

Judgment
1, 1958

~~G.H.G.~~
G.H.G.

No. 28 of 1956.

In the Privy Council

1

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

BETWEEN

CHIEF EKE OJA
CHIEF OGWO OBU and } for themselves and as representing the people of Asaga
NJAGHA OBASSI } *Defendants-Appellants*

AND

CHIEF KANU UKPAI and } for themselves and as representing the people of
CHIEF KANU EKPEZU } Biakpan *Plaintiffs-Respondents.*

RECORD OF PROCEEDINGS

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Solicitors for 1st Respondent CHIEF KANU UKPAI.

In the Privy Council

ON APPEAL

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

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 CHIEF OGWO OBU and } for themselves and as representing the people of Asaga
 NJAGHA OBASSI } *Defendants-Appellants*

AND

CHIEF KANU UKPAI and } for themselves and as representing the people of Biakpan
 CHIEF KANU EKPEZU } *Plaintiffs-Respondents.*

RECORD OF PROCEEDINGS

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In the Privy Council

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

BETWEEN

CHIEF EKE OJA
CHIEF OGWO OBU and
NJAGHA OBASSI

10 for themselves and as representing the people of Asaga
Defendants-Appellants

AND

CHIEF KANU UKPAI and
CHIEF KANU EKPEZU

for themselves and as representing the people of Biakpan
Plaintiffs-Respondents.

RECORD OF PROCEEDINGS

No. 1.

ORDER OF TRANSFER to Supreme Court.

20 In accordance with the powers conferred upon me by Section 28 (1) (c) of the Native Courts Ordinance, Cap. 142, Volume IV, Laws of Nigeria, 1948, I, MAJOR EDWARD STANLEY JAMES, T.D., Assistant District Officer, in charge, Arochuku District, do hereby order that the Suit mentioned in the Schedule hereunder be transferred to the Supreme Court, ABA, for hearing and determination at the instance of the Plaintiffs and their Counsel.

REASONS FOR TRANSFER :—

30 (1) The Plaintiffs have made arrangements with a Licensed Surveyor to prepare for them a plan of the land in dispute showing all the necessary boundaries and the area of trespass. It is therefore necessary for Counsel to assist the Court in giving accurate and fair interpretation of the plan which the Plaintiffs intend to produce at the hearing.

No. 1.
Order of
Transfer to
Supreme
Court
(undated).

No. 1.
Order of
Transfer to
Supreme
Court
(undated),
continued.

(2) The Plaintiffs are anxious that finality should be reached in this dispute, and it is only the Supreme Court that can bring about such finality.

(3) The Plaintiffs belong to the Arochuku Division and therefore subject to the jurisdiction of the District Officer, Arochuku, while the Defendants are under Bende Division.

(4) The Defendants would not like to appear in the home Court of the Plaintiffs nor would the Plaintiffs be prepared to appear in the home Court of the Defendants. It is therefore necessary that the case be tried by the Supreme Court which is likely to be detached in its judgment the only neutral Court is the Supreme Court. 10

(Sgd.) E. S. JAMES,
Assistant District Officer,
i/c Arochuku District.

Scheduled
Plaint in
Native
Court,
21st June,
1951.

SCHEDULED PLAINT IN NATIVE COURT.

SCHEDULE.

IN THE NATIVE COURT OF UBAGHARA.

Suit No. 17/51.

Between CHIEF KANU UKPAI
CHIEF KANU EKPEZU 20
for themselves and as representing the
people of Biakpan Plaintiffs

And

CHIEF EKE OJA
CHIEF KANU OCHU (dead)
OGWO OBU
NJAGHA OBASSI
for themselves and as representing the
people of Asaga Defendants.

PARTICULARS OF CLAIM. 30

The Plaintiffs' claim against the Defendants jointly and severally is as follows:—

(1) Declaration of title to all that piece or parcel of land known as "Ekuot Ijoho" situate and being at Biakpan in the Calabar Province, property of the Plaintiffs, the said land to be particularly delineated on the plan to be produced at the hearing.

(2) £300 damages for trespass in that in or during the year 1947, the Defendants and their people and/or agents broke and entered into the Plaintiffs' said land and therefrom collected palm fruits and made farms therein, and thereby disturbed the Plaintiffs' quiet possession of the said land, without the leave or licence of the Plaintiffs.

Scheduled
Plaint in
Native
Court,
21st June,
1951,
continued.

10 (3) An Injunction to restrain the Defendants, their people, agents, servants and each and everyone of them from any further acts of interference with the Plaintiffs' right, title, interest in, and possession of the said land. Dispute started since 1947.

Dated at Ubaghara this 21st day of June, 1951.

(Sgd.) KANU EKPEZU,
for Plaintiffs.

Addresses for Service :—

Plaintiffs' c/o Aro Post Office, Via Utu.

Defendants' c/o Ohafia Post Office, Via Bende.

(Sgd.) E. S. JAMES,
Assistant District Officer,
i/c Arochuku District.

*In the
Supreme
Court.*

No. 2.

STATEMENT OF CLAIM.

No. 2.
Statement
of Claim,
15th
September,
1952.

IN THE SUPREME COURT OF NIGERIA.

In the Supreme Court of the Aba Judicial Division holden at Ikot
Ekpene.

Suit No. A/105/1951.

Between 1. CHIEF KANU UKPAI
2. CHIEF KANU EKPEZU,
for themselves and as representing the
people of Biakpan . . . Plaintiffs 10

and

1. CHIEF EKE OJA
2. CHIEF KANU OCHU
3. OGWO OBU
4. NJAGBA OBASSI
for themselves and as representing the
people of Asaga . . . Defendants.

STATEMENT OF CLAIM.

1. The Plaintiffs are the chiefs, elders and natives of Biakpan and sue for themselves and as representing and with the authority and consent 20 of the people of Biakpan Arochuku District, Calabar Province. The Defendants are the elders and natives of Asaga and are sued for themselves and as representing the people of Asaga.

2. The land the subject matter of this action (hereinafter called the land in dispute) is known as "Ekuot Ijoho" and comprises three contiguous portions of land known as "Okpotum Emafa," "Okuot Ijoho Wibet" and "Otim Enyo," and is situate at Biakpan in the Arochuku District, Calabar Province. The land in dispute is bounded as follows:—

(I) On the north by the lands on Ikun and the people of Ufiele ;

(II) On the east by the land of the Plaintiffs ; 30

(III) On the south by the land of the Plaintiffs and the land of Nderioke ; and

(IV) On the west by the land of the people of Eziafe and the land of the Defendants.

These boundaries are clearly marked out with prominent land marks and boundary marks and are particularly delineated and shown on the plan filed in this action. The land in dispute is on the said plan verged pink.

3. The land in dispute is the property of the Plaintiffs and their people and has been so from time immemorial. The Plaintiffs and their people have exercised maximum acts of ownership over the same by farming the same, collecting palm fruits therefrom, granting portions of the same according to native law and custom to tenants who pay regular tribute to the Plaintiffs and their people. The Plaintiffs and their people have jujus on the land in dispute to which they make customary sacrifice.

*In the
Supreme
Court.*

No. 2.
Statement
of Claim,
15th
September,
1952,
continued.

10 4. The Plaintiffs' ancestors were the first to occupy and settle on the land in dispute while the same was yet a virgin forest. Several generations ago the Plaintiffs' ancestors migrated from their original settlement known as Ebe Oton in the Calabar District owing to lack of water and finally settled on the land in dispute. The Plaintiffs have inherited the land in dispute from their ancestors or predecessors-in-title, and have since remained in possession of the same from time immemorial.

20 5. The Defendants are strangers to the land in dispute, their ancestor having originally migrated from Ibeku in Umuahia, Bende Division, Owerri Province, and finally settled on the land whereon the village of Asaga, that is, the Defendants' village, now stands, and which is a considerable distance away from the land in dispute. The ancient and natural boundaries separating the land of the Plaintiffs from the land of the Defendants have always been the Rivers "Obara" and Ivetim" and part of River "Isiogugu." The Plaintiffs and their people have effectively occupied as owners, the land in dispute up to Duhke and Isiogugu rivers on the north and Ivetim river on the west and Obara river on the south. The Defendants have for several generations respected these limits of occupation, user and possession by the Plaintiffs.

30 6. Both the Defendants' ancestors while settled at the Defendants' present habitat of Asaga and the Plaintiffs' ancestors at the present location of the Plaintiffs' village of Biakpan had treated the lands lying between Asaga village and Biakpan village as the common property of both villages save that the limits of effective occupation and user and exclusive possession hereinbefore alleged and contained in paragraph 5 of the Statement of Claim, were recognised and maintained by both the Plaintiffs and their people and the Defendants and their people respectively. The Plaintiffs and their people had never before been interrupted in their exclusive enjoyment and possession of their exclusive portion which is the land in dispute.

40 7. It had all for several generations past been peaceful between the Plaintiffs and their people and the Defendants and their people in respect to the separate lands of both the Plaintiffs and the Defendants, the Defendants and their people respecting the land in dispute as the exclusive property of the Plaintiffs and their people and the title interests and rights and possession of the Plaintiffs therein until in or about 1947 when the Defendants and their people in large numbers invaded the land in dispute and without the leave or licence of the Plaintiffs and their people thereon made farms collected palm fruits therefrom and thus deprived the Plaintiffs and their people of their farm lands and palm fruits.

*In the
Supreme
Court.*

No. 2.
Statement
of Claim,
15th
September,
1952,
continued.

8. The Defendants and their people have since continued, in flagrant disregard of the rights, interests and title of the Plaintiffs in the land in dispute, to molest the lives of the Plaintiffs and their people on the land in dispute and to farm the said land and collect palm fruits therefrom despite the warnings of the Plaintiffs and their people. The Defendants have taken advantage of their great superiority in number and wealth over the Plaintiffs and are determined to dispossess the Plaintiffs of their most valuable farm lands. The Plaintiffs have in consequence suffered great hardship and considerable damages.

Wherefore the Plaintiffs claim from the Defendants jointly and 10 severally :—

(I) Declaration of title to all that piece or parcel of land known as “ Ekuot Ijoho ” situate and being at Biakpan in the Calabar Province, property of the Plaintiffs, the said land to be particularly delineated on the plan to be produced at the hearing.

(II) £300 damages for trespass in that in or during the year 1947, the Defendants and their people and/or agents broke and entered into the Plaintiffs’ said land and therefrom collected palm fruits and made farms therein, and thereby disturbed the Plaintiffs’ quiet possession of the said land, without the leave or licence of the 20 Plaintiffs.

(III) An Injunction to restrain the Defendants, their people, agents, servants and each and every one of them from any further acts of interference with the Plaintiffs’ right, title, interest in, and possession of the said land. Dispute started since 1947.

Dated at Aba this 26th July, 1952.

(Sgd.) E. UDO UDOMA,
Solicitor for Plaintiffs.

No. 3.
Defence,
5th
November,
1952.

No. 3.
DEFENCE.

30

(Title as No. 2)

STATEMENT OF DEFENCE.

1. The Defendants admit paragraph 1 of the Statement of Claim.
2. The Defendants deny paragraph 2 of the Statement of Claim and aver that the land in dispute is known as and called “ Ali Ukwu ” and not as the Plaintiffs state in the Statement of Claim. The said land in dispute is bounded as follows :—

(A) On the north by lands of the people of Ikun and of the Defendants respectively.

(B) On the east by land given to the Plaintiffs' ancestors by the Defendants' ancestors and now occupied by the Plaintiffs, with the exception of a fishing pond called "Ikama" which the Defendants' ancestors reserved to themselves when land was given to Plaintiffs' ancestors as stated above.

(c) On the south by lands of the people of Eziafo, Ndiorieke, Abia and Defendants respectively.

(D) On the west by lands of Eziafo and Defendants respectively.

*In the
Supreme
Court.*

No. 3.
Defence,
5th
November,
1952,
continued.

3. The Defendants deny paragraph 3 of the Statement of Claim and
10 aver that the Defendants are the real and true owners of the land in dispute
which is clearly delineated and shown on the plan filed by the Defendants
with this Statement of Defence. The Defendants inherited the land in
dispute from their ancestors and have exercised maximum acts of ownership
over the same by farming the same, putting tenants thereon and collecting
palm fruits and other crops therefrom. The Defendants have jujus on
the land in dispute.

4. In answer to paragraph 4 of the Statement of Claim the Defendants
admit that the Plaintiffs' ancestors migrated from Ebe Oton but deny that
20 the Plaintiffs' ancestors were the first to occupy and settle on the land in
dispute. The Plaintiffs' ancestors first settled among the Ikun people
who were related to them by blood. The Plaintiffs' ancestors quarrelled
with the Ikun people who drove the Plaintiffs' ancestors away and the
Defendants' ancestors harboured the Plaintiffs' ancestors and gave them
the land on which the Plaintiffs now live.

5. The Defendants admit that their ancestors migrated from Ibeku
as stated in paragraph 5 of the Statement of Claim but this was long before
the ancestors of the Plaintiffs migrated to the Plaintiffs' present place of
abode and were given land as per paragraph 4 above. The Plaintiffs
have always acknowledged the Defendants as their landlords until recently
30 when one Onugen Iquo who was discharged from the Police Force and
installed as a Chief at the Plaintiffs' place, Biakpan, started to put strangers
on the land.

6. The Defendants deny paragraphs 6, 7 and 8 of the Statement of
Claim and shall put the Plaintiffs to the strictest proof thereof.

7. Save as is herein specifically admitted the Defendants deny each
and every allegation contained in the Statement of Claim.

8. The Defendants will plead :—

- (1) Estoppel.
- (2) Res judicata.

40 Dated at Aba this 5th day of November, 1952.

(Sgd.) D. C. OSADEBAY,
Solicitors for Defendants.

KANU EKPEZU.

*Plaintiff's
Evidence.*

KANU EKPEZU (m) A native of Biakpan. Sworn states:—

No. 4.
Kanu
Ekpezu,
28th May,
1953,
Examina-
tion.

I am a farmer and live in Biakpan. I represent the people of Biakpan in this action. Kanu Ukpai is our head Chief and he and I have sued as representing Biakpan. I know the Defendants we have sued them on behalf of the people of Asaga.

The Asagas are in Ebam Ohafia Clan and we are of Biase Clan in Arochuku.

We call the land in dispute Ekuot Ijoho (Ekwot Ichocho). Ekuot 10
Ojoho is made up of three portions of land namely Okpotom Emafa,
Otum Enyo, and Okuot Ijoho Wibet. The land in dispute is in Aro
Division. The Biakpans are the owners of this land. We have owned
the land since our forefathers.

On the Obara side (OBARA). Obana or Obara is a river and it forms
our Southern boundary with Nderioke land. We also have a stream
called the Eduepepin stream which flows into the Obara River. Nderioke
people are Asagas. On one side we have a forest which forms our boundary
with Eziafo. Eziafos are Asagas then a road which leads from our village
to Eziafo. Crossing the road one meets the Osia Ekwot waterway then 20
to the Uzie stream and after crossing the Uzie stream one gets to the
Ivetim stream. The Ivetim stream is our boundary with the Asagas.
After the Ivetim stream one gets to a Hill which leads to the Isiogugu
stream. The Ivetim stream runs from a hill in Asaga right across the
road we have with Asagas. The Hill one meets after the Ivetim stream
is our boundary with Asaga. The Hill itself is on the Asaga side and we
walk on our side of the boundary to the Isiogugu stream. The Isiogugu
stream is our boundary with Ufiela Ohafia people who are Asagas. At the
top our boundary is the Duhke River which forms our boundary with 30
Ikun people. The Ikuns and ourselves are one. The Duhke River flows
down to Dughein stream on our side. On our plan we showed the Surveyor
the Eastern boundary as surveyed by the Defendant this has never been
the boundary between us. During this case we made a survey of the
land in dispute and we showed our Surveyor all the features he has put
on the plan. We have filed a copy of the plan in Court. Our ancestors
came from Ebote in Calabar and the original man who migrated was
Ubagara he had to leave Calabar because where he was living was flooded
and he settled at Ivei he left Ivei for want of water he then settled at Omandi
he then left Omandi for want of farming land and settled at Otimenyo 40
which is near the Obara river. Ubagara and his people farmed from
Otimenyo to the Ivetim stream which we regard as our boundary with
Asaga. From Otimenyo we founded our present village. We made
roads from our village to Ivetim. The Asagas made their road from their
village to Ivetim with river running in between the two roads. No one
from Asaga has ever made a road beyond the Ivetim on our side. The
only road that connects Asaga is the one we made up to Ivetim. There
was an old road but this was straightened out. The Defendants sent this
letter to us requesting us to make our roads and stop at Ivetim and they

will do the same. Letter tendered and objected to by Mr. Osadebay on the ground that the witness could not read or write. Dr. Udoma withdraws letter at this stage.

We agreed to make a Motor road with Asagas according to their request we made ours and stopped at Ivetim but up till now the Defendants have not made theirs. The road on the Asaga side which joins ours at Ivetim is not motorable.

We farm on the land in dispute and we collect palm fruits on it. We rent portions of it to strangers and we receive rents.

10 The Defendants originated from Ibeku a part of Umuahia. They travelled from Ibeku and stopped at Abam, from Abam they went to Udaragbo from Udaragbo they went to Ivu Obasi. From Ivu Obasi they went to Ogbu where they now live and which is now called Asaga. We have always regarded Ivetim as our boundary. Ivetim was the recognised boundary by both of us before I was born and when I grew up it was still the recognised boundary. Both sides used to meet at Ivetim to discuss matters.

20 We rent portions of this land to Ufiele people to farm on and they pay us tribute by way of four pots of palm wine and the waist of a bush meat and a goat, 100 yams during the new yam festival and when they harvest they give us 10/- and another 100 yams. This happens at each farming season when they want land from us. The Ufiele are Asagas. We give them land in the portion called Okpotum Emefa. I have witnessed this payment of tribute by Ufiele myself when they paid to 1st Plaintiff Kanu Ukpai in 1952 even when this case was already in Court. The Ufiele are still using Okpotun with our permission. Their farms are shown on the plan we made. We have a juju on the land known as Ngwu juju (Trees) also Gbaneze juju by the road (near the Isiogugu waterway No. 1). From our village to Asaga we have Palm 30 groves on our land. The Asagas have never interfered with our farming on the land. They have never come on our land to farm except when they have asked for and given permission.

There was never any dispute between us and the Defendants over the land now in dispute the first dispute I know of was in 1936 when we had a boundary dispute with Eziofors and they were joined by Asagas. The dispute that has made this action necessary was what happened in 1947. The Defendants crossed Ivetim and came on Ekwot Ichoho Wibet. One Mr. Edem of Asaga leased a portion of Ekwot Ichoho for rice 40 plantation from us in 1947. Later we found that he did not plant rice but rather. We pointed this out to Edem and he begged. This was not the cause of this dispute what caused the dispute was the farming on the land by Asagas without our permission. We did not give them permission to do this. Ogwo Obu and Njaga Obassi are two of the Asagas we saw farming on the land (3rd and 4th Defendants). We sued the two Chiefs (1st and 2nd Defendants) of Asaga as well. The 3rd and 4th Defendants went on the land with many other Asagas. We complained to the 1st and 2nd Defendants who said that the young men in Asaga never listen to their advice.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 4.
Kanu
Ekpezu,
28th May,
1953,
Examina-
tion,
continued.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

3rd and 4th Defendants with their people collected palm fruits on the land and planted yam and cassava on the land which they harvested and sold and we were prevented from farming and so we claim £300 damages. Defendants are more numerous than ourselves. 3rd and 4th Defendants cassava plants are still on the land.

No. 4.
Kanu
Ekpezu,
28th May,
1953,
Examina-
tion,
continued.

It is not true to say that Defendants gave us land and that they gave us where we are living now.

Cross-examined by Osadebay :

I did not know that 2nd Defendant is dead. Note—Mr. Osadebay informs Court that he has just been told that the 2nd Defendant Kanu 10 Ochu is dead this is confirmed by the 1st Defendant, Eke Oja.

Cross-
examina-
tion.
By Court.

Court :

The name of Kanu Ochu is struck out of these proceedings.

Cross-
examina-
tion.

Mr. Osadebay continues his Cross-examination :

When we left Calabar we did not go to the Ikun people we went to a place near Ikun. The Ikuns are our blood relatives we have the same ancestor. We left Calabar with the Ikun people and came to these parts together. They did not settle in these parts before us. We lived at Ivie and they at Ikun. The Ikuns did not give us Ivie. We did not quarrel with Ikuns and they did not drive us away. The Asagas did 20 not give us land at all. Our present village site was not given to us by Asagas. I know a man by name Onugen Iquo he is a Biakpan man. He gave evidence before the District Officer in 1936. Asagas did not give us any land. Asagas have no pond in our land. I heard of a man called Ine-Bu he fished in Ikama stream or pond. The Asagas and Itono people sued him. Ine-Bu is a Biakpan man. The pond he fished in is in the land of Itono Ubagala No. 1. It is not near our village and the pond is not ours and we do not fish in it. From Asaga one passes through Biakpan then to Etone Biakpan then the road to Ikama on which one meets Itono Ubagala who have boundary with us then Ikama and the 30 Asaga fishing pond is beyond that. The Itono Ubagalas are not our people but Etono Biakpans are our people.

