

PC
GH4-62

New Case

11/10/62

IN THE PRIVY COUNCIL

No. 11 of 1959

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

- 1. NWUBA MORA
- 2. NWANGENE
- 3. ONWUAGHASI OKEKE
- 4. MMANEKE on behalf of themselves
and the people of Awka (Defendants) Appellants

- and -

- 1. H.E. NWALUSI
- 2. OKOYE OKONGWU
- 3. NWONU ORAEKIE
- 4. PATRICK OGWU for themselves and all
others the people of Amawbia
(Plaintiffs) Respondents

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

29 MAR 1963
 25 RUSSELL SQUARE
 LONDON, W.C.1.

68151

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Appellants.

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Solicitors for the
Respondents.

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N :

1. NWUBA MORA
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3. Nwonu Oraekie
4. PATRICK OGWU for themselves and all
others the people of Amawbia
(Plaintiffs) Respondents

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IN THE PRIVY COUNCIL

No. 11 of 1959

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

- 1. NWUBA MORA
- 2. NWANGENE
- 3. ONWUAGHASI OKEKE
- 4. MMANEKE on behalf of themselves
and the people of Awka
(Defendants) Appellants

10

- and -

- 1. H.E. NWALUSI
- 2. OKOYE OKONGWU
- 3. NWONU ORAEKIE
- 4. PATRICK OGWU for themselves and all
others the people of Amawbia
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS

No. 1

NATIVE COURT CIVIL SUMMONS

20 FORM 3 e NATIVE COURTS No. 61/49
(CIVIL SUMMONS) 64

IN THE NATIVE COURT OR JUDICIAL COUNCIL OF
MBAILINOFU

Between: NIGERIA.

- 1. H.E. Nwalusi
- 2. Okoye Okongwu
- 3. Nwonu Oraekie
- 4. Patrick Ogwu: plaintiffs
- for themselves and all others the people of
- Amawbia ... Plaintiffs
- and

In the Native
Court or
Judicial
Council of
Mballinofu

No. 1

Native Court
Civil Summons.

1st July 1949.

30

- 1. Nnebe Nwude
- 2. Nwangene
- 3. Onwuaghosi Okeke
- 4. Mmaneke: defendants as representing themselves
and the people of Awka.

In the Native Court or Judicial Council of Mbailinofu

To " of Awka.

YOU are commanded to attend this Court at Mbailinofu on the 8th day of July, 1949, at 9 o'clock a.m., to answer a suit by plaintiffs of Amawbia against you.

No. 1

Native Court Civil Summons.

1st July 1949 - continued.

The Plaintiffs claim: (a) Declaration of title to a piece of land known as Agu Norgu belonging to the plaintiffs. (b) £500 damages for trespass by the defendants on the said piece of land and farming thereon. (c) An injunction to restrain the defendants and their agents from continuing or repeating any of the acts complained of.

10

Dispute arose a year ago.

Issued at Mbailinofu the 1st day of July, 1949.

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

State Plaintiff's claim clearly.

(Sgd.) G.O. Uchendu

Signature of President or Vice-President.

(Sgd.) ? ? ?
C.N.C.

20

No. 2

No. 2

Order of Transfer.

ORDER OF TRANSFER

19th July 1949.

PROTECTORATE COURT OF NIGERIA

In the Native Court of Mbailinofu - Awka Division

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

I, BENNETT HUMPHREYS BRACKENBURY, Acting District Officer, Awka Division, by virtue of the powers vested in me under section 25(1)(c) of the Native Courts Ordinance, 1933, hereby order that the following suit be transferred from the Mbailinofu Native

30

Court to the Supreme Court, Onitsha.

Civil Summons No. 61/49
64

In the Native
Court or
Judicial
Council of
Mbailinofu

No. 2

Parties: 1. H.E. Nwalusi & 3 others on behalf of
themselves & the people of Amawbia, Awka.

Versus

1. Nnebe Nwude & 3 others on behalf of
themselves & the people of Awka.

Order of
Transfer.

Claims: 1. Declaration of title to a piece of land
known as 'Agu-Norgu' belonging to the
Plaintiffs.

19th July 1949
- continued.

10

2. £500 damages for trespass by the Defen-
dants on the said piece of land and
farming thereon.

3. An injunction to restrain the Defendants
and their Agents from continuing or re-
peating any of the acts complained of.

20

I certify that the order of Transfer of the
above-mentioned Suit from the Mbailinofu Native
Court to the Supreme Court, Onitsha, is made by me
on the motion of G.C. Nnonyelu, Esq; Solicitor for
the Plaintiffs, for the following reasons:-

1. Part of the area had been adjudicated upon by
the Supreme Court, Onitsha, in a case between
Awka and Okpuno and it will be essential for
the case to use the proceedings in the former
case.

2. The area involved is large and claim for tres-
pass is \$500 which ousts the jurisdiction of
the Native Court.

30

DATED at Awka this 19th day of July, 1949.

(Sgd.) B.H. Brackenbury

Acting District Officer,
Awka Division.



In the
Supreme Court
of Nigeria

No. 3

ORDER FOR PLEADINGS

No. 3

IN THE SUPREME COURT OF NIGERIA

Order for
Pleadings.

13th March 1950.

Claim: 1. Declaration of title to a piece of land known as Agu-Norgu belonging to the Plaintiffs.

2. £500 damages for trespass by the Defendants on the said piece of land and farming thereon.

3. An injunction to restrain the Defendants and their Agents from continuing or repeating any of the acts complained of. 10

UDOMA and NNONYELU for Plaintiffs.

MBANEFO for Defendants.

BY COURT: Statement of Claim and Plan to be filed within 90 days and a copy of Statement of Claim and Plan to be served on Defendants or their Counsel:

Statement of Defence to be filed within 90 days of the service on them of Statement of Claim and copy of Statement of Defence to be served on Plaintiffs or their Counsel. 20

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

13th March, 1950.

STATEMENT OF CLAIMFiled at 10 a.m. on 29.7.1950.In the
Supreme Court
of Nigeria

No. 4

Statement of
Claim.

26th July 1950.

1. The Plaintiffs are the chiefs, elders and natives of Amawbia in the Awka District and sue for themselves and with the full authority, consent of and as representing the people of Amawbia. The defendants are the chiefs, elders and natives of Awka in the Awka District and are sued for themselves and as representing the people of Awka.

10

2. The land, the subject matter of this action (hereinafter referred to as the land in dispute) is known as "AGU NORGU", property of the Plaintiffs and is situate at Amawbia, Awka District, Onitsha Province, and is bounded as follows:-

(i) On the North by the ancient boundary separating the land in dispute from the land of the people of Enugu Agidi. The extreme northernmost boundary of the land in dispute is a point of convergence of the boundaries of the Plaintiffs' land, the land of the people of Enugu Agidi and the land of the defendants.

20

(ii) On the West by the land of the people of Enugu Agidi and the land of the people of Nawfia with whom also the Plaintiffs share common boundaries.

(iii) On the East by the land of the defendants and

30

(iv) On the South by the land of the Plaintiffs, known as Ukpukpa Utuokani lands.

These boundaries are clearly delineated on the plan filed in this action as well as being clearly indicated by ancient boundary trees and marks and the said land is in the plan filed in this action edged pink. The land in dispute forms part of the whole of the land of the Plaintiffs the boundary of which stretches from the common boundary between the Plaintiffs and the people of Enugu Agidi in the North to the Obibia River on the South.

40

In the
Supreme Court
of Nigeria

No. 4

Statement of
Claim.

26th July 1950
- continued.

3. The land in dispute has been from time immemorial and is the property of the Plaintiffs and their people who have exercised maximum acts of ownership over the same from time immemorial by farming the same, collecting palm fruits and other economic fruits therefrom and putting the same into diverse other uses according to custom.

4. The Plaintiffs and their people acquired the land in dispute by inheriting the same from their ancestors who had acquired the same by right of conquest. The land in dispute originally, according to tradition, formed part of a large area of land in the occupation and possession of the people of Norgu who, in those ancient days, were neighbours and shared common boundary with the Plaintiffs and their people.

10

5. According to the traditional history of the Plaintiffs, several generations ago, member of the Plaintiffs' village of Amawbia was killed while separating a fight between some members of Norgu village. In consequence of that killing the Plaintiffs' ancestors declared war against the people of Norgu village and thereto summoned the aid of their neighbouring villages of Awka, Okpuno, Isu, Enugu, Agidi and Nawfia. In the course of the war the people of Norgu were defeated and put to flight, and they fled to Ukwulu - a place South-West of Enugu Agidi.

20

6. Prior to the said conquest of the people of Norgu, the Northernmost boundary of the Plaintiffs land then was the Mili Nwaogodo River which empties itself into the Uvunu River and thence to the Ogbeke River. As a result of the defeat and flight of the people of Norgu the whole land formerly property of the people of Norgu thus abandoned was shared between the Plaintiffs' people and the rest of the neighbouring villages that had taken part in the war on the side of the Plaintiffs' people. The land in dispute was the portion allotted to and taken by the Plaintiffs' people. The defendants were also allotted their own portion.

30

7. Ever since the apportionment of the land aforesaid and several generations thereafter the Plaintiffs' ancestors before the Plaintiffs and subsequently the Plaintiffs themselves and their people have been in possession of and have continually exercised maximum acts of ownership over the land in

40

dispute without any let or hindrance on the part of the defendants or any body else.

8. About 7 years ago a land dispute broke out between the defendants' people and the people of "Okpuno". In the course of that case defendants' people in surveying their land included the land in dispute, property of the Plaintiffs as forming part of their land despite the protests of the Plaintiffs and their people.

In the
Supreme Court
of Nigeria

No. 4

Statement of
Claim.

26th July 1950
- continued.

10 9. In or about April, 1948, while the Plaintiffs were carrying on their normal farming operations in the land in dispute, the defendants together with a large number of their people invaded the land in dispute without the leave and licence of the Plaintiffs and therein disturbed the Plaintiffs quiet enjoyment of the same and therefrom collected palm fruits and made farms thereon. Subsequently in
20 1949, the Plaintiffs and their people were working peacefully on the land in dispute when the Defendants and their people once more broke and entered the said land and laid waste the same and fought the Plaintiffs' people therein.

10. The defendants have persistently since 1948 been interfering with the Plaintiffs enjoyment of their property and have molested the laws of the Plaintiffs' people and have made it impossible for the Plaintiffs and their people to exercise their right, title and interest in the land in dispute.

30 And the Plaintiffs have suffered considerable damage. Hence the Plaintiffs' claims as against the Defendants:

- (i) A declaration of title to the piece or parcel of land known as "AGU NORGU" situate and being at Amawbia in Awka District, the said land being particularly delineated and edged pink in the plan filed in this action.
- (ii) £500 damages for trespass committed by the Defendants in the said land; and
- 40 (iii) An injunction as per their writ of Summons.

Dated at Aba this 26th day of July, 1950.

(Sgd.) E. Udo Udoma
Solicitor for Plaintiffs.

In the
Supreme Court
of Nigeria

No. 5

STATEMENT OF DEFENCE

No. 5

Filed at 9.30 a.m. on 2/11/50 (Intld.)E.O.Ho.
Cashier.

Statement of
Defence.

14th October
1950.

1. The defendants admit paragraph 1 of the Statement of Claim.

2. The defendants admit the land in dispute is called ARGU NORGU, but deny that the boundaries are as described in paragraph 2 of the Statement of Claim, or that it forms part of the plaintiffs' land. The plaintiffs have no land of their own. 10

3. The defendants deny paragraph 3 of the Statement of Claim, and say that the plaintiffs never had any land as of right in the neighbourhood of the land in dispute. The plaintiffs' town Amawbia (translated site for strangers) were given portion of the land where they dwell by the defendants. Since the advent of the Government, they have been endeavouring without success to extend of their holding. 20

4. The defendants deny paragraph 4 of the Statement of Claim, and say that the Norgus were fought and driven away by the defendants and that at that time the plaintiffs had not arrived, and had not been given their present site. The plaintiffs did not take part in the fight against the Norgus.

5. The defendants deny paragraph 5 of the Statement of Claim, and say that after they had fought and driven away the Norgus, they, the defendants took over, and occupied all Norgu lands. The defendants acquired Norgu lands by conquest, and thereafter let portions thereof to Okpuno people on payment of annual tribute. Another portion was let to Enugu-Agidi people who pay rent to the defendants. 30

6. In 1941, the Okpuno people, encouraged by the Plaintiffs and Enugu-Agidi, laid claim to the portion given to them to farm by the defendants. The defendants sued them in the Native Court and claimed declaration of title. The case was tried in the High where it was determined in favour of the defendants. The judgment in the said case No. O/13/41 will be founded upon. The area in dispute in the 40

said suit is clearly described and shown bordered yellow on the plan to be filed herein by the defendants.

In the
Supreme Court
of Nigeria

No. 5

Statement of
Defence.

14th October
1950 -
continued.

10 7. In 1943, the defendants sued the various vil-
lages of Enugu-Agidi for arrears of rent in respect
of the land occupied by them as tenants of the
defendants which includes the area now claimed by
the plaintiffs. The case was heard and determined
in the High Court, and judgment given in favour of
the defendants. Not satisfied with the judgment,
Enugu-Agidi appealed to the West African Court of
Appeal. This appeal was dismissed, and judgment
of the High Court in favour of the Defendants was
upheld. The defendants' plan used in that case in-
cludes the area now claimed by the plaintiffs. The
defendants will rely on the judgments of the High
Court and of the West African Court of Appeal in
the said cases.

20 8. The plaintiffs knew of the said cases referred
to in paragraphs 7 and 8 above, but did nothing.

9. In answer to paragraph 8 of the Statement of
Claim, the defendants admit that they had a dispute
with Okpuno, and that the defendants made a survey
of all Argu Norgu land, including the land in dis-
pute to the knowledge and with the acquiescence of
the plaintiffs. The plaintiffs made no protests
to the defendants or to anybody else to the knowledge
of the defendants.

30 10. The defendants deny paragraph 9 of the State-
ment of Claim, but say that even if they drove the
plaintiffs away, they had every right to do so, as
the plaintiffs are not the owners of the land, and
had never farmed there previously.

40 11. In answer to paragraph 10 of the Statement of
Claim, the defendants say that the plaintiffs began
to trespass on the land since 1948, and that their
entry thereon have been vigorously and persistently
resisted by the defendants. The land given to the
plaintiffs by the defendants was outside the area
now claimed by the plaintiffs.

12. The defendants deny that the plaintiffs
suffered any damage, and say that they are not
entitled as claimed.

In the
Supreme Court
of Nigeria

The defendants will plead Ownership, Long Possession, Laches and Acquiescence.

Dated at Onitsha this 14th day of October, 1950.

No. 5

Statement of
Defence.

(Sgd.) L. Mbanefo
Defendants' Solicitor.

14th October
1950 -
continued.

No. 6

Court's Note
of Adjourn-
ment.

6th November
1950.

No. 6

COURT'S NOTE OF ADJOURNMENT

At Onitsha, Monday the 6th day of November, 1950
Before His Honour Mr. Justice Ademola P.J.

- Claim: 1. Declaration of title etc. 10
2. £500 damages for trespass etc.
3. An injunction etc.

Adjourned till 20/11/50.

(Sgd.) A. Ade Ademola.
Puisne Judge. 6/11/50.

11.

No. 7

COURT'S NOTE OF ADJOURNMENT

Resumed at Onitsha, Monday the 20th day
of November, 1950

Before His Honour Mr. Justice Ademola P.J.

Claim: 1. Declaration of title etc.
2. £500 damages for trespass etc.
3. Injunction etc.

Adjourned till 5/2/51.

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(Sgd.) A. Ade Ademola.
Puisne Judge. 20/11/50.

No. 8

COURT'S NOTE OF ADJOURNMENT

Resumed at Onitsha, Monday the 5th day
of February, 1951

Before His Honour Mr. Justice Ademola P.J.

Case is adjourned to the general call over
5/3/51.

(Intld). A.A.A.(Ademola)

In the
Supreme Court
of Nigeria

No. 7

Court's Note
of Adjournment.

20th November
1950.

No. 8

Court's Note
of Adjournment.

5th February
1951.

In the
Supreme Court
of Nigeria

No. 9

COURT'S NOTES

No. 9
Court's Notes.
22nd May 1951.

At Onitsha, Tuesday the 22nd day of May, 1951
Before Mr. Justice Manson, Puisne Judge

Udoma and Nonyelu for Plaintiffs.
Mbanefo for Defendants.
Udoma cannot attend: see 59 in file.

BY COURT: This case is closely allied to 0/38/1949
fol: 151. It is clear that the Amawbia people are
claiming in 0/38/49 the portion of land in dispute
in that case but also the portion of land in dispute
in this case. Between the 2 pieces of land lies
Amawbia village. The Awka people also claim to the
pieces, although they were not made Defendants in
0/38/49. Further, Awka Township - or a portion of
it - seems to have been the subject matter of an
Agreement between the Awka and Amawbia people in
1921 under which Government was permitted to occupy
a certain area. The Amawbia people must make a
Plan showing the whole of their land in this area.
Awka also claim all the land claimed by Amawbia,
saying Amawbia are merely on the land with their
leisure. Plaintiffs have position explained and
agree to make a fuller plan showing their whole area.

10
20

(Sgd.) A.G.B. Manson
22nd May, 1951. J.

No.10
Court's Notes
and Order for
Adjournment.
10th February
1953.

No.10

COURT'S NOTES AND ORDER FOR ADJOURNMENT

At Awka, Tuesday the 10th day of February, 1953

Before His Lordship The Honourable
Mr. Justice Frederick William Johnston P.J.

30

0/35/49.

Dr. Udoma and Mojekwu for plaintiffs.
Ojiako and Mbanefo for defendants.

Udoma: ready for hearing. - 0/38/49 is related. This is struck out and 0/9/52 takes its place. - The areas are connected. - Composite plan was ordered for 0/38/49 and this suit - (0/35/49). 0/9/52 now substituted for 0/38/49. - The issue is one and the same in 0/9/52 and this suit: 0/9/52 and this suit should be consolidated. We ask that this suit abide proceedings in 0/9/52 so that both suits should be consolidated for joint trial.

In the
Supreme Court
of Nigeria

No.10

Court's Notes
and Order for
Adjournment.

10th February
1953 -
continued.

10 Order: By consent this suit is adjourned to await pleadings in 0/9/52 with view to consolidation.

Adjourned sine die.

(Sgd.) F.W. Johnston
J.

No.11

COURT'S NOTES

At Onitsha, Monday the 26th day of October 1953

Before His Lordship
The Honourable, Mr. Justice Hurley, Puisne Judge

No.11

Court's Notes.

26th October
1953.

20

0/35/1949

Claim: 1. Declaration of title.
2. £500 damages.
3. An injunction.

Araka holding Udoma's brief for plaintiffs, who are present except 3rd. Ojiako for Defendants, with him Mbanefo (absent).

Defendants present.

Stand later for plaintiff's Counsel.

(Sgd.) W. H. Hurley
J.

30

26. x. 53

In the
Supreme Court
of Nigeria

Resumed. Araka asks for adjournment to prepare
case, 1.30 p.m. Adjourned to 27.x.53.

No.11

(Sgd.) W.H. Hurley
J.

Court's Notes.

26. x. 53.

26th October
1953 -
continued.

No.12

No.12

Motion to Sub-
stitute Nwuba
Mora as 1st
Defendant.

MOTION TO SUBSTITUTE NWUBA MORA
AS 1st DEFENDANT

Filed on 27th
October 1953.

MOTION. Filed this 27th day of October, 1953.
at 8.45 a.m. (Intld.) S.A.M.

10

TAKE NOTICE that this Honourable Court will be
moved on the 27th day of October 1953, at the hour
of nine of the clock in the forenoon or so soon
thereafter as Counsel can be heard on behalf of the
defendants in the above-named matter, for an Order
substituting Nwuba Mora of Awka as the 1st defendant,
representing the people of Awka in the above-named
suit, Nnebe Nwude, the original 1st defendant, hav-
ing died on or about the 4th day of November, 1951,
and for such further and/or other order as to this
Honourable Court may seem meet.

20

Dated at Onitsha this 6th day of February, 1953.

(Sgd.) A.O. Mbanefo
Defendant's Solicitor.

No.13

AFFIDAVIT IN SUPPORT OF MOTIONIn the
Supreme Court
of Nigeria

No.13

Affidavit in
Support of
Motion.22nd October
1953.

I, Victor Okoli Oji of Awka, Farmer, British Protected person, make oath and say as follows:-

1. That I am a native of Awka, in Awka Division.
2. That the above-named first defendant-Nnebe Nwude- was appointed by the Awka people to represent them in the above-named suit.
- 10 3. That the said first defendant-Nnebe Nwude- died at Awka on or about the 4th day of November 1951.
4. That on account of the death of the said first defendant-Nnebe Nwude, the above-named suit could not be heard in the Supreme Court, until another person is substituted in his place.
- 20 5. That a village meeting held on the 4th day of August, 1953, in the house of Nwuba Mora, the Head of the people of Awka, the whole of the people of Awka unanimously appointed and authorised Nwuba Mora of Awka, to represent them in the above-named suit.
6. That at another meeting of the village held in the house of Nwuba Mora, on the 12th of September, 1953, I was appointed by the whole of Ezinano-Awka, to ask on their behalf for an approval of this Honourable Court that the said Nwuba Mora shall represent them in the above-named suit.
- 30 7. That I make this affidavit in support of a motion for an approval of this Honourable Court of the authorisation by the people of Ezinano-Awka that Nwuba Mora should represent them in the above suit.

(Sgd.) V.O. Oji

Deponent.

Sworn to at the Supreme Court Registry, Onitsha, this 22nd day of October, 1953.

BEFORE ME.

(Sgd.) S.A. Macaulay

COMMISSIONER FOR OATHS.

In the
Supreme Court
of Nigeria

No.14

HEARING OF MOTION AND ORDER FOR ADJOURNMENT

No.14

At Awka 27th day of October, 1953

Hearing of
Motion and
Order for
Adjournment.

27th October
1953.

Parties as before.

Ojiako for Defendants. Plaintiffs not represented. Motion by Defendants to substitute Nwuba Mora as 1st Defendant in place of Nnebe Nwude, now deceased. Motion and affidavit served on plaintiffs in Court, and interpreted. Plaintiffs have no objection.

Order as prayed.

10

1st plaintiff: Our lawyers are in the West African Court of Appeal and we are not ready to go on.

COURT: The Court is; why are not you?

1st plaintiff: Hearing notice was served on us on 17th October and before the receipt of our notice Counsel had left for Lagos.

COURT: You had Counsel here yesterday, who was given an adjournment until today to prepare the case.

1st plaintiff: We haven't the papers here with us. Our Counsel has them. They are old cases and judgments to be tendered on our behalf.

20

Ojiako: We are ready. I leave it to the Court to consider what to do. If there is an adjournment, it should be on terms.

COURT: It is plain that I cannot insist upon the plaintiffs going on without their papers, which no doubt are with their lawyer. If it were not for the fact that they are without part of their evidence, through no fault of their own, I would insist on their bringing forward their evidence or accepting a dismissal. As it is, it would be a denial of justice to do this. I will therefore allow an adjournment upon terms as to costs. I would point out that it has not been explained why Counsel who appeared yesterday holding plaintiffs' Counsel's brief has not appeared today, and why plaintiffs'

30

papers are not with them and are, presumably, still with their Counsel. I refer to Order 16 rule 12A. If plaintiffs think that their Counsel is in default in his failure to appear or to send another Counsel in his place, with their papers, they are at liberty to apply to the Court and upon proof of those facts obtain an order that the costs of this adjournment be paid by their Counsel personally.

In the
Supreme Court
of Nigeria

No.14

Hearing of
Motion and
Order for
Adjournment.

27th October
1953 -
continued.

10 Adjourned to next sessions at Awka, with 20 guineas costs to Defendants.

(Sgd.) W.H. Hurley
J.
27. x. 53.

No.15

No.15

COURT PROCEEDINGS

Court
Proceedings.

At Awka, Monday the 25th day of January, 1954

25th January
1954.

0/35/1949

Parties in Court.

20 Nnonyelu, with him Okadigbo and Mojekwu, for Plaintiffs.

Ojiako, with him Mbanefo, for Defendants.

This case is expected to take a week.

Stand later.

(Sgd.) W.H. Hurley
J.
25. 1. 54.

Resumed, 10.45 a.m.

By consent, plan ID.9/51, as filed by plaintiffs, received as evidence in the suit.

30 Defendants may put in another plan or plans later.

Nnonyelu opens.

Para. 3 Statement of Defence: Amawbia - meaning disputed. Res judicata - no privity.

In the
Supreme Court
of Nigeria

No.16

EVIDENCE OF E. NWALUSI

Plaintiffs'
Evidence

1st PLAINTIFFS' WITNESS: Male Sworn Ibo states
English:

No.16

E. Nwalusi.
Examination.

I am EKEMEZI NWALUSI, native of AMAWBIA, contractor and farmer. In this action I represent myself and people of AMAWBIA and am authorized to represent them and bring this action. I am President of AMAWBIA Local Council, and Vice Chairman of NJIKOKA District Council, member of NIGER County Council.

10

Know land in dispute, AGU NORGU. People of AMAWBIA own it. They got it by conquest. Conquered people of NORGU.

NORGU war, my grandfather told me, was started when OKANWATOGO, native of UMUKABIA quarter in AMAWBIA town, was going to harvest his yams and heard a tumult from NORGU, his mother's town, the neighbouring town. Went to the spot and saw his mother's people fighting among themselves. Trying to part them, was hit by stick, died. News came to AMAWBIA people, took body and buried it. Then told NORGU people to bring man who killed OKANWATOGO to be hanged. NORGU refused. Our people sent for allies among neighbouring towns - AWKA was among them, NAWFIA, ENUGU, UKWU, ENUGU AGIDI, OKPUNA, ISU, and others. It was the custom that if a town killed a man of another town and refused to deliver the killer surrounding towns would ally themselves against that town. Norgu refused to deliver the man on the allies' demand, war was declared NORGU people were driven away to UKWULU, where they now dwell. AMAWBIA took part in the fight. Their booty included NGENENKOLOFIA juju, now in AMAWBIA town, and NGENATA juju, and IKOLO drum. They also captured AGU NORGU land. Since then they have farmed and cut wood and harvested palm nuts and tapped wine there. No disturbance until last four years. First disturbed about 1948 or 1949. Our people went to farm there and AWKA people came and disturbed them and uprooted our crops. Before 1948 Defendants did nothing on the land. They surveyed it when they had a case with OKPUNO, about 1941. Our people saw them survey. Young men wanted to chase them, we elders

20

30

40

prevented, wrote and spoke to District Officer. At that time I was a member of the Native Authority. District Officer said we mustn't fight, we obeyed. We must complain to Judge. That was about 1941.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Examination -
continued.

10 Boundaries of land in dispute are from ENUGU AGIDI the MILI NWEZI Stream, and an Akpaka or oil bean tree; then two Ogirisi trees, Anyachu tree, Ogirisi tree, Agrinya tree, Akpu Ojimma tree, then straight to Akpu Oraekia tree. That is our boundary with AWKA. With ENUGU AGIDI and NAWFIA boundary is from that Akpaka tree along NWEZI Stream to its source, where there is an Ogirisi tree; also an Ebenebe tree, and an Akpu or cotton tree, on a mound or Ekpe, a sort of wall going along; then to main road from AMAWBIA to ENUGU AGIDI. Cross it, and come to a big Ogirisi tree; that is the ENUGU AGIDI boundary. Then another Ogirisi tree; on our NAWFIA boundary, then Akpu or Onu Nkpirisi tree, then Ebenebe, then OGBEKE river.

20 Road to ENUGU AGIDI was built by our people a long time ago, since British came, we supplied no labour or money or materials. Only a few years ago N.A., now County Council, took it over. Before that, AMAWBIA themselves kept the road, under a road Overseer paid by government.

Got Surveyor to make plan, went with him to show him boundaries described. That is the plan made by Surveyor John in 1951.

30 We AMAWBIA are not strangers, the word does not mean "site or land for strangers". Our name is mis-pronounced by white people, our correct name as spoken by our ancestors is AMAGHVIA (very slurred) ("Amwvia"). AWKA people pronounce f and v the same - if NAWFIA pronounced "Nawvia". "AMAWBIA" means "strangers' land". "AMAGHVIA" "AMAWBIA" means "people who didn't know strangers", (i.e. don't recognise anybody as strangers, are hospitable, per Nonyelu). There are many strangers at AWKA. Also at AMAWBIA, but that is recent. AMAWBIAS are 40 carvers and farmers. AWKAS are blacksmiths and native doctors; they travel; they don't farm as much as AMAWBIAS and other neighbours.

Our ancestor came from ENUGU UKWU. Name KANU. Six children, ENWEANI, OME, RIAMU, AGIDI, AWAFIA ONUORA.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Examination -
continued.

ENWEANI settled in NRI, otherwise AGUKU and
AKAMPISI.

OME settled ENUGU UKWU

RIAMU " NAWFIA

AGIDI " ENUGU AGIDI, earlier called OSUNA
AGIDI

AWAFIA " AMAWBIA

ONUORA " ONUORA.

I ask this Court to tell people of Awka to
keep off our land, and to pay for the damage they
have done. 10

After NORGU war other people also got land in
AGU NORGU; also NAWFIA, AWKA, ISU, OKPUNO. NISE
got no land, because they couldn't pass through
AMAWBIA to go there and get land; are far away.

I myself farm on this land, have my own portion.
Near AWKA-AMAWBIA boundary. Meet defendant ONWU-
AGHASI OKEKE. His wives and brother's wives farm
there. I know them.

Cross-
Examination.

XXD:

20

Q. - AMAWBIA-NORGU boundary before the fight? - From
MILI NWAGODU down to UVUNU river, then Akpu tree,
then Onunu tree, then Ebenebe tree, then Akpu, then
OGBEKE river, which NORGU called OMALA.

Q. - All land to West of this originally belonged to
NORGU ? - Yes.

Q. - AMAWBIA helped in the fight? - They started it.

Q. - ISU, NAWFIA, AWKA helped; was whole of NORGU
land divided among the allies after NORGU went, or
each took what he captured? - Each took what he
captured, no division. 30

Q. - AMAWBIA drove NORGU as far as Western boundary,
and stopped? - Everybody drove NORGU from their own
side, we captured the jujus and the drum.

Q. - This is not first case about NORGU land in this
Court? - I am less concerned; it is our first case.

Q. - You knew there was an AWKA-OKPUNO case; you petitioned the District Officer? - Yes, the time they surveyed our land.

In the
Supreme Court
of Nigeria

Q. - About AGU NORGU ? -

Plaintiffs'
Evidence

Objection: This will be on the record.

No.16

Q. - You knew of a case about AGU-ARALA? - It came to this Court, AWKA - OKPUNO, surveyed our land, 1941 survey.

E. Nwalusi.

10 Q. - OKPUNO called the land AGU ARALA, and AWKA called it AGU NORGU? - I don't know, it was too far away.

Cross-
Examination -
continued.

Mbanefo tenders proceedings in case under discussion.

Nnonyelu: I will have no objection to this if it is agreed that the land was not AGU NORGU at all, but another land called AGU ARALA, quite different.

Mbanefo: AGU ARALA is part of AGU NORGU.

Nnonyelu: That is why I object.

20 COURT: This I suppose is being put in as res judicata. Then all the necessary identities will have to be proved. Let it go in, and they may then be proved.

Mbanefo: I offer it only as evidence of possession.

COURT: You will still have to prove what land it is about. Subject to that, record may go in.

30 (Record O/13/41 Nnebe Nwude vs. Ikenyenwu, received Exhibit A).

(Mbanefo submits plan used in case Exhibit A; received without objection, Exhibit B).

Q. - In 1941, to your knowledge, during this case, AWKA surveyed whole of AGU NORGU ? - Yes; and we protested, as I've said.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Cross-
Examination -
continued.

Q. - The survey included AGU ARALA? - Yes.

Q. - Was AGU ARALA part of AGU NORGU, or something outside it? - Quite different.

Q. - (Exhibit A, p.94-95, judgment para.57 read) ?
- (not allowed to answer: argument, not fact).

Q. - You knew of ENUGU AGIDI case with AWKA people?
- Heard of it, AWKA sued them for rent.

Q. - Land in dispute was part of AGU NORGU? - It is a large area, it may have been.

Q. - (repeated) ? - I don't agree. 10

Q. - You knew whole area surveyed by AWKA in 1941? - I didn't see the plan.

Q. - (Shown Exhibit B) - I can't read a plan.

Q. - They surveyed up to AJIRIJA river to the North?
- We have no land there, I don't know.

Q. - Up to EZU NWOGODO river on the East? - I never heard of a stream called NWOGODO in my life.

Q. - NWAOGODO? - I was not present at survey.

Q. - What did he survey in 1941? - I didn't go with them; but I saw him making his survey in AMAWBIA town. 20

Q. - What features on boundary at AMAWBIA did he cross when you saw he was no longer surveying AWKA land? - They were going along ENUGU-AGIDI road with a chain when our people saw them.

Q. - When you saw this were they surveying, or passing through? - They were holding chain and going along, surveying it.

- Can't agree that land now in dispute was included in their plan in 1941. 30

- You told your lawyer area in dispute was included in 1941 plan, para.8 of Statement of Claim? - I said they surveyed part of our land, don't know what part.

- Don't know that whole of AGU NORGU was given to AWKA in that case.

Q. - You knew AWKA were claiming whole of AGU NORGU then? - Yes; and we reported to Judge, who said if they claimed it they must take action against other people who had interest on AGU NORGU, including ourselves; but they went on with their case.

Nnonyelu: Will Defendants agree they claimed all AGU NORGU and got only AGU ARALA in 0/13/41?

10 COURT: And then the question will be, what is AGU ARALA?

Mbanefo: I don't agree: case only concerned AGU ARALA; we claimed all AGU NORGU, but not against defendants, simply in evidence. The evidence was that we owned all AGU NORGU, and AGU ARALA was part; and we got AGU ARALA, on that basis.

Q. - You know the ENUGU-AGIDI and AWKA case, judgment in 1953, about portion of AGU NORGU? - Yes; about rent.

20 Q. - Question of rent concerned AGU NORGU land - Yes.

Q. - Decided they must pay rent for portion of AGU NORGU they occupied? - I heard the judgment.

Nnonyelu calls for record. Upheld. Mbanefo undertakes to put it in.

Q. - 1941 case, Exhibit A, decided in W.A.C.A. 1944; from 1944 to 1949 what did you do about your portion of AGU NORGU included in that case? - We were farming on our land, without interference until 1948.

30 Q. - But in 1944 you knew, and from 1943, when P.C. gave judgment, you knew that AWKA people had a judgment for land which included this land in dispute? - We went on farming, and they took no action against us, and we weren't parties, weren't in Court. District Officer and Judge said we should wait till they took action against us.

COURT: You were told by District Officer and Judge you were not affected by proceedings? - Court didn't hear us.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Cross-
Examination -
continued.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Cross-
Examination -
continued.

XX ctd

Q. - 1941 case your people gave evidence, also NORGU people? for defendants? - Our people concerned in AGU ARALA gave evidence.

Q. - NORGU man said ?

(Q. Disallowed)

Q. - AMAWBIA people took no part in NORGU fight, and got no NORGU land? - They took part, and got trophies and land.

Q. - ENUGU-AGIDI village road was built by government with labour recruited indiscriminately? - Not correct. 10

Q. - Portion of that road between UVUNU and AGU NORGU boundary near Ebenebe? You got overseers to construct this, or the whole road? - R.C. Mission to ENUGU-AGIDI boundary.

Q. - You knew UGBO between NIBO and NISE? Or UVO? a town? was there a town there before? - I don't know; none now, it is a place where people farm.

Q. - Your ancestors were driven from UGBO? - I don't know the place. I am not aware. 20

Q. - (Repeated) and you fled to AWKA people? - a lie.

Q. - You were quartered near AWKA people, and got the name AMA AWBIA, "land for strangers", - No.

Q. - Ama means place? - Yes.

Q. - Awbia means a stranger? - In some accentuation, yes.

Q. - Ama awbia means a place for the stranger? - I don't agree. My father told me we used to have boundary with UMUKU, and AWKA came as strangers, all of them. 30

Q. - Agu means farming place, not place for habitation? - means "farm".

Q. - Agu NORGU means farming place for the NORGU people? - No; when they left we called it AGU NORGU.

Q. - AMAWBIA lies between two AWKA towns, UMU OKPO AWKA and AWKA main town? - UMUOKPO live there, they were allowed by AMAWBIA people.

In the
Supreme Court
of Nigeria

Q. - AWKA people have largest farming area in all AWKA District? - No. UKULU has land more than any other town; AMAWUKE and MBAFOM have more, and ACHALA and ISIAGU. Even UGWUOBA.

Plaintiffs'
Evidence

No.16

10 Q. - Were you farming on this land before 1941? - Yes, without any interference; from our forefathers' time.

E. Nwalusi.

Q. - You stopped after 1941? After the survey? - No.

Cross-
Examination -
continued.

Q. - You never farmed on the land in dispute? - I don't agree.

Q. - AWKA people, particularly UMUOKPO, always farmed there? - They came there just recently.

1.30 p.m.

Adjourned to 9 a.m. 26.1.54

(Sgd.) W.H. Hurley

20

J.

25. 1. 54.

At Awka, Tuesday the 26th day of January,
1954.

Re-
Examination.

9 a.m.

Parties in Court.

Nnonyelu and Okadigbo for Plaintiffs.

Ojiako for Defendants.

1st Plaintiffs' Witness still on oath RXd. Judgment in 1941 case does not cover land now in dispute.

30

AMAWBIA people who gave evidence did it without town's authority, on their personal initiative.

In AWKA dialect there is no difference between Agu and Ugbo; both mean farmland.

In the
Supreme Court
of Nigeria

Ama means place; it can also mean closet in
AWKA dialect; also information; depends on pro-
nunciation.

Plaintiffs'
Evidence

No.16

E. Nwalusi.

Re-
Examination -
continued.

UMUOKPO, my grandfather told me, came from
AMAENYI, part of AWKA, and ADA people fought them
and AWKA people gave no assistance; they were re-
lated to AMAWBIA by marriage and begged them for
protection and a place to live; and we gave them
the land where they are now. NAWFIA then declared
war on AMAWBIA, and ENUGU UKWU people came and made
peace. AMAWBIA people were blamed by ENUGU for
not telling NAWFIA they were putting people on
their boundary. ENUGU ordered us to make a bound-
ary wall, which is discernible today, between
AMAWBIA and UMUOKPO. It was made round UMUOKPO,
but is demolished in places now.

10

No.17

No.17

E. Nwokoye.

EVIDENCE OF E. NWOKOYE

Examination.

2nd PLAINTIFFS' WITNESS: Male Sworn Gun States Ibo:

I am EJIKE NWOKOYE, native of AMAWBIA, farmer, and
tapper and hunter, Ozo member in AMAWBIA. I farm
in the village and also on AGU NORGU, land in dis-
pute. Have been farming on land in dispute since
I grew up (aged around 50). This is the 5th year
since I stopped farming there.

20

Counsel: injunction in this case.

X ctd: The part I farmed was OJIMMA (see plan). I
have boundary with AWKA, ENUGU-AGIDI.

Q. - In your own farming area? - With UGORJI of NGENE
AMAWBIA; with NWANFOR ENANYA of AMAWBIA; with
NWOKOYE IDA of AWKA, whose wives farm there.

30

Know boundaries of land in dispute: Between
NWEZI river and OJIMMA river the marks are Akpaka,
Ogirisi, Ebenege, Ogirisi, Anyachu, Agirinya, and
Akpu Ojimma, which is where I farm.

Never saw anybody not of AMAWBIA farming there.

My father told me NORGU people killed our son and our people jointly waged war against them and drove them away, so it is called ANI NORGU (sic).

When NORGU were driven away people who drove them away farmed on that land.

5 years ago before this action our yams and cassava were uprooted by AWKA, so we took this action.

XXd.

10 Q. - UMUOKPA live at South end of this land? - They live where they've been living, they answer to UMUOKPA AWKA.

Q. - On Southern part of AGU NORGU? - Yes.

Q. - As far as living memory goes? - I grew up to see them there, but my father told me how came there.

Q. - They are people of AWKA? - UMUOKPA AMAENYI: AWKA is different from AMAENYI.

20 Q. - Is it AMAENYI a village of AWKA, AMAENYI AWKA? - AMAENYI people are farmers, so are we; they don't travel like AWKA people.

Q. - But they are AWKA people? - AMAENYI AWKA.

Q. - So UMUOKPO AMAENYI are AWKA people, UMUOKPO AMAENYI AWKA? - I wouldn't call them that; because my father told me they put them where they are living now.

Q. - AMAWBIA have not much land? - We own land.

30 Q. - The AMAWBIA man who gave evidence in 1941 case (Exhibit A), NWOMU OREKIE: do you know him? - Yes, but I do not know anything about his evidence, we did not send him.

Q. - AMAWBIA knew he was to give that evidence? - No.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

E. Nwokoye.

Examination -
continued.

Cross-
examination.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

E. Nwokoye.

Cross-
Examination -
continued.

Q. - Did AMAWBIA know about that case? - No, and we were not in arrangement with OKPUNO.

Q. - Did you know AWKA surveyed some land in that case? - Yes, that caused this dispute.

Q. - How many years ago? - Don't know, but know they surveyed.

Q. - Did you see them? - Villagers raised alarm, ran out, I ran out with my gun, and saw them; the elders advised us to keep cool, not to fight.

Q. - Where exactly did you see them? - I met them at R.C.M. School; from there they came up to my house. 10

Q. - Inside AMAWBIA town? - From R.C.M. school to village and then towards ENUGU AGIDI.

- AWKA surveyed on AMAWBIA twice.

- I am talking about the first time.

Q. - The survey you have just described was the second survey? - No, the first.

Q. - That was the only time they surveyed inside AMAWBIA? - The second time they surveyed was in the farm land. 20

Q. - Survey in town was in 1951? - No, this land was closed up 5 years ago.

- Second survey was in AGU NORGU.

Q. - When they surveyed AGU NORGU they never entered AMAWBIA town? - The day they surveyed from R.C.M. they entered the village and from there to AGU NORGU and up to ENUGU AGIDI.

Q. - When AGU NORGU was surveyed people never entered AMAWBIA? - They did.

Q. - And surveyed AMAWBIA too? - Whole of AMAWBIA from R.C.M. and went to ENUGU AGIDI. 30

Q. - With whom did you drive NORGU? - AMAWBIA, AWKA, ENUGU AGIDI, NAWFIA, OKPUNO, ISU who live further in.

Q. - These people shared AGU NORGU? - We did not

share the land, each town owned and farmed the part where they drove NORGU away.

Q. - Case between AWKA and OKPUNO over AGU ARALA a part of AGU NORGU? - Yes, and I hunt in AGU ARALA.

- OKPUNO people will know if it was part of NORGU land.

Q. - ENUGU AGIDI and AWKA had land dispute over part of AGU NORGU? - Yes.

Q. - AWKA won? - Judgment was for ENUGU AGIDI to pay rent to AWKA if they crossed the boundary.

10

(Record in 0/48/49, 0/55/49, 0/56/49, 0/47/49, consolidated, tendered).

Nnonyelu objects: res inter alios acta.

Ojiako: It is to show that AGU NORGU was not shared with all the people with whom they say it was shared; and in each case we've claimed it as a whole.

(Received, Exhibit C).

Q. - ISU people are on part of AGU NORGU by leave of AWKA? - That is not our business.

20

Q. - NAWFIA people have no claim to AGU NORGU? - I know about our own; we have been farming without disturbance until they came and surveyed 5 years ago.

TO COURT: 5 years ago was when I stopped farming there, not when they surveyed.

Q. - Land now in dispute has all along been farmed by AWKA people? - No.

Q. - We saw you first on the land in 1948? - No.

30

Q. - Ama means? - a closet (laughter) where people defecate; also an open place.

Q. - Obia means? - If you visit me I will call you an Obia.

Q. - A stranger? - Somebody who came to me from outside?

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

E. Nwokoye.

Cross-
Examination -
continued.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

E. Nwokoye.

Cross-
Examination -
continued.

Q. - So AMAWBIA means site for strangers? - A lie.

Q. - Or a place where strangers defecate? - You ask me what Ama means and I say a closet and also an open place.

Q. - And you say Obia means stranger, and you then put them together? - That is not our interpretation.

Q. - Your people were originally UGBO? - We have always been farmers.

Q. - From UGBO town? - There is no town of that name from where we came. 10

Q. - You were given where you live by AWKA? - No.

Q. - To protect you they placed you between mainland of AWKA and UMUOKPO AWKA? - A lie.

- We have an Ekpe (fosse) on AGU NORGU because it was built by us and ENUGU AGIDI after we'd driven NORGU away.

- It was called Oburu, meaning the end, where the war was ended between NORGU and the 5 towns.

Q. - How long is it? - From Mili NWEZI to a road leading to ENUGU AGIDI. 20

Q. - There is no Ekpe? - The ruins of the old one are there, and the new one is there.

Ojiako tenders plan of C.C. Emodi of 18.5.51.

Nnonyele: I object: it does not show land in dispute correctly, see LD.9/51.

Ojiako: See plan originally filed by plaintiffs, GA.62/49.

COURT: All these plans are different as regards outline of land in dispute.

Plans are superimposed: no substantial differences. Differences affect plaintiffs' boundaries with land claimed. 30

Decided after discussion that all plans are admitted as regards physical features, measurements,

areas, and accuracy of survey generally, it being further agreed that the later plans are to be followed in preference to GA.62/49 as far as concerns the MILI NWAOGODO-UVUNU confluence; but there is no admission regarding the names given to the physical features and areas, or the attributions of ownership or statements about farming activities.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

10 This applies to Plaintiffs' L.D.9/51 and GA.62/49, to Exhibit B, and to Defendants' plan of 18.5.51 now tendered and received as Exhibit D.

E. Nwokoye,

Added, that any names or attributions or statements on which plans of both sides agree need not be proved.

Cross-
Examination -
continued.

XX ctd:

Q. - AWKA-ENUGU AGIDI dispute: District Officer went on to land? - If he did, we were not invited.

Q. - He showed ENUGU-AGIDI a part of the land to farm temporarily till case was over? - No, they went on farming where they'd farmed in the past.

20 Q. - ENUGU were asked to make a temporary fence, recent, not old? - That is the new Ekpe I've referred to, built on the old one.

- not on ENUGU-AGIDI's own land.

RX:

Re-
Examination.

AMAWBIA gave AWKA government station to Government. If AWKA was pronounced Awka it would mean corn.

30 TO COURT: AWKA only came to survey on AMAWBIA land once. They surveyed twice, first from R.C.M., the second time on farm land, on AGU NORGU, on our part of AGU NORGU. (Is thinking of AMAWBIA village, not AMAWBIA land).

They came twice to survey on land belonging to us, once in the village, and once on the farm land, to my knowledge. The village was first. That started this case. I don't know how long after it they surveyed on the farm. It was the first time. I ran out with my gun and elders told us not to fight. No trouble the second time, we had been advised to keep the peace, and that surveying it

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.17

E. Nwokoye.

Re-
Examination -
continued.

No.18

S.N.Nankwo.
Examination.

wouldn't mean they were the owners.

Ojiako: I am not aware there was any injunction in this case.

Nnonyelu: There was a breach of the peace, and District Officer told both sides to keep off the land. District Officer will give evidence. That's what is referred to.

(Mbanefo is now in Court).

No.18

EVIDENCE OF S.N. NANKWO

10

3rd PLAINTIFFS' WITNESS: Male Sworn Bible states Ibo:
I am SETH NNAKE NANKWO, farmer and head carver (aged about 60).

I farm in the village and on AGU NORGU. Know land in dispute. I farm there. At OJIMMA. Have boundary with NWOKEKE ADINKACHI, of AWKA. He farms there himself.

Have boundaries also with my people. When I farm on AGU NORGU I see no people of any other town farming there.

20

Have been farming there since I used to go there with my father in my childhood.

Last farmed there 5 years ago. Stopped because AWKA people uprooted our yams and cassava and we sued them. When we sued them we stopped going on land because Government asked us to wait until case was heard.

Know UMUOKPO, my mother was of UMUOKPO. Some people waged war against OBE town, OBE were all killed, complained AWKA did not aid them, UMUOKPO people ran out from AMAENYI to us and asked us to show them where to live, and we did, on our boundary with NAWFIA, where they are now. So NAWFIA fought

30

us, I don't know when, my father told me, he had a gunshot wound on his head, (temple), bullet came into his mouth, one day when he and I were eating corn, he thought it was a kernel, he took it out, it was a piece of bullet, I saw it, he told me it had gone into his head in that war.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.18

S.N. Nankwo.

Examination -
continued.

10 He told me how we got NORGU land. OKONWA-
TOGWU was an AMAWBIA man, his mother from NORGU,
went to see what it was, found a fight going on,
tried to pacify them, was hit on head and died. We
asked NORGU to produce his killer to be hanged,
they refused, we complained to neighbouring towns,
they all asked NORGU to produce the man; refused;
AMAWBIA told neighbours there'd be war on NORGU;
on appointed day of attack AMAWBIA led, fought in
their own direction, AWKA fought in their own dir-
20 ection, so did ENUGU AGIDI, ISU, NAWFIA, ENUGU UKWU.
After the fight we all farmed in the direction of
the attack. Never any trouble between us and AWKA
over this land.

Have boundaries with ENUGU AGIDI, NAWFIA, as
well with AWKA. Father told me origin of AMAWBIA,
from their father KANU. He had 6 sons, ENWEANA
(sic) now called AGUKU NRI; he had the Ofor; then
OME, now ENUGU UKWU; RIAMU, now NAWFIA; AGIDI,
now ENUGU AGIDI; AWAWVI, now AMAWBIA; ONUORA, who
killed his brother and was driven away, leaving
five remaining.

30 I am 90 years old. British came here in
"nineteen-o-five" (English). I had my facial mark
long before they came, and had children before they
came.

XXd:

Cross-
Examination.

Q. - NIBO claimed part of government area includ-
ing District Officer's house in a land case with
you? - They did; they told a lie.

Q. - They got judgment? - No. (loud laughter)

Q. - Case went through District Officer to Resident?
- Wherever the case was taken to, the land was ours.

40 - NIBO didn't win.

Q. - KANU is an ARO CHUKU name? - No.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.18

S.N. Nankwo.

Cross-
Examination -
continued.

Q. - Where did he come from? - I don't know (loud laughter).

Q. - Only in AROCHUKU do you find the name KANU? - Perhaps AROCHUKU had the name of our father KANU and liked it and adopted it.

Q. - Who did ONUORA kill? - My father told me he killed a relative, don't know whom.

Q. - Knew about AWKA people's survey in 1941? - They came to our village and surveyed and that caused trouble.

10

Q. - Did you sue? - Went to District Officer, he told us when Judge would come, we went and saw Judge, were advised not to fight.

Q. - People had then finished survey and gone? - District Officer advised us not to fight; that was the day we were about to fight; then he told us to see Judge.

Q. - Did Judge tell you not to mind and let them carry on with case with a plan of your land? - He went and inspected the land.

20

Q. - What did he tell you and AWKA then? - He told them to take action against all other towns that claimed AGU NORGU if they, AWKA, knew they were the owners, so that he could take all the cases together.

Q. - What did he tell you? - That was all he said; he later was transferred.

Q. - He went on land because of your complaint? - Yes.

Q. - UMUOKPO farm on AGU NORGU? - On land we gave them.

30

Q. - You gave them NORGU land where they farm? - Where they live and where they farm; they don't farm on land in dispute.

Q. - You know the whole of AGU NORGU? - Yes.

- We started the NORGU war.

Q. - You got the smallest share of NORGU land? - What we were able to conquer.

Q. - Did NORGU live all over AGU NORGU, or only in one place? - They lived on it and farmed on it, but when they went it all became farm land.

In the
Supreme Court
of Nigeria

Q. - You attacked first from your own side? - Yes.

Plaintiffs'
Evidence

Q. - Where did fight end? - When NORGU left, the different towns farmed on the land from their own directions.

No.18

10 Q. - No place dedicated as the place where the fight ended? - They were no longer there, their houses were not there.

S.N. Nankwo.

Q. - OKPUNO and ENUGU AGIDI and AWKA each started from their own side, or you started from one side special place? - Each town from its direction.

Cross-
Examination -
continued.

Q. - AWKA get any portion of AGU NORGU at all? - They are more numerous than AMAWBIA and have more land.

Q. - (repeated) - Yes, their own; it is larger than ours.

20 Q. - What portion? - From AWKA town to beyond OKPUNO.

Q. - OKPUNO is a town? - Yes.

Q. - OKPUNO is between AWKA and NORGU? - Yes; they attacked from their own side.

Q. - After OKPUNO on the East comes ISU? - Yes, they live in the upper part of OKPUNO.

Q. - So before AWKA got to NORGU they had to cross OKPUNO and ISU? - The three live adjacent, and NORGU was almost in the centre and opposite them; each could get into NORGU from its own side.

30 Q. - Areas claimed by OKPUNO and ENUGU AGIDI have been awarded to AWKA by the Court? - I don't know.

Q. - In AMAWBIA, besides yourselves there are Hausas and government; all strangers? - Do you want us to drive them away?

Q. - AWKA have sued AMAWBIA for title to this land, and District Officer has transferred case to

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.18

S.N. Nankwo.

Cross-
Examination -
continued.

Re-
Examination

Supreme Court? - I heard: but this action is not disposed of, how can be talk of the other one? (laughter).

Q. - You remember when NORGU came back to their land after government came? - I have seen no house there ever.

Q. - They came back and attempted to regain their land? - I did not see them.

RX:

I know UJALIS, in AWKA Division, when District Officer Awka talks of ADA, that is under NDIKE-LIONWU town, and they were the people that attacked AWKA, NDIKELIONWU hired them, when UMUOKPO ran to us. It is quite different from ADAZI; ADAZI is a town, ADA are the warriors. 10

(Ojiako's home town).

I can tell the boundaries of all NORGU land, boundaries of ENUGU-AGIDI, NAWFIA, etc. on it.

Have been served with AWKA's writ for title to AGU NORGU, don't know which court. 20

No.19

A. Nwavolume.
Examination.

No.19

EVIDENCE OF A. NWA VOLUME

4th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:
I am ADO NWA VOLUME, of AMAWBIA, where I live, farmer. (aged about 80) (looks a lot older than last witness).

I farm on this AGU NORGU we got from NORGU people, and also in the village. Knew land in dispute, it is AMAWBIA's. AGU NORGU goes up to MILI NWEZI; I was farming that part with my father when I was so high (10 years); I planted corn then. 30

Still farm there, till there was trouble when AWKA uprooted our yams and cassava. My father had boundary with ONYEBU NNAMA, now dead, and I have boundary with his wives. No people not AMAWBIA farm on land in dispute. Know AMAWBIA-AWKA boundary. From the stream you come to Akpaka, then Ogirisi, a second Ogirisi, Ebenebe, Anyachu, Agrinya, now cut down, Akpu Ojemma, Akpu Orekie.

10 Have boundaries with OSUNAGIDI now ENUGU AGIDI, NAWFIA.

Know road AMAWBIA - ENUGU AGIDI starting at R.C.M.; we constructed it; I was one of those that constructed it, all the AMAWBIA young men did.

No other people helped us, we constructed it up to our boundary with ENUGU AGIDI then they continued from there to their village.

We brought this action because our yams and cassava were uprooted by AWKA.

20 NORGU owned the land originally, we attacked them and drove them away, and own the land.

UMUOKPO people - Okpu means "hat" Umu means children. They came from AMAENYI AWKA and there was a war against them and they ran to us because their mother was from our place and asked us to show them where to live and we did.

AMAWBIA people are farmers.

XXd:

Q. - Know AJALI and NDISUOGU people? - Know.

30 Q. - Only AROCHUKU people and NDISUOGU who are AROCHUKU answer name of KANU? - Don't know.

Q. - KANU an Ibo name? - Yes, our ancestor's name.

Q. - Many Ibo people here answer KANU? - Depends on choice, you may give any name to children.

Q. - (repeated) - Our father was KANU.

Q. - Anybody else called KANU today at AMAWBIA? - Yes, one, but he's dead now.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.19

A. Nwavolume.

Examination -
continued.

Cross-
Examination.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.19

A. Nwavolume.

Cross-
Examination -
continued.

Q. - Who? - KANU NWOKONKWO.

Q. - He must have come from ARO NDISIOGU? - No, his father was UZOREBU.

- My name is also unique in AMAWBIA, it is ADUNWERUGE.

Q. - You know ADUNWERUGE of ENUGU UKWU? - No.

Q. - Any KANU there? - Yes.

Q. - KANU who? - KANU, his son is ENWEANI.

- lives in ENUGU UKWU town.

Q. - No man of that name there today? - There is. 10

Q. - You mean the KANU who is the father of all the people? - Yes.

Q. - There is an ADUNWERUKE (k, not G - dialect variant) at AWKA? - my father's son.

- Have seen no ADUNWERUGE.

Q. - Have AWKA any farm land on the land you've mentioned near NWEZI Stream? - They have a boundary there, we farm one side, they the other.

Q. - They even farm inside land in dispute? - Never on our side near NWEZI Stream, which is the boundary - never at any time inside. 20

Q. - AMAWBIA first encroached here in 1948? - I farmed that land up to the influenza, then fell ill and hired people to harvest.

TO COURT: NWEZI is boundary - from AKPAKA tree there, southwards. ENUGU AGIDI are beyond the stream.

Re-
Examination.

RX:

Chief OJIAKO, deceased, in AWKA: nobody I know of outside his family was called OJIAKO; we have OJI. 30

No.20

EVIDENCE OF M. NWOGUIn the
Supreme Court
of Nigeria5th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:Plaintiffs'
EvidenceI am MADUNEKE NWOGU, of AMAWBIA, where I live,
farmer. (50-60).

No.20

Farm in village and AGU NORGU. Farm on land
in dispute. Boundary with ENUGU AGIDI and NAWFIA.
With NAWFIA, boundary from main road is to Ogirisi,
10 Akpu Nkpirisi Onu, Ebenebe, Akpu Oboloto, Ebenebe,
and to OGBEKE river.

M. Nwogu.

Examination.

My immediate NAWFIA neighbour is NWOKEKE OGUNO,
also CHINUKWU another NAWFIA man has boundary with
me.

ENUGU AGIDI neighbour UDEKWU.

Boundary with ENUGU AGIDI, as far as I know it,
was an old Ekpe (fosse), and now we have a new one.
It goes on a long line up to an Akpu tree, then to
Ebenebe, then Ogirisi standing at source of MILI
NWEZI.20 Have seen no other people farming on the land.
Stopped 5 years ago.XXd:Cross-
Examination.

UDEKWU, I don't know if he's UDEKWU AMATA.

Q. - Know of AWKA - ENUGU AGIDI dispute over AGU
NORGU? - No.Q. - You know UDEKWU AMATA, prominent man in ENUGU
AGIDI? - Usually met this UDEKWU on farm, never
asked surnames.

Q. - (repeated) ? - No.

30 Q. - The Ekpe was built by ENUGU AGIDI on instruc-
tions of District Officer? - Yes, the new Ekpe.- If ENUGU AGIDI said it was their boundary with
AWKA, it is a lie.

Q. - How was Ekpe built? - ENUGU AGIDI said they'd

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.20

M. Nwogu.

Cross-
Examination -
continued.

Re-
Examination.

been asked to build new Ekpe and we helped them; but old Ekpe still exists.

Q. - Is new Ekpe on top of old, or on a different line? - In line with the old, adjoining it.

Q. - Did ENUGU AGIDI say why District Officer asked them? - They said they had a dispute with AWKA and were asked to build that Ekpe.

Q. ... For what purpose, as what? - If there's a dispute between two towns, and boundaries are not there, new ones will be made.

Q. - So this was their boundary with AWKA? - I am referring to boundary between ENUGU AGIDI and AMAWBIA, we jointly built Ekpe along it.

TO COURT: At time of their dispute with AWKA.

If ENUGU AGIDI built Ekpe on their boundary with AWKA I don't know.

RX:

Ekpe was not to mark ENUGU AGIDI's boundary with AWKA.

No.21

N. Okeke.

Examination.

No.21

EVIDENCE OF N. OKEKE

6th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:
I am NWOKOYE OKEKE, native of NORGU, living at NORGU, farmer.

NORGU is now beyond ENUGU AGIDI; the town where NORGU people live is - we are neighbours with UKWULU.

Our present settlement is not our original settlement.

Our fathers lived in ANI OKPUNO NORGU. We left, I was told, because an AMAWBIA man whose mother came from our place heard a fight at NORGU and came to separate and was killed. They asked

10

20

30

NORGU people to hang for the man killed. NORGU refused. They fought with AMAWBIA people. AMAWBIA hired 5 towns, ENUGU AGIDI, NAWFIA, AMAWBIA, AWKA, OKPUNO. They drove NORGU away. They shared NORGU land. Never heard AMAWBIA didn't take part in the fight or even start it. Each town went in from its own direction. Land we were driven out of is now called OKPUNO NORGU. The same as AGU NORGU.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.21

10 NORGU people came back to NORGU land after government came; I was one of those that returned. When we returned we had trouble with ENUGU AGIDI and AMAWBIA; they burnt our houses and we fled. We used to come down to AWKA station. We came by ENUGU AGIDI way. Passed through AGU NORGU. Saw people farm there. ENUGU AGIDI, AMAWBIA, and after that we'd go into AMAWBIA village.

N. Okeke.

Examination -
continued.

XXd:

Cross-
Examination.

20 Q. - Heard of case (Exhibit A) AWKA-OKPUNO 1941? -
Yes.

Q. - About AGU ARAIA? - Don't know.

Q. - About part of AGU NORGU? - Can't say what part of AGU NORGU belongs to any particular town.

- I couldn't point to the land then in dispute.

Q. - You know NNAEMEGBO OKOYE? - No.

Q. - NNAEMEGWO OKOYE of NORGU? - No one of that name in NORGU.

30 Q. - NNAEMEGWO (different accent) OKOYE? - If there's one, its not in my own part; I wouldn't know all the NORGU people.

Q. - NNAEMEGWO OKOYE an ex-Council Member for NORGU people? - The man who has been to prison before.

Q. - The ex-Council member? - I heard that one NNAEMEGWO was imprisoned; he's the only one I've heard of.

Q. - An ex-Council member? - Yes, for his family, not for mine.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.21

N. Okeke.

Cross-
Examination -
continued.

Q. - Know OKOYE IFEKANDO, juju priest for NORGU? - No.

Q. - Can you say if any NORGU man gave evidence in 1941 AWKA-OKPUNO case for either side? - If anybody did, I do not know; they wouldn't summon the town, one would go on one's own.

Q. - NNAEMEGWO OKOYE should know something about NORGU history? - He is not older than I, wouldn't know more than I, have a daughter as old as him.

Q. - (Exhibit A, p.24 "In those days our neighbours were I don't know about AMAWBIA") - He was a Council member then, he was flying about, and that was how he got himself into prison.

10

Q. - He was a more important person in NORGU than you?- He moved about in the air, but I am a farmer living on the land and I will tell the custom.

Q. - He was a Chief as well as Council-Member? - No.

Q. - You know AKPU ESO quarter in NORGU? - My own.

Q. - Your juju priest was who? - OBU EKWE was our Council Member and the chief juju priest.

Q. - Before him? - OKONKWO NWANKWO.

20

Q. - At time of OKPUNO-AWKA case? - OKONKWO.

Q. - Any person in your quarter called OKOYE IFEKANDO? - Not in our village.

Q. - You knew well he gave evidence for your quarter in 1941? - We never had a meeting and sent anyone to give evidence.

Q. - Any man who gave evidence against you must be penalized; did you hear that anyone gave evidence for your quarter in 1941? - I did not hear.

Q. - (Exhibit A, p.28 "There was once a war we were driven out"). - That is the correct version of your history? - My father never told me it was only AWKA.

30

2 p.m. Adjourn to 9 a.m. 27.1.54.

(Sgd.) W.H.Hurley
Judge.

26. 1. 54.

At Awka, Wednesday the 27th day of January, 1954

9. 5 a.m.

Parties in Court.

Nnonyelu for plaintiffs. No other Counsel present.

Mbanefo had not concluded XX yesterday. Is not now here to continue.

RX: (None).

7th Plaintiffs' Witness is called.

10 Mojekwu appears for plaintiffs.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.21

N. Okeke.

Cross-
Examination -
continued.

No.22

EVIDENCE OF N. ANIEMENE

No.22

N. Aniemene.

Examination.

7th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:

I am NWOKOYE ANIEMENE, native of NAWFIA, where I live, farmer.

I farm at AGU NORGU. I have a boundary with AMAWBIA. I farm opposite NWANNA of AMAWBIA.

NAWFIA - AMAWBIA boundary is Akpu Nkpirisi Onu, Akpu Ovoloto, Ebenebe, Ogilisi, up to OGBEKE river.

20 My father used to take me as a boy on land there and I still farm there (50-60 years old?). No one but ENUGU AGIDI and AMAWBIA farm near me. No AWKA people.

30 Father told me of dispute with AMAWBIA. They put UMUCKPO on land they owned jointly and NAWFIA complained they didn't like AMAWBIA putting UMUCKPO on land the two towns owned together. AMAWBIA and NAWFIA fought, and ENUGU UKWU separated them. NAWFIA and ENUGU UKWU are related. We are related also to the UMUNRI, ENUGU AGIDI, AMAWBIA, ORUORA.

Father told me how we got part of AGU NORGU.

In the
Supreme Court
of Nigeria

Told me NORGU were fighting; AMAWBIA man,
mother from NORGU, went to separate them and was
killed by NORGU.

Plaintiffs'
Evidence

Ojiako appears for Defendants.

No.22

NAWFIA, ENUGU AGIDI, ISU, AMAWBIA all jointly
attacked NORGU, AWKA also took part. They drove
NORGU away and each since then farmed from his
direction of attack. Not true that AMAWBIA didn't
take part.

N. Aniemene.

Examination -
continued.

Cross-
Examination.

XXd:

10

Q. - NAWFIA have part of NORGU land. - I know the
NORGU land.

- We are between ENUGU AGIDI and AMAWBIA.

- We farm on NORGU Land.

(Last 2 questions were "can you describe NORGU
land?").

Q. - What is boundary between you and NORGU? - NORGU
owned the land and since the attack each town farms
from direction of attack.

Q. - (repeated) - My father never told me there was
a boundary. 20

Q. - So NAWFIA had no boundary with NORGU? - He
never showed me the boundary.

Q. - You are farming NAWFIA not NORGU land? - We
farm NORGU land.

Q. - Any other two towns you know have no boundary?
- Can't say what boundary was before attack.

Q. - NAWFIA don't claim NORGU land at all? - I'm not
telling a lie, we still farm NORGU land.

Q. - Remember AWKA-OKPUNO case, 1941? - We have no
boundary with OKPUNO. 30

Q. - (repeated) - I heard they had a case over ARALLA
land, I don't know where it is.

Q. - Heard AWKA surveyed NORGU land in that case? - Yes, they surveyed up to our town, then we went to District Officer and complained.

In the Supreme Court of Nigeria

Q. - Take any action against them? - No.

Plaintiffs' Evidence

Q. - You have been hired to give this evidence? - No.

No.22

10

TO COURT: We owned the land where UMUOKPO are, together with AMAWBIA people, we had a boundary, and when they brought UMUOKPO on the land we owned together we were annoyed. Mbafie tree stands on our boundary with AMAWBIA, they put UMUOKPO within area of that tree, and UMUOKPO extended into our own land.

N. Aniemene.

Cross-Examination - continued.

Interpreter: I interpret "Nwekotaluonu" as "we owned together", it means "jointly".

RX:

Re-Examination.

AMAWBIA land is on one side, ours on the other, they put UMUOKPO on the boundary, they spread both sides.

20

No.23

No.23

EVIDENCE OF N. OKONKWO

N. Okonkwo.

Examination.

8th PLAINTIFFS' WITNESS: Male Sworn Gun States Ibo:

I am NWOKOCHA OKONKWO, of ENUGU UKWU, where I live, farmer (Aged 45 - 55). I farm at home.

Father told me about NORGU war. Who took part. ENUGU, NAWFIA, AGIDI, ORUORA, ISU, AWKA, OKPUNO.

Q. - Who started the War? - AWAWVIA, their son was killed. Now called AMAWBIA.

30

After fight our people said NAWFIA and AWAWVIA were living in front of them and they would not pass through these towns to farm NORGU land and decided to allow NAWFIA and AWAWVIA to carry on farming that land from the direction of their attack.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.23

N. Okonkwo.

Cross-
Examination.

XXd:

Q. - Your people farm at AGULERI and UKULU? - Yes, and at IGBARIAM.

Q. - These 3 towns, and AGU NORGU, which is nearer to ENUGU UKWU? - IGBARIAM is farther away from my town than NORGU Land is.

Q. - Your people also farm at ASABA? - Yes.

Q. - Which is across Niger and further from you than AGU NORGU is? - Yes.

Q. - In all these places, AGULERI, UKULU, ASABA, IGBARIAM, you go as tenants? - Yes. 10

Q. - Yet you left AGU NORGU which you acquired by conquest and went to these distant towns as tenants? - Our relatives are farming there, we are numerous, that land would not be enough for us all ("there", "that land" means AGU NORGU, agreed).

Q. - You know NGAJI OKEKE of ENUGU UKWU (Exhibit C, p.45)? - Yes.

Q. - Older than you? - No (positive).

Q. - About 80? - I don't know. 20

Q. - A farmer? - Yes.

Q. - Farmed on AGU NORGU as tenant of AWKA? - On AWKA portion.

- did not farm on our relatives' portion.

Q. - Went with many ENUGU UKWU People? - Yes, on AWKA portion.

Q. - ENUGU UKWU will farm as tenants on land they took part in conquering? - We don't pay rent we farm on our relatives' portion; we are many, and our relatives' portion isn't enough for us all (is getting very indignant). That's why some of us paid rent to farm AWKA portion. 30

Q. - ENUGU UKWU never took part in fight against NORGU? - We took part and my father told me that.

RX:

I was a man when government came (makes him 60-70).

It was after government came we started to go to these places like ASABA and IGBARIAM to farm.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.23

N. Okonkwo.

Re-Examination.

No.24

EVIDENCE OF O. ANAKWE

No.24

O. Anakwe.

Examination.

9th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:

10 I am OKAFOR ANAKWE, of ISU, where I live, farmer (aged around 50).

20 Know NORGU people, live with UKULU now. Before then they lived in AGU NORGU. A large piece of land. I know it. Because we farm on our own side, then AMAWVIA people farm on other side of NWEZI river. Have seen them farm there since I grew up and started going to farm. Popular Eke market in this area is Eke Amawvia. I attend it, and many of our people, all ISU people. We come by main road, main Onitsha road. We get to that road from branch road leading to ACHALLA, with a signboard, passing through OKPUNO town.

TO COURT: We pass the AWKA Prison on our way.

XXd:

Cross-
Examination.

Q. - ISU had any land dispute with AWKA? - Yes.

Q. - About AGU NORGU? - Yes.

Q. - AWKA won? - A lie.

Q. - ISU who farm on NORGU do so with permission of AWKA? - No.

Q. - What was decision in that case? - We said our boundary was OBIBIA stream.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.24

O. Anakwe.

Cross-
Examination -
continued.

Q. - Your people cultivate up to OBIBIA river? -
Yes.

Q. - What Court was the case in? - MBATETE Court.

Q. - When? - A long time ago.

- No other case with AWKA over NORGU land; they
trespassed on our land, came over.

Q. - NWANKWO OFULUME represented ISU? - Yes.

Q. - ANENE OGBUKWEZE and NWAZO EKWE for AWKA? -
Yes.

Q. - Claimed trespass on MGBOKO OBIBIA? - Yes.

10

Q. - Judgment was your case was dismissed? - Court
decided that they should leave our land.

(Copy proceedings tendered, received Exhibit E).

Q. - You knew about the 1941 AWKA-OKPUNO case? - I
heard there was such a case.

Q. - That AWKA won? - I didn't hear that.

Q. - Did your people know AWKA surveyed AGU NORGU? -
I am not sure.

Q. - Did you hear of it? - I didn't hear.

Q. - AWKA passed through your town surveying land at
any time? - Because they surveyed our land we sued
them.

20

Q. - Then your case was dismissed? - No.

Q. - Know land AWKA disputed with OKPUNO, AGU ARALLA?
- Have not been there.

Q. - Know NORGU land at all? - Yes.

Q. - Can you describe it a bit? - My father told me
a story about it.

Q. - Tell the Court the boundaries of AGU NORGU? - I
am not an old man so as to give all the boundaries.

30

Q. - Know land claimed by OKPUNO was covered by

OBIBIA river down to MILI NWEZI? - I know NWEZI Stream.

- I know OBIBIA river.

Q. - You know other side of OBIBIA was claimed by OKPUNO? - I don't know.

Q. - Know AWKA farmed on East of OBIBIA? - Never see them.

Q. - And on Western side of OBIBIA? - No.

10 Q. - Who farmed there? - On Eastern side it is our land, on Western it is AGU NORGU.

Q. - So AGU NORGU is different from your own land? - Yes.

Q. - Your people don't farm on AGU NORGU? - They don't.

RX: (None).

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.24

O. Anakwe.

Cross-
Examination -
continued.

No.25

EVIDENCE OF A. NWOSU

No.25

A. Nwosu.

Examination.

10th PLAINTIFFS' WITNESS: Male Sworn Bible states Ibo:

20 I am AUGUSTIN NWOSU, of NISE, where I live. (Aged 40-50).

I know AGU NORGU. It is in my land. I own it. There is a College in it now, C.M.S.

Father did not tell me AMAWBIA's were originally settled at AGU UGBO.

XXd:

Cross-
Examination.

Q. - You showed C.M.S. land where College is built between NISE and NIBO? - Yes.

Q. - Name of College? - St. Mark.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.25

A. Nwosu.

Cross-
Examination -
continued.

Q. - Is it in any way called NIBO-NISE College? -
Yes, it is called NIBO-NISE College, but it has a
meaning.

Q. - That land is communal, can't say exactly
whether it belongs to NISE or NIBO? - That's why I
say it has a meaning.

Q. - Is that the meaning I've put to you? - No.

Q. - Is my suggestion correct or not (communal land)?
- NISE owns the land.

Q. - NISE and NIBO towns are separate? - Yes. 10

Q. - Then why does NIBO name come in? - The NIBO
man to whom the land was given has relationship
with NISE, his mother was from NISE, and that is why
it is now called NISE NIBO College.

Q. - Why did you say that land was your own? - I
showed the land.

Q. - How many years ago? - This is sixth year.

Q. - Reason it is called NIBO-NISE is that the place
was common property of both whodrove away AMAWBIA? -
No, my father did not tell me that. 20

- My father is dead.

TO COURT: Because I shared it, I am the owner,
but I know in myself the people that own it, they
are UMUBULOLO OTOTU, UMUNWUFO, UMO ADOMOJI, UMUEZ-
EONYEBALU, URUEZEONWU, UMUENKWECHI, these are the
families that own the land around that College.
These are families of NISE, and of NISE only.

Q. - If land was given to NIBO man, how did you give
it out? - The actual place wanted for the College
was part of our land which was given to a NISE woman 30
who married a NIBO and went to live at NIBO but had
no children, so that the land went to her husband.
If she'd had children we'd have taken the land back
after she died.

COURT: That seems strange to me.

RX:

Made a paper with C.M.S. Signed my name. C.M.S. did not build only on the piece given to the NISE woman, we showed them a bigger portion surrounding it. For the smaller portion NWOKEKE ONUORA of NIBO signed.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.25

A. Nwosu.

Re-Examination.

No.26

No.26

EVIDENCE OF O. EGBANDO

O. Egbando.

Examination.

11th PLAINTIFFS' WITNESS: Male Sworn Gun states Ibo:

10 I am OKEKE EGBANDO, of OKPUNO, where I live, farmer. (In his 30s).

I farm at OKPUNO, place called AGU OKPUNO. From OKPUNO there is a road to AWKA. I have gone on that road from OKPUNO to Awka and from AWKA to AMAWBIA. There is another route, from AGU OKPUNO to AGU AWKA along AGU NORGU up to MILI NWEZI. When I cross MILI NWEZI I get to where AMAWBIA people farm. Before crossing NWEZI I would see AWKA people farming; after crossing I get to where
20 AMAWBIA people farm, and they farm there alone. I see AWKA people first, NEBE NWUDE an AWKA man.

I have been seeing AMAWBIAs farm since I started using that road a long time ago. It is a footpath not a motor road.

XXd:

Cross-
Examination.

Q. - Your mother came from AMAWBIA? - Yes.

Q. - That's why you've come to give this evidence?
- No.

30 Q. - AWKA had land dispute with OKPUNO in 1941? -
Yes; not about this land.

Q. - AWKA won? - Against only one quarter of OKPUNO.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.26

O. Egbando.

Cross-
Examination -
continued.

Q. - Know MADUKA, oldest man in OKPUNO? - I knew him, not the oldest man.

Q. - He gave evidence (Exhibit A, p.40) for AWKA? - Yes, but in a case against UMUODU of UKPCNO.

Q. - A very important man in OKPUNO? - No.

Q. - More important than you? - No.

Q. - What are you at OKPUNO? - Not even a titled man? - I have 5 wives and he has 2.

- He's not a titled man.

- He's older than I.

10

Q. - Now 70 or 80? - Don't know.

- I am 60.

Q. - MADUKA's children older than you? - I don't know.

Q. - You know his children? - I do.

Q. - You have age-grades? - Yes.

Q. - You are not of same age-grades with some of his children, they are older than you? - I am older than all of them.

Q. - (Exhibit A, p.40). He said AWKA drove away NORGU? - He lied; AMAWBIA man was killed, NWOKAN-WATOGU (stopped).

20

Q. - How many AMAWBIA wives have you? - None.

- leaving OKPUNO I get to UMUODO then to AWKA farms then NWEZI Stream.

- pass through the land involved in the AWKA-OKPUNO case, almost daily.

- before I get to MILI NWEZI.

Q. - After passing that AGU ARALLA you meet AWKA people farming before you get to MILI NWEZI? - They work on AGU ARALLA, I pass through it, I cross MILI NWEZI, and on the other side I see AMAWBIA people working.

30

RX:

Not true that AMAWBIA didn't take part in NORGU war; they headed the fight, my father told me. My father's mother comes from AWKA, my own from AMAWBIA.

In the
Supreme Court
of Nigeria

Plaintiffs'
Evidence

No.26

O. Egbando.

Re-Examination.

No.27

EVIDENCE OF J. NWACHUKWU

No.27

J. Nwachukwu.

Examination.

12th PLAINTIFFS' WITNESS: Male Sworn Bible states English:

10 I am JOSEPH NWACHUKWU, District Clerk, AWKA. Live in AWKA Station Government Quarters.

Have a file dealing with AGU NORGU land dispute in office. Have a letter in it dated 13.5.41 to District Officer signed by leading members of AMAWBIA. I produce the letter, extracted from the file.

(Tendered, no objection, received Exhibit F).

XXd:

Cross-
Examination.

20 I do not know if any action was taken on Exhibit F.

Case for plaintiffs,

In the
Supreme Court
of Nigeria

No.28

EVIDENCE OF N. MORA

Defendants'
Evidence

No.28

N. Mora.
Examination.

1st DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am NWUBA MORA, of AMIFU AWKA, trader, formerly blacksmith, Defendant in this case, sued in representative capacity.

Know land in dispute, AGU NORGU. We own AGU NORGU. Original owners were NORGU. AWKA man went to NORGU, NORGU people killed him, AWKA made war against NORGU and drove them away. AWKA people asked NORGU for somebody to hang for the AWKA man they killed, NORGU refused, AWKA took NORGU's land in lieu, and NORGU went to UKULU and lived. AWKA owned NORGU land because NORGU had run to UKULU, we drove them, we made war and drove them away.

10

Nobody else but AWKA joined in the fight.

Nobody but AWKA ever laid claim to AGU NORGU except the case we had with OKPUNC. OKPUNO refused to pay rent to use, we wrote to Resident, he advised us survey all AGU NORGU land to let him know the boundaries, and to sue OKPUNC after the survey. We did this. OKPUNO were claiming a portion of AGU NORGU for which we sued them. AGU ARALLA, we won.

20

When we surveyed we met no other people from other towns as we were surveying.

ISU laid claim to part of AGU NORGU after OKPUNO, and sued us in their Court, MBATETE. We won.

ENUGU AGIDI refused to pay rent and we sued them and they've been paying it. We won.

30

ENUGU AGIDI said their own boundary was at MILI NWEZI, from ENUGU AGIDI to MILI NWEZI was what they claimed.

There was another case with ENUGU AGIDI after the rent case (Exhibit C), we sued for title and injunction. We won.

District Officer advised AMAWBIA to sue us, Hence this case.

Q. - Know area they are claiming? - OJIMMA and IDEBE long time ago we showed this land to NISE and they farmed on it and then left.

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of Nigeria

Today, since NISE left, AWKA have been farming on it. We have been farming up to OJIMMA, and UMUCKPU have been farming up to OJIMMA; one day we discovered AMAWBIA had been going on the land and uprooting cassava and yams.

Defendants'
Evidence

No.28

10 COURT: To me " up to OJIMMA" means as far as, but not into.

N. Mora.

X ctd:

Examination -
continued.

We farm on OJIMMA land too. AMAWBIA dug up our yams and cassava about 5 years ago. On the day they agreed to do this information got to UMUOKPO people so they went and kept watch and when AMAWBIA came there was a fight between them and AMAWBIA and a person was killed.

Not true AMAWBIA have always farmed on this land; they have never farmed on AGU NORGU.

20 AMAWBIA are strangers, people who came. I heard from my father that AMIVWO AWKA and AGULU AWKA were fighting. They fought for 3 years and one OKEKE OMELOIGBO went to OLU and brought the government; at that time there was no government here (i.e. inland). When government came they stopped the fight and damaged all the guns in this part of IBO land. Then they returned to AWKA and OKEKE told AWKA people that government would like to be shown a piece of land to live. AWKA said they'd
30 already shown portion of land to some strangers, AMAWBIA, originally UGBO, when they came we called them NDIOBIA, and AWKA decided to show the remaining portion to the government, so they showed government the present Station. Station is owned in part by NIBO, in part by AWKA. AWKA have boundaries with NIBO, NORGU, and NAWFIA. From an oji tree just after market place up to the beginning of UMUOKPO town is the portion we showed to AMAWBIA; they were not many then; that was what my father
40 told me.

