

34, 1960

IN THE PRIVY COUNCIL

No. 5 of 1958

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

ANOJE IGWE & OTHERS, for themselves and
on behalf of their people of Umunahu
Uratta (Plaintiffs) Appellants

- and -

OPARA UKWEJE & OTHERS for themselves
and as representing their people of
Umuofa Uzoagbe (Defendants) Respondents

- and -

ONE ADAKONYE & OTHERS for themselves
and as representing the people of
Umunahu Uratta (Defendants) Appellants

- and -

MARK THEOMA & ANOTHER for themselves
and as representing the people of
Umuofa Uzoaba (Plaintiffs) Respondents

- and -

NDULU & ANOTHER for and as representing
the people of Umundala-Uratta
(Plaintiffs) Appellants

- and -

MBARA ENWERE & OTHERS all of Umualumaku-
Uzoaba (Defendants) Respondents
(Consolidated Appeals)

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCILON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N

ANOJE IGWE & OTHERS, for themselves and
on behalf of their people of Umunahu
Uratta (Plaintiffs) Appellants

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and as representing their people of
Umuofa Uzoagba (Defendants) Respondents

- and -

OKE ADAONYE & OTHERS for themselves
and as representing the people of
Umunahu Uratta (Defendants) Appellants

- and -

MARK IHEOMA & ANOTHER for themselves
and as representing the people of
Umuofa Uzoaba (Plaintiffs) Respondents

- and -

NDULU & ANOTHER for and as representing
the people of Umundala-Uratta
(Plaintiffs) Appellants

- and -

MBARA ENWERE & OTHERS all of Umualumaku-
Uzoaba (Defendants) Respondents

(Consolidated Appeals)

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IN THE PRIVY COUNCIL

No. 5 of 1958

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

BETWEEN - 1. Anoje Igwe 3. Annsike
 2. Vincent Chikeka 4. Mbara
 for themselves and on behalf of their
 people of Umunahu Uratta
 (Plaintiffs) Appellants

- and -

1. Opara Ukweje 8. Ohuawunwa
 2. Obiakomba 9. Njoku
 3. Ucheriodu 10. Osuji Mbeke
 4. Ihenacho 11. Madubata
 5. Chemeziri 12. Anuruodo
 6. Opara Iheoma 13. Amadi Ekeocha
 7. Ibelwaba 14. Ugochukwu
 for themselves and as representing their
 people of Umuofa Uzoagba (Defendants) Respondents

AND BETWEEN -

1. Oke Adakonye 2. Orji 3. Ahurunwa
 for themselves and as representing the
 people of Umunahu Uratta (Defendants) Appellants

- and -

1. Mark Iheoma 2. Wilfred Okpara
 for themselves and as representing the
 people of Umuofa Uzoaba (Plaintiffs) Respondents

AND BETWEEN -

1. Ndulu 2. Olugazie
 for and as representing the people of
 Umundala-Uratta (Plaintiffs) Appellants

- and -

1. Mbara Enwere 7. Oparaiheoma Abia
 2. Ukonu Ikpe 8. Joseph Nwosu
 3. Ugwuegbu Ibokwe 9. Eneremadu
 4. Ugorji 10. Michael Akalonu
 5. Manunacho 11. Wilfred Okparaokpo
 6. Manuihe 12. Asonyanze Anodi
 all of Umualumaku-Uzoaba (Defendants) Respondents

(Consolidated Appeals)RECORD OF PROCEEDINGS

No. 1.

ORDER OF TRANSFER
 SUITS 53/44 (A/83/53) AND 96/44 (A/84/53)

Native Court Ordinance
 No. 44 of 1933

In the Ikeduru
Native Court.

No. 1.

Order of
 Transfer Suits
 53/44 (A/83/53)
 and 96/44
 (A/84/53).

In exercise of the powers conferred upon District

10th March 1944.

In the Ikeduru
Native Court.

No. 1.

Order of
Transfer

Suits 53/44
(A/83/53) and
96/44 (A/84/53)

10th March 1944
- continued.

Officers by Section 25 1(C) of the Native Courts Ordinance, I, Alban Thomas Edenson Marsh, Divisional Officer, Owerri, hereby order that the causes described in the Schedule hereto be transferred to the High Court, Onitsha Judicial Division to be heard and determined :-

Reason: The parties are natives of two villages which are subject to the jurisdiction of two Native Courts, and consequently an unbiased decision is unlikely to be obtained.

10

SCHEDULE

Civil Suit No. 53/44. Ikeduru Native Court.

Anoje and on behalf of Vincent, Anosike & Mbara of Uratta.

Versus

1. Opara Ukwuje, 2. Obiakomba, 3. Ucheriodo, 4. Ihen-
acho, 5. Chimeziri, 6. Opara Iheoma, 7. Ibekwaba, 8.
Ahuta, 9. Ibeanana, 10. Madugubue, 11. Chukwu Nwosu,
12. Ohuawunwa, 13. Njoku, 14. Mbalu, 15. Osuji Mbeka,
16. Diala, 17. Madubata, 18. Anuruodo, 19. Iheonwunekwe,
20. Ihenacho, 21. Amadi Ekeocha, 22. Umunakwa, 23. Ug-
ochukwu all of Umualumaku Uzoaba.

20

Claim: The Plaintiffs claim is for declaration of title to all that parcel of land known as Egbelu Ube Agba situated on both sides of Uzolibe (path) bounded on the East side by the Okitankwo stream, on the North by the lands of Ihitte Ana Emekuku villages, on the West by the lands of Uzoaba village and on the South by lands of Uzoaba.

2. Sole rights over fishing in the Okitankwo stream within the limits of the river frontage forming the Eastern boundary of the land. Sole rights in all the tombo trees growing and along the Okitankwo stream.

30

3. Definition and demarcation of a boundary between the lands of Libie Umunahu Uratta and the lands of Uzoaba.

4. Twenty-five pounds damages for trespass on the said land by Defendants during the months of January and February 1944 by clearing the bush growing thereon.

40

Civil Suit No. 96/44. Ikeduru Native Court.

In the Ikeduru
Native Court.

Mbamara Okpara, Mark Iheoma, Wilfred Okpara and
Okpara Ugo for themselves and as representing the
people of Umuofa Uzoaba.

No. 1.

Vs.

Order of
Transfer
Suits 53/44
(A/83/53) and
96/44 (A/84/53)

1. Oke Adakonye, 2. Orji, 3. Okwu, 4. Ahurunwa,
5. Obioma and 6. Azuike for themselves and as
representing the people of Umunahu Uratta.

10th March 1944
- continued.

10 Claim: The Plaintiffs claim is for declaration
of title to all that piece and parcel of land
known as Egbelu Umuofa land and bounded on the
east by the thalweg of the Okitankwo stream, on
the north by the lands of Ihitte and Emekuku vil-
lages. On the west and south by the lands of Umu-
ahihie and Umueziogwu Uzoaba delineated on a plan
to be made and produced at the hearing of this
suit.

20 2. Rights over the fishing in the Okitankwo river
within the limits of the boundary formed by the
thalweg.

3. Rights over tombo trees growing on the left bank
of the river and within the limits of the boundary
formed by the thalweg.

4. Definition and/or demarcation of boundary be-
tween the lands of Uzoaba and lands of Libia Umun-
ahu Uratta.

30 5. An injunction to restrain the Defendants their
servants or agents from in any way interfering
with the said land Egbelu belonging to the Umuofa
people.

6. £25 damages for the use of the Plaintiffs' land
by Defendants people cutting tombo trees, trees
and farming thereon and fishing on the Okitankwo
river during the year 1943 and 1944. Value of the
said land is over £400.

Made at Owerri this 10th day of March, 1944.

(Sgd.) A.T.E. Marsh,
DIVISIONAL OFFICER.

In the Ikeduru
Native Court.

No. 2.

ORDER OF TRANSFER SUIT 100/44 (A/85/53)

No. 2.

Order of
Transfer
Suit 100/44
(A/85/53).

Protectorate of Nigeria

In the Native Court of Ikeduru, Owerri Division

Transfer Order

23rd March 1944.

In exercise of the powers conferred upon District Officers by Section 25(1)(c) of the Native Courts Ordinance No.44 of 1933, I, Alban Thomas Edenson Marsh, Divisional Officer Owerri, HEREBY ORDER that the cause described in the Schedule hereto be transferred to the High Court, Onitsha Judicial Division to be heard and determined.

10

Reasons: The parties are native of two villages which are subject to the jurisdiction of two Native Courts, and consequently an unbiassed decision is unlikely to be obtained.

SCHEDULE

Civil Suit No. 100/44.

Iheuko, Ndulu and Olugazie for and as representing the people of Umundula Uratta.

20

Versus.

1. Mbara Enwere, 2. Onyekuru Nkwoada, 3. Ukonu Ikpe, 4. Ugwuegbu Ibokwe, 5. Ugorji, 6. Uche, 7. Oparaukwuoma, 8. Ibekweba, 9. Oparaocha, 10. Manunacho, 11. Amadi Mba, 12. Manuihe, 13. Oparaiheoma Abia, 14. Joseph Nwosu, 15. Oparaiheoma Anosike, 16. Ibenana, 17. Eneremadu, 18. Michael Akalonu, 19. Wilfred Oparaokpo, 20. Asonyanze Nnodi and 21 Akuta all of Umualumaku - Uzoaba.

30

Claim: 1. Declaration of title to the land known as Egbelu-Umundula situating over the Okitankwo Stream, on the side of Umualumaku and bounded on the East by the Okitankwo Stream, on the North by farm land of Nduhu Umundula, on the West and South by the lands of Umualumaku Uzoaba.

- 2. Twenty-five pounds damages for trespass by Defendants on the said land during the months of January and February, 1944 by clearing the bush grown on it.
- 3. Definition and demarcation of boundary between the lands of Plaintiffs and the lands of Defendants.
- 4. Exclusive fishing rights in the Okitankwo stream and in the tomo trees growing in the said stream and along both banks of it within the limits of the frontage of the said land or the stream.

In the Ikeduru Native Court.

No. 2.

Order of Transfer Suit 100/44 (A/85/53).

23rd March 1944 - continued.

10

Made at Owerri this 23rd day of March, 1944.

(Sgd.) A.T.E. Marsh,
Divisional Officer,
Owerri Division.

No. 3.

NOTICE OF APPLICATION FOR LEAVE TO AMEND PARTICULARS OF CLAIM SUIT O/4/44 (A/84/53)

In the High Court of the Enugu-Onitsha Judicial Division

20

Protectorate of Nigeria

In the High Court of the Enugu-Onitsha Judicial Division

Suit No. O/4/44

1. Bkara Okpara, 2. Mark Theomu,
3. Wilfred Okpara, 4. Okpara Ugo,
for themselves and as representing the people of Umuofa.

}
} Plaintiffs

Versus

1. Oke Adakonye, 2. Orji, 3. Okwu
4. Ahurunwa, 5. Obioma, 6. Azuike
for themselves and as representing the people of Umunahu-Uratta

}
} Defendants

No. 3.

Notice of Application for Leave to Amend Particulars of Claim Suit O/4/44 (A/84/53)

12th June 1944.

30

NOTICE OF AMENDMENT

TAKE NOTICE that the Plaintiffs will ask leave of the Court to amend the particulars of Claim in the above-named suit to read as follows :-

In the High Court of the Enugu-Onitsha Judicial Division.

1. Mbara Okpara, 2. Mark Iheomu, 3. Wilfred Okpara, 4. Okpara Ugo for themselves and as representing the Umualumaku and Nduku Obokwe villages of Uzoaba. } Plaintiffs

No. 3.

Versus

Notice of Application for Leave to Amend Particulars of Claim
Suit O/4/44
(A/84/53)

1. Oke Adakonye, 2. Orji, 3. Okwu, 4. Ahurunwa, 5. Azuike, for themselves and as representing the people of Umunahu Uratta } Defendants 10

Particulars of Claim

12th June 1944
- continued.

1. Declaration of Title to all that piece or parcel of land known as UMUOFA land, the boundaries whereof are shown delineated and edged brown on the plan filed in Court herein.
2. Fishing rights in and over the Akitankwo stream which forms the western boundary of the said UMUOFA land.
3. £150 damages for trespass committed on the said UMUOFA land by the Defendants by entering thereon and cutting yam sticks, and for preventing the Plaintiffs from exercising their fishing rights over the said Akitankwo stream for two years. 20
4. Injunction to restrain the Defendants their servants and/or Agents from further trespassing on the said land and also from further interfering with the Plaintiffs in the exercise of their rights to fish in the said Akitankwo stream. 30

The value of the land is over £500.

Dated at Onitsha this 12th day of June, 1944.

(Sgd.) L.N. Mbanefo,

Plaintiffs' Solicitor.

No. 4.

STATEMENT OF CLAIM SUIT O/4/1944 (A/84/53)(Title as in No. 3)STATEMENT OF CLAIMIn the High
Court of the
Enugu-Onitsha
Judicial
Division

No. 4.

Statement of
Claim.
SUIT O/4/1944
(A/84/53).

12th June 1944.

1. The Plaintiffs are the elders and natives of Umualumaku and Nduhu-Obo'kwe villages of Uzoaba and bring this action on behalf of themselves and as representing the said villages.
- 10 2. The Defendants are natives of Umunahu-Aratta, and are sued in their personal capacities and in their capacity as representing the said Umunahu-Uratta.
3. The land and stream in dispute herein are situate in the Owerri Division, and are shown, delineated and edged brown on the plan filed herein by the Plaintiffs, the land being bounded as follows :-

On the West by the Akitankwo stream; on the North west by a road forming the boundary between it and the land of Umueziogwu Uzoaba; on the North by a track forming the boundary between it and Umunkpa Uzoaba; on the East by the Iheduru-Emekuku Road, and on the South by the land of Emeke.
- 20 4. The said land in dispute is part of a larger portion known as Umuofa land which said land is and has been the property of the Plaintiffs from time immemorial.
- 30 5. The land derives its name from OFA - a grand ancestor of the Plaintiffs, who was the first to settle thereon at a time beyond human memory; UMU-OFA meaning children of OFA.
6. As owners thereof the Plaintiffs and before them their predecessors-in-title have used the land in dispute in diverse ways, e.g. building and living thereon, tapping the tombo trees and cutting the branches thereof, farming thereon, and letting portions of it to others to farm on for a rent.
- 40 7. The Akitankwo stream forms the boundary between the Plaintiffs and the Defendants - the Plaintiffs

In the High
Court of the
Enugu-Onitsha
Judicial
Division.

No. 4.

Statement of
Claim.
Suit O/4/1944
(A/84/53).

12th June 1944
- continued.

living on the Eastern side and the Defendants on the western side of it.

8. From time immemorial the Plaintiffs have drawn water from the said Akitankwo stream for drinking and other domestic purposes, and fished therefrom without let or hindrance from the Defendants or anybody else.
9. The said Akitankwo stream being the boundary between the Plaintiffs and the Defendants both parties fished therein in common each party respecting the others rights thereto until two years ago when the Defendants started, for the first time, to assert the claim that the stream was their exclusive property and that they were entitled to the land in dispute on the Eastern side of the stream. 10
10. As a consequence of the said claim the Defendants for the past two years have crossed the said Akitankwo stream and without the consent of the Plaintiffs cut sticks in large quantities from the said Umuofa land of the Plaintiffs and also disturbed the Plaintiffs in the exercise of their fishing rights in the said Akitankwo stream. 20
11. As a prelude to this claim one Francis Enwere of Umuunahu-Uratta in 1942, prosecuted Onugha Mba and 11 others of Umuanumaku in the Native Court of Uratta on charges of "stealing tombo tree leaves", assault and wounding. The Native Court convicted three of them but on review by the District Officer, the decision of the Native Court was set aside. 30
12. The Plaintiffs therefore claim as per the amended writ of summons.

Dated at Onitsha this 12th day of June, 1944.

(Sgd.) L.N. Mbanefo.

Plaintiffs' Solicitor.

No. 5.

STATEMENT OF DEFENCE SUIT 0/4/1944 (A/84/53)(Title as in No.3)STATEMENT OF DEFENCEIn the High
Court of the
Enugu-Onitsha
Judicial
Division.No. 5.

- 1 sic. The Plaintiffs do not admit or deny paragraph 1 of the Statement of Claim and put Plaintiffs to the strict proof thereof.
2. The Defendants admit paragraph 2 of the Statement of Claim.
- 10 3. The Defendants deny paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Statement of Claim and puts Plaintiffs to the strictest proof of the allegations therein contained.
4. In further answer to paragraphs 4, 5 and 6 of the Statement of Claim the Defendants say that the land is and has been known as Egbelu land or farm land of the Defendants' people and was never known to them or at all by the name of Umu-ofa. They say that their ancestors first settled on the land and farmed it tapped the tombo trees, lopped their branches for their use and exercised the fullest rights of ownership thereon.
- 20 5. The Plaintiffs were given permission by the Defendants people to occupy certain portions of Egbelu land erect buildings thereon when they sought shelter from the unfriendly forays of their neighbours.
- 30 6. The Plaintiffs made the annual and seasonal presents and payments in accordance with Native Customary Law for the privilege of cutting tombo branches and taking the wine as also for occupation of the land and fishing in the said stream. These payments were made to the Defendants people in recognition of their ownership of the land.
- 40 7. In further answer to paragraphs 7, 8 and 9 of the Statement of Claim the Defendants say that the Akitankwo stream was never the boundary between themselves and the Plaintiffs. The

Statement of
Defence.
SUIT 0/4/1944
(A/84/53).10th February,
1945.

In the High Court of the Enugu-Onitsha Judicial Division.

No. 5.

Statement of Defence. Suit 0/4/1944 (A/84/53).

10th February, 1945 - continued.

said stream has been exclusively owned by the Defendants' people the Umunahu. The Defendants say that the Plaintiffs people have never drawn water from the stream to their knowledge nor fished there without permission first obtained from the Defendants. Some 2 years ago the Plaintiffs began to assert a claim to exclusive fishing rights in the said stream. This claim was made after Defendants objected to Plaintiff cutting tombo branches and tapping wine from tombo trees around the stream without permission and payment as hitherto.

10

8. In further answer to paragraph 10 of the Statement of Claim the Defendants say that from time immemorial they and their predecessors in title as owners in possession of the said Egbelu land have always crossed the Okitankwo stream in order to farm the land and exercise maximum rights without let or hindrance by anyone until recently when the Plaintiffs allege a claim to the ownership thereof and disturb our rights over the same.

20

9. The Defendants will plead ownership, Long Possession, Res Judicata Estoppel, Acquiescence.

Dated at Warri this 10th day of February, 1945.

(Sgd.) T.E. Nelson Williams, Solicitor.

No. 6.

Statement of Claim. Suit 0/3/1944 (A/83/53)

10th February, 1945.

No. 6.

STATEMENT OF CLAIM SUIT 0/3/1944 (A/83/53)

Protectorate of Nigeria.

30

In the High Court of the Enugu-Onitsha Judicial Division

Suit No. 0/3/1944

Anoje on behalf of Vincent,)
Anosike and Mbara of Uratta } Plaintiffs

Versus

Opara Ukweje and 22 Others Defendants

STATEMENT OF CLAIM

The Plaintiffs are elders and natives of Umunahu-

Uratta and sue on behalf of themselves and the people of Umunahu-Uratta.

2. The Defendants are natives and chiefs of Umualumaku Uzoagba and are sued in their personal capacities and as representing the people of Umualumaku Uzoaba.

10 3. The land and stream, the subject matter of this dispute is situate in the Owerri Province and are delineated in the plan filed and served herein edged green.

4. The said land has been and is still the property of the Plaintiff's people from time immemorial and as owners in possession have farmed thereon without first hindrance and have exercised maximum rights of ownership by letting, mortgaging and the like of portions thereof and fully cultivating and farming the entire limits of the said Egbelu land and fishing in the Okitankwo stream therein.

20 sic 5. Before the advent of British Rule in the Owerri Province the Defendants' people known as the Uzoabas dwelt on land reputed to be Uhu Ama few miles from the Okitankwo stream and good neighbourly relations existed between the Plaintiffs and Defendants people resulting in intermarriages between them with popular consent and general approbation.

30 6. In process of time the Defendants people fell victims to violent raids of Umuagurus, Abos and Anambas and the Umualumaku Uzoaba were dispossessed and driven from their homes. These fugitives sought shelter in the comparative safety of their friends and relations homes in Umunahu-Uratta land. They were received and afforded protection accordingly.

40 7. Many years elapsed and having won the affection of their protectors and they besought the elders of the Plaintiffs to give them permission to occupy portions of Plaintiffs land for purposes of residence and farming.

8. Land was eventually given by the Elders of the Plaintiffs to the Defendants people for use and occupation by them with all the incidents of Native Law and Custom.

In the High Court of the Enugu-Onitsha Judicial Division.

No. 6.

Statement of Claim
Suit 0/3/1944
(A/83/53)

10th February,
1945
- continued.

In the High
Court of the
Enugu-Onitsha
Judicial
Division.

No. 6.

Statement of
Claim.
Suit O/3/1944
(A/83/53)

10th February,
1945

-- continued.

9. The Defendants were put and entered into possession of portions of Plaintiffs' land known as Egbelu land. They occupied the area North of the area edged pink within the entire Egbelu land edged green and made the customary annual and Seasonal presents or payments to Plaintiffs' people.
10. By efflux of time and their own industry the Defendants people waxed strong economically and financially and were enabled thereby to render financial and other aid to their erst-while benefactors the Plaintiffs' people. Portions of Egbelu land were pledged to the Defendants' people by some of the Plaintiffs' people without prejudice to the ownership of the said lands. 10
11. This relation of owners and tenant-occupiers continued for time out of memory and permission was usually sought and obtained from the Plaintiffs' people by the Defendants' people before tapping the palm trees, cutting tombo leaves and bamboo in the vicinity of the Okitankwo stream in Egbelu land. 20
12. In and around the year 1942 the Defendants' people tapped and cut the said tombo leaves and trees without permission first obtained and on being challenged by the Plaintiffs and told to desist, the Defendants refused so to do and claimed ownership of the said land.
13. In order to further assert their claim to title the Defendants people in 1942 violated the law relating to keeping of goats in ground which they had had scrupulously observed in the past and let out their herd into the farms of the Defendants people thereby causing destruction of the said farms and consequent loss to the Defendants. 30
sic
sic
14. Several summonses in the Native Court were tried and judgments entered for the Plaintiffs people in support of their ownership of the said Egbelu land. These judgments will be founded upon. 40
15. Furthermore the Defendants in large numbers entered the said land in the year 1944 cleared

the said Egbelu land inside the area edged pink in the plan filed, and planted yams cassavas and other crops in assertion of their claim to ownership of the entire Egbelu land down to the Okitanlwo stream and fished in the said stream without permission. The Defendants therefore claim as per amended writ of summons.

In the High Court of the Enugu-Onitsha Judicial Division.

No. 6.

Dated at Warri this 10th day of February 1945.

(Sgd.) T.E. Nelson Williams,

Plaintiffs' Solicitor.

Statement of Claim.
Suit 0/3/1944 (A/83/53)

10th February, 1945

- continued.

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No. 7.

ORDER FOR CONSOLIDATION SUITS 0/3/1944 (A/83/53),
0/4/1944 (A/84/53) AND 0/5/1944 (A/85/53)

No. 7.

Order for Consolidation Suits 0/3/1944 (A/83/53), 0/4/1944 (A/84/53) and 0/5/1944 (A/85/53).

16th March 1945.

Protectorate of Nigeria

In the High Court of the Enugu-Onitsha Judicial Division

Holden at Onitsha

Before HIS HONOUR HARRY WADDINGTON, JUDGE,
The 16th day of March, 1945.

20 1. Suit 0/3/1944 - Anoje on behalf of Vincent Anosike and Mbara of Uratta Plaintiffs

Versus

Opara Ukweje and 22 others, all of Umualumaku Uzoaba Defendants

2. Suit No.0/4/1944 - Mbamara Okpara and 3 Others for themselves and as representing the people of Umuoba Uzoaba Plaintiffs

Versus

30 Oke Adakonye and 5 others for themselves and as representing the people of Umunaku Uratta Defendants

3. Suit 0/5/1944 - Iheuko and 2 others for and as representing the people

In the High Court of the Enugu-Onitsha Judicial Division.

of Umundula Uratta

Plaintiffs

Versus

Mbara Emuere and 21 others of Uzoaba Defendants

No. 7.

Order for Consolidation Suits 0/3/1944 (A/83/53), 0/4/1944 (A/84/53) and 0/5/1944 (A/85/53)

16th March 1945 - continued.

(L.S.) } UPON Motion on Notice this day made unto this Court by (Sgd.) H.Waddington } T.E.Nelson Williams, Counsel Judge } for the Plaintiffs in Suits 0/3/44 and 0/5/44 and for Defendants in 0/4/44 for an order for extension of time to file plan and pleadings, and upon reading the Affidavit and hearing the said Counsel in support - L.N. Mbanefo, Counsel for the Defendants in 0/3/44 and 0/5/44 and for Plaintiffs in 0/4/44 not opposing :

10

IT IS HEREBY ORDERED by consent of both parties that extension of time be granted and extended to today's date, to wit, the 16th day of March, 1944:

AND IT IS FURTHER ORDERED upon the oral application of Counsel on both sides, that the above-mentioned three suits be consolidated for the purpose of hearing and determination.

20

GIVEN at Onitsha under the seal of the Court and the hand of the Presiding Judge this 16th day of March, 1945.

(Sgd.) P.E.G. Achikeh, Registrar.

In the Supreme Court of Nigeria

No. 8.

No. 8.

Statement of Defence Suit 0/3/1944 (A/83/53)

25th September, 1945.

STATEMENT OF DEFENCE SUIT 0/3/1944 (A/83/53)

(Title as in No. 6)

STATEMENT OF DEFENCE

30

- 1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.
- 2. The land in dispute is part of a larger portion of land known as Umuofa land which said land is and has been the property of the Defendants from time immemorial.

3. The land derives its name from OFA a grand ancestor of the Defendants who was the first to settle thereon at a time beyond human memory, UMU-OFA meaning the children of OFA.
4. As owners thereof the Defendants and before them their predecessors-in-title have used the land in dispute in diverse ways, e.g. building and living thereon, farming thereon, and letting portions thereof to others to farm on for a rent and/or tribute.
5. The Akitankwo stream forms the boundary between the Plaintiffs and the Defendants - the Plaintiffs living on the Western side, and the Defendants on the Eastern side of it.
6. From time immemorial the Defendants and their people have drawn water from the said Akitankwo stream for drinking and other domestic purposes, and fished therein without let or hindrance from the Plaintiffs or anybody else.
7. The said Akitankwo stream being the boundary between the Plaintiffs and the Defendants both parties fished therein in common, each party respecting the others rights thereto until three years ago when the Plaintiffs started, for the first time, to assert the claim that the stream belonged to them and that they were entitled to the land in dispute on the Eastern side of the stream.
8. Save as herein expressly stated the Defendants deny seriatim paragraphs, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Statement of Claim, as if each paragraph has been separately taken up and traversed and will put the Plaintiffs to the strictest proof of each and every allegation of fact contained in each of the said paragraphs.
9. The Defendants will plead ownership, long possession, laches and Acquiescence.

