

15,1956

No. 11 of 1954.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL 19 FEB 1957
(NIGERIAN SESSION)

UNIVERSITY OF LONDON
VICT
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LEGAL STUDIES

BETWEEN

NWANKWO OKARAKWU on behalf of himself and
Urumpi Orofia Abagana people (Plaintiff) . . . *Appellant*

AND

- 10 1. NWEKE UDEOGU
2. NWANKWO ONOKO
3. NWAFO KAREME
4. AKWUE
5. NWUZO UDEOGU on behalf of themselves and
the people of Amene Ukpo Mili (Defendants) . . . *Respondents.*

Case for the Appellant

1. This is an appeal from a judgment of the West African Court of Appeal (Nigerian Session) dated the 7th October 1952) dismissing an appeal from a judgment of Manson, J., in the Supreme Court, Onitsha Judicial Division, dated the 31st July 1951 dismissing a claim by the Appellant for a declaration of title to land, damages for trespass and an injunction. RECORD.
p. 38.
pp. 30-34.

2. The Appellant sued on behalf of himself and the Urumpi Orofia-Abagana people (hereinafter called the Urumpi). The Respondents were sued on behalf of themselves and the Amene Ukpo-Mili people (hereinafter called the Ukpo-Mili).

3. A previous suit between the Ukpo-Mili as Plaintiffs and certain persons sued on behalf of themselves and the Amene-Abagana people (who are not parties to the present suit) for a declaration of title to land in the neighbourhood of the land in dispute in the present suit was decided in favour of the Ukpo-Mili, and the judgment in the said previous suit appears to have awarded to the Ukpo-Mili as against the Amene Abagana (but not as against the Urumpi, who were not a party to that suit) a pp. 41-46.
pp. 45-46.

p. 8.

portion of land which included the land in dispute in the present suit. The Ukpo-Mili in the present suit rely *inter alia* upon the judgment in the previous suit and they pleaded estoppel and acquiescence.

4. The principal issues which arise for determination on this appeal are (i) whether the learned trial judge allowed himself to be so influenced by the decision in the previous suit that his judgment is really founded upon it, alternatively (ii) whether the learned judge gave such undue weight to the decision in the previous suit and to evidence as to the conduct of the Urumpi upon which the allegation of acquiescence was based as to amount to a miscarriage of justice. There also arise for determination 10 issues as to :—

(1) Whether the judgments against the Appellant can be allowed to stand in view of the fact that the learned trial judge's finding was contrary to certain vital evidence which although undisputed appears to have been entirely ignored by him.

(2) Whether there was any evidence upon which the learned judge could arrive at certain findings of fact upon which his judgment was founded.

pp. 41-46.
Exhibit 2.
p. 41, ll. 19-21.

p. 42, ll. 19-31.

pp. 43-44.
pp. 44-46.
p. 46, ll. 1-15.

5. The suit between the Ukpo-Mili and the Amene-Abagana was suit No. 27 of 1944 in the Native Court of Dunukofia. The claim was for 20 a declaration of title of ownership of land named in the Claim as "Ana-Ekepotu and Abonkwu land." It appears from the judgment in the Native Court that the land claimed extended to the north and the south of a road from Onitsha running roughly due east to Awka. In the Native Court judgment was given for the Plaintiffs and the boundary of the land in question was stated. On appeal to the District Officer the judgment of the Native Court was set aside but on appeal to the Resident the judgment of the Native Court was restored save that the Resident awarded a boundary substantially different from the boundary as laid down by the Native Court. 30

Exhibit 1.

p. 41.

p. 41, ll. 19-22.

pp. 41-42.

pp. 43-44.

p. 43, ll. 40-45.

p. 44, ll. 3-5.

p. 44, ll. 11-12

pp. 45-46.

p. 46, ll. 1-9.

