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32
1964

IN THE PRIVY COUNCIL

No. 35 of 1963

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

1. EGONEKWU DIM
2. DURU EGBUFO
3. OJARA EZEGWO
4. OKWARA IBEBUIKE (Defendants) Appellants

- and -

1. ANUSIONWU DURU
2. OKANU NNADE
3. DURU OBASSI NWECHÉ
4. IBEBUIKE EZEONYEMBA
5. DIMOGUDO EZE (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78618

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellants.

REXWORTHY BONSER & SIMONS,
83/85, Cowcross Street,
London, E.C.1.

Solicitors for the Respondents.

IN THE PRIVY COUNCILNo. 35 of 1963

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RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>In the High Court of Eastern Nigeria</u>		
1.	Particulars of Claim	15th March 1958	1
2.	Civil Summons	1st April 1958	2
3.	Court Notes	6th October 1958	3
4.	Statement of Claim	21st October 1958	3
5.	Statement of Defence	7th March 1958	5
6.	Order for Defendants to sue in a representative capacity	16th May 1960	8

No.	Description of Document	Date	Page
	<u>PLAINTIFFS' EVIDENCE</u>		
7.	Ezike Chidolue	16th May 1960	9
8.	Motion for Plaintiffs to proceed in a representative capacity	14th May 1960	10
9.	Affidavit in support of No.8 with annexure	17th May 1960	11
10.	Order	31st May 1960	13
11.	Court Notes	2nd August 1960	14
12.	Okanu Nmadekwe	2nd and 10th August 1960	14
13.	Fred Ogabanya	10th August 1960	18
14.	Tobias Ogo	12th August 1960	20
15.	Nnoham Dim	12th August 1960	21
	<u>DEFENDANTS' EVIDENCE</u>		
16.	Egonekwu Dim	22nd September 1960	24
17.	Matthias Chukwural	20th October 1960	28
18.	Eze Ogbarakwe	20th October 1960	29
19.	Oliver Nwagbo	20th October 1960	30
20.	Columba Olumba	20th October 1960	31
21.	Odum Okpara	20th October 1960	31
22.	Inspection Note	25th October 1960	33
23.	Counsel's Addresses	26th and 28th October 1960	35

No.	Description of Document	Date	Page
24.	Judgment <u>In the Federal Supreme Court</u>	5th November 1960	43
25.	Grounds of Appeal	24th November 1960	47
26.	Court Notes	26th and 27th February 1962	52
27.	Judgment	30th March 1962	56
28.	Order	30th March 1962	63
29.	Order granting Final Leave to Appeal to Privy Council	6th May 1963	64

EXHIBITS

Exhibit Mark	Description of Document	Date	Page
6.	Proceedings, Civil Case 10/39	28th January 1939	66
7.	Proceedings, Civil Case 0/10/43	14th March 1944	67
14.	Proceedings, Civil Case 31/29	18th January 1911	65

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>In the High Court of the Eastern Region</u> Court Notes	26th May 1958

Description of Document	Date
Motion on Notice for Extension of time to file Statement of Claim and Plan	16th August 1958
Affidavit in support	21st August 1958
Court Notes	24th July 1959
Court Notes	18th January 1960
Motion for leave to Defendants to defend on behalf of people of Amanano in Orulu Division	15th January 1960
Affidavit in support	18th January 1960
<u>In the Federal Supreme Court</u>	
Notice of Settlement of Record	29th December 1960
Bond for Costs of Appeal	29th December 1960
Certificate of service of Notice of Appeal	2nd February 1961
Certificate of compliance with Conditions of Appeal	2nd February 1961
Motion on Notice for accelerated hearing	14th December 1961
Affidavit in support	14th December 1961
Court Notes	8th January 1962
Order for hearing	8th January 1962
Motion on Notice for leave to Appeal to the Privy Council	21st April 1962
Affidavit in support	25th April 1962
Court Notes	18th June 1962

Description of Document	Date
Order granting Conditional Appeal to Privy Council	18th June 1962
Affidavit of Means	30th July 1962
Bond for Costs of Appeal	1st August 1962
Motion for Final Leave to Appeal to Privy Council	Undated
Affidavit in support	26th October 1962
Counter Affidavit	17th November 1962
Further Counter Affidavit	20th November 1962
Counter Affidavit	30th November 1962
Court Notes	17th December 1962
Court Notes	2nd April 1963
Court Notes	6th May 1963
Order for settlement of Record	1st June 1963

IN THE PRIVY COUNCIL

No. 35 of 1963

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

- 1. EGONEKWU DIM
- 2. DURU EGBUFO
- 3. OJARA EZEGWO
- 4. OKWARA IBEBUIKE (Defendants) Appellants

- and -

10

- 1. ANUSIONWU DURU
- 2. OKANU NNADE
- 3. DURU OBASSI NWECHÉ
- 4. IBEBUIKE EZEONYEMBA
- 5. DIMOGUDO EZE (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

NO. 1

PARTICULARS OF CLAIM

IN THE HIGH COURT OF THE EASTERN REGION OF JUSTICE
 IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
 HOLDEN AT ONITSHA

In the High Court

20

No. 1

SUIT NO. 0/20/58:

BETWEEN:

Particulars
 of Claim
 15th March
 1958

- 1. ANUSIONWU DURU for themselves and on
- 2. OKANU NNADE behalf of the people
- 3. DURU OBASSI NWECHÉ of Amanato Umuezeala
- 4. IBEBUIKE EZEONYEMBA Ogboko Orlu Division.
- 5. DIMOGUDO EZE

- and -

30

- 1. EGONEKWU DIM for themselves and on
- 2. DURU EGBUFO behalf of the people
- 3. OJARA EZEGWO of Amanano Ogboko
- 4. OKWARA IBEBUIKE Orlu Division.

In the
High Court

C L A I M

The Plaintiffs' claim against the
Defendants is as follows:-

No. 1

Particulars
of Claim
15th March
1958
continued

(1) A declaration of title to owner-
ship and recovery of possession
of land known as Ugwu land situate
at Amanato Umuezeala Ogboko in
Orlu Division.

(2) Injunction to restrain the De-
fendants their Servants or Agents
from entering and or remaining
on the said land.

10

Dated the 15th day of March, 1958.

Sgd. B.C.I.Obanye
Solicitor.

NO.2

No. 2

Civil
Summons
1st April
1958

CIVIL SUMMONS
BOOK NO. U 93 IN THE HIGH COURT OF NIGERIA

CIVIL SUMMONS U 9237

SUIT NO. 0/20/58

20

Civil Summons

BETWEEN Anusionwu Duru & 4 ors.... Plaintiffs
and Egonekwu Dim & 3 ors..... Defendants

To Egonekwu Dim and 3 ors of c/o
Amanano Ogboko, Orlu Division.

You are hereby commanded in Her Majesty's
name to attend this court at Onitsha on a
date to be notified later at 9 o'clock in the
forenoon to answer a suit by Anusionwu Duru
and 4 ors of Amanato Umuezeala Ogboko, Orlu
Division against you.

30

The plaintiffs claim against the De-
fendants is as follows:-

(1) A declaration of title to ownership and
recovery of possession of land known as Ugwu
land situate at Amanato Umuezeala Ogboko in
Orlu Division.

(2) Injunction to restrain the Defendants, their servants or agents from entering and/or remaining on the said land.

In the High Court

(As per particulars of claim attached).

No. 2

Issued at Onitsha the 1st day of April 1958.

Civil Summons
1st April 1958
continued

NO. 3

No. 3

COURT NOTES
BEFORE THE HONOURABLE MR. JUSTICE HUGHES PUISNE
JUDGE - MONDAY THE 6TH DAY OF OCTOBER, 1958:

Court Notes
6th October
1958

10

SUIT NO. 0/20/58:

DURU AND 4 ORS PLAINTIFFS

- and -

DIM AND 3 ORS DEFENDANTS

Parties present except 4th defendant.
Obanye for plaintiffs to move.
Eze, holding for Obiorah, for defendants.
Extension of time to file statement of claim and plan.

20

Eze does not oppose.
Application granted: time extended:
Statement of claim and plan to be filed in 30 days.

Costs to defendants assessed and fixed at three guineas.

Sgd. H.J. Hughes
6th October, 1958.

NO. 4

No. 4

30

STATEMENT OF CLAIM
IN THE HIGH COURT OF THE EASTERN REGION OF JUSTICE
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

Statement of Claim
21st October
1958

SUIT NO. 0/20/1958:

BETWEEN:

In the
High Court

ANUSIONWU DURU & 4 ORS PLAINTIFFS

- and -

No. 4

EGONEKWU DIM & 3 ORS DEFENDANTS

Statement
of Claim
21st October
1958
continued

STATEMENT OF CLAIM

1. The Plaintiffs are the people of Amanato Umuezeala Ogboko in Orlu Division and bring this action for themselves and on behalf of the people of the said Amanato Umuezeala Ogboko.
2. The defendants are the people of Amanano Ogboko in Orlu Division and are sued for themselves and on behalf of the people of the said Amanano Ogboko. 10
3. The land in dispute is called Ugwu land and is situate at Amanato Umuezeala Ogboko and is more particularly drawn and shown surrounded by a border verged pink on the plan filed in Court by the Plaintiffs.
4. The Plaintiffs and before them their ancestors have been and are the owners of the land in dispute from time immemorial. 20
5. As such owners the Plaintiffs and before them their ancestors have been exercising maximum acts of ownership and possession over this land without let or hindrance from the defendants or any one else.
6. The Plaintiffs by themselves and their tenants live on and farm this land in dispute and reap economic trees growing thereon; such tenants pay yearly tribute to the Plaintiffs. 30
7. There has been a series of cases between the Plaintiffs and the Defendants over this land in dispute and it has been consistently held that the plaintiffs are the owners of the land in dispute and in 1939 the Chief Commissioner Southern Provinces in Appeal No. 10/1939 finally determined in Plaintiffs' favour the question of title to the said land. 40

8. From about the year 1954 the defendants began again to interfere with Plaintiffs ownership and possession of this land and on several occasions invaded the said land and did considerable damage to Plaintiffs' crops and economic trees on the land.

In the High Court

No.4

9. The defendants in defiance of Plaintiffs' title to the said land erected some farm huts on the land which huts are indicated on the plan filed in Court.

Statement of Claim
21st October 1958
continued

10

10. Wherefore the Plaintiffs claim from the Defendants a declaration of title to the said land in dispute and an injunction to restrain the defendants their servants or agents from entering and/or remaining on the said land.

Dated the 21st day of October, 1958.

Sgd. B.C.I.Obanye
Solicitor.

NO.5

No. 5

20

STATEMENT OF DEFENCE
IN THE HIGH COURT OF THE EASTERN REGION OF JUSTICE
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

Statement of Defence
7th March 1959

SUIT NO. 0/20/1958:

BETWEEN:

ANUSIONWU DURU & 4 ORS Plaintiffs

- and -

EGONEKWU DIM & 3 ORS Defendants

STATEMENT OF DEFENCE

30

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.
2. The Defendants admit paragraph 3 of the Statement of Claim in so far as it describes the land in dispute as "Ugwu land" but deny that it is situate at Amanato, Umuezeala Ogboko.

In the
High Court

—
No. 5

Statement
of Defence
7th March
1959
continued

3. The Defendants deny that the said land in dispute is as shown surrounded by a border verged pink on the plan filed by the Plaintiffs, and state that it is more particularly described and bordered pink on the plan numbered MEC/9/59 filed with this Statement of Defence.
4. The Defendants deny paragraphs 4, 5 and 6 of the Statement of Claim, and in support of this, would refer to the admissions made by the Plaintiffs' predecessor in title in several civil cases between the said Plaintiffs' predecessor and the 1st Defendant. 10
5. In the Northern Isu Native Court suit No. 78/37 the Plaintiffs' predecessor admitted that the 1st Defendant has a portion of the land in dispute which portion he named "Nwoma land", and defined the boundary thereof. 20
6. In the same Northern Isu Native Court suit No. 78/37, the said Plaintiffs' predecessor admitted that they only came on the land and built thereon 27 years before that date, thereby admitting that the plaintiffs have not been on the land from time immemorial.
7. In the High Court of the Enugu - Onitsha Judicial Division in suit No. O/10/1943 between the Plaintiffs' predecessor, the 1st and 3rd Plaintiffs and the 1st Defendant and 11 others, in a claim of £300 damages for trespass, a referee was appointed with the following terms of reference: 30
 - "1. To take evidence and to determine whether in fact Defendants in the above-named suit have trespassed on Plaintiffs' land as alleged and if so, 40
 2. What is the nature of the trespass, and
 3. To give an estimate of its value".

In the course of the proceedings of the court of the said referee the plaintiffs' predecessor admitted that the Defendants own a portion of the land in dispute and enumerated all but one of the pieces of land comprising the land in dispute as shown on the plan filed by the plaintiffs in that case and admitted in evidence as Exhibit "A". They also claimed identical interest in the land in dispute which claim complicated the issue and contributed, among other facts, to the Referee's Finding that the land in dispute belonged to both parties communally and should be used as such. These proceedings will be founded upon. All the pieces of land shown on the plan filed with the Statement of Claim in this case are the same as those admitted by the plaintiffs' predecessor as aforesaid.

In the
High Court

No. 5

Statement
of Defence
7th March
1959
continued

10

20

8. The plan filed with the Statement of Claim in this case is a distortion of the information given by that filed by the plaintiffs' predecessor in the said suit, that is to say, suit No. O/10/1943, in that some pieces of the land in dispute admitted by the said plaintiffs' predecessor to belong to the Defendants are omitted, and the position of several pieces of land have been displaced.

30

9. The plaintiffs have failed to show the Defendants' land not in dispute called Okechia-Ukwu and Okechianta, verged yellow in the plan filed with this Statement of Defence. This land is bounded on the south by the land in dispute, on the west and north west by a road from Orlu and on the north east by Iyiahuhu stream. By this omission, the plaintiffs appear to merge the said pieces of land with plaintiffs' land not in dispute.

40

10. The Defendants deny paragraph 7 of the Statement of Claim and say that the judgment referred to was merely a rejection of the 1st Defendant's claim to recover from the plaintiffs' predecessor the possession of the pieces of land which the said plaintiffs' predecessor admitted to belong to the 1st Defendants' family of Amanano as stated in paragraph 7 above.

