

~~P.C.~~
~~G.H.A. G.2~~

Judgment
24, 1964

IN THE PRIVY COUNCIL .

No.29 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA.

B E T W E E N :

(Suit No.0/25/58)

- 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)

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

Appellants

AND

- 1. EUGENE NZEKWU
- 2. PHILLIP AKUNNE ANATOUGU
(for themselves and on behalf of the Ogbo Family of Umuasele Onitsha)

(Plaintiffs)

Respondents

- 78601

AND BETWEEN

(Suit No.0/32/58)

- 1. ANACHUNA NWAKOBI, THE OSHA OF OBOSI
- 2. IKEFUNA ONWUGBOLU, THE OBOLI OF OBOSI
(representing themselves and all others the people of Obosi)

(Plaintiffs)

Appellants

AND

- 1. PHILLIP ANATOUGU
- 2. EUGENE NZEKWU
(representing themselves and all others of the Ogbo Family)

(Defendants)

Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellants.

REXWORTHY BONSER & SIMONS,
83/85 Cowcross Street,
London, E.C.1.
Solicitors for the Respondents.

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

(Suit No.0/25/58)

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

1. EUGENE NZEKWU
2. PHILLIP AKUNNE ANATOUGU
(for themselves and on behalf of
the Ogbo Family of Umuasele Onitsha)
(Plaintiffs) Respondents

AND BETWEEN

(Suit No.0/32/58)

1. ANACHUNA NWAKOBI, THE OSHA OF OBOSI
2. IKEFUNA ONWUGBOLU, THE OBOLI OF OBOSI
(representing themselves and all
others the people of Obosi)
(Plaintiffs) Appellants

AND

1. PHILLIP ANATOUGU
2. EUGENE NZEKWU
(representing themselves and all
others of the Ogbo Family)
(Defendants) Respondents

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ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

(Suit No.0/25/58)

- 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
- 10 4. ALFRED OKOMA
- 5. JONAH NWOGEM
- 6. DOCTOR JONAS IWEKA
- 7. ISAAC IWEKA
- 8. JONAS IBEZUE (Defendants) Appellants

AND

- 1. EUGENE NZEKWU
- 2. PHILLIP AKUNNE ANATO GU
(for themselves and on behalf of the Ogbo Family of Umuasele Onitsha)
- 20 (Plaintiffs) Respondents

AND BETWEEN

(Suit No.0/32/58)

- 1. ANACHUNA NWAKOBI, THE OSHA OF OBOSI
- 2. IKEFUNA ONWUGBOLU, THE OBOLI OF OBOSI
(representing themselves and all others the people of Obosi)
- (Plaintiffs) Appellants

AND

- 30 1. PHILLIP ANATO GU
- 2. EUGENE NZEKWU
(representing themselves and all others of the Ogbo Family)
- (Defendants) Respondents

In the
High Court

NO.1

STATEMENT OF CLAIM, SUIT 0/25/58

No.1

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

Suit 0/25/58
Statement of
Claim
26th March
1958

SUIT NO. 0/25/58:

BETWEEN:

- 1. EUGENE N. NZEKWU, the Omodi and Okpala
 - 2. PHILIP AKUNNE ANATOUGU for themselves and on behalf of the OGBO (UMUASELE) FAMILY OF ONITSHA
- 10
Plaintiffs

AND

- 1. JABEZ CHUKWUDEBE NWANGWU
 - 2. ALFRED OKOMA
 - 3. JONAH NWOGEM
 - 4. DOCTOR JONAS IWEKA
 - 5. ISAAC IWEKA
 - 6. JONAS EBEZUE
- 20
Defendants.

C L A I M

The Plaintiffs' claim against the Defendants is for :-

- 1. £5000 for damages for trespass on Plaintiffs' Ugborimili land.
- 2. Recovery of possession of portions of Ugborimili land now being built upon by the Defendants and their people in spite of several warnings.
- 3. Injunction 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.

30

Dated at Onitsha this 26th day of March, 1958.

(Sgd) M.O.Balonwu

SOLICITORS FOR PLAINTIFFS.

NO.2
CIVIL SUMMONS

In the
High Court

IN THE HIGH COURT OF NIGERIA

No.2

BOOK NO	CIVIL SUMMONS	U9242	Suit 0/25/58
93	Suit No.0/25/58		Civil Summons 1st April 1958

BETWEEN:

	EUGENE N. NZEKWU & ANOR.	Plaintiffs
and	JABEZ CHUKWUDEBE NWANGWU & 5 Ors.	Defendants.

10 To Jabez Chukwudebe Nwangwu & 5 Ors. of c/o
Barrister Nonyelu, 18 Bernard Carr Street,
Port Harcourt.

You are hereby commanded in His Majesty's name to attend this Court at Onitsha on the _____ day of _____ 1958 at 9 o'clock in the forenoon to answer a suit by Eugene N. Nzekwu and enr. of c/o Barrister M.O. Balonwu, Onitsha against you.

20 The Plaintiffs' claim against the Defendants is for :-

(1) £5000 for damages for trespass on Plaintiffs' Ugborimili land.

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

(3) Injunction 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.

30 Issued at Onitsha the 1st day of April, 1958.

(Sgd) H. J. Hughes

JUDGE.

In the
High Court

NO.3
COURT NOTES

No.3

Suit 0/25/58
Court Notes
26th May and
4th July 1958

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

BEFORE THE HONOURABLE MR. JUSTICE BETUEL,
AG. PUISNE J.

MONDAY THE 26TH DAY OF MAY, 1958.

10

SUIT No.0/25/58:

EUGENE N. NZEKWU & ANOR. Plaintiffs

AND

JABEZ C. NWANGWU & 5 ORS. Defendants.

IKPEAZU for Plaintiffs.

NONYELU for Defendants.

We do not represent the Obosi Community. If the Plaintiffs want the representatives of the Obosi Community I will supply them with their names. The people authorized to represent Obosi in connection with this land dispute and this action are the Plaintiffs in 0/32/58 i.e. Anachuna Nwakobi and Ikefuna Onwugbolu.

20

IKPEAZU:- I would wish to consider this new development.

Adjourned 4/7/58 for this purpose.

(Sgd) Herbert Betuel
AG PUISNE JUDGE.
26/5/58.

FRIDAY THE 4TH DAY OF JULY, 1958:

30

BALONWU:- Motion to amend writ in terms of

earlier Statement by Mr. Nonyelu not before Court on notice and not served.

In the High Court

Defendants not present or represented.

No.3

Plaintiffs present and represented.

Suit 0/25/58
Court Notes
26th May and
4th July 1958
continued

Adjourned 21/7/58 for hearing of motion and ordering of pleadings.

(Sgd) Herbert Betuel
AG.PUISNE JUDGE 4/7/58:

NO.4

No.4

10

MOTION FOR AMENDMENT OF WRIT.

Suit 0/25/58
Motion for
Amendment of
Writ
2nd July 1958

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/25/58:

BETWEEN:

20

EUGENE N.NZEKWU, the
Omodi and Okpala &
ANOR.

For themselves and on
behalf of the OGBO
(UMUASELE) family of
Onitsha. Plaintiffs.

AND

JABEZ C. NWANGWU &
5 ORS.

on behalf of them-
selves and represent-
ing the Obosi people.

M O T I O N:

30

TAKE NOTICE that this Honourable Court will be moved on Friday the 4th day of July, 1958, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiffs in the above-named suit can be heard for an order of Court amending the writ in the said suit to read as in Annexure "A" and for such further and/or other order as to the Court may seem just.

DATED at Onitsha this 2nd day of July, 1958.

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

In the
High Court

NO.5

AFFIDAVIT IN SUPPORT OF MOTION

No.5
Suit 0/25/58
Affidavit in
Support of
Motion
3rd July 1958

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/25/58:

BETWEEN:

EUGENE N. NZEKWU & ANOR For themselves and
the Omodi and Okpala on behalf of the 10
OGBO (UMUASELE)
family Onitsha
Plaintiffs.

AND

JABEZ C. NWANGWU & 5 On behalf of them-
ORS: selves and as represent-
ing the Obosi people.
Defendants.

A F F I D A V I T:

I, Eugene N. Nzekwu, Ibo, native of Onitsha, 20
resident at 44, Oguta Road, Onitsha, Pensioner,
British Protected person, make oath and say as
follows:-

1. That I am the first Plaintiff in the above-named suit.
2. That the named Defendants in the said suit have houses on the said land.
3. That these houses were recently built in spite of repeated warnings from my family.
4. That I am reliably informed and verily believe that (1) Anachuna Nwakobi, The Osha of Obosi and (2) Ikefuna Onwugholu, The Oboli of Obosi are persons appointed by the Obosi people to represent them in all land matters. 30
5. That in a recent suit No. 0/32/58 brought by the Obosi people against me and Philip Anatogu, the second Defendant in this suit,

7.

as representing my family, the said (1) Anachuna Nwakobi and (2) Ikefuna Onwugholu were appointed by the Obosi people to represent them.

In the High Court

No.5

- 6. That I attach hereto a copy of the Writ and Claim in Suit O/32/58 marked Exh. "A".
- 7. That I make this affidavit to the best of my knowledge and belief and in support of the attached Motion.

Suit O/25/58
Affidavit in Support of Motion
3rd July 1958
continued

10

(Sgd) E.N.Nzekwu
DEPONENT.

Sworn to at the High Court Registry,
Onitsha, this 3rd day of July, 1958.

BEFORE ME

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

"ANNEXURE "A"

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

20

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

AMENDED WRIT:

SUIT NO. O/25/58:

BETWEEN:

EUGENE N. NZEKWU, the Omodi For themselves and
Okpapa & on behalf of the
Anor. OGBO (UMUASELE)
family of Onitsha
Plaintiffs.

30

AND

ANACHUNA NWAKOBI, The people of Obosi: as
representing themselves and
all other the people of
Obosi

- 3. JABEZ C. NWANGWU)
- 4. ALFRED OKOMA)
- 5. JONAH NWOGEM)
- 6. DOCTOR JONAS IWEKA)

In the
High Court

7. ISAAC IWEKA }
8. JONAS EBEZUE }

Defendants.

No.5

CLAIM:

Suit 0/25/58
Affidavit in
Support of
Motion
3rd July 1958
continued

The Plaintiffs' claim against the
Defendants is for;

1. £5000 for damages for trespass on
Plaintiffs' Ugborimili land.
2. Recovery of possession of portion of Ug-
borimili land now being built upon by the
Defendants and their people in spite of
several warnings. 10
3. Injunction or Order of Court to restrain
the Defendants, their servants, and or
agents from interfering with the Plain-
tiffs' title, possession, rights of enjoy-
ment and disposition of the said land.

(Sgd) M.O.Balonwu
Plaintiffs' Solicitor.

This is the Annexure "A" referred to in para-
graph 6 of the Affidavit sworn to by the
deponent. 20

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

No.6

NO.6

Suit 0/25/58
Motion for
Amendment of
Writ
2nd July 1958

MOTION FOR AMENDMENT OF WRIT.

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/25/58:

30

BETWEEN:

EUGENE N.NZEKWU & ANR. For themselves and on
befalf of the OGBO
(UMUASELE) Family of
Onitsha. Plaintiffs.

A N D

JABEZ C. NWANGWU & ORS. On behalf of themselves and as representing the Obosi People
Defendants.

In the High Court

No.6

Suit O/25/58
Motion for Amendment of Writ
2nd July 1958
continued

M O T I O N:

10 TAKE NOTICE that this Honourable Court will be moved on Monday the 21st day of July, 1958, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiffs in the above-named suit can be heard for an order of Court amending the Writ in the said suit to read as in Annexure "A" and for such further and/or other order as to the Court may seem just.

DATED at Onitsha this 2nd day of July, 1958.

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

NO.7

No.7

20 AFFIDAVIT IN SUPPORT OF MOTION
IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

Suit O/25/58
Affidavit in support of Motion
4th July 1958

SUIT NO.0/25/58:

BETWEEN:

30 1. EUGENE N.NZEKWU & ANR. For themselves and on behalf of the OGBO (Umuasele) family of Onitsha.
Plaintiffs.

JABEZ C. NWANGWU & ORS. On behalf of themselves and as representing the Obosi people.
Defendants.

A F F I D A V I T

I, Eugene N. Nzekwu, Ibo, native of Onitsha

In the
High Court

No.7

Suit 0/25/58
Affidavit in
Support of
Motion
4th July 1958
continued

residing at 44, Oguta Road, Onitsha, Pensioner,
British Protected person, make oath and say as
follows:-

1. That I am the first Plaintiff in the above-named suit.
2. That the named Defendants in the said suit have houses on the said land.
3. That those houses were recently built in spite of repeated warnings from my family.
4. That I am reliably informed and verily believe that (1) Anachuna Nw ekobi, The Osha of Obosi, and (2) Ikefuna Onwugbolu, The Oboli of Obosi are persons appointed by the Obosi people to represent them in all land matters. 10
5. That in a recent suit - Suit No.0/32/58 - brought by the Obosi people against me and Philip Anatogu, the second Defendant in this suit, as representing my family, the said (1) Anachuna Nw akobi and (2) Ikefuna Onwugbolu were appointed by the Obosi people to re- present them. 20
6. That I attach hereto a copy of the Amended Writ containing also the CLAIM marked "Annexure "A".
7. That I attach hereto a copy of the Writ and Claim in Suit No.0/32/58 marked Annexure "B".
8. That I make this Affidavit to the best of my knowledge and belief and in support of the attached Motion.

SWORN to at the High)
 Court Registry, Onitsha,)
 this 4th day of July,) (Sgd) E.N.Nzekwu
 1958.) DEPONENT.

30

Before me,

(Sgd) Dom. A. Nwoche
REGISTRAR.

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

In the
High Court

No.7

Suit 0/25/58
Affidavit in
Support of
Motion
4th July 1958
continued

AMENDED WRIT: SUIT NO.0/25/58:

BETWEEN:

EUGENE N.NZEKWU & ANR. For themselves and on
the Omodi and behalf of the OGBO
Okpala. (UMUASELE) Family of
Onitsha

10

AND

1. ANACHUNA NWAKOBI, The Osha of Obosi
2. IKEFUNA ONWUGBOLU, the Oboli of Obosi
3. JABEZ C. NWANGWU
4. ALFRED OKOMA
5. JONAH NWOGEM
6. DOCTOR JONAS IWEKA
7. ISAAC IWEKA
8. JONAS EBEZUE

20

CLAIM:

The Plaintiffs' claim against the Defendants is for :

1. £5000 for damages for trespass on Plaintiffs' Ugborimili land.
2. Recovery of possession of portion of Ugborimili land formerly known as C.D.C. site, now being built upon by the Defendants and their people in spite of several warnings.
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.

30

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

This is the Annexure "A" referred to in paragraph

In the
High Court

No.7

Suit O/25/58
Affidavit in
Support of
Motion
4th July 1958
continued

6 of the Affidavit sworn to by Eugene N.Nzekwu,
the Omodi and Okpala on this 3rd day of July,
1958.

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/32/58: 10

BETWEEN

1. ANACHUNA NWAKOBI the Osha of Obosi
2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
representing themselves and all others
the people of Obosi Plaintiffs.

AND

1. PHILIP ANATOGU
2. EUGENE NZEKWU
representing themselves and all
others the Ogbo family of Umuasele 20
Onitsha Defendants.

C L A I M:

The Plaintiffs claim:

1. A declaration that they are entitled to possession and use of the land known and called "UGBORIMILI" situate in the Onitsha Judicial Division to farm thereon and to exercise piscary rights over the creeks and rivers within or adjoining thereto by virtue of agreement No.72 dated 8 October 1884 and/or under Native Laws and Custom. 30
2. Injunction to restrain the Defendants, their agents and servants from, interfering with their rights above-mentioned.

Dated at Port Harcourt this 14th day of April,
1958.

(Sgd) G. C. Nonyelu
SOLICITOR FOR PLAINTIFFS,
20, Bernard Carr Street,
Port Harcourt.

ADDRESS FOR SERVICE:

Defendants: Ogbo Family,
Onitsha.

In the
High Court

No.7

ADDRESS FOR SERVICE:

Plaintiffs: Obosi.

Suit 0/25/58
Affidavit in
Support of
Motion
4th July 1958
continued

This is the Annexure "B" referred to in para-
graph 7 of the Affidavit sworn to by Eugene N.
Nzekwu, the Omodi and Okpala on this 3rd day
of July, 1958.

10

(Sgd) Dom. A. Nwoche.
COMMISSIONER FOR OATHS.

NO.8

No.8

COURT NOTES

MONDAY THE 21ST DAY OF JULY, 1958:

Suit 0/25/58
Court Notes
21st July 1958

SUIT NO.0/25/58:

EUGENE N. NZEKWU & ANOR. Plaintiffs

AND

JABEZ NWANGWU & 5 ORS.

BALONWU for Plaintiffs-applicants to move.

20

No return of service on Defendants or Defendants
Solicitors.

Registrar to call and press for a return of
service.

Adjourned 2nd August, 1958 for service.

(Sgd) Herbert Betual
AG Puisne Judge 21/7/58.

In the
High Court

NO.9

MOTION FOR INTERIM INJUNCTION

No.9

Suit 0/25/58
Motion for
Interim
Injunction
6th August
1958

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/25/58:

BETWEEN:

1. EUGENE N.NZEKWU, the Omodi For themselves
Okpala & Anr. on behalf of 10
the OGBO
(UMUASELE)
Family of
Onitsha
Plaintiffs.

AND

JABEZ C. NWANGWU & 5 ORS, On behalf of
themselves and
as representing 20
the Obosi people.
Defendants.

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will
be moved on Thursday the 21st day of August, 1958,
at 9 o'clock in the forenoon or so soon there-
after as the Counsel for the Plaintiffs in the
above suit can be heard for an Order of Court
granting an interim injunction against the
Defendants and their people of Obosi restraining
them from building on the Ugborimili land in
dispute, from digging pits thereon, and from 30
committing any other act of waste thereon, and for
any further and/or other order which to this Hon-
ourable Court may seem just.

Dated at Onitsha this 6th day of August,
1958.

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

NO.10

In the
High Court

AFFIDAVIT IN SUPPORT OF MOTION

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

No.10
Suit 0/25/58
Affidavit in
Support of
Motion
6th August 1958

SUIT NO.0/25/58:

BETWEEN :

10 EUGENE N. NZEKWE, The Omodi For themselves and
and Okpala & Anr. on behalf of the
OGBO (UMUASELE)
Family of Onitsha
Plaintiffs.

AND

JABEZ C. NWANGWU & 5 ORS. On behalf of them-
selves and as re-
presenting the
Obosi people.
Defendants.

20

A F F I D A V I T:

I, Eugene N. Nzekwu, Ibo, Native of Onitsha,
resident at 44, Oguta Road, Onitsha, Pensioner,
British Protected person, make oath and say as
follows :-

1. That I am the first Plaintiff in the above-named suit.
2. That apart from the houses built in the teeth of opposition from my family by numbers 3 to 8 Defendants, other Obosi people are bringing materials to build on the land, and are leasing out plots thereon to non-Obosi people.
3. That title to the whole land had been adjudged to my family, whom I represent in this action, in suit No.0/31/49 which decision was upheld on appeal both by the West African Court of Appeal (as the appellate Court in Nigeria was then known) and by Her Majesty's Privy Council.

30

In the
High Court

No.10

Suit O/25/58
Affidavit in
Support of
Motion
6th August 1958
continued

4. That the whole land is the subject-matter of a layout scheme by my family.
5. That the object of the Defendants' people of Obosi is to cover the whole land indiscriminately with houses, and to make it impossible for my family to use the land in accordance with the lay-out scheme.
6. That I attach hereto a copy of Suit No. O/32/58 taken out by the Obosi people against my family marked Ex. "A".
7. That the only reason my family have refrained from operating their scheme and have preferred to wait until after the Court action has been determined; is to avoid a possible breach of the peace.
8. That besides building houses indiscriminately on the land in dispute, namely UGBORIMILI land, the Obosi people have dug pits here and there on the said land, thus defacing the surface of the land.
9. That the Obosi people are aware that the said land is subject to a layout (building) scheme, and by building indiscriminately thereon and digging pits there, are committing acts of waste thereon.
10. That I make this Affidavit with the authority of my family and to the best of my knowledge and belief and in support of the attached Motion.

10

20

(Sgd) E.N. Nzekwu
DEPONENT.

30

Sworn to at the High)
Court Registry Onitsha,)
this 6th of August,)
1958.)

Before me,

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

In the
High Court

No.10

SUIT NO. 0/32/58:

Suit No.0/25/58
Affidavit in
Support of
Motion
6th August 1958
continued

BETWEEN

- 1. ANACHUNA NWAKOBI The Osha of Obosi
- 2. IKEFUNA ONWUGBOLU The Oboli of Obosi
representing themselves and all
others the people of Obosi

10

Plaintiffs

AND

- 1. PHILIP ANATO GU
- 2. EUGENE NZEKWU
For themselves and all others
the Ogbo

Defendants

C L A I M:

The Plaintiffs claim:

- (1) A declaration that they are entitled to possession and use of the land known and called "UGBORIMILI" situate in the Onitsha Judicial Division 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.
- (2) Injunction to restrain the Defendants, their agents and servants from interfering with their rights above-mentioned.

20

30

Dated at Port Harcourt this 14th day of April, 1958.

(Sgd) G. C. Nonyelu
SOLICITOR FOR PLAINTIFFS
20 Bernard Carr Street,
Port Harcourt.

This is the Annexure "A" referred to in paragraph

In the
High Court

No.10

Suit 0/25/58
Affidavit in
Support of
Motion
6th August 1958
continued

6 of the Affidavit sworn to by Eugene N. Nzekwu, the Omodi and Okpala, on this 6th day of August, 1958.

This is the Annexure referred to as Exh. "A" in para.6 of the Affidavit.

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

No.11

Suit 0/25/58
Court Notes
21st & 22nd
August 1958

NO.11

COURT NOTES

BEFORE THE HONOURABLE MR. JUSTICE HUGHES
PUISNE JUDGE:

10

THURSDAY THE 21ST DAY OF AUGUST, 1958:

SUIT NO. 0/25/58:

Plaintiffs present. Defendants absent.

Balonwu for Plaintiffs.

(Position is as in above case 0/58/57.

As regards the above two cases, up to 12.15 p.m. neither the Defendants nor their Counsel have appeared.

Affidavit of service produced.

20

The Motions in both cases are adjourned for hearing to tomorrow (22nd instant) at 11.00 a.m.

Costs to Plaintiffs for this adjournment to be fixed tomorrow.

(Sgd) H.J.Hughes
21st August, 1958.

FRIDAY THE 22ND DAY OF AUGUST, 1958:

Plaintiffs present. Defendants absent. Affidavit

of Service.

In the
High Court

Balonwu for Plaintiffs.

No.11

Motion for interim injunction: Motion dated
6th August, 1958.

Suit O/25/58
Court Notes
21st & 22nd
August 1958
continued

BALONWU: Asks for the addition of the names of
the two persons, who were joined as Defendants
by order of 2/8/58 inadvertently omitted.
Application granted with liberty to such persons
to apply as regards any order made on this ap-
plication for an interim injunction. Refers to
Affidavit. Section 27 of High Court Law 1955.
Order 21 Rule 1 of High Court Rules. No plan
has yet been filed so that it is not possible to
determine with precision the area over which the
injunction shall have effect and accordingly,
Balonwu asks for an adjournment to 5th September,
1958 by which date the plan should be filed.

10

Adjourned for hearing to Friday 5th Septem-
ber, 1958.

20

(Sgd) H.J. Hughes
22nd August, 1958.

NO.12

No.12

COURT NOTES

BEFORE THE HONOURABLE MR. JUSTICE BETUEL
AG. PUISNE J.

Suit O/25/58
Court Notes
5th September
1958

FRIDAY THE 5TH DAY OF SEPTEMBER, 1958:

SUIT NO. O/25/58:

EUGENE N. NZEKWU & ANOR. Plaintiffs

AND

30

ANACHUNA NWAKOBI & 7 ORS. Defendants

BALONWU: for Plaintiff-Applicants.

IBEZIAKO for Nonyelu for Defendants-Respondents.

IBEZIAKO:- I apply for an adjournment on behalf

In the
High Court

No.12

Suit 0/25/58
Court Notes
5th September
1958
continued

of my learned friend Mr. Nonyelu.

(1) Counter-Affidavit not ready.

(2) Additional Affidavit just served in 0/25/58.

BALONWU:- Additional Affidavit only corrected names etc.

IBEZIAKO:- I will give an undertaking that there will be no further building works or completion of any building or any purported disposition of the land or any part thereof between now and the disposal of the motion. The Plaintiffs may take photographs of the actual state of the buildings on the land, provided that the Defendants are served with sufficient notice thereof of 48 hours undertaking accepted by Plaintiff and Court.

10

Adjourned 9th October, 1958 for hearing of Motion without fail.

(Sgd) Herbert Betuel
AG. PUISNE JUDGE 5/9/58.

No.13

Suit 0/25/58
Counter
Affidavit
5th September
1958

NO.13

COUNTER AFFIDAVIT

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION

SUIT NO. 0/25/58:

BETWEEN:

- | | |
|---|--|
| 1. EUGENE N. NZEKWU, the
Omid and Okpala | For themselves and
on behalf of the |
| 2. PHILIP AKUNNE
ANATOGU | OGBO (UMUASELE) of
Onitsha |
| | Plaintiffs. |

30

A N D

1. JABEZ C.NWANGWU & 5 ORS. On behalf of themselves and as representing the Obosi people
Defendants

In the
High Court

No.13

Suit 0/25/58
Counter
Affidavit
5th September
1958
continued

COUNTER AFFIDAVIT

I, Jabez Chukwudebe Nwangwu, of Obosi, British Protected person, make oath and say as follows:-

- 10 1. That I am the first Defendant in the Writ as unamended.
2. That I am authorised by Defendants Nos.1 - 6 to represent them only for this purpose of this affidavit and to swear to it.
3. That paragraph 2 of the Plaintiffs' Affidavit is not correct. The Obosis have heard buildings there and doing all manner divers acts on the said land for a very long period from time immemorial.
- 20 4. That the Plaintiffs' ancestors acknowledged this state of affairs by Grant No.72 of 1882, which was also Exhibit No.53 in 0/31/49.
5. That paragraph 3 of Plaintiffs' Affidavit is correct in so far as the issue of radical title was concluded between the parties. The question of possession was still left open by Privy Council. The Privy Council refused injunction against possession.
- 30 6. Paragraph 4 of the Plaintiffs' Affidavit does not arise.
7. That paragraph 5 of the Plaintiffs' Affidavit is denied.
8. That paragraph 6 of the Plaintiffs' Affidavit is correct. The said suit had to be taken out because the Plaintiffs have been interfering with the Defendants' rights over the land by portions to firms e.g. Total Oil Company Limited.
- 40 9. That in answer to paragraph 7 of the Affidavit there is no threatened breach of the peace.

In the
High Court

No.13

Suit O/25/58
Counter
Affidavit
5th September
1958
continued

- 10. That paragraph 8 of the Affidavit is denied.
- 11. That paragraph 9 of the affidavit is denied.
- 12. That Obosis live there in large numbers long before the area was surrounded by the Government and an injunction will cause untold hardship e.g. It is an electoral and Tax Area within Obosi Local Council and it is so recognised by Government.

Dated at Port Harcourt this 5th day of September, 1958.

10

(Sgd) J.C. Nwangwu
DEPONENT.

Sworn to at the High Court Registry, Onitsha, this 9th day of September, 1958.

Before me,

(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

No.14

Suit O/25/28
Motion to set
aside Interim
Injunction
22nd September
1958

NO.14

20

MOTION TO SET ASIDE INTERIM INJUNCTION
IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

SUIT NO.0/58/57:

BETWEEN:

- 1. EUGENE N.NZEKWU the Omodi and Okpala & Anr. For themselves and on behalf of the OGBO (UMUASELE) Family of Onitsha Plaintiffs.

30

A N D

JABEZ C.NWANGWU & 5 ORS. On behalf of themselves as representing the Obosi people.
Defendants.

In the High Court

No.14

Suit 0/58/57
Motion to set aside Interim Injunction
22nd September 1958
continued

MOTION ON NOTICE:

10 TAKE NOTICE that this Honourable Court will be moved on Thursday the 9th day of October, 1958, at 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiffs in the above suit can be heard for an Order of Court.

- (1) To set aside the order for interim injunction made on the 21st August, 1958 in absence of the Defendants and to re-list the Plaintiffs' motion for rehearing.
- (2) Any further order or orders.

Dated at Onitsha this 22nd day of September, 1958.

20 (Sgd) G. C. Nonyelu
SOLICITOR FOR DEFENDANTS,
20, BERNARD CARR STREET,
PORT HARCOURT.

NO.15

No.15

AFFIDAVIT IN SUPPORT OF MOTION

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

Suit 0/58/57
Affidavit in Support of Motion
22nd September 1958

SUIT NO.0/58/57:

30 BETWEEN:

1. EUGENE N. NZEKWU, the Omodi and Okpala & Anr.	For themselves and on behalf of the OGBA (UMUASELE) of Onitsha Plaintiffs.
--	--

A N D

In the
High Court

No.15

Suit O/58/57
Affidavit in
Support of
Motion
22nd September
1958
continued

JABEZ C. NWANGWU & 5 ORS. On behalf of them-
selves and as repre-
senting the Obosi
people
Defendants.

A F F I D A V I T:

I, Gilbert Chukudike Nonyelu, Legal Practitioner, 20 Bernard Carr Street, Port Harcourt, British Protected Person, make oath and say as follows:-

1. That I am the Solicitor for the Defendants in the above-named suit. 10
2. That hearing notice of the motion in the above suit was received by my office on the 18th August, 1958.
3. That I sent a telegram asking for adjournment to 24/9/58 for O/25/58 and O/58/57.
4. That on 26th August 1958, I received the telegram marked annexure I and was under the impression that the telegram affected the two cases. 20
5. That on the 4th September, 1958, I applied for adjournment in the two cases to 22nd September 1958 and had the letter delivered to Mr. Balonwu and the Registrar on the same date.
6. That I was heavily engaged in the High Court Port Harcourt on the date the Motion was to be heard at Onitsha and in fact I did not see the hearing notice until the 22nd August, 1958.
7. That the said hearing notice was not served on my clients and I could not inform them and so they were absent in Court when the case was called up on 21st August, 1958. 30
8. That on 14th September, 1958 my clients came into my house and showed me the order made against them for an interim injunction on 21st August, 1958.
9. That my clients did not know of this order

until after the expiration of 14 days after it was made.

In the High Court

No.15

Suit 0/58/57
Affidavit in Support of Motion
22nd September 1958
continued

- 10. That the Motion was argued by Plaintiffs' Counsel alone my unavoidable absence and non service on my clients not withstanding.
- 11. That my clients were not given the opportunity to be heard in answer to whatever Plaintiffs' Counsel had said in respect of the Order sought.
- 10 12. That my clients have a good and legal defence to the application for an interim injunction.
- 13. That great hardship has been caused by the aforesaid Order as my clients have been farming on the said land from time immemorial and still have their farms thereon as well as some of them and their tenants have lived there for long.
- 20 14. That I make this affidavit in support of motion filed.

Dated at Onitsha this 22nd day of September, 1958.

(Sgd) G.C.Nonyelu
DEPONENT.

Sworn to at the High Court)
Registry, Onitsha, this 22nd)
day of September, 1958.)

BEFORE ME
(Sgd) Dom.A.Nwoche
COMMISSIONER FOR OATHS.

30 ANNEXURE "1"

CK 69 SB 1122 ONITSHA 26 PRIORITY 27/26
BARRISTER NONYELU PORTHARCOURT
0/25/58 X NZEKWU AND ANOTHER VERSUS NWAKOBI
AND OTHERS BEFORE RECEIPT YOUR TELEGRAM CASE
ALREADY ADJOURNED TO 5TH SEPTEMBER, 1958X

REGISTRAR

This is Annexure "1" referred to in paragraph 4 of affidavit sworn to by G.C.Nonyelu this 22nd September, 1958.

40

Before me,
(Sgd) Dom. A. Nwoche
Com. for Oaths.

In the
High Court

NO.16

STATEMENT OF CLAIM

No.16

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

Suit 0/25/58
Statement
of Claim
1st September
1958

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/25/58:

BETWEEN:

EUGENE N. NZEKWU, the For themselves and on
Omodi and Okpala & Anor. behalf of the OGBO 10
(Umuasele) family of
Onitsha
Plaintiffs.

