

13, 1948

In the Privy Council.

No. 59 of 1946.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

UNIVERSITY OF LONDON
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 INSTITUTE OF ADVANCED
 LEGAL STUDIES

44445

BETWEEN

1. VICTOR MADUKA,
2. OKAFOR MOKA,
3. ONWUZULIKE AGWU,
 All of Umuori, Awka Division (Defendants)

Appellants

AND

EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU
 (Plaintiff) - - -

Respondent.

RECORD OF PROCEEDINGS.

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ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

- 1. VICTOR MADUKA,
2. OKAFOR MOKA,
3. ONWUZULIKE AGWU,
All of Umuori, Awka Division (Defendants) Appellants

AND

- 10 EZEODIMEGWU on behalf of late CHIEF ABOH of
OROKWU (Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

No. 1.

STATEMENT.

Appeal from the High Court of the Enugu-Onitsha Judicial Division.
(Not printed.)

In the West African Court of Appeal.
No. 1. Statement (not printed)

No. 2.

ORIGINATING SUMMONS.

60/42.

20 IN THE NATIVE COURT OR JUDICIAL COUNCIL OF NOBI
Nigeria.

Between EZEODIMEGWU (M) on behalf of late
CHIEF ABOH of OROKWU Onitsha Division Plaintiff
and

VICTOR MADUKA (M) & 2 others of Umuori
Awka Division Defendants.

In the Native Court of Nobi.
No. 2. Originating Summons, 9th October 1942.

To VICTOR MADUKA (M) & 2 others of Umuori Awka Division.

You are commanded to attend this Court at Nobi on the 28th day of
October 1942 at 9 o'clock a.m. to answer a suit by Ezeodimegwu (Pltf)
30 of Orokwu against you.

The Plaintiff claims (A) Possession of that piece of land now occupied
built and farmed on by the Defendants at Orokwu which said piece of
land has been adjudged to be the property of the Plaintiff by the High
Court of the Onitsha Division in an action between the Plaintiff & the
people of Adazi/Awka Division.

*In the
Native
Court of
Nobi.*

(ii) £150 jointly from Defdts being mesne profits.

Issued at Nobi the ninth day of October 1942.

Double fees 6/- (six shillings).

(Sgd.) ?

(Sgd.)

?

Signature of President
or Vice-President.

No. 2.
Originating
Summons,
9th
October
1942,
continued.

C.N.C.

Plaintiff—Ezeodimegwu (M) on behalf of late Chief Aboh of Orokwu
Onitsha Division.

1. Victor Maduka (M)

Defendants all of Umuori

2. Okafor Moka (M)

Awka Division.

3. Onwuzulike Agwu (M)

10

No. 3.

No. 3.

D.O.'s ORDER transferring Suit to High Court of the Enugu.

16th November 1942.

(*Not printed.*)

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 4.

HIGH COURT'S NOTES ordering Plan and Pleadings.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Division.

Holden at Onitsha.

20

No. 4.
High
Court's
Notes
ordering
Plan and
Pleadings,
10th
February
1943.

Before

His Honour Mr. Justice GRAHAM CALLOW, A.J.

Wednesday the 10th day of February 1943.

Suit No. O/18/1942.

EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU

Versus

1. VICTOR MADUKA,

2. OKAFOR MOKA,

3. ONWUZULIKE AGWU OF UMUORI, Awka Division.

Claim per writ. Possession of that piece of land now occupied built 30 and farmed on by the Defendants at Orokwu which said piece of land has been adjudged to be the property of the Plaintiff by the High Court of the Onitsha Division in the action between the Plaintiff and the people of Adazi, Awka Division.

£150 jointly from Defendants being mesne profits.

Rhodes for Plaintiff.

Mbanefo for Defendants.

Plan and pleadings ordered : 30-30 days.

Adjourned to next sessions at Onitsha.

(Intd.) G.C. 40

No. 5.

STATEMENT OF CLAIM.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Judicial Division.

Suit No. .—194

Between CHIEF EZEODIMEGWU on behalf of himself
and the other Chiefs and people of Orokwu Plaintiffs

No. 5.
Statement
of Claim,
23rd
February
1943.

and

10 1. VICTOR MADUKA
 2. OKAFOR MOKA
 3. ONWUZULIKE all of Umuori - Defendants.

1. The Plaintiff is one of the Chiefs of Orokwu and brings this action as such with the knowledge and consent of the Chiefs and people of Orokwu.

2. The Defendants are sued in their personal capacity.

3. The land in dispute has from time immemorial been the property of the Plaintiffs.

20 4. The people of Adazi within recent years made attempts to encroach over the boundary between the Plaintiffs and the Adazis which resulted in an action in the High Court of the Enugu-Onitsha Division and a boundary demarcated by the Court the proceedings and plan in the said suit will be founded upon.

5. The Defendants who with their townspeople were given a portion of land by the Adazis in settlement of a dispute between themselves and the Adazis have occupied the Plaintiffs' land in dispute, built houses and farmed and still farming on it.

6. As a result of the Defendants farming on the said land the Plaintiffs have been deprived of the use of their said land and could not farm it.

30 7. The Plaintiffs therefore claim as per writ of Summons.

Dated at Aba this day of February 1943.

S. B. RHODES,
Plaintiffs' Solicitor.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 6.

STATEMENT OF DEFENCE.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Judicial Division.

Suit No. O/18/1942.

No 6
Statement
of Defence,
filed 13th
March
1943.

Between CHIEF EZEODIMEGWU on behalf of himself
and the Chiefs and people of Orokwu - Plaintiffs
and

1. VICTOR MADUKA
2. OKAFOR MOKA
3. ONWUZULIKE AGWU—All of Umuori Defendants. 10

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim and say that they are natives of, and live at Umuori.

2. The Defendants say that they do not know the land referred to in paragraph 3 of the Statement of Claim and that until it is made clear to them which land is referred to they deny every allegation of fact contained in the said paragraph.

3. As to paragraph 4 of the Statement of Claim the Defendants deny that the people of Adazi in recent years or at any time attempted to encroach over the boundary of Plaintiffs' land and further say that this 20 is not probable since the Plaintiffs' land is not contiguous with the land of Adazi. Between the Plaintiffs' land and Adazi town lies the Defendants' town of Umuori.

4. With regards to paragraph 4 of the Statement of Claim the Defendants further say that they were not parties to the action referred to therein, that the said action was a collusive one and was never contested it being started with a view to oust the Defendants and their people from possession of their land wrongly.

5. The Defendants deny paragraph 5 of the Statement of Claim and say that they have not at any time built or farmed on any land 30 belonging to the Plaintiffs. Where the Defendants built and have always farmed is Umuori land and as such has been in their possession from time immemorial.

6. The Defendants deny paragraph 6 of the Statement of Claim and say that they are not liable to the Plaintiffs on the claim before the Court or at all.

7. The Defendants will plead long possession, Laches and Acquiescence.

Dated at Onitsha this 13th day of March 1943.

L. N. MBANEFO, 40
Defendants' Solicitor.

No. 7.

PROCEEDINGS in the High Court.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Division.
Holden at Onitsha.

Before

His Honour HARRY WADDINGTON, J.
The 8th day of June 1943.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 7.
Proceedings
in the
High Court.

Suit No. O/18/42.

10 EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU

Versus

1. VICTOR MADUKA
2. OKAFOR MOKA
3. ONWUZULIKE AGWU OF UMUORI, Awka Division.

Rhodes for Plaintiff wants case called tomorrow.
Mbanefo for Defendants no objection.
So ordered.

(Sgd.) H. WADDINGTON, J.
Onitsha, 8/6/43.

20

At Onitsha this 9th June 1943.

O/18/42.

Rhodes for Plaintiff.

Mbanefo for Defendants.

Rhodes : We have plan in a previous case ordered to remain in Court

By Court : Plan produced by Plaintiff shows only a boundary line,
which was drawn for purposes of a previous case.

It does not show the land of which Plaintiffs now claim possession.

This will be necessary.

Counsel on both sides propose an adjournment sine die with a view
30 to a settlement being discussed.

To next Sessions.

(Sgd.) H. WADDINGTON, J.
Onitsha, 9/6/43.

At Onitsha this 5th August 1943.

Rhodes for Plaintiff has written to say he must go to Lagos on public
duty—Executive Council, and Legislative Council.

Mbanefo for Defendants.

To next Sessions.

(Sgd.) H. WADDINGTON, J.
Onitsha, 5/8/43.

40

In the
High Court
of Enugu-
Onitsha
Judicial
Division.

No. 7.
Proceedings
in the
High Court,
continued.

At Onitsha the 2nd day of September 1943.

0/18/42 EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU

Versus

1. VICTOR MADUKA
2. OKAFOR MOKA
3. ONWUZULIKE AGWU OF UMUORI.

Egbuna holding Rhodes brief for Plaintiff.

Mbanefo for Defendants.

Egbuna : Rhodes lately returned to Aba.

Not ready to go on.

10

Mbanefo : Entitled to costs.

This is the third adjournment on Plaintiff's application.

Court : Defendants certainly are entitled to costs, but if I make an order, no doubt the client would have to pay, though the fault is not his.

Matter to be mentioned when costs in the cause are assessed.

To 1st October.

(Sgd.) H. WADDINGTON, J.

Onitsha, 2/9/43.

At Onitsha the 30th day of November 1943.

0/18/42 EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU Plaintiff 20

Versus

1. VICTOR MADUKA
2. OKAFOR MOKA
3. ONWUZULIKE AGWU OF UMUORI Defendants

Rhodes for Plaintiff ; Mbanefo for Defendants.

Pleadings filed, and plan by Plaintiff.

Plan marked Exhibit " A " by consent.

Mbanefo : We admit that we are on the part marked in green. We say we always have been there ; it is our land. 30

(Court : Sole issue, as counsel agree, is whether this green area is or is not Plaintiff's property.)

Rhodes : Former action O/65/34 Ezeani and ors. of Umuori *versus* Ezene and Ors, of Adazi.

Tenders Judgment.

Marked by consent Exhibit " B."

Tenders agreement of 2nd March 1938 between Adazi and Umuori (with rough sketch plan attached).

Marked by consent Exhibit " C."

Tenders judgment in suit O/4/40—Orokwu *versus* Adazi Nnukwu, 40 declaring red line on Plan (Exhibit " E " herein) to be the boundary between those 2 villages.

Marked by consent Exhibit " D."

Plan by consent Exhibit " E."

To 1st December.

(Sgd.) H. WADDINGTON, J.

Onitsha, 30/11/43.

At Onitsha the 1st day of December 1943.

0/18/42

EZEODIMEGWU etc.

Versus

VICTOR MADUKA & 2 ors.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

Hearing continues. Two more plans marked by consent Exhibits
" F " and " G ."

Mbanefo says 3rd Defendant Onwuzulike is too ill to come.
Rhodes calls :

No. 7.
Proceedings
in the
High Court,
continued.

(a) PLAINTIFF'S EVIDENCE—Justin Omeje.

*Plaintiff's
Evidence.*

10 1. JUSTIN OMEJE M. 50 Ibo sworn says in Ibo :

Of Orokwu.
Farmer.

(A) Justin
Omeje.

I know the land in this case.

I know boundary fixed by chiefs between Orokwu and Adazi.

I live on that land.

Boundary fixed by Nnobi Chiefs many years ago and confirmed by
Resident O'Connor 2 or 3 years ago.

I know Defendants Victor Maduka, Okafor Moka and Onwuzulike.

They have houses and farms on this disputed land.

20 They came there 3 or 4 years ago.

I have been there myself 30 years.

I remember case between Umuori and Adazi 7 years ago.

Adazis had destroyed houses belonging to Umuori.

That did not occur on this land.

Umuori men have come over the boundary marked with pillars,
to our side of it.

Some of the destroyed houses were solid ones, of mud blocks and
iron roofs.

30 Houses on land now in dispute are all thatched—not substantial
buildings.

My house is " not as much as 2 poles " from 3rd Defendant
Onwuzulike (a pole = 70 yards).

I was established there at time the destroyed houses were built,
and also at time Onwuzulike came.

I remember case between Orokwu and Adazi in 1940 (Suit 4/1940).

