

Q111-62

8, 1961

IN THE PRIVY COUNCIL

No. 42 of 1959

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

CHIEF OKRO ORUKUMAKPOR (for himself and Ajamatan
Family of Gbumidaka) Appellant

- and -

- | | | |
|-------------------|----------------|--------------------|
| 1. ITEBU | 13. ESHOWAN | 25. OYIBO |
| 2. IDOGHALE | 14. MUKORO | 26. TAJERUO |
| 3. EGHOMITSE | 15. MEBRADU | 27. BOY MABAMIJE |
| 4. AWIENI | 16. EGHERTIVE | 28. SAJINI MATA |
| 5. EDORUEGWARE | 17. GBADUDU | 29. JCSINYOTA |
| 6. ATSEMIJURE | 18. GBAMIDOBO | 30. ARIBORO |
| 7. AMARHAVEV | 19. DODOYO | 31. OBOSHERI |
| 8. IMUWE | 20. BOY DAMTSE | 32. SAJINI YANUGHU |
| 9. EMADAMESHEYE | 21. ENINEVWRO | 33. MANAYERUE |
| 10. EYETAN | 22. DAMIGORU | 34. OWONOWARE |
| 11. ERHABO | 23. OVWIE | 35. ASAMA |
| 12. UMIGBORHIEMVO | 24. ITSAVO | 36. SAJINI |
| | | 37. SUKURU |
- (for themselves and on behalf of the
people of Elume) Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
10 FEB 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

63501

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20, Copthall Avenue,
London Wall,
E.C.2.
Solicitors for the Appellant.

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

CHIEF OKRO ORUKUMAKPOR (for himself and Ajamatan
Family of Gbumidaka) Appellant

- and -

- | | | |
|-------------------|----------------|--------------------|
| 1. ITEBU | 13. ESHOWAN | 25. OYIBO |
| 2. IDOGHALE | 14. MUKORO | 26. TAJERUO |
| 3. EGHOMITSE | 15. MEBRADU | 27. BOY MABAMIJE |
| 4. AWIENI | 16. EGHERTIVE | 28. SAJINI MATA |
| 5. EDORUEGWARE | 17. GBADUDU | 29. JOSINYOTA |
| 6. ATSEMIJURE | 18. GBAMIDOBO | 30. ARIBORO |
| 7. AMARHAVEV | 19. DODOYO | 31. OBOSHERI |
| 8. IMUWE | 20. BOY DAMTSE | 32. SAJINI YANUGHU |
| 9. EMADAMESHEYIE | 21. ENINEVWRO | 33. MANAYERUE |
| 10. EYETAN | 22. DAMIGORU | 34. OWONOWARE |
| 11. ERHABO | 23. OVWIE | 35. ASAMA |
| 12. UMIGBORHIEMVO | 24. ITSAVO | 36. SAJINI |
| | | 37. SUKURU |
- (for themselves and on behalf of the
people of Elume) Respondents

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT OF JUSTICE</u> <u>WESTERN REGION OF NIGERIA</u> <u>IN THE WARRI JUDICIAL DIVISION</u>		
1.	Writ of Summons	6th February 1956	1
2.	Court Notes granting Plaintiff leave to sue in representative capacity	20th February 1956	2

No.	Description of Document	Date	Page
3.	Statement of Claim	8th May 1956	3
4.	Statement of Defence	6th June 1956	6
5.	Court Notes	11th July 1956	10
6.	Court Notes	15th August 1956	12
	<u>Plaintiff's Evidence</u>		
7.	Okro Orukumakpor	15th August 1956	13
8.	Ikoru Akpoigbe	15th August 1956	15
9.	Akpoforure	15th August 1956	16
	<u>Defendants' Evidence</u>		
10.	Itebu	15th August 1956	17
11.	Dominic Pemu	15th August 1956	17
12.	Mukoro Enyerughe	15th August 1956	18
13.	Court Notes	15th August 1956	19
14.	Judgment	16th August 1956	20
15.	Enrolment of Judgment	18th August 1956	23
	<u>IN THE FEDERAL SUPREME COURT OF NIGERIA</u>		
16.	Notice of Appeal	31st August 1956	24
17.	Court Notes of Arguments	17th February 1958	26
18.	Judgment	3rd March 1958	28

No.	Description of Document	Date	Page
19.	Order on Judgment	3rd March 1958	32
20.	Order granting final leave to Appeal to Privy Council	10th November 1958	33

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
"A"	Judgment re Chief Okro Orukumakpor v. Itebu & Others	3rd December 1953	34
"B"	Terms of Settlement drawn up and made an Order of the West African Court of Appeal	15th November 1954	39
"C"	Court Ruling	19th October 1955	41
"D"	Plan of Land in Dispute	Original Document	
"E"	Proceedings in Case No. 24/55 re Chief Okro Ojomata v. Edegware and Ors.	14/15th March 1955	43
"F"	Proceedings in Case No. 24/55 re Chief Okro Ojomata v. Edegware & Ors. on Appeal.	10th August 1955	50

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Description of Document	Date
<p><u>IN THE HIGH COURT OF JUSTICE</u> <u>WESTERN REGION OF NIGERIA</u> <u>IN THE WARRI JUDICIAL DIVISION</u></p>	
Motion supported by Affidavit for Order granting leave for Plaintiff to sue in representative capacity.	10th/13th February 1956
Summons to answer suit and Court Notes as to delivery of Pleadings.	9th April 1956
Motion supported by Affidavit for stay of execution.	4th September 1956
Court notes granting stay of execution.	9th October 1956
Notice and Court Notes as to settling Record of Appeal.	28th November 1956
<p><u>IN THE FEDERAL SUPREME COURT OF NIGERIA</u></p>	
Bond for Costs on Appeal	20th December 1956
Certificate of Service of Notice of Appeal	14th February 1957
Certificate as to fulfilment of conditions of Appeal.	14th February 1957
Order allowing Appeal.	3rd March 1958
Motion on Notice for conditional leave to appeal.	15th March 1958
Affidavit in support of Motion for conditional leave to appeal.	20th March 1958
Affidavit in opposition of Motion for conditional leave to appeal.	14th April 1958
Motion on Notice supported by Affidavit and Supplemental Affidavit for leave to re-list Motion for conditional leave to appeal.	13th May 1958

Description of Document	Date
Court Notes and Order granting leave to re-list application for conditional leave to appeal.	16th/17th June 1958
Court Notes and Order granting conditional leave to appeal to Privy Council.	17th June 1958
Affidavits of Means of John Jemide Onohwohwakpo and Johnson Edematie.	27th August 1958
Bond for costs on Appeal.	27th August 1958
Notice of fulfilment of conditions of Appeal.	27th August 1958
Motion on Notice supported by Affidavit for final leave to appeal.	28th August 1958
Court Notes granting final leave to appeal.	10th November 1958
Notice of appointment to settle Record of Appeal and Order made thereon.	27th December 1958

1.

No. 1

WRIT OF SUMMONS

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IN THE WARRI JUDICIAL DIVISION

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

SUIT NO. W/15/1956

Between:

No.1

Writ of
Summons.

6th February
1956.

10 Chief Okro Orukumakpor (for himself
and Ajamatan family of
Gbumidaka) Plaintiff

- and -

- | | |
|--------------------|--------------------|
| 1. Itebu | 19. Dodoyo |
| 2. Idoghale | 20. Boy Damtse |
| 3. Eghomitse | 21. Eninevwro |
| 4. Awieni | 22. Damigoru |
| 5. Edoruegware | 23. Ovwie |
| 6. Atsemijure | 24. Itsavo |
| 7. Amarhavev | 25. Oyibo |
| 8. Imuwe | 26. Tajeruo |
| 20 9. Emadamesheye | 27. Boy Mabamije |
| 10. Eyetan | 28. Sajini Mata |
| 11. Erhabo | 29. Josinyota |
| 12. Umigborhiemvo | 30. Ariboro |
| 13. Eshowan | 31. Obosheri |
| 14. Mukoro | 32. Sajini Yanughu |
| 15. Mebradu | 33. Manayerue |
| 16. Eghertive | 34. Owonoware |
| 17. Gbadudu | 35. Asama |
| 30 18. Gbamidobo | 36. Sajini |
| | 37. Sukuru |

(for themselves and on behalf
of the people of Elume) Defendants

The plaintiff seeks against the defendants a declaration that he is entitled to collect 4 tins of palm oil per person per season from the defendants and the defendants' people who enter the plaintiff's land known as "Idale" to collect palm fruits as per Order of the Western African Court of Appeal dated 15th day of November, 1954, incorporating Terms of Settlement arrived at between the

In the High Court of Justice
Western Region of Nigeria.
In the Warri Judicial Division

plaintiff and the 1st, 2nd, 3rd and 4th defendants for themselves and on behalf of the people of Elume.

(ii) The Plaintiff further claims from the 5th to the 37th defendants, 4 tins of palm oil and 14/- respectively, per person, per season, being seasonal tribute payable by them to the plaintiff for entering the plaintiff's land aforesaid and collecting palm fruits therefrom during the 1954 and 1955 season.

No.1

Writ of Summons.

Dated at Warri this 6th day of February, 1956.

10

(Sgd.) M. O. Kubeinje

6th February 1956 - continued

Plaintiff's address: C/o His Solicitor,
6, KHALIL ROAD,
WARRI.

Defendants' address: C/o Itabu,
Elume village,
Delta Province.

No.2

No. 2

Court Notes granting Plaintiff leave to sue in representative capacity.

COURT NOTES GRANTING PLAINTIFF LEAVE TO
SUE IN REPRESENTATIVE CAPACITY

20

20th February 1956.

In the High Court of Justice-
Western Region of Nigeria
In the High Court of the Warri Judicial Division
Holden at Warri
Before the Honourable Mr. Justice Thomas, Judge
Friday the 20th day of February, 1956

Suit No. W/15/1956

Between: Chief Okro Orukumakpor ... Plaintiff

- and -

Itebu and 36 others ... Defendants

30

Ex-parte Motion for an Order granting leave to the above-named plaintiff to institute this action in a representative capacity against the above-named defendants and for such further Order or other orders as this Honourable Court may deem fit.

Plaintiff present, represented by KUBEINJE.

Affidavit filed.

KUBEINJE heard. Order granted as prayed.

(Sgd.) Stephen Peter Thomas.

3.

No. 3

STATEMENT OF CLAIM

IN THE HIGH COURT OF JUSTICE
WESTERN REGION OF NIGERIA
IN THE WARRI JUDICIAL DIVISION

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

SUIT NO. W/15/56

No.3

BETWEEN:

Chief Okro Orukumakpor (for himself
and Ajomatan family of Gbimidaka) Plaintiff

Statement
of Claim.