UMUOKPO are AWKA people. AWKA people took them out from AMAENYI to their present site and asked them to live there. That was our boundary

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Supreme Court
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Evidence

No.28

N. Mora.

Examination -
continued.

with NAWFIA, that was why we asked them to live there, it was not given to them by AMAWBIA. Distance from AWKA town to UMUCKPO would be about 3 to 4 miles, I don't check.

Never heard the story of KANU being ancestor of AMAWBIA and others. In this part of IBO KANU is not a name in use, it's from AROCHUKU side.

Ekpe from NWEZI source on West of land in dispute was where District Officer summoned AWKA and ENUGU AGIDI and showed them where to demarcate their boundary. They started from NWEZI and walked to ENUGU AGIDI side and he asked them to build Ekpe from the stream to where he stopped on ENUGU AGIDI side, and ENUGU AGIDI did so. He asked ENUGU AGIDI to farm from the Ekpe bounding their village, and AWKA to start from the Ekpe and farm towards AWKA town; and that ENUGU should continue to pay their tribute; that was the boundary marked out by District Officer. He told us to farm towards AWKA town up to UVUNU river and towards UMUCKPO. 10 20

The Ekpe goes up to the ENUGU AGIDI road, and there an Ebenebe tree there.

AMAWBIA took no part in dispute that led to building of Ekpe.

Q. - From wall, not ENUGU AGIDI side, but the other side, what did the District Officer tell you? - He said we were the owners of that portion. We refused and said District Officer couldn't force us to do that, so we sued for an injunction. We were not satisfied with District Officer because the portion given to ENUGU AGIDI was too large. Besides NWEZI, land now in dispute is bounded by other rivers, namely, at UVUNU, OJIMMA is there. 30

East boundary of land in dispute I can't say, I was not present when AMAWBIA surveyed the land. Crossing UVUNU one comes to OJIMMA. MGBOKOFIA Stream is on the land. There are trees on the land. From MILI NWEZI one goes to Akpaka tree, then Ogirisi, then Anyachu, then Akpu, then second Akpu, then to UVUNU. Then on UVUNU bank up to the ENUGU AGIDI road. Then to the Ekpe, going along the road. I don't know they managed to get to the Akpu tree. After the Akpu I don't know what. AMAWBIA say their boundary is along the road up to Ogirisi tree. 40

Road to ENUGU AGIDI I don't know who built it; it was built by the Government.

AMAWBIA don't farm on West of UVUNU river.

In the
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Defendants'
Evidence

No.28

N. Mora.

Examination -
continued.

Cross-
Examination.

XXd:

Q. - Your case with OKPUNO, 1941: did you know of it? - Yes, I was present.

Q. - Were one of the elders who were authorised to carry on that case? - I was present when people were authorised.

10 Q. - Know Chief NNEBE NWUDE now dead? - Yes.

Q. - He took out Native Court writ against OKPUNO? - Yes.

Q. - Writ before survey, or survey before land? - First surveyed, then took action.

Q. - So you then knew exactly the land you were describing in Native Court writ? - Yes.

Q. - (Reads Native Court Summons, Exhibit A, page 4)? - That is not what we took action for in Native Court.

20 Q. - What land of AMAWBIA bounded this land to the East in 1941, which land had you in mind when you said they had land on the East? - We didn't say that AMAWBIA land was the boundary on the East. If it's stated in the summons, I don't know about it.

Q. - When you tendered plan, you were allowed amend writ in Supreme Court to suit plan, you remember? (Exhibit A, pp.7 and 12) - We didn't hear that.

In the
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of Nigeria

Defendants'
Evidence

No.28

N. Mora.

Cross-
Examination -
continued.

Q. - At that time you first used word AGU ARALLA? - Judge directed that AGU ARALLA which concerned only onequarter in OKPUNO should be dealt with first; after that then AGU NORGU case would be heard later; ARALLA is a quarter in NORGU.

Q. - Many towns farm on AGU NORGU? - People that we show do, those that we don't do not.

Q. - Why don't you show AMAWBIA a place to farm, as well as where to live? - They were not many then, and they farmed from where they were shown right to UVUNU, that was enough. 10

Q. - Since their increase, have you shown them a place to farm? - From their town to UVUNU is large and is enough.

Q. - You AWKAs alone fought NORGU? - Yes.

Q. - You are noted as warriors? - Yes, we had powerful guns with which we waged war and drove towns away.

Q. - You are mainly blacksmiths? - Yes.

Q. - Native doctors? - Yes. 20

Q. - Travellers? - Yes.

Q. - Your custom is all young men must travel? - Some do, some stay behind and keep watch over the town.

Q. - People who stay are not as many as those who travel? - I don't know, don't check.

Q. - Keep watch over property and woman? - Yes, and if people offend us we usually recall all AWKA people who are on tour.

Q. - Shortest time to recall people on tour? - Depends on distance; some may return same day, some two days, some 4 days from OLU part (riverside, per interpreter; v.supra). 30

Q. - You are thinking of present day? - No.

Q. - Your people travelled as far as NGWA (= Aba, interpreter) ? - Yes.

- and Calabar.

Q. - One whole village used to go to NGWA? - Not many went to NGWA.

Q. - Where have you your greatest number of people? - NNEWI, EKWULUOBIA, ACHALLA, OGBUNIKE, OGIDI, OBOSI.

Q. - How many days after killing of AWKA man did you attack NORGU? - Don't know, not in my presence.

10 Q. - Did you take NORGU land by conquest? - We drove them away, we asked them to come and hang for the man they killed, they refused, then they paid us with that land.

Q. - After you'd driven them away still called on them to hang? - Yes, and they refused.

- they paid us with the land.

Q. - When you drove them, you kill any of their people? - Don't know.

Q. - Use guns? - Yes, but I wasn't there.

20 Q. - If your story's true, you have to depend on NORGU people to show you boundaries before you start a case? - They showed us the boundaries of the place they had lived.

Q. - When there is a dispute as to boundaries, whom do you call to show you the boundaries? - They'd already shown us their boundaries, and we showed them on the plan as they showed them to us.

Q. - When did they show you? - Before Government, I didn't know; ENUGU AGIDI were paying tribute before Government came.

30 Q. - Who showed surveyor the boundaries? - Our old men.

Q. - You are not farmers? - When a man ceases travelling, he becomes a farmer, as I am now.

Q. - Where do you farm? - We go to farm in shifts, we have OBIBIA to ISU and farm there one year; in another season we go to MILI NWEZI side, and farm

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Supreme Court
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Evidence

No.28

N. Mora.

Cross-
Examination -
continued.

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N. Mora.

Cross-
Examination -
continued.

from there to OBIBIA; OBIBIA touches ENUGU AGIDI; also from UVUNU to OJIMMA, and UMUOKPO also farm from their side and meet us at OJIMMA.

Q. - From time immemorial have you had any boundary dispute over AGU NORGU with anyone? - No, except with NORGU who came and built houses before government came and we sued them and won and they went back.

Q. - Why did your representative NNEBE NWUDE say "if there was any boundary dispute we called the NORGU people" to define the boundary"? - If he said that, I don't know; but whenever there was trouble we sued and got NORGU to give evidence to explain the position.

10

Q. - He said area in dispute was portion conquered by AWKA from NORGU? - Yes.

Q. - Are you sure you farm right down to UVUNU river? - Yes, I am one of those who do.

Q. - And that UVUNU river is the boundary of AGU NORGU land? - Yes.

20

Q. - AWKA vs. ENUGU AGIDI, (Exhibit C) you gave evidence (p.42)? - Yes.

Q. - You said "We farmed from the other side of OBIBIA up to NWEZI stream and we have always let the rest to Defendants"? Referring to the OBIBIA river North of AMAWBIA? - Going from UVUNU one gets to OBIBIA.

Q. - When did you give OJIMMA in AGU NORGU to NISE to farm? - A long time ago.

- They vacated about 20 years ago, I estimate.

30

Q. - Why did they vacate? - They thought it was not fertile.

Q. - Why did you tell UMUOKPO to vacate AMAENYI? - Some remained there, others were asked to live on our boundary.

Q. - All AWKA people decided UMUOKPO should live there? - Yes.

Q. - Why UMUOKPO particularly, not some other quarter? - They AMAENYI were the strongest people in AWKA, in those days people who were not strong were not allowed live on boundary.

- Don't know whether before or after NORGU war.

Q. - Know AMINKPO AWKA? - I am a native of AMINKPO.

Q. - The smallest village in AWKA? - How do you know?

Q. - (repeated) - No.

10 Q. - One of the smallest? - Not small.

Q. - AGULU is the largest? - If I counted them I would know.

Q. - You knew AMAWBIAs were small? - They were strangers, and that is what my father told me.

Q. - Where do AWKAs come from? - From nowhere.

Q. - Remember AMINKWO-AWKA war? - Yes.

Q. - Had AGULUs then more fighting men than AMINKWO? - Each had men.

Q. - Which had more? - I did not count them.

20 - Don't know which is largest village in AWKA.

Q. - Common history in AWKA today to refer to gallantry of AMINKWO in AMINKWO-AGULU war? - They refer to both sides as gallant men. Neither drove the others.

Q. - What do you call this area where we are now? The town itself, across the main road? When you leave AWKA for post office, where do you say you are going? - AGU EGBE.

30 Q. - Meaning? - Old people call it AGU EGBE, I don't know why.

Q. - Meaning the place where you get guns? - That is your translation.

Q. - Does Egbe mean gun? - Yes.

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Defendants'
Evidence

No.28

N. Mora.

Cross-
Examination -
continued.

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Defendants'
Evidence

No.28

N. Mora.

Cross-
Examination -
continued.

Q. - Otherwise pronounced, it means hawk? - Yes.

Q. - What other names do your ancestors call this place? To which town does 1st plaintiff belong? - AMAGHO AWBIA (- then says) AMAWBIA.

Q. - You gave AMAWBIA land where they settled? - Yes.

Q. - Boundary between you? - An Agilinya tree and an Ekpe wall still on the boundary there, and it extends to an Oji tree by the market place; and the market up there was established by us.

- I know NGENE UKWA river.

10

Q. - Is part of it any boundary between AWKA and AMAWBIA? - It is not.

Q. - Remember when British came? - Yes.

Q. - Knew late Chief NWEZE ONUORA? - Yes.

Q. - Knew late Chief ABATA IKEZI of AMAWBIA? - Yes.

Q. - There is a lease of Government land beyond NGENE UKWA river to Government, all this land, right up to OBIBIA-OGENE UKWU confluence? - If there is any, I do not know.

Q. - You never knew these two gave out their respective lands to government in fee simple? - I heard Chief NWEZE and ONUORA and others (named) made a lease, and brought ABATA and made him sign as witness.

20

Q. - You are MUONWUBA? - No.

Q. - NWUBA is short from MUONWUBA? - I don't know.

Q. - You knew MUONWUBA of AMINKWO? - Yes.

Q. - You knew NONYELU NWOSU of OKPERI AMINKWO? - No.

Q. - Don't remember case between him and JEREMIAH NWOSU of AMAWBIA? - No.

30

Q. - NWANNONYELU NWOSU? - No.

Q. - AMAWBIA land has more fresh water than any surrounding land, especially AWKA? - If you name the streams.

Q. - Don't you know the streams in the land you gave to AMAWBIA? - They have UVUNU where they work up to, that is the only stream they have.

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Q. - Where do AWKAs get water? - OGBA Spring water near College, CBIBIA stream, AWFIA MAZU river; MGBOKO.

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Evidence

Q. - Most of AWKA people come all the way for fresh water to the OGBA Spring near here? - Inner villages have their own, anyone who likes may come here.

No.28

N. Mora.

10 Q. - AMAWBIA's have more and more accessible drinking water than AWKAs?- They could go to OBIBIA, but it is not their stream.

Cross-
Examination -
continued.

Q. - They have more streams surrounding them? - I have not seen.

Q. - Can you mention any stream of drinking water in AMAWBIA? - I only know UVUNU.

Q. - OTI was one of your ancestral Chiefs? - I don't know who OTI is.

- Father didn't tell me about OTI.

20 Q. - If he existed, it is an AROCHUKWU name? - I don't know.

Q. - What of OJI? - Also AROCHUKWU name? - I have not heard so.

Q. - You knew IKELIONWU? - Yes, an AROCHUKWU part.

Q. - You know IFITE AWKA? - Yes.

Q. - Related to NDI IKELIONWU? - No.

Q. - Any KANU in AWKA? - No.

Adjourn to 28.1.54 at 9 a.m.

(Sgd.) W.H. Hurley

27.1.54.

In the
Supreme Court
of Nigeria

At Awka, Thursday the 28th day of January, 1954

Parties present.

Defendants'
Evidence

1st Defendants' Witness reminded of oath XX ctd.

No.28

N. Mora.

Q. - Did you give AMAWBIA's present site before or after NORGU war? - I don't know, it did not happen in my presence.

Q. - Know if NORGU had boundary with AMAWBIA's? - Had no boundary.

Cross-
Examination -
continued.

Q. - They lived together as neighbours? - They were not neighbours.

10

Mojekwu appears for Plaintiffs.

Q. - Know AWKA man URUCHUKWU NWANMO? - No.

- I am from AMINKPO.

Q. - Don't know URUCHUKWU NWANMO who had land at junctions of NGENE UKWU and OBIBIA rivers? - No.

Q. - From UMUOGBU? - Don't know him.

Q. - Know where NGENE UKWU and OBIBIA meet? - I know that OGBA Stream flows into OBIBIA.

Q. - NGENE UKWU does not? - It does not.

Q. - Can you name an AWKA man who had land in OGBA Stream area? - The other side?

20

Q. - This side? - No. AWKA people own all this area.

Q. - Therefore if an AWKA man says NGENE UKWU is boundary AWKA-AMAWBIA it is not correct? - That would be his responsibility.

Q. - Knew late Chief ABATA IKELI of AMAWBIA? - Yes.

Q. - He owns land, junction OBIBIA and OGBA Streams? - Had no land there.

Nnonyelu tenders certified copy of agreement concerning AWKA Government Station.

30

No objection: Received Exhibit G, read interpreted.

Plan of Government Station, certified copy, tendered, no objection, received Exhibit H.

XX ctd.

Q. - NIBOS in lifetime of Chiefs ABATA, NWEZE, and OBIORA, had their own Chief? - Yes.

Q. - Remember his name? - No, I was then a traveller.

Mbanefo appears for Defendants.

10 Q. - Was fight between UMUOKPO and AMAWBIA in which person was killed before or after you were sued in this action? - Before.

RXD:

Chief ABATA was a big Chief. If anything was to be done in the District, he would be informed by Government. In his time other important Chiefs were NWEKE of MGBAKWU, ILOGWE of ISU.

TO COURT: MGBAKWU is not in AWKA or AMAWBIA.

20 There were Chiefs in AWKA town of equal and greater importance with ABATA.

No.29

EVIDENCE OF O. EKELEMU

2nd DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am OKEKE EKELEMU, of UMUOKPO AWKA, farmer, living at UMUOKPO. Know land in dispute. (Aged in 50s ?).

30 Q. - How do you know that land? - We had a land dispute with ENUGU AGIDI; District Officer asked us to give a portion of that land to them, for them to farm and pay rent to AWKA, and we refused. District Officer gave orders, detailed Police and

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.28

N. Mora.

Cross-
Examination -
continued.

Re-
Examination.

No.29

O. Ekelemu.

Examination.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.29

O. Ekelemu.

Examination -
continued.

Chiefs, and they built Ekpe wall. From MILI NWEZI to road to ENUGU AGIDI.

After wall built AMAWBIA went on the land and said their boundary with ENUGU AGIDI was the Ekpe. AMAWBIA's were not party to our dispute with ENUGU AGIDI.

We farm on the land. I farm on it myself, I was going there with my father, and have been farming on it myself. Where I farm is called OJIMMA. Never saw AMAWBIA farm there; they don't farm on NORGU land at all.

10

Know UVUNU river. Between that and the Ekpe the people farming the land are AWKA from time immemorial.

I know how AWKA got AGU NORGU. They were neighbours, their boundary was UVUNU. NORGU people left and went away, AWKA owned the land, all that land, and I've been farming it. They left because they killed an AWKA man, AWKA asked for somebody to hang, NORGU refused, there was a war between them, AWKA won, and NORGU fled to UKULU; there AWKA sent a message to them to send somebody to hang, NORGU refused and asked AWKA to take the vacated land in lieu.

20

UMUOKPO came to live where we are now thus my father told me we were all AWKA people; AWKA wanted some of the AWKA people to live on their boundary with NAWFIA; our father UKPU was a strong man; AWKA asked us to live on their NAWFIA boundary so as to resist any attack from a neighbouring town. AMAWBIA didn't put us on the land, they were strangers, our great grandfathers had long lived there before they came. Father told me they came from UGO and AWKA put them where they now live between us and AWKA, fearing that if they did not place them between us ENUGU and NAWFIA would kidnap and sell them. Whole of AGU NORGU is owned by AWKA.

30

Cross-
Examination.

XXd:

I was outside Court yesterday, far. Didn't sit on back bench.

40

- AWKA has no boundary with AMAWBIA.

Q. - From which side do you farm to OJIMMA? - From our town UMUOKPO across OGBEKE Stream and OMAIA Stream and the adjoining land is AGU NORGU and then OJIMMA. I farm there myself. Pay no tribute to AWKA, we are all AWKA.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.29

Q. - By local custom here, can a murderer escape penalty by giving property as compensation? - That was the story my father told me, that NORGU killed AWKA man (etc.).

O. Ekelemu.

10 Q. - What is native law and custom when a person kills another? - If a man commits murder and is asked to hang and refuses he runs away where no AWKA man can see him and will remain there until he's dead.

Cross-
Examination -
continued.

Q. - If an IBO man kills AWKA man what is native law and custom? - AWKA will ask for somebody to hang, and if they refuse they'll fight with their guns.

20 Q. - What is object of fight? - Because they wouldn't allow the murderer to hang.

Q. - So it is to avenge the murder? - Yes.

Q. - After the fight, if the murderer's town is conquered, is it native law and custom to call on that town again to produce somebody to hang? - They would pay tribute with their property and go away.

Q. - (repeated) - That is the custom.

30 Q. - When you went to settle at your present place, where were AMAWBIA? - My father told me they had not come.

Q. - You only occupy a very narrow strip? - A large area, and NAWFIA are our neighbours.

- They could not take us as captives.

Q. - In NORGU war, did you kill anyone? - I was not told, they ran away.

- I was told they ran, no NORGU man was killed.

Q. - Know of any war between NAWFIA and AMAWBIA? - My father told me there was no fight between them.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.29

O. Ekelemu.

Cross-
Examination -
continued.

Q. - How did the question arise, that he told that?
- A son would stay near a father, who would tell
him stories.

COURT: That does not seem like a story, -
about something that didn't happen.

- I knew OKEKE OKO as I grew up.

- My age-grade.

Q. - Any story behind him? Was he a captive, sold
as a slave, returned? - Never sold, never a slave.

Q. - Know of any UMJOKPO man who has been sold? - 10
No.

Q. - Any war AKWA-AMAWBIA? - No.

- AMAWBIAs farmed for us.

Q. - You yourselves don't do much farming? - My
father told me they were strangers, they came and
worked for us, we gave them food to eat.

Q. - Where did your fathers give land to AMAWBIAs to
farm? - Behind NGENE NKOLOFIA, and then one gets to
UVUNU, and beyond that is AGU NORGU.

Q. - Where is the limit? - Extends up back of Chief 20
ABATA's house.

- Along the side of UVUNU to back of ABATA's house.

TO COURT: NGENE NKOLOFIA is a juju.

Q. - What is the boundary of the land you gave them
to farm? - Behind their village.

- Upwards (i.e., North).

- They cross no stream.

- ENUGU AGIDI road goes through AGU NORGU.

- AMAWBIA built it to UVUNU, then AWKA from there
to ENUGU AGIDI (laughter in Court). 30

Q. - Which is larger, land occupied by AMAWBIA or
UMUOKPO? - UMUOKPO is double the size.

Q. - Going through UMUOKPO on tarred road to NAWFIA, how far do you travel through UMUOKPO - a half mile? - About 2 miles.

Q. - Origin of NGENE NKOLOFIA, AMAWBIA's juju? - I wouldn't know origin of juju in different villages.

Q. - Was it there before they came? - Don't know.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.29

O. Ekelemu.

Cross-
Examination -
continued.

No.30

EVIDENCE OF A. EJIOFOR

No.30

O. Ejiofor.

10 3rd DEFENDANTS' WITNESS: Male Sworn Bible states
Ibo:

I am ANEKWE EJIOFOR.

(Wrong man, per Ojiako).

Not Xd; Not XXd.

No.31

EVIDENCE OF A. OKEKE

No.31

A. Okeke.

Examination.

3rd (A) DEFENDANTS' WITNESS: Male Sworn gun states
Ibo:

I am ANEKWE OKEKE of OKPUNO, where I live, farmer. (Elderly - sixties ?); poor).

20 Know AGU NORGU land. AWKA own it. I was told how they got it. Our fathers told us NORGU people killed AWKA people and AWKA people fought with NORGU. AWKA people attacked NORGU and drove them away and took their land, because they did not hang for the murder.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.31

A. Okeke.

Examination -
continued.

Cross-
Examination.

Remember OKPUNO-AWKA land case. AWKA won.
About AGU NORGU.

Know MADUKA of OKPUNO. A good man in our
town; has 7 sons. EKEMEZIE is his first son.

Know NWOKOYE OKEKE of NORGU. He and EKEMEZIE
son of MADUKA would be the same age.

Don't know if NORGU man gave evidence in AWKA-
OKPUNO case.

Father didn't tell me AMAWBIA took part in war
against NORGU. 10

All I heard about history of AMAWBIA was that
they and AWKA had dispute about AGU NORGU land.

XXd:

Q. - In the district, which people were noted as
good fighters in those days? - AWKA; I was told that
they alone owned guns, unless one bought guns and
bullets from AWKA they'd have none.

Q. - But who were good fighters? - AWKA; that's why
ADA did not attack AWKA.

Q. - Anybody but AWKA you saw farm on AGU NORGU? - 20
I used to see only AWKA; they pass through our
town.

Q. - Know extent of land they farm? - No, my father
did not tell me.

Q. - You farm on the land? - I have farmed on it.

Q. - Which part? - Where they call OROGUMA.

- I don't know the land in dispute in this case.

Q. - The AGU NORGU you know is the AGU NORGU AWKA
won from you? - Yes.

- That's what I'm talking about now. 30

- My mother was from AWKA, but not UMUNAGA
quarter.

- I am from OKPO quarter, not UMUODO, in OKPUNO;
our quarter is the head.

Q. - Know UBE in AWKA? - No.

Q. - Know AMAENYI? - Yes.

Q. - Head people of OGBE? - No.

Q. - Head of exodus of a certain quarter of AMAENYI AWKA? - My father didn't tell me that and I do not know.

Q. - AWKA people are not farmers? - Some farm, some travel; people who travel, their wives farm.

Q. - OKPUNO are predominantly farmers? - Yes.

10 - and AMAWBIA.

- and OSUNA AGIDI.

Q. - Do AWKA farm like that? - They hire us with their money, and AMAWBIA, and IFITE AWKA, to farm for them.

Q. - Did they show AMAWBIA where to farm? - If they did, I do not know.

RX:

OROGUMA where I farm is a swampy fertile area in AGU NORGU.

20 I know ARALLA in AGU NORGU, another portion of AGU NORGU - know no other portion.

No.32

EVIDENCE OF E. MADUKA

4th DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am EKEMEZI MADUKA, living at OKPUNO, night watchman. (40s).

Remember AWKA-OKPUNO case. MADUKA who gave evidence was my father.

Know land in dispute in that case, I live on

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.31

A. Okeke.

Cross-
Examination -
continued.

Re-
Examination.

No.32

E. Maduka.

Examination.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.32

E. Maduka.

Examination -
continued.

it now. Called AGU NORGU, we live on AGU NORGU. AWKA own AGU NORGU, NORGU owned it and showed it to AWKA, and AWKA showed it to us and we live on it now.

Besides AGU ARALLA, I know the part of AGU NORGU at MILI NWEZI, and that of AROGUMA (sic).

All these portions are farmed by AWKA; we also farm on them, AWKA showed them to us.

AMAWBIA have no portion of AGU NORGU.

My father told me no other town joined AWKA in driving NORGU out. (Question was, do you know the history of AMAWBIA?). (Continues) AMAWBIA people summoned OKPUNO UMUCODU, NAWFIA, OSUNA AGIDI, ISU, and suggested they should all join together and fight for AGU NORGU land and my people refused to join. By "fight for" I mean "claim". My father in particular said he was an old man. They said they were going to claim it, he said we'd been paying tribute to AWKA; and he gave evidence for AWKA.

10

Cross-
Examination.

XXd:

20

Q. - Your father was never popular with your own side of OKPUNO? - Yes, because of this very case, he told them he wouldn't claim somebody's property.

Q. - Land you have in mind was AGU ARALLA, where your own quarter were? - All the AGU NORGU land; we live on AGU ARALLA and farm on AGU NORGU.

Q. - Which land in dispute between OKPUNO and AWKA? - AGU NORGU.

Q. - The land now in dispute? - Yes.

Q. - Your father was telling you history of NORGU war when he said no others joined AWKA? - How AWKA people fought NORGU people.

30

Q. - Heard the word "OGU AMAKOM" in this area? - My father never told me.

Q. - Never told you there was Ogu Amakom? - No.

Q. - Ever used that phrase in your hearing? - No.

Q. - What does it mean? - Have never heard it and can't explain.

In the
Supreme Court
of Nigeria

Q. - What does Amakom mean? - Don't know.

Defendants'
Evidence

Q. - Means "joining together"? Two or three or 4 towns coming together for a purpose? - Don't know. Father never told me.

No.32

Q. - Do you know where AMAWBIA farm at all? - No, I don't live near them. My father told them they were strangers.

E. Maduka.

10 Q. - Only history he told you was about NORGU war and about AMAWBIA being strangers? - That was what he told me.

Cross-
Examination -
continued.

Q. - Tell you about return of NORGU to their former land? - Yes, and AWKA drove them away; Judge and Counsel went on the land in case; OKONKWO IFEKANDO and my father explained things while they were there.

- I live at OKPUNO.

- I have my children at OKPUNO.

20 - I don't live at AWKA.

RX: (None).

No.33

No.33

EVIDENCE OF N. AGU

N. Agu.

5th DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

Examination.

I am NGU AGU, of NISE, where I live, farmer (elderly 60-70).

Q. - Know AMAWBIA? - I know AWKA.

- Have not heard of AMAWBIA people.

- I know people of NIBO.

30 Standing at NISE, facing OBIBIA river, NIBO are on the right. AWKA are on the left. In front are AWKA.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.33

N. Agu.

Examination -
continued.

Cross-
Examination.

Q. - Can you mention 2 or 3 villages of AWKA living beyond OBIBIA? - No; AWKA people are many.

Q. - Know UVUNU river? - It is on the AWKA side.

Q. - It is boundary between AWKA and any people? - It didn't form a boundary, it belongs to AWKA.

Q. - Know Motor Park in AWKA? - Yes.

Q. - Know people who live around there? - AWKA, AWKA. (laughter)

Q. - Heard of a place called AMAWBIA? - No. (greatly appreciated).

10

Q. - Heard of AGU NORGU? - Yes.

Q. - Owners are? - AWKA. AWKA drove NORGU people away and AWKA own the land at OJIMMA.

Q. - Know UMUOKPO AWKA? - No.

XXd:

Q. - Heard the word Amakom? - No.

No.34

N. Ezeodo.

Examination.

No.34

EVIDENCE OF N. EZEODO

6th DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am NWAONU EZEODO, native of NILO, where I live; farmer. (Up to 60 ?).

20

Am an Ozo member. Know NISE people, AWKA people, AMAWBIA people. Know people of NAWFIA. Know UMUOKPO quarter of AWKA.

Our boundary with AWKA is Nkpu Agu Olu ant hill, Ugili tree, Ache tree, and upwards to UMUOKPO, NAWFIA.

Our boundary with NISE is a big Eligheli tree.

Our boundary with NAWFIA is the same tree.

Have no boundary with AMAWBIA. Because we have boundary with AWKA, and they live on AWKA land.

Have heard of place called UGBO. Our father told us AMAWBIA came from OJI ENUGU to UGBO and begged NIBO and NISE to give them land to live on and were given that place. They became troublesome and NIBO and NISE drove them and they went to AWKA people. We have been since farming our portion of the land they vacated, and NISE have been farming their portion of it.

We had case with AMAWBIA. About Government Station. We won.

Heard of NORGU war. Between NORGU and AWKA. NORGU, gave AWKA land when it was over. Know St. Mark's College.

(Note: agreed this is on AGULU road on LP9/31, not "C.M.S. Training College" on that plan, which is St. Paul's).

We gave them the land we owned with NISE for St. Marks. We call the place we own in common with NISE, AGU UGBO. That is the UGBO where AMAWBIA were.

XXd;

The OJI ENUGU I refer to is ENUGU UKWU.

Q. - Your case against AMAWBIA's about Crown land was transferred from Native Court to Supreme Court Onitsha? - Yes.

- The case I say we won.

Q. - Where is the case now? - The land is in our possession.

Q. - Case is before Lieutenant Governor? - I don't know.

- I know IKEMBA of EZEAWOZO NIBO.

Q. - You know 1937 case against him by NWOKEKE NWEZE of AMAWBIA, 52/38? - AWKA owned the land they made the case about.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.34

N. Ezeodo.

Examination -
continued.

Cross-
Examination.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.34

N. Ezeodo.

Cross-
Examination -
continued.

Q. - Claim for return of Plaintiffs' MGBOKO OBIBIA land? - They don't own MGBOKO OBIBIA, it belongs to AWKA, we have boundaries with AWKA.

Q. - MBU lost? - That may be so, but we have no boundary with them.

Q. - You took case up to RESIDENT? - Case was with only one man, not NIBO people.

Q. - Resident dismissed your review? - Don't know.

(Record in this case tendered. Objection. Withdrawn).

Q. - Heard "Amakom"? - No.

Q. - Know meaning? - I don't know what Amakom is (laughter).

Q. - Know late Chief ABATA of AMAWBIA? - Yes.

Q. - In his lifetime had you a Chief? - Yes.

- NAMA CJI.

Q. - Same rank as ABATA? - Yes, both had Warrants.

Q. - Know who gave land to government? - NWEZE, ONUORA, OBUORA.

Q. - No other person? - ABATA was there as a witness. 20

Q. - You were once a prison warder? - Where?

Q. - (repeated) - No.

Q. - What were you doing in 1914 during first German war? - At Nsukka.

Q. - When did you return? - I returned to AWKA N.A. Office.

Q. - When? - Year that taxation was introduced. (1927 - 1928, agreed).

Q. - Went to N.A. Office as what? - Messenger.

Q. - When leave? - Transferred as road overseer, N.A. 30

Q. - Still N.A. Road Overseer? - No.

Q. - When leave? - About 9 years ago.

Q. - Retired or dismissed? - Left service on my own.

Q. - Did NIBO and AMAWBIA intermarry in ancient times? - Yes.

Q. - Many? - Yes.

Q. - Fathers tell you of NIBO AMAWBIA war? - NGEN-CJI juju was put on land down there (points towards OBIBIA river) by AMAWBIA people; my people objected and threatened to capture them and AWKA intervened and AMAWBIA took the juju back to their village. NNABO is the juju priest.

Q. - Know of any war? - No, there was no war.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.34

N. Ezeodo.

Cross-
Examination -
continued.

10

No.35

EVIDENCE OF O. NWEKE

No.35

O. Nweke.

Examination.

7th DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am OBUORA NWEKE, of NORGU, where I live; farmer. (Aged up to 50) (better-off than Plaintiffs' NORGU witness).

20 Know AGU NORGU. Original owners were NORGU. When we owned it, our neighbours were AWKA, OKPUNO, ISU, NAWFIA, ENUGU AGIDI, that's all.

AGU NORGU now is in the hands of AWKA people. (Q. was: who are the owners of AGU NORGU now?)

30 Q. - What do you mean, in their hands? - We killed an AWKA man, OKEKE ERI, NORGU were asked to pay for that man, refused; AWKA and NORGU fought; AWKA overpowered NORGU and drove them away; ODUME NRI a native of NORGU took us to UKULU; after government had come we decided to return to our former home; we returned and AWKA sued us in their Court. We were each fined £2 and ordered to quit. We had built homes on the land. We had 2 weeks to quit, on pain of imprisonment. We returned to UKULU. That is all.

In the
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Remember AWKA-OKPUNO case (Exhibit A.). OKCYE
IFEKANDU, Ezeani of OKPUNO gave evidence (p.27) the
NORGU people were behind him.

Defendants'
Evidence

Have not heard of AMAWBIA people.

No.35

TO COURT: I mean, we have no boundary with
AMAWBIA.

O. Nweke.

Examination -
continued.

Cross-
Examination.

XXd:

Fathers never told us anything about AMAWBIA;
they told us about AWKA.

Q. - Ever use the word AMAWBIA to you? - We have
been hearing of AMAWBIA, but they are not our neigh- 10
bours.

Q. - Heard of them as people existing as long as
yourselves? - My father did not say.

Q. - Father tell you of juju NGENATA? - We have
NGENATA, and it is everywhere, in all towns.

Q. - NGENENKOLOVIA? - Didn't tell me anything about
it. Owners of jujus name them as they wish.

Q. - You have NGENATA? - My father told me we have
a juju we call NGENATA. 20

Q. - Did he tell you of any other town having a juju
called NGENATA? - He told me some people had juju
and named it NGENE UNO.

Q. - Can you name a town that has NGENATA juju? -
In Ukulu there is a juju called NGENATA, can't
mention any others. UKULU where we were driven to.

Q. - Do you know AMAWBIA have NGENATA? - I don't
know.

Q. - Land case between NORGU and UKULU? - Yes.

Q. - You gave evidence for UKULU? - Yes, as to the
place to where we fled. 30

Q. - Since then you've lived under UKULU, not where NORGU now settles? - I live where NORGU live today.

Q. - Where did you perform Ozo ceremony? - A man may do that anywhere he wishes (laughter).

Q. - (repeated) - I went to UKULU, and when I had the money I performed the ceremony there (getting heated).

10 Q. - You could not perform it at NORGU, because they regarded you as a traitor? - Let the Court decide that (false to) (laughter).

Q. - You agree? - Not so; my father told me the land was UKULU and I went and saw so; I wouldn't go against what my father had told me.

20 Q. - Custom is you must make your Ozo title in your town among your kin? - I had already performed 11 cowries in NORGU and at the time I was to take Ozo title I went to UKULU and did it; when the case came up I told NORGU to drop it, it was UKULU gave us the land on which we live and it wouldn't be fair to make a case with them; NORGU wouldn't agree, and that was how I have wronged NORGU people.

Q. - Before you went to UKULU, did you ask NORGU men to initiate you? - I had already performed 11 title ceremonies, and they were not giving me my shares, and so I left them and went to UKULU.

Q. - Know "Amakom" ? - No; I have not heard Amakobam (sic).

Q. - (repeated)? - No.

Q. - Amakovam? - No.

30 Q. - Know meaning? - No.

Q. - Heard of Ogu Amakom? - No, I didn't take part in that fight.

(Interpreter: Ogu means fight).

Q. - In which fight? - I don't know what is Ogu Amakovam, I did not take part.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.35

O. Nweke.

Cross-
Examination -
continued.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.35

O. Nweke.

Re-Examination.

No.36

N. Okeke.

Examination.

RX:

NORGU has NGENTA juju, so has UKULU, I only know of those two. Father didn't tell us what happened to our NGENETA after the fight. Never heard of Amakom fight.

No.36

EVIDENCE OF N. OKEKE

8th DEFENDANTS' WITNESS: Male Sworn Gun states Ibo:

I am NGAJI OKEKE, of ENUGU UKWU, where I live, farmer. (About 65, or less).

10

Know AGU NORGU land. Have lived there. On OJIMMA near MILI NWEZI. AWKA put us there, we farmed and paid them tribute; later OSUNA AGIDI came and drove us away, burnt down our houses and uprooted our cassava. They said they were having a land dispute with AWKA people and District Officer had ordered them to make Ekpe wall. They said it was boundary between them and AWKA. Our houses were near the Ekpe, and after they'd built it they burnt our houses and we went away. Before that I'd lived there 6 years. Our huts were between OBIBIA and MILI NWEZI. Know UVUNU river. Standing on Ekpe facing UVUNU river, people who farm in front are ourselves: we farm from OJIMMA to UVUNU; about 5 years ago AMAWBIA and AWKA fought there; we were told government had asked people not to work there, near UVUNU; we went home as we didn't see any land on which to farm. I farmed there with AWKA and AMAWBIA people, until Government said nobody should farm.

20

30

Don't know if AMAWBIA paid tribute to anybody.

Cross-
Examination.

XXd:

Looking down from MILI NWEZI, AMAWBIA farmed in common with us all from UVUNU.

Q. - AMAWBIA farmed from UVUNU to MILI NWEZI and OJIMMA? - They farmed on OJIMMA, and it was from there we were driven.

Q. - Did they farm up to MILI NWEZI? - No.

Q. - OJIMMA extends to MILI NWEZI? - AWKA worked there, I have not seen AMAWBIA there.

Q. - Heard Ogu Amakom? - No.

Q. - Gave evidence for AWKA in case between them and your people? - No.

10 Q. - In ENUGU AGIDI case? - Yes.

Q. - Did you farm below MILI NWEZI? - All the area of MILI NWEZI.

Q. - You cross it? - Across it was where our houses were burnt and Ekpe wall was built.

Q. - You farmed on the AMAWBIA town side of MILI NWEZI? - The land we were asked not to farm on was next to AMAWBIA.

Q. - AMAWBIA farmed there? - Yes, everybody worked there.

20 - It is now the land in dispute.

TO COURT: This is the 5th year Government told us to stop farming there. The 5th year since we left. I had lived there for 6 years before that. I didn't farm there before living on it.

RX: (None).

Case for Defence.

Adjourn to 9 a.m. 29.1.54 at UMUCKPO-NAWFIA boundary on Onitsha road for view.

30 (Sgd.) W. H. Hurley
J.
28. 1. 54.

In the
Supreme Court
of Nigeria

Defendants'
Evidence

No.36

N. Okeke.

Cross-
Examination -
continued.

In the
Supreme Court
of Nigeria

No.37

COURT'S NOTE OF INSPECTION VIEW

No.37

At Awka, Friday the 29th day of January, 1954:

Court's Note
of Inspection
View.

Inspection - Note of view.

29th January
1954.

9 a.m. Parties and Counsel present.

Defendants did not agree with Plaintiffs on points where Nawfia-Umuokpo and Umuokpo-Amawbia boundaries crossed main Onitsha-Enugu Road, placing them further apart from Plaintiffs did. Taking Defendants' points, the distance between them along the main road, which is here fairly straight, was under $\frac{3}{4}$ mile.

10

Went along Amawbia-Enugu Agidi road over Uvunu river to point where road crosses Enugu Agidi boundary on which Ekpe was dug on orders of District Officer. Saw new Ekpe mounds - oblong mounds of earth surmounted by ditches at easy intervals along boundary as far as Mili Nwezi source, set lengthwise on the boundary. Asked to see old Ekpe stated by witnesses to be visible in line with old.

20

Shown -

(a) not far from road, a long (c.20 feet) narrow low eminence not much larger than a cultivation ridge, with "sticks" growing sparsely and irregularly along it.

Proceeded along line of Ekpe and then by path to within sight of Akpu over Mili Nwezi source, then traced line of Ekpe back to road; shown

(b) a long (20 - 30 feet) bank or step varying 1' - 3' high facing towards Amawbia/Awka side and level with surface on Enugu Agidi side (no corresponding step or ditch on that side) where the ground was rising. This also had "sticks" growing along it.

30

Noted that top of nearby new Ekpe was nearly level with higher ground on its Enugu Agidi side, from which it was separated by a ditch.

(c) in line with new Ekpe and touching it an Ekpe of comparable size but lower and wider. Like new Ekpe, this lower and wider one had a ditch around it, but not so deep. It was lowest near the old Ekpe, and at the far end was nearly the same height, but not altogether the same height.

In the
Supreme Court
of Nigeria

No.37

Court's Note
of Inspection
View.

29th January
1954 -
continued.

10 This lower Ekpe had been planted on. Plaintiffs asserted it was remains of old Ekpe; Defendants contested it was part of the new Ekpe either unfinished or flattened out by cultivation.

(d) a very small low mound tailing off lengthwise along the direction of the boundary line. Defendants said it was an ant-hill, and dug comb out of it. Plaintiffs said it was not all ant-hill, and verified this by demonstration.

(e) an area of red earth suggested by Plaintiffs to be remains of old Ekpe. Surrounded by black earth, but much red earth visible from boundary line, especially on Enugu Agidi side.

20 (f) length of shallow ditch bordered on Amawbia/Awka side by low step facing to Enugu Agidi side, 20 - 30 feet, with cultivation extending to it on Amawbia/Awka side. Contended remains of old Ekpe flattened by cultivation.

At this point a person claiming to be an Enugu Agidi man (not a witness) made a statement. 5th Defendants' Witness said this man was his farming neighbour Nwogbu Edekwu of Agidi. The man said he was Nwogbu, and his father's name was Udekwu Anwata.

30 Defendants offered to show Court old Ekpe elsewhere for comparison with what had been shown by Plaintiffs. As they could not say how many generations old either the alleged Ekpe now being inspected or the Ekpe offered for inspection were, Court did not go to see Defendants' Ekpe.

Returned to road and proceeded to Agu Norgu boundary towards Uvunu side.

40 Plaintiffs pointed out their Akpu on line of road, and position of Onwu (fallen), which Defendants agreed. Plaintiffs pointed out Ebenebe on right of road (of their second plan, LD 9/51), and their Akpu between it and Uvunu.

In the
Supreme Court
of Nigeria

No.37

Court's Note
of Inspection
View.

29th January
1954 -
continued.

Defendants pointed to Ebenebe on left of road,
and to Akpu on right down towards Uvunu on line
which did not agree with that shown on their plan
Exhibit B. Defendants did not point out Akpu until
after certain amount of confused discussion among
themselves.

Returned to Awka for addresses.

(Sgd.) W.H. Hurley
J.
29.1.54.

10

No.38

Address by
Counsel for
Plaintiffs.

29th January
1954.

No.38

ADDRESS BY COUNSEL FOR PLAINTIFFS

In Court. Parties and Counsel present,
12.15 p.m.

Ojiako: addresses Court:

Plaintiffs' inaction - estoppel by conduct -
(1) survey; no action against Defendants (2) Awka
v. Enugu Agidi Exhibit C, and Ekpe: Amawbia knew
and did nothing.

Awka V. Okpuno Exhibit A - Norgu war evidence of
Norgu.

20

Awka v. Enugu Agidi Exhibit C p.23 paragraphs 4,5;
p.45 evidence of Enugu Agidi.

8th Plaintiffs' Witness in XX - farming abroad.
Knew Ngaji Okeke, last Defendants' Witness.

11th Plaintiffs' Witness, mother from Amawbia,
crosses Agu Aralla, then where Awka farm, then
Nwezi, then where Amawbia farm.

10th Plaintiffs' Witness agrees it is Nibo-Nise
College; explanation of this not to be believed;
5th Defendants' Witness evidence.

30

Amawbia and Umuokpo origins : unusual for
strangers to live in middle of another town.

"Amawvia" etymology.

Plan "New Farms on Awka" yet their witnesses say Awka never farmed in Ojemma.

Exhibit H was made only by a N.A. Surveyor, not a licensed Surveyor.

Plaintiffs encroached 5 years ago.

Road: always N.A., indiscriminately recruited labour.

10 Exhibits A and C: Evidence of 5-towns' war has been rejected in these cases. Previous judgments admissible to show acts of possession 2 W.A.C.A. 380 Kobina Ababio II v. Priest-in-Charge, Catholic Mission.

Inspection: no old Ekpe discernible. Flattened mound beside new one was simply unfinished in middle; rose to full height at far end. Exhibit B makes no reference to old wall. Plaintiffs helped build new walls - knew all about them: did nothing. (See above).

In the
Supreme Court
of Nigeria

No.38

Address by
Counsel for
Plaintiffs.

29th January
1954 -
continued.

20

No.39

No.39

ADDRESS BY COUNSEL FOR DEFENDANTS

Monyelu addresses Court:

Exhibits A and C: Kobina Ababio's case, see p.381 "The case came before Nicol J. same lands boundaries practically identical..... practically the same."

Defendants don't know their boundaries.

Estoppel by conduct Phipson 8, p.669.

30 Traditional history: from Enugu Ukwu, supported by Nawfia and Enugu Ukwu witnesses.

Acts of ownership: abundant evidence to show possession ever since Norgu war. Note last Def-

Address by
Counsel for
Defendants.

29th January
1954.

In the
Supreme Court
of Nigeria

No.39

Address by
Counsel for
Defendants.

29th January
1954 -
continued.

endants' Witness's admission that Amawbia farm there. If Amawbia built Ekpe in 1948 it was as landowners, not as labourers: an act of ownership.

Norgu war and Amawbia settlement: if settlement first Amawbia would join protectors as allies, and share booty. If settlement after the war and Amawbia were few as they say, why give them such a large and well watered piece of land as compared with their own Umuokpo's $\frac{3}{4}$ mile strip. But if settlement after war, why weren't Umuokpo settled on Norgu land? Incredible single-handed victory. Defence sequence - killing: war: conquest: demand for hanging: gift in compensation of whole land - for one man? 2 Norgu witnesses, but our 7, 8, 9, and 11 are neighbours.

10

1st Defendants' Witness didn't even know his ancestor's origin; and knew nothing about Norgu war.

"Amawbia" so pronounced means site for strangers; but Nwuba himself in XX called it "Amaghovia".

20

Enugu-Uku's distant farming - only since Government came; that is the answer; question is what happened before Government.

Nise defence witness could say nothing but "Awka" Defence really grounds itself on not more than Exhibit A and C.

Exhibit A, p.1: original writ is an estoppel against Defendants. "Bounded on East by land of Amawbia" this after survey.

Adjourn to 29.4.54 for judgment.

30

(Sgd.) W.H. Hurley

J.

29.1.54.

No.40

JUDGMENTIn the
Supreme Court
of NigeriaAt Awka, Wednesday the 28th day of April, 1954.

No.40

0/35/1949: H.E.Nwalusi Vs. Nnebe Nwude:

Judgment.

1st, 4th Plaintiffs in person; 1st, 3rd Defendants in person. Mojekwu, with them Adoba, for Plaintiffs.28th April
1954.

(Sgd.) W.H. Hurley

J.

28. 4. 54.

10

This is a representative action between the people of AMAWBIA as Plaintiffs and the people of AWKA as Defendants. The claim is for a declaration of title to a piece of land called AGU NORGU, £500 damages for trespass, and an injunction. The action was begun in the MBAILINOFU Native Court in Awka Division, and was transferred to this Court by Order made under Section 25(1)(c) of the Native Courts Ordinance, 1933, on 19th July, 1949. The original 1st Defendant, NNEBE NWUDE, has died and the present 1st Defendant, NWUBA MORA, was substituted for him by order made on 27th October, 1953, in this Court.

20

The land in dispute under the name of AGU NORGU in this action is part of a larger tract which is also named AGU NORGU. The larger AGU NORGU is the former territory of the Norgu people, who in the traditional past were driven away from it by war, and I shall refer to it as the NORGU territory. On the south east the land in dispute adjoins the land of the Plaintiffs, the AMAWBIA people (which I shall call AMAWBIA land), where the Plaintiffs live and farm and have, according to themselves, lived and farmed from time immemorial. On the north east the land in dispute, according to Plaintiffs' plan, adjoins land of the Defendants, the AWKA people; according to the Defendants themselves, this land on the north east is part of the NORGU territory. The Plaintiffs' case in this action is that they were neighbours of NORGU at the time of the war, took part in the war in alliance with other peoples (including AWKA) against NORGU, acquired the land

30

40

In the
Supreme Court
of Nigeria

No. 40

Judgment.

28th April
1954 -
continued.

now in dispute as their share of the conquered territory and remained in undisturbed possession and enjoyment of it from then until recently, when in 1941 the Defendants surveyed it in connection with a land dispute between them and a third party, and in 1948 and 1949 trespassed on it again and more seriously. In fact, the land in dispute between the Defendants and the third party was another portion of the NORGU territory, and the Defendants' claim to it was asserted for the purpose of enforcing part of their general claim to the whole NORGU territory. The Defendants say that the Plaintiffs trespassed on the land in 1948 and the Defendants resisted them, being themselves in possession as owners; the Plaintiffs were never in possession or enjoyment of the land, had no right or interest in it whatever, took no part in the NORGU war, were not on AMAWBIA land at the time of the war, and are not owners of AMAWBIA land or indeed of any land, but were put on AMAWBIA land, which is part of AWKA land, by the Defendants when they, the Plaintiffs, came as strangers after the war. 10 20

The following plans are before the Court, and by consent are in evidence as accurate surveys but not to establish the correctness or truth of the nomenclature, attributions of ownership, or statements about farming activities appearing in them except so far as there may be agreement on any of these matters between the opposing parties or their plans; to which it may be added that anything in a plan which is an admission by the party by whom it is tendered is receivable in evidence as such:- 30

Plan No. G.A.62/49, filed by the Plaintiffs with their Statement of Claim; a plan showing the land in dispute, other land in dispute in another case, and intervening territory.

Plan No. LD.9/51, filed by the Plaintiffs in pursuance of an order of this Court made on 22nd May, 1951; a plan showing the land in dispute in this case, the land in dispute in the other case which I have just now referred to, and all of AMAWBIA land, which is the intervening territory. 40

Exhibit B, tendered by Defendants: a copy of the plan made for them in 1941, upon the Survey mentioned above, for an action (Exhibit A) against the people of OKPUNO for land called AGU ARALLA,

part of the AGU NORGU territory; the copy was made in 1945 and amplified for the purposes of an action against the people of ENUGU AGIDI in 1946 for trespass in another part of the NORGU territory, and was further amplified in 1950 for other proceedings (Exhibit C) against ENUGU AGIDI about the same portion of the territory, for title, trespass, and an injunction.

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Judgment.

28th April
1954 -
continued.

10 Exhibit D, tendered by the Defendants: a plan prepared by them for this action, showing the NORGU territory and AGU ARALLA as in Exhibit A, and the land in dispute.

There is also the plan Exhibit H, tendered by the Plaintiffs, a certified copy of a plan of AWKA Government Station, which is at the far end of AMAWBIA land from the land in dispute.

The following copies of Court records, proceedings, and judgments were received in evidence, all tendered by Defendants :-

20 Exhibit A, Supreme Court Suit No. O/13/41, between the people of AWKA and the people of OKPUNO, for title to AGU ARALLA: the case for which the original of the plan Exhibit B was prepared. AWKA succeeded in this claim.

30 Exhibit C, Supreme Court Suits Nos. O/48, 55, 56 and 57/1949, consolidated, between the people of AWKA and the people of ENUGU AGIDI, for title, trespass, and an injunction; the case for which the plan Exhibit B was given its final form. AWKA succeeded in this claim also.

This exhibit contains copies (at pp.67-159 and 159-164) of proceedings in an earlier case between AWKA and ENUGU AGIDI about the same land, a successful claim by AWKA for rent in consolidated actions Nos. O/12-15/1943 in the Supreme Court; the plan used in those proceedings has not, apparently, been tendered in this action.

40 The same Exhibit C, also contains copies of proceedings exhibited in the actions O/12-15/1943, including Exhibit E in that action, at p.131 of Exhibit C, which shows that as far back as 1922 AWKA made a claim against ENUGU AGIDI (then called OSUNA AGIDI) for trespass on AGU NORGU land, then

In the
Supreme Court
of Nigeria

No.40

Judgment.

28th April
1954 -
continued.

described by AWKA as "our general land"; and that AWKA succeeded in default of appearance.

Exhibit E, MGBATGHETE Native Court Case No. 22/1946, an unsuccessful claim by the people of ISU against the people of AWKA for trespass on land called MGBOKO OBIBIA which was within the NORGU territory.

The Plaintiffs' two plans show different boundaries between the land in dispute and AMAWBIA land. The first difference is in the course of the NWAOGODU stream at its confluence with the UVUNU river on the east. It has been agreed that the later plan, LD.9/51, shows this correctly; and the Defendants' plans Exhibits B and D agree with it. The plans also differ completely as regards the line of the boundary from the source of the NWA-OGODU to the OGBEKE river. The latter includes more ground in the land in dispute. The earlier plan, GA.62/49, was filed with the Statement of Claim and is referred to there, and the Plaintiffs are bound by it. The two plans also differ as regards the ENUGU AGIDI boundary from the ENUGU AGIDI road south to the OGBEKE river. The boundary on the later plan extends further west into ENUGU AGIDI territory. The Plaintiffs are bound by the earlier plan. The continuation of this boundary across the road is also different on the two plans, at its north end beyond the line of Ekpe. The boundaries of the land in dispute shown in the earlier plan have been copied on the Defendants' plan, Exhibit D, as shown by their surveyor's certificate thereon dated 18th May, 1951, and the Defendants must be taken to have accepted the boundary shown by the earlier plan beyond the end of the line of Ekpe.

At this stage I must refer to the events preceding and following the 1941 case, Exhibit C. They have a bearing on two questions: to what extent, if any, should the proceedings, findings and judgment in that case and subsequent cases be taken as affecting Plaintiffs in this case; and whether Plaintiffs can be said to have slept on their rights, or delayed proceedings in such a way as would afford evidence to weaken their claim.

The Plaintiffs began this action in 1949; the Defendants ask why they did nothing after the trouble started with the Defendants' survey in 1941. The

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Judgment.

28th April
1954 -
continued.

10 answer is abundantly clear. When they made the survey in 1941 the Defendants were defining their claim to NORGU territory as a whole and were taking the first step towards a systematic enforcement of the claim against the occupiers of the several portions of the territory which was to start with their case against OKPUNO, the 1941 case (Exhibit C). That was in accordance with the Resident's direction upon a review of a Native Court case about a part of NORGU territory in which they had been concerned. The direction is copied in Exhibit C in the 1941 case, and said that AWKA should start proceedings to claim the whole of the NORGU territory in individual Native Court actions against the several occupiers which would be transferred to the High Court and consolidated. The survey roused and angered the Plaintiffs; but peaceful counsels prevailed, and they made a written complaint to Government (Exhibit F). They were advised by those in authority to have patience and wait. They were not advised to sue; AWKA had been advised to do that; they were advised to wait until they were sued. But AWKA did not sue all concerned in the NORGU territory (for some reason into which I have not inquired, so that I do not hold their failure against them). They sued OKPUNO only, and then ENUGU AGIDI. The Plaintiffs awaited the result of the action against OKPUNO, which was decided in 1943, and the appeal to the West African Court of Appeal, which was decided in October, 1944. After that, nothing was done against them, and they continued to keep quiet as advised, until 1948. They say that until then they continued farming on the land without interference, and that then AWKA, instead of suing them, came and uprooted their crops that year and the next; and that is the trespass of which they complain in this action begun in 1949. The fact that they did not take action until 1949 cannot in my view be held to count against the Plaintiffs in any way; nor can they be considered to have been concerned in the 1941 or 1949 actions between AWKA and other people begun at a time when they themselves had been advised to wait and Awka had been advised to sue.

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The Plaintiffs' case is that they acquired the land in dispute by conquest in the Norgu war, and until the Plaintiffs show a prima facie case on that issue the Defendants' allegation that the Plaintiffs were not on AMAWBIA land at the time of the war will

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28th April
1954 -
continued.

not be in issue. The Plaintiffs are in possession of AMAWBIA land and have undoubtedly been there for a long time, and it is presumed in their favour that they own it absolutely.

It is common ground that the NORGU war was waged when NORGU refused to hand over a man to be hanged in expiation for NORGU's having killed a man of their opponent's people. The Plaintiffs say that the man killed by NORGU was one of their people and that the war arose out of their ensuing quarrel with NORGU, and that they waged it with six allies including AWKA. The Defendants say the man who was killed was an AWKA man and the quarrel was theirs, and they waged the war alone. Some of the Plaintiffs' witnesses seem to have forgotten the names of all the allies, but all testify that the alliance included AMAWBIA, AWKA, NAWFIA, and ENUGU AGIDI. OKPUNO was omitted by two witnesses; I mention OKPUNO here only because these people were concerned in the 1941 case, Exhibit A, but I may observe that one of the two witnesses (Plaintiffs' 3rd witness) was an old man who claimed to be 90 years of age, and the other (Plaintiffs' 7th witness) was not examined at length on the question.

10

20

The Plaintiffs' account of the war and its origin I found preferable to the Defendants' as seeming a more likely story in itself and as coming on the whole from more credible-seeming witnesses. When I say that I found Plaintiffs' account more likely I mean, principally, that the story of an alliance seemed more likely than AWKA's story of their single encounter with NORGU. That was not because I had any reason for thinking, or thought, that AWKA could not have undertaken such a war alone, and won it, but because it seemed to me natural that neighbouring peoples should ally themselves in the circumstances described, with the two fold object, first, of enforcing respect for customary law and preserving order by exacting retribution, and secondly, of winning land out of the conquered territory. I did not feel that the balance of probability weighed very heavily against the Defendants, but it did seem to be against them.

30

40

It seemed to be more against them after their witnesses had been cross-examined about the meaning of Ogu amakom. This phrase, I understand, means a fight in alliance, and none of the witnesses on the

side of the Defendants would admit ever having heard it, or that they knew what it meant, or even that they had heard or understood the expression amakom by itself. I have no evidence to show what the phrase is used to describe, but from the quite incredible answers which the defence witnesses gave when questioned about it I have received the settled impression that it is an expression well known and well understood, and I believe it denotes a war fought in alliance of the sort described by Plaintiffs and would properly have been applied to that war if it had taken place. The fact that the defence witnesses have lied about their knowledge of the phrase ogu amakom, does not show that the NORGU war was a war fought by allies as the Plaintiffs say; the witnesses' unwillingness to speak the truth may be explained by supposing that they were afraid to admit that an ogu amakom had ever been heard of, much less that it was a frequent or customary thing, in case I might be moved to infer from such an admission, incorrectly, that the NORGU war was a war of that kind. But that does not displace the other explanation, it merely shows that it is not the only one. The other explanation, of course, of the witnesses' untruthfulness is that they were afraid to admit having heard of ogu amakom because that is what the NORGU war was. In the result, I believe that amakom is something well known and usual, and I am moved in consequence to infer that the NORGU war was ogu amakom, and I am the more ready to infer that because it is clear that the witnesses were lying about the matter and because one of the reasons why they lied could have been that the NORGU war was ogu amakom.

Finally, I must allude to a peculiar feature of the Defendants' account of the war. They say not that they drove NORGU away from the territory and occupied it themselves, but that after NORGU had been driven out they again refused to surrender a man to be hanged, and asked AWKA to take the NORGU territory instead. During the war AWKA presumably killed some NORGU people; I am not satisfied they did not. After the war they were in possession of NORGU territory. Having killed some of NORGU's people in war, why did they ask again for a NORGU man to hang for the original victim? Having seized NORGU territory, what need had they of NORGU's permission to occupy it? These matters have not been explained and I cannot understand them. This makes

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of Nigeria

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28th April
1954 -
continued.

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1954 -
continued.

it the harder to believe the Defendants' account of the war.

On the other hand, it has been established by the evidence of the 1941 case, Exhibit A, and the 1949 case, Exhibit C, together with the earlier cases exhibited in the latter proceedings, not only that the Defendants have been asserting claims to parts of the NORGU territory as owners of the whole since as far back as 1922, but that they are at present in lawful enjoyment of the ownership of certain parts of it to the exclusion as owners of two of the alleged allies in the NORGU war, OKPUNO and ENUGU AGIDI. That in my opinion is the evidential value and effect of these cases, which as far as the present plaintiffs are concerned are res inter alios actae and are not conclusive against them or for the Defendants. 10

Nor is any of the evidence given in those cases available in this case under section 34 of the Evidence Ordinance; though OKPUNO in the 1941 case (Exhibit A) and ENUGU AGIDI in the 1949 case (Exhibit C) relied on the same traditional history as Plaintiffs in this case rely on, they relied on it for themselves and it cannot be said that they were the present Plaintiffs' representatives in interest within the meaning of that expression in paragraph (a) in the proviso to sub-section (1) of section 34. 20

Any part of the evidence in the earlier cases which amounts to an admission for the purposes of this case is of course admissible. Attempts have been made in cross-examination to contradict or challenge the evidence of individual witnesses in this case by reference to evidence in the earlier cases given not by the witnesses themselves but by members of their respective communities. Such earlier evidence is not admissible for that purpose, but only, if at all, as admissions. The evidence given in the earlier cases is relevant for purposes of contradicting witnesses only where the witness sought to be contradicted was himself a witness in the earlier case. 30 40

The proceedings in the earlier cases have been put in evidence as acts of enjoyment of ownership of land (Section 45 of the Evidence Ordinance, and Kobina Ababio II vs. R.C.M. Ampenyi, 2 W.A.C.A. 380), and as such their value and effect is as I have

already stated. Since, for the rest, they are res inter alios actae, I have refrained from examining the evidential grounds and the reasoning on which the decisions in them are based and have had regard only to the effect and operation of the decisions.

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Judgment.

28th April
1954 -
continued.

10 It is however impossible to overlook the fact that in the 1941 case (Exhibit A), the plaintiffs (AWKA) having brought evidence that they waged the NORGU war alone, and the defendants (OKPUNO) having brought evidence, including the evidence of AMAWBIA men, that it was waged by an alliance gathered together by AMAWBIA, the Judge said in his judgment (paragraph 15) :-

20 "From the demeanour of the witnesses and from the evidence on each side, I decide on this point in favour of the Plaintiffs. I find that the Norgu war was fought between Awka and Norgu and I believe the Plaintiffs' version as to the cause of this war. I regard it as not unlikely that the smaller people of Norfia, Eso Agidi Isu Okpuno (including Umuodu) and Amawbia may have taken some part in this war especially once the plight of Norgu was appreciated, but I find it quite impossible to believe that Amawbia started the war ...; that Awka were not originally involved, ...; and that Amawbia successfully induced every village and clan bordering on Norgu to participate."

30 At p.211 of Spencer Bowen on Res Judicata, the following statement may be found "... Where estoppel per rem judicatam has not been sufficiently ... made out, but nevertheless the circumstances are such as to render any reargitation of the questions formerly adjudicated upon a scandal and an abuse; the Court will not hesitate to dismiss the action, or stay proceedings therein, or strike out the defence thereto as the case may require." I have felt a very great reluctance to look away from the findings of the High Court in the 1941 case, and I have asked myself whether to do so, and to arrive at different findings, would not be to work a scandal as the phrase is to be understood in that passage. But 40 that is not the meaning of the passage. The meaning is best explained by the passages which precede it and by the cases cited in support of it, and these do not assist me to take the view which had

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Judgment.

28th April
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occurred to me. The passage cited is preceded by the following: "Every English Court of justice ... invested with inherent jurisdiction ... to dismiss, or stay, or otherwise nullify all actions or proceedings which are shown to its satisfaction to be vexatious or oppressive, or to constitute an abuse of its process ... In the exercise of this inherent authority, the Courts have not infrequently intervened to prevent the perversion to base uses of a bare right to reopen matters already litigated, in cases where no estoppel per rem judicatam ... has been strictly established." The scandal and abuse against which the inherent jurisdiction is exercised as described consists in an attempt by a party to use the process of the court, or some technical distinction or rule, for the purpose of vexatiously reagitating a question already decided against him; it does not consist merely in asking a court or a Judge to arrive at different findings from those previously made by another court or Judge about the same events or transactions but on different evidence between different parties. What is scandalous is the abuse of the process in a manner vexatious to a party; the scandal is not that there would be disagreement between courts; the inherent jurisdiction is exercised to protect parties, not to give judgments inter partes the force of judgments in rem. I cannot find that the jurisdiction has ever been exercised against a litigant who has not been a party to the earlier proceedings. I have traced in the English and Empire Digest three of the four cases cited in support of the passage which I have quoted; the three cases are Reichel v. Magrath (1889), 14 App.Cas.665; Horrocks v. Stubbs (1896), 74 L.T.58; and Stephenson v. Garnet (1898), 1 Q.B. 677. In all of them the party seeking to reagitate the question previously decided had been a party to the previous litigation and had had the question decided against him there. In the present case, Plaintiffs have not been parties to the previous litigation. It cannot be said that their right is merely "a bare right to reopen matters already litigated". The matters have not been litigated by them.

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For these reasons I feel bound to consider only the effect of the judgment in the 1941 case, as I have said, and to disregard the particular findings therein arrived at about the NORGU war.

There remains the 1946 MGBATGHETE Native Court case, Exhibit E, between ISU and AWKA, in which ISU claimed damages for trespass to land north of the NWOCHICHI and OBIBIA rivers. This case also went in favour of AWKA, but it is clear that the decision was not given upon the evidence but in deference to the decision in the 1941 case, Exhibit A, between AWKA and OKPUNO. At the end of the defendants' case the Court asked them (AWKA) had they with them in Court the judgment in their case with OKPUNO, and the defendants said it was at home. This was after the defendants had referred repeatedly to the Judge who tried that case, and had informed the Native Court, more or less, that they had appeared before them only because they did not wish to display contempt towards the Court, but that the Judge had said that proceedings about NORGU territory should be brought in the High Court. The proceedings were adjourned at the end of the defendants' case for them to bring a copy of their case with OKPUNO, but at the adjourned hearing the defendants said their lawyer had the copy, and the Native Court then gave judgment "The case is dismissed the case must be as the Judge decided it". The Native Court did not decide the case on the evidence at all. But it remains a case decided in AWKA's favour and so evidence of their enjoyment of part of NORGU territory.

The evidential effect of all this earlier litigation may be best appreciated by looking at the plan Exhibit B put in by the Defendants. This shows what they call NORGU land, that is, the NORGU territory (edged pink). Within that area, it shows what the Defendants have successfully claimed against OKPUNO (AGU ARALLA, edged yellow) and against ENUGU AGIDI (edged orange). The subject matter of ISU's claim successfully resisted by Defendants in the MGBATGHETE Native Court case (Exhibit E) lies between the NWOCHICHI and OBIBIA rivers and the ISU boundary. Throughout the whole of NORGU territory as shown on Exhibit B AWKA can point, on the evidence of the decisions in the cases exhibited, to acts of possession or enjoyment of two large defined areas and the whole area connecting them north of the OBIBIA and NWOCHICHI rivers.

In addition, Plaintiffs' plan No. LD.9/51 shows "Land of Awka People" extending between the UVUNU and the NWEZI rivers north of a tributary of UVUNU

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named OJIMMA on that plan and OWERENDUKA on Defendants' plan Exhibit B. No doubt the Plaintiffs mean that the land so marked is the share of NORGU territory acquired by Defendants after the war. At any rate, Defendants own it, and it extends to the NWEZI. From the UVUNU to the OBIBIA between the NWEZI confluence and AGU ARALLA and from the UVUNU to the AGU ARALLA boundary I have no evidence as to ownership, except of course these words on the Plaintiffs' plan No. LD.9/51, which shows only the south west limits of this area. So far as I know, and upon the information given to me by Plaintiffs' plan No. LD.9/51, the whole area right up to the NWEZI and OBIBIA and all the way along the AGU ARALLA boundary is AWKA's property.

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All that is left is the land now in dispute, and the area between it or the ENUGU AGIDI road and NAWFIA, as to which the plans and the decided cases yield no evidence. Of the whole of the NORGU territory north east of the ENUGU AGIDI road, except so much of the land in dispute as lies north east of that road, it can therefore be said that AWKA either own it, or that they can point to decided cases which are evidence that they enjoy the ownership of it by having successfully asserted their rights of ownership against people, not the Plaintiffs, in occupation of it. This is very striking; but it has to be kept in mind that the effect of the decided cases (which is to show that Defendants are in enjoyment of land connected with the land in dispute), being evidence, has to be weighed along with the rest of the evidence, and that AWKA's ownership of what, upon the admissions in Plaintiffs' plan No. LD.9/51, it must be inferred that they do own, is not inconsistent per se with Plaintiffs' account of the NORGU war.

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Examination of the plans discloses another point: the area now claimed by AMAWBIA, extending on the north east of the ENUGU AGIDI road from the river NWAOGODU (plan No. LD.9/51) or EZUNWOGODO (Exhibit B) to the river NWEZI and the old ENUGU AGIDI boundary, and on the south west of the road to the NAWFIA boundary, seems a small proportion of the whole NORGU territory (as described by Defendants in their plan Exhibit B) to have been occupied by AMAWBIA, who, according to themselves, convened the alliance in the NORGU war. If that view is taken, it is upon the assumption that the people who summon

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an alliance are stronger than, or as strong as, any of their allies, and that they are in a position to control or at least substantially to influence both the operations of the war and the ensuing settlement. No such assumption can safely be made.

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10 Before I leave the subject of the NORGU war and turn to the evidence of more recent acts of enjoyment and possession of the land now in dispute by the parties to this action, who each say that the land was acquired by themselves in the war, I have to refer to the evidence about the Ekpe or mounds which stand along the north west boundary of the land between the ENUGU AGIDI road and the source of the NWEZI river. The evidence about these includes the evidence of the first two plaintiffs in AWKA's 1949 case against ENUGU AGIDI. The existing mounds were built in 1946 by direction of the District Officer. They were built because the dispute which ended in the 1949 case (Exhibit C) was then in progress, and the District Officer told the ENUGU AGIDI people that they could go on farming up to the line marked by the mounds but not beyond it. Subsequently, the mounds were used as one of the boundaries demarcating the land to the north west of them claimed by AWKA in the 1949 case, the other boundaries, except on the ENUGU AGIDI side, being recognizable features - rivers, and the ENUGU AGIDI-AWKA road. They now constitute one of the boundaries of the land (to the south east of them) claimed by AMAWBIA in this case, and AWKA the Defendants say that their having been put there in 1946 shows that the land to the south east is theirs. All it shows is that they were claiming that land in 1946; and it is already known that they were claiming it at least as early as 1941, when the original of the plan Exhibit B was made. AWKA could say with more reason that the mounds cannot mark the true and ancient boundary of AMAWBIA's share (if any) of NORGU territory because they never existed before 1946. They do say that the line the mounds mark was selected arbitrarily by the District Officer, and that comes to the same thing. The Plaintiffs say that it followed an earlier line marked out at the end of the NORGU war by mounds now vanished. There are two facts which I find upon the evidence, and one piece of real evidence, running counter to the Defendants' case and tending to support the Plaintiffs'. The first fact is that AMAWBIA helped to build the mounds in 1946. At the

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time, AWKA repudiated the line marked by the mounds, but the line was not chosen entirely at large, because neighbours were found on the other side of it who agreed with it, as is shown by their having helped to mark it. The second fact is that, as the plans show, the line of the mounds is not quite the shortest line between the source of the NWEZI river and the ENUGU AGIDI road; and that makes it possible that the line may have been selected for some other particular reason. The real evidence was seen when the Court went to the land for inspection; there are features on the land which could be (I do not say which must be) the remains of very old mounds. 10

This leads me to the evidence given on either side in this case about the boundaries of the land in dispute. AMAWBIA have contradicted themselves as to the boundaries by the evidence of their plans, as has already been noticed. The information given to their two surveyors was not the same. Their oral evidence is of higher quality. Three AMAWBIA men gave evidence for AMAWBIA about the boundaries - the Plaintiffs' 1st, 2nd, and 4th witnesses. The Plaintiffs' 1st and 4th witnesses gave evidence about the boundaries on the AWKA, ENUGU AGIDI, and NAWFIA sides - the north east, the north west, and the south east. The 2nd confined himself to the AWKA boundary. Their evidence was full and detailed, and there was a very large measure of agreement between them. The Plaintiffs' 1st witness, in addition, described the boundary between the land in dispute and AMAWBIA land itself. Against this testimony the Defendants have set only the evidence of two witnesses, Defendants' 1st witness and Defendants' 2nd witness. The latter said only that the NORGU AWKA boundary was the UVUNU river. The former said the same, and in addition gave the features on the north east boundary, and that was all. At the land inspection, the Defendants did not know where to look for the boundary features to the south west of the ENUGU AGIDI road. And the evidence of both these witnesses that the south east boundary of NORGU territory was the UVUNU river is in gross contradiction of the evidence of their 1941 plan Exhibit B. Apart from this, there is nothing in AWKA's evidence about the boundaries which could not have been given in evidence by people who had never set foot on the land in dispute. 20 30 40

Turning to evidence dealing directly with

possession and enjoyment, evidence of farming and use, each side says they farm in the area to the exclusion of the other. I find the weight of evidence greatly in favour of the Plaintiffs. Farming has been stopped by the Administration since the disturbances of 1948, which each side ascribes to a trespass by the other.

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10 It now becomes necessary for me to consider the issue raised by Defendants' allegation that Plaintiffs were not on AMAWBIA land at the time of the NORGU war but were put there afterwards as newcomers and strangers by AWKA, in which capacity they are there still.

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continued.

20 In the first place, the Defendants point to the name AMAWBIA, and say it means "place for strangers", which indeed it does, so far as I am informed. The Plaintiffs say it had not that meaning originally, being a corruption of a word pronounced AMAGHOVIA or AMAWVIA and meaning "people who don't know strangers". I do not feel able to decide this particular question. It seems to me that AMAWBIA could be corrupted to AMAWVIA just as easily as AMAWVIA could be corrupted to AMAWBIA. For what it may be worth in support of the Plaintiffs' assertion, I note that I have heard the pronunciation AMAWVIA on the lips of witnesses on both sides in this case, and the 1st Defendant has pronounced the name AMAGHO OBIA and then corrected it to AMAWBIA; but what he meant by that I don't know.

40 The fact that Government and the Hausas and other strangers are on AMAWBIA land does not help much. Defendants say they themselves put them all there; there was no evidence about this either way except the bare assertion, countered by the evidence of the grant of AWKA Government Station land. The Plaintiffs put in a certified copy of this grant or agreement, whereunder AWKA Government Station is held (Exhibit G). The original was made by three Chiefs of AWKA and a Chief of AMAWBIA for themselves and their people as grantors, who after reciting that they are empowered by native law and custom to dispose of the lands concerned, agree that the Governor is thenceforward to be in possession of the Station land for the purpose of administering the government. The Defendants say that the AMAWBIA Chief signed as a witness only. That is quite incorrect; he signed as a party. This is not con-

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continued.

clusive to show that AMAWBIA were owners having the same rights on a part of the Station land as AWKA had on the remainder; but it does point that way, for not only does it show that AMAWBIA had an interest, but it conveys no indication that the interest was not of the same sort as AWKA's.

Next, the Defendants say the Plaintiffs came from ENUGU UKWU to a place called UGBO where they were given land by the NIBO and NISE people, who drove them away again when they became troublesome. The Plaintiffs say they were never at Ugbo. Each side called a witness from NISE, and the Defendants' witness deliberately made nonsense of his evidence and, he intended to imply, of their case, while the evidence of the Plaintiffs' witness from NISE was not very convincing. The Defendants also brought a witness from NIBO; he is a member of a community who are litigating with AMAWBIA, and his refusal to recognize the phrase amakom impaired his credit.

When the Plaintiffs left UGBO, according to the Defendants, they came to them for land, and for their safety were put between the main body of AWKA and their offshoot, the UMUOKPA, who had been sent to settle on the NAWFIA boundary and guard it. AMAWBIA in reply to this say that they themselves put UMUOKPA where they now are, when they were fugitives from their own place. UMUOKPA are a branch of AWKA, and Plaintiffs' account of how they came to be where they are now involves the assertion, which is hard to believe, that AWKA, a people powerful in war, did nothing to prevent their kinsmen's ejection. But the Plaintiffs' story goes on to say that NAWFIA objected to the settlement of UMUOKPA on the boundary, and made war on AMAWBIA on that account. The Defendants deny that there was any such war, but there is convincing testimony on Plaintiffs' side to the contrary which describes also what the war was about, including particularly the evidence of their 3rd witness. On behalf of the Plaintiffs, and to show that UMUOKPA were the last-comers, it was suggested to the UMUOKPA witness who gave evidence for the Defence that UMUOKPA territory was narrow; he replied that it was wider than AMAWBIA land and was 2 miles wide at the Onitsha motor road. Inspection showed that it is three-quarters of a mile there. AMAWBIA land at its narrowest, according to Plaintiffs' plan No. ID.9/51, is just under 4000 feet, or three-quarters of a mile also.

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Finally there was the traditional history of their genealogy which was offered by the Plaintiffs. They trace their descent from one KANU, and claim kinship with NRI, ENUGU UKWU, ENUGU AGIDI, NAWFIA, and ONUORA as other descendants of his. In reply to this, Defendants can only say that they never heard of it, that AMAWBIA came from ENUGU UKWU via UGBO, and that KANU is an AROCHUKU name. I am satisfied at any rate that it is not an Ibo name now in use. But to me any weight the evidence of AMAWBIA's origins has is not because it goes to show where they came from (because it does not say where KANU himself came from), but because it goes to show that AMAWBIA are related to surrounding communities who, so far as I know, and for all that has been suggested to the contrary, are IBO and have been settled where they are now as long as any community in AWKA Division or ONITSHA Province.

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continued.

On the evidence as a whole on the question, I am not satisfied that AMAWBIA were not the original owners of AMAWBIA lands or that AWKA were the original owners, or that they put AMAWBIA there. Even if they established their allegations in this regard, there would still be no satisfactory evidence to show that AMAWBIA came after the NORGU war. Defendants' case on that point came to grief on the evidence of 1st Defendant himself, who said he did not know whether it was before or after.

I return then to the Plaintiffs' case, in which they seek first to establish their title as owners by conquest of this portion of the Norgu territory. It seems to me that the weight of evidence is in their favour at all points relative to the question, except for the evidence of the Defendants' earlier claims to the whole territory and the decisions in the earlier actions fought successfully by them against other people about other, but adjacent and almost surrounding, parts of the territory. The Plaintiffs have satisfied me that within living memory at least they have been in possession, disturbed only by the 1941 survey, to the exclusion of AWKA until 1948. Their account of the NORGU war is given by witnesses who on the whole seemed of greater credibility than AWKA's, and in my judgment it is a more likely account than AWKA's. This account clearly receives more support than otherwise from the evidence about the Ekpe on the ENUGU AGIDI boundary. Against it

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continued.

stands the evidence of the Defendants' long assertion of their claims to all the NORGU territory, and of the fruition of those claims in judgments which have given them present enjoyment of the ownership of the greater part of the territory they have claimed. But the value of the Defendants' assertions of their claims, for all that they have resulted elsewhere in positive enjoyment of ownership, must so far as this part of NORGU territory is concerned be gravely affected by the ignorance or dishonesty (it does not matter which) displayed by them in now claiming the UVUNU river as the south east boundary of AGU NORGU when in 1941 as their plan Exhibit B shows they put the boundary away to the north east of that river.

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In the final result, I am satisfied that the Plaintiffs have proved their title to the land in dispute as owners, and they will succeed in that part of their claim.

As to their claim for £500 damages for trespass, the trespass has been clearly proved. In the sequel, the plaintiffs have been excluded from the enjoyment of their land by Administrative action for a number of years - though not, apparently, since further back than 1949: see paragraph 9 of the statement of claim. The Defendants have acted very highhandedly, and that is borne out not only by the Plaintiffs' evidence but also by the demeanour of 1st Defendant in the witness box. All that can be said for the Defendants is that they may have thought the earlier judgments had established their right to the land now in dispute. That was what the Native Court thought in the ISU case, Exhibit H. Damages will be assessed with both these aspects of the matter in mind. There will be an injunction.

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Judgment for Plaintiffs, for a declaration that they are the owners of that portion of AGU NORGU land shown verged pink on their plan No. GA 62/49 filed in this action, for £300 damages for trespass, and for the injunction claimed; with costs of 100 guineas payable by Defendants to Plaintiffs.

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(Sgd.) W. H. Hurley

J U D G E.

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

In the
Supreme Court
of Nigeria

No.41

NOTICE OF APPEAL TO THE WEST
AFRICAN COURT OF APPEAL
(RULE 12)

Notice and
Grounds of
Appeal.

Suit No. 0/35/1949

BETWEEN:

21st May 1954.

10 H.E. Nwalusi } For themselves and on behalf
Nwanu Okeke } of the people of Amawbia:
Okoye Okongwu }
Patrick Ogwu } ... Plaintiffs.

A N D

Nwuba Mora } For themselves and behalf
Nwangene } of the people of Awka.
Onwuaghasi Okeke }
Nmaneke } ... Defendants.

20 TAKE NOTICE that the Defendants being dis-
satisfied with the whole decision of the Supreme
Court, Onitsha contained in the judgment of His
Lordship Justice W.H. Hurley dated the 28th day of
April, 1954, doth hereby appeal to the West African
Court of Appeal upon the grounds set out in para-
graph 3 and will at the hearing of the appeal seek
the relief set out in paragraph 4.

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

30 2. Part of decision of the lower Court complained
of:- The whole decision.

3. Grounds of Appeal:-

1. The decision is wrong in law in that the
two plans submitted by the plaintiffs are
not identical as to the area of land in
dispute.

2. The learned trial judge misdirected his

In the
Supreme Court
of Nigeria

No.41

Notice and
Grounds of
Appeal.

21st May 1954
- continued.

mind when he stated that the fact that the plaintiffs people knew when the Ekpe mounds were being built as a boundary between the Defendants and Enugu Agidi people and helped to build the mounds supported the plaintiffs' case even though the plaintiffs did not set up any claim then over the portion stated to belong to the Defendants which constitutes now the area in dispute in this action.

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3. The learned trial judge erred in holding that the plaintiffs took necessary steps to register their objection when the Defendants surveyed the whole of Agu Norgu land and entered into the area of land now claimed by the plaintiffs because the plaintiffs wrote a letter to the District Officer Awka without notifying the Defendants about the alleged protest.

4. The verdict is against the weight of evidence.

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4. Relief sought from the West African Court of Appeal :-

That the judgment of the lower Court be quashed and set aside.

5. Persons directly affected by the Appeal:-

H.E. Nwalusi)
Nwanu Orekie) Amawbia Town, c/o Post
Okoye Okongwu) Office, Awka.
Patrick Okongwu)

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Dated this 21st day of May, 1954.