In the
Supreme Court
of Nigeria.

No. 8.

Statement of
Defence
Suit O/3/1944
(A/83/53)

25th September
1945

- continued.

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20

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Dated at Onitsha this 25th day of September,
1945.

(Sgd.) L.N. Mbanefo,
Defendants' Solicitor.

In the
Supreme Court
of Nigeria.

No.9.

STATEMENT OF CLAIM SUIT 0/5/1944 (A/85/53)

In the Supreme Court of Nigeria

Holden at Owerri

Suit No. 0/5/1944

No. 9.
Statement of
Claim
Suit 0/5/1944
(A/85/53)
22nd October,
1945.

1. Iheuko, 2. Nduku, 3. Olugazie,)
for and as representing the people)
of Umundala-Uratta) Plaintiffs

Versus

1. Mbara Enwere, 2. Onyekuru) 10
Nkwoada, 3. Ukonu Ikpe, 4. Ugwuegba)
Ibokwe, 5. Ugorji, 6. Uche,)
7. Oparaukwoma, 8. Ibekweba,)
9. Oparaocha, 10. Hanunacho,)
11. Amade Mba, 12. Manuihe,)
13. Oparaiheoma Abia, 14. Joseph)
Nwosu, 15. Oparaiheoma Anosike,)
16. Ibenana, 17. Eneremadu,)
18. Michael Akalonu, 19. Wilfred) 20
Okparaokpo, 20. Asonyanze Nnodi,)
21. Akuta.) Defendants

STATEMENT OF CLAIM

The Plaintiffs are elders and natives of Umundala-Uratta and sue on behalf of themselves and the people of Umundala-Uratta.

2. The Defendants are natives and chiefs of Umualumaku Uzoagba and are sued in their personal capacities and as representing the people of Umualumaku Uzoagba.

3. The land and stream, the subject matter of this dispute is situate in the Owerri Province and are delineated in the plan filed and served herein edged green. 30

4. The said land has been and is still the property of the Plaintiffs people from time immemorial and as owners in possession have farmed thereon without let or hindrance and have exercised maximum rights of ownership by letting, mortgaging and the like of portions thereof and fully cultivating and farming the entire limits of 40

the said Egbelu land and fishing in the Okitan-
kwo stream therein.

In the
Supreme Court
of Nigeria.

No. 9.

Statement of
Claim
Suit 0/5/1944
(A/85/53)

22nd October,
1945

- continued.

- 10 5. Before the advent of British Rule in the Owerri Province the Defendants people known as the Uzoagbas dwelt on land reputed to be UHU AMA few miles from the Okitankwo stream and good neighbourly relations existed between the Plaintiffs and Defendants people resulting in inter-marriages between them with popular consent and general approbation.
- 10 sic 6. In process of time the Defendants people fell victims to violent raids of Umuagurus, Abos and Anambas and the Umualumaku Uzoagba were dispossessed and driven from their homes. These fugitives sought shelter in the comparative safety of their friends and relations homes in Umunahu-Uratta land. They were received and afforded protection accordingly.
- 20 7. Many years elapsed and having won the affection of their protectors and they besought the elders of the Plaintiffs to give them permission to occupy portions of Plaintiffs' land for purposes of residence and farming.
8. Land was eventually given by the elders of the Plaintiffs to the Defendants people for use and occupation by them with all the incidents of Native Law and Custom.
- 30 9. The Defendants were put and entered into possession of portions of Plaintiffs' land known as EGBELU land. They occupied the area North of the area edged pink within the entire EGBELU land edged green and made the customary annual and sessional presents or payments to Plaintiffs people.
- 40 10. By efflux of time and their own industry the Defendants people waxed strong economically and financially and were enabled thereby to render financial and other aid to their erstwhile benefactors the Plaintiffs' people. Portions of EGBELU land were pledged to the Defendants people by some of the Plaintiffs people without prejudice to the ownership of the said lands.
11. This relation of owners and tenant-occupiers continued for time out of memory and permission

In the
Supreme Court
of Nigeria.

No. 9.

Statement of
Claim
Suit 0/5/1944
(A/85/53)

22nd October,
1945

- continued.

was usually sought and obtained from the Plaintiffs' people by the Defendants' people before tapping the palm-trees, cutting tombo leaves and bamboo in the vicinity of the Okitankwo stream in Egbelu land.

12. In and around the year 1942 the Defendants' people tapped and cut the said tombo leaves and trees without permission first obtained and on being challenged by the Plaintiffs and told to desist, the Defendants refused so to do and claimed ownership of the said land. 10
13. In order to further assert their claim to title the Defendants people in 1942 violated the law relating to keeping of goats in ground which they had scrupulously observed in the past and let out their herd into the farms of the Plaintiffs' people thereby causing destruction of the said farms and consequent loss to the Plaintiffs.
14. Several summonses in the Native Court were tried and judgments entered for the Plaintiffs' people in support of their ownership of the said EGBELU land. These judgments will be founded upon. 20
15. Furthermore the Defendants in large numbers entered the said land in the year 1944 cleared the said EGBELU land inside the area edged pink in the plan filed, and planted yams cassavas and other crops in assertion of their claim to ownership of the entire EGBELU land down to the Okitankwo stream and fished in the said stream without permission. 30

The Plaintiffs therefore claim as per amended writ of summons.

Dated at Onitsha this 22nd day of October,
1945.

(Sgd.) M. Ogo Ibeziako,
Plaintiffs' Solicitor.

No. 10.

STATEMENT OF DEFENCE SUIT O/5/44 (A/85/53)(Title as in No.9)STATEMENT OF DEFENCEIn the
Supreme Court
of Nigeria.

No.10.

Statement of
Defence
Suit O/5/1944
(A/85/53)23rd November,
1945.

10

1. The Defendants admit paragraph 1 of the Statement of Claim.
2. Save as is herein expressly admitted, the Defendants deny scriatim paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Statement of Claim, as if each paragraph has been separately taken up and traversed and will put the Plaintiffs to the strictest proof of each and every allegation of fact contained therein.
3. The Defendant say that the land in dispute is part of a larger portion of land known as UMUOFA land, which said land has from time immemorial been the property of the Defendants and their people.
4. The land derives its name from OFA - a grand ancestor of the Defendants, who was the first to settle thereon at a time beyond human memory.
5. As owners aforesaid, the Defendants and before them, their predecessors-in-title, have built on the said land in dispute, farmed on it extensively, and tapped the tombo trees thereon, and have exercised other acts of ownership without let or hindrance from the Plaintiffs or at all.
6. The Defendants say that the Okitankwo stream is and has been from time immemorial the boundary between them and the Plaintiffs - the Plaintiffs living on the western side and they on the eastern side of the said stream.
7. From time immemorial as aforesaid, the Defendants have drawn water from the said Okitankwo stream for drinking and other domestic purposes, and have fished therein without any interference from the Plaintiffs or at all.
8. The Defendants deny paragraph 14 of the Statement of Claim, and say that the allegations

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In the
Supreme Court
of Nigeria.

therein are vague in that the Plaintiffs do not supply particulars of the cases referred to therein.

No.10.

Statement of
Defence
Suit O/5/1944
(A/85/53).

23rd November,
1945
- continued.

9. In answer to paragraph 15 of the Statement of Claim, the Defendants say that they and their people have always used the said land in dispute and have from time immemorial claimed and regarded it as their own to the knowledge of the Plaintiffs.
10. The Defendants say the Plaintiffs are not entitled as claimed, and will plead ownership, long possession, Laches and Acquiescence.

10

Dated at Onitsha this 23rd day of November, 1945.

(Sgd.) L.N. Mbanefo.

Defendants' Solicitor.

In the West
African Court
of Appeal.

No. 11.

ORDER FOR RE-TRIAL

IN THE WEST AFRICAN COURT OF APPEAL
HOLDEN AT LAGOS, NIGERIA.

20

No.11.

Order for Re-
trial.
9th November,
1950.

W.A.C.A. 3312 Suits O/3-5/1944

On Appeal from the Judgment of the Supreme Court of the Onitsha Judicial Division.

Between :-

Anoje & 3 Others for themselves and
as representing the people of
Umunahu Plaintiffs/Appellants

- and -

Opara Ukweje and 22 others of
Umualumaku Uzoaba Defendants/Respondents

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(L.S.) - and -

Mbara Okpara & 2 Others for them-
selves and as representing the
people of Umuofa Uzoaba Plaintiffs/Respondents

- and -

Oke Adakonye & 3 Others for them-
selves and as representing the
people of Umunahu Uratta Defendants/Appellants

- and -

Iheuko & 2 Others for and as
representing the people of
Umundula Plaintiffs/Appellants

- and -

Mbara Enwere & 20 others of
Umualumaku Uzoaba Defendants/Respondents

(Sgd.) H.W.B. Blackall
President.

Thursday the 9th day of November, 1950.

In the West
African Court
of Appeal.

No.11.

Order for Re-
trial.

9th November,
1950.

- continued.

10 UPON READING the record of appeal herein and
upon hearing Mr. Njoku (Sir Adeyemo Alakija, and
Mr. Ibeziako with him) of Counsel for the Appell-
ants and Mr. Mbanefo of Counsel for the Respond-
ents.

20 IT IS ORDERED the judgment obtained for the
Respondents herein in the Court below dated the
14th June, 1949 be set aside and that this action
be remitted to the Court below to be re-tried and
that the costs of this appeal assessed at £52.10.0.
be paid by the Respondents to the Appellants.

(Intld.) J.A.S.
DEPUTY REGISTRAR,
WEST AFRICAN COURT OF APPEAL.

No. 12.

MOTION AND AFFIDAVIT FOR INJUNCTION.

In the Supreme Court of Nigeria

In the Supreme Court of the Onitsha Judicial
Division, Holden at Owerri.

0/3 - 5/1944 Suit Nos.A/83-85/1953

- 30
- | | |
|---------------------------|-------------------|
| 1. Anoje and Others | <u>Plaintiffs</u> |
| Versus | |
| Opara Ukweje and Others | <u>Defendants</u> |
| 2. Mbara Opara and Others | <u>Plaintiffs</u> |
| Versus | |
| Oke Adekonye and Others | <u>Defendants</u> |
| 3. Iheuko and Others | <u>Plaintiffs</u> |
| Versus | |
| Mbara Enwere and Others | <u>Defendants</u> |

(All Consolidated)

In the Supreme
Court of Nigeria

No.12.

Motion and
Affidavit for
Injunction.

19th and 30th
March, 1951.

In the
Supreme Court
of Nigeria.

MOTION ON NOTICE

No.12.

Motion and
Affidavit for
Injunction.

19th and 30th
March, 1951

- continued.

TAKE NOTICE that this Honourable Court will be moved on th day of 1951, at the hour of nine o'clock in the forenoon or so soon thereafter as Plaintiffs or Counsel on their behalf can be heard for an order for an interim injunction restraining the Defendants and all their people of Uzoagba, their servants, workmen and agents from farming and otherwise interfering with the land in dispute pending the determination of this action and for such further and/or other order or orders as to this Honourable Court may seem just and expedient.

10

Dated this 19th day of March, 1951.

(Sgd.) R. Amanze Njoku,
Plaintiffs' Solicitor.

(Title as in Motion)

I, Olugazie Ugorji of Umundula-Uratta in the Owerri Division, Nigeria, British Protected Person make oath and say as follows :-

20

1. That I am one of the Plaintiffs in these suits which are actions for declaration of title to land, damages for trespass and perpetual injunction.
2. That these three suits were consolidated, my people of Uratta being designated Plaintiffs and the Uzoagba people Defendants.
3. That the Defendants won the case before the Supreme Court in June, 1949.
4. That the Plaintiffs appealed to the West African Court of Appeal. 30
5. That on the 7th November, 1950, the West African Court of Appeal holden at Lagos allowed the Plaintiffs' appeal with £52.10.9d. costs and ordered a re-trial.
6. That the Defendants have refused to pay these costs and have been celebrating in the local markets that they (the Defendants) also won the appeal at Lagos.

7. That the Defendants have laid waste the Plaintiffs wine palm groves situate along the banks of the Oketankwo stream bordering on the land in dispute.
8. That the Defendants have waylaid the Plaintiffs wives and daughters passing along the main road adjoining the land in dispute without just cause.
- 10 9. That the Defendants who are wild and pugnacious have also attacked and assaulted the Plaintiffs people who about January, 1951, went on their customary annual hunting expedition in the land in dispute.
10. That in 1943 an affray occurred between the Plaintiffs' and the Defendants' people on the land in dispute for which the Magistrate fined the Plaintiffs people £27 and the Defendants people £30 and warned both parties to cause no more trouble on that land.
- 20 11. That every farming season feelings on both sides run very high and consequently the District Officer, Owerri, warned both sides that in the interest of peace and order they should not farm on the land in dispute until the case was determined by the Supreme Court, both sides agreeing to this advice.
12. That the Plaintiffs being peaceful and law-abiding citizens kept this gentlemen's agreement and desisted from farming on the said land.
- 30 13. That in May, 1944 nineteen of the Defendants people went on the land again and unlawfully assembled and went about armed to cause terror on the Uratta (Plaintiffs) bridge and were prosecuted before the Magistrate, Owerri, who found eighteen of them guilty on three counts and sentenced each to a fine of £5 or 3 months I.H.L. on each count.
- 40 14. That in spite of the decision of the West African Court of Appeal in November, 1950, and the District Officer's warning, the Defendants in February, 1951 have broken into the land again, cleared the same for farming and are provoking the Plaintiffs to enter into a communal fight with them.

In the
Supreme Court
of Nigeria.

No.12.

Motion and
Affidavit for
Injunction.

19th and 30th
March, 1951
- continued.

In the
Supreme Court
of Nigeria.

No.12.

Motion and
Affidavit for
Injunction.

19th and 30th
March, 1951
- continued.

15. That if the Plaintiffs enter the land in dispute to farm there is surely going to be another affray.

16. That the Defendants have been acting in defiance of the law and should not be allowed to profit by their misconduct.

17. That the Defendants have left their farmlands extending over many miles towards the Mba a stream and have persisted in squatting on the Plaintiffs land so as to lend colour to their false claim.

10

18. That it is only fair to both parties that an interim injunction restraining both parties from entering and farming on the land until the determination of the case be imposed by this Honourable Court.

Olugazie Ugorj-i his R.T.I.

Deponent.

Sworn at the Supreme Court Registry, Onitsha this 30th day of March, 1951, the foregoing having been first read over and interpreted to the Deponent from English to Ibo by (Sgd.) G.U. Okwechime and he seemed perfectly to understand the same before affixing his mark thereto.

20

Before me (Sgd.) E. Ade. Bamgboye,
Commissioner for Oaths.

No.13.

Motion and
Affidavit for
Injunction.

2nd and 3rd
January 1953.

No. 13.

MOTION AND AFFIDAVIT FOR INJUNCTION

(Title as in No.12)

MOTION ON NOTICE

30

TAKE NOTICE that this Honourable Court will be moved on the 14th day of January, 1953, at the hour of 9 o'clock in the forenoon or so soon thereafter as Plaintiffs or Counsel on their behalf can be heard for an order for interim injunction restraining the Defendants and all their people of Uzoagba, their servants, workmen and agents from

farming and otherwise interfering with the land in dispute in this case and with the Okitankwo stream with the raffia and wine palm trees along its banks pending the determination of this case on the grounds set out in the accompanying affidavit and for such further order or orders as may be just and expedient.

Dated at Owerri this 2nd day of January, 1953.

(Sgd.) R. Amanze Njoku,

Plaintiffs' Solicitor.

Names and Address for Service on Defendants -

1. Opara Ukweje - of Umualumaku Uzoagba,
Owerri Division
2. Mbara Okpara - of Umuofo Uzoagba " "
3. Mbara Enwere - of Umualumalu
Uzoagba " "
4. Mark Iheoma - of Umuofo Uzoagba " "
5. Wilfred Opara - of Umofa Uzuoagba " "

0/3 - 5/1944 Suits Nos. A/83-85/1953

(Title as in No. 12)

AFFIDAVIT OF ANOJE IGWE

I, ANOJE IGWE, of Uratta, farmer, British protected person, make oath and say as follows :-

1. That I am the first Plaintiff in this case.
2. That I am authorised by the other Plaintiffs of Uratta to swear this Affidavit on my and their behalf.
3. That I swear this Affidavit to supplement that of Olugazie sworn in March, 1951.
4. That every farming season an affray or free fight occurs between my people of Uratta and the Defendants of Uzoagba.
5. That the Defendants of Uzoagba being more numerous than my people of Uratta are always the aggressors.
6. That on the 27th day of October, 1952, the Defendants armed for fighting came with their women, children and servants in large numbers

In the
Supreme Court
of Nigeria.

No.13.

Motion and
Affidavit for
Injunction.

2nd and 3rd
January 1953
- continued.

In the
Supreme Court
of Nigeria.

No.13.

Motion and
Affidavit for
Injunction.

2nd and 3rd
January 1953
- continued.

to the Plaintiffs' stream known as Okitankwo to dig and remove sand without the consent, leave or licence of the Plaintiffs.

7. That the Plaintiffs requested them to desist from this action, but they refused and a quarrel and fight ensued, during which sticks and stones were thrown and bows and arrows used.
8. That as a result of this encounter 46 of the Defendants people and 18 of the Plaintiffs people were arrested by the Police, Owerri. 10
9. That I and other Plaintiffs have been reliably informed and verily believe that the Defendants who outnumber the Plaintiffs have met with other villages of the Ikeduru clan who have agreed to help them to do the following things :-
 - (a) To drive away the Plaintiffs from the stream by force of arms and number and to dig and carry away sand from the Plaintiffs stream, Okitankwo. 20
 - (b) To clear the entire farmland in dispute in spite of any opposition down to the Okitankwo stream and to farm thereon exclusively.
 - (c) To lay waste and desolate the Plaintiffs raffia and wine trees along the Okitankwo stream.
 - (d) To prevent the Plaintiffs from carrying out their traditional annual hunting ceremony known as "ICHU-NTA" in the Plaintiffs said land, Egbelu, in January, 1953. 30
10. That the Defendants, by so doing, want to give the impression that the Appeal Court in Lagos also found in their favour.
11. That if this Order for an interim injunction is not made there is likely going to break out early in the New Year between the parties a grave communal disorder.

Anoje Igwe his R.T.I.

Deponent.

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Sworn at the Magistrate's Court Registry, Owerri this 3rd day of January, 1953, the foregoing having been first read over and interpreted to the deponent from English to Ibo by (Sgd.) ? ? and he seemed perfectly to understand the same before affixing his mark thereto.

Before me,
 (Sgd.) B.O. Ekanem,
 Commissioner for Oaths.

In the
 Supreme Court
 of Nigeria.

No.13.

Motion and
 Affidavit for
 Injunction.

2nd and 3rd
 January 1953
 - continued.

10

No. 14.

COURT NOTES ON HEARING OF MOTION

In the Supreme Court of Nigeria

In the Supreme Court of the Onitsha
 Judicial Division, Holden at Owerri

Wednesday the 14th day of January, 1953.

Before His Lordship,

The Honourable, Mr. Justice Frederick William
 Johnston, P.J.

0/3 - 5/1944.

20 NJOKU- for Plaintiffs (Ibeziako with him - absent)
IHENACHO and OSUAGWU for Defendants. (Mbanefo
 leading - absent).

IHENACHO - This is 3 cases consolidated by consent.
 Many of the parties are now dead - on both sides.
 Suit 0/3/44: There are 4 Plaintiffs and 23 Defendants. (p. record). The 4 Plaintiffs are alive: This suit enlarged later to include all Uratta.
 Suit 0/4/44: The Defendants in 0/3/44 are here the Plaintiffs in 0/4/44. The Defendants number 6.
 30 Three of them are dead. Nos. 3, 5 & 6 (p. record). That leaves Nos. 1, 2 and 6 plus all the people of Uratta. Suit 0/5/44. (at p.). The first Plaintiff is dead. The 2nd and 3rd are alive and represent the people of Uratta. Those 21 Defendants named.

Turn to p. of record: The three suits were

No.14.

Court Notes on
 Hearing of
 Motion.

14th, 15th and
 16th January,
 1953.

In the Supreme Court of Nigeria.

No.14.

Court Notes on Hearing of Motion.

14th, 15th and 16th January, 1953

- continued.

consolidated on 16/7/45. The note of 0/3/44 does not show the enlargement of Plaintiffs to include all - Uratta people: 0/4/1944 is shown correctly as a suit between the people of Uzoagba and the people of Umunaha Uratta and 0/5/44 as between the people of Uratta and 22 of the people of Uzoaba as Defendants.

Note: It would appear at this stage that the main suit is between the people of Uzoaba and people of Uratta.

Continued - Refer p. On 31/5/49 a single issue was accepted as agreed between parties viz:- People of Uratta and people of Uzoaba concerning title to land shown on plan No. H 14/44 filed by Plaintiffs (Uratta). Two plans were filed one marked "A" and the other marked "B": Exhibit "A" is plan No. H 14/44. What we of Uratta claim is ownership of the area green which includes the area pink. As to area marked pink we claim exclusive possession. At present we possess, or hold, some of the pink area while the Defendants (Uzoaba) hold some of it as trespassers. In regard to pink area we seek declaration of title, possession and damages for trespass :-

As to the portion marked green other than area - pink we seek claim of title to the whole and declaration of our right to receive rent from any person who farms any portion of the area. There are Uzoaba people living in the area (green) by our permission. We don't seek to dispossess them. We do not claim any rent for mere occupation but we do claim to obtain rent for farming. We also claim the right to give permission to Uzoaba people to occupy portion of the green area, outside the pink area: - We claim injunction restraining Defendants from occupying the area green outside pink area, without our permission, as to any unoccupied land in this portion. In regard to the pink area we seek injunction to restrain Uzoaba people from trespass throughout that area. "As to the river we seek declaration of sole fishing rights, and sole rights to the wine palm trees on both banks. Also to the sand and stone in the river.

To sum up: we claim as follows :-

1. Declaration of title to ownership of entire area outlined green.

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2. As to area pink (a) exclusive possession and dispossession in (and eviction) of Uzoaba people now on portions of that area. Also (b) injunction against Uzoaba people against further trespass in that area.

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3. As to the rest of area green (outside pink area) we claim (a) Declaration of right to receive rent from any person living in the area who also farms in the area. Or from any person who farms in the area, in respect of the farm. (b) Injunction against Uzoaba people from occupying any unoccupied portion of this area without our permission. (c) Declaration of right to grant permission to occupy land in this area, to Uzoaba people.

Court Notes on Hearing of Motion.

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- continued.

4. As to river Okitankwo - we seek declaration of (a) Sole fishing rights. (b) Sole right to wine palms on both banks. (c) Sole right to sand and stone in the river.

5. General damages for trespass.

Note: The above sums up the Uratta peoples' claims.

(Sgd.) F.W. Johnston,
J.

MBANEFU: As to claims above: Plaintiffs (Uratta) claims: To No.1 no objection. As to No.2: "Exclusive possession". We (Uzoaba) people are in exclusive possession of area pink: There are no Uratta people in area (pink) as Plaintiffs suggest. As to No.3 the claim to receive rent from Uzoaba people is in conflict with original summons. We do not object to the inclusion of the matters in No.3. No.4 we dispute Plaintiffs claims to "sole" rights but no objection to the inclusion of such claims for retrial. No objection to No.5.

As to (Uzoaba) Defendants claims :-

Note:- It is agreed that the area outlined brown in Exhibit "B", and the whole area marked green in Exhibit "A" are identical. -

(Intld.) F.W.J.
J.

Defendants claims :- (p. record).

(1) Declaration of title to the entire area marked green in Exhibit "A".

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- continued.

- (2) Sole fishing rights on left bank of river Okitankwo.
- (3) Damages for trespass by Uratta people on Umofa land (shown on Exhibit "B" and is the entire area green in Exhibit "A" and for prevention of Uzoaba people exercising their rights to fishing in the river.
- (4) Injunction to restrain Uratta and their agents for trespass on land and from interfering with fishing rights.

10

NJOKU: Both sides claim definition and demarcation of boundaries of their respective interests: Our claim is included at p. line - (0/3/44). Also in suit 0/5/44 at p. and raised by Uzoaba people at p. in 0/4/44. These claims have never been withdrawn.

MBANEFO: Refers p. - We abandoned claim to definition and demarcation - our final particulars of claim are p.

NJOKU: Uratta Plaintiffs - will restrain claim for definition and demarcation of boundaries. No observation as to Defendants' claims. Plaintiffs claims combine those in suit Nos. 3 & 5. BOTH COUNSEL agreed that the suits remain consolidated. Note suit No.4 is a suit by all the Uzoaba against all the Uratta. Defendants representatives still living are (1) Mark Theoma (2) Wilfred Okpara. Plaintiffs representatives still living are (1) Vincent Chikoha (2) Oke (3) Amoja Igwe (4) Olugazie Ugorji - Both Counsel say no wish to change representatives of parties as they survive today.

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NJOKU: We seek approval of our representatives to represent us in all - three suits for Uratta people. We wish suit No.3 to be amended as a suit between URATTA people and UZOABA people and likewise suit No.5 to be amended as a suit between URATTA people and UZOABA people.

(Intld.) F.W.J.
J.

MBANEFO: It is open to question whether the Defendants in 0/3 can be said to represent Uzoaba people. Likewise in 0/5. But since the application to the record in No.3. I consent but not as to No.5.

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RULING:- Plaintiffs may apply formally, if thought necessary at any stage, for amendment of writ of summons and particulars of claim to enlarge the Defendants, named in suit No.3 and in Suit No.5, so as to make them representative of all the Uzoaba people. I wont make an order now on the long default notice at p. of record. The parties' claims are now set out above in relation to their respective suits. The pleadings are available and now the retrial ought to proceed subject to the hearing of the motion set down by the Plaintiffs.

10

14/1/53. Adjourned to 9.30 a.m. tomorrow.

(Sgd.) F.W. Johnston,
J.

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Court Notes on
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14th, 15th and
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1953

- continued.

15th January, Suits O/3-5/44: continued Court and Bar as before.

NJOKU moving -

MBANEFO opposing - (No counter Affidavit).