6. There are three portions of land which came under consideration in the suit in the Native Court. South of the Onitsha-Awka road there is a portion of land known as Abonkwu. North of the same road there is another portion of land also called Abonkwu. Further north still there is a third portion of land known as Ekpeotu or Ana-Ekpeotu. The Ukpo-Mili claimed the whole of the said lands (i.e. all three portions) which they described in their claim as stated in paragraph 5 above and the judgment of the Native Court granted them the whole of the land claimed by them. The Findings of the District Officer stated *inter alia* that there was evidence concerning the interests of the Urumpi and that the Amene-Abagana 40 admitted that Abonkwu land belongs to the Urumpi. The said Findings included a decision (which the Appellants submit is entirely correct) in the following terms: "As Urumpi-Orofia are not a party to this case, I make no order as to title of Abonkwu land." The judgment of the Resident awarded to the Ukpo-Mili all the land claimed north of the Onitsha-Awka road i.e. the Ekpeotu and the northern portion of the Abonkwu, and described the whole of the said two portions of land as Anaekpeotu.

7. The Appellant claims that the whole of Abonkwu i.e. both south and north of the Onitsha-Awka road belongs to the Urumpi. The Appellant therefore submits that the judgment of the Resident in the suit between the Ukpo-Mili and the Amene-Abagana to the extent that the same purported to award to the Ukpo-Mili Abonkwu land as part of Ekpeotu land was without jurisdiction and cannot in any way bind or adversely affect the Urumpi.

8. By a Civil Summons dated the 21st March 1949 in the Native Court of Ndoka the Appellant (together with a Co-Plaintiff, since deceased) instituted

THE PRESENT SUIT.

The claim relates to the portion of land called Abonkwu which lies north of the Onitsha-Awka road.

9. By Order dated the 1st April 1949 the suit was transferred to the Supreme Court, Onitsha Judicial Division, where pleadings were ordered.

10. On the application of the Appellant and his Co-Plaintiff an interim injunction restraining the Respondents until the trial of the action from entering or building houses on the land in dispute was granted. A motion for committal or attachment on the ground of breach of the interim injunction which came before the Court on the 6th November 1950 was adjourned and a date fixed for the trial of the suit.

11. The Appellant and his Co-Plaintiff by their Statement of Claim dated the 19th January 1950 stated (*inter alia*) that (i) they are natives of Urumpi and sue for themselves on behalf of the Urumpi, (ii) the land claimed (shown on plan annexed) is called Abonkwu, (iii) the land in dispute is separated from the land of the Ukpo-Mili by ancient boundary walls called Ekpe, (iv) the land in dispute is separated from Ekpeotu by an ancient boundary line, (v) the Urumpi have occupied the land from time immemorial and have exercised maximum acts of ownership, (vi) until about four years previously the Ukpo-Mili have never crossed the ancient boundary walls into the land in dispute but as a result of suit No. 27 of 1944 crossed into the land and started to erect buildings on it.

12. The Respondents by their Statement of Defence dated 7th February 1950 (*inter alia*) (i) denied that the Plaintiffs were natives of Urumpi, and alleged that the Appellant is a native of Adagbe-Orofia-Abagana and that his Co-Plaintiff is a native of Amene-Abagana, (ii) admitted that the land in dispute is called Abonkwu but denied that it belongs to the Urumpi, (iii) claimed that the Abonkwu land in dispute is the property of Ukpo-Mili and has been so from time immemorial, (iv) alleged that from time immemorial the Ukpo-Mili have used the said land by building houses and residing thereon and farming on it and reaping fruits without let or hindrance from the Urumpi, (v) referred to the issues and the decision in suit No. 27 of 1944 and stated that the Respondents would rely on the judgment of the Resident therein, (vi) alleged that the

Onitsha-Awka road forms a boundary between the Ukpo-Mili and the Urumpi and (vii) pleaded ownership, Possession, Estoppel, Laches and Acquiescence.

pp. 13-34.