8th May 1956.

10

- and -

Itebu and 36 others (for themselves
and on behalf of the people of
Elume) Defendants

Title of suit as set out in Writ
of Summons on page 1.

STATEMENT OF CLAIM

1. The Plaintiff is a farmer and resides both at Ijakpa and Gbimidaka.

20

2. Paternally the plaintiff belongs to the people of Elume but maternally he belongs to the people of IDALE land in the family of AJOMATAN, the plaintiff's ancestor.

3. The Plaintiff is now the head of the said Ajomatan family and he brings this action in a representative capacity being duly authorised by the said family to bring this action. The Defendants are sued for themselves and as representing the people of Elume.

30

4. The Defendants reside exclusively in Elume and are people of Elume and related paternally to the plaintiff who has no maternal relationship whatever with defendants.

5. The Land in question is called IDALE (which

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No.3

Statement
of Claim.

8th May 1956
- continued.

means "over-side" or "across the river") and the land is so called because it is separated from the defendants' communal land (ELUME) by a creek or river.

6. The said land IDALE, is sometimes called IDALE-AGWA and is shown edged yellow in the plan filed in court by the plaintiff.

7. The land IDALE, was founded by the plaintiff's people and passing in succession from progeny to progeny of the said AJOMATAN and till it is now in the care of the plaintiff who is now the head of the AJOMATAN family.

10

8. The plaintiff and the plaintiff's ancestors have exercised maximum acts of ownership over the said land at all times without let or hindrance by the defendants or anyone else and have put tenants thereon and received tributes from various persons to whom the plaintiff's people have granted leave and licence to use the said land.

9. The Plaintiff and Plaintiff's ancestors have brought several actions against others and defended several actions in respect of the said land. The Judgment and proceedings in all these actions shall be founded upon such as in the cases AJOMATAN versus YALAJU, ETE versus EWEREGHE, ITEBU versus OKRO ORUKUMAKPOR and CHIEF OKRO ORUKUMAKPOR versus ITEBU.

20

10. The Defendants live at ELUME and are not descendants of AJOMATAN and have no houses or farms on the land in dispute.

11. For several years the defendants have sought the permission of the plaintiff to use the said land, collected palm fruits therefrom and paying to the plaintiff rent or tribute at the rate of 4 tins of palm oil each person per year for the right to collect fruits from the land IDALE.

30

12. The Plaintiff has for several years demanded and received the sum of 14/- from any person including the people of ELUME, the defendants' people, who entered the said "IDALE" land for the first time to collect palm fruits.

40

13. About the year 1951, because the defendants were numerous in strength, the defendants wrongfully

entered IDALE land without paying the usual entrance fee of 14/- per person and also refused to pay the said rent or tribute of 4 tins of palm oil per person per year and wrongfully and without the consent of the plaintiff removed therefrom palm fruits and wrongfully planted various crops on the land.

14. In 1952, the defendants brought a speculative action against the plaintiff claiming title to IDALE land. The said action was finally dismissed.

10 15. In 1953, the plaintiff brought an action against the defendants claiming the sum of £600 for trespass aforesaid and also an injunction restraining the defendants, their servants and/or agents from entering the said land without plaintiff's consent.

16. This case was heard in the Warri Judicial Division of the Supreme Court and judgment was entered for the plaintiff for £20 in respect of the alleged trespass but no injunction was granted.

20 17. The Plaintiff being dissatisfied with the said Judgment appealed to the West African Court of Appeal on the 3rd day of December 1953.

30 18. The defendants realising their adverse position in this matter offered the plaintiff terms of settlement in which the defendants agreed to pay the usual entrance fee of 14/- per person and the customary tribute of 4 tins of palm oil per person per season and these terms were made an Order of the West African Court of Appeal and dated Monday the 15th day of November 1954. The Plaintiff shall rely on this Order at the hearing of the case.

19. The defendants have neglected or failed to pay the entrance fee of 14/- and the customary tribute of 4 tins palm oil per person per season despite the aforesaid order and repeated demands on them by the plaintiff.

40 20. The 5th to the 37th defendants still continue to collect palm fruits from the IDALE land without payments of the agreed 14/- entrance fee and 4 tins of palm fruits per person per season.

21. In March 1955, the plaintiff brought a criminal action against the 5th to the 37th defendants in the

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No.3

Statement
of Claim.

8th May 1956
- continued.

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No.3

Statement
of Claim.

8th May 1956
- continued.

Okpe No. 2 Native Court, for entry and collecting palm fruits from plaintiff palm bush without consent and knowledge of plaintiff, and the defendants were found guilty and fined. The Plaintiff shall also rely on the judgment and proceedings of this criminal action.

22. During the hearing of the aforementioned criminal charge against the 5th to the 37th defendants, the defendants pleaded that they, the defendants were liable to pay to the plaintiff only 4 tins of palm oil in all to the plaintiff per season. 10

23. Wherefore the plaintiff is completed to seek:- (sic)

(i) A declaration that he is entitled to collect 4 tins of palm oil per person per season from the defendants and defendants' people who enter the plaintiff's land known as "IDALE" to collect palm fruits. (ii) To claim from the 5th to the 37th defendants 4 tins palm oil and 14/- respectively per person per season, being seasonal tribute payable by the said 5th to the 37th defendants to the plaintiff for entering and collecting palm fruits from plaintiff's land aforesaid during the 1954 and 1955 season. 20

24. For filing and service (with one plan) on the defendants' SOLICITOR V.O. OVIE-WHISKEY ESQ. 8, Robert Road Warri, this 8th day of May 1956.

(Sgd.) M.O. Kubeinje

PLAINTIFF'S SOLICITOR.

No.4

Statement
of Defence

6th June 1956

No. 4

STATEMENT OF DEFENCE

30

[Title of suit as set out in Writ
of Summons on page 1.]

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

2. At the hearing of this suit, the defendants shall argue that the plaintiff is estopped from

this action in that the case is Res Judicata. The defendants will rely on suit No. West African Court of Appeal 130/1954, of the West African Court of Appeal and the Ruling on the Motion brought by the Plaintiff in respect of the same case in the West African Court of Appeal on the 19th of October, 1955.

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No. 4

Statement
of Defence

6th June 1956
- continued

10 3. As regards Paragraph 3 of the Statement of Claim, the defendants severally admit that the plaintiff is the head of the AJOMATAN family, and are not in a position to admit that he was duly authorised by the said family to bring this action.

4. In answer to Paragraph 4 of the Statement of Claim the defendants severally say that they do not reside exclusively in Elume but say that some of the said defendants reside at Elume and some reside at IDALE.

20 5. In further answer to paragraph 4 of the Statement of Claim, the defendants severally say that some of the members of the family whom the plaintiff represents in this action reside at Elume and some reside at IDALE, and that some of the defendants are maternal relatives of the Plaintiff.

6. The Defendants severally admit Paragraphs 5, 6, and 7 of the Statement of Claim.

30 7. In answer to paragraph 8 of the Statement of Claim, sometime in 1926, the Plaintiff's ancestors sued one Iyalaju for Declaration of title to the land "IDALE" and the Defendants aided the Plaintiffs financially in fighting the action. Judgment was given for the plaintiff's ancestors, and since then the defendants have been enjoying the fruits of the land together with the Plaintiffs.

8. In answer to paragraph 10 of the Statement of Claim, the Defendants say that some of the defendants live at Elume and that some of them are descendants of Ajomatan.

40 9. In answer to paragraph 11, the defendants severally deny that at no time before have they ever paid tribute to the Plaintiff at the rate of 4 tins of palm oil each person per year for the right to collect fruits from the land "IDALE".

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No. 4

Statement
of Defence

6th June 1956
- continued

10. In further answer to paragraph 11 of the Statement of Claim, the defendants severally say that all the defendants together pay 4 tins of Palm Oil per season as tribute to the plaintiff as per paragraph 5 of the Consent Judgment of the West African Court of Appeal in 1954.

11. The defendants admit paragraph 12 of the Statement of Claim.

12. The defendants severally deny paragraph 13 of the Statement of Claim and put the plaintiff to the strictest proof thereof. The defendants further say that there has never been a time that the defendants paid tribute of 4 tins of Palm Oil per person per year to the plaintiffs. 10

13. The defendants admit paragraph 15 of the Statement of Claim.

14. The defendants admit paragraph 16 of the Statement of Claim, but add that in this case the Learned Puisne Judge found as a fact that the Defendants (ELUME PEOPLE) have since the Provincial Court case in 1926 enjoyed the land with the plaintiff. 20

15. The defendants admit paragraph 17 of the Statement of Claim.

16. In answer to paragraph 18 of the Statement of Claim, the defendants say that they were never in any adverse position when the appeal was before the West African Court of Appeal. The defendants admit that there was a settlement between the plaintiff and the defendants which was made an order of the West African Court of Appeal on the 15th of November, 1954. The defendants say that paragraph 5 of the Settlement agreement arrived at between the plaintiff and the defendants which was made an order of the West African Court of Appeal is to the effect that the people of Elume, the defendants in this case "who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the appellant" (the plaintiff in this case). 30

Paragraph 6 of the same Settlement order states "Those people of Elume who are entering the said "IDALE" land for the first time will have to pay the usual entrance fee of 14/-". The defendants in 40

this case are no new entrants to the said "IDALE". The defendants and their ancestors have been collecting palm fruits on the land for well over 30 years. The defendants say further in answer to paragraph 18 of the Statement of Claim that there was never a time it was agreed between the defendants and plaintiff that a tribute of 4 tins of palm oil be paid per person per season by the Defendants.

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

10 17. In answer to paragraphs 19 and 20 of the Statement of Claim the defendants say that the 5th to the 37th defendants have been on the land for many years, and are no new entrants to it, and so not liable to pay the 14/- entrance fee, and there was never a time defendants agreed to pay 4 tins of palm oil per person per season.

No. 4

Statement
of Defence

6th June 1956
- continued

20 18. The defendants admit paragraph 21 but add that the then Acting District Officer, Urhobo Division quashed the Judgment of the Okpe No. 2 Native Court, and ordered that all fines and costs paid by Accused, be refunded. The Defendants shall rely on this judgment at the trial.

19. The defendants admit paragraph 22 of the Statement of Claim.

30 20. The defendants say that on the 19th of October, 1955, the Plaintiff brought a Motion in the West African Court of Appeal for an order amending the order of the said West African Court of Appeal, in civil Appeal No. 130 of 1954, so that paragraph 5 of the Settlement agreement of the plaintiff and defendants made into an order of the said Court which reads

"The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the appellants"

may be altered to read that the Defendants be made to agree to pay 4 tins of palm oil per person per season.

