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Judgment  
(15) 1956

No. 11 of 1954.

**In the Privy Council.**

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**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.**

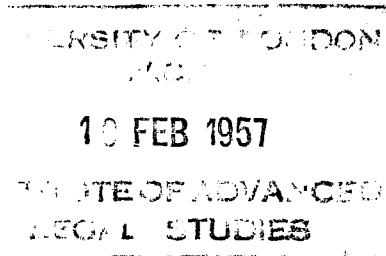
**AND**

**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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**RECORD OF PROCEEDINGS**

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**A. L. BRYDEN & WILLIAMS,**  
**53 VICTORIA STREET,**  
**LONDON, S.W.1.,**  
*Solicitors for the Appellant.*

**REXWORTHY, BONSER & WADKIN,**  
**83/85 COWCROSS STREET,**  
**LONDON, E.C.1.,**  
*Solicitors for the Respondents.*

INSTITUTE OF ADVANCED  
LEARNER STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

**In the Privy Council.****ON APPEAL**

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

19 FEB 1957

UNIVERSITY OF  
 NIGERIA  
 INSTITUTE OF  
 LEGAL STUDIES

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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# 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

- 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*

## RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS No 28/49

20

(Civil Summons)

28/49  
No. 19

*In the  
Native  
Court.*

No. 1.

IN THE NATIVE COURT OR JUDICIAL COUNCIL OF NDOKA,  
NIGERIA.

Civil  
Summons  
No. 28/49,  
21st  
March  
1949.

Between 1. NWANKWO OKARAKWU . . . . .  
         2. ODILI OKEKE on behalf of themselves and } Plaintiffs  
         Urumpi Orofia Abagana . . . . .  
         and

30

1. NWEKE UDEOGU . . . . .  
2. NWANKWO ONOKO . . . . .  
3. NWAFO KANEME . . . . .  
4. AKWUE . . . . .  
5. NWAZO UDEOGWU . . . . .  
6. NWOYE ODILI, on behalf of themselves and } Defendants  
         Amene Ukpo-Mili . . . . .

To                      do                      do                      of                      do

YOU are commanded to attend this Court at Ndoka on the 23rd day  
of March, 1949, at 9 o'clock a.m., to answer a suit by Nwankwo  
Okarakwu etc. of Abagana against you.

*In the  
Native  
Court.*

# CLAIM.

## THE PLAINTIFF CLAIMS :—

No. 1.  
Civil  
Summons  
No. 28/49,  
21st  
March  
1949,  
*continued.*

(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.

(3) An injunction to restrain the Defendants from going on the said piece or parcel of land.

Dispute arose 15 months ago.

10

Issued at Ndoka the 21st day of March, 1949.

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

(Sgd.) P. OKEKE,  
Signature of President or Vice-President.

No. 2.  
Order of  
Transfer,  
1st April  
1949.

No. 2.

## ORDER OF TRANSFER

### PROTECTORATE COURT OF NIGERIA.

IN THE NATIVE COURT OF UDOKA—AKWA DIVISION.

ORDER made under section 25 (1) (c) of the Native Court Ordinance, 1933. 20

I, BENNET HUMPHREYS BRACKENBURY, Acting District Officer, Akwa Division, by virtue of the powers vested in me under Section 25 (1) (c) of the Native Courts Ordinance, 1933, hereby order that the following suit be transferred from the Udoka Native Court to the Supreme Court, Onitsha.

Civil Summons No. 28/49 :

19

- 1) Nwankwo Okarakwu
- 2) Odili Okeke on behalf of themselves and Urumpi Orofia-Abagana.

*versus*

30

- 1) Nweke Udeogu and 5 others on behalf of themselves and Amene Ukpo-Mili.

Claim :

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.

3) An Injunction to restrain the Defendants from going on the said piece or parcel of land.



I certify that the order of transfer of the above mentioned Suit from the Udoka Native Court to the Supreme Court, Onitsha is made by me on the motion of L. N. Mbanefo Esq., Solicitor for the Defendants, for the following reasons :—

*In the  
Native  
Court.*

No. 2.

Order of  
Transfer,  
1st April  
1949,  
*continued.*

- 1) The issues to be raised in the present case will be beyond the competence of the Native Court to deal with.
- 2) The case will also involve the production of a plan the value of which the Native Court is unlikely to be able properly to assess.
- 10 3) The Udoka Native Court would have considerable difficulty in interpreting the meaning of the previous judgments.

Dated at Akwa this 1st day of April, 1949.

(Sgd.) B. H. BRACKENBURY,  
Ag : District Officer,  
Akwa Division.

No. 3.

**MOTION to restrain the Defendants from entering the land**

**IN THE SUPREME COURT OF NIGERIA.**

**IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION,  
Holden at Onitsha.**

20

Suit No. 0/18/1949.

(*Title as No. 1.*)

**MOTION ON NOTICE.**

TAKE NOTICE that this Honourable Court will be moved on 24th August, 1949, at the hour of nine of the clock in the forenoon or so soon as the Court can hear Counsel for the Plaintiffs for an order that the Defendants, their servants and agents be restrained by injunction until the trial of this action from entering or building houses on the land the subject of the above-named suit shown on the plan to be filed in Court and therein delineated and edged pink and for such further and/or other  
30 order as to the Court may seem just.

*In the  
Supreme  
Court of  
Nigeria.*

No. 3.  
Motion to  
restrain  
the  
Defendants  
from  
entering  
the land,  
9th  
August  
1949.

Dated at Onitsha this 9th day of August, 1949.

(Sgd.) M. O. AJEGBU,  
Plaintiffs' Solicitor.

*In the  
Supreme  
Court of  
Nigeria.*

No. 4.

**AFFIDAVIT in support of motion for an injunction**

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION,  
Holden at Onitsha.

Suit No. 0/18/1949.

(Title as No. 1.)

**AFFIDAVIT.**

I, NWANKWO OKARAKWU of Urumpi Abagana, Akwa Division, a  
British protected person make oath and say as follows :— 10

1. That I am one of the Plaintiffs in the above-named Suit and I  
sue in a representative capacity.

2. That the land the subject matter of the suit is the communal  
property of the people of Urumpi Abagana in the Akwa Division.

3. That the Plaintiffs have been in occupation of the said land from  
time immemorial.

4. That the Plaintiffs use the said land for farming purposes.

5. That since the commencement of this suit the Defendants have  
been erecting or transferring more houses on the said land and the land  
is as a result not suitable for farming purposes. 20

6. That the Defendants have other lands on which to build their  
houses.

7. That the land for which the Defendants require an injunction  
is clearly shown on a plan to be filed in Court.

8. That I make this affidavit in support of my application for an  
interim injunction against the Defendants to stop erecting more houses  
on the said land until the final determination of the suit. .

This Affidavit has been read over by E. O. H. Okwusogu and explained  
to the deponent Nwankwo Okarakwu in Ibo language who seemed  
perfectly to understand the same before making his mark thereto. 30

NWANKWO OKARAKWU, His right  
Deponent. thumb imp.

Sworn at the office of the Supreme Court, Registry, Onitsha, this  
16th day of August, 1949.

Before me,  
(Sgd.) S. A. SAMUEL,  
Commissioner for Oaths.

## No. 5.

## COURT NOTES of hearing of motion for injunction

At Onitsha, Wednesday the 24th day of August, 1949.

Before His Honour Mr. Justice G. G. ROBINSON, Puisne Judge.

NWANKWO OKARAKWU AND ANOR. . . Plaintiffs

*versus*

NWEKE UDEOGU AND 5 OTHERS . . Defendants.

*In the  
Supreme  
Court of  
Nigeria.*

No. 5.  
Court  
Notes of  
hearing  
of motion  
for  
injunction,  
24th  
August  
1949.

10 MOTION *ex parte* by Plaintiffs for an order that the Defendants, their servants and agents be restricted by injunction until the trial of this action from entering or building houses on the land the subject of the above-named suit shown on the plan to be filed in Court and therein delineated and edged pink and for such further and/or other order as to the Court may seem just.

*Ex parte*

Mr. Ajegbo and Onyiuke for the movers.

Onyiuke—Order 21, Rule 1.

Asks for interim injunction. White Book—1944 page 918 :

“ Any time after the issue of Writ.”

20 Writ was issued in Native Court. District Officer transferred the case to Supreme Court at the instance of the Defendants—so Defendants know about it. The Defendants can apply to set it aside if they can give good grounds—Order 34, Rule 11.

ORDER : In as much as the Defendants must know about this suit in that it was Defendants who applied to the District Officer to have it transferred, I am prepared to grant an interim injunction.

Order as prayed.

(Sgd.) G. G. ROBINSON.

*In the  
Supreme  
Court of  
Nigeria.*

**No. 6.**

**ORDER for Injunction**

Suit No. 0/18/1949.

(*Title as No. 5.*)

No. 6.  
Order for  
Injunction,  
24th  
August  
1949.

UPON READING the affidavit of Nwankwo Okarakwu of Urumpi Abagana, Awka Division, sworn to and filed at Onitsha on the 16th day of August, 1949, and after hearing Gabriel Chike Onyiuke Esq. (with him Michael Oguejiofo Ajegbo) of Counsel for the Plaintiffs :

IT IS ORDERED AS PRAYED, restraining the Defendants, their agents and servants from entering or building houses on the land the subject 10 of the above-named suit shown on the plan to be filed in Court, pending the determination of the suit or further order in this case.

Dated at Onitsha this 24th day of August, 1949.

(Sgd.) G. G. ROBINSON,  
Judge.

No. 7.  
Court  
Notes of  
order for  
pleadings,  
23rd  
December  
1949.

**No. 7.**

**COURT NOTES of order for pleadings.**

Pleadings : Statement of Claim within 30 days and Plan to be filed and served on Defendants : Statement of Defence to be filed within 30 days after service on them of Statement of Claim and copy served on 20 Plaintiffs.

(Intld.) A. G. B. M.,  
J.  
23/12/49.

No. 8.  
Statement  
of Claim,  
19th  
January  
1950.

**No. 8.**

**STATEMENT OF CLAIM.**

**STATEMENT OF CLAIM.**

1. The Plaintiffs are natives of Urumpo Orofia Abagana and sue for themselves and the people of the said Urumpi Orofia Abagana.

2. The Defendants are sued on behalf of themselves and the people 30 of Amene Ukpo Mili.

3. The land the subject matter of the suit is edged pink on a plan annexed hereto and is part of the Plaintiffs' land known as and called Abonkwu Land.

4. The land in dispute is separated from the land of the Defendants by ancient boundary walls called Ekpe.

5. The land in dispute is separated from Ekpeotu land by an ancient boundary line starting from an Mba tree on the west to Ubeosa tree on the east.

6. The Plaintiffs have been in occupation of the land in dispute from time immemorial.

7. The Plaintiffs have exercised maximum acts of ownership over the land in dispute.

8. The Defendants until about 4 years ago have never crossed the ancient boundary walls into the land in dispute.

10 9. In or about the year 1947 as a result of the Suit No. 27 of 1944 between the Defendants and the people of Amene Abagana the Defendants crossed into the land in dispute and started to erect buildings on the land in dispute.

10. The Plaintiffs use the land in dispute as a farm land.

11. The Defendants by their conduct have committed acts of waste on the land in dispute.

Whereof the Plaintiffs claim as per writ of Summons.

Dated at Onitsha this 19th day of January, 1950.

(Sgd.) M. O. AJEGBO,  
Plaintiffs' Solicitor.

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*In the  
Supreme  
Court of  
Nigeria.*

No. 8.  
Statement  
of Claim,  
19th  
January  
1950,  
*continued.*

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**No. 9.**  
**STATEMENT OF DEFENCE.**

**STATEMENT OF DEFENCE.**

1. The Defendant deny paragraph 1 of the Statement of Claim, and say that 1st Plaintiff is a native of Adagbe-Orofia-Abagana, and 2nd Plaintiff a native of Amene-Abagana.

2. The Defendants admit paragraph 2 of the Statement of Claim.

3. The Defendants admit that the land in dispute as shown on Plaintiff's plan is called "Abonkwu," but deny that the said land belongs  
30 to the Plaintiff.

No. 9.  
Statement  
of Defence,  
7th  
February  
1950.

*In the  
Supreme  
Court of  
Nigeria.*

No. 9.  
Statement  
of Defence,  
7th  
February  
1950,  
*continued.*

4. The said Abonkwu land is the bona fide property of Amene-Ukpo-Mili, and has been so regarded from time immemorial.

5. As owners aforesaid, Amene-Ukpo-Mili have from time immemorial used the said land by building houses and residing thereon and farming on portions of it, and they reap the fruit of the palm trees growing thereon without let or hindrance from the Plaintiff.

6. In 1944, individuals from Amene-Abagana trespassed and laid claim to a large area of land including the land now in dispute. In consequence of their action, one Okeke Akpaka, on behalf of Amene-Ukpo Mili, sued Unegbu and two others of Amene-Abagana, claiming title to the said land in the Native Court of Dunukofia—Suit No. 27/44. The Native Court gave judgment for Amene-Ukpo-Mili for the area now in dispute. The matter went on appeal to the Resident, who confirmed the award of the area in dispute to Amene-Ukpo-Mili. The said judgment of the Resident was upheld on appeal to the Governor's Court. The Defendants will rely on the judgment of the said Suit No. 27/44. 10

7. The land in dispute is the exclusive possession of the Defendants and their people of Amene-Ukpo-Mili, and is bounded on the North by the Defendants' land called Ekpeotu, and on the West by the Defendants' other land. The Onitsha-Awka Road and the Achalla Road form the boundary between the Defendants and Abagana people. 20

8. Save as is herein expressly admitted, the Defendants deny seriatim paragraphs 4 to 11 of the Statement of Claim, as if each of the said paragraphs was separately taken up and traversed.

