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4, 1955 *McGee*

In the Privy Council

No. 39 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

- 1. CHIEF J. M. KODILINYE
- 2. J. C. NWANGWU for themselves and on behalf of the Obosi people (Defendants) Appellants

AND

- 1. PHILIP AKUNNE ANATOGU
- 2. JOSEPH AKUNNIA AGBU for themselves and on behalf of the Ogbo family of Umuasele, Onitsha (Plaintiffs) Respondents.

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON
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In the Privy Council

No. 39 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

1. CHIEF J. M. KODILINYE
2. J. C. NWANGWU for themselves and on behalf of the Obosi people (*Defendants*) *Appellants*

AND

- 10 1. PHILIP AKUNNE ANATOGU
2. JOSEPH AKUNNIA AGBU for themselves and on behalf of the Ogbo family of Umuasele, Onitsha (*Plaintiffs*) *Respondents*.

RECORD OF PROCEEDINGS

No. 1.

**Writ of Summons.
(Civil Summons).**

No. 29950.

In the
Native
Court of
Onitsha
Nigeria.

IN THE NATIVE COURT OR JUDICIAL COUNCIL OF ONITSHA NIGERIA.

BETWEEN

- 20 1. PHILIP AKUNNE ANATOGU
2. JOSEPH AKUNNIA AGBU for themselves and on behalf of the Ogbo family of Umuasele, Onitsha *Plaintiffs*

No. 1
Writ of
Summons.
4th
January,
1949.

AND

1. CHIEF J. M. KODILINYE
2. J. C. NWANGWU, for themselves and on behalf of the Obosi people *Defendants*.
To Defendants of Obosi.

In the
Native
Court of
Onitsha
Nigeria.

No. 1
Writ of
Summons.
4th
January,
1949—
continued

YOU are commanded to attend this Court at Onitsha on the 4th day of February, 1949 at 9 o'clock a.m., to answer a suit by Plaintiffs of Onitsha against you.

The Plaintiffs claim (A) Declaration of title to all that piece or parcel of land known as Ugborimili situate at Onitsha in the Onitsha Division.

(B) An injunction to restrain the Defendants and their people of Obosi from interfering with or disturbing the Plaintiffs' ownership and possession of the said land.

Dated 4.1.49.

Issued at Onitsha the 4th day of January, 1949.

10

(Sgd.) EGBUNA ADAZIE,
(Signature of President or Vice-President).

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

No. 2.

Courts Order ordering Pleadings to be Filed.

IN THE SUPREME COURT OF NIGERIA.

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

Before His Honour Mr. Justice BROWN P.J.

20

Friday the 4th day of February, 1949.

The Plaintiffs' Claim :—

(A) Declaration of title to all that piece or parcel of land known as Ugborimili situate at Onitsha, in the Onitsha Division.

(B) An injunction to restrain the Defendants and their people of Obosi from interfering with or disturbing the Plaintiffs' ownership and possession of the said land.

MBANEFO of Counsel for the Plaintiffs.

AJEGBO for the Defendants.

ORDER : Pleadings, Statement of Claim within 60 days with plan 30 and service on Defendant and 60 days for the defence beginning from the date of service of Statement of Claim.

(Intld.) H. M. B.

4.2.49.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 2
Courts
Order
ordering
Pleadings
to be filed
4th
February,
1949.

No. 3.

Statement of Claim.

IN THE SUPREME COURT OF NIGERIA.

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

Suit No. 0/3/49.

(Title as in No. 1.)

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 3.
Statement
of Claim.
22nd
March,
1949.

STATEMENT OF CLAIM.

1. The Plaintiffs are elders and members of the Ogbo Family of
10 Umuasele in Onitsha, and sue on behalf of the said Ogbo Family.

2. The Defendants are natives of Obosi and are sued for themselves,
and as representing the Obosi people.

3. The Plaintiffs are natives of Onitsha. The people of Onitsha
came from across the Niger from Benin about four hundred years ago,
met the Ozehs, attacked and drove them away and occupied the present
site of their town of Onitsha. Originally Onitsha had boundary with
Umuoji.

4. Many years after the Onitsha people had driven away the
Ozehs and were settled on their present site, the Obosi people came from
20 Ojoto and were granted the land where they live by the Umuoji people.
When they wanted more land they got a further portion from the Onitsha
people. Their present Obosi town is on the two portions thus given
to them.

5. The Plaintiffs are from time immemorial the owners in possession
of the land in dispute known as Ugbo-Orimili situate in Onitsha and
lying between the Otumoye Creek and the Idemili Stream, and more
particularly shown delineated and edged pink on the plan to be filed
in Court with this Statement of Claim; the Plaintiffs' ancestor Ogbo
being the first person to occupy the said land.

30 6. As owners aforesaid, the Ogbo family occupied the said land
by themselves and their tenants for farming purposes without inter-
ference from anybody. They have leased the land to the Obosi people
who have paid yearly tribute for the right of farming in accordance
with Native Custom.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 3.
Statement
of Claim.
22nd
March,
1949—
continued

7. In 1882, ORIKAGBUE, an ancestor of the Plaintiffs, granted the said land to the National African Company Limited, and the said Company set up a trading station known as "Abutshi Station" thereon. The said grant was referred to in a certificate made by one Edward Hyde Hewett, British Consul on board H.M.S. "Alecto" on the 8th of October, 1884.

8. By the said grant ORIKAGBUE reserved to the descendants of his family and to their Obosi tenants the rights to be allowed to raise yams, corn, etc., and to fish from spots of the river bank in the occupation of the Company. 10

9. By the said grant the Company entered into possession of the said land, opened a trading station thereon as aforesaid. The Obosi tenants of the Ogbo family continued to farm on the land and to pay the customary tribute as before. The Trading Station opened by the Company is still on the said land.

10. Subsequent to the said grant, the said National African Company became merged into another company known as the Royal Niger Company Chartered and Limited.

11. On the 26th of October, 1896, the said ORIKAGBUE and other members of Ogbo Family, on behalf of their said family, entered into an agreement with the Royal Niger Company Chartered and Limited by which they sold to the Company all private rights of every kind not already possessed by the Company in a portion of the land in dispute comprised in the grant of 1882 aforesaid, that is to say, between the Dende Creek on the north and the Idemiri (EDEMERI) on the south, and extending inland 500 yards from the River Niger. This land was included in the former grant of 1882. 20

12. In 1916, the Government of Nigeria passed the Niger Lands Transfer (Protectorate) Ordinance. At that time the Royal Niger Company Chartered and Limited had become known as the Royal Niger Company Ltd. By the said Ordinance the land and rights specified or referred to in the certificate of 8th October, 1884, referred to in paragraph 7 above and in the agreement of the 6th October, 1896 (referred to in paragraph 11 supra) belonging to the Royal Niger Company became vested as from 1st January, 1900, in the Governor in trust for His Majesty his heirs and successors upon and subject to the terms and conditions contained or referred to in the said certificate and agreement, the Company reserving for itself a small portion thereof which has since remained in the possession of the Company and its successors until today. 30

13. In the 1st schedule to the said Ordinance the certificate of 8th October, 1884, was referred to as agreement No. 72 and the agreement of 6th October, 1896, was referred to as agreement No. 40. The certificate and agreement will hereafter be referred to as Agreement Nos. 40 and 72 respectively, and will be founded upon by the Plaintiffs.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

14. As had been the case before Agreements Nos. 40 and 72 were made, and in accordance also with the reservations in the said agreements, the Obosi tenants of the Ogbo Family continued to farm the land in dispute and to pay the customary tributes, and whenever they failed to pay, the Ogbo family have successfully sued them in Court and recovered the equivalent in money.

No. 3.
Statement
of Claim.
22nd
March
1949—
continued

15. By an Order dated the 11th day of December, 1948, the Crown abandoned portion of the land originally granted to the National African Company, and vested in the Crown by the Niger Lands Transfer Ordinance as aforesaid, and retaining a portion for itself. The portion so abandoned is substantially the area now in dispute.

16. The Government having abandoned its right, title and interest in the land specified in Instruments Nos. 40 and 72, the said land reverted to the original grantors, that is to say, the Ogbo Family, who are the owners thereof.

17. The Obosi people had always recognised the Plaintiffs as their landlords until about 1934, when the 1st Defendant, following land disputes between himself and other families of Onitsha, encouraged some of them not to continue paying on the ground that the land was Crown land.

18. The Plaintiffs made representations to the Government, and were informed that the Government did not recognise their right to collect rents, but that the whole question of Niger Lands including the land in dispute, were being reconsidered. As a result of the said letter from the Government the Plaintiffs took no further action against the Defendants.

19. From 1934, until December, 1948, when the Crown finally withdrew from the land as aforesaid, the Government was still reconsidering the matter and showed no apparent interest in the land with the result that the Defendants and their people of Obosi taking advantage of that position entered on the land in large numbers and erected buildings thereon, claimed the land as their own, and refused to pay further rents to the Plaintiffs, or to recognise them as their landlords as they had done in the past.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

20. The Obosi people have no land in the neighbourhood of the land in dispute. Obosi town is about seven miles away therefrom. All the lands north and east of the land in dispute right up to Obosi town are Onitsha lands belonging to various families of Onitsha. Some of these families have boundaries with the Plaintiffs as shown on the plan to be filed herein with this Statement of Claim.

No. 3.
Statement
of Claim.
22nd
March
1949—
continued

21. Since the Crown withdrew from the said land, the Defendants have again asserted a claim of ownership to the land in dispute, and are endeavouring to sell portions thereof to other people.

Wherefore the Plaintiffs claim as per Writ of Summons.

10

Dated at Onitsha this 22nd day of March, 1949.

(Sgd.) L. N. MBANEFO,
Plaintiffs' Solicitor.

No. 4.
Statement
of Defence
16th May,
1949.

No. 4.

(Title as in No. 1.)

STATEMENT OF DEFENCE.

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

2. With reference to paragraph 3 the Defendants only admit that the Plaintiffs are natives of Onitsha and that the people of Onitsha came across the Niger from Benin and will put the Plaintiffs to strict proof of the other allegations therein. 20

3. With further reference to paragraph 3 the Defendants say that they (Defendants) originally had boundaries with the Ozehs and the Umuojis.

4. The Defendants deny paragraph 4 of the Statement of Claim. The Defendants say that Ojoto and Obosi were two brothers who inherited their father's land which they divided between themselves, one part of the land to the East went to the Senior Son Ojoto and the one to the West down the River Niger went to Obosi. The Defendants deny that they were ever granted land by either the Umuoji people or the Onitsha people, and say the Onitshas met the Obosis on their land when they migrated from Benin. 30

5. The Defendants deny paragraph 5 of the Statement of Claim and put the Plaintiffs to the strict proof thereof. The land in dispute lies between the Dende Creek and the Idemiri Stream and has from time immemorial been the property of the Obosi people who have been exercising all rights of Ownership thereon and are in possession thereof until this day.
6. The Defendants deny paragraph 6 of the Statement of Claim and put the Plaintiffs to strict proof thereof.
7. With reference to paragraph 7 the Defendants deny that
 10 Orikagbue was an ancestor of the Plaintiffs. Orikagbue was an Obosi man residing at Onitsha where he was then practising as a native doctor. Orikagbue contracted for himself and the Obosi people.
8. With reference to paragraph 8 the Defendants deny that the Obosi people occupying the land at the time of Orikagbue were tenants but that they occupied the land as owners.
9. With reference to paragraph 9 the Defendants while admitting that the Company entered into the possession of the land in dispute deny that the Obosi people farming thereon were tenants of the Ogbo family and paying tribute for their holdings.
- 20 10. The Defendants admit paragraph 10 of the Statement of Claim.
11. With reference to paragraph 11 the Defendants say that Orikagbue and others who entered into the agreement referred to therein are Obosi people and not members of the Ogbo family. The agreement was dated 26th October, 1896 and not 6th October, 1896.
12. The Defendants admit paragraph 12 of the Statement of Claim and say that the agreement referred to as having been made on the 6th October, 1896 was made on the 26th October, 1896.
13. Paragraph 13 of the Statement of Claim is admitted and the Defendants say that 6th October should be 26th October, 1896.
- 30 14. With reference to paragraph 14 the Defendants say that the Obosi people farming on the land in dispute do so as in their own right and not as tenants of the Ogbo family. They deny all the other allegations contained in the said paragraph.
15. The Defendants admit paragraph 15 of the Statement of Claim.
16. With reference to paragraph 16 while admitting that the abandoned land reverted to the original owners say that the land reverted to the Obosi people who are the original owners thereof and not to the Ogbo family.

In the
 Supreme
 Court of
 Nigeria,
 Onitsha
 Judicial
 Division.

No. 4.
 Statement
 of
 Defence.
 16th
 May
 1949—
continued

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 4.
Statement
of
Defence.
16th
May
1949—
continued

17. The Defendants deny paragraph 17 of the Statement of Claim and put the Plaintiffs to strict proof thereof.

18. The Defendants are not in a position to deny or admit paragraph 18 of the Statement of Claim.

19. The Defendants deny paragraph 19 of the Statement of Claim and say that the Obosi people had been in possession of the land before the advent of the Royal Niger Company and the Onitsha people, and are still on the land in their own rights.

20. The Defendants deny paragraph 20 of the Statement of Claim and say that the whole area referred to therein belongs to and is occupied by the Obosi people. The Defendants say that there is no Onitshaman in occupation of the area in dispute and will file a plan showing the occupiers thereof. 10

21. With reference to paragraph 21 while admitting that since the Crown withdrew from the land they have re-asserted their claim of ownership.

22. The Plaintiffs are not entitled as per Writ of Summons.

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

(Sgd.) M. O. AJEGBO,
Defendants' Solicitor. 20

No. 5.
Note of
Proceed-
ings.
19th
September,
1949.

No. 5.
Note of Proceedings.

AT ONITSHA, MONDAY THE 19TH DAY OF SEPTEMBER, 1949.

Before His Honour ALBERT GEOFFREY BORRODAILE MANSON,
P. Judge.

MBANEFO & IKPEAZU.

A. SOETAN & NKEMENA & AJEGBO.

BY COURT. Defendants' Counsel desire to amend the Statement of Defence: Amendments are handed in. These are they:—

AMENDMENT TO DEFENCE.

30

Statement
of Defence
Amended.

16. With reference to paragraph 16 the Defendants while denying that the abandoned land reverted to the original grantors say that

even if it did the land reverted to the Obosi people who were the original owners thereof and not the Ogbo Family.

21. With reference to paragraph 21 while admitting that since the Crown withdrew from the land they have re-asserted their claim of ownership, the Defendants deny any endeavour on their part to sell any portion of the land in dispute.

22. The Plaintiffs are not entitled as per Writ of Summons and the Defendants will object that the matters disclosed in the Statement of Claim cannot in point of law sustain the action.

10

(Intld.) A. G. B. M.
J.

In the Supreme Court of Nigeria, Onitsha Judicial Division.
No. 5.
Note of Proceedings 19th September, 1949—
continued

MBANEFO admits he is not prejudiced and does not ask for adjournment and does not oppose the amendments, reserving his right to comment on any question of law raised in the amendments.

SOETAN desires to argue that the land on abandonment by the Crown does not in law revert to the original owners and that, therefore, even if the Plaintiffs were the original owners, the Court cannot in law grant them the declaration sought. He raises this point on the assumption that the facts are as stated in the Statement of Claim R.S.C.Or. 28 r.l.

20 I decline to dispose of this matter in the manner proposed by Defendants' Counsel; he has not in fact followed the procedure laid down in r.l. of Or. 28; he should have proceeded by motion. The case is of a very great importance locally and it would be wrong to decide it on a preliminary objection on a point of law. The facts must be laid before the Court, and the evidence on both sides heard and considered. I reject Defendants' Counsel application.

MBANEFO opens—opening interpreted to the public in Court.
MBANEFO opens.

No. 6.
Evidence of S. A. Samuel.

30

1ST WITNESS : SYLVANUS AKINROKUN SAMUEL (m) sworn on Bible, says in English : I am the Registrar of the Supreme Court, Onitsha. I produce the original record in Civil Suit 6/1932, *J. M. Kodilinye v. Igweagu*, Ex. 1. I also produce the plan filed in 0/9/32 *J. M. Kodilinye v. Erokwu* by the Plaintiff, Ex. 2, and the Statement of Claim is the same suit, Ex. 3, and the Court Judgment, Ex. 4. I also produce a certified copy of the Judgment in 0/8/1932, Ex. 5, and also the Plan filed therein, Ex. 6 2 WACA 336.

Plaintiffs' Evidence.
No. 6.
S. A. Samuel.
19th September, 1949.
Examination.

40 I also produce a certified copy of the summons, Ex. 7, Statement of Claim, Ex. 8 and Judgment, Ex. 9 in 12A/28 in the Supreme Court at Onitsha. I know Mr. Scott's signature; he was acting Registrar.

XX. None.

No. 7.

Evidence of C. Emodi.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 7.
C. Emodi.

19th
September,
1949.
Examina-
tion.

2ND WITNESS: CHARLES EMODI (m) sworn on Bible, says in English: Licensed Surveyor. This is a tracing made by me from an original Plan made by Mr. Theophilus John, licensed surveyor. Tracing put in and marked Ex. 10. This is the Plan from which I made the tracing Ex. 11. I inserted on Ex. 11 the green line which encloses a certain area—the area retained by Government; the area is shown on Map OA. Onitsha 143 Township boundary Ex. 12.

I also inserted on Ex. 11 the layout of Nupe Settlement and I also indicated on Ex. 11 a yellow line on the West running N. and S. 500 yards from the River Bank. I myself surveyed this yellow line. I also compiled a Plan—put in Ex. 13—from the original plans tabulated on the top. I showed on Ex. 13, the area of land shown on Ex. 2—starting from N.W. and following as a thin red line going due East and then S.E. and S.W. and then due West to the Niger. Ex. 2 is enlarged on Ex. 13; I also showed on Ex. 13, the area shown in Ex. 6, I also plotted on Ex. 11 the area edged orange—the boundaries of land of the Niger Company which the Company retained after the Government acquired their holding. (BY COURT: See No. 2 in 4th Schedule in Cap. 86). I also inserted on Ex. 11, the numbers of certain cases which had been heard in the Native Courts. I got my information from the records in the Native Court. 10 20

(BY COURT: These records are being put in later).

I also show on Ex. 13 certain brickfields in the N. West. Some portions of Ex. 13 were surveyed by me and some inserted from original plans, Ex. 14, Ex. 15, Ex. 16, Ex. 17.

(Rejected: It does not

Cross-
examina-
tion.

XX. When I had no plan of land which had been in dispute in Court cases, I surveyed the area myself on information supplied to me by the owners. 12; 150/25; 267/28; 303/1908; 133/1942; 215/1926; 496/1913; 278/1909; 301/1919. 30

Re-
examina-
tion.

RE-X. In drawing the green line on Ex. 10, I had before me this drawing sent by the Asst. Commissioner of Lands, Enugu, Ex. 18.

No. 8.**Evidence of B. D. John.**

3RD WITNESS : BENJAMIN DOMINGO JOHN (m) sworn on Bible, says in English : Civil Servant : Chief Clerk, Resident's Office, Onitsha. I produce

- In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.
- Plaintiffs'
Evidence.
- No. 8.
B. D. John.
19th
September,
1949.
Examina-
tion.
- (1) A letter of 31st January, 1933 to the Resident by the Ogbo Family, Ex. 19.
- 10 (2) A copy of letter dated 9th February, 1936 addressed to the Secretary, Southern Provinces, Enugu, Ex. 20. This is slightly damaged ; and the damaged portion is made legible by another copy in the hands of Counsel ; this supplies the missing words.
- (3) A letter dated 2nd of September, 1942 to Resident Onitsha Province by Plaintiff's Counsel Ex. 21 which was written in reply to a letter of 16th June from the Resident, Ex. 22 and Reply to Ex. 21 (Ex. 23).
- (4) Letter of 1st March, 1946 by Plaintiff's Counsel to Resident Onitsha Province, Ex. 24 and Reply thereto, Ex. 25.
- (5) Letter of 14th January by Plaintiff's Counsel to Resident Onitsha Province, Ex. 26 and Resident's Reply thereto, Ex. 27.
- 20 (6) Letter of 16th May, 1934 from Plaintiffs to Secretary, Southern Provinces, Ex. 27A.
- (7) Letter of 9th July, 1934 from Secretary Southern Provinces to Plaintiffs, Ex. 27B.
- (8) Letter of 13th November, 1942 from Plaintiffs to Resident, Onitsha, Ex. 27C.
- XX. None.

No. 9.**Evidence of M. O. Nduba.**

- No. 9.
M. O.
Nduba.
19th
September,
1949.
Examina-
tion.
- 30 **4TH WITNESS :** MICHAEL ONYEKWE NDUBA (m) Ibo, sworn on Bible, says through interpreter : Court Clerk : Onitsha Native Court since 1933.
- (1) I produce Native Court Record Book in 547/1912 *David Okagbue of Onitsha v. Ogbogu Ekwem*, Ex. 28.
- (2) I produce Native Court Record Book in No. 406/1920 *Atogu of Onitsha v. Ojogwu and Gbalite and certified copy thereof*, Ex. 29.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

(3) I produce certified copy of Native Court Case No. 269/1930
Chukwuemeka v. Anah and others, Ex. 30.

(4) I produce certified copy of Native Court Case No. 270/1930
Chukwuemeka v. Oseloka, Ex. 31.

Adjourned to 20th September, 1949.

Plaintiffs'
Evidence.

(Sgd.) A. G. B. MANSON.

J.

No. 9.
M. O.
Nduba.
20th
September,
1949.
Examina-
tion—
continued

19th September, 1949.

AT ONITSHA, TUESDAY, THE 20TH DAY OF SEPTEMBER, 1949.
20th September, 1949. Resumed.

10

Counsel as before.

MBANEFO calls :

4TH WITNESS (contd.) MICHAEL ONYEKWE NDUBA on former oath : I
also produce

(5) The original Native Court Record Book in 101/28, and 102/28
Nduaguba v. Nwameze and ors., Ex. 32.

(6) A certified copy of Native Court Case 150/25 *Okenwa of Obosi v.
Ichu of Obosi*, Ex. 33.

(7) A certified copy of Native Court Case 71/41 *Sammy Okafor v.
Eze Ude*, Ex. 34.

20

(8) A certified copy of Native Court Case 218/43 ; same parties,
Ex. 35.

By Court. BY COURT : This completes the list of cases in the Native Court relating
to plots of land inside the disputed area. Defendant's Counsel states
that he does not oppose their admission at this stage but reserves his
right to argue their relevance at a later stage.

Examina-
tion—
continued

WITNESS continues : I also produce

(1) The original Native Court Record Book in *Okafor of Obosi v.
Okeke* 303/08, Ex. 36.

(2) A certified copy of Native Court Case 496/1913 *Okonkwo v. 30
Obodoefuna*, Ex. 37.

(3) The original Native Court Record Book in 278/1918 *Ekwuaju
v. Chukwurah*, Ex. 38.

(4) The original Native Court Record Book in 278/1919 *Omodi v.
Ilomuanya*, Ex. 39.

- (5) The original Native Court Record Book in 301/1919, (to be found in Ex. 39). In the Supreme Court of Nigeria, Onitsha Judicial Division.
- (6) A certified copy of Native Court Cases 215—220/1920, Ex. 40.
- (7) A certified copy of Native Court Case 182/1926, Ex. 41.
- (8) The original Native Court Record Book in 139/1926 *Ezeocha of Onitsha v. Ikefuna and ors. of Obosi*, Ex. 42. Plaintiffs' Evidence.
- (9) A certified copy of Native Court Case 200—201/1926 *Megafu of Onitsha v. Magom and another of Obosi*, Ex. 43. No. 9.
- 10 (10) A certified copy of Native Court Case 204/1926 *Egbunike of Onitsha v. Eziamaka and others of Obosi*, Ex. 44. M. O. Nduba.
- (11) A certified copy of Native Court Case 215/1926 *Achebe of Onitsha v. Anazonwu of Oboshi*, Ex. 45. 20th September, 1949.
- (12) A certified copy of Native Court Case 267/1928 *Ekwuaju of Onitsha v. Chukwura of Obosi*, Ex. 46. Examination—continued
- (13) A certified copy of Native Court Case 268/1928 *Ekwuaju Akunne of Onitsha v. Chukwura and another of Obosi*, Ex. 47.
- (14) The original Native Court Record Book in 207/1929 *John Anyaeji of Onitsha v. Eziamaka of Obosi*, Ex. 48.
- 20 (15) The original Native Court Record Book in 257/1929, (to be found in Ex. 48).
- (16) The original Native Court Record Book in 258/1929, (to be found in Ex. 48).
- (17) The original Native Court Record Book in 259/1929, (to be found in Ex. 48).
- (18) The original Native Court Record Book in 13/1938 *Egbuna v. Onuigbo and others*, Ex. 49).
- (19) The original Native Court Record Book in 50/1928 *Ekwuaju Akunne of Onitsha v. Ugokwe of Obosi*, Ex. 50.
- 30 (20) The original Native Court Record Book in 162/35 *Onuora of Umuase v. Epundu and others of Obosi*, Ex. 51.
- (21) A certified copy of Native Court Case 133/1942 *Ikwuazom of Onitsha v. Anazonwu of Obosi*, Ex. 52.

By Court: This completes the list of cases in the Native Court relating to plots of land outside the disputed area. Defendant's Counsel does not oppose their admission but reserves his right to question their relevance at a later stage. By Court.

XX. None.

No. 10.

Evidence of C. H. S. R. Palmer.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 10.
C. H. S. R.
Palmer.
20th
September,
1949.
Examina-
tion.

5TH WITNESS: CECIL HUGH STEWART REYNOLDS PALMER, British, sworn on Bible says: Assistant Commissioner of Lands, Enugu. I produce a Certified copy of an agreement made by Orikabue dated 8th October, 1884; this being the Certificate No. 72 in Schedule 1 of Cap. 86, Ex. 53.

I also produce a certified copy of an agreement made between Chief Orrirafbue and the Royal Niger Company dated 26th October, 1896; this being Agreement No. 40 in Schedule 1 of Cap. 86, Ex. 54. 10

I identify this document (marked X for identification) handed to me as having been seen by me about 1945 at Lagos in the Lands Office; it was shown to me by Mr. Mbanefo, Plaintiffs' Counsel. The original counterpart is filed in one of 2 bound Volumes of the Niger Lands Agreements in the custody of the Registrar of Lands in Lagos. I think I compared this document with the other original counterpart. They were identical with one exception—an entry at the bottom of this document which reads "this annuls the prior agreement made and attached hereto and dated 31st July, 1882" does not appear on the counterpart in Lagos. Witness is referred to Ex. 18. This was prepared in my office. It is a sketch Plan of an area of land retained by the Crown. This Plan—Ex. 12—O. A. Onitsha 143 and is referred to in Ordinance 29/1948. South of the line in Ex. 18 is the land abandoned by Government I see Exs. 10, 11. The area in orange on the West is, I have reason to believe, the area No. 2 in the 4th Schedule to Cap. 86—land retained by the Niger Company. 20

With reference to the copies of plans attached to Exs. 53, 54 the originals are presumed to have been made at the time of the agreements but there is no definite evidence as who made the plans or when; there is no indication of scale; they are quite clearly not drawn to scale. 30

XX. None.

By Court. BY COURT: The area marked blue on Ex. 54 is the whole area granted to the Niger Company and is much larger than the area now retained by the Company; No. 2 in 4th Schedule of Cap. 86.

No. 11.**Evidence of J. T. John.**

6TH WITNESS : JOSEPHUS THEOPHILUS JOHN (m) sworn on Bible says in English : Civil Engineer and Licensed Surveyor : Shown Ex. 2. I made this Plan in 1933 on the instructions of the Plaintiff in 0/9/32— J. M. Kodilinye ; and also the Defendant in this case. Shown Ex. 11. I made this Plan—but not entirely : there are several additions and colourings not made by me. The green, yellow, orange and blue were not lines marked in, made by me. I did not insert on Ex. 11 the lay-out
10 of the Nupe Settlement.

Shown Ex. 6 : I also made this Plan.

Shown Ex. 14 : I traced this from an original made by Charles Barnes, deceased, in 1922.

Shown Ex. 15 : I made this in 1934.

Shown Ex. 16 : I made this in 1944.

XX. I signed Ex. 11 but the additions have been made by another Surveyor without my knowledge. The whole of Ex. 11 was not traced by Emodi as is stated on it but only certain things were superimposed on it.

20 I made Ex. 11 in 1941 for a pending case between Onitsha and Obosi people over a Nupe Settlement. The Pink line was the whole of the area claimed by the Umuasele Family of Onitsha.

RE-X. None.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 11.
J. T. John.
20th
September,
1949.
Examina-
tion.

Cross-
examined.

No. 12.**Further Evidence of C. Emodi (recalled).**

2ND WITNESS RECALLED : CHARLES EMODI, on former oath : I've shown on Ex. 13 by a thin red line the area in Ex. 2 enlarged. The land in dispute in this case—Ugbo-Orimili-land is shown on Ex. 13 and Ex. 2 by a red line—dot dash dot dash. I was unable to insert on Ex. 13
30 the boundary marks between Ogboagu and Anumudu land and also between Ogboaba and Ogbolu family land because I lost my Field Book with the details.

XX. I surveyed on Ex. 13 from the New Cemetery on the N. to a point marked Aroba Tree on the East near Obosi village. The Obosi people did not interfere with me here but at a spot lower down at the Owerri Road. They drove my party away.

No. 12.
C. Emodi.
(Recalled).
20th
September,
1949.
Examina-
tion.

Cross-
examined.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 12.
C. Emodi
(Recalled)
20th
September
1949.

By Court—
continued

BY COURT : I completed Ex. 13 in 1949, June. As regards the yellow line on the W. of Ex. 13 drawn at a distance of 500 yards from the River ; in 1945 I was instructed by the Resident, Onitsha province to make a Plan with a line showing area 500 yards from the Niger between the Idemiri Creek on the South and Otumoye Creek on the North. I, when I made Ex. 13 inserted this area on it. The Resident wanted the Plan because, I think of a dispute between the Commissioner of Lands and Obosi people. I was also asked to insert buildings erected by Obosi people inside the 500 yards area.

Letter put in Ex. 55.

10

Adjourned to 21st September, 1949.

(Sgd.) A. G. B. MANSON,
J.

20th September, 1949.

No. 13.

Evidence of P. A. Anatogu.

No. 13.
P. A.
Anatogu.
21st
September,
1949.
Examina-
tion.

AT ONITSHA, WEDNESDAY, THE 21ST DAY OF SEPTEMBER, 1949.
21st September, 1949. Resumed.

Counsel as before.

MBANEFO calls.

20

7TH WITNESS : PHILIP AKUNNE ANATOGU (m), Ibo, sworn on Bible says through interpreter : I am a member of the Ogbo Family of Umuasele ; Clerk in B.B.W.A. Onitsha for 28 years. I am a titled person in my family—Ozo—which means I am important person in my family and the town. It does not mean that Ozo is head of the family necessarily. I am head of the Ogbo Family at the present time. I and the 2nd Plaintiff were duly authorised to represent the Ogbo Family. I know the land in dispute ; it is called Ugbo-Orimili. I know the boundaries. It is bounded on the East by Ezeogwu—a tree—which has been there a long time. This is followed by an Ukpaka Tree ; then to an Nkpu (ant-hill) ; then to an Agba Tree ; then to an Elili Tree ; then to another ant-hill and Oji Tree ; the southern boundary is the Idemiri River. This boundary is the boundary between my family and the Umuakwa Family. The Umuakwa people are from Umuasele Quarter Onitsha. My family—Ogbo Family—comes from Umuasele Quarter also.

The Trees I have mentioned have been there since before I was born—about 1898—1899.

I knew them as a boy ; my father took me to see them because he knew that one day he would die and I should know the boundaries in case of dispute arising in the years to come. The Idemiri Stream divides Ogbo Family land from Odekpe people who are not either Onitsha or Obosi (Defendant) people. The stream flows into the Niger which is the Western boundary of the land in dispute. On the North the Otumoye River forms the boundary of the land in dispute. The Otumoye River flows into the Ndende River and both flow into the Niger. The Otumoye Stream is the boundary between Ogbo Family and the Mgbelekeke Family.

BY COURT : Mbanefo wishes to tender in evidence a certified copy of a judgment of Brown J. in a recent case which is now under appeal to W.A.C.A. The present Defendants object.

Objection upheld.

The land in dispute edged pink was originally possessed and occupied by our ancestor Ogbo, a long time ago. My father was not alive when Ogbo was in possession. Since Ogbo's day, the land has been used and farmed by the Ogbo family, even up to today ; people pay us tribute for the use of it up to the present time—the Ogbeukwu people and Ogbewarri people and Umuolu people, and Sammy of Obosi (Def.) people and other Obosi people. We apportioned land to them and they paid us tribute up to 1928 when they stopped. They began to claim the land as their own. We only gave land to build on to 4 Obosi people but the other Obosi people then came in. The 4 people were Anah Akalue, Okafor Kwochaka, Obiefuna Nwabunie, Ikejiofor Ezeakudo, who are Umuezechima people, who are our relations domiciled at Obosi. Only the son of Okafor is now in occupation and paying rent. The houses of 2 of the others are occupied by Obosi people and one vacant. The occupiers of the two houses have stopped paying tribute except Sammy.

In 1930 we sued some of the tenants : Anah Akalue, Exs. 30, 31. The land was given to the Niger Company by Odikagbue sometimes spelt Orikagbue. See Section 7 of Statement of Claim.

Before and since the grant to the Niger Company we allowed the Obosi people only to farm the land and pay tribute. We used to go to the land to make sacrifice or juju for them on the land. Each year when they farm on the land they used to bring a goat or fowl, gin and palm wine and we make sacrifice. They used to bring these things to indicate that we gave the land to them and when killed we eat and drink together. They farmed each year at a separate spot each year and the sacrifice was made each year at that spot. There are many Obosi people farming on our land but they do not pay us tribute. The

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Plaintiffs'
Evidence.

No. 13.

P. A.
Anatogu.
21st
September,
1949.

Examina-
tion—
continued

Defen-
dants'
Objection
to Exhibit
Upheld.

Examina-
tion—
continued

In the
Supreme
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Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 13.
P. A.
Anatogu.
21st
September,
1949.
Examina-
tion—
continued.

Objection
by Defen-
dants'
Counsel.
Court
Over-rules
Objection.
Examina-
tion—
continued.

Observa-
tion by
Court.
Examina-
tion—
continued

Cross-
examined

sacrifice is now given up because in 1928 they refused to pay us claiming the land as their own, Exs. 27A, 27B. See also Ex. 33. Since 1928, we the Ogbo Family have sued Defendants for non-payment of tribute, Exs. 29, 30, 31. We got judgment. I myself have been present with my father at least five times at these sacrifices. I have my own original counterpart copy of the Agreement of 1896 (Ex. 54). This is it, Ex. 57. It has been in possession of the Ogbo Family since 1896. I've myself had it in my own personal possession for over 30 years.

DEFENDANT'S COUNSEL objects that this agreement cannot be given in evidence unless registered. 1933 Legislation p. 248. Ordinance No. 10 36/1924.

BY COURT: Objection over-ruled. Regs. 24/1944 expressly exempts agreements for sale from the need for registration whether made before or after the Ordinance. Ex. 54 is expressly stated to be an agreement to purchase. S. 2 of Cap. 86 expressly states that (Ex. 54) No. 40 in 1st Schedule was duly registered under the then existing law.

WITNESS continues: Odikagbue, Exs. 53, 54, was not an Obosi (Defendant) man; he was a grandson of the original Ogbo. The latter had three children, SENUAH, LONWAH, NWAUZO. Odikagbue was great-grandson of Nwauzo. I knew Odikagbue myself; he died when I was 20 a small boy. Three of his sons are now living Ndagbua Okagbue, David Okagbue, Thomas Okagbue.

BY COURT: See Exs. 28, 32: in which David is Plaintiff and Ex. 33 where he is the man who put the Obosi people (Defendants) on the land.

WITNESS continues: Odikagbue took "Ozo" title and the "NDICHIE" title known as Agba of Onitsha. No one who is not a native of Onitsha is eligible for either title. A stranger cannot take it. As a result of Exs. 53, 54, the Niger Company went into possession because we, Ogbo people, granted them the land. The Company still retain a portion—called Abutshi Station or Otu-Obosi. Area coloured orange on Ex. 10. 30 Since 1928, there are many Obosi people who have built houses and we, the Plaintiffs, the Ogbo people, wrote to the Government and told them what was happening, Exs. 19—27. All the houses except one which has a corrugated roof are mud and thatch. We, the Ogbo Family, farm on the land in dispute today; Ndaguba Odikagbue's house is still there—one occupied by tenants. (See Ex. 10: 2 INS South of Dende Creek in N). We farm over the land by virtue of the rights conferred on the grantors' Family, Ex. 53, 54. We pay no tribute to anyone. Odikagbue was a farmer in a big way; not a native doctor. (Section 7 of Statement of Defence). He lived in the Umuasele Quarter of Onitsha. 40

XX. Odikagbue got this land from Obo who acquired it when the Onitsha people drove out the Ozeh people, who now live 7 or 8 miles

from Onitsha. Section 3 of Statement of Claim. Part of Obosi village was given to them Obosi people by the Onitsha people who were friendly with them and part by the Umuoji people. Obosis are Ibos. Onitsha people speak Ibo but they are not Ibos. I do not know the original Onitsha language; I've not heard it spoken. Odikagbue was of our Family and not an Obosi man residing in Onitsha. If Odikagbue had been an Obosi man, he would not have held the title of "Ozo" and "Ndichie". I was 5 years old when Odikagbue died. He was not literate and could only point out visually the area he granted to the Niger Company. I do not know the exact years when I went with my father to attend the sacrifices but I went 5 times. I carried his staff of office. The Ogbo people live in Onitsha Town and go to the land South of the green line only to farm and not to build; but the Onitsha (Ogbo Family) have tenants there e.g. Ogbe Ukwu Quarter due west under green line, and the tenants of the Ibelegwu Quarter (just North of Niger Company Settlement) are also Ogbo Family Tenants, not Obosi Tenants.

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examina-
tion—
continued

"Ugbo-Orimili" the name of the land in dispute is not named after our Family "Ogbo"; Ugbo means "farm"; "Orimili" means water. "Ugbo" is also the name of a person. The Obosi were our tenants and got to know our name for our land; they did not themselves name it "UgboOrimili". The Otumoye River was not at any time called the Dende River by the Obosi people; we the Onitsha people and all people living in Onitsha call it Otumoye River. "Otu-Obosi" does not mean "beach belonging to the Obosi people" but the place or market where they came to sell their produce to the Niger Company.

BY COURT : Shown 53 : (1) Keatshi or Kotshi at the time of this Agreement was the "Okpala" or spiritual Head of the Ogbo Family: a grandson of Obo. By Court.

(2) This should be orange and he was one of the descendants of Obo, a grandson.

(3) Otsi or Ochai was another descendant of Obo, a grandson.

(4) Onokoo was also a descendant of Obo, a grandson.

I myself knew No. 2 well before he died: but not Otsi or Onokoo. I knew No. 1 but I was a small boy. None of them belonged to the Obosi Family.

Adjourned to 22nd September, 1949.

(Sgd.) A. G. B. MANSON.

J.

40 21st September, 1949.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

AT ONITSHA, THURSDAY, THE 22ND DAY OF SEPTEMBER, 1949.

22nd September, 1949. Resumed.

Counsel as before.

MBANEFO calls.

7TH WITNESS : PHILIP AKUNNE ANATOGU, on former oath :

Plaintiffs'
Evidence.

No. 13.
P. A.
Anatogu.
22nd
September,
1949.
Cross-
examina-
tion—
continued

XX.—(continued). We have no boundary with the Obosi people at Dende ; we have a boundary with the Odekpe people at the Idemiri Creek. We, the Plaintiffs in this case, have no boundaries with the Obosi people anywhere. I do not know if other Onitsha people have any boundary with the Obosi people. When the Obosi people came from Ojoto, I gather from history that they were given land by Onitsha and Umuoji people. This land is now the site of the Village of the Obosi people. I cannot say how much land was given by Onitsha people to Obosi people. 10

We, the Ogbo people, did not come to this neighbour as refugees and find the Obosi people here. My people came from Benin. I do not know why they left Benin or how many came over the river. They conquered the Ozeh people, drove them away and occupied their land. I do not know the area. We have no boundary now with Ozeh people. There are 9 quarters in Onitsha—but there is not an Obosi Quarter there. The nine Quarters are (1) Ugunaobamkpa (2) Umuezearli (3) Umudei (4) Ekenaobene (5) Ogboliolosi (6) Obikporo (7) Umukemnaogbeotu (8) Ogbeozoma and (9) Umuasele. Umuezeani is not a Quarter in Onitsha Township. My family have a boundary with Mgbelekeke people, the Umukwa people, and the Odekpe people at Idemiri Creek. My family live in the Umuasele Quarter from which this land in dispute can be seen. It comes right up to the quarter. The Defendants—Obosi people—are resident 6 miles or more away from the land. The Obosi people have no land near Dende (N) or Idemiri (S) Creeks. I do not know what the boundaries of Obosi peoples' land are ; I only know where they live. 20 30

Re-
examined.

RE-X. Some of those who signed Ex. 53 (see questions by Court yesterday) have descendants to-day. Kotshi who was the " Okpala " has a daughter living now. She is the leader of the women of our Family to-day. Her name is Eju.

Ochei had 3 sons alive to-day—(1) Egbuniwe Akunne, (2) Iwobi Amakeze (3) Johnny Ochei.

Oranye has one son living ; he is the 2nd Plaintiff. I am myself the " Okpala " of the Family to-day as well as the " Temporal " head.

Onokoo has a daughter living—Ezidim.

No. 14.**Evidence of N. Ogbuefi.**

8TH WITNESS : NWOKOCHA OGBUEFI (m), Olu, sworn on gun as pagan, says through interpreter : I live at Odekpe. ((S.) at Idemiri Creek). I am a Chief and Court member. My people have land ; our land stretches from Odekpe up to the Idemiri Creek s. in Ex. 10. The Umuasele people are the owners of the land the other side of the creek. We have no boundary with the Obosi people who live in the hinterland and have no land touching the Niger.

10 XX. I am the only Chief in the Town—the Head Chief. I do not know where the Onitsha people originally came from. I am not a native of Onitsha. We have no boundary with the Ozeh people who live in the hinterland ; if anyone says no, he is incorrect. My father told me that Idemiri Creek is the boundary between us and Umuasele people. I know no land call Mkpukpa. I know about Otu-Obosi. Europeans settled there and when our women go there, they sell their produce. It is usual for Europeans to give a name to the place where they settle. No Obosi people live at Otu-Obosi ; they go to Otu-Obosi to do their marketing and other people besides the Obosi people
20 also go there to market.

RE-X. I know the Umuasele people own the land adjacent to my Family land but I do not know its extent.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 14.
N. Ogbuefi,
22nd
September,
1949.
Examina-
tion.
Cross-
examined.

Re-
examined.

No. 15.**Evidence of M. Obanye.**

9TH WITNESS : MICHAEL OBANYE, Onitsha Ibo, sworn on Bible, says through interpreter : I am Head of the Mgbalekeke Family (see Ex. 10 N. of Otumoye River). We have some land at Otu-Onitsha ; it is bounded by Otumoye River which is the boundary between us and the Umuasele people, the Ogboowene Family or Ogbo Family. We have no boundary with the Obosi people. Since my youth, as a small boy, I've known we had a boundary with Ogbo Family. I know Dende Creek into which Otumoye Creek flows. The Dende then flows into the Niger. The Dende Creek is the boundary between my Family and the Ogbo Family of Umuasele.
30

XX. I've heard of Otu-Obosi as the place where the Niger Company trades. I also know Otu-Onitsha ; it is so called because it is situated on the River side. I do not know why Otu-Obosi is called "Obosi." "Otu" means "waterside" or beach and is usually used to signify a place at the waterside where people trade.

No. 15.
M. Obanye,
22nd
September,
1949.
Examina-
tion.

Cross-
examined.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.
Plaintiffs'
Evidence.

No. 15.
M. Obanye
22nd
September,
1949.

Re-
examined.

No. 16.
T. Okagbue
22nd
September,
1949.
Examina-
tion.

RE-X. An "Otu" is the place where people trade. I've been to Otu-Obosi as a young man but I do not think Obosi people lived there. I know "Otu" Company in Onitsha where U.A.C. trades and "Otu Enesia" which is a nickname for Holt and Co. There are 6 "Otus" in Onitsha. People who come and trade in Onitsha from outside say they are going to "Otu Onitsha" generally. When they get there, they go to a particular "Otu" e.g. "Otu Coy."