The Asaga fishing pond is called Ikama. Ikama belong to Abaya and Etope people they are Itono Ubagala No. 1. The reason why this Asagas fish in this pond is that a woman by name Oma Eziakuma of Ohafia gave birth to twins she left Ohafia and went and lived at Itono Ugbala with Abaya people and she followed the Abayas and fished in the pond. When Uduma Ekele of Ohafia went and married the woman who had twins and lived with her in Itono Ubagala he and his wife used to go with Asaga people and fish in the pond. When Abaya died the Ohafia 40 man and his wife continued to fish in the pond with Abaya's children in the pond. The woman died and Uduma returned to Ohafia. Although he lived in Ohafia he used to go with Asagas to the pond to fish. Ekele people sacrifice before fishing in the pond. Uduma Ekele is an Asaga man. Uduma Ekele was before my time but during my father's lifetime.

I cannot remember the year we leased the land to Edem (1947) I remember 1936 and 1937 when District Officer Connel and District Officer Ennals went into the 1936 dispute between Eziafos and ourselves but the Asagas joined on the Eziafos side. We did not like the boundary fixed by D. O. Ennals and the Defendants did not like the boundary fixed by D. O. Connel. We both petitioned to the Resident. We agreed before the Resident that both sides use the land then in dispute in common. The boundary between Asagas and ourselves is not Iyi Atama but Ivetim. It is neither Iyi Atani. It is Ivetim. Ogwe Ufie is not our northern boundary with Asagas. (North East.) (Note plan of Defendants.) Duake stream is the boundary between ourselves and the Ikuns not the Asagas. Obara river in the south is our boundary with Nderioke and Eziafo. Asagas did not arrive in their present site before us. Onugen Iquo is an ex-police constable he is not the cause of the trouble. The trouble arose when Asagas came and farmed on our land without permission. The land in dispute is ours.

In the Supreme Court.

Plaintiffs' Evidence.

No. 4.
Kanu Ekpezu, 28th May, 1953, Cross-examination, *continued.*

No. 5.

JOSEPHUS THEOPHILUS JOHN.

20 JOSEPHUS THEOPHILUS JOHN (m) Licensed Surveyor stationed Calabar Sworn states :—

No. 5.
Josephus Theophilus John, 28th May, 1953, Examination.

I know the Plaintiffs in this action the Biakpans. I made a survey of the land in dispute for them. I prepared a plan as per their instruction. They showed me their boundaries. Plaintiffs gave the details. I saw everything I put on the plan. This is the plan tendered and admitted and marked Ex. A. The land shown in the plan is the same as in Ex. A. By consent Defendants plan tendered and admitted and marked Ex. B. The details in Ex. B I do not know about.

Ex. A.
Ex. B.

No questions by Mr. Osadebay.

No. 6.

LAZARUS UKA.

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LAZARUS UKA (m). A native of Biakpan Sworn states :—

No. 6.
Lazarus Uka, 28th and 29th May, 1953, Examination.

I am a farmer and live in Biakpan I am also a member of Council. I know the 2nd Plaintiff he and our Head Chief were authorised by us to bring this action. I know the Defendants they are Asagas. I know the land in dispute is called Ekwotichoho. There is a portion called Otim Enyo, another Okpotam Umefa and the third Ekwotichoho Wibet.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 6.
Lazarus
Uka,
28th and
29th May,
1953,
Examina-
tion,
continued.

The land belong to us the Biakpans. The land is bounded on the Otim Enyo side by Obara River then by a forest, then the road to Eziafo from Biakpan then to the Osia Ekwo waterway, then to Uzin Stream, then to Ivetim and then the road with Asaga which crosses the river then the Hill between Asaga and ourselves and then the Isiogugu stream to Duako stream. At Isiogugu we have boundary with Ufiele Ohafia people. At Duake we share boundary with Ikuns. The boundary with Ikuns go on to the Dugheni stream. I went on the land with our Surveyor. We saw the boundary made by Defendants for their own surveyor. We do not accept the boundary made by Defendants. The area in dispute 10 is ours. We came originally from Ebeoten near Calabar. We finally settled at Ebe Uzin which is the Biakpan town now. This is our traditional history. We have jujus on the land and our people sacrifice to them. One of our jujus is called Ngwa juju (Trees) the other is Gbaneze juju. We the Biakpans sacrifice to both jujus. We have never been prevented from sacrificing to these two jujus. Ivetim is the acknowledged boundary between Asagas and ourselves we farm up to Ivetim and we made a road and stopped at Ivetim. The Defendants farm on the other side and then road is on the other side of Ivetim. I can read and write. This letter was sent to us by Asagas after we had met at Ivetim to consider making 20 of road it was written by a teacher in Asaga. Tendered and admitted and marked Ex. C. [Mr. Osadebay I am instructed to say that the letter is a forgery and it does not comply with the requirement of the illiterate Protection Ordinance. Court—I will consider this later it goes to the weight one can put on it.] We did make our road and stopped at Ivetim. Defendants made their road. It is not motorable. We farm on the land and collect palm fruits on it. We plant Cassava and we also have palm wine groves. I have a farm on the land. I have farmed on Ekwotichoho, Wibet and Otim Enyo. I have also farmed on Okpotom Umefa. 1st 30 and 2nd Plaintiffs have also farmed on the land in dispute. We put strangers on the land. We have let portions of the land to Ohafia people. Up to this day we give Ufiele people portions of this land to farm on. They pay us tribute when we give them land. They give four pots of wine and two legs of meat a goat for sacrifice. During new yam festival they give us 100 yams and after harvest 100 yams and ten shillings cash. The present case started in 1947. The Asagas are more numerous than our people they came on our land and farmed and built huts. They did not ask our permission. We did not see Edem but we saw his Chief. Edem came to us for land to plant rice he did not plant rice but he planted rubber this did not please us. The Defendants having farmed on our land 40 without our permission we sent a message to their Chiefs we sent to Eke Oja. Eke Oja said he would go and see our Chief he begged us. He said the young men would not take their advice. 3rd and 4th Defendants went and farmed on the land with others whose names I do not know. Although we protested the Defendants (3rd and 4th) and their people still continued to be on the land without our permission. The Ufiele who we gave permission to farm on the land, still do so and still recognise us as the owners of the land.

Ex. C.

Cross-
examina-
tion.

Cross-examined by Mr. Osadebay :

When we left Calabar we lived at Ivie among other places but the 50 Ikuns did not give us Ivie we founded it ourselves. This was not during

my lifetime. It happened long ago but that is our tradition. It is not true that we got our present site and farm land from Asaga. If we quarrelled with Ikuns when we were at Ivie I do not know I was not born then. I have never heard that we had any dispute with Ikuns. We are one. I have heard of the Ikama Pond but I have never been there myself. It is in Itono Ugabala No. 1. I do not know whether Asaga own it I know of it as belonging to Itono people. There is a road from Ikono Eke Ikama Pond. There is a road that runs through Biakpan and Etono Biakpan on to Itono and Ikama. Ufiele and Asagas had a dispute. It has been settled. Asagas lost the case. I only know of one case between them. I know of the case No. 178/50 Native Court of Ubaghara between Awa Okwara on behalf of Asaga Village and Kalu Ukpai and Kalu Nsi on behalf of Ufiele people for declaration of title to Isigboro Ude-Oke situate at Asaga. The land was really Okpotom Umefa but Asagas called it by a different name. I know of the Ennals Connel settlement of boundary. Before the Resident we agreed to use the land in common. I can read and write a little. I have not read the copy of Proceedings.

In the Supreme Court.

Plaintiffs' Evidence.

No. 6.
Lazarus Uka,
28th and 29th May, 1953,
Cross-examination,
continued.

Adjourned to 29.5.53.

(Sgd.) G. F. DOVE-EDWIN,

20

Puisne Judge.

Resumed—29th May, 1953.

Counsel as before.

LAZARUS UKA still on his oath Cross-examined by Mr. Osadebay states :—

Cross-examination.

I was living at Biakpan in 1932. I do not know of the case between an Asaga man and Iregbu about Ikama Pool.

Re-examined by Dr. Udoma :

Re-examination.

In the Connel Ennals settlement of boundary I cannot say the extent of the land involved.

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No. 7.

AWA KALU.

No. 7.
Awa Kalu,
29th May, 1953,
Examination.

AWAKALU (AWA KALU) (m) A native of Ufiele Sworn states :—

I am a farmer and live in Ufiele. We are one with Asaga. I know the Plaintiffs Biakpans and I know the Asagas defendants. I know the land in dispute it is called Ekwot Ichoho. Ekwot Ichoho belong to the Biakpans. I know the boundary of the land we have a boundary with the land. We have the boundary at Isiagugu stream. We have always asked Plaintiffs for that portion of the land in dispute called Okpotom.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 7.
Awa Kalu,
29th May,
1953,
Examina-
tion,
continued.

I have farmed on Okpotom myself and I do so after I have got permission from the Plaintiffs. I have had permission from the Head Chief Kalu Ukpai. When I went to him for farm land on the first occasion I gave four pots of Palm wine and after that I gave two legs of meat. I give a goat for sacrifice each farming season. During the new Yam festival I give 100 yams and after reaping my yams I give another 100 yams and 10/- for tobacco. I have farmed on the land for twenty years. I farm for three years then go to my village and do not go to farm again for four years. I am given sufficient land to farm on for three years without farming on the same spot twice then I retire to my own farm and work that for four 10 years during which time the land I got from Plaintiffs would lie fallow. No Asaga man has ever stopped me from farming on the portion given to me by Plaintiffs. One Ewa Oburu of Asaga at one time went and farmed on the portion allocated to me by Plaintiffs and I took out an action in the Ubaghala Native Court against him and I won the case Chief Kalu Ikepzu gave evidence on my behalf that he gave me permission to farm on the land. No other Asaga man disturbed my use of the land. My Cassava Plants are on the land now. The whole of Ufiele farm on Okpotom Umefa both men and women. We are a small community only about 50 Tax Payers in it. Ivetim is the acknowledged boundary between Asaga and 20 Biakpan.

*Cross-
examina-
tion.*

Cross-examined by Mr. Osadebay :

I have not always quarrelled with Asagas over land I do not do so yearly. I have only had one with Ewa Obum and that's all and this was about two years ago. I did not hear that the Resident had said the land between Asaga and Biakpan should be used in common I know Kalu Ukpai of Ufiele and Kalu Nsi of Ufiele. I know Awa Okwara of Asaga. I heard of the land case taken out by Awa Okwara against Kalu Ukpai and Kalu Nsi for and on behalf of Ufiele it was for declaration of title to Isigboro-Ude-Uke as he the Plaintiff called it but the land was the same Okpotom 30 Umefa. Asagas did not win I represented Chief Kalu Ukpai of Ufiele who is my Father. We the Ufiele have land. We do not live in Asaga land it is Asagas who live on our land. We go to Biakpan for land as their land is more fertile. I know the Ikama Pond it belongs to Itono Ubaghara people. I know Inegbu of Biakpan he was sued by Asagas for fishing in the Ikama Pond the Asagas won. I know Aliukwu it belongs to Ufiele. I do not know of an Aliukwu in Asaga. Asagas have land in their village. From our village to Asaga and to Biakpan village the distance is the same. I do not know the name of Asaga land. I cannot give the extent of Asaga land I do not live with them. I know Biakpan boundary 40 as they give me land to farm on. I farm on Okotom Umefa. I have Biakpan neighbour in my farm area.

*Re-exami-
nation.*

Re-examined by Dr. Udoma :

The case I spoke of between Awa Okara and Kalu Ukpai and Kalu Nsi was in the Ebem Native Court Ebem is in Ohafia. I represented Kalu Ukpai my father who was ill. In the *Ewa Obom* case he got Asagas to give evidence for him and I was supported by the Biakpans. Chief Unugen of Ikun was one of the Native Court Judges. Itono Chiefs were also Judges.

No. 8.

AGWU EKEA.

AGWU EKEA (m.). A native of Ufiele Sworn states :—

I am a farmer and live in Ufiele. I know the Asagas who are Defendants. I know the Biakpans who are Plaintiffs. I know the land in dispute it is called Ekwot Ichoho. There is a road from our village to Biakpan village. We have a boundary with Biakpans at Isiogugu stream. When we farm on Ufiele land our neighbours are Biakpans. We have boundary with Asagas on the Asaga village side. When I said we have farm neighbours with the Biakpans I mean on the Isiogugu stream side. Plaintiffs have land called Okpotom Umefa in Ekwot Ichoho and Plaintiffs used to give us portion of Okpotom Umefa to farm on. I have myself farmed on Okpotom Umefa with permission from Plaintiffs. I pay yearly tribute that is every farming season. I give four pots of wine at the start and after this two legs of meat, one goat, 100 yams during the new yam season and 100 yams and 10/- at the harvest. I have farmed on Okpotom Umefa for about thirty-three years. It was in my time that we started to farm on Okpotom Umefa. Before my time my father used to farm from Isiogugu to our village. I have crops on Okpotom Umefa now.

Cross-examined by Mr. Osadebay :

I know Kalu Ukpai of Ufiele he is our Chief. I know Awa Okwara of Asaga I know Kalu Nsi of Ufiele he is also our Chief. I know that Awa Okwara sued our two Chiefs for declaration of title to land in Ebem Native Court. My people went to Court. We do not have cases with Asagas always only once did last witness sue them when they came on land given to us by Plaintiffs. There is no case between Asagas and Ufiele pending in the Supreme Court that I know of.

I do not know Inegbu of Biakpan. I know Ikama it is a stream full of fish. I do not know of any man fishing in that stream and who was sued. We and Asagas are friendly.

Resumed—22nd day of June, 1953.

Messrs. Emole and Ebo for Plaintiff. Ebo holding Dr. Udoma brief. Mr. Osadebay for Defendants. Dr. Udoma joined later for Plaintiffs.

No. 9.

KANU ABARA EKPO.

KANU ABARA EKPO (m.). A native of Biakpan sworn states :—

I am a farmer and live at Biakpan. Ife Ogo is my village in Biakpan. I know the parties in this case and the land in dispute. The name of the land in dispute is Ekwot Ichoho, Otim Eyo (Enyo) and Okpotom Umefa.

*In the
Supreme
Court.**Plaintiffs'
Evidence.*No. 8.
Agwu Ekea,
29th May,
1953,
Examina-
tion.Cross-
examina-
tion.No. 9.
Kanu
Abara
Ekpo,
22nd June,
1953,
Examina-
tion.

*In the
Supreme
Court.*

*Plaintiffs'
Evidence.*

No. 9.
Kanu
Abara
Ekpo,
22nd June,
1953,
Examina-
tion,
continued.

I have farmed on Ekwot Ichoho. I farmed near Gbaneze juju. From Obara stream going left and facing north one gets to a forest and then to the Eziafo road and Eziafo is on the left and Biakpan on the right. One then gets to Osia Ekwot then to Uzin which flows into the Ivetim stream all along here Asagas are on the left and we Biakpans on the right. These waterways Osia Ekwot, Uzin and Ivetim are our boundary with Asagas. From Ivetim one gets to a hill and then to Isiogugu stream and then to Duake River. This is our boundary with Asagas. The Duake River is our boundary with Ikuns the Isiogugu with Ufiela and the Ivetims our boundary with Asagas. The Dugheni stream is our boundary 10
with Ikuns on the other side. I used to farm on Ekwot Ichoho with my father who is now dead. I farmed with him twice before his death and three times after his death. Gbaneze juju belong to Biakpan. We let land lie fallow for six years before we plant on it again. I have farmed on other portions of Biakpan land such as Etim Eyo and Okpotom Emefa.

About seven years ago the Asagas came and cleared a portion of Ekwot Ichoho land. I was one of those sent by our Elders to the Asagas to ask why they had cleared a portion of our land. We went to the house of the Chief of Asaga called Eke Oja and he asked us to go back and he will come and beg our people that the action was done by young men who 20
would not take advice. Eke Oja did not come. We took action against them in the Ikun Native Court.

Cross-
examina-
tion.

Cross-examined by Mr. Osadebay :

I have heard about Ikama it is a pond and it belongs to Etono Ughabala, I knew one Enobu he is dead. I do not know anything about Enobu going to fish in the pond Ikama. I do not know that Ikama belongs to Asagas. I know of the Settlement by the Resident after two District Officers had traced boundaries. We told the Resident that we would use the land in common. I do not know Kalu Ali Uhujuju if it belongs to Asagas I do not know. I do not know Kalu Okpuhorakpo on the land in 30
dispute the Asagas have no land there. Gbaneze juju was on the land from time immemorial. Gbaneze juju is a tree we did not plant it it grew there of itself. We Biakpans originally came from Calabar District a place called Ebe Otong. From Ebe Otong we went to Etim Eyo the land in dispute. Ikuns did not give us land. Asagas did not give us land. Ikama does not belong to Asagas. No one gave us land.

By Court. *By Court :*

From the date the Resident said we should use the land in common and we agreed we used it in common for about seven or eight years. We quarrelled about tenants on the land. Asagas would not tell them to go 40
away and so the trouble started.

Re-exami-
nation.

Re-examined by Emole :

I was present at the settlement by the Resident.

No. 10.

MBA EKPEZU.

In the
Supreme
Court.Plaintiffs'
Evidence.

MBA EKPEZU (m). A native of Biakpan sworn states:—

I am a farmer and live in Biakpan. I know the land in dispute it is called Ekwot Ichoho. Aged about 55 years. Ekwot Ichoho consists of several pieces of land such as Otom Enyo, Okpotom Emefa, Ekwot Ichoho Wibet. Starting from Eduepepin stream we have the people of Nderioke on the left and we Biakpans are on the right. After Eduepepin we have Obara stream then a forest which is our boundary with the Eziafos after this forest one gets to a road which lies between us and Eziafos from there one gets to Osia Ekwot then Uzim, and from Uzim to Ivetim this is our boundary with Asagas. Osia Ekwot and Uzim form our boundary with Eziafos. After Ivetim one gets to our road with Asagas after the road one gets to Isiogugu which is our boundary with Ufiele people from Isiogugu one gets to Duake (Duhke) from Duhke to Dugheni is our boundary with the Ikuns. I have farmed on Ekwot Ichoho Wibet I have done so since I started farming. I have farmed there three times. We let the land lie fallow for seven years. When I do not farm on Ekwot Ichoho Wibet I farm on our other lands not in dispute. We sacrifice at Gbaneze, a juju on the land in dispute. Gbaneze juju belongs to Biakpan people. We have a juju called Ngwu on the land in dispute.

No. 10.
Mba
Ekpezu,
22nd June,
1953,
Examina-
tion.*Cross-examined by Mr. Osadebay :*

Gbaneze is a tree and was there before our fathers went on the land. Ngwu is also a tree and was also there before our fathers occupied the land in dispute. I have heard of Ikama but do not know where it is it is in Etono Ubaghala. Ikama is not in Asaga land it belongs to Etono Ubaghala people. I only heard this. I knew Enebu I did not hear that our people told Asagas he had been fishing in Ikama pond. I did not know that Enebu was sentenced for fishing in Ikama pond. I am hearing of it now. I knew Onugen Iquo he is dead. He was a Constable and a Biakpan man he did not start the trouble between us and Asagas. He was made a Chief when he returned home. I know of the Connel and Ennals boundary and the Resident settlement that we that is the Asagas, Eziafos and Biakpans use the land in common. Enugen Iquo gave evidence for us before the District Officers. I was born in Biakpan but did not ask where we came from originally. I am a big man in Biakpan. I have heard of Ebe Otong in Calabar and have heard that Biakpan came from there. I have heard of Ivehi and that Biakpan lived there before. I do not know why we left Ivehi. I do not know our history I only know I was born at Biakpan. My father did not tell me Asagas gave us land.

Cross-
examina-
tion.

*In the
Supreme
Court.*

No. 11.

KANU EDODI.

*Plaintiffs'
Evidence.*

KANU EDODI (m). A native of Etono Ubagala No. 1 Sworn states :—

No. 11.
Kanu
Edodi,
22nd June,
1953,
Examina-
tion.

I am a farmer and live at Etono. I know the parties in this action Biakpans and Asagas. I know Ikama it is a lake it is used for fishing the water is stagnant. It belongs to one Abaya of Etone Ugbagala. Abaya used the fishing pond for himself and his people he does not rent it. Oma a woman from Ohafia used to fish with Abaya in the pond Ikama. One Ohafia man by name Uduma Ekele came and married Oma and she and Uduma fished in Ikama. When Abaya died Uduma and 10
Oma continued to fish in the pond Ikama. Oma died and Uduma returned to Asaga Ohafia. Uduma used to leave Asaga and go and fish in Ikama. The pond does not belong to Asagas.

Cross-
examina-
tion.

Cross-examined by Mr. Osadebay :

I know of the Ennals, Connel boundary and the Resident's decision. I heard of it. Uduma up to his death was the recognised person to fish in Ikama. I do not know who succeeded him in fishing in the pond Ikama. I do not know Enye Orié I have never heard of him. I do not know whether he is of Asaga. I did not know he put Enebu in Court for fishing in Ikama and that Enebu was sentenced. We live on our own land we do 20
not live on Ikun land.