9. The Defendants say the Plaintiffs are not entitled as claimed, and will plead ownership, Possession, Estoppel, Laches and Acquiescence.

Dated at Onitsha this 7th day of February, 1950.

(Sgd.) L. MBANEFO,  
Defendants' Solicitor.

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## No. 10.

## MOTION for Committal Order.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION  
Holden at Onitsha.

Suit No. 0/18/1949.

No. 10.  
Motion for  
Committal  
Order,  
4th April  
1950.

Between 1. NWANKWO OKARAKWU

2. ODILI OKEKE, on behalf of themselves and  
the people of Urumpi, Orofia Abagana . Plaintiffs

10

and

1. NWEKE UDEOGU

2. NWANKWO

3. NWAFOR KANEME

4. AKWUE

5. NWUZO UDEOGU

6. NWOYE ODILI, on behalf of themselves and  
the people of Amene Ukpo Mili

7. UDEZUE ODILI

8. NWAFO OGWUAGANA

20

9. NWEKE OSIA

10. AGIDI . . . . . Defendants

IN THE MATTER of an application on behalf of the above-named Plaintiffs for an order for committal against UDEZUE ODILI, NWAFO OGWUAGANA, NWEKE OSIA, NWUZO UDEOGU and AGIDI, all of Amene Ukpo Mili.

## NOTICE OF MOTION

for committal or alternatively attachment for disobedience—to the Order of Court dated the 24th day of August, 1949.

30 TAKE NOTICE that this Honourable Court will be moved on a day to be fixed by the Court or so soon thereafter as Counsel can be heard, by Counsel on behalf of the above-named Plaintiffs for an order:—

1. That the Defendants do stand committed to prison for their contempt in not paying obedience to the order issued out of this Honourable Court restraining the said Defendants, their servants and agents by injunction until the trial of this action from entering or building houses on the land the subject-matter of the above-mentioned suit.

40 2. That UDEZUE ODILI, NWAFO OGWUAGANA, NWEKE OSIA, NWUZO UDEOGU and AGIDI, all of Amene Ukpo Mili, do stand committed to prison for their contempt in not paying obedience to the order issued out of this Honourable Court restraining them, their servants and agents by injunction until the trial of this action from entering or building houses on the land the subject-matter of the above-mentioned suit.

*In the  
Court of  
Supreme  
Nigeria.*

No. 10.  
Motion for  
Committal  
Order,  
4th April  
1950,  
*continued.*

3. Alternatively that the above-mentioned Plaintiffs be at liberty to issue a writ or writs of attachment against the said Defendants and the said persons mentioned in paragraph 2.

4. That the said Defendants do pay to the Plaintiffs their costs of and incidental to their application and to the order to be made thereon and of issuing and executing such writs of attachment.

5. Such further or other order as the nature of the case may require.

AND FURTHER TAKE NOTICE that the Plaintiffs intend to read and use in support of their application the affidavit of NWANKWO OKARAKWU filed herein on the 5th day of April, 1950 true copies of which affidavit 10 are intended to be served with this Notice of Motion.

Dated at Onitsha this 4th day of April, 1950.

(Sgd.) M. O. AJEGBO,  
Plaintiffs' Solicitor.

No. 10A.  
Affidavit  
in support  
of motion  
for  
committal,  
5th April  
1950.

#### No. 10a.

#### AFFIDAVIT in support of motion for committal.

#### AFFIDAVIT.

I, NWANKWO OKARAKWU of Urumpo Abagana, Awka Division, a British protected person make oath and say as follows :—

1. That I am the Plaintiff in the above suit. 20
2. That I reside at Abagana near the land in dispute.
3. That I pass along the main road which runs through the land in dispute practically every day.
4. That the Defendants are people of Amene Ukpo Mili and are sued on behalf of themselves and the people of Amene Ukpo Mili.
5. That on the 24th day of August, 1949, an interim injunction was obtained against the Defendants and their people their servants and agents restraining them until the trial of this action from entering or building houses on the land in dispute.
6. That a copy of this order was served on the Defendants. 30
7. That 2 copies of the Plan in dispute were filed in Court on the 19th day of January, 1950.
8. That the Defendants and their people continue to enter the land in dispute.
9. That Udezue Odili, Nwafo Agwuagana, Nweke Osia, Nwuzo Udeogu and Agidi, all of Amene Ukpo Mili, to the knowledge of the Defendants now go on the land in dispute.



10. That Nwafo Ogbuagana, Nweke Osia, Nwuzo Udeogu have completed their buildings barely a month ago.

11. That Nwafo Ogbuagana uses his building as a temporary hotel.

12. That the buildings erected on the land are farm huts.

13. That there is a building belonging to Udezue Odili that is now under construction and has been recently roofed with corrugated iron sheets.

14. That the Defendants and their people continue and threaten to continue to enter on the land and to build thereon.

10 15. That the land in dispute is fast transforming from an exclusively farm land to a residential area.

Nwankwo Okarakwu  
Deponent.

His right  
thumb mark

This Affidavit has been read over and explained to the deponent Nwankwo Okarakwu in Ibo language who seemed perfectly to understand the same before making his mark hereto.

(Sgd.) D. O. Anyaegbunam.

Sworn at the Office of the Supreme Court Registry, Onitsha, this 5th day of April, 1950.

20

Before me,

(Sgd.) S. A. Samuel,  
Commissioner for Oaths.

#### No. 11.

#### COURT NOTES.

At Onitsha, Monday the 6th day of November, 1950.

Before His Honour Mr. Justice ADEMOLA, Puisne Judge.

Suit No. 0/18/1949.

NWANKWO OKERAKWU and Anor. . . . Plaintiffs

*versus*

30 NWEKE UDEGU and 5 Others . . . . Defendants.

MOTION on Notice with Affidavit in support by Nwankwo Okarakwu of Urumpi Abagana for an Order for committal or alternatively attachment for disobedience—to the Order of Court dated the 24th day of August, 1949.

Counsel on both sides away in Lagos for West African Court of Appeal.

Adjourned till 20/11/50.

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

*In the  
Supreme  
Court of  
Nigeria.*

No. 10A.  
Affidavit  
in support  
of motion  
for  
committal,  
5th April  
1950,  
*continued.*

No. 11.  
Court  
Notes,  
6th  
November  
1950.

*In the  
Supreme  
Court of  
Nigeria.*

No. 11.  
Court  
Notes,  
20th  
November  
1950,  
*continued.*

At Onitsha, Monday the 6th day of November, 1950.  
Adjourned till 20/11/50.

(Sgd.) A. ADE ADEMOLA,  
Puisne Judge.

Monday, the 20th day of November, 1950.

### MOTION

Onyiuke moving.

L. N. Mbanefo opposes.

*Court* : No certified copy of the Order made by the Court accompany the Notice of motion. 10

Onyiuke asks that motion be adjourned *sine die* as date likely to be fixed for hearing of the substantial case.

Adjourned *sine die*.

(Sgd.) A. ADE ADEMOLA,  
J.

At Onitsha, Monday the 20th day of November, 1950.  
Adjourned till 22/1/51.

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

Monday, the 22nd day of January, 1951.

Ajegbo (Onyiuke with him) for Plaintiffs. 20

Mbanefo for Defendants.

Adjourned till 5/3/51—for mention.

(Sgd.) A. ADE ADEMOLA,  
J.

At Onitsha, Monday the 11th day of June, 1951.  
Before His Honour Mr. Justice MANSON, Puisne Judge.

Suit No. 0/18/1949.

|                            |   |   |             |    |
|----------------------------|---|---|-------------|----|
| NWANKWO OKARAKWU and Anor. | . | . | Plaintiffs  |    |
|                            |   |   | and         |    |
| NWEKE UDEOGU and 5 Others  | . | . | Defendants. | 30 |

*By Court* : Mr. Onyiuke mentions above case and asks for an early hearing date. Defendants' Counsel is L. N. Mbanefo. His brother will hold his brief. Hearing fixed for 4th July, 1951. Hearing Notices to issue for that date and a letter to be addressed to Mr. A. O. Mbanefo.

11th June, 1951.

(Sgd.) A. G. B. MANSON,  
J.  
At Onitsha.

**No. 12.**  
**COURT NOTES.**

Wednesday the 4th day of July, 1951.

Onyiuke and Ajegbo for Plaintiffs.

A. O. Mbanefo, holding L. N. Mbanefo's brief, for Defendants.

No. 2 Plaintiff and No. 6 Defendant reported to have died.

*In the  
Supreme  
Court of  
Nigeria.*

No. 12.  
Court  
Notes,  
4th July  
1951.

**No. 13.**

**EVIDENCE of Nwankwo Okarakwu.**

*Plaintiffs'  
Evidence.*

10 1st Witness—NWANKWO OKARAKWU: (m.) Ibo, Sworn as pagan,  
says through interpreter:—

No. 1 Plaintiff in this action; No. 2 Plaintiff died about 8 months ago; am a native of Urumpi Orofia Abagana; I am *not* a native of Adagbe-Orofia-Abagana. Plaintiff No. 2 was a native of Urumpi Orofia Abagana, he was not a Native of Amene-Abagana. Paragraph 1 of Statement of Defence. Adagbe and Urumpi are distinct families of the same quarter of Orofia-Abagana. I represent the Urumpi Orofia: I and Plaintiff No. 2 were appointed to take this summons out. We were appointed 2½ years ago. I hold no important position. We were appointed at a meeting called by the Town Crier. We assembled in Nwokeke  
20 Edochie's house; he is head of our village or Urumpi Orofia Abagana and our tax collector. Plaintiff No. 2 was related to him. I know the land in dispute; it is called "Abonkwo" or "Abo." I know the Awkuzu Achalla Road; it passes through the land in dispute. I know the Ukwulu Achalla Road; it divides the disputed land from the land of Amene Abagana. This road was constructed some 7 years ago by one Simon Ofedu a Government employee. I know the junction of these 2 roads at the Onitsha-Awka Road—Enugu Road—a tarred road. The Onitsha-Awka, Enugu Road passes through our land. Going to Onitsha from Enugu, the land each side is "Abonkwo"—we own both sides. The land  
30 in dispute *now* is the area on the right. I know Defendants. We have a common boundary with them in the bush; it is the *Western* EKPE walls. There is an Iroko Tree on the boundary. There are Otosi Trees along the walls and bush as well. After the bush comes palm trees. I've never been into the bush. I know "EKPEOTU" land; it adjoins the land in dispute. After the Iroko Tree one finds an Mba Tree; then the Awkuzu Road; then an ant hill (MKPU) then to an Ubeosa Tree. "Ekpeotu" land belongs to Amene Ukp Mili (Defendants). The boundary between Plaintiffs and Amene Abagana is an Akpaka tree and 3 Ukwu Trees and Onuama Stream. We own "Abonkwo" or "Abo": the Western  
40 Ekpe Walls between us and Defendants were erected because of a fight between Plaintiffs and Defendants ancestors. After the fight, the wall was put up as a defence by our ancestors against Defendants. Since the walls

No. 13.  
Nwankwo  
Okarakwu,  
4th July  
1951.  
Examina-  
tion.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 13.  
Nwankwo  
Okarakwu,  
4th July  
1951,  
*continued.*

Ex. 1.

Cross-  
examina-  
tion.

Ex. 2.

Ex. 3.

were put up, Defendants never went on our land until about 2½ years ago. They came on our land and farmed and built on it. Amongst those who built were 5th Defendant 1st Defendant 6th Defendant; 3rd Defendant; 2nd Defendant; and 4th Defendants. We summoned them. The houses were of mud; one was roofed with corrugated iron and is to be faced with cement; it was built by the brother of 6th Defendant (deceased); it is occupied but not yet faced with cement. It is in the centre of the disputed area. An injunction was granted by the Court but Defendants flouted the Order; Akunne, Nwafor Ugwuagana, Nweke Osia, 5th Defendant; and one Agidi built houses. Before getting an Order to commit Defendants, 10 the houses were completed. The tarred Onitsha-Awka road is not our boundary with Defendants at any point. Defendants have not lived and built on this land in dispute from time immemorial nor farmed it. Paragraph 5 of Defence. We farm this land and do not build on it. We put tenants on the land—we have 2 of our relations there who live in Defendants' Village and other tenants come from Amanye Abagana and Umuduru. We have no tenants from Defendants' town except the two relatives. I know one Simon Eme—S. of area in dispute. He is from Defendants' people; he was given land by Okonkwo Ekugha of our people—about 7 years ago or more. I know where Edward Ukpomili 20 lives: (Ex. 1 in area *not* in dispute); his house is on boundary between us Adagbe-Orofia. The road to Awkuzu is a very old road. Government employed the road-makers. I remember it being made when I was a boy. I'm about 50 years. I myself farm on the land in dispute—towards the Ekpe Wall; my village head—Nwokeke Edochie—farms next to me. We have heard no previous case with Defendants over this land. Defendants had a dispute with Amene Abagana people over "Ekpeotu" land. When they had this action with the Amene people, they were not farming on our land. I'm sure the action referred to related only to "Ekpeotu." There were cross actions. "Ekpeotu" was awarded to 30 present Defendants but on review by District Officer it was awarded to Amene Abagana people and later, on review, by Resident to Defendants. Plaintiffs were not a party to this action.

