

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIAB E T W E E N:

1. Anoje Igwe 2. Vincent Chikeka 3. Anosike

4. Mbara

for themselves and on behalf of their people

of Umunahu Uratta (Plaintiffs) Appellants

- and -

10 1. Opara Ukweje 6. Opara Iheoma 11. Madubata
2. Obiakomba 7. I(b)(h)ekwaba 12. Anuruodo
3. Ucheriodu 8. Ohuawunwa 13. Amadi Ekeocha
4. Ihenach(o)(e) 9. Njoku 14. Ugochukwu
5. Chemeziri 10. Osuji Mbek(e)(a)
for themselves and as representing their people
of Umuofa Uzoagba (Defendants) Respondents

A N D B E T W E E N:

1. Oke Adakonye 2. Orji 3. Ahurunwa

for themselves and as representing the people

20 of Umunaha Uratta (Defendants) Appellants

- and -

1. Mark Iheoma 2. Wilfred Okpara

for themselves and as representing the people

of Umuofa Uzoaba (Plaintiffs) RespondentsA N D B E T W E E N:

1. Ndulu (Udulu) 2. Olugazie

for and as representing the people of

Umundala-Uratta (Plaintiffs) Appellants

- and -

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

(Consolidated Appeals)

CASE FOR THE RESPONDENTS

40 1. This is an appeal from a judgment and order of the Federal Supreme Court of Nigeria both dated the 20th June, 1956, dismissing the Appellants' appeal from a judgment and order of Dove Edwin J. in the Supreme Court of Nigeria dated the 2nd April, 1954, whereby the learned Judge dismissed the claim of the Appellants (hereinafter referred to as "the Plaintiffs") in Suits A/83/53 and A/85/53 for a declaration of title to a piece of land (described by the Appellants as Egbelu Land and by the

Record
pp.90, 91

p.81

Record

Respondents as Umuofa or Egbelu Umuofa) and for other relief and granted the claim of the Respondents (hereinafter referred to as "the Defendants") in Suit A/84/53 for a declaration of title to the said land.

2. The issue in this appeal is whether, as contended by the Plaintiffs, the people of Umunahu Uratta are the owners of the land in dispute and the Defendants are their tenants according to native law and custom or whether, as contended by the Defendants and as found in the Courts below, the people of Umuofa Uzoagbe were the owners of the said land and the boundary between the parties is the Okitankwo stream and not the Emekuku-Uzoagba road.

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3. All three suits were commenced in the Native Court of Ikeduru, Owerri Division. By their claim in A/83/53 Anoje and on behalf of Vincent, Anosike and Mbara of Uratta claimed against Opara Ukwuje and twenty-two others all of Ukulaumaku Uzoaba a declaration of title to the land in suit and consequential relief.

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p.2, 1.11

p.4, 1.18

By their claim in A/85/53 Iheuko, Ndulu and Olugazie for and as representing the people of Umundula Uratta claimed the same reliefs against Mbara Enwere and twenty other defendants.

p.3, 1.1

By their claim in Suit No. A/84/53 Mbamara Okpara and three others for themselves and as representing the people of Umuofa Uzoaba claimed against Oke Adakonye and five others as representing the people of Umunahu Uratta a declaration of title to the land in suit and consequential relief.

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pp. 1, 4.

4. By orders dated 10th March 1944, and 23rd March 1944, made pursuant to Section 25(1)(c) of the Native Courts Ordinance No. 44 of 1953 the Divisional Officer, Owerri, ordered these suits to be transferred to the High Court, Onitsha Judicial Division. Thereafter, pleadings were filed in the High Court.

p.7, 1.24

5. By their Statement of Claim in A/84/53 dated the 12th June 1944, the Defendants pleaded (inter alia) that the land in dispute was part of a larger portion known as Umuofa land which said land was and had been their property from time immemorial, and that the Okitankwo stream formed the boundary

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10 between the Defendants and the Plaintiffs. By their Statement of Defence dated the 10th February 1945 the Plaintiffs pleaded that the land was and had been known as Egbelu land; "that their ancestors first settled on the land and farmed it tapped the tomo trees, lopped their branches for their use and exercised the fullest rights of ownership thereon"; that the Defendants were given permission by the Plaintiffs to occupy certain portions of Egbelu land and erected buildings thereon when they sought shelter from the unfriendly forays of their neighbours; that the Defendants made the annual and seasonal presents and payments in accordance with native customary law for the privilege of cutting tomo branches and taking the wine, also for occupation of the land and fishing in the said stream; and that the Okitankwo stream was never the boundary between the two peoples.