No. 12.
Lazarus
Uka
(recalled),
22nd June,
1953,
Examina-
tion.

No. 12.

LAZARUS UKA (Recalled).

LAZARUS UKA recalled by Plaintiffs still on his oath states in answer to Mr. Emole :

I produce the record of proceedings in a case in the Ikun Native Court between Awa Kalu of Ufiéle versus Ewa Oburu of Asaga for Okpotom Emefa land. Awa Kalu placed his title on Biakpans and we gave evidence for him Kanu Ekpezu 3rd Plaintiff in this case gave evidence for him and he won the case tendered and admitted and marked Ex. D. 30

No cross-examination.

Case for Plaintiffs.

NOTE.—Mr. Osadebay informs Court that 1st Defendant is old and infirm and so cannot attend Court and as 2nd Defendant is dead 3rd and 4th Defendants will carry on the case for Asagas.

No. 13.

OGWO OBU.

*In the
Supreme
Court.*

OGWO OBU (m) (Age about 48 years). A native of Asaga sworn states :

*Defendants'
Evidence.*

I am a farmer and live in Asaga. I know the Plaintiffs in this case they are Biakpans. I know the land in dispute we call it Alauku. We call the whole land Alu Uku and it belongs to us the Asagas. I used to go with my father to farm on the land. We discovered the land and occupied and cultivated it. This was generations ago. We gave a portion of the
10 land to Biakpan to farm on and this is where their present village is. We have a boundary it is at a spot where we both farm and stop. I know the Obara stream and it is our boundary with Plaintiffs. I cannot trace the boundary from the Obara stream. I know about the Connel and Ennals boundary and the settlement by the Resident. I was there. The Resident did not say that we should use the land in common.

No. 13.
Ogwo Obu,
22nd
June, 1953,
Examina-
tion.

Cross-examined by Dr. Udoma :

I do not know the boundary between Biakpan and Asaga. I was present at the Resident settlement. The whole of the land was then in dispute that is from Asaga village to Biakpan village and that is what
20 I call Aliuttu. Biakpans do not know their boundary. We gave Ufiele people land. I know where we gave to them. We gave them land at Isi Iboro. We are not more numerous than Biakpans.

Cross-
Examina-
tion.

No. 14.

NJAGHA OBASSI.

NJAGHA OBASSI (m) About 45 years. A native of Asaga sworn states :

No. 14.
Njagha
Obassi,
22nd and
23rd
June, 1953,
Examina-
tion.

I am a farmer and live at Asaga. I know the Plaintiffs they are from Biakpan. I know the land in dispute it belongs to Asaga. We Asagas discovered the land in dispute. We call it Ala Uku. We gave Biakpans
30 land to live on. We have boundary on one side with Ukwa people and with Abia people on another side, we gave the Nderioke their land, we have boundary with the Ikuns. Our boundary with Plaintiffs start at Obara stream and after Obara one gets to Iyi Ume stream and after Iyi Ume then Ocha Igele Pupoi stream, Usini Ogwe Kpukpu stream and after this to Iyi Atama stream and then Ocha Aliuku stream then Atani Isiogugu stream, then Ochu Ukwe stream then Ogu Ufie road and after the road Odu tree and then a palm tree called Uku Umu Okoro, and after this one gets to the road between us and Ikun. After the road one gets to Duhke stream. Along this boundary from south to north we own the
40 land on the left and Biakpan on the right. (Boundary as per Ex. B

*In the
Supreme
Court.*

*Defendants'
Evidence.*

No. 14.
Njagha
Obassi,
22nd and
23rd
June, 1953,
Examina-
tion,
continued.
Ex. E.

edged pink.) We farm on the land and collect palm fruits and tap palm wine on it. We have jujus on the land. One is Kalu Okpororopo, also Kalu Aliukwu, also Fijeoko Awuku, also Uduma miri Awuku. We also have crops on the land. We farm on it and we have farm there this year. All Asagas farm on the land. One Nnaobu has a farm on the land he has Cassava plants there now. I also have a farm there. I have always farmed on the land I do so yearly. I know of the settlement between the District Officers, Resident and ourselves. Resident said we should farm and stop at Iyi Atama and the Biakpans farm and stop at Iyi Atama but for cutting palm fruits we can both cross over Iyi Atama. I was 10 present on that Sunday when the Resident read his report. At this stage Mr. Osadebay by consent tenders Ennals report and the Resident's decision. Ennals report has his decision attached to it. Tendered and admitted and marked Ex. E.

Ex. F.

Dr. Udoma tenders by consent the joint report by Ennals and Connel and Connel's individual report tendered and admitted and marked Ex. F. Both Counsel agree that this is the position with respect to these reports. First Connel was asked to enquire and the boundary he did so and his report was set aside by the Resident who then appointed Ennals another District Officer whose report was also set aside. These two District Officers were 20 in charge of Ennals—Bende and Connel—Afikpo. Resident then appointed both of them to fix boundary and they submitted their joint report which was also set aside and the Resident findings on the 23rd–24th April, 1938, was the last.

Cross-
examina-
tion.

Cross-examined by Dr. Udoma :

The land that was the subject of the boundary in which the Administrative Officers took part was the land lying between Asaga village and Biakpan village. Resident said that for farming purposes we should stop where our forefathers used to stop. We did so. I know Ivetim. I remember our building the road from Asaga to Ivetim. What I mean is that there was 30 an old path there which we use up to now. I knew Chief Onugu Ibeke he was our Head Chief he is dead. I knew Kalu Ochu he was my father he is dead. My father was a big chief in Asaga. I know the Asaga School there are so many teachers there. I did not know M. Onwuchiya. The present Headmaster of the School is one Anya he came there this year.

Resumed 23/6/53.

23rd June,
1953,
Cross-
examina-
tion,
continued.

NJAGHA OBASSI still on his oath cross-examined by Dr. Udoma states :—

I know where the ancient boundary between Plaintiffs and ourselves is it is at Iyi Atama. Our ancient boundary is not Ivetim. I know Ewa 40 Obara. I know of the case *Ewa Kalu of Ufiele versus Ewa Obara of Asaga* (Ex. D.). We called the land then in dispute Isi Igboire I do not know what the Plaintiff called it. I know Iyi Ubia the land in dispute in Ex. D. is not near there. Iyi Ubia flows into Ocha stream and the Ocha stream into Duhke. I was with the Government Surveyor when he made Ex. B (Plan). We gave Plaintiffs land and that should be sufficient for them but now they claim what their fathers did not claim and we do not like that. We want

them to remain on the land we gave to them. Since the Ex Policeman Iquo of Biakpan returned home this trouble began. Plaintiffs drove away our tenants on the land pulled down our huts and two Asaga men were kidnapped and have not been heard of or seen since then this was about three years ago. We have not been on friendly terms. The year that the District Officers came to fix a boundary between us was the year the trouble began (1936) and it has gone on up to now. Ex P.C. Iquo was the cause of it all. The Resident decided that both sides should respect the ancient boundary which we say is at Iyi Atama. We respected the ancient boundary till the incident of three years ago. Plaintiffs say that the ancient boundary is at Ivetim. The whole trouble is between Ivetim and Iyi Atama.

*In the
Supreme
Court.*

*Defendants'
Evidence.*

No. 14.
Njagha
Obassi,
22nd and
23rd
June, 1953,
Cross-
examina-
tion,
continued.

No. 15.

OGBU OGWO.

OGBU OGWO (m) Aged about 70 to 75 years—a native of Asaga—Sworn states :—

No. 15.
Ogbu
Ogwo,
23rd June,
1953,
Examina-
tion.

I live in Asaga and I am a farmer. I am 100 years old. I know the Plaintiffs they are Biakpans. I know the land in dispute very well and we call it Ala Uku. We have boundary with the Eziafo people and the Ikuns, also Nderioke people, and Obia people and Ukwa Nkasi. We gave Plaintiffs land in Ala Iku and we showed them the boundary where they were to stop. We gave them where they live. We the Asagas came from Ibeku near Umuahia and from Ibeku we settled at Elu. One Asaga man by name Uma Ukpai discovered our present Asaga village. Uma Ukpai was living at Elu he is an Ohafia man. Uma Ukpai and his children cleared the present Asaga village and also the present Biakpan village was the site of one of Umo Ukpai sons. Awa, Umo Ukpai's son discovered the Ikama fishing pond. He used to fish in it in the dry season. Awa placed a juju called Itabi in the pond so that no one else should fish in it. At this time the Biakpans were at Ebe Oton near Calabar. We gave the Eziafos the place where they live. Their boundary is at Ebo Obara to Ochi Ume.

Biakpans left Ebe Oton and settled at Ikun but drove them away. After some time Biakpans then came to Mba Oloekwu of Asaga and asked him for land. They lived with Mba in his village in Asaga. Oma asked Asagas to go and build houses for Biakpans to live in and so we built houses near our yam barns. The wife of a Biakpan man had a son whilst they were living near our yam barns, and the father called his son Mba after Mba Oloekwu. Biakpans stole Mba's yam and he sent them to live with Awa who took them to his village Okogo and settled them in his farm where he had huts and this is the present Biakpan village. The land in dispute is not Biakpan land it is ours their present village was given to them by us. The boundary between Biakpan and Asaga start at Egbe Obara to Ochi Ume (Iyi Ume) and then to Ngele Opupoi, and then to Usin Ogwe Kpugukpugu, thence to Ude Awa palm grove and

*In the
Supreme
Court.*
*Defendants'
Evidence.*
—
No. 15.
Ogbu
Ogwo,
23rd June,
1953,
Examina-
tion,
continued.

then to Ude Ukpai Uma, we planted an Odu tree at this spot (Note—
What I mean is that from Ude Ukpai Uma one gets to an Odu tree we
planted). From the Odu tree one gets to Iyi Akama and thence to Iyi
Aliuku and from there to Atani Isiogugu and from there to an Odu tree
planted by our Fathers and from there to Ocho Okwu stream and after
Ocho Okwe Ogu Ufie road and thence to a palm tree Nkwu Uma Okara
and thence to Duhke. (Boundary as indicated in Pink on plan Ex. "B.")
We did not buy the land we discovered it. I could show any visitor to
the land our palm trees and I can show him where to farm on. We also
have jujus on the land for instance Kalu Okpohorokpo also Nge Uku, 10
also Kalu Aliuke, also Udumamiri. I also have tenants on the land. I
farm on it and collect palm fruits on it. Ikama pond is not on Etono
land but on Asaga land where we gave Plaintiffs to live. I know Enye
Orie he is of Asaga I know Enebu he is a Biakpan man. One Inyang
Ofio of Biakpan came and reported to Asagas that he had seen someone
fishing in the Ikama pond. Enye Orie then took an action against Enebu
and the Biakpan man gave evidence and Enebu was imprisoned and asked
to pay £5 a piece of cloth and a goat.

I remember when D. O. Connel and D. O. Ennals came on the land
and later Resident O'Connor. [Resident decided that we should farm up 20
to Iyi Atama and the Biakpans up to Iyi Atama as our forefathers did
before.]

This by Court.

Cross-
examina-
tion.

Cross-examined by Dr. Udoma :

We told Biakpans to farm from Iyi Akama on to their village and
as far as they could go (East). I maintain that we gave land to Biakpans.
The Ikama pond belongs to all Asagas not one Asaga man alone. The
story that the pond belonged originally to Etonos is not true. The
Etonos were not there when we discovered the pond.

After Resident's decision we farmed up to Iyi Akama and Plaintiffs 30
up to Iyi Akama. Ivetim is not the boundary between us. The portions
near Ikun and Ufiele were not in dispute. The dispute started between
Eziafo and Biakpan. Biakpan and the Eziafos came to us as we gave
them land. They came to us after D.O. Connel of Afikpo's decision and
we went to D. O. Ennals at Bende. I saw where cement pillars were fixed
by D. O. Connel and that brought about the trouble. D. O. Ennals came
then both D. O. Ennals and Connel and later the Resident. After
Resident's decision the cement pillars were removed and we were told to
stop at Iyi Akama. Three years ago trouble broke out again and two
of our people kidnapped. We reported to Police and some Biakpans 40
were arrested and during the trial of the Case Biakpans took this action.
I was present in Court when the *Enye Orie* versus *Enebu* Case about
Ikama fishing pond was tried. We do not want the Biakpans to cross
Iyi Atama. It is not true that Ivetim is the boundary. Ufiele people
have no land the land belongs to Atani of Asaga. Isiogugu flows into
Duhke. We call it Iyi Ubia. Iyi Ubia flows into Atani Isiogugu and
then Atani Isiogugu flows into Duhke. It is not our boundary with
Biakpans. The people who own land along Iyi Ubia are not the Ufiele
they are Ufieles and Asagas. There are no Ufiele farms on the right.

(See plan Ex. "B.") I went with Surveyor who made Ex. "B" if he put Ufiele farm on both sides of Iyi Ubia it is wrong. There are no Ufiele farms there. I do not know anything about the case Ex. "D." I do not know where the land is. I now remember Ex. "D." I gave evidence for Ewa Ogburu the Asaga man. The case was not finally decided. I gave evidence supporting the Asaga Claim and the Biakpans gave evidence supporting the Ufiele claim.

*In the
Supreme
Court.*

*Defendants'
Evidence.*

No. 15.
Ogbu
Ogwo,
23rd June,
1953,
Cross-
examina-
tion,
continued.
By Court.

By Court :

10 Before the District Officers and Resident came we both farmed and stopped at Iyi Akama. After the Resident's decision we did not use the lands between the three villages in common. We only used it in common in cutting palm fruits but not for farming. We did not allow any Biakpan to cross Iyi Akama for farming.

By Dr. Udoma :

Palm fruits are collected in each village by its inhabitants.

Cross-
examina-
tion.

By Mr. Osadebay :

Asagas gave Ufiele land.

Re-
examina-
tion.

No. 16.

NWIKOM OKORO.

20 NWIKOM OKORO (m). Aged about 40 years. A native of Ikun.
Sworn states :—

No. 16.
Nwikom
Okoro,
23rd June,
1953,
Examina-
tion.

I live at Ikun and I am a farmer. I know the parties they are Asagas and Biakpans. I know that they have a land dispute I know the land in dispute it is called Ala Uku. We the Ikuns have a boundary with Asagas. We are related to the Biakpans they lived with us in the olden days and then we had a dispute and so we drove them away and they went to Asaga to one Mba Oloke and he gave them land. This was in the days of our forefathers. It is not correct to say that Biakpans have boundary with us at Dugheni.

30 *Cross-examined by Dr. Udoma :*

Ikuns have land dispute with Biakpans if there is a case it is an individual one. I know Okpani Ogbo of Ikun. I do not know land by name Ekwot Agani. I am not from Ufiele. I do not go to Ufiele village. I did not hear of the case Ex. "D." Ocho Okwe stream is the boundary between us and Biakpans.

Cross-
examina-
tion.

JOHNATHAN OKWARA EREM.

*Defendants'
Evidence.*

JOHNATHAN OKWARA EREM. Aged about 38 years. (m) A native of Asaga Ohafia. Sworn states :—

No. 17.
Johnathan
Okwara
Erem,
23rd June,
1953,
Examina-
tion.

I live at Itu and I am a trader. I know the parties and the Defendants are my people. I know the land in dispute it belongs to the Asagas. (Speaks English.)

I know Iyi Akama there is a road from Asaga to Biakpan and it crosses Iyi Akama. There is a Kola tree and Odu tree at the boundary. The boundary between Asaga and Biakpan is at Iyi Akama. Ivetim is not the oboundary. The land in dispute lies between Ivetim and Iyi Akama the boundary goes from Iyi Akama to Nkwu Uma Okara a road to Ikun from Asaga crosses at the point. We have boundary with Ikuns at that point. From Iyi Akama going south we meet Iyi Ume and then the river Obara.

We migrated from Ibeku and settled at Elu and from there to Asaga. Plaintiffs settled at Ikun at first and after a dispute were driven away and then they went to Asaga and settled at Omandi. Omandi means yam stack. Biakpan tampered with the yams of their host and so he handed them to Awauka who put them where they now are. The land is called Ali Uku. We farm on it and cut palm fruits on it. I have a rubber plantation on the road to Biakpan and near to Iyi Akama. I planted in 1940. I bought it from Asaga in 1939. A juju called Kalu Kpororopo is near my land. I know of plantations belonging to Ogwu Ogbu and Njaga Obasi and Agwu Uko. I know of the Connel, Ennals and Resident settlement. Resident decided that the land was given to Biakpan by Asagas under a gentleman's agreement. That he set aside the decision of Connel and Ennals and that the land should be used in common.

Cross-
examina-
tion.

Cross-examined by Dr. Udoma :

Despite the Resident's decision I paid money to Asaga for my plantation. Asagas did not accept the Resident order as to communal ownership. I have never planted rice on the land. I live at Itu and go home occasionally. I was first a School teacher. I started trading in 1935. I was at Asaga during the District Officers Connel and Ennals settlement. We do not want the lands to be owned in common. My plantation is about 1½ miles from Iyi Atama. I know Ivetim. I do not know the cause of present trouble two of our people were kidnapped three years ago. Biakpans did not give me the land on which I planted Rubber they did not give me to plant rice. I bought it from Asaga. I paid Asagas for the land as Asagas did not accept Capt. O'Connor's decision. We did not want to own the lands in common. I have never seen a Biakpan man cross over Iyi Akama to farm. Ivetim was not our common meeting place we met at Iyi Akama. I have no idea about a motor road. The road is not motorable. From Iyi Akama to Ivetim is not motorable.

UMA OKORIE.

*In the
Supreme
Court.*

UMA OKORIE (m). About 60 years of age. A native of Asaga. Sworn states :—

*Defendants'
Evidence.*

I live in Asaga and I am a farmer. I know the Plaintiffs they are Biakpans. I know the land in dispute it is called Ali Uku. It is owned by the Asagas. I was told by my father that we gave the Biakpans land and that the boundary between us started from Obara river to Iyi Ume and then to Ngele Upupoi and thence to a palm wine grove belonging to Ude Awa and from there to another palm wine grove belonging to Ukpai Ume and from there to Eziafo road at Uzim Ugwe Kpoghokpogho stream thence to an Odu tree and a Kola tree, thence to the Asaga road where it crosses the Iyi Atama stream and then to Iyi Ali Uku and then to Atama Isiogugu then to Ochuokwe stream which is the boundary between Asaga and Ikuns. From there to Nkwu Umu Okara where the road from Asaga to Ikun crosses and then on to Duhke river. I know the land as I have been on it with my father farming. We collect palm fruits on the land and we have many farms on the land belonging to the Asagas. We have tenants on the land. We have jujus on the land such as Kalu Ali Uku. Kalu Kpoghokpogho. I know Ufiele people we gave them lands. I know Awa Okwara he is my relative. (Awa Okwara.) I know Kalu Ukpai he is from Ufiele. I know Kalu Nse he is from Ufiele. I know when Kalu Nse and Kalu Ukpai went on Asaga land called Isi Igboro and Awa Okwara sued them in Court this was about four to five years ago. Isi Igboro is where the Plaintiffs call Okpotom Emefa. Proceedings in Native Court of Ohafia in case C/S No. 172/50 of 1.5.50. Awa Okwara on behalf of Asaga village versus Kalu Ukpai, Kalu Nse on behalf of Ufiele people. Tendered and admitted and marked Ex. "G." Ivetim is not the boundary between Plaintiffs and ourselves.

No. 18.
Uma
Okorie,
24th June,
1953,
Examina-
tion.

Ex. G.

30 *Cross-examined by Mr. Emole :*

Cross-
examina-
tion.

I know the land in dispute I have farmed on the land myself several times. I have farmed on it about 20 times. We allow the land to lie fallow for seven years I do not farm on the same place twice unless after seven years. My farms are small ones. I farm near Kalu Ali Uku juju and I have a cassava farm there now. I also farmed near Iyi Ubia stream this year. I farm at Obo Oka the place called Ekwot Ichoho by Plaintiffs. The land belongs to my father and has been from time immemorial.

By Court :

By Court.

I know of the Resident O'Connor settlement.

40 *Question :* Did you hear what the Resident said in his findings. Court quotes para. 15, 16 and 17 which contains the order.

Witness answer : The Resident said that we should farm and stop at the place we used to stop before. We took it to be Iyi Atama. What we understood was that the Resident said that

*In the
Supreme
Court.*

since there was no boundary we should all go and use the land as we used to use it before. We would not allow Biakpans to cross Iyi Atama even now.

*Defendants'
Evidence.*

By Emole :

No. 18.
Uma
Okorie,
24th June,
1953,
Cross-
examina-
tion,
continued.

I lived at Ukwa for a long time as a trader and I was the Clerk to the Chiefs. I was in Ukwa from 1929 to 1930. Before Resident O'Connor's Judgment or settlement we considered Iyi Atama our boundary. We did not have a meeting place with the Plaintiffs. If they had anything to discuss with us they came to our village. If we had anything to discuss with them we go to their village. I did not hear of the proposed Motor Road. I know the two chiefs whose names are mentioned in Ex. "C." The letter was not written by them for if it was I would have written it. I was the clerk of the village. I became the village Council Clerk in 1938. One Osiagwu was Headmaster of the Asaga School in 1938. Ivetim is not the boundary. 10

No. 19.
Ekong
Ikpeme,
24th June,
1953,
Examina-
tion.