In the
High Court

No. 5

Statement
of Defence
7th March
1959
continued

- 11. The Defendants deny paragraph 8 of the Statement of Claim and state that in 1954, in the Isu Native Court suit No. 201/54 the plaintiffs' predecessor sued the 1st Defendant for the demarcation of the land in dispute, that is the land the whole of which the plaintiffs claim title for, and was finally non-suited by the Resident of the Owerri Province. 10
- 12. The Defendants deny paragraph 9 of the Statement of Claim and state that in the High Court of the Onitsha Judicial Division in suit No. 0/5/1955 the plaintiffs' predecessor, together with the 1st, 2nd, 3rd and the 4th plaintiffs sued the 1st Defendant and 39 others for trespass to the land in dispute and was unable to adduce evidence in support of their claim whereby it was dismissed. 20
- 13. The Defendants deny paragraph 10 of the Statement of Claim and would put the plaintiffs to the strictest proof thereof.
- 14. Save as hereinbefore otherwise appears the Defendants deny each and every allegation in the Statement of Claim as fully and effectually as if such allegation were herein set out and traversed seriatim. 30

Dated at Port Harcourt this 7th day of March, 1959.

Sd. S.B.C.Obiora
Solicitor for the Defendants.

No. 6

NO.6

Order for
Defendants to
sue in a
representative
capacity
16th May 1960

ORDER FOR DEFENDANTS TO SUE IN A REPRESENTATIVE CAPACITY

Monday the 16th day of May 1960:

Obanye for Plaintiffs

40

Obiora for defendants motion to sue ex parte in a representative capacity supported by affidavit. Order as prayed.

In the High Court

No. 6

Order for Defendants to sue in a representative capacity 16th May 1960 continued

NO.7

EVIDENCE OF EZIKE CHIDOLUE

Plaintiffs Evidence

No. 7

1ST WITNESS FOR PLAINTIFF SWORN ON BIBLE STATES IN ENGLISH - EZIKE CHIDOLUE - MALE - IBO -

Ezike Chidolue examination

10

Licenced Surveyor - at present Provincial Commissioner Anang Province, Ikot Ekpene. I see this plan, I made it for the Plaintiffs in this case (Exhibit "1" put in by Plaintiff). I look at north eastern portion of land called Anunkwo, I see the Plaintiff houses thereon, new houses at time I made plan in June, 1958. I did not notice any non new buildings there, other structures there were palm huts. I have recorded in the plan all the details shown to me by the Plaintiffs I see sketch made in Native Court suit No. 206/36 used in the judgment. I tender both Exhibit "2" judgment and Exhibit "2A" plan put in by Plaintiffs. I compare sketch with Exhibit "1", the same footpath is shown on both documents, and so is the footpath from Orlu, there is an Uruabia tree shown on the same footpath. Akputara Land is shown on the sketch and on the plan. North of the land in dispute on Exhibit "2", the 2 plans, refer roughly to the same land. In 1958, I do not think the Plaintiffs' houses, I saw were more than 1 or 2 years old.

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CROSS EXAMINED BY OBIORA FOR DEFENCE: I see this plan (Exhibit "3" put in by Defence) Exhibit "1" and Exhibit "2" are plans drawn up on different scales, but the details show that they refer to same piece of land not necessarily same extent of area. West of Exhibit "3", I saw Ebelebe, not in the same position in Exhibit "1", the same streams are given different names, position

Cross-examination

In the High Court

Plaintiff's Evidence

No. 7

Ezike Chidolue cross-examination continued

of Iyiahuhu is same I think, Ozi stream is an entirely different stream, no stream called Ozi in Exhibit "1", stream on North Western corner of Exhibit "1", Korokoro stream flows into Ozi stream, not shown on Exhibit "3". Akwu and Ugwuntu are not shown in the same place in Exhibits "1" and "2". In Exhibit "3", I find Alawai and Nkputara, these are not shown at all on Exhibit "1" as such. Farm huts of Defendants are shown on the plan. No pieces of Alaike are shown on Exhibit "1". 3 pieces are shown on Exhibit "3".

10

NO RE-EXAMINATION BY OBANYE FOR DEFENCE

Adjourned 2nd August 1960, for continuation of hearing.

Sd. Herbert Betuel
PUISNE JUDGE 16/5/60.

No. 8

NO.8

20

Motion for Plaintiffs to proceed in representative capacity
14th May 1960

MOTION FOR PLAINTIFFS TO PROCEED IN REPRESENTATIVE CAPACITY

IN THE HIGH COURT OF THE EASTERN REGION OF NIGERIA:
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION: HOLDEN AT ONITSHA:

SUIT NO. 0/20/1958.

BETWEEN:

ANUSIONWU DURU & 4 ORS PLAINTIFFS

- and -

EGONEKWU DIM & 3 ORS DEFENDANTS

30

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 31st day of May 1960, at the hour of nine of the o'clock or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs in the above case for the Court to approve of the Plaintiffs bringing the above action in a

representative capacity pursuant to Order IV Rule 3 of the High Court Rules, and for such further and/or other order as to this Honourable Court may seem just.

In the High Court

No. 8

DATED at Onitsha this 14th day of May 1960.

Sd. B.C.I.Obanye
Solicitor for Plaintiffs.

Motion for Plaintiffs to proceed in representative capacity 14th May 1960 continued

NO.9

No. 9

AFFIDAVIT IN SUPPORT OF NO. 8, WITH ANNEXURE

Affidavit in support of No.8 with Annexure 17th May, 1960

10

IN THE HIGH COURT OF THE EASTERN REGION OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA:

SUIT NO. 0/20/58

BETWEEN:

ANUSIONWU DURU & 4 ORS Plaintiffs

- and -

EGONEKWU DIM & 3 ORS Defendants

A F F I D A V I T

20

I, Okanu Nnade farmer of Amanato Umuezeala Ogboko, Orlu Division and a British Protected Person of Nigeria do make oath and say as follows:-

30

1. That I am the 2nd Plaintiff in the above case.
2. That the Plaintiffs are the people of Amanato Umuezeala Ogboko, Orlu Division.
3. That the above action is in the interest of the said people of Amanato Umuezeala Ogboko.
4. That the said people of Amanato Umuezeala Ogboko have authorised the Plaintiffs to bring the said action on

In the
High Court

No.9

Affidavit in
support of No.
8 with Annexure
17th May 1960
continued

their behalf and have signed a
written authority to that effect
which is annexed thereto and
marked Annexure "A".

5. That I make this affidavit in
support of a motion praying
this Honourable Court to ap-
prove of the Plaintiffs bringing
the said action in a representa-
tive capacity.

10

6. That to the best of my knowledge,
belief and conscience the facts
here deposed to are correct.

Okanu Nnade H.R.T.I.,
D E P O N E N T

Sworn to at the High Court Registry
Onitsha this 17th day of May 1960 the
foregoing having been interpreted to
the deponent in the Ibo language and
he expressed himself as understanding
the same before affixing his thumb im-
pression before me.

20

Sd. P.N. Onukwuli
SWORN INTERPRETER

Sd. Dom. A. Nwoche
COMMISSIONER FOR OATHS.

"ANNEXURE A"

IN THE HIGH COURT OF THE EASTERN REGION OF
NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL
DIVISION: HOLDEN AT ONITSHA:

30

SUIT NO. 0/20/1958:

BETWEEN:

ANUSIONWU DURU & 4 ORS PLAINTIFFS

- and -

EGONEKWU DIM & 3 ORS DEFENDANTS

A U T H O R I T Y :

In the
High Court

We the undersigned principal men of Amanato Umuezeala Ogboko, Orlu Division, authorise the above named Plaintiffs to bring the above action for and on behalf of the people of Amanato Umuezeala Ogboko, Orlu Division.

No.9

Affidavit in support of No.8 with Annexure 17th May 1960 continued

10

We do hereby undertake to be bound by any decision to be reached by the Court in the said case whether as to the substance of the action, costs or otherwise.

DATED the 14th day of May 1960.

S I G N A T U R E

1. Nnoham Dim H.R.T.
2. Elias Oji H.R.T.
3. Ferdinand Eze H.R.T.
4. Christopher Nwosu H.R.T.
5. Joseph Eze H.R.T.

Prepared by:-

20

Sd. B.C.I. Obanye
S O L I C I T O R

NO.10

No.10

O R D E R

Order
31st May 1960

TUESDAY THE 31ST DAY OF MAY 1960

Obanye for Plaintiffs to move ex parte:-

Motion supported by affidavit and authority of persons to be represented.

Order as prayed.

30

Sd. Herbert Betuel
PUISNE JUDGE
31st May, 1960.

In the
High Court

NO.11

COURT NOTES

No. 11

TUESDAY THE 2ND DAY OF AUGUST, 1960

Court Notes
2nd August
1960

BETWEEN:

ANUSIONWU DURU & 4 ORS PLAINTIFFS

- and -

EGONEKWU DIM & 3 ORS DEFENDANTS

SUIT NO. 0/20/1958:

OBANYE for Plaintiffs

OBIORA for Defendants

10

Costs not paid in related matter. 100 guineas.

OBANYE: Proceedings must be in existence at time, earlier case finished, and Defendants have their remedies, not same matter, levying execution.

ORDER: Trial to proceed.

Plaintiffs'
Evidence

NO.12

EVIDENCE OF OKANU NMADEKWE

No. 12

Okanu
Nmadekwe
examination

2ND PLAINTIFF SWORN ON BIBLE STATES IN IBO OKANU NMADEKWE - 2ND PLAINTIFF - FARMER
member of Amanato Umzezeale Ogboko Family. I bring this action on behalf of myself and the rest of my family. The Defendants also appear on behalf of their family. This is a family suit. The land in dispute is called Ugwu; this land is situate at Amanato not at Amanano. I have had a plan made by a surveyor (Exhibit "1"). I showed him all the details he put in the land. Ugwu is made up of eight pieces of land called:- Onunkwo, Alanro, Igbaranku, Ebelebe, Mpata, Ugwuntu, Akwu, Ofor, Ugwu land belongs to us, it has belonged to us since time immemorial. Our grandfather divided the land into 2 Ugwu and gave us one part and the Defendants another part. The portion given to us

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lies to Mgbei, the portion given to them lies towards Ugbele Umoma. We farm on Ugwu land, reap fruits from economic trees and do all other acts of ownership thereon, we live on a portion of the land called Onunkwo i.e. some of us live there, our main habitations are over the Ulas stream. Our people have been living on Onunkwo land since a long time ago, the original settlers have died but their children are still there.

In the
High Court

Plaintiffs'
Evidence

No. 12

Okanu
Nmadekwe
examination
continued

10 Boundary starts at Onunkwo with an Ogilisi and Ukpaka tree to an Egbu tree and thence to an Exhichiri tree, to Oga and Urobia trees, between these points there is a footpath, this is our boundary with the Defendants, on Ukwa tree then an Ukpaka tree, to Uga tree to Ofor to the source of the Korokoro stream which flows into the Ozii stream then to our boundary with Mbei people on to the Nwugwugwa stream, then some ditches or ravines up to the bad bush, and from the for-
20 bidden Bush to an Ukwa tree to the Urashi stream. There has been a great deal of litigation over this land. One case between us was finally decided by A.D.O.Mackenzie (Exhibit "2"). Native Court Case is Exhibit "4" put in by Plaintiffs, there is an earlier proceeding where 1st Defendant sued members of my family for recovery of possession, A.D.O.Newnes, presided over the Native Court, and went up to Chief Commissioner, we succeeded (Exhibits "5" and "6" put in by
30 Plaintiffs). The Defendants did not respect these cases but have put huts on the land hence this action, also some small zinc houses. I want a declaration of title and an injunction. We have also a boundary with Umudiatum Orlu. We own Akputara land which is not in dispute in this case.

CROSS EXAMINED BY OBIORA FOR DEFENCE: Exhibit "5". Certain portions of land mentioned in that case did not belong to us, Akputara is our land. Akputara is in Ugwu. We have our Ugwu and they have their Ugwu. This case is in a sense a boundary dispute between us. Durunwaneri is one of us. I do not know whether he said we were on the land for only 27 years, I did not hear him say so. The Defendants first built on the land 6 or 7 years ago. Sued Defendants in 1943. (Exhibit "7" put in by Defts).

Cross
Examination

50 OBANYE: Object to admissibility of this document in evidence. Referee's report not part of judgment TENDERED AND NOT CERTIFIED Court Notes:-

In the High Court

Order of Reference and Judgment itself certified.

Plaintiffs' Evidence

OBIORA: I will withdraw Exhibit "7" and have all proceedings properly certified.

No.12 Okanu Nmadekwe Cross examination continued

Adjourned to 10th August 1960, at Orlu for continuation of hearing with £5.5s.0d., costs to Plaintiffs.

Sd. Herbert Betuel
PUISNE JUDGE
2/8/60.

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WEDNESDAY THE 10TH DAY OF AUGUST 1960

OBANYE: for Plaintiffs.

