

~~P.C.~~
~~G.H.H. 62~~

Judgment
24/1964

1.

IN THE PRIVY COUNCIL

No.29 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN:-

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78602

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- 1. ANACHUNA NWAKOBI, The Osha of Obosi
- 2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
(as representing themselves and all
others the people of Obosi)
- 3. JABEZ CHUKWUDEBE NWANGWU
- 4. ALFRED OKOMA
- 5. JONAH NWOGEM
- 6. DOCTOR JONAS IWEKA
- 7. ISAAC IWEKA
- 8. JONAS IBEZUE (Defendants) Appellants

- and -

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- 1. EUGENE NZEKWU
 - 2. PHILLIP AKUNNE ANATO GU
(for themselves and on behalf of the
Ogbo Family of Umuasele Onitsha)
(Plaintiffs) Respondents
- (Suit No. 0/25/58)

AND BETWEEN:-

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- 1. ANACHUNA NWAKOBI, The Osha of Obosi
 - 2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
(as representing themselves and all
others the people of Obosi)
(Plaintiffs) Appellants
- and -
- 1. PHILLIP ANATO GU
 - 2. EUGENE NZEKWU
(as representing themselves and
all others of the Ogbo Family)
(Defendants) Respondents
- (Suit No. 0/32/58)

(Consolidated Suits)

CASE FOR THE APPELLANTS IN BOTH SUITS

Record

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1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria, dated the 3rd July, 1961, dismissing an appeal, in consolidated suits, from a Judgment of the High

pp.158-168

pp.119-137

<u>Record</u>	Court of the Onitsha Judicial Division (of the Eastern Region of the Federation of Nigeria), dated the 12th May, 1960, whereby: (1) in an action relating to the ownership and possession of certain land which the Respondents herein instituted against the Appellants (Suit No. 0/25/58) the Respondents were awarded the sum of £500/- as damages for trespass committed by the Appellants on the said land, recovery of possession of the said land and an injunction restraining the Appellants, their servants and/or agents from interfering with the Respondents' title to, and possession, rights of enjoyment and disposition of, the said land; and (2) the cross-action instituted by the Appellants Nos.1 and 2 against the Respondents (Suit No.0/32/58) and (a) a declaration that they (the Appellants) are entitled to the possession and use of the said land (known as "Ugborimili" and situate in the Onitsha Judicial Division) and to exercise piscary rights over the creeks and rivers within or adjoining thereto; and (b) an injunction to restrain the Respondents from interfering with the said rights, was dismissed.	10
p.137, ll. 16-20		
p.137, ll. 25-26		
	2. The main question for determination on this appeal is whether or not the decision of the Courts below that on the evidence and in the circumstances of these Consolidated Suits the Appellants are not entitled to the possession and usufructuary use of the said Ugborimili land was in accordance with a true interpretation and application of the laws relating to laches acquiescence and res judicata.	30
	3. The facts leading up to the present dispute were thus briefly stated by the learned Trial Judge (Betuel J.) when granting an interim injunction to the Respondents:-	
p.39	"The history of the land as judicially determined is that in 1882, confirmed by an instrument of 1884, it formed a part of the land granted by Orikagbue, the then head of Ogbo (Umuasele) family of Onitsha i.e. Plaintiff family "(Respondents herein)" to the National African Company Ltd., to whose title the Royal Niger Company succeeded.	40

"This grant reserved certain farming,

fishing and occupancy rights to the Abutshi (i.e. Obosi) people" (Appellants herein).

Record

"By virtue of this right or by some other title, the Obosis have entered the land called Ugboromili by the Plaintiffs, and have built permanent structures thereon, especially houses, and are continuing to do so at an increasing rate.

10 "The Niger Lands' Transfer Ordinance of 1916, as from the 1st January, 1900, vested the title of the land in trust for His Majesty.