No. 19.

EKONG IKPEME.

EKONG IKPEME (m) 67 years of age. A native of Enyong. Sworn states :—

I am a School master and manager of St. Georges School Aba. I know both parties in this case. In 1915 on the 25th of March I was employed by the late Robert Collins a Church of Scotland Missionary and sent to Asaga as a teacher in the C.S.M. School there and I was there till 1925 January when I was promoted and made a Travelling Teacher of the Out Station Schools under C.S.M. of which Biakpan School was one. I used to be stationed at Elu Ohafia and I travelled to Biakpan to visit the School and so know the boundary between Asaga and Biakpan. I used to use the road between Asaga and Biakpan and the boundary was a stream called Atama and in Ibo it was called Iyi Atama. Ivetim was never the boundary between the two villages I know Ivetim. I used to tell the chiefs of both villages to cut the grass when it is high. I knew them and they used to cut the grass the Asagas up to Atama and Biakpans up to Atama. As far as I know Ikama pond belongs to Asagas for boys at School used to close School on the day the pond was opened for fishing. 20 30

Cross-
examina-
tion.

Cross-examined by Mr. Emole :

Asaga and Biakpan are neighbours.

By Court.

By Court :

When I was there the Iyi Atama was the acknowledged boundary between the two parties why Asagas agreed with the Resident that there was no boundary I do not know. 40

By Mr. Emole :

I know the boundary very well.

By Mr. Osadebay :

The Asagas and Biakpans do not cut the grass for me to be able to go on inspection on the same day. I have met the bush cut in parts and I have asked the Chiefs why at times the Asaga part is cut and I am told that the other side belong to Biakpans and vice versa.

*In the
Supreme
Court.*

*Defendants'
Evidence.*

No. 19.
Ekong
Ikpeme,
24th June,
1953,
Cross-
examina-
tion,
continued.
Re-exam-
ination.

No. 20.

BASSEY UKPAI.

10 BASSEY UKPAI (m). For defence about 42 years old. A native of Ikun Sworn states :

I live at Ikun and I am a farmer. I know the parties they are Biakpans and Asagas. I am related to the Plaintiffs. We the Ikuns are related to the Biakpans. I know that the place where Biakpans live belong to Asagas. I was told this by my people. It is not correct to say that Biakpans have boundary with us at Dugene. Our boundary is at Acha Okwe stream. This same boundary is our boundary with Asagas. I do not know Ivetim.

No. 20.
Bassey
Ukpaï,
24th June,
1953,
Examina-
tion.

Cross-examined by Mr. Emole :

20 I have never lived on Biakpan land. I have never lived in Asaga. I do not know Dugene. I do not know Dugbari stream. I do not know that Dugbari stream runs into Dunke river. I say that our boundary with Asaga is at Ocha Okwe because all the land there is Asagas. I call Biakpan village Asaga land. I do not know Iyi Ogwe Ufie stream I do not know Iyi Atama. We have another boundary my father showed me it is at Nkwu Umu Okara we have this with Asagas.

Cross-
examina-
tion.

No. 21.

ITA EKE.

ITA EKE (m). A native of Ukwa Sworn states :

30 I live at Ukwa and I am a farmer. I know the parties they are Biakpan and Asaga. I know of the land dispute. I know the boundary we have with Asaga it is at Akwa Idim. I have heard of Ikama pond but I do not know it.

No. 21.
Ita Eke,
24th June,
1953,
Examina-
tion.

No Cross-examination by Mr. Emole.

*In the
Supreme
Court.*

No. 22.

AGU ODEN.

*Defendants'
Evidence.*

AGU ODEN (m). A native of Eziafo. Aged about 75 years. Sworn states :

No. 22.
Agu Oden,
24th June,
1953,
Examina-
tion.

I live at Eziafo and I am a farmer. I know the parties and the cause of the trouble was Kalu Ekpezu of Biakpan he took out an action against Asagas this is the action (refers to 2nd Plaintiff). The dispute is over land and the name of the land is Ali Uku. The Uzim stream is the boundary between Asagas and Eziafos. The Asagas have no boundary with Biakpans where Biakpans live now was given to them by Asagas. 10
Biakpans were to occupy where they live up to the cross River. The land between Iyi Atama and Ivetim is Asagas. From Iyi Atama to Iyi Isiogugu (Atani) (Atani Iyi Isiogugu) to Nkwu Ume Okara, to Duhke is the boundary between Asaga and Biakpan.

Cross-
examina-
tion.

Cross-examined by Mr. Emole :

We got our land from Asagas. Biakpans are my neighbours. The Ufieles get land to farm from Asagas. The Asagas made a boundary between Biakpans and ourselves at Uzim Ogwe Kpughukpughu.

I know of the Connell, Ennals and Resident O'Connor award. The Resident said Asagas should farm up to where they used to farm before 20
and the Eziafo and Biakpans do the same. We Eziafos did not accept this. I do not know whether Plaintiffs and Defendants accepted this. We still farm up to the boundary shown to us by Asagas. I know Ivetim. The boundary is not at Ivetim it is at Iyi Akama.

Case for Defence.

No. 23.

COUNSEL'S ADDRESSES.

No. 23.
Counsel's
Addresses,
29th June,
1953.

Dr. Udoma. Mr. Emole with him for Plaintiffs.

Mr. Osadebay for Defendants.

Mr. Osadebay :

30

Quotes claim and quotes Nigeria Law Reports Vol. XI page 68 *Ekpo versus Ita* also *Maduka Iwucha versus Ogbonna Wallereonya*. Suit No. A/42/51. If Plaintiffs have not proved exclusive ownership their claim must be dismissed. On Plaintiffs' evidence there is no proof of exclusive ownership to entitle them to a declaration of title. Refers to Inter-Tribal Boundaries Settlement Ordinance Vol. III Cap. 95, page 402. Section 6 Ex. " E " shows that District Officers Settlement was upset by

Resident who made an order. Order could only be set aside by the Governor. Section 11 deals with penalty. In view of Resident's order under the Ordinance no one could claim a Declaration of Title.

*In the
Supreme
Court.*

My contention is that if Ex. "E" is taken as a decision of a Tribunal then it is *res judicata* but if this is not accepted I plead estoppel in which case Ex. "E" becomes the agreement of the Parties to regard the land of Common ownership. Quotes W.A.C.A. Cyclostyled Copy for October, 1939, page 51, *Wememba versus Jideaka*.

No. 23.
Counsel's
Addresses,
29th June,
1953,
continued.

10 Plaintiffs cannot succeed in trespass or injunction in view of Ex. "E."
10 Plaintiffs claim should be dismissed.

Dr. Udoma :

Difficulty is to know what defence really is. There is really no defence to the action and refers to Pleadings. No facts in pleadings as to estoppel and *res judicata*. The defence is not that land is communally owned that is in direct contradiction to the defence before the Court. No evidence that since 1938 Ex. "E" the land was ever owned in common. About Inter Tribal Boundary Settlement Ordinance. Ordinance was set up purely for administrative purposes in fixing boundaries. It does not confer Judicial Powers. Ex. "E" did not fulfil the provisions of the
20 Ordinance. People said no boundary was desirable and that was the end of it. Document Ex. "E" has no effect whatsoever in determining the rights of Parties.

Defence not being based on Ex. "E" we are entitled to damages for trespass.

By conduct of Defendants in restricting our use of land they are trespassers. Since they did not follow Ex. "E" and we did not then agreement in Ex. "E" was deemed to be set aside.

Do not believe 3rd witness for defence Erem.

30 Question to be decided upon is what is the boundary. First time right of parties is being tested in Court. We rely on Ex. "D." All Ufieleles who are Asagas on the land in dispute are put there by Plaintiffs.

Ex. "C" written by Asagas support our case.

Adjourned to 14.7.53 for decision in view of this Court going on Sessions to Umuahia on 4.7.53 and the Criminal Session starting here to-morrow.

(Sgd.) G. F. DOVE-EDWIN,
Puisne Judge

JUDGMENT.

No. 24.
Judgment,
14th July,
1953.

The Plaintiffs claim as against the Defendants is for " Declaration of title to all that piece or parcel of land known as Ekuot Ijoho situate and being at Biakpan in the Calabar Province property of the Plaintiffs, the said land to be particularly delineated on the plan to be produced at the hearing.

(2) £300 damages for trespass in that in or during the year 1947 the Defendants and their people and/or Agents broke and entered into the Plaintiffs' said land and therefrom collected palm fruits and made farms therein and thereby disturbed the Plaintiffs' quiet possession of the said land without the leave and licence of the Plaintiffs. 10

(3) An injunction to restrain the Defendants, their people, agents, servants and each and every one of them from any further acts of interference with the Plaintiffs' right, title, interest in and possession of the said land. Dispute started since 1947." The suit was transferred to this Court by the Assistant District Officer, Arochuku by virtue of his powers under section 28 (1) (c) of the Native Courts Ordinance Cap. 142. Pleadings were ordered and filed and both parties filed plans. Plaintiffs' plan was admitted in evidence and marked Ex. " A " whilst the Defendants' plan also admitted in evidence was marked Ex. " B." The Plaintiffs are Biakpans and are in the Arochuku Division whilst the Defendants Asagas are in the Bende Division. 20

The land in dispute is called Ekuot Ijoho by the Plaintiffs and Ali Uhu or Ali Kuwu by the Defendants. The real dispute between the two parties could be said to be—What is the boundary between these two villages is it at the stream Ivetim which lies to the west of the Plans and which the Defendants have to cross if they have to go on the land in dispute or is it at Iyi Atama to the east of the land in dispute ? On the western side of the land in dispute are the Ufieles to the north-west and the Eziafos to the south-west both these two tribes are Asagas or at least hold the lands they occupy outside the land in dispute from the Asagas. 30

It appears that there has been a considerable amount of trouble between the Asagas and the Biakpans as to where their boundaries lay each relying on quite a different boundary there is no dispute at all about any land outside that edged pink in the Plaintiffs' plan and the two boundaries claimed are shown quite clearly on the Defendants' plan Ex. " B " that edged yellow is what the Plaintiffs claim as the boundary and that edged light red is what Defendants claim as their boundary.

The Plaintiffs base their title on ownership. They claim that they occupied the land in dispute beyond living memory when it was a virgin forest and that several of their ancestors have lived on it and used it as their own without interference. That they occupied the land when they migrated from Ebe Otu in the Calabar District and that they Defendants 40

who came from Ibeku in Umuahia in Bende Division of the Owerri Province settled on what is known as Asaga a considerable distance from the land in dispute.

*In the
Supreme
Court.*

The Defendants on the other hand claim that the Plaintiffs are their tenants, that they gave them land to live on when they were driven away by the Ikuns who first harboured them when they left Calabar District. That they gave them what is now known as Biakpan village and further east right up to the river but kept a place called Ikama in the East for themselves as it was a fishing pond. They also pleaded estoppel and

No. 24.
Judgment,
14th July,
1953,
continued.

10 *res judicata.*

No details of the estoppel or *res judicata* on which Defendants relied was given but during the conduct of the case it transpired that this defence centred around Exs. E and F alleged to be proceedings under the Inter-Tribal Boundaries Ordinance.

There appears to have been an order under the Inter-Tribal Boundaries Settlement Ordinance No. 49 of 1933 and two District Officers one from Bende and one from Afikpo were sent to go into the boundary dispute.

Each sent in his report and finding, these appeared to be unsatisfactory. Perhaps it would be as well for me at this stage to quote from the Resident's
20 Review of the 23rd/24th April, 1938. "On 3rd November, 1936, Mr. T. G. Connel Assistant District Officer Afikpo Division was appointed to hold an enquiry under the Ordinance—to determine a boundary between Eziafos and Biakpan. On the 16th November, 1936, Mr. Connell gave a decision which he duly promulgated. The Biakpans were satisfied with this decision but the Eziafos had referred it to the people of Asaga (they two being of one Clan) and in January, 1937, representations were made to the effect that the Connel boundary had given to Biakpan extra lands over which the Asagas claimed to have rights.

The upshot of this was that on the 30th March, 1937, Mr. C. T. C.
30 Ennals Assistant District Officer Bende Division was appointed to hold a further enquiry and to decide a boundary not only between the Biakpans and the Eziafos section of Asaga but also between Biakpan and Asaga. On 24th April, 1937, Mr. Ennals gave his decision.

The Ennals decision departed from the Connell award in so far as concerned the Biakpans-Eziafo section and in fact took away from Biakpan an area of land which had been assigned to Biakpan by Connell. The Biakpans not unnaturally petitioned against this new decision."

These two decisions as well as a joint one by the two Administrative
40 Officers were set aside by the Resident Capt. O'Conner from whose review the above was quoted to show what actually transpired. His reasons for setting aside the Awards appear in his Review which is a part of Ex. E. What happened was that the Resident after a discussion with the parties suggested that the three villages should consult and say whether a boundary was really necessary between them. They seemed to have fallen in with the Resident's suggestion and told the Resident that no boundary was desired but that all the lands lying between the three villages should be communally owned by the villages due regard being paid to existing

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No. 24.

Judgment,
14th July,
1953,
continued.

farms. The Resident duly set aside all the awards under the Ordinance and made an order "that all the land lying between the villages of Biakpan, Eziafo and Asaga shall be owned in common by the three villages."

From the date of that order in 1938 neither the Defendants nor the Plaintiffs took any notice of it, and certainly did not act on it and from the evidence before me the Defendants seem to have got quite a totally different idea of the order. The Defendants do not rely upon this order as their case as would be seen from the Pleadings and the evidence but Counsel for the defence has rested upon it as a possible line of defence if all else fails. 10

It is as well that I give my view on the effect of this Order. Could it be treated as an estoppel or *res judicata*? In support of his contention that it is an estoppel learned Counsel quoted the case of *Francis O. Wemambu and Others* versus *Okediachi Jideaka and Others* Suit No. 0/21/1938 W.A.C.A. No. 10/8 decided on the 2/11/39 by W.A.C.A. when the Court held that a document signed by the representatives of all five quarters of Asaga placing the disputed area of land under one quarter was held to be an estoppel. The present case in my view is not on all fours with the one quoted. Both Assistant District Officers were appointed under the Ordinance by their respective Residents (A) of the Ogoja Province and 20 (B) of the Owerri Province. Biakpan is now in Arochuku District of the Calabar Province. I doubt whether the Resident Ogoja Province acting alone could make an effective order under the Ordinance about boundary on land between two Provinces. Even if this could be done I hold that the Resident's Order was merely an Administrative convenience to keep the peace and that it cannot act as either an estoppel or *res judicata*.

In my view the Inter-Tribal Boundaries Settlement Ordinance was designed only for what it purports to be that is to settle boundary disputes between tribes. It does not confer on the District Officer or Resident powers to confer title so as to prevent tribes from having their title to 30 lands gone into by the Courts and decided. It is a useful Administrative weapon and that it all.

As to the evidence the Plaintiffs called six witnesses apart from the 2nd Plaintiff and the Surveyor and the Defendants called eight witnesses apart from the 3rd and 4th Defendants.

I consider the Plaintiff and his witnesses reliable and I accept their evidence. I do not consider the Defendants or their witnesses reliable and as for the witness Jonathan Okwara Erem it was clear to me that this educated man from Asaga Ohafia was not speaking the truth and I do not consider the witness Ekong Ikpeme reliable in any case he did not impress 40 me as a witness that I could rely upon. The Ufiele on the land in dispute I find were put there by the Biakpans. Ex. D shows that in a claim for a small portion of land in which the Defendant put his title in the Asagas and the Plaintiff from Ufiele Ohafia placed his title on the Biakpans with Ikun and Etono men as Court members the Ufiele man won and this land is on the boundary on what is called Okpotom Emefa land on Plaintiffs' plan Ex. G judgment in default was appealed against and result not known. I find that these two tribes Asaga and Biakpan owned separate and distant lands. Asaga village as shown on both plans being well to the west of the land in dispute and a good distance from it. They gave land to 50

Ufieles and Eziafos all to the west of the land in dispute. That the acknowledged boundary has always been the Ivetim stream and not Iyi Atama stream which is quite close to the Biakpan village.

*In the
Supreme
Court.*

The pond Ikama is a fishing pond it is no mystery that an Ohafia man controlled it I accept the version of the Plaintiffs about this Ikama. There is nothing unusual about fishing ponds being owned in this way by strangers to the land in dispute. In any case it is outside of the land in dispute and is in Etono Ugbagala.

No. 24.
Judgment,
14th July,
1953,
continued.

There will be judgment for Plaintiffs for the Declaration sought. No 10 damages for trespass. The injunction sought is granted.

As to costs : Dr. Udoma asks for two hundred guineas costs and says that the survey cost £300 as it was dangerous to go and survey on account of the enmity between the parties.

Mr. Osadebay—We were put to much expense on account of the same thing.

Costs assessed at one hundred and fifty guineas.

(Sgd.) G. F. DOVE-EDWIN,
Puisne Judge.

No. 25.

20

NOTICE AND GROUNDS OF APPEAL.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos.

Suit No. A/105/1951.

Between 1. CHIEF KANU UKPAI
2. CHIEF KANU EKPEZU
for themselves and as representing the
people of Biakpan . . . Plaintiffs

No. 25.
Notice and
Grounds of
Appeal,
23rd July,
1953.

and

30

1. CHIEF EKE OJA
2. CHIEF KANU OCHU (deceased)
3. CHIEF OGWO OBU
4. NJAGHA OBASSI
for themselves and as representing the
people of Asaga . . . Defendants.

NOTICE OF APPEAL.

TAKE NOTICE that the Defendants being dissatisfied with the decision of the Aba Supreme Court holden at Aba contained in the judgment of His Lordship Mr. Justice George Frederick Dove-Edwin dated the

*In the
West
African
Court of
Appeal.*

14th day of July, 1953, do hereby appeal to the West African Court of Appeal upon the Grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

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

No. 25.
Notice and
Grounds of
Appeal,
23rd July,
1953,
continued.

2. Part of the decision of lower Court complained of: Whole decision.

3. GROUNDS OF APPEAL :

(1) *Misdirection* : The learned trial Judge misdirected himself in the following passage in his judgment : “ I doubt whether the Resident Ogoja Province acting alone could make an effective order under the Ordinance about boundary on land between two Provinces. Even if this could be done I hold that the Resident’s Order was merely an administrative convenience to keep the peace and that it cannot act as either an estoppel or *res judicata*— 10

“ In my view the Inter-Tribal Boundaries Settlement Ordinance was designed only for what it purports to be that is to settle boundary disputes between tribes it does not confer on the District Officer or Resident powers to confer title so as to prevent tribes from having their title to lands gone into by the Courts and decided. It is a useful administrative weapon and that is all.” 20

by holding that “ the Resident’s Order was merely an administrative convenience to keep the peace and that it cannot act as either an estoppel or *res judicata*.”

(2) This decision is wrong in law having regard to sections 2 and 6 of the Inter-tribal Boundaries Settlement Ordinance Cap. 95 Revised Laws of Nigeria, Volume 111 page 402.

(3) The decision is altogether unwarranted, unreasonable and cannot be supported having regard to the weight of evidence. 30

4. Relief sought from the West African Court of Appeal :—

That the judgment of the lower Court be set aside.

Persons directly affected by the Appeal :—

<i>Name</i>	<i>Address</i>	
1. Chief Kanu Ukpai	Biakpan	
2. Chief Kanu Ekpezu	Arochuku District	<i>Plaintiffs.</i>
1. Chief Eke Oja	Asaga ; Bende Division	} <i>Defendants. 40</i>
2. Chief Kanu Ochu (deceased)		
3. Chief Ogwo Obu		
4. Njagha Obassi		

Dated at Aba this 22nd day of July, 1953.

(Sgd.) F. O. NWOKEDI
pp. OSADEBAY & NWOKEDI
Solicitors for Appellants.

ARGUMENTS ON APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

Thursday, the 29th day of April, 1954.

Before their Lordships

SIR STAFFORD WILLIAM POWELL FOSTER SUTTON, President.

JOSEPH HENRI MAXIME DE COMARMOND, Ag. Chief Justice.

SIR JAMES HENLEY COUSSEY, Justice of Appeal.

10

(Title as No. 25.)

Mr. Taylor, with him Mr. Ibekwe, for the Appellants.

No appearance on behalf of Respondents.

Taylor :

Refers to grounds of appeal—argues grounds 1 and 2 together, p. 34 of record—page 57—Exhibit E—paragraph 8 p. 58 of record—Finding is to be found in paragraph 17—p. 59.

Section 3 of Cap. 95—requires him to settle any dispute not essential that he should settle a boundary from A to B.

20 Refers to evidence given for Plaintiffs p. 11, line 6—agreed to use land in common—p. 13, line 16—to same effect. Land in dispute in this case is that shown on Plaintiffs' plan Exhibit A—description of boundaries claimed by Plaintiffs is at p. 4 of record.

