

IN THE PRIVY COUNCIL

No.49 of 1962

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

B E T W E E N :-

- (1) NNAEGLO EKWEZE  
CHINWEZE EJIOFOR and  
UZODIGWE MAKIDA  
(For themselves and on behalf  
of People of Abube Nando) Defendants/Appellants
- and -
- AJANA ENWELUM and  
ROBERT NWEKEZE  
(For themselves and on behalf  
of People of Agbudu Nando) Plaintiffs/Respondents
- and -
- (2) UZODIGWE MADIKA  
UDOLI IGWEZE  
NNELI ANEKWE and  
EGWUONWU EGBILI  
(For themselves and on behalf  
of Abube Nando) Plaintiffs/Appellants
- and -
- NWANWUBA ASIEGBU  
IFEDIORA AGBAZINUO  
EMESIN ENENDU  
ONAEFUNA ONYEKWE and  
OBIDIGWE UYAMEDU Defendants/Respondents
- and -
- (3) AJANA ADUAKA  
ONWUEGBUKE EGENTI  
EGWUONWU EGBILI  
NNELI ANAKWE - 78640  
EKWEOBA ARINZE  
UDOBU IGWEZE and  
OGUGUA UGBOAJA  
(For themselves and on behalf  
of the Abube Ibinagu family  
of Nando) Defendants/Appellants
- and -
- VINCENT EKWEALOR (For himself  
and on behalf of the Umuawa  
Family of Nando) Plaintiff/Respondent

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

RECORD OF PROCEEDINGS

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6, Westminster Palace Gardens,  
S.W.1.

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Solicitors for the Appellants.

*Solicitors for the Plaintiffs/Respondents*

ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

B E T W E E N :

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 CHINWEZE EJIOFOR and  
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 (For themselves and on behalf  
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- and -
- AJANA ENWELUM and  
 ROBERT NWEKEZE  
 (For themselves and on behalf  
 of People of Agbudu Nando) Plaintiffs/Respondents
- and -
- (2) UZODIGWE MADIKA  
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 NNELI ANEKWE and  
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 of Abube Nando) Plaintiffs/Appellants
- and -
- NWANWUBA ASIEGBU  
 IFEDIORA AGBAZINUO  
 EMESIN ENENDU  
 ONAEFUNA ONYEKWE and  
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 EKWEOBA ARINZE  
 UDOBU IGWEZE and  
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 (For themselves and on behalf  
 of the Abube Ibinagu family  
 of Nando) Defendants/Appellants
- and -
- VINCENT EKWEALOR (For himself  
 and on behalf of the Umuawa  
 Family of Nando) Plaintiff/Respondent

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"A"	Plan	-	Reproduced separately
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"C"	Agreement		Not reproduced
"D"	Agreement		Not reproduced
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Court Note	(0/19/57)	15th May 1958
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Motion with Affidavit	25th September 1961



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1.

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

In the  
High Court

No.1

B E T W E E N:-

NNAEGBO EKWEZE and OTHERS  
(Defendants) Appellants  
- and -  
AJANA ENWELUM and ANOTHER  
(Plaintiffs) Respondents

Claim in Suit  
No. 0/19/57  
9th February  
1957

10

NO.1

CLAIM IN SUIT NO.0/19/57

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

SUIT NO. 0/19/57:

BETWEEN:

1. AJANA ENWELUM For themselves and on behalf  
2. ROBERT NWEKEZE of People of Agbudu Nando.  
PLAINTIFFS.

20

- and -

1. NNAEGBO AKWEZE For themselves and on  
2. CHINWEZE FJIOFOR behalf of People of  
3. UZODIGWE MAKIKA Abube Nando  
DEFENDANTS.

C L A I M :

The Plaintiffs claim from the Defendants as follows :-

1. Declaration of title to all that piece and parcel of land known and called "Agu Okpu Ani" situate at Nando.
2. £200 damages for trespass on the said land.
3. Injunction to restrain the Defendants their Servants and agents from further trespass.

30

DATED at Onitsha this 9th day of February, 1957.

(Sgd.) F.O. Anyaegbunam.

In the  
High Court

NO.2

CIVIL SUMMONS (SUIT NO.0/19/57)

No.2

IN THE HIGH COURT OF NIGERIA:

U 9138

Civil Summons.  
(Suit No.  
0/19/57)  
19th February  
1957

CIVIL SUMMONS

SUIT NO.0/19/1957:

(TITLE AS NO.1)

You are hereby commanded in His Majesty's name to attend this Court at Onitsha on Monday the 11th day of March, 1957, at 9 o'clock in the forenoon to answer a suit by Ajana Enwelum and two others of Agbuđu Nando.

10

c/o Postal Agency, Nkwo Nando against you.

The Plaintiffs' claim from the defendants as follows:-

- (1) Declaration of title to all that piece and parcel of land known and called "Agu Okpu Ani" situate at Nando.
- (2) £200 damages for trespass on the said land.
- (3) Injunction to restrain the Defendants their Servants and agents from further trespass.

20

(As per particulars of claim attached)

Issued at Onitsha the 19th day of February, 1957.

(Sgd.) H.M.S. Brown

J U D G E.

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

30

NO.3

STATEMENT OF CLAIM (SUIT NO.0/19/57)

In the  
High Court

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

No.3

Statement of  
Claim (Suit  
No.0/19/57)  
23rd May 1958

(TITLE AS NO.1)

STATEMENT OF CLAIM :

- 10 1. That Plaintiffs are natives of Agbudu Nando in Onitsha Division and sue for themselves and on behalf of the people of Agbudu Nando.
- 2. The Defendants are natives of Abube Nando and are sued for themselves and on behalf of people of Abube Nando.
- 3. The land in dispute is known and called "Agu Okpu Ani" and situate at Nando and is edged pink in the plan No. MEC/258/57 filed by the Plaintiffs in this action.
- 20 4. The Plaintiffs and Defendants are children of Ikenga Nando who had 3 children Agbudu, Umu-awo and Abube. Of all the 3 children Agbudu was the eldest and took the first share of the Ikenga land.
- 5. The Plan filed by the Plaintiffs in this action correctly shows the portions of Ikenga land acquired by the 3 children of Ikenga.
- 30 6. As owners in possession of the land in dispute the Plaintiffs have exercised maximum acts of ownership with let or hinderance from the Defendants of from any one all from time immemorial.
- 7. The Plaintiffs have many shrines on the land in dispute which they worship fairly regularly. The Plaintiffs farm, take fire wood, cut economic trees, tap palm wine from palm trees, put rent paying tenants and do diverse acts in exercise of their right of ownership of the

In the  
High Court

No.3

Statement of  
Claim (Suit  
No.0/19/57)  
23rd May 1958  
continued

land in dispute.

8. There are some of the Defendants' people who live as the Plaintiffs' tenants and pay land tribute to the Plaintiffs.
9. In or about 1914 in a land dispute between the Plaintiffs and the Umuawo people the Defendants appeared as witnesses for Umuawo and claimed to be their tenants and disclaimed any right of ownership in the area the Defendants now call Abube Nando town in the Plan they (Defendants) filed in Suit No.0/31/57 now pending in Onitsha High Court. 10
10. In 1917 before the then District Officer P.J. Gardner Esq., one Anekwe Akpe of Abube a member of the Defendants' family agreed that the boundary between Agbudu and Abube run from the confluence of the Ezuka and Gburugbu streams along the latter stream to Echichi tree where the stream meets the path to Achalla town along the path in an Easterly direction to a point opposite the Churugburu Bush and to the source of the Ezuka stream. 20
11. Some time in 1957 in utter defiance of Judgment obtained against the Defendants and open declaration made by Defendants' people the Defendants trespassed on the land in dispute and grant a portion of the land in dispute, to Roman Catholic Mission without the knowledge and consent of the Plaintiffs who are the owner of the land. 30
12. The Defendants' people in a large number went into the land in dispute and destroyed economic trees on the land.
13. Since 1957 the Plaintiffs who are mainly farmers have been deprived of their farm land by the Defendants.
14. In a dispute between the Plaintiffs and Umuawo people the Defendants' head Chief by name Ezechukwu disclaimed on behalf of the Defendants any right of ownership over the land now called by the Defendants Abube Nando town on plan filed by the Defendants in Suit No.0/31/57. The proceedings and the Defendants' admissions 40

will be founded upon.

15. Achalla Nteje people who have been Plaintiffs tenants on the land in dispute as far back as 1917 pay yearly rent to the Plaintiffs, the Defendants know of this and do nothing.

16. The Plaintiffs therefore claims from the Defendants as follows:-

- (a) Declaration of title to all that piece and parcel of land known and called "Agu Okpu Ani" situate at Nando.
- (b) £200 damages for trespass on the said land.
- (c) Injunction to restrain the Defendants their Servants and Agents from further trespass.

Dated at Onitsha this 23rd day of May,1958.

(Sgd.) F.O. Anyaegbunam  
PLAINTIFFS SOLICITOR.

In the  
High Court

No.3

Statement of  
Claim (Suit  
No.0/19/57)  
23rd May 1958  
continued

10

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NO.4

STATEMENT OF DEFENCE (SUIT NO.0/19/57.

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

SUIT NO.0/19/57.

(TITLE AS NO.1)

STATEMENT OF DEFENCE :

- 1. The Defendants admit that the Plaintiffs are natives of Agbudu Nando in the Onitsha Division but make no further admission.
- 2. The Defendants in answer to paragraph 2 of the Statement of Claim admit that they are natives of Abube Nando but make no further

30

No.4

Statement of  
Defence (Suit  
No.0/19/57).  
30th June 1958

In the  
High Court

No.4

Statement of  
Defence (Suit  
No.0/19/57).  
30th June 1958  
continued

- admission.
3. The Defendants in answer to paragraph 3 of the Statement of Claim say that the land in dispute is not called "Agu Okpu Ani" but rather "Ofia Abube" which is shown edged pink in the Defendants plan filed in this suit. "Ofia Abube" comprised of various pieces of land known as and called "Obu Ogwe" "Agu Oyi" "Ama-Oba", "Ana Uzo", "Imo Agu" and "Agu Eke". The whole of "Ofia Abube" is at times loosely called "Obu-Ogwe". 10
  4. In answer to paragraph 4 of the Statement of Claim the Defendants admit that the Plaintiffs, Defendants and Umuawo are the 3 children of Ikenga. The Defendants make no further admissions.
  5. In answer to paragraph 5 of the Statement of Claim the Defendants say that the Plaintiffs' plan does not show the extent of the Defendants' land. 20
  6. The Defendants deny the allegations contained in paragraph 6 of the Statement of Claim and will put the Plaintiffs to their strictest proof. The Defendants say that from time immemorial they have been exercising maximum acts of ownership over their "Ofia Abube" land without any disturbance by the Plaintiffs. The Defendants have put Agbudu tenants on the land on payment of yearly tribute, namely, Tagbo Anumogidi, Adokwe, Ezigbo, Ameke Chinwedu, Nwuba Nwasike, Ekwealor Emesim, Udemu Nneli, Osakwe Obuagu, Enunka. Defendants also put Achalla Nteje tenants on the land on payment of customary yearly tributes. 30
  7. The Defendants deny paragraph 7 of the Statement of Claim and will put the Plaintiffs to its strictest proof.
  8. The Defendants deny paragraph 8 of the Statement of Claim and will put the Plaintiffs to its strictest proof. 40
  9. The Defendants deny paragraph 9 of the Statement of Claim and will put the Plaintiffs to its strictest proof. The Defendants say

that they do not know of any case in any Court in which any member of the Defendants family was duly authorised to disclaim the Defendants interests within any portion of the land in dispute.

In the  
High Court

No.4

10. The Defendants deny paragraph 10 of the Statement of Claim and will put the Plaintiffs to its strictest proof. The Defendants say that the said Anekwe Akpe did not obtain the consent of the Defendants family before making the alleged statement. He was not a chief or representative of the Defendant's family: and if any such statement was made by him it was made clandestinely and fraudulently.
11. The Defendants deny paragraph 11 of the Statement of Claim and say that they do not know of any judgment ever obtained against them by the Plaintiffs. They will put the Plaintiffs to the strictest proof of the allegations made in this paragraph of their statement of claim.
12. The Defendants deny paragraph 11 of the Statement of Claim and will put the Plaintiffs to its strictest proof.
13. The Defendants deny paragraph 12 of the Statement of Claim and will put the Plaintiffs to its strictest proof.
14. In answer to paragraph 14 of the Statement of Claim the Defendants say that they do not know of any dispute between Umuawo and the Plaintiffs and will put the Plaintiffs to the strictest proof of the allegations therein made.
15. The Defendants deny paragraph 15 of the Statement of Claim and will put the Plaintiffs to its proof. The Defendants say that Achalla Nteje have always been the tenants of the Defendants. They were put on the land by the Defendants on payment of yearly tribute of 20 big yams, 40 seed yams and 4 big pots of wine.
16. The Defendants in exercise of their acts of ownership over this land instituted an action for title to this land against the Plaintiffs in the Umuigwedo Native Court and this terminated in their favour. Early in 1957 the

Statement of  
Defence (Suit  
No.0/19/57).  
30th June 1958  
continued



In the  
High Court

No.4

Statement of  
Defence (Suit  
No.0/19/57).  
30th June 1958  
continued

Plaintiffs acting in concert with Umuawo conspired with some of Achalla Nteje tenants of the Defendants to dispossess the Defendants of a greater part of the land in dispute. The Plaintiffs entered the land by force and disturbed the Defendants in their extension of the R.C.M. St.Jude's School building. The Defendants promptly instituted the Native Court action which ended in their favour and subsequently the Onitsha High Court Suit No. 0/31/57.

10

17. Whereof Defendants say that the Plaintiffs are not entitled as claimed and will particularly plead:-

- (a) Ownership.
- (b) Long and uninterrupted continued and most effective occupation.
- (c) Laches and Acquiescence.
- (d) Estoppel; per record and conduct.

Dated at Onitsha this 30th day of June, 1958.

20

(Sgd.) E.O. Araka  
DEFENDANTS' SOLICITOR.

NO.5

CLAIM IN SUIT NO.0/31/57.

No.5

Claim in  
Suit No.  
0/31/57  
4th March  
1957

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

SUIT NO.0/31/57:

BETWEEN:

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UZODIGWE MADIKA & ORS For themselves and on  
behalf of Abube Nando.  
PLAINTIFFS.

-- and --

NNANWEBE ABIEGBU & ORS. DEFENDANTS.

C L A I M

1. The Plaintiff's claim from the Defendants is

for the sum of £400 damages for trespassing into the Plaintiffs land known as and called "OFIA ABUBE" which is in actual and peaceable possession of the Plaintiffs and for cutting therein iroko trees and tapping palm trees therein.

In the High Court

No.5

Claim in Suit  
No.0/31/57  
4th March 1957  
continued

- 10 2. Plaintiffs also seek an order of perpetual injunction to restrain the Defendants, their heirs, agents, servants, privies and assignees from ever repeating the said act of trespass.

DATED AT ONITSHA THIS 4TH DAY OF MARCH, 1957.

(Sgd.) E.O. Araka  
PLAINTIFFS' SOLICITOR.

NO.6

No.6

CIVIL SUMMONS (SUIT NO.0/31/57)

Civil Summons  
(Suit No.  
0/31/57).  
9th March 1957

CIVIL SUMMONS

SUIT NO. 0/31/57:

BETWEEN:

UZODIGWE MADIKA & 3 ORS. PLAINTIFFS

20 and

NNANWUBA OSIEGBU & 4 ORS. DEFENDANTS

You are hereby commanded in His Majesty's name to attend this Court at Onitsha on Monday the 1st day of April, 1957, at 9 o'clock in the forenoon to answer a suit by Uzodigwe Madika and 3 others of Abube Quarter of Nnando c/o Postal Agency Nkwo Nnando against you.

30 The Plaintiffs' claim from the Defendants, is for the sum of £400 damages for trespassing into the Plaintiffs' land known as and called "Ofia Abube" which is in actual and peaceable possession of the Plaintiffs and for cutting therein iroko trees and tapping palm trees therein.

Plaintiffs also seek an order or perpetual injunction to restrain the Defendants, their

In the  
High Court

No.6

Civil Summons  
(Suit No.  
0/31/57).  
9th March 1957  
continued

heirs, agents, servants, privies and assignees  
from ever repeating the said act of trespass.

(as per particulars of claim attached)

Issued at Onitsha the 9th day of March, 1957.

(Sgd.) H.M.S.Brown  
JUDGE.

TAKE NOTICE : That if you fail to attend at the  
hearing of the suit or at any continuation or ad-  
journment thereof, the Court may allow the  
Plaintiff to proceed to judgment and execution.

10

No.7

NO.7

Statement of  
Claim (Suit  
No. 0/31/57)  
19th November  
1957

STATEMENT OF CLAIM (SUIT NO.0/31/57)

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

SUIT NO. 0/31/57:

(TITLE AS NO.6)

1. The Plaintiffs are people of Abube Nando in the Onitsha Division and sue for themselves and on behalf of the people of Abube Nando who have duly authorised them so to do.
2. The Defendants are people of Agbudu Nando and are sued for themselves and on behalf of the people of Agbudu Nando.
3. The Plaintiffs and Defendants are all children of Ikenga Nando. Ikenga Nando has 3 children namely Abube, Umuawo and Agbudu. Ikenga's land was divided amongst his aforementioned 3 children.
4. The land in dispute in this case is within the area which Abube Nando acquired after the division of Ikenga's land.

20

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In the  
High Court

No.7

Statement of  
Claim (Suit  
No. O/31/57)  
19th November  
1957  
continued

5. The Plaintiffs are the owners of the land in dispute and have as owners in possession been exercising maximum acts of ownership over same by inhabiting the land, farming same and reaping economic crops therein and by letting same to tenants on payment of tribute or in kind.
- 10 6. The land in dispute which is known as "Ofia Abube" is shown edged pink in the Plaintiffs' plan which is filed in this action. "OFIA ABUBE" comprises of various pieces of land known as and called "Obu-Ogwe", "Agu-Oyi", "Ana-Oba", "Ana-Ugo", "Ime-Agu", and "Agu-Eke". The whole of "Ofia Abube" is also loosely called "Obu Ogwe".
- 20 7. From time immemorial the Plaintiffs have been exercising maximum acts of ownership over this land without any disturbance from the Defendants. The Plaintiffs have in the past put Agbudu tenants on the land namely Tagbo Anumogidi, Adokwe, Ezigbo, Ameke Chinwendu, Nwuba Nwasike, Ekwakor Emesim Udemu Nneli, Osakwe Obuagu Enunka. Each of these tenants paid £2 annual rent to the Plaintiffs.
- 30 8. Plaintiffs also put some Achalla Nteje people on the land who pay annual rent of 20 big yams, 40 seed yams and 4 big pots of wine to Plaintiffs.
9. In exercise of their acts of ownership over this land Plaintiffs have instituted an action for title to this land against the Defendants in the Umuigwedo Native Court and this was in favour of the Plaintiff.
- 40 10. Quite recently i.e. early this year the Defendants acting in concert with Umüawō conspired with the Plaintiffs tenants Achalla Nteje to dispossess the Plaintiffs of the greater part of their land. The Defendants entered the land by force and disturbed the Plaintiffs in their extension of the R.C.M. St. Jude's School building. The Defendants furthermore cut down economic crops in this area and cultivated same.
11. The Defendants despite repeated warnings intend

In the  
High Court

No.7

Statement of  
Claim (Suit  
No. 0/31/57)  
19th November  
1957  
continued

to continue the said acts of trespass hence  
this action.

12. Whereof Plaintiffs claim from the Defendants  
the sum of £400 damages for trespassing into  
the Plaintiffs land known as and called "OFIA  
ABUBE" which is in actual and peaceable  
possession of the Plaintiffs and for cutting  
therein iroko trees and tapping palm trees  
therein.

(b) An order or perpetual injunction to  
restrain the Defendants, their heirs,  
agents servants, privies and assignees  
from ever repeating the said act of  
trespass.

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DATED at Onitsha this 19th day of November,  
1957.

(Sgd.) E.O. Araka  
PLAINTIFFS' SOLICITOR.

No.8

Statement of  
Defence (Suit  
No. 0/31/57)  
20th January  
1958

NO.8

STATEMENT OF DEFENCE (SUIT NO. 0/31/57)

20

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL

DIVISION HOLDEN AT ONITSHA

SUIT NO.0/31/57:

(TITLE AS NO.6)

STATEMENT OF DEFENCE :

1. The Defendants admit paragraph (1) and (2) of  
the Statement of Claim.
2. The Defendants admit paragraph (3) of the  
Statement of Claim and add that Agbudu was the  
eldest of the 3 children and took the first  
share of the Ikenga lands.
3. In answer to paragraph (4) of the Statement of  
Claim the Defendants vigorously deny that the

30

Plaintiffs' plan correctly shows the portions of Ikenga lands acquired by the 3 children and assert that the Defendants' plan filed with this Statement of Defence shows more correctly the areas belonging to the 3 children. The Defendants further assert that the Plaintiffs by their plan aforesaid have claimed the lands of the Agbudus and Umuawos. The Plaintiffs' share is shown on the Defendants' plan. The Defendants vigorously deny paragraph (4) of the Statement of Claim.

In the  
High Court

No.8

Statement of  
Defence (Suit  
No. O/31/57)  
20th January  
1958

continued

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4. The Defendants vigorously deny paragraph (5) of the Statement of Claim and assert that the Abube people who live on Agbudu lands do so as tenants of Agbudu people. The Plaintiffs by asserting ownership to Agbudu lands and by claiming to be their landlords have forfeited their rights to remain on Agbudu land.

20

5. The Defendants deny paragraph (6) and will put the Plaintiffs to strict proof.

6. The Defendants deny paragraph (7) of the Statement of Claim and assert that by their claims the Plaintiffs have forfeited their rights to remain on Agbudu land.

7. The Defendants deny paragraph (8) of the Statement of Claim, and assert that they put Achalla Nteje people on the land as their tenants and that these tenants have paid tribute to them as from about 1914.

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8. In answer to paragraph (9) of the Statement of Claim the Defendants say that in the Umuigwedo Suit No.16/57 the Plaintiffs claimed against the Defendants declaration of title to an area of land on a plan vastly different from the Plaintiffs' present plan and by a majority decision obtained judgment. On appeal the District Officer set aside this judgment on the grounds inter alia that "The majority judgment has failed to appreciate all the evidence produced by the Agbudu family in support of their case". As the Native Court in that case did not consistently form a quorum throughout its session the District Officer non-suited the Plaintiffs.

40

9. The Defendants vigorously deny paragraph (10) of

In the  
High Court

No.8

Statement of  
Defence (Suit  
No. 0/31/57)  
20th January  
1958  
continued

- the Statement of Claim and assert that the Plaintiffs without the consent of the Defendants purported to grant the Roman Catholic Mission a portion of the Defendants' land and the Defendants in assertion of their right of ownership repudiated this grant of and resisted this encroachment on their lands.
10. The Defendants admit that they will continue to assert their rights of ownership against the Plaintiffs. 10
11. In 1917 a dispute arose between the Defendants and the Plaintiffs over the area verged yellow on Defendants' plan. By agreement the then District Officer Mr.P.J.Gardner in an arbitration fixed the boundaries between the lands of the Defendants and the Plaintiffs. The area awarded to the Plaintiffs is shown verged yellow on the Defendants' plan and the boundaries and the cement pillars emplantated thereon are shown on the Defendants' plan. This case will be founded upon. 20
12. Again in 1917 in a dispute between the Defendants and the Amagata Okpopiri Ezi quarter of Nando the boundary between the Defendants land and the said village was demarcated by the then District Officer Mr. P.J. Gardner. The Plaintiffs were well aware of this case and of the boundary demarcated and did not interfere. This case will be founded-upon..
13. In or about 1914 in a land dispute between the Defendants and the Umuawo village the Plaintiffs appeared as witnesses for Umuawo village and claimed to be their tenants and disclaimed any right of ownership in the area now shown as Abube Nando town on the Plaintiffs' plan. Again in a dispute between the Defendants and the said Umuawo village the Plaintiffs' head chief by name Ezechukwu disclaimed on behalf of the Plaintiffs any right of ownership over the land now shown as Abube Nando town on the Plaintiffs' plan and recognised the position of the Plaintiffs as tenants in that area. The proceedings and the Plaintiffs' admissions will be founded upon. Finally in the 1917 case the rents paid by the Achalla Nteje tenants were divided between the Defendants and the Umuawo people. The Plaintiffs were aware of this and did nothing. 40

15.

14. The Defendants assert that the bulk of the Plaintiffs' land lie to the North of the Anyafuanwu stream as shown on Defendants' plan.

In the  
High Court

No.8

15. The Defendants deny that the Plaintiffs are entitled as per their claim and will plead:-

Statement of  
Defence (Suit  
No. O/31/57)  
20th January  
1958  
continued

- (a) Ownership
- (b) Laches and acquiescence.
- (c) Estoppel
- (d) Long possession
- (e) Forfeiture.

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DATED at Onitsha this 20th day of January, 1958.

(Sgd.) G.C.M. Onyiuke  
DEFENDANTS SOLICITOR.

NO.9

COURT NOTES ON CONSOLIDATION  
AND DECISION

IN THE HIGH COURT OF THE EASTERN REGION OF  
THE FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

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ON MONDAY THE 23RD DAY OF FEBRUARY, 1959:

SUIT NO. O/19/57:  
& O/31/57:

BETWEEN:

AJANA ENWELUM & ANR. PLAINTIFFS

- and -

NNAEGBO EKWEZE & 2 ORS. DEFENDANTS

Anyaegbunam for Plaintiffs

Araka for Defendants.

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ANYAEGBUNAM: In Statement of Claim reference



In the  
High Court

No.9

Court Notes on  
Consolidation  
and Decision  
23rd February  
1959  
continued

is made to 0/31/57 which is between the same parties and on same subject-matter.

Para.3 Statement of Defence in present case. This is same allegation as para.6 of Statement of Claim in 0/31/57. Para.6 Statement of Claim of 0/19/57. Para.7 Statement of Defence of 0/19/57. It will save time and expense if two cases are consolidated. Ask for order consolidating the two cases.

ARAKA :- Strongly oppose this application. No motion. 10

ANYAEGBUNAM :- Order 35 High Court Rules. Need not be by written motion and affidavit in support. 1956 A.P. at page 873 Order 49 Rule 8.

ARAKA:- We would be bound by judgment in this case. These are cross-actions. Cannot be consolidation of cross-action without consent. 0/31/57 was taken for prestige as is commonly done.

ANYAEGBUNAM :- In Enugu two cross-actions were consolidated. Ought to consider whether consent is unreasonably withheld. 20

#### D E C I S I O N :

I am satisfied on what Mr. Anyaegbunam has said that the issues between the parties are the same and that the actions are between the same parties. Objections as to alleged difficulties with regard to onus of proof would not in my opinion afford any real difficulty. I consider that the consolidation of these 2 suits will save time and expenses and that the order will not prejudice either party. In the circumstances I do not consider that it is necessary for there to be consent to order for consolidation especially in view of Araka's admission that second action was brought for prestige purposes. 30

Order that the two actions be consolidated and heard together.

ARAKA:- It is not admitted that Defendants in 0/19/57 are sued in a representative capacity. Cannot use admission in 0/31/57 to prove matters 40

in 0/19/57. Order 3 Rule 9 3rd Defendant in 0/19/57 is same as 1st Plaintiff in 0/31/57 and he admits representing the Abube Nando community.

In the High Court

I have heard further argument in the question of whether the Defendants in 0/19/57 have admitted being sued in a representative capacity so as to prejudice them if these suits are consolidated.

No.9

Court Notes on Consolidation and Decision 23rd February 1959 continued

10 I am satisfied that the 3rd Defendant in 0/19/57 represents the community being the 1st Plaintiff in suit 0/19/57 in which this is alleged. The Plaintiffs in 0/31/57 would therefore be able if necessary to continue their suit against him only as representing the community in which case it would be proper to make the order for consolidation. I therefore confirm the above order. Set down for hearing 3rd - 8th August, 1959 inclusive.

(Sgd.) J. Reynolds.

PUISNE JUDGE. 23/2/59.

