prove elements of tradition and acts of ownership, also plead res judicata. I submit that a preliminary issue as to jurisdiction arises on the pleadings, and, that pleadings and judgments which will be tendered by agreement will be sufficient material on which to determine the preliminary issue, without hearing evidence.

IKPEAZU:- I agree with my friend. I say my friend has raised res judicata as a substantive defence. I have pleaded it as a part of my claim.

20 AJEGBO: We rely on Suit O/32/38. They rely on /12A/28, we do not say land in 12A/28 is same as land O/32/38. Court observes then some evidence will have to be taken as to the identity of the land.

AJEGBO: In that event let the case go on in the ordinary way.

IKPEAZU:- I agree, this is an important case to be decided on the evidence.

Court orders trial to proceed.

30 IKPEAZU:- I apply to amend Summons and statement of Claim by adding to both the claim and the statement of Claim the item "Recovery of Possession" Case transferred from Native Court but once case is in this Court; Court can exercise all its powers. Ababis v Achumpong 6 W.A.C.A. 173, 177. Court has jurisdiction to amend, recovery of possession essential to adjudication of all issues between the parties to avoid multiplicity of proceedings between the parties. Amendment does not embarrass Defendants, who say the land is ours.

40 Thomas v Ademola 11 (1948) Select Judgments Jan. - April at p. 48. (Order 34 H.C.R. 1955. Completely unfettered discretion so long as it exercised judicially. Order 35 R 1, interlocutory motions "may" be made by motion at any

In the High Court Eastern Region

No.16

Court Notes 25th June 1957 continued

stage of cause or matter. Application can be made at any time before judgment Bobo v Anthony 1 W.A.C.A. 169. Transferred proceedings Court exercising its original jurisdiction (Old Supreme Court Ordinance)

AJEGBO:- I am opposing this application. Writ of summons in Native Court on 26th May, 1952. Transferred to S.C. Onitsha, on 7/7/52. Pleadings ordered 8/12/52 90/90 days. S/C filed on 9th March, 1953.

10

S/D May 1953. Case up for hearing on 29th March 1954, and this point was not taken, at that time, they had knowledge of the result of the P.C. case.

Case came up for hearing again on 23/8/54, case adjourned at request of Plaintiffs exhibits not available, also 10/1/55, another application for adjournment by Plaintiffs, case adjourned sine die 4/4/56, motion by Plaintiffs to file a reply 29/5/56, application granted, point not taken up in their reply or adjournments. On 8/5/57, Plaintiffs sought leave again to file further reply, again no application.

20

This morning an oral application is made to add a substantial remedy which involed a new cause of action, 5 years later. Type of amendment not contemplated by law bad precedent, lost by delay.

"In the existing suit", want to save time by bringing a different suit. Writ correctly expresses what Plaintiffs are claiming. Not intended to cover a different Claim. Application goes beyond an amendment. I am taken by surprise. I ask for an adjournment until tomorrow to bring my authorities. "Vigilantibus non dormientibus jura subveniunt". Adjourned 26/6/57 for continuation of argument and for Ruling.

30

(Sgd) Herbert Betuel AG. Puisne Judge 25/6/57.

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26th June 1957 RESUMED TODAY WEDNESDAY THE 26TH OF JUNE, 1957.

SUIT NO. 0/44/52:

Resumed on 26/6/57:

AJEGBO continues with his argument : Will compare

English Rules with our own.

In the High
Court
Eastern Region

No.16

Court Notes
26th June 1957
continued

10 O 28 R.R. 1 & 12 of Rules of English Supreme Court Limited to endorsement or pleadings. O 28 R. 12 E. S.C.R. Similar to our O. 34. Wider power than O 28 R. I, R.12 gives wider power. P.453 lll, provided there has been no undue delay on his part, and amendment will not affect or injure any vested rights of his opponents. Application made mala fide, or if proposed amend-
ment will cause undue delay, etcetra leave to amend will be refused. Undue delay which will be caused if application is granted. Paras 3 and 4 of S/D Defendants are served, practically all of them say they do not farm or live in the land in dispute. No capacity to represent Obosi people, if amendment granted, further pleadings will be necessary. The introduction of a new remedy may be a manouvre to bring the present case, outside our alleged estoppel.
20 Subject matter not necessarily same. Not type of application to be made orally. Previous case precisely same as this case except as to the recovery of possession, which introduces a fresh element. "Alter or amend" no word "add" in the Rules P. 459 White Book. 1952 2 W.L.R. 231.

AJEGBO:- If amendment granted will not require further pleadings.

30 IKPEAZU:- New claim connected with existing items. Parkinson v Noel (1923) I.K.B, 117, fresh matter introduced at a later stage, at the close of the case, asked for possession and a claim for mesne profits. Para 23 of Defence. Para 12 of S/D.

COURT:- Allows amendment will give its reasons in its judgment.

Ajegbo:- Apply for costs of amendments and the adjournments.

IKPEAZU: If amendment essential should be made costs in the cause.

40 Adjourned 27/6/57 for continuation of trial with £15:15/- costs to the Defendants.

(Sgd) Herbert Betuel
AG: PUISHE JUDGE 26/6/57.

In the High
Court
Eastern Region

THURSDAY THE 27TH DAY OF JUNE, 1957.

SUIT NO. O/44/52:

No.16

AJEGBO, Nonyelu and Ekpunobi for Defendants.

Court Notes
27th June 1957

IKPEAZU and Balonwu for Plaintiffs.

Ikpeazu opens:- Case concerns a piece of land situated in Onitsha just outside the Crown Land Area. Plaintiffs are an Onitsha Family and own land, surrounded by land owned by various families in Onitsha, it is close to the Niger and separated from it by land belonging to an Onitsha Family. This piece of land was the subject matter of Suit O/3/49, that land was adjudged in that suit to the Onitsha Family. The distance between the land in dispute to Obosi is about 6 miles; and this area comprises various areas of land owned by Onitsha Families, and, in respect of these areas, there has been litigation between Onitsha Families and the Obosi community. The Obosis have jumped over Onitsha land. Many years ago the Obosi people came to the land in dispute as seasonal farmers, with the leave of the Plaintiffs and Onitsha families. Permission obtained each farming season and tribute paid. Entering land without such permission would amount to a trespass. In addition to the Obosi people there were also tenants from other places. Obosi good tenants until about 1928, when the head Chief Modilinye instructed them not to pay rent and assert title to these lands and administered an oath to them to that effect. They took out an action in O/12A/28, against the family of the present Plaintiffs, the Obosi Plaintiff discontinued the action, and judgment was entered for the Defendants with costs. The land claimed by the Obosi was called by them:- Ama - Ime -- Obosi, was a much larger piece of land than the one in dispute and included the land in dispute, within it. After this we refused to permit them to farm on the land, the heads of their family pleaded with us and made sworn declaration in 1930, before the Magistrate acknowledging our title. After O/12A/28, they brought an

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action against another Onitsha Family in respect of the same piece of land Ana Ime Obosi and failed (No.9/32 of this Court). After their sworn declaration, we admitted them again. In 1938, some of them refused to pay rent and we, our family, sued some individuals of Obosi. Onitsha Native Court case No.12/38 for trespass and obtained damages. Same year Onitsha Native Court No.13/38 against Kodilinye and Ors. one of them was the father of one of the Defendants in this case and got judgment. In 1939 0/32/38, we brought an action against Odolinye & 3 Ors, the claim was for title and damages for trespass and we were non suited.

In the High Court
Eastern Region

No.16

Court Notes
27th June 1957
continued

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In 1935 there was a case in the High Court 0/7/35, Plaintiffs family v Odolinye and 5 Ors, in respect of the land claimed in this case, claim (1) title (2) injunction and (3) £50 damages. Judgment for Plaintiffs' in terms of writ, 2nd, 3rd, 4th, and 7th Defendants No.13, 3 people left out in 0/7/35, were people against whom judgment was entered.

No litigation between 1940 - 1952 when this action was taken, the combined effect of all this, is that some Obosi people acknowledge our title and others do not. Since action taken Obosi people have been putting up permanent structures on the land to present us with a fait accompli, we have tried to obtain an interim injunction but have been given an accelerated hearing instead.

PLAINTIFFS' EVIDENCE

No.17

SYLVESTER ONUORAH AFAM EGBUNA

Plaintiffs' Evidence

No.17

Sylvester
Onuorah Afam
Egbuna
27th June 1957
Examination

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1ST WITNESS FOR PLAINTIFFS S/S ON BIBLE IN ENGLISH SYLVESTER ONUORAH AFAM EGBUNA MALE - IBO Registrar of the High Court Onitsha. I have in my custody plan numbered Exhibit 2 in 0/3/49. (Ex. (1) put in by Plaintiffs). I also have in my possession, plan marked Exhibit

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.17

Sylvester
Onuorah Afam
Egbuna
27th June 1957
Examination
continued

"6" tendered in Suit 0/3/49. (Ex. (2) put in by Plaintiffs). I also have in my custody plan marked Exhibit 14 in 0/3/49 (Exhibit (3) put in by Plaintiffs). Also plan marked Exhibit 11 in 0/3/49 (Exhibit (4) put in by Plaintiffs). Also plan marked Exhibit 13 in 0/3/49. (Exhibit (5) put in by Plaintiffs). I also tender the plan filed in this case. Ex. 6 put in by Plaintiffs. I have the custody of some Native Court Proceedings tendered in 0/3/49, Exhibit 9 in that case (Exhibit (7) put in by Plaintiffs). I have the statements and Claim and Defence in 0/12A/28 tendered in 0/3/49, as Exhibit 8 (Exhibit (8) put in by Plaintiffs). I have S/C in Suit 9/32 Chief Kodolyne and Ors v. R.A.Erokwu tendered as Exhibit 3 in 0/3/49. (Exhibit (9) put in by Plaintiffs). I also have Exhibit 8 tendered in 0/3/49. (Exhibit (10) put in by Plaintiffs). 10

AJEGBO:- I object to Exhibit (10) being admitted in evidence because (1) it was not specifically pleaded (2) because the case was between an Onitsha individual and another Onitsha individual, and the Defendants were not parties to that action, the land is not adjoining land and is not shown on Exhibit "6". Case is also not relevant. 20

IKPEAZU:- Exhibit "10" goes in as part of the proceedings in 0/3/49, land need not be contiguous to land, in dispute because the stretch of land from the place in issue to obosi is in dispute and specifically traversed by the Defendants. Evidence Ordinance, Section 12, evidence relevant. 30
Establishes fact of possession, makes a fact probable or improbable. I agree it does not bind the Defendants. 2 W.A.C.A. 380 Akpabio ll Vs. Ohere Teseyi. This case does not say that it concerns different communities, same land, Section 45 of the Evidence Ordinance between same parties 5 W.A.C.A.46

AJEGBO: This evidence is res inter alios acta.

IKPEAZU Admissibility depends on nature of defence.

Order:- On Ikpeazu's undertaking that he will show its bearing on admissibility at a later stage the document will be admitted in evidence at this stage. 40

I have also in my custody proceedings in Native Court Case 133. Marked as Exhibit 52 in suit

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.17

Sylvester
Onuorah Afam
Egbuna
27th June 1957
Examination
continued

10 0/3/49 (Ex."11" put in by Plaintiffs). Objected to by Defence, admitted on Mr. Ikpeazu's undertaking to show its admissibility at a later stage, otherwise it will be struck out (Phipson P. 58 Haugh V Belcher 7 C.& P 389) I have also N.C. Case 268/28, put in as Ex.47 in 0/3/49 (Ex. 12 put in by Plaintiff). Objected to by Defence, admitted on Plaintiff's same undertaking as above. I have also proceedings in N.C. 267/28 marked as Ex. 46 in 0/3/49 (Ex. 13 put in by Plaintiffs). Objected to by Defence admitted on same terms as Ex.10. I have also proceedings 215 of 26/6/26 it was Exhibit 45 in 0/3/49 (Ex. 14 put in by Plaintiff). Objected to by Defence, same undertaking, same terms of admission. I have also case 182/1926, marked Ex.41 in 0/3/49 (Ex.(15) put in by Plaintiff). Objected to by Defence, admitted on same undertaking and on same terms as Ex.10. I also have

20 proceedings in Cases 215 - 220 of 1920, marked Ex.40 in Suit 0/3/49. Objected to by Defence, same undertaking and admitted on same terms as 10, Ex.16 put in by Plaintiff). I also have proceedings in case 200 - 201, of 1926 marked Ex.43 in 0/3/49 (Ex. (17) put in by Plaintiffs). Same objection, same undertaking same terms of admission. I also have proceedings in suit 270. tendered as Ex.31 in suit 0/3/49 (Ex. 18 put in by Plaintiffs) same objection same undertaking, same conditions of admission. I put in

30 Claim Kodilinye v Egbuna marked Ex.7 in 0/3/49 (Ex. (19) put in by Plaintiffs). I have judgment in Kodilinye V Mbanefo Odu in suit M/1/55, N.C. case 8/1932 Ex.5 0/3/49. Objected to by Defence, on grounds land is completely outside the area in dispute, Ikpeazu gives same undertaking, Court admits it on same terms as Ex.10 (Ex. (20) put in by Plaintiffs). I have the Supreme Court judgment in 0/3/39 (Ex. (21) &

40 (22) put in by Plaintiff which contains the judgment of the W.A.C.A. (Ex. 22) I have plan dated 3/7/53 Ex. 17 in 0/3/49 (Ex. 23 put in by Plaintiff). Objected to by Defence, outside land in dispute. Ikpeazu gives undertaking same condition of admission as Ex.10 (Ex. "23" put in by Plaintiff).

CROSS EXAMINED BY AJEGBO FOR DEFENCE: I put in the plan in 0/3/49. The one filed by the

Cross-
examination

In the High Court Eastern Region

Plaintiffs' Evidence

No.17

Sylvester Onuorah Afam Egbuna 27th and 28th June 1957 Cross-examination continued

Defendants. (Ex. 24 put in by Defence) in 0/3/49.

Adjourned 28/6/57 for Registrar to produce Ex.59, further documents, and for evidence of Surveyor from Aba to be taken without fail. Costs of this adjournment will not be borne by Plaintiffs in any event.

(Sgd) Herbert Betuel Ag. Puisne Judge 27/6/57.

FRIDAY THE 28TH DAY OF JUNE 1957.

SUIT NO. 0/44/52:

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IKPEAZU: Balonwu and Araka for Plaintiffs.

Ajegbo: Nonyelu and Ekpunobi for Defendants.

1ST WITNESS for Plaintiffs recalled and resworn

Sylvester Egbuna - Male Ibo Registrar High Court.

CROSS EXAMINED BY AJEGBO FOR DEFENDANTS (Continued)

I have the plan filed by the Plaintiffs on 30/11/52 in suit 0/5/52. (Ex.25 put in by Defence). Parties agree substitute the original plans with printed copies and this will be done in due course at the expense of the party putting in the plan. The same agreement is reached in respect of the written copies of proceedings to be certified by the Registrar of this Court. I have the writ of summons in 0/5/52. I have the statement of Claim in 0/5/52. I put in the Statement of Claim. (Ex. 26 put in by defence) I have the plan put in by the Defence in suit 0/5/52. (Ex.27 put in by Defence).

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No.18

Josephus Theophilus John 28th June 1957 Examination

No.18

JOSEPHUS THEOPHILUS JOHN

2ND WITNESS FOR PLAINTIFF S/S ON BIBLE IN ENGLISH

JOSEPHUS THEOPHILUS JOHN - MALE - Licenced

Surveyor and carry on business at 107 Jubilee Road Aba, where also I live. I see the plan, prepared by me in July, 1934, for Egbuna of Onitsha. I tender it. (Ex.28 put in by Defence)
 I see Ex.6, I compare Exs.28 and Ex.6, they are identical, same scale, bearings, etc. I see Ex.1 plan of Ama - Ime - Obosi plan used in 0/3/49 and /9/32. Kadolinye v Erokwu, used in conjunction with Ex.9, I prepared Ex. (1) myself at the instance of Chief Kodilinye (The Eze of Obosi). This is a printed copy of Ex. (1) (To be marked Ex. (1) Ex (1) formerly tendered to be released to its appropriate file. Parties agree that these printed copies will be coloured in due course for easy reference at the expense of the parties producing them).

In the High Court
 Eastern Region

Plaintiffs'
 Evidence

No.18

Josephus
 Theophilus
 John
 28th June 1957
 Examination
 continued

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I see Ex. (1), Ex. (8) is read to me, the description of Ama - Ime - Obosi coincides with the area of Ama - Ime - Obosi in Ex. (1), I mark it with red crosses, Ikpeazu I will make trace copies of Ex. (1) and all plans tendered by the Plaintiffs in substitution for those already tendered which can then be released and returned to the files of the cases where they belong. Undertaking accepted by Defendants and Court.

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WITNESS CONTINUES:- provided that for Mile 1 in Ex. 8 one reads Mile 2. I see Ex.2, tendered in suit 0/3/49, it was made by me in 1933, I compare it with Exs. 28 so far as I can remember when I prepared Ex.28, there were no houses or buildings on the land in dispute. I look at Ex.1, again, apart from buildings near the water front, I see no others in the remainder of Ex.1.

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CROSS EXAMINED BY AJEGBO FOR DEFENCE:- I mark N/S and E/W on Ex. 6. Furthest point West is part of Idemninnin River and part of land of Anatogu East is part of land of Abardom and part of land of Emodi Nnabenyi, North, part of land of Anatogu, South, part of Ideminuri River part of land Isiokwe. Not correct to say land was bounded on the West by Isiokwe land. I was shown the land by Egbuna Ezoma, the head of the Plaintiffs family. I put down everything he told me about the boundaries, he showed me the boundary of the land between himself and Emodi Nnabenyi, and the boundary between himself and

Cross-
 examination

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.18

Josephus
Theophilus
John
28th June 1957
Cross-
examination
continued

Abadom the land of the Umuosodi Family was not shown to me. The area of the land in Exs.6 and 28 is the same in every respect.

I see Exs. 26, 27, 28, they are all identical with each other. I see Ex.6 South Eastern side land of Isiokwe it shows a rivulet flowing into the Idenminirin River, I see Western portion land of Anatogu, between Anatogu's land and the rivulet, I did not meet any streams.

On 6, when I made my plan in 1954, all the farms I saw there were Obosi farms, scattered all over the land, had the Plaintiffs shown me any farms belonging to the Plaintiffs, I would have indicated them on the plan, also any farms belonging to non Obosi people. I prepared Ex. 4 in 1941 for Umuasele Family, Plaintiffs in 0/3/49. River Niger on West, land of Umuokwa i.e. present Plaintiffs' family, on East, West to East as stipulated, no creeks, stream or rivulets between these points. Rivulet in Ex. 6, cannot appear in Ex. 4, as that part of the land is not within the plan. I see Ex. 24, plan filed by Defendant in 0/3/49. I see the rivulet appearing on Ex. 6, between Niger and this rivulet there are no other streams. I compare Ex.4 with Ex.24, Ex 24 is a reproduction of Ex.4, and Ex.6, there are difference in the particulars in the plans mostly in nomenclature, and the same scale is not used in all the exhibits. I see the area verged green on Ex.4, area retained by government, same area in Ex.24, also verged green outside land in dispute in 0/3/39, there is a slight difference of shape in the East, the area where the green crosses the pink line on Ex.4 is beacon 207S, on Ex.24 the red line crosses between 206S and 207S, about 350 feet away from 207S. 'Northern' line verged green comes down to the palm trees in Ex.24, and is as far from the palm trees in Ex.4.

I prepared original of Ex.25 in 1944, land of Umuasele Family is on the North - West of the plan, I made the survey for families and Onitsha individuals showing land alleged to be owned and acquired by them, and showing their boundaries as between themselves. Land claimed by the Umuasele Family in Ex.25, is the same in

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In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.18

Josephus
Theophilus
John
28th June 1957
Cross-
examination
continued

particulars and location as in Ex.6. I see a
plan it contains a reproduction of Ex.6, and
part of Ex.25, the land of the Umuosodi Family
is super imposed on Ex.6, the scales used in
Ex.25 and 6 are the same, the super imposing is
in order except that the boundaries of the land
are not the same. The land claimed by the
Umuosodi Family as the Western Boundary over-
laps the Eastern Boundary of the Umuakwor
10 Family, by more than half its area. Ex.2, con-
cerns land completely outside the present land
in dispute. I made a plan for Mr.Erokwu. When
I prepared Ex.4, I believe I saw the Niger
Lands' Agreements Nos.72 and 40. Odamare =
Idinmirin. Abutshi = Obosi. Ammodo creek is
shown in Exs.24 and 6. On Ex.4 the Eastern
Boundary is the same as the Western Boundary on
Ex.6, there are no creeks between the Eastern
Boundary in Ex.4 and the Western Boundary on
20 Exhibit 6, except the rivulet shown on Ex.6.

AJEGBO:- I tender this plan for identification.
(Exhibit 29 put in by Defence).

WITNESS RE-EXAMINED BY IKPEAZU FOR PLAINTIFF.

Re-examination

I see Ex.4 used by Plaintiffs in 0/3/49, land
claimed is edged pink, part edged green is
Crown Land, actual area claimed is the pink
area south of the green line, Plaintiffs also
claim to be the original owners of the Crown
land. I see P.7 of Ex.21, I read "I grant the
30 Plaintiffs a declaration of the land edged
pink, south of the green line running from East
to West". The area pink of the green line does
not in any way impinge on the land in dispute
shown as Ex.6 in this case. Area edged pink in
Ex.24 is the same as the area edged pink in
Ex.4. Ex.24 shows land claimed in Ex.24 and
another piece of land, that other piece of land
is edged blue on Ex.24, and is nearly the same
as the area in Ex.6, with some slight distor-
40 tion in that the line running from the palm
trees at the bottom of the Uko swamp runs more
to the West in Ex.24 than it does in Exs.27 or
6, I would say the areas otherwise are substan-
tially the same. In Ex.24, the name given to
the land edged blue by the Obosi people is Nke-
taku and Akprikpu, the Plaintiffs also give the
same name to the land in Ex.6. On Eastern side

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.18

Josephus
Theophilus
John
28th June 1957
Re-examination
continued

Ex.6, I see the land claimed by Umuosodi, Okolo, Araka etcetra. On the Western side of Ex.6, I see Obosi farms of 1934, cause of dispute, the farms were shown to me as connected with an action then pending. I see land of Umuasele in Exs.25 and Ex. 6, by particulars, I mean the indications given to me by the parties, no particulars in Ex. 25 of Umuasele, only its location, by particulars I mean land of Umuasele, of which it does not contain any details. Ex. 24, green line shows land retained by government by Order 29/48 made under Niger land Transfer Ordinance, and the green line constitutes its southern Boundary, it shows itself extending outside the plan.

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Adjourned 2/7/57 for continuation of trial, after P.H. criminal cases if any. Plans to be released to Plaintiffs for tracing.

(Sgd). Herbert Betuel
AG. PUISNE JUDGE.
28/6/57.

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2nd July 1957

TUESDAY THE 2ND DAY OF JULY, 1957.

SUIT NO. 0/44/52:

N.O.IFEJIKA & ANS.

PLAINTIFFS

Vs.

E. EKWUNO & ORS.

DEFENDANTS

IKPEAZU:- We have the tracings now of the plans put in by me and one by Ajegbo.

AJEGBO:- I agree the tracings are accurate and agree to their being put in in substitution of the plans already before the Court and to be marked as those plans were. The plans before the Court to be released to their respective files. Above agreed to by Counsel and Court. Colouring to be changed to ensure uniformity also agreed to as above.

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No.19

SYLVESTER ONUORAH AFAM EGBUNA (Recalled)In the High
Court
Eastern Region1ST WITNESS FOR PLAINTIFFS RECALLED WITH LEAVE
OF COURT S/S on Bible in English.Plaintiffs'
Evidence

SYLVESTER EGBUNA: Male, Ibo - Registrar High Court Onitsha - I have in my file a certified copy of proceedings in O/31/49 between R.A. Erokwu etc. vs. J.M.Kodolinye and 2 Ors. I produce it. (Ex. (30) put in by Plaintiffs).

No.19

Sylvester
Onuorah Afam
Egbuna
(Recalled)
2nd July 1957
Examination

10 AJEGBO:- I object to the admission of these proceedings in evidence because they do not relate to the land in decision, are not between the same parties, were not specifically pleaded. Para.8 of the S/C is exceedingly vague, exhibit not relevant.

20 IKPEAZU:- It concerns land outside the land in dispute, but it does concern neighbouring land, the ownership of that piece of land is in issue. It is pleaded in the sense that it is a portion of land within the intervening land, which has formed the basis of litigation between certain families of Onitsha and the Obosi people and para.8 of S/C was specifically traversed. I will prove that all I have said is so at a later stage. Court in view of understanding will admit document at this stage, and will rule on it in its judgment or at some later stage.

IKPEAZU:- Plan in Ex.30 destroyed by white ants.

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No.20

MATTHAS CHUKWURAH3RD WITNESS for Plaintiffs S/S on Bible in English.Matthas
Chukwurah
2nd and 3rd
July 1957
Examination

MATTHAS CHUKWURAH:- Male - Ibo - Licenced Surveyor and carry on business in Onitsha at 59 New Market Road. I have Ex.5 before me I compare this plan with Ex.5, it is identical with Ex.5 (Ex.31 put in by Plaintiffs).

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.20

Matthas
Chukwurah
2nd and 3rd
July 1957
Examination
continued

AJEGBO:- I object to the admission of Ex.31, because it is a copy, made by Surveyor from Ex.5 not original plan. Court upholds objection to Ex.31.

WITNESS continues:- I see Ex. (1), I compare it with Ex.5, I can super impose Ex. (1) on Ex. (5).

IKPEAZU:- I now withdraw Ex. 31 because it merely shows the superim position of Ex. (1) on Ex. (5) which has already been done. Court grants leave to withdraw Ex.31 from the exhibits put in as it is superfluous.

WITNESS CONTINUES:- It has been superimposed. The area shown on Ex. (1) is shown on Ex.5 in red dotted lines with the description boundary on plan by Kodilinye in suit Kodilinye v. Erokwu. East is Obosi Town. West is River Niger, contiguous with the Niger is Ugbonimili Land, the subject matter of O/3/49. Kodilinye v. Anatogu, contiguous to that is the land in dispute is Nkitaku or Afrikpu as shown on plan which is included in a large piece of land claimed by Kodolinye in 12A/28 Exs.7 & 8 are the statements of claim, in which the land Ama - Ime - Obosi was claimed by the Defendants.

AJEGBO:- I think it is only right to state that this case 12A/28 was discontinued by Chief Kodolinye and judgment given for Defendants with costs.

IKPEAZU:- I agree for Court in due course to assess value of this judgment.

WITNESS CONTINUES:- I see Ex.2, Isiafo land in the North East, I show the place it is in Ex.5, edged yellow. It conforms with the judgment in suit 8/32 Chief Kodolinye vs. Mbanefo Odu. I see Ex.4, plan of land in dispute in O/3/49, shown on Ex.5 on its Western side, edged red, Ugborumili land, I see Ex.(3) is a portion of Ogbu land, edged light brown on the Eastern side of Oguta Road; and about the centre of Ex.5. I see Ex.24, plan submitted by Defendant in O/3/39, of land belonging to them, 4 pieces of land, the area verged brown on Ex.24 is the same as the strip of land bounded by the River

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Niger on the West in Ex.5 and running along the line shown in yellow, East of the Niger, almost parallel East. I see this plan of Ugbo - Ulo land, it is shown on Ex.5 edged green, piece of land subject matter of Ex.30.

In the High Court Eastern Region

Plaintiffs' Evidence

(Ex. 31 put in by Plaintiffs).

No.20

Adjourned 3/7/57 for cross-examination of this witness even before hearing of appeal and motion, which will follow.

Matthas Chukwurah 2nd and 3rd July 1957 Examination continued

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(Sgd) Herbert Betuel AG: PUISNE JUDGE 2/7/56.

WEDNESDAY THE 3RD DAY OF JULY, 1957.

SUIT NO.0/44/52.

3RD WITNESS for Plaintiff re-sworn.

MATTHIAS CHUKWURAH: Male - Ibo - Licenced Surveyor.

CROSS EXAMINED BY AJEGBO FOR DEFENCE: I was in the Civil service before I set out in private practice. I left the Civil Service in 1947, I started in practice in 1947. Ex.5 was not prepared or compiled by me but by Mr.Emodi, I never made a survey myself of the composite plan. I made my tracing on the plan made by Mr.Emodi. I cannot certify the accuracy of Ex. 5.

Cross-examination

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Re Xed by Ikpeazu for Plaintiffs.

Re-examination

Ex.5 is the original plan compiled by Mr. Emodi. Ex.13 in 0/3/49 was tendered by the man who made it.

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COURT:- Ex.5 to be given to Mr.Chukwurah to make the agreed colouration thereon.

Adjourned 5/7/57 for continuation of trial without fail.

(Sgd) Herbert Betuel AG: PUISNE JUDGE 3/7/

FRIDAY THE 5TH OF JULY, 1957.

SUIT NO.0/44/52:

BALONWU for Plaintiffs.

AJEGBO, Nonyelu and Ekpunobi for Defendants.

In the High Court Eastern Region

No.21

PHILIP AKUNLE ANATOGU

Plaintiffs' Evidence

4TH WITNESS FOR PLAINTIFF S/S on Bible in English.

No. 21

PHILIP AKUNLE ANATOGU - Male - Ibo live in Onitsha.

Philip Akunle Anatogu
5th July 1957
Examination

Retired Bank Chief Clerk. I am not one of the Plaintiffs in this case.

AJEGBO:- I wish to make an objection to the order in which the Plaintiff is calling his witnesses, I have taken no objection to the order in which 3 witnesses have already been called by the Plaintiff, as one of produced documents, and, the 2 others were professional witness, I object to the order in which this witness is called because the defence will be embarrassed and prejudiced if the Plaintiffs call their witnesses before giving, or one of them giving, his own evidence because the Plaintiffs will normally be in court while the evidence is being given and cannot be excluded, he will be in a position to hear everything his witnesses say, and, later come corroborate or edit their evidence, in my opinion, the order should be the other way round. Under Order 42 H.C.R. 1955, Rule 2, the party on whom burden of proof lies shall begin, shall state his case. His Counsel has stated his case.

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RULE 3:- He shall then produce his evidence and examine his witnesses-in-chief. If the Plaintiff is not going to give evidence, I have no objection to this procedure.

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BALONWU REPLICANDO:- Order 42 Rule 2 of H.C.R. 1955, deals with burden of proof, party includes Counsel, Counsel has fully opened the Plaintiffs case, there can be no prejudice on the Defence, it being clear the evidence that will be called.

Order a matter of convenience. Section 184 of

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cap 63. I agree discretion is vested in Court, convenient to hear this witness first, it contains the first piece of land in dispute between the Onitsha and Obozi, adjacent on the West to the land in dispute, it is the best geographical order.

In the High
Court
Eastern Region

Plaintiffs'
Evidence

COURT:- Does not see any inconvenience in one of the Plaintiffs being called first after the non formal witnesses ?

No.21

Philip Akunle
Anatogu
5th July 1957
Examination
continued

10 BALONWU:- In that event, I will call one of the Plaintiffs before this witness.

No.22

FRANCIS OBIGBO

2ND PLAINTIFF S/S on Bible in English

No.22

Francis Obigbo
5th and 10th
July 1957
Examination

20 FRANCIS OBIG BO:- Male - Ibo - Native of Onitsha belong to the Ukwa Family of Onitsha. I am one of the Plaintiffs, appointed by the family to represent them in this action. I live in Onitsha, and, I am a trader and contractor. I am a titled man (Ozo) in Onitsha, one of the Plaintiffs who originally brought this action was Egbuna Ozoma, he was Okpala or Head of the Ukwa Family, the present head of the Ukwa family is Napoleon Ofodile Ifejika, he has been substituted for Egbuna Ozoma in this action. I know the land in dispute in this action. It is called Nkitaku or Aprikpu or Okpoko, all these names refer to the same land, the land in dispute. The Ukwa Family are the owners of the land in dispute, This land is bounded by several other lands owned by other families of Onitsha. Land is owned in Onitsha not by the whole community, but by families acknowledging a common head forming part of the community who themselves acknowledge a common head i.e. The Obi or King. The names of the land surrounding our family land and their owners are:- On the West of our land in dispute lies the Ogbo Family land, in the

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In the High
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Evidence

No.22

Francis Obigbo
5th and 10th
July 1957
Examination
continued

name of the Anatogi, known as Ugburumili land, the subject of suit O/3/49, on the North of the land in dispute lies the Iyiukwu land belonging to the Ogbodogwu Family, in the name Abadon, the land is called Iyiukwu land, on the south of my land flows the Idenmirin River, on the East of the land in dispute, several families of Onitsha own land there eg. the Isiokwe Family owning Ugbo Ulo land, the Otinili Family of Onitsha of Obikporo, owning a portion of Awado land, this Awada land stretches to the North to the Iyiukwu land, there are other small portions of land lying in between belonging to Umu Osodi Family of Onitsha, we farm on the land in dispute, rent it to tenants, Obosi tenants, Oba tenants and other Onitsha tenants, each farming season, all intending farmers come to us, each person pays 5/-, and is given land to farm on, after harvest time each tenant brings to us 2 or 3 baskets of seed yams, according to the area given to him and palm wines, this rent is usually called tribute, if he wishes to farm the next season, he goes through the same procedure eg. makes a fresh application pays 5/- et cetera. When I say we also farm on the land, I mean members of the Ukwu family itself, eg. myself, my father, Egbuna Ozoma the late Thomas Ifejika, et cetera.

