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Judgment  
15, 1956

UNIVERSITY OF ILLINOIS  
CHICAGO

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INSTITUTE OF ADVANCED  
LEGAL STUDIES

## In the Privy Council.

No. 11 of 1954.

15035

### ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (NIGERIAN SESSION)

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#### 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 Ukpomili (Defendants) ... *Respondents.*

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### CASE FOR THE RESPONDENTS.

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1.—This is an appeal from a judgment and order of the West African Court of Appeal dated 7th October, 1952, dismissing the Appellant's appeal against a judgment of Manson, J. in the Supreme Court of Nigeria dated 31st July, 1951, which dismissed the Appellant's claim for a declaration of title to a certain parcel of land called Abonkwu near Ukpomili in Awka Division, Province, Nigeria and damages for trespass on the said land and an injunction to restrain such trespass.

RECORD  
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2.—The Appellants represent the people of Urumpi Orofia Abagana who are hereinafter referred to as the Plaintiffs. The Respondents, who are  
10 hereinafter referred to as the Defendants, represent the people of Amene Ukpomili.

## RECORD

3.—The principal questions to be determined in this appeal are as follows :—

- (A) Whether the learned trial judge was entitled to find that the Plaintiffs had not made out their title to the land in dispute.
- (B) Whether the learned judge was entitled to infer from the fact that the Plaintiffs had stood by and not intervened in a previous suit between the Defendants and another party concerning the same land that they knew they had no title to the said land.
- (C) Whether there were any grounds upon which the West African Court of Appeal should have disturbed the judgment of the learned trial judge. 10

4.—On 20th July, 1944, the Defendants, by case 27/44 of 6/6/44, sued in the native Court of Dunukofia certain persons representing the people of Amene Abagana for a declaration of title to certain land including *inter alia* the land at present in dispute. After an appeal to the District Officer an appeal was made to the Resident. The Resident granted the present Defendants a declaration of title to land which he referred to as Anaekpeotu and after visiting the said land he defined it in such a way as to identify it with the land which is the subject of the present proceedings, notwithstanding that the said land is now referred to by the name of Abonkwo. 20

5.—By a Native Court summons dated 21st March, 1949, the Plaintiff and another since deceased for themselves and the people of Urumpi Orofia Abagana instituted

## THE PRESENT SUIT

claiming against the Defendants on behalf of themselves and the people of Amene Ukpo-Mili—

- (1) Declaration of title of ownership to that piece or parcel of land called Abonkwu and more particularly delineated on a plan.
- (2) £100 damages for trespass to the said piece or parcel of land. 30
- (3) An Injunction to restrain the Defendants from going on the said piece or parcel of land.

On the 1st April, 1949, pursuant to Section 25 (1) (c) of the Native Courts Ordinance, 1933, the District Officer for the Awka Division ordered the transfer of the suit to the Supreme Court of the Onitsha Judicial Division.

By their Statement of Claim dated 19th January, 1950, the Plaintiffs pleaded *inter alia* that they sued on behalf of the people of Urumpi Orofia Abagana and the Defendants were sued on behalf of the people of Amene Ukpo Mili; that the land in dispute was called Abonkwu; that the said

land was separated from the Defendant's land by boundary walls called Ekpe and by an ancient boundary from an Mba tree on the west to an Ubeosa tree on the east ; that the Plaintiffs had been in occupation of the said land from time immemorial and had exercised maximum acts of ownership over it ; that the Defendant until four years before had never crossed the ancient boundary walls ; that about 1947 as a result of suit 27 of 1944 (referred to in paragraph 4 hereof) the Defendants crossed into the said land ; and that the Plaintiffs used the said land as farm land and the Defendants had committed acts of waste thereon.