No. 16.

Evidence of T. Okagbue.

10TH WITNESS: THOMAS OKAGBUE (m), Onitsha Ibo, sworn on Bible, 10 says through interpreter: Retired Engine Driver of Nigerian Railway; retired in 1941. I left home in 1909 first as a workman for the Niger Company in Burutu; I left them for Holt and Co. in 1914, at Warri. I joined Nigerian Railway in 1917 at Port Harcourt. The name of my father was Odikagbue; he died in 1906. My family are known as Umuogbo. My father was not an Obosi man. He lived at Umuasele. "Umu" means children—Umuogbo children or Family of Ogbo. My father was never a Native Doctor (S.7 of Statement of Defence). He had no connection whatever with Obosi. His mother's name was Nwadi. She came from Ogbeobi branch of Umuezeoroli Family of Onitsha. 20 My grandfather's name was Sonkwu. I know the "Ugbo-Orimili" land i.e. land in dispute since my boyhood. It was granted to the Niger Company by Odikagbue; my father and others joined in the grant—Kotshi, Oranye, Ochei, Onokoo. I knew all these 4 properly. They are all dead but their children are alive. They all belonged to the Ogbo Family. The 2nd grant was in writing, after discussion, it was written down. It was in 1896 when I was up to 14 years. The "whiteman" wrote the paper in my father's house; I was present. It was interpreted to us by a man called "Palmer's." Then my father was called, he held a pen and made a mark. The other 4 did the same. There were 30 no Obosi people there—not one man. What should they come to do. There was no plan present on the day of signature. Many things were brought that date for the sale, gin, matchets, powder, clothing. The area of land granted to the Company was pointed out on the spot by Odikagbue and the other signatories. I went with my father and the other 4 gentlemen and perambulated the area. We started from the River and measured 500 yards of the land and then from Ndende Creek right down to Idemiri Creek where our land ends. The Odekpe people adjoin us there. I have 2 brothers living Ndaguba Okagbue (Ex. 32) and David Okagbue (Ex. 28). 40

XX. Our family came from Benin across the Niger. I do not know why they left Benin. They drove away the people whom they found occupying the country round what is now Onitsha—The Ozeh people—and occupied the land themselves. Our land—disputed land—came to us from the founder of our family, Ogbo, who cleared the land himself. Section 5 of Statement of Claim.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

On one side our land has a frontier with Mgbelekeke and Modebe Family, and on another side with Umuakwa Family and the Niger on the West and on South the Idemiri Creek. We have no common boundary with the Obosi people (Defendants) whose village is up to 5 or 6 miles away. They have no land except what was given to them by our ancestors; it is inside Obosi village. The Obosi people have no land near the Idemiri River. Odikagbue is an Onitsha name and the Europeans made a mistake in the paper by calling it Orikabue. Sections 7, 11 of Statement of Claim. It is untrue if the Defendants say he was an Obosi man. All members of my Family were present when the Agreement Ex. 53 was signed but only 5 members signed. Odikagbue signed the Agreement in his house in Umuasele Quarter (Onitsha Inland Town); this house is now occupied by his son Ndaguba. Not more than 2 Europeans were present at the signing. I know my father was an Onitsha man and the land is not the property of the Obosi people.

Plaintiffs'
Evidence.

No. 16.
T. Okagbue
22nd
September,
1949.
Cross-
examined

RE-X. None.

BY COURT: No Obosi would farm our land without our permission. Obosi who have occupied our land have always paid Ogbo Family—our Family—tribute. They ceased to pay tribute when they began to claim the land as their own; this was about 1928. We sued them, Exs. 30, 31, 32.

By Court.

Adjourned to 23rd September, 1949.

(Sgd.) A. G. B. MANSON.

J.

30

22nd September, 1949.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 17.**Evidence of E. Kotsi.**

AT ONITSHA, FRIDAY THE 23RD DAY OF SEPTEMBER, 1949.

Plaintiffs'
Evidence.

23rd September, 1949. Resumed.

Counsel as before.

No. 17.
E. Kotsi.
23rd
September,
1949.
Examina-
tion.

MBANEFO calls :

11TH WITNESS : EJU KOTSI (f), Onitsha Ibo, sworn on gun, says through interpreter : I come from Umuasele Quarter in Onitsha ; my Family is the Ogbo Family, the Plaintiffs. I am the only surviving child of my father Kotsi. I am a married woman. My husband's name is Okoloji of Onitsha from Ogboza, a sub-family of Umuezeoroli. My father is dead—a long time ago ; I cannot say when exactly ; I'm not literate ; he was the head of the Ogbo Family of Umuasele ; he was the spiritual Head who is regarded as the owner of the land. He keeps the juju of the Family. He was the " Okpala " of the Family. 10

Cross-
examined.

XX. My father was the head or Chief of the Family. He was an " Ndichie " holding the title of " Omodi " ; he leads the family spiritually. My father was the " Okpala " and then took the title of " Omodi ".

RE-X. None.

By Court.

BY COURT : I am the leader of the women or daughters of the Ogbo Family today, since 3 years ago. 20

No. 18.
J. A. Agbu.
23rd
September,
1949.
Examina-
tion.

No. 18.**Evidence of J. A. Agbu.**

12TH WITNESS : JOSEPH AKUNNIA AGBU (m), Onitsha Ibo, sworn on Bible, says through interpreter : I am of Umuasele Family of Onitsha ; we are members of Ogbo Family branch. I and 1st Plaintiff were authorised to bring this action. I am the 2nd Plaintiff. The land we claim is called " Ugbo-Orimili " I know its boundaries. I was with the surveyor, Mr. John, when he made a Plan ; I showed him the boundaries starting from Ndende Creek we have a boundary with Mgbelekeke people who are on the other side of the Otumoye River. 30

Then we come to Iyi Uzo, our neighbours are the Modebe Family. In the
 On leaving Iyi Uzo and passing the Uko, we own one side and the Supreme
 Umuakwa Family own the other side. There is a tree Ezeogwu, showing Court of
 the boundary between our Family and Umuakwa Family (E. on Ex. 10); Nigeria,
 then comes a Palm Tree and an Ukpaka Tree, then an Ant-hill (Nkpu); Onitsha
 then a Palm Tree and Agba Tree and then another Ant-Hill and Elili Judicial
 Tree and then an Oji Tree and an Ant-Hill, then finally the Idemiri Division.
 River. The latter is our boundary with the Odekpe people (Extreme S. Plaintiff's
 of Ex. 10). On the West the Niger is our boundary. Evidence.

- 10 We have a juju on the disputed land; one is the Otumoye juju which is near the river and when the river is in flood, the shrine is covered up (Not marked on Ex. 10). The other juju shrine is called Iyioji; it is on the side which leads to the Niger River (N. of the Niger Company land on due West of Ex. 10). We, the Ogbo Family, make the sacrifice to both these jujus from the days of our ancestors up to now. My father's name was Oranye Agbu; he is dead. The land in dispute was at one time given to the Niger Company by Ogbo Family. When I grew up I got to know that it was given in 1882 and 1896. There was a paper drawn up which I saw when I grew up. I was not present
- 20 when it was signed. My father told me how the Niger Company came to them in the house of Odikagbue and asked them for a place to trade. They gave the Company land. He told me there was an agreement which was signed by Kotshi, Odikagbue, my father Oranye, and Ochei, and Onokoo. These were the only signatories and are all "children" of Ogbo, our Family founder. None of them are Obosi (Defendants) people. I knew Odikagbue myself—he was not a native doctor. Our land—this disputed land—is farmed by us. Some Obosi people farm there with our consent and they pay us. When the time came to allot land to them, they came to the spiritual Head with gin, palm wine for
- 30 inspection of the land. When allotted and the harvest reaped they will bring 21 seed yams. Before harvest is reaped, we would go with them to the land and perform sacrifice for them. Only the owners of the land can perform such sacrifices for them. The Obosi people who are thus given land bring their Headman with them—I can remember Anah Akalue, Okafor Kwochaka, Ikejiofo Ezeakudo, Ebenezer Obiefuna, Exs. 30, 31, 33, 34. These 4 live near Otu-Obosi on the disputed land. They do not pay tribute for the Obosi people now, except Sammy the son of Okafor. They had 4 houses; all are now occupied except one, that of Ikejiofor. They used to pay tribute for farming and for their
- 40 sub-tenants, but they do not do so now. They ceased to do so since 1928 and began to claim ownership of the land. We took action against them in Court for non-payment of tribute. We won (Exs. 30, 31, 32). Even after judgment, they continued to refuse to pay. I should say there are some 200 houses now on our land built and occupied by the

No. 18.
 J. A. Agbu
 23rd
 September,
 1949.
 Examination—
continued

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 18.
J. A. Agbu.
23rd
September,
1949.

Examina-
tion—
continued.

Obosi people. Some have thatched roofs, some corrugated iron. We petitioned the Government asking them if they were aware of what the Obosi people were doing on our land. Besides the Obosi people, we have tenants on this land who pay us rent, the Ogbeukwu people (W. of Ex. 10 below green line); the Ogbe Warri people who are between Ogbeukwu Quarter and Umolu Quarter (N. of Ogbe Okwu); Chief Momo (Compound marked); the Umuolu Quarter also pay us. Also the occupiers of Egbunike huts (N. of Umuolu Quarter) pay us rent. Okagbue's huts (N. of Egbunike huts) are occupied by tenants of Ndaguba, Odikagbue's son. Ndaguba does not live there himself but in Umuasele 10 Quarter.

We gave some Ijaws huts also (N. of Okagbue's huts) and we sued them for rent, Ex. 29. They are fishermen. We gave the Conservancy pits to the Government (N. of Ex. 10). We, the Ogbo people, have no boundary with us; they have no land nearer than their own village—some 6 miles from Onitsha and 5 from disputed land.

Cross-
examined.

XX. This disputed land is our Family land; we are not merely trying to get a foothold. Our neighbours the Umuakwa Family (E. of Ex. 10) have always been there and they are now represented by Egbuna Ozomma who in 1938 0/32/38 brought an action against the present 20 Defendant Kodilinye for a declaration of title. I was a witness and I spoke then. The action failed. Egbuna is from one of the families in the Umuasele—the Umuakwa Family. I do not know if the Umuakwa Family is the same as Umu-Ugba Family. I know nothing of any Ugba person called Ugba. I know about my own family of Ogbo but not about the Family of Ukwa. Ogbo and Ukwa were children of the same father Odi who is not the same as Awuma. I never said he was the same. Iyiojo (N. of Niger Co. E. of Ex. 10) is not a pond where the Obosi people have a right to fish; our juju is above the pond and is not submerged in the rains; the Obosi people may fish there secretly. They 30 did not excavate the pond; it was there from time immemorial. We own the pond and fish there—since a long time. We've ceased to fish since we saw the "inclinations" of the Obosi people. They began to come on the land by force in 1928. They destroyed one of our houses by fire. Before 1928 we were friendly and brought us palm wine for the use of our land. I do not know why they changed and became unfriendly. The Defendant, Kodilinye, swore them on the Idemili Juju that he who pays tribute to the owners of the land would be killed by the juju (Ex. 41). I do not know why Kodilinye is grasping. The juju on the Otumoye River is on our land on the N. of the Otumoye 40 River. (BY COURT: This is not on the land in dispute.) My father's name was Oranye; one of his sons—my brother—is also called Oranye.

The place where the Niger Company trade is called Otu-Obosi and was given by our Family to the Company ; it is called Otu-Obosi because Obosi people come there to sell their produce to the Company ; other people also come there—Ojoto, Oba, Ogbaru people also come there. It is called Otu-Obosi because the Obosi people live nearer to the Niger Company land than the other people, I have mentioned. It is not called “ Otu-Obosi ” because the Obosi people own it ; they do not own it. It is true that we have made sacrifices for the Obosi people—before and after harvest—and also on preliminary inspection. Those we
 10 sued for tribute said the land was belonging to the Government and so we petitioned Government asking them about the matter. My Family put Chief Momo on his land (see Ex. 10 N.W.) about 17 years ago. He paid tribute at first but when the Obosi started to oppose our claim, Chief Momo stopped saying he looked to the Government to place matters on a proper basis ; he was afraid of the Obosis and stopped paying. The land belonging to the Umukwa people has nothing to do with the land my family granted to the Niger Company.

In the
 Supreme
 Court of
 Nigeria,
 Onitsha
 Judicial
 Division.

Plaintiffs'
 Evidence.

No. 18.
 J. A. Agbu.
 23rd
 September,
 1949.
 Cross-
 Examination—
continued.

XX. The boundary I described as a witness in the 0/32/38 is exactly the boundary I have described this morning. Ukwa and Ogbo
 20 were half-brothers. I do not know who Ugba is or was.

No. 19.

Evidence of F. Obigbo.

13TH WITNESS : FRANCIS OBIGBO (m), Onitsha Ibo, sworn on Bible says in English : Trader ; aged 41. I am from the Umuakwa Family of Onitsha. We belong to the Umuasele Quarter. My family have land near the land in dispute (see Ex. 10 (East)). Our land is called Nketaku Akprikpu ; we have a common boundary with Plaintiffs' land which is called “ Ugbo-Orimiri.” Our boundary starts at an Ezeogwu Tree, then to a Palm Tree, an Ukpaka Tree, an ant-hill, a Palm Tree, an
 30 Ogba Tree, an ant-hill, an Elili Tree, an Oji Tree and then the Idemiri Stream. Our Family Head is Egbuna Ozonma ; he is still alive and is now in his house ; he is now 110 years. About 25 years ago, I went with my father, Obigbo, to our land ; he was farming there. I went several times—sometimes to see the farm, sometimes to collect tribute from Obosi people whom we put on the land. I was last there in 1940. We have no Obosi people on our land put there by us ; Obosi people are there who say the land is theirs. They do not pay us tribute and we have sued them in the Native Court (Ex. 49). We won the case. We subsequently sued the Obosi people for a declaration of title. The
 40 Defendant was Kodilinye, their Head, who is the Defendant in this case 0/32/38. We were non-suited. My father died in 1940.

No. 19.
 F. Obigbo.
 23rd
 September,
 1949.
 Examination.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 19.
F. Obigbo.
23rd
September,
1949.
Cross-
examined.

XX. Since we were non-suited, we have been considering bringing another action against Obosi people. I do not agree that since the action Obosi people have been in full occupation of our land ; a few of them have trespassed. The Obosi people ceased paying tribute just before 1938. I know " Otu-Obosi " ; for all I know it is a market place ; there are others in the same language denoting the same thing e.g. " Otu-Ikede," where a Hausa man came to trade ; " Otu-Ogbalingba," where this man cleared a site and started to trade. Obosi people cracked nuts and brought them to the white man i.e. the Niger Company and so the trading place is called " Otu-Obosi." I do not know any place called 10
Otu-Onitsha. Otu X, for example, means where X trades ; it does not mean that the site is owned by X. We are not farming on our family land Nketaku Akpilikpu at the moment ; we have other lands and as there is trouble over it with the Obosi people, we are waiting for the end of the trouble before we farm it again. I do not know who is farming it now. Obosi people do not own it.

RE-X. None.

Adjourned to 26th September, 1949.

(Sgd.) A. G. B. MANSON,
J.

20

23rd September, 1949.

No. 20.

Evidence of O. Akpe.

AT ONITSHA, MONDAY, THE 26TH DAY OF SEPTEMBER, 1949.

COUNSEL as before.

MBANEFO calls.

No. 20.
O. Akpe.
26th
September,
1949.
Examina-
tion.

14TH WITNESS : OKONJU AKPE (m), Onitsha Ibo, sworn on Bible, says through interpreter : Native of Umuodimegwugbuagwu Family ; resides in Ugwunaobamkpa Quarter of Onitsha ; I am a farmer and a member of Onitsha Council, I know the history of the Onitsha ; my father told 30
me they came from Benin across the Niger. I do not know when they came. My father said they came a long time ago. My father died over 30 years ago. According to my knowledge of their history, the Onitshas met the Ozeh people here and warred with them and drove them out and

settled in their place. I have never at any time heard that Ozehs gave their land to the Onitshas. I know Obosi Town. Our history tells us the Obosis came from Ojoto. Our history says they got the land on which Obosi village stands from the Onitsha people who met the Umuoji people and made a boundary with them. One man Adike came from Ojoto and the Umuoji people gave him land. This was sufficient for him and his family at first but later it was insufficient and he went to the Onitsha people and they gave him more. This was a long long time ago and is history. When the Onitsha people came across the River
 10 the Umuezechima people, a branch went and settled on the land where Obosi Village is now. "Umuezechima" means the children of King Chima. The Umuodimegwugbuagwu family, my family, gave Adike the land and this land adjoins the land of the Umuezechima people. From Adike, the Obosi people descended—he was their father. The Obosi people, in order to mark the fact that they got land from the Onitsha people, would offer any trophy of the chase to the King of Onitsha e.g. a leopard. The Obosi people obtained the right of appointing "Kings" from the Onitsha people.

In the Supreme Court of Nigeria, Onitsha Judicial Division.

Plaintiffs' Evidence.

No. 20. O. Akpe. 26th September, 1949. Examination—*continued*

By COURT : Mr. Mbanefo quotes certain passages from Iweka's History
 20 of the Obosis in support of witness's evidence. By Court.

Chief Analozo before being made a King of Obosi came to Obi Anazonwu of Onitsha to receive sanction. I was there when it happened. I was a boy then. Eze Anene Obosi before he was crowned came to Obi Okosi of Onitsha to receive sanction. I went with my father to the ceremony, my father then having the title of Ndichie. My family had a dispute with the Obosi people over a piece of land adjoining the piece of land allotted to them the Obosis at Obosi Village by my family. Case No. 8/32/Ex. 5, Ex. 6. My father won but the Obosi people have not respected the Judgment and we have sued them. Never at any time
 30 have I heard the Obosi people gave land to the Onitsha people.

Examination—*continued*

XX. I do not know my age. (By COURT : He appears about 50 years, but Counsel accept 60—66 years). Cross-examined.

My ancestors—the Onitsha people—were not driven out of Benin by anyone. My family did not come from Ojoto. I do not know the exact boundaries of the land the Onitsha people gave to Obosi people on which Obosi Village now stands. You got ownership from us and you do not pay us tribute for land in Obosi village. The trouble is that you are encroaching beyond your proper boundaries. I am not lying when I say I was present at Eze Anene Obosis "sanction."

40 RE-X. None.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 21.
B.
Anwadike.
26th
September,
1949.
Examina-
tion.

Cross-
examined.

No. 21.

Evidence of B. Anwadike.

15TH WITNESS : BENJAMIN ANWADIKE (m), sworn on Bible says through interpreter : I came from Aboh ; I know Ogbe Ukwu Quarter W. of green line on Ex. 10 at River side. My people live there, the Umuasele people put us there. We pay tribute to Plaintiffs' family—the Ogbo Family ; we pay them up to now. We have never paid tribute to any Obosi land. I know the Ogbe Warri Quarter between our Quarter and the Umuolu Quarter. Most of those living in Ogbe Warri are my people, Abohs. The Ogbo Family (Plaintiffs) also put them there. They pay 10 tribute to Ogbo people.

XX. I became " Anwadike " about 5 years ago ; previously I was Orakwue. I changed because Anwadike was my real father but I was brought up by Orakwue. I was born in Onitsha near the old market. I do not live at Ogbe Ukwu but I visit there. I have house there. I am a retired Customs Officer. I was once a Court Clerk. My father never live at Ogbe Ukwu. I pay £2 for myself and everyone to the Plaintiffs' family. I do not know who first settled at Ogbe Ukwu.

No. 22.

Evidence of J. E. Egbunike.

20

No. 22.
J. E.
Egbunike.
26th
September,
1949.
Examina-
tion.

16TH WITNESS : JAMES ERNEST EGBUNIKE (m), Onitsha Ibo, sworn on Bible, says through interpreter : I know land dispute ; I have a plot there.
(BY COURT : Egbunike's huts ; just above the Umuola Quarter West of Ex. 10).

I do not live there. I have tenants there ; I myself got the right to occupy from the Ogbo Family of Umuasele between 55 and 56 years ago. I am 80 years, over 80, I think.

(BY COURT : He does not look quite so much).

I pay tribute—ten yams and wine each year. I am a native of 30 Onitsha. I have a plot of land along the Oguta Road OKPOKO LAND. I have brought an action over this land (Ex. 41). It was against an Obosi man. See the evidence about present Defendant. I won the case.

(BY COURT : Defendants' Counsel objects as irrelevant, objection overruled).

I also had land called " Udo land " just N.E. of " Okpoko land " just referred to. I sold it to Okolo and Agusiobo. Ex. 44. Before I sold, I sued 2 Obosi people for trespass in 1926. I won and the Obosi people paid the Judgment.

40

Defen-
dants'
Counsels'
Objection
Overruled
by Court.
Examina-
tion—
continued.

- XX. I was once a policeman. I joined in 1900 and left in 1913. I was up to 40 when I joined, I think. I live in Umuezeoroli Quarter in Onitsha. I claimed to be Eze of Onitsha some time ago. I did not fail because it was said I was not an Onitsha man. I failed because our family had many contestants. The Obosi people are lying about the disputed land; it is not and never has been theirs. It is the Onitsha people's land. People are beginning to realise the value of land and are snatching as much as they can get; this is true of the Obosis. I have farmed at my huts; but I am old now. My family farm there.
- 10 I have my own family land; but I see no reason why I should not rent other land as well. The land I rent from Plaintiffs is nearer the market in Onitsha; I can leave my wife there and then go and see how my labourers are getting on. I only farm now inside my own compound—at my age. I've not farmed outside for 10 years now. The huts there were not built by me but by my tenants. The huts I built have fallen down. When I plant I pay the Ogbo family; but I do not pay for the huts.
- RE-X. None.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 22.
J. E.
Egbunike.
26th
September,
1949.
Cross-
examined.

No. 23.

20

Evidence of O. Ese.

17TH WITNESS: OSADEBE ESE (m), Ogbaru Ibo, sworn as pagan, says through interpreter: I live at Umuolu Quarter on Onitsha land; we are near Chief Momo's compound (E. of Ex. 10). The Umuasele people, Ogbo Family (Plaintiff) put us there—many years ago. We pay tribute. The Ogbo Family as evidence of their ownership made sacrifice and gave the land to us. We acknowledge them by payment for every house of 5 every year. We have never paid rent to the Obosi people.

No. 23.
O. Ese.
26th
September,
1949.
Examina-
tion.

- XX. Our plot was given to us by the Onitsha people. I know nothing about our Quarter being in the Otu-Obosi area; Otu-Obosi is down the River after leaving Umuolu; it goes to Idemiri Creek. Recently the Obosi people moved from where they were i.e. inland to this area (Ex. 13, Obosi house on E. near River). I do not know exactly when we do not pay rent to Ogbo Family now; we ceased ten years ago because when the Obosi people started to "make trouble" i.e. claimed the land, we stopped payment. No one summoned us for non-payment. I know Chief Ede Obosi; he has never collected rent from us. I never paid £4 to the Obosi people for the right to fish in the Niger.
- 30

Cross-
examined.

RE-X. I know the Ogbe-Ukwu settlement; going from Umuolu, one gets to Ogbe-Ukwu and then to Otu-Obosi.

Re-exami-
nation.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 24.
R. Ossai.
26th
September,
1949.
Examina-
tion.
Cross-
examined.

No. 24.

Evidence of R. Ossai.

18TH WITNESS : REMI OSSAI (m), Aboh Ibo, sworn as pagan, says through interpreter : Native of Aboh ; I live at Ogbe-Warri ; it is between Umuolu Quarter and Ogbe-Ukwu Quarter (E. of Ex. 10 near the bank of the Niger). My people do not own Ogbe Warri ; it was given to us by the Umuasele people, the 1st and 2nd Plaintiffs, the Ogbo Family—many years ago—I was alive at the time of the grant (BY COURT : Witness is about 35—40 years). We pay tribute. We pay £2 each year for the whole Quarter. Since the death of Chief Obi Omodi 3 years ago 10 we've not paid. The Onitsha people never demanded it ; no one else demanded it ; we have never paid tribute or rent to the Obosi people ; they have never demanded any.

XX. I know Otu-Obosi, i.e. the place where the " Company " once lived ; I do not know who lives there now. I do not know whether the Company gave the name to the place. I have never gone by foot from Ogbe-Ukwu to the Idemiri Creek. We always go by water along the Niger. You don't look to meet Obosi people on the river ; they go by foot. I cannot say they are not canoe men or whether they are like the Ijaws. 20

RE-X. None.

No. 25.
P.
Emaviwe.
26th
September,
1949.
Examina-
tion.

No. 25.

Evidence of P. Emaviwe.

19TH WITNESS : PETER EMAVIWE (m), Soko, sworn on Bible, says through interpreter : I live at Ijaw Quarter, across the Ndende Stream (Extreme N.W. of Ex. 10). About 1924 I joined my brother who was already living there ; he had been there sometime before I joined. He was paying the Umuasele people tribute—the Ogbo Family—about 5s. a year—now about £2 per man. There were many Ijaws paying besides my brother, to the same family. I still pay up to today and so do the 30 other Ijaws, to the Ogbo Family. Never at any time have we paid to Obosi people ; they about the end of 1946 came and demanded tribute ; I refused to pay them and so did the others.

We Ijaws, fish and I am the head of the fishers. We fish in the Otumoye River and the Niger. We use baskets to fish with ; they have ropes attached. This is the " Atana " method. There is also the dam or fence constructed and a canoe will fish at the entrance—this is called the " Ikwum " method. The latter is used close to the bank ; so is the " Atana " method. And so we pay rent for the use of the banks. We pay to the Ogbo Family ; we fish right down to the mouth of the Idemiri 40 River. The £2 covers the fishing rights and the right to live on the land. (BY COURT : Ex. 29).

XX. Coming from Onitsha, one must cross the Otumoye River to get to our settlement. I have my own house in the Ijaw Quarter—since 1932. I pay rent to no one except the Ogbo Family (Plaintiffs). I was living there between 1940—1946. I do not know if Government took any action in the Court between those years against anyone. I have never been sued by Government nor have the Ijaw people. We paid no rent to Government. At Ndende River, we used to meet the people placed there by the Ogbo Family of Umuasele. I am the head of the Ijaw fishermen and I would therefore know who fish the River, as
 10 I am appointed by the Ogbo Family to put other fishers there. I'm not a tailor by trade. I have not come here to support the Ogbo Family by telling lies. The Obosi people came to the water in 1946 and this started this dispute.

In the Supreme Court of Nigeria, Onitsha Judicial Division.
 ———
 Plaintiffs' Evidence.
 ———
 No. 25.
 P.
 Emaviwe.
 26th September, 1949.
 Cross-Examination.
 Re-examined.

RE-X. The Obosi people and the Ijaws fought and were taken to Court for a breach of the peace and both fined.

Adjourned to 27th September, 1949.

(Sgd.) A. G. B. MANSON.
 J.

26th September, 1949.

20

No. 26.

Evidence of Aduba.

No. 26.
 Aduba.
 27th September, 1949.
 Examination.

AT ONITSHA, TUESDAY THE 27TH DAY OF SEPTEMBER, 1949.

27th September, 1949. Resumed.

Counsel as before.

MBANEFO calls :

20TH WITNESS : ADUBA (m), Onitsha Ibo, sworn on Bible, says through interpreter : I come from Iyiawu, Onitsha. My family, Ogbola Family has two plots of land between the land in dispute and Obosi Town, i.e. Akpu-Apali (E. of Ex. 13) and land of Iyiawu (Centre of Ex. 13). We
 30 have had disputes with Obosi people over these lands, Exs. 37, 39, 46, 47 and 50. We got judgment in all cases. Plaintiff in Exs. 50, 38, 46, 47 is a member of my family. I showed Mr. Emodi, the surveyor (2nd Witness) when he made his plan—Ex. 13—our two plots.

XX. I am not related to Ogbo Family and do not own their land. The land in dispute is not my family land and we have no interest in it. The Obosi people are not on the lands which I have said belong to my family. They do not belong to Chukurah Family of Obosi. The Obosi

Cross-examined.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

people have not planted any crops on my land now ; we used to lease it to them and they paid up rent and planted cassava. I would not be suprised to hear that any man from Obosi had said he had planted cassava on my lands ; I or any man can say I or he planted on someone's else's land.

RE-X. None.

Plaintiffs'
Evidence.

No. 27.

Evidence of V. Okwosa.

No. 27.
V. Okwosa.
27th
September,
1949.
Examina-
tion.

21ST WITNESS : VICTOR OKWOSA (m), Onitsha Ibo, sworn on Bible, says through interpreter : My family is Obior ; we have land called " Udo " 10
(BY COURT : Orange portion in centre of Ex. 13). We had a case over this land with the Obosi people. The Obosi people were given some land to farm by the Onitsha people and exceeded the boundaries of the piece they rented and encroached on our land. We sued them, Ex. 40. My family sold a portion of our land to one Megafu (S.W. corner of " Udo " Land) also to one Egbunike who sold to Agusiobo (S. of " Udo ") also to one Anyaeji (W. of " Udo ") (Ex. 48, Cases No. 207, 257, 258, 259/1929) ; a piece of land owned by Okolo (N. of " Udo " Plot) was sold to him partly by my family and partly by Egbunike who resold to him after buying from us. Ezeocha was the Head of our family ; 20 he is dead and I have succeeded him. He had a case in the Supreme Court in 1922—*Ezeocha v. Anyaegbunam*—the Defendant had placed Obosi people on our land and they were farming it. The Court awarded us damages. Record tendered.

Objection
by Defen-
dants'
Counsel
Over-ruled
by Court.
Cross-
examined.

BY COURT : Defendants' Counsel objects on ground that his evidence is *res inter alios acta* ; it has nothing to do with the parties in this case. Objection over-ruled. Record put in Ex. 58.

XX. My family is not the Ogbo Family (Plaintiffs) nor related to them nor has my family any interest in the land in dispute. Our family land—Udo Land—is our land ; not Obosi land. The Obosi people are 30 farming our land now and they bring us tribute yearly, palm wine, yams. They do not farm every year but in cycles of 2 years and pay tribute when they farm. Two years ago we received our last tribute from Obosi people but since this action started, we told them to stop paying us till this action is decided. This present action affects the whole Obosi people generally—the matter is becoming " national " between Ogbo Family and Obosi people. All the people we sold our family land to are Onitsha people.

RE-X. None.

No. 28.

Evidence of E. Azokwu.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

22ND WITNESS : EGBUNIWE AZOKWU (m), Onitsha Ibo, sworn as pagan, says through interpreter : My family is Ozoma or Onogbo ; we live in Umudei Quarter in Onitsha. My family has land near the Oguta Road. (BY COURT : Piece edged blue) (E. of Ex. 13). The land was divided in two by the Oguta-Onitsha Road but we gave the part on the right of the road to Egbunike Family—a long time ago. On the left hand side, we own the land except for 2 pieces which adjoin Egbunike's piece
10 —one owned by Oranye and one by Okolo. (See Ex. 13.) The family land remaining is bounded by Ogboaba people of Umuasele on the East : by Umuanumudu of Umuasele on South ; and then on S.W. by Okwugbele Family. We let out portions of our remaining family land yearly to Obosi people ; they pay—cash, yams. We had a dispute over this land ; an action for non-payment of rent. Case 133/32. Ex. 52.

Plaintiffs'
Evidence.

No. 28.
E. Azokwu.
27th
September,
1949.
Examina-
tion.

XX. My family is different from the Egbuna-Ozomma Family. Cross-examined.

BY COURT : Mr. Soetan, Defendants' Counsel says he is in a difficulty, he has had no opportunity of seeing Ex. 13. This copy has always been available for him, and Mr. Mbanefo says he supplied him with a
20 copy before the oral evidence was given which he kept overnight. By Court.

XX. My own family do not farm our remaining land ; we give it all to the Obosi people to farm on payment. If the Obosi people had not been paying tribute, why should we sue one of them for non-payment ? They farmed up to 3 years ago and paid us tribute up to then ; now the land is vacant as the land is lying fallow. We sold our land to Onitsha people. My family has many lands ; we do not rent from any family. We have no common boundary with the Ogbo Family ; I know where the land in dispute is situate, but my family has no interest in it. Cross-examination—*continued*

RE-X. The Obosi people planted " seed " yams ; the Onitsha
30 people plant " big yams " ; the land can only produce " small yams ". Re-examined.

No. 29.

Evidence of K. Gbosa.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Plaintiffs'
Evidence.

No. 29.
K. Gbosa.
27th
September,
1949
Examina-
tion.

23RD WITNESS: KWENTOH GBOSA (m), Onitsha Ibo, sworn as pagan, says through interpreter: My family is Obikporo; I hold the "Ozo" Title and I am also an "Ndichie." I am also a Council Member. I live in Onitsha Inland Town. I know the Oguta Road; I know one Iweka's land. (N. of area marked Motor Park. Ex. 13.) It was given to him by Okolu Ochili and Emodi Nnabuenyi. The grantors belonged to the Oreze Family of Obikporo Quarter. This Oreze Family is the same as Otimili Family. I was present when it was given—23 years ago. Okolu and Emodi are both dead. The price was agreed at £100. Iweka is also dead. 10

Cross-
examined.

XX. I knew Iweka when he came to Okolu's house about this matter. I do not know if he was a trader. Iweka did not get his plot from Obosi people. I went to the land myself to see it when it was sold.

RE-X. None.

No. 30.
J. Onuora.
27th
September,
1949.
Examina-
tion.

No. 30.

Evidence of J. Onuora

24TH WITNESS: JAMES ONUORA (m), Onitsha Ibo, sworn on Bible, says through interpreter: My family is Anumudu of Umuasele. We have land on the Onitsha-Oguta Road down to Idemiri Stream; it is Mkpukpa Land. S. of Ex. 13. We had actions over it with the Obosi people in the Native Court and Supreme Court Onitsha. In one case we sued for non-payment of tribute, N.C.278/19, Ex. 39, and in Supreme Court Kodilinye (Defendant in this case) sued us for a declaration of Title, Exs. 7, 8, 9. We got judgment against the Obosi people. I know one Omodi; he was the Head member of my family; he was plaintiff in Ex. 39. I also know Achebe; he was the Head of our family when Kodilinye sued my family in the Supreme Court. In one action, N.Ct. Case 301/1919, Ex. 39, Achebe sued Omodi who had tried to sell family land to Obosi people and the Court held family land could not be sold by an individual. 20 30

Ex. 45, No. N. Ct. 215/1926, Achebe sued an Obosi man for trespass on our land. Our family won. Our family have boundaries with Ozomaocha Family—same as Onogbo Family left of Oguta Road (Blue Area, Ex. 13), than with Ogboaba on N.E. We have no boundary with Obosi people. Our family are on each side of the Onitsha-Oguta Road. We also have a boundary with the Okwugbele Family. See Ex. 13.

In the Supreme Court of Nigeria, Onitsha Judicial Division.

10 XX. I was present in Court when Ex. 9 was decided. No one from Obosi gave evidence in that case. Achebe and Egbuna (Defendants in Ex. 9) did not give evidence. Kodilinye got up and said he no longer contested the case and said the land was ours. He gave notice of discontinuance.

Plaintiffs' Evidence.

No. 30.
J. Onuora.
27th
September,
1949.

20 Our land was rented to Obosi people to farm; they used to pay rent but do not do so now not since 1928, Ex. 9, though some tenants have done so. They claimed the land as their own. The Obosi Council ruled that Obosi people should cease to pay tribute to anyone and since then they have not paid us. I do not remember the date of this decision. Each time we were about to sue those Obosi people who did not pay us tribute, they always said they would acknowledge us. The Obosi people are not the owners of our land. They used to pay us rent since the days of our ancestors.

Examina-
tion—
continued.
Cross-
examined

RE-X. I have no money with which to sue the Obosi people.

Re-
examina-
tion.

CLOSE OF PLAINTIFFS' CASE.

SOETAN for Defendants says he would desire to open his address tomorrow morning. It is now 12 noon and another case is fixed for 12.30 p.m.

Adjourned to 28th September, 1949.

(Sgd.) A. G. B. MANSON,

J.

27th September, 1949.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

No. 31.**Opening for Defence.**

AT ONITSHA, WEDNESDAY THE 28TH DAY OF SEPTEMBER, 1949.

No. 31.
Opening
by Soetan
Counsel for
Defen-
dants.
28th
September,
1949.

28th September, 1949. Resumed.

Counsel as before.

SOETAN opens for Defendants.

The onus is on the Plaintiffs to prove that the land is theirs and that they have exercised since rights of ownership as to entitle them to the declaration they seek.

The land in dispute belongs to the Obosi people, by long undisturbed 10 possession and by their traditional history. The signatories to Exs. 53, 54, are Obosi people and not Onitsha people. 1st Defendant is old, infirm and blind and unable to come to Court and give evidence.

Defen-
dants'
Evidence.

No. 32.**Evidence of E. Chidolue.**

No. 32.
E.
Chidolue.
28th
September,
1949.
Examina-
tion.

SOETAN calls :

1ST WITNESS : EJIKE CHIDOLUE (m), Onitsha Ibo, being sworn on Bible, says in English : Licensed Surveyor ; I made a plan for defendants in this action ; this is it, Ex. 59. I made a survey of the area in dispute ; I saw Ex. 11, I had it with me when I went on the land. I showed on 20 my plan, Ex. 59, the Obosi houses and farms not shown on Ex. 11 as well as the Iyi Ndende Pond—just South of Township boundary and on Akpurikpu land. I also show Iyi-Mkpologwu—South extreme of Ex. 59. I also showed the site of the old Market Onu-Afia. W. of Ex. 59 on River.

Cross-
examined.

XX. The market does not exist ; the Defendants told me it was the site of the old market ; there are no buildings.

No. 33.**Evidence of S. A. Samuel.**

2ND WITNESS: SYLVANUS AKINROKUN SAMUEL (m), sworn on Bible, says in English: Registrar of this Court. I produce Record Book Vol. 8; containing proceedings in Suit No. 0/32/38, Ex. 60. Ex. 15 was an Exhibit in that case. I have also a certified copy of 0/15/44. Ex. 61. I produce the Plan in that suit: Ex. 62.0/15/44 was appealed against to W.A.C.A. which Court sent the case back for re-trial. See Ex. 63. The Plaintiff filed a notice of discontinuance. Ex. 64. I also produce a
 10 summons in this Court in 0/16/44. Ex. 65. This summons was not proceeded with and was withdrawn. Notice of discontinuance, Ex. 66.

XX. None.

In the
 Supreme
 Court of
 Nigeria,
 Onitsha
 Judicial
 Division.

Defen-
 dants'
 Evidence.

No. 33.
 S. A.
 Samuel.
 28th
 September,
 1949.
 Examina-
 tion.

No. 34.**Evidence of B. A. O. Igbegbu.**

3RD WITNESS: BENJAMIN AARON OLISAELOKA IGBEGBU (m), Onitsha Ibo, sworn on Bible says through interpreter: Clerk in the provincial Administration. I produce a letter 8th August, 1945 addressed to the District Officer Onitsha by Odu Amobi, Ex. 67; also a letter, 16th February, 1936, addressed to District Officer of Onitsha from Kodilinye,
 20 Ex. 68. The reply was 25th February, 1936, Ex. 69.

XX. None.

No. 34.
 B. A. O.
 Igbegbu.
 28th
 September,
 1949.
 Examina-
 tion.

DEFENDANTS' COUNSEL tenders without objection from Plaintiffs' Certified copy of M.O./1A/42, Ex. 70; also a Plan Sheet 25 of Nigerian Surveys showing Position of Otu Obosi. No objection, Ex. 71. Also a certified copy of Treaty of Cession, 1885 between National African Company and certain people from Abutshi. No objection. Ex. 72.

Tender of
 Exhibits.

No. 35.**Evidence of J. C. Nwangwu.**

4TH WITNESS: JABEZ CHUKWUDEBE NWANGWU (m), Obosi man, sworn on Bible says through interpreter: Trader and Farmer of Obosi and 2nd
 30 Defendant. I live in Obosi Village. The Obosi people got their land at Obosi Village from their ancestor, Okpala. On the latter's death, his son Adike used the land. Adike was the father of Egbuadiji and Obosi. Adike divided his land between these two. He told Egbuadiji to live on the East and Obosi to live on the West. Egbuadiji was the

No. 35.
 J. C.
 Nwangwu.
 28th
 September,
 1949.
 Examina-
 tion.

In the
Supreme
Court of
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Division.

Defen-
dants'
Evidence.

No. 35.
J. C.
Nwangwu.
28th
September,
1949.
Examina-
tion—
continued

father of Ojoto : the Ojoto people now live in Ojoto now. The people called Obosi are the descendants of Obosi and live in Obosi Village and right up to Obosi waterside or "Otu-Obosi." It is on the river side on this land which is in dispute. Ex. 71. The Western boundary of Obosi land is the Niger. The Obosi people own all the land from the N'Dende River, to the Idemiri Creek on to Obosi village ; this includes the area in dispute. The land in dispute in this action is only a portion of the whole Obosi land. N'Dende is our Northern boundary. When the River floods it touches our boundary with the Onitsha people and the Mgbelekeke Family. (Ex. 10. N.) The Ozeh people used to live 10 where the Onitsha people now live and we had a boundary then with the Ozeh people. Our Southern boundary is the Idemiri Creek. Egbuna Ozomma summoned the Obosi people about the land immediately adjoining the land in dispute. Ex. 60. The suit failed. Egbuna came from Umuasele Family, the same Quarter as Plaintiffs in this case. We, Obosi people, have no other name for the Ndende Stream. The land in dispute is called "Otu-Obosi." The Obosi people live and farm there and have done so since before I was born.

(BY COURT : Witness is in 40—I should say.)

No Onitsha man farms there. We have never paid Onitsha people 20 tribute. I know the name Ugbo-Orimili ; this means a farm made by the river-side. There is such a farm by the waterside. The Obosi people farm it. The Obosi people have tenants who live on and farm the land. They pay us something but nothing to the Onitsha people. I know the Ogbe-Ukwu people. Ex. 10. E. and N. & S. of green line in Ex. 59. The Obosi people put them there. The first man was put there in 1914 and others followed. The Obosi people who put them were Jibike Tigbue and other Obosi people. The Obgeukwu people pay the Obosi people. The National African Company, predecessors of the Niger Company, opened their station at Otu-Onitsha and closed it in 1879 because 30 of troubles with the Onitsha people who were stealing from their canteens (laughter in Court). The Company seized their stolen goods and bombarded Onitsha—the beach and inland town. The Niger Company next opened at Otu-Obosi ; Akigbue lead the Company to the Obosi people and the Obosi people authorised Akigbue to give the land to the Company because by then Akigbue was living at Otu-Onitsha. He was so deputed because he was an Obosi man who came from Umuezeani Family of Obosi, but lived in Otu-Onitsha. He was a native of Obosi. He was a Native Doctor. He was a Chief holding the title of "Onya"—an Obosi Title reserved for the Umuezeani Family of Obosi. It is not unusual for 40 an Obosi man to live outside Obosi. There were Obosi people living at Otu-Obosi before the Company even came there. I was one of the Defendants in Ex. 61. The Obosi people have a boundary with the

Odekwe people. S. of Ex. 10. Nwokocha (Plaintiffs' 8th Witness) is no longer a Chief; his evidence saying we Obosi people have no land touching the Niger is untrue. We, Obosi people, own Ijiojo Pond W. of Ex. 10. No Onitsha man fishes there. The Pond is fishable all the year. There is no juju or shrine at Iyiojo (see 12th Witness). No Ogbo Family has even come to the land to worship the land. My people ceded land from Idemiri Creek to Auba. (Ex. 72.)

In the
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Division.

(BY COURT: Now called OBA.)

Defen-
dants'
Evidence.

10 The Plaintiffs have never written to us protesting against our occupation. Onitsha has never given us land; the Umuoji people have never given us land. The Onitsha people came from Benin—I know this from history. They beat up the wife of the king when she went to fetch firewood (laughter in Court). The woman was called Asiye and her son Gbunwala. The Onitsha and Benin people fought and ran away towards this part of the world. Some stopped at Onitsha Ugbo and some at Onitsha Olona and some at Asaba. The Asaba ferried them across in 2 canoes to Onitsha; the people in the canoes asked the Asaba people, as they did not know the language, to ask the Ozeh people to grant them land. They were given land. Some of the canoe people
20 migrated to Obosi village—Chima being one. The descendants of Chima are there now and called Umuezechima. We Obosi people, were here long before the Onitsha came.

No. 35.
J. C.
Nwangwu.
28th
September,
1949.
Examina-
tion—
continued

XX. I know 1st Defendant very well and that he has been fighting Onitsha people for land. In all these cases, I and my own Obosi people supported him but not all the Obosi people.

Cross-
examined.