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NO.10

No.10

CLAIM IN SUIT NO.0/32/57  
IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA  
IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

Claim in Suit No.0/32/57 22nd March 1957

SUIT NO.0/32/57

BETWEEN:

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VINCENT EKWEALO, For himself and on behalf of the Umuawu Family of Nando  
PLAINTIFFS

- and -

1. AJAMMA ADUAKA For themselves and on  
2. ONWUEGBUKE EGENTI behalf of the Abube  
3. EGWUONWU EGBILI Ibinagu Family of Nando.  
4. NNELI ANAKWE DEFENDANTS.  
5. EKWEOBA ARINZE  
6. UDOBU IGWEZE  
7. OGUGUA UGBOAJA

C L A I M

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The Plaintiff claims from the Defendants:-

In the  
High Court

No.10

Claim in Suit  
No. 0/32/57  
22nd March 1957  
continued

(a) A declaration that the Plaintiff is the owner of the land known and called Odo Ubiri (or Okpobri) situate at Nendo and bounded as in plan to be hereafter filed.

(b) £100 damages for the destruction by the Defendants, their agents and/or servants of the boundary pillars on Plaintiff's land.

(c) An injunction restraining the Defendants from further committing such acts as are complained of in paragraph (b) above.

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DATED at Onitsha this 22nd day of March, 1957.

(Sgd ) J. Emembolu  
SOLICITOR FOR PLAINTIFF.

No.11

NO.11

Civil Summons  
(Suit No.  
0/32/57)  
1st April  
1957

CIVIL SUMMONS (SUIT NO.0/32/57)

IN THE SUPREME COURT OF NIGERIA

CIVIL SUMMONS

U 9150

SUIT NO.0/32/1957:

(TITLE AS NO.10)

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TO Ajamma Aduaka & 6 Ors. of Abube Obinagu,  
Nnando.

You are hereby commanded in His Majesty's name to attend this Court at Onitsha on Monday the 29th day of April, 1957, at 9 o'clock in the forenoon to answer a suit by Vincent Ekwealo of c/o J.Emembolu, 1, Anionwu Street, Onitsha against you.

The Plaintiff's claims are (a) A declaration that the Plaintiff is the owner of the land known and called Odo Ubiri (or Okpobiri) situate at Nando and bounded as in plan to be hereafter filed (b) £100 damages for the destruction by the Defendants, their agents and/or servants of

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In the  
High Court

No.12

Statement of  
Claim (Suit No.  
0/32/57).  
17th January  
1958  
continued

3. The Plaintiff's family are, from time immemorial, the owners in possession of the entire piece of land called land of Umuawo on the plan, and as owners thereof have exercised maximum acts of ownership and possession in and over the same by letting portions of it out to tenants (including the Defendants) and by farming and building thereon. The area and extent of the said land is more particularly delineated in the plan annexed hereto and therein verged in purple.

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4. In or about 1917, the boundaries of the said land were finally fixed by the District Officer's arbitration judgment. Pursuant to the said judgment, concrete pillars were erected along the boundaries of the Plaintiff's land and Abudu, Nando, land. The Plaintiff's family contributed towards the cost of erecting the said pillars. The arbitration judgment will be founded upon the trial.

20

5. Subsequent to the said judgment, a portion of the land was rented out to persons from the Abube quarter of Ikenga, Nando, by the Plaintiff's family.

The portion of land so rented out is known as and called "ODO - UBIRI" or "OKPOBIRI". The area and extent of this portion of land is more particularly delineated in the attached plan and therein verged in brown.

6. In or about February, 1957, the Defendants, their agents and servants, wrongfully destroyed the concrete pillars aforesaid.

30

PARTICULARS OF SPECIAL DAMAGE

Value of concrete pillars £100

7. The Defendants uprooted the pillar aforesaid in an attempt to destroy the established boundaries of the land, and thus to lay claims to lands which have never been their own.

8. Subsequent to the destruction of these pillars, the Abube Obinagu of which the Defendants are part, sued the Agbudu Quarter and claimed against Agbudu title over an area of land which

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included land belonging to the Plaintiff. The proceedings in that suit will be founded upon at the trial.

In the High Court

No.12

9. Wherefore the Plaintiff claims from the Defendants :-

Statement of Claim (Suit No. 0/32/57).  
17th January 1958  
continued

(a) A declaration of title and possession in and over Odo-Ubiri or Okpobiri land.

(b) £100 damages for the wrongful destructions of the boundary pillars aforementioned.

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(c) An injunction to restrain the Defendants, their privies, servants and agents from further acts of destruction of the boundaries and landmarks on the land.

Dated this 17th day of January, 1958.

(Sgd.) J.I. Emembolu  
SOLICITOR FOR PLAINTIFF

NO.13

No.13

STATEMENT OF DEFENCE (SUIT NO.0/32/57).

Statement of Defence (Suit No.0/32/57)  
18th April 1958

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IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

SUIT NO.0/32/57:

(TITLE AS NO.12)

STATEMENT OF DEFENCE :

1. The Defendants admit that the Plaintiff is a native of Umuawu Nando, but is not in a position to make any other admissions with reference to paragraph 1 of the Statement of Claim.

30

2. The Defendants admit that they are natives of Abube, Nando, but will put the Plaintiffs to strict proof of the validity of this action

In the  
High Court

No.13

Statement of  
Defence (Suit  
No.0/32/57)  
18th April 1958  
continued

- against the Defendants in a presentative capacity.
3. The Defendants in answer to paragraph 3 of the Statement of Claim say that the land in dispute is not known as "Land of Umuawu". The land in dispute is known as "Ana-Oba" land and is the property of the Defendants who from time immemorial been exercising maximum acts of ownership and possession over same by reaping and planting economic crops therein, by inhabiting same and letting same to tenants on payment of annual tributes. The said "Ana-Oba" land is shown in the Defendants plan filed in this suit. 10
  4. The Defendants further deny every material Statement of Fact contained in para.3 of the Statement of Claim and will put the Plaintiff to its strictest proof.
  5. The Defendants deny the allegations made in paragraph 4 of the Statement of Claim and will put the Plaintiff to their strictest proof. The Defendants say that if there was any arbitration proceedings in 1917 it will not be material in this case as it is "res inter alios acta". 20
  6. The Defendants deny paragraph 5 of the Statement of Claim and will put the Plaintiffs to its strictest proof.
  7. The Defendants deny paragraphs 6 and 7 of the Statement of Claim and will put the Plaintiffs to their strictest proof. 30
  8. The Defendants deny destroying any pillars as alleged in paragraph 8 of the Statement of Claim and will put the Plaintiff to the strictest proof of this allegation.
  9. Quite recently i.e. later part of last year the Plaintiffs acting in concert with Agbudu Nando conspired with the Defendants tenants (Achalla Nteje) to dispossess the Defendants of the greater part of the Defendants land. The Agbudu people entered the Defendants' land by force and disturbed the Defendants in their extension of the R.C.M. St.Judes School Building. The Agbudu sued the Defendants in 40

the Native Court and lost.

In the  
High Court

                      
No.13

10. Whereof Defendants say that the Plaintiff is not entitled as claimed and will particularly plead:-

Statement of  
Defence (Suit  
No.0/32/57)  
18th April 1958  
continued

- (1) Ownership.
- (2) Long and uninterrupted continued possession.
- (3) Laches and Acquiescence.
- (4) Estoppel per record and conduct.

10 DATED at Onitsha this 18th day of April, 1958.

(Sgd.) E.O. Araka  
DEFENDANTS' SOLICITOR.

NO.14

No.14

AMENDMENT TO STATEMENT OF CLAIM  
IN SUIT NO.0/19/57.

Amendment to  
Statement of  
Claim (Suit  
No.0/19/57).  
1st August  
1959

ANNEXURE "A"

SUIT NO.0/19/57:

BETWEEN:

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AJANA ENWELUM & ANOR For themselves and on behalf of the people of AGBUDU-NANDO.  
PLAINTIFFS.

- and -

NNAGBO AKWEZE & 2 ORS. For themselves and on behalf of the people of ABUBE-NANDO  
DEFENDANTS.

A M E N D M E N T S

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- (1) To delete the present paragraph 9 of the Statement of Claim and to substitute the following :



In the  
High Court

No.14

Amendment to  
Statement of  
Claim (Suit  
No.0/19/57).  
1st August  
1959  
continued

PARAGRAPH 9 :-

"In or about 1914 in a land dispute between the Plaintiffs and the Umuawo village the Defendants appeared as witnesses for the said Umuawo village and claimed to be their tenants and disclaimed any rights of ownership in the area now shown as Abube town on the Defendants' plan and in the surrounding lands. Again in the subsequent customary arbitration proceedings between the said parties aforesaid the Defendants' head chief by name Ezechukwu disclaimed on behalf of the Defendants any right of ownership over the land now shown as ABUBE NANDO TOWN on the Defendants' plan and in the surrounding lands and recognised the position of the Plaintiffs as tenants in that area. In the said customary arbitration a boundary was demarcated between the Plaintiffs and the said people of UMUAWO village and the said boundary was emplantcd with cement pillars. Rents paid by the Achalla Nteje tenants on the land were divided between the Plaintiffs and the said Umuawo people. The Defendants were aware of all this and did nothing. The Defendants' admissions and the arbitration awards will be founded upon."

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(2) To delete paragraph 10 of the Statement of Claim and to substitute the following:-

PARAGRAPH 10:-

"In 1917 a dispute arose between the Plaintiffs and the Defendants over the area verged yellow on the Plaintiffs' plan by agreement the D.O. Mr.P.J.Gardner in an arbitration according to native law and custom fixed the boundaries between the lands of the Plaintiffs and Defendants. This arbitration award was later confirmed by Mr.Lawton and cement pillars were emplantcd along the boundary. The area awarded to the Defendants is shown verged yellow on the Plaintiffs' plan. The arbitration proceedings and award will be founded upon".

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(3) To delete paragraph 14 of the Statement of Claim and to renumber paragraphs (15) and (16) as paragraph 14 and 15 respectively.

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Dated at Onitsha this 1st day of August, 1959.

(Sgd.) G.C.M. Onyiuke

PLAINTIFFS' SOLICITOR.

NO.15COURT NOTES ON CONSOLIDATION AND AMEND-  
MENT OF STATEMENT OF CLAIM.In the  
High CourtNo.15IN THE HIGH COURT OF THE EASTERN REGION OF THEFEDERATION OF NIGERIAIN THE HIGH COURT OF THE ONITSHA JUDICIALDIVISION HOLDEN AT ONITSHABEFORE THE HONOURABLE MR. JUSTICE REYNOLDS P.J.MONDAY THE 3RD DAY OF AUGUST, 1959:Court Notes on  
Consolidation  
and Amendment  
of Statement of  
Claim.  
3rd August 1959.

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SUITS NO.0/19/57:  
& 0/31/57:

BETWEEN:

AJANA ENWELUM & ANOR.	PLAINTIFFS
- and -	
NNAGBO AKWEZE & ORS.	DEFENDANTS
- and -	
UZODIGWE MADIKA & 3 ORS.	PLAINTIFFS
- and -	
NNANWUBA ASIEGBU & 4 ORS.	DEFENDANTS

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Emembolu:- I represent the Umuawo mentioned in the pleadings in this case. We are very deeply interested. 0/32/57 in which we are Plaintiffs. Defendants are the Defendants in 0/19/57.

ONYIUIKE: for Plaintiffs in 0/19/57 do not object to application for consolidation.

ARAKA Object to consolidation.

Hearing adjourned till 6th August, 1959, at 9 a.m. pending application for further consolidation.

30

ONYIUIKE: Motion for amendment Statement of Claim in 0/19/57.

ARAKA: Difference between case and arbitration. Leave to amend granted in terms of motion costs to Defendants (in 0/19/57). Costs measured at 3 guineas.

(Sgd.) J. Reynolds.  
PUISNE JUDGE.  
3/8/59.

In the  
High Court

NO.16

COURT NOTES (CONSOLIDATION)

No.16

Court Notes  
(Consolidation)  
6th August 1959

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

BEFORE THE HONOURABLE MR.JUSTICE REYNOLDS  
PUISNE J.

THURSDAY THE 6TH DAY OF AUGUST, 1959

SUIT NO.0/32/57:

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Emembolu for Applicant.

Onyiuke, Anyaegbunam and Ebo for Respondents of Agbudu.

Emembolu: Proceedings in all 3 cases involve same questions of law and of fact. Plans of Defendant we are supposed to have no land at all. If judgment were given for Abube people we would be deprived of our land because it is judgment in rem.

ONYIUKE: The plan filed by us is exactly the same as filed by the Applicants Representative of Abube filed in suit O/31/57 plan MEC/277/57. Order 2 Rule 7 of High Court Rules 1955. Bailey v Curgon (1932) 2 K BD 392 at 399.

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Avoid multiplicity of actions.

ARAKA: Oppose although we agree we claim all land. No question of their standing by. Would not be bound by action. Prejudicial Emembolu.

DECISION: I consider this is a fit case for Consolidation and I order so accordingly.

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SUIT NO. O/19/57:  
O/31/57:  
O/32/57:

C O N S O L I D A T E D

Parties in Court.

Onyiuke, Anyaegbunam and Ebo for Plaintiffs in  
0/19/57.

In the  
High Court

Araka for Defendants.

No.16

Araka for Plaintiffs in 0/31/57.

Onyiuke and Anyaegbunam and Ebo for Defendants in  
0/31/57.

Court Notes  
(Consolidation)  
6th August 1959  
continued

Emembolu for Plaintiffs in 0/32/57:

Araka for Defendants in 0/32/57.

10 Agreed that Plaintiffs in 0/19/57 should start and  
close his case; then Plaintiffs in 0/32/57 to  
start and close and finally Plaintiffs in 0/31/57  
to start and close.

20 ONYIUKE:- Claim of Plaintiffs in 0/19/57 to  
declaration of title to land verged pink in plan  
MEC/258/57. Shews area of Agbudu. Concede  
area verged violet belongs to Plaintiff in 0/32/57  
with whom we have common boundary which has been  
the subject matter of arbitration proceedings  
according to Native Law and custom. To North of  
area verged pink and bounded by Anyafuanwu Stream.  
This stream is claimed by us as boundary with  
Defendants in 0/19/57. Land verged green is land  
of Abube up to Iku Stream. Common ground that  
Agbudu (Pff in 0/19) Umuawo plff in 0/32 and Abube  
are 3 sons of one man called Ikenga of Nando and  
the land set out in plan originally belonged to  
him and on his death was shared between the 3 sons.  
Agbudu 1st son taking first; Umuawo 2nd son tak-  
ing second and Abube last son taking last. Area  
30 verged yellow on plan. This piece originally be-  
longed to Agbudu as part of his share, but was  
given to Abube as blood price. It was confirmed  
as Abube land at 1917 arbitration between Abube  
and Agbudu. Arbitration between Agbudu and  
Umuawo. To North of area verged pink is land Ok-  
pobiri. There was arbitration between us and the  
people of Okpobiri. Also an arbitration between  
Okpobiri and Abube where their boundary was deter-  
mined. All these arbitrations took place in 1917.  
40 Then there was a general land dispute between  
these various villages and familics. The D.O. in  
charge Awka under which was Nando. Mr.P.J.Gardi-  
ner in order to bring calm to area was asked by  
villages concerned to settle land dispute amongst

In the  
High Court  
 No.16  
 Court Notes  
 (Consolidation)  
 6th August 1959  
 continued

them. We have record. He made sketch plans which fit substantially with boundaries and features shown on our plan MEC/258/57. The award is binding on parties to the arbitration. For parties who are not strictly parties they know of arbitration awards and was acquiesced in for 30-40 years and is now too late for anyone to dispute. Also admissible as acts of ownership and possession. During the proceedings some persons made admission which will be founded upon. One admission. Abube has 2 main sub-families Amagu and Onuiyi. Amagu live mainly to North but most of Enunji live on land belonging to Umuawo. Area verged violet is this land Odo Ubilu verged grey. In Defendants plan 277/57 it corresponds roughly with Abube-Nando town. Contend that in 1917 when there was dispute between Agbudu and Umuawo before Mr. Gardiner these people not only disclaimed title to this area, but came as witnesses for Umuawo declaring themselves to be their tenants. Achalla Nteje settlement is an ancient settlement of tenants of Agbudu. This figured prominently in arbitration proceedings between Agbudu and Umuawo in 1917. Gardiner ruled that these tenants are on Agbudu land as admitted by them and would pay annual tribute of £8 and they have paid this tribute to the present day - over 40 years. This is one of major acts of possession which we are going to lead in this action. What is present cause of dispute. In 1956-7 the Abube tenants gave R.C.M. land to build and that land (Plan MEC/277/57) St. Jude's R.C.M. School and an action was instituted by Agbudu against Abube for removing cement pillars. Also people of Abube sued us in Native Court pleaded in para.9 of Statement of Claim in 0/31/57. Replying in para.6 of Statement of Defence. Result was non-suit.

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Plaintiffs Evidence  
 No.17  
 Matthias Chukwura  
 8th August 1959  
 Examination

PLAINTIFFS EVIDENCE

NO.17

MATTHIAS CHUKWURA

ONYIUKÉ CALLS: MATTHIAS CHUKWURA SWORN ON BIBLE STATES IN ENGLISH

Licensed Surveyor, 59 New Market Road, I know

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people of Agbudu and Umu-Awo and of Abube. I made a plan for all three of them. I made plan MEC/258/57 for Agbudu. Plan tendered and admitted Exhibit "A". I made one plan for Agbudus and Umuawos. The features I put on plan were shown me by Agbudus and Umuawos. G.B. (cement beacon) indicate boundary marks between Agbudu and Umuawo. These beacons are along the edge verged violet distinguishing it from area verged pink. Agbudu people said these were emplanted by one Mr. Gardiner, the Umuawos agreed with this. I did not see the pillars when I went there in May, 1957. I was shewn holes from which they alleged pillars had been dug up. They said they had taken action for the removal of those pillars. The holes look like ones surveyors dig before putting in pillars. Area verged yellow - I was told that is area awarded to Abube people in 1917 arbitration. This area is between 2 streams. Gburgbum Stream and Ezuku Stream. I shewed the sources of these 2 streams. I showed 3 cement beacons 3 indicating the sources and one in the middle (on Southern boundary). I did not see pillars but holes. To North of area verged violet is path from Inyi tree to source of Gburgbum stream. Violet area is separated from yellow area with cement pillar at tip distance between the 2 beacons is 500 feet. Document put in for identification - tendered as Exhibit "C" in Umugwedo Native Court Suits 16/57 and 29/57. Marked for identification as Id. No.1 This carries a sketch. In this sketch we have 2 streams above mentioned and footpath. Source of Ezuku stream is shewn. It is identical with the area marked yellow on plan MEC/258/57. Agbudu land is shewn to west of that sketch it corresponds to land shewn pink on boundary of area verged yellow, to South of sketch is Agbudu land. That corresponds to land shewn pink to South of area verged yellow. Document dated 7/4/1917 headed land dispute between Agbudu and Amagata Okpopere village tendered for identification. Marked Id. No.2 This also contains sketch. North is shewn. It shews Anyafunanwo stream (vide north) of area verged pink in MEC/258) Agbudu village is shewn and Okpobiri farms and footpath to Nkwo market. Nkwo market is shewn on my plan. The boundary demarcated in Id. No.2 corresponds with the area.

In the  
High Court

Plaintiffs  
Evidence

No.17

Matthias  
Chukwura  
8th August  
1959  
Examination  
continued

In the  
High Court

Plaintiffs  
Evidence

No.17

Matthias  
Chukwura  
8th August  
1959  
Examination  
continued

Nkwo shrine and along path to source of Anyafun-  
nanwu stream. Document dated 17/4/1917 headed  
"Amajata Okbiri v. Abube village. It carries  
a sketch plan. Tendered for identification -  
Id No.3. Magnetic North is shewn in sketch.  
It shows Anyafunanwu stream and Nkwo market.  
Land on left of stream is shewn as Abube land.  
Land on right bank as Umuawo and Agbudu. Land  
on left of line from bridge on Anyafunwu stream  
to Nkwo shrine is shewn as Okpolili stream. 10  
Corresponds with lands shewn on both side of Any-  
afunwu stream, in sketch and corresponds with  
land shown on both sides of Anyafunwu stream in  
plan MEC/258/57. I saw Achalla Nteje. It is  
a big settlement old permanent houses. There are  
about 200 houses.

CROSS EXAMINED BY ANYAEGBUNAM FOR EMEBOLU NONE  
CROSS EXAMINED BY ARAKA :-

Cross-  
Examination

I gave evidence about these pillars in  
Magistrate's Court. I said I did not see 20  
pillars and was shewn holes. I did not say that  
they appeared to be ordinary holes. I said they  
were large enough to take a cement pillar. I  
would not say any holes dug in ground large  
enough to take cement pillars. I would not  
take as being dug for that purpose. Holes dug  
by surveyor are 7" in section and 2'6" deep. I  
was told they were put by one Gardiner. He was  
District Officer. Before I went to make survey  
the track had recently been cleared. I would 30  
not say for certain the holes were cleared re-  
cently. I could not say when the holes had  
been dug. Survey was made in May in the rainy  
season. It was not raining very heavily. The  
track was cleared for purposes of survey. I can-  
not say if during clearing of track the holes were  
dug. I was shewn about 12 holes on alleged Umu  
Awo boundary and 3 on alleged Abube boundary. I  
also drew this plan MEC/277/57 for the Abubes.  
Plan tendered and marked Exhibit "B". I see 40  
Aro shrine near Achalla Nteze village. It was  
shewn me by all parties. I was also shewn  
Omantu shrine by all parties. I see Abube  
Nando town. The settlement there appears very  
very permanent. Many storey buildings there.  
Abube people have village square there. There  
are about 500 houses there. These houses appear  
on both sides of the road. Agbudu people told

Exhibit "B"

me that Abube people occupied houses beyond line of concrete pillars were their tenants. This was deleted because it was a mistake of the draftman. Nkwo market is not in original plan lodged. I went by Nkwo market as I did my survey it must appear in original plan in my office. It is not true that it was put in afterwards before it was countersigned. There is an Nkwo market at spot and it is still being used. Re Id. No.3. Two magnetic norths should agree. Umuawo village is south of Anyafuanwu stream. Agbudu village is also south. Umuawo village is to West of Agbudu-Nando village on MEC/258 and on plan Id. No.3 Umuawo village is East of Agbudu.

In the  
High Court

Plaintiffs  
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No.17

Matthias  
Chukwura  
8th August  
1959  
Cross-  
examination  
continued

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Re Id. No.2. Shews Agbudu village. In MEC/277 I see Agbudu. I say they agree in the 2 plans. Alaka stream is a continuation of Iyaoji-Agu stream which joins Anyafuanwu to meet Ezuku. When I was making plans for Umu Awo and Agbudu people no Abube man was there. I saw all features on plan MEC 277 as pointed out by Abube people. In area verged green (Land of Abube) I saw more than 50 houses. There were no zinc roofed houses there. No storeyed buildings. Where the permanent settlement is marked Abube Nando town. I saw Abube farms.

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RE-EXAMINED:- Aro Shrine in MEC/258 corresponds to Arobuagu Ezenwa shrine on MEC/277. Land between Oburgburu shrine there are 5 jujus (in MEC/277). These fit into area verged yellow in MEC/258. There is Arobuago Adube shrine (in MEC 277). In area verged green in MEC 258 Abube lands were said to be the ancestral homes of defendants. There is shown in heart of the town a shrine.

Re-examination

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Re Id 3 Apart from the village of Umu Awo which appears to be to the East the other villages are properly placed. They are in correct bank of the river. Okpobiri is properly shewn as it is on MEC 258.

Re Id 2. Anyafunwu stream is not shewn on plan MEC 277. Source of Anyafuanwu stream is shewn on Id 2. It is also shown on plan MEC/258.

Id. No.2 shews that Agbudu extends South East from source of Anyafuanwu stream. Position of



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High Court

Plaintiffs  
Evidence

No.17

Matthias  
Chukwura  
8th August  
1959  
Re-examination  
continued

land of Agbudu by Ayafuanwu stream is more accurately shewn on Exhibit "A" in relation to Id. No.2.

Plan 277 shews just part of Agbudu.

Id 1. Shews that land on left bank of Ngbwa stream is Agbudu land. According to Id 1. the entry on plan 277 the claim to left bank belongs to Abube cannot be correct. A storied building is modern invention in this part of the world. Can be permanent building without being concrete or storeyed. I would not say that buildings on land verged green in plan 258 are not permanent. There are storied buildings in Achalla Nteje settlement. Achalla Nteje is much a town as Abube Nando.

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TO COURT: There is not a single house on area verged yellow but there are farms - Abube farms.

No.18

Augustine  
Nwuaneukwu  
8th August  
1959  
Examination

NO.18

AUGUSTINE NWUANEUKWU

AUGUSTINE NWUANEUKWU SWORN ON BIBLE STATES IN ENGLISH Clerk from District Office Awka subpoenaed to produce documents. I have in my possession the originals of these proceedings. Folio 10. Land dispute Nando Ikenga Quarter Etc. Tendered.

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ARAKA OBJECT. There is nothing in document to show what these proceedings are whether appeal or arbitration. No submission. 21 Digest page 232 section 630.

ONYIUKÉ: This is arbitration according to Native Law and Custom as appears from document. There is no law which says every arbitration must be according to the Arbitration Ordinance. Kwabena Mensa v Takyrampay 6 W.A.C.A. 118. Award in Native Law Custom cannot be enforced in same way as arbitration under Arbitration Ordinance but that does not go the validity. What is arbitration under Native Law and custom. Laxbi V Kwasi 13 W.A.C.A. 81. No need for written submission to arbitration. Ababio v. Pred I/C C.M. 2 W.A.C.A. 380. This is admissible as acts of ownership. Brell v. Beales 1 M & M 416. We will show defendants knew of

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this arbitration and boundary was demarcated to their knowledge and has been acquiesced in for over 40 years. Tender original of dispute Id. 1. This original of arbitration proceedings. Folio 8 of arbitration book. I tender original of (Id.2) arbitration dispute between Abube and Anato page 7 of Arbitration book. I tender original of (Id 3) page 6 of arbitration book. There is plan alleged attached to arbitration but although it was searched for it could not be found. Book also contains other arbitration proceedings between other towns in Awka Division. All took place in 1916-1918.

In the High Court

Plaintiffs Evidence

No.18

Augustine Nwuaneukwu  
8th August 1959  
Examination continued

Objection

Ruling

ARAKA Objects to all documents going in. It is not stated that it is an arbitration. There must be submission to arbitration.

RULING reserved pending further evidence as to nature of the proceedings.

CROSS-EXAMINED:- Folios 5 signed by District Officer. Signatures marked X. No thumb print. Some one witnessed the marks - Mr. Atch. There is signature of interpreter. I did not search for the plan.

Cross-examination

RE-EXAMINED:- Map should have been attached to Arbitration proceedings.

Re-examination

Hearing adjourned till 24th, 25th, 26th September, 1959.

(Sgd) J. Reynolds.  
PUISNE JUDGE  
8/8/59.

THURSDAY THE 24TH DAY OF SEPTEMBER, 1959.

SUIT NO.0/19/57  
0/31/57  
0/32/57

Araka for Plaintiffs in Suit 0/31/57 and Defendants in 0/19/57 and 0/32/57.

EMEMBOLU for Plaintiffs in 0/32/57

EMEMBOLU vice Onyiuke for Plaintiff in 0/19/ and Defendants in 0/31.

Adjourned to 2nd - 7th November, 1959 at 9 a.m.

(Sgd.) J. Reynolds  
PUISNE JUDGE  
24/9/59.

In the  
High Court

NO.19

EJIKE CHIDOLUE

Plaintiffs  
Evidence

MONDAY THE 2ND DAY OF NOVEMBER, 1959

Suit 0/19/1957 & 0/31 & 32/57:

No.19

Ejike Chidolue  
2nd November  
1959

Anyaegbunam for Plaintiff in 0/19 and for  
Defendants in 0/31/57.

EMEMBOLU for Plaintiff in 0/32/57.

IKPEAZU & ARAKA for Defendants in 0/19 & 32/57  
and Plaintiffs in 0/31/57.

Onyiuke now appears with Anyaegbunam.