20

NJOKU: There was a motion for a similar injunction filed on 30th March 1951. It was never heard. Judgment of Supreme Court was in June '49 (14th). W.A.C.A. judgment was in 7th November 1950. So earlier motion was filed after order for retrial but not proceeded with ("not set down"). There were 2 motions for injunctions one by each party. The Plaintiffs' lapsed. The Defendants' was dismissed and there have never been injunction, to either party granted by this Court since these suits commenced. The farming season for planting in February to April. Reads both Affidavits (March 51 and present Affidavits of January 53). We ask for the injunction in respect only of the area pink and in respect of the stream Okitankwo. As to the area pink the bush is ripe for cultivation after 4-5 years. We have no one living in the area edged pink but we claim an exclusive right to farm there. There are some few Defendants people living in the area. At present there is no farming going on. Next month both parties will enter and farm and meet and clash. The Defendants enter across the intersecting road and from the N.E. and we enter from this South and West. The entered area is light bush in fallow: Refers to plan.

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(Note - note footpaths from centre juju point to N.E. and N.W.) - I ask this Court that no

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farming shall take place by either party until the final determination of this action. It is in the interest of peace. (Query. Food production). The river Okitankwo - We ask for injunction to prevent Defendants digging and removing sand and interfering with our raffia and wine palm trees in either bank. (Note the Defendants admit ownership of the right bank is Plaintiffs). We have been able to keep the Defendants away from both banks of this river. We ask for injunction to relate to both banks. Alternatively - If cultivation is to both places we should be the people to do it.

10

MBANEFO: This pink land as the only portion we have for farming. Affidavit p. para. - A "defence" Affidavit: (In O/4/44). Defendants and their father, live in this area. We have over 100 houses in the pink area. Refers Exhibit "B" (noted). According to our plan we do farm right down at this bottom of the plan: We have houses in the land: The present Defendants are part of Ozoaba people but they are of a clan apart. We are the Umualumaka - Umuofa Uzoaba - We live in this area edged green. The entire area - They do not live anywhere else. On the boundaries there are other branches of the Uzoaba. We depend on the cultivation of our food. That has all along been our evidence. The Plaintiffs live and farm over the Okitankwo on the right bank of the river: Our houses have been up for a long time over 20 years: It is false to say that Plaintiffs and Defendants will enter the land to farm. Plaintiffs evidence was that no farming of theirs took place. Not in occupation of any part of the land edged pink. Plaintiffs admit this. No reason to stop Defendants from farming. As to river we both drew water. We own sand and stone from our own side (left bank). We use only the wine and raffia palms on the left bank: Each side can watch its own bank.

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Refer suit O/3/44 para. 15 Statement of Claim at p. Also para.15 of Statement of Claim in O/5/44 at page These support view of Defendants living on and using the land since 1944: Refer Statement of Claim in O/4/44 at p. The Plaintiffs do not claim ownership of both banks of the river. They did not claim ownership of the left bank.

40

No.1: Injunction will disturb existing position: It is Defendants only who would suffer hardship. Nowhere else to farm. Injunction not instrument to prevent crime. This case and status of parties is enlarged since 1944. Injunction refused to Plaintiffs in 1949. We have no other place in which to farm. The Plaintiffs do not need relieving by injunction now after 9 years.

(Sgd.) F.W. Johnston,
J.

10

15/1/53. Adjourned to 9 a.m. tomorrow.

At Owerri, Friday the 16th day of January, 1953.

Suits Nos. 0/3 - 5/1944 (continued)

Counsel and Bar as before.

NJOKU - reply:- The description of Defendants is on p. of record: Umuofa is a composite name for the 3 names. (1) Umualumaka (2) Nduhuobokwe and (3) Umaeziogwu. They have land to cultivate to S.E. land of Nduhuobokwe Uzoaba. Note their juju is extreme N.E., and outside the area - Also Umuofo juju - the chief juju. Also their market is these. Their lands extensive: Include villages of Umualumeku and Nduhuobokwe. Can see - para. 4 of the Statement of Claim. p. land is "part of larger portion - Umuofa land".

20

We have won title to portions in former cases. Defendants are on our land as trespassers. Being in possession does not give Defendants the right to remain on the land and waste it. Court cases are referred to on plan Exhibit "A". Note I withdrew this part of motion relating to the Okitankwo streams. Application relates to area (pink) only.

30

(Intld.) F.W.J.
J.

Application shall be granted to preserve the land. The fact of building in the land is immaterial. They have other farming land: Shall be restrained from farming on area (pink). This land is ours. It should not be impoverished. It is to material advantage to rest the land to avoid waste. Is basis of motion. It is farmed in parts each year.

40

O R D E R :

That part of this motion which relates to the

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- continued.

Okitankwo stream and the wine and raffia palm on its bank has been abandoned by the Plaintiffs-applicants. The motion for decision is that seeking an interim injunction against the Defendants to restrain them and all their people from farming in and otherwise interfering with the land confused sic in the area edged pink in the Plaintiffs plan, Exhibit "A". Some facts have emerged in the hearing. There has never been an injunction against either party in these consolidated suits since that consolidation in March 1945. None of the Plaintiffs who claim ownership of the land resides on the land. Defendants to a number, which is neither a small nor a very considerable number, do reside on the land and rightly, or it may be as trespassers, some, or possibly all these Defendants, who probably farmed on portions of the area before these actions commenced have begun to reside on portions of the land since the commencement of the actions. Such are my impressions. 10

While the Plaintiffs do not, any of them, live on the land they claim an exclusive right to use it themselves. It is impossible at this stage to form an opinion as to whether the Plaintiffs have carried out seasonal farming on portions of the land during the past nine years. The most that can be said is that they may, some of them, have done so from time to time and in portions here and there just as the Defendants have done but in this Defendants case in much larger numbers. The fact that Anaje Igwe has deposed to affrays between the parties each farming season lands some support, sic but not much support to the possibility of Plaintiffs using portions of the land seasonally for farming although none of them resides on it. 30

It would appear to be a fact that this area of land is never wholly under cultivation. The cultivation shifts as it becomes necessary to rest the land so that, in my opinion, neither the Defendants nor the Plaintiffs being all of them farmers, can be said to "waste" the land or be regarded as likely to waste the land now or at any future times. The land is too precious an asset in a highly populated part of this country. It yields food. Upon this aspect of the present application I am satisfied that while the Defendants may farm the land, which they regard as theirs, they will not do anything likely to diminish the 40

value of the land which any precedent farmer hereabouts would refrain from doing. It must be remembered that the Defendants either possess, or hope to possess, a good holding title to the land in this area and that they can be expected up to the final determination of this suit at any rate to exercise care towards the land.

10 In my opinion the award of an injunction against the Defendants, upon the facts as I see them, would result in a degree of hardship to the Defendants far beyond anything that the Plaintiffs are likely to experience by refusal to grant an injunction. The planting season is about to start. The Defendants who, right or wrong, farm portions of this land each year must reckon upon producing so much food there this year as they have done for some nine years past. It would be wrong to stop them upon the meagre grounds at present known to me.

20 The land is not going to be wasted. It will go on producing food which is as much needed by the Defendants who are numerous as by the rest of the community. It may be true to say that the Defendants farm in places outside the area in dispute but that alone is insufficient to stop them from farming within the area edged pink where, it would seem, there is room for both parties to farm until this suit is determined finally.

30 I refuse the injunction prayed and I award six (6) guineas costs to the Defendants in any event.
16/1/53.

(Sgd.) F.W. Johnston,
J.

In the
Supreme Court
of Nigeria.

No.14.

Court Notes on
Hearing of
Motion.

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16th January,
1953

- continued.

No. 15.

ORDER REFUSING INJUNCTION

(Title as in No.12)

UPON READING the Affidavit of Anoje Igwe of Uratta, sworn to and filed at Onitsha on the 10th day of January, 1953, and after hearing Raymond Amanze Njoku Esq., (Mr. Ibeziako with him) of Counsel for the Plaintiffs in support of the motion,

No.15.

Order refusing
Injunction.

16th January,
1953.

In the
Supreme Court
of Nigeria.

No.15.
Order refusing
Injunction.
16th January,
1953
- continued.

and after hearing Alexander Okwudi Mbanefo Esq.,
(Messrs. Ihenacho and Osuagwu with him) of Counsel
for the Defendants opposing the motion:

IT IS ORDERED that the interim injunction
prayed for be and is hereby refused with £6.6/-
(six guineas) costs to the Defendants in any event.

Dated at Owerri this 16th day of January, 1953.
(Sgd.) F.W. Johnston,
Puisne Judge.

No.16.
Court Notes.
16th January,
1953.

No. 16.

10

COURT NOTES

Proceedings continued: Checking Defendants alive
today :-

MBANEFO: The number of Defendants alive in 0/3/44
is as follows :-

No. 7. Ibekwaba.	No. 17. Madubata.
12. Ohuawunwa	18. Anwruodo.
13. Njoku	21. Amadi Ekeocha
16. Osuji Mbeke	23. Ogochukwa.

The number of Plaintiffs alive in 0/4/44 is as 20
follows :-

No. 2. Mark Iheoma and No. 3. Wilfred Okpara.

The number of Defendants alive in 0/5/44 is as
follows :-

No. 1. Mbara Enwere	No.12. Manuihe
2. Onyekwuru Nkwoda	13. Oparacheoma Abia
3. Okpomu Ikpe.	14. Joseph Nwosu
4. Ugwuegbu Ilohu	17. Eneramadu
5. Ugorji	18. Michael Akalone
8. Ibekweba	19. Wilfred Okparaokpo 30
9. Oparaocha	20. Asonyanze Nwodu.
10. Manuaoho	

Pleadings: NJOKU: In suit 0/3/44. See at p.
in final form: (now 8 Defendants) In suit 0/5/44.
See at p. in final form (now 15 Defendants).

CONTENTION

Para.1. Two branches of family Umunchu Uratta and Umuadala Uratta.

2. Same in each case.

3. " "

4. " "

5. " etc. In those two suits the statement of claim are identical.

In the
Supreme Court
of Nigeria.

No.16.

Court Notes.

16th January,
1953

- continued.

10 MBANEFO: In suits 0/3 and 0/5. The Statement of defence on pages and to final in form, for suits Nos.3 and 5 except in regard to para.1 and 2 where para.1 of Statement of Claim in 0/5 is admitted and para.2 is denied while at page in Statement of defence to suit 0/3 we admitted para. 1 and 2 of the Statement of Claim in No.0/3.

(Sgd.) F.W. Johnston,
J.

Suit No.4/44: The Statement of Claim in its final form is at p. record.

20 NJOKU: The Statement of Claim in its final form is at p. record.

Issues settlement of : Tentatively.

1. Which of the parties is entitled to a declaration of title to entire area (green).
2. All the Defendants entitled to damages and injunction against Plaintiffs throughout the entire area.
- 30 3. All the Plaintiffs entitled as against the Defendants to order for possession, injunction against trespass, and damages in respect of that portion of the whole area which is edged pink.
4. All the Plaintiffs entitled to declaration of right to resume farming rents in that portion of the area which is edged green only (outside pink area).
- 40 5. River issue (1) What are the respective right of both parties to the Okitankwo stream as to (a) the banks (b) the fishing (c) sand and stone (d) palms?

(2) What trespass if any has occurred?

6. Who is entitled to damages.

(Sgd.) F.W. Johnston,
J.

Suit adjourned to next session.

16/1/53.

In the
Supreme Court
of Nigeria.

No. 17.

MOTION AND AFFIDAVIT FOR INJUNCTION.

No.17.

(Title as in No.12)

Motion and
Affidavit for
Injunction.

MOTION ON NOTICE

9th and 7th
March, 1953.

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 17th day of March 1953, at the hour of 9 o'clock in the forenoon or so soon thereafter as the Counsel for the Defendants can be heard for an order refraining the Plaintiffs in suits Nos. 0/3/1944 and 0/5/1944 and their agents from entering the land in dispute until the determination of the above-mentioned suits which are before the Supreme Court, Onitsha Judicial Division and for such further order or orders as this Court may deem fit.

10

Dated at Onitsha this 9th day of March, 1953.

(Sgd.) A.O. Mbanefo,

Defendants' Solicitor.

AFFIDAVIT IN SUPPORT OF MOTION

I, Mark Iheonu of Uzoagba Owerri District, farmer and a British protected person make oath and say as follows :-

20

1. That I am one of the Defendants in two of the above three consolidated cases - suits Nos. 0/3/1944 and 0/5/1944.
2. That I am one of the Plaintiffs in one of the above three consolidated cases - suit No. 0/4/1944.
3. That the motion filed by Umunahu Uratta, Plaintiffs in suits Nos. 0/3/1944 and 0/5/1944, asking for an injunction refraining us Umualumaku Uzoagba, (Defendants) from entering the land in dispute was dismissed in our favour.
4. That from time immemorial, the Plaintiffs have never farmed on the said land in dispute. We are the people that are residing there and we have so many buildings there today.

30

- 5. That to the best of my knowledge, this land in dispute belongs to us from time immemorial.
- 6. That the said Plaintiffs have now started farming on the land in dispute while their motion was struck out with costs before the Supreme Court.
- 7. That to avoid the breach of the peace, I therefore pray this Honourable Court to refrain the Plaintiffs or their agents from farming on the said land in dispute until the determination of the above-mentioned suits before the Supreme Court, Onitsha.
- 8. That I swear to this Affidavit in support of my motion.

In the Supreme Court of Nigeria.

No.17.

Motion and Affidavit for Injunction.

9th and 7th March, 1953.

10

Mark Iheonu his R.T.I.

Deponent.

Sworn to at the Magistrate's Court Registry, Owerri this 7th day of March, 1953, Before me,

(Sgd.) B.O. Ekanem,

20

Commissioner for Oaths.

The above has been read over and explained to the deponent in Ibo language and he appears to have understood same perfectly before his mark hereon.

(Sgd.) ? ? Sworn Interpreter.

No. 18.

COURT NOTES ON HEARING OF MOTION

At Owerri, Friday the 20th day of March, 1953.

0/3-5/44:

Motion:

IHENACHO moving for Defendants' applicants.

30

NJOKU opposes for Plaintiffs. Respondents.

On 15/1/53 - Plaintiffs were refused injunction against Defendants. They then went on to the land. Defendants now seek injunction to keep the Plaintiffs off the land. Plaintiffs said in first trial

No.18.

Court Notes on Hearing of Motion.

20th March, 1953.

In the
Supreme Court
of Nigeria.

No.18.

Court Notes on
Hearing of
Motion.

20th March,
1953

- continued.

that they have not farmed on the land for past 9 years. They do not live on the land while Defendants do live on it. P. record. P. 1.7 P.W.4 admitted that Defendants have built over 100 houses on the land. P. - two members for 30 years. P. 1. - P. Farm belonging to the Defendants. This shows matters in status quo. Plaintiffs were not farming and Defendants have no houses on the land. Now they have started farming since 16th January. We seek to stop them. They have not farmed for 9 years. 10

NJOKU: I have just been served. Asks for adjournment - Order: The motion is set down before the time allowed to the Respondent has expired. But it is Mr. Njoku's fault that this motion has been permitted to go on. I grant the adjournment asked for. Motion is adjourned to 1st May. This will enable Respondent to file counter affidavit.

(Sgd.) F.W. Johnston.

No.19.

Counter
Affidavit
Opposing
Motion.

24th April,
1953.

No. 19.

COUNTER AFFIDAVIT OPPOSING MOTION

(Title as in No.12)

Counter-Affidavit of Olugazie Ugorji.

I, Olugazie Ugorji farmer of Uratta, Owerri Division British protected person, make oath and say as follows :-

1. That I am one of the Plaintiffs in one of these consolidated suits.
2. That when these three suits were consolidated my people of Uratta were designated Plaintiffs while the people of Uzoagba were designated Defendants. 30
3. That why my people of Uratta are the Plaintiffs in suits Nos. 1 and 3 of 1944 above. sic
4. That the land in dispute has been in the ownership and possession of my people of Uratta from time immemorial.

5. That after these three actions were taken out the District Officer, Owerri, warned both sides to keep out of the land in dispute and to keep the peace until the determination of the case because every farming season feelings run high on both sides and breaches of the peace either actually occur or loom largely in the air.
6. That the Plaintiffs being peaceful and law abiding citizens kept this "gentleman's agreement" and desisted from farming on the said land.
7. That the Defendants being wild and pugnacious have defied the instruction of the District Officer and have broken the gentleman's agreement several times.
8. That in May, 1944, nineteen of the Defendants' people unlawfully assembled on the land in dispute and went about armed to cause terror on the Uratta (Plaintiffs) bridge. They were prosecuted before the Magistrate, Owerri, who found eighteen of them guilty on three counts and sentenced each to a fine of £5 or 3 months I.H.L. on each count.
9. That in March, 1949, the Defendants of Uzoagba filed a motion for an interim injunction to restrain the Uratta (Plaintiffs) people for farming on the land in dispute.
10. That on the 25th April, 1949, the Defendants motion was dismissed with the following comment by H.M.S. Brown, J. "Order. Considered not in the interests of either party that an injunction upon either should be issued".
11. That the Plaintiffs' motion for an interim injunction to restrain the Defendants from farming on the land in dispute was in January, 1953, dismissed by this Honourable Court with six guineas costs to the Defendants.
12. That this year the Defendants of Uzoagba have farmed on part of the land in dispute.
13. That this year the Plaintiffs of Uratta have farmed on part of the land in dispute, planting yams, maize, and other crops therein.
14. That on Monday 20th April, 1953, seven of the

In the
Supreme Court
of Nigeria.

No.19.

Counter
Affidavit
Opposing
Motion.

24th April,
1953.

- continued.

In the
Supreme Court
of Nigeria.

Plaintiffs and seven of the Defendants people
were bound over before the Magistrate, Owerri,
on account of this land in dispute to keep the
peace for one year.

No.19.
Counter
Affidavit
Opposing
Motion.

15. That I swear this Affidavit in opposition to
the Defendants application which is most un-
reasonable.

Olugazie Ugorji his R.T.I.
Deponent.

24th April,
1953
- continued.

Sworn at the Supreme Court Registry, Aba this 24th 10
day of April, 1953, the foregoing having been first
read over and interpreted to the Deponent from En-
glish to Ibo by (Sgd.) ? ? sworn interpreter
and he seemed perfectly to understand the same be-
fore affixing his R.T.I. thereto. Before me,

(Sgd.) C. Obiesie Oduah,
Commissioner for Oaths.

No.20.

Court Notes
on Hearing
of Motion.
15th May, 1953.

No. 20.

COURT NOTES ON HEARING OF MOTION

Suits 0/3-5/1944

20

IHENACHO - Moving for Defendants

NJOKU and EJIMOFOR with him opposing with
counter affidavit in reply :-

15th May at Onitsha.

(Sgd.) F.W. Johnston,
J.

In the Supreme Court of Nigeria

In the Supreme Court of the Onitsha Judicial Div-
ision Holden at Onitsha, Friday the 15th day of
May, 1953,

30

Before His Lordship,

The Honourable, Mr. Justice Frederick William John-
ston, P.J., 0/3-5/1944:

IHENACHO moving for Defendants. Uzoagba people.

NJOKU and EJIMOFOR - opposing for Plaintiffs.

Uratta people.

IHENACHO: Defendants live on the land. None of

10 Plaintiffs live on it. We farm and there is no farm of Plaintiffs there. We complain of Plaintiffs farming. They started on 16th January. (not deposed to). They lost motion for injunction against Defendants in January and after that they started farming. The Plaintiffs admit that they had "desisted". Paragraph 12 of Counterclaim is correct: Paragraph 13: Plaintiffs entered the land to provoke breach of the peace: Plaintiffs' Counsel - note: The present position is that both parties representatives have been bound to the peace last month in Owerri. The Plaintiffs ought not to be permitted to farm now because they have not done so previously.

(Intld.) F.W.J.
J.

20 ORDER: There is no need to call on the Respondents. The sole ground upon which the applicants seek remedy by way of interim injunction is an apprehended breach of the peace. This by itself, is insufficient ground for putting a stop to essential food production for a larger body of people. But there is another matter to be considered. It is deposed, and uncontradicted, that both parties, representative persons I take it to mean, have solemnly bound themselves to maintain the peace for a year as from last month. This fact should have led to the consequential withdrawal of the present motion upon its present grounds. I refuse
30 the motion with costs which I assess at six (6) guineas to be awarded to the Respondent-Defendants in any event.

15/5/53.

(Sgd.) F.W. Johnston
J.

In the
Supreme Court
of Nigeria.

No.20.

Court Notes.
on Hearing
of Motion.

15th May, 1953
- continued.

(sic)

In the
Supreme Court
of Nigeria.

No. 21.

ORDER OF TRANSFER TO SUPREME COURT, ABA.

In the Supreme Court of Nigeria

Onitsha Division

Order of
Transfer to
Supreme Court,
Aba.

Anoje on behalf of
Vincent & Others etc.)

Plaintiffs

Versus

14th September,
1953.

Opara Ukweje & 22
Others etc.)

Defendants

(L.S.)

10

(Sgd.) W.H. Hurley,
Judge.

The Supreme Court Ordinance, Cap.211, Section
39.

Monday the 14th day of September, 1953.

IT IS ORDERED that this cause be transferred
to the Honourable the Judge of the Aba Judicial
Division:

AND that proceedings in the Onitsha Judicial
Division in this cause be stayed.

20

(Sgd.) S.A. Macaulay,
Registrar.

No.22.

No. 22.

Court Notes.

COURT NOTES

5th and 26th
October, 1953.

In the Supreme Court of Nigeria

the Aba Judicial Division

Holden at Owerri

Before His Lordship George Frederick Dove Edwin,
P.J.

Monday the 5th day of October, 1953

30

Suit Nos. A/83/53 to A/85/53

Anoje and 3 Others Vs. Opara Ukweje & 22 Others
(resumed)

MR. NJOKU for Plaintiffs.

MR. A. O. MBANEFO - Mr. Ihenacho with him for Defendants.

MR. NJOKU - Mr. Ejimofor is with me.

MR. MBANEFO - I ask for the 26/10/53 at Aba.

MR. NJOKU - I agree.

Adjourned to Aba specially for 26/10/53.

(Sgd.) G.F. Dove Edwin.

In the
Supreme Court
of Nigeria.

No. 22.

Court Notes.

5th and 26th
October, 1953
- continued.

Resumed at Aba, Monday the 26th October, 1953.

10 MR. NJOKU, MR. EJIMOFOR with him for Plaintiffs Uratta. That is suits A/83/53 and A/85/53 and

MR. MBANEFO, MR. IHENACHO with him for Defendants that is A/84/53 and A/83 and 85/53.

20 MR. NJOKU - O/3/44 now A/83/53 was not amended although my learned friend Mr. F. E. Nelson Williams actually filed an amended claim but there was no order of Court and the title remained Anoje and on behalf of Vincent etc. On the claim itself there was no distinction between the whole land edged green on our plan and the pink border within it. We claim Declaration of title to the whole area edged green and say we gave a portion of it to Defendants but not the area edged pink. The trespass and Injunction is confined within the area edged pink. I have here the amended claim.

No objection. Amendment allowed.

30 Also I ask leave to amend O/5/44 now A/85/53. The Defendants are shown as sued in their personal capacity. The amendment shows that they are sued for themselves and as representing their people of Umuofa Uzoagba. As to the claim the two areas that edged green and that edged pink are shown. In this case as in the other O/3/44 now A/83/53 we claim damages within the area edged pink and an Injunction.

No objection. Amendment allowed.

40 Note in A/85/53 the first Plaintiff Iheuko is dead. The 2nd, 6th, 7th, 8th, 9th, 11th, 15th, 16th and 21st are all dead. In A/83/53 the 8th, 9th, 10th, 11th, 14th, 16th, 19th, 20th and 22nd are all dead

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and their names will be struck out from the suits. In A/84/53, Nos. 1 Mbamara Okpara and No. 4 Okpara Ugo are dead. The 3rd Defendant Okwu, 5th Defendant Obioma and the 6th Defendant Aruke are dead and their names struck out of the claims. It is agreed that there is no necessity for substitution.

Plaintiffs'
Evidence.

No.23.

Anoje Igwe.

26th and 27th
October, 1953.

Examination.

PLAINTIFFS' EVIDENCE

No. 23.

EVIDENCE OF ANOJE IGWE

10

PLAINTIFF ABOUT 65 YEARS. 1ST PLAINTIFF IN A/83/53

ANOJE IGWE (m) A native of Umunahu Uratta sworn states :-

I am a farmer and live at Umunahu Uratta. I belong to the LIBIE family of Umunahu Uratta. The other three Plaintiffs belong to the other three families in Umunahu Uratta. There are four families in Umunahu Uratta and they are Ndokwu, Nduhu, Umundula and Libie. We were authorised by our people to bring this action. I know the Defendants they are two families in Umuofa Uzoagba. They are Umualumaku and Nduhu Obokwe. I know the land known as Egbelu or Egbelu Uche Agba the land is in Umunahu Uratta and it belongs to us. The land has been ours from time immemorial our forefathers lived on it. It has been ours before my own grandfather was born. I had the land surveyed and filed a copy of it in Court. This is the plan I filed in Court tendered and admitted and marked Exhibit "A". Note - At this stage Defendants plan is submitted and admitted by consent of Counsel and marked Exhibit "B". The land is bounded on one side by the land of the Ihites (south) and land of Okwu Emeke, then land of Ubo Emekuku then land of Defendants Uzoagba (east) the Defendants own all the land East and North but on the west we the Umundula Umunahu have boundary with them. The boundary between where we live and the land now in dispute is the Okitankwo stream. We own the land on both sides of the stream. On the western side

20

30

40

by the old Native or N.A. road the Okitankwo stream divides our village Umunahu from the Ohu Aboshi place of sacrifice on Umundula - Umunahu land. The boundary between us and the Defendants on the North-western side is a road, the road that runs from Emeku to Umunkpehi.

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No.23.