Cause of that was Umuori people coming on to our land.

We found that Adazis had given them some land and they had gone
over its boundary on to our land. It was then we brought the action to
get boundary marked between us and Adazi.

40 Adazis did not destroy houses on this land.

Ever since I have known anything about this land—and our people
lived there before my time—our right to the land has never been questioned.

I went with surveyor to make the survey of this disputed area.

Cross-examined by Mr. Mbanefo :

Q. Between Orokwu town and this land there is a large ravine ?
—That is on our own land.

Q. It runs from main road up to Ndide stream ?—No, it is about a
mile long in our village.

Cross-
examina-
tion by Mr.
Mbanefo.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 7.
Proceedings
in the
High Court.

*Plaintiff's
Evidence.
(A) Justin
Omeje,
continued.*

Q. It is your boundary with Umuori?—Umuori would not be there if Adazi had not given them land.

Q. District Officer Onitsha and District Officer Awka met and tried to fix boundary between you and Umuori in 1941?—Yes.

Q. Umuori contended it was that ravine?—No, they said they did not know what boundary the Adazis had told them to keep to.

Q. There are no Orokwu houses on this land?—Yes, there are, mixed up with the Umuori houses.

Q. Your plan Exhibit "A" does not show any?—We have some there. 10

Q. Up to this present action being started, you had no houses on the Umuori side of the ravine?—We have mature trees.

Q. In 1941 why did you not sue the Umuoris as well as the Adazis?—We asked them and they said Adazi had given them the land so we sued Adazi.

Q. Umuori brought a motion to be joined as Defendants?—If they had taken our land "by force" we should have sued them.

Q. Your people opposed it?—We sued the people who had given them the land.

Q. You and Adazi agreed to this boundary without any contest?—It came before Judge; then Resident came on land. Chiefs were called from Agulu to say which boundary. 20

Q. You were a produce trader living in Onitsha?—Yes.

Q. You said you had lived on the land 30 years?—Yes; my house was always there. My mother lived there.

Q. You only went home to settle 6 years ago?—No.

Q. You know boundary between Adazi and Umuori?—(i.e. that of 1938 agreement)—Yes.

Q. None of the destroyed houses were on the Adazi side of that boundary (see red line on Exhibit "G")?—True. 30

Q. You know the houses that were destroyed in 1931?—Those belonging to these 3 Defendants?—No.

Q. You admit they were destroyed?—I don't know.

Q. Their present houses are the houses they rebuilt on the exact spot?—No; there were no houses there at that time.

Q. Why should they leave and build elsewhere?—They want us to destroy them then they could put us in trouble like the Adazis.

Q. What was there to show that 1916 boundary before Resident went there?—A path from motor road to stream.

(B) Ezeodi-
megwu
Abor.

(b) PLAINTIFF'S EVIDENCE—Ezeodimegwu Abor. 40

2. *EZEODIMEGWU ABOR M.* 60 Ibo sworn says in Ibo :

I represent Plaintiffs as their chief.

Farmer.

I know this land.

I accompanied surveyor when he made plan (Exhibit "A").

I know these 3 Defendants.

They live at Nneni.

We sue them now because they have come on to our land, built farm huts and made farms.

I remember Adazis destroying the Umuori houses. 50

I knew those houses.
 Two of them had iron roofs and mud block walls.
 None of them on this present land.
 I was there in 1916 when boundary made by Chiefs of Nobi and Agulu.
 They went on the land to do it.
 Large crowd there—"all Adazi and all Orokwu."
 Both sides kept to that boundary.
 On that occasion Umuori people had nothing to say because they had
 no land there.

*In the
 High Court
 of Enugu-
 Onitsha
 Judicial
 Division.*

No. 7.
 Proceedings
 in the
 High Court.

10 Cross-examined by Mr. Mbanefo :

Q. What caused the dispute of 1916 ?—Adazi sued us in Agulu
 Native Court.

Q. Who was Defendant ?—Chiefs of Orokwu ; Uzochuku now dead,
 and Ometu.

Q. What result ?—Agulu and Nobi people came and settled it by
 "showing us the old boundary."

Q. Any trees planted ?—Yes.

Q. There were no marks ?—There were ; one mango tree is still there.

And there is the old path.

20 Q. That is a path made by Umuori to stream where they draw
 water ?—No ; they dig wells ; they don't go to stream.

Q. What was the path used for ?—From Adazi Ani to Orokwu and
 Agulu.

Q. Is path boundary all way from road to stream ?—Yes.

Q. You live in Orokwu town ?—I live on this disputed land. Family
 live there. Mother died there.

Q. Did you show your house to surveyor ?—No.

Q. You have not got one there ?—It is there.

Q. You live in it ?—Yes ; iron roof.

30 Q. Why did you not show it to surveyor ?—I didn't show it.

Q. You remember case against Chief Ojiakor and others (Exhibit "D") ?
 —Yes.

Q. Present Defendants were on the land at time of that action ?—No.

Q. Umuori people applied to be joined as Defendants then ?—(Motion
 paper marked Exhibit "H" and order on motion Exhibit "I" by
 consent).

*Plaintiff's
 Evidence.*

(B) Ezeodi-
 megwu
 Abor,
continued.

Cross-
 examina-
 tion by Mr.
 Mbanefo.

(c) PLAINTIFF'S EVIDENCE—Ademamo.

(c) Adem-
 amo.

3. ADEMAMO M. 70 Ibo sworn says in Ibo :

A chief of Adazi.

40 Farmer.

I was concerned in case between Umuori and Adazi in which Umuori
 were awarded damages.

We gave Umuori some land instead of the damages.

I remember Chiefs of Nobi and Agulu fixing boundary in 1916.

We put some cement pillars in.

Boundary from road to Nside stream.

I know this land at present in dispute.

It is not within the land given by Adazi to Umuori.

I took part in the raid on Umuori houses.

50 That was not on this land.

In the High Court of Enugu-Onitsha Judicial Division.

Cross-examined by Mr. Mbanefo :

- Q. You know Victor Maduka ?—No.
- Q. Or Moka ?—Yes.
- Q. You know his house ?—Yes, on this land.
- Q. His house was destroyed in 1931 ?—I don't know ; we destroyed many.
- Q. You are related to Chief Ojiako of Adazi ?—Same town ; but no relation.
- Q. Same " family," Adazi Nnukwu ?—Yes.
- Q. You were his servant when he was at his zenith ?—No.

10

Rhodes closes his case.

No. 7. Proceedings in the High Court.

Plaintiff's Evidence.

(c) Ademamo, continued. Cross-examination by Mr. Mbanifo.

Defendants' Evidence.

(d) Victor Maduka.

(d) **DEFENDANTS' EVIDENCE—Victor Maduka.**

1. **VICTOR MADUKA M.** 25 Ibo sworn says in Ibo :
Of Umuori.

I live on this land.

Been there 12 years.

Never been interfered with by any Orokwu man.

Others there before me.

Many there already when I first went there.

I had my wife there in those days.

I was there when Adazis destroyed our houses.

Been there 2 years then.

Mine was one of them.

I built again on the same spot.

Lived there ever since.

No Adazi man has ever challenged me over living there.

I was one of the Plaintiffs—Suit O/65/34 (Exhibit " B ") 4th Plaintiff.

We have a boundary with Orokwu.

(Mbanefo tenders a plan illustrating where it is ; marked Exhibit " J ".)

Boundary is a ravine.

During the years of our disputes with Adazi Orokwu never interfered.

This plan " J " was made before the riot of 1930.

I went with surveyor.

I was a young boy then.

I was helping the surveyor.

No Orokwu man interfered.

I asked no Orokwu man's leave to live there—it is our land.

I remember Resident O'Connor coming out there to try and settle after the case about the destroyed houses.

He went round boundary.

No Orokwu man interfered.

Later on Chief Ojiako of Adazi took money from the Orokwus and told them " to go and fight for the land."

Many Adazis went to gaol as a result of the riot.

One of them Nnoli Ezene is Ojiako's younger brother.

Ojiako also went to gaol.

20

30

40

Cross-examination by Mr. Rhodes.

Cross-examined by Mr. Rhodes :

- Q. You live at Nneni ?—No, but my father does.
- Q. You live in his house ?—No.

Q. Why does your father live at Nneni?—He lives on some land near Nneni.

Q. What kind of house have you on this land in dispute?—Ordinary thatched house.

Q. A farm hut?—No.

Q. You have lived there 12 years?—Yes.

Q. You built it 12 years ago?—No, 10 years ago.

Q. It is 12 years since houses destroyed?—

10 Yes. Q. Did Adazis give you land instead of the £1,200 compensation?—

Q. What land was it?—Same Umuori land.

Q. They just said, keep that land, and we do not owe you £900?—They did not say that.

By Court :

Q. What did happen?—They paid as much as they could and then suggested we should divide the land.

We did not forego the money.

By Mr. Rhodes :

20 Q. According to your plan Exhibit "J" there are many Orokwu people living on what you say is your land; have you ever sued them?—No.

Q. You know David Mbachi?—Yes.

Q. He is on land on your side of ravine (Exhibit "A")?—I never saw house there.

Q. Where Orokwu people farm, there is their land?—On the other side of the ravine.

Q. They are on both sides of the ravine?—No.

By Court :

Q. Did you see Plaintiff's surveyor there?—No.

30 By Mr. Rhodes :—

Q. He was working in your compound?—I did not see him I was not at home.

Q. Did you hear?—Yes.

Q. In 1916 Nobi and Agulu Chiefs fixed boundary between Orokwu and Adazi?—Never heard of it.

Q. You live there?—We live between Adazi and Orokwu.

Q. Did you see Chief Ojiako take money from Orokwu?—Yes.

Q. Were you there?—No, but I saw those who went.

By Court :

40 Q. Do you remember Resident O'Connor coming to your town?—Two or three years ago?—I don't know about it. I had gone to Enugu for three weeks to visit a relation of mine.

To 2nd December.

(Sgd.) H. WADDINGTON, J.

Onitsha, 1/12/43.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 7.
Proceedings
in the
High Court.

*Defendants'
Evidence.
(D) Victor
Maduka,
continued.*

At Onitsha the 2nd day of December 1943.

O/18/42—EZEODIMEGWU etc.

versus

VICTOR MADUKA & 2 ors.

In the
High Court
of Enugu-
Onitsha
Judicial
Division.

No. 7.

Proceedings
in the
High Court.

Mbanefo continues.

(e) DEFENDANTS' EVIDENCE—Okafor Moka.

Defendants'
Evidence.
(E) Okafor
Moka.

2. OKAFOR MOKA M. 50 Ibo sworn says in Ibo :

Of Umuori. Farmer.

I have a house on this land.

There four years when the Adazis destroyed our houses (1932).

Mine was one of those destroyed.

I put it up again same place after that affair was settled.

That would be about 9 years.

Been there ever since.

Never asked leave of any Orokwu man to go there.

No necessity because it is our land.

My being there has never been challenged.

There are many of us living there.

10

Cross-
examina-
tion by Mr.
Rhodes.

Cross-examined by Mr. Rhodes :

Q. Do you know piece of land given to your people by Adazi in settlement of the £900 ?—That is where my house is. That is part of it.

Q. A boundary was fixed between you and Adazi ?—Yes.

Q. Did you find out what boundary was between Adazi and Orokwu ?
—I don't know about that boundary.

Q. In 1916 Chiefs of Agulu and Chiefs of Nobi marked one ?—Never heard of it.

Q. All you have there is a temporary hut ?—No, a proper house.

Q. You went to prison over this land ?—Yes. We fought over it. Some of them went to prison too.

Q. You went because you rebuilt without permission ?—Yes. Later on matter settled and I stayed there.

Q. That is not the land now in dispute ?—It is all one.

Q. Is bit near main road (green on Exhibit " A ") better land than rest of land Adazi gave you ?—It is all same.

Q. Were you there when surveyor John went on the land ?—Yes.

Q. You say Umuori boundary with Orokwu is the ravine ?—Yes.

Q. Plenty Orokwu people living on the disputed area ?—No, but some built houses there when they brought this action but they don't live there.

Q. And farms ?—They planted cassava to show their claim.

Re-
examina-
tion.