Ordinance does not necessarily involve the fixing of line, i.e. boundary—it settles a dispute as to boundaries to be determined.

Submits that Exhibit E is a decision within the meaning of the Ordinance Cap. 95, and it is a judicial one and binding—Cites Judgment in W.A.C.A. No. 178 of 1953 delivered on 5th November, 1953.

30 Submits that proceedings before Resident were “ Judicial Proceedings ”—and his decision has same legal effect as a Judgment—therefore any decision of his even although based on consent of parties is binding, again refers in support to 178/1953.

Last ground. Difference in traditional evidence given by Plaintiffs before the Resident, Exhibit E and that given at trial of this action. P. 5—compare with p. 8—page 44, line 10—supports evidence in this case but does not support their Statement of Claim, p. 46, line 39.

C. A. V.

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

29.4.54.

*In the
West
African
Court of
Appeal.*

No. 26.
Arguments
on Appeal,
29th April,
1954, and
21st May,
1954.

*In the
West
African
Court of
Appeal.*

Coram and Counsel as before—but Mr. David now appears on behalf of Respondents. Through an error did not appear before—Counsel who was then in the case had not received copy of the record—Taylor not objecting we re-open case to hear Mr. David.

No. 26.
Arguments
on Appeal,
29th April,
1954, and
21st May,
1954,
continued.

21.5.54.

(Sgd.) S. FOSTER SUTTON, P.

Coram and Counsel as before—Mr. David now appears for the Respondents.

P. 6—Defence—particularly paragraph 8.

P. 7. They have not pleaded estoppel. You must recite judgment.

Note—No objection was taken in Court below by Plaintiffs to evidence 10 being led as to estoppel—indeed they tendered Exhibit F—We rule too late for respondents to take the point now.

178/1953, does not apply to this case.

Refers to P. 31 of record P. 55—Exhibit F.

Land was partly in Owerri and partly in Ogoja—Province—Investigation brought about by order made by two Residents—Exhibit E is a review by Resident of Ogoja Province alone. He had no power to review the report concerning the Owerri Province. Cap. 95 Section 3.—Section 6—Resident Ogoja Province cannot review proceedings relating to Owerri Province. They could have reviewed jointly—Residents—E is review 20 by the Resident Ogoja Province paragraph 17 of E.

They agreed therefore no inquiry—and no decision within the meaning of the Ordinance.

Residents decision paragraph 17—E amounts to a declaration of title. All he has power to do is to declare boundaries between persons disputing.

Taylor :

Exhibit E—I do not rely upon it as *res judicata*—but as an estoppel by conduct. They agreed—

But not P. 24. Appellants own witness denies that Asagas ever agreed— 30

Submits that Plaintiff brought case and admits agreement—

This Court must decide if E was agreed upon by both parties—Resident would not have written down that parties agreed if they had not—date of E—1938—action 1951—nothing in between.

P. 20—Defendants say there was a settlement line 7—which is different to Resident's E.

21.5.54.

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

Coram and Counsel as before.

Judgment delivered by de Comarmond Ag. C.J.

Appeal dismissed with costs fixed at £43.7.0d. 40

28.5.54.

(Sgd.) S. FOSTER SUTTON, P.

No. 27.

JUDGMENT.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos on Friday the 28th day of May, 1954.

Before THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON, President.

HENRI MAXIME DE COMARMOND, Ag. Chief Justice, Nigeria.

SIR JAMES HENLEY COUSSEY, Justice of Appeal.

*In the
West
African
Court of
Appeal.*No. 27.
Judgment,
28th May,
1954.

No. W.A.C.A. 196/1953.

10 1. CHIEF KANU UKPAI

2. CHIEF KANU EKPEZU

for themselves and as representing
the people of Biakpan . . . Plaintiffs/Respondents

and

1. CHIEF EKE OJA

2. CHIEF KANU OCHU (deceased) and
Ors. . . . Defendants/Appellants.**JUDGMENT.**

(Delivered by HENRI MAXIME DE COMARMOND, Ag. C.J.)

20 This is an appeal against a judgment delivered by Dove-Edwin, J., sitting in the Aba Judicial Division. The Defendants in the court below are the Appellants.

The suit originated in the Uraghara Native Court but was transferred to the Supreme Court.

Plaintiffs' claim was for a declaration of title to a certain piece of land, for damages for trespass upon the said land, and for an injunction restraining the Defendants, their servants and agents from any further acts of interference.

30 The learned trial Judge granted the declaration prayed for and the injunction, but did not grant damages for trespass.

The boundaries of the land in dispute are set out in paragraph 2 of the Statement of Claim and are shown on the plan (Exhibit A) produced by the Plaintiffs. The land in dispute is edged pink on that plan.

The learned trial Judge held, in effect, that the Plaintiffs' boundaries on the west and north-west are as shown on plan A. The Western boundary is partly demarcated by the Ivetim stream. The western boundary at

*In the
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No. 27.
Judgment,
28th May,
1954,
continued.

its northernmost point bends towards the north-east where the Isiogun stream forms a natural boundary almost along the whole distance to the northernmost point of the land in dispute where the Isiogun stream meets the Dunke River.

The Defendants' contention was that the land in dispute forms part of the area owned by them on the west of the land in dispute and that the boundary between their lands and the Plaintiffs' lands lies along the eastern boundary of the land in dispute, shown on plan A as the "boundary traced by the Asaga." They go further and aver that the Plaintiffs are their tenants and were allowed to settle on the land now known as Biakpan village. 10

The learned Judge took the view, which I consider justified, that there was no dispute about any land situate outside the land in dispute which is shown edged pink on plan A. He addressed himself to the issue whether the boundary separating the Plaintiffs (i.e. the Biakpans) and the Defendants (i.e. the Asagas) is the yellow line on Defendants' plan (Exhibit B) or the line edged light red on the same plan. The Plaintiffs claimed that the yellow line is the boundary, and the Defendants said that the light red line is the boundary.

The learned trial Judge considered that the Plaintiffs and their witnesses were reliable and he accepted their evidence. He did not believe the Defendants and their witnesses. He noted, *inter alia*, that the Ufieles and Eziafos were given land by the Asagas to the west of the land in dispute (which tends to indicate that the boundary is on the western side of the land in dispute). 20

I do not consider that the Appellants can succeed in this appeal to have the judgment set aside on the ground that it cannot be supported having regard to the weight of evidence or that it is unreasonable.

The important question that falls to be decided is whether the learned Judge was right in rejecting the plea of estoppel or *res judicata* raised in paragraph 8 of the Asagas' statement of defence. 30

It was only in the course of the trial that the Defendants disclosed the basis for the said plea. They produced a document (Exhibit E) which contains the record of proceedings held under the Inter-Tribal Boundaries Settlement Ordinance Cap. 95 and certain minutes. The document was admitted by consent.

Exhibit E shows that on the 3rd November, 1936, Mr. T. G. Connell, A.D.O., Afikpo Division, was appointed to hold an enquiry under the Inter-Tribal Boundaries Settlement Ordinance (hereinafter called the Boundaries Ordinance) to determine the boundary between Eziafo and Biakpan. On the 16th of the same month Mr. Connell gave his decision. The Biakpan people were satisfied but the Eziafos were not, and they brought in on their side the Asaga people (Defendants/Appellants in the present suit). It is necessary to point out here that the Asagas and Eziafos belong to the same clan and that the Eziafos were given their land, which abuts on part of the western boundary of the land in dispute, by the Asagas. 40

Objections were raised against the boundary fixed by Mr. Connell, and, as a result, another A.D.O. (Mr. Ennals) was appointed to hold a further inquiry. Mr. Ennals was A.D.O. in Bende Division. He was instructed to fix the boundary between the Biakpans on the one side and the Asagas and Eziafos. The boundary traced by Mr. Ennals did not satisfy the Biakpans and they petitioned against the decision.

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No. 27.
Judgment,
28th May,
1954,
continued.

In paragraph 4 of the review made by Resident O'Conner (Exhibit E) it is stated that the Residents of the two Provinces looked into the matter and agreed that the two A.D.O.s should go on the land and arrive at a
10 joint decision confirming one of the decisions already arrived at.

The decision arrived at by the two A.D.O.s was to alter the Connell boundary.

In paragraph 8 of Mr. O'Conner's report in Exhibit E it is stated as follows: "while in the past the areas on each side of it (i.e., the boundary fixed by the two A.D.O.s) had been owned in common and while neither party to-day had established a definite title, it was considered advisable to make this boundary purely as a measure for preserving peace. It was in fact an arbitrary line." This was an explanation given by
20 Mr. Connell in order to explain paragraph 4 of the joint report (i.e., the Connell-Ennals report).

The Resident of Ogoja Province, Mr. O'Conner then took up the matter for review. The result of his intervention was the setting aside of the joint report of Messrs. Connell and Ennals which he was reviewing (he stated that the previous separate reports were merely interlocutory proceedings). Mr. O'Conner then ordered that all land lying between the villages of Biakpan, Eziafo and Asaga "shall be owned in common by the three villages."

It is quite clear that Mr. O'Conner did not fix any boundary. In paragraphs 15 of his report in Exhibit E he explained that, being convinced
30 that in the past there never had been any question of boundaries, he had suggested that the three villages should consult and say whether a boundary was desired. Then in the following paragraph he stated in a thoroughly friendly spirit the villages acted upon his suggestion and were unanimous in their view that no boundary was desired but that all the land lying between the three villages should be "communally" owned by the villages, due regard being paid to the existing farms occupied by inhabitants of the villages.

The Resident then made the order set out above.

It is upon this order that the Defendants relied as constituting an
40 estoppel.

The trial Judge pointed out that the Defendants (now Appellants) did not rely on the Resident's order. What the learned Judge meant was that the Defendants did not plead that the land in dispute was owned in common by them, the Eziafos, and the Biakpans. Their statement of defence was to the effect that they owned the land in dispute. Moreover, at the trial, the Defendants led evidence to the effect that their lands were bounded on the east by the pink line (or light red line) shown on plan B (See evidence of D.W.1 Ogbu Ogwo).

*In the
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No. 27.
Judgment,
28th May,
1954,
continued.

The interpretation of the Resident's decision given by Ogbu Ogwo was that the Defendants "should farm up to Iyi Atama."

The Resident had said nothing of the sort.

The third witness for the defence (Jonathan Okwara Erem) went further and stated clearly that the Asagas did not accept the Resident's order as to communal ownership and that the Asagas did not want the land to be owned in common.

The fourth witness for the defence stated that what the Asagas understood from the Resident's decision was that, since there was no boundary, the Asagas could all go and use the land as they used it before. 10
The witness added that the Asagas would not allow the Biakpans to cross Iyi Atama.

From the evidence just reviewed, it is clear that Defendants-Appellants never agreed that the land in dispute should be owned in common. They cannot therefore say that the Plaintiffs are estopped from claiming the said land because there was an agreement to treat it as owned in common. In other words, the Resident purported to approve an agreement which did not in fact exist.

The question that arises next is whether the Resident's decision constitutes an estoppel *per rem judicatem* (whatever the Defendants thought 20 about it).

In the case of Nnamena Anjoku of Obunaw Akpugo, Appellants, and Ivure Nwa Nnameni (Respondent) W.A.C.A. 178/53 decided on November 5th, 1953, this Court held that "District Officer acting under section 3 of the Inter-Tribal Boundaries Settlement Ordinance is a person vested with judicial authority to hear and determine a class of disputes by the provision of a statute and that, when so acting, he is a judicial tribunal and his decision, subject to the rights of review thereof provided by the statute is conclusive upon the issue so determined by him."

When Dove-Edwin, J., gave his decision in the present case, this 30 Court had not yet decided the appeal No. 178/53 above mentioned.

The learned trial Judge was in error when he held that a decision given by a D.O. or Resident under the Boundaries Ordinance "is a useful administrative weapon and that is all," but this does not necessarily mean that the order or decision given by Resident O'Conner was such as to constitute *res judicata*. I am of opinion that the Resident did not "decide any dispute between two or more tribes as to the boundaries between the lands of such tribes" (see Section 3 of Cap. 95).

The Resident stated as clearly as possible that no boundaries need be fixed and he did not fix any (see paras. 15 and 17 of Resident's report 40 in Exhibit E).

What the law empowers a district officer (or a reviewing officer) to do is to inquire into and decide any dispute between two or more tribes as to the boundaries between the lands of such tribes. If, therefore, the decision is that there is no dispute about boundaries, any decision or order purporting to be given under the provisions of the Boundaries Ordinance

is *ultra vires*. I might add, in order to clarify my meaning, that if the lands of two tribes are not coterminous there can be no boundary dispute between them.

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Appeal.*

Moreover, I am of opinion that Mr. Resident O'Conner (Resident of Ogoja Province) was not acting *intra vires* the Boundaries Ordinance when he purported to review the proceedings of inquiries made under that Ordinance in two different Provinces: Ogoja and Owerri. It is clear from sections 3 and 5 of the Ordinance that a Resident cannot exercise, outside the limits of his Province, the powers conferred upon him by the Boundaries Ordinance. It is equally clear from Exhibits E and F that the people of Asaga (the Appellants) reside in the Afikpo Division of Ogoja Province whereas the people of Biakpan (the Respondents) reside in the Bende Division of Owerri Province. As a matter of fact, the Residents of these two Provinces did at one stage of the dispute appreciate the difficulty because they agreed to appoint one officer from each Province to decide the boundary dispute. When subsequently, the Resident of Ogoja Province purported to review the proceedings of the joint inquiry, he acted *ultra vires* and the order made by him is therefore a nullity.

No. 27.
Judgment,
28th May,
1954,
continued.

I am of opinion, therefore, that the first two grounds of appeal fail.

The last ground of appeal, which is that the decision is unwarranted, unreasonable and not supported by the weight of evidence, must also fail because it cannot be said that there was not sufficient evidence to support the trial Judge's decision. I am satisfied that the learned Judge spared no effort in analysing and weighing the evidence, and I see no reason for disagreeing with him.

I would dismiss this appeal with costs.

Costs fixed at £43 7s.

(Sgd.) M. DE COMARMOND, Ag. C.J.

STAFFORD FOSTER SUTTON, P. : I concur.

30

(Sgd.) S. FOSTER SUTTON, P.

JAMES HENLEY COUSSEY, J.A. : I concur.

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

No. 28.

*In the
West
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ORDER DISMISSING APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

No. 28.
Order
dismissing
Appeal,
28th May,
1954.

Suit No. A/105/1951.

W.A.C.A. 196/1953.

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

Between 1. CHIEF EKE OJA
2. CHIEF KANU OCHU (deceased) 10
3. CHIEF OGWO OBU
4. NJAGHA OBASSI
for themselves and as representing the
people of Asaga Appellants

and

1. CHIEF KANU UKPAI
2. CHIEF KANU EKPEZU
for themselves and as representing the
people of Biakpan Respondents.

(L.S.) 20

(Sgd.) S. FOSTER SUTTON,
President.

Friday the 28th day of May, 1954.

UPON READING the Record of Appeal herein and after hearing
Mr. J. I. C. Taylor, appearing with Mr. D. O. Ibekwe, of counsel for the
Appellants and Mr. J. E. C. David of counsel for the Respondents: IT IS
ORDERED that this appeal be dismissed.

And that the Appellants do pay to the Respondents costs of the
appeal fixed at £43.7.0d.

(Sgd.) J. A. SMITH, 30
Deputy Registrar.

No. 29.

FORMAL ORDER on Motion for Final Leave.

IN THE WEST AFRICAN COURT OF APPEAL.

Holden at Lagos, Nigeria.

Suit No. A/105/1951.

W.A.C.A. 196/1953.

Application for an order for Final Leave to appeal to Her Majesty's Privy Council.

In the West African Court of Appeal.

No. 29.
Formal Order on Motion for Final Leave, 15th February, 1955.

Between 1. CHIEF EKE OJA
10 2. CHIEF KANU OCHU
3. CHIEF OGWO OBU
4. NJAGHA OBASSI
for themselves and as representing the people of Asaga Appellants

and

1. CHIEF KANU UKPAI
2. CHIEF KANU EKPEZU
for themselves and as representing the people of Biakpan Respondents.

20 (L.S.)

(Sgd.) M. DE COMARMOND, Ag. C.J.,
Presiding Judge.

Tuesday the 15th day of February, 1955.

UPON READING the application herein and the affidavit sworn to on the 5th day of January, 1955, filed on behalf of the Appellants and after hearing Mr. J. I. C. Taylor of counsel for the Appellants, the Respondents not being present, nor represented :

IT IS ORDERED that Final Leave to appeal to Her Majesty's Privy Council from the judgment of this Court delivered on the 28th day of 30 May, 1954, be and is hereby granted to the Appellants.

(Sgd.) H. O. LUCAS,
Ag. Deputy Registrar.



EXHIBITS

“ E ” (part)—MINUTES OF EVIDENCE, REPORT AND DECISION at Enquiry
before C.T.C. Ennals D.O.

MINUTES OF EVIDENCE.

BIAKPAN.

ONUGEN IQUO.

I am a native of Biakpan. Our grand-fathers came from a place called Ebe Oton in Calabar District. Our forefathers left the place owing to floods.

From Ebe Oton we came to a place called Ivei. At Ivei the water was bad and we went to a place called Omandi, about the same time as the Asaga left Ibeku. Omandi is near the present Asaga yam stacks. While at Omandi the Biakpans met Mba Ulo Eku the Asaga leader. The Asagas were then living at their present site. We were living below the yam stacks. We considered that there would not be sufficient land for both of us, so we Biakpans left and settled in a place called Otumenyoung which is near the site where Ogonnia Asiegbu lived now. There was no dispute at that time between ourselves and Asaga. 10

While we dwelt at Otumenyoung we used to farm on land called Itep-Otumentyong which extended as far as the River Ivetum which we regarded as the boundary between Biakpan and Asaga. The land called Itep-Otumentyong is on the left side of the Biakpan-Asaga road as one goes towards Asaga. The land on the right side of the road was known as Ekwot-Ichogho. This also extended as far as the River Ivetum, and the Asaga cleared the road from their present site as far as the Ivetu, on the other side. 20

There was a dispute between Biakpan and Asaga 1902–1904 but it was not due to any dispute about land, but owing to the murder of one Ughendu a Biakpan.

We never have had a land dispute with Asaga. We regard as the natural boundary the River Ivetum. 30

With regard to the boundary which was demarcated by the Settlement Officer between Biakpan and Eziafor, I have nothing further to add to my evidence recorded in the previous inquiry except to observe that the result of the boundary was to give a large part of our land to the Eziafors.

Q.A. (C.T.C.E.): Otumenyoung or Otumenyor land extends from the R. Usim near where a path leads from the Biakpan-Eziafor road, as far as the River Arong near Eziafor. All Otumenyor land is on the left side of the road.

(Q.A.C.T.C.E.): All the land between the present Biakpan-Eziafor road, and the present Biakpan-Asaga road was known as Itep Otumenyoung. 40

(Q.A.C.T.C.E.): Yes, in former times we farmed as far as the Ivetum River ourselves, but since about 20 years ago we have given permission to Asagas to farm on either side of the road so far as the stream called Isiogogo. Once only, 4 years ago, we allowed the Asagas to farm as far

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Evidence.

as the stream Eba Isiogogo No. 1. It has been our habit always to send Biakpans to farm with the Asagas on this side of the Ivetum River to show that the land belongs to us.

(*Q.A.C.T.C.E.*): The present Biakpan-Asaga road was constructed by us 12 years ago as far as the Isiogogo Stream, near the junction with the old Biakpan-Asaga Road.

(*Q.A.C.T.C.E.*): One Agwu Chuku of Imenyong-Biakpan was in charge of the work. We did not construct the road further than this point.

10 (*Q.A.C.T.C.E.*): with regard to the previous inquiry, the large part of land given to the Eziafor was all a part of the land called Otumenyor.

Q.A. (Ibe Mba of Asaga): Yes, we came to Omandi at the same time you came from Ibeku.

Q.A. (Ibe Mba): Yes, you had to give us wine and meat for the land we allowed you to farm.

Q.A. (Ibe Mba): I can point out the people who offered us wine and meat. Iro Olugo and other people of Amafia whose names I cannot remember used to come to Biakpan to offer us this tribute.

20 *Q.A. (Ibe Mba)*: The people which came to Biakpan were sent on behalf of Asaga, and they were not given allotments, but land in one large portion. I can only remember the portions of land farmed by Biakpans.

Q.A. Ibemba: I do not know the land farmed by Iro Olugo, Asagas representative.

Q.A. Ibemba: You may call what witnesses you wish to prove that no Asaga man ever visited Biakpan to offer tribute, but what I have said is the truth.

Q.A. Ibemba: I am prepared to swear that Asagas never rented land to Biakpans to farm.

30 *Q.A. Ibemba*: I am prepared to point out the owners of portions of land which was given to Eziafor by the last Settlement Officer.

Q.A. Ibemba: Yes, I am prepared to say that the Eziafors have no land on this side between Eziafor and Biakpan.

Q.A. Ibemba: I am not prepared to accept the evidence of an Ndiorieke man to state what land is held by Eziafors, as no Ndiorieke witness was called at the previous proceedings.