40 This Motion was dismissed with £5.5.0 costs against the plaintiff. The defendants shall rely on this Ruling at the trial.

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

21. Save as is hereinbefore expressly admitted, the defendants deny each and every allegation in the Statement of Claim appearing as if the same were set out herein and traversed seriatim.

22. The Defendants say that the claim is speculative, vexatious and misconceived, and so should be dismissed.

No.4

DATED at Warri, this 6th day of June, 1956.

Statement
of Defence

(Sgd.) V.E. Ovie-Whiskey
DEFENDANTS' SOLICITOR.

10

6th June 1956
- continued

FOR SERVICE ON: Plaintiff's Solicitor,
M.O. Kubeinje, Esq.,
Khalil Road, Warri.

No.5

No. 5

Court Notes

COURT NOTES

11th July 1956

Suit No. W/15/1956

Wednesday, 11th July, 1956.

Chief Okro Orukumakpor, etc.

Versus

Itebu and 36 others, etc.

20

KUBEINJE for Plaintiff.

OVIE-WHISKEY for Defendants.

COURT calls on defence counsel on the plea of Res Judicata.

OVIE-WHISKEY: I produce the following documents:

(1) Certified copy of judgment of the Supreme Court, Warri in Suit W/2/1953 delivered on 3rd December, 1953. No objection by plaintiff's counsel: Admitted and marked Exhibit "A".

(2) Certified copy of the terms of Settlement made an Order of the West African Court of Appeal

30

in Suit W/2/53. No objection by plaintiff's counsel. Admitted and marked Exhibit "B".

(3) Certified copy of the ruling by the West African Court of Appeal in W.A.C.A. 130/54: No objection by plaintiff's counsel. Admitted and marked Exhibit "C".

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No.5

Court Notes

11th July 1956
- continued

10

WHISKEY: I concede that paragraph 6 of the terms of settlement means that each palm fruits collector going on the land in dispute to collect palm fruits would pay 14/- and that it is not the group or community as a whole which will pay the 14/-.

COURT: How do you distinguish the language in paragraph 5 and paragraph 6?

WHISKEY: Paragraph 5 refers to those already on the land and paragraph 6 to new entrance.

COURT: But in neither paragraph is it stated that the tribute is to be paid by each person. Why then must each entrant pay 14/- and each palm collector not pay the tribute of 4 tins of palm oil?

20

WHISKEY: The whole group should pay the oil. I wish to deal with the defence that the action is misconceived, the parties being not at one, the terms of settlement were signed by mistake; the proper action would be one to set aside the Order of Agreement; Annual Practice, 1954;

COURT: There is no merit in the plea of Res Judicata raised nor in the defence that the action is misconceived.

The case will proceed to hearing.

30

Adjourned to August 15, 1956.

(Sgd.) Charles Onyeama
Acting Judge.

COURT NOTES

Suit No. W/15/1956

Wednesday, 15th August, 1956

In the
High Court of
Justice
Western Region
of Nigeria.
In the Warri
Judicial
Division

No.6

Court Notes

15th August 1956

Chief Okro Orukumakpor, etc.

vs.

Itebu and 36 others.

Parties present.

KUBEINJE for Plaintiff.

OVIE-WHISKEY for Defendants.

10

OVIE-WHISKEY: I wish to object to any evidence to explain the consent judgment; if the words are clear "it would not be within the jurisdiction of this Court to go into the meaning of paragraph 5".

Goss V. Nugent; (1833) 5 B & Ad. Shall V. Wilson.

RULING: In view of Whiskey's own different interpretations of the same expression in paragraph 5 and paragraph 6, it is strange that he should now suggest that the meaning of the words is clear.

KUBEINJE: I produce a plan of the area in dispute which has been agreed by the opposing party and us.

20

WHISKEY: No objection.

Plan admitted in evidence by consent and marked Exhibit "D".

No. 7

PLAINTIFF'S EVIDENCE - OKRO ORUKUMAKPOR

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

Plaintiff's
Evidence

No.7

Okro
Orukumakpor,
Plaintiff.

15th August
1956.

Examination-
in-chief.

10 Plaintiff sworn on cutlass states in Urhobo: My
name is OKRO ORUKUMAKPOR; residing Ugbemidaka, a
trader; I know the defendants; they are people of
Elume; my father is of Elume and my mother came
from Idale; a river separates Elume from Idale;
Idale land belongs to Ajumatan, and as the head of
Ajumata family I now collect tribute from the Elume
people on the land; I have brought the present
action by the authority of the Ajumata people; the
Ajumata family is not related to Elume people, the
Elume people come on Ajumata land to collect palm
fruits; I permitted them to come on the land on
payment of tribute; it was agreed that on the
first occasion each of the Elume people came on the
land he would pay 14/-; at the beginning of each
palm fruit collecting season each person was to pay
20 four tins of palm oil as tribute to me; anyone who
had no oil to pay would pay £2; the Elume people
used to arrange terms of tenancy individually and
not in groups;

Question: Did 5th to 37th defendants go on the
land during the season 1954/55?

WHISKEY: I object to the words "during 1954/55
season"

KUBEINJE: accepts the objection without wishing the
Court to rule.

30 Question: When did 5th to 37th defendants go on
the land?

Answer: Last year.

40 They have not paid the dues for last year; the
first four defendants did not themselves go on the
land but represent their people. I had a case
with Itebu; Exhibit "A"; the case went on appeal;
Exhibit "B"; when we were in Lagos Itebu came to me
and told me they were prepared to pay the usual
tribute; I agreed and terms of settlement were
drawn up by our lawyers and after we had signed the
settlement it was made an order of Court; we then

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

Plaintiff's
Evidence

No. 7

Okro
Orukumakpor,
Plaintiff.

15th August
1956.

Examination-
in-chief -
continued.

Cross-
Examination

returned home; after we had returned home the present defendants came on the land; they did not pay the tribute; I sued them in the Native Court; the case was tried; certified copy admitted in evidence and marked Exhibit "E"; the defendants have not up to now paid 14/- each or four tins of palm oil each;

XXD. BY WHISKEY: I stay at Elume; the term "Elume people" includes me and my family; I do not know Edu Efewu; I know this man; his name is Imetie; his name is not Idu; he is not related to me; he is not my first cousin; there are other Urhobo people collecting palm fruits from the area apart from the Elume people; all of us of Elume are related; the other Urhobo people pay 14/- each on first coming on the land and four tins of palm oil each every season; my great grandfather had a case with one Iyalaju in 1926 over this Idale land; the Elume people did not assist my great grandfather in the case; I do not know Eshowan; I know Umukoro of Elume; I cannot remember anyone called Gbamidobo; I do not know Asama; I know Sukuru of Elume; he entered on the land last year; Umukoro also came on the land last year; I do not recollect Imuwe; I know Ederuogware; the first four defendants did not collect palm fruits from the land; this tribute payable had been the tribute from time immemorial; I have personally collected tribute from tenants; I collected tributes about five years from Elume people; since litigation started the Elume people stopped paying tribute; after the Order of the West African Court of Appeal some Elume people started paying again; Shemuya was one of the Elume people who paid rent to me; Osiokoro also paid; similarly Biokoro; Ataeme, Sajini, Bank, Kokifo, Etetuwe; they all paid before the cases; about 30 Elume people paid before the cases started; I know Sajini personally; I have known Umukoro a long

10

20

30

time; he makes his living by collecting palm fruits from Elume; I did not give receipts for rents collected; I went on appeal from the Supreme Court as I was not satisfied with the damages awarded; I moved the West African Court of Appeal because the consent order did not explain if the rent and the palm oil were to be paid by each person or by the group; the defendants appealed to the District Officer from the Native Court judgment; the District Officer set aside the Native Court judgment and advised me to take civil action; certified copy of District Officer's judgment admitted and marked Exhibit "F"; not true it is usual for all the 14/- collected from each tenant is divided among Elume people; not true Elume people were to enjoy preferential treatment over the land; the present defendants are descended from Iyalaju with whom we had the case; Elume people are not treated any different from other people; the judge in 1953 did not advise me to settle with the Elume people.

RE-X: Nil.

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

Plaintiff's
Evidence

No.7

Okro
Orukumakpor,
Plaintiff.

15th August
1956.

Cross-
Examination -
continued

No. 8

IKORO AKPOIGBE

No.8

Ikoro
Akpoigbe.

15th August
1956.

Examination-
in-chief.

FIRST WITNESS sworn on matchet states in Urhobo: My name is IKORO AKPOIGBE: residing Edegbode village; Elume; I know the plaintiff; I collect palm fruits from his land; the land is Idale; I paid 14/- before I was admitted a tenant and four tins of palm oil each season; I am not the only Elume man paying in this way; I know Afolaju; he is of Amafe near Adagbrasa; he is an Elume man; I have been on the land about 30 years; I have always paid four tins of palm oil each season; I remember Okro had a case with Itebu; I did not join with Itebu to fight the case but continued paying the usual tribute;

In the High Court of Justice Western Region of Nigeria In the Warri Judicial Division

Plaintiff's Evidence

No.8

Ikoro Akpoigbe.

15th August 1956.

Cross-Examination

No.9

Akpoforure.

15th August 1956.

Examination-in-chief.

Cross-Examination

Re-Examination

XXD. BY WHISKEY: I am not related to the plaintiff; the plaintiff and I live in Idale; Itebu is an Elume man; he does not collect palm fruits.

The witness is warned that if he does not desist from making fun of the proceedings he is liable to summary punishment for contempt;

WITNESS CONTINUES: I did not see Awieni collecting palm fruits on the land; Mukoro collects palm fruits from the land; he came on the land after the first case between Okro and the Elume people; I know Ideghele; I know Oriboro; the following collect palm nuts in the same area with me; Aghomitse and Olukoro; Aghomitse has newly come into the land; he came about a year ago; the rent paid is not shared between Ajomata family and Elume people.

RE-X: Nil.

10

No. 9

AKPOFORURE

SECOND WITNESS sworn on Bible states in Urhobo: My name is AKPOFORURE; residing Jakpa; a palm fruit collector; I know the plaintiff; I collect palm fruit on his land; he is related to me; I belong to the Ajumota family; the plaintiff is in charge of our land and collects tribute from tenants on the land; we placed him in charge of the land and authorised him to bring this action; the defendants are not descendants of Ajomata.

XXD. BY WHISKEY: None of the defendants had been collecting palm fruits from Idale land.

RE-X: I know the defendants; I said they had never collected palm fruits from the land; I would know if they collected palm fruits from the land;

Question: How would you know?

Objection: Does not arise from cross-examination.

Upheld.