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The Obosi tenants were good tenants up to 1928. In 1928, some Obosi farmers went on the land without our permission and claimed to do so as of right, we stopped them from farming thereon and drove them away. They told us something, and Chief Kodoliniye, the Eze of Obosi took an action against Egbuna Ozoma and another claiming title, injunction and so on, he described the land as Ama - Ine - Obosi. Ama=land, Ire-right inside a thing. This description embraces the land in dispute in this case also Ugbo Ulo land of the Isiokpo Family, the whole of Awada land, and Iyiukwu land and the Ugburumili land which borders on the River Niger and also several other portions of land belonging to other Onitsha Families, statement of claim and defence was filed in this action, I obtained certified copies of these, I now see them. (Ex. (7) & (8)). Chief Kodoliniye discontinued his action and judgment was entered in our favour. We

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continued our farming on the land in dispute without hindrance, some Obosi pleaded with us for re-admission, which after a while, was granted on condition that they went before the Station Magistrate (Local Authority) before whom they swore declarations, admitting our title, individual Obosi people, we have kept these declarations, these are the declarations. The first one is by Anakpe Akunmle of Ire quarters of Obosi swore Akprikeipu land is the property of Egbuna Ozoma and his relatives (Ex. (32) put in by Plaintiffs)

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No.22

Francis Obigbo
5th and 10th
July 1957
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continued

AJEGBO:- I object to the admission of this document in evidence, because if it is genuine, it concerns only the maker and not the people of Obosi as a whole, it is marked "Agreement" at the top, and purports to be an agreement between Anakpo Akunmle of Ire quarter of Obosi and Egbuna Ozoma, taken to Station Magistrate to comply with Section 8 (1) of the Land's Registration Ordinance (Cap.108). It is not intended as an affidavit, the document comes within the meaning of "Instrument" in Section 2 of the Land Registration Ordinance, confers limits extinguishes etcetra, document not admissible in evidence under Section 15 of the Lands Registration Ordinance. These alleged agreements or declarations were not pleaded at all. Document not even made on behalf of Ire Quarter of Obosi, it is only made by an individual who says that he belongs to that quarter.

BALONWU:- replies:- S/D Paras 13-16, para 16 especially Ire is a quarter of Obosi. Tendering Ex 32 as an admission Phipson p 236 9th ed., last paragraph. Form of admission immaterial, agreement only a declaration of pre-existing rights does not per se confer, limit or extinguish right. Sections 19 & 20 of the Evidence Ordinance, proprietary or pecuniary interest. Evidence tending to rebut Para 13 - 16 of the Defence.

ORDER:- Ex.32 admitted for what it may be worth, Court will give reasons if necessary later.

WITNESS CONTINUES :- I now put in all these

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Francis Obigbo
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Examination
continued

declarations (Exs.33 - 38 put in by Plaintiffs)

AJEGBO:- I make the same objection as before and would add that not one of the Defendants in this present case are connected with the above alleged declarations and all these alleged declarations purport to come from individuals belonging to the Ire Quarter of Obosi and only by 7 individuals from that quarter.

BALONWU:- I make the same reply and would add, the Defendants have set up in this case, the communal title of Obosi, including the Ire title as a part of the community of Obosi.

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ORDER:- Exs. 33 - 39 are admitted in evidence on the same terms as Ex.32 i.e. they may be excluded later.

WITNESS CONTINUES:- We allowed those particular individuals and others to farm on the land. In 1935, some Obosi people, failed to apply to us for farming right, and Egbuna Ozoma brought an action against them for declaration of title, damages and trespass, the action was brought in the High Court against Chief Kodoleniye, the Eze of Obosi, the 18th Defendant in this case and his father and others, we got judgment against 4 out of the 7, I obtained a certified true copy of that judgment (Ex. (39) put in by Plaintiffs)

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In 1938, we sued the remaining 3 Defendants of Ex.39, in the Onitsha Native Court, we obtained judgment against them. (Ex. (40) put in by Plaintiffs).

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In that case Obideke and Nwangwu, the father of the 18th Defendant in this suit gave evidence on our behalf, they were among the Defendants whom we sued in Ex.39, the land in dispute in Ex.40 is Nkittaku, the land in dispute in this case, also in Ex.40 Ikejiofo of Obosi also gave evidence on our behalf, he was of Umueze Chima of Obosi, all those admitted our title.

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After 1938, the head of my family Egbuna Ozoma took another action against Chief Kodoleniyi and Ors. in the High Court that case was non suited. That is it.

Judgment. (Ex. (41) put in by Plaintiffs).

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Francis Obigbo
5th and 10th
July 1957
Examination
continued

10 After the non suit, we continued to use the land,
put other farmers, including Obosi people, who
applied to us on the land, nothing happened un-
til about 1947-1950, when Obosi people intensifi-
ed their flouting of our title, assaulted our
tenants and even some members of my family who
asserted their title over the land, thuse arose
0/3/49, between the Ugbo Family for Ugborumili
land, and, after that case in 1952 we brought
this action, even after we brought this action,
more and more. Obosi people entered the land,
so we filed a motion for an interim injunction
and an accelerated hearing, the injunction was
not granted, but an accelerated hearing was
20 granted in 1954, which is this present action
before the Court. I claim damages \$50 damages
for trespass and an injunction, I later applied
to join Defendants 17 - 21 as representing the
Land Committee of Obosi, but they were joined
in their personal capacity. Beyond the Idenmen-
rin River lies settlement of the Oba people,
opposite Ugburumuli over the Idemirin River
are the lands of Odekpe people, while this
action is going on, Obosi people are converting
small temporary huts into permanent zinc roof
buildings. That is one of the reasons why I
am asking for the recovery of possession.

30 CROSS EXAMINED BY AJEGBO FOR DEFENCE:- I am
46 years of age. Until his death, Egbuna Ozoma
was recognised as the head of Ukwa Family,
since the death of Ifejika, Ifejika died long
time ago before I was born. In 1938, Egbuna
Ozoma took action as head of our family in Suit
O/32/38 and as representing our family it con-
cerned the same piece of land as we are concern-
ed with now.

Cross-
examination

Further Cross examination and hearing on 10/7/57.

40 (Sgd) Herbert Betuel
AG: PUISSE JUDGE 5/7/57.

WEDNESDAY THE 10TH DAY OF JULY, 1957:

10th July 1957

2ND PLAINTIFF RESWORN:- FRANCIS OBIGBO - MALE -
IBO Ozo of Onitsha.

FURTHER CROSS EXAMINATION BY AJEGBO FOR

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examination
continued

DEFENDANTS The land in dispute is one stretch or portion of land, it is a large piece of land over 600 acres my forbears as they farm and put tenants on it, call it by different names. The whole land can be described as Nkitaku. I see Ex.6, on the plan Okpoko is on the Northern side, para.3 of S/C land in dispute comprises three contiguous pieces of land. Nkitaku or Akfrikpu and Okpoko, not true, it is the same portion of land given three different names. I am not a member of Ogbo Family of Onitsha, but of the Ukwa Family of Onitsha, Ogbo and Ukwa were issue of the same father, and mother, Ogbo was the eldest, the common ancestor of Ogbo and Ukwa is Odi, Odi had 4 children, Ogbaba, Okunurilinye, Ogbo and Ukwa. Egbuna Ozoma would know much more than myself of this tradition. We are known as Umuodi i.e. people of Odi. It is possible that Odi may have been known as Awuma. I do not know all the names of Odi. Ogbo land is distinct from Ukwa land. We do not own lands in common except within the family. We do not call the land in dispute Ugborumili. Ugboro means farm, "Rumili" is our name for the River Niger, and lies closer to the Niger than our land, then comes our land. Nkitaku lies within the area of Ugorumili ie adjoins it. I have heard of the Niger Lands Agreements Nos.40 and 72. As far as I know my family was not a party to these agreements. A member of my family may have been a witness to the agreement, although none of the names read seem familiar to me. I am not aware that the land affected by these agreements includes a portion of the land now in dispute, until we saw 3 or 4 beacons on the land extending from Ugorumili into our land, we took up the matter with the Ogbo Family the owners of Ugorumili land, the issue was referred to District Officer, Mr.E.G.Lewis, but I have no dispute with the Crown. A portion of my land may be Crown Land, purported to have been acquired as a result of these agreements. This Circular did not come to my notice, signed by C.D.N.Hill, District Officer, Onitsha Division. In 1934 brought suit O/25/34, claim declaration of title to land in dispute, et-cetra, claim identical with this case, failed to file Statement of claim, non suited (Ex.42 put in by defence). Action for trespass also.

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In 1936, brought an action against present Defendants, same action as this case, trespass since 7 years, action was compromised (Ex.39), agreement to withdraw against some Defendants, because they admitted our title and denied any trespass.

In the High
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Evidence

No.22

Francis Obigbo
5th and 10th
July 1957
Cross-
examination
continued

10 In 1938, brought an action in Onitsha Native Court claiming tribute against main Defendant and others (Ex.40), all the judges appear to be natives of Onitsha as shown in this exhibit. (Ex.43 put in by defence). In 1938, brought an action in the High Court against Chief Kodolinyi and 3 others of Obosi. Egbuna Ozoma gave evidence in that case and called witnesses, nine of them, our claim failed, non suit. (Ex.44 put in by Defence). I have said that I have farmed on the land, through my servants 1936 - 1940, my own father knew I was farming on the land, my own father had his own crops on the land. In 1938 Egbuna Ozoma was over 100 years old, and may have been confused, if he gave his age as 60. I would be surprised. Ages are estimated. I do not remember the name of two of my Oba tenants. Elaebo and Okeke, both may be dead. I cannot remember any of the names of the Onitsha tenants, I have never been responsible for putting them on the land. I gave evidence in 0/3/49, not farming on the land at that moment. I have farmed on the land and I have put tenants on the land, the land is poor. We grow large yams, Obosi people seed yams. I did not cease to take any interest in the land since 1938. Since 1947 the Obosi people have if necessary driven us out of the land by violence. We are a more law abiding people than the Obosi. I see this S/C and Defence. (Ex.45 & 46 put in by Defence). I do not remember any action brought by 1938-1952. I do not know the names of the Obosi people whom I drove away from the land. I know Joseph Agbu a member of Ogbu, he is an Ozo. His family have confidence in him. When I was born the 5/- was being paid; at the end of the farming season, each tenant gave us baskets of seed yams and palm wine. Obosi tenants have paid the application fee. I remember Anyanti of Obosi, who brought 30/- to my father for 6 pieces of land. I do not know his surname. In 1938, did not take advantage of the trouble at Obosi to get

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Francis Obigbo
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examination
continued

5 Obosi men to give false evidence in Court. 3 among the 7 Defendants gave evidence in our favour in 1938. Declarations of 1930 were made by Obosi people. The station Magistrate at the time was Captain O'connor. Umuosodi Family owned their land long before 1938. Otimili and Umuosodi Family are on Awada Land, both families have a boundary with us. Ex.27 contains the correct boundaries of my land. The tradition of how my family came to be on the land is as follows:- When the original Onitsha settlers came to these parts they met Oze people on the land, a dispute arose between them and there was war. The Onitsha conquered the Oze, and the Oze fled about 6 $\frac{1}{2}$ miles in land near Nkwelle, various families of Onitsha acquired various portions of land. The Obosi were not even on their present settlement at the time. I do not know whether the land was known as Awa. I do not understand the evidence of Egbuna Ozoma on the traditional history. Odi is not the head of the Onitsha. I have heard of the Umuezechima Family of Obosi. I do not know whether they stem from Onitsha people. I do not believe that they come from Onitsha. Onitsha is the name of place. Original settlers called Onitsha-ado-na-idu. I disagree that Umuezechima a relation of our common ancestor lived on the land in dispute. Umuezechima is not part of Umuasele. I know Anatogu, I do not know whether Umuezechima are our relatives domiciled in Obosi. I do not agree that if Umuezechima came from Onitsha, they would have a share of the lands acquired by conquest. Umuosodi family is not claiming a portion of our land, we have a boundary with them. I have no boundary dispute with them. I am surprised to hear that Umuosodi family are suing Obosi in respect of a portion of our land. Anachebe is not a member of the Ukwa Family, he belongs to Umuosodi. I know Anakpe Akunne, he is a defendant in this case, I know him personally.

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Ikpeazu: I want to put in 2 copies of proceedings in the Onitsha Native Court between plaintiffs' predecessor in this case against Eze Onye and 8 ors. of Obosi claiming £25 tribute for farming on Okpoko land without permission. (Ex.47 put in by Plaintiffs)

WITNESS CONTINUED: RE-EXAMINED BY IKPEAZU: I see Ex.46, sued certain Obosis for farming on the land without permission. I see Onitsha Native Court Case No.44/34, claim by Egbuna Ozoma V. Okeke Ezegwui and 3 Ors. of Obosi, conduct likely to cause breach of peace for failing to pay tribute etc. (Ex.48 put in by Plaintiff)

In the High Court
Eastern Region

Plaintiffs'
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No.22

Francis Obigbo
5th and 10th
July 1957
Re-examination

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AJEGBO: I object to the admissibility of this document, it has not been pleaded, it is an action in criminal form.

IKPEAZU:- Hardly a criminal case, showing Plaintiffs are defending their title, also contains valuable admissions, pleaded generally.

AJEGBO: I want an opportunity to argue the admissibility of this document further.

IKPEAZU: I will withdraw Ex.48.

ORDER: Ex.48 to be returned to Mr.Ikpeazu.

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CROSS-EXAMINED BY AJEGBO FOR DEFENCE BY LEAVE OF COURT Ex.47 was a default judgment, whole bench constituted of Onitsha people. Same set of witnesses as in 0/32/38.

RE-EXAMINED BY BALONWI FOR PLAINTIFFS CONTINUED:-

No appeal from decision in Ex.47. Defendants served. I knew of no trouble at Obosi in 1938. Not sued by Umuosodi Family as to any portion of my land. Ex.27 did not put in all the neighbouring land.

Adjourned 12/7/57 for continuation of trial.

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(Sgd) Herbert Betuel
Ag: Puisne Judge: 10/7/57.

Resumed on 12/7/57:

Adj. 16/7/57 for continuation of trial.

(Sgd) H. Betuel
AG: P. Judge.

In the High Court Eastern Region

TUESDAY THE 16TH DAY OF JULY, 1957:

SUIT O/44/52:

Plaintiffs' Evidence

No.23

PHILLIP AKUNNE ANATOQU

No.23

Phillip Akunne Anatogu
16th July 1957
Examination

5TH WITNESS FOR PLAINTIFF S/S ON BIBLE IN ENGLISH:

PHILLIP AKUNNE ANATOQU - MALE - Native of Onitsha also a member of the Ogbo Family. I am a titled man i.e. an Ozo. I am a retired Chief Clerk of the Bank of British West Africa. I was the 1st Plaintiff in O/3/49 in a suit against Chief Kodolinye and others. That case dealt with Ugborumili land. Ex.4 is a copy of the plan filed by me in that case. I also filed Ex.5 in that case, a composite plan. In that case the contending parties were my family Ogbo suing the Obosi people as a community. The Obosi community were represented by Chief Kodolinye and the 18th Defendant in this case. Chief Kodolinye did not attend, but the 18th Defendant defended the action. Ex.24 was the plan filed by the Defendants in that case. The case resulted in a judgment in favour of my family. Ex.21 is that judgment. There was an appeal to the West African Court of Appeal, and the appeal, and the appeal was dismissed (Ex.22). The Area edged pink in Ex.4 was land originally held by the Crown, our family were the original owners. In 1949, the area south of the green line was surrendered by the Crown. On the East of the pink line in Ex.4 lies the land of the Umuoke Family. i.e. the Plaintiffs in this case. I know the land in dispute in this it lies East of Ugboromuli land. Our boundary lies between an Eze Ogwu Tree; Palm Tree, Okpaka tree Ant Hill, Elele Tree, Old Ago Tree, another Ant Hill, another palm tree, an Oji Tree, and Ant Hill, there we touch the Idemirin River. Across the Idemirin River live Odekpe people. There was a dispute between the Obosi people and Odekpe People. The land in dispute in this case is the property of the Plaintiff family, not Obosi, who have houses in the land in dispute, farm there and treat the land as their own.

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CROSS EXAMINED BY AJENBO FOR DEFENCE:- About 27 years ago I built my house at Oguta Road ie in about 1930 - 1931. I do not know in what year Mr. Nzekwu built his house but it was not 1950. He built his house after I had built mine. Before 1930, I lived in the inland Town at the Umuasole quarter and so did Mr. Nzekwu. I am not a member of the Ukwa Family. As a member of the Ogbo Family, I have no claim to the land in dispute. In suit 0/3/49, I joined the 18th Defendant in this suit, as a Defendant. Suit 0/3/49 went up to the Privy Council, I remember agreements No.72 and 40, I admit that before 1882, we had Obosi tenants, who acknowledged our title, also tenants in occupation of the land before 1896, but only 4 of them, whom I mention in 0/3/49, members of the Umuezechima Family of Obosi, they are not related to me but came over from Benin with the Onitsha people i.e. they were Onitsha People. I know Mr Akpe, he was a witness in 0/3/49, I called him, Umuezechima means the children of Chima the founder of Obosi. I know Agbu, 2nd Plaintiff in 0/3/49 and Egbuna Ozoma, now deceased, formerly head of Plaintiff family. He was wrong to say Umuezechima at first settled in Onitsha. Umuezechima is not a part of Umuasole. 0/40/50 suing some Obosi people for possession, not tried yet, one of the Defendants is the 15th Defendant in this case. In the land in dispute Obosi people have not been living, building and farming there for generation. Individual Obosis farming on land for generations on obtaining permission from the Onitsha family concerned (Ex. 45 Para 4 of S/C). Onitsha was not formerly known as Umuezechima. Onitsha is an Ibo sounding name, adopted by people on the Western side of the Niger. Area edged green in Ex. 4, part of it extends beyond the boundaries of my family's land.

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Eastern Region

Plaintiffs'
Evidence

No.23

Phillip Akunne
Anatogu
16th July 1957
Cross-
examination

RE - EXAMINED BY IKPEAZU FOR PLAINTIFFS:-

Re-examination

When Umuezechima crossed the Niger with the Onitsha people he went and settled at Obosi. This a true copy of the case in 0/3/49 showing the progress of the case throughout all the Courts. (Ex.48 put in by Plaintiffs).

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No.24

IGBONEKWU UYAELUMUO

Plaintiffs'
Evidence

No.24

Igbonekwu
Uyaelumuo
16th July 1957
Examination

6TH WITNESS FOR PLAINTIFF S/S ON GHI IN IBO.
IGBONEKWU UYAELUMUO - MALE - NATIVE of
Oba - Farmer. I could be 60 years old,
(Court agrees). I know the Plaintiff's father,
Egbuna Ozoma, he is a native of Onitsha, I had
a transaction with Egbuna Ozoma, I paid tribute
to him and he gave me land to farm. I paid
tribute to him and he gave me land to farm at
Nkittaku for 5/- rent annually and palm wine. I
farmed on those terms for about 20 years. I
obtained a fresh permission every year. The
same rule applied to other Oba and Obosi ten-
ants. About 40-60 people from Oba farmed on
those terms and about the same number of Obosi
people. Oba and Obosi are neighbouring areas.
Ajegbo's father and myself used to farm on
Plaintiff's land on these terms. After har-
vest we also gave 20 yams per tenant to our
Onitsha landlord. It was a general rule. I
have seen Obosi tenants doing it as well. I
am no longer farming on the land in dispute
since 6 years ago, when Obosi people began to
claim the rent. 20 years ago there were no
houses on the land in dispute, buildings only
began to appear about 5 years ago in Nkittaku.

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Cross-
examination

CROSS EXAMINED BY AJEGBO FOR DEFENCE:- Oba
through Obosi cross over Idemili stream, then
follow a footpath of the land in dispute, after
crossing some other persons land, of whose name
I am unaware. I do not know whether Oba
people farm in the land in between. I have
never farmed in that land myself. Nkittaku
and Okpoko are the same piece of land, no geo-
graphical division between them eg. a stream.
Nkittaku has also another name, which I have
forgotten. Farm 3 contiguous pieces of land
for 3 years, then give up land, 3 years rest
and return again, when I said I farmed for
about 20 years, it was true the rotation is on
the land for 3 years, then I get land from an-
other family for 3 years and then return, I
get land from Mbanefo Family, I cannot remember
the name of the land. Ajegbo's father and I
farmed on the land about 15 years ago. Ajegbo's

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father did not die 33 years ago but about 8 years ago, not 20 years ago. No case over this particular piece of land. I was not called by Egbuna Ozoma to give evidence in any case. 1934 - 1938, we Oba's were farming on the land, I have seen traces made on the land since about 5 or 10 years ago. 1934 - 1938, not only Obosi's farming there. 2 years ago I saw some tracing on the land when passing to Anieolu farm. It is not untrue. In 1934 not only Obosi farms on the land. I do not know if the Surveyor was shown any other farms. I was not present when he was shown the farms. In 1939, I was farming on the land. The soil of the land in dispute is not poor. In 1949, I was farming on the land. I do not know whether the Ukwa family were farming on the land at that time because the land is so vast. I went to Egbuna Ozoma for my piece but the Obosi people were making trouble Egbuna Ozoma died about 5 years ago. I do not farm on the same piece of land every year. I cannot remember the date that I last farmed on the land in dispute. Before each farming season went and made a gift of palm wine to Egbuna Ozoma, at the end of the season, we gave him 5/- as rent, and 20 yams. I have no quarrel with Obosi people as such.

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Plaintiffs'
Evidence

No.24

Igbonekwu
Uyaelumuo
16th July 1957
Cross-
examination
continued

RE-EXAMINED BY IKPEAZU FOR PLAINTIFF:- I come from Agbo Oji in Oba. I have only given evidence against Obosi in the case and the Edekpe case, which also concerns land, and, in which I was called as a witness for Odekpe. I have farmed in the land in dispute on and off for 20 years after obtaining permission from Plaintiff's family.

Re-examination

No. 25

MATTHEW AKUNNE UWECHIA

7TH WITNESS FOR PLAINTIFF SWORN STATES ON BIBLE
IN ENGLISH MATTHEW AKUNNE UWECHIA - MALE -
NATIVE OF Onitsha also an Ozo - I am a member of the Isiokwe family, Erokwu (R.A.) is the head of the Isiokwe family, my family owns

No.25

Matthew Akunne
Uwechia
16th and 17th
July 1957
Examination

In the High
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Plaintiffs'
Evidence

No.25

Matthew Akunne
Uwechia
16th and 17th
July 1957
Examination
continued

Awada and Ogbulo lands, Awada is on the Eastern side of Iweka's property, and Ogbulo is on the South of Iweka's property. I see Ex.31, it is a plan of Ogbulo land, I see this plan, it is a plan of Awada (Ex.49 put in by Plaintiffs) I see Ex.30 suit 0/31/49.

AJEGBO:- I object to the plan going in as evidence, it is not contiguous to the one in dispute. No parties to this action. Plan not put to Surveyor. 10

IKPEAZU:- Ogbulo land is contiguous to the land in dispute. Lands between Niger and Obosi in dispute, traversed and put to strict proof. The family has sued Obosi community in respect of these 2 pieces of land. Case tendered as Ex.31, and plans going in as part of record. Ownership of stretch of land in issue.

ORDER:- Ex.49 admitted in evidence.

WITNESS CONTINUES:- Original plan was eaten by white ants, this is a duplicate in my custody. Ex.30, Erokwu v. Kodilinyi for trespass on Awada and Ogbulo, judgment was given in our favour (P.33 of Ex.30) for £300 damages. An appeal was lodged but discontinued, and, they paid the damages. The injunction was not obeyed and they neither pay tribute nor go away from the land. In 1932 there was a case Kodolinye v. Erokwu in which he sued us for Ime Obosi (Ex.1), that was the S/C, my family were Defendants in that case. I see Court's Order in 9/32, (Ex.50 put in by Plaintiff) 20 30

AJEGBO:- I object to this document being put in evidence, for same reasons as those I submitted in Ex.49.

IKPEAZU:- I make the same reply.

ORDER:- Ex.50 admitted in evidence.

WITNESS CONTINUES:- I tender the final judgment (Ex.51 put in by Plaintiff). Land in dispute specifically named as Nkettaku Okpoko Awada in 9/32. 40

I know the land in dispute in this case, it

includes a part of the land claimed by Obosi in the above case. Our Ogbulu land neighbours on the Plaintiff's land. Our boundary on the West is a small stream, starting from Idemiri, which discharges into a fishing pool, further our neighbours are Otimili family, head Emodi.

Adjourned 17/6/57 after 11 a.m. part heard criminal case to be disposed of.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE 16/6/57.

WEDNESDAY THE 17TH DAY OF JULY, 1957.

SUIT NO. 0/44/52:

7TH WITNESS FOR PLAINTIFF RESWORN:- MATTHEW AKUNNE UWECHIA - MALE - Native of Onitsha.

CROSS EXAMINED BY AJEGBO FOR DEFENCE :-

Isiokwe family do not own Nkittaku, also not owners of Okpoko. I am not the head of the Isiokwe family. R.A.Erokwu is still the head of the Isiokwe Family. Animodu is the name of the fishing pool, so is Emodia, these are different pronunciations of the name of the same pond. Since 1949, Obosis have been on the land in defiance of the Court's judgment and we have taken no action for contempt of Court. Odoje-Igbo is not the name of my family. I come from Isiokwe Family of Odoje in Onitsha. Odoje-Igbo is a nickname for my family. Odoje is a name of a quarter in Onitsha, because Odoje lies at the extreme end of Onitsha and our nearest neighbours are Igbos or Ibos. These neighbours are Nkpo and Obosi. Obosi is Ibo. Obosi town is Ibo. Some Agbor people joined the original invaders or settlers from Benin- Exhibit 49 plan not put to Mr. John, I brought the plan with me when called to give evidence I did not tender this plan in the case Erokwu V Kodolinye (Ex.30).

RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS:- R.A. Erokwu is not in a position to come to Court, his eldest son has died, and by custom he cannot visit public places for about 1 year.

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.25

Matthew Akunne
Uwechia
16th and 17th
July 1957
Examination
continued

Cross-
examination

Re-examination

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In the High Court Eastern Region

No.26

ANTONY OSITA ABADOM

Plaintiffs' Evidence

No.26

Antony Osita Abadom
17th July 1957
Examination

8TH WITNESS FOR PLAINTIFF SWORN STATES ON BIBLE IN ENGLISH ANTONY OSITA ABADOM:- MALE - Native of Onitsha. Cashier employed by G.B.Ollivants - I am an Ozo. I come from Ogbodogu Onitsha - I know the land in dispute in this case it is called Nkittaku, Afrikpu and Okpoko. We have a boundary with the Plaintiffs, our land is called Iyiuku land, it lies on both sides of the Oguta Road, there was a dispute between us and Obosi concerning this piece of land in 1930, my family sued Obosi in the Native Court and we were successful, Onitsha Native Court case No. 130 Abadom of Onitsha Vs. Anigbogu of Obosi and 11 others all of Obosi, claim £30 damages for trespass, etcetra (Ex.52 put in by Plaintiffs). In this case some Obosi people gave evidence in favour of my family. I know Dr. Iweka and where he lives, his father got that land from our family, his father was I.E. Eweka, gave evidence in Ex.32.

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Cross-examination

CROSS EXAMINED BY AJEGBO FOR DEFENCE:- I see this document but Ex.52 is not false i.e. gives a false impression. I know Obi Okosi, he was the Obi of Onitsha, he signed the judgment, the other chiefs did not arrive at a judgment. My copy does not show the names of the members of the Bench. (Ex.53 put in by Defendants). If the case was reviewed by the A.D.O., I do not know. After Exs. 52 and 53, we sued Iweka's son, a few months ago but the case was settled out of Court. I know Nwahbogu Akunwata, he was at one time, the head of my family, in 1934, he brought an action against Anagbogu of Obosi and 7 others in the High Court Onitsha Division O/26/34, he failed to file his statement of claim and was nonsuited. (Exhibit 54 put in by Defendants). In 1935, I do not know that another action O/8/35 was brought against the same parties, I do not know if it was returned to the Native Court and nothing done. (Ex.55 put in by Defendants). Only action we took since 1935 was the one settled out of Court.

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NO RE-EXAMINATION BY IKPEAZU FOR PLAINTIFFS.

No.27

ANTHONY AGUNYEGO

In the High
Court
Eastern Region

9TH WITNESS FOR PLAINTIFF SWORN ON BIBLE STATES
IN ENGLISH ANTHONY AGUNYEGO - MALE - Native
of Onitsha School teacher - live in Onitsha -
I belong to the Oreze Family of Obikporo - I
know Gbosa, he is the Chief of Obikporo, he is
not a member of the Oreze family.

Plaintiffs'
Evidence

No.27

Anthony
Agunyego
17th July 1957
Examination

NO CROSS EXAMINATION BY AJEGBO FOR DEFENCE:

10 Adjourned 18/7/57 for continuation of trial.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE, 17/6/57.

THURSDAY THE 18TH DAY OF JULY, 1957.

SUIT NO. 0/44/52:

No.28

No.28

SYLVESTER ONUORAH AFAM EGBUNA (Recalled)

Sylvester
Onuorah Afam
Egbuna
(Recalled)
18th July 1957
Examination

1ST WITNESS FOR PLAINTIFF RESWORN AND RECALLED
WITH LEAVE OF COURT: SYLVESTER EGBUNA -
MALE - Native of Onitsha, Registrar High
Court Onitsha Division - 2 cases tried in this
Court 0/6/49 between Ikwuene and Anyia Agbunam
and others, I have the file, I produce the
Order of Transfer from the Native Court. I
will put in a certified copy of same. (Ex.56
put in by Plaintiffs) I also have the Statement
of Claim filed by the Plaintiff in that case, I
shall put in a certified copy of the same
(Ex.57 put in by Plaintiffs). I also put in
the Statement of Defence by the first 4 Defend-
ants, I shall put in a certified copy of the
same (Ex.58 put in by Plaintiffs). There was
an Order joining Chief Kodilinye of Obosi as
the 5th Defendant, I put in a certified copy of
that order (Ex.59 put in by Plaintiffs). I put
the statement of Defence filed by the 5th De-
fendant, Chief Kodolinye, I put in a certified
copy of the same (Ex.60 put in by Plaintiffs).

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In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.28

Sylvester
Onuorah Afam
Egbuna
(Recalled)
18th July 1957
Examination
continued

An interim injunction was granted during the hearing of that case. I will put in a certified copy of that order as contained in the record Book. (Ex.61 put in by Plaintiff). I can produce the plans of the land in dispute in that case, two of them (Exs.62 and 63 put in by Plaintiffs). In that case, the Court made some minutes of the terms of settlement between the parties, and made it an Order of Court i.e. the Order of the Court. I will put in a certified copy (Ex.64 put in by Plaintiffs).

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AJEGBO:- I object to the admission in evidence of Ex.56 - 64, no admission of area in plan, case not tried, but injunction tried, motor owners rights obtained from Obosi, abandoned the area. Chief Kodolinye not a party to the settlement. Land outside land in dispute.

IKPEAZU:- It concerns land within the 6 miles stretch, which is in issue.