Nwuba Mora

His Thumb Impression

APPELLANT

Witness to thumb impression.

The foregoing having been first read over and interpreted by me Nestor O. Onyido to the illiterate Solicitor's Clerk

Deponent in Ibo language who appeared to have understood the same before fixing his right thumb Impression.

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107.

No.42

MOTION FOR STAY OF EXECUTION

MOTION ON NOTICE:

10 TAKE NOTICE that this Honourable Court will be moved on a date to be fixed later 1954 at the hour of nine of the clock in the forenoon or so soon hereafter as Counsel for the defendants can be heard for an Order for a Stay of execution of the judgment of this Honourable Court delivered on the 28th day of April, 1954 and for such further and/or other order as to this Honourable Court may seem just.

Dated at Onitsha this 28th day of May, 1954.

(Sgd.) T.O.C. Ojiako
Defendants Solicitor.

No.43

AFFIDAVIT IN SUPPORT OF MOTION

I, Nwuba Mora of Awka, Farmer, British Protected Person make oath and say as follows:-

- 20 1. That I am the first defendant in the above named case.
2. That judgment was delivered on the 28th of April, 1954 against the above named defendants by this Honourable Court at Awka.
3. That the defendants are dissatisfied with the said judgment as a whole and have lodged an appeal to the West African Court of Appeal on the 22nd day of May, 1954.
- 30 4. That on the 21st day of May, 1954 the defendants paid the sum of £405:-:-d into this Honourable Court for the sums of £300 and £105 awarded against them as damages and costs respectively as per Revenue Collectors Receipt No. 262842.

In the
Supreme Court
of Nigeria

No.42

Motion for
Stay of
Execution.

28th May 1954.

No.43

Affidavit in
Support of
Motion.

29th May 1954.

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Supreme Court
of Nigeria

No.43

Affidavit in
Support of
Motion.

29th May 1954
- continued.

5. That the defendants believe that before the appeal is heard the plaintiffs will enter the land in dispute and make use of it.
6. That there has been a Common Injunction against both parties not to enter into the land in dispute and the defendants pray that this Honourable Court will stay the execution of the judgment of the 28th of April, 1954 until the said appeal to the West African Court of Appeal is determined. 10
7. That if the stay of execution is granted it will save future probable litigations should the appeal be allowed.
8. That I make this affidavit in support of a motion for an order of this Honourable Court for a stay of execution of the judgment in the above case until the determination of the Appeal now pending before the West African Court of Appeal.

Nwuba Mora

H.R.T.I.
Deponent. 20

The foregoing having been first read over and interpreted by me S.N.I. Ndiwe to the Illiterate Deponent in Ibo Language who appeared to have perfectly understood the same before signing his signature.

Sworn at the Supreme Court Registry, Onitsha,
this 29th day of May, 1954.

Sworn before me

Commissioner for oaths.

No. 44

HEARING OF MOTION

Suit No.0/35/1949

H.E. Nwalusi and ors. Vs. N. Nwude & ors.

In the
Supreme Court
of Nigeria

No.44

Hearing of
Motion.

5th July 1954.

- Claim:
1. Declaration of title to a piece of land known as Agu-Norgu belonging to the Plaintiffs.
 2. £500 damages for trespass by the defendants on the said piece of land and farming thereon.
 3. An injunction to restrain the Defendants and their Agents from continuing or repeating any of the acts complained of.

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1st Defendant (applicant) in person.

1st Plaintiff (respondent) in person.

Obanye: to move, holding Ojiako's brief.

Mojekwu for respondents.

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Obanye: What we want suspended is not the damages and costs, which have been paid, but the declaration and injunction suspended to prevent Plaintiffs from making use of land pending appeal: Paragraphs 5 and 6 of affidavit: common injunction: I mean an injunction against both parties. I think this refers to order of Executive Officer.

Mojekwu: There was no such injunction in this Court.

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Obanye: Para. 7. If plaintiffs go on the land, they will likely alter the character of the land before appeal decision - e.g., by cutting down the economic trees, or by building on it.

COURT: Is there anything to show they will?

In the
Supreme Court
of Nigeria

No.44

Hearing of
Motion.

5th July 1954
- continued.

Obanye: No. Further, I submit we are in possession.

COURT: If so, wrongfully.

Mojekwu: Possibility of a clash has been threatened "Common injunction: para.6. Para.7, litigation".

In fact, Defendants rushed on to this land after the judgment. They now want the Court's protection for what has been done. I ask them to be warned off.

COURT: Before I rule on this application, I should like, in order to avoid misunderstanding, to know more about this "Common injunction", and I will ask the District Officer will he come here to tell me about it. 10

Stand later.

(Sgd.) W.H. Hurley
J.
5. 7. 54.

H.E. Nwalusi & ors. Vs. N. Nwude & ors.

Resumed. 0/35/49. 20

G.S. Grislan, District Officer.

Court explains position. Para.6, "Common injunction"

Grislan: I believe such an order was made by my predecessor pending the decision: as far as I know it's not effective now. It was made to prevent a breach of peace.

COURT: I don't wish anybody to understand what I'm going to say now and start any further breach of peace. 30

I have given judgment for declaration and injunction. Defendants have appealed, and now ask me to stay judgment pending the appeal. The judgment was also for damages and costs, which have been paid, and I'm not asked to do anything about that. What I'm asked to do is to lift the injunction which prevents the AWKA people from going on the land.

The first reason is that the plaintiffs will enter the land and use it before the appeal is known. Why shouldn't they? It is their land. They have been out of it since 1948 or 1949 because the executive had to keep both parties out to prevent a breach of the peace after AWKA trespassed. It wasn't known then whether AWKA had title or not; it's known now that they haven't; and they have no right to go on the land unless and until the Appeal Court upsets this judgment.

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Then I am told there is a common injunction against both parties. That, as District Officer has explained, was remaining to prevent a breach of the peace pending the hearing of the case. If there is a breach of the peace pending the appeal, there will be no doubt who will be responsible.

I am told by Counsel that there may be a breach of the peace. If there is, it will be caused by AWKA, who have no right to set foot on the land. They have been ordered to get off it. I have refused to alter that order and they must go off, if they are on it, and in any case they must stay off. If the Court of Appeal upsets the judgment, the Court of Appeal may say they can go on; but until then, they must stay off.

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The possibility of future litigation should the appeal succeed has been mentioned as a further reason. There is no reason in that that I can see. Nobody will prevent AWKA litigating when the time comes, if it does come. Meanwhile they are to obey this Court's injunction, and to keep the peace.

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Application dismissed with £7.7.0. costs payable by Defendants to Plaintiffs.

(Sgd.) W.H. Hurley
J.
5.7.54.

In the
Supreme Court
of Nigeria

No.44

Hearing of
Motion.

5th July 1954
- continued.

In the West African Court of Appeal

No. 45

SUMMONS TO PARTIES TO SETTLE RECORD

No.45

Summons to Parties to Settle Record.

25th August 1954.

TAKE NOTICE that all parties concerned are required to attend before me at the Supreme Court Office at Onitsha on Friday the 3rd day of September, 1954, at the hour of 10 o'clock in the forenoon to proceed with settling of the record of appeal herein.

DATED this 25th day of August, 1954.

(Sgd.) S.A. Macaulay

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R E G I S T R A R .

1. Mr. H.E. Nwalusi & 3 ors Amawbia Town, c/o Awka Post Office.
2. Nwuba Mora & 3 ors c/o A.O. Mbanefo, B.L. Onitsha.

In the Supreme Court of Nigeria

No.46

TERMS OF SETTLEMENT OF RECORD OF APPEAL

No.46

Terms of Settlement of Record of Appeal.

3rd September 1954.

1st and 4th Plaintiffs for plaintiffs; present.

1st defendant for defendants present.

20

Parties state they desire all documents forwarded to the West African Court of Appeal. There is no document they desire to add to the records.

Records are settled and appellants ordered to fulfil the following conditions.

1. Deposit into Court the sum of £70 for records. (T.R.3479 & R.V.149 of 9.9.54).
2. Give security by bond with a security in the sum of £50 for the prosecution of appeal and payment of costs.

30

Conditions to be fulfilled within 21 days.

(Sgd.) S.A. Macaulay.

No. 47

MOTION FOR LEAVE TO FILE ADDITIONAL
GROUNDS OF APPEAL

In the Federal
Supreme Court
of Nigeria

No.47

MOTION ON NOTICE

Motion for
Leave to File
Additional
Grounds of
Appeal.

10 TAKE NOTICE that this Honourable Court will be moved on Monday the 18th day of February 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named defendants-appellants for an Order for leave to file additional Grounds of Appeal in the matter herein and for such further or other Order as this Honourable Court may deem fit to make in the circumstances.

6th September
1956.

Dated at Lagos this 6th day of September 1956.

(Sgd.)- K.A. Kotun

Solicitor for Defendants-Appellants.

On notice to:-

The above-named plaintiffs-respondents
Amawbia Town, care Post Office, Awka.

20

No. 48

No.48

AFFIDAVIT IN SUPPORT OF MOTION

Affidavit in
Support of
Motion.

I, KASALI AREMU KOTUN, of No. 6 Idoluwo Street, Lagos Yoruba, British subject, Barrister-at-law, make oath and say as follows:-

8th September
1956.

- 30
1. That I am the Solicitor briefed to appear for the defendants-appellants in the above matter.
 2. That I was not Counsel in the case in the lower Court.
 3. That on perusal of the record of appeal I find it necessary to add more to the Grounds of Appeal already filed.

In the Federal
Supreme Court
of Nigeria

4. That a copy of the proposed additional Grounds
of Appeal is hereunto attached and marked
Exhibit 'A'.

No.48

(Sgd.) K.A. Kotun.

Affidavit in
Support of
Motion.

Sworn to at the Federal Supreme Court
Registry, Lagos, this 8th day of
September 1956.

8th September
1956 -
continued.

Before me,

(Sgd.) E.O.H. Okwusogu
Commissioner for Oaths.

10

No.49

No. 49

Additional
Grounds of
Appeal.

ADDITIONAL GROUNDS OF APPEAL

6th September
1956.

1. The learned trial Judge erred in law in making an Order for Declaration of Title in favour of the Plaintiffs when the two plans tendered by the Plaintiffs as well as their evidence are conflicting as to the land or the area of the land they claim.
2. The learned trial Judge erred in law when he gave judgment for the plaintiffs since from his observations there is not much to choose between the traditional evidence of the plaintiffs and the defendants.
3. The judgment is against the weight of evidence.

20

Dated at Lagos this 6th day of September, 1956.

(Sgd.) K.A. Kotun
Solicitor for Defendants-Appellants.

This is the Exhibit marked 'A' referred to in the affidavit of KASALI AREMU KOTUN sworn to this 8th day of September, 1956.

30

No. 50

MOTION FOR LEAVE TO FILE AMENDED
GROUND'S OF APPEAL

In the Federal
Supreme Court
of Nigeria

No.50

Motion for
Leave to File
Amended Grounds
of Appeal.

19th January
1957.

10 TAKE NOTICE that this Honourable Court will be moved on Monday the 18th day of February 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named defendants appellants for an Order for leave to file Amended Grounds of Appeal in the matter herein and for such further or other Order as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 19th day of January 1957.

(Sgd.) K.A. Kotun

Defendants-Appellants' Solicitor.

On notice to

The above-named plaintiffs-respondents.

No. 51

AFFIDAVIT IN SUPPORT OF MOTION

No.51

Affidavit in
Support of
Motion.

20 I, KASALI AREMU KOTUN, of No. 6 Idoluwo Street, Lagos, Yoruba, British Subject, Barrister-at-Law, make oath and say as follows:-

21st January
1957.

1. That I am the Solicitor briefed to appear for the defendants-appellants in the above matter.
2. That I was not Counsel in the case in the lower Court.
3. That the Record of Appeal is voluminous and upon a thorough reading I discovered that more grounds of appeal ought to be put forward for consideration of this Honourable Court.
4. That since I received the Record of Appeal in September 1956 I had no sufficient time to go

30

In the Federal
Supreme Court
of Nigeria

through it as I appeared before this Honourable
Court nearly every week since the session
started apart from appearance before other
Courts.

No.51

Affidavit in
Support of
Motion.

- 5. That a copy of the proposed Amended Grounds of Appeal is hereunto attached and marked Exhibit 'A'.

(Sgd.) K.A. Kotun.

21st January
1957 -
continued.

Sworn to at the Federal Supreme
Court Registry, Lagos, this 21st
day of January, 1957.

10

Before me,

(Sgd.) E.O.H. Okwosogo
Commissioner for Oaths.

No.52

No. 52

Amended Grounds
of Appeal.

AMENDED GROUNDS OF APPEAL

19th January
1957.

- 1. The learned trial Judge erred in law and in fact in making an Order for Declaration of Title in favour of the plaintiffs when the two plans tendered by plaintiffs as well as their evidence are conflicting as to the land or the area of the land they claim. 20
- 2. The learned trial Judge erred in law and in fact in not giving sufficient weight to the other cases against other neighbouring peoples won by Awka which showed that Awka had successfully asserted ownership to the whole of Agu Norgu land against the very people plaintiffs claimed to have been their allies and to have derived their titles from the same event, in some of which cases the plaintiffs' people gave evidence. 30
- 3. The learned trial Judge misdirected himself in law and in fact when he stated that "in the result, I believe that amakom is something well known and usual, and I am moved in consequence to infer that the Norgu war was ugu amakom, and

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I am the more ready to infer that because it is clear that the witnesses were lying about the matter and because one of the reasons why they lied could have been that the Norgu war was ogu amakom".

In the Federal
Supreme Court
of Nigeria

No.52

Amended Grounds
of Appeal.

19th January
1957 -
continued.

- 10 4. The learned trial Judge misdirected himself in law and in fact when he stated that the fact that the plaintiffs people knew when the Ekpe mounds were being built as a boundary between the defendants and Enugu Agidi people and helped to build the mounds supported the plaintiffs' case even though the plaintiffs did not set up any claim then over the portion stated to belong to the defendants which constitutes now the area in dispute in this action.
- 20 5. The learned trial Judge erred in law and in fact in holding that the plaintiffs took necessary steps to register their objection when the defendants surveyed the whole of Agu Norgu land and entered into the area of land now claimed by the plaintiffs because the plaintiffs wrote a letter to the District Officer Awka without notifying the defendants about the alleged protest.
- 30 6. The learned trial Judge erred in law and in fact when he gave judgment for the plaintiffs since from his observations there is not much to choose between the traditional evidence of the plaintiffs and the defendants.
7. The judgment is against the weight of evidence.

Dated at Lagos this 19th day of January, 1957.

K.A. Kotun
Defendants/Appellants' Solicitor.

This is the exhibit marked 'A' referred to in the affidavit of KASALI AREMU KOTUN sworn to this 21st day of January, 1957.

Before me,

(Sgd.) E.O.H. OKWUSOGU.

Commissioner for Oaths.

In the Federal
Supreme Court
of Nigeria

No. 53

HEARING OF MOTION AND APPEAL

No.53

Hearing of
Motion and
Appeal.

18th February
1957.

Mr. K. Kotun, with him Mr. G.N.A. Okafer, for
appellants.

Mr. G.C.M. Onyiuke, with him Mr. G.C.Nnonyelu, for
respondents.

Kotun: Motion for leave to file amended grounds of
appeal. Onyiuke does not oppose. Leave granted.

(Intld.) S.F.S., F.C.J.

Kotun: Plans varied as to area - Yes, but see note
at page 35 of record. Draws attention to judgment,
says given on Plan G.A.62/49. N.B. This is the
one it was agreed should be ignored. Says land
given declaration for impiuges on land the appell-
ants were given judgment for in Suit No. 23/45, 46
and 47 of 1949. Exhibit "B" - and that present
respondents must be deemed to have been privies to
that case because two of their people gave evidence
in it.

10

We ask how were they privies - says page 186.
But note that part referred to was not the subject
of that action - i.e. the portion witness said Amaw-
bia were farming. Says respondents were privy in
estate.

20

Note - That case was not against the Amawbia
people nor was this one then in dispute.

We indicate that we do not agree that present
respondents were privies in earlier case or that
they are estopped by conduct.

Two plans do not agree - refers to evidence
given as to boundaries submits does not support
either of two plans.

30

Evidence of 1st Plaintiff's witness page 21 -
line 27. Says all other boundaries are given, but
not the southern one.

Draws attention to fact that Ekemezie Nwalusi -
page 21, said "then straight to Akpu Obaekia tree"

which is well below southern boundary on both of their plans.

No other evidence of southern boundary. Refers to New ground 3. Says no evidence by witness as to meaning of "Amakom" - Submits trial Judge was not in a position to express any opinion on meaning of the word.

10 Junior Counsel is an Ibo says that he has never before reading present record heard of an Ibo word "Amakom". On other hand Junior Counsel on other side says a well known Ibo word!! The Registrar who comes from Onitsha says well known Ibo word there meaning group of people.

Plaintiffs never called any witness to give evidence about meaning of "Amakom".

Trial Judge discredited defendants' witnesses because they denied knowing of "Amakom". Judgment page 105 line 15 submits no evidence to justify conclusion.

20 Ground 4. See page 114 - 116 Judgment.

Abandons ground 6.

Onyiuke: Refers to Plan filed after pleadings LD9/51., 8th September, 1951, and GA.62/49. Refers to page 22, line 8.

"Then Ogbebe river". Says that was intended to describe southern boundary - (We do not agree - in our view it is merely a description of the end of the western boundary.)

30 Submits: combined effect of examination in Chief or cross-examination shows all boundaries clearly. See page 23.

We ask counsel if it is not a fact that the respondents were also claiming the land to the south.

Answer: Yes.

But note - The area on Exhibit "D" was alleged by defendants-respondents, to be theirs - that is area edged brown - that area is exactly the same as area

In the Federal
Supreme Court
of Nigeria

No.53

Hearing of
Motion and
Appeal.

18th February
1957 -
continued.

In the Federal
Supreme Court
of Nigeria

edged pink on plaintiffs' plan LD9/51 dated 8th
September 1951, and it was agreed, pages 35-36 that
later plan should be followed as regards area.

No.53

We now indicate that we do not wish to hear
him further as regards proof of area and boundary
in dispute.

Hearing of
Motion and
Appeal.

Adjourned to 19.2.57.

18th February
1957 -
continued.

(Intld.) S.F.S., F.C.J.

No.54

No. 54

Hearing of
Appeal
(continued).

HEARING OF APPEAL (CONTINUED)

10

19th February
1957.

Coram and Counsel as before.

Onyiuke: Ground 3. Amakom - even assuming a mis-
direction here there were two further points trial
judge used in accepting plaintiffs case - moreover
evidence of possession on enjoyment. Refers to
Judgment page 104 - line 26. Counsel admits that
no witness for plaintiff gave any evidence about
meaning of ugu amakom - nor did they even use the
expression in their evidence.

Concedes that there was a misdirection on
amakom - page 106 line 25. They could not point
out boundaries when they went on land. Clear find-
ing of fact regarding long possession - see page 122,
line 8. "The plaintiffs have satisfied me"

20

Ground 4. Deals with significance of mounds.
We refer him to evidence page 46 of record - Madun-
eke Nwogu "Note on view" page 92 - 93.

Kotun: Goes back to estoppel - we draw attention
to our earlier ruling. Amakom - says obviously
affected trial Judge when considering other evidence
of defendants. Submits what operated on trial
Judge's mind was who started war and who were in
alliance. He discredited whole of evidence given
by defendants. Misdirection regarding Ogu Amakom
affected whole Judgment, and for that reason is
unsatisfactory.

30

C.A.V. (Intld.) S.F.S., F.C.J.
19.2.57.

JUDGMENT

Monday the 18th day of March, 1957.

No.55

Continued from above Judgment delivered by
Jibowu, F.J.

Judgment.

ORDER: Appeal dismissed with costs fixed at £93.0.0.

18th March
1957.

(Sgd.) S. Foster Sutton F.C.J.
18. 3. 57.

JUDGMENT

10 JIBOWU, F.J. The appellants have appealed to this
Court against the judgment given against them by
Hurley, J., on the 28th April, 1954, in favour of
the respondents, who, as plaintiffs, claimed for
themselves and for other people of Amawbia (1) a
declaration of title to a piece of land which both
parties agreed was a part of land originally belong-
ing to Norgu people, by whose name the land was
known, (2) damages for trespass to the land by the
respondents, and (3) an injunction to restrain the
20 respondents from further acts of trespass on the
land.

The appellants are Awka people and they were
sued on behalf of themselves and the people of Awka.

30 It was common ground between the parties that
Norgu people were fought and driven away from
Norgu land, including the land in dispute, but they
differed as to who fought and drove Norgu people
from the land, as the respondents claimed that they
and their allies, the people of Enugu Agidi, Isu,
Okpuno, Nawfia and others, including Awka, took
part in the war caused by the failure of the Norgu
people to hand over the person who had killed an
Amawbia man, and the appellants claimed that they,
Awka people, alone took part in the fight which was
occasioned by the killing of an Awka man by a Norgu
man.

The respondents' case was that each of the
towns that fought Norgu took so much of Norgu land

In the Federal
Supreme Court
of Nigeria

No.55

Judgment.

18th March
1957 -
continued.

as they conquered, and that the land in dispute fell to the lot of the respondents. The appellants claimed the whole of Norgu land and had succeeded in getting themselves declared the owners of Norgu land occupied by Okpuno and Enugu Agidi. Isu people sued the appellants for trespass to a portion of Norgu land claimed by them and lost.

The respondents were not parties to any of these actions nor were the lands involved in the actions the same as the land in this present case. The learned Judge, in my view, came to a right conclusion when he held that the judgments in the other actions are res inter alia so far as the respondents are concerned, and that they are not bound by them. The learned Counsel for the appellants submitted in this Court that as some Amawbia people gave evidence for the other towns, Amawbia people are bound by the judgments of the Court in the other actions as privies. This submission is, in my view, untenable, as there was no evidence that the Amawbia community sent the men who gave evidence to represent their community; even if they had, that fact could not make them privies in estate to the defendants in those actions as submitted by Counsel, nor could the judgments in those actions, to which the respondents were not parties and which were in respect of lands other than the one in dispute in this case, bind the respondents in any way.

The appellants' first complaint against the learned trial Judge's judgment is that he had tied the decree of Declaration of Title in respondents' favour to the plan No. GA 62/49 filed by the respondents with their statement of claim in spite of an agreement between the parties that another plan LD 9/1951, subsequently filed by the respondents, should be adopted. It is to be noted that the appellants also filed two plans of the land in dispute which were tendered in evidence and marked Exhibits B and D respectively. In his judgment the learned trial Judge stated: "The boundaries of the land in dispute shown in the earlier plan have been copied on the defendants' plan, Exhibit D, as shown by their surveyor's certificate thereon dated 18th May, 1951, and the defendants must be taken to have accepted the boundary shown by the earlier plan beyond the end of the line of the Ekpe". As the appellants themselves have by their plan, Exhibit D, admitted that the earlier plan No. GA 62/49 was

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correct by adopting it, the Judge was justified in tying the decree to the plan. I therefore find no substance in this ground of appeal, which therefore fails.

In the Federal
Supreme Court
of Nigeria

No.55

Judgment.

18th March
1957 -
continued.

10 The 2nd ground of appeal argued complains that the learned Judge misdirected himself by discrediting the witnesses for the appellants because they stated on cross-examination that they had not heard of "Ogu Amakoru" which was said to be "a war in alliance", or "war by a group of towns". I accept the learned Counsel's submission that it is clearly a misdirection when the learned Judge held: "In the result I believe that Amakom is something well known and usual, and I am moved in consequence to infer that the Norgu war was Ogu Amakom, and I am the more ready to infer that because it is clear that the witnesses were lying about the matter and because one of the reasons why they lied could have been that the Norgu war was Ogu Amakom". No witness on the respondents' side described the Norgu war as Ogu Amakom, and none of them made use of the expression. The learned Judge himself observed: "I have no evidence to show what the phrase is used to describe". The fact that the appellants' witnesses denied knowledge of the word "Amakom" did not necessarily make them liars in the absence of any evidence showing that they did, in fact, know the word and its significance. There is, therefore, no justification for the Judge's finding that the word is well known and usual, and for holding that the witnesses had lied on that account.

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Counsel for the respondents agreed that there had been a misdirection on the point, and the question for this Court to consider is, how far has the misdirection affected the judgment? Counsel for the appellants submitted that the misdirection influenced the mind of the Judge right through his judgment, and that, for that reason, the judgment is unsatisfactory. For the respondents it was submitted that the learned Judge would have arrived at the same conclusion if the question of Ogu Amakom was eliminated. The question whether the Norgu war was fought singly or by people in alliance was an important issue between the parties, as to who was the owner of the land in dispute. In my view, however, the issue before the Judge fell for determination by consideration of the traditional evidence and the evidence of possession and exercise

40

In the Federal
Supreme Court
of Nigeria

No.55

Judgment.

18th March
1957 -
continued.

of rights of ownership over such a long period of time as to justify the inference that the people in possession are the owners of the land in dispute. With regard to the traditional evidence in this case, the learned Judge was not impressed by the appellants' version of the Norgu war and preferred that of the respondents, which appeared to be more in accord with reason and commonsense. One cannot say that he was wrong in this. However, he did not find against the appellants only on the traditional evidence which could not be conclusive apart from the question of possession and exercise of rights of ownership over the land in dispute. Both parties claimed to be in possession of the land in dispute to the exclusion of the other. Although the appellants alleged that they introduced the respondents to the land now known as Amawbia land after the Norgu war, they did not suggest that the respondents, Amawbia people, were placed on the land in dispute by them. With regard to Amawbia land, they failed to satisfy the learned Judge that they were the original owners of Amawbia land and that they gave it to the respondents as they alleged.

Besides hearing evidence in Court the learned Judge went on inspection of the land in dispute. The respondents pointed out their farms, their boundaries and boundary marks to him, but the appellants were unable to point out their own boundaries. On this point the learned Judge's finding was: "At the land inspection the defendants did not know where to look for their boundary features to the south west of Enugu Agidi road. And the evidence of both these witnesses that the south east boundary of Norgu territory was the Uvunu river is in gross contradiction of their evidence of 1941, plan Exhibit B. Apart from this, there is nothing in Awka's evidence about the boundaries which could not have been given in evidence by people who had never set foot on the land in dispute". The learned Judge further observed with regard to the boundary question that the appellants had, either through ignorance or dishonesty, it does not matter which, claimed their boundary in this case up to the Uvunu river, whereas in Exhibit B in 1941, they showed the boundary away to the southeast of the river. The implication is that the appellants had been shifting their boundary to suit their purpose.

After considering all the evidence, the learned

Judge stated: "the plaintiffs have satisfied me that within living memory at least they have been in possession, disturbed only by the 1941 survey, to the exclusion of Awka until 1948". This finding of fact is, in my view, amply supported by the evidence before him, and the finding could not, in my view, have been affected by the misdirection on Ogu Amakom.

In the Federal
Supreme Court
of Nigeria

No.55

Judgment.

18th March
1957 -
continued.

10 Simply put, the respondents claimed that the land in dispute was theirs through conquest and that they have since the Norgu war occupied it. They were able to satisfy the Judge that they were in possession and exercising rights of ownership over the land. The appellants also claimed the land as theirs by conquest and that they were in possession. They were unable to satisfy the Judge when the land was inspected that they were, in fact, in possession.

20 If the appellants' case had been that they put the respondents in possession of the land, the result might have been different, but that was not their case. It would have been surprising if in the face of the satisfactory proof of possession and exercise of rights of ownership over the land in dispute for a long period of time, the respondents were not declared the owners of the land in dispute.

30 In the circumstances, I hold that the learned Judge was right in giving judgment in favour of the respondents in terms of their claim, and that the misdirection on Amakom did not affect the Judge's findings of fact as to possession and exercise of rights of ownership over the land in dispute.

I would, therefore, dismiss this appeal with costs.

(Sgd.) O. Jibowu, F.J.

I concur. (Sgd.) S. Foster Sutton, F.C.J.

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

40 Mr. K.A. Kotun (with Mr. G.N.A. Okafor) for appellants.

Mr. G.C.M. Onyiuke (with Mr. G.C. Nonyelu) for respondents.

In the Federal
Supreme Court
of Nigeria

No. 56

DRAWN UP ORDER ON JUDGMENT

No.56

Monday the 18th day of March, 1957.

Drawn up
Order on
Judgment.

18th March
1957.

UPON READING the Record of Appeal herein and after hearing Mr. K.A. Kotun, with him Mr. G.N.A. Okafor, of counsel for the Defendants-Appellants and Mr. G.C.M. Onyuike, with him Mr. G.C. Nonyelu, of counsel for the Plaintiffs-Respondents:

IT IS ORDERED that this appeal be dismissed and that the Defendants-Appellants do pay to the Plaintiffs-Respondents costs of this appeal fixed at £93.0.0d.

10

(Sgd.) W.A.H. Duffus
CHIEF REGISTRAR.

No.57

No. 57

Motion for
Conditional
Leave to
Appeal to
Privy Council.

4th April 1957.

MOTION FOR CONDITIONAL LEAVE TO
APPEAL TO PRIVY COUNCIL

TAKE NOTICE that the Federal Supreme Court of Nigeria will be moved on Wednesday the 22nd day of May, 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as an order for Conditional Leave to appeal to Her Majesty's Privy Council from the decision of this Honourable Court given in the above mentioned suit on Monday the 18th day of March 1957, and for such further or other order as this Honourable Court may deem fit in the circumstances.

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Dated at Lagos this 4th day of April 1957.

(Sgd.) G.N.A. Okafor.
Defendants-Appellants Solicitor.

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ON NOTICE TO:-

1. H.E. Nwalusi
 2. Okoye Okongu
 3. Nwonu Araekie
 4. Patrick Ogwu
- c/o G.C. Nonyelu, Esq.,
Bernard Carr Street,
Port Harcourt.

In the Federal
Supreme Court
of Nigeria

No. 59

HEARING OF MOTION

No.59

Hearing of
Motion.

22nd May 1957.

Motion for conditional leave to appeal to Her Majesty in Council from the decision of this Court held on the 18th March, 1957.

G.N. Okafor for appellants, Okafor wishes to deposit £500 as security.

IT IS ORDERED that the Appellants be at liberty to appeal to Her Majesty in Council from the judgment of this Court dated the 18th day of March 1957, upon fulfilment within 3 months from the date hereof of the following conditions, namely:-

10

1. That the Appellants do deposit into this Court the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellants to pay the Respondents' costs of the appeal (as the case may be);
2. That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of Appeal and do take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

20

AND THAT the costs of this application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

30

(Sgd.) O. Jibowu, Ag. F.C.J.

22/5/57.

No. 60

DRAWN UP ORDER ON MOTION

In the Federal
Supreme Court
of Nigeria

Wednesday the 22nd day of May, 1957.

No.60

UPON READING the application herein for an order for conditional leave to appeal to Her Majesty in Council from the decision of this Court given on the 18th day of March, 1957, and the affidavit of Nwuba Mora sworn to on the 4th day of April, 1957, filed on behalf of the Appellants, and after hearing Mr. G.N.A. Okafor of counsel for the Appellants:

Drawn up
Order on
Motion.

22nd May 1957.

IT IS ORDERED that the Appellants be at liberty to appeal to Her Majesty in Council from the judgment of this Court dated the 18th day of March, 1957, upon fulfilment within 3 months from the date hereof of the following conditions, namely:-

(1) That the Appellants do deposit into this Court the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellants to pay the Respondents' costs of the appeal (as the case may be);

(2) That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of Appeal and do take all necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

AND THAT the costs of this application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

(Sgd.) F. Olawale Lucas
AG. CHIEF REGISTRAR.

In the Federal
Supreme Court
of Nigeria

No. 61

MOTION FOR FINAL LEAVE TO APPEAL
TO PRIVY COUNCIL

No.61

Motion for
Final Leave
to Appeal to
Privy Council.

4th October
1957.

TAKE NOTICE that this Honourable Court will be moved on Monday the 18th day of November, 1957 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendants/Appellants for an order granting the above-named Defendants/Appellants final leave to appeal to Her Majesty's Privy Council and for such further or other order as this Honourable Court may deem fit in the circumstances.

10

Dated at Lagos this 4th day of October 1957.

(Sgd.) G.N.A. Okafor

Defendants/Appellants Solicitor.

ON NOTICE TO:-

1. H.E. Nwalusi
2. Okoye Okongwu
3. Nwonu Araekie
4. Patrick Ogwu
c/o G.C. Nonyelu, Esq.,
Solicitor & Advocate,
Bearnard Carr Street,
Port Harcourt.

20

No.62

No. 62

Affidavit in
Support of
Motion.

AFFIDAVIT IN SUPPORT OF MOTION

4th October
1957.

I, Nwuba Mora of Amikwo Village Awka, farmer, a British Protected Person, a Nigerian, make oath and say as follows:-

1. That I defended the above action on behalf of myself and the people of Awka and we are the Defendants-Appellants.

30

2. That on the 22nd day of May 1957 this Honourable Court granted me conditional leave to appeal

against the judgment of this Court given in the above-mentioned suit on the 18th day of March 1957 to Her Majesty's Privy Council.

In the Federal Supreme Court of Nigeria

3. That the conditions were that I should deposit into this Court the sum of £500 as security for costs and for the due prosecution of the appeal, and a further sum of £50 for the preparation of the Record of Appeal.

No.62

Affidavit in Support of Motion.

10 4. That on the 15th of June 1957, the necessary conditions were duly satisfied by me.

4th October 1957 - continued.

5. That I have arrangements on hand to prosecute the appeal.

Right Thumb Mark
(Nwuba Mora)
Deponent.

20 Sworn at the Federal Supreme Court Registry, Lagos, this 4th day of October 1957, the foregoing having been first read over and interpreted to the illiterate deponent Nwuba Mora in the Ibo language by (Sgd.) ? Edekobi qualified interpreter when he seemed perfectly to understand same before affixing his thumb print thereon.

Before me,
(Sgd.) E.O.H. OKWUSOGU
Commissioner for Oaths.

No.63

No.63

HEARING OF MOTION

Hearing of Motion.

30 Motion for final leave -
Mr. G.N.A. Okafor for applicants.

18th November 1957.

Okafor: Moves - All conditions fulfilled. Order in terms of Motion. Costs in the cause.

(Sgd.) S. Foster Sutton, F.C.J.

In the Federal
Supreme Court
of Nigeria

DRAWN UP ORDER ON MOTION

No.64

Drawn Up
Order on
Motion.

18th November
1957.

Monday the 18th day of November, 1957.

UPON READING the application herein for an order for final leave to appeal to Her Majesty's Privy Council and the affidavit of Nwuba Mora sworn to on the 4th day of October, 1957, filed on behalf of the Applicants, and after hearing Mr. G.N.A. Okafor of counsel for the Applicants, the Respondents not being present or represented:

10

IT IS ORDERED that final leave be granted and that the costs of this application shall be costs in the cause.

(Sgd.) S.A. Samuel

AG. CHIEF REGISTRAR.

E X H I B I T S

Exhibits

"A" - PROCEEDINGS OF COURT IN CASE
NO. 0/13/41

"A"

Proceedings of
Court in Case
No. 0/13/41.

Exhibit "A" put in by Defendants, admitted
and marked in Suit No. 0/35/1949: H.E.
Nwalusi & 3 ors. vs. Nwuba Mora & 3 ors.

25th January
1954.

(Sgd.) A.A. Nwankpa
25. 1. 54.

PROTECTORAGE OF NIGERIA

10 APPEAL FROM THE HIGH COURT OF THE ENUGU-ONITSHA
DIVISION

TO

THE WEST AFRICAN COURT OF APPEAL
HOLDEN AT LAGOS, NIGERIA

Suit No.0/13/1941.

Chief Nnefe Nwude on behalf of himself
and the Chiefs and people of Awka

Plaintiffs
Respondents.

20 versus

Chief Ikanyonwu for himself and as
representing the people of Okpuno

Defendants
Appellants.

RECORD OF APPEAL

Certified true copy.

(Sgd.) P.E.G. Achikeh.
REGISTRAR.

Exhibits

Protectorate of Nigeria

"A"

Appeal from the High Court of the Enugu-Onitsha
Division

to

The West African Court of Appeal

Holden at Lagos, NigeriaProceedings of
Court in Case
No. 0/13/41.25th January
1954 -
continued.Suit No. 0/13/1941Chief Nnefe Nwude on behalf of himself
and the Chiefs and people of AwkaPlaintiffs-
Respondents

10

versus

Chief Ikanyionwu for himself and as
representing the people of OkpunoDefendants-
AppellantsS T A T E M E N T

This suit was transferred from the Native Court of Mbanese in Awka Division to the High Court by an Order of the Resident, Onitsha Province, for hearing and determination.

2. The claim as per original writ of summons was for "a declaration of title to that piece or parcel of land known as Agwu Norgu situate in Awka and bounded on the North by lands of Norgwu and Isu, on the West by land of Oso N'nagidi and Nofia, on the South by lands of Nofia and Umu-Ukpu and on the East by lands of Amobia.

20

Also injunction "This claim was subsequently amended by the Plaintiffs' Solicitor, Mr. L.N. Mbanefo, to read as follows:-

"(a) Declaration of title to all that piece of "land known as Agwu Aralla forming part of the "land known as Agwu Norgu and more particularly "described and delineated and edged yellow on a "plan filed in Court herein.

30

"(b) An injunction to restrain the defendants, "their servants, and/or agents from any further "interference on this land."

3. Plan and pleadings were ordered and filed and on the 2nd day of March 1943, hearing was commenced before His Honour Mr. Justice Callow who on the 19th March 1943 gave judgment for Plaintiffs for the declaration sought with costs against the Defendants assessed at 25 guineas.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 4. Motion for Conditional Leave to appeal to the West African Court of Appeal was filed on the 10th day of June 1943 and on the 9th July 1943 Conditional Leave to Appeal was granted.

5. Owing to the voluminous nature of the record herein the sum originally ordered to be deposited was found insufficient to cover the cost of transmission of the appeal record and the Defendants were therefore further ordered to deposit a further fee of £25 and consequently the Defendants' time for the fulfilment of the conditions was accordingly extended to 9th December 1943.

20 6. Motion for Final Leave to appeal was filed on the 17th July 1943 and on the 9th December 1943 Final leave was granted, all the conditions imposed having been perfected.

7. The grounds of appeal were filed on the 16th December 1943 by Mr. E.N. Egbuna Solicitor for the Defendants-Appellants.

Native Courts Ordinance - Protectorate, Nigeria

ORDER OF TRANSFER

30 By virtue of the powers vested under Section 25(c) of the Native Courts Ordinance No. 44 of 1933 (as amended), I hereby order that the Case mentioned in the following Schedule be transferred for hearing and determination from the MBANESE Native Court, Awka Division, Onitsha Province to the High Court, Onitsha.

SCHEDULE

Case No. 17/40:

Plaintiff: Chief Nnefe Nwude on behalf of himself and the Chiefs and people of Awka.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Defendant: Chief Ikanyowu for himself and as representing the people of Okpuno.

Claims: 1. Declaration of title to that piece or parcel of land known as AGWUNOGWU situate in Awka and bounded on the North by Lands of Nogwu and Isu on the West by Lands of Cso-N'nagidi and Nofia on the South by lands of Nofia and Umu-Ukpu and on the East by lands of Amobia.

2. Injunction.

10

Reason for transfer

There is a mass of former litigation which requires legal argument. There is also the question whether a certain Review Order made by an Administrative Officer in one of the relative cases is valid. The validity of this Order affects the present claim in whole or in part.

The Native Court is not qualified to deal with difficult points of this nature.

D.P.J. O'Connor.
Resident, Onitsha Province.

20

NATIVE COURTS
Civil Summons

IN THE NATIVE COURT OF MBANESE
NIGERIA

Between { Chief Nnefe Nwude on behalf
{ of himself and the Chiefs
{ (and the people of Awka .. Plaintiff
{ and
{ Defendant

30

To Chief Ikanyowu for himself and as representing the people of Okpuno.

YOU are hereby commanded to attend before this Court at on the day of 19 , to

answer a suit by Pltffs of Awka against you.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10

The Plaintiff Claims (a) The Plaintiff seek a declaration that all that piece or parcel of land known as AGWUNOGWU situate in Awka and bounded on the north by Lands of Norgu and Isu on the West by Lands of Oso Nnagidi and Nofia on the South by Lands of the Nofia and Umuokpu and on the E. by Lands of Amobia and the Pltffs and Defdts and more particularly described in a plan to be produced at the hearing, are the properties of the Awka people. An injunction to restrain the Defdts their servants or Agents from any future interference of this Land.

C/M Udegbune Nwoye his thumb
for C.

(Signature of President or Vice President or
(Member)

Date 15/11/41.

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

20

(a) State Plaintiff's claim clearly.

??
C.N.C.

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT AWKA
BEFORE HIS HONOUR HARRY WADDINGTON, ASST.JUDGE,
THIS 18th DAY OF MARCH, 1942.

0/13/1941.

30

Chief Nnefe Nwude on behalf of
himself and the Chiefs and
people of Awka. ... Plaintiffs

versus

Chief Ikanyowu for himself and
as representing the people of
Okpuno ... Defendants

Claim per writ:-

Plaintiff claims a Declaration of title to that piece or parcel of land known as AGWU-NORGWU

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

situate in Awka and bounded on the north by lands of Norgu and Isu, on the west by lands of Oso-N'nagidi and Nofia, on the south by lands of Nofia and Umu-Ukpu and on the east by lands of Amobia.

2. Injunction.

Transferred by Order of Resident Onitsha undated, but sent here on 22nd December 1941.

From Mbanese Native Court.

Onyeama (Rhodes with him) for Plaintiffs.

Egbuna for Defendants. 10

Onyeama says they have a plan.

Plan and Statement of Claim 30 days.

Statement of Defence 30 days. Plan to be available after filing, to the Defence.

(Sgd.) H. Waddington, A.J.
Awka - 18-3-42.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT AWKA
BEFORE HIS HONOUR SAMUEL SPEDDING JOHN, ASST. JUDGE 20

Chief Nnefe Nwude Representing Awka people

versus

Chief Ikanyowu, Representing Okpuno people

Mr. Mbenefo for Plaintiffs.

Mr. Egbuna for Defendants.

In accordance with Order XIV Rule 2, the Court of its own motion orders that the Statement of Claim be amended to describe the land in dispute so that it agrees with the plan filed. At the moment the original claim as per writ of summons dated 15/11/41 and issued from Mbanese Native Court are totally 30

different. These further particulars to be filed in Court within 14 days when action can be taken by Counsel for the Plaintiff if he so desire, in accordance with Order XIV Rule 4. P.C. Rules.

Given at Awka this 19/9/42.

(Sgd.) Samuel S. John
Asst. J.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT AWKA
BEFORE HIS HONOUR GRAHAM CALLOW, ASST. JUDGE
THE 2nd day of MARCH, 1943

Chief Nnefe Nwude, representing people of Awka.

versus

Chief Ikanyowu, representing people of Okpuno

Parties in person.

Adjourned by consent to 3.3.43.

(Sgd.) G. CALLOW.

20

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA-ENUGU DIVISION

Suit No. 0/13/1941

Chief Nnefe Nwude on behalf of himself and
the Chiefs & people of Awka .. Plaintiffs

versus

Chief Ikanyowu for himself and as repre-
senting the people of Okpuno .. Defendants

STATEMENT OF CLAIM

30

1. The Plaintiff is a Chief and an elder of Awka and sues on behalf of himself and the Chiefs and people of Awka.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

2. The Defendant is an elder of Okpuno in Awka District and is sued for himself and in his capacity as representing the people of Okpuno.

3. The Plaintiff and his people of Awka are the owners from time immemorial of the piece or parcel of land in dispute situate and forming part of Plaintiff's land known as Agu Norgwu and more particularly described, delineated and edged yellow on the plan filed herein by the Plaintiff. The said piece or parcel of land is usually known and referred to as Agu Aralla. 10

4. The said Agu Norgwu including Agu Aralla was originally the property of, and occupied by, the people of Norgwu. Many years ago before the advent of British Government Awka fought Norgwu drove them out of the said Agu Norgwu occupied it and acquired it in accordance with Native Law and Custom as war booty.

5. The land was used by the Plaintiff's people mainly for farming purposes.

6. About 25 years ago the Okpuno (Defendant's) people approached the Plaintiff's people through their head at the time and asked for permission to be allowed to farm on the said land Agu Aralla and to make farm settlement to watch the farms thereon. Permission was granted to them the only condition being that they paid a tribute of £1, one goat, and palm wine annually in recognition of the Plaintiff's ownership of the land. 20

7. In consequence of the said permission Okpuno people entered on the said land and built houses thereon paying the yearly tribute of £1, one goat, and palm wine as aforesaid. 30

8. After paying the said tribute for some years the Defendants stopped and started to claim the land as their own.

9. As owners aforesaid the Plaintiff and before him his predecessors-in-title have farmed and leased the land in dispute without let or hindrance from the Defendant and his people, and have instituted and defended actions in order to establish and to protect their title to the said land. 40

10. The Plaintiff claims as per the writ of summons.

Dated at Onitsha this 16th day of April, 1942.

Exhibits

(Sgd.) L.N. MBANEFO
Plaintiff's Solicitor.

"A"

Proceedings of
Court in Case
No. 0/13/41.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA-ENUGU DIVISION

25th January
1954 -
continued.

Suit No. 0/13/1941

Chief Nwefe Nwude on behalf of himself
and the Chiefs and people of Awka Plaintiffs

Versus

10 Chief Ikanyowu for himself and as repre-
sented the people of Okpuno Defendant

STATEMENT OF DEFENCE

1. The defendant admits paragraph 1 of the State-
ment of Claim.

20 2. Save as herein specifically admitted the def-
endant denies paragraphs 2, 3, 4, 5, 6, 7, 8, & 9
seriatim as if each and every paragraph has been
taken up separately and traversed. The defendant
will put the plaintiffs to the strictest proof of
each and every allegation of fact contained in the
said paragraphs 2 - 9 inclusive.

3. The defendant is an elder of UMUODU QUARTER of
Okpuno and represents the people of that Quarter of
Okpuno only. There are three other Quarters of
Okpuno, namely, OKACHI, NNODU & OKPU.

30 4. The land in dispute known to the plaintiffs as
Agu Aralla and to the defendants as Arira Aguejim
is that edged yellow on the plan filed by the plain-
tiffs and is roughly bounded by the OBIBIA RIVER in
the North, UVURU & ULOKO RIVERS in the South & East
and in the South-West by a line stretching from
UVURU river through the EBENEBE TREE to the Obibia
River in the North.

5. The land in dispute did not, at any time, form

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

part of Agu Norgu land, it was never occupied or owned by the Norgu people.

6. Even if the land in dispute did form part of Norgu land, nevertheless ever since the people of Norgu were compelled to evacuate long before the advent of the British Government, the defendant and his people have been in effective occupation exercising maximum acts of ownership without let or hindrance from the plaintiffs.

7. Agu Norgu is a large tract of land lying to the West and South-West of the land in dispute. Portions of the said Agu Norgu land are farmed not only by Awka people but also by the people of Amaobia, Norfia, Enugu-Agidi (Eso-Agidi in the plan). 10

8. The people of Amaobia, Norfia, Isu, Enugu-Agidi, Umuodu-Okpuno and Awka fought as allies against the people of Norgu and drove them away. Agu Norgu thereafter, became the joint property of the victorious allies.

9. The people of Umuodu-Okpuno have been owners in possession from time immemorial of the piece or parcel of land in dispute. 20

10. As owners in possession from time immemorial as aforesaid the people of Umuodu Quarter of Okpuno settled on and occupied the land in dispute. They cultivated and farmed portions thereof, cleared sites and founded the permanent settlement known as Umuodu Village, without let or hindrance from the plaintiffs and paid no rent or tribute whatsoever, for the use and occupation of the said land from time immemorial. 30

11. From time immemorial to the present day the people of Umuodu Okpuno have been in effective occupation and have been exercising acts of ownership over the land in dispute, letting out plots to strangers and neighbours for farming purposes, receiving tributes and profits therefrom and farming thereon themselves. They, the defendants have always brought and defended actions in order to protect their interests in the land in dispute. 40

12. In 1932 for the first time the plaintiffs took out an action, (Case No. 95/32) against the defendants in the Native Court of Awka claiming what

amounts to title to the land in dispute. Judgment was entered in favour of the plaintiffs for the land. The people of Umuodu-Okpuno thereon appealed. After going carefully and exhaustively into the whole matter and after visiting the land in dispute together with parties so as to ascertain the limits of the area claimed and after hearing the parties Mr. R.de.S. Stampledon, then Assistant District Officer delivered a lengthy and exhaustive judgment in which he found that the defendants had effectively "occupied the land and appear to have enjoyed undisturbed use of it until now", and therefore, entered judgment for the defendants (Umuodu-Okpuno). That judgment against which no appeal was lodged and which delivered on 8/12/32 will be founded upon.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10

20

13. After that judgment defendant continued to effectively occupy the land without let or hindrance from the plaintiffs. In 1940, however, certain people of Awka trespassed upon the land in dispute. Defendant's people brought an action in the Njikobu Court of Appeal and claimed £20 damages for trespass. The action now pending in the High Court is a direct consequence of the 1940 claim for trespass.

14. The defendant will plead Res Judicata, Ownership, Long Possession, Laches and Acquiescence.

Dated at Onitsha, this 20th day of June, 1942.

Nwanolue Egbuna

DEFENDANT S'SOLICITOR

30 Nwanolue Egbuna B.L.
P.O. Box 101
Onitsha.

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA-ENUGU DIVISION

Suit No. 0/13/1941

Between: Chief Nwefe Nwude on behalf of
himself and the Chiefs and
People of Awka ... Plaintiffs

versus

40

Chief Ikanyowu for himself and
as representing the people of
Okpuno ... Defendants

Exhibits

AMENDED CLAIM

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

TAKE NOTICE that in accordance with an order of Court made on the 19th September, 1942, the particulars of claim in the above-named case is hereby amended to read as follows:-

The Plaintiff seeks:-

(a) Declaration of title to all that piece or parcel of land known as Agwu Aralla forming part of the land known as Agwu Norgwu and more particularly described and delineated and edged yellow on a plan filed in court herein. 10

(b) An injunction to restrain the Defendants, their servants, and/or again from any further interference on this land.

Dated at Onitsha the 2nd day of October, 1942.

L.N. Mbanefo
Plaintiffs' Solicitor.

Chief Nnefe Nwude; Representing people of Awka
versus

Chief Ikanyowu; Representing people of Okpuno. 20

Rhodes, Oneyama and Mbanefo with him for
Plaintiffs.

Egbuna for Defendants.

Amended claim filed 2.10.42.

(a) Declaration of Title to all that piece or parcel of land known as Agwu Aralla forming part of the land known as Agwu Norgwu and particularly described and delineated and edged yellow on the plan filed in Court.

(b) An injunction to restrain the defendants, their servants, and/or agents from any further interference on this land. 30

Plan admitted by consent and marked A.
Counsel for plaintiffs applies to amend the names

of defendants to "Chief Ikanyowu for himself and as representing the people of Umuodu quarter of Okpuno."

Exhibits

"A"

No objection by Counsel for Defendants.

Application granted.

Proceedings of
Court in Case
No. 0/13/41.

Counsel for Defendant. Res judicata.
Founds argument on case No. 95/32 of 13.6.32.
Native Court Awka. Nwosu Adigwe on behalf of Awka
vs. Ile Nyenwa and Ifejimali on behalf of Umuodu-
Okpuno. Refers to para. 3 of Statement of claim,
also para 4 and 6: Defendant denies para 6.
Refers to para 5, 7, 10, 11 and 12 of Defence.

25th January
1954 -
continued.

10

In case 95/32 Plaintiffs claim is as follows:-

To appear before the Court and show cause
why you should not quit from our land Agwu
Norgu dispute arose 5 years ago.

In this case plaintiff's case was that they had
acquired this land from Norgu by force of conquest;
earlier, Norgu had acquired it by consent from
Aralla.

20

When plaintiffs drove the people of Norgu away
the defendant entered into possession. Plaintiff
desired defendant to quit but they refused. Refers
to evidence of 1st witness in case 95/32. It is
agreed that case 95/32 concerns the same parties
and embraces the same land. Point now is whether
the judgment in 95/32 precludes this action for
declaration of Title. Counsel for plaintiff inter-
poses: "We do not desire to disturb defendant's
possession: we only desire Title". District
Officer in review annulled judgment of Native Court.
Counsel for defendant argues District Officer sub-
stituted another judgment which was in favour of
defendant. Record of case 95/32 admitted by con-
sent and marked B. Mbanefo replies for plaintiffs.

30

Defendant not in occupation from time immem-
orial. Refers to summary of evidence in Ex.B at
page 21. Defendants only commenced occupation
about 30 years ago. Defendant paid tribute up to
1932, then there was a break but reconciliation
followed - continued until this case commenced 3
years ago. 2 W A C A 98 at 100.

40

Everest and Strods on Estoppel 3 Ed. page 19.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

95/32 is an action for ejectment; not Declaration of title. Refers to page 27 of Ex. B at 2. Review of Mbanasataw Native Court case No. 17 admitted by consent and marked C.

Counsel for defendant in reply.

Adjourned to 4.3.42.

(Sgd.) G. Callow.

Chief Nnefe Nwude for Awka

versus

Chief Ikanyowu for the Umuodu quarter of Okpuno. 10

The plea of res judicata has been raised. Counsel for Defendant argues that case 95/32 dated 13.6.32 in the Awka Native Court operates as an estoppel by record. These proceedings were admitted by consent and marked B. The claim in the Awka Native Court was "To appear before the Court to show cause why you should not quit from our land Agu Norgu, dispute arose since 5 years ago".

On this the Native Court judgment was "For plaintiff on behalf of Awka for the land Agu Norgu in dispute and cost as bounded along Uloko River. Defendants to refund £2 viewing land fees paid by Awka people to them (Awka) costs to be paid at once. The boundary between the parties is along Uloko River." 20

The proceedings were reviewed by Mr. R.de.S. Stapledon in the following terms:-

"Summing up. The Court apparently accepted the Testimony of Norgu (?Norgu). I am doubtful on their point. Moreover it appears to me that the Court have not given due consideration to another and more important aspect of the case - namely that Awka base their claim upon right of conquest, but a conquest which took place many years ago and which until now they have not attempted to follow up by occupation. Whether or not Okpuno should in the original conquest they have effectively occupied the land and appear to have enjoyed un- 30

"disturbed use of it until now. In my judgment this establishes for Okpuno a prior right of ownership. I have stated the case as above to the Court, but they are unable to agree with me therefore annul, the Court's judgment"

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

This is taken direct from Ex. B and there seem to be mistakes, perhaps in copying, particularly at lines X and Y above.

10 I have therefore to decide whether Ex. B. can sustain a plea of res judicata.

It is agreed that the parties in case 95/32 Ex.B are the parties in this case, and that the land in that case (Ex.B) embraces the land in this.

20 It is clear from Ex.B that the judgment of the Awka Native Court was annulled, but Counsel for defendants argues that the Reviewing Officer in saying "In my judgment this establishes for Okpuno a prior right of ownership" created another judgment superseding that of the Awka Native Court and in favour of the Defendants. Or in other words that the judgment of the Awka Native Court was reversed.

30 It seems obvious that Mr. Stapledon's sympathy was with the defendants, but does his summing up amount to a final judgment, upon which res judicata may be founded? Ex.C, admitted by consent, contains the Resident's view, but I have directed myself that I should not be influenced thereby. Neither Counsel for plaintiff nor Counsel for defendant gave me the authority whereby the power of review was exercised in 1932, nor have I with me the appropriate Ordinance to which I might refer. I therefore conclude that Mr. Stapledon acted *intra vires* when he annulled the Native Court judgment.

The immediate result on annulment was that the parties were in the same position as if case 95/32 had never been heard or determined at all.

The remaining question is, in consequence whether Mr. Stapledon, having annulled the Native Court judgment delivered any judgment in its stead.

40 I do not think he did. He expressed an opinion and he endeavoured without success to convert the Native Court to that opinion.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

But apart from this question is the point as to whether the claim in case No. 95/32 (Ex.B) could ever operate as a bar to subsequent proceedings for a declaration of Title.

Counsel for plaintiff cited Okwosa Odua and others v. Nwanze and others (2 WACA at page 100). He argued that the claim in Ex.B was tantamount to an action for ejection, that as such it dealt only with possession, and could in no way determine title; in support of this he referred to Everest and Strodes' Law of Estoppel, 3rd Edition, page 19.

10

I think he is right. An action to establish title is essentially different from a claim "to show cause why you should not quit from our land" as set out in the claim to Case 95/32 (Ex.B).

The plea of res judicata fails.

(Sgd.) G. Callow.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT AWKA
BEFORE HIS HONOUR GRAHAM CALLOW ASST. JUDGE
THE 4th DAY OF MARCH 1943

20

Chief Nnefe Nwude for Awka

v.

Chief Ikanyowu for Umuodu Quarter of Okpuno.

Rhodes opens.

In view of the statement in open Court (at X on page 196) paragraph (b) of claim is not proceeded with. Issue on paragraph (a) only. Paragraph (b) struck out.

30

1. Plaintiff's Witness NNEFE NWUDE M.Ibo S/S in IBO.

I am a well known man in Awka. I am not exactly a Chief. I am an elder deputed to bring this action. I know the land in dispute. Oloko River was the boundary between the Norgu and Okpuno people

(defendants). We the Awka people, now own the land formerly owned by Norgu. I went round the land in dispute with the Surveyor. There was once a fight between us and Norgu and they killed one of our people. They killed an Awka man and as a result we drove them out. It was before I was born. It is tradition. When the Norgu people were driven out they went to Ukwulu, and they were asked to pay compensation; they refused; they said we could take the land. The matter ended. Norgu people showed the boundary. If there was any boundary dispute we called the Norgu people, who were the original owners, to define the boundary. The area in dispute is a portion conquered by Awka from Norgu. I cannot say when the war was between Awka and Norgu; it is a long time ago. It is history. We had no trouble with this land before the Government came, that is, the defendants did not trouble us. The Awka Chief in the Norgu war was Umano, he was the head Chief. After Umano came Anyano. After Anyano came Oti. I know Oti when I was a boy. Ekwonu succeeded Oti. During Oti's time the Okpuno people brought palm wine, yams and cowries to the value of £1. All this was tribute. The Okpuno people used to come and farm on this land the Norgu people were driven from. For this they paid tribute. They built no houses, only farming was done. Tribute was paid about this time of the year, just before the farming season started. It was done annually. I have many times seen this tribute brought. About 20 years ago the defendant brought palm wine. The Defendant Ikanyowu was among them, they asked permission to build houses on the ex-Norgu land, we agreed, so long as they continued to pay tribute. The tribute was raised £1 in consequence, also a goat. The trouble arose because defendants claim the land. We are satisfied if defendant recognise us as the owners, we do not want to eject them. I remember the 1932 case, Nwosu Adigwe v. Ilenyenwa & others (Ex.B). It concerned this land. After this case defendant begged us and said they could continue to pay for the land as usual. We agreed. Defendants resumed payments of tribute. I witnessed these payments. I am one of those who used to collect the payments and hand it over to the elders. 3 years ago defendants stopped paying and this case resulted. Defendants want the land. We asked for the continuance of the tribute. Defendants refused to pay; they said the land was their own. Our

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boundary with Isu is the Ajirija River. It flows into the Obibia River. We have no dispute with the Isu people. I have never heard that an Amaobia man named Okanwadudo met his death at the hands of the Norgu people, and that the Amaobia people were joined by Awka people against the Norgu people. I have never heard that Awka joined Amaobia against Norgu. Amaobia is too little to fight Norgu. I have never heard that Amaobia, Norfia, Isu Enugu Agidi, the defendants and the plaintiffs (Awka) fought as allies against Norgu. Enugu-Agidi pay yearly tribute for farmland. Isu used to pay tribute. Norfia pay Awka tribute. Amaobia have no land, they ask us individually for farm land, they do not come collectively as a town. Amaobia, Norfia, Isu and Enugu-Agidi know our land; they did not partake in the Norgu war, they were not concerned. Umano was the Chief at the time of the Norgu War. I do not know how many years elapsed between the reigns of Umano and Anyano. I was not born. After Anyano came Oti. I did not know Anyano. Oti had been reigning a long time when I first knew him. Anyano followed Umano (c.f.2 above). There were no Chiefs in between. After 1932 Defendant renewed tribute. They paid a goat, 100 yams and £1. That was to stop the case and to continue as they were doing before. The District Officer asked us to drop the matter, we wanted to appeal. When defendants were only farming the land the tribute was £1, a goat and yams. When they asked to live on the land they paid another £1 and another goat. I say that upon the 1932 settlement defendants paid 2 goats and £2. I say that the tribute was once £1, one goat and 100 yams. To dwell on the land £1 was added, not an extra goat. After the 1932 Settlement defendants paid £2, 1 goat, yams and palm wine until 3 years ago. The year after the case Exhibit B defendants paid tribute. I was present. It was brought to Ifema's house. Ifema accepted the £2; defendant was present and Maduka. Defendants brought the tribute to the house of Obuokezie and there our company collect and take it to Ifema's house. By Company I mean my age group. We call ourselves Umuotu. The towns people have elected us to receive the tribute; Ifema himself accepts the tribute. To-day Akwuba receives the tribute. When the tribute is brought to Obuokezie's house a bell is rung and we (my age group) assemble. I don't see the tribute actually arrive. The Awka people did not tell the District

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Officer they were not appealing because they thought their land had been given to Okpuno (defendants). I don't know if Awka people told the District Officer they didn't know procedure. I travel, I go abroad, I am not always at home. I know the interview with the Resident 2 years ago. I am head of my age group, and a man of repute in the town. I am not a Chief. I am not a Council member. I am one of those who lead among the towns people, although I have no recognised position. The Court members have authorised me to represent them. Defendants started to live on the land 20 years ago, or less than that. Plaintiffs never lived on the land, except for one man named Nwafude, who lived and farmed there. We used to farm on the land as well as the defendants. When I was a small boy I knew Nwafude was living there. Defendants have a settlement east of the Uloko river, none on the West; to the West is the land in dispute. When I said defendant had no settlement West of the Uloko river I meant before they obtained permission to so settle; they have now. We farmed before 1932 on the land in dispute without disturbance. We farmed there together. That is why they paid us tribute. (Defendants). Since this dispute we have been disturbed. Before 1932 we shared the land in dispute with defendants. Every year the defendant farmed a portion and we farmed a portion; no one said who was to farm which portion. We Awka people are not very interested in farming, but my family has farmed on the area in dispute. There was no boundary in the disputed land between us and the defendants, it was farmed in common. Between the Ebenebe tree (see Ex.A) and the Uloko river is where we used to farm in common. In 1932 Defendants pulled out our planted yams. Then we took action. Defendants farmed the land and paid no tribute. After the case (EX.B) defendants came and begged us to settle. I was present. It was at the house of Nwonyeluke. We didn't want the tribute arrears, we were anxious to settle the matter. At that time we elected defendant to be responsible for Okpuno and to bring the tribute. The Amaobia people do not farm the land in dispute; if they have done it is since the beginning of this case. The Amaobia people will fear to farm on the land in dispute. I don't know Ndufuechi. I do not know he bought a strip of the land in dispute 40 years ago. No land was sold to Ndufuechi. I don't know if defendants sold any of the land to

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Ndufuechi. I was present when case 95/32 (Ex.B) was heard; also when the Assistant District Officer reviewed the case. I was not present when Ndufuechi gave evidence if he did, in case 95/32 (Ex.B). The Enugu-Agidi do not farm on the land in dispute. We give them land to farm, but not that in dispute. This action is not an oppressive one by strong people against weak.

XX. Enugu-Agidi is the same as Osuna-Agidi. I remember the case Nwosu of Awka v. Nwokeke Okam. The Enugu-Agidi people have never farmed on the land in dispute. Awka people have had a land dispute with Osuna-Agidi, but it referred to neighbouring land i.e. land near that in dispute. From the 1932 settlement to 3 years ago plaintiffs and defendants farmed the land in dispute. 2 years ago defendants disturbed our crops on the land in dispute; this case had started. The tribute is paid to enable defendants to farm generally on the land in dispute - no particular part. Tribute is annual and only confers farming rights for that period. When tribute is brought to the house of Obuekezie our age group assembles, no one else. We meet there those who bring the tribute, the people of Okpuno (defendants). 10 20

BY COURT: Nawfue died years ago. I knew him. His grand children are alive. When the Norgu people were driven out they were given land by Ukwulu. They are there now.

2 P.W. NNAEMEGWO OKOYE: M. Ibo S/S in Ibo:- I am a farmer and an ex-Council Member. I know the land in dispute; it is called Agu-Aralla because "Aralla" is part of Olo and Olo is part of Norgu. "Olo" and "Agu" are the same. Aralla is part of Norgu. The land in dispute was once occupied by Aralla and Olo. Both Aralla and Olo are of the Norgu people. "Agu" means land where yams are farmed, then "Agu-Aralla" means the yam farming of the Aralla people. The Awka people drove us from the land. It is long ago before living memory, it is our history. Our fathers, hand it down. When the Awka people drove us out we went to Ukwulu, where we are now. The boundary between us and the Okpuno people used to be the Uloko river, so our history says. The land in dispute lies to the West of Uloko River. About 16 years ago we attempted to return to Agu Obibia, it is not part. 30 40

of the land in dispute, it is near the main road leading to Osuna Agidi from Awka. Agu-Aralla is part of Agu Norgu. We started to build, but the Awka people (Plaintiffs) took action against us, they succeeded; we left the land. At this stage Counsel for Plaintiffs tenders record of Native Court case 53/30 Udekwe of Awka on behalf of Awka Town v. Onwuduya and 9 others on behalf of Norgu Town. He asked that witness should produce this Court record. Counsel for Defendants objects on grounds defendants not parties to this action. Res inter alias acta. It is a different piece of land.

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Counsel for plaintiffs replies.

Objection upheld. Adjourned to 5.3.43.

(Sgd.) G. Callow.

At Awka the 5th day of March, 1943

Chief Nnefe for Awka

v.

20 Chief Ikanyowu for Umuodu Okpuno.

Onyeama for Plaintiffs.

Egbuna for Defendants.

2 Wit. NNAEMEGWO OKOYE warned still on oath :-

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X It is traditional history that the Uloko River was the boundary between Norgu and Okpuno. In those days our neighbours were Okpuno, Isu, Osuna-Agidi, Norfia and Awka. I don't know about Amaobia. The only boundary my father showed me was the boundary between Norgu and Okpuno that existed when we were in that area, it is the Uloko River. It was 18 years ago when my father told me this; we used to go to that area to cut long grass, the Awka people came and took the long grass from us because they said the land was their's. I don't know the boundaries that used to exist with Osuna-Agidi and Norfia; I only know that tradition says they were neighbours. I know the boundary we

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(Norgu) had with Awka, it was the Uvunu River. Tradition says the boundary that was between Norgu and Isu is the Ajirija stream. I last visited the area in dispute when the land was viewed by the Court in September 1942. I went with the Awka people. No living Norgu man was born on the land in dispute. I was born at Olo-Aralla, it is different from Ukwulu, less than a mile distant. It will be about 4 miles from where the Okpuno village is situated by the Uloko River. I have never heard of Ukanwadudo. History says the Norgu people have always been on good terms with the people of Amaobia. It cannot be true that an Amaobia person was killed by the Norgu people. Norgu was driven from Agu-Aralla by Awka. Awka was too powerful and Norgu was beaten and dispersed. My father did not tell me that Isu, Osuna-Agidi, Norfia, Amaobia and defendants all combined with Awka to drive us away because we were bad neighbours. My evidence is what my father told me; it is not lies. I was once a Court member. I was removed from Office. It was last year. I do not wish to explain why I was removed from office. I was prosecuted for something and sentenced, my removal followed. 10

Q. Were you not prosecuted and convicted for corruption in connection with the Native Court? 20

A. It was an "arrangement". When I was arrested there was no case against me. I never admitted taking the money. I was charged with corruption. The Awka people have invited (Kpo) - Counsel for plaintiffs interposes and says the true Ibo interpretation of "Kpo" is "called upon"; Court interpreter agrees.) The Awka people have called upon us to say how the land came into their possession. No person of my father's age is now alive; he is dead. (Witness's age is estimated by the Registrar as 42). Others will come and give evidence, but no one can say they saw the Awka people drive out the Norgu people, it is history. The cause of the Awka war, according to what my father told me, that an Awka man came to our Town Olo-Aralla, Norgu, and our people killed him. The war lasted about 2 months, so my father told me; Norgu was in the wrong, and it was just that Awka conquered us. Awka first asked for compensation, but Norgu refused. At that time Norgu was strong and the devil tempted them. We were defeated and driven out. The Awka 30 40

people told us 18 years ago when my father, myself and many others went to cut grass that if we paid compensation we could return to the land. No price was stated, but we were told to go back to our village and consider an offer of compensation. We have not yet done so. Two years later we got involved in a land case, that is why we have not considered an offer of compensation to Awka. If we could come to a decision and an agreement as to compensation we still hope to recover our land at Agu-Aralla i.e. this land in dispute.

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10 XX: We once lived in Aralla. Our immediate neighbours, according to history were Awka, Defendants, Isu, Eso-Agidi (=Osuna-Agidi), Norfia and Umu-Ukpu Awka. The immediate neighbours of our particular quarter of Norgu, the Olo-Aralla were according to history the defendants and Awka. I am not here for corrupt reasons, I am telling the truth, but if plaintiffs succeed we of Norgu will have hopes of recovering our land. Even Awka people know the land is called Agu-Norgu. The defendants will deny this. When we settled at Ukwulu we retained our name of Norgu. At the time land was plentiful and people did not fight for land. At Ukwulu we retained the names of our quarters. I was born in the new Olo-Aralla in Ukwulu.

20 BY COURT: We went to the land in dispute when it was viewed last September (1942). The Awka people told us the Judges were going to inspect our land and we should be prepared to say what we knew.

30 3 P.W. OKOYE IFEKANDU: M. 60 Ibo S/S in Ibo:- I am a juju priest. I sacrifice for the Akweso quarter of Norgu. I know Agu-Norgu; also Agu-Aralla. Both were once Norgu land. There was once a war between Awka and Norgu. Only Awka fought Norgu, no other tribe joined Awka or Norgu; only these two participated, Awka were stronger than us (Norgu); we were driven out. All this is history. About 20 or 30 years ago Awka asked Norgu to point out the boundaries of our former land. I was among those who went. There was some dispute between the Awka people and the villagers who were then farming our former land. The villagers were the defendants. We went to the Uloko to the Uloko river, and pointed it out as the boundary between us (Norgu) as defendants. All the people who used to border on our land were there,

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too. We used to be one side of the Uloko River and the defendants the other, so history tells us. We then got to the Obibia River, that was inside our land. We then got to the Ajirija River which was once our boundary with Isu. Then we pointed out the boundary we once had with Eso-Agidi. Defendants did not dispute these boundaries, not even when we pointed out the Uloko River, at least not to our hearing. Other villagers came as we pointed out the boundaries, but no dispute arose. I live at Ukwulu. Neither I nor my people have any disagreement with defendants. There is an Ebenebe tree which was well inside our former land. It is quite true that I pointed out, with others, the boundaries I have described.

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(Witness is emphatic).

The Awka people sent for us to come and show them our former boundaries. The other villagers came for no reason I know of. When we pointed out the Uloko River as our former boundary between us and defendants (the Okpuno people) nothing was said by the defendants. They agreed it was the boundary. I will swear on juju that the Uloko River was the boundary between us and the defendants. I know that the Plaintiffs (Awka) are prepared to restore to us our land if we will pay compensation for a man who was killed and whose death resulted in the Awka-Norgu war. It was on account of the assurance we had from the Awka people that we might get back our land on payment of compensation that we went to point out the boundaries. The Uloko River was the boundary with Okpuno (defendants). The talk of compensation came to nothing. When I went there over this boundary palaver plaintiffs were farming the land.

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XX: Awka wanted us to point out the boundaries because they did not know them all. They were not living there.

BY COURT: This assurance I have spoken of about the possible return of our land was given before we went to point out the boundaries. This did not cause us to exaggerate our former boundaries; we showed them just our old land. When we driven out many villages farmed our former land. Isu and others, the plaintiffs would know better than I do. We Norgu people went far away.

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4 P.W. NWONYE KWELU: M. 50 Ibo S/S in Ibo:- I am
of Awka. I am a blacksmith. I know the land in
dispute. It is Agu-Norgu. The defendants call
it Agu-Aralla. Norgu originally owned the land.
We Awka people now own it. I know the boundaries
shown us by the Norgu people. The land is bounded
by the Uloko River between us and defendants. After
the Uloko River the Obibia River is the boundary.
We acquired the land following a dispute with the
10 Norgu. We were born when this happened, but we
were all young children. There was a war between
Awka (plaintiffs) and Norgu. At the time of this
war the chief of Awka was Anyano. His son succeeded
him. All this happened long years ago. I was
very small when the fight occurred. The Norgu
people were driven away to Ukwulu. Awka took
possession of their land Agu-Norgu. All that is
in dispute is our boundary with defendants. The
Uloko River is the boundary. (Witness emphatic).
20 Tabansi took an action against me about land. It
was land in Argu Norgu. It was about 3 years ago.
I do not know what the land was called.

(Case tendered admitted and marked Ex.D).

Following this case there was an appeal. The
appeal was in my favour. I won the case and the
appeal upheld me. The case concerned a piece of
land inside that now in dispute. The first action
was by Tabansi against me (Ex.D). Later I took
action against Tabansi for trespass. I obtained
30 a copy of the case. Tendered. Counsel for
defendants objects.

This is a case between two individuals, not a
claim in a representative capacity. It must be
established that the land is part of the land in
dispute.

Counsel for the Plaintiffs.

Judgment is against an individual but if the
individuals are from families who are parties to
this suit, then admissible. It refers to the land
40 subject of case 95/32.

Counsel for defendants replies.

Land not established as identical.

These proceedings clearly follow Ex.D which
was admitted. They are admitted de bene esse.

Exhibits

(Proceedings admitted and marked Ex.E).

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Defendants in Ex.E brought £1 to beg. The judgment is not yet satisfied. The whole of the land in dispute was farmed by us and the defendants, but the land is ours. Defendants used to pay for farming our land. They used to bring £1, a goat, 100 yams and palm wine. This was brought yearly after the yams have been planted. The tribute was brought at the end of the farming season and before another farming season is commenced. Defendants live on this land in dispute. They have dwelled there for the past 11 years. They told us when they went to live there. I was present. I was then a young man. Our people said defendants should pay another £1 if they wished to live there, making an annual payment of £2, the tribute of yams, a goat and palm wine continued.

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X Annually defendants brought 100 yams and a goat. I am not now a blacksmith. I don't work now, I am retired. Tabansi and I in our case had no plan; it was not my individual property. I brought the action about Agu Norgu land. Tabansi first took the action. It was not part of the case that Tabansi had farmed beyond the Ebenebe tree. All Umuodo (defendants) agreed Tabansi had crossed into our land. I don't know the Ebenebe tree.

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(Witness prevaricating).

Defendants pay us £1 and a goat etc. as tribute to enable them to farm. No definite area is apportioned to defendants. We "mix" with them. They pay it for and on behalf of the Okpuno people (defendants). They bring the tribute to the house of Obuokezie. We are then summoned. We all then take it (the tribute) to the house of Ifeme. Defendants follow us. Since defendants lived on the land they pay £2.

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I have seen the defendants bring this tribute. I last saw them bring it 4 years ago. When the Court case in 1932 occurred I used to travel. I was at home. For the past 7 years I have stayed at home. I was not present when the Nwosu case (Ex. -) was heard. When Awka (plaintiffs) fought the defendants they (plaintiffs) had no allies. Whenever there is a dispute over boundary of the ex-Norgu land, we send for the Norgu people to point out these boundaries.

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Q. If the Norgu people came and say the Obibia is the boundary would you agree?

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10 A. No I won't agree, we are not goats ... (Witness will not answer without much irrelevant speech. To every question he returns a question instead of an answer). We asked an extra £1 from defendants when they asked to dwell on the land. It was payable as tribute, every year. I have said all I know (this is answer to a question as to whether defendants would be required to quit on non-payment of the tribute). The Eso Agidi people farm on the land in dispute. They pay tribute, but not to defendants.

Q. Do you know if the Amaobia people farm on the land in dispute?

A. No (answer after much cross-questioning).

I do not know if Amaobia people pay any tribute to defendants. I do not know Ndufuechi.

20 Q. Is it not a fact that the only part Awka took in the war against Norgu was to supply gunpowder? (Question written at request of Counsel for Plaintiffs).

A. I won't answer.

As far as I am concerned the whole land named Agu Norgu belongs to the plaintiffs. The Norgu people say this. The land in dispute is Agu-Norgu.

30 XX: I know the actual portion of land which this case is about. I went with the Surveyor and I was one of those who pointed out the boundaries. I remember the Ebenebe tree was mentioned in the cases against Tabansi (Exs. D & E). If I stood at the foot of the Ebenebe tree Iso land would be half left to my rear, Okpuno village would be half left to my front and the land I had the dispute with Tabansi would be in front of the Ebenebe tree. I know the Uloko River. If I stood by the Ebenebe tree and you (Counsel for plaintiffs) were in the Uloko River the land about which I had the case with Tabansi would be in front of me. The Uloko River flows in an arc (pointing from the front to the left). Tribute was paid by Osuna-Agidi for the part near their town, not for the part in

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dispute in this case.

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Adjourned to 6/3/43.

(Sgd.) G. Callow.

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At Awka the 6th day of March, 1943

NWONYE KWELU, warned still on oath:-

BY COURT: All our age grade go to Obuokezie's house when the tribute arrives. Obuokezie is dead. Nwamuo would now call us should tribute arrive. Osuna-Agidi people also bring tribute. Obuako lead the Okpuno people (defendants) 4 years ago when tribute was last brought. Obuokezie received it on the authority of the elders. Then we all took it to Ifeme, our leader, and handed it to him. He is dead. Akwuba is his successor. He is the oldest man in Awka. 10

4 years ago when the tribute was taken to Ifema, he summoned the elders of the town and the tribute was divided among them - They drank the palm wine, check the tribute and then the Okpuno people go away. The elders take the money, the goat and the yams. Nothing is given as receipt. 20

Counsel for plaintiff through Court.

Akwuba is aware of this action. We keep him informed of the proceedings. Counsel for defendants has no questions to put through Court.

5 P.W. MUONWUBA ANISI M. 40 Ibo S/S in Ibo:- I am a native of Awka and a blacksmith. I know the land in dispute. I have been on it. It is called Agu-Norgu. The portion in dispute is Agu-Aralla; the defendants call it Agu-Aralla ejim. It was Norgu land. Now plaintiffs own it (Awka). Norgu people killed an Awka person and a fight followed. The result of the fight was that Norgu left the land and Awka took it. Our custom is that if a person from one town kills a person of another, the latter will ask for compensation. If the compensation is not paid a war may follow and the victorious party takes the loser's land. Those who took part in this war are dead. Awka farmed on the land won. History says no one assisted Awka in the fight. My grand- 30 40

father, Amunwa, fought in the war, so my father told me. Defendants came, after the war, so history relates, and asked permission to farm the Norgu land. They were allowed. I have seen defendants come and pay tribute on account of this permission to farm Norgu land. I have seen them many times come with tribute. Defendants' tribute consisting of a goat, 100 yams, cowries to the value of £1, palm wine. Defendants left their former town and moved on to this land about 30 years ago, I saw this myself. Uloko River was the boundary between defendants and Agu-Aralla, i.e. the Norgu people. Defendants 30 years ago came to the house Umano; everyone gathered, I was then a young man, fairly grown up, I was married. Umano was not then alive. At the time of this meeting Ifema was the head person, he was oldest man, Akwuba is now the oldest man of Awka. The elders of the town attended this meeting. Defendants asked our permission to build on the land now in dispute. We told them (defendants) to add £1 to the amount they paid. They now pay £2, 100 yams, a goat and palm wine.

When the tribute is brought to the house of Obuokezie, there the age group assembles, it is my age group. Our age group are selected to look after the town, when we get old others are selected. We are not the elders, we are sort of messengers for the elders. The elders of the town assemble and share the money. Defendants continued to pay tribute till 11 years ago when there was a dispute. There was a Court case. (Ex.B.). After this case plaintiffs (Awka) wished to appeal. We did not appeal because defendants came and begged us not to appeal. They came to Ifema's house, the elders assembled. I was then of the age group which I have described as being "sort of messenger". I was present. The elders agreed to settle the matter. Defendants said they would resume tribute payments. They did so. They stopped 3 or 4 years ago and started trouble again. I have farmed in Agu-Aralla. I did so last year. I now describe the Agu-Aralla land. The Ebenebe tree faces the Uloko river, if I stand at the foot of the tree looking towards the river. Then on the right would be the Uvunu River; a path to the Ebenebe tree leads from the Uvunu River. To the left would be the Obibia River. To the west of the land in dispute is land called Aneteka.

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X. Yesterday I was not inside the Court. I sat under the mango tree about 20 yards away. Our people were there. 11 years ago defendants came and begged. They brought palm wine, yams and a goat, it was to beg. We agreed. Defendants also brought £1. When I said "we agreed" I meant the elders. My age group received a goat from the defendants in order to take them before the elders. Defendants went back to their town and returned again, when our age group took them to the elders, bringing £1, 100 yams, palm wine and another goat. There are as many as a 100 in our age group. We all went to the elders with the defendants. Defendants came to OBUOKEZIE's house; he was then head of our age group. Defendants were anxious to go on farming on the land that is why they came to beg. The elders had decided the Agu Aralla land (i.e. that in dispute) belonged to Awka. The Assistant District Officer decided for defendants, he said whoever lives near the land should get the fruits of the land. I was present. The Assistant District Officer did not say the land belonged to the Defendants. We wanted to appeal to cause defendants to quit the land. If the Assistant District Officer had said defendants should quit the land we should have been satisfied; he did not say so therefore we wanted to appeal; it was because we wanted to appeal defendants came to beg. It would be for the elders to decide whether an appeal should be lodged. Defendant's elders begged the Awka (Plaintiff's) elders not to appeal. The Awka elders agreed. Seven years later in 1940 I was one of those who went to see the District Officer concerning the case of IKANYONWU (defendants in this case) for Umuodu versus Ezidunma and 6 others of Awka. The District Officer was not told Awka had not appeal from the case 7 years earlier (Ex.B) because they thought they had won. If it has been said that it was only 11 years ago when defendants went to dwell on the land in dispute it is a mistake. We don't keep records. It is no mistake that defendants used to bring tribute. No land is apportioned to defendants to farm; they farm where they like, so do we. I was not present, when the case (Ex.B) was tried. I was told what happened. Everyone cannot always attend Court. I don't know NDUFUECHI. I know the Eso-Agidi and Amaobia people do not farm on the land in dispute. They have their own land. Defendants do not give Eso-Agidi and Amaobia people permission to farm on the land in

dispute. If Defendants had, to our knowledge, sold any of the land in dispute to NDUFUECHI we should have taken an action against the seller (defendants). I don't know if NDUFUECHI gave evidence in the 1932 case (Ex.B); I didn't see him; I don't know him. Awka does not farm on Agu Aralla only with permission of defendants. (Witness emphatic). Norgu were told that if they paid compensation for the man history tells us they killed they could return to their former land. It would be for the elders of the Town to decide the compensation payable. It was after the Norgu people were told by the elders that they could return to their land on paying compensation that they showed us the old boundaries with Norgu and defendants. Every time we had a dispute over former Norgu land we called the Norgu people to point out the boundaries. The Uloko River is our boundary. I know Nwosu Adigwe, he represented Awka in the 1932 case (Ex.B).