30 Shown Ex. 2: I do not recognise it. The lands shown as Awada, Okpoko, Nkitaku are Obosi lands. Section 4 of Ex. 3. Kodilinye did not win the case. Ex. 4. I still say they are Obosi land. Kodilinye is the "Eze" or "King" of Obosi people and he brought the suit on behalf of them. No land is called "Ugbo-Orimili"—only the water side where farms are made. Referred to Ex. 2: Not the whole area of land. I know a man called Iweka, an Obosi man—respected, older than I, and partly literate. He wrote a book about Onitsha people; he gave the facts to someone else who did the writing, Thomas. I also know Revd. Ukpunodi, an Obosi man. I've seen his History; the book was never at any time brought before the Committee of Obosi people read and criticised. It may be, it was published in 1924. (Witness reads title in Ibo.) (Passages on p. 10 read.) I still say Obosi is one of the sons of Okpala. The account read to me is inaccurate.

In the
Supreme
Court of
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Judicial
Division.

Okpala came from where the Ibos came from. Adike did not come from Ojoto (p. 10 read). The ceremonial stick must be obtained from the house of the first son and, therefore, people go to Ojoto as Egbuadiji was the elder son of Adike and lived at Ojoto. The eldest son cared not live in his father's town but can go to a strange land.

Defen-
dants'
Evidence.

—
No. 35.
J. C.
Nwangwu.
28th
September,
1949.
Cross-
examina-
tion—
continued

There is a branch of Onitsha people at Obosi—Umuezechima Family. Kingship or Eze of Obosi is not derived from Onitsha, the above family have no right to the Kingship of Obosi. Kingship is derived from Obosi Families. The first Eze of Obosi was not Chima, an Onitsha man (p. 17 of book read), and he installed no one. I will not say if the Ojoto people have kings—(long laughter in Court). “Eze” means first son—and he is king of that area. Egbuadiji was the Eze of Ojoto. I do not know who now; the Ojoto people will know. 10

Adjourned to 29th September, 1949.

(Sgd.) A. G. B. MANSON,

J.

28th September, 1949.

AT ONITSHA, THURSDAY THE 29TH DAY OF SEPTEMBER, 1949.

29th September, 1949. Resumed.

Counsel as before.

20

MBANEFO continues Cross-examination.

JABEZ CHUKWUDEBE NWANGWU on former oath :

XX. (cont.). I can mention Obosi lands; they have OKPOKO, AWADA, UGBO-ULO, NKETAKU, AKPIRIKPU, the latter 2 are called Otu-Obosi land and extend to the River Niger; OZALAEITITI, UBWU-AGBA, OGBOLO, UMURU and others which I cannot remember. MKPUKPA, Ex. 15 (large area S.W.), is not the name of the land but the name of the waterside—we call it Ogbododo. It lies around 4–5 miles down the Onitsha-Oguta Road stretching to Idemili Creek. (Ex. 39, Case No. 278/1919.) Okpoko (W. of Ex. 13) (Ex. 38, 41, 43), Awada (W. of Ex. 13), Case No. 9/32; Ex. 3, Nketaku (W. of Ex. 13), Case 9/32 : Ex. 3. I still say all these lands are ours—Obosi people. I do not know anything about these judgments. I am speaking the truth. 30

(Witness also referred to Ex. 33 in which land inside the disputed area was said by the Obosi people to have been given to him for safe keeping by Onitsha people.) I was not a party to this case—*Okenwa v. Ichu*, Native Court Case 150/1925.

In the Supreme Court of Nigeria, Onitsha Judicial Division.

(BY COURT: The Defendant in this present action, Kodilinye, was one of the Judges: see original R. Book 33A, p. 35.)

Defendants' Evidence.

(BY COURT: Witness is also referred to Ex. 30—No. 269/1930 in Record Book No. 4/1930; in this case, the Obosi people said they got Otu-Obosi from Government. Here again Kodilinye Defendant in present action, 10 gave evidence of ancestral ownership of Obosi people: the Court did not believe Kodilinye.)

No. 35. J. C. Nwangwu. 29th September, 1949.

(BY COURT: Witness' attention is drawn to difference between boundaries of Obosi people marked on their Plan in this case, Ex. 59 and those on Ex. 2 in which they sued Onitsha people, Case 0/9/32. Witness is also referred to Ex. 6 in 0/8/1932.

Cross-Examination—*continued*

WITNESS continuing: I know an ant-hill—Egbualugbalu. This is on boundary between Obosi people and Onitsha people.

(BY COURT: See Court's Judgment about this ant-hill.) Okagbue was an "Onya" an Obosi Title and he signed in 1882 on behalf of Obosi 20 people. His name would not be on Ex. 72 in 1885 because he belonged to the Umuezeani Family: other signatories were people who carried out the laws of the town and kept order. The Umuezeani people grant land to strangers.

(BY COURT: This witness is most unintelligent.)

WITNESS: The land in Ex. 72 has something to do with the land in dispute.

RE-X. According to all I hear, Odikagbue whom I did not know myself, was an "Onya" of the Umuezeani people of Obosi. The Obosi were at Obosi before the Onitsha came. We Obosis had "Ezes" or 30 Kings before the Onitsha came. Our first "Eze" was "Shime" not "Chima." No "Chima" was ever an "Eze" in Obosi. The Idemiri stream does not flow through Onitsha land. Re-examined.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Defen-
dants'
Evidence.

No. 36.
Ikefunaon-
wugbolu.
29th
September,
1949.
Examina-
tion.

Cross-
examined.

No. 36.

Evidence of Ikefunaonwugbolu.

5TH WITNESS : IKEFUNAONWUGBOLU (m), Obosi Ibo, sworn as pagan, says through interpreter : Farmer ; live at " Otu Obosi " and farm there too. I was born there. Coming from Onitsha, " Otu-Obosi " starts from Ndende Creek and goes as far as Idemiri River. My father's name was Onwugbolu ; he lived at " Otu-Obosi " ; he was a farmer at Otu-Obosi. I farm near where the Company have their station. My father died at Otu-Obosi. My grandfather also lived in Otu-Obosi ; also a farmer there ; my father told me this. I have never paid tribute to anyone. It is our family land. No Onitsha man has demanded any rent or tribute or tried to disturb my possession. My father never told me he paid tribute and I never saw him pay tribute. I am about 60 years.

XX. I was summoned in a Native Court by one Okafor—not an Onitsha man—for farming on his land. The case was dismissed. I built my house about 30 years ago.

(BY COURT : Pls. Counsel refers to Ex. 62 put in by Defendant : this witness' name does not appear on the list of Obosi settlers.)

RE-X. None.

20

No. 37.
W. Izuora.
29th
September,
1949.
Examina-
tion.

Cross-
examined.

No. 37.

Evidence of W. Izuora.

6TH WITNESS : WILSON IZUORA (m), Obosi, sworn on Bible, says through interpreter : Native of Obosi ; I live at Otu-Obosi and was born there. My father was Izuora ; he also was a farmer ; he died at Otu-Obosi. I live now where he lived. He never paid tribute to any Onitsha man. Since he died I have never paid tribute to anyone and no Onitsha man has disturbed my possession. No Onitsha man has ever sued me nor my father. In 1914, I was one of those sued by the C. of Lands in 0/15/44. Ex. 62 being No. 41 ; I'm still there.

XX. I've never lived outside Otu-Obosi. I was a forest guard and left my employment in 1931. I had a quarrel with an Ogbaru man ; I was sent to prison for asking money from him, i.e. corruption. Ikejiofo was my neighbour.

BY COURT : Counsel refers to Ex. 30.

RE-X. None.

30

No. 38.

Evidence of B. Sigaba.

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

7TH WITNESS: BABA SIGABA (m), Bida Nupe, sworn on Koran, says through interpreter: I live at Otu-Obosi and was born there; my father was Sigaba now dead; he lived and died at Otu-Obosi. He came from Bida and settled at Otu-Obosi—a long time ago before I was born. I am 35 years old. An Obosi man permitted him to live there. My father paid him tribute and I pay too—5s. per annum to Oboli Ikeazor, an Obosi man. I have never paid tribute to an Onitsha man nor has any Onitsha
10 man demanded any.

Defen-
dants'
Evidence.

No. 38.
B. Sigaba.
29th
September,
1949.
Examina-
tion.

XX. I can mention one or two of my neighbours, i.e. (1) Anah Akalue (2) Ikejiofor Ezeakudo (see 7th Witness for Plaintiff who says that A. Akalue and Ikejiofor were put on the land by Ogbo Family, Ex. 30, Case No. 269/1930.) I do live there—at Otu-Obosi.

Cross-
examined.

RE-X. I can show you my father's grave.

Re-
examined.

No. 39.

Evidence of F. N. Ajie.

No. 39.
F. N. Ajie.
29th
September,
1949.
Examina-
tion.

8TH WITNESS: FRANCIS NDUPU AJIE, Aboh Ibo, sworn on Bible, says through interpreter: Farmer and Fisherman: live at Ogbe-Ukwu which
20 is at Otu-Obosi (N. of Iyi Oji pond on W. of Ex. 10). I was a small boy when my father came with a friend and lived near the Company's plot of land. My father died at Ogbe-Ukwu. Jibike Anene, an Obosi man, brought him there. I do not know if my father paid tribute to an Onitsha man but he paid Jibike. I also paid Jibike. No Onitsha man has tried to disturb my possession up to today.

XX. I do not know my age. (BY COURT: About in later 30s.) I know Ogbe-Warri; it is contained in Ogbe-Ukwu; the people are the same but some prefer to be called by one name and some by another. I knew Chief Obi Omodi, he was chief of both places. (See 18th Plaintiffs' Witness.) I know Remi Osai (Plaintiffs' 18th Witness); I regard him
30 as my father. I do not know what is in his mind.

Cross-
examined.

RE-X. None.

In the
Supreme
Court of
Nigeria,
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Judicial
Division.

Defen-
dants'
Evidence.

No. 40.
Obiakufie.
29th
September,
1949.
Examina-
tion.
Cross-
examined.

No. 40.

Evidence of Obiakufie.

9TH WITNESS: OBIAKUFIE (m), Isioko, sworn on Bible, says through interpreter: Palm-fruit cutter; live at Otu-Obosi; have done so for 40 years. My land was given to me by Kodilinye (Defendant in this case). My house is near the Company's house behind it. (W. of Ex. 10.) I pay to Kodilinye—10s. p.a.

I know no Onitsha land; and no Onitsha man has disturbed me.

XX. I remember the first war; I went at Otu-Obosi after the war leaving my home town. I am not a mile from the River. Where I 10 work there are palm nuts.

RE-X. None.

No. 41.

Evidence of P. A. Okoye.

No. 41.
P. A.
Okoye.
29th
September,
1949.
Examina-
tion.

10TH WITNESS: PHILIP AGULEFO OKOYE (m), Ojoto Ibo, sworn on Bible, says through interpreter: I know Otu-Obosi well; I have lived there and farmed there. The man who gave us the land to farm was Ejindu Eze Otu, he was a native of Obosi; he died long ago. The land was given to us before the Niger Company bombarded our town Ojoto in 1899. I was ten years old in 1884, the advent of the Missionaries. 20 At first we, I and my brother, farmed at Akpurikpu; I do not farm there myself but my people do. When I and my brother farmed Akpurikpu we lived at our own town Ojoto later at Otu-Obosi; the Obosi people gave it us the farm. I know present site of Niger Company (W. of Ex. 10). I do not live at Otu-Obosi now but at Ojoto; I left Akpurikpu about 52 years ago. I left Otu-Obosi in 1910. We, Ojoto people do not pay tribute to Obosi people; we and they are related. "Okpala" was our common ancestor. Okpala had a son Egbuadiji and we, Ojoto, are descended from him. Adike was the son of Okpala and the father of Obosi. 30

(BY COURT: See 4th Witness.)

The Onitsha people came from Adonaidu between Benin and Ndo. Obosi people were here when the Onitshas' came. It is a concoction of a great brain which says the Onitshas' gave the Obosis land.

XX. I was a farmer, then a telegraph clerk ; I am not a political agitator in Ojoto. I petition the D.O. on behalf of the Ojoto people. It is my duty to tell the D.O. what is going on at Ojoto.

In the Supreme Court of Nigeria, Onitsha Judicial Division.

BY COURT : This witness is regarded as a " comic " and keeps the Court constantly laughing ; he constantly salutes the Court and also the crowd at the back when he leaves.

Defendants' Evidence.

RE-X. None.

Adjourned to 30th September, 1949.

(Sgd.) A. G. MANSON,

J.

10

29th September, 1949.

No. 41. P. A. Okoye 29th September, 1949. Cross-examined.

No. 42.

Evidence of J. U. Oputa.

No. 42. J. U. Oputa. 30th September, 1949. Examination.

AT ONITSHA, FRIDAY THE 30TH DAY OF SEPTEMBER, 1949.

30th September, 1949. Resumed.

Counsel as before.

SOETAN calls.

11TH WITNESS : JAMES UGENYI OPUTA, Ibo sworn on Bible, says in English : Pensioner ; I am now Oduma of Odekpe ; the head of the whole of Odekpe ; I know Nwokocha Ogbuefi (Plaintiffs' 8th Witness). He is a prominent man in the town but since I returned to Odekpe he has not been the Head Chief. I took the Title of Oduma 2½ years ago. I know Idemiri Stream ; if it flows into the Niger ; it flows by our land. I was away for so many years from my native town—some 40 years—I was told that Idemiri River separated Obosi land from Odekpe land. My elders told me this when I got back 2½ years ago. I was never told that it separated Umuasele and Odekpe.

XX. Separate family have separate Quarters in Odekpe and each Quarter has its own separate lands. I heard there was a case between Odekpe people and the Oraifiti people about land south of the Idemiri Creek. Chief Nwokocha (Plaintiffs' 8th Witness) was the spokesman

Cross-examined.

30

In the
Supreme
Court of
Nigeria,
Onitsha
Judicial
Division.

Defen-
dants'
Evidence.

No. 42.

J. U.
Oputa.
30th
September,
1949.
Cross-
Examina-
tion—
continued

for the Odekpe people. Opakrika Quarter owned the land immediately adjoining Idemiri Creek. After the case it became communal to the Odekpe people. Chief Nwokocha ought to know all about the land. I have been away from my town of Ndekpe for so many years that I myself know nothing about our Odekpe peoples' boundaries with other families except what I have been told.

RE-X. None.

No. 43.

Evidence of A. Nwafunwanne.

No. 43. 12TH WITNESS: ANAKWE NWAFUNWANNE (m), Obosi, sworn as pagan, 10
A. Nwafun- says through interpreter: Native of Obosi: I am from Ire Quarter
wanne. from Obosi; my family is Umudejilo. I know the Idemiri Juju. My
30th family have something to do with its worship. They make sacrifice
September, with goat; I am the Juju Priest. There is no shrine but the sacrifice
1949. takes place at the point where the Idemiri enters the Niger. My father
Examina- was the Juju Priest before me, and his father before him. Where the
tion. Idemiri enters the Niger is Obosi property on the side leading to Onitsha
(i.e. North). No Onitsha man has ever troubled us.

Cross- XX. I do not know the boundaries of all Obosi lands. I know the
examined. Odekpe people; they have land close to where my juju is. When I 20
grew up I got to know the shrine at the point where it flows into the
Niger. The shrine is fenced; we sacrifice once a year. I and members
of my family go together. Any juju must have a shrine. The spot is
flooded in the rains by both Niger and Idemiri Rivers. I know Otu-
Obosi; it is by the side of the Company. I know Arah Akalue and
Ikejiofor (Plaintiffs' 7th Witness), they are Obosi men; I know where
they live; they live at Otu-Obosi. I was sent for last night to give
evidence.

RE-X. None.

BY COURT: Laughter in Court when he leaves.

30

Adjourned to 1st October, 1949.

(Sgd.) A. G. B. MANSON,
J.

30th September, 1949.

No. 44.

Counsels' Addresses to the Court.

AT ONITSHA, SATURDAY THE 1ST DAY OF OCTOBER, 1949.

1st October, 1949. Resumed.

Counsel as before.

SOETAN addresses Court.

The Court is solely concerned with the area marked pink South of the green line, Ex. 10.

10 Plaintiffs must prove ownership; 2 WACA. 95. 11 N.L.R. 68 ; exclusive ownership. They have failed to discharge the onus. Two sets of evidence have been led (1) traditional history, (2) acts of ownership.

(1) Major Lennard's book "Lower Niger," pp. 35, 39, Iweka's History of Obosi—various extracts. The Onitshas did not give land to Obosi.

20 (2) All Exhibits dealing with land outside the area claimed are irrelevant. I informed the Court that I did not oppose their admission but would argue that they are irrelevant. No Onitsha man has ever got any declaration of title against an Obosi man over any part of the area claimed. Iweka History : extract relating to Native Courts. The cases in the Native Courts are *res inter alios acta*, Ex. 28 —both the parties in that case were Onitshas and is not admission ; the same applies to Ex. 29. Ex. 33 : In the latter, the judgment was given by a Judge who never sat.

30 Exs. 53, 54. "Aren't these Plaintiffs clever ; they are steward in their own juria." Odikagbue is a myth, so as far as Plaintiffs are concerned ; he is an Obosi man. Obosis say Umeseri is Umuezeani. " How Plaintiffs got this document, Ex. 57, Heaven only knows," it cancels all previous documents. Where is the agreement of 1882 ? Exhibit 53 gives an area of 3 miles : Exhibit 54 gives only 500 yards. Odikagbue was a man giving to the Niger Company Obosi land not an U nuasele man giving away Ogbo Family land. Any judgment founded upon Exhibits 53, 54 cannot stand. Exhibit 53 gives right to Obosi people to farm. The Onitsha people never sued Obosi people ; it is nonsense for them to say they could not sue them because it was Govern nent land. *Akpan Awo v. Cookey Gam* (Vol. 2, N.L.R.100). " This is Plaintiffs' Waterloo," Defendants have been on this land to Plaintiffs' knowledge for years.

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No. 44.
Counsels'
Addresses
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continued

“Abutshi” or “Obosi” appears in Item 72, 1st Schedule Cap. 86 and in Item 2 4th Schedule (i.e. part retained by Niger Company). These two references show land is Obosi land. I also refer to Ex. 67. “Otu-Obosi” means Beach Land of Obosi people. Basden “Ibos’ of Nigeria”, p. 27. Basden “Niger Ibos,” p. 114. Meek: Law and Authority of Nigerian Tribe. Geary’s Nigeria under British Rule, p. 175. I also refer to 2 WACA. 336.

MBANEFO ADDRESSES COURT.

Defendants’ Counsel address is full of irrelevancies. The History Books are not reliable; where did the historians get their facts? Ex. 5, 10 p. 4, Major Lennard’s books—a quotation was said by the Court to be “unhelpful.” The evidence is clear that for very many years the Plaintiffs have exercised innumerable acts of ownership over the land in dispute, i.e. S. of green line.

1 Exs. 53, 54, 57—the maximum act of ownership which a person can exercise is to grant to another a piece of land and a good title with it. The grant has stood unchallenged for more than 60 years. The first grant was in 1882—Ex. 53; the second in 1896—Ex. 54. Defendants do not deny these grants or the rights conferred by them. They can only say that it was given by an Obosi man—a native Doctor residing 20 in Onitsha. Once it is proved that Odikagbue was not an Obosi man but an Onitsha man, the Defendants’ case collapses because it shows Plaintiffs have exercised the maximum act of ownership over the land in dispute. Plaintiffs’ 10th Witness is the son of Odikagbue; he was an eye-witness to agreement of 1896. He says his father was not an Obosi man, was not a Native Doctor, and had no connection with Obosi. Plaintiffs’ 7th, 11th and 12th Witnesses; these 2 latter are children of 2 of the signatories. Defendants have called no evidence to say Odikagbue came from Obosi Family of Umuezeani at Obosi. If he was, why did he not sign. Ex. 72—a document treasured by Defendants. 30 Defendants have not proved one of the facts in their Statement of Defence. Ex. 57 has been in our possession since it was made and produced from our custody in this Court. Their claim that Odikagbue was an Obosi man is pure invention. If he was why did he an important man leave Obosi and go to live at Onitsha? If Defendants own the land why did they break the agreement and erect their houses? In Ex. 53 we gave the land subject to our tenants’ rights, i.e. Obosi people; we could not break faith with them. They are our tenants. Ex. 33. It is significant that the case is between two Obosi people: the “safe-keeping” given by Onitsha people was 40 years before, i.e. about 1882. The witness 40 says “Odikagbue” gave the land to Obosi for safe keeping. When Obosi people refused to pay our tribute we sued them (Exs. 29, 30, 31, 32, 34).

2 N.L.R. 100. There has been no acquiescence by Plaintiffs in Defendants' occupation. From 1882 we have exercised acts of ownership over land in dispute.

It is clear from evidence that about 1928 the present Defendant who has not come to Court claimed this land. Ex. 41 (in 1926). Kodilinye called meeting and said Obosi people should no longer pay rent to Onitsha people. (See evidence of Defendant in that case.) This was the beginning of the Obosi peoples' claims and their going on Plaintiffs' land and building houses. Plaintiffs protested to Government (Ex. 19), 10 (Ex. 27A), (Ex 27B), (Ex. 26), (Ex. 23).

It is Government's indecision which has been the cause of the infiltration of Obosi people. Cap. 84, S. 30, 31, 35. The Obosi people are trespassers, and cannot benefit from their own illegality.

2. The boundaries of the land we claim are clearly proved by Plaintiffs' neighbours, Plaintiffs' witnesses 7, 8, 9, 12, 13. Obosi is a hinterland town. These witnesses have in no way been discredited by Defendants'.

3. Areas of land lying between land in dispute and Obosi Town. Paragraph 20 of Statement of Claim and Paragraph 20 of Statement of Defence. When Defendants' Counsel denies the relevance of this evidence, he should realise that he has raised issue with Plaintiffs on Paragraph 20 of Statement of Claim. 5 W.A.C.A., p. 4 at p. 6. This case is very important so far as this case is concerned, because evidence of ownership of adjacent lands is relevant and material. The Obosi say they own all lands from disputed land to Obosi Village. How did they get there? There is land of other families in between—"Akpu-Akpali," Exs. 36, 46. "Udo" land, 42, 44, 48. Exs. 4, 37, 39. Exs. 38, 41, 43, 47, 52.

4. There is ample evidence to show that "Otu-Obosi" was not and is not a settlement of the Obosi people. There were only 4 tenants 30 in 1932. Ex. 2. Plaintiffs' 8th, 9th and 12th Witnesses. The present number of settlers have come in recent years since 1932 and Plaintiffs have protested.

DEFENCE.

2nd Plaintiff's evidence is completely unreliable.

Ex. 5. Graham Paul, J., rejected the Defendants' version of their history. Defendants' 10th witness is simply a clown. There are inconsistencies of witnesses in regard to the Obosi history. Ex. 62, 59, where the Obosi Head Kodilinye (1st Defendant in this case) gave one version of Obosi boundaries and 2nd Defendant another.

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Graham Paul, J., rejected the evidence of Obosi as to the ant-hill, Egbua Inghalu. This Court must plainly accept the version of the Plaintiffs as to traditional history. The first man to be crowned EZE of Obosi was crowned by an Onitsha man. Obosi was a Colony of Onitsha.

No. 44.
Counsel's
Addresses
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continued

5. Ex. 72. If this has any value, it gives the lie to the Defendants' case that disputed lands belong to them. It refers to the land from Idemiri to Oba—it has nothing to do with this case. If the Obosi gave the Company the whole of their land for ever why did they not give the disputed land to the Company? They clearly must be taken to say that they had no land North of Idemiri Creek. 10

Ex. 9. Kodilinye gave notice of discontinuance and they have not sued again.

Ex. 49 and Ex. 60.

Defendants have established no case; their witnesses are quite unreliable. Our right of ownership has been proved.

No. 45.
Court
Notes for
Judgment.
1st
October,
1949.

No. 45.

Court Notes for Judgment.

BY COURT: I deliver a short oral judgment which I inform the parties I will put into writing. After hearing all the evidence and Counsel's addresses I have no doubt what my decision should be. The case is one of great local importance and it is in the public interest that the Court's decision should be known as soon as possible. 20

No. 46.

Judgment.In the
Supreme
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IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION. HOLDEN
AT ONITSHA.No. 46.
Judgment.
1st
October,
1949.Before His Honour ALBERT GEOFFREY BORRODAILE MANSON,
Puisne Judge.

Saturday, the 1st day of October, 1949.

(Title as in No. 1.)

10

JUDGMENT.

The Plaintiffs, the Ogbo Family of Umuasele, are suing the Defendants, the Obosi People, claiming a declaration of title to a piece of land called Ugbo-Orimili being all that part of the area edged pink on Ex. 10 which lies South of the line running East and West and edged green thereon which is the Southern boundary of the Township of Onitsha.

20 The dispute arises in this way. In 1882 certain land was granted to the National African Company Ltd. by one ORIKAGBUE who is variously named Odikagbue or Orriragbue or Okrikagbue or Oribakwe in other documents and in this evidence. This grant, if it was ever in writing, was not produced to the Court by the Plaintiffs. It is, however, referred to in a "Certificate" dated 8th October, 1884, which was tendered in evidence Ex. 53. This Certificate confirms by express reference the grant of 1882 but is not signed by Odikagbue. The National African Company Ltd. subsequently became merged in the Royal Niger Company who became their successors in title.

30 In 1896—26th October, a further grant of land was made to the Royal Niger Company by Odikagbue and 4 others. This grant was tendered in evidence: Ex. 54. It was executed in triplicate and Plaintiffs have produced their copy: Ex. 57. It will be seen that Ex. 57 and Ex. 54 differ as to the spelling of the grantor's name and his place "Umuseri" Ex. 57 and "Umuleri" in Ex. 54 and "Onitsha Station" is on Ex. 54 and "Abutshi Station" on Ex. 57.

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Under these two agreements rights of farming and fishing were reserved to the grantors and their tenants who were not to be disturbed in their occupation. Ex. 54. The Obosi or "Abutshi" people are expressly referred to by name in Ex. 53. I will refer to these two agreements later.

In 1916 an Ordinance was passed—the Niger Lands Transfer Ordinance (Cap. 86)—the purpose of which was to vest in the Governor and his successors in office in trust for His Majesty as from the 1st January, 1900 certain lands which were belonging to the Royal Niger Company on the 1st January, 1900, which lands are specified in the 10
First Schedule to the Ordinance. Certain parts of such lands are, however, reserved to the Niger Company and are referred to in the Fourth Schedule (S.2 of Cap. 86). Included in the list of Agreements referred to in the First Schedule are the two Agreements above referred to i.e. the 1884 and 1896 Agreements, being Instruments No. 72 and 40 respectively. The date "1894" in Instrument 72 in the First Schedule is a mistake for "1884".

In 1945, by Ordinance No. 22/1945, Cap. 86 was amended. The amending Ordinance by S.4 inserted a provision (being a new S.10) 20
empowering the Governor by Order to abandon all the right, title or interest vested in him by the Ordinance in the whole or any part of the lands—called "vested trust lands"—which are vested in the Governor in trust for His Majesty under S.2 of the Ordinance. Under the authority of S.10 the Governor made an order (No. 29/1948) dated the 11th December, 1948, abandoning all the right, title or interest in a part of the vested trust lands specified in the Agreements of 1884, and 1896 i.e. Instruments No. 72 and 40. The part so abandoned covers those portions of land in Instruments No. 72 and 40 which lie outside the Township of Onitsha. For the purpose of this case, such parts are those 30
South of the green line running East and West on Ex. 10 S.15 of Cap. 86 (as amended by Ordinance Nos. 22 and 61/1945) sets out the effect of a Divesting Order, on the original document of title, i.e. it shall have effect as if the whole or part of any vested trust lands so abandoned had never been included in the instrument, agreement or document by which the same was originally transferred to the Niger Company or their predecessors—in other words, the abandoned part reverts to the original owners.

The result of the Divesting Order (No. 29/1948) was what was to be expected in a district where land disputes are so numerous, where the value of land is increasing, and where the ownership of land is so vital to 40
a family's or people's subsistence. Litigation became inevitable. The Plaintiffs took action at once. The Divesting Order took effect from

the 1st January, 1949. The Plaintiffs issued a summons against the Defendants on the 4th January in the Onitsha Native Court and the case was transferred to this Court on the 15th January, by an Order of the District Officer under S.25(1) (c) Native Courts Ordinance, 1933 ; also S.12 provision Supreme Court Ordinance (No. 23/1943). The question is—to whom did the portion of land abandoned by the Governor under Order No. 29/48 revert ?—to use the words of S.15, if the abandoned land “ had never been included ” in the Agreements of 1884 and 1896—Instruments 72 and 40—who are the lawful owners ? Defendants’ Counsel in his amended Defence para. 16 was prepared to argue that land abandoned under S.10 did not revert to the original grantors but was “ *res derelicta* ” presumably intending to argue that anyone could take possession and by occupation acquire possessory titlehood against all comers. This argument would no doubt suit his clients’ case who have occupied so ne part, at any rate, of the area in dispute by building houses on it. Counsel was referred to S.15 and in face of its provisions abandoned the above contention—at any rate, no more was heard of it. It is, in my view, quite unsustainable.

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The original grantors in Exs. 53, 54 may or may not have been the lawful owners, but that is the Plaintiffs’ case—that they were.

A vast amount of evidence was tendered and the Court was occupied for 11 days ; 36 witnesses were called—24 for the Plaintiffs and 12 for the Defendants ; 72 Exhibits were tendered, including Plans and records in numerous other previously decided cases.

I have no doubt that the Plaintiffs are entitled to the declaration they seek.

FIRST. The Plaintiffs rely on Exhibits 53 and 54. They were made in one case 65 years ago and in the other 53 years ago. Not only were these two Agreements reduced into writing and duly executed and signed (Ex. 54) or certified (Ex. 53) but they were subsequently registered Ex. 53 in 1897 and Ex. 54 in November, 1896 under the “ Lands Registry Regulations, 1896.” (See the Exs. and S.2 of Cap. 86.) Further, each certified copy of the Agreements has attached to it a Plan—stated to be a Tracing. The Plaintiffs called the Assistant Commissioner of Lands (5th witness). He says that there is no evidence as to when and by whom the originals were made but he presumes, and I think reasonably, that they were made at the time of the Agreements. They are, as he says, obviously not drawn to scale ; they probably would have been if made recently.

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These two Agreements conferred on the National African Company Ltd. and their successors, the Niger Company, certain rights which have been enjoyed by them and later by the Crown, their successors, for more than 50 and 60 years respectively. They have received statutory recognition.

The land granted in 1896 by Ex. 54 covers an area of land extending from NDENDE CREEK on the North to IDEMIRI CREEK on the South for a distance of 500 yards inland. (See Ex. 10—yellow line and Plaintiffs' 2nd witness.) The earlier grant of 1884—Ex. 53—covers a very much larger area from the NDENDE CREEK on the North to the IDEMIRI CREEK on the South for a distance "about 3 miles inland". The earlier grant would thus appear to include the land granted by the later grant and one wonders why the later one was drawn up. The first grant—the 3 mile limit—was made to the National African Company : the second grant of 500 yards was made to the Royal Niger Company their successors. It may be that the Royal Niger Company felt that they did not need such a vast area as that conferred by the 1884 grant. On Ex. 57—one of the triplicates of the 1896 grant—there is in a note in manuscript—"This annuls the prior Agreement made and attached hereto and dated 31st July, 1882". The Lands Officer (5th witness) says these words do not appear on the Counterpart in Lagos. The 1882 Agreement is not attached to Ex. 57 and is not before the Court; it may be the Agreement referred to in Ex. 53 which confirmed it, as it says the 1882 Agreement was made in the dry season of 1882. But there is no clear evidence to show that the Niger Company abandoned their rights over 3 miles and accepted a fresh agreement for 500 yards. Both Agreements are referred to in Cap. 86 as still subsisting.

Further, Ex. 54 gives to the Company all the private rights of every kind not already possessed by the Company, so Ex. 53 was regarded as still existing and Ex. 54 is supplementary. In any event, both Exs. 53 and 54 were executed or confirmed by the same person or persons—Odikagbue and others.

Ex. 53 says the plot granted extended "about 3 miles inland" and the plan attached thereto shows the area, although not drawn to scale. The area edged pink in Ex. 10 which is the whole of the area which the Plaintiff's family claim is covered by Exs. 53 and 54, a part only of which is the subject-matter of this suit, the remainder being still vested in the Crown, is not even at its widest part up to $1\frac{1}{2}$ miles—the whole area is pear-shaped, of unequal breadth.

The Plaintiffs do not claim any land outside the pink line—except their own quarter over the Uko Swamp N.W. of Ex. 10 and, as far as I know, never have claimed any—so "about 3 miles" in 1884 (Ex. 53) has shrunk in 1949 to the area edged pink.

The Defendants, when confronted by the two documents, say that the Odikagbue who signed Ex. 54 and confirmed the earlier grant of 1882, Ex. 53, was not an Onitsha man i.e. a member of the Plaintiffs' family of Ogbo of the Umuasele people of Onitsha but an Obosi man i.e. a member of Umuezeani Family of Obosi i.e. from Defendants' people. They say he was authorised by the Obosi people to sign for them (para. 7 of Defence). They further imply, if they do not expressly say so, that the other 4 signatories to Ex. 54 were also Obosi men. The Plaintiffs called Odikagbue's son (10th witness); he says he was present when Ex. 54 was signed by his father who was not an Obosi man and had no connection with Obosi; he says all the other signatories were all from the Ogbo Family; he knew them "properly". The Plaintiffs also called (11th witness) the daughter of the 2nd signatory: ZEATSHI in Ex. 54 or KOTSHI in Ex. 57. The witness is the leader of the women of the Ogbo Family, and her father was the Okpala or spiritual head of the Ogbo Family. It is quite impossible to accept the Defendants' claim that Odikagbue was an Obosi man. He never lived at Obosi and he held that title of "Ndichie" or "Ozo" which is not a title held by Obosi people (Plaintiffs' 7th witness). He was never a Native Doctor as Defendants say (S.7 of the Defence).

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The next argument of the Defendants is that if Odikagbue was a member of the Ogbo Family, of Onitsha and not an Obosi man, then he was giving away or selling land which always has been land belonging to the Obosi people.

To establish this the Defendants called evidence of the history of the Obosi people. To refute this the Plaintiffs gave their own history. Each claimed to have been there first. The Plaintiffs were quite frank in saying that some very long time ago, some centuries, they migrated from Benin and fought and drove out the Ozeh people and then gave to the Obosi people, at their request, a portion of land on which Obosi village now stands and accepted them as tenants paying tribute or rent for the land in dispute.

The Defendants allege that they were already here when the Plaintiffs' ancestors arrived and that they gave to them land for which they paid tribute to them (Defendants' 4th witness).

These family or people's histories regarding their origin and arrival in certain areas must inevitably be vague; there are never any contemporary documents; the people were illiterate and, as the years go by, tradition becomes confused and overlaid with myth and evidence of tradition is sometimes deliberately manufactured for the purpose of particular proceedings.

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I accept the Plaintiffs' version as more probable. One cannot get exact truth on these local historical matters but one can regard their version as not unlikely.

The Defendants' witnesses were quite unreliable and one (Defendants' 10th witness) could only be regarded as a clown—his evidence and behaviour in Court caused only amusement; he did not seem to treat the matter seriously.

Various references were made to statements contained in books of travel: "Up the Niger" by Captain Mocklin-Ferryman (1891); "Lower Niger" by Major Lennard and some histories and other books 10 by Basden and Meek and an Ibo History by one Iweka. I do not really think they take one very far: they are not, strictly speaking, admissible; also they could only record what they were told. There was a previous case in this Court—Suit No. 8/1932, *Kodilinye v. Mbanefo Odu* (Exs. 5 and 6). The Plaintiff Kodilinye in that case is the 1st Defendant in this case. In that case the same two versions of the histories of the Onitsha and Obosi people were given, extracts were also made from books also referred to in this case, the same evidence of tradition was also given as in this case. Mr. Justice Graham Paul accepted the version of the Onitshas as more probable and said the Obosi version of 20 their origin and their coming here "did not ring true".

This second objection to Exs. 53 and 54 thus also fails.

SECONDLY: Apart from written Agreements (Exs. 53 and 54) the Plaintiffs have called oral evidence to establish the actual boundaries of their land i.e. 7th, 12th and 13th witnesses. Further than this, they have called those neighbours with whom they have a common boundary to come and testify to the fact i.e. the Mgbelekeke people (9th witness) N. of Ex. 10 across the Otumoye Stream; the Umuakwa Family (13th witness), S.E. of Ex. 10 and Ex. 13; the Odekpe people (8th witness), South of Ex. 10 just across Idemiri Creek. No one of them has a common 30 boundary with the Obosi people. This evidence of the adjoining owners is very material (5 W.A.C.A. 4 at p. 6, para. 5).

The Defendants' village is some 6 miles away from the land in dispute. There is no "Obosi" quarter in Onitsha Town. The Plaintiffs say Defendants have no land in between the village and the disputed land; further that all the intervening land is in the ownership of other families and people. How comes it about, Plaintiffs ask, that Defendants can claim the disputed land and thus "jump over", so to speak, the land of neighbouring people—a jump of some 6 miles? The Defendants claim a vast area right from the Otumoye Stream down to the Idemiri 40

Creek and onwards to Obosi village : they say that the land in dispute is only a part of their lands. It is a fantastic claim (Defendants' 4th witness). (See their plan Ex. 59.) The area in dispute which is claimed by Defendants is what they call "Otu-Obosi" or "Abutshi". "Otu-Obosi" is nothing more than a small cluster of dwellings (Ex. 71) near the existing site of the Niger Company which they retain. Cap. 86, Fourth Schedule, Item 2 (W. of Ex. 10 on river bank). "Otu" simply means a market place and the site was called "Otu-Obosi" because the Obosi people took their produce there to sell to the Company; other people also traded there besides Obosi people; it was called "Obosi" because the Obosi people live nearer to the spot than the other people who trade there. (Plaintiffs' 7th, 8th, 9th and 12th witnesses). It does not imply ownership. (See Plaintiffs' witnesses 12th and 13th.) The Obosi people have since 1928 come to the site in increased numbers (Plaintiffs' 12th witness). They produced Ex. 72 showing a grant in 1885 by certain Abutshi people to the National African Company; this has no bearing on the present case as the land in Ex. 72 lies South of the Idemiri Creek as far as Oba which is about 4 miles South of Obosi.

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In Suit No. 9/1932, the present Defendant No. 1—Kodilinye—
20 representing Obosi people, sued Erokwe for a vast area including the whole of the lands now claimed by the Obosi people. (See Exs. 2, 3, 4.) It was agreed by Counsel and by Graham Paul J. that the decision in No. 9/1932 depended on the decision of W.A.C.A. in No. 8/1932, *Kodilinye v. Mbanefo Odu*. If the appeal was dismissed "there must be automatically judgment entered for the Defendant in this Suit", i.e. No. 9/1932, Ex. 4.

The appeal was dismissed (2 W.A.C.A. 336). The Obosi people, therefore, have had an action in which they claimed the same land as in this action or more dismissed. That does not deter them from putting
30 up the same claim when sued by the present Plaintiffs. The Obosi people have been making a nuisance of themselves to their neighbours for a number of years. They have litigated frequently and have always lost. There is obstruction and refusal by them to pay tribute to anyone (Ex. 41). The motive is greed; as the Plaintiffs' 16th witness says, "people are beginning to realise the value of land and are snatching as much as they can get, this is true of the Obosis". The land in dispute is near the large, important and growing Township of Onitsha and land in the Township's vicinity has a great potential value as a development area. It is common knowledge that certain schemes of development are in view
40 near the area in question. The Obosis have squatted on a large area not only on the land in dispute but also on the land still in the possession of the Crown, North of the green line, Ex. 10 and Ex. 13. The Plaintiffs have protested again and again to Government, Ex. 27A, 27B, 26, 23, 19.

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THIRDLY : The Plaintiffs say that the Obosi people have always been their tenants and until the Obosi people became obstructive in about 1928, they had received rent from them. Some Obosi people still pay them (Plaintiffs' 12th witness). The Plaintiffs sometimes sued for non-payment and won, Exs. 30, 31 and 32. It is very important and very significant that when Ex. 53 was drawn up there was an express stipulation that the "Abutshi" people, that is people living at "Otu-Obosi" might be allowed to continue to farm the land and fish from those parts of the bank not occupied by the Company ; so even in 1884, Obosi people and others living at "Otu-Obosi" were regarded as on the land with the consent of the Ogbo Family whose representatives confirm Ex. 53 and signed Ex. 54. The "Abutshi people" in Ex. 53, are expressly differentiated from the grantors' own people and family—"his sons and daughters". The Plaintiffs have also been paid and are still being paid rent by other people on the area in dispute i.e. the Ogbu Ukwu people ; their settlement is West of Ex. 10 on the Niger's bank, just below the green line. (Plaintiffs' 15th witness). 10

The area lying North of the green line in Ex. 10 is within the area granted by Exs. 53 and 54 but is not in dispute in this action ; it is still Crown land not having been abandoned under S.10 of Cap. 86. Certain persons, e.g. Umuola quarter, Ijaws, Egbunike huts and others (Plaintiffs' 16th 17th 18th and 19th witnesses) are paying rent to the Plaintiffs for the occupation of sites along the banks of the River Niger. (See Ex. 10 along bank of river.) The Plaintiffs receive their rents as owners as their rights over tenants are expressly reserved in Ex. 53. Defendants' Counsel objects to the admissibility of this evidence as irrelevant. In my view it is very relevant and admissible. Receipt of rent is some evidence of ownership of superior title. Wills on evidence, page 60. Not only is it evidence of ownership in respect of the plot for which it is received but it may be evidence of ownership of other land so situated or connected therewith by locality or similarity that what is true as to one piece of land is likely to be true as to the other : S.45 Evidence Ordinance No. 27/43 and *Jones v. Williams* 2 M & W 326. 30

The 2 areas—North and South of the green line in Ex. 10—are adjoining and similar and receipt of rent from the Northern piece unchallenged over a number of years is relevant when considering ownership of the Southern piece.

Even if such evidence is not relevant and admissible, there is ample evidence without it to justify a finding that Plaintiffs have proved acts of ownership extending over a long period over the Southern area by receiving rents and granting leases or rights of occupancy. 40

FOURTHLY : The Plaintiffs have exhibited a composite Plan, Ex. 13, to show that all the land lying between the land in dispute and Obosi village is in the ownership or occupation of other families or persons either by virtue of original ownership or acquisition by purchase from the original owners or by Court decisions, e.g. Udo land (Plaintiffs' 21st witness), Awada land, Okolo land (Plaintiffs' 21st witness), Iweka land (Plaintiffs' 23rd witness), Okpala land, Ozoma land (Plaintiffs' 22nd witness), Umu-Adumudu Family land, Akpu-Apali land (Plaintiffs' 20th witness), Mkpukpa land (Plaintiffs' 24th witness) and others. With the exception of Mkpukpa, the whole of the other areas were claimed by the present 1st Defendant on behalf of the Obosi people in his case *Kodilinye v. Erokwu* in Suit No. 9/1932. See under "Secondly" in this judgment. He failed in this suit.

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Defendants' Counsel says that the evidence tendered in regard to the above areas belonging to other families is not relevant. It is relevant. The Defendants still claim these areas, Ex. 59. They claimed them before and lost in No. 9/1932. See Ex. 2—their Plan in that Suit. There is this barrier of lands in possession of other families and persons between the area in dispute and their own village of Obosi which is 5—6 miles away. Some are adjacent to and some adjoining the land in dispute (5 W.A.C.A. 4, at p. 6).

FIFTHLY : The Defendants say that the Plaintiffs have allowed them to occupy the land in dispute over a period of many years and they should not now be disturbed (2 N.L.R. 100).

Nothing can be further from the truth. The Plaintiffs have certainly been aware of the Defendants' squatting occupation but they have never acquiesced in it for a moment. Before the Divesting Order No. 29/48 was made, the Plaintiffs protested again and again to Government about the unlawful occupation of Defendants and asked for action to be taken (Exs. 19, 23, 26, 27A and 27B).

As soon as the above Order became effective the Plaintiffs' hands were free and they took immediate action—they issued a summons against Defendants within 3 days.

I grant the Plaintiffs the declaration they ask for being all that part of the area edged pink on Ex. 10 which lies South of the green line running East and West.

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I also grant the injunction sought. The Defendants must in no way interfere with the beneficial enjoyment by the Plaintiffs of the above area. The Defendants are occupying many houses and other buildings on the land. The Plaintiffs do not ask for an order of ejection of Defendants. If they want an order they must apply for it. In the meanwhile the Defendants are liable to pay to the Plaintiffs rent for the use and occupation of the Plaintiffs' land. If Plaintiffs demand rent, the Defendants must pay it unless they remove their buildings and vacate the plots.