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Examination

P.W.1. EJIKE CHIDOLUE SWORN ON BIBLE STATES IN  
ENGLISH PROVINCIAL COMMISSIONER AT IKOT

EKPENE: In 1957 I was Licensed Surveyor at  
Onitsha. I made plan No.EC/33/57 for people  
of Abube Nando in Native Court Suit 29/57 and  
16/57 (consolidated) between the parties. I  
made plan on instructions of Abube people and  
they pointed out features shewn on plan. 1st  
Defendant in 0/32 was one of them. There  
were many of them who took me. Tendered.

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Ikpeazu: Object to admission of plan. It is  
not relevant. The land surveyed was called  
Agu Eke and Onwama and Akweke land. Put in  
as Id. 4.

Cross-  
examination

CROSS-EXAMINED BY IKPEAZU:- They asked me  
to survey the area in dispute and also other  
areas shewn. Land East as shewn was claimed  
by them but was shewn as not being in dispute  
then. I magu land marked "not in dispute"  
was not surveyed by me. It was indicated as  
not then in dispute. Land verged yellow to  
East. They did not shew me boundary with  
Igbariam. Was not surveyed. I can't re-  
member with whom the dispute existed. I did  
not have occasion to give evidence in any case  
at which this plan was used. Plan shews  
lands Umuawo and Abube on West. That land  
was not subject matter of the Native Court case.  
I was not shewn the boundary that existed be-  
tween Abube and Umuawo.

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CROSS EXAMINED BY EMEMBOLU:- It was made in respect of an existing Native Court case as they told me. The Abube people obtained a copy of plan from me. I didn't survey the Eastern boundary of land to South verged yellow on 3 sides. Over the river they said was Abube-Nando. I see Oyi and Nwanne Streams on Exhibit "B". I see Nwanne bridge. Scales of my plan and Exhibit "B" are not the same.

In the  
High Court

Plaintiffs  
Evidence

No.19

Ejike Chidolue  
2nd November  
1959  
Cross-  
examination  
continued

Re-examination

10 RE-EXAMINED:- My scale is 1 inch = 541 feet. In my plan I showed land belonging exclusively to Umuawo. They also shewed lands which belonged to Umuawo and Abube. It is 3500 feet from Nwanne bridge to Western boundary. Witness makes mark with blue pencil on West of plan Exhibit "4" shewing Agbanabo stream on plan Exhibit "B" and will shew great deal of land described on my plan as Umowo and Abube Nando lands. Witness draws triangle on plan Exhibit "B". This triangle on my own plan would shew part of land marked Abube Nando and Umuawo. Road from fork to Agbudu Nando is shewn on my plan. Land on both sides are described as lands of Umuawo and Agbube lands from the bridge Okorie to a distance of 4000 feet to North where there is marked and Ogilisi tree. In Northern boundary is shewn Iyooji Agu shrine on Exhibit "B" is same as Iyoji Agu on my plan Id 4. On my plan there is no land belonging to Abube shewn. The land east of Iyi Agu stream is claimed by Abube on plan Id.1 In Exhibit "B" land to east is now shewn as land of Agbudo. On West bank of stream on my plan is shewn Amu Agu. I shewed Oburogburu stream. The real source is not shewn. Ezuku stream flows South from junction. All features shewn on plan are surveyed.

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TO COURT:- I think Ezuku shewn flows North an arrow on my plan is wrong.

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Adjourned till 9 a.m. tomorrow.

(Sgd.) J. Reynolds

PUISNE JUDGE.

In the  
High Court

NO.20

AJANA ENEWELUM

Plaintiffs  
Evidence

TUESDAY THE 3RD DAY OF NOVEMBER, 1959:

No.20

SUITS NOS.0/19/57:  
0/31/57:  
0/32/57:

Ajana Enewelum  
3rd, 4th & 5th  
November 1959

Hearing resumed.

Appearances as before. Emembolu absent.

Examination

AJANA ENEWELUM SWORN ON GUN STATES IN IBO:

Native of Agbudu-Nando. Farmer. Aged 60 years. 10  
 I bring this action for Agbudu on their authority.  
 I know the land in dispute its called Okpu Ani.  
 I know licensed surveyor Chukwurah. He made  
 plan Exhibit "A" for us. He put in features on  
 plan which I shewed him. The land belongs to  
 Agbudu and Umu-Awo. Towns of Igbariam and Umu-  
 Awo have boundary with us. Also Abube and  
 Okpobili and Obasi-Oye. Starting at South of  
 Oyi River boundary with Igbariam is Akpu, Agba,  
 Obisenkwu stream (across it) inside our land), 20  
 cocoa nut, Ubili, Elili, Agba, Elili Agba, Agba,  
 Agba, Aga, Akpalamogazi, Mbumbu, Agba, to source  
 of Ezuku stream to junction burburu stream.  
 Ejukwu stream. Boundary of Abube people with  
 us is Anyafuanwu stream which flows into Iyioji-  
 Agu which in turn flows to Ezuku stream. Our  
 boundary with Okpoblili is anyafanwu stream.  
 Our boundary with Ubasioye begins with Mango  
 tree, Abosi source of the Anyafuanwu stream is  
 at our boundary with Okpolili. Our boundary 30  
 with Umu-Awo is marked with a boundary pillar.  
 There are 10 cement pillars. Mr.Gardiner D.O.  
 Awka put in the boundary pillars. We had a  
 land dispute over that land with Umu Awo begun  
 at Achalla Native Court. Umu Awo took action  
 against us. Umu Awo were represented by one  
 Agenti. Abudu was represented by Ohigbada.  
 I know Achalla Nteje.

Objection

Ikpeazu: Object to witness giving evidence to  
say where the land in dispute is. 40

ONYIUKE: Witness is called to give evidence  
identifying the area in dispute.

IKPEAZU: Section 131 of Evidence Ordinance. No evidence may be given contradict, add to or vary.

In the  
High Court

ONYIUIKE: Refers to judgment. Page 565 Phipson "Judicial documents" In cases of Res judicata it may be used to identify land in dispute. The record cannot be produced.

Plaintiffs  
Evidence

No.20

10 ID 3 IKPEAZU: Now seeking to give evidence. No foundation has been laid that case existed and that record cannot be procured. Case was not pleaded.

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Objection  
continued

RULING: No basis has been laid for the introduction of secondary evidence of the proceedings in this case. I hold that the evidence which would identify the land litigated in that case is secondary evidence of the judicial proceedings and is inadmissible under Section 131 of the Evidence Ordinance.

Ruling

20 WITNESS RESUMES:- Judgment was given in that case. Umu-Awo went on appeal. Appeal was not heard as Mr. Gardiner intervened to settle the matter. Agbudu and Umu-Awo asked him to intervene and settle the matter. Ikpeazu objects to evidence of arbitration where precise conditions concerning submission to arbitration have not been proved. It is customary in our area where there is dispute for third person to come and settle it. He succeeded in settling the matter. After settlement we signed a document and Umu-Awo also signed and we were all satisfied. Achuam signed for Abudu, Uchendu also signed. For Umu-Awo, Nwakanama and Agbuli signed. Ezechukwu Chief of Abube signed for Abube. I was present during the whole of these proceedings. Arbitration tendered.

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Examination  
continued

40 IKPEAZU: Cannot be admitted as evidence of a customary arbitration proceedings. Three things must be established before it can be received as customary arbitration. (1) Voluntary submission by both parties. (2) Prior agreement by both parties to accept award. (3) Publication of the award vide 1 W.A.L.R. page 90. These requirements must appear on the record. It does not even appear that it was an arbitration at all. Para.10 Statement of Claim. (as amended). 21 E. Dig. page 232 section 630. Must be shown on

Objection

In the  
High Court

Plaintiffs  
Evidence

No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Objection  
continued

document itself that there was a voluntary sub-  
mission. Ankarah v D 1 W.A.L.R. 89. It does  
not appear on document how it came before Mr.  
Gardiner.

ONYIUKU:- Document is admissible on 2 heads.  
As an Arbitration according to Native Law and  
Custom; as an agreement by both sides and  
binding on them.

6 W.A.C.A.118  
13 W.A.C.A.81  
1 W.A.C.A.1

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Arbitration according to Native Law and Custom  
need not be in writing at all.

Adjourned 10 minutes.

(Sgd.) J. Reynolds  
PUISNE JUDGE  
3/11/59

Hearing resumed as before.

6 W.A.C.A. at page 119 and 121. Writing is  
foreign to Native Law and Custom. This is a  
memorandum of Arbitration award. In any  
event this document is admissible as an agree-  
ment. Document is made in 1917. Section 152  
Evidence Ordinance. Agreement signed between  
two communities. 13 W.A.C.A. 81. Once sub-  
mission to arbitration can not be withdrawal.

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IKPEAZU: Assampang v Amuaka 1 W.A.C.A. 192.  
Must be recognised under Native Law and Custom  
recognised the method. The document must re-  
flect the submission. If it is submitted as  
an agreement it contravenes Illiterates Pro-  
tection Ordinance. To admit it as such would  
be contrary to pleadings.

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ONYIUKU:- Section 3 of Illiterates Protection  
Ordinance. Does not apply because not made on  
instructions of illiterate person. Section 122  
of Evidence Ordinance applies. Even if heard  
of Illiterate Protection Ordinance it does not  
make it inadmissible. Illiterates Protection  
Ordinance can only be raised as a defence.

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RULING:- I am not satisfied that the document is an arbitration under Native Law and Custom but I am satisfied that it is admissible as an agreement between the parties under the provisions of Evidence Ordinance Section 122. The provisions of the Illiterates Protection Ordinance does not apply in my opinion to render it inadmissible. Document tendered admitted and marked Exhibit "C".

In the  
High Court  
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Plaintiffs  
Evidence  
-----  
No.20

Adjourned till 9 a.m. tomorrow.

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Ruling

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(Sgd.) J. Reynolds.  
PUISNE JUDGE  
3/11/59

WEDNESDAY THE 4TH DAY OF NOVEMBER, 1959.

0/19/57:  
0/31/57:  
0/32/57:

Hearing resumed.

As before.

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4 AJANA ENEWELUM ON FORMER OATH:- Gardiner made boundary. I know another D.O. Lawton he put the cement pillars along the boundary made by Mr. Gardiner. One pillar is at Oyi River another near the Road leading to Achalla Nteje. Next one is near an Agba tree. Next one is near a gate leading to Okodigbo compound. Next one is near gate leading to Akpe's compound. Another is near gate leading to Udebuna's compound. Another near to Uminyinora compound. Next is near Odu Ubeli; Next one is near Ojoajwu (burial ground). Next one near Ebenebe tree.

Examination  
continued

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Q. Did Abube know of this dispute that led to the demarcation of boundary. A. They knew because they were attending, as well as Umuawu and ourselves before Gardiner the D.O. They also attended before Lawton. The Abube people came as witnesses for Umuawo.

IKPEAZU: Object to evidence of what Abube people said as it is secondary evidence of what is contained in a document.

Objection



<p>In the High Court</p> <hr/> <p>Plaintiffs Evidence</p> <hr/> <p>No.20</p> <p>Ajana Enewelum 3rd, 4th &amp; 5th November 1959</p>	<p><u>ONYIUKÉ</u>:- This evidence is to explain negotia- tion leading up to agreement.</p> <p><u>RULING</u>:- Hold it admissible.</p> <p>Abube people testified and said the land on which they (the Abube people) dwelt belonged to Umuawo. This land was part of the land in dispute at that time. The names of Abube people who testified for Umuawo were: Akpe Onyeaka, Anakwe Ejdidu. The 3rd Plaintiff in O/31/57 Uneli Anekwe is the son of that Anakwe Ejendu. 10</p> <p>Agenti also gave evidence for Umuawo.</p>
<p>Objection</p>	<p><u>IKPEAZU</u>: This evidence is not admissible as part alleged arbitration proceedings.</p>
<p>Ruling</p> <p>Examination continued</p>	<p><u>RULING</u>:- The evidence is to be admitted as admission made by Abube. I know Chief Eze Chukwu he spoke on this occasion. He spoke for the Abube people he was their chief then. He said they the Abubes had no land there. There were many Abube people who attended. 20</p> <p>There are 2 main sections in Abube village name- ly Umuago and Enuiyi and Chief Ezechukwu is from Umuago, who was then their chief (of Abube people). Umuago is the senior section. Akpe Onyeake came from Enuiyi; Anekwe Agendo also came from Enuiyi. Umuawo people own land up to their boundary with Ubasioye. We own land up to our boundary with Igbariam. It is the land in middle including the Achalla Ntje Settlement and the place where Abube people live 30 that is land in dispute. After the demarca- tion Achalla Ntje settlement fell into Abudu portion and Abube settlement into Umuawo land. Achalla Ntje was to pay £8 to Abudu people as rent because they live on our land. They pay this rent to the present day. Achalla Ntje farmed this settlement a long time ago. I don't know when but I grew up to know them there. Abudu people put Achalla Nteje people on this land. Before they had paid rent in yams and 40 wine. Demarcation of boundary and fixation of rents was made over 40 years ago. Abube people helped us to put in the boundary pillars. Umuawo and Abudu people contributed the money to pay for them. Since then there has been no</p>

quarrel between Abube and ourselves as to the land concerned in that dispute. They accepted the boundary. The people of Igbariam I know. D.O. Gardiner also demarcated a boundary with them but there was no dispute. This is the boundary I described yesterday. The boundary had been in existence before then. He asked Igbariam people and us if we accepted the boundary and we both said yes. Chief Umeadi signed for the Igbariam in that agreement.

In the  
High Court

Plaintiffs  
Evidence

No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Examination  
continued

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Re Abube - Abudu land dispute. Abudu gave Abube some land. The land is between Gburugbrum stream and Ezuku stream. (verged yellow on Ex. "A"). The land was given to Abube as blood price. They exceeded the boundary of the land we gave them - over 40 years ago. When A.D.O. came to Achalla we went and reported to him and they also went and reported that we were exceeding our boundary with them and D.O. said he would come and settle the matter. He agreed to come and did come. D.O. was Gardiner or Lawton. He demarcated a boundary.

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Q. Where did this boundary run?

A. From the source of Gburugburu to source of Ezuku. Both parties accepted this demarcation. We signed agreement acknowledging the boundary. I know one Anekwe he signed for Abube. I know one Akpe he also signed for Abube. They were the same people who gave evidence for Umuawo and previously mentioned. Achuam signed for Agbudu; Uchandu also signed for Agbudu. Achuam is not now alive; Uchendu is also dead. Anekwe is also dead. Akpe is also dead. Chief Ezechukwu is also dead. Chief Umeadi is also dead. Cement pillars were placed along the boundary by Lawton. Three cement pillars were made. One was at source of Gburugburu second one in the middle of the boundary; third one at the source of Ezuku. Abube and Agbudu accepted this placing of pillars. The two parties were with D.O. when he was putting in the cement pillars. Since 1917 the two parties accepted the boundary and there was no trouble except recently i.e. 2½ years ago. Tender agreed demarcation. Id 1.

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IKPEAZU:- Object to admission on ground that

Objection

<p>In the High Court</p> <hr/> <p>Plaintiffs Evidence</p> <hr/> <p>No.20</p>	<p>the plans or sketch does not bear the signature of the man who made it.</p> <p><u>ONYIUKÉ:-</u> This is certified copy. Section 28 of Provincial Courts Ordinance Cap 4 Laws of Nigeria 1923 Edition. Promote reconciliation amongst persons over whom Court has jurisdiction without recourse to litigation.</p>	
<p>Ajana Enewelum 3rd, 4th &amp; 5th November 1959 Objection continued</p>	<p><u>RULING:</u> I hold it is admissible as an agreement between parties and as a reconciliation arrived at under Provincial Court Ordinance (Cap.4). Id. No.1 admitted and marked Exhibit "D".</p>	<p>10 Exhibit "D"</p>
<p>Examination continued</p>	<p><u>RE OKPOBOLI BOUNDARY:-</u> I know village of Okpoboli we have boundary with them. I had land dispute with Okpoboli people and Gardiner came and settled it. He demarcated a boundary between us and Okpobili. We signed agreement; Achuan signed for us; Odalo signed for Okpoboli and Chief Chife. The boundary as demarcated was the source of Anyafunawu stream. This boundary was agreed and since then there have been no dispute. Chief Chife is dead so is Odalo. Agreement Id 2 tendered.</p>	<p>20</p>
<p>Objection</p>	<p><u>IKPEAZU:-</u> I have same objection as made previously. Id 2 admitted and marked Exhibit "E".</p>	<p>Exhibit "E"</p>
<p>Examination continued</p>	<p>Q. How long did it take Gardiner to look into all these disputes. He stayed at Nando for 2 weeks. The parties used to meet him at Nkwo Market near Okpobili. It was at same time as settlement of other dispute referred to. Obudu people sat on one side, Abube on another and Umuawo on another all facing the D.O. Igbariam was far away so chief Umeadi used to represent them. Meetings were held in broad daylight and in public just as we have it here. When Gardiner went to blaze the boundaries the parties used to go with him. All groups mentioned witnessed the making of the boundary. Mr.Gardiner must have gone back home. The agreements were all signed on the same day. Achalla Ntje people live on the land with our permission and farm on it.</p>	<p>30  40</p>

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High Court

Plaintiffs  
Evidence

No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Examination  
continued

Our people also farm on the land, cut economic trees on the land. We live on top part of the land. We have our jujus on the land. Okpu-ana shrine, Obuzeze shrine; Eke shrine. Achalla Nteje have their own shrine marked Ara shrine which they put to protect them. Achutu Pond and Agbudugpu area (during rainy season); Lyinbohu pond are our ponds. At Oyi river we have boundary with Nteje. I farm there myself.

10 We have tenants on this land. Other than Achalla Nteje people we also have Abube tenants if they want land for farming. We used also to give Okwosu people land. People from Enugu if they want land we give them or from Ulasioye. Okwosu only farm on the land; they do not live on it - they just farm for the season. People of Enugu do the same. Also Igbariam. Abube tenants after harvesting season they pay tribute to us. They do not farm on our land.

20 Abube people live on our land now. They have begun to live on our land since 20 years ago. About 44 Abube tenants have been put on land. Nnaegbo Ekweze (1st deft. in 0/19/57) does not live on our land. He lives on the land of Umuawo. Chinweze Ejiofor (2nd deft. I-bid) does not live on our land. He lives on Umuawo land. UzoigweMakika (3rd deft. ibid) does not live on our land but on land of Umuawo.

Adjourned 10 minutes.

30

(Sgd.) J. Reynolds  
PUISNE JUDGE 4/11/59.

Hearing resumed as before.

Q. How much do seasonal and Abube tenants pay.

A. Originally they were paying 10 yams and wine now they are asking them for £1. They refused to pay the £1 now. They were paying the £1 before the dispute started 2 years ago. After harvesting their crops on the land they come and pay the money. I with others of Agbudu used to go along to shew them the land.

40 Abube tenant has no right to go on Abudu land to farm without its first being pointed out to him by us. Abube people living on the land if they approach us for land to farm he usually pay 20/- each year. If he wishes also to farm he

In the  
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No.20

Ajana Enewelum  
3rd, 4th & 5th  
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Examination  
continued

pay £2. It was over 40 years ago when yams and wine was paid for the land. Tenants started to pay £1 over 40 years ago when money was introduced.

Q. What is cause of dispute which led to this action.

A. The 3 defendants collected some young men went into our land and built a school about  $2\frac{1}{2}$  years ago. The pillars planted on the boundary are no longer there they have all been removed. It was  $2\frac{1}{2}$  years ago when dispute arose they removed them in the night except one at Iyi. We left some people to watch that one and when they came to remove that one they were caught. Chief Ojinyi caught them. That was the pillar tendered in the Magistrate's Court. We brought an action in Court for the removal of pillars the Abube counter claimed for title in suit 16/57. The two actions were tried together in the Native Court. The Court split in their decision. The matter went on appeal to D.O. Abube people put in a plan in Native Court and they produced another plan before D.O.

10

20

Exhibits "F"  
& "F1".

Record of proceedings in 29/57 and 16/57 and appeal No.26/57 in all suits by R.R. Olisa D.O. and plan EC/33/57 used in Native Court and before D.O. and marked Exh. "A" by D.O. Record put in and marked Exh."F". Plan marked Exh. "F1". Dispute between us and Umuawo started in Native Court Achalla. It was over 40 years ago. It was 2 years after the suit when D.O.Gardiner came to settle the dispute. It is not true that the land belongs to people of Abube. We farm on land and put tenants there and perform other acts of ownership.

30

Q. What is relationship between you; Umuawo and Abube.

A. We are 3 sections of Ikenga - 3 sons of common ancestor. Abudu is most senior, 2nd is Umuawo and 3rd Abube. Three sons shared the land of Ikenga on his death. Abudu was first to take his share. He took the largest share, Umuawo took 2nd share and Abube took last and smallest. The land we now claim is the land which is our share. Boundary with Abube at Anyafuanwu on

40

South up to Iku stream in North shews Abube share. The Umuawo share is the one the Abube is now claiming marked violet. It is not true that Abube put tenants on the land. Abube have been building fast on the land since action without our permission, because they are more in number. They are building indiscriminately over land and constructing roads. They are changing the character of the land by so doing.

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No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Examination  
continued

Cross-examination

10

CROSS EXAMINED BY EMEMBOLU:-

Q. Boundary mentioned with Umuawo has always been boundary up to present day.

A. Yes.

When boundary pillars were fixed Abube people came to live on Umuawo land still live on and Umuawo people on Abube land. Pillars between us and Umuawo started at Oyi.

Q. In what area do Abube live in Umuawo land.

20

A. Large area because they are large in number.

Hearing adjourned till tomorrow morning at 9 a.m.

(Sgd.) J. Reynolds 4/11/59.

ON THURSDAY THE 5TH DAY OF NOVEMBER, 1959:

Suit No.0/19/57:

Resumed

Onyiuke and Anyaegbunam.

Ikpeazu.

AJANA ENEWELU ON FORMER OATH:

30

CROSS EXAMINED BY IKPEAZU:- I know the village of Umuawo.

Q. Is their present homestead the same as in 1917 when D.O. Gardiner came.

A. That is so.

In the  
High Court

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Evidence

No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Cross-  
examination  
continued

Q. If someone in 1917 referred to the place where Umuawo settled they would be referring to the place where they now are.

A. That would be so.

Q. In 1917 there was dispute between Abudu and Abube settled by Mr. Gardiner involving the bush between the village of Abudu and Umuawo?

A. It is the land we gave to Abube the land between Gburugbruru and Ezuku streams.

Q. The Imuawo village stood on the land in dispute? 10

A. I don't know about this. There was no such dispute. There was a bush on that land and we gave it to them as I said yesterday.

Ikpeazu tenders agreement.

Objection

Onyuike: Witness said he knew nothing about this matter. Nothing to do with village of Umuawo.

Ikpeazu: Representative case.

Ruling

RULING: Document may only be put in for identification until properly proved admissible. 20

Cross-  
examination  
continued

Document put in Id.5. Umuawo live together where their homestead is. They always lived there never on the land of Umuawo. If Mr. Gardiner said Umuawo lived on Abube land I would not accept this. I know Ikenga very well and always live there.

Q. Never did Amuawo people live on land belonging to Abube people.

A. Never.

Ikenga was common ancestor and divided his land and each got his share. 30

Q. Was boundary between Umuawo and Abudu given by you yesterday the one created by D.O. or by your ancestor. .

A. There was a dispute about the boundary demarcated by ancestor that is why Gardiner came to mark it out. It was not different. It was not very straight. Gardiner did it in a modern way. Gardiner blazed the trail Lawton put the cement pillars. 40

Q. That was not so. No one put pillars?

Q. After agreement was reached none of D.O'S concerned put in pillars.  
 A. We have pillars on our boundary with Umuawo.

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 High Court

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Q. Those pillars were invented for the purposes of the dispute?  
 A. They were there and I can produce the one which was at Oyi.

Plaintiffs  
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10 Q. Did you shew actual pillars to surveyor.  
 A. I shewed the surveyor the holes from where the pillars were removed.

Ajana Enewelum  
 3rd, 4th & 5th  
 November 1959  
 Cross-  
 examination  
 continued

Q. Achalla Nteje sued Abube people for removal of pillars and lost.  
 A. They did not lose the case.

Q. You said the land above anyafunawu belonged to Amawyu Abube?

Q. Amago and Enuiyi are two different families comprising Abube?  
 A. Yes.

20 Q. Village shewn surveyor to North of Anyafuanwu is Amoji Abube.  
 A. The land is Amoji. Amoji does not describe the village Amajo.

Q. Village shewn in Amajo Abube.  
 A. All of them live there, that is Enuiyi and Amago. Some there some live elsewhere now. Abube live on land of Umuawo near Achalla Nteje. They live there in very large numbers. Their houses there are many. They have settled there for over 40 years the houses are bound to be very old. I agree the houses are very old. The original settlers are not many.

30 Q. Settlement was long in existence before time of Mr. Gardiner or Mr. Lawton.  
 A. Abube were not living there before.

Q. Settlement existed for a long time before 1917? That is not true. When they went to farm they approached Umuawo for land and pay money.

40 Q. Being children of common ancestor any one of you may live on the land of another without tribute.



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No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Cross-  
examination  
continued

A. We do not do that. We as eldest son had the largest share. Witness referred to Exh. "C" at page two. Formerly we were accepting rent of 10 years from them but later when money was introduced we changed it to £1. We gave land to 44 people to build and live. If they had children they would be there so long as they pay tribute and to farm on the land as well. We did not show them definite boundary. They can't farm any of land in dispute without our consent. If anyone wished to farm they first seek our permission and if we permitted it we would demand another 20/-. You can formulate your own conditions on your land.

10

Q. You never asked these people for any rent and they never paid any.

A. They paid up to the time this action was brought. In view of the confusion on land and refusal to pay rent we wanted them to quit.

Q. There is a school and church in the settlement.

20

A. They built them without telling us, about 2 years ago. There is no other school there. They had something like a school on the land of Umuawo and they hold services there also.

We farm on the land. I showed surveyor my own farms.

Adjourned 10 minutes.

(Sgd.) J. Reynolds.  
PUISNE JUDGE 5/11/59.

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Hearing resumed.

4.AJANA ENEWELUM ON FORMER OATH: There were 44 people put on the land they still live there. Some have died but their wives remain. Some have children. I don't accept that any had children who built their own houses. If a person dies his son can step into his shoes and live there. I have no record of tenants and the rent they pay. There are 44 houses built by defendants on land in dispute. The road passes in front of my house.

40

Q. The number of houses of defendants within land claimed is over 100.

A. It was originally 44 houses but afterwards they built indiscriminately. There are not up to 100 houses. They would be up to ninety. They are not very old houses. People have no market. There is an Nkwo market which belongs to whole of Nando.

In the  
High Court  

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Q. In Ibo land owner has juju shrine to indicate proprietary rights.

No.20

10 A. Anyone who owns can keep a juju shrine on it. If someone has tenant and he keeps juju on land it is tenants juju. I know Aro shrine at Achalla Nteje. The Achalla Nteje own it.

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Cross-  
examination  
continued

Q. Have Enugi people anything to do with that shrine.

A. They had nothing to do with it.

Witness referred to Exhibit "F" at page 5.

20 I did not give evidence in the case. I agree I was 4th defendant in that case. I gave evidence in the suit. I was cross examined by 1st Plaintiff. Question was "Q who erected aro ....."? He asked me the question I did not give the answer recorded. My answer was that Ezenwa did not make the juju of or Achalla Nteje. The one I referred to Abobinagu Abube shrine (in land verged yellow on Ex. "A").

Q. Aro juju was put there by Abube people and they could only do so as owners of land.

A. They did not establish that juju.

30 Q. Have defendants any jujus on place where they have now settled.

A. Yes.

Q. Omanto shrine between Achalla Nteje and Oyi River.

A. I know. It is not owned and worshipped by defendants. Umuawo own it and worship it.

40 Defendants do not bury their dead at Ajoagwu or Aguruere. We bury our dead there and Umuawo bury their dead on their side of boundary. I don't know where defendants settled there bury their dead.