COURT:- Holds Exs.56 - 64 as admissible in evidence. I now come to suit O/7/49 between A.O.L. Asolo and Anyaegbunam and Ors. I produce the Order of transfer, same as in Ex.56, both cases transferred in the same instrument. I produce the Statement of Claim (Ex.65 put in by Plaintiffs). I produce the Defence of the first "4" Defendants (Ex.66 put in by Plaintiffs). I produce an Order joining Chief Kodolinye as 5th Defendant (Ex.67 put in by Plaintiff) statement of Defence by Chief Kodolinye (Ex.68 put in by Plaintiffs). Order of injunction (Ex.69 put in by Plaintiffs), the plan (Ex.70 put in by Plaintiffs) and the terms of settlement (Ex.71) put in by Plaintiffs.

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AJEGBO:- I object to admission of Exs.65 - 71 same reasons.

IKPEAZU:- I make same reply.

COURT:- I make same Order.

WITNESS CONTINUES:- I have the file O/34/39 Chief Okoloji Akpe vs. Chief J.M.Kodolinye and Ors. a case transferred from the Native Court. I produce certified copy of Order of transfer (Ex.72 put in by Plaintiffs). Statement of

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Claim (Ex.73 put in by Plaintiffs). Statement of Defence (Ex.74 put in by Plaintiffs). The plan has already been tendered (Ex.2). I also produce the judgment (Ex.75 put in by Plaintiffs).

In the High Court
Eastern Region

Plaintiffs' Evidence

No.28

Sylvester
Onuorah Afam
Egbuna
(Recalled)
18th July 1957
continued

AJEGBO:- I object to admission of Ex.2, 65 - 75 land concerned completely outside land in dispute.

IKPEAZU:- Within 6 miles stretch in issue.

10 COURT:- I hold Exs.2, 65 - 75 as admissible in evidence.

NO CROSS EXAMINED BY AJEGBO FOR DEFENCE:-

No.29

No.29

ISAAC MBANEFO

Isaac Mbanefo
18th July 1957
Examination

10TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE

20 STATES IN ENGLISH:- ISAAC MBANEFO:- MALE - Native of Onitsha. Odu of Onitsha. Member of Umuobimegwuagu family - I know a piece of land called Isiafor land it belongs to my family. I see Suit No. 8/1932 Chief Kodolinye sued my family, my late father (Ex.20). Ex.20 is the judgment in that case. I see Ex.2, it is a plan of Isiafor land my family's land, subject matter of Case 8/32. Okoloji Akpe is my uncle and a member of the Umuobimegwuagu Family. In 1949, O/34/49, I remember that case, the land in dispute in that case was Isiafor, claimed £600 damages for trespass and, an injunction against the Obosi people, the case was transferred from the Native Court. 30 (Ex.72), Ex.73 was our statement of Claim in that case, Ex.74 was the defence, Ex.75, judgment £400 damages for trespass and an injunction.

CROSS EXAMINED BY AJEGBO FOR DEFENCE:- I know the land in dispute, South of Onitsha Town. It has no boundary with Isiafor land, my land has a boundary with Obosi Land.

Cross-examination

NO RE-EXAMINATION BY IKPEAZU FOR DEFENCE:

In the High
Court
Eastern Region

No.30

GEOFFREY BRIGGS

Plaintiffs'
Evidence

No.30

Geoffrey Briggs
18th July 1957
Examination

11TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE
STATES IN ENGLISH: GEOFFREY BRIGGS - MALE -
European - Attorney General for Eastern Nigeria
and a Queens Counsel - I have been legal adviser
to the Governor in relation to all matters con-
nected with Crown Land in Onitsha. I know about
the Crown Land called the Fegge Lay Out, I have
a plan of that Lay out, showing the boundaries
of the land claimed by Government in that area.
Southern Boundary is along the Onitsha Port
Harcourt Road and has pillars marked on it (Ex.
76 put in by Plaintiffs). I see Ex.4, the green
line corresponds to the boundary in Ex.76 but
goes further than figure 205. I see Ex.24, I
see the green line and it corresponds with the
boundary of the Fegge Layout which stops at
pillar 205 beyond these boundaries, Government
does not claim the land. The land edged blue is
in dispute, claim to the land in dispute except
a tiny triangle a corner South Eastern corner of
Fegge Lay Out, in which the Crown is not greatly
interested.

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Cross-
examination

CROSS EXAMINED BY AJEGBO FOR DEFENCE:-
Government abandoned some parts of the area out-
side the Township boundary of that year i.e. all
land beyond the green line. Before the abandon-
ment, we claimed the land, 3 miles inland from
the Niger which was never demarcated. Crown
abandoned everything outside the Township bound-
ary which ended at pillar 199 on the main road,
and infact has abandoned everything except the
Fegge Lay out in that area. In the past, the
3 miles inland area was claimed by the Crown. I
put in Nigeria Gazette Notice No.29/48 of the
16th December, 1948. (Ex.77 put in by Defence).

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Adjourned 19/7/57 for continuation of trial at
9 a.m.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE 18/7/57.

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FRIDAY THE 19TH OF JULY, 1957.

SUIT NO. 0/44/52:

No.31

JOHN ASOLO

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.31

John Asolo
19th July 1957
Examination

12TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE

STATEMENTS IN IBO JOHN ASOLO - NAME - family origin - Ilesha. I was born and brought up at Onitsha - I am domiciled in Onitsha - I know A.O.L.Asolo, he was my father, he was the Plaintiff in 0/7/49, in respect of which Exs. 56, 65-71, were tendered, yesterday, my father is dead, he acquired land along the Oguta Road from the Otimili Family of Obikporo village Onitsha, it was acquired, about 25 years ago. The case 0/7/49 was against the Obosi people, who were making use of the land as a motor park, my father sued them. (Ex.56, 65 - 70). Ex.70 is the plan of the land. This is my land in Ex.5.

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CROSS EXAMINED BY AJEGBO FOR DEFENCE:- Ilesha is in the Western Region of Nigeria. It is in the heart of Yorubaland. I am the eldest son of my father. I was present when the land was acquired by my father we farm in the land. I was born in 1913 on December the 15th in Onitsha and bred here. I am not a member of the Otimili Family. All I know is that the Otimili Family sold the land to my father. My father was a pensioner before he died, he was a dispenser i.e. Chemist and Druggist, he retired from the Government Service in about 1935 - 36. My father was stationed last at Kaduna. It was Kaduna that he retired. My father was not a farmer but employed labourers to farm. We have not farmed there since the case because we feared violence. I am the Manager of an Hotel and Bar, I am also a landlord and let rooms out in my house. Defendants in 0/7/49 were not Obosi people, but claimed to have been granted the land by Obosi people, we did not sue the Obosi people directly, although the motor owners left the motor park, there are still some houses on the land, but although we sued the motor owners, we did

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Cross-
examination

In the High
Court
Eastern Region

not sue the people on the land, because we were not sure.

NO RE-EXAMINATION BY IKPEAZU FOR DEFENCE:

Plaintiffs'
Evidence

IKPEAZU :- Apply to call witness 9th witness to give further evidence with leave of Court.

No.31

AJEGBO:- I oppose the recalling of this witness.

John Asolo
19th July 1957
Cross-
examination
continued

IKPEAZU:- I withdraw the witness under a misapprehension, I am satisfied that he can give material and relevant evidence.

COURT: Leave granted to recall this witness.

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No.32

No.32

Antony Agunyego
(Recalled)
19th July 1957
Examination

ANTONY AGUNYEGO (Recalled)

9TH WITNESS FOR PLAINTIFFS RECALLED AND RESWORN
LEAVE OF COURT:- ANTONY AGUNYEGO - MALE -

Native of Onitsha - School Teacher. Member of Oreze Family of Obikporo. I know Obosa, he is the Chief of Obikporo and not a member of the Oreze Family, the Oreze Family is also known as the Otimili Family. I know Okolu Ochili of Onitsha, his father was the junior brother of my grandfather. I also know Emeodi Nnabenji of Onitsha, he is my senior brother. I know the Oguta Road. I know Iweka's land near Iweka Road. The greater part of Iweka's land was given to him by my family, I was present at Oholu Ochili's house to share the wine brought by Iweka, when he came to negotiate for the purchase of the land. It was round about 1925-1926. Oholu Ochili and Emeodi Nnabenji are now dead, so is my father. I know that Iweka was given a portion of Awada land. My father also sold a portion of Awada to Ikwueme Nanyulugo, and, another portion to A.O.L.Asolo, and, another to P.H.Okolo, another N.N.Araka. Ikwueme Nmanyelujo is the name also of Jacob Ikwueme, Plaintiff in O/6/49 (Ex.57). Awada land is bounded on the Northern side by Umuosadi and Iyiukwu Land of Odogwu, on the Eastern boundary Awada land of Isiokwe, on the south Udo land of

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Ezeocha and Okpoko of Ogbunili, South Western part Ugo Ulo Land of Isiokwe, on the Western part we are bounded by Nkittaku, alias Afrikpu, alias Okpoko.

In the High
Court
Eastern Region

CROSS EXAMINED BY ASIMBO FOR DEFENCE:- I am about 43 years old. Chitsha is divided into 2 broad sections Umuezechima and Ugwu - Na - Obankpa, both being the descendants of Ezechima. I do not know the meaning of Ugwu and Obankpa. I do not think it means people from Iboland. Umuezechima means the descendants of King Chima, that is its meaning in Ibo. Creze was the offspring of Chima. I have never been told of the Umuezechima family of Obosi. Umuezechima of Obosi not same as Umuezechima of Nitsha, there are Umuezechimas across the Niger. I have heard that Umuezechima of Obosi came from Benin, Umuezechima of Onitsha came from Benin, Ibo speaking Binis. I do not know where the Obosis' came from and what their history is although they are my neighbours. My grandfather was called Otimili. I have disposed of most of the land along Oguta Road.

Plaintiffs'
Evidence

No.32

Antony Agunyege
(Recalled)
19th July 1957
Examination
continued

Cross-
examination

NO RE-EXAMINATION BY BALONWU FOR PLAINTIFF:

No.33

No.33

OFOKAJA NWAFOR

Ofokaja Nwafor
19th July 1957
Examination

13TH WITNESS FOR PLAINTIFF SWORN ON GUN IN IBO:

OFOKAJA NWAFOR - MALE - Native of Oba. Farmer. I was farming on the land of Egbuna Ozoma, we called it, Nkittaku, started farming on the land a long time ago; when I went with my father to farm there, many times. I was a boy in those days and too young to farm on my own, when I came of age, I started farming on Nkittaku myself. Egbuna Ozoma gave us permission to farm on this land; there were many other Oba people farming on the land, at end of harvest, paid to Egbuna 5/- each and wine, and 20 yams from each farmer. I have actually seen that done. The land Nkittaku. In the land there is a stream called Aminoro which flows into the Idemirin River, separating this land from another piece of land. I have farmed many times on the land.

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.33

Ofokaja Nwafor
19th July 1957
Cross-
examination

CROSS EXAMINED BY AJEGBO FOR DEFENCE: I cannot say facing the flow of the stream into the Idenmirin River. Whether I farm on the left or right hand side of the stream, but I am willing to show the place where I have farmed. There was formerly an Arachi tree in the centre of the farm but the Arachi tree is no longer there. Farm different pieces of land every year, land I farmed last was near the stream, but I do not know my right from my left. From Oba, I follow Mkpkpa stream which leads towards the land in dispute. I do not pass through Obosi Town and we farm on that land with the Obosi. Hpukpa stream divides the Obosi from the Oba lands and I have to cross that stream to get to the land in dispute. I am not farming on that land now. I stopped farming there, since sometime ago: 20 years, I do not know, not a christiam, 20 farming seasons, I do not know. I do not know whether only the Obosis' farm on the land in dispute now. I have farmed on other Onitsha lands, but I do not remember their names or the names of their owners. We called the land Mgbu-Onitsha i.e. the Onitsha farm land and Nkittaku is not a part of it; they are far apart. The Obosi used to call the land where they farmed, Ugbulu and Okpoko, and it coincided with Nkittaku. I come from Umuogali in Oba. Aboji and Umuogale are the same place.

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Re-examination

RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS:- From Oba, along main road to Aniumuolu stream which is in the land in dispute Ugboromili is on one side of Egbuna Ozoma's land on the other. Obosi farmers on the land also pay rent or tribute.

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Adjourned 27/7/57 for continuation of trial.

(Sgd) Herbert Betuel
AG. PUISNE JUDGE 19/7/57.

No.34

Emengini Arimah
27th July 1957

SATURDAY THE 27TH DAY OF JULY, 1957.

No.34

SUIT NO.0/44/52:

EMENGINI ARIMAH

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14TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES

IN IBO EMENGINI ARIMAH :- FEMALE - Native of Onitsha - Housewife live at Ogboza village in Onitsha, where my husband lives. I was born a member of the Ukwé Family, I have no idea of my age, except that my children are married and have issue. (All parties agree with estimate of Court, that witness is over 50 years old and under 60 years old). I am a farmer and trader. I plant cassava. During the influenza epidemic, I was farming cassava with my mother, I was unmarried then, after my marriage, I continued planting cassava on Ukwé land which is called Nkittaku, Afrikpu and Okpoko, I get there by going along Oguta Road to Iwéka's building, from Iwéka's building, I get to the farm by following a footpath on my right. On the land lies the Idemili Stream looking one way and the Emeodia post looking one way and the Emeodia post looking another way. I do not farm there today, I have stopped planting there since about 7 years ago, because if I plant anything there it will be uprooted by Obosi women, with whom I have fought.

In the High
Court
Eastern Region

Plaintiffs'
Evidence

No.34

Emengini
Arimah
27th July 1957
Examination

CROSS EXAMINED BY AJEGBO FOR DEFENCE:- The Emeodia stream makes a boundary of the land. The Emodia stream is shaped like a circle. Ugborimili land is on one side of the land, on the right facing the Idemili stream. My husband's people of the Ogboza village have their own land, plenty of it. By marriage, I am Ogboza, by birth, I am an Umuasele. I do not know the Umuezechima Family of Obosi, only the Umuezechima Family of Onitsha. Umuasele Family is a part of Umuezechima. The whole of Onitsha is known as Umuezechima i.e. the descendants of Ezechima. I know where Obosi Town lies, I have passed through it on my way to Oba, a long time ago, when I went there on foot, the distance is shorter on foot through Obosi, than following the main road to Oba. Nkittaku, Afrikpu and Okpoko, all these names refer to the same piece of land. I know of no other land in Onitsha, which has 3 names. In about 1918, I have seen Obosi, Oba and Onitsha people were farming on the land, I went with my father to collect the rents from the tenants. The whole of our family used to go together to harvest the produce. I was too small to remember the names of the tenants, but I remember collecting the yams as tribute. My mother came

Cross-
examination

In the High Court Eastern Region

from the Isiokwe family in Onitsha.

NO RE-EXAMINATION BY IKPEAZU FOR PLAINTIFFS:

Plaintiffs' Evidence

PLAINTIFFS' CASE CLOSED:

No.34

Adjourned 8/8/57 for continuation of trial.

Emengini Arimah
27th July 1957
Cross-examination continued

(Sgd) Herbert Betuel
AG: PUISNE JUDGE 27/7/57.

Adjourned 13/8/57 for continuation of trial; parties and their counsel informed.

(Sgd) Herbert Betuel.
AG: PUISNE JUDGE 8/8/57.

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Defendants' Evidence

TUESDAY THE 13TH DAY OF AUGUST 1957

SUIT NO.0/44/52:

No.35

No.35

Nathaniel Obiefuna
13th August 1957
Examination

NATHANIEL OBIEFUNA

4TH DEFENDANT SWORN ON BIBLE STATES IN ENGLISH
NATHANIEL OBIEFUNA - MALE - OBOSI :- Postal Agent Obosi - live at Obosi. 1st September 1945, opened a postal agency at Obosi. I keep open 8 a.m. - 12 p.m. - 2 p.m. - 4 p.m. on every day except Saturdays and Sundays. On Saturdays work from 8 a.m. - 12 p.m. Been working as postal agent at Obosi since 1945 continuously, no leave. I have never lived outside Obosi since 1945. I am not a farmer, never lived there in 1952, never farmed there. I was born in 1919, I am not a prominent man at Obosi, I am not a titled man, I am not the sort of man to represent Obosi.

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Cross-examination

CROSS EXAMINED BY IKPEAZU FOR PLAINTIFFS:-
Obosi Community consists of 5 extended families, Ire, Umuota, Ugamua, Urowulu, Makwum. I belong to the Ire Family. I know the areas in dispute. I know Okpoko, I have passed through it on my way to Otu - Obosi. This land belongs to

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In the High
Court
Eastern Region

Defendants'
Evidence

No.35

Nathaniel
Obiefuna
13th August
1957
Cross-
examination
continued

Obosi, as a community. I do not know that
tenure of land in Obosi is communal. If Ire
owns land as Ire, I do not know. The Okpala
of the family deals with our lands. What he
receives as rents, he receives for himself in
his lifetime. The land between Obosi and
the Niger, the 6 miles is owned by Obosi. I
knew Chief Kodolinye in his lifetime, he is
dead now, more than 5 years ago, no one has
10 been appointed in the place of Chief Kodolinye,
although some one is acting as Eze. I know
the Obosi Land Council who conduct the Obosi
Agrarian Policy, and, allocate the land to the
farmers of Obosi, on which they farm, Okpoko
may form a part of the land allocated. They
may also allocate land to stranger tenants. I
know Mr. Orakpo and that he is a member of the
Obosi Land Council, and, an important man in
Obosi. I know Nathaniel Anikpe, he lives at
20 Otu Obosi, he is not a well known Obosi. I
am not a member of the Land Council, I know
some of the members, not all of them. I know
all the Ires who are members of the Land
Council e.g. J.C.Nwangwu. I know 1st Defen-
dant lives at Otu-Obosi, he is a member of
the Ire Family, not a member of the Land Coun-
cil. I do not know the 3rd Defendant. 5th
Defendant is dead. I know 6th Defendant,
she is from Ire. I know the 7th Defendant.
30 I do not know from which quarter he came.
8th Defendant has died. I do not know 9th
Defendant. I know 10th Defendant comes from
Umuota quarter. I know the 11th Defendant
he is dead. he was from Ire. 12th Defendant
did not know personally nor 13th. I knew
14th Defendant an Ire from Obosi. 15th De-
fendant also Ire; do not know 16th Defend-
ant. 18th Defendant is a member of the Land
Council, I do not know whether he has repre-
40 sented Obosi in Court. I have spoken about
17th Defendant 21st Defendant is an important
man in Obosi, he is an Umuota. I know that
Obosi people farm on Okpoko but I cannot name
any.

NO RE-EXAMINATION BY AJEGBO FOR DEFENCE

Adjourned 14/8/57 for continuation of trial.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE 13/8/57.

In the High Court Eastern Region

WEDNESDAY THE 14TH DAY OF AUGUST, 1957.

SUIT NO. 0/44/52:

Defendants' Evidence

No.36

EJIKE CHIDOLUE

No.36

Ejike Chidolue
14th August
1957
Examination

1ST WITNESS FOR DEFENCE SWORN STATES ON BIBLE IN ENGLISH EJIKE CHIDOLUE - MALE - IBO - Licensed Surveyor and Member of House of Assembly - live and carry on business at 4, Venn Road Onitsha. I made a plan for the Obosi people in case 0/3/49. This is a true copy of that plan (Ex.24). I see Odomare Creek called now Idemili River which flows into the River Niger just below the Royal Niger Company's factory at Abutshi (i.e. Obosi), to the South Bank of the Creek called Ndende North of the Factory and bounded on the East by the small creek. I see the creek from Animodu to the Idemili River. Animodu is a pond. During my survey, I only saw one creek between Animodu and the River Niger, the Creek that flows into the Idemili River. I see Ex.6, the area in Ex. 6 is shown in Ex.24 verged blue. The area mentioned in Agreement No.72 is included in Ex.24. I made Ex.29 for the Defendants, the Obosi people, in this case. I superimposed a portion of Ex.25 on Ex.29, the area verged yellow. I find 2/3rds of the area verged yellow in Ex.25, overlaps the area verged pink in Ex.29. I set out the buildings in Ex.25 for the Umuasele Family of Onitsha. They are a number of buildings there, living quarters, permanent houses, the family complained that most of these buildings had been put up by Obosi People, at that time, all the buildings are shown on the plan, that was in 1952, more houses have been built there and are springing up all the time, from the land in dispute to Obosi town i.e. from Iweka Hall to Obosi Town is about 2½ miles in a straight line along a straight road, motor road it is a continuation of Iweka Road, it goes to Afor Market in Obosi Town. The first building in Obosi met along the road would be about 2 miles from Onitsha. (Ex.29 put in by Defence).

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Cross-examination

CROSS EXAMINED BY IKPEAZU FOR PLAINTIFFS:- In respect of Agreement No.72, I do not know whether it was surveyed at the time of the grant.

But I saw a sketch attached to that agreement. Animodo pond is not shown on the sketch, but a small creek flowing into Idemili River, East of the River Niger is shown in the sketch. The scale used is not shown on the sketch. There are 3 fixed boundaries in the sketch, which I can place in the plans. Ndende Creek is a small creek, it dries up in the dry season but the Animodo pond does not dry up in the dry season; course of creek can be seen in the dry season; though dried up. Ex.29 is traced from my own original plan which I made for the Obosi people. Land claimed by Umuosodi Family impinges on land of Plaintiff Family. I do not know whether there is any land dispute between them. They have never asked me to make any superimpositions.

In the High
Court
Eastern Region

Defendants'
Evidence

No.36

Ejike Chidolue
14th August
1957
Cross-
examination
continued

RE-EXAMINED BY AJEGBO FOR DEFENCE:- Ex.6 shows same creek as Ex.29 from Animodu pond to Idemili.

Re-examination

AJEGBO:- I want to delete and abandon paras. 13-19 of Statement of Defence evidence of tradition which is not relevant to this case. (Order 34 H.C.R. 1955):

IKPEAZU:- I oppose this abandonment as it is a departure from their fundamental defence, namely that the land belonged to the Ire and Ota Quarters of Obosi and the amendment is caused by the evidence of the 4th Defendant.

AJEGBO:- Paras.3 and 4 of our further defence is our real defence.

COURT: There is no provision in our Rules as to this matter but Order 26 Rule 1 English Supreme Court Rules, leaves it to the discretion of the Court. I shall order paras. 13-19 of Statement of Defence to be struck out and these paragraphs are struck out.

No.37

OSMOND OSADEBE

No.37

Osmond Osadebe
14th August
1957
Examination

2ND WITNESS FOR DEFENCE SWORN STATES ON BIBLE IN ENGLISH OSMOND OSADEBE - MALE - ACTING COMMISSIONER OF LANDS Eastern Region - I see Agreements No.72 and 40 (Agreement No.72, Ex.78 put in by Defence). Agreement No.40 Ex.79 put

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In the High
Court
Eastern Region

in by Defence. I have not got plan OAl43, I had the impression it was tendered in this Court in a criminal appeal (Court observes this does not appear to be so).

Defendants'
Evidence

IKPEAZU:- Witness subpoenaed to give evidence, not merely to produce a document, I am entitled to cross-examine him. (Ex.80 put in by Plaintiff). It is immaterial that he did not give evidence affecting the merits.

No.37

Osmond Osadebe
14th August
1957
Examination
continued

AJEGBO:- I only applied to have the witness to produce documents not to give evidence. I put in my application for subpoena (Ex.81 put in by Defence). If the Court issues a subpoena to give evidence, that is not my concern. Court holds that the witness cannot be cross-examined by the Plaintiff. Section 192 of Evidence Ordinance and Phipson on Evidence 9th Edition page 496.

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No.38

No.38

Adeze Jibike
14th August
1957
Examination

ADEZE JIBIKE

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6TH DEFENDANT SWORN STATES ON BIBLE IN IBO
ADEZE JIBIKE - FEMALE - MARRIED WOMAN :-

My husband is called Onwugbolu - I am a trader - live in Ugborimili in Otu-Obosi - I am about 57 years old - I was born in Ugborimili - I was married there. I have lived there all my life - When I was born my parents were living in Ugborimili - I know the lands Okpoko, Nkitaku and Afrikpu in dispute, they belong to Obosi, Obosi people farm on the land but live in Okpoko and also farm there. I have not farmed in Okpoko Nkitaku and Afrikpu. I am a trader not a farmer. I know Mr. Ajegbo's father, he died about 30 years ago. I know Chief Kodolinye he died about 4 or 5 years ago. The head or acting head of the whole of Obosi is Nwosu Igwe, there are Ndichies i.e. counsellors and advisers, 1st Defendant is not an Ndichie, he is not an Ozo, recently retired from the civil service where he was employed as a carpenter, he lives in Ugboromili and has lived there about 7 years, he does not live on the land in dispute. 2nd Defendant is dead, during his lifetime, he was

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employed in the Posts and Telegraphs, he lived in Ugboromili, not Ndichie or Ozo, I know the 3rd Defendant he lives in Ugboromili, never lived in land in dispute or, so far as I know farmed there, he was a farmer, not an Ozo, Ndichie or prominent person, I know 4th Defendant and not a farmer but postal agent, neither Ndichie or Ozo nor a prominent person, he lives in Obosi Town. I know the 7th Defendant, he is a motor tout, he lives in Ugborimili, not a farmer or an important person, I know the 8th Defendant he is dead, he lived in Ugborimili in his lifetime, he was a farmer and an Ozo of Obosi. I know 9th Defendant, lives in Ugborimili he is a travelling native doctor, lives at Ugborimili, he is not an Ozo of Obosi and not an Ndichie. I know 10th Defendant lives in Obosi Town he is a native doctor, so far I know he does not live or farm in the land in dispute, not an Ndichie or Ozo. I know 11th Defendant he is dead, when alive he lived at Ugborimili, he was farmer he was an Ozo but not an Ndichie, so far as I know he did not farm on the land in dispute. I know 12th Defendant, lives in Ugborimili, he is a farmer, he was an Ozo, never farmed or lived on land in dispute. I know 13th Defendant lives at Ugborimili he is a fisherman not a farmer does not live on land in dispute, he is an Ozo and not an Ndichie. I know 14th Defendant lives at Ugborimili, employee of Mobil Oil, as a guard, he is not a farmer, never farmed or lived on the land in dispute, not an Ndichie or Ozo, I know 15th Defendant, he lives near the Fegge Layout, he is a motor tout, neither an Ozo nor Ndichie, I know 16th Defendant lives at Ugborimili, never lived or farmed in land in dispute, formerly a driver, neither an Ozo nor an Ndichie, I know the 18th Defendant he is a trader lives in Obosi Town, he is a christian and not an Ozo, never lived or farmed on the land in dispute, he is a prominent son of Obosi. I know 17th Defendant, he lives in Obosi, he is retired, and a prominent man in Obosi, neither lives nor farmed on land in dispute. I know 21st Defendant; he is not a farmer, lives in Fegge Layout, he is very prominent son of Obosi. I know 19th Defendant, he is a retired civil servant, living in Obosi, never farmed on land in dispute. I cannot represent Obosi as a community especially as I am a woman. If I sued Obosi as a community, I would sue the Obi and Ndichies or some of them.

In the High
Court
Eastern Region

Defendants'
Evidence

No.38

Adeze Jibike
14th August
1957
Examination
continued

In the High
Court
Eastern Region

Defendants'
Evidence

No.38

Adeze Jibike
14th August
1957
Cross-
examination

CROSS EXAMINED BY IKPEAZU FOR PLAINTIFFS:- The Courts have awarded the Ugborimili land to an Onitsha Family. Ugborimili land belongs to Obosi as a community and that is our case. The Obosi people farm on the land in dispute because it is communally owned by them. Ever since I can remember I have seen Obosi people farming on this land. Obosi people have been building on Okpoko, because Okpoko land is owned by the Obosi people, as a community. If it was not owned by us as a community we would have to seek permission from the owners to build and farm on any part of the land in dispute. So far as I know none of the Obosis living and farming there have sought the permission of any Onitsha Family. I know the boundary between Ugborimili and Nkittaku, between Nkittaku and Afrikpu, and between Afrikpu and Okpoko. We call Afrikpu, Afrikpu - Animodu. I have never been around the land to see the boundaries. I know that 17th and 18th Defendants have represented Obosi in a land case with Ndekpe, no doubt authorize by the Eze and Ndichies. Eze and Ndichies' must be concerned when a claim is made to land communal to Obosi, and, will arrange representation. My grand father was Eze of Obosi. Non Ndichies may be authorised to represent Obosi people. Not authorised even apart from being a woman to represent Obosi in this action. I know of the land Council of Obosi in charge of Obosis' land Policy, powers of Eze and Ndichies delegated to them. 18th Defendant is a member of the Council. 17th Defendant is also a member of the Land Council, so is the 19th Defendant but not the 21st Defendant. Not knowing the boundaries I cannot say that any of the Defendants who farm did not farm in the land in dispute. I know land but not boundaries. I do not accept it that a man can be a farmer, by employing labourers to farm for him, without himself farming in Obosi. I do not agree that many of the Defendants employ servants to farm on their behalf. I am woman, I do not represent Obosi and so far as I am concerned, I ask the case to be dismissed with costs. They did not even sue my husband, who is an Ozo.

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NO RE-EXAMINATION BY AJEGBO FOR DEFENCE.

No.39

NWOKOYE IZUORAIn the High
Court
Eastern Region14TH DEFENDANT SWORN ON BIBLE STATES IN IBO

10 NWOKOYE IZUORA:- MALE - Native of Obosi -
Guard employed by Mobil Oil at Fegge. I have
been employed by the company since the 10th of
January, 1955, before this time, I was a trader,
I started trading in 1931, when I was trading I
lived at Ugborimil, I still live there, I was
born in 1910 at Ugborimili, I know Nkitaku,
Afrikpu and Okpoko. I have never lived or
farmed there, nor has anyone on my behalf.
Obosi people farm Nkitaku, Afrikpu and Okpoko
lands. Obosi people live in Okpoko e.g.
Nnath Nebo, Ben O. Ebozue, Andrew Ezuka and
others. None of the Defendants in this action
live or lived in Okpoko, neither the living nor
the dead. I am not an Ndichie. I am not an
Ozo - I am not a prominent man in Obosi. I
20 have no right to represent the Obosi People.

Defendants'
Evidence

No.39

Nwokoye Izuora
14th August
1957
ExaminationCROSS EXAMINED BY IKPEAZU FOR PLAINTIFFS:-

30 Okuchuku also lives at Okpoko, and Obidima Eg-
buna, Joseph Nwarem, Michael Obiefu, James Nebo
does not live there, nor Isaac Nebo. I do not
know Godfrey Okunbo or Michael Ezechi, they are
not Obosis. The land in dispute is owned by
the Obosi as a community and they farm there be-
cause the land is communally owned by Obosi. I
know that there was a case in respect of Ugbori-
mili. I am not representing the Obosi commun-
ity. If I am living on another's land and I
am sued, I will defend it without reporting it
to my Eze that the suit concerns Obosi land.
The Eze and Ndichies' are no doubt well aware
of this action. I remember action Erokwu vs.
Chief Kodolinye and 19th and 18th Defendants in
this suit. 18th and 19th Defendants are in a
position to represent Obosi if authorised. Any
Obosi man can represent Obosi if authorised.
40 In 0/3/49 (Ex.48) 18th Defendant alone repre-
sented Obosi. Any of the Defendants in this
case could represent Obosi if so authorised.
We have no implied authority. We did not ask
for authority.

Cross-
examinationNO RE-EXAMINATION BY AJECBO FOR DEFENCE:

Adjourned 15/3/57 for continuation of trial.

(Sgd) Herbert Betuel

AG: PUISNE JUDGE 14/8/57.

In the High
Court
Eastern Region

RESUMED THURSDAY THE 15TH DAY OF AUGUST, 1957:

No.40

SYLVESTER ONUORA AFAMEFUNA EGBUNA

Defendants'
Evidence

No.40

Sylvester Onuora
Afamefuna Egbuna
15th August 1957
Examination

3RD WITNESS FOR DEFENCE SWORN ON BIBLE STATES IN
ENGLISH SYLVESTER ONUORA AFAMEFUNA EGBUNA -
MALE - IBO ONITSHA HIGH COURT REGISTRAR -

I have in my custody the Statement of Claim in
Suit O/32/38, Egbuna Ozoma V. J.M.Kodelinye and
Others all of Obosi, I also have the Statement
of Defence and I produce them as certified true
copies. (Ex.45 and 46 put in by Defence). 10

There is an Order of Transfer attached to which
is the Writ of Summons in the Native Court
(Ex.82 and 83 put in by Defence certified copy).