AND

ANACHUNA NWAKOBI, The Osha of Obosi as repre-
& 10 Ors. senting themselves and all
of Obosi Defendants

STATEMENT OF CLAIM:

1. The Plaintiffs are elders and members of the OGBO family of Umuasele in Onitsha and sue on behalf of the said Ogbo family. 20
2. The first and second Defendants are natives of Obosi and are sued for themselves and as representing the Obosi people.
3. The third, fourth, fifth, sixth, seventh, and eighth Defendants are natives of Obosi and are sued personally.
4. The Plaintiffs are from time imemorial the owners in possession of the land known as and called UGBORIMILI land, situate in Onitsha, and lying between Otumoye creek and Idemili stream, and more particularly shown delineated and edged pink on the plan to be filed in Court with this statement of claim, the Plaintiffs' ancestor OGBO being the first person to occupy the said land. 30

In the
High Court

No.16

Suit 0/25/58
Statement
of Claim
1st September
1958
continued

5. As owners aforesaid, the OGBO (Plaintiffs') family occupied the said land by themselves and their tenants for farming purposes, without interference from any body. They have now and again put various individuals from Obosi to farm upon the land in dispute on payment of yearly tribute in accordance with Onitsha native law and custom.
- 10 6. Besides persons from Obosi, the Plaintiffs' - people have been putting other persons on the said land. They have been putting Ijaws who fish along the bank of the Niger, and pay their rent to the Plaintiffs' family. They have also put Aboh tenants on the said land, and some of these have founded a settlement thereon called the OGBE UKWU settlement. These also pay rent to the Plaintiffs' family. Other tenants include the OGBE WARRI and UMUOLU tenants.
- 20 7. The Obosi people whom the Plaintiffs' people permitted to build each a dwelling house on the land are only 4 in number, and they are Umuezechima people, who are related to Plaintiffs, but were domiciled at Obosi. They were Ana Akalue, Okafor Kwochaka, Obiefuna Nwabunie, and Ikejiofor Ezeakudo.
- 30 8. In 1882, Orikagbue, an ancestor of the Plaintiffs, granted the said land to the National African Company, Limited, and the said Company set up thereon a trading station known as "Abutshi Station". The said grant was referred to in a certificate made by one Edward Hyde Hewott, a British Consul on board H.M.S. "Alecto", on the 8th October, 1884.
- 40 9. By the said grant Orikagbue reserved to his (i.e. Plaintiffs') family the right (a) to farm on the land in dispute and (b) to permit "Abutshi people" i.e. people living at Otu Obosi" to farm thereon, and to fish from those parts of the bank not occupied by the Company. The said "Abutshi people" comprised those 4 Obosi people referred to in paragraph 7 hereof as well as Ijaw and other tenants of the Plaintiffs.
10. By the said grant the company entered into

In the
High Court

No.16

Suit 0/25/58
Statement
of Claim
1st September
1958
continued

possession of the said land, opened a trading station thereon as aforesaid. The Obosi and other tenants of the Plaintiffs' family continued, with the latter's permission, to farm on the land and to pay the customary tribute as before. The trading station opened by the company is still on the said land.

11. Subsequent to the said grant the said National African Company became merged into another Company known as Royal Niger Company Chartered and Limited. 10
12. On the 26th of October, 1896 the said Orikagbue and other members of Ogbo (Plaintiffs') family, on behalf of the said family, entered into an agreement with Royal Niger Company whereby they sold to the Company all private rights of every kind not already possessed by the Company in a portion of the land now in dispute comprised in the grant of 1882 aforesaid, that is to say between the Ndende Creek on the North and the Idemiri on the South, and extending inland 500 yards from the River Niger. This land was included in the former grant of 1882. 20
13. By the said agreement of 1896 the Company agreed not to disturb the four Obosi tenants of the Plaintiffs referred to in paragraph 7 above, as well as their Ijaw, Umuolu Ogbe Ukwu and Ogbe Warri tenants.
14. In 1916, the Government of Nigeria passed the Niger Lands Transfer (protectorate) Ordinance. At that time, the Royal Niger Company Chartered and Limited had become known as the Royal Niger Company Limited. By the said Ordinance the land and rights specified or referred to in the Certificate of 8th October, 1884, in paragraph 8 above, and in the Agreement of 26th October, 1896, referred to in paragraph 12 above, belonging to the Royal Niger Company became vested as from 1st January, 1900, in the Governor in trust for His Majesty, his heirs and successors upon and subject to the terms and conditions contained or referred to in the said Certificate and agreement, the company reserving for itself a small portion thereof which has since remained in the possession of 40

the Company and its successors until today.

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September
1958
continued

15. In the 1st Schedule to the said Ordinance, the Certificate of 8th October, 1884, was referred to as Agreement No.72 and the Agreement of 26th October, 1896 was referred to as Agreement No.40. The Agreement and Certificate will hereafter be referred to as Agreement Nos.40 and 72 respectively, and will be founded upon by the Plaintiffs.
- 10 16. As had been the case before Agreements Nos.40 and 72 were made, and in accordance also with the reservations in the said agreements, the family continued to put Obosi tenants to farm on the land in dispute and these tenants continued to pay the customary tributes and whenever they failed to pay, the (Ogbo) family have successfully sued them in Court and recovered the equivalent in money.
- 20 17. In Onitsha Native Court case No.270; Chukwuemeka of Ogbo Family of Umuasele sued Oseloka of Obosi, tenant of Ogbo Umuasele Family, for failing to pay rent for farming on Ani Olu, a part of Ugbo-Orimili land, and he obtained judgment to the effect that the said Oseloka should pay him £15 and quit the land, in accordance with the native law and custom. The Plaintiffs will found upon this suit at the hearing.
- 30 18. In Onitsha Native Court Case No.269, the afore-said Chukwuemeka of Ogbo Family of Umuasele, sued Anah and 20 others of Obosi for recovery of rent and injunction to restrain the Defendants from using the Ugborimili land and succeeded. The Plaintiffs will found upon this suit at the hearing.
- 40 19. In Onitsha Native Court Case No.101/28 and 103/28, Ndaguba Okagbue of the Plaintiffs' Family sued one Nwameze and two others of Obosi, claiming (1) £50 damages for trespass on Ugborimili land (2) £50 damages for trespass by building houses, farming on the said land without the consent of the owners since one year, obtained judgment and an order restraining the then Defendants of Obosi from farming on the land unless permission was

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September
1958
continued

- obtained from the then Plaintiffs' family. The Plaintiffs will found upon this suit also at the hearing.
20. The Obosi tenants of the Plaintiffs had always recognised the Plaintiffs as their landlords until about 1934, when Chief J.M.Kodilinye, the then head of Obosi people, as a result of land dispute between him and other families of Onitsha, encouraged some of these tenants not to continue paying on the ground that the land was Crown land. 10
21. The Plaintiffs made representations to the Government, and were informed that the Government did not recognise their right to collect rents, but that the whole question of Niger Lands including the land in dispute, were being reconsidered. As result of the said letter from the Government the Plaintiffs' people took no further action against the Obosi people. 20
22. From 1934, until December, 1948, when the Crown finally withdrew from the said land, the Government was still reconsidering the matter, and showed no apparent interest in the land with the result that the Defendants and their people of Obosi, taking advantage of that position, entered on the land in large numbers and erected buildings thereon claiming the land as their own, and refused to pay further rents to the Plaintiffs or to recognise them as their landlords as they had done in the past. 30
23. Owing to continued protests to the Government, in 1944 the Assistant Commissioner of Lands sued one Ikebuife Nwajiaku and 53 others as well as one J.O. Mozie and I.I.Nwogem for recovery of possession of the Crown Land, including the said land, occupied by them, in suits Nos.0/15/1944 and 0/16/1944 respectively. 40
24. By an Order dated the 11th day of December, 1948 the Crown abandoned portion of the land originally granted to the National African Company, and vested in the Crown by the Niger Lands Transfer Ordinance as aforesaid, and

retaining a portion for itself. The portion as abandoned is the subject-matter of this action. In the
High Court

No.16

25. Subsequently, the said abandoned portion became the subject matter of dispute between the Plaintiffs and the Defendants people of Obosi in Suit No.0/3/49, and judgment was given for the Plaintiffs' family.

Suit 0/25/58
Statement
of Claim
1st September
1958
continued

10 26. The Defendants' people of Obosi appealed to the then West African Court of Appeal from the decision of the then Supreme Court in Suit No.0/3/49, and subsequently from the decision of the West African Court of Appeal to Her Majesty's Privy Council, and the Appeal in each case was dismissed.

20 27. In Suit No.0/3/49, the Court made the following findings of facts, to wit: (a) "So even in 1884, Obosi people and others living at "Otu Obosi" were regarded as on the land with the consent of the OGBO Family whose representatives confirm Ex.53 and signed Ex.54", (b) "The Plaintiffs have also been paid and are still being paid rent by other people on the area in dispute i.e. the OGBO? UKWU people; their settlement is West of Exh.10 on the Niger's bank, just below the green line"; (c) That Plaintiffs have proved acts of ownership extending over a long period over the Southern area by receiving rents and granting leases or rights of occupancy";

30 (d) "The Defendants say that the Plaintiffs have allowed them to occupy the land in dispute over a period of many years and they should not now be disturbed. Nothing can be further from the truth. The Plaintiffs have certainly been aware of the Defendants' squatting occupation but they have never acquiesced in it for a moment; (e) "The Obosi people have been making a nuisance of themselves to their neighbours for a number

40 of years. They have litigated frequently and have always lost. There is obstruction and refusal by them to pay tribute to anyone. The motive is greed" These findings of facts will be founded upon by the Plaintiffs at the hearing.

28. The Plaintiffs further say that the Agreement

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September
1958
continued

No.72 referred to in paragraph 8, 9, 10, 15 and 16 of the Statement of Claim and the expression "Abutshi people" contained therein, had fallen for interpretation in Suit No.0/3/49, afore-mentioned and the learned trial judge in that suit found as follows: (a) It is very important and very significant that when Exh.53 (meaning Agreement No. 72) was drawn up there was an express stipulation that the "Abutshi" people, that is people living at "Oyu Obosi" might be allowed to continue to farm the land and fish from those parts of the bank not occupied by the Company". (b) "The Plaintiffs (that is, the present plaintiffs' family) received their rents as owners as their rights over tenants are expressly reserved in Exh.53 (meaning Agreement No.72)". The Plaintiffs will found on this interpretation and finding at the hearing of this suit and will contend that the Obosi people are estopped from putting any other interpretation on the said Agreement No.72 and on the term "Abutshi" people contained therein.

10

20

29. In suit No.0/31/1956 the present Plaintiffs sued one Isaac Maduegbunam Ichue of Obosi in respect of a portion of the land now in dispute, claiming as follows :-

1. "Recovery of possession from the Defendant of portion of Plaintiffs' land in Ugborimili situate in Onitsha in the Onitsha Division.

30

2. "Order of Court for the demolition of the Defendant's buildings on the said portion of land.

3. "An injunction to restrain the Defendant, his servants, and "or agents from interfering with the Plaintiffs' ownership and possession of the said portion of land".

30. The Defendant in the said Suit No.0/31/56 fought the case with the support of the Obosi people, and put forward as his Defence: (a) That the Obosis as such have been in possession of the land all these years and that their rights to farm and fish

40

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September 1958
continued

were preserved in 1882 and 1896, that is referring to Agreements Nos.40 and 72; (b) That the Obosis have built on the land to the knowledge of the present Plaintiffs family ever since the Niger Company and the Crown were in Possession of the land and as such the present Plaintiffs' family must be deemed to have acquiesced in such buildings and in the case of the Defendant Isaac Madeugbunam Ichu, in his building which, was at any rate before 1948. (c) That as an Obosi man he (the Defendant) was entitled under Agreements Nos.40 and 72 to farm on the land and fish from the banks of the River Niger and to continue in occupation of the land or house as set out in the said Agreements. (d) That the said agreements make no provision for the payment of rent or tribute; (e) That no rent or tribute was at any time payable in respect of this land, and if any such rent was payable at all, it was not payable to the present Plaintiffs' family.

31. In the said Suit O/31/1956 the Court found the following facts, that is to say: (a) That the Defendant of Obosi build on the land in dispute in 1942, without the permission of anyone, in the mistaken belief that it was Obosi land and with the support of Obosi people: (b) That there was neither laches nor acquiescence either on the part of OGBO Family of Umuasele or on the part of the Crown; (c) That before the abandonment of the land by the Crown in 1948, the OGBO family of Umuasele had continued to exercise their acts of ownership on the land, acting on the conditions set out in Agreements Nos.40 & 72 putting stranger communities on the land and taking rent of 40/- from them; (d) That the Obosis paid rents to the said family for farming on the land in dispute; (e) That only 4 (four) Obosi persons were permitted to build thereon; (f) That the Obosis refused to pay rents to the OGBO (Umuasele) Family from 1928 to 1934 at the instigation of Chief Kodilinye; (g) That the Obosi Defendant fought the case with the active support of the Obosi people; (h) That the Obosi Defendant had not by himself or through his Obosi people acquired any right to the land in dispute either by laches, acquiescence or under any native law and custom vis-avis the Ogbo family. The Plaintiffs will found on these

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September
1958
continued

findings of fact at the hearing.

32. The Court then delivered its judgment in the said Suit No.0/31/1956 on the 24th day of August, 1957, and granted to the present Defendants' family both the Recovery of Possession and Injunction south. 10
33. On the 7th day of April, 1952, both the Obosi people (Defendants here) and the OGBO family of Umuasele (Plaintiffs) entered into an agreement with the Colonial Development Corporation, in respect of 240 acres of the UGBORIMILI land in dispute (shown bordered purple on Plaintiffs' plan), whereby it was agreed that whoever succeeded in establishing ownership of the land in Suit No. O/3/49 aforementioned, OGBO - Family or Obosis, described in the agreement as "an estate in fee simple in possession", would grant a lease of it to the said Corporation and shall be entitled to rent accruing therefrom. As has been said in paragraphs 25 and 26 hereof, the OGBO family were successful in obtaining a declaration of title at the trial of the said Suit No.0/3/49 before Manson, J., and the learned Judge's decision was upheld on appeals to the West African Court of Appeal (as the Appellate Court in Nigeria was then known) and to the Judicial Committee of the Privy Council. 20
34. In Suit No. O/71/1955, the OGBO family obtained a court's order for the payment to them of the sum of £4,320 being the amount of the accumulated rent deposited by the Colonial Development Corporation as rent for the land in the Bank of British West Africa, in pursuance of the aforesaid Agreement. The area of the land in dispute, affected by this Agreement is verged purple on the Plaintiffs' plan. 30
35. The Obosis were dissatisfied with this order, and appealed to the Federal Supreme Court, Lagos, in Suit No.F.S.C.189/56. The Federal Supreme Court construed the aforesaid agreement of 7th April, 1952, and gave judgment for the present plaintiffs' (OGBO) family, concluding as follows:- 40
- (a) That in being successful in Suit No.0/3/49, and in subsequent appeals, culminating in the appeal to the Judicial Committee of the Privy

Council, the present Plaintiffs' (OGBO) family have obtained "an absolute title to the land in dispute under Native Customary law."

In the
High Court

No.16

- (b) That the present Plaintiffs' family have, therefore, the right to grant the lease of the said land to the said Corporation, and were, as a result, entitled to the accumulated rent of £4,320.

Suit O/25/58
Statement
of Claim
1st September
1958

continued

- 10 The present Plaintiffs family will found on this suit No. F.S.C. 189/56 and will at the hearing contend that the Defendants are estopped from putting any other construction on the said agreement of 7th April, 1952, and from claiming any other right in that land than one of absolute title which they lost in Suit No. O/3/49 and subsequent appeals.
- 20 36. The Plaintiffs also say that before the Colonial Development Corporation entered into possession of the area verged purple which was granted to them under the above agreement, all the Obosi huts therein were demolished, and vacant possession was given them by both the Defendants' and Plaintiffs' people.
37. The Defendants' people have by various acts denied the title of the Plaintiffs' family to the land in dispute, to wit:
- (a) By fighting the title case against the present Plaintiffs in Suit No.0/3/49;
- 30 (b) By entering into agreement with the Colonial Development Corporation.
- (c) By disposing of portions of the land in dispute to non-Obosis.
- 40 38. The Plaintiffs say that the Defendants have no other rights in the land than that of absolute title which they asserted and lost in Suit No.0/3/49. By paragraphs 5,7,8,9 and 19 of their statement of Defence in the said suit, the present Defendants averred as follows:-
- (1) That they were the owners of the land in

In the
High Court

No.16

Suit O/25/58
Statement
of Claim
1st September
1958
continued

dispute from time immemorial and have been exercising all the rights of ownership and are in possession thereof until this day

- (2) That Orikagbue, who made the grant to the Company in 1882 and 1896, was an Obosi man, and he contracted for himself and the Obosi people.
- (3) That the Obosi people, occupied the land at the time of Orikagbue as owners, and not as tenants. 10
- (4) That the Obosi people, not being tenants of the present Plaintiffs' family did not pay them (Plaintiffs) tribute for their holdings.
- (5) That when the Nigerian Government abandoned the land in dispute in 1948, it reverted to the Obosi people as the original owners thereof, and not to the Ogbo (Umuasele) family. 20
- (6) That they (the Obosi people) had been in possession of the land in dispute before the advent of the Royal Niger Company and the Onitsha people, and are still on the land in their own rights. Thus the Obosi rights on the land could never have arisen by any reservations made in the grant made by the Onitsha (present Defendants') people.

The Plaintiffs attach hereto the statements of Claim and Defence in Suit O/3/49 and will, therefore, contend that the Defendants are estopped from relying on the agreements Nos. 40 and 72 aforementioned so as to claim any rights less than that of absolute title to the land. 30

39. During the month of March this year the 3rd, 4th, 5th, 6th, 7th and 8th Defendants began to build houses on the land in dispute without the permission of the Plaintiffs' people, and in spite of several warnings by the Plaintiffs. When questioned by the Plaintiffs the said Defendants said the land 40

belongs to them, and that they were authorised by the Ndichie and Land Council of Obosi to build thereon.

In the
High Court

No.16

40. Whereupon the Plaintiffs have taken this action claiming as follows:-

Suit 0/25/58
Statement of
of Claim
1st September
1958
continued

(1) £5000 for damages for trespass on Plaintiffs' Ugborimili land.

10

(2) Recovery of possession of portions of Ugborimili land now being built upon by the Defendants and their people inspite of several warnings.

(3) Injunction 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.

20

41. Since this action, the Defendants have gone on to complete the said buildings. Furthermore, other Obosi people, acting on the authority of the Ndichie and Land Council of Obosi, have begun new buildings on various portions of the land in dispute.

DATED at Onitsha this 1st day of September, 1958.

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

NO.17

COURT NOTES

THURSDAY THE 9TH DAY OF OCTOBER, 1958:

No.17

Suit 0/25/58
Court Notes
9th & 23rd
October 1958

30

SUIT NO. 0/25/58:

BALONWU for Plaintiffs - Applicants.

NONYELU for Defendants.

NONYELU:- Motion and Affidavit refers to 0/58/57 and not to this case, I ask for leave to withdraw these documents, have number amended and have documents put in correct file.

In the
High Court

No.17

Suit 0/25/58
Court Notes
9th & 23rd
October 1958
continued

ORDER:- Leave granted with £3:3/- costs to Plaintiffs. Court orders hearing of main motion to proceed.

BALONWU for Plaintiffs arguendo:- Motion for interim injunction against building etcetra, not asking them to pull down anything. Apply that Anuchuna Nwokobi and Ikefuna Onwugboli appear in the interim motion. No objection.

ORDER:- Leave granted.

GROUND'S OF INTERIM INJUNCTION IN AFFIDAVIT

10

Building in spite of opposition (Para 2 of Affidavit). Judgment in our favour 0/31/49; no right under any agreement to build, only piscatory rights and farming, no building on land, lost title. Plaintiffs have a lay out scheme for this area. Committing acts of waste on land, digging pits etcetra. Attempting to dispose of portion of land. Section 27 High Court Law, 1955, Order 21 Rule 21 High Court Rule. Not asking for appointment of Manager or Receiver.

20

NONYELU :- Want status quo preserved? Possession determined by action. Dove-Edwin judgment only affects individuals - Plaintiffs have not filed pleadings. Accelerated hearing, proper remedy. Question of possession open. Ask for injunction? And an accelerated hearing. 1954 1 All E.R. Swamping area by our people? Present buildings only to be completed? Court visited land in company of the Court Clerk, Orderly, Counsel and Parties, no evidence was taken, the Court visited the land to better understand, the affidavit and arguments. It was clear that works and buildings are continuing to be built on the land in dispute despite the undertaking given by Obosi people and their tenants, in fact, permanent buildings are being erected at such a speed as to suggest a building drive. In any places, I saw new blocks and sand obviously put there since the undertaking. The Court saw no pits. Number of buildings almost completed. New buildings.

30

40

COUNSEL: We leave the matter to the Court.

Adjourned 23rd October, 1958, for

decision on motion.

(Sgd) Herbert Betuel
9/10/58.

In the
High Court

No.17

THURSDAY THE 23RD DAY OF OCTOBER, 1958:

SUIT NO.0/25/58:

Suit 0/25/58
Court Notes
9th & 23rd
October 1958
continued

BALONWU for Plaintiffs - Applicants.

OJIAKO for Defendants - Respondents.

DECISION:

10 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, to the National African Company Limited, to whose title the Royal Niger Company succeeded.

This grant reserved certain farming, fishing and occupancy rights to the Abutshi (i.e. Obosi) people.

20 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.

The Niger Lands' Transfer Ordinance of 1916, as from the 1st of January, 1900, vested the title in 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.

30 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.

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.

In the
High Court

No.17

Suit O/25/58
Court Notes
9th & 23rd
October 1958
continued

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.

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.

10

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

This left the possessory and usufructuary rights, if any, of the Obosi people in the land open to future judicial determination.
(Kodolinye v Anatogu (1955) 1 W.L.R.231).

In O/31/56 and O/38/56 (unreported), the High Court considered the terms on which two individual Obosis were permitted to enter the land for farming and building purposes and, found that they could only do so with the consent of owners and on payment of rent.

20

In this case the claim against the Defendants is for trespass, the recovery of possession, and an injunction to prevent the Defendants, their servants or agents from building on the land.

The present proceedings are for an interim injunction to restrain the Defendants, their agents or servants from building on the land and committing acts of waste thereon, as there does not seem to have been any waste in the nature of digging pits and so on. I treat this application as one to prevent any further building on the land simpliciter.

30

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

An undertaking has already been given to cease building or completing of buildings, until this motion is disposed of, but this undertaking,

40

has admittedly not been wholly implemented.

In the
High Court

No.17

Suit O/25/58
Court Notes
9th & 23rd
October 1958
continued

The Plaintiffs, should they succeed in this action, allege that they have a layout scheme for this land, which will be gravely jeopardised if the Defendants and those claiming through them, are not prevented from continuing building on the land.

10 It seems convenient in order to preserve the status quo, that the land should be left in its present condition until the issues between the parties are disposed of, at the earliest convenient date.

20 So far as the justice of the order is concerned, it is not for this Court to consider whether the Plaintiffs have made out a case for a perpetual injunction that is not the issue at this stage, it is sufficient that, as between the parties, there is a fair question to be decided, e.g. whether the possessory or usufructuary rights, if any, conferred on the Defendants by whatever title, can permit them to build on the land without the consent of the Plaintiff. (Kerr on Injunctions Chap 1 and Preston v Luck (1884) 27 Ch. D 505 and Challender v Royle (1887) 36 Ch D 25.

30 An injunction is granted against any further building on the land until this case is disposed of, if the Plaintiffs are not diligent in prosecuting this cause, this order may be reviewed.

As the Plaintiffs have been successful in this application, they are entitled to costs which I assess at £10.10/-.

(Sgd) Herbert Betuel

AG PUISNE JUDGE
23/10/58.

In the
High Court

No.18

Suit 0/25/58
Motion for
extension of
time to file
Statement of
Claim
21st October
1958

NO.18
MOTION FOR EXTENSION OF TIME TO
FILE STATEMENT OF CLAIM

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO. 0/25/58:

BETWEEN:

EUGENE N. NZEKWU, the
Omodi and Okpala &
Anor.

For themselves and on
behalf of the OGBO
(UMUASELE) Family of
Onitsha

10

Plaintiffs

AND

ANACHUNA NWAKOBI &
10 ORS.
The Osha of Obosi
The Oboli of Obosi

as representing them-
selves and all others
the people of Obosi.
Defendant.

MOTION ON NOTICE:

TAKE NOTICE that this Honourable Court will
be moved on Wednesday the 5th day of November,
1958, at 9 o'clock in the forenoon or so soon
thereafter as Counsel for the Plaintiffs in the
above-named suit can be heard for an Order of
Court granting extension of time within which
to file the Statement of Claim and Plans in the
said suit and for any further and/or other
order as to this Honourable Court may seem just.

20

Dated at Onitsha this 21st day of October,
1958.

30

(Sgd) M.O. Balonwu
PLAINTIFFS' SOLICITOR.

NO.19
AFFIDAVIT IN SUPPORT OF MOTION

In the
High Court

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

No.19

Suit 0/25/58
Affidavit in
Support of
Motion
22nd October
1958

SUIT NO.0/25/58:

BETWEEN:

10 EUGENE N. NZEKWU the For themselves and on
Omodi and Okpala & behalf of the OGBO
Anor. (UMUASELE) Family of
Onitsha
Plaintiffs.

AND

ANACHUNA NWAKOBI, as representing them-
& 10 ORS. selves and all others
The Osha of Obosi the people of Obosi
The Obosi of Obosi Defendants

AFFIDAVIT :

20 I, Eugene N. Nzekwu, Ibo, native of Onitsha,
resident at 44, Oguta Road, Onitsha, pensioner,
British Protected person make oath and say as
follows:-

1. That I am the first Plaintiff in the above-named suit.
2. That I have been authorised by the other Plaintiff to make this Affidavit on his and on my behalf.
- 30 3. That pleadings in the said suit were ordered on the 2nd day of August, 1958, and the Plaintiffs and Defendants were given 60 days and 60 days respectively for filing plans and Statements of Claim and Defence.
4. That the period allowed the Plaintiffs within which to file their plan and pleading

In the
High Court

No.19

Suit 0/25/58
Affidavit in
Support of
Motion
22nd October
1958
continued

expired on the 1st day of October, 1958.

- 5. That the Statement of Claim was ready in time but that the plans, after they had been prepared by the Surveyor, were sent by him to Enugu for countersignature by the Director of Surveys, and have not returned.
- 6. That I make this Affidavit to the best of my knowledge and belief and in support of the attached Motion.

(Sgd) E. N. Nzekwu
DEPONENT.

10

Sworn to at the High Court)
Registry, Onitsha this)
22nd day of October, 1958.)

BEFORE ME
(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

No.20

Suit 0/25/58
Motion for
Dismissal of
Suit
25th October
1958

NO.20

MOTION FOR DISMISSAL OF SUIT
IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

20

SUIT NO.0/25/28:

BETWEEN:

EUGENE N. NZEKWU, the Omodi and Okpala & Anr.	For themselves and on behalf of the Ogbo (Umuasele) Family of Onitsha
---	--

30

AND

ANACHUNA NWAKOBI & Others The Osha of Obosi Oboli of Obosi	As representing them- selves and all others the people of Obosi.
---	--

Application by the Defendants for the above
Suit to be dismissed for want of prosecu-
tion by the Plaintiffs for their failure to

file Statement of Claim as ordered by the Court on the 2nd August, 1958.

In the High Court

MOTION ON NOTICE:

No.20

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 5th day of November, 1958, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel or Defendants can be heard for an Order that the above-named suit be dismissed for want of possession.

Suit 0/25/58
Motion for Dismissal of Suit
25th October 1958
continued

10 Dated at Port Harcourt this 25th day of October, 1958.

(Sgd) T.O.C. Ojiako
for G.C.Nonyelu
SOLICITOR FOR DEFENDANTS
20 BERNARD STREET,
PORT HARCOURT.

NO.21

No.21

AFFIDAVIT IN SUPPORT OF MOTION
IN THE HIGH COURT OF THE EASTERN REGION OF THE
20 FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION
HOLDEN AT ONITSHA

Suit 0/25/58
Affidavit in Support of Motion
25th October 1958

SUIT NO.0/25/58:

BETWEEN:

EUGENE N. NZEKWU & Anr. For themselves and on the Omodi and Okpala behalf of the Ogbo (Umuasele) family of Onitsha

Plaintiffs

AND

30 ANACHUNA NWAKOBI & Ors.
the Osha of Obosi
the Oboli of Obosi

As representing themselves and all others the people of Obosi
Defendants

Application by the Defendants for the above suit to be dismissed for want of

In the
High Court

No.21

possession by the Plaintiffs for their failure to file Statement of Claim as ordered by the Court on the 2nd August, 1958.

Suit O/25/58
Affidavit in
Support of
Motion
25th October
1958
continued

A F F I D A V I T:

I, Anachuna Nwakobi, the Osha of Obosi, farmer, residing at Obosi British Protected Person, make oath and say as follows:-

1. That I am the 1st Defendant in the above suit.

2. That I am authorised by my co-defendants in the above Suit to swear to this Affidavit. 10

3. That the claim is as follows:-

"The Plaintiffs' claim against the Defendants is for:

(1) £5000 for damages for trespass on Plaintiffs' Ugborimili land.

(2) Recovery of possession of portion of Ugborimili land formerly known as C.D.C. site, now being built upon by the Defendants and their people inspite of several warnings. 20

(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."

4. That on 2nd August, 1958 pleadings were ordered for Statement of Claim to be filed by the Plaintiffs within 60 days and thereafter the Defendants to file Statement of Defence within 60 days. 30

5. That on enquiry from the Registry I was informed the Plaintiffs have not filed their Statement of Claim as ordered and I verily so believed.

6. That to the best of my knowledge no leave for

extension of time has been applied for.

7. That I make this Affidavit in support of Motion herewith filed.

Dated at Port Harcourt this 25th day of October 1958.

The contents of the foregoing affidavit having been first read over and interpreted to the illiterate deponent in Ibo language by me P.N.Onwukwuli Sworn Interpreter and in my opinion he appeared perfectly to understand the meaning and effect of same before making his right thumb Impression.

A. Nwakobi H.R.T.I.
DEPONENT

Sworn to at the High Court Registry, Onitsha this 27th day of October, 1958.

BEFORE ME,
(Sgd). Dom. A. Nwoche
COMMISSIONER FOR OATHS.

In the
High Court

No.21

Suit 0/25/58
Affidavit in
Support of
Motion
25th October
1958
continued

10

20

NO.22

COURT NOTES

WEDNESDAY THE 5TH DAY OF NOVEMBER, 1958:

IKPEAZU, BALONWU, ONYEJEKWE for Plaintiffs.

OJIAKO for Defendants

(1) Motion for extension of time.

(2) Motion suit be dismissed for want of prosecution.

OJIAKO: Not served with Motion. Withdraw 2nd Motion.

30

ORDER: Struck out.

IKPEAZU: Everything ready now.

ORDER:- Time within which to file Statement of Claim and plan extended 7 days from today with £7: 7/- costs to the Defendants.

(Sgd.) Herbert Betuel.
AG. PUISNE JUDGE.

No.22

Court Notes
5th November
1958

In the
High Court

NO.23

MOTION TO AMEND STATEMENT OF CLAIM

No.23

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

Suit 0/25/58
Motion to
Amend
Statement
of Claim
9th December
1958

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/25/58:

BETWEEN:

EUGENE N. NZEKWU the Omodi and Okpala & Anor.	For themselves and on behalf of the Ogbo (Umuasele) Family of Onitsha	10
	Plaintiffs	

AND

ANACHUNA NWAKOBI the Ocha and 9 Ors.	As representing them- selves and all others the people of Obosi.	Defendants.
--	--	-------------

MOTION ON NOTICE:

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 10th day of February, 1959, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiffs in the above suit can be heard for an Order of Court granting leave to the Plaintiffs to amend their Claim in the said Suit, and for any further and/or other order which to this Honourable Court may seem Just. 20

Dated at Onitsha this 9th day of December, 1958. 30

(Sgd) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

NO.24

AFFIDAVIT IN SUPPORT OF MOTION

In the
High Court

IN THE HIGH COURT OF THE EASTERN REGION OF THE

No.24

FEDERATION

Suit 0/25/58
Affidavit in
Support of
Motion
12th December
1958

IN THE HIGH COURT AT ONITSHA JUDICIAL

DIVISION

SUIT NO.0/25/58:

BETWEEN:

10 EUGENE N. NZEKWU the For themselves and on
Omodi and Okpala & behalf of the OGBO
Anor. (Umuasele) Family of
Onitsha

AND

ANACHUNA NWAKOBI the As representing them-
Osha & 8 Ors. selves and all others
the people of Obosi

AFFIDAVIT:

20 I, Eugene N. Nzekwu, Ibo, native of Onitsha,
resident at 44, Oguta Road, Onitsha, Pensioner,
British Protected Person, make Oath and say as
follows:-

1. That I am the first Plaintiff in the abovenamed suit.
2. That I have been authorised by the second Plaintiff and members of our OGBO (Umeasele) Family to make this affidavit on my and their behalf.
- 30 3. That before this Suit was commenced, my people sued certain individuals from Obosi who built on portions of Ugborimili land outside the C.D.C. site verged purple on the Plan filed by the Plaintiff in the present Suit.
4. That some of these suits are: Suit No.0/36/56; 0/35/56; 0/39/56; 0/37/56; 0/40/56; 0/31/56;

In the
High Court

No.24

Suit 0/25/58
Affidavit in
Support of
Motion
12th December
1958
continued

0/34/56; and 0/38/56.

5. That since the commencement of this suit, other persons, natives of Obosi, acting on the authority of the Ndichie and Land Council of Obosi, representatives and agents of Obosi people in all matters concerning land, have begun new buildings on various portions of Ugborimili land, including the portion outside the C.D.C. site aforementioned.

6. That as a result, I have been advised by my Solicitor, Mr. M.O. Balonwu, to amend the second paragraph of the Claim in this suit, so that all matters in controversy between the parties there- to may be completely and finally determined and all multiplicity of legal proceedings concerning any such matters avoided.

10

7. That I attach hereto a copy of the Amended Claim as proposed marked Annexure "A".

8. That I make this Affidavit to the best of my knowledge and belief and in support of the attached motion.

20

(Sgd). E.N.Nzekwu
DEPONENT

Sworn to at the High Court Registry,
Onitsha, this 12th day of Dec. 1958.)