OBIORA: for Defendants

2ND PLAINTIFF RESWORN OKANU NMADEKWE - MALE - IBO:

CROSS EXAMINED BY OBIORA FOR DEFENCE CONTINUED:

There was only one referee in this Case. (Exhibits "7", "8" and "9" put in by Defence). "7" order appointing Referee, "8" report of Referee, "9" Judgment of Supreme Court in O/10/53. In 1937, Defendant sued us in respect of this very land in dispute. The 8 pieces of land, I have named only exist on the land in dispute, our land, and nowhere else. In 1937, the oldest house on the land was about 16 years old, not about 27 years old. Nwoma land belongs to the Defendant, it is not in dispute in this case. Nwoma land is not very near to Alanro, they are not contiguous, there are other lands between them e.g. Onude, which is a stream also used as a boundary. I did not show Onude near Alanro on my plan and Onude is also called Onunkwo. I do not know any land called Alaike. In 1943 I sued Defendants in the High Court in respect of this land in dispute, we filed a plan in that case (Exhibit "3"). There are

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no 3 pieces of land called Alaike. I know of no land called Alawai. The Surveyor made Exhibit "3" on our instructions and we showed him all the features on the land. I know the Ozi Stream, the boundary between us and Mbei. Ebenebe and Igbaranku are contiguous portions of land near a stream called Nwaugwuga. Alanro is also near this stream. Ebenebe, Igbaranku and Alanro are close to one another and there is no other portion of land between them. Akwu is near Iyiahuhu. Ugwu land has retained the name given to it by our fathers, so also have portions thereof retained their names and positions. These 8 portions of land were named by our grandfathers and fathers, not named by the Defendants, although called by the same names as ourselves by them. The Defendants did not invent these names. I do not know any land called Amangbo. Ugwu land was divided between ourselves and Defendants before I was born, according to tradition it was our great grandfather Ogboko who divided the land between ourselves and the Defendants. The Defendants came from senior branch of family (Duruihearukwa) and they took the first share. Akputara and other portions of land further north are not in dispute, it is on our own portion. 3 paths in Ugwu land in dispute, one leading to Orlu, one to Defendants main village, one to Umunwile. There are streams in land in dispute, 2 paths lead to Iyiahuhu. There are no streams in the land in dispute that the Defendants and ourselves enjoy in common. The land in dispute did not belong originally to Mbei people. It was not given to Umuogboko as a blood price, I never heard that. Before 1937, Defendants trespassed on our land, find for fighting them not demolishing their houses. I know land called Ukabia, is not a part of Ugwu land. Iyiahuhu runs across the land in dispute, we own the land on the right side of the stream, the Defendants own the left hand side of the stream. In 1937, there was an Orlu witness who gave evidence for us, who claimed for Orlu a portion of Ugwu. Okporopoko tree is the boundary between ourselves and Orlu not Iyiahuhu. Raphael was our leader in the 1943 case, he was our spokesman, I was in the case also, I gave evidence before the Referee, I said something, I heard Raphael give his evidence, we were Plaintiffs in that case as in this one, same Defendants, I did hear him award the portion of land

In the
High Court

Plaintiff's
Evidence
No.12
Okanu
Nmadekwa
Cross
examination
continued

In the
High Court

Plaintiffs'
Evidence
No.12
Okanu
Nmadekwa
Cross
examination
continued

in dispute and more to the Defendants as well as the Plaintiffs. In 1946, sued Defendants for declaration of title to this land (Exhibit "10" put in by Defence). In 1954, took an action not for demarcation of land but for trespass (Exhibit "11" put in by Defence). To have boundary pillars placed on land. The Defendants are on the land since 1937 or before but we have been suing them all the time, and demolished their last house about 5 years ago i.e. we fought them about that time, there was no house put up by the Defendants before that time. The zinc hut was put up about 3 or 4 years ago. I see Proceedings in 0/5/55 (Exhibit "12" put in by Defence). The Defendants are no longer on the land. Want an injunction to prevent Defendants further farming on our land. I did not include a claim of trespass in my claim.

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Re-
examination

RE-EXAMINED BY OBANYE FOR PLAINTIFFS:
Exhibit "5". I see proceedings before Resident in suit No. 78/37. (Exhibit "13" put in by Plaintiffs). Ogboko laid down our boundary. This fact was recognised by Mr. Crawford. (Exhibit "14" put in by Plaintiffs).
Iyiahuhu divides land in dispute, one side is Defendants, other Plaintiffs. Coming from our home, our own land is on right, Defendants on left along the footpath to Orlu at the point where the footpath meets the Iyiahuhu.

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No. 13

NO.13

Fred
Ogabanya
examination

EVIDENCE OF FRED OGABANYA

2ND WITNESS FOR PLAINTIFFS SWORN ON BIBLE STATES IN IBO - FRED OGABANYA - MALE - IBO

Native of Mbei - Farmer - I know the land in dispute in this case, known as Ugwu land, our people of Mbei have a boundary with this Ugwu land, my boundary is with the Plaintiffs' since at least the time of my great great grandfather, our boundary consists of a stream called Nwuawugwa to the Ihuala Ukwu Mgbii, to ant hill

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Mpu, to the Korokoro stream, I know the Plaintiffs own this land, because I have given evidence to that effect. I see the Plaintiffs farming on the land, my people of Mbei have no boundary with Defendants who have a boundary with Ugbele people.

In the
High Court

Plaintiffs'
Evidence

No.13

Fred
Ogabanya
examination
continued

CROSS EXAMINED BY OBIORA FOR DEFENCE: My native name is Abiaka. I gave evidence in the 1937 case not with Ogilisi Ukpaka and Okpara, although they have land there and are from Mbei. I know Chief Ibekwe. In the 1937 case, I did not give evidence for the Defendants but only for the Plaintiffs with whom we have a common boundary, I gave evidence with Chief Ibekwe. I was present when Ibekwe gave evidence. The land in dispute originally belonged according to our tradition to Mbei and was paid as a blood price to Ogboko, because some Ogboko person had been killed by us. The whole of Ugwu land was given as a blood price, and it was divided up by Ogboko among his two sons. I endorse all that Ibekwe said except it did not merely refer to the land in dispute in 1937 case but Ugwu land generally.

Cross-
examination

Land given to Amanano and Amanato but Amanano plus Amanato = Umu Ogboko. I do not know any land called Alanro. I did not know that was land given by Mbei people as compensation. I know the land called Akputara, it is not in dispute. I see Plaintiffs farming on the land. Never had any land dispute with Plaintiffs or Ugwu land. My house is over the bridge near the Ozi stream, also near the ant hill. I am from Umudara but I do not know anything about Akputara. I am not giving my own version of Ibekwe's evidence to suit the Plaintiffs' case. I do not know any place called Ukwakwa. I did not hear Ibekwe say he had boundary with Plaintiffs at Ukwakwa, the boundary was at Nwugwugwa. Ibekwe did not claim Akputara land. He claimed to be original owner of Ugwu which had been given to Ogboko and divided up amongst his sons, that would include portions of Ugwu e.g. Akputara.

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In the
High Court

RE-EXAMINED BY OBANYA FOR PLAINTIFFS:
Chief Ibekwe was leader of the whole of
Mbei, he is now dead.

Plaintiffs'
Evidence

Adjourned to 12th August 1960 for con-
tinuation of trial.

No. 13

Sd. Herbert Betuel
PUISNE JUDGE
10/8/60.

Fred
Ogabanya
Re-
examination

No.14

NO.14

Tobias Ogo
examination

EVIDENCE OF TOBIAS OGO

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REOPENED AT ORLU, FRIDAY THE 10TH DAY
OF AUGUST, 1960. REPRESENTATION AS BEFORE.

3RD WITNESS FOR PLAINTIFFS SWORN ON BIBLE
STATES IN IBO - TOBIAS OGO - MALE - IBO

Farmer and Trader. Native of Orlu -
Umudiatum - Live in Umudiatum. I am
the Eze of Umudiatum - I succeeded my
father as Eze. I am a member of the
Local District Council. I know the
land in dispute, called Ugwu land. We
have a boundary with Amanato (Plain-
tiffs), an Ukwa tree, Urobia tree to
the Korokoro stream are our boundary
marks, the people of Amanato farm this
land, about 20 years ago, the Defen-
dants entered the land and destroyed
many things, there was a suit brought
by the Plaintiffs and my people gave
evidence in that case, about 3 years
ago the Defendants came into the land
and destroyed the Plaintiffs' crops,
not knowing the precise boundary, they
also destroyed some of our crops, our
people sued them, claiming damages for
trespass, and we were successful all
along even before the Resident (Ex-
hibit "15" put in by Plaintiff).

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Cross-
examination

CROSS EXAMINED BY OBIORA FOR DEFENCE:
The 20 years ago case may have been
the 1937 case between Defendants and
Plaintiffs. At about the same time,
they destroyed our crops and were fined.

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They came again afterwards (Exhibit "15"). I did not inform my lawyer of the earlier case. After they did not pay the fine, we let them off, as they begged for forgiveness. I know the people of Ebenato - Orlu, who have their own portion of Ugwu land but it is not near our land, or contiguous to the land in dispute, if any Ebenato man has land there it must be as a grantee or tenant. I know Onyeachus and Ihekwo but not Abasie, I know Alisigwe, Ogo, my father, Asiegbu and Ibezim and Okereke who gave evidence for the Plaintiffs in this case, in the 1937 case. Umudiatum have no boundary at all with the Defendants but with Umuire. The land in dispute in the 1937 case and in this case, is the same piece of land. Onyeachus may have been our spokesman in the 1937 case, (Exhibit "5"). It is for the Court to decide whom it believes, after seeing the place. The land from Ukwa to Iyiahuhu stream, the road that runs to Orlu is the boundary between Plaintiffs and Defendants, the Iyiahuhu runs across land in dispute but goes on into other lands, the Plaintiffs own land on both sides of the Iyiahuhu stream (Exhibit "5") not true that Iyiahuhu stream is boundary between Umudiatum and Ogboko people (i.e. amanano and Amanato) ready to swear to it. I have never seen Amanano plant on either side of the Iyiahuhu stream, as they have their own portion of land where they farm. There is an Ofor tree on our boundary with the Plaintiffs. Beside Plaintiffs we have a boundary with Mbei near the Korokoro stream with Okoro Ibekwe. I think they are called Umudara. I have heard of Umuoshe - Mbei but I have no boundary with them. I know the Ozii stream it is in Mbei. The Korokoro stream is nearer to our land than the Ozii stream. I do not know who lives along to Ozii stream. I know Fred Ogabanya, he lives at Umudara, where Chief Ibekwe lives.

In the High Court

Plaintiffs' Evidence

No. 14

Tobias Ogo cross-examination continued

NO RE-EXAMINATION BY OBANYA FOR PLAINTIFFS

NO.15

EVIDENCE OF NNOHAM DIM

4TH WITNESS FOR PLAINTIFFS SWORN ON GUN STATES
IN IBO NNOHAM DIM - MALE - IBO Umuezeala
 Amanato Ogboko i.e. Plaintiff's family. We

No. 15

Nnoham Dim, examination

In the
High Court

Plaintiffs'
Evidence

No. 15

Nnoham Dim
examination
continued

authorised Plaintiffs to bring this action on behalf of the family. I know the land in dispute as part of Ugwu land. The land in dispute is owned by the Plaintiffs family since our forefathers' days, we live and farm on the land in dispute, it consists of 8 pieces of land not ten, Onunkwo, Alanro, Igbaranku, Ebelebe, Mpata, Akwu, Uguntu, Ofor. (COURT:- Agreed no further evidence needed as to area of land which is agreed on but details within and without disputed land are not necessarily agreed on). A distinctive feature of the land in dispute is the road to Orlu, we own the land on the right of it, the Defendants on the left of it i.e. facing Orlu direction. Near an Egbu tree is the Ihumdieke juju, also called Ndioke, for short. The road to Orlu was made by our people and has been used as a boundary even in our forefathers time. Defendants have similar names to us of their portions of land on their side of the boundary.

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OBIORA: Not pleaded or shown in plan.

OBANYE: Matter of evidence need not be pleaded or shown on plan.

COURT: Allows evidence to be given for what it may be worth.

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The Defendants are not now on the land in dispute. Ofor is on the boundary with Orlu Umudiatum. The Defendants have no Ofor on their land. Our people have been living on the land in dispute for about the last 60 years, there is a small zinc hut on the land built by the Defendants, which is the cause of this action.

Cross
examination

CROSS EXAMINED BY OBIORA FOR DEFENCE:
I do not know of land called Ofor Nwoma. I have never heard of Ofor Nwoma. (Exhibit "8"). I have never heard of Ofennwoma. All I know is Ofor. Part of Ebelebe is in the Plaintiffs' land, the other part is in the Defendants land.

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In the
High Court

Plaintiffs
Evidence

No. 15

Nnoham Dim
cross-
examination
continued

10 It is near Igbaranku land. The land nearest
to the Korokoro stream is called Ofor, there
is a piece of land on our side called Alaike,
Ala = land, Ike = Hard, I know the portions of
land on our side, called Alaike. The land is
called Ugwu because it is hilly. In Uguntu
there are small birds called "Wai", so Uguntu
is also called "Alawai" Iyiahuhu stream flows
across the land in dispute, Uguntu land is on
both sides of the stream, Igbaranku is near
Alanro. Mpata is near Ebelebe. Alanro has
boundary with Igbaranku then Ebelebe and Mpata
and then Akwu to the Iyiahuhu stream. I
remember the inquiry before the Referee, a
plan was made for us by a surveyor, we showed
the surveyor the land and apprised him of all
the details. We took action as soon as the
Defendants came on the land. Before 1943,
20 there were no Defendants' houses on the land
in dispute, we did not win that action, but
they left the land, and, afterwards came and
put a zinc house on it. Destroyed Defendants'
houses on land, fined £200. People of Mbei
are our neighbours, they are of Umudara, Umu-
oshe, Umuokpara, we have boundaries with Umu-
udara and Umuokpara only. Our boundary with
Umudara is the Korokoro and Ozii stream. The
Umuoshe - Mbei have a boundary with Umuokpara
Orlu. We have a boundary with Umuokpara-Ubei
30 along from ravines to Mbei Forbidden Bush. R.C.
School at Umuokpara-Umudara near the Nwugwugwa
stream. I knew the 1st Defendant's father Dim,
he never built on the land in dispute, before
1937, the 1st Defendant had not built on the
land. We derive our title to this land through
our ancestor Ogboko.

RE-EXAMINED BY OBANYE FOR PLAINTIFFS: We own
land on both sides of the Iyiahuhu stream

Re-examination

40 Adjourned to 22nd September 1960 at Onitsha
for continuation of trial.

Sd. Herbert Betuel
PUISNE JUDGE
20/12/58

In the
High Court

HOLDEN AT ONITSHA
THURSDAY THE 22ND DAY OF SEPTEMBER 1960:

Plaintiffs'
Evidence

OBANYE: for Plaintiffs

OBIORA: for Defendants

No. 15

Nnoham Dim
re examina-
tion
continued

OBANYE: I tender proceedings before
Resident, completing record of Exhibit
"11", Northern Isu Native Court, Civil
Suit No. 201/54, not objected to (Ex-
hibit "11" (a) put in by Plaintiffs).