Questioned by Ikpeazu with leave of Court and
by consent to put in a part of record. I see

an affidavit sworn by Francis Ubaka Obigbo in
this case. (Ex.84 put in by Plaintiffs.) I

also see a motion supported by this affidavit
(Ex.85 put in by Plaintiffs) and the Ruling of
Savage J. on the motion (Ex.86 put in by
Plaintiffs). 20

DEFENCE CLOSED:

No.41

No.41

COURT NOTES

Court Notes
15th August 1957

AJEGBO FOR DEFENCE ARGUENDO:- Plaintiffs claim
as in Native Court's Summons Transfer to this
Court as in D.O's Order. In this Court claim
for recovery of possession added with leave of
Court. 30

DECLARATION: What Plaintiffs have to prove to
of Title in a declaration of title
to land is settled law. (Egbo v Ita 11 N.L.R.
68.69) Acts of ownership etc., inconclusive
tradition, becomes a question of fact.

PERSONAL TRESPASS:- No acts of trespass proved
on an individual as opposed to a community basis.
No acts of trespass shown on their plan.

COMMUNITY TRESPASS: Exs.82 and 83: Defendants

In the High
Court
Eastern Region

Court Notes
15th August
1957
continued

sued in the personal capacity not as representing the Obosi Community and the Writ of Summons was transferred to the High Court in that form. No amendment has been sought to make the action a representative action so far as the Defendants are concerned (H.C.R. 1955 O 4 R 1, Rule 3) R.S.O. 1956 (Annual Practice) Order 16 Rule 9. Representative capacity should be stated in the title of the writ, and, in the endorsement or either, or in the title of the statement Claim statement in body of statement of claim will not suffice. In Statement of Claim Defendants not shown as representing Obosi people as such, only in para 2 are Defendants sued in a representative character Defendants deny that they are competent or authorized to represent Obosi people (para.4 of S/D). Chief Kodolinye, proper representative. No affidavit Chief Kodolinye dead at time. No effort made by interrogatories to find right representatives - it is always Chief Kodolinye who is sued in O/32/34, O/7/35, O/32/38 (Ex.39,42,41) and also in the Native Court Cases it is always Chief Kodolinye who is sued as representing the Obosi people (Adurumokumor v Sillo 14 W.A.C.A. 123), all authorities reviewed. Defendant admitted in his defence, the capacity in which he was sued (Mark Jaja V Eboh 12 W.A.C.A.148), sued in a representative capacity in the Native Court, no need for an order in the High Court, does not apply to an action brought in a personal capacity in the Native Court, in which case if a change in capacities of Defendants is required, the Court must be moved to make the order bound by Order 4, Rule 3 of High Court Rules. (Adebibite) V Lawal 12 W.A.C.A. 398). Whatever form your action takes in the Native Court it will be transferred to the High Court in that capacity, if you want a change in capacity you will make that application to the High Court. Jaja V Eboh only decides that if action is taken in the Native Court in a representative capacity, no need to seek authority of High Court. Evidence of Plaintiff and his Witnesses Composite Plan not admissible in evidence and not relevant admitted in error O/3/49, does not make it automatically admissible in this case. No surveyor called to prove it. Mr.Chukwura could not testify to the accuracy of the plan - Iyiuku Land on N.E. of Ex. 6 land of Abadom Ex. 52 and 53 tendered. Claim for damages for trespass -

In the High
Court
Eastern Region

No.41

Court Notes
15th August
1957
continued

4 Native Court Judges only Obi Okosi gave judgment for the Plaintiff. Other 3 judges did not agree. No final judgment. No certainty - No majority judgment. In Exs.54, successors of Abadom, action in High Court C/26/34 against Anabogu 1st Defendant in Ex.53, declaration of title to Iyiuku etcetra, non suited. Ex. 55 another action same parties 0/8/35, transferred to Native Court, where it died.

LAND OF UMUOSODI FAMILY has boundary with Plaintiff land on N.E. side (alleged) in Ex.6 tendered by Plaintiff 0/32/38 in the plan in this case. Egbuna Ozoma gave evidence in that case (Ex.44), no mention of Umuosodi family, not shown in plan or evidence. Obosi Town not 6 miles away from land in dispute but 2 or 2½ miles away. Para. 7 of Statement of Claim not true. Para.11 of Defence true. Circuitous Oguta Road might make distance about 6 miles. Not conclusive stretch of land owned by Onitsha families. Ex.11 case 133 Menkiti V Anozonwu. Menkiti not called not informed he is dead et cetra. Ex.12 Case 268/28 Ekwuaji Akunne of Onitsha V Chukwu Nwalie of Obosi. Ekwuaji not called not informed he is dead et cetra. Ex.13 same submission, also Exs. 14, 15, 16, 17, 18, 23. In all these cases, the parties are not called and no explanation given. Submitted cases, inadmissible irrelevant and should be rejected. Section 34 (1) Evidence Ordinance. Section interpreted Nahman V Odotola 14 W.A.C.A. 381, 348. Best evidence must be given undertaking to connect cases not fulfilled by Plaintiffs. Exs.32 - 38, sworn declarations by Obosi People, same objection, people not called, not subjected to cross-examination, none of parties in this case made an declaration, not shown their declaration in a representative capacity or authorized. "Agreement". Not all sworn, some declared Ask Court to reject them or regard them as of little or no value. M 155 Kodolinye V Mbanefo Odu land completely outside land in dispute, does not cut us off from other pieces of land, as admitted by Chief Mbanefo Odu himself. 0/9/32 Ex. 51 Kodilinye V Erokwu. Creates no estoppel. Erokwu could not claim all the lands.

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Plaintiffs' Evidence (Para 6 of Statement of Claim). 3 pieces of land, now one. Land on West not bounded by Ugbulo of Isiokwe Village.

Mr. John says that statement is not correct and no amendment has been made to that. Plaintiff did not give the boundaries of the land. Mr. Anatogu attempted to give the features of the boundaries. Overlapping between land of Umuosodi Family and land in dispute. (Ex. 29). Boundary with Umuosodi Family in the East. Plaintiff never told us what it is. Boundary not proved $\frac{1}{2}$ or $\frac{2}{3}$ we do not know what the boundary is in Suit O/5/52 (Exs. 25 - 27). In 10 O/5/52 Umuosodi Family of Onitsha, claim from Obosi People damages for trespass et cetra claim for trespass and injunction raises title, as boundary not proved. Case Part Heard in this Court before Savage J. Case in respect of Land in dispute Exs. 39 and 40. O/25/34 (Ex. 42). Plaintiff now dead sued Chief Kodilinye same sort of action. Non 20 suited - No finality et cetra. Brought another action (Ex. 39) in the High Court substantially same parties and same claim. Judgment against some Defendants withdrawals against others, decided on 25th May, 1937. Ex. 49 another action in Native Court against substantially same parties against those dropped, claimed tribute in Native Court 18 Judges. All Onitsha people - gave judgment in default. Not known if money paid. Not proved Defendants knew of judgment. Same Obosi witnesses. O/32/38 Ex. 44. Action 30 for declaration of title et cetra to land in dispute in this case. Waiver of estoppel in Ex. 49, acknowledgment of tribute not same as acknowledgment of title (?). Plaintiff (Francis Obigbo) says each tenant pays 5/- rent as application fee and he receives baskets of yams at end of farming season, conflicts with evidence given by Plaintiffs' witnesses No. 6 and 13. Oba witnesses 5/- and yams paid at the end of the season. Ex. 44 on P/O, yams and wine paid 40 not money. Ex. 14 P. 7. Abu not money palm wine et cetra not of money value. Ex. 48 O/3/49, submit all this evidence about tribute is P. 28 concocted because Obosi never did pay tribute. Plaintiffs do not farm on land, no action taken between 1939 - 1952 by the present Plaintiffs, no statute of limitations affect them - Abandoned the land (?). Umuezechima Family of Obosi formerly of Onitsha. P. 4 of Ex. 44 Egbuna Ozoma cross-examined. Obosi settled with Umuezechima. Umuezechima were Onitsha men. Some 50

In the High
Court
Eastern Region

No. 41

Court Notes
15th August
1957
continued

In the High
Court
Eastern Region

No.41

Court Notes
15th August
1957
continued

of Umuezechima people live with Obosi P.8 of
Ex.44 Abu important member of Ugbo Family.
Umuezechima is part of Umuasele. Plaintiffs are
Ukwa a part of the Umuasele Family. At one time
Obosi and Onitsha were one, P.8 of Ex.44. Land
derived from Awuma. Ezechima descendant of Umue-
zechima settled there. Statement of Claim
contains no history. Plaintiff cross-examined
as to history. Evidence of Egbuna Ozoma in
Ex.44 at P.3. Awuma et cetera land shared be-
tween Ugbo and Ugba. Evidence of tradition.
Practically none or inconclusive.

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Adjourned 16/8/57 for continuation of address.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE. 15/8/57.

16th August
1957

RESUMED FRIDAY THE 16TH DAY OF AUGUST, 1957.

SUIT NO. 0/44/52:

Ajegbo for defence continues his address:-

Witnesses called by Plaintiffs:

2 Oba Witnesses: Could not describe where land
in dispute is situated. Could not name any
other man, also farming there. When land lay
fallow, he farmed elsewhere but was unable to
name it. Ajegbo died about 30 years ago, could
not have farmed there 6 years ago. Disbelieve
this witness P.W.13, next Oba witness, he was a
worse witness than the other, clearly neither of
these witnesses have ever been on the land.
Animodo Pool on Eastern Boundary not in the
middle of the land in dispute, could not explain
how he got there. Ex.44 P.6. The soil there
is very poor. No Oba man farming there in 1939.
Submit 2 witnesses from Oba not truthful.

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Plaintiff not speaking truth when he says he was
farming there between 1939 and 1940. Ex.44 P.4.

Plaintiffs' representative. Neither I nor my
children farm on this disputed area. P.W.9 -
Anthony Ogunyego first gave evidence on 17/7/57,
on 19/7/57 he gave evidence again generally and
not on any specific point, procedure irregular.

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P.W.12 John Asolo, father acquired land from
Otimili Family about 25 years ago, adjoining land.
Obosi people disputed the ownership of the land

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with him. Took no steps against them. Ex.65 - 71, year 1949, took action against 3 motor owners not Obosi people but put there by Obosi people, Chief Kodolinye was joined as a Defendant Ex.67. Settled out of Court. Chief Kodolinye not a party to the settlement was not affected Ex.71. Obosi people are still on that land no other actions pending. Same remarks apply to Ikwuemes' Case (Exs. 56-64) Chief Kodolinye was not a party to that suit. Facts Ex.44- P.8. Both settled on areas of land there at about the same time. Both engaged in the war both should share the booty.

In the High
Court
Eastern Region

No.41

Court Notes
16th August
1957
continued

DEFENCE: (1) Personal Action (submitted). (2) Defendants not authorized or competent to defend suit in a representative capacity. Sample of those who are alleged to represent Obosi people, motor tout, postal agent, guard, married woman, one or 2 Ozos, a few non Ozo farmers. Application to join 5 other people, including Dr. Iweka 3 of them members of Obosi Land Council, can they be sued as representing the Council neither president nor council sued.

(3) Further Defences:- (a) Acquiescence (b) Res Judicata

(a) Acquiescence: Up to 1948, land was Crown Land. Ex.24. River Niger, evidence of Mr. John, Creek mentioned in Agreement No.72 must be the creek running into the Idemili River. No other creek in-between, evidence confirmed by Chidolue, land in dispute is included in the grant, based on the natural features, river, creek, pond, and amply demarcated thereby. 3 mile limit. Land South of Pillar 199 surrendered by Crown (A.G's evidence), area within area Crown held, up to 1948. (Egbuchip V Idigbo 11 N.L.R.140) 1948, divesting Order. Section 14 of Niger Lands Transfer Ordinance. Restores status quo ante pactem. While title of Crown subsisted, Plaintiff family had no right to sue for a declaration of title or trespass so that the judgment of the Native Courts must be regarded and are worthless. Idiko Nwabisi V.R.A. Idigbo W.A.C.A. 266 1955 decided 23rd February 1957. Divesting order also wipes out transactions during that period and we go back to the period before 1882. What acts of ownership have the plaintiffs shown

In the High
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Eastern Region

No.41

Court Notes
16th August
1957
continued

before 1882? Not parties to the agreement of 1882? Ogbo Family gave such proof in 0/3/49, definite act of ownership. Rights of Obosi people protected in Agreement No.72 farming rights et cetra, rights to be enjoyed in perpetuity. 66 years, cannot be evicted a bar to any action for trespass or injunction does not affect declaration of title (Akpan Awo V Cookey Gam (1913) 2 N.L.R. 100. Undisturbed possession - Merely for purpose of bolstering up a stale claim. Cannot see how Court can give an injunction in vacuo (Estoppel raised in Plaintiffs' Reply.

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(1) Case 12A/28 does not raise any estoppel. Chief Kodolinye brought an action. Statement of Claim & S/D filed. No indication case was fixed for trial P 108 of Ex.48.) Case adjourned sine die. Notice of discontinuance being given. No res judicata. Rules of Court 1923, substantially same as our rules now. Order 38 Rule (1) of S.C.R. 1928 3rd ed. Lord Simmons Vol 15210. (Magnus V National Bank of Scotland 57 L.J. Ch. 502). 904) Merits of case must be dealt with. OXUSONYA & Anor. V. Akanwo & Anor 7 W.A.C.A. 1. 5 P.C. No judicial decision on claim. Plaintiffs claim of estoppel cannot succeed.

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(2) 215A dealt with previously also 9/32, No.130 and 0/3/49. (3) 0/7/35 action withdrawn against Kodolinye and 2 others. (4) 13/38, default judgment for tribute, after withdrawing action for declaration of title. Our Estoppel. Suit 0/32/38 Ex.44 Egbuna Ozoma, representing Plaintiff family sued Chief Kodolinye as representing Obosi people and 3 others in their personal capacity. Claim identical with this case, save for added item recovery of possession and injunction Plans and Pleadings filed - Case went to trial. Plaintiff called 9 witnesses, judgment given. Claim for declaration of title and trespass fails. Non suit (Waddington. J.).

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Same issues res judicata. Non suit to treat as pro non scripto. Halsbury Laws of England 15 3rd ed. P.208. Facts actually decided. Same ed Volume P 186 Art. 359 P. 187 Art 361. Evidence Ordinance Section 53 10 W.A.C.A. P.P.19, 21. Parties must bring forward their whole case - Disbelieved both tradition and acts of ownership and said action failed. Non suit superfluous unnecessary. Action failed and should not have

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been resurrected, and it was resurrected until 1952, purport to give an explanation which is false. Port Harcourt Case. Case between Onitsha families not relevant - Act Court to dismiss action with costs 2 W.A.C.A.366, 337.

In the High
Court
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10 IKPEAZU replicando - Land in dispute never subject of agreement No.72. Never Crown Land - Grantors members of Ogbo Family. Gave what they had and could only give what they had "Nemo dat qui non habet". Principal member of the Family is the 5th witness for Plaintiff, Phillip Kunne Anatogu, gave evidence his land contiguous to land in dispute and described the boundaries between Ugborimili the land in dispute and says land in dispute never property of his family but property of Plaintiffs' family. His family never granted and could never have granted the land in dispute to the Royal Niger Company, that evidence was not assailed in cross examination,

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20 Obosi people not parties to agreement No.72. Not in a position to know extent of land granted in Agreement No.72. Land passed extended to the limits of the land in dispute (Ex.79) that land included is based on the mention of a Creek flowing into the Odamare and the Sketch on P.78 of Ex.48. and the evidence of 2 surveyors, who say the only creek flowing into Odamare River, is the one from Animodo and therefore it must be the one agreed on in Ex.72, that is not proof,
30 it is only a suggestion, no plan surveyed at the time, creek could have dried up. 1882 until today, about 70 years, no small creek flowing from elsewhere into the Idemili River, Rivers change their course, who not creeks. Not sufficient on which to make such a finding. Not asserted by Crown or Ogbo Family. The best evidence is the owner of the land 5th Witness, it is also a declaration against interest, member of Onitsha Families Union (?) Extent of land granted under
40 Agreement 72 has received judicial pronouncement. Ex.48 P.56 last paragraph shrink to area edged pink, which does not include land in dispute, extent of land in issue. Pink line on Ex.4, is the pink line referred to and it corresponds with the pink line in the Obosi plan Ex.24, land never surveyed, et cetera. Judge held limit of land in Ex.48. 2nd Plaintiff gave evidence of his boundaries in 0/3/49 not challenged by Obosi. See Ex.48 P.27, 28. Too late for Defence to

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come forward with this suggestion. Never conceived by Obosi People that the land now in dispute passed under the grant Ex.9. 1932 Action against Erokwu Ex.9, which includes land in dispute and Ugboromili land, no reference to grant did not even know of it. Ex.7 Action against Egbuna (Suit 12A/1928/. Ex.8 action against Egbuna (Suit 12A/1928). Defendants V Plaintiffs. Ex.8 Statement of Claim by Defendants no mention made that any part of the land was included in any grant, except a small frontage. No plan but detailed description of land claimed. Submit Court cannot be convinced that land in dispute was subject matter of agreement No.72 and Crown land. Makes restoration of status - quo ante pactem unnecessary and restores to validity all the native Court cases. Ex.44 does not amount to Res Judicata. Plaintiff's failed but what is order of Court. Order of Court Non suit, matter at large, parties can come back again. No appeal against that Order. Order acquiesced in (Machukwunta V Nwalu Chuku & Ors 14 W.A.C.A. 341) Onwunika Nwesi & Ors V Dike Nwaha & Ors. F.S.C. 5th April 1957. F.S.C. 205/56, appellants did not prove their case. Estoppel cases became irrelevant.

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PLAINTIFFS' CASE:

Case instituted in Native Court and transferred to this Court.

PARTIES: Concede case taken against Defendants in their personal capacity on face of summons. In Statement of claim without obtaining order of Court, Plaintiffs' pleaded action was against Defendants in their representative capacity. Defendants traversed that and said they were not the proper persons to represent Obosi but Chief J.M. Kodolinye was and pleaded the land in dispute was the property of their ancestor. Applied to join 5 people to defend action as representatives of Obosi, in our Affidavit Ex.84 para.5, we say what they are doing, these 5 persons are substantial persons in Obosi. 17th and 18th Defendants represented Obosi in Ex.30, in 0/3/49 Ex.48. 18th Defendant represented Obosi by himself, in Exs. 72 - 75, Odus case, the 18th Defendant represented Obosi - Eze et cetra aware of this case,

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Defendants not in good faith. Obosi people have notice of case. Land communal property of Obosi. Defendants say Obosi people on their land (Odua Esiaha & Ors V Vincent Obiasozu & Ors. 14 W.A.C.A. P. 178).

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10

TITLE:- Acts of Ownership. Pleading facts, are Plaintiffs owners as against Obosi. Niger to Obosi Town is a stretch of land belonging to Onitsha Family, many portions lost by Obosi in litigation, jump our portions of land, all this traversed and put in issue. Judgment render probable or improbable our claim over that of Obosi. (Section 6 of Evidence Ordinance), evidence of facts in issue; also section 12 ibidem make fact in issue probable or improbable.

20

QUANTUM OF PROOF ESTABLISHED: Primary decision between Plaintiffs' family and Obosi people. Nature of Defence is to claim the land communally. Obosi is the peg on which they hang their cloak. Who owns land?

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CASE PROVED. Proved ownership of following pieces of land. Exs. 22 - 75, Ex.2 is plan suit O/34/49, land lost by Chief Kodolinye. Won by Mbanefo Family Isiafor land. Ex. 30 O/31/49, Awada, Ugbulo, claimed by Chief J.M.Kodolinye lost, won by Erokwu also Ugboromili O/3/49 (Ex. 48 plan Ex.4) O/6/49 and O/7/49. Exs. 56 - 64, Ex. 62 plan in O/6/49. New motor park, motor owners removed. Iyiuku Land, Anthony Abadom, sued 12 Obosi Obi Okosi signed judgment other judges abstained In Ex.53 what is effect of it? Judgment of Obi Okosi valid. Iweka's father gave evidence not challenged in cross-examination.

Adjourned till 4 p.m. for continuation of address.

RESUMED AT 4 P.M. ON FRIDAY 16TH AUGUST, 1957.

Suit No. O/44/52.

40

IKPEAZU for Plaintiffs continues his reply:- Plaintiffs adduced sufficient evidence to warrant a declaration of title in their favour. Native Court Cases: Show Plaintiffs family have exercised acts of ownership on land as well as possession. Suit O/7/35. Ex.39 Egbuna Ozoma

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V. James Kodolinye & 7 Ors. of Obosi H.C. Case.
Declaration of title to land in dispute etc.
judgment entered against 2nd, 3rd, 4th and 7th
Defendants in terms of the writ. Parties
represented by Counsel. Judgment entered
against 4 Obosi Defendants. Case struck out
against Defendants No.1, 5, 6, Onitsha Native
Court Case Ex.40 action against the 3 persons
dropped out in Ex.39, 3rd Defendant, 5th in
Ex. 39, father of 18th Defendant in this case,
gave following evidence. Found land not
mine, settled, 18th Defendant also settled
with Plaintiff No.3, all must joint in settle-
ment, important admission Umuezechimas' evi-
dence of Obosi Umuezechima farms on land with
permission of Plaintiff so did my father.
Ike Ijofofor is witness's name. Default judg-
ment, not appealed against, valid and subsist-
ing, Defendants' served see evidence of Court
Messenger Okafor. Judgment valid confirms
title of the Plaintiff to the land. Makes
no difference case for tribute, earlier case,
compromised. Affidavit sworn witness Nwan-
gwu father of 18th Defendant no counter affi-
davit disputing it. Ex.40 amounts to act of
ownership exercised by Plaintiff Ex.47 Onit-
sha Native Court Case No.12 1937, refers to
land in dispute farming without permission P.2
Ex.47. Different Umuezechima witness Oko-
loja Umama, Plaintiff's caretaker of the land.
P.3 Ex.47 another Obibike another Obosi man
from Ire Obosi, says land belongs to Plaintiff.
Defendants served P.3 Defendants refused to
attend Court. Judgment for Plaintiffs, no
appeal. Exs. 32 - 38. Documents headed
"Agreement". Ask Court to look at its sub-
stance sworn declaration by 7 men from Obosi
admitting Plaintiffs' title Exhibits admissi-
ble in evidence. Not controverted in cross-
examination that these 7 men were from Obosi.
Phipson on Evidence 9 ed P 236. Form of ad-
mission immaterial, affidavits, answer to in-
terrogatories, et cetra. Section 20 (3) (a)
Evidence Ordinance. Statements as to known
persons. Plaintiffs people put tenants on
the land. 1st April 1930. If Exs. 32 - 38
are admitted in evidence, shows act of owner-
ship and possession e.g. through tenants not
tendered as agreements. No objection to
stamping et cetra. Silent to a fact deposed

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in evidence Phipson 9th ed. P.497, omission to cross-examine Evidence of Plaintiffs' Neighbours.

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- 10 WEST: Ugboromili - Anatogu's evidence gave evidence of boundaries with us. East Ugbo-Ulo Land. Uwechia gave evidence of its boundaries with our land, going North Agunyege of Otimili Family gives evidence of his boundaries with us, sold to Araka Okolo and Asolo and Ikwueme lands bordering on ours, portion of land given to Iweka, no cross examination on these questions at all (?). Iyuiku Land North. East, Anthony Abadon, Plaintiffs' neighbours, his family gave a portion of the land to Iweka. My title is recognized by all my neighbours. Plaintiffs' evidence people farm there et cetra. No reason to dis-believe him. Emengini Arima last witness, born in Plaintiff's family, farmed et cetra, difficult witness to cross-examine, unshaken collected tribute from tenants. 6th and 13th witness Oba tenants know
- 20 land etcetra, may have made a mistake, stopped farming 8 years ago, owing to Obosi attitude, simple man, rehabilitated himself in re-examination, consider if these witnesses are telling truth in the light of all the circumstances. Never admitted by any member of Onitsha family, land belongs to Obosi. (G.Ollivant V Mustapha 7 N.L.R. 29). Evidence same in respect of all other parts of adjoining land, Oba and Obosi tenants placed on this land. Obosi behaviour entitled us to possession - Defence raises title in Obosi community, otherwise no explanation of their possession. Obosi have resisted defending action as a community. 1st Defence land owned by 2 quarters of Obosi, abandoned then to Obosi as a community. Not proved 21 people on land but people on land under title of Obosi. Claim under Obosi no title. Plaintiff entitled to possession because possession follows title. Claim under Obosi, no title, hence injunction.
- 30
- 40 TRESPASS:- 4 Defendants only defended 4th, 14th, 18th and 21st, none of the others defended 5 of them in affidavit said to have authorised building on land, did nothing. Defendants who made no defence bound. Plaintiff gave evidence against all the Defendants but not individually. Community trespass.

ACQUIESCENCE:- Where is the evidence? Obosis

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placed on land on payment of tribute, whenever they defaulted, we sued and did not sleep over our rights, used land until just before this action began not 13 years. Not suing people for 13 years - acquiescence, absurd. Obosi people menacing and ferocious, Plaintiff's brother beaten on land, Emengini says they stole his cassava and yams, evidence not controverted. John Asolo cannot use land, because of Obosi attitude stealing farm produce also Oba witnesses. 1949 prosecution. Obosi people on land vi et armis, no equity in their favour, do not come to Court with clean hands. (Morayo V. Okiade & Ors. 8 W.A.C.A. 46 48). Notice of title of owner. Earliest case 1930. Our Estoppel. Case 12A/28, Exs. 7 - 8, and Ex. (1) plan. Chief Kodilinye sued in a representative capacity claimed an area of land including land in dispute, case was ripe for hearing and fixed for hearing. Submitted Statement of Claim disclosed no cause of action, adjourned sine die, then discontinued. Rules substantially same. Notice of discontinuance (1) before hearing date, (2) afterwards. In (2) Court can make order as to costs and other matter. Order 47 H.C. R. 1955, after notice of hearing et cetra. Court entered judgment for Defendant in special circumstances intentionally (W. Butler - Loyd J.) Kodolinye V. Mbanefo Odu 2 W.A.C.A. 336. Judgment for Defendant = Plaintiff fails in his case. Case dismissed - Hurley Cases - Proper res judicata although not a decision on the merits.

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No doubt as to identity of land - Ex. 6 para 5 Statement of Claim bounded on West by Idemili River not strictly true South West Para 6 S/C. Ask amend on "West" by saying on "South East" non embarrassing to any one 14 W.A.C.A. P.125.

ORDER:- Amendment granted para.5 S/C.
Instead of West by Idemili Creek
South West by Idemili Creek.

40

ORDER:- Amendment granted.
Adjourned 21/8/57 for decision of Court if at all conceivable.

(Sgd) Herbert Betuel
AG: PUISNE JUDGE. 16/8/57.

RESUMED ON WEDNESDAY THE 21ST OF AUGUST, 1957.

SUIT NO. O/44/52:

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COURT:-

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I do not believe that it would be wise at this stage to make any interim orders pending the delivery of my judgment, as such orders might wrongly be interpreted as a "parti pris".

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10 I have made some notes which I will retain, and I have a vivid recollection of the evidence given by the witnesses.

I shall fix the provisional date for the delivery of my judgment as the 14th of January, 1958.

I regret the delay but I shall be out of the jurisdiction on United Kingdom leave for a period of nearly 5 months.

20 It is perhaps conceivable that if all other conditions had been favourable, that I might have been able to deliver my judgment today, but because last moment matters of the utmost public importance and urgency have intervened, and during the period between the last adjournment and, today, I have had to deliver a number of judgments before this one. I have been unable to deliver this one.

Adjourned 14/1/58 for delivery of judgment.

(Sgd) Herbert Betuel

AG: PUISNE JUDGE 21/8/57.

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J U D G M E N T

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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
BEFORE THE HONOURABLE MR. JUSTICE HERBERT
BETUEL,
AG: PUISNE JUDGE,
FRIDAY THE 16TH DAY OF MAY, 1958.

10

SUIT NO. C/44/1952:J U D G M E N T:

This is an action between:-

1. N.O. Ifejike
2. Francis Obigbo - for themselves
and on behalf of the Ukwa Family
of Umuasele, Onitsha ... Plaintiffs

A N D

- | | | |
|---------------------------|------------------------|-------------|
| 1. Emmanuel Ekwuno | 14. Nwokoye Izuora | |
| 3. Ibeife Ibeneweka | 15. Nathaniel Anikpe | 20 |
| 4. Nath Obiefuna | 16. Francis Amanchukwu | |
| 6. Adeze Jibike | (All of Obosi) | Defendants. |
| 7. Anene Ikebife | | |
| 9. Nwachukwu Akunna | | |
| 10. Oranefo Mbatu | | |
| 12. Ofo Ebemikwu | | |
| 13. Anamaonyeiwe Ejikeme. | | |

At a later stage 5 more Defendants were joined
by order of Savage J.

- | | | |
|------------------------------|------------|----|
| 17. Joseph Amanchukwu Orokpe | | 30 |
| 18. Jabez Chukwudobi Nwangwu | | |
| 19. Alfred E. Okoma | | |
| 20. David Umera Odibe | | |
| 21. Dr. Jonas (ALL OF OBOSI) | Defendants | |

The Plaintiffs sue in a representative capacity, the Defendants are sued in a personal capacity.

The Defendants who have died up to the date of the hearing, by consent, have been struck out, the numbering is retained for purposes of convenience. The names of the deceased are not included.

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The Plaintiffs are not anxious to obtain the remedies sought, declaration of title, injunction, trespass and the recovery of possession against the Defendants in their personal capacity, they seek these remedies against the Obosi Community.

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10 So far as the trespass is concerned, it has not been shown that any of the Defendants have in person farmed or trespassed or built houses or been in possession of the land.

The trespass proved is a community trespass. So far as representation is concerned, although no doubt any Obosi, authorised by the community, could represent it, it is unlikely that they would have chosen persons of the standing of the first 16 Defendants, and I believe, the 20th Defendant,
20 to represent them.

The more representative persons, if I may be pardoned that expression are:- the 17th, 18th, 19th, and 21st Defendants. Indeed the 17th and 18th Defendants have represented the Obosi Community in other proceedings but except in paragraph 2 of the Statement of Claim, where their representative capacity is mentioned, the Defendants are sued in a personal capacity.

30 It is, I conceive, for the Plaintiffs to bring the right Defendants before the Court and sue them in their proper capacity, on the other hand, there was nothing to prevent the Obosi Community appointing proper persons to represent them in addition or in lieu of those before the Court by way of joinder or substitution e.g. the 17th 18th and 19th Defendants who are members of the Obosi Land Council.

40 In England, the Court may authorize persons to sue or defend in a representative capacity, even though it is, against the will of the persons whom they are authorized to represent.

(Order 16, Rule 9, English Supreme Court Rules). In our law, although the approval of the Court is required, the authorisation proceeds from the persons to be represented.

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(Order 4, Rule 3, High Court Rules 1955:
Adegbite V Lawal 12 W.A.C.A. 398).

The Defendants deny that they have any authority to do so or do represent the Obosi Community, they claim that Chief Kodolinye was alive when proceedings were instituted and should have been sued as representing the Community. The Plaintiffs say that is false, that he was dead at the time, and that the Defence is mala fide, as it enables the Obosi Community by availing themselves of a procedural subterfuge, on the one hand, to allow the Defendants to deny their representative capacity, and on the other hand to deny the Plaintiffs' title and assert the Obosi title to the land without incurring the consequences of defending the suit communally. It is reasonably clear that the Obosi Community are aware of this suit and its implications, and are supporting the Defendants and defending the suit under cover of the non-representative character of the Defendants.

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20

The form of the action is a suit against the Defendants in their personal capacity, but in substance it is the Obosi Community who standing behind the Defendants, will accept, if it comes, a decision in their favour, but if it goes against them, will say that it is not binding on the Community.

(EZEAKA V. OBASOGWU (1952) 14 W.A.C.A. 178.
ABUAKWA V. ADANA (1957) 3 ALL E.R. 561).

30

Nonetheless I do not think that the authorities as they stand go as far as to permit me to regard the Defendants as being sued in their representative capacity so as to permit me to grant the remedies prayed for against them as a community.