- 10 By their Defence dated 7th February, 1950, the Defendants pleaded *inter alia* that the Plaintiffs did not represent the people of Urumpi Orofia Abagana but that the 1st Plaintiff was a native of Adagbe-Orofia-Abagana and the 2nd Plaintiff of Amene-Abagana ; that the Plaintiff's ownership of the said land was denied ; that the said land was the property from time immemorial of Amene Ukpo-Mili ; that Amene Ukpo-Mili had from time immemorial used the said land for farming and building houses and reaping the fruit of palm trees without let or hindrance from the Plaintiffs ; that the Plaintiffs were bound by the result of suit 27/44 hereinbefore referred to ;  
 20 was bounded on the north by the Defendants' land called Ekpeotu, on the west by Defendants' other land and otherwise by the Onitsha-Awka Road and the Achalla Road ; and that the Defendants would plead ownership, possession, estoppel, laches and acquiescence.

- 6.—The Plaintiff Okarakwu deposed that the 2nd Plaintiff was dead, and that both he and the deceased Plaintiff were natives of Urumpi Orofia Abagana and that Adagbe and Urumpi were distinct families of the same quarter of Orofia Abagana. He further deposed that he held no important position in the family but was appointed to represent them at a meeting called by the town crier. The Achalla Road had been built seven years  
 30 before and divided the disputed land from land of Amene Abagana. The Onitsha-Awka Road passed through Plaintiffs' property and their family owned both sides. The boundary between Plaintiffs' and Defendants' land were the Western Ekpe walls and ran from a Mba tree through an anthill to an Ubeosa tree ; the said walls were put up after a fight between Plaintiffs' and Defendants' people. The Defendants never went on the land till  $2\frac{1}{2}$  years before when they went on the land and farmed and built on it. The Plaintiffs farmed on the land but did not build on it, and Plaintiff himself farmed on it. The Defendants had had a case with Amene Abagana over Ekpeotu land and not the said land.

- 40 In cross-examination the Plaintiff admitted that his people knew the action between the Defendants and Amene Abagana was going on and that representatives of the Plaintiffs and Defendants and Amene Abagana people were present when the Resident fixed the boundaries of the land Ekpeotu. When the Plaintiff denied that the land Ekpeotu awarded to the Defendants by the Resident in suit 27/44 was the same as the land in dispute the plan in suit 27/44 was put in without objection.

## RECORD

p. 15, l. 1

In further cross-examination the Plaintiff deposed that there were no jujus on the land. He stated Defendants had planted Otosi trees thereon and used them for building and after dealing with the building of the Roads went on to give his version of the boundary line. He stated that his people showed the Resident in case No. 27/44 the boundary between their land and the Defendants' land but said that if the Resident had said the Enugu-Onitsha Road was their boundary his people would have protested at once.

p. 15, l. 27

7.—The other witnesses called by the Plaintiff deposed *inter alia* as follows :—

p. 16

(A) Ejike Chidolue, a licensed surveyor, deposed that he had made the plan Exhibit 1 and that the houses on the disputed area were new. 10

p. 17

(B) Charles Nwokeke deposed that he was a farmer from Urumpi Orofia and that the said land belonged to the Plaintiffs, and the boundary with the Defendants was the Ekpe walls, Iroko tree, Mba tree, 2 anthills and Ubeosa tree, that he and his father and grandfather had farmed the said land, but ceased to do so when Defendants came on the land, uprooted crops and built houses. There was a fight which led to the building of Ekpe walls, and until  $2\frac{1}{2}$  years before Defendants had not come on the land. 20

p. 18, l. 7

In cross-examination this witness deposed that the Plaintiffs had had no Court case with anyone over Abonkwo and if any Urumpi people took part in that case they went on their own. His father who was head of Urumpi Orofia quarter was alive at the time of suit 27/44. The witness was present when the Resident came to see the land and he asked who owned the farms on Abonkwo land (which the witness identified as being on the right of Onitsha-Awka Road) and the Urumpi people showed the Resident the boundary with Ekpeotu land. He denied that Abonkwo land was in dispute in that case. The Plaintiffs knew of the dispute between Defendants and Amene Abagana but were not a party nor invited and took no interest in it. There were no jujus on Abonkwo land and jujus were not placed on farms. If Defendants' jujus were on the land they were placed there secretly or since the present suit began. 30