Re-examined by Mr. Mbanefo :

Q. When was it Orokwu began to build there ?—About 2 years ago.

Q. None there before that ?—No.

By Court :

Q. Do you say boundaries of your land are the line of pillars marked after the 1928 agreement (red line on Exhibit " G ") and the ravine (Exhibit " A ") ?—Yes.

40

Q. Did you see Resident go on the land 2 years ago?—Yes, but I did not follow him because I did not know what he was doing there.

Q. You have no rights save what you derive from Adazi, in this land?—Not so; this land has always been ours. It is all one land.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

(f) DEFENDANTS' EVIDENCE—Obi Agwu.

3. *OBI AGWU*. M. 50 Ibo sworn says in Ibo :

Of Umuori.

I know Onwuzulike (3rd Defendant).

My full brother.

10 He is in Agulu hospital ill.

I know where he lives.

On land in dispute.

I live there too.

I remember houses being destroyed by Adazi.

I was there at that time and before then and so was Onwuzulike.

His house was destroyed.

He rebuilt it in the same place.

There to this day.

No. 7.
Proceedings
in the
High Court.

*Defendants'
Evidence.*
(E) Okafor
Moka,
continued.

(F) Obi
Agwu.

Cross-examined by Mr. Rhodes :

20 Q. Have you a house of your own there?—Yes.

Q. Who are your neighbours?—Your name not on Plan
(Exhibit "A")?—Victor, Okafor.

Q. Are there any Orokwu people living there?—They came on at
time we went to prison. (1932).

Q. Been there ever since?—There are still there (will not answer).

Re-examined by Mr. Mbanefo :

Q. Have you a fence round house?—Yes.

Q. Who lives next door?—Orokwu people.

Cross-
examina-
tion by Mr.
Rhodes.

Re-
examina-
tion.

(g) DEFENDANTS' EVIDENCE—Unegbu Obo.

30 4. *UNEGBU OBO* M. 70 Ibo sworn says in Ibo :

Of Adazi.

I know Victor and Okafor.

I know their houses.

Our people once claimed that land.

We once destroyed Umuori houses there.

Victor's and Okafor's houses were among those destroyed.

After case in Court which resulted in damages for Umuori we agreed
on a boundary.

Two years ago Orokwu brought an action against Adazi.

40 Chief Ojiako represented Adazi but not all Adazi agreed to his doing so.

I was one of the objectors.

We wrote a letter to the Court.

This is it.

(Rhodes objects; to be marked for identification only at present;
I will rule on admissibility later; marked "K".)

Land where Victor and Okafor have their houses is land we had
dispute with Umuori over.

(G) Unegbu
Obo.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 7.
Proceedings
in the
High Court.

It is Umuori land.
We never had a dispute with Orokwu over it.
A boundary was fixed between us and Orokwu 2 or 3 years ago.
We had no boundary before that.
Before Native Administration came we used to go to Agulu Court.
Nobi Chiefs did not attend there.
Orokwu people did not go there.
Adazi come under District Officer Awka.
Grokwu and Nobi are under District Officer Onitsha.

*Defendants'
Evidence.
(G) Unegbu
Obo,
continued.
Cross-
examina-
tion by Mr.
Rhodes.*

Cross-examined by Mr. Rhodes :

10

Q. Do you know Chief Ademamo (3rd Plaintiff Witness) ?—Yes, but he is not a chief.

Q. Did you take part in the riot ?—Yes, all Adazi were in it.

Q. Ademamo was there ?—Yes.

Q. 27 years ago dispute between Adazi and Orokwu about land ?—
No.

Q. Chiefs of Agulu and Nobi met over it and fixed a boundary ?—
Never heard of it.

Q. Do you know Ndide boundary ?—No.

Q. When boundary fixed between you and Umuori, what was it on 20
the other side (with Orokwu) ?—Ravine. Down to stream (Ndide).
We call it Iyuku.

Q. Have you Adazis a boundary at all with Orokwu ?—We had one
at place where we destroyed the houses. The ancient boundary is there.

Q. Land you gave to Umuori includes that ancient boundary ?—
No.

Q. Then land you gave to Umuori does not go beyond that boundary ?
—Yes it does.

Q. Suppose you had paid the Umuori debt instead of giving them land
where would they be now ?—They would be where they were before. 30

Q. Where you destroyed houses ?—No, towards Nneni at the other
side of the road.

By Court :

Q. Umuori have no rights in the land now in dispute except what
they get from you Adazi ?—True.

(H) Philip
Achikeh.

(h) DEFENDANTS' EVIDENCE—Philip Achikeh.

5. PHILIP ACHIKEH M. 45 Ibo sworn says in English :

Registrar High Court Onitsha.

I produce petition " K. "

Connected with O/4/40.

(Admitted as evidence that the Signatories were men opposed to
Chief Ojiako ; marked Exhibit " K ".) 40

I produce also copy of Court's note of proceedings in suit O/4/40
of 29th October 1940.

(Mbanefo : I tender that to show the claim and in proof that both
parties agreed that Chief Ojiako alone should represent Defendants ;
admitted for this purpose and marked Exhibit " L ".)

Defence closed.

Cross-examined by Mr. Rhodes :

Q. Is this the statement of claim filed in that suit ?—Yes ; (marked Exhibit “ M ”).

Q. And the defence ?—Yes ; three ; one by Thomas for 1st–4th and 6th Defendants ; (marked Exhibit “ N ”).

One by 5th Defendant himself ; (marked Exhibit “ O ”).

One by 7th Defendant himself ; (marked Exhibit “ P ”).

Mbanefo :

Claim for possession and damages.

10

No case for damages.

Mesne profits—no evidence of this.

They base their case purely on suit O/4/1940.

It has no bearing on present case.

We applied in that case to be joined as Defendants.

(Exhibit “ I ”.)

Filed a motion (Exhibit “ H ”).

Stated in our affidavit we lie between Orokwu and Adazi.

We are not bound by that judgment.

Not parties to it.

20

No evidence to show this land was Adazi's and they gave it to us. Agreement Exhibit “ C.”

This stops Adazi from saying their boundary with Orokwu is somewhere else.

Agreement says nothing about Adazi having given any particular piece of land to Umuori.

Much litigation between them.

Judgment for over £1,000 against Adazi.

Their case is Adazi gave Umuori land and Umuori have gone outside it on to Orokwu land.

30

Case of 1940 was never contested.

Nor before Referee.—

They have made out no case.

3 Defendants admitted being there over 12 years.

These are the houses that were destroyed in 1932.

There never was a boundary fixed in 1916.

Defence Exhibit “ N ”—nothing put in issue.

“ K ” and “ L ” show that things were going on which never came to surface.

40 Rhodes : XI N L R 68—issue is which party can prove better title, where claim is recovery of possession.

Exhibit “ M.”

We sued 7 of Adazi. 5 of them admitted 1916 boundary.

Motion Exhibit “ H ” was dismissed because Judge after examining files concluded that whatever rights Umuori had came from Adazi.

2 Adazi witnesses, one of ours, one of theirs.

Former said this is not land given to Umuori by Adazi.

Latter said but for the judgment debt, Umuori would have been on the other side of the road at Nneni.

Their own witness.

50

This land has not one “ permanent ” house on it.

Longest anybody has been there is 14 years.

In the High Court of Enugu-Onitsha Judicial Division.

No. 7. Proceedings in the High Court.

Defendants' Evidence.
(H) Philip Achikeh, *continued.*
Cross-examination by Mr. Rhodes.

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

They went on this piece not more than 4 years ago.
Saying it was given them by Adazi.
Orokwu then sued for a boundary between them and Adazi.
Umuori came there as squatters and then began to expand.
Mesne profits—any profits of the land.
Adjourned C.A.V.

No. 7.
Proceedings
in the
High Court.

(Sgd.) H. WADDINGTON, J.
Onitsha, 2/12/43.

*Defendants'
Evidence.*
(H) Philip
Achikeh,
continued.

No. 8.
JUDGMENT.

10

THE HIGH COURT OF ENUGU.

Onitsha Judicial Division.

EZEODIMEGWU of Orokwu

Versus

MADUKA etc. of Umuori.

Suit No. 18/1942.

No. 8
Judgment,
31st
December
1943.

This suit originated by the issue of a summons in the Nobi Native Court in October 1942.

On Plaintiffs' application, it was transferred to this Court by order of the District Officer Onitsha dated 16th November 1942.

20

Pleadings were filed and various plans are in evidence.

The Plaintiffs are the Chiefs and people of Orokwu who seek to recover possession of land alleged to be in the unlawful occupation of the three individual Defendants.

It is said that other individuals are also in occupation who will be affected by this judgment.

The substance of the suit can be briefly stated thus :

In 1940 there was an action in this Court by Orokwu the present Plaintiffs, against the neighbouring village of Adazi, which resulted in the declaration of a boundary between them shown by the red line on Plaintiffs' plan Exhibit " A " (blue on Defendants' plan Exhibit " G ").

Plaintiffs say that the people of Umuori have been granted land by the Adazi people in extinguishment of a debt due on a judgment of this Court of 1936, and that the Umuoris have gone outside the limits of that land on to the Orokwu side of the boundary of 1940.

Defendants admit that they are on the land as alleged, but say first that the land is their immemorial property, and, second, that the 1940 boundary does not bind them because they were not parties to the action.

Defendants allege that the 1940 action was a collusive one, aimed at getting rid of the Umuoris, who applied to be joined as Defendants, but whose application was refused for reasons which do not appear on the record.

I find no difficulty whatever in reaching a decision in this suit.

The judgment of this Court declaring the Orokwu-Adazi boundary in 1940 still subsists and that boundary is binding on the parties to the action and their privies.

It seems to me to be idle for Counsel to criticise that suit as collusive; so long as the judgment remains, it must be observed.

I may remark incidentally, that I find it difficult to see how any question of collusion could have arisen in the 1940 action, since the parties agreed not to abide by any boundary the referee should lay down between them, but to accept a boundary which had been laid down as long ago as 1916, and which it was the referee's function to discover.

As to the witnesses, there is not much to say; I noted Defendant Victor Maduka as shifty; and Obi Agwu was a bad witness.

10 On the evidence, it is quite clear that the Umuori people have no rights in the land north of the main road (Exhibit "A") except such as they derive from Adazi.

2nd Defendant Okafor—"My house is on land given us by Adazi."

He contradicted this later, saying in reply to the Court, "This land has always been ours."

Witness Unegbu Obo of Adazi, called by the Defence was very definite on this point—

20 "If Adazi had paid their debt, Umuori would be where they were before, towards Nneni at the other side of the road. (Exhibit "A".)

"Umuori have no rights in the land now in dispute save what they get from Adazi."

If, as I find, Umuori have no rights north of the main road save such as they derive from Adazi, it must follow that Umuori have no rights west of the red line on Exhibit "A" the 1940 Orokwu-Adazi boundary, because Adazi have none there.

Therefore Plaintiffs are entitled to succeed on the claim for possession and I accordingly give judgment for them on that part of the claim, in the terms of the writ.

30 As to the £150 damages, this subject was not dealt with in detail in the evidence, and of course in actions of this nature which concern native lands of indeterminate value, it is not possible to bring evidence whereby the Court can arrive at even a rough approximation of the value of the damage suffered.

I therefore assess it at a low figure—£10.

Costs to Plaintiffs assessed at 50 guineas.

All plans in evidence to remain in Court.

(Sgd.) H. WADDINGTON, J.
Onitsha, 31/12/43.

40 Egbuna (Holding Rhodes's brief) for Plaintiffs.
Mbanefo for Defendants.

No. 9.

No. 9.

MOTION for Conditional Leave to Appeal to West African Court of Appeal.

3rd January 1944.

(Not printed.)

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 10.

AFFIDAVIT in support of Motion for Leave to Appeal.

4th January 1944.

(Not printed.)

No. 10.

No. 11.

No. 11.

ORDER granting Conditional Leave to Appeal.

25th January 1944.

(Not printed.)

No. 12.

No. 12.

BOND for Costs on Appeal.

7th February 1944.

(Not printed.)

10

No. 13.
Notice of
Appeal,
8th
February
1944.