BEFORE ME,

(Sgd.) Dom. A.Nwoche,
COMMISSIONER FOR OATHS.

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

30

SUIT NO.0/25/58.

IN THE HIGH COURT AT ONITSHA OF THE ONITSHA
JUDICIAL DIV.

BETWEEN:

EUGENE N. NZEKWU, & Anr. for themselves and on
the Omodi and Okpala behalf of the Ogbo
(Umuasele) family of
Onitsha Plaintiffs

A N D

ANACHUNA NWAKOBI, &
7 Ors.
the Osha of Obosi
the Oboli of Obosi

As representing them-
selves and all others
the people of Obosi
Defendants.

In the
High Court

No.24

AMENDED CLAIM:

The Plaintiffs' Claim against the Defendants
is for :-

Suit O/25/58
Affidavit in
Support of
Motion
12th December
1958
continued

1. £5,000 for damages for trespass on Plain-
tiffs' Ugborimili land.
- 10 2. Recovery of possession of Ugborimili land
now being built upon by the Defendants and
their people inspite of several warnings.
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 disposi-
tion of the said land.

(Sgd.) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

20 PLAINTIFFS' ADDRESS FOR SERVICE :

c/o Barrister M.O.Balonwu,
14, New America Road,
Onitsha.

DEFENDANTS' ADDRESS FOR SERVICE :

c/o Barrister Nonyelu;
20, Bernard Carr, Street,
Port Harcourt.

30 This is the Annexure "A" referred to in para-
graph 7 of the Affidavit sworn to by Eugene
N. Nzekwu, the Omodi and Okpala, on this 12th
day of December, 1958.

(Sgd.) Dom. A. Nwoche.

In the
High Court

NO.25
COURT NOTES

No.25
Suit 0/25/58
Court Notes
10th February
1959

TUESDAY THE 10TH DAY OF FEBRUARY, 1959:

SUIT NO. 0/25/58:

Adjourned 23/3/59 enable Plaintiffs to make their amendments in order and proper form.

Adjourned 23/3/59 enable this to be done.

(Sgd.) Herbert Betuel
PUISNE JUDGE
10/2/59.

10

No.26

NO.26

Suit 0/25/58
Statement of
Defence
10th December
1958

STATEMENT OF DEFENCE

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

ONITSHA JUDICIAL DIVISION

SUIT NO.0/25/58:

BETWEEN:

EUGENE N. NZEKWU, & Anor. For themselves and
the Omodi and Okpala on behalf of the
OGBO Family of
Onitsha
Plaintiffs

20

A N D

ANACHUNA NWAKOBI, & 7
Ors.
the Osha of Obosi As representing
& the Oboli of Obosi themselves and all
others the people
of Obosi
Defendants

30

STATEMENT OF DEFENCE

1. The Defendants admit paragraph 1, 2 and 3 of

Statement of Claim.

In the
High Court

No.26

Suit 0/25/58
Statement of
Defence
10th December
1958
continued

- 10 2. As regards paragraph 4 of the Statement of Claim, the 1st and 2nd Defendants only admit that the Plaintiffs are the radical owners of the land in dispute by virtue of the decision in Suit 0/3/49 but dispute the Plaintiffs have been in possession from time immemorial. The said Defendants say that they and the Obosis have been in possession from time imemorial, 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 either under Native Customary grant or by Deed No.72 of 1882 or both.
- 20 3. The 1st and 2nd Defendants deny paragraph 5 of Statement of Claim. They further assert that of any Obosi person paid rent, such payment was made under a mistake of facts the Plaintiffs having by virtue of Grant of No.72 sold all their rights in the aforesaid land to the Royal Niger Company. The said grant did not reserve to the Plaintiffs the right to put tenants on the land nor did it reserve as of right the right of the Plaintiffs to farm thereon.
- 30 4. In answer to paragraph 6 of Statement of Claim, the 1st and 2nd Defendants admit there are settlements called Ogbe Ukwu, Ogbe Warri, Umuolu. The said Defendants make no further admission. The said Defendants repeat materially paragraph 3 of statement of Defence supra.
5. The 1st and 2nd Defendants deny paragraph 7 of Statement of Claim. But they admit the existence of Umuezechima family in Obosi who are directly related to the Plaintiffs.
- 40 6. The 1st and 2nd Defendants admit paragraph 8 of the Statement of Claim.
7. The 1st and 2nd Defendants deny paragraph 9 of Statement of Claim. The 1st and 2nd Defendants will rely on the terms of the said grant No.72 of 1882.

In the
High Court

No.26

Suit O/25/58
Statement of
Defence
10th December
1958
continued

8. In answer to paragraph 10 of Statement of Claim, the 1st and 2nd Defendants say the Obosi were there before 1882 without let, or hindrance or payment of tribute. The said grant No.72 was and still is confirmatory of the state of affairs which existed before 1882, the Obosis being the only people farming, fishing and living and exercising other usufructuary rights.
9. The 1st and 2nd Defendants admit paragraph 11 of Statement of Claim. 10
10. As regards paragraph 12 of Statement of Claim the 1st and 2nd Defendants admit the agreement No.40 of 26th October, 1896 and no further.
11. The 1st and 2nd Defendants deny paragraph 13 of Statement of Claim.
12. As regards paragraphs 14 and 15 of Statement of Claim the 1st and 2nd Defendants admit 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 of Laws of Nigeria 1943 Edition and that the said agreements mentioned therein were referred to as Agreements Nos.40 and 72 respectively. 20
13. The 1st and 2nd Defendants deny paragraph 16 of Statement of Claim. If any Obosi person paid rent he paid under a mistake of facts and without the knowledge and consent of the Chiefs and Ndichies of Obosis. 30
14. As regards paragraphs 17, 18 and 19 of statement of Claim the 1st and 2nd Defendants dispute these judgments. They are res inter alios; made by Court without jurisdiction as at that time the land was crown land. They dispute that the Defendants in these judgments are Obosis.
15. The 1st and 2nd Defendants deny paragraph 20 of Statement of Claim. 40
16. The 1st and 2nd Defendants are not in a position to admit or deny paragraph 21 of the

Statement of Claim.

In the
High Court

No.26

Suit 0/25/58
Statement of
Defence
10th December
1958
continued

17. The Defendants deny paragraph 22 of Statement of Claim. The Obosis as a community have never paid tribute to the Plaintiffs. Such houses as there are were put up in exercise of their possessory rights.
18. As regards paragraph 23, the Defendants admit the existence of Suits 0/15/1944 and 0/16/1944 which were subsequently withdrawn by the Assistant Commissioner of Lands. The Defendants are not in a position to admit or deny that the said suits were initiated as a result of protests from the Plaintiffs.
19. The Defendants admit paragraphs 24, 25 and 26 of Statement of Claim. In the said suit 0/3/49 the Plaintiffs obtained judgment for the radical title injunction against possession was refused and the question of possession was left open for determination by the Court. The Defendants will found on the Privy Council judgment.
20. As regards paragraphs 27 and 28 of statement of claim, the scattered findings of facts enumerated therein and the interpretation placed on agreement 72 are irrelevant to these proceedings as the issue sought to be decided herein are different from the issues involved in 0/3/49.
21. The 1st and 2nd Defendants admit the existence of 0/31/56 but say the said matter is before the Federal Supreme Court on appeal and sub judice. Paragraphs 29, 30, 31 and 32 do not arise. Furthermore the suit is res inter alios.
22. As regards paragraphs 33, 34 and 35 of statement of claim the 1st and 2nd Defendants admit only the existence of Suit 0/71/1955 and makes no further admissions. The order was obtained in a special construction placed on the word in an estate in fee simple in possession.
23. As regards paragraph 36 of Statement of Claim vacant possession was given to the C.D.C. in

In the
High Court

No.26

Suit O/25/58
Statement of
Defence
10th December
1958
continued

exercise of and recognition by the Plaintiffs of 1st and 2nd Defendants possessory rights.

24. The 1st and 2nd Defendants say paragraph 37 of Statement of Claim does not arise and therefore does not call for any pleading. In any event the Privy Council O/3/49 have decided the issues raised in this paragraph.
25. The 1st and 2nd Defendants dispute paragraph 38 of Statement of Claim. The rights of the Defendants were preserved by agreement No.72 of 1882. 10
26. The 3rd, 4th, 5th, 6th, 7th and 8th Defendants deny paragraph 39 of Statement of Claim and say that except 5th Defendant they have no houses there. No.5 Defendant has a house before 1944 on the land.
27. The Defendants say the Plaintiffs are not entitled as claimed in paragraph 40 of statement of claim.
28. Save as is hereinbefore expressly admitted the Defendants deny each and every allegation in the Statement of Claim appearing as if the same were set out herein and traversed seriatim and will plead all legal and equitable defences which may be open to them and not herein expressly pleaded and in particular will plead: 20
- (1) Long possession.
 - (2) Agreement No.72 of 1882.
 - (3) Laches. 30
 - (4) Estoppel.
29. The Defendants deny paragraph 41 of statement of claim. Such buildings as there have been put up by Obosi people as of right.

Dated at Port Harcourt this 10th December, 1958.

(Sgd). G.C. Nonyelu
SOLICITOR FOR DEFENDANTS
20, Bernard Carr Street,
Port Harcourt.

NO.27

MOTION FOR AMENDMENT OF CLAIM

In the
High Court

No.27

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

Suit 0/25/58
Motion for
Amendment of
Claim

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

February
1959

HOLDEN AT ONITSHA

SUIT NO.0/25/58:

BETWEEN:

10 EUGENE N. NZEKWU & Anr. For themselves and on
the Omodi and Okpala behalf of the Ogbo
(Umuasele) of Onitsha
Plaintiffs

A N D

ANACHUNA NWAKOBI & 7 ORS. As representing them-
the Osha of Obosi & the selves and all others
Oboli of Obosi the people of Obosi
Defendants

MOTION ON NOTICE :

20 TAKE NOTICE that this Honourable Court will
be moved on Monday the 23rd day of March, 1959,
at the hour of 9 o'clock in the forenoon or so
soon thereafter as Counsel for the Plaintiffs in
the above suit can be heard for an Order of Court
granting leave to the Plaintiffs to amend their
Claim in the said Suit as set out in the Affi-
davit and annexure "A" and for any further and/or
other order which to this Honourable Court may
seem just.

30 Dated at Onitsha this day of February,
1959.

(Sgd.) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

In the
High Court

NO.28

AFFIDAVIT IN SUPPORT OF MOTION

No.28

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

Suit 0/25/58
Affidavit in
Support of
Motion
18th February
1959

IN THE HIGH COURT AT ONITSHA OF THE ONITSHA
JUDICIAL DIVISION
HOLDEN AT ONITSHA

SUIT NO. 0/25/58:

BETWEEN:

EUGENE N. NZEKWU & Anr. For themselves and 10
the Omodi and Okpala on behalf of the
Ogbo (Umuasele)
Family of Onitsha
Plaintiffs

A N D

ANACHUNA NWAKOBI & 7 Ors. As representing 20
the Osha of Obosi the themselves and
Oboli of Obosi all others the
people of Obosi
Defendants

AFFIDAVIT :

I, Eugene N. Nzekwu, Ibo, native of
Onitsha, resident at 44, Oguta Road, Onitsha,
Pensioner, British Protected Person, make oath
and say as follows:-

1. That I am the 1st Plaintiff in the above-named Suit.
2. That I have been authorised by the second Plaintiff and members of our OGBO (Umuasele) Family to make this Affidavit on my and their behalf. 30
3. That before this suit was commenced, my people sued certain individuals from Obosi who built on portions of Ugborimili land outside the C.D.C. site verged purple on the plan filed by the Plaintiffs in the

present Suit.

In the
High Court

No.28

4. That some of these Suits are: Suits Nos.
0/36/56 0/35/56; 0/39/56; 0/37/56;
0/40/56; 0/31/56; 0/34/56 and 0/38/56.

5. That when the above suit was commenced, the
Claim read as follows :-

Suit 0/25/58
Affidavit in
Support of
Motion
18th February
1959
continued

The Plaintiffs' claim against the Defendants
is for :-

10

"1. £5000 for damages for trespass on
" Plaintiffs' Ugborimili land.

"2. Recovery of possession of portion of
" Ugborimili land now being built upon by
" the Defendants and their people inspite
" of several warnings.

"3. Injunction to restrain the Defendants,
" their servants, and/or agents from inter-
" fering with the Plaintiffs' title,
" possession, rights of enjoyment and dis-
"p position of the said land.

20

Dated at Onitsha this 26th day of March,
1958.

6. That in July 1958 it was thought necessary
to define with precision the area in respect
of which recovery of possession was sought
and paragraph 2 of the claim was amended as
follows: "Recovery of possession of portion
of Ugborimili land formerly known as C.D.C.
site now being built upon by the Defendants
and their people inspite of several warnings."

30

7. That some six months or thereabouts since
the commencement of this suit, other persons,
natives of Obosi, acting on the authority of
the Ndichie and Land Council of Obosi, repre-
sentatives and agents of Obosi people in all
matters concerning land, have begun new
buildings on various portions of Ugborimili
land, including the portion outside the C.D.C.
site afore-mentioned.

40

8. That as a result, I have been advised by my
Solicitor Mr. M.O.Balonwu, to delete from

In the
High Court

No.28

Suit O/25/58
Affidavit in
Support of
Motion
18th February
1959
continued

the second paragraph of the Claim the words
"formerly known as C.D.C. site" and to amend
the second paragraph of the claim therefore
to read :-

"Recovery of Possession of portions of
"Ugborimili land now being built upon
"by the Defendants and their people in-
"spite of several warnings".

9. That I attach hereto a copy of the Amended
Claim as proposed marked Annexure "A".

10

10. That I make this Affidavit to the best of my
knowledge and belief and in support of the
attached Motion.

(Sgd.) E.N.Nzekwu
DEPONENT

SWORN to at the High Court Registry,
Onitsha this 18th day of February, }
1959.

BEFORE ME
(Sgd.) Dom. A. Nwoche
COMMISSIONER FOR OATHS

20

ANNEXURE "A"

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

IN THE HIGH COURT OF ONITSHA OF THE ONITSHA
JUDICIAL DIVISION

SUIT NO. O/25/58:

BETWEEN:

EUGENE N. NZEKWU & Anor. For themselves and
the Omodi and Okpala on behalf of the
OGBO (Umuasele)
Family of Onitsha.
Plaintiffs

30

A N D

ANACHUNA NWAKOBI & 7 Ors. As representing
the Osha of Obosi themselves and all
the Oboli of Obosi others the people
of Obosi
Defendants.

AMENDED CLAIM

40

The Plaintiffs' claim against the Defendants is

for:

In the
High Court

No.28

Suit O/25/58
Affidavit in
Support of
Motion
18th February
1959
continued

1. £5000 damages for trespass on Plaintiffs' Ugborimili land.
2. Recovery of possession of Ugborimili land now being built upon by the Defendants and their people inspite of several warnings.
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.

10

(Sgd.) M.O.Balonwu
PLAINTIFFS' SOLICITOR.

This is the Annexure "A" referred to in paragraph 9 of the Affidavit sworn to by Eugene N.Nzekwu, the Omodi and Okpala on the 18th day of February, 1959.

(Sgd.) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

NO.29

No.29

COURT NOTES

Suit O/25/58
Court Notes
23rd March
1959

SUIT NO.0/25/58:

20

BETWEEN:

EUGENE N. NZEKWU & ANR.	Plaintiffs
AND	
ANACHUNA NWAKOBI & 7 ORS.	Defendants

IKPEAZU and AGBU for Plaintiffs

OFFIAH for Nonyelu for Defendants

Application to amend claim i.e.

Motion to amend amended claim "Strike Out Words"
C.D.C. site in para.2.

30

Motion not opposed.

Order as prayed. Amended claim as amended to be treated as the claim.

(Sgd.) Herbert Betuel

PUISNE JUDGE
23/3/59.

In the
High Court

NO.30

No.30

Suit 0/25/58
Supplemental
Order of
Interim
Injunction
15th June 1959

SUPPLEMENTAL ORDER OF INTERIM INJUNCTION
IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

SUIT NO.0/25/58:

BETWEEN:

E.N.NZEKWU & ANOR for OGBO (UMUASELE)
FAMILY of Onitsha Plaintiffs 10

AND

ANACHUNA NWAKOBI & ORS. for Obosi people
Defendants.

ORDER OF INTERIM INJUNCTION OVER
UGBORIMILI LAND:

Pursuant to the Order of Injunction granted by
this Court on the 23rd day of October, 1958m to
the Plaintiffs of OGBO (UMUASELE) Family of Onit-
sha against the Obosi people, Defendants in the
above suit, in the following terms, to wit: 20

"An Order of Court granting an Interim Injunc-
"tion in the above-named suit against the De-
"fendants and their people of Obosi-restraining
"them from building on the Ugborimili land in
"dispute, from digging pits thereon, and from
"committing any other act of waste thereon
"until this case is disposed of";

AND IN ORDER to secure the observance and en-
forcement of the said ORDER

IT IS HEREBY directed that the Plaintiffs of 30
OGBO (UMUASELE) Family of Onitsha be given police
assistance in all manner and at all times necess-
ary so as to apprehend and bring to justice all
persons who in any way whatsoever are found act-
ing in contravention of the aforesaid ORDER.

DATED at Onitsha this 15th day of June,1959.

(Sgd.) J.Reynolds
JUDGE.

NO.31
CLAIM, SUIT 0/32/58

-In the -
High Court

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

No.31

Suit 0/32/58
Claim
14th April 1958

SUIT NO.0/32/58:

BETWEEN:

10

ANACHUNA NWAKOBI & ANOR. the Osha of Obosi
the Oboli of Obosi
representing themselves and all others the
people of Obosi ... Plaintiffs

A N D

PHILIP ANATOGU & ANOR. representing them-
selves and all others the Ogbo Family of
Umuasele Onitsha ... Defendants

C L A I M :

The Plaintiffs claim:

20

- (1) A Declaration that they are entitled to possession and use of the land known and called "UGBORIMILI" situate in the Onitsha Judicial Division 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.
- (2) Injunction to restrain the Defendants, their agents and servants from interfering with their rights above-mentioned.

30

Dated at Port Harcourt this 14th day of April, 1958.

(Sgd.) G.C.Nonyelu
SOLICITOR FOR PLAINTIFFS
20 Bernard Carr Street,
Port Harcourt.

In the
High Court

NO.32
CIVIL SUMMONS

No.32
Suit O/32/58
Civil
Summons
1st May 1958

IN THE SUPREME COURT OF NIGERIA

BOOK NO
U 93

CIVIL SUMMONS

U 9249:

SUIT NO. O/32/58

BETWEEN:

ANACHUNA NWAKOBI & ANOR. Plaintiffs

AND

PHILIP ANATOGU & ANOR. Defendants

10

To Philip Anatogu & Anor of Ogbo Family, Onitsha.

You are hereby commanded in His Majesty's name to attend this Court at Onitsha on Monday the 26th day of July, 1958, at 9 o'clock in the forenoon to answer a suit by Anachuna Nwakobi & Anor of Obosi, against you.

The Plaintiffs claim

(1) A declaration that they are entitled to possession and use of the land known and called "UGBORIMILI" situate in the Onitsha Judicial Division 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.

20

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

(As per particulars of claim attached)

Issued at Onitsha the 1st day of May, 1958.

30

(Sgd.) H.J.Hughes
JUDGE

TAKE NOTE :- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

NO.33
COURT NOTES

In the
High Court

MONDAY THE 26TH DAY OF MAY, 1958:

No.33

SUIT NO.0/32/58:

Suit 0/32/58
Court Notes
26th May 1958

Nonyelu for Plaintiffs

IKPEAZU and BALONWU for Defendants

ORDER:- Statement of Claim and plan within 90 days;

Statement of Defence 90 days thereafter.

(Sgd.) Herbert Betuel
AG.PUISNE JUDGE
26/5/58

10

NO.34

MOTION TO SUE IN REPRESENTATIVE
CAPACITY

No.34
Suit 0/32/58
Motion to sue
in represent-
ative capacity
12th June 1958

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

SUIT NO.0/32/58:

20 BETWEEN:-

1. ANACHUNA NWAKOBI, The Osha of Obosi
2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
representing themselves and all
others the people of Obosi Plaintiffs.

AND

1. PHILLIP ANATOGU
2. EUGENE NZEKWU representing themselves and
all others the Ogbo Family of Umuasele
Defendants.

30

MOTION EX PARTE :

TAKE NOTICE that this Honourable Court will
be moved under Order IV Rule 3 of the High Court
Law 1955, on Saturday the 2nd day of August,1958,

In the
High Court

No.34

Suit 0/32/58
Motion to sue
in represent-
ative capacity
12th June 1958
continued

at the hour of 9 o'clock in the forenoon or
so soon thereafter as the Plaintiffs or Counsel
on their behalf can be heard by Counsel for an
order:

- (a) To sue in a Representative Capacity
as the persons representing the
people of Obosi.
- (b) Any further order or orders.

Dated at Onitsha this 12th day of June,
1958.

10

(Sgd.) G.C.Nonyelu
SOLICITOR FOR PLAINTIFFS,
20 Bernard Carr Street,
Port Harcourt.

No.35

Suit 0/32/58
Affidavit in
Support of
Motion
12th June 1958

NO.35

AFFIDAVIT IN SUPPORT OF MOTION
IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

20

SUIT NO. 0/32/58

BETWEEN:

- 1. ANACHUNA NWAKOBI, The Osha of Obosi
- 2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
representing themselves and all others
the people of Obosi ... Plaintiffs

AND

- 1. PHILLIP ANATOGU
- 2. EUGENE NZEKWU representing themselves
and all others the Ogbo Family of
Umuasele Onitsha ... Defendants

30

AFFIDAVIT IN SUPPORT OF MOTION

We, Anachuna Nwakobi, and Ikefuna Onwugbolu,

farmers of Obosi in Onitsha Division, British Protected Person make Oath and say as follows:-

In the
High Court

No.35

Suit 0/32/58
Affidavit in
Support of
Motion
12th June 1958
continued

1. That we are the Plaintiffs in the above action and titled men of the Obosi Community.
2. That we are authorised by our people as in the list hereto attached and marked annexure 1 to sue on our behalf and their behalf and to so represent them.
- 10 3. That we are the fit and proper persons to represent our people.
4. That we make this Affidavit in support of motion herewith filed.

Dated at Onitsha this 12th day of June, 1958.

1. Anachuna Nwakobi H.R.T.I.
2. Ikefuna Onwugbolu H.R.T.I.

20 The contents of the foregoing Affidavit having been first read over and interpreted to the illiterate deponents in Ibo language by me P.N. Onnukwudili (Sworn Interpreter) and in my opinion they appeared perfectly to understand the meaning and effect of same before making their right thumb impressions thereto.

Sworn to at the High Court Registry,
Onitsha, this 28th day of July, 1958.

BEFORE ME
(Sgd) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

30 This is Annexure "1" referred to in paragraph 2 of the Affidavit sworn by A. Nwakobi and I. Onwugbolu, this 28th of July, 1958.

BEFORE ME
(Sgd.) Dom. A. Nwoche
COMMISSIONER FOR OATHS.

In the
High Court

AUTHORITY TO SUE IN A REPRESENTATIVE
CAPACITY :

No.35

SUIT NO.0/32/58

Suit 0/32/58
Affidavit in
Support of
Motion
12th June 1958
continued

ANACHUNA NWAKOBI & ANOR. V. PHILLIP
ANATOGU & ANOR.

We the undersigned principal men of the
Obosi Town do hereby authorise (1) Anachuna Nwak-
obi (2) Ikefuna Onwugbolu to bring the above
action for and on behalf of the people of Obosi
Town.

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We do hereby undertake to be bound by any
decision to be reached by the Court in the said
case whether as to the substance of the action,
costs or otherwise.

Dated at Onitsha this 12th day of June,
1958.

S I G N A T U R E

Nwosu Igwe H.R.T.I. (1)
D.I.Uyamalu " (2)
Obidike Onowu " (3)
Obumsele Aje " (4)
Ngbakogu Onya " (5)

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The foregoing was read over to the signatories
and interpreted to them in Ibo language by me
P.N.Onukwuli and expressed themselves as fully
understanding the same before affixing their
thumb impressions.

BEFORE ME

(Sgd). Dom. A. Nwoche
COMMISSIONER FOR OATHS.

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NO.36
STATEMENT OF CLAIM, SUIT 0/32/58.

In the
High Court

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA
ONITSHA JUDICIAL DIVISION

No.36

Suit 0/32/58
Statement of
Claim
8th August 1958

SUIT NO. 0/32/58

BETWEEN:

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- 1. ANACHUNA NWAKOBI, The Osha of Obosi
- 2. IKEFUNA ONWUGBOLU, The Oboli of Obosi
representing themselves and all others
the people of Obosi PLAINTIFFS

A N D

- 1. PHILLIP ANATOGU
- 2. EUGENE NZEKWU representing themselves
and all others the Ogbo Family of
Umuasele Onitsha ... DEFENDANTS

STATEMENT OF CLAIM

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- 1. The Plaintiffs are natives of Obosi and bring this action with the authority and consent of the Obosi people the approval to so sue and represent them having been given by this Honourable Court on 2nd August, 1958.

The Defendants are natives of Onitsha of the Ogbo Family of Umuassele and are sued as representing themselves and all others the members of the aforesaid family.

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- 2. The land the subject matter of this dispute is situate along the River Niger and form part of the land granted to the Royal Niger Company in 1882 and 1896 under Agreement Nos.72 and 40 and also was the subject of Suit No.0/3/1949 which ultimately called for decision of the Privy Council.

- 3. The said land has from time immemorial and

In the
High Court

No.36

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Statement of
Claim
8th August 1958
continued

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 River around it undisturbed either by the Defendants' ancestors or by the Royal Niger Company to whom the land was granted by the Defendants' ancestors Orikagbo in 1882 by deed of grant No.72 without payment of tribute either to the Defendants or Royal Niger Company.

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4. These said rights were exercised either under Native Customary grant or by virtue of agreement No.72 or both.
5. The said deed of grant No.72 will be founded upon.
6. Between 1882 and 1949 the Plaintiffs had no more rights over the said land by virtue of the said agreement No.72 having under that agreement sold their rights over the said land to the Royal Niger Company but reserving unto the Defendants and their ancestors the possessory usufructuary and piscary rights thereon. 20
7. 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 a Vesting Order, the portion so abandoned being the subject matter of this dispute and that of O/3/1949 and which as to area, extent and dimension is more particularly delineated and edged Pink South of the Green Line in plan EC 14/49 of 15/4/49 and filed in Suit O/3/49. All the land claimed by the Plaintiffs are verged Yellow in the aforesaid plan. 30
8. Between 1920 and 1948, the Defendants started asserting their rights over the whole of the area verged Pink both North and South of the Green line and started demanding tributes from the Plaintiffs which said demands the Plaintiffs have refused to recognise. 40

9. In 1949 as a result of the Government's abandonment of the area in dispute the Defendants sued the Plaintiffs in suit O/3/1949 for:

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

Suit O/32/58
Statement of
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8th August 1958
continued

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

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10. By virtue of the aforesaid suit the Privy Council on appeal by the Plaintiffs awarded the Radical title to the Defendants and left the question of possession and other usufructuary rights open. The said suit in particular the Privy Council judgment will be founded upon.

11. Before the aforesaid Vesting Order referred to in paragraph 10 above, the Crown sued some Obosi inhabitants in Suits Nos. O/15 of 1944 and O/16 of 1944 and later discontinued them in 1947 and 1945 respectively. The area involved is the area covered by Agreement No.72. The said suits will be founded upon.

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12. Before and after the suits referred to in paragraph 11 above the Defendants in those suits and the Obosis have been in possession of the various portions within the area in dispute undisturbed by the Defendants or any other person without payment of tribute either to the Defendants or the Crown.

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13. The Plaintiffs contend that the Defendants 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 have been so long that the Defendants must be deemed to have acquiesced in it either directly or by virtue of the acquiescence of the RNC. and the Crown ultimately, the divesting Order of 1948 notwithstanding.

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14. Since the said Privy Council judgment, the Defendants have molested the Plaintiffs, disturbed

In the
High Court

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Statement of
Claim
8th August 1958
continued

their piscary and usufructuary rights selling out portions of the land without reservations and regard to Plaintiffs' possession and use of the land and threaten to so continue unless restrained from so doing.

15. Wherefore the Plaintiffs claim:

(1) A declaration that they are entitled to possession and use of the land known and called "UGBORIMILI" situate in the Onitsha Judicial Division 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.

Dated at Port Harcourt this 8th day of August, 1958.

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(Sgd.) G.C.Nonyelu
SOLICITOR FOR PLAINTIFFS
20, BERNARD CARR STREET,
PORT HARCOURT.

No.37

Suit 0/32/58
Statement of
Defence
(Undated)

NO.37

STATEMENT OF DEFENCE, SUIT 0/32/58

IN THE HIGH COURT OF THE EASTERN REGION OF

THE FEDERATION OF NIGERIA

IN THE HIGH COURT AT ONITSHA OF THE ONITSHA

JUDICIAL DIVISION

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SUIT NO.0/32/58

BETWEEN:

1. ANA-CHUNA NWAKOBI, The Osha of Obosi
2. IKEFUNA ONWUGBOLU, The Oboli of Obosi representing themselves and all others the people of Obosi ... Plaintiffs.

A N D

1. PHILLIP ANATOGU
 2. EUGENE NZEKWU representing themselves
 and all others the Ogbo Family of
 Umuasele Onitsha ... Defendants.

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 High Court

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STATEMENT OF DEFENCE

Suit 0/32/58
 Statement of
 Defence
 (Undated)
 continued

- 10 1. The Defendants do not deny paragraphs 1, 2,
 7, 9, and 10 of the Statement of Claim.
2. The Defendants vigorously deny paragraphs 3,
 4, 5, 6, 8, 12 and 13 of the Statement of
 Claim and will put the Plaintiffs to the
 strictest proof of every material allegation
 of fact therein contained.
- 20 3. In further answer to the aforesaid paragraphs,
 the Defendants say that they are from time
 immemorial the owners in possession of the
 land known as, and called, UGBORIMILI land,
 situate in Onitsha, and lying between Otumoye
 creek and Idemili stream, and more particular-
 ly shown delineated and edged pink on the
 plan to be filed in Court with this Statement
 of Defence, the Defendants' ancestor OGBO be-
 ing the first person to occupy the said land.
- 30 4. As owners aforesaid, the OGBO (Defendants')
 family occupied the said land by themselves
 and their tenants for farming purposes, with-
 out interference from anybody. They have
 now and again put various individuals from
 Obosi to farm upon the land in dispute on pay-
 ment of yearly tribute in accordance with
 Onitsha Native law and custom.
- 40 5. Besides persons from Obosi, the Defendants'
 people have been putting other persons on the
 said land. They have been putting Ijaws who
 fish along the bank of the Niger, and pay
 their rent to the Defendants' family. They
 have also put Aboh tenants on the said land,
 and some of these have founded a settlement
 thereon called the OGBO OKWU settlement.
 These also pay rent to the Defendants' Family.
 Other tenants include the OGBO WARRI and
 UMUOLU tenants.

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Statement of
Defence
(Undated)
continued

6. The Obosi people whom the Defendants' people permitted to build each a dwelling house on the land are only 4 in number, and they are Umuezechima people, who are related to Defendants, but were domiciled at Obosi. They were Anah Akalue, Okafor Kwochaka, Obiefuna Nwabunie, and Ikejiofor Ezeakudo.
7. In 1882, Orikagbue, an ancestor of the Defendants, granted the said land to the National African Company, Limited, and the said Company set up thereon a trading station known as "Abutshi" Station". The said grant was referred to in a certificate made by one Edward Hyde Hewott, a British Consul on board H.M.S. "Alecto", on the 8th October, 1884. 10
8. By the said grant Orikagbue reserved to his (i.e. Defendants') Family the right (a) to farm on the land in dispute and (b) to permit "Abutshi people" i.e. people living at Otu Obosi" to farm thereon, and to fish from those parts of the bank not occupied by the Company. The said "Abutshi people" comprised those 4 Obosi people referred to in paragraph 6 hereof as well as Ijaw and other tenants of the Defendants. 20
9. By the said grant the company entered into possession of the said land, opened a trading station thereon as aforesaid. The Obosi and other tenants of the Defendants' Family continued, with the latter's permission, to farm on the land and to pay the customary tribute as before. The trading station opened by the company is still on the said land. 30
10. Subsequent to the said grant the said National African Company became merged into another Company known as Royal Niger Company Chartered and Limited.
11. On the 26th of October, 1896, the said Orikagbue and other members of Ogbo (Defendants) Family, on behalf of the said Family, entered into an agreement with the Royal Niger Company whereby they sold to the Company all private rights of every kind not already possessed by the Company in a portion of the land now in dispute comprised in the grant of 1882 afore- 40

said, that is to say, between the Ndende Creek on the North and the Idemiro on the South, and extending inland 500 yards from the River Niger. This land was included in the former grant of 1882.