p. 19, l. 37

(C) Ezekwe Ugbo deposed that he was formerly a member of Dunukofia Native Court, and gave similar evidence to the other Plaintiffs witnesses concerning the fight and the boundaries. The Amene Abagana people were also in the fight and the Ekpe walls were intended also as a boundary between them and the Defendants. 40

p. 20, l. 35

(D) Anakpe Iloani deposed that he had farmed the land in dispute for 20 years until  $2\frac{1}{2}$  years before and gave similar evidence to the other Plaintiffs witnesses concerning the fight and the Ekpe walls. In examination by the Court he stated that he did not know the boundaries of the Abo land.

8.—The 5th Defendant Nwazo Udeogu deposed that he was a native of Amene Ukpomili and that there were nine quarters of Abagana of which Urumpi-Orofia Abagana and Amene Abagana were two. No. 1 Plaintiff came from Urumpi and Plaintiff No. 2 from Amene Abagana. Standing on the Onitsha-Awka tarred road facing Onitsha the disputed land was on the right, that on the left was also Ukpomili land until it was given by the Resident to Amene Abagana. The Defendants owned the disputed land from time immemorial and the Plaintiffs had not entered the land to farm or reside. The boundaries of Abo-Ekpeotu land were an Egbu tree of Ukwulu Achalla Road, from there to tarred road and then to a pillar and then to Edward Ekpomili's farm. The Ekpe walls were put round quarters of each family to prevent kidnapping by strangers, and never formed a boundary with anyone, and were never accepted as a boundary in the dispute with Amene Abagana people. Defendants jujus were on the land and Plaintiffs' 5th witness had no work except as a paid witness. Plaintiffs had never interfered with Defendants occupation and use of land.

In cross-examination this witness deposed that Abo and Abonkwo were two names for the same piece of land. Before the Resident's decision in case 27/44 the tarred road was not a boundary. In that case Defendant claimed Ekpeotu and Abo, and the land now in dispute was part of the land then claimed, when Defendant sued Amene Abagana they claimed Ekpeotu and Abo or Abonkwo land, and the land in the present suit was *part* of the land in former suit. The Defendants did not live on the land until after the Resident's judgment. There was never a fight with the people of Amene Abagana or anyone else. The Ekpe walls were not boundaries but for the protection of individuals. The Otosi tree near the Ekpe walls were planted by Defendants to support their yams.

In re-examination this witness deposed that Ekpeotu meant a portion of land where people lived and Abonkwo meant where they farmed. The Defendants claimed land south of the tarred road but did not produce sufficient evidence for the Resident to grant a declaration of title.

9.—Charles Chike Emodi, licensed surveyor, deposed that he had made the plan in the case 27/44. He had been confused between Ekpeotu and Abo land until he was told that Ekpeotu land was where people lived and Abo land was where they farmed.

After being cross-examined as to his knowledge of the dispute at the time he made the plan, the witness deposed in examination by the Court that if the Ekpe walls had been well defined he would have shown them on Exhibit 3, and that Ekpe walls were sometimes tribal defensive walls, sometimes boundary walls and sometimes performed both functions, and they were also sometimes built round farms.

10.—Anene Ejiofo deposed that he was a Court member in case 27/44, but did not join in the decision because he was of Ukpomili family. Abo or Abonkwo land was part of Ekpeotu land. The Urumpi people were there when the Resident marked out the boundaries, but were not parties.