"By Ordinance No.22 of 1945, the Ordinance was amended to enable the Governor to abandon his title in the trust land.

"In 1948, the Governor made an order, which, as from the 1st day of January, 1949, abandoned his title in the land now in dispute.

20 "The combined effect of the abandonment and Section 14 of the Ordinance of 1916, as amended by Ordinances Nos.22 and 61 of 1945, was that the title in the land reverted to its original owners."

4. Continuing, the learned Trial Judge, on the said occasion, stated :-

30 "The Ogbo (Umuasele) family who claimed to be the original owners of the land sued for a declaration of title against, and, an injunction to prevent, the Obosis from interfering with or, disturbing, the Plaintiffs' ownership 'or possession' of the land.

p.40, ll.
1-17

"The issue between the parties was tried by Manson J. who granted both the remedies claimed and his decision was upheld by the West African Court of Appeal.

"In the Privy Council, however, while the declaration of title was upheld, the words 'or possession' were deleted from the injunction.

40 "This left the possessory and usufructuary rights, if any, of the Obosi people in the

Record

land open to future judicial determination
(Kodolinye v. Anatogu (1955) 1 W.L.R. 231).
.....

p.40, ll.
37-38

"The area of the land is not in dispute and is delineated on a plan agreed on by the parties."

p.1

5. The Respondents instituted the -

PRESENT PROCEEDINGS (SUIT NO.0/25/58)

against the Appellants in the High Court of the Onitsha Judicial Division on the 26th March, 1958.

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pp.26-37,61

p.26, ll.
27-30

By their Statement of Claim, dated the 1st September, 1958, and subsequent amendments thereto, they claimed ownership of the land called Ugborimili land upon which they had "now and again put various individuals from Obosi" (i.e. the Appellants' people) "to farm . . . on payment of yearly tribute in accordance with Onitsha native law and custom." They traced their title to ownership and possession from their ancestor Orikagbue and referred in greater detail to some of the facts already set out in paragraph 3 hereof. They referred to early proceedings in which they had succeeded in their claims for rent, etc. against certain individual Obosi tenants occupying only portions of the land in dispute and, inter alia, to Suit No. 0/3/49 (which ended in an appeal to the Privy Council, with results as already referred to in the preceding paragraph) and to Suit No.0/3/1956 (Ex. 15 - "Ichu's Case") detailing certain conclusions of fact which, at the trials in those Suits, had been found in their favour. They said that the Appellants had, by various acts, denied their title to the land in dispute and that they had "no other rights in the said land than that of absolute title which they asserted and lost in Suit No. 0/3/49" ending in the decision of the Privy Council referred to in paragraph 4 hereof.

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p.29, l.
19 to
p.30, l.3

p.31, ll.
3-45

p.32, l.
25 to
p.34, l.6

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p.35, ll.
25-37

6. The Respondents (Plaintiffs in Suit 0/25/58) by their said Statement of Claim, as amended, claimed relief as follows :-

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p.61, ll
1-10

"(1) £5,000 damages for trespass on Plaintiffs' Ugborimili land.

"(2) Recovery of possession of Ugborimili land now being built upon by the Defendants (Appellants) and their people in spite of several warnings.

Record

"(3) Injunction or Order of Court to restrain the Defendants their servants and/or agents from interfering with the Plaintiffs' title, possession, rights of enjoyment and disposition of the said land."

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7. By their Statement of Defence in the said Suit No. O/25/58, dated the 10th December, 1958, the Appellants said that whereas the radical title of the land in dispute was in the Respondents, the Obosis (i.e. the Appellants) had been in possession of the same from time immemorial. Answering the Respondents' allegations in paragraph 4 of the Statement of Claim, the Appellants, in paragraph 2 of their said Statement of Defence said :-

pp.52-56

p.53, ll. 2-14

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"The 1st and 2nd Defendants only admit that the Plaintiffs are the radical owners of the land in dispute by virtue of the decision" (of the Privy Council) "in Suit No. O/3/49 but dispute that the Plaintiffs have been in possession from time immemorial. The said Defendants say that they and the Obosis have been in possession from time immemorial, living and farming thereon, and fishing from the ponds and creeks around the said land without let or hindrance, or payment of tribute and that they have exercised these rights . . ."