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Defence
(Undated)
continued

- 10 12. By the said agreement of 1896 the Company agreed not to disturb the four Obosi tenants of the Defendants referred to in paragraph 6 above, as well as their Ijaw, Umuolu, Ogbe Ukwa and Ogbe Warri tenants.
- 20 13. In 1916, the Government of Nigeria passed the Niger Lands Transfer (Protectorate) Ordinance. At that time, the Royal Niger Company Chartered and Limited had become known as the Royal Niger Company Limited. By the said Ordinance the land and rights specified or referred to in the Certificate of 8th October, 1884, in paragraph 7 above, and in the Agreement of 6th October, 1896, referred to in paragraph 11 above, belonging to the Royal Niger Company became vested as from 1st January, 1900, in the Governor in trust for His Majesty, his heirs and successors upon and subject to the terms and condition contained or referred to in the said certificate and agreement, the company reserving for itself a small portion thereof which has since remained in the possession of the Company and its successors until today.
- 30 14. In the 1st Schedule to the said Ordinance, the Certificate of 8th October, 1884, was referred to as Agreement No.72 and the Agreement of 6th October, 1896 was referred to as Agreement No.40. The Agreement and Certificate will hereafter be referred to as Agreements Nos.40 and 72 respectively, and will be founded upon by the Defendants.
- 40 15. As had been the case before Agreements Nos.40 and 72 were made, and in accordance also with the reservations in the said agreements, the Obosi tenants of the Defendants' family continued to farm the land in dispute, and to pay the customary tributes, and whenever they failed to pay, the Defendants' (Ogbo) Family have successfully sued them in court and recovered the equivalent in money.

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Suit 0/32/58
Statement of
Defence
(Undated)
continued

16. In Onitsha Native Court Case No.270:
Chukwuemeka of Ogbo Family of Umuasele sued
Oseloka of Obosi tenant of Ogbo Umuasele
Family, for failing to pay rent for farming
an Ani Olu, a part of Ugbo-Orimili land,
and he obtained judgment to the effect that
the said Oseloka should pay him £15 and
quit the land, in accordance with the native
law and custom. The Defendants will
found upon this suit at the hearing. 10
17. In Onitsha Native Court Case No.269, the
aforesaid Chukwuemeka of Ogbo Family of
Umuasele, sued Anah and 20 others of Obosi
for recovery of rent and Injunction to re-
strain the Defendants from using the Ugbori-
mili land and succeeded. The Defendants
Will found upon this Suit at the hearing.
18. In Onitsha Native Court Case No. 101/28 and
103/28, Ndeguba Okagbue of the Defendants'
Family sued one Nwameze and two others of 20
Obosi, claiming (1) £50 damages for trespass
by building houses, farming on the said land
without the consent of the owner since one
year, obtained judgment and an order re-
straining the then Defendants of Obosi from
farming on the land unless permission was
obtained from the then Plaintiffs' Family.
The Defendants will found upon this suit
also at the hearing.
19. The Obosi tenants of the Defendants had al- 30
ways recognised the Defendants as their Land-
lords until about 1934, when Chief J.M.Kodi-
linye, the then head of Obosi people, as a
result of land dispute between him and other
families of Onitsha, encouraged some of
tenants not to continue paying on the ground
that the land was Crown land.
20. The Defendants made representations to the 40
Government, and were informed that the
Government did not recognise their right to
collect rents, but that the whole question
of Niger Lands including the land in dispute
were being reconsidered. As a result of the
said letter from the Government the Defend-
ants' people took no further action against
the Obosi people.

- In the
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Statement of
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(Undated)
continued
- 10 21. From 1934, until December, 1948, when the Crown finally withdrew from the said land, the Government was still reconsidering the matter, and showed no apparent interest in the land with the result that the Plaintiffs and their people of Obosi, taking advantage of that position, entered on the land in large numbers and erected buildings thereon, claimed the land as their own, and refused to pay further rents to the Defendants or to recognise them as their landlords as they had done in the past.
22. Owing to continued protests to the Government, in 1944 the Assistant Commissioner of Lands sued one Ikebuife Nwajiaku and 55 others as well as one J.O. Mozie and J.I. Nwogem for recovery of possession of the Crown Land, including the said land, occupied by them in suits Nos. 0/15/1944 and 0/16/1944 respectively.
- 20 23. By an Order dated the 11th day of December, 1948, the Crown abandoned portion of the land originally granted to the National African Company, and vested in the Crown by the Niger Lands Transfer Ordinance as aforesaid, and retaining a portion for itself. The portion abandoned is the subject matter of this action.
- 30 24. Subsequently, the said abandoned portion became the subject matter of dispute between the Defendants and the Plaintiffs people of Obosi in Suit No.0/3/49 and judgment was given for the Defendants' family.
25. The Plaintiffs' people of Obosi appealed to the then West African Court of Appeal from the decision of the then Supreme Court in Suit No. 0/3/49, and subsequently from the decision of the West African Court of Appeal to Her Majesty's Privy Council, and the Appeal in each case was dismissed.
- 40 26. In Suit No. 0/3/49, the Court made the following findings of fact, to wit: (a) "So even in 1884, Obosi people and others living at "Otu Obosi" were regarded as on the land with the consent of the OGBO Family whose representatives confirm Ex. "53" and signed Ex. "54". (b) "The Plaintiffs have also been paid and are

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Statement of
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(Undated)
continued

still being paid rent by other people on the area in dispute i.e., the OGBO UKWU people; their settlement is West of Exh. "10", on the Niger's bank, just below the green-line"; (c) That Plaintiffs have proved acts of ownership extending over a long period over the Southern area by receiving rents and granting leases or rights of occupancy"; (d) "The Defendants say that the Plaintiffs have allowed them to occupy the land in dispute over a period of many years and they should not now be disturbed. Nothing can be further from the truth. The Plaintiffs have certainly been aware of the Defendants' squatting occupation but they have never acquiesced in it for a moment; (e) "The Obosi people have been making a nuisance of themselves to their neighbours for a number of years. They have litigated frequently and have always lost. There is obstruction and refusal by them to pay tribute to anyone. The motive is greed". These findings of fact will be founded upon by the Plaintiffs at the hearing.

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27. The Defendants further say that the Agreement No.72 referred to in paragraphs 2, 3, 4, 5, and 6 of the Statement of Claim and the expression "Abutshi people" contained therein, had fallen for interpretation in Suit No. 0/3/49 aforementioned and the Learned trial judge in that suit found as follows:-

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(a) It is very important and very significant that when Exh.53 (meaning Agreement No.72) was drawn up there was an express stipulation that the "Abutshi" people, that is people living at "Otu Obosi" might be allowed to continue to FARM the land and fish from those parts of the bank not occupied by the Company. (b) The Plaintiffs (that is, the present Defendants' family) received their rents as owners as their rights over tenants are expressly reserved in Exh.53 (meaning Agreement No.72)". The Defendants will found on this interpretation and finding at the hearing of this Suit and will contend that the Obosi people are estopped from putting any other interpretation on the said Agreement No.72 and on the term "Abutshi" people contained therein.

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28. In Suit No. 0/31/1956 the present Defendants

sued one Isaac Maduegbunam Ichu of Obosi in respect of a portion of the land now in dispute, claiming as follows:-

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Statement of
Defence
(Undated)
continued

"1. Recovery of possession from Defendant of portion of Plaintiffs' land in Ugborimili situate in Onitsha in the Onitsha Division.

"2. Order of Court for the demolition of the Defendant's buildings on the said portion of land.

"3. An injunction to restrain the Defendants his servant, and/or agents from interfering with the Plaintiffs ownership and possession of the said portion of land."

29. The Defendant in the said Suit No.0/31/56 fought the case with the support of the Obosi people, and put forward as his defence:
- (a) that the obosi as such have been in possession of the land all these years and that their rights to farm and fish were preserved in 1882 and 1896, that is, referring to Agreements Nos. 40 and 72; (b) That the Obosi have built on the land to the knowledge of the present Defendants' family ever since the Niger Company and the Crown were in possession of the land and as such the present Defendants' family must be deemed to have acquiesced in such buildings, and in the case of the Defendant Isaac Maduegbunam Ichu, in his building which was at any rate before 1948; (c) That as an Obosi man he (the Defendant) was entitled under Agreements Nos.40 and 72 to farm on the land and fish from the banks of the River Niger and to continue in occupation of the land or house as set out in the said Agreements; (d) that the said agreements make no provision for the payment of rent or tribute; (e) that no rent or tribute was at any time payable in respect of this land, and if any such rent was payable at all, it was not payable to the present Defendants family.
30. In the said Suit 0/31/1956 the Court found the following: facts, that is to say: (a) That the Defendant of Obosi built on the land in dispute in 1942, without the permission of

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Statement of
Defence
(Undated)
continued

anyone, in the mistaken belief that it was Obosi land and with the support of Obosi people: (b) That there was neither laches nor acquiescence either on the part of OGBO Family of Umuasele or on the part of the Crown; (c) that before the abandonment of the land by the Crown in 1948, the OGBO Family of Umuasele had continued to exercise their acts of ownership on the land, acting on the conditions set out in Agreements Nos. 40 and 72, by putting stranger communities on the land and taking rent of 40/- from them; (d) That the Obosis paid rents to the said family for farming on the land in dispute; (e) That only 4 (four) Obosi persons were permitted to build thereon; (f) That the Obosis refused to pay rents to the OGBO (Umuasele) Family from 1928 to 1934 at the instigation of Chief Kodilinye; (g) That the Obosis Defendant fought the case with the active support of the Obosis people; (h) That the Obosi Defendant had not by himself or through his Obosi people acquired any right to the land in dispute either by laches, acquiescence, or under any native law and custom vis-a-vis the Ogbo Family.

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31. The Court then delivered its judgment in the said suit No. 0/31/1956 on the 14th day of August, 1957, and granted to the present Defendants' family both the Recovery of Possession and Injunction sought.

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32. On the 7th day of April, 1952, both the Obosi people (Plaintiffs here) and the OGBO family of Umuasele (Defendants) entered into an agreement with the Colonial Development Corporation, in respect of 240 acres of the UGBORIMILI land in dispute (shown bordered purple on Defendants' plan, whereby it was agreed that whoever succeeded in establishing ownership of the land in Suit No. 0/3/49 aforementioned, OGBO family or Obosis, described in the agreement as "an estate in fee simple in possession", would grant a lease of it to the said Corporation and shall be entitled to the rent accruing therefrom. As has been said in paragraph 24 and 25 hereof, the OGBO family were successful in obtaining a declaration of title at the trial

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of the said suit No.0/3/49 before Manson J., and the learned judge's decision was upheld on appeals to the West African Court of Appeal (as the Appellate Court of Nigeria was then known) and to the Judicial Committee of the Privy Council.

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Statement of
Defence
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continued

10 33. In Suit No. 0/71/1955 the OGBO family obtained a Court's Order for the payment to them of the sum of £4,320 being the amount of the accumulated rent deposited by the Colonial Development Corporation as rent for the land in the Bank of British West Africa, pursuance of the aforesaid Agreement. The area of the land in dispute affected by this agreement is verged purple on the Defendants' plan.

20 34. The Obosis were dissatisfied with this Order, and appealed to the Federal Supreme Court, Lagos, in Suit No. F.S.C. 189/56. The Federal Supreme Court construed the aforesaid agreement of 7th April, 1952, and gave judgment for the present Defendants' (OGBO) family, concluding as follows:-

(a) That in being successful in Suit No. 0/3/49, and in subsequent appeals, culminating in the appeal to the Judicial Committee of the Privy Council, the present Defendants' (OGBO) family have obtained "an absolute title to the land in dispute under Native Customary Law."

30 (b) That the present Defendants' family have, therefore, the right to grant the lease of the said land to the said Corporation, and were, as a result, entitled to the accumulated rent of £4,320.

40 The present Defendants' family Will found on this suit No. F.S.C. 189/56 and will at the hearing contend that the Plaintiffs are estopped from putting any other construction on the said agreement of 7th April 1952, and from claiming any other rights in the land than one of Absolute title which they lost in Suit No.0/3/49 and subsequent appeals.

35. The Defendants also say that before the Colonial Development Corporation entered into

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Statement of
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(Undated)
continued

- possession of the area verged purple which was granted to them under the above agreement, all the Obosi huts therein were all demolished, and vacant possession was given them by both the Defendants' and Plaintiffs' people.
36. The Plaintiffs' people have by various acts denied the title of the Defendants' family to the land in dispute, to wit:
- (a) By fighting the title case against the present Defendants in Suit No. 0/3/49; 10
- (b) By entering into agreement with the Colonial Development Corporation.
- (c) By disposing of portions of the land in dispute to non-Obosis.
37. The Defendants deny paragraph 14 of the Statement of Claim and say that the Plaintiffs have no other rights in the land than that of absolute title which they asserted and lost in Suit No. 0/3/49. By paragraphs 5, 7, 8, 9, 17, and 19 of their Statement of Defence in the said suit, the present Plaintiffs averred as follows: 20
- (1) That they were the owners of the land in dispute from time immemorial and have been exercising all the rights of ownership and are in possession thereof until this day.
- (2) That Orikagbue, who made the grant to the Company in 1882 and 1896, was an Obosi man, and he contracted for himself and the Obosi people. 30
- (3) That the Obosi people occupied the land at the time of Orikagbue as owners, and not as tenants.
- (4) That the Obosi people, not being tenants of the present Defendants' Family, did not pay them (Defendants) tribute for their holdings.
- (5) That when the Nigerian Government abandoned the land in dispute in 1948, it reverted to the Obosi people as the original 40

owners thereof, and not to the Ogbo (Umuasele) Family.

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Suit 0/32/58
Statement of
Defence
(Undated)
continued

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(6) That they (the Obosi people) had been in possession of the land in dispute before the advent of the Royal Niger Company and the Onitsha people, and are still on the land in their own rights. Thus the Obosi rights on the land could never have arisen by any reservations made in the grant made by the Onitsha (present Defendants') people.

The Defendants attach hereto the Statements of Claim and Defence in Suit 0/3/49 and will, therefore, contend that the Plaintiffs' claim is speculative, and that the Plaintiffs are estopped from relying on the agreements Nos.40 and 72 aforementioned so as to claim any rights less than that of absolute title to the land.

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38. The Defendants say that the Plaintiffs are not entitled as claimed and will at the hearing plead.

- (1) Estoppel per agreement and per Record.
- (2) Denial of title - Forfeiture.
- (3) Ownership and long possession.

Dated at Onitsha this day of 1958.

(Sgd.) M.O.Balonwu
DEFENDANTS' SOLICITOR.

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NO.38

COURT NOTES

TUESDAY THE 10TH DAY OF FEBRUARY, 1959:

SUIT NO. 0/25/58

IKPEAZU & BALONWU for Plaintiffs
NONYELU for Defendants

SUIT NO.0/32/58

BETWEEN:

ANACHUNA NWAKOBI & 2 ORS. Plaintiffs.

A N D

No.38

Consolidated
Suits.
Court Notes
10th February
1959, 18th
January and
31st March
1960

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Consolidated
Suits
Court Notes
10th February
1959, 18th
January and
31st March
1960
continued

PHILLIP ANATOBU & ANOR. Defendants.

Counsel apply for consolidation of above causes. Land same, parties same issued involved substantially same. Save time and repetition to have cases heard together.

ORDER :- Above Causes consolidated.

Adjourned 2nd - 16th June, 1959 for hearing.

(Sgd.) Herbert Betuel
PUISNE JUDGE 10/2/59.

MONDAY THE 18TH DAY OF JANUARY, 1960

10

SUIT NO. 0/25/58

BETWEEN:

EUGENE N. NZEKWU & ANOR. Plaintiffs

AND

ANACHUNA NWAKOBI & ORS. Defendants

IKPEAZU, BALONWU AND AGBU for Plaintiffs.

IBEZIAKO and NONYELU for Defendants.

IKPEAZU:- I oppose any request for any adjournment. Adjourned 25th March, 1960 - 8th April, 1960 for trial at Defendants request.

50 guineas costs of adjournment to Plaintiffs.

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(Sgd) Herbert Betuel
PUISNE JUDGE
18/1/60.

THURSDAY THE 31ST DAY OF MARCH, 1960

SUITS NOS. 0/25/58
0/32/58

IKPEAZU, BALONWU, AGBU AND OKOSI for Plaintiffs.

GRATIAEN Q.C. AND NONYELU for Defendants.

IKPEAZU:- Apply for Plaintiffs and Defendants to have order of suing and depending in a representative capacity in both suits to be placed above suspicion.

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Court believes present situation clear in 0/32/58, but ex majore cautela, a witness or witnesses may be heard in both cases.

PLAINTIFFS EVIDENCE

NO.39

THOMAS OKAGBUE

In the
High Court

Plaintiffs'
Evidence

1ST WITNESS FOR PLAINTIFF SWORN ON BIBLE STATES
IN IBO THOMAS OKAGBUE - MALE - PENSIONER
AND FARMER - NATIVE OF ONITSHA - MEMBER OF

Consolidated
Suits.

No.39

OGBO FAMILY of Umuasele. My family is Plaintiff
in 0/25/58 and Defendant in 0/32/58, and have an
interest in Ugborimili land. I know Plaintiffs
in 0/25/58 they are members of the Ogbo Family and
have been authorised by our family to sue and de-
fend all actions in respect of Ugborimili land.

Thomas Okagbue
Examination
31st March 1960

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NO CROSS EXAMINATION BY GRATIAEN FOR
DEFENDANTS.

NO.40

COURT NOTES

No.40

Consolidated
Suits
Court Notes
31st March 1960

GRATIAEN Q.C. :- Undertake to lead fresh evi-
dence of authority at a later stage e.g. for
example tomorrow.

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ORDER:- That the representative capacity of
Plaintiffs in 0/25/58 and Defendants 0/32/58 be
approved.

IKPEAZU OPENS:- Court sees plan, old township
boundary, green line, Port Harcourt Road now.
Plan prepared on 1/5/41, it was filed in - 0/3/49.
Accuracy of plan not challenged (Gratiaen). Land
in dispute area South of green line (Exhibit "1"
put in by Plaintiffs by consent) and was land in
dispute in 0/3/49. Ugborimili land, was subject
to a grant in 1882 to Royal Niger Company by
Plaintiff family not Obosi, who lost issue in
0/3/49. 2 agreements Nos.72 and 40.
(Exhibits 2 and 3 put in by Plaintiffs, by con-
sent includes a copy of plan). Certain reserva-
tions on which Defendants rely related to status
quo ante pactem, only reserve rights existing at
time, not acquired subsequently up to time of
grant using land in our own right; seasonal

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In the
High Court

No.40

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31st March 1960
continued

farms placed on land on payment of rent. Seasonal farmers, not exclusively but principally Obosis application, permission, payment of rent, tenancy expires at end of each farming season. Reservation made by Plaintiff family, Obosis not parties to the agreement. 4 Obosis people authorised to live and build on the land before 1882, only those 4 people authorised to remain on the land, plus any seasonal farmers, reservations made in our favour. In 1896, area covered reduced to area 500 yards inland from the river. In spite of agreement put seasonal farmers on land since 1882 in pursuance of reservation, Obosis who failed to pay rent sued in the Native Court, and Plaintiffs succeeded, also in ejectment actions and damages for trespass; defence not reservation in their favour, etcetra but e.g. grant to Royal Niger Company. Authorised non-Obosis settlements e.g. Ogbuokwa quarter; Umuolo quarter, Ijaw huts close to river, Ijaw quarter in extreme North. In 1928 Chief Kodolinye told them not to pay rent as land was theirs and they had given to the Crown. Acquiescence, culpable delay. Land cannot be acquired mala fide (Ramsden v Dyson L.R. 1 H.L. 129) Attorney-General vs P.W.Collom (1916) 2 K B 193, 205). Payment of rent, issues cannot be reagitated. In 1916, Niger Land Transfer Ordinance, vested in Crown Ugborimili land since 1900 (Cap 149). In 1930 sued. In 1934, Government intervened, 1948 Crown rights abandoned reverted to status quo ante pactem (Divesting order) Obosis went on land, farming building without paying rent; no temporary licence; protest ineffective does not matter 0/3/49; after area abandoned by Government; South of green line; Northern area still Crown land today. Section 10 Niger Lands Transfer Ordinance abandonment, section 14 effect of abandonment restores status quo ante pactem or status quo sine pacte, regard agreements as pro non scripto; section 14 interpreted by Privy Council 1955 1 weekly Law Reports 231 Section 15. Court must not disregard events between 1882 - 1949; rights accrued by acquiescence, restores status quo subject to rights acquired in the interval. Rights acquired by acquiescence against Crown and Plaintiffs? Claim in 0/3/49; title injunction (Exhibit 4. Claim (Exhibit 4)

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31st March 1960
continued

(a) statement of claim Exhibit "5" of defence Exhibit "6" judgment of Manson J. Exhibit "7" Court of Appeal 8, Privy Council 9, put in by Plaintiffs by consent Disturbing Plaintiffs (Onitsha) ownership and possession of land Manson J gave declaration of title and injunction applied for W.A.C.A. confirmed that points raised, issue not joined at trial; left to be determined in a later suit; possessory rights acquired under native law and custom. While case pending before P.C., C.D.C. site, agreement signed by Obosi and Onitsha (Ogbo), on application of C.D.C. for lease (Exhibit "10" put in by Plaintiff by consent). Rent to be collected by winner. Amount deposited with bank. Compensation paid to persons having buildings in this area. Houses belonging to Obosi people in this area all abolished in 1956, owners compensated. Withdrew money under order of Court (Exhibit "11" put in by Plaintiff by consent dated 11/2/57). 1956 - 1958 no houses there at all, as soon as they started building on that part we sued i.e. in 1958. No plea of acquiescence can avail in case of C.D.C. site. South of C.D.C. site, no buildings in 1941 apart from some farm huts, no acquiescence in respect of vacant land, but position may have been different 1949. Sued 2 persons in Native Courts; case transferred to this Court (0/3/56), case for possession etcetra, (Exhibit "12", claim. 13 Statement of Claim, defence 14 judgment of D.E. 15 put in by Plaintiff by consent) 0/38/56 (Claim Exhibit "16"; Statement of Claim 17, defence 18, judgment of High Court 19, Federal Supreme Court Judgment 20, 21 appeal to Privy Council put in by Plaintiff by consent). Same as present case but against Obosi individuals.

Adjourned until later in day.

(Sgd.) Herbert Betuel
Puisne Judge.

RESUMED AT 3 P.M.

Issues same in those 2 cases as in this -
Possession. Case against 2 Obosi individuals but decision binding on Obosi Community.

In 0/31/56, clear from judgment; knowledge of Obosi Community but case fought behind screen

In the
High Court

No.40

Consolidated
Suits
Court Notes
31st March 1960
continued

of individual concerned. In those cases, defence was not individual right but right of Obosi as a Community, and the community stood behind them. Other cases also transferred at their instance, and cheques signed by them i.e. representative members of the Obosi Community. 13 W.A.C.A. 178 Isiaka v Obiasogwu unequivocal act or evidence. A big Obosi Chief gave evidence in 0/31/56 - 2nd Defendant in 0/25/58, 2nd Plaintiff in 0/32/58; deputed representative. Exhibit "15" and 15(a) £192/10/- paid by Obosis - Pleadings - Decisions bind Obosis estoppel. Defence raised title to Ugborimili land - Same issues. Building in spite of injunction. Want to present Court with fait accompli; building rushed up. Reservations in Agreements. Findings of fact. Grant in perpetuity under Native Law and Custom; defeated by payment of rent; grant in perpetuity contrary to Obosi Native Law and Custom. Not raised in earlier cases; Obosi title not raised; 0/3/49 this was not pleaded; defence suggested to them by the Privy Council; claimed documents inadmissible; then relied on it for their usufructuary title not taken advantage of since 1882.

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GRATIAEN Q.C. :- Will agree to all documents being put in without further proof subject to all just exceptions.

IKPEAZU:- I put in therefore:-

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EXHIBIT "22" List of those receiving compensation in 0/38/56. Receipt of one man Exhibit "22" (a).

EXHIBIT "23", evidence of witness in 0/31/56 Benjamin Onwuadike now dead (Section 34 (1) Evidence Ordinance) also his evidence in 0/38/56 Exhibit "24". Question admissibility may be raised later by Gratiaen Q.C.

EXHIBIT "25" Claim Suit 0/15/44. Commissioner of Lands v Nwajaku.

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EXHIBIT "26". Particulars of Claim.

EXHIBIT "27". Proceedings 20th March, 1945, land never demarcated, crown not interested.

EXHIBIT "28". Decision of Waddington J.

In the
High Court

EXHIBIT "29". Judgment of W.A.C.A.

No.40

EXHIBIT "30". Notice of discontinuance 14th
January, 1947.

Consolidated
Suits
Court Notes
31st March 1960
continued

EXHIBIT "31". Assistant Commissioner of Lands
v John Nwogem. Claim O/16/44.

EXHIBIT "32". Particulars of Claim.

10 EXHIBIT "33". Notice of discontinuation dated
January, 1945. Letters of Protest in O/3/49
put in, in a number of cases, certified copies.
First letter 31st January, 1933.

EXHIBIT "34" letters of protest. First 31st
January, 1933.

EXHIBIT "35" letter of 16th May, 1934 to
Secretary Southern Provinces.

EXHIBIT "36" letter of 9th July, 1934.

EXHIBIT "37" letter of 9th February, 1939.

EXHIBIT "38" letter of 16th June, 1942.

EXHIBIT "39" letter of 2nd September, 1942.

20 EXHIBIT "40" letter of 4th September, 1942.

EXHIBIT "41" letter of 13th November, 1942.

EXHIBIT "42" letter of 2nd February, 1945.

EXHIBIT "43" letter of 1st March, 1946.

EXHIBIT "44" letter of 6th March, 1946.

EXHIBIT "45" letter of 14th January, 1947.
(Question of admissibility may be raised later
by Gratiaen).

EXHIBIT "46" letter of 17th January, 1947.

30 Native Court Proceedings Case 101/28 and 103/28
(Exhibit "47").

In the
High Court

No.40

Consolidated
Suits
Court Notes
31st March 1960
continued

Onitsha Native Court case 269/1930 (Exhibit "48").

Onitsha Native Court case 270/1930 (Exhibit "49").

JUDGMENT IN 0/69/55: Plaintiffs v Madam Adobi (Exhibit "50"). Objected to by Gratiaen admitted (50A).

No further pleadings in that case.

Second Plaintiff in 0/32/58; 2nd Defendant 0/25/58 gave evidence in 0/31/56 (Exhibit "51") Objected to by Gratiaen. 10

(Witness still alive document probably inadmissible not Admitted). Exhibit "52" Plan of land in April 1949. EC 14/49.

Defendants
Evidence

DEFENDANTS EVIDENCE

NO.41

Consolidated
Suits.

ISAAC IWEKA

No.41

Isaac Iweka
31st March
1960
Examination

1ST WITNESS FOR DEFENCE SWORN ON BIBLE STATES IN ENGLISH ISAAC IWEKA - MALE - OBOSI - CIVIL ENGINEER live in Onitsha. Retired from P.W.D. in 1956. 7th Defendant in 0/25/58, 6th Defendant in 0/25/58; not a member of Obosi Land Council, sue personally in 0/25/58; Osha and Oboli, 1st and 2nd Defendants in 0/25/58; chosen by our people to represent them, also as Plaintiffs in 0/32/58. Claim possessory farm and fishing rights over Ugborimili land. 2nd August, 1958, motion to Court supported by a declaration signed by 6 prominent Obosi people; all my people support this representation with express authority. 20 30

NO CROSS EXAMINATION BY IKPEAZU FOR PLAINTIFFS:

Adjourned 1st April, 1960 for continuation.

(Sgd) Herbert Betuel
PUISNE JUDGE
31/3/60.

FRIDAY THE 1ST DAY OF APRIL, 1960.

IKPEAZU & NALONWU & AGBU AND OKOSI for Plaintiffs.
GRATIAEN Q.C. AND NONYELU for Defendants.

PLAINTIFFS EVIDENCE

NO.42

THOMAS CHIKE MBANEFOIn the
High CourtPlaintiffs
Evidence

No.42

Thomas Chike
Mbanefo
1st April 1960
Examination2ND WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES
IN ENGLISH THOMAS CHIKE MBANEFO - MALE -

10 ONITSHA - Principal Manager E. R.D.C. -
stationed at Aba - From 1952 - 1957. I was a
District Officer at Onitsha. I was connected
with the C.D.C.'s (Colonial Development Corpor-
ations) proposals. They sought to acquire
about 240 acres in Ugborimili land. Land con-
tiguous to site of Royal Niger Company. I
know the area extremely well. In 1955, I went
to the site and saw some cassava farms, but no
dwellings, the C.D.C. wanted to hand over cement
posts to the police. Houses formerly on site
had been demolished on payment of compensation,
there were 149 persons to be compensated (Exhibit
"22" is a copy of the list). The persons con-
cerned received compensation and receipts were
20 obtained from them. Exhibit "22" (a) is a
specimen receipt. I have been there several
times since subsequently the C.D.C. abandoned
the project.

CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENCE :-

30 Portion is marked purple in Exhibit "1". It was
acquired to establish a "sack" factory. Agreement
was with the Onitsha and Obosis at a future date;
lease was to be granted; at the time, litigation
between Plaintiffs and Defendants, still going on
before P.C. Agreed C.D.C. should enter site and
that the houses should be demolished, in 1952
demolition had been completed. Both families
agreed that the C.D.C. should demolish the
buildings and clear the site. Exhibit "22" sum-
mary of receipts and amount paid to owner of each
house. Houses demolished, house property at Otu
Obosi. When I went on land in 1955, I do not
know whether Privy Council had given its decision.
40 In 1956 whole cement posts and barbed wire were
taken away. The C.D.C. did not build on site.
I do not know whether the C.D.C. ever took up a
lease. In 1957 still no buildings on this site
(September 1957). I am quite sure that the
barbed wire and fencing and so on was not taken
away in 1954.

RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS:- The C.D.C. Re-examination
fenced off the whole of the land.

In the
High Court

NO.43

MATTHIAS CHUNKWURAH

Plaintiffs
Evidence

No.43

Matthias
Chukwurah
1st April 1960
Examination

3RD WITNESS FOR PLAINTIFFS SWORN ON BIBLE
STATES IN ENGLISH MATTHIAS CHUNKWURAH -
MALE - LICENSED SURVEYOR carry on business in
Onitsha. I see plan Exhibit "1(a)", it is
photostatic reproduction of Exhibit "10" in
0/3/49. Exhibit "1" is an exact reproduction
that I made of Exhibit "1(a)". I see area edged
purple in Exhibit "1". Plan in Exhibit "10"
does not show C.D.C. site; I plotted purple
area in Exhibit "1" from area shown in Exhibit
"10".

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Cross-
examination

CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENCE :-
Exhibit "1" is the original plan and bears date
1st May, 1941. Exhibit "1" is a tracing of
Exhibit "1(a)", plus the C.D.C. site only; no
other new matters have been put in, nor has the
plan been brought up to date.

NO RE-EXAMINATION BY IKPEAZU FOR PLAINTIFFS.

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No.44

NO.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Examination

PHILLIP AKUNNE NATOGU

2ND PLAINTIFF IN 0/25/58, 2ND DEFENDANT IN
0/32/58 SWORN ON BIBLE STATES IN IBO :
PHILLIP AKUNNE NATOGU: MALE - ONITSHA
ONOWU OF ONITSHA. I rank next to the Obi of
Onitsha. Member of Ogbo Family of Umuasele,
Onitsha. The 1st Plaintiff and I are authorised
by our family to sue and defend in these suits
and I sue first 2 Obosi Defendants in a represent-
ative capacity, the remainder in a personal capa-
city. I know Ugborimili land. The 1st Plain-
tiff is the Okpala of the Ogbo Family. Ugbori-
mili land belongs to our family for hundreds of
years. As owners of the land, we farm and place
tenants on the land. Our tenants pay rent for
the privilege. They farm annually and pay an
annual rent with the consent of the Okpala. They
approach him with gin and palm wine, and if he
agrees, he apportions to him a portion of land
for farming, each tenant is dealt with individu-
ally during the season; each tenant brings goat,
fowl, palm wine and gin, fish to appease the gods

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and fructify the crops, at the end of the season, each farmer brought 20 yams and 5/- or the equivalent of 5/- in cowries. No more applications would be entertained until the beginning of the next farming season. Application was made annually and permission was granted annually. Tenants came from Obosi, Onitsha, Ogbaru etc-tera. All the seasonal farms rendered these dues but not ourselves the owners. We never gave this land in perpetuity or for an extended term and dealt with individuals and not communities. We have never made a communal grant or grant in perpetuity to the Obosi community. The land in dispute was not a residential area, the first building put up on the land was by the Royal Niger Company. In 1882, my family made a grant of part of this land to the Niger Company, all the signatories were members of my family. Ugborimili is a vast area of land; all the company did was to put some buildings there; 2 buildings; they traded in the stores adjacent to the river; they did not exploit the rest of the land. No buildings put on land before Royal Niger Company; even in my life time those were the only houses there; except 4 houses belonging to persons of Obosi, as a result of a grant from my family. These belonged to (1) Ana Akalue, (2) Okafor Nwochaka, (3) Obifuna Nwabunye (4) Ekejiofor Ezeakudo. No others of Obosi were permitted to build on this land. In spite of the grant to the Royal Niger Company, we used the remainder of the land as owners and continued as before. These seasonal farmers were principally Obosis and continued paying rent until 1928. In 1928, Chief Kodilinye told them to refuse paying rents as it was their land, they told us this, some paid some didn't, we sued some of the defaulters; I was in Onitsha. I knew Ndaguba Okagbue; eldest son of Okagbue who signed the agreement with the Company; he was of our family, he took action (Exhibit "47"). The action referred to Ugborimili land. Chukwuemeka of Umua-sele is of the Ogbo Family. In 1930, I was in Onitsha, he sued 21 people in respect of Ugborimili land for rent (Exhibit "48"). Ana Akalue is an Obosi so were the others.