PLAINTIFFS' CASE CLOSED

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Defendants'
Evidence

NO.16

EVIDENCE OF EGONEKWU DIM

No. 16

Egonekwu
Dim
examination

1ST DEFENDANT SWORN ON GUN STATES IN IBO
EGONEKWU DIM - MALE - IBO - Live at Ogboko
- Farmer. I know the Plaintiffs of
Amanato and the land in dispute, I am
defending this case on behalf of myself
and my people. I caused this plan to be
made. (Exhibit "16" put in Defence, at
this stage identification later). The
Urashi River is one of the boundaries of
the land in dispute, moving Westward an
earth wall forms our boundary with Mgbei,
thence to Wongugwa stream. Northwards
up the Adu stream, then Westward to the
Iyiahuhu stream, South Westward to the
Korokoro stream, thence to an Ukwa
(Grapefruit) tree, then to an Achichi tree,
our boundary with a small Mgbei village,
then southward to an Okporokpo tree on the
road to Orlu to another Ukwa tree, South-
ward still to an Awala tree, South east-
ward to a palm tree, in same direction
continuing to an Ngu tree, taking a
Northward bearing to an Ofor tree all on
the way to Orlu, an earth mound forms
our boundary with the people of Orlu, there
is an Ogah tree at the end of the earth
mound, and water near the Orlu road, which
flows at flood time but at other times re-
mains a pond, along the Eastern boundary
we come bearing North to the Iyiahuhu
stream, then to a road which goes to Orlu,

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In the
High Court

Defendants'
Evidence

No. 16

Egonekwu Dim
examination
continued

Northwards to a crossroad, one branch of which
in an easterly direction, connects our village
with the main road in the North, the road to
Uruala; follow road northward until we are close
to Christmas Agusiegbe, the boundary then curves
into the Urashi stream. Walking across land
from the Urashi stream, I would cross Onunkwo,
Alanro, Mkputara, Ugwuntu, Alaike is North of
Ugwuntu, South of Ugwuntu is Ala Awai, then in
10 a North Westerly direction Igbarankwu, then to
Ofor and North West of Ofor, Ebelebe, Akwu lies
between Ebelebe and Alaike. Alaike consists of
3 portions of land, 2 are on the Korokoro side,
the other two on Iyiahuhu stream. We own the
land both North and South of the land in dispute
and the land in dispute. The Plaintiffs and
ourselves all belong to Ogboko, Ogboko was our
common ancestors, this is a bitter family quar-
rel. Ogboko had 2 children (1) Duruihearukwa
20 (2) Ezeala. We are descended from Duruihearuba
the senior line, the Defendants from Ezeala,
the junior line, we do not want to teach them a
lesson because they are junior. The whole of
the land in that area is called Ugwu land, any
D.O. that refers to a portion only of the land
as Ugwu is an ignorant foreigner, because dif-
ferent portions of Ugwu have different names.
The whole of Ugwu was the land of our ancestor
Ogboko, and each family took its share, our
30 portion included the land in dispute; and
their's did not, my father told me all this be-
fore this case had started and before any dispute
had arisen. In my father's lifetime there was
no trouble, the trouble arose after his death,
when the Plaintiffs tried to snatch the land from
us his children, not all our land, but portions
of it. The first case arose in 1937, my father
died a long time before that, I am the eldest son
of my father, the Okpala of my family. The
40 Plaintiffs family have lands called Akputara,
Uhuakwaranwa, Amangbo, Uhudiriabika, Ude, Uhuo-
kpokiri and others. North west of and not in-
cluded in the land in dispute. The following
farmed on the land in dispute before my father
died:- Umegesi succeeded to Duruharukor then
Okpara Ojugo, then Okpara Ebie, then Duru Ugo,
then Akpata, then Okpara Ukwu then Ukonwa, Ok-
para Ebigbue, Onyieche, more than twelve gene-
rations, I cannot remember them all. I was
50 still mourning my father's death, when Plain-
tiffs trespassed on the land, I reported them

In the
High Court

Defendants'
Evidence

No. 16

Egonekwu Dim
examination
continued

to the Amalas but they refused to leave the land so I reported the matter to the District Officer, who advised me to sue them, I sued them first in 1936, then 1937 (Exhibit "4" 206/36). In 1943, Plaintiffs sued me in the High Court. (Exhibits "7", "8" and "9"). There are no lands outside the land in dispute, bearing the same name as portions inside the land in dispute except small extensions across the road the only name we all share is that of Ugwu. The pieces of land extending over the road are Alanro, Mkpata, Ugwuntu, Ala Awai and these extend into our portions of land, none of the portions of the land in dispute extend by name into the Plaintiffs name. Beyond the extension lies the land of the Ugbele people, the extension is never more than about 200 yards over the road, map shows it at about 500 yards at the furthest point. Ofor, Ebelebe, Igbarankwu cannot extend southwards into the land of Orlu. The Onude river is near and belongs to Ugbele. We have built on the land since many years ago, there are many ancient ruins of the old buildings on the land. In 1946, Plaintiffs sued me again (Exhibit "10") case was not heard and struck out. The descendants of Ogboko gave the land their names, especially Dunuihearukwa. In 1954, Plaintiffs sued me again (Exhibits "11" and "11A"). In 1955, sued me and 39 others in the High Court (Exhibit "12"). I have been continuously farming all over the land in dispute even up to the present day. The boundaries of the disputed land are with Umuokpara - Mbei, at Korokoro with Umuoshi - Mbei, in the south with Orlu. Fred Abiaka is from Umudara Mbei, Umudara Mbei Village is near the Ozii stream. Ihumdake juju outside the land in dispute. My brother Agusiegbo is the juju priest and it is our own juju. The Plaintiffs have a village on Onunkwo, they entered it and put up their buildings there since before 1936, there are Plaintiffs' houses there now, there are no Plaintiffs' houses in any other portions of the land in dispute. Apart

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from Onunkwo no one actually lives on the land in dispute now. A visit to the land will show our farms but not the Plaintiffs' farms, we used the land communally, after referee's decision, until Plaintiffs broke the agreement.

In the
High Court

Defendants'
Evidence

No. 16

Egonekwu Dim
examination
continued

CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS:

Cross-
examination

10 Plaintiffs' stopped farming on the land in about 1944, and began suing me again. I caused Exhibit "16" to be made in 1959 (dated 30/1/59). Our village, Amanano Ogboko village is outside the land in dispute. The Plaintiffs' Village, Onunkwo, is on the land in dispute. They had been on the land about 1 year in 1936, when I sued them. Fought over land with Plaintiffs', ten years before 1936, to the best of my recollection. Lived on land at time fighting took place, I was mourning my father for 10 years, could not sue Plaintiffs' during that period, they took advantage of my period of mourning to build on the land, D.O.Mackenzie came on land and inspected it. He said Defendants living on land for perhaps over 20 years etc. I did appeal against that decision.

20 In 1937, sued Plaintiffs again for recovery of possession of all these lands, case went up to Chief Commissioner. Claim dismissed etc. After fight, I did not see any District Officer come and enquire into the matter. (Exhibit "4" put in by Plaintiffs) He did not come and hear

30 the case. Crawford did not come and fix a boundary or confirm the boundary between Plaintiffs' and ourselves. In about 1925, Plaintiffs' destroyed our houses on the land in dispute, oil press shed on land in dispute, still on land in dispute, shed and other houses on the land, ruins: did not put southern limit of extension of lands in dispute in our plan, because such portions were not in dispute. We own Okechia - Ukwu and Okeoha - Nta, north of land

40 in dispute, and north of that is the land of the Plaintiffs', Plaintiffs' do not interfere with those portions, but cross them to enter land in dispute, no special jujus on undisputed

In the High Court

Defendants' Evidence

No.16

Egonekwu Dim cross-examination continued

Re-examination

portions to frighten people away, Okeohia - Ukwu and Nta are not fictitious names given to land belonging to the Plaintiffs. My father did not own personally any portion of this land it was family land. (Exhibit "4" put in by Plaintiffs). Only mentioned 4 portions of land.

RE-EXAMINED BY OBIORA FOR DEFENCE: Showed surveyor place where Plaintiffs first planted their cassava farm. Amanano Ogboko near Ugbele is not our only village. My own house is not in the village near Ugbele. I have personal farms on the land in dispute. We ceased to live on the land in dispute after Plaintiffs' destroyed our houses. The oil press is no longer on the land. Last fight over land 5 years ago. Last time they demolished our houses about 5 years ago. Roads are not used as boundaries in local custom. I did not show my surveyor boundary of our land with Ugbele.

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Adjourned to 20th October 1960 for continuation of trial.

Sd. Herbert Betuel
FUISNE JUDGE
22/9/60.

No. 17

NO.17

Matthias Chukwurah
20th October 1960
Examination

EVIDENCE OF MATTHIAS CHUKWURAH

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THURSDAY THE 20TH DAY OF OCTOBER 1960

OBANYE: for Plaintiffs.

OBIORA: for Defendants.

1ST WITNESS FOR DEFENCE SWORN ON PIBLE STATES IN ENGLISH - MATTHIAS CHUKWURAH - MALE - LICENCED SURVEYOR carrying on

business in Onitsha. I know the Defendants, I made a plan for them in 1959 in connection with this dispute. I see the plan made (Exhibit "16" put in by Defence). The 1st Defendant and his people showed me around. I saw some cassava farms belonging to the Plaintiffs' on the land, old cassava trees, they appear to have been planted a long time ago, I saw the buildings I inserted in the plan.

In the
High Court

Defendants'
Evidence

No.17

Matthias
Chukwurah
20th October
1960
examination
continued

10 CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS: I showed ruins of Defendants buildings on the land and inserted the boundaries of the land in dispute which they showed to me, the southern boundary is a footpath from the Urashi river to the road leading to Orlu. The Defendants also showed me their Amanato village outside the land in dispute. I am not a farmer or an agricultural expert, Plaintiffs' farms are shown as scattered all over the land.

Cross-
examination

20 RE-EXAMINED BY OBIORA FOR DEFENCE: I come from a farming family and can judge the age of cassava.

Re-
examination

NO.18

No. 18

EVIDENCE OF EZE AGBARAKWE

Eze
Agbarakwe
examination

30 2ND WITNESS FOR DEFENCE SWORN ON GUN STATES IN IBO - EZE AGBARAKWE - MALE - IBO - Native of Umuokpara Mbei - farmer. I know the Defendants. I have a boundary with them, it is the Wongugwa stream, on our land is shown a Catholic School, Holy Cross, the stream runs to an earth mound. Mbei consists of Umudara, Ozalla, Umuokpara, Umuoshi, do not know Fred Oganbanya Abiaka, he is not from Umuokpara, from the time I have been farming I knew that my father had a boundary with the 1st Deft's father, the Defendants with which we have a boundary is known as well as our land as Alanro.

In the
High Court

Defendants'
Evidence

No.18

Eze
Agbarakwe
cross-
examination

CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS:

My parents farmed on this land. My father was called Agbarakwe. Okpara Emeara was my grandfather. He married my grandmother. I have not taken any title, I am a freeborn of Mbei. I know Ibekwe, a Chief of Mbei also Peter Alozie of Mbei but okoro of Mbei, I do not know if they gave evidence in a case between Plaintiffs and Defendants in Isu Native Court in 1937. Okpara Onama gave evidence in that case. On one side of the earth wall is Mbei village of Umuokpara Mbei, the village on the other side of the earth wall is the Defendants' village. I do not know of any Plaintiffs' houses there at all. Mbei had a boundary dispute with the Plaintiffs', we of Umuokpara, we won the case. I took part in the dispute, no boundary was fixed, apart from the Wongugwa and the earth wall we have no other boundary with the Defendants', I do not know the Adu stream. I know the road to Urualla which starts in our own land, it crosses the Urashi river and some other streams but I do not know what they are called. I have never heard of the Adu stream.

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Re-
examination

RE-EXAMINED BY OBIORA FOR DEFENCE:

Plaintiffs' people and ourselves live on different banks of the Urashi.

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No. 19

NO.19

Oliver
Nwagbo
examination

EVIDENCE OF OLIVER NWAGBO

3RD WITNESS FOR DEFENCE SWORN ON BIBLE STATES IN IBO - OLIVER NWAGBO - MALE -

Native of Umuoshi - Mbei - Farmer - I know the 1st Defendant, I have a common boundary with his people, it is the korokoro, the Mbei village shown there is our village of Duruchime. Our boundary is an Ukwa tree and also an Achicha tree. I know Adiaka from Umudara Mbei not from Umuoshi, I know late Chief Ibekwe he was from Umudara, Umudara has a boundary with Defendants at the Ozii stream. I know Obika of Umuoshi my brother, he is dead.

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CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS: We have no boundary with the Plaintiffs'. I do not know any land called Okeohia. Ukwu or Okeohia - Nta or the Adu stream or Alaike or Ebelebe or Ofor. I live near the land in dispute.

In the
High Court

Defendants'
Evidence

No.19

Oliver
Nwagbo
cross-
examination

NO RE-EXAMINATION BY OBIORA FOR DEFENCE

NO.20

No.20

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4TH WITNESS FOR DEFENCE SWORN ON BIBLE STATES IN
IBO - COLUMBA OLUMBA - MALE - IBO - live at Orlu
- Farmer - I know the Defendants. We have a boundary with his people a Ngu tree to an Ofor earth mound, Ogah tree, road to Orlu on south western boundary of land in dispute. I have particular boundaries with Dim Okata and Egbufo of Defendant family.

Columba
Olumba
examination

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CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS: I come from Umuokpara in Orlu. Tobias Ogo comes from Umudiatu Orlu. The land where I farm was shown to me by Tobias Ogo, my relative he is Eze of Umudiatum. We have no boundary with Umudiatum. The boundary I described is between Umuokpara and Defendant. We are descended from Tobias family. I have never seen any of the Plaintiffs' family farming in the land in dispute except where they have boundary with Umuokpara Mbei.

Cross
examination

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RE-EXAMINED BY OBIORA FOR DEFENCE: The latter boundaries are not within land in dispute. I know the land in dispute. I know where the Umuokpara Mbei live near Urashi.