Q. Do you know that when Nwosu Adigwe gave evidence for Awka in the 1932 case (Ex.B) he said that the Awka people had sent a message to the defendants at the first time not to live in the land that the defendants said that the land was AGUEJIM, their own land? (Q. Taken down in Counsel-for-defendants' exact words).

A. We told them no, it was Agu Aralla Norgu. This is history. Ever since I was small defendants farmed Agu Aralla; they have done this ever since the Norgu people were driven out, but they (defendants) paid tribute. All this my father told me. Defendants never, up to 30 years ago, lived West of the Uloko River. Defendants moved over the Uloko River and dwelled on the land in dispute after first "begging" Awka. Defendants have paid Awka tribute from "days gone by". Defendants people do not number more than 80 adults. Plaintiffs (Awka) are many times larger. We don't want defendants to be driven away; we want them to continue as their fore fathers did. When they saw Norgu had left Agu-Aralla, they entered. We agreed provided they paid and they assented. We are not taking this action because we are stronger than they are. Others who had boundaries with Norgu are Isu, Eso-Agidi, Norfia and Umu-Ukpo. (Witness describes correctly with plan the former Isu-Norgu boundary). Norgu people describe the boundaries. They have

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it from their fathers. They have showed us these boundaries.

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6 P.W. MADUKA M. 70 Ibo S/S in Ibo:- I come from Umuodu Okpuno. I am the oldest man there. I know the land in dispute. I live there. It was Norgu land. I have a house there. I have dwelled there for 30 years. When I went there our people (defendants) were living there (meaning when witness went to live in land in dispute defendants were already there). I moved there from Okpuno, my home town. Norgu owned the land in dispute. Awka fought Norgu and drove them out. This is history, before my father's day. When Norgu were driven out, history tells us we (Umuodu (defendants)) went in; we told Awka. We told Awka before we moved. We pay tribute to Awka for this very land in dispute. My father used to pay. He used to go Oti's house to pay. When I grew up, after my father's death, I became the oldest man in Umuodu Okpuno (defendants village). I continued from the times of my father to pay tribute for this very land in dispute. We used to go to Awka; we take £1, a goat 100 yams and palm wine. I have been one of those who used to take it. It was taken to the house of Obuokezie in Awka. When we decided to move our dwellings into the farmland, that is the land in dispute, we went to see the Awka people about it. We were asked to pay an additional £1. We did so, making a total of £2. We paid yearly before we go to farm. When we have paid this tribute, they farm on the land and we farm on the land. They would not ask us to leave the land. From my home town to where we settled on this land now in dispute one crosses the Uloko River. I know the defendant. We both come from Umuodu Okpuno. I am giving evidence because my fore fathers used to pay tribute to Awka, and when my time came we continued. I used to call them every year to tell the people that our fathers paid tribute to Awka. After some time defendant said we should not pay this tribute because "our eyes are open", and tribute ceased about 3 years ago. A subscription was started I thought it was for paying the customary yearly tribute. The defendant suggested engaging a lawyer; I said I will not agree; I will do what my forefathers did and continue to farm. This was about 3 years ago. Then defendant stopped other villagers visiting me,

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because I wanted to continue as my fathers did and pay this tribute. Norgu owned the land. Now we go to Awka (plaintiffs) if we want to farm the land.

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X. I know ILEYEN. He is not older than I am. I can't remember any case of Nwosu v. Ileyen in the Awka Court. (Ex.B) about 1932. When Obuaku died 5 years ago I became the oldest man in Umuodu (defendants village). When Obuaku was alive I was next to him. We live in our quarters and do not know if occupants of another quarter has a dispute, but this is a case with Awka. It affects all. It is far from my house to that of Ilenyen, but it is the same town. Every time there is a dispute over this land it is settled that Awka should farm and that we should farm. There was a palaver some time ago and it was settled that Awka (plaintiffs) and Umuodu (defendants) should farm on the land in dispute, but some Umuodu people destroyed Awka props. It was our own village people who started to "do bad" and trouble arose again. Myself and the people were subscribing to go and beg the Awka people to settle this matter, but after a while defendant (Ikanyowu) said he would pay no more, "his eyes were open". I have paid 10/-. We pay Awka £2 as tribute. People are not encouraged to visit me, I am said to be with the Awka people. 4 years ago the villagers oppressed me and made me pay £3 and a goat to Awka to farm this land in dispute. I paid the money to the age group at Obuokezie's; I asked them to intervene in this matter. It is an old custom of our forefathers to pay tribute to Awka; Ikanyowu want to stop it; he had money. What I have said is true. I am doing what my fathers would wish. Some of the villagers took an action against me, by MOFUNANYA OKEKE, last year, in the Mbanese Native Court, for not joining with the others in subscribing for a lawyer to represent the village in this case; I replied that they should gather together, our fathers used to pay tribute to Awka, there had never been a disturbance or dispute about it. I won the case. After the case I said "All right, let him (Ikanyowu) go and engage a lawyer." We farm together with Awka. We used to work together in such a spirit that if anyone left their hoes on their farm they would find it the next day, but now that does not exist, wickedness is rife. IKANYOWU (defendant) and his people are against me; he is the leader in

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the village; they have destroyed my yams. My fathers used to go to Awka to beg for land. We always assembled together before going. Anyone who wanted to plant goes to Awka to beg and there they get permission and plant. I did this, and Ikanyowu (defendant) and his followers uprooted my yams. I know NDUFUECHI. A man from our town married his daughter, NWAMGBAFO. She is alive. I have never heard, that Ndufuechi bought a piece of land from Umuodu. I have never seen Amaobia people farming on the land in dispute; nor have I seen Eso-Agidi people so farming. The boundaries of the land in dispute, is going from our village, I mean our home town, across the Uloko River. Over the river is Norgu land. The Obibia River is a boundary up to the bridge. The Ebenebe tree is in the middle of the Norgu land; that is not ours. This land in dispute is called Agu-Aralla. No part of this land in dispute belongs to Umuodu (defendants) as against Awka (plaintiffs). I don't remember a case brought by defendant Ikanyowu against Ezidunma and 6 others in 1940.

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XX. I remember the case of Mofunanya Okeke against me. I did not get a copy of the case. 3 of us were sued.

Adjourned to 8.3.43.

(Sgd.) G. Callow

At 7 a.m. 7.3.43 I viewed the land in the presence of the parties. I followed the route marked on the plan Exhibit A with red arrows. I directed myself to limit my view to enable me to understand the features of the locality. I took no evidence.

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(Sgd.) G. Callow

At Awka the 8th day of March, 1943.

Chief Nnefe Nwude for Awka

vs.

Chief Ikanyowu for Umuodu Quarter of Okpuno.

Counsel for plaintiffs asks to recall 5th witness, Muonwuba. No objection Counsel for Defendant.

5 W. MUONWUBA ANISI: warned still on oath:-
recalled.

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10 When tribute is brought by defendants it is brought first to my age group and then we take it to the elders. Our elders cannot move about easily like young men, so they select our age group to represent them to look after the town. AKWUBA is the senior elder, he is too old to attend Court. The elders do not move about, they do not come to Court, but if they were sent for, some could come. They are very old. If necessary the elders would come and tell the custom, if unnecessary our age group speaks. Elders of Akwuba's age stay with Akwuba.

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X. I have been a member of my age group for 15 years.

Q. How many age groups are there now in Awka?

20 A. Only one, and that is the one I belong to, we look after the town. I did not attend the 1932 case (Ex.B), I was at home. Even in this case all my age group are not here.

No XX.

Counsel for defendants asks that the witness Maduka be recalled. No objection Counsel for Plaintiffs.

6 Wit. MADUKA warned still on oath:-

30 X. through Court. I am not Tabansi's father. 6 years ago Tabansi and I farmed the same piece of land. The Awka people (Plaintiffs) took an action against Tabansi claiming the land. I was not in the Native Court when the case was heard. The Awka and Umuodu people (plaintiffs and defendants respectively) viewed this land. The Umuodu people (defendants) agreed that Tabansi and I had encroached on Awka land. An elder, senior to me, said we had farmed on Awka land. This land was South of the Ebenebe tree, it is the same land. I said that as the elder had said this land belonged to Awka I took away my yams and said all the land belongs to Awka. 40 I say the land belongs to Awka (plaintiffs) because my forefathers always paid tribute before farming. There is no particular limit to the land we paid

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tribute to farm on; once you cross the Uloko river you are in Norgu land and that was conquered by the Awka people.

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7 Witness. EKEMEZIE MADUKA: M. 33 Ibo S/S in Ibo:-

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continued.

6 witness is my father. Some time ago I was put in Court by Mofunanya Okeke of Umuodu (defendants). There 3 defendants myself, my father (6 witness) and Nwokafo Okeke. I tender the summons (admitted, marked Ex.F) I obtained a copy of the case.

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(Tendered, Marked Ex.G).

No X.

8 Witness. ONWUASO: M. 75 Ibo S/S in Ibo:-

I am of Awka. I am an elder of Awka. I am aware of this action. It is authorised by all the elders. Plaintiffs represents the elders. Plaintiff represents the age group and speaks for Awka. Anything that occurs in the town, such as a dispute, the age group knows of, and will bring before the elders. That is our custom. I know of the land in dispute. The elders received tribute on account of this land. Umano's son was killed by Norgu. This is traditional history. Anyanwo was Umano's son, but not the one killed. Following the killing of Umano's son, Awka attacked Norgu. After the fight Norgu left the land and Awka took it. From the time of my forefathers Awka (plaintiffs) have farmed this land. Defendants came to farm on the land. Defendants (Okpuno) did not take part in the Awka-Norgu fight. Defendants pay annual tribute to farm on the land. They have paid this tribute for some time. Three years ago they started to farm without paying the tribute. I was born when Defendants started to pay tribute, I was among those who shared in the tribute when it was brought. Defendants bring the tribute to the house of the head of the age group, that is the house of Obuokezie; from there it is taken to the house of Ifema; the elders are then summoned and the tribute is shared out. I am one of the elders summoned. The tribute is a goat, palm wine, 100 yams and £1. When defendants asked to live on the land we asked and obtained £2.

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At first defendants only paid in cash £1. Later when asking to dwell there they paid £2. Defendants refused to pay. They have never paid the £2. 4 years defendants ceased payment of any tribute. 5 years defendants paid nothing. 6 years defendants paid nothing. It is a long time since defendants paid tribute. I have received tribute since I was an elder. For 14 years defendants have not paid tribute. Defendants and Awka farmed the land in dispute in common after Norgu were driven out. According to history we (plaintiffs) fought and drove out Norgu. My father told me the defendants had been farming this land in common with plaintiffs (Awka) for long time past, but the land is Awka's. I have visited this land when I was younger. The Uloko river is the boundary between Norgu and Okpuno (defendants). The Uvunu river flows into the Uloko and it in turn flows into the Obibia. It is long since I went on this land. I have given the boundaries as the Uvunu, the Uloko and Obibia Rivers. I did not know the Umuodu (defendants) people living on the land when I was young, I cannot say if they are dwelling on the land in dispute now for I have not been there for many years.

No XX.

BY COURT: Defendants stopped paying tribute because the whiteman came. They paid tribute during the early days of the white man. After some time they stopped and refused to pay. That is why this case - this trouble - arose. Defendants said they were stronger than us and refused to pay, we said it was our land and they must pay. Tribute would at no time have been brought unless I was called and shared in it. I am an elder. The last time was 14 years ago at Ifema's house. Since then defendants have not paid tribute. I remember the case of Nwosu (Ex.B). It is a long time ago. I think it would be more than 14 years ago. It was since that case defendants have not come to pay.

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CASE FOR PLAINTIFFS

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COUNSEL FOR DEFENDANTS OPENS.

"A"

1 D.W. IKANYOWU: M. 55 Ibo S/S in Ibo:-

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continued.

I farm at Umuodu. I live there. I am defendant in this case, I represent the people of Umuodu. I am a Chief, an elder and a Court member. I know the land in dispute. It is Umuodu land. Our boundary with the Isu is the Obibia River; our boundary with Norgu is the Ebenebe Tree; another boundary with another part of Norgu is the river Uvunu, this flows into the Obibia. Our ancestors have dwelled on this land. I was born there. We farm yams and cassava on this land. We live on this land. Eso-Agidi come to farm on this land, we give them a portion to farm. Amaobia are also given a portion to farm. Those who come are given a piece to farm. They ask for land before the farming season; after reaping they go. Intending farmers bring us, when applying, some palm wine. After reaping the crops 3/- is paid; it used to be paid in cowries. The money is paid to the owner of that land where the stranger farms. That is Native law and custom. I have never paid anything to Awka in respect of this land. Awka (plaintiffs) pay us if any of them farm on this land. I have never heard of Obuokazie of Awka. I have never paid him anything in the way of tribute in respect of the land in dispute. I remember the Nwosu case (Ex.B). It arose because of the threat on demand by plaintiffs to take the land of any smaller people. Plaintiffs entered our land without permission. We complained to the District Officer. Plaintiffs brought the action (Ex.B) against us. We appealed on this case. The Assistant District Officer viewed the boundary. We (defendants) live either side of the Uvunu River. The Uloko is not a river, it is a juju, it belongs to one of our people, it is situated on the East side of the Uvunu River near the footbridge (marked on plan Ex.A as a fetish). There is another juju called Onyeko, on the West side of the Uvunu River and in the land in dispute. We serve this juju. No Awka man serves this juju; they don't go there. I know NDUFUECHI, he is dead, he was of Amaobia. It is a long time since I first saw NDUFUECHI first working on land which is inside this land in dispute. When NDUFUECHI died about 2 years ago his family continued to farm there. The land is between the Ebenebe tree and Umuodu village. He (NDUFUECHI) lived at Amaobia and came to farm on

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our land. I remember the Tabansi case (Ex.D). He comes from Umuodu. I was present when this case was heard. The land in this case (Ex.D) is beyond the Ebenebe tree, i.e. South of the Tree; it is part of Agu-Norgu, beyond our land. I said at the time we had no part in this, it was not our land. MADUKA also worked on that land with Tabansi. (He is 6 witness for plaintiff). We viewed the land. 6 witness Maduka was there. He was told he was across the boundary, the Ebenebe tree. 6 witness Maduka said "Since you don't want to fight for this land, I will be on the side of Awka if there is any dispute". After that case (Ex.D), this trouble was the next. 11 years ago plaintiffs took an action against us, they said all Agu-Norgu belonged to them. We said we do not live in Agu-Norgu. 3 years ago plaintiffs (Awka) came to plant on our land. We took an action against them for destroying our crops, we claimed £20. Plaintiffs denied the trespass. They told the District Officer so. He viewed the land. The trespass case lead up to this action (see Ex.C). I have heard of the Norgu war. According to tradition the parties to this war were Isu, Eso-Agidi, Norfia, Amaobia, Okpuno (defendants) and Awka (plaintiffs). We fought Norgu, they were driven out. The cause of the war was that Ukanwa Tugo went to his mother's country and there was a fight, he tried to part combatants and he was beaten to death. UKANWATUGO came from Amaobia, but his mother's country where he was visiting when killed was Norgu. Then the Amaobia people attacked Norgu and drove them out; they went to Ukwulu. The war came about because the Norgu people refused to make amends for the killing of UKANWATUGO, by hanging one of their (Norgu) men. Thus Amaobia got other villages to help them drive out Norgu; they were the six I have already named.

X. We had no share of booty following this war. We are not plenty. We were satisfied with our own land. (N.B. see paragraph 8 of defence). The name Amaobia does not mean stranger. I do not know if Amaobia means stranger. (Interpreter states Ibo for stranger is Obia). I was born on the land in dispute, in Umuodu (see plan Ex.A); so were my forefathers. I remember the Nwosu case (Ex.B) I was defendant in that case, I am also known by the name of Ifejemali. I recollect giving evidence. The issue in that case (Ex.B) is the same land as

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continued.

is now in dispute. Q. Do you recollect saying, "We started living on the land 19 years ago, that is 5 years before the influenza"? A. I did not say that. Suppose the Awka man who wrote Exhibit B did not put down correctly what I said. I applied for Exhibit B. I handed it to my lawyer. When I say I was born on the land in question and so were my forefathers, I spoke truly. I remember the case of MOFUNANYA v. MADUKO and 2 others (Ex.G). The claim was in connection with the 1932 case (Ex.B). I was in Court when the case (Ex.G) was heard. I left during the hearing to go to the latrine. I was not there when defendant Maduka spoke. (6 witness for plaintiff). As he started to speak I went out. The claim in Exhibit G was in connection with the subscription to brief counsel for this case, if I said it was in connection with the 1932 case it was a mistake. The evidence in Exhibit G is untrue. I know the Chiefs dismissed the case as they said defendants in Exhibit G need not contribute unless they wished. The Chiefs were those of our own area. Maduka (6 witness for plaintiff) complained because we would not go over the boundary as he had done. We claim ownership of this land from time immemorial. Plaintiffs only farm if we show them a small portion, that is, on the land in dispute. Annually about 100 of us defendants farm on the land, about 10 persons from Eso-Agidi, about 5 from Amaobia, and only one (a woman) from Awka. All this is on the land in dispute. I never saw or had Exhibit A explained to me. We contest this case as owners, coupled with long possession. I remember the Tabansi case (Ex.D) we call the land in dispute Arira Aguejim (see para. 4 of Defence). Tabansi crossed the boundary.

Q. When the Assistant District Officer reviewed the case (Ex.B) did you not conclude the land was yours and that you had won the case?

A. We thought the land was ours. I and others came to the Tabansi does not know the old Norgu boundary if he said in Exhibit D that the Uloko was the boundary between Norgu and Awka. I have heard of a single tree like the Ebenebe making a boundary.

Q. What was the boundary before the Ebenebe Tree grew up? A. The Ebenebe tree is an old tree, older than any one here.

The Norgu war history was handed down to me from my

forefathers. We had this boundary with Norgu long before. We always know if anyone exceeds this boundary. If we win this case 6th witness Maduka will dwell on the land without paying tribute; he will live on the land free. If we lose the case 6th witness Maduka will have a house built for him, a zinc house. 6th witness, Maduka was promised money to testify as he did. It is all a bargain. He will never agree to share in tribute. 6th witness, Maduka does not participate in the activities of the Town; he ceased, following the case (Ex.G). 6th witness did pay 4/- as share of tribute. Plaintiffs have promised him a house, Maduka boasted this in our Town. I did not tell my lawyer of this. It is customary to pay tribute for farming the land of others. Palm wine is given, not a goat, nor cowries but 3/- in English money and some cowries. Before the white man came cowries were paid. Not everyone produces yams, I've never seen it. I don't know what 6th witness Maduka says about tribute.

Q. Are there no other parts in the land where 6th witness Maduka could farm?

A. No one would stop him. (Witness's answers are irrelevant and counsel for defendants describes them as insulting: witness warned.) I don't know the stream AJIRIJA. Obibia divides us from Isu. I don't know a stream flowing into Obibia, nevertheless I know our land. I have never heard that we have ever paid tribute to plaintiffs. I have never heard it from my forefathers.

Adjourned to 9.3.43.

(Sgd.) G. Callow.

At Awka the 9th day of March, 1943.

Chief Nnefe Nwude for Awka

v.

Chief Ikanyowu for Umuodu Quarter of Okpuno.

Defendant IKANYOWU warned still on oath:-

XX: Q. When you said in Exhibit B at page 6 "We started living in the said land since 19 years ago, that is, 5 years before the influenza of 1918".

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continued.

What was the exact words you used and can you explain this passage?

A. I said that the people who came up from down the hill; that no action was taken when those people came; they were living down the hill and we were living up the hill; some live on one side of the river and some on the other, and so they were coming up to us one by one as people were dying; people were dying where they were staying before so they were coming up to live with us; the people who were coming up to live with us were the Umuodu people. We who started in the other part were also Umuodu people. 10

BY COURT: There is no other people besides the Awka people disputing the ownership of this land with us. I do not often come into Awka. Norfia do not farm on this land in dispute.

2 D.W. MOFUNANYA OKEKE: M. 50 Ibo S/S in Ibo:-

I am an elder of Umuodu Okpuno (defendants village) I farm. I know the land in dispute. We call it Arira Aguejim. The Obibia River is our boundary with Isu. Our boundary with Norgu was the Ebenebe Tree. By this I mean a line drawn through the Ebenebe Tree to the Uvunu River. The land in dispute belong to Umuodu. We live on the land and farm it; my fathers farmed the land. I was born on the land. I can't say how my father was born, but he was born there. (Answer verbatim). For many years past our people have farmed the land. I have never paid tribute to anybody respecting this land in dispute. Umuodu has never paid Awka tribute for this land. Esu-Agidi people, Amaobia, Awka may farm in this land with our permission. Some years about 3 come from Esu-Agidi, sometimes 4 come. We never go to Esu-Agidi or Awka to farm, rather we go to Isu and Mbaku. The demand for land depends on its fertility. From Amaobia in a year some 4 or 5 people come to farm on our land. When a stranger desires to farm in our land he does not approach the community, but goes to an individual who has a holding. In our land farming is not communal. The same procedure applies if we go to Isu, that is our custom. I knew NDUFUECHI of Amaobia. He is dead. When he was alive he used to farm part of our land. He bought a piece of land from NWOKAFO OKEKE. It was between the village 20 30 40

and the Ebenebe Tree. It is in the middle of our land. Since NDUFUECHI died the family have not farmed this land, but it still belongs to them. Umuodu has a ju-ju called ONYEKO. I serve it. Defendants attend it. Awka people do not serve it. They will serve their own ju-ju, they will not serve a ju-ju in our land. I know Tabansi. He is of Umuodu. I know NWONYEKWELU. I remember the case between them, six years ago. Tabansi farmed beyond the Ebenebe tree in land not ours. I gave evidence for Tabansi (Ex.D) I did not know the land on which Tabansi had farmed before I gave evidence. On viewing the scene we said Tabansi had farmed beyond our land. Tabansi had been farming this land with MADUKA. When we viewed the land Maduka was present. He said that since we had not supported him about farming on this land, if there is any dispute with Awka he will side with Awka.

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X. I gave evidence in Exhibit D. Before giving evidence I had not visited the land. I giving evidence, I lied, the plaintiff lied, he said the land on which Tabansi had farmed was our land, meaning Umuodu land. The land Tabansi had farmed was not our land. The land in dispute is called Arira Aguejim from the days of our fathers. I knew the boundaries of this land from boyhood. Tabansi told me to give evidence that he was farming in ARIRA AGUEJIM, so I did, but on visiting the land I found that he had farmed beyond the boundary into Agu Norgu.

Q. Can you explain this passage in your evidence in Exhibit D. "Why we knew this, the Ebenebe tree is the boundary but his plants did not go beyond the boundary"?

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A. I said this in Court, but when we visited the land I found Tabansi was over the boundary. In that case Exhibit D I gave evidence of what Tabansi told me to say; I thought at the time it was true. Maduka said after the case Exhibit D that he would side with Awka if any dispute arose between us. This was 5 or 6 years ago. That is why he is giving evidence against us.

Q. Then why did you take action (Exhibit G) against Maduka last year to try and enforce him to contribute to funds for this case if you knew he would

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"A"

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Exhibits

"A"

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continued.

side with Awka? A. We were subscribing for this case and Maduka at first subscribed after a time he refused to continue his contribution, so we took an action (Ex.G). He stopped contributing about a year ago, when the land was surveyed. Maduka started to contribute after the Tabansi case (Ex.D). He Maduka said in Court in Exhibit D that he had told us he proposed siding with Awka. We knew this before we went to Court, we wanted him to say this in Court. NDUFUECHI bought a piece of land from NWOKAFO OKEKE. He paid £20; it was a big piece. The sale was many years ago, I grew up and found Ndufuechi on the land. If in the 1932 case (Ex.B) defendants said Ndufuechi leased the land it is untrue. NDUFUECHI's land has not been farmed for the past 2 years. I admit 3 previous conviction for which I have been imprisoned. Last year I was charged before the Magistrate for stealing cassava. When I was charged with corruption it was in the Mbanese Native Court. My own family once prosecuted me for stealing.

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XX: In Tabansi's case (Ex.D) I spoke as I did because Tabansi had told me that land where he farmed was Arira Aguejim, when I found out my mistake, I realised what I had said was untrue. Tabansi was farming about 40 yards past the Ebenebe Tree.

3 D.W. NWOKEKE NWAFO: M. 60 Ibo S/S in Ibo:-

I am from the UMULERI Quarter of Isu. I am the head man of the quarter, also the oldest man. I know the defendants they are our neighbours. The Obibia is our boundary. I know this land in dispute. The defendants' land is from the Obibia river to the Ebenebe tree and from there to the Uvunu River. Defendants live on the land. The Uvunu divides the defendants (the Umuodu people) into two parts, one part lives on the land in dispute and the other across the Uvunu River. Since my boyhood defendants have lived on this land. So far as I know they lived there before, so history tells me. Defendants farm this land. They have done so for long time past. Defendants, so far as I know, pay no tribute to Awka (Plaintiffs) for this land; I have never seen them do it. So far as I know Awka does not farm this land. Sometimes the Amaobia people obtain land therein to farm, they beg defendants for permission. NDUFUECHI of Amaobia farmed near the boundary we have with

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defendants. I have seen him there. His farm was in the middle of the land now in dispute. It was between the Ebenebe tree and the Obibia River, if he wanted to drink water he used to go to Obibia. Esu-Agidi farm on this land in dispute also.

Exhibits

"A"

Proceedings of
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continued.

10 X. Sometimes we exchange visits with our neighbours, the defendants. Only defendants live on the land in dispute. From my earliest memory defendants have been on this land. In Isu there are about 70 Taxpayers. There are not more in Umuodu (defendants). Across the Uvunu from the defendant's village in the area in dispute is the old Umuodu village. All have left the old village. About 40 years ago some of the defendants lived on one side of the Uvunu and some on the other. After the Government came Plaintiffs started to covet defendants land. When the Government came the people of Umuodu were still partly in the old village East of the Uvunu and partly in the village in the land in dispute. Before the Government came people tended to live together for security. The people moved out finally from the old village on account of an epidemic. I remember the influenza epidemic. It was this epidemic that caused the people to leave the old village and join the others over the river in this land in dispute. I do not know the Ajirija stream. The Obibia was the boundary with Norgu and ourselves. NDUFUECHI farmed near the Obibia, I could see him farming from our land. I could see 30 a person farming in the middle of the land in dispute, in fact as far as the Ebenebe tree. A Government road leads to Isu. I have never seen defendants go to Awka to pay tribute. I have seen the Eso-Agidi people come to Umuodu to beg for land and later to pay tribute to defendants. Amobia have also done this. When this was done I was not actually present but saw them and spoke to them (Eso-Agidi and Amaobia) from across the river, they spoke to me of their mission. I have seen the 40 Amaobia people come and ask defendants for land on which to farm. I have not seen others than Esu Agidi and Amaobia on the defendant's land. I can view all the land in dispute. The Obibia is a big river. The whole length of the Obibia was the boundary between the Isu and the Norgu in the old times. Today it is our boundary with defendants. It always was. The Obibia in ancient times was the boundary between Isu and Norgu and Isu and Okpuno (defendants). I have heard from my fathers

Exhibits

"A"

Proceedings of
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continued.

of the Norgu War. In that war Isu, Esu-Agidi, Norfia, defendants, Amaobia and Awka drove out the Norgu people. Afterwards they all farmed on the conquered land. Defendants got no part of this conquered land, the land was not divided. Every village, Isu, Esu-Agidi, Norfia, defendants, Amaobia and Awka each farmed the part nearest to their villages of the conquered land. We do not farm beyond the Obibia, unless, we beg permission from defendants. We only farmed our own land, we got no portion of the conquered land. I don't know what the defendants got of the conquered land. Nor can I speak of Amaobia or Esu-Agidi. The land in dispute is owned by individual people. The land bordering the Obibia River in Umuodu is farmed by defendant Ikanyowu and others. I see Ikanyowu (defendant) farming across the Obibia. Each person farms his own portion.

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XX: I have seen Ndufuechi, Eso-Agidi and Amaobia farming on the land in dispute. At one time Isu bounded along the Obibia river with Norgu and Okpuno. That was always our boundary. The Obibia is a long river running from Eso-Agidi to Isu. Besides the defendants there are the quarters of Okpu, they neighbour Umuodu. The Okachi quarter is further east, the Obibia remains the boundary. I know the Nnodu, they live next to Okachi. From my fathers I have heard of the Obibia as a boundary.

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4 D.W. FRANCIS OKEKE: M. 45 Ibo S/S in Ibo:-

I am of Amaobia. I know Umuodu. I have farmed there. I know Ndufuechi, he was my full brother. He died 2 years ago. He bought land in Umuodu from Nwokafo Udeaku. He paid £20. It was in 1907. Nwokafo is still alive. I know the land in dispute well. The land was West of the village and between the Obibia and the Ebenebe tree. It was big land, (witness describes length and breadth) 300 yards by 400 yards in length and 200 yards in width. When the land was bought I was there. We plant there, but not for the past 2 years, we have been in mourning, the women who would have worked there do not come out, they remain in the house. I used to farm on this land. The boundaries of the land in dispute are the Obibia river to the North and the Ebenebe tree to the South.

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X. Ndufuechi is older than I am, many years older,

Exhibits

"A"

Proceedings of
Court in Case
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1954 -
continued.

30 years older. I joined the Police in 1919 and left in 1925. I succeeded to my brother's property on his death. If anyone claimed my property I would go to Court. Awka (Plaintiffs) started to claim land 10 or 11 years ago. Then my brother was alive, I had then no interest in the land. My brother left children, the land is their's, I look after it for them. I heard of the survey of this land. It was 3 years ago. I heard Awka (Plain-
10 tiffs) sent the Surveyor. I heard Awka had included our land in the claim against defendants. It is a year since this action started. If plaintiffs succeed they will take my land. I can't say why I did not identify myself with this case, I didn't think of it, my brother was alive until recently. I didn't know that when the case started all who were interested were invited to be joined as defendants. I knew I was to give evidence in the case about 6 months ago. I have farmed this
20 land with my brother since 1907.

Q. In 1932 did not your brother say in Exhibit B that he bought the land in 1917? A. I made a mistake when I said the land was bought in 1907. I don't know who made the mistake, all I know is the figure 7 comes into the purchase date. It was either 1907 or 1917. I was not in Court. You suggested the date 1917 to me, and I got confused. It was, I think, 1907 when my brother bought the land. When I joined the Police I am not sure
30 whether my brother had bought the land 2 or 12 years before. Sometime ago Ikanyowu and my brother had a dispute over the boundary of the land he bought, they put a stick to mark the boundary. It is a long time ago and I have never seen it. I went 2 years ago to reap the crops; before then I had not been for long time. I cannot say much as to the boundaries as there was no palaver about it. From the Ebenebe Tree to my land, I mean my brother's land, is about 800 yards. From the Northern edge
40 of the land to the Obibia is about 300 yards - 400 yards. It is about a mile from Umuodu village to my brother's land. Beyond the land is the Obibia. I know the land, apart from what my brother told me. I am a wood carver in Awka. I have a farm, but I don't go far to farm. Going to the land my brother bought from Amaobia you pass Norgu land. Now the villagers own Norgu land that is near their villages.

XX: The measurements I have given are approximate.

Exhibits

I guessed them.

"A"

Adjourned to 10.3.43.

(Sgd.) G. Callow.

Proceedings of
Court in Case
No. 0/13/41.

At Awka the 10th day of March, 1943

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1954 -
continued.

Chief Nnefe Nwude for Awka

v.

Chief Ikanyowu for Umuodu Quarter of Okpuno.

5 D.W. NWONU OREKIE: M. 55 Ibo S/S in Ibo:-

I am of Amaobia. I farm. I know the plaintiffs and defendants. I know the area in dispute. I first knew this land before the British Government came. One of my wives is of defendants people- I asked my brother-in-law, NWANKWO, for a piece of defendant's land to farm. All this was before the advent of the British Government. I farmed a piece of this land. I paid cowries for this farming. From time to time I went and obtained land to farm. For the past 5 years I have not done this. I only paid once, on the other occasions I did not pay because I had married into the family. My wife's name was MGBEKE MGBOKU. She is dead. She had no issue. I never paid anything to plaintiffs (Awka) in respect of this farming on defendant's land I learned from my fathers of the Norgu War. The following took part, ourselves (Amaobia), Norfia, Esu-Agidi, Isu, Okpuno and Awka. History says that a man from our town was killed by Norgu, the man killed was named UKANWATUGO. Our fathers demanded that the Norgu people should hang a man to revenge this death. They did not. War follows. Guns were used. Norgu were driven out. They fled through defeat. I cannot say which direction the Norgu retreated. Two years ago Enugu fought Norgu, about 6 villages joined in. Government stopped the fight. Enugu, Nimo, Abagana, Ukpo and Eso-Agidi all fought Norgu. The cause was the killing of a Enugu man. No one helped Norgu. The Police stopped the fight. The combatants were prosecuted. After Norgu were driven out from the land in the early war each village adjacent to the former Norgu territory farmed the vacated land. Amaobia farmed part of this land, no tribute was paid.

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X. In Ibo the word "Ama" means a Town. "Obia" means a stranger. Amaobia is not the place where strangers visiting Awka are required to live. We of Amaobia are indigenous. We are near Awka; we are also near others. The other side of the Awka market is Amaobia. My facial markings are Amaobia. Awka do not have facial markings I do not know if my facial markings originate from Nimo. Many villages have it. We do not originate from Nri. We have no connection with Awka.

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Q. Why should Awka fight for Amaobia, if your tale of history is true?

A. Awka joined in the fight because an Awka man went to the Norgu land to get palm wine, on his way back he fell down and died. This happened during the Norgu war. History does not give his name. Awka was not originally in the Norgu war. Awka fought Norgu from their direction and we from ours. We (Amaobia) fought Norgu on account of the killing of Ukanwatugo. After the fight had started Awka joined in because of the death of the palm wine collector. Amaobia and Awka did not fight Norgu as allies.

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I do not know who was getting the better of the war before Awka joined in. The quarters of Okpuno are four, Umuodu (defendants), Okachi, Nnodu and Okpu. History says only Umuodu (defendants) joined in the Norgu war. Awka (plaintiffs) is much bigger than Amaobia. According to history it always was. I am a wood carver. I also farm. This last season I farmed at Amaobia. Eso-Agidi fought with us against Norgu because we appealed to them for help, also Isu, Norfia and Umuodu (defendants). History does not say if we appealed to Awka (plaintiffs). It was usual in those days to seek allies.

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No XX.

BY COURT: The piece of land I farmed in defendants land was between the Umuodu village and the Obibia. It was about 35 paces in length. I farmed for myself and my family.

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6 D.W. UDEKWU AGBATA: M. 55-60 Ibo S/S in Ibo:-

I am of Eso-Agidi. I farm, I am a Court member and an elder. I know defendants and their

Exhibits

"A"

Proceedings of
Court in Case
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25th January
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continued.

Exhibits

"A"

Proceedings of
Court in Case
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25th January
1954 -
continued.

land. From our village to defendants land you get to the Ebenebe Tree, then to the right is the Uvunu River and to the left is the Obibia River. Across the Obibia are the Isu. I do not know who owns the land across the Uvunu River. The Ebenebe Tree is the old boundary between defendant's and Norgu. When Umuodu people (defendants) showed me land on which to farm they told me not to pass the Ebenebe Tree. I first went to this land as a small boy. I was very small when I first worked on defendant's land. I have not been there for 6 years to farm. I did not farm there every year. I went there to farm because my land is not sufficiently fertile. I went to defendants because I am related by marriage to them. I have heard of the Norgu War from my fathers. 6 Towns took part, Eso Agidi, Isu, Okpuno, Okachi, Umuodu, Okpuno, Norfia, Amaobia and Awka. I do not know about Okpuno Okachi. We have a boundary with defendants. History relates that the war arose because Norgu killed an Amaobia person. Amaobia fought against Norgu and during this war an Awka man was killed. The Amaobia people called us, Isu, Norfia, and Enugu-Agidi, Umuodu and Awka to help them. History does not say if Norgu called on any village for assistance. Norgu ran away to Ukwulu where they are now. Those who drove the Norgu out farmed the land. We farm part of this Ex-Norgu land. We pay no tribute. My village of Eso-Agidi is UROEBIERI (see Ex.A). Our boundary with Norgu was the Obibia River. After the war we crossed the Obibia and still farm on the East side of this River. When I go to Umuodu to beg for farm land I take as present palm wine. After farming, I give the land owner food and 8 yams; now-a-days it is the custom to pay money and we pay 3/-.

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X. The Obibia was our eastern boundary. Beyond was Norgu. We now farm it. We have now no eastern boundary. I know the Ebenebe tree. When I took land from defendants I was told not to go beyond that tree. The land is farmed by Awka (plaintiff). We have no boundary with Awka. The land has never been divided. We farm together with Norfia, the boundary is Ogugu Esu, it is a valley. We have no boundary with Amaobia. We work together at Ojima, it is the name of a piece of land. We have no boundaries with any one. I do not know NWOLEKE OKAM of Eso-Agidi. I know Chief NWANKWO of Eso-Agidi. He is an older man than myself, a "bigger" man than me. It would be a lie if he said we do not farm beyond

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the Obibia. I do not know Nwokeke Mgboku. I do not know of any case against Awka over Norgu land, there has never been one. I have never heard of a case in which Chief Nwankwo gave evidence. There has been and is no concerted action by us. Isu and Amaobia to claim Norgu land.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

Q. Does the word "Osu" in Ibo mean slave?

A. I will not answer that question.

25th January
1954 -
continued.

10 Q. Are not "Osu-Agidi or Esu Agidi" the name for ex-slave settlements?

A. I am not a slave.

20 Awka are not our masters. I have Nri facial markings. Only slave have no markings; freeborn have markings. We are of higher breed than Awka; they have no markings. The Amaobia people did not call Awka when the Norgu war started. History states a man from Amaobia called UKANWATUGO was killed visiting his mother in Norgu. An Awka man was killed during the war and that caused Awka to join. I do not know if Awka's help turned the scales against Norgu. I do not know if the land in dispute is all the defendants land or only a part of it. I do not know the country east of the Uvunu River. From the Ebenebe tree to the Uvunu defendants have land on the left and plaintiffs on the right.

30 XX: Our fathers were never slaves. We are known as Osu or Esu Agidi or Enugu Agidi. It is just a bad name our fathers gave us. (Witness gets excited.) Other people ridicule us on account of the word "Esu". "Esu" is a person sacrificed to a juju. When Norgu were driven away each village farmed the area nearest to them which was vacated. There was no actual division. I do not know if the defendants farmed part of the land so vacated. Through Court by Counsel for Plaintiff. I have had an action against me for farming on Agu Norgu land, the case never went to Court. The plaintiffs in this case were Awka. It was against our people and included me. It is a long time ago. We told 40 the people who had farmed on Awka land to go and settle with plaintiffs. It was Agu Norgu land. Our people had farmed beyond the MILINWEZI stream. That is as far as we farm. The Awka people say if we farm beyond that we have to pay palm wine as

Exhibits

"A"

Proceedings of
Court in Case
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25th January
1954 -
continued.

tribute. We went to Court, but the case was not actually tried and no judgment was given. Through Court by Counsel for Defendant: We went to Court, but the case was not tried. I do not call it a case. I paid no summons fee, the case was never actually tried.

BY COURT: Q. Were there any Court proceedings at all? A. There was no case. I do not know if anything was written or not. Through Court by Counsel for Defendant. I know Chief Nwankwo, but I know of no case in which he gave evidence. He comes from ACHALLA-ENUGU-AGIDI. 10

7 D.W. TABANSI: M. 40 Ibo S/S in Ibo:-

I farm. I am of Umuodu. Ikanyowu is also of Umuodu (Defendant) I know this land in dispute. We had a boundary with Norgu. This is history. The boundary was the Ebenebe Tree; from there to the Uvunu. The Uvunu divides Umuodu in two. The Uvunu flows into the Obibia. There is our boundary with Isu. Up stream you can see the Ebenebe tree, there the boundary ran across. I was born on the land in dispute. Our people (defendants) have dwelled on the land from the time of our fathers. They farm it. They (defendants) always have farmed it. I pay no tribute to plaintiffs for farming that land. I have never heard that Umuodu people pay tribute to Awka for farming or for living on the land. I know NDUFUECHI of Amaobia. He is dead. He bought part of the land in dispute. He farmed it. It is more than 20 years since he bought it from Nwokafo Okeke, my relation. I was present when Ndufuechi paid Nwokafo £20. I know an Awka man named Nwonyekwelu; 6 years ago I had a case with him. It concerned land outside Umuodu (defendants) land. It is near the Ebenebe tree, about 35 yards from it. The land is in the right going from the Ebenebe tree to the Uvunu River. It is near our ex-boundary with Norgu. Maduka (6 witness for plaintiffs) was with me farming. MWONYEKWELU took an action against me for trespass. I took a cross action Exhibits D and E. Up to that time I thought we were farming inside our boundary. I went to MOFUNANYA and told him I had been farming on our land and that he should give evidence for me. He came to Court and gave evidence. Before going to Court he did not see the land. The Court decided to view the land. All interested went. Our people said we 20 30 40

had farmed over the boundary. Maduka (6th plaintiffs witness) was there. He said that since our people had not supported us, if there is any dispute with Awka, land or otherwise, he would side with Awka. I had to pay £10 over this case. I appealed. I paid the plaintiff in this case £4.17.0; after much begging he compromised for that sum. Maduka had to pay something, too.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 X. The first action was by NWONYEKWELU against me. I went to the District Officer who told me if I was sure the land was inside our land that I should take action against NWONYEKWELU. Our land is Arira Aguejim. The boundary is the Ebenebe tree. I knew it from childhood. When I took action against Nwonyekwelu, I did not know the boundary. I was not sure of the boundary before the action, I thought it was on the Arira Aguejim. The District Officer told me to make sure the land was inside the boundary of Umuodu. I did so and thought it was on our side of the boundary. The Uloko is a ju-ju, not a stream.

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Q. Do you remember saying in the Native Court (Ex.C) "At the first time when the boundary was marked A Awka people said the boundary is the Uloko stream"?

A. No, I did not say this in Court. I did say our boundary with Norgu was the Ebenebe tree. I know about Arira Aguejim. Our people said this particular piece of land was in Agu Norgu. The case was in our Native Court Mbanese; Awka people don't go there. I did not describe the land to Mofunanya; I only told him it was near the Ebenebe tree. I did not take him to the place, I had no time. The place is not far from my house.

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Q. Do you remember saying in the case (Ex.D) "Nearly all the Okpuno people planted their yams in the same land"?

A. I did not say so.

Q. Did you not also say in Exhibit D "I can swear if I have planted beyond the Ebenebe tree which is the boundary"?

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A. I did not say so. I gave evidence in the Native Court Mbanese on oath. When my people said I had gone beyond the boundary I left the matter.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Q. Did you not say in Exhibit E "The District Officer gave judgment on your behalf that the boundary was the Ebenebe Tree the Uvunu and the Obibia"?

A. No.

In Exhibit D I did not base my case on Exhibit B; it was on account of the farm I had planted.

XX: When I planted the farm I thought it was our land. We had a case 11 years ago (referring to Ex.B). The District Officer went into the case. Our people showed him the boundary. We understood we won the case (refers to Ex.B). In Exhibit D, I told the Court about the case. In Exhibit B, Plaintiffs said the Uloko was the boundary. In Exhibit D, I quoted what plaintiffs had said in Exhibit B, I said "The Awka people had said the Uloko was the River, but Uloko is not the boundary". I was prepared to swear in Exhibit D that I was farming with-in Arira Aguejim.

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CASE FOR DEFENCE

Adjourned to 11.3.43.

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(Sgd.) G. Callow.

By consent Counsel will address in Onitsha.

At Onitsha the 11th day of March, 1943.

Chief Nnefe Nwude for Awka

v.

Chief Ikanyowu for the Umuodu Quarter of Okpuno.

Mbanefo for Plaintiffs.

Egbuna for Defendants.

By consent the following figures of the numbers of persons paying Tax now are admitted.

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(Defendants)	Umuodu Okpuno	...	45
	Osun-Agidi or Esu-Agidi or Enugu-Agidi	...	658
	Norfia	...	283
	Isu	...	358

Amaobia	...	...	...	371
Norgu	...	...	...	362
(Plaintiffs) Awka	...	...	...	1,171

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

Counsel for Defendants addresses.

Onus on Plaintiffs.

25th January
1954 -
continued.

Case depends on whether plaintiffs have proved that defendants paid tribute in respect of land in dispute. Plaintiff must show acts of ownership sufficient to warrant inference of conclusive ownership i.e. living, farming, leasing.

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Difference between action for Declaration of Title and one for recovery of possession.

Cites: 2 N.L.R. 100, 1 W.A.C.A. 259

2 W.A.C.A. 336

Counsel for Plaintiffs addresses.

Issue is have plaintiffs ever held the land and have they ever received tribute. If Defendants have paid tribute they are estopped from denying title.

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Deals with Cases cited by Counsel for Defendants.

6 W.A.C.A. 139 5 W.A.C.A. 4

1 W.A.C.A. 323

Plaintiffs have adduced evidence upon which title may be granted. Disregard discrepancies as to time. I think it could be arranged that if plaintiffs obtain a declaration of Title they would let defendants use all Agu Aralla on payment of tribute. I would do my best to have that carried out.

Judgment reserved to 19.3.43.

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To be delivered at Awka at 10 a.m.

(Sgd.) G. Callow.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA JUDICIAL
DIVISION, HOLDEN AT AWKA
BEFORE HIS HONOUR GRAHAM CALLOW, ASSISTANT JUDGE
THE 19th DAY OF MARCH, 1943

Suit No. O/13/1941.

CHIEF NNEFE NWUDE on behalf of himself
and the Chiefs and people of Awka

versus

CHIEF IKANYOWU for himself and as repre-
senting the people of Umuodu Quarter of
Okpuno

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JUDGMENT

The Plaintiffs in the case are the people of Awka and the Defendants are the people of Umuodu quarter of Okpuno. The dispute has been active for at least 10 years, the hearing took 8 days, and this judgment is necessarily lengthy.

2. The claim is for declaration of title to all that piece or parcel of land known as Agu Aralla forming part of the land known as Agu Norgu and more particularly described and delineated and edged yellow on the plan filed in Court (Ex.A), which is included in this judgment.

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3. The suit commenced in Mbanese Native Court, Awka Division, and was transferred to this Court by the Resident, Onitsha Province, in exercise of the powers contained in section 25(1)(c) of the Native Courts Ordinance. The Transfer was received on 22.12.41.

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4. In the original suit paragraph 1 of the claim was for declaration of title to the piece or parcel of land known as Agwunorgu situate in Awka and bounded on the north by lands of Norgu and Isu, on the West by lands of Osu-Nnagidi and Norfia, and the South by lands of Norfia and Umu-Ukpu, and in the East by lands of Amobia. Later, partly on the Resident's representation, the issue was left between Plaintiffs

and Defendants only. I shall refer later to this.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
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5. Plan and pleadings were ordered on 18.3.42, and on 19.9.42 the Court, by virtue of Order XIV, rule 2, of the Protectorate Courts' Rules ordered the amendment of the claim so that it agreed with the plan (Ex.A). The Court viewed the land and the amended claim subsequently read as in paragraph 2 above. I should state that I have made every endeavour to keep uniform the spellings of the various places mentioned. Where they have varied reference to an appendix to this judgment will clarify.

6. There was also an injunction sought to restrain the Defendants, their servant, and/or agents from any further interference on this land, but Counsel for Plaintiffs in opening and in closing, said it was not desired to disturb the Defendants' possession; only declaration of title was sought. Further, the Plaintiff Nwefe Nwude said in Court "We are satisfied if the Defendants recognise us as the owners, we do not want to eject them". In consequence paragraph (b) of the claim was struck out.

7. At the outset of the trial Counsel for Defendants raised the plea of res judicata. This was argued at length and I held that the plea failed. Reasons for this decision are contained in the record.

8. The case for the Plaintiffs is that in ancient days, before living memory, they, the people of Awka, conquered this land from the Norgu people. The war is said to have arisen from the killing of an Awka man by the Norgu people. Awka drove the Norgu from the area (Agu-Norgu), which includes the land in dispute. The vanquished Norgu settled at Ukwulu. Subsequently, say the Plaintiffs, the Defendants who formerly dwelled east of the Uvunu or Uloko river, gradually encroached across the river and commenced to till the former Norgu land. For this they paid an annual tribute of £1 (in cow-ries), a goat, 100 yams and palm wine. Later within living memory, they abandoned entirely the former village on the east side of the Uloko and settled on the present village site; for this a further annual tribute of £1 was asked. The Plaintiffs say this tribute was paid regularly until recent years when dispute arose culminating in this suit.

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9. Thus the Plaintiffs claim is based on right of conquest, and the fact that the Defendants have for many years acknowledged the Plaintiffs as titular owners by payment of annual tribute in respect of the land subject of this claim.

10. The Defendants' case, put briefly, is a denial that the land in dispute was ever part of the Norgu country; that they have never at any time paid tribute in respect of this land to anyone; and that from time immemorial they have enjoyed exclusive ownership of the land, living thereon and farming.

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11. The first consideration is the Norgu war. Both sides agree that there was in fact a war in which Norgu was driven from their land, but while the Plaintiffs maintain that no third party was involved, the Defendants say that Amaobia attacked Norgu on account of the killing of a man named Ukanwatugo. The Amaobia then sought and obtained the aid of Isu, Norfia, Osunagidi and Okpuno (Defendants) later, after the war had started, Awka joined because of the death of a palm-wine collector.

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12. The 5th Defence witness Nsonu Orekie of Amaobia said Amaobia and Awka did not fight as allies, but the Defendant Ikayonwu, 3rd Defence witness Nwokeke Nwafo, and 6th Defence witness Udekwu Agbata all state the war was fought by six people (Osunagidi, Isu, Okpuno, Norfia, Amaobia and Awka) as allies against Norgu; it is pertinent to note that all these Defence witnesses mentioned Awka last, almost as an after thought; Awka is by far largest unit in this locality and according to the 5th Defence witness Nwonu Orekie, it always was.

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13. Thus if the Defendants' version of ancient history is correct the Amaobia were successful in encircling the Norgu, who were unable to any allies. There is no evidence as to their line of retreat, but both parties agree they were driven out of their land.

14. The Plaintiff Nwefe Nwude gave traditional evidence of the Norgu war, and was supported by the 2nd witness Nnaemegwo Okoye, the 3rd witness Okoye Ifekandu, the 4th witness Nwoyekwelu, the 5th witness Muonwuba, the 6th witness Maduka and the 8th witness Onwuaso. These witnesses, except the last, could only give in general terms the history of the cause

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of this war, i.e. that an Awka man was killed by the Norgu who refused to pay compensation; but the 8th witness Onwuaso an Awka Elder and a very old man who tired visibly towards the conclusion of his evidence, said that the Awka man killed was the son of Umano who at that time was an Awka leader, and on this point he was not cross-examined. This name Umano is corroborated by the Plaintiff Nwefe Nwude when he stated that Umano was the Awka Head Chief in the Norgu war.

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15. From the demeanour of the witnesses and from the evidence on each side, I decide on this point in favour of the Plaintiffs. I find that Norgu war was fought between Awka and Norgu and I believe the Plaintiffs' version as to the cause of this war. I regard it not unlikely that the smaller peoples of Norfia, Eso-Agidi, Isu, Okpuno (including Umuodu) and Amaobia may have taken some part in this war especially once the plight of Norgu was appreciated, but I find it quite impossible to believe that Amaobia started the war as the 5th Defence witness Nwonu Orekie said; that Awka were not originally involved, and only joined in because a palm wine collector on his way back from Norgu land "fell down and died"; and that Amaobia successfully induced every village or clan bordering on Norgu to participate.

16. It is far more reasonable to believe, as I do believe, that the Awka-Norgu war was fought between these two peoples and for the reasons indicated in paragraph 14 above.

17. It is now necessary to consider the Defendants' boundaries with Norgu before the war.

18. The Plaintiffs point simply to the Uloko River.

19. The Defendants say the Uloko is not a river but a juju, and that the stream is known as Uvunu throughout nevertheless in paragraph 4 of the Defence I find the Uloko described as a river; there is no mention therein of it being a juju. They point to the Ebenebe tree (see Ex.A) as the old boundary between themselves and Norgu.

20. A witness who particularly impressed me was the 3rd witness Okoye Ifekandu, a Norgu juju priest. It is true that he admitted an assurance that they

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(Norgu) might still recover their former land on payment of compensation, and I realise that would bias him in favour of the Plaintiffs but when he gave evidence of the old traditional Norgu - Okpuno boundary I have no doubt that he spoke truthfully and without favour. I know this is tradition, but his demeanour in giving evidence and under cross-examination satisfied me that he spoke of ancient knowledge handed down to him. He said that 20 or 30 years ago Awka (Plaintiffs) asked Norgu to point out the old boundaries and that he did so in front of the Defendants who did not dispute them. On Cross-examination he was emphatic that he pointed out the Uloko River as the old Norgu-Okpuno (Defts) boundary, and the Defendants agreed; he said he would swear on his juju as to the boundary being the Uloko River.

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21. Each witness for the Defence maintained that the Umuodu boundary, originally with Norgu and later with Plaintiffs, was this line running through the Ebenebe tree, but the 3rd Defence witness Nwokeke Nwafor, who is of Isu, said in cross-examination "The Obibia was the boundary between the Norgu and ourselves The Obibia is a big river....." The whole length of the Obibia was the "boundary between the Isu and the Norgu in the old times". Then the witness said "Today it is our boundary with Defendants. It always was."; but he followed this by stating "The Obibia in ancient times was the boundary between Isu and Norgu and Isu and Okpuno". Now an examination of the plan Ex.A makes it clear that if the Obibia was in ancient times the Isu-Norgu boundary then the witness must have intended that part of the Obibia flowing from the entrance of the Ajirija stream (which the witness said he did not know) to where the Uvunu or Uloko joins the Obibia. Otherwise the land now claimed by the Defendants would have been a buffer between Isu and Norgu and nowhere would their boundaries have marched together. I also compare and contrast his evidence as to the boundary being the Obibia with that given by the 3rd Plaintiffs witness Okoye Ifekandu, to whose evidence I have referred in the last preceding paragraph.

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22. I must also note the evidence of the 6th witness Maduka. I shall deal with the other parts of his testimony as regards the traditions and history of former days, and recollecting his demeanour, I am

satisfied that he described what were in fact the Norgu boundaries with the Defendants, his own village.

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23. I find that prior to being driven from their land the Norgu people occupied inter alia the area verged yellow on the plan Ex.A, and that during that period and up to the time the Norgu people were forced out of the area the Defendants' boundary with Norgu was the River on the plan Ex.A described as the Uloko.

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24. I have directed myself against the temptation, after viewing the land, to become a witness, but I do not think it improper to refer to Ex.A from which it will be seen that no natural boundary exists to the South of the land in dispute, whereas to the North and to the East the rivers form natural boundaries between what I have found to be Norgu, Isu and the land of the Defendants, Umuodu Okpuno, I am also mindful of the evidence of the 3rd Defence witness Nwokeke Nwafor when he said "Before the Government came people tended to live together for security". Nor do I omit the evidence of the 6th Defence witness Udekwu Agbata of Eso-Agidi, when he said "Our boundary with Norgu was the Obibia River"; I do not believe it could have been, certainly not in those reaches of the river near the land in dispute; furthermore this witness in cross-examination said "We have no boundaries with any one". I did not believe his evidence on this point.

25. Being satisfied as to what were the old boundaries, I now consider the position following the Awka-Norgu war. A large tract of land was left vacant; then according to the evidence of the 5th Defence witness Nwonu Orekei and 6th Defence witness Udekwu Agbata each village adjacent to the former Norgu territory farmed the land vacated. The 3rd Defence witness Nwokeke Nwafor corroborated this but afterwards changed and said that the Isu people got no portion of the conquered land, and that he did not know if the Defendants (Umuodu Okpuno) obtained any such land.

26. The Defendant Ikanyowu maintained that his people acquired neither land nor booty from the Norgu war, although paragraph 8 of the Defence is to the effect that Agu-Norgu became the joint property of the victorious allies.

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27. It seems a very reasonable conclusion to draw from this evidence given by the Defence witnesses that following the Norgu war each village took advantage of the situation to use and farm the empty land in the neighbourhood.

28. Following the conclusion that after the Norgu exodus each village farmed the adjacent vacant land, comes the question how and when did the Defendants eventually come to settle on the land in dispute. I have no doubt that in the first place only small farm shelters were erected. The Plaintiff Nwefe Nwude and his 4th, 5th and 6th witnesses all spoke of the time when the Defendants' village Umuodu sought and obtained permission to move and settle on the land in dispute; the Plaintiff Nwefe Nwude said it was 20 years ago, the witness Nwonyekwelu said it was 11 years ago, the witness Muonwuba Anisi said it was 30 years ago, while the witness Maduka gave no estimate of years. The witness Nwonyekwelu was an excitable man and with difficulty restrained himself to wait for the end of a question, I prefer to rely more on the estimates given by the Plaintiff Nwefe Nwude and the witness Muonwuba Anisi, but I am conscious that estimates of time given by witnesses of the type giving evidence in this suit are very approximate, except perhaps for the 4th Defence witness Francis Okeke who is an ex-Police Constable. No witness, for instance, knew his age in years.

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29. The Defendants' case is that they have lived on the land from time immemorial, but when the Defendant Ikanyowu was cross-examined as to his statement on page 6 in Ex.B, which reads "we started living in the said land since 19 years ago, that is 5 years before influenza of 1918", he denied it. I see no reason to doubt the truth of the statement in Ex.B which emanated from the Defence. I disbelieve the Defendant Ikanyowu when he now states to the contrary. I also have in mind the evidence of the 3rd Defence witness Nwokeke Nwafor when he said "about 40 years ago some of the Defendants lived on one side of the Uvunu - some on the other. He then went on to say that it was the influenza epidemic (which seems widely recollected) that caused the final migration from old Umuodu to the present site. I accept this.

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30. I find the Defendants did migrate from the old Umuodu village east of the Uloko or Uvunu and settle on the present Umuodu site, and that this migration

was gradual, concluding at the time of the 1918 influenza epidemic.

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31. I have now to deal with the most important question of all - tribute - but before doing so I will summarise the findings up to the present. They are as follows:-

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(a) The war was fought between Awka and Norgu.

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(b) The pre-war boundary between Norgu and Defendants was the Uloko or Uvunu River.

10 (c) The Norgu were driven out.

(d) Infiltration for farming purposes was gradual, each village farming ex-Norgu land adjacent to it.

(e) The Defendants over a period of years gradually moved from the old Umuodu village east of the River to the present site.

(f) The move was finally completed at the time of the influenza epidemic.

20 32. Now on this question of tribute, there are discrepancies, exaggeration, and on the Defence, a complete denial, so I must examine the evidence of each witness and assess its value, bearing in mind that the onus is upon the Plaintiffs to acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that they were exclusive owners. If it is established that tribute in respect of this land was paid by the Defendants to the Plaintiff in
30 acknowledgment for farming and dwelling thereon, and that this tribute was paid until recent years, then that would be sufficient to enable the Plaintiffs to succeed, but the evidence of tradition in that the land was conquered in ages past is not in itself enough to warrant the Plaintiffs obtaining the declaration of title which they seek. I agree with Counsel for Defendants when he stated in his closing address that the case depends on tribute.

40 33. The Plaintiffs case as regards this is that tribute was received. Evidence is adduced that tribute was brought to the house of Obuokezie, from

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there it was conveyed with some ceremony to the house of Ifeoma, and there distributed among the Elders. The tribute, say the Plaintiffs, is first received by the age group of which the Plaintiff Nwefe Nwude, the 4th witness Nwonyekwelu and the 5th witness Muonwuba are members. This age group, says the 8th witness Onwuaso, an Elder of Awka, is the executive body responsible to the Elders for the management of the people.

34. Here I might mention that I regard it as regrettable that each side chose to present to the Court as witnesses worthy of credence persons charged and convicted of corruption. Each side evidently regarded these witnesses as important for they are witnesses called immediately after the Plaintiff and Defendant respectively. I refer to the witness Nnaemegwo Okoye and the 2nd Defence witness Muofunanya Okeke, the latter also admitted 2 previous convictions for stealing. I do not say that previous convictions render inadmissible or unbelievable the evidence of a witness, but convictions for corruption and dishonesty are bound to detract from the credence that may be attached to the testimony of such witnesses. Nor do I understand how the 2nd Defence witness Muofunanya Okeke can remain an Elder of the Defendants' village Umuodu.

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35. However, to return to the question of tribute. The Defendants' case is that they had never paid tribute, and that they have exercised acts of ownership over the land in dispute by letting plots to strangers and neighbours.

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36. Now these acts of letting land to strangers need examining. At first I found it most difficult to apprehend that a community like the Defendants could exist on some 600 acres and let out the areas described by the 4th Defence witness Francis Okeke, the 5th Defence witness Nwonu Orekei and the 6th Defence witness Udekwu Agbata; then I appreciated that there was no evidence as to how far the Defendants land extended east of the River Uloko or Uvunu, and furthermore these witnesses did not appear to have farmed them recently or ever very regularly.

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37. The 5th and 6th Defence witnesses Nwonu Orekei and Udekwu Agbata are both related to Defendants

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people, and on this account the former only once paid a rent, while the latter did not mention any such payment having been made by him. The evidence given by the witness Francis Okeke of the sale of a piece of land to Ndufuechi whose daughter, according to the witness Maduka married a man of the Defendants' village Umuodu, is not very satisfactory; to begin with it is difficult to reconcile this considerable area within the land in dispute; secondly when, if at all, did this sale occur? Ndufuechi's relation, the 4th Defence witness Francis Okeke, could not be sure whether it was 1907 or 1917; the 2nd Defence witness Muofunanya Okeke, whose age I estimate at 50, said in evidence, "I grew up and found Ndufuechi on the land"; while the Defendant Ikanyowu, who is a man of middle age, said it was a long time ago. I think that while it is probable that Ndufuechi did farm, some land in the area in dispute there is insufficient satisfactory evidence to decide in what circumstances he came so to do.

38. In my view although acts illustrating ownerships are important, they are not in this case of paramount importance. No witness for the Plaintiffs would admit any knowledge of them, and I think that even if they did occur, and even if they were within the knowledge of the Plaintiffs, they cannot have an overwhelming bearing on this case. Assuming for the moment that the Defendants did pay tribute, I doubt if any objection would be taken to the letting or sub-letting of any part of the particular land. As regards the sale I cannot be sure of it, more especially as the 4th Defence witness Francis Okeke admitted in cross-examination that if the Plaintiffs succeed the land which he apparently holds in trust for his nephews will be lost, and that although this case is of long standing he has never done anything to identify himself with it. This witness is an ex-Police Constable and not so unsophisticated as others who gave evidence.

39. As I have already stated the deciding factor in this case is the payment of tribute. The Plaintiffs call, in addition to Chief Nwefe Nwude, the 4th witness Nwonyekwelu, the 5th witness Muonwuba Anisi, the 6th witness Maduka (who is of the Defendants' village Umuodu) and the 8th witness Onwuaso. They all swear that the Defendants paid tribute

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regularly and from time immemorial. They each give the tribute as £1, or its worth in cowries, a goat, 100 yams, and the last three also mention palm wine.

40. These five witnesses comprise three members of the age group discussed in paragraph 33 above, an old man from the Defendants' own village, and an Awka Elder.

41. Now the members of the age group are virtually the Plaintiffs in this case and would be expected to corroborate each other, but the 8th witness Onwuaso is a very old man who gave his evidence in a manner obviously truthful. His evidence conflicted with that of the others in that he said he had received no tribute for a number of years, while the "age group" witnesses maintained it had been paid, except for a break about 1932 when the case Exhibit 'B' was tried, up to three years ago. I also noted that the 8th witness Onwuaso said that if the Defendants had brought tribute he would have been cognisant of it and would have shared it.

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42. But the outstanding witness in favour of the Plaintiffs was the 6th witness Maduka. As Counsel for Plaintiffs said in his closing address this witness gave his evidence with dignity. I agree; he is full of years and comported himself with self-respect and candour. The Defence attacked his evidence strongly on the grounds that he had a grudge against his own village because when the 7th Defence witness Tabansi failed in an action (Ex.D) the witness Maduka said "Since you don't want to fight for this land, I will be on the side of Awka if there is a dispute". Maduka was not a party to this action, and he said in cross-examination he was not present in the Mbanese Native Court when it was heard, and Ex.D supports this, but he admitted farming in that vicinity and he said that as it had been decided that he had farmed when he should not, he abided by the decision and uprooted his crops and left. It is too far fetched to hold that because of this incident Maduka would turn against his native village and commit deliberate perjury. What could he gain? The Defendant Ikanyowu said in cross-examination that Maduka had been bribed by money and the offer of a house to testify as he did; it is notable that this was never put to the witness Maduka; I cannot accept it. I watched closely the witness' demeanour and I believe his testimony. He

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was emphatic that the land in dispute was part of the old Norgu land which Awka conquered, and he described how Umuodu farmed it and paid tribute.

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10 43. The Bonafides of the witness Maduka were also attacked through Ex.C, which is an action by the 2nd Defence witness Mofunanya Okeke against Maduka and 2 others to try and obtain money from them to finance the legal expenses of this suit. It very properly failed, and the witness Maduka explains adequately in his evidence therein, and I note it is consistent with the evidence he has given in this Court; that as soon as he understood the purpose of the levy he declined to subscribe. So, according to Exhibit G, did two others. Incidentally, although I am not influenced by this Exhibit in my findings, the record makes pertinent reading.

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20 44. Before going further I wish to deal with Exhibits D and E. The Plaintiffs say with some data that in paragraph 4 of the Defence the land in dispute is named by the Defendants as Arira Aguejim. Exhibit D claims land in Arira Aguejim; during the case the following questions and answers are relevant; they are put by the Native Court to the Plaintiff Tabansi (in this case the 7th Defence witness):

"Q. Is the Arira Aguejim belonging to your father only or your family?

A. It belongs to our town in general.

30 Q. Do you take action on behalf of your Townspeople or you only?

A. For the Townspeople."

The case is dismissed, e.g. the Mbanese Native Court held that Arira Aguejim did not belong to the Defendants.

40 45. The Defence say Tabansi made an honest mistake; he thought he was farming on the north (or north west) of the boundary running through the Ebenebe tree whereas in fact he was just south. But was he? I have read Ex.D with care. It is impossible to ascertain to what precise piece of land it refers. I observe the Reviewing Officer writes "They (referring to Umuodu Elders) stated the

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Ebenebe tree does form the boundary at one end but that there is a dispute in the question (Umuodu) as to the line from Ebenebe tree".

46. But what this case does illustrate is the unreliability of the witness Tabansi. Nearly every extract from Ex.D put to him in cross-examination he denied. In Ex. E and in cross-examination he admitted that the District Officer had advised him to make sure he was not trespassing before he commenced litigation, and now he says he thought the land was on the right side of the boundary. This is a witness who comes to testify as to a boundary which he is not sure of.

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47. More irresponsible still is 2nd Defence witness Moufuanya Okeke, who I have already mentioned as an ex-convict; he gave evidence in Ex.D to the effect that Tabansi (7th Defence witness) had farmed within Defendants (Umuodu) land. In this case he wishes me to believe that he gave this evidence on the witness Tabansi's description of the land and that he himself had not visited it. In re-examination 2nd Defence witness Moufuanya Okeke said the land Tabansi was farming was 40 yards from the Ebenebe tree, that is less than 1000 yards from Umuodu village, yet he asks me to believe he went to Mbanese Native Court to give evidence as to the site of land he had never seen. I can believe little if any of the evidence given by this witness.

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48. As regards the evidence given by the 6th Defence witness Udekwu Agbata as to farming ex-Norgu land without tribute, I do not believe it. I am satisfied that the witness lied.

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49. I think there can be no doubt that following the review of the 1936 case (Ex.B) the general impression was that annulment of the Judgment of the Awka Native Court meant that this land now in dispute was vested in the Defendants. The Defendant Ikanyowu admitted this in cross-examination, although at first he was evasive and it was necessary to write down the question and answer before his reply could be recorded.

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50. Now every witness for Awka who was in a position to speak with authority, together with the 6th witness Maduka, said that when the Defendants definitely moved their village on to the land in question

their tribute to Awka was increased from £1 to £2, but the 8th witness Onwuaso, whose evidence I accept, said that although this sum was asked the Defendants had never paid it, and mindful of the exaggeration so prone in cases of this nature, I cannot be sure that tribute was in fact paid after the dispute resulting in the case Ex.B. It is for the Plaintiffs to satisfy the Court that it was paid, and on this point I am not convinced.

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10 51. On the other hand the evidence that tribute was paid up to that time i.e. 1932 is in my view, established. The 5th witness was a person who gave evidence with a sense of responsibility and fairness. He was not vindictive; he said, and in this he was corroborated by the Umuodu man, Maduka (6th witness), that all that was sought was for the Defendants to continue as their fathers had in years past. He (5th witness Muonwuba) said that he had
20 according to his reckoning, some 11 years ago when there was the case (Ex.B). I accept this.

52. I keep well in my mind that it is for Plaintiffs to prove the payment of this tribute, but I am also mindful that on this point the Plaintiffs produce five witnesses whose evidence I accept, while apart from the Defendant Ikanyowu no person from Umuodu testifies to the contrary except the ex-convict Moufunanya Okeke (2nd Defence witness) who is capable of any misrepresentation, and the 7th
30 Defence witness Tabansi who, as I have said, is unreliable.

53. Thus at last we reach the issue, if tribute has been paid in respect of this very land in dispute, as the 6th witness Maduka maintained, up to 1932 when dispute arose, does that afford sufficient evidence to justify a declaration of title?

54. I think it does. I have seen and heard the witnesses and essayed the value of the evidence tendered. I find as a fact that tribute was paid
40 in respect of land which covered this land in dispute up to 1932 and that this is sufficient to warrant the Plaintiffs being given the declaration of title sought.

55. I have used deliberately the phrase "in respect of land which covered this land in dispute", because

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the evidence upon which I rely is to the effect that no particular limit was fixed to the area on which Defendants by paying tribute might farm. As the witness Maduka said "We (meaning Umuodu) farmed together with Awka", and although he also said that the tribute was for the very land in dispute I do not think there was any exact boundary, at all events to the South. The tribute was paid for a general permission to farm with the Awka people on the former Norgu land adjacent to Umuodu.

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56. In deciding this case I have had reference to the case of Kwamina Kirma versus Kofi Kuma reported in 2 WACA page 178 and in 4 WACA page 4. I should also state that I have not been influenced by any expression of opinion or judgment given in any exhibit; I have come to my conclusions solely on the evidence before the Court.

57. In conclusion I should refer to Ex. C in which I observe that in paragraphs 9 and 10 the Resident made a very proper effort to achieve finality by requiring that proceedings should embrace all Agu-Norgu (para.9(1)), and it was for all this land that the declaration of title was sought when the cause was transferred to this Court (see paragraph 3 above). Later according to page 7 of the suit file the Resident put forward in his memo. No. O.P.349/351/49 dated 2.2.42 a request emanating from the District Officer, Awka, and I note that at page 9 of the suit file the Resident's memorandum under reference was replied to in Memorandum No. 0/13/1941/9 dated 5.2.43 in which it was stated that any party concerned would be afforded ample opportunity to safeguard his own interest. I have no doubt this was done. Nevertheless the result of this case may not accomplish the desired end, that is the ownership of the land Agu-Norgu shown on the plan Ex.A and verged red. It can only grant declaration of title to that land verged yellow in Ex.A, a comparatively small tract of land comprising 614 acres, some 4 or 5 miles distant from Awka.

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58. Counsel for Plaintiffs have assured me that the Defendants will be left in undisturbed possession provided that tribute is paid. Indeed in view of the judgment in the case of Chief Uwani v. Nwosu Akom & ors reported in 8 N.L.R. page 19, I doubt if their possession could easily be disturbed. But a nominal tribute is sought, and I counsel each side to meet

in good will and in acceptance of this judgment to assess this tribute which I suggest is £1 payable annually on March 1st each year, the renewal to have effect from 1.3.44 with no retrospection. I also urge the parties to farm together in the spirit whereby if a hoe is forgotten it can be collected on the morrow (vide evidence of 6th witness Maduka), but if that co-operation is impracticable then I refer to Counsel for Plaintiffs undertaking to do his best to arrange that Defendants farm all Agu-Aralla.

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59. I now give judgment for the Plaintiffs and grant to Chief Nwefe Nwude on behalf of himself and the Chiefs and people of Awka a declaration of title to all that piece or parcel of land known as Agu Aralla forming part of the land known as Agu Norgu and more particularly described and delineated and edged yellow on the plan Ex.A which is hereby incorporated in this judgment.

60. I order Exhibits B, C, D, E, and G to remain in the custody of the Court.

Costs: Plaintiffs are awarded costs assessed at 25 guineas.

(Sgd.) GRAHAM CALLOW

Assistant Judge
Awka, 19.3.43.

NOTE: I have assessed the costs at this very low figure, in comparison to the expenses of the Plaintiffs, because I wished to name a sum within paying capacity of the Defendants. If a sum higher had been assessed it might mean that by economic pressure, i.e. Fi Fa, the Plaintiffs would effect what they have elected to withhold - the ejection of the Defendants. If a writ of Fi Fa does issue it can, I think, only run against the movable property of the Defendants. Plaintiffs are wealthy and numerous, the Defendants poor and few. Furthermore there is not unanimity in Umuodu (Defendants' village) vide Ex.G.

(Intld.) G.C.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

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

HOLDEN AT AWKA

Suit No.0/13/1941

CHIEF NNEBE NWUDE for himself and)
the people of Awka ...) Plaintiffs

a n d

CHIEF IKANYONWU for himself and)
the people of Umuodu Okpuno) Defendants 10

MOTION EX PARTE

TAKE NOTICE that on a day and hour to be fixed
by the Registrar, this Honourable Court will be
moved for an order for leave to appeal to the West
African Court of Appeal against the Judgment of the
Honourable Court delivered on the 19th day of March,
1943.

Dated this 9th day of June, 1943.

(Sgd.) E.N. Egbuna

Solicitor for the Defendants. 20

The Registrar,
High Court,
Onitsha.

Defendants' Address for service:

Chief Ikanyionwu,
c/o Mbanese Group Court,
Awka, Division.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-AWKA DIVISION
HOLDEN AT AWKA

Exhibits

"A"

Suit No. 0/13/1941

Proceedings of
Court in Case
No. 0/13/41.

CHIEF NNEBE NWUDE for himself and)
the people of Awka ...) Plaintiffs
versus
CHIEF IKANYIONWU for himself and)
the people of Umuodu Okpuna) Defendants

25th January
1954 -
continued.

10

AFFIDAVIT OF CHIEF IKANYIONWU

I, Ikanyionwu of Umuodu Okpuno make oath and say as follows:-

1. That I am a Chief and Elder of the Umuodu Okpuno and represent the people of the said Umuodu Okpuno.
2. That I was defendant in the above-named suit in which Chief Nnebe Nwude, representing himself and the people of Awka claimed as against the People of Umuodu Okpuno Declaration of title to Agu Aralla land in Awka Division. The Plaintiffs also claimed Damages and Injunction.
3. That the above-mentioned suit was heard and determined by this Honourable Court. On the 19th day of March 1943 this Honourable Court delivered judgment granting the plaintiffs the declaration sought.
4. The defendants the people of Umuodu Okpuno whom I represent are dissatisfied with the said judgment and desire to appeal to the West African Court of Appeal.

20

30

Ikanyionwu his right thumb impression.

Deponent.

Sworn in the Chambers of the Magistrate's Court Onitsha the foregoing having been duly interpreted in Ibo by A.C.P. Abomeli who thereafter expressed himself as understanding the same thereafter made his mark in the presence of J. Ngo. Chukwurah. D.R.

Before

G.F. Dove-Edwin
Magistrate
Commissioner for Oaths.

40

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON, Judge
THE 11th DAY OF JUNE, 1943.

Suit No. 0/13/1941

Chief Nnefe Nwude on behalf of himself)
and the Chiefs and people of Awka)

versus

Chief Ikanyonwu for himself and as)
representing the people of Okpuno.)

10

Motion Exparte for an Order for Conditional
Leave to Appeal to the West African Court of Appeal.

Egbuna for Defendants moves.

W.A.C.A. Rules; Rule 12.

Conditions:-

- (1) Deposit £15 cost of record.
- (2) Security by bond in 50 guineas 2 sureties
to satisfaction of Registrar.
- (3) Notice to plaintiffs.

20

All within one month.

(Sgd.) H. Waddington J.
Onitsha, 11 - 6 - 43.

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

HOLDEN AT AWKA

Suit No. 0/13/1941

Chief Nnebe Nwude for himself and)
the people of Awka ...) Plaintiffs
versus

10 Chief Ikanyionwu for himself and)
the people of Umuodu Okpuno) Defendants

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

- To: 1. The Registrar,
High Court, Onitsha.
2. Chief Nnebe Nwude,
Plaintiff-Respondent, Awka.

NOTICE OF APPEAL

20 Please take Notice that leave to appeal to the
West African Court of Appeal in the above-named
matter has been granted by the High Court sitting
at Onitsha and that the conditions of appeal imposed
have this day been fulfilled.

Dated and filed at Onitsha the 9th day of July,
1943.

(Sgd.) E.N. Egbuna
Solicitor for Defendant-Appellant

IN THE WEST AFRICAN COURT OF APPEAL

Bond for Costs on Appeal.

30 KNOW ALL MEN, by these presents, that we 1. Chief
Ikanyionwu of Umuodu Okpuno and Mofunanya Okeke of
Umuodu Okpuno and Ndife Nwokoye of Umuodu Okpuno
are jointly and severally held and firmly bound to
Joseph G. Mathison Chief Registrar of Lagos in the
sum of Fifty-two pounds ten shillings (£52.10/-) of
lawful money to be paid to the said Joseph G.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Mathison, his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole our and every of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals.

Dated the 9th day of July in the year of our Lord, 1943.

WHEREAS a suit is now pending in the Court at Lagos wherein the above-bounden Chief Ikanyionwu is Defendant-Appellant and the said Chief Nnife Nwude is Plaintiff-Respondent;

10

AND WHEREAS a judgment was given by the Court therein, on the 19th day of March 1943 for the said Plaintiff and the said Defendant has applied for leave to appeal from the said judgment;

AND WHEREAS it is by law provided that the party appealing shall give security to the satisfaction of the Court below for all such costs as may be awarded to any respondent by the Court;

20

AND WHEREAS the above-named Mofunanya Okeke and Ndife Nwokoye, at the request of the said Chief Ikanyionwu have agreed to enter into this obligation for the purposes aforesaid;

NOW the condition of this obligation is such, that if the above-bounden Mofunanya Okeke and Ndife Nwokoye, any or either of them shall pay unto the said Chief Registrar, his executors, administrators or assigns the costs of the said appeal as the Court shall order, then this obligation shall be void, otherwise remain in full force.

30

Signed, sealed and) Mofunanya Okeke (L.S.)
delivered in the) Chief Ikanyionwu (L.S.)
presence) Ndife Nwokoye (L.S.)

P.E.G. Achikeh
Registrar, 9/7/43.



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

HOLDEN AT ONITSHA

Suit No. 0/13/1941

CHIEF NNEBE NWUDE for himself and
 the people of Awka ... Plaintiffs

versus

10 CHIEF IKANYIONWU for himself and
 the people of Umuodu Okpuno Defendants

MOTION (EXPARTE) FOR FINAL LEAVE

TAKE NOTICE that on a day and hour to be fixed by the Registrar, this Honourable Court will be moved for an order for Final Leave to Appeal to the West African Court of Appeal, in accordance with Rule 13 of the West African Court of Appeal Rules 1937.

Dated and filed at Awgu this 17th day of July, 1943.

20 (Sgd.) E.N. Egbuna

Solicitor for the Defendant-Appellant

The Registrar,
 High Court Registry,
 Onitsha.

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

HOLDEN AT ONITSHA

Suit No. 0/13/1943

30 CHIEF NNEBE NWUDE for himself and
 the people of Awka ... Plaintiffs

versus

CHIEF IKANYIONWU for himself and
 the people of Umuodu Okpuno Defendants

Exhibits

"A"

Proceedings of
 Court in Case
 No. 0/13/41.

25th January
 1954 -
 continued.

Exhibits

AFFIDAVIT IN SUPPORT OF MOTION FOR FINAL LEAVE

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

I, ERNEST NWANOLUE EGBUNA, Legal Practitioner
residing at Onitsha in the Southern Province of
Nigeria make oath and say as follows :

That I represent the defendant-appellants in
the above matter.

2. That on the 11th day of June 1943 conditional
Leave to appeal to the West African Court of Appeal
was granted to the said defendant-appellants by this
Honourable Court.

10

3. That the conditions imposed by this Honourable
Court have been fulfilled within the time specified
and Notice of the said appeal filed for service on
the plaintiff-respondents on the 9th day of July
1943.

(Sgd.) E.N. Egbuna
Deponent.

Sworn at the Registry of the Magistrate's Court
Onitsha this 15th day of July, 1943.

Before me

20

G.F. Dove-Edwin
Magistrate-Onitsha-Awka Area.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON, Judge
THE 5th DAY OF AUGUST 1943.