In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Examination
continued

GRATIAEN Q.C. :- I do not dispute that the Defendants in the Native Court cases were Obosis. Ana is dead now. In that case, Chief Kodilinye

In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Examination
continued

gave evidence, he is dead now.

IKPEAZU:- I want to put in evidence of Ana and Chief Kodilinye in that suit, issue was possession.

GRATTIAEN:- Claim rent due by an individual. Obosi title set up as a dispute.

Court holds evidence admissible. (Ana's evidence Exhibit "48" (a). Chief Kodilinye Exhibit "48 (b)" put in by Plaintiff).

Chukwuemeka also Oseloka of Obosi in respect of Aniolu land in Ugborimili sued for rent got judgment (Exhibit "49"). In 1896 there was another agreement with Royal Niger Company in respect of a smaller portion of the same land. Grants of land have been made to Ogbeukwu and Ijawa, who have settlements there, and pay annual rent. Ogbeukwu came on the land in 1922. Ben Anwadike led the elders of Ogbeukwu in these negotiations, and were granted by my family land on which to settle, and for which they pay rent. In 1956, case against Isaac Ichu. Ben Anwadike is now dead, he gave evidence about that settlement in Exhibit "23" (O/31/56). O/38/56 case against Jonah Nwogem, Benjamin Anwadike, also called as witness (Exhibit "24"). Apart from Ogbeukwu, Umuoni and Ogbe Ijaw were permitted to settle there on payment of rent and have never been disturbed by any of the Obosis. All those settlements are still there on the land. In 1934, the Obosis were putting up a number of houses, we protested to Government who told us not to collect rent any more on Crown land. Between 1933 - 1946, there was a great deal of correspondence with Government (Exhibits 34 - 44). In 1948, Government surrendered part of Ugborimili land, so a few days later we sued in O/3/49. In 1944, Government took action against Obosis on the land (Exhibits 25 - 33), but before had warned us not to farm or use it without the consent of the Crown at a number of meetings which I attended and Chief Kodilinye headed the Obosis. The Government was represented by the Resident and District Officer. We headed these warnings but not some Obosis who continued farming and building on the land. In O/3/49 we got judgment. The Obosis lost their appeal (Exhibits "7" - "9"). But succeeded in part before the Privy Council. During pendency

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In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Examination
continued

of appeal before the Privy Council, with the Obosis,
we entered into negotiations in respect of a lease
to the C.D.C. subject to the determination of the
appeal which would determine who would be entitled
to compensation. I signed Exhibit "10", being
one of the signatories for my family; the portion
of land to be leased was agreed upon, and a plan
made and attached to Exhibit "10". An amount of
£4,000 odd was deposited in the Bank as compensa-
tion. The C.D.C. went into possession by demo-
lishing all the houses there and paying compensa-
tion to their respective owners and fencing off
the land with concrete pillars and barbed wire.
After delivering of the Privy Council judgment,
favourable to us in respect of title, we obtained
an order of Court and withdrew the money from the
Court. There was an appeal against the order.
I proceeded to publicize what I conceived was the
right position in an Onitsha newspaper (Exhibit
"53" dated March 28th 1958 put in by Plaintiffs).
On the same day the Obosis published a notice in
the New Africa (Exhibit "54" put in by Plaintiffs).
Several other notices were inserted e.g. October
1st 1956 (Exhibit "55" put in by Plaintiffs) and
we have persistently warned the Defendants, who
have continued to treat the land as their own;
granting land; putting up buildings and so on;
and buildings are still going up on the land put
up by themselves and their grantees. After Privy
Council decision, sued 2 Obosi men Ichu and Nwogem;
I sued Nwogem (O/38/56) because he built without
permission, and, we got judgment (Exhibit "19").
Defendant appealed and lost. Also succeeded in
O/31/56 in High Court and Supreme Court. We have
applied for an injunction and taken committal pro-
ceedings, and actions, and these actions are still
pending until this main case is disposed of. I
see Exhibit "50"; I know the Defendant (O/61/55);
she was sued for recovery of possession of a part
of Ugborimili land. That is the judgment. The
area in dispute was where the Total Oil Co. is now
and i.e. where they have their Oil depot; my
family granted them the land. I signed a lease
with the Total Co. (Exhibit 56 put in by
Plaintiffs) within C.D.C. site. No houses within
C.D.C. site at time we made grant; buildings
were put up afterwards by Obosis i.e. by 3rd - 8th
Defendants, when they did that; I took this
action out against them. South of the Southern
area there are some buildings there. Between

In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Examination
continued

Cross-
examination

purple and green line in 1941 no houses there except Ogbeukwu quarter; now many houses there; built without our consent and permission (0/71/55 (statement of Claim "11 (a) "11 (b) motion, "11 (c) order put in by Plaintiffs by consent). Disturbed in our possession cannot exercise our rights there; difficulty of surveying land. As a result of all this, I took this action claiming damages, recovery of possession and injunction in respect of Ugborimili land.

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CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENCE :-

Pleased with Privy Council judgment, disappointed with variation of order as to possession; I realised that further litigation was necessary hence I took this action in 1958. Gave a Chance to persons on land to treat with us after Privy Council judgment. First lessees after Privy Council judgment. Total Oil Company lease commenced on 3rd September, 1957. Before 3rd September, 1957, showed Total Oil land and put them in possession. Obosis sued Total Oil. I wanted to put other tenants on the land. In 1958, Obosis put up buildings in vicinity of Total Oil site on C.D.C. site; (Para 39 S/C). Took out claim on 26th March, 1958 in this case. C.D.C. site first occupied by C.D.C. in 1952; abandoned in about 1955; I do not know whether it was before or after delivering of C.D.C. judgment. Privy Council judgment 14/2/55. For 3 years the Obosi occupied the farms persistently and consistently and put up new buildings. Rights in houses extinguished by receipt of compensation, but continued to put up fresh houses. Houses put up in and out of C.D.C. site. The land is fertile. 4 Obosi people built between 1882 and 1896; between the 2 agreements. In March 1958, there were a large number of houses on the land, perhaps several hundred, and more have been built since even the injunction houses are put up during the night. Between 1930 - 1948, innumerable houses put up by Obosis without permission but we continually protested but the Government behaved sluggishly 1944 action discontinued in 1945. Established a township? an Obosi Township. Obosis stopped paying rent in 1928, Obosi houses built since 1928. Roman Catholic Obosi Church on land in dispute we did

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not make a grant to them or the Government. First building up in 1921. I do not know. Enlarged from time to time, congregation grew larger congregation largely lives on Ugborimili; School established there for Catholic children built without our permission. It receives a Government grant. Land in dispute, electoral ward. Ogbeukwu Ward, formerly Otu Obosi Ward. Since 1928, Northern portion of Ugborimili; Crown land; Onitsha settlers put up C.M.S. church in 1935, but the Government took the land from them. St. Johns C.M.S. Church Otu Obosi; Our family have never lived on this land not short of land; do not farm on land, cannot remember when we last farmed there, we farm Eastwards of the land. Only tenants left on our land Ogbeukwu settlement about 100 houses.

In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Cross-
examination
continued

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Adjourned 2nd April, 1960 for continuation of trial.

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(Sgd) Herbert Betuel
PUISNE JUDGE
1/4/60.

SATURDAY THE 2ND DAY OF APRIL, 1960;

SUITS NOS. 0/25/58
0/32/58

Representation as before.

2nd Plaintiff in 0/25/58 etcetra resworn.
PHILIP AKUNNE ANATOGU - MALE - ONITSHA

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CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENDANTS
CONTINUED

As far as possible the dead are buried at home - Obosi Village is about 4 miles from the land in dispute. Many Obosis may be buried in the land in dispute. I do not know and would have no means of knowing. The Ogbeukwu tenants farm on and fish off the site, and live there, no other stranger tenants because of disturbance caused by the Obi. About 5 years ago, there were still some non resident straners farming on the land. Stranger = Non Onitsha and Non Obosi. Have ceased performing sacri-fices on the land for many years because of Obosi attitude, since 1930 and 1934, in 1934, forbidden by Government to put tenants on land.

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In the
High Court

Plaintiffs
Evidence

No.44

Phillip Akunne
Natogu
1st and 2nd
April 1960
Cross-
examination
continued

In 1948 gave lease to C.D.C. and Total in 1957, and sued the Obosis in 1949 for trespass. Conservancy pits in our land not Ugborimili land given to O.U.D.C. No farming on Ugborimili when it was Crown land, without a temporary farming licence from the Crown. Proposal may have been made to the Advisory Board, who may not have accepted it. Conservancy pits are in Woliwo land not on the land in dispute, not on Crown land. I do not know whether Government issued any farming permit, yet Obosis still continued farming there; action taken about building; farming may include putting up temporary huts. Government brought 2 actions in 1945, about buildings and these actions were discontinued. Captain O'Connor not only Administrative Officer in Onitsha during relevant period. Meetings were held in the District Officer's Office and on the land in dispute in 1934. Complained continuously between 1934 - 1944. I know of no action the Government took apart from these 2 actions and the meetings held. Series of meetings after 1934, cannot say when last meeting took place, throughout this period Obosis were represented by Chief Kodilinye their spokesman, who falsely asserted that the whole and was a part of Oty Obosi. Kodilinye in 1930 said the land was Crown land given to them by the Obosis and he was speaking of Ugborimili land. We asserted the opposite. Issue of fact decided in our favour. Kodilinye told his people to farm and build on land without recognizing our rights or those of Government. Claimed first agreement was annulled not second one; now claim our title runs through it. Did not tell our tenants of sale to Niger Company because our rights and theirs were protected. In 1933, Government asked what right they claimed under these agreements. I was born in 1898; I am 63 years old now. I have personal knowledge of these matters. I have seen tributes paid to my father since about 1920 and he told me of the tradition, there is the agreement and finding of fact Orikagbue was of the Ogbo Family.

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Re-examination

RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS: Land sold to Royal Niger Company; I know land North of green line retained C.M.S. Church was built there; Extensive township in the land in dispute

in the main put up in the C.D.C. site, while title and right to possession were sub judice, those houses were subject of suit (Exhibit "25"). No township after demolition of the fresh houses had not been put up inside and only one outside C.D.C. site in Exhibit "12" which comprised settlement of Obosis of land in dispute i.e. up to 1952.

In the
High Court

Plaintiffs
Evidence

No.44

10 GRATIAEN Q.C. Admit re-occupation and erection of 50 - 60 houses, built between decision of Privy Council and commencement of this action. New houses have been put up since immediately after Privy Council Judgment, Defendants house in Exhibit "12" excepted. This action was commenced before Defendants action against Total of 18th September, 1958 (Admitted by Gratiaen Q.C.). Total had been on the land since 1957 and had completed their buildings. Area fenced off by C.D.C. in 1952, pillars removed in 1957; no one
20 other than C.D.C. using land by farming or building. Jonah Nwogem sued in Exhibits "16 - 21"21", received compensation from C.D.C., his house was demolished, in 1954, he returned and built another house outside the C.D.C. site, recovered possession of site. In 1928 sued Obosis for building on land (Exhibit "47"), desisted from building in 1928. Next effort, in 1934, after land had become Crown Land, complained to Government who addressed us in the same year. First
30 noticed Catholic School on land in dispute after 1934, presumed they got their land from the Crown. Ex. "50" not a collusive action with Defendant.

Phillip Akunne
Natogu
1st and 2nd
April 1960
Cross-
examination
continued

NO.45

DOMINIC NWOCHÉ

No.45

Dominic Nwoche
2nd April 1960
Examination

40 3RD WITNESS FOR PLAINTIFFS NOT SWORN CALLED TO PRODUCE DOCUMENTS ONLY - DOMINIC NWOCHÉ REGISTRAR OF HIGH COURT ONITSHA, have files of actions brought by Plaintiffs against individuals in respect of this land:- (1) 0/43/57 copy of claim (Exhibit "57"), (2) 0/46/57 copy of claim i.e. Order of Transfer (Exhibit "58"); (3) 0/47/57 Order of Transfer (Exhibit "59") (4) 0/36/56 Summons (Exhibit "60"); (5) 0/34/46 Summons (Exhibit "61") (6) 0/35/56 (Summons (Exhibit "62")) (7) 0/37/56 Summons (Exhibit "63") (7) 0/39/56,

In the
High Court
Plaintiffs
Evidence

No.45

Dominic Nwoche
2nd April 1960
Examination
continued

Summons (Exhibit "64") 0/40/56 Summons (Exhibit "64"), 0/55/55, Order of Transfer (Exhibit "65") 0/60/55, Order of Transfer (Exhibit "66") 0/61/55, Order of Transfer (Exhibit "67"), 0/62/55 Order of Transfer (Exhibit "68"); 0/63/55 Order of Transfer (Exhibit "69") 0/64/55, Order of Transfer (Exhibit "70") 0/65/55 Order of transfer (Exhibit "71") 0/66/55 Order of Transfer (Exhibit "73") 0/68/55 Order Transfer (Exhibit "74") 0/70/55 Order of Transfer (Exhibit "75")
Setting down fees paid in all cases.

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GRATIAEN Q.C. Admit we have tenants on the land.

No.46

Peter Emaviwe
2nd April 1960
Examination

NO.46

PETER EMAVIWE

4TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES IN IBO PETER EMAVIWE - MALE - IJAW - FISHERMAN:-
Live at Ogbe Ijaw. Live at 6 Otumoye Street Onitsha now. Ogbe Ijaw is shown in Exhibit "1", it lies between Otumoye stream and the Niger. I lived there from 1924 - 1956 after I joined my brother. Plaintiff Family put my brother on the land with other Ijaw, each Ijaw family farming there paid 5/- to the Plaintiff family, or for putting up a fishing hut and rent was collected every year. I have paid rent of 5/- but when I fished, I paid 40/- a year. I paid rent up to now for fishing, in 1956, when O.U.D.C. demolished my quarters I ceased to pay rent for the land. The O.U.D.C. have established a wood market there. Never disturbed before 1946, when Obosis came and demanded rent for fishing, we refused and fought them and they never claimed it again.

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Cross-
examination

CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENCE:-
Ijaws mostly fisherman. Obosis live South of our settlement. We fish all along the river.

NO RE-EXAMINATION BY IKPEAZU FOR PLAINTIFFS:

Adjourned 4th April, 1960 for continuation of trial.

(Sgd) Herbert Betuel
PUISNE JUDGE 2/4/60.

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MONDAY THE 4TH DAY OF APRIL, 1960;

SUITS NOS.0/25/58
0/32/58

In the
High Court

Plaintiffs
Evidence

NO.47

VICTOR MODEBE

No.47

5TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE

STATES IN ENGLISH VICTOR MODEBE - MALE -

ONITSHA - 15 Modebe Avenue Onitsha - School
Proprietor - Okpala of the Modebe Family of

Victor Modebe
4th April 1960
Examination

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Onitsha. There is a Modebe Layout in Onitsha -
Lay out of our family land into building plots,
most of whom were allocated. Scheme initiated
in 1941 and lay out, first allocations made in
1943. Before the lay out the land could be
described as bush but could be cleared for farms.
The land is shown on Exhibit "1" North of the
Otumoye Stream and cuts across the Iweka Road.

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Before the lay out land was allocated to tenants;
a tenant would apply to the Okpala with a pot of
palm wine: I would then allocate a portion to
the tenant, after that, I would collect 5/- from
each applicant as rent during the farming period,
the tenants would provide for the ceremony of
Ikpubani, which is carried out on the land; it is
a fertility rite, at the end of the season, I
received 40 seed yams from each tenant. These
farmers came from Onitsha, Obosi and Oba. At the
end of the farming season the land is vacated and
fresh arrangements are entered into each year.

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This is the general rule of Onitsha customary law
only its details vary. The custom does not per-
mit of dealing with communities only individual.

CROSS-EXAMINED BY GRATIAEN FOR DEFENCE: Farming
before lay out. Still have some farming going
on parts not yet allocated. No claim against
Otu Obosi have a boundary with them.

Cross-
examination

NO.48

OBI OPUTA

No.48

Obi Oputa
4th April 1960
Examination

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6TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES

IN IBO OBI OPUTA - MALE - ABOH - Live at Fegge -
born at Ogbe Warri Onitsha. Between Ogbe Ukwu
and Umuolo, well North of Ogbe Ukwu, born in 1911.

In the
High Court

Plaintiffs
Evidence

No.48

Obi Oputa
4th April 1960
Examination
continued

Plaintiff Family gave my people land at an annual rent. The Obosi Community did not collect rent from us. Our quarter is no longer there, Government acquired the area, and allocated to Ugochukwu Tyre Company S.C.O.A. and Nemco about 5 years ago. We paid rent until we vacated the area. Live now at 55 Creek Road Fegge. Our people have scattered. I know the Port Harcourt Road and the Idemili Stream and the Atani Road, which runs to Idemili from the Port Harcourt Road. I was brought up at Ogbe Warri: I knew the area described well, we farmed there, we also fished, and farmed right up to the Idemili stream with the permission of the Plaintiff Family and on payment of rent. I know Ogbe Ukwu from Aboh, they treated the land as we did on the same terms in the same area of land. Neither Ogbe Ukwu nor ourselves farm the area any more as Odekpe people have given us more fertile land to farm on since about 2 years, up to 2 years ago we were farming on this land. I know the St. Johns R.C.M. Church near the Ogbe Ukwu quarter; I first saw a thatched roof there between 1945 - 1946, it was attended by people from Ogbe Ukwu and Ogbe Warri. Only recently have we had land allocated to us to live on, on the land in dispute; just South of the Niger Company near the River, since November 1958, the land was allocated to us by the Obosi, at their invitation, I informed my people, who agreed, and we met them and accepted their proposal. We met the Obosi Land Council, South of the U.A.C. Building on the land; I knew many of them. I met Anikpe and Offodile Akunne Nwangu (3rd Defendant), Chairman of Obosi Land Court (Admitted) in Okoma (4th Defendant) Treasurer (Admitted) in other words I met the Officials and others of Obosi Land Council, we were allocated 24 plots 300 x 400, paid for it and got a receipt. Went to Obosi village for negotiation. Paid £300 premium, annual rent was to be £3 a plot. £150 paid on account (Exhibit "76" put in by Plaintiff) dated 15/11/58 as soon as balance was paid we could start building; we did not pay balance because when I went there with my people, I saw some Onitsha people e.g. 1st Plaintiff and Mr. Agbu and some policemen chasing people building on the land, so we desisted from any further Action.

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CROSS EXAMINED BY GRATIAEN Q.C. FOR DEFENCE :-

I am 49 years old. I do not remember any R.C.M. Church in 1928. I am a Catholic. In 1928, I used to come to the Cathedral. The C.M.S. had a Church there. Ceased farming on land in dispute in about 1957, on land allotted to our family of Ogbe Warri. Do not know when my father first came over. Before it became Crown land, we farmed extensively on this land. Plaintiffs performed sacrifices on the land annually. Ikpobani is performed once and for all not annually; rent is collected annually. Ikpobani was done before I was born. In about 1957, there were few houses belonging to Obosis, and there was plenty of room for farming and numbers of Obosis farm and non Obosi farms scattered about indiscriminately. In 1946, there were many houses on the land in dispute including Obosi, non Obosi, Ibos and Hausas, I did not count the number of houses, scattered houses but not indiscriminately.

In the
High Court

Plaintiffs
Evidence

No.48

Obi Oputa
4th April 1960
Cross-
examination

RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS:- I saw the Ikpobani established in our settlement. Annual permission annual rent. I remember C.D. C. site; I remember the area; I saw that the houses had been demolished; I saw the way they fenced in the area. All the houses were within C.D.C. area living between Niger Company and Iyioji pond. Up to the time these houses were demolished there were no houses outside the C.D.C. site.

Re-examination

NO.49

HENRY OSITA EMEMBOLU

No.49

Henry Osita
Emembolu
4th April 1960
Examination

7TH WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES IN ENGLISH HENRY OSITA EMEMBOLU - MALE - IBO:-

Administrative Officer stationed in Obudu. In Onitsha 1927 - 1928, 1938 - 1946 in Resident's Office in 1938, as Second Class Clerk and Interpreter; I know the Plaintiffs in 1938 received complaints from Plaintiffs and saw meetings between Plaintiffs, Defendants and Resident, complaints were against Obosis entering their land; Resident warned parties land was still Crown land until abandoned by the Crown, and no question of ownership arose until that happened. Farming

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<p>In the High Court <u> </u> Plaintiffs Evidence <u> </u> No.49 Henry Osita Emembolu 4th April 1960 Examination</p>	<p>was to be on a temporary annual individual permit system. Chief Kodolinye attended all these meetings. 1940 - 1946, complaints repeated, not only against farming but also against building; I actually saw them farming on the land and running away when they saw me; more than once; the police were posted on the site on occasions. No one came for any permit. I first went on the site in 1938, very few houses there, but Obosis continued building houses in secret; mud and thatched roof at the time.</p>	<p>10</p>
<p>Cross- examination</p>	<p><u>CROSS EXAMINED BY GRATIAEN FOR DEFENCE:-</u> To some extent complaints were directed against Government's inactivity, Government instructions were ignored. Chief Kodilinye did not dispute that the land was Crown Land. Captain O'Connor was trying to ascertain the policy of the Government and endeavouring to get Government to abandon the land and was complaining against Lagos evading the issue.</p>	<p>20</p>
<p>Re-examination</p>	<p><u>RE-EXAMINED BY IKPEAZU FOR PLAINTIFFS:-</u> Ogbo Family obeyed instruction not Obosis.</p>	
<p><u>PLAINTIFFS CASE CLOSED.</u></p> <hr style="width: 30%; margin: auto;"/>		
<p>Defendants' Evidence <u> </u> No.50</p>	<p style="text-align: center;"><u>DEFENDANTS' EVIDENCE</u></p> <p style="text-align: center;">NO.50</p> <p style="text-align: center;"><u>ISAAC IWEKA</u></p>	
<p>Isaac Iweka 4th and 5th April 1960 Examination</p>	<p><u>7TH DEFENDANT SWORN ON BIBLE STATES IN ENGLISH:</u> <u>ISAAC IWEKA:-</u> MALE - OBOSI - 49 years old - Qualified Civil Engineer - lived up to 1928 in Obosi Village; afterwards at Awada on the Oguta Road where I live now - Popularly known as Iweka Halt. The land in dispute is Otu Obosi; Obutshi = Obosi. There is a cemetery containing graves of many old Niger Company employees. I have a photograph of a tombstone, showing deceased was buried in 1888 at Abutshi Akassa W.A.Africa (Exhibit "77") put in by Defence). I saw it and photographed it. Remember land in dispute since I was a child. Oramalu Iweka, my uncle lived on the land in dispute; in his own home; paid no rent to anyone died in 1919; he</p>	<p>30</p> <p>40</p>

In the
High Court

Defendants'
Evidence

No.50

Isaac Iweka
4th and 5th
April 1960
Examination
continued

was buried on the land in dispute, my aunt, his widow after his death continued to live in the same area until 2 or 3 years ago elsewhere when I used to visit my uncle there were many but not as many as now other Obosi houses in the vicinity. My uncle's house was within the C.D.C. site. Before 1919, the land was farmed extensively by the Obosis but not upon payment of rent. I remember the Catholic Church. First building in 1921, grant made by Obosis; it was a very small building with a thatched roof; it was burnt down in a bush fire in about 1925, Another was built on the same sight and enlarged until recently it was built in its present form Large Congregation of Otu Obosi School is maintained in the same building; Otu Obosi children attend it; whole of land not only part in dispute; known as Otu Obosi; in the Northern portion we made a grant to the C.M.S. for Church and School. Church founded by Rev. Ejindo of Otu Obosi in about 1935; building was enlarged twice, before it was built in its present form known as St. John's C.M.S. Church Otu Obosi other Church is known as St. John's R.C.M. Church Otu Obosi. From my earliest recollection, I have seen obosis using land. Ogbe Ukwu about 5 acres wide; does not belong to us. Ogbe Ukwu principally fish and farm on flood lands i.e. water farming. Many non Obosis settled on land under Obosis. Ogbe Ukwu, Ogbe Ijaw, Ogbe Warri did not have our permission, apart from Ogbe Ukwu had settled North of land in dispute. Obosis came from Obosi inland town and the land itself to farm the land. Obosis settled in Otu Obosi for generations would be reinforced by the arrival of fresh Obosi settlers from the inland towns, these would also be tenants of the Obosi on the land and so the resident population increased. I am aware the Government abandoned land in dispute in 1948, at that time about 400 houses had been erected in the land in dispute, and also Obosis had erected number of houses North of the Green Line; we regarded ourselves as one community, until Government turned us out of the Northern part. Obosis paid no rent for their use of the land in dispute. No knowledge of the 1882 or 1896 agreements or reservations under those agreements until the 1949 case was started. Otu Obosi by 1948, led different communal life to inland Obosi e.g. separate

In the
High Court

Defendants'
Evidence

No.50

Isaac Iweka
4th and 5th
April 1960
Examination
continued

shrines, meeting places, burial grounds markets, separate churches. 128 houses were demolished on the C.D.C.site. 1949 - 1955 continued to maintain the separate communities. 1951, C.D.C. entered into possession of C.D.C.site. Agreement executed in 1952 final outcome of litigation not then known, agreed C.D.C. fence off land and demolished buildings on land, individual owners of the houses received compensation. Obosi farms, economic fruit trees within area not destroyed. Obosis continued to reap them. The 128 persons built outside the C.D.C. site on Otu Obosi new houses, in 1952, about 100 new houses were put up on the land in dispute. Even before houses in C.D.C. site were demolished, some 2 to 3 hundred houses in the remainder of the land in dispute. C.D.C.site not given up for farming purposes. C.D.C. left site in 1954 before Privy Council judgment was delivered. On 14/12/55 Privy Council delivered its judgment, possession not given to Plaintiffs, took legal advice, decided we could continue to treat the land as before as possessors until dispossessed, took the risk but did not understand implications. About 50 houses on C.D.C.site now. In 1957, lease granted by Plaintiffs to Total Oil Company; tried to build on the same site, but police intervened; complained to Total Company head quarter, built a number of houses, to prevent other companies being brought in, some are completed 6 7 to 10 not completed, built by the community as a whole. In March 1958 we were sued. At that time we had 400 to 500 houses on the land, about the same number as when Crown abandoned land new erections mostly replacements between 14/2/55 and March, 58 no other actions taken against us Obosis to recover possession I know of a number of cases against individuals including some pending and some decided 0/31/56 and 0/38/56, Obosis did not fight case as a community but the Obosi Progressive Society gave them financial support. Obosis abroad. Members of Society about 2000 members. I know the Obosi Land Council; I am not a member of it; nor is my brother; the 6th Defendant; where the community interests are concerned the Land Council fights case. Almost a self sufficient community on Obosi. Believed community could exercise rights of possession over this land, community recognized as township in

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1951; Otu Obosi came within the Onitsha Urban District, in 1958; it was made an electoral ward, and called Ogbe Ukwu Ward; a ward requires a minimum population of 3000 people predominantly Obosi. I represent the ward in the Onitsha Urban District Council. No Aboshs farming on the land in dispute.

-In the
High Court

Defendants'
Evidence

No.50

10 CROSS EXAMINED BY IKPEAZU FOR PLAINTIFFS:- I see Exhibit "52" Otu Obosi is also called Ugborimili land by some Obosis. Ugborimili = Farming land near Idemili.

Isaac Iweka
4th and 5th
April 1960
Examination
continued

Adjourned 5th April, 1960 for continuation
X X examination.

(Sgd) Herbert Betuel
PUISNE JUDGE
5/4/60

TUESDAY THE 5TH DAY OF APRIL, 1960.

SUITS NOS.0/25/58
0/32/58

20 7TH DEFENDANT RE-SWORN ISAAC IWEKA - MALE -
OBOSI.

CROSS EXAMINATION BY IKPEAZU FOR PLAINTIFFS

30 CONTINUED :- Otu Obosi = Obosi beach. Exhibit "52", plan of 15th April 1949; partly surveyed by John in 1934, and 1941. Not shown what land was surveyed by John or Chidolue. I know the extent of Ugborimili land, the part abandoned by the Crown as well as the part retained by the Crown. Up to the Privy Council Judgment, the Obosis claimed to be owners of that land e.g. 0/3/49 (Exhibit "49"). We claimed to be grantors to the Royal Niger Company. Claimed that Orikagbue (Okagbue) was an Obosi. It was true as far as the Obosi knowledge of the facts went 6 people who signed agreements claimed they were obosis; 1882 agreement never found and produced only confirmation of it. Believed we made grant to Royal Niger Company.
40 My evidence is given on behalf of myself and my community. I know the Ijaw quarter. Obosis put some tenants there, but other tenants not put there by Obosis, issue between us and Ogbo Family in Privy Council case. I do not know

In the
High Court

Defendants'
Evidence

No.50

Isaac Iweka
4th and 5th
April 1960
Cross-
examination
continued

who put tenants on Omuolu or Ogbe Warri; the Plaintiffs claim to have put them there. I know Ogbe Uke; the original Ogbe Uku was put there by the Obosis. Aboh quarrelled with Oko living on adjoining land. Anwadike, a stranger, but an assimilated Onitsha, who had identified himself with the Aboh, and he brought the Aboh people to Otu Obosi and settled down with the original inhabitant; Ogbe Uke turned traitor and supported the Onitsha with some exceptions. These issues have been debated in Court in the Privy Council case. It was held Ogbe Uku were put there by the Plaintiff. I know Jonah Nwogem is an Obosi man and a member of the Obosi Land Council, he is a prominent Obosi man and the 5th Defendant in this case and would know the salient issues in this dispute. He lives on the land in dispute. Ogbe Uku history within living memory: my evidence is hearsay or traditional. Does not conflict with Jonah Nwogem's evidence. Acting against Ichu concerning his own compound in Ugborimili land and within land in dispute believed they were on the land exercising Obosi rights, we believe that we have right to be in possession of the land and to build on it subject to internal arrangements within the Obosi Community, who must be consulted. In 1956, rights of Nwogem and Ichu to possession based on Obosi rights was challenged. We knew that Nwogem and Ichu were being sued; so did the Land Council, the Obosi Progressive Union and others the 2nd and all the other Defendants knew of the Actions and after representative persons 2nd Defendant in this case was a Defendant in the Privy Council case (Exhibit "4"). Since 1956, asserting our possessary rights over the land and we have been sued in a number of cases. Some were transferred from Native Court; Balonwu paid fees for Plaintiffs and the amount was refunded to Balonwu by 3 Officials of the Obosi Progressive Society (Signed by 6th Defendant). I am a member of the Obosi Progressive Society (Exhibit 78 put in by Plaintiffs). Money paid to assist. Defendants in Court. Within living memory we acquired those rights; I do not know how they arose. After Privy Council case; interpreted it to mean we were in effective possession of the land. Evidence as to tenants same as in Exhibit "12" - 15", "16" - "22", may have been, same evidence in Privy Council. We

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lease and have leased portions of the land in dispute to strangers to about 30 strangers, since the Privy Council Judgment, and they have built houses, some of them. Many Obosis have built on the land since the Privy Council judgment about 80 houses. I knew Chief Kodilinye; he was Eze of Obosi; a most intelligent and influential man in Obosi; he would know the situation of Obosi lands and the rights of Obosi over the lands; he represented Obosi in many land cases. Land Crown land 1900 - 1945. He fought and defended for Obosi. Went to Asaba and asked for permission to build on the land. In 1930, the Obosi Community knew the land was Crown Land. I knew Anah, he was well known in Obosi. Refused to pay rent on ground land was Government land. Not seasonal farmers paying annual rent to Ogbo Family. Up to 1934, only 4 Obosi houses on land in dispute most incorrect. Visit to my uncle not a fabrication. Houses not concentrated on C.D.C. site; North of line many Otu Obosi houses; why South of green line, should it be limited to CDC site; after houses demolished on CDC site, still many Obosi houses remained on the land in dispute. Ememolu is an Onitsha name, he gave untrue evidence because of his sympathies, I do not know whether he was cross-examined on this point. Do not know if houses built in teeth of Government opposition. Do not know if we were warned to leave land alone because it was Crown Land. Saw Total starting operations in 1957; sent protests to everyone. They did nothing. Placed building materials near site on behalf of the community acting under direct instructions of land Council; stopped building after injunction; all buildings on land in dispute not put up since Privy Council judgment; tried to prevent breach of injunction, also some unruly persons.

In the
High Court

Defendants'
Evidence

No.50

Isaac Iweka
4th and 5th
April 1960
Cross-
examination
continued

RE-EXAMINED BY GRATIAEN Q.C. FOR DEFENCE:-
Exhibit "52" appears to be merely a tracing of previous plans plotted from an original plan made in 1934, all houses not shown and in 1949, there were far more houses than those shown. In 1951 about 450 Obosi houses on the land in dispute. In 1951 - 1952 say about 2000 Obosis on the land, could not live in 128 houses, no Obosi left the land after the demolition only the site of the demolition, the community life continued as before,

Re-examination

In the
High Court
 Defendants'
Evidence
 No.50
 Isaac Iweka
 4th and 5th
 April 1960
 Re-examination
 continued

the R.C.M. Church even though within the C.D.C. site was not demolished. In Exhibit "42" of 1945, not only Obosis on land in dispute, but stranger tenants; believed they were able to do this as of right. Ichu went on land and built there in the mistaken belief it belonged to the Obosis (Exhibit "15"), it was a general belief. And permission obtained from Government to occupy land. Begon protesting about Total immediately after operations. Obeyed all responsible members of our community; injunction issued by this Court. Part of my evidence is within my personal knowledge since about 1917 - 1918. Ijaw settlement not within my personal knowledge or Ogbe Ukwu do not claim their portions.