No. 13.

NOTICE OF APPEAL.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Judicial Division.
Holden at Onitsha.

Suit O/18/1943.

EZEODIMEGWU on behalf of late CHIEF ABOH
of OROKWU - - - - Plaintiff

20

Versus

- 1. VICTOR MADUKA
- 2. OKAFOR MOKA
- 3. ONWUZULIKE AGWU - - Defendants.

Take notice that the Defendants in the above-named matter on the 25th day of January 1944 obtained conditional leave to appeal to the West African Court of Appeal from the judgment of the High Court delivered on the 31st of December 1943 and that the Defendants intend to prosecute the said appeal.

Dated at Onitsha this 8th day of February 1944.

30

(Sgd.) L. N. MBANEFO
Defendants-Appellants' Solicitor.

No. 14.

MOTION with Affidavit in Support for Final Leave to Appeal.

2nd March 1944.

(Not printed.)

In the High Court of Enugu-Onitsha Judicial Division.

No. 14.

No. 15.

ORDER granting Final Leave to Appeal.

At Onitsha the 4th March 1944.

O/18/42.

No. 15. Order granting Final Leave to Appeal, 4th March 1944.

EZEODIMEGWU on behalf of late CHIEF ABOH of OROKWU

Versus

10

- 1. VICTOR MADUKA
- 2. OKAFOR MOKA
- 3. ONWUZULIKE AGWU of Umuori

Motion for Final Leave to appeal to West African Court of Appeal.
 Ex parte. Motion filed 3/3/44.
 Mbanefo moves.
 Conditions given on 25th January fulfilled.
 Final leave granted.

(Sgd.) H. WADDINGTON, J.

Onitsha, 4/3/44.

20

No. 16.

GROUND OF APPEAL.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Judicial Division.
Holden at Onitsha.

Suit No. O/18/43.

No. 16. Grounds of Appeal, 6th March 1944.

EZEODIMEGWU on behalf of late CHIEF ABOH
of OROKWU - - - - - Plaintiff

Versus

30

- 1. VICTOR MADUKA
- 2. OKAFOR MOKA
- 3. ONWUZULIKE AGWU - - - Defendants.

The Appellants, being dissatisfied with the judgment of the High Court, of the Enugu-Onitsha Judicial Division, Holden at Onitsha, delivered on the 31st day of December 1943, and having on the 4th day of March 1944 obtained Final Leave to appeal therefrom hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth :—

1. The Learned Judge erred in law when he held that the Defendants were bound by the judgment of the High Court case of 1940 between the Orokwus and the Adazis, the Defendants not being a party to that case.

40

*In the
High Court
of Enugu-
Onitsha
Judicial
Division.*

No. 16.
Grounds
of Appeal,
6th March
1944,
continued.

2. The Learned Judge was wrong in holding that the Umuoris (Defendants' people) were the privies of the Adazis and that the Umuoris had no land save what the Adazis gave to them.

3. The Learned Judge was wrong in admitting, and in allowing his mind to be influenced by oral evidence of witnesses, the effect of which was to vary, contradict and/or modify a written agreement to which the witnesses were parties.

4. The Learned Judge failed to direct his mind sufficiently as to the effect of the agreement dated 2nd of March 1938 made between Umuori and Adazi. 10

5. The Learned Judge was wrong in saying that the High Court case of 1940 was not a collusive action.

6. There being evidence that the Defendants have been on the land for more than 12 years, the Learned Judge was wrong in that he did not consider the questions of Laches and Acquiescence so patently raised by both the pleadings and evidence.

7. The application of the Umuoris (including the Defendants) to be made a party to the High Court case of 1940, having been opposed by the Adazis and the Orokwus and by the Court, the Learned Judge was wrong in holding that the Defendants were 20 bound by it, and in allowing the said case to influence his mind in reaching a decision in the present action.

8. The Learned Judge misdirected himself in the following passages of his judgment :—

(A) "It seems to me to be idle for Counsel to criticise that suit is collusive; so long as the judgment remains, it must be observed."

(B) "On the evidence, it is quite clear that the Umuori people have no rights in the land north of the main road (Exhibit 'A') except such as they derive from Adazi." 30

9. Verdict against the weight of evidence.

Dated at Onitsha this 6th day of March 1944.

(Sgd.) L. N. MBANEFO
Defendants-Appellants' Solicitor.

No. 17.
JUDGMENT.

Suit No. O/18/1942
WAC. 2048.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL.
Holden at Lagos, Nigeria.

No. 17.
Judgment,
3rd May
1944.

3rd day of May 1944.

Before :

Their Honours :

10 SIR DONALD KINGDON, Chief Justice, Nigeria—President.
FRANCIS HORACE BAKER, Puisne Judge, Nigeria.
NEVILLE JOHN BROOKE, Puisne Judge, Nigeria.

Between EZEODIMEGWU on behalf of late CHIEF
ABOH of OROKWU

Plaintiff-
Respondent.

and

1. VICTOR MADUKA
2. OKAFOR MOKA
3. ONWUZULIKE AGWU

20 all of Umuori, Awka Division

Defendants-
Appellants.

T. E. Nelson-Williams (with him L. N. Mbanefo) for Appellants
S. B. Rhodes for Respondent.

Read by the President.

By their writ the Plaintiff-Respondent claimed :—

30 “ Possession of that piece of land now occupied built and
“ farmed on by the defendants at Orokwu which said piece of land
“ has been adjudged to be the property of the plaintiffs by the
“ High Court of the Onitsha Division in the action between the
“ plaintiff and the people of Adazi, Awka Division.
“ £150 jointly from defendants being mesne profits.”

The action was commenced in the Native Court of the Nobi area,
Onitsha Division, and was transferred for trial in the Enugu-Onitsha
Division of the High Court.

In the result the Plaintiffs succeeded in their claim for possession in
terms of the writ and were granted £10, and 50 guineas costs.

Against that judgment the Defendants have appealed to this Court.

40 The area of land in dispute is shown coloured green in the plan
Ex. “ A ” put in by the Plaintiffs. The Eastern boundary of that land
is the same as the red line in another plan (Ex. “ F ”) which marks the
Western boundary of a strip of land described in Ex. “ F ” as “ land of
Adazi allowed Umuori.”

The Eastern boundary of that strip so described is shown by a blue
line in Ex. “ F .”

*In the
West
African
Court of
Appeal.*

No. 17.
Judgment,
3rd May
1944,
continued.

In another plan (Ex. "G") put in by Defendants the same Eastern boundary is shown by a red line, and in both "F" and "G" all land East of that line (blue in "F" red in "G") is shown as "Land of Adazi."

In yet another plan (Ex. "E") the line red in "F" is also shown in red.

The Southern end of all these lines rests on the Nobi-Adazi road. In plans "A" and "F" the land south of this road is shown as "land of Nneni," whilst in plan "G" it is shown as "Land of Umuori"; and there is yet another plan Ex. "J" which shows Umuori land as both sides of the road. This last plan was apparently prepared for the Umuoris for some previous litigation, but not used in any case until the present. 10

There is a long history of disputes over land between the Orokwas, the Umuoris and the Adazis. Apparently as long ago as 1916 the Chiefs of Nobi and Agulu settled a boundary line between the Orokwas and the Adazis, the Adazis having sued the Orokwas in the Agulu Native Court. Later, according to the Plaintiffs (who contend that the Umuoris have never had any interest in any land North of the Nobi-Adazi road, except what they acquired from the Adazis), the Umuoris crossed the road and squatted North of the road. This led to a dispute between the Umuoris and the Adazis and in 1931 the Umuoris brought an action against the Adazis claiming a declaration of title. They lost that action, whereupon the Adazis, over-rating the effect of their successful defence of the action riotuously destroyed the houses of the Umuoris on the disputed land. For this act they were first prosecuted criminally and convicted and then sued civilly for damages by the Umuoris. In that civil suit O/65/34 the Umuoris were awarded against the Adazis damages amounting to £1,127.11.1 and costs. After a few years when it appeared that the Adazis could not pay such a large sum, the parties i.e. the Umuoris and the Adazis, came to an amicable agreement in settlement of the judgment debt. In passing we may say that we think that great credit redounds to Mr. Mbanefo (of Counsel for the Appellants in the present case) for having brought about that amicable settlement. By the Agreement, which is in writing and dated the 2nd March, 1938, the Umuoris agreed to accept £300 in settlement of the judgment debt and in consideration of this the Adazis agreed that the boundary between them should be that shown by the red line in Ex. "G" (blue in "F"). This was allowing the Umuoris to extend considerably further East than they had ever before claimed to do. The agreement is naturally silent as to the Western boundary of the Umuori's land. 20 30

Subsequently, the Orokwas allege, the Umuoris started coming on to their land West of the strip marked in Exhibits "A" and "F" "Land of Adazi allowed Umuori," and put up huts and cultivated farms on the area coloured green in Ex. "A." Before taking action against the Umuoris in respect of this trespass, the Orokwas thought it prudent to get their ancient boundary with the Adazis clearly established in the Courts. They accordingly commenced a suit against the Adazis which became suit No. O/4/1940 in the Enugu-Onitsha Division of the High Court. The Umuoris applied to be joined as Defendants to this suit, but their application was refused. 40

The High Court referred the question of the Boundary between the Orokwas and the Adazis to the Resident of the Onitsha Province as 50

Referee. He pronounced in favour of the boundary fixed by the Nobi and Agulu Chiefs in 1916 and after being shown that boundary by some of the Nobi Chiefs fixed it as shown by the red line in Ex. "E" (same as the red line in "F"). That was the line claimed by the Orokwus, and although the Adazis had contended for a line further West (shown in blue in Ex. "E") they also accepted the Referee's report and judgment was given accordingly.

*In the
West
African
Court of
Appeal.*

No. 17.
Judgment,
3rd May
1944,
continued.

Thereafter the Orokwus instituted the present action against the Umuoris.

10 The Umuoris contend that they have always had land on both sides of the Nobi-Adazi road, that on the North of it lying between the Orokwus and the Adazis and extending to the West as far as the ravine shown in plan "A" by two parallel black lines to the West of the area coloured green. They claimed to have been on the land in dispute from time immemorial. They allege that the suit No. O/4/40 was a collusive one designed by the Orokwus and Adazis to squeeze them, the Umuoris, out of their ancient heritage North of the road.

They contend that, in any case, since they were not parties to that suit, they are not bound by the judgment in it.

20 Failing success of their claim to ownership and possession from time immemorial they claim to have been in undisturbed possession of the land in dispute for a period sufficiently long to entitle them to resist the present claim by the Orokwus to recover possession.

They plead long possession, laches and acquiescence. The learned trial Judge made two findings of fact which appear to be conclusive in the decision of the question in issue. They are (1) that suit No. O/4/40 was not a collusive one; and (2) "that the Umuori people have no rights in "the land north of the main-road except such as they derive from 'Adazi'."

30 Having carefully examined the evidence and the plans and listened to the able argument of Counsel, we have come to the conclusion that both these findings are right and we agree with them.

The second of these findings disposes of one of the main contentions of the Appellants, viz.:—that the learned trial Judge was wrong in applying the 1940 judgment to the present case, since by it the Umuoris become the privies of the Adazis in the 1940 action.

40 For the rest, it is true that the learned trial Judge did not specifically deal with the second string to the Umuori's bow, namely, long possession, laches and acquiescence but we think that the second of the above findings "no rights," . . . "except etc.," is a sufficiently clear negating of the Umuori's claim to retain possession on any of these grounds.

We can see no sufficient ground for refusing the Orokwu's claim either on the ground of long possession by the Umuoris or on the ground of laches or acquiescence by the Orokwus.

For these reasons the appeal is dismissed with costs assessed at 50 guineas.

(Sgd.) DONALD KINGDON
President.

(Sgd.) FRANCIS H. BAKER
Judge.

50

(Sgd.) N. J. BROOKE
Judge.

ORDER granting Special Leave to Appeal.

No. 18.
Order
granting
Special
Leave to
Appeal,
4th June
1946.

