

Judgment  
3

Nigeria  
11957

No. 19 of 1955.

In the Privy Council.

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ON APPEAL  
FROM THE WEST AFRICAN COURT OF APPEAL.

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BETWEEN

CHIEF IYEKE for himself and on behalf of the people of  
Anikpaku Igbodo (Defendant) . . . . . *Appellant*

AND

B. OSAGIE substituted for Obi Osagie II for himself and on  
behalf of the people of Akumazi (Plaintiff) . . . . . *Respondent.*

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RECORD OF PROCEEDINGS

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SEIFERT SEDLEY & CO.,  
14 TOOKS COURT  
CURSITOR STREET,  
LONDON, E.C.4,  
*Solicitors for the Appellant.*

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

# In the Privy Council.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

CHIEF IYEKE for himself and on behalf of the people of Anikpaku  
Igbodo (Defendant) . . . . . *Appellant*

AND

B. OSAGIE substituted for Obi Osagie II for himself and on behalf  
of the people of Akumazi (Plaintiff) . . . . . *Respondent.*

# RECORD OF PROCEEDINGS

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# In the Privy Council.

## ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

CHIEF IYEKE for himself and on behalf of the  
people of Anikpaku Igbodo (Defendant) . . . . . *Appellant*

AND

10 B. OSAGIE substituted for Obi Osagie II for himself  
and on behalf of the people of Akumazi (Plaintiff) . . . . . *Respondent.*

# RECORD OF PROCEEDINGS

*In the  
Native  
Court of  
Akumazi.*

No. 1.

CIVIL SUMMONS.

No. 1.  
Civil  
Summons,  
7th August  
1947.

THE NATIVE COURT OF AKUMAZI, NIGERIA.

Between OBI OSAGIE II for himself and on behalf of  
the people of Akumazi . . . . . Plaintiff

and

CHIEF IYEKE for himself and on behalf of the  
people of Anikpaku Igbodo . . . . . Defendant.

20 To Chief Iyeke of Anikpaku—Igbodo.

You are hereby commanded to attend this Court at Akumazi on the  
12th day of August 1947 to answer a Suit by Plaintiff of above against you.

### THE PLAINTIFF CLAIMS :

(A) Declaration of title to all that piece or Parcel of land  
known as Ugboko Akumazi situate and being at Akumazi and  
more particularly delineated and shown on the plan to be filed  
herein by the Plaintiff.

(B) An account of all royalties received in respect of the said  
land and payment over to the Plaintiff of whatever may be found  
due to him.

30

*In the  
Native  
Court of  
Akumazi.*

(c) Injunction restraining the Defendant from hiring out to timber contractors the forests on the said land and receiving royalties therefor.

No. 1.  
Civil  
Summons,  
7th August  
1947,  
*continued.*

Issued at Akumazi the 7th day of August 1947.

CHIEF KUAMU His x Mark  
President.

No. 2.  
Order of  
Transfer.

**No. 2.**  
**ORDER OF TRANSFER.**

Native Court Suit.

By virtue of the powers conferred upon me by section 25 (1) of the 10 Native Courts' Ordinance No. 44 of 1933, I do hereby order the transfer of the case mentioned in the subjoined schedule to the Supreme Court of the Warri Judicial Division :—

**SCHEDULE.**

*(Title as in No. 1.)*

**CLAIM :**

(A) Declaration of title to all that piece or parcel of land known as Ugboko Akumazi situate and being at Akumazi and more particularly delineated and shown on the plan to be filed herein by the Plaintiff.

(B) On account of all royalties received in respect of the said land 20 and payment over to the Plaintiff of whatever may be found due to him.

(c) Injunction restraining the Defendant from hiring out to timber contractors the forest on the said land and receiving royalties therefor.

**REASON FOR TRANSFER :—**

The parties to this case come from different clans and the case cannot, in my opinion, be heard in the Court of issue of the summons with justice to both parties. The parties wish to be represented by Counsel, both of whom have applied for transfer.

(Sgd.) W. St. P. M. HANCOCK,  
Ag. District Officer, 30  
Asaba Division.

Addresses . . .

**ADDRESSES OF PARTIES :—**

Plaintiff's :—c/o Akumazi Native Court, Akumazi Town.

Defendant's :—c/o Igbodo Native Court, Igbodo Town.

No. 3.  
COURT NOTES of Order for Pleadings.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.  
Holden at Asaba.

No. 3.  
Court Notes  
of Order  
for  
Pleadings,  
17th  
November  
1947.

Before—

HIS HONOUR STEPHEN BANKOLE RHODES, Esq., C.B.E., Puisne  
Judge.

Monday the 17th day of November, 1947.

10

Suit No. W/42/1947.

OBI OSAGIE II for himself and on behalf of the  
people of Akumazi . . . . . Plaintiff

*versus*

CHIEF IYEKE for himself and on behalf of the people  
of Anikpaku-Igbodo . . . . . Defendant.

CLAIMS :—

1. Declaration of title to all that piece or parcel of land known as  
Ugboko Akumazi situate and being at Akumazi and more particularly  
delineated and shown on the plan to be filed herein by the Plaintiff.

20

2. An account of all royalties received in respect of the said land  
and payment over to the Plaintiff of whatever may be found due to him.

3. Injunction restraining the Defendant from hiring out to timber  
contractors the forest on the said land and receiving royalties therefor.  
Plaintiff in person.

Ipeago (Mr. Ajegbo with him) for Defence.

ORDER :

Plan and Pleadings to be filed and served within 60 days Defendant  
to file and serve defence within 30 days after service of Statement of  
Claim.

30

(Sgd.) S. B. RHODES,  
Judge.

17.11.47.



*In the  
Supreme  
Court of  
Nigeria.*

No. 4.

**MOTION AND AFFIDAVIT for extension of time within which to file Statement of Claim.**

*(Title as No. 3.)*

No. 4.  
Motion and  
Affidavit  
for  
extension  
of time  
within  
which to  
file  
Statement  
of Claim,  
3rd  
November  
1948.

**MOTION.**

TAKE NOTICE that this Honourable Court will be moved on the day of 1948, at the hour of nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff for an order granting the Plaintiff extension of time within which to file his Statement of Claim and for such further and/or other order as to the Court may seem just. 10

Dated at Onitsha this 22nd day of October, 1948.

(Sgd.) L. N. MBANEFO,  
Plaintiff's Solicitor.

Time extended from 17th January 1948 till 15th of July 1949.  
5 guineas costs to Defendant.

(Intld.) O. A.  
23.6.49.

*(Title as in No. 3.)*

**AFFIDAVIT.**

I, LOUIS NWACHUKWU MBANEFO, Legal Practitioner of Osodi 20 Chambers, Old Market Road, Onitsha, make oath and say as follows :—

1. That I am the Solicitor for the Plaintiff in the above-named matter.

2. That on the 17th day of November, 1947, this Honourable Court ordered plan and pleadings to be filed in the above-named suit, allowing the Plaintiff sixty days within which to file his Statement of Claim.

3. That owing to difficulty of getting a Surveyor and the expense involved, it was not possible to have the plan prepared before the time allowed the Plaintiff by this Honourable Court as aforesaid expired. 30

4. That the said Plan is now prepared and the Plaintiff is ready and willing to prosecute the case.

5. That I make this Affidavit in support of a motion for an order extending the time allowed the Plaintiff to file his Statement of Claim as aforesaid.

Dated at Onitsha this 21st day of October, 1948.

(Sgd.) L. N. MBANEFO,  
Plaintiff's Solicitor.

No. 5.  
COURT NOTES on hearing of Motion.

*In the  
Supreme  
Court of  
Nigeria.*

Before—

HIS HONOUR ADETOKUNBO ADE ADEMOLA, Esq., Puisne Judge.  
Thursday the 23rd day of June 1949.

No. 5.  
Court Notes  
on hearing  
of Motion,  
23rd June  
1949.

Suit No. W/42/1947.

OBI OSAGIE II for himself and on behalf of the  
people of Akumazi . . . . . Plaintiffs

*versus*

10 CHIEF IYEKE for himself and on behalf of the  
people of Ankipaku Igbodo . . . . . Defendants.

MOTION by Plaintiff's solicitor for an Order granting the Plaintiff extension of time within which to file his Statement of Claim and for such further and/or other order as to the Court may seem just.

Nelson-Williams (Mbanefo's Brief) to move Affidavit in support.

Ajebeo opposing.

*Nelson-Williams :*

Pleadings ordered since November 1947. Statement of Claim and Plan to be filed within 60 days. A year later this motion is filed. Difficulty  
20 of getting a Surveyor. Survey now completed. Plan ready to be filed.

*Ajebeo :*

It has been too long getting this plan and Pleading. Urged that case be struck out.

*Court :*

Motion allowed. It is ordered that the Plaintiff's time for filing a Statement of Claim and a Plan be extended as from 17th January 1948 till 15th of July 1949.

The Defendant to file his defence 30 days after the service of the Statement of Claim and Plan on him. 5 guineas costs to the Defendant.

30

(Sgd.) A. ADE ADEMOLA,  
Judge.

*In the  
Supreme  
Court of  
Nigeria.*

**No. 6.**

**ORDER granting extension of time.**

**IN THE SUPREME COURT OF NIGERIA.**

No. 6.  
Order  
granting  
extension  
of time,  
23rd June  
1949.

In the Supreme Court of the Warri Judicial Division.

Holden at Agbor.

Suit No. W/42/1947.

Between OBI OSAGIE II for himself and on behalf of  
the people of Akumazi . . . . Plaintiffs

and

CHIEF IYEKE for himself and on behalf of  
the people of Anikpaku Igbodo . . . . Defendants. 10

UPON READING the Notice of Motion and Affidavit of Louis Nwachukwu Mbanefo, Counsel for Plaintiffs in the above action sworn to on the 20th day of October, 1948 and filed on the 3rd day of November, 1948, AND AFTER HEARING Counsel in Support :

IT IS ORDERED that the Plaintiffs' time for filing a Statement of Claim and a plan be extended as from 17th January, 1948, till 15th July, 1949.

IT IS FURTHER ORDERED that Defendant do file his Statement of Defence 30 days after his service of Statement of Claim and plan on him. 20

Dated at Agbor this 23rd day of June, 1949.

(Sgd.) A. ADE ADEMOLA,  
Judge.



No. 7.  
STATEMENT OF CLAIM.

*In the  
Supreme  
Court of  
Nigeria.*

IN THE SUPREME COURT OF NIGERIA.  
In the Supreme Court of the Warri Judicial Division.

No. 7.  
Statement  
of Claim,  
14th July  
1949.

Suit No. W/42/1947.

Between OBI OSAGIE II, for himself and on behalf of  
the Akumazi people . . . . . Plaintiff

*versus*

10 CHIEF IYEKE, for himself and on behalf of  
the people of Anikpaku Igbodo . . . . . Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff is the paramount head of Akumazi and brings this action for and on behalf of the people of Akumazi by whom he was authorised to sue.

2. The Defendant is a Chief of Igbodo and is sued for himself and as representing the people of Igbodo.

3. The Akumazi people form what is administratively known as the Akumazi Clan Area and are the owners of a large area of land having boundaries as follows : with Ishan on the North, with Umuezechima on  
20 the East, with the Uteh on the South and with Umunede on the West.

4. The land in dispute is part of Akumazi land and has been so from time immemorial. The said land in dispute is known as Ugbokoissa and is shown edged green on the plan to be filed in Court with this Statement of Claim.

5. As owners the Plaintiffs have been in undisturbed possession of the said Ugbokoissa which they use as farm land from time to time. The said Ugbokoissa is forest land and rich in timber.

6. The said Ugbokoissa is bounded as follows :—

30 On the North by the lands of Mbiri, Akpu and Ewohimi in Ishan Division ; on the East by the land of Onitsha Onitsha-Ugbo, on the West by the land of Mbiri and on the South by the other lands of Akumazi (Plaintiff).

7. The town of Igbodo where the Defendant and his people live is on the land of Akumazi. Igbodo is a recent settlement founded since the advent of the Government and comprising of strangers from Onitsha-Ugbo, Uteh and Obior.

8. The town of Igbodo has grown from a congregation of people from neighbouring towns and each section of the town still owe allegiance to the head of town whence they came.

*In the  
Supreme  
Court of  
Nigeria.*

9. The portion allowed to Igbodo to settle is about seven miles from the area in dispute. That portion so allowed them is not in dispute in this case.

No. 7.  
Statement  
of Claim,  
14th July  
1949,  
*continued.*

10. About four years ago Plaintiff received information that certain labourers of the United Africa Company were making a timber camp on the land in dispute and so he quickly caused an enquiry to be made as to how they came there. The Inquiry revealed that the Defendant had leased the land to the United Africa Company Limited as a timber concession.

11. The Plaintiff sent messengers to the Defendant and pointed to him that he had no land there and offered to meet him on the spot for him (the Plaintiff) to show him his boundaries. On the appointed day the Defendant failed to turn up. The Plaintiff then reported the matter to the District Officer, Agbor, who advised him to sue.

12. The Defendant has no right to lease the said land in dispute or any part thereof to the United Africa Company Limited or anybody else.

Therefore THE PLAINTIFF CLAIMS as per the writ of Summons.

Dated this 14th day of July, 1949.

(Sgd.) L. N. MBANEFO, 20  
Plaintiff's Solicitor.

No. 8.  
Statement  
of Defence,  
9th August  
1949.

**No. 8.  
STATEMENT OF DEFENCE.**

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.

Holden at . . .

Suit No. W/42/1947.

Between OBI OSAGIE II, for himself and on behalf of  
the Akumazi people . . . . . Plaintiff

and

30

CHIEF IYEKE, for himself and on behalf of  
the people of Anikpaku Igbodo . . . . . Defendant.

**STATEMENT OF DEFENCE.**

1. Save and except as hereinafter expressly admitted the Defendant denies all allegations of fact contained in the Plaintiff's Statement of Claim as if each and every such allegation were separately taken and specifically traversed.

2. With reference to paragraph 1 of the Statement of Claim the Defendant admits only that the Plaintiff is the head of Akumazi people and will put the Plaintiff to strict proof of the other allegations therein.

*In the  
Supreme  
Court of  
Nigeria.*

3. The Defendant admits paragraph 2 of the Statement of Claim.

4. In answer to paragraph 3 of the Statement of Claim the Plaintiff says that he is not in a position to admit or deny that Akumazi people formed what is administratively known as Akumazi Clan Area. The Defendant denies other allegations in this paragraph and will put the Plaintiff to strict proof.

No. 8.  
Statement  
of Defence,  
9th August  
1949,  
*continued.*

10 5. In answer to paragraph 4 the Defendant denies that the land in dispute is or has ever been part of Akumazi land and says that the land is and has from time immemorial been the property of Igbodo people by whom it is called "Ugboko-Igbodo" or "Ugboko-Iyarra."

6. In answer to paragraph 5 the Defendant denies that the Plaintiff and/or his people are owners of or have ever been in possession of the land. The Defendant admits that the said land is forest land and rich in timber.

20 7. In answer to paragraph 6 the Defendant says that the said land in dispute is bounded on the north by the lands of Mbiri in Asaba Division, and the lands of Ekpon and Ewohini in Ishan Division; on the east by land of Onitsha-Ugbo; on the north-east by Udumuje-Ugboko; on the west by the land of Mbiri and on the south by Akwukwu Akumazi.

30 8. With reference to paragraph 7 the Defendant denies that the town of Igbodo is on the land of Akumazi or that it is a recent settlement founded since the advent of the British Government comprising strangers from Onitsha-Ugbo, Uteh and Obior and says that Igbodo has existed long before the advent of the British Government and that the land on which the Defendant and his people live is their own land. The Defendant admits that a few families from Igbodo came from Uteh and Obior and says that the Plaintiff and his people came from Mbiri after the people of Igbodo had settled at Igbodo.

9. The Defendant denies paragraph 8 of the Statement of Claim and will put the Plaintiff to the strictest proof thereof.

10. In answer to paragraph 9 the Defendant denies that Igbodo was allowed any portion of land to settle and says that he and his people had been in occupation of Igbodo land long before the Akumazi people came from Mbiri and that the land in dispute is about 6 miles from the residential area of Igbodo.

40 11. The Defendant is not in a position to admit or deny the Statement in paragraph 10 of the Statement of Claim with regard to inquiries the Plaintiff alleges he made but says that the land in dispute was leased to Mr. Isaiah Iyasere in 1944 by the people of Igbodo who are the owners of the land and that the Plaintiff's father who was then the paramount

*In the  
Supreme  
Court of  
Nigeria.*

head of Akumazi was aware of the lease and the royalty that was being paid to Igbodo. Plaintiff's father died in 1947 and up to the time of his death no claim whatever was made on the land by Akumazi.

No. 8.  
Statement  
of Defence,  
9th August  
1949,  
*continued.*

12. With reference to paragraph 11 of the Statement of Claim the Defendant is not in a position to admit or deny the allegation that the Plaintiff reported the matter to the District Officer or that the District Officer advised him to sue. The Defendant denies all other allegations in paragraph 11 of the Statement of Claim.

13. In answer to paragraph 12 the Defendant says that he has every right to lease the land to whomever he likes and that the Plaintiff is not 10 entitled as per writ of summons.

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

(Sgd.) M. O. AJEGBO,  
Defendant's Solicitor.

No. 9.  
Court  
Notes,  
11th  
October  
1949,  
13th March  
1950.

No. 9.  
**COURT NOTES.**

IN THE SUPREME COURT OF NIGERIA.  
In the Supreme Court of the Warri Judicial Division.  
Holden at Agbor.

Before—

HIS HONOUR ADETOKUNBO ADE ADEMOLA, Esq., Puisne Judge. 20  
Tuesday the 11th day of October, 1949.

Suit No. W/42/1947.

OBI OSAGIE II etc.

*versus*

CHIEF IYEKE etc.

Mbanefo for Plaintiff: Sent a wire asking for adjournment: busy WACA and unlikely to finish before 14/10/49.

Plaintiff himself in person.

Ajegro for Defendant. 30

Adjourned till next Sessions: 6 guineas costs to the Defendant.

(Sgd.) A. ADE ADEMOLA,  
Judge.

IN THE SUPREME COURT OF NIGERIA.  
In the Supreme Court of the Warri Judicial Division.  
Holden at Agbor.

*In the  
Supreme  
Court of  
Nigeria.*

Before—

HIS HONOUR HERBERT MACAULAY SANDES BROWN, Esq., Puisne  
Judge.

No. 9.  
Court  
Notes,  
11th  
October  
1949,  
13th March  
1950,  
*continued.*

Monday the 13th March 1950.

Suit No. W/42/47.

10 OBI OSAGIE II for himself and on behalf of the  
People of Akumazi . . . . . Plaintiffs

*versus*

CHIEF IYEKE for himself and on behalf of the  
people of Anikpaku Igbodo . . . . . Defendants.

CLAIM :

- 1. Declaration of Title.
- 2. An account of all royalties.
- 3. Injunction.

Izuora (holding for Mbanefo) for the Plaintiff.

Ajegbo for the Defendant.

20 For hearing first on the list at the next Civil Session holden at Agbor  
provided costs previously awarded are paid on 17th March 1950.

(Intld.) H. M. B.  
13.3.50.





*In the  
Supreme  
Court of  
Nigeria.*

**No. 10.**

**MOTION AND AFFIDAVIT to strike out Plaintiff's Claim.**

No. 10.  
Motion and  
Affidavit  
to strike  
out  
Plaintiff's  
claim,  
13th  
September  
1950.

**IN THE SUPREME COURT OF NIGERIA.**

**In the Supreme Court of the Warri Judicial Division.**

**Holden at Agbor.**

Suit No. W/42/47.

Between **OBI OSAGIE II** for himself and the people of  
Akumazi . . . . . Plaintiff

and

**CHIEF IYEKE** for himself and people of  
Igbodo . . . . . Defendant. 10

**MOTION ON NOTICE.**

**TAKE NOTICE** that this Honourable Court will be moved on 14th day of September, 1950, in the hour of nine of the clock or so soon thereafter as Defendants/or their Counsel can be heard for an order of this Honourable Court striking out the Plaintiff's claim for failure to comply with or otherwise carry out an order of this Honourable Court made on the 13th day of March 1950, and for further and/or other orders as to this Honourable Court shall seem meet.

(Sgd.) **CHUKWUWEIKE IDIGBE,** 20  
Defendant's Solicitor.

**IN THE SUPREME COURT OF NIGERIA.**

**In the Supreme Court of the Warri Judicial Division.**

**Holden at Agbor.**

Suit No. W/42/47.

Between **OBI OSAGIE II** for himself and the people of  
Akumazi . . . . . Plaintiff

and

**CHIEF IYEKE** for himself and the people of  
Igbodo . . . . . Defendant. 30

**AFFIDAVIT.**

I, **CHIEF IYEKE**, farmer and Councillor of Igbodo in the Benin Province of Nigeria make oath and say as follows :—

1. That I am the Defendant in the above action.

2. That on the 13th day of March 1950 this Honourable Court made an order that the Plaintiff should pay over to me the sum of £11.11.0 as costs for adjournment of the hearing of the above suit within 5 days.