Q.A. Okoro Kalu Asaga Biakpans have recently given you land upon which to farm.

Q.A. Iro Olugo: You used to bring tribute to the house of one Enunu Okpan.

40 *Q.A. Iro Olugo*: You came 4 years ago, and we gave you a portion of land after the Isiogogo stream for the first time.

Q.A. Iro Olugo: You were accompanied by other people of Amafia.

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Minutes of Evidence, *continued.*

Q.A. Iro Olugo : You went to Enunu Okpan's house because you were sent by the people of Amafia. (Witness first said Iro Olugo was a native of Amafia a compound of Asaga (Intd.) C.T.C.E.)

Q.A. Iro Olugo : I do not know who was sent by the Asaga people when you lived at Biakpan.

Q.A. Iro Olugo : I do not know if land was given to Asaga people while you were at Biakpan.

Q.A. Iro Olugo : I do not know of any juju existing on the land which was given you to farm.

Q.A. Iro Olugo : I always gave land to Asagas through you. 10

Q.A. Iro Olugo : At the commencement of the new yam festival you had to bring 100 yams ; at the time the yams are dug, another 100 yams. Also on each occasion 7 pots of tumbo wine.

Enunu Okpan, Mba Mba, Okpo Okpo and Otu Onodu all of Biakpan, state that they have nothing further to add to the statement of witness Onugen Iquo.

ASAGA.

IRO OLUGO.

I am a native of Asaga. I take third share in Asaga after Asi Ibeke and Kalu Ochu. I am head of the family called Ndi Uduma Ukwu. 20

It was a very long time ago, when we left Ibeku, and one Abam was born. We have lived at the place called Ozuabam. We next resided at Elu Ohafia. We then moved to a place called Ihu Obasi, and from there to our present site Asaga. At the time we were living at Asaga, the Biakpans were living at Ivei : where they had a boundary with the Ikunis. At this time the Amafia people of Asaga were farming as far as the River Atama.

I am now going to deal with the land on the Eziafor side. One Awa Ezima acquired land from Asaga as far as Eziafor. One Eziafor from whom the Eziafors are now descended, approached Awa Ezima who gave the Eziafors the land where they now reside. Awa Ezima also acquired land reaching as far as the River Usim near Biakpan, and as far as the Ubara stream. Awa Ezima also had a tumbo swamp called Akparor Awa (outside present land in dispute (Intd.) C.T.C.E.), on the other side of Biakpan forming a boundary with Ukwu, to which point his land extended. 30

Awa Ezima also acquired land as far as the River Anyim (the Cross River (Intd.) C.T.C.E.) Biakpans were then at Ivei near Ikuni.

There was a fight between them and the Ikunis, as a result of which Ikunis drove the Biakpans from Ivei. The Biakpans were met by Mba Ulo Eku of Asaga who collected them and brought them to his brother Awa Ezima, who took them to a place called Ewa Oba Udueke on the road to Isiugwu. While at this place, the Biakpans complained that water was scarce, and begged Awa to take them back. Awa then took them to a place called Okogo near Eziafor. While there, the Biakpans asked Awa 40

for a farming place. Awa then had his yam stacks at Olori Nwanza, where Awa allowed the Biakpans to settle. Awa Ezima left this place for the Biakpans, whom he regarded as his children, and went on to the Cross River.

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- 10 It was Awa Ezima who gave the land called Aliuku to my father called Uduma Uku Ewa to farm. My father was also told to look after the Biakpan settlers at Olori Nwanza and to make use of the palm fruit on Aliuku. There was a thick forest where Ogbonna Asiegbu is now. My father allowed the Eziafors to farm there, and make use of the palm fruit. Some of the Asagas suggested that the Eziafors should establish a settlement there, but others objected because the land was being used by Biakpans and Eziafors communally, and they were afraid that a settlement would cause a dispute.

Some time ago the Chief of Biakpan Emunu Okpan gave a portion of this land to Ogbonna Asiagbu without my permission and that of the Eziafors. This brought about a dispute between Biakpans and Eziafors.

Minutes of
Evidence,
continued.

The boundary made by the last Settlement Officer gave much Asaga land to Biakpan. That is why we petitioned Government.

- 20 *Q.A.C.T.C.E.* : The land Aliuku extends from a stream called Ocha Awa not far from R. Usim Ogwu Kpugu on the Eziafor side of the boundary demarcated to an Ngwo tree at the junction of the old Biakpan Asaga road on the left. On the right-hand side the land extends to an Odu tree on the bank of River Obara which is not far from some ruin of dwelling-houses (witness indicated distance to a palm tree about 100 yards outside the place of enquiry). The ruins referred to are those marked on the map as Kalu Udo's plantation ruins. I went over the land called Aliuku with the witness and he never showed me this tree. (Intd.) C.T.C.E.

Q.A.C.T.C.E. : Aliukwu is farm land.

- 30 *Q.A.C.T.C.E.* : I myself farmed there 5 years ago on land which has now been given to Biakpan. Ewa Ewa who died 4 years ago farmed a portion next to mine. One Umuma Eke also farmed on the Biakpan side. My boundary with Ewa Ewa were stones placed on the earth.

Q.A.C.T.C.E. : Nkama Uko and others of Ndi Ezila also farmed on Aliuku. Eziafors also farmed there.

Q.A.C.T.C.E. : Women from Eziafor and Ndiorieke had cassava farms on Aliuku at this time.

Q.A.C.T.C.E. : We farmed to the extent of the boundary I have mentioned as farming the land called Aliuku.

- 40 *Q.A.C.T.C.E.* : I have a boundary at Ocha Awa with Kalu Idika of Eziafor.

Q.A. Onugen Iquo : You used to fish for us after we gave you your present site to live on. The fish was carried to us.

Q.A. Onugen Iquo : I have not seen this myself.

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Q.A. Onugen Iquo : My ancestors came from Ibeku.

Q.A.O.I. : From here to the River Ikwetum, and from Biakpan to the place called Akparoi is about the same distance.

Q.A.O.I. : I still maintain that the Odu tree I mentioned is about 100 yards from the ruins. (N.B.—This tree is that referred to by the Biakpans as Nso Obasi Otumenyong a juju Shrine (Intd.) C.T.C.E.)

Q.A.O.I. : There have been no previous dispute between Biakpan and Asaga.

Adjourned 1 p.m.

(Sgd.) C. T. C. ENNALS. 10

Resumed 2 p.m.

(Sgd.) C. T. C. ENNALS.

Minutes of
Evidence,
continued.

SECOND OGBU OGWU.

I am a native of Amafia-Asaga. The road from Asaga to Biakpan has always been known as the Amafia Road. The Amafia people farm on either side of the road. If the Biakpans wished to farm, it was I who was always detailed by the people of Amafia to give allotments to such persons. The first person to whom I remember my father giving an allotment was one Ora of Biakpan. He was accompanied by one Onugen Ogbu also of Biakpan. On another occasion one Kpesu Onumba 20 approached us, and asked for an allotment from us, saying he had a dispute with his people.

The first allotment which was given was on the land called Aliuku which was on the left side of the road between Ngle Upupui stream and the stream Iyi Atama (see map). The second allotment was given on land between stream Ngele Upupui and Isiogogo, on the right side facing Biakpan.

I subsequently gave allotments to Biakpans on the land called Aliuku on more than one occasion.

On one occasion I gave a piece of land on Aliuku to one Ikpo of 30 Biakpan. He gave me 1/- and a pot of tumbo.

One Anun Ogbu 8 years ago came to my house and gave me two tails of stockfish, because there was no land left to farm on. These were taken to Asi Igbeke who directed that the man should be given allotments.

The next year 4 Biakpans farmed on the land called Ngele Upupui which stretches between Ngele Upupui and the stream Iyi Nkume.

On the next occasion 4 years ago when Biakpans asked permission to farm Aliuku, Kalu Ochu refused, and Biakpans went and farmed on land which we had given them on a previous occasion without our permission. 40

Three years when Enunu Okpan was in prison, his wife accompanied by one Aru Ukpai came to my house with tumbo. They said the Biakpans had driven them away. One Okum Okum also accompanied them. We gave them land about half way between Isiogogo and Ivetum. These

persons gave me yams after they had farmed. It is not true that we are given allotments by the Biakpans. The Amafias have always farmed as far as the River Iyi Atama.

Q.A.C.T.C.E. : Our land follows the River Iyi Atama up to where the river stops. From that point the boundary with Biakpan continues as a mound which continues until the stream Atani Isiogogo is reached.

Q.A.C.T.C.E. : Yes, the stream Atani Isiogogo forms the limit of our boundary with Biakpan. It is also a boundary with Atani and Ufiele.

Q.A.C.T.C.E. : On the other side of the road the people of Amafia have a boundary with Iro Olugo at the point where the River Usim crosses the old road. Our land then continues alongside of the River Usim until a point opposite the R. Iyi Atama is reached.

Q.A. Onugen Iquo : It is a long time ago since this land was allotted to one Ora.

Q.A.O.I. : The Biakpans constructed the road up to Isiogogo.

Q.A.O.I. : I have never taken tumbo to Enunu Okpan's house.

THIRD AGWU OGBU.

I am a native of Ndimole-Amafia. My farm shed is near where the R. Usim crosses the old Biakpan Asaga Road. Three years ago Onugen Iwuo brought me Enyienyi of Biakpan and asked if he could reside in my shed. Tumbo was brought to my farm shed by Onugen Iquo. I asked for Onugen Iquo to bring Enunu Okpan but he refused as they had a dispute about court-membership. I paid rent for the farm shed to the people of Amafia.

Q.A.O.I. : I am prepared to swear that Enyienyi came to my house.

FOURTH AGWU EKE.

I wish to give evidence about the land called Aliuku situated by the Eziafor-Biakpan Road. I have a boundary with Iro Olugo on the land called Aluiku. I farmed at the place myself 5 years ago. At one time I rented the land to Ugbo of Eziafor.

Q.A.O.I. : (Witness is unable to give an exact description of his land as requested by Onugen Iquo (Intd.) C.T.C.E.)

SECOND WITNESS OGBU OGWO re-called by Asaga states :—

I wish to speak about the land called Aliuku on the Eziafor Biakpan side. I have a boundary with the last witness on this land. One Ukoha Awa has a boundary with me on the other side. The latter has a boundary with Ukoha Amogu, Ukoha Amogu's land extends as far as the Ubara stream through a cassava plantation. My land extends about as far from here to that palm tree (about 300 yards (Intd.) C.T.C.E.) from the boundary in the direction of Biakpan. My boundary with Agwu Eke is a stream called Ocha Ude.

Q.A.C.T.C.E. : Agwu Eke's land is further away from the boundary in the direction of Biakpan than mine.

Q.A.C.T.C.E. : Ukoha Awogu is dead.

Q.A.C.T.C.E. : I farmed on my land 5 years ago. I rented a portion of the land to one Kalu Ogazu of Eziafor. Others were Okpirikpi, Iro Ugbo, Ndukwe Iro all of Eziafor, and Kalu Ukaonu of Asaga.

Defendants' Exhibit.

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Q.A. Onugen Iquo : I was not present at the previous inquiry. I was absent at Enugu.

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Resumed 24th April, 1937, at 8.30 a.m.

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FIFTH WITNESS AGWU EKE :

I am a native of Ikuni. I am a Court member and elder at Ikuni. We are related to the people of Asaga on the mother's side, and to the Biakpans on the father's side. We Ikunis and the people of Asaga own all the land from Asaga to the Cross River. Formerly we lived with the Biakpans at Ikuni. Midway between Biakpan and Ikuni there is a stream called Ubine. On the left side the Biakpans and Ikunis had land on the right side the Asagas. Their land (the Asagas) extended from this stream to the Cross River, and back as far as the place they occupy now. There was a dispute between Biakpan and Ikuni as a result of which the Biakpans went and lived with the Asagas. The people of Asaga took the father of Enunu Okpan and showed them the place where the Biakpans now reside. The Biakpans therefore left Asaga and went to their present place, which was given to them by the Asagas. 10

Minutes of Evidence, continued.

Q.A. Onugen Iquo : I am not a Court member (contradicts statement above (Intd.) C.T.C.E.) and I am under the Ikuni Chief.

Q.A. Onugen Iquo : The Chief of Ikuni has gone to Afikpo to attend Court and he sent me to give evidence. 20

Q.A. Onugen Iquo : I confirm that Ubine was the boundary between Biakpan and Asaga.

Q.A.O.I. : Yes, I know a stream called Ngele Upupui between Biakpan and Asaga, but I usually call it Icha Oto.

Q.A.O.I. : One crosses this stream passing along the road from Asaga to Biakpan (*Onugen Iquo* maintains that this stream is on the other side of Biakpan, on the Biakpan-Ikuni road (Intd.) C.T.C.E.).

Q.A.O.I. : I do not know the site of the stream called Isiogogo.

Q.A.O.I. : I know Usim Ogwkpughukpugu. It is on Asaga land. 30

Q.A.O.I. : I have not given evidence because there has been a land dispute between Biakpan and Asaga.

Q.A.O.I. : I was present at the previous inquiry.

Q.A.C.T.C.E. : I am referring to the inquiry at Ikuni not the one recently heard by the Settlement Officer.

SIXTH WITNESS UKOKO IBAM.

I am a native of Ndiorieke. I am one of the elders. I am not a court member. I know that Iro Olugu rented land to 7 persons of my town who planted cassava. Ogbu Ogwo also gave allotments to two persons of my town making a total of 9 allotments in all. The cassava planted by the women has never been rooted. 40

Q.A.C.T.C.E. : I am referring to the land called Aliuku. I have not seen the boundary recently demarcated, but I was informed by Iro Olugo that land rented to people of my town had been given to Biakpan.

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Q.A.C.T.C.E. : The names of the persons are Ogolo Uche, Evutu, Odide Ota, Egwuonwunta, Udi Anyanke, Evidu Anyanko and Akwu. All these persons are women.

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Q.A.C.T.C.E. : This land was rented one year ago. It is the first time any one from Ndiorieke has farmed on this land.

before

10 *Q.A. Onugen Iquo* : I was not at Eziafor during the previous inquiry. I was in my town.

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Q.A.O.I. : I did not give evidence at the previous inquiry, because I was not called.

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Q.A.O.I. : Iro Olugo has never rented land to me.

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Evidence,
continued.

Q.A.O.I. : I do not know why Iro Olugo did not produce the women as witnesses.

Q.A.O.I. : I cannot give the extent of any allotment awarded to one of my women as I was not present at the time.

Q.A.O.I. : It is not only through Iro Olugo that I make this statement. I have also made enquiries from the persons I have mentioned above.

20 *Q.A.O.I.* : I am not related to the people of Eziafor or Asaga.

SEVENTH WITNESS NGWO OKPAN :

My name is Ngwo Okpan. I am a native of Eziafor. My father takes the largest share in Eziafor. When the last boundary was made lands belonging to Iro Olugo, Agwu Eke and Ogbu Ogwo were given to Biakpan and added to land actually in dispute.

These lands have always been rented to us to farm, and they belong to the people of Asaga. The land actually in dispute is that occupied by Ogbonnia Asiegbu, but the land belonging to Iro Olugo through which a boundary was made is not in dispute.

30 *Q.A.C.T.C.E.* : The land now occupied by Ogbonnia Asiegbu is the land in dispute, because Iro Olugo rented it to me. This land was given to Ogbonnia Asiegbu and Nomeke or Enunu Okpan without our consent.

Q.A.C.T.C.E. : Iro Olugo gave this land which was called Aliukwu to my father.

Q.A.C.T.C.E. : I know Aliukwu as an extensive tract of land which was given to my father by Iro Olugo, but I do not know its exact boundaries.

Q.A.C.T.C.E. : I have myself collected palm nuts from near where Ogbonnia Asiegbu resides.

40 *Q.A. Onugen Iquo* : The land belonging to Iro Olugo, Agwu Eke, and Ogbu Ogwo is called Aliukwu.

Q.A.O.I. : I confirm that the land belonging to these people and the land in dispute is all known as Aliukwu.

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Q.A.O.I. : I was present at the last inquiry and my name was recorded.

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Q.A.O.I. : I did not show the lands belonging to these persons to the last Settlement Officer, because I never know the land would be given to the Biakpans.

Minutes of Evidence, continued. Report.

REPORT.

(A) BIAKPAN-EZIAFOR BOUNDARY.

A boundary had been demarcated between Biakpan and Eziafor following the recent inquiry held by Mr. Connell Assistant District Officer, subsequently a possibility arose that the boundary had been made inadvertently to pass through land belonging to the village of Asaga, a consideration which therefore required examination in conjunction with the inquiry into the boundary Settlement between Biakpan and Asaga. Since investigations into the latter appeared to show that the previous boundary did in fact pass through Asaga land, permission was sought and obtained to reopen the Eziafor-Biakpan inquiry for further evidence. 10

With regard to the Eziafor-Biakpan boundary settlement the question at issue concerns the extent of the land referred to as Aliukwu, the ownership of which is admitted by Eziafor and Asagas generally to be vested in Iro Olugo of the Ndi Udu Ukwu compound of Asaga. 20

Accompanied by Iro Olugo, Agwu Eke, and Ogbu Ogwo elders of Asaga, the Eziafor-Biakpan road was followed from a stream Ocha Awa, about 135 yards to the Eziafor side of the demarcated boundary, to the junction of the road with the old Biakpan-Asaga road by an Ngwo tree, which forms the limit of Aliukwu Land of the Northern (Asaga) side, both the Asagas and the Biakpans claimed to have farmed the land south of the roads years ago ; the Biakpans admitted that the Asaga farmed on the North (Asaga) side of the road.

The boundary demarcated by Mr. Connell was then followed and land belonging to the following persons of Asaga was pointed out to me in this order—Iro Olugo, Agwu Eke, Ogbu Ogwo and Ukoma (as far as the Ubara River). Their land in each case was said to extend to the Biakpan side of the boundary, to a distance of 400-500 yards. Cassava planted by Eziafor and Ndiorieke women was also seen. The same area was subsequently visited with elders from Biakpan and it was admitted by them that the area on either side of the path shown on the map as leading from Kalu Udo's plantation ruins between the Forest belt and the boundary was farmed by Eziafor three years ago, but they stated with their permission, and by virtue of an agreement which had been produced before Mr. Connell who doubted its validity. (Report p. 16.) In my opinion, therefore, the land south of Mr. Connell's boundary has in the past been rented by Asagas to Eziafor, and I do not believe that the Biakpans have ever farmed the land on the Eziafor side of the forest area. 40

In his evidence before the present inquiry Iro Olugo stated that the land " Aliukwu " extended on the Ubara River side as far as on Odu Tree on the river bank. This tree lies about 60 yards on the Eziafor side of the Kalu Udo plantation ruins, but when accompanying me round the land,

Iro Olugo did not mention the existence of this tree and admitted that he had never himself entered the forest area leading to Ogbonnia Asiegbu's plantation, although he stated that the land as far as the plantation had been rented by his father to Eziafor and Ndiorieke for palm nut cutting.

Defendants' Exhibit.

“ E ”
(part).
Minutes of Evidence, Report and Decision at Enquiry before C. T. C. Ennals, D.O., April, 1937, Report *continued.*

While therefore, I consider that the boundary previously demarcated should be amended to include the farm land on the Biakpan side of the boundary I do not consider that the forest belt should be included. I agree with Mr. Connell that the Biakpan have probably more right to the plantation area than the Eziafors.

- 10 It is recommended, therefore, that the boundary should form a straight line from the Ubara River by Boundary Pillar No. 1 of Mr. Connell's boundary to the junction of the Eziafor-Biakpan road with the old Biakpan-Asaga Road by an Ngwo tree forming the limit of Aliukwu land on the Asaga side. This boundary would preserve the palm belt area to the Biakpans, but would include the farm area which was the subject of controversy on the Eziafor side. It would also be possible to join up this boundary with that proposed for Biakpan-Asaga.

- 20 The possibility of compensating the owners of farm land on Aliukwu by giving them land elsewhere as an alternative to amending the boundary was considered, but it was difficult to find such land, and as it would have had to come from the Asaga side, the award would have been of little benefit to the Eziafor who since as they use the land, would be the more effected.

The previous order of the Settlement Officer concerning the fishing rights of either side will not be interfered with.

(B) BIAKPAN-ASAGA BOUNDARY.

- 30 On the North side of the Eziafor-Biakpan road, the Biakpans claimed to own the land as far as the R. Ivetum, the Asagas (or more particularly the Amafia compound of Asaga) as far towards Biakpan as the R. Iyi Atama (known to the Biakpans as Ngele Eshien). In fact it is not possible to point out a definite boundary. The members of either side who accompanied me to inspect this land pointed out places which had been farmed by members of the other side with their permission, and it is clear that in the past the land has been communally farmed by Biakpan and Asaga probably between the River Ivetum and Iyi Atama. A division of the area of land between these two rivers is therefore inevitable, but this can be effected by reorganising effective occupation.