A meeting was held before I was appointed. I was chosen because I come from Urumpi and I was a younger man than the others who were too old to conduct these proceedings. Plaintiff No. 2 now dead was selected because of his special knowledge of this area. I come from the same quarter as he, he did not come from Amene-Abagana. We know the action was going on between Defendants and Amene Aabagana. I know one Nwaude Nwanko; he is from Urumpi-Orofia and is our relation; he lives in our 40 village but has no official position. I do not know if he gave evidence in the above suit. It is not correct to call the land on which Simon Eme's house is (road-junction on Ex. 1) "Ekpeotu" land. The Chief Commissioner and Resident reviewed the District Officer's finding and said "Ekpeotu" belonged to Plaintiffs and "Obonkwo" to us. Representatives of ourselves and present Defendants and Amene Abagana people were called by the Resident when he fixed the boundaries of "Ekpeotu." "Ekpeotu" awarded to Defendants by Resident is *not* part of *Obonkwo* (Defendants' Counsel puts in a certified copy of proceedings in Native Court No. 27/44 and plan therein. Exs. 2, 3, paragraph 6 of Statement of 50 Defence. No objection by Plaintiff's Counsel).

- There is no juju on area in dispute. Defendants simply came to a tree or stone and say that is a juju. There are no jujus on the land. I accompanied our Surveyor (2nd Witness) when he surveyed the land in dispute. I showed him Okoye Odili's house (see Ex. 1); it was built before the summons in this case was taken out. I know the Ukwulu and Achalla road; it was constructed before the 1944 case Ex. 1. It was made by Government with paid labour. The Awkuzu and Achalla road was constructed by Abagana; Plaintiffs helped with the work; but labour was not paid. I was not amongst the workers. I remember Ezeokwechia, 10 Ajegbo, Nwaokonkwo, Udeokwu helped. The Chief of Ifite Ukpo (N.E. of Ex. 1 but not marked) told the Defendants not to work on the road as the land did not belong to them. Defendants have other lands to farm Umudioka, Umu-Nachi and Umanya. I know all about this land in dispute. The Defendants put up the otosi trees the other side of the Western Elpo trees and use the bamboo for building. Our Ekpe Western Walls stop at an Iroko Tree (see Ex. 1). The other Ekpe walls continue upwards—they were built by Defendants' and Amene Abagana people as a boundary. Our Ekpe walls were put up *by agreement* between our ancestors and Defendants' ancestors after our fight. The fight was over this very land 20 of Obonkwo in dispute. We have put tenants on land in dispute since Ex. 2 we ask no permission from the Defendants; it is our land and there is no need to ask Defendants for their permission. After Ex. 2, Defendants went on to Ekpeotu which they got from Amene Abagana people in Ex. 2 and all was quiet. They then came on to *our* land 2½ years ago.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

—  
No. 13.  
Nwankwo  
Okarakwu,  
4th July  
1951,  
*continued.*

- I have spoken to the boundary between Ekpeotu and Abonkwo—land in dispute. The Onitsha Enugu Road is not our boundary with anyone. We showed the Resident the boundary between our "Abonkwo" i.e. land in dispute and "Ekpeotu" before he gave his decision in Ex. 2. It runs from Ekpe wall—Iroko tree—NKPU—MKPU—Ubeosa (Blue line 30 in Ex. 2) Defendants have never disputed this Northern boundary of the portion of Abonkwo land in dispute in this case. The fight between our ancestors and Defendants' ancestors was not between us alone, Amene Abagana also fought with us. According to our Ibo custom, jujus are not placed on farm land but at the settlement. If the Resident had said the Enugu-Onitsha road was our boundary we should have protested at once. From where we live to the area in dispute is from here to the Police Station—(about 1½ miles). One of our houses is very near to the Onitsha road. We farm up to the road but not immediately around our homestead as goats and sheep would destroy our crops.

Re-exami-  
nation.

40 Adjourned to 5th July, 1951.

(Sgd.) A. G. B. MANSON, J.

*In the  
Supreme  
Court of  
Nigeria.*

No. 14.

**EVIDENCE of Ejike Chidolue.**

*Plaintiffs'  
Evidence.*

No. 14.  
Ejike  
Chidolue,  
4th July  
1951.  
Examina-  
tion.

2nd Witness : EJIKE CHIDOLUE (m) Ibo, sworn on the Bible, says in English :—

Licensed Surveyor ; Onitsha ; I made a plan for the Plaintiffs in this suit ; this is it Ex. 1. There are 2 distinct portions of land—Ekpeotu land and Abonkwo : the Plaintiffs pointed out the details. An Ekpe wall was shown to me—W. of Ex. 1 and N. of Ex. 1. All the disputed area—"Abonkwo" was shown to me and also a part of Abonkwo *not* in dispute—S. of Onitsha-Awka Road. When I drew Ex. 1 there were 10 new buildings on the disputed area—most just completed some were occupied ; some not completed. They have mud walls and thatch roofs—all of them. They are marked on the Plan. If there is a zinc house on the area it must have been since I went on the land. I went on the land January-February 1949 and made a Plan on the 5th February, 1949. Ex. 1 is an exact copy. If there are more houses now on the site than those I've shown, I would say they were erected since I went on the land. West of the West Ekpe wall is big bush and otosi trees which run alongside the Ekpe walls ; The otosi trees are very old. I went along the Ekpe walls ; I saw no definite lane leading through the Ekpe trees 20 into the disputed area, but there is bush W. of the Ekpe Walls and there may be unimportant farm paths there.

If there is a large road passing through the bush from Ukpomili and through the Ekpe Western Walls, it must have been constructed since I went there.

Cross-  
examina-  
tion.

When I went on the area in dispute no one of the buildings I marked was older than one-two years. The ones I marked "New Buildings" were those just completed—not all these were occupied. The mud of the new buildings *was* new. The new ones which were completed were not up to one year. Those between 1-2 years were that of Alochuku 30 Akwecha (S. of disputed area) and Amaife Akunwata in Ekpeotu land. Okoye Odili's house—2nd Plaintiff was just completed—up to a year old. I got the names of the occupiers—some from Plaintiffs and some from the actual occupiers. The Plaintiffs informed me that the buildings belonged to the Plaintiffs themselves. The road running N.E. to Ukwulu and Achalla is a well-defined motor road—not macadamed—about 20 feet wide ; I think its an N.A. Road.

Re-exami-  
nation.

The area in dispute is farm land becoming residential.

*By Court :* S.W. of Ex. 1—junction of disputed area with Onitsha-Awka Road ; house of Edward Ukpomili ; this is an old house—surrounded 40 by palm trees, coconut trees, mango trees—that is how we tell the age ; these trees show an old settlement. It is a permanent building. It is not inside the disputed area. The Plaintiffs gave me the information showing the southern boundary of Defendants' land which is the red line at Edward's house. The Ekpe Walls are very old mounds at regular intervals with Otosi trees alongside.

## No. 15.

## EVIDENCE of Charles Nwokeke.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 15.  
Charles  
Nwokeke,  
5th July  
1951.

Examina-  
tion.

3rd Witness : CHARLES NWOKEKE : (m) Ibo, sworn as pagan, says through interpreter :—

Farmer from Urumpi Orofia ; my father was Nwokeke Educhie—he is dead—last year. At his death he was Head of Urumpi Village ; he has not yet been succeeded as he has only been dead a year. His successor is his eldest son Nwoka Nwokeke. The Headship is hereditary not elective. I know the land *now* in dispute ; it is called “ Abo ” or  
10 “ Abonkwo.” I know the Awkuzu-Achalla Road ; it passes through the land ; the Ukwulu Achalla Road passes by the land. I know the junction of the 2 roads ; there is a 3rd road there—the Onitsha-Awka Enugu road. On the road going to Onitsha from Awka the land in dispute is “ Abonkwo,” it is owned by Urumpi people. It is on the *right* of the road. There is also Abonkwo land on the *left* of the road ; this is ours. The land in dispute is the Abonkwo land on the *right* of the road and is also ours. I know Defendants : our boundary with Defendants—Amene Ukpomili is an Ekpe Wall. W. of Ex. 1. If I stand on the wall, looking towards Defendants’ land one comes first to bush, then to their farms and then to  
20 their homestead. I know land Ekpeotu land ; N. of Ex. 1. The boundary between it and our Abonkwo land in dispute (blue line in Ex. 1) is Ekpe wall, Iroko Tree, Mba Tree, 2 and hills, Ubeosa Tree. I know the Amene Abagana quarter of Abagana ; E. of Ex. 1, our boundary with them is Okoye Idabo—a compound, S.E. of Ex. 1 and 3 Ukwa and one Akpaka Tree and then Onuama Stream S.E. of Ex. 1. These mark the boundary between our Abonkwo Land *NOT* in dispute and Amene Quarter of Abagana. We own all Abonkwo land ; we farm it ; we do not live on it. We farmed it before this dispute ; I farmed it and my father and grand-father. We have farmed *each side* of the road. I farm  
30 near the Plaintiff (1st Witness) ; he farms on the piece of Abonkwo in dispute. Ndubuanya Ikepulu, another farmer of Urumpi—my relation—also farms on land in dispute. *To-day* my farm is not on the disputed area. I ceased to farm there 2½ years ago because people from Defendants’ Town went on our land. I knew if I went to farm a fight might ensue and so I left the land. When Defendants entered the land in dispute, they uprooted our cassava, destroyed other properties economic and began to dig mud to build with. I know the names of some of those who did this—Okoye Odili alias Nwoye Odili—(6th Defendant—he is dead) ; Nweke Udegu (1st Defendant identified) Nwafor Kaneme (3rd Defendant  
40 identified) ; Nwuzu Udeogu (5th Defendant identified) Akwue (4th Defendant identified). There were other Defendants’ people. Some of the houses have been completed—about 5 : one has a corrugated roof ; the others grass. I’ve seen the former ; it is occupied ; it was built hurriedly as they knew the land was not their’s. It has doors ; Edezue Udeogu lives in it Defendants began to put houses *for the first time* on this land some 2½ years ago. We got an interim injunction to stop Defendants from entering and building on our land.

*By Court :* (See Order dated 24th August, 1949) Defendants dis-  
regarded the Order—Nwafor Ugwuagana ; Nweke Udeogu) 1st Defendant) ;

Examina-  
tion by  
Court.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 15.  
Charles  
Nwokeke,  
5th July  
1951,  
*continued.*

Cross-  
examina-  
tion.

Nweke Osia, Nwuzo Udeogu (5th Defendant) Agidi—(6th Defendant)—Nwoye Odili—now dead—also entered the land. I can remember these. Defendants began to plant farms and build more houses. I know one Simon Eme; we own the land on which his house is S. of Ex. 1; he came and asked our permission. Nwokeke Educhie and Okonkwo Ekwugha—gave the permission. The Western Ekpe walls; my father told me “there was” a fight between the Quarters of Amene Abagana and Amene Ukpomili (Defendants) and our own people (Plaintiffs) over land and as a result Ekpe walls were placed there to demarkate boundary by agreement. Since the walls were built, Defendants have never come on our land until 10 2½ years ago except when some one of their people has come with wine to ask for land to farm—I can remember one Odili the father of 6th Defendant did so—Odili’s mother came from our place. The father of Defendant No. 1 and No. 5 who are brothers came to ask us permission. The Nkwo Odenigbo (Market) at road junction is on our land, S.W. of Ex. 1.

My people—Plaintiffs—have had no Court case with anyone over “Abonkwo.” The people who would represent Plaintiffs in any such case would be chosen by the people. Ndubuanya, Nwadike, Wili Nwako and my late father are the men who would sit at a meeting to elect a 20 representative to conduct a case. The first 3 are very old now. They elected present Plaintiffs to conduct this case as the Plaintiffs’ people’s representatives. The persons elected would be persons whom the electors thought suitable for carrying on the case. Plaintiff No. 2 was a native of Urumpi Orofia (Plaintiffs) he is dead. Taxes are collected by families; 2nd Plaintiff paid his tax to us not Amene Abagana people. His mother came from Amene Abagana. My father was alive when Defendants had a case with Amene Abagana Ex. 2; he was never a Chief but only head of Urumpi Orofia Quarter (Plaintiffs) when the Resident had been to see the land at Ekpeotu in dispute between Defendants and Amene Abagana 30 he met our people at our farm; I was present. He asked who owned the farms on Abonkwo land i.e. on the right of the Onitsha-Awka Enugu road. We said we owned it and we showed him our boundaries with “Ekpeotu” land. We showed him Ekpe walls. Iroko tree, 2 ant-hills and Ubeosa—(blue line in Ex. 1). No piece of “Abonkwo” or “Abo” land was in dispute between Defendants and Amene Abagana; they were disputing over a different piece of land. There is a burial ground on “Abonkwo” or “Abo”; it is used for the burial of our women who die abroad. The name is ININE OZU Umuokpu. It is near our homestead; near Nkwo Odenigbo market. (S.W. of cross-roads.) My father had no 40 interest in the case (Ex. 2) and took no part in it. If any Urumpi took part in the case, he went on his own; he was not sent by the Plaintiffs’ quarter. The Resident called our representatives because he was settling a dispute between 2 neighbours over a piece of land adjoining our land and so the Resident naturally asked us to show our boundaries with the land in dispute i.e. Ekpeotu. Abonkwo was not in dispute in that case. Since the Resident’s decision we (Plaintiffs) have been farming Abonkwo without any interference by Defendants. When they *did* enter “Abonkwo” in dispute we took out this present summons. We then left “Abonkwo” as we did not want a fight with Defendants. Defendants did not destroy 50 their own cassava but ours. The Ekpe Wall extends beyond the Iroko Tree into Ekpeotu; but our portion of the Ekpe wall stops at the Iroko tree.



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. I accompanied our Surveyor, who made Ex. 1. I showed him Okoye Odili's house; it was being built when we took surveyor there. All the houses I showed him were new. The corrugated one (see X-in-Chief) and so was not built and occupied before the Surveyor came. It is not shown on map; it had reached a height of 8 feet or so. It was completed when the injunction was obtained.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 15.  
Charles  
Nwokeke,  
5th July  
1951,  
*continued.*

*By Court : 24th August, 1949.*

There are no jujus on Abonkwo farm land; we have our juju at our homestead. The Defendants have their own juju at their homestead—Kusaukpomili. Jujus are not placed on farms. There are no Defendants' jujus on the land in dispute. They cannot place jujus on our land. Defendants are not Abagana people—they are Ukpomili people—strangers to us. The ceremony of Ukpobani is performed at the homestead not on the farm; Simon Eme does not perform Ukpobani as our tenant. (S.W. of cross-roads Ex. 1) as he is not a *farming* tenant but a trader. At the end of the season, tribute is paid by the tenant to the owner in acknowledgement of his ownership—yams etc.