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Further the Appellants said that if "any Obosi person paid rent, such payment was made under a mistake of fact."

p.53, ll. 18-20

p.54, ll. 28-31

In paragraph 12 of the said Statement of Defence the Appellants Nos.1 and 2 admitted "that the land now in dispute became vested as from 1st January, 1900, in the Governor under the terms of Niger Lands Transfer Ordinance Cap.149"

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p.54, ll. 19-21

In paragraph 17, the Appellants said that as a Community the Obosis had never paid rent to the Respondents and that the houses built by the Obosis upon the land in dispute were "put up in

p.55, ll. 3-6

Record

p.55, ll.
15-21

the exercise of their possessory rights"; and in paragraph 19 they pointed out that "in the said Suit O/3/49, the Plaintiffs obtained Judgment for the radical title, injunction against possession was refused, and the question of possession was left open for determination by a Court. The Defendants will found on the Privy Council Judgment".

8. In paragraph 28 of the said Statement of Defence in Suit O/25/58, the Appellants said that they would plead all legal and equitable defences which might be open to them and, in particular, would plead -

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- "(1) Long possession.
- (2) Agreement No.72 of 1882.
- (3) Laches.
- (4) Estoppel."

As to the allegation in paragraph 41 of the Statement of Claim that the Obosis had, since the institution of the suit, continued building operations on the land in dispute, the Appellants, in paragraph 29 of the said Statement of Defence, denied the truth of the said paragraph 41 and said that any buildings on the land had been "put up by Obosi people as of right."

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p.56, ll.
32-34

9. Faced with the said Suit No.O/25/58, the Appellants Nos.1 and 2, as representing themselves and the Obosi people, instituted the cross-proceedings -

SUIT NO. O/32/58

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against the Respondents in the same High Court of the Onitsha Judicial Division, on the 14th April, 1958.

By their Statement of Claim, dated the 8th August, 1958, the Respondents (Plaintiffs in this cross-suit) said, in paragraph 3, that -

p.69, l.35
to
p.70, l.12

"The said land has from time immemorial and after 1882 (except the portion in physical occupation of the Royal Niger Company) been in the

possession, occupation and use of the Obosis who had, and still, farmed on the aforesaid land and fished from the creeks and banks of the River around it undisturbed either by the Defendants' ancestors or by the Royal Niger Company to whom the land was granted by the Defendants' ancestor Orikagbo in 1882 by deed of grant No.72 without payment of tribute either to the Defendants or the Royal Niger Company."

- 10 In paragraph 7, the Appellants said that "The aforesaid land was ultimately transferred by the Royal Niger Company and its successors to the Government of Nigeria and thus the said land became Crown land until 1948 when the Crown divested itself of a portion of the aforesaid area in 1949 by an Order, the portion so abandoned being the subject matter of this dispute and that of O/3/1949" (i.e. Kodilinye v. Anatogu (1955) 1 W.L.R. 231, P.C.) p.70, ll. 26-33
- 20 10. In paragraph 10 of their said Statement of Claim in Suit No. O/32/58, the Appellants pointed out that in the said Suit O/3/1949, the Privy Council had awarded the radical title of the land in dispute to the Respondents but had left the question of possession and other usufructuary rights open; in paragraph 11 they referred to suits which had been instituted by the Crown against certain Obosis in 1944 but which had later been abandoned; and in paragraph 12 they said that, before and after the said suits by the Crown, the Obosis had been in undisturbed possession of various portions of the area in dispute without payment of tribute to anyone. p.71, ll. 11-15
- 30 Paragraph 13 of the said Statement of Claim, in Suit No. O/32/58, was as follows:- p.71, ll. 16-23
- 40 "13. The Plaintiffs" (i.e. present Appellants Nos.1 and 2) "contend that the Defendants" (Respondents herein) "before 1882 and in particular between 1882 and 1948 abandoned all their rights over the said land and are estopped from denying or varying Agreement No.72 and that furthermore the Plaintiffs' possession within the period aforesaid has been so long that the Defendants must be deemed to have acquiesced in it either directly or by virtue of the acquiescence of the Royal Niger Company and the Crown p.71, ll. 31-41