I award Plaintiffs one hundred and seventy-five guineas costs. 10
Plaintiffs' two Plans, Exs. 10 and 13, have cost £150. They appear to be entitled to half survey costs (7 N.L.R. 82). It has been a protracted case and Plaintiffs have incurred expenses for Court fees, Exs., etc. Defendants' Counsel applies for a stay of execution: I refuse this application.

(Sgd.) A. G. B. MANSON,
Judge.

No. 47.**Order Granting Final Leave to Appeal to West African Court of Appeal.**

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION.

(Title as in No. 1.)

UPON READING the affidavit of Michael Oguejifo Ajegbo, sworn to and filed at Onitsha on the 11th day of November, 1949, and after hearing same Michael Oguejifo Ajegbo, Counsel for the Defendants, in support of the Motion :

- 10 IT IS ORDERED that Final Leave to appeal to the West African Court of Appeal from the judgment of this Court dated the 1st day of October, 1949, be and is hereby granted to the Defendants.

Dated at Onitsha, this 11th day of January, 1950.

(Sgd.) A. G. B. MANSON,

Puisne Judge.

In the
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No. 47.

Order
Granting
Final
Leave to
Appeal to
West
African
Court of
Appeal.
11th
January,
1950.

No. 48.**Grounds of Appeal.**

IN THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

- 20 1. CHIEF J. M. K. KODLINYE
2. J. C. NWANGWU, for themselves and on
behalf of Obosi people

Defendants/Appellants

AND

1. PHILIP AKUNNE ANATOGU
2. JOSEPH AKUNNIA AGBU, for them-
selves and on behalf of Ogbo family of
Umuasele Onitsha

Plaintiffs/Respondents

- 30 The appellant, being dissatisfied with the judgment of the Supreme Court, Onitsha, in Suit No. 0/3/1949, delivered on the 1st October, 1949, and having obtained final leave to appeal therefrom dated the 11th of January, 1950, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

In the
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Appeal.

—
No. 48.
Grounds
of Appeal.
16th
January,
1950.

GROUNDS OF APPEAL.

In the
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No. 48.
Grounds
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16th
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continued

1. Inadmissible evidence was admitted. Agreement No. 40 (Ex. 57) produced by the Plaintiffs was wrongly received in evidence by the Court.

2. The plan tendered by the Plaintiffs is not a correct plan of the land in dispute and was wrongly admitted in evidence by the Court.

3. The Court misdirected itself in arriving at the conclusion that Capt. Mocklin Ferryman's book "Up the Niger" (1891), Dr. Basden's books "Among the Ibos of Nigeria" and "Niger Ibos," Dr. Meek's "Law and Authority in a Nigerian Tribe," Major Leonard's "Lower Niger and its Tribes" and an Ibo History by Iweka "did not take one very far" in arriving at a conclusion as to the owners of the land in dispute. 10

4. The Court misdirected itself as to the significance of the words "NDENDE" and "IDEMIRI" in Agreements Nos. 40 and 72 (Exs. 53 and 54) and did not take into consideration the fact that the creek mentioned in the Agreements is called "Ndende" by Obosi people and that "Idemiri" from where Idemiri River mentioned in the Agreements derived its name is a fetish worshipped by Obosi people.

5. The Court was wrong in law to find that Obosi people have always been the tenants of the plaintiffs until "Obosi people became obstructive in about 1928" and that "the Plaintiffs had received rent from Obosi people" for if the Plaintiffs sold the land in dispute to the Niger Company in 1882 the Plaintiffs have by the sale extinguished their rights and could not therefore have collected rents from the Obosi people up to 1928. 20

6. The Court misdirected itself in stating that "Ndichie or Ozo title is not a title held by Obosi people."

7. (A) The Court misdirected itself in finding that "Otu" simply means a market place and that the site was called "Otu-Obosi" because the Obosi people took their produce there to sell to the Company; other people also traded there besides Obosi people; it was called "Obosi" because the Obosi people live nearer to the spot than the other people who trade there." 30

(B) The Court erred in its interpretation of the words "the piece of land at Abutshi known as the Niger Company's Station" in Item 2 of the 4th Schedule to the Niger Lands Transfer (Protectorate) Ordinance—Cap. 86.

8. The Court misdirected itself as to the location and/or the extent of the land in dispute. In the West African Court of Appeal.

9. The Court wrongly interpreted Agreement Nos. 40 and 72 (Exs. 53 and 54) by holding that " Even in 1884 Obosi people and others living at " Otu-Obosi were regarded as on the land with the consent of the Ogbo Family." No. 48. Grounds of Appeal 16th January, 1950—

10. The Court misdirected itself as to the effect of all the Native Court Judgments and in accepting the evidence of the letter-press of the Plaintiffs' composite plan as to the real location of the sites in Native Court Cases. 1950—
continued

11. The Court erred in law in granting to Plaintiffs declaration of title " to all that part of the area edged pink on Ex. 10 which lies South of the green line running East and West."

12. The Judgment is unwarranted and unreasonable and cannot be supported having regard to the weight of evidence.

Dated at Onitsha 16th day of January, 1950.

(Sgd.) M. O. AJEGBO,
Appellants' Solicitor.

No. 49.

20 **Notice of Motion for leave to add to Grounds of Appeal and Affidavits of M. O. Ajegbo and A. Soetan in support thereof.** No. 49. Notice of Motion for Leave to add to Grounds of Appeal and Affidavits in support thereof.

IN THE WEST AFRICAN COURT OF APPEAL, HOLDEN AT LAGOS, NIGERIA.
(Title as in No. 48.) 27th October, 1950.

W.A.C.A. 3323.

MOTION

TAKE NOTICE that this Honourable Court will be moved on the day of , 1950, at nine o'clock in the forenoon or so soon as Counsel for the Defendants/Appellants in the above-named case can be heard for leave to add to the Grounds of Appeal in the case.

30 Dated at Lagos this 27th day of October, 1950.

(Sgd.) M. O. AJEGBO,
Solicitor for the Defendants/Appellants.

In the
West
African
Court of
Appeal.

(Title as in No. 48.)

AFFIDAVIT.

No. 49.
Notice of
Motion for
Leave to
add to
Grounds of
Appeal
and
Affidavits
in support
thereof.
27th
October,
1950—
continued

I, MICHAEL OGUEJIOFO AJEGBO, Legal Practitioner and British Protected Person of Iweka Road, Onitsha, make oath and say :

1. That I am Solicitor for the Defendants/Appellants in the above named case.
2. That the record of proceedings in the case was not made available to my clients in time.
3. That Grounds of Appeal were prepared before the Court record was received. 10
4. That I wish to add to the Grounds of Appeal.
5. That I pray for leave of Court to do so.

Dated at Lagos this 27th day of October, 1950.

(Sgd.) M. O. AJEGBO,

Solicitor for the Defendants/Appellants.

Sworn at the Office of the Supreme
Court Registry, Lagos, this 27th }
day of October, 1950. }

Before me,

(Sgd.) D. S. ODIGIE,

Commissioner for Oaths.

20

(Title as in No. 48.)

AFFIDAVIT.

I, ADEGUNLE SOETAN, of Lafenwa, in the town of Abeokuta, in the Protectorate of Nigeria, male, Yoruba, Legal Practitioner, make oath and say as follows :

1. That I was the leading Counsel for the Defendants at the trial of the above action.

2. That my Juniors at the said trial were M. O. Ajegbo Esquire and G. C. Nkemena Esquire, Barristers-at-Law, both of whom took part in the proceedings by examining and cross-examining some witnesses, and by recording notes of the said proceedings.
3. That the Court's record of proceedings is not accurate (A) the learned trial Judge wholly omitted to record my cross-examination of the fifth witness for the Plaintiffs, Mr. Cecil Hugh Stewart Reynolds Palmer, Assistant Commissioner of Lands at Enugu, whose answers to the cross-examination were material to the Defendants' case, and (B) the answers of Mr. Josephus Theophilus John, sixth witness for the Plaintiffs, to cross-examination on material points were not fully recorded.

In the West African Court of Appeal.

No. 49. Notice of Motion for Leave to add to Grounds of Appeal and Affidavits in support thereof. 27th October, 1950—
continued

(Sgd.) A. SOETAN.

Sworn at the Supreme Court Registry, Ibadan, this 30th day of October, 1950.

Before me,

(Sgd.) ? ? ?

Commissioner for Oaths.

20

No. 50.

Proceedings on Motion for Leave to Add to Grounds of Appeal (adjourned).

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Tuesday, the 31st day of October, 1950.

Before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, K.C.,

President; Sir JOHN VERITY, Chief Justice, Nigeria; ARTHUR

WERNER LEWEY, K.C., Justice of Appeal.

No. 50. Proceedings on Motion for Leave to add to Grounds of Appeal (adjourned) 31st October, 1950.

W.A.C.A. 3323.

(Title as in No. 48.)

Adjourned for amendments to be exhibited.

30

(Sgd.) H. W. B. BLACKALL,
President.

In the
West
African
Court of
Appeal.

No. 51.

Notice of Adjourned Motion for Leave to Add to Grounds of Appeal and Affidavit in Support.

(Title as in No. 48.)

No. 51.
Notice of
Adjourned
Motion for
Leave to
Add to
Grounds
of Appeal
and
Affidavit
in support
thereof.
31st
October,
1950.

MOTION.

TAKE NOTICE that this Honourable Court will be moved on the day of November, 1950 at nine o'clock in the forenoon or so soon as Counsel for the Defendants/Appellants in the above-named case can be heard for leave to add to the Grounds of Appeal in the case.

This Motion is made under Section 19 of the Rules of West African 10 Court of Appeal.

Dated at Lagos this 31st day of October, 1950.

(Sgd.) M. O. AJEGBO,

Solicitor for the Defendants/Appellants.

W.A.C.A. 3323.

(Title as in No. 48.)

AFFIDAVIT.

I, MICHAEL OGUEJIOFO AJEGBO, Legal Practitioner and British Protected Person of Iweka Road, Onitsha, make oath and say :

1. That I am Solicitor for the Defendants/Appellants in the above- 20 named case.
2. That the record of proceedings in the case was not made available to my clients in time.
3. That Grounds of Appeal were prepared before the Court record was received.
4. That I wish to add to the Grounds of Appeal.
5. That I pray for leave of Court to do so.

6. That I make this application under Section 19 of the Rules of West African Court of Appeal.

Dated at Lagos this 31st day of October, 1950.

(Sgd.) M. O. AJEGBO,
Solicitor for the Defendants/Appellants.

Sworn at the Office of the Supreme Court Registry, Lagos, this 1st day of November, 1950.

Before me,

10 (Sgd.) D. S. ODIGIE,
Commissioner for Oaths.

No. 52.

Additional Grounds of Appeal.

(Title as in No. 48.)

1(A). The learned trial Judge admitted in evidence previous proceedings of Native Courts which bear no relevance to this action and allowed his mind to be influenced thereby.

1(B). The learned trial Judge admitted in evidence copy of judgment in Suit No. 0/2/28/44 (Ex. 56) which was objected to by Defendants' 20 Counsel and which objection was not over-ruled.

11. The learned trial Judge erred in law in granting to Plaintiffs declaration of title "To all that part of the area edged pink on Ex. 10 which lies south of the green line running East and West" when part of the area is still vested in the Company.

11(A). The learned trial Judge failed to take into consideration in his judgment the point of law raised by Counsel for the Defendants that land on abandonment by the Crown does not in law revert to the original owners and that even if the Plaintiffs were the original owners, the Court cannot in law grant them the declaration sought, but treated the point 30 as abandoned.

In the West African Court of Appeal.

No. 51.
Notice of Adjourned Motion for Leave to Add to Grounds of Appeal and Affidavit in support thereof.
31st October, 1950—
continued

No. 52.
Additional Grounds of Appeal.
27th October, 1950.
Filed 1st November, 1950.

In the
West
African
Court of
Appeal.

No. 52.
Additional
Grounds
of Appeal.
27th
October,
1950.
Filed.
1st
November,
1950—
continued

12(A). The learned trial Judge omitted from the record a material point in the cross-examination of Mr. Josephus Theophilus John, Civil Engineer and Licensed Surveyor, namely, the length in Ex. 11 from the Niger River to pink (opposite the Niger Company Station) and omitted altogether the cross-examination of Mr. Cecil Hugh Stewart Reynolds Palmer, Assistant Commissioner of Lands, Enugu.

Dated at Lagos this 27th day of October, 1950.

(Sgd.) M. O. AJEGBO,

Solicitor for the Defendants/Appellants.

No. 53.

10

No. 53.
Further
Affidavit
in support
of Motion
and
Exhibits
thereto.
1st
November,
1950.

Further Affidavit in Support of Motion and Exhibits.

(Title as in No. 48.)

I, MICHAEL OGUEJIOFO AJEGBO, Legal Practitioner and a British Protected Person of Iweka Road, Onitsha, make oath and say :

1. That I was one of the Counsel engaged by the Defendants in Suit No. 0/3/1949 now under appeal.
2. That I was present throughout the trial of this case in the Supreme Court, Onitsha, and took notes of the proceedings, attached and marked Exhibits "A" and "B."
3. That I was present when the 5th Witness for the Plaintiff, Mr. Cecil Hugh Stewart Reynolds Palmer, Assistant Commissioner of Lands, Enuga, gave evidence in the case.
4. That Mr. Palmer was cross-examined by A. Soetan, Esquire, Leading Counsel for the Defendants, and he made important admissions very material to the Defendants' case.
5. That the Court record which states that this witness was not cross-examined is not correct.
6. That I was present when Mr. Josephus Theophilus John, Civil Engineer and Licensed Surveyor, gave evidence and was cross-examined by A. Soetan, Esquire.

30

7. That the Court record omitted a material question in the cross-examination of and the answer given by Mr. John.

(Sgd.) M. O. AJEGBO,

Deponent.

Sworn at the Office of the Supreme }
 Court Registry, Lagos, this 1st }
 day of November, 1950.

Before me,

(Sgd.) D. S. ODIGIE,

Commissioner for Oaths.

10

In the
 West
 African
 Court of
 Appeal.

No. 53.
 Further
 Affidavit
 in support
 of Motion
 and
 Exhibits
 thereto.
 1st
 November,
 1950—
continued

Exhibit " A " Evidence of Josephus Theophilus John in Suit No. 0/3/1949.

I am a Civil Engineer and Licensed Surveyor.

I made Ex. 2 (Plan) in 1933 for Suit No. 9/32.

This was made by me from Plan OAC/27 and subdivided by me as instructed by Plaintiff, J. M. Kodilynje in that case.

Ex. 11. This Plan is not entirely made by me. There are several additions and colourings which were not made by me. The area edged pink were done by me. The lines marked in blue, orange and green were not made by me. I did not put in the area coloured yellow. I
 20 did not insert the area of Nupe Settlement.

Ex. 6. Ex. 6 was prepared by me (0/8/32). I made it from several plans.

Ex. 14. Made by late Charles Albert Barnes but traced by me from the original plan. The original plan was made in 1922.

Ex. 15. Was made by me in 1934.

Ex. 16. Was made by me in 1944.

XX. by SOETAN.

In the
West
African
Court of
Appeal.
—
No. 53
Further
Affidavit
in support
of Motion
and
Exhibits
thereto.
1st
November,
1950—
continued

- Q. You say Plan Ex. 11 was not wholly made by you ?—A. Yes.
- Q. That was not the plan you signed ?—A. It was the plan I signed.
- Q. Were the alterations made with your permission ?—A. Not to my knowledge.
- Q. Ex. 10 is marked “ traced by me ” ?—A. It is not correct.
- Ex. 11. Q. You made Ex. 11 in 1941 ?—A. Yes.
- Q. You did not make it for any case ?—A. I was told a case was pending but I was not told the case. I was told the Onitsha people wanted to institute action against Obosi people in the area of Nupe Settlement.

10

Q. From the area—River Niger to pink—(opposite the Niger Company Settlement) in Ex. 11 what is the length ?—A. About 1,100 yards. BY COURT: A number of Umuasele Family took me along. I don't remember who they are. I went down with members of Umuasele Family. I did a survey before for one Egbuna of Onitsha. In making the plan for Umuasele I tried to go along the same trace as that of Egbuna. The case is *Egbuna versus J. M. Kodilinye*.

This is the Exhibit marked “ A ” and referred to in the Affidavit of Michael Oguejiofo Ajegbo.

Sworn at the Office of the Supreme
Court Registry, Lagos, this 1st
day of November, 1950. }

20

Before me,

(Sgd.) D. S. ODIGIE,

Commissioner for Oaths.

“ Exhibit B.”

Evidence of Cecil Hughes Stewart Reynolds Palmer in Suit No. 0/3/1949.

Agreement No. 40/Ex. 53 Assistant Commissioner of Lands.

I produce Office copies of Agreements Nos. 40 & 72. Agreement 72/Ex. 54 Item 40 is referred to in 1st Schedule to the Niger Lands 30 Ordinance.

I seem to recollect seeing this document about 4 years ago when I was in Lagos. I should say I saw it in 1945 in Lagos at the Lands Office. As far as I remember it was Mr. Mbanefo who showed me the document. The original is filed in one of two volumes (bound) of Niger Lands Agreements in the custody of Registrar of Lands in Lagos. I think I compared this with the original. They were identical with one exception. An entry which reads "this annuls the first agreement made and attached hereto and dated 31st July, 1882," does not appear in the original. As far as I know the agreement of 1882 has never been traced. (Ex. 18). The plan as I know the agreement of 1882 has never been traced. (Ex. 18). The plan was prepared in my office. It is a sketch plan of the area retained by the Crown. I cannot say whether I have seen Ex. 12 before. I remember having seen a similar plan.

XX. by SOETAN.

Ex. 12 is plan No. OA/143 in Ex. 11. I have reason to believe that the area in orange is the one retained by Niger Company—Item 2 of the 4th Schedule.

Q. The area abandoned by the Crown is area covered by Agreements Nos. 40 and 72 except the area bounded on the north by Otumoye Creek, on the west by River Niger?—A. I cannot demarcate the land entirely in Ex. 10. The area abandoned by the Crown extends 3 miles inland.

Q. In Agreements Nos. 40 and 72 the northern boundary is Dende Creek?—A. Yes.

Q. You have Otumoye Creek in sketch plan, why?—A. —.

Q. What do dots on the plan in the agreements represent?—A. The dots appear to indicate Asaba, Onitsha, etc.

Q. The dots indicate the towns?—A. Yes.

Q. The marks represent the Royal Niger Company Station at Obosi?—A. Yes.

RE-EXD. by MBANEFO.

30 Q. By whom and when were the plans made?—A. The presumption has always been that they were prepared at the same time as the instruments themselves. These are copies of originals in Lagos but I do not know when and by whom they were prepared.

Q. Are the plans drawn to scale?—A. There is no indication of scale on the plans.

In the
West
African
Court of
Appeal.

—
No. 53.
Further
Affidavit
in support
of Motion
and
Exhibits
thereto.
1st
November,
1950—
continuel

In the
West
African
Court of
Appeal.

BY COURT : The area coloured blue on (Agreement 72) represents the total area originally granted to the Niger Company.

Ex. 53 ; Schedule 4, No. 2.

This is the Exhibit marked " B " and referred to in the Affidavit of Michael Oguejiofo Ajegbo.

No. 53.
Further
Affidavit
in support
of Motion
and
Exhibits
thereto.
1st
November,
1950—
continued

Sworn at the Office of the Supreme
Court Registry, Lagos, this 1st
day of November, 1950. }

Before me,

(Sgd.) D. S. ODIGIE,
Commissioner for Oaths.

10

No. 54.

Proceedings on Adjourned Motion.

Monday, the 6th day of November, 1950.

No. 54.
Proceed-
ings on
Adjourned
Motion.
6th
November,
1950.

Before Their Honours Sir HENRY WILLIAM BUTLER BLACKALL, K.C.,
President ; Sir JOHN VERITY, Chief Justice, Nigeria ; ARTHUR
WERNER LEWEY, K.C., Justice of Appeal.

W.A.C.A. 3323.

ANATOGU *versus* KODILINYE.

MOTION.

20

Sir A. ALIKAJA for Applicant.

MBANEFO (IKPEAZU and BALONWU with him) for Respondent.

MBANEFO : Ground 1(A) insufficient particulars.

Ground 12(A) Supreme Court Ordinance S.62.

ALAKIJA : Re Ground 1(A) we say that none of the Native Court proceedings have any relevance.

Re Ground 12 (A). This Court has wide powers.

COURT : You have not applied for amendment.

ORDER : Leave to file additional grounds 1(A), 1(B), 11 and 11(A) granted. Leave to file ground 12(A) refused.

30

Costs of this Motion to be costs in the cause.

(Sgd.) H. W. B. BLACKALL,
President.

No. 55.

Proceedings on Appeal.

Monday, the 13th day of November, 1950.

(Title as in No. 48.)

Sir O. ALAKIJA (SOETAN and AJEGBO with him) for Appellants.

MBANEFO (IKPEAZU and BALONWU with him) for Respondents.

SOETAN : Asks leave to amend ground 9 by substituting " and was wrong in " for " by " in line 2.

MBANEFO : No objection.

10 COURT : Leave granted. Amendment made.

Re Ground (2) Mbanefo asks for particulars of plan mentioned.

SOETAN : Ex. 10.

COURT : Ground 2 amended accordingly.

SOETAN : Ground 1. Ex. 54 is supposed to be same as Ex. 57. Cap. 108, para. 15, No. 40 did not grant land. The words " This annuls the prior agreement . . . dated 31st July, 1882 " in the registered copy (Ex. 54) is not in Ex. 57 (original agreement). Cyclo, March, May, 1949, p. 44 W.A.C.A. 2795 *Chief Uno Egim etc. versus Odu Agu & anor. etc.* What binds people of one compound does not necessarily bind people as a whole. Ex. 13 (composite plan) supposed to refer to areas in all land in Native Court cases although there were no plans in Native Court. Grounds 3, 5, and 9. No land was granted by 1896 agreement (Ex. 54), p. 148, line 3. (Record p.92) line 20, Plaintiffs admit their land does not extend to 3 miles re certificate (53) " people of Abotsi " meant Obosi people residing in Onitsha in contrast to grantors own family who were living at Obosi. What have Plaintiffs been doing with land adjoining pink area ? *Egbuche v. Idigo*, 11 N.L.R. 140. In the plan Abutshi is shown on part coloured blue and Onitsha is shown outside it. How then can Onitsha claim the blue area. Therefore grantor an Obosi man.

20 p.261 (Record p.178) Resident " Otu Obosi not within Onitsha jurisdiction." p.65 (Record p.40) As Niger Company had to bombard Onitsha would they ask an Onitsha man for a new station at Abutshi ? p.149, para. 5, line 12 (Record p.92) Therefore Judge confused by holding Obosi were tenants.

30

In the
West
African
Court of
Appeal.No. 55.
Proceed-
ings on
Appeal.
13th and
14th
November,
1950.

Tuesday, the 14th day of November, 1950.

In the
West
African
Court of
Appeal.

Parties as before.

SOETAN (resumes). Re ground 1(B), p.8, para. 15. (Record p.5).

Ground 4 Dende Creek so called by Obosi people, p.64, line 21.
(Record p.40).

Ground 6, p.91. (Record p.57).

Cap. 149, 4th Schedule, No. 2. The land is described as at Abutshi.
Ground 12 weight of evidence, p.88, line 21. (Record p.55).

· MBANEFO : Three miles in Ibo in 1882 (Ex. 53) plan not drawn to
scale. In 1896 Ex. 54 made. Nobody now alive in 1882. Probably 10
Company found a strip of 500 yards enough for their purpose.

Point at which 3 mile limit was has never been demarcated. But
500 yards was paced in 1896. Therefore grantors well within own land
(Ex. 54) only definite evidence of actual measurement.

Re Dende, p. 27, line 9, (Record p.17) p.35, line 17 (Record p.21).

SOETAN in reply.

No. 55
Proceed-
ings on
Appeal—
13th and
14th
November,
1950—
continued

No. 56.
Judgment.
14th
November,
1950.

No. 56.

Judgment.

Appeal dismissed. Costs assessed at £68 14s. 0d.

REASONS FOR JUDGMENT.

(Art. 16.)

20

The Judgment of the Court in this appeal was delivered by the
President and was to the following effect : "The question at issue in this
appeal is the ownership of an area of land at Onitsha edged pink on the
plan Ex. 10. Manson J. in a lucid and well referenced judgment,
found in favour of the Respondents. As the learned Judge's reasons
are fully set out in his Judgment and this Court sees no reason to differ
from them, there is no need to recapitulate them. It is enough to say
that the evidence fully supports the findings of the Court below, and
that in our view there is no substance in this appeal."

Verity C. J. and Lewey J. A. concurred.

30

(Sgd.) H. W. B. BLACKALL,

President, West African Court of Appeal.

11th January, 1951.

No. 57.

Order Granting Conditional Leave to Appeal to His Majesty-in-Council.

(Title as in No. 48.)

Monday, the 27th day of November, 1950.

(L.S.)

(Sgd.) JOHN VERITY,
Presiding Judge.

UPON READING the Motion supported by Affidavit filed on behalf of the Defendants/Appellants for leave to appeal to His Majesty-in-Council from the Judgment given herein on the 14th November, 1950, and upon hearing Mr. J. I. C. Taylor holding Mr. Ajegbo's brief of Counsel for the Appellants and Mr. David of Counsel for the Respondents :

IT IS ORDERED that Conditional Leave be granted to the Appellants subject to the following conditions (A) That within 3 months from the date hereof, the Appellants do deposit in Court £50 to cover the cost of making and transmitting the Record of Appeal to the Registrar, Privy Council.

(B) That within three months from the date hereof the Appellants do enter into Bond with two sureties in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an Order granting Final Leave to appeal or for non-prosecution of the appeal or of the appeal being dismissed or of His Majesty-in-Council ordering the Appellants to pay the Respondents' costs.

(c) That within three months from the date hereof the Appellants do pay into Court the costs awarded to the Respondents in this Court and in the Court below.

AND (D) That the Appellant do give Notice of this appeal to the Respondents.

30

(Sgd.) J. A. SMITH,
Deputy Registrar,
West African Court of Appeal.

In the
 West
 African
 Court of
 Appeal.
 No. 57.
 Order
 Granting
 Conditional
 Leave to
 Appeal
 to His
 Majesty in
 Council.
 27th
 November,
 1950.

In the
West
African
Court of
Appeal.

No. 58.
Order
Granting
Final
Leave to
Appeal to
His
Majesty-
in-Council.
2nd April,
1951.

No. 58.

Order Granting Final Leave to Appeal to His Majesty-in-Council.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Suit No. 0/3/1949.

W.A.C.A. 3323.

An application for Final Leave to appeal to His Majesty-in-Council from the Judgment of the West African Court of Appeal, Lagos, dated 14th November, 1950.

BETWEEN

1. PHILIP AKUNNE ANATOGU 10
2. JOSEPH AKUNNIA AGBU for themselves
and on behalf of the Ogbo Family of
Umuasele, Onitsha *Plaintiffs/Respondents.*

AND

1. CHIEF KODILINYE
2. J. C. NWANGWU for themselves and on
behalf of the Obosi people.. .. . *Defendants/Appellants.*

(L.S.)

(Sgd.) JOHN VERITY,

Presiding Judge.

20

Monday, the 2nd day of April, 1951.

UPON READING the Motion filed on the 26th day of February, 1951, on behalf of the Defendants/Appellants for Final Leave to appeal to His Majesty-in-Council from the Judgment of this Court dated 14th November, 1950, and upon hearing Mr. J. I. C. Taylor of Counsel for the Appellants and Mr. Chuba Ikpeazu of Counsel for the Respondents :

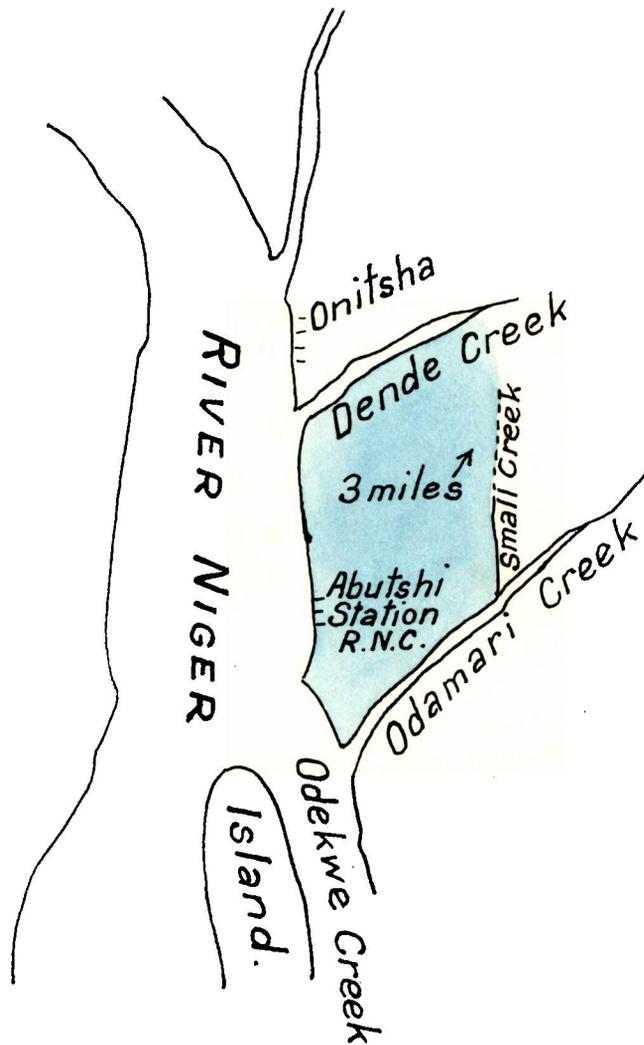
IT IS ORDERED that Final Leave to appeal to His Majesty-in-Council be granted to the Appellants.

(Sgd.) J. A. SMITH,

Deputy Registrar, 30

West African Court of Appeal.

Copy of Plan
No. 72. Vol. 2.



EXHIBITS.**PLAINTIFFS' EXHIBITS.****Exhibit 53.****Official Record of Agreement No. 72 dated 8th October, 1884.**

This is to certify that the within instrument is a true and correct copy of an AGREEMENT dated the 8th October, 1884, and filed as No. 72 in Volume 2 of Niger Land Agreements kept in the Land Registry at Lagos, Nigeria.

(Sgd.) J. J. HIMENS,

Deputy Registrar.

10

(SEAL.)

Exhibits.

Plaintiffs'
Exhibits.

Ex. 53.
Official
Record of
Agreement
No. 72
dated 8th
October,
1884.

No. 72.

Volume 2.

This is to certify that Orikabwe, a Chief residing at Onitsha, was brought before me this day, and through the Interpreter, George L. Luke, who was sworn to interpret correctly, stated on oath that he was the sole and lawful representative of the family owning the land extending from the first creek called Odamari falling into the River Niger below The National African Company's Limited Factory at Abutshi to the South Bank of the Creek called Dende, to the North of the Factory and 20 bounded on the East by the small creek flowing into the Odamari creek and about three miles inland. That he sold the above-mentioned plot of land during the dry season of the year 1882 to D. McIntosh of the National African Company Limited, and he duly received the amount agreed upon by the said D. McIntosh and himself as the price paid for the land.

He asked that the Abutshi people might be allowed to use the land for raising yams, corn, etc., and to fish from those parts of the bank which were not in the occupation of the Company, that all persons interested in the ownership had agreed to the sale of the land to the 30 Company that he also asked that if any of his sons or daughters wished

Exhibits. for a portion of the land for farming purposes that they should be allowed
and that these requests were acceded to.

Plaintiffs' Exhibits. Abutshi,

Ex. 53. October 8th, 1884.

Official
Record of
Agreement
No. 72
dated 8th
October,
1884—
continued

On board H.M.S. "Alecto," anchored off Abutshi Factory,
this 8th October, 1884.

(British Consulate
Seal.)

(Sgd.) EDWARD HYDE HEWETT,
H.B.M. Consul.

(Sgd.) DAVID McINTOSH,
pp. The National African Company, Limited. 10

This instrument was delivered to me for registration by John McTaggart for and on behalf of the Royal Niger Company Chartered and Limited at 10.30 o'clock in the forenoon this 11th day of September, 1897. I am satisfied it is a genuine document under the hands of the respective parties thereto.

(Sgd.) T. A. HARDWOCK,
Registrar of Instruments.

Exhibit 54.

Official Record of Agreement No. 40 dated 26th October, 1896.

Ex. 54.
Official
Record of
Agreement
No. 40
dated 26th
October,
1896.

This is to certify that the within instrument is a true and correct 20
copy of an AGREEMENT dated the 26th October, 1896, and filed as
No. 40 in Volume 1 of Niger Land Agreements kept in the Land Registry
at Lagos, Nigeria.

Deputy Registrar.

No. 40.

Volume 1.

AGREEMENT FOR PURCHASE OF LAND.

Agreement between THE ROYAL NIGER COMPANY, CHAR-
TERED AND LIMITED hereinafter called the Company on the one
part and Chief Orrirafbue of Umuleri hereinafter called the vendors
on the other part.

COPY OF PLAN N°40. VOL. I,

NIGER LAND AGREEMENTS.



I. The Vendors for good consideration, the receipt of which is hereby acknowledged sell to the Company all the private rights of every kind not already possessed by the Company in the land between The Creek Dembe on the North to the Creek Ediemiri on the left bank of the River Niger and situated between or close to Abutshi Station and extending back from the river for five hundred yards inland.

10 II. The Company agrees not to disturb present tenants or their heirs who may wish to continue in personal occupation of their lands or houses from this date, except at a price to be fixed by mutual agreement at the time.

WE the undersigned witnesses, do hereby solemnly declare that the persons whose names are placed opposite their respective marks, have in our presence affixed their marks of their own free will and consent, and that,
(Sgd.) JOHN McTAGGART
on behalf of The Company, has in our presence affixed his signature.

	(Sgd.) Ori Kabue	his	X
	(„) Zeatshi		X
	(„) Osayne		X
	(„) Otsti		X
	(„) Onoroo		X
		mark	

20 (Sgd.) T. ATKINSON
(„) D. A. IGARA
(„) ISAAC T. PALMER

I John McTaggart for and on behalf of The Company, do hereby approve and accept the above Agreement, and hereby affix my hand.

(Sgd.) JOHN McTAGGART,
Senior Executive Officer,
For the Royal Niger Coy. Chd. & Ltd.

DECLARATION BY INTERPRETER.

30 I Isaac Thomas Palmer native of Sierra Leone do hereby solemnly declare that I am well acquainted with the Eboe language, and that on the 26th day of October 1896 I truly and faithfully explained the above Agreement to all the native signatories, and that they understood its meaning.

(Sgd.) ISAAC T. PALMER

Witnesses to the above mark or signature,

(Sgd.) T. ATKINSON
D.A., G.R.A.
(„) JOHN McTAGGART

Done in triplicate at Onitsha this 26th day of October, 1896.

Exhibits.
—
Plaintiffs' Exhibits.
—
Ex. 54.
Official Record of Agreement No. 40 dated 26th October, 1896—
continued

Exhibits.
—
Plaintiffs'
Exhibits.
—

Ex. 54.
Official
Record of
Agreement
No. 40
dated 26th
October,
1896—
continued

This instrument was delivered to me for registration by John McTaggart for and on behalf of the Royal Niger Company Chartered and Limited at 11.0 o'clock in the forenoon this 14th day of November 1896. I am satisfied it is a genuine instrument under the hands of the respective parties thereto.

(Sgd.) T. A. HARDWOCK,
Registrar of Instruments.

Exhibit 19.

Petition Addressed to Resident, Onitsha.

Ex. 19.
Petition
Addressed
to
Resident,
Onitsha.
31st
January,
1933.

Charles W. Clinton,
Barrister-at-Law,
Solicitor of the Supreme Court,
Nigeria.

Telephone, Clinton, Calabar.

The Honourable,

The Senior Resident,

Onitsha Province, Onitsha.

Sir,

I have to inform you that I have been requested by the Chiefs and 20
people of the Umuasele Family of Onitsha to make to you the following
representation in respect of all that piece of land lying to the south of
Onitsha Township and bounded on the north by the Dembe Creek,
on the south by the Idemiri Creek, on the East by the Niger River and
extending westward from the left bank of the Niger River, 500 yards
inland. This portion of land was in the year 1896 made over to the
Niger Company with the exclusive right to load and discharge cargo on
the banks of the river and on condition, on the part of the Niger Company,
not to disturb the occupants or their heirs who may wish to continue
in occupation of their land excepting at a price to be fixed by mutual 30
agreement. From the date of this agreement with the Niger Company,
in 1896, the Umuasele people in occupation of the land have never been
disturbed and excepting for that portion of the land known as Abutshi
Waterside where the loading and discharge of cargo took place the

No. 31/33. 10

Assinie Chambers,
Onitsha.

31st January, 1933.

Company allowed the Umuasele people to remain in occupation for all purposes including building and farming. A few years ago, about 1929, Chief Kodilinye of Obosi took an action against the Umuasele people claiming a declaration of title to all the portion of land in question. The Umuasele people, I believe, filed a Statement of Defence repudiating Chief Kodilinye's claim on the ground that the land was the property of the Umuasele people. The Government, however, who it would seem claimed that all the land on the Niger River acquired by the Niger Company vested in the Nigeria Government, intervened in the action with the result that Chief Kodilinye's claim was disallowed. Some time before this the Umuasele people had permitted a body of Nupe people to make settlement on that portion of the land nearest the Onitsha Township and were receiving rent therefor. It would appear that the Umuasele Family have reason to believe that the Government claim that all the land in question is Crown Land in respect of which the Umuasele have no rights whatever and that upon this basis the Government intend to make an extensive layout inclusive of the portion occupied by the Nupes with the view of leasing out plots to the Nupes for rent to be paid to the Government. In any case, on the strength of this report the Nupes now in occupation by permission of the Umuasele have refused to continue to pay their tribute to the Umuasele. The Umuasele are in possession of some of the documents made between their late Chief Orkabue and the Niger Company. Other documents have been misplaced and are not available. I am requested to pray you to be good enough to let them know at your earliest convenience what is the true position in this matter between them and the Government. Will you be good enough to supply them with copies of Agreements, which the Government must hold, made between the Umuasele and the Niger Company. What is the rights of the Government in respect of these Agreements? What is the present intention of the Government in respect of the occupation of the Nupe and the reported intended layout. If information in respect of the above question could be supplied it would save a good deal of misunderstanding and possibly a good deal of unnecessary trouble.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) CHARLES W. CLINTON.

Exhibits.
 Plaintiffs'
 Exhibits.
 Ex. 19.
 Petition
 Addressed
 to
 Resident,
 Onitsha.
 31st
 January,
 1933—
continued

Exhibits.

Exhibit 27A.Plaintiffs'
Exhibits.**Letter, 16th May, 1934, Ogbo Family to Secretary, Southern Provinces.**Ex. 27A.
Letter,
Ogbo
Family to
Secretary,
Southern
Provinces.
16th May,
1934.Copy to H.H. The Lt. Govr. S. P. Nigeria and The Hon. The Secy.
S. P. ENUGU direct for information.

Subject : Land Ugborimili (Nupe Settlement),

Ogbo Family, Umuasele Villa,

Inland Town, Onitsha.

16th May, 1934.

To,
The Honourable,
The Secretary, Southern Provinces,
Nigeria, Enugu.
Through The Honourable,
The Resident, O. P. Onitsha and
The District Officer, Onitsha Division,
Onitsha.

10

Sir,

We the undersigned representative members of the " Ogbo Family " Umuasele Villa, Inland Town, Onitsha, have the honour most respectfully beg to approach you with this Petition of ours, solicitously and earnestly craving for the ruling of His Honour The Lieutenant Governor, Southern Provinces, Nigeria, with reference to the attached copies of correspondence relating to the Land Ugborimili (Nupe Settlement). 20

2. From correspondence referred to, we are sure you will observe that since our representation made to The Honourable The Senior Resident, Onitsha Province and his reply respectively dated 31st January, 1933, (Record p.82) and 22nd May, 1933, up to the present no information has yet been received by us.

3. We beg to state for His Honour's information that for the space of about seven (7) years ago, dispute has arisen between ourselves the lessors and the lessees with regard to the yearly tribute usually paid 30

to us by the latter lessees, as owners of the land in question, and in consequence, steps have been taken by us to sue trespassers in the Native Court, Onitsha. The excuse of those trespassers very often being that the land does not belong to us but the Crown.

4. With the view to avoiding further dispute and confusion among the Native community, we humbly request for His Honour's immediate ruling as to whether this land belongs to us or to the Crown; or, on the other hand, if His Honour may be so good and kind enough to find it clear that the land belongs to us, we may be so informed and necessary permit kindly granted to us to take such legal action against the trespassers on that land.

We have the honour to be,

Sir,

Your humble and obedient Servants,

FOR AND ON BEHALF OF
MEMBERS OF THE "OGBO FAMILY."

Witness to Marks.	(Sgd.) James A. Nzekwu	His X	Mark
P. O. Anatogu	Egbuniwe Akunne	„ X	„
Ogbo Family	Ndaguba Okagbue	„ X	„
20 Umuasele Villa	J. U. Agbu	„ X	„
Onitsha	Iwobi Ochei	„ X	„
	Chieka Oba	„ X	„
	J. U. Ochei		
	P. O. Anatogu		

(Here is attached a copy of Exhibit 54 save that the following words also appear "This annuls the prior agreement made and attached hereto and dated 31st July, 1882").

Exhibit 27B.

Letter, 9th July, 1934, from Secretary, Southern Provinces, to Ogbo Family.

30

No. S.P.397/406/15.
Secretary's Office,
Southern Provinces,
Nigeria,
Enugu.
9th July, 1934.

Nigeria.

Gentlemen,

With reference to my letter No. S.P.397/406/6 of the 22nd May, 1934, I am directed by the Lieutenant-Governor to inform you that the land in question is covered by the Niger Treaties. An enquiry has recently been held with regard to these treaties and recommendations have been made to Government.

Exhibits.
Plaintiffs'
Exhibits.

Ex. 27A.
Letter,
Ogbo
Family
to
Secretary,
Southern
Provinces,
16th May,
1934—
continued

Ex. 27B.
Letter,
from
Secretary,
Southern
Provinces,
to Ogbo
Family,
9th July,
1934.

Exhibits. 2. I am to say that in the meantime that the Government does not
 Plaintiffs' admit your right to collect any rents or fees within the area in question.
 Exhibits.

I have the honour to be,

Ex. 27B.
 Letter,
 from
 Secretary,
 Southern
 Provinces,
 to Ogbo
 Family,
 9th July,
 1934,—
continued

Gentlemen,

Your obedient Servant,

(Sgd.) E. A. MILLER,
*for Acting Secretary,
 Southern Provinces.*

Mr. J. A. Nzekwu and Others,
 Umuasele Villa,
 Onitsha.

10

U.f.s. thro' The Resident,
 Onitsha Province,
 Onitsha.

Ex. 20.
 Letter,
 Mbanefo to
 Resident,
 and
 Attach-
 ments.
 9th
 February,
 1939.

Exhibit 20.

Letter, Mbanefo to Resident and Attachments.

Louis N. Mbanefo, B.A.,
 Barrister-at-Law,
 Osodi Chambers,
 Benjamin Street,
 Onitsha.

9th February, 1939.
 Postal Address,
 P.O. Box 14,
 Onitsha. 20

The Honourable,
 The Senior Resident,
 Onitsha Province,
 Onitsha.

Sir,

The attached are for your information please.

I have the honour to be,

Sir,

Your obedient Servant,

30

(Sgd.) L. N. MBANEFO.

The Local Authority,
Onitsha.

Sir,

Re NUPE SETTLEMENT.

Following our interview of the 3rd of January, 1939, I have the pleasure in sending to you the attached being the cons the Umuasele Family to the rent being collected and kept deposit until such time as their share of it is known.

10 I am further instructed by my clients to state as follows :

- (A) The Nupe Settlement is included in two plots of land which were the subjects of two separate grants to the Royal Niger Company Ltd., one in 1884, and the other in 1896, the latter annulling a previous agreement of 1882.
- (B) The Instrument of 1884 is only a statement certifying the correctness of the terms of the agreement of 1882 which included an area of land extending 3 miles inland Niger and bounded on the north by the Dende creek south by the Idemiri creek. In this instrument paragraph which reads as follows :
20 Abutshi people might be allowed to yams, corn, etc. and to fish from the which were not in the occupation if any of his sons or daughters land for farming purposes that they that these requests were acceded to.
- (c) The Agreement of 1896 refers to an
between the Dende Creek and Idemili
inland from the River Niger for

a

30 It was there specifically stated
agrees not to disturb present tenants
may wish to continue in personal
or houses from this date except
mutual agreement at the time.