Q. Boundary on E from source of Azuke to Ayi stream is boundary between Igbariam and

In the  
High Court

Plaintiffs  
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No.20

Ajana Enewelum  
3rd, 4th & 5th  
November 1959  
Cross-  
examination  
continued

defendant and not Igbariam and Plaintiffs.  
A. Not so it is our boundary.

Q. You said defendant paid 20/- per year for farming and that this has been going on for over 40 years.

A. I said they paid the rent after Gardiner Settlement. After they gave evidence for Umuawo we said they should pay 20/- rent. Before then it was 6 or 10 yams.

Q. Defendants have been living and farming on land without rent or tribute to Plaintiffs and tribute was never asked for or paid. 10

A. They were paying us and they were paying Umuawo People. The Defendants were present and helped to put in cement pillars.

Re-examination. RE-EXAMINED:- The 44 Abube tenants came gradually not all at once. Tenants must get our consent before building. They pay rent also for the house. We just shew him where to build house but no boundaries. If he wants to farm he must come to us first and we shew him where to farm. It is only 2 years ago that they started farming indiscriminately without our consent and this was cause of the dispute. We have 2 sections in Agbudu - Agbudu-Ani and Nsokwe. These two sections comprise the Agbudu just as the two sections comprise Abube. Somebody from our place must make juju. If there is good man outside he could be brought in to make medicine for us. Land is separately held by 3 houses of Ikenga. On Umuawo land Abube people were given land between Mili Nwanmene stream and Ubeiyi stream to settle. This settlement is on Umu Awo land. 20 30

TO COURT:- The whole of land inherited from Ikenga is shewn in Exhibit "A", and that is all the land the three branches own.

Adjourned 9 a.m. tomorrow.

(Sgd.) J. Reynolds

PUISNE JUDGE 5/11/59.

NO.21  
OJIANYIA OKAFOR

In the  
High Court

ON FRIDAY THE 6TH DAY OF NOVEMBER, 1959.

Plaintiffs  
Evidence

SUITS NOS. 0/19/57:  
0/31/57:  
0/32/57.

No.21

Hearing resumed as before.

Ojanyia Okafor  
6th November  
1959

10 Onyiuke: It is now agreed by all parties that Mr. Gardiner, Mr. Lawton and Mr. Newton all D.O'S appearing in documents submitted were existing persons and that they are now out of Nigeria.

P.W.5 OJIANYIA OKAFOR SWORN ON GUN STATES IN IBO:

Examination

20 Native of Achalla Nteje. I know Achalla Nteje settlement across Oyi River. I live there. I am about 50 years old. I am a farmer. I am the Chief or head of that settlement. The settlement is on Agbudu land. I was born on the land. According to tradition Agbudu put our ancestors there. We pay rent or tribute yam and wine to Abudu in olden days, but now we pay £8. £8 was paid since Gardiner's settlement. It is not true that we were put on this land by Abube people. I have never witnessed any payment of tribute to Abube people. Achalla Nteje is a big settlement containing bungalows and storied buildings. I have a storied building there myself as well as a bungalow. Achalla Nteje have one shrine there by name Arobinagu or (in short) Aro. They also showed us some portion where we farm. We farm up to the cocoa-nut trees on North of Obsunkwo stream. At that tree the Abudu people have a boundary with the Igbariam people. We also farm down to Oyi stream which is the boundary between Nteje. There are pillars on the boundary between Umuawo and Abudu and we farm up to this boundary. First pillar is at Oyi another on road leading to Achalla Nteje, another near Agba tree. We farm up to these 3 pillars - we stop at these 3 pillars. These 3 pillars have been removed by the Abube people - about 2 years ago. I knew Warrant Chief Okafor; he was my father. He is now dead. He is now dead about 30 years.

In the  
High Court

Plaintiffs  
Evidence

No.21

Ojiaanya Okafor  
6th November  
1959  
Cross-  
examination

CROSS EXAMINED BY AMEMBOLU: Abube had Abube Uno. I have been there that is where they migrate from to the farm. I know Odo Mili. It is on Umuawo land. When I say Abube people to farm I mean the land of Umuawo people called Odo Ubili. The field is this Odo Ubili which is land of Umuawo. I know place called Omanto. It is Umuawo land; it is on Umuawo side of Achalla Nteje. Pillars on that land were removed by Abube people 2 years ago. One was recovered - the one at Oyi. It was tendered at Magistrate's and left there. 10

CROSS EXAMINED BY IKPEAZU: Abube people never said they put us on the land at Nteje settlement. They did say so since 2 years ago. They never said it earlier. There are not 2 sections of Achalla Nteje only one namely Achalla ago.

Q. Did you ever hear the name Achalla Iroti.  
A. Yes. We at Achalla Ago are Achalla Iroti. I did not hear of Achalla Enu. We are not on Umuawo land. After the settlement by Gardiner those whose farms fell on the land of Umuawo paid £4 and harvested the crop. Just for that year and no more. Authority to live on land was given our people before they were born. 20

Q. Two years ago you said you were 53.  
A. I am not literate and do not speak English. Witness referred to Exhibit "F" suit No.16/57. I said there I was about 53 years. I was guessing. 30

Q. As you grew you saw settlement of Abube.  
A. Yes.

Q. It was an established settlement.  
A. It was after Gardiner's settlement that the Abube came and as each came Agbua would give them land. They did not invite me every time they gave people land.

Q. Do you know where Enui Abudu live.  
A. Yes. It is close to Achalla Nteje. It is as big as the town where we live and on the land of Umuawo. I was not present when any land was being given. It is a new settlement not very old. They went there during my time. 40

During my youth it was bush. It was when I had grown up that I saw the people going to that settlement. It is a road settlement but some Abube, still live at home. Big but not very big. About as big as our own. They are larger in number and the number of houses are larger. I know Ubeiye stream. It crosses the road. The whole land I mentioned earlier was given to my people to live on and farm. I was not born when they came and settled. He said Abube people gave him the land to farm and live on. My father had not died at the time of the Gardiner settlement. My father paid 10 yams and wine. I know of nothing else except the yams, wine and cola. He died about 30 years ago. For living on the land my people were giving £8 per year and before settlement we were giving yams. It was £8 for the whole town. That includes the right to farm and live. That is the case up to now. It entitles member of town to farm on any part of the land. We and Enuyi Abube people are more or less neighbours. Some are farmers if they are shewn where to farm. We are not shewn where to farm that was arrangement. We work within the land given us. We farm wherever we like within that area. He does not pay £1 because original arrangement still stands. I am on good terms with Enuyi Abube.

In the  
High Court

Plaintiffs  
Evidence

No.21

Ojianya Okafor  
6th November  
1959  
Cross-  
examination  
continued

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Q. Did you not sue 6 of them in 1957 for removing boundary pillars and uprooting yams and cassava in Magistrate's Court. Case was dismissed with 25 gns. cost, but I appealed. I remember St. Jude's school being put up by Abube Enuyi. I know where it stands. It is within land given us by Abudu people. Our boys do not go to this school. I know Udefi Ukongwu from Achalla Ago, from my family. He is not an Ozo titled man. He would be my age. His brother is here. The Aro shrine is worshipped by my people. It is not true it was established by Enuyi people - by one Ezenwa. Ara Otimpi is how it is referred to not Araobinagu Ezeinwa. By leave of Court Xd by Onyiuke:- I said Abube people removed pillar and was recovered and tendered in Magistrate's Court. This is the pillar. Pillar put in as Exhibit "G".

Exhibit "G"

In the  
High Court

Plaintiffs  
Evidence

No.21

CROSS EXAMINED BY IKPEAZU: Exhibit "G" was put in during trial in Magistrate's Court. I complained to police about this pillar before taking action. I did not carry it to police station before they came to investigate. Claim was not for damages for uprooting pillar. It does not belong to me. I said I saw it removed by Enuiyi people.

Ojiaanya Okafor  
6th November  
1959  
Cross-  
examination

Objection

Onyiuke: Cannot cross examine on findings in judgment without putting it in.

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Ruling

RULING: Question as to whether Magistrate disbelieved witness allowed.

A. He disbelieved me but I appealed. The appeal has not yet been heard. (Suit 0/2/57 refers) Summons tendered and marked Exhibit "H".

Re-examination

RE-EXAMINED: Achalla Nteje people migrated from Nteje. Abube migrated to their settlement from Abube their village at home. Achalla Nteje settlement is older than of Abube settlement. Abube people pay for farming and living on the land. I know they do because Abube gave us the land where we now live and as we paid them so also they pay. I saw them pay. Abubē tenants pay individually not as a group. Tenants from Okoso also farm on the land and after farming season they go back. When I said the arrangement was in writing I mean one of the documents by Gardiner. It is because our arrangement was done in olden days that we pay as a group and only £8 whereas Abube pay as a group. After arrangement an oath was taken and this present day value of land increased and that is why their arrangement is different. St. Jude's school was built 2 years ago. That school brought about the present dispute. I know Nnagbo Okongwu brother of Udeifu. Nnagbo is much older. Ndeifu treats Nnagbo as his father.

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NO.22WILFRED CHIKWUJIIn the  
High CourtPlaintiffs  
Evidence

No.22

Wilfred  
Chikwuji  
6th November  
1959  
Examination6. WILFRED CHIKWUJI SWORN ON BIBLE STATES IN

10 ENGLISH: I am Registrar of Magistrate Court Onitsha. I know case MO/306/58. Exhibit "1" in that case is a cement pillar. Exhibit "G" is that cement pillar. It has been in my custody all along and it was from my registry that it was brought to Court this morning: This is file of case I have. The judgment is not in the file.

CROSS EXAMINED BY EMEMBOLU: None.

Adjourned 10 minutes.

(Sgd) J. Reynolds  
PUISNE JUDGE 6/11/59.

Hearing resumed as before.

NO.23AKPE ANAKWENSI

No.23

Akpe Anakwensi  
6th November  
1959  
ExaminationP.W.7 AKPE ANAKWENSI SWORN ON GUN STATES IN IBO:

20 Native of Okpobili Ezi - Nando. I am a farmer. I am aged 80 years. I know village called Abudu. People of Okpobili have boundary with Abudu. Anyafawu stream formed the boundary. I know Abube. I know bridge across Anyafawu on road leading to Nkwo market. That is our boundary with Abudu as well as our boundary with Abube. Nkwo market is on our boundary with Abube. The source of Anyafanwu stream is our boundary with Abudu. I know a D.O. called Mr.

30 Gardiner. Anyafanwu is boundary Gardiner put for Abudu and the road to the market for Abube. We signed a book agreeing to the demarcation ld.3. Odieli and Chief Chife signed for Okpolobi. For Abube Warrant Chief Ezechukwu signed; also Oraegbunam. Since then there has been no trouble. ld 3 tendered. ld. 3 admitted and marked Exhibit "J". Gardiner also demarcated boundary



In the  
High Court

Plaintiffs  
Evidence

No.23

Akpe Anakwensi  
6th November  
1959  
Examination  
continued

Cross-  
examination

between us and Abudu (vide Exh. "E"). Odieli and Chief Chife signed for us. Uchendu signed for Ubudu. From then there has been no trouble.

CROSS EXAMINED BY EMEMBOLU: I am one of the oldest men. There are 3 main groups in Nando Ezi, Ifite and Ikenga. Whole of Nando is divided into 3 blocks. One went to each block. Ikenga is most senior group, Ezi second and Ifite last. Ezi Nando comprises Isinyi, Ubasioyi, Amagwene (West of Exh. "A"). Ikenga consists of Abudu, Amuawo and Abube. Abudu is most senior quarter followed by Umuawo and least Abube. I know Abube-Ndiuno. There are 2 groups Amagu and Enuiyi. Where they live is where I have boundary with them. By Ndiuno I refer to original homestead. I have heard of Ubinagu-Abube it is a new establishment.

Q. Ubinagu means those who have migrated from Ndiuno. Umuawo own that land. Ubinago Abube live on Umuawo land at Ado Ubili. Abudu own Ado Ubili. Ago Umuawo is the name of the land on which Obiago Abube live. Mr.Gardiner when he came stayed 2 weeks. They stayed at Nkwo Nando in a tent. Abudu people, Abube, Umuawo attended we Eze people attended.

IKPEAZU: Q. The parties who attended were parties to each dispute before him?

A. Yes.

Q. Did your people have any dispute with Umuago people.

A. Yes, they were coming on our land and we settled it. Amago and Enuiyi are one. Amago is senior section and whatever share they take would be shared with the other group Enuiyi.

Q. There was dispute between Abudu and Enuiyi sub quarter of Abube settled by Gardiner. It cannot be a fact therefore that Amago to Enuiyi are one, but each owns its own land. They have their lands together their original home where Enuiyi and Amago live.

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Q. Why did you say your boundary was with Amago.  
 A. They are one with Abube. We have 2 quarters in Okpobili-Amajana and Achalla Obu. I come from Amajana. My quarter had this dispute.  
 Amajana have boundary with Amago?  
 A. Yes. The land of other quarter Achalla Obu is inside. Two quarters own their land separately.

In the  
 High Court  
 \_\_\_\_\_  
 Plaintiffs  
 Evidence  
 \_\_\_\_\_  
 No.23

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Q. In Nando why sub-quarter has their own land.  
 A. That is so, but if people join they have one land. Two quarters of Okpobili take one share and we have only one piece of land. But 2 quarters live differently.

Akpe Anakwensi  
 6th November  
 1959  
 Cross-  
 examination  
 continued

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Q. We are not parties to dispute. You had before Gardiner.  
 A. They said what we said. They have no power other than ourselves and Odeili who signed on their behalf. I used to go Obinagu Abube when I was a young man. My daughter lived there. I went there to ask them to lease Abudu land where they built a Church as it was no good. Their husband threatened to kill me if I came again and so I went away and did not return. That was 2 years ago.

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Q. Ubanago Abube is larger.  
 A. In whole of Nando they are the largest.  
 Q. Obinagu Abube is of long standing.  
 A. It is new settlement. They have their original home I can't give the age of the houses as I don't know when they migrated. I don't know the extent of land of all sub families in all Akongo but I know those of people on our own boundary. My knowledge is confined to these parts.

RE-EXAMINED: Amaga and Enuiyi both comprise Abube. They are on the same land.

Re-examination

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Q. Going to Abube Uno which do you meet first?  
 A. There are 2 roads if you take one you get to Anaga first if the other Enuiyi. I know Iku stream. From Nkwo there is road going to. If you follow the road you get to Amago. Gardiner settled land dispute between Umu Awo

In the  
High Court  
            
Plaintiffs  
Evidence  
          

No.23

Akpe Anakwensi  
6th November  
1959  
Re-  
examination  
continued

and Abudu. Abube people had not started to live there at that time. Umuawo people and Abudu were present. I don't remember who was there but the parties to dispute were there. During dispute Abube gave evidence for Umuawo and that is why Umuawo shewed them where to settle.

Hearing adjourned till 18th-23rd January, 1960.

(whole week) (Sgd) J.Reynolds.  
PUISNE JUDGE 6/11/59.

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ON MONDAY THE 18TH DAY OF JANUARY, 1960

Suit 0/19/57  
0/31/57  
0/32/57

Anyaegbunam for Plaintiff in 0/19 and Defendant in 0/31.

Emembolu for Plaintiff in 0/32.

Ikpeazu and Araka for Defendants in 0/19 and 0/32 and Plaintiffs in 0/31.

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Adjourned for hearing till 21st-23rd inclusive January, 1960 at 9 a.m.

(Sgd) J.Reynolds  
PUISNE JUDGE 18/1/60.

No.24

Vincent  
Ekwealor  
21st & 22nd  
January 1960

NO.24

VINCENT EKWEALOR

Suit 0/19/57:  
0/31/57:  
0/32/57:

Hearing resumed.

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Appearances as before.

Anyaegbunam: Plaintiffs in 0/19/57 (Defts in

0/31/57) Close their case.

In the  
High Court

Emembolu for Plaintiffs in 0/32/57 opens case.

Plaintiffs  
Evidence

Calls:-

VINCENT EKWEALOR SWORN ON BIBLE STATES IN IBO:

No.24

10 Native of Umuawo Nando. I live in Onitsha. I am bringing this action for myself and on behalf of Umuawo. I know Ajana Aduaka from Abube Obinagu. Onweujlkue Ejali (2nd deft) is also Abube Abinjo. I know 3rd deft also from Abube Obinego. Nneli Anakwe also for Abube Obiago Ekwoke Onze, Udobe Igweze Ogugua Uybunya all from Abube Obinago. Defts. (1-7). They represent Abube Obinago some of them are councillors. We sue them on behalf of their people Abube Obinago. There is also an Abube Obinono. They from Obinono to Obinago. The Defendants have homes in Obinono. Umuawo people have land in Nando. That is area we shewed to our surveyor verged purple in plan filed by Plaintiffs. Exhibit "A".

20 We live on the land, we work and reap fruit from the land. We have boundary with Ikenga Nteje. Oyi river is our boundary with them; as far as confluence of Agbanabo stream. On the other side of Oyi River is cement pillar which marks boundary with Agbudu. We have boundary with Agbudu from cement pillar upward. On 2nd pillar (R.B.) on road to Achallants village. 3rd pillar along road at Agba tree Next one is near Ukwa. Next pillar is near Akpe's compound. Next pillar

30 is near Udegbo compound; next pillar is near source of Mili Nwangwe stream, next pillar is after Mili Nwagene stream; next is at Ajoagu, next point is at stump of Ebenebe; next point on boundary is road where there is a mango tree. We have boundary with town of Ubarunāisi ̄oye. Boundary with this town is from confluence Ogbbu- iobu stream to Okpoalfa stream into Inyug tree; thence mango tree. We have jujus on this room called Ageli. Nneli Aguti is the juju priest.

40 The father of the priest is Chief of all our jujus. We have also Mili Okpogo shrine - means the surrounding land. We have also Onato shrine. Priest is Makam. He is from our town Umuawo. Ifeacho is priest of Okpogo shrine. Agele stream, Ababaloo, Ubeiyi stream, Oyi, Okpbifa stream, Mili Nwagene, Onelegude stream are all streams on our

Vincent  
Ekwealor  
21st & 22nd  
January 1960  
Examination

In the  
High Court

Plaintiffs  
Evidence

No.24

land. We have Abudu tenants also of Ikenga Nteje; Okwesio Enugu Ukwu. Abube tenants live on land - they live in Odo Ubili so called because before we gave it to Abube the centre of it was full of Ubili (date palm trees). They live there now About 20 years ago they exceeded Odo Ubili and we caused the houses to be demolished now they live within Odo Ubili.

Vincent  
Ekwealor  
21st & 22nd  
January 1960  
Examination  
continued

Q. How long ago did you give them this spot to live on?

A. Over 40 years ago. We had a case with Agbudu people about this land. This case was decided over 40 years ago. Abube Obinagu came to live on the land after the case. When the case was going on they built houses there and when the Court asked who were the owners of the houses we said they belonged to Abube people as Abube people were giving evidence for them. Nobody lived in these houses at that time. The Agbuofu people did not give their consent to them to live there. Agbudu won that case and they destroyed the houses and we appealed white men came to the land and settled the matter between us and Agbudu and put pillars. Gardiner and Lawton were the names of the white men.

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(EXH. "C" refers). Umuawo lodged an appeal and the white men came. I knew one Chief Ezechukwu. These are the pillars I described earlier. At the time the pillars were put there were no Abube tenants on the land. I am 38 years. I work on this land and as I grow our people made copies of this case and we read. My father died 7 years ago. I was in the North when he died. I attained the age of manhood at Nando. My father was farmer. He farmed Omanto and Okpueyo land. I was a man before my father died. I used to go on the land with him and he used to tell me stories and I knew the boundaries very well. At one time our people lived on Abube land and paid them tribute and they were giving evidence for us. We went there as farmers to Abube land at Obinono. The Anyafuanwu river is between Abube and Agbudu. We allowed Abube people to settle on Umuawo land on payment of tribute paid in yams and wine - 10 large yams for each individual. Now they pay money 20/- as tribute for where they live. We do not allow them to farm. They stopped paying tribute when this trouble started. That was 30

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years ago. We had no trouble before. It was on account of the pillars they removed marking our boundaries with Agbudu. We and Agbudu people own the pillars. The pillars were uprooted by Abube people. We made enquiries from Abube about those pillars. They came thrice to beg. Ajanma Aduoka was their spokesman Onwuegbuka also came and Ogwuguo came (i.e. 1st 2nd and 7th Defendants). They begged us that we should suspend the matter until they finished the case with Agbudu they would go and put back the boundary for us. On 10 third occasion we said they were playing us a trick. When we said this they said the tribute they were paying us was sufficient to fight the case against Umuawo. We took action against them. Abube took action against Agbudu in Umu-igwedo Native Court claiming all our land. We gave evidence on behalf of Agbudu people saying we owned the land with them. Before the trouble 20 began we collected over £160 a year. Since that time no rent has been paid. That is why we took this action. We have not made demands because if any of us went there we were beaten. Anyone who went to demand money they would beat. I saw the tracks made by their surveyor. They left no land at all for as they left only a part of our village taking part of our village. vice Exh. "B". We belong to Ikenga group of Nando.

Adjourned 20 minutes.

(Sgd.) J.Reynolds.  
 PUISNE JUDGE 21/1/60.

SUIT NO.0/19/57.

12.20 p.m. Hearing resumed.

The other groups are Ezi Nando, Ifete Nando. These three groups have their own particular plots of land. Ezi Nando has boundary with Ikenga Nando. 3 Sub-families of Ikenga Abudu, Umuawo and Abube in order of Seniority. Abudu takes first share in Ikenga.

40 IKPEAZU: This is traditional history which is not pleaded and may not be given Order 33 must plead natural facts.

In the  
 High Court

Plaintiffs  
 Evidence

No.24

Vincent  
 Ekwealor  
 21st & 22nd  
 January 1960  
 Examination  
 continued

Objection

<p>In the High Court</p> <p>Plaintiffs Evidence</p> <p>No.24</p> <p>Vincent Ekwealor 21st &amp; 22nd January 1960</p> <p>Examination continued</p> <p>Cross- examination</p> <p>Objection</p> <p>Ruling</p> <p>Cross- examination continued</p>	<p><u>EMEMBOLU:</u></p> <p><u>RULING:</u> Question of traditional history not having been pleaded is not allowed.</p> <p>There are also Akwuosa tenants on land. They are farmers. We give them land where they work. They live on the farm. Some live and some go home. They only live on land for the farming season. They paid 20/- tribute each farmer. At time of case with Abudu over 40 years ago Ikenga Nteje were farming on the land before Abube came. They paid to our fathers. They are still on the land. They still pay tribute to us. Since this case began the Abube people exceeded the portion we gave to them and built 7 houses and destroyed our cassava farm. We took action against them here for interim injunction. After this they went to our land again and built 4 more houses police arrested them. We contributed money together with Agbudu for pillars between our land; we are claiming £100 for the pillars. Our share of contribution was £100. We of Umuawo also ask this Court to say we are owners of this land in possession and to restrain the Defendants from interfering with our boundaries on the land. I know Okpobili land that is the land given to Abube is the same as Odo Ubili.</p> <p><u>CROSS EXAMINED BY ANYAEGBUNAM:-</u> Abube Obinono is homestead of all Abubes. Abube Obinagu is land we give them.</p> <p><u>IKPEAZU :-</u> It is unfair that Anyaegbunam should be allowed to ask this witness leading questions because he is in same interest as his clients. Will ask that answers and questions in cross-examination by Emembolu also be deleted from the record.</p> <p><u>ANYAEGBUNAM:-</u> This was matter which was decided on Motion for consolidation.</p> <p>Leave granted to continue cross-examination.</p> <p>Those who migrated from Abube Obinono and settled on Abube Obinago the land we gave them. Rent as to Achalla Nteje (Page Ex. "C" refers). This was case in which Abube people gave evidence for us.</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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CROSS EXAMINED BY IKPEAZU:--In the  
High CourtPlaintiffs  
Evidence

No.24

Vincent  
Ekwealor  
1st & 22nd  
January 1960  
Cross-  
examination  
continued

- Q. Were you available when the surveyor surveyed this land.  
A. We showed them a boundary.
- Q. There was then no cement pillar to be found?  
A. No; we saw the hole.
- Q. What constitutes boundary of Odo Ubili on other side i.e. West).  
A. In ancient times the line through which Ubili trees ran was the boundary but now the boundary that could be seen is the extent of their houses. They exceeded the boundary. They live up to the boundary given them. It follows the line of palm trees our own. There are now palm trees where there were Ubili trees before. I showed surveyor all trees set down in plan Exh. "A" on Eastern boundary. We did not shew the surveyor palm trees or any other trees marking the Western boundary. We showed him the extent of Odo Ubili. We gave them land but because they are our neighbour. I heard that Abudu people went to Police and complained cement pillars had been removed. I heard police went to the village. Police advised Abudu to take civil action. We went as witnesses.
- Q. Abube sued Abudu claiming title to land. You gave evidence in the case but not in case about pillars?  
A. I don't know.
- Q. Umuawo people didnot lodge any complaint to police.  
A. Four of us went and lodged such complaint. I did not make a statement. Chieji Nwakama did 11th-13th day of month on which pillars were removed. Feb. (I think) three years ago. Police said should go and take action that Abube people were happy that they were going to claim the land.
- Q. Put it Abube never came to beg you.  
A. They did. There were 10 pillars put in 1917. We claim £100 from them. Ex. "F" page 6.
- Q. You were called to give evidence in land case



In the  
High Court

Plaintiffs  
Evidence

No.24

Vincent  
Ekwealor  
21st & 22nd  
January 1960  
Cross-  
examination  
continued

Abube v. Abudu. I know there were 10 pillars  
all along.

A. I did not then say there were 11 pillars.

Q. You then said Abube people pay £4 per house  
for dwelling place.

A. I said that what they paid for farming. They  
started paying money after the case. There  
were up to 20 then who paid £4. It was 2  
years after the case when 10/- for small yams  
for farming was introduced and 20/- for large  
yams.

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Hearing adjourned till 9 a.m. tomorrow.

(Sgd.) J. Reynolds  
PUISNE JUDGE 21/1/60.

Hearing resumed

ON FRIDAY THE 22ND DAY OF JANUARY, 1960.

Suit 0/19/57.  
0/31/57 &  
0/32/57.

Appearance as before.

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VINCENT EKWEALOR (On former oath).

Ex. "F" page 6 Witnesses previous evidence in  
which he said number of pillars were 11 and  
collective rent was £4. Whole evidence of wit-  
ness at page 6 of Ex. "F" admitted in evidence  
as / Ex. "F1".

Q. You say anyone who wants to farm outside where  
Defendants live (Odo Ubili) pays for farming.

A. We gave them land on which to live. If they  
wish to farm outside that area they could be  
given land on payment. Outside people who  
farm on our land do so on payment. No part  
of Ode Ubili is farmed by anyone.

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Q. Abube people who live on this land described  
as Odo Ubili pay no rent to anyone.

A. Not so.

Q. There is no boundary to West at all.

A. Not so. Agreed the village was established before I was born. There is a big square in the town; it existed from the time the settlement came into existence.

In the High Court

Plaintiffs Evidence

Q. It is an established village with 600 people.  
A. It may be.

No.24

Q. It is more than Umuawo and Abudu put together.  
A. It may be so.

Vincent Ekwealor  
21st & 22nd January 1960  
Cross-examination continued

10

RE-EXAMINED:- Odo Ubili is part of our land. It is not a separate land.

Q. Did you at any time make any boundary with Abube.  
A. No.

Re-examination

Q. How do you define the area called Odo Ubili.  
A. It runs from Nwagene to Ubeiyi. When going across Nwagene. I know I reach Odo Ubili. In case (Ex. "F") I gave my evidence in Ibo. I am 38 years old. Case of 1917 between Abudu and Umuawo ended before I was born.

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TO COURT: We did not put any boundary to the land given to them.