Record

ultimately, the divesting Order of 1948 notwithstanding."

11. In paragraph 15 of their said Statement of Claim, in Suit No. O/32/58, the Appellants claimed the following relief :-

p.72, ll.
6-19

"(1) A declaration that they are entitled to possession and use of the land known and called 'Ugborimili' situate in the Onitsha Judicial Division and to farm thereon and to exercise piscary rights over the creeks and rivers within or adjoining thereto by virtue of Agreement No.72 dated 8th October, 1884, and/or under Native Laws and Custom.

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(2) Injunction to restrain the Defendants, their agents and servants from interfering with their rights above mentioned."

12. By their Statement of Defence (undated), in the said Suit No. O/32/58, the Respondents denied all material allegations in the Statement of Claim. In further answer they alleged that :-

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p.73, ll.
14-16

p.73, ll.
23-33

p.74, ll.
1-7

p.74, ll.
8-22

they were the owners in possession of the land in dispute from time immemorial; as such, they and their tenants (some of them Obosis) had occupied the land; they had received tribute and rent from their said tenants; they had permitted only four Obosis to build each a dwelling house on the land; in 1882 their ancestor, Orikagbue, had granted the land to the National African Company, reserving to his (i.e. the Respondent's) Family the right to farm thereon and also to permit the said four Obosis to do likewise and to fish from certain parts of the river bank; the said four Obosis and other tenants of the Respondents' family continued, with the latter's permission, to farm on the land and pay the customary tribute after the said Native African Company had opened a trading station on the land; following the merger of the said Company into the Royal Niger Company, the said Orikagbue and other members of the Ogbo (i.e. Respondents') family, on the 26th

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p.74, ll.
26-31

October, 1896, entered into an agreement with the Royal Niger Company whereby they sold to the Company all private rights not already possessed by the Company in a portion of the land now in dispute comprised in the grant of 1882, the Company agreeing not to disturb the said four

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p.74, l.33
to
p.75, l.10

Obosi tenants; and that in various suits they had successfully sued their Obosi tenants for the recovery of rent and tributes.

Record
p.75, 1.38
to
p.76, 1.29

13. Continuing, in their said Statement of Defence (in Suit No. O/32/58), the Respondents said that: in 1934 they had made representations to the Government in respect of non-payment of rent by their Obosi tenants but were informed that the Government did not recognise their right to collect rents and that the whole question of Niger lands was being re-considered by the Government; pending such re-consideration - between 1934 and 1948 - the Obosis had entered on the land, erected buildings thereon and claimed it as their own; by an Order, dated the 11th December, 1948, the Crown had abandoned a portion of the land originally granted to the National African Company which portion was the land now in dispute; in Suit No. O/3/49, the said portion was the land in dispute and judgment was given for the Respondents' family, an appeal therefrom to the West African Court of Appeal and to the Privy Council being dismissed; in Suit No. O/31/56 the Respondents had succeeded in their claim for recovery of possession and an injunction against an Obosi who occupied a portion of the land now in dispute; in consequence of their successes in Suit No. O/3/49 and in subsequent appeals, the Respondents (and not the Appellants) had established an absolute title to the said land; the Appellants were estopped from asserting any claim to the land in possession; and that they had forfeited their rights by their denial of the Respondents' title.
14. On the 10th February, 1959, both Suits (No. O/25/58 and No. O/32/58) were, by an Order of the said High Court consolidated and oral and documentary evidence was then produced by both sides, in the Consolidated Suits.
15. By his Judgment in the Consolidated Suits, dated the 12th May, 1950, the learned High Court Judge before whom the Suits were heard (Betuel J.) found in favour of the Respondents herein, as is stated in paragraph 1 hereof.
- He held also that in Suit No. O/25/58, the Appellants Nos. 3 to 8 had been joined unnecessarily in their personal capacity and he awarded