The hearing lasted some 20 not necessarily full days, as other cases required disposal, and owing to the pressure of judicial work, I was unable to give judgment before I went on leave and also on my return, as I was posted elsewhere.

40

The suit was instituted in the Onitsha

Native Court and was for a declaration of title, damages for trespass, and an injunction. Exhibit 82 is the order of transfer.

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The case is properly before this Court and I have jurisdiction to entertain it. In this Court leave was granted to add a claim for the recovery of possession, although this remedy was not sought in the Native Court, I had no doubt of my power to grant leave.

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10 (ORDER 34, HIGH COURT RULES, 1955.
 JAMES V. SMITH (1891) 1 CH. 384:
 CLARAPADE V. COMMERCIAL UNION 32 W.R. 263:
 KURTZ V. SPENCE 30 CH. D. 774).

It appeared a convenient course to take, it might avoid a multiplicity of actions, and could not prejudice the defence, if bona fide and well founded.

20 In this case the defence of title of the Obosi Community is not supported by any evidence of tradition, (paragraphs 13 - 19 of the defence have been struck out at their request together with the separatist claim of the Ire and Olota Quarters of Obosi).

30 As the Community hides behind the Defendants in their personal capacity, so also they shift their defence in the course of the trial abandoning the claims of the Ire Olota Quarters and adopting that of the Community, treating this litigation as a game of chess, in order to preserve at whatever cost interest in the land in dispute.

The land in dispute which the Plaintiffs' Family called Okpoko, Wkitaku and Afrikpu does not refer to 3 contiguous pieces of land, as stated in para.3 of the Statement of Claim but one piece of land, a part of a larger area, claimed by the Obosi, which includes lands belonging to other Onitsha families, and which they call by the tendentious title of Ama-Ime-Obosi.

The 2nd Plaintiff gave evidence as to the boundaries of the land by reference to the adjoining lands and claimed that his family farmed on

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the land and continued to use the land.

It was the custom to put tenants on the land, who paid rent or tribute for the land, and obtained permission for each farming season.

Obosis were among these tenants, and this seems to have been the general rule.

He says that there are many admissions by Obosis of his title e.g. Exhibits 32-39 contain declarations by individuals of the Ire Quarter of Obosi of his title, that these documents are an admission as to pre-existing rights and as such do not require registration under the Land's Registration Ordinance (Section 2 and 15 Land Registration Ordinance, Psul V. Saha (1939) 2 All E.R. 737). 10

These declarations are also declarations against interest. On the other hand, the deponents were not called as witnesses or shown to be dead, and, it was not strictly proved that they came from the Ire Quarter and had the authority of the Ire Quarter or of Obosi to make such admissions although the witness was not cross-examined on this point. 20

No doubt if they are admissible they tell against the Obosi Community, because although the Defendants have abandoned any Ire or Olota title, the Ire title is still included in the Obosi title.

It is the Plaintiffs' contention that even if these exhibits are rejected in evidence, that in previous cases leading members of the Obosi Community have given evidence in support of his title and have not disputed the issue with other Onitsha families e.g. Dr. Iweka's father to whom the Abadom family made a grant of a part of their land. (See Exhibit 32). 30

In addition it is shown that the land in dispute is surrounded by land belonging to various Onitsha families, and, the land between the Defendants' village and the land in dispute is owned by various Onitsha Families so that any claim of title by Obosis to land within the enclave can only be described as far fetched. 40

It may be added that Onitsha Families, who own land, surrounding the land in dispute acknowledge the title of the Plaintiffs' Family to the land in dispute, although there may be dispute inter se as to boundaries, these disputes if any, in my view do not concern the Defendants personally or the Obosi Community e.g. the alleged dispute between the Umuosodi family and the Plaintiffs' Family as to their Eastern boundary.

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10 The Plaintiffs have at times sought to protect their title by suing the Obosis, individually and as a community.

It is clear that for many years individual Obosis (permission being granted annually), were allowed on payment of rent to farm on the land, and on adjoining lands.

20 As the town of Onitsha expanded, the land, poor soil that it was, began to increase in value, which led the Obosi Community to assert title to the land, and to the Onitsha families, including the Plaintiffs defending themselves as well as they could against the Obosis, but having to stay their hands from time to time while cases or appeals were pending in similar cases and while parts of the land were Crown land or of doubtful status. There was also, I regret to say, some fear of incurring the violence of the Obosis. It does not seem that there is in recent times even a single instance of an Onitsha family acknowledging any title in the Obosi Community or
30 even any right to possession, except to individuals as annual tenants and no Onitsha family has acquiesced in any claim based on adverse possession which seems to distinguish this case from that of Awo V Gam (1913) 2 N.E.R. 100.

There may be an apparent exception to this. The Defendants claim that the land in dispute forms part of the land sold to the National African Company, which later became the Niger Company.

40 The grant was made by one Orikagbue, (the Plaintiffs deny that their family were parties to this grant) and the Obosis were allowed usufructuary rights on the land.

It is difficult to believe that these

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conditions were intended to go further than to preserve to the Obosis, their seasonal right of farming and their right to fish. It clearly did not confer any title on them.

The 3 miles inland in Agreement 72, is probably an exaggeration, and, no proper delineation was made of the inland boundary.

I am not satisfied that up to 1948, the whole land in dispute was Crown Land, although a small triangular portion of land in respect of which the Crown disclaims any interest is Crown Land today, (See Exhibits 78 and 79), and unless the disputed land is shown to have formed a part of Crown Land, the Plaintiffs were never divested of their title (Egbuche V Idigo (1934 11 N.L.R.140)), although until 1945, assuming their land was Crown Land, their rights went into abeyance, and would revive on a divesting order. Exhibit 77 is such an order, (Section 14 Niger Land's Transfer Ordinance).

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The divesting order would of course restore the states quo ant pactem i.e. before 1882. In any event the 2nd Plaintiff denies that his family were parties to the agreement, and there is evidence that they have put tenants on the land for a long, long time, and have been farming there perhaps even before these agreements.

At the outset, both parties raised a plea of res judicata, the Plaintiffs as a part of their case, the Defendants as a preliminary issue, in view of the issues involved and some apparent lack of unanimity as to the identity of the land, and the probability that determination of the plea might exclude otherwise relevant evidence, I ordered the trial to proceed.

30

The Defendant submit that Exhibits 41 and 44 concern land in dispute, which it does, and amounts to Res Judicata.

40

In an action between the Plaintiffs' Family and the Obosi Community, the learned Judge non-suited the Plaintiffs' family because he did not believe their evidence, I am asked to

treat the non suit as pro non scripto and to regard the learned judge as having dismissed the Plaintiffs' claim.

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(SECTION 53 OF THE EVIDENCE ORDINANCE)

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I must regard the learned judge since he did not conclude the issue, as having left the matter at large, and, there being no finality, there can be no res judicata.

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10 In addition, a number of decisions of the Native Court, the Supreme Court, the West African Court of Appeal, and a decision of the Privy Council have been referred to and many of them tendered in evidence, the documents were many in number, such exhibits as seen to require exclusion or discussion and which have not been dealt with, I will endeavour to consider. Exhibit 48 contains all proceedings leading up to the decision of the Judicial Committee.

20 Exhibit 10 is probably inadmissible in evidence, it is an action between 2 Onitsha families in respect of a piece of land called Udo, the Obosi were not parties to the action, so far as they are concerned it is "res inter alios acta".

I find that Exhibits 7, 18, 52 and inconclusive, and Exhibits 39, 42 and 54 valueless.

30 Exhibit 5 is composite plan, it shows the situation of the land in dispute vis a vis other land in the area, and the effect of previous actions, thereon, it was admitted in evidence and formed part of the Record in suit 3/49.

The same result can be obtained more laboriously by piecing together the other plans before me. It is admissible in evidence, but even if it is not, it does not affect my judgment.

Exhibits 11, 12, 13, 14, 16, 17 and 44 all assert the title of various Onitsha families against individual Obosis, in no case does the defence raise any title vested in the Obosi Community. In all these cases the individuals concerned were tenants.

40 In Exhibits 40, 43, 47 and 49, the Plaintiffs'

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family obtained judgments by default against various Obosi tenants for failing to pay rent.

Exhibit 21 concerns land claimed by the Ogbo family of Onitsha against the Obosi Community, the land Ugbo-Orimili adjoins the present land in dispute, although nearer to the Niger, and even further away from the Defendants' village, than the land in dispute, the Ogbo Family obtained a declaration of title and other remedies.

10

Exhibit 30 is a suit between the Isiokwe Family of Onitsha and the Obosi Community for trespass and an injunction in respect of the land called Awada and Ogbulo, the Isiokwe Family were granted these remedies.

Exhibits 61, 65, 68 and 69 concern the portion of Otimili land bought by John Asolo's father, who had trouble with the Obosi Community because they went on his land without permission and used it as a Motor Park.

20

The case was settled. The intention in this case was to acquire land for the Obosis.

In Exhibit 20 the Obosi Community asserted title directly against Mbanefo Odu representing an Onitsha Family, and in Exhibit 50 against Erokwu representing another Onitsha Family to land called Iyiukwu and Awada, in both cases, the claim of the Obosi Community was dismissed (See Exhibit 51).

In Exhibit 75, Ademola J. as he then was expressed strong views on the attitude of the Obosi Community. I have come to the same conclusion. The Obosi Community have not only farmed on the land in dispute without permission, but since this series of litigation started and since this case was begun, have erected buildings on the land e.g. Mr. John says he saw no buildings on the land when he surveyed it there are buildings there now and have been for some time since the survey.

30

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The Obosi Community are flooding the land with their people and putting tenants on it, and building on it, because of course they do not recognize the Onitsha Family's title, and

will take any action in order to retain some interest in the land and be in a position to plead if necessary, the hardship of being evicted.

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16th May 1958
continued

10 In this case there is no proof of trespass or of being in possession by any of the Defendants who are sued in a personal capacity, but as they raise in their defence the title of the Obosi Community to the land in dispute, and have failed to substantiate it, I am entitled I think, to give the Plaintiffs who have proved their title a declaration of title against them.

As they are not individual trespassers and deny any intention to trespass, I do not think that any injunction would or should lie; and, as they are not in possession as individuals they cannot be evicted.

20 In so far as the triangular portion of the land is Crown Land, I grant a declaration of title against the remaining Defendants i.e. all those not struck out of the case, of the portion of land called Nkitaku, Akpriku and Okpoko, as shown in Exhibit 5, with the exception of the small triangular portion shown to be Crown Land.

I will now hear any argument the parties may wish to put forward on the question of Costs.

IKPEAZU: I am asking the Court to draw up a formal order.

NONYELU: I have no objection.

ORDER: Formal order to be drawn up in due course.

30 IKPEAZU: Succeeded on issue of title, failed in the other issues but have the right to possession as against the Defendants by raising title denied our right to possession. Even in trespass denied acts but also denied our title. We have succeeded substantially. Had to make many plans called important witnesses, et cetera, defence made case more difficult and prolonged that it need have been.

Ask for 700 guineas costs.

40 NONYELU: Plaintiffs have substantially failed in most issues, picked Defendants indiscriminately. I ask for 900 guineas.

In the High
Court
Eastern Region

No.42

Judgment
16th May 1958
continued

COURT:- Defence to receive all costs awarded to them in the course of the proceedings and £15:15/-: over and above that in respect of an adjournment granted to Plaintiffs in the course of this hearing.

For rest of defence no costs.

The Plaintiffs cannot expect to recover all their costs, I will award them 200 guineas.

(Sgd). Herbert Betuel

AG: PUISNE JUDGE.

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In the Federal
Supreme Court

No.43

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

SUIT NO.0/44/1952:

No.43
Notice and
Grounds of
Appeal
3rd July 1958

BETWEEN :

1. N.O.Ifejika for themselves and on behalf
2. Francis Obigbo: of the Ukwa Family of Umua-sele Onitsha Plaintiffs

AND

- | | |
|-------------------------|--------------------------|
| 1. Emmanuel Ekwuno | 3. Nath Obiefuna |
| 2. Ikebife Ibeneweka | 4. Adeze Jibike |
| 6. Ogbunbi Efobi | 5. Anene Ikebife |
| 8. Oranefo Mbatu | 7. Nwachukwu Akunna |
| 10. Ofo Obomikwu | 9. Ilomuanya Ezemenyiba |
| 12. Nwokoye Izuora | 11. Anameonyeiwe Ejikeme |
| 14. Francis Amanochukwu | 13. Nathaniel Anikpe |
| 16. Jabez C. Nwangwu | 15. Joseph A. Orakpo |
| 18. David U. Odibe | 17. Alfred E. Okoma |
| 19. Dr. Jonas Iweka | |
- (All of Obosi) ... Defendants

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TAKE NOTICE that the Defendants being dissatisfied with the decision of the High Court contained in the judgment of His Lordship Mr. Justice Betuel dated 16th day of May, 1956, doth hereby appeal to the Federal Supreme Court upon

In the Federal
Supreme Court

No.43

Notice and
Grounds of
Appeal
3rd July 1958
continued

and judgment entered in favour
of the Defendants, and the
Plaintiffs' claim for declara-
tion of title be dismissed.

5. Persons directly affected by the Appeal:-

<u>NAME</u>	<u>ADDRESS:</u>
N.O.Ifejika & Anor.	c/o Their Solicitor, Chuba Ikpeazu Esq., Barrister-at-Law ONITSHA.
Emmanuel Ekwuno & 18 Ors.	c/o Their Solicitors 20 Bernard Carr Street PORT HARCOURT.

10

Dated at Onitsha this 3rd day of July, 1958.

(Sgd) G.C.Nonyelu
SOLICITOR FOR APPELLANTS.

No.44

Court Notes
10th June 1960

No.44

COURT NOTES

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
FRIDAY THE 10TH DAY OF JUNE, 1960
BEFORE THEIR LORDSHIPS
SIR ADETOKUNBO ADEMOLA KT., CHIEF JUSTICE OF
THE FEDERATION
MYLES JOHN ABBOTT ... FEDERAL JUSTICE
PERCY CYRIL HUBBARD ... FEDERAL JUSTICE

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FSC. 322/1959.

Emmanuel Ekwuno & 18 others: Defendants/
Appellants

v.

N.O. Ifejika & Anor etc. Plaintiffs/
Respondents
Gratien, Q.C. (Nonyelu & Ikpeazu with him)
for Appellants
Ikpeazu for Respondents.

30

Gratiaen argues:

Grounds 2, 4 & 5 will not be argued.

Refers to the claim as set out at page 6: para.15 of the Statement of Claim. Submits that the main claim failed.

In the Federal
Supreme Court

Refers to page 104 of the Record: Judgment shows main claim fail.

No.44

Where declaration asked for as foundation for substantive relief claim by Plaintiff, the Court should not grant the declaration if the claim for substantive relief fails.

Court Notes
10th June 1960
continued

10 Submit this applies even where Plaintiff's title has been challenged.

It is improper for the court to express its conclusion upon the issue of title in such a case.

In other words, Declaration cannot be got against those who are not trespassers. Refers to Earl of Dysart V. Hammerton (1914) 1 Ch.822 and (1916) 1 A.C.57.

20 Specifically refers to page 833, last paragraph: and particularly top of page 834.

Also at page 838 first paragraph.

See also page 846, last paragraph.

See the House of Lords Report of the Appeal (1916) 1 A.C. 57 at page 64.

Particularly page 65, first paragraph and page 123 last paragraph.

Refers to London Passenger Transport Board V. Mircrop (1942) A.C.332 at page 345.

Ikpeazu for the Respondent

30 Hammerton's case cited not applicable.

Right to operate traffic by the Defendant existed on a completely different line.

Refers to the report (1914) 1 Ch.822 cited above, at page 825 (3rd paragraph).

In the present case, claim was title to land.

In Hammerton's case, title of plaintiff not put to issue.

In the Federal
Supreme Court

No.44

Court Notes
10th June 1960
continued

In Hammerton's case the line of thought is that the Defendants were doing a lawful thing, in the present case, Defendant doing unlawful thing.

It is submitted that since the Defendants have challenged the Plaintiffs title, it is enough for the judge to make a declaration. Refers to paragraph 10 Statement of Claim at page 5.

It was denied at page 7: paragraph 5, and see particularly page 8: paragraph 13 of the Statement of Defence where the Defendants put title in issue; Claim land as belonging to their ancestor see generally paragraphs 13, 14, 15.

10

The Obosi community standing by to reap from judgment.

Gratiaen in reply:

It must be remembered that 21 persons were sued personally. The case of trespass not proved against them. Claim for eviction added. Still not proved. A tort is alleged and a tort must be established. Bare declaration cannot be given. The invasion of right or the threatening invasion not proved.

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Judgment Reserved.

(Sgd) A.Ade Ademola

CHIEF JUSTICE OF THE FEDERATION.

No.45

In the Federal
Supreme Court

J U D G M E N T

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
ON FRIDAY, THE 24TH DAY OF JUNE, 1960

No.45
Judgment
24th June 1960

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION
MYLES JOHN ABBOT FEDERAL JUSTICE
10 PERCIVAL CYRIL HUBBARD ACTING FEDERAL JUSTICE
FSC. 322/1959.

BETWEEN:

EMMANUEL EKWUNO & 18 OTHERS DEFENDANTS/
(ALL OF OBOSI) ... APPELLANTS

AND

N.O. IFEJIKA & ANOTHER
(for themselves and on
behalf of the Ukwa family
of Umuasele Onitsha) ... PLAINTIFFS/
RESPONDENTS.

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J U D G M E N T:

P.C.HUBBARD, AG.F.J.:

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The seventeen appellants appeal against a judgment of the High Court of the Eastern Region sitting at Onitsha, by which the two Respondents were granted a declaration of title to a piece of land at Onitsha. In the action the two Respondents had claimed also damages for trespass, an injunction, and an order for recovery of possession. The declaration was made without the granting of any consequential relief.

The only ground of appeal is that it was improper for the learned Judge to grant a declaration

In the Federal
Supreme Court

No.45

Judgment
24th June 1960
continued

by itself when the Respondents' claims to consequential relief had entirely failed.

The evidence in the action is largely irrelevant on this appeal. The only relevant matters are (1) that none of the seventeen Appellants had in fact trespassed upon the land, and therefore the Respondents were entitled neither to damages, nor to an injunction, nor to an order for recovery of possession; and (2) that by their pleadings the Appellants denied the Respondents' averment that they are "Owners in possession of the land in dispute from time immemorial" and alleged that the Obosi people, to which community they, the Appellants, belong, are the owners.

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Mr. Gratiaen, who appeared for the Appellants, cited Earl of Dysart v. Hammerton & Co. (1914, 1 Ch. 822 C.A.) in support of his ground of appeal. Mr. Ikpeazu, on behalf of the Respondents, attempted to distinguish the facts of that case from those which arise on this appeal, but, in my view, unsuccessfully. In Dysart's case the first Plaintiff claimed to be the owner, and the second Plaintiff claimed to be the lessee of a franchise ferry. The Defendants had recently begun carrying passengers across the river some 500 yards away from the Plaintiffs' ferry. The Plaintiffs' cause of action was that the Defendants' ferry was an illegal interference with their franchise ferry. The Defendants denied the interference and also challenged the Plaintiffs' title, i.e. denied that their ferry was an ancient franchise ferry. Warrington, J., at first instance held that the Plaintiffs had established their title to a franchise ferry, but that there was no illegal interference by the Defendants. He accordingly dismissed the action, but made a declaration that the Plaintiffs were entitled to a franchise ferry. On appeal it was held that the Defendants' ferry was an illegal interference and that an injunction ought to be granted, but at the same time it was laid down that if Warrington, J.'s finding that there was no interference had been the correct finding, then no declaration should have been made. This latter proposition was confirmed by the House of Lords (Hammerton v. Dysart, (1916) A.C. 57), per Lord

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Haldane, at pages 64, 65. Cozens-Hardy, M.R. in the Court of Appeal, said: "If, however, Warrington J's view was correct if ...
 the Plaintiffs are held not entitled to any relief against Hamerton, it is really unimportant whether the Plaintiffs have or have not an ancient ferry which the Defendants have not disturbed. The rule enabling the Court to make a declaratory decree ought not to be applied where a declaration is merely asked as a foundation for substantive relief which fails. The dismissal of the action is not a decision adverse to the Plaintiffs' title to a franchise ferry" (pp.833 and 834). Similarly, on the facts now before this Court it is clear that the dismissal of the Plaintiffs' action claiming a declaration of title is not a decision adverse to the Plaintiffs' title to the land. Buckley, L.J., in the Dysart Appeal, said: "Under O. XXV. r.5, the Court now has power to make declaration of right whether any consequential relief is or could be claimed or not. The purpose of these last words is not I think, to enable a declaration to be made in a litigation between parties in which the Plaintiff could under no circumstances obtain relief against the Defendant. It is addressed to cases in which no substantive relief can at present be given, not to cases in which substantive relief could never be given. A declaration can under proper circumstances be made so as to bind future rights. The case here is one in which the learned Judge has found that the Plaintiffs could have no relief against the Defendants at all". The last sentence of this passage describes exactly what the learned Judge found in the case before us.

It appears to me that Dysart's case fully supports the proposition for which Mr. Gratiaen contended. Dysart's case, however, is not the last word on the matter, nor is it universally true that no declaratory decree can be made where the claim for consequential relief - that is to say, relief claimed on the basis of an alleged right of action - completely fails. In London Association of Shipowners and Brokers v. London and India Docks Joint Committee. (1892, 3 Ch.242), a declaration was granted, although the claim for consequential relief had failed. In this case the Peninsular and Oriental Steam Navigation Company sought a declaration that a compulsory code of regulations for shipowners using the Defendants' docks was invalid until

In the Federal
 Supreme Court

No.45

Judgment
 24th June 1960
 continued

In the Federal
Supreme Court

No.45

Judgment
24th June 1960
continued

confirmed as required by statute, and asked for an injunction against the Defendants. At first instance A.L.Smith, J., dismissed the action with costs. At the hearing of the appeal the Plaintiffs abandoned their claim for the injunction. The Court of Appeal dismissed the appeal, but nevertheless made a declaration in favour of the plaintiffs. The relevant facts and the reason for making the declaration are as follows. There were two kinds of berths for ships at the docks, berths appropriated to named companies and unappropriated berths. The plaintiffs, it was found, were entitled to complain of the regulations only as regarding the use of unappropriated berths. It was the Plaintiffs invariable practice, however, to use only appropriated berths for their ships. They had never used, and did not contemplate using, unappropriated berths. Suing as individuals, and not by the Attorney-General as representing the public, they were bound to prove special damage arising from the issue of the regulations, and this they were unable to do. They had, therefore, no cause of action on which they could claim an injunction, and their claim to relief consequential upon the declaration failed altogether. It was held, however, that although the Plaintiffs had not established their right to relief, in the sense of a remedy related to a present or possible future cause of action, they should nevertheless, be granted a declaration in order to give them relief, using that word in a wider sense. This case is considered in Guaranty Trust Company of New York v. Hannay & Co. (1915, 2 K.B.536, C.A.) in the judgment of Pickford, L.J. (at p.559), and in the judgment of Banks L.J. there is a passage explanatory of the meaning of the word "relief" used in a wider sense in connection with a declaratory decree. "In my opinion the clue to the real meaning of the rule" (O.25,r.4) "is to be found in the opening words. It deals with actions and proceedings. For the present purpose it is only necessary to consider an action. An action is a civil proceeding commenced by a writ (Judicature Act, 1873, s.100) and in every action there must be a Plaintiff who is a person seeking relief (Judicature Act, 1873, 5.100) or, to use the language of Order 16, r.1, a person in whom a right to relief is

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In the Federal
Supreme Court

No.45

Judgment
24th June 1960
continued

On the facts of the case now before this Court there is indeed no present wrongful act of the Defendants which may later affect the title of the Plaintiffs to the land in dispute. On the other hand, however, the Defendants have alleged that the ownership of the land is in their own community, the Obosi. The Obosi are not a legal entity, they are a large number of natural persons, and the Defendants are seventeen of them. The only reason why this action was not brought against the Obosis as a community is that it is impossible under the relevant rules to compel them to be represented by named members of the community. The authority to defend must come from the community and they cannot be compelled to give such authority (Eastern Region High Court Rules, 1955, O.4. r.3). The Defendants are seventeen of a large number of persons to whom they say the land in dispute belongs. They so pleaded and they called evidence to support this contention. The question of title was litigated as between the seventeen defendants and the Plaintiffs, and in view of the allegation of the Defendants and of the evidence called in support, there is good reason to anticipate that the Obosis, including the seventeen Defendants, may at some future time challenge the Plaintiffs' title. In these circumstances, and upon a careful consideration of the authorities, I have come to the conclusion that, as against the seventeen Defendants, the Plaintiffs are entitled to this relief, that their ownership of the land be established by a declaration to that effect.

I would, therefore, dismiss this appeal with forty-two guineas costs to the Respondents.

(Sgd) Percy C. Hubbard

AG. FEDERAL JUSTICE

I concur

(Sgd) A. Ade Ademola

CHIEF JUSTICE OF THE FEDERATION

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I concur

(Sgd) M. J. Abbott
FEDERAL JUSTICE.

In the Federal
Supreme Court

Mr. E.F.L. Gratiaen Q.C., (Messrs. G.C. Nonyelu
and C. Ikeazor with him) for Appellants.

Mr. C. Ikpeazu for Respondents.

No.45
Judgment
24th June 1960
continued

No.46
O R D E R

No.46
Order
24th June 1960

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

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SUIT NO.0/44/1952:
F.S.C. 322/1959.

On appeal from the judgment
of the High Court of Onitsha.

Between:

Emmanuel Ekwuno)
and 18 Others) Defendants/
Appellants

and

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1.N. O. Ifajika)
2.F. Obigbo) Plaintiffs/
(For themselves and) Respondents
on behalf of Ukwa)
Family of Umuasele)

(L.S.)

(Sgd) A.Ade Ademola Friday the 24th day of June,
1960.

CHIEF JUSTICE
OF THE FEDER-
ATION

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UPON READING the Record
of Appeal herein and after
hearing Mr.E.F.L.Gratiaen, Q.C.,
(Messrs.G.C.Nonyelu and C.Ikea-
zor with him) of Counsel for the
Defendants/Appellants and Mr. C.
Ikpeazu of Counsel for the
Plaintiffs/Respondents:

IT IS ORDERED that this
appeal be dismissed with 42
guineas costs to the Plaintiffs/
Respondents.

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

In the Federal
Supreme Court

No.47
ORDER GRANTING FINAL LEAVE TO
APPEAL TO PRIVY COUNCIL

No.47

Order granting
Final Leave to
Appeal to
Privy Council
4th April 1961

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.0/44/1952
F.S.C. 322/1959.

Application for an order
for final leave to appeal
to Her Majesty-in-Council.

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Between:

Emmanuel Ekwuno & 18
Others (All of Obosi) Applicants

And

1. N. O. Ifejika
2. Francis Obigbo Respondents
(For themselves and
on behalf of the
Ukwa family of
Umuasele Onitsha)

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(L.S.)

(Sgd) A. Ade
Ademola
CHIEF JUSTICE
OF THE FEDER-
ATION

Tuesday the 4th day of April, 1961.

UPON READING the Application herein
and the Affidavit of Jabez C. Nwangwu
sworn to on the 16th day of February, 1961,
and filed on behalf of the Applicants and
after hearing Mr. C. Ikeazor of Counsel
for the Applicants, the Respondents not
being present or represented:

IT IS ORDERED that Final Leave to
appeal to Her Majesty-in-Council be
granted.

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

EXHIBIT 32.

AGREEMENT, ANAKPE AKUNNE AND ANOTHER

Plaintiffs'
Exhibits

32

Agreement,
Anakpe Akunne
and Another
1st March
1930

AN AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Anakpe Akunne Ire quarters of Obosi (now represents) his fathers Agulefo and Ebokosia Odu and Egbuna Ozonma.

10

I the under signed Anakpe Akunne of Ire Obosi declared that the land named Odoaruru and Akpilikpu now in dispute is solely the property of Egbuna Ozonma and his relatives. This land was formerly leased to my fathers Agulefo and Ebokosia Odu for the purpose of farming, for which annual rents were being paid to the said Egbuna Ozonma and his relatives.

20

During the present Land dispute we were enticed by our Head Chief Kodiliny Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us, hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and their relatives, as were done by my Fathers.

Witness to mark Anakpe Akunne his X Mark
(Sgd) A.G.Onuorah

Writer D.O.B.

Sworn before me this date 10th April 1930.

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EXHIBIT 33.

AGREEMENT, UZOWULO EMEOBO AND ANOTHER

33

Agreement
Uzowulo
Emeobo and
Another
1st March
1930

AN AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Uzowulu Emeobo of Ire quarters Obosi (now represents) his father Emeobo Egbenekwu and Egbuna Ozonma of Onitsha. I the undersigned Uzowulu Emeobo of Ire Obosi declared that the Land named Akpilipu now in dispute is solely the property of Egbuna Ozonma and his relatives. This Land was formerly leased to my father

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Plaintiffs' Exhibits

33

Agreement Uzowulo Emeobo and Another 1st March 1930 continued

Emeobo Egbenekw for the purpose of farming, for which annual rents were paid to the said Egbuna Ozonma and his relatives. During the present Land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us, hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and his relatives as were done by my Father.

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Uzowulu Emeobo His X mark

witness to mark (Sgd) A.E.Obuorah writer D.O.Bosa

Sworn before me this date 1st April, 1930.

34

Agreement Azuamaka Agulefo and Another 1st March 1930

EXHIBIT 34

AGREEMENT, AZUAMAKA AGULEFO AND ANOTHER

20

AN AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Azuamaka Agulefo Ire quarters of Obosi (now represents) his father Agulefo and Egbuna Ozonma of Onitsha.

I the under signed Azuamaka Agulefo of Ire Obosi declared that the Land named Akpilikpu now in dispute is solely the property of Egbuna Ozonma and his relatives. This Land was formerly leased to my father Agulefo for the purpose of farming, for which annual rents were paid to the said Egbuna Ozonma and his relatives.

30

During the present Land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us, hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and his relatives as were done by my father.

40

Azuamaka Agulefo his X Mark

Witness to mark (Sgd) A.E.Onuorah

Sworn before me this date 1st April, 1930

Writer D.O.Bosa free.

EXHIBIT 35

AGREEMENT, OFORAH EZEDIALO AND ANOTHERPlaintiffs'
Exhibits

35

AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Oforah Ezedialo of Ire quarters Obosi (now represents) his fathers Echeogu and Umeozumba and Egbuna Ozonmah of Onitsha.

Agreement
Oforah
Ezedialo
and Another
1st March 1930

10 I the under signed Ofora Ezedialo of Ire quarters Obosi declare that the Land named Nketeaku now in dispute is solely the property of Egbuna Ozonmah and his relatives. This land was formerly leased to my fathers Echeogu and Umezumba for the purpose of farming for which usual rents were being paid to the said Egbuna Ozonmah and his relatives.

20 During the present Land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us hence I submitted and hereby signed a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and his relatives as were done by my fathers.

Ofora Ezedialo His X mark

Declare before me this date April 12th, 1930.

(Sgd) F.O.Nwosu
witness to mark and Interpreter.

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EXHIBIT 36

AGREEMENT, OFOBUKA AND OTHERS

36

AN AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Ofobuka of Ire quarters Obosi (now represents) his fathers Nwafulaku and Okagbue and Nwafodulu and Egbuna Ozonmah of Onitsha.

Agreement,
Ofobuka and
Others
1st March 1930

40 I the undersigned Ofobuka of Ire quarters Obosi declare that the Land named Nketeaku now in dispute is solely the property of Nwafodulu and Egbuna Ozonma and their relatives. This land was formerly leased to my fathers Nwafulaku and Okagbue for the purpose of farming for which usual rents were being paid to the said Nwafodulu.

Plaintiffs'
Exhibits
36
Agreement,
Ofobuka and
Others
1st March 1930
continued

Egbuna Ozonmah and their relatives. During the present Land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma. Nwafodulu and their relatives as were done by my fathers.

10

Ofobuke His X mark

Declare before me this date 10th 1930.

Sgd. A. Nwosu
Witness to mark and Interpreter.