RECORD

Plaintiff No. 1 and his brother were there, also the witness Nwokeke, none of the Urumpi objected to the boundaries. The Resident started at an Egbu tree and then along Ukwulu Achalla Road to Onitsha-Awka Road and then along the latter to a pillar close to Edward Ukpomili's house S.W. of Exhibit 1. Abonkwo was not different to Ekpeotu. The Ekpe walls were put round farms and houses to prevent animals from destroying property ; they were not boundaries.

p. 26, l. 38

In cross-examination this witness deposed that Ekpeotu land when planted with palms became Abonkwo land. The Urumpi people were present when the Resident inspected the land, as were all quarters of Abagana and Ifite Ukpo, and there were so many as 1,200 people. The Resident gave his decision on the spot.

p. 28

11.—Omedike Ibekwe, interposed on behalf of the Plaintiff, gave evidence as to the labourers employed in constructing the Onitsha Awka Road and the branch road to Awkuzu Achalla.

p. 29, l. 1

12.—On 24th July, 1951, the Court inspected the area in dispute.

p. 30, l. 23

13.—The learned trial judge delivered his judgment on 31st July, 1951. He found that Ekpe walls served a number of purposes, and that inspection of the locus in the present case disclosed no such regular and clear line as would be expected from Exhibit 1 ; they seemed to take any direction and to criss-cross. He was satisfied that they never were a boundary between Plaintiff and Defendants, and they were remains of walls surrounding abandoned habitations. After reciting the history of the case 27/44, the learned judge found that the Resident had awarded the whole of the disputed land to the present Defendants. It was quite clear that the Plaintiffs knew of the Defendants' dispute with Amene Abagana, and were present when the Resident gave his decision. If the Plaintiffs land was in jeopardy they would have been aware of it ; they made no protest or submitted no claim and never took out a cross-summons. They waited nearly four years before issuing the summons in the present suit.

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p. 33, l. 21

If it were true that the Plaintiffs had been in occupation from time immemorial it would be impossible to suppose that the Resident would have been unaware of it. It was not a matter of acquiescence or estoppel merely the inference to be drawn from Plaintiffs silence and inaction for nearly four years.

p. 33, l. 34

The Plaintiffs had placed great reliance on the Ekpe walls but the learned judge rejected the claim that they were boundary walls. The Plaintiffs showed no field jujus, and Defendants showed the Court three which were shown on a plan prepared four years before the present suit. The learned judge rejected the Plaintiffs assertion that they did not put jujus on farms.

p. 33, l. 45

The Plaintiffs fifth witness was not reliable, and may have farmed on other land, and in any case did not know the boundaries. The Plaintiffs admitted that the Defendants had planted the Otosi (bamboo) trees and

used them for building and the state of the bamboos did not suggest planting since the 1945 case.

RECORD

The learned judge then dismissed the Defendants claim with costs assessed at 30 guineas. p. 34, l. 37

14.—The Plaintiffs appealed from the said judgment to the West African Court of Appeal. The judgment in the said Court of Appeal was delivered by Sir Stafford Foster Sutton P., who held that the Plaintiffs had to succeed on the strength of their evidence which they had failed to do, and nothing had persuaded him that the learned trial judge had erred in his decision. Verity, C.J. and Coussey, J.A. concurred. p. 35-p. 39 p. 38

15.—The Defendants humbly submit that this appeal should be dismissed with costs and the judgments and orders of the Court below upheld for the following amongst other

### REASONS

- (1) BECAUSE the onus rested upon the Plaintiffs to establish their title and they failed to discharge that onus.
- (2) BECAUSE the learned trial judge found as a fact that the Plaintiffs had failed to establish their title to the land in dispute and because there was ample material upon which he could so find.
- (3) BECAUSE the learned trial judge was entitled to infer, from the fact that the Plaintiffs must have been aware of the earlier proceedings and that they did not intervene in such proceedings that they knew they had no right to the land then in dispute.
- (4) BECAUSE there were concurrent findings of fact in the Defendants' favour in the Courts below.
- (5) BECAUSE there were no grounds upon which the West African Court of Appeal would have been justified in discharging the judgment of the trial judge.
- (6) BECAUSE the judgments in the Courts below were right and should be affirmed.

DINGLE FOOT.

F. R. McQUOWN.

# In the Privy Council.

No. 11 of 1954.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL (NIGERIAN SESSION).

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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.*

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CASE FOR THE RESPONDENTS

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