NO.35

No.25

EMEKA OKONGWU

Emeka Okongwu  
22nd January 1960  
Examination

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2. EMEKA OKONGWU SWORN ON GUN STATES IN IBO:- Native of Ikenga Nteje. Live in Ikenga Nteje. I am 55 years old. I farm on Umuawo Nnando land. The elders of Umuawo shew me where to work. There are many of us who farm there. I am the Nteje people who farm there. The land where we farm begins from Oyi River to Ubeiyi stream. They shewed me cement pillar on the Road to Achalla Nteje. Three pillars were shewn. First is at Oyi; second on road to Achalla Nteje; next one is near Agba tree. I actually saw these 3 pillars myself. I started to see these pillars 40 years ago. It is about 3 years since I last saw the pillars. By that time the pillars were no longer there. My

In the  
High Court

Plaintiffs  
Evidence

No.25

Emeka Okongwu  
22nd January  
1960  
Examination  
continued

father used to take me to the land when I was small. We farm to the confluence of Oyi and Ubeiye. Across the Ubueyi Umuawo farm. I built a house and I have a yam barn there where I keep my yams. The house is still there. The barns of my people are still there. At the end of the harvest season I hold a sort of feast and pay the tribute to Umuawo people 10/- for big yams and 10/- for seedlings. The crops we cultivate are yams, cassava, rice. Also palm trees we who work on the land cut the palm fruits. After cutting we invite Umuawo and they give some share to the fellow who cut the palm fruits. We pay the annual rent to the elders of Umuawo. I have seen Omata shrine on this land. Our village is near the land. Achalla Nteje also live near the road where pillars stood separate us. Umuawo told me that it is Agbudu land on which Achalla Nteje is. Since I started working there no one disturbed me. Agbudu and Umuawo once had a dispute when I was small. I remember I was in our village when Umuawo beat their drums to our place and were rejoicing that the white man had settled their case and Anudu people also rejoiced at our place and said the same thing. Before this rejoicing my father had been taking me to Umuawo farm land. At that time nobody lived on the land then. I know Abube Obinajo Village but I never went there as it was not on my way. I do not see any house there. I usually stop at Ubeiye and from there I saw the houses. But the houses were not there when I used to work there with my father. When I grew up I saw Achalla Nteje settlement. Abube settlement was during my life but Nteje settlement was before I was born.

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ANYAEGBUNAM NO CROSS EXAMINATION:

Cross-  
examination

IKPEAZU CROSS EXAMINES:- I have never worked out-side this land. The name of the land is Agu Umuawo also Omoanto because of the Omanto shrine. I have gone through Abube; there was nothing there to concern me. It would be distance from here to the main road from Ubeiye to farthest house. When I used to go with my father to work I did not see houses.

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- Q. You never worked there nor your father. I know Nwasolu Nwene he worked under me.  
Q. He was put on land by us and pays.

A. He brings his money to my house for payment to Umuawo people. I showed him where he farmed this year.

In the High Court

Q. Abube people also farm on this land.  
A. From Oyi to Ubeiye was shewn to me by Umuawo and we work on the land. I don't know Ekwunife Nwele.

Plaintiffs Evidence

No.25

Q. He is the juju priest of Omanto.  
A. No Abube man has ever disturbed me on the land till this day. He is not juju priest. Nwakamma of Umuawo is the juju priest. I don't know juju of Achalla Nteje. There are many jujus in the town.

Emeka Okongwu  
22nd January  
1960  
Cross-examination continued

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NO RE-EXAMINATION:

Adjourned 10 minutes.

(Sgd.) J.Reynolds.  
PUISNE JUDGE. 22/1/60.

Hearing resumed.

Ememnolu closes his case.

20 IKEAZU Plaintiffs in O/32 have not made out a case.

Adjourned till 4th February, 1960 at 9 a.m.

5th and 6th February also reserved.

(Sgd.) J.Reynolds.  
PUISNE JUDGE. 22/1/60.

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In the  
High Court

DEFENDANTS EVIDENCE

NO.26

Defendants  
Evidence

AJANMA ADUAKA

ON MONDAY THE 4TH DAY OF FEBRUARY, 1960.

No.26

Ajanma Aduaka  
4th, 5th &  
10th February  
1960

Hearing resumed.

Suit Nos.0/19/57:  
0/31/57:  
0/32/57:

Appearances as before.

Araka for Defence calls:

Examination

D.W.1.AJANMA ADUAKA SWORN ON GUN STATES IN IBO:

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I live in Abube in Nando. I am a farmer. I represent Abube in this case. I have been authorised by people of Abube to represent them. I know the land in dispute in this case. Obuogwu is the name of the land. Ofia Abube is our land. Imeagu is one of the lands. Obuogwu is another, Ofia Nmene, Agwueke, Ana Oba, Ana Ugo, Agu Oyi. Abube are the owners of all these lands. I was born there. I am 70 years old. From my birth I knew the land belonged to us. We have boundary with Igbariam on one side and with Nteje and another with Awkusa, Ubasioye, Umu Awo and with Agbudo. At Oyi the boundary with Igbariam and Nteje. Our boundary with Igbariam starts with Ezuku stream running to its source, thence Ebili tree; then to Ogba, Mbunimi tree, Elili, Agba, Elili, Echeche tree and another Echichi tree thence where it crosses Obuogwe stream, Abba tree, thence Ogilisi tree Elili tree, Road leading to Obuzo another Elili then cross Mili Agu stream, then 2 Ubili trees; thence to stump of Uri tree, thence to Oyi river. Oyi forms our boundary with Ukuso and Nteje then to confluence of Oyi and Agbanabo where our boundary with Ubasioyi begins thence to Olosi on the road, thence to Ebebebe; thence to another Otosi; there to Umlumbo; thence to Echichi tree which was planted as a result of a dispute between an Umu Awo man and an Abube man; thence to Alili tree and Elili and Agba tree where there is a burial ground Ajo-Agu Ndiche thence Ogilisi, then about 3 Elili trees then Echichi tree;

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thence Elili then to Abaka stream where our boundary with Agbudu starts; then to Ajana shrines; thence Mango tree; thence Ebenebe; then to Nkwu Muo tree, I haven't it in my head; Elili tree; Utulubeji tree, Ukpi tree; then to small stream Iyioji Agu to bridge and then to Ezuku coming back to our boundary with Igbariam. We live and farm on this land. We also shew people land there to farm. Enugu Uturu people; Achalla Nteje and real Nteje who live inside, Okoso people also Ulasioye, also Umuawo and Agbudu where they live.

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Emembolu not pleaded that Umuawo people were tenants.

Araka: Not alleged in respect of area in dispute with Umuawo.

WITNESS:- We also gave land to Tagbo and Anumojidi, Adokwe Ezigbo, Aneke Chinwendu, Enumka, Emesim. Achalla Nteje people live on our land and pay us 20 big yams and 40 small yams. Asonwu collects the yams and brings them to us. Ansonwu's mother was from our place. He lived in Nteje but when his father died he came over and stayed with us. Then later on he called Agbuda his brother and Ogueji. They said they would settle there and work there. They lived there and farmed and later on Okafor Uchenu and Modi came. All these people are from Nteje. When they were progressing in their farm work they said they would like to settle there. We went and performed customary rites for them to live in peace there. "Araezemwa" is the name of the rite. It is a juju shrine. It was to protect them if they became sick and we later took an oath with them at our place. That they would not steal our things and we would not poison them. We also asked them to swear to the effect that they would not do anything like cutting trees or building houses without telling us. Later on Okafor built a house without telling us. Then we had a dispute with them and we calculated the amounts they owed us and the juju started to kill them. They brought a goat, the sum of £2 and wine and said we should revoke the oath. We refused. Then they ran back to their people and reported to them that we refused to revoke the juju and one

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In the  
High Court

Defendants  
Evidence

No.26

Ajanma Aduaka  
4th, 5th &  
10th February  
1960  
Examination  
continued

In the  
High Court

Defendants  
Evidence

No.26

Ajanma Aduaka  
4th, 5th &  
10th February  
1960  
Examination  
continued

of them Naagbo sued us at Okozo Court to revoke the juju as the juju was killing them. We revoked the juju and they paid us the debt (£30) in Court. Achalla Nteje people are still on our land. Asonwu came there to settle after I was born about 45 years ago. We do not live on Agbudu land they live on our land. We never paid them tribute. We never paid Umuawo people tribute. We have never paid any of them tribute. I was present when 1st Plaintiff was born. I am older than any of the parties here. I have never seen any pillars on the land indicating an alleged boundary. We did not uproot any pillars. We own the whole land described this morning. Where I live is Abube village. I know Amaagu village it is not within the land in dispute. Obu-Ohwe is the land on which we live. I was born on this land. My father lived there. I could shew where he was buried. Anagu is Abube Ono.

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Q. It is alleged that you people migrated recently from Amagu or Abube Ono to live in the land in dispute.

A. That is not so. I was born on this land and have never shifted. We did not know of any arbitration proceedings 40 years ago between Umuawo and Agbudu. I was not called. If others were called I do not know. About 40 years ago I was a chief if they settled this matter I do not know. I knew Chief Ezechukwu. I was chief at the same time. He lived at Amago. He did not tell Enuiyi about any arbitration. I did not see D.O.Gardiner on the land. Arobinagu is a juju on land; Eneamalala; Ovuve, Obanbe Ogugu (by the road); Omanto; Iyimbekwu are all jujus on our land. When Ekwunife died Udenze took over. These people are from Abube. People from Abube worship these jujus. The area in which is St. Jude's school is owned by Abube. When it was being built Achalla Nteje and Abudu took out action against us in Onitsha saying the land belonged to them. That led to this present dispute. We had previously been farming in this area. Previously nobody had disturbed us there. We had never paid rent for farming in this area nor were we asked for rent. I don't know one Anakwe or Akpe. I know Anakwe and Akpe. They are from Abube. They did not tell me of taking part in any arbitration proceedings. They are

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dead now. They died when I was a small boy. We did not go and destroy economic trees belonging to Agbudu people. I ask for declaration to land described by me and an injunction against Agbudu people disturbing us. They have never disturbed us except for this action taken against us and that is why we sued them.

In the  
High Court

Defendants  
Evidence

No.26

Adjourned 10 minutes.

(Sgd.) J.Reynolds

PUISNE JUDGE.

4/2/60.

Ajanma Aduaka  
4th, 5th &  
10th February  
1960  
Examination  
continued

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Ajana Aduaka (on former oath)

CROSS EXAMINED BY ONYIUKE :- Anakwe and Akpe come from Abube village they belong to Enu Iyi sub-family. We were not of age to attend meetings when they died. It is true that I am 70 years old. Chief Eze Chukwu was a native of Abube belonging to Omago family. He was chief at time Anakwe and Akpe lived. Ex. "F" (Suits 29/57 and 16/57). Witness referred to suit 29/57.

Cross-  
examination

20

Q. Abudu sued you for title and removing boundary pillars.

A. Yes. I gave evidence for defendants (March 1957).

Q. There you gave your age as 52 years.

A. I did not say that.

Q. In 1917 you were not of age to know about. Referred to Suit O/31/57 Para. 3 S/C. filed by Defendants.

30

Q. After death of Ikenga land was shared between his 3 Children. No his land was never divided. A Each cultivated the land where he lived. It is not true that land was divided amongst his 3 children.

Refer to Ex. "F" Q. In Suit 16/57: Abube sued Agbudu claiming title to the lands.

A. Yes.

40

Ekwunife Milli and 3 others represent Abube in that case. I was in Court when Ekwunife Nnelli



In the  
High Court

Defendants  
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Ajanma Aduaka  
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Cross-  
examination  
continued

gave evidence. He was speaking for Abube Nando in that case. He knows about the land and the history of our people. (vide page 1 Record Suit 16/57). It is not true the land was divided. He did not say so. I know agbasionwo Nnabuanya. He gave evidence when I was not in Court.

Q. He claimed to be head of Abube.

A. It is not correct. He was telling lies when he said so. "Ago" would refer to our land at Imago.

10

Q. Ono meant home land and Ago farm.

A. If I farm at home I called it Ono. If farm in field I call it "Ago". "Ago" would refer to where they farm.

I was not in Court when he gave evidence but if he said it was divided into 3 equal parts it was not true. The land in dispute belongs exclusively to Abube. It was originally part of Ikenga land. We came to own it exclusively because I was born there.

20

Q. Have Umuawo share of Ikenga land.

A. They have their own share of Ikenga land.

Q. Have Agbdu also share. A. Yes.

Land was not divided; where one lives and works becomes his. If I work on Agbudu land I must obtain their permission. Sub page 4 Record.

Q. He said Abube only got one not two shares.

A. The land was not divided.

30

Q. Part of Ikenga land farmed by Abube was it divided between Amago and Enuiyi. A. It was not divided. Ekwunife Nneli spoke for whole of Abube just as I am speaking now.

Q. Obasionwu said the only land which Abube people had differently was Imago land.

A. No. Abasionwu is now dead.

Q. If his statements in Native Court were not true would not your people have contradicted him in that Court.

40

A. As I was not there I don't know if he said.

In the  
High Court

Q. You made plan EC 33/57 in case 16/57?

A. Chedozie made plan but we rejected it.

Defendants  
Evidence

Q. Court gave judgment on plan.

A. No. They visited the land.

No.26

Q. It was Plaintiffs who attacked plan in C.A. not you.

A. No. (Page 2 of D.O. appeal judgment in case 16/57 referred to.)

Ajanma Aduaka  
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1960

10 Q. Chidolue gave evidence that all names features were supplied by your people.

A. He did not come. We rejected the plan because Chidolue sent a Hausa man and we did not understand him. I don't know of people who have land at Agu Eke. I did not go with surveyor. We have land called Obaogwue. We have land called Ime Agu. It was us who gave these names. The land where we live is called Obaogwue. Enuiyi sub-family live there.

20 Obuogwe land has no other name. C/6 Obu - Ogwe land in Exhs. A. & F1 and Exh. "B". I know Achalla Nteje settlement. They have lived there for 42 years. It is on Obuogwe land. There is no other land on which we live. They never lived on Agu Eke land. In Exh. "B" Agu Eke is shewn in North extending to the South in Exh. "F". I don't know Iku stream. I know Iyi Ogi Agu stream. There we have boundary with Igbariam and Agbudu.

30 Omoji. I know where Amago Abube live. It is part of Ikenga land. Standing at Alaka stream and look at Ezuku stream Amego is on left. Land where Amego live is part of Abube which was part of Ikenga land. I don't know with whom Amego has boundary. I know confluence of Gburugburu and Ezeku stream. We own the land between these two streams. We own land on both sides of Gburugburu stream. The land enclosed by the 2 streams left one is Imeagu the right Agu Eke. I know source of the 2 streams.

40 We own land Obo-Ogwe. We never had any dispute as to land between the 2 streams.

Cross-  
examination  
continued

Q. Did you ever hear the Southern boundary was demarcated?

A. No boundary was ever demarcated.

In the  
High Court

Q. Anekwe and Akpe were representatives.  
A. They did not.

Defendants  
Evidence

Hearing adjourned till 9 a.m. tomorrow.

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(Sgd.) J.Reynolds

PUISNE JUDGE.  
4/2/60.

Ajanma Aduaka  
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D.W.L. AJANNA ADUKA (ON FORMER OATH)

Cross-  
examination  
continued

Imeagu land is land of Abube. "Ojia Agelle" is  
the name of Umuawo. Land of Abudu is called  
"Agu Abaka". Abube own Ime Agu land not Agbudu  
of Umuawo.

10

Re-examination. RE-EXAMINED :-

Q. Land dispute at time of Gardiner between  
Umuawo and Agbudu.

A. I did not know about that. I never heard of  
land dispute between Agbudu and Umuawo. Up to  
now I have never heard of such dispute. It is  
not true that Umuawo and Agbudu had dispute.  
Exhibit "F" case 29/57 (for removal of cement  
pillars.) I remember the case. I gave evi-  
dence for defence in that case. I said there  
were no cement pillars. Page 2 Record. "Q.  
When plaintiffs and Umuawo were disputing over  
this land were you at Nando. A. Yes. I did  
not say that in Court.

20

Q. You are deliberately lying and made such  
answer.

Q. Why didn't you appear if the land belonged  
to you.

A. This as a separate land from that I can shew  
you on land inspection. The question was put  
but I said I wasn't there.

30

Q. What was land dispute between Plaintiffs and  
Umuawo?

A. It was Imeagu land".

I was asked that question. I told them they  
should not ask me that I did not know. I did  
not say "it was Imeagu land". We did not know

of this dispute.

Q. All other Defendants 2 - 7 concerned with your answers? vide record.

A. I agree. I know Achalla Nteje Settlement. It is on Obuogwe land.

Q. I know warrant Chief Okafor of Achalla Nteje. He is now dead. I don't know how many years. Akpe died before him.

In the  
High Court

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1960  
Re-examination  
continued

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Covenant with Achalla people 45 years ago that would not put up permanent buildings and that later they broke oath. I cannot say how many years after the oath was taken that they broke it. Achalla Nteje people were paying tribute to us. I don't know how long they ceased paying customary tribute. We took action against them for not paying and they paid.

20

RE-EXAMINED :- Q. As far back as 1914 Achalla Nteje swore they paid rent to Agbudu and no one else. A. Not so. I don't know that they paid tribute to Agbudu. I know Ojanyi Okafor (P.W.). He is son of Warrant Chief Okafor referred to earlier. He is the head of Achalla Nteje because he is the Chief but there are other older men.

Q. He gave evidence that he pays tribute to Agbudu.

A. Yes.

30

Q. Question of oath swearing between his people and Abudu was never put to him in cross-examination.

A. I did not hear that.

Q. At no time was 1958 case of revocation of juju put to him.

A. I am not surprised because all of them contributed to this action. In action 16/57 Ex. "F" page 7 Ojanji Okafor and 4 other people gave evidence in Native Court and they were fined.

40

Q. Rent to be paid by Achalla Nteje was settled by Gardiner.

A. I don't know.

Q. You people made no claim to land on which lived Achalla Nteje in time of Gardiner because you did not own it.

In the  
High Court

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Ajanma Aduaka  
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Re-examination  
continued

A. Gardiner did not come.

Q. When dispute was raging people of Umuawo and Enuiyi came before Gardiner and disclaimed interest in land.

A. Not so.

I know Chief Henry Umeadi. He is now dead. I don't know Mr.Gardiner. Umeadi was Chief of Igbariam.

Igweze was his spokesman.

Q. People of Agbudu and Igbariam had land dispute in 1917? 10

A. I don't know that.

Q. Boundary was demarcated by Gardiner starting from Oye Ndoei.

A. He did not.

Q. Representatives signed acceptance of this boundary by Gardiner?

A. I don't agree.

(Exh. "D" page 3 of record refers).

I am Chief for about 22 years. I said it yesterday. 42 years. I don't know the name of D.O.Awka 42 years ago. No D.O. visited my town 42 years ago. I have never seen any D.O. come to our place. We go to Court at Achalla and D.O. comes there. I don't know what age I was when I became chief because I did not write it down. Not warranted Chief. 20

Q. Warrant Chief of Abube was Ezechukwu.

A. No. He was Amgo and I of Enuiyi. I was never warrant Chief of Awka but of Onitsha. 30

Q. Cause of this dispute was that Agbudu people said you built a School on their land.

A. Yes. We built a school. We cut down trees on the land to build the school.

Q. If land is given tenant he turns round and dispute tenancy he forfeits right according to custom.

A. If the other person is the owner.

Q. Tenants do not have boundaries only owners?

A. I agree; we own the land.

In the  
High Court

Q. Demarcation of boundary is not between owner and tenant but only between owner and tenant.

A. I show him extent where he should cultivate up to. I will show him.

Defendants  
Evidence

Q. Is there any boundary between you and Achalla Nteje.

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A. No; we showed them where to stop.

Ajanma Aduaka  
4th, 5th &  
10th February  
1960

Re-examination  
continued

10 CROSS EXAMINED BY EMEMBOLU:- I know Gburugburu Stream. We did not give plan to Native Court. I was not there when my people gave plan to Native Court. Shewed Mr. Chukwurah Alaka stream.

Q. There is Road through Achalla Nteje Umuagu Abube and Nando right up Agbudu.

Cross-  
examination

A. Yes. Also shewed surveyor Mili Nwanne. (Ex. "E" 33/57 Ex. "F" shews same Road).

20 Ajo Agu Ediche is burial ground near Igbariam boundary. We have only one burial ground at Ndiche (vide Ex. "B" and "F"). There is another road branching to Umuawo. If stand on bridge over Mili Nwague we have land on either side. (vide Ex. "B" land on left described as Umuawo and Abube land. At Abaka stream Agbudu has boundary with us. I know people called Ogwu and Nando. We have boundary with them at Ogbilisi. We own land on either side from bridge over Nwanne to Abaka river. I was not present when Chidolue or Hausa man was shewn land. I know Mili Nwanne stream. It flows into Ubeyi which flows into Oyi. We own land on both side of Mili Nwanne stream. There was land dispute between Onyebo and Obieko. I was present and took part in the Settlement. It was about 7 years ago. At that time I was Chief; Onyebo was not a chief or elder nor was Obike. It was not dispute Abube and Umuawo but between these two persons Ofia Nmene is name of land in dispute because Abube man named Nmene used to work there. Nmene got the land. It is not the whole land in dispute. Ofi is same thing as Agu. Ours is different. Atele Chudeke I know he Obinegu or Oninofia is very different from Obinono. Atele Obidike I know he is Enuiyi man. He does not live at Omoji.

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In the  
High Court

Defendants  
Evidence

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Ajanma Aduaka  
4th, 5th &  
10th February  
1960  
Cross-  
examination  
continued

He is not head at Enuiyi (homestead) Iruduna is part of Enuiyi Abube. Dibe Obuanyiya I know. He lives at Amago. I know house of Nwaguba in Obuago land. He lives with me.

Q. After his house there is a road which goes in Omelegube stream.

A. That is where you drove your car. That was on Saturday after last adjournment (23rd January 1960.

Q. Beyond road are clusters of palm trees.

A. Yes they belong to Nwajube. There are 2 houses after that.

Q. That is end of Oninagu Nando people.

A. The houses do not end there. The owners of houses after this one are dead after that there are no other Amango houses. The remaining portion we farm. "Odo Achalla". Achalla is sort of shrub.

Q. Odo Achalla is cluster of Achalla.

A. Yes. Odo Ubili may mean cluster of Ubili trees. We don't live in Odo Ubili we live in Abube. Obiogwe is not distinct from our Abube land.

Q. What is different between Agu Oyi and Obuogwe land.

A. It is the same land. There is no boundary between these lands.

Adjourned 10th February, 1960.

(Sgd.) J. Reynolds.  
PUISNE JUDGE 5/2/60.

WEDNESDAY THE 10TH DAY OF FEBRUARY, 1960:

SUIT NOS. 0/19/57:  
0/31/57:  
0/32/57:

Hearing resumed.

Appearance as before.

D.W.1. AJANNA ADUAKA ON FORMER OATH.

CROSS EXAMINATION BY EMEBOLU CONTINUED :-

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I know Oyi river well.

In the  
High Court

Q. How many bridges are on Oyi River from Agbanabo river to Igbariam boundary?

A. Eight. I agree there is bridge on road from Nteje. The path goes straight to Abube.

Defendants  
Evidence

Q. In 1918 Mr. Lawton the D.O. saw pillars at Oyi river and also at Road leading to Achalla Nteje.

A. In 1918 Mr. Lawton put some of pillars on the land itself.

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10 A. I did not see that. It is not true. I know Nkwo market.

Ajanma Aduaka  
4th, 5th &  
10th February  
1960  
Cross-  
examination  
continued

Q. Nkwo market is on the boundaries of the towns of Ulasioye, Okpobiri Amagu Nando, Ama Egwene.

A. It is not true.

Q. Who owns land on which Nkwo market stands.

A. I don't know who owns the land there. Nando is the name of the Town and they own the market. It is not on our land. It does not touch our land. I am from Abube Nando. Amago is also  
20 Abube. I know the road from Agbudu to Nkwo. There is one bridge at Anyafuanya on that Road.

Q. That Anyafuanya stream leads up to Iyioji Agu stream.

A. I don't know that. Ogba stream flows into Iyi Oji Agu. If another stream flows into Iyioji Agu stream I don't know. Ubaisoge land does not extend to Nkwo. I don't know who has land between Nkwo and Ubasioye. None of our people (Abube) took part in any demarcation by  
30 District Officers. Abube people have never been a party to the settlement of any land dispute.

Q. Land of Umuawo is as shown on plan Exhibit "A".

A. That is so. We do not reside on Umuawo land nor did we pay rents to Umuawo until this case began. It is not true that we uprooted any cement pillars. I know Achalla Nteje settlement. They have their farms there. They  
40 pay us.

Q. Forty years ago they paid £4 rent to Umuawo and £8 to Agbudu.

That is not so. If tenant disputes title to



In the  
High Court

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Ajanma Aduaka  
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1960  
Cross-  
examination  
continued

land I would ask him to quit. Customary things would be performed. If there is dispute I instruct the tenant should leave the land. He would call his relatives and I would call mine. If these relatives settled the matter and we accepted the settlement; but if he continues I would summons my relatives again and he also would summon his relatives. If after going into the matter the relatives are settled with my own case they would ask us to go through again the customary rites we performed before I put him on the land. The tenant would bring a cock, 10 yams, 2 pots of wine, a goat and £2. When these things are brought we would give him land and invoke certain jujus to make him live in peace. When it is agreed the tenant will go he will bring things and we will invoke this juju. The eight bridges mentioned one is at Oyi Mkpune (Obi Ogwe) Omeli etc. There are 2 bridges on Oyi river between Agbababo stream and our boundary with Igbariam.

10

20

By permission of Court:

Q. It was always custom to require tenant disputing title to quit. If a community puts another community on land and tenants dispute title who decides dispute.

A. Nando Ezi and Ikenga would decide it. The tenants would bring the things. If he refuses to leave the land then we will go to court.

Q. Whole basis depends on tenant agreeing to quit.

30

A. Yes.

No.27

NO.27

Philip  
Igbanugo  
10th February  
1960  
Examination

PHILIP IGBANUGO

D.W.2. PHILIP IGBANUGO SWORN ON BIBLE STATES IN

IBO : I come from Igbariam. I live there. I am a farmer. I am aged 49 years old. I know neighbours of Igbariam. I know Nando. I know the villages of Nando. Ikenga comprises Umuawo, Agbudu and Abube. We have boundary with Abube. From Ezukwe stream to Uvi tree stump on Oyi river. I know this because since I grow up I have been seeing them work on the other side of the boundary. My father told me that they owned that land and I

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also see them live there. When we work on the edge of the boundary we see them working there. We could go on their land and they on ours if they obtained permission. We in fact have done so. No people disturb us and we obtained permission of Abube only.

In the  
High Court

Defendants  
Evidence

CROSS EXAMINED BY ONYIUKE :- I know where Achalla Nteje settlement is.

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Philip  
Igbanugo  
10th February  
1960  
Examination  
continued

Cross-  
examination

10 Q. You know late Chief Henry Umeadi of Igbariam.

A. Yes.

Q. He was chief of all Igbariam.

A. Yes. There were two warrant Chiefs in those days, one died and Henry continued alone. Other Chief's name was Ifemene Egbo. I don't know when died. I know Chief Nwabeze.

Q. During time of Chief Henry Igbariam had dispute with neighbouring towns.

A. Yes. Isinyi Nando, Owkoso. If there is any other section of Nando I don't know.

20 Q. Your people had dispute against Nando.

A. That was individual action.

Q. Spokesman was Henry Umeadi?

A. He was chief but not spokesman in that case.

Q. He was spokesman for Igbariam in Awkuso case.

A. Yes. That case might be about 1920. I have heard of D.O. Mr. Gardiner.

Q. During his time Igbariam claimed land up to end including Achalla Nteje settlement.

30 A. No. Only up to our present boundary.  
(Witness referred to Exh. "D").

Q. In 1917 your village claimed land which passed through Achalla Nteje settlement.

A. I would not be surprised as they were wanting a straight forward boundary.

Q. As a result of wanting straight forward boundary Igbariam came in conflict with their neighbours?

A. That was with people living there and those who showed them land.

40 Q. D.O. intervened and settled this case.

In the  
High Court

Defendants  
Evidence

No.27

Philip  
Igbanugo  
10th February  
1960  
Cross-  
examination  
continued

A. I don't remember if he settled it. It was settled but I do not know the parties to it.

Q. The parties with whom you had dispute were Agbudu and Umuawo.

A. I don't know about Umuawo. I am not clear about Agbudu. After that there was not trouble between us and Abube, our neighbours.