- 40 It is proposed that the boundary between Biakpan and Asaga should commence from the Biakpan-Eziafor boundary, across the River Usi, and continue in a straight line in a northerly direction until the Biakpan-Asaga road is reached between the streams Ngele Upepui and Iyi Atama in such a way as to preserve intact the land brushed by Biakpan for farming this year, which stretched for a distance of about 600 yards on the Asaga side of the R. Iyi Atama.

The boundary could then continue until it reaches that R. Iyi Atama which forms a boundary with Biakpan land until it reaches its source. I walked along the dry bed of this stream and it was clear that the River

Defendants' Exhibit.

" E "

(part).
Minutes of
Evidence,
Report and
Decision at
Enquiry
before
C. T. C.
Ennals,
D.O.,
April,
1937,
Report
continued.

had been recognised as the boundary between the Amafia-Asaga and Biakpan farms, whose land had been cleared this year by the side of the right bank Biakpan farms on this side extend as far as the boundary of Biakpan with Ikuni.

From this source of the river a mound continues to form the boundary until the Biakpan-Ufiele road is reached. The boundary will finally terminate at the R. Atani Isiogogo which forms a boundary between the Amafia and Atani compounds of Asaga on the one side, and Biakpan on the other.

Mr. Connell's map was used for the purpose of the inquiry, additions 10 being made for that part which concerned the boundary between Biakpan and Asaga.

No boundary has been demarcated pending the submission of this report.

(Sgd.) C. T. C. ENNALS,

Asst. District Officer. 24/4/37.

Decision.

DECISION.

BIAKPAN-EZIAFOR-ASAGA BOUNDARY SETTLEMENT

A boundary to be demarcated by a 30 foot wide path to be cut in a straight line from a cement Pillar marked B.E.I. on the Ubara River 20 on a bearing of 43° (degrees) in a Northerly direction until the junction between the Eziafor-Biakpan and old Biakpan-Asaga road is reached.

Thence in a straight line in a northerly direction on a bearing of 16° (degrees) crossing the Biakpan-Asaga road between the stream called Ngele Upepoi and Iyi Atama, until the R. Iyi Atama is reached.

Thence along the bank of the river for a distance of approximately 650 yards to its source.

Thence in a straight line on a bearing approximately due North until the Biakpan-Ufiele bush path is reached.

Thence along the path for a distance of approximately 75 yards 30 to the River Atani-Isiogogo.

The Biakpans must not fish the Obara River above the boundary nor the Eziafors below it; but the boundary will not affect the Eziafor and Asaga rights in the pond Ikama.

(Sgd.) C. T. C. ENNALS,

Assistant District Officer

24/4/37

“ F ”—JOINT REPORT of Messrs. Connell and Ennals.

Defendants' Exhibit.

A JOINT REPORT BY T. G. CONNELL, ESQR., AND C. T. C. ENNALS, ESQR., ASSISTANT DISTRICT OFFICERS, ON THE INTER-TRIBAL BOUNDARY SETTLEMENT BETWEEN THE VILLAGE OF BIAKPAN, AFIKPO DIVISION OGOJO PROVINCE AND THE EZIAFOR & ASAGA VILLAGES OF THE BENDE DIVISION OF OWERRI PROVINCE.

“ F.”
Joint Report of Messrs. Connell & Ennals, 22nd October, 1937.

In accordance with instructions received from the Resident, Owerri, and Ogoja Provinces in *their* Memoranda Ow : 3068/135 of 23rd July, 1937, and OG, 1669/158 of 11th October, 1937, respectively, the above-mentioned Officers proceeded to the area in dispute on the 22nd October, 1937, accompanied by Representatives, selected by each of the three villages.

2. (A) *Biakpan-Eziafor Boundary.* Accompanied by the representatives referred to above, we proceeded along the boundary demarcated by Mr. Connell from the Ubara River to its junction with the Biakpan-Eziafor Road (Map Point 62) and thence to Map Point E.I. Opportunity was given for the representatives of all three villages to comment by reference to land marks. As a result we recommend that the Biakpan-Eziafor boundary be amended by removing pillar B.E. 8 from its present position at point 62 on the Biakpan-Eziafor Road to a point on the junction of the boundary with the path which crosses it at point E.C. 1 on the Map. Thence the boundary will continue to a point marked E.C. 2 on the Biakpan-Eziafor Road.

3. The Complaint by the members of the Ndi Uduma Ukwa family of Asaga that the demarcated boundary deprived them of land previously farmed by them was fully investigated. In our opinion no right to permanent tenure has been established. There is no doubt that areas of land on the Biakpan side of the boundary have been rented to the people of Eziafor by the people of Asaga for farming of yams and cassava. On the other hand the Biakpans have undoubtedly cut palm nuts on the Eziafor side. It is probable that the plantation of *Ogbonnia Asiegbu* of Aro, was established in 1930, to prevent further encroachment by Eziafor on land claimed to have been originally inhabited by Biakpans. The Biakpans, however, were unable to maintain their alleged title to rent land to Eziafor west of the demarcated boundary nor could they prove that the Eziafors paid tribute for such land to them. *Ogbonnia Asiegbu*, continued to cut palm nuts on Otumenyor (Map) up to the juju trees (point 9).

In 1935 matters came ahead. There were petitions by Eziafors against *Ogbonnia Asiegbu*, a case in the Ikun Native Court and a case in the Court of the Magistrate, Afikpo, in which Eziafors were charged with trespass and damage to the plantation of Kalu Udo of Biakpan (see Map).

4. It is clear that in the past the area on the immediate East and western sides of the demarcated boundary was communally enjoyed but neither side has established title to it.

Defendants' Exhibit.

" F. "

Joint Report of Messrs. Connell & Ennals, 22nd October, 1937, *continued.*

5. The amendment is in paragraph 2 above, is put forward because Iro Olughu of Asaga showed definite land marked East of the boundary and convinced us that he had himself farmed land shown on the map as enclosed by points EC. 1, EC. 2 and 62.

6. *Ikama Pond: Fishing Rights Ubarar.* No amendment of Mr. Connell's decision is proposed.

7. *Biakpan-Asaga Boundary.* We proceeded from point E1 to point E2. It is evident that Asaga have established effective occupation of land adjoining (A). The old Biakpan-Asaga path (B) The Biakpan-Asaga road up to the boundary proposed by Mr. Ennals. No Biakpan 10 complaints viz.: that they claim land as far as to Ivetum river were investigated in view of the fact that Mr. Connell had seen the aforesaid effective occupation when he made his map, and of the fact that no complaints had been made by either side previous to his inquiry as Settlement Officer. Therefore no amendments are proposed.

8. It should be mentioned that since the inquiry was held into this boundary, members of the Amafia family have established plantation houses on a site which would be bisected by the proposed boundary. An Order has been already made that the occupants, the majority of whom are Addas employed by the inhabitants of Amafia-Asaga, should quit. 20

DESCRIPTION OF BOUNDARY.

PROPOSED BIAKPAN-EZIAFOR-ASAGA BOUNDARY.

9. From Boundary Pillar B.E.1 Ubara River in a Northerly direction on a bearing of 15° via boundary Pillars B.E.2 to 6 to boundary Pillar B.E.7, thence on the same bearing 15° until the plantation road is met at point EC.1. Thence in a north easterly direction in a straight line to a point on the Biakpan-Eziafor Road marked EC.2. Thence along the Biakpan-Eziafor until a point E.1, at the junction of the Biakpan-Eziafor road with the old Biakpan-Asaga path is reached.

Thence in a northerly direction on a bearing of 16 degrees until the 30 16 degrees until the Biakpan-Asaga Road is reached at a point approximately 350 yards on the Biakpan side of the stream Eba Isiogogo No. 2. Thence on a bearing of 16 degrees until the River Iyi Atama is reached. Thence along the left bank of the river to its source. Thence on a straight line approximately due north until the Biakpan-Ufiele path is reached. Thence along the Biakpan-Ufiele path in a westerly direction until the Atani-Isiogogo is reached.

Ubara River :—The Biakpans must not fish the Ubara River above B.P. No. B.E.1, nor the Eziafors below it.

(Sgd.) T. G. CONNELL, 40
Assistant District Officer,
Afikpo.

22nd October, 1937.

(Sgd.) C. T. C. ENNALS,
Assistant District Officer,
Bende.

“ E ” (part).—REVIEW by Capt. O’Conner, Resident Ogoja Province, of Joint Report of Messrs. Connell and Ennals. *Defendants’ Exhibit.*

Dispute between Asaga and Eziafor of the Bende Division of the Owerri Province and Biakpan of the Afikpo Division of the Ogoja Province.

Review by Captain D. O’Conner Resident, Ogoja Province of a Joint Report of the Assistant District Officers Bende and Efikpo Divisions of an Enquiry conducted under the Ordinance—at Biakpan the 23rd/24th April, 1938.

“ E ”
(part).
Review by
Capt.
O’Conner,
Resident,
Ogoja
Province,
of Joint
Report of
Messrs.
Connell &
Ennals,
23rd and
24th
April,
1937.

10 On 3rd November, 1936, Mr. T. G. Connell, Assistant District Officer, Afikpo Division, was appointed to hold an enquiry under the Ordinance and to determine a boundary between Eziafo and Biakpan. On 16th November, 1936, Mr. Connell gave a decision which he duly promulgated. The Biakpans were satisfied with this decision—but the Eziafos had referred it to the people of Asaga (they two being of one clan) and in January, 1937, representations were made to the effect that the Connell boundary had given to Biakpan certain lands over which the Asagas claimed to have rights.

20 2. The upshot of this was that on the 30th March, 1937, Mr. C. T. C. Ennals Assistant District Officer Bende Division was appointed to hold a further enquiry and to decide a boundary not only between Biakpans and Eziafo section of Asaga but also between Biakpan and Asaga. On 24th April, 1937, Mr. Ennals gave his decision.

3. The Ennals’ decision departed from the Connell award in so far as concerned the Biakpan–Eziafo section, and in fact it took away from Biakpan an area of land which had been assigned to Biakpan by Mr. Connell. The Biakpans, not unnaturally, petitioned against this new decision.

30 4. Correspondence ensued between the Residents of the two Provinces and eventually it was agreed that the best way to handle the matter would be for Messrs. Connell and Ennals to meet on the land and to submit a joint report which either would confirm one or other of the boundaries already made (i.e., as to Biakpan–Eziafo) or would suggest an amendment.

5. I journeyed to Biakpan on the 22nd April and on the two succeeding days I discussed with representatives of Eziafo, Asaga and Biakpan their respective claims, and the two individual reports and the joint report.

40 6. The Report (at paragraph 3) showed reasons for abandoning the Biakpan–Eziafo section of the Ennals award: one of the families of Asaga had complained that the Connell boundary had deprived them of land, but the joint investigation proved not only that this family was unable to establish permanent rights of tenure but also that while the Eziafos had been allowed west of the Ennals and east of the Connell line, the Biakpans on the other hand had upon occasion also come west of the

Defendants' Exhibit.

" E "

(part).

Review by
Capt.
O'Conner,
Resident,
Ogoja
Province,
of Joint
Report of
Messrs.
Connell &
Ennalls,
23rd and
24th April,
1937,
continued.

Ennalls boundary. The report gave an assurance that the Biakpans had been unable to prove a right to rent land to the Eziafos west of the Connell boundary.

7. However a slight amendment was made to the Connell line resulting in an addition of land to the Asaga-cum-Eziafo. The Officers were convinced that the Asagas had established rights on this additional portion—a fact which was not reported originally by Mr. Connell owing to the Asagas' refusal to point out the limits of their farms.

8. The report adopting this amended Connell boundary stated that while in the past the areas on each side of it had owned in common and while neither party to-day had established a definite title, it was considered advisable to make this boundary purely as a measure for preserving the peace. It was in fact an arbitrary line. 10

(Be it noted that this is *not* recorded in the Report—but it is an explanation given by Mr. Connell of paragraph 4 which otherwise appears to deny the justice of the boundary.)

9. The second sentence of paragraph 7 of the Report is misleading in a sense: claims by the Biakpans to farm up to the River Ivatum were not recorded by Mr. Connell because this area was outside the terms of reference of this enquiry. None the less in preparing his map he had been made aware of the Asaga Settlement there. For the same reason that Mr. Connell was not called upon to adjudicate on this area no complaints had been made with regard to it at his enquiry. 20

10. It seemed desirable to me not merely to confine my attention to the Joint Report but to review it in conjunction with the two previous reports and supplemented by any explanations that the representatives of the three villages might have to offer. There was a very full representation of all the parties and I was able to discuss the whole evidence.

11. The parties were in general agreement that many years ago the Biakpans were immigrants into this part of the world. Starting from a place in the neighbourhood of Calabar they had come to an area in the vicinity of Ikun (i.e., east of the present site). Thence they had migrated on to Asaga land and eventually had settled where they are to-day. There were slight differences in stories put up by each side, the Asagas seeking to show that the Biakpans had at one time resided right amongst them—but in broad outline there was agreement. 30

It was made manifest that at some time in those wanderings the Biakpans had been received in friendly fashion by the Asagas and that a free division of lands on a form of "gentleman's agreement" had taken place. 40

12. With regard to the present layout of farm lands in the area lying between the three villages it was abundantly clear that farming was and had been for some long time previously promiscuous. In the centre of the

area, along the Biakpan-Eziafo road : the old Biakpan-Asaga path : and the new Biakpan-Asaga road farms of the respective villages were contiguous. It was also made clear that in the past any one of the three villages had been permitted to open up hitherto virgin soil.

13. Of course there was the usual talk of rent—and in one particular I was shown an “ agreement ” said to have been entered into by the people of Eziafo whereby they would pay rent to Biakpan—but as a valid “ agreement ” it was not worth the paper on which it was written. Claims to rent were made impartially by both Biakpan and Asaga but investigation
10 showed very soon that no claim advanced was possible proof.

14. There had, too, been the other element so frequent in all disputes of this nature—the presence of strangers and—having regard to all other points shown to me, I was confident that this importation of strangers was the sole cause of the dispute. An area of communal land, or no man’s land is a very usual feature between villages and everything goes on happily until one side or other brings in strangers from whom of course a satisfactory rent is obtained.

15. Having discussed the whole matter at considerable length and being convinced in my own mind that in the past there never had been
20 any question of boundaries I suggested that the three villages should consult and should say whether a boundary really was desired.

16. In a thoroughly friendly spirit the villages acted upon my suggestion and in due course they returned to say that they were unanimous in their view that no boundary was desired but that all the land lying between the three villages should be “ communally ” owned by the villages due regard being paid to existing farms of all persons of the villages. There being not one voice raised in dissent I informed the meeting that the decision would be adopted and would be duly registered.

17. Accordingly, in as much as the individual Connell award and the
30 individual Ennals award are merely interlocutory proceedings, and as the final Joint Report of Messrs. Connell and Ennals is the award upon which this review is based, I now order that this award be set aside and that all land lying between the villages of Biakpan, Eziafo and Asaga shall be owned in common by the three villages.

18. By agreement between the parties it was arranged that all strangers living on the communal lands should vacate within three (English) weeks from the 24th April. It is recorded that these strangers are servants and employees of Ogonnia Asaga on the part of Biakpan, and employees of the following on the part of Asaga—Agwu Ogbu ;
40 Ama Oji ; Ogonnia Ekpu ; Kalu Nnachi ; Onugu Mkpbi ; Kalu Ukpon and Kalu Ugbe ; Ogonnia Asiegu an Aro is also to vacate his Biakpan holding.

19. The parties were authorised to remove the boundary posts which demarcated the Connell award.

(Sgd.) D. O’CONNER,
Resident,
Ogoja Province.

Defendants’ Exhibit.

“ E ”
(part).

Review by
Capt.
O’Conner,
Resident,
Ogoja
Province,
of Joint
Report of
Messrs.
Connell &
Ennals,
23rd and
24th April,
1937,
continued.

Plaintiffs' Exhibit.

"C."

Letter,
20th
November,
1943.

"C"—LETTER.

Asaga Village,
Ohafia,

20th November, 1943.

Dear Sir,

I write this letter to let you know that the people of Asaga have agreed to make a motor road from Asaga to the Spring (Ifu Etum) and the people of Biakpan will continue from there to the town of Biakpan. The motor road is to be completed by the two parties concerned.

The people of Biakpan are to get ready to begin as soon as possible. 10 We want to make a start so as to have time for our farm work.

Yours faithfully,

CHIEF ONUGU OBEKE his X mark.

„ KALU OCHU „ X „

The Head Chief of Asaga, on behalf of Asaga Chiefs.

Plaintiffs' Exhibit.

"D."

Pro-
ceedings in
Ubaghara
Clan Court
between
*Ewa Kalu
of Ufiela
Ohafia
Biakpan
(Plaintiff)*
v. *Ewa
Oburu of
Asaga
(Defendant)*,
27th April,
1950, to
16th March,
1951.

9/50

"D"—PROCEEDINGS in Ubaghara Clan Court between Ewa Kalu of Ufiela Ohafia Biakpan (Plaintiff) v. Ewa Oburu of Asaga (Defendant).

Ubaghara Clan Court Session held 27th April, 1950.

Sitting Chiefs :—

- | | |
|---------------------------------|----|
| 1. Unor Egim of Ikun. | 20 |
| 2. Basseyy Esien of Ikun. | |
| 3. Onete Ogban of „ | |
| 4. Enun Eko „ „ | |
| 5. Unor Mba „ „ | |
| 6. Ogban Obisi „ „ | |
| 7. Edodi Ibidam of Etono No. 1. | |
| 8. Kamanu Onesa „ „ „ „ | |
| 9. Aya Edodi „ „ „ „ | |
| 10. Obia Onesa „ „ „ „ | |
| 11. Oja Oja „ „ „ „ | 30 |
| 12. Oti Ufia „ „ „ „ | |

Ewa Kalu of Ufiela Ohafia—Biakpan Plantation

vs.

Ewa Oburu of Asaga—Ikun Plantation.

CLAIM :—

Court
Notes,
27th April,
1950.

(A) £5 Damages done in Plaintiff's land known as Okpotum Omefa alias (Isi igboro in Ibo) by entering to farm without Plaintiff's authority since 2 weeks ago.

(B) Defendant to quit the land. Order of Court: Case adjourned till land inspected to know in which part of the Division the land is before trial.

(Sgd.) CHIEF UNOR EGIM his X mark

spokesman 27/4/50.

£1 5/- by Pltff. being land inspection fee C/R.

No. 128738 of 7/5/50.

Land inspected by Mr. J. Brynebaker Senior D.O. Afikpo.

10 Yesterday I visited this farm, which is a small one alongside the motor road to Biakpan. This road has been built during the past year with funds provided in Afikpo Division and supervised by the Afikpo Administration. Along bridge over the Duiker river is situated about 200 yards from this farm. I cannot see how the farm can possibly be in Bende Division, and am quite satisfied that this Court has jurisdiction to try the case. The Plaintiff is suing as a tenant of Biakpan who claim to own the land. The land formerly in dispute between Biakpan and Asaga Bende lies in the further side of Biakpan Village, this land is on the motor road between Ikun and Biakpan.

20 I have warned the Defendant, who is here today that he can call Asaga witnesses if he wishes, but should not arrange for any other Asaga to be there to cause confusion. The Plaintiff is not here, but I have warned Biakpan, the landlord of Plaintiff, that they must make sure that neither they nor Ufiela appear while the land is being inspected apart from the actual Plaintiff and witnesses.

30 When the Court has inspected the land the full Court not just one or two members, must inspect, heard evidence and given judgment, either parts will have the usual rights of review. The Defdt. then asks for a transfer on grounds of lack of jurisdiction. It will be for the reviewing Officer to consider this. But speaking for myself I see no reason why this Court should not have jurisdiction and I am not prepared to order a transfer at this stage. Defendant has not in fact asked for a transfer but merely for an adjournment to enable him to call Asaga witnesses. The Court will doubtless note that Defendant's dwelling house—built it seems about a year ago, is situated in the bush on the opposite side of the road.

The house is reached from a bush path starting from very near the Duiker bridge; there is another small farm of Defendant's near the house. This action does not seem to be concerned with the house and second farm.

(Sgd.) J. BRYNE BAKER,

Senior District Officer, Afikpo.

22/5/50.

Plaintiff's Exhibit.

“D.”

Proceedings in Ubaghara Clan Court between Ewa Kalu of Ufiela Ohafie Biakpan (Plaintiff) v. Ewa Oburu of Asaga (Defendant), 27th April, 1950, to 16th March, 1951, continued. Notes of Inspection by J. B. Baker, S.D.O., 22nd May, 1950.

Plaintiffs'
Exhibit.

Ubaghara Clan Court Session held 22nd September, 1950.

"D."

Sitting Chiefs :—

Pro-
ceedings in
Ubaghara
Clan Court
between
Ewa Kalu
of Ufiele
Ohafia
Biakpan
(Plaintiff)
v. Ewa
Oburu of
Asaga
(Defendant),
27th April,
1950, to
16th March,
1951,
continued.

9/50.