0/13/1941

Egbuna applies under rule 13 for final leave.

Motion filed 17-7-43.

30

Conditions as above perfected.

Registrar has pointed out that cost of record
was under-estimated and should have been £40 instead

of £15.

Motion adjourned; to be brought again when this balance of £25 has been paid.

(Sgd.) H. Waddington J.
Onitsha, 5-8-43

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA DIVISION

Suit No. 0/13/41.

10 BETWEEN: CHIEF NNEBE NWUDE on behalf
of himself and the Chiefs
and people of Awka: Plaintiffs-Respondents

A N D

CHIEF IKEANYONWU for himself
and representing the people
of Okpuno: Defendants-Appellants.

NOTICE OF MOTION WITH AFFIDAVIT
IN SUPPORT

20 TAKE NOTICE that this Honourable Court will be
moved at Awka on Wednesday the 8th day of December,
1943, at the hour of 9 of the clock in the forenoon
or so soon thereafter as Counsel for the above-
named Plaintiff-Respondent can be heard for an
Order striking out the Appeal for want of prosecu-
tion and for any further order as to the Court may
deem necessary to make.

Dated at Onitsha this 29th day of November,
1943.

(Sgd.) S.B. Rhodes
Solicitor to Plaintiffs-Respondents

Exhibits

"A"

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

Proceedings of
 Court in Case
 No. 0/13/41.

 25th January
 1954 -
 continued.

Suit No. 0/13/41.

BETWEEN:

CHIEF NNEBE on behalf of)
 himself and the Chiefs and)
 people of AWKA ...) Plaintiffs
 Respondents

and

CHIEF IKEANYONWU for himself)
 and representing the people)
 of Okpuno ...) Defendants
 Appellants

10

AFFIDAVIT OF CHIEF NNEBE NWUDE

I, NNEBE NWUDE, Chief of Awka, Farmer and
 Trader, British Protected Person, residing at Awka
 make oath and say as follows:-

1. That I am the Plaintiff-Appellant in the above case.
2. That the action before the High Court of Onitsha was for Declaration of Title to land known as AGWUWOGWU. 20
3. That on the 19th day of March, 1943 judgment was entered in my favour with twenty five guineas costs.
4. That on the 11th day of June, 1943 the Defendants-Appellants being dissatisfied with the said judgment applied to this Honourable Court for Conditional Leave to Appeal to the West African Court of Appeal and conditions were imposed. 30
5. That in the month of July, 1943 I had served upon me a Notice Appeal copy of which is attached to this Affidavit and marked "A".
6. That as a result of the Notice of Appeal I had to brief Counsel to represent me in Lagos.
7. That it is now over five months since the conditions were imposed and they have not been fulfilled.

NNEBE NWUDE his mark

The foregoing having been first interpreted in Ibo language to the deponent when he seemed perfectly to understand the same before making his mark thereto.

D.N. Okoli
Sworn Interpreter.

Sworn at the Office of the Magistrate Onitsha this 29th day of November, 1943.

Before me
G.F. Dove-Edwin.
Magistrate Full Power.

10

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Ex."A"

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

HOLDEN AT AWKA

Suit No. 0/13/1941

CHIEF NNEBE NWUDE for himself and
the people of Awka ... Plaintiffs

versus

20 CHIEF IKANYIONWU for himself and
the people of Umuodu Okpuno Defendants

To: 1. The Registrar, High Court, Onitsha.
2. Chief Nnebe Nwude, Plaintiff-Respondent, Awka.

NOTICE OF APPEAL

30 Please take Notice that leave to appeal to the West African Court of Appeal in the above-named matter has been granted by the High Court sitting at Onitsha and that the conditions of appeal imposed have this day been fulfilled.

Dated and filed at Onitsha the 9th day of July, 1943.

(Sgd.) E.N. Egbuna
Solicitor for Defendant-Appellant.

This is the Exhibit marked "A" referred to in the affidavit of Chief Nnebe Nwude, sworn to this 29th day of November 1943.

Before me
G.F. Dove-Edwin
MAGISTRATE FULL POWERS, ONITSHA.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT AWKA

BEFORE HIS HONOUR HARRY WADDINGTON, Judge
THE 9th day of DECEMBER, 1943

0/13/1941

CHIEF NNEBE NWUDE on behalf of himself
and the Chiefs and people of Awka:
Plaintiff-Respondents.

versus

10

CHIEF IKANYONWU for himself and as representing
the people of Okpuno: Defendant-Appellants

Motion on Notice for an Order striking out the
Appeal for want of prosecution.

Rhodes moves for Plaintiffs.

Rhodes: They were ordered to complete deposit of
£40 cost of record, by paying a further £25, on the
5th August.

Nothing heard of the matter since.

Applies to strike out.

20

Appellant Ikanyonwu in person.

He has brought the £25 with him this morning.
Motion for final leave previously filed.

Motion now renewed by Defendant-Appellant in
person for final leave under W.A.C.A. Rule 13.

Rhodes agrees - subject to reasonable costs.

Order: Time for fulfilment of conditions extended
under Rule 12(1) up to and including today.

Final leave granted. Costs 7 guineas to
respondents.

30

(Sgd.) H. Waddington J.
Awka, 9.12.43.

IN THE WEST AFRICAN COURT OF APPEAL

Exhibits

"A"

BETWEEN:

CHIEF NNEBE NWUDE for himself
and the people of Awka

Plaintiff
Respondents

Proceedings of
Court in Case
No. 0/13/41.

versus

CHIEF IKANYIONWU for himself and
the people of Umuodu-Akpuno

Defendant-
Appellants

25th January
1954 -
continued.

10 The Appellants being dissatisfied with the judgment of the High Court delivered on the 19th day of March 1943, and having obtained final leave to Appeal therefrom dated 9th day of December 1943, hereby Appeals to the West African Court of Appeal upon the grounds hereinafter set forth.

Grounds of Appeal

1. That the issue before the Court below had previously been disposed of in favour of the defendant-appellants. It was 'Res Judicata'.
- 20 2. In view of the express opinion of the learned trial Judge to the effect that the question of tribute was of the utmost importance and the foundation upon which the plaintiffs' case rested and the fact that the evidence adduced by the plaintiff and his witnesses in proof of the alleged payment of the said tribute was admittedly of a contradictory and unsatisfactory nature, the plaintiffs claim ought to have been dismissed on Non-Suited.
- 30 3. The onus of proof of clear title which rested on the plaintiffs was not discharged by the plaintiffs as the evidence adduced by the plaintiff and his witnesses in support of the claim was contradictory, conflicting and insufficient to grant a Declaration of Title.
4. The judgment erred in law and fact in that it was founded on traditional evidence which was in its very nature unreliable and inconclusive.
5. The judgment erred in that it was influenced to

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

a large extent by the theory that because the second defence witness Mofunanya Okeke had been tried and convicted for corruption and dishonesty, his testimony was automatically tainted unreliable and unworthy of credence.

6. Misdirection. The learned trial Judge mis-directed himself in the following passages of the judgment:
- (a) "I have directed myself against the temptation, after viewing the land, to become a witness, but I do not think it improper to refer to Ex.A, from which it will be seen that no natural boundary exists to the South of the land in dispute, whereas to the North and to the East the rivers form natural boundaries between what I have found to be Norgu, Isu and the land of the Defendants, Umuodu-Okpuno." 10
- (b) "In my view although acts illustrating ownerships are important, they are not in this case of paramount importance. No witness for the plaintiffs would admit any knowledge of them, and I think that even if they did occur, and even if they were within the knowledge of the plaintiffs, they cannot have an overwhelming bearing on this case. Assuming for a moment that the Defendants did pay tribute, I doubt if any objection would be taken to the letting or sub-letting of any part of the particular land." 20 30
7. The Court below erred in that it failed to strike out or dismiss the Claim for Injunction although the plaintiffs had already intimated that they did not wish to pursue it and the Court had found that had the Claim been persisted in, it could not likely have succeeded.
8. The judgment erred in that it attached greater weight than it deserves, on the evidence the plaintiffs witness MADUKA, who was admittedly biased and prejudiced against the defendants' cause. 40
9. The judgment of the Court below was unjust, harsh and inequitable and was not supported by the evidence before the said Court below.

10. The verdict was against the weight of Evidence.

Exhibits

11. Judgment otherwise erroneous in law and fact.

"A"

Dated and filed at Onitsha this 16th day of December 1943.

Proceedings of Court in Case No. O/13/41.

(Sgd.) E.N. Egbuna
Solicitor for the Defendant-Appellants

25th January 1954 - continued.

Exhibit "B" put in by the Defendant by consent in suit O/13/41 Chief Nnebe Nwude etc. versus Chief Ikanyonwu etc.

10

(Sgd.) J.G.U. Bosah
Sessions Registrar.
(J.B.2/31 Page 376) 3/3/43.

In the Native Court of Awka on 13/6/32.

Case No. 95/32.

Chief Onwura 2.Obuora 3.Ofodile 4.Nnana Nwanyenta
Nwanodile 6. Agbata 7.Owele 8.Nnara Nibo 9.Onubiyi
10.Okam 11.Nwankwo 12.Okoye 13.Nneke 14.Uchendu
15.Okpalekwo 16.Okafor 17.Ajuora 18.Ilogwe
19.Oguocha 20.Ahiegbunam 21.Nwokolo 22.Emmanuel Ilo
23.Okoli.

20

Nwosu Adigwe on behalf of Awka.

versus

1. Ilenyennwa on behalf of Umuodu Okpuno.
2. Ifejimali " " " " "

Claim:- To appear before the Court to show cause why you should not quit from our land Agu-Norgu, dispute arose since 5 years ago.

Claim not admitted.

Plaintiff states:-

30

I am a native of Awka. I am speaking on behalf of the whole Awka, we took action against the Defendants Quarter Umuodu-Okpuno to quit from our land; we know where the Defendants live before,

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

but now left their compound and went and settled in our land named Okpuno-Ibe-Nwafude and Igwebike of Awka, but the land was called Agu-Arala. Norgu formerly drove Arala town away and owned their land, then after Norgu had murdered Awka man, Awka drove Norgu away and owned their lands including Arala's land.

We then sent message to the Defendants at the first time not to live in that land, they replied that Arala is called Arala Aguejim. We then went for the second time warning them not to live in our land, they started scolding against us hence we reported the matter to our elders who told the Defendants that Arala town were driven away by Norgu people hence the Defendants left calling the land Arala Aguejim and calling the land their own land. If the Defendants Quarter Umuodu purchased the land from Awka man, they must tell us to ask the man to return our land.

10

Q. by No.2 Defendant:- Both Nwafude of Awka and yourself. Who is the senior?

20

Ans:- Nwafude is the senior and I gathered the information of this land from him.

Q. by No.2 Defendant:- Are we paying rent to Nwafude while there is no Government or that Nwafude is paying rent to us?

Ans:- Nwafude was staying in the very land and paid rent to no body.

Q. by No.2 Defendant:- Are you paying rent to us on the said land up to last year or not?

30

Ans:- The reason why I include No.1 Defendant is that he knew his father Igweze who used to bring his people with a goat 20/- worth of Cowries and palm wine to Okafor Ukwa's house who is to call the whole Awka to divide them as yearly rent paid to us by your people Umuodu.

Q. by Chief Nweke:- What is the boundary between Awka and Okpuno-Umuodo?

Ans:- Yes, along Uloko river.

Q. by Chief Oguocha:- Can you show where Nwafude of Awka stayed in the said land? Ans:- Yes.

40

Q. by Chief Nwankwo:- Since the Defendants started living in the said land, had you ever sent a message to them to quit from the land?

Ans:- Yes, more than 5 or 6 times, as I said in my statement.

Q. by Chief Okafor:- How many years now did the Umuodu started living in the said land?

Ans:- About 20 years ago, after the arrival of Government.

10 Q. by Chief Okafor:- Why you never take action against them?

Ans:- They are playing means as they are the Doctors hence we are postponing the action till now.

Q. by Chief Ilogwe:- Can you swear that none of Awka man paid rent to Defendants in the said land?

Ans:- I will swear that I never paid the rent and that the land belonged to Norgu. Norgu people had showed us the boundary of the said land.

20 Q. by Chief Agbata:- Is it only along Uloko River is the boundary between you and Defendants people?

Ans:- Yes.

Plaintiff's witness Nweke states:- I am a native of Awka the Defendants were living in our land and we told them to quit, they refused we sent for them for the second time they refused. We again sent to No. 1 Defendant's house this year and told him to warn his people to quit from our land they refused. Hence we summoned them.

30 Nwafude of our town had lived there Onwugbolu Udoba the same. We are calling there Norgu land, because Norgu drove Arala away from the said land.

Norgu got boundary with Defendants people along Uloko river. Norgu drove Arala and owned their land and we drove Norgu and owned their land together with Arala's land.

Q. by No.2 Defendant:- The time that Awka drove Norgu are our father living?

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Ans:- Yes, they lived in their compound and after all they removed to our land about 20 years ago.

Q. by Chief Ilogwe:- Can you swear that Defendants people never leased the very land to Awka man and he paid rent to them?

Ans:- I will swear that the boundary is along Uloko river, but did not know anything about rentage.

Q. by Chief Agbata:- Can you swear with 6 persons from Ezinato-Awka that where Defendants lived belonged to you?

10

Ans:- I will be among the persons who will take the oath.

Q. by Chief Agbata:- Can you please if 7 men from Defendants people swear that the land belonged to them?

Ans:- No.

Q. by Chief Oguocha:- Do you know the number of your people lived there?

Ans:- Yes, 4 men.

Q. by Chief Oguocha:- Can you show their compound in the very land?

20

Ans:- Yes.

Q. by Chief Okafor:- As you said that the land belonged to Norgu formerly has the boundary been shown to you by Norgu people?

Ans:- Yes: Norgu people said that the boundary is along Uloko river.

Q. by Chief Uchendu:- Can you bring Norgu people to be witness that the boundary is along Uloko river and then swear for same?

30

Ans:- We can swear that Norgu people showed the boundary along Uloko river.

No. 2 Defendant states:- I am a native of Umuodu Okpuno, and here by speaking on behalf of the whole Quarter.

What are we as to take the land from Awka.

They knew that the land is ours but trying to take it from us. When there is no Government, we are leasing the said land to late Obilinjo of Awka.

After the arrival of Government we leased the very land to Nwagu Mbada of Awka and he paid the rent, last year we leased the very land to Ezeana of Awka and he paid the rent and brought a fowl.

10 Molokwu Obukwunnwa of Awka the same. The late Chief Molokwu of Awka the same. Nwobuelwe Akwuo of Awka the same.

Ezeanyina of Awka the same, Ezeubani of Awka the same, if we continued counting Awka people that we leased this land and they paid rent to us it will fill this book.

Chief Onwura told us that they will take the land from the conquered towns as the journey roads had closed.

20 When there is a matter between Awka and Amobia the market we leased the land to Ndufu of Amobia why they did not take the land from him Ndufu) as they knew that the land belonged to them. Arize of Amobia the same. Nwafor Okolo of Amobia the same.

30 They are driving us because they are larger than us, when there is no Government, they never claim the said land, we were farming when Plaintiff's people drove Norgu away. The whole Norgu now alive cannot tell the boundary, we are working with our father in the said land, hence we knew the boundary and can swear for same. Norgu had returned twice if any thing is fixed and a person standing where Norgu attempted to settle and see the stick fixed in our town then the land belonged to them. Nwafude that they are no mentioning, showed the land to Nwafude and his wife Nwanma. Ifejilika of Awka is now living in our town, and we showed him the land where he stay, long after they will claim that the land belonged to them. Nwafude 40 brushed a bush in Norgu farm and not in our bush which they are now taking from us by force this year.

Plaintiff told us that we have no school boys

Exhibits

"A"

Proceedings of Court in Case No. 0/13/41.

25th January 1954 - continued.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

nor Christian so they must take this land from us by force that they can state and also decide that if whiteman wanted to ask something he will ask them and not us and that we will not hear what he said. Plaintiff then said that if is impossible the case will take two Ajaghija titles that he will not pay any collection of money before wins the case. We never fixed the boundary with Norgu, if Norgu wanted to show the boundary we would have to be present, Norgu never shew them the boundary, we knew our boundary between us and Norgu also Isu, we started living in the said land 19 years ago, that is 5 years before influenza of 1918.

10

We never knew the town called Aralla but if Plaintiff knew where they stay he may tell the Court.

Awka took the land from Norgu for committing murderer, they are taking our land for Nwarala's name, but we did not know Nwarala and committed no murder.

20

Q. by Plaintiff:- Did you know your father or not?

Ans:- Yes, I knew my father who told me that they are leasing land to Awka, who used to pay rent with tobacco and gun powder.

Q. by Plaintiff:- As you know your father when did he tell you that they started living in the said land?

Ans:- Since long my fathers still farming there and after the driven of Norgu we still farming there.

Q. by Plaintiff:- Is your father alive when Norgu people were driven away?

30

Ans:- Yes, my father is alive.

Q. by Plaintiff:- Do you mean your own father or your grand father?

Ans:- Both my father and my grand father were alive when Norgu people were driven away.

Q. by Chief Ilogwe:- After crossed Uloko river, can you show the boundaries between you and Norgu people and swear for same?

Ans:- Yes.

Q. by Chief Agbata:- How many years now did Awka sent the message to you that the land belonged to them?

Ans:- This year they told us, this year they took action against us.

Q. by Chief Ilogwe:- Can you swear that the Awka people that you named farmed the land by your permission and pay rent to you?

10 Ans:- Yes.

Defendant witness Mofunanya 2.Nwokafo Uduahu
3. Nwankwo Okeke state:-

My name is Mofunanya and I am speaking on behalf of myself and other witnesses, we are from the same Quarter with Defendants (Umuodu Quarter). The land is the cause of this matter. Awka people came and said we are living in their land, we said no, we are not living in your land that we are leasing the land to you and you used to bring palm wine to us. Now you turned and said that the land belonged to you. We leased the very land to the following Awka people and they paid the rent in my present. Late Chief Molokwu 2. Nwagu Mbada, 3. Uzoegbo 4. Ezeana, who after paid the rent brought a fowl for we to perform Ava ceremony for him, 5. Anurobu 6. Igboekwe Mobuna 7. Nnadozie 8. Molokwu Obukwanwa 9. Nnadiozie Molokwu 10. Nnayeli's wife 11. Nwosisi 12. Our late father leased the very land to the late Obili for yearly rent. 13. Ezeubani 14.Ezeanyia.

When there is market matter between Awka and Amorbia we leased the very land to Amorbia people viz:- Ndufuechi 2.Oraka 3.Nwafokolo 4.Maduka Obuawo and they used to pay rent to us, which we never send to Awka. They are trying to take the land from us, that the journey had spoiled. We got no boundary with Awka people, we got boundary with Norgu and Isu people, and we know our boundary and can show them. No palaver between us and our land neighbours. Chief Onwura told us that they must take our land from us, that they will drive the whole small towns near them as they are not getting anything on journey.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Q. by Plaintiff:- Is this land in dispute between the whole Okpuno and Awka?

Ans:- No, between Awka and Umuodu.

Q. by Chief Nnana Nibo:- Can you swear with 6 persons that the land in dispute is yours and not Norgu land?

Ans:- Yes, the whole of us will swear.

Case adjd till next Court for the Chiefs to view the land on this coming Saturday and remaining witnesses.

10

Chief Ajuora his x mark

(Sgd.) ? ? Nadi
C.N.C.
13/6/32.

Reopened 27/6/32.

Plaintiff's witnesses:- 1.Obu Nsiegbe 2.Nwosu Nmo.
3.Agulu Chiogu.

My name is Obu Nsiegbe, I am speaking on behalf of myself and other two witnesses, we are the natives of Norgu, the now in dispute the parties belonged to us Norgu, we are told by our father that the boundary between us and Defendants people in the land in dispute is along Uloko River, that while our people were using the said land if any of our people wanted to use the land over Uloko River, he has to take permission from Defendants' people, if Defendants people wanted to make any farm across Uloko River that is in our part, they have to take permission from our people Norgu. Now we have given our own land to Plaintiff's people Awka; who are the right owner of the said our land. In olden time our town Norgu drove Aralla away from the said land and owned their land. This is what our father told us.

20

30

Q. by Chief Owele:- What Quarter of Norgu did you the 3 witnesses belonged?

Ans:- We belonged to Ifiteora-Norgu.

Q. by Chief Owele:- Are you the Ifiteora Quarter who got boundary with the late Aralla?

Ans:- Yes, so our fathers said.

Q. by Chief Agbata to No.1 witness:- Did you know Uloko River?

Ans:- Yes I knew the River called Uloko.

Q. by Chief Agbata:- While Norgu were living in the land now in dispute did Ifiteora got boundary with Okpuno?

Ans:- Norgu got boundary with Okpuno, but my father did not tell me the name of the Quarter who got boundary with Okpuno.

Q. by Chief Agbata to No.1 witness:- Can you swear by adding 6 persons from your town that Norgu got boundary with Okpuno along Uloko River in olden time before the land was given to Awka?

Ans:- Yes, we can swear that the boundary between Norgu and Okpuno is along Uloko River.

Q. by No.2 Defdt.:- What is called Uloko, is it tree or River or juju?

Ans:- A certain River is called Uloko.

No.2 Defdt. added:- Uloko is our juju serving by one Ezinwa of our Town.

Q. by No.2 Defdt:- When Awka drove your town Norgu away from your land are we staying where we stay now?

Ans:- No.

Q. by No.2 Defdt:- Are you only Ifiteora Quarter who will swear by pointing 7 persons or the whole Norgu Town?

Ans:- The whole Norgu people can point 7 men to swear that the land is ours.

Case adjd till next Court for Defdts witnesses.

Chief Agbata his x mark

(Sgd.) ? ? Nadi
C.N.C.
27/6/32.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10

20

30

Exhibits

Reopened 4/7/32.

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Plaintiffs witnesses:- 1.Ochienyi 2.Okeko Okafor
3.Nwokeke Okafor 4.Chidume Anawa 5.Anisiobu Nwafor
6.Nwokefor Onwura 7.Okoye Ifekandu 8.Nwadafor
Onuora 9.Nwanyeli Onwugbolu 10.Onyejekwe Uchendu
11.Maduka Okoy 12.Okeke Egboelo 13.Nnatuanya Nwaja.

My name is Ochienyi, I am speaking on behalf
of myself and other 12 witnesses mentioned above.
We are the natives of Norgu, and the whole Quarters
in Norgu brought two men here only Ifiteora Norgu. 10
The land now in dispute between Awka and Okpuno be-
longed to us (Norgu) from the forefathers who quit
from the said land and handed it over to pltffs
people Awka; we never have land matter with Okpuno
people, the boundary between us and Defdts' people
Okpuno is along Uloko River, during the life time of
our chiefs Nnadozie and Echeazu they have shown this
boundary when there are land matters between Awka
and Osunagidi. Defdts people knew that the land in
dispute is ours and we can swear that the land in 20
dispute formerly belonged to us now belonged to Awka.

Case adjd till next Court for Defdts witness.

Chief Uchendu his x mark

(Sgd.) ? ? Nadi
C.N.C.
4/7/32

Reopened 12/7/36:

Defdts Witness Echendu states:- I am a native of
Umuodu Quarter of Okpuno. The land in dispute
which Awka people are taking from us is our land. 30
The reason why it is our land is because I knew the
people that our fathers leased the land. Our father
usually leased the land to one Obilinjo Oti and he
paid wine and tobacco 2.Uzoegbo Nwokpaocha my own
father leased the land to him. 3.Nwagu Mbada our
father leased the very land where we stay now to him.
4.Omenkpona of Umudioka we leased the very land to
him and he farmed it. 5.Nwamadu Nwugha by title
name Ezeduora we leased the land to him and he paid
the rent before farmed it. 6.Igboekwe Nwabona we 40
leased the land to him in my eyes and he paid wine
and a head of tobacco as rent. I only counting
Umudioka people. 7.late Chief Molokwu we leased the
land to him and he gave us a head of tobacco and

wine before farmed the land. 8. Orogbu Nze of Umu-
egbuno the same.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 We have also leased the said land where we are
now staying to Ndufuechi of Amorbia and he farmed
it and not the pl'tffs people who lease the land to
him (Ndufuechi). Chiama Ekweozo of Umunnya the
same, and this year Awka people began to claim that
the said land belonged to them. Chinwuba Ele of
Umuogbu the priest of Ana juju we have leased the
land to him. Nwokoye Nworagu of Umubele the same,
Nweke Mgbugo the same.

Nwafo Okolo of Amorbia we leased the very land
to him and he paid the rent to us and not to Awka
people. Molokwu Obukwanwa, I was leasing the land
to him for myself and his yam store is in my house.
Arize Nwocha of Amorbia we had leased the said land
to him and he farmed it. The pl'tffs people said
that Uloko is the boundary while Uloko is our juju.

20 Q. by Chief Nnawa Nibo:- While Norgu were living
there have they any stick boundary with Okpuno?

Ans:- Yes, our father told us that Ebenebe tree
which was called Ebenebe Nwigweghu is the boundary
between us and Norgu. Nwigweghu is our country
man.

Q. by Chief Nnoma Nibo:- If the two towns were
fighting and one drove the other away, who will own
the driven people's land?

Ans:- Awka drove Norgu in their land and not in
our (Okpuno) land.

30 Q. by Chief Nweke:- These men that you counted
that you have leased the land in dispute for farm-
ing why even one of them did not come to Court as
your witness?

Ans:- Awka people will not agree to come as witness
and the Court can ask Amorbia people that I mentioned.

Q. by Chief Okoye:- Are you claiming the land that
it belonged to Norgu or to Okpuno?

Ans:- That it belonged to our Quarter Umuodu-
Okpuno.

Q. by Pl'tff:- These people you counted that you are

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

leasing the land to, is it while you are living in your father's compound or after you have removed to Aguarala Norgu now in dispute.

Ans:- We are leasing the land to the mentioned people while staying where we stay now.

Q. by Udekwe:- Can you tell why my late father marries two wives in your town?

Ans:- No.

Q. by Udekwe:- Had your late father ever leased the land to my father Anyaro?

10

Ans:- No.

Q. by Udekwe:- The land in dispute get two names Aguachi which is Aguarala and Okefi land which of the two are you leasing to the mentioned people?

Ans:- We are leasing the land Okefi to the mentioned people we get no land called Aguachi, as by Nnodu Quarter got the land called Aguachi.

Defdts witness Okonkwo Achalla states:-

I am a native of Umuodu Quarter of Okpuno. The land now in dispute belonged to us Umuodu, for the reason that the said land belonged to us hence Awka people used to obtain our permission before farm the said land. They used to give us wine and tobacco before we lease the land to them.

20

The people of Awka which we used to lease the said land some still alive and some not alive. The people who still alive that we have leased the said land are:- 1.Chinwuba Ezeara he gave us wine and tobacco. 2.Nwobuekwe Akwuo of Awka the same. 3. Uzoegbo of Umudioka the same. 4.Chiamo of Agulu Awka the same.

30

We used to lease the same land to another town. We are leasing the land to Ndufuechi of Amorbia since the matter between Awka and Amorbia.

Q. by Chief Nweke:- Who called you as witness?

Ans:- I heard that D.O. said that he who bought the land from Okpuno or he who was farming Okpuno land must attend and give evidence, hence I came.

Q. by Chief Okam:- Since 15 years ago that you started farming the said land, is any of Awka man knew that you are using the said land?

Ans:- Yes, my cassava and cocoa yam still there now.

Case No. 95/32 Awka Okpuno land dispute.

J.B.2/31 p.376.

Summary of the evidence recorded.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 I. Awka claim a portion of land which they call Agu-Aralla.

They say:-

1. That the land originally belonged to a town called Aralla.
2. That Norgu drove Aralla and occupied the land.
3. That Awka drove the Norgu within the last 50 or 100 years.
4. That there Nwabude, Igwebike and Onwugbolu of Awka lived on the land.
- 20 5. That Defendants came on to the land 20 years ago and paid rent to one Okafo Ukwa for the whole of Awka.
6. That the boundary between Awka and Okpuno is Uloko Stream.

N.B. The stream is called Uvunu (by Okpuno) which was the old boundary between Norgu and Okpuno.

II. Okpuno claim that this land is called Aguachi and has been theirs for time immemorial. They say:-

- 30 1. That Government came they were leasing a portion of the land to one Obilinjo of Awka.
2. That after Government came they leased portions of it to one Ezeana of Awka and many others of Awka including the late Chief Molokwu.
3. That they also leased portions of the land to Ndufu, Arinze and Nwafo Okolo of Amobia.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

5. That they were farming on this land at the time when Awka drove Norgu.

6. That their boundary with Norgu was on Ebenebe stick.

Q. by Chief Okafor:- Who was present when you bought the said land from Nwokafor of Okpuno either from Okpuno or Amorbia?

Ans:- Yes, Nwokafor's brother was present and Echetebe of Okpuno the same, also my brother Obunabo.

Q. by Chief Okafor:- Did you ask Okafor the real owner of the land before you paid for it? 10

Ans:- Yes, and Nwokafor told me that the land belonged to his whole family, and I asked him to call his family he called one man and said it remains one man.

Q. by Pltff:- Did Okpuno man from whom you bought the land showed you the boundary between them and Norgu people?

Ans:- No.

Defendant states:- We have no more witness to call. 20

Case adjd till tomorrow.

Chief Agbata his x mark

(Sgd.) ? ? Nadi
5/9/36.

Reopened 6/9/36

Court:- The Defendant mentioned plenty witnesses from Amorbia that they are leasing the land in dispute to but called only Ndufuechi who came to the Court and gave false evidence that he bought the land for £20 while the Defdts (Okpuno people) never mention that they sold the land to any body hence we see no reason to alter our first judgment. 30

Judgment for pltff on behalf of Awka for the land in dispute and cost as given in first judgment.

Chief Nnara Nibo his thumb for Court Members.

(Sgd.) ? ? Nadi
C.N.C.
6/9/36.

7. That they started building and actually living on the land 19 years ago.

8. That they have never heard of the town called Aralla.

9. That Uloko is town's juju.

III. Norgu called by Awka state:-

1. That they originally owned the land having acquired it by conquest from Aralla.

10 2. That their boundary there with Okpuno was Uloko River.

3. That they have since ceded the land to Awka.

IV. Ndufuechi of Amobia says that he bought a piece of land called Nkputukpu from one Nwokafo of Okpuno 15 years ago and is still farming on it. He says that the piece of land lies within the area now in dispute.

V. Awka, Okpuno and Norgu witnesses all stated they were prepared to swear to their statements.

20 VI. The Court members who viewed the land say that they saw:-

1. The boundary from Nwangene stream by Ebenebe tree and stone to Obibia R. shown by Okpuno as being their boundary with Norgu.

2. (Uloko stream which runs into Obibia R.) shewn by Awka as their boundary with Okpuno.

3. Uloko juju shown by Awka.

VII. The Court then ordered Okpuno to produce an oath for Norgu to swear Okpuno refused.

30 The Court then gave judgment for Pltff (Awka) with Uloko stream as the boundary.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

On Saturday September 10th 1932 I viewed the land in dispute in the presence of :-

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Plaintiffs: Nweke Nwosu and 20 or 30 Awka elders.

Defendants Ifejimalu Mofunanya of Okpuno.

Leaving the Awka Achalla road at approximately mile 2½ (a) we proceed S.W. along a bush path running through Umuodu Okpuno until reaching the stream Uloko or Uburu (b) Along this path several jujus were pointed out by Okpuno and a spot which both parties agreed had been the dwelling site of Defendants' late father. We then crossed the Uvunu or Uloko on to the land in dispute.

10

Awka claimed a part of the course of the Uloko stream to be their boundary as shown on the sketch plan. We then proceeded along the bush path through the land in dispute passing (1) and (2) and finishing AE (3).

Okpuno admitted at (1) that the land had been settled on and the compounds built within the last 20 years.

Between (1) and (2) we passed through Okpuno towns to left and right.

20

A.E. (2) the juju bush onjeko which lies besides a that, Okpuno declared that they had always served this juju and produced the present juju priest, Obuako of Umuodu.

Awka declared that the juju originally belonged to Norgu, but admitted that since they had driven Norgu away they had not served the juju or appointed a priest for it.

Proceeding from (2) to (3) we first passed through Okpuno farms and then on the junction (c) of another bush path from the S.E. we encountered Awka farms for the first time.

30

Awka stated that they used the bush path C.D.E. to reach their farm. From C to (3) all new farms had been planted by Awka though the Cassava standing in the bush had been planted by Okpuno. In one case Okpuno asserted that they had leased a certain farm to one Obilinjoti of Awka.

At (3) Okpuno showed the Ebenebe stick with stone as foot which they said marked their boundary

40

with Norgu. They described the boundary as straight line from the Uloko or Uvunu stream in the south through the Ebenebe tree to the Obibia R. in the north.

They stated that the Obibia was their boundary with Isu. They denied that they had any boundary with Awka to the S.W. Awka then mentioned that they did regard the Obibia as their boundary with Isu, and that they claimed Obibia.

10 Okpuno stated that this was the first year that Awka had come to farm on the land. Awka did not deny this. Asked why they had not taken action on this Okpuno stated that they went and complained to the D.O. who told them to take action but "they were not able to do that" - meaning that they did not consider that Awka N.C. was likely to prove an impartial arbitrator between themselves and Awka.

I pointed out to them that this was foolishness.

20 Awka then led the returns S.E. along the path C.D.E. on either side of this path farms planted by Awka were observed. In one instance Okpuno pointed out a farm on the E. side of the path which they alleged had been sold to an Awka man. Having crossed the Uloko (Uvunu) (D) again Awka stated that all land to the north (and E. of the Uloko) belonged to Umuodu Okpuno, but proceeding along the path towards the main road we immediately entered land which both parties agreed had been sold by Umuodu Okpuno to Awka. We then reached the main road
30 again at point E. I roughly estimate the area of the land in dispute to be in the neighbourhood of square mile. Umuodu questioned stated that they had no land to the E. of the main road Umuodu Okpuno declared themselves prepared to swear upon Anyeko juju that the land in dispute had always been theirs. Awka declared themselves equally prepared to swear on the same juju that they had the land from Norgu and that Uloko stream had been the old boundary between Okpuno and Norgu. The meeting then dis-
40 persed.

From various enquiries in office records and neighbouring towns which I have since made I have determined beyond doubt that Norgu were in fact driven away by Awka and probably other towns but I have not been able to determine whence they were driven.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. C/13/41.

25th January
1954 -
continued.

The following extract from intelligence notes made H. West Pierce Esqr. A.D.O. on 25/10/29 at Norgu is interesting Norgu used to live between Awka and Nibo. There was a civil war between Norgu and Awka, then all the other towns Nibo, Norfia Amobia, Okpuno Umuokpu and Osunagidi drove them away.

(Sgd.) H. West Pierce
A.D.O.
25/10/29.

10

This does not preclude the possibility however that Norgu were not in possession of this land now in dispute and the elder of Norfia themselves have told me that Norgu used to live in the field between Okpuno, Isu and Osunagidi. Elders of Umueri Isu on the other hand stated to me that they had always had boundary with Okpuno along the Obibia R. and that their boundary extended well along the confluence of the Obibia with the Uvunu (Uloko).

Summing up: The Court apparently accepted the test in any of Norgu. I am doubtful on their point. How ever it appears to me that the Court have not given due consideration to another and more important to aspect of the case - namely that Awka base their claim upon right of conquest, but a conquest which took place many years ago and which until now they have not attempted to follow up by occupation.

20

Whether or not Okpuno also should in the original conquest they have effectively occupied the land and appear to have engaged undisturbed use of it until now.

30

In my Judgment this establishes for Okpuno a prior right of ownership.

I have stated the case as above to the Court but they are unable to agree with me therefore annul the Courts judgment.

(Sgd.) R.Des.S.Stapledon
A.D.O.
8/12/32.

(Sgd.) ?? Nadi
C.N.C.
12/9/36.

40

Exhibit "C" put in by Plaintiff by consent
in suit No. 0/13/41 Chief Nwebe Nwude etc.
vs. Chief Ikanyowu etc.

Exhibits

"A"

(Sgd.) J.G.U. Bosah
Sessions Registrar
3/3/43.

Proceedings of
Court in Case
No. 0/13/41.

O.P. 349/551/13. 10th March, 1931.
The District Officer,
Awka.

25th January
1954 -
continued.

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

Mbanasataw Native Court Case No. 17

I find that I have to withdraw from the posi-
tion I took up in my letters O.P.T.24/40/9 of 22nd
October, 1940 and O.P.349/551/12 of 7th November.
My assertion that Mr. Stapledon had clearly given
judgment for the defendants in case 95 of 1932 was
founded upon a misinterpretation of a statement.
20 I have now had an opportunity to examine the judg-
ment book and to hear representatives of the parties.

2. In case 95/32 certain men of Awka sued men of
Okpuno for trespass upon land - Agu-Norgu. The
Native Court gave judgment for Awka. Mr. Stapledon
reviewed, visited the land, made a sketch, and went
at great length into the matter. In his summing-
up he said " - - - Awka claim a portion of land
which they call "Agu-Aralla - - -". I do not know
whether this means that Awka had amended the claim
as stated in the writ of summons. Mr. Stapledon
30 continues and in discussing the rival claims says
" - - - In my judgment (i.e. opinion D.O.C.) this
establishes for "Okpuno a prior right of ownership.
I have stated that case as above to the Court but
they are unable to agree with me - - -".

Mr. Stapledon concludes his review:-

"I therefore annul the Court's judgment".

3. In my view this can mean only one thing - Mr.
Stapledon in effect non-suited Awka Plaintiffs
leaving it open to them to begin later. To my
40 mind it is clear not only that he did not give Judg-
ment for Okpuno defendants but also that he made no

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

positive order at all. He may have had one of two reasons either (A) that he considered that Awka could not gain title to the amended (?) claim for Agu-Aralla or (B) that he was aware that while Awka might have a right to some parts of Agu-Norgu (the original claim was for all Agu-Norgu) they could not have right to all of it. It seems to me that he intended that the claim to Agu-Norgu (or to Agu-Aralla) should be made a nullity, so that the parties could commence all over again in respect of individual pieces of land. This view appears to be borne out by the subsequent events. 10

4. You have said that before you the Awka men considered that Mr. Stapledon had given away all their lands and that they did not ask for a review because they were ignorant of procedure. Before me, they repeated the first assertion but they added that realising the injustice of the (suspended) award they went to Okpuno to settle the matter out of Court. This statement is borne out to some extent by Okpuno who told me - in answer to the question what they thought Mr. Stapledon's Review had meant - that they thought that they had gained title to Agu Aralla only. They added that they had no claim to any other land. It seems to me that what Awka say is fairly sound. They thought that Mr. Stapledon had given all Agu Norgu to Okpuno. (After all the claim before the Native Court was for the same thing). Negotiation open with Okpuno who retreat from all lands except Agu Aralla. After four years of haggling and delays Awka begin proceedings anew for individual piece of land (a procedure, which I suggested above, was what Mr. Stapledon had intended). 20 30

5. As to the individual pieces of land which are named in the latter cases.

Awka say that while Agu Aralla and Ukuebenebe are within the same area of land they are distinct. I should say that the combined area might be, say, "100-acre field" of which the lower slopes were, say, Ukuebenebe and the upper Agu-Aralla. The land Kputunakpu was quite distinct from the other two, although adjoining them. 40

Okpuno say that Kputunakpu and Agu-Aralla are different names for the same piece of land. (Note here that in the Mbanese case No. 17 which went to

the Njikobu Court of Appeal Case 11/40, Okpuno claim damages for trespass upon Arira-Aguejim land. Before me they said this was a third alternative name for the same land).

Okpuno told me that Ukuebenebe was a totally different piece of land and that they had no claim to it (at least they said this at first).

10 6. Now we come to the cases - and you will remember my view that these cases come into being upon the break down of negotiations.

Case 106/37. Awka sue Okpuno for land Kputunakpu. It is recorded in the judgment book that the case was settled out of Court. Awka told me that the settlement was a relinquishment by Okpuno of any claims to this land. Okpuno say at first that none of the people to whom I spoke was present at the settlement. Upon being pressed they in the Courts about this land.

20 Case 119/37. Awka sue Okpuno for land Agu Aralla. Again - settled out of Court. Awka and Okpuno each make precisely the same statements to me as in the matter of Case 106/37 - above.

Case 121/37. Awka sue Okpuno for damages for trespass upon land Ukuebenebe. Judgment of the Court for Plaintiff. Okpuno made no appeal and a part payment of the damages was made.

30 When I said that at any rate we had reached finality as to one piece of land and that clearly Ukuebenebe belonged to Awka - the men of Okpuno withdrew from their former position saying that Ukuebenebe was theirs and that it was the same as Agu Aralla.

Case 48/38. Awka sue Okpuno once again for Agu Aralla (presumably the settlement out of Court after case 119/37 had been violated).

The Judgment Books shew no decision in this case.

40 There is another case - on the Criminal side - No. 27/38 in which an Okpuno man was found guilty of stealing crops but there is nothing to show what land was the scene of the crime.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

7. We come now to the NJIKOBU Appeal Court Case No. 11/40 in which Okpuno claimed damages for trespass upon Arira Aguejim land. Presumably in the Court below they had been unsuccessful - and they were equally unsuccessful in the Appeal Court. Upon review by the District Officer Awka the Appeal Court judgment was set aside on the grounds that the claim to this land was adjudged in favour of Okpuno by Mr. Stapledon in the case 95/32. The District Officer ordered damages for Okpuno.

10

8. I have already said that Mr. Stapledon's judgment was a nullity and that he made no award in favour of Okpuno. It is clear then that the District Officer's Review Order of the Appeal Court case 11/40 is founded upon a fallacy.

I set aside the judgments both of the Appeal Court and of the Court below.

9. I order as follows:-

(1) Awka will institute proceedings in the appropriate Native Court and they will claim :-

20

(a) Declaration of title etc. (b) an injunction etc. (c) Damages for trespass etc. - for each of the lands Agu Norgu: Ukuebenebe: Agu Aralla:

Kputunakpu and any other lands which comprise the Agu-Norgu. It is essential that they claim individual pieces of Agu-Norgu in addition to claiming the whole so that if at the trial they fail to gain judgment for the whole they may succeed in part or in parts.

30

(2) Okpuno will sue in the same Court as a cross-action. The claims will be exactly as above and they will be in respect of lands named individually and collectively according to their claims.

(3) As soon as the summonses have been served they must be recovered from the parties and sent to me and I will order a transfer to the High Court.

40

(4) Awka (certainly) and Okpuno (possibly)

should arrange for a licensed Surveyor to make a complete and accurate plan of all the lands claimed. The plan should show not only the individual claims but also the land or lands adjoining those represented in the claims.

Exhibits

"A"

Proceedings of Court in Case No. 0/13/41.

25th January 1954 - continued.

(5) The parties have been made to understand clearly that until the High Court has made its award or awards possession of the lands must remain as it is today.

10

A successful claim to title by either party in respect of any one piece of land can then lead to an assessment of damages for continued trespass (if any).

10. I should add that claims made out as above by both parties will enable the High Court to consolidate both actions and to award title and damages and finish off the whole business at one fell swoop.

20

11. Let a copy of this be pasted in the relevant judgment Book.

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

Exhibit "D" put in by the Plaintiff and admitted by Defence in Suit 0/13/41 Chief Nwefe Nwude etc. vs. Chief Ikanyowu etc.

(Sgd.) J.G.U. Bosah
Sessions Registrar
5/3/43.

30

J.B. 1/34 P.345

In the Native Court Mbanese opened 11 a.m.

Case No.23. Tabansi of Okpuno } Claim: To show
vs. Nwonyekwelu of Awka. } cause why you are
clearing my own
Arira Aguejim land
at Okpuno.

Claim not admitted.

Plaintiff states:- The land in dispute is my own land. I planted yams in that. The Defendant

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

came about and told me the land belongs to him. The question of that land Arira Aguejim had once taken to Awka Court as to whom it belongs. It was then decided the land belongs to me (Ebenebe) tree is the boundary. I did not go beyond that. About 5 years now the Defendant's towns people planted in the same land which brought about quarrelling between both Okpuno & Awka towns in general.

To ensure that the land belongs to me hence I called the 7 witnesses who know something about the land in question. I am a boy I cannot definitely prove well to whom the land belongs. At the first time when the boundary was marked Awka people said the boundary is in Uloko stream but then we had no boundary with Awka but with Norgu people. Nearly all Okpuno people planted their yams in the same land. I see no reason why I should not plant there while others have done so. I had the copy of the case heard at Awka Court about the land. One Ifejimali of my town whom I call as one of the witnesses is with the paper showing that the land belongs to me. I can swear if I had planted beyond the (Ebenebe) tree which is the boundary. 10 20

Q. by Defendant:- Do you know you summoned me alone, and why do you ask for many witness as from here and there?

Ans:- They are the people who planted at the same sport with me.

Q. by Court:- What punishment can be inflicted upon you if the sport where you planted is not your own portion. 30

Ans:- I do not know.

By Court:- Do your people know it belongs to you?

Ans:- Yes.

Q. by Court:- If they are called to say that the land does not belong to you what punishment to impose on you?

Ans:- Nothing answered.

Q. by Court:- Can you swear with your seven witnesses that land belongs to you? 40

Ans:- I do not know whether they will agree to do so.

Exhibits

"A"

Q. by Court:- Why do you call all to be your witnesses?

Proceedings of
Court in Case
No. 0/13/41.

Ans:- Because they know something about it.

Q. by Court:- That Arira Aguejim in dispute, did any body from your family plant there?

25th January
1954 -
continued.

Ans:- Yes.

10 Q. by Court:- Did the Defendant take action against all or you alone?

Ans:- Myself only.

Q. by Court:- Is the Arira Aguejim belonging to your father only or your family?

Ans:- It belongs to our town in general.

Q. by Court:- Did the Defendant report you on behalf of his towns people or that the land belongs to him?

Ans:- He reported me simply because the land belongs to him.

20 Q. by Court:- Do you take action on behalf of your towns people or for you only?

Ans:- For the townspeople.

Q. by Court:- If so why the whole of your town's men did not appear for the same case but then leaves alone?

Ans:- It is simply because one Ifejimali was stopped to attend Court as one of the Court-Members.

30 Q. by Court:- If it is found that those who planted with you at the same sport paid rent to the people of Awka what will be the consequence?

Ans:- I do not know whether they paid.

Mofunanya witness to the Plaintiff states and on behalf of Okonkwo and Nwokafo. One Ifejimu,

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Obuako, Ilonyenwa and Uchendu could not be seen. The Plaintiff also states that their witnesses does not matter. He further states that if the first three men appear as witnesses he is satisfied, hence the Court overlooked.

Then Mofunanya states:- The Arira Aguejim belongs to the Plaintiff. We went and inspected the land itself. Why we know this is (Ebenebe) tree is the boundary, but his plant did not go beyond the boundary. The Plaintiff planted in his own portion of land. He did not in any other man's land.

10

Q. by Court:- How do you know the boundary is situated on the (Ebenebe) tree?

Ans:- Everybody from our town knows.

Q. by Court:- Can you produce the remaining 4 witnesses to swear that the land belongs to the Plaintiff.

Ans:- We cannot do that.

Q. by Court:- Was I present when the land in dispute was given to you or with my town's men?

20

Ans:- All Ezinato-Awka and some of Okpuno were present.

Q. by Court:- Can you swear that the land Arira Aguejim belongs to Plaintiff.

Ans:- Yes.

D E F E N C E

Defendant states:- The land in question belongs to my late father. It was after my father's death that I began to plant in the land. Not a few years after death of my father I started to use the land. Since then the Plaintiff had never ventured to plant on it. As my towns people work on it as well, they saw some people using their own without permission, therefore they took action against them for having used their own land without being authorised and it happened that when the action was taken they came asking for peace. Now that this Plaintiff was sued for using the said land without authority could not ask for peace, came here talking annum. The son's of Nwabode who have the same portion of land with me there

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40

are here to witness in the Court that they know about the land. I am ready to take any special oath that the land in question belong to me. Nobody from Okpuno has ever planted on that portion of land. They all know it does not belong to them. It is also not in the same sport where the Plaintiff says is the boundary. He was persuaded or deceived to plant there just to know if any body will ask him anything.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 He never cleared the land ever since then not until this year. Rather than asking me to allow him to plant on it he went about planting to know what I will do. The two persons from Plaintiff's town who went about planting in the portions of other Awka people at the same sport were summoned and they went and asked for peace, but the Plaintiff did not care to do so simply because he is wise. Seeing that the Plaintiff did not take it to be anything I then took action at Mbanasataw Court. After all
20 the D.O. gave order that the land should be viewed by some elders of both Awka and Okpuno and to settle us well the matter. When we reached the sport the elders of Okpuno who came to the sport began to tumble about so that nothing good was done, therefore our people refused and all returned. The D.O. was again shown the matter then he ordered the Plaintiff to sue action against me there he knows the land belongs to him.

30 Q. by Plaintiff:- Who planted cassava in the same land before?

Ans:- My people.

Q. by Court:- Where are the two men from?

Ans:- Okpuno.

Q. by Court:- Were the two men from Okpuno who planted other portions of land sued in the Court or that they paid rent?

Ans:- They were summoned in Court and they agreed that the land is not their own.

Q. by Court:- Do you know them and their names?

40 Ans:- I know one of them.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Lazarus Akabogu witness to Defendant: states and
on behalf of Nathaniel.

The land in dispute is Orogwuma and it belongs to the Defendant's father. When we were yet boys we used to carry yams home from there for one late Nzekwe he was our father's brother. Nwabude was the owner of the land. It was after the death that one late Nwabude trained us up. Nobody from Okpuno has ever come into contact with us regarding this land, and they did not plant on that land in dispute. On the right hand side we have boundary with Molokwu. On the left hand side with one Anene Nwabu all of Awka. About 8 years now one Ukaji went to plant cassava on one Anene Nwabu's own portion from there he jumped into our own, that caused row or quarrelling. We then told her that she should leave our own because it belongs to us. In this when we returned from journey we were told by our senior brother by name Nwosu, that one Maduka of Okpuno farmed on our land Orogwuma. Immediately after hearing that we then went to one Maduka who farmed on our land. He begged us and then related to us what prompted him to farm on our land. We asked him to root out his yams if he knew he would not seek palaver. He asked that he should see us about it. We then insisted that he should root out his yams. Before he could root out his yams he was sued in Court, he then told us he has rooted out his yams. Therefore case was withdrawn. We then made out an agreement with him that he should never venture to farm anymore on our land in case if we are away from the town. We had boundary with one Maduka of which after then comes Nwonyekwelu the Defendants portion of land, that is to say, he is next to one Molokwu.

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Nnadozie the third witness to the Defendant states:

The land in dispute belongs to the Defendant. All the pieces of land there belong to us. Nobody from Umuodu Okpuno has ever farmed on the land in question. One Nwabude of Awka took action against one Maduka of Okpuno for having farmed on his land. Then one Maduka asked that he should be allowed to reap the yams, but he would not agree, then he rooted out his yams Nwabude's portion on the top. My own in the middle, while the Defendant's own lies on the below or down part. I sued action one Obiora of Okpuno for having planted on my own portion and when

40

he heard one Maduka was as well reported, he hastened and asked me to pay rent and to use it for that year only.

Exhibits

"A"

10 Then the Defendant seeing that the Plaintiff did not care to come and see him for having planted in his own as well as took action against him to show cause why he farmed on his land, he turned to see the D.O. Then the D.O. asked them whether the land in dispute was the former one which was in dispute between Awka and Okpuno towns; the Defendant said it was not that. Furthermore that nobody from Okpuno has ever made any dispute with Awka people in that one. The D.O. then ordered that the land be settled well by the elders of both Awka and Okpuno.

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

20 Case adjourned till next sitting to enforce judgment. The land to be viewed on Saturday. The Defendant to produce those who have boundary with him. Plaintiff also to produce elders of Okpuno then.

Spokesman

C/M Ilogwe His thumb for Court members.

(Sgd.) R.I. Nwangene

C.N.C. 6/9/37.

Reopened 13/9/37.

Judgment:- Case dismissed.

30 Reasons:- The land in question was viewed and found out the Plaintiff has no portion of land there. The elders of both the Plaintiff and the Defendant were called upon to say whom the land belongs to. The Plaintiffs town elders concluded the land belongs to Awka man and that the former land in question which is in dispute between Awka and Okpuno towns in general is not the same land with this. They the Okpuno elders said that they are not concerned in this matter. If the Defendant likes he can take action against the Plaintiff for making use of his land. Furthermore the Plaintiff uses asked in the Court whether the land in dispute is for all Okpuno people in general and he said yes. Finally all the

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Exhibits

"A"

Okpuno people were called they deliberately stated the land is not theirs. The Defendant has every right to make use of this land.

Proceedings of
Court in Case
No. O/13/41.

C/M Ilogwe his thumb for Court members.

(Sgd.) R.I. Nwangene C.N.C. 13/9/37.

25th January
1954 -
continued.

Plaintiff applies for Review 13/9/37.

On Review

Plaintiff's application. Does not require Judicial appeal. Plaintiff produces 14 members of Umuodu quarter to support him. He admits that the other people do not. None of these people are real elders. They all allege that Plaintiff has a dispute with the rest of the Quarters.

10

Re Court decision is unanimous. They state that the Ebenebe tree form the boundary at one end but that there is a dispute in the quarter as to the line from Ebenebe tree. The head of the quarter and the other elders showed a boundary agreed upon by Defendant. This shows the Plaintiff has trespassed.

20

This boundary was previously fixed by a D.O. although no copies of the case are produced.

Obviously the evidence of 14 people of the quarter cannot be accepted against the rest of the elders.

They are now claiming it as communal property.

Upheld.

(Sgd.) S.P.L. Beamount.

27. 10. 37.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

my own summons then said it might be true that I was taking the defendant's land by force, and that Defendant is to go to their own court at Mbanese and take action against me, for the Court to find out, if the said land belonged to me or the Defendant. Defendant then sued me at Mbanese N.C. who after gone into the case and viewed the land gave judgment in my favour that the land is mine and that I must take the land. I then went again before the D.O. and told him the decision given by Mbanese N.C. and D.O. said that my claim is fact and endorse my summons before it was served to Defendant. The whole of Defendant's people gave evidence in Mbanese N.C. that the land is mine, except only 4 persons who were instigating the Defendant to claim my land falsely. My brother's land which Defendant leased to other people. I will take another action against him for it afterwards. I wanted Defendant to pay me £12 rentage for farming my land by force. Defendant's yams still now in my land up to date.

10

20

Q. by C/M Nwokafor Okolobi:- Is any one present at Mbanese N.C. when the judgment was given in your favour to own the very land now in dispute?

Ans:- Yes, plenty peoples named, Nwefe, 2.Eluba, 3.Ogoekwe, 4.Nwamo, 5.Nnadozie, 6,Ileanya, 7.Oguguo, 8.Nwama Mkpuechine, 9.Molokwu and many others.

Q. by C/M Vincent Okeke:- On the day Mbanese Court viewed the said land, did Okpuno the Defendant's people accompanied?

Ans:- Yes, the whole of Umuodu the Defendants' people went with us, and that the land in dispute is not their own but mine.

30

Q. by Defendant:- You said that the whole of Okpuno said that the said land is yours, is the senior man Uwa Nwachidume say so?

Ans:- Uwa is present but did not say anything.

Q. By Defendant Okonkwo Nwokoye: 2.Okonkwo Okeke, 3.Mofunanya Okeke, 4.Ndife Okoye, 5.Okoye Ilenyinwa, 6.Okafor Ezeama, 7.Nwokafor Okeke and 8.Okonkwo Uwa, who went with members of Mbanese did they state that the land in dispute is yours?

40

Ans:- The eldest man Ubuako in your family Umuodu

gave evidence in the land that it is not their land but belonged to me (Awka people).

Exhibits

"A"

Q. by Defendant:- The other portion of the land that you said it was planted Oku yams whose country man that I leased it to?

Proceedings of
Court in Case
No. 0/13/41.

Ans:- You will know the man you leased it to when I take action but you admitted having leased it to some one.

25th January
1954 -
continued.

PLAINTIFF'S WITNESSES.

- 10 1.Lazarus Akabogu 2.Stephen Nzekwe 3.Nnadozie Molokwu
4.Molokwu Uba 5.Nwanmo Ndu 6.Eluba Ibe and 7.Nnife Okolie.

20 My name is Nnadozie Molokwu, I am speaking on behalf of myself and other 6 men mentioned above, we are the natives of Awka and were present when this land case was gone into and decided by Mbanese N.C. and gave judgment on Plaintiff's favour to own the said land. Mbanese N.C. said that they gave judgment in favour of Plaintiff because the Defendant's senior man and other people from his family called as witnesses by Defendant stated that the land in dispute is not their own but Plaintiff's land. Another, I got boundary with Plaintiff there, I took action against one Obuora the Defendant's brother who came to this Court and admitted that the land is mine, one paid me 10/- rent at home.

Q. by C/M Vincent Okeke: Are Okpuno people present when Court gave judgment in Plaintiff's favour at Mbanese N.C.?

- 30 Ans:- Yes. Plenty of them were present.

Q. by Defendant:- After the Mbanese Court's decision what did I say?

Ans:- He said he was not satisfied, that he will put the case on review.

Defendant states:-

I am a native of Okpuno, I did not farm the Plaintiff's land, I farmed on our land which Awka and Okpuno people tried is case 5 years ago. 5 years ago, Awka people took action against our

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

people to quit where we live including the land where I planted yams now in dispute.

By that time Awka people stated that the boundary is along Uloko and our people showed boundary along Ebenebe, 2 Ufunu and Obibia. I did not cross any of the said boundaries.

The D.O. came and gave judgment on our (Okpuno's) behalf. We had the copy of the said original case in this Court. The said copy is with Ifejimali. Our town told Ifejimali and Uchendu not to be our Court members hence they called Awka people to come and take the Land. Plaintiff then took out this action against me, for working in his land, both of us then went to D.O. who told us that both of our elders and Awka elders to go and see about it as to know whether I farmed in the Plaintiff's land. When we got there our people said, I did not farm the Plaintiff's land but on our land which we obtained its judgment in the Court. D.O. then told me that if I am sure that I worked on our land I better go and take action against Plaintiff in Mbanese N.C. I did so, Court members after going into the said case and came to view the land the people that we drove away from being the Court members and their brothers gave evidence on behalf of Awka people. The people from our town who did it are about 3 in number.

10

20

The 9 persons that I counted first stated that the land is ours, that the other 3 men gave evidence because we are not in peace with them. The Court then agreed with my enemies evidence and decided that the land belonged to Awka people, I then put the case on review. I did not lease any land to anybody and can swear for same, the whole is mine. I can swear that I did not pass the boundary fixed.

30

Q. by C/M Uchendu:- Who took action at Mbanese and what did Mbanese N.C. decide?

Ans:- I am the one who took action at Mbanese N.C. and court decided that Plaintiff to own the land, and do me what he likes.

40

Defendant's witness Nwokafor Uchendu states:-

I am a native of Okpuno, and from Umuodu family.

10 It is the very land that Awka wanted to take from us 5 years ago. There we lived and there we planted our yams 5 years ago. Awka people asked us to quit that we lived on their Norgu land, and we said that the land belonged to us and not Norgu land, Awka people shared the whole of our land and farmed the very year, and took action against us; and the white man came and the whole of our people showed him the boundary between us and Norgu which is along Ebenebe, Ufunu, Obibia, which is the boundary of our land since then that is 5 years now, we still using our own land as boundaries mentioned above.

About one year ago we got palaver with the Court members of our Quarter because we said we will exchange them, because the white man said if the family do not like their Court members they have to change him, our Court members refused that we will not change them.

20 Hence, they called Awka people, and said when ever they pointed (they) Awka people to sue such a man, and this was done by Ikenyionwu and Uchendu.

Q. by C/M Nwanara Obu:- Has this very land case tried at Mbanese N.C.?

Ans:- Yes.

Q. by C/M Nwanara Obu:- What is Mbanese N.C. decision?

Ans:- I cannot tell because I was not present when the decision was given nor did I hear the decision.

30 Q. by C/M Nwanara:- Is the land in dispute your general land or personal land?

Ans:- It is our general land.

Q. by C/M Nwanara:- The people who gave evidence that the land belonged to Awka; are among the land owners?

Ans:- Yes.

Q. by C/M Nwanara:- If there is a matter between you and your people you will take your general land and give to other people?

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Ans:- No.

Q. by C/M Nwanara:- Who said that the land belonged to Awka?

Ans:- Ikeanyionwu 2.Uchendu and 3.Obuako and no more.

Q. by C/M Okpala Uloli: If Court find out that you were present when the judgment was passed in Mbanese N.C. will you be punished?

Ans:- I was not present unless our enemies stated that I was present. 10

Q. by C/M Nwana Nwoyenta: Why you did not give evidence in Mbanese N.C. where the land was tried, and come to this Court and give evidence for trespass?

Ans:- I gave evidence in Mbanese N.C.

Case adjourned till first sitting in November 1937.

C/Member Atuba his thumb for Court members.

(Sgd.) Emodi
C.N.C. 6/10/37.

Reopened 1/11/37

20

Defendant failed to attend. Judgment for Plaintiff for £10 trespass and cost next Court allowed for payment.

C/M Nwanara his thumb for Court members.

(Sgd.) Emodi
C.N.C. 1/11/37

£1 part payment and 3/- cost paid to Plaintiff in Court.

C/M: Okpala Uloli his thumb
For Court Members. 30

(Sgd.) Emodi
C.N.C. 13/12/37.

Exhibit "F" put in by Plaintiff and admitted by Defence in suit 0/13/41 Chief Nwefe Nwude etc. versus Chief Ikanyowu etc.

(Sgd.) J.G.U. Bosah
Sessions Registrar.
8/3/43.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

No. 35
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NATIVE COURTS
Civil Summons

25th January
1954 -
continued.

IN THE NATIVE COURT OF MBANESE

10 Mofunanya Okeke for Umuodu Okpuno
Between Plaintiff
Madike Okafor & 2 others of do. Defendant
To Madike Okafor & 2 others of Okpuno.

20 You are hereby commanded to attend before this Court at Mbanese on the 23rd day of September 1942, to answer a suit by Plaintiff of Okpuno against you. The Plaintiff Claims £6 being your due share of contribution in the land case of Umuodu & Akoka 10 months ago at Okpuno.

Issued at Mbanese the 23rd day of September 1942.

Fees paid 3/-

(Signature of President or Vice
President or Members.)

Take notice - if you do not attend, the Court may give judgment in your absence.

(a) State Plaintiff's claim clearly.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibit "G" put in by Pltff. & admitted
by Defence in Suit 0/13/41 Chief Nwefe
Nwude etc. vs. Chief Ikanyowu etc.

(Sgd.) J.G.U. Bosah
S.Registrar 8/3/43.

Copy of Case No. 35

In the Native Court of Mbanese this 28/9/42

Mofunanya Okeke No.22111 for Umuodu Okpuno

Vs.

- | | | |
|--------------------|--------|------------|
| 1. Maduka Okafor | 22101 | 10 |
| 2. Ekemezie Maduka | 21210 | |
| 3. Nwokafor Okeke | 21020. | All of do. |

Claim:- £6 being your due share of contribu-
tion in the land case between Umuodu and Awka
since 10 months ago at Okpuno.

Claim not admitted.

Pltff asks for adjmt for his witnesses to appear on
the first sitting in October 5/10/42. See page 104.

1/- adjmt Fee paid vide N.C.R.No.18/97 of 28/9/42.

Reopened on 5/10/42 for trial from page 101. 20

Pltff Mofunanya states on behalf of others:- We
Umuodu of Okpuno have land case with Awka since 10
years ago. These Defendants have been paying their
due share of contribution; but since 10 months ago
the Surveyor came to the land in dispute they have
never paid anything again.

The amount they owe our people summed to £2
each man so that 3 of them owe £6. So we found
that they are not ready to pay anything again in
addition to what they have paid before so came to 30
the Court and sued them to explain why.

Even it was No.2 Defendant who advised us to go
to a Lawyer. No.1 Defendant only paid 4/- No.2
Defendant only paid 2/- No.3 Defendant only paid
3/- = 9/- in all.

So all they paid our people is only 9/-.

We then considered the balance remaining for each man it sums to £2. Hence we sued them for £6.

Q. by No.2 Defdt:- Can you tell why we after paying for nearly 10 years failed to pay since 10 months?

Ans:- No.

Q. by No.2 Defdt:- Can you tell of another man failing to pay the contribution?

10 Ans:- No.

Q. by No.3 Defdt:- Did we do anything since we began the land case?

Ans:- We did nothing.

Q. by No. 3 Defdt:- Did we copy for the land case or no ?

Ans:- We copied.

20 Q. by No.3 Defdt:- As Awka people sued us in which Nwonyekwelu gave statements on behalf of Awka, and Atabansi gave his own on our behalf was the case copied?

Ans:- Atabansi planted Awka land hence they sued him.

Q. by Court:- When did they pay the 9/-?

Ans:- Since 10 months ago.

Q. by Court:- Did they pay for 10 years since case began?

Ans:- They paid.

Q. by Court:- Did Atabansi claim the land in dispute since those 10 years?

30 Ans:- Yes.

Q. by Court:- Why did he not know the boundary?

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Ans:- He was then suffering from sore.

Q. by Court:- Are you sure that everyone of your
place paid £2 each hence the Defendants owe you £2
each?

Ans:- Not all paid.

Q. by Court:- Did you ask the Defendants why they
failed to pay before suing them?

Ans:- Yes.

Q. by Court:- What did they say it was the reason
they failed to pay?

10

Ans:- They replied that they do not get money.

Q. by Court:- What was your due share of contri-
bution?

Ans:- It has no settled amount.

Q. by Court:- Do you all pay settled amount?

Ans:- Not one settled amount.

Q. by Court:- Why did you sue them for £6 that is
£2 each?

Ans:- We pay the same amount.

Q. by Court:- Which was false that you all pay the
same amount or that you all do not pay the same
amount?

20

Ans:- That we all pay the same amount.

Q. by Court:- How many of you paid £2 each?

Ans:- 9 persons.

Q. by Court:- How many it remained to pay £2 each?

Ans:- I can not tell.

Q. by Court:- Can you swear you all paid £2 each?

Ans:- Yes we can swear.

Pltff's witness Okonkwo Okeke states:- The Defendants were sued because since 10 months ago they have never paid their contribution. They stopped paying since the Surveyor came to the land in dispute. Even it was No.2 Defendant who told us the name of the Lawyer we could go to. When then we began to hire Lawyer he ran away what he paid in the land was only 2/-.

No.3 Defendant Nwokafor only paid 3/-.

10 No.1 Defendant Maduka only paid 4/-. So they all paid 9/-. We all have been paying the contribution but the Defendants failed to pay anything since 10 months.

We sued them because it was No.2 Defendant who made us jump into the case but began to ran away after all.

Q. by No.2 Defdt:- Did I know book as to write you to hire a Lawyer?

Ans:- No.

20 Q. by No.2 Defdt:- Can you tell why we failed to pay the contribution since 10 months?

Ans:- I am paying my own.

Q. by No.3 Defdt:- Have I ever failed to pay Tax?

Ans:- You can pay only you do not want to do so.

Q. by Court:- What was the settled amount you are paying?

Ans:- £2 each.

Q. by Court:- Is it all Taxable males in your family paying £2 each?

30 Ans:- Only 9 persons paid.

Q. Why did you not sue all others?

Ans:- We wish to settle these 3 persons' own first.

Q. by Court:- You tell their names?

Ans:- No.

Exhibits

"A"

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

Exhibits

"A"

Q. by Court:- When was £2 each paid?

Ans:- Since 10 years ago.

Proceedings of
Court in Case
No. 0/13/41.

Defence.

25th January
1954 -
continued.

Defendant No.2 Ekemezie states on behalf of No.1
Defendant:-

Since 10 years ago we came to live where we are now living, but before we began to make wall fence there, we went to Awka people and gave them land rent because the land belongs to Awka people. The land Arala is Nogwu no family is called Arala at Okpuno. 10

Our forefathers told us that Nogwu drove Arala and Awka drove Nogwu and had both Nogwu and Arala land. We have been paying land rent to Awka people but finally our people considered to claim the land in which we are living. We told them that is bad to claim for the land while we pay land rent to Awka people.

Ikeanyionwu of our family said we should claim the land because we pay tax, and Govt. can let us remain in the land because we pay tax. 20

So our people made up their mind to claim the land but then Awka people sued them to quit from the land in which the Judgment was that the land belongs to Awka. So we again began to serve Awka as before for the land belongs to them.

About 5 years ago our people went to Awka and told them to drive away my father from the land for he has not been paying the land rent to Awka.

We then went to Awka people and gave them:- big kid £3 basket of yams and a pot of wine at Chinwuba's house. After all these things Awka people agreed and allowed us to plant in the land. 30

The same 5 years ago Awka people sued Atabansi for planting in the land to which Judgment was to give £10 to Awka. In this case Ikeanyionwu 2.Obunako & 3.Uchendu gave statements that the land belongs to Awka, £1 only paid out of the £10 it remained £9.

We all swore that we can not claim the land again for our people know that land belongs to Awka and they have been paying land rent to Awka.

Exhibits

"A"

We refused paying the contribution because we told our people to stop claiming Awka land they refused saying that they would be claiming the land that perhaps they may get it.

Proceedings of
Court in Case
No. 0/13/41.

25th January
1954 -
continued.

10 Some years ago Awka people gave our people gun powder to watch the land for them; for the reason of which Okonkwo was caught by Mofunanya.

About 2 years ago we planted the land and Awka people the same but robbers only robbed Awka people's yams but our yams not robbed at all for the reason of which Awka people were angry and determined sending our people away from the land.

20 Ikeanyionwu told our people that they should start the land case again. Then Ikeanyionwu went to Resident and gave the copy of the first land case. Then Resident came to view the land but did not reach there at all but tried to slap Ikeanyionwu because the Resident asked him if it was not he, Obuako & Uchendu who started before that the land belongs to Awka he could not answer. They 3 stated that the land belongs to Awka in the action against Atabansi. We then considered that the land case had stopped and so I gave our people 2/- and my father 4/- and Nwokafor 3/- thinking that the money would be used for the land rent as usual but they went and got a surveyor for the land; I
30 regretted for the money given them. They said they would hire Lawyer as they would helped by Amawbia and Enugu Agidi people.

I then was agry telling them that people mentioned could not help them for the case before tried by their Chiefs. They said they must hire a Lawyer, I told them that I cannot put any money in hiring a Lawyer and none of us 3 can put any money in hiring Lawyer because the land is Awka land.

40 I told our people not to do anything in the land for I am now in charge of Awka land, they seemed not to listen to what I told them so went and unrooted Awka cassava in the land this made them go to prison.

Exhibits

"A"

Proceedings of
Court in Case
No. O/13/41.

25th January
1954 -
continued.

Q. by Pltff:- Was it ten years we started the case that you turned back to our place?

Ans:- Yes.

Q. by Pltff:- Why did you live near Anekwe while you are Umuodu?

Ans:- I am Umuodu.

Q. by Pltff:- Why did you return from another place while we lived in the land before?

Ans:- Because the land is Awka land.

Q. by Pltff:- Who went to Awka as to spare you the land to live in?

10

Ans:- Our family.

Q. by Pltff:- As Awka people gave you the land to live in why some of your family are paying for the land case?

Ans:- You gave my people juju to swear while I was away?

Q. by Pltff:- As you went to Awka to spare you the land to live in where is Onwudinjo's Compound?

Ans:- Onwudinjo was old and could not build wall fence.

20

Q. by Pltff:- Onwudinjo and 2.Enemmo who is senior?

Ans:- Enemmo hired labours to build wall fence.

Q. by Pltff:- As Awka people allowed you the land why did they damage your crops in the land?

Ans:- We first claimed the land with our people but knowing that the land belongs to Awka we withdrew.

Q. by Court:- As you Defendants refused claiming the land, if it belongs to Okpuno will you share part in the land?

30

Ans:- We shall not share part in the land.

Defendant No. 3 Nwokafor States:- We refused paying the contribution because the land in question is Awka land but we told our people not to claim the land because we gave Awka people land rent. Some years ago we carried some yams, 2 big kids and 1 big pot of wine to Awka then they stopped asking for review in action against Atabansi.

Exhibits

"A"

Proceedings of Court in Case No. 0/13/41.

10 When this land case was first tried here so many members were present and they all knew or heard that the land belongs to Awka.

25th January 1954 - continued.

I am not stating further that the land belongs and we refused contribution because the land is Awka land because we having been paying land rent to Awka we cannot give the Pltff any amount at all.

Judgment 31 - 0 members.

Judgment:- For the Defendants case dismissed.

Reason:- The land on which the action based is yet to be tried by the Chief Judge.

20 (2) The Defendants stated if the land belongs to Umuodu that they will not share part in the land unless the Defendants will pay to Umuodu what all others paid before they should share part in the land.

Chief Okafor Nweke his thumb for Court

Spokesman.

Witness to mark.

(Sgd.) ? ?
C.N.C.

Exhibits

"A"

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

Proceedings of
Court in Case
No. 0/13/41.

Suit No. 0/13/1941
WAC. 2053.

BETWEEN

25th January
1954 -
continued.

CHIEF NNEFE NWUDE on behalf of
himself and the Chiefs and
people of Awka ... Plaintiffs
Respondents

and

10

CHIEF IKANYONWU for himself
and as representing the
people of Okpuno. ... Defendants
Appellants

(L.S.)

(Sgd.) Donald Kingdon.

PRESIDENT.

IT IS HEREBY CERTIFIED that on the 20th day of
October, 1944, the West African Court of Appeal
sitting at Lagos, Nigeria, ORDERED that the appeal
lodged herein by the Defendants-Appellants be dis-
missed with costs assessed at Forty guineas in
favour of the Plaintiffs-Respondents.

20

AND THAT THE COURT BELOW DO CARRY OUT THIS
ORDER.

GIVEN at Lagos, Nigeria, under the
Seal of the Court and the hand of
the President this 20th day of
October 1944.

(Sgd.) F. Spencer Protheroe

30

AG: REGISTRAR,
WEST AFRICAN COURT OF APPEAL



Exhibit "C". - APPEAL RECORD IN SUITS O/48,
55, 56, 57/49.

Exhibits

"C"

Appeal Record.

CIVIL APPEAL

RECORD OF APPEAL

APPEAL FROM

THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION

HOLDEN AT ONITSHA

TO

THE WEST AFRICAN COURT OF APPEAL

HOLDEN AT LAGOS, NIGERIA

10

W.A.C.A.
Suit No.0/48/1949

BETWEEN:

1. UDOGU MODEKWE 2. NWUBA MORAH)
3. OKEKE ADAKA, for themselves and) Plaintiffs
on behalf of the people of Awka) Respondents

- and -

UDEKWU ANATA, for himself and for)
the people of Isu-Obieli Quarter)
of Enugu-Agidi; (Amended by leave) Defendants
of Court dated 20/11/50) Appellants

20

Suit No.0/55/1949

BETWEEN:

1. UDOGU MODEKWE 2. NWUBA MORAH)
3. OKEKE ADAKA for themselves and) Plaintiffs
on behalf of the people of Awka) Respondents

- and -

ANADEBE OJISI for himself and for)
the people of Ifite quarter in) Defendants
Enugu-Agidi) Appellants

30

Suit No.0/56/1949

BETWEEN:

1. UDOGU MODEKWE 2. NWUBA MORAH)
3. OKEKE ADAKA for themselves and) Plaintiffs
for the people of Awka) Respondents

- and -

NWANKWO AHIEGBU for himself and)
for the people of Igbolo quarter) Defendants
in Enugu-Agidi) Appellants

Exhibits

Suit No.0/57/1949

"C"
Appeal Record
- continued.

BETWEEN:

- | | | | |
|-----------------------------------|-----------------------------------|---|--------------------|
| 1. UDOGU MODEKWE | 2. NWUBA MORAH |) | |
| 3. OKEKE ADAKE for themselves and | on behalf of the people of Awka |) | Plaintiffs |
| | |) | <u>Respondents</u> |
| - and - | | | |
| OJUKWU ONWUKAIFE for himself and | for the people of Achalla quarter |) | Defendants |
| in Enugu-Agidi | |) | <u>Appellants</u> |

C O N S C L I D A T E D

10

1. CLAIM: (a) Declaration of Title etc. :
(b) £250 damages for trespass &
(c) Injunction.
2. COURT: Supreme Court, Onitsha - Original.
3. DATE OF JUDGMENT: 12th March, 1953.
4. JUDGE: Mr. Justice Johnston.
5. NATURE OF APPEAL AND DATE OF FILING NOTICE
OR APPLICATION
Appeal against the judgment

23rd March, 1953.

20

APPEAL FROM
THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA,
TO
THE WEST AFRICAN COURT OF APPEAL,
HOLDEN AT LAGOS, NIGERIA.

Suit No.0/48/1949

BETWEEN:

- | | | | |
|------------------------------------|----------------------------------|---|--------------------|
| 1. UDOGU MODEKWE | 2. NWUBA MORAH |) | |
| 3. OKEKE ADAKA, for themselves and | on behalf of the people of Awka |) | Plaintiffs |
| | |) | <u>Respondents</u> |
| - and - | | | |
| 1. UDEKWU AMATTA for himself and | for the people of Iru-Obieli |) | Defendants |
| Quarter of Enugu-Agidi (Amended) | by leave of Court dated 20/11/50 |) | <u>Appellants</u> |

30

Suit No.0/55/1949ExhibitsBETWEEN:

1. UDOGU MODEKWE 2. NWUBAH MORAH)
 3. OKEKE ADAKA, for themselves and) Plaintiffs
 on behalf of the people of Awka) Respondents

"C"
 Appeal Record
 - continued.

- and -

1. ANADEBE OJISI for himself and)
 for the people of Ifite Quarter of) Defendants
 Enugu-Agidi) Appellants

10

Suit No.0/56/1949BETWEEN:

1. UDOGU MODEKWE 2. NWUBAH MORAH)
 3. OKEKE ADAKA for themselves and) Plaintiffs
 for the people of Awka) Respondents

- and -

NWANKWO AHIEGBU for himself and)
 for the people of Igbo Quarter) Defendants
 of Enugu-Agidi) Appellants

20

Suit No.0/57/1949BETWEEN:

1. UDOGU MODEKWE 2. NWUBAH MORAH)
 3. OKEKE ADAKA, for themselves and) Plaintiffs
 on behalf of the people of Awka) Respondents

- and -

OJUKWU ONWUKAIFE for himself and)
 on behalf of Achalla Quarter in) Defendants
 Enugu-Agidi) Appellants

C O N S O L I D A T E DINDEX TO RECORD OF APPEAL

30	No.	Particulars	Page
	1.	Statement	
	2.	Order of Transfer	
	3.	Native Court Summons - 0/48/49	
	4.	" " " - 0/55/49	
	5.	" " " - 0/56/49	
	6.	" " " - 0/57/49	

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Appeal Record -- continued.	7.	Pleadings ordered 23rd March, 1950	
	8.	Statement of Claim - 0/48/1949	
	9.	" " Defence 0/48/1949	
	10.	Court's Notes dated 6.11.50 adjourning suit to 20/11/50	
	11.	Proceedings dated 20/11/50 consolidating the 4 cases	
	12.	Motion & Affidavit filed 27/1/51 for extension of time within which to file statement of Claim and plan	
	13.	Motion to file a fresh statement of claim	
	14.	Court's Order granting 90 days' extension & awarding two guineas to Defendants	
	15.	Statement of Claim filed 16/2/51 by Plaintiffs	
	16.	Motion & Affidavit of Defendant's Solicitor for extension of time to file statement of Defence as ordered	
	17.	Court's Notes extending time to file S/D to 7 days	
	18.	Statement of Defence filed 1/6/51	
	19.	Motion & Affidavit for Judgment to be entered in favour of the plaintiffs etc.	
	20.	Court's Notes adjourning hearing of motion to 30th December, 1952.	
	21.	Court's Notes granting withdrawal of the above motion and for a refund of £1.5.0 & case adjourned to next civil sessions at Awka	
	22.	Address by Mbanefo, counsel for plain- tiffs.	

No.	Particulars	Page	<u>Exhibits</u>
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24.	2nd Address by Mbanefo		
25.	Court's Ruling		
26.	Evidence of P.W.1 - Udogu Modekwe		
27.	Evidence of P.W.2 - Nwuba Morah		
28.	Evidence of P.W.3 - Samuel Macaulay, Registrar, Supreme Court, Onitsha		
29.	Evidence of P.W.4 - Ngaji Okeke <u>Close of plaintiffs' Case.</u>		
30.	Evidence of D.W.1. Ojukwu Onwukaifa		
31.	Evidence of D.W.2. Ejike Chidolue, Licensed Surveyor, Onitsha <u>Close of Defendants' Case.</u>		
	<u>Address by Counsel</u>		
32.	Address by Ibeziako, Counsel for Defendants		
33.	Address by Ojiako, Counsel for Plaintiffs		
	<u>Judgment</u>		
34.	Judgment dated 12th March, 1953.		
35.	Motion & Affidavit by Defendants for a stay of execution		
36.	Court's notes granting the stay of execution dated 27th March, 1953.		
	<u>LIST OF EXHIBITS.</u>		
36A.	Ex. A. Plan No. EC.10/46 by Plaintiffs	} not copied	
36B.	Ex. B. " No. EC.5/46 by Defendants		
37.	Ex.CI. proceedings of suits O/12-15/43 (consolidated) sent to W.A.C.A.		

<u>Exhibits</u>	No.	Particulars	Page
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	39.	Ex.C3. Receipt No.C587397 for 3/- & proceedings in 0/12-15/43 (consolidated)	
	39A.	Ex.D - Cash Book (Not copied)	
	39B.	Ex.E - B2 or Payment out of Court Book (Not copied)	
<u>APPEAL PAPERS</u>			
	40.	Notice and grounds of Appeal filed 26/3/53	
	41.	List of Documents omitted to be copied for this Record of Appeal.	

APPEAL FROM
THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
TO
THE WEST AFRICAN COURT OF APPEAL:
HOLDEN AT LAGOS, NIGERIA

Exhibits

"C"

Appeal Record
- continued.

Suit No.0/48/1949

BETWEEN:

10 1. UDOGU MODEKWE 2. NWUMBA MORAH)
3. OKEKE ADAKA, for themselves &) Plaintiffs
on behalf of the people of Awka) Respondents
- and -

1. UDEKWU AMATTA for himself & for)
the people of Iru-Obieli Quarter)
of Enugu-Agidi (Amended by leave) Defendants
of Court dated 20/11/50) Appellants.