When Ex. 2 was going on, no person from Defendants' family or Quarter went on the land in dispute in this case—"Obonkwo." No person from our quarter *ever* told the Resident that the Onitsha-Awka Enugu road was our boundary with any one; if anyone did so, he was speaking falsely. *Main* roads are not boundaries in this part of the world—but trees etc. mark it. If there are jujus on the land, they have either been put there by Defendants *since* the summons or put there *secretly before* the summons. Our land was there i.e. Abonkwo *before* the Onitsha-Awka Road *ever went through it*; the road cannot thus be our boundary with anyone.

Re-exami-  
nation.

#### No. 16.

#### EVIDENCE of Ezekwe Ugbo.

4th Witness : EZEKWE UGBO : (m) Ibo, sworn as pagan, says through interpreter :—

Native of Umuduru Quarter Abagana, other quarters are Orofia; Akpo, Amene, I am old—(about 75 or more years). I was born before Government came and have taken all the titles. I know Dunukofia Native Court : N. of Ex. 1; before it was built we sat at Awka—I was then a Court Member. I was compulsorily retired because of my age from being Councillor or Court Member. It was built long after the

No. 16.  
Ezekwe  
Ugbo,  
5th July  
1951.

Examina-  
tion.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence.*

No. 16.  
Ezekwe  
Ugbo,  
5th July  
1951,  
*continued.*

influenza (1918). It is not used now. When it ceased to function, cases were taken to Abagana. Government labourers built it: District Officer Bridges built it. The workmen were paid; they came from all quarters of Abagana, I do not remember Ukpomili people coming as labourers. It was abandoned as a Court because it was wished to centralise the Native Courts; they were centralised at Abagana. I have sat many times in Dunukofia Court before it was given up. I know an Ekpe wall which goes nearly all round "Abo" land; Ekpe walls indicate boundaries. It is the boundary between Ukpomili people (Defendants) and Urumpi people (Plaintiffs). It was put up as a result of a fight between Plaintiffs' 10 and Defendants' ancestors. I come from Umuduru, I was not in the fight. I was born before the fight and remember the walls being put up. The Amene Abagana people were also in the fight and the Ekpe Walls were intended to be a boundary between them and present Defendants.

*Cross-  
examina-  
tion.*

I say what I know. I know Plaintiff No. 1 he comes from Urumpi-Orofia, and I knew Plaintiff No. 2; he is dead. He was a native of Urumpi and did not come from Amene Abagana; paragraph 2 of Statement of Defence; The site of the Dunukofia Court was claimed by Amene Abagana people and they protested at the Court being built. The Court was then moved a little further away to the other side of the road. I know 20 "Abo" land by sight but I cannot say what its boundaries are: it is the same as "Abonkwu" land.

*Re-exami-  
nation.*

Plaintiff is a mere boy in age compared with me. I have a son older than he. Dunukofia Native Court was a branch of Abagana Native Court; I did not sit in the former as a Judge but if any case came up there which had already come up in, or had some connection with a case already heard in, Abagana Court, I and others who sat as Judges in the latter Court went to Dunukofia Native Court to speak about it.

Adjourned to 13th July, 1951.

5th July, 1951.

(Sgd.) A. G. B. MANSON,

J.

30

No. 17.  
Anakpe  
Iloani,  
13th July  
1951.

*Examina-  
tion.*

No. 17.

#### EVIDENCE of Anakpe Iloani.

5th Witness ANAKPE ILOANI, (m) Ibo, sworn as pagan, says through interpreter:—

Come from Umuduru Abagana; live there; farmer; I know land in dispute—I work on it; it is called "Abo" or "Abonkwo." I've farmed on it for more than 20 years—since 2½ years ago I ceased farming. One Okeke Edochie from Urumpi Adagbe Orofia gave me permission to farm as 40 representative of Urumpi Adagbe Abagana. It belongs to that family. I ceased to farm because the people of Ukpomili (Defendants) entered on the land—many of them and so I left. They built houses. I used to pay

Plaintiffs tribute—wine—*before* going on the land they then apportioned me a piece and I gave yams *after* harvest. I took wine and yams to Okeke Edochie; he is dead, after his death I did the same to Charles Okeke (3rd Plaintiff Witness). I have never paid tribute to Ukpomili people and they have never interfered with me during my 20 years. The place or “Abo” where I farmed was different each year. One piece was near the Onitsha-Awka main road; another piece was near the Ekpe Walls; the main road was between them. The Ekpe walls are the boundary between Plaintiffs and Defendants, because nearly all families in my area have  
 10 Ekpe walls as boundaries. My family has Ekpe walls with Nimmo people and Enugu Awka.

I am a titled man in my quarter; a Councillor, we have our own land; but members of my family go to farm in other areas. Urumpi Adagbe Orofia Abagana and Urumpi Orofia Abagana are different Quarters of Orofia Abagana. Odili Okeke (2 Plaintiff now dead) came from Urumpi Orofia. Standing on the tarred road Onitsha-Awka Road facing Onitsha, I was farming on the right when Defendants came on the land. Aronjo was one of my neighbours when I last farmed land in dispute and one Agboyne Kwube. We farmed there 4  
 20 years ago; our cassava was there when Defendants came; the site was near the walls. All my neighbours came from Urumpi Orofia. Defendants are *now* farming; I saw an Ukpomili man farming for the first time  $2\frac{1}{2}$  years ago. The Adagbe Orofia Abagana people also farmed on it *before* Defendants came on it. I’ve never seen an Ukpomili man (Defendants) on this land while I farmed until  $2\frac{1}{2}$  years ago. The present Defendants had a dispute over “Ekpeotu” land with Amene Abagana people. I do not know its boundaries but it is near the land in dispute. “Ekpeotu” nowhere touches the tarred road—Onitsha-Awka Road—only “Abo” does. I was not present when the Resident settled the dispute  
 30 over “Ekpeotu” between Defendants and Amene Abagana people. My people had no interest in the ownership of “Ekpeotu.” I know of no burial ground for women called “Amaenye Ukpomili.” (See Ex. 3 S. of Main road.) Other members from my family—Umuduru—used to farm on this disputed area—Igboabsin was one and Okoye, now dead, another. They also get permission from Okoye Edochie. Palm trees are on the land in dispute. I never at any time farmed on Abo with Defendants’ permission.

None.

*By Court:* I do not know the boundaries of “Abo” land: I only  
 40 know about the pieces of land I farmed. “Abo” is nearer to the tarred Road than “Ekpeotu.” I cannot say if Abo and Ekpeotu are contiguous.

Subject to another witness being called, Plaintiff closes his case.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs’  
Evidence.*

No. 17.  
Anakpe  
Iloani,  
13th July  
1951,  
*continued.*

*Cross-  
examina-  
tion.*

*Re-exami-  
nation.*

1st Witness : NWAZO UDEOGU : (m) Ibo, sworn as pagan says through interpreter :—

Native of Amene Ukpomili, Defendants No. 5. There are about 9 quarters of Abagana—Urumpi-Orofia Abagana, Amene Abagana, Umuduru Abagana, Akpo Abagana, Adagbe Orofia Abagana—I can only remember 6. Urumpi and Adagbe Orofia are the same quarter ; No. 1 Plaintiff comes from Adagbe Orofia, No. 2 (now dead) came from Amene Abagana. I know the land in dispute—it is called “Abo-Ekpeotu.” Standing on the 10 Onitsha-Awka tarred road facing Onitsha the land in dispute *is on the right* ; the land *on the left* is called “Abonkwo.” The latter on the left was originally our land but was given by the Resident to Amene Abagana ; *before* this decision we farmed S, of the road. We use this land in dispute for farming and building houses ; we’ve done this from time immemorial. When an injunction was granted in this case against us, neither we nor any representative of us was present. Since we were granted this land in Ex. 2, Ex. 3, we’ve erected more houses. No one of Plaintiffs has ever entered on this land at any time either to farm or reside. I know one Simon Eme—he is from our place. I know his compound and house 20 (S. of Cross-Roads on Ex. 1), the site of his house *was* on our land ; *since* Ex. 2, 3 it is on Amene Abagana land. The boundaries of Abo-Ekpeotu land is an Egbu Tree of Ekwulu Achalla Road from there to tarred Road and then to a pillar and then to Edward Ekpomili’s farm. (See Ex. 1.) These are the boundaries. We have no boundaries with Plaintiffs at all I know something about Ekpe Walls ; it is a thick wall ; there were put round the quarters of every individual family in those days to prevent people going out from the quarter and being kidnapped by strangers. These Ekpe Walls never at any time formed boundary between us *and anyone*. I remember our case (Ex. 2) with Amene Abagana people ; these 30 walls were never accepted as the boundary between us and them. We have evidences of our long ownership of this land, e.g. Ekpe walls, regional jujus Okwu Anaaji Ex. 3 (along N. of Road) Okwudu are there Ekwu—this latter is usually owned by an Ozo title holder and descends to a member of his family. Another juju is Okwuani juju ; centre of Ex. 3. Apart from farming we have planted Oji, Iroko and kola nuts trees, palm trees, grape fruit, and trees round our dwellings. I know Awkuzu Achalla Road ; it divides the land in dispute (Ex. 1). It is a long time since it was built—I do not know when ; a path was cut by our family but the actual building was left to the Government. I know also the Ukwulu Achalla Road 40 (Ex. 1) it was built by Dunukofia people ourselves and i.e. Ifite Ukpomili who live with us Ukpo-Akpo, Ukwulu. I know Plaintiffs’ 5th witness ; he has no work except that of being a paid witness in cases. It is quite untrue that he farmed this land for 20 years. Plaintiffs have never at any time interfered with our occupation or ownership or our use of this land.

I know a piece of land called “Ekpeotu ” because it is ours. I know a piece of land called “Abo ” or “Abonkwo ” which are 2 names for the same piece of land. Ekpeotu and “Abo ” adjoin one another divided by the main road—Onitsha-Awka tarred Road. Going to Onitsha the land 50

- now in dispute is on the *right*—it is called “Ekpeotu.” I told my lawyer that the land now in dispute is “Ekpeotu.” (See contra paragraph 3 of Statement of Defence). The tarred road does *not* pass through “Abo.” The Resident said the tarred road is the boundary between us and Abagana. *Before* the Resident’s decision Ex. 2, the tarred road was not our boundary between us and anyone. After the Resident’s Ex. 2, the boundary between Abo and Ekpeotu was from Egbu Tree on Ukwulu Achalla Road—Pillar 87, and then to Edward Ukpomili’s house. (Ex. 1) I do not know that Ukwulu Achalla road was built 15 years ago—it was built more than 15 years ago.
- 10 I worked on it. It is true that Simon Ofedu was overseer on the road although not the head overseer. I remember when our people used Amene Abagana ; we claimed “Ekpeotu ” and “Abo.” It went to the Resident Ex. 1. He did tell us to show the boundaries of the two pieces on a Map. Our people hired a licensed Surveyor, Emodi. We took him to the land. We showed him the Dunukofia Court. We did not show him the boundary between “Abo ” and “Ekpeotu.” The person who took out the summons in Ex. 2 knew what he was claiming. It may be that he was claiming 2 pieces of land “Ekpeotu ” and Abonkwo or “Abo.” The land which is in dispute *now* was *part* of the land in dispute between us and Amene
- 20 Abgaane in Ex. 2. When Emodi came on the land, we showed him the boundary between “Abonkwo ” and “Ekpeotu ”—Egbu Tree, Pillar on Onitsha Road and palm trees at the back of the house of Edward Atuanya of Ukpomili. There are many anthills on the land in dispute ; they were shown to Emodi in Ex. 3. I do not remember showing him an Mba Tree ; but he was shown an Ube Tree and an Oji (Iroko) tree by Ekpe Wall see blue line Ex. 1 and Ex. 2. At the time of Ex. 2 we were *not* living on the land in dispute in that case except we occasionally visited jujus left by our forefathers. It was after Resident’s Judgment Ex. 2 that we went and lived on the portion awarded to us by the Resident. No. 1 Defendant
- 30 went on *after* the judgment. No. 2 Defendant went on the land *after* the judgment. No. 3 Defendant went on the land *after* the judgment. No. 4 Defendant went on the land *after* the judgment. I also went on *after* the judgment. The only person living on the land at the time of Ex. 2 was Edward Ukpomili S.W. of Ex. 1. All our people who now are on the land—except Edward—went on *after* the *Resident’s* judgment. Udezue Odili built himself a corrugated building of about 6 rooms, not yet plastered since about 2 years. It was not roofed only last year. It was begun before last year. Near the Ekpe Walls, there are many Otosi Trees and “Udo Juju Bush ” and the remains of my forefathers’ houses which are close to the
- 40 Walls. To go from the Ekpe Walls to our Village, one passes remains of old buildings and past some Otosi but we do not go through the Udo Juju Bush Ex. 2. There is a road which has been there a long time passing from our homestead through Udo Juju bush and Otosi trees and the Ekpe Walls, it stops at my place (Cross-roads Ex. 1). It is not true that this road was not in existence when this case started ; we did not first use the road *after* the judgment in Ex. 2 to come on this land ; we use the main tarred road now. From where I used to dwell to the present site is only 2 poles. We did not show Emodi this road. The walls do not run from the tarred road (Onitsha-Awka) to the Dunukofia Native Court. They
- 50 go round the buildings for protection. We showed Emodi these. Never at any time did we have any fight with Amene Abagana people—Defendants in Ex. 2 nor with anyone else. I know one Itchoku ; he comes

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants’  
Evidence.*

—  
No. 18.  
Nwazo  
Udeogu,  
13th and  
17th July  
1951,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants'  
Evidence.*

No. 18.  
Nwazo  
Udeogu,  
13th and  
17th July  
1951,  
*continued.*  
17th July  
1951.

from Abidudu Ifite Ukpo from same quarter but different family from us. N. of Ex. 3. He gave evidence in Ex. 2. The Ekpe Walls were not made as a result of any fight; they were made to prevent kidnapping; they are circular wall round dwellings. They are not family or people's boundaries but a person's own individual protection.