Anoje Igwe.
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10 The Okitankwo stream is ours. We own it, we fish in it, we plant wine palms there, we collect sand, and stones from it. We use everything from the stream and its borders. The Defendants went on Okitankwo and cut our palm wine tree branches for making mats and this is what brought the trouble. I know Francis Enwere of Umunahu he sued Onugha and others of Uzoagba for stealing tombo leaves. The action was in the Owerri Native Court in 1942 they cut the tombo leaves at Nduhu Umunahu, Nduhu Umunahu is close to Umundula the tombo trees from which the leaves were cut were in our stream Okitankwo. We plant tombo in the swamp land both sides of Okitankwo stream. This is a copy of the proceedings tendered and admitted and marked Exhibit "C". The tombo trees on both sides of Okitankwo belong to individual members of Umunahu. Before N.A. took over bridges we used to be responsible for the bridges across Okitankwo near the Ohu Aboshi juju. We made it and we maintained it. The Defendants did not take part in making that bridge we have now made it of cement. Ala Ubi is a place of sacrifice we showed it to the surveyor. 20 We have Osisi Ofo juju, also Onuagbu juju, near Okitankwo stream, we have Olumulukwa Agunda juju. All these jujus belong to us and we sacrifice to them. Before 1942 we farmed on the land edged pink. 30

40 The road from Emeku to Uzuoagba runs through our land. On the left hand side going towards Uzuoagba we farmed in and on the right hand side we used to farm on it but we gave it to the Defendants. Our forefathers gave it to Defendants and they did not give the Defendants all the land to the right of the road but only a portion of it. I myself have not farmed on the right hand side of the road. On the right hand side there are buildings belonging to Defendants in the portion we gave to them; they have now entered on the portion we did not give to them. Our forefathers gave a portion of the land on the right hand side of the road to one Alumaku of Umualumaku Uzoagba and he

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brought his people on the land as well as the Nduhu Obokwe. Alumaku was living at Uhu-ama near the Afo Uzoagba market, he was driven away from Uhu-ama when there was a war with the people of Eziana, Amamba and Umuome. We are related to the Defendants by marriage. We inter-marry. It was the Umundula family of Umunahu Uratta that gave Alumaku the land. The Defendants did not confine themselves to the portion given to them but encroached on the portion we did not give to them. 10
Up to 1942 all was peaceful between us they kept to that portion of land given to them on the right hand side of the road. The portion of land on the right hand side of the road we gave to Defendants was near Umumkpehe which is near Umu-eziogu it is the land opposite Umueziogu. The Defendants have now occupied all the land to the right of the Emekuku Uzoagba road. There is no dispute about the area as long as the Defendants acknowledge that we gave them the land. It is now 20
over twenty years that Defendants have crossed over the road into the left hand side without any permission. They started to farm on the land. We asked them who gave them permission and they said that the land belonged to them. We the Libies are the owners of the land on the left hand side of the road and it was nine years ago that Defendants started to farm on the land. We took this action when Defendants started to farm on our land. They started to farm on our land on the left hand side 30
of the road at the same time that they cut tombo leaves from the Okitankwo.

We showed surveyor where we farmed on the left hand side of the road in 1941 and where the Uzoagbas farmed in 1944. There are new buildings. In the plan we showed Libie portion of land on the left hand side of the road. We farm there and I have a farm there even now. I showed surveyor where Uzoagbas farmed as Libie land nine years ago. (1944). We claim as per writ of summons as amend- 40
ed.

BY COURT: We Libies own land at the bottom and have boundary with Ihits and Okwu Emeke on the left hand side of the Emekuku Uzoagba road. The other Umunahu family called Ndokwu have the land above us, we two have boundaries on the left hand side of the road. The Nduhu family are further up and they have boundary on the same side of the road

with Ndukwu family and the top end is owned by Umundula family and they have boundary with Nduhu.

We therefore have the road as our boundary with Defendants and the Okitankwo stream and the old N.A. road in the land now in dispute. Although we did not give Defendants all the land on the right hand side of the road yet we have no dispute about that as long as they acknowledge us as the original owners who gave it to them.

10 Cross-Examined by Mr. Mbanefo -

I knew Mbara Opara he is dead, he was not older than I am, I was older. I knew his father and I knew that he built his house on the left hand side of the Emekuku - Uzoagba road on Umundula portion of the land. I know the house I do not know whether it is still standing. I have not been there for nine years now since we took out this action. I knew he lived there and whether he died there or not I do not know. Mbara Opara was not born in his father's house. He was born at Uhuama. I have made a mistake the house was not built by Mbara's father but by Mbara Opara himself. His father's house was at Uhu-ama and there Mbara was born. The Defendants were driven away from Uhu-ama and Mbara was born during the war. There are two churches on the left hand side of the road and they were built over 40 years ago, no any case before this 1942 trespass about cutting tombo leaves. The two churches were built by Uzoagba people on the Umundula portion of the land. The churches are C.M.S. and R.C.M. The C.M.S. church is on the left hand side of the road and the R.C.M. church is on the left hand side of the old N.A. road going towards the market. There were over 100 houses belonging to Uzoagbas on the left hand side of the road on Umundula portion before the two churches were built. The Umundulas gave Defendants the right to build the houses and churches. They do not pay any rent as rents were unknown in those days. The Uzoagba people have been living a long time on the left hand side of the road before this action was brought. I was only a boy of about 3 years old when Defendants started to live on the left hand side of the road. The Defendants were farming on Uhu-ama. I say now that they were farming near Afo Uzugba which is near what has been given to R.C.M.

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No.23.

Anoje Igwe.

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- continued.

Cross-
Examination.

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No.23.

Anoje Igwe.

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October, 1953.

Cross-
Examination
- continued.

I know Egbelu land it is the land on both sides
of Okitankwo stream and it belongs to us.

Adjourned to 27/10/53.

(Sgd.) G.F. Dove Edwin.

Resumed the 27th day of October, 1953.

Counsel as before.

ANOJE IGWE still on his oath Cross-Examined by Mr. Mbanefo states:-

Mr. Osuji of the District Office Aba sworn as Interpreter in Ibo Owerri dialect. Witness continues:- I know a ditch along Okitankwo, we have ditches. Where Okitankwo crosses the old N.A.road we have a beach it is shallow water no canoes there but we bathe, and draw water and do washing there. I have never heard the name Onumili Nwoku, this beach is not called by that name. We have a place of sacrifice there and it is Ohu Aboshi. I have heard the name Nwoku but do not know the person. The Defendants use the beach. At that beach there is an Aboshi tree and it is to that tree we sacrifice. This beach belong to Umundula branch of Umunahu. Each of the four families have a beach. The beaches are all on the left hand side of Okitankwo facing the market, that is on the side not in dispute. I have never heard of Onumili Nedoanya. There are beaches on the right hand side of the land as well and we own them. Nwoku was an Uzoagba man. I have never heard the name Nedoanya. I have never seen a beach by that name. I have never heard of Nduhu Obokwe beach the Defendants use the beaches on the right hand side except Libie and Ndokwu beaches. The Defendants do not use Libie and Ndokwu as they live very far from it and if they attempted to use we would not allow them. The other two families allow them to use their beaches as they live nearer to them. They have no road which they would use to come to our beach.

The bridge on Ohu Aboshi has not been made with cement yet there is a timber cut for it put up by either N.A. or D.O. I am not a Councillor and so do not know. We used to help the people of Umundula Amunahu to repair the bridge as it was for our common use. The people of Umueziogu Uzoagba lived near the bridge but never helped in its repairs. The people of Umueziogu Uzoagba helped us when we first made the bridge but then we were living in harmony with them. I have

heard of the Ikoduru Treasury and Uratta Treasury. We come under Uratta Treasury and Defendants under Uzoagba Treasury. The District Officer does not use the bridge if he is coming to us from Uzoagba. I do not know whether the money for the new bridge is to come from both Treasuries. I know that there is a pit for trapping animals it is dug on Libie portion of the land (south-east corner of plan A). It was not dug by Uzoagba people but by Ubo Emekuku by permission. I was there with Surveyor when he surveyed for us. I did not actually go on the land with surveyor. The pit is not called Enihazu I do not know who Enihazu was. I do not know who gave the Surveyor this name, Enihazu. I have never heard of an Uzoagba man by name Ukalacho. I have never heard that Uzoagba had a pit on the land in dispute for trapping animals. I know Ala-ubi juju and Osisi Ofo juju they are on Libie land. The Olumulukwa Agunwa juju is ours. Onuagbu juju is also ours. All these jujus are on our land and belong to us. These are the only jujus on the land in dispute and we the four families own them in common. I am the Priest for Onuagbu juju and my son is to succeed me. One Onunaiwu is the chief Priest of Olumulukwa juju. One Onyenu is the Priest for Ala-ubi juju. I am also in charge of Osisi Ofo juju. Onyenu is from Ndokwu. One family cannot put his juju on the other family land. Ala-ubi juju is a central place and it is on common ground all the roads to the different family lands of Umunahu lead to it. We the Libies pledge some portion of our family land on the land in dispute to Uzoagba people but we had redeemed them before 1944. Ndokwus also pledged and they redeemed before 1944. We pledge our lands when we need money for some purpose. What we pledged to Defendants did not extend to the Okitankwo stream. Each individual pledged his own land it was never a family affair. I have redeemed mine. I do not know if any other Libie man that pledged his. Alumaku was the first Uzoagba man to come to us for refuge so our tradition tells us. Uhu-ama is a part of Uzoagba. He approached Umundula family of Umunahu I am not told whether Umundulas settled him on land agreed upon by all the four families or whether they were consulted, my father did not tell me this. I was told however that only Umundulas family gave land to Alumaku and our family land does not go over the Emekuku - Uzoagba road.

The whole of the land on the right hand of the

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Anoje Igwe.

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Cross-
Examination
- continued.

Emekuku - Uzoagba road belong to Umundula family. When I grew up Defendants were in occupation of the land on the right hand side of the road and they never used to deny that we the Urattas gave it to them.

I remember the action Exhibit "C". I cannot say on what side of the stream the tombo leaves were cut from. It concerns the family of Nāuhu Umunahu.

Re-Examined by Mr. Njoku -

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The land on the left hand side of Okitankwo not in dispute is ours and is called UHU land not Egbelu. Egbelu land is the one in dispute. We the Umunahus have already made the embankment of the bridge and collected sand and gravel. I do not know of the Tender. I thought we were going to build it ourselves. The work is now at a stand still. I know one Wachuku Okparaugo of Libie he was my uncle. He pledged land to Uzoagbas and that is the land I redeemed.

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No.24.

Olugazie Ugorji.

27th October,
1953.

Examination.

No. 24.

EVIDENCE OF OLUGAZIE UGORJI

THIRD PLAINTIFF IN A/85/53 AGED ABOUT 62 YEARS -
OLUGAZIE UGORJI (m)

A native of Umundula sworn states :-

I am a farmer and live in Umundula Amunahu. I know the parties both Umunahus and Uzoagbas. I know the land in dispute it is called Egbelu land and it is our property. Egbelu is owned by the four families of Umunahu each family has its own portion. We have owned this land for generations at least four generations have lived on it. The Defendants occupy the land on the right hand side of the Emekuku Uzoagba road. We were told that Uzoagbas had a dispute with their relatives and so left them and approached our ancestors for land to live on. The dispute deteriorated to a fight with matchets and guns. The relatives they fought with were Umuagu Uzoagba Abor Uzoagba, Umuene Uzoagba. Defendants were put on the right hand side of the

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road by my family the Umundulas. Before this war we had intermarried with them and that is why they came to us. I was told that it was Alumaku who approached our ancestors. We did not give them land on the left hand side of the road. Alumaku settled on the portion we gave to him with his people. Our tradition tells us that we were the only people they approached for land. Whilst the Defendants occupied the land on the right hand side of the road we were farming on the left hand side of the road. We did not live on it but used it only as farm land. We were living on the other side of the stream on the land called UHU. Now there are houses on the left hand side of the road. They belong to Uzoagba. We the Umundulas permitted three persons to build there they were (1) Mmanuihe Onyeuku, (2) Mbara Enwere, (3) Mbanu Onyeuku and Mmanuihe Onyeuke and Mbanu Onyeuku were brothers. This grant was during my life time when I was a man. The three men we permitted to build on the left hand side of the road were all our relations as their mothers were from Umundula. This was about 20 years ago. They gave us chicken, tombo wine, sheep and food and they were given to our elders. Today there are over one hundred houses there most of them built in 1944 when this case started. There were only three persons we gave this grant to and they built many houses for their wives and children.

I know the house of Chief Gabriel Okparaugo. It was built after 1944. We took action against those we did not permit, it is this action. Iheuko now dead was an Umundula man and so is Ndukwe. Anoje Igwe is Libie Umunahu Uratta, Vincent Chikeka is also Libie Umunahu, Anosike is from Ndokwu, Mbara is also from Ndokwu. The Defendants in A/84/53 are Oke Adakonye and he is from Ndokwu, Orji is from Nduhu, Okwu is also from Nduhu, Ahuranwa is also Ndokwu, Azuike is also from Ndokwu. We the four families as Egbelu farm on it, when we gave the three persons land to live on. We continued farming on the rest of the land. We did not give permission to the three men to farm on the left hand side of the road. We sacrifice to Alaubi juju. We divide the land into three portions and farm on them in rotation. The land is left fallow for five years. Okitankwo belong to the Umunahus and we own both sides of it. We fish from it, tap tombo wine from the swamp and cut the tombo branches

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No.24.

Olugazie Ugorji.

27th October,
1953.

Examination
- continued.

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Plaintiffs'
Evidence.

No.24.

Olugazie Ugorji.

27th October,
1953

Examination-
- continued.

for raffia work. The Uzoagbas could not fish from the stream or tap our tomo trees. They have never done so. I heard about the case Exhibit "C". Uzoagba people cut tomo branches from Okitankwo without permission.

The Defendants could remain on the right hand side of the road. We complain of their coming in to the left hand side of the road without permission. We do not want them to fish in Okitankwo or collect stones or do anything on the banks or in the stream without permission. We claim £25 damages for their coming into the left hand side of the road. We want the boundaries between us defined. We ask for Injunction on land edged pink that is left hand side of the road. The bridge near Onu Aboshi is near my compound we own the beach on both sides. I mean we the Umundulas. Umundulas were responsible for the maintenance of the bridge. The Nduhu used to assist us.

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Cross-Examined by Mr. Mbanefo -

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Cross-
Examination.

The Emeku Uzoagba road was made during the time of District Officer Douglas who was the first District Officer to come to Owerri. (about 50 years ago). The grant to Alumaku was years ago my grandfather does not know when the grant was made. Our fathers used to point to the spot where Defendants forefathers farmed up to. The boundary was marked by trees before the District Officer made a road. Before Alumaku came our boundary with our neighbours were Oji trees, Edo trees, Ogogo to the boundary with Emekuku. We have farm lands on the other side of the Okitankwo where my compound is. The other three families have land there as well.

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Before Alumaku came we were farming on the whole land. We divided the land as Alumaku was coming over with his people. I knew Mbara Opara and I knew his father. His father had his house on the right hand side of the road. Mbara built his house on the left hand side of the road when this case started. Mbara Opara and I would have been of the same age. I am not of the same age as his son. I do not know if he has a son. Before this case Mbara Opara lived on the right hand side of the land he only came over when this case started. He was not an OZO man. He was the eldest son of his father. When his father died he occupied his house on the right hand side of the road.

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10 There is an R.C.M. Church on the land in dispute
in this area edged pink the church was built by
Uzoagbas. It was built without our permission but
when we asked them to quit the three people we per-
mitted begged us and said our children would bene-
fit from the church. There were not many houses
around the area in which the church was built be-
fore it was built. Only the three people we per-
mitted were there with their wives and children.
20 The people who built the church were living on the
right hand side of the road. There is also an
R.C.M. Church and C.M.S. Church on the right hand
side of the road built by Ndukwu Obokwe people. It
was the Umualumaku people of Uzoagba that built
them we on the left. The three persons we permit-
ted were Umualumaku people. The tribute that was
paid was to us Umundulas. I was young then and it
was our elders who enjoyed the tribute. No one
from Defendants people ever lived on the left hand
side of the road before I was born. I do not know
if anything was paid for the R.C.M. Church on the
left hand side of the road. There are beaches on
both sides of the Okitankwo stream and they were
made by us. The Defendants only draw water from
the beaches for domestic use. They do not fish in
the stream when the water is in flood. We did not
allow them to collect gravel from the beach. They
attempted to and we did not allow them, there was
a fight and Police intervened. Defendants did not
30 assist in the original boundary of the bridge.

Adjourned to 28/10/53.

(Sgd.) G.F. Dove Edwin.

No. 25.

AMENDED PARTICULARS OF CLAIM
IN SUIT 0/3/1944 (A/83/53)

To put all issues clear before the Court, I beg to
amend the Writ in Suit No. 0/3/1944 or A/83/1953
to read as follows :-

40 1. Anoje Igwe, 2. Vincent Chikeka }
3. Anosike, 4. Mbara for them- }
selves and on behalf of their }
people of Umunahu Uratta } Plaintiffs

- and -

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Supreme Court
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Plaintiffs'
Evidence.

No.24.

Olugazie Ugorji.
27th October,
1953.

Cross-
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- continued.

No.25.

Amended
Particulars
of Claim in
Suit 0/3/1944
(A/83/53)

28th October,
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No.25.

Amended
Particulars
of Claim in
Suit O/3/1944
(A/83/53)

28th October,
1953

- continued.

- | | | |
|------------------------------------|------------------|--------------|
| 1. Opara Ukwuje, | 2. Obiakomba, |) Defendants |
| 3. Ucheriodo, | 4. Ihenacho, | |
| 5. Chimeziri, | 6. Opara Iheoma, | |
| 7. Ibekwaba, | 8. Ohuawunwa, | |
| 9. Njoku, | 10. Osuji Mbeke, | |
| 11. Madubata, | 12. Anuruodo, | |
| 13. Amadi Ekeocha, | 14. Ugochukwu | |
| for themselves and as represent- | | |
| ing their people of Umuofa Uzoagba | | |

PARTICULARS OF CLAIM

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The Plaintiffs as owners in possession claim against the Defendants as follows :-

1. Declaration of title to all that parcel of land known as "Egbelu Ube Agba" or "Egbelu" situate and being in Umunahu Uratta in the Owerri Division which parcel of land will be more particularly described and delineated in a plan to be filed by the Plaintiffs and therein edged green.
2. (a) Sole rights of fishing in the Okitankwo stream within the limits of the water frontage forming the western boundary of the land in dispute. 20
 (b) Sole rights of ownership in all the tombo trees or wine palm trees and raphia trees growing along the banks of the said Okitankwo stream which bank forms part of the land in dispute.
3. Definition and demarcation of the boundaries between the lands of Umunahu Uratta and Umuofa Uzoagba as far as the parcel of land in dispute in this case is concerned. 30
4. £25 damages for trespass on the said land by the Defendants, their workmen, agents and servants during the months of January and February 1944 by clearing the bush growing on the said land for farming without the consent, leave or licence of the Plaintiffs.
5. An injunction restraining the Defendants their servants or agents from further acts of trespass on the said land, Egbelu outside the area edged pink and from further acts of interference with the Plaintiffs sole rights of fishing and collecting sand, gravel and stones from the Okitankwo stream and using the wine palm (tombo) and raffia trees along the banks of the said stream. 40

(Sgd.) R. Amanze Njoku,
Plaintiffs' Solicitor.

No. 26.

EVIDENCE OF OLUGAZIE UGORJI (Continued)Resumed Wednesday the 28th day of October, 1953.

Counsel as before.

THIRD PLAINTIFF - OLUGAZIE UGORJI still on his
oath RE-EXAMINEDBy Mr. NJOKU:

10 I was a boy when Mr. Douglas made the Emekuku
- Uzoagba road. There was an original path and
this was what Mr. Douglas widened into a road.
The trees I named yesterday were along the old
path. I farmed on the left hand side of the road
and nine years ago Defendants came on the land.
We have more farms on the land now than Defendants.
Defendants have no farms up to the Okitankwo stream.
We have more farms on the area in dispute than in
our town on the land not in dispute. Uhu Ama is
beyond Afo Uzoagba market. From Uhu Ama Defendants
20 would have to pass Umumkpehi village. Our custom
is to put fugitives who come to us for land within
our own boundary with our neighbours and as long
as they live on our land we protect them.

No. 27.

EVIDENCE OF OKE ADAKONYE or ANORUEFIRST DEFENDANT IN A/84/53 AGED ABOUT 70 YEARS -
OKE ADAKONYE OR ANORUE (m) A native of Umunahu
sworn states :-

30 I belong to Ndokwu family in Umunahu and I am
a farmer. I live in Umunahu. I was also a Court
Member. I have been a Court member for over 13
years. I know the parties in this case. I am one
of the Defendants in the case taken against us by
the Umuofa people. I know Umuofa land it is be-
yond Afo Uzoagba market it is in Uhu Ama. I know
Egbelu land. Egbelu land is ours the Umunahu.
Umuofa land belong to Uzoagba. Egbelu belong to
our four families in common that is we four share
it and have our individual family pieces on it.

In the
Supreme Court
of Nigeria.Plaintiffs'
Evidence.

No.26.

Olugazie Ugorji
- continued.28th October,
1953.

Re-Examination.

No.27.

Oke Adakonye or
Anorue.28th October,
1953.

Examination.

In the
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Plaintiffs'
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No.27.

Oke Adakonye
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28th October,
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Examination
- continued.

Our ancestors farmed on Egbelu land until it descended to us. There is a road running through Egbelu now it is the Emekuku Uzoagba road. Our ancestors told us that they gave the land on the right of the road going towards Uzoagba to Defendants to live and farm on. We farmed on the left hand side of the road. When I was young I did not see Uzoagba people farming on the left hand side of the road. 50 years ago they had no houses on the left hand side of the road. Now they have houses on the left hand side of the road. The houses are on the Umundula family portion. We farm on our portion. There are no houses on the Ndokwu portion or Nduhu or Libie portions. We have names for our different portions. We call ours Egbelu Ndokwu. In Egbelu land we have a portion called Ekwuru, Ekwuru is a tree. Ekwuru is also a portion of Egbelu. There is a big tree called Ekwuru in that area and we call the land around it Ekwuru. I know one Mbara Enwere he is now dead. There is another Mbara Enwere he is alive I took action against him in Owerri Native Court, the old one, claiming £10 damages for trespass on Ekwuru. This is the copy of the proceedings tendered and admitted and marked Exhibit "D". As a result of Exhibit "D" I took action against one Okorochoa and four others claiming £10 for unlawfully handing over Defendants land Ekwuru in 1935. I won this case. The Native Court inspected the area, one of the Native Court Judges Okorie is still alive. The Court visited the land. This is a copy of the proceedings tendered and admitted and marked Exhibit "E". In those days the Owerri Court served Uratta and Uzoagbas. I knew one Anugwolu of Libie he was sued by Opara in 1940 in the Ikeduru Native Court. Opara won, this is the case tendered and admitted and marked Exhibit "F". Since the re-organisation of the Native Courts the Defendants have their own Native Court: and we have ours. We have ours in Uratta and they have theirs in Ikeduru. Formerly we both went to Owerri Native Court. The Defendants have reconciled with their enemies before the people that they fought with and who made them leave Uhu Ama. They were all relatives and a long time ago I cannot say when they made peace and are now working together. Defendants did not give us the left hand side of the road except with our permission. About nine years ago they came on the land and farmed without our permission. They trespassed on all the lands owned by our four

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families. They planted yams and cassava in our family land. We all have farms on our family land this year. In 1944 we farmed on certain portions and Defendants farmed on the other portions. Since 1944 we have not been at peace. I know one Michael Atulonwu I remember when he was prosecuted by Police on the complaint of Umunahu people. I know Okitankwo stream it runs alongside of Egbelu land. It belongs to Umunahu people. The tombo trees belong to us. The Defendants could not collect anything from the stream or its banks without our permission.

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The Uzoagbas have a stream it is called Mbara it is beyond Afo Uzoagba market. The Defendants are permitted to draw water from the Okitankwo stream. I know Uzoagba Central School this land on which it is situated belong to the Defendants. Egbelu was never known as Umuofa. Ofa never settled on it. Okitankwo is not the boundary, we live near to it. Egbelu means 'Family land'. Where people live is not called Egbelu it is called Uhu land. Okitankwo runs through other villages and towns. It is not regarded as a boundary between the other villages, and farms. A village could have farms on both sides of the stream. Ezedibia in Emekuku. Akalovo in Emekuku they each farm on both sides of Okitankwo which flows through their village. In Ihite the same thing applies. In Emii it is the same. Okitankwo is not a big river it is a small stream, it dries up in the dry season and it is a stream in the flood tide. People wade from one side to the other when it is in flood. Before 1944 the Defendants did not interfere with us.

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Cross-Examined by Mr. Mbanefo -

In 1949 I gave evidence in this case when it was tried by Judge Brown. I gave the name Oke. I did not say that Egbelu land lies beyond the Okitankwo stream from my towns. It extends to Emekuku road. I did not say it was on both sides of the Okitankwo stream. Ekwuru in Egbelu I got from my father it is personal. Exhibits "D", "E" and "F" are all with a man called Mbara of Uzoagba it is the one man that is concerned in all three cases. I did not know that we pledged lands to Defendants for financial assistance. I do not think we told our Lawyer that we pledged lands to Defendants

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- continued.

(denies paragraph 10 of Statement of Claim).

Defendants did not farm on the right hand side of the road we farmed there. Defendants farmed on the land. Note: Witness answer to his Counsel before Mr. Justice Brown said "they did not farm on the land but only lived there etc. (page of record). After our ancestors gave Defendants this right hand side of the road they did not farm there themselves but left Defendants to live and farm there. I have not known any of us to go and farm there. We have farm land in both sides of Okitankwo stream. Where we live we farm only behind our back yards the land is not big, across the stream we have our farms. We have Wells which we use for water when Okitankwo dries up. Ihite is not part of Uratta. We do not do things in common. The boundary between Ihite and ourselves is Odu tree near Okitankwo. Ihite live on both sides of Okitankwo (south). I went with the surveyor into the land in dispute. Ezedibia and Akalovo people live on one side and go and farm on the other side. I do not know Umuiyi Akabo. Umundula people gave portion of the land to Defendants who have gone and brought their people into the land. The number has now increased. I did not tell the Court when this case was first heard that Defendants had houses on both sides of the road. In our own side of the land in dispute and on the Libie and Nduhu sides there are no houses. Defendants farmed through Umunkpehi. I do not know whether Umunkpehi and Umuofa are related. Umu Uzoagba people are also known as Umuofa. Okitankwo is not the boundary between Uratta and Uzoagba. We use the Okitankwo, it is ours and we have every right to use it.

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No.28.

Okorie Ofoha.

28th October,
1953.

Examination.

No. 28.

EVIDENCE OF OKORIE OFOHA

FIRST WITNESS FOR PLAINTIFF AGED OVER 70 YEARS -
OKORIE OFOHA (m) A native of Avu sworn states :-

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I am a farmer and live at Avu. I am neither Uratta or Uzoagba. I was a Warrant Chief when Warranted Chiefs were in force. I was grown when District Officer Douglas came to Owerri (50 years

ago) I am older than any of the Plaintiffs. I knew Chief Ihenacho I was one of the sitting members in Owerri Court. I remember the case taken out by last witness Oke (Exhibit "E"). I was President in Exhibit "E". I also sat in the case Exhibit "D". I remember going to inspect the land in dispute. We had to cross the Okitankwo before we got to it. We cross the stream from the Uratta side.

10 I was a Court member before the first world war. I was a Warrant Chief during the Women riot (1929). After Warrants were withdrawn I was elected a Court member.