Suit No.0/55/1949

BETWEEN:

20 1. UDOGU MODEKWE 2. NWUBA MORAH)
3. OKEKE ADAKE for themselves &) Plaintiffs
on behalf of the people of Awka) Respondents
- and -

1. ANADESE OJISI for himself and)
for the people of Ifite Quarter of) Defendants
Enugu-Agidi) Appellants

Suit No.0/56/1949

BETWEEN:

30 1. UDOGU MODEKWE 2. NWUBAH MORAH)
3. OKEKE ADAKE for themselves &) Plaintiffs
for the people of Awka) Respondents
- and -

1. NWANKWO ANIEGBU for himself &)
for the people of Igbolo quarter) Defendants
in Enugu-Agidi) Appellants

Exhibits

Suit No.0/57/1949

"C"
Appeal Record
- continued.

BETWEEN:

1. UDOGU MODEKWE 2. NWUBAH MORAH)
3. OKEKE ADAKE, for themselves &) Plaintiffs
on behalf of the people of Awka) Respondents

- and -

OJUKWU ONWUKAIFE for himself & on)
behalf of Achalla Quarter in) Defendants
Enugu-Agidi) Appellants

C O N S O L I D A T E D

10

S T A T E M E N T

1. These suits were transferred from the Njikoka Native Court, Awka, to the Supreme Court, Onitsha, by Order of Transfer by the Acting District, Awka Division dated 10th October, 1949. The suits were consolidated by Order of Court dated 20th November, 1950.

2. The case was tried at the Supreme Court, Onitsha and Judgment was delivered in favour of the plaintiffs on the 12th day of March, 1953, with one hundred and twenty-five (125) guineas costs.

20

3. The Notice and Grounds of Appeal were filed on the 26th day of March, 1953.

F E E S PA I D

1. Registrar's Certificate	£1. - . -	
2. Filing Notice and Grounds of Appeal	5. - . -	
3. Service	6. -	
4. Mileage	8. -	
5. Transport	4. -	30
6. Settling Records	1. - . -	
7. W.A.C.A. Certificate	2. - . -	
8. One certified copy of Record of 855 folios at 9d a folio of 100 words or part thereof	32. 1. 3	
9. $\frac{1}{2}$ Costs for each of the 3 copies for use of the Judges of the Appeal Court	24. 1. -	

TOTAL £66. - . 3d

PROTECTORATE COURT OF NIGERIAExhibitsIN THE NATIVE COURT OF NJIKOKA - AWKA DIVISION

"C"

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

Appeal Record
 - continued.

10 I, BENNET HUMPHREYS BRACKENBURY, Acting District Officer, Awka Division by virtue of the powers vested in me under section 25(1)(c) of the Native Courts Ordinance, 1933, hereby order that the following suits be transferred from the Njikoka Native Court to the Supreme Court, Onitsha.

Njikoka Native Court Civil Suits Nos.23/49,
 45/49, 46/49 & 47/49.

Parties: 1. Udogu Nodokwe 2. Nwuba Morah
 3. Okeke Adaka for themselves and
 on behalf of the people of Awka

versus

Udogu Amata of Isu Obieli Quarters in
 Enugu-Agidi

- 20 Claim: 1. A declaration of title to all that piece and parcel of land known as Agunogu land situated at Awka in the District of Awka in the province of Onitsha, the said piece and parcel of land to be particularly delineated on a plan to be produced at the hearing.
- 30 2. £250 (two hundred and fifty pounds) damages for trespass on the said land since 1947.
3. An injunction to restrain the Defendants their servants or Agents from further trespassing on the said land.

I certify that the order of transfer of the above mentioned suits from the Njikoka Native Court to the Supreme Court, Onitsha, is made by me on the notion of J.A. Wachuku, Esqr., solicitor for the plaintiffs for the following reasons:-

- 40 1. The action is for title to a large area of land, some portions of which have already been the subject of previous litigations in the Supreme Court.

Exhibits

"C"

Appeal Record
- continued.

2. The case will involve reference to previous judgments in the Native Courts, the meaning of which the Njikoka Native Court of Appeal would have considerable difficulty in interpreting.
3. The case will also involve the production of plans, the value of which the Native Court is unlikely to be able properly to assess.

Dated at Awka this 10th day of October, 1949.

(Sgd.) B.H. Brackenbury,
Ag. District Officer,
Awka Division.

10

CIVIL SUMMONSES

No.23/49

21105 0/48/49

NATIVE COURT OF JUDICIAL COUNCIL OF NJIKOKA

NIGERIA

1. UDOGU NODEKWE	2. NWUBA MORAH	} <u>Plaintiffs</u>
3. OKEKE ADAKE for themselves and	on behalf of the people of Awka	
- and -		

UDOGU ANATA of Isu Obieli Quarters	} <u>Defendant</u>
in Enugu Agidi	

20

- Claim: 1. A declaration of title to all that piece and parcel of land known as Agunogu land situated at Awka in the District of Awka in the province of Onitsha, the said piece and parcel of land to be particularly delineated on a plan to be produced at the hearing.
2. £250 (two hundred and fifty pounds) damages for trespass on the said land since 1947.
3. An injunction to restrain the defendants their servants or Agents from further trespassing on the said land.

30

Date of Summons:- 21.3.49.

Fees paid 15/- vide a/c R.No.43/64182 dated 21/3/49

(Sgd.) J.E. Anigbogu
(Signature of President or Vice President)

W/S (Sgd.) A.A. Nwokoye
A.C.C.

CIVIL SUMMONS

No. 45/49
21108 (0/55/49)

Exhibits

"C"

NATIVE COURT OR JUDICIAL COUNCIL OF NJIKOKA

Appeal Record
- continued.

NIGERIA

- 1. UDOGU NODEBE (m) 2. NWUBA MORAH (m))
- 3. OKEKE ADAKE for themselves and on behalf of the people of Awka) Plaintiffs

- and -

- 10 ANADEBE OJISI (m) and for the people of Ifite Quarter in Enugu Agidi) Defendant

Claim:- 1. A declaration of title to all that piece and parcel of land known as Agunogu land situated at Awka in the District of Awka, in the province of Onitsha, the said piece and parcel of land to be particularly delineated on a plan to be produced at the hearing.

2. £250 damages for trespass on the said land since 1947.

20 3. An injunction to restrain the defendants, their servants or Agents from further trespassing on the said land.

Date of Summons - 16/5/49.

Fees paid 15/- vide a/c R.No.14/9574.

(Sgd.) G.O. Uchendu.

(Signature of President or Vice President)

W/s (Sgd) A.A. Nwokoye

A.C.C.

Exhibits

CIVIL SUMMONS

No.46/49
21109 (0/56/49)

"C"

Appeal Record
- continued.

NATIVE COURT OR JUDICIAL COUNCIL OF NJIKOKA

NIGERIA

1. UDOGU NODEBE (m) 2. NWUBA MORAH)
3. OKEKE ADAKE for themselves and)
for the people of Awka) Plaintiffs

- and -

NWANKWO ATUEGBU for himself and for)
the people of Igbolo quarters in) 10
Enugu Agidi) Defendant

Claim:- 1. A declaration of title to all that piece and parcel of land known as Agunogu land situated at Akwa, in the District of Awka, in the province of Onitsha, the said piece and parcel of land to be particularly delineated on a plan produced at the hearing.

2. £250 damages for trespass on the said land since 1947. 20

3. An Injunction to restrain the Defendants, their servants or Agents from further trespassing on the said land.

Date of Summons 16/5/49

Fees paid. 15/- vide N.C.R. No.15/7515

(Sgd.) G.O. Uchendu.

(Signature of President or Vice President)

Sgd. A.A. Nwokoye

A.C.C.

CIVIL SUMMONS

No.47/49
21110 (0/57/49)

Exhibits

"C"

NATIVE COURT OR JUDICIAL COUNCIL OF NJIKOKA

Appeal Record
- continued.

NIGERIA

1. UDOGU NODEBE (m) 2. NWUBA MORAH)
3. OKEKE ADAKA for themselves and)
on behalf of the people of Awka) Plaintiffs

- and -

10 OJUKWU ONWUKAIFE for himself and)
for the people of Achalla Quarter)
in Enugu Agidi) Defendant

Claim:- 1. A declaration of title to all that piece
and parcel of land known as Agunogu land
situated at Awka, in the District of
Awka, in the province of Onitsha, the
said piece and parcel of land to be par-
ticularly delineated on a plan to be
produced at the hearing.

20 2. £250 damages for trespass on the said
land since 1947.

3. An injunction to restrain the defendants,
their servants or agents from further
trespassing on the said land.

Date of Summons 16/5/49

Fees paid 15/- vide N.C.R. No.16/7516.

(Sgd.) G.O. Uchendu

(Signature of President or Vice President)

Sgd. A.A. Nwokoye A.C.C.

Exhibits

"C"

Appeal Record
- continued.IN THE SUPREME COURT OF NIGERIAIN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISIONHOLDEN AT ONITSHABEFORE HIS HONOUR, MR. JUSTICE MANSON, PUISNE JUDGE
WEDNESDAY THE 23RD DAY OF MARCH, 1950Suit No.0/48/1949

1. UDOGU NODUKWE, 2. NWUBA MORAH,
3. OKEKE ADAKA, for themselves and
on behalf of the people of Awka Plaintiffs 10

versus

UDOGU AMATA of Isu Obieli Quarters
in Enugu Agidi Defendant

Claim:- 1. A declaration of Title to all that piece
and parcel of land known as Agunogu Land
situated at Awka in the District of Awka
in the province of Onitsha, the said
piece and parcel of land to be particu-
larly delineated on a plan to be pro-
duced at the hearing. 20

2. £250 (two hundred and fifty pounds)
damages for trespass on the said land
since 1947.

3. An injunction to restrain the Defendants
their servants or Agents from further
trespassing on the said land.

Mbanefo for PlaintiffsIbeziako for Defendants

By Court: Statement of Claim and plan to be filed
in Court within 90 days and a copy of Statement of
Claim and plan to be served on Defendants. State-
ment of Defence to be filed within 90 days from
service on them of Statement of Claim and plan and
a copy of Statement of Defence to be served on
plaintiffs. 30

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

23rd March, 1950.

IN THE SUPREME COURT OF NIGERIA

Exhibits

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL

"C"

DIVISION

Appeal Record
- continued.

HOLDEN AT

Suit No.0/48/1949

BETWEEN:

- 1. UDOGU NODEKWE
- 2. NWUBA MORAH
- 3. OKEKE ADAKA for themselves and
on behalf of the people of Awka Plaintiffs

10 - and -

- 1. UDOKWU AMATA of Iru Obiele Quarters
- 2. ANADEBE OJISI of Ifite "
- 3. NWANKWO ATUEGBU of Igbolo "
- 4. OJUKWU ONWUKAITE of Achala "
for themselves and on behalf of
the people of Enugu Agidi Defendants

STATEMENT OF CLAIM

Filed at 11.30 a.m. on 20/6/1950. (Intld) S.A.S.
Regr.

- 20 1. The plaintiffs sue for themselves and on behalf of the people of Awka in Awka Division.
- 2. The defendants are sued for themselves and as representing the people of Enugu Agidi in Awka Division.
- 3. The land the subject matter of this action is called Agu Norgu and is part of a larger piece of land also known as Agu Norgu property of the plaintiffs.
- 30 4. All Agu Norgu land originally belonged to the Norgu people. At a time beyond human memory Awka fought Norgu drove them and took over their land known and called Agu Norgu to this day. From that time until today the said Agu Norgu became the property of Awka and has been in their exclusive possession ever since.
- 5. As owners aforesaid the plaintiffs have farmed

Exhibits

"C"

Appeal Record
- continued.

on the said land and let portions thereof to various native communities for farming on payment of the customary tribute and/or rent.

6. Amongst the communities to whom the plaintiffs have let Agu Norgu for farming are the people of Enugu-Agidi the defendants. Whenever they failed to pay the rent the plaintiffs have always sued them in Court to recover.

7. In 1943 the plaintiffs took out four summonses in the Native Court against the various communities of Enugu Agidi which said summonses were transferred to the High Court and therein heard and determined Suits Nos. 0/12-15/1943. The said suits terminated in favour of the plaintiffs. The defendants being dissatisfied with the judgment of the High Court appealed to the West African Court of Appeal and lost. The plaintiffs will rely on the judgment in the said cases which were consolidated and tried together. 10

8. In accordance with customary practice the defendants made farming villages where they stay during the farming season. These farming villages consist of temporary huts which are rebuilt every farming season. 20

9. In spite of the judgment of the High Court and of the West African Court of Appeal referred to in paragraph 7 above the defendants continue to use the land and refuse to pay rents as before stating that the land belongs to them.

10. The portion of Agu Norgu in dispute in the present action is clearly delineated shown and bordered orange on the plan to be filed in Court with this Statement of Claim. 30

11. The defendants are claiming exclusive possession and ownership of the area in dispute and have built boundary wall from the main Awka-Enugu Agidi Road to Nwezi stream and this with other natural boundaries marks out in the area in dispute from the rest of Agu Norgu land.

Wherefore the plaintiffs claim:- 40

(a) Declaration of title to the said Agu Norgu land

(b) £250 damages for trespass.

(c) An injunction to restrain the defendants by themselves or through their agents from further trespassing on the said land.

Exhibits

"C"

Dated at Onitsha this 19th day of June, 1950.

Appeal Record
- continued.

(Sgd.) T. Okam Ojiako ...B.L.

per pro L.N. Mbanefo, B.L.
plaintiffs' Solicitor.

For filing:

Filing	S/C	2/6
"	plan	2/6
Service	on 4 defdts.	12/-
Mileage		8/-

10

£1.5/- pd. on C.R.No.195891
of 20/6/50.

Suit No.0/48/1949

STATEMENT OF DEFENCE

Filed at 12.20 p.m. on 8/8/50. (Intd.) S.A.S. Regr.

1. The defendants admit paragraphs 1 & 2 of the Statement of Claim.

20

2. Save as is herein expressly admitted the defendants deny seriatim paragraphs 3,4,5,6,7,8,9,10 and 11 of the Statement of Claim, as if each paragraph has been separately taken up and traversed, and will put the plaintiffs to the strictest proof of each and every allegation of fact contained therein.

30

3. The defendants say that the land in dispute is part of a larger portion of land known as Umuagidi Agu Iga land which is and has been the property of the defendants.

4. The Mili Awbibia stream was the boundary between the plaintiffs and the Norgu people who were subsequently conquered by both the plaintiffs and the defendants at one of the early inter tribal wars before the advent of the British Government. After the conquest of Norgu the plaintiffs and the defendants fixed the Mili Nwezi stream as their common boundary.

Exhibits

"C"

Appeal Record
- continued.

5. Since that time when the defendants farmed beyond or across Mili Nwezi stream from Enugu Agidi direction those farmers who actually crossed over paid collectively tribute of £5, one goat, 100 yams and 4 pots of palm wine to the plaintiffs people on each occasion they farmed. When however the number of farmers who paid the tribute decreased in number as most of them became traders the tribute was reduced by unanimous consent to £3, one goat, 100 yams and four pots of palm wine. 10

6. The defendants have exercised maximum rights of ownership of the land in dispute in diverse ways namely for farming purposes, building living houses thereon, cutting the palm fruits and tapping the tomo trees in addition to letting on payment of rent portions thereof to other people to farm.

7. Since about 1943 the plaintiffs commence to claim almost all the land where the ancestors of the defendants lived and up to the very threshold where the defendants today live and farm. In order to assert their right an action was instituted by the plaintiffs in the Native Court for payment of rent. This suit was heard by the High Court, and the West African Court of Appeal. The defendants have always made it very clear at all times that they are willing to pay rent whenever they farm over the Mili Nwezi stream from the Enugu Agidi direction. The Native Court, the High Court and the West African Court of Appeal made no order as to the specific area in respect of which rents were payable. 20 30

8. In 1946 the defendants in the Nimo Umanri Native Court sued the plaintiffs for declaration of title to the land in dispute with a view to determine the limit in respect of which rent was payable. The Native Court however gave judgment in favour of the defendants vide the Nimo Umanri Native Court case No.12/1946.

9. The plaintiffs further in 1946 brought an action in the Supreme Court against the defendants for trespass on this land in dispute. This action No.0/10/1946 was dismissed by His Honour. 40

10. The defendants say that the plaintiffs are not entitled to the declaration sought and that at the trial they will plead long possession, laches and acquiescence.

Dated at Onitsha this 1st day of August, 1950.

Filing 2/6)
 Mileage 9/-) 19/6 pd. on C.R.No. 431795 of 8/8/50. 50
 Mileage 8/-)
 (Sgd.) M. Ogo Ibeziako
 DEFENDANT'S SOLICITOR.

IN THE SUPREME COURT OF NIGERIA

Exhibits

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

"C"

HOLDEN AT ONITSHA

Appeal Record
- continued.

BEFORE HIS HONOUR: MR. JUSTICE ADEMOLA, PUISNE JUDGE
MONDAY THE 6TH DAY OF NOVEMBER, 1950

Suit No.0/48/1949

UDOGU NODEKWE & 2 ORS.

Vs.

UDOGU AMATA & 3 OTHERS.

10

- Claim 1. Declaration of title to land etc.
2. £250 damages for trespass etc.
3. Injunction etc.

Adjourned till 20/11/50.

(Sgd.) A. Ade Ademola
Puisne Judge
6/11/50.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

20

HOLDEN AT ONITSHA

BEFORE HIS HONOUR, MR. JUSTICE ADEMOLA, PUISNE JUDGE.
MONDAY THE 20TH DAY OF NOVEMBER, 1950.

Suit No.0/48/49

UDOGU NODEKWE & 2 ORS.

Vs.

UDOGU AMATA & 3 ORS.

Mbanefo for plaintiffs.
Ibeziako for defendants.

30 COURT: The Court observes that in this case an

Exhibits

"C"

Appeal Record
- continued.

Order of Transfer made on 10th October, 1949 was in respect of four cases, but it would appear that in this Registry it has been treated as an Order of Transfer of four suits consolidated.

The cases must be separated:- They are separated thus:-

- (1) Native Court case No.23/49
21105 to be in this court Suit No.0/48/49.

Udogu Nodekwe & 2 others
versus

Udogu Amata of Isu Olieli quarters in Enugu Agidi. 10

- (2) Native Court case No.45/49
21108 to be in this court Suit No.0/55/49.

Udogu Nodekwe & 2 others
versus

Anadegbe Ojisi (m) and for the people of Ifite Quarter in Enugu Agidi.

- (3) Native Court Case No.46/49
21109 to be in this Court Suit No. 0/56/49 20

Udogu Nodekwe & 2 others
versus

Nwankwo Atuegbu for himself and for the people of Igbolo quarters in Enugu-Agidi.

- (4) Native Court Case No.47/49
21110 to be in this Court Suit No. 0/57/49

Udogu Nodekwe & 2 others
versus

Ojukwu Onwukaife for himself and for the people of Achalla quarters in Enugu-Agidi. 30

Mbanefo at this stage seeks for leave to amend the summons in Suit No.0/48/49 by substituting for the defendant, the following:-

"Udogu Amata for himself and for the people of Isu Obieli quarter in Enugu-Agidi"

Ibeziako for the defendants does not object.

Amendment allowed as such.

Mbanefo asks that the four cases be now consolidated. Ibeziako is of the same view, that it

will be better that a consolidation order be made before pleadings are ordered separately in each case.

Exhibits

"C"

Order. Suits No.0/48/49, 0/55/49, 0/56/49 and 0/57/49 are hereby consolidated and to be heard together.

Appeal Record
- continued.

10 It is further ordered that one Statement of Claim in respect of the four suits be filed with a plan covering the whole area in the four suits, within 60 days and a copy of each to be served on each defendant within that period. Statement of Defence to be filed 60 days thereafter. Pleadings already filed are hereby cancelled. Plan already filed in Court to be returned to plaintiffs.

Copy of this record of proceedings so far taken to be supplied free of charge to counsel on either side.

(Sgd.) A. Ade Ademola,
Puisne Judge.
20/11/50.

20

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL

DIVISION

HOLDEN AT ONITSHA

Suits Nos.0/48/49)
0/55/49)
0/56/49) Consolidated
And 0/57/49)

BETWEEN

30 1. UDOGU MODEKWE & 2 OTHERS Plaintiffs
versus
UDOGU AMATA of Isu Olieli Quarters
in Enugu-Agidi Defendants

2. UDOGU MODEKWE & 2 OTHERS Plaintiffs
versus
ANADEGBE OJISI and for himself
and the people of Ifite Quarter
in Enugu-Agidi Defendants

<u>Exhibits</u>	3. UDOGU MODEKWE & 2 OTHERS	<u>Plaintiffs</u>	
	versus		
"C"	NWANIKWO ATUEGBU for himself and for the people of Igbolo Quarters in Enugu-Agidi	<u>Defendants</u>	
Appeal Record - continued.	4. UDOGU MODEKWE & 2 OTHERS	<u>Plaintiffs</u>	
	versus		
	OJUKWU ONWUKAIEE for himself and for the people of Achalla Quarters in Enugu-Agidi	<u>Defendants</u>	10

Filed 27/1/51 at 11.25 a.m. (Sgd.) E. Ade Bangboye
for Cashier

M O T I O N

TAKE NOTICE that this Honourable Court will be moved on the 5th day of February, 1951, at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the plaintiffs in the above-named cases for an order granting the plaintiffs an extension of time within which to file and serve upon the defendants the plan and a fresh Statement of Claim as ordered herein by this Honourable Court, and for such further and/or other orders as to the Court may seem just.

Dated at Onitsha this 25th day of January, 1951.

(Sgd.) A.O. Mbanefo
for plaintiffs' Solicitor.

A F F I D A V I T

Filed 27/1/51 at 11.25 a.m.

(Sgd.) E. Ade Bangboye
for Cashier.

I, LOUIS NWACHUKWU MBANEFU, Legal Practitioner, Osodi Chambers, Old Market Road, Onitsha, British protected person make oath and say as follows:-

1. That I am the solicitor for the plaintiffs in the above-mentioned case.
2. That on the 20th day of November, 1950, this Honourable Court made an order for the consolidation of the above-named cases, and

granting to the plaintiffs 60 days within which to file and serve upon the defendants the plan and a fresh Statement of Claim, and granting the defendants 60 days within which to file and serve upon the plaintiffs their Statement of Defence.

Exhibits

"C"

Appeal Record
- continued.

3. That the Court ordered the Registrar to supply to Counsel of either side copy of the record of proceedings for the day free of charge.
- 10 4. That the said copy of the record of proceedings was not supplied to us until the 20th day of January, 1951 by which time the period of 60 days allowed to us to file the Statement of Claim and plan had expired.
5. That I make this affidavit in support of a motion for an extension of time within which to file the Statement of Claim and plan.

(Sgd.) L. Mbanefo
Deponent.

20 Sworn at the Supreme Court, Onitsha, this 26th day of January, 1951.

Before me,

(Sgd.) E. Ade Bangboye
COMMISSIONER FOR OATHS.

Motion	10/-
E/Affidavit	2/6
Service	6/-
Mileage	<u>8/-</u>

26/6 pd. C.R. No.602436 of
27/1/51
Intld. E.B.
(Bangboye for C.)

30

4/- pd. C.R.No.602433 of
26.1.51.

Exhibits

"C"

Appeal Record
- continued.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA

MONDAY THE 5TH DAY OF FEBRUARY, 1951

BEFORE HIS HONOUR

ADETOKUNBO ADEGBOYEGA ADENIOLA, Esq., Puisne Judge.

Suit Nos. 0/48/49, 0/55/49, 0/56/49
and 0/57/49: Consolidated

BETWEEN:

10

- | | |
|--|-------------------|
| 1. UDOGU NODEKWE & 2 ORS. | <u>Plaintiffs</u> |
| versus | |
| UDOGU AMATA of Isu Olieli Quarters
in Enugu Agidi | <u>Defendants</u> |
| 2. UDOGU NODEKWE & 2 ORS. | <u>Plaintiffs</u> |
| versus | |
| ANADEGBE OJISI, etc. | <u>Defendants</u> |
| 3. UDOGU NODEKWE & 2 ORS. | <u>Plaintiffs</u> |
| versus | |
| HWANKWO ATUDGBU, etc. | <u>Defendants</u> |
| 4. UDOGU NODEKWE & 2 ORS. | <u>Plaintiffs</u> |
| versus | |
| OJUKWU OMWUKAIME, etc. | <u>Defendants</u> |

20

TAKE NOTICE that this Honourable Court will be moved on the 5th day of February, 1951, at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs in the above-named cases for an order granting the Plaintiffs an extension of time within which to file and serve upon the defendants the plan and a fresh statement of Claim as ordered herein by this Honourable Court, and for such further and/or other orders as to the Court may seem just.

30

L. Ibanefo moving

Udoma (Ibeziako's brief) not opposing but on terms

Mbanefo says delay was due to copy of proceedings not supplied in time by the Court.

Exhibits

"C"

Udoma learned Counsel on the other side should have applied to the Court.

Appeal Record
- continued.

COURT: Time within which to file statement of Claim and plan is enlarged to 90 days as from the date of the first order - 20/11/50.

2 guineas costs to the defendants.

(Sgd.) A. Ade Ademola, J.

10
 Suit No. 0/48/49)
 " " 0/55/49 } Consolidated
 " " 0/56/49 }
 " " 0/57/49)

BETWEEN:

1. UDOGU MODEKWE & 2 ORS. Plaintiffs
 versus
 UDOGU AMATA of Isu Olieli quarters
 in Enugu-Agidi Defendants
- 20
 2. UDOGU MODEKWE & 2 ORS. Plaintiffs
 versus
 ANADEGBE OJISI, for himself and
 people of Ifite Quarter in
 Enugu-Agidi Defendants
3. UDOGU MODEKWE & 2 ORS. Plaintiffs
 versus
 NMAKWO ATUEGBU, for himself
 and for the people of Igbolo
 Quarters in Enugu-Agidi Defendants
- 30
 4. UDOGU MODEKWE & 2 ORS. Plaintiffs
 versus
 OJUKWU OHWUKAIFE for himself
 and for the people of Achalla
 Quarters in Enugu-Agidi Defendants

STATEMENT OF CLAIM

Filed 16/2/51 at 1.30 p.m. C.R.602465 of 16/2/51.
 for 19/- (Sgd.) E. Ade Bamgboye
 for Cashier.

1. The plaintiffs sue for themselves and on

Exhibits

"C"

Appeal Record
- continued.

behalf of the people of Awka in Awka Division.

2. The defendants represent respectively the Iru Olieli Ifite, Igbolo and Achalla quarters of Enugu-Agidi, and are sued as representing the said quarters of Enugu-Agidi, respectively. The term "defendants" whenever used in this Statement of Claim, refer to the said four quarters collectively.

3. The land the subject matter of this action is called Agu Norgu, and is part of a larger piece of land also known as Agu Norgu property of the plaintiffs. 10

4. All Agu Norgu land originally belonged to the Norgu people. At a time beyond human memory, Awka fought Norgu, drove them and took over their land known and called Agu Norgu to this day. From that time until today, the said Agu Norgu became the property of Awka, and has been in their exclusive possession ever since.

5. As owners aforesaid, the plaintiffs have farmed on the said land, and let portions thereof to various communities for farming, on payment of the customary tribute and/or rent. 20

6. Amongst the communities to whom the plaintiffs have let Agu Norgu for farming, are the people of Enugu-Agidi, the defendants. Whenever they failed to pay the rent, the plaintiffs have always sued them in court to recover.

7. In 1943 the plaintiffs took out four summonses in the Native Court against the various communities of Enugu-Agidi, which said summonses were transferred to the High Court and therein heard and determined Suits Nos. 0/12-15/1943. The said suits terminated in favour of the plaintiffs. The defendants being dissatisfied with the judgment of the High Court, appealed to the West African Court of Appeal, and lost. The plaintiffs will rely on the judgment in the said cases, which are consolidated and tried together. 30

8. In accordance with customary practice, the defendants made farming villages where they stay during the farming season. These farming villages consist of temporary huts which are rebuilt every farming season. 40

9. In spite of the judgment of the High Court,

and of the West African Court of Appeal referred to in paragraph 7 above, the defendants continue to use the land and refuse to pay rents as before stating that the land belongs to them.

Exhibits

"C"

Appeal Record
- continued.

10. The portion of Agu Norgu in dispute in the present action is clearly delineated, shown and bordered orange on the plan to be filed in court with this Statement of Claim.

10 11. The defendants are claiming exclusive possession and ownership of the area in dispute, and have built boundary wall from the main Awka-Enugu-Agidi Road to Nwezi stream, and this, with other natural boundaries, marks out the area in dispute from the rest of Agu Norgu land.

Wherefore the plaintiffs claim as per the writ of summons.

Dated at Onitsha this 14th day of February, 1951.

(Sgd.) A.O. Mbanefo B.L.
per pro L.N.Mbanefo Esq., B.L.
Plaintiffs' Solicitor.

20

S/C
1 plan 2/6
Service 2/6
Mileage 6/-
8/-

19/- pd. C.R. No.602465 of 16/2/51.
(Intld. E.B. Bamgboye)
for C:

M O T I O N

30 Filed 10/5/51 12.30 p.m. (Sgd.) E.Ade.Bamgboye
Registrar

40 TAKE NOTICE that this Honourable Court will be moved on the 31st day of May 1951, at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendants in the above named cases for an order granting the Defendants an extension of time within which to file and serve upon the Plaintiffs Statement of Defence as ordered by this Honourable Court and for such further and/or other orders as the Court may deem just.

Dated at Onitsha this 3rd day of May, 1951.
(Sgd.) M. Ogo Ibeziako
Defendants' Solicitor.

Exhibits

A F F I D A V I T

"C"

Filed 10/5/51 at 12.30 p.m. (Sgd.) E.Ade Bamgboye
Regr.

Appeal Record
- continued.

I, MICHAEL OGO IBEZIAKO, Legal practitioner of 65 Old Market Road Onitsha make oath and say as follows:-

1. That I am the solicitor for the Defendants in the above consolidated suits.
2. That on or about 5th of February, 1951, this Honourable Court extended the time within which to file the Statement of Claim by the plaintiffs. 10
3. That owing to my absence to Lagos for the public Service Board and my clients inability to file the Statement of Defence while I was away the period allowed to file the Statement of Defence expired.
4. That I make this Affidavit in support of a motion for an extension of time within which to file the Statement of Defence. 20

(Sgd.) M. Ogo Ibeziako
Deponent.

Sworn at the Supreme Court Registry, Onitsha this 10th day of May, 1951.

Before me

(Sgd.) E. Ade Bamgboye
COMMISSIONER FOR OATHS.

4/- pd. C.R. No.691816 of 10/5/51

Motion	10/-
F/Affdt.	2/6
Oath	4/-
Service	1/6
Mileage	<u>1/6</u>
	19/6

30

pd. C.R. No.691816 of 10/5/51 (Intld.) E.B.

AT ONITSHA, THURSDAY THE 31ST DAY OF MAY, 1951.

BEFORE HIS HONOUR MR. JUSTICE MANSON
PRISON JUDGE

Exhibits

"C"

Suit No.0/48/1949

UDOGU NODEKWE & 2 ORS. vs. UDOGU AMATA

Appeal Record
- continued.

Suit No.0/55/1949

UDOGU NODEKWE & 2 ORS. vs. ANADEBE OJISI

Suit No.0/56/1949

UDOGU NODEBWE & 2 ORS. VS. NWANKWO AHIEGBU

Suit No.0/57/1949

UDOGU NODEBE & 2 ORS. vs. OJUKWU ONWUKAIFE

M O T I O N

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MOTION with Affidavit in support by Michael Ogo Ibeziako, Legal practitioner. Solicitor for Defendants, for an order to grant the Defendants an extension of time within which to file and serve upon the Plaintiffs Statement of Defence as ordered by this Honourable Court and for such further and/or other orders as the Court may deem just.

A.O. MBANEFU for Plaintiffs.

20

IBEZIAKO for Defendants in support of motion.

A.O. MBANEFU does not oppose.

BY COURT:- Ibeziako says Statement of Defence is ready. I grant an extension of time for 7 days from to-day's date. I award Plaintiffs 2 guineas costs.

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

31st May, 1951.

STATEMENT OF DEFENCE

30

Filed 1/6/51 at 9 a.m. (Sgd.) E. Ade Bamgboye
Registrar.

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

Exhibits

"C"

Appeal Record
- continued.

2. Save as herein expressly admitted the defendants deny seriatim paragraphs 3,4,5,6,7,8,9,10 and 11 of the Statement of Claim, as if each paragraph has been separately taken up and traversed and will put the Plaintiffs to the strictest proof of each and every allegation of fact contained therein.

3. The Defendants further say that the land in dispute is known and called Agu Iga and has been their property.

4. The Mili Awbibia (stream) was the boundary between the Defendants and the Norgu people who were subsequently conquered by the Plaintiffs and the Defendants at one of the early inter tribal wars before the advent of the British Government. After the conquest of Norgu the Plaintiffs and the Defendants fixed the Mili Nwezi (stream) as their common boundary. 10

5. Since that time when the Defendants farmed beyond or across Mili Nwezi (stream) from Enugu Agidi direction those farmers who actually crossed over paid collectively tribute of £5, one goat, 100 yams and 4 pots of palm wine to the plaintiffs on each occasion they so farmed. When, however the number of farmers who paid the tribute decreased in number as most of them became traders the tribute was reduced by unanimous consent to £3, one goat, 100 yams and four pots of palm wine. 20

6. The Defendants have exercised maximum rights of ownership over the land in dispute in diverse ways namely for farming purposes, building dwelling houses thereon, cutting the palm fruits and tapping the tombo trees in addition to letting on payment of rent portions thereof to other people to farm. 30

7. Since about 1943 the plaintiffs commenced to claim almost all the land where the ancestors of the Defendants lived and up to the very threshold of their present doors. In order further to assert their right an action was instituted by the plaintiffs in the Native Court for payment of rent. This suit was heard by the High Court, and the West African Court of Appeal. The Defendants have always made it very clear at all times that they are willing to pay rent whenever they farm over the Mili Nwezi (stream) from Enugu Agidi direction. The Native Court, the High Court and the West African Court of Appeal made no order as to the 40

specific area in respect of which rents were payable.

Exhibits

"C"

Appeal Record
- continued.

10 8. In 1946 the Defendants in the Nimo Umanri Native Court sued the Plaintiffs for declaration of title to the land in dispute with a view to determine the limit in respect of which rent was payable. The Native Court gave judgment in favour of the Defendants vide Nimo Umanri Case No.12/1946. On appeal both the Njikoka Appeal Court (Suit No. 1/21101 and the District Officer Awka confirmed the judgment of the Court of first instance.

9. The Plaintiffs further in 1946 brought an action in the Supreme Court against the Defendants for trespass on this land in dispute. The Suit No.0/10/1946 was dismissed by His Honour the Judge.

10. The Defendants say that the Plaintiffs are not entitled to the declaration of title sought and that at the trial they will plead long possession, laches and acquiescence.

20 Dated at Onitsha this 3rd day of May, 1951.

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

S/D 2/6
Service 4/6
Mileage 8/-

15/- pd. C.R. No.691843 of 1/6/51.
(Intld) E.B.
C.

Suits Nos. 0/48/49, 0/55/49, 0/56/49, 0/57/49;

Consolidated.

30 MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved at 9 of the clock in the forenoon on the 8th day of December, 1952, or so soon thereafter as Counsel for the plaintiffs can be heard on behalf of the above named plaintiffs for an order of this Honourable Court that judgment should be entered in favour of the plaintiffs for non compliance by the defendants with this Honourable Court's order of the 31st of May, 1951, that the Statement of Defence be filed within seven (7) days and for

40

Exhibits

"C"

Appeal Record
- continued.

such orders as the Honourable Court may seem fit.

Dated at Onitsha this 11th day of October, 1952.

(Sgd.) T. Okam Ojiako
Plaintiffs' Solicitor.

Filed at 11 a.m. on 14/10/52 (Intld.) J.E.(Egbaran)
C.

Motion	12/6
Service at 1/6	6/-
Mileage	4/-
Transport	4/-
Filing affidavit	2/6
Order	<u>25/-</u>

10

54/- pd. C.R.No.A592920 of
14/10/52
(Intld.) J.E.
C.

AFFIDAVIT IN SUPPORT OF MOTION

Filed at 11 a.m. on 14/10/52.

I, UDOGU MODEKWE of Awka, British protected person make oath and say as follows:-

1. That I am the first plaintiff in the above four suits. 20
2. That on the 20th day of November, 1950, the four cases were consolidated and pleadings were ordered.
3. That a motion for extension of time to file the Statement of Claim was filed on the 27th day of January 1951 and granted on the 5th day of February 1951.
4. That the Statement of Claim and plan were filed on the 16th day of February 1951. 30
5. That on the 31st of May 1951, the defendants were granted extension of time for 7 days to file the Statement of Defence.
6. That up till today the defendants have failed to comply with the order of this Honourable

Court and no Statement of Defence has been filed for over 16 months now.

Exhibits

"C"

7. That I make this affidavit in support of the Motion for an order of this Honourable Court that judgment be in favour of the plaintiffs in the above consolidated suits.

Appeal Record
- continued.

Dated at Onitsha this 11th day of October, 1952.

(Sgd.) Udeogu Modekwe
DEPONENT.

10

Sworn at the office of the Supreme Court Registry Onitsha this 11th day of October, 1952.

Before me,
(Sgd.) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

4/- pd. C.R. No.A592921 of 11/10/52. (Intld.) J.E.
C.

AT ONITSHA, MONDAY THE 8TH DAY OF DECEMBER, 1952
BEFORE HIS LORDSHIP MR.F.W.JOHNSTON, PUISNE JUDGE

Suits Nos. 0/48/49, 0/55/49, 0/56/49 & 0/57/49:
(Consolidated)

20

OJIAKO & MBANFEO for plaintiffs
IBEZIAKO for defendants.

Hearing (Motion) on 30th December.

(Sgd.) F.W. Johnston,
J.

AT ONITSHA, TUESDAY THE 30TH DAY OF DECEMBER, 1952

0/48, 0/55, 0/56, 0/57 of 1949 - Consolidated.

OJIAKO & MBANFEO for plaintiffs
IBEZIAKO for defendants - opposing motion - The
Statement of Defence was filed within the period
prescribed.

30

Ojiako:- No copies received: No service up to now:-

Exhibits

"C"

Appeal Record
- continued.

Note:- The record contains the Statement of Defence filed on 1st June.

We would not have brought this motion if we had known that the statement of defence was filed in time.

Ojiako:- applies to withdraw the motion.

ORDER: In the circumstances I approve withdrawal of this motion and I rule that the plaintiffs be permitted to obtain a refund of £1.5.0 paid by them for the 'Order' which now will not arise. The plaintiffs may have access to the Court file to make a copy of the Statement of defence of which they may have lost their copy. There will be no order as to costs.

10

(Sgd.) F.W. Johnston,
J.

Note: This case be considered for inclusion at next Awka sessions.

30.xii.52. (Intld.) F.W.J.

AT AWKA, TUESDAY THE 10TH DAY OF FEBRUARY, 1953.

20

0/48, 55-57/49

OJIAKO with MBANEFO for plaintiffs
IBEZIAKO for defendants.

Next case in the list:- s/o to tomorrow.

(Sgd.) F.W. Johnston
J.

AT AWKA, FRIDAY THE 13TH DAY OF FEBRUARY, 1953

MBANEFO with OJIAKO for plaintiffs.
IBEZIAKO for defendants.

MBANEFO:- In 1941 - plaintiff sued Okpuno people in 0/13/1941 for declaration of title to the portion marked yellow and plaintiffs gained declaration of title to whole yellow area. That judgment subsists today. It was established that that yellow area forms portion of whole of Agunogu land. In 1943, plaintiffs took action against each quarter which comprise present defendants. In

30

Native Court Suits were transferred to High Court and became 0/12 to 0/15 of 1943, claiming money and stock for rent for farming. The judgments subsist. (This would appear to be admitted in para.7)

Exhibits

"C"

Appeal Record
- continued.

10 We now sue for declaration of title because vide paragraph 11, defendants have ceased paying rent and set up title. Defendants have not paid rent for 10 years. The area is the area orange on the plan. Plaintiffs' and defendants' plans are admitted as Ex. A and B respectively: By consent. Refer to defence - The defendants agree that they pay us rent for farming in the "Corridor" between Nwezi stream and area yellow. As in fact they do - I refer to paragraph 5 Statement of defence - "Farming beyond or across Nwezi stream".

20 In paragraph 6 defendants claim ownership to area orange Ex. A. We used Ex. A in our 1943 rent cases. I shall submit that by the defendants defence in the 1943 cases they were estopped from denying our claim to a declaration of title in this suit.

(Sgd.) F.W. Johnston
J.

IBEZIAKO:- per curiam

30 Note:- I refer to paragraph 8 in Statement of Defence and I point out to Ibeziako that if the intention is to say that the subject of plaintiffs' present claim is res judicata the defence must raise the objection - which goes to the root of plaintiffs case - as a preliminary objection to the plaintiffs suit.

IBEZIAKO:- Will take the objection.

40 History of case:- Long standing dispute between the plaintiffs Awka people and defendants of Enugu Agidi - others, Okpuno and Amawbia have also been in dispute with the plaintiffs. Subject matter has been Agunogu Land. We say now (para.4) we shared the Conquest of Norgu land and that it was divided giving Nwezi stream as boundary - We had originally Obiba Stream as our boundary - with Norgu - Our case is that the land west of Nwezi stream is ours and land east of Nwezi stream is plaintiffs'. - The area west is the area now in dispute. The four rent suits 0/12 to 0/15 of 1943 contained no reference to boundaries. We agree

Exhibits

"C"

Appeal Record
- continued.

that the rent suits were by the present plaintiffs - peoples against the present defendant peoples. After the rent cases we had consultations. In 1946 the plaintiffs took action for damage to trees against the defendants. The suit was dismissed. Rent - We took action in Native Court as stated in paragraph 8. Produces Records - (For identification later). We got judgment for "Aguiga" land as demarcated by Mili Nwezi boundary to Plan No. E.C. 5246. On appeal we got judgment boundary between the plaintiffs Enugu Agidi and defendants Awka declared from Mili Nwezi river - plaintiffs to pay rent reserved in agreement if cross Nwezi river to the Eastern side defendants' land. Costs for plaintiff. Defendants appealed to D.O. - The D.O. dismissed the defendants appeal and directed mounds to be set up between source of N.A. stream and the N.A. road. Defendants further appealed to Resident. The defendants succeeded on the ground that the appeal Court and D.O. had no jurisdiction and he said "I therefore allow the appeal". He set aside all previous judgments. 10

We appealed to chief Commissioner on ground that Resident erred: The Chief Commissioner reversed the Resident's judgment and ordered that the suit be heard by the Supreme Court, - a transfer to Supreme Court for trial. The suit was not transferred - Reads Chief Commissioner's judgment - The Chief Commissioner has not set aside the trial court judgment. He set aside the Resident's judgment. He left the trial court judgment, the appeal court judgment and the D.O.'s judgment, unmentioned. The last sentence of the Chief Commissioner's judgment is meaningless. 30

Note: But see para. 4 "I order that this claim be reheard in the Supreme Court."

Ruling - This objection - suit res judicata - is unsupportable. I have seen the Chief Commissioner's Order under section 40 (2) of the Native Courts Ordinance. The order is good. It directed a retrial of the claims brought by the defendants in Nimo Umunri Native Court and it thereby set aside the decision of that Court and, of course, of the two appellate decisions which followed later. The position is that that claim by the defendants should be in the Supreme Court now and if so should be consolidated with these present suits. 40

(Records returned) (Sgd.) F.W. Johnston
J.

Order: I strike out paragraph 8 of the witnesses' statement of defence in view of my ruling upon the matter raised therein.

(Sgd.) F.W. Johnston.
J.

Exhibits

"C"

Appeal Record
- continued.

10 MBANEFU:- Plaintiffs' submission that the defend-
ants are estopped from defending their action. The
defendants paid rent. The Court found that they
were tenants. I refer to the 4 rent cases. We
claimed rents against defendants for farming
plaintiffs land Agunogu. We claimed £80 cash and
also rent in kind for 4 years in arrears. Defend-
ants denied plaintiffs' claim to ownership by
conquest and pleaded joint ownership by conquest.
The decision found that the defendants were tenants.
We got judgment as prayed and it was upheld on
appeal. The date of Supreme Court judgment was
10.7.44. : Rent action commenced in 1949 puts in
copies proceedings 0/12 to 15/43 including Supreme
Court and W.A.C.A. judgments: Admitted by consent
20 as Exhibits C (1) (2) and (3). We have ceased to
regard the defendants as tenants. They are tres-
passers. We sue also for damages as trespassers.
Defendants are estopped from defending the action.
I refer to 6 W.A.C.A. page 139. (It was a finding
of fact that the defendants were tenants). They
are estopped now from denying our title.

30 per Curiam: How does it arise in view of Section
151 Evidence Ordinance Cap.63 and your treating
defendants as trespassers?

MBANEFU: The defendants paid rent. Then they
stopped. They remain on the land. The defendants
became trespassers from the moment they denied our
title.

(Sgd.) F.W. Johnston.

40 Ruling: I regard the submission that the defend-
ants are estopped from defending the plaintiffs'
claim to title as misconceived. It seems that at
one time the defendants were regarded by the Plain-
tiffs as tenants and that plaintiffs in 1943
succeeded in obtaining decrees against the defend-
ants for arrears of rent in money and in kind. But
in the present suits the defendants are regarded
as trespassers, not as tenants. So in view of
Section 151 of Cap 63 and on the facts as I see
them I disallow this submission without calling
upon the defendants to reply to it.

(Sgd.) F.W. Johnston J.

Exhibits

"C"

Appeal Record
- continued.

Evidence - Plaintiffs to begin.

P.W.1. UDOGU MODEKWE: Sworn examined states:-
I am Udogu Modekwe native of Awka living at Awka
(para. 1 & 2 Statement of Claim admitted) I am a
trader in food-stuffs. I know defendants who are
the people of Enugu Agidi. The land in dispute is
Agunogu. (Note - It is common ground that the
boundaries are as marked orange on Ex.A and pink
on Ex.B - identical)

This 'Norgu' land was won by conquest. But
the defendants never took part in conquest of
Norgu. It was only Awka people, ourselves, who
took part in it. We took action against Okpuno
people in relation to this land for their failure
to pay tribute to us some 15 years ago. We won our
case. Also we sued Isu people for rent for farm-
ing on Agunogu land after Okpuno case some 12
years and we won our case. Also against Enugu
Agidi, the present defendants. Vide Ex.C (12 & 3)

10

We lease the land to tenants and also farm
some parts ourselves. Okpuno, Isu, to defendants,
but not to the whole of the defendants' people
that is, we let the land to the defendants of the
4 quarters in this case. After the final decision
in the 1943 cases the defendants paid us the rents
for which we had taken the action but paid us no
further rent. The defendants are still on the
land farming.

20

Adjourned to Thursday next.
13.2.53. (Sgd.) F.W. Johnston J.

30

AT AWKA, THURSDAY THE 19TH DAY OF FEBRUARY, 1953.

Bar as before.

Suits Nos. 0/48, 55-57/49
(Consolidated)

Evidence continued.

P.W.1. The Enugu Agidi people are still on this
land. I put them on the land to do yam farming
but for no other purpose. They started 10 years
ago cutting palm fruits and other valuable trees.
They also tapped tombo trees and cut the branches
for mats. 5 Iroko trees felled. One Iroko tree
could be valued £30. I estimated loss of £100 on
the palm trees by cutting. I estimate loss of

40

Exhibits

"C"

Appeal Record
- continued.

£110 for palm wine, palm fibres and mats. Our reason for taking action is that defendants have not respected the judgment of W.A.C.A. They don't pay rent and they claim our land. (vide paras.9-11 of Statement of Claim and 3-6 of Statement of Defence). We have some other tenants on the land from Enugu-Ukwu also Ukpoko people. That is all. These other tenants pay us something for farming on the land. We, plaintiffs, farm from Nwezi stream up to our boundary with Enugu Agidi. We farm the whole of Agu-Norgu land. Okpuno people are permitted to farm only in "Agu-Aralla" land and we too farm in Agu Aralla land but if any Okpuno person wants a portion elsewhere on which to farm we can show him a portion. Nweke Maduke, an Okpuno man, has our permission to farm in Agunogu land. He farms between Obibia River and Nwezi stream. Enugu Ukwu are not farming in that portion. They are not farming on our land now. After W.A.C.A. judgment they refused to pay rent. They claimed ownership and when there was a dispute between us and Enugu Agidi people the D.O. came to put a boundary. We did not agree to the D.O. demarcating a boundary. The Enugu Agidi people went and burnt down the houses of the Enugu Ukwu people. We were advised not to put people there again. Enugu Ukwu people. Enugu Ukwu is the same as Enugu Awka (ringed in yellow portion of Ex.A). We do not accept the D.O.'s boundary as binding on us. (Ref. para. 8 of Statement of Claim). Some of defendants' people are living on the disputed land. The dwellings are grass roofed mud walled-huts of the sort built in farms for temporary use with a view to being asked to leave the place at some time or other.

Agu Norgu land is not known by any other name and is not known as Agu Iga land. We ask declaration of title to Agunorgu land. We seek damages and injunction if they are not willing to be tenants.

AT AWKA, FRIDAY THE 20TH DAY OF FEBRUARY, 1953

Hearing resumed.

Udogu Modokwe continuing: Court and Bar as before.

P.W.I. Cross examined Ibeziaka:-

Awka town is comprised of thirty three villages or quarters. It is Ezinano quarter which comprises

Exhibits

"C"

Appeal Record
- continued.

the plaintiffs in this action. Eziano claims this land in dispute on behalf of Awka people. Of all Awka people (vide para.1 Statement of Claim). Ifite people have their own portion where they farm but the land in dispute belongs to us. Ifite people do not claim it. Awka people as a whole won the land by war. If Ifite people have a war today all Awka people will join them against their opponents.

After the war against Norgu people the whole of Norgu land was given to us because the land is nearer to our place. Another portion of Norgu land, also won by us, was left to Ifite people to farm exclusively. That is Agu-Omacha land won from Omacha people. I cannot say whether Norgu war and Omacha war were fought in same year.

10

Allocation to tenants. We allocated to tenants collectively but if an individual comes we would let him a portion individually. We never demarcated boundaries. We let portions, blocks, to people who want to farm in a group. The neighbours of Norgu people before they were driven away were Awka, Okpuno, Isu, Osu-Nagidi, Nofia. Odu Nagidi people changed their name after our case to Enugu Agidi but they are the same people.

20

Before the conquest we did not know the Norgu boundary but the Norgu people pointed it out after the conquest.

To Court we did not kill all the Norgu people. Some ran away and later they asked us for land on which to settle and we gave them a portion where they are today. I cannot say what happened exactly. It all happened long ago. I cannot name anyone who pointed out the boundary but it is known from generation to generation. I cannot say whether neighbours concurred. There are trees on the land which might have been planted by our people I have no more knowledge than that. Palm trees are never planted in farm land they grow by themselves. The planting of palm trees started only recently. Our people may have planted palm trees but I don't know. Wild palms on anybody's land belong to him. I have planted Tombo palms on the land. I did not specify them to the Surveyor but we showed him the group of trees they are communally owned. Okpu people are still on the land. The Surveyor saw all whether or not shown on his plan. After our Lawyers' advice we have not put any tenants on the

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Exhibits

"C"

Appeal Record
- continued.

land. Not since the burning of huts of Enugu Awka people 3 or 4 years ago. Nor did we enter the land to farm on same advice. That is correct. We have not been on the land and we have not placed anyone on it. There is no one in the disputed area at present with our permission. We farm outside. Defendants are in the disputed area because they say that the area has been awarded to them by the District Officer. It is within 10 years since defendants started to cut down the Iroko trees. Since they began to claim the land, we saw them. We did not take separate action. They cut up to 5 trees. It is a large area. I could not be exact. The Surveyor saw them. We did not destroy the Ekpe boundary found by the D.O. We decided to take Court action. We have not taken out suit for rent against defendants. It is not included in this suit. That is suit for a debt.

10

20

Q. Seven defendants have built corrugated iron roofed houses on the land?

A. If so they have built within last 10 years and that includes all defendants.

Q. There are 150 permanent defendants' houses on the land?

A. I don't know. It is ten years ago since I have walked over the land.

Since 10 years I have never entered the land. I am not advised not to enter the land.

30

To Court: No news has been given to me of the erection of any permanent houses by the defendants.

40

Evidence continued: My townsmen went with the Surveyor but I did not go with him when he surveyed the land for the plan. I know that there were some Achalla people living on the disputed land 12 years ago. I don't know whether Achalla people live on the land now or not. I admit that Igbolo village, the whole village are living on the land in dispute. I now say that I do not know whether there are any Igbolo (village) people there now. I know that there were Igbolo people living there before - 12 years ago - I know that there are some Igbolo people on the land now but not whether all the Igbolo people are there. I do not know that they are in permanent houses and with their families. The defendants have paid the arrears of rent for

Exhibits

"C"

Appeal Record
- continued.

which we sued them. They paid the money through the Court. Paid it in satisfaction of the judgment. That is not untrue.

Upon defendants burning our tenants' houses we took action against them in the Magistrate Court.

(Per Curiam - Arson charged?)

I am not too sure. I don't know what action was taken but I was given to understand that some action had been taken in a Magistrate Court.

I do not know whether but I did hear that my people took action against the defendants in Supreme Court. (Vide para.9) I heard of 0/10/46 but I do not know how it was decided.

10

Re-XXD. Ibanefo. Re para. 9 Statement of Claim:

Enugu Awka people left the land when their houses were burnt.

As to lettings to tenants:- I refer to a composite or made up group of people as a community to whom lettings are made I can let land to a village community through the chief of the village. We took the whole of Agunogu land from Norgu people on conquest. We showed the whole of the Norgu land in our previous suits. We never planted palm trees. It is only since the English came that we came to know that palm trees could be planted in plantations. The Enugu Awka village was burnt after our case had been to W.A.C.A. Likewise the D.O. demarcated boundary after the W.A.C.A. decision. And it was after that that the huts were burnt. Our Lawyers' advice not to go on the land was given to us after the D.O. demarcated the boundary. The D.O. gave as reason for putting the boundary that the defendants (Enugu Agidi), should have sufficient area in which to farm in order to realise the money to pay us the rent. I have lived at times out of Awka but I have not been abroad since a year ago. I understand from my Lawyer's advice that we should not go on to the land to farm. I don't know whether my people instructed their lawyer about defendants' permanent houses on the land and I did not go with them. I know that the defendants object in building permanent houses on the land is to claim the land. We sued defendants for rent some 11 years ago. There were no permanent buildings then. I was not called to give evidence

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in the Magistrate's Court in regard to the burning of the huts. At the time of the 1946 Supreme Court case I was not representing my people.

Exhibits

"C"

(Sgd.) F.W. Johnston
J.

Appeal Record
- continued.

10 P.W.2. Sworn on gun, examined states:- I am NWUBA MORA I am a native of Awka and I reside here. I am aged about 70 years. I have lived permanently in Awka for above 30 years. I know Agunogu land now in dispute. I am one of the plaintiffs representing Awka people. The Agunogu neighbouring people are Ofpuno, Isu-Norgu and Osu Nagidi who are defendants who changed their name to Enugu Agidi. There is also Nofia people and then ourselves. We sued four quarters of Enugu Agidi as set out in these suits. Since the W.A.C.A. case defendants paid the 4 years rent claimed and costs. They paid no further rent.

20 The D.O. demarcated a boundary on the land. We disputed it. The matter went to the Chief Commissioner who sent it back. (Referred para.4 Statement of Defence.) There was no boundary agreed with the defendants after the Conquest. The boundary was only put by the D.O. in 1946. The land is Agunogu never Agun-iga as stated in para. 4 of Statement of Defence. The defendants are on the land now in dispute. The defendants approached us after the Norgu war and asked for portion to farm. We showed them portion. There are other tenants,
30 Enugu Awka. They were known before as Enugu-Ukwu but now Enugu Awka. They are the same. We allocated the land to quarters. Each quarter as a unit rented land. If people come in a group we must know who is responsible for the group and who will collect rent. Enugu Ukwu people were in the land after the judgment of 1943 but in 1946 when the D.O. marked the boundary he gave the Enugu Ukwu people 6 months in which to move out. They were living on the land between Obibia stream and Nwezi stream.
40 The defendants (Enugu Agidi) were farming on our land up to 1943. They were not utilizing economic trees. Those trees were our exclusive property. We got declaration title (?) in 1943 case. It was rent case. After that case (1943) the defendants started cutting down Iroko trees palm fruits Tombo trees and sold branches and leaves. We took action for trespass and damages to our trees. (Referred to para. 9 Statement of Defence) The case resulted as stated in para. 9 Statement of Defence. We

Exhibits

"C"

Appeal Record
- continued.

have brought this suit because since 1944 the defendants have not paid rent. They have possessed themselves of the land and claim ownership. We got this land by conquest from Norgu people. We had dispute with Okpuno people as to portion of the Agunogu land which led to court case in which we got title declared to the area yellow on Ex. A. A plan of entire Agu Norgu land was made in the case that went to W.A.C.A. One defendant Mora has a corrugated iron building but it is not on the disputed land. The defendants have got permanent corrugated iron sheeted buildings but they have no corrugated iron roofed buildings on the Agu Norgu land in dispute. Those they have are outside the area. We own the disputed area; defendants claim is false. We claim title damages and injunction.

10

Adjourned to Onitsha, 10 a.m. Monday 2nd March

(Sgd.) F.W. Johnston

20.2.53.

J.

AT ONITSHA, MONDAY THE 2ND DAY OF MARCH, 1953:

20

Court and Bar as before.

Examination - P.W.2. continued.

Cross-examined - Ibeziake - Referred to plan Ex.A. (x Achalla and Enugu "Esu Agidi" shown outside area in dispute as Awka tenants) We did not point out Achalla tenants to Surveyor outside the land in dispute. (Note the plan) It is the fault of our Surveyor (possibly). It must be a mistake. Achalla village (indicated with query in circle on plan) is not within the land in dispute. We have their huts in the disputed area when they are farming. There are not many of them. I guess about 10. All four quarters have farming huts within the land. These huts are temporary shelters and they are abandoned at the end of the season. The wives and children do not live in them. The huts are grass constructed. We would not describe them as a village. A village is something quite distinctive from a collection of grass huts.

30

Q. So that in Agu Norgu the 4 quarters you mention have no villages in the land in dispute?

40

A. That is so. The land is given to them only for farming not for settlement.

I know the disputed area. The two places marked as villages on the plan. The two are not permanent

settlements. They are just given for farming. There are no villages in the disputed area in which people live with their household. No permanent villages in the area. The people of the 4 quarters who wish to do so, put up palm huts. They build them in their respective areas. It is in their discretion. I do not know that it is their general practice. I do not know now whether there were such huts (farming huts) on the land when I pointed out things to the Surveyor. In some years they build and in others they don't.

Exhibits

"C"

Appeal Record
- continued.

10

Q. Do you give out the land collectively to the 4 quarters or do you apportion a separate area to each quarter?

A. We give it to them collectively and the four villages apportion it amongst themselves.

20

We give out a portion from Obibia stream up to Ofianekwu Forest. (Vide Ex.A.) I am sure of that. We give out that block from year to year for farming and they will pay. We farm from the other side of Obibia up to Nwezi stream. We have always let the rest to defendants. After Norgu war we made a boundary with defendants. There are Iroko trees (very big trees) on the land but I cannot say how many now had been cut down when the plan was being made. They were cut down after the case.

30

The defendants have no walled houses anywhere on the land. The Enugu Awka people have got permanent houses between Obibia stream and Nwezi stream. The huts occupied or used by defendants for farming were known at the time when the plan was made. Ifite people did not get any portion of Norgu property upon the Norgu defeat.

Ref. Achalla:- Their village, outside the area, is their ancestral home from the boundary of Agunogu the Achalla village is "far" - not close to the boundary of Agunogu.

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There is a village - name Osu Agidi:- The four villages make up Enugu-Osu-Agidi - the "town" (Note - not perhaps in English sense of word "town".) The people live in their respective "villages". We give out the land for farming to the four villages (Note - These are the quarters comprising defendants) Those four villages make up Enugu-Osu Agidi.

I did not go around with the Surveyor. I don't know who told the Surveyor the names on plan - I did not know Chief Nwankwo nor of his having lived on the land in dispute in permanent fashion for 100 years.

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To Court:- I heard of him but did not know him personally. We are neighbours.

Adjourned to 3.3.53. (Sgd.) F.W. Johnston

J. 2.3.53.

ExhibitsAT ONITSHA, TUESDAY THE 3RD DAY OF MARCH, 1953

"C"

Court and Bar as before.

Appeal Record
- continued.

P.W.2. Cross-examination continued. It is correct that the plan shows Achalla outside the area. It is correctly shown. Likewise the ancestral home of Ifite is correctly shown outside the area. But Agbow village on the plan is not correctly shown inside the area. Also Uroebieri village is not within the area in dispute. It is outside. These two villages have their houses outside the disputed land. The Surveyor has shown them inside incorrectly.

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Q. Chief Nwankwo has a stone and zinc house inside the area?

A. I know that he lives outside the land in dispute.

I know Chief Okoli Ekwue. He is of Igbolo quarter but he lives in his village and not in the land in dispute. I did not know Chief Udegbuna and he did not live within the area. I agree that Enugu Agidi has other "quarters" not involved in this suit. There are several quarters. I remember we took trespass action against defendants in 1946 for cutting Tombo trees. (para. 9 Statement of Defence) In Agunogu land. It related to Tombo trees along Obibia stream. Our case was dismissed.

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Re-examined - Ojiako:

Three of us, plaintiffs came from Anikwo quarter of Awka. A sub quarter of Ezinnano. But the whole of Awka people own this Agunogu land - The defendants did not get portion of it after the conquest. Nor did they take part in that war. As the plan shows defendants' villages are far from the land in dispute. The villages inside the area and on the outside nearby are not the houses of those people. The defendants have farming land between their villages (houses) and Agunogu. Defendants could build farm huts on the land between their villages and Agunogu. That is what I think to be the case in Achalla and Ifite villages. Plaintiffs (Enugu Awka) people have got permanent homes between Obibia and Nwezi streams because they live very far away from the land. The defendants' people live much nearer.

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(Sgd.) F.W. Johnston
J.

P.W.3. - Sworn examined states:- I am SAMUEL
MACAULAY Registrar Supreme Court Onitsha.

Exhibits

"C"

Appeal Record
- continued.

10 Produces i.e. 0/12/43, 0/13/43, 0/14/43 and
0/15/43. Court cash book showing £119.3.0 paid
into court in respect of these suits on deposit.
It has since been paid out. (Entry marked Ex.D.)
Writs of fi-fa were obtained but the money was
paid in before execution. In 0/12/43 the amount
was £31.18.0, 0/13/43 was £31.15.0., 0/14/43 was
£23.15.0., 0/15/43 was £31.15.0 Total £119.3.0

I produce the payment out book. Item dated 22.2.46
- payment out to plaintiff respondent of £44.13 -
being W.A.C.A. costs and cost of fi-fa.

Writs: (Entry marked Ex.E)

To Court:- Date of deposit is 3.xi.44 before
W.A.C.A. result. The 119.3.0 was a judgment debt.
There is no record of further payment into Court
after the receipt of W.A.C.A. judgment.

(Sgd.) F.W. Johnston
J.

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30 P.W.4. Sworn examined states:- I am NGAJI OKEKE
of Enugu Awka same as Enugu Ukwu farmer. I esti-
mate my age as 80. I know the land in question.
Our real home is Enugu Awka but we have lived on
the land in dispute. I live there. Enugu Ukwu
lived there for about 20 years. We were tenants
to Awka people who owned the land. We paid each
person 10/- individual tribute to Awka people also
20 yams and a pot of wine. We lived on one side
of Nwezi stream; we had our houses facing Obibia
stream. Between the two streams. We farmed to
both streams. The defendants farm on the other
side of the stream.

40 I remember the action between plaintiffs and
defendants several years ago. I was on the land
then. Awka sued defendants for tribute. I believe
that Awka won. We do not live on the land now
because the defendants burnt down our houses. We
now live in our ancestral homes. The only other
villages on the land in dispute were of Okpu people
to whom the plaintiffs gave land. I know Chief
Nwanko. He was famous and was very old when he
died. He lived in his house at Achalla-Esu-Agidi
village. you have to pass through Enugu Agidi to

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"C"

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- continued.

get to Achalla village. From where we used to live in Agunogu to Achalla village is a distance between (indicated 2 to 3 miles). It is outside Agunogu land. I used to visit Chief Nwankwo in his house.

Cross-examined - Ibeziako: I was on the land more than 20 years before the plaintiffs sued defendants for rent. That was 7 years ago. I was not tutored. The case lasted some 12 years. So I was on the land for 32 years. Our houses were burnt and we left.

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To Court. I know that a year is 12 months.

Continued - I do not know the whole extent of the land in question. There were no people besides ourselves living between the streams up to the time we left. Nobody lived beyond Obibia stream up to the time we left - Not as far as Isu village. You would go some 3 miles beyond Obibia stream before you would see houses, at Isu village. The first quarter you would come to would be Obinagu-Isu and then Umuleri-Isu next. (Note - this suggests going North-West to North) you would not pass through these quarters to get to Achalla. I agree that these two villages (or quarters) are not in Agunogu land. I know Ofiankwa Forest (Ex.A) You would not pass any villages to get to it from where I lived in the land in dispute. You would pass some farm huts on the way. We used to make farm huts besides our houses which were burnt. We never farmed beyond (West of) Obibia stream. The defendants burnt all our houses down. Awka people took action on our complaint. I gave evidence in the case but it was dismissed. Igbolo village is not in Agunogu. Uroebieri village where they live is not on the land.

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Re-examined - No questions.

Plaintiffs' case closed.

(Sgd.) F.W. Johnston J.

Defence

D.W.l. Sworn on gun. Examined states - I am OJUKWU ONWUKAIFE. My quarter is Achalla. Farmer and I reside at Achalla. I am farming forty years in our land. Up to our boundary which is Nwezi Stream and

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Eastern boundary of the land in dispute. Nawfia people are our Southern neighbours. Western (as shown on Ex.B) The land between Abibia and Nwezi is ours.

Exhibits

"C"

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- continued.

10 History has it that Norgu people killed one Aliekwu of our people during a dispute with plaintiffs people. We fought Norgu people, joining hands with Awka, Okpuno, Nawfia, and others and we drove Norgu people out. Obibia stream had been our boundary with Norgu people. After the fight we got to Nwezi stream. That was 4 generations ago.

20 Our village Achalla is within the disputed land and I live there as did my father - permanent home in permanent house, not a hut. I know Chief Nwankwo of Achalla village. His house is of stone. It is on the land built some 20 years ago. Udekwu, Enemo, Mora, have houses in Achalla. Igbolo people live permanently on the land. Okoye Okonkwo, Egwu-Ekwe, are in two Igbolos. Achalla possesses 100 permanent houses on the land. Igbolo possesses 60 permanent houses on the land. We have not got farm huts on the land.

30 I know the Enugu Awka people who once stayed on the land. They removed some 6 years ago. They were there for 2 years. We don't pay rent to plaintiffs. You would pay only if farming beyond Nwezi stream. (W. Plaintiffs' land) people go to them individually and pay individual rent or tribute. Igbolo and Achalla (ourselves) have no places of residences other than those mentioned within the land. None elsewhere. We are the fourth generation living there. We have aro juju there belonging only to Achalla people. There is another Aro juju in Achalla which is worshipped by all Enugu Agidi peoples. There is Ojukwu juju also. Obinago Iruobiaeli people never lived on the land in question.

40 Plaintiffs sued us in Supreme Court. (para 9 of Statement of Defence - ref.0/10/1946). Their case was dismissed and we got 30 guineas costs. Plaintiffs also prosecuted us in Magistrate's Court for Arson but I was not at home then. We have never been disturbed. We tapped and we planted the tombo trees. We collected palm nuts. Likewise our forefathers. We have tombo trees on Obibia river. We planted them. Also kola trees. The Plaintiffs' case against us went to Lagos. After that case we paid no rent to plaintiffs. There are

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- continued.

9 villages comprising Enugu Agidi - (Achalla, Igbolo, Iruobiaeli, Etiti, Ifite, Nomu, Ogwugwu, Egbedima, Urunebo.) I have never stopped farming the land in dispute. We call it Aguiga. We never cut down Iroko tree on the land.

Cross-examined - Ojiako: I remember Awka people had case with Okpuno people (1941). They and their surveyor at that time surveyed one village.

Q. What did you do on seeing plaintiffs survey your village?

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Ans. We complained to the District Officer. We did not see them. We were afraid of them at that time. I was not one of those who complained to D.O. I was only a small boy then (in 1941).

(Refuses in effect to answer a question). In 1943 plaintiffs sued us for arrears of rent. I was one of those who were sued. (Claim for rent (tribute) for 4 years in arrear in respect of Agunogu land). The plaintiffs claimed as you have stated: It was rent for that portion. Our defence was that we owned the land. The High Court upheld it that we should pay the rent claimed. We lost. We said that we owned the land up to Nwezi stream. We subsequently paid the amount decreed against us.

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Q. Reference to Anugu Awka (Okpu) people - To whom did they pay rent during the 2 years?

Ans. I do not know. But we commenced action against plaintiffs for putting the Enugu Awka (Okpu) people on our land. We have a copy of that case. I did not go to get a copy.

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(Witness refers to suit stated in para.8 Statement of Defence (Ibeziako). I heard evidence of P.W.4. They never lived there for 20 years. They paid tribute to plaintiffs but for 2 years only. I heard his description of the land but it is untrue.

Q. You have no permanent building anywhere on the land?

Ans. We have Achalla and Igbolo.

P.W.4's description of approach to our village is not correct. We have farm land to Nwezi stream. We farm between the streams. We do not have any houses between the streams. They are extending up to Ofiankwa from Achalla village. Mr. Mora works S.C.O.A. Onitsha. His house is on the disputed

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land. Enugu Agidi town comprises villages. Each village is not necessarily separated by farms from the others. Just plain ground may separate villages. Adjourned to 9 a.m. 4.3.53.

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- continued.

(Sgd.) F.W. Johnston J.
3.3.53.

AT ONITSHA, WEDNESDAY THE 4TH OF MARCH, 1953.

Court and Bar as before.

10 Cross-examination - D.W.1. continued: Aro juju is on the land. "Agu" is a farming area. I do not live on Agu-Iga. We call the land in dispute Agu-iga. We do not live on Agu-Iga.

20 Re-examined:- I am aged 60 years. I remember the rent case brought against us 10 years ago. I was not one of the defendants. My father was one of the defendants. Now dead. I know that Chief Nwankwo's house is on the land because the road from R.C.M. entered the compound. The land is 7 miles from Awka town. I live on the land. The whole area is Agu-iga. Achalla Village is not situated in the centre of the land. It is on Ofiankwo side. My evidence is for all my people; defendants. We don't farm in the town. We go to our farm land to farm.

(Sgd.) F.W. Johnston J.

30 D.W.2 sworn, examined states:- I am EJIKE CHIDOLUE. Licensed surveyor. Stationed at Onitsha. I am engaged by the Enugu-Agidi people to survey their land. I made the plan Ex.B. I went on the land myself. I saw Nwankwo compound marked on plan. It is very big. It has one zinc house and many thatched roof buildings. The buildings are of permanent sort and not of recent erection. People were living in them. It is a place of old habitation.

40 Igbolo village is old of old habitation. Mud wall and thatched roof buildings of permanent nature. There were between 20 to 30 such buildings in Igbolo. There are tall palm trees mangoes, kolas, pear trees and others indicating long habitation. Also jujus. There are some Achalla huts, but very few, within the land in dispute. Most lie

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- continued.

outside it. The huts are palm huts of a temporary nature. I went between Obibia and Nwezi rivers. I don't remember if I saw mud walls there. In the Western area I saw old walls. I was not shown an Igbolo village outside the area.

Cross-examined - Mbanefo: - I saw Ex. A. (Plaintiffs' plan) before I made Ex. B. I am not sure that I was aware of the case that went to W.A.C.A. But I note the note on my plan as to area edged green. The defendants asked me to supply new details on plan originally made by Mr. T. John in Awka plan Ex. A. (I made the survey in Ex. B.) I don't know what the other surveyor meant by noting that I amplified the plan Ex. A (vide certificate) I put more details in that plan. They are shown in green. vide the two lots of Tombo palms and the circle of farm huts. Also Nwezi stream I was employed by Awka people in 1945 to show the details edged in green on Ex. A.

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Referred Ex. B. I was aware that area green outside area now in dispute in Ex. B had been subject of dispute previously. Area edged as in No. 9 in Ex. B coincides with area yellow in Ex. A. and I was informed that it had been subject of dispute with Okpuno people. Present defendants showed me both areas. The farm huts in circle (red) had been standing some 2 or 3 years. These huts are generally occupied for the farming season and some are maintained to another season. Those in the circle had not been there for a long time. Doors and windows on farm huts would be a matter of farmer's taste. I judge age of house by walls and thatch and also by presence of economic trees. Roofs of thatched houses are not necessarily changed every season. A place where people live would not be called Aguiga. My evidence is that people live in the Western portion of the area in dispute. They have been there for a very long time. The Agu-iga is the portion South of the Obibia. There is no one living there. There are only farm huts.

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To Court: The portion I mark Agu-iga is that between Obibia and Nwezi only - farming land.

Continued:- The defendants claim Agu-iga and they claim the other lands where they are now living. I last saw the place in 1950. I made the plan in 1946. I was asked to supply new details in 1950 and I did so. They are indicated by N.T. in circle. They asked me to put in the village marked N.T. in

1950. I deny that I falsified the plan, at the instance of the defendants.

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- continued.

10 Re-examined:- No, I have been a practising licensed surveyor since 1944. Previous to that I was a government Surveyor from 1929 to 1943. I can produce now to satisfy the court the very field book which I used in 1950 to make this re-survey of the area. In 1946 I showed all the details shown to me by the defendants. In 1950 I showed the additional details which were in existence in 1946 but pointed out for inclusion in 1950. In many suits I make plans for contesting parties.

Defence closed.

(Sgd.) F.W. Johnston
J.

IBEZIAKO ADDRESSES:

20 Statement of Claim para. 1. The evidence shows that the land belongs to Ezinano quarter only and not Ifite which is part of Awka. Para. 2 only 4 of the 9 quarters have been brought to court, para. 5. Only one plaintiff, one representative was called as a witness. Para. 6. It is admitted that defendants have not paid rent since 1943. No action has been taken against them since 1943. Para. 7. No custom of villages making huts. We admit huts made by individual farmers, P.W.4. Enugu Awka man stated each one paid the tribute. None of neighbours called to give evidence of history of Agunogu. Defence is that several "towns" shared in the conquest. Reference plaintiffs' plan:- Ex.A. They place Achalla outside the area. Villages are marked as shown in explanation of signs at top. These are villages - places of residence - Agboro, Uroebieri, are villages. Not farm huts. They are shown on both plans. Plaintiffs use the same markings for villages outside and inside. We contend that these are villages as marked and not farm shelters. 1943 case - was not a boundary case. Plaintiffs' case is that the whole area is farming land without permanent houses. The Surveyor's evidence settles question that the western area is residential. His opinion is that huts in area between the rivers are 2 years old. Plaintiffs say 20 years occupation. (Vol.2 W.A.C.A. pp. 95 - 97 strength of his case) (and 11 N.E.R. pp. 68 - 69). We are shown to be in occupation and possession of Western side. No cut Iroko trees pleaded or shown on plan.

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ExhibitsOJIAKO REFFLIS:

"C"
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 - continued.

Statement of Claim: para 1 & 2 of Statement of Claim are admitted. We do not say that land belonged to Ifite. The Defendants' witness speaks for Enugu-Agidi as a whole. We called sufficient witnesses, including Ngaji P.W.4. Our 1943 case disposed of in 1945 (12.10.45) W.A.C.A.

Rents:- Continuously we have been in litigation. No opportunity for further suits for rent. Refer para. 7 statement of defence. 10

Defendant admits that the survey took place in 1941. The disputed area in 1943 and to-day to the same. From the evidence the defendants do not dispute this 1943 case decided that defendants were tenants. Defendants say that they live and farm on this land. Defendants have paid us rent.

Refer Ex.C (2) C.C. - p. 4: Confirmed by W.A.C.A. in C (3): We rely on evidence Ordinance Cap. 63. (Section 151). We only sued those quarters who were our tenants (4 suits). Agu-Iga. Conflict between surveyor and defendants' evidence as to Agu-iga. We call it Agu-Nogu. As to villages, we pleaded in para. 8 "farming villages consisting of temporary huts....rebuilt....every season". P.W.4:- says no permanent houses on this land. Refers 2. W.A.C.A. 95 to 97 is not identical with present case; issue, different question. 20

Note: Principle is the same; we were found to be defendants' landlords in 1943.

C.A.V. Judgment Thursday next. (Intld.) F.W.J. 30
 4.3.53.

J U D G M E N T

Counsel as before.

This suit consists of the consolidated causes in this Court numbered 48, 55, 56 and 57 of 1949. The four suits originated in the Native Court of Njikoka in Awka Administrative Division. They were transferred to the Supreme Court on 10th October 1949 by the Acting District Officer exercising his powers under section 28(1)(c), Native Courts Ordinance, Cap. 142. On 20th November 1950 the four transferred suits were consolidated and consolidated 40

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- continued.

pleadings and plans were directed. The consolidated suit may be described correctly as a claim by the people of Awka against the people of Enugu-Agidi for a declaration of title to land known to both parties as Agunogu land but known to the defendants also as Aguiga land of which however only a portion lying between two waterways or rivers, Obibia river and Nwezi stream, is so described upon the defendants' surveyor's plan Ex. B. It is common ground that the outer boundary of the whole area to which the plaintiffs lay claim to title is correctly shown and is identical on both plans Ex.A and Ex.B. It is virtually common ground, but also established by the evidence, that each party to the suit has quite properly pointed out to its surveyor those natural and artificial objects on the land which seemed to have or seemed likely to have, evidential value at the trial. So that, as in most cases of this sort where each party prepares its own plan the main topographical features are identical but the details differ in some respects.

The plaintiffs' case is that they alone won the land in question from the Nogu people several generations ago as a result of a war with those people; and that the land was originally portion of a bigger area known as Agunogu which includes the yellow outlined area on their plan called Okpuno to which they successfully claimed title against the Okpuno people in an earlier suit. They say that they have let the land from time to time to tenants of Isu people, Okpuno people and to the people of the four quarters of the defendants peoples. In support of the evidence of letting the land to the defendants the plaintiffs rely on the proceedings in this court admitted in evidence in Ex.C (1 to 3) and the judgment of Waddington J. dated 10th July 1944 which was upheld on appeal to the West African Court of Appeal. In those proceedings it is seen that the plaintiffs successfully sued the present defendants for four years tribute - rent then in arrear for farming on and otherwise making use of Agunogu land under verbal agreement whereby the defendants became tenants of the plaintiffs for those purposes on Agunogu land.

Now it must be borne in mind that the defendants, have answered in their statement of defence in this present suit, in paragraph 3, that "the land in dispute is part of a larger portion of land known as the Amuagidi Aguiga land which is and has

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- continued.

been the property of the defendants. The witness (D.W.1.) Ojukwu Onwukaife who gave evidence for the defendants and described himself as a farmer who had been farming for forty years in what he referred to as "our land" said that he farmed up to the Nwezi stream boundary. He stated at the end of his evidence in chief - "We call it Agu Iga". He referred to the whole of the land which the plaintiffs call Agunogu. The defendants called an independent witness, their surveyor D.W.2. under cross examination this witness stated that land upon which people live would not be called "Agu". He went on to say that his evidence was as follows:- "people live in the western portion of the area. They have been there for a very long time. The "Aguiga" is the portion south of the Obibia (river). There is no one living there. There are only farm huts. The portion I marked as Aguiga (on the plan Ex.B) is that between the Obibia and Nwezi (rivers) only as farming land. The defendants claim Aguiga and they claim the other lands where they are now living."

This evidence to which I call attention supports the view, which I take, that the plaintiffs have much better grounds for their description of the entire area as Agunogu land than have the defendants for describing it as Aguiga land. It lends support to the view that the defendants when sued for rent as tenants in the earlier suits were sued in respect of farming tenancies within the land to which the plaintiffs claim title to-day, either East or West of the Obibia River, but clearly within the land. In this connection the evidence given under cross examination by D.W.1. just before his examination concluded is in point. He said "Agu" is a farming area. I do not live on Agu Iga. We call the land in dispute Agu-Iga. We do not live on Agu Iga".

The plaintiffs called three witnesses from their people in support of their claim. The witness Ngaji Okeke (P.W.4) described himself as an Enugu Ukwu tenant-farmer of the plaintiffs for some 32 years until he was burnt out of his home, encircled in red between Obibia and Nwezi streams in Ex.A several years ago and was compelled to get out of his holding by the defendants. I accept that evidence as true but I do not accept his evidence that in the land in question between Obibia river and Ofiankwu forest on the N.W. boundary as shown in Ex.B. there are no permanent dwellings of defendant people. He said that there were none

probably because he was called as a witness by the plaintiffs and has no reason for permitting his evidence to yield anything that might be construed in favour of the defendants.

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10 The plaintiffs' first witness was P.W.1 Udogu Modekwe. He admitted in his evidence that he has not walked over the land in question for the past ten years. He stated in evidence that "some of the defendants' people are living on the land in grass roofed mud walled houses of the sort built in farms for temporary use with a view to the owners being asked to leave the place at some time or other". He first admitted and then denied that the defendants' Igbolo people had a whole "village" on the land. The tenour of his evidence is, however, that to his knowledge the defendants have no permanent dwelling places on the land.

20 The next witness, (P.W.2) Nwuba Mora maintained throughout that, however the surveyors of both parties chose to describe what they saw on the land, the defendants have been using the land for seasonal farming only and that they have no homes or places of permanent residence anywhere on the land. His evidence is that those places shown on the land as "villages" are not villages in any permanent sense. The plaintiffs called the Registrar of the Court as P.W.3 to prove records only.

30 The defence witness D.W.1, to whose evidence I have already referred deposed that the defendants joined the plaintiffs and the Okpuno people in the war to drive off the Nogu people from their land.