37

EXHIBIT 37

Agreement
Nkpeazu
Okafor and
Another
1st March 1930

AGREEMENT, NKPEAZU OKAFOR AND ANOTHER

AN AGREEMENT is hereby made this 1st day of March, in the year of Our Lord One thousand nine hundred and thirty between Nkpeazu Okafor of Ire quarters Obosi (Now represents) his father Okafor and Egbuna Ozonma of Umuasele Quarters Onitsha

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I the undersigned Nkpeazu Okafor of Ire Obosi declared that the land named Nketeaku now in dispute is solely the property of Egbuna Ozonma and his relatives. This land was formerly leased to my father Okafor for the purpose of farming for which annual rents were paid to the said Egbuna Ozonma and his relatives.

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During the present land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we arrived at a conclusion that such concoctions would result unfair treatment to us, hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and his relatives as were done by my father.

40

Nkpeazu Okfu his X mark

Witness to mark
A.E.Onuorah

Sworn before me this date 1st April 1930.

Writer
D.O.Bosa
Free.

EXHIBIT 38

AGREEMENT, OKPEAZU OKAFOR AND ANOTHERPlaintiffs'
Exhibits

38

Agreement,
Okpeazu Okafor
and Another
1st March 1930

AN AGREEMENT is hereby made this 1st day of March in the year of our Lord One thousand nine hundred and thirty between Okpeazu Okafor Ire quarters of Obosi (now represents) his fathers Okafor, Egbonnye, Iremeh, Odugah and Egbuna Czonma of Onitsha.

10 I the undersigned Okpeazu Okafor of Ire Obosi declared that the land named Okpoko now in dispute is solely the property of Egbuna Ozonma and his relatives. This land was formerly leased to my fathers Okafor, Egbonnye Iremeh for the purpose of farming, for which annual rents were paid to the said Egbuna Ozonma and his relatives. During the present Land dispute we were enticed by our Head Chief Kodilinye Ezeonyeolu to accompany him as witnesses in the aforesaid case of which we agreed. After serious consideration we

20 arrived at a conclusion that such concoctions would result unfair treatment to us, hence I submitted and hereby signing a true agreement that I shall continue to pay the usual rentage to Egbuna Ozonma and his relatives as were done by my fathers.

Okpeazu Okafo His X mark.

Witness to mark
A.E. OnuorahWriter
Dan O.Bosa
Free.

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EXHIBIT 17

PROCEEDINGS, SUITS Nos.200 and 201 of 1926.

17

Proceedings
Suits Nos.
200 and 201
of 17th June
1926IN THE ONITSHA NATIVE COURT
200 & 201.

MEMBERS

Chief Nwokocha
" Haruna
" Agbakoba
" Uzoka

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J.Magafu of Onitsha
Vs.1. Magom of Obosi
2. Osadebe of "

Claim £5 from each of the deftd being yearly payment due to plaintiff in his land Udo of Okpoko farmed by you. dispute arose 2 months ago.

J. Magafu S: The land in question is my own property, No.1 Defendant is the agent in one portion

Plaintiffs'
Exhibits

17

Proceedings
Suits Nos.
200 and 201
of 17th June
1926
continued

of this land and the No.2 the other. They were looking after these land given it out to Obosi people and pay me rent since 8 years ago, and there have never been any dispute over this land ever since. This year the 2 Defendants put in their people and they farmed the land and refused to pay me my due hence this action. Defendant Osadebe S. The land in question belonged to the Plaintiff. He appointed me as an agent over this land since 8 years ago and ever since I am paying the Plaintiff his due rentage without any dispute. This year I have given the Plaintiff Kola to enter in the land and shall pay all what due to the plaintiff to him. No.1 Defendant is the agent of the other land he will speak himself.

10

Nwokafo S: I am speaking in behalf of my father. He sent me with summons paper against him; as he was not well to come. I know nothing of the land in question. I cannot give any answer. I know that we farmed in Okpoko land and cannot tell the owner.

20

No.2 defdt recalled by Court. I am the same family with No.1 defdt the whole land belonged to Megafu and was divided between me and the No.1 defendant. Both of us were acting as the plt's agent and paid him his due after farming.

Plaintiff recalled No.1 defdt was not sick he pretended sick because he was intending to claim the land as he farmed without permit he must removed from the land entirely.

30

Chiefs Decision. No.2 Defendant is instructed to carry palm wine and kola to the plt the land owner and must pay rent to plt. When time approached.

No.1 defdt Magom to pay £5 damages to the plt next Court sittings and to quit the land at once in failing to quit will be dealt with for contempt of Court.

40

Ch Nwokocha his x mark (Sgd) I.Inzegu
C.N.C. 17/6/26

24th June 1926 Deft Magom S. The land Udo is especial property of plt he made me agent over this land since

7 years ago and has placing my people for farming and pay rent accordingly. I have now paid £5 ordered and promise to paying him rent as ordered and shall never at any time denied that the land does not belonged to plt. Plt requested that as the defdt has begged will be allowed to continue the land he has brought palm wine kolas as per custom. Ch Nwokocha decided that the defendant shall continue farming.

Plaintiffs'
Exhibits

17

Proceedings
Suits Nos.
200 and 201
of 17th June
1926
continued

10

(Initialled) L.N.N.17/6/26

IN THE ONITSHA NATIVE COURT 17/6/26.

MEMBERS

Chief Nwokocha
" Haruna
" Agbakoba
" Uzoka

J.E.Egbunike of Onitsha

Vs.

20

1.Eziamaka Nnabude of
Obosi
2.Obiojulu "
3.Ikechebe of do

Claim £45 being damages for trespass in plt's land known as Udo situated Uguta road Onitsha dispute arose 4 months ago.

30

J.E.Egbunike S: The land in question Udo is my land. The whole land Udo originally belonged to Ezeocha. He sold the part of to me per custom. The Defendant applied to farm the land, I agreed to make him an agent in one part of this land. He refused this year defdt came to me through Ginger and asked to farm the land. I agreed and told them to pay me £10 and palm wine before farming they went away; not long after they commenced clearing the land and planting yams without any further instruction, and without paying me the rent as arranged. I sent the middle man Ginger to warn them not to farm the land without paying the arrangement they refused. I sent the same middle man three different occasions to stop them from farming the land they took no notice. I went myself and warned them they took notice of me they cleared the land and farmed without my knowledge hence this action. After I have served summons on the defts this morning the defts came with £9 and begged settle the matter out of Court. I then to come before the Court and give evidence.

40

Plaintiffs'
Exhibits

17

Proceedings
Suits Nos.
200 and 201
of 17th June
1926
continued

Ginger S:- I am the middle man between the plt and defts, I am a friend to the defts brother. Chibo Obubuenyi. He brought his brothers the defts and asked me to beg the plt to allow them farm the land; I took them to the Plaintiff and begged him to give them the remaining land as he has already given part of it to certain people. The land in question was then given to the deft's No.1 deft was appointed as an agent in this land they were instructed to pay £10 and palm wine before entered in the land: the deft entered in the land clearing and farming without performing the arrangements. I went there and found the defts clearing and planting in the land but refused to pay the rent because they were ordered not to pay. I went more than three times asking them to come in and settle the arrangement they refused. Hence this action.

10

Defence Nziamaka S: The land belonged to the Plaintiff. He allowed us to farm the land on condition that we would first pay him £10 and palm wine. We never pay the arrangement before planting. We have now agreed to settle out promise and have already brought £9. We must pay rent as usual. We were about 20 or more that farmed the land in question and willing to be paying rent as usual.

20

Chiefs Decision Judgment for Plaintiff for £12 and costs. Deft must go to plt this coming Sunday with palm wine and kolar and made peace with the plt if failing will be driven off.

30

Ch Nwokocha his X mark.

(Sgd) L.N.Nzegu C.N.C. witness to
mark 17/6/26.

Full judgment paid £12 25/6/26.

EXHIBIT 14
PROCEEDINGS IN SUIT No.215 of 1926

Plaintiffs'
Exhibits

No.215 IN THE ONITSHA NATIVE COURT 26/6/26

14

Chief Nwokocho
 " haruna
 " Agbakoba
 " Uzoka

Proceedings
 Suit No.215
 of 1926
 26th June 1926

10 A.C.Achebe of Onitsha Claim £10 damages for
 Vs. trespass in the Plt's
 Anazonwu of Obosi land known as Okpoko' oc-
 cupied by you since 3
 months ago.

Claim not admitted.

20 A.C.Achebe S: The land in question belonged to
 our great father Anumdu. It is our own especi-
 al properties. The same land were divided to
 various agents of Obosi. They put their fami-
 lies when farmed it and pay us rent as per cus-
 tom. The various agent in charge of the land
 gave it various names as to distinguish them:
 Nkpukpa, Anata-Anaba, Okpoko, Ogwolo, Ogmoagha
 but all termed original Nkpukpa. I found the
 Defdt farmed this land and did not pay me rent
 as per custom. I called his attention he claim-
 ed it as his own property. I then sued him in
 the Court. I have sent several times and call-
 ed his attention in the land. He took no notice
 of me I then sued him.

30 X X by Defdt. How many years I stopped paying
 the rent?

Ans. 4 years ago.

X X by Defdt. How long were given out this land.

Ans. From the time of grand father.

James O.Onuora S: I know the land as Nkpukpa,
 the Defdt Anozonwu is the agent of the land in
 question for long time. Defdt farmed this land
 last year and failed to pay rent as well as this

Plaintiffs'
Exhibits

14
Proceedings
Suit No.215
of 1926
26th June 1926
continued

year hence this action. We have boundary with Nmekiti that is all I have to say.

Defence. Anazonwu S: The land in question belonged one Nmekiti Agba of Onitsha. He placed one of my late brother Odibe as agent he farmed it and paid him rent as usual. After his death I succeeded him and became the Agent for him. I put people in the land and paid rent-age as usual. I have never farm the pit's land and I have never pay him any rent for this land.

10

X by Plt: Do you remember that the main road to Ugata divided this land?

Ans. Yes. The right hand Ugata was sold to Eg-bunike by Nmekiti and left was placed in my charge.

Nwokoye S: The land in question is about $3\frac{3}{4}$ miles from Onitsha Ugata road. This land belonged to Nmekiti of Onitsha and placed the Defdt as the agent in this land. We were farming this land over 20 years ago and always pay rent to Nmekiti. We have never never planted his land or pay him any rent.

20

X X by Plt. Who is the agent of the right hand ?

Case adjourned for appearance of Nmekiti's son
Ikwusom Ch Nwokocha his X mark
(Sgd) I.N.Nzegu C.N.E.
26/6/26.

9th July 1926

CASE REOPENED THIS 9/7/26:

30

Ikwuazom Nmekiti S: I was away from home since 3 months ago when I returned I learnt the Plt. is claiming the land. I know the land in dispute it is called Okpoko. This land is property of my late father. I have been to this land in question. I authorized the defdt to farm the land. He has given me the rent due to me. that is all I could say now.

X by Plt. Have you any boundary with me?

Plaintiffs'
Exhibits

Ans. Yes this land in question belonged to me.

14

X X by Court: which is the side of main road
your land situated?

Proceedings
Suit No.215
of 1926
9th July 1926
continued

Ans. In the 2 sides of main road. I sold the
right side to Egbunike and allowed the Defdt to
be using the left side.

X by Plt. Which is side of the road you had
boundary with me?

10

Ans: In the inside right of the road.

CHIEFS DECISION:

Land to be viewed by the chiefs this coming
Tuesday 13/7/26 to know exactly the situation of
land before given decision.

Ch.Malam Haruna his X mark
(Sgd) L.N.Nzegu C.N.C. 9/7/26.

Case reopened this 16/7/26.

20

Ch Cugbo S: Myself and the following Chiefs
Mallam Haruna, Orefo, Onwubuya. Both parties
were present and each showed us his boundary,
according to this statement we believe that Defdt
trespassed the plt's land.

Judgment: For plt for £3 and cost to be paid
within next Court sitting. (This is from the
cause book)

Plaintiffs'
Exhibits

7

Proceedings
in Suit
No.12A of 1928
14th August
1931

EXHIBIT 7
PROCEEDINGS IN SUIT NO.12A of 1928
IN THE SUPREME COURT OF NIGERIA:
FRIDAY THE 14TH DAY OF AUGUST, 1931
BEFORE HIS HONOUR WILLIAM BUTLER LLOYD
JUDGE

AT ONITSHA

SUIT 12A of 1928

J.M.KODILINYE & OBOSI PEOPLE

Vs

ANACHEBE AND EGBUNA

10

- CLAIM:-
1. Declaration that Obosi people are owners of that piece of land known as Ana Ima Obosi and
 2. Injunction restraining Defendants etc. from interference.
 3. Value of land £200.

Clinton submits that the Statement of Claim disclosed no cause of action.

Mr. Roberts asks for an adjournment with a view to amending his Statement of Claim.

20

Adjourned sine die.

(Sgd) W.B.Lloyd
J.

Thursday the 27th day of August, 1931.

Notice of discontinuance having been given there will be judgment for defendants with 25 guineas costs.

(Sgd) W.B.Lloyd
J.

EXHIBIT 13
PROCEEDINGS IN CASE No.267 of 1928
CIVIL J.B. NO. 6/28
IN THE NATIVE COURT OF ONITSHA 22/8/28

Plaintiffs'
Exhibits

13

Proceedings
in Case
No.267 of 1928
22nd August
1928

Chief I.O.Mba	President
" Malam Haruna	Member
" Nwokocha	"
" Momor	"

10 CASE NO.267/28 Claim:- £50 damages for tres-
pass on Plaintiff's land know-
ing as Akpu-Apali situated near
Ikobi and Ezeocha's land since
two years ago.

Ekwuaju Akunne
of Onitsha

Vs.

Chukwura Nwalie of Obosi Not admitted.

20 Orakposim Odigwe for Pltff S.S. This land belong
to us. The Pltff Ekwuaju is not feeling well
and he sent me to speak for him. This land Akpu-
Apali is our own. It is a property of our fore-
father - Ogbolu. He used to lease same to
Defdt's father Ikwueme. He used to pay us rent.
He died and Okeke, father of defdt took his charge
and used to pay us rent. He died and we allowed
the defdt to take his charge as usual. He used
to pay us due rent and tribute. He stopped from
paying us the rent since two years ago. There
30 are two different lands one is Okpoko and this is
Akpu-Apali. We asked defdt why he stopped from
paying us rent and he replied that Okolo Akunwanne
of Onitsha in my family told him to stop from pay-
ing us rent that the land is his own.

Adjourned 22/8/28.

Reopened 23/8/28.

Q. by defdt. When you reached on the land this year
did we farm there? Ans. Yes, but we summoned you
for two years rent.

Plaintiffs'
Exhibits

13
Proceedings
in Case
No.267 of 1928
22nd August
1928
continued

Q. By defdt, Did I pay you rent three years ago which we farmed there? Ans. No.

Defendant S.S., This land in question is called Akpu-Apali belonged to Ogbolu grandfather of pltff and my grandfather Ikwueme but Ikwueme used to pay rent to Ogbolu the pltff's father for this land. I did not farm this land this year and so I did not pay the rent to pltff. I did not farm there last year also. I never have any quarrel with them about the land. If I farmed there I musk ask their permission and pay rent. If I farmed there alone without others they never ask me for rent. The old people never trouble about it. I never run away from Pltiff when trouble comes out of this land. We are relatives to Pltiff. We never forbid their jujus as they do to us.

10

X.X. Nobody farmed on that land this year.

X. Pltiff, How near are you to Anakwenze who farmed there last year, two years ago and of this year? Ans. He is of Umuagu but not Umu-Ikwueme.

20

X. Court Is it will allow any farmers there? Ans. Yes.

X. COURT Nobody farmed there last year? Ans. No, neither this year nor last year.

COURT. Vide Onitsha Civil Case No.87 of J.B. No.8 1923 Page 59 And Civil No: 335346 and 347 of 1924 J.B. No.2 of 1924 folio 33.

Pltff: recalled, The defdt have planted Cassava in Akpu-Apali land which are now on the ground and I can show all to Court.

30

Defdt recalled. There is no cassava on the ground there. If plaintiff for Court find cassava there now can make use of it.

Judgment, AS THE DEFDT DENIED THAT HE DID NOT PLANT LAST YEAR AND TWO YEARS AGO ON THAT LAND, PLTFF CAN PRODUCE OATH FOR DEFDT TO SWEAR FOR FACT NEXT COURT AND IF SWORN THE PLTFF CAN USE ANY CASSAVA HE SEE THERE PLANTED AND ANY

40

CROPS THEREIN AND SUE WHOEVER MAY TOUCH IT.

Plaintiffs'
Exhibits

(Sgd) I.O.Mba
23/8/28.

13

Proceedings
in Case
No.267 of 1928
22nd August
1928
continued

RESUMED 29/8/28 COURT, THE DEFDT CHUKWURA RE-
FUSED TO SWEAR OATH AS ORDERED BY COURT THAT
HE SAID HE DID FARM THE LAND TWO YEARS AGO AS
HE FAILED TO SWEAR JUDGMENT IS ALTERED THAT
DEFDT WILL PAY £5 DAMAGES TO PLTFF IN TWO
WEEKS FROM DATE.

10

(Sgd) I.O.Mba 29/8/28.

EXHIBIT 12

12

PROCEEDINGS IN CASE NO.268 of 1928

Proceedings
in Case
No.268 of
1928
15th August
1928

J.B. 6/28 FOLIO 127:

IN THE NATIVE COURT OF ONITSHA 15TH AUGUST, 1928.

Chief I.O. Mba	P
" Malam Haruna	M
" Nwokocha	M
" Momor	M

CIVIL JURISDICTION

20

CASE NO.268/28.

Claim:- £50 damages for tres-
pass on Pltff's land known as
"Okpoko" Situated near Oguta
road since a year ago.

EKWUAJU AKUNNE OF
Onitsha

Vs.

Chukwura Nwalie of Obosi
Okoafor Nwamonukpo "

No.1 Defendant absent
No.2 Defendant admitted

30

Okoafor Nwamonukpo Co-Defdt S.S. It is true that
I have farmed in plttf's land. He did not ask me
for rent neither that I refused to pay. My yams
are now in ground and I agree to pay rent. I am
not claiming the land. It belongs to plaintiff.
They used to lease it to me all the time and I

Plaintiffs'
Exhibits

12

Proceedings
in Case
No.268 of
1928
15th August
1928
continued

23rd August
1928

I used to pay them rent as usual. This land is Okpoko.

Adjd: by Court till 22/8/28
for Chukwura to appear.
15/8/28.

Reopened 23/8/28.
Both defendants appeared.

Plaintiff Orakposim Odigwe S.S. Two years ago we saw Obosi people farming on our land. They told us that it was deft Chukwura who leased it to them. The land is our family land. They did not pay us rent. Last year we met defdt's wife Mgboyibo (f) farming there. She said that defdt was ill and that he will come when he recovered. He did not. During dry season I went with Jacob Aduba and saw Anakwenze's son with yams but he did not pay rent. He said he will tell his father. That year past and they paid no rent. They did not pay us rent for last year, 2 years up to this year.

10

X defdt No.1. Did you see any farm there this year? Ans. Yes.

20

Defence. Chukwura defdt No.1 S.S. This land Okpoko is mine where I used to farm always. It is a land of Ogbulu grand-father of plttf and Ikwueme my grand father of Obosi. The Obosi people used to pay rent to my father Ikwueme and he used to take it to Ogbolu, the Plttf's father. This land belonged to Ogbolu and Ikwueme.

30

X by Court. This relation between Ogbolu and Ikwueme, can you explain it to Court?
Ans. I do not know and I was young but cannot tell, I only know that both used to have one farm-house.

X by Court, Do this land belonged to Ogbolu or Ikwueme? Ans. It belonged to both Ogbolu and Ikwueme but Ikwueme used to bring rent to Ogbolu after collecting it from Obosi.

X by Court Did you farm there this year, last year or two years ago? Ans. I have farmed there three years ago and paid rent, I did not farm there last year and this year.

40

X by Pltff. Who planted cassava which are now on the ground?

Plaintiffs' Exhibits

Ans. My wives have planted cassava there last year as I was ill.

12

X by Pltff. Whot plant yams on that Okpoko land this year?

Proceedings in Case No.268 of 1928

Ans. I did not plant yams there at all.

X. by Court, Where you planted yams three years ago in Okpoko land who gets it?

23rd August 1928 continued

10

Ans. It belonged to Ogbolu the father of Pltff.

COURT

THE DEFENDANT DENIED FARMING ON THIS LAND.

JUDGMENT:- THE PLTFF TO PRODUCE OATH FOR DEFDT NO.1 CHUKWURA TO SWEAR THAT HE PLANTED NOTHING THERE NEITHER LEASED TO ANYBODY AND IF SWORN, THE PLTFF TO MAKE USE OF CASSAVA AND AS DECIDED IN CIVIL CASE No.267 Page 137 Co-defdt Okafor to pay rent accordingly.

20

(Sgd) I. O. Mba
23/8/28.

COURT.

The defdt have refused to swear oath that he did not farm the land two years ago Judgment is altered that defdt will pay £5 damages and costs to pltff in two weeks from date.

(Sgd) I. O. Mba
29/8/28.

30

"£5 paid to plaintiff with costs
C.R.No.204126 of 22/11/28.

Plaintiffs'
Exhibits

EXHIBIT 19

PROCEEDINGS IN SUIT NO. OF 1928

19

Proceedings
in Suit
No. of
1928
May 1928

IN THE PROVINCIAL COURT OF ONITSHA
IN THE DISTRICT COURT OF ONITSHA

SUIT NO. OF 1928

Eze J.M.Kodilinye
(On behalf of himself and the
inhabitants of the Town of
Obosi) Plaintiffs

Vs.

10

(1) Anachebe
(2) Egbuna of Umuasele
Quarter of Onitsha Defendants

The Plaintiff seeks a declaration that Obosi people are the owners in fee simple of that piece or parcel of land known as Ana Ime Obosi, bounded on the East by Obosi land, on the North by Obosi land, on the South by Idemili Stream and on the West by the Niger Company's land at Otu Obosi.

2. An injunction to restrain the Defendants, their boys or servants from interfering with the said land. 20

The value of the said Ana Ime Obosi land is about £200.

Dated at Onitsha this day of May, 1928.

(Sgd) J.M.Kodilinye,
Eze and Head Chief of Obosi.

EXHIBIT 18

Plaintiffs'
ExhibitsPROCEEDINGS IN CASE NO.270 of 1930

IN THE NATIVE COURT OF ONITSHA 24/10/30

18

Chief Nwaakocha	President
" Chugboe	Member
" Momo	"
" Orefo	"

Proceedings in
Case No.270 of
1930
24th October
1930

Case No.270.

10 Chukuemeka of Umuasele Claim:- An order of Court
to complete the defendant
Vs. and others concerned to
pay the sum of £30 being
rent on Ani-Olu land de-
Oseloka of Obosi tained since 6 years.

DEFENDANTS NOT PRESENT:

Pltf S/S:- I leased a part of Ugbo-Orimili land
called Ani-Olu to defendant and others concerned
whose names I do not know. They pay us yearly
rent with bottle of Gin Palm Wine, yams, etc.
20 Since 6 years ago they stopped bringing this tri-
butes. Hence I sue them to recovery. My rights
as being a Land Lord. Some Obosi men who knew
something about this land are outside as witnesses.

Ifekandu S/S:- (Witness) speaking on behalf of
Ebenezer. The plaintiff gives defendants and some
other people Ani-Olu which they use as farm. They
usually pay the Pltf by gathering some yams, Palm-
Wine and Gin which they bring as tribute. Six
30 years ago this act of sending tribute seized, but I
am constantly sending in mine every year. It is
the negligence that cause this summons.

Qur by Court:- What made others to stop paying tri-
bute? Ans. Others said the land belongs to Obosi
and not Onitsha people.

Qur by Court:- How many of you are paying pre-
sently? Ans. Three of us Viz Ikemjiofo, Ifekandu,
& Ebenezer.

(For defence see J.B. No.4 page 33)

40 Judgment:- for Pltf for £15 with cost within
three weeks and to quit from the
said land.

(Sgd) ? ? ? Chief Nwaakocha His X Mark
C.N.N. 20/10/30 PRESIDENT.

Plaintiffs'
Exhibits

EXHIBIT 50

PROCEEDINGS IN SUIT NO.6 OF 1932

50

Proceedings in
Suit No.6 of
1932
17th September
1934

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

MONDAY THE 17TH DAY OF SEPTEMBER, 1934

BEFORE HIS HONOUR GEORGE GRAHAM PAUL -
JUDGE

SUIT NO.6 of 1932

KODILINYE

versus

EROKWU

10

Thompson and Soetan for Plaintiff.

Clinton and Renner for Defendant.

Counsel agree that this suit is governed by the decision just given in the suit by the same plaintiff against Mbanefo Odu which Plaintiff's Counsel says it to be taken to the West African Court of Appeal. Counsel for the Plaintiff agrees that if the Judgment in question is upheld there must be automatically judgment entered for the Defendant in this suit.

20

I decide to adjourn the suit pending the result of the appeal.

Clinton complains that his clients are ready to go on their witnesses specially brought for the purpose and asks for costs. These costs i.e. of the preparation for trial at this sitting are to be costs in the cause. If the Plaintiff do not obtain final leave to appeal within 4 months of this date the Defendant may apply to have this suit relisted for the entering of judgment for the Defendant.

30

(Sgd) G. Graham Paul
JUDGE.

EXHIBIT 9
STATEMENT OF CLAIM IN SUIT NO.9 of 1932

Plaintiffs'
Exhibits

IN THE SUPREME COURT OF NIGERIA
ONITSHA WESTERN DIVISION

9

Statement of
Claim in Suit
No.9 of 1932
24th January
1933

SUIT NO. 9/32:

BETWEEN

CHIEF J.M.KODILINYE OF OBOSI as
representing the Obosi People Plaintiff

and

10 R. A. OROKWU of Onitsha Defendant

STATEMENT OF CLAIM

1. The Plaintiff is the Head Chief of Obosi and is commonly called and known as the Obi or Eze of Obosi.
2. The Defendant is a Native of Isiokwe quarter of Onitsha and in no way related to Obosi.
3. The Plaintiff by virtue of his position and that of his predecessors in Title has from time immemorial been the owner and in possession, together with the people of Obosi, of all Obosi lands, a portion of which is known by the Obosis as Ana-Imobosi and used for farming; it is bounded on the North by land called Ug-bulo on the South by swamp leading to Idemiri river on the East by Onitsha-Oguta road on the West by land called Akpulikpu the property of Plaintiff, and more particularly described in a Plan to be produced at the hearing which will show that the land in dispute is divided into sections bearing sectional names for the purpose of farming.
4. The portion in dispute are known by their sectional names OPOKO, AWADA, and NKETAKU of Ana-Imobosi.
5. The Defendant in the year 1932 started to molest the Obosi people on the land by

Plaintiffs'
Exhibits

9

Statement of
Claim in Suit
No.9 of 1932
24th January
1933
continued

endeavouring to assert a right as owners.

6. The Defendant has collected tribute from the
Obosi tenants farming on the said land in
dispute since 1932.

Dated at Aba this 24th day of January, 1933.

(Sgd) S.B.Rhodes
Plaintiff's Solicitor

51

Proceedings
in Suit
No.9 of 1932
25th June 1935

EXHIBIT 51

PROCEEDINGS IN SUIT NO.9 of 1932

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

10

HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON
ASST. JUDGE.

THE 25TH DAY OF JUNE 1935.

9 of 1932 (M.155)

J. M. Kodilinye

Versus

R. A. Erokwu as representing
the Isiokwe Odoje-Onitsha
Family.

20

Plaintiff absent.

Defendant in person.

This suit was before Graham Paul, J., at
Onitsha on the 17th Sept. 1934. (Special
Sessions R.B. folio 165) Counsel, Thompson and
Soetan for plaintiff; Clinton and Renner for
Defendant. That record states:

"Counsel agree that this suit is governed
by the decision just given in the suit by the
same plaintiff against Mbanefo Odu, which
plaintiff's Counsel says is to be taken to the
West African Court of Appeal.

30

Counsel for the Plaintiff agrees that if the

judgment in question is upheld on appeal there must be automatically judgment entered for the defendant in this suit. I decide to adjourn the suit pending the result of the appeal.

Plaintiffs' Exhibits

51

Clinton asks for costs. These costs i.e. of the preparation for trial at this sitting are to be costs in the cause"

Proceedings in Suit No.9 of 1932 25th June 1935 continued

10

The Registrar of this Court produces a certified true copy and the certificate under the Seal of the W.A.C.A. in connection with the appeal in J.M.Kodilinye. Plaintiff-Appellant and Mbanefo Odu etc. Defendant-Respondent. (Suit No.8 of 1932 (M.155). Appeal dismissed.

Plaintiff's Counsel having agreed that in the present suit judgment must be automatically for Defendant in the event of the appeal failing, this would entitle the Defendant to judgment.

20

Suit dismissed under Rules No.5 of 1934.

Order 18 Rule 2.

Costs (including those of 17th Sept.1934) to Defendant assessed at forty guineas.

(Sgd) H.Waddington

A.J.

Onitsha 25/6/35.

EXHIBIT 42

PROCEEDINGS IN SUIT NO.0/25 of 1934

Defendants' Exhibits

42

30

IN THE PROTECTORATE COURT OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/25/34:

Proceedings in Suit No.0/25 of 1934 3rd July 1934

Egbuna Ozonma

Plaintiff

Versus

1. Okeke Ezegwui
2. Obidike
3. Mr.Nwangwu
4. Chief Kodilinye

Defendants.

Pleadings ordered - Plaintiff to submit statement

Defendants'
Exhibits

42

Proceedings in
Suit No. 0/25
of 1934
3rd July 1934
continued

of Claim within 30 days and file Plan of land in
dispute. Statement of Defence 30 days there-
after.

S. John
3/7/34

- (1) Declaration of title to lands known as Nke-
taku, Akpulikpu or Okpoko.
- (2) £50 damages for trespass.
- (3) Injunction.

24th September
1934.

Having heard Counsel defendants who have not to
date been served with the Statement of Claim.
The Plaintiff also has not taken any steps until
very late to comply with the Court's order of
3/7/34.

10

Non-suit. Costs for the Defendants for 20
guineas.

S. John
24/9/34.

EXHIBIT 54

54
Proceedings in
Suit No. 0/46
of 1934
24th September
1934

PROCEEDINGS IN SUIT NO. 0/46 of 1934

20

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR SAMUEL SPEDDING JOHN ESQRE.
ASST. JUDGE,
THE 24TH DAY OF SEPTEMBER, 1934

SUIT NO.0/46/1934

NWAGBOGU AKUNWATA

versus

ANAGBOGU OF OBOSI & 7 OTHERS

30

CLAIM:

1. Declaration of title to land known as
Iyukwu
2. £50 damages for trespass.
3. Injunction.

Claim not admitted.

Mr. Soetan for Defendants.

Affidavit of Service.

Having heard counsel for Defendants who have not been served with the Statement of Claim nor has the Statement of Claim been filed as per the Court's Order of 21/7/34.

Non Suit. Cost for the Defendants for 20 guineas.

Given at Onitsha this 24th day of September, 1934.

10

(Sgd) Samuel S. John
24/9/34.

Defendants'
Exhibits

54

Proceedings in
Suit No. 0/46
of 1934
24th September
1934
continued

EXHIBIT 39
PROCEEDINGS IN SUIT NO.0/7 of 1935

IN THE HIGH COURT OF THE ENUGU
ONITSHA DIVISION HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON,
ASSISTANT JUDGE.
THE 21ST DAY OF MAY, 1937.

0/7/1935.

20

EGBUNA OZONMA

versus

1. J.M.KODILINYE
2. CIEKCE NZEGUI
3. NWANGWU
4. OBIDIKE
5. MR.NWANGWU
6. ONWUBUNGHA
7. ONWUZIKO NWANENAUKPO

Plaintiffs'
Exhibits

39

Proceedings in
Suit No.0/7 of
1935
21st May 1937

30

Claim: Declaration of Title to that piece or parcel of land known as Nketaku Akpilikpu, Udo or Okpoko situated at Onitsha Oguta Road.

2. £50 damages for trespass on the land since 7 years.

Plaintiffs' Exhibits

3. An injunction to restrain the Defendants from further trespassing on the land.

39
Proceedings in Suit No.0/7 of 1935
21st May 1937
continued

Judgment: As against 2nd, 3rd, 4th and 7th Defendants therefore, judgment for Plaintiff in the terms of the writ.

No order as to costs.

SOETAN to consider position as regards the three remaining Defendants and mention case later.