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Defendants calling no further evidence.

Adjourned 6th April 1960 for addresses.

(Sgd) Herbert Betuel
 PUISNE JUDGE
 5/4/60.

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WEDNESDAY THE 6TH DAY OF APRIL, 1960

No.51
 Consolidated
 Suits.
 Counsel's
 Addresses
 6th April 1960

NO.51

COUNSEL'S ADDRESSES

GRATIAEN Q.C. ARGUENDO :-

Anxious case presenting human problem, large family, large community. Property bush in 1882, recovered title in 1949 on abandonment by Crown; value much increased now a township of 2000 or 3000 souls settled majority innocent children, etcetera. Equity will supervene. Stale demands. Past history has only a limited relevancy. Both parties must accept radical title. Statutory effect of abandonment passed title to Plaintiffs former owners. (S.14 Land Transfer Ordinance): injunction also sued for. Privy Council cut out injunction; said only radical title in issue, subject to any equitable or usufructuary rights that may have accrued and subject to further adjudication and injunction was set aside. (Exhibit "9") Exhibit "9" must be amplified with all proceedings to date Exhibit "9 (a) put in by

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consent) (1955 1 W.L.R. 235. Trial Judge however, before that concurrent finding of facts. Matters decided in proceedings in which issue of possession is properly raised. Court not to disregard all events between 1882 - 1949. Injunction and equitable remedy. Rights against Crown. Must bind Crown if they are to bind Plaintiffs. Acquiescence and laches on part of the Crown. Equitable defences against a legal right, also against equitable belief. Acquiescence and laches distinct from any limitation. Affect rights of use and occupation. Section 29 Limitation Act 1939, preserves equitable jurisdiction of a court to refuse relief on grounds of acquiescence or otherwise, R.P. Limitation Act 1833, Section 25. Crown by local statute in colonies not affected by law of limitation but affected by equitable defences. A.G. Trinidad v Bourne (1895) A.C. 83. Crown sued B in respect of a contract relating to land, defence of equitable ownership; no legal title, established good equitable defence, every defence open to B, action of ejectment... Wherever there is a discretion, the principle applies. Have a defence against the Crown even in 1948; before abandonment. Plaintiffs bound by those defences. Even if defences not available against Crown, available against Plaintiffs. Crown has parted title. A.G. to Prince of Wales v Collum (1916) 2 K.B. 193. Meaning of acquiescence, houses openly built and developed before the eyes of the P.O.W. Agent in the Duchy of Cornwall, equitable defence based on estopped reasonably believed to be her own P.204. equitable estoppel. Crown protected statutory. Section 31 of Crown Lands Ordinance only applies to law of limitation. Destruction between principles of limitation and acquiescence stricto sensu, and acquiescence as an element of laches. Limitation wipes out a legal right, equitable defences do not wipe out any legal right but make it inequitable to enforce. Strict acquiescence operates immediately by way of estoppel and is based on an implied consent. Laches means culpable delay, staleness of demand, its basis is waiver or abandonment. Section 31 only protects Crown during its ownership. Actions by and on behalf of Crown to recover Crown lands which these have long since to be. Statutory succession Halsbury Semmonds 3d Vol 14 P 638 paras 1177N foll paras 1181, 1183, 1186, negligence in enforcing your rights. Time

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question of fact. In re Sharp and Bennett
(1892) 1 Ch P.P. 154 167 - 168, relief by analogy to statute of Limitation. No undue delay. Time elapsed balance of justice and injustice in affording relief. Depends on circumstances of case. Brooks v Muckleston
(1909) 2 Ch 519, 522. Lewis v Clay Conscience, good faith and reasonable diligence. Intense human problem equitable problem by injunction; action commenced in March, 1958, assertion of communal and community rights. Examine evidence mistaken belief; rely on letters, Government dilatory; Second class clerk sent to lodge a protest; then sleep for a further 3 or 4 years; churches and schools going up in 1921 openly; what was acquiesced in and slept on was the communal claim of the Obosi community, bush into township at time of abandonment, living organism, recognised as a part of Onitsha in 1951; 4 years before Privy Council Judgment in 1958, larger portion of an electoral ward. 10
(1936) 3 W.A.C.A. 93 Oshodi v Imory P.95, rely mainly on 1 not 2. Ask Court to accept evidence of Mr. Iweka (broadly). Events of later years, 2nd Plaintiff's absentee ex owner, protested all letters support our case. Not cross-examined on establishment of church and school in 1921; spoke of C.M.S. Church and School established in 1935, up to 1948, must treat land as a whole. Do not dispute settlements of Ijaws etcetera. In 1921, probable community had taken roots there; beginnings of a congregation, 1945 - 1946. Church and School expanded; Oputa saw it for the first time. 30
1900 - 1948, assume Plaintiffs collected tribute from some farmers although they had not legal rights to the land; let us assumed only put in 4 Obosis between 1882 and 1896, what does it amount to; traditional evidence of what happened in last century or in modern development in modern times. Assume Catholic Church never existed before 1945; by that date Government knew of growing township and allowed it to continue. Clean hands. Government did not care what was done on the land. Stateness of demand not made by occasional verbal protests but legal action; 2 actions brought in a half hearted manner and discontinued. Recovery of possession and Injunction. 40

Exhibit "34 - 46". First representative action 50

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1929, Government intervened withdrawn. What is position? Copy of agreements. Series of protests by Plaintiffs, not owners of land, had no legal rights to assert. Dispute arose in about 1927. Tenants holding over but not tenants of Government. Farming tenants not builders. "This annuls prior agreement dated 31st July, 1882 false". Denial of Plaintiffs ownership in 1934, categorical prohibition.

10 1934 - 1948. Plaintiffs not concerned Crown as owner versus Obosi people as occupiers. Exhibit "37" (d) false (H) No legal rights relevant to statement of demands; admit adversity of Obosi claim. Meeting Obosis at Government conference; do not trust Ememolu's recollection. No permit system introduced, no evidence thereof. Dispute between Ogbo Family - Obosi who lay claim to the land, farms in 1942. Matter to be settled in Court. Could accommodate Obosi in

20 Southern portion which they are more interested in. Ogbo Family in uppermost portion of Northern Area. No evidence proposal accepted; admitted no permit was issued; farming on Southern portion and living there. Plaintiffs ceased to farm on land. Exhibit "39" accused Crown of culpable inactivity para.3 (1942), houses built within area; whole area Crown abandoning its rights in the land. Obosis should be kept off land. Buildings not know-

30 ledge or consent of Crown; know of it in 1942 (Exhibit "40") Exhibit "41" Built extensively on land in 1942, 6 years before abandonment; many permanent and substantial buildings built in recent years. Large scale infiltration by Obosi tenant no relation by Ogbo Family. Exhibits "31 - 33", in October 1944 after 2 years of infiltration sued 2 people for ejection from Crown land. On 4/1/45, Crown filed a notice of discontinuance, did not care.

40 Exhibits 25 - 30 54 persons sued for ejection on 2/11/56 case heard by Waddington J. 20/3/45 land never demarcated Crown not interested whether it was used or not, held land not Crown land, case dismissed. Appeal Exhibit "29". appeal allowed retrial ordered Exhibit "30", action wholly discontinued Exhibit "43". Ogbo complaints within depth of 500 yards, number of Obosi houses or their tenants, and still building on 2/2/45; Resident ordered a plan to be made

50 para 2, entering land and building houses thereon

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in large number. Exhibit "44" no definite answer from Government, admission of culpable inactivity Exhibit "45" discontinuance condonation of illegal acts. Ogbo Family respected law, but Crown did not protect its rights in the land. Despite efforts Obosis continued their infiltration; land divided in blocks and sold to divers people. Para 9 doubtful as to Crown rights; rights deemed expedient; Obosis took no notice of Resident; strong anumus possidendi each aggression acts a sleeping pull to Government. Para 13 government still making up his mind, Obosi people are fast building on the land Paras 14, 17 and 21 which Court will order their complete demolition. Successor in title bound by equities binding former owner. Does not restore status quo anti pactem wrong decision of Courts in Nigeria Section 14 does not restore status quo ante pactem but restores radical title to owner subject to any rights acquired as against the Crown or Niger Company between 1882 - 1949; Crown successor of Niger Company whatever bound Niger Company bound Crown. Conveyance by statute to whoever is entitled.

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Exhibit "15" O/31/56, recorded a finding of fact against Defendant misdirected himself on the law; went on the land in 1942, took it for granted it was Obosi land; site in Southern portion not C.D.C. site, hold, no acquiescence on part of Crown, went on land built on it in mistaken belief it was Obosi. Dove - Edwin J. thought acquiescence and limitation was the same and caught up in Section "31". Laches does not depend on honest belief in builder it is a punishment inflicted on the owner. "In part male fidei potior est conditis defendentis".

30

Buildings as they stood in 1949, 400 to 500 buildings including 128 buildings demolished in 1952. Put buildings since 1955, 128 buildings, part of township; Government acquiesced in the building of a township not mere houses, 128 buildings destroyed does not destroy township; res judicata does not apply, it is a strict doctrine or modified one. Strict doctrine 2nd Edition Halsbury Vol. 13 Para 477 P 426. Individual claimed title under Obosis but Obosis did not claim title under him and were not his privies. P.428 para 480. similar interest latter

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claims title from the former. P. 432 para 485 no representation order, not sued in a representative capacity; members of a class, individuals selected to represent multitude, present by representation Comm of Sewers v Gellatly (1876) 3 Ch 610, 615, multitudes on each side etcetera. Plaintiff chose Defendant not Obosi. In re Lart (1896) 2 Ch 788; taking advantage of judgment, not bound by judgment but by his conduct after and under the judgment a sort of estoppel arises by adoption of the judgment; stands by and takes benefit of decision; there must be an advantage taken of judgment, right to intervene mere right to intervene not sufficient P 792, cognizance and full knowledge equitable interpretation by analogy. (1952) 14 W.A.C.A. 178 Esiaka v Obiasogwu. Actions withdrawn for purpose of an inquiry P 180 representative capacity. In O/31/56, only individual defendant, defendant did not represent us.

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Adjourned 7th April, 1960, for Plaintiffs Counsel to address Court at 10 a.m.

(Sgd) Herbert Betuel
PUISNE JUDGE 6/4/60.

THURSDAY THE 7TH DAY OF APRIL, 1960

SUITS NOS. O/25/58
O/32/58

IKPEAZU, BALONWU AND AGBU for Plaintiffs.

7th April 1960

EZENKO for NONYELU for Defendants.

IKPEAZU REPLICANDO:- No answer to Plaintiff's Case. Defendants claim abandoned. Not supported - Payment of rent under a mistake of fact. Reservation made in agreement in their favour. Obosis do not fish, small thing. Been in possession under Customary Law i.e. Native Customary grant. This ground has been abandoned and even contradicted. They do not know how their rights arose (Iweka's evidence). Defence = We have been there a long time, not paid rent to anyone, no one did anything to us. O/32/58 claim rests on Native Law and Custom and Reservation in agreements no evidence of that adduced at all.

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Re Estoppel:- Case must be decided on basis of Dove-Edwin J. in O/31/56, estops Defendants from disputing our possessary rights to Ugborimili land or asserting their own.

CONDITIONS:- (1) Same Plaintiffs, (2) Subject matter same Ugborimili land (not merely a part) (3) issues same, possessary title in issue between Ogbo Family and the Obosis (4) Defendant was asserting the communal right of the Obosis as a defence. (5) Community knew about case and (a) took an active part in defending suit or (b) stood by and allowed single Defendant to fight their battle. If all those conditions are present, community bound in future proceedings. Exhibit "12" claim in O/31/56, recovery of possession of a part of Ugborimili land.

10

Exhibit "13", describes Ugbo Crimili, Defendant sued personally, Community did not apply to be joined, stood by Jurisdic issue same. Para.14 only 4 permitted to build Obosis of Umuezechima etcetera. All issues controverted put to strict proof. Para 30. Exhibit "14" asserts Obosi possessary rights, bases his buildings on it, mistaken belief. Para 6 of Statement of Defence, Para.10. Substantially same defence in this case, Para 22 (c) of Statement of Defence, acquiescence in issue and determined. Pleadings in O/25/58. Claim (1) damages for trespass, (2) Recovery of possession, (3) Injunction, land Ugborimili land. Pleadings in O/32/58, claim- ing declaration entitled to possession of Ugbori- mili land. Although D - E case dealt with an individual it dealt also with a community right. Community knew; what did they do and knew of action, admitted by Gratiaen Q.C. Obosi Pro- gressive Union, large body includes "elite" at home and abroad.

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Exhibit "15" finding by trial judge that Obosi Community stood behind Defendant. Advertisement by Obosis. Consulted Obosis; with Obosi sup- port defended the action. Building on land since Niger Company and Crown were in possession etcetera; claim against Defendant personally but fought out Ogbo Family v Obosi. Transfer fees etcetera (Conceded by Gratiaen Q.C. earlier)

40

Judge granted recovery of possession on basis that as between Obosis and Ogbo Family, where

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was the possessory right; found possessory right in Ogbo Family. Some findings of facts :- No laches or acquiescence on part of Plaintiffs. Paying rent to us even if land Crown land since 1900. 14 W.A.C.A.178 Esiaka v Obiasogwu.

Action withdrawn left to D.O. but even if that was not so P.180. Chief Onyeama pledgee asserting their right, presumption to conduct proceedings. Bound by result in O/31/56 had it gone against us. Either strict res judicata or standing by.

10

Marvell v Akwa 14 W.A.C.A. 143, 145, substantial justice and that which right reason requires.

Ata v Agyei (1952) 14 W.A.C.A. 149, 152, taking benefit further evidence of acquiescence; taking benefit not essential element. Abuakwa v Adana 1957 (3) All E.R. 559 fought out by subordinate, recognised thing etcetera. Inequitable to bring up question again, no application to be joined as parties, tenant and landlord; encouraged by

20

Obosi to resist Plaintiff; no need for any actual benefit. Obosi people bound by the judgment of Dove - Edwin J. Kwao v Coker (1931) 1 W.A.C.A. 162 167 Dispute concerns whole of land not mere piece (Conceded by Gratiaen Q.C. earlier).

No appeal in respect of O/31/56. Any appeal does not affect alleged estoppel (Exhibit "15A" Chapman v. C.F.A.O. 9 W.A.C.A. 181, 182, judgment valid, unless made without jurisdiction, bad law immaterial, failure to distinguish between laches and limitation not concern of this Court. Exhibit "15", no acquiescence by Crown issue on case finding make, immaterial finding mistaken on question of estoppel.

30

2. Acquiescence of academic interest not against us against Crown. (1895) A.C.83 does not lay down principle acquiescence can always be pleaded against Crown, based on a concluded contract. Defendant went into possession with Crown knowledge, in 1868, never paid any rent; nothing done until 1880 when Defendant was sued, partaking of estoppel and part performance. Above case does not lay down any general authority Ramaden v Dyson (1916) 2 K.B. Building on land with honest and mistaken belief land is his own, owner does nothing to prevent building going on, fraud. Stranger, knowing land is not his own goes and build on it; makes a present of it to the owner of the land. Obosis built from 1934, in error as to who owned land, any bona fide mistake on their part not in 1934.

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Exhibit "48B" handed to Government in 1900 ordered to pay rent. Plaintiffs Vs Ogbosi: not concerned whether decision right or wrong it stands. Obosis knew they were tenants in 1930. Tenant can hold over or deny his landlord's title in which event he becomes a trespasser; if he remains on the land. As against Crown effective year would be not 1900 but 1934.

Findings of fact by Manson J. and Dove-Edwin J; hands tied by Government in 1934. Township set up from 1934, knew we were their landlords, prohibited by Government from collecting rent; believed it was Obosi land, story untenable Obosis informed it was Crown land, yet went on building without permission. Farming permitted not building, warnings, government could not take sides, not bound to act energetically, sufficient that it acted. Williams v Mends 9 W.A.C.A.50 58

Obosis undisciplined and lawless; Government did act (Exhibits 25 - 30). 54 houses in 1944. 54 Obosi houses only then on the land, houses going up during pendency of case, acquiescence based on equity; not clean hands, sections 27 - 36 Crown lands Ordinance unlawful to build without permission; how can they rely on their unlawful acts. Obosi people nuisance to their neighbours motive greed; building to present township. Exhibit "45" para 6 attempts to stop infiltration. Wilnot v Barber (1880) 15 ch 96, 105. P 57 in William v Mends. No mistake by Obosis paying rents, cannot pay rents for their own land, must know of existence of its own right, Crown not in doubt of its rights, only as to date of abandonment, nothing short of fraud will do. No basis of acquiescence. Unlawful acts by Obosis to-date, houses going on after 1949, after judgment; although title, possession, etcetera awarded to Ogbo Family. No rights of sale or disposal of land involved in a possessory right; where is their good faith. Exhibit "54" of 28th March, 1955. Privy Council never gave possession to Obosi. No equitable relief possible. Ichu house outside C.D.C. site only house outside C.D.C. site.

Adjourned 12th May, 1960 for decision of Court.

(Sgd) Herbert Betuel
 PUISNE JUDGE
 7/4/60.

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In the
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HOLDEN AT ONITSHA

No.52

BEFORE THE HONOURABLE MR.JUSTICE BETUEL,
PUISNE JUDGE

Consolidated
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THURSDAY THE 12TH DAY OF MAY, 1960:

Judgment
12th May 1960

SUIT NO. 0/25/58

- 10 1. EUGENE NZEKWU) For themselves and on behalf
 - 2. PHILLIP AKUNNE) of the Ogbo Family of Umuasele
 - ANATOGU) sele Onitsha ...
- Plaintiffs.

A N D

- 1. ANACHUNA NWAKOBI The Osha of Obosi
- 2. IKEFUNA ONWUGBOLU The Oboli of Obosi (as representing themselves and all others the people of Obosi.

A N D

- 20 3. JABEZ CHUKWUDEBE NWANGWU.
- 4. ALFRED OKOMA
- 5. JONAH NWOGEM
- 6. DOCTOR JONAS IWEKA
- 7. ISAAC IWEKA
- 8. JONAS EBEZUE ... Defendants

- 1. ANACHUNA NWAKOBI the Osha of Obosi
- 2. IKEFUNA ONWUGBOLU The Oboli of Obosi (representing themselves and all others the people of Obosi) ... Plaintiffs

A N D

- 30 1. PHILLIP ANATOGU
- 2. EUGENE NZEKWU (representing themselves and all others of the Ogbo Family of Umuasele Onitsha) Defendants

(Consolidated hearing of the above causes ordered on 10th February, 1959).

Plaintiffs same appearances as before.

Umezinwa for Nonyelu for Defendants.

J U D G M E N T

The actual hearing of the above causes

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fortunately only lasted eight days, as some issues were abandoned and documents were admitted in evidence without further proof.

The portion of land in dispute is shown in Exhibit "1" verged pink, it is not the whole of Ugbo - Orimili land, because the portion North of the Port-Harcourt Road, verged green, remains Crown land. The area of land which had been the subject matter of a lease with the Colonial Development Corporation is verged purple. The actual site of the Royal Niger Company's premises is verged yellow.

10

Suit Number 32 of 1958, is a representative action between the Obosi Community and the Ogbo Family of Umuasele Onitsha.

Suit Number 25 of 1958, is partly an action between The Ogbo Family and the Obosi Community; and, partly an action against individual Obosis, for damages for trespass, the recovery of possession and an injunction.

20

The first two Defendants are sued in a representative capacity, the remainder in a personal capacity. The suit was conducted on a representative basis, and the 3rd - 8th Defendants in Suit Number 25 of 1958, should be dismissed from the suit.

The only suits remaining are the representative actions in suits Number 25 and 32 of 1958.

In dealing with these preliminary considerations, it may be remarked that this dispute and others of a like nature, are between representatives of certain original Onitsha families and the Obosi Community, and are not disputes with the Onitsha Community as a whole.

30

The present Ogbo Family of Umuasele, Onitsha are descendants of one of those original Onitsha families who alleged that their rights in land, which they regard as family land, are threatened by the claims of the Obosi Community.

The title to the land having been awarded to the Ogbo Family, an Onitsha family, the land itself is to be regulated by Onitsha not Obosi local

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customary law.

10 It is part of "Ugbo - Orimili" land, also known to the Obosis and strangers as "Otu Obosi". "Otu Obosi" was perhaps, at first, limited to in or around the site where the Royal Niger Company had its premises, and, where the few original Obosi families living on the land had their houses. "Otu Obosi" means the "Obosi Beach", "beach" in this sense, means any trading area sometimes but not necessarily always, close to water. "Ugbo Orimili" means the "bush" by the "Idemili Creek, "bush" is any area of mainly uncultivated land though parts of it may be farmed and inhabited.

20 As already stated, the portion of "Ugbo - Orimili" land where the Royal Niger Company had its buildings became known as "Abutshi", (See Exhibit "77"), "obosi" or "Otu Obosi", and by expansion, the name "Otu Obosi" may have covered the same or a similar area as that of "Ugbo - Orimili".

Further as a number of Obosis had lived and farmed there since even before 1888, it was natural enough for Europeans and other strangers to call it in earlier days "Abutshi (i.e. Obosi) or more recently "Otu Obosi

30 The use alone of the name does not confer, in itself any ownership or possessory rights on the Obosi community as such to the land in dispute or any part thereof, as it is an essential part of the case put forward by the "Ogbo Family, that any such rights to live or farm on the land, were conferred on individual Obosis and their descendants as tenants and not on the Obosi Community as a whole.

The extent of those rights will be discussed at a later stage.

40 In Suit Number 32 of 1958, the Obosi Community claim as against the Ogbo Family, to be entitled to usufructuary rights in Ugbo - Orimili, piscatory rights in the waters adjoining and therein, and an injunction to ensure the enjoyment of these rights.

The Ogbo Family claim (inter alia) that all

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these issues are resjudicata.

I turn to two recent cases in which individual Obosis were sued by the Ogbo Family in respect of the land in dispute, for the recovery of possession, demolition of the buildings erected by them, and an injunction.

I will not touch on Exhibit "19" and subsequent proceedings, except to say that the Ogbo Family recovered judgment.

It is relevant to these proceedings and unless and until upset on appeal, it is now before the Judicial Committee of the Privy Council, on the basis of the Ogbo Family argument it could amount to an estoppel per rem judicatum, they prefer, however to rely on Exhibit "15" which they submit cannot be upset on appeal, as no further appeal lies, and amounts to an estoppel. 10

I therefore leave Exhibit "19" and turn my attention to Exhibit "15". 20

In Exhibit "15", the action was between the Ogbo Family and an Obosi, known as Ichu.

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, 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. 30

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 the defence put forward and evidence adduced in this case.

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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10 I accept the reality as conclusively shown the suit was financed and conducted by organised bodies within the Obosi Community their Progressive Society and Land Council, and I am not at all sure that the Obosi Community deny it, 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.

20 In Commissioner of Service of the City of London v Gellatly (1876 3 Ch 610 - 611, 613-617), the action was concerned with an earlier suit between the Plaintiffs on behalf of themselves and all other occupiers of land, and tenants within Epping Forest, against the Lord of the Manor, and, two grantees from the Lord of the Manor, the other grantees being too numerous to be joined, the Defendant was one of those grantees too numerous to be joined. The Plaintiffs sued the Defendant claiming an injunction, and the benefit of a decree granted against the others.

30 It was held that the Defendant was bound by the decree in the suit and could not litigate the right of common thereby established, and that these subsequent proceedings were merely a continuation of the earlier proceedings.

40 In re Lart (1896) 2 Ch. D 788, it was held that if a person not a party to an action and not technically bound by the judgment, but fully cognizant of the proceedings, stands by and deliberately takes the benefit of a decision under it, he is estopped by his conduct, in identical circumstances, from re opening any questions covered in the former action, even though claiming in respect of a different interest.

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

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4, rule 5 of the High Court Rules of 1955.

The Obosi Community in the language of Lord Penzance in *Wytcherley v Andrews* L.R. 2 P and M 329 were "knowing what was passing were content to stand by and see their battle fought by somebody in the same interest" and the issues and defences now raised in the proceedings are identical with those raised in the earlier proceedings, and, I do not think it is material whether the result of those proceedings were a burden or a benefit.

10

The applicability of these doctrines and their extension to local circumstances has been considered in some decisions of the West African Court of Appeal.

In *Kwao v Coker* (1931) 1 W.A.C.A. 162, the facts were (my own lettering) that "A" sold land to "B", "B" sold a portion of the land to "C", a predecessor of "D", the Defendant.

Later "A" sold the same land again to a syndicate consisting of "E", "F" and "P", the Plaintiff.

20

This resulted in an action between "B" and "A", in which "B" was declared to be the owner of the land. "E" who asserted a right to a portion of the land was sued for trespass by "D", the land was found to be the property of "D". "P" then sued "D" for trespass. Held, as "P" title was identical with that of "E", and he had stood by and acquiesced in the title being determined in favour of "D", he was now estopped from asserting any title in the land.

30

It need hardly be reiterated that in the present and earlier suits, the defence and issues are identical, same as to a claim to damages for trespass in this Suit O/25/58. *Marbell v Akwei* (1952) 14 W.A.C.A. 143, was concerned with a plot of land, "A" sued "B", "A" claimed title through various persons, and "B" through "C" from whom he bought the plot, and the issue was title; "A" won the case and in a new action pleaded estoppel as against "C". Held:- "C" being in the same interest as "B" could have applied to be joined, as the result was likely to affect him, in the earlier action, instead he left "B" to defend, he was estopped from bringing the action.

40

As the principal is estoppel based on acquiescence, receipt of a benefit under the judgment is only further evidence of acquiescence. ((1952) 14 W.A.C.A. 149. 153).

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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. (Esiaka v Obiasogwu (1952) 14 W.A.C.A. 178, 180 - 181). The evidence of such identification is overwhelming. I take judicial notice that it is a recognised practice in this part of West Africa, as in some other localities, for a community with the same interest in a land suit as an individual to range themselves on one side or the other either by applying to be joined as parties or by providing witnesses or both. (Abuakwa v Adanse (1953) 3 All E.R. 539).

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In my opinion Exhibit "15" is res judicata or comes within the extension of the doctrine, but in case, I am mistaken, I will also consider the other aspects of the case.

So far as any claim arising under any local customary law is concerned, the Obosi Community have adduced no evidence to support it; it has been abandoned and is hereby dismissed, and any usufructuary rights even if they existed, would not extend to granting leases of the land to strangers, an abuse of the proprietors' rights in the land.

Did the Obosi Community acquire any rights in the land by reservation under the Agreements (Exhibit "1" and "2").

The historical back ground to the dispute between the parties, is that 1884 and 1896 certain lands, including "Ugbo - Orimili" or "Otu Obosi", were granted by Akagbue, a member of the Ogbo Family, to the National African Company Limited, to whom the Royal Niger Company succeeded.

The Ogbo Family by virtue of that act, although some rights were reserved to them, divested themselves of their title in the land. (Egbuchie v Idigo (1934) 11 N.L. R. 140)

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These lands came under the control of the Crown by virtue of the provisions of Section 2 of the Niger Lands Transfer Ordinance of 1916, (Cap. 149) which vested in the Governor v His Successors, in trust for His Majesty, His Heirs and Successors, the land acquired by the Royal Niger Company, and, the land by virtue of the provisions of Section 2 of the Crown Lands Ordinance, (Cap 45), became Crown Land. It would appear, that apart from the provisions of these Ordinances, the Crown acquired these lands, subject to any reservations contained in the Agreements.

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These reservations preserved certain fishing and farming rights for the Obosis and occupancy rights to the original families occupying a fringe of land extending 500 yards inland from the Niger River.

It is only necessary to consider the extent of the grant in so far as it included the whole of "Ugbo-Orimili" or "Otu Obosi" not only the portion of land in dispute.

20

The Ogbo Family have been recognised as the original owners of the Crown land as existing to-day, and the portion of land in dispute, which between the years :- 1900 - 1948 was Crown land.

The rights of certain Obosi people, or, of the Community to occupancy or usufructuary rights in the land in dispute was not expressly negated by the decision of the Judicial Committee of the Privy Council in Kodilinye v Anatogu, (1955).
1. W.L.R. 331)

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It becomes, therefore, necessary to find out what those rights, if any were.

The 2nd Plaintiff, Chief P.A. Anatogu, the Owner of Onitsha, although not the Okpala (Head) of the Ogbo Family gave evidence as to the local customary system of tenure on Ugo - Orimili.

Farmers were placed on the land, annually for each farming season, mostly but not exclusively Obosis, on payment of rent or tributes.

40

There were some Obosi tenants living on the land by permission of the Ogbo Family on payment

of rent or tributes, these were:- Anah Akalue, Okafor Kwochaka, Obiefuna Nwabunye, Ekejiofor Ezeakudo. It is also conceivable, as Mr. Iweka says, that his uncle lived on the side and did not pay rent to anyone, a statement based on hearsay, but it was an extensive bush, no doubt, not carefully controlled.

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Judgment
12th May 1960
continued

10 I have already stated that the presence of these Obosis on the land may have led both Obosis and strangers to call the land "Otu Obosi", but no claim to any rights of occupation is raised specifically by the descendants of those persons who had houses on the land, the claim to possessory rights is raised by the Obosis Community as a community.

20 Other settlements were at the time of these Agreements or subsequently permitted on the land by the Ogbo Family on the usual terms:- Ijaws, Hausa, Okweru, and Ogbe Uku, where the Warri people lived.

It is admitted by the Obosi Community that they never purported to make any grant to any stranger Community until November, 1958, while the present case was pending, they offered plots on the land to Aboh people, on payment of a premium of £300, and at a rental of £3 per year, per plot, and indeed received £150 on account.

30 The conclusion, I come to, is that until comparatively recent times, the system of land tenure outlined by Chief Anatogu was the general rule and was generally observed.

40 In the light of this evidence, it is difficult to believe that the reserved rights of the Obosis went further than preserving to individual Obosis on the land, their seasonal rights to farm, and on the waters, their right to fish, coupled with a right of occupancy to the original inhabitants and their descendants who had received permission to occupy portions of the land, and that all these were in duty bound to acknowledge their landlords title by payment of rent or tribute.

It is interesting to observe that these rights were reserved as against the Company by the Ogbo Family, who were protecting their tenants i.e.

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continued

The Obosis.

The existence of these Agreements and the subsequent status of the land as Crown land, did not prevent the Ogbo Family from putting tenants on the land, Obosis included, and claiming rent from them. When some of the Obosis ceased to pay rent in 1924 - 1928, some of them were sued and the Ogbo Family continued to assert their rights, until prevented from doing so by orders of the Crown, warnings which were heeded by the Ogbo Family but not by the Obosis.

10

I find that the Obosis claim under these Agreements except to be individual tenants of the Ogbo Family, with their permission and on payment of rent, must be dismissed.

It appears that I have reached the same conclusion as Dove-Edwin J. did in respect of these reservations in suits 31 and 38 of 1956. I have already dealt with suit Number 31 of 1956, considered as an estoppel.

20

There remains the question whether the Obosi Community can successfully resist the remedies sought against them in Suit Number 25 of 1958, by raising some sort of equitable title or defence.

I turn to some cases in which the Ogbo Family have asserted their interest in the land. Exhibit "47" is a record of Onitsha Native Court cases Numbers 101 and 103 of 1928, the action is brought by the Ogbe Owelle, a part of the Ogbe Family, against three Obosis for trespass and building on the land. The land was Ugbo Orimili. The judgment which was not materially affected by Orders made by the Assistant District Officer and the District Officer on the 25th of April and 17th of May 1928, respectively, was given in favour of the Plaintiff, Nduaguba Akagbue. This case shows that as early as 1928, the Ogbo Family were enforcing as against the Obosis, their possessory rights in the land, it may be perhaps, mistakenly and because since 1900 the area had been acquired by the Crown as statutory successors of the Royal Niger Company, as Crown land, and vested in the Governor as trustee for His Majesty, His Heirs and Successors. (Section 2 of the Niger Lands Transfer Ordinance

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claim that they gave their land to the Royal Niger Company, and were authorised by the Government to live there, and, ask the Plaintiffs to sue Government, their superior landlord.

Chief Kodilinye, claimed title to the land, and says the Obosis made a grant of it to the Royal Niger Company who had permitted them to live on the land.

The case is important as showing that as early as 1928, representative Obosis knew that they were only permitted to live on the land. The issue of title to the disputed land has been decided in favour of the Ogbo Family, and, it is admittedly too late to raise it. The decision followed on a divesting order made under Section 14 of the Niger Lands Transfer Ordinance of 1916 (Cap 149), whereby the Ogbo Family revived or re-acquired their rights in the disputed land. The Order, however did not revive the status quo ante pactem i.e. before 1882, so that due regards must be paid to rights, if any acquired at the time of the divesting order.

There is evidence that individual Obosis were tenants of the Ogbo Family and that neither the individual Obosis nor the Obosi Community disputed the status of those persons as tenants until 1924-1928 when individual Obosis denied their landlords title by refusing to pay rent and setting up title in the Obosi Community. There is evidence that these individual Obosis were sued for rent successfully. The Plaintiffs, whenever able to do so, have consistently sought to protect their rights by suits against the Obosis personally and as a community, by making representations to Government, during the period, the land was Crown land, and it is now admitted by the Obosi Community that any equitable defences, they put forward, will not avail them, against, the Ogbo Family as such, but against the Ogbo Family as the successors of the Crown.