20

30

CASE FOR PLAINTIFF

No. 10

DEFENDANTS' EVIDENCE - ITEBU

WHISKEY CALLS:

10 FIRST DEFENDANT: sworn on matchet states in Urhobo: My name is ITEBU; residing Elume; a farmer; I am the elder of the village; the plaintiff and I had a case in Court in 1953; the case was appealed to West African Court of Appeal in Lagos; I went to Lagos; we settled the case and a consent order was entered; we agreed that each person going on the land for the first time was to pay 14/- to the plaintiff; all the money collected was to be shared between the Elume people and the plaintiff; at the opening of the season, each stranger pays four tins of oil; the palm fruits collectors from Elume do not pay any palm oil at all, but allow four tins of oil out of the total oil collected to the plaintiff and the rest is shared between the Elume villages; this is what we agreed on in Lagos which was embodied in the consent order; no Elume man is expected to pay 14/- rent; this is paid by the strangers only; I know all the defendants; they are all natives of Elume; they collect palm fruits from Idale land; they have been doing so since a long time; none of them commenced collecting palm fruits only a year or two ago.

20 XXD. BY KUBEINJE: The plaintiff collects the palm oil and the rents are paid to him for all of us; Idale is not the exclusive property of the plaintiff's family Ajomata; we are also joint owners of it; we did not agree Elume people were to pay 4 tins of oil when they entered the land; we did not agree Elume people were to pay 14/- but we meant the strangers were to pay the rent.

RE-X: Nil.

No. 11

DOMINIC PEMU

FIRST WITNESS: sworn on Bible states in English: My name is DOMINIC PEMU; residing Adagbrasa; a trader; I was born in Elume; I have been living

In the High Court of Justice Western Region of Nigeria In the Warri Judicial Division

Defendants' Evidence

No. 10

Itebu.

15th August 1956.

Examination-in-chief

Cross-Examination

No. 11

Dominic Pemu.

15th August 1956.

Examination-in-chief

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

Defendants'
Evidence

No. 11

Dominic Pemu.

15th August
1956.

Examination-
in-chief -
continued.

Cross-
Examination

there since 1940; I knew of the case between Chief Okro and his people had against Elume people; the matter was taken on appeal to Lagos; I was in Lagos when the settlement was reached; we agreed that Elume people who had not been on the land before and who are not members of our group were to pay 14/- to Okro and the community; we agreed that the group of Elume people entering the land was to pay four tins of oil; there is only one group; 14/- is paid by each person but the oil by the group; I know the defendants; all of the defendants collect palm fruits from Idale land except the first to the fourth defendants; none of them commenced collecting palm fruits only a year or two ago.

10

XXD. BY KUBEINJE: I settled in Adagbrasa in Elume in 1940; we are close to Idale; I do not collect palm fruits; Idale land belongs to Ajomata family; I was not a party to Exhibit "B".

RE-X: Nil.

No. 12

Mukoro
Enyerughe.

15th August
1956.

Examination-
in-chief

No. 12

MUKORO ENYERUGHE

FOURTEENTH DEFENDANT: sworn on matchet states in Urhobo; my name is MUKORO ENYERUGHE; residing Okwuke Elume; a palm fruit collector; I have been collecting palm fruits in Elume from my childhood;

(Witness aged about 40 years.)

the other defendants collect palm fruits from Idale; they all commenced palm fruits on that land a long time ago;

Cross-
Examination

XXD. BY KUBEINJE: I disagree plaintiff is in charge of the land; the land belongs to Elume people; the 14/- is payable by strangers but not by Elume people; I have never paid 14/- nor has any of the other

20

30

defendants paid 14/- to go on the land; Okro did not demand 14/- from me; I was one of those prosecuted in the Native Court; I did not pay any tins of oil.

RE-X: Nil.

CASE FOR DEFENCE

No. 13

COURT NOTES

10 WHISKEY ADDRESSES: Paragraph 6 of Exhibit "B "; 2nd part of claim; 5th to 37th defendants have been on the land and are not new entrants; not liable to pay 14/-; plaintiff did not know some of the defendants; paragraph 5 sets out the privilege accorded to defendants who used to share the rents.

KUBEINJE IN REPLY: Evidence of 1st defendant; four tins per person intended;

C.A.V.

To August 16, 1956.

(Sgd.) Charles Onyeama
Acting Judge
August 15, 1956.

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

Defendants'
Evidence

No. 12

Mukoro
Enyerughe.

15th August
1956.

Cross-
Examination
- continued

No. 13

Court Notes

15th August
1956.

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

No. 14

JUDGMENT

This case essentially turns on the intention of the parties as expressed in the Terms of Settlement drawn up by their counsel and made an order of the West African Court of Appeal - Exhibit "B".

No. 14

Judgment.

16th August
1956.

The facts are not very much in dispute. It cannot now be denied that the land in question is the property of the plaintiff's family. This fact was decided in Suit W/2/1953 by the Supreme Court sitting at Warri, and was expressly made a term in the settlement - Exhibit "B".

10

It is admitted that the fifth to the thirty-seventh defendants have been, and still are, collecting palm fruits from the land. The first to the fourth defendants were parties to the Suit W/2/1953 and to the terms of settlement and, then, represented their people of Elume.

On these facts, the plaintiff "for himself and Ajomatan family of Gbimidaka" seeks against the defendants "for themselves and on behalf of the people of Elume" a declaration that he is entitled to collect 4 tins of palm oil per person per season from the defendants and the defendants' people who enter the plaintiff's land known as "Idale" to collect palm fruits.

20

The terms of which the defendants may enter on Idale land to collect palm fruits are set out in clauses 5 and 6 of Exhibit "B".

The trouble started because both sides interpreted clause 5 of Exhibit "B" in two different ways. That clause reads:

30

"The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the Appellants."

The respondents were the first four defendants in the present suit representing the Elume people, and the appellants are the plaintiff.

The plaintiff contends that the clause means

that each Elume person who continues to enter on that land to collect palm fruits will pay 4 tins of oil while the defendants contend in their pleadings, but not in evidence, that all the defendants together pay 4 tins of oil. The clause in question is susceptible of both meanings and is therefore ambiguous.

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

10 I am however satisfied that the plaintiff's interpretation ought to be upheld for the reason that it is supported by the evidence before me. The plaintiff gave evidence and called witnesses who all stated it was customary for each tenant to pay 4 tins of oil a season. The defendants who gave evidence deny their liability to pay 4 tins of oil notwithstanding clause 5, and their witness said it was the community who would pay the oil.

No. 14

Judgment.

16th August
1956 -
continued

20 The whole of Exhibit "B", particularly paragraph 5, implies that the defendants as a community will be permitted at all times to enter "upon the said land to farm and during the season when the bush is declared open to collect palm fruits on payment of customary tribute."

Paragraph 5 states that it is those people "who continue to enter into the land to collect palm fruits" who will pay the tribute.

30 From this it appears to me that although the community as a whole is at liberty to enter into the land to farm and during the season to collect palm fruits, yet only those who actually enter into the land will pay tribute and not the community as a whole.

From the defendants' own evidence it appears that "strangers" entering on the land pay 4 tins of oil each. No distinction was drawn in the terms of settlement between the defendants and other people.

For the foregoing reasons, I hold that the plaintiff is entitled to the declaration sought.

40 The claim regarding the 14/- "per person per season being seasonal tribute" is not in accordance with Exhibit "B". This sum is payable by persons entering on the land for the first time as "entrance fee" and not as "seasonal tribute." I am satisfied

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

No. 14

Judgment.

16th August
1956 -
continued

on the evidence that none of the fifth to the thirty-seventh defendants is a "person entering on the said Idale land for the first time". The claim regarding the tribute of 4 tins of oil from each of those defendants for the 1954 and 1955 season has been clearly established.

There will therefore be judgment for the plaintiff against each of the fifth to the thirty-seventh defendants named on the writ for 4 tins of palm oil being tribute for the 1954/55 season, and it is hereby declared against the defendants that the plaintiff as representing the Ajomatan family is entitled to collect 4 tins of palm oil each season from each person entering on Idale Land to collect palm fruits.

10

I would add that from the evidence which I accept a tin of oil is a tin containing four gallons of oil.

Costs to the plaintiff is assessed at £42.

(Sgd.) Charles Onyeama
Acting Judge

20

CERTIFIED TRUE COPIES:

REGISTRAR GRADE I
HIGH COURT, WARRI.

No. 15

ENROLMENT OF JUDGMENT

In the High Court of Justice - Western Region
of Nigeria
In the High Court of the Warri Judicial Division
Holden at Warri
Before the Honourable Mr. Justice Onyeama,
Acting Judge.
Saturday, the 18th day of August, 1956

In the
High Court of
Justice
Western Region
of Nigeria
In the Warri
Judicial
Division

No. 15

Enrolment of
Judgment.

18th August
1956.

10

Suit No. W/15/1956

Between: Chief Okro Orukumakpor
for himself and Ajamatan
family of Gbimidaka ... Plaintiff
- and -
Itebu & 36 others ... Defendants

UPON the following claim of the plaintiff
against the defendants to wit:

20

CLAIM: Declaration that he is entitled to col-
lect 4 tins of oil from each of the
defendants per season as per writ.

COMING up for hearing in the presence of the
parties, M.O. Kubeinje, Esq., of Counsel for plain-
tiff and V.E. Ovie-Whiskey, Esq., of Counsel for
Defendants, the Court after hearing both parties
and their Counsel ordered as follows:

30

"Judgment for the plaintiff against each of the
"fifth to thirtyseventh defendants named on the
"writ for 4 tins of palm oil being tribute for
"the 1954/55 season, and it is hereby declared
"against the defendants that the plaintiff as
"representing the Ajomatan family is entitled
"to collect 4 tins of palm oil each season from
"each of the persons entering on Idale land to
"collect palm fruits. The claim regarding the
"14/- "per person per season" is not in accord-
"ance with Exhibit "B" - Dismissed."

DATED at Warri this 18th day of August, 1956.

(Sgd.) Charles Onyeama
ACTING JUDGE.

In the
Federal Supreme
Court of
Nigeria

No. 16

NOTICE OF APPEAL

IN THE FEDERAL SUPREME COURT

No. 16
Notice of
Appeal.
31st August
1956.

Between: Chief Okro Orukumakpor
(For himself and Ajamatan
family of Gbimidaka) ... Plaintiff

- versus -

Itebu and 36 Others
(For themselves and on behalf
of the people of Elume) ... Defendants 10

Title of suit as set out in Writ
of Summons on page 1.

TAKE NOTICE that the Defendants being dissatisfied with the decision of the Warri High Court contained in the Judgment of Mr. Charles Onyeama, Acting Judge dated the 16th day of August, 1956, do hereby appeal to the Federal Supreme Court upon the grounds set out in paragraph 3, and will at the hearing of the appeal seek the relief set out in paragraph 4.