13. The suit was tried on the 4th, 5th, 13th, 17th, 23rd and 31st July 1951. Evidence was adduced both by the Urumpi and the Ukpo-Mili. Before hearing the addresses of Counsel and delivering his judgment on the 31st July 1951 the learned trial judge inspected the area in dispute on the 24th July 1951.

p. 29, ll. 1-6.

pp. 13-15.

14. The Appellant gave evidence. He stated (*inter alia*) the following :—

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p. 13, ll. 12-13.

(1) That he is a native of Urumpi and not a native of Adagbe-Orofia-Abagana.

p. 13, ll. 13-14.

(2) That his Co-Plaintiff who had died about eight months previously was a native of Urumpi and not a native of Amene-Abagana.

p. 13, ll. 22-23.

(3) That the Awkusu and Achalla road (a road running in a northerly direction from a junction with the Onitsha-Awka road) passes through the land of the Urumpi.

p. 13, ll. 23-25.

(4) That another road, the Ukwulu and Achalla road (which runs in roughly a north-easterly direction from the said junction) divides the disputed land from the land of the Amene-Abagana. 20

p. 13, ll. 30-34.

(5) That the boundary on the west between the Urumpi and the Ukpo-Mili consists of Ekpe walls and that there are Otosi trees along the walls and bush as well.

p. 13, ll. 36-38.

(6) That Ekpeotu adjoins the Abonkwu land in dispute.

p. 14, ll. 1-2.

(7) That the Ukpo-Mili never went on the disputed Abonkwu land until about 2½ years previously and that then they came on the land and farmed and built on it.

p. 14, ll. 11-12.

(8) That the Onitsha-Awka road is not a boundary between the Urumpi and the Ukpo-Mili at any point. 30

p. 14, ll. 22-23.

(9) That he remembered the Awkusu and Achalla road being made when he was a boy (he said he was about 50 years old) and that the Government employed the road makers. He added in cross-examination that the road was constructed by Abagana, that the Urumpi helped with the work and that the Ukpo-Mili were told not to work on the road as the land did not belong to them.

p. 14, ll. 27-30.

(10) That the Urumpi were not a party to the suit No. 27 of 1944 between the Ukpo-Mili and the Amene-Abagana and that he was sure that it related only to the Ekpeotu.

p. 15, ll. 33-34.

p. 15, ll. 1-2.

(11) That according to the Ibo custom of his people jujus are not placed on farm land but at the settlement (this evidence was given to deal with the suggestion that the absence of the jujus of the Urumpi on the land in dispute was evidence against them). 40

15. The appellant's second witness was a licensed surveyor who produced a plan, Exhibit 1, and gave evidence regarding the area. He stated *inter alia* that the Ekpe walls are very old mounds at regular intervals with Otosi trees alongside. p. 16.
p. 16, ll. 45-46.

16. The third witness in support of the claim of the Urumpi was a farmer who stated *inter alia* that he had farmed on the land in dispute until he ceased to do so 2½ years previously because people from the Ukpo-Mili then went on the land. This witness stated in cross-examination that if any Urumpi took part in the case No. 27 of 1944 he did so on his own and was not sent by the Urumpi people. With regard to that suit the witness stated *inter alia*— pp. 17-19.
p. 17, ll. 30-34.
p. 18, ll. 41-43.

“Plaintiffs—my people—knew of the existence of the case between Defendants and Amene Abagana people; Ex. 2 but we were not a party nor invited and so we took no interest in it. Ex. 2. If any person from Plaintiffs gave evidence in Ex. 2, he was probably called by Amene Abagana people. I care nothing about that case. It does not concern Plaintiffs; it related only to Ekpeotu not Abonkwo. If Defendants have managed to get land from Amene Abagana people, that is not our concern.” p. 19, ll. 1-8.

20 This witness also gave evidence that his people have their jujus at their homestead. p. 19, ll. 15-16.

17. The Urumpi's fourth witness was an old man who stated *inter alia* that the Ekpe walls indicate boundaries. This witness also gave evidence about the building of the Dunukofia Native Court now disused which he said was built by Government paid workmen who came from the Abagana. He said that the site of the Court was claimed by the Amene Abagana people who protested at the Court being built and that it was then moved a little further away to the other side of the Awkusu and Achalla road. pp. 19-20.
p. 20, l. 8.
p. 20, ll. 2-4.
p. 20, ll. 18-20.