20 By their Statements of Claim in A/83/53 and A/85/53 dated respectively the 10th February 1945, and the 22nd October 1945, the Plaintiffs again pleaded that their people had been owners of the land from time immemorial and had permitted the Defendants' people to occupy portions of the said land for purposes of residence and farming. They further pleaded that in or around the year 1942 the Defendants' people tapped and cut the tomo 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, and that in order "to further assert their claim to title" the Defendants' people in 1942 violated the law relating to keeping of goats 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.

p.11, 1.11
p.16, 1.34

p.12, 1.24
p.18, 1.6

40 By their Statements of Defence dated respectively the 25th September, 1945 and the 23rd November, 1945, the Defendants again pleaded, as in A/84/53, that the land in dispute was part of a larger portion of land known as Umuofa land which had been the property of the Defendants since time immemorial.

p.14, 1.34
p.19, 1.14

6. On the 16th March, 1945 Waddington J. made an order for the consolidation of all three suits.

p.13, 1.12

7. On the 14th June, 1949 judgment in the con-

p.81, 1.9

- Record consolidated suits was given by Brown J. in the Supreme Court of the Onitsha Judicial Division.
- pp.20-21. On the 9th November 1950 the West African Court of Appeal set aside this judgment and ordered that the consolidated actions be remitted to the Court below to be re-tried.
- pp.46-66. 8. On the re-trial the Plaintiffs called eight witnesses, four of them being parties and the other four neighbours. They also relied upon four Exhibits, "C", "D", "E" and "F", all of which were Records of earlier proceedings in native courts. Plans were exhibited by both sides. 10
- p.46, 1.12. 9. Anoje Igwe, the 1st Plaintiff in A/83/53, gave evidence in chief which included the following passage:-
- p.48, 1.16 "The Defendants have now occupied all the land to the right of the Emekuku Uzoagba road. There is no dispute about the area as along as the Defendants acknowledge that we gave them the land. It is now 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 of the road at the same time that they cut tombo leaves from the Okitankwo." 20 30
- In cross-examination this witness deposed as follows:-
- p.49, 1.28 "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 40

10 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."

10. Olugazie Ugorji the 3rd Plaintiff in A/85/53 deposed that his people did not live on the land in dispute but used it only as farm land; that now there were houses on the left hand side of the road belonging to Uzoagba; that the Umundulas permitted three persons to build there; that this grant was during his lifetime when he was a man; that this was about twenty years ago; that to-day there were over 100 houses, "most of them built in 1944 when this case started". In cross-examination this witness deposed that there was a R.C.M. Church on the land in dispute built by the Uzoagbas; that it was built without the Plaintiffs' permission but when they asked them to quit the three people they permitted begged them and said that their children would benefit from the church.

11. The Defendants called five witnesses. Mark Iheoma the 2nd Plaintiff in A/84/53 deposed, inter alia, that the Uzoagbas used the Okitankwo stream where they fished, tapped tombo palms and got sand and gravel; that they did these things in their own right; that they had about five beaches which were there before the witnesses' parents were born; that they had houses on the left of the road which was never the boundary between the Plaintiffs and the Defendants; that they had built churches there both C.M.S. and R.C.M. which were over forty years old; that they had jujus on the land.

12. The 3rd Plaintiff in A/84/53, Wilfred Okpara, deposed that he had a house on the land in dispute and that the Uzoagbas had many houses there; that nobody had given him permission to build; that his first house had been there twenty-eight years ago; that he now had three houses there the last of which he built about sixteen years ago; that they had an R.C.M. Church there as well built over thirty years ago.

Record
p.73, 1.38

13. Johnson Orji the 1st witness for the Defendants (i.e. for the Plaintiffs in A/84/53) a native of Oku Emekuku, deposed that he knew the land in dispute; that he had a boundary there with the Uzoagbas people; that he had always seen the Uzoagbas farming on the land; that he had not seen the Urattas farm there and he had never been told that they used to farm there.

p.75, 1.1

Similar evidence was given by a witness named Elemuwa Mpordimma, a native of Umueziogu.