- (D) The Agreement of 1882 which was certified by the instrument of 1884 was annulled by a clause in the agreement of 1896 ; so that there is only one agreement now in force and that is the agreement of 1896 referring to the area five hundred yards inland (copies of the two agreements are attached herewith.)

9th February, 1939. Exhibits.

Plaintiffs'
Exhibits.

Ex. 20.
Letter,
Mbanefo to
Resident
and
Attach-
ments.
9th
February,
1939—
continued

Exhibits.
 ———
 Plaintiffs'
 Exhibits.

Ex. 20.
 Letter,
 Mbanefo to
 Resident
 and
 Attach-
 ments.
 9th
 February,
 1939—
continued

- (E) It will be observed that the grantor in both instruments is Odikagbue (Orikabue in the deeds) of Umuasele an ancestor of the Umuasele Family.
- (F) The land is Crown Land by virtue of the agreement referred to above, and, if anybody had any rights in or over it, it was because of the reservations made in the deeds.
- (G) My clients therefore cannot understand why Chief Kodilinye and his associates have been dragged into negotiation and what is their interest in the land ?
- (H) At a meeting held at the provincial office last year the Resident 10 went into the matter carefully and in the end came to the conclusion that the Obosi people have no rights as such on the land, as they were not parties to the deeds. The agreement arrived at at the meeting was that until the Government has decided how much of the land it will require the rents should be collected and deposited at the Native Administration Treasury so that when the Government does decide the rents could be apportioned between it and the Umuasele Family.
- (I) The attached consent is given so as not to impede the scheme 20 for the development of the township and without prejudice to the facts stated above. If the Obosi people feel that the land is theirs or that they have any interest in it they could put the Umuasele Family in Court and their claim could there be determined.

2. My clients desire me further to state that they are not prepared to attend any further meetings in respect of this matter if the Obosi people are also invited as they cannot see that the Obosi people come into the matter at all.

3. A copy of this letter is being forwarded to the Senior Resident 30 for his information.

I have the honour to be,

Sir.

Your obedient Servant,

(Sgd.) L. N. MBANEFO,

Solicitor.

The Local Authority,
Onitsha.

Sir,

Re NUPE SETTLEMENT.
CONSENT OF UMUASELE FAMILY.

I have been instructed by the Umuasele Family to say that they agree to the rents due from the tenants residing in the Nupe Settlement being collected and deposited in the Native Administration Treasury until such time as their portion of the said rent is determined.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) L. N. MBANEFO,
Solicitor.

(Here is attached a copy of Exhibit 57.)

(Here is attached a copy of Exhibit No. 53.)

9th February, 1939. Exhibits.

Plaintiffs'
Exhibits.

Ex. 20.
Letter,
Mbanefo to
Resident,
and
Attach-
ments.
9th
February,
1939—
continued

Exhibit 22.

Letter, Resident to District Officer, of 16th June, 1942.

20

O.P.C.3/1938/428.

Resident's Office,
Onitsha Province,
Onitsha, Nigeria.
16th June, 1942.

Ex. 22.
Letter,
Resident to
District
Officer, of
16th June,
1942.

The District Officer, Onitsha.

Copy to :

The Ogbo-Umuasele Family, Onitsha.

The Eze Kodilinye Obosi.

Onitsha Township Lands.

30 As you are aware, I have long ago recommended to Government that we should cease to hold on to those areas of the Niger Lands which we do not require. The proposals which are awaiting the approval of the Secretary of State are that while we retain the radical title in the lands we permit those people, who had rights in the lands before we came in, to continue to enjoy those rights. If at any time we have

Exhibits. occasion to re-enter, then we do so, but first pay compensation for disturbance.

Plaintiffs' Exhibits.

Ex. 22.
Letter,
Resident to
District
Officer, of
16th June,
1942—
continued

2. Part of the Niger Lands which are concerned in this way is that area of the Township extending from the present southern limits of the Hausa Quarter to the southern limit of the Township. This latter limit is a line drawn at roughly 270° to the River Niger from the point of intersection of the IWEKA Road with the Owerri Road. There is one exception in this area—and that is the plotted area of the NUPE Settlement which would continue to be Crown Land plus the approach to that Settlement.

10

3. As you know the Obosi people lay claim to this land and so do the Umuasele Family of Onitsha and the most important part is all the land lying between the IWEKA Road and the River. Today there are a number of Obosi and of Onitsha farms scattered about. Obosi says the Niger Company obtained the land from Obosi—and that therefore we hold it also from (indirectly) Obosi. Onitsha say that the original grantor was an Onitsha man. Obviously so long as we regard the land as Crown Land, we cannot have a land case between Onitsha and Obosi: neither of them could obtain legal rights so long as the area is still ours. Naturally if we were to relinquish possession, the two towns could go to the Courts and settle the matter once for all.

4. There are, as you know, constant disputes about this land and it seems to me that there can be only one thing to do so long as we have the legal rights. Farming should be allowed by PERMIT only and we should give farming permits to each of Obosi and to Umuasele. Obosi are interested more in the southern area of the Township land and we could accommodate them there. Umuasele could farm under permit in the areas (roughly) lying between Onitsha proper and the Conservancy pits.

5. I suggest therefore that the Advisory Board adopts that principle and that as from say, 1st January, 1943, no farming should be permitted in these Township lands without permits. (Unless of course we have relinquished our rights by then.)

It is too late to do anything now—farms are in being and we will have to await the reaping of the crops: but there is no reason why we should not start from 1st January, 1943, or if you thought it better, from 1st April, 1943. The latter date would give plenty of time for reaping of crops before any new farming takes place.

Will you let me know if you and the Board will accept the proposal and if so, the date from which it should operate?

40

(Sgd.) D. P. J. O'CONNOR,
Resident, Onitsha Province.

Exhibit 21.**Letter, Mbanefo to Resident, 2nd September, 1942.**

Louis N. Mbanefo,
M.A.(Cantab)LL.B.(Lond.),
Barrister-at-Law.

Exhibits.

 Plaintiffs'
Exhibits.

Ex. 21.
Letter,
Mbanefo to
Resident,
Onitsha, 2nd
September,
1942.

Onitsha, 2nd
Nigeria. September,
1942.

2nd September, 1942.

The Resident,
10 Onitsha Province,
Onitsha.

Sir,

Onitsha Township Lands.

With reference to your letter of the 16th of June, 1942, O.P.C.3/1938/428 I am instructed by my Clients, the Umuasele Family to reply and state as follows :

1. (A) The Crown derived its title to the land between the Dende Creek and Idemiri River from the Niger Lands transfer Ordinance 1900 by which certain lands originally belonging to the Royal Niger Company became vested in the Crown. The Crown therefore assumed as much title as the Royal Niger Company possessed and took the land subject to the same encumbrances as when the Royal Niger Company had it.

(B) The Company's root of title began with a certificate dated October 8th, 1884, certifying that by an agreement between Chief Oribakwe (Odikagbue) of Umuasele and the National African Company Ltd. made in 1882 all the land between the Dende Creek and Idemiri River and extending 3 miles inland was sold by the said Chief Oribakwe to the National African Company Ltd. Paragraph 2 of the certificate reads :

30 " He (Oribakwe) asked that the Abutshi people might be allowed to use the land for raising yams, corn, etc., and to fish from those parts of the bank which were not in the occupation of the Company " . . . " he also asked that if any of his sons or daughters wished for a portion of the land for farming purposes that they should be allowed and that these requests were acceded to."

Exhibits.

—
Plaintiffs'
Exhibits.

—
Ex. 21.
Letter,
Mbanefo to
Resident,
2nd
September,
1942—
continued

(c) In 1896 another agreement was made between the Royal Niger Company Ltd. and Chief Orikabue of Umuaseri by which the latter sold to the Company all the private rights of every kind not already possessed by the Company between the Creek Dende and Creek Idemiri and extending inland 500 yards. Paragraph 2 reads the Company agrees not to disturb present tenants or their heirs who may wish to continue in personal occupation of their lands or houses from this date except at a price to be fixed by mutual agreement at the time. It is also stated therein that this agreement "annuls" the prior agreement made and dated 31st July, 1882.

10

(D) As there is no other known agreement dated 1882 than that embodied in the certificate of 1884 the presumption is that this instrument was the one annulled by the deed of 1896. This presumption is reinforced by the fact that Orikabue's Family land does not extend as much as 3 miles inland. Lands belonging to other families of Onitsha would have been affected by the grant.

(E) It will be observed that the grantor in both instruments is Odikabue (Oribakwe) whose sons are alive to-day and residing at Umuasele.

(F) The land is Crown land by virtue of the above-mentioned 20 instruments and if anybody other than the Crown claims any rights in or over it, it must be by virtue of the reservations contained in the deeds.

2. My clients therefore cannot see how and why Chief Kodilinye and his associates have been dragged into the negotiations and what precisely is their interest in the land ?

3. Within the past few years several persons from Obosi have taken plots from Chief Kodilinye within this area and have built houses thereon. My clients desire to know whether the houses were built with the knowledge and consent of the Crown and if not whether they 30 would regard the Crown's apparent unconcern abandonment by the Crown of its rights and interests in the land.

4. As is clearly stated in the instrument of 1896 rights of occupation were reserved only to the tenants of Umuasele Family and their heirs.

5. Pending a reply from Government to your recommendations my clients ask that Chief Kodilinye and his associates should be kept off the land until such as they are able to show that they have an interest in the land and what is the nature of that interest. On the face of the

deeds it is difficult to see how the claim of the Obosi people could be entertained. For some time they have endeavoured in diverse ways to provoke a breach of the peace. And a clash has been avoided with the greatest restraint on the part of the Umuasele people.

6. I am instructed further to state there has never been any Court case between the Obosi people and the Umuasele people in respect of the piece of land between the Dende and Idemiri Creek and that the allegation by Chief Kodilinye that the land was awarded to them in a suit in the High Court is false.

10 7. There are several families in Umuasele and the particular family that claim an interest in this area is the Ogbo Family of whom Chief Orikabue was the head at the time of the grants to the National African Company Ltd.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) L. N. MBANEFO,

Solicitor.

Exhibit 23.

20 **Letter, Resident to Mbanefo, 4th September, 1942.**

No. O.P.C.3/1938/455.

Resident's Office,
Onitsha Province,
Onitsha, Nigeria.

4th September, 1942.

L. N. Mbanefo, Esqr.,
Barrister-at-Law,
P.O. Box No. 14,
Onitsha.

30 Sir,

Onitsha Town Lands.

In reply to your letter of 2nd September, I have to say :

(1) That the position of the Crown to-day is as shown in your paragraph 1(A).

Exhibits.
—
Plaintiffs'
Exhibits.
—

Ex. 21.
Letter,
Mbanefo to
Resident,
2nd
September,
1942—
continued

Ex. 23.
Letter,
Resident to
Mbanefo,
4th
September,
1942.

Exhibits.
—
Plaintiffs'
Exhibits.

Ex. 23.
Letter,
Resident to
Mbanefo,
4th
September,
1942—
continued

(2) That the ultimate position of the Crown may be either a continuance of its present position or that outlined in paragraph 1 of my letter No. O.P.C.3/1938/428 of the 16th of June.

(3) Your paragraph 3. Buildings by Obosi people have not been to the knowledge of or with the consent of the Crown.

It follows that the Crown has not abandoned its rights.

(4) I am once again asking Government to hasten its decision in regard to Agreements 40 and 72.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) D. P. J. O'CONNOR,
Resident, Onitsha Province.

10

Exhibit 27C

Ex. 27c.
Letter,
Mbanefo to
Resident,
13th
November,
1942.

Letter, Mbanefo to Resident, 13th November, 1942.

Louis N. Mbanefo,
Barrister-at-Law,
P.O. Box 14,
Onitsha.

Onitsha, 20
Nigeria.

13th November, 1942.

The Resident,
Onitsha Province,
Onitsha.

Sir,

Onitsha Town Lands.

With reference to your letters O.P.C.3/1938/455 of the 4th of September, 1942, and O.P.C.3/1938/460 of the 19th of October, 1942, I am instructed by my clients, the Ogbo Family of Umuasele to write 30 and state as follows :

(1) You state in paragraph 3 of your letter O.P.C.3/1938/455 of the 4th of September, 1942, that " buildings by Obosi people

have not been to the knowledge of or with the consent of the Crown." My clients want to know what steps you propose to take in view of the fact that the Obosi people have built extensively on the land.

Exhibits.

Plaintiffs' Exhibits.

Ex. 27c.

- 10 (2) My clients feel that the Obosi people are encroaching with a view to establishing rights of occupancy (which they have never had) within the area so that if and when the Crown surrenders it will not be possible or easy to turn them out. Many of these buildings are permanent and substantial buildings. They were all built within recent years.
- (3) As the Crown contemplates surrendering the land to my clients, the original grantors, they ask that steps be taken to stop this large scale infiltration by the Obosi people. Failing that my clients reserve the right to take whatever steps they consider necessary to safeguard their interests. They may find it necessary to resort to extensive occupation (by building houses) of a large portion of the land.
- 20 (4) As regards your letter O.P.C.3/1938/460, my clients ask that you may be pleased to request Chief Kodilinye to produce the plan which he tendered in evidence in Suits *Chief Kodilinye v. Mbanefo Odu*, and *Chief Kodilinye v. Erokwu*. A study of the plan of the areas claimed by Chief Kodilinye on behalf of the Obosi people in both suits and lost will convince any one about the futility of the Obosi people's claim in respect of the land now in dispute.

Letter, Mbanefo to Resident, 13th November, 1942—
continued

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) L. N. MBANEFO,

Solicitor.

Exhibits.

Exhibit 55.Plaintiff's
Exhibits.**Letter from Resident to Emodi of 2nd February, 1945.**Ex. 55.
Letter from
Resident to
Emodi,
2nd
February,
1945.Mr. C. C. Emodi,
Licensed Surveyor,
Onitsha.

O.P.C.3/38/750.

2nd February, 1945.

Copy to :
L. N. Mbanefo, Esq.,
Barrister-at-Law,
Onitsha.

10

Sir,

Niger Lands—Onitsha Province.

I require you to make a plan in duplicate of the area lying between the Ndende of Otumoye Creek and the Idemili Creek along the bank of the Niger and to a depth of 500 yards throughout the length of the river between the two creeks named above. You will appreciate that your 500 yard line will therefore be a line parallel with the River Niger. Within this depth of 500 yards you will find a number of buildings belonging to people of Obosi or belonging to people of other towns who have been put into this land by Order or by permission of Obosi people. By buildings I mean not only completed houses but even erections which have been only just started or in a half-finished state. I want every single one of these buildings duly plotted in on your map. No building which is outside of 500 yard limit should be shown. Either on the map itself or in the schedule on the side of the map you should show a detail of the owners or occupiers of the houses which you have plotted in.

Right on the bank of the River Niger will you find a number of houses belonging to what is known as Obi Ossai's Compound. I am not concerned with these and you need not plot these in.

30

2. If you go to see Mr. Mbanefo on Saturday morning he will arrange for you to have people of the Ugbo Family of Umusele Quarter of Onitsha to go round the land with you and to identify the Obosi houses as described above which you are going to show on the plan. I repeat once more that Obosi houses mean not only houses belonging to people of Obosi but also houses belonging to people of other towns whom the Obosi people have put therein.

3. I should like the completed plan to be delivered to me not later than the 17th of February.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) . ? ? ?

Resident, Onitsha Province.

Exhibits.

Plaintiffs' Exhibits.

Ex. 55.
Letter from Resident to Emodi, 2nd February, 1945—
continued

Exhibit 24.

Letter, Mbanefo to Resident of 1st March, 1946.

Ex. 24.
Letter, Mbanefo to Resident, 1st March, 1946.

10 Louis N. Mbanefo,
M.A.(Cantab), LL.B.(London),
Solicitor and Barrister-at-Law.

Onitsha, Nigeria.

1st March, 1946.

The Resident,
Onitsha Province,
Onitsha.

Sir,

Niger Lands Agreements 40 and 72.

20 I write on behalf of the Ogbo Family of Umuasele, the original grantors to the Royal Niger Company Limited, of the lands mentioned in Agreements 40 and 72.

2. The Obosi people under the leadership of Chief Kodilinye are entering on the said lands in large numbers and building houses thereon. Because of the Crown's title and/or interest on the said land, my clients have so far refrained from taking any action.

3. My clients, as the original grantors, now want to take action against the Obosi people in order to assert their right to the said land.

30 4. In view of Sections 11 and 12 of the Niger Lands Transfer (Amendment) Ordinance, 1945, my clients would like to know before the action is instituted whether the Governor still claims any title or interest in the said lands, and if so, what title or interest, and whether he intends to abandon any of his rights or interests.

Exhibits. 5. You may wish to inquire from the Attorney-General and/or the
 Plaintiffs' Commissioner of Lands what is the Government intention with respect
 Exhibits. thereto.

Ex. 24.
 Letter,
 Mbanefo to
 Resident,
 1st March,
 1946—
continued

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) L. N. MBANEFO,

Solicitor.

Ex. 25.
 Letter,
 Resident to
 Mbanefo of
 6th March,
 1946.

Exhibit 25.

Letter, Resident to Mbanefo of 6th March, 1946.

10

No. O.P.C.3/1938/1101.

Resident's Office,
 Onitsha Province,
 Onitsha, Nigeria.
 6th March, 1946.

L. N. Mbanefo, Esq.,
 Barrister-at-Law,
 P.O. Box 14,
 Onitsha.

Sir,

20

Niger Lands Agreements 40 and 72.

In reply to your letter of 1st March, 1946, I have to say that I would love to be able to tell you not only what is Government's policy with regard to the Niger Lands in general but also what are Government's intention as to these lands in particular. I have tried time and again to get some sort of definite answer to these questions but all without avail. I am passing your letter on to His Honour the Chief Commissioner who might perhaps be prepared to take up the matter in Lagos this month.

I have the honour to be,

30

Sir,

Your obedient Servant,

(Sgd.) D. P. J. O'CONNOR,
Resident, Onitsha Province.

Exhibit 26.

Letter, Mbanefo to Resident, 14th January, 1947.

Louis N. Mbanefo,
M.A.(Cantab), LL.B.(London),
Solicitor and Barrister-at-Law,

Onitsha, Nigeria.
14th January, 1947.

The Resident,
Onitsha Province,
10 Onitsha.

Copy to :
The District Officer,
Onitsha.

Sir,

Niger Lands Agreements 40 and 72.

I write on behalf of the Umuasele people, for whom I have been acting in the matter of the land, the subject matter of Agreement 40 and 72, of the Niger Lands Agreements.

2. I interviewed you this morning and you told me that the Govern-
20 ment was discontinuing the action now pending in the Supreme Court—
The Assistant Commissioner of Lands versus Ikebuiife Nwajiaku and 42
others—and that thereafter the Government would—I presume when the
forlorn decision is taken—declare its policy with respect to the land
as a whole.

3. By discontinuing the action, it appears the Government is
condoning the illegal acts of trespass in considerable numbers by the
Obosi people on the land, in which until the Government assumed
possession they had no right.

4. You will permit me if I write with some feeling on this matter.
30 For the past eight or nine years, I have had the responsibility of advising
my clients to respect the law, and not to enter on the land in the same
manner as the Obosis have done, and I did so on repeated assurances
from successive officers that the Crown intended to stick to and protect
its rights in the land.

Exhibits.

Plaintiffs'
Exhibits.

Ex. 26.

Letter,
Mbanefo to
Resident,
14th
January,
1947.

Exhibits.
 —
 Plaintiffs'
 Exhibits.

Ex. 26.
 Letter,
 Mbanefo to
 Resident,
 14th
 January,
 1947—
continued

5. In 1939, I wrote to the Local Authority, Onitsha, on behalf of my clients, and complained of the infiltration of the Obosi people into the land. In that letter, I pointed out that the land was originally leased to Royal Niger Company by my clients' family, and that the original Deeds were still in my clients' possession. I may add that there are alive to-day men who were present when the Agreements were signed.

6. Attempts were made by the Local Authority and the Resident, Captain O'Connor, to stop the Obosi people entering on the land freely, but in spite of their efforts the Obosis continued their infiltration. Repeated complaints were made by the Umuasele people, and at one time they threatened to enter on the land if the Obosi people were not stopped or ejected. They felt that as the original Grantors, they had a prior right to resume occupation of the land if the Crown was no longer interested on what happened there. 10

7. In the meantime, Chief Kodilinye of Obosi and his people had begun to divide the land in plots, and to sell the plots to diverse persons for considerable sums of money, and some of those who bought from him had begun to build on the plots.

8. On the 2nd of September, 1942, I wrote to the Resident complaining about this action of Chief Kodilinye and he replied as follows : 20

“ In reply to your letter of the 2nd September, I have to say : (1) That the position of the Crown to-day is as shown in your paragraph 1(A), (2) that the ultimate position of the Crown may be either a continuance of its present position or that outlined in paragraph 1 of my letter No. O.P.C.3/1939/428 of the 16th of June, (3) Your paragraph 3. Building by Obosi people have not been to the knowledge of or with the consent of the Crown. It follows that the Crown has not abandoned its rights. (4) I am once again asking the Government to hasten its decision in regard to Agreements 40 and 72.” 30

9. On the 17th of October, 1942, Captain O'Connor visited the land, and saw for himself the trespasses by the Obosi people. In his letter to the District Officer, No. O.P.C.3/1938/460 of the 19th of October, 1942, he gave an account of his visit, and of his efforts to inform the Obosi people as to the exact limits of Crown land. In paragraph 8 of that letter, he wrote as follows :

“ Finally I exhorted the Eze and his people (Obosi) to endeavour to appreciate the fact that, until proof were established that the Crown had no rights, the Crown proposed to exercise over the township lands whatever rights of ownership were deemed expedient.” 40

10. Notwithstanding the foregoing efforts, the Obosi people ignored the Resident's letter, and continued to give out portions of the land, and to build on it. Finally, the Resident was compelled to institute the action, which is now being withdrawn, to eject all the people who have built on the land as they did so without the consent of the Crown.
11. My clients are anxious to know what is or will be the Crown's attitude towards those quarters—about 50 in number—who have built illegally on the land after the action is discontinued. It appears my clients are going to be the losers, because they have endeavoured to be law-abiding, and to respect the rights of the Crown.
12. On the 1st of March, 1946, I wrote to the Resident, stating that my clients were prepared to go to Court and establish their title to the land, and that they would like to know whether the Crown still wished to maintain its rights in it. In spite of several reminders, I have not yet received any definite answer to that inquiry.
13. My clients have overwhelming proof of their title to the land and are ready to go to Court. But while the Government is still making up its mind, the Obosi people are fast building on the land.
14. When the Notice of Discontinuance is served on them, there can be no doubt but that the Obosi people will use it as further proof of their title to the land, and their right to sell, and to continue in occupation of it. They will publish it in all the newspapers, and capitalise on it. And who will blame them, if they did so ?
15. It appears that they are going to benefit by their illegal acts, and the moment that happens, I cannot see what will stop my clients entering on the land, and taking what they can get out of it. And the Government cannot by its apparent lethargy completely escape the responsibility for any breach of the peace there might be.
16. It seems to me that instructions are being given from above without regard to actual existing facts. It would be most unwise for the Notices of Discontinuance to be served without the Government at the same time declaring its policy with respect to the land. The better step would have been for the action to be adjourned indefinitely, until such time as the Government pronounce a definite decision.
17. By the time the Government abandons, or my clients succeed in asserting their rights through the Courts, there will be several thousands of pounds worth of buildings on the land, and which Court will order their complete demolition. If the buildings were not demolished, the

Exhibits.
—
Plaintiffs'
Exhibits.

Ex. 26.
Letter,
Mbanefo to
Resident,
14th
January,
1947—
continued

Exhibits. Obosi would have succeeded in securing the land for themselves and their tenants, even though illegally.

Plaintiffs' Exhibits.

Ex. 26.
Letter,
Mbanefo to
Resident,
14th
January,
1947—
continued

18. It seems a curious by-product of giving lands to the Crown that it provides a chance for third parties who have not had any right to the land of engrafting a right thereto by illegal acts. This is one of the reasons why people are very suspicious of outright acquisition of land by the Crown. They fear that, if ultimately the land is to be abandoned, it might get into the hands of wrong people, or they would be involved in an expensive litigation. I have four instances where this has happened.

19. It cannot be said that it is doubtful who the original Grantors 10 in this case are. The names of the Grantors are clear on the Deeds. My clients are in possession of the original Deeds, the counterpart of which are with the Government. But even if the Government is in any doubt on that point, the fairest thing is to suspend further action in the matter, and refer the point to the Court for decision.

20. Politically, this apparent indecision on the part of the Govern-
ment, is also causing some confusion. The Onitsha Native Administration
and the Obosi Council collect taxes indiscriminately from people residing
in the area. Obosi people and their tenants pay to Obosi, and others
who like to do so pay to Onitsha. Neither Native Authority exercise 20
full jurisdiction over the place. The same thing applies to the Native
Courts. A similar situation has arisen in respect of Otu-Ocha Aguleri,
another of the Niger Lands. Some of the strangers pay tax to Umuig-
wodo, and others to Aguleri. The Aguleri people are far from being
satisfied with the situation, and have continuously complained and
petitioned about it since 1940.

21. While one appreciates that the Government will want to be
fair to all parties concerned, the Government cannot escape the accusation
that it has been too dilatory over the matter, and the sooner some definite,
fair and equitable decision is taken, the better for all concerned. 30

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) L. N. MBANEFU,

Solicitor.

Exhibit 27.

Letters dated 17th January, 1947, from Resident to Mbanefo and District Officer.

Exhibits.

Plaintiffs' Exhibits.

Ex. 27.

No. O.P.C.3/1938/1190. Letters from Resident to Mbanefo and District Officer, dated 17th January, 1947.

Resident's Office,
Onitsha Province,
Onitsha, Nigeria.

Sir,

10 I have the honour to thank you for your letter of 14th January, and to attach hereto a copy of a letter I have sent to the District Officer, Onitsha. It would be a very good thing in my opinion if you would consent to be present, as representing your clients, when the copies of the Notice are served.

2. As I have informed you I am representing your points immediately to the Secretary, Eastern Provinces, making it quite clear that I invited you to write as fully and emphatically as you have done.

I have the honour to be,

Sir,

20

Your obedient Servant,

(Sgd.) R. J. HOOK,

*Resident,
Onitsha Province.*

L. N. Mbanefo, Esq.,
P.O. Box 14,
Onitsha.

O.P.C.3/1938/1189.

17th January, 1947.

30 The District Officer,
Onitsha.

Items 72 and 40, 1st Schedule, Cap. 86.

I mentioned to you yesterday the question of the service of Notice of Discontinuance, vide my endorsement No. O.P.C.3/1938/1180 of 19th December, 1946. You will now have received a copy of Mr. Mbanefo's

Exhibits. letter of 14th January, addressed to me which I am putting up to the
 Plaintiffs' Secretary, Eastern Provinces. I mentioned to you the points which
 Exhibits. Mr. Mbanefo raises in paragraph 16 of his letter to me. The copies of
 the Notice of Discontinuance will reach you very shortly and I consider
 Ex. 27. you should call those to be served at a meeting and make it quite clear
 Letters from to them that they must not regard this action as indicating that Govern-
 Resident to ment has abandoned all claim to the land and that the Resident is pressing
 Mbanefo for an early Government decision. I think it would be as well if you
 and would ask Mr. Mbanefo if he would agree to be present as he is very
 District well up in the history of the matter. 10
 Officer,
 dated 17th
 January,
 1947—
continued

(Sgd.) R. J. HOOK,
*Resident,
 Onitsha Province.*

Exhibit 7.

Ex. 7. Claim in 12A/28. Kodilinye v. Anachebe and another. 20

IN THE DISTRICT COURT OF ONITSHA.

IN THE DISTRICT COURT OF ONITSHA.

Suit No. of 1928

EZE J. M. KODILINYE on behalf of himself and the inhabi-
 tants of the Town of Obosi *Plaintiffs* 20

vs.

1. ANACHEBE
 2. EGBUNA of Umuasele Quarter of Onitsha *Defendants.*

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

2. An Injunction to restrain the Defendants, their boys or servants from interfering with the said land. 30

The value of the said ANA IME OBOSI Land is about £200.

Dated at Onitsha this day of May, 1928.

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

Exhibit 8.

Statements of Claim and Defence in 12A/28.

SERVICE. IN THE SUPREME COURT OF NIGERIA.

IN THE DIVISIONAL COURT OF ONITSHA.

Suit No. 12A/1928.

Between

OBI J. M. KODILINYE on behalf of himself and of the inhabitants of the Town of Obosi *Plaintiff*

AND

10 ANACHEBE of Umuasele Quarter and **EGBUNA** of Onitsha .. *Defendants*

STATEMENT OF CLAIM.

1. The Plaintiff is the Eze and Head Chief of Obosi people of Obosi country and as such Eze and Head Chief all lands in Obosi country are vested in him in trust for the inhabitants of the said Obosi country.

2. Obosi country is divided into two principal sections, namely, Ana Imeobosi and Ana Isiowulu lands.

3. The Defendants are natives of Onitsha and were never at any time given Ana Ime Obosi land by the Plaintiff or by his predecessors in office.

20 4. Ana Ime Obosi from time immemorial has been the property of the inhabitants of Obosi and only such demarcated portions known as Udo land and Niger Company premises and Obosi waterside were respectively given to one Obior an Onitsha man for sacrifices at the coronation of Onitsha Kings and to Niger Company for trade purposes by the Obosi people.

5. The Onitshas were and are not natives of this side (Ibo) of the Niger but immigrated and settled on the site now known as Onitsha.

6. The Onitshas had no land on this side of the Niger unless such lands as were given to them by the Oze people or by the Obosi people.

30 7. Ana Ime Obosi is bounded

NORTH AND WEST.

From 1 mile through Nkwake where a mango tree now stands on the north in a westerly direction to Obaku west ; continuing along the west to Ana Ime Obosi waterside Niger Company premises and landing stage thence along extreme west to Ide-Miri junction where the Rivers Ide-Miri and Niger meet.

Exhibits.

Plaintiffs' Exhibits.

Ex. 8.
Statements of Claim and Defence in 12A/28.

Exhibits.

SOUTH AND EAST

Plaintiffs'
Exhibits.Ex. 8.
Statements
of Claim
and
Defence in
12A/28—
continued

From Ide Miri junction on the South in a southerly direction to Asa Stream Nkporogu Stream thence leading to Nkpupa Stream extreme South and continuing easterly cutting through Uguagha, Potambo, Okpoko and motor roads from Obosi to Onitsha circuitously to a point at Nkpueghajughalu dividing Ana Ime Obosi and Ana-Isiowulu lands on the east.

From this point North easterly through Okpukpuoku and Agbaogio-kpolo stump along the motor road from Obosi to Onitsha then Northernly to one mile post. With the exception of the West and on the East of 10 demarcated portions belonging to the Niger Company and the descendants of OBIOR respectively all other land within the area described as Ana Ime Obosi is the property of Obosi people. AND THE PLAINTIFF AS EZE AND HEAD CHIEF AS AFORESAID CLAIMS :

8. A declaration that the land known as Ana-Ime-Obosi as bounded in paragraph 7 hereof is the property of the Obosi people.

Dated at Onitsha this 20th day of December, 1929.

(Sgd.) ? ? ?

Plaintiff's Solicitor.

To the Chief Registrar,
Divisional Court, Lagos,
and to 1st and 2nd Defendants,
c/o their Solicitor,
C. W. Clinton, Esquire,
Calabar.

20

IN THE SUPREME COURT OF NIGERIA.

DIVISIONAL COURT, ONITSHA.

Suit No. 124/1928.

CHIEF J. M. KODILINYE *versus* ANACHEBE and EGBUNA.

STATEMENT OF DEFENCE.

30

1. Paragraph 1 of the Statement of Claim are not known and not admitted. The Defendants are not concerned as to who is the Eze and Head Chief of Obosi or into how many sections the Obosi country is divided.

2. The Defendants are not aware that they, the Defendants, occupy or claim any lands known as Ana Imeobosi or Ana Isiowulu. In the Ibo language Ime Obosi, being interpreted, means, the middle of Obosi. The Defendants certainly do not occupy or claim any land in Obosi town.

3. Paragraph 4 of the Statement of Claim is denied in as far as it is stated that Udo land and the Niger Company premises, near a spot known as Obosi waterside, were given to the Onitsha people by the Obosi people. When the Onitsha people came to the left bank of Niger River and took possession of the places now occupied by them the Obosi people did not occupy the present town of Obosi; they were then living in another part of the country and were subsequently granted permission to squat and live on their present occupation by another tribe who were the neighbours of the Onitsha.

Exhibits.

Plaintiffs' Exhibits.

Ex. 8.
Statements
of Claim
and
Defence in
12A/28—
continued

10 4. The Onitsha were never given any land either by the Obosi or the Oze peoples. The Oze retired before the advent of the Onitsha who were too strong as against any resistance that the Oze could make and the Obosi were not then in the vicinity.

5. The lands now occupied and farmed upon by the Onitsha and all the lands owned and claimed by the Onitsha were taken possession of by them many years before the advent of the British into this part of the country.

20 6. The Defendants have been served with no plan of the land described in paragraph 7 of the Statement of Claim and therefore cannot say whether the lands owned, farmed upon and occupied by the Defendants are included in the boundaries mentioned in the paragraph.

7. The Niger Company premises were granted to them by a former King of Onitsha by Deed many years ago and have since been held by the Niger Company under that grant without any opposition, claim or interference on the part of the Obosi people. This deed of grant will be founded by the Defendants.

30 8. In so far as the Plaintiffs' claim affect the lands coming under the grant above mentioned and to any land in the possession and occupation of the Defendants either by themselves or their tenants or in respect of which either of the Defendants or their privies have obtained judgment in any Court of Law in the Protectorate the Defendants will plead :

- (1) Ownership and Long Possession.
- (2) Laches and Acquiescence.
- (3) Estoppel.
- (4) Res Judicata.

9. The Plaintiff is not entitled to the declaration sought for.

Dated at Lagos this 3rd February, 1930.

(Sgd.) ? ? ?
Solicitor for the Defendants.

Exhibits.

Plaintiffs' Exhibits.

Ex. 9.
Copies of Records in Suit 12A/28.

Exhibit 9.

Copies of Records in Suit 12A/28.

IN THE SUPREME COURT OF NIGERIA.

Friday the 14th day of August, 1931.

Before His Honour WILLIAM BUTLER LLOYD, Judge, at Onitsha.

Suit 12A of 1928.

J. M. KODILINYE & OBOSI PEOPLE

versus

ANACHEBE AND EGBUNA.

Claim :

10

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

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

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

Adjourned *sine die*.

(Sgd.) W. B. LLOYD, 20
J.

Thursday the 27th day of August, 1931.

Notice of Discontinuance having been given there will be judgment for Defendants with 25 guineas costs.

(Sgd.) W. B. LLOYD,
J.

Exhibit 3.

Exhibits.

Statement of Claim in Suit 9/32, Kodilinye v. Orokwu.

Plaintiffs' Exhibits.

Filed 13/2/33.

IN THE SUPREME COURT OF NIGERIA.

Ex. 3.
Statement of Claim in Suit 9/32 Kodilinye and Orokwu.

ONITSHA WESTERN DIVISION.

Suit No. 9/32.

Between

CHIEF J. M. KODILINYE of Obosi, as representing the Obosi People *Plaintiff*

10 AND

R. A. OROKWU, of Onitsha *Defendant.*

STATEMENT OF CLAIM.

1. The Plaintiff is the Head Chief of Obosi and is commonly called and known as the Obi or Eze of Obosi.

2. The Defendant is a Native of Isiokwe Quarter of Onitsha and is in no way related to Obosi.

3. The Plaintiff by virtue of his position and that of his predecessors in title has from time immemorial been the owner and in possession, together with the people of Obosi, of all Obosi lands, a portion of which is known by the Obosis as ANA-IMOBOSI and used for farming ; it is bounded on the North by land called UGBULO on the South by swamp leading to IDEMIRI RIVER on the East by ONITSHA-OGUTA ROAD on the West by land called AKPULIKPU the property of Plaintiff, and more particularly described in a plan to be produced at the hearing which will show that the land in dispute is divided into sections bearing sectional names for the purposes of farming.

4. The portions in dispute are known by their sectional names as OPOKO, AWADA, and NKETAKU of ANA-IMOBOSI.

5. The Defendant in the year 1932 started to molest the Obosi people on the land by endeavouring to assert a right as owner.

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

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

(Sgd.) S. B. RHODES,
Plaintiff's Solicitor.

Exhibits.

Plaintiffs'
Exhibits.Ex. 4.
Extract
from
Suit 9/32
Kodilinye
and
Orokwu.**Exhibit 4.****Extract from Suit 9/32, Kodilinye v. Orokwu.**

9 of 1932.

M. 156.

J. M. KODILINYE,

v.

R. A. OROKWU, as representing the Isokwe Odoje—Onitsha Family.

The Note—folio 121 applies, *mutatis mutandis*, to this Suit.

Note in Special Sessions Record Book folio 165. Plaintiff absent.

Defendant present in person. 10

Suit dismissed under Rules No. 5 of 1934 Order 18 Rule 2.

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

(Sgd.) H. WADDINGTON,
Asst. Judge.
Onitsha, 25.6.35.Ex. 5.
Judgment
in Suit 8/32
Kodilinye
and
Mbanefo
Odu.**Exhibit 5.****Judgment in Suit 8/32, Kodilinye v. Mbanefo Odu.**

IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION.

Saturday the 15th day of September, 1934. 20

Before His Honour GEORGE GRAHAM PAUL, Judge.

M. 155. Suit No. 8 of 1932.

J. M. KODILINYE

versus

MBANEFO ODU, representing Odimegwugbueagu, Quarter, Odojeh, Onitsha.

JUDGMENT.

The Plaintiff in this Suit sues in his representative capacity as the EZE or HEAD CHIEF of OBOSI and claims a declaration of title to a piece of land known as the Western portion of ANA-ISIOWURU in ONITSHA PROVINCE. The Suit was taken in the Provincial Court 30 and transferred to this Court.

The Defendant is sued as representing the Odimegwugbueagu Quarter Onitsha. Exhibits.

Pleadings were ordered and filed and each party in the course of the proceedings produced a plan. Plaintiffs' Exhibits.

The Defendant *inter alia* pleaded *res judicata*. I heard certain evidence and argument on that preliminary plea but I was unable on the evidence at that stage before me to uphold the preliminary plea and the suit remained on the list for trial. At the outset of the trial, by consent, the evidence (including Exhibits) given on the preliminary plea was treated as evidence in the trial. Ex. 5. Judgment in Suit 8/32 Kodilinye and Mbanefo Odu—*continued*

A mass of evidence was given by both sides. The evidence as is usual in such suit was conflicting and somewhat confused and in this particular case the presenting of the parties' respective cases to the Court suffered somewhat from a lack of continuity in the attendance of Counsel engaged in the suit.

At the close of the Plaintiff's case Counsel for the Defendant submitted that there was no case for him to answer. This submission was made not without some justification but I decided I had better hear the Defendant's case and directed that the Defence proceed.

20 From the conflicting evidence there emerged the usual rival traditional stories ; the usual rival versions of facts within living memory ; and the usual series of previous litigations.

I shall deal first with the rival traditional stories, taking the Plaintiff's story first. He says that the land in question originally belonged to OKPALA whom he calls the founder of the Obosi and Ajote people. OKPALA'S land after his death was divided into two by his son Adike the eastern side being given to Egbeadiji the elder son of Adike and the western side to the younger son Obosi. Adike kept only a small part for himself. Ajote are quite separate now from Obosi and are 30 not under the Plaintiff.

Obosi the younger son of Adike in his turn divided the land into two parts among his children but for some reason the effect of Obosi's division was different from that of Adike and Obosi's children remained one family under one EZE, the Plaintiff being at present the EZE, and claiming in that capacity.

The Plaintiff says that the Obosi people had originally a boundary with the Ozeh people—another Ibo tribe. That boundary is shown hatched red on the north west part of the Plaintiff's Plan Ex. " A."

Exhibits. The Onitsha people came from the other side of the Niger ; they were
 Plaintiffs' not originally Ibo people though they talk Ibo now ; they were given
 Exhibits. land by the Ozeh people and eventually by that means came to take the
 place of the Ozehs on the Obosi-Ozeh boundary. The land now claimed
 Ex. 5. is on the Obosi's side of that boundary.

Judgment
 in Suit 8/32
 Kodilinye
 and
 Mbanefo
 Odu—
continued

The Plaintiff also says that Obosi town was already established on
 its present site when the Onitsha people first crossed the Niger. Obosi
 Town is at the South East of the land in dispute but not on it.

The Onitsha story is of course quite different. They say that when
 they came over the Ozehs were in occupation of the bulk of the land 10
 immediately inland on this side of the Niger. The Onitshas settled on
 this side and eventually drove the Ozehs away—the Ozehs going first
 towards Ogidi and finally across the Nkissi Stream to where they now
 are. This happened over 200 years ago and the Onitshas got the land
 from the waterside right inland and had boundary with the Umoji
 people. Later on the Obosis who came from Ajoto obtained a portion
 of Umoji land from the Umoji people to live on. When they required
 more land they got a further portion from the Onitsha people—their
 present Obosi town being on these two portions.

These shortly are the two rival traditional stories. I am satisfied 20
 that as usual both stories as told by the witnesses have been given
 definiteness and detail which do not really belong to the somewhat
 vague history which has come down through generations of illiterate
 and not very intelligent people. In the ordinary course the generations
 of story tellers are not examined and cross-examined by their family
 audiences as to particular details in the way that the present day retailers
 of the stories are examined and cross-examined in regard to the bearing
 of the traditional story on a particular controversy. On their merits
 as likely stories there is little to choose between the two versions but I
 certainly prefer the Onitsha version as regards the way in which they 30
 acquired land from the Ozehs. I think it is much more likely that the
 Onitshas, a more developed and more forceful people, drove the Ozehs
 away from their original town and land than that the Ozehs, gave the
 land, including the actual site of their town, willingly to the strangers.

Also I think the Plaintiff's story as to the Obosis peoples origin and
 their coming to their present site does not ring true. The complete
 severance which in fact has taken place between the Obosis and the
 Ajotos seems to me much more consistent with the Defendant's story
 that what happened was not a division of the ancestral land by Adike
 the Head of the Family between Ajotos and Obosis but a hiving off by 40
 the Obosis from the parent stock now represented by Ajotos.

Major Leonard's book on "The Lower Niger and its Tribes" was quoted to me by the Plaintiff's Counsel but I found the quotation unhelpful.

Exhibits.
—
Plaintiffs'
Exhibits.

Before leaving the traditional stories it is necessary to refer to the evidence bearing on these stories of the Ozeh and Umoji people. Each side called an Ozeh man and an Umoji man to support their rival stories. I was not much impressed by either the Ozeh or Umoji witnesses on either side. They struck me as all very unintelligent and unconvincing. Particularly I found very fantastic the evidence of the Ozeh man called
10 by the Plaintiff who professed to be able to give the exact boundaries of land with which the Ozeh people have admittedly had nothing whatever to do for over 200 years. I doubt very much if the ant-hill (called by the Plaintiff Egbuajugbalu) or the Agba tree were in existence 200 years ago; still more do I doubt that they were then recognised as the boundary marks of Ozeh land.

Ex. 5.
Judgment
in Suit 8/32
Kodilinye
and
Mbanefo
Odu—
continued.

I come now to the facts spoken to within living memory. Both sides claim that they have occupied the land in dispute from time immemorial. The occupation claimed is mainly occupation by farming tenants, and the evidence on both sides by farming witnesses is unsatisfactory. Not a single farmer's site of occupation is shown on either
20 plan except in regard to the *loci* of various Native Court cases on the Defendant's plan which I shall deal with later, and not one witness satisfied me by his own evidence that he actually farmed on the land in dispute. The farming witnesses of course were incapable of pointing out on a plan where they farmed. If any of them did really farm on the land in dispute one would expect to find that the site of their farms had been shown to the Surveyor and marked on the plan.

The Plaintiff in his evidence said in answer to me that he showed farms to the surveyor but he never put them on the plan. The surveyor
30 gave evidence twice before me but no such suggestion was ever made to him. It may be that the farms shown were outside the land in dispute and so not shown on the plan by the Surveyor. I can think of no other reason why the surveyor should omit them and none was suggested to me or the surveyor.

The most that the Plaintiff's farming witnesses could say was that they farmed near the ant-hill which Obosis call Egbuajugbalu but this ant-hill is quite near the western boundary of the land claimed and I am left quite uncertain as to whether the farming in question was inside or outside the western boundary of the land in dispute.