20

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

2. Part of the decision of the Lower Court complained of: Whole decision.

3. Grounds of Appeal.

(1) Misdirection: That the learned trial Judge misdirected himself on a point of law by holding that

"The clause in question is susceptible of both meanings and is therefore ambiguous" 30

"I am however satisfied that the Plaintiff's interpretation ought to be upheld for the reason that it is supported by the evidence before me."

(ii) Error in Law: The learned trial judge erred in law when he said "The claim regarding the tribute of 4 tins of oil from each of those defendants for the 1954 and 1955 season has been clearly established" in that by so holding the learned trial judge was interpreting customary tribute as meaning seasonal tribute, which is contrary to the terms of settlement.

10 (iii) That the learned trial judge was wrong in law in his interpretations of clause 5 of the terms of settlement arrived at between the Plaintiff and the Defendants.

(iv) The judgment is against the weight of evidence.

4. Relief sought from the Federal Supreme Court. That the said decision be set aside and judgment entered for the Defendants.

5. Persons directly effected by the appeal.

	<u>Names</u>	<u>Addresses</u>
20	Chief Okro Orukumakpor for himself and Ajamatan family of Gbimidaka	Elume Village Warri Division also c/o His Solicitor Mr. Kubeinje of Warri (Plaintiff)
	1. Itebu	
	2. Ideghele	
	3. Eghemitse	
	4. Awieni	
	5. Ederuegware	
	6. Atsemijure	
	7. Amarhave	
30	8. Omiwe	
	9. Emedamesheye	
	10. Eyetan	
	11. Erhabo	
	12. Umighorhiemre	
	13. Eshewan	
	14. Mukoro	
	15. Mebradu	
	16. Egheretive	
	17. Gbadudu	
40	18. Gbamidebo	
	19. Dodoyo	
	20. Boy Damitie	
	21. Enienewre	

In the
Federal Supreme
Court of
Nigeria

No. 16

Notice of
Appeal.

31st August
1956 -
continued

In the
Federal Supreme
Court of
Nigeria

No. 16

Notice of
Appeal.

31st August
1956 -
continued

Names

Addresses

22. Damigeru
23. Ovwie
24. Itsare
25. Oyibo
26. Tajeruo
27. Boy Mabamije
28. Sajini Mata
29. Jesinyeta
30. Atiboro
31. Onosheri
32. Sajini Yamughu
33. Mnayerue
34. Owonowere
35. Asama
36. Sajini
37. Sakuru

(for themselves and on behalf of the
people of Elume)

10

DATED at Warri this 31st day of August, 1956.

20

(Sgd.) Webber G. Egbe
Solicitor for the Appellants.

No. 17

Court Notes of
Arguments.

17th February
1958.

No. 17

COURT NOTES OF ARGUMENTS

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE 17th DAY OF FEBRUARY, 1958

BEFORE THEIR LORDSHIPS

M.C.E.C.NAGEON DE LESTANG, AG. FEDERAL CHIEF JUSTICE
MYLES JOHN ABBOTT, FEDERAL JUSTICE
SIR JAMES HENLEY COUSSEY, AG. FEDERAL JUSTICE

30

FSC. 46/1957.

Itebu & 36 others Appellants

v.

Chief Okro Orukumakpor ... Respondent

W.G. EGBE for appellants

M.O. KUBENJE for Respondent.

EGBE: Agreed value of the case is over £50.

Order of interpretation of clause 5 of terms of settlement, p.39. Submits clause 5 is clear and contains no ambiguity whatsoever. Must be given its ordinary gramatical meaning. No evidence may be had to explain or vary it.

In the
Federal Supreme
Court of
Nigeria

No. 17

Court Notes of
Arguments.

17th February
1958 -
continued

Assuming ambiguous the ambiguity could not be restored by evidence. Patent ambiguity not latent. 10 Halsbury 1st Ed. p.453 para. 796. (S.132 Cap.63).

10 The appellants helped the Respondent in winning their case over that land. Could not have been treated the same as strangers P.37-38 - Judge found that appellants helped and enjoyed the land.

Not intended till every farmer shall pay the tribute because when respondent went before Native Court he did not so claim but claimed the initial judgment for entering.

Four tins of oil for tribute was not in issue.

Tributes are always paid by head of family.

Bench's cardinal Rules of Legal Interpretation p.77.

20 Surrounding circumstances are in favour of appellants.

KUBENJI: Clause 5 is ambiguous. Does not give effect to the intention of the parties because soon afterwards respondent moved the court to clarify it. Clause 3 important. Judge accepted evidence given in favour of respondent in regard to the normal tribute payable. I ask for appeal to be dismissed.

EGBE: Nothing to add.

C. A. V.

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

In the
Federal Supreme
Court of
Nigeria

No. 18

JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA

No. 18

HOLDEN AT LAGOS

Judgment.

MONDAY THE 3rd DAY OF MARCH, 1958

3rd March 1958

BEFORE THEIR LORDSHIPS

M.C. NAGEON DE LESTANG

AG. CHIEF JUSTICE OF THE
FEDERATION

JOHN MYLES ABBOTT
SIR HENLEY COUSSEY

FEDERAL JUSTICE
AG. FEDERAL JUSTICE

10

F.S.C. 46/1957.

CHIEF OKRO ORUKUMAKPOR Plaintiff/Respondent

- versus -

ITEBU AND 36 OTHERS Defendants/Appellants

J U D G M E N T

NAGEON DE LESTANG, AG.F.C.J. This appeal turns on the true construction of a clause in a judgment by consent. In 1953 the respondents sued the first four appellants, as representing the people of Elume, and obtained judgment against them for £20 as damages for trespass on a piece of land known as Idale. Although partially successful in that action the respondents appealed but during the hearing of the appeal the parties settled their differences and the following terms of settlement reduced into writing were filed and made an Order of Court:-

" Supreme Court No. W/2/1953
W.A.C.A. No. 130 of 1954.

Between:

1. Chief Okro Orukumakpor for
himself and Ajomatan family
of Gbimidaka Appellant

30

and

1. Itebu (m) 2. Idegbele (m)
3. Eghomitse (m) 4. Awieni (m)
for themselves and on behalf of
the people of Elume ... Defendants

"

TERMS OF SETTLEMENT

In the
Federal Supreme
Court of
Nigeria

No. 18

Judgment.

3rd March 1958

- continued

1. The parties to the above appeal agree to the undermentioned terms of settlement and pray that they be made an Order of this Honourable Court.

2. The Respondents agree that the Appellants are the owners of the land known as "IDALE" the subject matter of this appeal.

10

3. The Appellants agree to permit the Respondents and their people of ELUME to enter at all times upon the said land to farm and during the season when the bush is declared open to collect palm fruits on payment of the customary tribute.

4. The Appellants further agree not to withhold their consent unreasonably or to unreasonably delay the opening of the said bush.

20

5. The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the Appellants.

6. Those people of ELUME who are entering the said "IDALE" land for the first time will have to pay the usual entrance fee of 14/-.

7. The judgment of the lower Court is hereby confirmed.

8. Each party bears his own costs in the appeal.

30

9. The Appellants agree that the said tribute of 4 tins hereby reserved will not be subject to any further increase in the future.

Dated at Lagos this 11th of November, 1954.

(Sgd.) James E. David
Appellants' Solicitor.

(Sgd.) O. Ajose-Adeogun
Respondents' Solicitor,
pp. Thomas, Williams & Kayode
Solicitors.

The attached terms of settlement are hereby made an order of this Court.

15.11.54

(Sgd.) S. Foster Sutton, P. "

In the
Federal Supreme
Court of
Nigeria

No. 18

Judgment.

3rd March 1958
- continued

In the present action the respondent (a) sought a declaration that he is entitled to collect 4 tins of palm oil from each of the appellants people by virtue of clause 5 of the Terms of settlement, and (b) claimed from the 5th to the 37th appellants 4 tins of palm oil and 14/- respectively per person in respect of each of the 1954 and 1955 seasons.

The learned trial Judge being of opinion that clause 5 of the Settlement was ambiguous and after hearing evidence for the purpose of resolving the ambiguity made the declaration sought in (a). As regards claim (b) he held that as the appellants concerned had entered the land before the settlement they were not liable to the "entrance fee" of 14/-. He pronounced judgment, however, against each of them for the 4 tins of oil claimed in respect of the 1954 and 1955 seasons. It is against those matters that the appellants appeal.

10

It is a well settled rule of evidence that where a judgment or any contract for that matter has been reduced to the form of a document no oral evidence may be given to contradict, alter, add to or vary the terms of such document. It is only where the document is ambiguous that extrinsic evidence of a kind may be given to resolve the ambiguity and that, only when the ambiguity is such as to render the document unmeaning. In the latter case no evidence can be given to show what the author of the document intended to say (see sections 131 and 132 Evidence Ordinance Cap. 63).

20

30

The real question for decision here, therefore, is whether there is any ambiguity in clause 5 of the Settlement. In my view there is none, clause 5 means exactly what it says, namely, that the respondents people (now appellants) must pay 4 tins of oil. This I understand to mean that the respondents people must make a collective payment of 4 tins of oil to the appellants (now respondents) per season. It does not follow that because under clause 6 the payment of 14/- is to be made by each new entrant, the tribute under clause 5 is also to be paid by each such person. Each clause deals with a different aspect albeit of the same subject matter and as the language used in both is clear there is, in my view, no room for speculation as to what the parties may or may not have intended. Nevertheless, a construction which would have the

40

effect of treating the appellants in the same way as strangers does not commend itself to me. It seems clear that the Elume people have in the past helped the respondents people financially successfully to fight a case in regard to Idale land and have since been sharing in the fruits of that land. That fact surely entitled them to special consideration and at least to be treated more favourably than strangers.

In the
Federal Supreme
Court of
Nigeria

No. 18

Judgment.

3rd March 1958
- continued

10 In my view the learned trial Judge erred in hearing extrinsic evidence as to the intention of the parties to the settlement since its meaning is clear and unambiguous.

I would accordingly allow this appeal, set aside the judgment of the Court below and enter judgment for the appellants with costs in the Court below to be taxed and in this Court assessed at £52. 0. 0.

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

I concur (Sgd.) M.J. Abbott, F.J.

I concur (Sgd.) J. Henley Coussey,
Ag. F.J.

Mr. W.G. Egbe for the Appellants.

Mr. M.O. Kubeinje for the Respondent.

In the
Federal Supreme
Court of
Nigeria

No. 19

ORDER ON JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

No. 19

Order on
Judgment.

Suit No. W/15/1956
F.S.C. 46/1957.