3. That this amount has not been paid to me and to the best of my information, knowledge and belief has neither been paid to my agent or Counsel nor in any other way to my people.

*In the Supreme Court of Nigeria.*

4. That I make this affidavit in support of my motion here attached.

Deponent's Right Thumb Mark.

No. 10.  
Motion and Affidavit to strike out Plaintiff's claim, 13th September 1950, *continued.*

The above was interpreted to the deponent from English to Ibo language when he seemed perfectly to understand.

(Sgd.) ISAAH ITOSEU,  
Interpreter.

10

Sworn to this 13th day of September 1950.

(Sgd.) S. J. MARIERE,  
Commissioner for Oaths.

**No. 11.**

**COURT NOTES on hearing of Motion.**

No. 11.  
Court Notes on hearing of Motion, 14th September 1950.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.  
Holden at Agbor.

Before—

20 HIS HONOUR HERBERT MACAULAY SANDES BROWN, ESQR., Judge.

Thursday the 14th day of September, 1950.

Suit No. W/42/47.

Between OBI OSAGIE II etc. . . . . Plaintiff  
and

CHIEF IYEKE etc. . . . . Defendants.

MOTION by the Defendants' Solicitor for an Order of this Honourable Court striking out the Plaintiff's claim for failure to comply with or otherwise carry out an order of this Honourable Court made on the 13th day of March, 1950, and for further and/or other orders as to this Honourable Court shall seem fit.

30

Ikpeazu (with him Ajegbo and Idigbe) to move.

Izuora (with him A. O. Mbanefo) contra.

*Ikpeazu :*

Applies to strike out Claim on grounds of order as to costs made on 13th March 1950.

Many Adjournments, and no prosecution of Suit.

Transfer September 1947.

Statement of Claim filed only 14th July 1949.

Adjournment asked for continually.

*In the  
Supreme  
Court of  
Nigeria.*

*Izuora :*

Admits personal responsibility for not paying the costs in time which were paid to him in time.

No. 11.  
Court Notes  
on hearing  
of Motion,  
14th  
September  
1950,  
*continued.*

*Order :*

Case to be heard at next Session on payment of Costs previously ordered with three guineas costs payable by Mr. Izuora personally immediately.

(Intld.) H. M. B.  
14.9.50.

No. 12.  
Court  
Notes,  
17th  
December  
1951.

**No. 12.  
COURT NOTES.**

10

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Warri Judicial Division.  
Holden at Agbor.

Before—

HIS LORDSHIP COURTENAY WALTON REECE, Esq., Puisne Judge.

Monday the 17th day of December, 1951.

Suit No. W/42/1947.

OBI OSAGIE

*versus*

CHIEF IYEKE

20

Onyiuke holding L. Mbanefo's brief for Plaintiff.  
Ajegbo with Ikpeazu and Idigbe for Defendant.  
Adjourned till 9 a.m. 18th December 1951.

(Sgd.) C. W. REECE.

Resumed : Tuesday the 18th day of December, 1951.

Suit No. W/42/1947.

OBI OSAGIE Et al

*versus*

CHIEF IYEKE Et al.

30

Onyiuke with Mbanefo for Plaintiffs.  
Ajegbo with Ikpeazu and Idigbe for Defendants.

Plaintiff is Obi of Akumazi. In Akumazi there are four quarters or Villages. The People of Akumazi from time immemorial have had lands communal to the four quarters. By virtue of his Office Obi of Akumazi is as it were a caretaker of the communal lands and he has always been

recognised as the person to take action for or defend actions against the people of Akumazi for the communal lands. Defendant is Obi of Igbodo and by virtue of his office is being sued in a representative capacity. Subject matter of the action is land called Ugbokoissa—vide paragraph 5 of Statement of Claim. Defendant in paragraph 5 of defence call the land Ugboko-Igbodo or Ugboko-Iyarra. This land has belonged to the people of Akumazi from time immemorial. We are going to show that Igbodo cannot possibly own the land in dispute. I refer to the plan tendered. Akumazi is roughly a buffer state between the Ishan and Asaba divisions of the same province. This land adjoins other towns. In paragraph 6 of the Statemen tof Claim we have tried to show the towns on which this land abutts. On the north it abounds on Ewohimi and Akpu; on the West Mbiri, on the East Onitsha-Ugbo and to the South with other lands of Akumazi. Obodo is a new settlement and comprises settlers from Onitsha-Ugbo, Uteh and Obior—vide paragraph 7 of Statement of Claim. We are going to show that the land on which Igbodo is situated is land of Onitsha-Ugbo and Akumazi. We are not claiming the land on which they are now settled but we say that if they leave where they are and go a distance of seven miles to the land in dispute we will sue. The Defendants have issued licences in respect of the timber on the land in dispute hence the action. When we became apprised that the Plaintiff had granted concessions on the land we asked him to show his authority and this was in 1947.

*In the  
Supreme  
Court of  
Nigeria.*

No. 12.  
Court  
Notes,  
17th  
December  
1951,  
*continued.*

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**PLAINTIFF'S EVIDENCE.**

No. 13.

**EVIDENCE of Justus Jegbefume Osagie.**

*Plaintiff's  
Evidence.*

No. 13.  
Justus  
Jegbefume  
Osagie,  
18th  
December  
1951,  
Examina-  
tion.

1ST: JUSTUS JEGBEFUME OSAGIE S/S

I am the Obi of Akumazi and the Plaintiff in this action suing on behalf of the people of Akumazi. The Obi is the paramount Chief of Akumazi. I know the Defendant who is the paramount Chief of Igbodo. I am suing him on behalf of himself and his people. There are four quarters or villages of Akumazi viz.—Akumazi-Umuocha also known as Akumazi-Uno; Akukwu-Akumazi; Owerre-Akumazi and Ilabor-Akumazi also known as Iregbo-Akumazi. The Clan which they form own the land. In the East Akumazi is bounded Umuezechima and Obior, on the West by Umunede, on the South by Uteh, on the North by Ishan. I know the land in dispute. Ekpon or Akpu and Ewohimi are towns adjoining the land in dispute. Ewohimi is on the north. Leaving Ewohimi on the north the next land adjoining the land in dispute is Mbiri on the West. On the South the lands of Akumazi adjoin the land in dispute and on the East by Onitsha-Ugbo. The people of Igbodo have no land near the land in dispute. From the land in dispute to the place where the people of Igbodo reside is approximately seven miles. The land in dispute is called Ugbokoissa. Through the land in dispute is a pathway starting from the Mbiri side to Onitsha-Ugbo side; the path passing through Udumeje Ugboko. There was once a railway path cut North and South and that is now used as a pathway. There are numerous pillars along this track.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 13.  
Justus  
Jegbefume  
Osagie,  
18th  
December  
1951,  
Examina-  
tion,  
*continued.*

There is a juju pot and an Abosi tree on the Eastern side on the Onitsha-Ugbo and Ewohimi boundary. The juju pot is called Nemo-Onitsha. This juju pot has been there from time immemorial. The pot is buried in the ground. At Ekpon there are trees forming the boundary viz. Ezeogba and Nkata. On the Mbiri side there are some trees viz. Efuma and coming East Akpu. I can't remember any other identification marks on the line. From the juju pot coming South along the Eastern boundary there are Igedu trees and Efume tree. On the land in dispute our people make farms. The land is forest land and rich in timber. Before this dispute the Defendant and his people have never been on this land. I first 10 heard in 1946 that the Defendants were coming on the land, after the death of my father. My father was ill for about two years before his death. It is the duty of the Clan head to protect communal lands. When in 1946 I heard that the Defendants were trespassing on the land I collected my people and had a meeting. I sent many messengers from my Clan about four times to ask the Defendant if he had land there. The messages were oral. No satisfactory reply was given. I went with my council to the District Officer and laid a complaint before him and acting on his advice we brought this action. There are still people on the land in dispute, put there by the Defendant. These people are farming and cutting 20 timber. They have erected buildings on the land. The Defendant collects royalties from the land, but I do not know how much. It is not correct that the Defendant and his people have been on the land for a long time. The people of Igbodo are emigrants from various lands in the division viz. Uteh, Onitsha-Ugbo and Obior. Where these people now live is land of Onitsha-Ugbo and Akumazi. They have no bush. I am not claiming the land where they now reside but the action is for the land on which they have trespassed and farmed and cut timber.

Cross-  
examina-  
tion.

*Cross-examined :*

I know that a Court to which my people attended was built in Obior 30 land since 1930 onwards. I went to School at a place called Irebo. I was never trained by the Defendant. The School to which I was sent was in Irebo. I do not know that the C.M.S. have a School at Igbodo. I know that the C.M.S. have a Church at Igbodo. I know that it was established in 1903. The land on which this Church was built was given to the C.M.S. by the Igbodo people. Iyeke does not live on our land. This C.M.S. Church was built on our land. The land in dispute is about 7 miles from where the Defendant's people reside. From my house to the land in dispute is approximately 11 miles. When I wanted to bring this action I consulted my people. I sent for the people in January 1947 after the 40 death of my father. I called Chief Leonard, Williams Awulo, Chief Kuwamu, Chief Akumakukue Osagie. I did not bring this action of my own accord. Issa and Ishan are the same words. I do not belong to Ishan. Ugboko is called Ugboko-Issa and because it is near Ishan. I do not know that the proper name for the land in dispute is Ogboko Igbodo or Iyarra. I was formerly a Sanitary Inspector and my duties used to take me to the land in dispute to vaccinate people. This was in 1943/44. The track North and South is now motorable. I know that this road was constructed by one Isaiah Iyasere. I do not know that he is an Igbodo man. There is a hut on the land in dispute owned by one Moseli. I now know that 50

he is an Igbodo man. I do not know how long Moseli has been living on the land. I know Ziemife. I know that he is an Igbodo man. I know Agbonta. He is an Akumazi man. I do not know that he is a tenant of Moseli. Nemo-Onicha is our Juju. I knew in 1948 that Mr. Scanlon, Assistant District Officer in 1938 held an inquiry into the boundaries of lands including the land in dispute. I know that the Akumazi people did not appear during the whole inquiry. There have been 14 Obis before me. There has never been any trouble about land between the Obi of Igbodo and my predecessors. I cannot tell how long the Obis have ruled  
 10 before me. My father was confined to his bed for two years before his death. During my father's illness the Olobi conducted the affairs of Akumazi. I do not know whether the District Officer called Iyeke or not. The Defendants have trespassed on the land in dispute since 1944. I do not know that they have been on the land in my Father's life time without question. My people did not migrate from Mbiri to Akumazi. The founder of Akumazi came from Benin and was named Unona. When my people came from Benin the Igbodos were not where they are now.

*In the Supreme Court of Nigeria.*  
 Plaintiff's Evidence.  
 No. 13.  
 Justus Jegbefume Osagie,  
 18th December 1951,  
 Examination, continued.

*Re-examined :*

My own quarter is Akumazi-Uno. "Ugboko" means a forest. I do  
 20 not know of any sketch map showing the boundaries of the 1938 enquiry by District Officer Scanlon. If the Igbodo people gave any of the land on which they are to Government I would object.

Re-examination.

Adjourned till 19th December at 9 a.m.

(Sgd.) C. W. REECE.  
 18.12.51.

**No. 14.**

**EVIDENCE of Ajei Josiah Ofo.**

Resumed : Wednesday the 19th day of December, 1951.

No. 14.  
 Ajei Josiah Ofo,  
 19th December 1951,  
 Examination.

30 Onyiuke for Plaintiff.

Suit No. W/42/1947.

Ajagbo for Defendant with Ikpeazu.

2ND : AJEI JOSIAH OFO. Sworn on Bible saith in Ibo :

I am a native of Akwukwu-Akumazi which is one of the four quarters of Akumazi. I am a Village head. I know the Obi of Akumazi ; he is the paramount Chief of Akumazi. Land is held communally in Akumazi and the Obi is in Charge of our lands. When any action is brought in respect of our communal land it is brought by the Obi. The Obi took this action on behalf of our people of Akumazi. The people of Akumazi knew that he was going to sue. Before the action was brought the people of Akumazi  
 40 held a meeting at the Obi's place. The Elders of Akumazi attended this meeting and as a result a message was sent to Chief Iyeke to leave our

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 14.  
Ajei  
Josiah Ofo,  
19th  
December  
1951,  
Examina-  
tion,  
*continued.*

bush and he did not give a satisfactory reply. We then took out the summons. We also laid a complaint to the District Officer Agbor. I know the land in dispute. It is called Ugbokoissa. It belongs to the people of Akumazi. It is bounded by Onicha-Ugbo, Ewohimi, Akpu or Ekpon and Mbiri. The boundary of the land in dispute with Ewohimi is the juju pot Nemo-Onicha and an Abosi tree. The boundary with Akpu is an Eyragba and an Nkata tree. The boundary with Mbiri is an Edo tree and a footpath leading to an Ufi tree on to an Efume tree to Ufi and other parts of Akumazi land. Between the land in dispute and Onitsha-Ugbo starting from Nemo-Onicha juju there is an Igedu tree and a footpath running to Oye market near which is an Egbe tree which is the boundary and leading to the Benin road to Ufi. I know Igbodo. Igbodo has no land near Igbokoissa. Igbodo is near to Akumazi Onitsha-Ugbo. The people of Akumazi and Onitsha-Ugbo own the land on which Igbodo people reside. From where the Igbodo people live to the land in dispute is about 7 miles. I know the Obi. His quarter is Akumazi-Uno. Between Akumazi-Uno and the land in dispute the land is owned by Akumazi. From Akumazi-Uno to the land in dispute we pass through Owerre-Akumazi, Irevbo-Akumazi and Akwuku Akumazi. My people have been in possession of Ugbokoissa for a very long time according to my grandfather. My people have been farming in this land. The land also has Mahogany and Iroko trees on it and is rich in timber. A fully grown Mahogany ready for felling is worth about £6 to us. Igbodo people did not live in this area. They are living there now. The Igbodo people have been putting people on the land for about 6 years but not before this time. As soon as my people saw that Igbodos were putting people on the land they took out the summons. I know Moseli very well. He is a native of Igbodo and is now living on the land in dispute. He has been living on it for about 6 years. I know Ziemife, he is my in-law and is a native of Igbodo. He also is living on the land in dispute. He also started to live on the land about 6 years ago. I know Isaiah Iyasere. He is a Native of Uteh. He lives on the land cutting timber. He has been there since 1945. I know Agbonta. He is a native of Akumazi-Uno. He lives on the land in dispute. The present Obi's father put him on this land to look after the bush. Before Agbotan one Dibe was there, but he died.

Cross-  
examina-  
tion.

*Cross-examined :*

I am one of the important Chiefs in Akumazi, next to the Obi in rank. The Obi did consult the people of Akumazi before he took this action. He consulted us after his father's death. The Obi consulted us in 1947. At that time my father was ill and I attended in his stead. I cannot remember the date—it was about October, 1947. We decided to send to the Obi of Igbodo to ask him to leave our bush. He refused to leave and we went to the District Officer who advised us to sue. I have lived in my town for a long time. We had taken the action before the District Officer came to survey the bush. The District Officer did not call Iyeke and Obi Akumazi together before the action was brought. "Issa" is the same word as "Ishan." By Akwukwu-Akumazi I mean Akwukwu belonging to Akumazi. "Ugboko" means bush or forest. It is not correct to say that the land in dispute is bounded on the North-East by Idumuje-Ugboko. I know Idumuje-Ugboko. The land in dispute is not near to

Idumuje-Ugboko. Akumazi has no juju by name Nemo-Onicha. We do not collect rent from the people of Igbodo in respect of the land on which they live. If the Igbodo people gave away any of the land on which they now live without first consulting us we would summon them. I know what is meant by C.M.S. I know that the people of Igbodo gave land to the C.M.S. but we don't want any action with them. The C.M.S. pay taxes to Obi for teachers on the land and that is why we don't ask them for rent. I do not collect taxes. I do not know the names of the teachers. I am a farmer. I have farmed on the land in dispute myself. I was a  
 10 small boy when I started to farm there. Mosieli has not been on that land for 35 years. I do not know that Mosieli has planted Kola trees on the land and that they are now bearing. Ziemife has not been on the land for the last 35 years. I know Uzu. He is an Igbodo man, but he has not been on the land for a long time. I knew Nwaka. He was my in-law. He never lived on the land in dispute in his lifetime. I do not know Onicha Emeka. I know Odu-Odowu. He farms on the land in dispute. He never paid rent to us. I do not know Agwuefe. We do not collect rent from Mosieli and others named. Nobody from Igbodo on the land pays rent to us. I know Isaiah Iyasere. I know he does timber work  
 20 there and that is why we brought the action. Akumazi people did not give him the land. Nobody but Agbonta who is alive has been put on the land by us. I do not know that the land in dispute belongs to Akumazi.

*Re-examined :*

All the people whose names have been mentioned have been on the land for about 6 years. Many Akumazi people farm on the land but do not live on it. We have not interfered with the Igbodo people where they live.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 14.

Ajei  
Josiah Ofo,  
19th

December  
1951,  
Cross-  
examina-  
tion,  
*continued.*

Re-  
examina-  
tion.

No. 15.

**EVIDENCE of John Ifejioku.**

30 3RD : JOHN IFEJIOKU. Sworn on Matchet Saith in Ibo :

I am a native of Onicha-Ugbo of the Ogbe-Obi quarter. I am a Chief. I know the town of Akumazi. Onicha-Ugbo has a common boundary with Akumazi. I know Ugbokoissa ; it belongs to Akumazi. The people of Onicha-Ugbo have their own " Ugboko " called Ugboko-Ukwu. Ugboko-Ukwu and Ugbokoissa abut and bound each other. One of the points of boundary between these two lands is Nemo-Onicha, the juju pot. An Abossi tree is another mark on the boundary. There is also an Egbo tree, an Egede tree on the left-hand side. One Igedu tree is there also, an Efume tree.  
 40 There is a path leading Olie market on to an Ufi tree leading to Benin road. I have never heard of a place called Ugboko-Igbodo. I have not heard of Ugboko-Iyare. Igbodo people have no land near the land in dispute. Igbodo people live on the land belonging to Onicha-Ugbo and Akumazi. We have no boundary with Igbodo. I know Idumuje-Igboko ; these people live on Onicha-Ugbo land. They do not live near Ugbokoissa. They have to pass through our bush to get to Ugbokoissa.

No. 15.

John  
Ifejioku,  
19th  
December  
1951.  
Examina-  
tion.



*In the Cross-examined :*

*Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 15.

John  
Ifejioku,  
19th  
December  
1951,  
Cross-  
examina-  
tion,  
*continued.*

The men who established Igbodo came from Obior. My people allowed them to live on land of Onicha-Ugbo. We are related to Obior people, having descended from Ezechima. It is a long time ago. It was before I was born, but was in my father's time. My father is dead. My father was old when he died about 20 years ago. It was during the civil war between Onicha-Ugbo and Uburuku when my father died. At the time the settlement was established strangers came from Uteh-Ubeje, Ndobu, some from Mbiri, some from Onicha-Ugbo and some came from Obior and formed two quarters. We did not make these people pay rent, 10 because it is not our custom. When our people came from Benin they established the points of boundary named. The Ishan people and Akumazi people came with my people also from Benin at the time of the civil war. All three of us joined and made the juju Nemo-Onicha. By "Ishan" I mean Ewohimi and Akpu. Akpu is an Ibo village in the Ishan division. I do not know that in 1938 there was an inter-tribal boundaries settlement between Akpu people and the Defendant's people over the land in dispute. Since this case started the Defendant's started to interfere with our forest land. They have cut a road through our big farm to Idumuje-Ugboko. They have been cutting timber. It is not yet two years since they entered 20 upon our land. I am not giving evidence on behalf of Plaintiffs to support an action by my people against the Defendant in the future. We told them to live within a mile or two of the spot we gave them. They are allowed to farm near their homes; they are not allowed to go to the big farm. When they go beyond the place allowed we stop them and they give us yams by way of appeasement. My house from the land in dispute is about as far as from here to the boundary between Emu and Agbor (an estimated distance of four miles).

*No re-examination.*



No. 16.

John  
Iyasere,  
19th  
December  
1951,  
Examina-  
tion.

No. 16.

30

**EVIDENCE of John Iyasere.**

4TH: JOHN IYASERE Sworn on Bible Saith in Ibo :

I come from Ekpon which is the same as Akpu. My village is Eko in Akpu. My father is alive and is the Iyase or Obi of our town. My father is ill. He is an old man. I know Akumazi. My town has common boundary with Akumazi. Akpu is in the Ishan division. I know Ewohimi my people are related to the people of Ewohimi. I know the land called Ugboko-Issa; it is near our boundary and belongs to Akumazi people. We have our own "Ugboko" and it is called Ugboko-Ake. There is a juju called Nemo-Onicha and an Ezeagba and Nkata tree forming the boundary 40 line between Akpu and Ugbokoissa. We have no common boundary with the people of Igbodo, but we have with the people of Mbiri.