30 18. The first witness for the Ukpo-Mili was Respondent No. 1. He stated *inter alia* the following:— pp. 22-24.

(1) That of the various quarters of Abagana Urumpi and Orofia-Abagana and Adagbe-Orofia are the same quarter and the Appellant comes from Adagbe-Orofia. p. 22, ll. 8-9.

(2) That the Appellant's Co-Plaintiff came from Amene-Abagana. p. 22, l. 9.

(3) That the land in dispute is called Abo-Ekpeotu. p. 22, ll. 9-10.

(4) That the Ukpo-Mili had used the land in dispute from time immemorial. p. 22, ll. 14-15.

40 (5) That since the Ukpo-Mili were “granted” land in suit No. 27 of 1944 they had erected more houses. p. 22, ll. 17-18.

(6) That the Onitsha-Awka road is a boundary between the land of the Urumpi and that of the Ukpo-Mili. p. 22, ll. 22-25.

p. 22, ll. 26-31.

(7) That the Ekpe walls are not boundary walls but were put round the quarters of individual families.

p. 22, ll. 31-35.

(8) That the Ukpo-Mili had jujus on the land in dispute.

p. 22, ll. 37-40.

(9) That the Awkusu-Achalla road was a path cut by the witness' family but the actual building of the road was left to the Government.

p. 22, ll. 49-50.

(10) That the Onitsha-Awka road divides Ekpeotu from Abonkwu.

p. 23, ll. 4-6.

(11) That in suit No. 27 of 1944 the Resident said that the Onitsha-Awka road is the boundary between the Ukpo-Mili and Abagana but that before the Resident's decision the road was not the boundary between the Ukpo-Mili and anyone. 10

p. 23, ll. 8-10.

(12) That when the Ukwulu-Achalla road was build he worked on it.

p. 23, ll. 26-35.

(13) That at the time of Suit No. 27 of 1944 the Ukpo-Mili were *not* living on the land in dispute in that case except that they occasionally visited jujus left by their forefathers. That it was after the Resident's judgment in that suit that the Ukpo-Mili went and lived on the portion awarded to them by the Resident. That the only person living on the land claimed in that suit at the time of the suit was one Edward Ukpomili (whose dwelling is in Abonkwu land south of the Onitsha-Awka road). That all the Ukpo-Mili people now on the land except Edward went on *after* the Resident's judgment. 20

Exhibit 1.

p. 24, ll. 36-37.

(14) That the Ukpo-Mili own land on both sides of the Awkusu-Achalla road "past the Western Egbu Tree (N of Ex. 1)."

p. 25.

p. 25, ll. 7-10.

p. 25, ll. 38-45.

19. A licensed surveyor gave evidence on behalf of the Ukpo-Mili and stated *inter alia* that he had prepared a plan (Exhibit 3) for the purpose of suit No. 27 of 1944. With regard to Ekpe walls the witness told the Court that he knew such walls as a familiar feature in the countryside, that in the days of inter-tribal wars they were built in some cases for defensive purposes, that in some cases they are used as boundary walls, in some cases they form both functions and that in some cases they are built round farms to prevent damage by goats etc. He stated that if the western Ekpe walls referred to in this suit had been very well defined he would have shown them on Exhibit 3. 30

p. 25, ll. 38-39.

pp. 26-27.

p. 26, ll. 22-23.

20. The third and last witness for the Ukpo-Mili gave evidence *inter alia* concerning the suit No. 27 of 1944. In examination he said with regard to the inspection of the land by the Resident "The Urumpi people—present (Plaintiffs)—were present but were not a party to the case." In cross-examination he explained the circumstances more fully as follows :— 40

p. 27, ll. 8-19.