p.76, 11.
30-46

p.77, 11.
1-12

p.77, 11.
20-26

p.77, 11.
27-38

p.78, 11.
49 to
p.80, 1.30

p.81, 11.
23-29

p.83, 11.
20-25

p.84, 11.
1-6

p.119-137

p.137, 11.
16-26

p.137, 11.
21-24

Record

them costs as against the Respondents.

16. The learned Trial Judge held that the Appellants were estopped from asserting any claims to possessory or usufructuary rights over the land in dispute as a result of the decision in Suit No. 0/31/56 (Ex. 15) which, in his opinion, made such claims res judicata or matters that came within the extension of the doctrine. Of that suit he said :-

p.125, ll.
21-24

"The action was between the Ogbo Family and an Obosi known as Ichu.

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p.122, ll.
21-38

"The building was situate on a portion of Ugbo - Orimili.

"In view of the final decision of the Privy Council on appeal in Suit No. 3 of 1949" (Kodilinye v. Anatogu (1955) 1 W.L.R. 231 P.C.) "there was no issue of title raised.

The issue was concerned with the existence and extent of the possessory rights enjoyed by the defendant as a member of the Obosi Community. The defendant pleaded that he was entitled to remain on the land by native customary law, or under the Agreements, or by reason of laches or acquiescence or under any other equitable right. The defence and evidence adduced in that case was much the same as in this case."

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p.122, l.39
to
p.123, l.14

17. Continuing his examination of the decision in Suit No. 0/31/56 (Ex. 15), the learned Trial Judge said :-

"Although the claim was against the defendant personally, the case was fought out as if it were, as in reality it was, a dispute between the Ogbo Family and the Obosi Community.

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"I accept the reality as conclusively shown" (that) "the suit was financed and conducted by organised bodies within the Obosi Community . . . what I am asked to do is to draw a distinction between an individual asserting the Obosis' case and supported by them, and a suit against the Obosi in a representative capacity in which they, and not the Ogbo Family, chose the person who will represent them"

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"The crucial test is full cognizance of the proceedings, and, participation therein, and the Obosi Community in Exhibit 15 could always have authorised representation, obtained the approval of the Court and applied to be joined under Order 4 rule 5, of the High Court Rules of 1955

Record
p.123, 1.41
to
p.124, 1.1

10 "The strict form of a representative action is not essential, it would be absurd to regard Ichu who was sued by the Ogbo Family, as representing the Obosi Community, what the Obosis did was to identify themselves with Ichu in defence of his interest which was also their interest

p.125, 11.
5-10

"In my opinion Exhibit 15 is res judicata or comes within the extension of the doctrine".

p.125, 11.
21-24

20 In the Appellants' respectful submission the above comments of the learned Trial Judge show that he misdirected himself as to the binding effect of the decision in Suit No. 0/31/56 (Exhibit 15) on the Obosi Community whose representatives were admittedly not before the Court as, it is submitted, they should, and could, have been if, by the said proceedings, it was intended to bind the Community.