Re-
examination

NO.21

No.21

EVIDENCE OF ODUM OKPARA

Odum Okpara
examination

5TH WITNESS FOR DEFENCE SWORN ON GUN STATES IN
IBO - ODUM OKPARA - MALE - IBO - Live at Amanano

In the
High Court

Defendants'
Evidence

No.21

Odum Okpara
examination
continued

Ogboko - I am related to the Defendants, I know the land in dispute, it belongs to us, it has been our land since time immemorial. I know the 1st Defendant, he is our Chief, he succeeded his father Dim. As far back as I can remember, Dim showed Plaintiffs' a portion at Onunkwo for farming, later they built their houses there, after Dim's death, they trespassed and invaded other portions of our land, the 1st Defendant sued them in the Native Court for the whole land i.e. 8 pieces of land in 1936 - 1937. In 1943, in the High Court, present Plaintiffs' sued us for same land as in this case. (Exhibits "7" and "8") a plan was made by the Plaintiffs'. Footpaths do not normally constitute and are not made boundaries, there are at least 3 or 4 other footpaths in the land. I know the names of pieces of land in dispute, we farm on that land now, between Ebelebe and Alaike, I have my own farm there, so has 1st Defendant, I can show my farm to the Court Ukwu and Ugwuntu are farmed by Okabia Nwadike, Adebionu Chineke, Agbala Oji, Jaka Adidi and others, Igbaranku and Alawai by Ojiora Uzoigbe, Adkwari Odum, yam and cassava farms, there are other farms on the land all over it. Surveyor surveyed land in 1959, showed surveyor land where our daughters who had married Plaintiffs' farmed on the land and they were at the time harvesting them. I can show the ruins of the houses of Augustine Duru, Hyacinth Akeme, George Amajironwu, Osi-gwe Okonwa on Ebelebe, at Akwu. Chief Egenekwu's zinc house in Alaike another 1st Defendant's zinc house Olewunne Dunigbo at Mpata, Ojara Uzigwe, in Alanro, oil press, Okwaa Anyegbu, Christmas Agusiegbo, we have one juju on the land called Ihumdioke juju of Agusiegbe. Ebelebe is only in the land in dispute. Alaike is only in the land in dispute. Alanro is partly in the land in dispute and partly outside it, also Mpata and Ogwuitu, as small part also Alawai, remained of pieces are within land in dispute. Alanro extends about 300 yards

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outside the land in dispute Mpata about 200 yards, Ogwuntu about the same, Alawai about 100 yards.

In the High Court

Defendants Evidence

No. 21

Odum Okpara examination continued

10 CROSS-EXAMINED BY OBANYE FOR PLAINTIFFS: Juju also called Ndioke for short. The survey was finished before we went into land to farm to make evidence in this case. Plaintiffs' wives had their farms on the land before we did, all farming together. Plaintiffs' destroyed the houses hence the ruins, after we had built them, about 11 years ago. No one of our family lives on this land now. We made a criminal charge. Not each time we entered the land and farmed they sued us. Okeohia Ukwu is north of Alaike also Okeohia Nta, north of Okeohia Ukwu and Okeohia - Nta, we have boundaries with Plaintiffs; Plaintiffs never farmed Okeohia Ukwu or Okeohia Nta, never interfered with these two lands. Live at Amanano village outside the

20 land in dispute.

Cross-examination

RE-EXAMINED BY OBIORA FOR DEFENCE: Some farming is seasonal, some farming is not seasonal, when surveyor came yams had been harvested only cassava plants left.

Re-examination

DEFENCE CLOSED

Adjourned to 24th October 1960, Court will visit scene, leaving this Court at 3 p.m.

Sd. Herbert Betuel
PUISNE JUDGE
20/10/60.

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NO.22

No. 22

INSPECTION NOTE

Inspection Note
25th October
1960

TUESDAY THE 25TH DAY OF OCTOBER 1960

A visit was made to the scene and its environs on Monday the 24th October 1960, the

In the
High Court

No. 22

Inspection
Note
25th October
1960
continued

Court Orderly, the Court Clerk and Interpreter, Counsel for the parties the parties themselves, and, such witnesses who wished to be there, were all present. No additional evidence was adduced, and the intention aimed at by the visit was for Court to visualise the evidence already given. The visit was undertaken at the request of the parties. The Court saw Onunkwo situate on the land in dispute, where the Plaintiffs' village lies, there is no dispute as between the parties on that issue, but it is alleged by the Defendants that they occupy the land as the result of a grant made to the Plaintiffs' ancestors. The parties agreed on the eastern boundaries of Amanunkwo. I continued westward along the utmost southern boundary as shown on the Plaintiffs plan, and saw some ruins claimed by both parties. I also saw the Ndiokwe juju and a very old Oji tree, which was an agreed boundary between the Plaintiffs' and the Defendants. I then proceeded in a south easterly direction and saw the stump of an Cilisi tree and an old Ikpaka tree lying slightly northward of the Urashi stream. The Defendants asked me to note the situation of the Onude stream, which is slightly outside the land in dispute and I did so, I then partly retraced my journey and followed a footpath which ran from the most south eastern boundary to the most south western boundary of the land in dispute as shown in the Plaintiffs' plan on the northern side of this path according to the Plaintiffs' is their land, on the southern side, the Defendants' land. I saw a number of erections on the land in dispute, admittedly erected by the Defendants, I noted the apparentage of these buildings which the Plaintiffs' allege constituted the cause of action, but which the Defendants claimed to have erected earlier, and out of which, it is not disputed, they were driven by the Plaintiffs'. The boundary which I followed was a path and the Plaintiffs' farms stopped at that path, but the reason may have been

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due to seasonal farming. I saw many other paths strewn all over the land, it was not suggested to me that these were boundaries. I saw the direction of the Defendants' village, on the southern side of the path, outside the land in dispute, which is alleged to have a boundary with Ugebe. I saw other portions of the land and the site of the oil mill, in two places, the second one lying further into the disputed land. I saw throughout the land ruins of unfinished buildings erected by the Defendants, the Plaintiffs' had no buildings or ruins on the land save at Onunkwo, the explanation given by them is that apart from Onunkwo they only use the land in dispute as farming land and do not build on it. At the Nguwugwu stream, I saw the boundary claimed by both parties with the people of Mbei. Owing to the rowdiness of the natives and their obvious ill temper with each other, the Court was unable to proceed to and view the far western boundary of the land in dispute i.e. the boundary with Orlu. The Court adjourned its further consideration of the case to Onitsha on the 26th of October, at 4 p.m., when it will read this note to the parties and hear the addresses of Counsel.

In the
High Court

—————
No. 22

Inspection
Note
25th October
1960
continued

Sd. Herbert Betuel
PUISNE JUDGE
24/10/60.

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NO.23

No.23

COUNSELS ADDRESSES

OBANYE: for Plaintiffs.

OBIORA: for Defendants.

Inspection Note read

OBIORA ARGUENDO:

Exhibits "2" and "2A". Sketch used, different from Exhibits "3", filed by Plaintiff in O/10/43 Iyiahuhu shown to belong to Orlu, should not be on right side but on left side, sketch wrong, does not show placing of land correctly and does not represent any of the portions of land shown in this case. Exhibits "2" and "2A" between 1st Defendant in this case against another section of Umuma, action between individuals, present

Counsel's
Addresses
26th October
1960

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In the
High Court

No. 23

Counsel's
Addresses
26th October
1960
continued

case between Amanano and Amanato, belong to Umuezeala extended family. Exhibit "4", native Court proceedings in 0/206/36. Plaintiffs predecessors say Akwu belong to Plaintiffs. Exhibit "3" filed by Plaintiffs. Akwu belong to Plaintiffs, separated by path road, no path road separating Igarankwu and Ebelebe, Akwu belongs to present Defendants now claiming it. Alawai belongs to us. Alawai not shown in Exhibit "1" merged in Ugwuntu, say Alawai = Ugwuntu. Exhibit "5", Exhibit "3" Alaike shown in 3 places all in the north, Ala Awai, south of Alaike near Iyi Ahuhu at P.10 line 19 of Exhibit "5" Plaintiffs Alaike has boundaries with Orlu, now deny existence of Alaike Exhibit "1", Alaike, Ala Awai omitted for obvious reasons, Exhibit "5" P.9 Plaintiffs predecessor in title line 16, land divided 27 years before 1937, great grandfather divided land, affirmed by whiteman, if came on land only 27 years before, confirms our evidence that we gave them Onunkwo. Exhibit "5" we had built houses on the land cause of the trouble, confusion of a part for whole, not came on land only 6 or 7 years, some ruins Court saw over 20 years old. Plaintiffs pleaded and claim land belonged to them since time immemorial, but in Exhibit "5" Ibekwe their witness gave evidence land given to Plaintiffs by Mbei people as compensation for a murder, Mbei killed many people of Amanano and Amanato land communal. Plaintiffs' spokesman in this case denied that. In 1937, Orlu claimed all portions of land west of Iyiahuhu. Evidence of Onyeachusi spokesman for 19 Orlu witnesses pointed out Iyiahuhu boundary between Ogboko and ourselves. Amanato and Amanano are included in Ogboko. Exhibits "7", "8" and "9". In 1943, 1st Plaintiff in this case, 2nd Plaintiff in that case sued 1st Defendant and 11 others, claiming damages for trespass on same 8 pieces of land claimed in this case and an injunction.

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Plaintiffs' and Surveyors admit same land in dispute, same subject matter (Exhibit "3" is the plan filed in that case Waddington J. appointed a Referee, and said in interests of finality, enquiry held on land, findings and recommendations, adopted and incorporated in the decision of this Court. Submitted report and his proceedings to Court, he had Exhibit "5", he went on the land with Exhibit "3" (see Exhibit "9"). Had all documents that this Court has before it, except Plaintiffs' land. Report attached of Exhibit "8", could see no boundary, rough boundary, no defined boundary, suggest farm on land communally. Exhibit "9" is the judgment. Plaintiffs' non-suited Exhibit "3" boundaries not proved. Essential finding to decision; existence of no boundary Halsbury 2nd Ed. Vol. 13 p.413, para. 468, decided in a previous case, cannot come back with the same boundary, same boundaries in Exhibits "3" and "1", only some details differ S.53 Evidence Ordinance (Cap 63) facts directly in issue, etcetera. Land communal advised by Referee. Referee refers to Onude stream see Exhibit "5", Plaintiffs and Defendants claim same interest, Defendants portion beginning from river Onude not from path, natural boundary more logical and reasonable. Alaike exists before Referee, no longer exists now. Alaike can be in both parts. Impossible (Exhibit "3") Alaike in 3 places, Akwu are placed inside the land in the north not on the alleged boundary with us, bounded on south by Igbarankwu, Alwai and Ugwuntu therefore cannot extend to the path let alone beyond. Ebelebe and Ofor on Exhibit "3" have boundaries with Orlu and Mbei and therefore cannot be divided. Onunkwe on the extreme east is bounded by Urashi. Only Alanro, Oguntu, Mpata and Alawai are crossed by the path, extend only a short distance to Onude stream. Not all portions can be on both sides of the path. In Exhibit "9", Plaintiffs say they were awarded this land, not plead in possession from time immemorial. Paras. 8 and 9 of S/C Plaintiffs over trespass but do not claim damages for trespass. Exhibit "11", record of proceedings in northern Isu N.C. in case No. 201/54, present Plaintiffs' as against Defendants ask Court to demarcate land for them. At Exhibit "11" you call land by all those names i.e. we gave the land all these names i.e. we named the portions of land. Resident's

In the
High Court

No.23

Counsel's
Addresses
26th October
1960
continued

In the
High Court

No. 23

Counsel's
Addresses
26th October
1960
continued

remarks on appeal. Exhibit "1" corresponds with Exhibit "3" both plans refer to same piece of land, portions of land should be same in both plans, land does not travel. Exhibit "1" Korokoro stream north west lead to Ozii, Exhibit "3" whole stream shown as Ogii Exhibit "3", Ebelebe and Ofor, shown in extreme west near Ozii stream, in Exhibit "1" Ebelebe shown on Iyiahuhu itself i.e. Iyiahuhu passes through Ebelebe. Exhibit "3" Ugwuntu is on eastern side of Iyiahuhu but in Exhibit "1" on the far western side near Ofor. Akwu next to Ebelebe and near Alaike on west in Exhibit "3", is shown on other side of Iyiahuhu after Ebelebe in Exhibit "1" Alaike is omitted in Exhibit "1" and merged in other areas. 9 W.A.C.A. 163. Plaintiffs' failed to know their land as Defendants did. Exhibit "16" merely plan not drawn to scale, Plaintiffs' 2 plans, one and distortion of the other, so Court cannot reply on plan. 4 W.A.C.A. 159, show clearly area of land, weight of evidence, we named our portions, they did not do so, should know what portion of land near Nungwugwa stream, boundary with Mbei show as Alanro and Mpata, not Ebelebe and Igbarankwu Exhibit "16" concurs largely with Exhibit "3" Okeohia Nta and Okeohia Ukwu, admit Akwu belongs to us, nothing said to dispute over claim to Okeohia Nta and Okeohia Ukwu not in dispute by Plaintiff called Akputara 2 W.A.C.A. 336, 337, 14 W.A.C.A. 593. must rely on strength of case not weakness of defence. Plaintiff contradicted his predecessor in title names of land, plan. Scrutinize all plans as to buildings, all Plaintiffs' witnesses suborned. Tobias Ogo contradicted his own father. Southern limit of Defendants' portion, narrow not shown on plan, but Onude stream. Section 20 (3) Evidence Ordinance. Ask Court for Judgment for Defendants.

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Adjourned to 28th October 1960 for continuation of address.

Sd. Herbert Betuel
PUISNE JUDGE 26/10/60

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FRIDAY THE 28TH DAY OF OCTOBER 1960

In the
High Court

OBANYE: for Plaintiffs

OBIORA: for Defendants

No. 23

OBIORA CONTINUENDO: I have to refer to Exhibit "12", in which Plaintiffs' action was dismissed as no evidence was tendered.