Exhibits.

Plaintiffs'
Exhibits.Ex. 5.
Judgment
in Suit 8/32
Kodilinye
and
Mbanefo
Odu—
continued

The ant-hill called Egbua Jugabalu by the Plaintiff's witnesses deserves a word of mention. The Plaintiff in his evidence never said anything about this ant-hill being an Obosi Jaju. I asked him if the Obosis had a jaju on the land and his reply was that they had a jaju near the land in dispute not on it ; that it had been shown to the surveyor who had marked it on the Plaintiff's plan as " Oshia Okonwuru Fetish Bush." I am unable to believe that the Plaintiff would have omitted to mention the fact that the ant-hill called Egbu-Jugbalu was an Obosi jaju on the land and actually worshipped by the Obosis if such had been really the fact. I am not satisfied that the subsequent witnesses 10 who spoke to this ant-hill being an Obosi jaju were speaking the truth.

As regards the actual boundaries of the land in dispute no evidence is given by the Plaintiff or his witnesses except as to the north west boundary. Neither in his evidence nor on his plan is any boundary mark mentioned or suggested on the North east or South west boundary. Nor is any reason whatever given why these two boundaries unmarked and apparently arbitrary so far as the Plaintiff is concerned—are chosen in bringing this claim for a declaration.

The Plaintiff claims in his writ and pleadings only part of Isiowuru land. The evidence for the Plaintiff shows great confusion as to what 20 is claimed. The Plaintiff himself says the land in dispute is partly Isiowuru and partly Imo Obosi. One of his witnesses said it was the whole of Isiowuru and the whole of Imo Obosi. The Defendant on the other hand has given in evidence and on his plan the boundary marks he finds on, and he stated with whom he has boundary. The explanation given by the Plaintiff's Counsel that the land on the North east and South west is Obosi land is not borne out by the evidence ; no satisfactory evidence whatever having been given of occupation of that adjoining land or of any other acts of ownership of it by Obosi people, whereas there is some evidence to the contrary by witnesses for the 30 Defendant.

In this connection it appears from the Plaintiff's Plan Ex. " A " that the 4th milestone on the Onitsha—Awka road is well within what the Plaintiff instructed the surveyor to mark on his plan as the Obosi-Onitsha boundary, whereas Plaintiff's Counsel on the evidence had to admit that the 4th milestone was not on Obosi land at all.

This to my mind strikes deeply if not fatally at the heart of the Plaintiff's case as to this boundary and as to the land on the north-east of the land in dispute. I am unable to accept the evidence of the Plaintiff and his witnesses as to the northern boundary alleged by them. 40

The history of the disputes between the two parties is interesting. Exhibits.
They began with the Plaintiff's return to his country from Government Plaintiffs'
service. Whether that was consequential or merely coincidental does not Exhibits.
appear.

There were several cases in the Native Court between Onitshas and Judgment
Obosis regarding land. The first was in 1917. The Defendant says in Suit 8/32
this was in regard to land inside the land now in dispute. The Plaintiff Kodilinye
says it was outside—i.e., over the northern boundary of the land in and
dispute on "Isiafor" land which he admits has belonged to the Defen- Mbanefo
10 dants since the Ozehs disappeared. The proceedings and judgment in Odu—
that case are in evidence (Ex. "D"). The Chiefs who inspected the *continued*
land, or some of them, gave evidence that the land was inside the land
now in dispute but if that fact had rested on their recollection and
evidence alone I would hesitate to accept it. But a perusal of the pro-
ceedings and of the Plaintiff's Plan Ex. "A" and other evidence in
this case has convinced me that the land in the 1917 case was inside the
land now in dispute. The Plaintiff says in his evidence that that case
was about Isiafor land which is inside the land given to the Onitshas
by the Ozehs. If that were so why did he—as the record shows—object
20 to the judgment on the ground that it was wrong judgment given by the
Onitsha Native Court because they were prejudiced. If the land in
the 1917 case was as the Plaintiff now says Isiafor then the Native Court
judgment was right. He also alleged in 1917 that the record of evidence
in that case was incorrect. This allegation on investigation by the
District Officer at the time was found to be without any basis in fact.
The Defendants in the 1917 case (both Obosi men) in their evidence
disclaimed any right to "Isiafor" land but their case was that the acts
complained of had been done not on Isiafor but on Agilinya and
Kputamkpo land. In the Plaintiff's plan in this case (Ex. "A") and in the
30 evidence of the Plaintiff's witnesses it is clear that Agilinya and Kputamkpo
lands are inside the land now in dispute. Comparing the Defendant's
plan Ex. "B" with Ex. "A" it appears that the surveyor has marked
the site shown to him by the Chiefs as the 1917 case land just at the place
where the boundary of Agilinya land is placed by the surveyor on Ex.
"A" by the Plaintiff's instructions. I am satisfied that the Plaintiff
and his witnesses are untruthful and I think deliberately untruthful in
denying that the land in dispute in 1917 was inside the land now in
dispute. That to my mind taints the whole of the case for the Plaintiff.

I am satisfied on the evidence before me that in 1917 the Native
40 Court decided that the land Isiafor—which is admittedly Onitsha land—
included land well to the South east of what is now put forward by the
Plaintiff as the south eastern boundary of the Onitsha land; that the
Plaintiff intervened in that case and had the judgment reviewed by the

Exhibits. District Officer who confirmed it ; and that there was no evidence given
 Plaintiffs' or suggestion made in the 1917 case that there was any such boundary
 Exhibits. as is now suggested ; that neither the present Plaintiff nor any Obosi
 witness in 1917 mentioned what I may call the " Egbu Jugbalu " boundary ;
 Ex. 5. that no Ozeh witness was called to prove that boundary ; and that the
 Judgment position as laid down by the Native Court and confirmed by the District
 in Suit 8/32 Officer in 1917 was accepted by all parties concerned for some years.

Kodilinye
 and
 Mbanefo
 Odu—
continued.

The next case to which I wish to refer is No. 53 of 1926 by *Okoji Akunia of Onitsha vs. Orunwu and others of Obosi*. That was a charge
 of contempt of Court against the Obosi people *re* Isiafor land in regard 10
 to the order made in the 1917 case ; in dealing with these Defendants
 for contempt of Court the Native Court appears to have treated the
 1917 case as if it were a representative action between the two families
 instead of a suit against an individual. That was I think a technical
 error. The important thing about that case however is not so much the
 judgment as the statement of the Defendant Okonkwo who said the land
 in question in that case was called by the Obosis Nkpotonkpo which
 according to the evidence before me is in the land now in dispute. The
 Native Court in arriving at their judgment as to the contempt of Court
 held that it was Onitsha land. In that case there was still no mention 20
 by Obosis or any one else of Egbua Jugbalu boundary line.

Suit 244 and 249 of 1926 make it clear that Obosi farmers were at
 that time farming Isiafor land and that their rents were being collected
 by an Obosi man and paid over to the Onitsha people. This corroborates
 the Defendant's story to a certain extent.

The next Native Court case before me is that by *Okoku Akunnia*
 against *Ogbogu* (No. 245 of 1926). That was again a case by an Onitsha
 man against Obosi man for trespass on Isiafor. The Defendant in that
 case admitted that he had been acting as agent for the Plaintiff, collecting
 rents for the Plaintiff on Isiafor which he (the Obosi man) called Ek- 30
 weluja ; from comparison of Plans " A " and " B " it appears that the
 surveyor has shown the land in case No. 245 of 1926 as pointed out to
 him by the Chiefs just on the boundary of what on the Plaintiff's plan
 (Ex. " A ") is called Ekwelujor. I am satisfied that the land in question
 in suit 245/1926 was inside the land now in dispute and that in 1926 it
 was occupied and regarded as Onitsha land.

Next there was the case No. 246 of 1928—*Olie Ozoma of Onitsha*
 versus *Obianozie of Obosi*. That was a claim brought about Isiafor land.
 The Defendant in that case said that the land in question was not Isiafor
 but Isiowulu. The surveyor has shown the land in case 246 on the 40
 Defendant's plan as inside the land in dispute which the Plaintiff says
 is Isiowulu. The Native Court in 1928 decided that that was really
 Isiafor land and the property of the Onitshas.

The next developments in the litigation between the parties to which I wish to refer are the actions taken in the Supreme Court by the present Plaintiff. The first of these is No. 12B of 1928 against the present Defendant. This apparently related to the same land as claimed in the present suit and on 14th April, 1928, it was struck out with 15 guineas costs. Next was No. 13 of 1931, also against the present Defendant. This was struck for want of prosecution on 21st May, 1932. The Plaintiff moved to have it relisted but the Motion was refused.

Exhibits.

Plaintiffs' Exhibits.

Ex. 5.
Judgment
in Suit 8/32
Kodilinye
and
Mbanefo
Odu—
continued.

10 It has been suggested by Defendant's Counsel that the reason the Plaintiff did not go on with these two cases was that he could not get evidence to support what was really a fictitious claim; that the evidence available was not even sufficient for Counsel to file a Statement of Claim as ordered by the Court. That may be the reason. No other reason is suggested by the Plaintiff.

20 Now the Plaintiff has brought the present claim and has produced his evidence. How it is that he can now produce evidence which was not forthcoming in 1928 and 1932 the Plaintiff has decided to leave entirely to the imagination of the Court. I do not propose expressly to exercise my imagination further than to appreciate that it is a most extraordinary thing that the Plaintiff has had to wait over 17 years before he could bring forward in this Court evidence to show that the 1917 judgment, which in effect dispossessed his people, was wrong.

30 I must shortly refer to the Native Court cases 236 and 237 of 1932. These were by the present Defendant against Obosi people. The Obosi people had worked on certain land which Mbanefo Odu said was Isiafor and the Obosi people said was Isiowulu. The Native Court found it was Isiafor land. These cases were reviewed by the Divisional Officer. He suspended judgment in these suits until after the hearing of the present suit for the reasons given by him. I am satisfied that if he had heard the full evidence as given in this suit he would have come to the same conclusion as I have come to namely that the land now in dispute is the property of the Defendant in this suit. A copy of this judgment will be sent to the Resident on the Province for reference and necessary action in regard to the suspended judgments.

At the conclusion of the Defendant's case the Plaintiff's Counsel applied to call evidence to rebut the evidence given by the Defence that Obosi men had acted as rent collectors for the Defendant, on the land. I allowed this and two witnesses were called, Ago and Oboabo.

40 Ago was a Defendant in suite No. 53 of 1926 in the Native Court. His statement is recorded in the proceedings of that case. I did not

Exhibits. believe him when he said he never attended Court or made the statement
 ——— recorded in that case. Oboabo was a Defendant in suit 245 of 1926.
 Plaintiffs' He was a most unconvincing witness and I did not believe his evidence
 Exhibits. before me that he never said what is recorded in the proceedings as his
 ——— statement, in that case.

Ex. 5.
 Judgment
 in Suit 8/32
 Kodilinye
 and
 Mbanefo
 Odu—
continued

Upon a most careful consideration of the whole evidence before me I have come to the definite conclusion that the alleged Egbu Jugbalu boundary line is a myth invented some time in 1928 in an attempt then vaguely initiated by the Plaintiff to obtain this land. I found myself quite unable to accept the case for the Plaintiff. There must accordingly be judgment for the Defendant with costs which I assess at sixty guineas. 10

(Sgd.) G. GRAHAM PAUL,
Judge.

Ex. 1.
 Judgment
 in Suit 6/32
 Kodilinye
 and
 Igweagu.

Exhibit 1.

Judgment in Suit 6/32, Kodilinye v. Igweagu.

IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION, HOLDEN AT ONITSHA.

Before His Honour HARRY WADDINGTON, Asst. Judge.

The 25th day of June, 1935.

6/1932. J. M. KODILINYE, The Obi of Obosi, 20
 M. 153. v.

IGWEAGU, as Head of Orezabo Family.

Plaintiff absent.

Defendant in person.

This Suit was before Graham Paul J. at Onitsha on the 17th September, 1934 (Special Sessions R.B. folio 164). Counsel, Thompson and Soetan for Plaintiff; Clinton and Renner for Defendant. That record states :

“ Counsel agree that this suit is governed by the decision first given in the suit by the same Plaintiff against Mbanefo Odu, which Plaintiffs' Counsel says is to be taken to the West African Court of Appeal. 30

“Counsel for the Plaintiff agrees that if the judgment in question is upheld on appeal there must be automatically judgment entered for the Defendant in this suit.”

Exhibits.
—
Plaintiffs’
Exhibits.
—

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

Ex. 1.
Judgment
in Suit 6/32
Kodilinye
and
Igweagu—
continued

CLINTON—asks for costs. These costs—i.e., of the preparation for trial at this sitting—are to be costs in the cause.”

The Registrar of this Court produces a certified true copy of the Certificate under the Seal of the West African Court of Appeal in connection with the Appeal in J. M. Kodilinye . . . Plaintiff-Appellant and Mbanefo Odu etc. . . . Defendant-Respondent.

(Suit No. 8 of 1932 (M. 155).) Appeal dismissed.

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

Plaintiff however is absent. Served on 25th May last, with a Hearing Notice for 17th instant. He has not appeared. The Suit was adjourned on the 17th September, 1934, “pending the result of the Appeal.”

20 I accordingly order that this Suit be dismissed under Rules No. 5 of 1934, Order 18 Rule 2.

Costs (having regard to the order as to costs of the 17th September) to Defendant assessed at forty guineas.

(Sgd.) H. WADDINGTON,

Asst. Judge.

Onitsha, 25.6.35.

Exhibits.

Exhibit 36.

Plaintiffs' Exhibits.

Record in Onitsha Native Court Case No. 303.

Ex. 36.
Record in
Onitsha
Native
Court Case
No. 303.

IN THE NATIVE COURT OF ONITSHA. 15/5/8. 206.

PROTECTORATE OF SOUTHERN NIGERIA.

No. 303.

_____	..	..	..	..	..	President.
CHIEF ANAKWE	..	..	..	..	..	Vice President.
CHIEF MAKAH	}	..	..	..	..	Members.
CHIEF OKECHUKU						
CHIEF OKAFOR						

10

CIVIL JURISDICTION.

OKAFOR OF OBOTSHI	}	Charge
<i>versus</i> OKEKE OF OBOTSHI		

CLAIM Not Admitted.

Plaintiff sworn states : One Igwor of Onitsha gave a portion of land to Arize Ofo, when he died the land lord fell to Mbayiwe and after the death of the latter Ezeocha took charge. This land is leased to Moloku of Obotshi. Ezeocha has leased this land altogether to defendant hence this action.

20

EZEocha sworn states : This land belonged to me and I gave it to Moloku after I have taken my land.

Defendant states : I did not take land from Plaintiff.

Decision.

Case dismissed.

(Sgd.) CHIEF ANAKWE V.P.

His X Mark.

Witness to mark,

(Sgd.) A. O. OBIANWU.

Exhibit 28.

Record in Onitsha Native Court Case No. 547.

IN THE NATIVE COUNCIL OF ONITSHA.

PROTECTORATE OF SOUTHERN NIGERIA.

No. 547.

H. B. MANSFIELD, D.C.	..	..	..	..	<i>President.</i>
CHIEF OKAFOR I	..	..	..	..	<i>Vice President.</i>
CHIEF OKECHUKU	}	..	..	..	<i>Members.</i>
10 CHIEF EMEKPO					
CHIEF EZEKWE					

Exhibits.
 Plaintiffs'
 Exhibits.
 Ex. 28.
 13.6.12. Record in
 Onitsha
 Native
 Court Case
 No. 547.

CIVIL JURISDICTION.

DAVID OKAGBUE	}	CLAIM : One hundred pounds damages for trespass on Ugborimili Land.
<i>versus</i> OGBOGU EKWEM		
PLEA		Claim not admitted.

DAVID OKAGBUE sworn, states : In October last year I gave thirty Ijoh people leave to fish in the water belonging to the land in dispute. Twenty of them agreed to pay three pounds each after the fishing, the 20 remaining ten were to pay four pounds each. They refused to pay. My brother Agu summoned one who had promised to pay three pounds. I was told that Defendant in this case stood up in Court and said he did not judgment given as the land belonged to him. No judgment was given. The Ijoh people have gone back to their homes and I have not received any money from them. This is why I summoned defendant as I consider he was the cause of my not being paid. I was at Burutu and received a wire from my people that the case was about to be settled in the King of Onitsha's house. I wired to the Sen. D.C. and requested him to stop it, and he did so. The land called Ugborimili and the water 30 on it belongs to me. The water is a hole filled by the overflow from the river. My family made the agreement with the Ijoh people. When there was any dispute about the water the people used to come to us showing that we owned the land. The Niger Company came to my father and he let them have a piece of this land for trading purposes. The Company paid kola to my father for the land.

Exhibits.

Plaintiffs'
Exhibits.Ex. 28.
Record in
Onitsha
Native
Court Case
No. 547—
continued

Defendant states : My reason for telling the Chief not give judgment, in the other case was because I claimed the water in which the man had been fishing. A meeting was held at the King of Onitsha's house to find out who the land belonged to. This meeting was stopped and nothing further was done. Agbu who summoned the Ijoh man said if he recovered the money he would give me half. Plaintiff is not the owner of the land and has no right to summon me. It is well known to all Onitsha people that the land belongs to me.

When Plaintiff's father got any kola he shared it with my father. When Plaintiff's father got anything from the Niger Company for the land he shared it with my father. When my father was about to die he gave the land to Plaintiff's father to look after. 10

NWADINOBI, sworn, states : As long as I could remember when we wanted to work on the land we paid money to Nwokolo, father of Ugbeke Abu who was Plaintiff in which the man was summoned for £3. We have always given the Palm-wine to Plaintiff's family and to no one else. The land has belonged to Plaintiff's people for longer than I can remember. I do not know Defendant or any of his family.

EGBUJI, sworn, states : I know the land in question. I own part of the adjoining land. I know that the land belongs to Plaintiff's people. When people wanted to work on it they took Palm-wine to Plaintiff's father. I was in the habit of going with them and sharing in the wine. I never knew the Defendant to have anything to do with the land. 20

Judgment. For Plaintiff, with ten shillings damages and costs 10s.

(Sgd.) H. B. MANSFIELD, D.C.

13.6.12.

Exhibit 37.

Record in Onitsha Native Court Case No. 496.

CIVIL J.B. No. 2/1913. Page 267.

IN THE NATIVE COUNCIL OF ONITSHA.

CHIEF NKPARU	..	..	..	..	..	<i>Vice President.</i>
CHIEF OKECHUKU	}	..	..	..	..	<i>Members.</i>
CHIEF MAKA						
CHIEF AGBAKOBA						

Exhibits.
 Plaintiffs' Exhibits.
 Ex. 37.
 Record in Onitsha Native Court Case No. 496.

CIVIL JURISDICTION.

10 Case No. 496.

OKONKWO	<i>versus</i>	1. OBODOEFUNA	2. MOTUANYA
		3. MARUKA	4. UZOWURU
		5. NWAGBO	6. OKALAFOR

CLAIM : Return of a piece of land occupied a month ago.

PLEA : Nos. 1 & 3—Not admitted. 2 & 7 absent.

Adjourned 5.6.13.

Resumed 2 p.m.

Plaintiff, sworn, states : My grandfather gave a piece of land to Defendant No. 1 to farm on. We are of Onitsha and Defendants of
 20 Obosi, this land I am referring belonged to myself and Chief Ogene and Defendants usually pay rents when my father was alive and so it is now. When Defendant No. 1's father died and he took charge he do not take care of the land so I cut piece for him and half for other people and told Defendant No. 1 to have anything to do with the other people of the other side, but Defendant refused to obey to my orders and have gone on that land. If Defendants wish to farm on the whole land as their fathers did, then they should pay £200 for the loss that I have been occasioned and then they can use same. If they agree, I would permit their yams planted to remain but if not I should ask that they be
 30 removed on the land, this is the cause of my action.

ACHEBE sworn, states : I am of Onitsha. Defendants were in charge of this land before. And two years ago we had palaver with Defendants about the land, because they gave 6 bottles gin and four pots wine to the other part of our family and 1 bottle gin, 2 pots wine. During the harvest, Defendants asked to be shown the proper boundary, we told them to go on as the other family will tell them the boundary—bye and bye they went beyond the boundary. We stopped them, the other

Exhibits. party proved that Defendants have lost their land. We said we would
 ——— take our land and Defendants begged us—we cautioned them not to
 Plaintiffs' plant in the other land facing ours, they may either plant on ours or
 Exhibits. the other as we do not want disputes—last year they planted on the
 ——— land and paid their rents, this year they said Aghadiuno gave our land
 Ex. 37. to other people at Obosi—we asked Aghadiuno and he said there is
 Record in boundary, we called him at the King of Onitsha's house but he failed
 Onitsha to come there, but brought the people to our house denying the report—
 Native the people told us there were other three parties who were farming on
 Court Case the land. We enquired of the Defendants, we see where they worked 10
 No. 496.— this and last year—we see other people working in the land, and
continued Defendants could not say anything but said they may have given them
 by our grandfathers. Defendants denied knowing anything about the
 people, but one of the other people found Defendants out—we were
 finding out who gave the other people the land so as to summon, but
 we were told to wait and we found Defendants also planting on the
 same place where the other people have planted—we want £200 from
 Defendants as rents for all the past losses, before we could permit their
 using the land.

COURT : Does the land belong to you originally ? 20

Answer : Yes. We have boundary with Ogene's part.

Defendant sworn : I am of Obosi, this land in dispute was given
 to my grandfather to take charge and farm on. We have a neighbour
 near us who also farm on other side of the land—5 months ago. I saw
 a mark on Ifajina's family land—I went to enquire of him he said he
 had never given land to any one and I should find out for him. On one
 occasion I saw Achebe came to me, bye and bye I went to him with
 two bottles gin, two pots palm wine to him as is usually done to land-
 lords—the same week I went to farm. I saw another mark in Plaintiff's
 land—I told Plaintiff, he asked to find out. I found the party to be 30
 Onwachu and family who had done. I send to ask Onwachu who
 ordered him to mark the land, he not tell me.

(Above Statement Not Correct.)

The land which Plaintiff now want us to give up, we have already paid
 them the usual tax for it which is 1200 seed yams. Plaintiff authorised
 us to plant on the land and to certain extent we did so. After the above
 seed yams 2 bottles gin was paid to him.

COURT : Who were first to plant on this particular piece of land ?

Answer : The other party—but a portion left ; we planted on.

COURT : Which of you cleared the ground before planting ?

Answer : The other party.

COURT : Do you often pay the above fee ?

Answer : No. This was specially paid because of the other party coming in.

Q. By Plaintiff : From Ifajina's boundary to our land on the Oguta Road does any other land come in ?

Answer : Yes, Nwokocha.

X. By Plaintiff : To whom does Nwokocha pay rent ?

10 Answer : I do not know, but the land was given to them by one Ononyem.

X. By Plaintiff : Do you know, this land to belong to us ?

Answer : Ifajina has not shown us any boundary.

X. By Plaintiff : Can you tell if Ifajina has any land there ?

Answer : I do not know if he has.

OSELUKA sworn : I know Defendants have paid fee before they planted in this particular land. Two pots palm wine, 1200 seed yams and 14 bottles gin. After planting they paid again 60 yams.

20 Finding for Plaintiff with costs—but Defendant's yams should be left on land as they have paid the usual fee to Plaintiff.

(Sgd.) CHIEF NKPARU.

W.B.
6.6.13.

His X Mark.

Exhibit 38.

Record in Onitsha Native Court Case No. 278/18.

Case No. 278/18.

EKWUAJU OF ONITSHA
versus
CHAKWURA OF OBOSI

} Return of land named Okpoko situated at
Obosi Road occupied by Defendant about
5 years ago.

Ex. 38.
Record in
Onitsha
Native
Court Case
No. 278/18.

30 CLAIM Not Admitted.

Plaintiff sworn, states : 5 years ago this case was brought before this Court but we were ordered to go home and settle. We stop the

Exhibits. Defendant from farming on the land three times the people of Obosi
 Plaintiffs' in the Quarter of Umezeobodo cleared the land for farming and Defendant
 Exhibits. went and farm on it. We want the Defendant to root out his yams
 from our land and plant them on our land called Ukpupani that portion
 Ex. 38. was given to Defendant by us and we are not trouble him do you remember
 Record in you tell my father when this land lost he will pay £40.
 Onitsha

Native
 Court Case attend the Court ?
 No 278/18.

—continued

Answer by Plaintiff : No.

XXD. by Court : What judgment was given 5 years ago in this 10
 Court ?

Answer by Defendant : That the Plaintiff people must go and give
 a proper boundary.

XXD. by Defendant : How do you know the land Okpoko ?

Answer by Plaintiff : You show me the land.

XXD. by Defendant : How do you know the people of Ezeobodo ?

Answer by Plaintiff : I knew them by you.

EGBUEWE sworn, states : I am a native of Onitsha. Five years ago the
 Defendant occupied the land and we told him to stop farming the land 20
 the year Defendant farm on the land where the people of Ezeobodo have
 cleared. We went and beg Kodilinye to beg Defendant to left the land.
 Defendant refused. I knew the boundary. I am the one going there.

XXD. by Defendant : You remember the place we drink 2 bottles
 gin and where you wanted to place Opu tree ?

Answer by witness : No.

ARADIUNO sworn, states : We gave the Defendant Okpoko land to
 farm. Five years ago the said case was brought before this Court and
 we were asked to settle it at home. The Defendant went home and
 started using the portion given to Umezebodo. I told him to stop he
 refused, hence we summoned him. 30

XXD. BY COURT : Did you put boundary on the land ?

Answer by witness : Yes, between Defendant and Umezeobodo.
 This land was given by the people of Umezeobodo to Defendant's father
 and from thence Defendant started using it.

OBI EZE OF OBOSI sworn, states : This land was divided by Umezebodo
 to the people of Obosi and also to Defendant's father 5 years ago the
 Defendant brought his people on this land and the matter was brought

before and we decided that we will take of our land. This year we went and clear the land our own portion. Defendant went and took his people and planted yams on the land. We clear the land Defendant farm on this our own portion. The land Okpoko was given to us by Umezeobodo and Defendant occupied Ekpupani.

Exhibits.

—
Plaintiffs'

Exhibits.

—
Ex. 38.

Record in

Onitsha

Native

Court Case

No. 278/18

—continued

- Defendant sworn, states : Five years ago I was summoned by late Chief Anene he was trying to take land from me. The case was not finished and this Court ordered that we must go and put boundary. We went the next day and I took 2 basket yams 2 bottles gin 2 pots of palm wine to drink after the boundary was fixed the people who fixed the boundary were Plaintiff's people. This land was farming long ago by Onitsha people by one Ogbolo who sued for Ikwueme thirty years ago. I went market on our way going we met on the way and Plaintiff said he will not allow any one to farm on the land this year. When I finished the second burial of my father Aradiuno came to me and asked me if I am not going to farm this year he said he will help me to get yams seed to buy. I went with 2 pots palm wine to Plaintiff people and they said I must give them £3 before I farm on the land. I told them I have done no wrong. I gave them £1 10s. Plaintiff receive 200 yams and 9s.
- 10 I also gave Aradiuno £2 5s. as Kola. I never pass the boundary I cause no trespass on the land.

OFFIAH sworn, states : I am a native of Onitsha. About 3 months ago the Plaintiff came to me at Onitsha town and asked me why since 5 years ago the people of Umezebodo do not pay land rent. I went 5 years with those that fixed the boundary the boundary was pointed out by Egbuniwe on an Aba tree. I went with my people this year and fixed the boundary as there was a dispute as the people of Umezebodo say not the boundary fixed 5 years was removed by Aradiuno. The Plaintiff is the Head of Family at present. The dispute on the boundary.

- 30 AYEUNAM sworn, states : The Defendant do not go against any native law he pays rents for the land. I went on the land with one Aradionu and I find 2 bottles of gin which Aradionu told me it was the gin they drank 5 years ago when they went and put the boundary also he pointed out the Abu tree. I never went 5 years ago but the boundary 5 years ago showed to me by Aradionu the boundary was removed by Aradionu. I went this year and Aradionu showed me. I did not know the boundary before what Aradionu pointed to me. The Plaintiff is the head of our family. What bring the palaver is because Plaintiff and Aradionu ate our money.

- 40 XXD. BY COURT : Did you ask him to return you land money ?

Answer. by witness AYEUNAM : No.

Exhibits. XXD. BY COURT : How much the money ?

Plaintiffs' Answer by witness AYEUNAM : I don't know.

Exhibits.

Ex. 38.
Record in
Onitsha
Native
Court Case
No. 278/18.
—continued

ANAKWINZE sworn, states : I am a native of Obosi. I know the people of Umezebodo and Defendant people. I know the land Okpoko it belongs to the people of Ijawo. The land Okpoko was used by my people and Umezebodo people. Five years ago the land boundary was point from Abu tree to the Igwisi tree. We drank 2 bottles gin and 2 pots palm wine. The boundary placed 5 years ago is still. What we are farming but this year the boundary was removed. This year we went to farm and the Ijaw's people stopped us and say they will settle the matter. 10 We have planted yams on some of the portion of land the matter left with the decision of the Court.

The Chiefs adjourned the case to view the land on Saturday.

JUDGMENT.

For Plaintiff. The Defendant's yams must not be rooted out but whatever the Plaintiff's place as boundary must stand.

(Sgd.) CHIEF CHUKWUMA.

His X Mark.

12.6.18.

Ex. 39.
Record in
Onitsha
Native
Court Case
No. 278.

Exhibit 39.

20

Record in Onitsha Native Court Case No. 278.

IN THE NATIVE COURT OF ONITSHA. 23/5/19.

Case No. 278.

<p>OMODI OF ONITSHA <i>versus</i> ELOMUANYA OF OBOSI</p>	}	<p>CLAIM : £20 damages for trespass on my land named NKPUKPA since 3 months ago.</p>
--	---	--

CLAIM Not Admitted.

OMODI sworn, states : My father gave Umuezechima a portion of land called NKPUKPA, my ancestor's name who gave this land in dispute to Umuezechima are classified as follows : My father Ozua, Daike, Efo, 30 Nwaka, Okpoko, and myself making 6 men, who gave this land to Ezechime. I gave 4 quarters of Obosi some portion of this land, and yearly rent is payable to me. Defendant afterwards leave his own portion

of land giving to him and this pass on the other portion giving to another party. I have warned the Defendant to restrain from further trespassing on this land, yet he could not submit to my instruction giving to him hence the action. I am the man who gave Defendant the portion of the land which he is farming.

Exhibits.
—
Plaintiffs'
Exhibits.
—

Ex. 39.
Record in
Onitsha
Native
Court Case
No. 278—
continued

QUESTION BY COURT: Are the 3 quarters remaining farmed on the land now ?

Answer: Defendant ejected them as I have stated 4 years ago Defendant and his people came to my house with a pot of palm wine
10 after drinking Defendant and his people told me that I should come and settle the matter between and other 3 quarters, when I go the other 3 quarters did not come. Defendant gave me 10s. and two baskets of seed yams. This 4 years mentioned all the rent was paid to me, since which time no dispute. Four years ago Onuonicha and Okonkwo came to me telling me that they were informed by Obosi people that I trespassed on their land. I denied and further told them that there is great difference between Anata Onaba and Kpukpa land.

AJAE BUE sworn, states: This land Nkpukpa was giving to us by Plaintiff. We are 4 quarters that Omodi gave land to, Umuezeisi,
20 Umuechekwube, Umuakwuniko and Umungwagu. Our great grandfather is Ikeligwo who born these 4 sons. Now taken as different quarters. This land was divided into 4 parts by our great grandfather, and when it is the time for farming everyone must mind where he is farming. This matter arises between ourselves since 6 years ago, but come to the public hearing since 4 years ago. Four years ago we 3 quarters brushed this land purposely for farming, having brushed it finished, the remaining 1 quarter of Okwuniko gave this land to Igwe Obosi to look after for time being. We went to Igwe and asked him whether this quarter
30 gave up their own portion of land to Igwe on the whole. He said yes. Going on going on this 1 quarter remaining joined the Igwe of Obosi and farmed the land. I asked Igwe why he farmed our land. There he told me that Plaintiff came and told him that the land now taken away from the 3 quarters and given to different quarter. Hearing this we went to Plaintiff who said that he did not take away the land as stated by Igwe Obosi, and as the land was divided into 4 parts so it will be. After this long talk Plaintiff told us to go and farm on the land. When we go we found Defendant and his people farming on the land. To shorten the matter we went back.

No question.

40 OKOYE sworn, states: Our father Ikeligwo born 4 sons which now divided into 4 quarters a portion of land was allowed by our ancestors

Exhibits. through Plaintiff's great grandfather, and the land itself was divided
 Plaintiffs' into 4 portions of which in time of farming each son or the quarter get to
 Exhibits. farm on their own. Land tribute is payable to Plaintiff.

Ex. 39. Question : Do you know the boundary between Anatanaba and
 Record in Agho-Ulo ?

Onitsha Answer : Yes.
 Native

Court Case EZEONYE sworn, states : Our great grandfather obtained this land
 No. 278— Nkpukpa from Plaintiff's great father. Our father Ikeligwo get 4 sons
 continued which we now take as 4 quarters, this land was divided into 4 portions
 in which each son get to farm in his own. Land tribute is payable to 10
 Plaintiff. Six years ago the 3 quarters or the sons consulted to them-
 selves and brushed the whole of the land, we were stopped by Igwe
 Obosi saying that the land Nkpukpa was placed in his care.

No question.

CHUKWURA sworn, states : I was in my house when Defendant's brother
 came to my house and told me that Plaintiff sold our land, we hold
 meeting in James Offiah's house, there Plaintiff stated that he did not
 sell the land. We arranged with Defendant's brother that he should
 not add to our land another man's land in other to cause confusion
 between ourselves and other people. Defendant and his people after 20
 saying some certain words to us ran away. Only 3 sons of Okoligwe
 showed us the land and boundary. The land is ours. Land tribute is
 payable to us.

No question.

Defendant ONWUCHU, for ILOMUANYA sworn, states : Plaintiff get no
 land at Nkpukpa. Plaintiff get land at Eyi-Nkpologwu. Nkpukpa
 land belonged to another quarter of Onitsha, namely Achebe. We once
 took an oath to Eyi-Nkpologwu land. We have no land from Onitsha
 people which is divided into 4 portions. Plaintiff once asked to show
 me the boundary there. I said that I will show them provided that the 30
 land will not be taken away from me and given to another man.

XXD. BY COURT : Is there any land giving to Igwe Obosi to look
 after, if what is the name of the land ?

Answer : Yes, land was giving to Igwe Obosi for some times. We
 the quarter of Okuniko.

XXD. BY COURT : What was the cause of giving this land to Igwe
 Obosi ?

Answer : On the time there certain matter between us and Ireh.
 Seeing this we called our brothers to come and assist us, they refused,
 and went on this particular land and began to brush it. We went to 40

Plaintiff to ascertain from him who are the sole owners of the land name Anata-Anaba, there he told us that the land is his.

XXD. BY COURT: Do you know the boundary between Nkpukpa land and Anata-Anaba ?

Answer: Yes I know the boundary. Eight years ago went to farm on this land. We commenced brushing the land, till the people of Ireh came to eject us or to restrain us from farming, we went to Plaintiff's house, who told us never mind, that we can go and farm on the land. Three days after the Onuonicha and Mota came to my house, Onuonicha
 10 told me or asked me to say who give me this land Anata-Anaba. I told him Omodi is the man who gave me the land. Some days after this, Omodi called me and one man Ikomuanya Onuorisa, and Onwudinjo were present. He told me that Nkpukpa land belonged to Onwudinjo and his people. Eight years ago, I followed Onwudinjo as I find out that Plaintiff has no land in this Nkpukpa in dispute. I further asked Omodi about 2 basket of yams and 10s. cash given to him purposely for farming on the said land. Having considered that Plaintiff is giving me land in Eyi-Nkpologwu, I dropped the question of my expenses. As I
 20 found out that Plaintiff get no land at Nkpukpa. I went to Ache with two bottles of gin and asked pardon for mistake caused. I farmed Nkpukpa land with the kind permission of Ache. I paid land tribute or rent to him. Ache afterwards went to Ireh people and stopped them from going on in this land, as Ireh people could not see with Ache the landlord, hence action was taken against them in this Court. Ache in summons claimed an injunction to restrain Ireh people from trespassing on the said land. The judgment was caused out. Since all the years mentioned land's rent is payable to Ache. Those who appeared on behalf of the Plaintiff are those who pretend to buy the land from Plaintiff. Plaintiff sold the land to Ajaebue. King Kodilinye ring bell
 30 that we should not trespass or farm on this land again. We complained to Ache whether he is the man who gave this land to Plaintiff. He told us to continue farming on the land till Plaintiff takes action against him for recovery of his land. Our great grand who get this land from Ache is name Ikedigwu. How is this possible that the land was divided into 4 parts and afterwards the 3 quarters or sons broke out to buy the land, whereas they said that the land was divided. I know that land belonged to Ache, it would have been better if Plaintiff had summoned the man Ache of Onitsha.

XXD. BY COURT: Do you remember that an oath was arranged to
 40 be removed ?

No.

Exhibits.

Plaintiffs' Exhibits.

Ex. 39.

Record in Onitsha Native Court Case No. 278—
continued

Exhibits.
 ———
 Plaintiffs'
 Exhibits.

XXD. BY COURT: Do you remember that you came to my house telling me that you will refund the amount of £20 but to let the land remain yours ?

Ex. 39.
 Record in
 Onitsha
 Native
 Court Case
 No. 278—
continued

Answer: I remember I came to your with this request.

Case adjourned by the Court till next Court sitting.

23/5/19.

M. O. EKWUNO.

To Page 185.

ONUONICHA Witness sworn, states: I know that the land Nkpukpa in dispute belongs to us we are the people who gave Defendant this land 10 for farming purpose. Eight years ago we were informed that one Onwuachu is clearing our land for farming. I went to find out from Onwuachu who gave him or them this land for farming. I went with Motuanya. I asked Onwuachu who gave him this land, he said Plaintiff, as he told me this I told him that it is alright. When I returned we went to King Obi Okosi and reported this matter to him. Some days after this Plaintiff called me, Onwuachu, Ilomuanya, and Onwudinjo the Land Lord. There Plaintiff renounced that he did not permit Defendant Onwuachu to farm on the land, that the land even does not belong to him, that the land is ours and not his, there he told Onwuachu 20 to go to us that we may give him land to farm that he will not in any way meddle with the land.

This year Onwuachu came and told us that Plaintiff is trying to sell our land. The case or complaint was taken up to D.O. and it was decided to our satisfaction. We have no boundary with the Plaintiff. We gave Obosi people land to farm. Hence there is no why Plaintiff should take action against Obosi people. What he would have done is to take action against us the land-lord, who gave Obosi this farming land in dispute. All the rent during this 8 years is payable to us.

XXD. BY COURT: Can tell those whom you get boundary with in 30 this land ?

Answer: We get boundary with Isiokwe, Iyiwu, and Umuonogbo. These people mentioned are those whom we get boundary with. Our great father never told me that Plaintiff get land at Nkpukpa, even our old man Eda who died some times 2 months ago, but if Plaintiff knows that he get land why he never ask to go and mark the boundary.

JUDGMENT—For Defendant.

Case dismissed.

(Sgd.) CHIEF ODIKPO,

His X Mark.

Reason: Plaintiff has not right to summon Defendant but to summon those who gave the land to Obosi people for farming. Hence Court decided the case thus.

(Sgd.) M. O. EKWUNO,

Witness to Mark.

28/5/19.

Exhibits.

Plaintiffs' Exhibits.

Ex. 39.
Record in
P. Onitsha
Native
Court Case
No. 278—
continued

10

Exhibit 29.

Record in Onitsha Native Court Case No. 406.

IN THE NATIVE COURT OF ONITSHA 20th October, 1920.

No. 406.

CHIEF OREFO.. .. . *President.*

CHIEF OBI OKOSI ..

CHIEF ODIKPO AKUNE

CHIEF KODILINYE

.. .. . *Members.*

20 ATOGU OF ONITSHA

versus

1. OJOGWU OF ONITSHA

2. GBALUTA OF ONITSHA

CLAIM: To remove from Plaintiff's fishing water "Ikwum" and a piece of land occupied by you 1 month ago.

CLAIM Not Admitted.

PLAINTIFF sworn, states: I am a native of Onitsha, I summoned the Defendants to remove from my fishing right "IKWUM" and land, the Defendant said that I sold the main river to one Gombo for 20s. he took me and my people to the Police Office and said that the fishing water is river and that it belong to the Government. The Defendant's brother
30 Ifeama said three years ago, that he gave SIX pounds to me and my

Ex. 29.
Record in
Onitsha
Native
Court Case
No. 406.

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

Ex. 29.
 Record in
 Onitsha
 Native
 Court case
 No. 406—
continued

family, he reported my late brother Tagbo, and he was arrested and detained in custody, the matter was taken to the D.O. and it was dismissed, the D.O. then ordered me to go to the Native Court and take action that Ifeoma will pay us THREE pounds for fishing in our water, the matter was taken in Court Ifeoma then denied his name so the case was dismissed. The chiefs further ordered that fresh summons should be taken against No. 1 Defendant, and Ifeoma to stop from fishing in our water, and stop using our land. The Defendants are living in our land and fishing our water, hence we want them to remove. The Defendants were living in our land before and pay rent of 2s. 6d. each a year. They were about 10 40 men that are living in our land we don't want the Defendants again in our land because they said that we sold river for 20s. and No. 1 Defendant's brother Ifeama reported my late brother Tagbo saying that we obtained SIX pounds from him.

Question by Defendant : Do you know that I used to pay rent for the land which we are living ?

Answer : You did not pay rent this year, and I don't want you to stay in my land.

WITNESS ROBERT sworn, states : I am a native of Onitsha there was a dispute between Plaintiff and Defendants, the Defendants are causing 20 dispute and the Plaintiff told them to remove from the land and the fishing water " IKWUM ". The Defendants refused, the Defendants are natives of Ijo, and have no right to occupy Plaintiff's land and water, the Defendant's brother Ifeama owed THREE pounds to Plaintiff, for living in Plaintiff's land, and since he never pay it.

No. 1 DEFENDANT OJOGWU sworn, states : I am a native of Ijo, I belong to Tulufans Quarter. I am a fisher man. I used to fish in the water in the high season, it is not Plaintiff's fishing water, it is river and is for public use, when I was fishing 1 month ago one Ilukwe came and told me that I must stop because he gave water to one Jombo and received 20s. from 30 him, I told Ilukwe that I will not stop because it is public fishing water, Ilukwe told Jombo, to stop me from fishing, I refused to stop, when Jombo told me to stop, Jombo is a native of Ijo, I am living on the land and used to pay 2s. 6d. per house I used to pay to one Johnny of Onitsha, after the death of Johnny I used to pay rent to Jombo to send to Onitsha people, Jombo told me to stop from fishing because he bought the water from the people of Onitsha. I then reported Jombo in the Police Office and a Constable was sent to see the water he went and found that it is river, Jombo was sent for when he came, the Police asked him, he said that he bought the water from Onitsha people for 20s. and that one 40 Ilukwe is the man who sold the River to him Ilukwe was sent for, and when he came he denied that he never sell water to Jombo. Ilukwe admitted in the Police Office that he used to receive rentage from us for

the land, Ilkuwe was told by Sergt. that he must allow us to be fishing and that he will not stop us, and that he will also permit us to stay on the land on payment of rentage. Ilkuwe agreed.

Exhibits.
—
Plaintiffs'
Exhibits.

No. 2 DEFENDANT GBALUTA sworn, states: I have nothing to say I agreed with No. 1 Defendant have said.

Ex. 29.
Record in
Onitsha
Native
Court Case
No. 406—
continued

JUDGMENT.

Adjourned for inspection of land and water.

Witness to mark,
J. N. OFFISH.

CHIEF OREFO,
President.

10

His X Mark.

20/10/20. REOPENED.

CHIEFS: The land and water visited, we have seen the land where Defendants are living and the water IKWUM which they are fishing. This land and water belong to Plaintiff, and his family.

JUDGMENT.

The Defendants to remove from land and water at once and pay the costs to Plaintiff.

Costs Refunded.

Witness to mark,
20 J. N. OFFISH,
C.N.C.

CHIEF OREFO,
President.
His X Mark

20/10/20.

Parties seen by me this 13.12.20. Plaintiff will not allow Defendants the privilege of fishing from his land in any circumstance. Judgment confirmed.

(Sgd.) H. WADDINGTON,
Assistant D.O.

13/12/20.

Exhibits.

Exhibit 33.

Plaintiffs' Exhibits.

Record in Onitsha Native Court Case No. 150.