(Sgd) H.Waddington,
Assistant Judge
Onitsha 21/5/1937

10

25th May 1937

0/7/1935: AT ONITSHA THIS 25TH MAY, 1937.

SOETAN: Remaining Defendants now consent to an Order striking out the suit without costs.

CLINTON: We agree to withdraw without Order as to costs.

Struck out as against Defendants, 1, 5 and 6.

(Sgd) H.Waddington
Assistant Judge.
Onitsha 25/5/1937.

20

55

EXHIBIT 55

Proceedings in Suit No.0/8 of 1935
21st June 1935

PROCEEDINGS IN SUIT NO.0/8 of 1935
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON, ASST. JUDGE.

THIS 21ST DAY OF JUNE, 1935:

SUIT NO.0/8/1935

30

BETWEEN:

NWAGBOGU AKUNWATA OF ONITSHA

PLAINTIFF

v.

- | | |
|--------------------|---------------------|
| 1.ANAGBOGWU | 6.OKONKWO EJEOLILU |
| 2.MADUAKO EZEOLULU | 7.OWUKA OSAJINDU |
| 3.NWAEKE ANABOGU | 8.CHUKWURA UMEOLU |
| 4.NWANDELU AGBOILI | 9.ANAKWE NWABUNWANE |
| 5.NWAORA OKWUNKIBI | OF OBOSI |

Plaintiff in person.

Defendants Nos.1, 2, 4, 5, 6, 7 present in

40

persons; Nos.3, 8 and 9 absent; all served.

Plaintiffs'
Exhibits

STATEMENT OF CLAIM:

55

1. A declaration of title to all that piece or parcel of land known as Iyinlewa situated on the Onitsha-Oguta road.
2. £50 damages for trespass on the said land.
3. An injunction to restrain Defendants from further trespass on the land.

Proceedings in
Suit No.0/8 of
1935
21st June 1935
continued

10 Transferred to this Court from the Onitsha Native Court by order of the District Officer Onitsha undated; memorandum dated 17th January, 1935.

Reasons (1) Written instrument;
(2) Prejudice of Onitsha Native Court.

Pleadings and plan filed.

20 Both parties say that there is no written instrument in this matter. Probably District Officer's reason (1) applied to another suit transferred in the same order. Defendants want an adjournment because their Counsel Soetan is engaged in Lagos at W.A. C.A. Both Plaintiff and Defendants say they have no objection to the suit being tried by the Onitsha Native Court. Each party claims to have had judgment there already in connection with this land.

30 No reason appearing why this suit should be tried in this Court in preference to the Native Court. I order this suit to be transferred to the Onitsha Native Court for hearing and determination.

No order as to costs.

(Sgd) H.Waddington, A.J.
Onitsha 21-6-35.

Plaintiffs'
Exhibits

EXHIBIT 40

PROCEEDINGS IN CASE NO.13 OF 1938

40

IN THE ONITSHA NATIVE COURT THIS 11/2/38.

Proceedings in
Case No.13 of
1938
11th February
1938

Case No.13.

Egbuna Ozorma of Onitsha

Vs.

1. Onuigboagha of Obosi
2. I.M. Kodilinye "
3. Mr. Nwangwu "

Claim £20 being land tribute due
Plaintiff for farming on his land
since 1937.

10

DEFENDANTS ABSENT

Plaintiffs: S/S Defendants farmed on my land without my permission. I summoned them before they admitted that the land is mine, and stated before the Judge that they do not wish to proceed on with the case. Since the settlement the Defendants never come to my house, but went on farming on my land. I then summoned them to pay me £20 for farming on my land. No.2 farmed in two pieces of this my land hence I took two actions against him. This was the land that I obtained judgment for.

20

WITNESS OBIDIKE S/S:-

Defendants were summoned before the High Court of Onitsha of which I was one of the Defdts in the case. We found that the land is not our land, we went before the Judge and said that we do want to proceed on with the case. The (deft) defts at first refused to enter into settlement with the plaintiff, but after words agreed. This land was where plaintiff obtained judgment for. The defendants said that they will not attend Court. I am an Obosi man. The Defendants indeed farmed on plaintiffs land.

30

NWANGWU S/S:-

I am of Obosi, I was summoned by Plaintiff before the High Court of Onitsha, I find that

the land is not mine, therefore asked for settlement of which we did settle. No.3 Defendant in the case is my son, he has also settled with Plaintiff. In as long I settled with Plaintiff I see no reason why my son should not come in the same agreement of settlement made before the Obi. I said that my son name will also open in the agreement. I do not know whether the Defendants farmed on this land. I have stated before to the Judge that where I stand "my son will stand. If my son Mr. Nwangwu is seen claiming this land let this Court sue me.

Plaintiffs'
Exhibits

40

Proceedings in
Case No.13 of
1938
11th February
1938
continued

10

WITNESS IKEJI OFO S/S:-

I am of Obosi Umuezechima. I know this land Nketaku. The Defendants farmed on this land. I am farming on this land. Nketaku through the permission of Plaintiff. My father farmed on it no dispute through the permission of Plaintiff. If was of recent that J.M.Kodilinye tries to claim this land. Defts are farming on this land every year. They do not pay me any tribute as Plaintiff told me to be looking after this land. Plaintiff now claims £20 from the Defendant as no tribute paid to him. Plaintiff got another land in which one Okolonji is looking after. The Defendants are farming on this land. Onigubo Agha farmed on this land. Onuigboagha farmed on this end placed in care of Okolonji. J.M.Kodilinye farmed on this land as well.

20

30 C/M OKAFOR S/S:- Summons was served on the Defendants and they were told date of hearing.

RECORD:- Defendants served with summons but bluntly required to attend, and has not written to Court why they should not attend. According to the copy of the judgment tendered. Judgment is for Plaintiff. This action was taken out against the Defendants since 11/1/38 but since the summons has been served on them they never appear even one day.

JUDGMENT:-

40

In default of Defendant for Plaintiff for £2 from each of the Defendants to be paid within 1 week time from date.

(Sgd) Obi Okosi 11
President

Plaintiffs'
Exhibits

56

Order of
transfer of
Suits Nos.5
and 6 of 1949
27th January
1949

EXHIBIT 56

ORDER OF TRANSFER OF SUITS
NOS.5 and 6 of 1949

PROTECTORATE COURT OF NIGERIA
IN THE NATIVE COURT OF ONITSHA - ONITSHA
DIVISION.

ORDER MADE UNDER SECTION 25 (1) (c)
THE NATIVE COURTS ORDINANCE, 1933.

I, CHARLES ALEXANDER LEONARD GUISE,
District Officer, Onitsha Division, by virtue
of the powers vested in me under section 25 (1)
(c) of the Native Courts Ordinance, 1933, here-
by order that the following cases be trans-
ferred from Onitsha Native Court to the Supreme
Court, Onitsha:-

10

- 1. Onitsha Native Court Suit No.6/49:
 Jacob Ikwueme ... Plaintiff
 Vs.
 Mark Anyaegbunam
 & 3 Ors. ... Defendants
- 2. Onitsha Native Court Suit No.5/49
 A. O. Asolo ... Plaintiff
 Vs.
 Mark Anyegbunam
 & 3 Others ... Defendants

20

- 1. CLAIM: The Plaintiff claims from Defts.
 jointly and severally.

 (1) £300 damages for trespassing on
 Plaintiff's land known as Okpoko
 (11) An injunction to strain the
 Defendants from further trespassing
 on the said land.

30

- CLAIM: The Plaintiff claims from Defts.
 jointly and severally.

 (1) £300 damages for trespassing on
 Plaintiff's land known as Okpoko
 (11) An injunction to restrain the
 Defendants from further trespassing
 on the said land.

I certify that the Order of

40

Transfer of the above cases from Onitsha Native Court to the Supreme Court, Onitsha, was made on Plaintiffs' Solicitor's motion.

Plaintiffs' Exhibits

56

Reasons for Transfer:

The lands the subject matter of the action lies where the defendants and other motor owners have established a new motor park. The amounts on the claim are above the jurisdiction of the Native Court. The summonses have to be issued in the Native Court in case the Defendants might raise of title.

Order of transfer of Suits Nos.5 and 6 of 1949 27th January 1949 continued

10

Dated at Onitsha this 27th day of January, 1949.

(Sgd) C.A.R. Guise
District Officer,
Onitsha Division.

MNE.

EXHIBIT 57

57

20

STATEMENT OF CLAIM SUIT NO. 0/6 OF 1949

Statement of Claim Suit No.0/6 of 1949 19th March 1949

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA.

SUIT No.0/6/1949

BETWEEN:-

Jacob Ikwueme ... Plaintiff

versus

30

1.Mark Anyeagbunam
2.Charles Uzodinma
3.Benson Okoli
4.Henry Ezeani ... Defendants

STATEMENT OF CLAIM

1. The Plaintiff is a native of Onitsha, and resides at Court Road, Onitsha.
2. The Defendants are all Motor Owners, residing at Onitsha.

Plaintiff's
Exhibits

57

Statement of
Claim Suit
No.0/6 of 1949
19th March
1949
continued

3. The land the subject matter of this action situates at Oguta Road in Onitsha. It originally belonged to the Otimili Family of Onitsha.
4. About seventeen years ago, the said Otimili Family sold the land to the Plaintiff and from that time until today the land has been in the undisturbed possession of the Plaintiff.
5. The said land is clearly shown, delineated and edged pink on the plan to be filed with this Statement of Claim. 10
6. The land is surrounded by lands belonging to various Onitsha people and families with whom the Plaintiff has boundaries, namely : On the East; Ekrokwu (Isiokwe); on the South A.O.I. Asolo; on the West the Umuo-sodi Family, and on the North Iweka whose land was granted to him by the Otimili Family aforesaid. 20
7. On or about the 17th of January, 1949, the Defendants with a large number of other motor owners, without the knowledge and consent of the plaintiff broke and entered on the said land of the plaintiff, cleared it, and turned the land into a motor park, where their lorries take on and offload passengers and cargo, thereby uprooting cassava and other crops planted thereon.
8. After they had entered on the land and cleared it, they approached the plaintiff and asked for his consent which the plaintiff refused to give. 30
9. In spite of plaintiff's refusal, the defendants continued to use the land as a motor park as aforesaid.
10. The said land in dispute is a farm land and has been used as such by the plaintiff by himself or through his tenants.
11. The said land is still being used as a motor park. 40
12. The plaintiff has suffered damages as a result of the defendants' action.

Wherefore the plaintiff claims as per the Writ of Summons.

Dated at Onitsha this 19th day of March, 1949.

EXHIBIT 58

STATEMENT OF DEFENCE, SUIT NO.0/6 OF 1949

Plaintiffs'
Exhibits

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA
SUIT NO. 0/6/1949.

58
Statement of
Defence, Suit
No.0/6 of 1949
21st April
1949

BETWEEN

JACOB IKWUEME ... Plaintiff

and

- 1. MARK ANYAEGBUNAM
- 2. CHARLES UZODINMA
- 3. BENSON OKOLI
- 4. HENRY EZEANI ... Defendants

10

20

30

40

STATEMENT OF DEFENCE

1. The defendants admit paragraphs 1 and 2 of the Statement of Claim.
2. In answer to paragraph 3 the defendants admit that the land the subject matter of the suit is situate at Oguta Road but deny that that portion of Oguta Road is in Onitsha or that the land originally belonged to Otimili family of Onitsha. They assert that the land originally belonged and still belongs to Obosi people.
3. With regard to paragraph 4 of the Statement of Claim the defendants are not in a position to admit or deny the alleged transaction between the plaintiff and Otimili family. They deny vigorously the statement that the land has been in the undisturbed possession of the plaintiff and will put the plaintiff to strict proof.
4. The defendants are not in a position to admit or deny the statements in paragraph 5 and 6 of the Statement of Claim as no plan of the land was received with the Statement of Claim.
5. In answer to paragraph 7 the defendants admit that on or about the 17th of January they cleared the land and turned it into a motor park but say that they did so with the consent and approval of the Obosi people who are the owners of the land and who were in occupation of the land. They further say that the cassava crops on the land were those of Obosi women and that those cassava

Plaintiffs'
Exhibits

58

Statement of
Defence, Suit
No.0/6 of 1949
21st April
1949
continued

crops were removed from the said land with
the consent and approval of these women.

- 6. The defendants deny vigorously paragraphs 8 and 9 of the Statement of Claim and will put the plaintiff to the strictest proof.
- 7. In answer to paragraph 10 the Defendants admit that the land is farm land but deny that the plaintiff or his tenants ever used the land.
- 8. With regard to paragraph 11 the defendants say that they ceased to use the land as motor park as from the 4th of March 1949, when the Court gave an order for interim injunction against them.
- 9. The defendants deny paragraph 12 of the Statement of Claim and further deny that the plaintiff is entitled as per writ.

10

Dated at Onitsha this 21st day of April,1949.

(Sgd) M.O.Ajegbo
Defendants' Solicitor.

59

Order, Suit
No. 0/6/1949
16th June 1949

EXHIBIT 59

20

ORDER, SUIT NO. 0/6/1949.

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/6/1949:

BETWEEN:

JABOB IKWULME ... Plaintiff

and

- 1. MARK ANYAEGBUNAM
- 2. CHARLES UZODINMA
- 3. BENSON OKOLI
- 4. HENRY EZEANI ... Defendants

30

In re application of Chief Joshua
Mbamalu Kodilinye to be joined as
defendant.

UPON READING the affidavit of Joshua Mbamalu

Kodilinye of Obosi, in the Province of Onitsha, sworn to and filed at Onitsha on the 20th day of April, 1949, and after hearing Michael Oguejiofo Ojegbo Esq., of Counsel for the applicant and Louis Nwachukwu Mbanefo Esq., of Counsel for the plaintiff.

Plaintiffs' Exhibits

59

Order, Suit No.0/6/1949 16th June 1949 continued

IT IS ORDERED that Joshua Mbaamalü Kodilinye be joined as defendant in this action.

10 IT IS FURTHER ORDERED that Statement of Claim be filed within seven days: Defence to be filed within 30 days thereafter.

Dated at Onitsha this 16th day of June, 1949.

(Sgd) H.M.S. Brown JUDGE.

EXHIBIT 60

60

STATEMENT OF DEFENCE, SUIT NO.0/6 of 1949

Statement of Defence, Suit No.0/6 of 1949

20 IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

SUIT NO. 0/6/1949.

BETWEEN:

JACOB IKWUNME ... Plaintiff
and

- 1. MARK ANYAEGBUNAM
- 2. CHARLES UZODINMA
- 3. BENSON OKOLI
- 4. HENRY EZEANI
- 30 5. J.M.KODILINYE for himself
and on behalf of Obosi
people ... Defendants

STATEMENT OF DEFENCE OF 5TH DEFENDANT J.M. KODILINYE

- 1. Save and except as hereinafter expressly admitted the 5th Defendant denies all allegations of fact contained in the Plaintiff's statement of Claim as if each and every such allegation were separately taken and specifically traversed.

Plaintiffs'
Exhibits

60

Statement of
Defence, Suit
No.0/6 of 1949
continued

2. The defendant admits paragraphs 1 and 2 of the Statement of Claim.

3. In answer to paragraph 3 the defendant admits that the land the subject matter of this suit is situate at Oguta Road but denies that that portion of Oguta Road is in Onitsha or that the land originally belonged to Otimili family of Onitsha. The defendant asserts that the land originally belonged and still belongs to Obosi people and that Obosi people have been in undisturbed possession of the land from time immemorial.

10

4. With regard to paragraph 4 of the Statement of Claim the Defendant is not in a position to admit or deny the alleged transaction between the plaintiff and Otimili family. The Defendant denies vigorously the statement that the land has been in the undisturbed possession of the plaintiff and will put to the strictest proof thereof.

20

The defendant is not in a position to admit or deny paragraph 5 of the Statement of Claim as no plan has been received with the Statement of Claim.

6. The defendant denies that the lands surrounding the land in dispute belong to various Onitsha people and families and say that these lands belong to various Obosi families.

7. In answer to paragraph 7 the defendant admits that on or about the 17th of January, 1949 the first four defendants cleared the land and turned it into a motor park but say that they did so with the consent and approval of Obosi people who are the owners of the land and who were in occupation of the land. The defendant further says that the cassava crops on the land were those of Obosi women and that those cassava crops were removed from the said land with consent and approval of these Obosi women.

30

8. The defendant is not in a position to admit or deny paragraphs 6 and 9 of the Statement of Claim.

9. In answer to paragraph 10 the defendant says

40

that the land has hitherto been used as farm-land. The defendant denies that the plaintiff or his tenants had ever used the land for farming or at all.

Plaintiffs' Exhibits

60

10. The defendant admits paragraph 11 of the Statement of Claim.

Statement of Defence, Suit No.0/6 of 1949 continued

11. The defendant denies paragraph 12 of the Statement of Claim and further denies that the plaintiff is entitled as per writ.

10 Dated at Onitsha this 9th day of August, 1949.

EXHIBIT 61

61

PROCEEDINGS SUIT NO. 0/6 OF 1949

Proceedings Suit No.0/6 of 1949 14th March 1949

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR MR. JUSTICE BROWN PUISNE JUDGE
FRIDAY THE 14TH DAY OF MARCH, 1949.

SUIT NO.0/6/1949:

20 COURT:- I am satisfied that this is a proper case for an injunction to be issued against the defendants.

I find that a prima facie case has been shown on the plaintiff's affidavit in that he claims the ownership of the land in dispute and how his title originated.

30 The defendants in reply do not claim ownership and have at most as regards ownership, expressed belief that the plaintiff is not the owner. They have shown however that before entering upon the land they were aware at last that the title was not clear, and did in fact make enquiries from the plaintiff. Though unsatisfied about this, they took the responsibility of entering upon this land instead of entering another site the ownership was not in dispute. Plaintiff promptly brought the present action against them.

An order could not be considered inconvenient

Plaintiffs'
Exhibits

61

Proceedings
Suit No.0/6
of 1949
14th March
1949
continued

sought in the popular sense, because the defend-
ants could and should have been entirely satis-
fied as to the ownership of the land upon which
they entered for apparently permanent occupation.
That such an order would be just also on this
account, I have no doubt.

That the £300 damages claimed might be
sufficient to compensate the plaintiff for all
damages caused by the entering of the defend-
ants as well as loss due to deterioration is
proved but it covers only the damages caused by
the original entry, and not that accruing from
the continued occupation.

10

ORDER:- I therefore make the order sought, re-
straining the defendants their Servants and
Agents from entering and using as a motor park
the land shown on the plan filed by the plain-
tiff and referred to in his affidavit pending
the judgment or further order in this case.

(Sgd) H.M.S. Brown
JUDGE
14/3/49.

20

64
Proceedings,
Suit No.0/6
of 1949
(Undated)

EXHIBIT 64
PROCEEDINGS, SUIT NO. 0/6 OF 1949
BEFORE HIS HONOUR
ADETOKUNBO ADEGBOYEGA ADEMOLA ESQ., PUISNE
JUDGE.
SUIT NO. 0/6/1949.

BETWEEN:-

JACOB IKWEME

...

Plaintiff

30

and

1. MARK ANYAEGBUNAM

2. CHARLES UZODINMA

3. BENSON OKOLI

4. HENRY EZEANI

5. CHIEF J.M.KODILINYE

...

Defendants.

Mbanefo for Plaintiff.

Nkemena (Mojekwu with him) for Defendants.

Mbanefo for plaintiff announced that this

case and the next, both affecting the Motor Park in Owerri road, have been settled. The first four defendants, motor owners undertaking to quit the place and to get other motor owners to do the same as early as possible. Those who remain, do remain at their own risks. The park to be vacated not later than 7/2/51.

Plaintiffs' Exhibits

64

Proceedings, Suit No.0/6 of 1949 (Undated) continued

10 The plaintiff on the other hand is prepared to withdraw the claim from Court, on payment to him and the plaintiff in the next case £50 each to cover expenses.

Defendant's Counsel agree that the terms of settlement be mere judgment of Court.

Court.

Judgment as per terms of settlement. Case is struck out the defendants to pay £50 costs being expenses made by plaintiff.

1st and 4th defendants undertake to pay the costs.

20 (Sgd) A.A.Ademola
JUDGE.

EXHIBIT 69

69

ORDER, SUIT NO. 0/7 OF 1949

Order, Suit No. 0/7 of 1949 4th March 1949

30 IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/7/1949:

BETWEEN:

A.O.L. ASOLO Plaintiff

- 1. MARK ANYAEGBUNAM
- 2. CHARLES UZODINMA
- 3. BENSON OKOLI
- 4. HENRY EZEANI Defendants

UPON READING the Affidavit of Aghaduno

Plaintiffs'
Exhibits

69

Order, Suit
No. 0/7 of
1949
4th March 1949
continued

Otenubi Laborunaja Asolo of Onitsha, in the Province of Onitsha, sworn to and filed at Onitsha on the 1st day of February, 1949, and after hearing Louis Nwachukwu Ibanefo Esq., of Counsel for the plaintiff and Michael Oguejifo Ajegbo Esq., of Counsel for defendants:

IT IS ORDERED AS SOUGHT, restraining the defendants, their agents and servants from entering and using as a motor park the land shown on the plan filed by plaintiff and referred to in his affidavit, pending the judgment or further order in this case.

10

IT IS FURTHER ORDERED that costs be cost in the cause.

DATED at Onitsha this 4th day of March, 1949.

(Sgd) H.M.S. Brown
JUDGE

65

Statement of
Claim, Suit
No. 0/7 of
1949.
19th March
1949

EXHIBIT 65

STATEMENT OF CLAIM, SUIT NO. 0/7 OF 1949

20

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

SUIT NO. 0/7 1949:

BETWEEN:

A.O.L.ASOLO Plaintiff

versus

1. MARK ANYAEGBUNAM
2. CHARLES UZODINMA
3. BENSON OKOLI
4. HENRY EZEANI Defendants

30

STATEMENT OF CLAIM:

1. The Plaintiff is a retired Government Official, and resides at Old Market Road, Onitsha.
2. The defendants are all motor owners, residing at Onitsha.

- | | | |
|----|--|---|
| | 3. The land the subject matter of this action situ-
ates at Oguta Road in Onitsha. It originally
belonged to the Otimili Family of Onitsha. | Plaintiffs'
<u>Exhibits</u> |
| | | 65 |
| | 4. About twenty one years ago, the said Otimili
Family sold the land to the Plaintiff and from
that time until today the land has been in the
undisturbed possession of the plaintiff. | Statement of
Claim, Suit
No. 0/7 of
1949 |
| | 5. The said land is clearly shown, "delineated" and
edged pink on the plan to be filed with this
Statement of Claim. | 19th March
1949
continued |
| 10 | | |
| | 6. The land is surrounded by lands belonging to
various Onitsha people and families with whom
the plaintiff has boundaries, namely:- On the
East: Erokwu (Isiokwe); on the South P.H.
Okolo; on the West, the Umuosodi Family, and
on the North Ikwueme. | |
| | 7. On or about the 17th of January, 1949, the de-
fendants with a large number of motor owners,
without the knowledge and consent of the Plain-
tiff, broke and entered on the said land of the
plaintiff, cleared it, and turned the land into
a motor park, where their lorries take on and
offload passengers and cargo thereby uprooting
cassava and other crops planted thereon. | |
| 20 | | |
| | 8. The said land in dispute is a farm land and has
been used as such by the plaintiff by himself
and through his tenants. | |
| | 9. The said land is still being used as a motor
park. | |
| 30 | 10. The plaintiff has suffered damage as a result of
the defendants' action. | |

Wherefore the plaintiff claims as per the writ
of Summons.

Dated at Onitsha this 19th day of March, 1949.

(Sgd) L.N.Mbanefo
Plaintiff's Solicitor.

Plaintiffs'
Exhibits

EXHIBIT 66

STATEMENT OF DEFENCE, SUIT NO.0/7 OF 1949

66

Statement of
Defence,
Suit No.0/7
of 1949
21st April 1949.

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

SUIT NO.0/7/1949

BETWEEN:

A.O.L.ASOLO

Plaintiff

and

10

- 1. MARK ANYAEGBUNAM
- 2. CHARLES UZODINMA
- 3. BENSON OKOLI
- 4. HENRY EZEANI

STATEMENT OF DEFENCE.

- 1. The defendants admit paragraphs 1 and 2 of the Statement of Claim.
- 2. In answer to paragraph 3 the defendants admit that the land the subject matter of the suit is situate at Oguta Road but deny that that portion of Oguta Road is in Onitsha or that the land originally belonged to Otimili family of Onitsha. They assert that the land originally belonged and still belongs to Obosi people. 20
- 3. With regard to paragraph 4 of the Statement of Claim the defendants are not in a position to admit or deny the alleged transaction between the plaintiff and Otimili family. They deny vigorously the statement that the land has been in the undisturbed possession of the plaintiff and will put the plaintiff to strict proof. 30
- 4. The defendants are not in a position to admit or deny the statements in paragraphs 5 and 6 of the Statement of Claim as no plan of the land was received with the Statement of Claim.
- 5. In answer to paragraph 7 the defendants admit

that on or about the 17th of January they cleared the land and turned it into a motor park but say that they did so with the consent and approval of the Obosi people who are the owners of the land and who were in occupation of the land. They further say that the cassava crops on the land were those of Obosi women and that those cassava crops were removed from the same land with the consent and approval of those women.

10

6. In answer to paragraph 8 the defendants admit that the land is farm land but deny that the plaintiff or his tenants ever used the land.

7. With regard to paragraph 9 the defendants say that they ceased to use the land as motor park as from the 4th of March, 1949, when the Court gave an order for interim injunction against them.

20

8. The defendants deny paragraph 10 of the Statement of Claim and further deny that the plaintiff is entitled as per writ.

Dated at Onitsha this 21st day of April, 1949.

(Sgd) M.O. Ajegbo
Defendants' Solicitor.

EXHIBIT 67

ORDER, SUIT NO. 0/7 OF 1949

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

30

SUIT NO.0/7/1949;

BETWEEN

A.O.L.ASOLO

Plaintiff

and

1. MARK ANYAEGBUNAN

2. CHARLES UZODINMA

3. BENSON OKOLI

4. HENRY EZZANI

Defendants

40

In re application of Chief Joshua
Nbamalu Kodilinye to be joined as
defendant.

UPON READING the affidavit of Joshua

Plaintiffs'
Exhibits

66

Statement of
Defence,
Suit No.0/7
of 1949
21st April
1949
continued

67

Order, Suit
No. 0/7 of 1949
16th June 1949.

Plaintiffs'
Exhibits

67

Order, Suit
No.0/7 of 1949
16th June 1949
continued

Mbamalu Kodilinye of Obosi, in the Province of Onitsha, sworn to and filed at Onitsha on the 20th day of April, 1949, and after hearing Michael Oguejiofo Ajegbo Esq., of Counsel for the applicant and Louis Nwanchukwu Mbanefo Esq., of Counsel for the plaintiff.

IT IS ORDERED AS SOUGHT that Joshua Mbamalu Kodilinye be joined as defendant in this action.

Dated at Onitsha this 16th day of June, 1949.

10

(Sgd) H.M.S. Brown
JUDGE

68

Statement of
Defence,
Suit No.0/7
of 1949
9th August 1949

EXHIBIT 68

STATEMENT OF DEFENCE, SUIT NO.0/7 OF 1949

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

SUIT NO.0/7/1949:

20

BETWEEN:

O.A.L.ASOLO

Plaintiff

and

1. MARK ANYAEGBUNAI
2. CHARLES UZODUNMA
3. BENSON OKOLI
4. HENRY EZEANI
5. J.M.KODILINYE for themselves
and on behalf of Obosi
people

Defendants

30

STATEMENT OF DEFENCE OF 5TH DEFENDANT -
J.M.KODILINYE.

1. Save and except as thereafter expressly admitted the 5th Defendant denies all allegations of fact continued in the plaintiff's Statement of Claim as if each and every such allegation were separately taken and specifically traversed.
2. The defendant admits paragraph 1 and 2 of the

Statement of Claim.

Plaintiffs'
Exhibits

68

Statement of
Defence,
Suit No.0/7
of 1949
9th August 1949
continued

- 10 3. In answer to paragraph 3 the defendant admits that the land the subject matter of this suit is situate at Oguta Road but denies that that portion of Oguta Road is in Onitsha or that the land originally belonged to Otimili family of Onitsha. The defendant asserts that the land originall belonged and still belongs to Obosi people and that Obosi people have been in undisturbed possession of the land from time immemorial.
4. With regard to paragraph 4 of the Statement of Claim the defendant is not in a pōsitiōn-tō admit or deny the alleged transaction between the plaintiff and Otimili family. The defendant denies vigorously the Statement that the land has been in the undisturbed possession of the plaintiff and will put him to the stric-test proof thereof.
- 20 5. The defendant is not in a position to admit or deny paragraph 5 of the Statement of Claim as no plan has been received with the State-ment of Claim.
6. In answer to paragraph 6 of the Statement of Claim the defendant denies that the lands sur-rounding the land in dispute belong to various Onitsha people and families and say that these lands belong to various obosi families.
- 30 7. In answer to paragraph 7 the defendant admits that on or about the 17th of January, 1949, the first four defendants cleared the land and turned it into a motor park but say that they did so with the consent and approval of Obosi people who are the owners of the land and who were in occupation of the land. The defend-ant further says that the cassava crops on the land were those of Obosi women and that those cassava crops were removed from the said land with the consent and approval of these Obosi women.
- 40 8. In answer to paragraph 8 of the Statement of Claim the defendant says that the said land has hitherto been used as farm-land. The defendant denies that the plaintiff or his tenants had ever used the land for farming or at all.

Plaintiffs' Exhibits

68

Statement of Defence, Suit No.0/7 of 1949 9th August 1949 continued

9. The defendant admits paragraph 9 of the Statement of Claim.

10. The defendant denies paragraph 10 of the Statement of Claim and further denies that the plaintiff is entitled as per writ.

Dated at Onitsha this 9th day of August, 1949.

(Sgd) M.O.Ajegbo Defendant's Solicitor.

71

Judgment, Suit No.0/7 of 1949 31st January 1951

EXHIBIT 71 JUDGMENT, SUIT NO.0/7 OF 1949

10

IN THE SUPREME COURT OF NIGERIA IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION HOLDEN AT ONITSHA WEDNESDAY THE 31ST DAY OF JANUARY, 1951. BEFORE HIS HONOUR ADETOKUNBO ADEGBOYEGA ADEMOLA, ESQ., PUISNE JUDGE.

SUIT NO.0/7/1949:

20

BETWEEN:

- A.O.L.ASOLO Plaintiff and 1. MARK ANYAEGBUNAM 2. CHARLES UZODINMA 3. BENSON OKOLI 4. HENRY EZEANI 5. CHIEF J.M.KODILINYE

Mbanefo for Plaintiff.

Nkemena (Mjekwu with him) for defendants. Settlement as in 0/6/49.

30

JUDGMENT:-

Judgment in terms of settlement reached. The first four defendants to quit the motor park within a week and to get other motor owners to quit during the period. Those who remain, remain at their own risks.

Case is struck out: The defendants to pay costs of £50 agreed upon to cover the plaintiff's expenses.

40

The first four defendants undertake to pay the costs.

(Sgd) A.A.Ademola JUDGE 31/1/51.

EXHIBIT 73

STATEMENT OF CLAIM, SUIT NO.0/34 of 1949

IN THE SUPREME COURT OF NIGERIA
 IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
 DIVISION
 HOLDEN AT ONITSHA

SUIT NO.0/34/1949

Plaintiffs'
Exhibits

73

Statement of
 Claim, Suit
 No.0/34 of
 1949
 30th September
 1949

BETWEEN:-

10

CHIEF MBANEFO ODU, for and on behalf
 of the Umu-Odimegwubuagu Family of
 Onitsha Plaintiff

and

20

1. J.M.KODILINYE
2. A.E.AKOMA
3. E.E.NWOBI
4. MANAGO OBIEZE
5. NWABUIKE OSUNO
6. BEN UYANMADU
7. JOHN GBUNYOMOBI
8. JOHN ORANWA
9. OGBOGU AKUNWANNE ONYA
10. JOHN AKABOGU
11. ANTHONY MOLOKWU
12. OSOLOKA EJIOFO
13. OKONKWO ILODIANYA, for themselves
 and on behalf of the Obosi people
 Defendants

STATEMENT OF CLAIM

30

1. The plaintiff is a chief and head of the Umu-Odimegwubuagu family of Onitsha, and brings this action for and on behalf of the said family of Umu-Odimegwubuagu.