Considering the period during which the Ogbo Family were pressing the Crown to act, believing themselves powerless to do anything, it seems a strange result of equitable doctrines, and just cause for complaint on their part, although not themselves in any way at fault, as statutory

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successors of the Crown, they may find themselves bound by the result of the Crown's inactivity.

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High Court

It is submitted to me, that is the law and for purposes of my decision, I will assume that the submission is well founded.

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Judgment
12th May 1960
continued

10

Viewed historically as the township of Onitsha expanded "Ugbo - Orimili" or "Otu Obosi", assumed importance, not indeed as agricultural land, it is noticeable Onitsha families do not farm there but Eastwards, but for building houses and possibly in the future for the erection of industries.

20

In 1952, between the date of the judgment of the West African Court of Appeal and that of the Judicial Committee of the Privy Council in 0/3/49 (Exhibits 8 & 9) as to the ownership of the portion of Ugbo - Orimililand in dispute, and on portion of which was the intended Colonial Development Corporation site, the corporation entered into an agreement for a lease of that portion with the Ogbo Family and the Obosi Community (Exhibit "10")

The Corporation undertook to pay compensation to those on the land whose houses were demolished and to pay the accumulated rents to the party who succeeded in the appeal before the Privy Council.

The land was entered, houses demolished, compensation paid, and, the whole area was fenced.

30

I do not accept the evidence that all Obosi houses on the land in dispute, were in 1956, on that site, but I believe a great many of them were demolished on that site.

A sum of £4,320 accumulated rent, deposited in the Bank of West Africa, was paid to the Ogbo Family as the absolute owners of the land under local customary law and as the party empowered to grant the lease and receive the rent. (See Exhibit "11").

40

Even since 1956, a large number of houses have been built on the land in dispute by the Obosi Community, in spite of their doubtful rights,

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High Court

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12th May 1960
continued

remonstrances, actions at law, undertakings and injunctions and judgments.

Waiving aside all these impediments, they had succeeded in creating a minor township, now part of an electoral ward, with churches, schools, many buildings and many inhabitants, and, have treated the land as their own.

It may be accepted as factual, that this building of houses has been going on for a considerable time, while the land was Crown land, when the Ogbo Family were powerless to interfere and since, when the Ogbo Family took action.

10

The Obosi Community no longer rely on any laches or acquiescence on the part of the Ogbo Family as such, but on the laches and acquiescence on the part of the Crown during the period that the land in dispute was Crown land. I have already stated that for these purposes; I accept that statement of law that such laches or acquiescence on the part of the Crown would bind the Ogbo Family. Section 31 of the Crown Lands Ordinance (Cap 45) provides that :-

20

"No action or other remedy by or on behalf of the Crown for the recovery of possession of Crown land shall be barred or affected by any statute Ordinance, or other law of limitation".

I do not think that the operation of this section, will bar, wherever applicable, any properly raised equitable claim or defence. Section 25 of the Real Property Limitation Act of 1883 was so construed, and section 29 of the Limitation Act of 1939, preserves the jurisdiction of the Court to refuse relief on grounds of acquiescence "or otherwise" e.g. "laches".

30

Reasoning by analogy, I apprehend therefore, that section 31 is not to be construed as compelling the Courts to disregard all the events which happened, when title to the land was vested in the Royal Niger Company, and, even when it was Crown land, as to any rights of use and occupation acquired or accrued during that period by acquiescence or otherwise to the Obosi Community as rights of property unenforceable by the operation of such doctrines are not made

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unenforceable or any right extinguished by the operation of any written law or any law of limitation, and it is submitted, that any equitable claim or defence available against the Crown is equally available against the Ogbo Family.

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High Court

No.52

If Dove-Edwin J., in Exhibits "15" and "19", construed section 31 in an opposite sense, I must respectively disagree with that construction, if however, I am bound by his decision as to res judicata, my opinion on this point, is merely academic and of no consequence in this suit.

Consolidated
Suits
Judgment
12th May 1960
continued

For what is is worth, I repeat, section 31 only applies to the limitation of actions and does not affect equitable defences, and, I find some confirmation of that view in the Attorney-General for Trinidad and Tobago v Bourn (1895) A C 83. Let us consider again the facts. Even before 1882 until about 1924 - 1928, individual Obosis paid rent or tribute for the occupation of their lands and no question of acquiescence can arise.

When they ceased to pay rent, they were sued by the Ogbo Family, until 1934, when the Ogbo Family were forbidden by government to have any dealings with the land, and so were the Obosis. The Ogbo Family heeded the warning the Obosis did not.

The attitude of the Crown appears to have gone through several stages, at first they do not seem sure in view of the existence of the agreements, of their position, but they nonetheless issued a warning to the parties, a gesture of ownership, in the next stage, between 1934-1948, the Crown not wishing to take sides in the dispute, and, having in view the abandonment of a part of the land, held their hands, although in 1944, they did bring an action against a number of individual Obosis, which they finally discontinued.

The fact the action was brought, was another gesture of ownership or something more than that; and shows that the Crown was disputing the Obosi claim, and, tells against any acquiescence on the part of the Crown, and may destroy any estoppel which would avail against the Crown, and therefore

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12th May 1960
continued

the Ogbo Family.

It is clear that in the period 1934 --1948, the Obosis built on Crown land to the knowledge of the Crown, any other suggestion to the contrary is ridiculous, but did they build in good faith on property which they honestly believed to be their own.

I may be exceedingly obtuse but I am 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 possessary rights in the land and were permitted to build thereon and treat the land as if it were their own (Section 150 of the Evidence Ordinance) (Cap)

10

The facts do not seem to me to suggest any sufficient grounds for any such belief and, I apprehend, that acting bona fide is a cause sine qua non of the grant of any equitable relief. If they held any such belief, which I doubt, I do not think that such a belief was reasonable. It is even doubtful since the Crown had at one time, some doubts as to its rights, whether it can be said that during that period the Crown with full knowledge of its rights, permitted the Obosis to build on the land. (Attorney-General to the Prince of Wales v Collom (1916) 2 K B 193) ch. 205.

20

Far from being permitted to build on the land they were, as they well knew, forbidden to do so. The term acquiescence is used in two senses, and I believe that I have touched on them both in one case a person abstains from interfering when his legal rights are violated, in the other he takes no steps to enforce his rights, when the knowledge of it is brought to his notice i.e. is guilty of culpable delay (i.e. "laches").

30

Acquiescence operates by way of estoppel, laches by way of an implied waiver. I have already stated that I have great doubts, whether in the circumstances of this case, any estoppel can be said to arise, nor in my view, has there been any sufficient waiver by culpable delay or negligence.

40

I have stated that the Crown must have full

knowledge of its rights, and, the Obosis must have acted under a mistaken belief, which was reasonable, and that any such relief, if it ever existed was not reasonable.

In the
High Court

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It is difficult to seize on any sufficient period of inactivity and to point to any course of action amounting to the bolstering up of a stale claim as in *Awo v Gam* (1913) 2 N.L.R. 100.

Consolidated
Suits

Judgment
12th May 1960
continued

10 If the Obosi Community, as they did, flooded the land in dispute with persons and buildings, in accordance with an unreasonable belief not caring whether the land was in their possession or not, with a view to presenting everyone with a "fait accompli", enabling them to plead the hardship of being dispossessed; they cannot now complain if as a community, they are now dispossessed, I say nothing as to the innocent persons who derive rights through them; as that issue is not before me.

20 These equitable defences, as we have seen, are available against the Crown, and, it is not necessary for me to consider the matter any further, except to say that as between the parties, the Crown, who remonstrated and sued and, the Ogbo Family, who did all they could in the circumstances in which they were placed, the balance of justice lies in refusing any relief to the Obosi Community.

30 There are, it seems to me, no grounds for imputing even to the Crown, a lack of good faith, conscience or even in the circumstances, reasonable diligence, if lack of good faith and conscience is to be attributed to anyone it should be imputed to the Obosi Community (*Smith v Clay* (1767) 3 Bro C.P. 640 n: and *Wimot v Barber* (1880) 15 Ch. D 96, 105.))

40 In the end, I think, the defence of the Obosi Community is that we have been on the land a long time and ought not to be disturbed, but even that is only true in respect of certain individual Obosis. They also say we have never paid rent to any one, that is false up to the years 1924 - 1928; no one did anything to us, not true in 1928 and 1944.

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High Court

No.52
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continued

These are some loose ends to be gathered up. After the Privy Council in 0/3/1939 (Exhibit "7") had awarded the radical title in the land to the Ogbe Family, and, left open for further judicial decision the possessary rights of the Obosi Community. They purported to interpret this decision to mean that it conferred possessary rights on them, which they never had before, except on payment of rent or tribute, or by leave of the Crown, and continued to deal with the land as if it were their own, hence this action for the recovery of possession and damages for trespass.

10

If the Obosis had a mistaken belief as to the rights conferred on them, the Ogbo Family did everything to inform them that the issue of possession was still in abeyance. How far at that late stage, it was a genuine mistake, or, how far they were misled by their leaders who feared to tell them the truth, and who ought to have know better must remain a matter of conjecture.

20

Immediately after their Lordship's decision they continued exploiting the land. building on it, making grants of it to Obosis and non Obosis, in a lawless manner and glorying in it.

The motive for these actions has already been exposed it is to build up a case of hardship. It is no longer a question of farming only but of having continuously built on the land so as to turn a bush area into a minor township and a part of an electoral ward.

30

The land in dispute is admittedly flooded with Obosis, their tenants and grantees, placed on it without any reference to the Ogbo Family.

In arriving at these conclusions and inferences from the evidence and the facts, I hope that it is not thought that I believe that the Crown sued all the Obosis on the land in 1944, a number were picked out, I suppose, as an example to the others, further I do not believe that all Obosi houses, except a few were destroyed, on the proposed Colonial Development Corporation site.

40

I now turn to the claim for trespass, the trespass was a community trespass, at first individual Obosis were tenants, then they held over and refused to pay any rent, finally the community,

even while the land was Crown land, knowing that they were if anything at all, mere licencees of the Crown, flooded it with tenants, denied the title of their landlords; the Ogbo Family, exceeded any rights of possession and use, if they mistakenly thought they had such rights, by making grants to strangers. I am also entitled to consider other aspects of their conduct, at first they alleged title, then possessary rights, if that fails, equitable defences, showing in their constant change of weapons, that they are determined to hold on to the land at all costs.

In the
High Court

No.52

Consolidated
Suits

Judgment
12th May 1960
continued

10

It is impossible to estimate the losses suffered by the Ogbo Family as a result of their trespass and contumacious conduct, but the damages should not be parsimonious; I award £500 damages against the Obosi Community, also an injunction and the recovery of possession in the terms set out in the writ (as amended on the 23rd of March, 1959) and 280 guineas costs.

20

I award to each of the 3rd - 8th Defendants in 0/25/58 £15:15/- costs as against the Plaintiffs, the costs of their unnecessary joinder in a personal capacity.

In 0/32/58, there will be judgment for the Defendants with £170 costs to the Defendants.

(Sgd) Herbert Betuel
PUISNE JUDGE
12/5/60.

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NO.53

In the Federal
Supreme Court

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

No.53

Notice and
Grounds of
Appeal
3rd June 1960

(Consolidated)

H.C. SUIT NOS. 0/25/58 &
0/32/58

B E T W E E N:

EUGENE NZEKWU & ANOR ... Plaintiffs

A N D

In the Federal
Supreme Court

ANACHUNA NWAKOBI & 7 ORS.
ANACHUNA NWAKOBI & ANOR.

Defendants
Plaintiffs

No.53

A N D

Notice and
Grounds of
Appeal
3rd June 1960
continued

PHILLIP ANATOGU & ANR.
in re Anachuna Nwakobi & Ors.
representing themselves and
all others the people of Obosi

Defendants
Appellants

TAKE NOTICE that the Defendants in O/25/58 and Plaintiffs in O/32/58 being dissatisfied with the decision of the High Court contained in the judgment of His Lordship Mr. Justice Herbert Betuel dated 12th day of May, 1960, doth hereby appeal to the Federal Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

10

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.

20

2. Part of Decision of the lower Court complained of :

Whole decision.

3. Grounds of Appeal.

(1) The learned trial Judge erred in law by holding that Exhibit 15 was res judicata.

(2) If the learned trial Judge's decision that Exhibit 15 was res judicata is right then the learned trial Judge erred in law in failing to apply to this case the findings of fact by the Learned trial Judge in Exhibit 15 that Ichu "went on the land and built on it in the mistaken belief that it belonged to the Obosis and in this he is fully supported by the Obosis".

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(3) The Learned trial Judge misdirected himself when he went further to find that the Obosis did not build in good faith honestly and reasonably believing the property to be theirs;

(a) "good faith", "honesty" and "reasonableness" are not essential ingredients to found a defence of laches and acquiescence. Even if these are essential elements to found a defence of acquiescence his conclusions are unsupported by his findings of fact that "It is clear that in period 1934 - 48, the Obosis built on Crown Land to the knowledge of the Crown, any other suggestion to the contrary is ridiculous.

In the Federal
Supreme Court

No.53

Notice and
Grounds of
Appeal
3rd June 1960
continued

4. The learned trial Judge erred in law and on the facts by failing to find in favour of the Defendants on their defence of laches and long possession and he failed also to draw the distinction between acquiescence as an element in laches and acquiescence per se.

5. The Learned trial Judge misdirected himself as follows :

"It is even doubtful since the Crown had at one time some doubts as of its rights, whether it can be said that during that period the Crown with full knowledge of its rights, permitted the Obosis to build on the land;" because no such conclusion could be arrived at from the facts before the Learned Judge

As

(a) The Nigeria Lands Transfer Ordinance 1916 vested in the Crown the land now in dispute;

(b) In Exhibit 25 i.e. O/15/44 the Crown claimed the present land in dispute as land "vested in the Crown by the Niger Lands Transfer Ordinance (Cap. 86) and is mentioned in the First Schedule as No.72".

This also affected the learned trial Judge's decision in coming to the conclusion that no acquiescence was established against the Crown.

(6) The learned Trial Judge erred in law in finding possessory rights in favour of the Plaintiffs thereby declaring the Defendants Plaintiffs trespasses or tenants of the OGBO family or tenants holding over basing his conclusion on Exhibits 47, 48 and 49 Onitsha Native Court cases because these

In the Federal
Supreme Court

No.53

Notice and
Grounds of
Appeal
3rd June 1960
continued

cases are inadmissible and the judgments could not be founded upon as having been pronounced by a Court without jurisdiction, the land then being Crown Land.

(7) Assuming that the said Native Court cases or any of them were admissible and of legal effect the learned trial Judge erred in law by finding for the Plaintiffs on the question of trespass and awarding damages thereon when he held as follows:-

10

"The case is important as showing that as early as 1928, representative Obosis knew that they were only permitted to live on the land"

(8) Furthermore on the question of trespass, the learned Trial Judge found as follows:-

"I now turn to the claim for trespass, the trespass was a community trespass, at first individual Obosis were tenants, then they held over and refused to pay any rent, finally the Community, even while the land was Crown land, knowing that they were if anything at all, mere licences of the Crown, flooded it with tenants, denied the title of their landlords, the OGBO family, exceed any rights of possession and use, if they mistakenly thought they had such rights, by making grants to strangers".

20

This coupled with his findings that between 1934 - 1948 the Obosis built to the knowledge of the Crown negatives trespass by the Defendants

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Because

- (a) Between 1882 - 1948 the Ogbo family was not in exclusive possession or entitled to possession the reservation in Agreement No. 72 conferring no such rights as of right.
- (b) 0/3/49 gave radical title to the Plaintiffs the issue of possession being left at large.
- (c) The Plaintiffs writ did not cover the period other than March 1958 and the only evidence of the Plaintiffs on the question of grant by Defendants to strangers is November 1958.

40

The Learned Trial Judge thereby misdirected himself.

In the Federal
Supreme Court

(9) The Learned Trial Judge erred in law in dismissing the Defendants' claim in 0/32/58 and he was influenced in doing this by all the misdirections hereinbefore recited.

No.53

Notice and
Grounds of
Appeal
3rd June 1960
continued

(10) WEIGHT OF EVIDENCE

The Judgment is against the weight of evidence.

10

4. Relief sought from the Federal Supreme Court:

Judgment to be set aside. Plaintiffs' claim in 0/25/58 to be dismissed and Defendants' claim in 0/32/58 to be allowed. Costs in the Court below in both cases to be taxed if relief granted.

20

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL.

NAME

ADDRESS

Eugene Nzekwu & Ors.

c/o Their Solicitor
Chuba Ikpeazu Esq.,
Barrister-at-Law,
Onitsha.

Anachuna Nwakobi & Ors.

c/o Their Solicitor
Messrs.Nonyelu &
Nonyelu
20 Bernard Carr
Street,
Port Harcourt.

30

Dated at Port Harcourt this 3rd day of June, 1960.

(Sgd) G.C.Nonyelu
pp. Nonyelu & Nonyelu,
Solicitor for Appellants,
20 Bernard Carr Street,
Port Harcourt.

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In the Federal
Supreme Court

No.54

Notice of
Intention to
contend for
variation
28th June 1960

NO.54
NOTICE OF INTENTION TO CONTEND FOR
VARIATION

IN THE FEDERAL SUPREME COURT:

NOTICE BY THE RESPONDENT OF INTENTION TO
CONTEND THAT DECISION OF COURT BELOW BE
VARIED.

SUITS NOS.0/25/58 &
0/32/58

BETWEEN:

ANACHUNA NWAKOBI & ANOR. Appellants
AND
E.N.NZEKWU & ANR. Respondents

10

TAKE NOTICE that upon the hearing of the
above appeal the Respondents herein intend to
contend that the decision of the Court below
dated the 12th day of May, 1960, shall be varied
as follows:-

That £5000 damages be awarded against the
Obosi community.

20

AND TAKE NOTICE that the grounds on which the
Respondents intend to rely are as follows:-

1. That the Obosi people have considerable
number of houses on the land in dispute.
2. That the Appellants have alienated portions
of the land to non-Obosi tenants who have built
many houses thereon and from whom they (the
Appellants) have been collecting rent.

Dated this 28th day of June, 1960.

(Sgd) C.E.Agbu
RESPONDENTS' SOLICITOR

30

Address for service

Appellants:

1. Anachuna Nwakobi, c/o Barrister Ikenazor
2. Ikefuna Onwugbolu No.4 Iweka Road, Onitsha.

Respondents:

1. E.N.Nzekwu, 44, Oguta Road, Onitsha
2. P.A.Anatogu, 23, Oguta Road, Onitsha

NO.55
NOTICE OF INTENTION TO CONTEND FOR
VARIATION

In the Federal
Supreme Court

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

No.55

Notice of
Intention to
Contend for
Variation
2nd July 1960

F.S.C.185/60

SUITS NOS.0/25/58
0/32/58

10 NOTICE BY THE RESPONDENT OF INTENTION
TO CONTEND THAT DECISION OF COURT BELOW
BE VARIED:

BETWEEN:

ANACHUNA NWAKOBI & ANOR. Appellants

AND

E.N.NZEKWU & ANOR. Respondents

20 TAKE NOTICE that upon the hearing of the
above appeal the Respondents herein intend to con-
tend that the decision of the Court below dated
the 12th day of May, 1960, shall be varied as
follows :-

1. That the sentence "I do not accept the evi-
dence that all Obosi houses on the land in
dispute, were in 1956, on that Site, but I be-
lieve a great many of them were demolished on
that site" read I do not accept the evidence
that all Obosi houses on the land in dispute,
were by 1956, on that site, but I believe
that all Obosi houses on that site were
demolished".

30 2. That £5000 damages be awarded against the
Obosi Community

AND TAKE NOTICE that the grounds on which the
Respondents intend to rely are as follows:-

1. That the evidence that all the houses on the
C.D.C. site were demolished and compensation
paid to the owners was overwhelming.

In the Federal
Supreme Court

No.55

Notice of
Intention to
Contend for
Variation
2nd July 1960
continued

2. (a) That the Obosi people have considerable
number of houses on the land in dispute.

(b) That the Appellants have alienated por-
tions of the land to Non-Obosi tenants
who have built many houses thereon and
from whom they (the Appellants) have
been collecting rent.

Dated this 2nd day of July, 1960.

(Sgd) M.O.Balonwu
RESPONDENTS' SOLICITOR.

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No.56

Judges' Notes
23rd May 1961

NO.56

JUDGES' NOTES

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

TUESDAY THE 23RD DAY OF MAY, 1961

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA KT., CHIEF JUSTICE OF
THE FED.

EDGAR IGNATIUS GODFREY
UNSWORTH, C.M.G.

FEDERAL JUSTICE

20

SIR VAHE ROBERT BAIRAMIAN

FEDERAL JUSTICE

F.S.C. 185/1960

ANACHUNA NWAKOBI & OTHERS
and

Defds/Appls

EUGENE N. NZEKWU & ANOR
and

Plts/Resp.

ANACHUNA NWAKOBI & OTHERS
V.

Plts/Appls

PHILLIP ANATOGU & ANOR.

Defds/Resp.

Appeal from judg. of Betuel, J., dated
12/5/60.

30

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Cap 149 of the Laws, the rights of the company passed to the crown as from 1900. The crown took over certain lands previously held by the Niger Company. Common ground that sec.2 of the Ordinance operated as valid transfer of certain lands including lands now in dispute.

After the statutory vesting, the crown it is submitted, will not be bound by concessions granted to certain tenants.

In effect, it was the Crown & Crown alone which is empowered to eject trespassers, grant leases, licence to farm on the land. 10

In any case from 1934 the Respd ceased to claim any rights they might have enjoyed.

There were certain misconceived actions in the Native Courts by the Respds against certain Obosi family claiming rents for certain lands occupied by them. Exh.47 is an example: it was an action instituted in 1928. Native Courts would have no jurisdiction in land belonging to the Crown. 20

Note the claim in Exh 47 - Case Nos.101/28 & 103/23. The defds (Obosi men) claimed they got the land from their chief - Chief Kodilinye.

Judg. was in favour of the Respd. In effect, the position continued that the Respd's family own the land without prejudice to the rights of the Crown. Doubts and certainties and confusions so continued. About 1929 Chief Kodilinye brought an action on behalf of the Obosi's against the Respds family for a declaration of title to a land which includes the present land in dispute. On that occasion, the Crown became alive and intervened: Result was that the claim was disallowed. 30

Exhibit 34 is the next important document - it was dated 31/1/33: was a letter by Clinton a barrister, to the Resident Onitsha Prov. asking for a clarification of the whole position.

Next is Exh.35 of 16/5/34 to the Secretary, Souther Provinces. 40

Exh.36 clarifies the position. The Crown

now made its claim to the land & told the Respd's family they could not claim rents from tenants as the land is crown land.

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It is conceded that from 1934 after Exh.36, the Respd accepted the position & did not continue to base its rights to the land on their former title.

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10 The next stage is crucial. From 1934 onwards, the Obosi people (Respd) continued to live on the land, farm on the land in increasing numbers.

Next is Exh.37, letter dated 9/2/39 from Mr. Mbanefo, Solicitor to the present Respd: but it was in respect of the Nupe Settlement - North of the land in dispute.

20 Exh.38 - a letter from Resident Onitsha Prov. to the District Officer, Onitsha. Proposals were made by the Resident: Strange to say none of them were ever adopted. Parag.4 of this letter, however is very very important especially the last three lines. Strangely enough and this is conceded by the Chief witness for the Respd, that the Respd. people have never farmed or built on the land in dispute - south.

By 1942 the Obosi were farming on the land in dispute without interference.

Until 1945 there was no provision for the Crown in the Niger Lands Transfer Ord. to abandon any Crown land.

30 Next is Exh.39, letter from Mr.Mbanefo to the Resident Onitsha: Note from parag.3.

40 Reply is Exh.40; but Exh.41 follows from Mr. Mbanefo. The only thing the Crown did was in 1944 when it brought two selected cases against two individuals for ejection. But the Crown soon abandoned the proceedings - see Exh.31 which is Summons (copy of) by Asst. Commissioner of Lands against two men: 2 months later, it was discontinued. Also Exh.25, the Asst Com. of Lands sued 64 selected persons. In the case, an Order Exh.28 was made by Weddington J. that it was not proved the land was crown land. An appeal was lodged, a

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retrial was ordered. When it came up, the Crown wholly discontinued the action. This was in Jan. 1947 (see Exh.45).

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Exh.42 of 2/2/45 is an interesting letter from the Resident to the Surveyor Mr.Emodi, copy to Mr.Mbanefo. It was a request to make a plan. The plan, if made, is to our knowledge not in existence.

What follows? Amendment to Cap.149: An amending Ordinance 22 of 1945: Section 10 of the Ord. was amended; Later Sec.14 of the Ord was amended.

10

In 1945 the Crown did not abandon the land nor were provisions made for its abandonment.

Exh.43 letter dated 1/3/46 from Mbanefo to the Resident Respd.

Reply is Exh.44 dated 6/3/46.

Letter Exh.45 from Mbanefo is important.

In Dec' 1948 the Govt made its intention known to abandon its rights as from 1949.

20

Refers to parag 22 of the statement of claim at p.36 of the Record of Appeal.

In page 94 from line 6 to 28 is important it is the Evid. of principal witness for the Respd.

Cf Evid of wit for the appellant at pp 102 & 103 - Evid of Isaac Eweka: p.102 line 26. et seq. P.103 line 1 et seq. to line 25; p.104 line 1 to line 15; p.105 line 22.

During the indecision by Govt. the C.D.C. wanted to lease portion of the land. It was agreed that the money should be pd in to Court.

30

Legal submission on Equitable Defence

During the period of the Obosi family have converted what was virtually bush into a minor township on land belonging to the Crown but on which the Crown had given every

appearance they had no interest. If even the Crown had sued in 1948, it would be difficult for it to succeed: Govt's acquiescence with full knowledge of what was going on resulted before 1948 in laches, acquiescence usufructuary rights that might have accrued.

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A successor to the rights of the Crown under Sec 14 of the Ord. can be in no better position than the Crown.

10 The Respd sued the appellant in 1949 Case
No.0/3/49 for trespass, injunction etc. the
Supreme Court granted the Respd were owners of the
land & granted injunction restraining the Obosi
people from interfering with rights of possession.
It went on appeal to the Privy Council. In 1955
the Judicial Committee refused to interfere with
the Radical title, but set aside the decision on
possessory rights as it will involve investigating
question of usufructuary - the judg. is Exh 9A;
20 Chief Kodlinye & another v. Anatogu & Ano. (1955)
1 W.L.R. 231.

Submission is that in the present case, it must be
accepted that on 1st Jan' 1949 the "radical title"
reverted to the Respd, but the title is subject to
rights of the Obosi people - then usufructuary
rights.

1882 - 1933; No doubt the Obosi people did enjoy
certain rights of use & occupation. All the con-
ditions are a matter of history cannot seek to
30 prove it now. Events which happen from 1934 on-
wards entitle Obosi to claim unlimited usufructuary
rights entitle them to claim No single claim for
rent of tribute during the period "Res Judicata"

"Res Judicata"

Refers to page 40 of the Record: para.33 of
the Statement of Claim.

Nothing turned upon this, because the C.D.C.
gave up the land before the Privy Council Judgment.
Those who got compensation for their building &
40 left it, when the C.D.C. packed out, coming back &
established again - See page 104 from line 16 to
line 32: continue at p.105 lines 1 - 4.

Present action commenced in 1958 on 26/3/58.

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Privy Council judg was in 1955.

What happened between 1955 & 1958 was that the Respds were content not to sue in a Representative action but to sue some individual Obosis holding pieces of land. One was in suit O/39/56 which in Jan' 1956 the present Respd sued one Ichu demanding he should demolish two buildings he has put up and recovery of pss. of the land on which he has put up the two buildings. The land is on portion of land now in dispute.

10

Judg was given in the case on 24/8/57 against Ichu. He appealed to the Federal Sup. Ct. On 18th May 1959 his appeal came up (this is 14 months after the entire Obosi had been sued in this action). Appeal was struck out for same reason: so the Respd had judg. for a small portion of land within the land now in dispute.

Now, this judg. - an individual judg. against Ichu on an unidentified portion in the land in dispute operates as "res judicata" against the whole family.

20

Exhs 12 - 15 are material on this point see page 38 Submit it is an extsnion of the already extended principles or Resjudicata parag. 29 of the Statement of Claim continuing on pages 39 & 40.

There can never be acquiescence against the Crown. It was not correct Ichu's case was fought by the Obosi Community. Some group of Obosi men might have helped financially.

30

See Evid. of Mr. Eweka at p.105 line 9.

It will be a great departure if because some Obosi people helped Ichu financially with his case, it should be so found by the Judge that this will form "res judicata" in respect of a large tract of land which the whole community claims.

Judg. dealing with Res judicata commences at p.123 line 14 et seq. up to page 124 line 1 et seq to the end; p.125 line 1 et seq: p.126 line 1 et seq. p.127 lines 1 - 20.

40

It is submitted, with respect that

A. The principle should not be extended where financial assistance is given by Society as Progressive Society should not be taken as a community.

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There is a land Council which deals with matters of Obosi; no Evid that they helped.

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10 Conditions in West Africa referred to by the Judge may apply in case of issue of title to land. This is not so in this matter. Issue of acquiescence raised by an individual who was in mistaken belief in 1942 put up houses on a small plot of land should not relate to a large community who have established a township on a larger plot of land.

Even if the whole community was a party to the Ichu case, what was the battle for? it is for a tiny bit of land not even identified.

The present is a larger piece of land for which the battle is being fought.

20 Res Judicata, it must be the same matter. This is one of the test which applies in res judicata - if Ichu had succeeded on a plea of mistake and the Crown which owns the land allows him to stay on the land, could the whole community have made a claim on the face of Ichu's success.

30 Res judicata must be exact; must be something identifiable. Ichu's land has not even been plotted on the plot. Nana Ofori Atta etc v. Nana Abu Bonsra II (1958) A.C. 95 at p.103 middle of the page. Agree this is the essence of "res judicata": not the same in the present case.

The fact is that in this case, over the years, the crown has allowed us to develop the land, to have our schools, churches etc. and our children going to schools, could we now be thrust out?

It will be a dangerous doctrine of extension of the doctrine that whoever helped Ichu in his tiny title case was fighting a battle for large extent of land for the community of Obosi.

40 Laches

By 1948 the crown has watched without any

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opposition the growth of a community with its schools, churches, communal centre, courts, etc.. could the crown then have now turned them out? the reply is in the negative.

Misdirection by the Judge is that Spiece of acquiescence by laches is not available if there is Evidence of bad faith.

Two types of laches.

An owner of land watches a stranger building on his land. The stranger believing he was entitled to the land. It would be fraud on part of the owner to watch him build & say nothing; he would be estopped later. 10

Acquiescence by laches: available for a man who slept on his rights.

On laches see 14 Halsbury (3rd Edition) pp. 641 - 644.

Judg. on this part is at p.135 of the Record line 7 et seq.

Agree with cases Attorney General for Trinidad & Tobago v. Bourn (1895) A.C. 83. & Attorney General to the Prince of Wales v. Collorn (1916) 2 K.B. 193 at p.205 both referred to by the learned trial Judge. 20

Submit the findings against Obosi people is due to misdirection.

Cases of laches

Enlanger v. Somulrero Phosphate Co (1877 & 1878) 3 A.C. 1218 at p.1278 middle of the page.

This case is a ques of justice and injustice between a sleeping Govt and its peöple. Lindsay Petrol Co. v. Hurd & Others 5 P.C. 221 at p.239 240 (middle page): 30

The Obosis spent money; they collected money & built a church; they buried their dead; they had children; with churches they had schools; the Govt gave them grants for the schools, the children grew up and spread on the

land. Can they now be pushed out by the Crown or the successors in title?

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Adj. till 24/5/61.

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(Sgd) A.Ade Ademola
C.J.F.

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WEDNESDAY THE 24TH DAY OF MAY, 1961.

Same appearances

24th May 1961

Court to Mr. Gratiaen.

10 Is your possessory title then one of tenants or as squatters.

Reply:

20 It is a right of usufructary without payment of rent. The owner is not deprived of his ownership but he cannot kick the appellants out. The point is that the owner of the land at the material time was the Crown. If the Crown passed the land over to the appellants, it was passed on with all its infirmities. The radical title is in the appellants but the appellants are on the land as a community and cannot be turned out since it would not have been possible for the Crown to turn them out.

Ikpeazu for the Respd argues.

Estoppel:

30 Principles laid down by Lord Penzance in Wytcherley v. Andrews L.R.2 P. & M. 329 does not involve participation. If the title claim in the previous case is similar and the same as in the present case and parties are the same, and persons interested knew of the proceedings in the previous case but nevertheless stood by and allowed his subordinate to fight his battle hoping to take advantage in case of success, it is submitted that he will be estopped.

Plans in the case Exh. 1 & A1: land edged pink is the subject matter of the agreement.

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The Obosi community had originally brought an action 0/3/49 (Exhs.7,8 & 9) against the Respd: they lost. It was after this the case of Uche came up; he was championing the community. Right from the start the Obosi people have been claiming they are from time immemorial the original owners of the land - see Statement of Defence in that case - Exh.6 herein.

The judgment of the Privy Council Exh.9 left the ques. of possession of the land open: Radical title only was determined.

10

In 1952 whilst the case was pending in the Privy Council, the C.D.C. (Colonial Development Corporation) by Exh.10 took up a lease of portion of the land in dispute (portion is edged purple in the plan Exh.1). It was agreed by both sides that the rents should be pd into the bank pending the result of the appeal.