30 18. The learned Trial Judge next considered, and for reasons that he gave, rejected, the argument that the Obosi Community had, under certain Agreements, acquired farming, fishing and occupancy rights on the land in dispute and rivers in and adjoining thereto.

p.125, 1.33
to
p.128, 1.15

40 Coming to the subject of equitable defences and an equitable title which the Obosi Community could successfully rely on, the learned Judge referred to previous cases in which the Ogbo Family had asserted their interest against individual Obosis who had occupied portions of the said land and to those cases in which the Obosis had asserted their communal rights. As to the events which had occurred during the period when the land in dispute was Crown Land (1900-1949), the learned Judge "accepted as factual" that the Obosis had during the said period built houses on the land, but, he said, that the Ogbo Family was then powerless to interfere. He referred

p.128, 11.
21-23
p.128, 1.24
to
p.129, 1.23
p.129, 1.24
to
p.130, 1.4
p.132, 11.
8-12

- Record
- p.132, 1.13
to
p.133, 1.5
- to the argument advanced on behalf of the Obosis that laches or acquiescence on the part of the Crown would bind the Ogbo Family - "that any equitable claim or defence available against the Crown is equally available against the Ogbo Family". And, in this connection, he expressed the view that Section 31 of the Crown Lands Ordinance (C.45) (which provides that "No action or other remedy by or on behalf of the Crown for the recovery of possession shall be barred or affected by any statute, Ordinance or other law of limitation") applies only to the limitation of actions and not to equitable defences. 10
- p.133, 1.34
to
p.134, 1.1
19. As to the actions (Suits Nos. O/15 of 1944 and O/16 of 1944) which, in 1944, the Crown had instituted against several individual Obosis who were in possession of various areas of the land in dispute but which had been subsequently discontinued, the learned Trial Judge could see no significance in them other than that their institution showed that the Crown had disputed the Obosi claim, which "tells against any acquiescence on the part of the Crown, and may destroy any estoppel which would avail against the Crown and, therefore, the Ogbo Family." The learned Judge completely overlooked, or ignored, the possibility that the discontinuance of the said actions might well have been due to a carefully considered, if belated, Crown acquiescence in Obosi rights. 20
- p.134, 11.
2-13
20. The learned Trial Judge was "clear that in the period 1934-1948 the Obosis built on Crown land to the knowledge of the Crown" but he was "not sure of the precise act or omission on the part of the Crown which intentionally caused or permitted the Obosis to believe they had possessory rights in the land as if it were their own". He thought that if the Obosis did in fact hold any such belief they had entertained it unreasonably - for it was his view that they had been forbidden to build on the land. 30
- p.134, 11.
38-43.
- p.135, 11.
20-28
- He was doubtful whether, in the circumstances of the case, the Crown was estopped because of the acquiescence in Obosi interference with its rights; nor, in his view, was there any laches on the part of the Crown. The "equitable defences" were "available against the 40

Crown" but he found that "the balance of justice lies in refusing any relief to the Obosi Community".

Record

21. Against the said Judgment of the High Court in the Consolidated Suits the Appellants appealed to the Federal Supreme Court of Nigeria, holden at Lagos, upon the grounds set out in their Notice of Appeal, dated the 3rd June, 1960.

pp.137-141

10 22. By its Judgment, dated the 3rd July, 1961, the Federal Supreme Court of Nigeria dismissed the appeal.

23. Delivering the main Judgment of the Federal Supreme Court, Bairamian F.J. (with whom Ademola C.J. and Unsworth F.J. agreed) said that the Consolidated Suits were brought to decide possession of the disputed land, following the decision of the Privy Council in Kodilinye v. Anatogu (1955) 1 W.L.R. 231 as to its ownership.

p.159, 11.
9-10,30-31.

20 On the subject of laches of the Crown and the argument advanced on behalf of the Appellants that "the Crown had by acquiescence waived the Obosi "Community's trespass and lost the right to evict the Obosis from their farms and buildings and that right could not revive", the learned Judge, after referring to some of the authorities on "laches" and "acquiescence", said that the Crown could have asserted the legal rights of an owner against a trespasser in 1948, in 1949, the Crown gave up the land, and the defence of laches was not therefore available to the Obosis who were trespassers on what they knew was Crown land. He agreed with the view of the Court below that the Obosis had built on the land after having been warned not to do so and he therefore found no merit in their conduct.

p.160, 11.
20-30

p.165, 11
10-31

p.166, 11.
7-20

It is respectfully submitted that the learned Judge misdirected himself as to the essential distinction between the equitable defences of laches and acquiescence.