"The Urumpi people (Plaintiffs) were present when the Resident inspected the land as they had heard the inspection was to take place. They were present as all quarters of Abagana were present as well as all quarters of Ifite Ukpo. I could not get

through them easily—they were so many 1,200 of them. I could recognise the 3 Urumpi people (Plaintiffs) I've mentioned. The Resident gave his decision—on the spot at the Pillar—No. 87 Ex. 1. I know there are 9 quarters of Abagana; only one quarter was interested in the case—Amene Abagana; only one quarter of Ifite Ukpo Family—Amene Ukpomili—(Defendants) was interested. All the other quarters of Abagana and Ifite Ukpo came of their own accord. The crowd was so great that no one could be at the spots when the Resident marked the boundaries as he went along."

- 10 21. After the conclusion of the case for the Ukpo-Mili a further witness was called for the Urumpi. This was an independent witness, a native of Onitsha, who was senior road overseer in the District Works Department from 1915 to 1938. He stated that he worked on the construction of the Awkusu Achalla road as senior road overseer from 1915 to 1925, that in those days the chiefs were empowered to conscript labour from villages adjacent to the roads and that for the Awkusu Achalla road Abagana people worked in their own town to the Egbu Tree east of the road on Exhibit 1. The witness stated that the Ukpo-Mili worked up to their boundary with Awkusu. As regards the Onitsha-Awka road the witness stated that Abagana people worked up to Mile 13 and that the Ukpo-Mili worked from Mile 13 along the Onitsha road to about the 12th Milestone.

p
p. 28.
p. 28, l. 5.
p. 28, ll. 11-16.

p. 28, l. 17.
p. 28, ll. 29-32.

22. The Appellant submits that it appears from the judgment of the learned trial judge taken as a whole that it is substantially founded upon the decision of the Resident in Suit No. 27 of 1944.

pp. 30-34.

23. The Appellant further submits that the learned trial judge gave such undue weight to the Resident's decision in the previous suit and to the evidence in this suit as to the conduct of the Urumpi upon which the allegation of acquiescence was based as to amount to a miscarriage of justice by reason of the following:—

30 (1) Considering the previous suit the learned judge concentrated his attention mainly upon the decision of the Resident and the circumstances in which that decision was arrived at and wholly ignored the fact which in the Appellant's submission plainly appears on the face of the Record in that suit (Ex. 2) that there was a great deal of confusion throughout the suit as to the boundaries of the land then in dispute.

pp. 32-33.

pp. 41-46.

40 (2) The learned judge allowed the findings of fact contained in the judgment of the Resident in the previous suit to cause confusion as between those facts and the facts which emerged from the evidence adduced before him in this suit. As appears from the judgment of the learned judge he allowed the said findings unduly to influence his assessment of the evidence.

(3) In spite of the evidence of the third witness for the Ukpo-Mili as to the great concourse of people who were present when the Resident inspected the land in dispute in the previous suit the

p. 27, ll. 8-19.

p. 32, l. 25.

learned judge described as "very material" the fact (as he stated it) that "representatives of the present Plaintiffs" were present when the Resident delivered judgment on the roadside.

p. 33, ll. 9-13.

(4) Contrary to the evidence and relying solely upon judicial notice the learned judge stated that he declined to believe the Plaintiffs when they said that they did not know the actual land in dispute in the previous suit to which admittedly they were not parties.

p. 33, ll. 16-18.

(5) The learned judge attached significance to the fact that in the previous suit the Urumpi "made no protest and submitted no claim to the Resident" and never asked to be joined as a party and "never took out a cross-summons."

p. 33, l. 24.

(6) The learned judge took the view—contrary to the evidence it is submitted—that the Urumpi must have known "fully" about the action between the Ukpo-Mili and the Amene-Abagana, and also took the view—without any justification from the record in Suit No. 27 of 1944 that the Resident must have been aware of the claim to ownership of Abonkwu by the Urumpi and must have "considered" it.

pp. 41-46.

p. 33, ll. 26-28.

p. 33, ll. 29-33.