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of June 1946.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. TOMLINSON
LORD SIMONDS	MR. STRACHEY
MR. SECRETARY WESTWOOD	



WHEREAS there was this day read at the Board a Report from the 10
Judicial Committee of the Privy Council dated the 22nd day of May 1946
in the words following viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there was
referred unto this Committee a humble Petition of Victor Maduka
Okafor Moka and Onwuzulike Agwu of Umuori in the matter of an
Appeal from the West African Court of Appeal between the
Petitioners Appellants and Ezeodimegwu on behalf of late Chief
Aboh of Orokwu Respondent setting forth (amongst other matters) :
that the Petitioners were Defendants in an action brought against 20
them by the Respondent in the Native Court of the Nobi area
Onitsha Division Nigeria : that the action was transferred to the
High Court Enugu-Onitsha Division : that the Respondent claimed
possession of certain land now occupied built and farmed on by the
Petitioners and also claimed £150 mesne profits ; that the Respon-
dent relied on the boundary demarcated by consent in a previous
action which was settled between himself and a tribe called the
Adazish that the Petitioners applied to be joined as parties to that
action but their application was refused : that the Respondent
claimed that the said boundary should be held to be the boundary 30
between himself and the Petitioners : that the Petitioners denied
that they were bound by the consent Judgment in the said action
since they were not a party thereto and said that the demarcation
of the boundary between the Respondent and the Adazis could not
affect their title to land in dispute which lay between the Respondent
and the Adazis and of which they were in possession at the time of
the said action in 1940 and of which they had been in possession
from time immemorial : that on the 2nd December 1943 the High
Court gave judgment for the Respondent for possession of the said
land and instead of the amount claimed by way of mesne profits 40
namely £150 awarded the sum of £10 damages : that the learned
Judge of the High Court decided that the Judgment of the Court
declaring the Orokwu-Adazi boundary in 1940 was binding on the

parties to the action and their privies : that he concluded that the Petitioners came within the latter designation although they applied to be joined as parties to the action and repudiated any privity between themselves and the Adazis : that the learned Judge based his decision on his finding that the Petitioners have no rights to the land claimed save such as they derive from the Adazis and since the Adazis (he said) have none owing to the 1940 consent Judgment it follows that the Petitioners have none : that this view was upheld by the West African Court of Appeal which gave Judgment on the 3rd May 1944 : And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the West African Court of Appeal dated the 3rd May 1944 or for such other Order as to Your Majesty in Council may seem fit :

*In the
Privy
Council.*

No. 18.
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10

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the West African Court of Appeal dated the 3rd day of May 1944 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

20

“ AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30

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

E. C. E. LEADBITTER.

*Exhibits.***EXHIBITS.**

“ B.”
 Judgment
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B.—JUDGMENT of the High Court in Suit O/65/1934—P. O. Ezeani and 16 Others versus Nnoli Ezene and 29 Others.

PROTECTORATE OF NIGERIA.

In the High Court of the Onitsha Judicial Division.

Holden at Onitsha.

Before :

His Honour CECIL GERIANT AMES, Assistant Judge.

The 29th day of June 1936.

O/65/34. 10

1. PETER O. EZEANI
2. CHRISTOPHER OBIORS
3. HENRY EZEANI
4. VICTOR MADUKA
5. EKEMEZIE OFODUM
6. ONWUZULIKE ONWEGHALA
7. OKEKE MUOGBUA
8. NUOJEKE IFEWULU
9. OBI AGWU
10. OKAFOR MOKA
11. ONYEGBUNA
12. OKEKE AKABUIKE
13. EJIDIKE IKEWULU
14. NOUBUISI AKABUIKE
15. JACOB ONYEKWELU
16. NWANKWO
17. NWADUME

20

Plaintiffs

Versus

1. NNOLI EZENE
2. OBEDUM EZERUMBA
3. ONYEKANWA ANETO
4. AGULEFO OKEKE
5. NORBERT CHIBUO
6. CYPRIAN OKOYE
7. OGUADINMA EJIOFOR
8. OBIDIEGWU OKEKE
9. UDEGBUNAM IKERI
10. JEREMIAH OKEKE
11. MADUELOSI ONYEJEKWE
12. CAJETAN OKOYE
13. IKEGWUONWU OKAFOR
14. EZEKWAM AZORUKWAM
15. UDECHUKU EZEANI
16. WILLIAM EZIMOHA
17. HENRY OKEKE
18. UDEOZO

30

40

	19. ADRIAN EGBOGU	<i>Exhibits.</i>
	20. MATTHIAS NWAFOR	“ B.”
	21. COLUMBA IGBOANUGE	Judgment
	22. JOHNSON OBI	of the High
	23. AZORUKWAM OMEJIAKO	Court in
	24. IBEAGBATAONWU OKAFOR	Suit
	25. UMEANO OKERIJI	O/65/1934
	26. ILOJIANYA EZENWAKWA	—P.O.
	27. ACHIKE OKOYE	Ezeani and
10	28. ANYAKORA ANAGBUO	16 Others
	29. AGUNWA EZISI	<i>versus</i>
	30. NWOKOYE ONWUCHI	Nnoli Ezene
		and
		29 Others,
		29th June
		1936,
		<i>continued.</i>
		Defendants.

JUDGMENT.

This is a re-trial, in accordance with an order of the West African Court of Appeal, dated the 26th of June 1935.

The claim, which is as it was before except that it had been amended, with leave, to read “ general and special damages ” instead of “ Special damages ” is for £1,935 11s. 11d., being the total value of the buildings and personal property of all of the Plaintiffs, said to have been destroyed and/or
 20 looted by the Defendants in a riot, which occurred in December 1932. Details of the claim of each particular Plaintiff are given and vary from £867 13s., that of Peter Ezeani, to £13 9s. 6d., that of Ndubuisi Akabuike.

One of the parties in the former hearing (the then 26th Defendant) won in the Appeal Court. Except for his disappearance from the case, the parties are the same as before.

The questions which have to be decided seem to me to be as follows :—

- (1) Did the Defendants destroy and/or loot the Plaintiffs' buildings and personal property ?
- (2) If so, are the Plaintiffs entitled to recover damages
 30 therefor ?
- (3) If so, how much ?

My answer to the first question is that I find it to be a fact that they did destroy and loot buildings and personal property of the Plaintiffs. (The question of how much property was destroyed is dealt with under question No. 3.)

I should add perhaps that many others (probably most of the town of Adazi) also took part in the riot, in which the destruction of the Plaintiffs' property occurred. The Defendants did not apply for any other persons to be joined as Defendants.

40 They were not represented by Counsel at this re-hearing but they were when the case started and when it was still at the proper stage for the making of such an application.

I should also mention the following, before going on to the next question. The Defendants say that the Plaintiffs also took part in the riot. But I find that not to be so. The Defendants seem to base this assertion on the fact that after the riot, when all the Defendants were convicted of riot and sent to prison, the Plaintiffs were also convicted and sent to prison. And so they were, but not for riot—but for something

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which they did in August 1932. (The riot was not until December.) I notice that in the judgment given at the former hearing of this case, the following statements occur :—

“ There is no doubt that all the Defendants except Obiasulu (23rd witness for d.) were convicted for riot. A number of witnesses for Plaintiffs admit that they were convicted for the same offence . . . There were Umuori people convicted of taking part in the same riot.”

Those statements were made on the evidence then before the Court. But I am in a better position than this Court then was, because a copy of the criminal case against the Umuori people has been put in as evidence in this re-hearing. The case in question is No. 102/32 of Awka—tried by the District Officer Awka in the Provincial Court of the Onitsha Province. (The riot case in which the present Defendants were convicted was 103/32 of Awka.) The charge in case 102/32 was not riot, nor was it about anything happening in December 1932. The charge was “ Forcible entry contrary Section 81 of the Criminal Code ” and the particulars were :—

“ Accused being natives of Umuori in Onitsha Province did in or about the month of August 1932, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace enter on land known as ‘ Umuori lands,’ situated in the Awka Division and erect houses thereon, the land being at the time in actual and peaceable possession of the inhabitants of Adazi Nukwu.”

The accused were twenty Umuori men and they were all convicted. Fifteen of them were fifteen of the present Plaintiffs. Another, who was convicted, was Okeke Agbakue. He is a Plaintiff, if he is the same man as Okeke Akabuike. There is no evidence on this point. And the other Plaintiff is Okeke Muogbua, who is in this case instead of his father—now dead but alive at the time of the riot.

This criminal case 102/32 puzzles me, because no breach of the peace occurred in August, nor does it seem clear that their August entry was made in such a manner. No breach of the peace occurred until December and then it was apparently due not so much, if at all, to the August entry, but to a December event—the taking of grass by the Plaintiffs for thatching a place where the rioters claimed the exclusive right to take grass. But be that as it may, the Plaintiffs were convicted on account of their August entry—and did not apparently take any steps to have it set aside—but were not convicted of riot in December (or at any time).

I now come to the second question—“ Are the Plaintiffs entitled to recover damages therefor ? ”

In my opinion they are. They are not the owners of the land and do not claim to be. The village of Umuori to which the Plaintiffs belong, had, in its collective capacity brought an action against the village of Adazi to which the Defendants belong in its collective capacity, for a declaration of title to land “ known as Umuori land,” which seems to have included (no plans available) that on which the Plaintiffs’ buildings and property were. The case started in the Provincial Court, and thence went by appeal to the Supreme Court and finally by appeal to the Full Court. The Umuori village failed in the case in all Courts.

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The Plaintiffs' claim that they had permission to settle there, from the Chief of Adazi. And there is no doubt that the Chief of Adazi did give Peter Ezeani, the 1st Plaintiff, permission, of some kind, to be there. He was there with the knowledge and consent of the Chief of Adazi and so could not be suddenly ejected by force. In fact it is quite obvious that the Chief had no objection to his being there—nor probably had any of his people. Peter was " *persona grata* " perhaps because of his relationship to Adazi through his mother, and/or perhaps because, being a trader in a largish way, the Adazi people found him useful. What upset the Adazi people was not the presence there of Peter but of the other Umuori people—the other Plaintiffs—who followed him there (and they have my sympathy). (It must have been most provoking to see these Umuori people come and build on the land after all the litigation that there had been between the two villages about it), and what set the spark to the gun-powder of riot was not the presence there of these Umuori people so much as their collecting grass in a place where Adazi thought—possibly quite rightly—that they had the exclusive right to collect grass.

The agreement between Peter Ezeani and the Chief was not a scientific one, and it is not possible to say if it included consent to bring all of these followers or any of them.

The collection of houses had become known, apparently as Peter's settlement, which looks as though it might have included it.

But it does not really matter whether it did or not. These followers had been there since August, and it was known that they were there, and that they had built houses there. No one interfered with them until December.

It may well be that the true owner of this land could lawfully have ejected them and have used a reasonable degree of force in doing so at the beginning of their occupation of the land on which they built their houses ; but there is a limit to the period within which an owner can do that. This is clear from the judgment of the Court in " *Browne versus Dawson* " (10 Law Journal W.B. 7—of which an extract is set out in " *Cockle and Ribberts Common Law Cases* "—2nd Edition—at page 482, I have no full report of the case).

" . . . a mere trespasser cannot, by the very act of trespass, immediately and without acquiescence, give himself what the law understands by possession, against the person whom he ejects (and drive him to produce his title) if that person can without delay, reinstate himself in his former possession."

What constitutes " *delay* " must vary with the circumstances. In my opinion the period of August to December was sufficiently long to put an end to that right (assuming that the Defendants as people of Adazi were proper persons to have exercised it) in the circumstances of this case. They lived almost cheek by jowl with the Plaintiffs, and knew well what was going on ; and the people of Adazi, or some of them, were trading with the Plaintiffs or some of them. The Defendants must be assumed to have acquiesced.

If, therefore, the Defendants had any rights against the Plaintiffs in December, they were not rights of sudden and forcible ejection. It is not necessary consequently to consider whether the force applied was merely or exceeded " *reasonable force*."

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Nor is it necessary to decide whether the Defendants are the owners or amongst the collective owners of this land. That is not before me—and this case is not a claim for a declaration of title. If it were, I should not have jurisdiction to try it.