Q. Had you any further dispute with Agbudus your enemies.

A. No because we had no boundary with them. 10

Q. Demarcation of boundary was accepted by Chief Henry Umeadi and Chief Nwabueze.

A. Chiefs Nwabueze and Umueadi might have signed document but our town did not know because we own our lands in common. Boundary was accepted but if document was signed it was not known by our people. I know Nganga. He was native of Igbariam. He is now dead. He was a Christian and elder in Igbariam. These are all now dead. We have no boundary at all with Agbudu any where. (Case 224/49 in Aguleri Native Court referred). I know Michael Nnatuzie. He is land inspector of Igbariam lands. He took action for people of Igbariam against one Nnagbo Okongu. He is empowered to sue anyone who trespasses on Igbariam land. In those cases he would be speaking for Igbariam. He took action for trespass against Defendant of Achalla Nteje. Witness referred to evidence of Michael at page 1 of record. If he said so it might be slip of tongue. Page 2 of Record put to witness Page 4-5. 20 30

Q. He was asked about boundary between Agbudu and Igbariam.

A. I don't know. He may have meant Abube for Agbudu.

Q. People from Agbudu came as witnesses.

A. Abube also came. Agbudu representative gave evidence but case was adjourned for Abube to give evidence but case was settled out of court.

Q. Case was not settled in continued and gave judgment. 40

A. If Court gave judgment I was not there. I agree I gave evidence in that case.

Q. Defendant claimed he lived on Agbudu Nando land.

A. I gave evidence before him but I was not in Court when he gave evidence. I was present when case was adjourned. We did not call Abube Nando as witness. I don't know if it was Defendant who called them.

In the  
High Court

Defendants  
Evidence

No.27

ONYIUKE: Record of 224/49 tendered as evidence as an admission against interest and admission of Igbariam as a community.

Philip  
Igbanugo  
10th February  
1960  
Cross-  
examination  
continued

10 IKPEAZU: Only think that would be evidence be claim and judgment unless it goes in under Section 34. If this witness had said his neighbour were Agbudu people his evidence could be put in to challenge it.

20 ONYIUKE :- This is evidence of individual which is contradicted by evidence of person giving evidence on behalf of his community. Section 208 of Evidence Ordinance. Witness is now giving evidence which contradicts evidence given by himself and others in respect of their communal boundary. Section 20 of Evidence Ordinance. Previous statement bound the whole community and may be put to him to contradict evidence given by him a member of the community. Subject of inquiry is as to the communal boundary of his people. Ruling reserved for any authorities to be produced. I know Iku stream. I know junction of Iku stream and Ezulu stream.

Ruling  
Cross-  
examination  
continued

30 Amago Nando has land to South of Iku stream and we own land on the other side. We have boundary with Amago along Ezuku stream. I don't know Anyafuanwu stream. I know some features of boundary but not all. It is true. I am. I was sent by my people to give evidence. The people of Igbariam supported and I came. I am speaking on behalf of two others from Igbariam, who are here. Not the whole of Igbariam. Three of us came to give evidence as leaders of people who look after the land of Igbariam.

40 People of Igbariam never sent us. I have not authority of people of Igbariam to give evidence. Boundary goes for Ezuku stream to Iyio-giaga Agba tree (near Ufe tree on the Oyi). These are the ones I remember as I stand now.

Q. S of Ezuka stream there is no boundary with

In the  
High Court

Abube.  
A. There is.

Defendants  
Evidence

NO REEXAMINATION.

No.27

There are trees I don't remember the names.  
Whole Igbariam owns land communally. We don't  
own it by village.

Philip  
Igbanugo  
10th February  
1960  
Cross-  
examination  
continued

Adjourned till 9 a.m. tomorrow.

(Sgd.) J.Reynolds  
PUISNE JUDGE 10/2/60.

No.28

NO.28

10

Udefi Ilogwu  
11th February  
1960

UDEFI ILOGWU

ON THURSDAY THE 11TH DAY OF FEBRUARY, 1960:

SUITS 0/19/57.  
0/31/57.  
0/32/57.

Examination

D.W.3.UDEFI ILOGWU SWORN ON GUN STATES IN IBO:

I live at Achalla Nteje. I live in Abube land.  
The whole of Achalla Nteje people live on Abube  
land. There are 2 sub-families at Achalla  
Nteje Umari and Iruoti. I came from Umari. I  
know Chief Oja Akafor. He is from Iruoti. Our  
father Asonwa leads us to that land. His  
mother was from Abube. He went and cultivated  
the land after harvesting had a very rich har-  
vest when he returned home the following person  
went back with him Ogueji, Okafor Achalla Nteje.  
Modi and many others went and cultivated the land  
They brought juju and Abube brought juju. We  
took an oath to give them 20 big yams and 40  
small ones. He carried 4 pots of wine. We  
brought a goat, \$2, one fowl. Juju which was  
put was aro juju and Ezenwa of Abube put the  
juju. The significance of the juju was that  
we should live in peace on the land. Ogugwu is  
the name of the land they showed us. Okafor  
Achalla Nteje built a house and that brought the  
dispute. He refused to pay tribute and as a

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30

result the juju started to kill our people. When the juju started to kill our people we went to Abube with goat, £2 and a fowl and asked them to revoke the juju. They took the things that were brought but refused to revoke the juju. We went and took action against them in the Court. After the action we paid them £30 and they revoked the juju and stopped killing our people then. It is not true that our people were put on the land by Ogbudu. I never heard of it. No pillar was seen. I have never seen any in my life. The Chief Oja Okafor is a small boy compared to me. I am over 50 years. I never heard of any D.O. Gardiner and I have never seen him. The people behind Chief Oja Okafor are the Iruoti and part of Umeri. Umueri people are neutral. Iruoti people began to support Oja Okafor when the house his father built became the subject of dispute. Abube said he built without telling them.

In the  
High Court

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Udefi Ilogwu  
11th February  
1960  
Examination  
continued

CROSS-EXAMINED BY ANYAEGBUNAM: I do not live in Agbudu Nando land. Nnabo Okonkwo is from Nteje. He is from same town. We are not of same parents. I have never answered the name Udefi Okonkwo.

Cross-  
examination

Q. Under what name do you pay your tax.

A. We are not talking about payment of tax. I paid under name Ilogwu. The father of Ilogwu was also the father of Okonkwo. I cannot answer Okonkwo. Ngbene is our tax collector. He collected tax from me last year. I am from same grand father as Nnabo Okonkwo.

Q. Nnabo can answer Ilogwu.

A. That is up to him. He will not answer a name which he has not chosen. I was not at home when Michael of Igbariam sued Nnabo Okonkwo. I know nothing about it. Nnabo is far older than I am.

Q. Nnabo Okonkwo should know owners of land on which you Achalla Nteje people are living.

A. I live on boundary of Abube and Igbariam. I know Nwora of Achalla Nteje. I am not sure of Nbessi Ibekwe. Nwora died a long time ago. At what time did he say Agbudu owned the land. Nwora was much more older than I am before he died. I will not accept what I have not seen.

In the  
High Court

Defendants  
Evidence

No.28

Udefi Ilogwu  
11th February  
1960  
Cross-  
examination  
continued

I was among the first settlers who came to Achalla Nteje. They were farming there a long time before I was born. Nwora was on the land long before I was born.  
Case No. 555/1920 Native Council of Achalla.

Ikpeazu objects to evidence of Nwora being put to witness before case is put in evidence. Objection over ruled.

(Evidence put). A. I do not accept that.

Case No. 55/1920 tendered.

10

Ikpeazu objects witness has not stated he knows the case.

ANYAEGBUNAM:- This case was only discovered after the Plaintiffs case had closed and so could not have been tendered then. Ask for leave to be granted to recall Clerk of Court to produce the record.

IKPEAZU:- Plaintiffs after having closed case is not permitted to supplement it by calling fresh-evidence.

20

ANYAEGBUNAM: Court has power to grant. Phipson 9th Edition 507. Can only be called by consent of all parties.

Ruling

Ruling reserved pending further argument.

Cross-  
examination  
continued

I don't know the name of any D.O. that has ever come to our area. I have never heard of order for Achalla Nteje to pay £8 rent to Agbudu and £4 to Umuawo. Abube sued Agbudu people about 3 years in Umuigwedo Native Court. Exhibit "F". I was not in Court. I did not hear that anyone had said land occupied by Achalla Nteje was Agbudu land.

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CROSS-EXAMINED BY EMEMBOLU: I know Nwoye Modi. He is descendant of Modi one of the original settlers.

Q. Modi gave evidence in Native Court that he lived on Agbudu land (Exh. "F" page 7).  
 A. If he gave that evidence it is not true. Okafor who built house is dead a long time ago. He was a Chief and father of Oja. He brought this dispute. It was when he built this house that there was dispute between him and Abube people. Ezemba the Aro juju priest is dead. I was present I was of one of the original settlers. It is at Achalla Nteje settlement. It stands on middle of our boundary between Iruoti. This is not the juju which was killing people; that was the oath we took in olden days. We put Aro juju after we had settled on land and built houses there, within the year. The oath was taken before the juju was put. Ezemba put the juju there.

In the  
 High Court  
 \_\_\_\_\_  
 Defendants  
 Evidence  
 \_\_\_\_\_  
 No.28

10

Udefi Ilogwu  
 11th February  
 1960  
 Cross-  
 examination  
 continued

NO RE-EXAMINATION: Case for Defendants except for calling of clerk of Magistrate's Court.

20

IKPEAZU: Ask Court to visit the locus in quo. Clients very strongly ask for visit.

ANYAEGBUNAM: No useful purpose served by visit to locus in quo.

EMEMBOLU: I support this view.

IKPEAZU:

Hearing adjourned till tomorrow at 9 a.m.

I do not consider any useful purpose be served by visiting the locus in quo and no visit will accordingly be made.

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(Sgd.) J. Reynolds.

PUISNE JUDGE.

11/2/60.

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In the  
High Court

NO.29  
EMMANUEL EBO

Defendants  
Evidence

ON FRIDAY THE 12TH DAY OF FEBRUARY, 1960:

No.29

SUITS 0/19/57:  
0/31/57  
0/32/57:

Emmanuel Ebo Stood over.  
12th February Appearance as before.  
1960

Examination D.W.4. EMMANUEL EBO REGISTRAR OF MAGISTRATE'S COURT ONITSHA.

10

I have record book Vol. 25 of Chief Magistrate containing proceedings in suit MO/306/58 between Chief Oja Okafor v. Ogoebunam Obaja and Ors. (Pages 262 - 4, 265 - 269, 291 - 292) (Exh. "H" is summons which was transferred from this Court to Chief Magistrate's Onitsha.)

Objection Emembolu: Object to admission not between the parties.

Ruling Ruling: This case is relevant to contradict evidence given by Plaintiffs in respect of pillars.

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Exhibit "K" Admitted Exhibit "K".

CASE FOR DEFENDANTS:

Rulings as to admission of documents adjourned till before final addresses.

Adjourned 4th March, 1960, for addresses.

(Sgd.) J.Reynolds.

PUISNE JUDGE

12/2/60.

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ON FRIDAY THE 4TH DAY OF MARCH, 1960:

SUITS 0/19/57:  
0/31/57:  
0/32/57:

Emembolu addresses already fixed 26/3/60.  
Parties agreed.

Adjourned 26/3/60.

(Sgd.) J.Reynolds

PUISNE JUDGE

4/3/60.

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NO.30

COUNSELS ADDRESSES

(a) ARAKA FOR DEFENDANTS IN SUITS 0/19/57  
AND 0/32/57 and for PLAINTIFFS IN SUIT  
0/31/57.

ON SATURDAY THE 26TH DAY OF MARCH, 1960.

Suits 0/19/57:  
0/31/57:  
0/32/57:

In the  
High Court

No.30

Counsels  
Addresses

(a) ARAKA for  
Defendants in  
Suits 0/19/57  
and 0/32/57 and  
for Plaintiffs  
in Suit 0/31/57  
26th March 1960

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Consolidated.

ADDRESSES:

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ARAKA. Three cornered fight. Abudu, Umuawo and Abube. Land only belong to common ancestor Ikenga. Plan Ex."B". Re Umuawo. Case is very weak ought to be dismissed. In Agbudu dismissal or non suit. Case of Umuawo. Declaration to title to "Odo Ubili". In case for declaration the area subject matter of suit must be distinctly defined. Evidence does not define the area. Nothing in evidence to shew extent of Odo Ubili land claimed. Umuawo called only 2 witnesses. Vincent gave land to Abubes in recognition of services as witnesses and because Abubes had harboured Umuawo's previously. Payments of rent and tribute. Evidence inconclusive. Ex."F" page 6. Vincent Okwelo's evidence. All Abube's pay £4 per year. In this Court they said they paid £160 in rent the previous year and denied that he said anyone who wanted farming place paid 10/-. Other witness from Achalla Nteje farmed Oyi and Abenyi and that we lived across Ubeyi stream an old terms he did not know. Vincent said Odo Ubili has no boundary features at all. Boundary must be specific. They say this land given since 1917. Paras. 5 - 7 Statement of Claim admitted giving us land. Para.8 sued third party. Not ground for order for forfeiture against us. No evidence to support claim for boundary pillars. No evidence that we did it. Judgment of Magistrate Ex."K". We did not go to beg Umuawos not report or to sue us for uprooting boundary pillars. Re injunction. No boundary pillars now. No evidence of land marks. We have been in possession of land for

In the  
High Court

No.30

Counsels  
Addresses

(a) ARAKA for  
Defendants in  
Suits 0/19/57  
and 0/32/57 and  
for Plaintiffs  
in Suit 0/31/57

26th March 1960  
continued

years. Too late to ask for possession. Fiscian v. Nelson & Anor. 12 W.A.C.A.21. We have been occupying land for 40 years without payment of rent. Abube-Nando Town - More than 500 houses. Should hold that Abube have been occupying land in belief that they are owners. Anyo Ita v. 2 W.A.C.A. 339. Our long possession must be protected. Should be declaration that we are entitled to occupy land according to Native Law and Custom.

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AGBUDU'S CASE:

Ex. "D" arbitration proceedings. It is clear from Ex. "D" that it was not area verged yellow that was ceded to us but area South of it and it is well marked in Ex. "D" shaded. It is below sources of Ezuku stream. It is not marked in Ex. "A". Ex. "D" page 2 reference to shaded portion which would otherwise fall to Agbudu. Okam Owon v. Eto. Ndon & Ors. 12 W.A.C.A. 71 and 74. Court should be restricted to area established. Court cannot draw this line arbitrarily. Surveyor must shew us area marked one by D.O. Agbudu say they put 40 Abubes. Claim declaration title, trespass injunction. Who are 40 people who were paying £1 per annum. Who then are the trespassers. They would have to be excluded from any order. St.Judes Church cause of action. This is within area they granted to Achalla Nteje people, their tenants. Trespass connotes interference with possession. Chief Oja Okafor on cross-examination said it was within area granted to them that church was built (vide page 71). It is also admitted we are in possession of area claimed by Agbudu. Surveyor agreed we live on both sides of alleged boundary. We have been living from time immemorial. Too late for Agbudus to complain now. Ex. "C". Observation made by Gardiner at page 2 (in 1917). In 1917 farming indiscriminately without real or nominal rent. Agbudu people have slept on their rights. Agreements can be put end to by acts of parties themselves. The agreement of 1917 have been put end to by allowing Abubes to establish their village permanently. They have waived all rights they may have as result of agreement. Exh. "H" page 5

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cross examination. Aro shrine for Nteje Achalla. We established this juju. We have called evidence of neighbouring people who saw us working on land. We have been living undisturbed on land until the Church was built.

In the High Court

No.30

Counsels Addresses

Adjourned 5th April, 1960, at 11 a.m.

(Sgd.) J. Reynolds

PUISNE JUDGE.

26/3/60.

(a) ARAKA for Defendants in Suits 0/19/57 and 0/32/57 and for Plaintiffs in Suit 0/31/57  
26th March 1960  
continued

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(b) EMEMBOLU for PLAINTIFFS IN SUIT 0/32/57.

ON TUESDAY THE 5TH DAY OF APRIL, 1960.

(b) EMEMBOLU for Plaintiffs in Suit 0/32/57  
5th April 1960

SUITS 0/19/57:  
0/31/57:  
0/32/57:

Appearance as before.

Emembolu for Umuawo Plaintiffs in 0/32/57.

Claim is as in Writ.

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Araka asked Court to dismiss case because W boundary of Odo Ubili was not satisfactorily defined. He concedes it would not be so if claim amended to declaration of title to all Umuawos land shewn in plan. If after considering my submission the Court considers an amendment necessary we ask for amendment subject to any costs necessary. We did not ask for possession or forfeiture. Re title. It is necessary in arriving at decision to know on which points issue was joined by parties.

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Para. 3 of Statement of Claim issue. Para.3 of Statement of Defence. Alleged land property of Defendants. It has to be decided if land known as Umuawo belongs to us. What are the boundaries of the land. Whether Abube came there as of right or on some sort of tenure. Para.4 of Statement of Claim.

In the  
High Court

No.30

Counsels  
Addresses

(b) EMEMBOLU for  
Plaintiffs in  
Suit O/32/57

5th April 1960  
continued

Boundaries fixed in 1917 and boundaries pillars.  
Para.5 of Statement of Claim. Portion of land  
rented out to Abube known as Odo Ubili.

Plan Ex. "A" shews extent of Umu Awo. Page 6  
of Ex. "F". whole land divided into 3 portions.  
Agbudu, Umuawo and Abube. Previous cases:  
Evidence of Adjara Agwegha in Ex. "F" page 2.  
He was aware of disputes between Agbudu and  
Umuowe in 1917. (Imeagu which Abube now claim  
to be their own. In 1917 so many disputes  
that D.O. had to go on land defined boundaries  
and encourage parties to put cement pillars on  
boundaries so defined. When boundary pillars  
put people of Agbudu, Umuawo Abube Igbariam etc.  
were present. Agbudu and Umuawo agreed on  
precise position of these pillars. Claim of  
Achalla people never related to land of Umuawo.  
Ex. "D". Abube claim of boundaries marked red.  
Land below was Agbudu land, as was land on West  
also. Ex. "C" Enuiyi people are found to have  
no claim to land in dispute. Boundary fixed  
between Agbudu and Umuawo at this time. Up to  
1917 the Abube people were not in that area.  
Ex. "J". Abube people always claimed land in  
N. of Ikenga land.

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(c) ANYAEGBUNAM  
for Plaintiffs  
in Suit O/19/57  
and for  
Defendants in  
Suit O/31/57

5th April 1960

(c) ANYAEGBUNAM for PLAINTIFFS in  
SUIT O/19/57 and for DEFENDANTS  
in SUIT O/31/57.

ANYAEGBUNAM: Nkwo Market.

Now claim land to Oyi. Boundary never fixed  
between Abube and Umuawo because they never  
had a boundary. Area of Odo Ubili. Eastern  
area given correctly. Named from cluster of  
date palm limit then known. F.S.C. 17/1958.  
No evidence of destruction by Abube people of  
pillars. Concede no direct evidence. Abube  
came to beg Umuawo in respect of these pillars.  
Abube people should have denied that they so  
begged. Inference can be drawn. Immediately  
these pillars were removed and made claim and  
produced plan different from first plan they  
rely on.

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INJUNCTION: Is in relation to removal of bound-  
ary marks between Agbudu and Umuawo by Abube.

(d) ONYIUKE for PLAINTIFFS in SUIT  
0/19/57 and for DEFENDANTS in  
SUIT 0/31/57.

In the  
High Court

No.30

ONYIUKE: Consolidation action of 3 suits.

Counsels  
Addresses

0/19/57 - Agbudu claim declaration of title to  
sic. land verged part on Ex. "A". In 0/31/57  
Abube sued Agbudu for trespass on land shewn in  
Ex. "B". In 0/32/57 Umuawo claimed title to  
10 area occupied. Para.3 Statement of Defence  
Defendants don't admit defending on behalf of  
Abube people. They must therefore be taken as  
defending themselves personally. Act of trespass:  
Para.11 Statement of Claim. Para.16 Statement  
of Defence. Admit building on land in dispute;  
exercise of act of ownership. ? Who are owners  
of land verged pink in Ex. "A" Are Defendants  
entitled to go on land and allow persons to  
erect buildings on that land without consent of  
20 Plaintiffs. 4th P.W. Ajana Enwelum (1st  
Plaintiff) gave evidence that neither 1st, 2nd  
nor 3rd Defendants live on the land verged pink  
nor was their tenant (i.e. not one of 44 tenants  
mentioned by witness. These 3 Defendants live  
on Umuawo land verged purple on Ex. "A". He  
was not contradicted or challenged in cross  
examination. If we prove title then automati-  
cally they are trespassers. Trespass is to be  
normally brought by person in possession but  
where there is damage to persons reversion he  
30 can sue for damage to that reversion. Building  
is permanent challenge to our ownership.

(d) ONYIUKE for  
Plaintiffs in  
Suit 0/19/57  
and for  
Defendants in  
Suit 0/31/57  
5th April 1960

TITLE: Duty to prove title. Ask Court to  
accept Ex. "A" as plan which shew most accurate-  
ly lands belonging to 3 parties because it is  
more in accord with past demarcations or bounda-  
ries between villages in this area. Evidence  
of 1st P.W. Chukwurah. Covered by Ex. "C"  
sketch shews area verged yellow on Ex. "A" South  
boundary Ehiichi tree and pillar No.111 then  
40 pillar 11 thence to source of Ejukwa with pillar  
1 as shewn in Ex. "A" with cement pillars. Land  
to west of Gburubru is Agbudu land; land to  
South is Agbudu land on Ex. "C" and "A". Does  
not include hatched portion. Agreed boundary  
shewn. It is duty of Defendants to claim and  
prove area hatched. Position of cement pillars

In the  
High Court

No.30

Counsels  
Addresses

(d) ONYIUKE for  
Plaintiffs in  
Suit 0/19/57  
and for  
Defendants in  
Suit 0/31/57  
5th April 1960  
continued

in Ex. "A" are correct ones. If area hatched conceded to Abube. Principal of law that declaration of title can only be given to ascertained area that where a thing could be made certain it must be regarded by Court as certain. Scale is shewn. Hatched portion starts at pillar 11. Owen v. Ndon 12 W.A.C.A.71. Area hatched has been defined. Nwado v Adjeye 10 W.A.C.A.274.

Ex. "D" Between Agbudu and Umuawo.

There was explained that there was originally plan attached to Ex."D" but that it is missing. Therefore entitled to fix it by circumstantial evidence. Ask Court to accept boundary as shown on Ex."A" as between Umuawo and Abudu Ex."C" shewed there was cement pillar at E 170 yards from pillar 111 on Ex."C" which corresponds with pillar shewn West of Gburugburu stream.

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Area of land in dispute. Oral evidence of 4th P.W. in this suit said area between Igbusiun and Ulasonye. Ex."D" shews the extent of the land. Para.3. Included Achalla Nteje Party to demarcation of boundary is act of ownership. Ex. "E". Party to demarcation of boundary.

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Confirms accuracy of Exh. "A".

Exhibit "J". Shews that Agbudu and Umuawo lie on our side of Anyafunya stream whilst Abube lies on other side. Abube people were in fact aware of these demarcations Public nature of inquiry. Defendants speaking through their representative in Ex."F" page 2 shewed that these people were aware of dispute.

30

Acquiescence for over 40 years is serious. From 1917-56 no actions. Why if those boundaries were not accepted? We have proved area and shewn we farm, fish on land and have tenants on the land. We put Achalla Nteje on land. They admitted paid rent to people of Agbudu. Chief Okafor said paid rent to Agbudu till this day.

Case: 1. Entitled to declaration of title.

2. Defendants because not owners, or tenants and because admit erecting Church on our land are trespassers. Ask Court to prevent Defendants entering into, building again. Do not sue for forfeiture. Ask Court to dismiss Defendants case against Agbudu with substantial costs. Technically for trespass what they are after is title to land. Dismiss claim to land in Ex."B" in so far as it falls within land set out in Ex."A". We

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have not gone into area verged yellow.

In the  
High Court

ARAKA: Agreement includes shaded portion.

No. 30

Judgment reserved 13th April, 1960.

Counsels  
Addresses

(Sgd.) J.Reynolds

PUISNE JUDGE

5/4/60.

(d) ONYIUKE for  
Plaintiffs in  
Suit 0/19/57  
and for  
Defendants in  
Suit 0/31/57

5th April 1960  
continued

NO.31

No.31

J U D G M E N T

Judgment  
13th April 1960

IN THE HIGH COURT OF THE EASTERN REGION OF THE  
FEDERATION OF NIGERIA

10

IN THE HIGH COURT OF THE ONITSHA JUDICIAL  
DIVISION HOLDEN AT ONITSHA

BEFORE THE HONOURABLE MR.JUSTICE REYNOLDS

ON WEDNESDAY THE 13TH DAY OF APRIL, 1960.

SUITS NOS. 0/19/57:

0/31/57:

CONSOLIDATED:

0/32/57:

J U D G M E N T

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These are three actions which were consolidated by order of this Court. Suit 0/19/57 is brought by the people of Agbudu Nando against the people of Abube Nando for declaration of title to a piece of land called "Agu Okpu Ani" situate at Nando and verged pink in plan Exhibit "A", damages for trespass thereon and an injunction in respect thereof. Suit 0/31/57 is brought on behalf of the people of Abube Nando against the people of Agbudu Nando for damages for trespass to "Ofia Abube"



In the  
High Court

No.31

Judgment  
13th April 1960  
continued

land shewn verged pink in plan Exhibit "B" and for an injunction in respect thereof. The third Suit O/32/57 is brought on behalf of Umuawo people of Nando against the representatives of Abube people of Nando for a declaration of title to a piece of land called "Odo Ubiri (or Okpobiri) at Nando as delineated and verged purple in plan Exhibit "A"; for damages for destruction of boundary pillars and an injunction in respect of further acts of destruction.

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In this judgment to avoid confusion I will refer to the parties as the people of Agbudu, the people of Abube and the people of Umuawo.

At the hearing the Agbudu people presented their case first then the Umuawo people and finally the Abubes people.

It is common-case that the parties are descendants of a common ancestor one Ikenga of Nando who on his death left three sons Agbudu, the eldest, Umuawo and Abube the youngest among whom his lands were divided. The Agbudu case is that their share was the land claimed plus the area verged yellow in Exhibit "A". This latter area, they say, was given to Abube people as blood price and was confirmed as Abube land in 1917 by an Arbitration under Native Law and Custom in a dispute between Agbudu and Abube. The Agbudu people say that there were numerous disputes between the parties and various other neighbouring peoples and that a Mr.P.J.Gardiner then the District Officer, Awka in order to bring peace to the area was asked by the villages concerned to settle these land disputes. That as a result of this request in 1917 he held a number of inquiries fixing boundaries of which some are relevant to these proceedings as being binding on the parties thereto, or by acquiescence in the awards or are admissible as being acts of possession; or as admissions contained in the record of evidence. On the land claimed by Agbudu there is a large settlement called Achalla Nteje which Agbudu claim to be occupied by their tenants who still pay annual tribute fixed by Mr.Gardiner in 1917 as £8 per annum.

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The Umuawo people contend that Abube consist of two main sub-families namely Amagu and

Enuiyi; that Amago live in the land to the north of the disputed land which is admittedly Abube land but that Enuiyi came to live on land belonging to Umuawo called Odo Ubili and verged violet in their plan Exhibit "A". Umuawo people say that not only did Mr. Gardiner in an arbitration in 1917 declare this area to be theirs but Enuiyi people gave evidence acknowledging themselves to be tenants of Umuawo.

In the  
High Court

No.31

Judgment  
13th April 1960  
continued

10           The Abube case is that all the land delineated in their plan Exhibit "B" and verged pink belongs to them. They say that Nteje people living south of the Oyi stream came to farm on their land and after some time (about 45 years ago) led by one Asonwu, whose mother was from Abube came to live at the Achalla Nteje settlement after performing customary rites. That Nteje people still live there and pay Abube people annual tribute of 20 yams and 40 small ones. They denied that there had ever been a land dispute between Agbudu and Umuawo and that Abube people have given evidence for Umuawo therein, or that in consequence of the dispute boundary pillars were put on the land; or that there had been at any time any boundary pillars on the land or had been removed by Abube people. Abube Anuiyi had always lived and farmed where they now live. It was untrue that they had recently (i.e. since 1917) migrated from Abube Amagu to live there. They had never paid rent for living or farming there to Agbudu, Umuawo or anyone else. Ikenga land had never been divided between Agbudu, Umuawo and Abube.