3rd March 1958

On appeal from the judgment
of the High Court of the
Warri Judicial Division.

(L.S.)

Between:

10

Itebu and 36 others ... Appellants

- and -

Chief Okro Orukumakpor ... Respondent

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

Monday the 3rd day of March, 1958.

UPON READING the Record of Appeal herein and
after hearing Mr. W.G. Egbe of counsel for the Appellants
and Mr. M.O. Kubeinje of counsel for the Respondent:

20

IT IS ORDERED that this appeal be allowed,
that the judgment of the Court below be set aside
and judgment entered for the Appellants:

AND that the Respondent do pay to the Appellants
costs of the appeal assessed at £52. 0; Od.
and costs in the Court below to be taxed.

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

No. 20

ORDER GRANTING FINAL LEAVE TO
APPEAL TO PRIVY COUNCIL

In the
Federal Supreme
Court of
Nigeria

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

No. 20

Suit No. W/15/1956
F.S.C. 46/1957.

Order granting
final leave to
Appeal to
Privy Council.

10th November
1958.

10 Application for an order for
final leave to appeal to Her
Majesty's Privy Council.

Between:

(L.S.)

Chief Okro Orukumakpor ... Applicant

- and -

Itebu and 36 others ... Respondents

Monday the 10th day of November, 1958

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

20 UPON READING the application herein and the
affidavit of the Applicant sworn to on the 28th
day of August, 1958, and after hearing Mr. M.E.R.
Okorodudu of counsel for the Applicant and Mr. W.G.
Egbe of counsel for the Respondents:

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

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

Exhibits

E X H I B I T S

"A"

"A"

Judgment re:
Chief Okro
Orukumakpor
vs. Itebu &
ors.

JUDGMENT RE: CHIEF OKRO ORUKUMAKPOR
VS. ITEBU & ORS.

3rd December
1953.

In the Supreme Court of Nigeria
In the Supreme Court of the Warri Judicial Division
Holden at Warri
Before the Honourable Mr. Justice Louis
Nwachukwu Mbanefo, Puisne Judge
Thursday the 3rd day of December, 1953.

10

Suit No. W/2/1953

Between: Chief Okro Orukumakpor (m) }
for himself and Ajomatan }
family of Gbimidama } .. Plaintiff

- and -

1. Itebu (m) }
2. Ideghele (m) }
3. Eghomitse (m) }
4. Awieni (m) for themselves }
and on behalf of the people }
of Elume. } Defendants

20

Okorodudu for the plaintiff.
Nelson-Williams (Senior) for the defendants.

J U D G M E N T

In this case the plaintiff claims from the
defendants £600 damages for trespass on Idale land
and asks for an injunction to restrain them from
further entering on the land.

The plaintiff sues as representing the Ajomatan
family and the defendants are sued and they defend
for themselves and on behalf of Elume people. The
land in dispute was the subject matter of an action
in the Provincial Court of Warri in 1926 in which
Iguereghe Ajomatan of Gbimidaka sued one Yalaju of
Ituru for a declaration of title to "Idale" land
and injunction. At the hearing of that case a
survey plan No. 2399 of July 1927 was filed and
used. A copy of that plan was filed in the present
action and the land therein shown and described is
the land the plaintiff claims.

30

40

As the plaintiff relies on this Provincial

10 Court judgment for his case perhaps it will be best to deal with it now. The full record of proceedings is not available having been destroyed by fire when the Provincial Office was burnt down. But copies of the judgments of the Provincial Court (Exhibit P2B) and of the Supreme Court (Exhibit P2) and Full Court (Exhibit P2A) on appeal were by consent received in evidence. In all the three
 20 copies of judgments the parties were described as "Iguereghe Ajomatan versus Yalaju" which appears to suggest that the parties were contesting in their personal capacities. The Provincial Court judgment was not long. It finds that "Ajomatan was the original owner of this land and that he and his descendants have controlled and owned this land, further that Defendants are entitled to use the land as descendants of Igonai and Umojakpe but must pay tribute according to Native Laws and customs to the present Head of the Ajomatan family or the man
 30 appointed by him to be in charge of the land." The judgment of the Provincial Court was upheld by the Supreme Court and subsequently by the Full Court on appeal.

30 The plaintiff says that Iguereghe was the head of Ajomatan family and was claiming on behalf of that family and that Yalaju represented the defendants implying by that that the defendants were the descendants of Igonai and Emajakpe referred to in the judgment of the Provincial Court. The defendants on the other hand say that Ituru was inhabited partly by people of Okuobu and partly by Elume and that Yalaju did not represent them. On the contrary they assert that Iguereghe was the spokesman for Elume and was in consequence of his position authorised to sue on behalf of Elume. Both parties suggest by their pleadings and evidence that Iguereghe and Yalaju contested the action in a representative capacity and one of the questions that fails for decision is did Iguereghe represent the Elume
 40 as a whole or only the Ajomatan family? And with that point is the ancillary question, namely, were the defendants represented by Yalaju or not?

In support of his assertion the plaintiff relied on his own evidence and on the copies of judgments referred to above. He called no witnesses. He said that since that case the Ajomatan family have been enjoying the fruits of the land exclusively, and that native of Elume paid 14/- for

Exhibits

"A"

Judgment re:
 Chief Okro
 Orukumakpor
 va. Itebu &
 ors.

3rd December
 1953 -
 continued

Exhibits

"A"

Judgment re:
Chief Okro
Orukumakpor
vs. Itebu &
ors.

the right to enter the bush and an annual tribute of 4 tins of oil each person to the Ajomatan family for the right to collect palm fruits. They could not enter until after the plaintiff had declared the bush open for the season. The plaintiff himself is a native of Elume - his mother is from the Ajomatan family and his father from Elume. He represents the Ajomatan family by virtue of the fact that his mother was from that family.

3rd December
1953 -
continued

The defendants on the other hand called four witnesses besides the 1st defendant who gave evidence on their behalf. The substance of their evidence is that Iguereghe was the spokesman for Elume and was authorised by the whole of Elume to represent them in the action but that unknown to them he claimed the land in the name of Ajomatan's family, that Ajomatan was a native of Elume and was in occupation of the land as such and the rents and/or tributes collected from the land is shared by all the seventeen villages of Elume equally after paying £3 to the caretaker. Iguereghe was the caretaker in his life time and after him the plaintiff was appointed. The plaintiff as such caretaker puts tenants on the land and collects the rent but he accounts for the rents collected to the whole community. Why only members of Ajomatan's family have been caretakers of the land is not explained but the reason is not far to seek. The defendants say that after Iguereghe died the plaintiff shared the rents with them for two years and then stopped. When they asked him about it he said he had used the money in building his house at Sapele and that he would pay later. When he failed to pay they sued him in the Okpe No. 2 Court (Exhibit P3). The court gave judgment in their favour. The plaintiff appealed to the Western Urhobo Appeal Court and lost. On further appeal to the Magistrate's Court the judgment of the appeal court was set aside - Exhibits P3, P3A and P3B. In that case the 1st defendant representing the people of Elume sued the plaintiff claiming title to Idale Agwa (admitted to be the same as Idale land in dispute here), refund of 18 casks of oil collected from tenants and Injunction. In setting aside the judgments of the Okpe Native Court and Urhobo Federal Court of Appeal and dismissing the 1st defendant's claim the Magistrate said: "On the weight of evidence the Respondent's suit should have been refused on the finding of facts by both courts that the land in dispute was

10

20

30

40

owned by the common ancestors of the parties and that they have all been in common occupation and enjoyment thereof up to time of these proceedings."

Exhibits

"A"

The defendants also allege that they contributed to the cost of making the plan used in the Provincial Court case which allegation the plaintiff denies.

Judgment re:
Chief Okro
Orukumakpor
vs. Itebu &
ors.

3rd December
1953 -
continued

10 After a careful examination of the evidence on both sides I am of the opinion based on the finding of fact by the Provincial court and do find as a fact that the land in dispute was founded by Ajomatan and that title in it is and has been in the members of that family. I am also satisfied that Yalaju represented the family of Igonai and Emujakpe in the Provincial Court case and that during the case Iguereghe appealed to and received assistance from Elume people but I am not prepared to go as far as the defendants in stating that all Elume helped. And I find that the assistance so given
20 was not meant to and did not vest in those who assisted or in the whole of Elume jointly with Ajomatan family title to the land in dispute. Such arrangements are not uncommon among native communities especially when a small unit of a larger family is involved in an expensive land case with a powerful neighbour. Members of the larger family are invariably appealed to for assistance which they often give for a consideration and the usual consideration is the right to partake of the use and
30 enjoyment of the land if they succeed. Such arrangements are invariably oral and often lead to further litigation in the future. I am not convinced that that is not one of such arrangements. Indeed I am inclined to the view that it is, in view of the evidence of the defendants that they have enjoyed the land with the Ajomatan family. The big questions which will remain unsolved for some time at least are who are the people so entitled and what should they receive? In order to save further litigation
40 in the future the parties may be well advised to reach a satisfactory settlement on these points. There is not sufficient evidence before me on which I could determine them.

I am satisfied that in order to assert a title to the land the defendants have in disregard of the rights of the Ajomatan family to open and close the bush for the season entered thereon and cut palm

Exhibits

"A"

Judgment re:
Chief Okro
Orukumakpor
vs. Itebu &
ors.

3rd December
1953 -
continued

fruits and for that they are liable for damages. In assessing the damages I shall bear in mind my finding that Elume people have enjoyed the land with the Ajomatan family since the Provincial Court case.

In short my findings are that Idale land belongs to the Ajomatan family, that other Elume people have since the Provincial Court case enjoyed a share of the rents of the land by virtue of the assistance they received during that case, and that the defendants by arrogating title to themselves and entering the bush in disregard of the right of the Ajomatan family to open and close the bush are liable in trespass, for damages which I assess at £20 with costs assessed at 25 guineas.

10

For the guidance of the parties I strongly recommend that they should get together and reach a settlement on the division of the fruits of the land as I am satisfied that the Ajomatan family have not enjoyed the land alone since the Provincial Court case. Failing agreement they should refer the matter to arbitration by an impartial body preferably the Resident of the Delta Province or some other officer appointed by him.

20

(Sgd.) L.N. Mbanefo

PUISNE JUDGE
3.12.53.

30 folios certified copy of Judgment
at 10d per folio = £1.5/- CR No. 107284 of 12/12/53.

(Sgd.) A.C.P. Abomeli
Cashier.

30

Certified true copy:

(Sgd.) A. Etim.
Registrar, Supreme Court, Warri.

"B"

Exhibits

TERMS OF SETTLEMENT DRAWN UP AND MADE AN ORDER
OF THE WEST AFRICAN COURT OF APPEAL

"B"

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

Terms of
Settlement
drawn up and
made an Order
of the West
African Court
of Appeal.