(7) The learned judge drew an inference from the silence and inaction of the Urumpi in relation to the previous suit that they had no right and knew they had none to the northern Abonkwu.

p. 28.

24. The learned judge appears to have entirely ignored the evidence of the last witness called for the Urumpi. The Appellant submits that the evidence of the former senior road overseer as to the portion of the Awkusu Achalla road upon which Abagana people worked and as to the portion of the Onitsha-Awka road upon which they worked very strongly supports the claim of the Urumpi. Judgment was given against their claim without any reference whatsoever being made to this vital piece of evidence.

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p. 20.

25. It also appears that the learned judge gave no consideration to the extremely important evidence given by the fourth witness for the Urumpi regarding the site of the former Dunukofia Court. The Appellant submits that in a suit such as the present one in which the history of the relationship between the different groups of peoples occupies so important a part of the evidence the facts (apparently unchallenged) that the Native Court was built by workmen from the Abagana and in view of the protest of the Amene Abagana the site was moved from the east to the west side of the Awkusu-Achalla road are matters of great significance.

p. 20, ll. 2-4.

p. 20, ll. 18-24.

p. 14, ll. 11-12.

p. 23, ll. 4-6.

26. The learned judge appears also to have given no attention to the evidence of the Appellant that the Onitsha-Awka road is not the boundary of the Urumpi with anyone and the clear admission by the first Respondent to precisely the same effect, viz., that the said road was not a boundary between the Ukpo-Mili and anyone before the Resident's decision in the previous suit. The Appellant submits that the Resident's decision in that suit cannot have any binding effect whatsoever as regards the Urumpi.

27. As appears from the cross-examination of the Appellant and the third witness for the Urumpi with regard to the absence of jujus belonging to the Urumpi in the area in dispute this is a matter to which considerable importance was attached by the Respondents. No evidence was given however to refute the evidence of the Appellant and the third witness that the Urumpi have their jujus at the settlement and not on farm land. In spite of this the learned judge stated simply that he did not accept the Urumpi evidence on the point. It is submitted that it was not open to the learned judge to arrive at such a finding without any evidence to support it.

p. 15, ll. 1-2.

p. 19, ll. 15-18.

p. 33, ll. 43-45.

28. The Appellant submits that the learned judge treated as evidence unsworn statements made to him during his inspection of the land in dispute by some person or persons unnamed in support of the Respondents' case and this notwithstanding the fact that such statements were in direct conflict with sworn evidence given by the first Respondent himself. Although the first Respondent gave evidence that at the time of Suit No. 27 of 1944 no one belonging to the Ukpo-Mili was living on the land in dispute (see paragraph 18 above), the learned judge included the following in his judgment :—

p. 23, ll. 26-35.

20 “ More than one of the Defendants' houses and the proprietary Ekpe walls round them are plainly older than the date of the Resident's judgment of 1945. One house pointed out as occupied by Defendants' people has been in occupation by the present occupier since his father's death—14 years ago and by his father before him. Another Defendant occupier showed the remains of his father's house and his own house built since the judgment.”

p. 34, ll. 4-10.

29. The Appellants further submit that the learned judge wrongly rejected the contention of the Urumpi that the western Ekpe walls were boundary walls on the basis of conclusions drawn by him from his inspection as distinct from sworn evidence. On this point the learned judge stated as follows :—

40 “ The Court held an inspection which was very valuable in assisting it to arrive at its decision. This inspection disclosed no such regular and clear line as Ex. 1 had led one to expect. It was difficult to see any well-marked walls at all ; low mounds were just visible forming shallow trenches from which the earth had been thrown up ; they seemed to take any direction and to criss-cross. They had become over-grown by thick bush and Otosi trees (Bamboos) and eroded by annual rains. I am quite satisfied that these low mounds are not and never were part of a boundary line between Plaintiffs and Defendants. They are the remains of walls surrounding abandoned habitations to protect the houses and farms ; there were in fact some piece of broken domestic utensils to be seen which plainly indicate the site of dwellings now evacuated.”

p. 31, ll. 8-20.