The Defendants have sought to justify their riotous action by saying that the land was Adazi land, and a copy of the Full Court judgment on which they rely has been admitted as evidence. I now observe that it is certified as a true copy not by the Registrar of the Full Court but by a Registrar of the Onitsha Provincial Court; it is therefore presumably a copy of the copy sent by the Full to the Provincial Court—but no objection was raised to its admissibility when it was tendered. 10

This judgment concludes as follows:—

“ . . . The judgment for the Defendants ” (i.e. Defendants also in this case) “ does not carry with it any declaration of title in favour of the Defendants.”

That judgment does not therefore support their contention. Nevertheless they may be the real owners—I should think it most probably that they are—but I repeat that this case does not have to determine that. What I say is that even assuming that they are and/or were in December 1932, they had in my opinion, lost, by delay and acquiescence, any right of forcible ejectment which they might otherwise have had. 20

This applies to the destroyed buildings and also to the personal property, which was in them.

I now come to the third question—which was: “ How much damages are the Plaintiffs entitled to recover ? ” The answer is the total value of the buildings and property destroyed, whatever that may be.

In Awka Criminal Case, 103/32—the riot case, in which the Defendants were convicted—there was also a charge and conviction of stealing “ a quantity of building materials and trading goods to the value of about £100, the property of the aforesaid Peter Ezeani and 19 others.” This is the case on which the Plaintiffs rely as evidence that the Defendants took part in the riot. 30

Can the Plaintiffs now claim more than that £100? I think that they undoubtedly can; because it is apparent from the minutes of that case that the £100 was not intended to refer to the total property destroyed or looted but only to that part of it, which was recovered by the police. The inventory of property, Exhibit “ A ” in the case, was stated by Police Inspector Grey Awani to be an inventory of property looted and recovered. Peter Ezeani stated that the value of his own property taken was £855. And two days before that trial started he and the other Plaintiffs had submitted to the District Officer Awka a list of “ our houses and properties destroyed ”—which totalled £1,935 11s. 11d., the amount now claimed. 40

I must confess the great difficulty in deciding how much their destroyed buildings and property were worth. I should be very chary of accepting the Plaintiffs’ details as correct, in spite of the fact that they state in evidence that they are. It is but human, when viewing in retrospect property, which has become lost to its owner, to view it through rose-coloured spectacles and also to assume that the memory is correct when there is no way of checking the memory. The lists given by most 50

of the witnesses are so long and minutely detailed that much more than ordinary memory would be necessary to ensure their accuracy. The Plaintiffs all appear to me to be ordinary people, and no more, just as no less, than ordinary people and so, no doubt, their memories are as fallible, and their spectacles are rose-coloured, as those of ordinary people are apt to be.

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The only method available to me now after this lapse of time is the arbitrary and unsatisfactory one of going through the list with a critical eye and a blue pencil and reducing items which seem excessive (e.g. articles of clothing, all of which seem to have been priced as if brand new) and deleting those, which seem improbable (e.g. one man, who had only a few pots and plates in his house, claims to have had £10 10s. 0d. in cash in the house), and those which are not sufficiently described to enable me to say either if they are probable or if the value is reasonable (e.g. " 1 box contents " value £2 10s. 0d., with no indication of the kind of content). By this method I arrive at a total of £1,127 11s. 1d. which is made up of the following portions :—

						£	s.	d.
	1st Plaintiff	Peter Ezeani	..	..	..	552	5	11
20	2nd "	Christopher Obiora	..	..	..	341	6	6
	3rd "	Henry Ezeani	..	..	..	36	9	7
	4th "	Victor Maduka	..	..	..	13	1	3
	5th "	Ekemezie Ofodum	..	..	..	14	3	2
	6th "	Onwuzulike Onwaghala	..	..	..	23	1	2
	7th "	Okeke Muogbua	..	..	..	12	1	7
	8th "	Muojeke Ifewulu	..	..	..	10	14	3
	9th "	Obi Agwu	..	..	..	18	0	5
	10th "	Okafor Moka	..	..	..	15	9	4
	11th "	Onyegbuna	..	..	..	13	6	7
30	12th "	Okeke Akabuike	..	..	..	14	13	3
	13th "	Ejidike Ikewulu	..	..	..	22	18	1
	14th "	Ndubuisi Akabuike	..	..	..	10	0	0
	15th "	Jacob Onyekwelu	..	..	..	10	0	0
	16th "	Nwankwo	..	..	..	10	0	0
	17th "	Nwadume	..	..	..	10	0	0
						£1,127 11 1		

Before concluding, I cannot refrain from making the following adverse comments about the " particulars of claim," which were filed in Court by a legal practitioner on behalf of the Plaintiffs.

40 The particulars are in two parts—a summary showing the claim of each Plaintiff, with the grand total at the bottom, and attached to his summary are long and minutely detailed lists showing how the claim of each Plaintiff is made up, these lists are separately totalled and the totals extended across the page and added at the end into the grand total. All this is as it should have been, had it been neatly and accurately done.

It is, however, far from being either.

The summary was written by hand. As the fifteen pages of the details were typed, the summary could have been typed. Its being in manuscript would not have mattered had it been legible. The first item is quite

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illegible and one has to refer to the detailed list of the first Plaintiff to find out what the figures shown against his name in this summary are meant to be.

Also in carrying the total of the eleventh Plaintiff from the detailed list to this summary a mistake of 3s. has been made.

Also the names of the Plaintiffs appear in this summary in a different order from that in which they appear in the title of the case. This leads to confusion which is quite unnecessary.

So much for the summary. Now for the lists of details.

The claims of the last four Plaintiffs contain only one item each 10 (a building and its alleged value).

The other thirteen lists vary in length, from half a sheet of foolscap to three pages of foolscap. Their length does not seem to me to be any reason why they should not have been added up correctly.

No less than six out of these thirteen lists have been added up incorrectly, namely the following :—

No.	Name.		Incorrect total shown in the lists.	Correct total.
1.	Peter Ezeani	.. ..	£876 13 0	£867 12 6 20
3.	Henry Ezeani	.. ..	84 10 10	84 7 10
5.	Ekemezie Ofodum	.. ..	37 8 4	27 7 4
6.	Onwuzulike Onwaghala	.. ..	46 9 9	46 9 0
11.	Onyegbuna	.. ..	25 17 1	25 19 4
12.	Okeke Okabuike	.. ..	31 2 5	31 0 11

The incorrect total of £25 17s. 1d. is that already mentioned as having been incorrectly carried across to the summary, where it was shown as £25 14s. 1d. So we have two different figures for this Plaintiffs' claim—neither of which are correct.

P. E. G. ACHIKEH,

30

Registrar.

30/11/43.

C.—MEMORANDUM OF AGREEMENT.

Exhibits.

Onitsha 2nd day of March 1938.

"C."

Memorandum of Agreement dated 2nd March 1938.

BETWEEN Chief Ojiakom Nnanyelugo, Enidom, Igweilo, Okpala, Unegbu Obi, Okafor Ebeka, Onwulu, Nnabogu, Ezeadofu, Okafor Mbeghaku all of Adazi as representing the people of Adazi and hereinafter collectively called the elders of Adazi of the one part and Nnoli Ezene, Obedum Ezurumba, Onyekaonwu Aneto, Agulefe Okeke, Norbert Chigbuo, Cyprian Okafor, Oguadinma Ejiofor, Obidiegwu Okeke, Udegbunam Ikeri, Jeremiah Okeke, Maduelosi Onyejekwe, Cajetan Okoye, Ikegwuono Okafor, Ezekwem

10 Azorukwam, Udechuku Ezeani, William Ezimcha, Henry Okeke, Udeozo Okafor, Adrian Egbogu, Mathias Nwafor, Columba Igboanugo, Johnson Obi, Azerukwam Umejiako, Ibeagbataonwu Okafor, Ilojiana Ezenwaka, Achike Okoye, Anyakora Anegbua, Agunwa Ezisi, and Nwokoye Onwuchi of Adazi—hereinafter collectively called the Defendants of the second part and Peter Ezeani, Christopher Obiora, Henry Ezeani, Victor Maduka, Ekemezie Ofodum, Onwuzuluike Onwaghala, Okeke Muogbua, Muojeke Ifewulu, Obi Agwu, Okafor Moka, Onyegbuna, Okeke Akabuike, Ejidike Ifewulu, Ndubuisi Akabuike, Jacob Onyekwele, Nwankwo and Nwadume of Umuori hereinafter collectively called the releasors.

20 1. Whereas a writ of " fieri-facias " has lately been issued at the instance of the releasors for the attachment of real and personal properties of the Defendants in execution for the sum of £1,236 4s. 1d. still due on judgment and costs awarded in favour of the releasors against the Defendants in a suit between the releasors and the Defendants (Suit No. O/65/34).

2. And whereas the elders of Adazi feel that the execution of the said writ will inevitably affect the interests of the people of Adazi adversely.

3. And whereas it has been agreed between the elders of Adazi the Defendants and the releasors as follows :—

30 (A) that the boundary between Adazi and Umuori should be as delineated on the map attached herewith and that the people of Adazi should pay to the releasors the sum of £300 for and in full satisfaction of the said Judgment and costs, the said £300 to be paid as follows :—£100 to be paid on the 31st of May 1938 and £50 to be paid on the 31st of January of each succeeding year until the said sum of £300 is paid off on the 31st of January 1942

40 NOW THE PARTIES have this day agreed that in consideration of the said boundary having been so demarcated and the sum of £300 to be paid in the manner aforesaid for and in full satisfaction of the said judgment and costs as aforesaid the said releasors hereby release and discharge the said Defendants from all claims and demands whatsoever which they the said releasors now have or at any time hereafter may have or but for the said agreement could or might have had against the said Defendants for or by reason or in respect of the said judgment debt and costs or for or by reason of any matter or thing in anywise relating thereto And they the said releasors hereby agree that all processes issued or to be issued in respect of the said judgment and costs shall forthwith be stayed or withdrawn and that they will give all necessary consents to any application which may be made by the said Defendants for that purpose.

50 IN WITNESS WHEREOF the parties hereto have hereunder set their hands or made their marks the day and year first above written.

Exhibits.
 "C."
 Memorandum of Agreement dated 2nd March 1938, continued.

Signed by making their marks (they being illiterates) and delivered by the above named elders of Adazi and Defendants after the above written memorandum had been translated from English into Ibo by L. N. Mbanefo and fully explained to them and they appeared perfectly to understand the same.

	His x mark	CHIEF OJIAKO	His x mark	
NNOLI EZENE		NNANYELUGO		
OBEDUM EZURUMBA	" "	ENIDOM	" "	
ONYEKAONWU ANETO	" "	IGWEILO	" "	
AGULEFO OKEKE	" "	OKPALA	" "	10
NORBERT CHIGBUE	" "	UNEGBU OBI	" "	
CYPRIAN OKAFOR	" "	OKAFOR EBEKA	" "	
OGUADINMA EJIOFOR	" "	ONWULU	" "	
OBIDIEGWU OKEKE	" "	NNABOGU	" "	
UDEGBUNAM IKERI	" "	EZEADOGU	" "	
JEREMIAH OKEKE	" "	OKAFOR MBEGBAKU	" "	
MADUELOSI ONYEJEKWE	" "	ANYAKORA ANEGBUE	" "	
CAJETAN OKOYE	" "	AGUNWA EZISI	" "	
IKEGUONWU OKAFOR	" "	NWOKOYE ANWUELM	" "	20
EZEKWEM AZORUKWAM	" "			
UDECHUKWU EZEANI	" "			
WILLIAM EZIMOHA	" "			
HENRY OKEKE	" "			
UDEOZO OKAFOR	" "			
ADRIAN EGBOGU	" "			
COLUMBA IGBOANUGO	" "			
JOHNSON OBI	" "			
EZORUKWAM UMEJAKO	" "			
IBEAGBATONWU OKAFOR	" "			
ILOJIANYA EZENWAKA	" "			
ACHIKE OKOYE	" "			30

Witness to marks

L. N. MBANEFO

2/3/38.

Signed by making their marks (they being illiterates) and delivered by the above named releasors after the above written memorandum had been translated from English into Ibo by P. O. Ezeani and fully explained to them and they appeared perfectly to understand the same.