Supreme Court No. W/2/1953
W.A.C.A. No. 130 of 1954.

15th November
1954.

Between:

10

1. Chief Okro Orukumakpor for
himself and Ajomatan family
of Gbimidaka Appellant

- and -

1. Itebu (m) 2. Ideghele (m)
3. Eghomitse (m) 4. Awieni (m)
for themselves and on behalf of
the people of Elume Defendants

TERMS OF SETTLEMENT

- 20 1. The parties to the above appeal agree to the undermentioned terms of settlement and pray that they be made an Order of this Honourable Court.
- 2. The Respondents agree that the Appellants are the owners of the land known as "IDALE" the subject matter of this appeal.
- 3. The appellants agree to permit the Respondents and their people of ELUME to enter at all times upon the said land to farm and during the season when the bush is declared open to collect palm fruits on payment of the customary tribute.
- 30 4. The Appellants further agree not to withhold their consent unreasonably or to unreasonably delay the opening of the said bush.
- 5. The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the Appellants.
- 6. Those people of ELUME who are entering the said

Exhibits

"B"

Terms of Settlement drawn up and made an Order of the West African Court of Appeal.

15th November 1954 - continued

"IDALE" land for the first time will have to pay the usual entrance fee of 14/-.

7. The judgment of the lower Court is hereby confirmed.

8. Each party bears his own costs in the appeal.

9. The Appellants agree that the said tribute of 4 tins hereby reserved will not be subject to any further increase in the future.

DATED at Lagos this 11th of November, 1954.

(Sgd.) James E. David
Appellant's Solicitor.

10

(Sgd.) O. Ajose-Adeogun
Respondents' Solicitor.
pp. Thomas, Williams & Kayode
Solicitors.

The attached terms of settlement are hereby made an order of this Court.

15.11.54 (Sgd.) S. Foster Sutton, P.

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

5 folios at 9d a folio 3/9d
C.R. 497836 of 28/1/54.

20

"C"
COURT RULING

Exhibits

"C"

IN THE WEST AFRICAN COURT OF APPEAL
 HOLDEN AT LAGOS
 WEDNESDAY THE 19th DAY OF OCTOBER, 1955
 BEFORE THEIR LORDSHIPS

Court Ruling

19th October
 1955.

SIR STAFFORD FOSTER SUTTON	PRESIDENT.
JOSEPH HENRI MAXIME DE COMARMOND	ACT. CHIEF JUSTICE NIGERIA
10 SIR JAMES HENLEY COUSSEY	JUSTICE OF APPEAL

Between: W.A.C.A.130/1954

Chief Okro Orukumakpor
 for himself and Ajomatan
 family of Gbimidaka ... Appellants

- and -

1. Itebu (m) 2. Ideghele (m)
 3. Eghomitse (m) 4. Awieni (m)
 for themselves and on behalf
 of the people of Elume ... Respondents

20

R U L I N G

This was an application, made by way of motion, for an order amending an Order made by this Court in Civil Appeal No. 130 of 1954.

30

During the hearing of this appeal on the 3rd November, 1954, Counsel for both sides intimated that a settlement of the case had been reached, and we were invited to make the terms of settlement submitted by Counsel on behalf of their clients part of the formal order made by this Court on the appeal. This was agreed to and the "Terms of Settlement" were attached to the formal order which was drawn up by the Deputy Registrar on the 15th November, 1954.

The parties are now at variance as to the meaning of paragraphs 5 and 6 of their settlement, and the appellant asks that words be inserted in the paragraphs in question to make it clear that each member of the respondent group who enters the land known as 'Idale' is required to pay the tribute referred to.

Exhibits

"C"

Court Ruling

19th October
1955 -
continued

At the hearing of this motion there appeared to be no dispute as to the meaning of paragraph 6 of the settlement, the real dispute is in connection with paragraph 5. The appellant alleging that it was intended that each of the respondents' people who enters the land in question to collect palm fruits should pay the tribute of "4 tins of oil per season", and the respondents that one payment of 4 tins each season was intended to cover the group.

10

There can be no doubt that the Court has an inherent power to vary its own order so as to carry out its own meaning, and where language has been used which is doubtful, to make it plain, *Lawrie v. Lees*, 7 A.C., 19, but it seems to us equally clear that the Court has no power, unless the parties consent which they have declined to do in this case, to vary the terms of a settlement reached by the parties even though such terms have been embodied in the order of this Court.

20

Mr. Moore for the applicants contended that we were only being asked to clarify the wording, to correct a clerical mistake, but we are of the opinion that the application goes beyond that. It seems to us clear that we could not determine the intention of the parties without going into evidence and really trying the matter out, a procedure, which could not be followed on a motion of this nature.

The motion is, therefore, dismissed with costs fixed at £5.5.0d.

30

(Sgd.) S. Foster Sutton, P.

Mr. Oladipo Moore for the Applicants.

Mr. H.O. Davies for the Respondents.

8 Folios at 9d per folio = 6/- pd

on C.R.No. 2657 of 29/10/55.

(Intld.) ? ? ?

Certified true copy:

(Sgd.) S.A. Samuel.
Assistant Registrar.

"E"

Exhibits

PROCEEDINGS IN CASE NO. 24/55 RE: CHIEF
OKRO OJOMATA (M) OF UGBIMIDAKA - ELUME
VS. EDEGWARE (M) & ORS.

"E"

In the Okpe Court No. 2 holden this 14th day of
March 1955

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata (m) of
Ugbimidaka -
Elume.

14th/15th
March 1955.

Before Chief Ogo.....President
Ojaruvbe
Atatse
10 Johnson Obarugo
Ojegba
Agbi
Irhoweroro
Orhiawaye
Oruma
Isiorho

Members.

Case No. 24/55.

Chief Okro Ojomata (m) of Ugbimidaka - Elume.

- versus -

- | | | |
|----|----------------------|------------------------|
| 20 | 1. Edegware (m) | 18. Isukuru (m) |
| | 2. Atsemijure (m) | 19. Owonowan (m) |
| | 3. Amarhavbie (m) | 20. Ghelonohor (m) |
| | 4. Enenevbro (m) | 21. Ovbie (m) |
| | 5. Damigoru (m) | 22. Sajumi (m) |
| | 6. Tajeruo (m) | 23. Mukoro (m) |
| | 7. Eyeta (m) | 24. Tsowa (m) |
| | 8. Egbetive (m) | 25. Oyibo (m) |
| | 9. Boy Edematie (m) | 26. Erhabor (m) |
| 30 | 10. Botseri (m) | 27. Sajini (m) |
| | 11. Aliboro (m) | 28. Dodoye (m) |
| | 12. Josiyota (m) | 29. Omanayeruekena (m) |
| | 13. Sajumi (m) | 30. Luwe (m) |
| | 14. Tsaro (m) | 31. Boy Mabamiye (m) |
| | 15. Mebradu (m) | 32. Gbamidobor (m) |
| | 16. Madamerhoye (m) | 33. Gbadudu (m) |
| | 17. Nugborhiemro (m) | |

All of Elume.

40 Charge: Stealing by entering into the Compl't's
palm bush known as "Idale" and thereby collected
palm fruits to the value of £91:16/-, without the
knowledge and consent of the Compl't vide the West
African Court of Appeal Order in suit No. W/2/1953
of 15/11/54.

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued

NOTE:- 8th, 18th, 22nd, and 28th, accused persons not appearing.

Chief Umuaya Okwata reports: It was I who bailed the accused persons. They are not correct here yet. Some are yet coming on the way. I wish Court to suspend the case awaiting the arrival of those who have not come yet. Another case can be called until.

Court Order: Case adjourned till tomorrow awaiting those who have not come. Chief Okwata to warn them to appear tomorrow. 10

(Sgd.) Chief Ogogo His x mark.
President.
14/3/55.

(Sgd.) W/M:- J.O. Mujakporuo.
c.n.c.

Case resumed from page 15 on 15/3/55

All members present.

Both parties present.

Plea:- Not guilty. 20

Complainant (m) S/S:- My name is Chief Okro Ajo-
matan, a male native of Ugbimidaka - Elume. I am
a Council member in the Okpe Clan Council. The land
"Idale" is my bona fide property. I had a case
with one Irhanigha in respect of the land and I won
it since 20 years. I had a case with one Tebu
who represented the Elume community in respect of
the same land. The case went as far as to the
West African Court of Appeal, Lagos, where the said
Tebu agreed that the said land is mine and we 30
entered into agreement to the effect that yearly
tribute of 4 tins of oil per head should be paid to
me per season. That those of Elume people who
are entering the land for first time should 14/- as
entrance fee. The accused persons have not pre-
viously entered the land "Idale" since the exis-
tence of the land. About 4 weeks ago, the accused
persons privately entered into the land "Idale"
without paying 14/- entrance fee as ordered in the
West African Court of Appeal and collected palm 40
fruits therefrom without my knowledge and consent
hence charging them with stealing in this case.

xxed: by 1st accused:- The case between Itebu and I ended in the West African Court of Appeal. The case was settled on certain conditions. The Supreme Court gave me title for the land and awarded me costs. He added that I should settle with Itebu. I was not satisfied with this (Settlement) hence I took appeal to Lagos. Itebu agreed at Lagos that I am the owner of the land "Idale" and he signed the agreement made to the effect. My opponents' Lawyer pleaded hence no cost was awarded to me at Lagos. Itebu agreed to pay 4 tins of oil as tribute per season to me. The terms of the agreement which are made an order of the West African Court of Appeal are that those of Elume people who are entering the land for the first time should pay 14/- entrance fee. There are other people who paid 14/- entrance fees to me and I gave them receipts before they entered into the land. I can make mention of those people if you want me to do so.

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued.

xxned by 2nd accused:- The order of the West African Court of Appeal according to the terms of the agreement are that 4 tins of oil should be paid to me per head per season, as well, as 14/- entrance fee per head. You have not previously entered into the land on payment of 14/- each as entrance fees.

xxed by 3rd accused:- You have not entered into the land before. You have just carved your canoe on the land about four years ago. When the case was going on between Itebu and I, but since Itebu signed the agreement that the land 'Idale' is mine, you ought to pay 14/- entrance fee before entering into the land for palm fruits collection.

xxd by 8th accused:- I sent to inform Itebu who is representing Elume community before I declared the palm bush open when some people paid their entrance fees of 14/- each before they entered into the land. You did not pay before you entered the land for palm fruits collection hence charging you alone with the rest with stealing.