*Cross-examined :*

My father is supporter of Obi. The Obi is the head in our town. My father is next to Obi. We own our lands in common. Obi is the head of the communal land. Our Obi is called "Onoja." If any action is brought in our town in respect of the land it is brought by or against the Onoja. I am 25 years old. There are a lot of old people in our land. I heard that there was an inter-tribal boundary dispute in 1938 in which the boundary between Akpu, Ewohimi and Igbodo was settled. I know Afedi in our town. He is a very big man in our area. He is a title holder.

10 The dispute in 1938 was over Ugbokoissa. Afedi knows all about our town. I think Afedi knows more about our town than I would know. The Obi of Akpu said during the dispute in 1938 that Igbodo had no land there. I do not agree that the land Ugbokoissa was owned by Ekpon, Ewohimi and Igbodo. Ekpon and Igbodo have never had any palaver over boundary. I know Mosere. I know his Camp. I can't remember whether his camp was there in 1938. We have a boundary with Akumazi.

*No re-examination.*

At this stage Mr. Onyiuke states that he is compelled to ask for an adjournment. Certain documents which are necessary for the Plaintiff's

20 case and which he has found in the brief handed to him are not certified and cannot be put in evidence in that condition. Ajegbo says that if an adjournment must be granted it must be on terms. That his client is ready to continue and that he has been put to expense and that this adjournment will put him to further expense. Every adjournment in this case has been at the instance of the Plaintiff.

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**No. 17.**  
**COURT NOTES.**

Costs assessed at fifteen guineas awarded to the Defendant on the adjournment and they are to be paid before the resumed hearing.

30 Adjourned till the 18th February, 1952.

(Sgd.) C. W. REECE.  
19.12.51.

Monday the 18th day of February, 1952.

Plaintiff absent represented by Onyiuke.

Defendants present.

Ajegbo for the Defendants.

Onyiuke asks for adjournment.

Fixed for the 25th March at Agbor.

No mention as to Costs.

40

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 16.  
John  
Iyasere,  
19th  
December  
1951,  
*continued.*  
Examina-  
tion.

No. 17.  
Court  
Notes,  
19th  
December  
1951, 18th  
February  
1952, 25th  
March 1952.

*In the  
Supreme  
Court of  
Nigeria.*

No. 17.  
Court  
Notes,  
19th  
December  
1951, 18th  
February  
1952, 25th  
March 1952,  
*continued.*

Resumed : Tuesday the 25th day of March, 1952.

Declaration of title to land known as Ugboko Akumazi and more particularly delineated and shown on the plan to be filed herein by the Plaintiff.

2. Account of all Royalties received.

3. Injunction.

Both parties present.

Plaintiff not represented.

Idigbe for the Defendant with Ajegbo.

Idigbe for the Plaintiff states that a cost of fifteen guineas was 10 awarded at the last hearing and that it was ordered that such costs were to be paid as a condition precedent to the further hearing of the suit.

Plaintiff states that he was not in Court when the Order was made.

Court adjourns for the Plaintiff to comply with the Court's Order.

Court resumed at 9.50.

Idigbe for the Defendant states that the Order has been complied with.

*Idigbe :*

I want to raise a point of law that this case is not properly before this court. The District Officer did not state under which sub-section 20 of section 28 (25 in the old Ordinance) he purports to transfer the case.

*Court :*

It is clear from the reasons given by the District Officer in the Order of transfer that he transferred it under and by virtue of section 28 (1.C.).

*Plaintiff's  
Evidence.*

No. 18.  
Justus Obi  
Osagie II  
(recalled),  
25th  
March 1952,  
Examina-  
tion.

No. 18.

EVIDENCE of Justus Obi Osagie II.

FIRST WITNESS JUSTUS OBI OSAGIE II s/s on the Bible English.

I am Obi of Akumazie Clan area. I bring this action on behalf of the Akumazi people. In the year 1947 after I had been installed Obi 30 my people who were on the side where the land in dispute is situate gathered together and approached me. In consequence of what I was told, I asked them to go and view the land. They found that a Sign Board that my father had placed on the land was missing.

At this stage L. Mbanefo with him Onyiuke for the Plaintiff.  
Mbanefo Opens Plaintiff's Case.

*In the  
Supreme  
Court of  
Nigeria.*

FIRST WITNESS re-called still on oath.

*Plaintiff's  
Evidence.*

I am the Obi the paramount head of Akumazi. I represent my town in all land matters. I became Obi in the year 1946. The land in dispute belongs to the Clan Head and people of Akumazi. I am the Clan Head. I know the Town of Igbodo, it is far away from the land in dispute. Onitsha Ugbo and Akumazi own the land between the land in dispute and Igbodo Town. The boundary between us and the Onitsha Ugbo  
10 people is traced from one Egbu Tree down Agbora Tree, Efume tree. There is a pathway between us and Onitsha Ugbo. All the trees I have named are on this pathway. Abosi tree starts the boundary between us Ewohimi and Onitsha Ugbo land. Near the Abosi tree is a juju pot Nemonicha. The juju pot was placed there in ancient times. I do not know who placed it there. It has been there from time immemorial, Ewohimi, Akumazi and Onitsha Ugbo people worship at this shrine close to the Abosi tree. The boundary from the Abosi Tree runs past another juju called Onitsha, the Efume (a tree) Abona tree down to an Egbu tree  
20 and Oye market and then to the Asaba Benin Road. On the boundary between Akumazi and Ewohimi on the land in dispute are the Abosi and Eze Agba trees. There is a boundary between us Ekpon people called Akpo on the plan. It is on the same line with the Abosi tree and starts from the Eze Agba tree to an Nkata tree. The boundary between us and the Mbiri people is from the Nkata tree to an Edo tree. The trees are all on the pathway. The boundary ends at the junction of the road and the path. From this junction there is a pathway Southwards to Akukwu Akumazi. All the land between the land in dispute and the main Benin road belongs to the Akumazi Clan. We farm on the land in  
30 dispute and cut trees therefrom with which to build our houses. There is a Timber Camp on the land built by Isiah and I saw it first in 1947. Isiah works for the U.A.C. There was no one living on the land before Isiah built his Camp there. The U.A.C. got on the land through Isiah who is a native of Uteh—Ogbeje and now residing at Igbodo. I have brought this action because when I interviewed Isiah he said that Chief Iyeke the Defendant has leased the land to him. I sent messages to the Defendant but received no satisfactory reply from him. Chief Iyeke belongs to Anikpaku people and hail from Onitsha Ugbo. They now live at Igbodo. There are five Quarters at Igbodo (1) Anikpaku (2) Anieyema from Uteh Ogbega (3) Ndogu from Mbiri (4) Idume Obior from Obior  
40 (5) Idumuozei from Obior. These people live at Igbodo which is a town where people from these five places have settled.

No. 18.  
Justus Obi  
Osagie II  
(recalled),  
25th  
March 1952,  
Examina-  
tion,  
*continued.*

Akumazi is a separate Clan in Agbor District. We do not belong to the Ezechima Clan. Onitsha Ugbo and Obior belong to Ezechima Clan.

*Cross-Examined.*

I became the Obi in 1946 my father was the Obi of Akumazi. He died on the 11th April 1946. My father was reigning before I was born.

Cross-  
examina-  
tion.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 18.  
Justus Obi  
Osagie II  
(recalled),  
25th  
March 1952,  
Cross-  
examina-  
tion,  
*continued.*

He has been on the throne for about 30 years. I am about 38 years old. There has been no dispute between Akumazi and Igbodo prior to this one. Igbodo was settled before I was born. The people of Igbodo are emigrants from various Clans in Asaba and Igbodo. My father told me the History of Igbodo. I consulted my people before taking this action. We had a meeting at Akumazi in the year 1947 in February. I am not aware that Royalties accruing from the land in dispute was ever paid to the Igbodo people to my father's knowledge. I only knew of it in 1947. It was then that I knew that Igbodo people were on the land and had given it to the U.A.C. prior to my installation as Obi, I was a Sanitary Inspector. 10  
I was a friend of Isiah. I used to visit his camp in the course of my duties as Sanitary Inspector. Isiah was then in a Camp in Ishan. An Ishan Sanitary Inspector accompanied me. I do not know when Isiah got to the land in dispute. I only saw him there in 1947. My duties as Sanitary Inspector used to take me to Ishan country as myself and the Ishan Sanitary Inspector worked hand in hand. I was stationed at Agbor and my duties took me to Ishan country. I knew that Isiah had made a road from Igbodo Town to the land in dispute. The road is from the main Asaba road to the Camp. I knew that Isiah used large Tractors for hauling Timber. 20

I first knew Isiah in 1944 when he was at a Camp in Ishan. I did not go to School at Igbodo but at Elabor a village in Akumazi. Akumazi gave the C.M.S. the land to build their Church and School. I do not know about the School and Church at Igbodo. I told the Court at a previous hearing that I knew that the people of Igbodo gave land to the C.M.S. We used to attend Court at Igbodo. My father was the President. The Office of President went in rotation.

There is a juju pot on the North-Eastern side of Abosi tree. Nemonicha juju is the name of the juju pot close to the Abosi tree. Idumje Ugboko people have a boundary with us on the East of 30  
Nemonicha but not on the land in dispute. I know Mosieli. He is an Igbodo. I do not know that he has a house near Isiah's camp. I know Ziemife an Igbodo man. I do not know that he has a house there. I know Agbonta, he is an Akumazi man and has a house there. I knew that he had a house there only in 1947. I did not give him any land. I do not know a Forest Guard living near Isiah's Camp. I did not accompany the Surveyor when he was working. Igbodo is between six and seven miles from the land in dispute. This is also the distance from the land to the Defendant's house. My palace is between seven and ten miles from the land in dispute. I said at a previous hearing that it was 40  
eleven miles, that was more or less in truth.

The Akumazi people have no boundary with Igbodo people, Isiah was making use of our land in constructing the road from the main Asaba Road to his Camp. C.M.S. Igbodo School is on my land. I did not give the land to them. Elarbo gave them the land Elarbo people are Akumazis.

Akumazi came from Benin and not from Mbiri. Ezechima Clan came from Benin. Igbodo was not long established in its present place before we came from Benin. I knew of the U.A.C. Timber Camp in the year 1947. That was the first time I knew of it. 50

*Re-Examined.*

I am not the nearest Akumazi man living close to the land in dispute. The nearest is about five or six miles on the land. Akuku Akumazi is on the Asaba Agbor Road and about 3½ miles from Igbodo. Elabor is between Akuku Akumazi and Igbodo. Elabor pay tax to Akumazi. They live close to Igbodo. The C.M.S. Igbodo is built on Akumazi Land—that of Elabor. I became Obi in 1946. My father died in April 1946. He was ill for a period of three years. I was referring to Elabor people when I said that Igbodo people had given land to the C.M.S. at a former  
 10 hearing. Elabor people started paying tax to us in 1947. Elabor people are now not friendly with me. The road made by Isiah from the land in dispute passes through Elabor street. It runs through the land in dispute then through Elabor's land and then on to the Main road. I do not know when it was built. My own farm is about three miles.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 18.  
Justus Obi  
Osagie II  
(recalled),  
25th  
March 1952,  
*continued.*  
Re-  
examina-  
tion.

*Cross-Examined by Court :*

*Q.* When did the split take place between the Akumazi people and Elabor.

*A.* It was in 1942 during the lifetime of my father.

Cross-  
examina-  
tion.

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No. 19.

**EVIDENCE of Ajei Josiah Ofo.**

20

SECOND WITNESS AJE s/s on the Bible in Ibo.

Pedro Rufai sworn on the Koran to interpret English into Ibo and vice versa.

No. 19.  
Ajei  
Josiah Ofo  
(recalled),  
25th March  
1952,  
Examina-  
tion.

*Witness continuing :*

I am Chief Aje Native of Akuku Akumazi one of the four quarters of Akumazi. I am the head of Akuku Akumazi. I know the land in dispute. It belongs to the Obi Akumazi and his people. He is the proper person to sue when there is a dispute over any land of ours. We have boundaries with these towns round the land in dispute Onitsha Ugbo,  
 30 Ewohimi Akpu or Akpon and Mbiri.

Between us and Onitsha Ugbo the boundary is the juju Pot Nemoonicha the Abosi tree Igedu, Efume and a footpath which runs to Oriye Market Ewohimi. Abosi Tree, another tree, I cannot remember the name of the tree.

Nemo Onicha tree is on the Ewohimi boundary as well as Onisha Ugbo.

From the Abosi tree the boundary runs to Akpo going West Eze Agba tree from thence to Nkata tree. This tree is on the footpath and thence to Mbiri. There is an Edo tree on this boundary and a footpath

*In the  
Supreme  
Court of  
Nigeria.*

which leads to an Ufi tree and thence to an Efuma tree and thence to Akumazi land. Igbodo people have no land close to this land which is in dispute. Igbodo people live about six or seven miles from the land in dispute.

*Plaintiff's  
Evidence.*

*Q.* Who owns the land between Igbodo settlement and the land in dispute.

No. 19.  
Ajei  
Josiah Ofo  
(recalled),  
25th March  
1952,  
Examina-  
tion,  
*continued.*

*A.* Akumazi and Onitsha Ugbodo people. Igbodo is not an ancient settlement. It is of recent origin. A portion of the land on which they have settled belongs to Akumazi and the other portion to Onitsha Ugbo. We are not asking them to quit from their present settlement. 10

*Q.* Have they ever extended into the land in dispute.

*A.* They do not farm in the land in dispute but fell timber there. They started to cut timber there which commenced this action. The present Obi is from Ogbe Obi in Akumazi. From Akumazi, you go to Owerri Akumazi and then to Elabor Akumazi, Akuku Akumazi and thence to the land in dispute. The distance from Akuku Akumazi to the land in dispute is about four miles.

The land is Forest and we cut Timber there. We use the land in dispute for farming. I know Isiah's Camp. It is in the land in dispute. It is the cause of this action. It has been in existence for about six years. 20  
We did not give it to Isiah. I know Moseli and Zemife who is related to me by marriage. They have been on the land in dispute about six years now. They went there to cut Timber. Moseli, Zemife and the Obi of Igbodo gave the land to Isiah. I know Agbonta. He is a native of Akumazi. He was there before Isiah. The late Obi of Akumazi placed him there. Agbonta is a native of Akumazi though I do not know what quarter he comes from. I have not heard of a tracing for a Railroad. The land between the Igbodo settlement and the land in dispute is used by Akuku and Elabor people. Akumazi has an Obi—the Plaintiff. Onitsha Ugbo has an Obi. Obior has an Obi. Igbodo has no Obi but Chief 30  
Iyeke. They have no Obi as they have come from different places.

*Cross-  
examina-  
tion.*

*Cross-examined :*

*Q.* You said earlier than Moseli and Zemife and the Obi of Igbodo gave the land to Isiah. What did you mean by Obi of Igbodo ?

*A.* I made a mistake. The Obi is our leader. We sued the Defendant as head of his people of Anipaku. We have taken action against Chief Iyeke as he is the head of Anipaku.

*Q.* Why have you not sued Zemife and Moseli ?

*A.* Because Iyeke is their head. Zemife is from Ndogu. Some part of Ndogu come from Mbiri. All the people of Ndogu come from Mbiri 40  
and not merely just a part. Anipaku people come from Onitsha Ugbo. Zemife comes from Ndogu. Moseli comes from Ndogu. I said that Zemife, Moseli and Iyeke gave Isiah land. I do not know whether they gave the land to Isiah. My father was alive then and was the head of Akuku Akumazi. Obi Osagie I placed Agbonta on the land to watch it so that none would cut Timber there unknown to us. I do not know when Isiah went to the land. I first saw Isiah on the land in 1947. I gave evidence before Mr. Justice Reece.

Q. Did you not say that Isiah went on the land in 1945 ?

A. Yes I did.

Isiah was then cutting timber. We left the matter because the late Obi was ill, after he went away, the present Obi took action. The present Obi was Sanitary Inspector at Akumazi Uno where his father was living. We all heard that Igbodo people were cutting timber in 1945. We did nothing because the Obi was ill. I saw Zemife and Moseli there then. I cannot tell whether Agbonta made any report or not. We call Ishan people Ndi Isa. Ugboko is the word for forest. We used to call the land in dispute Ugboko Isah. I do not know my age. I do not know Ekumeku disturbance. I heard the story but do not know when it happened. I cannot tell whether I was born then or not. I grew up to know Igbodo people at their present place my grandfather told me about them. I went with the Surveyor to show him the boundary as told me by my father. My father died in 1948. I showed the Surveyor our Farms. I have one Farm. Our people have many farms. We have farms in the land in dispute. I can read a plan. I have a yam farm. I have Casava, Coco yam and yam. The land between Igbodo people and the land in dispute belongs to Elabor and Akumazi people. Akuku and Onitsha Ugbo have boundary. But we have no boundary with Igbodo because they are strangers. They do not pay tax to Akumazi people. Elabor gave land to C.M.S. and not Igbodo. There was a Court at Igbodo when there was none at Akumazi. We used to go to Court at Igbodo.

*Cross-examined :*

I am the Village Head and not the Obi of Akumazi. We called the land Ugboko Isah because it was close to the boundary with Ewohimi and Epon who are Ishans. Moseli and Zemife are not important people. Many towns used to attend the Court at Igbodo at the time. It was used for the whole area. The present Obi in 1945 lived at Akumazi and then had no say in the affairs of the Town.

Adjourned to the 26th.

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 19.  
Ajei  
Josiah Ofo  
(recalled),  
25th March  
1952,  
Cross-  
examina-  
tion,  
*continued.*



*In the  
Supreme  
Court of  
Nigeria.*

No. 20.

**EVIDENCE of John Ifejioku.**

*Plaintiff's  
Evidence.*

Resumed : Wednesday the 26th day of March 1952.

Parties present.

Court constituted as at 25.3.52.

Plaintiff's Case continued.

No. 20.  
John  
Ifejioku  
(recalled),  
26th March  
1952,  
Examina-  
tion.

THIRD WITNESS. JOHN IFEJIOKU s/s on the Matchet in Ibo.

I am a native of Onitsha Ugbo, Chief and Council member. I am a titled man. Onitsha Ugbo belongs to the Eze Chima Clan. Obior belongs to the same Clan. Akumazie is a separate Clan. The people of Igbodo are settlers from various places, Idume Obior, Idume Ozei and from Obior, Ndobu, Agba Onitsha Ugbo. Some of the Ndubu people are from Mbiri but the Ndubu people are all Eze Chima. Anieyime is also another quarter of Igbodo. They come from Uteh Ogbeje. Anikpaku people are also interlocked with Aniyeme. Anikpaku is an Ishan name and they must have come from Ishan. They are the smallest of all the Clans in Igbodo. Sometime ago the people of Ndobu all returned to Onitsha Ugbo and stayed there for some years, but when they found that their Plaintain crops did not thrive well they returned to Ndobu. The ruins of their habitation at Onitsha Ugbo is still in existence. There are some Agba Ndobu people still at Onitsha Ugbo. The Ndubu people have the same system of titles with us. People of Eze Chima descent who live at Igbodo have the same title with us. The others of Igbodo who are not of Eze Chima descent do not take the same titles as we take at Onitsha Ugbo. Igbodo people live on land belonging in part to Akumazi and in part to Onitsha Ugbo. The Mozei Ndomobior Anieyemi and Ankpaku live on Onitsha Ugbo land. One man called Ogbede from Obior came to live in that bush. We are brothers with Obior as we all descent from Eze Chima. Later one Ozei joined him from Obior. Hence we have Idume Obior and Idume Ozei. Later Ndubu joined them. Anieyen from Uteh Ogbeji came and lived with them. Later one Ikpaku a hunter from Ishan came and lived with them. Anikpaku did not hail from Onitsha Ugbo but the present Chief Iyeke is related to us.

We have a boundary with Akumazi. It starts from the Abosi tree (Nemonicha) juju. The boundary with Ewohimi Akumazi and ourselves meet at Nemonicha which is a juju. Nemonicha means "mother of Onitsha." I know the late Obi of Ewohimi. He died about three years ago. He was a witness for Akumazi in respect of this land at Asaba about four years ago. He is now dead. I know the present Obi of Ewohimi. He is a young man. The boundary with Akumazi runs from Nemonicha Igedu tree, to another Igedu tree Efume Tree, Efume tree and from thence to a footpath to Abona tree to Oniye market where there is an Egbu market and from thence to an Ufi Tree on the main Asaba Benin Road. I know Idumije Ugboko. They are dwelling on Onitsha Ugbo land. They came from Idumoje Ona. We have a boundary with the latter on the Asaba side. The Idumije Ugboko still have a quarter

at Idumuje one called Imegbe. The present Obi of Idumije Ugboko is Justin Obi Nwoko. He gave some of our land to Rev. Martin about two months ago, but we asked Martin to leave the land and he did so. Obi Nwoko does not own the land and so has no right to give it away. We call our land Ugboku Uku and the Akumazi people call theirs Ugboku Isah. I know Isiah. He is a Timber Contractor. He began felling trees on Akumazi land. Since this case, he has now come to our land. I do not know whether he has felled timber anywhere else.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 20.