Adjourned to 17th July, 1951.

(Sgd.) A. G. B. MANSON,  
J.

13th July, 1951.

NWAZO UDEOGU on former oath :—

*Xx.* (Cont.) There are Otsi Trees near the Ekpe Walls; we planted 10 them to support our yams. Some were put there by our great ancestors. There are farms amongst the Otsi trees. But we do not farm amongst the Otsi Trees near the Ekpe Walls. I do not know Urumpi Village; I never said Adagbe and Urumpi were the same; I only said the whole area was Orofia. There are Iroko trees and grape fruit trees; some were planted in my life time some not. The palm trees there are now bearing fruit. I do not know my age. I've never seen a wild palm tree growing on this area. Every palm tree that the Court will see on inspection of the area was planted *by someone*. There is a cotton tree growing wild near our Ekwu juju—cotton trees grow near strong jujus. I know Edward 20 Ukpomili's house. S.W. of Ex. 1 looking towards the tarred-road—Onitsha-Awgu, the land to the *left* is ours; *also on the right* to our boundary with Abidudu N.E. of Ex. 3 at the Egbu Tree on Ukwulu Achalla Road N.W. of Exs. 1 and 3. We have a common boundary with *Amene Abagana* now; it is the tarred road—Achalla Road—Pillar near to Edward's house. I do not know that Amene Abagana ever said that Abonkwo south of tarred road belonged to present Plaintiffs. Ex. 2. I did not hear the District Officer say so. Our land does not lie to the W. of the Ekpe Walls *only*. We farm between Ekpe walls *West* to our village. Ex. 1. The Resident, when inspecting land in dispute did *not* find the Plaintiffs on 30 this land. The Awkuzu-Achalla road was in existence before I was born; all I know about its construction I heard from various persons. We have 2 Egba Trees—one of Awkuzu Achalla Road and one on Ukwulu Achalla Road. (See Ekpe Walls (N.W. of Ex. 1—each end).) These mark our boundary with Abidudu people. N.W. of Ex. 3. There are no Ekpe Walls between these two trees. We own land on both sides of the Awkuzu Achalla Road past the Western Egbu Tree (N. of Ex. 1). There is also an Ogilinya Tree there N.E. of Ex. 3. There was no dispute as to the site of the old Dunukofia Court. I had a wife at the time; I helped to build 40 the Court. I was sent by the Ukpomili people to represent them in this action; I have no status of Chief, Councillor etc. The Plaintiffs have deliberately chosen to sue 4 young men because they know that if the older men were sued the older men would know all about it.

Re-exami-  
nation.

Ekpeotu means a portion of land where the people live—Ekpe Walls surround it; Abonkwo means where people go and farm. We had a Plan when we sued Amene Abagana people in Ex. 2, they also had a plan. We claimed land *South* of the tarred road but the Resident said we had not produced sufficient evidence to grant a declaration of title to that land. Ex. 2.

## No. 19.

## EVIDENCE of Charles Chike Emodi.

*In the  
Supreme  
Court of  
Nigeria.*

2nd Witness CHARLES CHIKE EMODI: (m) Ibo, sworn on Bible, says in English:—

*Defendants'  
Evidence.*

Licensed Surveyor; live in Onitsha. In 1945 I was employed by Ukpomili people—present Defendants in respect of a dispute they had with Amene Abagana people. I made a Plan for the Ukpomili people. They employed me to survey a piece of land known as “Abo” and “Ekpeotu.” I was informed it was one area with two names for 2 different  
10 portions. I gave them the Plan. Shown Ex. 3. This is it. They showed me the pink, yellow and blue lines. When they showed me the *two* lands “Abo” and “Ekpeotu” or one land—with 2 areas with different names, I got confused and I asked them if it was one piece of land or two. They said it was one piece with 2 names given for different purposes—one was to show the part they farmed and the other they used to dwell on. I then asked them to show me the boundary between them—and they showed me the blue line. This was the *only* boundary they showed me between Ekpeotu and Abonkwo.

No. 19.  
Charles  
Chike  
Emodi,  
17th July  
1951.

*Examina-  
tion.*

I went on this land on 30th July, 1945. When I went I was only  
20 engaged to make a survey of the land; I knew later it was in dispute with Amene Abagana people while I was making the survey but not before I went to the survey. While making it, I did not ask if the matter had gone to Court. I cannot remember if I was shown the Native Court decision and District Officer's decision while making Ex. 3 and before I completed it. The land in orange on Ex. 3 was pointed out to me by Ukpomili people, present Defendants; they said, I think it was the Chiefs who had fixed the orange line. I relied on my information and did not ask for any written record of Chiefs' decision. I never saw their decision in Ex. 2 (shows it). There is no difficulty here; it is usual for Chiefs  
30 when they fix a boundary to go with the parties and point out features and the parties remember them. The Ukpomili people, therefore, told me what the Chiefs had shown. Now I see Ex. 2, the yellow line I drew on the instructions of Ukpomili people corresponds substantially with the Court's Decision. By Chiefs on reference on Ex. 3 I meant the Native Court. Ex. 1 and Ex. 3 are to the same scale and correspond on the line Mba Tree to the Ukwulu-Achalla Road.

*Cross-  
examina-  
tion.*

None.

*Re-exami-  
nation.*

*By Court:* If the Western Ekpa Walls W. of Ex. 1 had been very well defined, I should have shown them on Ex. 3. I know Ekpe Walls  
40 as a familiar feature in the country-side; they are built to 3, 4 feet in a straight line. In the days of inter-tribal wars, I gather, the walls were built in some cases for defensive purposes by one town against another; in some cases they are used as boundary walls; in some cases they will perform both functions; in some cases they are built round farms to prevent damage by goats etc. During the years since some walls were built, the rains have washed them down to a foot or so from the ground.

*Examina-  
tion by  
Court.*

3rd Witness : ANENE EJIOFO : (m) Ibo, sworn as pagan, says through interpreter :—

Live at Ifite Ukpo ; I know Plaintiff No. 1 ; he is a native of Urumpi Orofia Abagana. I never knew Plaintiff No. 2. I know Defendants ; they are natives of Amene Ukpo-Mili. I was a Council Member ; I was a Court Member in 1944. I remember a case between Ukpomili (present Defendants) and Amene Abagana. I was a Court Member sitting in the case ; See Ex. 2. It was a land case about Ekpeotu land. " Ekpeotu " 10  
is the land where Amene Ukpomili people lived and planted and farmed. I know " Abo " or " Abonkwo " land it is part of Ekpeotu land, it is on " Ekpeotu land " where palm trees are planted. The Court gave judgment in favour of Ukpomili ; I was told not to join in the decision because I came from Ukpomili Family.

(By Court :—this is correct : See Ex. 2 Judgment of Native Court.)

After the case the Court Members went on the land and demarcated it according to the judgment ; I went with them. We inspected the land before judgment. The case went to the Resident who came to the land ; I was present. All the Ifite people and all Abagana people were invited. 20  
The Resident marked out some boundaries ; I know the boundaries. The Urumpi people—present (Plaintiffs)—were present but were not a party to the case. 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 one Edward Ukpomili's house, S.W. of Ex. 1. Of the Urumpi people present, Nwude Nwako, now dead was present ; he was brother of Plaintiff No. 1 ; Plaintiff No. 1 was also there, and Charles Nwokeke too. Plaintiffs' 3rd witness. No one of the Urumpi people objected to the line the Resident marked. I do not know what the particular area in dispute is in *this* case. They call it Abonkwo but it is not different from 30  
Ekpeotu. I know Ekpe Walls ; in old days they were put to prevent domestic animals from destroying properties at home and on farms ; they were put round farms and houses also. These Ekpe walls are not village boundaries ; but each quarter erects them around its quarter ; I know Aguleri Awkuzu-Achalla road. We Ifite people built it. We also built a road to Ukwulu Achalla. The Aguleri road was built first—more than 10 years ago—then Ukwulu Road ; I helped to build both.

There were no Abagana persons (Plaintiffs) sitting as Judges in Ex. 2. The Council was now broken up. I would fight for Ukpomili people if they had a war. I give my evidence now in my capacity of a Court Member 40  
when Ex. 2 was decided. " Ekpeotu " land when palm trees are planted on it becomes " Abonkwo " land. I know my people Ifite Ukpomili (present Defendants) in Ex. 2 were claiming both " Ekpeotu " and " Abonkwo " land. At the time of Ex. 2 my people were living on " Ekpeotu," during the inspection by the Resident, we saw our people on the right of the Onitsha-Awka Road going to Onitsha. Other areas of Ekpeotu planted say with cassava or bread fruit would similarly be



given a special name. I showed the surveyor, after the Resident said he wanted a Plan, Ekpeotu—I showed him the portion of “Ekpeotu” land which is planted with palms and so is called Abonkwo land, as I have said. It is the presence of palm trees which differentiates “Ekpeotu” from “Abonkwo.” Ekpeotu was used for ordinary farming except palm trees and some people live on Ekpeotu now as our ancestors did. The Resident gave a different boundary of “Ekpeotu” from that of the Native Court. 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. The Resident said the boundaries would be the Egbu Tree—and Ukwulu Road and Onitsha Awka Road—Pillar. Boundaries between villages are shown by living trees or cement pillars; or stones. There are usually 4 boundary walls—one at each corner of the land. I know all about this “Ekpeotu” land because I was one of the judges in the case. I inspected the land.

Adjourned to 21st July, 1951.

17th July, 1951.

(Sgd.) A. G. B. MANSON,  
J.

*In the  
Supreme  
Court of  
Nigeria.*

*Defendants’  
Evidence.*

No. 20.  
Anene  
Ejiofo,  
17th July  
1951,  
*continued.*

30

No. 21.  
**COURT NOTES.**

At Onitsha, Saturday the 21st day of July, 1951.

Hearing resumed.

Onyiuke and Nwosu for Plaintiffs.

A. O. Mbanefo for Defendants.

A. O. Mbanefo says he has finished his case.

Onyiuke has one more witness who is very old and who will be brought to the Court on Monday; if not able to come, Onyiuke will close his case.

By agreement, inspection fixed for Tuesday, 24th July, 1951.

Adjourned to 23rd July, 1951.

40

21st July, 1951.

(Sgd.) A. G. B. MANSON,  
J.

No. 21.  
Court  
Notes,  
21st July  
1951.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiffs'  
Evidence,  
continued.*

No. 22.  
Omedike  
Ibekwe,  
23rd July  
1951.

Examina-  
tion.

No. 22.

**EVIDENCE of Omedike Ibekwe.**

Plaintiffs' 6th Witness : OMEDIKE IBEKWE (m.), Ibo, sworn on Bible,  
says through interpreter :—

Native of Onitsha ; was senior Road overseer in P.W.D. 1915–1938 ;  
in 1907 I was employed as section man in P.W.D. When I retired I was  
70 years—in 1938 1st October. (Certificate signed by Senior Executive  
Engineer, Owerri Province saying witness was employed for 31 years by  
P.W.D. and retired on account of old age 1938). I know Onitsha-Awka-  
Enugu Road and also the branch road to Awkuzu Achalla. I worked on 10  
them as senior road overseer from 1915–1925. In those days, the Chiefs  
were empowered to conscript labour from villages adjacent to the road.  
For the Awkuzu-Achalla Road, Abagana people worked on their portion,  
Ukpomili on their portion and Awkuzu people on their portion. The  
Abagana people worked in their own town to an Egbu Tree ; East of  
road Ex. 1 where they stopped. I could point it out now, although a long  
time ago. Ukpomili worked up to their boundary with Awkuzu. After  
construction, labour for maintenance began to be engaged by P.W.D. and  
it was not conscripted.

Cross-  
examina-  
tion.

I've worked in the area in dispute for a long time. I do not know 20  
Ukwulu-Achalla Road—I did not construct it. It was built since I retired  
in 1938 ; I do not know who built it. I know nothing about it. I do not  
know the boundaries of all these people's lands—I only know the place  
where each section worked and stopped. I cannot say anything about any  
Ekpe trees. I cannot remember the names of the labourers on Awkuzu-  
Achalla Road, or the section man i/c of Awkuzu-Achalla Road ; it was not  
Mr. Pointer.

Re-exami-  
nation.

None.

Examina-  
tion by  
Court.

*By Court :* I know mile 13 ; I worked on the road from there to  
junction of Awkuzu-Achalla Road ; Abagana people worked up to Mile 13 30  
and then Ukpomili from Mile 13 along the road to Onitsha up to a place  
called Mgbuke about 12th milestone.

Close of Plaintiffs' case.

Adjourned to 24th July, 1951.

23rd July, 1951.

(Sgd.) A. G. B. MANSON,  
J.

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## No. 23.

## COURT NOTES as to inspection.

At Onitsha, Tuesday the 31st day of July, 1951.

*By Court:* The Court and Counsel and parties inspected the area in dispute on 24th July, 1951 and spent some 2¼ hours walking over the land. After inspection, the case was fixed for this morning for addresses by Counsel.