30. The Appellant appealed to the West African Court of Appeal upon the following grounds :—

pp. 30-36.

50 (1) The learned trial judge was wrong to hold that the northern Abonkwu is part of Ekpeotu and not part of Abonkwu the southern portion of which is in the exclusive possession of the Appellants.

(2) The learned trial judge was wrong to have presumed that the Resident would doubtless have considered the Appellants' claim to ownership of northern Abonkwu at the time the Resident gave his judgment and to allow that presumption to influence his decision.

(3) The learned trial judge was wrong to find that the Appellants did not "take immediate steps to challenge the Defendants' trespass" and came to a wrong conclusion that the Appellants had no right to the northern Abonkwu.

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

p. 38.

31. The principal judgment in the Court of Appeal (Foster Sutton, P., 10 Verity, C.J., and Coussey, J.A.) was delivered by Foster Sutton, P., and included the following statement: ". . . nothing that has been said during the hearing of this appeal has persuaded me that the learned trial judge erred in coming to the conclusion he did." In his said judgment the learned President did not review the evidence adduced before the Supreme Court or examine in detail the judgment delivered by the learned trial judge. Verity, C.J., and Coussey, J.A., concurred with the judgment delivered by the learned President.

p. 38.

p. 39.

32. Final leave to appeal to Her Majesty in Council was granted on the 20th April 1953.

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33. The Appellant submits that this appeal should be allowed and the judgments of the Court of Appeal and the Supreme Court should be reversed for the following amongst other

REASONS

- (1) BECAUSE the learned trial judge allowed himself to be so influenced by the decision in the previous Suit No. 27 of 1944 to which the Appellant and the Urumpi people were not parties that his said judgment is really founded upon the said decision.
- (2) BECAUSE the learned trial judge gave such undue 30 weight to the decision in the previous Suit No. 27 of 1944 and to the evidence as to the conduct of the Urumpi people upon which the allegation of acquiescence was based as to amount to a miscarriage of justice.
- (3) BECAUSE the learned trial judge wholly failed to give any weight whatsoever to (i) the undisputed evidence of the independent witness called by the Appellant as to the building of the Awkusu-Achalla road and of the Onitsha-Awka road and (ii) the undisputed evidence as 40 to the building and the siting of the former Native Court of Dunukofia and (iii) the admitted evidence that the Onitsha-Awka road was not a boundary before the Resident's decision in the previous Suit No. 27 of 1944.

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- (4) BECAUSE the learned trial judge rejected the evidence of the Appellant and his third witness as to the custom of the Urumpi people regarding jujus without any evidence.
- (5) BECAUSE the learned trial judge based his said judgment *inter alia* upon unsworn statements by unnamed persons made to him during his inspection of the land in dispute.
- (6) BECAUSE the learned trial judge based his said judgment *inter alia* upon conclusions drawn by him as a result of his inspection of the Ekpe walls as distinct from sworn evidence.
- (7) BECAUSE the Court of Appeal failed to correct the said errors of the learned trial judge.
- (8) BECAUSE the errors of the learned trial judge and the error of the Court of Appeal in failing to correct the same amount to a miscarriage of justice.

RALPH MILLNER.

In the Privy Council.

ON APPEAL
from the West African Court of Appeal
(Nigerian Session)

BETWEEN
NWANKWO OKARAKWU on behalf
of himself and Urumpi Orofia
Abagana people (Plaintiff) - - *Appellant*

AND

1. **NWEKE UDEOGU**
 2. **NWANKWO ONOKO**
 3. **NWAFO KAREME**
 4. **AKWUE**
 5. **NWUZO UDEOGU** on behalf of
themselves and the people of Amene
Ukpo Mili (Defendants) - *Respondents.*
-

Case for the Appellant.

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