John  
Ifejioku  
(recalled),  
26th March  
1952,  
Examina-  
tion.  
*continued.*

Cross-  
examina-  
tion.

*Cross-examined :*

- 10 We have an Obi at Onitsha Ugbo. He is the paramount head. He is a young man. He has a meeting with the C.M.S. people today. He had a Town meeting yesterday. He used to come for this case. He did not come for it in December. I came. The people of Anikpaku come from Ishan side and not from Onitsha Ugbo. I have told the Court exactly what I told the Court in December. I did not mention last time that some Igbodo people emigrated from Ishan. We have Okpala title. Anieyere people have them too, but they perform theirs apart from us. The Igbodo people were already settled on the present site before I was born. Igbodo people do not pay tax to us but to the Ishan Treasury.
- 20 Idumeje Ugboko pay tax to Ogwashi Uku. I have seen them bring yam and Palm wine to my father who was the Obi as tribute. Anaoje quarrelled with Igbenabo about Odogwu title. The title was given to Igbanabo Anaoje got annoyed and came to us and was allowed to reside in our bush. I used to farm on the land before they arrived there. I do not know when Isiah entered the land to fell timber. The next place from Idumoje Ugboko is Ewohimi but the Idumoje Ugboko people live on our land.

The Akumazi, Onitsha Ugbo and the Ewohimi people placed Nemon Onicha on the spot where it now lives.

*Re-examined :*

- 30 We still have our ancient path to Ewohimi. The N.A. road is shorter. Idumeje Ogboko people and ourselves farm on the land between us and Ewohimi. We are not driving them from the land but they will not be allowed to make use of our bush.

Re-  
examina-  
tion.

No. 21.

**EVIDENCE of Okia Ikede.**

No. 21.  
Okia Ikede,  
26th March  
1952,  
Examina-  
tion.

FOURTH WITNESS OKIA IKEDE S/S on the Matchet in Ibo.

- I am living at Idumobia Igbodo. My great grand father lived there before me and I was born there. The first man to settle there was Ossian Ogbede. He came from Obior. When Ossian came he started to farm.
- 40 He planted a leaf called Igbodo used for thatching houses. He had a son Ojie begat Okoto and Ekediachie who begat me. The other quarters

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 21.  
Okia Ikede,  
26th March  
1952,  
Examina-  
tion,  
*continued.*

are Idumozie, Anieyeme, Ikpeku, Ndobu and Elabor. Idumozei come from Obior, Ndobu from Agba Onitsha Ugbo. Anieyemi from Uteh Ogbeji. Anikpeku from Ishan Elabor from Akumazi. We live on Ezechima land. Onitsha Ugbo and Obior belong to Eze Chima Clan. We have always used land in common. Some part of Anikpaku live on Eze Chima land and the other part on Akumazi land. Idumozei and Idumobior pay tax to their Elders. Obior our original home is in Asaba Division. My quarter in Idumobior pay tax to Ogwashiku Ankpeku people pay tax at Agbor. Apart from the fact that the Anikpaku people live with us at Igbodo, we have nothing in common with them. We have 10 things in common with Idumozei and Idumo Obior. I do not know where the Elabor people pay their tax. I know the boundary between Eze Chima land (Onitsha Ugbo) and Akumazi. It starts on the main road with Ufi tree thence to the Olie Market thence to an Agbona tree. The distance from my house to the Market (Oniye) is about the distance of this Court to the Garage (about 100 yards). I know C.M.S. School at Agbodo. It is on Akumazi land. The first School was built on my father's land. The smallest quarter in Igbodo is Anikpeku.

Cross-  
examina-  
tion.

*Cross-examined :*

I am called Okia Ugboko as well. Ugboko was my father and 20 Ekadiache was my grandfather. I answer to my grandfather and Father's name. Assomo is my mother and a native of Akumazi. She is from the same quarter as the Plaintiff the Obi. I lived at Akumazi for seven years and nine years ago returned to Igbodo. I have a daughter who had three children. I am not a Christian. I am a Titled man. I am an Okpala. The title was conferred upon me by the Obi of Obior. They know of it at Igbodo. My ancestor founded Igbodo. I know Ofoku. He did not ask the Obi of Igbodo to allow us to stay at Igbodo for a consideration. I know of no agreement to that effect. There has never been an Obi of Igbodo. Iyeke is known as a Chief. He is not known as an Obi. I knew 30 that there was a Court attended by all at Igbodo. I do not know whether Chief Iyeke sat there. My father used to go. Obi Akumazi sat there. We pay our tax to our Elders and they pay to Agbor. Witness changes. I do not know where the tax is taken to finally. The area where we Idumozei and Idumobior live belongs to Eze Chima. The land belongs jointly to Onitsha Ugbo and Obior. We do not pay any tribute to Onitsha Ugbo. We have no boundary with them because we are one. I have heard about Isiah. I know him. I know his house on the main road. I saw Isiah constructing the road from the main road close to the Ufi tree on to the land in dispute. I know the first C.M.S. School at Igbodo. 40 It was not close to Chief Iyeke's Palace. I do not know that he gave the land to the C.M.S. The Church is not close to his house either. I do not know that every Obi of Igbodo comes from Anikpaku. I know Unakpa Osu. He is my half-brother. I was asked by my village head to come and testify. Benigbogo is the Village head. He is an Old man. He is older than Chief Iyeke. Ifeosa is next to the village head followed by Ebagu. I have come to tell the truth. At this stage the Plan of the Land is admitted by consent of Counsel on either side. Marked Exhibit "1."

No. 22.

## EVIDENCE of John Iyase II.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 22.  
John  
Iyase II,  
26th March  
1952,  
Examina-  
tion.

FIFTH WITNESS JOHN IYASE II s/s on the Bible in English.

I am Chief at Ekpon. I am a Council member as well. There is no boundary between Ekpon and Ewohimi. We are one people and have one Treasury. We belong to the Ishan Division. We have a boundary with Obi Akumazi. We have a juju pot called Nemo Onicha. There is an Abosi Tree on the spot and from there to an Eze Agba tree and from thence to an Nkata Tree. We call our own land on the boundary Ugboko  
10 Uku and the Akumazi people call theirs Ugboku Isa. Ugboku Uku means in our language "Distant Ugboku." We have no boundary with Igbodo. We have a boundary with the Mbiri people on the West near a stream called Iye Ofia. On the east we have a boundary with Onitsha Ugbo and Idumeje Ona.

*Cross-examined :*

I became a Chief two years ago. I became Iyasere two years ago. My father was Iyasere of Ekpon before me. My father died in 1942. I gave evidence in this Court in December. I became Iyasere after my father's death. Counsel reads his last testimony to him.

Cross-  
examina-  
tion.

20 I told the Court last year that my father was alive but was ill and so I had come to give evidence. My elder brother is unable to come. He is the Iyasere I was at home doing no work last year. I am a Farmer. I went to the Baptist School at Ekpon. I passed Standard 6 in 1948. I am approximately forty. My School Leaving Certificate was to the effect that I was 25 when I passed standard six. We have Onogie at Ewohimi. He is an Ex-Service Man. We have no boundary with Ewohimi. We farm together. There is an Uka Tree on the boundary. We have a boundary with Akumazi at the Abosi tree and with no other people there. We have a boundary with Idumije Oma near the Uka tree.  
30 We have a boundary with Mbiri at a Stream Iyi Ofia. There is a Camp there called Yama. Nothing else on the boundary apart from these two. The Onogie of Ekpon called Akpon is alive. He ranks with Obis in other parts of the Country.

*Re-examined :*

I am Chief John Iyase II. My elder brother is Chief Iyase I.

Re-  
examina-  
tion.

*In the  
Supreme  
Court of  
Nigeria.*

*Plaintiff's  
Evidence.*

No. 23.  
Joachim  
Adigwe,  
26th March  
1952.  
Examina-  
tion.

No. 23.

**EVIDENCE of Joachim Adigwe.**

SIXTH WITNESS JOACHIM ADIGWE s/s on the Bible in English.

I am District Clerk Agbor. I have a copy of a report of the settlement of an Inter Tribal Boundary Dispute with a Plan by Mr. Spottiswoode. Idigbe objects to the Report and Plan go in.

**REASONS**

*Report :*

It is a report of proceedings between an Ishan tribe and Ibos of the Asaba Division purporting to fix boundaries—between these two tribes 10 *inter se*.

The issue now is as between two tribes of the Asaba Division.

As regards the Plan Section 9 of Cap. 212 of Laws of Nigeria.

*Mbanefo :*

I refer the Court to Cap. 95 Inter tribal Boundary Settlements. Spottiswoode held the Inquiry under the Ordinance. The Plan is part of the Record of the proceedings and is a documentary representation of the Boundary demarcated as a result of the Inquiry.

The parties to the present case were parties to the proceedings.

The Plan is part of the Record Section 9 of Cap. 212 does not apply. 20

I rule that the document is admissible as well as the Plan. Exhibit " 2."

Cross-  
examina-  
tion.

*Cross-examined :*

I produce and tender Scallors Plan and Report.

Mbanefo objects stating that his Clients were not parties to the proceedings.

Idigbe cites 2 W.A.C.A. page 380 *Kobina Ababio II* versus *Priest-in-Charge Catholic Mission Apene*.

The Document will be admitted marked Exhibit " 3."

Close of Plaintiff's Case.

Adjourned to the 27th.

(Sgd.) STEPHEN PETER THOMAS.

30

## DEFENDANT'S EVIDENCE.

No. 24.

EVIDENCE of George Obianwu.

Resumed : Thursday the 27th day of March, 1952.

Court constituted as at 26/3/52.

## DEFENCE

FIRST WITNESS GEORGE OBIANWU S/S on the Bible in English.

I am Licensed Surveyor living at Benin. In 1949, I went to Igbodo and did some work for them. I made this Plan. It is a Plan of the land in dispute between Obi Osagie II and Chief Iyeke. It is the entire area surveyed by me that is in dispute. The colouring in yellow indicates the portion claimed by the Akumazi people as in dispute and the red colouring land belonging to Akumazi but not the subject of this action and the colouring in green indicates land of the Igbodo people. I saw all the sites indicated to me. I see Exhibit " 2."

Spottiswoode map. It is a sketch map traced by Cole. I see Exhibit " 1 " and comparing it with the Map Exhibit " 2." The relative position of Nemo Onicha juju to Isiah's Camp is exactly North of Isiah's Camp as shown in the map Exhibit " 2." It is North. In Exhibit " 1 " there is a spot shown as juju pot. In that Exhibit it is East of Isiah's Camp. I produce and tender my plan of the land in dispute. Admitted Exhibit " 4."

*Cross-examined :*

The sketch Exhibit " 2 " is made by a Licensed Surveyor Mr. Cole. He signed the original which must be somewhere. It was traced in part from a plan made by Mr. Cole. The whole of it was not traced from Mr. Cole's Plan. When I was under the Government Mr. Cole was asked to make a reconnaissance Survey to enable the Railway Department to know the position of Railway lines. I left the Service in 1945. Cole's plan was made between 1935 and 1939. He had the contract then.

Exhibit " 1 " Plaintiff's Plan. I see the junction 5 miles just above U.A.C. Camp. The distance from that junction to the U.A.C. Camp is about 1,000 feet. The distance from that junction to the juju pot is about 8,000 feet.

The same distance on Exhibit " 2 " on the scale of that plan is 4,000 feet. The two plans are not on the same scale. One is double of the other. I can reconcile it. I see the spot on which the Ekan tree is shown in Exhibit " 2 "; the distance from the junction to that point is 8,000 feet. Ekan is North East of the junction. On Exhibit " 1 " the bearing from mile 5 to the juju pot is almost East of that point. I see point Efume on

*In the  
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No. 24.  
George  
Obianwu,  
27th March  
1952,  
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tion.

Cross-  
examina-  
tion.

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Supreme  
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*Defendant's  
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No. 24.

George  
Obianwu,  
27th March  
1952,  
Cross-  
examina-  
tion,  
*continued.*

Exhibit "1." It is South East to almost East of the junction. I was speaking of Efume (ancient Boundary). The variation between Magnetic and true North can be anything. It depends on the compass. Exhibit "2" indicates true North and Exhibit "1" shows True North and Magnetic North. If Exhibit "2" is superimposed on Exhibit "1" the juju pot will be North East on Exhibit "2." According to Exhibit "2" Akumazi is nearest to the 5 mile junction.

On Exhibit "4" I see Nemoniche. It is not the same as Nemoniche in Exhibit "2."

Q. Why was the yellow line on Exhibit "4" not completed right 10 round.

A. Because the areas left out were outside the land in dispute.

*Re-Examined :*

Re-exami-  
nation.

No conventional signs of Town on Exhibit "2." There are no boundaries shown either apart from those in red.

Ekan tree in Exhibit "2" is identical with Juju pot in Exhibit "1."

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No. 25.

Obi Iyeke,  
27th March  
1952,  
Examina-  
tion.

No. 25.

**EVIDENCE of Obi Iyeke.**

SECOND WITNESS OBI IYEKE s/s on the Matchet in Ibo.

I am the Obi of Igbodo. I live at Igbodo. I have been Obi for 20 sixty years. I know the bush in dispute. I am the owner. It belongs to Igbodo and not to Akumazi. We have a C.M.S. Church built at Igbodo. Self and the Igbodo people gave the site to the Mission. The Mission has been there for about forty years. I am the 18th Obi of Igbodo. Anikpeku people first got to Igbodo. The Akumazi people were not there then. In fact there was no one on the site. There are six Quarters at Igbodo. They are Idumobior, Idumoze, Anieyene, Anikpeku, Ndobu and Elabor. Anikpeku people came from Benin. Idumobior came from Obior. Idumoze came from Obior. Aniyeri come from Uteh. Ndobu from Ehw in Benin. Elabor from Uku in Ubiaja. Anikpeku people gave land 30 to them and other quarters as they arrived on the scene. Our people live in that bush. I can name them (1) Mozele Zemife, Kwhodu, Iroro, Ozu Onitsha Eneke, Agbonta and others. They have lived there now for about forty years. Agbonta is a native of Akumazi but he sought refuge there. He is living with Mosiele who is his relation. I know Isiah. He lives on the land in dispute and has built a house there. He cuts timber there. Self and the elders of Igbodo granted him permission to live there and cut timber. This was about eight years ago. Royalties in respect of Timber cut on the land were paid to us on two occasions before the Akumazi took action. I know Obi Osagie I deceased. He 40 was my close friend and father of the present Obi the Plaintiff. The late

- Obi used to attend Court at Akumazi. I was installed Obi of Igbodo before the late Obi was installed at Akumazi. He was sick for only two weeks before he died and I paid him a visit during his illness. We have boundary with the people of Onitsha Ugbo, Obior Okporo, Owerri Akumazi, Akuku Akumazi, Mbiri, Akpu, Ewohimi, Idumije. An Obobo Tree marks the boundary between us and Idumije Ogo. There is one Nemonicha a juju marking this boundary also. There is also one Utietie tree on this boundary before one gets to Nemonicha. An Uzi tree and a valley called Iyarra mark the boundary between us and the Ewohimi people.
- 10 One Okwe tree is on the road marking the boundary between us and the Epon tree. The road is the one used for evacuating timber from Isiah's Camp to Amahor. An Ogiri tree marks the boundary between us and the Mbiri. Nkwo trees also mark the boundary. The boundary between us and the Akuku Akumazi is indicated by an Obe Tree. There is an Ozi tree close to it also. There is an ant hill close to the Obe Tree. There is an Agbo tree marking the boundary between us and Owerri Akumazi. There is an Okpu tree marking the boundary between us and the Obior people. We go to Obior by a footpath from Igbodo. We have a boundary with Onitsha Ugbo. It is an Efume tree on the Asaba road. It is not
- 20 true to say that there is no Obi at Igbodo. It is well known that I am the Obi of Igbodo. We call the land in dispute Igboko Igbodo and at times Igboko Iyara. The Akumazi people came from Mbiri. We preceded them to the area. The people of Akumazi did not at any time give any land to the people of Igbodo. We did not receive grants of land either from the people of Onitsha Ugbo or the people of Akumazi. Ndobu people did not at any time migrate to Onitsha Ugbo and then return to Ndobu.

*Cross-Examined :*

- We came from Benin. We used the old road to Agbor through
- 30 Mbiri. The people of Mbiri were already there. Our forefathers actually made the journey. We left no relations at Mbiri. Our people left Benin on account of the war. The Benin people were chasing us. They stopped at Igbodo because there was no one there. They planted a leaf Igbodo with which they thatched their houses. Over 140 people pay tax at Anikpeku. We are not the smallest unit at Igbodo. Idumobior is the smallest. We have a boundary with Obior and with Akumazi. Elabor is a quarter of Igbodo. I cannot say whether Elabor pay tax to Akumazi. They pay to Agbor. Anieyime come from Uteh Ogbige. They are about eight miles from Uteh Ogbije. We have been there for a long time.
- 40 My father gave Elabor the land on which they are now living. The C.M.S. Church is built on Ndobu land and not on Elabor. The first one was built on our land between Elabor and Ndobu. Elabor live on Igbodo land. Amukpeku live on Igbodo land. An Igbodo man can build anywhere Igbodo land on the Main Road. But if he wants to build in a certain quarter he would have to get permission of the Quarter. We gave Elabor people their present site when they came from Uku. Akumazi do not own the land. Idumobior and Idumozei live nearest to Obior of all the quarters of Igbodo. Ndobu did not come from Agba Onitsha Ugbo. I have never heard of any such story. My mother came

*In the  
Supreme  
Court of  
Nigeria.*

*Defendant's  
Evidence.*

No. 25.  
Obi Iyeke,  
27th March  
1952,  
Examina-  
tion,  
*continued.*

Cross-  
examina-  
tion.



*In the  
Supreme  
Court of  
Nigeria.*

*Defendant's  
Evidence.*

No. 25.  
Obi Iyeke,  
27th March  
1952,  
Cross-  
examina-  
tion.  
*continued.*

from Umunede. Moka was my father and was an Obi. Anieyime came from Uteh. I was Obi long before the Government arrived. I know the juju Nemonicha. It belongs to Idumoje people. I remember Mr. Spottiswoode. He took evidence from me. Isiah's Camp was founded by Isiah. He met Moseile and Zemife farming there. No one gave us land. Our fathers cleared the bush.

*Not re-examined.*

No. 26.  
Godfrey  
Aslekwa,  
27th March  
1952,  
Examina-  
tion.

No. 26.

**EVIDENCE of Godfrey Aslekwa.**

THIRD WITNESS GODFREY ASLEKWA S/S on the Bible in Ibo.

10

I am a native of Mbiri. I am the Obi of Mbiri. I know the Plaintiffs and the Defendants. I know the land in dispute as I have a boundary with the people of Igbodo. Iyi Odiji at Nkpitimi is the boundary between us at Mbiri and the Igbodo people. It is further indicated by Origi tree and Nkwo trees. The land in dispute does not belong to Akumazi. It belongs to the Igbodo people and the Mbiri people. My portion of the land ends on the boundary.

Cross-  
examina-  
tion.

*Cross-examined :*

Spottiswoode came to enquire about the boundary between us and Epon. He wanted also to know about the boundary between us at Igbodo. I became Obi 12 years ago. I am not related to Akumazi. Mbiri and Akumazi are related. We do things together. But they left us and went away. I do not know when they left. 20

Q. Where were the Akumazi people when you did things together ?

A. They were in our town. I do not know where the Igbodo people come from. I was not told they came from Mbiri. I have heard about Eze Chima. I do not know where we come from. We are in Agbor district. I am next to the Obi of Agbor. I know Akuku Akumazi. We will pass through Umunede to Akuku Akumazi. Through the bush one would have to go through the road on the boundary between us and Igbodo. Nkpitimi is not on Akuku Akumazi Land. 30

Q. You have been brought here by Igbodo people to talk about something you know nothing of ?

A. No.

Q. When you and the Akumazi people were living together who was using the land between your boundary and the present Akumazi boundary ?

A. I do not know. We were using it for farming. If you and the Akumazi people were doing things in common were the Akumazi not farming on it.

Yes they were.

The Akumazi having left us have no right to the land because we have the Igbodo and the Umunede between us and the Akumazi.

10 *Cross-examined by Court :*

I am thirty years old.

How is it you do not know where your people come from.

I did not enquire.

Q. How did you come to know the History of this land including that of the Igbodo and Akumazi people.

I used to see the Igbodo people working on the boundary. We are friends but not related.

*Not re-examined.*

*In the  
Supreme  
Court of  
Nigeria.*

*Defendant's  
Evidence.*

No. 26.

Godfrey  
Aslekwa,  
27th March  
1952,  
Cross-  
examina-  
tion,  
*continued.*

No. 27.

20

EVIDENCE of Justin Obi Nwoko II.