*In the  
Supreme  
Court of  
Nigeria.*

No. 23.  
Court  
Notes as to  
inspection,  
31st July  
1951.

## No. 24.

## ADDRESSES of Counsel.

10 Onyiuke and Ajegbo for Plaintiffs.

A. O. Mbanefo for Defendants.

A. O. Mbanefo addresses Court.

No. 24.  
Addresses  
of Counsel,  
31st July  
1951.

This portion of Abonkwo in dispute is part and parcel of a large parcel of land Ekpeotu: We've been on this land from time immemorial, paragraph 5 of Statement of Defence. See Chidolue's evidence, i.e., Plaintiff's own witness. He did not show the old buildings, i.e., Atuanya and Udeogu 1st Defendant's witness. The Plaintiffs were present when Resident O'Connor gave his judgment in 1945 on the spot and they made no protest. There is no real distinction between Abonkwo and Ekpeotu—  
20 all the land is Ekpeotu—the Abonkwo part is that planted with palm trees. See Emodi's evidence. Plaintiff's 5th witness is quite unreliable; he's a person who lives by being employed as a witness; he did not know the boundaries of Abonkwo or Ekpeotu. As regards jujus; the one with the big cotton tree in front—Ekwa—is clearly Defendants': It is a juju—it is a question of fact for the Court. Another juju Ani-Oja was also pointed out. *Ekpe Walls*: These walls do not form a regular line—they run here and there; they are not a boundary line at all: our Surveyor Emodi would have shown them on Ex. 3 if in 1945 they were a boundary wall with Amene Abagana people or other Abagana people. They are domestic  
30 walls. Defendants' third witness was a Court Member and was present when Resident gave his judgment; he says all quarters of Abagana, i.e., Plaintiffs were present. There has been estoppel (Section 150 Evidence Ordinance) by conduct on Plaintiffs' part. They were present when the boundary was demarcated by O'Connor and if they say—as they now say—that they had an interest in the land which O'Connor demarcated, they should have put forward their claim (8 WACA 46, page 47). The present Plaintiffs (Urumpi people) were privies to Ex. 2 if not parties because the Defendants, i.e., Amene Abagana people, in Ex. 2 called as a witness Nwude Nwako, a person from present Plaintiffs' quarter of Urumpi. The  
40 land in that case covered the land in dispute now but the present Plaintiffs did not set up any claim. The Amene Abagana people were claiming the land through him, the Urumpi witness. There was acquiescence by

Defendants'  
Counsel.

*In the  
Supreme  
Court of  
Nigeria.*

silence on part of present Plaintiffs (Vol. 13, page 495 (Halsbury 2nd Edition)). Plaintiffs have not proved their case so as to entitle them to a declaration.

No. 24.  
Addresses  
of Counsel,  
31st July  
1951,  
*continued.*  
Plaintiffs'  
Counsel.

*Ajegbo addresses Court.*

If Defendants had old buildings on the land why did not Emodi—Ex. 3—put them in. Defendants only went and lived on this land after O'Connor's judgment see 1st Defendant's evidence. Merely because people i.e. Plaintiffs followed O'Connor round the boundaries, it is not to be inferred that they acquiesced in his judgment. The Ekpe Walls run alongside Otosi trees; if the walls are not boundaries, what about the 10 Otosi Trees? They must form a boundary. Plaintiffs are not bound by Ex. 2—there is no question of acquiescence or estoppel or Plaintiffs being parties or privies to Ex. 2. The Abagana people built Awkuzu-Achalla Road. Plaintiffs have proved acts of ownership (1) We are in possession of part of Abonkwo lands—*Not* in dispute—South of the main road which is not a boundary. (2) Defendants have shown the boundaries of Abonkwo land i.e. blue line in Ex. 1 and 3; they are only entitled to Ekpeotu land. (3) Our 5th Witness testified that he had farmed on Abonkwo for 20 years. (4) Our 6th Witness was reliable. Ex. 2. Resident O'Connor had no right to demarcate a boundary; he was sitting in an Appeal Court 16 N.L.R.—30. 20 Our case is proved and we are entitled to the declaration.

No. 25.  
Judgment,  
31st July  
1951.

No. 25.

#### JUDGMENT.

#### JUDGMENT

The Plaintiffs—the Urumpi Family of the Quarter of Orofia Abagana—claim a declaration of title to the portion of land called ABONKWO or ABO, edged pink on Ex. 1, being the Plan put in by Plaintiffs. Their homestead is *South* of the ONITSHA-AWKA ROAD about  $1\frac{1}{2}$  miles away on land also called ABONKWO. Ex. 1. The Defendants—the Amene Ukpomili people—have their homestead *North-West* of Ex. 1; The road 30 leading to it is marked but not the settlement itself. The Plaintiffs say that their boundary with the Defendants is marked by EKPE WALLS (West of area edged pink on Ex. 1), thence by the blue line (North of area edged pink on Ex. 1) to an Ubeosa Tree. They say that from this tree along the Ukwulu-Achalla Road to its junction with the ONITSHA-AWKA Road (edged green on Ex. 1) is their boundary with the Amene Abagana people, another Quarter of Abagana. The Plaintiffs say that the ABONKWO in dispute i.e. the area edged pink is part and parcel of their own ABONKWO, South of the ONITSHA-AWKA Road—it being only 40 divided from the Southern ABONKWO by the said road which is not in any way a boundary. The two ABONKWOS are, according to Plaintiffs, one area of land divided by the main road, this area having been in their exclusive and undisputed ownership and occupation since “time immemorial” until about 4 years ago when the Defendants entered the Northern ABONKWO i.e. the land in dispute and farmed it and built

houses on it ; paragraphs 6, 7, 8, 9, of Statement of Claim. The Plaintiffs say that the EKPE WALLS, WEST of area in dispute, were erected as boundary walls by agreement between their ancestors and Defendants' ancestors after a fight between them. The evidence makes it plain that EKPE WALLS serve a number of purposes (See Defendants' 2nd Witness) ; these walls can be seen everywhere in the farm lands of these parts ; the Court has seen them on other inspections. As marked on Ex. 1, they appear well-defined and continuous. The Court held an inspection which was very valuable in assisting it to arrive at its decision. This inspection

10 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 house and farms ; there were in fact some piece of broken domestic utensils to be seen which plainly indicate the site of dwellings

20 now evacuated. That dwellings would have been walled in the area of the EKPE WALLS is certain as it adjoins very thick bush—the UDO JUJU BUSH—marked on Ex. 3—with its potential dangers. Similar walls some 3–4 feet high are to be seen on the very land in dispute surrounding Defendants' houses and farms—a proprietary wall. The Defendants' Surveyor, (2nd D.W.) in 1945, under the circumstances to be described later, made a plan including the area in dispute. Ex. 3. He says that if the *Western* EKPE WALLS had been as well defined as in Ex. 1, he would certainly have shown them on his Plan, Ex. 3. I reject Plaintiff's evidence and that of his 4th witness that the EKPE WALLS mark the

30 *Western* boundary between Plaintiffs' and Defendants' people. The latter witness says he remembers them being built after the fight. He is 75 years or more and may very probably have seen them being built, but his recollection as to their purpose is, I think, faded and, perhaps, not entirely impartial as it may be noted that he comes from the Umuduru Quarter of Abagana—the Plaintiffs come from the Orofia Quarter of Abagana. The Defendants deny any fighting between them and Plaintiffs resulting in an agreed boundary wall and say that they have no common boundary with the Plaintiffs at any point, the main ONITSHA-AWKA Road which is not regarded as a boundary separating their lands ; they further say

40 that the Northern portion of ABONKWO i.e. the area in dispute, is not part of the Southern ABONKWO as Plaintiffs contend but is just a part of a larger piece of land called EKPEOTU, with no very precise boundary between them but called by Defendants by different names to indicate the different purposes to which the area is put—ABO or ABONKWO being the farming part and EKPEOTU the living part of the *whole* area and that the *whole* area of EKPEOTU was awarded to them by the Resident in 1945. Ex. 2. The area so awarded runs from the Egbu Tree East of Ex. 1 along the Ukwulu-Achalla Road to the junction of roads and then along the ONITSHA-AWKA Road to the EKPE WALLS.

50 See Ex. 1. The blue line in Ex. 1 and Ex. 3 is, according to Defendants, the approximate boundary between the two portions of EKPEOTU referred to above. The case which eventually came before the Resident

*In the  
Supreme  
Court of  
Nigeria.*

No. 25.  
Judgment,  
31st July  
1951,  
*continued.*

*In the  
Supreme  
Court of  
Nigeria.*

No. 25.  
Judgment,  
31st July  
1951,  
*continued.*

started in the Native Court No. 27/1944. Ex. 2. The Plaintiffs were the Amene Ukpomili people (i.e. the present Defendants) and they sued the Amene Abagana people, another quarter of Abagana (present Plaintiffs belonging to Orofia Abagana Quarter) for a declaration of title to two pieces of land (North and South of Ex. 1 and Ex. 3) called ANA-EKPEOTU and ABONKWO. Each party put in a Plan—they were not tendered in this Court. The Native Court awarded the boundary between the parties as marked by the yellow line on Ex. 3. On review, the District Officer, after ordering that a Native Authority Surveyor should record accurately on the Plans the 2 areas claimed, set aside the decision of the Native Court and made a re-alignment so far as ANA-EKPEOTU land went and refused to make any order in regard to the ABONKWO land for the very good reason that the Urumpi Orofia Abagana (i.e. present Plaintiffs) were not parties to the case and it was apparent that the Native Court decision had given away a large area of their land to the Amene Abagana people and the present Defendants. Ex. 2. The case then went to the Resident in April, 1945, who, not being satisfied with the accuracy of the Plans tendered by the parties, adjourned the case for a Plan to be made. The Plaintiffs i.e. the Amene Ukpomili people (being the present Defendants) engaged a Surveyor (2nd D.W.) who has stated very clearly how he prepared the Plan, now Ex. 3. He made it in August, 1945. This was given to the Resident who then perambulated the area and, finally, in the company of a considerable number of people from the Plaintiffs' and Defendants' people—Amene Ukpomili and Amene Abagana—and, what is very material, of *representatives of the present Plaintiffs*, delivered judgment on the road side and subsequently reduced it into writing. Ex. 2. The judgment is undated, but it was probably given in the latter part of 1945. He awarded to the present Defendants the whole of EKPEOTU as well as the part of EKPEOTU called ABONKWO i.e. the Northern ABONKWO, the land now in dispute edged pink in Ex. 1; the Resident set out the boundaries i.e. from the Egbu Tree, East of Ex. 1 along the Ukwulu-Achalla Road to the junction and then along the main ONITSHA-AWKA Road to a cement pillar (still visible) marked C.F.H.87—800 feet East of Milestone 13. He declined to give the Plaintiffs a declaration in regard to the Southern ABONKWO except a small piece South-West of C.F.H.87 which does not affect the present case. After the judgment in their favour the present Defendants went on to EKPEOTU and its portion called ABONKWO and built houses etc. The present Plaintiffs say that the Resident's decision does not bind them as they were not parties to it. That is plain. Plaintiffs are contending that the ABONKWO part of EKPEOTU is really part of their own ABONKWO and that Ex. 2 only awarded to Defendants the EKPEOTU lying to the north of the blue line, or, alternatively, that the Resident wrongly gave to Defendants a piece of Plaintiffs' own ABONKWO.

It is quite clear from the present Plaintiffs' evidence that they—the Urumpi Orofia Abagana people—knew perfectly well that there was a land dispute between present Defendants and the Amene Abagana people.

The Plaintiffs admit it: Plaintiffs' 1st witness says that "Representatives of ourselves and present Defendants and Amene Abagana people were called by the Resident when he fixed the boundaries of EKPEOTU." The Plaintiffs' 3rd witness says "The Resident called our representatives

because he was settling a dispute between 2 neighbours over a piece of land adjoining our land and so the Resident naturally asked us to show our boundaries with the land in dispute i.e. EKPEOTU." ABONKWO was not in dispute in that case." "An ABONKWO certainly *was* in dispute in that case (see Ex. 2)—the Resident declined to award the Southern ABONKWO (i.e. present Plaintiffs' ABONKWO) to any one; but he awarded the Northern ABONKWO, being part of EKPEOTU, to present Defendants.

*In the  
Supreme  
Court of  
Nigeria.*

No. 25.  
Judgment,  
31st July  
1951,  
*continued*

I decline to believe the Plaintiffs when they say they did not know the actual land in dispute in Ex. 2. The Court must take judicial notice of the fact that in these areas the slightest hint or knowledge that a neighbour is about to enter unlawfully on or has unlawfully entered on a piece of land is immediately followed by a fight or a summons. When the Northern ABONKWO was claimed by the present Defendants in Ex. 2 the Plaintiffs would most certainly have known of the claim. If their land was in jeopardy, they would have been aware of it; they made no protest and submitted no claim to the Resident; they never asked to be joined as a party and they never took out a cross-summons. They waited until 21st March, 1949, before they issued the summons in this case—nearly 4 years after the date of the Resident's decision.

It is impossible to suppose that if they had in fact, as they say, been from "time immemorial" in occupation of the portion in dispute in that case and were in effective occupation at the time of the Resident's decision and knowing fully about the action between present Defendants and the Amene Abagana people and actually accompanying the Resident on his inspection and being present when he marked the boundaries, the Resident would have been unaware of their claim to ownership of this portion and doubtless considered it. It is not a question of acquiescence or estoppel—it is simply a matter of what inference is to be drawn from the Plaintiffs' silence and inaction until 4 years later. One would have expected them to take immediate civil steps to challenge the Defendants' trespass. They waited for nearly 4 years. The inference I draw is that they had no right and knew they had none to the Northern ABONKWO.