Ex. 33. Record in Onitsha Native Court Case No. 150.

IN THE NATIVE COURT OF ONITSHA. 22nd April, 1925.

EX. " J " put in by Defendant (Umuasele) admitted and marked in Suit 0/28/44 : Stephen Ononye v. Chieka Oba and 3 others.

(Sgd.) DOM A. NWOICHE.

CHIEF ANACHUNA OF EZE President.

CHIEF AGBAKOBA OF ONITSHA }
CHIEF OREFO OF NKWELLE } Members.
CHIEF KODILINYE OF OBOSI }

10

CIVIL JURISDICTION.

Case No. 150.

OKENWA OF OBOSI versus ICHU OF OBOSI .. CLAIM: Return of land name " UGORI-MILI " value over £15 given to the Plaintiff by Nwaokolo of Onitsha for safe keeping over 40 years ago.

Defendant stated that he got no witness now as to try the case today so case adjourned :

Case Resumed 23/4/25.

(Sgd.) P. H. ONWAZO, C.N.C.

CHIEF ANACHUNA. 20 His X Mark.

Witness to Mark. 22/4/25.

To Page 35.

Plaintiff sworn, states : This land in question was the land given to our first father Onyedinuekwu by Onitsha people for safe keeping when the first father died one Umena told me that the land was given to our first father for safe keeping, that time one Anochie was alive who was as Okpala at the time.

The land in question was given to us by one Nwaokolo of Umuasele Quarter of Onitsha, when Okagbuo Agba was alive our old men took me 30 to him and he told me that they gave the land to my first father, that time one Okecuku was alive, after Okechuku's death I went to one

Agbue for the land and that time this Defendant leased the land to two Oba men for farming and one Agbu told him that he made mistake and our people told him to give palm-wine for the wrong done. Since the time all the palm-wine for leasing the land was bringing to my house, and he got his own portion of land given to them by one Offiah of Onitsha when this land case was held at our town, Obosi, Onitsha people said that they gave the land to our first father and they will swear juju for same. I knew that the Defendant's first father by name Ajumobi was brother to one Onyedumekwu.

Exhibits.
—
Plaintiffs'
Exhibits.
—
No. 33.
Record in
Onitsha
Native
Court Case
No. 150—
continued

- 10 PLAINTIFF'S WITNESS, ATOGU sworn, states : I knew that this land in question by name Ugborimili, belonged to our family Ogbeowe Quarter of Umuasele Onitsha. Our first father by names Nwaokolo, Okagbua and Okosi gave the land to the Plaintiff's first father Onyedumekwu for safe keeping and to be farming at long time ago, the Plaintiff with his family came with palm-wine to us when one Otogbolu died that they may get the land as their first father got the land. I knew that this Plaintiff brought palm-wine to one Agbu for the land and also to be right ownership of using the land as their first father did. When one Agbu died it is my turn the Plaintiff has given to me palm-wine as usual
20 3 years ago, the Defendant came to me and asked us to take the land from the Plaintiff and to be using the by the elders son we refused. We were 5 persons who went to Obosi. We gave the land to one Okenwa for safe keeping and his family must be farming on the land, but any palm-wine for the land must be kept at Okenwa's house before drinking.

Defendant sworn, states : I got no witness here to have the case try now.

Case adjourned by Court until Next Court Day.

CHIEF ANACHUNA.

His X Mark.

30 (Sgd.) P. H. ONWUAZO.

23/4/25. Witness to mark.

To Page 197.

Question by Defendant : Do you know the time when palaver came between Umuapatara and Oyemesi ?

Answer by Plaintiff : I don't know.

Defendant states : This land was given to our late father by Umojesi Family for farming purposes. Our old men farm on this land and died the young men of our family say they will take palm-wine to Onitsha

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

No. 33.
 Record in
 Onitsha
 Native
 Court Case
 No. 150—
continued

people and they will not serve the family of Umojesi but they gave Onitsha people in order to occupy the land, and the people gave us the land to farm. The Onitsha people place the grandfather of Plaintiff to be the head, and whosoever be the oldest man should be the head for the land according to the order of the Onitsha people. The grandfather of Plaintiff died and it reaches one Onwutachi of the elderly men, he died and it reaches Onochie and he died and we said we will go to Onitsha to see the Onitsha people before the time reach Plaintiff and one Ngbena called me privately and tell me that we must go to Onitsha and tell Onitsha people that this land belongs to us and not the whole family and I objected. When Plaintiff return he came and report to me that he return from Onitsha the next time the whole family went to Onitsha Onochie take 8 pence with him and Plaintiff take 8 pence and the people of Onitsha take Plaintiff 8 pence as we have seen them before with palm-wine. Onochie 8 pence was not received. Ata Ogu the witness was not present he was told by the elderly people Ata Ogu is the head of the land living at Onitsha Plaintiff stand as head of the people using at Obosi but it those reaches him but Udo, the elderly man at Obosi he is telling lies to get the head of the land. We are brothers of the same family. 10 20

Question by Plaintiff : How was I at the time ?

Answer by Defendant : You are a young man you have two wives. OBI sworn, states : The matter which grieve us that Plaintiff said when he died is son will obtain and the only thing in the matter is the palm-wine place and drink in common.

JUDGMENT.

For Plaintiff for Land and Costs.

(Sgd.) OBI OKOSI.

Exhibit 43.

Record in Onitsha Native Court Case No. 200 and 201.

IN THE ONITSHA NATIVE COURT. 17/6/26.

No. 200 & 201.

CHIEF NWOKOCHA	} <i>Members.</i>
CHIEF HARUNA	..	..	..	..	..
CHIEF AGBAKOBA	..	..	..	..	..
CHIEF UZOKA	..	..	..	..	..

10 J. MEGAFU OF ONITSHA } CLAIM £5 from each of the Defendants yearly
versus } rentage due to Plaintiff in his land Udo
 1. MAGOM OF OBOSI } or Okpoko farmed by you. Dispute arose
 2. OSADEBE OF OBOSI } 2 months ago.

J. MEGAFU states: The land in question is my own property, No. 1 Defendant is the agent in one portion of this land and the No. 2 the other. They were looking after these lands given it out to Obosi people and pay me rent since 8 years ago, and there have never been any dispute over this land ever since. This year the 2 Defendants put in their people and they farmed the land and refused to pay me my due hence this action.

20 DEFENDANT OSADEBE states: The land in question belonged to the Plaintiff. He appointed me as an agent over this land since 8 years ago and ever since I am paying the Plaintiff his due rentage without any dispute. This year I have given the Plaintiff Kola to enter in the land and shall pay all what due to the Plaintiff to him. No. 1 Defendant is the agent of the other land he will speak himself.

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

30 No. 2 Defendant Re-called by Court.

I am the same family with the No. 1 Defendant. The land belonged to Megafu and was divided between me and the No. 1 Defendant. Both of us were acting as the Plaintiff's agent and paid him his due after farming.

Plaintiff re-called: No. 1 Defendant was not sick he pretended sick because he was intending to claim the land as he farmed without permit. He must remove from the land entirely.

Exhibits.

Plaintiffs'
Exhibits.Ex. 43.
Record in
Onitsha
Native
Court Case
No. 200
and 201.

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

Chief's Decision : No. 2 Defendant is instructed to carry palm wine and kolas to the Plaintiff the land owner and must pay rent to Plaintiff. When the time approached.

Ex. 43.
 Record in
 Onitsha
 Native
 Court Case
 No. 200 and
 201—
continued

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

(Sgd.) CH. NWOKOCHA.
 His X Mark.

(Sgd.) L. N. NZEGWU,
 C.N.C. 17/6/26. 10

DEFENDANT MAGOM states : The land Udo is especial property of Plaintiff. He made me agent over this land since 7 years ago and has placing my people for farming and pay rent accordingly. I have now paid £5 ordered and promise to be paying him rent as ordered and shall never at any time deny that the land does not belong to Plaintiff.

Plaintiff requested that as the Defendant has begged will be allowed to continue the land he has brought palm wine kolas as per custom. Ch. Nwokocha decided that the Defendant shall continue farming.

(Intld.) L.N.N. 24/6/26.

Full Judgment paid £5. 24/6/26. 20

Ex. 44.
 Record in
 Onitsha
 Native
 Court Case
 No. 204.

Exhibit 44.

Record in Onitsha Native Court Case No. 204.

IN THE ONITSHA NATIVE COURT. 17/6/26.

No. 204.

CHIEF NWOKOCHA	} <i>Members.</i>
CHIEF HARUNA	..	..	..	..	..
CHIEF AGBAKOBA	..	..	..	..	..
CHIEF UZOKA	..	..	..	..	..

J. E. EGBUNIKE OF ONITSHA
versus

30

1. EZIAMAKA NNABUDE OF OBOSI
2. OBIOJULU OF OBOSI
3. IKECHEBE & OTHERS OF OBOSI.

CLAIM : £45 being damages for trespass in the Plaintiff's land known as Udo situated Oguta Road Onitsha dispute arose 4 months ago.

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

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

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

Chief's Decision.

Judgment for Plaintiff for £12 and costs.

Defendant must go to Plaintiff this coming Sunday with palm wine
 40 and kola and make peace with the Plaintiff if failing will be driven off.

(Sgd.) CHIEF NWOKOCHA.

His X Mark.

(Sgd.) L. N. NZEGWU, C.N.C.

Witness to mark.

17/6/26.

Exhibits.
 —
 Plaintiffs'
 Exhibits.
 —
 Ex. 44.
 Record in
 Onitsha
 Native
 Court Case
 No. 204—
continued

Exhibits.

Exhibit 41.

Plaintiffs' Exhibits

Record of Onitsha Native Court Case No. 182.

Ex. 41.
Record of
Onitsha
Native
Court Case
No. 182.

IN THE ONITSHA NATIVE COURT 26/5/26.

Criminal J.B. dated 28/4/26. Page 44.

CHIEF CHUKWUMA	..	..	..	..	..	President.
CHIEF CHIGBO	..	..	..	..	..	} Members.
CHIEF CHUKWUDEBE	..	..	..	..	..
CHIEF NWADE	..	..	..	..	..

J. E. EGBUNIKE OF ONITSHA	}	CLAIM: £10 being rentage due to Plaintiff on his land Okpoko, farmed by you since a year ago.	10
<i>versus</i> ANANTI NWAZULU OF OBOSI			

Claim Admitted : £10.

J. E. EGBUNIKE states : I am the ownership of land OKPOKO situated Onitsha Uguta road about 3½ miles from Onitsha Waterside. I placed this very land in care of Defendant to be farming they pay me due rent according to custom Defendant and his families Obosi farmed this land last year about 70 of them. Defendant only brought me 2 baskets of yams and promised to send the remaining, he is the head of Gang in this land as well as the head Gang in my land known as Udo. Defendant told me he has collected all the rent for the lands planted but refused to hand them over to me as usual. He also planted in the 2 lands Udo and Okpoko this year and paid me nothing as usual. As he failed to give me his reason I sued him and claimed £10 cost of the rentage collected and detained. 20

DEFENCE.

ANANTI NWAZULU states : I am of Ire quarter of Obosi. Plaintiff placed me as the head of Gang in his land Okpoko since 7 years ago. I am to place my people to farm the land and pay him rent due to him yearly. He also gave me the charge of his land known as Udo. I put my people to work and pay him the yearly rentage as per custom. Last year we farmed Okpoko land and Udo. Plaintiff instructed me to collect the rent as usual and send. I have collected the yams and were finding the amount of £10 owned. I only sent 3 baskets of yams balance of yams and the amount of (remained) £10 still unpaid. About 2 months ago our Chief Kodilinye beat ton-ton or "Ogene" and called meeting of the whole town Obosi, all met in the Idemili Juju. He advised them that they should now claim all Onitsha lands, although, it was Onitsha properties they all bound themselves up with a juju not to pay any rent or settle any debt connected to land to Onitsha. Head of Idemili Ogoejiofo 30

killed the goat before the Juju, hence I withdraw from paying the rent due to Plaintiff. I should be glad if the Court should quash this Juju sworn. I do not wish to claim another man's land or make false claim as advised our people. But I cannot settle the balance of the rent or pay the balance of £10 unless the Juju is quashed, otherwise it will kill me the Juju was sworn against my will and families' will. My head of family Kame Ogbuefi knew all about this, as he was present in the meeting for this purpose people are now collecting money join their plan.

Exhibits
 —
 Plaintiffs'
 Exhibits.
 —
 Ex 41.
 Record of
 Onitsha
 Native
 Court Case
 No. 182—
continued

10 OBOSI : DEFENDANT'S WITNESS MOGHALU states : I am of Ire quarter of Obosi. I related the Defendant. I am one of the people farmed in the Plaintiff's land and collected the yams and kept in the house of Defendant owing to Idemili sworn by the whole Obosi not to pay rent to Onitsha people and will make false claim of the land. He was afraid to settle the debt or rent else the juju will kill him. He will pay the rent if the juju is quashed. The yams collected are now lying with the Defendant but cannot pay in fear of Idemili juju.

20 OBOSI Atu states : I am from Umota Quarter of Obosi. I was called by the Court to give this evidence. I corroborated the evidence of Defendant that Chief Kodilinye rang bell and called meeting of the whole town and bound themselves up with Idemili Juju not to pay any rent to Onitsha and to deny all facts in connection with Onitsha land and claim the same as Obosi properties.

OBOSI Nwashili states : I am of Umuota Quarter of Obosi. I witnessed and heard bell ring in the name of Chief Kodilinye for the whole Obosi town to meet at Idemili Juju. I refused to attend with my people as we do not wish to create disturbance with Onitsha people the Juju was really sworn but self and family did not join.

Case adjourned for witnesses.

(Sgd.) CH. CHUKWUMA. His X Mark.

30

(Sgd.) L. N. NZEGWU,

C.N.C. Witness to Mark.
 26/5/26.

Case re-opened this 2/6/26.

OGUEJIOFO states : I am the head of Idemili Juju. I did not remember of swearing the juju against any person. We held no meeting in our Juju place against Onitsha.

KAMELU-OGUEFI states : I knew nothing about swearing Idemili Juju. I cannot tell if the Juju is being sworn or not. I know that Plaintiff J. E. Egbunike placed my brother the Defendant as the head

Exhibits. of his land, the name of land I did not remember. I farmed on this
 ——— land last year. We collected rent and handed over to the Defendant
 Plaintiffs' to send to the Plaintiff. He detained the yams and other things. I
 Exhibits. did not know the reason he failed to send the rent due to Plaintiff for
 ——— his land.

Ex. 41.
 Record of
 Onitsha
 Native
 Court Case
 No. 182—
continued

Defendant re-called by the Court :

OBOSI states : Defendant Kamelu Ogbuefi stands as my father. Now he is given false evidence by saying that he never accompany us to Plaintiff's house, for paying yearly rentage and by denied that he did not know the cause of detaining the Plaintiff's last year's rent, because 10
 the juju Idemili was instructed to kill any person that paid Onitsha rent and that he was in the meeting and witnessed Idemili being sworn against the whole Obosi for paying rent. After this evidence Idemili head man told me that the Juju was not sworn.

OBOSI Chief Ejikeme Odu states : I am a native of Obosi, from quarter of Umuota, I am the head of the whole Red Cap Chiefs of Obosi town. Chief Kodilinye called the meeting of the whole town we all met in one Ezembanofu's compound he Chief Kodilinye told people that we all must joined together and bound ourselves up with Idemili Juju to deprive Onitsha their lands, and that no person must pay any rent 20
 to the land owners of Onitsha. I told him that it is bad and I cannot join in making false claim, as Onitsha is friend town to us. He said that his order being N.C. Warrant Chief must be done the day appointed for swearing he called meeting. I refused to go the juju Idemili was sworn the whole town being bound up to be denying all fact about Onitsha land. A beef killed for Idemili was sent to me as I was the head of (Ndiches) Red Cap Chiefs. I am the second share to Chief Kodilinye. I refused the beef this swearing of oath, brought the present disturbances between Onitsha and Obosi. I am old man and cannot join in cheating and ill-treatment to friendly town Onitsha. The present trouble was caused 30
 by the Chief Kodilinye, which was very bad.

OBOSI Chief Ngbakogu Onya states : I am from Umuota Quarter of Obosi. I am one of head titled chief of Obosi town. I was present in the meeting called by Chief Kodilinye the whole town met at Idemili place when a goat was brought to swear against Onitsha, that we shall deprive them their land and shall not pay rent to them. I refused that I shall not join. My house is few yards from Idemili. The Juju was sworn that any person given Onitsha rent, juju must kill him, hence the people refused to be paying rent as usual. Oguejiofo was the head of Idemili he performed the ceremony and killed the goat. 40

MODEBE states : I am one of the land owners of Onitsha my lands are the following :

- (1) Ozala Biabuloji,
- (2) Awada.

These 2 different lands were given to 7 different of head men or head gangs to be farming the head men or head gangs are :

- 10 Nwasa Akupue of Obosi Ire Quarter
- Nmeka of Obosi Ire Quarter
- Anwurebe of Obosi Ire Quarter
- Udo-Nmelue of Obosi Ire Quarter
- Idemili of Obosi Ire Quarter
- Iwenofu Ajaba of Obosi Umuota Quarter
- 20 Josiah of Obosi Ire Quarter.

The head men were using or farming the portion of land given to them over 20 years ago, without disturbance and paid rentage as arranged. This year all these men refused to pay rent because of the Juju Idemili sworn against paying rent to Onitsha people that they bound themselves up with Idemili not to pay me the rent. I told him, not to use the land until he paid the rent owned, he refused. I then sued them for rentage due me case not heard.

MEGAFU states : I have a land called Udo. I placed as head Gang Osadebe Okunwa and Nmagom Akubue on this land since 7 years ago and farming the land and paying rent without dispute they has failed to pay me my due this year because they were bound up with Juju Idemili not to pay the rent they said this has done against their will.

AWGU states : Of Umuase Quarter of Onitsha corroborated above statement.

W. NWOKWU states : I am of Ogboli Eke Quarter of Onitsha corroborated.

- 30 Chiefs' Decision : Judgment for Plaintiff for £10 and cost Idemili Juju sworn must be quashed as early as possible to release people against their will and then to settle their debts. Head of Idemili Oguejiofo must be punished for wilfully given false evidence and false administration of oath. Chief Kodilinye was the cause of the whole action, which is now causing breach of the peace between Obosi and Onitsha.

(Sgd.) CHIEF CHUKWUMA. His X Mark.

(Sgd.) L. N. NZEGWU.

Witness to mark. 10/6/26.

Exhibits.
 Plaintiffs'
 Exhibits.
 Ex. 41.
 Record of
 Onitsha
 Native
 Court Case
 No. 182—
continued

Exhibits.
 ———
 Plaintiffs'
 Exhibits.

Judgment confirmed. It is not proved that Chief Kodilinye sworn the whole of Obosi to Idemili and the remarks above are therefore cancelled.

Ex. 41.
 Record of
 Onitsha
 Native
 Court Case
 No. 182—
continued.

(Sgd.) ? ? ?

16/6/26.

Ex. 45.
 Record in
 Onitsha
 Native
 Court Case
 No. 215.

Exhibit 45.

Record in Onitsha Native Court Case No. 215.

26/6/26.

IN THE ONITSHA NATIVE COURT.

No. 215. CHIEF NWOKOCHA
 CHIEF HARUNA
 CHIEF AGBAKOBA
 CHIEF UZOKA

10

A. O. ACHEBE of Onitsha
versus
 ANAZONWU of Obosi.

Claim : £10 damages for trespass in the Plaintiff's land known as Okpoko occupied by you since 3 months ago.

Claim not admitted.

A. O. ACHEBE states : The land in question belonged to our great father Anumdu. It is our own especial properties. The same land were divided to various agents of Obosi. They put their families when farmed it and pay us rent as per custom. The various agent in charge of the land gave it various names as to distinguish them : MKPUKPA, ANATA-ANABA, OKPOKO, OGWOLO, OGMOAGBA but all termed original NKPUKPA. I found the Defendant farmed this land and did not pay me rent as per custom. I called his attention he claimed it as his own property. I then sued him in the Court. I have sent several times and called his attention in the land. He took no notice of me I then sued him.

30

XX. By Defendant: How many years I stopped paying the rent ?—
 A. Four years ago.

XX. By Defendant: How long you were given out this land?— Exhibits.
A. From the time of grandfather. Plaintiffs' Exhibits.

JAMES O. ONUORA states: I know the land as Nkpukpa, the Defendant Anozonwu is the agent of the land in question for long time. Defendant farmed this land last year and failed to pay rent as well as this year hence this action. We have boundary with Nmekiti that is all I have to say. Ex. 45. Record in Onitsha Native Court Case No. 215—

Defence. ANAZONWU states: The land in question belonged to one Nkemiti Agba of Onitsha. He placed one of my late brother Odibe as agent he farmed it and paid him rent as usual. After his death I succeeded him and became the agent for him. I put people in the land and paid rentage as usual. I have never farmed the Plaintiff's land and I have never paid him any rent for this land. continued

X. By Plaintiff: Do you remember that the main road to Uguta divided this land?—A. Yes. The right hand to Uguta was sold to Egbunike by Nmekiti and the left was placed in my charge.

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

XX. By Plaintiff: Who is the agent of the right hand?

Case adjourned for appearance of Nmekiti's son Ikwuazom.

(Sgd.) CH. NWOKOCHA. His X Mark.

(Sgd.) L. N. NZEGWU, C.N.C.

26/6/21.

Case re-opened this 9/7/26.

IKWUAZOM NMEKITI states: I was away from home since 3 months ago when I returned I learnt the Plaintiff is claiming the land. I know the land in dispute it is called Okpoko. This land is property of my late father. I have been to this land in question. I authorised the Defendant to farm the land. He has given me the rent due to me. That is all I could say now.

X. By Plaintiff: Have you any boundary with me?—A. Yes, this land in question belonged to me.

Exhibits.

Plaintiffs' Exhibits.

Ex. 45.
Record in
Onitsha
Native
Court Case
No. 215—
continued

XX. BY COURT : Which is the side of main road your land situated?
—A. In the 2 sides of main road. I sold the right side to Egbunike and allowed the Defendant to be using the left side.

By Plaintiff : Which is side of the road you had boundary with me ?—A. In the inside right of the road.

Chief's Decision : Land to be viewed by the Chiefs this coming Tuesday 13/7/26 to know exactly the situation of land before giving decision.

(Sgd.) CH. MALAM HARUNA. His X Mark.

(Sgd.) L. N. NZEGWU, C.N.C. 9/7/26. 10

Case re-opened this 16/7/26.

CHIEF CHUGBO states : Myself and the following Chiefs Malam Haruna, Orefo, Onwubuya. Both parties were present and each showed us his boundary, according to their statement we believe that Defendant trespassed the Plaintiff's land.

Judgment : For Plaintiff for £3 and cost to be paid within next Court sitting.

(This is from the cause book.)

Exhibit 47.

Ex. 47.
Record in
Onitsha
Native
Court Case
No. 268/28.

Record of Onitsha Native Court Case No. 268/28.

20

J.B. 6/28. Folio 127.

IN THE NATIVE COURT OF ONITSHA, 15th August, 1928.

CHIEF I. O. MBA	P.
CHIEF MALAM HARUNA	M.
CHIEF NWOKOCHA	M.
CHIEF MOMOR	M.

Civil Jurisdiction.

Case No. 268/28.

EKWUAJU AKUNNE of Onitsha

versus

CHUKWURA NVALIE of Obosi

OKOAFOR NWANONUKPE of Obosi.

30

Claim : £50 damages for trespass on Plaintiff's land known as "OKPOKO" situated near Oguta Road since a year ago.

No. 1 Defendant absent.

Exhibits.

No. 2 Defendant admitted.

Plaintiffs'
Exhibits.

OKOAFOR NWANONUKPE Co-Defendant states : It is true that I have farmed in Plaintiff's land. He did not ask me for rent neither that I refused to pay. My yams are now in ground and I agree to pay rent. I am not claiming the land. It belongs to Plaintiff. They used to lease it to me all the time and I use to pay them rent as usual. This land is Okpoko.

Ex. 47.
Record in
Onitsha
Native
Court Case
No. 268/28
—continued

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

10 Re-opened 23/8/28.

Both Defendants appeared.

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

X. Defendant No. 1 : Did you see any farm there this year ?—A. Yes.

DEFENCE.

CHUKWURA Defendant No. 1 states : This land Okpoko is mine where I used to farm always. It is a land of Ogbolu grandfather of Plaintiff and Ikueme my grandfather of Obosi. The Obosi people used to pay rent to my father Ikwueme and he used to take it to Ogbolu, the Plaintiff's father. This land belonged to Ogbolu and Ikwueme.

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

X. BY COURT : Do this land belong to Ogbolu or Ikwueme?—A. It belonged to both Ogbolu and Ikwueme but Ikwueme used to bring rent to Ogbolu after collecting it from Obosi.

Exhibits. X. BY COURT: Did you farm there this year, last year or two
 ——— years ago?—A. I have farmed there three years ago and paid rent.
 Plaintiffs' Exhibits. I did not farm there last year and this year.

Ex. 47. X. By Plaintiff: Who planted cassava which are now on the
 Record in ground?—A. My wives have planted cassava there last year as I was ill.
 Onitsha X. By Plaintiff: Who planted yams on that Okpoko land this
 Native year?—A. I did not plant yams there at all.
 Court Case X. BY COURT: Where you planted yams three years ago in Okpoko
 No. 268/28 land who gets it?—A. It belonged to Ogbolu the father of Plaintiff.
 —continued

COURT: The Defendant denied farming on this land. 10

Judgment: The Plaintiff to produce oath for Defendant No. 1 Chukwura to swear that he planted nothing there neither leased to anybody and if sworn, the Plaintiff to make use of cassava planted and as decided in Civil Case No. 267 page 137. Co-Defendant Okoafor to pay rent accordingly.

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

COURT: The Defendant have refused to swear oath that he did not farm the land two years ago.

Judgment is altered that Defendant will pay £5 damages and costs 20 to Plaintiff in two weeks from date.

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

“£5 paid to Plaintiff with costs C.R. No. 204126 of 22/11/28.”

Exhibit 46.

Record in Onitsha Native Court Case No. 267/28.

Ex. 46. Record in Onitsha Native Court Case No. 267/28. Civil J.B. No. 6/28. Page 137.

IN THE NATIVE COURT OF ONITSHA. 22/8/28.

CHIEF I. O. MBA *President*
 CHIEF MALAM HARUNA *Member*
 CHIEF NWOKOCHA *Member*
 CHIEF MOMO *Member*

30

Case No. 267/28.

EKWUAJU AKUNNE of Onitsha
versus
 CHUKWURAH NVALIE of Obosi.

Claim: £50 damages for trespass on Plaintiff's land knowing as Akpu-Apali situated near Ikobi and Ezeocha's land since two years ago.

Not admitted.

Exhibits.

ORAKPOSIM ODIGWE, for Plaintiff, states : This land belongs to us. The Plaintiff Ekwuaju is not feeling well and he sent me to speak for him. This land Akpu-Apali is our own. It is a property of our forefather—Ogbolu. He used to lease same to Defendant's father—Ikwuemem. He used to pay us rent. He died and Okeke, father of Defendant took his charge and used to pay us rent. He died and we allowed the Defendant to take his charge as usual. He used to pay us due rent and tribute. He stopped from paying us the rent since two years ago. There are
10 two different lands one is Okpoko and this is Akpu-Apali. We asked Defendant why he stopped from paying us rent and he replied that Okolo Akunwanne of Onitsha in my family told him to stop from paying us rent that the land is his own.

Plaintiffs'
Exhibits.
Ex. 46.
Record in
Onitsha
Native
Court Case
No. 267/28
—continued

Adjourned 22/8/28.

Re-opened 23/8/28.

Q. By Defendant : When you reached on the land this year did we farm there ?—A. Yes, but we summoned you for two years' rent.

Q. By Defendant : Did I pay you rent three years ago which we farmed there ?—A. No.

20

DEFENCE.

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

XX. Nobody farmed on that land this year.

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

X. COURT : Is it () will allow any farmers there ?—A. Yes.

X. COURT : Nobody farmed there last year ?—A. No, neither this year not last year.

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

Exhibits.

Plaintiffs'

Exhibits.

Ex. 46.
Record in
Onitsha
Court Case
No. 267/28
—continued

Plaintiff re-called. The Defendant have planted cassava in Akpu-Apali land which are now on the ground and I can show all to Court.

Defendant re-called. There is no cassava on the ground there. If Plaintiff or Court find cassava there now they can make use of it.

Judgment : As the Defendant denied that he did not plant last year and two years ago on that land, Plaintiff can produce oath for Defendant to swear for fact next Court and if sworn the Plaintiff can use any cassava he sees there planted and any crops therein and sue whoever may touch it.

(Sgd.) I. O. MBA. 10
23/8/28.

Resumed 29/8/28.

COURT : The Defendant Chukwura refused to swear oath as ordered by Court that he said he did farm the land two years ago as he failed to swear judgment is altered that Defendant will pay £5 damages to Plaintiff in two weeks from date.

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

£5 paid Plaintiff with costs.

Court receipt No. 204126 of 22/11/28. 20

Exhibit 32.

Record in Onitsha Native Court Case No. 101/28 and 103/28.

Ex. 32.
Record in
Onitsha
Native
Court Case
No. 101/28
and 103/28.

Sitting :

CHIEF ONWUBUYA	<i>President</i>
CHIEF MOMO	<i>Member</i>
CHIEF H. ODUNZEH	<i>Member</i>
CHIEF UZOKA	<i>Member</i>

Case No. 101/28.

Case No. 103/28.

NDUAGUBA OKAGBUE of Onitsha

30

versus

1. NWAMEZE
2. EZIAMAKA
3. UDOBA

(All of Obosi.)

Claims : No. I. £50 damages for trespass on Plaintiff's land. II. £50 damages for trespass by building houses, farming on the said land without the consent of the owner since one year.

Claims not admitted.

Exhibits.

Plaintiff states : I am now the spokesman in this case on behalf of Ogbe-Owele Family. Since 2 years now Defendants began to farm on this land—building houses on it. When I noticed this conduct I began to search for them as to know on whose power Defendants entered into my land in this way but I could not see them and they did not do what their fathers—grand fathers used to do for us before making use of this land without our consent and notice. I want Defendants to prove their reasons of trespassing on this Ugbo-Orimili land. We only
 10 have boundary marks with Egbuna of Umuase Quarters of Onitsha on the Eastern side and Ogbe-Ikporo Quarters Oti Mili also Umuase Odoje and on the southern part I have boundary marks over Stream Idemili with Orifite people. Therefore any one doing some thing from this place to Orifite I have to ask for it and know cause why that should be done. Another boundary on the Northern side I have with Modebe's Family.

Plaintiffs' Exhibits.

Ex. 32.
 Record in Onitsha Native Court Case No. 101/28 and 103/28
 —continued

By Defendant No. 2 : Was it only since 2 years we began to farm on this land ?—A. No. You used to farm and pay me all the dues or rights due me as land lord.

20 By Defendants : Was it only since 2 years a house is built there ?—A. No. Those who built houses there were given by me since considerable years ago.

Witness to Plaintiff CHUKUEMEKA states : I am a native of Onitsha belonging to Umuase Quarters. The land in dispute is our land. Any one wishing to farm on this land have to inform us and pay us certain rents or dues before farming or building houses. All the people living on this land before they were allowed by us but Defendants did not inform us and forced into this land with their own powers. No. 2 Defendant planting yams on this land did not ask us according to native law
 30 and customs. Last year he farmed on this land and after digging the yams he did not pay us our yearly dues. This year he went again hence this action. We have boundary with Ogbe Ozoma on the east side on the South we have boundary with Orifite people and on the North with Modebe's Family. This land is known to be Ani Ugbo-Orimili. We also have boundary with Achebe of Umuasele Quarters of Onitsha and Umu Oti Mili and Iyiawu on the east side. There is nowhere we have boundary with Defendants at all. Defendants entered into this land unlawfully against our customs. We gave portion to Umu Olu, to Ijors and Hausa men also to Okwenu people. We also gave a plot to
 40 Ogbe Uku people to build their houses since they left Abo Okoh town. We gave Ana his place to build and Ibologwu, one Ezeakubo and the

Exhibits.

Plaintiffs'

Exhibits.

Ex. 32.

Record in

Onitsha

Native

Court Case

No. 101/28

and 103/28

—continued

Niger Company Ltd. we gave them the plot where they built their factory. We gave one Oseloka Akalusia Abana a portion to be farming and Obosi people farming on this Ogbu-Orimili land we used to give them. Only the Chief Kodilinye we never give him this land or to his father to farm. Therefore since I became a man I never witnessed seeing him farming on this land. We also allowed Brick makers to burn their Bricks or make it in our land in dispute.

Q. By Court to Defendants.

Defendants : Have you any questions to ask the witness ?

Defendants answered : No. We have no question to ask.

10

Witness to Plaintiffs EGBUNA states : I am a native of Onitsha belonging to Umuase Quarters. The land in question known to be called Ugbo-Orimili which I know to be a property of Plaintiff and his family. I know this because I have boundary with them on the eastern side of this land. Since I became a man and gained sense I used to see Obosi people coming to Plaintiff's father and to my father according to the position required by the person to farm. The person must have to pay us our dues before farming on this land. When the Niger Company arrived before they build the houses and stores it was Plaintiff's father who gave them the piece of this land to build. They used to pay him 20 yearly then I was a young boy. I am one of boys who often go there and bring the yearly fees to Plaintiff's father. All Obosi people there were allowed to live there with our permission, and yearly fees pay to us. All the down Rivers, Igaras Ijaws used to come to us for permission and consent after arrangement then they have their houses built and paying us yearly even Aboh people living on this land we gave them and we used to perform all necessary juju pertaining to the land lord. The Obosi people if any of our tenants have dispute with each other we used to go and settle the matter for them as being land lords and since 2 years now Defendants stopped paying us all our dues and even making no 30 notice to us before farming on this land. We could not bear it any longer hence this action. We have boundary with Orifite people over Idemili Stream there is a gutter or valley. There is nowhere Plaintiff have boundary with Defendants. Plaintiff Statement continued. There are more witnesses and also there are some documentary evidences namely:

- Year 1882. 1. Agreement for purchase of land by Royal Niger Company.
2. Copy of case No. 547 of 1912 over this very land known as Ugbo-Orimili.

3. An Agreement made with Obosi between Ogbo Family or Ogbe-Owelr and Obosi people and few other documents which if required by the Court we are ready to produce them. Exhibits. Plaintiffs' Exhibits.

Defendant No. 1 states : I have nothing to say that before building my house on this land it was Chief Kodilinye who gave me this land to build, because he told me that the land belongs to him. When I had wanted to plant yams I went and begged him he allowed me to farm on it. Ex. 32. Record in Onitsha Native Court Case No. 101/28 and 103/28

10 Q. BY COURT : Do you know how long this land belongs to Igwe Chief Kodilinye ?—A. Yes. Since a year and half. —continued

Q. BY COURT : Have you ever farmed on this land before ?—A. Yes 2 years ago I farmed on this land.

Q. BY COURT : Did you ever hear that Otu Obosi Beach given to Niger Company by Plaintiff's father ?—A. No. I never heard it.

Q. BY COURT : Do you know who gave Aboh people the portion where they are now living called Ogbe Uku ?—A. I don't know.

BY COURT : Did Plaintiff ever asked you who gave you the land to build your house or farming purposes ?—A. I never see Plaintiff and I don't know him too.

By Plaintiff : You don't know me and had never seen me how did I know you occupied my land without my consent and knowledge ?—A. I don't know of that.

Defendant No. 2 states : I am a native of Obosi. I used to farm on this land but I am always allowed by Chief Kodilinye. I farmed on this land about 3 times and there is no time I go to Onitsha people only Igwe used to give me.

Q. BY COURT : How many years now Chief Kodilinye first gave you this land to farm on ?—A. About 4 years.

30 Defendant No. 3 states : I am a native of Obosi. This land was given to me to build my house by Chief Kodilinye this year. So far I want a land or plot to build and he Chief Kodilinye gave me the power to do so I did it need nothing more. This happened this year.

Q. By Plaintiff : Do you know with whom you or Chief Kodilinye have boundary with ?—A. I don't know.

Witness to Defendant : Chief Kodilinye, Eze and Head Chief of Obosi states : I am a native of Obosi. I appear to ask Plaintiff to summon me direct if he is claiming the Otu Obosi land. I am the only man who knows of this land. This land belongs to us before Obosi had been

Exhibits.
—
Plaintiffs'
Exhibits.
—

Ex. 32.
Record in
Onitsha
Native
Court Case
No. 101/28
and 103/38
—continued

fought by the Government. There is never a time when Plaintiff and his family or generation said a word over this land. This land owned to our fathers same way I owned it. If Plaintiff thinks it is bad that I gave this land to Defendants he may sue me. Then I show Plaintiff the cause why I own this land and Plaintiff show me how he owned it. That all I got to say.

Case adjourned till further consideration till 11/4/28.

Case re-opened this 11/4/28.

Records : We have gone through this case and see that Defendants did farm on this land through the assistance or instruction of their Chief 10
Kodilinye.

They have known that all the sundry towns living on this land had been allowed on certain arrangements with Onitsha people the Plaintiffs. We know of certain that this land belongs to Onitsha, there was a certain time dispute arose on this very land how things went on there with or for which Documents made Plaintiffs produced them in this Court. Therefore Defendants did trespass on this land.

Judgment : For Plaintiffs for £30 each of the Defendants to be paid to Plaintiffs for Case No. 101/28 and Case No. 103/28. (£90.)

Defendants must pay this within 3 months.

20

(Sgd.) CHIEF ONWUBUYA, *President.*

His X Mark.

(Sgd.) C. U. EMODI,

C.N.C. 11/4/28.

2nd Judgment suspended for 14 days. Obosi meanwhile to abstain from farming on the land unless permission received from Onitsha.

(Sgd.) ? ? ?

A.D.O. 25/4/28.

Judgment reduced to £2 each and it is explained that Government safeguards its rights under Niger Treaty 72. (To be paid by 7/6/28.) 30

(Sgd.) ? ? ?

D.O. 7/5/28.

Exhibit 50.**Record in Onitsha Native Court Case No. 50.**

Case No. 50.

EKWUAJU AKUNNE of Onitsha

versus

UGOKWE EZEONYIA of Obosi.

Claim : Recovery of £5 rent due Plaintiff for land known as Okpoko
10 you farmed since 2 years.

Claim not admitted.

ORAKPOSIM ODIGWE, for Plaintiff, states : The Defendant farmed on our land named Okpoko two years ago. We expected the Defendant to pay us rent but he failed to do so. We went to the Defendant's house and asked him about rent he made us a promise and furthermore told me to return on Eke day. I declined to do so. One Akamonye who also farmed on a portion of that land came to us. We the owners of the land held meeting. I told Akamonye that he will be sued if he fails to pay the rent due him. He gave excuse that he was stopped by
20 something. He also went to Okolu Ochuli to get his debt. Akamonye went away but did not return to see me. Akamonye is also called Onuekwusi as in Civil Summons No. 51. There are three different peoples we used to pawn our land for farming. Okafor and Chukwura have been sued sometime ago for rent and they paid their £5 each to us *vide* J.B. 6/28, page 137 and 127. Okafor admitted we owned this land in question. £10 was paid to us by Chukwura. There were 16 farm-huts built on this land and we placed something on the houses to show the builders that we know they farmed our land. There were more than 16 men farming the land. This land has been inspected by the
30 D.O. this year, i.e. about 3 months ago. I showed all the boundaries to D.O. We got boundary with Egbunike, Obichukwu, Otimili, Anatogu and Ezeocha. I pointed out to D.O. a portion given to Okafor Nwanonkpo. I showed D.O. all the portions of our land which we pawn to Obosi people. The part where Defendant and other farmed has been shown to the D.O. Defendant and Onuekwusi farmed a portion of land. We have sued Obosi people several times.

Q. By Defendant : What did you and Ekwuaju come to Onuekwusi's house ?—A. It is for this land dispute between you and Chukwura.

Exhibits.

Plaintiffs'
ExhibitsEx. 50.
Record in
Onitsha
Native
Court Case
No. 50.

Exhibits.

Plaintiffs' Exhibits.

Ex. 50.
Record in
Onitsha
Native
Court Case
No. 50—
continued

Witness Jacob Aduba states : This land named Okpoko belonged to our great grand father named Ogbolu. He, Ogbolu, was leasing it to Obosi people for farm. There are three different peoples of Obosi that farm the land. Okafor Nwanonukpo is a head of gang. Okeke Umegike farms with his men. Okputu farms with his men. Defendant belongs to Okputu company. They were farming this land and paying us the rent even from day of yore. There has never been any misunderstanding. We usually settle matters that arose during those three companies, Defendant had had a dispute over this land with Chukwura and we saw to its settlement. The matter was gone into yet Defendant's people do not satisfy. This does not impede payment of rent to us. Defendant failed to pay rent since 2 years. We sent and told them to pay us rent due us for period of two years. Defendant failed to pay rent. We have taken out action against Okafor and Chukwura. Okafor appeared in Court and agreed to pay us rent. Chukwura who raised objection was ordered to pay £10 to us which he did. Chukwura chose to swear and after evade the swearing of juju. We have taken A.D.O. Mr. Chapman to the land and accordingly showed him boundaries and portions allotted to Obosi people. On review of the previous case A.D.O. confirmed that Chukwura must pay £10 to us. Obieze and Chukwura were having dispute and we settled it both are natives of Obosi. 10

Defendant states : About 11 years ago we were having dispute over this land with Chukwura and Plaintiff and his relatives appeared as witnesses for Chukwura. The name is called Ofutenasu. There are two portions of land which we gave to the father of Chukwura in olden days. This land Ofutenasu is our land. Plaintiff and his relatives have a relationship with Chukwura, Plaintiff told us to quit their land since 10 years. We have left the land and did not farm on it ever since. About five years ago Plaintiff came with Ekwuaju to our house and asked me to show the boundary of this land. I declined to do so. Jacob Aduba came to me last month and told me to come and farm on their land for they do not wish Chukwura to continue. I do not know the Plaintiff's house and he does not know mine. I can take oath I have never farmed on the land since 10 years. I farmed a land named Ume-Ana Obosi for last two years. I can show the land to Court. 30

Defendant's Witnesses states :

1. Jibike elects and states : The Defendant did not farm
 2. Onwuachu on the Plaintiff's land. There is boundary be-
 3. Iwegbunam tween Obieze's land and Chukwura's land. Defen-
 4. Ogbogu dant has never trespassed. After the case of
 5. Madakor Obieze and Chukwura and judgment given in
- did never farm the land. Plaintiff's people were then witnesses for

Chukwura in that case. The Plaintiff's land is not known. Defendant's land is called Ofutenasi. I did not know if this land Ofutenasi was given to Defendant by any man. Defendant and his people farmed on a land called Uso-Iyi-Udene.

Nos. 2, 3, 4 and 5 Defendants say: We agree with Jibike. His statement is correct.

Case adjourned till 6/3/29, for oath to be produced by Plaintiff for Defendant and his witnesses to swear.

Vide cases No. 50 and 51 Defendants and their witnesses (8 in number) have sworn that they did not farm in Okpoko land which pertains to Plaintiff and his family therefore, case dismissed.

(Sgd.) CH. GIWA PAM PAM. His X Mark.
P.

(Sgd.) S. CINELU,
C.N.C. 6/3/29.

Note: As Defendants and their witnesses have sworn that they did not plant anything on the land named Okpoko, crops found on the land should be property of Plaintiff.

(Sgd.) C. H. GIWA PAM PAM. His X Mark.

20 (Sgd.) C. H. OBI OKOSI. His X Mark.

Exhibit 30.

Record in Onitsha Native Court Case No. 269.

IN THE NATIVE COURT OF ONITSHA.

CHIEF NWAOKOCHA	<i>President</i>
CHIEF CHUGBOE	<i>Member</i>
CHIEF MOMO	<i>Member</i>
CHIEF OREFO	<i>Member</i>

Case No. 269.

CHUKUEMEKA of Umuasele

versus

30 1. ANAH. 2. UDOGU. 3. IWENOFU. 4. ODOGWU. 5. ANWUSI.
6. ANIREH. 7. ODILIBE. 8. OFORAH. 9. OGIDINMA. 10. OFOH.
11. OBIDIEGWU. 12. MADUEGBUNAM. 13. CHUKWUEMENAM. 14.
UZO. 15. NKWO. 16. IJOMA. 17. ADISEME. 18. OSELOKA. 19.
OGBUNUBI. 20. OKAFOR. 21. ONUHA.

Claim: Recovery of £37 16s. being rent on land called Ugbo-Orimili for 6 years. (2) Injunction to refrain Defendants from using the said Ugbo-Orimili land.