The entrance fee of 14/- per head is for me alone.

xxd. by COURT:- The 14/- entrance fee per head is for me and the descendants of Ajomatan; I am representing the members of Ajomatan family in this

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued.

case. One Okpeniwho, Oprikini, James Uba, Akpavbare, Akporhe, Etabere, Otutu, Uruteri, Itsemuya and many others paid 14/- each as entrance fee before entering to the land for palm fruits collection and I gave them receipts. They are natives of Elume as well. If proved from the terms of the agreement which is an order of the West African Court of Appeal, that the land 'Idale' is declared a communal land, I will admit telling lies. I am here with the agreement which is an order of the West African Court of Appeal which shows that Itebu agreed that the land 'Idale' is my property.

10

Ist accused for self and on behalf of the rest accused persons (m) S/S:- My name is Edegware a male native of Ituru-Elume. This particular land case has been going on since three years. It was one Itebu who represented the whole Elume in the case. The case was first heard in the Okpe No. 2 Court which decided it in our favour. Complt. took appeal to the Western Urhobo Court of Appeal which also confirmed the judgment of the lower Court. He - Complt. again took further appeal to the Magistrate's Court, Warri, which also confirmed the judgments of the two lower Courts. He - Complt. again sued Itebu for £600 damages for trespass into his land 'Idale'. The case was heard in the Supreme Court which dismissed the claim and declared the land a communal land. Complt. being not satisfied with the judgment took appeal to the West African Court of Appeal, Lagos. After perusing copies of the proceedings in the West African Court of Appeal, found that both complt. and Itebu are members of the same family and advised them for settlement which they did in the presence of their lawyers on the following conditions:-

20

30

That Itebu agreed that the land "Idale" is the property of the complt. That 4 tins of oil be paid to complt as tribute per season as the caretaker. The complt. should inform the people of Elume at each time he wishes to declare the palm bush open. That any stranger who wishes to enter into the bush for the first time should pay 14/- as entrance fee to complt. These terms of agreement are made an order of the West African Court of Appeal, signed by their respective lawyers, thus confirming the judgment of the Supreme Court. This done, they returned from Lagos. After about one week, the palm bush was declared closed by the complt. on

40

consent of Itebu. Three months after complt. fixed a day to declare the palm bush open and he sent to inform Itebu to notice his people of the date fixed to declare the palm bush open. I have Itebu as our witness in the case. At the time fixed for the opening of the palm bush we went to collect palm fruits on the said land, this is all. The charge against us is malicious. It was complt. and Itebu who permitted us to enter into the land for palm fruits collection.

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued.

xxed by complt. One Itebu of Elume is the person representing the Elume community in that case. If it is found that the judgment or order of the West African Court of Appeal is against Itebu, we are then affected. It was agreed by Itebu that the land 'Idale' belongs to Ajomatan. I have a copy of the proceedings declaring the land 'Idale' a communal land. Cost awarded to you against Itebu in the Magistrate's Court, Warri, during the case at the first time. Itebu reported to us of the 14/- entrance fee to be paid by those Elume people who are entering the land for the first time. The land 'Idale' is a communal land. The agreement between you and Itebu in respect of the land 'Idale', which is an order of the West African Court of Appeal shows that the land in question belonged to Ajomatan.

xxed by Court:- Complt. is claiming the land 'Idale' in the name of Ajomatan. Itebu is claiming the 'Idale' as a communal land to the whole people of Elume. It was the complt. who declared the palm bush closed about three months ago. Complt. is only a caretaker on the land. Those people who paid entrance fee of 14/- each before entering into the land 'Idale' are relatives of the complt.

Witness to the Accused persons - Itebu (m) S/S:-

My name is Itebu, a male native of Elume. It was I who represented Elume people in respect of the case between complt. and I about the land 'Idale'. The case started from this court which decided the case in our favour. Complt. then took appeal to the West Urhobo Appeal Court which confirmed the judgment of the lower Court. He further took appeal to the Magistrate's Court which confirmed same. He - complt. being not satisfied still, took further appeal to the West African Court of

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued.

Appeal, Lagos. On going through the proceedings of that case, it was found that complt. and I are members of the same family and advised our lawyers for settlement. Complt. agreed to this. I also agreed to it. The case was then settled at last on certain conditions and the terms of agreement are made an order of the West African Court of Appeal. This is the agreement. Two weeks after on our return from Lagos, complt. sent to inform me before declaring the palm bush closed. I also informed my people. After three months he again sent to inform me of the date to declare the palm bush open and I also reported this to the people of Elume, who entered into the land 'Idale' for palm fruits collection on the fixed date. Later on, I heard of the accused persons being arrested by the complt.

10

xxed by Complt:- I agreed at Lagos that the land 'Idale' belonged to your grandfather - Ajomatan and this was entered in the agreement which was an order of the West African Court of Appeal. I did not agree that 14/- entrance fee be paid to you by the Elume people who are entering the land for the first time. If it is found in the agreement which is made an order of the West African Court of Appeal that those Elume people who are entering the land for the first time to pay 14/- entrance fee to you, I will admit telling lies. The terms of agreement are that 4 tins of oil as tribute per season should be paid to you but not 4 tins of oil per head. The people of Elume town never used to collect palm fruits from the land because Elume town is too far from the land.

20

30

xxed by Court:- The order of the West African Court of Appeal is that 14/- entrance fee be paid by the strangers who are entering the land for the first time and to be shared by the whole Elume people along with the complt. The tribute of 4 tins of oil per season is to be paid to the complt. by the Elume people who collect palm fruits on the land 'Idale'.

40

COURT:- The terms of agreement made between the complt. and the accused persons' witness - Itebu for settlement in respect of the 'Idale' land, which are made an order of the West African Court of Appeal are read to this Court.

Both parties confirm same as being correct.

Exhibits

The agreements are tendered by both parties in evidence.

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

10 Findings:- The complt. to the case charged the accused persons with stealing by entering into his land 'Idale' from where they collected palm fruits to the value of £91.16/- without his knowledge and consent. According to the terms of the agreement as embodied in the agreement between complt. and the accused persons' witness - Itebu which are made an order of the West African Court of Appeal, it was agreed that 4 tins of oil as customary tribute be paid to the complt. per season. It was also agreed by the accused persons' witness - Itebu that those people of Elume who are entering the land 'Idale' for the first time should pay the usual entrance fee of 14/- to the complt. The accused persons' witness - Itebu also agreed that complt. is the owner of the land 'Idale'. The accused persons admitted having entered into the land 'Idale' for palm fruits collection but argue that only strangers who are entering the land for the first time that are bound to pay the usual entrance fee of 14/- to the complt. According to para 6 of the terms of agreement we decline to agree to this point raised by the accused persons. The complt's case that the accused persons are those people of Elume who are entering the land for the first time is justified. Since they failed to consult the complt. as well as they failed to pay the usual entrance fee of 14/- each to him before they entered into the land 'Idale' for palm fruits collection it is therefore termed as stealing but they must be given an option of fines.

20

30

14th/15th
March 1955 -
continued.

Judgment: All the accused persons are found guilty of the charge preferred against them.

Sentence: To a fine of 10/- each or two weeks
I.H.L.

40 Order:- Complt. to claim from the accused persons the usual entrance fee of 14/- each on their discharge from the prison. £5.5. costs of the action to be paid to complt. by the accused persons. Accused persons told of their right of appeal but

Exhibits

"E"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata v.
Edegware &
Ors.

14th/15th
March 1955 -
continued.

must pay the fine first before appealing the case.

(Sgd.) Chief Ogogo His X Mark.
President. 15/3/55.

W/M J.O.M., C.n.c. Note: Accused persons give notice
of appeal.

£17 fines at 10/- each paid by the accused persons
vide C.R. No. 2525 of 15/3/55.

Certified true copy:

(Sgd.) ? ? ?

Court Clerk i/c
Okpe Court No.2
11/6/55.

£1.6/- copy fee paid vide C.R.709
of 11/6/55.

10

"F"

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata vs.
Edegware & Ors.
on Appeal.

10th August
1955.

"F"

PROCEEDINGS IN CASE NO. 24/55 re: CHIEF OKRO
OJOMATA vs. EDEGWARE & ORS. ON APPEAL

Appeal held before the Acting District Officer,
B. Cooke Esq. at Orerokpe on Tuesday the 10th
of August, 1955.

A/28.

Case No. 24/55 (Criminal) in the Okpe No. 2
Court.

Parties Chief Okro Ajomata (m) Vs. Edegwara
(m) & 32 others.

Charge: Stealing by entering into the Com-
plainant's Palm bush known as 'Idale' and thereby
collecting palm fruits to the value of £91.16/-
without the knowledge and consent of the complain-
ant vide the W.A.C.A. order in Suit No. W/2/1953 of
5/11/54.

Judgment: All accused found guilty and fined 10/-
each or 2 weeks I.H.L. Order. Complainant to
claim from the accused persons the usual entrance
fee of 14/- each on their discharge from prison.

£5.5/- costs of the action to be paid to complain-
ant by the accused persons.

20

30

Appeal Court. Judgment in Court below confirmed.

Exhibits

Accused/appellant appeals.

"F"

District Officer's Appeal: Complainant present.
Accused and 17 other accused present.

Proceedings in
Case No. 24/55
re: Chief Okro
Ojomata vs.
Edegware. & Ors.
on Appeal.

The case arises out of the Terms of Settlement made into an Order of the West African Court of Appeal in Suit No. W/2/1953 of 15/11/54.

10 The land in question 'Idale' is admitted to belong to Complainant (on behalf of the Ajomata family of Gbimidaka). The dispute arises from paragraph 5 and 6 of the Terms of Settlement, viz:

10th August
1955 -
continued.

"5. The Respondents people who continue to enter into the land to collect palm fruits agree to pay 4 tins of oil per season as tribute to the Appellants.

20 6. Those people of ELUME who are entering the said 'IDALE' land for the first time will have to pay the usual entrance fee of 14/-."

30 This case came before me as a criminal case and Accused/Appellant's first argument for appeal is that the case is one concerning civil liability. The case is, in essence, one of interpreting the terms of settlement. To make out a charge of stealing, it would be necessary to show that the accused had wilfully disregarded what they knew to be the terms of Settlement. In fact, there is a genuine dispute concerning the interpretation of those terms. The case should never have been dealt with criminally. I consider that the Okpe No. 2 Court was greatly at fault to have issued a Warrant of Arrest against the accused.

Order: Judgment in Appeal Court and Court of 1st instance is quashed. All fines and cost paid by Accused are to be refunded. If Complainant wishes to proceed in the case he may do so by civil action.

(Sgd.) B. Cooke
Ag. District Officer,
Urhobo Division.
11/8/55.

40

Certified true Copy:

(Sgd.) ? ? ?
Snr. Court Clerk
Western Urhobo D.C.