The Plaintiffs place great reliance on the Western EKPE WALLS as strong evidence in support of their claim. Having rejected their contention that these WALLS are boundary WALLS between the two peoples, there is no other evidence which would justify the grant of a declaration in their favour. There is nothing more than mere assertion as to acts of ownership. They showed no field jujus; Defendants showed the Court three. They appear on Ex. 3 prepared not for the purpose of this case but 4 years before the Plaintiffs' summons. This is important as it was hinted that the Defendants had placed the jujus there for the purpose of this case. Plaintiffs explain the absence of their jujus by saying that they do not have them on farms but only at their settlement; this I do not accept. Their 5th witness, a tenant, who asserted that he had farmed the land for 20 years with their permission is not reliable—even if honest (Defendants challenge his integrity by saying he is a professional witness). He may have been a tenant of the Plaintiffs but he farmed on a different part on ABONKWO each year; he may quite probably have farmed on the Southern "ABONKWO" i.e. Plaintiffs' own ABONKWO

*In the  
Supreme  
Court of  
Nigeria.*

No. 25.  
Judgment,  
31st July  
1951,  
*continued.*

some of these 20 years. He admits not knowing the boundaries of ABONKWO land. When the Defendants entered the land after the Judgment in 1945, he simply walked off, without protest or any claim to be the Plaintiffs' tenant. 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. All along the EKPE WALLS or what remains of them are clumps of Otosi Trees—bamboos. The Plaintiffs admit that Defendants planted the clumps to use for building. These clumps are very big and dense and tall and some of the bamboos are very thick—perhaps 4" in diameter. This does not suggest recent planting—since the 1945 case. They were sufficiently noticeable as to be shown on Ex. 3 prepared in August, 1945. A small track passes through the land in dispute to the Defendants' settlement through the UDO JUJU BUSH and the Otosi clumps. It is not sufficiently well-defined as to be shown on the Exs. 1 and 3 but it is significant evidence. It is still used but the tarred road is also more frequently used as it goes round the UDO JUJU BUSH (XX of P.W.1).

No conclusion unfavourable to the Defendants is to be drawn from their new houses having been put up only since the judgment of 1945. The decision of the Court in their favour would naturally remove any hesitation to build that would have existed while the dispute remained undecided.

I dismiss the Plaintiff's claim and award Defendants 30 guineas costs.

(Sgd.) A. G. B. MANSON,  
Puisne Judge.

31st July, 1951.

30



No. 26.

NOTICE OF APPEAL filed by Plaintiffs/Appellants.

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL.

(Rule 12.)

Suit No. 0/18/1949.

Filed 16/10/51 at 11.7 a.m.

(Sgd.) E. ADE BAMGBOYE,  
Registrar.

*In the  
West  
African  
Court of  
Appeal.*

No. 26.  
Notice of  
Appeal  
filed by  
Plaintiffs/  
Appellants,  
16th  
October  
1951.

- 10 Between 1. NWANKWO OKARAKWU  
2. ODILI OKEKE, on behalf of themselves and  
the people of Urumpi Orofia Abagana . Plaintiffs
- and
1. NWEKE UDEOGU  
2. NWANKWO  
3. NWAFOR KANEME  
4. AKWUE  
5. NWUZO UDEOGU  
6. NWOYE ODILI, on behalf of themselves  
and the people of Amene Ukpo Mili . Defendants.
- 20

TAKE NOTICE that the Plaintiffs being dissatisfied with the decision of the Onitsha Supreme Court contained in the Judgment of the Honourable Mr. Justice Manson dated the 31st day of July, 1951, do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Whole decision.

3. Grounds of Appeal.

- 30 (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.

*In the  
West  
African  
Court of  
Appeal.*

No. 26.  
Notice of  
Appeal  
filed by  
Plaintiffs/  
Appellants,  
16th  
October  
1951,  
*continued.*

(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. 10

4. Relief sought from the West African Court of Appeal: To set aside the decision of the Supreme Court and declare the Appellants owners of Northern Abonkwu.

5. Persons directly affected by the Appeal:—

1. Nweke Udeogu
2. Nwankwo
3. Nwafor Kaneme
4. Akwue
5. Nwuzo Udeogu
6. Nwoye Odili

All of Amene Ukpo Mili,  
c/o Udoka Native Court,  
Abagana.

20

and

Nwankwo Okarakwu, Plaintiff, c/o Udoka Native Court,  
Abagana.

(Sgd.) M. O. AJEGBU,  
Appellants' Solicitor.

## COURT NOTES of Hearing.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos, Nigeria.

Tuesday the 7th day of October, 1952.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER-SUTTON, President

Sir JOHN VERITY, Chief Justice, Nigeria

Sir JAMES HENLEY COUSSEY, Justice of Appeal, Gold Coast

*In the  
West  
African  
Court of  
Appeal.*

No. 27.  
Court  
Notes of  
Hearing,  
7th  
October  
1952.

10

W.A.C.A. No. 3836.

NWANKWO OKARAKWU & Anor., etc.

And

NWEKE UDEOGU & 5 Ors., etc.

Mr. Taylor—with him Mr. H. E. Nelson Williams and Mr. Ibekwe for Appellants.

Mr. G. B. A. Coker—with him Mr. A. O. Mbanefo for Respondents.

*Taylor :*

Plaintiffs were asking for a declaration of title—damages for trespass and an injunction.

20 Deal with facts. Our case is that road is not a boundary—and that is admitted by both sides. p. 23 lines 4 to 6.

Refers to Statement of Defence, paragraph 5. Point I rely upon is—both admit main road was not a boundary.

Cites 2 W.A.C.A. p. 50.

I submit case should be sent back for a re-trial—Refers to evidence p. 45 of record. Exhibit “ 2 ”—

We indicate that we do not wish to hear Coker.

Judgment delivered by Foster Sutton P.

Appeal dismissed with costs fixed at £29·5·0.

30

7/10/52.

(Intld.) S. F. S. P.

*In the  
West  
African  
Court of  
Appeal.*

No. 28.  
Judgment,  
7th  
October  
1952.

No. 28.  
JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos.

Tuesday, 7th day of October, 1952.

Before their Lordships

Sir STAFFORD FOSTER SUTTON, President.

Sir JOHN VERITY, Chief Justice, Nigeria.

Sir JAMES HENLEY COUSSEY, Justice of Appeal, Gold Coast.

W.A.C.A. No. 3836. 10

1. NWANKO OKARAKWU
2. ODILI OKEKE, on behalf of themselves and the Plaintiffs/  
people of Urumpi Orofia, Abagana . . . Appellants.

and

1. NWEKE UDEOGU
2. NWANKWO ONOKO
3. NWOFO KANEME
4. AKWUE
5. NWUZO UDEOGWU
6. NWOYE ODILI, on behalf of themselves and the Defendants/ 20  
people of Amene Ukpo Mili . . . Respondents.

JUDGMENT

(Delivered by Sir STAFFORD FOSTER SUTTON, P.)

The Appellants, who were the Plaintiffs in the Court below, claimed a declaration of title against Defendants/Respondents in respect of an area of land called Abonkwu, which is the portion edged pink on the plan put in evidence by the Appellants and marked Exhibit 1.

After a very careful hearing and an inspection of the area of land in dispute, the learned trial judge, Manson, J., rejected the Appellants' claim and gave judgment for the Respondents. 30

In a case such as this in which a declaration of title to land is sought, the Plaintiffs have to succeed on the strength of their own evidence. This they failed to do and 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.

That being so, I would dismiss this appeal with costs.

(Sgd.) S. FOSTER SUTTON.

" I concur "

(Intd.) J. V.  
VERITY, C.J.

" I concur "

(Sgd.) J. HENLEY COUSSEY 40  
COUSSEY, J.A.

The appeal is dismissed with costs fixed at £29 5s. 0d.

**ORDER** in terms of Judgment.

IN THE WEST AFRICAN COURT OF APPEAL.  
Holden at Lagos, Nigeria.

Suit No. 0/18/49  
W.A.C.A. 3836.

On appeal from the judgment of the Supreme Court in the Onitsha  
Judicial Division.

*In the  
West  
African  
Court of  
Appeal.*

No. 29.  
Order in  
terms of  
Judgment,  
7th  
October  
1952.

## Between

- 10**
1. NWANKWO OKARAKWU  
2. ODILI OKEKE, on behalf of themselves and the  
people of Urumpi Orofia, Abagana . . . Appellants  
  
and
1. NWEKE UDEOGU  
2. NWANKWO ONOKO  
3. NWAFO KANEME  
4. AKWUE  
5. NWUZOU UDEOGWU  
6. NWOYE ODILI, on behalf of themselves and the  
people of Amene Ukpo Mili . . . Respondents.
- 20**

Tuesday the 7th day of October, 1952.

UPON READING the Record of Appeal herein and after hearing Mr. J. I. C. Taylor (Messrs. H. E. Nelson Williams and D. O. Ibekwe with him) of counsel for the Appellants and without calling upon Mr. G. B. A. Coker (Mr. A. O. Mbanefo with him) of counsel for the Respondents :

IT IS ORDERED that this appeal be and is hereby dismissed.

AND that the Appellants do pay to the Respondents costs of this appeal fixed at £29 5s. 0d.

(Sgd.) W. H. HURLEY,  
Deputy Registrar.

*In the  
West  
African  
Court of  
Appeal.*

No. 30.  
Order  
granting  
Final Leave  
to appeal  
to Her  
Majesty in  
Council,  
20th April  
1953.

(L.S.)  
(Sgd.)  
S. Foster  
Sutton,  
President.

No. 30.

**ORDER granting Final Leave to appeal to Her Majesty in Council.**

**IN THE WEST AFRICAN COURT OF APPEAL.**  
**Holden at Lagos, Nigeria.**

Suit No. 0/18/1949  
W.A.C.A. 3836.

**APPLICATION**

**for Final Leave to appeal to Her Majesty's Privy Council.**

**Between**

- |  |    |
|--|----|
| 1. NWANKWO OKARAKWU  | 10 |
| 2. ODILI OKEKE, on behalf of themselves and the<br>people of Urumpi Orofia, Abagana . . . . . Applicants |    |
| and  |    |
| 1. NWEKE UDEOGU  |    |
| 2. NWANKWO ONOKO   |    |
| 3. NWAFO KANEME  |    |
| 4. AKWUE   |    |
| 5. NWUZO UDEOGU  |    |
| 6. NWOYE ODILI, on behalf of themselves and the<br>people of Amene Upko Mili . . . . . Respondents.      | 20 |

**Monday the 20th day of April, 1953.**

**UPON READING the application herein and affidavit sworn on the 13th day of March, 1953, filed by the Applicants' counsel and after hearing Mr. J. I. C. Taylor of counsel for the Applicants and Mr. G. B. A. Coker of counsel for the Respondents :**

**IT IS ORDERED that Final Leave to appeal to Her Majesty's Privy Council from the judgment of this Court dated 7th October 1952 be granted to the Applicants :**

**AND THAT the costs of this application shall be costs in the cause.**

(Sgd.) N. V. REED, 30  
Ag. Deputy Registrar.

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## EXHIBITS.

## DEFENDANTS' EXHIBIT.

"2".—PROCEEDINGS in the Native Court of Dunukofia and on appeal.

Exhibit "2" (Proceedings) put in by Defendants through the Plaintiff, admitted and marked in Suit No. 0/18/1949. Nwanko Okarakwu versus Nweke Udeogu and 5 ors.

(Sgd.) U. OKWECHIME, R/S.

## PROCEEDINGS.

In the N.C. of Dunukofia this 20th day of July 1944.

10

20/7/44

- |                 |                    |
|-----------------|--------------------|
| 1. Anene Ejiofo | 5. Okeke Obukwelu  |
| 2. Ezulu Izuogo | 6. Nwoye Uwaezuoke |
| 3. R. Nzeduba   | 7. Ofili Oramalu   |
| 4. Onyegili     | 8. Simon Eme       |

Case 27/44 of 6/6/44.

OKEKE AKPAKA for Amene Ukpo Mili of Ifite Ukpo

vs.

Unegbu 2. AKUTIWUE 3. & IKEABA of all Amenye Abagana

## CLAIM :—

- 20 Declaration of title of ownership to Plaintiffs land by name Ana-Ekepotu and Abonkwu land according to the Plaintiffs plan which the Defendants entered since 1937 at Ifite Ukpo.

(Claim not admitted)

(Members Anene Ejiofo 2. Ofili 3. S. Eme withdrawn)

(Evidence omitted)

In the N.C. of Dunukofia 23/9/44

- Members :—
- |                   |              |
|-------------------|--------------|
| 1. Ezunu          | 5. Nwoye Uwa |
| 2. R. Nzeduba     | 6. Ofili     |
| 3. Okeke Agbata   | 7. Simon Eme |
| 4. Okeke Obukwelu | 8. Anene     |

30

Case 27/44

Declaration of title of ownership

OKEKE AKPAKA

vs.

UNEGBU 2. AKUTIWUE 3. IKEABA

(Simon Eme 2. Ofili 3. Okeke Agbata 4. Anene all withdrawn) because they are from the Plaintiffs' town Ifite Ukpo.

## JUDGMENT

We viewed the land. We found that the Plaintiffs owned the land as on the plan. Defendants houses are in some area. We are not ready to  
40 order for the removal of the Defendants house.

*Exhibits.*

*Defendants' Exhibit.*

No. 2.

Proceedings in the Native Court of Dunukofia and on appeal, 20th July 1944 to 5th September 1946.

*Exhibits.*  
 —  
*Defendants'*  
*Exhibit.*  
 —

No. 2.  
 Proceed-  
 ings in the  
 Native  
 Court of  
 Dunukofia  
 and on  
 appeal,  
 20th July  
 1944 to 5th  
 September  
 1946,  
*continued.*

The Defendants and their witness Nwoko contradicted themselves. The witness said they owned the land as well, but one of the Defendants—Unegbu, denied. The Defendants included this Court in their plan. This showed that they could not be believed. For they made no objection when this Court was building.