Counsel's
Addresses
28th October
1960

OBANYE REPLICANDO:

- 10 1. Exhibit "2A", sketch plan attached to Exhibit "2" not to be disregarded, valuable as a rough sketch. There is a path which starts at Orashi etcetera, see Exhibit "2" Cp. Exhibit "2A" and any plan of land in dispute refers to same people of land e.g. position of Orashi juju shows Mbei land. Para. 5 Exhibit "2" District Officer visited land as Court did. Exhibits "2" and "2A" not a representative action. Exhibit "4" led to Exhibit "2" representative action in essence though not in form and concerns the same land, Defendants' evidence in Chief in this case mentioned people who had farmed on land, sued them in Court in 1936 (Exhibit "4"). Exhibit "4" presents Defendant. Plaintiff stated the case of the family land belonging to him and his family sued Defendants as a family, all belong to Umuezeala family and so on. Amanato another name. Both descendants of Ogboko of Duruikoorukwa and Ezeala.
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- 30 2. Alawai and Aliake Wai = birds, land on which birds flock, Ike = hard, Alaike is anywhere where land is hard neither are specific names of any portion of land only descriptive names.
3. Ruins on land over 20 years old. Out of possession for 20 years, possession nec vi, supports our case.
- 40 4. Exhibits "7" - "9" decided boundary, 1943 case, Exhibit "9" sets out claim, claim in trespass, judgment or finding a non suit, a non suit is not a judgment. Order 48 Rule 1 High Court Rules of 1955, not satisfactory evidence on either side, non suit,

In the
High Court

No. 23

Counsel's
Addresses
28th October
1960
continued

parties left where they were. Order 49 of our Rules sets out what a judgment is Section 53 or Evidence Ordinance no relitigation of facts already decided, section deals with judgments not non suits, "facts actually decided by Court". Defendant cannot reply on non suit judgment or any breach of it. Exhibits "11" and "11A" same remarks apply. Exhibit "12" has no bearing on case action for trespass by Plaintiffs against Defendants no evidence was led, no adjournment granted, declined to lead evidence.

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5. Exhibits "1" - "3" not identical in all respects quoted authorities but Ibezeako case, area ascertainable, can Court relate its decree to a definite portion of land, same area of land shown, and main features no doubt as to identity of land. 20
6. Kodilinye v Odu Onus of proof, some inconsistencies between evidence given in this case and earlier cases not material, 20 years between cases, different witnesses.
7. Defences' case Defendants do not live on any portion of this land and have no houses there. We live on this land on Onunkwo, Okeohia Ukwu, Okeohia Nta, no acts of trespass alleged against that, skipped it to go into Ugwu land used helicopter, all witnesses called by them are unreliable people 3rd Witness for Defence would not agree boundary at Wongugwa stream, did not know where it was. Did not know Adu stream close to Wongugwa stream, knew nothing of whose village was on other side of earth mound on north east boundary of land in dispute, lying, disregard his evidence. 4th Defence Oliver Nwagbu came from Mgbei village in the north west, denied having boundary with Plaintiffs' at all, falsified plan, never heard of Okeohia Ukwu and Okeohia Nta 30 40 50

adjoining land, never heard of Adu stream, does not know area or locality, evidence should be disregarded; also spoke of Korokoro stream. 5th Witness for Defence Columba or Orlu, gave evidence as to south eastern boundary of the land in dispute. Said Tobias Ogo, Chief of Orlu, showed him land which had a boundary with Defendants., accept evidence of grantor rather than grantee. Defence always raise same case and always have it dismissed.

In the
High Court

No. 23

Counsel's
Addresses
28th October
1960
continued

8. Plaintiffs' case. Owned land from time immemorial after division, owned our portion, traditional history is not disputed. Uguwu land divided into 2 portions, path made boundary. Show inherited land, live on it, within land edged pink. Farm land, Defendants' plan show our farms scattered over whole area, acts of ownership of this kind, cannot be lightly treated. Tobias Ogo gave evidence as to south eastern boundary, no evidence as to extent of land of Defendants' led. Defendants' village completely outside land in dispute not shown where boundary with Ugbele people lies. Mgbei Witness Fred Ogbonniaya gave evidence of Mbei boundary unshaken. Ask Court to believe these witnesses. Uguwu land divided portion of named same land on either side of path, boundary respected until 1911, boundary confirmed by D.O. Exhibit "14", respected and undisturbed possession until sued in 1936 for trespass on land Exhibit "4", judgment in their favour in N.C. Exhibits "2" and "2A", on appeal to D.O. judgment of N.C. set aside and judgment entered in our favour, action for trespass but set up their ownership against ours and lost (Exhibit "4"). Judgment subsist and has not been set aside. Exhibit "4" - 10 years now etcetera, been on land since at least 1926. Exhibit "4", after fight Defendants in possession of all these lands - built across their passage i.e. boundary. Defendants lived on land before fight, some ruins now about 34 years old, zinc sheds later, never built another house on land since then, respected boundary never crossed it. Judgment in Exhibit "2" Para 5. Boundary main issue Exhibit "2" Defendants say they have no boundary with us in respect of the

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In the
High Court

No. 23

Counsel's
Addresses
28th October
1960
continued

land in dispute P. para. 8 original records of earlier case cannot be traced P. Paras. 8-9 but same path used as boundary. Mbei and Orlu support Plaintiffs. Decision in Exhibit "2" valid and subsisting. Exhibit "5" of 1937, action for title, recovery of family land, set up again, their ownership against ours, native Court gave judgment for Defendants, advise wrote his own judgment. Defendants not pleased with earlier cases. Resident set aside judgment of N.C. and upheld decision of District Officer (Exhibit "13"). Boundary made and observed Exhibit "6" appeal to C.C. Dismissed appeal. No more cases after 1939 by present Defendants worrying us, judgment not set aside. 10

Decided (a) Footpath boundary between parties 20

(b) Defendants cannot plead title and succeed or sue us for trespass, entry on land without our consent makes them trespassers, always asserted our rights. Law clear 2A cannot be 2 adverse claimants to same portion of land. True owners Plaintiffs. 3 W.A.C.65, 3 W.A.C.A. 170 interpretation of cases in native Court. Ask for declaration of title and injunction. 30

OBIORA: Court will consider and interpret all cases. Court shown Onude stream, where our land begins in Exhibit 8. Nwizuke v Eneyok 14 W.A.C.A. 354. Court still a Court even on inspection. Argument between non suit or dismissal Exhibit "12". Exhibit "5" not an action for a declaration of title. 40

Adjourned 5th November 1960 for decision of Court.

Sd. Herbert Betuel
PUISNE JUDGE
28/10/60.

NO.24

In the
High CourtJUDGMENTSATURDAY THE 5TH DAY OF NOVEMBER 1960

No. 24

OBANYE: for PlaintiffsJudgment
5th November
1960UMEZINWA forOBIORA: for DefendantsJ U D G M E N T

The parties are from the Orlu Division.

10 The Plaintiffs represent the people called Amanato Umuezeala, the Defendants the Amanano, and are the descendants of Ogboko; wherever it is convenient, for brevity's sake, they will be called respectively, Amanato and Amanano.

The suit is conducted, by both parties, as a representative action and the claim is for a declaration of title and an injunction.

20 The land in dispute, verged pink in Exhibit "16", is a portion of the land called "Ugwu". The part of "Ugwu" in dispute consists of 8 pieces of land and these 8 pieces are named in the Amanato plan (Exhibit "1").

30 The boundaries of these pieces, inter se, are exceedingly vague and some readjustments have been made in later plans in names and that has led to some discussion but I do not attach any great importance to it all, because the area claimed is clearly shown in the plan filed in this case, and there is no dispute as between the parties as to the precise area of land in dispute.

(Baruwa v Ogunshole (1938) 4 W.A.C.A.159).

In Exhibit "4" the 1st Defendant suing on behalf of himself, or himself and certain families of Amanano or the whole of Amanano, he did not seem very sure of himself, made the important admission that "Mkputara", a portion of the part of "Ugwu" in dispute, belonged to Amanato.

In the
High Court

No. 24

Judgment
5th November
1960
continued

Thus the portions of land in dispute in that case were reduced to seven in number although the precise area of land contained in Mputara would be difficult to ascertain.

It would appear that, according to a tradition, after "Ugwu" was acquired from Mbei and because the property of the Umu - Ogboko as a blood price for Ogboko people killed by Mbei, it was divided, by a common ancestor, perhaps Ogboko himself, between the Amanato and Amanano if that is what indeed happened, and the footpath shown to me is their boundary, it is a pity that a more equitable distribution of the lands available was not made, and it seems more probable to me, that although a division may have been made, the boundary was left vague or was forgotten, and that the present alleged boundary between the parties is the result of official action.

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Amanato claim to have received the portion of "Ugwu" in dispute, and lands to the north west and north east of the land in dispute on the eastern banks of the Urashi stream, and that appears to have been a lion's share.

The Amanano receiving only the portion east of the path running from Amanato to Orlu, to their boundary with Ebela, a portion not precisely shown on any of the plans filed and perhaps some lands in the north west which are not in issue.

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It is admitted by the Amanano, that some of the Amanato although their main village is east of the Urashi stream, have been actually living on "Onunkwo" a portion of the land in dispute. "Onunkwo" lies in the north east corner of the land in dispute, and is the nearest part of the land in dispute to the main Amanato village, and it would appear that they have been living there for a number of years, at least from 1916, if not earlier, and have also been farming all over the land in dispute, since about the same time.

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It seems to me most unlikely that the Amanato lived on "Onunkwo" as a result of a grant made to them by the Amanano.

Apart from "Onunkwo" the rest of the land in dispute has been used as farming land and not for residential purposes, and any efforts made by the Amanano people to erect structures on the land could only have been with the tententious aim in mind of creating evidence in their favour in the future.

In the
High Court

No. 24

Judgment
5th November
1960
continued

10 The Amanato have described their boundaries with Amanano and Mbei, and, it is in accordance with the plan filed by them, that their north - eastern boundary is with Mbei and their boundary with Amanano is said to be a footpath, starting at the Urashi stream and continuing in a long curve past the Mdioke juju and with some very slight undulations proceeding south westward, but along the eastern boundary of the land in dispute, in the direction of Orlu.

20 In Exhibit "2", which was a review of Exhibit "4", the Amanato, as Defendants, obtained judgment.

It was noted in that case that the main issue between the parties concerned the boundary between them and that it was extremely probable that at some time or other, the path which I have described was demarcated as the boundary between them.

30 In Exhibit "5", again, a claim brought by the Amanano against a number of persons from Amanato, for the recovery of Amanano family lands, some of which appear to have been within and others outside the land in dispute the Amanano once again succeeded in the Native Court, but the Court's adviser, Mr. Newnes, disagreed with their decision and said that the boundary between them, fixed in 1927, was the path which I have already described, and Mr. Newnes dissenting decision was confirmed by the Chief Commissioner on a further review.

40 In Exhibit "11", the Amanato brought an action against the Amanano for a demarcation of the boundaries between them, the Native Court rightly held that the boundary had already been ascertained as the pathway described and ordered pillars to be placed along it but this was not done.

In the
High Court

No. 24

Judgment
5th November
1960
continued

In Exhibit "12", an action for trespass by Amanato against Amanano, the case was dismissed for want of prosecution.

In Exhibits "7" - "9", a claim for trespass, it became necessary to ascertain the boundary between the parties, the Referee appointed was unable to discover it and the Plaintiffs Amanato were non suited and the parties were advised to enjoy the land communally.

10

If the Referee considered all the previous proceedings available to me, I am unable to understand how he could have come to his conclusion as to there being no boundary.

In Exhibit "10", the Plaintiffs case was struck out. I am at a loss to understand how any of these proceedings can be regarded as in any way strengthening the Amanano case.

20

The Amanano claim Okeohia - Ukwu and Okeohianta, verged yellow in the Defendants plan, strangely enough their lands are in the north west of the land in dispute but they are not in issue in this case, although they border on the land in dispute, and present a disturbing feature.

All I am concerned with is the land in dispute in this case, and in particular the boundary between the parties.

30

It appears to me on the evidence, that the Amanato have shown that they have lived on the land in dispute for a considerable time, that they have farmed there for a long time, that they have continually sued the Amanano for entering and farming and erecting structures on the land, even going to the extent of pulling down the structures and driving them out, they have also sought to have a boundary between them demarcated, although the footpath had been fixed as a boundary in earlier cases.

40

I am not unduly impressed with the support given to the Amanato by most of

their neighbours, the Amanato also have received considerable support, but if the evidence is weighed, the preponderance of credible evidence favours the Plaintiffs.

In the High Court

No. 24

It appears to me that they have established a case for and are entitled to a declaration of title and an injunction in respect of the land verged pink in Exhibit "16".

Judgment
5th November
1960
continued

10 I also award them 149 guineas as costs, out of pocket expenses are over £100.

Sd. Herbert Betuel
PUISNE JUDGE
5/11/60.

NO.25

In the Federal Supreme Court

IN THE FEDERAL SUPREME COURT OF NIGERIA

GROUND'S OF APPEAL

SUIT NO. 0/20/58

Appeal papers

No. 25

Grounds of Appeal
24th November
1960.

BETWEEN:

20 ANUSIONWU DURU & 4 ORSPLAINTIFFS/
RESPONDENTS

EGONEKWU DIM & 3 ORSDEFENDANTS/
APPELLANTS.

30 TAKE NOTICE that the Defendants being dissatisfied with the decision of the High Court contained in the judgment of His Lordship Mr. Justice Betuel dated the 5th day of November, 1960, do hereby appeal to the Federal Supreme Court 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.

In the
Federal
Supreme
Court

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

GROUNDS OF APPEAL:

No. 25

Grounds of
Appeal
24th November
1960
continued

- (1) The learned trial judge mis-directed himself when he held that the boundaries of the pieces of land which comprise the land in dispute were vague and that some readjustments were made in later plans because distortion or ignorance of the positions of the pieces of land in dispute cannot be readjustment of boundaries. 10
- (2) The learned trial judge erred in law in that the Plaintiffs cannot succeed when the plan in the present case differs materially from the plan of the same land in dispute filed by the Plaintiffs in Suit No. O/10/1943. One of them must be wrong. 20
- (3) The learned trial judge erred in law in that admission by Plaintiffs' predecessors in title that the eight pieces of land comprising the land in dispute beginning from Onude stream belong to the Defendants, was binding on the Plaintiffs.
- (4) The learned trial judge was wrong in law in that the Plaintiffs' having failed to prove the plan filed by them in this case by giving evidence of the positions of the pieces of land in dispute contrary to what were shown on their plan, disclosed ignorance of the land in dispute, and cannot, therefore, succeed. 30
- (5) The learned trial judge was wrong in not finding for the Defendants having come to the conclusion that the Plaintiffs' claim is a lion's share considering the evidence of the Plaintiffs' that there was a division after which the Defendants' ancestors, being their ancestors' senior brother, took the first share. It is therefore 40

inconceivable that the senior brother would leave the lion's share to the Plaintiffs' ancestor.