40 That is not improbable evidence. If it is true then it would appear that the Okpuno people did not gain possession for themselves of the portion of Agunogu land where they reside in the area yellow on Ex.A in which the plaintiffs made good a claim to title. It is in point to note that according to D.W.1 his people had a motive in joining the plaintiffs in that war in that the Nogu people killed one Aliekwu, one of the defendants' people. Be that as it may I do not reject the evidence that the defendants as a people took part in the Nogu war which gained for the plaintiffs, as they say possession of all Agunogu land.

It is a main point of this defence witnesses' evidence that the defendants have two permanently

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occupied villages on the land namely Achalla and Igbolo.

I now turn to the evidence of the defendants' surveyor; the independent witness. Having been employed by the plaintiffs in 1945 to enter on the plan Ex.A the details edged green in Agunogu land now the subject of the present suit he made the plan Ex.B for the defendants in 1946 from his observations on the land. He then visited the land again in 1950 and added to the plan the details encircled (N T) required by the defendants in this suit which they pointed out on the land. On the evidence of this witness I find it established that in 1950 he saw the late Chief Nwankwo compound containing permanent houses and also saw some 20 to 30 permanent Igbolo village houses but no permanent Achalla houses. He saw as he said only very few Achalla palm huts "of a temporary nature".

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The surveyor was none too confident or convincing in his evidence under cross-examination when questioned about the age of the huts in the circle red between the rivers in Aguiga. There is no good reason in my opinion to accept his evidence as conclusively settling the age of those huts. The surveyor impressed me as a witness, not wholly impartial as he ought to have been, but anxious to be fair as far as it was possible for him to be fair without "letting down his own side", if I may employ a colloquialism. I cannot avoid this impression gained from watching him and listening to him. I am entitled to take notice of the fact that our climatic conditions cause a rapid weathering of dwellinghouses and in my opinion it is correct to say that, the surveyor's evidence notwithstanding upon a subject, the age of dwellings in which his opinion is not that of an expert, the appearance of permanency of many years standing is not inconsistent with the view that the dwellings of defendants on the land, which are permanent, may have been built, gradually, between 1941 and 1946 when it would have appeared to the defendants that their prospect of permanent residence on the Agunogu land appeared to be good. If in fact the permanent dwellings seen by the surveyor are of greater age than I think they are, they must have been erected by individual defendants who were rent paying tenant-farmers of the plaintiffs and who must have known that they erected the dwellings at their own risk. I cannot ignore the fact that

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the defendants; upon transfer of the plaintiffs' rent suits to the Supreme Court did not then counter claim for title, or institute suit for title in the Native Court and obtain its transfer to the Supreme Court for consolidation with the plaintiffs' suits. The defendants have moreover failed to take that course, always open to them, in this present suit or at any time.

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10 In view of the entire sum of the evidence verbal and documentary in this case I am of opinion, and I find accordingly, that the defendants have never had possession as owner occupiers, but only as farming tenants, of the Agunogu land now claimed. I find the plaintiffs have established their claim to declaration of title. I must add that in my assessment of the evidence of the defendants' surveyor I pay no regard to a somewhat gross attack upon his character for which I have already rebuked Counsel who made it in ignorance as to that aspect of cross-examination of a witness. I am not in any doubt that Mr. Chidolue was not wholly impartial. That is all that need be said.

20 In regard to plaintiffs' claim for damages for trespass I assess damages in the sum of one hundred pounds only. The evidence is meagre as to damages. It would be unsafe to accept a higher gross figure. I grant the plaintiffs an injunction against the defendants to restrain them, as prayed, from further trespass on the plaintiffs' land as to which the plaintiffs are hereby declared to have a good possessory title to the extent permitted by their native law and custom. There will be judgment for the plaintiffs in these terms. I award costs to the plaintiffs which I shall proceed to assess.

30 (Sgd.) F.W. Johnston J.
Read 12.3.53. 10.3.53.

40 OJIAKO: The checking and reversion of plan cost £50
Disbursements, Out of pocket £58
Costs in general (two Counsel)

ARAKA: Suggest 50 guineas costs sufficient.

ORDER: I assess costs to plaintiffs on basis of disbursements. 75 guineas allowed plus 50 guineas general costs of trial and other appearances not already taken into account.

Total One hundred and twenty-five guineas.
(125 guineas).

50 (Sgd.) F.W. Johnston. J.
12.3.53.

ExhibitsMOTION OF NOTICE FOR STAY OF EXECUTION

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Appeal Record
- continued.

TAKE NOTICE that this Honourable Court will be moved on the 27th day of March 1953, at the hour of nine o'clock in the forenoon or so soon thereafter as the Defendants or their Counsel can be heard for an order for stay of execution of the judgment delivered by this Honourable Court on Thursday the 12th day of March, 1953 until the determination of the appeal lodged in the West African Court of Appeal and for such further or other order as to the Court may deem just.

10

Dated at Onitsha this 16th day of March, 1953.

(Sgd.) M. Ogo Ibeziako
Solicitor for Defendants Appellants

Motion	12/6
Service	3/-
Mileage	3/-
Order	<u>25/-</u>
	43/6

C.R.A.681493 of 17.3.53.

(Intld.) S.N.I.N. (Ndiwe)

20

A F F I D A V I TIN SUPPORT OF MOTION FOR STAY OF EXECUTION

I, MICHAEL OGO IBEZIAKO, Legal Practitioner of 65 Old Market Road Onitsha, make oath and say as follows:-

1. That I represented the Defendants-Appellants at the hearing of the above-named consolidated case.
2. That on the 12th day of March, 1953, this Honourable Court gave judgment against the above-named Defendants.
3. That the Defendants are dissatisfied with the said judgment as a whole and have lodged appeal against it to the West African Court of Appeal.
4. That the Defendants believe that before the Appeal is heard the plaintiffs will eject them from the land.

30

5. That as a good number of the Defendants people live on the land in dispute the Defendants will find it difficult to face action for ejection and the prosecution of the Appeal to the West African Court of Appeal at the same time.

Exhibits

"C"

Appeal Record
- continued.

6. That furthermore the plaintiffs are applying or intend to apply for writ of Fi Fa against the Defendants for £100 damages and 125 guineas costs awarded by this Honourable Court in the above suits.

10

7. That on the instructions of the Defendants I make this Affidavit in support of a motion for stay of execution of the decrees for title, injunction, £100 damages, 125 guineas costs pending the final determination of the Appeal.

(Sgd.) M. Ogod Ibeziako.
Deponent.

Sworn at Onitsha this 17th day of March, 1953.

Before me

20

(Sgd.) S.A. Macauley
Commissioner for Oaths.

Oath 4/-
Filing Affidavit 2/6
6/6

C.R. A681493 of 17.3.53.
(Intld.) S.N.I.N.

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

FRIDAY THE 27TH DAY OF MARCH, 1953.

30

BEFORE HIS LORDSHIP
THE HONOURABLE, MR. JUSTICE FREDERICK
WILLIAM JOHNSTON, PUISME JUDGE

IBEZIAKO: moving
OJIAKO and MBANEFO:

BY CONSENT: Stay of execution granted subject to payment into Court of the costs awarded at trial 125 guineas within one month from to-day. In case of default this stay of execution shall be raised. No order as to costs.

40

(Sgd.) F.W. Johnston. J.

27.3.53.

Exhibits

"C"

Appeal Record
- continued.

Exhibit "C1" in case O/48,55-57/49
Udogu Nodekwe & Ors. Vs. Udogu Amata put in
by the plaintiff admitted and marked.
Sgd. E.V. Chude-Ebo
Regr. of Sessions at Awka
13/2/53.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL
DIVISION

Suit Nos.0/12-15/1953
Consolidated

10

NNEBE OKERE for himself and on
behalf of EZINANO AWKA

Plaintiff
Respondent

versus

- 1. (i) OTE IFEKULONYE
(ii) ANADEBE OJISI on behalf of
IMITE OSUNAGIDI
- 2. (i) UDOKWU AMATA
(ii) AMAZIGWOM ENWEANA on behalf
of IRUOBIAELI OSUNAGIDI
- 3. (i) NKWONTA AKUBUDE
(ii) NWANKWO NWOBIALI on behalf
of IGBOLO-OSUNAGIDI
- 4. (i) ONWUKAIFE
(ii) EZIAKUNO on behalf of
ACHALLA-OSUNAGIDI

20

Defendants
Appellants

S T A T E M E N T

The above-named suits, in which the plaintiffs
are of the Ezinano Quarters of Awka, and the de-
fendants are of the 4 quarters of Osunagidi in the
Awka Division of the Onitsha province, were trans-
ferred, by an order under the hand of the District
Officer Awka, dated 21st August 1943, from the
Mbanasataw Native Court upon the application of
the defendants, to the High Court for hearing and
determination.

30

The plaintiffs claim from the defendants
arrears of 4 years rent due to them for the use by
defendants of their communal farm land called

'Agu-Nawgu land which have been theirs from time immemorial by right of conquest'.

Exhibits

"C"

At the request of Mr. S.B. Rhodes, Counsel for the Awka plaintiffs, the 4 suits were consolidated for trial in this Court.

Appeal Record
- continued.

10 Plan and pleadings were also ordered and filed. Hearing was commenced at Awka Sessions on the 16th June 1944 before Waddington J. and on the 10th July 1944, His Honour delivered a written judgment at Onitsha, for the Ezinano-Awka plaintiffs, for the respective claims in full as per the writs of summons with costs against each of the 4 defendants quarters of Osunagidi assessed at 10 guineas, making a total of 40 guineas on the consolidated suits.

20 The Osunagidi defendants being dissatisfied with the said judgment filed a Motion with affidavit in support for conditional leave to appeal to W.A.C.A. on the 30th August 1944, and on the 6th October 1944 the Court granted conditional leave to appeal.

Motion with affidavit in support for Final Leave to appeal was filed on the 29th day of June 1945 and on the 5th day of July 1945, the Court granted final leave to appeal the conditions imposed having been perfected within the specified time allowed by the Court.

Grounds of appeal were filed on the 11th day of July 1945.

30 (Sgd.) P.E.G. Achikeh
REGISTRAR.

IN THE PROTECTORATE OF NIGERIA

IN THE MAGISTRATE'S COURT OF ONITSHA-AWKA

MAGISTERIAL AREA

ORDER OF TRANSFER

40 BY virtue of the powers vested in me under Section 25(1)(c) of the Native Courts Ordinance, 1933, it is hereby ordered that the suit mentioned in the Schedule hereto be transferred for trial from the Ibanasataw Native Court to the High Court at Onitsha.

IN THE PROTECTORATE OF NIGERIA
IN THE MAGISTRATE'S COURT OF ONITSHA-AWKA
MAGISTERIAL AREA

Exhibits

"C"

Appeal Record
- continued.

ORDER OF TRANSFER

By virtue of the powers vested in me under section 25(1)(c) of the Native Courts Ordinance, 1933, it is hereby ordered that the suit mentioned in the schedule hereto be transferred for trial from the Mbanasataw Native Court to the High Court at Onitsha.

10

S C H E D U L E

Mbanasataw N.C. Case 126/43

Nnebe Okeke on behalf of Ezinano-Awka	}	Claim: £20, 400 yams 16 pots of wine - rent owing plaintiffs for farming plain- tiffs' Agu-Nawgu land since 4 years ago. At £5 100 yams, 4 pots of wine each year.
versus	}	
1. Udokwu Amata on behalf of Uruobiaeli Osunagidi	}	
2. Amazigwom Enweana of do.)	}	

20

Dated at Awka this 21st day of August, 1943.

(Sgd.) ? Allen
District Officer
i/c Awka Division

Native Administration No.126/73

Mbanasataw Native Court. Case No.126/43
Fee paid 3/-

Plaintiff Nnebe Okeke on behalf of Ezinano-Awka

Defendants: 1. Udokwu Amata
2. Amayigwon Enweze on behalf of
Iruobiaeli-Odunagidi.

30

Claim: £20, 4 goats, 400 yams 16 pots of wine Rent
owing pl'tfs for farming pl'tfs Agunawgu land
since 4 years ago. At £5, 1 goat 100 yams
and 4 pots of wine each year.

Fee paid 3/- three shillings Date 5/7/43

C/M Onyiauke His thumb
Signature of Senior Member for Court Members
Sgd. S.N. Madeibo
C.H.C.

40

I certify that the above summons No. was
served by me on the defendants.

C/M Anage His thumb.

Exhibits

"C"

Appeal Record
- continued.

IN THE PROTECTORATE OF NIGERIA
IN THE MAGISTRATE'S COURT OF ONITSHA-AWKA
MAGISTERIAL AREA

ORDER OF TRANSFER

By virtue of the powers vested in me under section 25(1)(c) of the Native Courts Ordinance, 1933, it is hereby ordered that the suit-mentioned in the Schedule hereto be transferred for trial from the Mbanasataw Native Court to the High Court at Onitsha.

10

SCHEDULEMbanasataw N.C. Case No.127/43

Nnebe Okeke on behalf of Ezinano Awka	)	Claim: £12, 400 yams 4 goats, 16 pots of wine - rent owing
Versus	)	plaintiffs for farming plaintiffs' Agu-Nawgu land since 4 years ago, at £3 1 goat, 100 yams, 4 pots of wine each
1. Mkwonta Akubude on behalf of Igbolo- Osunagidi	)	year.
2. Nwankwo Nwobiali of do.)	)	year.

20

Dated at Awka this 21st day of August, 1943.

(Sgd.) ? Allen
District Officer
i/c Awka Division.

Native Administration No.127/79

Mbanasataw Native Court. Case No.127/43

Fees paid 3/-

Plaintiff. Nnebe Okeke on behalf of Ezinano-Awka

Defendants: 1. Mkwonta Akubude
2. Nwankwo Nwabialu on behalf of
Igbolo-Osunagidi.

30

Claim: £12, 4 goats, 400 yams and 16 pots of wine
owing plaintiffs for farming pl'tfs Agunargu land
4 years ago at £3, 1 goat, 100 yams and 4 pots of
palm wine each year.

Fee (3/-) Three shillings Date 5/7/43

C/M Nwakafor Ogene his thumb.

Signature of Senior Member for Court Members.

Sgd. S.N. Madeibo

C.N.C.

I certify that the above summons No. was
served by me on the defendants.

C/M Anago His thumb.

40

Exhibits

"C"

Appeal Record
- continued.

IN THE PROTECTORATE OF NIGERIA
IN THE MAGISTRATE'S COURT OF ONITSHA-AWKA
MAGISTERIAL AREA

ORDER OF TRANSFER

BY virtue of the powers vested in me under section 25(1)(c) of the Native Courts Ordinance, 1933, it is hereby ordered that the suit mentioned in the schedule be transferred for trial from the Mbanasataw Native Court to the High Court at Onitsha.

10

SCHEDULE

Mbanasataw N.C. Case 128/43.

Nnebe Okeke on behalf of Ezinano Awka

versus

1. Onwukaife on behalf of Achalla
Osunagidi
2. Ezikuno of ditto.

20

Claim: £20, 400 yams, 4 goats, 16 pots of wine being rent owing plaintiffs for farming plaintiffs' Agu-Nawgu land since 4 years ago at £5, 1 goat 100 yams, and 4 pots of wine each year.

Dated at Awka this 21st day of August, 1943.

(Sgd.) ? Allen
District Officer
i/c Awka Division.

Native Administration No.128/80

Mbanasataw Native Court. Case No.128/43
Fee paid 3/-

30

Plaintiff Nnebe Okeke on behalf of Ezinano-Awka
Defendants 1. Onwukaife 2. Ezikuno on behalf of
Achalla-Osunagidi.

Claim: £20 4 goats, 400 yams and 16 pots of wine rent owing pltf's for farming pltf's Agunawgu land since 4 years at £5 1 goat, 100 yams and 4 pots of wine each year.

Fees paid. (3/-) three shillings. Date 5/7/43.
C/M Onyiauka His thumb.

Signature of Senior Member for Court Members.
Sgd. S.N. Madiebo
C.F.C.

40

I certify that the above summons No. was served by me on the defendants.

C/M Amago His thumb

Exhibits

"C"

Appeal Record
- continued.PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE ENUGU OHITSHA DIVISIONHOLDEN AT AWKABEFORE HIS HONOUR HARRY WADDINGTON, JUDGETHE 9TH DAY OF DECEMBER, 1943Suit No.0/12/1943NNEBE OKEKE on behalf of IZINANO-AWKA

versus

ONE IIEGULONYE on behalf of IPIRE OSUNAGIDI

Claim per writ:

10

£20, 4 goats, 400 yams, 16 pots of wine, -
rent owing plaintiffs for farming plaintiffs'
Agu-Nawgu land since 4 years at £5, 1 goat,
100 yams and 4 pots of wine each year.

Rhodes (Onyeama with him) for plaintiffs.

Defendants absent - Registrar says they came
yesterday and he told them to come back this
morning - public holiday yesterday, announced
since fixture arranged.

Rhodes asks to consolidate suits 12,13,14 and
15. All action for rent in respect of same land,
against different tenants.

20

Registrar says Elgbuna is for all defendants.

He is not here.

Order: To consolidate as prayed.

Pleadings 30 and 30. Rhodes says he has a plan.

To file it with Statement of Claim.

(Sgd.) H. Waddington J.

Awka 9.12.43.

Suit No.0/13/1943Exhibits

NNEBE OKEKE on behalf of EZINANO-AWKA

"C"

versus

Appeal Record
- continued.1. USOKWU AMATA 2. AMAZIGWOM ENWEANA on
behalf of URUOBIABLI OSUNAGIDI

Claim per writ:-

10 £20, 4 goats, 400 yams, 16 pots of wine -
rent owing plaintiffs for farming plaintiffs'
Agu-Nawgu land since 4 years ago. At £5, 100
yams, 4 pots of wine each year.

See note and order recorded in suit 0/12/43.

Intld. H.W.
Awka 9.12.43.

Suit No.0/14/1943

NNEBE OKEKE on behalf of EZINANO-AWKA

versus

1. NKWONTA AKUBUDE 2. NWANKVO NWABIALI
on behalf of IGBOLO-OSUNAGIDI

Claim per writ:

20 £12, 400 yams 4 goats, 16 pots of wine - rent
owing plaintiffs for farming plaintiffs' Agu-
Nawgu land since 4 years ago at £3, 1 goat,
100 yams, 4 pots of wine each year.

See note and order recorded in suit 0/12/43.

Suit No.0/15/1943

NNEBE OKEKE on behalf of EZINANO-AWKA

versus

1. OIRWUKIEE 2. EZIKUNO on behalf of ACHALLA-
OSUNAGIDI

30 Claim per writ:

£20, 400 yams, 4 goats, 16 pots of wine -
being rent owing plaintiffs for farming
plaintiffs' Agu Nawgu land since 4 years ago
at £5, 1 goat, 100 yams, and 4 pots of wine
each year.

See note and order recorded in suit 0/12/43.

Intld. H.W. 9/12.

Exhibits

"C"
 Appeal Record
 - continued.

PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE NIGERONIA JUDICIALDIVISIONSESSIONS AT AWKA.Consolidated Suit No. 0/12-15/43

Filed 8/1/44 1/- pd. C.R. No.A269603 of 8/1/44

(Sgd.) P.E.G. Achikeh
Registrar 8/1/44.

0/12/43.

NNEBE OKEKE for himself: and on
behalf of EZINANO AWKAPlaintiff

10

versus

1. (1) OTE IFEKULONYE
(2) ANADEBE OJISI on behalf of
IFITE OSUNAGIDI
2. 0/13/43
(1) UDOKWU AMATA
(2) AMAZIGWOM ENWEENA on behalf of
IRUBIAELI OSUNAGIDI
3. 0/14/43
(1) NKWONTA AKUBUDE
(2) NWANKWO NWOBIALI on behalf of
IGBOLO OSUNAGIDI
4. 0/15/43
(1) ONWUKIIE
(2) EZIKUNO on behalf of ACHALLA
OSUNAGIDI

20

DefendantsSTATEMENT OF CLAIM

1. The plaintiff is an elder of Awka and sues on behalf of Ezinano-Awka.

30

2. The defendants Ote Ifegulonye and Anadebe Ojisi are sued for themselves and as representing the Ifite quarter of Osunagidi. The defendants Udokwu Amata and Amazigwom Enweena are sued for themselves and as representing the Irubiaeli quarter of Osunagidi. The defendants Nkwonta Akubude and Nwankwo Nwobiali are sued for themselves and

as representing the Igbolo quarter of Osunagidi. The defendants Onwukife and Baikung are sued for themselves and as representing the Achalla quarter of Osunagidi.

Exhibits

"C"

Appeal Record
- continued.

3. The plaintiffs have been owners from time immemorial of Agu-Nawgu land by right of conquest. Their ancestors fought a war with the original owners of the land, the Nawgu people, beat them drove them away and occupied the said land.
- 10 4. The plaintiffs and their ancestors before them have farmed the said land and let portions of it out to neighbouring villages, for example, Okpuno, Amawbia and Osunagidi.
5. The defendants' quarters have always paid rentals for the use of portions of the land now in dispute.
- 20 6. Following on the advice of a District Officer Mr. J.G. Lawton, the defendants' people came to the plaintiffs and an agreement was entered into between them stating the rental to be paid for the future; to wit, £5, 1 goat, 100 yams and 4 pots of wine by each quarter of Osunagidi every year. This agreement will be founded on.
7. The plaintiffs sued the Iruabiaeli quarter of Osunagidi in 1934 claiming rental for 3 years for farming or otherwise using the land in dispute, and obtained judgment. (Native Court Suit No.66) This suit will be founded on.
- 30 8. The plaintiffs sued the Ifite quarter of Osunagidi in 1936 claiming rental for five years for farming or otherwise using the land now in dispute; and obtained judgment. The judgment in this suit No.84/36 will be founded upon.
9. On two occasions Ibenegbu of Ifite - Osunagidi sued his people claiming contributions to the rentals to be paid to the plaintiff. The evidence and judgment in both cases will be founded upon. (Native Court Suits No.111/36 and 41/37).
- 40 10. In 1922 the plaintiffs in suit No.353/22 obtained judgment against Achalla quarter for damages for trespassing on the land now in dispute. The evidence and judgment in the said suit will be founded upon.

Exhibits

"C"

Appeal Record
- continued.

11. The defendants have been in arrears of rent for the past four years and the plaintiffs therefore claim as per the writs of summons.

Dated at Enugu this 22nd day of December 1943.

(Sgd.) S.B. Rhodes
Solicitor for the plaintiffs.

PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE ENUGU OBITSHA DIVISION

10

HOLDEN AT AWKABEFORE HIS HONOUR HARRY WADDINGTON JUDGETHE 21ST DAY OF MARCH 1944Suit No.0/12/1943

NNEBE OKKEK on behalf of EZINANO-AWKA

versus

OTE IIBGULONYE on behalf of IITE-
OSUNAGIDI

Consolidated with suits 0/13, 0/14 and 0/15/1943.

Plaintiff in person.

Defendants in suits 12 and 13 in person.

Defendants in suits 14 and 15 absent.

20

Defendant Nkwonta Akubude reported dead. All the others served. Plaintiff says he expected Onyeama here this morning. He has not come.

Plaintiff has filed plan and pleadings. Defendants have done nothing.

BY COURT: Position is unsatisfactory: neither side has Counsel here (by whose default I do not know) and defendants (on whose application the transfers were ordered by the District Officer) have not filed pleadings, due over a month ago.

30

The choice seems to be between an adjournment and sending the suits back to the Native Court.

Both sides prefer the matter to remain in this Court now that it is here.

Further, there is an appeal to the W.A.C.A. at

present pending in a suit by the present plaintiffs against the people of Okpuno, neighbours of theirs like these defendants of Osunagidi.

Exhibits

"C"

It would be as well to know the result of that appeal before proceeding with the present suit, although the land involved is a different piece.

Appeal Record
- continued.

To next sessions.

(Sgd.) H. Waddington. J.
Awka, 21.3.44.

10

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF ENUGU ONITSHA JUDICIAL

DIVISION

SESSIONS HOLDEN AT AWKA

Consolidated Suits Nos.0/12-15/1943

Filed 10/6/44. 7/6 pd. C.R.No.B34549 of 10.6.44
Intld. C.O.O.

0/12/43 - NNEBE OKIKE for himself and on
behalf of EZIMANO AWKA Plaintiffs

versus

20

(i) OTE IIEGULONYE
(ii) ANADEBE OJISI on behalf
of IFITE OSUNAGIDI

0/13/43 - (i) UDOKWU AMATA
(ii) AMAZIGWON EWEANA on behalf
of IRUOBISELI OSUNAGIDI

0/14/43 - (i) NIKWONTA AKUBUDE
(ii) NWANKWO NWOBIALI on behalf
of IGBOLO OSUNAGIDI

30

0/15/43 - (i) ONWUKIFE
(ii) EZIKUNO on behalf of
ACHALLA OSUNAGIDI Defendants

MOTION FOR EXTENSION OF TIME TO FILE
STATEMENT OF DEFENCE

TAKE NOTICE that this Honourable Court will be moved on Friday the 9th day of June, 1944, at 9 o'clock in the forenoon or so soon thereafter as counsel for the defendants can be heard for an order for extension of time to file the pleadings

Exhibits

"C"

Appeal Record
- continued.

or statement of defence in these consolidated suits
or for such further order as to the Court seem fit.

Dated at Calabar this 5th day of June 1944.

(Sgd.) Charles W. Clinton
Solicitor for the defendants.

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE BENUE OVIOTSHA JUDICIAL
DIVISION

SESSIONS HOLDEN AT AWKA

Consolidated Suits Nos. 0/12-15/1943 10

Filed 10/6/44 1/- pd. C.R.No.B34547 of 10/6/44
(Intld.) G.C.O.

0/12/43 - ENEBE OYEKE for himself and
on behalf of EZIHANO AWKA Plaintiffs

versus

(i) OFE IFEGULONYE
(ii) ANADEBE OJISI on behalf
of IFITE OSUNAGIDI

0/13/43 - (i) UDOKWU AMATA
(ii) AMAZIGWOI ENWEAMA on
behalf of IRUBISELI
OSUNAGIDI 20

0/14/43 - (i) NKWONMA AKUBUDE
(ii) NWANKWO NWOBIALI on behalf
of IGBOLO OSUNAGIDI

0/15/43 - (i) OHWUKI FE
(ii) EZIKUNO on behalf of
AGHALIA OSUNAGIDI Defendants

AFFIDAVIT OF R.O. DARLEY

I, RICHARD OLATUNDE DARLEY of Calabar, British
Protected subject, Solicitor's clerk, make oath
and say as follows:- 30

1. I am a clerk to Mr. C.W. Clinton, Barrister-at-law Calabar.
2. On or about the 25th April 1944 I was present at Aba when some people sent from Awka by the

defendants herein arrived at Aba to consult Mr. Clinton and asked him to take up the defence in these suits in respect of which they produced hearing Notices for a date that had lapsed.

Exhibits

"C"

Appeal Record
- continued.

- 10 3. The messengers from the defendants could not produce any copy of the writs of summonses or any statement of claim served upon the defendants neither could they properly explain to Mr. Clinton what was the nature of the defence to be set up.
4. Mr. Clinton instructed them to hurry back to their country and bring him a copy of the writs of summonses, order for pleadings and statement of claim, if any.
- 20 5. The messengers returned to Awka and came back to Aba on the 23rd of May 1944 when they brought fresh hearing notices one of the writs of summonses in the Native Court and a statement of claim but no copy of the Order for pleadings to indicate when statement of defence should be filed.
6. It was then that Mr. Clinton was able to take instructions as to the defence and make out a statement of defence which was posted to Onitsha on or about the 27th ultimo.
7. It was evident that the defendants and their messengers were grossly ignorant people who did not know how to proceed to defend the actions taken against them.

30 (Sgd.) R.O. Darley

Sworn by the said Richard Olatunde Darley
at Calabar this 5th day of June 1944.

Before me

(Sgd.) Evelyn Brown,
Commissioner for Oaths.

(Intld) R.C A.F.
D/R.

C.R.No.B80826

5.6.44

Exhibits

"C"

Appeal Record
- continued.PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE ENUGU ONITSHA JUDICIALDIVISIONSESSIONS HOLDEN AT AWKAConsolidated Suits No.0/12-15/43

Filed 10/6/44 1/- pd. C.R. No.B34550 of 10/6/44.

(Sgd.) P.E.G. Achikeh
Registrar 10.6.44.0/12/43 - NNEBE OIKEKE for himself and on
behalf of EZINANO AWKA Plaintiffs 10

versus

(i) OTE IIEGULONYE
(ii) ANADEBE OJISI on behalf
of IPITE OSUNAGIDI0/13/43 - (i) UDOKWU AMATA
(ii) AMAZIGWON EZENWEAMA on
behalf of IRUCBISILI
OSUNAGIDI0/14/43 - (i) KWONTA AKUBUDE
(ii) NWANKWO NWOBIALI on behalf
of IGBOLO OSUNAGIDI 200/15/43 - (i) ONWUKIFE
(ii) EZIKUNO on behalf of
ACHALLA OSUNAGIDI DefendantsSTATEMENT OF DEFENCE

1. Paragraph 1 of the Statement of Claim is denied and plaintiffs are put to the strict proof thereof.

2. It is denied that the plaintiffs are the owners of Agu-Nawgu land in that the same was ever conquered by the ancestors of the plaintiffs alone in a fight with the Nawgu people. The defendants say that this war was between the ancestors of the plaintiffs and the defendants on the one side and the Nawgu on the other and the Nawgus being driven off the ancestors of the plaintiffs and the defendants jointly owned the conquered territory. 30

3. The defendants also say that the land conquered by the ancestors of the plaintiffs and the defendants has not been the subject of any written agreement between the plaintiffs and the defendants.

Exhibits

"C"

Appeal Record
- continued.

4. The defendants know nothing about agreements between the plaintiffs on the one side and the Okounos and/or the Amawbia on the other.

10 5. The defendants say that they are not responsible or liable on any agreements entered into by individuals of defendants' villages not authorised by the villagers and/or their village heads.

6. Paragraphs 5, 6, 7, 8 and 9 are denied and plaintiffs are put to the strict proof thereof.

20 7. The defendants are not responsible or liable on any Court Judgments in favour of the plaintiffs as against any members of the defendants' villages not representing the villagers. The defendants deny knowledge of any such judgments and put the plaintiffs to the proof thereof.

8. Defendants will plead ownership, long possession, estoppel, laches, acquiescence.

Dated at Aba this day of May, 1944.

(Sgd.) Charles W. Clinton.

Solicitor for Defendants.

Exhibits

"C"

Appeal Record
- continued.PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE BENIGU ONITSHA JUDICIAL
DIVISIONSESSIONS AT AWKAConsolidated Suit No.0/12-15/43Filed 14/6/44 7/6d pd. C.R.No.A269576 of 14.6.44.
(Sgd.) P.E.G. Achikeh Registrar
14.6.44.0/12/43 - NNEBE OKIKE for himself and on
behalf of EZIHANO AWKA Plaintiff 10

versus

1. (i) OTE IIEGULONYE
(ii) ANADEBE OJISI on behalf
of IFITE OSUNAGIDI
- 0/13/43 - 2. (i) UDOKWU AMATA
(ii) AMAZIGWOM ENWESANA on
behalf of IRUOBIALI
OSUNAGIDI
- 0/14/43 - 3. (i) NKWONTA AKUBUDC
(ii) NWANKWO NWABIALI on
behalf of IGBOLO
OSUNAGIDI 20
- 0/15/43 - 4. (i) ONWUKIFE
(ii) EZIKUNO on behalf of
ACHALLA OSUNAGIDI Defendants

NOTICE OF MOTION with AFFIDAVIT in support

TAKE NOTICE that this Honourable Court will be moved at Awka on a date to be fixed by the Registrar at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel for the above plaintiff can be heard for an Order that this Honourable Court delivers its judgment for the plaintiff on the statement of Claim as filed or for any Order or further Order as the Court may deem fit to make in the premises.

30

Dated at Onitsha this 5th day of June, 1944.

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

PROTECTORATE OF NIGERIAExhibitsIN THE HIGH COURT OF THE NIGUGU ONIYESHA JUDICIAL
DIVISION

"C"

Appeal Record
- continued.SESSIONS AT AWKAConsolidated Suit No.0/12-15/43

Filed 14/6/44 1/- pd. C.R.No.A267567 of 14.6.44
(Sgd.) P.E.G. Achikeh
Registrar.

10 0/12/43 - NNEBE OKEKE for himself and on
behalf of EZINANO AWKA Plaintiff

versus

1. (i) OTE IIEGULONYE
(ii) ANADEBE OJISI on behalf
of IWITE OSUNAGIDI

0/13/43 2. (i) UDOKWU AMATA
(ii) AMAZIGWOM ENWBEANU on behalf
of IRUCBIELI OSUNAGIDI

20 0/14/43 3. (i) NKWONTA AKUBUDE
(ii) NWANKWO NWOBIALI on behalf
of IGBOLO OSUNAGIDI

0/15/43 4. (i) ONWUKIFE
(ii) EZIKUNO on behalf of
ACHALLA OSUNAGIDI Defendants

AFFIDAVIT of NNEBE OKEKE of AWKA.

I, NNEBE OKEKE of Awka British protected
person Farmer and Elder of Awka at present resid-
ing at Awka make oath and say as follows:-

1. That I am the plaintiff in the above three
consolidated actions.
- 30 2. That the said Actions were consolidated by
this Honourable Court at Awka on the ninth
day of December 1943.
3. That on the said ninth day of December 1943
an Order was made by this Honourable Court
for plan and pleadings to be filed by the

Exhibits

"C"

Appeal Record
- continued.

plaintiff within thirty days and that a copy of the pleadings so filed to be served upon the defendants.

4. That on the 8th day of January 1944 I complied with the Order of this Honourable Court but to the best of my knowledge information and belief the defendants have not so complied and no Order for an extension of time to comply has been made by this Honourable Court.

his right thumb

10

NNEBE OKEKE

X
impression.

The above Affidavit of Nnebe Okeke was read over to him from the English to the Ibo language and he seems to have perfectly understood its contents before affixing his right thumb impression thereto at Onitsha this 5th day of June 1944.

Before me,

20

(Sgd.) G.F. Dove Edwin
Magistrate, Full powers.

Swearing 2/- C.R. No.B21794 of 5.6.44.
(Intld.) J.N.C. D/R.

(Sgd.) G. Goziam Onyia
Interpreter & W/Impression.

PROTECTORATE OF NIGERIAExhibitsIN THE HIGH COURT OF THE ENUGU ONITSHA DIVISION

"C"

HOLDEN AT AWKAAppeal Record
- continued.BEFORE HIS HONOUR HARRY WADDINGTON J.THE 16TH DAY OF JUNE 1944

0/12/43 - NNEBE OKEKE on behalf of
EZINANO AWKA Plaintiff

versus

10 OTE IREGULONYE on behalf of
IFITE OSUNAGIDI Defendant

0/13/43 - NNEBE OKEKE on behalf of
EZINANOR AWKA Plaintiff

versus

1. UDOKWU AMATA
2. AMAZIGWOM ENWEANA on behalf
of UMUOBIAELI OSUNAGIDI Defendants

0/14/43 - NNEBE OKEKE on behalf of
EZINANOR AWKA Plaintiff

versus

20 1. NKWONTE AKUBUDE
2. NWANKWO NWOBIALI on behalf
of IGBOLO-OSUNAGIDI Defendants

0/15/43 - NNEBE OKEKE on behalf of
EZINANOR AWKA Plaintiff

versus

1. ONWUKIFE
2. EZIKUNO on behalf of
ACHALLA OSUNAGIDI Defendants

Consolidated Suits

30 (1) Motion on Notice for an Order for extension
of time within which to file Statement of
Defence.

Clinton moves.

Affidavit filed. Clinton - nothing to add to
it.

Exhibits

"C"

Appeal Record
- continued.

Onyeama for plaintiffs. Understands Rhodes filed a motion for judgment in default of defence but they had already filed theirs.

I ask for costs.

Order: Time extended up to 10th June - date of filing. Costs to Plaintiff - 3 guineas.

(2) Motion on Notice for an Order that this Honourable Court delivers its judgment for the plaintiffs on the Statement of Claim filed.

Court: Defence now filed and extension of time granted for that purpose. Motion dismissed.

10

Trial proceeds.

Onyeama for plaintiffs. Clinton for Defendants.

Clinton on plea of estoppel. Fight referred to in pleadings - they and ourselves joined against Nawgu. After it, we used the land together. Therefore we say they are now estopped from denying our joint rights. Onyeama wants to put plan in by consent. Clinton wants it to wait till a later stage - he has only just seen it.

20

Onyeama calls:-

1. NNEBE OKEKE (m) 55 Ibo sworn says in Ibo:-

An elder of Ezinano Awka. Suing on behalf of Ezinano people with their consent. We had a case with Okpuno some time ago in this Court. I represented my people in that case too. I know all 8 defendants in these 4 cases. All men of Osunagidi. We sue them for their respective quarters of Osunagidi. There are parts of Osunagidi who are not concerned in this case. We had a plan of the land made. The land according to our history originally belonged to Nwagu. They killed one of our men and gave us this land as compensation. We had a war with them. Drove them off the land and occupied it. It was the killing of our man that caused the fight. We have been in the habit of letting out plots to farmers from Osunagidi, Okpuno and Amawbia. Defendants paid tribute to our ancestors. And to me up to 4 years ago when we had our case with Okpuno people. We had a case in Native Court about 10 years ago against Ifite - represented by Chief Ebenibo. We got judgment. I

30

40

have a copy of the case.
(Tendered:- Suit 111/1936)

Exhibits

"C"

Clinton objects. Re inter alios acta. This is an action between people of Ifite of both sides. It cannot concern this present action.

Appeal Record
- continued.

Onyeama: I tender this in proof of a previous admission by the Ifite people that rent is payable by them to us.

10 Clinton still objects. The Awka people themselves should have sued. This document should be rejected for all purposes.

(I rule admissible for purposes explained by Onyeama marked Ex.B.)

After that Ifite continued to pay our rent. We had a case against Ifite. I have a copy of it.

(Counsel tenders copy of N.C. Suit No.84/36).

20 Clinton: This is against 3 individuals of Ifite. Not representative action. Not objecting. (marked Ex."C") 10 years ago we had a case against Udokwu and others of Irobieli (Suit 66/1934) I have a copy of it. (Tendered: marked Ex."D") I know Nwosu of Awka. Now dead. I remember case Nwosu against Nwokeke of Achalla Osunagidi. I have a copy of it (353/1922). (Tendered) Clinton: This is not a representative action. Objects.

Onyeama: Native Court action. Parties not described as representative - cannot be too particular in Native Court procedure.

30 (Court: Proceedings are brief but such as they are their tenour indicates that it was in fact the two villages at large who were litigating, though parties not described as representing them.

This is a Native Court Record of 1922. One cannot expect too much. Record admitted: marked Ex.E)

40 We have never had previous occasion to sue Igbolo till now they have always paid. I remember District Officer Lawton. Following his advice we agreed to permit all these 4 quarters to continue farming this land on payment of rent. I don't know whether District Officer Lawton's advice altered previous practice or not. Parties to the agreement

Exhibits

"C"

Appeal Record
- continued.

we reached with the 4 quarters on our side were Moduekwe, Nudekwo and others. I was present. It was in our headman Ifema's house. He is now dead. Osunagidi people present were defendant Ote Ifegulonye; Ibeneme of Ifite, Amazigwom Enwena (deft) Nwankwo Tute of Irobeli; Defendant Udokwu of Irobeli. We agreed that these 4 quarters should farm the land. Rent to be paid - £10 each for Ifite, Irobeli, and Achalla; £6 for Igbolo. The payment was to be yearly. Later on their request we altered this. Reduced £10 to £5 plus 100 yams and a goat. Reduced £6 to £3 plus 100 yams and a goat. They would bring wine when bringing the rent, which we would drink together. Payments were made until a case we had with Okpuno people 6 years ago. They stopped then. We are now suing them for the arrears.

10

Clinton:

Q. Did District Officer Lawton know about the agreement - Yes, he was present. It was in our town.

20

Q. Did he put it in writing? - Not as far as I know. He told us to settle at home.

Q. Does that mean he was not there when you settled - He was not present when agreement made.

Q. Before District Officer Lawton advised you, had these people been paying? - Yes.

Q. Why should District Officer interfere then? - Because they were refusing to pay and causing trouble as now. They were paying in cowries.

30

Q. Did you bring these actions before or after agreement? - After.

Q. You sued Nwokeke Okan? - Yes.

Q. Against him alone? - No, representing his people.

Q. You were not Chief then? - No.

Q. You only heard this? - I was present in Court.

Q. He was sued for trespass? - Yes.

Q. He was not one of those liable for rent? - He was.

Q. What persons did Nwosu sue in the case when you

40

were present? - I don't know; he was suing the people.

Exhibits

"C"

Appeal Record
- continued.

Q. Was the case you were present at for trespass or rent? - When they failed to pay rent we sued for trespass.

Q. You know Nwokeke Okan? - No.

Q. You know case against Irobeli people (No.66/34 Ex.D)? - Yes.

Q. You know defendant Udokwu? -- Yes.

10 Q. Were you a plaintiff? - Yes.

Q. Was that action for rent or trespass? - Rent.

Q. Due as result of agreement made on advice of Mr. Lawton? - Yes.

Q. No rent due until that agreement was made? - They had been paying for years in cowries, goats, yams.

Q. These defendants are always refusing to pay? - No.

20 Q. You said Nawgu gave you this land as compensation? - No; they killed our man and we fought them and drove them out.

Q. Did Okpuno join you in the fight? - No.

Q. Did Osunagidi join you? - No.

Q. Or Amawbia? - No.

Q. Or Norfia? - No.

Q. Did Okpuno claim that they joined you, in their action against you? - Yes, but it is not true.

Q. Norfia said so too? - They did not give evidence.

Q. You know Isu Achalla people? - Yes.

30 Q. Do they claim to have joined you in the fight? - They said so in Court.

Q. And they claimed a share in this land? - Yes.

Q. Okpuno also? - Yes. So did Amawbia.

Exhibits

"C"

Appeal Record
- continued.

- Q. Nawgu were given land by Ukulu? - Yes.
- Q. Still live there? - Yes.
- Q. 3 years ago 8 towns joined to drive Nawgu people still further away and Government interfered? A riot in which police intervened? I remember but it was not about land.
- Q. 6 of the 8 towns are the people who attacked Nawgu on previous occasion? - What 6 towns?
- Q. Norfia, Osu Achalla; Okpuno - Okochia; Amawbia; Osunagidi; and Awka? - No, only Awka. 10
- Q. And afterwards the Nawgu land was divided among the 6? - No; they wouldn't have paid rent if it had been.
- Q. Mili Umezi stream was the old boundary between you and Osunagidi? - No.
- Q. Is Obibia stream a boundary? - No.
- Q. It divides you from Nawgu, as Nawgu was before the fight? - No.
- Q. Boundary altered after fight? - The whole land is now ours. 20
- Q. What is your boundary with Okpuno? - Oloko.
- Q. And Norfia? - Amala stream.
- Q. And Amawbia? - They live on our land.

OKOYE IBEKANDU m. 60. Ibo sworn in Ibo:-

Of Ukulu. Farmer and elder. A Nawgu man. We settled on Ukulu land after being driven out by Awka. I was not born then. So far as I ever heard only the Awka people drove us away.

Clinton:

- Q. Awka people asked you to come? - Yes. 30
- Q. Do you know Nwokoye Okelu? - No, unless I see him.
- Q. This man (in Court)? - Yes.
- Q. Your town? - Yes.

OKEKE EKUOZO m. 60. Ibo sworn says in Ibo: of Ebenebo - a chief there. Farmer, 5 or 6 years ago. I was a member of the Court which tried case of Nnebe (present plaintiff) against Ebenebu of Achalla Odunagidi.

We inspected some land in connection with the case. Plaintiff was suing for rent. Don't remember name of land. Parties accompanied us on the land. Achalla did not claim the land as their own. Ebenebu asked for time to find money to pay the rent. He did not say he did not own it. (Onyeama says Rhodes had the copy of this record).

Exhibits

"C"

Appeal Record
- continued.

Clinton: Cannot cross examine till record produced. To recall witness when record available.

- 10 4. OKONKWO ECHAZU: 50, Ibo sworn in Ibo: Court member Awka Native Court. Farmer of Nawgu. Living on Okulu land. According to our tradition our fathers used to live on this land now in dispute. Nawgu and Awka fought. They drove us out. Only Awka against Nawgu. About 14 years ago our people wanted to get back on the land. Some of our men were prosecuted over it by Awka.

(Onyeama tenders copy of record of 53/1930 Awka N.C. Marked Ex.F)

- 20 Land in that case is the land in this case. I went on the land and put up a house there. They did not prosecute me.

Clinton:

- Q. What name land you were driven from? - Agu Nawgu.
 Q. Was it called that before the fight? - I don't know I wasn't born then.
 Q. How do you know who fought your people? - My father told me. He also told me land was Agu Nawgu.
 30 Q. Where is Omago land (mentioned in 53/30)? - On Agu Nawgu.
 Q. You don't know what land that case was about? - I do.
 Q. Do you know Kwokoye Okeke? -
 Q. Did your father tell you you and Norfia were neighbours? - Yes.
 Q. And you and Okpuno? - Yes.
 Q. And you and Osunagidi? -
 Q. You had all these people round you? - Yes.
 40 Q. You were a strong people? - Yes.
 Q. One town could not drive you out? - Awka could.

Exhibits

"C"

Appeal Record
- continued.

- Q. Joined by 5 other towns? - No.
- Q. Do you remember riots 3 years ago? - Yes.
- Q. How many towns in it? - Six.
- Q. All against Nawgu? - Yes.
- Q. Same six as before? - Not as my father told me.
- Q. Are you farming yourself on this land now? - No.
- Q. Or your people? - No.
- Q. Osunagidi have always said, let those who farm pay rent, but not those who do not farm? - Yes. 10
- Q. Case Ex.B.111/36 - They said in that case let those who farm pay, but not those who don't? - Yes.
- Q. People actually farming paid - Yes.
- Q. Not those not on the land? - No.

Court:

- Q. Custom is for individuals who actually farm to pay, not those who do not? - Yes. Chief collects and pays total sum to owner of land.

Onyeama:-

- Q. Is it customary to get these farming leases by the quarter or by individuals? - All who want to farm would go and approach land owners with drink. 20

Court:-

- Q. If for example 20 men of Ifite wish to farm, they depute a man to arrange with the land owners? - Yes.
- Q. And if the rent were, say, £5 those 20 would subscribe it, not the whole of Ifite? - Yes. 30

Onyeama:

- Q. To whom do the individuals pay? - To their own headmen who then takes it to the land owner in bulk.

Court:

- Q. Have Osunagidi farm land elsewhere? - Yes.
- Q. Some of their men farm elsewhere? - Yes.

(Onyeama proposes now to call evidence to prove plaintiff is entitled to sue in a representative capacity, Clinton having denied his right in pleadings. Clinton now admits plaintiff is so entitled)

Plaintiff recalled by Court.

Exhibits

"C"

Appeal Record
- continued.

10 Q. How many men from Osunagidi actually farm your land? - It is for their Chief to find out who goes and who must contribute to the rent. In that previous case there were 39 concerned, from Ifite alone. I cannot estimate how many go.

Onyeama closes his case.

To 17th. (Sgd.) H. Waddington, J.
Onitsha, 16.6.44.

AT AWKA THE 17TH DAY OF JUNE, 1944

0/12-15/43.

Onyeama applies to call one further witness.

20 MUO NWUBA AMISHA m. 55 Ibo sworn says in Ibo:-
of Awka. Blacksmith. I know this Agu Nawgu land. I have a farm there. The 4 defendants quarters of Osunagidi have farms there. From what I have seen I should say there are about 200 men from these 4 quarters farming there. They lease the land from Awka. Each pays £10 a year except Igbolo which pays £6. That has been reduced now to £5 each and £3 for Igbolo. Each also gives a goat, 100 yams and wine. This is paid yearly at harvest time (Sept - Oct.) Yams, coco yams, cassava grown there.
30 Each man has his own plot and takes the fruits of it. We deal with family heads. Head of family allots plots to his men. Head of family pays for all.

Clinton:

Q. Where is your blacksmiths shop? - I used to have it in Ahiada District. Not doing that work now. Farming.

Q. Court member? - No.

Q. Never been one? - No.

Q. Plaintiff says District Officer Lawton advised about a settlement of your dealings with Osunagidi; do you agree? - Yes.

40 Q. Is this case based on it? - Yes, on the arrangement we made afterwards.

Q. You were not present when agreement made? - I was.

Exhibits

"C"

Appeal Record
- continued.

- Q. Was it for 1,2,3,4 years or for ever? - They had to pay every year they farmed.
- Q. No farming no payment? - So.
- Q. Somebody has to find out who has farmed? - we always ask the villages whether they intend farming in coming year. We then send our men out to make sure whether they farm or not.
- Q. Do you know what Achalla people farmed last year? - I know Onwukilu is their head; he is responsible. 10
- Q. You sue the headman and he collects from those who farm? - Yes.
- Q. If he tells you 20 men have farmed, you get money for 20? - Number of men does not matter. We are entitled to the agreed rent.
- Q. Do you find out number who farm? - No.
- Q. Do women and children pay? - Village has to pay the fixed rent; we are not concerned with what individuals pay.
- Q. Do you remember Ibenebu of Ifite suing 39 men (Ex.B)? - Yes; his men. 20
- Q. Are there only 39 men in Ifite? - I don't know.
- Q. How many Ifite men farmed there? - I don't know. That is for their head man to say.
- Q. The 200 men you mentioned - is that on the whole land? - No; I refer to area near my own farm.
- Q. You don't know how many in whole area? - Ifite farm near me; I speak of Ifite men.
- Q. What year are you speaking of? 5 or 6 years ago.
- Q. Since Ibenebu sued those men (Ex.B) have they paid? - They satisfied the judgment. 30
- Q. Did they farm after that? - Yes.
- Q. How long? - some of them are there this year but not many.
- Q. How many were there last year? - I cannot say.
- Q. Only Ibenebu can say that.
- Q. Do you know how many families in Ifite? - No.
- Q. Nor in the other quarters? - No.
- Q. After District Officer Lawton's advice, any written agreement? - No. 40
- Q. Awka have other land they let out to individuals to farm? - Yes.
- Q. You get a written agreement each year for that? - Yes.

Court:-

Q. Are there years when these 4 quarters do not go on the land at all? - Yes.

Q. No rent paid then? - No.

Onyeama:

Q. Can you remember last occasion on which none of these people farmed this land? - Igbolo said 6 years they were not going there. I do not remember the last time nobody from Osunagidi farmed there.

10

Onyeama closes his case.

DEFENCE

Clinton: No further objection to plan going in. (Marked Ex.A by consent).

Clinton: After fight Nawgu driven off. Land they occupied divided off. Awka got biggest share. They allowed others on it on payment. But it is understood only those men who farm east of Ezu stream were liable to pay. No agreement to pay rent as a body.

20

Clinton calls:-

ANADYBE OJI m. 60 Ibo sworn says in Ibo: Of Ifite Osunagidi. I know this land. Nawgu first there. Now we have a piece of it. Amawbia, Okpuno, Isu, Norfia and Awka all have their parts. All these took part in driving out Nawgu and they divided up the land. Before the fight our boundary with Awka was the Ezi stream.

30

I do not farm on Awka land. Those of our men who farm beyond Ezi must pay rent. We do not farm there now. I did not know District Officer Lawton. If our men farm this land, head of their family collects rent from them and pays to Awka. He would not collect from any one else. I remember Ibenebu's case against 39 men (Ex.B) I was not among them.

Onyeama:

Q. When the fight took place Nawgu retreated through Osunagidi village? - No.

Q. Nawgu are surrounded by the 6 villages? - Yes.

40

Q. How did they escape? Through Isu farm land.

Q. Awka agreed for rent with your chiefs? - Yes.

Q. No agreement with any Ifite individual men? - No.

Q. Lump sum paid each year the land is farmed? - Yes.

Q. When did your men last farm there? - About 5 years ago.

Q. How much had your chief to collect? - It depends how many men farm there.

Q. How much per man? - It depends how many there.

Q. Fixed sum divided among all? - Yes.

Exhibits

"C"

Appeal Record
- continued.

Exhibits

"C"

Appeal Record
- continued.

- Q. What sum? It depends how much is demanded by owner.
- Q. What sum has been demanded? - Don't know.
- Q. You know Ibenegbu? - Yes.
- Q. Case against 39 men (Ex.B) - Yes.
- Q. This is same land now? - Yes.
- Q. You were present at trial? - No.
- Q. Those men paid? - Yes.
- Q. 4 months previously 5 Awka men sued 3 Ifite men for rent (Ex.G)? - Those men were farming there. 10
- Q. Were you in Court at trial? - No.
- Q. You know what the judgment was? - No.

Court:

- Q. On Ex.B your man Ibenegbu is stated to have told the Court your people had agreed to pay £5 etc. a year? - I cannot explain that.

2. IBENEGBU m. 55. Ibo sworn says in Ibo: Of Ifite. I sued some of my people for farming Agu Nawgu land - 39 of them (Ex.B). They were the men who had farmed. People who do not farm do not pay, We never had any agreement that every one in the village should pay. I do not remember District Officer Lawton. No officer ever came to our town to arrange about payment of rent. 20

Onyeama:

- Q. You gave evidence in that Native Court case (Ex. B)? - Yes.
- Q. This was your claim - (read it)? - Yes.
- Q. This is what you said (reads evidence as to agreement for rent)? - Yes. 30
- Q. Shares each individual paid had nothing to do with Awka? - Yes.

Court:

- Q. You spoke of something being signed; what was it? - Yes; I don't know what it was. It was signed in a man's house in Awka. Don't know his name. Couldn't find his house now. We got no copy.

Onyeama:

- Q. It was an agreement to pay £5 etc. every time you farmed? - Yes. 40
- Q. When did your people last farm there? - Before this case. About 4 or 5 years ago we stopped.

Clinton:

- Q. Who had to collect the £5? - I had.
- Q. Have you collected during last 4 or 5 years? - No.

Court:

- Q. Do you farm mixed up with Awka men? - No, separately. 50

Exhibits

"C"

Appeal Record
- continued.

10 3. UDOKWU AMATA, M, 60 Ibo sworn says in Ibo. Of Urobiali. Farmer. I know this Agu Nawgu land. It belongs to 6 villages. Awka have their piece of it. I don't farm there myself and never did. I know of no agreement to pay rent for farming this land. My people used to farm there but not since land was surveyed 4 years ago. I was sued 10 years ago (Ex.D). I found some of my men had farmed on the land. I told court they would pay, That is the only time I was sued. We have not farmed since then. Those who farm have to pay. I don't collect it and I don't know who does.

Onyeama:

- Q. Case Ex.D states you admitted claim? Yes.
Q. Your defence states arrangement you had made for rent (puts it to witness)? I never said it.
Q. You went on to say £5 was too much and you begged for a reduction? - I never said it.

20 4. EZIKUNO. 60 Ibo sworn says in Ibo. Of Achalla: Farmer. I know this land. I know the Awka part of it. That lies beyond Ezi stream. If we cross stream we have to pay rent. I don't know how much. I have never farmed there. I have never been told to pay rent there. I know of no written agreement about rent. No District Officer ever made one between us. I farm my own Osunagidi land. I do not know any Achalla people who farm this land and pay rent. I have never been sued by Awka people. Never heard of any Osunagidi people farming Awka
30 land.

Onyeama:

- Q. You knew Nwokeke Okam of Achalla? - No.
Q. You know Onwukike? - Yes.
Q. Does he collect rents? - For those who farm beyond Ezi stream.
Q. Those are Achalla men farming this land? - Yes.

40 NWOKOYE OKIKE. m. 60. Ibo sworn says in Ibo: Of Nawgu. Farmer. I know this land - Nawgu had it formerly. Driven out by 6 towns. Osunagidi people farm there. I don't know whether they pay rent. Osunagidi always farmed there. They are there even this year.

No cross examination.

Defence closed.

Exhibits

"C"

Appeal Record
- continued.

Onyeama asks to recall Ibenegbu 2nd defence witness:

Q. You spoke of an agreement made in house in Awka?
Yes.

Q. Can you say whether this is it? I can't say.
Can't read.

Onyeama calls:-

NWOKOYA IDA. m. 45 Ibo sworn says in Ibo: Of Awka. Trader. I see this paper. I have brought it here. Elders of Awka gave it to me for safe custody about 14 years ago. I have had it ever since. 10

Rendered.

Clinton objects. Must be proved that signatories had it explained and understood it. It may not be genuine. Stamping doubtful.

(Rejected: Onyeama cannot procure a witness who can explain anything at all about this paper)

Clinton: all sued on behalf of the quarter - e.g. "Irite".

Evidence would not support a judgment against the quarter at large. It might, against the respective defendants if there were evidence that they had farmed on the land. No evidence who has actually farmed there. We do not deny this is Awka land. We also admit that people who farm there are liable for rent. But common ground they and they alone are liable. Must prove all village farms to get judgment against whole village. No court will say chiefs can bind their people to farm particular land and pay rent for it; without their people's consent. No evidence here that the people knew anything about it. 20 30

Last 4 or 5 years they have not farmed. Ibenegbu (Ex.B) only sued 39. See their defence. Some farm elsewhere and pay. Why should they pay here also? Ex.C - judgment only against parties, not representing anybody. Cannot bind whole village. Ex. B. "No.4 and others" - what others? Ex.E. - Action for trespass, not rent. Trespassers only are liable. 40

"Agreement" referred to in evidence cannot bind the whole village.

Onyeama: Admitted it is our land. Also that some time other defendants farmed on it. Last witness said they were still there now. Question whether we can sue the Chiefs or must sue the people. These men in authority can be sued for their people - constantly being done. They say it makes no

difference how many men farm there. That shows individuals were never contemplated but whole community.

Exhibits

"C"

Appeal Record
- continued.

What Ifite or any other quarter does about collecting the money is only their affair. So far as we are concerned we deal with the quarter through the head. Whether 100 or what number farm there does not matter to us.

10 "No. 4 and others" in Ex. D. means all the defendants proceedings in Ex.E show representative action. These people have farmed there by virtue of the agreement with Awka.

Ex.F - this only to show that we alone have rights here; the other 5 took no part in that case because they have no interests there.

20 Ex.B - Ibenegbu's evidence as to what agreement was. Not for us to find out names of hundreds of individuals. We are concerned only with rights we have conferred on the quarters. Their pleadings talk of ownership, laches, long possession - all abandoned here.

Adjourned to 8th July Onitsha - C.A.V.

(Sgd.) H. Waddington, J.
Awka 17.6.44.

AT ONITSHA, THIS TENTH DAY OF JULY 1944.

J U D G M E N T

Four suits consolidated for trial. All commenced in Mbanasataw Native Court in the Awka division, by writs issued 5th July 1943.

30 All transferred by order of District Officer, Awka under Native Court Ordinance Section 25(1)(c).

Plaintiffs are the Ezinano quarter of Awka and the defendants are 4 quarters of Osunagidi, the claim being 4 years' rent due to the plaintiffs for the use by the Osunagidis of the communal farm land of Ezinano - Awka:-

	Ifite Osunagidi	-	£20, 4 goats, 400 yams, 16 pots of Wine.
	Urobieli	"	- do -
40	Igbolo	"	- £12, 4 goats, 400 yams, 16 pots of wine.
	Achalla	"	- £20, 4 goats, 400 yams, 16 pots of wine.

Exhibits

"C"

Appeal Record
- continued.

The case was tried with pleadings and plaintiff put in a plan by consent, Ex. A. Plaintiffs pleaded various Native Court Judgments copies of which are in evidence.

The statement of defence denies everything in the Statement of Claim, pleads in effect the defence that the communities cannot be held liable for rents for land farmed by individual farmers, and terminates by pleading ownership and four other defences, all of which are quite remote from defendants' case as presented at the trial. 10

Defendants' Counsel began on his plea of estoppel but could say nothing that had any bearing on this subject. It is clear from the evidence that it is an old custom for plaintiffs to let out this farm-land to various communities, including all these defendant quarters of Osunagidi.

The defence according to the evidence and Counsel's final address is, first, a denial that defendants have farmed the land during the period in respect of which the rents are claimed (the 4 years preceding the issue of the writ); and second that even if they had, it is the individuals who do the farming who must be held liable, and not the whole quarter. 20

With regard to the first of these contentions, I do not doubt that the defendants have been farming this land during the period. I accept that their own witness Nwokoye Okeke who describes himself as a farmer of Nawgu said - "I know this land. Osunagidi always farmed there. They are there even this year." 30

As to the second defence: It is evidence from the record of the suit of 1922, Ex. E. that the plaintiffs at least held the community liable. The defendants did not appear, so the record of course contains no statement of their view of the matter. The record of suit 66/1934 Ex.D shows that the claim was against Urobieli, one of the present defendant quarters, and the claim is recorded as "Admitted". The record states, "judgment satisfied". The defence recorded states that the quarter had an "arrangement" - "we agreed to pay them 25, pots of wine, a goat and 100 yams, every year and we have made an arrangement about it". 40

The record of suit 84/1936 Ex.C. shows - a claim against 3 defendants who are not stated to represent their quarter (Ifite), but it is clear

that the claim was in fact against the Quarter. Court Messenger Aka said in evidence that when he went to serve the summons he found "the whole Ifite performing a ceremony" and he told them the action was against the quarter and they must all attend. The defendants did not attend, judgment for the claim was given for plaintiffs and is recorded as having been satisfied.

Exhibits

"C"

Appeal Record
- continued.

10 In Suit 111/1936 (Ex.B) we have Ibenegbu of Ifite (2nd defence witness in the present suit) suing 39 individuals of his quarter for their share of the rent. At the present trial this witness stated - "We never had any agreement that every one in the village should pay". In suit 111/1936, he said - "We the whole Ifite come into agreement that we will be farming their land and paying them, etc."

20 It appears from the defence that the defendants objected to paying when they did not farm, and it is said (per 1st Deft.) that Ibenegbu had actually brought some strangers on the land, and had taken rent from them.

The Judgment states that the Court members visited the land, and they evidently directed their inquiries to discovering whether these defendants had planted crops or taken palm nuts there. The suit terminated in the defendants admitting liability "with our people", judgment was entered for the full claim and it was paid.

30 Taking these records with the verbal evidence, I find no difficulty in reaching the conclusion that we have here an example of the well-recognised native practice whereby a village which owns more farm land than it requires, will let out parts of it to other less favoured villages or quarters, and it is the communities at large who treat with each other in such transactions with the communal land which is meant for communal use.

40 The land owning community does not concern itself with the particular members of the tenant community who makes their farms on the land; the tenant community are free to farm on the land; as they please, and it is their business to make their own arrangements for collecting contributions to the bulk rent. And it is evidently in this that trouble arises; difficulties are encountered in collecting the individual shares, which as the present case discloses, are payable only by those

Exhibits

"C"

Appeal Record
- continued.

who use the land, and so the bulk rent falls in arrear.

The above-noticed series of former cases shows that pressure to pay has frequently been necessary, but that when pressure is applied, the rents are always paid.

It may well be that if some kind of system were devised (with the assistance of the Administrative authorities) to control the individual payments this kind of chronic dispute would be less liable to occur. 10

Though these suits have been consolidated for trial, the claims are separate and require separate judgments.

Judgment will be in all four cases for plaintiffs for the respective claims in full.

Costs against each of the 4 defendants quarters assessed at 10 guineas. (Total of 40 guineas).

(Sgd.) H. Waddington, J.
Onitsha, 10.7.44. 20

Mbanefo holding Onyeama's brief for plaintiffs.
Adeshigbin holding Clinton's brief for defendants.

Ex.B. tendered by the plaintiffs and admitted in suits - consolidated 0/12 - 0/15/43 Nnebe Okeke for Awka versus Ote Ifegulonye & ors. for Osunagidi.

(Sgd.) P.E.G. Achikeh
Registrar.
16/6/44.

IN THE NATIVE COURT OF AWKA ON 8/12/36 30

Case No.111/36

IBENEGBU of Ifite-Osunagidi

versus

- | | |
|----------------------|--------------------|
| 1. ONEJELI of Ifite- | 15. NDEBE OLISEKWE |
| Osunagidi | 16. OKAFO NDIBE |
| 2. ANAKUO | 17. OKOYE AGU |
| 3. OKAFOCHA | 18. NWIYIZOBA |
| 4. OKONLWO | 19. NWEKWEONU |
| 5. EKWOSI | 20. OKAFO NDIBE |
| 6. OKOYE NJIMWIBE | 21. NNAMA ELE |
| 7. OKAFO OKOYE | 22. NFOYE AYATANMO |
| 8. EJIKE IFITEGWO | 23. ONWUEMENE |
| 9. OKOYE | 24. CHIAGHANAM |
| 10. NDIBE UGWUMBA | 25. OKOYE EKWEANYA |
| 11. OKOYE ANNENYEUNO | 26. NWENE NDAJI |
| 12. NKAKWAONWU | 27. NWANKWO ADUNMA |
| 13. OKAFO NWONU | 28. IKERIE |
| 14. OKEKE ANADUAKA | |

40

29. OKONKWO NWANKAM
 30. ANA MODEZIE
 31. OKEKE NTA
 32. NWAONWU
 33. OGHANYE
 34. OKAFOR EJINAKA

35. OKEKE CHIKWUKA
 36. ANAEZI CHIKWUKA
 37. OKAFOR NWIGBO
 38. NWANKWO ACHOBANLO
 39. NWOKOYE ACHOBANLO

Exhibits

"C"

Appeal Record
 - continued.

All of Ifite-Osunagidi.

10 Claim:- To appear before the Court to share and pay £33.2.6d rent owing Awka people for farming on their land as decided in Awka Native Court Civil Case No.84/36 JB No.1/36 page 314 of 11/8/36.

Defendant claim not admitted - Right over taken the Court - case adjd. till next Court.

Sgd. S.N. Madi. C.N.C. 11/12/36 W/M Agbata his thumb for Court Members.

Re-opened 14/12/36.

Plaintiff states:

20 I am a native of Ifite quarter of Osunagidi, we the whole Ifite Osunagidi come into agreement that we will be farming their land and paying them £5, 100 big yams, one goat and two pots of wine every year as rent to Awka people. After arranged Awka people asked us to come for we to make an agreement. As we are three families on Ifite, each family brought out two men as decided by the whole Ifite to sign the agreement for their family. My own family named Ifite Ora granted myself and one Chiobu. 2. Mgbachalla pointed Onyeli No.1, defendant and Anakuo No.2 defendant. 3. Akaezi family 30 pointed out Nwokebe Okannadi and Nwankwo Nwoye, making six persons out of the three families, then six of us signed the agreement six years ago. Achalla-Osunagidi came into agreement with Awka and Igbolo quarter the same. As well as Iruobiseli-Osunagidi, in the same agreement. The agreement was also made in this Court.

40 The first year £2.10.0 rent was paid to Awka people by the whole Ifite (our people). The following year no rent was paid hence they sued us and handed the summons paper to one Ifitegno hence the whole Ifite collected £2.10.0 and paid to them to complete one year's rent. The rent put was paid by Otteh of Mgbachalla, 2 of Ifite-Ora and Abunwune of Akaezi, hence the summons taken was struck off since then our people never pay the rent of 5 years and Awka people then reckoned it and took action against us. If ask our people to pay the rent

Exhibits

"C"

Appeal Record
- continued.

they say I am the one calling Awka people to ask for rentage. So this year Awka took action against myself, 2 Otteh and Nwokek Kamome in civil case No.84/36 of 11/8/36 J.B. 1/36 page 314, to come with the whole of our people Ifite and pay the 5 years rent, after the action the whole Ifite said that it fall while they were paying tax, so we the people sued by Awka people to take our Ifite general money 10/- to go and pay to Awka and beg them to wait till we finish paying tax, we told them that 10/- is too small, hence the whole Ifite ordered the 5 of us to receive loans after the tax, they will pay us, hence we received £2.10.0 loan. We then took the money to Awka in one Obuekezie's house, and told us to bring the money in Court, as to tell the Court that we have admitted the debt. We then brought the £2.10.0 in court and pay £2 part debt and 10/- cost in the full sitting of court. We begged Otu Awka for we to settle the matter at house. They refused and said that 5 years is not a small thing that they wanted 5 years rent. We then went home and called meeting of our people and told them how we went, but defts. started saying that they are not among, that the people farming Awka land must pay the rent I told them that Awka never mind whether farmed the land or not but that they have to bring Awka rent to go and give them. But the defendants did not give us satisfactory answer and Awka took case against us and have us arrested and put in custody, hence our people who agreed that we owed rent to Awka came and took us on bail. I then took action against the defendants to collect Awka rent money and give to me to pay to them. Because I did not sign agreement that if our people fail to pay the rent I will pay, No.12 defendant came to me after this action and said he will pay the rent with us, but he got no money. I told him to pay as much as he has. He paid 2d. No.17 defendant also paid 2d after this action. I can swear with 6 persons that the defendants are working in Awka land cutting grasses and palm nuts.

Q. by c/member Johnston:- Is it the whole Ifite who paid the first rent to Awka people?

A. Yes.

Q. by C/member Johnston: How many people from your quarter Ifite Osunagidi agreed to pay rent with you. A. They are 37 persons.

Q. by C/M Johnston: Can you swear with 37 persons who agreed with you that the defendants are farming at Agu-Norgu Awka farm?

A. Yes: and can swear that the first rent was paid by the whole Ifite Osunagidi.

Exhibits

"C"

Q. by C/M. Agbata: Did you make agreement that the whole of your quarter Ifite will be paying rent or that as many as the people who farmed on the land will pay rent?

Appeal Record
- continued.

A. No we are from the 3 families in Ifite and we all can swear with plff; that the defendant are farming on Awka land.

10 Q. by C/M. Knama Nibo: Had the defendants ever told Awka the people that they are not among?

A. No. If the defendants say they are not among they better join us and then pay the past rent and then meet and council the old agreement.

No.1 Defendant states:- I am a native of Ifite-Osunagidi. About 6 years ago the plaintiff called the meeting of our quarter Ifite at Ezioji place and told us that Awka requested us to come for we to make agreement farming on their land. Our people
20 pointed 8 of us named myself. 2. Nwokeke Okanamadu 3. Chiobu 4. Plaintiff 5. Nwokeke Kaneme and 6. Anekuo No. 2 defendant to go and make agreement with Awka, but while making the agreement we must say that the people who farmed on the land will pay the rent, and the people who did not farm on the land will not be among the people who will pay the rent. We are 3 families in Ifite - and 2 men from each family was appointed to present his family in making the agreement. Six of us then went to Awka
30 and plff. signed the agreement that if the people farmed the land they will pay £5 100 big yams and 2 pots of wine as yearly rent. We were told that Iruobiaeli and Igbolo had signed the agreement. I told Awka people that as plff. was signing the agreement if, he took part of us and go and farm on the land he will pay the rent with only the people who farmed with him. Awka people then told us that we will not pay rent in the field that as many as the people who farmed the land will pay
40 rent. We then returned and reported to our people how we went, and how we made the agreement, and they said we did well. Pltff. then took the only people who agreed with him now and went and farmed on the land hence we the people who did not work on the land told plff. to pay the rent with the people who worked on the Awka land. Hence we the Defts. got lease of land, since from Isu, some from Okpuno, some from Amanuke and some from Achalla each was paying rent to the people who
50 leased the land to him - we the people farming in other towns land never ask plff to come and assist

Exhibits

"C"

Appeal Record
- continued.

us in paying rent, hence we wonder why they the people farming in Awka land asked us to come and assist them in paying rent to Awka.

Q. by C/Member Nwobu Onwujekwe:- Can you swear that since the agreement was made that none of you farmed in Awka land?

Ans. Yes.

Q. by C/Member Nweze:- If plff. show any farm or crops belonging to you what can you do?

Ans. If any farm was shown there as mine I will pay debt. 10

I do not tell Awka people that I am not among on the first year we made agreement, we all divided the land and pay the rent in general we then decided after all that Igbolo, Iruobiali and Achalla signed the agreement but did not divide the land. So we will not divide our own land. Pltff. then went to Awka and when returned he called only the people with him and said that Awka gave the land to him in his hand to be in charge of and that he is the chief of the said land and as we refused that the land will not be divided he will be taking the land wherever he sees, Pltff. then tell the Otteh to ring the bell, he did so, and we said in Otteh house that we will not farm on the land and whenever we wanted to farm the land we all will and pay the rent plff took some people and then went and farmed on the land, hence we the Defdt. said we are not among. Plff leased the same land to Norfia people and received the rent, without telling us, Etit-Osunagidi the same. Iruobiaeli people cut Achalla sticks there plff. took 10/- from each of them without telling us. If pltff. show any crops belonging to any of us, we will pay the rent with them. 20

We will show the plff. and his partners own farms there, 40 persons worked for plff. in the said land this year. Plff. and one Chiobu got land matter there and it was settled for them, none of us was present when it was settled. If any woman worked in the very land, he pay 4/- and one yam to plff. The properties of the woman who failed to pay rent still in plffs. house now. If the people who give evidence for plff. swear that plff. are not receiving rent other people then we will join in paying the rent. We can swear that we never collect any money nor told Defdt. to take our money to pay the Awka people, and can swear for same. 30

The plff. said he took our mask money we must 40 50

ask him about it, as we did not order him to do so. Plff. never work in another town farm since the said year

Exhibits

"C"

No.10 Defendant states: I am speaking on behalf of myself and the other remaining Defendants. What No.1 Defdtd. stated is what we say.

Appeal Record
- continued.

10 Q. by C/Member Johnston: Isu stated that you rang bell and hold meeting in Otteh house, and put law that no one to farm the land till it is ripe for you all to farm it, and that it was because the plff. farmed it you refused to pay the rent with him and his people? Ans. Yes.

Q. by C/M Johnston: Had you ever been to Awka people whom you made agreement with and made report to them that the plff. went and farmed the land without ripe, and leasing it to other people, hence you are not among?

20 A. No we asked plff. to go with us, but he refused and said that he is the chief of the said land, hence we told him that the man who farms the land will pay rent.

Q. by C/M Agbata:- Can whole of you swear that since 5 years ago none of you ever farmed on the said land except the very year the agreement was made?

A. Yes. And that the land was farmed by plff. and his partner and the people he was leasing the land.

30 Q. by C/M. Ibe: Can you also swear that you are not cutting palm nuts grasses and achalla sticks there? A. Yes.

Case adjourned till next court. Both parties each to produce the oath. Court will select 8 members to go and view the farm on Saturday the 19th instant and report to court on Monday.

(Sgd.) Court Member Moghali
His thumb
for Court Members.

40 Sgd. S.H. Madi C.N.C.
14/12/36.

Court Members:- 1. Robert, 2. Nweze Akagu. 3. Samuel Nohe 4. Okoye Kkwozo 5. Onyike Mgbike 6. Okoye Ekweonu 7. Oji Ibekwe 8. Adume.

My name is Robert Okoye. I am speaking on

Exhibits

"C"

Appeal Record
- continued.

behalf of myself & 7 other Court members. We are the Court sent to go and view the land, as to know if defendants farmed on Awka land. On the fixed day we went when reached their meeting place, each party turned out, when we got there plaintiff showed us a plot of land where the yams were planted and said the yams were planted by the defendants, plaintiff also showed us cassava planted about 2 years ago and plaintiff said it was planted by the defendants. The defendants did not go with us there as they said that, that part belonged to Iruobiaeli, if Ifite, the parties quarter are farming on that part of farm with Iruobiaeli, Udeku replied no; and that part is where the plaintiff showed us yams plantation and cassava. We then went to Ifite farm where both parties agreed that it was their own farm. Plaintiff party showed us Mgboko land where there is no yam but only sticks and said it was planted by defendants, but defendants denied, plaintiff told us that defendants tapped tree when we got there we did not see it or part of it after having been cut down. We got to one cassava plantation and plaintiff say it was planted by one of the defendants but the defendants concerned said it was leased to his wife by plaintiff and his wife paid rent to Plaintiff. Defendants then showed us the lands leased to Iruobiaeli people by plaintiff and received rent from them. The people that defendants mentioned that plaintiff leased the land are - Mgeke Okafor, 2. Mgboye Nwaokafor and 3. Nwabeze Nwokoye and still asking to show us more but we said that we are tired.

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Q. by C/M Isaac Nwankwo: Did you see any yam planted by defendants.

A. We saw the yams planted but Iruobiaeli men said it is in their own part.

Q. by C/M. Agbata: Did you see where defendants planted yams in the said land? A. No.

Monwuba, 2. Okoye Ocha 3. Nweke, 4. Nwanna, 5. Molokwu.

40

My name is Monwuba. I am speaking on behalf of myself and other 4 mentioned men. We are the native of Awka and the people who went with the Court members to the land. We cross Mili Okunwa, we stopped and told the Court Members to stop that this is the boundary of our land. When we got to the joint road defendants persisted us to take the right but plaintiff say no that we will take the left part road. The whole members say we will follow the plaintiff who say that he knew where the defendants

50

Exhibits

"C"

Appeal Record
- continued.

made their farm. The people who took the right part road ran to Udeku and told him that plaintiff is taking the Court Members and Awka people to their land, hence Ibenegbu ran out. We asked Udekwu if we Awka gave Ana Nogu where they are staying to only them (Iruobiaeli) he replied no. We asked them if parties quarter Ifite are paying rent to us with Iruobiaeli they replied no. That each quarter are paying their own apart. We asked 10 Udekwu if parties are paying rent to you Iruobiaeli and farm the part of Iruobiaeli land they replied no. We asked them if they are farming together with Ifite, he replied yes, that each man farms where his father was farming. The man named Okafor Ejiaka one of the defendants is the one plaintiff first show us his own farm, plaintiff showed us 8 places of farm made by the defendants, Okoye, Ndife Olisekwe and Okafor Ocha Obuoji all are the defend- 20 ants. But if the Court found out that the defend- ants did not farm on the land, they can fine us.

Court:- The plaintiff to produce the oath next court for each defendant to swear that since after 5 years that the \$5, rent has been paid to Awka. He never farm in Awka land now in dispute again.

Case adjourned till next court for swearing before the judgment.

(Sgd.) C/M Nnaemegwo His thumb.
for Court Members.
Sgd. S.A. Madi
C.N.S. 11/1/37.

30 Court Members:- Nnamegwo & 7 others states:-

My name is Nnamegwo, I am speaking on behalf of myself and other 7 members, we are the 8 members appointed by the Court to go and administer this swearing. When we got there, plaintiff said that the defendants will add when swearing that they never cut palm nuts in the disputing land and that the defendants will not answer until they turned out correctly. 25 defendants turned out today.

40 Case adjourned till next court for plaintiff to reproduce the oath and the whole defendants to attend,

(Sgd.) N.N. Okonkwo
for Court Members.

Sgd. S.N. Madi
18/1/37.

Exhibits

"C"
Appeal Record
- continued.

Reopened 1/2/37.

Defendants state:- I am speaking on behalf of myself and other defendants. We do not want to swear, we wanted to pay the debt with our people and we the defendants brought £5.10.0 here and paid to Awka people See civil case No.84/36 page 314 JB. 1/36. (48-0).

Judgment:- For plaintiff. The whole defendants to join their people plaintiff & others and pay to Awka people £33.2.6d rent as decided in civil case No. 84/36 JB. 1/36 page 314. Cost to Plaintiff.

10

C/M Moghali His thumb.
for Court Members.

Sgd. S.N. Madi
C.N.C. 1/2/37.

£5.10.0 paid to Awka people as part rent by Defendants, see civil case No. 84/36 JB.1/36 page 324 1/2/37. 6/- cost refunded to plaintiff in court 2/2/37.

£5.10.9

20

£11.0.9d. (Sgd.) Moghali for C/M.

I certify that the above is correctly checked.
(Sgd.) S. Cime C.N.C.

Exhibit "C" tendered by plaintiffs in Consolidated Suits C/12 - O/15/43
Imebe Okeke for Awka versus Ote Ifegulonye & ors.
for Osunagidi.

Sgd. P.E.G. Achickeh - Registrar.
16/6/44.

IN THE NATIVE COURT OF AWKA ON 10/8/36

30

Case No. 84/36.

1. OBUEKEZIE 2. NWOSORWE 3. NONWUBA
4. OKOYBOCHA 5. NWONYEKWELU all of Ezianata
Awka

versus

1. IBENEGBU 2. OTTEH of Ifite Osunagidi
3. KWONBEKE KANAME " " "

Claim:- £25 5 goats, 25 pots of wine 500 yams rent owing plttf. for farming Agunogu land 5 years ago.

40

Defendants failed to attend court.
Case adjd. till tomorrow for Defdts. to attend.

S.N. Madi W/M. Okafor his thumb.
spokesman.
C.N.C. 10.8.36

Reopened 11/8/36 Defdts. still not attending.
 No. 1 plaintiff Obuekezie states:- I am speaking
 on behalf of myself and other 4 mentioned plffs.
 We are from Ezinano quarters of Awka. Ezinano
 consisted of 1. Agulu-Awka, 2. Amikwo Awka,
 3. Ezioka and 4. Umuokpu-Awka. We the 5 persons
 are the representatives of the 4 quarters mention
 and were elected to speak on their behalf. 6 years ago.
 Ifite Osunagidi quarter (the defendants) and Iruobiaeli-Osuna-
 gidi quarter, came to us Ezinano Awka, and begged
 us that the rent which they are paying us yearly
 for farming our land is too heavy and that they
 wanted us to cotalil for rent for them we agreed;
 and fixed with Ifite the Defdts people to be pay-
 ing £5. 1 goat, 100 yams and 5 pots of wine to us
 every year as rent. Iruobieli the same thing and
 Igbolo the same thing. Since then Iruobieli and
 Igbolo were paying their own rent to us yearly up
 to this year. We made agreement with them after
 the arrangement. But since then the arrangement
 was made, Ifite-people (Defdts) never pay the said
 rent to us up to 5 years now, as we never include
 the rent of this year and that will due after
 collected the crops. If the crops now in ground
 is collected then it will be 6 years rent they
 will owe to us, we went to their house for several
 times demanding the rent but they refused to pay,
 but still farming our land, hence we sued them and
 the summons served on them and they failed to
 attend court, yesterday, and court adjd the case
 till today, today they again failed to attend.

The goats were not entered in the agreement
 as they belonged to the Rent collectors only.