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40           On the evidence before me I have no hesitation in rejecting this last contention. I am satisfied that the land of Ikenga was divided between Agbudu, Umuawo and Abube and that they took their land in that order. The series of land inquiries held by the District Officers Gardiner and Lawton are in my opinion invaluable in establishing a number of facts which are in dispute in the present suits and from which area owned by Agbudu, Umuawo and Abube at that time are shewn or can be deduced. Exhibit "D" the record of the dispute between Agbudu and Enuiyi village of Abube shews conclusively that the area verged yellow in Agbudu's plan Exhibit "A" was declared the land of Abube Enuiyi in May

In the  
High Court

No.31

Judgment  
13th April 1960  
continued

1917 and that the areas North West of it and south of it were owned by Agbudu. It further shews that the Southern boundary of this land was marked by 3 boundary beacons corresponding to 3 of those shewn in plan Exhibit "A". It also shews to the South Eastern portion of this line a small triangular shaded area which it grants to Enuiyi in lieu of land ceded as blood money for the murder of an Enuiyi man. A note at the bottom of Exhibit "D", however states "Abube Enuiyi do not accept the shaded portion as they claimed this by right. This therefore passes to Agbudu and Igbariam as arranged". I think it is reasonably clear that this note was added after the signing of the agreement by the parties and Mr. Gardiner and is not binding to deprive Abube Enuiyi of the shaded area previously granted.

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Exhibit "C" the record of the dispute between Agbudu and Umuawo. It finds that Enuiyi and Abube have no claim on the land in dispute save a small portion in the North East corner accorded to them in lieu of a piece of land ceded to them by Agbudu as blood money for the murder of an Enuiyi man. This obviously refers to the shaded portion mentioned in Exhibit "D". Also mentioned is Oyi stream in South; source of Ezuku stream in the West. Unfortunately the map attached to this record was lost but it is clear that the land corresponds to land shewn in Exhibit "A" as the land of Agbudu and on the evidence given I find that the boundary between Umuawo and Agbudu was as shewn on Exhibit "A".

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The record and plan of Exhibit "J" is relevant as shewing that Abube lies to the north and both Agbudu and Umuawo to the South of the Anyafunya stream, as shewn in Exhibit "A". This evidence is in accord with the evidence given on behalf of Agbudu and Umuawo and contradicts the evidence given on behalf of Abube, and I find that the plan Exhibit "A" accurately represents the area owned by each of the three parties to these Suits. The defence raised by Mr. Araka is really of a technical nature. With regard to Umuawo's claim he says that the Court has no jurisdiction to make the declaration of title sought because even if the Court accepts the eastern boundary as described by the witnesses

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and set out in Exhibit "A" that the Western boundary has not been accurately described in evidence or delineated in Exhibit "A". Mr. Emembolu for Umuawo relied on a recent decision in the Federal Supreme Court Suit 171/58 for the proposition that where the area in respect of which a declaration of title was claimed is admittedly within land owned by the Plaintiff such declaration may be granted even though area is not precisely defined. The case cited appears to me to support that proposition; in any event I am prepared to hold that where the part of the boundary which is not precisely defined is admittedly within the land of the claimant he is entitled to a declaration of title. I accept the evidence of the Umuawo people and the Agbudu people that the area verged purple in the plan Exhibit "A" and called Odo Ubili land is part of Umuawo land and that Abube people living there occupy it as tenants and I accordingly grant the Plaintiffs in Suit O/32/57 the declaration of title claimed. I also accept the evidence that cement boundary pillars as shewn in red ink in Exhibit "A" and marked "C.B." in fact existed up to February 1957 were dug up and removed by someone and that the Abube people approached Umuawo and asked for their co-operation by making no complaint in this matter. Although there is no direct evidence that Abube people removed the pillars they appear to me to be the only persons who could benefit by their removal and accordingly in the circumstances I find that they did so remove them. I assess the damages for such wrongful removal at £55 and make an order restraining the Abube people from interfering with Umuawo's boundary pillars or other such boundary marks in the future.

With regards to the Agbudu claim (O/19/57) I find that they are owners of all the land verged pink in Exhibit "A" with the exception of the shaded area shewn in the sketch attached to Exhibit "D". Mr. Araka submitted that as the boundary of this area was not shewn on Exhibit "A" the Court could not grant the declaration sought. A surveyor would in my opinion experience no difficulty in inserting that area in the plan Exhibit "A" nor in actually marking it out on the land and I accordingly make a declaration of title in favour of Agbudu of the land delineated and verged pink in the plan Exhibit "A"

In the  
High Court

No.31

Judgment  
13th April 1960  
continued

In the  
High Court

No.31

Judgment  
13th April 1960  
continued

with the exception of the portion shaded and shewn in Exhibit "D".

The Agbudu claim for damages is in respect of trespass upon Agbudu land occupied by Achalla Nteje people. The purpose of the trespass was the building of a school. Mr. Araka argues as the land is not occupied by Agbudu they cannot sustain an action for trespass in respect thereof. He says further that as Agbudu's case is that they have number of Abube tenants on it none whom were specifically identified in evidence it cannot be held that Abube who have gone on land are trespassers.

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On the first submission I agree with Onyiuke's contention that an owner not entitled to immediate possession may sustain an action for trespass where the act constitutes a damage to the owners' reversion and I am of opinion that the erection of a permanent building, which I find as a fact that the Abube Defendants in 0/19/57 were erecting is such damage. On the second issue none of those 3 Abube Defendants admitted he was representing Abube in the action and so their liability if any, is personal. Evidence was given which I accept that all 3 Defendants lived on Umuawo land and therefore their entry upon Agbudu land as proved constituted a trespass. I accordingly hold that the 3 Defendants are liable in trespass and I assess the damages against them jointly and severally at £50. I also grant Agbudu the injunction prayed for against the 3 Abube Defendants.

20

30

With regard to the Abube case against Agbudu there is no evidence that I accept that Agbudu people have trespassed on any land of which the Abube people are entitled to possession. Their claim for damages for trespass and an injunction is therefore dismissed.

ONYIUIKE: Re costs. We prepared plan Exhibit "A". We paid £100 for it. Subpoena Surveyor, Registrar and representative of D.O. from Awka and Chief Okafor. At least 12 appearances. Summons fee £37. 15. 0. I am asking for 350 guineas in all.

40

EMEMBOLU: Bulk of expenditure of plan was

borne by Agbudu people but we had to pay surveyor £25 for making. Fees £39:19:6d. One witness. Ask for 150 guineas.

In the High Court

No.31

ARAKA: Only one plan was made by both. Suggest 70 guineas for Agbudu and 50 for Umuawo.

Judgment  
13th April 1960  
continued

Costs awarded to Agbudu in consolidated actions against Abube measured at 200 guineas. Costs of Umuawo against Abube measured at 100 guineas.

10 The injunction granted is against Abube people as such in favour of Agbudu. Costs awarded are also granted against Abube people as such.

(Sgd.) J.Reynolds  
PUISNE JUDGE  
13/4/60.

NO.32

In the Federal Supreme Court of Nigeria

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

No.32

ONITSHA HIGH COURT SUITS NO. 0/19/57:  
0/31/57:  
0/32/57:

20

Notice and Grounds of Appeal  
2nd May 1960

FEDERAL SUPREME COURT NO.

30

TAKE NOTICE THAT the Defendants/Appellants being dissatisfied with the decision contained in the judgment of the Onitsha High Court of the Eastern Region of the Federation of Nigeria dated the 13th day of April, 1960 doth hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph (3) and will at the hearing of the appeal seek the relief set out in paragraph (4).

AND the Appellants further 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

In the Federal  
Supreme Court  
of Nigeria

complained of:-

THE WHOLE DECISION:-

No.32

Notice and  
Grounds of  
Appeal  
2nd May 1960  
continued

3. GROUND OF APPEAL:-

1. ERROR IN LAW: The learned trial Judge erred in law in consolidating these 3 suits.
2. ERROR IN LAW: The learned trial Judge erred in law in admitting the series of land inquiries here by the District Officers Gardiner and Lawton and by accepting all the issues determined in the said inquiries without first deciding whether the Appellant were privy to the said inquiries and therefore bound by them. 10
3. ERROR IN LAW: The learned trial judge erred in law to have granted to the Umuawo people declaration of title to "Odo Ubili" land when the said "Odo Ubili" land was not precisely defined in the evidence.
4. ERROR IN LAW: The learned trial Judge erred in law to have awarded the Umuawo's £55 for boundary pillars wrongfully removed when the evidence did not disclose who removed the alleged boundary pillars and erroneously concluded "although there is no direct evidence that Abube people removed the pillars they appear to me to be the only persons who could benefit by their removal and accordingly in the circumstances I find that they did so remove them 30
5. ERROR IN LAW: The learned trial Judge erred in law to have awarded damages of £55 against the Abube people since the Defendants in O/32/57 did not admit that they were defending the action in a representative capacity and the said Defendants were not proved to have removed the alleged boundary pillars personally. 40
6. ERROR IN LAW: The learned trial Judge erred in law to have granted the Agbudu declaration of title when from the

judgment they were not entitled to the whole of the area verged pink in Exhibit "A" and furthermore there was no evidence as to the extent of the shaded area to be excluded.

In the Federal  
Supreme Court  
of Nigeria

---

No.32

Notice and  
Grounds of  
Appeal  
2nd May 1960  
continued

10

7. ERROR IN LAW: The learned trial Judge erred in law to have made an order for declaration of title and injunction against the Abubes in general in favour of Agbudu when it was clear from the judgment, pleadings and address of Counsel that the actions was one against the three named Defendants in their personal capacity.

8. ERROR IN LAW: The learned trial Judge erred in law to have awarded the Agbudu people the sum of £50 damages for trespass.

9. The judgment is unreasonable, unwarranted and cannot be supported having regard to the evidence.

20

4. RELIEF SOUGHT FROM THE FEDERAL SUPREME COURT.

To set aside the judgment of the lower Court and judgment entered for the Defendants.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

(Not reproduced in view of length)

Dated at Onitsha this 2nd day of May, 1960.

(Sgd.) E.O.Araka  
APPELLANTS' SOLICITORS.

---



In the Federal  
Supreme Court  
of Nigeria

NO.33

ADDITIONAL GROUNDS OF APPEAL

No.33

Exhibit "A"

Additional  
Grounds of  
Appeal  
5th June 1961

IN THE FEDERAL SUPREME COURT

F.S.C. 295/1960.

BETWEEN

NNAEBGO EKWEYE & ORS.

Appellants

- and -

AJANO ENWELUM & ORS.

Respondents

ADDITIONAL GROUNDS

10

1. (a) The learned trial Judge erred in Law to have made the order for consolidation of the different actions in these proceedings when this is not a case in which each plaintiff and each cause of action could properly have been on the same Writ.

(b) The learned trial Judge exercised his discretion wrongly in making the order for consolidation when the Plaintiff in one of the actions is the same person as the Defendant in another of the said actions.

20

(c) The learned trial Judge exercised his discretion in a manner prejudicial and embarrassing to the Appellants by making the order for consolidation because the order enabled opposing counsel to ask leading questions from witnesses who are testifying to facts in favour of the said opposing counsel and against the interest of the Appellants.

30

(d) The order for consolidation was wrong in principle and ought not to have been made.

2. The learned trial Judge misdirected himself in law in admitting Exhibit "C" as an agreement between the parties when -

In the Federal  
Supreme Court  
of Nigeria

No.33

Additional  
Grounds of  
Appeal  
5th June 1961  
continued

- 10 (a) there has been an amendment to paragraph 10 of the Statement of Claim filed by the Agbudu people whereby the fact relied upon was that there was an arbitration according to native law and custom and the plea of an alleged agreement between the parties was abandoned; and
- (b) the alleged agreement did not comply with the Land Registration Ordinance and was not registered as required by that Ordinance.
- (c) the Appellants were not parties to the dispute which the alleged agreement was intended to settle, and
- (d) the plans attached to the Exhibit did not comply with section 23 of the Survey Ordinance.

20 3. The learned trial Judge erred in law in admitting Exhibit "D" in evidence as an agreement between the parties and as a reconcilliation arrived at under Provincial Courts Ordinance (Cap.4, 1923 Laws) when -

- (a) The plan attached to the said Exhibit do not comply with the Survey Ordinance Section 23,
- (b) there is no proof that the District Officer concerned dated in his judicial capacity;
- 30 (c) the alleged agreement does not comply with the Land Registration Ordinance and was not registered under that Ordinance.

4. The learned trial Judge erred in law in admitting Exhibit "E" as evidence when the said document is irrelevant to these proceedings and

- (a) the plans attached to the said Exhibit do not comply with the Survey Ordinance, Section 23,
- (b) there is no compliance with the Land Registration Ordinance and the Exhibit was not registered under the said Ordinance.

40 Dated this 5th day of June, 1961

(Sgd.) F.R.A. Williams  
Appellant's Counsel.

In the Federal  
Supreme Court  
of Nigeria

NO.34

COURT NOTES AND COUNSELS ARGUMENTS  
ON APPEAL

No.34

Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON TUESDAY THE 20TH DAY OF JUNE, 1961

BEFORE THEIR LORDSHIPS

LIONEL BRETT, KT. AG.CHIEF JUSTICE OF  
THE FEDERATION.

EDGAR IGNATIUS GODFREY  
UNSWORTH, C.M.G. FEDERAL JUSTICE

10

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

F.S.C. 295/1960:

Ajana Enwelum & Anor ... Pltffs-Respmts.  
Vs.

Nnaegbo Ekweze & Ors. ... Defts-Appellants

AND

Uzodigwe Madika & Ors. ... Pltffs-Appellants  
Vs.

Nnanwuba Asiegbu & Ors. ... Defts-Respondents 20

AND

Vincent Ekwealor ... Pltffs-Respondents  
Vs.

Ajama Aduaka & Ors. ... Defts-Appellants

F.R.A. Williams, Q.C., Fani-Kayode, Q.C., &  
E.O.Araka for Appellants.

R.A. Kotun, F.O.Anyaegbunam & G.F.Ezuuko for  
Respondents Ajana Enwelum & Anor. representing  
Abudu.

M.O. Oseni & M.N.Ana for Respondents Vincent  
Ekwealor representing Umuawo family of Nando.

30

Williams moves for leave to argue additional G/A as filed: Not opposed: Granted - to be decided after hearing argument whether G/A based on Land Registration Ordinance can first be raised on appeal.

In the Federal  
Supreme Court  
of Nigeria

No.34

Williams arguing appeal:

Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961  
continued

Three separate actions, three (or four) parties - peoples of Agbudu (A) Umuawu (B), Abube (C).

- 10 1st action A v. C. for declaration, trespass & injunction
- 2nd C v. A. for trespass
- 3rd B v. C. for trespass & injunction.

Concede wide power to order consolidation. E.R. High Ct. Rules 02 & 7. But no wider than English 0.49 & 8. Normal to consolidate case where common issues of fact & law & where claims can be joined on one writ.

- 20 End must be one set of parties as Plaintiffs another as defts. Only circumstances where one party can be Plaintiff in one case & deft, in another is where it is possible to treat one action as a counterclaim.

0.49 & 8. A.P.1961 p. 1186 (passage occurring for first time).

Inconvenience. Embarrassing effect.

- 30 Pleadings show interest of A & B more or less identical When A put his witnesses in the box B was able to cross-examine them, in spite of protest - e.g. p.89.

Further complication; pp 130 1.6 seq. refers to 3rd action, which was not defended in representative capacity.

Horwood v. Statesman Publishing Co. (1929) All E.R.554 reads headnote & p.558 F-G. "No doubt -- " & p.559 I - 560 This is case (iv) of Sankey, L.J.'s statement - different plaintiffs, different defts. Impossible to

In the Federal  
Supreme Court  
of Nigeria

No.34

Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961  
continued

join causes of action in one writ.

Taylor, F.J. E.R. O.2 & 6 as to joinder of causes of action is more limited than English rule.

G/A 2(a)

Admissibility of Exhibit C as an agreement.  
P.60 l.29 - p.61 l.20 seq Rules admissible at  
p.63 l.13.

Original plea with regard to this was at  
p.10 l.22 - as an admission. At p.41D this  
abandoned - pleaded as arbitration award under  
native law & custom.

10

Area edged yellow in Exh.A is described by  
reference to 1917 arbitration. Objection on  
ground of pleadings taken at p.63.

2(b) If it was an agreement it required regis-  
tration. If declared boundaries & was an  
"instrument". If it had been pleaded as an  
agreement we should have come prepared to take  
this objection in the High Court.

20

Misa v. Glyn & Ors HL. (1875) 1 App Cus  
554.

Land Regn. Ordinance s.2 defines "instru-  
ment". Exh.C extinguishes rights which parties  
would previously have had beyond the boundaries  
there laid down.

The former Ordinance, Cap.87 of 1923  
applied to Colony & Protectorate. Enacted 1916.

Sections 7 & 15 of Cap.99 in 1958 edition.

Further as to taking point now Yaya &  
Mogoga 12 WACA 132 - courts to enforce s.15.

30

2(c) Exh.C would have been inadmissible as a  
judgment being res inter alia. Abube people  
were not concerned & did not sign main agreement  
at p.3. They are affected by D.O's further  
notes. Last three lines of p.3 - Abube told to  
abandon houses - i.e. to make a grant.

2(d) - do not argue.

G/A 3(a)

Exhibit D. Not countersigned by Director of Surveys. Survey Ordinance (1958 Cap. ) s.23 No cause shown.

In the Federal  
Supreme Court  
of Nigeria

                      
No.34

Document admitted at p.65 l.29 - s.67 l.3 as agreement and reconciliation. Provincial Courts Ordinance s.28 read. Docs not obviate need for proper conveyancing.

Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961  
continued

10

So far as it extinguishes rights it was an instrument. It was made 19th July 1918 & required a plan. It is intended to extinguish rights. I correct the date of signature it was 7 April & 25 May 1917. It may be registrable but was inadmissible in evidence.

Exhibit C was signed 7 April 1917.

G/A 4 Exhibit E. Irrelevant - Abube not parties to it. Plan not signed or even made by a surveyor. Ought to have been registered as an agreement. If also is dated 7th April, 1917.

20

Original Grounds of Appeal - p.136.

G/A 2; Exhibit J inadmissible for same reasons. It is also 7th April, 1917.

G/A 3.

Odo Ubili land not precisely defined. Wrong to grant declaration. This refers to O/32/57. Writ at p.31 refers to plan to be filed - it became Exh.A. - edged in brown. Eastern boundary is well defined by trees etc. Western just a circle.

30

Judgment p.128 dealt with this. Declaration was asked for for small piece of land.

Our plan does not admit any of land is Umawu land. Wrong to say land on western side was "admittedly" such.

G/A 4

Wrong to award damages against Abube for removal of pillars in absence of evidence who did it. - A felony s.45 Criminal Code stopped.

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Supreme Court  
of Nigeria

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Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961  
continued

G/A 5 Stopped.

G/A 6 p.129 l.12 - 23.

Anyaegbunam for Respondents Ajana Enwulum & Anor:

Consolidation: Order at p.44 l.17 - Ababu claim-  
ed whole land. Facts were all the same.  
Separate actions embarrassing. Consolidation a  
matter of convenience. No embarrassment.  
There was an objection to a particular question  
but there was no dispute about the answer to it.

Our plan Exh.A shows land of Abube.

10

Judge was right in allowed me to cross-  
examine the witness Vincent Ekwealo. He was not  
my witness. I have no authority for this. The  
question concerned did not harm Abube's case much.

Abundant evidence even if answers in XX dis-  
regarded.

Evidence same in all suits. Admission at  
p.29 that Abube's action taken for prestige.  
Bailey v. Curzon (1932) 2 K.B. at p.401. Cases  
disclosed no principle.

20

Add. G/A 2, 3 & 4

Exh. C,D & E. Were merely evidence of previ-  
ously agreed points & did not extinguish rights.

The documents merely contain a demarcation of  
existing rights. They are evidence of what took  
place between the parties before a D.O.

I agree judge called Exh.C an agreement but  
it was in fact merely a record of an agreement.

Documents were over 20 years old. Evidence  
of admissions made by members of Abube. Admission  
against interest recorded in Exh. D.

30

Section 23 of Survey Ordinance does not apply  
here.

As to possibility of identifying area shaded  
in Exh. D - see surveyor's evidence at p.47.  
Judge was right at p.129.

Oseni for Respondents Vincent Ekwealor

In the Federal  
Supreme Court  
of Nigeria

No.34

Consolidation. Very wide latitude.  
Appellants must establish from record that they  
were embarrassed.

Obiekweife v. Vavmma 2 F.S.C.70.

Issues as shown on pleadings. Facts essen-  
tially the same.

As to cross-examination, it did not em-  
barrass Appellants' case.

Court Notes  
and Counsels  
Arguments on  
Appeal  
20th June 1961  
continued

10 As to Exh. C, D. & E.

Admissible under S.108 Evidence Ordinance  
& exempt from provisions of Land Registration  
Ordinance and of Survey Ordinance.

Provincial Courts Ordinance (1923 Cap.4)  
s.5. D.O. as Commissioner of Provincial Court.  
I do not submit documents are judgments of the  
court.

Documents do not transfer interests in  
land, merely to fix boundaries.

20 Gbeneriche v. Awosika 14 W.A.C.A.101.

Same argument applies to Exh.J.

Definition of western boundary of land  
awarded to us.

Declaration can properly be made.

As to £55 damages. I rely on p.87 l.25  
seq.

Adegbite v. Lawal 12 W.A.C.A. 398, 401.  
Amend judgment.

Chief Williams:

30 Area shaded in Exh.D not identifiable -  
p.47 l.14 - 6 Shows use of heresay in demarcat-  
ing yellow area.

Obiekweife v. Vavmma is deconsolidating.



In the Federal  
Supreme Court  
of Nigeria

As to indication of embarrassment record  
shows answers, not question & answers. Cross-  
examinations was Permitted.

No.34

Court Notes  
and Counsels  
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Appeal  
20th June 1961  
continued

Public Documents.

As to declaration against interest - it was  
merely a note made by District Officer. Not  
evidence against whole Abube.

Judgment reserved.

(Sgd.) L. Brett,  
ag. C.J.F.

10

No.35(a)

NO.35 (a)

Judgment of  
Taylor, F.J.  
30th June 1961.

JUDGMENT OF TAYLOR F.J.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS.

ON FRIDAY, the 30th DAY OF JUNE, 1961:

BEFORE THEIR LORDSHIPS

LIONEL BRETT, KT.

ACTING CHIEF JUSTICE OF  
THE FEDERATION.

EDGAR IGNATIUS GODFREY  
UNSWORTH

FEDERAL JUSTICE

20

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE.

NSC.295/1960.

BETWEEN:-

(1) Ajana Enwelum & Anor

Plaintiffs/  
Respondents.

V.

Nnaegbo Ekweze & Ors.

Defendants/  
Appellants.

(2) Uzodigwe Madika & Ors.

Plaintiffs/  
Appellants.

V.

Nnanwuba Asiegbu & Ors.

Defendants/  
Respondents.

30

(3) Vincent Ekwealor

Plaintiff/  
Respondent.

V.

Ajama Aduaka & Ors.

Defendants/  
Appellants.

J U D G M E N T

TAYLOR, F.J.

This is an Appeal from the judgment of

Reynolds, J. of the High Court of the Onitsha Division, The appeal involves three suits which were consolidated at the trial, and it is as well to set out at this stage their history.

In the Federal  
Supreme Court  
of Nigeria

No.35(a)

On the 14th February, 1957 an action Suit No. O/19/57 was instituted between the following as Plaintiffs and Defendants, to wit :-

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

10	Ajana Enwelum Robert Nwekeze (For themselves ) (and on behalf ) (of people of ) (Agbudu Nando. )	Vs.	Nnaegbo Akweze Chinweze Ejiofor Uzodigwe Madika. For themselves and on behalf of people of Abube Nando.
----	---	-----	--

The claims were for (i) a declaration of title to land known as "Agu Okpu Ani" (ii) damages for trespass committed by the Defendants and (iii) an injunction to restrain further trespass. Before the hearing date Suit O/31/57 was filed. This was an action between the following parties :-

20	Uzodigwe Madika Udoli Igweze. Nneli Anekwe Egwuonu (For themselves and) (on behalf of Abube) (Nando)	vs.	Nnanwuba Aziegbu Ifediora Agbaziuno Emesim Enendu Anaefuna Onyekwe Obidigwe Uyamedu
----	--	-----	---

Though the Defendants were, on the face of it, sued personally, it is pleaded in the Statement of Claim that they were sued "for themselves and on behalf of the people of Agbudu Nando and this paragraph of the Statement of Claim is admitted by paragraph 1 of the Statement of Defence. The claim was for the sum of £400 being damages for the trespass alleged to have been committed on the Plaintiffs' land known as "Ofia Abube". An order for an injunction to restrain further trespass was also sought. On the 7th October 1958 the question of consolidation of the above two suits was considered and Mr. Araka, who appeared for the people of Abube Nando, is recorded as saying that :-

"While I am not at the moment opposed to  
"consolidation I should like an oppor-  
"tunity of further consultation with my  
"clients ..."

In the Federal  
Supreme Court  
of Nigeria

No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

The matter came up again for mention on the 26th May 1958 and Mr. Araka stated that:-

"There is a Cross action O/19/57) and consolidation is possible".

An order for consolidation was however made at a later stage, although it was by that time opposed by Mr. Araka on behalf of the Defendants in O/19/57.

On the 23rd March 1957 Suit No. O/32/57 was filed and the parties were as follows :-

Victor Ekwealor (For himself and on behalf of Umuawu Family of Nando)

Vs.

Ajama Aduaka  
Onwuegbuke Egenti,  
Egwuonwu Egbili (For themselves and on behalf of the Abube Ibinagu Family of Nando.  
Nneli Anakwe  
Ekweoba Arinze  
Uduobu Igweze  
Ogugua Ugboaja

The Suit was for a declaration of title to land known as "Odo Ubiri" (or Okpobiri). On the 6th August, 1959 this suit was consolidated with the two already consolidate, Mr. Araka still opposing on behalf of his clients, and the following are the recordings of the trial Judge as to the procedure to be adopted :-

"Agreed that Plaintiffs in O/19/57 should start and close his case; then Plaintiffs in O/32/57 to start and close and finally Plaintiffs in O/31/57 to start and close."

The hearing then proceeded as recorded. I shall from henceforth refer to the parties as the people of Agbudu (Plaintiffs in O/19/57); the people of Umuawu (Plaintiffs in O/32/57) and the people of Abube (Plaintiffs in O/31/57) for they are the three principal parties to this appeal. The people of Abube are the Appellants and the others are the Respondents.

Against the judgment in favour of the

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people of Agbudu and Umuawu nine grounds of appeal were filed and leave was obtained at the hearing to file and argue four additional grounds. I shall deal firstly with the additional grounds and those of the original which touch on the same matter.

In the Federal  
Supreme Court  
of Nigeria

No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

10

The first of both sets of grounds of appeal attack the order for consolidation of the three suits. Chief Williams for the Appellants contended that consolidation should not have been ordered for the following reasons :-

1. That the cases were not such that each cause of action could properly have been on the same writ.
2. That the Plaintiff in one action was the same person as the Defendant in the other.
3. That the order was prejudicial to the Appellants for it was exercised in such a way as to enable opposing Counsel to ask leading questions from witnesses testifying favourably to that party and against the Appellants.
4. That consolidation was wrong in principle.

20

By Order 11 r.7 of the Eastern Region High Court Rules 1955 it is provided that :-

30

"Causes or matters pending in the same court may by order of the Court be consolidated, and the Court shall give such directions as may be necessary with respect to the hearing of the causes or matters so consolidated".