2. The defendants are natives of Obosi. The first defendant is the head chief of Obosi. The defendants are sued for themselves and as representing the Obosi people.

40

3. The land the subject matter of the action is called ISIAFOR land, and is shown on the plan to be filed in court with this Statement of Claim, and thereon edged pink.

4. The said land is the bona fide property of the plaintiff's family, and has been so from time immemorial; the said land being first

Plaintiffs'
Exhibits

73

Statement of
Claim, Suit
No. 0/34 of
1949
30th September
1949
continued

occupied by plaintiff's ancestor called ODIMEGWUGBUAGU, the founder of the plaintiff's family.

5. The plaintiff's family use the said land for farming, and also let portions of it out to Obosi people for farming on payment of the customary annual tributes and/or rent, and when the Obosi tenants failed to pay rent or trespassed on the said land, they have been successfully sued by the plaintiff or other members of his family duly authorised to do so. The judgments in those cases will be founded upon particularly the following Onitsha Native Court cases:-

- (a) Nos.76 and 77 of 1917
- (b) No.53 of 1926
- (c) No.244 of 1926
- (d) No.245 of 1926
- (e) No.249 of 1926
- (f) No.246 of 1928
- (g) No.134 of 1930
- (h) No.236 and 237 of 1932.

7. In 1932, the 1st defendant on behalf of the Obosi people sued the plaintiff claiming amongst others Declaration of title to the land in dispute. The suit was transferred to the Supreme Court and there determined in favour of the plaintiff (as defendant in the suit). The 1st defendant appealed to the West African Court of Appeal, and his appeal was dismissed. The plaintiff will rely on the judgment of the Supreme Court and of the West African Court of Appeal in the said action entitled J.M.KODILINYE for himself and the people of Obosi Versus MBANEFO ODU as representing the Odimegwugbuagu quarter of Onitsha Suit No. 8/32.

8. In 1948, the defendants with a large number of their people without the knowledge and consent of the plaintiffs entered the said ISIAFOR land, and thereon made farms. They have trespassed again this year, and their farms are still there to this day.

9. The action of the defendants was done in wanton and flagrant disregard of the

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previous judgments and encouraged by a general movement by the people of Obosi to claim Onitsha lands. The location of the trespass has been shown on the plan to be filed herewith, and thereon coloured violet.

10. The plaintiff has suffered heavy damage as a result of the defendants action, and claims as per the writ of summons.

Dated at Onitsha this 30th day of September, 1949.

(Sgd) L.N.Mbanefo
Plaintiff's Solicitor.

Plaintiffs'
Exhibits

73
Statement of
Claim, Suit
No. 0/34 of
1949
30th September
1949
continued

EXHIBIT 74

STATEMENT OF DEFENCE, SUIT NO.0/34 OF 1949.

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

SUIT NO. 0/34/1949.

74
Statement of
Defence, Suit
No. 0/34 of
1949
5th December
1949

BETWEEN:

CHIEF MBANEFO ODU, for himself and
on behalf of the Umu-Odimegwubueagu
Family of Onitsha ... Plaintiff

and

1. J.M.KODILINYE
 2. A.E.OKOMA
 3. E.E.NWOBI
 4. MATAGO OBIEZE
 5. NWABUIKE OSUNO
 6. BEN UYAMADU
 7. JOHN GBUGBEMOBI
 8. JOHN ORANWA
 9. OGBOGU AKUNWANNE OFIYA
 10. JOHN AKABOGU
 11. ANTHONY MOLOKU
 12. OSELORA EJIOFO
 13. OKONKWO ILODIANYA for themselves and
on behalf of the Obosi people
- Defendants

STATEMENT OF DEFENCE

1. The Defendants admit that the Plaintiff is a

Plaintiffs'
Exhibits

74

Statement of
Defence, Suit
No. O/34 of
1949
5th December
1949
continued

chief and head of the Umu-Odimegwugbuagu family of Onitsha but are not in a position to admit or deny that the plaintiff brings this action for and on behalf of the said Umu-Odimegwugbuagu family.

2. The defendants admit paragraph 2 of the Statement of Claim.

3. The defendants deny that the land the subject matter of the action is called Isiafor land and say that part of the land is called Ana-Ime-Obosi and part Ana-Isiowuru.

10

4. The defendants deny paragraph 4 and say that the land in question is the bona fide property of Obosi people and has been so from time immemorial.

5. In answer to paragraph 5 the defendants admit that there were Native Court cases but say that these cases relate to land outside the land in dispute. Alternatively the defendants say that even if the Native Court cases relate to the land in dispute they do not confer title on the plaintiff.

20

6. The defendants admit paragraph 7 but say that neither the Supreme Court nor the West African Court of Appeal decreed title to the plaintiff in those judgments

The defendants deny that they farmed on Isiafor land either in 1948 or in 1949. The defendants will produce a plan at the trial to show that where the defendants farmed were not on Isiafor land.

30

8. The defendants deny paragraph 9 of the Statement of Claim.

9. The plaintiff is not entitled as per writ of summons.

Dated at Onitsha this 5th day of December, 1949.

(Sgd) M.O.Ajegbo
Defendants' Solicitor

EXHIBIT 75

JUDGMENT, SUIT NO. 0/34 OF 1949Plaintiffs'
Exhibits

75

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISIONJudgment,
Suit No.0/34
of 1949
7th February
1951

HOLDEN AT ONITSHA

WEDNESDAY THE 7TH DAY OF FEBRUARY, 1951.

BEFORE HIS HONOUR

ADETOKUNBO ADEGBOYEGA ADEMOLA ESQ.,

PUISNE JUDGE.

10

SUIT NO.0/34/1949:CHIEF MBANEFU ODU (M) FOR AND ON BEHALF OF
THE UMU-ODIMEGWUGBUAGU FAMILY OF ONITSHA

Plaintiff

and

1. J.M.KODILINYE (M)	8. JOHN ORANWA (M)
2. A.E.OKOMA (M)	9. OGBOGU AKUIWANNE ONYA (M)
3. E.E.NWOBI (M)	10. JOHN AKABOGU (M)
4. MANAGO OBIEZI (M)	11. ANTHONY MCLOKWU (M)
5. NWABUIKE OSUNO (M)	12. OSELOKI EJIORO (M)
6. BEN UYANLADU (M)	13. OKONKWO ILODIANYA (M)
7. JOHN GBUNYEMOBI (M)	

20

For themselves and on behalf of the Obosi
people Defendants.J U D G M E N T:By virtue of powers conferred upon him by
section 25 (1) (c) of the Native Courts Ordinance
1933, the District Officer, Onitsha Division, on
the 15th July 1949 transferred this case to the
Supreme Court from the Onitsha Native Court.

30

The claims read as follows:-

1. The plaintiff claims from the defendants jointly and severally the sum of £600 (Six hundred pounds) damages in that the defendants with a large number of their people during 1948 and 1949, trespassed on the plaintiff's land known as Isiafor land.
2. The plaintiff also seeks an injunction to restrain the defendants and their people of Obosi whom they represent from further trespassing on the said land.

40

Plaintiffs'
Exhibits

75
Judgment,
Suit No.0/34
of 1949
7th February
1951
continued

Pleadings were filed and a plan showing the land in dispute was filed.

During the hearing, the defendants' Counsel requested that paragraph 7 of the Statement of Defence filed by him be struck out. This paragraph denied that the land farmed upon by the defendants is called Isiafor land.

The plaintiff is a native of Onitsha and claims the land in dispute as head of his family in Onitsha. 10

The defendants are Obosi people whose home town is a few miles away from Onitsha.

Litigation about the land in dispute between the Onitsha people (plaintiff and his family) and the Obosis started as far back as 1917. There were quite a few Native Court cases from 1917 and in 1932 the 1st defendant, representing his people the Obosis, brought an action for declaration of title to the land in dispute in the Supreme Court. A copy of the plan filed in Court in that action was agreed upon by Counsel on either side and it was put in evidence in this case and marked Exhibit "A". Points of trespass now complained of are shown on the plan by a Surveyor who went on the land and who was called to give evidence. 20

Issues were settled before me, Counsel on both sides agreeing that the land in dispute in 1932 case is the same land Isiafor now in dispute. The defendants admitted they farmed on the land in 1948 and 1949 as alleged by plaintiff; they claim they have always farmed on the land and have never paid tribute to the plaintiff, his representative or to anybody. 30

A certified copy of the Record of proceedings and judgment of the 1932 case which includes previous Native Court judgments from 1917 was put in evidence and marked Exhibit "C". Judgment of the W.A.C.A. on appeal, was also admitted in evidence and marked Exhibit "D". 40

It was agreed upon as per the judgment in 1932 that the Obosi people represented by the present 1st defendant failed in their action

against the present plaintiff for declaration of title to the land Isiafor.

Plaintiffs'
Exhibits

The issue in the case appears to me very simple.

75

Judgment,
Suit No.0/34
of 1949
7th February
1951
continued

The contention is that although declaration of title to the land was refused to the present defendants by the 1932 judgment, the land was not declared the land of the present plaintiff. As such, it is contended, the defendants and their people can continue to farm on the land undisturbed.

10

It was further contended that the plaintiff and his people are not in possession of the land and as such cannot maintain an action for trespass.

The defendants maintain they are in possession of the land; but their possession was never defined before me. They cannot claim ownership of the land as the 1932 case (Exhibit "C") estops them; they say they are not tenants on the land but they are on the land!

20

Now, plaintiff's case is that he and his people are owners in possession and that the defendants' people during farming season would call upon them and ask for land to farm on; that part of the land in dispute would be given to them on payment of the sum of 5/- and palm wine for asking for land to farm on and later 21 yams and sum of 5/- would be collected from each tenant at the end of the farming season. The next farming season they would come again and some portion of land would be given them on the same basis. Not only do I believe that this has been happening for years, there are various judgments of Court to support it.

30

I refer to (a) Onitsha Native Court case Nos.76 and 77 of

1917 at page 92 of Exhibit "C"

(b) Onitsha Native Court case No.245 of 1926 at page 101 of Exhibit "C".

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(c) Onitsha Native Court case No.246 of 1928 at page 103 of Exhibit "C".

(d) Onitsha Native Court case No.249 of 1926 at page 113 of Exhibit "C".

Plaintiffs'
Exhibits

75

Judgment,
Suit No.0/34
of 1949
7th February
1951
continued

(e) Onitsha Native Court case No.244 of 1926
at page 114 of Exhibit "C".

(f) Onitsha Native Court case No.134 of 1930
at page 115 of Exhibit "C".

(g) Onitsha Native Court Case Nos.236 and 237
of 1932 at page 133 of Exhibit "C".

The defendants in some of these cases are
relations (and parent in one case) of some of
the present defendants.

These series of cases although personal
actions in themselves, were actions against vari-
ous Obosi men who have farmed or interfered with
the land in dispute. These cases were referred
to and dealt with extensively by Graham Paul, J.
(as he then was) in his judgment in the 1932 case
(Exhibit "C" at page 74 to 77). The cases show,
without any shadow of doubt, that the Onitsha
people (plaintiff) have never at any time lost
possession of the land in dispute.

10

After the 1932 case (Exhibit "C") the plain-
tiff was still in possession, and according to
the evidence before me which I believe, Obosi men
approached the plaintiff's family afresh for farm
land. The tribute was increased to 40 yams and
10/- per tenant at the end of the farming season.
It was not until 1948 that the usual request for
land was not made by Obosi men. A number of
them merely went on the land, measured out cer-
tain areas and started farming. It appears that
the first three defendants and the 6th defendant
were at the head of this gang. It was also
established that some of the plaintiff's people
are still farming on various parts of the land.
All these are definite evidence that the plain-
tiff and his people have not at any time abandon-
ed possession, and I fail to see by what stretch
of imagination it can be suggested that the de-
fendants' people were ever at any time in "de
Jure" possession.

20

30

It will be useless to write a long judgment
on such a case which shows a flagrant disregard
for judgments of Court on the part of the defen-
dants. To them, as it appears to me, a judg-
ment of Court means nothing more than the

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trumpeting of a cricket which apparently does no harm to anybody. But the sooner they realise that the tiny trumpeting do break one's dream, even when sweetest, the better. The Record of the Onitsha Native Court shows at page 109 of Exhibit "C" that some Obosi men were committed to prison for contempt of court in respect of the land in dispute. Yet, they have not learnt a lesson! One of the Obosi men who gave evidence before me (the 2nd witness) said :-

10

"I know judgment was given against Obosi.
 "We still farm on the land despite the
 "judgment because the land is ours. If
 "judgment is given against us now we shall
 "not be afraid to go on the land because it
 "is our "bona fide" property."

Such is the attitude of mind of the defendants, and that spirit is fostered by the activities of the half educated elements among the people. The 2nd defendant for instance, the Secretary of Obosi land committee, a somewhat educated man and a Court Clerk in his younger days, although well aware of the hopelessness of his people's claim to the land in dispute was not ashamed to say before me that he realised it but he was not prepared to tell his people the truth!

20

Truth is bitter; and it appears to me that the bitter pill must be swallowed by the defendants in this case in nothing but exemplary damages. It is abundantly clear that many of the Obosi people did farm on the land in dispute. According to evidence which I believe, tribute of 40 yams and 10/- each (after the 1932 case) was payable by each tenant after farming season. In cash this means at least 50/- to 60/- per tenant. The defendants' people farmed for two years 1948 and 1949 before they were sued when they flatly refused to pay. Undoubtedly the loss to the plaintiff and his people must be heavy.

30

I also have to consider the conduct of the defendants. They have since the year 1917 continued to put the plaintiff and his people to expense of periodical litigation as evidence by the various Native Court cases some of which I have referred to. I also have to take into account

40

Plaintiffs'
Exhibits

75

Judgment,
 Suit No.0/34
 of 1949
 7th February
 1951
 continued

Plaintiffs'
Exhibits

their open defiance of various judgments against them as well as their attitude before me.

75
Judgment,
Suit No.0/34
of 1949
7th February
1951
continued

There will judgment for the plaintiff against the defendants in the sum of £400 as damages for trespass to the land Isiafor, and an injunction is granted in terms of the writ.

Costs assessed at 100 guineas.

(Sgd) A.A.Ademola
PUISNE JUDGE
7/2/51.

10

72
Order of
Transfer,
Suit No.93
of 1949
15th July
1949

EXHIBIT 72
ORDER OF TRANSFER, SUIT NO.93 OF 1949
PROTECTORATE COURT OF NIGERIA
IN THE NATIVE COURT OF ONITSHA - ONITSHA
DIVISION

ORDER MADE UNDER SECTION 25 (1) (c)
THE NATIVE COURTS ORDINANCE 1933

I, CHARLES ALEXANDER LEONARD GUISE, District Officer, Onitsha Division, by virtue of the powers vested in me under section 25 (1) (c) of the Native Courts Ordinance, 1933, hereby order that the following case be transferred from Onitsha Native Court to the Supreme Court, Onitsha:-

20

Onitsha Native Court Civil Suit No.93/49.

BETWEEN:-

CHIEF MBANEFO ODU FOR AND ON BEHALF
OF THE ODIMEGWUGBUAGU FAMILY OF
ONITSHA

and

J.M.KODILINYE ETC., FOR THEMSELVES
AND ON BEHALF OF THE OBOSI PEOPLE.

30

CLAIM:- 1. The plaintiff claims from the Defendants jointly and severally the sum of

£600 (Six hundred pounds) damages is that the defendants with a large number of their people during 1948 and 1949, trespassed on the plaintiff's land known as Isiafor land.

Plaintiffs'
Exhibits

72

Order of
Transfer,
Suit No.93
of 1949
15th July
1949
continued

2. The plaintiff also seeks an injunction to restrain the defendants and their people of Obosi whom they represent from further trespassing on the said land.

10

I certify that the Order of Transfer of the above mentioned case from Onitsha Native Court to the Supreme Court, Onitsha, was made on the Plaintiff Solicitor's motion.

Reason for Transfer: The land in dispute was the subject matter of an action between the parties which was heard and determined in the Supreme Court and the West African Court of Appeal. There is a survey plan of the land and the judgment in the said case plus the survey plan will be tendered in evidence at the hearing of the present action.

20

2. The plaintiffs are natives of Onitsha and the defendants are natives of Obosi.

Dated at Onitsha this 15th day of July, 1949.

(Sgd) C.A.L.Guise

District Officer
Onitsha Division.

Plaintiffs'
Exhibits

22

Judgment,
Kodilinye &
Another v.
Anatogu &
Another
11th January
1951

EXHIBIT 22

JUDGMENT, KODLINYE & ANOTHER v. ANATO GU
& ANOTHER

IN THE WEST AFRICAN COURT OF APPEAL

BETWEEN

- 1. CHIEF J.M.K.KODLINYE
- 2. J.C.NWANGWU, for themselves
and on behalf of Obosi people
Defendants/Appellants

and

10

- 1. PHILIP AKUNNE ANATO GU
- 2. JOSEPH AKUNNIA AGBU, for
themselves and on behalf
of Ogbo Family of Umua-
sele Onitsha Plaintiffs/Respondents

J U D G M E N T

Appeal dismissed. Costs assessed at £68:14:0d.

REASONS FOR JUDGMENT

The Judgment of the Court in this appeal was delivered by the President and was to the following effect: "The question at issue in this appeal is the ownership of an area of land at Onitsha edged pink on the plan Ex.10 Manson J. in a lucid and well referenced judgment, found in favour of the Respondents. As the Learned Judge's reasons are fully set out in his Judgment and this Court sees no reasons to differ from them, there is no need to recapitulate them. It is enough to say that the evidence fully supports the findings of the Court below, and that in our view there is no substance in this appeal".

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Varity C.J. and LEWEY J.A. Concurred.

(Sgd) H.W.B.Blackall,
PRESIDENT, WEST AFRICAN COURT OF APPEAL

11th January, 1951.

EXHIBIT 81
REQUEST FOR SUBPOENA, SUIT No.0/44 OF 1952.

Defendants'
Exhibit

M.O.Ajegbo
 Solicitor & Advocate
 Phone: 123

P.O.Box 140,
 Onitsha, Nigeria
 27th June, 1957.

The Registrar,
 High Court,
 Onitsha.

81
 Request for
 Subpoena,
 Suit No.0/44
 of 1952
 27th June 1957

Dear Sir,

SUIT NO. 0/44/52:

SUBPOENA

Will you please issue a Subpoena to the Commissioner of Lands, Enugu, to produce during the hearing of the abovenamed case which commenced on the 28th of June, 1957, the following documents:-

1. Official Record of Niger Land Agreement No.72.
2. Official Record of Niger Land Agreement No.40.
3. Plan No. OA. 143.

Yours sincerely,
 (Sgd) M.O.Ajegbo
 SOLICITOR FOR THE DEFENDANTS.

EXHIBIT 85
MOTION, SUIT NO.0/44 OF 1952

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

SUIT NO. 0/44/52

Plaintiffs'
Exhibits

85

Motion,
 Suit No.0/44
 of 1952
 2nd April 1956.

BETWEEN:-

1. Sam C.Egbuna for themselves and on behalf
2. Francis Obigbo of UKWA Family of Umuasele
 Onitsha

PLAINTIFFS

AND

1. Emmanuel Ekwuno
2. James Mozie
3. Ikebife Ibenemeka
4. Nath Obiefuna
5. Jonathan Udegbo
6. Adeze Jibike
7. Anene Ikebuiife
8. Ogbunbi Efobi
 (All of Obosi)
9. Nwanhukwu Ajunna
10. Oranefo Ubatu
11. Ilomuanya Ezemenyiba
12. Ofo Ebemikwu
13. Anamaonyeiwe Ejikeme
14. Nwokoye Izuora
15. Nathaniel Anikpe
16. Francis Amanchukwu

DEFENDANTS.

M O T I O N

TAKE NOTICE that this Honourable Court will

Plaintiffs'
Exhibits

85

Motion,
Suit No.0/44
of 1952
2nd April 1956
continued

be moved on Saturday the 14th day of April, 1956, at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the plaintiffs in the above-named suit for an order of Court (a) joining Joseph Amanchukwu Orakpo, Jabez Chukwudobe Nwangwu, Alfred E. Okoma, David Umera Odibe, and Dr. Jonas Iweka as co-defendants and as representing the people of Obcsi town in the said suit; (b) granting interim injunction against the defendants in their representative capacity, restraining them and their Obosi people they represent from further acts of trespass and waste on land in dispute until the case has been determined on the merits: (c) granting accelerated hearing of the said suit, and for any further and/or other order as to this Honourable Court may seem just.

10

Dated at Onitsha this 2nd day of April, 1956.

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

20

Plaintiffs' address for service

c/o Barrister M.C.Balonwu, Onitsha

Defendants' address for service:

c/o Barrister Ajegbo, Onitsha.

80

Subpoena,
Suit No.0/44
of 1952
27th June
1957

EXHIBIT 80
SUBPOENA, SUIT NO. 0/44 OF 1952
IN THE HIGH COURT OF ONITSHA W 14259
CIVIL SUBPOENA
SUIT NO. 0/44/1952.

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BETWEEN

N.O.IFEJIKA & ANR.

Plaintiffs

and

E.EKWUNO & ORS. of
Onitsha

Defendants

Your are hereby commanded in His Majesty's name to attend in person before this Court at Onitsha on Wednesday the 14th day of August, 1957, at 9 o'clock in the forenoon, and so from day to day till the above cause be tried, to testify all that you know in the said cause.

40

You are hereby summoned at the instance of
the Defendants.

Plaintiffs'
Exhibits

Issued at Onitsha this 27th day of June,
1957.

80
Subpoena,
Suit No.0/44
of 1952
27th June
1957
continued

	£:	s:	d:
Fees:-			
Subpoena	5.	-	
Service	2.	-	
Mileage	2.	-	
10 Attendance fee.	1.	10.	-
	<hr/>		
	£1.	19.	-
Transport allowance ...	2.	4.	8d.
	£4.	3.	8 CR.
	No.6992 of 27/6/52.		

(Sgd) Herbert Betuel
AG: PUISNE JUDGE.

To produce the following :-

- (1) Official Record of Niger Land,
Agreement No.72.
 - 20 (2) Official Record of Niger Land,
Agreement No.40.
 - (3) Plan No. O. A. 143.
-

Plaintiffs'
Exhibits

EXHIBIT 86

RULING, SUIT NO. 0/44 OF 1952

86
Ruling,
Suit No. 0/44
of 1952
20th August
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
BEFORE HIS LORDSHIP MR. JUSTICE VINCENT
AKINFEMI SAVAGE
MONDAY THE 20TH DAY OF AUGUST, 1956.

10

SUIT NO. 0/44/52:

BETWEEN:

1. EGBUNA OZOMA for and on behalf of Ukwu
2. FRANCIS OBIGBO Family of Umuasele of
Onitsha

and

1. Emmanuel Ekwuno	9. Nwachukwu Akunna	
2. James Mozie	10. Oranefo Mbatu	
3. Ikebife Ibenemweka	11. Ilomuanya Ezemenyiba	
4. Nath Obiefuna	12. Ofo Ebemikwu	20
5. Jonathan Udegbe	13. Anamaonyeiwe Ejikeme	
6. Adeze Jibike	14. Nwokoye Izuora	
7. Anene Ikebife	15. Nathaniel Anikpe and	
8. Ogbunbi Efobi	16. Francis Amanchukwu	

(All of Obosi)

Claim: A declaration of title to the piece
or parcels of Ugborimili land.
2. £50 damages for trespass.
3. An injunction to restrain
defendants.

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Araka, Obanye and Balonwu with Ikpeazu for
Plaintiffs.

Ajegbo for the Defence.

R U L I N G.

This is an application brought on behalf
of the Plaintiffs asking for an order of this
Court to join the 5 persons named in the
application as Co-Defendants and as represent-
ing the people of Obosi Town.

Counsel for the Defence opposed the
application on the ground that the 5 persons

40

named in the application cannot be joined as re-
presenting the people of Obosi Town without their
being authorised to do so by the people of Obosi
Town. He cited the case of Chief Imam Quadu
Lawal and Others Vs. Buraimoh Adegbite and Others
reported in 1948 July and October cyclostyled
W.A.C.A. Report page 99.

Plaintiffs'
Exhibits
86
Ruling,
Suit No. O/44
of 1952
20th August
1956
continued

10 That decision was based on the wording of
Order 4 Rule 3 of the Old Supreme Court Rules
(Nigeria). The wording of Order 4 Rule 3 of the
High Court Rules Eastern Region is exactly the
same as that of Crder 4 Rules 3 of the old Supreme
Court Rules, therefore the case of Chief Imam
Quadu Lawal Vs. Buraimo Adegbite and Others still
applies. It is clear on that authority that this
Court cannot join the 5 persons as representing
the people of Obosi Town without their being so
authorised by the people of Obosi Town. The
20 Plaintiffs' application in this respect must fail.
I however order that the 5 persons named in the
application be joined as co-defendants in their
personal capacity.

(Sgd) V.A.Savage
AG: PUISNE JUDGE
20/8/56

EXHIBIT 83
CIVIL SUMMONS, SUIT NO. 77 of 1952
NATIVE COURTS 77/52
NO. 27032

83
Civil Summons
Suit No.77 of
1952
26th May 1952

30 CIVIL SUMMONS:
IN THE NATIVE COURT OF JUDICIAL COUNCIL OF ONITSHA
NIGERIA

BETWEEN

1. Egbuna Ozoma for and on behalf of Ukwu
2. Francis Obigbo Family of Umuasele Osha
Plaintiff

and

1. Emmanuel Ekwuno (m) of Obosi and
15 Others Defendants

40 To
of

You are commanded to attend this Court at
Onitsha on the 27th day of June, 1952, at 9 o'clock
a.m. to answer a suit by Plaintiffs of Onitsha
against you.

Defendants'
Exhibits

83

Civil Summons
Suit No.77 of
1952
26th May 1952
continued

The Plaintiff Claims (1) A declaration of title to all those pieces or parcels of Ugborimili land known as NKETAKU and AKPURIKPU which situate in Onitsha (value lands about £100 each) (2) £50 damages for trespassing on the said lands (3) An injunction to restrain the Defendants their servants and/or agents from further trespassing on the said lands.

Issued at Onitsha the 26th day of May,1952.

(Sgd) A. Madufor.

F. Signature of President or
Vice-President.

10

Fees pd.
£6.15.0d.

TAKE NOTICE - If you do not attend, the Court may give judgment in your absence (a) State Plaintiff's claim clear.

Dispute arose about 2 years ago.

82

Order of
Transfer,
Suit No.77
of 1952
7th July
1952

EXHIBIT 82

ORDER OF TRANSFER, SUIT NO. 77 OF 1952

20

PROTECTORATE COURT OF NIGERIA
IN THE NATIVE COURT OF ONITSHA - ONITSHA
DIVISION

ORDER MADE UNDER SECTION 28 (1) (c) OF
THE NATIVE COURTS ORDINANCE CAP. 142 OF
THE LAWS OF NIGERIA 1948 EDITION.

I, ERNEST GORDON LEWIS, District Officer, Onitsha Division, by virtue of the powers vested in me under Section 28 (1)(c) of the Native Courts Ordinance; Cap. 142 of the Laws of Nigeria 1948 edition, hereby order that the following case be transferred from the Onitsha Native Court to the Supreme Court, Onitsha.

30

ONITSHA NATIVE COURT SUIT NO. 77/52:

Defendants'
Exhibits

BETWEEN:

- 1. Edbuna Ozoma for and on behalf of Ukwu
 - 2. Francis Obigbo Family of Umuasele Osh
- Plaintiffs

and

- Emmanuel Ekwuno (m)
 - and 15 Others of Obosi
- Defendants

82
Order of
Transfer,
Suit No.77
of 1952
7th July
1952
continued

10

- CLAIMS: 1. A declaration of title to all those pieces or parcels of Ugborimili land known as NKETAKU and AKPURIKPU which situate in Onitsha (value lands about £100 each).
2. £50 damages for trespassing on the said lands
3. An injunction to restrain the defendants their servants and/or agents from further trespassing on the said lands.

REASONS FOR TRANSFER:

20

- 1. The Plaintiffs and the Defendants belong to two different towns and to two different Native Courts
- 2. A similar action brought by the 1st plaintiff over the same piece of land was transferred to and tried by the Supreme Court.
- 3. Important points of law beyond the competence of the Native Court will arise during the trial.

30

I certify that the Order of Transfer of the above mentioned case from Onitsha Native Court to the Supreme Court, Onitsha, was made on the defendants solicitor's motion.

DATED at Onitsha this 7th day of July 1952.

(Sgd) E.C.Lewis
DISTRICT OFFICER
ONITSHA DIVISION.

Plaintiffs' Exhibit

EXHIBIT 84

AFFIDAVIT, SUIT NO. OF 1956

84
Affidavit,
Suit No.
of 1956
4th April
1956

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

SUIT NO. / /56

BEFORE

- 1. Sam C.Egbuna for themselves and on be-
- 2. Francis Obigbo half of Ukwu Family of 10
- Umuasele of Onitsha
- Plaintiffs

and

- 1. Emmanuel Ekwuno
- 2. James Mozie
- 3. Ikebife Ibenemeka
- 4. Nath Obiefuna
- 5. Jonathan Udogbe
- 6. Adeze Jibike
- 7. Anen Ikebuife
- 8. Ogbuni Efobi
- (All of Obosi)
- 9.Nwachukwu Ajunna
- 10.Oranefo Mbatu
- 11.Ilomuanya Ezemengiba
- 12.Ofo Ebenikwu
- 13.Anemaonyeiwe Ejikwme
- 14.Awokoye Izuora
- 15.Nathaniel Anikpe
- 16.Francis Amanchukwu
- 20
- Defendants

A F F I D A V I T:

I, Francis Ubaka Obigbo, a farmer, native of Onitsha and resident there as, a British Protected person make oath and say as follows:-

- 1. That I am one of the plaintiffs in the above-named suit.
- 2. That I am informed and verily believe that Joseph Amanchukwu Orakpo; Jabez Chukwudobe Nwangwu, Alfred E. Okoma, David Umera Odihe, and Doctor Jonah Iwaka are the leaders and representatives of the people of Obosi Town. 30
- 3. That in fact the aforementioned persons

have on one occasion or another represented the people of Obosi Town.

Plaintiffs'
Exhibit

84

Affidavit,
Suit No.
of 1956
4th April
1956
continued

4. That the people of Obosi have recently built over ten houses and put in cement blocks and committed waste on the land in dispute in order to support their false claim, and are threatening to build more houses and put in more cement blocks.

10

5. That I am informed that these houses and blocks are being built and put on the land in dispute on the authority, and with the approval, of the persons mentioned in paragraph 2 above.

6. That the said aforementioned persons also claim the land in dispute in the above suit on behalf of the people of Obosi Town.

7. That I make this affidavit to the best of my knowledge and belief and in support of the attached Motion.

20

Sworn to at the Magistrate's
Court Registry at Onitsha
this 4th day of April 1956.

BEFORE ME

(Sgd) F.O.Obigbo
DEPONENT

(Sgd) E.V.C.Ebo

COMMISSIONER FOR OATHS.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

1. ~~IMMANUEL BIKWUNO~~
 2. IKEBIFE IBENEWEKA
 3. NATH OBIEFUNA
 4. ADEZE JIBIKE
 5. ANENE IKEBIFE
 6. OGBUNBI EFOBI
 7. NWACHUKWU AKUNNA
 8. ORANEFO MBATU
 9. ILOMUANYA EZEMENYIBA
 10. OFO EBOMIKWU
 11. ANAMAONYEIWE EJIKEME
 12. NWOKOYE IZUORA
 13. NATHANIEL ANIKPE
 14. FRANCIS AMANOCHUKWU
 15. JOSEPH A. ORAKPO
 16. JABEZ C. NWANGWU
 17. ALFRED E. OKOMA
 18. DAVID U. ODIBE
 19. DR. JONAS IWEKA
- (all of Obosi) (Defendants) Appellants

- and -

1. ~~N.O. IFEJIKA~~ PETER EGBUNA
 2. ~~FRANCIS ODIGBO~~ JULIUS ARINZE
- (For themselves and on behalf of the Ukwa family of Umuasele Onitsha) (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London S.W.1.

Solicitors for the Appellants

REXWORTHY, BONSER & SIMONS
83-85, Cowcross Street,
London, E.C.1.

Solicitors for the Respondents.