In the
Federal
Supreme Court

(6) The learned trial judge was wrong in not considering the Plaintiffs land in the north west beginning from Akputara which apart from the land in dispute is also in Uguwu land and could be the Plaintiffs' share after the division.

No. 25

Grounds of
Appeal
24th November
1960
continued

10 (7) The learned trial judge misdirected himself in holding that the Defendants' admitted that "Mkputara" belongs to the Plaintiffs' because there was no such admission. The Defendants' admitted that "Akputara" which is shown on both plans as not being in dispute and situated on the northwest of the land in dispute, belongs to the Plaintiffs within the area which the Defendants claim to be the Plaintiffs' share. "Mkputara" was shown on Defendants

20 plan as another name for "Mpata".

(8) The learned trial judge erred in law in failing to consider the admission of the Plaintiffs' predecessor in title that they have no land in "Akwu" and that "Alawara" meaning "Alawai" belongs to the Defendants.

(9) The learned trial judge failed to consider 1st Defendant's thorough knowledge of the land in dispute as against the Plaintiffs' ignorance of the same.

30

(10) The learned trial judge failed to consider the admission of the Plaintiffs' predecessor in title that the names of the eight pieces of land comprising the land in dispute were given to them by the 1st Defendant, there being no suggestion as to the names by which the Plaintiffs' knew them if they belonged to them from time immemorial.

40 (11) The learned trial judge failed to consider the materiality of the omission of "Alaike" in the Plaintiffs' plan in this case when it was shown in their plan in O/10/1943 which the Plaintiffs' surveyor admitted represents also the land in dispute.

In the
Federal
Supreme
Court

No.25

Grounds of
Appeal
24th November
1960
continued

- (12) The learned trial judge having found that the Referee was appointed in Exhibits "7" - "9" to ascertain the boundary and that the said Referee considered all the previous proceedings available to him cannot, in the absence of fresh and indisputable evidence to the contrary, accept the boundary which the said Referee found to be non-existent. The proceedings and the finding of the Referee were incorporated in the judgment of the High Court in Suit No. 0/10/1943 the decision of which was not appealed against. 10
- (13) The learned trial judge cannot constitute himself a Court of Appeal to reverse the Referee's report which found that the footpath was not a boundary by official action, because there is no evidence before him to that effect which was not before the Referee. 20
- (14) The learned trial judge failed to consider the materiality of the evidence of the Plaintiffs' in previous proceedings when they called a witness from an adjoining village to claim half of the land in dispute, that is, west of Iyiahuhu as theirs and to give them the east to spite the Defendants. 30
- (15) The learned trial judge erred in law in not taking into consideration the conflicts in the evidence of the Plaintiffs' and their witnesses in this case as well as the testimonies of their predecessors in title in previous proceedings. 40
- (16) The learned trial judge misdirected himself when he held that efforts made by the Defendants' to erect structures on the land in dispute could have been with a tendentious aim in mind of creating evidence in their favour in future, because it is in evidence by the

Plaintiffs' predecessor in title that before the Defendants' took action against the Plaintiffs' in 1937, they had already built on the land in dispute.

In the Federal Supreme Court

(17) The learned trial judge was wrong in believing the Plaintiffs' evidence that the Defendants' first built on the land six or seven years ago when apart from admissions of their predecessors in title, they showed Defendants' structures on the land in dispute in 1943.

No. 25

Grounds of Appeal
24th November 1960
continued

10

(18) The learned trial judge erred in law in basing his judgment in connection with the alleged boundary on the decision of the Native Court (Exhibit "11") which was reversed on appeals to both the District Officer and the Resident.

(19) The decision is unreasonable and cannot be supported having regard to the weight of evidence.

20

RELIEF SOUGHT FROM THE FEDERAL SUPREME COURT

That the judgment of the lower Court be set aside and judgment to be entered for the Defendants/Appellants.

PERSONS DIRECTLY AFFECTED BY THE APPEAL

(1) Anusionwu Duru)
(2) Okanu Nnade)
(3) Duru Obassi Nweche) c/o Amanato Umue-
(4) Ibebuike Ezeonyemba) zeala Ogboko,
(5) Dimogudo Eze) Orlu Division.

30

(1) Egonekwu Dim)
(2) Duru Egbufo) c/o Amanano Ogboko,
(3) Ojara Ezegwo) Orlu Division.
(4) Okwara Ibebuike)

Dated at Port Harcourt this 24th day of November 1960.

Sd. S.B.C. Obiora
Solicitor for Defendants/
Appellants
23, Potts Johnson Street,
Port - Harcourt.

40

In the
Federal
Supreme
Court

NO.26

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT ENUGU

No.26

ON MONDAY THE 26TH DAY OF FEBRUARY 1962

Court Notes
26th February
1962

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT	FEDERAL JUSTICE
EDGAR IGNATIUS GODFREY UNSWORTH	FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE
	<u>F.S.C. 62/1961.</u>

Egonekwu Dim & Ors. Appellants 10

v

Anusionwu Duru & ors. Respondents

Appeal from decision of E.R.High Court granting declaration of title and injunction.

Obiora for appellants. Obanye for respondents.

Obiora arguing appeal: Judgment P.43 Grounds of Appeal p.47. Will argue Grounds of Appeal in five groups. Identity of land under G/A 1, 2 & 4. G/A 12, 13 & 18 - as to estoppel. G/A 10, 11 & 15 as to conflicts in evidence. G/A 7, 14, 3, 5, 6, 16 & 17 misdirection and errors in law. G/A 8, 9 & 18 weight of evidence. 20

G/A 1, 2 & 4 - Identity of land Judgment p.43 lines 21-31 S/D p.7 para. 8. Plans Exhibits 1 & 3. Respondents admitted p. 16 line 38-p. 17 line 4 that they sued us in 1943. This surveyor at p. line as to Exhibit 3 and Exhibit 1 - differences. Plaintiff and his witness could not identify and describe the features shown on Exhibits 1 and 3 p.17 lines 8-10 contradicts Exhibit 1 p. 17 lines 5-7 P. 23 lines 8-11 further contradiction. 30

Darku v Agyakwa 9 W.A.C.A. 163.

Baruwa v Ogunsola 4 W.A.C.A. 159 distinguishable.
Estoppel G/A 12, 13 & 18

In the
 Federal
 Supreme Court

P. 44 lines 9-25 p. 46 line 5.

No. 26

Esiaka v Obiasogwo 14 W.A.C.A. 178.

Anjoku v Nnamani 14 W.A.C.A. 357.

Court Notes
 26th February
 1962
 continued

Referee found that the boundary claimed in 1943 and now had not been proved to be the boundary. Judge in effect acted as a Court of Appeal from the Referee.

10 Larinde v Afiko 6 W.A.C.A. 108.

Morrison Rose v Hillman (1961) 2 All ER 891, 896. Pearson LJ. Conclusive evidence.

Chukwuata v Chukwu 14 W.A.C.A. 381.

Exhibit 11. Resident non suited.

Conflicts in evidence - G/A 10, 11 & 15. Exhibit 8 L.1 p. 6 lines 9-28

Conflicts as to parcels of land already dealt with.

20 P. 17 line 35 Blood price. Contrast p. 19
 line 15 P. 21 lines 9-19.

P.16 lines 25-28- Contrast p.22 lines 23-25 and 44-46
 P.16 lines 28-29 Alaike contrast p. 23 lines 2-5
 P.17 lines 1-2 Alawai p.23- lines 6-8.

G/A 7 etc. Misdirection.

Adjourned to 27.2.62.

Sd. L. Brett
 FEDERAL JUSTICE

ON TUESDAY THE 27TH DAY OF FEBRUARY 1962

27th February
 1962

Egonekwu Dim & Ors. Appellants

30 Anusionwu Duru & Ors. Respondents

Part - heard appeal. Appearances as before.

In the
Federal
Supreme
Court

No. 26

Court Notes
27th February
1962
continued

Obiora continues argument:

G/A 7 etc. Misdirection and errors
in law Mkputara not the same as Akputara.
It Mpata Exhibits 3 & 16. p. 17 line 25
and p. 25 line 40.

G/A 14 Exhibit 5 p.15 line 29 . p. 17
lines 40-45.

3 Admission in Exhibit 8 p. line
. Admitted at p. 17 lines 46 - p.18 L.2.

5 & 6 p. 44 line 5 - 10. line 10
p. 17 lines 19-27.

16 & 17 Misdirection as to motive of
building by Amanano. Exhibit 3 shows
houses belonging to Defendants in 1943.
P. 9 lines 11-18 and 28-30 I refer to the
grass huts shown in Exhibit 3.

Archbong v Asim Ita 14 W.A.C.A. 520, 522
- "As to line (b)".

Failure to prove exclusive possession.

Evidence Ordinance s.44 as to acts of 20
possession.

G/A 8 etc. Weight of evidence

P. 15 lines 37-41.

G/A 9 p. 24 L.20-P.25 L.6 Defendants know the
land and could describe boundaries. P.
lines 6 - 14.

Ownership of land to north of land in
dispute.

Mattonk v Massad 7 W.A.C.A. 91 as to 30
credibility.

G/A 19

They did not reply to our plea that
land to the north is ours, nor deal with it
in evidence - p.46 lines 22-28.

We showed it so on Exhibit 16.

Akubeze v Nwaduiche 4 FSC 262, 265 - "In the Plaintiff S/C". New issues introduced.

In the
Federal
Supreme Court

Evidence Ordinance s.45. I agree they did show the land to the north as theirs on Exhibit 1.

No. 26

We alone gave traditional evidence. Evidence Ordinance s.44.

Court Notes
27th February
1962
continued

Obanye for respondents

10

As to "identity of land" - names given to various portions are merely descriptive - not specific names. P. 23 line 2.

Estoppel - not called on.

Conflicts of evidence

As to Iyiahuhu - p. 17 line 40 and p.21 line 25 and p. 23 line 37 . See p. 18 lines 30-35 where PW 1 explains it. It is the footpath he means is the boundary.

Blood price - PW 1 might well not have heard of traditions.

20

All this a mere matter of credibility. Agreed the land originally acquired by common ancestor.

Misdirection: Exhibit 4 - as shown in Exhibit 2 p. 1 para 5. Evidence in previous suit. P. 17 line 46-P18L.2 see Exhibit 1 for explanation and Exhibit 16 - all Ugwu land and names same on both sides of path: P.22 L.23-25 and DW 1 p.26 lines 7-12 agree - extensions across the road.

30

"Lion's share" - does not affect case. We do not know extent or quality of the land in the two shares.

Motive of building - judge's comment justified - admission at p. 33 line 4 .

Weight of evidence

Plaintiffs knew the land as well as Defendants. p. 45 line 8. Our village is on the land, our farms all over the land.

In the
Federal
Supreme
Court

As to lands to the north claimed
in Exhibit 16, Exhibit 1 shows we claimed
it. They were challenged at p. 27 line 38 to
P.28 L.3 in cross examination.

No. 26

Generally, we did establish claim
by Exhibits 2, 2A and 5 and 13 and 6 -
path already adjudged to have been
boundary.

Court Notes
27th February
1962
continued

Judge accepted this - P. 46 line 29
seq.

10

We have always resisted their en-
croachments.

Their story of grant of Onunkwo -
not pleaded and rejected at p. 44 line 44 .

Obiora in reply

Exhibit 2. Reads p. 17 lines 43-45.

As to use of same names for portions of
land (p.26 line 13) - could not apply
to all eight portions and - 500 yards
at most.

20

Exhibit 2 referred to Akputara
not Mkputara. It reads "Mputara".
Land north of land in dispute - Exhibit
1 filed before defence.

Judgment reserved.

Sd. L. Brett
FEDERAL JUSTICE

No. 27

NO.27

Judgment
30th March
1962

IN THE FEDERAL SUPREME COURT OF NIGERIA

30

HOLDEN AT LAGOS

FRIDAY THE 30TH DAY OF MARCH 1962

BEFORE THEIR LORDSHIPS

SIR LIONEL BRETT	FEDERAL JUSTICE
EDGAR IGNATIUS GODFREY UNSWORTH	FEDERAL JUSTICE
JOHN IDOWU CONRAD TAYLOR	FEDERAL JUSTICE
	<u>FSC. 62/1961</u>

In the
Federal
Supreme Court

No. 27

BETWEEN:

ANUSIONWU DURU & ORS ... Plaintiffs/Respon-
dents

- and -

EGONEKWU DIM & ORS Defendants/Appel-
lants

Judgment
30th March
1962
continued

J U D G M E N T

10

Taylor F.J.

This is an appeal from the judgment of Betuel J. of the High Court of Onitsha granting the Plaintiffs' a declaration of title and an injunction in respect of the land verged pink on the Plaintiffs' plan Exhibit 1. The Defendants/Appellants have appealed against this judgment and nineteen grounds of appeal were argued in their favour by learned Counsel who grouped them in the following manner during his address - Grounds 1, 2 and 4 were argued together as Ground 1; 12, 13 and 18 as Ground 2; 10, 11 and 15 as Ground 3; 7, 14, 3, 5, 6, 16 and 17 as Ground 4; and finally 8, 9 and 14 as Ground 5. The Grounds of Appeal may, however, be conveniently treated in this judgment under the following two heads:-

20

30

- (1) Estoppel by virtue of the proceedings before the Referee as per Suit O/10/1943.
- (2) Error and misdirection in failing to take into account the inconsistencies in the evidence of the respondents in the present Suit and in Suit O/10/43, and more particularly the inconsistencies in the names and

In the
Federal
Supreme
Court

locations of places sited on the
plan Exhibit "1" which was made for
the purposes of the present Suit
and the plan Exhibit "3" which was
made for the 1943 suit.