Cross-Examined by Mr. Mbanefo -

I cannot say whether any of those that sat with me in Court were from Uratta. I have forgotten.

No. 29.

EVIDENCE OF MAURICE IJIAKU

SECOND WITNESS AGED ABOUT 53 YEARS - MAURICE IJIAKU

20 (m) A native of Okwu and Emeke sworn states -

30 I am a farmer and live in Okwu. I know the parties in this case. I am 50 years old. I know Egbelu land. It belongs to the Umunaku Uratta people. I have land near it. There are other Okwu-Emeke people who have lands near there. I have boundary with Libie and Nokwu family of Umunahu. I have seen people of Ndokwu and Libie working on the land. I know Libie Umunahu village. I have boundary with Ihite people and Ulo Emekuku. I live on my land and I have farmed on it for past 43 years. My father farmed on it. The land does not belong to Uzoagba it belongs to Uratta.

Cross-Examined by Mr. Mbanefo -

I gave evidence before the Judge who first tried this case. I know Osuji he came from Okwo-Emeke as well. He gave evidence for Defendants. I know Johnson Orji he also gave evidence for Defendants. We all come from Okwo-Emeke Osuji was the oldest inhabitant of Okwo-Emeke. He is alive and

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No.28.

Okorie Ofoha.

28th October,
1953.

Examination
- continued.

Cross-
Examination.

No.29.

Maurice Ijiaku.

28th October,
1953.

Examination.

Cross-
Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.29.

Maurice Ijiaku.
28th October, 1953.

Cross-
Examination.
- continued.

Re-Examination.

a very old man now. He is old enough to be my father. Johnson Orji is older than I am but he was not a Council member. I did not tell Judge that I held no position of authority in Okwo-Emeke. I did not mention Ndokwu to the Judge that as I was not asked. I fish in the Okitankwo stream. I did not tell the Court that my land extended to Okitankwo stream. If the Judge said I said that my land extended to Okitankwo stream it is wrong. I did not say so. My land does not extend to Okitankwo stream. Iwhite land lies between us. I fish in Okitankwo as of right.

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Re-Examined by Mr. Njoku -

Johnson Orji grew up in Uzoagba in Alumaku. (Umualumaku). My village is one of the ten villages in Emekuku. The 1949 interpreter was speaking the Onitsha dialect of Ibo.

Adjourned to 29/10/53.

(Sgd.) G.F. Dove Edwin.

No.30.

Ikwebu Anosie.
29th October,
1953.

Examination.

No. 30.

EVIDENCE OF IKWEBU ANOSIE

Resumed Thursday the 29th day of October, 1953.

Counsel as before.

THIRD WITNESS FOR PLAINTIFF AGED ABOUT 75 YEARS -
IKWEBU ANOSIE (m) A native of Ubo-Emekuku sworn
states :-

I am a farmer and live in Ubo. I was a grown up man with a child when Mr. Douglas District Officer came to Owerri. I know all the parties. I know Egbelu land. It belongs to the Umunahu people we have boundaries with theirs. We also have boundary with Okwu people. We also have boundary with the Defendants. We meet with the Plaintiffs in the Nkwo Egbelu market. I know the Okitankwo stream. We live on the other side of the stream opposite Libie. (Libie) I have seen the Umunahu, Okes and Eke Oparas family working on Egbelu land. I did not see Defendants' people in Egbelu land till nine years. I know the Emeku Uzoagba road it runs through our land for a certain distance and

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this joins the Emekuku Ikeduru road. Egbelu is on the left. After the point where these two roads meet I do not know how the people living there have boundaries. The Nduhu Umunahu have land there.

Cross-Examined by Mr. Mbanefo -

10 From my village to Afo Uzoagba the road runs through Uzoagba land. I gave evidence in this case in 1949. I know Osuji Okparamiri if he was the oldest man in Emekuku at the time I do not know. He is older than I am. He comes from Okwu Emeke. He is alive but very old now. Nkwo Egbele is our market and it is on the boundary between us and Umunchu. The Ube-agba tree is in our market as well as other trees. I know Johnson Oji (Orji). I do not know whether he was a Council member in 1949. He is an Okwu Emeke man but he was brought up in Umualumaku. If he said in 1949 that the Ube-agba tree is the boundary between Okwu-Emeke and Uzoagba he was lying. We have boundary with Nduhu Obokwe we do not live behind the Nduhu Obokwes. On 20 the Emekuku Umpeziogu road the land on the left belongs to Umunahus and that on the right I do not know the owners. I know the four families of Umunahu my farm is near the Ndokwus. I never used to see Defendants farming on the right hand side of the road. I have not been there for 20 years. Nine years ago Defendants went on Egbelu land in the Ndokwu portion they started to clear it. They were clearing from our boundary with Umunahus to- 30 wards the stream.

In the Supreme Court of Nigeria.

Plaintiffs' Evidence.

No.30.

Ikwebu Anosic.

29th October, 1953.

Examination - continued.

Cross-Examination.

No. 31.

EVIDENCE OF WOGU ANYANWU

FOURTH WITNESS AGED ABOUT 50 YEARS - WOGU ANYANWU

(m) A native of Umualum sworn states :-

40 I am a farmer and live at Umualum Ihite. I am about 44 years old. I was a child when Mr. Douglas came. (this puts witness age over 50 years). I know the parties in this action. I know Okitankwo stream we have land near the Okitankwo stream and we own land on both sides of it. I know the village of Libie Umunahu. I know Egbelu land it is in dispute in this case. It is beyond the Okitankwo

No.31.

Wogu Anyanwu.

29th October, 1953.

Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.31.

Wogu Anyanwu.
29th October,
1953.

Examination
- continued.

stream and that is why it is called Egbelu land. Egbelu land belongs to Umunahu. I have land near Egbelu, we the Ihites have a common boundary with Egbelu. The portion of Egbelu land that we have boundary with is owned by Libie family of Umunahu. The Libie family work on the land. We also have boundary with Okwu Emeke. I used to see Ijiaku and Obuzuo family there. They are both dead but Morris Ijiaku and Ohiri Obuzuo now farm there. They being their sons. Morris has given evidence in this case. I never used to see Defendants farming on Mgbelu till nine years ago. I knew Mbara Opara he is now dead I have never seen him farming on Egbelu land. People pledged their lands if they want money. Our boundary with Libie is Odu tree also earth mound. I gave evidence in 1949 and as a result of the judgment the Defendants said that Okitankwo was the boundary and so the Okwu Emeke tried to push us out and say the Okitankwo is the boundary. They came on my land and I sued them in Owerri Uratta Court and won.

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Cross-Examined by Mr. Mbanefo -

Cross-
Examination.

Morris Ijiaku came from Okwu Emeke. I fish in Okitankwo the portion that runs outside the land in dispute so do the Okwo-Emeke. We who live near it used the stream without any trouble, we each use our father's portion. The Okitankwo stream also runs through a portion of Okwo-Emeke family land. I know the Odunakire tree near Okitankwo it is my boundary with Libie.

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No.32.

Orji Ibeawuchi.

29th October,
1953.

Examination.

No. 32.

EVIDENCE OF ORJI IBEAWUCHI.

SECOND DEFENDANT IN A/84/53 AGED ABOUT 62 YEARS -
ORJI IBEAWUCHI (m) A native of Umunahu sworn
states :-

I am a farmer and live in Umunahu. My family is Nduhu Umunahu. I know the parties in this case the Urattas and Uzoagbas. I was a boy when Mr. Douglas came to Owerri (50 years ago). I know Egbelu land I know the road from Emekuku to Uzoagba. I know the Emekuku to Uzoagba road it runs through Egbelu land. The Uzoagbas lived in Uhu-ama near Uzoagba market. Uhu-ama is after Uzoagba

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market. When the ancestors of Defendants left Uhu-ama they came to our ancestors who gave them land to live on. They had fought with their relatives Umueme and Abor and Umuagu. Our ancestors gave them the land on the right hand side of the road. They came to us as we were in friendly terms as we had intermarried. We lived in friendly terms and they were intermarriages. The Defendants continued to farm at Uhu-ama and farmed on the right hand side of the road we gave to them as well. We farmed on the left hand side of the road and did our hunting there. We did not live there. Egbelu means land across the stream. The Uzoagbas did not farm on the left hand side of the road except those we rented pieces of land to in the farming season. We rented at the rate of a shilling per farming plot. They only got us the land by renting pieces and by no other means. I know a woman called IRUARU she said that Osuji and Ogbonna pledged land to her and that she had sued them to come and redeem the land. The land is in Egbelu land and it is called Ekwuru. There are other lands pledged by relative pledged to one Duru.

The people of Umualumaku went to cut palms in Uhu-ama area and a fight ensued between them and the people of Umuoma and one Nwanukwe of Umuoma was killed. They were all related. The people of Umualumaku went back to Uhu-ama to cut their own palm when this fight occurred between themselves and their relatives. It is not true that the land in dispute is theirs. The Uzoagbas came in the left hand side of the road nine years ago that was when they came and started clearing the bush. The Defendants have no houses on the left hand side of the road on our own portion Nduhu Uratta. They have on the Umundula portion. We did not go on the Uzoagbas land. Egbelu land is ours.

Cross-Examined by Mr. Mbanefo:

The Defendants would call our land on the other side of the streams Egbelu since they have to cross the stream to get there but we call it Uhu. I know some of the families that make up Umuofa. Umueziogu is a branch of Umuofa. Umumkpehi I do not know about we call all of them Uzuogba. I do not know Umuogu. We call Umualumaku and Nduhu Obokwe all Uzoagbas. I was not told of the cause of the fight that led Defendants to come and seek refuge with our people. It was the Umundulas that

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Evidence.

No. 52.

Orji Ibeawuchi.

29th October,
1953.

Examination
- continued.

Cross-
Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.32.

Orji Ibeawuchi.
29th October,
1953.

Cross-
Examination
- continued.

they approached for land. There was a path and that was the boundary. We put the Uzoagbas near their own people so as not to destroy their relationship. The annual ditch was not dug by Ukalacho it was dug by one Amadi of Ubo and he had permission before he dug it. Eniahzu is a Uratta man he did not dig the pit. We did not tell Surveyor that Eniahzu dug the pit. I have leased land to Uzoagba man one Timothy is one and Asoroizeanya. They are my relatives in law.

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Case for Plaintiff

DEFENDANTS' EVIDENCE

Defendants'
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No. 33.

EVIDENCE OF MARK IHEONU

No.33.

Mark Iheonu
29th and 30th
October, 1953.
Examination.

Defence:

SECOND PLAINTIFF IN A/84/53 65 YEARS - MARK IHEONU
(m) A native of Nduhu Obokwe sworn states :-

I am a farmer and live in Nduhu Obokwe. I am about 81 years (this is nonsense witness is under 70 years) I was one of the Plaintiffs in suit O/4/44 which is being retried now (A/84/53) The case was decided and sent to West African Court of Appeal and West African Court of Appeal ruled that it be tried again. This is the record of the Proceedings in 1949 tendered and objected to by Mr. Njoku on the grounds that Counsel has not shown why he wants the whole record in. Record withdrawn. We call the land in dispute Egbelu Umuofa. In Egbelu Umuofa there are several portions with different names such as Ekwuru, Ubia, Eke Egbelu. The boundary between Plaintiffs and ourselves is the Okitankwo stream. Where the Umuofa Uratta live we call Egbelu Umuofa. We were on friendly terms before the trouble began. Ekwuru land is called by that name on account of the Ekwuru tree that grows there. Plaintiffs have an Ekwuru tree on their side. Where there is an Ekwuru tree that is big the land around it is called Ekwuru. Even in Owerri itself land is called Ekwuru for instance the land where the old Magistrate's Court and Police Barracks are is called Ekwuru from the tree standing opposite the old Magistrate's Court. The

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Ekwuru land referred to in Exhibits "D", "E" and "F" might relate to the Ekwuru on the other side of Okitankwo where the Plaintiffs live it is not in Egbelu Umuofa. The Chief who said they crossed the stream and came in to our land to inspect Ekwuru is not speaking the truth. I remember this case Exhibit "C" it concerns land in the Uzoagba side the accused were found to be not guilty by District Officer I know Uhu-ama people of Umuoma Uzuagba and Umeze Uzoagba have lands there. We were never living there. There were no such fight as Plaintiff has spoken of. We have never approached Plaintiffs for land. The Ikeduru road from Emekuku passes through Nduhu Obokwe. We live on both sides. I know the road from Umunahu Uratta to Umunkpehi we the Uzuagbas have land on both sides of that road. I know Nkwo Egbelu market on this Emekuku road we have a boundary with Okwu and Emeke. Alumaku is our relative and between the son of Ofa. Ofa had four sons and Alumaku was the youngest. Ofa lived and died in Nduhu Obokwe. I have never heard that Alumaku asked for land from Plaintiffs. We use Okitankwo stream. We fish and tap tombo palms and get sand and gravel from it. We do these things in our own right. We plant tombo trees there. We have beaches on the stream we have about five they are Nwaoka, Iedoanya, Uzo Nwarekpanndu, Okorie, Nwamba. These beaches were there before my parents were born. The Plaintiffs have never crossed the stream and used our beaches. I know the Emekuku Uzoagba road referred to as one made by District Officer Douglas. It was made to get communication with our then Warrant Chief, Chief Ndabirinze. He was living at Umueziogu.

Adjourned to 30/10/53.

(Sgd.) G.F. Dove Edwin.

Resumed the 30th day of October, 1953.

SECOND PLAINTIFF - MARK IHEONU still on his oath says in answer to Mr. Mbanefo :-

The road referred to as District Officer Douglas road was never a boundary between Plaintiffs and ourselves. We have houses on the left of the road. We are scattered all over the land on both sides of the road. We have been there before my great grandfather was born, we have ruins there. We built Churches there. These churches are not recent they are over 40 years old. They are both

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Mark Iheonu

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No.33.

Mark Theonu

29th and 30th
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Examination
- continued.

C.M.S. and R.C.M. We have jujus on the land they Amadi Ohu. We have Ala-ubi, Osisi Ofor is no juju it is a vast place it is near Chukwu Oha juju. Mbara Opara was the juju priest in charge of Chukwu Oha juju. Ala-ubi was in charge of Ihenacho who has since died, a successor has not been found yet. We the Nduhu Obokwe of Uzuagba got the land in dispute as our own share. Ofa had a large portion of land and this he shared among his four sons. We have the portion with Umualamaku. We are surrounded by our brothers. Umumkpehi and Umueziogu are the other two sons. We do not have lands elsewhere. We do not have any lands in Uhu-ama before or now. Our land extends from the Okitankwo stream across the Douglas road and over the Emekuku and Ikeduru road which actually runs through our village where we have our boundary with Umuagwu Ujoagba who is not one of Ofa sons but is of the Uzoagba clan. We took action because the Plaintiffs came on our land and cut sticks from our bush and took our sticks to their village. We fish on our side of the stream we were not disturbed over our fishing rights. Plaintiffs have no farms on the left hand side of the road. They have no farms there even now. We moved this Court three years for Interim Injunction to restrain Plaintiffs from farming on the land they did the same and both motions were dismissed. The day after the motion was dismissed Plaintiffs went and cleared the land on the left hand side of the road. We are the owners of the land and the boundary is the stream.

Cross-Examined by Mr. Njoku -

Cross-
Examination.

Our common ancestor is Ofa. According to seniority Nduhu Obokwe is the eldest then Umumkpehi, then Umueziogu and Umu Alumaku. They are not of the same mothers. We the eldest lived where our father lived. We live on both sides of the Ikeduru Emekuku road. We have ruins of ancient dwellings there. Ofa lived on the left hand side of the Emekuku and Ikeduru road going rowards Ikeduru it was his children that spread out to the right. The road was made latter and it ran through our village. It was the custom in the old days for a man's eldest son to move into his house on his death. Ala-ubi Ofa is on the land in dispute on the left of Ikeduru road looking towards Ikeduru. It is on the land in dispute. It is near Ala-ubi Ofa. It is near the road to Ikeduru where we have

an Ogogo tree. All Ofas juju are centred around that spot. Adaola was my grandmother my father was Iheonnekwu he was from Ubo-Emekuku. He died last year and when he died the Emeku people did not come to carry away his corpse. Ala juju is not the same as Ala-ubi. We have Ala juju. Ala-umuofa juju is near Amadioha and Ala-ubi juju. Ala-ubi means juju of a farm and is always by a path leading to the farm. Umuofa had a market called Eke-ala. I showed Ekeala market and Ala Umuofa juju to our surveyor (north-west) I know late Chief Datronye's compound it is on our plan. There is an Ekwuru tree near Police Barracks, Owerri. Witnesses in the Magistrate's Court used to be told to go and wait at Ekwuru. We live nine miles from Owerri. Nobody told me the land near the Ekwuru tree is Ekwuru land but we all who go there assume that it is so called. I do not know anything about Exhibits "D", "E" and "F". The Plaintiffs have Ekwuru tree on their side of Okitankwo stream.

By Court - The Urattas have pledged land to us on their side of the land not in dispute in the other side of the Okitankwo stream and they have redeemed such land afterwards.

By Mr. Njoku - Mbara Opara was Umualumaku man and his father was also of Umualumaku. I gave evidence in 1949. Ofa's land spread up to Uzoagba market it was divided into sections among his families. Uzoagba had eight children one of them was Ofa and the others were, Agwu, Eme Okoroha, Abor, Amamba, Umuomai, Umueze, Umuehihe.

I do not know whether he lived with his sons at Uhu-ama. The Umuomais and the Umueze of Uzoagba farm on Uhu-ama. Every village has a Uhu ours is in our village. I have never heard of a war between us and Umuomaii. We and the Umundulas used to intermarry we have not done so for the last nine years. We live on both sides of the Emekuku Uzoagba road. We have nine houses on the left hand side of that road then in the right hand side. Mamuihe Onyeku, Mbanu Onyeuka and Mbara Enwere are all related to Umundula Uratta family. They live on the left hand side of the road. It is not because they are related to Umundula that is why they live on the left hand side of the road. The Umu Alumaku are not related to the Umundulas by marriage more than we the Nduhu Obokwes are. We

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Cross-
Examination
- continued.

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Cross-
Examination
- continued.

Nduhu Obokwu have no house on the left hand standing they are now ruins. We have houses on the right hand side. The Umu Alumakus have more houses on the left hand side than on the right of the road but we the Nduhu Obokwes live entirely on the right hand side. The R.C.M. Church is thatched roof. It belongs to Umualumaku. It is not a very small Church. I know Obiakomba of Umualumaku the land was given by some of the Umumkpehi people and Obiakomba. How Obiakomba got it I do not know. I know the Mba stream. It is between Umuomaii and Eziamma beyond Afo Uzoagba. Eziamma is not Uzoagba. We farm indiscriminately with the Umualumakus. I farm on Ubia land. Ubia land is usual Egbelu. I did not say that we did not farm on Ubia land. One Nkwarukwe was killed over 30 years ago by Umuamii people he was an Umuofa man by adoption and not by birth. He was an Umuamii by birth. He was killed at Uhu-Umuagu where there was a dispute between Umuamii and Umuagu people. He was not killed at Uhu Ama over palm branches or fruits there are no palm trees on Uhu-ama land. I mean that there are only scattered trees there not like our area where we have palm tree groves. There are more palm trees in Uhu than in Egbelu. The beach near the bridge is called Onu Aboshi and the name was given by our people. Nwachuku Ohe is a juju. Ihenacho died last year. No one has been appointed to succeed Opara and Ihenacho. The road to Ikeduru runs through our village. There are ruins on both sides. The village is ours we do not share it with Umualumaku. Ubo Emekuku live behind us and we have a boundary with them. Plaintiffs went on the land after the motions were dismissed. They made farms there this farming season.

Re-Examined by Mr. Mbanefo -

Re-Examination.

We have boundary with Ubo Emeke.

No.34.

Wilfred Okpara.
30th October,
and
18th December,
1953.

Examination.

No. 34.

EVIDENCE OF WILFRED OKPARA

THIRD PLAINTIFF IN A/84/53 AGED ABOUT 50 YEARS -
WILFRED OKPARA (m) A native of Umualumaku sworn
states :-

I am a farmer and live in Umualumaku. I know

the land in dispute it is called Egbelu land its real name is Egbelu Umuofa. Umueziogu, Umunkpehi, Nduhu Obokse and Umualumaku make up Umuofa. I know the Defendants the Urattas. Our boundary is the Okitankwo stream and a thick bush. We use the Okitankwo stream on our side. We also tap the tombo palm trees around the stream, fish in it and dig sand and gravel from it. We had a bridge across it which we constructed with Plaintiffs but it is now spoilt. The stream is in a bush. I have heard of Uhu-ama it is another part of Uhu-ama not our own side. It was not our ancestral home. We did not have a fight with anybody. We never approached Urattas for land. Ofa had four children and Alumaku was the youngest. I was never told that Alumaku approached Umundulas for land. I heard when Mbara said he was going to Court over land he had bought from Umunahu. It is not true that they crossed Okitankwo to inspect the land involved in this Mbara case. I have heard about Exhibit "C" it was over palm leaves on our side of Okitankwo stream. I know the road from Emekuku to Uzoagba called Douglas road. When I grew up I saw the road and did not know why it was made. It has never been our boundary with the Plaintiffs. I farm on the land in dispute on the left hand side of the road going towards Uzoagba. I farm as of right I do not ask permission from anybody. I have my yams farm there now. I live on the left hand side of the road. I built my own house there. We have many houses there. Nobody gave me permission to build there. My first house was built there 28 years ago. I have three houses there now the last I built about 16 years ago. We have an R.C.M. Church there as well, it was built over 30 years ago. We did not build with Urattas permission. We have jujus on the land. We have Ala-ubi juju and Nwachuku Ohe juju the other jujus are on the right hand side. Osisi Ofo is on the left but it is not a juju. We farm on it and have economic trees on it. We have boundary with Okwu Emeke and Umueziogu. Uzoagba as also Umueziogu Umunkwo Uzoagba. On the boundary between Okwu-Emeke and ourselves are trees, Arusi, Odu, Uba Nku etc. After the case with Oke Plaintiffs came on our land and cut trees so we sued them particularly as they had sued us for cutting tombo leaves on the land. Okitankwo is our boundary.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.34.

Wilfred Okpara.

30th October,
and
18th December,
1953.

Examination
- continued.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.34.

Wilfred Okpara.

30th October
and
18th December,
1953.

Cross-
Examination.

Cross-Examined by Mr. Njoku -

I have an elder brother living, he is Chief Gabriel Oparugo. Michael Akalonu is not my brother but he is a relative. He was a Chief. Enwereji and Michael are the same age as I am. I know Nduhu Obokwe. There are many elder people in Nduhu Obokwe. They are supporting the action and financing it. Oke Anorue is Chief of Uratta village. Gabriel Okparugo is our Chief. I know the road from Emekuku to Uzoagba and from Emekuku to Ikeduru. We call the land Egbelu. I know the R.C.M. Church on the left hand side of the road. The land there is Egbelu. I heard about the cases Exhibits "D", "E" and "F". When Mbara used to talk about them. Mbara belong to another family not mine. I did not know that Mbara gave evidence for Oke in Exhibit "E". We the Umualumaku have nine houses on the left hand side of the road than the right. We have our old home near where we live on the land in dispute we have it in both sides of the road.

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Adjourned to 10/11/53.

(Sgd.) G.F. Dove Edwin.

Resumed the 18th day of December, 1953.

MR.NJOKU, MR.EJIMOFO, with him for Plaintiffs.

MR.IHENACHO for Defendants.

THIRD PLAINTIFF IN A/84/53 - WILFRED OKPARA still in his oath CROSS-EXAMINED BY MR.NJOKU states :-
(Note - witness's evidence read to him by Court before Cross-examination continues).

I know Manuihe the 12th Defendant in case A/85/53 he is much older than I am. He is still alive. I know Abara Enwere he is one of the Defendants in case A/85/53 he is slightly older than I am. Abaras mother was an Umundule woman but Manuihes mother was not Umundula but she came from Umualum Uratta his father was of the same family as I am and he was older than my father. I knew Mbanu Onyeuku he is now dead he and Manuihe had the same mother. Manuihe, Abara and Mbanu were not the first Umualumaku people to settle on the left hand side of the Douglas road. These three people were sued by the Urattas in this set of cases, A/83/53 and A/85/53. Manuihe and Abara

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have been coming to Court. I know the Onu "Abochi" juju on the left hand side near the old N.A. road the juju does not belong to Plaintiffs the Urattas. I know one Ndukwa Onyenobi of Umundula he is not a juju priest in our area if he is a juju priest at all I do not know. The juju priest for Onu Abochi came from Umu Eziogu as they are the owners of the juju they can tell the name of the juju priest. We are four families making up Umuofa. Umu Eziogu and Umumkpei branches of the Umuofas are not parties in these series of cases they are neither Plaintiffs nor Defendants. We the Nduhu Obokwe and Umualumaku are the owners of the portions now in dispute that is our portion of Umuofa land. The Umueziogus and Umumkpei are not part owners of it but they are sympathetic. We have no other lands beside the one now in dispute.

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Umueziogu and Umukpei do not own land in common the four families of Umuofa are descended from three mothers. One woman had two and the others one each. Ofa original juju was at a spot called Ogogo. Ogogo is on the way going to Afo Uzuagba it is at Nduhu Obokwe. Thenacho is the juju priest of Alaubi juju. Abara told me that Oke had sued him but he did not tell me over which land. We call the whole land Egbelu land but one Nduhu Obokwe man called his portion in it Ekwuru land. I know Opara Ukweje he is one of the Defendants in A/83/53. I do not know about Exhibit "F" involving Opara Ukweje. I was at Uzoagba in 1940. Egbelu means land in which you farm as distinct from land in which you live. We intermarry with Umundulas, Libies and Nduhus. We have always done so from time. It is not correct that we went in the land in dispute by the permission of the Urattas.

No. 35.

EVIDENCE OF JOHNSON ORJI

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FIRST WITNESS FOR PLAINTIFFS IN A/84/53 AND DEFENDANT IN CASES A/85/53 and A/83/53, AGED ABOUT 62 YEARS - JOHNSON ORJI (m) A native of Oku Emekuku sworn states :-

I am a farmer and live in my village. I am

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.34.

Wilfred Okpara.

30th October
and
18th December,
1953.

Cross-
Examination
- continued.

No.35.

Johnson Orji.

18th December,
1953.

Examination.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.35.

Johnson Orji.
18th December,
1953.

Examination
- continued.

over 50 years of age. I know the Urattas and the Uzoagbas. I know the land in dispute. I have boundary with some people on the land in dispute. I have boundary with the Uzoagba people. I have always seen the Uzoagbas farming on the land and we farm near them as we have a boundary with them. I have not seen Urattas farm there and I have never been told that they used to farm there.