We found the ruins of walls of a building at Oye-Agu Market which we understood that the Defendants wanted to build a school but the Plaintiffs objected hence no building was erected. The Defendants stated that Abaidudu Quarter wanted to build wall on the land opposite to this Court and the Defendants said they reported the matter to the Plaintiffs 10 and the Plaintiffs came and broke down the walls. The whole towns under Dunukofia and Abagana Aba once went into the case and decided that both parties should swear and the land to be divided into 2 each party to take one; but the Defendants refused. What caused the dispute was Failure to pay some usual rents to the Plaintiffs. The Defendants to entirely quit the land after harvest unless they enter into agreement to use the land and pay the usual rents. Our boundary of the decision runs thus :—

Some part of the land is awarded to the Defendants. The boundary from the main road (N.A.) to Ukpo Akpu—Ukwulu road to the junction of 20 Awka-Onitsha Road less 47 steps where it crosses and meets Awka-Onitsha P.W.D. road to one Idabo wall fence and from there to Araba Onyidiike Bush and up to Umukisa land.

In one months time we shall go and demarcate our boundaries.

### Judgment.

For Plaintiffs for the land as above.

From Achalla road (as on the plan) to junction less 47 steps where it crosses and meets Awka-Onitsha Road. At Okoye Idabo's wall fence thence to Araba Onyia Dike Bush which is on the plan from there to Umukisa land. Defendants to pay 6/- costs and £1 land inspection Fee 30 to Plaintiffs.

(Signed) EZUNU for Court.

Member

(Signed) W. Igwemba  
 C. N. C.

23/9/44

(Both parties asked for review)

Review refused. The matter to be heard by way of Judicial Appeal on payment of prescribed fee of 25/—

C. T. C. Ennals  
 (Sgd.) D. O.

21/11/44.



Plaintiffs Respondent present.

*Exhibits.*

Appellant No. 2 present. Appellants Nos. one and three absent.

*Defendants' Exhibit.*

### Grounds of Appeal :—

Plaintiffs Respondents have no title to the lands mentioned in the claim.

The judgment of the Court dividing the land is unfair.

No. 2 Defendants Appellant states :—The land on the East side of the Awkuzu road belongs to Amanye-Abagana and is called Ana-Ekpeotu. 10 Abonkwu is the land West of the Awkuzu Road adjacent to an Ebenebe tree.

No. 2. Proceedings in the Native Court of Dunukofia and on appeal, 20th July 1944 to 5th September 1946, continued.

Plaintiff-Respondent states :—The dispute between parties started when Amanye Abagana endeavoured to build a school near the Oyeagu market. An attempt was made to settle by both sides swearing oath but Appellants refused to swear. The land Anaekpeotu extends from the Dunukofia Court and includes the house occupied by Simon Eme and the Oyeagu—Abagana Market. Abonkwu is where the Ebenebe tree is and also belongs to Amenye-Ukpo Mili.

The Plans produced by each side do not show the areas Abonkwu and Ana-Ekpeotu mentioned in the claim. Proceedings adjourned for 20 N.A. Surveyor to record these areas accurately on the plans. 19/3/45

(Signed) C. T. C. ENNALS,  
District Officer,  
i/c Awka Division.

Proceedings resumed 4/4/45.

Plaintiff-Respondent, and 1st and 2nd Defendants-Appellant present. 3rd Defendant-Appellant absent. Plan produced with areas Abonkwu and Ana-Ekpeotu clearly shown as claimed by parties.

### FINDINGS.

30 After hearing the parties and reading the record of evidence in the Court below, I am satisfied that Plaintiffs Respondents representing the Amanye family of Ukpo-Mili have no claim either to the land called (A) Ana-Ekpeotu or (B) Abonkwo. As to (A) the witness, Ichoku at page 172 of J.B. from the Abidudu family of Ifite-Ukpo which borders on the land in dispute admits that Amaenye-Abagana farms the land to the Egbu tree shown on the plan but says it was leased from Plaintiff-Respondent. There is no evidence of this. As to that part of Ana-Ekpeotu South of the Awka Onitsha Road there is no evidence whatsoever of Respondents' title. There is one house occupied by Simon Eme of Ukpo-Mili but he resides 40 there by virtue of an arrangement with the Urumpi family of Orofia-Abagana who are not a party to this case but whom the Appellants admit own the land on which the house is situate. Evidence concerning this matter was given by the witness Nwude Nwanko (now deceased) representing Urumpi Orofia-Abagana (see page 175 of Land Record Book J.B.1/36B). See also appeal No. 19/40 on which judgment has been

*Exhibits.*  
*Defendants' Exhibit.*

No. 2.  
 Proceedings in the  
 Native Court of  
 Dunukofia  
 and on  
 appeal,  
 20th July  
 1944 to 5th  
 September  
 1946,  
*continued.*

suspended (P. 106 of J.B.1/40), pending a decision in this case. As to (B) Respondents again fail to establish a claim. The plan shows that Amaenye-Abagana farmed on Abonkwo land. Appellants admit that Abonkwo land belongs to the Urumpi Quarter of Orofia-Abagana and that they farmed on the land with their permission, I see no reason to disbelieve this. Ukpo Mili have land south of the Onitsha Road, extending in a Westerly direction from the house occupied by one Edward of Ukpo-Mili, but that land is outside the present claim, and was the subject of a judicial decision in another case.

I have no hesitation, therefore in setting aside the decision of the 10 Court which sought to make a division of the land. As Urumpi-Orofia are not a party to this case, I make no order as to title of Abonkwo land. As to Ana-Ekpeotu land I award Amenye-Abagana title as far as an Egbu Tree on the Achalla Road to a point 100 yards south of the site of the present Dunukofia Court on the Awkuzu road. This means that the site of the Dunukofia Court is not included within land awarded to Appellants. I make no order as to the boundary between Abonkwo (Orofia Abagana) and Ana-Ekpeotu (Appellants).

The Appeal is allowed with 25/- costs.

(Sgd.) C. T. C. ENNALS, 20  
 District Officer,  
 i/c Awka Division.

A judicial appeal from a judgment on appeal by the District Officer, Awka, before Captain Dermot O'Connor, Resident Onitsha province at Dunukofia the 25th April, 1945.

Suit No. 27/44

#### UMUDUNOKOFIA NATIVE COURT.

|   |            |    |
|---|------------|----|
| OKEKE AKPAKA representing Amene Ukpo-Mili of Ifite-Ukpo . . . . . | Plaintiff  |    |
| <i>versus</i>   |            | 30 |
| UNEGBU and others of Amene Abagana . . . . .                      | Defendants |    |

#### CLAIM :—

Declaration of title to lands Anaekpeotu and Abonkwo.

Judgment of N.C. for Plaintiffs as on a plan accepted by Court.

Defendant's appeal.

Judgment of the District Officer on appeal.

Judgment for Defendants.

Plaintiff's Appeal.

Ground of Appeal :—

Judgment against Evidence.

The Court below stated that the Appellants would produce a plan. A Plan put in by them does not tally with the plan put in by Respondents, and in neither plan are the precise limits shown of each piece of land in relation to the other.

*Exhibits*  
—  
*Defendants' Exhibit.*

The Boundary declared by the Court of First Instance is not shown on the plan and in any case this boundary does not appear to be concise enough—that is to say that it refers to only one side of the lands in dispute. I remit the case to the court below to produce an accurate and completed plan.

No. 2.  
Proceedings in the Native Court of Dunukofia and on appeal, 20th July 1944 to 5th September 1946,  
*continued.*

10 The Appeal is adjourned sine die.

(Sgd.) DERMOT O'CONNOR,  
Resident.

### JUDGMENT.

This claim to a declaration of title to the lands Anaekpeotu and Abonkwu proved to be unsatisfactory affair. See the plan attached put in by the Plaintiffs Appellant. Right at the start the Appellants announced that all that land bounded by red circles on the plan attached had been given by them many years ago to the Respondents. It remained then to determine the northern boundary of the land claimed by the Appellants.

20 There is little doubt but that the northern area of the disputed land (Anaekpeotu) does in fact belong to Plaintiffs of Ifite Ukpo. The presence of the Dunukofia Court (the Court of the Clan of which Plaintiffs' unit is a part) confirmed their ownership. There were of course numerous farms belonging to Respondents—but it was quite clear that these had come into being only since the judgment of the Court below. It appeared obvious that the judgment of the Court of First Instance was correct as to the demarcation of the land known as Anaekpeotu—up to the junction of the Awkuzu-Awka Road, but it was not clear what decided the Court as to the division of land south and west of that junction.

30 2. Much play was made by the Plaintiffs-Appellants as to the Burial Ground for Women—South of the Awka Road, but cross-examination on this point revealed a mass of uncertainty and of contradiction.

3. It should be noted that a case of 1940 assigned to Respondents of Abagana the land whereon is built the house of Simon Eme just south of the Awkuzu-Awka Road boundary.

4. Having heard the parties and having closely examined the land with them, I decided :—

(A) That the Plaintiffs-Appellant must have the declaration asked for in respect of the land known as Anaekpeotu.

40 (B) That the Plaintiffs-Respondent had established no case in respect of the land Abonkwu—except that portion of it in the extreme west (and south of the Awka Road).

(C) Therefore that having regard to the evidence the appeal must be allowed—but only in so far as relates to the Anaekpeotu land.

*Exhibits.*  
*Defendants' Exhibit.*  
 No. 2.  
 Proceedings in the  
 Native Court of  
 Dunukofia  
 and on  
 appeal,  
 20th July  
 1944 to 5th  
 September  
 1946,  
*continued.*

5. It seems desirable to explain the boundary of the Anaekpeotu land for which Plaintiffs-Appellant have obtained judgment. (See the attached plan submitted by Plaintiffs-Appellant) :—

From the Egbu tree on the north east adjoining the Achalla Road : thence the Achalla Road to its junction with the Awka Road : thence the Awka Road to a cement pillar—C.F.H. CPK 87—situate about 800 feet east of Milestone 13. All land to the north of this line is Anaekpeotu land—and is the property of Plaintiffs-Appellant.

6. All land to the south of the above boundary is Abonkwu land of 10 which Plaintiffs-Appellant may have no declaration of title—except that portion lying west of the line :—

CPK 87—thence to the eastern boundary of the compound of Edward of Ukpo Mili—thence to the southern boundary of that compound.

7. Each party must pay its own costs.

8. Respondents may be permitted to reap their crops in Anaekpeotu land.

(Sgd.) DERMOT O'CONNOR,  
 Resident, 20  
 Onitsha Province.

#### IN THE GOVERNOR'S COURT OF APPEAL.

The Native Courts Ordinance, 1933, Section 28.

(Powers delegated to the Chief Commissioner, Eastern Provinces.)

No. 12/1946.

Before His Honour Sir BERNARD CARR, C.M.G.  
 Chief Commissioner, Eastern Provinces.

|                                      |                         |
|--------------------------------------|-------------------------|
| OKEKE AKPAKA Representing Amene      |                         |
| Ukpo Mili of Ifite Ukpo . . . . .    | Plaintiffs-Appellant    |
| <i>versus</i>                        |                         |
| UNEGBU and others representing Amene |                         |
| Abagana . . . . .                    | Defendants-Respondents. |

30

#### CLAIM.

Declaration of title to lands known as Anaekpeotu and Abonkwu.

This is an application for leave to appeal out of time against the decision of the Resident, Onitsha Province. (Capt. D. P. J. O'Connor, M.C.) reversing the decision on appeal of the District Officer, Awka (Mr. C. T. C. Ennals), reversing the decision of the Umudunukofia Native Court in civil suit No. 27/44.

## 2. The grounds of Appeal are :—

*Exhibits.*

(i) The evidence adduced by Plaintiff and his witnesses is sufficient to establish a *prima facie* case justifying his claim to all the lands in dispute. *Defendants' Exhibit.*

(ii) The Resident's appeal order is repugnant to the Native Law and Custom in that he assigned the portion of land which was the cemetery Plaintiff's women married abroad to the Defendants. *No. 2. Proceedings in the Native Court of Dunukofia and on appeal, 20th July 1944 to 5th September 1946, continued.*

(iii) The Resident made no order as to costs.

10 (iv) The cases concerning the ownership of land judgment of the Native Courts of first instance need not be disturbed, unless there is clear evidence to dispute such judgments.

(v) The Resident's appeal order is contradictory and against the weight of evidence.

20 3. As to the first and second grounds, after closely examining the land the Court below made an exhaustive enquiry into the evidence adduced by Plaintiff and found that the evidence produced was insufficient to establish Plaintiff's claim to the southernly portion—the land Abonkwu and revealed a mass of uncertainty and of contradiction in regard to the burial ground for women. Ground three is not correct. As to ground four the Court below found sufficient evidence adduced by the Defendants to challenge the judgment of the Court of first instance. As to ground five the judgment of the Court below set out the case clearly and shows that careful consideration was given to all available evidence.

4. No reason is given for the delay in applying for leave to appeal to me nor does it seem probable upon the record that the appeal would succeed if leave were granted.

5. I decline to grant leave to appeal out of time.

30

(Sgd.) F. B. CARR,  
Chief Commissioner,  
Eastern Provinces,  
Enugu.

September 5th 1946.

# In the Privy Council.

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## 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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# RECORD OF PROCEEDINGS

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A. L. BRYDEN & WILLIAMS,  
53 VICTORIA STREET,  
LONDON, S.W.1.,  
*Solicitors for the Appellant.*

REXWORTHY, BONSER & WADKIN,  
83/85 COWCROSS STREET,  
LONDON, E.C.1.,  
*Solicitors for the Respondents.*