FOURTH WITNESS JUSTIN OBI NWOKO II S/S on the Bible in English.

I am the Obi of Idumje Ugboko. I am a member of the Western House of Assembly. I was installed on the 1st day of September 1929. Idumoje Ogbuoko is not of recent settlement. Onitsha Ugbo did not give us our present settlement. I know the land in dispute and the parties. The land in dispute belong to Igbodo Onitsha Ugbo have no boundary with the land in dispute. We have a boundary with Igbodo along the land in dispute. There is a road between Idumuje Ogboko and Igbodo commencing from the Nemonicha juju. There was an Isikara tree destroyed by fire from thence to an Obobo tree. Isiah's road passes by this tree. My ancestors placed the Nemonicha juju on the land. We have a boundary with Onitsha Ugbo about nine miles away.

30

*Cross-examined :*

I remember the Enquiry before Spottiswoode and Scallon. I made no statement to Spottiswoode. I took him to the Nemo Onicha juju on the East near the Abosi tree. I told Spottiswoode that it was my boundary with Epon, Scallon has merely given an opinion in his report. Some of my people came from Idumije Ono. My family lived there. I cannot

No. 27.  
Justin Obi  
Nwoko II,  
27th March  
1952,  
Examina-  
tion.

Cross-  
examina-  
tion.

*In the  
Supreme  
Court of  
Nigeria.*

*Defendant's  
Evidence.*

No. 27.  
Justin Obi  
Nwoko II,  
27th March  
1952,  
Cross-  
examina-  
tion,  
*continued.*

tell the number of Taxable persons at Idumoje Ugbo. Reverend Martin has not been driven from the land that I gave him. We do not live on Onitsha Ugbo land. I am not giving this evidence to get the support of the Igbodo people in claiming Onitsha Ugbo land. I saw Spottiswoode looking at a Plan. I went with the District Officer to the Ekan tree. It is some distance from the Nemonicha. I cannot tell the distance. I did not measure it. I took the District Officer to the spot near Ekan tree. I know Igbodo. I know the quarters. I know Elabor as a quarter of Igbodo. I know Idumobior, Ndobu, Anikpeku, Aniyeme. I know all the Quarters, I know Onitsha Ugbo. I know Agba Onitsha Ugbo. 10

My great grandfather Obi Nwoko I was the founder of my place. He was followed by Ahamoge. There was a regent. I am the fourth generation. I cannot tell whether we are a much older people than Igbodo or not. Spottiswoode came to make a boundary between Ishan and Asaba. People who had land in the vicinity came to give evidence.

Re-  
examina-  
tion.

*Re-Examined :*

During the Enquiry before Scallon ; I went, Igbodo went, but Akumazi did not go. Ewohimi and Epon were represented. Reverend Martin is still on the land given him. 20

No. 28.  
Moseli  
Abohu,  
27th March  
1952,  
Examina-  
tion.

No. 28.

**EVIDENCE of Moseli Abohu.**

FIFTH WITNESS MOSELI ABOHU S/S on the Matchet in Ibo.

I am a native of Igbodo. I am a Farmer. I know the land in dispute. I have been farming on this land and live there. I have lived and farmed there about 40 years. I know Isiah's Camp. Isiah came and met me there. The distance from my house to Isiah's is about the distance from this Court to the Rest House (100 yards). Zamife lives on the land also my son Ozo, Kufudo Iroro, Agbonta came and joined us there. He is a native of Akumazi. I gave him land to stay. None of us have ever paid rent to Akumazi. We have never paid them tribute. Akumazi people have never disturbed me on the land. Igbodo has an Obi. He is Iyeke. 30

Cross-  
examina-  
tion.

*Cross-Examined :*

I belong to Ndobu quarter of Igbodo. We came from Eko Ankpeku first settled in the area. Elabor live at Igbodo. They come from Uku. I did not go there to live after Isiah had got there. It is a big forest. I went there first and showed Isiah the trees. Agbonta came there 27 years ago. He is an Akumazi man. He met me there. Igbodo people farm in that area. We have boundary with Idumuje Gboko. 40

Nemonicha and Akpu tree are on the boundary. I know nothing about miles. Our boundary with Ewohimi is marked by Uzi tree and the valley Iyarra. An Efume tree marks the boundary between us and Onitsha Ugbo. The Efume is on the Main Road. We have no boundary with Onitsha Ugbo in the bush. Zemife went with me as also our children.

*Not re-examined.*

*In the  
Supreme  
Court of  
Nigeria.*

*Defendant's  
Evidence.*

No. 28.  
Moseli  
Abohu,  
27th March  
1952,  
Cross-  
examina-  
tion,  
*continued.*

No. 29.

EVIDENCE of Agbonta.

No. 29.  
Agbonta,  
27th March  
1952,  
Examina-  
tion.

SIXTH WITNESS AGBONTA S/S on the Matchet in Ibo.

10 I am a native of Akumazi. I am a Farmer. I live in Moseli's Bush. This is Moseli (fifth witness identified by witness). I have been there about 27 years. Zemife was already there when I got there. My three wives there so I left my home. I know Isiah Iyase. He came to meet us in the bush where he is cutting timber. After I had built my house, I told Moseli that I would go and pay my tax at Akumazi. He said that one pays his tax where he lives. That the land belongs to Igboodo and that I should pay my tax to him. Obi Osagie did not send me to the bush to look after the interests of the Akumazi people. I suffered at home and so I went there.

20 *Cross-Examined :*

I come from Isu—Ibe quarter of Akumazi. I lost three wives and many children at birth. I was related to Moseli and I was looking for someone to help me with my motherless children and so I went to Moseli. Moseli's wife is alive. He told me that the land belonged to Igboodo people. Isiah cuts Timber in that area. I do not work for him. I visited Akumazi to perform certain ceremonies about 10 years ago. When I finished the ceremonies I returned to the Bush. I farmed and fed my children. I will only return to Akumazi when my children are fully grown. I have four children. The first is 17 years ago. I took four children to  
30 the bush. They are still living. I had a farm at Akumazi.

Cross-  
examina-  
tion.

*Not re-examined.*

Adjourned to 28/3/52.

(Sgd.) STEPHEN PETER THOMAS.  
Ag. Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

No. 30.

**EVIDENCE of Ukakeke Esimoya.**

*Defendant's  
Evidence.*

Resumed : Friday the 28th day of March, 1952.

Parties present.

No. 30.

Onyiuke for the Plaintiffs.

Ukakeke  
Esimoya,  
28th March  
1952,  
Examina-  
tion.

Ajegbo for the Defendants.

Defendants' case continued.

SEVENTH WITNESS UKAKEKE ESIMOYA S/S on the Matchet in Ibo.

I am a native of Umunede living at Idumuobo Village of Umunede. I am over sixty years of age. I am a Farmer. I am Chief and a Court 10 Member. I know Obi Iyeke. I know Obi Akumazi. I know the land in dispute between the parties. The land is called Ugboke Igbodo. I know this land because we the people of Idumoba in Umunede go and farm on this land. Obi of Igbodo that is Iyeke permits us to farm on the land. We give him annual tribute of 25 yams and a pot of Palm wine. We have never been disturbed there by Akumazi people and have never paid tribute to Akumazi. I have never heard that the land belonged to Akumazi.

Cross-  
examina-  
tion.

*Cross-examined :*

Our Villagers are tenants on the land in dispute. We have land near 20 the land in dispute. We have no boundary with Igbodo but we farm on their land. We do not have to pass through Akumazi to get on the land in dispute because the Akumazi live in our rear. The Obi of Igbodo knows that we farm on the land. I have been coming to Court since the commencement of this case. I was asked to come by my village. The Obi of Igbodo knew that I was coming to give evidence. I have never been to the Nemonicha Juju. I have never been to the Ekan tree. I do not know where Efume and Ufi trees are. I know Isiah's Camp. We farm in the direction of Isiah's Camp. There is a footpath to the Camp. You do not have to pass through any towns when going on to the land 30 in dispute from Umunede. One walks straight from Umunede into the land in dispute. I know something about the land hence I came. We have a Regent. I am the most senior man in my village.

*Not re-examined.*

No. 31.

## EVIDENCE of Justus Omo.

*In the  
Supreme  
Court of  
Nigeria.*

EIGHTH WITNESS, JUSTUS OMO, S/S on the Bible in English.

*Defendant's  
Evidence.*

I am a native of Elabor Igbodo. I am a Chief and Farmer. I know the land in dispute. It is called Ugboko Igbodo. It belongs to Igbodo people. My ancestors came from Uku and were given our present land by Igbodo people. This was quite a long time ago. Our forefathers told us the story. I know where the C.M.S. have their Church and School. I am a Lay Reader of the C.M.S. Church. I am the Pastor's Warden of the  
10 Church. The land was given to the Mission by Obi Iyeke and the Elders of Igbodo. The former School was close to the Palace of the Obi and was moved to a site that can still be seen from the Obi's Palace. Obi Iyeke and the Elders gave this new site to the C.M.S. I have never heard that the spot belong to Akumazi.

No. 31.  
Justus  
Omo,  
28th March  
1952,  
Examina-  
tion.

*Cross-examined :*

Cross-  
examina-  
tion.

Elabor belongs to Igbodo. They have belonged to Igbodo since they joined us a long time ago. Elabor is not a quarter in Akumazi. We have a Clan Court at Elabor. The Court is not under the Obi of Akumazi. We come to Agbor on Appeal. We do not go to the Obi of Akumazi on  
20 Appeal. We told the Resident that we are not natives of Akumazi when we came to Agbor. We had never been under the Obi of Akumazi. He is only our relative in law. Our Ancestor got a wife from the Akumazi we are told. We were not under them. We appealed to the Resident about three years ago. We do not pay our Tax to the Obi of Akumazi. We used to bring our Tax to Agbor. I know Chief Odogu of Idumobior. I know Agborgimoma. I do not know when any action was taken against him. I know Obi Iyeke. I am a part of Igbodo Clan. I know Chief Okputu of Elabor. He was formerly of Elabor and later ran away to Akumazi. We are friendly with the Obi of Agbor.

30 Q. I suggest to you that you do things in common with the other three quarters of Akumazi ?

A. No. We have nothing in common with Akumazi. The land on which we live belongs to Igbodo and not to Akumazi. Each Village in Igbodo has a Clerk collecting its taxes which is then taken separately to Agbor. We have a separate Court and come to Agbor on appeal. I remember Resident Pender. He dealt with the differences between us and the Obi of Akumazi. The Obi of Akumazi was asked to go and apologise to our people. He was told to do so in this Court. He has not done so up to now. The Obi said that we did things in common and we denied  
40 the assertion. The Resident did not insist that we were to go back to Igbodo. We told the Resident that we were not prepared to accept his advice that we were to go back to Akumazi. We are related to a quarter in Igbodo. The question of Appeal from Elabor Court was discussed and we were told to appeal to Agbor.

*In the  
Supreme  
Court of  
Nigeria.*

**No. 32.**

**EVIDENCE of Isiah Iyasere.**

*Defendant's  
Evidence.*

NINTH WITNESS, ISIAH IYASERE, S/S on the Bible in Ibo.

I am a Contractor (Timber) for U.A.C. I know the land in dispute. It is known as Ugboko Igbodo. I cut Timber in that bush.

No. 32.

Isiah  
Iyasere,  
28th March  
1952,  
Examina-  
tion.

Q. Who gave the land to you ?

A. Obi Igbodo and the Elders.

Q. When did you go on the land ?

A. I went there in 1944.

Q. Was any one on the land when you got there ?

10

A. Yes. One Mosele, Zemife and Agbonta. They are all natives of Igbodo with the exception of Agbonta who is a native of Akumazi. I have a Camp on the land in dispute. Mosele and others live and farm on the land.

Q. How do they go from Igbodo to the Camp.

A. They used an old footpath used by farmers. It is still there. It starts from the old School site at Igbodo.

I constructed a road from the Asaba Benin Road to the Camp in the interest of my work. I commenced making the Road in 1944. I know the Obi of Akumazi. I have known him for over 20 years. He came and vaccinated me and others at the Camp in 1944. (Witness shows the scars.)

He visited the camp again in 1945 and 1946.

*By Court :*

I am a native of Igbodo.

Cross-  
examina-  
tion.

*Cross-examined :*

The Obi of Akumazi was a vaccinator at the time he visited the Camp. There are several houses in the Camp belonging to me, including a Storey Building since I commenced operations in 1944. There are over 60 persons living in my Camp. I only cut Timber in the bush. Timber is cut in Ishan Forest and my European Employer lives in Ishan. My Camp is older. I started operations on the land in dispute before those in the Ishan Camp which were commenced in 1945. I had cut timber from Benin Bush before and not from Ishan. I was away at Sapele when Spottiswoode came to my Camp. I only heard of his visit. I heard that he surveyed the bush. I know the Ekan tree. I was not told of Boundaries fixed by Spottiswoode.

*Not re-examined.*

**No. 33.**  
**EVIDENCE of Godwin Iyeke.**

*In the  
Supreme  
Court of  
Nigeria.*

TENTH WITNESS GODWIN IYEKE S/S on the Bible in English

I am a Court Clerk of the Native Court Igbodo. I produce and tender Native Court Record Book No. 2 for the year 1918. At pages 135-136 the President is shown as Obi Iyeke.

Admitted marked Exhibit " 5."

*Cross-examined :*

10 The Court Clerk before me was Obed Okonye. This is a certified Copy of a Judgment in the Igbodo Native Court. I produce and tender it. Admitted Exhibit " 6."

I recognise the signature on this document. It is that of Greg Edozien Tax Clerk of Agbor District.

Ajebbo objects to its admission on the grounds that Tax Clerk should have been called.

Objection upheld. Document rejected.

Onyiuke asks the leave of the Court to call the Tax Clerk.

20 Ajebbo objects on the grounds that Plaintiff's Case is closed, no new matter has been introduced. There is no necessity to tender the document. Its relevancy is not obvious.

*Onyiuke :*

I have closed my case. I am calling this witness to show that under Cross-Examination the Defendant's witness made a statement inconsistent with proved fact.

*Court :*

30 The question of the payment of Tax has not in my view arisen *ex improviso*. The Plaintiffs have not been taken by surprise. The issue on this point was quite obvious during the Cross-Examination of Obi of Akumazi by Defendant's Counsel and this witness should have been called before the Plaintiff's case was closed.

I will therefore uphold the objections of Counsel for the defence with regards to the calling of this witness.

Close of case for the defence.

Land will be inspected to-morrow.

Court will meet at Umunede on the 29th at 8.30 a.m.

Address by Counsel fixed for the 4th April at Warri.

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.  
28/3/52.

*Defendant's  
Evidence.*

No. 33.  
Godwin  
Iyeke,  
28th March  
1952.

Examina-  
tion.

Cross-  
examina-  
tion.



**NOTES of the Visit to the Land in Dispute on Saturday the 29th day of March 1952.**

No. 34.  
Notes of  
the visit  
to the land  
in dispute,  
29th March  
1952.

The Court including the parties and Onyiuke Counsel for Plaintiff and Ajegbo for the Defendants got to Akumazi about 9 a.m.

We walked from Akumazi and got on to the land in dispute at about 12.30 p.m.

There was no partition. The whole land was continuous.

The area in dispute is virgin Forest with a relatively small clearing close to the centre as shown on both plans where Isiah's Camp is situate as also the houses of Moseli, Agbonta and others. 10

Isiah's house is a modern storey building and Moselis is the usual wattle and mud hut plastered with red clay. He has Kola trees, pear trees (Native) and some citrous fruit trees. It is quite true that he might have been on the land about forty years. He showed me his farm about a quarter of a mile from his house. He was unable to show me the ancient foot path by which he came on to the land from Igbodo. It is possible that the present modern Road built by Isiah traverses this foot path or that he now uses and this modern road.

We motored from Isiah's Camp right down to Elabor first and then to Igbodo. 20

Apart from Moseli's farm on the land in dispute and close to his house I saw no other Igbodo farm in the area or adjacent areas.

On the contrary I was shown Akumazi farms by Aju and two or three ancient wells dug by his father and still in use. He pointed them to me in the presence of the Obi Igbodo who did not dispute the fact.

Of course this area was about a hundred yards from beginning of the area of the Land in dispute as agreed by both parties.

I saw the C.M.S. School at Elabor. I saw the Obi's palace and Igbodo Town which is about 8 or 9 miles from the land in dispute.

Akumazi is about the same distance or a little more but in a different 30 direction.

The Defendant pointed to a tree about 10 feet from his palace saying that the Akumazi people claimed land up to that point.

The Defendants did not show me any intervening land claimed by them between Igbodo settlement and the land in dispute.

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

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No. 35.

## COURT NOTES.

*In the  
Supreme  
Court of  
Nigeria.*

Friday the 4th day of April, 1952.

Balonwu for Counsel for Plaintiff and Defendant asks for adjournment till later in the day.

Application granted. Adjourned to the 5th April.

No. 35.  
Court  
Notes,  
4th April  
1952, 18th  
April 1952.(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

Resumed : Friday the 18th day of April, 1952.

10 Plaintiffs absent not represented.

Defendant absent. Idigbe appears.

Adjourned *sine die* for a date for addresses on either side to be agreed upon.

Costs in the cause.

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

No. 36.

## ADDRESS by Defendant's Counsel.

Resumed : Monday the 12th day of May, 1952.

20 Parties present.

Mbanefo with him Onyiuke for the Plaintiff.

Idigbe with him Ojiako for the Defendant.

No. 36.  
Address by  
Defen-  
dant's  
Counsel,  
12th May  
1952.*Addresses :*

Idigbe for the Defendant.

The Plaintiff's Claim is a Declaration of title for a parcel of land known as Igbokise (B) an account of all Royalties paid over to the Defendant.

(c) Injunction to restrain the Defendants and his agents.

*In the  
Supreme  
Court of  
Nigeria.*

No. 36.  
Address by  
Defen-  
dant's  
Counsel,  
12th May  
1952,  
*continued.*

Plaintiff has not only asserted ownership to the land in dispute but also to the land that the Defendants and his people are not residing at Igbodo.

Item 2 is an indication of Plaintiff's thirst for land, but he forgot about it during the trial.

Plaintiff's evidence poor and scanty—consists mainly of traditional History it is the practice of the Court not to grant Declaration merely on traditional title excepting where it is satisfactory and exclusive possession by Plaintiffs can be inferred.

Evidence of Plaintiff inconsistent. They have tried to prove that the 10 Defendants migrated from somewhere but so did the Plaintiffs. The Plaintiff himself that is the Paramount Chief testified that Anipeku a quarter of Igbodo and in fact the only quarter sued came from Onitsha Ugbo. John Ifejioku told us that Anipeku came from Benin. Both are witnesses to Plaintiff's case. According to Okia Ikediash (Witness for the Plaintiff), the Defendants came from Ishan. Johnny Iyashere testified no one else has a boundary with Ekpon at the Abosi tree excepting Akumazi. This is contrary to the Plaintiff's Plan Exhibit "1."

It has been proved that the witnesses had given made different statements before a former judge in respect of the same issues. 20

Johnny Iyashere is obviously a youth and had elders who could have been produced in court to testify. Nobody came from Mbiri to say that the Mbiris have a boundary with them. No other Monarch (traditional) has been produced by the Plaintiff, though he is a traditional Monarch.

Plaintiffs have not proved any acts of possession.

#### SPOTTISWOODE'S REPORT. INTER TRIBAL BOUNDARY REPORT.

I ask this Court not to treat this Report seriously. Cap 95 at Section 10 has not been complied with so far as the reports go. The Reports are of equal value. Either has not superseded the other. Not the business of 30 the Defendant to show why the Plaintiffs were absent in 1938. There was no trouble then. Trouble started 1947 and so in 1949 they took their chance when trouble brewed up. Spottiswoode was the Surveyor Exhibit "2" is of no value. It is incomplete without the map of Cole dated 30/12/49 referred to in the Report and the Plan Exhibit "2."

Plaintiff testified that Agbonta was his Caretaker on the land. The evidence of Agbonta must be compared against what the Plaintiffs said about him.

Akumazie said that they had given land to Elabor. That does not appear to have been borne out by the evidence. 40

There is the evidence of Moseli. His evidence was never shaken. He showed the court his Kola trees which have been bearing fruit. The whole case rests on purely question of fact. The onus on the Plaintiff is not a light one.

Ekpoe and Ita 11 N.L.R. 68/69. Kponugho and Udaja Vol. 2 W.A.C.A. 24 especially page 29. I refer the Court to *Iyasere Igwkwé* versus *Nanna W/9/40*.

Judgment 24th March, 1942.

I ask that the Plaintiff's action be dismissed. They are not entitled to the claim.

Mbanefo in reply.

10 I refer the Court to Exhibit "4." The Western Boundary edged in green is the whole of the land claimed by the Defendant. It was clear on inspection that they did not claim any of the lands between the green boundary on the West and the land in dispute. It is admitted by the Defendants that the Elabor people are Akumazi. If Elabor sought refuge with Igbodo, they would not do so just about a short distance inch away from where they had been residing formerly. As late as 1944 Igbodo people were trying to draw in Elabor people as is shown in the Native Court Judgment Exhibit "6." Elabor would not ordinarily attend court with the Akumazi Clan if they were not one and the same.