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p.81
p.84, 1.16

14. In the course of his judgment dated the 2nd April, 1954 the learned trial judge Dove Edwin J. held that the land in dispute was clearly defined on both plans.

p.84, 1.35

The learned Judge dealt with the Plaintiffs' documentary evidence as follows:-

pp.84-85.

"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'.

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"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 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."

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p.85, 1.13

The learned Judge then stated that the Plaintiffs who gave evidence as witnesses did not impress him as witnesses of truth. Their evidence on their traditional history was not impressive and he did

not consider them reliable. Neither were they impressive over matters during their lifetime. On the other hand the learned Judge found that he could rely on the Defendants' evidence and that of their witnesses. The whole land in dispute was so situated that it lent colour to the contention that the Okitankwo was the boundary between them. In his view the boundary between the parties was the Okitankwo and not the Emekuku-Uzoagba road. He proceeded as follows:-

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"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."

p.85, 1.27

The learned Judge therefore dismissed the Plaintiffs' claim in both suits A/83/53 and A/85/53. As regards A/84/53, in view of a judgment of the West African Court of Appeal to which he referred he struck out the claim for fishing rights as the Government was not joined. Since, however, he had found that the Okitankwo stream was the boundary between the parties he granted the Defendants the declaration of title claimed in A/84/53. He gave no damages for trespass but granted an injunction.

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p.85, 1.32
and p.80,
1.22
p.85, 1.34

15. By a Notice of Appeal dated the 26th April, 1954, the Plaintiffs appealed from the said judgment to the West African Court of Appeal.

p.86, 1.10

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16. The appeal was heard by the Federal Supreme Court of Nigeria. The appeal was dismissed without the Defendants being called on. The judgment of the Federal Supreme Court (Foster Sutton F.C.J., Verity J.A. and Irwin J.A.) included the following passage:-

p.90
p.89, 1.40

"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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p.90, 1.16

An order was passed accordingly.

p.91, 1.1

Record
p.91, 1.26

17. On the 8th January 1957 final leave was granted to appeal to Her Majesty in Council.

18. The Respondents respectfully submit that this appeal should be dismissed with costs and the judgments and orders of the Court below upheld for the following amongst other

R E A S O N S

1. BECAUSE there are concurrent findings of the Courts below that the Plaintiffs had failed to establish and the Defendants had established their claim to ownership of the land in suit. 10
2. BECAUSE the learned trial Judge held that the boundary between the parties was the Okitankwo stream and not the Emekuku-Uzoagba road and there was ample evidence upon which he could so hold.
3. BECAUSE the Plaintiffs failed to discharge the onus which rested upon them of proving that the possession of the land in dispute by the Defendants was merely permissive. The Plaintiffs also failed to discharge the onus of proving their title by traditional history. 20
4. BECAUSE the learned trial Judge held, and was entitled to hold, that the Plaintiffs' evidence on their traditional history and on matters during their lifetime was not impressive and that the Defendants were more reliable.
5. BECAUSE the Federal Supreme Court rightly held that the decision in this case wholly depended upon the view taken by the trial Judge of the evidence. 30
6. BECAUSE the Federal Supreme Court rightly held that there was no substance in the Plaintiffs' allegations of misdirection by the learned trial Judge.
7. BECAUSE the judgments of the Courts below were right and should be upheld.

PHINEAS QUASS.

E.F.N. GRATIAEN.

IN THE PRIVY COUNCIL
ON APPEAL FROM THE FEDERAL SUPREME
COURT OF NIGERIA

BETWEEN:

ANOJE IGWE and OTHERS, for them-
selves and on behalf of their people
of Umunahu Uratta
(Plaintiffs) Appellants

- and -

OPARA UKWEJE and OTHERS for them-
selves and as representing their
people of Umuofa Uzoagbe
(Defendants) Respondents

AND BETWEEN:

OKE ADAKONYE and OTHERS for them-
selves and as representing the people
of Umunahu Uratta
(Defendants) Appellants

- and -

MARK IHEOMA and ANOTHER for them-
selves and as representing the people
of Umuofa Uzoaba
(Plaintiffs) Respondents

AND BETWEEN:

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

- and -

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

(Consolidated Appeals)

CASE FOR THE RESPONDENTS

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