BY COURT - I know the Douglas road from Emeku to the beaches of Uzoagba. I used to see the Uzoagbas farming on the left hand side of that road.

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Cross-Examined by Mr. Njoku -

My family in Emekuku is Umueboche (Umu Eboche). Our present head is myself. I am the head of Umu Eboche but Osuji is the head of Oku Emekuku. As a child I was at Umualumaku but left and went back home where I stayed until I became of age and went into Government Service as a Constable. I am not regarded as an Umualumaku man. I am more related to the Urattas as my grandmother was an Uratta woman. It was Plaintiffs who gave my mother in marriage to an Uzoagba man after the death of my father. My grandmother was born in Ndokwu village in Uratta. My mother was born at Ihite. My wife is from Umudike. It was not the Uzoagbas who took wine for my marriage it was Emekukus. I had no house when I was married. My mother was not alive when I got married. Since these series of actions I have not instigated Emekukus to claim and sue for land from the Ihites. There are three cases now pending between Ihites and Emekukus. I am not a party in any of them. Maurice Ijiaku 2nd witness for Plaintiff has no land near the land in dispute. His land is about five telegraph poles from the land in dispute. My land is near the land in dispute. I gave evidence in this case in 1949 what I said then is correct it is what I am saying now. I might have forgotten what I said in 1949. It is correct to say that Morris farm is nearer the boundary than mine.

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Re-Examined by Mr. Ihenacho -

Re-Examination.

I was married after I joined the Police Force.

No. 36.

EVIDENCE OF ELEMUWA MPORDIMMA

SECOND WITNESS AGED ABOUT 70 YEARS - ELEMUWA
MPORDIMMA (m) A native of Umueziogu sworn states:-

10 I know the Urattas who are Plaintiffs in this case. I also know the Umuofas. I am also Umuofa. I know the land in dispute it is called Egbelu land. We have boundary with Umualumaku people. On the boundary there is an Ebu tree also an Uba tree and an Oji tree. The Umualumakus have boundary with Nduhu Obokwe people. The Umumkpei also have boundary with them. The land in dispute belong to Nduhu Obokwe and Umualumaku people they have been farming on it. I have never seen the Urattas farm on the land. I know Douglas road land on both sides belong to Umualumaku and Nduhu Obokwe people and they farm on it.

Cross-Examined by Mr. Njoku -

20 Umueziogu is one of the families of Umuofa our head is Nduhu Obokwe. Uzoagbas is made up of eight villages. Our ancestor Uzoagba formerly lived at Uhuama but we have no land there. Afor Uzoagba is near Umumkpei. Uhuama is far from Umueziogu. From Uhuama to Afor Uzoagba is about one mile. We have no land at Uhuama and we do not go there to reap any fruits. It belongs to Umumkpei and Umuoma own it. No one has ever told me that there was any fight between Nduhu Obokwe and Umuoma. I know the Onu Aboshi juju. The Umunahus or Umundulas Urattas have never sacrificed to it. I knew Joe Idimogu he is now dead he was of my family. I was not present in Court in this case in 1949 but I was told that Joe gave evidence. Onu Aboshi is on our side of the Okitankwo stream. Ofa our ancestor had his juju at Ogogo he built his shrine there. Ogogo is on Nduhu Obokwe land. Ofa built there as Nduhu Obokwe is the eldest and he has emblem of authority. The juju is called Ala Umuofa. I only know of this case near Egbelu between the parties. I was at Kregeni for four years. I know Ekala Umuofa the market was established by one Dabirinze (Dabirinze). From Ekala Umuofa to Afor Uzoagba is owned by Umumkpei they are sole owner of everything there.

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In the
 Supreme Court
 of Nigeria.

Defendants'
 Evidence.

No.36.

Elemuwa
 Mpardimma.

18th December,
 1953.

Examination.

Cross-
 Examination.

In the
Supreme Court
of Nigeria.

No. 37.

EVIDENCE OF NJOKU AKUSIE

Defendants'
Evidence.

THIRD WITNESS AGED ABOUT 55 YEARS - NJOKU AKUSIE

(m) A native of Umuomii Uzoagba sworn states :-

No.37.
Njoku Akusie.
18th December,
1953.
Examination.

I am a farmer and live in my village. I know the Umuofa they are Uzoagbas like myself. I know the Plaintiffs they are Urattas. I have never been told that there was a fight between us the Umuomiis and the Umuofas. It is not true there was no such fight. There was no fight between the Umuofas and the Eziamas. Neither ourselves nor the Eziamas ever drove the Umuofas from any place this is not true. 10

Cross-Examined by Mr. Njoku -

Cross-
Examination.

I know Uhuama it is far from Afor Uzoagba it is one mile distant. Uhuama belongs to Umuomii, Umunkpei, Umueje. Ofa was the father of Umunkpei. I know Egbelu but we do not own it in common with the Umuofas. I have never heard of any fight between our villages or collection of our villages. There was a fight between us and Umuagwu during my time at Uzuama because they cut our palm fruits. One Warukwe (Warukwe) died in the fight. He was an Umueme man who lived Umualumaku. 20

Case for Defence.

Adjourned to 31/12/53 for Addresses.

(Sgd.) G.F. Dove Edwin.

No.38.

No. 38.

Address by
Defendants'
Counsel.

ADDRESS BY DEFENDANTS' COUNSEL

Resumed Thursday the 31st December, 1953.

31st December,
1953.

MR. NJOKU for Plaintiffs

MR. IHENACHO for Defendants

MR. IHENACHO -

Plaintiffs claim title to Egbelu land. An injunction and £20 damages for trespass. Originally the Defendants were sued in person but the amendment shows that they are sued for themselves and as representing their people. Defendants claim title to the same piece of land but we call it 30

In the
Supreme Court
of Nigeria.

No.38.

Address by
Defendants'
Counsel.

31st December,
1953

- continued.

10 Uauofa land. Case mainly depends on facts. Plaintiff has not proved case to entitle them to Declaration quotes Vol. II N.L.R. page 68 Ntoe Ekpo Eta Ekpo versus Chief Eta Ita. Plaintiffs have not proved numerous acts of ownership except that they have farmed on the land. Farming alone is not enough. Duty of Plaintiff to demarcate land in dispute quotes Baruwa versus Agunshoba and Others 4 W.A.C.A. page 159. Onus of proof rests on Plaintiff. Plaintiffs claim Declaration of title and again to fix boundary. Plaintiffs have failed to prove that before Douglas road came into being there was a boundary at that place between them and Defendants. The fact of Plaintiff now calling that road a boundary is just arbitrary. Plaintiffs' claim based on tradition. Defendants say there was never any migration by them. Migration is made up story refer to evidence of first Plaintiff Anoje Igwe who said Defendants were driven away from

20 Uhuama after Mbara was born and yet he said he was older than Mbara. If this is true then the migration was recent within living memory and witness is aged 65 years. Refers to plan Exhibit "A" and Egbelu land claimed is almost entirely hemmed in by Uzuoagba lands. Plaintiffs plan deceptive and misleading. Plaintiffs have no land beyond Okitankwo stream. The pit for trapping animals is named by Uzoagba man. It is admitted by Plaintiff that pit was dug over 60 years ago. Plaintiffs admit that

30 Enhiazu is not an Uratta man. Exhibits "C" and "D" do not show ownership. Ekwuru land is not properly defined. Ekwuru land used to be found on both sides of Okitankwo stream. Do not believe witness who said he visited Ekwuru on land in dispute. Exhibit "F" land in dispute there is not identified Eke Egbelu is on either side of the stream. Plaintiffs say they have never seen Defendants farm on land in dispute. In the Statement of Claim they say they pledged land to Defendants. No

40 proof of Defendants paying any rents to Plaintiffs. First Plaintiff admitted no rents were paid to them. Plaintiffs contradict themselves over houses built by Defendants on land in dispute and churches.

Second witness for Plaintiff Maurice Ijiaku is not to be believed he denied part of his evidence before Mr. Justice H.M.S. Brown. He told Mr. Justice Brown that his land extended to Okitankwo stream he now tells this Court that his land does not extend to the stream. As far as Defendants'

In the
Supreme Court
of Nigeria.

No.38.

Address by
Defendants'
Counsel.

31st December,
1953

- continued.

claim goes we have shown sufficient acts of owner-
ship to warrant title. We have buildings on the
land. Defendants have been using the Eastern por-
tion of the Okitankwo and could not be deprived of
that now. Plaintiffs claim should be dismissed.
Title to be given to Defendants.

No.39.

Address by
Plaintiffs'
Counsel.

31st December,
1953.

No. 39.

ADDRESS BY PLAINTIFFS' COUNSEL

MR. NJOKU -

Action for Declaration of title etc. and de-
marcation of boundary. This is not a cross action
and so onus in Defendants is as heavy as that in
Plaintiffs. I refer to their claim for declaration.
Authorities quoted by Counsel cuts both ways. In
addition to farming on land we have taken Court ac-
tions Exhibits "C", "D" and "E". Exhibit "C" re-
fers to tombo leaves which Defendants admit were
on their side of Okitankwo stream. Exhibit "D"
action about part of land in dispute. Evidence of
Uzoagba Defendant showed that land was got on
pledge, it is shown in plan Exhibit "A" as on the
land in dispute. Defendants in their Statement of
Defence did not attack this. In 1949 and now the
Defendants did not support to Plaintiffs that Ek-
wuru land was on the western side of Okitankwo.
They did not say that Exhibits "D" and "E" referred
to lands on the other side (western side). Admits
that paragraph 3 of claim by Plaintiffs is unneces-
sary is veiled of paragraph 1. Evidence was led
that Douglas road was made from an old path. This
was given by Plaintiffs.

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Most could be said apart migration is that
there was a difference in the evidence as to what
time the migration took place but all agreed that
there was a migration. Third witness for defence
admitted that Umunkpei which is a branch of Umuofa
have land in Uhuama. Uhu means an old habitation.
This confirms story of migration. It was admitted

that the Onu Aboshi juju was sacrificed to by the Plaintiffs people. Ownership of land in the early days was purely arbitrary. Land belonged to those who cleared the primaeval forest. Exhibit "E" is an action concerning Ekwuru land Mbara a Defendant in this case said it belonged to Plaintiffs. Exhibits "C", "D" and "F" are acts of ownership and in each case Defendants people admitted that land in dispute was property of Plaintiffs. When Exhibits were tendered it was not suggested in cross examination that they referred to lands outside land in dispute. Plaintiffs did not admit that pit for trapping animals was dug by an Uzoagba man or bore his name. Plaintiffs say it was dug with their permission.

In the
Supreme Court
of Nigeria.

No.39.

Address by
Plaintiffs'
Counsel.

31st December,
1953.

- continued.

When Plaintiffs said Defendants did not farm on the land it means that they did not farm as of right. As to rent - Plaintiffs case is that no rent was paid by Defendants for living on the land. They gave customary gifts. Rents paid were paid for farming. Discrepancies go to strengthen Plaintiffs case. As to Defendants claim - They call land Umuofa land but in evidence and plan they call it Egbelu, Egbelu, Ekwuru and Ubia. They say it is a part of larger land known as Umuofa land. No suggestion that Exhibit "B" is surrounded by Umuofa land. The suggestion that Egbelu is on both sides of Okitankwo stream is an after thought as they did not show it in their plan or suggest it to Plaintiffs when in the witness box. They say that area in dispute belong to two families of Umuofa namely Umualumaku and Nduhu Obokwe. The other two families have no interest. According to them all four branches of Umuofa are from different mothers it is therefore incredible that two should own land in common to the detriment of the other two. Not one of the Defendants sued by Plaintiffs gave evidence. Defendants could not say correctly where there fathers juju was. Defendants admitted that the threc men we say we put on the western side of the Douglas road were all relatives of Umundulas. This supports Plaintiffs case that land was given to these three because they were relatives. Houses were built by Defendants and nothing was done because at the time they were built over title was respected it was when this was denied that we sued. Those who represented Defendants were comparatively young people older ones would not come forward. Do not believe Johnson Orji first witness for defence not a person to

In the
Supreme Court
of Nigeria.

No.39.

Address by
Plaintiffs'
Counsel.

31st December,
1953

- continued.

be believed contradicted what he said in 1949. The second witness knew nothing about boundaries this applies to third witness. Believe witnesses for Plaintiffs. First witness for Plaintiff an independent witness. Plaintiffs call four independent witnesses. Stories consistent after allowing for discrepancies and inconsistencies. Plaintiffs claim for declaration is of two kinds.

Issues were agreed to be between people of Umunahu Uratta and Umuofa Uzoagba. Umunahu Uratta includes Umundula. Defendants claim weak. Asks for judgment. Okitankwo dries up in the dry season and is non tidal. Has never been a natural boundary.

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Case.

COURT - In view of the length of time this case has taken and the adjournments I do not intend to fix a date now for judgment. Notice will be given to the parties as soon as the judgment is ready after the Aba assizes and the Owerri assizes.

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(Sgd.) G.F. Dove Edwin.

No.40.

Court Notes.

2nd April, 1954.

No. 40.

COURT NOTES

Resumed at Aba the 2nd day of April, 1954

MR. EJIMOFOR for Plaintiffs

MR. IHENACHO for Defendants.

COURT - Plaintiffs claim in A/83 and A/85/53 dismissed. Defendants claim in A/84/53 is granted that is Declaration of title for land edged brown in plan Exhibit "B" and an injunction.

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No damages for trespass. Costs to Defendants in A/83/53 assessed at forty guineas, in A/85/53 at forty guineas and in A/84/53 as Plaintiffs assessed at forty guineas.

(Sgd.) G.F. Dove Edwin.

No. 41.

JUDGMENT.In the
Supreme Court
of Nigeria.No.41.
Judgment.
2nd April, 1954.

The three cases 0/3/44, 0/4/44 and 0/5/44 were transferred to this Court from the Onitsha Judicial area and were re-numbered as $\frac{0/3/44}{A/83/53}$, $\frac{0/4/44}{A/84/53}$, and $\frac{0/5/44}{A/85/53}$.

10 The cases were consolidated and tried in 1949 and on the 14/6/49 the Honourable Mr. Justice H.M.S. Brown gave judgment and on appeal to the West African Court of Appeal on the 9/11/50 was sent back for re-trial. The re-trial in this court was concluded on the 31/12/53 but due to the fact that this Court had to do accumulated arrears due to the times the Court could not sit in Owerri, Aba and Umuahia it was not convenient to give the judgment before now.

20 The suits A/83/53 and A/85/53 were issued out by the Urattas that is the people of Umunahu Uratta and Umundula Uratta against the people of Umuofa Uzoagba and the suit A/84/53 was issued as amended by the Umualumaku and Nduhu Obokwe villages of Uzoagba against the Umunahu Urattas. Before the trial started the Plaintiffs through their Solicitors submitted an amended writ in order "to put all issues clearly before the Court" in case A/83/53 and A/85/53. This amendment sought to make the actions a representative one and not personal. So
30 that the whole case by Plaintiffs could be said to be between the Umunahu Urattas, Umundula Urattas and the Umuofa Uzoagbas and by the Defendants by the Umualumaku and Nduhu Obokwe of Uzoagba and the Umunahu Urattas. It is of some importance to explain who these parties are. The Plaintiffs the Umunahus are of four families, Nduhu, Umundula, Ndokwu and Libie.

40 The Defendants the Umuofa are also four families they are Nduhu Obokwe, Umunkpehi, Umueziogu and Umu Alimaku. In the suits A/83/53 and A/85/53 the Umunahus as such claim declaration of title etc. to all the land edged green on their plan Exhibit "A" and in this they are supported by the Umundulas against the Umuofas as such. The Umualumaku and Nduhu Obokwes of the Defendants also

In the
Supreme Court
of Nigeria.

No.41.
Judgment.
2nd April 1954
- continued.

claim in A/84/53 declaration of title to the same piece of land.

The case for the Plaintiffs is that they the Umunahu Urattas are the owners from time immemorial of lands on both sides of the Okitankwo stream. That they inter-married with the Defendants particularly the Umualumaku family of Defendants. That some time in the dim past the Defendants were driven out of their village at Uhu Ama and sought refuge with them as they were in-laws. That the Umundula Urattas settled them on the eastern side of the land coloured pink which is within that coloured green and that the road from Emekuku to Uzoagba runs through the land and forms the boundary between where the Defendants were settled and the land edged pink. That the portion given to Defendants was portion owned by the Umundula family. 10

As time went on three persons of the Defendants asked for permission to go on to the land edged pink on the western side of the road. That they were four in number two were brothers and they were all from Umualumaku family in-laws of the Umundulas their names were Mmanuike Onyeuku, Mbara Enwere, Mbanu Onyeuku, Mmanuike and Mbanu were brothers. Permission was given and they built houses for themselves and their families but were not allowed to farm without permission whilst they the Plaintiffs Umundulas farmed on the land. 20 30

About twenty years or so ago at any rate within comparatively recent years the Defendants as such began to go on the land edged pink and farm there without permission. The land edged pink belong to the four families of Uratta each having their own portion as shown on their plan. Umundula, Libie, Nduhu and Ndukwu. This went on till in 1942 when the case 92/49 Exhibit "C" in this case a criminal action was taken by one Francis Enwere of Umunahu against eleven persons of Uzoagba for stealing toambo leaves and assault. Before this action Exhibit "C" Defendants had been sued in 1935 suits 189/35 Exhibit "D" and 514/35 Exhibit "E" over Ekwuru land which they claim is within the land edged pink on plan Exhibit "A". In 1940 an Uzoagba man Opara took action against five Urattas Exhibit "F" and it was shown that the land was only pledged to the Uzoagba man this land again they claim is within the land edged pink. 40

That they alone used both sides of the Okitankwo stream and plant tap and cut toambo leaves on it and take whatever things on it they desired. The Defendants have no rights whatsoever in that stream.

In the
Supreme Court
of Nigeria.

No.41.

Judgment.

2nd April 1954

- continued.

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Matters came to a head in 1944 when these actions were taken. The Plaintiffs therefore claim the whole of that portion edged green but say as to the eastern portion of the road they only want it established that they were the original owners they do not wish to disturb the Defendants who occupy that portion of the land, but as far as the land edged pink or land to the west of the road is concerned they claim declaration, damages, injunction and that they want it declared that the road is the boundary between them that is that their gift to Defendants does not extend to the west of the road. They want also sole right of fishing in the Okitankwo stream and sole rights of ownership

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of all palm and raffia trees etc.

The defence is that only two families of the Uzoagbas are primarily interested in these actions and they are the Nduhu Obokwes and the Umualumakus. They contend that they descend from Ofa and that Alumaku who Plaintiffs say asked them for land was the youngest son of Ofa. Alumaku did no such thing. The land is called Umuofa or Egbelu Umuofa and that the Okitankwo stream has always been the boundary between them and the Umunahu Urattas.

30

That the land now claimed by Plaintiffs is the portion owned by the Umualumakus and Nduhu Obokwes. Ofa had four sons Nduhu Obokwe the eldest, Umunkpehi next, then Umueziogu and last Umualumaku. He divided his huge piece of land between his four sons and the land now in dispute on both sides of the Emekuku Uzoagba road or Douglas road is the portion given to the Nduhu Obokwes and Umu Alumakus and they are surrounded by their brothers as could be seen from their plan.

40

As to Exhibits "D" and "E" they contend that the word Ekwuru is common in Owerri. It is the name of a tree and one usually calls the name of his land Ekwuru if this particular tree was there. There are several on the Plaintiffs side of the Okitankwo that is the western side of the Okitankwo stream.

They have never paid any rents or tributes to

In the
Supreme Court
of Nigeria.

No.41.

Judgment.

2nd April 1954

- continued.

the Plaintiffs for land on the eastern side of the Okitankwo and that they have used the eastern side of the stream in every way cutting and planting tombo trees and doing whatever they please there. That they have occupied the land for generations building and farming on it. Any case of pledging land to individual Umuofa was on the western side of the stream for example Exhibit "F". Douglas road as the Emekuku Uzoagba road is called runs through their land and is no boundary. It was made to get in contact with their Chief. They never lived at Uhu Ama their relatives did and the land in dispute is surrounded by their relatives. There was no war or fight and they were never driven out of Uhu Ama.

10

The land in dispute is clearly defined on both plans. Plaintiffs call it Egbelu land and Defendants Umuofa or Egbelu Umuofa.

I have now to decide whether the contention of the Plaintiffs that they gave Defendants the land to the east of the Emekuku Uzoagba road called Douglas road to live on when they came to them to ask for land after they had to leave Uhuama is correct and that only three Uzoagbas were permitted to live on the Umundula portion of the land edged pink on the western side of the road and that the Uzoagba Emekuku road is the boundary, or whether as Defendants contend the whole land belong to them east and west of the road and that the Okitankwo stream is the boundary.

20

In order to prove their case the Plaintiffs called eight witnesses in all four of them parties and the other four neighbours. They also submit four Exhibits "C", "D", "E" and "F"

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As to the Exhibits. Exhibit "C" does not help at all the wording of the Native Court Judgment is peculiar it says "The accused persons are not to touch plants in that river (Okitankwo) till they prove how they have share in that water".

The District Officer quite rightly allowed the appeal in this case. Nothing in the proceedings to show where this occurred although presumably it is the cause of the dispute which led to these series of actions. Exhibit "D" and "E" over Ekwuru land. First witness for Plaintiffs Okorie

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10 Ofaha who claimed to be the President in Exhibit "E" and a member when Exhibit "D" was tried said they had to cross the Okitankwo stream to visit it, thereby suggesting that it was land within the land edged pink now in dispute. I cannot accept this witness's evidence. He struck me as most unreliable. The record itself does not indicate on what side of the river the dispute was. Exhibit "F" is the same thing although I feel strongly that it was land on the western side of the Okitankwo stream. Again this Exhibit does not help at all.

As to the Plaintiffs who gave evidence as witnesses they did not impress me as witnesses of truth. Their evidence on their traditional history was not impressive and I did not consider them reliable. Neither were they impressive over matters during their lifetime. The Defendants were more reliable.

20 I find I could rely upon their evidence and that of their witnesses. The whole land in dispute is so situate that it lends colour to their contention that the Okitankwo is the boundary between them.

30 In my view the boundary between the parties is the Okitankwo and not the Emekuku - Uzoagba road. The Plaintiffs did not give any land to the Defendants as they contend and the Umundulas did not place three Uzoagbas on the land. All the houses and churches on the land were built as of right by the Defendants.

The Plaintiffs claim is dismissed in both suits A/83/53 and A/85/53.

40 As to the Defendants claim A/84/53. In view of the Judgment in the case Chief Usuquo Ekanem and another versus Chief Nsidintak Bassey and others by the West African Court of Appeal on the 5/11/53 I strike out their claim for fishing rights as the Government was not joined. As I have said the Okitankwo stream is the boundary between the parties and there will be judgment for Plaintiffs in suit A/84/53, as amended for declaration of title to the land edged brown on the plan Exhibit "B".

In the
Supreme Court
of Nigeria.

—————
No.41.

Judgment.

2nd April 1954
- continued.

In the
Supreme Court
of Nigeria.

No.41.

Judgment.

2nd April 1954
- continued.

The evidence of trespass and the individuals who committed the trespass is meagre and I do not propose to give any damages. The injunction is granted.

Costs in A/83/53 - £42 to Defendants. In A/85/53 - £42 to Defendants. In A/84/53 - £42 to Plaintiffs.

(Sgd.) G.F. Dove Edwin,
Puisne Judge.

In the West
African Court
of Appeal.

No.42.

Notice of
Appeal.

26th April,
1954.

No. 42.

10

NOTICE OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL.

Notice of Appeal

Supreme Court Aba

Between:-

Suit No. A/83/53 - Anoje on behalf of
0/3/1944 Vincent Anosike and
Mbara of Uratta
Plaintiffs/Appellants

Versus

20

Opara Ukweje & 19 Others
of Umualumaku Uzoagba
Defendants/Respondents

And
Suit No. A/84/53
0/4/44.

- Mbamara Opara & 3 Others
of Nduhuobokwe & Umuotu
Plaintiffs/Respondents

Versus

Oke Adakonye & 5 Others
of Umunhu Uratta
Defendants/Appellants

30

And
Suit No. A/85/53
0/5/44

- Iheuko & 2 Others of
Umundula Uratta
Plaintiffs/Appellants

Versus

Mbara Enwere & 20 Others
of Umualumaku Uzoagba
Defendants/Respondents

(Consolidated)

TAKE NOTICE that the Plaintiffs being dissatisfied with the decision of the Aba Supreme Court contained in the judgment of Suits Nos. A/83/53 and A/84/53 and A/85/53, consolidated, dated the 2nd day of April, 1954, doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3, and will at the hearing of the appeal seek the relief set out in paragraph 4.

In the West African Court of Appeal.

No.42.

Notice of Appeal.

26th April, 1954.

- continued.

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

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

Whole Decision

3. Grounds of Appeal:-

20 1. Misdirection:- The learned trial Judge misdirected himself when he dismissed as unreliable the relevant and material evidence of Chief Okorie Ofaha who testified as president of the Native Court that previous land disputes between Plaintiffs and Defendants were across the stream on the Egbelu land in dispute, and that he had inspected the said land.

30 2. Misdirection:- The learned trial judge misdirected himself when he stated in his judgment:- "The whole land in dispute is so situate that it lends colour to their (Defendants) contention that Okitankwo stream is the boundary between them", thereby dismissing erroneously from his mind all natural possibilities of one town or village having and owning farm lands in fee simple on both banks of a stream.

40 3. Misdirection:- The learned trial judge misdirected himself by failing to consider and weigh in his mind the long distance between the Defendants' villages and the stream and the absolute proximity of the Plaintiffs' villages to the stream. Which fact makes it impossible for the stream to be the boundary as all farm lands are situate across the stream and between the stream and the Defendants' villages. The learned trial judge did not inspect the land and must have misdirected his mind from the plan.

In the West
African Court
of Appeal.

No.42.

Notice of
Appeal.

26th April,
1954

- continued.

4. Misdirection:- The learned trial judge mis-directed himself in law and fact in that he held in his mind throughout the hearing and judgment that a stream created and constituted a natural boundary, and so failed to weigh in his mind all other factual possibilities and probabilities.

5. Misdirection:- The learned trial judge erred in law and fact and misdirected himself in that he held throughout the proceedings and judgment that a road (Emekuku-Uzoagba road) could not have been a land boundary between Plaintiffs and Defendants as demarcated by the ancients, and that the land of the Defendants must necessarily cross the road to border on the stream, which idea ostensibly constitutes an erroneous philosophy in Native law and custom.

10

6. Misdirection:- The learned trial judge mis-directed himself when he in his judgment disbelieved the evidence of all the Plaintiffs and their witnesses, even elderly men and witnesses of 70 to 80 years of age who swore as to their personal knowledge of the history and facts of the land in dispute.