The portion of the land edged purple was at that time occupied by some individual settlers (Obosi people) but all the same it was the whole community which laid claim to the portion of the land edged purple. The agreement Exh.10 showed the Obosis acted as a community.

20

Refers to Evid of Isaac Iweke at page 106 line 2 et seq, to p.106 line 21 Also page 109 line 31 All showing that the Obosis (appellants) have always acted as a community.

Refers to p.101 line 41 et seq. p.102 from line 25 et seq. Obosi land Council acting for the community. Also Exh 76: receipt of money received from Mr. Obi Oputa. At p.99 of the Record of Appeal, a few exhibits relating to summonses in individual actions are shown. They were personal actions, but the transfer fees of the cases were paid by the Obosi Progressive Society - the Community - see page 108 lines 35 - 41 lines 18 - 27 All these are evidence that the Obosi Community were aware & had knowledge of the case against Ichue injs in 1956. See Exhs. 12, 13, 14 & 15 for this case. Judgment Exh.15 shows clearly it was an action fought by the community although it was an action against Ichu.

30

40

Refers to case Abuakwa v. Adanse. (1957) 3 All

E.R.559 at p.561 (d)(e)(f)(g)(h) and p.562 from line 3.

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Kwao v. Coker 1 WACA 162 at p.168, which goes a little further than the issue in the Adanse's case.

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Refers to sec.53 Evid Ordinance Cap 62. "grounds upon which judgment was based" See Phipson on Evid: 9th Ed. p.427.

10 Refers to Poulton v. Adjustable Cover etc. Co. (1908) 2 Ch. D.430 at p.433. "matters decided for the purpose of that judgment" are words material.

The Obosi Community were definitely aware that their rights were challenged although Ichu's small portion of land was involved.

Acquiescence & Laches:

Balance of justice must be considered.

20 In 1934 before the Obosis ever built any house on the land, the Crown having become the owner prohibited any building and/or putting tenants on the land for farming - see p.103 line 36 et seq up to page 104 line 22.

30 The Obosis have built on the land despite Govt's warnings. It is no Evid that Govt saw them building & did nothing. If they choose to build despite warnings, they must stand the consequence. - see p.109 line 25 et seq and page 134 lines 28 - 30 p.135 line 9 - 28. The defence could only succeed if there were evidence that Govt saw them building houses & did nothing.

Reply to Court:

In 1948 there were 400 houses built.

Became part of a township in 1952.

The estimate that there were about 300 houses and 3,000 lives involved is an exaggeration.

Continues

Inactivity of the Crown does not amount to

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waiver. Acquiescence by laches is not available
against legal claim.

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Hanbury's Modern Equity 6th Ed. p. 59.

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Fullwood v. Fullwood (1878) 9 Ch.176 at
p.178.

Laches does not destroy a legal right: the
right of the Crown was a legal right.

The appellants were trespassers on the land
when they were building; they cannot benefit
from their wrong doing. 10

See pp. 37 - 39 the Obosi gave undertaking
not to build which they do not observe. Building
drive when Judge visited the locus.

The Respds have now taken poss. in law. The
Obosis have been evicted.

Gratiaen replies:

This is not a plea of 'Res Judicata' in the
strict sense - it is an extended doctrine. It
is a rule of common sense to extend to a party
who watched his battle fought. 20

Battle fought between the Respd & Ichu -
Lord Dennings judg in Abuabkwa v. Adanse (supra).

Res judicata is "identify" and not
"similarity" of cause of action.

Remedy is the important matter is the action.
Ichu pleaded an individual estoppel.

Estoppel by conduct does not go beyond the
real subject matter.

Laches:

The Crown at the date of its abandonment
acquiesce & reached a stage that it abandon its
claim to the appellant's occupation of the land. 30

If the Sulema v. Hannibal Johnson 13 W.A.C.A. 213 at bottom of p.214 & p.216 (after middle of the page).

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Refers to Exh.24 shows as far as 1929 Govt realise the land is Crown land.

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10 Exh.38 shows that in 1942 the Resident (Capt. O'Connor) became aware of the position & started getting Govt interested. He suggested Obosis must farm but with permits. The Obosis rejected this & they were allowed to farm without.

In 1943 Mr. Mbanefo wrote that a number of substantial buildings are being put on the land. In 194 - Capt. O'Connor asked for a plan to see the buildings on the land generally. The Govt then chose to discontinue the whole action.

20 (1) If you sleep on your rights for so long you lose them: waking up too late does not avail you.

(2) Bringing an action 15 yrs after the event, so much Evid available then may not be available now.

Watt v. Assets Company Ltd. (1905) A.C. 317 at p.333.

Decision to abandon or withdraw cases: does it now depend on balance of justice.

Refers to p.109 showing houses & lives living on the land.

30

Judgment Reserved.

(Sgd.) A. Ade Ademola
C. J. F.

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IN THE FEDERAL SUPREME COURT OF NIGERIA

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HOLDEN AT LAGOS

MONDAY THE 3RD DAY OF JULY, 1961

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA

CHIEF JUSTICE OF THE
FEDERATION

EDGAR IGNATIUS GODFREY
UNSWORTH

FEDERAL JUSTICE

10

SIR VAHE BAIRAMIAN

FEDERAL JUSTICE

F.S.C. 185/1960

ANACHUNA NWAKOBI & ORS DEFENDANTS/
APPELLANTS

v.

EUGENE N. NZEKWU & ANOR. ... PLAINTIFFS/
RESPONDENTS

AND

ANACHUNA NWAKOBI & ORS. ... PLAINTIFFS/
RESPONDENTS

v.

PHILLIP ANATOGU & ANOR. ... DEFENDANTS/
RESPONDENTS

20

(Appeal in consolidated Suits
No. 0/25/58 and No.0/32/58)

J U D G M E N T

BAIRAMIAN, F.J.:

This Appeal is from the judgment given in two consolidated suits (0/25/58 and 0/32/58) on the 12th May, 1960, by Betuel, J., at Onitsha, in the High Court of the Eastern Region. They were cross-actions between the Ogbo (Umuasele)

family of Onitsha and the people of Obosi: the parties will be referred to respectively as the Onitshas and Obosis, as in the Privy Council judgment of the 14th February, 1955 (Privy Council Appeal No.39 of 1951, sub nom. Chief J.M. Kodilinye and another v. Philip Akunne Anatogu and another, reported in (1955) 1 W.L.R. 231). The appellants are the Obosis again. This time the dispute is about possession. It will be useful to quote the following passage from the judgment of the Privy Council:-

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"The only issue having been as to ownership nothing could or should have been decided which would in any way affect the usufructuary rights, if any, of individuals or of families or tribes to the land in dispute or any portions thereof, or as to whether any such rights are or are not conditional upon payment of rent or tribute. All such matters can only be decided in proceedings in which such issues are properly raised."

The result was that the Onitshas were left with their judgment that they were owners of the land, but the words "and possession" were struck out of the injunction, which now reads :-

"An injunction to restrain the defendants and their people of Obosi from interfering with or disturbing the plaintiffs' ownership of the said land."

The consolidated suits were brought to decide possession. But there had been some preliminary skirmishing.

In 1956 the Onitshas brought suit O/31/1956 against one Isaac Maduegbunam Ichu, an Obosi, claiming recovery of possession of a portion of their land in Ugborimili, an order for the demolition of his buildings, and an injunction to restrain interference with their ownership and possession of the said portion of land. Judgment was given on the 24th August, 1957, for recovery of possession, demolition was refused; but the injunction was granted. Something went wrong with Ichu's intended appeal, and it was struck out on the 18th May, 1959 (F.S.C. 54/59). In the judgment now under appeal, the learned trial Judge states:-

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"In my opinion Exhibit 15 (the Ichu case) is res judicata or comes within the extension of the doctrine, but in case I am mistaken, I will also consider the other aspects of the case."

Learned Counsel for the Obosis (the appellants) has argued that the learned Judge went too far. The Ichu case could not operate as estoppel by conduct, was his first argument.

The judgment goes on to consider other aspects, and ultimately states that :-

10

"There remains the question whether the Obosi Community can successfully resist the remedies sought against them in suit No.25 of 1958, by raising some sort of equitable title of defence."

The second argument advanced on behalf of the Obosis is that it was a mistake to reject their defence of acquiescence and laches. Their learned Counsel stressed the point of laches rather: it was, he said to the Court for the information of learned Counsel on the other side, the laches of the Crown that he relied upon; if it was complete in his favour by 1949 (when the Crown gave up the land) he was safe, otherwise not. And in his reply he said that he stood or fell on the position that the Crown had by acquiescence waived the Community's trespass and lost the right to evict the Obosis from their farms and buildings, and that right could not revive.

20

30

Now, the trial Judge did accept the Obosis' submission that laches or acquiescence on the part of the Crown would bind the Onitshas; he was of opinion, in the light of a passage in A.G. for Trinidad and Tobago v. Bourne, 1895, A.C. 83, that equitable defences were not affected by section 31 of the Crown Lands Ordinance, cap. 45, which provides that :-

"No action or other remedy by or on behalf of the Crown for the recovery of possession of Crown land shall be barred or affected by any statute, ordinance, or other law of limitation."

40

The learned Judge proceeded to review the facts.

He said that no question of acquiescence arose before 1934; in that year Government forbade both the Onitsha and the Obosis to deal with the land; the Onitshas heeded the warning, the Obosis did not; and now I quote from his judgment :-

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10 "in the next stage, between 1934-1948, the Crown not wishing to take sides in the dispute, and, having in view the abandonment of a part of the land, held their hands, although in 1944, they did bring an action against a number of individual Obosis, which they finally discontinued.

20 "The fact the action was brought, was another gesture of Ownership or something more than that; and shows that the Crown was disputing the Obosi claim, and 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 (viz: the Onitshas).

"It is clear that in the period 1934-1938, the Obosis built on Crown land to the knowledge of the Crown, any other suggestion to the contrary is ridiculous, but did they build in good faith on property which they honestly believed to be their own."

30 The learned Judge was of opinion that acting bona fide was a cause sine qua non of the grant of equitable relief; also that there was no estoppel by acquiescence or implied waiver by culpable delay or negligence on the part of the Crown. His views have been criticised.

40 Mr. Gratiaen's argument for the Obosis is that the Crown went to sleep in 1934, and allowed them not only to farm but also to build up a minor township on the land as an established community; that it was an acquiescence which entitled them to unrestricted usufruct; and that the doctrine of laches was available to a person who had built fraudulently where there was no statutory bar. I now give the authorities he cited on the law.

A.G. for Trinidad v. Bourne, 1895, A.C., 83.
The headnote states that :-

"In an action of ejectment by the Crown a

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defendant may set up any equitable defence which would have availed against a private plaintiff.

"Judgment held to have been rightly entered for the Defendant, where a concluded contract with the Crown was proved entitling him to the issue of a grant in respect of the land in suit."

That case has no bearing on acquiescence or laches, but it does establish that equitable defences are available against the Crown, according to the judgment of Atkin, J. (as he then was) in A.C. to the Prince of Wales v. Collom. 1916, 2 K.B., 193, at 204, which was also cited. For the grand point in his argument that good faith is not necessary, Mr. Gratiaen cited Erlanger v. New Bombrero Phosphate Co., 1878, 3 A.C., 1218, for what Lord Blackburn said at p. 1278, or, rather, quoted from the judgment in Cough v. The London and North Western Railway Co., Law Rep. 7 Ex. 34, 35. Lord Blackburn quoted this :-

10

20

"We agree that the contract continues valid till the party defrauded has determined his election by avoiding it. In such cases, (i.e. of fraud) the question is, Has the person on whom the fraud was practised, having notice of the fraud, elected not to avoid it? We think that so long as he has made no election he retains the right to determine it either way; subject to this, that if, in the interval whilst he is deliberating, an innocent third party has acquired an interest in the property, or if, in consequence of his delay the position even of the wrongdoer is affected, it will preclude him from exercising his right to rescind."

30

The words relied upon are italicised; they are :-

"in consequence of his delay the position even of the wrongdoer is affected";

but those words are followed by the words :-

40

"it will preclude him exercising his right to rescind."

There is a contract tainted with fraud; the

defrauded party, if he is applying for the equitable remedy of rescission, must do so promptly; for delay may make it practically unjust to grant the remedy, as was said in Lindsay Petroleum Co. v. Hurd, Law Rep. 5 P.C. 239, which was also a suit for the rescission of a contract obtained by fraud. It appears that laches is a defence to claims to enforce equitable rights. Mr. Ikpeazu, on behalf of the Onitshas, referred to Hanbury's Modern Equity, 6th Ed., p.59, where it is said that :-

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continued

10

20

"The doctrine of laches applies only to equitable claims; it is a defence advanced by a defendant against a plaintiff who, though barred by no statutory bar, nevertheless ought not to succeed by reason of his apathy. But it can never be pleaded against a plaintiff who has a legal claim; nay, more, in Fullwood v. Fullwood (1878, 9 Ch. D. 176) it was decided that a plaintiff may have a final injunction in aid of a legal right in spite of the fact that he has been guilty of delay, provided that he is still in a position to maintain an action at law".

I should quote from the judgment of Fry, J. (as he then was) in Fullwood; the learned Judge said, at p. 179 :-

30

40

"In my opinion that delay, and it is simply delay, is not sufficient to deprive the plaintiff of his rights. The right asserted by the Plaintiff in this action is a legal right. He is, in effect, asserting that the defendants are liable to an action for deceit. It is clear that such an action is subject to the Statute of Limitations, and it is also clear that the injunction is sought merely in aid of the plaintiff's legal right. In such a case the injunction is, in my opinion, a matter of course if the legal right be proved to exist."

But Mr. Gratiaen relies on what follows there, which is :-

"In saying that I do not shut my eyes to the possible existence in other cases of a purely equitable defence, such as acquiescence or acknowledgment, and the various

In the Federal
Supreme Court

No.57

Judgment
3rd July 1961
continued

other equitable defence which may be
imagined."

I also quote what the learned Judge went on to
say :-

"But mere lapse of time, unaccompanied by
anything else (and to that I confine my
observations) has, in my judgment, just as
much effect, and no more, in barring a suit
for an injunction as it has in barring an
action for deceit. In my judgment, the
same rule applies since the Judicature Act
as formerly applied in the Court of Chancery
when the legal right had to be determined in
an action at law. There is, therefore, no
defence to this action, and the injunction
must go."

10

The equitable defence on which the Obosis rely
is laches: It is not acquiescence in its pro-
per legal sense, which implies that a person
abstains from interfering while a violation of
his legal rights is in progress. I cannot do
better than cite the passage from Lord Cranworth's
judgment in Ramsden v. Dyson, L.R.1 H.L., 129,
140, 141, which was cited in A.G. to the Prince
of Wales v. Collom. 1916, 2 K.B. at p.203:-

20

"If a stranger begins to build on my land
supposing it to be his own, and I, perceiv-
ing his mistake, abstain from setting him
right; and leave him to persevere in his
error, a Court of Equity will not allow me
afterwards to assert my title to the land on
which he had expended money on the supposi-
tion that the land was his own. It con-
siders that, when I saw the mistake into
which he had fallen, it was my duty to be
active and to state my adverse title; and
that it would be dishonest in me to remain
wilfully passive on such an occasion, in
order afterwards to profit by the mistake
which I might have prevented. But it will
be observed that to raise such an equity two
things are required, first, that the person
expanding the money supposes himself to be
building on his own land; and, secondly,
that the real owner at the time of the
expenditure knows that the land belongs to
him and not to the person expending the

30

40

money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights."

In the Federal
Supreme Court

No.57

Judgment
3rd July 1961
continued

10 The Obosis do not argue that their case comes within the first principle; so, I cannot see what there was to prevent the Crown from asserting the legal rights of an owner against a trespasser in 1948. A suit by the Crown could not have been resisted by pleading limitation of time, so what is pleaded is laches, but, with respect. I do not think that the defence is available to the Obosis. They were trespassers on what they knew was Crown land: see para.12 of their defence to the Onitshas' suit, and para.7 of
20 their Statement of Claim in their own cross-suit; and their own witness, Isaac Iweke, admitted in cross-examination that "In 1930, the Obosi Community knew the land was Crown Land" - which brings their case within the last two sentences in the above passage from Ramaden v. Dyson. One trespassed, but, when the officers of the Crown came to know of it, no action was taken to evict; then another trespassed, and so it went on; but
30 I do not see how the tortious conduct of the Obosis could have affected the legal rights of the Crown if the Crown had chosen to assert them.

40 It seems to me that the argument for the Obosis, that they can plead against the Crown laches because the statute of limitation does not apply, makes the Crown's position worse than a private citizen's. For suppose that A. owns an area of land and that B., who knows it is A.'s, builds on it without A.'s sues him before his suit is barred by the statute, B. cannot, I believe, validly say, Your delay in suing makes it inequitable to turn me out. Now, substitute the Crown for A.: the only difference, in my view, is that it does not matter how late the Crown may be in suing, as the statute of limitation cannot be pleaded. I think that section 31 of the Crown Lands Ordinance was intended to make the Crown's position better. Apparently, on the argument for the Obosis, even if the Crown's delay

In the Federal
Supreme Court

No.57

Judgment
3rd July 1961
continued

in suing should be less than the time allowed for suing to a private person, the Crown could be faced with a plea of laches, and the Crown's position is worse. With respect, I think the plea of laches could not have helped the Obosis if the Crown had sued them in 1948.

There is, I fear, no merit in their conduct. There is the evidence for the Plaintiffs of the Resident's oral warnings to their Chief; to whom the Resident also sent a copy of Exh.38, his letter of 16th June, 1942, on individual farming permits. The learned Judge says that -

10

"Far from being permitted to build on the land they were, as they well know, forbidden to do so."

They built all the same; and, after the Crown gave up the land at the end of 1948, they went on trespassing. The idea of depriving the owners of their property without any return did not worry them: it was not until this appeal that they even suggested that, if they lost, they would like to be allowed to stay on and pay rent. They built up a case of hardship by wrongdoing, and wished to have their misconduct condoned, by putting the blame on the Crown.

20

Having reached the view that the argument on the substance fails, I do not propose to discuss the complaint that the learned trial Judge erred in treating the judgment in Ichu's case as estoppel under Nana Ofori Atta II v. Nana Abu Bonsra II, 1958, A.C., 95.

30

I have, however, to express regret that the judgment under appeal was not drawn up formally. To appreciate what it is one has to discover the amended claim of the Onitshas in 0/25/58, which was for :-

1. £5,000 for damages for trespass on plaintiff's Ugborimili land.
2. Recovery of possession of Ugborimili land now being built upon by the defendants and their people in spite of several warnings.
3. Injunction or order of court to restrain the defendants, their servants and/or agents from interfering with the plaintiff's title, possession, rights of enjoyment and disposition of the said land.

40

The judgment under appeal (towards the end)
is :-

In the Federal
Supreme Court

No.57

Judgment
3rd July 1961
continued

"I award £500 damages against the Obosi community, also an injunction and the recovery of possession in the terms set out in the writ (as amended on the 23rd March, 1959) and 280 guineas costs.

10

I award to each of the 3rd-8th Defendants in O/25/58 £15. 15s. Od. costs as against the plaintiffs, the costs of their unnecessary joinder in a personal capacity.

In O/32/58, there will be judgment for the defendants with £170 costs to the defendants."

(The defendants in O/32/58 were the Onitshas.)

20

At the hearing of the appeal the plan referred to was Plan No. JJ.28/60, which bears the exhibit No. F.S.C.1, and in which the land in question is the area lying to the south of the green line running east and west on the plan, within the land verged pink.

I would dismiss the appeal with eighty guineas costs to the Respondents.

(Sgd.) Vahe Bairamian
FEDERAL JUSTICE.

I agree

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

I agree

30

(Sgd.) E.I.G. Unsworth
FEDERAL JUSTICE.

Mr. E.F.N. Gratiaen, Q.C. (Mr. C. Ikeazor with him) for the Appellants.

Mr. Chuba Ikpeazu (Messrs.M.O. Balonwu and B.C.I. Obanye with him) for Respondents.

In the Federal
Supreme Court

NO.58

O R D E R

No.58

IN THE FEDERAL SUPREME COURT OF NIGERIA

Order
3rd July 1961

HOLDEN AT LAGOS

Suits Nos. 0/25/58 &
0/32/58
F.S.C. 185/1960

On Appeal from the judgment of the High
Court of the Onitsha Judicial Division
of the Eastern Nigeria.

10

BETWEEN :

ANACHUNA NWAKOBI & ORS. ... Defendants/
Appellants

and

EUGENE N. NZEKWU & ORS. ... Plaintiffs/
Respondents

and

(L.S.) ANACHUNA NWAKOBI & ORS. ... Plaintiffs/
Appellants

and

PHILLIP ANATO GU & ANOR. ... Defendants/
Respondents

20

(Sgd.) L.Brett
AG.CHIEF JUSTICE
OF THE FEDERATION

Monday the 3rd day of July, 1961.

UPON READING the Record of Appeal herein
and after hearing Mr. E.F.N. Gratiaen, Q.C.,
(Mr. C. Ikeazor with him) of Counsel for the
Appellants and Mr.Chuba Ikpeazu (Messrs. M.O.
Balonwu and B.C.I. Obanye with him) of Counsel
for the Respondents:

30

IT IS ORDERED that this appeal be dis-
missed with costs assessed at 80 guineas in
favour of the Respondents.

(Sgd.) J.A. Adefarasin
CHIEF REGISTRAR.

NO.59

ORDER GRANTING FINAL LEAVE TO APPEAL
TO PRIVY COUNCIL.

In the Federal
Supreme Court

No.59

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit Nos.0/25/58 &
0/32/58
F.S.C. 185/1960.

Order granting
Final Leave to
Appeal to Privy
Council
13th November
1961

10 Application for an order for Final Leave
to Appeal to Privy Council.

BETWEEN :

ANACHUNA NWAKOBI & ORS. ... Defendants/
Appellants

and

EUGENE N. NZEKWU & ORS. ... Plaintiffs/
Respondents

(L.S.)

and

ANACHUNA NWAKOBI & ORS. ... Plaintiffs/
Appellants

20 and

PHILLIP ANATOGU & ANOR. ... Defendants/
Respondents

Monday the 13th day of November, 1961.

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

30 UPON READING the application herein and
the affidavit sworn to on the 28th day of
September 1961, filed on behalf of the Appell-
ants and after hearing Mr.C.Ikeazor (Mr.R.I.C.
Iweka with him) of Counsel for the Appellants
and Mr.C.E.Agbu of Counsel for the Respondents:

IT IS ORDERED that Final Leave to appeal
Privy Council be granted.

(Sgd.) J.A.Adefarasin
CHIEF REGISTRAR.

Exhibits

E X H I B I T S

2

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

EXHIBIT 2 OFFICIAL RECORD OF AGREEMENT
NO.72, 8TH OCTOBER 1884.

IN THE WEST AFRICAN COURT OF NIGERIA

BETWEEN :

- 1. CHIEF J.M.K.KODILINYE
 - 2. J.C.NWANGWU, for themselves and on behalf of Obosi people
- Defendants/
Appellants

AND

10

- 1. PHILIP AKUNNE ANATOGE
 - 2. JOSEPH AKUNNIA, AGBU for themselves and on behalf of Ogbo Family of Umuasele Onitsha
- Plaintiffs/
Respondents

Exhibit "2" put in by Plaintiffs admitted by consent in O/25/58 and O/32/58 E.N.Nzekwu & Anr. v Anachuna Nwakobi & 7 Ors.

(Sgd) P.N.Iwuanya
R/S 31/3/60.

20

EXHIBIT 53:

OFFICIAL RECORD OF AGREEMENT NO.72
DATED 8TH OCTOBER, 1884.

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

(Sgd) J.J.Himens
DEPUTY REGISTRAR.

30

NO.72

This is to certify that Orikagbue, a Chief residing at Onitsha, was brought before me this

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

10

20

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

Abutshi,

October 8th 1884.

30

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

(BRITISH CONSULATE (Sgd) EDWARD HYDE HEWETT
SEAL) H.B.M. CONSUL.

(Sgd) DAVID McINTOSH,
p.p. The National African Company Ltd.

40

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

(Sgd.) T.A. Hardwock
REGISTRAR OF INSTRUMENTS.

Exhibits

2

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

Exhibits

4

Writ of Summons
4th January
1949

EXHIBIT 4

WRIT OF SUMMONS, SUIT 0/3/49.

WRIT OF SUMMONS
(CIVIL SUMMONS)

NO. 29950.

IN THE NATIVE COURT OF JUDICIAL COUNCIL OF
ONITSHA NIGERIA

SUIT NO.0/3/49:

Exhibit "4" put in by Plaintiffs admitted
by consent in 0/25/58 & 0/32/58 E.N.Nzekwu
v. Anachuna Nwakobi.

10

BETWEEN:

1. PHILIP AKUNNE ANATOJU & ANOR. for them-
selves and on behalf of the Ogbo Family
of Umuasele, Onitsha ... Plaintiffs.

AND

1. CHIEF J.M.KODILINYE & ANOR. for
themselves and of Obosi people
Defendants

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

20

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

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

30

Dated 4/1/49

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

(Sgd). Egbuna Adazie
(Signature of President or
Vice-President).

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

EXHIBIT 8ExhibitsJUDGMENT, SUIT 0/3/49

8

Exhibit "8" put in by Plaintiffs admitted
by consent in 0/25/58 & 0/32/58 E.N.Nzekwu &
Anor. Vs. Anachuna Nwakobi & 7 Ors.

Judgment
Suit 0/3/49
11th January
1951

(Sgd.) P.N. Iweanya R/S
31/3/60

IN THE WEST AFRICAN COURT OF APPEAL

W.A.C.A. 3323

0/3/49:

10 BETWEEN :

CHIEF J.M.KODILINYE & ANR. for themselves
and on behalf of Obosi people
Defendants/Appellants

A N D

PHILIP AKUNNE ANATOGU & ANOR. for them-
selves and on behalf of Ogbo Family of
Umuasele Onitsha
Plaintiffs/Respondents

APPEAL DISMISSED COSTS ASSESSED AT £68:14/-.

20

REASONS FOR JUDGMENT
(ART 16)

30

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

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

(Sgd.) H.W.B. Blackall

PRESIDENT WEST AFRICAN COURT OF APPEAL.

11th January, 1951.

Exhibits

12

Statement of
Claim Suit
0/31/56
6th January
1956

EXHIBIT 12

STATEMENT OF CLAIM, SUIT 0/31/56

IN THE HIGH COURT OF THE EASTERN REGION OF
THE FEDERATION OF NIGERIA
IN THE HIGH COURT AT ONITSHA IN THE
JUDICIAL DIVISION

SUIT NO.0/31/56

Ex."12" put in by Plaintiffs admitted in
0/25/58 & 0/32/58 L.N.Nzekwu vs. Anachuna
Nwokobi & Anor.

10

BETWEEN:-

EUGENE NZEKWU, the Omodi For themselves and on
Okpala of Ogbo family on behalf of Ogbo
(Umuasele) family
Plaintiffs

A N D

ISAAC M. ICHU Defendants

The Plaintiff's claim against the Defendant is for:

1. Recovery of possession from the Defendant of
portion of Plaintiffs' land in Ugborimili,
situate in Onitsha, in the Onitsha Division. 20
2. An Order of Court for the demolition of the
Defendant's buildings on the said portion of
land.
3. An injunction to restrain the Defendants his
servants and/or agents from interfering with
the Plaintiffs' ownership and possession of the
said portion of land.
4. The Plan of Ugborimili land showing the Defend-
ant's buildings will be filed in Court. 30

Dated at Onitsha this 6th day of January, 1956.

(Sgd.) M.O.Balonwu
PLAINTIFFS' SOLICITOR

PLAINTIFFS' ADDRESS FOR

SERVICE c/o Barrister Balonwu
Onitsha

DEFENDANT'S ADDRESS FOR

SERVICE Port Harcourt Road,
Fegge, Onitsha, or
c/o Barrister Ajegbo
Onitsha.

40

EXHIBIT 15ACOURT NOTES, FSC/54/59Exhibits

15A

Exhibit "15A" put in by Plaintiffs, admitted in
0/25/58 & 0/32/58 E.N. Nzekwu & Anr. V Anachuna
Nwakobi & 7 Ors.

Court Notes
FSC/54/59
18th May 1959

(Sgd.) P.N.Iweanya
R/S 31/3/60.

IN THE FEDERAL SUPREME COURT OF NIGERIAHOLDEN AT LAGOS10 MONDAY THE 18TH DAY OF MAY, 1959

BEFORE THEIR LORDSHIPS

MYLES JOHN ABBOT

AG. FEDERAL CHIEF
JUSTICE

LIONEL BRETT

FEDERAL JUSTICE

LOUIS NWANCHUKWU MBANEFO

FEDERAL JUSTICE

FSC/54/59

I. M. ICHU

Appellant

v.

E. N. NZEKWU & ANOR.

Respondents.

20 Appeal from judgment of Onitsha High Court.
Gratiaen for Appellant (with him Nonyelu)
Ikpeazu for Respondent (with him Balonwu)

We take the point that there is no notice of
appeal filed in this case and therefore the appeal
is not properly before us.

GRATIAEN I can say nothing in answer to this.IKPEAZU on costs

We are entitled to our costs.

GRATIAEN If objection at proper time, money saved.

30 ORDER This appeal must be struck out. We will
give our decision on the question of costs
when judgment is given in FSC. 55/59.

(Sgd) M.J.Abbott, Ag. F.C.J.

Certified true copy

(Sgd) L. Brett, F.J.

(Sgd) S.A. Samuel
Senior Registrar

(Sgd) L.N. Mbanefo F.J.

Exhibits

EXHIBIT 16

16

STATEMENT OF CLAIM, SUIT 0/38/56

Statement of
Claim
6th January
1956

Exhibit "16" put in by Plaintiffs, admitted by
consent in 0/28/58 & 0/32/58 E.N.Nzekwu & Anor.
v Anachuna Nwakobi & 7 Ors.

(Sgd) P.N.Iweanya
R/S 31/3/60

IN THE HIGH COURT OF THE EASTERN REGION OF THE
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION

10

SUIT NO. 0/38/56

BETWEEN:

EUGENE NZEKWU & ANOR, the Omodi and
Okpala of Ogbo family, for themselves
and on behalf of Ogbo (Umuasele) Family
Plaintiffs

A N D

JONAH NWOGEM Defendant

C L A I M:

20

The Plaintiffs' claim against the Defendant is for:

1. Recovery of possession from the Defendant of
portion of Plaintiffs' land in Ugborimili,
situate in Onitsha, in the Onitsha Division.
2. An Order of Court for the demolition of the
Defendant's building on the said portion of
land.
3. An injunction to restrain the Defendant, his
servants and/or agents from interfering with
the Plaintiffs' ownership and possession of the
said portion of land.
4. The Plan of Ugborimili land showing the Defend-
ant's buildings will be filed in Court.

30

Dated at Onitsha this 6th day of January, 1956.

(Sgd) M.O. Balonwu
PLAINTIFFS' SOLICITOR.

PLAINTIFFS' ADDRESS FOR SERVICE:

c/o Barrister Balonwu
Onitsha

DEFENDANT'S ADDRESS FOR SERVICE: Port Harcourt
Road, nearby
Aneboss.

40

EXHIBIT 21

Exhibits

ORDER FOR FINAL LEAVE TO APPEAL,
FSC/55/59.

21

Order for
Final Leave
to Appeal,
FSC/55/59
25th January
1960

Exhibit "21" put in by Defendants admitted by
consent in 0/25/58 & 0/32/58 E.N.Nzekwu &
Anor. v. Anachuna Nwakobi & 7 Ors.

(Sgd) P.N.Iweanya
R/S 31/3/60.

IN THE FEDERAL SUPREME COURT OF NIGERIA

10

HOLDEN AT LAGOS

SUIT NO. 0/38/1956

FSC: 55/1959:

BETWEEN:

JONAH NWOGEM

Applicant

A N D

EUGENE NZEKWU & ANOR.
for themselves and on
behalf of Ogbo (Umuasele)
Family.

Respondents

20

MONDAY THE 25TH DAY OF JANUARY, 1960.

UPON READING the Application herein and
the Affidavit of the Applicant sworn to on the
18th day of December, 1959, and after hearing
Mr. Nylander of Counsel for the Applicant and
Mr. Ajayi, holding Mr. Balonwu's brief, of
Counsel for the Respondents:

IT IS ORDERED that final leave be granted
to appeal to Privy Council.

(Sgd.) S.A.SAMUEL (Sgd.) A. ADE ADEMOLA

30

AG.CHIEF REGISTRAR. CHIEF JUSTICE OF
FEDERATION.

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA.

B E T W E E N :

(Suit No.0/25/58)

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

1. EUGENE NZEKWU
 2. PHILLIP AKUNNE ANATO GU
(for themselves and on behalf of the Ogbo Family of Umuasele Onitsha)
- (Plaintiffs) Respondents

AND BETWEEN

(Suit No.0/32/58)

1. ANACHUNA NWAKOBI, THE OSHA OF OBOSI
 2. IKEFUNA ONWUGBOLU, THE OBOLI OF OBOSI
(representing themselves and all others the people of Obosi)
- (Plaintiffs) Appellants

AND

1. PHILLIP ANATO GU
 2. EUGENE NZEKWU
(representing themselves and all others of the Ogbo Family)
- (Defendants) Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellants.

REXWORTHY BONSER & SIMONS,
83/85 Cowcross Street,
London, E.C.1.
Solicitors for the Respondents.