	His x mark	P. O. EZEANI	(Sgd)	
OKEKE AKABUIKE		CHRISTOPHER OBIORA	His x mark	
EZIDIKE IFEWULU	" "	HENRY EZEANI	" "	40
NDUBUISI AKABUIKE	" "	VICTOR MADUKA	" "	
JACOB ONYEKWELE	" "	EKEMEZIE UFODUM	" "	
NWANKWO	" "	ONWUZULUIKE	" "	
NWADUME	" "	ONWAGHALA	" "	
		OKEKE MUOGBUA	" "	
		MUOJEKE IFEWULU	" "	
		OBI AGWU	" "	
		OKAFOR MOKA	" "	
		ONYEGBUNA	" "	

Witness to marks

M. O. AREH,

2/2/38.

50

D.—JUDGMENT of the High Court upon Referee’s Report in Suit O/4/1940 Chief Aboh and Another versus Chief Ojiako.

Exhibits.
“ D.”

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Division.
Holden at Onitsha.

Judgment
of the High
Court upon
Referee’s
Report in
Suit
O/4/1940
Chief Aboh
and
Another
versus
Chief
Ojiako,
1st
February
1941.

Before :

His Honour Mr. Justice WADDINGTON, Assistant Judge.

Saturday the 1st day of February 1941.
O/4/1940.

10 CHIEF ABOH and JUSTINE UMEJI of Otta Orokwu on behalf
of themselves and the elders and people of Otta Orokwu

Versus

- 1. CHIEF OJIAKO
- 2. IBEANUGO
- 3. ONWUGBALU NWOGU
- 4. ODECHUKWU OKPALA
- 5. BEN OKAFO
- 6. NNANYELUGO EZIMORA
- 7. RAYMOND NGBEDIKE

20 as representing themselves and the people of Adazi-Nukwu.

Rhodes for Plaintiffs.

Thomas for Defendants.

Both counsel have had a copy of Referee’s Report, filed on
27th November 1940.

RHODES : I ask that Referee’s report be adopted.

THOMAS : I accept report.

(Report marked Exhibit “ B.”)

JUDGMENT.

30 Rhodes and Thomas having agreed to accept Referee’s report, they
agree that it only remains to record a consent judgment.

Both agree that this be in the terms of the amended claim (without
the claim for the injunction originally included).

For Plaintiff, for the declaration sought, viz., boundary between the
land of Otta Orokwu and the land of Adazi Nukwu is the boundary marked
by the red ink line on Plaintiff’s plan marked Exhibit “ A.”

Plan to remain in custody of Court.

Rhodes asks for nominal costs only.

3 guineas.

(Sgd.) H. WADDINGTON,
Assistant Judge.

40

Onitsha, 1–2–41.

Exhibits. **H.—COPY OF MOTION on Motion with affidavit in support in Suit O/4/1940 tendered by Defendants.**

“ H. ”

Copy of Motion on Motion with affidavit in support in Suit O/4/1940 tendered by Defendants, 30th May 1940.

(Defendants' Exhibit.)

PROTECTORATE OF NIGERIA.

In the High Court of Enugu-Onitsha Division.

Suit No. O/4/1940.

CHIEF ABOH of Otta Orokwu representing the people of Otta Orokwu - - - Plaintiff

Versus

CHIEF OJIAKO & 6 others as representing the people of Adazi - - - Defendant. 10

MOTION.

TAKE NOTICE that this Honourable Court will be moved on day of 1940 at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Deponent for an Order that the Deponent be allowed to join as Defendant to contest the above-named suit on behalf of the Umuori people and for such further and other order as to this Honourable Court will seem just.

Dated at Onitsha this 30th day of May 1940.

P. O. EZEANI, 20
Deponent, for Umuori People.



PROTECTORATE OF NIGERIA.

In the High Court of Enugu-Onitsha Division.

CHIEF ABOH of Otta Orokwu representing the people of Otta Orokwu	-	Plaintiff	<i>Exhibits.</i> " H " Copy of Motion on Motion with affidavit in support in Suit O/4/1940 tendered by Defendants, 30th May 1940, <i>continued.</i>
<i>Versus</i>			
CHIEF OJIAKO & 6 others as representing the people of Adazi	-	Defendant.	

Suit No. 19 .

AFFIDAVIT.

10 I, PETER EZEANI of Umuori make and say as follows :—

1. That I represent the people of Umuori in Awka Division. That the village of Umuori lies between Orokwu and Adazi.

2. Orokwu lies to the West and Adazi to the east of Umuori village.

3. That Orokwu and Adazi have no common boundary.

4. That part of the land claimed by the Plaintiff in the above-named suit includes a large portion of Umuori land at present occupied by Umuori people over which they (the people of Umuori) have had protracted litigations with the Adazi people.

5. That a Declaration of title granted to the Plaintiff in the terms
20 asked for in the writ of summons is bound to affect the rights of Umuori adversely.

6. That in consequence of the above I am filing a Motion for an order that I be allowed to join the Defendants on behalf of Umuori to contest the said suit.

7. That I make this Affidavit in support of the said Motion.

Dated at Onitsha this 30th day of May 1940.

P. O. EZEANI.

Sworn at the Office of Magistrate (Limited Powers) Onitsha this 30th day
of May 1940.

30 Before me,
B. G. SMITH,
Commissioner for Oaths.

Exhibits.

" I. "

High Court
Notes and
Order on
Hearing
the above
Motion,
23rd July
1940.

I.—HIGH COURT NOTES and Order on Hearing the above Motion.
(Defendants' Exhibit.)

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Division, holden at Onitsha.

Before His Honour Mr. Justice MARTINDALE, Judge.

—————
The 23rd day of July 1940.
—————

Suit No. O/4/1940.

CHIEF ABOH and JUSTINE IMEJI of Otta
Orokwu on behalf of themselves and the
Elders and the people of Otta Orokwu - Plaintiffs 10

Versus

1. CHIEF OJIAKO
2. IBEANUGO
3. ONWUGHALU NWOGU
4. UDECHUKU OKPALA
5. BEN OKAFOR
6. NNANYELUGO EZIMORA
7. RAYMOND NGBEDIKE
as representing themselves and the people of
Adazi-Nukwu - - - Defendants. 20

MOTION.

Motion for an Order that the Deponent be allowed to join as Defendant to contest in Suit No. O/4/1940, Chief Aboh and another etc. versus Chief Ojiako and others.

Parties as before.

THOMAS : I appear for Defendants 1-5 only.

MBANEFO : I ask to withdraw. Defendants all consulted me. They said that they had shown Plaintiffs' Surveyor a boundary that disposed of this action.

I was dissatisfied as to the bona fides of my clients. 30

I felt that I could not continue.

Leave to withdraw granted as prayed.

RHODES : The third parties have nothing to do with this case.

THOMAS : The third parties are not acceptable.

MBANEFO : I am for the third party.

Between Plaintiff and Defendants lies a village occupied by the Applicants of this Motion.

Boundary dispute between Plaintiffs and Applicants.

Resident advised that they should institute High Court proceedings.

Plaintiffs are trying to divide Applicants land between themselves and Defendants. 40

RHODES : An action took place between the present Defendants and the Umuori people who are now asking to be joined as Defendants. That action was non suited.

The present Defendants destroyed buildings belonging to the Umuori. The latter sued claiming for damages to crops. They succeeded and obtained damages £1,000 odd.

Question of title not in dispute.

Following this Judgment. The Defendants cannot pay. Compromise. £300 was paid and land conveyed.

10 The Umuori having got what they wanted encroached on Plaintiffs' land. Saying that Defendants had given them that land.

Plaintiffs have brought an action for the Court to decide in the present action their boundary with the Defendants.

MBANEFO : We do not want it to be said that we stood by.

COURT : Motion is dismissed.

THOMAS : We ask for an extension of time in which to file pleadings. We are 2 months out of time.

Order as prayed 30 days.

Extension Costs 5 guineas.

20

(Sgd.) M. H. MARTINDALE,

Judge.

K.—PETITION addressed to His Honour the Judge.
(Defendants' Exhibit.)

Adazi Anuku,
Awka District,
Onitsha Province,

15th August 1940.

His Honour, The Judge,
Enugu, Onitsha, Nigeria.

" K. "
Petition
addressed
to His
Honour
the Judge.
15th
August
1940.

30 Subject :—Petition on " Adazi " (5) five notorious individuals, wilfully and unlawfully protesting against the Towns-men (i.e.) Chief Ojiako 2. Igbe-naugo Ezeani 3. Onwuyalu Nwogu 4. Udecukwu Ezeani 5. Nnayelugo Morjeje.

Your Honour,

. We, your humble petitioners, on behalf of the whole " Adazi " Towns-men, of which (70) seventy of us here have signed our names as representatives, faithfully beg to submit this our petition to your Honour, and to fully express our grievances and disturbances caused by the above persons indicated above, in our Town " Adazi. "

40 2. We humbly beg to submit to your Honour, that we previously tried a land case between " Umuori " people and our Towns-men, this land case was hanging for a period of 28 years. This land case was tried in various courts. In 1930, the plan of this land was made by " Umuori "

Exhibits.
" I. "
High Court
Notes and
Order on
Hearing
the above
Motion,
23rd July
1940.
continued.

Exhibits.
 " K. "
 Petition
 addressed
 to His
 Honour
 the Judge,
 15th
 August
 1940,
continued.

people, of which both parties concerned unanimously agreed with the made plan. The dispute of this case was originated from land cases and then on to the damages involved on that very land, after the long trial of this case from lower court to a higher court, the decision was assessed for £1,127-11-1 damages to be awarded to " Umuori " Towns-men.

3. That after the decision delivered on this case " Adazi " Towns-men had no money to satisfy the judgment of the Court, then on the settlement, both parties came in agreement that each of them should not trespass to each others boundary, ever since this agreement was in force, we, the people of Adazi dared not to trespass to Umuori's boundary. 10
 It is however with regret to mention that these five men quothes on the heading of this petition wilfully and unlawfully trespassed on " Umuori's " land without the knowledge of our Towns-men, these men therefore are separately responsible for any action that may likely arise with " Umuori's " men.

4. We have the honour to also point out that these five men with their followers (7) seven other men in number, are not notable men in our Town " Adazi " as much as to warrant them to trespass on Umuori's land, after we had amicably made a peaceful agreement. These men therefore are solely responsible for the breach of agreement. We 20
 however gathered from experience that " Orokwu " people induced these our men to commit this offence of trespassing.

5. In the conclusion of this petition, we respectfully beg to say that one Raymond Ngbedike and Ben Okafor both " Adazi "-men were not involved on this matter of trespass on this land of " Umuori." Under these circumstances, we earnestly implore and submit to your Honour for your kind and best attention on this matter.