Exhibits.

Plaintiffs' Exhibits.

Ex. 50.
Record in
Onitsha
Native
Court Case
No. 50—
continued

Ex. 30.
Record in
Onitsha
Native
Court Case
No. 269.

23/10/30.

Exhibits. Defendants not present. (Disappeared.)

Plaintiffs' Exhibits.

Ex. 30.
Record in
Onitsha
Native
Court Case
No. 269—
continued

Plaintiff states : The Defendants have been paying us yearly rentage through their head-man Anah, but 6 years ago they withdrew this payment. The land was given to first Defendant by Okagbue of Onitsha and he was paying yearly tribute of one bottle Gin. After the death of Okagbue, one Okechukwu Igweoba succeeded him. From that time many Obosi people domiciled there and Anah No. 1 Defendant was known as the head-man. No. 1 Defendant was collecting this tribute from them. On the death of Okechukwu, Agbu Ogbuefi succeeded him. When he died Ataogu succeeded. The Defendants paid their tribute regularly to these mentioned headmen of Onitsha. Four years ago we took action against 4 men of Obosi namely (1) Nwameze (2) Eziamaka (3) Udaba (4) Efobi for £50 damages for trespass and judgment was entered for us. (*Vide* Civil Case No. 101 and 103 of 1928.) The very same year Obosi people trespassed again and we took action against them. Chief Kodilinye said that he was surveying the land, and the case was dismissed. The actual payment was 6s. per head and as we have waited them to pay us this tribute since these past years and they could not, we sue them to recover same and that they should quit the land. 10

IKEJIOFOR of Obosi states : I am a native of Obosi and residing at Ugbo-Orimili. We are paying Umuasele people 6s. per head every year. This payment has been in action for many past years.

OBI ORANU of Obosi states : This land of Ugbo-Orimili was given our fathers by Umuasele people. Defendant No. 1 was formerly living at Onitsha Water side but after the war with Onitsha people, he asked Okagbue Agbo to lease him some land. This portion in dispute was given to him and the payment of a bottle of Gin each year was fixed. From that day Defendant No. 1 was known as "Onye-Isi," and he used to collect the tributes. Six years ago, Defendant refrained from paying this tribute ; and dispute arose between the landlords and the tenants. 30

BY COURT : Is this the first hearing of this case ?—A. No, it was heard in the last Assizes.

BY COURT : What was the decision ?—A. Obosi people were fined for trespass.

IN THE NATIVE COURT OF ONITSHA.

10/12/30.

Same Chiefs as last on page 383.

Q. By Defendants : When the Niger Company handed over their coffee trees to Government why don't you ordered us to build our houses where the coffee trees were planted ?—A. You built your houses where the land lord wants you to build them. 40

Q. By Defendants : Has Okagbue any child, and how are you related to him ?—A. He has got a child and I am brother to him, descendants from Ogbo family of Onitsha.

Exhibits.
—
Plaintiffs'
Exhibits.

DEFENCE.

ANAH speaking on behalf of others, states : We never asked Onitsha people to lease us any land. The Plaintiff's father is from Akiri in Osomari Native Court Area domiciled at Onitsha some years ago. His mother is from Obosi, and he is our grandson. The time we were going to ask for that Obosi Wharf, myself, Chief Kodilinye, and some others
10 went to the Divisional Agent of Niger Company about 30 years ago and this place in dispute was leased to us. It was formerly Coffee garden owned by Niger Company and handed over to Government at Asaba.

Ex. 30.
Record in
Onitsha
Native
Court Case
No. 269—
continued

We went there and we were told to go and live on the Consent of our elders but not to live near the River. The land is Obosi land given to Niger by Obosi people. Six of us namely : (1) Chief Kodilinye (2) Anah (3) Moses Oyaka (4) Nathaniel Aghauno (5) Udefbe (6) Odogu went and lived there. Myself (Anah 1st Defendant) and Oyaka built a mighty house. When D.C. Watts was going for a land dispute between Odekpe and Orefite, he saw the house and enquired who built the house. We
20 were ordered to proceed to Onitsha. We came and he asked us whether we have got an authority from the Government. We said yes.

He therefore said we should not come down to the Beach for some Europeans are coming. Four years ago the Plaintiff and some Umuasele people of Onitsha came and said we should pay rent. We refused and said the land is Government land. The people summoned us and the case was dismissed. If the Plaintiff is claiming " Ugbo land " let them take action against Government for it was from the Government we got the land.

XX. BY COURT : You just said you (Obosi) handed the land to
30 Niger Company and the Niger Company handed it to Government, what special quarter of Obosi owned it before that time ?—A. We Obosi owned it in general. No quarter owned it specially.

XX. BY COURT : Did you remember this matter was once referred to Niger Company and you were ordered to produce an Agreement you made with Niger Company and you failed to ?—A. We have not got the copy by that time.

CHIEF KODILINYE states : (Witness) : The land in dispute called " Otu Obosi " was inherited by Obosi people long ago. During the life

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

Ex. 30.
 Record in
 Onitsha
 Native
 Court Case
 No. 269—
continued.

of Obi Akuzu who died in 1873 no person from Onitsha said the land belonged to him. In 1875 when Obosi and Odekpe were having market there, there was no interference from Onitsha people. 1879 during reign of Obi Anazonwu, there was no Umuasele man who ever claimed the land as his own ; it was also the same year Onitsha was bombarded. After this bombardment, there were two companies National and United Companies. In 1880 the land was handed to Niger Company by Obosi people and an Agreement was made. The Company was paying rentage till in 1896 when it was stopped. The Niger Company tried to buy the land but we refused. In 1920 Rev. Anyaegbunam said the land is his and from there the question of Agreement arose. The D.O. (Mr. Cook) sent to Niger Company and it was sent up. Obosi people were farming on this land till 1900 when it was handed to Government. We went to Asaba and obtained permission to live on the land. In 1928 some Obosi men were fined £90 which was reduced to £6. (This fine was paid back to me.) In 1929 when the Assizes was held in this Court we were afraid of Government and paid the cost in the case between us and Onitsha with regards the same land. 10

Judgment : See J.B. 3/30. Page 385.

(Defendants to produce the Agreement which they said is with the Government before any alteration could be made in previous Judgment if their proof is fact.) 20

(Intld.) J.A.S.M.R.

(Sgd.) CHIEF NWOKOCHA.

His X Mark.

Judgment : For Plaintiff for £30 within 3 weeks. Costs also to be paid. (See J.B. Civil Page 157 of 10th April, 1928 Case No. 101 and 103/28.)

(Sgd.) CHIEF NWOKOCHA, *President.*

(Sgd.) J.A.S.M. ROMAINE.

His X Mark.

C.N.C.

30

Exhibit 31.

Record in Onitsha Native Court Case No. 270.

Exhibits.

Plaintiffs'
Exhibits.

24/10/30.

Ex. 31.

Record in
Onitsha
Native
Court Case
No. 270.

IN THE NATIVE COURT OF ONITSHA.

CHIEF NWOKOCHA	<i>President</i>
CHIEF CHUGBOE	<i>Member</i>
CHIEF MOMO	<i>Member</i>
CHIEF OREFO	<i>Member</i>

Case No. 270.

CHUKUEMEKA of Umuasle

versus

OSELOKA of Obosi.

10

Claim : An Order of Court to compel the Defendant and others concerned to pay the sum of £30 being rent on Ani-Olu land detained since 6 years.

Defendants not present.

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

IFEKANDU states : (Witness) : Speaking on behalf of Ebenezer. The Plaintiff gives Defendants and some other people Ani-Olu which they use as farm. They usually pay the Plaintiff by gathering some yams, palm-wine and Gin which they bring as tribute. Six years ago this act of sending tribute seized, but I am constantly sending in mine every year. It is the negligence that cause this summons.

BY COURT : What made others to stop paying tribute ?—A. Others said the land belongs to Obosi and not Onitsha people.

30 BY COURT : How many of you are paying presently ?—A. Three of us viz. : Ikemjiofo, Ifekandu, and Ebenezer.

(For Defence see J.B. No. 4, page 33.)

Judgment : For Plaintiff for £15 within three weeks time and to quit from the said land.

(Sgd.) CHIEF NWAOKOCHA, *President*.

His X Mark.

(Sgd.) J. A. S. M. ROMAINE.

C.N.C. 24/10/30.

Exhibits.

Plaintiffs'
Exhibits.Ex. 51.
Record in
Onitsha
Native
Court Case
No. 162.**Exhibit 51.****Record in Onitsha Native Court Case No. 162.**

IN THE ONITSHA NATIVE COURT, this 17/10/35.
Case No. 162.

ONUORA ODIGWE of Umuosodi Umudei,
versus

1. EPUNDU of Obosi. 2. OKONKWO of Obosi. 3. AMA ONE of Obosi.
4. ANYA OKU of Obosi. 5. AKUNWATA of Obosi. 6. MATTHEW of Obosi.
7. NWAOKOLO of Obosi. 8. UDU EZUE of Obosi. 9. IGWEMMA of Obosi.
10. ONUGHA of Obosi. 11. OSOLOKA NAEGBUE.

10

Claim : 10s. from each of the Defendants being tribute due Plaintiff and his people for farming on their land Odoache.

Defendants absent.

Plaintiff states : Defendants farmed on our land Odoache without permission. The dispute of land case came in this Court in which case we obtained judgment and Court ordered us to claim our tribute from the Defendants. The usual tribute is 10s. a head which was claimed from the Defendants. Summons was served on No. 1 Defendant who is the principal man and he is the man who put the other Defendants on this land.

20

Witness JOHN NWANOLUE states : I am of Umuosodi. I went on this our land and took the name of those who farmed on this our land. The Chief also witnessed that Defendants farmed on this land which we obtained judgment, but before we took out this action we went to the Defendants and told them that they have heard that we obtained judgment on this land and as such they should come to us. This, he, No. 1 Defendant agreed and gave us the names of the other Defendants. They fixed the day that they will come to us but failed to come, still sent message to us and fixed another date that they will come to us. On the day fixed No. 1 Defendant failed to come but 4 men from these men summoned came to us with palm wine. Then we had conversation with them and they go, but fixed another day that they will come to us for final settlement. The day fixed we got message that he No. 1 Defendant told the other Defendants not to come that he No. 1 Defendant related to Mr. Onwualu that from Mr. Onwualu they got the land that they farmed. That if any of the Defendants do come to us that No. 1 Defendant would summon them as we do not see them we then summoned them claiming tribute due us from them.

30

C/M ISIEKWENA states : I am C/M attached to this Court. I served summons on No. 1 Defendant. I told him to inform the other Defendants

40

as he said that he is the one who took them to farm on this land. The No. 1 Defendant said to me that he will not tell the rest of the Defendants for he is the man who took them to farm on this land. I told him to inform all the Defendants named in the summons. He told me alright, that he will tell them but that they will not dare to come to Court. I served summons on the Defendant No. 1 since two weeks.

Judgment : In default of Defendants. For Plaintiff for 10s. from each of the Defendants and costs to be paid in two weeks time.

(Sgd.) CHIEF CHUGBO Wt. to M.

10 Witness to Mk. (Sgd.) M. O. EKWUNO. 17/10/35.

Paid by No. 3 9s. 8d. on 21/6/37. £3 paid No. 35/182. of 21/6/37. 10s. paid 23/8/37 C.R. 10/10 of

Exhibit 49.

Record in Onitsha Native Court Case No. 13.

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

Case No. 13.

EGBUNA OZOMMA of Onitsha

versus

- 20
1. ONUGBO AGHA of Obosi
 2. J. M. KODILINYE of Obosi
 3. M. NWANGWU of Obosi.

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

Defendants absent.

30 Plaintiff states : Defendants farmed on my land without my permission. I summoned them before they admitted that the land is mine and stated before the Judge that they do not wish to proceed on with the case. Since the settlement the Defendants never come to my house, but went on farming on my land. I then summoned them to pay me £20 for farming in my land. No 2 farmed in two places on this my land hence

Exhibits.
 ———
 Plaintiffs' Exhibits.
 ———
 Ex. 51.
 Record in Onitsha Native Court Case No. 162—
continued

Ex. 49.
 Record in Onitsha Native Court Case No. 13.

Exhibits. I took two actions against them. This was the land that I obtained judgment for.

Plaintiffs' Exhibits.

Ex. 49.
Record in
Onitsha
Native
Court
Case
No. 13—

continued.

Witness OBIDIKE states : Defendants were summoned before the High Court of Onitsha of which I was one of the Defendants in the case. We found that the land is not our land. We went before the Judge and said that we do not want to proceed on with the case. The Defendants at first refused to enter into settlement with the Plaintiffs but afterwards agreed. This land was where Plaintiff obtained judgment for. The Defendants said that they will not attend Court. I am an Obosi man. The Defendant indeed farmed on the Plaintiff's land.

10

NWANGWU states : I am of Obosi. I was summoned by Plaintiff before the High Court of Onitsha. I found that the land is not mine therefore I asked for settlement of which we did settle.

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

20

Witness IKEJIOFO states : I am of Obosi Umuezechima. I know this land Nkete Aku, the Defendants farmed on this land. I am farming on this land Nkete Aku through the permission of Plaintiff. My father farmed on it. No dispute through the permission of Plaintiff. It was of recent that J. M. Kodilinye tries to claim this land. Defendants are farming on this land every year they do not pay me any tribute as Plaintiff told me not to be looking after this land. Plaintiff now claims £20 from the Defendants as no tribute paid to him. Plaintiff got another land in which one Okoloji is looking after. The Defendants are farming on this land. Onugbo Agha farmed on this land placed in care of Okoloji. J. M. Klodilinye farmed on this land as well.

30

C. M. OKAFO states : Summons was served on the Defendant and they were told the date of hearing.

Record : Defendant served with summons but bluntly refused to attend and has not written to Court why they should not attend. According to the copy of the Judgment ordered. Judgment is for Plaintiff. This action was taken out against the Defendants since 11/1/38 but since the summons has been served on them they never appeared even one day.

Judgment in default of Defendants for Plaintiff for £2 from each of the Defendants to be paid within 1 week's time from date.

(Sgd.) OBI OKOSI II,

President.

OBI OKOSI II.

11/2/38.

Exhibits.
 Plaintiffs'
 Exhibits.
 Ex. 49.
 Record in
 Onitsha
 Native
 Court
 Case
 No. 13—
continued.

COPY.

PROTECTORATE OF NIGERIA.

IN THE HIGH COURT OF THE ENUGA—ONITSHA DIVISION HOLDEN AT
 10 ONITSHA.

Before His Honour HARRY WADDINGTON, *Assistant Judge.*

The 21st day of May, 1937.

0/7/1935.

EGBUNA OZONMA

versus

20

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

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

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

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

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

30 No order as to costs.

Exhibits.
 ———
 Plaintiffs'
 Exhibits.

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

(Sgd.) H. WADDINGTON,

Assistant Judge.

Onitsha. 21/5/1937.

Ex. 49.
 Record in
 Onitsha
 Native
 Court
 Case
 No. 13—
continued

0/7/1935. At Onitsha this 25th May, 1937.

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

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

Struck out as against Defendants 1, 5 and 6.

10

(Sgd.) H. WADDINGTON,

Assistant Judge.

Onitsha. 25/5/1937.

Exhibit 52.

Record in Onitsha Native Court Case No. 133.

Ex. 52.
 Record in
 Onitsha
 Native
 Court Case
 No. 133.

IN THE NATIVE COURT OF ONITSHA. 23/12/42.

EZUDU OGBUOBA
 NWOSA OZIZANI
 P. H. OKOLO
 MALAM ISHIEWU.

20

C.S. No. 133.

IKWUAZOM MENKITI of Onitsha

versus

ANASONWU of Obosi.

Claim : Recovery of £3 5s. and 115 seed yams being balance tribute due Plaintiff for Okpoko land farmed by Defendant during 1941/42.

Claim not admitted.

Plaintiff duly states : My name is Ikwuazom Menkiti. I am from Ogbabu Quarter of Onitsha. Defendant farmed my land known as Okpoko land during last year and also this year. I told him that he 30

must pay me £3 5s. tribute each year. I also told him that he should also pay me 800 seed yams each year. He paid me some seed yams for last year leaving a balance of 115 yams. He has not paid me any cash. For this year he has not paid me anything. I sue him now for recovery of my last year's tribute.

Exhibits.

Plaintiffs'
Exhibits.Ex. 52.
Record in
Onithsa
Native
Court Case
No. 133—
continued

Q. By Defendant : Did you not come to my house last year and take away one basket of seed yams ?—*A.* No.

Q. Did I not tell you that only 4 persons planted yams last year and the rest was planted with cassava ?—*A.* No. I never came to your
10 house.

Q. In the month of February did you not come and receive £1 2s. from me ?—*A.* No. I never received any money from you.

Q. When you came and received the money did you not give 3d. each to my three wives ?—*A.* When I came to your house and gave your wives 3d. each you did not give me any money.

Q. Did my wife and son not bring to you in your house 200 yams last year ?—*A.* No.

Q. When I asked you of your family in connection with this land and you said the land is your exclusive property did I not tell you that you
20 should come to Dum Omodi's house to receive tribute to avoid denial ?—*A.* You said so but I told you that you should come to my house to pay me tribute and not at another person's house.

Q. BY COURT : How many persons farmed the land last year ?—*A.* About 16 persons planted yams but I know not how many who planted cassava. Each person should collect 5s. and 41 seed yams.

Q. Do you know those who planted on the farm ?—*A.* No. Defendant is my agent and he knows them.

Q. Why did you give Defendant's wives 3d. each when you went to demand the tribute from Defendant ?—*A.* It was on occasion when I
30 went to all Defendant to demarcate my boundaries of the land.

Defendant duly states : My name is Igwe Anazonwu. I am from Ochiogu—family of Uma-Ota Quarter of Obosi. I am the caretaker of the land of Plaintiff. I paid Plaintiff 84 seed yams. We agreed that each farmer should pay 21 seed yams at harvest. I had an agreement made between Plaintiff and myself.

Exhibits.
 —
 Plaintiffs'
 Exhibits.
 —

Ex. 52.
 Record in
 Onitsha
 Native
 Court Case
 No. 133—
continued

Agreement dated 21st June, 1926, tendered and read to Court. Once on a time Plaintiff came to me and I gave him one basket of seed yams (200) gratis. I paid him £1 2s. 6d. as tribute in cash for last year, also 84 yams which I have already stated.

Q. BY COURT: Was anybody present when you paid the £1 2s. 6d. to Plaintiff?—A. My wives were present and after payment Plaintiff gave them 3d. each as present.

Witness called by both parties :

DUM OMODI duly states: My name is Dum Omodi. I am from Okwugbele family of Umuasele Onitsha. I know both parties. I know 10 that Plaintiff use to give Defendant farm land after three miles at Obosi road. I use to give Defendant land there too. One day Plaintiff told me that Defendant never paid tribute to him then. I called both together and Defendant said he used to pay tribute accordingly. Plaintiff said that Defendant owed him £3 and over 100 seed yams. This he said was old account outstanding before the one of last year. I know nothing about their transaction for last year.

JUDGMENT.

Both parties agree that 84 seed yams have been paid as tribute. The monetary issue has no corroboration. The fee for tribute of land 20 is 5s. per head. It is believed that four persons farmed the land last year whereas 84 seed yams were paid. Defendant alleged that he paid £1 2s. 6d. to Plaintiff in his (Defendant's) house. He produced no witness to support this statement. Since he paid the yams in Plaintiff's house the cash could have been paid there also.

Judgment for Plaintiff for £1 in one month's time. 5/- cost to be paid now.

(Sgd.) M. O. EZEUDU,
Vice-President.

(Sgd.) H. ODEE OREFFO.
 C.N.C.

Exhibit 56.

Certified Copy of Judgment in Onitsha Supreme Court Case—Ononye v. Oba and Ors.

Exhibits.

Plaintiffs' Exhibits.

Ex. 56.
Certified Copy of Judgment in Onitsha Supreme Court Case. Ononye v. Oba and ors.

IN THE SUPREME COURT OF NIGERIA.

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

Before His Honour Mr. Justice BROWN, Puisne Judge.

Monday, the 17th day of January, 1949.

Suit No. 0/28/1944.

10 STEPHEN NWAKO ONONYE for himself and on behalf of the Mgbelekeke Family *Plaintiff*

versus

1. CHIEKA OBA
2. PHILIP OKOLONKWO ANATOGU
3. JOSEPH NJOTE AGBU, for themselves and on behalf of Ogbo Family of Umuasele, Onitsha *Defendants.*
4. JOSHUA KODILINYE.

JUDGMENT.

20 The Niger in flood overflows the banks and floods the low lying lands adjacent to it, forming sheets or pockets of water in which fish abound. This takes place annually for a period of about three months. One such pocket described by the Plaintiff as the " Otumoye Pool " is the subject of this action.

The position of this seasonal water is shown roughly if inaccurately, upon a plan filed by the Plaintiff. The position of the pool however is not in dispute, it lies, when it exists, over the left bank of the Niger to the south of the town of Onitsha. Owing to its very temporary existence the claim for a declaration of title to the waters of the pool is, in reality, a claim to exclusive fishing rights therein.

30 The Plaintiff Stephen Ononye, is a member of an old established family of Onitsha, the Mgbelekeke Family, and purports to sue in a representative capacity as head of that family, and on behalf of its members. He claims for them exclusive rights over the waters of the pool.

Exhibits.
 Plaintiffs'
 Exhibits.

Ex. 56.
 Certified
 Copy of
 Judgment
 in Onitsha
 Supreme
 Court Case
 Ononye v.
 Oba and
 ors.—
continued

The first three persons who were named by him as Defendants, are leading members of the Ogbo Family, another family long established in Onitsha. The fourth Defendant, joined as such at his own request, and against the will of both Plaintiff and Defendants, claims the pool as the property of the Obosi people, of which clan he is the head.

The Plaintiff sues "for himself and on behalf of the Mgbelekeke Family" and on his pleading, which he signs "in person," he describes himself as "a representative head of the Mgbelekeke Family Landlords of Onitsha," and states that he sues the Defendants as such.

In evidence he states: "I am the senior head of the Mgbelekeke Family of Onitsha and am representing the family." During the course of his evidence, in cross-examination however, he admitted that one Michael Obanye was a leading member of the family, and that it is ordinarily necessary to obtain his consent to any legal act on behalf of the family, and that in this case it was not obtained specifically, but only by acquiescence. 10

Michael Obanye however, when called by the first Defendant, not only denied this consent, but repudiated this claim, saying that Stephen Ononye had no authority to represent the family. He even went further, declaring that the pool in question is the property of the Ogbo family, represented by the first three Defendants. In face of this somewhat disconcerting evidence, Counsel for the Plaintiff applied, at the close of the Defendant's case, for the writ to be amended so as to allow Plaintiff to sue in his personal capacity. He cited a case, *Lawani Laribigbe versus Salamotu Motola and another* (XII N.L.R. 17) where a tenant sued for possession of a common property on behalf of himself and other tenants in common, and it was held that the suit might be taken to be by the Plaintiff alone, and the writ amended accordingly, and further that the Plaintiff in that action, as one of several tenants in common, could bring an action for recovery of the whole common property as against other parties. 20 30

In that case there was no evidence that any of the other tenants in common authorised the Plaintiff to bring the action, and the writ was amended accordingly. It was said in the judgment that any order made in favour of the Plaintiff would have to be in favour of him alone, and not on behalf of anyone else, that is, his co-tenants. It was also stated that there was nothing in the evidence which would enable the Defendants in event of success, to recover costs from anyone except the Plaintiff. Since this has been brought to my notice I will certainly bear it in mind. The present case of course, can be distinguished materially from that case. It may be held that members of a landowning family such as the Mgbelekeke, are tenants in common of such land as belongs to the family. 40

Here it is true that there was no evidence that any of the other members of the family authorised the Plaintiff to bring the action, but there is evidence by one of the leading members of the family he purported to represent, that the others did not in fact authorise the action, that in fact the Plaintiff had no authority to bring it, and that the property claimed belongs to the Defendants and not to the family at all.

For this reason I did not allow the writ to be amended, and I hold that the action was wrongly brought, and this in my view is fatal to the claim, and it must be dismissed.

- 10 But quite apart from this question of authority to sue in a representative capacity, I think it proper to examine shortly the Plaintiff's claim on the merits. It appears, indeed from the evidence of the Plaintiff himself, that prior to the year 1926, the area over which the waters of the pool flow, was a mosquito-infested swamp surrounded by thick bush, and it is only since 1932 that any pool in the true sense existed at all. Some pools in this swamp appear to have been fished freely by the women of Onitsha in common. There existed however for many years, upon the outskirts of this swamp a "juju" shrine named "Otumoye," placed there by a former member of the Defendant's family which gave the name
- 20 subsequently formed pool. This lends colour to the Defendant's claim, supported by Michael Obanye.

With the draining of the swamp a stream was formed, leaving dry land on either side. This stream runs roughly east and west, and it appears that what may be termed the "mainland" to the north was early occupied by members of the Mgbelekeke Family, and that to the south by the members of the Ogbo Family; or at any rate they placed tenants upon it.

- In 1943 the Mgbelekeke Family succeeded in an action for a declaration of title to the reclaimed land north of the stream and bounded by it,
- 30 which decision was confirmed on appeal. This land is covered by the flood water in the rainy season, and therefore lies under the Otumoye Pool during that time.

- For this reason I could not award the exclusive fishing rights in this pool to the Defendants, as it would be ridiculous to hold in abeyance the rights of user of the Mgbelekeke Family over land decreed to them, for a period of three months in the year, and if the pool was situated entirely upon that land a proper claim by the family would be likely to succeed. On the other hand to grant title to part of a pool whose southern boundary is a stream whose course is obliterated by the waters that cover it, would
- 40 be equally inconclusive, and no such Order should be made.

Exhibits.

Plaintiffs' Exhibits.

Ex. 56.

Certified Copy of Judgment in Onitsha Supreme Court Case Ononye v. Oba and ors.—
continued

Exhibits.
 ———
 Plaintiffs'
 Exhibits.
 ———

Ex. 56.
 Certified
 Copy of
 Judgment
 in Onitsha
 Supreme
 Court Case
 Ononye v.
 Oba and
 ors.—
continued

I have referred so far to the first three Defendants only, and the members of the Ogbo Family which they represent. The fourth Defendant, as representing the Obosi Clan, came into this action of his own free will. One witness was called to prove that the pool belonged to the Obosi people, but his evidence was discredited when it came to light that any Obosi people who lived in the vicinity of the fishing pool were at most tenants holding originally from the Ogbo Family, or their successors in title the Niger Company, and now the Government, who occupy the whole of the material "Mainland" to the south of the Otumoye Stream.

10

I am satisfied that the Defendant was fishing in the troubled waters, if not of the pool, those caused by this action. He appeared to have no rights whatsoever. He is dismissed from the suit with costs awarded to the first three named Defendants in their representative capacity, assessed at twenty-five guineas. The Plaintiff's case is dismissed with twenty-five guineas costs awarded against the Plaintiff personally, and payable to the same Defendants.

I cannot conceive how either of the parties can establish a claim to the whole area of water concerned, and in my view it should be fished in common.

20

(Sgd.) H. M. BROWN,

Judge.

20/1/49.

DEFENDANTS' EXHIBITS.

Exhibit 68.

Letter, Kodilinye and 12 ors. to District Officer Onitsha, 16th February,
1936.

Exhibits.

Defen-
dants'
Exhibits.

Ex. 68.

Letter,
Kodilinye
and 12 ors.
toDistrict
Officer
Onitsha.
16th16/2/36. February,
1936.

Obosi.

D.O.

Onitsha.

Your Worship,

10 1. We thy humble servants are extremely sorry to approach your
worship again as unduly oppressed and disadvantageous petitioners *re*
the oppression of Onitsha people in the land case matter.

2. Igweagu of Orezabu Family Onitsha who had land case with us
which culminated to the West African Court of Appeal and which was
admitted for granted with that of Mbanefo in every respect, has taken
action against ten of our men in Onitsha village court which shows that
they are very much delightful to continue their formal advantageous
practice of adjudicating land cases over Obosi people.

20 3. Igweagu seems to forget that if he wishes to take action against
us after the judgment of the West African Court of Appeal, he should go
to the Protectorate Court and not to his family's court to facilitate his
course.

4. We they petitioners pray and beseech your worship to deliver
us by your justice from the hands of our oppressors who are trying every
unjustified means to victimise us.

Exhibits. 5. May your worship please see for reference N. A. Summons No. 46
attached herewith.

Defen-
dants'
Exhibits.

We have the honour to be,

Sir,

Ex. 68.
Letter,
Kodilinye
and 12 ors.
to
District
Officer
Onitsha,
16th
February,
1936—
continued

Your most obedient Servants,

(Sgd.) OBI, J. M. KODILINYE, EZE.

- | | | |
|-----------------------|----------|----|
| 1. Owele Odu | His Mark | |
| 2. Ezemonye Odu | ” | |
| 3. Okonkwo Onya | ” | |
| 4. Anyalogbu Ezeana | ” | 10 |
| 5. Ojiamike Akunne | ” | |
| 6. Jibike Tigbue | ” | |
| 7. Onwuachu Nnapyeaku | ” | |
| 8. Oraekwuotu Nwaukpo | ” | |
| 9. Maduka Igwenze | ” | |
| 10. Oseloka Nnaebue | ” | |
| 11. Ikeaja Nwaukpo | ” | |
| 12. Cukura Nwalie | ” | |

Writer . . . (Sgd.) J. E. IKENGU & Witness to Mark.

Free of Charge. 20

Exhibit 69.

Ex. 69.
Letter,
District
Officer
Onitsha to
Kodilinye.
25th
February,
1936.

Letter, District Officer Onitsha to Kodilinye, 25th February, 1936.

No. O.D.129/113.

District Officer's Office,

Onitsha.

25th February, 1936.

The Eze Kodilinye,

Obosi.

Onitsha Native Court Case No. 32—*Igweagu vs. Mark Onugha and Others.* 30

I am in receipt of your letter dated the 16th of February, 1936,
relating to Onitsha Case No. 32—*Igweagu versus Mark Onugha and others.*

Mbanefo's case showed that the land in respect of which Igweagu takes action was nearer to Onitsha than Mbanefo's. In Mbanefo's case it was found that you Obosi people had no right to Mbanefo's land. Therefore in default of any one else claiming it the land must be Mbanefo's.

It follows then that the Igweagu land must be outside the jurisdiction of the Obosi village Court and of the Idemili Group, and within that of the Onitsha Court. Therefore Igweagu is quite right to take his action in the Onitsha Court.

2. I have told that Court to proceed with the case. I will not order a transfer to the Protectorate Court.

I have the honour to be,

Sir,

Your obedient Servant,

(Intld.) ? ? ?

*District Officer,
Onitsha Division.*

Exhibit 67.

Letter, Finance Committee to District Officer Onitsha, 8th August, 1945.

At Otu Obosi.
8th August, 1945.

20 His Worship,
The District Officer,
Onitsha Division,
Onitsha.

Your Worship,

Tax Assessment—Otu Obosi.

30 With reference to your Worship's letter No. O.T.87 Vol. 11/691 of the 10th July, 1945, addressed to Mr. H. C. Onuora, our Chief in charge of Otu Obosi, we beg to approach your worship through the medium of this letter as we were sent by the Mbailinito Native Authority to assess the inhabitants of the Otu Obosi for tax-paying purposes.

Exhibits.
Defendants' Exhibits.

Ex. 69.
Letter,
District Officer
Onitsha to
Kodilinye
25th
February,
1936—
continued

Ex. 67.
Letter,
Finance
Committee
to District
Officer
Onitsha.
8th
August,
1945.

Exhibits.
 ———
 Defen-
 dants'
 Exhibits.

Ex. 67.
 Letter,
 Finance
 Committee
 to District
 Officer
 Onitsha
 8th
 August,
 1945—
continued

On our arrival, we met a number of people residing at Otu Obosi who had been paying taxes to the Onitsha Town Native Authority before now.

We approached them and they made us to understand that as the tax collected in any of the centres in the Onitsha Division is meant for the same Government of the Division, they have no objection to paying their quota of tax to the Mbailinato Native Authority provided your Worship does not object to their doing so.

Entertaining the idea that your Worship will have no objection as long as the place in which they live is within our Native Court Juris- 10
 diction, we asked some of them to follow us here to see your Worship so that you may gather personally from them that they are willing to pay their taxes to our centre.

We hope we are not encroaching upon your Worship's valuable time.

We have the honour to be,

Sir,

Your obedient Servants,

(Sgd.) ODU AMOBI.

(Sgd.) D. C. NWANGWU.

Finance Committee. 20

(Sgd.) D. C. OBI,
 Assessment Clerk,
 Mbailinato.
 Res. O.P.,

I should be grateful for your advice on this matter. I am of opinion that those who paid at Onitsha previously should pay at Onitsha this year. But this is an arbitrary settlement.

(Sgd.) H. C. DENTON, D.O.

8/8.

D.O.,

30

I should say that if mistakes have been made in the past, the sooner they are rectified the better. No Onitsha man can pretend that Otu Obosi (or Abutshi Wharf) is within Onitsha jurisdiction. Compare ONONO on the Anam land which from 1928—to about 1932 paid to the Hon. Sam until the D.O. of the day stopped this.

(Sgd.) D.P.O.

8/8.

No. O.T.87, Vol. II.
 Onitsha, 14th August, 1945.

Copy to :
The Obi & Council,
Onitsha.

For information with reference to my letter No. O.T.87, Vol. II/690 of 10th July.

The Resident's instructions should be complied with.

(Sgd.) ? ? ?

*for District Officer,
Onitsha Division,
Draft by D.O.*

10

Copy forwarded to :

Assessment Committee, for information.

(Intld.) ? ? ?

17/10/45.

Exhibits.

Defendants' Exhibits.

Ex. 67.

Letter, Finance Committee to District Officer Onitsha, 8th August, 1945—
continued

Exhibit 70.

Record of Proceedings in Protectorate Court No. MO/1A/42.

PROTECTORATE OF NIGERIA.

IN THE MAGISTRATE'S COURT OF THE ONITSHA-AWKA MAGISTERIAL AREA
HOLDEN AT ONITSHA.

Ex. 70.
Record of Proceedings in Protectorate Court No. MO/1A/42.

20 Before His Worship G. F. DOVE-EDWIN, Esq., Magistrate Full Powers.

This 21st day of April, 1942.

Suit No. MO/1A/42.

R. A. EROKWU of Onitsha *Plaintiff/Respondent.*

versus

ODEBATU AKUKALIA & 11 ORS. of Obosi .. . *Defendants/Appellants.*

APPEAL AGAINST THE JUDGMENT OF THE ONITSHA NATIVE COURT AND ONITSHA NATIVE COURT OF APPEAL.

Mr. SOETAN, for Appellants, and Mr. EGBUNA, for Respondents.

30 SOETAN : Judgment was judgment in default. Plaintiff sued Defendants for £5 for trespass from each of them. No proof that any but two of the Defendants that is, Nos. 1 and 9 knew of a date of Trial

Exhibits. Even if this was proper, date of Trial was 24/9/41. Case was tried on
 ——— 25/9/41 and no proof that any Defendant knew of trial on that date.

Defen- Mr. EGBUNA : Nos. 1 and 9 were present. Case was fixed for
 dants' 24/9/41.
 Exhibits.

JUDGMENT.

Ex. 70. I allow this appeal. The judgment of the Native Court and that
 Record of Proceedings in Protec- of the Native Court of Appeal are set aside and the case would be sent
 orate Court No. back to the Onitsha Native Court for trial subject of course to any action
 MO/1A/42 the Defendants may desire to take as to Transfer.
 —con-
 tinued.

There is no proof that the Defendants knew of the trial on the 10
 25/9/41.

EGBUNA, for Respondent, asks for Costs.
 SOETAN says Appellants are entitled to Costs.
 Costs to Appellants assessed at £2 2s. 0d.

(Sgd.) G. F. DOVE-EDWIN,
Magistrate Full Powers.

Exhibit 65.

Ex. 65.
 Summons
 in Enugu
 High Court
 in Case
 Assistant
 Com-
 missioner
 of Lands v.
 J. O. Mozie
 and anor.

**Summons in Enugu High Court in Case Assistant Commissioner of Lands
 v. J. O. Mozie of Obosi and Anor.**

Prot. Ct. c42. 20

Civil Summons. Protectorate of Nigeria.

IN THE HIGH COURT OF THE ENUGU, ONITSHA DIVISION.

In the Court of the Magisterial Area.

No. Suit No. 0/16 of 1944.

Between

ASSISTANT COMMISSIONER OF LANDS, ONITSHA Plaintiff

AND

1. J. O. MOZIE of Obosi
2. J. I. NWOGEM of Obosi Defendants.

To : 30
 J. I. Nwogem of Obosi.

You are hereby commanded in His Majesty's name to attend this
 Court at Onitsha, on Thursday the 2nd day of November, 1944, at
 o'clock in the forenoon to answer a suit by The Asst. Commr. of Lands
 of Onitsha against you.

The Plaintiff's claim under the Crown Lands Ordinance (Cap. 84) Section 28 is for an order that the possession of the Crown Land at Onitsha situate between the Creek Dende on the North and the Creek Idemili on the South and extending back from the left bank of the River Niger for a distance of three miles inland between the two creeks named— be given by Defendants to the Plaintiff within two calendar months. Particulars attached.

Exhibits.
—
Defendants' Exhibits.
—

Ex. 65.
Summons in Enugu High Court in Case Assistant Commissioner of Lands v. J. O. Mozie and anor.—
continued

(See back.)

Issued at Onitsha the day of October, 1944.

10 £ s. d.

Summons

Service

Hearing

£ Official.

(Sgd.) H. WADDINGTON,

Judge.

TAKE NOTICE that if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to Judgment and execution.

20 PARTICULARS.

1. The said land is vested in the Crown by the Niger Lands Transfer Ordinance (Cap. 86) and is mentioned in the First Schedule as No. 72.

2. The Defendant is in occupation of the said land and he has erected a house on it.

3. Defendant has no right, title or licence to be in occupation of the said land.



Exhibits.
Defendants' Exhibits.

Exhibit 66.

Notice of Discontinuance in Case referred to in Ex. 65.

PROTECTORATE OF NIGERIA.

IN THE HIGH COURT OF THE ENUGU, ONITSHA JUDICIAL DIVISION HOLDEN AT ONITSHA.

Suit No. 0/16/1944.

ASSISTANT COMMISSIONER OF LANDS Plaintiff
versus

- 1. J. O. MOZIE
- 2. J. I. NWOGEM Defendants. 10

NOTICE OF DISCONTINUANCE.

TAKE NOTICE that the above-named Summons issued at the instance of the Commissioner of Lands as Plaintiff is hereby discontinued.

Dated at Onitsha this 4th day of January, 1945.

(Sgd.) ? ? ?
Plaintiff.

For service on 2nd Defendant
J. I. NWOGEM of Obosi.

Ex. 63.
Certificate of Judgment of West African Court of Appeal in Suit Assistant Commissioner of Lands Onitsha v. Ikebuife Nwajiaku and 53 ors.

Exhibit 63.

20

Certificate of Judgment of West African Court of Appeal in Suit Assistant Commissioner of Lands Onitsha v. Ikebuife Nwajiaku and 53 Ors.

IN THE WEST AFRICAN COURT OF APPEAL HOLDEN AT LAGOS, NIGERIA.

Suit No. 0/15/1944.

W.A.C.A. 2342.

Between

ASSISTANT COMMISSIONER OF LANDS Onitsha *Plaintiff/Appellant*

AND

IKEBUIFE NWAJIAKU AND 53 ORS. *Defendants/Respondents.*

(Sgd.) FRANCIS H. BAKER,
Presiding Judge.

30

IT IS HEREBY CERTIFIED that on the 2nd day of May, 1946, the West African Court of Appeal sitting at Lagos, Nigeria, gave judgment to the effect following :

“ The one ground of appeal dealt with is Ground 1. ‘ 1 The decision is erroneous in point of law, the whole judgment is based upon the interpretation of a document to wit Exhibit ‘ A ’ a document which the Court ruled to be inadmissible in evidence, and rejected for want of proof of registration.’

Exhibits.
—
Defen-
dants’
Exhibits.

10

“ It is clear from the judgment that the learned trial Judge took the document Ex. A into consideration although he had already ruled that it was inadmissible and that he failed to give any ruling on the document Ex. C because he was not in a position to do so as the registration, he says, was governed by a law ‘ about which I cannot inform myself.’ These rules are now available and it is clear that this case must be remitted to the Court below for re-trial.

Ex. 63.
Certificate
of
Judgment
of West
African
Court of
Appeal in
suit Assis-
tant Com-
missioner
of Lands
Onitsha v.
Ikebuife
Nwajiaku
and 53 ors.
—con-
tinued.

“ Costs to await the determination of the cause.”

AND THAT THE COURT BELOW DO CARRY OUT THIS ORDER.

GIVEN AT LAGOS, NIGERIA, under the seal of the Court and the hand of the Presiding Judge, this 2nd day of May, 1946.

(Sgd.) W. H. HURLEY,

20

Ag. Registrar,

West African Court of Appeal.



Exhibits.

Defendants'
Exhibits.Ex. 64.
Notice of
Discon-
tinuance
in Suit
referred to
in Ex. 63.**Exhibit 64.****Notice of Discontinuance in Suit referred to in Ex. 63.**

IN THE SUPREME COURT OF NIGERIA.

IN THE ONITSHA JUDICIAL DIVISION.

Suit No. 0/15/1944.

Between

THE ASSISTANT COMMISSIONER OF LANDS *Plaintiff*

AND

- | | | |
|---------------------------------|-------------------------|----|
| 1. IKEBUIFE NWAJIAKU | 2. OFOBIKE AKWUNWANNE | |
| 3. JAMES IBEGBU | 4. IKEGWUONU ODU | 10 |
| 5. ONWUKE EROBI | 6. NATHANIEL ANIKPE | |
| 7. ONWUSIKA AJAGBE | 8. EFOBI | |
| 9. UYAMADU | 10. JAMES OREDU | |
| 11. LEVI ORAKPO | 12. HAYFORD ONUORA | |
| 13. ONYUMA EZENNIA | 14. IDU IKEBAKU | |
| 15. CLEMENT OKONKWO | 16. BEN EJIOFOR | |
| 17. JOSEPH ONUORA | 18. MRS. EJINDU | |
| 19. JEREMIAH ORAKPO | 20. ONWUEGBUSI IGBABALO | |
| 21. THOMAS EJIOFOR | 22. PHILIP CHUKWULOLO | |
| 23. EDWARD EJIKEME | 24. ONAGHA | 20 |
| 25. DEBORAH | 26. SIMON IWEBE | |
| 27. AMANBU AKUNWATA | 28. ANAH | |
| 29. ONWUAMAIZU | 30. REV. EKWULUGO | |
| 31. ANWADEBE ONWUACHU | 32. IGBAKWU | |
| 33. OKEKE UMEZULUIGBO | 34. CHUKWUTALU | |
| 35. THEO ANYAEKU | 36. J. C. ORAKWUTE | |
| 37. MGBAFOR OFONSI | 38. RIGIM IKEAZO | |
| 39. JONATHAN ADEGBE | 40. OKAFOR NVALIE | |
| 41. NKEMUEJINA | 42. WILSON IZUORA | |
| 43. ONUORA ISSAH | 44. JIJINWA | 30 |
| 45. ADOBI CHUJWUMA | 46. DENNIS UME | |
| 47. JOHN ANYAEFE | 48. ABEL MADU | |
| 49. JOSIAH | 50. JOSEPH EKE | |
| 51. JAMES EZELIBE | 52. UDEGBE of Umunnahi | |
| 53. NATHANIEL OSISI of Nduziogu | 54. ADAMU of Irrua | |

Defendants.

TAKE NOTICE that the Plaintiff hereby wholly discontinues this action.

Dated the 14th day of January, 1947.

(Sgd.) ? ? ? 40

*Assistant Commissioner of Lands,
Plaintiff.*

To :
The Registrar,
Supreme Court,
Onitsha.

In the Privy Council

No. 39 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF
APPEAL.

BETWEEN

1. CHIEF J. M. KODILINYE
2. J. C. NWANGWU for themselves and on
behalf of the Obosi people (Defendants)
Appellants

AND

1. PHILIP AKUNNE ANATOGU
2. JOSEPH AKUNNIA AGBU for themselves,
and on behalf of the Ogbo Family of Umua-
sele, Onitsha (Plaintiffs) *Respondents.*

Record of Proceedings

WATKINS, PULLEYN & ELLISON,
14, Gray's Inn Square, W.C.1,
Solicitors for the Appellants.

REXWORTHY, BONSER & WADKIN,
83, Cowcross Street, E.C.1,
Solicitors for the Respondents.