20

7. Weight of evidence:- The decision is unwarranted unreasonable and cannot be supported having regard to the weight of evidence. The balance and weight of evidence is more in the Plaintiffs' favour.

4. Relief sought from the West African Court of Appeal set aside and reverse the decision of the Supreme Court and enter judgment for Plaintiffs-Appellants.

30

5. Persons directly affected by the Appeal :-

<u>Name</u>	<u>Address</u>
(i) Opara Ukweje	Umualunaku Uzoagba, Owerri Division.
(ii) Mbara Opara	Nduhuobokwe Uzoagba, Owerri Division.
(iii) Mbara Enwere	Umualunaku Uzoagba, Owerri Division.

40

etc.

Dated this 26th day of April, 1954.

(Sgd.) E. Ejimofe,
Plaintiffs-Appellants' Solicitor.

No. 43.

COURT NOTES ON HEARING OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

WEDNESDAY THE 20TH DAY OF JUNE, 1956

(Title as in No.42)

In the Federal
Supreme Court
of Nigeria.

No.43.

Court Notes
on Hearing
of Appeal.

20th June 1956.

Mr. J. E. C. David, with him Mr. Desalu and Mr. Moore
for Appellants.

Mr. Kaine for Respondents.

10 DAVID:

Three cases consolidated for trial - all about
same land - 83 and 85 suits by Appellants 84 by
Respondents. Only claim proposes to deal with is
the one for a declaration of title.

20 Ground 1. Judgment page line Refers
to Exhibit "E" page Admits there is nothing
in Exhibit "E" to show where the land is on Exhibit
"A". We point out that the Statement on "A" re-
garding 514/35 and 189/35 is by no means conclusive
since it is merely a record of what was told to the
Surveyor who made the plan.

Submits oral evidence of the member of the
Court who said they had to cross the stream to get
to the land in dispute and Appellants got judgment
in that case so it must then have been held that
Appellants had land on the other side of the stream.
Court in "E" inspected land then in dispute. No
XX re-crossing stream.

David:

30 Note - in "D" and "E" the land is referred to
as "EAWURU" - In the present case plan. Exhibit
"A" Appellants - shows land as "EGBELU LAND" - not
"EAWURU" - although there is a note in the S.E.
corner of "A" purporting to show that "D" and "E"
land was there.

Submits - S. of C. para. 10. "D" and "E" were
dealing with pledges - Says shows land part of
Appellants.

Discusses evidence -

40 We do not call upon Kaine.



In the Federal
Supreme Court
of Nigeria.

No. 44.

JUDGMENT.

No.44.
Judgment.
20th June 1956.

The Appellants complain that the learned trial Judge erred in not granting their claim for a declaration of title to the land in dispute in this case.

It is clear from his judgment that the trial Judge carefully weighed and considered the evidence given by both sides, and having done so he said: "As to the Plaintiffs who gave evidence as witnesses they did not impress me as witnesses of truth. Their evidence on traditional history was not impressive and I did not consider them reliable. Neither were they impressive over matters during their lifetime. The Defendants were more reliable".

10

The decision in this case wholly depended upon the view taken by the trial Judge of the evidence, and he found himself unable to accept that tendered on behalf of the Appellants. Nothing that has been said by Mr. David on their behalf has convinced us that the learned trial Judge erred in taking the view he did, nor do we think there is any substance in the allegations of misdirection.

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This appeal is accordingly dismissed with costs fixed at £28.14.0.

Sgd. S. Foster Sutton.

FEDERAL CHIEF JUSTICE,
20.6.56.

Sgd. John Verity.

Sgd. W. H. Irwin.

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No. 45.

COURT ORDER ON JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit Nos. A/83-85/1953.
W.A.C.A. No.25/1955.

On Appeal from the Judgment of the
Supreme Court in the Aba Judicial
Division.

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(Title as in No.43)

(L.S.)

Sd. Foster Sutton,
FEDERAL CHIEF JUSTICE.

Wednesday the 20th day of June, 1956.

UPON READING the Record of Appeal herein and
after hearing Mr. J.E.C. David, appearing with
Messrs. O. Moore and A. Desalu, of Counsel for the
Appellants and without calling upon Mr. H.U. Kaine
of Counsel for the Respondents:

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IT IS ORDERED that this appeal be and is here-
by dismissed and that the Appellants do pay to the
Respondents costs on the appeal fixed at £28.14.0d.

Sgd. S.A. Samuel,
CHIEF REGISTRAR.

No. 46.

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

Suit Nos. A/83-85/1953
W.A.C.A. 25/1955.

Application for an Order for Final Leave
to Appeal to Her Majesty in Council.

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(Title as in No.43)

(L.S.)

Sgd. O. Jibowu
ACTING CHIEF JUSTICE
OF THE FEDERATION.

In the Federal
Supreme Court
of Nigeria.

No.45.

Court Order on
Judgment.

20th June, 1956.

No.46.

Order granting
Final Leave to
Appeal to Her
Majesty in
Council.

8th January,
1957.

In the Federal
Supreme Court
of Nigeria.

No.46.

Order granting
Final leave to
Appeal to Her
Majesty in
Council.

8th January,
1957

- continued.

Tuesday the 8th day of January, 1957.

UPON READING the application herein and the Affidavit of Victor Ayo Solanke sworn to on the 15th day of November, 1956, and after hearing Mr. J.E.C. David of Counsel for the Appellants and Dr. G.B.A. Coker, appearing with Mr. H.U. Kaine, of Counsel for the Respondents:

IT IS ORDERED that Final Leave to Appeal to Her Majesty's Privy Council from the judgment of the Court dated 20th day of June, 1956, be granted to the Appellants.

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Sgd. S.A. Samuel,
AG. CHIEF REGISTRAR.

E X H I B I T S

EXHIBIT "D"

URATTA NATIVE COURT PROCEEDINGS IN 189/35

Exhibit "D" put in by Plaintiffs admitted and marked in Suits A/33-85/53 Anoje & Others Vs. Okwueje & Others (Consolidated)
 (Sgd.) F. Bosah,
 Clerk of Court, Aba.
 28/10/53.

Exhibits

Exhibit "D"

Uratta Native Court Proceedings in 189/35.

22nd March and 6th June, 1935.

10 In the Native Court or Judicial Council of Owerri Nigeria.

Civil Jurisdiction No.189/35 J.B. 1/35 Page 235:

No.189/35:	Oke of Uratta	} £10 being damages for trespass on Plaintiffs land EKWURU since 7 days.
	Vs.	
	Mbara of Uzoaba	

20 Deft: absent: Service proves vide attached M.P. No.47/35 of 8/3/35. OKE (m) S.S. I am a native of Uratta, about 3 weeks ago Defendant went and cleared my EKWURU land without my permission. This EKWURU land does not due farming this year, it will due next planting season, about 4 year ago, I sued Defendant for this land and case was settled at home, people who presided at the meeting ruled that Defendant should revert this land to me, which he did, and this year again Defendant cleared the land and destroyed UKO, and other trees. The portion of this land cleared contained 5 UMUBIS.

30 JUDGMENT: For Plaintiff for £4: in one (1) month and costs

(Sgd.) Ukaebu x their marks (Sgd.) Ugorji x
 " Okorie x " Ebukole x
 (Sgd.) B.Ofurum. 22/3/35.

Appealed by Deft: 3/- paid CR.6/96 of 1/4/35.

Reopen: Deft. may on payment. (Intd.) G.I.S.20/4.

No.189/35 From page 235, J.B. 1/35.

40 Oke of Uratta } £10: Being damages for trespass on Plaintiff's land EKWURU since 7 days.
 Vs. }
 Mbara of Uzoaba } Claim not admitted.

Exhibits

Exhibit "D"

Uratta Native
Court
Proceedings
in 189/35.

22nd March and
6th June 1935
- continued.

Plaintiff (m) states:- My witness is sick, and therefore I am not ready for this case as yet. I wish to adjourn it till next month.

Case adjourned by Plaintiff till next month (June 1935) fee 1/- paid. CR.No.23/136 of 20/5/35.

(Sgd.) Urraebu x his mark.

(Intd.) B.O.O. 20/5/35.

Resumed 4/6/35. Defendant (m) states :- My witness is not here today, he will attend on 6/6/35.

Case remanded till 6/6/35.

(Sgd.) Chiagorom x his mark.

(Intd.) B.O.O. 4/6/35.

Resumed 6/6/35. From page 85 Cp. No. 189.

Plaintiff (m) S.S.- I am a native of Umunahu, Uratta. The land in question is known as UKWURU. It belonged to my late father ANORUO who died about 7 years ago, I then took over the possession of this land as I am my father's successor. My father did not pawn this land to anybody during his life's time, and had no dispute over it with anybody. One Onyekaihe of Akabo related to my father in marriage, as he married Ubala a member of my family, he was residing at Uzoaba, as this land situates near Uzoaba, therefore my late father used to give it to Ubala to farm on, and she used to pay for it at each time she farmed on it, she started farming on it since 20 years, even she continued farming on it after her husband Onyekaihe's death, about 6 years ago. Ubala died, she had no surviving son. Defendant is a son to Enwere, his late father Enwere was late Ubala's son. About 4 years ago Defendant applied for permission to farm on this land, I refused, that I will not give it out to anybody again, he disobeyed, I then sued him, when he heard it he discontinued doing anything on it in that year, I then planted yams there. Defendant asked Azuike and Nwoji to tell me that he will not do anything on this land any longer; that he will refund costs of my action to me, Azuike and Nwoji are all dead. I had recently served the writ of that action on the Defendant as it was marked not served 4 years ago. About 3 months ago Defendant went and cleared this land without my permission, and when I asked him his reason of doing so he

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told me that the land was given to him by Umuowara people I then took out this action against him, Defendant failed to attend Court and I obtained Judgment of £4 damages against him on his absence, he appealed the case the D.O. on review ordered it to be re-opened on payment, Defendant did so, this case had been gone into at home, but no decision was given, M.N.T. Odu attended Meeting where this matter was gone into. It was suggested in the meeting that the matter should be referred to Soothe Sayer as to prove who owns the land, I refused. They also ruled that Defendant should swear on juju that the land was given to him by Umuowara people, I refused, they also ruled that Obioma, Aka and Oparaocha should swear on my juju that this land actually belonged to them, I refused that they are OSU and therefore should not swear on my juju. For if they die after the swearing of my juju I have to buy another OSU for their juju. The other people who presided at the meeting with M.N.T.Odu were not of opinion with Odu that Defendant or Aka, Obioma and Oparacha should swear on juju. They said it is my place to swear on juju in support of my claim to this land.

Exhibits
 Exhibit "D"
 Uratta Native
 Court
 Proceedings
 in 189/35.
 22nd March and
 6th June 1935
 - continued.

Ojiri (m) S.S.:- I am a native of Umuahu Uratta. Plaintiff is my elder brother. The land in question is known as Ekwuru. It belonged to our late father Anoruo. My father did not pawn this land to anybody but used to give it to Ubala a member of our family to farm on, Ubala was a wife of one Onyekaihe of Akabo, who was residing at Uz-oaba. My father gave this land to Ubala about 20 years ago. Ubala had a son by name Enwere, he is dead. Defendant is Enwere's son. Ubala and Onyekaihe are dead, likewise Enwere. After their deaths Ihenacho, Defendant's elder brother farmed on this land once and died, about 4 years ago, we told Defendant that we were of opinion to take away this land from him, he refused, and started clearing it, Plaintiff then sued him. He then discontinued clearing it. Plaintiff then planted his yams there, late Nwoji sent for Plaintiff and told him that Defendant had agreed to refund costs of his action, therefore he should not proceed with the action again, Defendant has not paid the costs of that action till date. About 2 months ago, Defendant cleared this land, Plaintiff sued him and heard the case on the Defendant's absence. After which Defendant came to our place and told us that

Exhibits

Exhibit "D"

Uratta Native
Court
Proceedings
in 189/35.22nd March and
6th June 1935
- continued.

his reason of claiming this land is that his father used to throw food while eating there asking Ala-Umuowara juju to take the food, and therefore it is believable that this land belonged to Umuowara family. This land contains 5 Umubi, I am prepared to swear with Plaintiff and Uba to support our claim to this land, as we do not want Osu people who are claiming it to swear, for if they die after swearing we have to buy Osu for their jujus. This matter had been gone into at home, but no decision was given, as it was suggested that we should refer the matter to Soothe Sayer, but we refused, and took back meeting fee from them. 10

Defendant (m) S.S.: - I am a native of Uzoaba. The land in question is known as Ekwuru. It belonged to late Iwuala originally. Before I was born Iwuala pawned this land to my Grandfather Onyekaiheya for (Nno Abua cawries) 20/-, as I was told by my father. Onyekaiheya was farming on this land till his death, after his death my father Enwere took over the possession of this land, Enwere died about 20 years ago, Ihenacho my elder brother took over the possession of this land he died 15 years ago, I then took over the possession of this land. About 4 years ago, Plaintiff said he had sued me for this land, but the writ was not served on me, Plaintiff farmed on this land 4 years ago without reference to me, and when I asked his reason of doing so, he told me that the land belonged to him, and lastly he promised to give me 5/- being amount he realized from it. I intended to sue him, he asked Azuike to send for me and settle the dispute for us, I then went and Azuike settled the matter for us, he told Plaintiff to pay me 5/- damages and revert the land to me after that year's yams harvest. Plaintiff agreed to do so, but has not paid me that 5/- till date. 30

Oparacha (m) S.S.: - I belong to Umunahu - Uratta. The land in question is known as EKWURU. It belonged to my Grandfather Iwuala. Originally he pawned it to Defendant's grand Onyekaiheya for (Nno Abua cawries) 20/- before I was born, he did not redeem it till his death. We belong to UMUIWELACHIEZE family, and Plaintiff belongs to UMUEZENWERE family. We have no relationship with Plaintiff, and have no boundary with Plaintiff or his relatives on this land, Plaintiff has no right to redeem this land from Defendant who is now in 40

possession of this land. Azuike is the eldest man in our family and he is the right man to redeem this land. Our grandfather Iwuala was born by OWARA, therefore Owara is our ancestor, though our family is known as Umuiwelachieze. This matter had been gone into at home on Plaintiff's request, and people who presided at the meeting suggested that the matter should be referred to Soothe sayer, Plaintiff refused, and they ruled that Aka, Obioma, Defendant and myself should swear on Defendant's juju in support of our claim to this land. We agreed to swear but Plaintiff refused. Plaintiff came to my house and asked me in the presence of my son Mcrenini what he would give me, as to allow him to take away this land from Defendant, but I refused to take anything from him. I am prepared to swear with 3 others to support that this land belonged to our grandfather originally. If Plaintiff wishes to take action for this land he is to sue us and not Defendant: (1) Onyeno, (2) Azuike, (3) Ononiwu, (4) (m) S.S.:- We have nothing to add on Oparocha's correct evidence.

Q. by Plaintiff:- Do you know Anosike?

Answer: Yes, he related to us.

Q. Is he Osu? Answer: He is not Osu and we are not Osu.

Q. Can you produce Anosike to swear on juju in support of your story? Answer: No. You are to produce him, you mentioned him.

Q. Has any of you ever married a wife who is not Osu? Answer: No answer.

Court Remarks:- Defendant stated that the land in question was pledged to his grandfather, and brought witnesses who admitted that their grandfather pawned the land to Defendant's grandfather, therefore we do not prepare to support Plaintiff's action against him, if Plaintiff knows that this land belongs to him, he is to sue people who pawned the land to Defendant's grandfather.

JUDGMENT:- Case dismissed. Plaintiff may sue people who pawned the land to Defendant's grandfather if he likes.

(Sgd.)	Chiagorom	x	their marks
"	Kamalu	x	
"	Njoku	x	
"	Nduku	x	

(Sgd.) B.Mkwopara, wit.
N.C.S. 6/6/35.

Exhibits

Exhibit "D"

Uratta Native
Court
Proceedings
in 189/35.

22nd March and
6th June 1935
- continued.

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Exhibits

EXHIBIT "E"

Exhibit "E"

URATTA NATIVE COURT PROCEEDINGS IN 514/35.

Uratta Native Court Proceedings in 514/35.

20th July, 12th, 19th, 23rd and 31st August, 1935.

Exhibit "E" put in by Plaintiffs admitted and marked in Suits A/83-85/53 Anoje & Others Vs. Okweje & Others.
(Sgd.) F. Bosah, Clerk of Court, Aba.
28/10/53.

In the Native Court or Judicial Council of Owerri. Nigeria. Civil Jurisdiction No.514/35 J.B.2/35 P.342.

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No.514/35: Oke of Uratta	} Vs.	} Claim:- £10: For unlawfully handing over Defendants land <u>EKWURU</u> to Mbara since 6/6/35.
1. Azuike of do.		
2. Onibu of do.	} Defendant No.2 not seen. Claim not admitted.	
3. Aka of do.		
4. Obioma of do.		
5. Oparocha of do.		

Plaintiff (m) S.S.:- I am a native of Umunahu.- Uratta. The land in question is known as Ekwuru. It belonged to my late father Anoruo, who died about 7 years ago, I then took over the possession of this land as he did not pawn it to anybody. I have boundary on the right side with Njoku of Umuahu, mound (ovruru) formed this boundary. Njoku pawned his own portion to Oparandukwe of Uzoaba, I have boundary with Anosike on the left side, mound (Ovuru) formed this boundary, Defendants are under Anosike, as they are Osu. About a month ago my case against Mbara of Uzoaba for trespass on this land was heard and dismissed, on the strength of evidence given by the Defendants that the land belongs to them, and that they gave it to Mbara in view of their evidence I then put up this claim of £10 damages against Defendants for pawning my land to Mbara without my permission. I sued Mbara 4 years ago for this land, Defendants were on my side, as they used to accos to Court saying that the land to me. Mbara of Uzoaba the Defendant in previous case bribed Defendants to give evidence against me in the previous case, that if I were to win that case I would establish another claim against them for my portion of land on which they are now living. During this year Uzoaba people buried corpse on this land I demanded damages from them as to create confusion they went and

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made arrangement with Defendants and on the strength of that arrangement Defendants began to claim this land to be theirs. It is quite unusual that Osu should claim any portion of land as their own personal land without reference to their master Anosike is Defendant's master and he is the man who has boundary with me.

Q. by Court:- How many Umubi on this land?

Answer: It contains 5 Umubi (25 Rows of yams)

10 Q. What happened to that action you took out against Mbara of Uzoaba 4 years ago? Answer: It was settled out of Court. Q. Haven't you got boundary on any land with Defendants? Answer: I have boundary with Defendants on this land, but their own portion was given to them by Anosike their master.

20 Q. by Defendant No.5: Who owned this land originally? Answer: My father late Anoruo inherited it from his late father Nwaneri, and after my father's death, I took over the possession of this land. Q. Was this land pawned to Uzoaba man by our late grandfather Opara Iwuala or by me Defendants? Answer: It was not to my knowledge that you claimed this land to be yours till when my case against Mbara was heard, therefore I cannot definitely tell which of you pawned this land to Uzoaba man.

30 Q. Why your late father did not interfere with our late father's pawning this land to Uzoaba man? Answer: Your late father did not pawn this land to Uzoaba man.

Q. Who was Ubala? Answer: Late Ubala related to my late father.

Q. Did you know her in person? Answer: Yes. I knew her.

40 Q. Your late father Anoruo and late Opara Nwaneri which was the senior man in your family? Answer: Late Opara Nwaneri was the senior man to my father. Q. Had Opara Nwaneri any portion on this land? Answer: Yes, he had his own portion, he pawned it to Uzoaba man. Q. Who is the eldest man in your family? Answer: Azuiké is the eldest man in our family but he is not in good terms with me. Q. Who is Anozie? Answer: Anozie is a member of my compound, but not a member of my family.

Exhibits

Exhibit "E"

Uratta Native Court Proceedings in 514/35.

20th July, 12th, 19th, 23rd and 31st August, 1935.
- continued.

Exhibits

Exhibit "E"

Uratta Native
Court
Proceedings
in 514/35.

20th July,
12th, 19th,
23rd and 31st
August, 1935.
- continued.

Q. Was Anozie's late brother Iwuala not the husband of your father's mother Adaeze? Answer: He was the husband of Adaeze, he refunded dowry to members of my family when he took her over as a wife after Nwaneri's death.

Ofiri (m) S.S.: - I am a native of Umuahu - Uratta. Plaintiff is my elder brother. The land in question is known as Ekwuru. It belonged to our late father Anoruo, who died about 10 years ago, Plaintiff his successor then took over the possession of this land. On the right side we have boundary with Anosike, mound (Ovuru) formed this boundary, we have boundary with Oparandukwe of Uzoaba on the left side mound (Ovurr) formed this boundary, Oparandukwe got his portion on pledge from members of our family. About a month ago Civil Case Plaintiff versus Mbara of Uzoaba was heard, in which Plaintiff claimed damages from Mbara for trespassing into this land, during the hearing of the said case Defendants gave evidence in favour of Mbara, and that case was dismissed, Court ruled that Plaintiff should sue Defendants hence action for £10 damages.

Q. By Defendant No.5: Is Anosike not my relative? Answer: You related to him as you are Osu under him. Q. Your ancestor Ezenwere and our ancestor Umuawara which was the senior man?

Answer: This is beyond my experience, and therefore I cannot tell which was the senior man.

Q. Have your late father ever taken you to this land before, for farming purposes?

Answer: Yes. My father used to farm there, and I used to accompany him to farm.

Defendant No.5: Oparocha (m) S.S.: - I am a native of Umuahu. I belong to Umu Iwuala family. The land in question is known as Ekwuru. It originally belonged to late Owara our ancestor, after Owara's death, his successor Iwuala took over the possession of this land, after Iwuala's death, Opara took over the possession of this land and pawned it to Onyekaiheya of Uzoaba for (Nno abua cawries) 20/- very long ago, even this happened before we all Defendants were born, Onyekaiheya farmed on this land till his death, Plaintiff's late father did not interfere with his farming on this land, after Onyekaiheya's death, Unanka his successor took over the possession of this land,

after Unanka's death Ihenacho took over, and after Ihanecho's death Mbara his successor took over the possession of this land, about 4 years ago, Plaintiff sued Mbara for this land claiming damages, but did not serve the writ on Mbara, as he Plaintiff suggested to Mbara that they should settle the case out of Court in Azuike's place. Plaintiff admitted that he made mistake in claiming this land to be his, Azuike decided that Plaintiff should pay 5/- damages to Mbara, and Plaintiff's action against Mbara was dismissed. Plaintiff did not pay that 5/- to Defendant till date, he took out another action against Mbara about 3 months ago, knowing that Azuike is dead, Court had dismissed that case. We have boundary on one side with Odionye (Ovuru) mound formed this boundary. We have boundary on the other side with Opara Iheoma mound (Ovuru) formed this land. We have no boundary with Plaintiff on this land.

10

20 Q. By Court: Was your ancestor Owara an Osu originally? Answer: He was not Osu.

Q. How did you become Osu? Answer: Very long ago, before the advent of Government there was a fight between our ancestor Owara and members of Umundumoha Umuolii, during the fight one of Owara's sons was killed, and at each time Owara tried to take vengeance by killing one man at Umundumoha. he met with failure. He then referred the matter to Soothe sayer, who revealed to him, that our juju Okitankwo said unless he buys Osu for him, he would not succeed in killing one of Umudumoha's people, as Owara had no money then to buy Osu, he offered his son Iwuala to Okitankwo as Osu, after which he succeeded in killing a man of Umudumoha after some-time Owara bought Egenamba and offered to Okitankwo as Osu in place of his son Iwuala, Okitankwo juju refused to accept Egenamba, that Iwusla should remain as Osu, this is how we are called Osu as we are late Iwuala's sons.

30

40 Q. Who is Anosike? Answer: Anosike is a son to Osuji, and Osuji was a son to Onyeka, and Onyeka was son to Owara our ancestor. Therefore we all are one, as Owara was our ancestor. Plaintiff's ancestor was Wanjoku of Amauzari in Orlu District, he was walking with 3 others and our people caught them, and divided them Wanjoku was given to Owara our ancestor, 3 others, on Wanjoku's commands were sold as slaves by other families. Therefore Plaintiff's ancestor Wanjoku was a servant to our ancestor Owara.

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Exhibits

Exhibit "E"
Uratta Native
Court
Proceedings
in 514/35.
20th July,
12th, 19th,
23rd and 31st
August, 1935.
- continued.

Exhibits

Exhibit "E"

Uratta Native
Court
Proceedings
in 514/35.

20th July,
12th, 19th,
23rd and 31st
August, 1935.
- continued.

Defendant Nos. 3, 4 & 5 (m) S.S.:- We have nothing to add to Defendant No. 5's correct evidence.

Mbara (m) S.S.:- I belong to Uzoaba. The land in question is known as Ekwuru. It belonged to Defendants originally, about 40 years ago Defendants late father Iwuala pawned this land to Onyekaiheya my grandfather for 20/- (Nno abua cawries) Onyekaiheya farmed on this land till his death, which after Ihenacho took over. After Ihen- 10
acho's death I took over the possession of this land. 4 years ago, Plaintiff cleared this land, that it belonged to his late father, I said his story was untrue, 4 days after he said he had sued me, and asked Azuike that he made mistake by taking action against me, that he should send for me and settle the case for us. Azuike sent for me, and dismissed that case, and ordered Plaintiff to re- 20
fund me 5/- he realized in selling this portion of land to others to farm on and revert to him after yams harvest. Plaintiff did not serve the writ of that action on me and did not pay me 5/- as ordered by Azuike, about 8 months ago, Plaintiff applied to redeem this land from me, I refused that it does not belong to him, he said he had got permission from Defendants to do so. I refused, he then sued me for this land, and his case was dismissed.

Q. by Plaintiff: Did you know late Ubala?
Answer: No. I do not know her. Q. What was your late father Enwere to me. Answer: His late 30
mother Ubala was a member of your compound.
Q. Did you give evidence that you know about this land or that Defendants gave evidence in your favour in the previous case? Answer: I gave evidence that Defendant's father pawned this land to my grandfather.

Case remanded for the sitting members to view this land if approval is obtained from the D.O.

(Sgd.) Okorie x their marks
" Ukuebu x 40
(Intd.) B.N. Wit. " Odu x
N.C.S. 19/7/35. " Opara Iwuala x

(See Civil Case No.189/35 Page 85 of this J.B.)

Members may inspect. 10/- fee to be paid by each party.

10/- Inspection fee (Sgd.) W.M.Newington,
paid by Defendants on 20/7/35.
23/7/35.

(Intd.) B.N.

RESUMED 12/8/35.