We have the honour to be,

Your Honour

Your most Obedient and Humble Servant, 30

Anagbogu Ebunobi	His x mark
Unegbu Obi	His x mark
Okafor Ebeka	His x mark
Obiekwe Dunu	His x mark
Anetoh Okpo	His x mark
Agusionu Eze	His x mark
Mbonu Okpewue	His x mark
Okeke Ezeobiefuna	His x mark
Anuchua Egbogu	His x mark
Okafor Mbiaku	His x mark
Anarade Akpalachie	His x mark
Enukora Ekoka	His x mark
Okeke Madudike	His x mark
Nwilo Okpegbue	His x mark
Agulifo	His x mark
Nwacukwu Ezeanaobika	His x mark
Ndubisi Okeke	His x mark
Okeke Enedum	His x mark

	Afoikunie	His x mark	<i>Exhibits.</i>
	Okeye Achusiafor	His x mark	"K."
	Anyikaro Anegbo	His x mark	Petition
	Ndiwe Nwaobi	His x mark	addressed
	Okeye Orakwudo	His x mark	to His
	Ezekwem Azolukwam	His x mark	Honour
	Maduka Okeke	His x mark	the Judge,
	Molokwu Okonkwo	His x mark	15th
	Okafor Ogwo	His x mark	August
10	Obidiegwu Okeke	His x mark	1940,
	Ilojiana Ezenwa-aka	His x mark	<i>continued.</i>
	Achuke Ajulucukwu	His x mark	
	Anyara Obiche belum	His x mark	
	Nwadinobi Ezeagu	His x mark	
	Okpolo Chimezie	His x mark	
	Okeke Ojilaku	His x mark	
	Aguliefu	His x mark	
	Ude-Egbunam	His x mark	
20	Nwaokafor Achala	His x mark	
	Nwogo Ejiofor	His x mark	
	Anachina Omuzuluniba	His x mark	
	Obiora Obijeaku	His x mark	
	Anagbogu Ijemba	His x mark	
	Anajiekwu Anazodo	His x mark	
	Joseph Dim	His x mark	
	Udo Okeke	His x mark	
	Ejeagwunaca Onyejiaka	His x mark	
	Umenwume Ezeonwuka	His x mark	
30	Anakwenagbu Epotaka	His x mark	
	Udegbunam Morjekwu	His x mark	
	Ejika Morjekwu Muojilionwu	His x mark	(Member)
	Igwilo Ezeodimike	His x mark	(Member)
	Akpaja Ezeadumakwe	His x mark	(Member)
	Mathias Okeke	His x mark	
	Ifeaname	His x mark	
	Ejiofor Okeye	His x mark	
	Cukwumalu Okpala	His x mark	
	Nnoka Nwabi	His x mark	
40	Anazoba Okeye	His x mark	
	Azolukwam Umejiaka	His x mark	
	Okeke Ebenebe	His x mark	
	Morjieke Ndieli	His x mark	
	Ikegwuonu Ogbuji	His x mark	
	Atubalaja Ibemelu	His x mark	

N.B.—The contents of this petition were read to the owners and were interpreted to them.

*Exhibits.***L.—HIGH COURT NOTES and Order referring Case to a Referee in Suit O/4/1940.****(Defendants' Exhibit.)**

" L."

High Court
Notes and
Order
referring
Case to a
Referee in
Suit
O/4/1940,
29th
October
1940.

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Division.

Holden at Onitsha.

Before :

His Honour Mr. Justice WADDINGTON, A. J.

The 29th day of October 1940.

Suit No. O/4/1940.

CHIEF ABOH (EZEODIMEGWU substituted) and JUSTINE 10
UMEJI of Otta Orokwu on behalf of themselves and the
elders and people of Otta Orokwu

Versus

1. CHIEF OJIAKO
2. IBEANUGO
3. ONWUAGHALU
4. UDECHUKU OKPALA
5. BEN OKAFOR
6. NNANYELUGO EZIMORA
7. RAYMOND NGBEDIKE

20

as representing themselves and the people of Adazi-Nukwu.

Claim per writ : The Plaintiff seeks a declaration that all that piece or parcel of land on the North of a boundary which starts from an Ekpe or ditch on the west running to the Nwaocha Idozu stream on the east, and demarcated by live trees, to be more particularly described on a plan to be produced at the hearing is the communal property of the people of Otta Orokwu.

2. An injunction to restrain the Defendants their Successors, Assigns, Agents or Tenants from the use or occupation of the said land.

Rhodes for Plaintiff.

30

Thomas for Defendants 1-4 and 6.

Egbuna for Defendants 5 and 7.

Pleadings filed.

RHODES : Apply to substitute Ezeodimegwu for Aboh who is an old man.

Secondly, in view of paragraph 3 of Defence of 5th and 7th Defendants, we shall not proceed against them.

THOMAS : No objection.

EGBUNA : Nothing to say as regards 5 and 7. But I represent Adazi interests at large.

40

Leave to substitute granted.

(NOTE : Egbuna says there has been a dispute as to who ought to be the nominal Defendants representing Adazi-Nukwu. Rhodes says he will be content with 1st Defendant only—Chief Ojiako. Thomas agrees to this.)

By consent :

Writ amended so that Defendant now is : “ Chief Ojiako as representing himself and the people of Adazi-Nukwu.”

And the claim to read :

The Plaintiff seeks a declaration that the boundary between the land of Otta Orokwu and the land of Adazi-Nukwu is the boundary demarcated about the year 1916 by 48 Chiefs of Nobi and Agulu and marked by a red-ink line on Plaintiff’s plan now marked by consent Exhibit “ A.”

10 Rhodes asks that an Administrative Officer be appointed a Referee with terms the effect of which will be to take evidence as to whether the boundary of 1916 is the boundary marked red on the plan Exhibit “ A,” and if not, to mark that boundary on the plan.

By consent 5th Defendant Ben Okafor and 7th Defendant Raymond Ngbedike will be dismissed from the suit.

Egbuna asks for costs.

3 guineas each.

Adjourned sine die, pending receipt of Referee’s report.

(Sgd.) H. WADDINGTON,
A. J.

20

Onitsha, 29/10/40.

M.—STATEMENT OF CLAIM in Suit O/4/1940.
(Plaintiff’s Exhibit.)

PROTECTORATE OF NIGERIA.

In the High Court of the Onitsha Judicial Division.

Suit No. O/4/1940.

Between CHIEF ABOH of Otta Orokwu on behalf of himself and the Elders and people of Otta Orokwu - - - - - Plaintiff

and

30

- 1. CHIEF OJIAKO
- 2. CHIEF IBEANUGO
- 3. ONWUGHALU NWOGU
- 4. UDECHUKU OKPALA
- 5. BEN OKAFOR
- 6. NNANYELUGO EZIMORA
- 7. RAYMOND NGBEDIKE

as representing themselves and the people of Adazi-Nukwu - - - - - Defendants.

STATEMENT OF CLAIM.

40 1. The Plaintiff is the Head Chief of Otta Orokwu and brings this action as such.

2. The Defendants are the Elders of Adazi-Nukwu and are sued in their representative capacity.

3. From time immemorial the Plaintiff has been in undisturbed possession of the land in dispute and has exercised all rights of ownership.

Exhibits.
“ L ”
High Court
Notes and
Order
referring
Case to a
Referee in
Suit
O/4/1940,
29th
October
1940,
continued.

“ M.”
Statement
of Claim
in Suit
O/4/1940,
16th May
1940.

Exhibits.
 " M. "
 Statement
 of Claim
 in Suit
 O/4/1940,
 16th May
 1940,
continued.

4. The land in dispute is the communal property of the Otta Orokwu and will be more particularly described in a plan to be produced by the Plaintiff at the hearing.
5. In the year 1916 there was a dispute between the Plaintiff and the Defendants' townspeople as to the correct features which form the boundary between the two towns.
6. That in order to settle this dispute Chief Ojiako of Adazi-Nukwu invited 48 Warranted Chiefs to act as Referees that 24 from Nobi in the Onitsha Division and 24 from Agulu in the Awka Division.
7. The reason for the action in paragraph 6 supra is that the land 10 is partly in the Awka Division and partly in the Onitsha Division.
8. That the 48 Chiefs investigated found and demarcated the boundary with 12 cement pillars and also the Nwaocha Idozu stream to the ditch or ekpe.
9. The 12 cement pillars have mysteriously disappeared.
10. Recently the Defendants through certain tenants of theirs have crossed over the recognised boundary and erect buildings on the land and perform acts of ownership by cutting down trees and farming without consent.
11. The Plaintiff therefore claims as per writ of Summons. 20
 Dated at Aba this 16th day of May 1940.

S. B. RHODES,
 Plaintiff's Solicitor.

" N. "
 Statement
 of Defence
 in Suit
 O/4/1940,
 filed
 20th August
 1940.

N.—STATEMENT OF DEFENCE in Suit O/4/1940.
 (Plaintiff's Exhibit.)

PROTECTORATE OF NIGERIA.

In the High Court of the Enugu-Onitsha Judicial Division.
 Holden at Onitsha.

Suit No. O/4/1940.

CHIEF ABOH of Otta Orokwu representing the 30
 people of Otta Orokwu - Plaintiff
Versus
 CHIEF OJIAKO & 6 others as representing the
 people of Adazi - - - - Defendants.

STATEMENT OF DEFENCE.

1. The Defendants admit paragraphs 1-8 of the Plaintiff's Statement of Claim.
 2. Paragraph 9 of the Plaintiff's Statement of Claim is vague and the Defendants are not in a position to admit or deny it.
 3. The Defendants deny paragraph 10 of the Plaintiff's Statement 40 of Claim.
 4. As regards paragraph 11 the Defendants will at the trial contend that they have never interfered with any of the Plaintiff's rights.
- N.B. 1. Chief Ojiako 3. Onwughalu Nwogo 6. Nnanyelugo Ezimora.
 2. Ibeanugo 4. Udechuku Okpala

STEPHEN PETER THOMAS,
 Defendants' Solicitor.

**O.—STATEMENT OF DEFENCE by 5th Defendant in Suit O/4/1940
(Plaintiff's Exhibit.)**

Exhibits.

“ O.”

Statement
of Defence
by 5th
Defendant
in Suit
O/4/1940,
15th
August
1940.

PROTECTORATE OF NIGERIA.

In the High Court of the Onitsha Judicial Division.

Suit No. O/4/1940.

CHIEF ABOH of Otta Orokwu on behalf of
himself and the Elders and people of Otta
Orokwu -

Plaintiff

Versus

10

1. CHIEF OJIAKO
2. CHIEF IBEANUGO
3. ONWUGHOLU NWOGU
4. UDECHUKU OKPALA
5. BEN OKAFOR
6. NNANYELUGO EZIMORA
7. RAYMOND NGBEDIKE

as representing themselves and the people
of Adazi-Nukwu - - Defendants.

STATEMENT OF DEFENCE BY 5TH DEFENDANT.

20

1. The 5th Defendant admits paragraph one of the Statement of Claim.

2. Save and except the several allegations specifically admitted herein the 5th Defendant denies seriatim paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

3. The 5th Defendant has no authority to represent the people of Adazi-Nukwu and denies liability both in his personal as well as in any representative capacity.

30

4. Neither the Defendant nor his family has any boundary with the Plaintiff's family.

5. Between the Plaintiff's village and the village of the 5th Defendant's family lies the land of Umuori family and the 5th Defendant does not admit liability for any act done by the said Umuori family on their said land.

6. The 5th Defendant never at any time either by himself or his agent trespassed on any land belonging to Plaintiff's family.

7. The 5th Defendant further says the action is vexatious and misconceived.

Dated at Onitsha this 15th day of August 1940.

40

BEN OKAFOR,
5th Defendant.

Exhibits.

**P.—STATEMENT OF DEFENCE by 7th Defendant in Suit O/4/1940.
(Plaintiff's Exhibit.)**

“ P. ”

Statement
of Defence
by 7th
Defendant
in Suit
O/4/1940,
15th
August
1940.

PROTECTORATE OF NIGERIA.

In the High Court of the Onitsha Judicial Division.

**CHIEF ABOH of Otta Orokwu on behalf of
himself and the Elders and people of Otta
Orokwu - - - Plaintiff**

Versus

- 1. CHIEF OJIAKO
- 2. CHIEF IBEANUGO 10
- 3. ONWUGHOLU NWOGU
- 4. UDECHUKU OKPALA
- 5. BEN OKAFOR
- 6. NNANYELUGO EZIMORA
- 7. RAYMOND NGBEDIKE
as representing themselves and the people
of Adazi-Nukwu - - - Defendants.

STATEMENT OF DEFENCE BY 7TH DEFENDANT.

- 1. The 7th Defendant admits paragraph one of the Statement of Claim. 20
- 2. Save and except the several allegations specifically admitted herein the 7th Defendant denies seriatim paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
- 3. The 7th Defendant has no authority to represent the people of Adazi-Nukwu and denies liability both in his personal as well as in any representative capacity.
- 4. Neither the Defendant nor his family has any boundary with the Plaintiff's family.
- 5. Between the Plaintiff's village and the village of the 7th Defendant's family lies the land of Umuori family and the 7th Defendant does not admit liability for any act done by the said Umuori family on their said land. 30
- 6. The 7th Defendant never at any time either by himself or his agent trespassed on any land belonging to Plaintiff's family.
- 7. The 7th Defendant further says the action is vexatious and misconceived.

Dated at Onitsha this 15th day of August 1940.

RAYMOND MGBEDIKE,
7th Defendant. 40