1. Unor Egim of Ikun.
2. Oja Oja of Etono No. 2.
3. Kanu Oti of Etono No. 2.
4. Okim Oberum of Biakpan.
5. Edodi Ibidam of Etono No. 1.
6. Ukpai Ekpesu of Etono No. 1.
7. Kanu Edodi of Etono No. 1.
8. Obia Enesu of Etono No. 1.
9. Obasi Esien of Ikun.
10. Enun Eko of Ikun.
11. Ogban Obasi of Ikun.
12. Kanu Ukpai of Biakpan.
13. Ikwang Ngim of Biakpan.
14. Ogban Ogbu of Biakpan.
15. Aya Edodi of Etono No. 1.

10

Ewa Kalu of Ufiele Ohafia-Biakpan Plantation

versus

Ewa Oburu of Asaga Ohafia-Ikun Plantation.

COURT CLAIM :

Court
Notes,
22nd
September,
1950.

(A) £5 Damages by entering Plaintiff's land known as (Okpotum Omefa) alias Isigboro in Ibo to farm without authority since two weeks ago.

(B) Defendant to quit the land as usual.

Claim not admitted.

Q. by Court. Ptff any witness ?

20

Ans. Yes. Kalu Ekpesu-Biakpan and Kalu Nsi-Ufiele.

Q. by Court. Defendant any witness ?

Ans. Yes, Onyeria Mecha, Jacob Ukadiwe and Daniel Okorie all of Asaga.

Plaintiff's
Evidence.

PLAINTIFF EWA KALU (m) Sworn s/s :

The land in question is known as (Okpotum Omefa) given to me on rentage by the people of Biakpan. An agreement was made between Biakpan and I in the Court, in the presence of the District Officer Afikpo who signed for it. The d.o's name unknown. The agreement paper was taken to Elu Ohafia and the D.O. Bende Mr. Mayne signed his name also. 30 One Asaga chief known as Onugu Igbeke was present the very day, and the D.O. Bende asked whether he had land there. He replied no. Almost 22 years ago I have been using the land and none of Asaga men or women complained of it being his or her land.

Defendant is living in Ikun plantation. There he lived in his own land given him by Ikun, and trespass to the one given me by Biakpan and planted his farm without my authority. This brought about the dispute. During the time he was clearing, I stop him, and say that I was

too foolish, that we should try to claim the both lands from Ubaghara to Ohafia people. I told him that I cannot do so. Defendant refused to quit the land and planted his crops in it, hence the above claim.

Plaintiffs' Exhibit.
"D."

Q. by Court. Defendant any question ?

Ans. No.

Cross-Exam. by the Court :

Q. by Court. Plaintiff the agreement paper signed both D.O. Afikpo and Bende is with you now ?

Ans. Yes, I am with it now.

10 *Q. by Court.* Plaintiff can Biakpan people confirmed that the land in dispute was given to you by them for rent ?

Ans. Yes they can confirm so.

Q. by Court. Plaintiff almost 22 years you pay rentage to Biakpan no dispute ?

Ans. Yes.

Pro-ceedings in Ubaghara Clan Court between *Ewa Kalu of Ufiela Ohafia Biakpan (Plaintiff) v. Ewa Oburu of Asaga (Defendant)*, 27th April, 1950, to 16th March, 1951, continued.

PLAINTIFF'S 1ST WITNESS KALU EKPESE (m) Sworn s/s. :

20 Almost 22 years ago we Biakpan people gave a land known as Okpotum Omefa to Plaintiff and his people of Ufiela in rentage. They used the land for 11 years before the people of Biakpan remember entering it in agreement paper. The year 1939 in the month of January on the 5th day an agreement was written. The contents of the agreement reads thus, that in each year when the land is to be planted, Plaintiff and his people have to pay a goat, 4 legs of meat, 4 pots of palm wine and after harvest to give 200 yams plus 10/-. If they refuse to do the above-mentioned things and enter the land to plant, Biakpan may claim £20 from them.

30 After the agreement was written the people of Biakpan took theirs to the D.O. Afikpo in Ubaghara Court which he went away with. The next day D.O. Captain J. W. Jewel came back with it and asked the people of Biakpan if there was a disputed land among the one given to Plaintiff. All said no. The D.O. then signed the paper and gave it to us. Plaintiff's own paper was taken to D.O. Bende and signed as D.O. Afikpo did in ours. This year the Plaintiff reported to us that Defdt. entered or trespass in his portion to plant. We advised Plaintiff to take the said action, and we appear as witnesses being the land lords. That is all I know of the case.

Q. by Court : Defendant any question ?

Ans. : No question.

Q. by Court : What is the area of the land ?

40 *Ans. :* I do not measure it.

Plaintiffs' Exhibit.

Q. by Court: How many miles from where Defendant live to reach the disputed land ?

"D."

Ans.: I am not after the place he lived, but where he planted is near the motor road.

Q. by Court: In the disputed land who bounded all the four corners ?

Ans.: Coming from Biakpan to Ikun on the left hand side of the land the boundary is known as Isi Ogugu stream near to Asaga. The right hand side the boundary is known as Dugini stream. The other side is Ikun land. On the front side Duike stream is the boundary.

Q. by Court: Unor Egim :—Walk on the main road from Duike 10 bridge to the branch who own the land there ?

Ans.: I cannot tell for our own boundary is Duike.

Q. by Court: Since the land was not in rentage to Plaintiff has any other village people plant there ?

Ans.: No.

Pro-ceedings in Ubaghara Clan Court between Ewa Kalu of Ufiela Ohafia Biakpan (Plaintiff) v. Ewa Oburu of Asaga (Defendant), 27th April, 1950, to 16th March, 1951, continued.

KALU NSI 2ND WITNESS TO PLAINTIFF (m.) sworn s/s :—

The land in dispute was given to us by Biakpan people. The land is known as Okpotum Omefa. The boundary between Asaga Ohafia and Biakpan Ubaghara is known as Isi Ogugu stream. We plant the land for almost 3 years then finished. After many years Biakpan people were 20 afraid that in due course we may take the land as Ohafia's land. That an agreement paper should be written. We agreed and an agreement was written. Both agreement papers were given to D.O. Afikpo which he took away. He sent our agreement paper to the D.O. Bende. One day I was in my house a Court Messenger from Elu came to me that I am wanted by District Officer Bende. I went with Ufiela people and D.O. produced the agreement paper, asked me whether I made it with the people of Biakpan. I said yes. He then turned to Asaga and asked them if their land is near there. They replied no. That it was the land in dispute between Osiafor and Biakpan years ago. In the 3rd month of 30 this year Defendant went and cleared it and plant. I reported to Biakpan Chiefs. They ordered us to sue Defendant in Court. That they did not give him the land.

Q. by Court: Defendant any question ?

Ans.: I have no question.

Defendant's Evidence.

DEFENCE.

EWA OBURU Defendant (m.) Sworn s/s :—

The land in dispute was given to me by the people of Asaga to farm. Not from my authority I plant on it. Asaga can prove how they own the land. That is all I know. 40

Q. by Plaintiff: Were you the first born in Asaga who cleared the land when it was a forest and gave to Asaga ?

Ans.: I was given the plantation by Asaga people.

Q. by Plaintiff: Asaga told you that the boundary of Ubaghara is Isi Ogugu stream? *Plaintiffs' Exhibit.*

Ans.: Asaga gave the disputed land to me. "D."

Q. by Court: Defendant have you seen Asaga people planted the disputed land? Before it was given to you? *Proceedings in Ubaghara Clan Court between Ewa Kalu of Ufiele Ohafie Biakpan (Plaintiff) v. Ewa Oburu of Asaga (Defendant), 27th April, 1950, to 16th March, 1951, continued.*

Ans.: I saw the place good for my plantation and I asked Asaga to allow me stay there, and they agreed. I have not seen any one planted it.

Q. by Court: So any land you see good for you and not Asaga's own, when you ask permission to live there they allow you?

10 *Ans.:* No unless Asaga's land.

Q. by Court: The land you cleared was a forest or the one planted before?

Ans.: It was a forest I cleared it.

Q. by Court: In the very land have you seen a site planted before?

Ans.: Yes.

Q. by Court: Defendant do you know the boundary between Asaga and Biakpan?

Ans.: No. I was not shown the boundary by Asaga people.

Q. by Court: Have you seen the motor road?

20 *Ans.:* Yes.

Q. by Court: The motor across Asaga or Biakpan land?

Ans.: It crosses Asaga's land.

Q. by Court: Any dispute made as the road crossed your land?

Ans.: No dispute made.

Q. by Court: Is your plantation near the disputed land?

Ans.: Yes.

Q. by Court: If it is found that the disputed land is owned by Biakpan what is to be done to you?

Ans.: I may pay the Plaintiff's Claim.

30 ONYEOURIE 1ST WITNESS TO DEFENDANT (m) Sworn s/s. :—

The footpath to the disputed land is generally owned by the people of Asaga and Ikun. Ikun used to clear half the way as well as Asaga. The disputed land is in the middle of the way between Ikun and Asaga. Biakpan and Asaga have a separate land from Asaga to Biakpan beach. Plaintiff's natives of Ufiele are living in my land. The disputed land is owned both by Asaga and Ikun. We, gave Defendant the portion to plant. The action against him should be against Asaga and Ikun who generally own the land. By there we explain how we do get the land. Biakpan people have no land there at all.

Plaintiffs'
Exhibit.

"D."
Pro-
ceedings in
Ubaghara
Clan Court
between
Ewa Kalu
of Ufiela
Ohafie
Biakpan
(Plaintiff)
v. Ewa
Oburu of
Asaga
(Defendant),
27th April,
1950, to
16th March,
1951,
continued.

Q. by Plaintiff: Since time of our forefathers has any Asaga crossed the stream Isi Ogugu and plant farm on the other side of the land ?

Ans.: Yes.

Q. by Plaintiff: What is the person's name ?

Ans.: Unless you take action against Asaga then I can tell you who planted the land.

Q. by Court: Do you know the boundary between Asaga and Ikun ?

Ans.: Asaga and Ikun have no boundary.

Q. by Court: Do you know the boundary between Asaga and Biakpan ?

Ans.: No, I do not know.

10

Q. by Court: The disputed land was given to Defendant by Asaga and Ikun or Asaga gave it alone ?

Ans.: It was given to Defendant by Asaga and Ikun jointly, but not Asaga alone.

Q. by Court: To pay what rent to you both ?

Ans.: Not to pay, but to look after there, so that others may not claim it.

Q. by Court: Do you want action to be taken against you or Ikun ?

Ans.: I do not know.

Q. by Court: Since Plaintiff and his people planted the land has 20 Asaga taken action against them ?

Ans.: The actions taken against them are uncountable.

Court
Notes,
22nd
September,
1950.

2nd and 3rd witnesses to Defendant corroborated with 1st witness statement. We have no more words to add. Case adjourned by order of Court for inspection of the land before judgment.

22.9.50.

Case above reopened on 20th October, 1950.

Court
Notes as to
inspection,
20th
October,
1950.

The following members inspected the land :—

1. Bassey-Ikun.
2. Unor Mba-Ikun.
3. Unor Eko-Ikun.
4. Ogban Obisi-Ikun.
5. Edodi Ibidam-Etono No. 1.
6. Obia Onesu-Etono No. 1.
7. Ukpai Ekpesu-Etono No. 1.
8. Nkamanu Onesu-Etono No. 1.
9. Aya Edodi-Etono No. 1.
10. Ikwan Ngum of Biakpan.

30

11. Okim Oberum of Biakpan.
12. Kalu Oti of Biakpan.
13. Ogbu Ogbu of Biakpan.
14. Oja Oja of Etono No. 2.
15. Oti Ufia of Etono No. 2.
16. Kanu Aja of Etono No. 2.

Plaintiffs' Exhibit.

“ D.”

Pro-
ceedings in
Ubaghara
Clan Court
between
*Ewa Kalu
of Ufiela
Ohafie
Biakpan
(Plaintiff)*
v. *Ewa
Oburu of
Asaga
(Defendant)*,
27th April,
1950, to
16th March,
1951,
continued.

Others who followed were the Councillors of Biakpan. The Court Clerk and a Messenger Daniel Abara. Defendant came but refused to show to members the disputed land complaining that, his people of Asaga could not turn up. Plaintiff came and showed his portion in dispute. Findings : Judgment divided into opinions. 5 men against 13. Majority's Judgment and findings : We have inspected the disputed land and the Plaintiff and the Defendant were present the very day. We found that the area Defendant planted was Biakpan land given in rentage to Plaintiff. Defendant actually trespassed to Plaintiff's portion of land to plant.

Judgment for Plaintiff for £5. £1 : 5/- inspection fee plus 7/6 cost of action total is £6.12.6d. to be paid within 2 months from the date of this judgment after harvest Defendant to quit the land.

Findings
(Majority).

- | | | | | | |
|----|--------|------------------|------------|------------|--|
| | (Sgd.) | 1. Edodi Ibidam | his X mark | spokesman. | |
| 20 | „ | 2. Ukpai Ekpesu | „ X | „ member. | |
| | „ | 3. Oti Ufia | „ „ | „ „ | |
| | „ | 4. Nkamanu Onesu | „ „ | „ „ | |
| | „ | 5. Aya Edodi | „ „ | „ „ | |
| | „ | 6. Obia Onesu | „ „ | „ „ | |
| | „ | 7. Oja Oja | „ „ | „ „ | |
| | „ | 8. Kanu Ukpai | „ „ | „ „ | |
| | „ | 9. Okpan Ogbu | „ „ | „ „ | |
| | „ | 10. Okin Oberum | „ „ | „ „ | |
| | „ | 11. Ikwan Ngum | „ „ | „ „ | |
| 30 | „ | 12. Kanu Edodi | „ „ | „ „ | |
| | „ | 13. Kanu Oti | „ „ | „ „ | |

Judgment
(Majority).

Q. by Court : Plaintiff satisfied or review ?

Ans. : I am satisfied.

Defendant absent while warned by the Court Clerk and the Messenger to turn up this day for final decision, the day the land was inspected.

Minority's Judgment for Plaintiff for £5. £1.5/- Inspection fee plus Judgment 7/6d. cost of action. Defendant actually trespassed to Plaintiff's portion of land. (Minority).

Findings : Starting from the stream known as Isi Ogugu is the boundary between Bende and Afikpo Division. The disputed land which Defendant plant is Ubaghara land. Biakpan people rented it to Plaintiff. (Minority).

Plaintiff's Exhibit. It is Biakpan portion of land. This case is no division after all. All judgment are same. It is a confusion by saying judgment divided into opinions while all are same.

"D."

Pro-
ceedings in
Ubaghara
Clan Court
between
*Ewa Kalu
of Ufiele
Ohafie
Biakpan
(Plaintiff)*
v. *Ewa
Oburu of
Asaga
(Defendant)*,
27th April,
1950, to
16th March,
1951,
continued.

- | | | |
|--------|-----------------|-----------------------|
| (Sgd.) | 1. Unor Egim | his X mark spokesman. |
| " | 2. Bassey Esien | " " " " |
| " | 3. Unor Mba | " " " " |
| " | 4. Enun Eko | " " " " |
| " | 5. Ogban Obisi | " " " " |

20.10.50.

Q. by Court : Plaintiff satisfied or review ?

10

Ans. : I am satisfied being same judgment.

Defendant absent while warned by the Court Clerk and C/M Daniel Abara on 15.10.50 to appear before the Court. Defendant has been noticed the judgment of the Court, he now applies for review.

Paid 7/6 Review fee C/R No. 128778 of 25/10/50.

On resumption of review at instance of Defendant see pp. 174-176—
review started by Mr. Brayne Baker S.D.O.

Decision on
Review,
16th
March,
1951.

Parties present. This is a dispute between two tenants about ownership of land. The land owners Biakpan and Ikun, are both agreed as to the boundary between them and the Court is unanimous in finding for the Plaintiff. The only reason that the Defendant applies for review is that the claim that the land he is farming does not belong to Ubaghara at all, but to Asaga in Bende Division, notwithstanding the fact that the Plaintiff holds an agreement with Biakpan for the land in dispute (Known by Ibos as Itobo). The Court has now inspected the land. The previous reviewing Officer gave it as his opinion that this land which is only 200 yards into the bush from the Duike bridge on the Biakpan motor road, was certainly not in Bende Division. I support that opinion. The Defendant does not ask for a transfer or grounds of lack of jurisdiction of the Court, but in any case in my view the Ubaghara Court has full jurisdiction in this case. Judgment of Court upheld.

(Sgd.) H. P. ELLIOTT,
District Officer Afikpo.

16.3.51.

“ G ”—PROCEEDINGS in the Ohafia Native Court between Awa Okwara (for Asaga) and Kalu Upai Kalu Nsi (for Ufiele). *Defendants' Exhibit.*

J.B. 5/50 Page 129.

Court members present this 3.7.50 :—

1. U. Anya.
2. U. Ole.
3. N. Lekwa.

C/S No. 178150 of 1/5/50.

Awa Okwara on behalf of Asaga Village

10

vs.

1. Kalu Ukpai,
2. Kalu Nsi on behalf of Ufiele people.

CLAIM :

Declaration of title to a piece of land called Isigbore Nde Oke situated at Asaga.

Plaintiff present.

Defendants absent.

Service of hearing Notice proved on oath by Court member.

Ugwaogu Ole.

20

Case then Proceeds.

30 Plaintiff s/s on juju for himself and Asaga people. I am a farmer aged about 40 years. We are not related to the Defendants who are a separate village. It is over 27 years since Atan Compound people in Asaga had a land case with these Ufiele people on a certain land distinct from the one now in dispute. The Atan compound people won the case and the land. One Eke and Ofia both of Ufiele with Kalu Ukpai No. 1 Defdt. in this case brought wine to late Chief Ajadu the Eze of Asaga at the time and begged the Asaga people that since they had been ejected from the land they had no other land on which to farm. The Eze of Asaga, late Chief Ajadu then gave the Ufiele people this land called Isigboro Nde Oke to farm. They then occupied the land. This land Isigboro Nde Oke starts from a stream called Iyi Ogboromuogwu up to the boundary formed by a stream called Reghim. On the right hand side the land Isigbore is bounded by another stream called Atan Isi Ogugu and tapers and joins with another land called Ofia Okuko. On the left side the land bounded by Duke.

“ G. ”
Pro-
ceedings
in the
Ohafia
Native
Court
between
Awa
Okwara
(for Asaga)
and Kalu
Upai Kalu
Nsi (for
Ufiele),
3rd July,
1950.

Defendants' Exhibit.

"G."

Pro-ceedings in the Ohafia Native Court between Awa Okwara (for Asaga) and Kalu Upai Kalu Nsi (for Ufiele), 3rd July, 1950, *continued.*

The one who cleared this land in its origin was Uma Ukpai the founder of Asaga. He cleared the whole Asaga, passed the land to the cross River. The land on which Biakpan people live belongs to Asaga. There has been many previous cases involving these lands and the Resident from Ogoja Province entered judgment for Asaga people records of which I can produce for reference. There has been never a boundary made to show that we are not the owners of the land up to the Cross River. The land was cleared long before the Ufiele people established at their present site. They were living at a place called Ubaba near Ndi Orieké. From there they migrated to a place called Chuku Ufiele. Later they left the place and lived at Osu Okpo within Asaga land and finally the Umua Nde family of Asaga leased or permitted them to live at their present site now. There has never been a dispute or interruption from any body against the Asaga people. 10

During the Enquiry by Resident O'Conner one Agwu Eke of Ikun gave evidence for Asaga people his evidence of which can be read from the report. He said that the Ruin or Rughin stream flows into the Cross River. He also mentioned that on the left was where they lived together with the Biakpans and that they were given the land by Asaga people. Our land stops at the Cross River. The cause of this action is that we the Asaga people placed Paul Oburu of Asaga on this land in dispute to establish Plantations. He reported to us that the Defendants of Ufiele had sued him for damages for occupying the land and that he should quit after payment of the damages. This suit was taken out at Ubaghala Native Court in Ikun. We wondered how the people demanded such authority hence this action. 20

Statement read to Plaintiff and admitted in evidence.

Findings: We have gone into the case. The Defendants know that the land is not theirs that is why they refused to come. This land belongs to Asaga people with whom we are satisfied with their evidence. Plaintiffs should take out action against any Ufiele people who are unauthorised into the land by them. 30

Judgment: For the Plaintiff for the land Isigboro Nde Oke situated in Asaga Ohafia as from date. 7/6d. Costs to be refunded to Plaintiff by the Defts. within 7 days.

1. (Sgd.) U. Anya, 2. (Sgd.) Ugwuogu Ole, 3. Nwojo Lekwa.

(Sgd.) U. USUS,
C/C 3/7/50.

Defendants appeal. 7/6d. appeal fee paid on C.R. 7246 of 6/7/50.

In the Privy Council

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

BETWEEN

CHIEF EKE OJA
CHIEF OGWO OBU and } for themselves and as representing the people of Asaga
NJAGHA OBASSI } *Defendants-Appellants*

AND

CHIEF KANU UKPAI and } for themselves and as representing the people of
CHIEF KANU EKPEZU } Biakpan *Plaintiffs-Respondents.*

RECORD OF PROCEEDINGS

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

SYDNEY REDFERN & CO.,
1 GRAY'S INN SQUARE,
GRAY'S INN,
LONDON, W.C.1,
Solicitors for 1st Respondent CHIEF KANU UKPAI.