Case remanded till 14/8/35, for Plaintiff and his brother Ogiri to swear on juju to be produced by Defendants supporting that this land belonged to their father, late Anoruo originally, and that he used to give it to late Ewure to farm on. Juju to be sworn in N.C. compound:

		(Sgd.) Okorie	their	x	mark
	(Intd.) B.N.	"	Akaebu	x	
10	E.C.S. Wit.12/8/35.	"	Odu	x	
		"	Opara Iwuala	x	

Exhibits
Exhibit "E"
Uratta Native Court Proceedings in 514/35.
20th July, 12th, 19th, 23rd and 31st August, 1935.
- continued.

RESUMED 19/8/35.

Defendants absent. Court remarks:- M.N.T. Odu, one of the sitting members reports that Plaintiff had sworn on jujus produced by Defendants in their town Uratta that jujus produced and sworn by Plaintiff and his brother Ojiri are:- Orilaohuru, Ogbaegbe, Amadioha-Onagwu and Alaubi and Ofo Owara that he asked Onyeaghu to tell Defendants to attend Court today for this case.

Case remanded till 23/8/35 for Defendants' attendance.

(Intd.) B.N.19/8/35. (Sgd.) Okorie his x mark.

Resumed 23/8/35. Defendant No.5 Recalled and states:- Plaintiff and his brother Ojiri had sworn on our jujus, Orilaohuru, Ogbaegha, Alaubi and Ofor-Owara and Amadioha supporting that the land in dispute belongs to them, though they swore but the land does not belong to them, as it is known that they are strangers if they die by means of those jujus they swore, we would take over the possession of our land.

Court remarks:- We had viewed the land in question. The area of the land in question contains 5 Umubis, there is (Ovuru) mound around it. No yam planted on it, Defendants planted cassava there.

JUDGMENT:- For Plaintiff for £2 damages in one (1) month and costs at once. Defendants to revert the land to Plaintiff; after they have dug all the cassava they planted there.

	(Sgd.) B.Nkwopara	(Sgd.) Okorie	x	their	marks
	N.C.S.	"	Odu	x	
	Wit. 23/8/35.	"	Opara Iwuala	x	

Exhibits
 Exhibit "E"
 Uratta Native
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 20th July,
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 August, 1935.
 - continued.

Appealed by Defendants 3/- paid. C.R.21/28
 of 24/8/35. 5/- costs paid 23/8/35.
 Upheld. Plaintiff has sworn this admitted by
 No. 5 Defendant. (Sgd.) W.M. Newington, 31/8/35.
 £2 damages paid to Ojiri Plaintiff's younger
 brother:
 (Sgd.) B.Nkwopara (Sgd.) Ugorji x their marks
 N.C.S. " Kalu x
 Wit. 17/9/35. " Unaebu x
 " Njoku x

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Certified true copy,
 (Sgd.) P.N. Anokwuru, N.C.S.
 Copy of 2297 words 11/6d. collected from
 Plaintiff Vide C.R. No. 4/101 of 4/3/44.
 (Sgd.) P.N. Anokwuru.
 N.S.C. 4/3/44.

M.P. No. 47/1935 of 8/3/35.

From, President To, Members
 Owerri N.C. Ikeduru N.C. 20
 8/3/35. O.W.N.C. Civil Summons No. 189/35.

Members,

Will you please permit the service of the
 attached O.W. N.C. Civil Summons on the Defendant
 of Uzoaba, and please report service as usual.
 Plaintiff states that the cause of action arose
 in O.W.N.C. area.

(Sgd.) B. Opurum for Plaintiff
 8/3/35.

Exhibit "F"
 Ikeduru Native
 Court
 Proceedings in
 218/40.
 25th May and
 16th September,
 1940.

EXHIBIT "F"
IKEDURU NATIVE COURT PROCEEDINGS IN 218/40

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Exhibit "F" put in by Plaintiffs admitted and
 marked in suits A/83-85/53 Anoje & Others Vs.
 Okweje & Others (Consolidated)

In the Native Court of Ikeduru - Owerri. Nigeria.
 25th May, 1940.

Oparaocha Chuku
 Ignatius Akujue Onyenobi Ejiofo

Ibechanini
Duru
Mbara

Simon
Obiako
Onyejela
Opara Iwueze
Urada

Ago
Amadioha
Nijoku Echedo
Onyeaguhale
Oparaku.

Exhibit "F"
Ikeduru Native
Court
Proceedings in
218/40.

No.218/40. Opara of Uzoaba

Vs.

- | | | |
|--|-----------------------|--|
| | 1. Anugwolu of Uratta | } Claim: £4 damages
for trespass on
Plaintiff's land
Eke Egbelu since
5 weeks ago. |
| | 2. Emeania " " | |
| | 3. Amadi " " | |
| | 4. Ihenacho " " | |
| | 5. Ihuanyanwu | |

25th May and
16th September,
1940

- continued.

10

NOT LIABLE:

Plaintiff S/S:- I am a native of Umualumaku Uzo-
aba, the land is called Eke Egbelu, I received it
in pledge from one Nwachuku Oparaugo of Libie
Uratta, now deceased, his son who knew of the
transaction is called Chiaka and he is living and
he is my witness, the land was pledged to me for
£3 since 32 years ago, it has not been redeemed
from me as yet and I have been farming therein
since then, this year I cleared the whole area
ready for planting, behold the Defendants have
encroached and made use of 3 pieces of that land
where they render no labour, hence issue them.

20

Q. by Court: Has this land been dealt with in any
other area of Court? Answer: No, but I remem-
ber there was only a dispute of gun shoot arisen
from it, that is assault.

30

Q. by No.4 Defendant: Has late Nwachuku Oparaugo
other sons of Chiaka alone? Answer: Yes, but
Chiaka is the heirs and the most oldest son.

Q. Any Libie Uratta man present when the trans-
action took place 32 years ago? Answer: No, his
sons knew of it.

Q. Is Chiaka real son of Nwachuku Oparaugo or his
brother? Answer: Nwachuku Oparaugo was his
uncle.

40

Q. by Court: Is that land within the area of Uzo-
aba or over side Oratta? Answer: Within the
side of Uzoaba.

Chiaka S/S:- I am a native of Libie Oratta.
I appear to give evidence on the land called Egbelu

Exhibits

Exhibit "F"

Ikeduru Native
Court
Proceedings in
218/40.25th May and
16th September,
1940

- continued.

or Eke Egbelu. It belongs to one late Chuku Oparaugo (that is Nwachuku). It situated on the side of Uzoaba, I am the heir of the properties of Nwachuku Oparaugo, this land was pledged to the Plaintiff for £1 since 32 years ago. I was away during the dispute and was so informed and I found it to be correct, for it has been in possession of the Plaintiff since then and no dispute. Five years ago the whole area was farmed by the Plaintiff, this year the Plaintiff again brushed the whole land and was ready to plant yams, the Defendant No.1 with the assistance of 5th Defendant encroached 3 pieces of the land, in the other name it is trespass. Plaintiff applied to me and I told him that the only remedy is to sue them for damages 2nd to 4th Defendants were found in that land planting yams with 1st and 5th, hence they are implicated. I have not redeemed that land up till now the whole land measured 7 pieces, 3 used by the Defendants, leaving only 4 pieces for the man who paid money for the land, I can swear this land was pledged to Plaintiff Nwachuku Oparaugo died only a year ago, if this land was not in pledge why can't he sue the Plaintiff for using it since 32 years ago, it has not been repledged to anybody else by late Nwachuku Oparaugo, nor by any of his sons who can't do it without my approval. No other Oratta or Uzoaba man ever claimed the ownership of that land.

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Q. by 4th Defendant: Do you relate to me?

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Answer: Yes. Q. Are you from Umuwejea - family? Answer: Really, my house is neighbour to your house, confess the truth pls. Q. Is that land originally belongs to Nwachuku Oparaugo or does it come to him by any way?

Answer: His really land, from ancestors. Q. Any brother of yours at home now? Answer: Yes. Q. Did any accompany you today? Answer: What for, I come to give evidence for the Plaintiff It concerns not small boys. Q. Has this land being disputed 5 years ago in Oratta Court? Answer: No, one Ononovo your relative chased Plaintiff's children while in that land 5 years ago with gun and was summoned in Oratta Court for assault that is all, that gun is now in possession of Oratta Court.

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Q. Any boundary demarcated with mound on the centre? Answer: Yes, there is and that is boundary between him and other neighbours.

Q. Did I ever summon you before the elders of Umunahu Oratta to come and prove how that land

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belong to Nwachuku Oparaugo? Answer: You did and I appeared. Q. What was the decision? Answer: They said I should sue you in Court, for the trace to long. Q. Can any Oratta man prove that the land belongs to Nwachuku from the origin? Answer: No dispute for that and no old man of Oratta ever claimed it.

Exhibits

Exhibit "F"

Ikeduru Native Court
Proceedings in
218/40.

25th May and
16th September,
1940

- continued.

10 Ihenacho 4th Defendant for and on behalf all
the rest Defendants S/S: I am a native of Umuejea-
Libie-Oratta, Umunahu village this land is called
Egbelu alias Ubeagba. This land belongs to Amechi
our father, he pledged it to one Agamana of Libie
for Ogodo-asato cowries = 4/- in value, this hap-
pened about 30 years, it has been redeemed from
late Agamana's son called Ononobo since 3 years
ago with the amount specified and he accepted it
freely. Many people witnessed the redemption, that
land divides into two parts, one late Njemanze
20 pledged the rest to the same late Agamana for Nno
Ogudo = 10/- in value. Ononobo son of Agamana was
a youth when his father died, for this reason we
have not intended to redeem that part pledged by
Njemanze, we thought nobody had pledged it to any
other man of Oratta or Uzoaba we do farm in one
area with Uzoaba and therefore could not tell what
had taken seeing any Uzoaba man in the land with-
in that area, for we may say perhaps, it has been
rented to him by a neighbour, we always think that
30 Ononobo do rent land to Plaintiff whenever we see
him farming on it, hence the use by him lasted too
long, 5 years ago, Ononobo took notice of Plaintiff
farming on it and therefore mix cassava with his
yams and asked him to explain who gave it to him,
for that reason Ononobo intended to shoot Plain-
tiff's wife and child 5 years ago, and there was a
case for that, up till now that gun is being seized
by Oratta Court with a machet belonging to Onono-
bo. From there we heard from the Plaintiff that he
40 had the land in pledge from one late Nwachuku quite
surprised we are and Ononobo denied have known of
the transaction according to custom one has to
ascertain the real owner of the land ere he pays
for it, none of the old men of our family do called
to witness the transaction, hence we took 4/- to
Ononobo and have that land redeemed, the part pledge
out to Ononobo's father by Njemanze has not been
redeemed, that land was brushed by the Plaintiff
this year, but the dress of the trees were by us
and we planted our yams therein, 3 pieces they are,

Exhibits

Exhibit "F"

Ikeduru Native
Court
Proceedings in
218/40.25th May and
16th September,
1940

- continued.

we don't call it any trespass, for it has been redeemed. I have informed the Plaintiff in presence of one M.N.T. Oke of Oratta that he should come for settlement for we have redeemed out our land, he failed to come and all he has to do is to summon us we are ready to swear that the land is ours, as we called Chiaka before the elders and he failed to appear, we were told to use the land.

Q. by Court:- Are you of the same family with the said Nwachuku Opara? Answer: He belongs to Umuofia Nwamba sub-family and we belong to Umuejea.

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Witnesses for Defendants 1. Amaram, 2. Chiagoro, 3. Benjamin Egwim, 4. Amadi, 5. Nanakala.

Amaram (elected to make statement) S/S:- I come from Libia Oratta and belong to it, this land is called Egbelu and it is the property of one late Amechi father of first Defendant, it is comprised of 3 Imubis (pieces) I mean those now in dispute, although there is another 4 pieces it belongs to Umuejea sub-family that's the sub family from where Amechi was brought up, these 3 pieces were pledged to late Agamana father of Ononobo, when 1st Defendant had applied for redemption, we asked Ononobo to give it up, Ogoto Asato cowries = 4/- in value, these three pieces are those now in dispute alleged to have been pledged by late Nwachuku Oparaugo to Plaintiff with the other 4 pieces inclusive.

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Q. by Court: Is late Nwachuku Oparaugo relates to Defendants in any way? Answer: No. Q. How long since Amechi pledged that land to late Agamana? Answer: About 20 years.

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Q. Did Nwachuku sell some of his land?

Answer: Yes, he was a rogue and useless man.

Ononobo S/S:- I am of Libie Oratta. The statement of elder Amaram are correct, the land was pledged to my late father by late Amechi for Ogoto assato = 4/-. It has been redeemed, they are 3 pieces of land (three Imubis).

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Q. Why no dispute until Nwachuku died only last year? Answer: It has been decided in Oratta N.C. 5 years ago. Q. Was it declaration of title to this land? Answer: No, it was for

threatening with gun arisen from that land.
 Q. How long since Plaintiff is being farmed in that land? Answer: Fifteen years. Q. So it is found Nwachuku had pledged it to Plaintiff? Answer: Yes, hence we told his son to refund the amount on which he paid to late Nwachuku.
 Q. Did Defendants ever sue Nwachuku for pledging away their land to Plaintiff? Answer: No action in Court as yet, we have been investigating it at home.

10

Exhibits
 Exhibit "F"
 Ikeduru Native Court Proceedings in 218/40.
 25th May and 16th September, 1940
 - continued.

Court's remarks: Plaintiff's claim for mere damages is correct on the ground that he don't claim the ownership of the said land he stated land was pledged to him, both Defendants and Plaintiff's witness admitted it and as long as the land belongs to Oratta people and disputed by Oratta between them, the Plaintiff has right to claim damages, he has used the land for 15 years according to evidence and no dispute, Nwachuku died only last year and no dispute during his time, both the Orattas should go to Oratta Court and claim title to that land and loser shall repay what we shall now award to Plaintiff, having cleared the bush and wilfully used by the Defendants they therefore deserve to pay damages land to remain with Plaintiff until after any case at Oratta.

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For Plaintiff: for 10/- damages in 2 weeks costs at once.

Witness to mark Osuagwu his x mark
 (Sgd.) B.A. Igwe. for Court.
 C/C. 25/5/40

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10/- costs paid 11/10/40. Defendants apply for Review 12/6/40.

REVIEW

I agree with the Court. Plaintiff cleared the land in good faith and Defendants should pay for his labour. Upheld.

(Sgd.) A.E. Cook D/O.
 16/9/40.

Exhibits

EXHIBIT "C"

Exhibit "C"

URATTA NATIVE COURT CRIMINAL PROCEEDINGS.

Uratta Native Court Criminal Proceedings.

11th, 14th, 15th and 16th September and 15th October, 1942.

Exhibit "C" put in by Plaintiff admitted and marked in Suits A/83-85/53 - Anoje & Others Vs. Okweje & Others.

(Sgd.) F. Bosah,
Clerk of Court, Aba,
26/10/53.

In the Native Court of Uratta Owerri Division.

Francis Enwere of Umunahu

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Vs.

- | | |
|---------------------------|-----------------------|
| 1. Onugha Mba of Uzoagba, | 6. Stephen of Uzoagba |
| 2. Origanye " " | 7. Joseph " " |
| 3. Agunanna " " | 8. Timothy " " |
| 4. Duru " " | 9. Obiako " " |
| 5. Agoamana " " | 10. Donald " " |
| | 11. Onuebu " " |

Stealing Pros tombo tree leaves.

(II) Assault and wounding Ndukwu with machet on the fingers at Umunahu waterside on 3/9/42.

20

Accd No. 6 not served.

Pros has 5 witnesses. Accd have 4 witnesses.

Parties present. Pros says Ndukwu who is assaulted with machet is not present and will be in on Monday 14/9/42.

Sgd. Wit.

M.R.J. John x his mark.

L.O.Ejiogu, 11/9/42.

Case resumed 14/9/42.

Pros. (m) S/S:- It was about 11 days ago I went to our waterside with one Warri. We heard a sound of machet and started to go there. Accused No.1 and 3 saw us and fell down while running. I caught hold of accused No.1 his machet fell off. I asked Warri to take the machet and run home telling people at home that I caught accused No. 1 while stealing our tombo tree leaves but accused No. 3 ran away. As I was shouting one Kamalu and Ogidi came up and asked me to leave him on the ground. I said no he would run away if I were to leave him because his the other accused No.3 had gone. My

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people Orji and Nwozuzu came up there and asked me to leave the accused No.1. I left him and handed him to them. All accused persons came up there with exception of accused No.9 who did not reach there. But one Ada Opara Okorie came up she told me that her husband accused No.9 sent the accused Nos. 1 & 3 to cut tombo tree leaves for him. After all these was done I asked Warri and Ogidi to carry the tombo tree leaves cut by the accused Nos. 1 & 3 house for me. As soon as Ogidi or Ndukwu wanted to carry the leaves and accused No.2 wanted to cut the leaves with his matchet it touched the finger of Ndukwu. We left the leaves for the accused persons. They carried them away. I came to Court with the matchet and sued the accused persons.

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Q. by accused No.3. Were in the water or coming when we were cutting the leaves? Answer: I was coming.

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Q. by accused No.4. Did you see me up there?
Answer: Yes.

Q. by accused No.5. Why should you include me in the summons? Answer: You were included because you were one of the people who ordered the others to carry my tombo tree leaves.

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Q. by accused No.7. Who is the owner of the tombo trees from which the leaves were got?
Answer: The trees belonged to me. Q. Who tapped the tombo tree? Answer: I ordered one Ibekwenwere to tap it for me. Q. Who farmed on the land near the tombo tree? Answer: I do not know. Q. As you do not know how do you know then that the tombo tree belonged to you?
Answer: No answer. Q. When was the tree tapped?
Answer: It was tapped 2 months ago.

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Q. by accused No.8. Who helped you to catch accused No.1? Answer: I caught him alone as he fell down. Q. Was accused No.1 on the top of the tree or on the ground? Answer: He was on the ground.

Q. by accused No.9. Why should you include me in the summons? Answer: You were included because your wife told me that you sent the accused persons to cut the leaves for you. Q. Who is Ibe?
Answer: He is an Umunahu man.
Q. by Court: Have accused been stealing your tombo tree leaves from the waterside before?
Answer: No. I only saw them in this. Q. Have accused persons share in the waterside or not?

Exhibits

Exhibit "C"

Uratta Native
Court Criminal
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Answer: They have not. Q. Do you really mean that accused persons steal these leaves?
 Answer: Yes, hence I sued them. Q. Who is the owner of the waterside? Answer: Umunahu my town owns it. Q. Have accused persons road to the river? Answer: Yes. Q. You only saw accused Nos. 1 & 3 with the leaves and caught one why you included the other 9 accused persons? Answer: They instructed the accused No.1 to carry my leaves. Q. Did accused Nos. 1 & 3 say the tombo tree belonged to them or to you? Answer: No answer. Q. Does your witness know that the accused persons stole the tombo tree leaves or not? Answer: They all knew that the accused persons stole the leaves.

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Kamalu (m) for pros. S/S:- It was about 11 days ago, Ndukwu and I were in the water fencing portions to catch fish when we heard a shout. We ran to see what for. As we were coming I saw accused No. 3 running away, and still like to see what the cry was raised. I reached and saw pros. on top of accused No.1 on the ground. I asked accused No.1 whether he asked somebody before he started to cut the leaves, he said no. I asked pros. to leave he said no he would not because accused No.3 had run away. Okorie and Orji after this came up and asked him to leave the accused No. 1. Accused No.2 came up there and ordered that the leaves should be carried home. Accused No. 4 again came up and said the same thing. Accused No. 8 was parting and did not say the leaves should be carried. Pros. asked Ndukwu and Warri to gather the leaves for, but Accused No.2 said they should keep down them. He wanted to cut the mat or leaves when Ndukwu touched the machet. It was accused No.9's wife that told us he sent the accused Nos.1 & 3 to cut the leaves for him. The accused persons all are included in this matter because they gave the order which touched the mind of the accused No. 1 that the leaves were carried. As we do not like to fight, hence pros sued the accused persons.

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Okorie, Orji and Warri S/S:- We corroborate the above evidence of Kamalu for pros.

Q. by accused No.1. Were staying over to your place or over to our own place? Answer: You have no part on that river. Q. Which side I was cutting the leaves? Answer: The other side Ebelu. Q. Which people get there? Answer: Your town Uzoagba lived there.

Q. by accused No.2. Am I insane to cut Ndukwu?
 Answer: No. Q. Which side of the body that I
 cut the boy? Answer: On the palm. Q. Why I
 cut that small boy and left you the grown up man?
 Answer: The boy Ndukwu was carrying the leaves
 hence that.

Q. by accused No.4. Did you see me there?
 Answer: Yes.

10 Q. by accused No.8. Why you failed to take the
 accused No.1 to your home when caught him stealing?
 Answer: He was begging. Q. Did you show him
 to any of your Court members? Answer: No.

20 Q. by Court: Is this stealing or assault matter?
 Answer: It is stealing. Q. Were all accused
 persons caught stealing the leaves? Answer: No.
 Only accused Nos. 1 & 3 saw. Q. Why they then
 included? Answer: They gave instruction to
 take the leaves. Q. Why they refused to give
 up the leaves? Answer: They the trees from
 which the leaves were got belonged to them.

Ndukwu (n) for Pros. S/S:- I was with Kamalu
 and heard pros shouted. We reached and found
 pros. on top of accused No.1 on the ground. We
 asked him to leave accused No.1. He left him.
 Pros. asked Warri and I to get the leaves for him.
 Accused No.2 wanted to cut the leaves unknowingly
 the machet trachet my finger on the palm side.

Case adjourned by Court to 15/9/42.

For accused and witnesses.

30 M.N.T. John x his mark.

(Sgd.) Wit. for Court.
 L.O. Ejiogu, 14/9/42.

Case resumed 15/9/49. Parties present.

40 Accused No.1 (m) states:- It was about 12 days
 ago I went to our river to cut tombo tree leaves.
 The tombo tree was tapped by my relative Opara
 Ukwuije. Pros and many others were fencing por-
 tions of the river to catch fishes. I saluted
 them and they saluted me same. I asked accused No.
 3 to climb on the tree to cut the leaves. He went
 and cut them. Pros came up there and asked who
 ordered me to cut the leaves. I replied that the
 tree does not belong to him. Why should he ask me

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the question. He took my matchet. I asked why he should do that. He threw it to his man Okoric and by force caught hold of my feet and I fell down. He started to call Kamalu and Orji. These people came up there and they started to beat us. A boy was sent to call more people at home. We were three till they came and jointly beating us. The boy who said he was cut with a matchet wounded himself with (Ebe) with which he was fencing. He showed this to Kamalu, who said that accused No.2 who had just arrived gave him the cut. My cloth was torn and taken. Accused No.3's matchet was also seized. The river is between Umunahu and Uzoagba. They are drinking from one side and we the same. We have our own tombo trees planted and they did the same. We call it (Onumiri Nledoanya) and we have been using it since I was born. One side is known as (Oriaku Agwu's) waterside. The other side is known as (Onumiri Nwoku Akaji). I was not stealing the leaves but cutting them because they are mine. If it is true that I am stealing the leaves my people should not have known and come for me. To prove that this is a false action accused No.6 is at Gold Coast since 6 years and has not reached home but he is included in this summons. Accused No.9 was in Court trying case being a sitting Court member for the month. Accused No.10 is a school boy and went to school on that day. But he is included in the summons. My witnesses will only come to prove how they were keeping meeting with the accused Nos.4,5,7,8 & 11.

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Q. by Court: Have you a boundary with any Nduhu man?
Answer: Okwu and his people have boundary with us.
Q. Are you the only man who have tombo trees in the river.
Answer: No. Other people have too.
Q. You have boundary with Okwu is it so?
Answer: Yes.
Q. What will be done to you if Okwu has no boundary?
Answer: No answer.
Q. Who is Okwu?
Answer: He is an Umunahu man.
Q. Who is your relative has boundary with in the river?
Answer: Umunwoku and Umuoriaku have boundary with my family.
Q. Why should you run away when saw pros.?
Answer: I did not run away.

40

Rest accused Nos.2,3,4,5,7,8,9,10 & 11 state:-
We corroborate with the above defence of the accused No.1.

Q. by Court: What is the name of the river?
Answer: (Okitankwo) river.
Q. How many times do

we celebrate Oru festival for (Okitankwo) during the year? Answer: No answer. Q. Would you like Court to inspect the river or not? Answer: No unless both you and Ikeduru N.C go together.

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10 Mbara (m) for accused persons S/S:- It was 12 days ago, that we were meeting together and drinking tombo. The accused Nos. 2,4,5,7,8 & 11 were among of us in the meeting. But accused No.2 went away before us that Emii people were coming to his place. None of us in the meeting reached waterside on that day. We only come to tell Court that the mentioned numbers of the accused persons were with us drinking and they were included in this case that they were among while in the river fighting. This is false. We only heard that these accused mentioned stole tombo tree leaves and assaulted them.

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20 Hycenth and Wilfred for accused persons S/S:- The above evidence of Mbara is correct, and we corroborate. Q. by pros: Has any Umunahu man ever caught any Uzoagba man stealing when he is not? Answer: No.

30 Court's opinion: This case has been gone into well. Since we are born, we never hear that Uzoagba people planted tombo tree in Okitankwo waterside. We found out that accused Nos.1 & 3 were caught cutting tombo tree leaves which did not belong to them both accused persons agreed or admitted they were really cutting the leaves. The accused No.2 is guilty, because he used machet which wounded one Ndukwu of Umunahu. Orji and Okorie acted very fine, because they saw the cut and blood and refused to fight but come to Court and sue which is the way. Accused Nos.1 & 3 found guilty of theft. Accused No.2 is found guilty of assault. They accused persons are not to touch plants in that river Okitankwo till they prove how they have share in that water.

40 JUDGMENT: Finding accused Nos.1 & 3 guilty. Sentenced (3) months I.H.L. each. Accused No. 2 fined £1 or (1) month I.H.L. Rest accused persons discharged. Costs to be paid to pros.

(Sgd.) Wit. M.N.T. John x his mark.
L.O.Ejiogu, 15/9/42. for Court.

5/- Costs paid to pros W.I. 92/7 - 9

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Place on review. Release accused on bail.

(Sgd.) Butcher,

Sept. 16. 1942.

A.D.O.

This case and Ikeduru N. Ct. criminal case 375/42 are cross actions. Both sides are telling lies and have charged more people than were concerned. I do not believe the story by the Oratta people but the boy Ndukwu. He shows a scratch on the inside of the middle finger at his right hand. Has the scratch been a matchet wound the other fingers could have been wounded. I believe he scratched himself on the bundle of bamboos.

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Accused found not guilty and discharged.

(Sgd.) E.R. Chadwick,

D.O. 15/10/42.