No. 27

Judgment
30th March
1962
continued

On the first of these heads, the
facts necessary for an understanding of
the position may be shortly put as fol-
lows. The present Plaintiffs, who will be
henceforth referred to as the Amanatos,
sued the Defendants, who are the Amananos
and will be so referred to, claiming £300,
as damages for trespass committed on Ugwu
land which comprised Alanro, Mputara, Akwu,
Ibarankwu, Ebelebe, Ofor, Onunkwo and Ug-
wuntu. An injunction to restrain further
acts of trespass was also sought. This
was Suit O/10/43. The matter was referred
to a Referee on the following terms of
reference:

10

20

- "1. To take evidence and to
determine whether in fact
Defendants in the above
mentioned Suit have tres-
passed on Plaintiffs' land
as alleged, and if so:
- 2. What is the nature of the
trespass? and
- 3. To give an estimate of its
value".

30

The Referee found as a fact that the
Amananos had not trespassed on the land
and that no question of damages therefore
arose. As to the boundary of this land
this is what he said:-

"I could see nothing else on the
land to support the boundary Plain-
tiffs alleged was laid down in
1911 by Acting Commissioner Craw-
ford I recommended
that the parties be told in view
of the fact that no defined
boundary between them has been
discovered, and being closely re-
lated, they continue to farm all
the land in dispute communally".

40

When the case came back to the High Court for argument on the Referee's report, a judgment of non suit was entered against the Amanatos. Mr. Obiora for the Amananos, contended that the Amanatos are now estopped from saying that the path shown as running from Orlu in a north easterly direction to the Urashi river as shown in Exhibit "3" is the boundary between the parties to the Suit. There is no substance in this contention for the finding of the Referee did not establish that a boundary did not exist but that on the evidence before him he was unable to determine it. It is not the case of either party that a boundary does not, in fact, exist between them. The Amanatos place the boundary at this footpath, which incidentally is depicted on the plan filed by the Amananos, i.e. Exhibit "16", whilst the Amananos show the boundary as edged in yellow - Exhibit "16". The grounds of appeal covering this point must therefore fail and are dismissed.

As regards the grounds dealing with the evidence in general, one must agree with Mr. Obiora that, though the boundaries of the land in dispute are roughly the same on all three plans, yet the features on the land in dispute and the names of places conflict. I shall here refer only to a few.

1. In Exhibit "3" the stream on the north west is shown as the Ozi stream, whereas in Exhibit "1" it is shown as the Korokoro stream flowing into the Ozi stream. In this respect, however, the plan of the Amananos agrees with Exhibit "1" showing the stream as Korokoro stream.
2. "Ala Awai" shown on the south of Exhibit "3" is not shown at all in Exhibit "1".
3. "Ala Ike" shown in three places in Exhibits "3" and "16" to the north of the land in dispute, is also not shown in Exhibit "1". I must confess that I was unimpressed by the explanation given by Mr. Obanye, for the Respondents, in respect of these last two omissions, to the effect that these names are merely descriptive of places and are subject to changes: that in the case of "Alai Awai" the word "Wai" refers to small

In the
Federal
Supreme Court

No. 27

Judgment
30th March
1962
continued

In the
Federal
Supreme
Court

No. 27

Judgment
30th March
1962
continued

migratory birds and that when these birds move away to another place the original nesting place loses its name. No explanation was however, given for "Ala Ike" meaning "hard ground".

- 4. The position of the portions of land called "Ebelebe", "Akwu" and "Ugwuntu" vary in Exhibits "1" and "3", whereas "Mkputara" shown in Exhibit "3" is not shown in Exhibit "1". 10

Then, apart from the plans, there were conflicts in the evidence. To these also I have addressed my mind and, in spite of them, find myself in agreement with the trial Judge when he says that:-

".....but if the evidence is weighed, the preponderance of credible evidence favours the Plaintiffs". 20

I should perhaps, comment on two portions of the evidence on which stress was laid by Mr. Obiora as being admissions against interest. The 2nd Plaintiff said that (1) he had never heard the traditional story that the land in dispute was given to Unuogboko as a blood price, and (2) that the Iyiahuhu stream runs across the land in dispute and the Amanatos own land on the right side of the stream and the Amananos on the left. As to the first point I cannot see how this can have any effect on this appeal in so far as both parties are admittedly descended from the same ancestor who acquired the land which was later shared out by his children. On the second point the evidence of the witness must be read in its context and under re-examination he went on to explain his earlier evidence as follows:- 30 40

"Iyiahuhu divides land in dispute, one side is Defendants, other Plaintiffs. Coming from our home, our own land is on right, Defendants on left along the footpath to Orlu at the point where the footpath meets the Iyiahuhu."

This explanation is in conformity with the plan Exhibit "1" and with the case of the Amanatos. On reading through the record of appeal, together with the plans tendered in evidence, the following matters have impressed me in the claim of the Amanatos to title to the area in dispute:-

In the
Federal
Supreme Court

No. 27

Judgment
30th March
1962
continued

10

1. In the first place, their village is situate at Onunkwo to the east of the land in dispute and on it, whereas the Amananos village is outside the land in dispute. The Amananos have endeavoured to explain this by saying that they made a grant of this land to the Amanatos as it was nearer the stream, i.e. the Urashi river. It should be noted that they never pleaded a grant and the explanation offered is not convincing for no less than five streams run through the land in dispute, as shown in Exhibit "1".

20

2. In the second place the Amanatos have farms as shown in both Exhibits "1" and "16" extending to the west, south and north of the area in dispute - in short all over the land.

30

3. Finally, as was urged by Mr. Obanye on behalf of the Amanatos, in Exhibit "2" the A.D.O. reviewed the following Suits - 213/174, 31/29 and 94/14 - and went on to say "in my opinion Plaintiffs' (Amananos) claim in this case cannot be accepted and must fail because:-

40

- "(a) Though Plaintiffs denies that there have been previous cases about these lands and that any boundary was previously fixed, the old cases that have been found show that there have been previous cases about lands, and that a boundary has been fixed. Also Ihin-acho and Oguamanam have shown that the path was fixed by the District Commissioner as the boundary".

This path is shown on a sketch plan attached to the judgment as running from Orlu to the Orashi river. There has been no appeal against this judgment. In other Exhibits referred to by the trial judge (proceedings of previous litigation)

In the
Federal
Supreme
Court

—————
No.27

Judgment
30th March
1962
continued

mention is also made of this footpath as the boundary between the Amanatos and the Amananos.

The only other point argued by Mr. Obiora and which deserves some mention, is the presumption to be drawn from the occupation of a portion of the land in dispute that the occupier is in possession of the whole. I should have thought that this was more applicable to the Amanatos who had their village on the land in dispute and farmed all over the land, than to the Amananos. Mr. Obiora however, went on to contend that the occupation by the Amananos of the adjoining area to the south of the land in dispute and to the north of the land in dispute, should draw unto it the interference that they are the owners of the land in dispute. Whilst it is true that the Amananos are admittedly the owners of the area to the south of the land in dispute, as shown on all the plans, the area to the north is, however, shown in both exhibits "1" and "3" as belonging partly to the Amanatos and partly to other clans, not the Amananos. Apart from the fact that the area of land to the north of the land in dispute is shown on the plans of the parties as being owned by different families, the area to the west is shown on the plan of the Amananos as belonging to the people of Orlu. I cannot therefore see how this inference can avail the Amananos.

I would, for the reasons expressed, dismiss this appeal with costs assessed at 22 guineas in favour of the respondents.

Sd. John Taylor
FEDERAL JUSTICE

I concur

Sd. E. Unsworth
FEDERAL JUSTICE

I concur

Sd. L. Brett
FEDERAL JUSTICE

Mr. C.Egerton Shyngle (Mr. S.B.C.Obiora with
him for the appellants)

Mr. B.C.I. Obanye for the respondents.

NO.28

O R D E R

In the
Federal
Supreme
Court

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No. 0/20/58

F.S.C. 62/1961

No. 28

Order
30th March
1962.

An appeal from the judgment
of the High Court of the
Onitsha Judicial Division

10 (L.S)

BETWEEN:

Egonekwu Dim
and others ... Appellants

- and -

Anusionwu Duru
and others Respondents

(sgd.) L. Brett
FEDERAL JUSTICE
(Presiding)

Friday the 30th day of March 1962.

20

UPON READING the Record of
Appeal herein and after hear-
ing Mr. C. Egerton Shyngle
(Mr. S.B.C. Obiora with him)
of counsel for the Appellants
and Mr. B.C.I. Obanye of
counsel for the Respondents:

IT IS ORDERED that this
appeal be dismissed and that
the Appellant's do pay to
the Respondents costs of this
appeal assessed at 22 guineas.

30

Sd. J.A.Adefarasin

CHIEF REGISTRAR.

ORDER GRANTING FINAL LEAVE TO APPEAL TO
PRIVY COUNCIL

In the
Federal
Supreme
Court

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

No. 29

Suit No. 0/20/58

Order
granting
Final Leave
to Appeal
to Privy
Council
6th May 1963

F.S.C. 62/1961

Application for an Order
for final leave to appeal
to the Privy Council.

(L.S)

BETWEEN:

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Egonekwu Dim Defendants/
and others Appellants

- and -

Anusionwu Duru Plaintiffs/
and others Respondents

(Sgd) L. Brett
FEDERAL JUSTICE
(Presiding)

Monday the 6th day of May
1963.

UPON READING the Ap-
plication herein and the
affidavit and counter
affidavits sworn to and
filed on behalf of the
parties, and after hearing
Mr. H.A.Lardner (Miss M.A.
Abiola with him) of coun-
sel for the Appellants and
Mr. A.I. Obiese of counsel
for the Respondents:

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IT IS ORDERED that final
leave to appeal to the Privy
Council be granted.

30

Sd. J.A. Adefarasin

CHIEF REGISTRAR.

Exhibits

EXHIBIT 6

PROCEEDINGS, CIVIL CASE 10/39

Plaintiffs

Exhibit

Exhibit 6

Proceedings

Civil Case

10/39

28th January

1939

IN THE COURT OF THE GOVERNOR (NATIVE COURT ORDINANCE, 1933, SECTION 28) BEFORE HIS HONOUR MR. H.F.M. WHITE, ACTING CHIEF COMMISSIONER, ON THE 28TH DAY OF JANUARY 1939

EGONEKWU AND OTHERS OF UMUME - PLAINTIFF/
APPELLANTS

v.

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UMEANOZIE AND 12 ORS. OF UMUMA DEFENDANTS/
RESPONDENTS

In reviewing Western Isu Native Court Case No. 206/36, Mr. Mackenzie, Assistant District Officer, found that:

- (a) Previous cases proved that a boundary had been made awarding the land in dispute to the defendants.
- (b) Defendants had been in undisturbed occupation for a long time possibly 20 years. 20
- (c) Plaintiff failed to claim the land many years before (the plaintiff alleged reason, i.e. tender age, not being accepted).

These findings were supported by Mr. Newns, Assistant District Officer when he sat as adviser on the Native Court case which is now before me on appeal and have also been endorsed by the Resident. The issues are purely matters of fact, and in my opinion the findings are in accordance with the evidence. 30

The appeal is therefore dismissed.

Sd. H.M.F. White
Acting Chief Commissioner,
Southern Province.

CERTIFIED TRUE COPY OF (FROM JB.1/37 Page 192)
Sd. ? ? ?
PRESIDENT 12/1/60

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EXHIBIT 7

Exhibit

PROCEEDINGS, CIVIL CASE 0/10/43

Defendants
Exhibit

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ENUGU-ONITSHA DIVISION
HOLDEN AT OKIGWI

Exhibit 7

SUIT NO. 0/10/1943

Proceedings
Civil Case
0/10/43
14th March
1943

(L.S)

RAPHAEL EZEANOWAI
AND 2 ORS
ALL OF UMUMA

v

EGENOKWU DIM
AND 10 ORS
ALL OF UMUMA

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ORDER OF REFERENCE

(Sd) H.Waddington
J U D G E

Whereas the above-named
suit coming on for hearing
on the 14th day of March
1944.

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AND WHEREAS it appearing
to the Court that the best
course to take in this matter
in the interest of finality,
is to appoint Mr. E.C. Powell,
Assistant District Officer
Orlu as a Referee to hold an
enquiry on the land, AND
both sides consenting:

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NOW THEREFORE, I, WADDING-
TON, JUDGE of the High Court
of the Enugu-Onitsha Division
DO HEREBY ORDER that the
matter arising in the Suit
BE REFERRED to a REFEREE, and
Mr. E.C.Powell Assistant
District Officer Orlu is
hereby so appointed as the
REFEREE herein on the terms
following:

Exhibits

TERMS OF REFERENCE

Defendants
Exhibit
Exhibit 7

1. To take evidence and to determine whether in fact Defendants in the above-named suit have trespassed on Plaintiffs' land as alleged and if so,

Proceedings
Civil Case
O/10/43
14th March
1943
continued

2. What is the nature of the trespass, and
3. To give an estimate of its value.

AND THE REFEREE is hereby directed to transmit to this Court, in triplicate, the proceedings held on the Inquiry and his report on his findings on the questions herein referred to him for his investigation, and on the credibility of the witnesses heard.

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GIVEN at Okigwi under the Seal of the Court and the Hand of the Presiding Judge this 14th day o. March, 1944.

Sd. P.E.G. Achikeh
R E G I S T R A R

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Certified true copy

Sd. P.E.G. Achikeh
R E G I S T R A R.

IN THE PRIVY COUNCIL

No. 35 of 1963

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

1. EGONEKWU DIM
2. DURU EGBUFO
3. OJARA EZEGWO
4. OKWARA IBEBUIKE (Defendants) Appellants

- and -

1. ANUSIONWU DURU
2. CKANU NNADE
3. DURU OBASSI NWECHÉ
4. IBEBUIKE EZEONYEMBA
5. DIMOGUDO EZE (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellants.

REXWORTHY BONSER & SIMONS,
83/85, Cowcross Street,
London, E.C.1.

Solicitors for the Respondents.