20 The Court can take Judicial Notice. The Schedule of the Native Courts Ordinance testifies to this fact. There is evidence that Elabor pay tax to Akumazi. The Elabors claim to be where they are as of right who then are the Igbodos? A portion came from Obior and the others from Akumazi others Onitsha Ugbo. I refer the Court to Defendant's Statement of Defence. They claimed no possession; they did not plead Laches or acquiescence. There are certain rights that can be exercised on the land of another and allowed.

No one minds if another farms on one's land. The classic case is *Kuma* versus *Kuma* 5 W.A.C.A. commencing from folio 4. I refer the Court to section 45 of the evidence Ordinance also section 145 of the same evidence.

30 Exhibit "2" is prima facie proof that we have boundary with Ewohimi and Ekpon. The Onus is on the Defendant to show that we have been divested of our ownership. Vol. 2 N.L.R.

I ask the Court to grant us the title that we ask. *Adu* versus *Kumar* Vol. 3 W.A.C.A. 240.

Adjourned to Monday 26th May for Judgment.

(Sgd.) STEPHEN PETER THOMAS,  
Ag. Puisne Judge.

*In the  
Supreme  
Court of  
Nigeria.*

No. 36.  
Address by  
Defen-  
dant's  
Counsel,  
12th May  
1952,  
*continued.*

No. 37.  
JUDGMENT.

Saturday the 21st day of June, 1952.

JUDGMENT.

The Plaintiff's Claim is for :—

(A) "Declaration of title to all that piece of land known as Ugboko Akumazi situate and being at Akumazi and more particularly delineated and shown on the plan to be filed by the Plaintiff."

(B) "On account of all royalties received in respect of the said land and payment over to the Plaintiff whatever may be found due to him." 10

(C) "Injunction restraining the Defendant from hiring out to timber contractors the forest on the said land and receiving royalties therefor."

Pleadings were ordered and duly filed.

The Plaintiffs case is that he is the paramount head of Akumazi and that he has brought this action on behalf of himself and the people of Akumazi.

2. That the land in dispute is edged Green on his plan Exhibit " 1 " 20 which was tendered in Court by Consent of the parties.

*Evidence :—*

3. Obi Osagie testified that he has boundaries on the North with the Mbiris, Akpu and Ewohimi in Ishan Division, on the East by the people of Onitsha Ugbo, on the West with the Mbiris and on the South by other lands of the Akumazi (Plaintiff).

He himself gave, in minute details, the boundary marks of the land as indicated in his plan; he moreover testified that his people of Akumazi and the people of Onitsha Ugbo own all the land between the land in dispute and those of the people of Igbodo the Defendants. He gave the 30 traditional history as far as he knew and said that he took this action because it had come to his knowledge that one Isiah a native of Ute-Ogbege built a Timber Camp on the land in about the year 1945 and had since been extracting Timber from the forest for the U.A.C. and that when he interviewed Isiah, the latter told him that the Defendant, Chief Iyeke, had leased the land to him. That he send messages to the Defendant but failed to get any satisfactory reply from him. That Chief Iyeke is an Anipeku man hailing from Onitsha Ugbo and now living at Igbodo. That the people of Igbodo belong to the Ezechima Clan, a different clan altogether from the Akumazi. That the Igbodos only recently settled 40 there from the surrounding towns and on land belonging to the Akumazi and Onitsha Ugbo. Chief Aji a native of Akuku Akumazi, a Sub-quarter of the Plaintiff community, testified in support of the Plaintiff.

Johnny Ufegioku a native of Onitsha Ugbo testified in support of Plaintiff's evidence with regard to the Eastern boundary of the land in dispute giving the traditional history with regards to the formation of the Igbodo settlement. He testified that he knew Isiah and that Isiah was felling trees on Akumazi land and explained why the Obi of Onitsha-Ugbo was unable to come to testify in Court owing to other pressing business.

*In the  
Supreme  
Court of  
Nigeria.*

No. 37.  
Judgment,  
21st June  
1952,  
*continued.*

Okia Ikede a native of Igbodo (Defendants Community) testified that he was born at Igbodo and lived there. He gave the traditional history of his people and testified that the people of Anipeku come from  
10 Ishan and that the Elabor people come from Akumazi. His reference to the Origin of the people of Elabor is significant and I will refer to it later. He furthermore said that they all belong to the Ezechima Clan, a portion settling on Ezechima land (Onitsha Ugbo) and some on Akumazi land. He gave the boundaries supporting Plaintiff's evidence.

John Iyase quite a young man gave evidence as representing the Ekpon and Ewohimi people whom he claimed as one. He gave his evidence in support of Plaintiff's northern boundary confirming Plaintiff's evidence with regards to the Mbiri, Ekpon, Ewohimi and Onitsha Ugbo. I must admit that he was rather comical in the way he gave his evidence.

20 The only other witness was called to tender an Inter Tribal Report and Plan Exhibit " 2." This witness also tendered Exhibit " 3 " for the Defendants.

Plaintiff then closed his case.

*Defence :*

The first Witness was the Surveyor who tendered the Defendants' Plan Exhibit " 4."

The Second Witness was the Defendant who gave the traditional History of his people to the effect that they came from Benin and were the first to settle on the land where they now are.

30 He testified that he and his people gave the present C.M.S. Site at Igbodo to the Mission and that they and not the Akinmuzis own the land in dispute. He claims Elabor as being a quarter in Igbodo. He testified that some of his people live in the land in dispute. He mentioned their names and stated that they had lived there for about 40 years. That he knew Isiah and that he and his people of Igbodo granted him permission to build his Timber Camp there about 8 years ago. That Royalties for timber all on the land had been paid to him on two occasions. He states that he has boundaries with the people of Onitsha Ugbo, Obior, Okpo Owerri Akumazi, Akuku Akumazi, Mbiri, Akpu and Ewohimi and  
40 Idumaze. That the people of Akumazi were from Mbiri and that the Akumazis and the people of Onitsha Ugbo did not at any time give them land to settle on and that in fact they preceded the Akumazis on the land.

Under cross-examination he said that his father gave Elabor people their present land.

Godfrey Alekwe the Obi of Mbiri was the counterpart of John Iyase Plaintiff's 3rd witness but very much worse. He is young though a little older than Iyase. He gave me the impression of being very irresponsible and that he was slightly tipsy. He testified that he has a boundary with the people of Igbodo. He said that the land in dispute

*In the  
Supreme  
Court of  
Nigeria.*

No. 37.  
Judgment,  
21st June  
1952,  
*continued.*

did not belong to the Akumazis but to the Igbodo people and the Mbiri people. Under Cross-examination he broke down completely. He admitted that he did not know the traditional people of his own though he was their Obi (recognised head.)

Justin Obi Nwoko testified that his people had been long settled on their present site and that they were given land to settle on, by the people of Onitsha Ugbo—that the land in dispute belonged to the people of Igbodo—that the people of Onitsha Ugbo have no boundary on the land in dispute. That his people have a boundary on the land in dispute with Igbodo commencing from the Nemonicha Juju running along Isiah's road 10 and that his people had placed the Nemonicha Juju on the land.

Then followed the evidence Moseli a native of Igbodo who has lived on the land for about 40 years and has never paid rent to the people of Akumazi.

Agbonta native of Akumazi who sought refuge in the land in dispute and lives with Moseli. Ukakeke Esimoya a native of Umunede testified that he was farming on the land with the Defendant's permission and paid tribute to him. Umunede people have no boundary with Igbodo though they farm on the land and have farms near it. They do not have to pass through Akumazi to get on the land as the Akumazis live in their rear. 20 They walk straight on to the land in dispute.

The Eighth witness testified that the land belonged to the people of Igbodo who gave the present mission site to the C.M.S. under Cross-examination he said that Elabor belongs to Igbodo and that they have always belonged to Igbodo and not to Akumazi.

Isiah testified that the Defendant permitted him to go on the land and he did so in 1944. That he constructed a road from the Asaba Benin Road to the land in dispute for the purpose of extracting logs.

The last Witness for the defence was the Court Clerk who tendered Exhibit " 5 " for the Defendant and Exhibit " 6 " from the Plaintiff. 30

Close of Case for the Defence.

Both Plans conform with regards to the land in dispute excepting that in Defendant's plan the land in dispute is not completed off, either in the West or in the East.

Both have the road leading from the land in dispute right down to the Benin Asaba Road indicated on them.

On the Plaintiff's Plan all the land to the left of the road and South of the land in dispute is shown as " other lands of Akumazi " not in dispute whilst land on the right of this road and south of the land in dispute is shown as belonging to Onitsha Ugbo. 40

On the Defendant's Plan Exhibit " 4 " all the land South of land in dispute and on either side of the road from the land in dispute leading up to the Asaba-Benin Road is shown as Igbodo land. I visited Akumazi and Igbodo with the parties and Counsel on either side and walked on foot from Akumazi Town on to the land in dispute and then drove in a Car from Isiah's Camp down the road leading to Elabor and Igbodo and on to the Benin-Asaba Road.

The Plaintiff's Plan, in my opinion after visiting the land, is more in conformity with the facts in dispute than that of the Defendants.

I am satisfied that Plaintiff's land form a continuous whole from Akumazi Town to the land in dispute. There was no partition of any sort and up to within a matter of 100 yards or so, and within view of the land in dispute, Plaintiff, especially Aju witness for the Plaintiff, showed me his farm and wells dug by his father to the hearing of Chief Iyeke and he was not contradicted. In contrast the Defendants had nothing to show the Court on the land.

*In the  
Supreme  
Court of  
Nigeria.*

No. 37.  
Judgment,  
21st June  
1952,  
*continued.*

Justin Obi Nwoko II 4th Witness for the defence alone showed me a farm alleged to be his and outside the land in dispute, but the Onitsha  
10 Ugbo people present, challenged this fact stating as they had said in evidence that the land belonged to Onitsha Ugbo as shown on Plaintiff's plan.

I am satisfied that much of Igbodo land as was shown to me does not form a continuous whole with the land in dispute as is indicated by their plan Exhibit "4." I satisfied that other people own and occupy land between their settlement and the land in dispute.

I am satisfied that Obi Iyeke's evidence about this land is unreliable. He is not a witness of truth.

He sat in solemn Judgment and decided as follows in Exhibit "6"  
20 which is a native Court Record of proceedings conducted at Igbodo on the 8th February 1944 in suit between *Chief Asolu Odogu of Idumobior Igbodo versus Osigiobu Agbonigimona of Ilabor.*

"The bush in which the palm nuts were cut by the accused is for Id. Obior Igbodo quarter and not for accused's quarter Ilabor. The accused's quarter Elabor has no right to enter the bush to farm or to cut palm fruits. It is ordered from date that no Ilabor person should enter to any portion of bush owned by Id. Obior—  
30 Igbodo people, to make farm or to cut nuts without prior permission from the Id. Obior Village Council. When at any time that Ilabor village shall become a complete member of Igbodo Clan, they shall have power to enter bushes without payment of any kind. Finding guilty on all the counts and discharged with warnings to pay 5/- cost."

This Judgment of the Defendant is quite in contrast with his testimony in this Court with reference to the people of Ilabor. It is rather in keeping with the evidence of Okia Ikede a native of Igbodo who testified for Plaintiffs.

The Defendant showed me his palace and pointed to a tree about  
40 10 feet from the building and told me that the Plaintiff's were claiming up to that tree as part of their land. The Plaintiffs would not have the nerve to put up such a Claim except there was some truth in it. It is inconceivable that the Igbodo people who according to the Defendant's evidence, first arrived in the area—a no man's land as it were clung to the small area where they now lived and allowed others to spread out over a wide area between their very tiny settlement and the land in dispute and have failed to show their farms in the adjacent areas leading to the land in dispute on their plan or to show them to me during my visit.



*In the  
Supreme  
Court of  
Nigeria.*

No. 37.  
Judgment,  
21st June  
1952,  
*continued.*

For the above reasons and on account of what I saw on the land and the dubious evidence by their witnesses, I disbelieve their story and accept that of the Plaintiffs.

If the Defendant had a very good case they would not be so strained that they would call a man like the Obi of Mbiri who though not a Defendant came to Court and said that the land in dispute belonged to him and the Defendants.

I do realise that Moseli, Isiah and others occupy some portion of the land in dispute but it is a comparatively small area.

The Defendants cannot found a claim on the fact of such occupation 10 when it is realised that their non continuous settlement at Igbodo in about eight or nine miles distant from the land in dispute.

The Plaintiffs do not want to evict them but want a declaration that they are owners of the land so that these occupiers should acknowledge their rights as such and not flout such rights by leasing out the land to strangers.

The Plaintiffs state that the land is their bush where they collect fire-wood and cut timber for building their houses etc. It is therefore not necessary that they should live there.

Mr. Mbanefo Counsel for the Plaintiffs said that the Defendants 20 have not pleaded, possession, laches or purchase of the land and so have no title whatever that this Court is entitled to take any notice of the cited *Adu versus Kumah* 3 W.A.C.A. 240.

I support his view.

I am satisfied that the Plaintiffs land is continuous from Akumazi, their settlement, right up to the land in dispute. I am unable to come to such a conclusion in Defendant's Case.

From the evidence and what I saw during my inspection, I am satisfied that the land in dispute is so situated with respect to the people of Akumazi that it might quite well be their bush as they call it. Evidence 30 Ordinance Section 45 clearly makes provision for such inference.

I have omitted Exhibit " 2 " and " 3 " tendered by the parties as they relate solely to the question of boundaries.

The Igbodos do not appear to have been present when Spottiswoode investigated and the Akumazis do not appear to have been present when Mr. Scallon made his own investigation.

I hereby grant the Declaration sought by the Plaintiffs against the Defendants.

I will grant an injunction restraining the Defendants from hiring out the land to Timber Contractors and receiving Royalties therefrom. 40

The Plaintiffs claim for an account is non suited.

Costs in favour of the Plaintiffs 180 guineas.

(Sgd.) STEPHEN PETER THOMAS.  
Ag. Puisne Judge.

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NOTICE OF APPEAL filed by Defendant/Appellant.

*In the  
West  
African  
Court of  
Appeal.*

Civil Form 1.

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL

(Rule 12).

Filed 21/7/52 at 9.25 a.m.  
(Intld.) I. C.  
R.

No. 38.  
Notice of  
Appeal  
filed by  
Defendant/  
Appellant,  
21st July  
1952.

10 Between ÖBI OSAGIE II (for himself and the  
people of Akumazi) . . . Plaintiff/Respondent  
and  
CHIEF IYEKE (for himself and the  
people of Anikpeku Igbodo) . . . Defendant/Appellant.

TAKE NOTICE that the Defendant being dissatisfied with the  
decision of the Supreme Court of the Warri Judicial Division contained in  
the Judgment of the Supreme Court dated the 21st day of June 1952 doth  
hereby appeal to the West African Court of Appeal upon grounds set out  
in paragraph 3 and will at the hearing of the appeal seek the relief set out  
20 in paragraph 4.

AND the Appellant further states that the names and addresses of  
the persons directly affected by the appeal are those set out in paragraph 5.

2. Part of the decision of the lower court complained of :—THE  
ENTIRE JUDGMENT.

3. GROUNDS OF APPEAL :

1. VERDICT IS AGAINST WEIGHT OF EVIDENCE GENERALLY AND  
PARTICULARLY.

30 (A) Plaintiff and his witnesses contradicted themselves in  
material particulars in regard to the Traditional evidence of the  
origin and ancestry of the Defendant, and the traditional evidence  
as to the origin and ownership, by Plaintiffs of the Land in dispute—  
if any—is thin and scanty.

(B) Plaintiff himself, it is respectfully submitted was an  
unreliable witness and perjured himself and admitted that he did  
so in court, upon material issues, while he gave evidence.

40 (C) The Plaintiffs produced no witness in boundary within them  
on the western portion of the Land in dispute and it is respectfully  
submitted that in respect of the Northern boundary the witness  
produced by the Plaintiffs—John Iyasere—was very much more  
than “comical”; in fact he was very unreliable having also  
perjured himself in court upon material issues.

*In the  
West  
African  
Court of  
Appeal.*

No. 38.  
Notice of  
Appeal  
filed by  
Defendant/  
Appellant,  
21st July  
1952,  
*continued.*

(D) In regard to the conclusions arrived at by the Learned trial Judge from the Inspection by him and parties of the land in dispute, those conclusions are—it is respectfully submitted—not based on evidence for, at the inspection evidence was not given on oath by parties and records of their sworn statements not made.

(E) Further in regard to the conclusions referred to in the paragraph immediately preceding, it is submitted with respect that it is significant that in 1938 during the Scanllon Inquiry—Exhibit “ 3 ”—it was not observed that the Plaintiffs had lands and farms continuous at least from the Asaba-Agbor Government Road 10 to within the land in dispute.

(F) The Learned Trial Judge *inter alia* wrote as follows in the judgment “ I am satisfied that Obi Iyeke’s evidence about the land is unreliable. He is not a witness of truth.” With respect it is submitted that conclusion is not borne out by the evidence in court and particularly when Defendant’s case is considered as a whole and Exhibit “ 6 ” in regard to which much ground was attributed in the disbelief of Defendant’s evidence is hardly material, if at all to issues raised in the suit.

(G) The Learned trial Judge in his judgment referred on more 20 than one occasion to his being satisfied on several issues from what he saw during his inspection of the land in dispute and it is submitted with great respect that what the Learned trial Judge saw during the inspection do not by themselves constitute evidence from which any inference can legally be drawn unless there is testimony in regard to the objects observed and seen by the Learned trial Judge, in accordance with and in the manner provided for by the Evidence Ordinance and the Common Law rules of Evidence ; and in this regard there was no sworn testimony of parties in regard to what was observed at the *locus in quo*. 30

## 2. MISDIRECTION :

(A) The Learned Trial Judge it is respectfully submitted, erred when he directed himself with respect to Exhibit “ 2 ” & “ 3 ” as follows :—

“ I have omitted Exhibits 2 and 3 tendered by the parties  
“ as they relate solely to the question of boundaries. The Igbodos  
“ do not appear to have been present when Spottiswoode investi-  
“ gated and the Akumazi do not appear to have been present  
“ when Mr. Scanllon made his own investigation.”

There was—it is submitted more in the parties absence for it 40 is significant that in 1938 the Igbodos appeared at the inquiry and this inquiry in fact does concern the Land in dispute in so far as it touches and bears upon the boundaries of the land in dispute, and it is respectfully submitted the presence of the people of Igbodo at the inquiry when there was then no dispute to this land between the Igbodos and the Akumazis was sufficient act of ownership and more correctly, of Possession. It is significant that the Akumazis appeared only when the inquiry was resumed at the instance of

Ekpon who appealed the Resident, in 1949 (1940) when there was already Lis Mota as between present Respondents and Appellants for the present action was transferred from the Native court to the Supreme Court in 1947.

*In the  
West  
African  
Court of  
Appeal.*

(B) (*Non-direction*).—The Learned trial Judge failed to direct himself upon the subjoined facts :—

No. 38.  
Notice of  
Appeal  
filed by  
Defendant/  
Appellant,  
21st July  
1952,  
*continued.*

10

(a) Agbonta, alleged to have been placed on the Land in dispute by the Plaintiffs as a custodian was called by and gave evidence at the instance of, the Defendants whom he testified placed him on the land in dispute as their tenants over 30 years ago.

(b) That Moseli's and Zemife's families and buildings both of whom were indicated on Defendant's Plan have been on the Land in dispute for over forty years and that Moseli gave evidence to that effect.

20

(c) That facts set out in (B) (a) and (b) together indicate sufficiently that Plaintiffs in any case—assuming the Learned Judges conclusion to be correct in regard to ownership of the land in dispute—are not exclusive owners within the Principle of Ntoe Ekpo Eta Ekpo *vs.* Eta Eta Ita, XI N.L.R. 68 so very often cited with approval by the West African Court of Appeal.

(d) That within the portion of land described in the judgment to be continuously owned by Plaintiffs up to the land in dispute, the Defendants established in evidence that they allocated the site now occupied by them to the Church Missionary Authorities.

4. RELIEF SOUGHT FROM THE WEST AFRICAN COURT OF APPEAL.

That the Judgment of the Supreme Court Warri be set aside and the Plaintiff/Respondents' claim for title to the land in dispute and Injunction refused.

30

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL.

<i>Name</i>	<i>Address</i>
Obi Osagie II ..	Akumazi Town near Agbor. Agbor District (Paramount Chief of Akumazi)
Chief Iyeke ..	Anikpeku Village (Paramount Chief of Igbodo) Igbodo Town near Agbor Agbor District.

Dated this 21st day of July 1952.

40

(Sgd.) CHUKWUWEIKE IDIGBE,  
Appellants' Solicitor.



*In the  
West  
African  
Court of  
Appeal.*

No. 39.