40 The learned Judge referred to, but did not consider, the argument that the Trial Judge was in error in treating the decision in Suit No. O/31/56 ("Ichu's Case"), Ex.15, as res judicata and binding on the Obosi Community (see paragraph

p.166, 11.
26-30

Record 17 hereof). He did not consider it necessary to do so for, he said, he had "reached the view that the argument on the substance fails".

p.168 24. An Order in accordance with the Judgment of the Federal Supreme Court of Nigeria was drawn up on the 3rd July, 1961, and against the said Judgment and Order this appeal to Her Majesty in Council is now preferred, the Appellants having obtained Final Leave to Appeal by an Order of the said Federal Supreme Court, dated the 13th November, 1961. 10

In the Appellants' respectful submission this appeal ought to be allowed, the Judgment and Orders of both Courts below should be set aside and appropriate directions should be given to the Courts below for the dismissal of the said Suit No. O/25/58 and for Judgment to be entered in favour of the Appellants in the said Suit No. O/32/58 with consequential relief and costs throughout for the following among other 20

R E A S O N S

1. Because on the 1st January, 1949 the radical title to the land in dispute which was previously Crown Land reverted to the Respondents but subject to all possessory and usufructuary rights which the Obosi Community had acquired in relation thereto.
2. Because the decision of the Courts below that the Obosi Community did not acquire any of the said rights is contrary to the law relating to laches and acquiescence and contrary to reason. 30
3. Because the said decision is not supported by any reasonable assessment of the evidence in the case nor by any conclusions lawfully and reasonably drawn from any such assessment.
4. Because it is clear that during the period of Crown ownership of the land, if not earlier, the Obosi Community had exercised possessory and usufructuary rights in respect of the land without any interference. 40
5. Because the discontinuance of the Crown suits

instituted in 1944 against certain individual Obosis clearly supports the inference that the Crown had confirmed the waiver of its right to eject the Obosis and acquiesced in the Obosis' possessory and usufructuary rights over the said land.

- 10 6. Because, on the evidence, it is clear that there was, in respect of the said exercise of possessory and usufructuary rights by the Obosi Community, laches, acquiescence, and waiver of rights on the part of the Crown.
7. Because the said Obosi rights, which were exercised openly and for a long period, were binding on the Crown and are binding on the Respondents.
- 20 8. Because the learned Trial Judge was in error in his view that the decision in Suit No. O/31/56 (also referred to as "Ichu's Case" and "Exhibit 15") operated, in regard to the claims of the Obosi Community in respect of the said land, as res judicata.
- 30 9. Because the Respondents have not alleged in their pleadings in either of the Consolidated Suits or proved at the trial any facts which entitle them to claim that the Obosi Community were estopped by their conduct in relation to the litigation in the said Suit No. O/31/56 from asserting their rights or relying upon equitable defences in respect of the entire land in dispute.

E.F.N.GRATIAEN

R.K.HANDOO.

No.29 of 1962.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL
SUPREME COURT OF NIGERIA

BETWEEN:-

ANACHUNA NWAKOBI & OTHERS
(Defendants) Appellants

- and -

EUGENE NZEKWU & ANOTHER
(Plaintiffs) Respondents

AND BETWEEN

ANACHUNA NWAKOBI & ANOTHER
(Plaintiffs) Appellants

- and -

PHILLIP ANATOGU & ANOTHER
(Defendants) Respondents

(Consolidated Suits)

CASE FOR THE APPELLANTS
IN BOTH SUITS

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