40

This rule is substantially the same as Order 49 r.8 of the Rules of the Supreme Court of England. The general principle, if one can say that such exists for Slessor L.J. in Bailey v. Curzon of Kedleston, 1932 2 K.B. 392 at 401, quotes from the 1932 Yearly Practice of the Supreme Court to the effect that the cases disclose no principle, may be found in the judgment of Scrutton L.J. at page 399 of the same report where he says that :-

"Much greater latitude is allowed in making

In the Federal  
Supreme Court  
of Nigeria

                      
No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

these orders, with the object of avoiding multiplicity of actions and, where various interests in one common subject matter are involved all the parties concerned, within reasonable limits, may now be joined as parties so that the Court may adjudicate upon their various rights and interests. Consequently Lee V. Arthur has ceased to be a binding authority, together with a number of other cases which decided that certain parties and causes of action could not be joined in the same Writ .....

10

The same principle is stated in similar terms in the 1961 edition of the Annual Practice at page 1185 as follows :-

"The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance to the rest" of the subject matter of the actions "to render it desirable that the whole should be disposed of at the same time."

20

In the matter before us I would refer to some paragraphs in the pleadings in all the suits as showing that it was desirable in order to save time and costs that consolidation should have been ordered, and that there was a common question of fact running through all these three suits. It is averred in paragraphs 4 and 5 of the Statement of Claim in C/19/57 as follows :-

30

"The Plaintiffs and Defendants are children of Ikenga Nando who had three children, Agbudu, Umuawo, and Abube. Of all the three children Agbudu was the eldest and took the first share of the Ikenga land". The plan filed by the Plaintiffs in this action correctly shows the portions of Ikenga land acquired by the three children of Ikenga."

40

It will be seen from these paragraphs, the parties to this appeal whether as individuals or groups derive their interest from their common ancestor Ikenga. Paragraphs 9 & 10 as

amended, and 11 and 12 shows that from 1917 there have been disputes between all three branches of this family as to the area of Ikēnga land rightly owned by them. The Abube people in their Statement of Defence admit that all the three parties are descended from Ikenga and they also refer to the disputes between them. Much the same facts are pleaded in O/31/57 and I would here refer only to paragraph 10 of the Statement of Claim of Abube people which states that :-

In the Federal  
Supreme Court  
of Nigeria

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No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

"Quite recently, i.e. early this year, the Defendants (Agbudu) acting in concert with Umuawu conspired with the Plaintiffs tenants Achalla Nteje to dispossess the Plaintiffs of the greater part of their land ....."

The same averment is contained in the Statement of Defence of the Abube people in O/32/57. These actions in my view were to decide the extent of the boundaries of each of the three branches of this family and in my view no grounds have been shown for saying that the trial Judge exercised his discretion wrongly.

Chief Williams further contended that the procedure adopted by the trial Judge after consolidation was prejudicial to the Appellants for the reason already stated. I have given this matter the full consideration it deserves and can find nothing in the cross-examination by Umuawu of the witnesses of Agbudu that could be said to have in any way been prejudicial to the interests of the Appellants. As I have remarked earlier Counsel agreed to the procedure to be adopted and it should be noted that throughout the case for Agbudu no objection was raised to the cross-examination of Agbudu people by Counsel for Umuawu. It was when Umuawu called their witnesses (two in number) that Counsel for Abube raised objection and then asked for their earlier cross-examination of witnesses for Agbudu to be deleted from the record. My remarks about there being no prejudice to the Appellants from the cross-examination of Agbudu applies equally to the cross-examination of Umuawu by Agbudu. I do concede that the procedure adopted by the trial Judge in this matter was wrong. The proper

In the Federal  
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No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

procedure was to have directed that the parties whose interests were not in conflict, that is, the people of Agbudu and Umuawu were not entitled to cross-examine each other's witnesses, but must adopt them as their own witnesses, if they wished to put questions to them, and to allow the Abube people only, a right to cross-examine the witnesses of both Agbudu and Umuawu. As it is, considering the proceedings as a whole, I am not prepared to say that any injustice has been occasioned thereby and this ground of appeal must be dismissed.

10

The second ground of the additional grounds alleges misdirection by the trial Judge in admitting exhibit "C" as an agreement between the parties because (1) such agreement did not comply with s.23 of the Survey Ordinance; (2) the people of Abube were not parties to it; (3) it did not comply with the Land Registration Ordinance and finally, because reliance was placed on it by the people of Agbudu in their Statement of Claim as an arbitration according to Native Law and Custom. The first and third objections are also taken to the admission of exhibits "D" and "E" in grounds 3 and 4 of the additional grounds and it would be convenient to deal with these points at once in respect of all these documents. In the case of Exhibit "E", there is nothing in the wording of the deed to show or indicate that there was any transfer of land or interest in land to bring it within the definition of an instrument as defined in s.2 of the Land Registration Ordinance Cap.108. The words used clearly indicate that the document was no more than a written expression of a boundary demarcation made by the District Officer on the 7th April 1917 and an agreement by the parties to be bound by such demarcation. But be that as it may, all these documents should be read together. They are all made on the 7th April, 1917 with the exception of the 2nd folio to exhibit "D", which was made some fifteen months later by T.G.Lawton, another District Officer, confirming the boundary struck on the 7th April, 1917. These documents were also made by the same District Officer Mr. Gardner. These two District Officers, on the notes of the trial Judge as to the admissions made by Counsel, are out of Nigeria and the parties to the documents, on the evidence of Ajana Enewelum

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in 0/19/57, are all dead. The documents are evidence of transactions which, like most dealings in land under Native Law and Custom at the time of their making were made orally are admissible as memoranda of the past acts and oral transactions between the parties recorded by responsible officers relating to the ownership of Ikenga land dating back to 1914. Some of these documents bear references to Native Court cases and in one instance to admissions made by the warrant Chief of Abube before the District Officer who prepared the documents. They were all made with a view to their user in the Native Courts and to shut them out when they have been acted upon for the past 40 years would in my view work more injustice than prevent injustice. However, as I have said earlier, they were in law admissible for the reasons given. There is, however, a further objection raised to these documents for Counsel urged that the plans or sketches contained in "D" and "E" do not comply with the Surveys Ordinance and are therefore inadmissible in evidence. The relevant section of this Ordinance is 23(1)(b) and it provides that :-

(1) No map, plan or diagram of land -

(b) If prepared, in the case of land in the Eastern or the Western Region, after the 20th day of October, 1917 or, in the case of land in the Northern Region after the 16th day of May, 1918, shall save for good cause shown to the Court, be admitted in evidence in any Court, unless the map, plan or diagram ..... is prepared and signed by a surveyor and countersigned by the Director of Surveys.

I am not here expressing an opinion that these sketches do come within this section of the Ordinance, but that if they do then the trial Judge has a discretion in the matter by the use of the words I have outlined above. I am of the view that if this objection had been taken in the lower Court the trial Judge could for good cause shown, admit the sketches on the documents. The good cause is the matters I have already dealt with when dealing with the admission of the

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continued



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continued

documents themselves.

I shall now deal with the separate matters raised in these three grounds, which are not common to all of them. In ground (2)c it was argued that the Abube people were not parties to Exhibit "C", but, as I have said, Exhibits "C" and "D" should be read together for the matter on appeal relates to the boundaries between these three related villages or groups. There is no substance in this ground or in 2(a) which alleges, in effect, that the ground on which the trial Judge admitted exhibit "C" is different from that relied on in the Statement of Claim. The document was pleaded and the facts therein contained were also pleaded. For the reasons I have given as to the admissibility of this document, this ground of appeal no longer serves any useful purpose and it is dismissed. This also applies to ground 3(b). Finally, it is urged that Exhibit "E" is irrelevant and should not have been admissible. With this I must agree and so it would appear did the learned trial Judge, for no mention is made of it in his judgment and therefore no reliance was placed on it in arriving at his decision.

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I now come to the original grounds. Nos. 1 and 2 have been dealt with, 7 and 8 were abandoned and 9 was not given any separate treatment by Counsel. It was urged on ground 3 that the area of land awarded to the Umuawu people and known as "Odo Ubili" was not precisely defined. When one looks at the plan Exhibit "A" one must concede that the western boundary of this area has no defined features. The trial Judge would seem to be of the same view, but granted a declaration of title for the reasons contained in the following passage of his judgment, where he says that:-

30

"With regard to Umuawu's claim he (Mr. Araka) says that the Court has no jurisdiction to make the declaration of title sought because even if the Court accepts the eastern boundary as described by the witness and set out in Exhibit "A", that the Western boundary has not been accurately described in evidence or delineated in Exhibit "A". Mr. Emembolu for

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Umuokuwu relied on a recent decision in the Federal Supreme Court Suit 171/58 for the proposition that where the area in respect of which a declaration of title was claimed is admittedly within land owned by a Plaintiff such declaration may be granted even though area is not precisely defined. The case cited appears to support that proposition; in any event I am prepared to hold that where the part of the boundary which is not precisely defined is admittedly within the land of the claimant he is entitled to a declaration of title.

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No.35(a)

Judgment of  
Taylor, F.J.  
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continued

10

With respect to the trial Judge the judgment of this Court in Suit 17/1958 in no way supports the contention of counsel or the view held by the trial Judge. That suit was a case in which the area claimed and known as "Ogundo Umuokwe" and edged green on the plan tendered was larger than the area to which the declaration of title was granted. The extent of the larger area was not shown but that of the smaller area edged pink in respect of which the declaration of title was granted was shown. The judgment of this Court reads as follows :-

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"On reading the plan, however, with the evidence in the Court below it was pointed out, and Counsel for the Plaintiff/Appellant agreed, that the claim for a declaration of title in this case was limited to the area edged pink on the plan, Exhibit "I", which is the area the Defendants/Respondents were disputing with the Plaintiff/Appellant...."

40

"Mr. Mojekwu for the Defendants/Respondents admits the contention of the Appellants that the Amagu people including the present five Defendants, who are sued personally, were "invited" by the Appellant's people to stay on different portions of their land shown in the plan, Exhibit "A". In view of this admission it was not possible for him to resist the Appellant's claim for a declaration of title to the land edged pink"

"In the circumstances, this appeal will be allowed in so far as it relates to the matter of a declaration to the land edged pink in the plan, Exhibit "I".

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Supreme Court  
of Nigeria

No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

Apart from the point of differentiation already referred to above it will be seen from these passages that the Respondent conceded the point in issue during the hearing of the appeal. In my judgment, the trial Judge erred in granting a declaration of title to the people of Umuawu in respect of an undefined area of land. To that extent the judgment must be set aside.

On the claim for trespass and injunction the trial Judge held that :- 10

"Although there is no direct evidence that Abube people removed the pillars they appear to me to be the only persons who could benefit by their removal and accordingly in the circumstances I find that they did so remove them. I assess the damages for such wrongful removal at £55 and make an order restraining the Abube people from interfering with Umuawu's boundary pillars or other such boundary marks in the future". 20

Chief Williams argued that the removal of pillars was a criminal act within s.457 of the criminal code and that the onus of proof had not been discharged by the people of Umuawu. The onus of proof is on the Plaintiff to prove his case by a preponderance of evidence in civil proceedings. How can it be said that that was done when there was no evidence showing that any one from Abube was seen removing the pillars or seen in such circumstances that this is a reasonable inference to draw. The inference drawn by the trial Judge is not in my view one that can safely be drawn on the evidence before him. As to the order for an injunction, the learned author of Halsbury's Laws of England 1st Ed. Vol.17 at page 208 states as follows :- 30

"Where a Plaintiff has established his legal right and the fact of its infringement and that further infringement is threatened to a material extent, he is entitled to an injunction to restrain such threatened infringement upon the ordinary legal principles upon which the court acts in granting injunctions." 40

The infringement of those rights must be by the Defendant. In view of the failure of the Umuawu people to prove any threat by the Abube to infringe their rights in the future, there can be no justification for granting the order, and the appeal in this respect must also succeed.

In the Federal  
Supreme Court  
of Nigeria

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No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

The result is that the appeal against the Umuawu people is allowed and the order I would make is as follows:-

10           The judgment of the trial Judge is set  
          aside and I would substitute in its place  
          an order of dismissal of claims for tres-  
          pass and injunction and an order of non-  
          suit in respect of the claim for a declar-  
          ation of title. I would order a non-suit  
          on the claim for a declaration of title in  
          view of the trial Judge's finding that the  
          larger area edged violet, though not  
20           claimed in the action, was owned by Umuawu,  
          and the area to which they failed to get a  
          declaration for failure to prove their  
          western boundary is within it.

          The Appellants are entitled to their costs  
          against Umuawu which I would assess at 70  
          guineas, bearing in mind the fact that the 100  
          guineas costs awarded Umuawu in the High Court  
          included their expenses in issuing summons. I  
          would award cost in this court in the sum of 42  
          guineas, and here I have taken into account the  
30           fact that the sum of £54:6:9d, the costs of  
          this appeal was incurred in respect of the whole  
          appeal.

          The remaining grounds deal with the appeal  
          against the judgment in favour of Agbudu.  
          Ground 6 complains of the following portion of  
          the judgment of the trial Judge which reads  
          thus :-

40           "With regards to the Agbudu claim  
          (0/19/57) I find that they are owners of  
          all land verged pink in Exhibit "A" with  
          the exception of the shaded area shown  
          in the sketch attached to Exhibit "D".

In the Federal  
Supreme Court  
of Nigeria

No.35(a)

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

It was argued that the area shaded in Exhibit "D" was not defined, with the result that the area granted to the Agbudu people is also undefined. I had at first thought that this award must suffer the same fate as that of the Umuawu people, but on further consideration and a closer scrutiny of the sketch on exhibit "D" it is clear that the triangular shaped and shaded piece of land is demarcated by pillars at its three corners. There are two pillars on the path to Achalla which forms the northern boundary of the shaded area at points marked "I" and "II" and there is a further pillar at the southern tip of the land. This becomes clearer still when one looks at the record made by the District Officer, Mr. Lawton on the 2nd folio of Exhibit "D" which reads thus :-

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"On 19.7.18 I went with representatives of Agbudu, Enuyi, Umuawo, Igbariam, Amagu and put in concrete pillars supplied by Agbudu at the points marked, I, II, and III on the big map. The boundaries of Abube Enuyi in this part are now perfectly clear ....."

20

These three points all lie on the Achalla road between the two streams shown on Exhibit "D". Matthias Chukwura, the Licensed Surveyor for Agbudu, having identified the northern boundary of the shaded area with the southern boundary of the area edged yellow in Exhibit "A". I would agree with the trial Judge that a surveyor could demarcate this area either on the plan Exhibit "A" or on the land in dispute. This ground of appeal must also fail.

30

The appeal against the judgment in so far as it relates to Agbudu wholly fails and is dismissed with costs which I assess at 30 guineas in favour of Agbudu.

(Sgd.) John Taylor  
Federal Justice.

40

I concur.

(Sgd.) E. Unsworth  
Federal Justice.

In the Federal  
Supreme Court  
of Nigeria

No.35(a)

Chief F.R.A.Williams, Q.C. and Mr.R.A.Fani  
Keyode, Q.C. (Mr.E.O.Araka with them) ...  
for Appellants.

Judgment of  
Taylor, F.J.  
30th June 1961  
continued

Mr.K.A.Kotun (Messrs.F.O.Anyaegbunam and  
G.E.Bzeuko with him) for 1st Respondent.

10

Mr.M.O.Oseni (Mr.N.N.Anah with him) for 2nd  
Respondent.

NO.35 (b)

No.35(b)

JUDGMENT OF BRETT, AG.F.C.J.

Judgment of  
Brett, Ag.F.C.J.  
30th June 1961.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON FRIDAY, the 30TH DAY OF JUNE, 1961

BEFORE THEIR LORDSHIPS

LIONEL BRETT, KT.

ACTING CHIEF JUSTICE  
OF THE FEDERATION

20

EDGAR IGNATIUS GODFREY  
UNSWORTH

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

FSC. 295/1960.

(1) Ajana Enwelum and Anor.

Plaintiffs/  
Respondents.

V.

Nnaegbo Ekweze and Ors.

Defendants/  
Appellants.

(2) Uzodigwe Madika and Ors.

Plaintiffs/  
Appellants.

V.

Nnanwuba Asiegbu and Ors.

Defendants/  
Respondents.

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In the Federal  
Supreme Court  
of Nigeria

(3) Vincent Ekwealor

Plaintiff/  
Respondent.

V.

No.35(b)

Ajama Aduaka & Ors.

Defendants/  
Appellants.

Judgment of  
Brett, Ag.F.C.J.  
30th June 1961  
continued

J U D G M E N T

I agree, and I will only add that the inconvenience of the Rule of Court which denies the Court of trial the power to order named Defendants to defend an action in a representative capacity could not be better illustrated than in the present case, in which we have the preposterous position that the very persons who plead that they sue in a representative capacity in Suit O/31/57 are able to say that they are not defending in a representative capacity in Suit O/32/57, although the two suits are so closely connected that the trial judge thought it expedient to try them as consolidated suits. I have used the word "inconvenience", but in this case I am not sure that "injustice" would not be the more appropriate word.

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In England, Order 16 Rule 9 of the Rules of the Supreme Court confers power on the Court to make an order on the application of the Plaintiff, and similar provision is contained in Order 7 Rule 9 of the Western Region. I would express the hope that those who are responsible for making Rules of Court for the other High Courts in the Federation will consider amending their own Rules, in order to enable justice to be done, particularly in the suits involving title to land which provide such a large part of the civil business of the courts in at least two of the Regions and in Lagos.

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(Sgd.) L. Brett

Acting Chief Justice of the Federation.

Chief F.R.A. Williams, Q.C. and Mr. F.R. Fani-Kayode, Q.C. (Mr. E.O. Araka with them) for the Appellants.

Mr. K.A. Kotum (Messrs. F.O. Anyaegbunam and G.F. Ezeuko with him) for 1st Respondent.

40

Mr. M.O. Osemi (Mr. N.N. Anah with him) for 2nd Respondent.

NO.36

In the Federal  
Supreme Court  
of Nigeria

ORDER GRANTING FINAL LEAVE TO HER  
MAJESTY IN COUNCIL

No. 36

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

SUIT NOS: 0/1931 & 32/1957  
F.S.C. 295/1960.

Order Granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council  
22nd January  
1962

APPLICATION FOR AN ORDER FOR FINAL LEAVE  
TO APPEAL TO PRIVY COUNCIL.

10 BETWEEN :

Nnegbo Ekweze & Ors.

Defendants/  
Appellants

(L.S.) Versus

Ajana Enwolun & Anor.

Plaintiffs/  
Respondents

And

Uzodigwe Madika & Ors.

Plaintiffs/  
Appellants

Versus

20

Nwanwuba Asiebu & Ors.

Defendants/  
Respondents.

And

Ajana Aduska & Ors.

Defendants/  
Appellants

Versus

Vincent Ekwealor

Plaintiff/  
Respondent

(Sgd.) A.Ade Ademola  
CHIEF JUSTICE OF THE  
FEDERATION

Monday the 22nd day of January,  
1962.

30

UPON READING the application herein and  
Affidavit sworn to on the 2nd day of January,  
1962 filed on behalf of the Appellants and  
after hearing Chief F.R.A. Williams Q.C.  
(G.C.Nzegwu with him) of Counsel for the  
Appellants and Mrs. M.O. Jinadu (holding Mr.  
M.O.Oseni's brief) of Counsel for the  
Respondents:

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

40

(Sgd.) S.A. Samuel  
Ag. CHIEF REGISTRAR.



Exhibits

E X H I B I T S

Exhibit "H"

EXHIBIT "H"

Particulars of  
Claim & Summons  
14th and 19th  
February 1957

PARTICULARS OF CLAIM AND SUMMONS

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

SUIT NO.0/2/1957:

Exhibit "H" put in by the Defendants in 0/19/57:

(Sgd.) O.K.Ajaegbu 10  
Clerk of Court.  
6/11/59.

BETWEEN:

CHIEF OJA OKAFOR Plaintiff  
and

1. OFOEGBUNA UGBAJA  
2. UDONI IGWEZE  
3. OGUGUA UGBAJA  
4. ENNELI ANEKWE  
5. EKWEOBA ARIZE 20  
6. EGUONWU EGBILI Defendants.

PARTICULARS OF CLAIM:

The Plaintiff claims from the Defendants jointly and severally the sum of £100 (One hundred pounds) being general and special damages, in that the Defendants on/or about the 7th day of February, 1957, wrongfully and wilfully uprooted boundary pillars which adjoins Plaintiff's farm and which demarcate boundary between Plaintiff's village and Umuawo villages, and also maliciously uprooted Plaintiff's yam and cassava plants. 30

PARTICULARS OF SPECIAL DAMAGE:

1. Value of Yam plants destroyed ... £30  
" " Cassava plants " ... 20  
£50  
General damages ... 50  
£100

Dated the 14th day of February, 1957.

(Sgd.) S.G.O.Ebo 40  
M.A.L.L.B.  
PLAINTIFF'S SOLICITOR.

ADDRESS FOR SERVICE:

Exhibits

PLAINTIFF: Achalla Ubiagu, Nteje.

Exhibit "H"

DEFENDANTS: Abube Nando, Onitsha.

Particulars of  
Claim & Summons  
14th and 19th  
February 1957  
continued

IN THE HIGH COURT OF NIGERIA

Jud. C 26.

CIVIL SUMMONS

NO. U 9140

Suit No.C/21/1957

BETWEEN CHIEF OJAR OKAFOR PLAINTIFF  
and OFOEGBUNA UGBOAJA & FIVE OTHERS DEFENDANTS.

To Udobi Igweze of Abube Nando, Onitsha Division

10

YOU ARE HEREBY COMMANDED in His Majesty's name to attend this Court at Onitsha on Monday the 11th day of March, 1957 at 9 o'clock in the forenoon to answer a suit by Chief-Ojar Okafor of Achalla Ubiagu, Nteje against you.

The Plaintiff's claim £100 being general and special damages etc., etc.

(As per particulars of claim attached)

Issued at Onitsha the 19th day of February, 1957.

20

Summons £3:15/-  
Service 12/-  
Mileage 10/-  
Transport 14/-  
£5:11/-

(Sgd.) H.M.S.Brown  
JUDGE

CERTIFIED TRUE COPY  
CR. No.77795 of 15th Feb.,  
1957.

30

TAKE NOTICE THAT if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to produce to judgment and execution.

(Sgd.) W.C. Ogidi

REGISTRAR.

ExhibitsEXHIBIT "K"Exhibit "K"CHIEF MAGISTRATE'S JUDGMENT

Judgment of  
Chief  
Magistrate  
(Undated)

Exh. "K" put in by the Abube (Defendants) in  
0/19/57, 0/31/57 and 0/32/57 and admitted in  
evidence.

(Sgd.) O.K.Ajaegbu  
Court Clerk.

MO/306/58: CHIEF OJA OKAFOR VS. CFOEGBUNAM  
UGBAJA & ORS.

J U D G M E N T

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This is a case transferred by the High Court Onitsha under Section 48(1) of the Magistrate's Court Law 1955. The Plaintiff in the particulars of his claim alleged that the Defendants on or about the 7th day of February, 1957, wrongfully and wilfully uprooted boundary pillars which adjoined Plaintiff's farm and which demarcated boundary between Plaintiff's village and Umuawo village and also maliciously uprooted Plaintiff's Yams and cassava plants. For both general and special damages arising out of the alleged trespass, the Plaintiff claims £100:

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Pleadings as well as plan of the land in question were ordered and filed in the High Court before the case was transferred. Plaintiff's statement of claim disclosed the same allegations as contained in his particulars of claim. In their statement of defence, Defendants denied the allegations of trespass into Plaintiff's farm and also of uprooting the boundary pillar. On each of these allegations the Plaintiff was put to their strictest proof.

30

Proving his case, the Plaintiff led evidence that about 2 years ago one Udalo and Mkwunife came to him in the morning of one day and reported that the Defendants people were seen uprooting a boundary pillar. As a result of this information he ran to the scene. There he saw the 1st Defendant carrying a concrete pillar and followed by the Defendants and several others.

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He asked why the Defendants should remove the pillar. He was told to go away as it was not his business. He however attacked the 1st Defendant, pushed him down and grabbed at the concrete pillar. At this time many of his own people arrived at the scene, and a free for all struggle ensued between them and the Defendants people, over the concrete pillar. The Plaintiff's people overpowered the Defendants people and succeeded in removing the pillar.

Exhibits  
Exhibit "K"  
-----  
Judgment of  
Chief  
Magistrate  
(Undated)  
continued

10

After this the Defendant then entered a nearby farm of the Plaintiff and destroyed the yams and cassava thereon. Later the Plaintiff reported this matter to the Police. Police constables visited the scene. The Plaintiffs were advised later by the police to take a civil action. This action is the result of the advice.

20

Plaintiff called three witnesses to support his case. The witnesses are Udalo and Ekwunife who first saw the Defendants uprooting the pillar and later reported to the Plaintiff and the Surveyor who prepared to plan of the land in question.

The defence case was a complete denial of the allegation. This case according to the Defendants was a reprisal for an earlier report made by them to Police against the Plaintiff's people for demolishing their Defendant's houses.

30

This case rests purely on facts. Plaintiff succeeds or fails on the question of credibility and on the point I do not think the Plaintiff has satisfied me. Apart from the points raised by the learned defence Counsel, there are several missing links in the Plaintiff's case which raise some doubt in my mind as to the genuineness of his case.

40

First, the claim is for trespass to a piece of farmland. I do not know for what purpose but a plan of the land was ordered to be filed. Plaintiff filed a plan shewing the plan of a land in dispute between on Agama Enwem and others and one Nnaegbo Akwaeze and others. Apart from the fact that the plan was not made specifically for this case, there was not attempt to indicate on it the area the Defendants are alleged to have trespassed.

Exhibits

Exhibit "K"

\_\_\_\_\_

Judgment of  
Chief  
Magistrate  
(Undated)  
continued

I am told that the subject matter of this action and the events leading up to it were reported to police but the police took no action although the Defendants conduct in uprooting the boundary pillars as alleged amounted to felony. No reason is shown why the police refused to prosecute this case. Policemen visited the alleged scene of trespass but none of these constables were called to support the Plaintiff's allegation. The learned counsel for Plaintiff stated that the policemen were not called because they will be adverse to their case. Why will the police be adverse? Could it be that they found the Plaintiffs allegations false.

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Again I am told that Plaintiff surrounded by a hostile crowd of over 30 people succeeded in pushing down the 1st Defendant and getting hold of the concrete pillar. Having seen the Plaintiff, I do not think I can associate him with such fit of bravery.

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These and other points raised by learned defence counsel are very compelling forces to disbelieve the Plaintiff's allegations. I refuse to believe them. I dismiss the Plaintiff's claim with costs assessed at 20 guineas.

(Sgd.) J.A.Phil-Ebosie  
CHIEF MAGISTRATE.

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ON APPEAL  
FROM THE FEDERAL SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS

B E T W E E N :-

- (1) NNAEGBO EKWEZE  
CHINWEZE EJIOFOR and  
UZODIGWE MAKIDA  
(For themselves and on behalf  
of People of Abube Nando) Defendants/Appellants  
- and -  
AJANA ENWELUM and  
ROBERT NWEKEZE  
(For themselves and on behalf  
of People of Agbudu Nando) Plaintiffs/Respondents  
- and -  
(2) UZODIGWE MADIKA  
UDOLI IGWEZE  
NNELI ANEKWE and  
EGWUONWU EGBILI  
(For themselves and on behalf  
of Abube Nando) Plaintiffs/Appellants  
- and -  
NWANWUBA ASIEGBU  
IFEDIORA AGBAZINUO  
EMESIN ENENDU  
ONAEFUNA ONYEKWE and  
OBIDIGWE UYAMEDU Defendants/Respondents  
- and -  
(3) AJANA ADUAKA  
ONWUEGBUKE EGENTI  
EGWUONWU EGBILI  
NNELI ANAKWE  
EKWEOBA ARINZE  
UDOBU IGWEZE and  
OGUGUA UGBOAJA  
(For themselves and on behalf  
of the Abube Ibinagu family  
of Nando) Defendants/Appellants  
- and -  
VINCENT EKWEALOR (For himself  
and on behalf of the Umuawa  
Family of Nando) Plaintiff/Respondent

RECORD OF PROCEEDINGS

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