**MOTION AND AFFIDAVIT for an Order substituting B. Osagie for Obi Osagie II.**

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

W.A.C.A. No. 3859.

(Title as in No. 38).

No. 39.  
Motion and  
Affidavit  
for an  
Order  
substituting  
B. Osagie  
for Obi  
Osagie II,  
12th March  
1953.

**MOTION ON NOTICE.**

TAKE NOTICE that this Honourable Court will be moved on Monday the 20th day of April, 1953, in the hour of Nine of the clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendant-Appellant for an Order of this Honourable Court substituting B. Osagie a member of the Akumazi people for the Plaintiff-Respondent Obi Osagie II and for such further and or other Orders as to this Honourable Court shall deem meet. 10

Dated at Warri this 12th day of February, 1953.

(Sgd.) C. IDIGBE,  
Solicitor for Defendant-Appellant.

Plaintiff-Respondent's Address :—

c/o B. Osagie, Akumazi,  
Agbor District Region, Nigeria.

20

Defendant-Appellant's Address :—

c/o His Solicitor,  
28, Hawley Street, Lagos.

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

W.A.C.A. No. 3859.

(Title as in No. 38.)

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE.**

I, IYEKE, Paramount Chief of the Igbodo people of Agbor district resident in Anikpeku quarter of Igbodo in the Benin Province also a farmer and British Protected Person make oath and say as follows :— 30

1. That I am the Defendant-Appellant in the above Suit which was in respect of claim for title to the land Igbokissa.

2. That the Suit was heard in the Supreme Court of the Warri Division and judgment was delivered by the Court on the 21st day of June, 1952, in Plaintiff's favour.

3. That I immediately gave notice of appeal and filed the same and my grounds of appeal in July, 1952.

4. That the Plaintiff-Respondent has already been served with my notice of and grounds of appeal. 40

5. That the Plaintiff-Respondent died in early January, 1953.

6. That the claim being in a representative capacity I make this affidavit in support of my prayer to substitute a member of the Akumazi community for the Plaintiff-Respondent in the person of the Plaintiff-Respondent's Brother, B. Osagie who is aged about 30 years.

7. That I make this affidavit in support of my motion attached herewith.

Iyeke X His R.T.I.  
Defendant's Right Thumb Mark.

*In the  
West  
African  
Court of  
Appeal.*

No. 39.  
Motion and  
Affidavit  
for an  
Order  
substituting  
B. Osagie  
for Obi  
Osagie II,  
12th March  
1953,  
*continued.*

10 The above was read over and interpreted from English to Ibo language for the benefit of the Deponent who appeared perfectly to understand same before affixing his right thumb mark.

(Sgd.) ?  
Qualified Interpreter.

Sworn to in the Agbor Court Registry at Agbor this 19th day of February, 1953.

Before me,  
(Sgd.) ?  
Commissioner for Oaths.

20

No. 40.  
COURT NOTES on hearing of Motion.

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

Monday the 20th day of April 1953.

Before their LORDSHIPS  
SIR STAFFORD WILLIAM POWELL FOSTER SUTTON, President.  
SIR JOHN VERITY, Chief Justice, Nigeria.  
SIR JAMES HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. 3859.

No. 40.  
Court Notes  
on hearing  
of Motion,  
20th April  
1953.

30

(Title as in No. 38.)

Motion for an order to substitute B. Osagie for Obi Osagie.  
Mr. Kaine for Appellant, moves.  
Mr. Taylor for Respondent does not oppose.  
Does not ask for costs.  
Order in terms of motion—no order as to costs.

20.4.53.

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

*In the  
West  
African  
Court of  
Appeal.*

No. 41.

COURT NOTES on hearing of Appeal.

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

No. 41.  
Court Notes  
on hearing  
of Appeal,  
12th May  
1953,  
13th May  
1953.

Tuesday the 12th day of May, 1953.

Before THEIR LORDSHIPS

SIR STAFFORD WILLIAM POWELL FOSTER SUTTON, President.

SIR JOHN VERITY, Chief Justice, Nigeria.

SIR JAMES HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. 3859. 10

(Title as in No. 38.)

Mr. H. U. Kaine, with him Mr. Idigbe, for Appellant.

Mr. E. C. M. Onyiuke for Respondent.

*Kaine :*

*Court :*

Grounds of appeal offend against W.A.C.A. Rules. 3, 1 (A), (B), (C), (D), (E), (F) and (G) of grounds of appeal are deleted—also the ultimate paragraph of ground 2, A., also the words “in court, unshaken and unchallenged” in B (B)—also B (C) & (D).

*Kaine :*

20

Appeal is from a judgment of Thomas, J., Appellant was the Defendant in the Court below. Claim was for (A) declaration of title ; (B) An account, and (C) an injunction.

Argues ground 1. Submits that Respondent failed to establish his title.

Refers to Statement of Claim paragraphs 4 & 5—onus was upon him to establish allegations—he does not state his traditional evidence—Note but he alleges they have owned it from “time immemorial,” which is good enough.

Plaintiff’s evidence—page 30 Where are acts of ownership ? page 32 30 farming on land—page 31. Juju—Everyone goes there.

He must show that he was on the land before the Defendant went there and that he permitted Defendant to go on to the land.

2nd witness for Plaintiff. Aje. Refers to page 56 of record—evidence of Agbonta—Says—Judge did not say that he did not believe this man’s evidence. He denies have been sent as a caretaker on land by Aje—page 37 line 22.

Draws attention to fact that trial Judge says in his Judgment Defendant showed me nothing page 75—and compares with his statement at page 63—line 22.

40

Submits that evidence at last clearly shows that Plaintiff was never in exclusive possession.

Refers to Exhibit "3" page 82—and summing-up page 87—also decision at page 88. Enquiry took place years before dispute and Defendant was then claiming the land—boundary was then fixed.

Complains that trial Judge said Defendant did not appear at Enquiry—Exhibit "2" whereas he did appear and gave evidence—line 17 on page 80.

10 Repeats that they failed to prove exclusive possession. No specific acts of ownership.

There was no previous decision in Plaintiff's favour. Cites *Ekpo v. Ita II* N.L.R. 68.

Submits evidence does not conflict with Judgment in Exhibit "6" page 95. See page 76 line 11 of Judgment in this case.

Adjourned to 13.5.53.

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

12.5.53.

Wednesday the 13th day of May, 1953

Counsel as before.

W.A.C.A. 3859.

20 *Kaine* :

Deals with alleged acts of possession by Plaintiff—page 30—line 30—page 32—line 1—page 36—line 21—page 37—line 22—page 38—13. No evidence that any of these acts were done before Defendant went in.

Submits trial Judge erred in referring to what witnesses said at the view—not given on oath.

*Onyiuke* :

Page 23 line 20. Note—That is part of abortive proceedings and was not put in evidence.

30 Page 39 line 15 & on. Page 40—line 2 "Igbodo people live on land belonging in part to Akumazi and in part to Onitsha Ugbo. Traditional evidence—see page 32 line 39. Page 36 line 3 onwards.

Intervening land—page 64—line 6—  
*not farm—farms* and wells.

See also line 20 and onwards.

These Juju is miles away to the East—nowhere near land in dispute.

*Kaine* :

Admits that Defendants never said they worshipped Juju at N.E. corner. Note—See also Enquiry page 83.

40 Deals with Judgment Exhibit "6" and Obi Iyeke's evidence at trial—Judges comment.

13.5.53.

C.A.V.  
(Intld.) S.F.S. P.

*In the  
West  
African  
Court of  
Appeal.*

No. 41.  
Court Notes  
on hearing  
of Appeal,  
12th May  
1953,  
13th May  
1953,  
*continued.*



*In the  
West  
African  
Court of  
Appeal.*

No. 42.  
Judgment,  
26th May  
1953.

No. 42.  
JUDGMENT.

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

Tuesday the 26th day of May, 1953.

Before THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON, President.

SIR JOHN VERITY, Chief Justice, Nigeria.

SIR HENLEY COUSSEY, Justice of Appeal.

W.A.C.A. No. 3859. 10

(Title as in No. 38.)

Judgment delivered by Foster Sutton. P.

Appeal dismissed with costs fixed at £32.5.0.

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

JUDGMENT.

FOSTER SUTTON, P.

The Plaintiff on behalf of himself and the people of Akumazi sued the Defendants as the Chief of Igbodo and as the representative of the people of Igbodo, claiming, firstly, a declaration of title to an area of land which he claimed is known as Ugboko Akumazi, secondly, an account of moneys 20 alleged to have been received by the Defendant in respect of the land, and, thirdly, an injunction restraining the Defendant from dealing with the land or receiving royalties in respect thereof.

After hearing the evidence and viewing the area, accompanied by the parties and their Counsel, the learned trial Judge gave Judgment granting the Plaintiff the declaration and injunction prayed and he entered a non suit in respect of the claim for an account.

It was common ground that the towns occupied by the Plaintiff's and Defendant's people are situated some miles from the area of land in dispute in this case. 30

The Defendant claimed that his people were the first to settle on the land in question and that they own all the land stretching from Igbodo Town up to and including the land in dispute. The area claimed by them is indicated in green on the plan tendered by the Defendants, marked Exhibit "4," and the area in dispute is indicated in yellow.

The Plaintiff also claimed that his people were the first to settle on the land, and the learned trial Judge after reviewing the evidence, and in the light of his inspections of the area, found this to be the case. He also found as a fact that the Plaintiff's land forms "a continuous whole from Akumazi Town to the land in dispute," and that the Defendant and his 40 people do not own any of the land between Igbodo Town and the land in dispute. In this connection it is relevant to observe that Igbodo Town is eight to nine miles distant from the land in dispute.

Another matter which seems to me to support the Plaintiff's claim to the land in question, as against the Defendant, is the uncontradicted evidence given by his third witness that a Juju known as Nemonicha, situate at the North Eastern end of the land in dispute was placed there by the Akumazi, Onitsha Ugbo and Ewohimi people. The Plaintiff also led evidence that this Juju was placed there "in ancient times," and that his people and others, but not the Defendants, worship there. None of this evidence was disputed by the Defendant nor did he offer any explanation as to how a Juju established and worshipped by others came to be upon the land claimed by him to be his property.

*In the  
West  
African  
Court of  
Appeal.*

No. 42.  
Judgment,  
26th May  
1953,  
*continued.*

Learned Counsel for the Appellant reviewed the evidence in some detail and strongly urged that the Judgment was against the weight of the evidence. He, correctly I think, stressed the point that several of the Defendant's people have been settled upon the land for a considerable period. The trial Judge thought that one Moseli Abohu who gave evidence that he had lived and farmed upon the land for about forty years without paying rent or tribute to Akumazi may well have been on the land for the period stated. When dealing with this question the trial Judge said, "I do realise that Moseli, Isiah and others occupy some portion of the land in dispute but it is a comparatively small area. The Defendants cannot found a claim on the fact of such occupation when it is realised that their non-contiguous settlement at Igbodo is about eight or nine miles distant from the land in dispute."

The evidence in this case presented a direct conflict of oral testimony on an issue of fact. In all cases this Court has a duty to exercise jurisdiction as a tribunal of appeal on facts as well as on law, a jurisdiction which we never hesitate to exercise when we are satisfied that the Court below has erred on a question of fact. Where, however, as in the present instance, the question is one of credibility, where either story told may be true and where the personal motives and interests of the parties cannot but affect their testimony, this Court has always been reluctant to differ from the Judge who has seen and heard the witnesses, unless it can be clearly shown that he has fallen into error.

In this case I am not satisfied that the trial Judge did err. On the contrary, I am disposed to the view that I would have come to the same conclusion as that arrived at by him.

It follows that, in my opinion, the Judgment appealed from ought to be affirmed, and I would accordingly dismiss this appeal with costs fixed at £32 5s.

*Sir John Verity :*  
" I concur."

(Sgd.) S. FOSTER SUTTON, P.

*Sir Henley Coussey :*  
" I concur."

(Sgd.) JOHN VERITY, C.J.

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

*In the  
West  
African  
Court of  
Appeal.*

No. 43.  
Court  
Order on  
Judgment,  
26th May  
1953.

No. 43.

**COURT ORDER on Judgment.**

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

Suit No. W/42/1947.  
W.A.C.A. 3859.

ON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT IN THE WARRI  
JUDICIAL DIVISION.

*(Title as in No. 38.)*

(L.S.)  
(Sgd.) S. FOSTER SUTTON,  
President.

10

Tuesday, the 26th day of May, 1953.

UPON READING the Record of Appeal herein and after hearing  
Mr. H. U. Kaine appearing with Mr. C. Idigbe of counsel for the Appellant  
and Mr. G. C. M. Onyiuke of counsel for the Respondent :

IT IS ORDERED that this appeal be dismissed and that the Appellant  
Chief Iyeke do pay to the Respondent Obi Osagie II costs of the appeal  
fixed at £32 5 0d.

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

20

No. 44.  
Order  
granting  
Final Leave  
to Appeal  
to Her  
Majesty  
in Council,  
15th  
February  
1954.

No. 44.

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

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

Suit No. W/42/1947.  
W.A.C.A. 3859.

APPLICATION FOR AN ORDER FOR FINAL LEAVE TO APPEAL TO HER  
MAJESTY'S PRIVY COUNCIL.

Between CHIEF IYEKE for himself and on behalf of the  
people of Anikpaku Igbo . . . . Applicant  
and

30

B. OSAGIE substituted for OBI OSAGIE for  
himself and on behalf of the people of Akumazi Respondent.

UPON READING the application herein and the affidavit of Hyacinth  
Ugboma Kaine, sworn to on the 4th day of January 1954, filed on behalf  
of the Applicant and after hearing Mr. H. U. Kaine of counsel for the  
Applicant and Mr. J. E. C. David of counsel for the Respondent :

IT IS ORDERED that Final Leave to appeal to Her Majesty's  
Privy Council from the judgment of the Court dated 26th May 1953 be  
granted to the Applicant.

(Sgd.) J. BENNETT,  
Deputy Registrar.

## EXHIBITS.

## Exhibit 2.

## ENQUIRY of Mr. Spottiswoode.

*Exhibits.*

Exhibit 2.  
Enquiry of  
Mr. Spottis-  
woode,  
7th July  
1949.

EXHIBIT " 2 " TENDERED BY PLAINTIFF IN SUIT W/42/47.

OBI OSAGIE VERSUS CHIEF IYEKE.

(Sgd.) H. H. C. ANENE R/S 26.3.52.

An enquiry held by Mr. H. Spottiswoode, S.D.O., under the Inter-Tribal Boundaries Settlement Ordinance, No. 49 1933, to determine the boundary between the Ekpon and Ewohimi Clans of the Ishan Division, Benin Province, on the one hand, and the Akumazi, Igbodo, and other Clans and villages of the Asaba Division, Benin Province, on the other hand.

An enquiry was held in 1938 by Mr. Scallon, A.D.O. to determine this boundary, and judgment was given by him on 8.4.38. After repeated complaints by Ekpon, and after a survey and a map dated 30.12.47 had been made at the instance of Ekpon, H.H. the Chief Commissioner on 8.2.49 ordered the Resident to hold a further enquiry. The amendment to this order dated is the authority for the present enquiry.

\* \* \* \* \*

## 20 SUMMING UP.

In spite of some initial confusion arising from the usual difficulty of describing features at a distance (aggravated by the youthfulness of some of the Obis, who have their information at nth hand), several undisputed boundary marks have been identified. These are—

(i) The round-topped concrete pillar on the road from Onicha-Ugbo to Ewohimi.

(ii) The spot known as Ikokoro, a boundary point between two Asaba Clans, but further north than any other point and must be accepted as a divisional boundary point.

30 (iii) The Ekan tree marked with an X.

(iv) The Nemonicha juju.

It should be noted that this last was originally a boundary point between Ewohimi, Idumuje and Akumazi; it appears however that Ewohimi some years ago ceded all their rights along this boundary to Ekpon, and now have none at all.

Further west there is more difficulty. I believe that the Oza juju was originally a boundary between Ekpon and Akumazi; and it is possible that the juju near Igboko Iyama was also a boundary mark. It is however impossible to accept either of these now, as Ekpon near them, have at least for many years exercised no rights, and there are the well-established settlements of Isaiah's Camp and Igboko Iyama on the Ekpon side of them. The boundary fixed in the decision recorded below appears to be equitable.

*Exhibits.*  
 —  
 Exhibit 2.  
 Enquiry of  
 Mr. Spottis-  
 woode,  
 7th July  
 1949,  
*continued.*

I can find no evidence in support of the railway trace CP15 as a boundary between Ekpon and Igbodo, apart from the quite unconvincing statement of the Obi of Igbodo.

It has been necessary to widen the scope of the enquiry somewhat to include the Asaba clans of Mbiri and Idumuje. The boundary fixed is the Ishan/Asaba divisional boundary west of the motor road from Onicha-Ugbo to Ewohimi, and the Chief Commissioner's approval for this will be sought. It is necessary to leave the western end indeterminate, as the Benin/Asaba divisional boundary has not been fixed north of the source of the Orogodo stream.

10

#### DECISION :

Under Section 6 of the Inter-Tribal Boundaries Settlement Ordinance I hereby decide that the boundary between the Ishan and Asaba Divisions west of the motor road from Onicha-Ugbo to Ewohimi shall be as follows :—

Starting from a round-topped concrete pillar marked " I " and " A " on the north and south sides respectively, on the motor road between Onicha-Ugbo and Ewohimi by a straight line cut approximately west to the spot known as Ikokoro ; thence by a straight line cut for about 200 yards on a bearing of about 220° (magnetic) to a large Ehan (Cylico- 20  
 discus) tree marked with an X at the side of a dry valley ; thence by a straight line cut approximately west to the Nemonicha juju ; thence by a straight line cut approximately south to milestone 5 on the timber road from Ekpon to Igbodo ; thence along the centre of the timber road to Igbodo Iyama village for about one mile to an Elue tree on the south-east side of the road, marked with two Xs ; thence by a straight line cut on a bearing of 280° (magnetic) to the Benin-Asaba divisional boundary (not at present fixed) north of the source of the Orogodo stream.

The above decision was announced to representatives of all the interested villages at Isiah's Camp on 7/7/49. All appeared to be 30  
 satisfied, but asked that the boundary lines should be cut as soon as possible, because of the extensive logging operations on the area. The P.F.O. Ubiaja will be asked to do this, and it is suggested that the cost be defrayed from timber royalties now being paid to the native treasuries in both Divisions.

The Marginal Capital letters in the foregoing record refer to points on the accompanying sketch map.

(Sgd.) H. SPOTTISWOODE.  
 S.D.O.

Certified True Copy.  
 (Sgd.) G. K. MOMO.  
 District Officer,  
 Agbor District.  
 31 December, 1951.

7/7/49.

40

## Exhibit 3.

No. 4/1938.—An Inquiry held by Mr. A. V. Scallon.

*Exhibits.*Exhibit 3.  
No. 4/1938.  
An Inquiry  
held by  
Mr. A. V.  
Scallon.

EXHIBIT "3" TENDERED BY DEFENDANT AND ADMITTED IN SUIT  
No. W/42/47 OBI OSAGIE VERSUS CHIEF IYEKE (SGD.) H. H. C. ANENE.  
26.3.52.

No. 4/1938.

AN INQUIRY HELD UNDER THE INTER-TRIBAL BOUNDARIES SETTLEMENT  
ORDINANCE BEFORE MR. A. V. SCALLON, ASSISTANT DISTRICT OFFICER,  
TO DECIDE THE BOUNDARY BETWEEN THE EWOHIMI AND EKPON CLANS,  
10 ISHAN DIVISION, AND THE IGBODO CLAN, ASABA DIVISION.

Authority :—Letter No. B.P. 286/60 of 11/3/38 from Resident, Benin.

Inquiry opened in camp at Omosiri's camp near milestone 5 on old  
railway trace (near supposed Divisional Boundary) on 7/4/38.

Interpreter :—In Ishan and Ibo :—Mr. C. P. Sadoh  
In Ika F. G. No. 52, J. I. Imafidon.

Present :—Afedí, Inen title-holder and others on behalf of Ekpon. Onoje  
of Ekpon not present.

Iyeke, Obi of Igbodo and others, on behalf of Igbodo.

Ewohimi and Idumuje-Ugboko not present.

20 (1)

Objects : Divisional Boundary.

(2) Forestry purposes.

Afedí on behalf of Ekpon states :—

Any confusion there may be is caused by Id : Ugboko. From the  
beginning, Ekpon and Igbodo have had no palaver about the boundary.  
About eight years ago Omosiri came to make a camp near here. He is an  
Igbodo man. Ekpon gave him permission to live there.

Omosiri came to us at Ekpon and said he was in trouble at Igbodo  
and wanted to live at the camp. He said he recognised the Obi of Igbodo  
30 and the Onoje of Ekpon to be his "landlords." We sent to the Chief of  
Igbodo, Obiose to ask if he had given Omosiri permission to live there.  
The messenger returned with the message from the Chief of Igbodo that  
Omosiri should quit. So Ekpon sent Agbokina a messenger of Ekpon  
Clan Court, to call Omosiri. He came and Onoje of Ekpon gave him  
permission to stay there, although the Chief of Igbodo refused, because  
Ekpon and Igbodo have no boundary palaver. Since then we have had a  
communal boundary no palaver.