The D.C. told us to make this agreement so
 that there will be no dispute about the land or
 rentage. Vide Civil Cases Nos. 354 J.B. 3/22 of
 4/9/22 page 13. Total Rentage due £25, 500 yams
 25 pots of wine and 5 goats.

No. 2 plff Nwozoekwe states: Same statement as
 Obuekezie.

No. 3 plff Monwuba states: Same statement as
 Obuekezie.

No. 4 plff. Okoyeocha states: Same statement as
 Obuekezie.

No. 5 plff. Nwonyekwe states: Same statement as
 Obuekezie.

The elders of Ezinano Awka.

1. Ekwegbeli, 2. Nwuzo Okeke 3. Onwunaeze

Exhibits

"C"

Appeal Record
 - continued.

Exhibits

"C"

Appeal Record
- continued.

4. Onwusoigwe 5. Nwaka 6. Kachi 7. Nzekwe
8. Nwamadi Obuajulu 9. Ohukuneke 10. Nwosu
11. Dimeli 12. Ndubisi 13. Nwozughu 14. Nwakaoso
15. Mmo 16. Anago. 17. Nnedi Nwadolura 18. Nnagbo
Okoli 19. Nwechetebu 20. Anigbata Nwafulujme.

My name is Ekwebgeli:- I am speaking on behalf of myself and other 19 men mention above, we all are from Ezinano Awka, and we are the people who elected the plffs. to speak on our behalf and they stated is what we say and have nothing to add to it.

10

C/M Aka states: I am a C/M attached in this Court and the c/m sent to serve this summons. I met the whole Ifite - where they were performing the ceremony, and served the summons to No.2 Defdt. and announced before the whole Ifite-Osunagidi people who were there that the action was taken against the 3 men on their behalf so the whole Ifite must attend Court. I also told them the Court day in present of Anighata and Anago who the plffs. gave to identify the Defdts.

20

Copy given to Nwozockwe for Awka Fees charged
Search fee 2/- 1012 words at 100 for 6d. = 5/6
total 7/6 vide N.C.R. No.56 of 18/9/42.

COURT:- This case was called up yesterday, but the Defdts failed to attend, hence we postpone it till today, but today they again failed to attend the Court, We have heard the statements of plaintiffs and the townspeople and also the c/m who served the summons. We kept this case till late in the evening yet none of the Defdts attend, hence we gave judgment in their absence. It is clear to the court that they are pay yearly rent.

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Judgment: For plaintiffs on behalf of Ezinano Awka for £2.5. 5 goats value £2.10 at 10/- each. 500 big yams value £5 at 100 yams for £1 25 pots of wine at 6d each = 12/6 total £35.2.6 and cost 10/-. Next Court allowed for payment.

W/M Agbata his thumb
Spokesman.

40

S.N. Madiebo C.N.C. 11/8/36.

10/- cost refunded by Defdts and 3 others to pliff in Court on 14/9/36. £2 part debt paid by Defdts and 3 others to pliff in Court on 14/9/36.

S.N. Madi
C.N.C. 14/9/36.

W/M Okafor his thumb
for Court Members.

£8.0.0 paid by No.1 Defdt to plffs in Court 8/3/37.
Defdts. to pay the balance debt next Court 15/3/37.
£6.0.0 paid by No.1 Defdt. to plffs in court
16/3/37.

Exhibits

"C"

c/m Nnama Oji his thumb.
for Court Members.

Appeal Record
- continued.

S.N. Madi. C.N.C.
16/3/37.

10 £5.10.0 paid to plff by Anakwue and 38 others that
is Defdt in case No.111/36 J.B.2/36 p.146 in Court
1/2/37

£5.10.9d. " " "

No.111/36 " " "
8/3/37.

S. Madi C/M Moghalu for C/Ms.
C.N.C. 1/2/37.

I certify the above is correct copy.

Sgd. S. Cime. C.N.C.

20 Exhibit "D" tendered by the plaintiffs in consoli-
dated Suits 0/12 - 0/15/43 Nnebe Okeke for Awka
versus Ote Ifegulonye & ors Osunagidi.

Sgd. P.E.C. Achikeh
Registrar.
16/6/44.

Case No. 66

1. NWOKEK 2. NNEBE 3. NWANMO 4. NWOZOEKWE
5. IDUBISI on behalf of all Ezinano Awka

versus

30 1. UDOKWU 2. IKEBUDE 3. NWANKWO NEUTE 4. ILOZO
on behalf of all Iruobiaeli Osunagidi.

Claim:- £15, 300 yams at 60/- & 12 Ogene pots of
wine at 12/- total £18.12.0 being rent owing
all Ezinano Awka on Agu Norgu land for the
period of 3 years dispute arose 6 months ago.

Claim admitted.

40 No.2 plff. states on behalf of 4 others. We
arranged with the defendants that they should be
paying us £5, 4 pots of wine, a goat and 100 yams
every year. Then 1932, 1933 and this year 1934
defendants have never paid us the rent arranged at
all.

Exhibits

"C"

Appeal Record
- continued.

They have been paying us the rent but since 1932 to 1934 they stopped to do so. It is arranged that £5 100 yams at 20/- and 4 pots at 4/- Then total for the period of 3 years is £15, and 300 yams at 60/- and 12 Ogene pots of wine at 12/- total £18.12/-. We have made an arrangement with the defendants. The first people from our Ezinato who were collecting the rents before took us to the No.4 defendants who used to collect the rent from his people and give it to us. The No.4 defendant will then take out 5/- out of the £5 rent paid to us due to the collection. This year they attempted to farm on it but we refused. Then they came to us in one Obuekezie's house and began to beg us to allow them to farm on it this year. We agreed when they said they would pay us for 1932 and 1933 quietly. Since 9 months we have been expecting them to pay it to us but they do not do so. If they know that they have paid for 3 years they should prove whom they pay it through to us but if not let them go and take it back from the one and pay it to us direct. Now they are living on it and farming on the same land too this year. Other quarters Achalla Osunagidi, Ifite and Igbolo Osunagidi are farming on the portions of our Agu Norgu lands and they are paying us the rents. Achalla have paid theirs last year but Ifite and Igbolo have not paid theirs yet for last year. We want the defendants to prove whom they pay our rents for the period of 3 years. They came to us to settle it at home but we told them it would be in the open court for if they take away all their crops they would deny having farmed on it (Agu-Norgu-land). We have been attending the Court all the time but the defendants had never attended until we complained it to the District Officer. Today in the morning they come and began to beg us again to settle it with them at home without paying us half of the rent owing us.

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Q. by No.1 defdt. to No.2 plff. - Is it because we came to you to beg that makes you say what you like?

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Ans. It is not so I am saying what is true.

Q. by No.1 defdt. to No.2 plff. - will you swear that we have not given the yams, palm wine and a goat for 1932 and 1933?

Ans. We will swear that when we come with the old members of our quarter to the No.4 Defdt's house. You have not told us that you gave them or anything to the old members or to any other person in our town.

Q. by No.4 defdt. to No.2 plff. - Have I seen you

in my house demanding this rent or have I ever paid you the rents?

Ans. You have seen us and told us to come in your public place as your people refused to come to your house. When we came out the place they us to expect them within two native weeks time. We did so but all in vain.

Exhibits

"C"

Appeal Record
- continued.

D E F E N C E

10 No.1 defendant states:- We agreed to pay them £5, pots of palm wine, goat and 100 yams rent every year and we have made an arrangement with them about it. But at last we find that the money is hard now we will not pay £5 again because it is too much. We are begging to reduce it for us. We gave them 100 yams and few amount 2 years ago and last year we did the same. This year we have not given anything to them. We are paying 6/- a head when collecting the tax but at last it was reduced. We want them to reduce it for us. If those whom we paid the rents are here and if we convince them how we have paid them the rents in case they will deny we will tell them to swear the juju. This is why we do not want to go on with the case now and want to go to them (plffs) at home and beg them. We want to fix up the rent again with them. We want to settle it with their elders and ours too.

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No.3 defendant states: I corroborated with the statement of the No. 1 defendant. We have farmed on it this year. No.4 defendant states:- I corroborated with the statement of the No. 1 defendant. I am the one collecting it for Ezinato and I use to take 5/- out of the £5 I should pay them.

30

Q. by W.M. Mweke to defdts. Can you tell us how much money you have paid to Ezinato Awka as a rent and mention whom you have paid it to?

Ans. by No.4 Defdt. I have not remembered it and when I get home I will ask and prove it to you and if it is in dispute I will take an oath.

40 Q. by No.4 plfff:- To whom did you pay that money you said you paid?

Ans. We paid the few amount in Ifeama's house.

Q. by No.4 plfff. Can you name a particular person that you gave the money?

Ans. We put it down on the ground when all the Awka people were gathered but not to a particular person.

Judgment: Defendants to come with the juju and

Exhibits

"C"

Appeal Record
- continued.

also their Elders of Iruobiaeli and also Awka people to come with juju on 24/9/34 and on that 24/9/34 we will decide who will swear.

Sgd. W.M. Uchendu his thumb for
the members. Spokesman

Witness to mark N.N. Anyika
C.N.C. 19/9/34.

Reopened 24/9/34.

No.4 defendant and others appeared and admitted the claim and produced the 10/- cost and paid to the pliffs and therefore Judgment for pliffs. for £18.12. in two sittings time. 10

Sgd. W.M. Agbata his thumb
for the members. Spokesman.

Witness to mark Sgd. C.H. Ana,
A.C.H.C. 24/9/34 Judgment satisfied.

I certify the above is correctly checked.

Sgd. S. Cime C.N.C.

Exhibit "E" tendered by plaintiffs in consolidated Suits 0/12 - 0/15/43 Nnebe Okoke for Awka versus Ote Ifegulonye and Ors. of Osunagidi. 20

Sgd. P.E.G. Achikeh
Registrar.
16/6/44.

Case No.353/22

NWOSU OF AWKA
versus
NWOKEK OKAM of Osunagidi

Claim: £40 being damages for trespass on our general land Agu Norgu by name since 5 years. 30

Defendant not appearing -

Plaintiff S.S. Defendant trespassed on our general land Agu Norgu since 5 years and shortly I took action against them for it and they came to us begging to settle out of court and promised to pay damages of £5. I refused and told them to go to Court for I want the case to be heard in the Court. They further promised £15 and 4 goats as rent but we refused.

Chief Obuorah S.S.:- The land in dispute belonged 40

to Awka Ezinano in general, defendant trespassed in this land without permission not defendant alone but with his families, so we took out action to 4 compounds of Achalla Quarter taking the name of head man in the compound claiming damage of £40 on each compound. Defendants come yesterday begging to settle out of court and pay £15 and 4 goats for rent and we refused and told them to go to Court as we want the case to settle in the Court.

Exhibits

"C"

Appeal Record
- continued.

10 C/M. Okudo S.S.: I served summons on defendants and told the Court day.

Judgment:- For plntiff, for £20 and costs, one week for payment.

Sgd. Chief Molokwu his X mark.

Witness to mark
J.C. Iwenofu C.N.C.
20/6/22.

I certify that the above is correctly checked.
Sgd. S. Cime. C.N.C.

20 Exhibit "F" tendered by the plaintiff in Consolidated Suits 0/12 - 0/15/43. Nnebe Okeke for Awka versus Ote Ifegulonye & ors for Osunagidi.
Sgd. P.E.G. Achikeh
Registrar 16/6/44.

Case No.53/30 Chs. same as before.

UDEKWE of Awka on behalf of Awka town
versus

1. ONWUBUYA 2. UZOEGBELE 3. EJIKA 4. NDIFE 5. ANASO
6. NWOKEKE 7. OGUNO 8. OKOYE NTA 9. NWEKE
30 10. AGUNCWU on behalf of Norgu town.

Charge: Wilfully farming the complts. Omagu land building houses since 2 weeks ago.

All plea NOT GUILTY.

Complainant S.S.- I am a native of Awka, about 2 weeks ago I went to our "Omagu" land with one Nwokafor of Awka. We saw 2 houses built by the accused, also one small house placed bad jujus in it. They uprooted the whole cassava of our in the very land. We returned home and rang for the whole
40 Awka town to assemble so that to inform them what we saw happened on our "Omagu" land. When the whole town have gathered and we told them about it.

Exhibits

"C"

Appeal Record
- continued.

They send us to Osunagidi our neighbouring town to ascertain if they had done anything on the said land. They told us that they did not and we went to Norgu town and told them to ring a bell and they did so and their people collected. When they all assembled we told them that we were sent by all Awka elders to enquire if they were the people building houses placing jujus on our land. They all went aside and consulted, returned and told us that they were the people building the said houses, placed jujus because the "Omagu" land belong to them. I called the No. 1 accused and asked him since you have born have you ever planted yams on this land he said he had never. That it is by strength that they are using the said land because Government has come also this time is not an olden days war therefore come home and related all these to our elders. The elders then took out this action for accuseds to withdraw from this land. The reason we Awka people own this land was because in the olden days one Warriem of Awka went to Norgu and there poisoned and when he got home he dies. We Awka people then went to Norgu and asked them the reason why Warriem was poisoned. The Norgu people then shoot to death one of our men named Okeke -Ele. We Awka people then brought fight to Norgu and drove them away from this "Omagu" land. And they went and lived at Ukwulu, we tried to fight to them at Ukwulu. The accds then gave us £20, one cow, one sheep and this very "Omagu" land to detain as our own in place of our man they killed. We Awka people said some time to come accds. may claim this land as their right and accds. told us to bring jujus for them to swear that they will in no time claim ownership of this land; and jujus were brought and whole Norgu sworn. Some years after these a companion "Ukeamaonwu" in Norgu came into this land again and we Awka people went and drove them away. They returned to Ukwulu and begged that no fight was to go on. They gave £10, one cow and a sheep on that account. The land then belonged to us. When Government arrived accds. people came to the District Officer and told him that they want Awka people to return their land to them and District Officer told them that those who drive some people from their land usually own the said land. That they must go to Awka people and arrange it friendly. We went with Norgu and the District Officer on the said land. When we reached to Miri-Ajilija side of the land near Isu town District Officer begged us and gave "Mili-Ajilija" part to accds. When we came home one Nwokoye Nwabugwu of Norgu came to our people with some others of Norgu,

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Exhibits

"C"

Appeal Record
- continued.

10 said that the portion given them by the District Officer, is quite very little that we should buy it away from them. We settled the amount to £6 and one goat and paid it to them at the same night. Some time afterwards Osunagidi people began to claim this very land and we took action in this court and Norgu chiefs Mnaedozie and Echeazu gave evidence before the D.O. that the very land originally belong to Norgu but Awka people drove them away from it in the olden days and own it as their property. Therefore D.O. said that the land belong to us but if Osunagidi people wishes to farm on it they may make an arrangement with us as to how much they would be annually paying to us. Then last month Osunagidi came and made the same agreement with us. Isu town are planting on some part of this land and pays to us annual rent. There is "Eriyeri" tree which had bear some at the side on this land.

20 Q. by No. 4 accd:- Did you inform the D.O. that Norgu people whom "Miri-Ajilija" part of the land were given had sold the same to you?
A. When a man sold away his property, he never use to tell the D.O.

Q. by No. 3 accd. Is Awka only people that drove Norgu from their former living land and occupy it?
A. The custom is when one drove another from his former land then he occupies it.

30 Q. by No. 6 accd. In whose house was Nweriem poisoned?
A. It was in one Ekwuekwe's house at Norgu.

Q. by No. 4 accd. Is one Ekwuekwe still alive?
A. No, he had died since long.

Adjd.

Reopened 7/4/30.

40 Witness for plaintiff Nwokafor Igweonu S.S. I am a native of Awka. About 7 years ago the whole Ezinato Quarters of Awka included me to look after one "Omagu" land that nobody should farm on it without their permission. Then some people of Osunagidi and Isu towns took some plots from this "Omagu" land and use to pay us annual rent. About the middle part of last month I was informed that accuseds had built some houses on this our land. Then on Ekke day I went with my boy to see the people who were planting on the land. On our way I met the No. 6 accused by name Nwokeke. I asked him were you among the people who had built houses on our land he admitted and I told them to stop from

Exhibits

"C"

Appeal Record
- continued.

that date. When I got home I informed the elders and the elders selected ten of us by name Nwudekwe, Nwobu, Nwora, Nwanizor myself and 5 others to accused's town. When we reached we told the accused that the whole Awka town sent us to inform them to break down those houses built on our land. They all agreed to break down the houses. We returned home and waited for some days, they would not come and break the houses. This land belong to us because one Nweriem Uzoka was poisoned by Norgu people in the olden days. The Awka went to Norgu to enquire why Nweriem was killed and Norgu people shoot to death one Okeke Umono. Then Awka people went and fought Norgu, drove them to Ukwulu and tried to continue fighting but Ukwulu people begged and accuseds gave £20, in cowries, one cow and one ram to our grand fathers, gave this "Omang" land to us in place of people they killed in our town. The Awka people then gave a juju to accuseds grandfathers to swear that they would no longer claim this land as their right and they swore. They then lived in Ukwulu land, but some years after they lived again in this land and we Awka people fought and drove them away again. The Ukwulu begged and Awka people told to perform "Itaoji" custom. They gave £10 in cowries, one cow and a ram to we Awka and swore again that they should not come into this land forever. Since then, they never have been any dispute about this land. When Government arrived Isu farmed on this our land and we summoned them and people of Norgu gave evidence that this land was given to us by them in the olden time in place of Awka people they killed during the war. Some time after the District Officer visited this land and gave a plot of land near Mili-ajilija to accuseds but accuseds afterwards sold this "Mili-ajilija" plot to us at £6, cost and we paid them and own it as well. Some years after this, we took action against Iruobiaoli quarter of Osunagidi for farming on this land and chiefs Nnaedozie and Echeazu of Norgu gave evidence that this "Omagu" land belong to us, because they handed it over to us in place of our men they killed during the war. We had once took action against chief Nwankwo and Okoli of Osunagidi for cutting an Iroko tree stood on this land and they were fined £10. The District Officer Newton had gone into this matter when we had case with Osunagidi people. He put down in the Court Record that this land really belong to us since Norgu chiefs had confirmed that the same was given to us in place of our likked during the war.

Q. by No.4 Accused. - Didn't we make peace after this fight was over?

Ans. Peace was made by handing this Omagu land to us.

Exhibits

"C"

Appeal Record
- continued.

Q. by No.4 Accused: Where did Norgu people receive the sum of £6 you paid them on "Mili-ajilija" land?

Ans. It was at Isu town.

By Accused: Was it at the very day the D.O. had given part of the land near "Mili-ajilija" to us that our people had sold it?

Ans. - No, it was time afterwards.

10 By Accused: Were the two chiefs Nnaedozie and Echeazu of Norgu present when you paid £6 to Norgu?

Ans. Yes.

Q. by Court: When does this land given to you by Norgu people?

Ans: It was very long time before I was born almost about four generations.

20 Witness for Complt. Iroazor S.S.: - I am a native of Osunagidi, since I became a man we people of Osunagidi had a boundary on "Omagu" land with complainants, it was almost about four generations since Awka people had own this land. When there was a dispute between our town and Awka on this land, the Norgu chief Nnaedozie gave evidence that, that land was given to Awka by Norgu in place of their people they killed during the war. Then whenever we want to make use of this land we pay annual rent to Awka people. My father had told me that Norgu people had killed so many people of Awka during the olden time and gave this land to Awka instead. He told me also that Norgu had sworn a juju for them that they will never come into this land again.

30 Q. by No.4 accused: Did your father told you as much the people of killed them?

Ans: He did not tell me.

40 No. 3 Accused stated S.S.: - I am a native of Norgu, some years ago, my father had told me that during the olden days, Awka people had brought a war and killed many of them drove them away from former "Omagu" land. My father also told me that some time ago one Oguaju was performing "Amaoba" custom and invite Awka man. This Awka man I do not know his name. Asked Oguaju why was he called Oguaju, that as they were planting much yams. That they must see the fight some time to come. This man then went away and inform his towns people that we Norgu had tied so many yams that year. Then the following day Awka people came and burnt our towns

Exhibits

"C"

Appeal Record
- continued.

field and fire burnt our yams and some of our children. The people of Norgu sent 4 persons to enquire from Awka people and they killed the four messengers. When war began. The Awka people employed the neighbouring towns Osunagidi, Okpuno and Isu killing our people. They killed the 7 quarters of Norgu drove us away from the "Omagu" land. We separated into some other towns. Some of us were Okwulu. Then when they came into sufficient numbers of people, they returned again in this land and lived. The Awka people gathered again and drove us away from the same land. Some years after we grow into large numbers of people. The rank named "Iloamaonwu" of Norgu came again into this land and Awka people killed lot of them, drove them away again. Then not longer after Government arrived and announced that any one has to return to his former land. We went and saw the District Officer and told him to accompany us to see where Awka people had driven us. The District Officer followed, also Chiefs Onwuram Ofili of Achalla and Nwankwo of Umuawulu. We pointed to him boundaries of our land from "Ofia" stream, also "Iyinwochichi" stream between Igbolo quarter of Osunagidi, then come to our boundaries near Morfia town and D.O. fixed "Esisii" trees on the boundary. Then 7 years now our field burnt by fire and we went and cut Achalla yams sticks on this land. The Awka people came and begged us to make use of some sticks, we allowed them. After that Nwaokafor Ofuokpa of Awka came to our chief Nnaedozie and begged that they would be looking after this "Omagu" land for us that nobody should farm on it without paying some rent. The chief and other people of Norgu refused, Nwaokafor afterwards came with one Oramalu and £20 sum, said it was the money they collected from Osunagidi and Isu people who farmed on our land. Then our chief Nnaedozie called the whole town and told them how Nwokafor and Oramalu came with £20. The Norgu people objected the money because we were preparing to build houses on our land. When we have built houses planted yams on this our land, the complainant took out action that the land was given to them in place of their men killed during the war. We Norgu people had not paid any money neither cow or this land to complainants in place of the people killed in the olden days. It was five years after the arrival, of the Government that D.O. took us to this land.

Q. by Complt: How many years after the Government had arrived that you went with the District Officer into this land? 50

Ans: I do not know.

Q. by Complt: Who were the people farming on this land since 7 years ago?

Ans: It was you Awka people but this year we said we should claim it as our original land.

Q. by Complt: Had there been any Osunagidi or Isu man paid you a rent on this land?

Ans: No, because we were afraid of you people.

Q. by Complt: Did you know what D.O. Lawton had written after your chief Nnaedozie's evidence during our case with Osunagidi?

10 Ans: I do not know.

Q. by Complt: When does this war took place?

Ans: It was happened about 3 generations past.

Q. by Court: Do you, whether chief Nnaedozie had given evidence when Osunagidi had a dispute with Awka on this land?

Ans: No.

20 Judgment:- Finding the Accuseds guilty fined £2 each for quarters, of one month I.H.L. on ground this matter had happened before Government because according to native custom whenever a town drive away another before Government comes; they usually occupy their land. There was a case of this kind when Umuawulu had driven a town Iwolo from their former land and when Government came Iwolo returned but when he was brought to court D.O. told them to leave the said land for Umuawulu who drove them.

Sgd. Ch. Hweke his X mark.

Witness to mark.

30 Sgd. J. Nwankwo C.N.C.
7.4.30.

£20 fine paid on 7/4/30.

The Appellant refer to Civil case Nos.354,355,356 but in the Judgment refers to Osunagidi and Awka not to Norgu and Awka. Confirmed.

Sgd. R. Underwood.
District Officer 14/4/30.

I certify the above is correctly checked.

Sgd. S. Cime
C.N.C.

Exhibits

"C"

Appeal Record
- continued.

ExhibitsPROTECTORATE OF NIGERIA

"C"

IN THE HIGH COURT OF THE ENUGU ONITSHA JUDICIAL
DIVISIONAppeal Record
- continued.Consolidated Suits Nos. 12-15/43

Filed 30/8/44 at 9 a.m.

Motion £2.
Filing Affd: -. 2. -
Service: -. 1. -£2. 3. - CR.No.B34579 of 30/8/44
(Intld.) C.C.O.

10

0/12/43: NNEBE OKIKE for himself
and on behalf of Ezinano-Awka Plaintiff
Respondent

versus

1. OTE ILEGULONYE
2. ANADEBE OJISI on behalf
of Ifite Osunagidi

0/13/43: 1. UDOIKWU AHAHA
2. AMAZIGWON NWBAMA on behalf
of Iruobiaeli-Osunagidi

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0/14/43: 1. NKWONTA AKUBUDE
2. NWANIKWO NWORIALI on behalf
of Igbolo-Osunagidi0/15/43: 1. ONWUKIEM
2. EZIKUNO on behalf of
Achalla-OsunagidiDefendants
AppellantsMOTION for CONDITIONAL LEAVE to APPEALTAKE NOTICE that the Honourable Court will be
moved at 9 a.m. on Monday the 2nd day of October
1944, or as soon thereafter as counsel for the de-
fendants appellants can be heard for conditional
leave to appeal from the judgment given by the
Honourable Court against defendants appellants at
Onitsha on the 10th day of July, 1944 and for stay
of execution pending the appeal.

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Dated at Calabar this 12th day of August,
1944.(Sgd.) Charles W. Clinton
Solicitor for defendants-Appellants.

40

PROTECTORATE OF NIGERIAExhibitsIN THE HIGH COURT OF THE ENUGU ONITSHA DIVISION

"C"

Suits Nos. 0/12-15/43Appeal Record
- continued.0/12/43 - NNEBE OKEKE on behalf of
Ezinano AwkaPlaintiff
Respondent

versus

1. OTE IFEGULONYE & ANOR. on
behalf of Ifite Osunagidi10 0/13/43 - 1. UDOKWU AMATA
2. AMAZIGWON ENWEANA on behalf
of Uruobiaeli Osunagidi0/14/43 - 1. NKWONTA AKUBUDE
2. NWANKWO NWOBIALI on behalf
of Igbolo Osunagidi0/15/43 - 1. ONWUKIIE
2. EZIKUNO on behalf of
Achalla OsunagidiDefendants
Appellants20 AFFIDAVIT of RICHARD OKONKWO in support of
Motion for Conditional Leave to appealI, RICHARD OKONKWO of Iruobiaeli Osunagidi
resident at Aba on the Owerri province, British
Protected subject, trader, make oath and say as
follows :-1. I am a native of Iruobiaeli Osunagidi in the
Awka area, Onitsha province, resident in Aba
interested in the land the subject of this
action and I have been deputed by the chiefs
30 and people of the Osunagidi villages of Ifite,
Iruobiaeli, Igbolo and Achalla to swear to
this affidavit for the purpose of an appeal
in this suit.2. The plaintiff took action against the defend-
ants appellants as follows:-Suit No. 0/12/43: Nnebe Okeke on behalf of
Ezinano Awka

versus

Ote Ifegulonye on behalf of
Ifite Osunagidi40 Claim per writ: £20, 4 goats, 400 yams, 16 pots
of palm wine Rent owing plaintiffs for farming
plaintiffs' Agu Nawgu land since 4 years at £5, 1
goat, 100 yams and 4 pots of wine.

Exhibits

"C"

Appeal Record
- continued.Suit No. 0/13/43: Enebe Okeke on behalf of
Ezinano Awka

versus

Udokwu Amata & Amazigwon
Enweana on behalf of
Uruobiaeli OsunagidiClaim per writ: £20, 4 goats, 400 yams, 16 pots of
wine, rent owing plaintiffs for farming plaintiffs'
Agu Nawgu land since 4 years ago. At £5, 1 goat,
100 yams, 4 pots of wine each year.

10

Suit No. 0/14/43: Enebe Okeke on behalf of
Ezinano Awka

versus

Nkwonta Akubude & Nwankwo
Nwobiali on behalf of
Igbolo Osunagidi.Claim per writ: £12, 400 yams, 4 goats, 16 pots
of wine. Rent owing plaintiffs for farming plain-
tiffs' Agu Nawgu land since 4 years ago, at £3, 1
goat, 100 yams, 4 pots of wine each year.

20

Suit No0/15/43: Enebe Okeke on behalf of
Ezinano Awka

versus

Onwukife & Ezikuno on behalf
of Achalla Osunagidi.Claim per writ: £20, 400 yams, 4 goats, 16 pots of
wine being rent owing plaintiffs for farming plain-
tiffs' Agu Nawgu land since 4 years ago at £5, 1
goat, 100 yams, 4 pots of wine each year.

Consolidated suits.

30

3. On the 10th day of July, 1944, the Court gave
judgment in all four cases for the plaintiff for
the respective claims in full with costs against
each of the defendant quarter assessed at 10
guineas: total of 40 guineas.4. I am informed, instructed and verily believe
that the defendants are dissatisfied with the
judgment given against them and desire to appeal
to the West African Court of Appeal and stay of
execution pending the appeal.

40

(Sgd.) Richard Okonkwo.

Sworn at Aba by the said Richard Okonkwo this 17th
day of August, 1944.

Before me

(Sgd.) F. Olawale Lucas
Magistrate.

The contents have been interpreted to deponent in

Ibo language and he appears to understand same before affixing his signature.

(Sgd.) S.G.O. Ebo
Sworn Interpreter

Exhibits

"C"

2/- P.F.C.R.No.B96234 of 17.8.44 (Intld.) R.E.E.A.

Appeal Record
- continued.

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE ENUGU CHITSHA DIVISION

HOIDEN AT CHITSHA

BEFORE HIS HONOUR HARRY WADDINGTON, JUDGE

THE 6TH DAY OF OCTOBER, 1944

Suits No.0/12-15/43
Consolidated

10 NNEBE OKEKE on behalf of Ezinano Awka
versus
OTE IEEGULONYE on behalf of Ifite Osunagidi

NNEBE OKEKE on behalf of Ezinano Awka
versus

20 1. UDOKWU AMATA
2. AMAZICWOM ENWEMANA on behalf of
Uruobiaeli Osunagidi

NNEBE OKEKE on behalf of Ezinano Awka
versus

1. ONWUKIPE
2. EZIKUNO on behalf of Achalla Osunagidi

NNEBE OKEKE on behalf of Ezinano Awka
versus

1. NKWONTA AKUBUDE
2. NWAUKWO NWOBIALI on behalf of Igbolo
Osunagidi

30 MOTION on Notice by defendants for Conditional
Leave to appeal and stay of execution

Egbuna holding Clinton's brief moves.

Mbanefo for Plaintiffs.

Egbuna: Award at trial has been levied. Proceeds
with District Officer Awka.

Asks that it be paid into Court pending dis-
posal of appeal.

Mbanefo: Stay cannot be ordered now that execution
has been completed.

Exhibits

"C"

Appeal Record
- continued.

I make no order on this question. Conditional leave granted.

Conditions - W.A.C.A. Rules, Rule 12:-

- (a) Pay £40 into Court cost of record
 (b) Security by bond in 2 sureties to satisfactory of Registrar - 50 guineas, possible costs in Appeal Court.
 (c) Give usual notice. Within one month.

(Sgd.) H. Waddington, J.
 Onitsha. 6.10.44.

10

PROTECTORATE OF NIGERIAIN THE HIGH COURT OF THE ENUGU ONITSHA DIVISIONHOLDEN AT ONITSHA

Consolidated Suits Nos. 0/12/43, 0/13/43, 0/14/43
& 0/15/43.

NNEBE OKIKE on behalf of
 Ezinano Awka

Plaintiff
Respondent

versus

OTE IPEGULONYE on behalf of Ifite
 Osungadidi

Defendant
Appellant

20

- and -

NNEBE OKIKE etc.

Plaintiff
Respondent

versus

1. UDEKWU AMATA
 2. AMAZIGWOM ENWEANA etc.

Defendants
Appellants

- and -

NNEBE OKIKE etc.

Plaintiff
Respondent

versus

1. NKWONTA AKUBUDE etc.
 2. NWANKWO NWOBIALI etc.

Defendants
Appellants

30

- and -

NNEBE OKIKE etc.

Plaintiff
Respondent

versus

1. ONWUKING
 2. EZIKUNO etc.

Defendants
Appellants

UPON READING the Affidavit of Richard Okonkwo of Iruobiaeli Osunagidi sworn to at Aba Magistrate's Court on 17th August, 1944, and filed at this Registry on the 30th day of August, 1944: AND

40

after hearing Mr. E.N. Ngbuna for Mr. C.W. Clinton,
Solicitor for the Defendants-Appellants:

Exhibits

"C"

IT IS ORDERED that leave to Appeal from the judgment of this Court in the above-mentioned suits dated 10th day of July 1944, be and is hereby granted to the Defendants-Appellants subject to their perfecting the following conditions within one month hereof:-

Appeal Record
- continued.

1. To pay £40 into Court to cover costs of Record.
2. To give a bond in 50 guineas with 2 sureties to the satisfaction of the Registrar as security for possible costs in the Appeal Court.
3. To give usual notice to the plaintiff-respondent.

Dated at Onitsha this 6th day of October, 1944.

(Sgd.) H. Waddington J.
JUDGE.

IN THE WEST AFRICAN COURT OF APPEAL

BOND FOR COSTS ON APPEAL

KNOW ALL MEN, by these presents, that we 1. Ote Ifegulonye, 2. Udokwu Amata, 3. Amazigwom Enweana, 4. Nkwonta Akubuđe, 5. Nwankwo Nwobiali, 6. Onwukife & 7. Ezinjuno of Ifite Osunagidi, Umobiaeli Osunagidi, Igbolo Osunagidi & Achalla Osunagidi and Dennis Okafor Ezenđu, Tailor, Dennis Memorial School of Onitsha and George Kwokiki Morah, Driver and Motor Owner, of Onitsha are jointly and severally held and firmly bound to F. Spencer Protheroe, Chief Registrar of Lagos in the sum of £52.10/- (Fifty guineas) of lawful money to be paid to the said F. Spencer Protheroe, his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole our and every of our heirs, executors and administrators, firmly by these presents, Sealed with our seals,

Dated the 30th day of October, in the year of Our Lord 1944.

WHEREAS a suit is now pending in Court at Lagos wherein the above-bounden 1. Ote Ifegulonye 2. Udokwu Amata, 3. Amazigwom Enweana, 4. Nkwonta Akubuđe, 5. Nwankwo Nwobiali, 6. Onwukife & 7. Ezikuno are defendants appellants and the said Nnebe Okeke is plaintiff respondent.

Exhibits

"C"

Appeal Record
- continued.

AND WHEREAS a judgment was given by the Court therein, on the 10th day of July 1944, for the said plaintiff and the said defendants have applied for leave to appeal from the said judgment.

AND WHEREAS it is by law provided that the party appealing shall give security to the satisfaction of the Court below for all such costs as may be awarded to any respondent by the Court:

AND WHEREAS the above-named Dennis Okafor Ezendu and George Nwokike Morah, at the request of the said 1. Ote Ifegulonye, 2. Udokwu Amata, 3. Amazigwom Enweana, 4. Nkwonta Akubude, 5. Nwankwo Nwobiali, have agreed to enter into this obligation for the purposes aforesaid: 10

NOW the condition of this obligation is such, that if the above-bounden Dennis Okafor Ezendu and George Nwokike Morah, any or either of them shall pay unto the said Chief Registrar, his executors, administrators or assigns the costs of the said appeal as the Court shall order, this obligation shall be void, otherwise remain in full force. 20

		Their Thumb Mark	
1. Ote Ifegulonye	L.S.	4. Ezikuno	L.S.
2. Udokwu Amata	L.S.	5. Dennis Okafor Ezendu	(Sgd.) L.S.
3. Nwankwo Nwobiali	L.S.	6. (Sgd.) George N. Morah	L.S.

Signed, sealed and delivered in the presence of (Sgd.) P.E.G. Achikeh Registrar 30/10/44. 30

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE BENUGU ONITSHA JUDICIAL DIVISION

HOLDEN AT AWKA

Suit No.0/12-15/43.

Filed 5/5/45.
£10 pd. C.R.No.B66685 of 5/5/45
(Sgd.) P.E.G. Achikeh Registrar 5/5/45.

BETWEEN:

ENEBE OKIKE on behalf of Ezinano
Awka

versus

OTE IFEKULONYE on behalf of Ifite
Osunagidi

Plaintiff

Defendant

40

IN THE MATTER of an application by the defendant in the above-named suit for extension of Time within which to fulfil the conditions of Appeal to the West African Court of Appeal from the judgment of the High Court.

Exhibits

"C"

Appeal Record
- continued.

NOTICE OF MOTION

10 TAKE NOTICE that on the 4th day of June 1945, at 9 o'clock in the forenoon this Honourable Court will be moved by the applicant or his Solicitor on his behalf for an Order of Court for Extension of Time within which to fulfil the conditions of appeal in the above-mentioned suit and/or for any such other or further order as may be expedient in the circumstances.

Dated at Onitsha the 4th day of May, 1945.

(Sgd.) E.N. Egbuna
Solicitor for the Appellant.

PROTECTORATE OF NIGERIA

20 IN THE HIGH COURT OF THE ENUGU ONITSHA JUDICIAL DIVISION

HOLDIN AT AWKA

Suit No.0/12-15/43.

Filed 5/5/45 2/- pd. C.R.No.B66685 of 5/5/45.
(Sgd.) P.E.G. Achikeh
Registrar 5/5/45.

BETWEEN:

30 ENEBO OKWUE on behalf of Ezinano
Awka Plaintiff

versus
OTE ISEGURONYE on behalf of Ifite
Osunagidi Defendant

AFFIDAVIT of UDEKWU AMATA in support of Motion

I, UDEKWU AMATA of Enugu Agidi make oath and say as follows:-

40 1. That I have authority to and do represent the defendants in the above-named suit instituted in the Native Court of Mbanasatow-Awka and transferred to the High Court of the Enugu-Onitsha Division for hearing and determination.

Exhibits

"C"

Appeal Record
- continued.

2. That judgment was delivered by this Honourable Court in the said matter on the 10th day of July, 1944.
3. That being dissatisfied with the judgment of the Court we the people of Enugu-Agidi moved this Honourable Court for Conditional Leave to Appeal therefrom to the West African Court of Appeal and on the 6th day of October 1944 this Honourable Court granted us leave to appeal on the following conditions: 10
 - (a) Defendants to pay £40 into Court for transmission of Record.
 - (b) Defendants to enter into Bond for 50 guineas with 2 sureties to the satisfaction of the Registrar.
 - (c) Usual Notice to the respondents.
4. That we have paid £40 into Court and entered into necessary Bond to secure costs but owing to inadvertence Notice of Appeal has not been given to the Respondents. 20
5. That we did not discover that Notice had not filed and served until we were so informed by Registrar of Court on the occasion of our attendance at the Registry to enquire into the cause of delay in listing the appeal and as soon as we made this discovery we instructed Solicitor to file this Motion for Extension of Time.
6. That we are ready and anxious to prosecute this appeal without any further delay and pray that this Honourable Court may grant us the necessary extension of time in order to give notice to the plaintiffs this being the only condition that remains unfulfilled. 30
7. I make this Affidavit in support of Motion for Extension of Time.
Application made under Part III Rule 15 of the West African Court of Appeal, Rules 1037.
Dated at Onitsha the 5th day of May, 1945.

Udekwa Amata	His right	
Deponent	X	40
	thumb mark.	

Sworn this 5th day of May, 1945, the foregoing having been first read over and interpreted to the illiterate deponent UDEKWA AMATA in the Ibo language by E.O.H. Okwusogu when he seemed perfectly to understand same before affixing his right thumb mark thereon.

Before me
(Sgd.) G.F. Dove Edwin
Commissioner for oaths N.E.P. Onitsha.

AT ONITSHA THE 4TH DAY OF JUNE 1945

Exhibits

Suit No.0/12-15/43
Consolidated suits.

"C"

Appeal Record
- continued.

NNEBE OKEKE on behalf of Ezinano-
Awka

Plaintiffs

versus

OTE IFEGUIONYE on behalf of Ifite
Osunagidi

Defendants

10

MOTION on Notice for an order for extension
of time within which to fulfil conditions
of appeal to W.A.C.A.

IBEZIAKO (for Egbuna) to move for defendants.
OINYEAMA for plaintiff does not oppose.

Order as prayed. Time extended to 30th June 1945.

Costs two guineas.

(Sgd.) H.M. Brown J.
12.6.45.

IN THE SUPREME COURT OF NIGERIA

IN THE DIVISION AT ONITSHA

20

Suit No.0/12-15/1943
Consolidated.

NNEBE OKEKE on behalf of Ezinano-
Awka

Plaintiff-Respondent

versus

30

1. OTE IFEGUIONYE on behalf of Ifite-Osunagidi.
2. NKWONTA AKUBUDE & ANO. on behalf of Igbolo-Osunagidi
3. ONWUKINE & ANO. on behalf of Achalla-Osunagidi
4. UDOKWU AMATA & ANO. on behalf of Uruobiaeli-Osunagidi Defendants-Appellants

(T.S.)

Sgd. H.H.S. Brown
Judge.

UPON MOTION ON NOTICE this day unto this Court
for an order for extension of time within which to
fulfil the conditions of appeal herein: AND upon
reading the affidavit of Udokwu Amata and hearing

Exhibits

"C"

Appeal Record
- continued.

Michael Ogo Ibeziako, Counsel for the Defendants-Appellants (holding Mr. Ernest Iwanolue Egbun's brief), and counsel for the respondent not opposing the application:

IT IS HEREBY ORDERED that extension of time within which to complete the fulfilment of the conditions of appeal, namely, to serve Notice of appeal to the Respondent in the above-named suit, be GRANTED up to and including the 30th day of June 1945.

10

Given at Onitsha under the Seal of the Court and the Hand of the Presiding Judge this 12th day of June 1945.

(Sgd.) P.E.C. Achikeh.
Registrar.

PROTECTORATE OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA-ENUGU JUDICIAL DIVISION

HOLDEN AT ONITSHA

Suit No.0/12-15/1943

20

Filed 30/6/45 2/-- pd. C.R. No.B66842 of 30/6/45.

BETWEEN:

EMEBE OKIKE on behalf of Ezinano-Avka

Plaintiff-
Respondent

versus

ONE IFEKULONYE on behalf of Ifite-Osunagidi

Defendant
Appellant

NOTICE OF APPEAL

30

TAKE NOTICE that Conditional Leave to Appeal to the West African Court of Appeal in the above named matter was granted to the Defendant-Appellant herein by the Judge of the Supreme Court of the Onitsha-Enugu Judicial Division Holden at Onitsha and that conditions of appeal have been fulfilled.

Dated at Onitsha the 29th day of June, 1945.

(Sgd.) E.N. Egbuna
Solicitor for the Defendant-Appellant.

PROTECTORATE OF NIGERIAExhibitsIN THE SUPREME COURT OF THE ENUGU-ONITSHA JUDICIAL
DIVISION

"C"

Suit No.0/12-15/1943Appeal Record
- continued.Filed 29/6/45 £1 pd. C.R.No.B66840 of 29/6/45
Sgd. P.E.G. Achikeh Registrar 29/6/45.NNEBE OKEKE on behalf of Ezinano-
Awka Plaintiff-Respondent
versus

- 10
1. OTE ILEGULONYE on behalf of Ifite-
Osunagidi
 2. NKWONTA AKUBUDE & ANO. on behalf of
Igbolo-Osunagidi
 3. ONWUKIFE & ANO. on behalf of Achalla-
Osunagidi
 4. UDCKWU AMATA & ANO. on behalf of
Uruebialeli-Osunagidi
- Defendants-Appellants

MOTION FOR FINAL LEAVE

20 TAKE NOTICE that this Honourable Court will
be moved on the 5th day of July 1945, at the hour
of nine of the clock in the forenoon or so soon
thereafter as applicant or his Counsel can be
heard for an order for Final Leave to Appeal
against the judgment delivered on the 6th day of
October, 1944, the applicant having fulfilled the
conditions imposed and for such further or other
as to the Court may seem just.

Dated at Onitsha this 29th day of June 1945.

30 (Sgd.) M. Ogo Ibeziako

Solicitor for Defendants-Appellants.

ExhibitsPROTECTORATE OF NIGERIA

"C"

IN THE SUPREME COURT OF THE ENUGU-ONITSHA JUDICIAL
DIVISIONAppeal Record
- continued.Suit Nos. 0/12-15/432/- pd. C.R.No.B66840 of 29/6/45.
Sgd. P.E.G. Achikeh Registrar.NNEBE OKEKE on behalf of Ezinano-
Awka Plaintiff-Respdt.
versus

1. OTE IFEAGULONYE on behalf of Ifite-
Osunagidi 10
2. NKWONKA AKUBUDE & ANO. on behalf of
Igbolo-Osunagidi
3. ONWUKIIE & ANO. on behalf of Achalla-
Osunagidi
4. UDOKWU AMATA & ANO. on behalf of
Uruobiaeli-Osunagidi Defendants-Applts.

AFFIDAVIT IN SUPPORT OF MOTION FOR FINAL LEAVEI, OTE IFEAGULONYE on behalf of the people
of Osunagidi make oath and say as follows:- 20

1. That I am one of the Defendants in the above
named consolidated suits.
2. That Conditional Leave to Appeal to West
African Court of Appeal was granted by this
Honourable Court on the 6th day of October
1944.
3. That all the conditions imposed by the said
Court have been fulfilled.
4. That I am ready and willing to prosecute the
Appeal and crave that Final Leave to appeal 30
be granted me.

Dated this 29th day of June 1945.

Ote Ifeagulonye
Deponent

His thumb X impression

The above Affidavit was interpreted to the deponent
by me from English into Ibo language to the best of
my skill and ability and he said that it was cor-
rect and made his thumb impression. 40(Sgd.) E.O.H. Okwusogu
Sworn Interpreter.

Sworn at Onitsha this 29th day of June 1945.

Exhibits

Before me

"C"

(Sgd.) G.F. Dove-Edwin
Commissioner for Oaths.

Appeal Record
- continued.

2/- C.R. B392366
Intld. Cla. S.

AT ONITSHA THE 5TH DAY OF JULY, 1945

Suit Nos. 0/12-15/43:
Consolidated.

10 NNEBE OKEKE on behalf of Ezinano
Awka Plaintiff Respdt.
versus
OTE IIEGULONYE on behalf of Ifite
Osunagidi Defendants
Appellants

MOTION ex parte for an order for Final
Leave to appeal to W.A.C.A.

20 Ibeziako to move.
Affidavit of Ote Iiegunonye 1st defendant-Appellant
filed and read.

Order as prayed.
(Sgd.) H.M.S. Brown J.
5/7/45.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL

DIVISION

HOLDEN AT ONITSHA

Suit Nos.0/12-15/1943
Consolidated

30 NNEBE OKEKE on behalf of Ezinano
Awka Plaintiff Respdt.
versus
1. OTE IIEGULONYE on behalf of Ifite-
Osunagidi
2. NEMONTA AKUBUDE & ANOR on behalf of
Igbolo-Osunagidi
3. ONWUKIEME & ANO. on behalf of Achalla-
Osunagidi
40 4. UDOKWU AMATA & ANOR. on behalf of
Uruobiachi-Osunagidi Defendants-Applts.

WHEREAS conditional leave to appeal was given

Exhibits

"C"

Appeal Record
- continued.

to the Defendants-Appellants by this Honourable Court on the 6th day of October 1944:

AND WHEREAS the said conditions as to bond, payment for making up and transmission of record of appeal and Notice have been complied with:

AND WHEREAS Motion for Final Leave to appeal was filed in this Honourable Court within 7 days of the expiry of the time allowed by the Court for perfecting these conditions:

NOW this Court does give to the Defendants-Appellants Final Leave to Appeal.

10

Dated at Onitsha this 5th day of July, 1945.

(Sgd.) E.M.S. Brown
Judge.

Appeal filed 11/7/45 £5 pd. C.R.No.B398703 of 11.7.45 Sgd. P.E.G. Achikeh Registrar 11/7/45.

IN THE WEST AFRICAN COURT OF APPEAL

Suit No.C/12-15/1943

BETWEEN:

NNEBE OKEKE on behalf of Ezinano-Awka

Plaintiff
Respondent

20

versus

OTE IENGULONYE on behalf of Ifite Osunagidi

Defendant
Appellant

THE appellants being dissatisfied with the judgment of the High Court of the Enugu-Onitsha Judicial Division, delivered on the 10th day of July 1944, and having obtained final leave to appeal therefrom dated the 5th day of July 1945, hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth

30

GROUPS OF APPEAL

1. That the learned trial judge erred in holding the defendants liable in their representative capacity for rent which on the plaintiff's showing was payable only by persons who actually and in fact farm the plaintiff's land.
2. That the learned trial judge erred in that he

40

wrongly received the various Native Court judgments marked Exhibits "B", and "E" obtained against individual persons and held them effectively binding upon the communities at large.

Exhibits

"C"

Appeal Record
- continued.

- 10 3. The area in respect of which the plaintiff claimed rent and tribute was not properly defined and proved and in view of that fact the court was wrong to enter judgment for the plaintiff.
- 20 4. In the absence of clear proof of title to, and of the extent and limits of, the area of land in respect of which rent was claimed and also definite proof of agreement binding the defendant communities to make payment of rent and/or tribute to the plaintiff in respect of a defined portion or portions of the land in dispute, the plaintiff was not entitled to judgment and the court erred in that it entered judgment in the plaintiff's favour on the very meagre and inconclusive evidence before it.
5. That the learned trial judge misdirected himself in the following passages of his judgment.
- (a) "It is clear from the evidence that it is an old custom for plaintiffs to let out this farm-land to various communities, including all these defendant quarters of Osunagidi."
- 30 (b) "Taking these records with the verbal evidence, I find no difficulty in reaching the conclusion that we have here an example of the well-recognised native practice whereby a village which owns more farm-land than it requires, will let out parts of it to other less favoured villages or quarters, and it is the communities at large who treat with each other in such transactions with the communal land which is meant for communal use.
- 40 (c) The land owning community does not concern itself with the particular members of the tenant community who makes their farms on the land; the tenant community are free to farm on the land; as they please, and it is their business to make their own arrangements for collecting contributions to the bulk rent."

Exhibits

"C"

6. The judgment of the Court otherwise erred in law and fact and was against the weight of evidence.

Appeal Record
- continued.

Dated at Onitsha the 10th day of July, 1945.

(Sgd.) M.H. Egbuna.
Solicitor for the defendant appellant.

Exhibit "C2" in case O/48,55-57/49, Udogu Nodokwe & ors. vs. Udogu Amata put in by the plaintiff admitted and marked.

(Sgd.) E.V. Chude Ebo
Regr. of Sessions at Awka 13/2/53

10

PROTECTORATE OF NIGERIA

IN THE HIGH COURT OF THE BENIGU-ONITSHA JUDICIAL
DIVISION

HOLDEN AT ONITSHA

BEFORE HIS HONOUR HARRY WADDINGTON, JUDGE
THE 10TH DAY OF JULY, 1944

Suit No.0/12/1943:

NNEBE OKEKE on behalf of Ezinano-Awka
versus
OFE ILEGULONYE on behalf of Ifite-
Osunagidi.

20

Claim per writ: £20, 4 goats, 400 yams, 16 pots of wine - rent owing plaintiffs for farming plaintiffs' Agu Nawgu land since 4 years at £5, 1 goat, 100 yams and 4 pots of palm wine each year.

Suit No.0/13/1943

NNEBE OKEKE on behalf of Ezinano-Awka
versus
1. UDOKWU AMATA 2. AMAZIGWOM ENWABANA on
behalf of Uruobiaeli Osunagidi.

30

Claim per writ: £20, 4 goats, 400 yams, 16 pots of wine - rent owing plaintiffs for farming plaintiffs' Agu-Nawgu land since 4 years ago, at £5, 100 yams, 4 pots of wine each year.

Suit No.0/14/1943.Exhibits

NNEBE OKEKE on behalf of Ezinano-Awka
 versus
 1. NIKWONTA AKURUDE 2. NWANKWO NWOBIALI
 on behalf of Igbolo-Osunagidi

"C"

Appeal Record
 - continued.

Claim per writ: £12, 400 yams, 4 goats, 16 pots of wine, rent owing plaintiffs for farming plaintiffs' Agu-Nawgu land since 4 years ago, at £3, 1 goat, 100 yams 4 pots of wine each year.

10

Suit No.0/15/1943.

NNEBE OKEKE on behalf of Ezinano-Awka
 versus
 1. ONWUKIFE 2. EZIKUNO on behalf of
 Achalla-Osunagidi.

Claim per writ, £20, 400 yams, 4 goats, 16 pots of wine, - being rent owing plaintiffs for farming plaintiffs' Agu-Nawgu land since 4 years ago at £5, 1 goat, 100 yams, and 4 pots of wine each year.

J U D G M E N T

20 Four suits consolidated for trial. All commenced in Ibanasataw Native Court in the Awka Division, by writs issued 5th July 1943.

All transferred by order of District Officer Awka under Native Courts Ordinance Section 25(1) (c).

30 Plaintiffs are the Ezinano quarter of Awka and the defendants are 4 quarters of Osunagidi, the claim being 4 years' rent due to the plaintiffs for the use by the Osunagidis of the communal farm-land of Ezinano-Awka:-

Ifite Osunagidi - £20, 4 goats, 400 yams, 16 pots of wine
 Uruobiaeli Osunagidi - £20, 4 goats 400 yams, 16 pots of wine
 Igbolo-Osunagidi - £12, 4 goats, 400 yams, 16 pots of wine
 Achalla-Osunagidi - £20, 4 goats, 400 yams, 16 pots of wine.

40 The case was tried with pleadings and plaintiffs put in a plan by consent, Exhibit "A".

Exhibits

"C"

Appeal Record
- continued.

Plaintiffs pleaded various Native Court judgments copies of which are in evidence.

The Statement of Defence denies everything in the Statement of Claim, pleads in effect the defence that the communalists cannot be held liable for rents for land farmed by individual farmers and terminates by pleading ownership and four other defences, all of which are quite remote from Defendants' case as presented at the trial.

Defendants' counsel began on his plea of estoppel but could say nothing that had any bearing on this subject.

10

It is clear from the evidence that it is an old custom for plaintiffs to let out this farmland to various communities including all these defendants' quarters of Osunagidi.

The defence according to the evidence and Counsel's final address is, first, a denial that defendants have farmed the land during the period in respect of which the rents are claimed (the 4 years preceding the issue of the writ); and second that even if they had, it is the individuals who do the farming who must be held liable and not the whole quarter. With regard to the first of these contentions, I do not doubt that the defendants have been farming this land during the period. I accept what their own witness Nwokoye Ckeke who describes himself as a farmer of Nawgu said - "I know this land. Osunagidi always farmed there. They are there even this year".

20

30

As to the second defence:-

It is evident from the record of the suit of 1922, Ex. "E", that the plaintiffs at least held the community liable. The defendants did not appear, so the record of course contains no statement of their view of the matter.

The record of Suit 66/1934 Ex. "D" shows that the claim was against Uruobiaeli, one of the present defendant quarters, and the claim is recorded as "admitted". The record states, "Judgment satisfied". The defence recorded states that the quarter had an "arrangement" - "We agreed to pay them £5, pots of wine, a goat and 100 yams every year and we have made an arrangement about it".

40

The record of Suit 84/1936 Ex. "C" shows - claim against 3 defendants who are not stated to represent their quarter (Ifite), but it is

clear that the claim was in fact against the quarter. Court Messenger Aka said in evidence that when he went to serve the summons he found the whole of Ifite performing a ceremony and he told them the action was against the quarter and they must all attend. The defendants did not attend. Judgment for the claim was given for plaintiffs, and is recorded as having been satisfied.

Exhibits

"C"

Appeal Record
- continued

10 In suit 111/1936 (Ex. "B") we have Ibenegbu of Ifite (2nd defence witness in the present suit) suing 39 individuals of his quarter for their share of the rent. At the present trial this witness stated - "we never had any agreement that everyone in the village should pay". In Suit 111/1936, he said - "we the whole Ifite come into agreement that we will be farming their land and paying them, etc."

20 It appears from the defence recorded that the defendants objected to paying when they did not farm, and it is said (per 1st defendant) that Ibenegbu had actually brought some strangers on the land and had taken rent from them.

The judgment states that the Court members visited the land and they evidently directed their enquiries to discovering whether these defendants had planted crops or taken palm nuts there.

30 The suit terminated in the defendant's admitting liability "with our people", judgment was entered for the full claim and it was paid.

40 Taking these records with the verbal evidence, I find no difficulty in reaching the conclusion that we have here an example of the well recognised native practice whereby a village which owns more farmland than it requires, will let out parts of it to other less favoured villages or quarters, and it is the communities at large who treat with each other in such transactions with the communal land which is meant for communal use. The land-owning community does not concern itself with the particular members of the tenant community who make their farms on the land; the tenant community are free to farm the land as they please, and it is their business to make their own arrangements for collecting contributions to the bulk rent. And it is evidently in this that trouble arises; difficulties are encountered in collecting the individual shares, which as the present case discloses, are

Exhibits

"C"

Appeal Record
- continued.

payable only by those who use the land, and so the bulk rent falls in arrear. The above-noticed series of former cases shows that pressure to pay had frequently been necessary, but that when pressure is applied, the rents are always paid.

It may well be that if some kind of system were devised (with the assistance of the administrative authorities) to control the individual payment, this kind of chronic dispute would be less liable to occur. Though these suits have been consolidated for trial, the claims are separate and require separate judgments.

10

Judgment will be in all four cases for plaintiffs for the respective claims in full.

Costs against each of the 4 defendant quarters assessed at 10 guineas (total of 40 guineas).

(Sgd.) H. Waddington
JUDGE.

Onitsha 10.7.44.

Mbanefo holding Onyeama's brief for plaintiffs.
Adesigbin holding Clinton's brief for defendants.

20

Ex. "C3" in Case O/48,57/49, Udogu Nodekwe vs. Udogu Amata: put in by the plaintiff admitted and marked.

(Sgd.) E.V. Chude Ebo.
Regr. of Sessions at Awka 13/2/53.

Treasury Book No.6

Nigeria ORIGINAL C 587397

Station Onitsha Date 10th March 1948

Head of Receipt....5 Fees of Court) R.V.

Sub-Head.....10..... Courts) No. -----

30

Received from Nnebe Okeke of Awka the sum of nil pounds three shillings nil pence being (description of payment) + Fees for a copy of Judgment in re consolidated suits O/12-15/43 WAC 2293 as follows:- 1st folio of 90 words at 1/- 4 folios at 6d a folio.

£- 3/- Sgd. S. Madeibo for Nnebe
Signature or Mark of payer.

Sgd. ? ? ?

Signature of Accounting Officer
Cashier.

Witness to Mark.

40

IN THE WEST AFRICAN COURT OF APPEALHOLDEN AT LAGOS, NIGERIAFRIDAY THE 12TH DAY OF OCTOBER, 1945

BEFORE THEIR HONOURS

FRANCIS HORACE BAKER, Acting Chief Justice, Nigeria
 Presiding Judge
 NEVILLE JOHN BROOKE, Acting Senior Puisne Judge,
 Nigeria
 MILES HAY MARTINDALE, Puisne Judge, Gold Coast.

Exhibits

"C"

Appeal Record
 - continued.

10

Consolidated Suit
 Nos. 0/12-15/1943
 WAC. 2293.

BETWEEN:

NNEBE OKEKE for himself and on
 behalf of Ezinano-Awka

Plaintiff
Respondent

- and -

20

1. (i) OTE IFEKULONYE (ii) ANADEBE
 OJISI on behalf of Ifite
 Osunagidi
2. (i) UDOKWU AMATA (ii) AMAZIGWOM
 ENWEANA on behalf of
 Iruobiaeli Osunagidi
3. (i) NEWONMA AKUBUDE (ii) NWANKWO
 NWOBIALI on behalf of Igbolo
 Osunagidi
4. (i) OIWUKIFE (ii) EZINANO on
 behalf of Achalla Osunagidi

Defendants
Appellants

30

APPEAL from the judgment of His Honour Mr. Justice
 Harry Waddington dated 10th July, 1944.

E.N. EGBUNA for the Defendants-Appellants
 C.D. ONYEAMA for the Plaintiff-Respondent.

J U D G M E N T

40

There was ample evidence before the Trial
 Court for the Judge to make the findings which he
 did and come to the conclusions which he did. We
 find no merit in the appeal. We affirm the judg-
 ment of the Court below and dismiss the appeal
 with costs assessed in this Court at £10.10/-

Exhibits

"C"

Appeal Record
- continued.

against each of the defendants quarters.

(Sgd.)	Francis H. Baker.
(Sgd.)	N.J. Brooke
(Sgd.)	M.H. Martindale

Certified true copy,

Sgd. Isaac John

For Deputy REGISTRAR OF THE COURT 5 folios = 3/-
20.3.47 C.R.No.C587397 of 10/3/48

CIVIL FORM 1.

IN THE WEST AFRICAN COURT OF APPEAL

10

NOTICE OF APPEALSuits Nos.0/48/49, 0/55/49, 0/56/49
and 0/57/49 - Consolidated.BETWEEN:

U. MODEKWE & 2 OTHERS	<u>Plaintiffs</u>	
vrs.		
UDEKWU AMATA of Irobiaeli quarters	<u>Defendants</u>	
2. UDOGU MODEKWE & 2 ORS.	<u>Plaintiffs</u>	
versus		
ANADEGBE OJISI and for himself and the people of Ifite Quarter in Enugu Agidi	<u>Defendants</u>	20
3. UDOGU MODEKWE & 2 OTHERS	<u>Plaintiffs</u>	
versus		
NWANKWO ATUEGBU for himself and for the people of Igbolo Quarter in Enugu Agidi	<u>Defendants</u>	
4. UDOGU MODEKWE & 2 ORS.	<u>Plaintiffs</u>	
versus		
OJUKWU ONWUKAIFE for himself and for the people of Achalla quarters in Enugu-Agidi	<u>Defendants</u>	30

TAKE NOTICE that the Defendants being dissatisfied with the decision of the Supreme Court, Onitsha, contained in the Judgment of Mr. Justice Johnston dated the 12th day of March, 1953 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek relief set out in paragraph 4.

40

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.

Exhibits

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

"C"

THE WHOLE DECISION

Appeal Record
- continued.

3. GROUNDS OF APPEAL:-

1. The learned trial Judge misdirected himself in the following passage of his Judgment:

10 "Be that as it may I do not reject the evidence that the Defendants as a people took part in the Nogu war which gained for the plaintiffs as they say, possession of all Agunogu land."

2. That the onus of proof of ownership to warrant the inference that the Plaintiffs-Respondents are entitled to declaration of title was not discharged by them.

3. That the learned trial Judge was wrong in awarding £100 damages when he found that the evidence on the question is meagre.

20 4. The learned trial Judge misdirected himself in the following passage of his judgment:

"If in fact permanent dwellings seen by the surveyor are of greater age than I think they are, they must have been erected by individual Defendants who were rent paying tenants farmers of the plaintiffs".

30 5. The learned trial Judge erred in law in holding that if it is true that the Okpuno people did not gain possession for themselves of the portion of Agunogu land where they reside in the yellow on Exhibit A in which the plaintiffs-respondents made a good claim to title that the defendants-appellants also have no possession on the Agunogu land.

6. That the verdict was against the weight of evidence.

4. Relief sought from the West African Court of Appeal:-

To set aside the whole decision of the learned trial Judge and enter judgment for the Defendants.

5. Persons directly affected by the appeal.

40 (a) 1. Udogu Modokwe 2. Nwuba Morah and Okeke Adaka for themselves and on behalf of the people of Awka care the Native Court, Awka.
Plaintiffs-Respondents

Exhibits

"C"

Appeal Record
- continued.

- (b) 1. Udekwa Amata of Iru Obielli 2. Anadegbe Ojisi of Ifite quarters Enugu Agidi 3. Nwankwo Atuegbu of Igbole quarters Enugu Agidi and 4. Ojukwu Onwukaife of Achalla Enugu Agidi - All care the Njikoka Native Court, Awka Division. Defendants-Appellants

Dated at Onitsha this 23rd day of March, 1953.

(Sgd.) M. Ogo Ibeziako
Solicitor for the Defendants-Appellants.

Registrar's Certificate	£1.	10
Filing Notice of Appeal	5.	
Service	6.	
Mileage	8.	
Transport	4.	
Settling Records	1.	
W.A.C.A. Certificate	2.	

Total £9.18

C.R.431844 of 26.3.53 (Intd.) (S.N.I.N.)

LIST OF DOCUMENTS OMITTED TO BE COPIED
FOR THIS RECORD OF APPEAL

- 20
1. Court's Order dated 5th February, 1951, for enlargement of time within which to file statement of claim to 90 days from 20/11/50.
 2. Court's Order dated 30/12/52 - approving withdrawal of motion for costs and for plaintiffs to obtain a refund of £1.5.0 and for the plaintiffs to have access to Court files to make copy of Statement of Defence of which they have lost their copy.
 3. Court's Order dated 27/3/53 for a stay of execution and that in default this stay of Execution shall be raised. 30
 4. Civil Form 3 - Summons by Registrar to parties to settle Records.

Exhibit "E". - NATIVE COURT RECEIPT & PROCEEDINGS IN CASE No.22/46

Exhibits

"E"

Exhibit "E" put in by Defendants, admitted & marked in Suit No. 0/35/1949: H.E. Nwalusi & Ors. vs. Kwaba Morah & Ors. (Sgd.) A.A. Nwankpa 27/1/54.

Native Court Receipt & Proceedings.

No. 9

Native Court 10

10 NOTE:- This receipt is to be issued for all payments into Court except in cases where a Counterfoil Process Book is used.

NATIVE COURT RECEIPT.

B 27
20728

Njikoka Native Administration.

Native Court of Mbatteghete Awka Division Onitsha Province. 15-4-1947.

20 £-.12.- Received from Asiegbune of Awka the sum of Nil pounds twelve shillings and nil pence, being copy and Search fee in civil case No. 22/46 p.119 J.B. 1/37.

....Signature.

???

Signature of President, Native Court.

???

Signature of Court Clerk or Scribe
C.N.C.

? ? ?

Witness to mark

30 In the N.C. of Mbatteghete 16/4/46

Case 22/46

NWANKWO OFULUME on behalf of Umleri Isu. Vs. ANENE OBUKWELE 2. NWOZOBIRWE of both Awka for Awka people) Claim: Trespassing and entering the pliffs land - Mgboko Obibia about 5 yrs ago at Isu.)

Defdts not here.

Plaintiffs states:

NWANKWO EDOM Spokesman: I am speaking on behalf

Exhibits

"E"

Native Court
 Receipt &
 Proceedings.
 - continued.

of Umuleri quarter. We took this action against the Awka people who came over to our land and started brushing and making farms on it.

The Awka people usually farmed on Norgu land and we farmed on this land. We have boundary with Okpuno people.

The Defdts had never once appeared on this land to farm. Since 5 years ago that the Defdts had a dispute with Okpuno people that they came over to our land to make a Survey. We have bound- 10
 ary with Osunagidi at Mmili Nwochichi and "akpu nkpilikpi Onu" tree. We use to lease the land to Anobia people hence they know something about it. Why the Defdt. started to claim the land was that our men appeared as a witness of Okpuno and testified that we had boundary with Norgu at Obibia likewise Okpuno. We had no dispute with Norgu. When they were living on the land now claimed by Awka people, hence we sued the defdts to withdraw using our land. 20

Q. by Court: Had you a previous case with the defdts.

Ans. No.

Q. by Court: What quarter of Awka that claim the land?

Ans. Agulu of Awka.

Q. by Court. What marks the boundary?

Ans. Obibia stream.

Q. by Court. What are the names of the land?

Ans. Mgboko Obibia, Ngene Ngwu, Iyiomu Ofia Obu, 30
 ofia uruoji, Ezi Umuafo, Ebenebe, Ekeagu, Agbagolu & Agu Ubulu.

Q. by Court. What is the combined name?

Ans. Oma Agu Umuleri.

Q. by Court. Where you had boundary with Okpuno who own the land there over to Okpuno side?

Ans. Awka people by judgment.

Q. by Court. With whom have you now boundary as Awka has taken the Okpuno land? Ans. Awka.

Q. by Court: Is there anybody from Isu apart from Umuleri that knows that you own the land? 40

Ans. We own this land particularly.

OKAFO UDE (H)

I am of Isu I am from Umuleri quarter the Awka people 5 yrs ago surveyed our land: and we made a report to the D.O. who asked us to sue the Awka people if they entered into our land. And since 5 years ago they withdrew entering and in

this year they re-entered and started making farms.

Anene Obukwelu brought them. We then sued them for them to explain why they came over to our land.

Originally we had boundary with Norgu at Obibia Stream likewise with Okpuno Okochi and Osunagidi at Isi Nwochichi and Akpu Nkpilikpi onu.

Q. by Court: Is Okpuno in possession of the spot that you had the boundary with them before?

10 Ans. I do not know.

Q. by Court: Who owns that of Norgu.

Ans. Awka people.

Q. by Court: Is there any of Isu apart from your quarter that can testify that you own the land?

Ans. We shall get if we are asked.

Q. by Court: Why did the defdts. come over?

Ans. I do not know.

ANAKWUBA NWOSU 2. ANADUAKU KIGU 3. ONYEJELU
OINWUJEKWU 4. NWAIKWO NWOBIALU 5. OKOYE ADAZU.

20 No.2 ANADUAKA Spokesman. I am speaking on behalf of myself and other above witnesses. We are from Enugu Agidi we are here to say that the boundary between Isu and Norgu was Obibia Stream on days gone by.

Isu did not use to cross over the stream of Obibia to Norgu side. We have boundary with Awka at Mili Nwezi and our original boundary with Norgu was at Obibia Stream.

Q. by Court: Where have you boundary with Isu?

30 Ans. We have no dispute with them.

Q. by Court: Has Okpuno any land there?

Ans. They have boundary with Awka at Ebenebe.

NWONU ORANKIE 2. FRANCIS OKENKE 3. OKEKE OKOYE
4. MOGOR.

No.1 NWONU Spokesman: I am speaking on behalf of the above people and myself. We are from Ama Obia. The Pltiffs' boundary with Norgu was at Obibia stream. Norgu did not use to go over to Isu side of the stream to farm.

40 Q. by Court: Where have you boundary with Isu?

Ans. We have boundary with Osunagidi and from there one can see Isu land and Norgu land.

Q. by Court: Have you any land there?

Ans. No but I used to see and I used to lease land from Isu.

Exhibits

"E"

Native Court
Receipt &
Proceedings
- continued.

Exhibits

"E"

Native Court
 Receipt &
 Proceedings
 - continued.

Q. by Court: Why did the defdts start to claim the land.

Ans: They say they drove Norgu but Norgu did not own there.

OKAFO OKEKE 2. OKONKWO UWA:

No. 1 Spokesman (Okafo). I am speaking on behalf of the other witness as well. We are from Okpuno. The Defdts trespassed on Pltffs land we have boundary with Pltffs at Obibia Stream and the Defdts had never come over there except in this year. They said they drove Norgu but Norgu did not own this land in dispute, for our fathers told us this and since we were born we had never witnessed the Defdts appearance on the land.

10

Q. by Court: What shows that Pltffs own the land?

Ans: We live very near there and we know.

Q. by Court: Did Isu use to lease the land to Awka people?

Ans: If that happened they must pay rent.

Case adjourned once more for defdts to appear and to arrange when to view the land.

20

(Sgd.) P. Ozugha for Ct.

Sgd. ???

C.N.C. 16/4/46.

Case reopened on 8/8/46 members same:

Court: Ndulue of Awka came with 1/- for an adjournment fee of this case to enable them to come as one of the Defdts is sick we grant the adjournment on condition that we did not meet the quorum till 7 days to come on 15/8/46.

30

Nwokoye to see that Obudunma, Udegbune and Peter the Court members to come on 15/8/46 for the trial of this case.

(Sgd.) P. Ozugha for C.

Sgd. ???

CNC 8/8/46 1/- A/F paid vide H.C.R.No.63/22784 of 8/8/46.

Reopened: Members same 15/8/46

Defdts now appeared claim not admitted.

Pltffs statement read:

40

Q. by Monwuba for defdts: Did you not hear from the Judge: After we had surveyed the land that any of the 5 towns Okpuno, Isu Enugu agidi, Norfia & Amobia should take an action against

us if we had surveyed their lands that he gave them 3 months to do that?

Ans: No we did not hear. He only said that Okeke Nwofo's word was true that he had gone and seen the stream.

Q. by Monwuba: When the judge said such a thing had he tried the case or not.

Ans: We did not know.

10 Q. by Monwuba: So none of you was there for he summoned the whole 5 towns.

Ans: We were there when he gave the decision of Okpuno - Awka case.

Q. by Monwuba: Do you not understand that before the judge would come he would have to give due notice.

Ans: If we had heard that from the judge we would have taken this action before now but we reported to the D.O.

DEFENCE:

20 Monwuba speaking on behalf of Ezinano Awka (the Defdts).

We the Awka people here including those at home were not born when Awka and Norgu had a war and Norgu was driven away from their town and Awka began to farm Norgu's land up to "Mili Ajilija" We only attended the Court for this case for Court to think not that we contempered the Court otherwise we should not have come for we surveyed our land since 5 yrs ago and the judge asked the 5 towns to sue us if we had surveyed any of their lands. And since then there had been no action until this time If the Pltffs knew that we shall have a case with them let them sue us in the High Court where the judge tries cases and there we shall have witnesses for their case and the question to ask them whether Norgu lived near them.

30

Q. by Pltff: Did you hear not Nefe testifying that they had boundary with Isu in the High Court that they had no dispute with Isu when Nefe is your towns man

40

Ans: Nefe said that our boundary with Isu was at Mili Ajilija likewise Ezeana of Norgu alias Okoye Ifekandu who has died now.

Q. by Pltff: Did you not hear Nefe say so or not?

Ans: No.

Q. by Pltff: Had we boundary with you in the time immemorial or Norgu?

Ans: No, but Norgu and we had taken Norgu's land.

Exhibits

"E"

Native Court
Receipt &
Proceedings
- continued.

Exhibits

"E"

Native Court
 Receipt &
 Proceedings
 - continued.

- Q. by Pltff: Did you know the extent of Norgus land before you drove them away or they showed it to you when they were running away.
- Ans. After they had been driven away one Echeazu and Unadozie brought numerous elders and pointed out their boundaries with other towns to us when we came to some settlement and they came and gave evidence when we and Okpuno had the case.
- Q. by Pltff: When that was done did you summon the adjacent towns to be present to see if Norgu was true 10
- Ans: We are not for your case now as we had stated but Arize and Anenyelonu were present they were living there paying rents and when they could not they left the place.
- Q. by Court: Who had been farming the land since you drove Norgu away? Ans: We.
- Q. by Court: Where Umuleri are now living "at agu" is it included in the land? Ans: Yes.
- Q. by Court: How long since they began to settle there. 20
- Ans: We do not know. People born there have grown into men.
- Q. by Court: What did they use to pay to you for their living there?
- Ans: When they were paying us they used to give us "Npipi" goat.
- Q. by Court: Is it the same plan with which you and Umuodu Okpuno had the case? Ans: Yes.
- Q. by Court: Is it on it written that you should own the land according to your survey. 30
- Ans: According to my previous answer about paying rents they used to pay us "Ihego nesi" cowries: 100 yams 5 pots of palm oil and when they failed to pay these we asked them to leave and they left.
- Q. by Court: So they stopped paying after the advent of the British Govt.
- Ans: They paid for about 2 or 3 times after the British Govt. had come. 40
- Q. by Court: Have you come here with the copy of the judgment of your case with Okpuno?
- Ans: No, but it is at home.

Case adjourned till 23/8/46 for defdts. to get us copy of the previous case with Okpuno

Sgd. ???
 C.H.C. 14/8/46.

Udegbune his mk for ct.

Reopened: 23/8/46 members same.

Exhibits

Reasons 5 nil.

"E"

Neither party produced the copy of the previous case we adjourned the case for Defdts to produce the copy but they said the lawyer is with it we must give judgment today for the case has been long outstanding.

Native Court
Receipt &
Proceedings
- continued.

Judgment:

10 The case is dismissed the case must be as the Chief Judge decided it.

Sgd. ??? Udebune his mk for Ct.
GNC 23/8/46.

Members 1. Udegbune 2. Obudunma Mofunanya for Nwokedi (previous statement read to him) 4. Peter 5. Pius Ozugha.

The Pltff asked for an appeal 10/- Fee paid vide N.C.R. No. 75/22796 of 26/8/46.

(C.T.C. ???)
C.M.C. 15/4/47

20 12/- twelve shillings paid for 1977 words with the Search Fee. Vide N.C.R. No.27/20728 of 15/4/47.

(Sgd.) ??? 15/4/47.

1977 words 10/-
Search Fee 2/-

Exhibit "F" - LETTER from ELDERS OF AMAWBIA TOWN TO DISTRICT OFFICER, AWKA

"F"

Exhibit "F" put in by Plaintiffs, admitted & marked in Suit No.0/35/1949: H.E. Nwalusi & Ors. vs. Mwuba Morah & Ors.

Letter from
Elders of
Amawbia Town to
District
Officer, Awka.

30 (Sgd.) A.A. Nwankpa
27/1/54.

13th May, 1941.

From The Elders of Amawbia,
Amawbia Town,
Awka District,
13th May, 1941.

To, The District Officer,
AWKA.

Sir,
We have the honour most respectfully to say

Exhibits

"F"

Letter from
Elders of
Amawbia Town
to District
Officer, Awka.

13th May, 1941
- continued.

that we Amawbia people understood that Awka people are surveying Nnogu land. We beg respectfully to say that we do not want any portion of land belonging to Amawbia to be included in the Plan, because during the Battle Nnogu and Amawbia which resulted in Nnogu people killing an Amawbia man, the following quarters in Nnogu, since then, quitted their lands, (1) Orofia, (2) Ezimezi, (3) Idede, (4) Akanato, and (5) Akwueso, for Amawbia.

2. Few days ago we saw Awka people accompanied by a Surveyor passing through our Town (Amawbia) to survey Nnogu land, therefore we respectfully express in writing that Awka people should be informed that we do not want any portion of land we got from Nnogu people, to be included in the Plan which Awka people are now making. In fact Awka people own some portions of land side by side with Amawbia, and yet the presence of Amawbia people was not sought when such Plan is being made.

10

20

3. We know that there is land dispute between Awka and Okpuno people, and as Okpuno Town is not near Amawbia, we see no reason why Awka people with a Surveyor should pass through Amawbia surveying Nnogu land without our knowledge. If they are sincere and honest enough, we think for justice sake, that we should be consulted. We therefore ask that the Plan made as a boundary between Awka and Amawbia in this occasion should not be regarded as being correct.

30

4. Again the land on which Umuokpu stands today is owned by Amawbia, and yet Awka people are now surveying Umuokpu land as their own, which is incorrect. Umuokpu's original place of abode is not far to seek. Umuokpu people recently migrated to Aguogba a portion of land belonging to Amawbia, and later there was a tribal dispute among Umuopku people themselves for which some of them ran to Amawbia again for help. These people were then given a place to live on our land at Agbovu, and they are now known as Obunagu Umuokpu.

40

5. We are aware of the present war, and would not like to clash with any Town.

We have the honour to be,
Sir,

1. Owele his thumb mark.
2. Aronu " do.
3. Agbata Ikele do.
4. Imogo " do.

5. Nwokike his thumb mark.
 6. Ozoekwe " do.
 7. Nwonu " do.
 8. Nnagbo " do.

Exhibits

"F"

Writer free of charge
 (Sgd.) ???

Witness to mark.
 (Sgd.) ???

(Sgd.) Vincent H. Okeke
 (Sgd.) H.E. Nwalusi.

Letter from
 Elders of
 Amawbia Town
 to District
 Officer, Awka.
 13th May, 1941
 - continued.

10

Exhibit "G". - AGREEMENT

"G"

Exhibit "G" put in by Plaintiffs, admitted &
 marked in Suit No.0/35/1949: H.E. Nwalusi &
 Ors. Vs. Nwuba Morah & Ors.
 (Sgd.) A.A. Nwankpa
 28/1/54.

Agreement.

25th May, 1921.

(Nigeria 6 June 21 Commissioner Stamp Duties)
 (No.B.II. Vol.1 Onitsha Province).

20

AN AGREEMENT made the 25th day of May 1921 BETWEEN
 Chiefs Onwura, Obiora, and Nweze of Awka and Chief
 Agbata of Amorbia for and on behalf of themselves
 and their people (hereinafter designated and includ-
 ed in the term "The Chiefs") of the one part and
 His Excellency Donald Charles Cameron, Companion of
 the Most Distinguished Order of Saint Michael and
 Saint George, Acting Governor and Commander-in-
 Chief of Nigeria for and on behalf of the Govern-
 ment of Nigeria (who together with his successors
 in office are hereinafter designated "The Governor")
 of the other part.

30

Whereas the land hereinafter described have
 been occupied by the Government for the past seven-
 teen years for the purpose of administering the
 Government but no formal deed vesting the said
 lands in the Government has been made.

And whereas the Chiefs recognise that it is to
 the interest and benefit of their people that the
 said lands should be formally set aside for the
 above recited purpose.

40

And whereas the Chiefs are empowered by Native
 Law and Custom to dispose of the said lands in the
 manner hereinafter appearing.

Exhibits

Now these presents witness :-

"G"
Agreement.
25th May, 1921
- continued.

1. The Chiefs agree with the Governor that on and after the date of these presents the Governor is for the purpose hereinbefore described fully possessed of that piece or parcel of land situate at Awka division of the Onitsha Province containing an area of 168 acres 2 roods 32 poles and more particularly described on the plan attached hereto and herein surrounded by a pink line.

2. The Governor agrees to take possession of the said land and authorises the District Officer of Awka to take possession thereof in his name.

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3. The Governor hereby agrees that he will deliver up possession of the said land to the Chiefs if and when the same shall cease to be used for the said purpose.

Signed by the said Onwura, Obiora, Nweze & Agbata, in the presence of (Sgd.) James O. Ebo

their
(Sgd) Onwura x (L.S.)
(Sgd) Obiora x "
(Sgd) Nweze x "
(Sgd) Agbata x "
mark

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Signed by the said Donald Charles Cameron C.M.G. in the presence of (Sgd.) A.C. Burns.

(Sgd) D.C. Cameron
(L.S.)

Signed by the said District Officer, in the presence of (Sgd.) Wm. Arthur.

(Sgd) J.C. Lawton
D.O. (L.S.)

Certified true copy

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(Sgd.) ? Bob Manuel
District Clerk,
Awka. 7/12/49.

9 folios @ 10d = 7/6. Receipt No.282741 of 9/1/50.

CERTIFIED TRUE COPY:

(Sgd.) E.O.H. OKWUSOGU
REGISTRAR.