OBI OF IGBODO on behalf of IGBODO CLAN states :—

Igbodo, Ekpon, Ewohimi and Onicha-Ugbo first used this land.  
40 Later they were joined by Idumuje-Ugboko. There has never been a

*Exhibits.* farming boundary between Igbodo and Ekpon. Similarly with Id : Ugboko. They have farmed where they like. We have all sworn a juju of friendship. The old people of Ekpon swore this peace juju.

Exhibit 3.  
No. 4/1938.  
An Inquiry  
held by  
Mr. A. V.  
Scallon,  
*continued.*

The juju, Nemonicha, placed in the bush near here by the Obi of Id : Ugboko was put there six years ago. I also put a juju, Okpetime, near there, but not for boundary purposes. It was only for service. Any boundary will be all right. We do not want palaver.

*Note : Obi of Id : Ugboko appears.*

Obi of Id : Ugboko states, on behalf of Id : Ugboko village : I start from the pillar on the Ewohimi Id : Ugboko road. That C.P. was fixed 26 years ago. There was then no demarcated boundary and Ewohimi and Id : Ugboko farmed where they pleased. Many years ago there was an old market (Afi Ekpon or Afi Ika) used by Id : Ugboko and Ekpon and that market was the boundary between us. There is a path to Id : Ugboko to this old market and the path went on to Ekpon, Idumoko. Long years ago Id : Ugboko people cleaned the path to the market and went on to salute the Onoje of Ekpon. So the latter ordered that the Ekpon part of the path should not be kept clean as if it was, young men from Id : Ugboko would attack Ekpon and remove their young women. The boundary is marked by an Egbo (Ikhimi) tree and the Nemonicha juju. The latter was put there before I was born. On the Ekpon side of the old market there are old farms, formerly cleaned by Ekpon.

On the left of the path from Id : Ugboko to the old market, we and Igbodo farm together. On the right of this path it is Id : Ugboko land, so Igbodo has no boundary with Ewohimi at all.

At the Pillar fixed on the motor-road there was formerly a market used by Ewohimi and Id : Ugboko. Igbodo people used to pass through Id : Ugboko farms to attend that market.

AGBON : called by EKPON CLAN, states :—

The path mentioned by Obi of Id : Ugboko was cut by Ekpon in the time of the Obi's father. It is a straight road and there is a pond on it. An Ewohimi man settled there and the Iyashere of Ekpon said he was the "landlord" and that the Ewohimi man should quit. He went to live on the boundary between Ekpon and Mbiri. The path referred to passed between Onicha-Ugbo and Ekpon ; later Id : Ugboko came to live on their present site. It was Ekpon people who put the market on this path and placed osa juju there. The Id : Ugboko people brought Nemonicha juju at the same time. The market only lasted for a year and after it was abolished Ekpon and Id : Ugboko swore on anti-thief juju. The market was not recognised as the boundary. Ekpon and Id : Ugboko have no boundary. If there is a boundary between Ekpon and Igbodo it is an Ikhimi tree which is on the railway trace beyond Omosiri's Camp.

OSEDOMBEN : called by Igbodo people, states :—

Igbodo and Ewohimi had a market in the old days near a valley on the Id : Ugboko side from where we are now. The path to the market was closed after a war between Ewohimi and Igbodo. Igbodo and

Ewohimi own this bush where we are now. Ekpon also had rights in it. It was only recently that the Obi of Id : Ugboko placed the Nemonicha juju of which he speaks. I have never heard about a market between Id : Ugboko and Ekpon.

Igbodo and Ekpon have no fixed boundary point. I do not know the Ikhimi tree mentioned by Agbon, on behalf of Ekpon.

I have not even heard of Nemonicha juju referred to by Obi of Id : Ugboko, before today.

OBI OF ID : UGBOKO, re-called, states :—

- 10 It was said by Agbon that Nemonicha juju was put at the market site at the same time as Ekpon brought Osa Juju. This refutes the statement of Osedomben that the juju, Nemonicha, was placed there recently.

Chief Odigie appears on behalf of Ewohimi Clan.

CHIEF ODIGIE states :—

- Id : Ugboko village came from Id : Unor. From the beginning there has been no boundary between Id : Ugboko and Ekpon. Ekpon and Ewohimi are on "the same land." The boundary between Ewohimi and Igbodo is a bush called Okoko. The boundary between Ewohimi and  
20 Mbiri is a juju called Ake. There was a market between Ewohimi and Igbodo in the Okoko bush called Aki Alupekuna. Igbodo people called it Afi Esan or Afi Ewohimi. Some years Omosiri settled in this bush. The late Onoje of Ewohimi sent an Olopa to bring Omosiri. The District Officer was at Ewohimi then. He was questioned and told to stay there. Then the Chief of Igbodo sent a messenger to Ewohimi that he did not wish Omosiri to stay there. The Onoje of Ewohimi said he should stay there. Omosiri said nothing then about having been given leave by Ekpon to live there. I have never heard of a boundary between Ekpon and Igbodo. I remember an Ewohimi and an Mbiri men have settled in  
30 a camp just part the Ake juju. The Ewohimi man is called Aigbe ; the Mbiri man is Iyama, each put there by the Chiefs of their towns.

Adjourned to 8/4/38 for Inspection of boundaries.

(Intd.) A. V. S. (Scallon) 7/4/38.

Resumed 8/4/38 in camp on old railway trace, at Omosiri's Camp.  
Inspected

(1) Alleged boundary between Ekpon and Igbodo, beyond Omosiri's camp, on railway trace, at the crossing of an Igbodo farm path. Spot said to have been marked by an Ikhimi tree, now disappeared.

- (2) Site of Nemonicha juju, placed there by Id : Ugboko people. Am  
40 satisfied that this juju was set up by the present Obi of Id : Ugboko to support his claim to this land.

*Exhibits.*

—  
Exhibit 3.  
No. 4/1938.  
An Inquiry  
held by  
Mr. A. V.  
Scallon,  
*continued.*



*Exhibits.*  
 —  
 Exhibit 3.  
 No. 4/1938.  
 An Inquiry  
 held by  
 Mr. A. V.  
 Scallon,  
*continued.*

(3) The Okoko "bush" referred to by Chief Odigie of Ewohimi, as the boundary between Ewohimi and Igbodo. This is probably the true boundary and is a natural feature,—a valley possibly leading to the source of the Odu river.

All places were inspected with Mr. G. C. R. Gray, S.A.C. of F., representatives of Igbodo and Id : Ugboko. Ewohimi not represented, although Chief Odigie knew of these proposed visits of inspection and had slept the previous night with the Obi of Igbodo at Igbodo.

The boundary between Ewohimi and Id : Ugboko and Igbodo would appear to be :—

10

From the C.P. fixed on the Ewohimi-Id : Ugboko motor road to a point in the "bush" on the W. side of the valley (Iyara); thence to a point on the path from the Onoje of Ewohimi's farm camp formerly leading to Id : Ugboko, near the Idumoko village of Ekpon Clan' This boundary would leave the old market site, claimed by Id : Ugboko to be marked by their Nemonicha juju, in Agbor District and probably in Igbodo clan land.

Ewohimi, Id : Ugboko, Igbodo and Ekpon all represented. The representatives have nothing true to say. Representatives of Id : Ugboko informed that this Inquiry is not concerned with the boundary between 20 Id : Ugboko and Igbodo, which are in Asaba Division, and Agbor District respectively.

#### SUMMING UP

There is little doubt that Id : Ugboko has no title to the land where the Nemonicha Juju has been placed. There is no doubt that this land is largely virgin forest and that the clans concerned had no boundaries between themselves in it. It is only recently that farming operations have extended so far from villages. The Okoko forest, referred to by Chief Odigie, is some eight miles from Ewohimi and the same from Igbodo and Ekpons about six miles from Id : Ugboko. Also, the clans concerned are 30 in the habit of farming where they like in this area. They have no farming boundaries. There is ample farm space for all the Clans. I am sure that the forest in which the Nemonicha juju has been placed and the Okoko forest, near the valley (Iyara) inspected to-day are an uninterrupted belt of forest that has never been farmed. Mr. Gray concurs. Until the present activities of the Forestry Department there has been no question of the "landlordship" of this forest. A further point on which I have no doubt is that Omosiri's camp is not in Ekpon land. The men of this camp have always paid tax to Igbodo (Agbor.) Finally, it is known that the greater 40 part of Ekpon land is W. of the P.W.D. road, on the Igbaki side.

#### DECISION

Under Section 3 of the Inter-Tribal Boundaries Settlement Ordinance, 1933, I decide that the boundary between Ewohimi, Ekpon, and Igbodo Clans shall be as follows :—

From a point on the path from the farm camp of the Onoje of Ewohimi formerly leading to Id : Ugboko,— $\frac{1}{4}$  mile N.E. of C.P. 15 on the railway trace,—due E. to a point marked by an Ekan tree (*Cylicodiscus*) on the

edge of the valley known as Iyara in the Okoko forest ; thence still almost due E. to the C.P. fixed on the Ewohimi-Id : Ugboko road. This will be the Ishan-Asaba Divisional boundary and will leave the forest, in which the Nemonicha juju has been placed, within Igbodo land. This inquiry is not concerned with the boundary between Id : Ugboko and Igbodo.

*Exhibits.*  
—  
Exhibit 3.  
No. 4/1938.  
An Inquiry  
held by  
Mr. A. V.  
Scallon,  
*continued.*

From the point on the path from the Onoje of Ewohimi's farm camp the boundary will run due W. to a point on the P.W.D. road  $\frac{3}{4}$  mile S.W. of Ekpon, as in the printed boundary of 1915.

The parties state that they are satisfied with this decision.

- 10 It is proposed, therefore, to set a cement pillar as under :—
- (1) At a point on the P.W.D. road  $\frac{3}{4}$  m. S.W. of Ekpon.
  - (2) At C.P. 15 on the railway trace ;
  - (3) At the corresponding point on the old farm path  $\frac{1}{4}$  mile N.E. of the C.P. ;
  - (4) At the point marked by the Ekan tree (Cylicodiscus), in Okoko forest on the edge of the valley (Iyara), lying due E. from the well-known Nemonicha juju ;
  - (5) At a point one mile due W. from the C.P. fixed on the Ewohimi—Id : Ugboko motor-road, half-way between the latter
- 20 and the C.P. in (4) above.

Inquiry (No. 4/1938) is, therefore, closed.

(Sgd.) A. V. SCALLON,  
Assistant District Officer.

Omosiri's camp, 8/4/38.

NOTE : A letter has now been received from the Onoje of Ekpon stating that the Ekpon Clan is not satisfied with this decision, in so far as it affects their boundary with the Igbodo Clan, and that the Resident's review is desired.

At Opoji 24/4/38.

30

Certified true copy.

(Intld.) A.V.S. (A.D.O.)

(Sgd.) A. ETIM,  
Registrar.

*Exhibits.*

**Exhibit 5.**

Exhibit 5.  
Igbodo  
Native  
Court  
Proceedings  
in Nos. 250  
and 261,  
9th  
October  
1918.

**IGBODO NATIVE COURT PROCEEDINGS in Nos. 250 and 261.**

**EXHIBIT "5" TENDERED BY DEFENCE AND ADMITTED IN SUIT W/42/47.  
OBI OSAGIE II *versus* CHIEF IYEKE. (SGD.) H. H. C. ANENE. 28.3.52.  
IN THE NATIVE COURT OF IGBODO.**

**No. 250.**

V.P. OBI IYEKI.  
Men. ELUOVDU.  
,, IKEM.  
,, IGBUDEI.

10

**AYOGBE OF UMUNEDE  
*versus*  
ELIMALO OF UMUNEDE.**

Recovery £3 dowry pd. on one Uzawone since three years ago.  
Deft. not appearing 8/10/18.  
9/10/18.

*Plaintiff S.S.*

I engaged the daughter of the Deft. for my sons wife and paid the above amount to him. She took her daughter and gave her to some one else hence I am claim my dowry I spent on her daughter. 20

For Plaintiff by default and costs.

V.P. OBI IYEKE,  
his X mark.

Witness to mark.

(Sgd.) ? ?

The amount to be paid next Court.

9/10/18.

**IN THE NATIVE COURT OF IGBODO.  
See folio 135.**

**No. 261.**

30

**UKE OF UTEH OFIEJE  
*Vs.***

**OBIE OF UTEH OFIEJE.**

Plaintiff claim return of his wife one Onye Oke taken since 3 months ago.

Claim not admitted.

*Plaintiff S.S.*

The woman Onye Oke, was a wife of my brother who pd. lawful dowries on her. My brother died. I am entitled to the house and to inherit

my brothers properties Onye Oke is one, I am entitled to inherit. My brother Chiazò have paid all that that is necessary on Onye Oke. & she have had 2 children for my brother Chiazos.

*Exhibits.*  
—  
Exhibit 5.  
Igbodo  
Native  
Court  
Proceedings  
in Nos. 250  
and 261,  
9th  
October  
1918,  
*continued.*

*Deft. S.S.*

My father Onye-ekunwu gave Onye Oke to Chiazò for wife Ptffs brother. The Ptff. is really entitled to the properties of Chiazò. I gave Ptff. brother my Sister. As my father did but not the Ptff. himself.

For Plaintiff for his wife the woman, to be returned at once to the Ptff.

V.P. OBI IYEKE,  
his X mark.

10

Witness to mark.  
(Sgd.) ? ?

**Exhibit 6.**

**PROCEEDINGS AND JUDGMENT in Case 47/44 and Court Receipt.**

Exhibit 6.  
Proceedings  
and  
Judgment  
in Case  
47/44 and  
Court  
Receipt.

EXHIBIT " 6 " TENDERED BY PLAINTIFF AND ADMITTED IN SUIT W/42/47. OBI OSAGIE II *versus* CHIEF IYEKE. (SGD.) H. H. C. ANENE. 27.3.52.

NATIVE CT. 10.

This receipt is to be issued for all payments into Court except in cases where a Counterfoil Process Book is used.

47/44.

Book No. 2446.

No. 15.

**NATIVE COURT RECEIPT.**

Agbor Native Administration.

Native Court of Igbodo.

Agbor District,  
Benin Province.  
Date 16/3/1944.

£:-6.3.

30

Received from Chief Odogu Aselue of Id. Obior the sum of \_\_\_\_\_ pounds Six shillings and Three pence, being Search fee and copy of case folio 233 vol. 50.

OBI IYEKE his X Mark.  
Signature of President Native Court.

c/m (Sgd.) A. U. ODOZI,  
Signature of Court Clerk or Scribe.

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Witness to Marks.

*Exhibits.*  
 Exhibit 6.  
 Proceedings  
 and  
 Judgment  
 in Case  
 47/44 and  
 Court  
 Receipt,  
*continued.*

In the Native Court of Igbodo Clan held on the 8th and 16th of February 1944 before Obi Iyeke President and members as follows :—

Uwogu, Ogingbe, Mudaku, Kehi, Agborh, Odi Adaka, Osewabe, Osemene, Okocha, Nwaomoko and Moseri.

Suit No. 47/44.

Chief Asoku Odogu of Id : Obior Igbodo

*Vs.*

Osegiokwu Agborgimona anor. of Ilabor.

**CHARGE :**

Having entered into Ekwu-Ogugu bush of Palm Trees without 10 permission of complts. quarter elders Id : Obior Igbodo.

II. Destroying the Palm Trees.

III. Cutting unripe Palm fruits Contra to Palm Produce Production.

IV. Conduct likely to disturb the peace on 2/2/44.

**ORDER :**

The bush in which the acts were done to be inspected by Chiefs Otingbe, Okocha, Anyasi, Nwaefulu, Aghomic, Osemeku and Odi—  
 Complt. and accd. to be present in the inspection as also c/m Chigborgu to keep peace in the bush. Case adjourned pending inspection.

OBI IYEKE his X Mk.,  
 President.

20

(Sgd.) W/m A. U. ODOZI C. N. C. 8/2/44.

Crim. Case No. 47/44 of 8/2/44.

CH. ASELUE *Vs.* OSEGIOKWU AGBORGUMONA.

*Accd :*

Pleads not guilty on all counts.

*Complt : s/s*

The Accd : entered into our bush to cut palm fruits. The nuts cut by the accd. were not ripe. The accd. destroyed the oil palms and brushed the bush for farming without permission of our village council. The bush 30 is owned by our quarter Id : Obior-Igbodo. And to this end I will swear juju in confirmation of my statement.

*Accd. : s/s :—*

I did not cut palm fruits in Id : Obior bush. The bush in which I cut the nuts is for Ilabor and will swear juju that the bush is for my

quarter people Ilabor. The unripe fruit was not cut by me. I do not know the person who cut the unripe palm fruit. I cut two palm nuts in our bush. Ilabor is in Igbodo clan and we are one in custom.

*Exhibits.*  
—  
Exhibit 6.  
Proceedings  
and  
Judgment  
in Case  
47/44 and  
Court  
Receipt,  
*continued.*

*Chief Otingbe Ogene says :—*

The Court sent Chiefs Odi, Iyase Okacha, Agborh and I to inspect the bush in which the palm nuts were cut by the accd. The accd's. quarter chiefs Nwaefulu Anyasi and Aghomie accompanied us to the bush as also the complts'. quarter Chief Osemeke, Ukoye and Agbedion. We have seen the bush in dispute. This bush belongs to Id : Obior  
10 quarter people and not Ilabor, to which village the accd: belongs. Accd : has done wrong to enter into the bush to cut palm Nuts or make farm because he has no right.

*Agbomie S/S :—*

I am a native Ilabor-Igbodo quarter. I was one of those Chiefs who went to inspect the bush where the accd : cut palm fruits. Accd : said he did not cut the unripe palm fruits. The bush in which the palm nuts were cut is for our quarter Ilabor. I will not myself swear juju that the bush is for Ilabor, if the accd : can swear it is his own affairs. Obis of Akumazi-Obior, Uti Ogbeji and Igbodo made decision on this  
20 bush. This bush in dispute is for Id : Obior Igbodo quarter.

*Nwaefulu (m) S/S :—*

I am a native of Ilabor. I am one of the chiefs who went to inspect the bush. Anikpeku, Anieyime, Id : Obior, Id : Ozie Ndobu and Ilabor —these six village make up Igbodo Clan. We are all one by custom from origin. All bushes are communal to us all. We want peace. This bush is owned by Id : Obior Igbodo quarter. We will ask their permission to enter the bush.

*Chief Ale of Id : Obior S/S :—*

It is a fact that Ilabor village is partly in Igbodo clan. We do not  
30 want them to enter into our bush without permission. We want them to pay rent for the bush each time they desire to farm there. I do not agree that Ilabor quarter proper should enter the bush any more. They have destroyed our palm oil trees and nuts. Rubbers are planted in the bush any how.

#### JUDGMENT.

The bush in which the palm nuts were cut by the accd. is for Id : Obior Igbodo quarter and not for accd's. quarter Ilabor. The accd's. quarter Ilabor has no right to enter the bush to farm or to cut palm fruits. It is ordered from date that no Ilabor person should enter to any portion  
40 of bush owned by Id : Obior-Igbodo people, to make farm or to cut palm nuts without prior permission from the Id : Obior village council. When at any time that Ilabor village shall become a complete member of Igbodo

*Exhibits.* Clan, they shall have power to enter the bushes without payments of any kind. Finding accd. guilty on all the counts and discharged with warnings to pay 5s. cost.

—  
Exhibit 6.  
Proceedings  
and  
Judgment  
in Case  
47/44 and  
Court  
Receipt,  
*continued.*

Obi Iyeke his X Mk.

Chief Icebri Iyase his X mk.

„ Odi Iyase his X mk.

„ Otinge Ogem his X mk.

„ Mudahu Ogene his X mk.

„ Owazu his X mk.

5s. cost vide C.R. No. 2434/73 of 16/2/44.

10

(Sgd.) W/M/ A. U. ODOZI, C.N.C.,  
16/2/44.

6s. 3d. search fee and copy of case 810 words vide C.R. No. 2446/15 of 16/3/44.

Certified True copy.

(Sgd.) A. U. ODOZI, C.M.,

16/3/44.

**In the Privy Council.**

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**ON APPEAL**  
*FROM THE WEST AFRICAN COURT OF APPEAL.*

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BETWEEN

**CHIEF IYEKE** for himself and on behalf of the people of  
**Anikpaku Igbodo** (Defendant) . . . . . *Appellant*

AND

**B. OSAGIE** substituted for **Obi Osagie II** for himself and on  
behalf of the people of **Akumazi** (Plaintiff) . . . . . *Respondent.*

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**RECORD OF PROCEEDINGS**

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SEIFERT SEDLEY & CO.,  
14 TOOKS COURT  
CURSITOR STREET,  
LONDON, E.C.4,  
*Solicitors for the Appellant.*

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