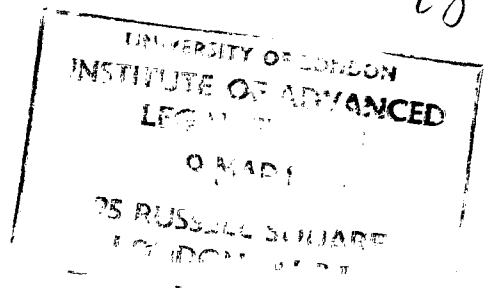


18, 1959



IN THE PRIVY COUNCIL

No. 4 of 1958

55308

ON APPEAL FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :

- 1. IDOKO NWABISI, substituted for Chinweze Chidebe, and
- 2. IFEACHO IGWEZE, substituted for Igweze Odili

on behalf of themselves and the UMULERI people (Plaintiffs) . Appellants

- and -

- 1. R. A. IDIGO and
- 2. SONDI IFILI

on behalf of themselves and the AGULERI people (Defendants) . Respondents

CASE FOR THE RESPONDENTS

- 1. This is an appeal from a Judgment of the Federal Supreme Court of Nigeria dated the 23rd February, 1957 dismissing an appeal from a Judgment of the Supreme Court of Nigeria, Onitsha Division, dated the 7th January, 1955, whereby the
- Record
p.96
p.64

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Appellants' claim for a declaration of title to certain land and an injunction to restrain the Respondents from using the said land was dismissed.

2. Both the Courts below held that on the evidence the Appellants had failed to discharge the burden of proving ownership of the land in dispute. It appears therefore that the principal question which arises for determination on this appeal is whether there is any good reason for disturbing the said concurrent findings of fact. The Respondents submit that there is no such reason. 10

3. The Respondents also contend that the Appellants failed to prove the boundaries of the land in respect of which they claimed a declaration of title. The Respondents further rely upon a plea of estoppel based upon two previous Judgments in their favour. Neither of these points will arise for determination on this appeal, however, if the concurrent findings of fact remain undisturbed. 20

4. The land in dispute is known as Otuocho. It is bounded on the North-West by the Anambara River, on the South-West side by the Akkor River, a tributary running roughly at right angles to the Anambara River, and on the North-East side by another tributary running roughly at right angles to the Anambara River known as the Emu stream. It is the Respondents' contention that the remaining part of the boundaries of the land was never defined. 30

5. The previous history of Utuocho land

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- includes a grant by the Appellants to the Royal Niger Company made on the 25th June, 1898 whereby the Appellants as vendors purported to sell to the Company a strip of land bounded on the North-West side by the Anambara River and stretching inland 1,000 yards from the River. This strip of land appears to be, or to be included in, the land in dispute in the present suit. By the Niger Lands Transfer Ordinance passed on the 25th February, 1916 certain land belonging to the Niger Company Limited, the successors in title to the Royal Niger Company, were vested as from the 1st January, 1900 in the Crown; included in the said lands, as belonging to the Niger Company Limited, was the strip of land which the Appellants had purported to convey to the Royal Niger Company in 1898. By Order No. 38 of 1950 made under Section 10 of the Ordinance the Crown abandoned all right, title or interest in the land except for a small area which has no relevance for the purposes of the present suit.
- 10
- 20
6. There have been previous proceedings between the respective peoples represented by the parties to this appeal in relation to Otuocha and neighbouring land. The first proceeding was a claim by the Umuleri to land described as Otu Ocha which was made about 1920 in a native court action. Nothing turns upon this proceeding, save that it shows that the Umuleri were making a claim to land bearing the same name as the land in dispute in the present suit.
- 30
7. The next proceeding was an action brought by the Umuleri against the Aguleri in the Provincial Court of Onitsha in 1933. In this
- p. 117
- p. 97
p. 143
p. 149
p. 152
p. 209
- p. 140

Record

- p. 141 1.3
p. 163
11.7-10
p. 157
11.7-8
p. 157
11.26-31
p. 157
1.125
- p. 158
1.7
p. 162
p. 165
11.16-22
p. 165
11.11-15
- action the Umuleri claimed a declaration of title to land described as "Otu-Ocha". The South-Eastern boundary of the land was not stated but on appeal in the Supreme Court both parties agreed that the land in question in that suit was precisely the same land as that covered by the 1898 grant to the Royal Niger Company. On the evidence given in the Provincial Court the District Officer stated that apart from the 1898 grant to the Royal Niger Company there was "very little to choose" between the two rival versions relating to the ownership of the land in dispute and said -
- "If judgment were to be based upon these contending claims and allegations as above - it might be difficult to formulate one which would be the correct one."
- Turning to the 1898 grant, however, the District Officer appeared to decide that the grant showed that the Umuleri were the rightful owners of the land in dispute in that action. On appeal the Supreme Court (G.Graham Paul J.) reversed the judgment of the District Officer on the ground that the Umuleri by proving the 1898 grant had, in fact, proved that they had no right or title to the land in question. The learned Judge further stated as follows:-
- "I am unable to hold that in 1898 the Plaintiffs-Respondents were in a position to give a good title to the Royal Niger Company to this land. I cannot therefore hold that the land in question is Crown land, as the Court below held."

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		<u>Record</u>
	8. The third proceeding was a further action for a declaration of title brought by Umuleri in the High Court at Onitsha in 1935. In this case the land claimed was described as "Aguakor" consisting of land on the same side of the Anambara River, but excluding the strip of land which the Umuleri purported to grant to the Royal Niger Company in 1898.	p.173
	The case was heard before Waddington Ag.J. who held that on the evidence the Umuleri had not succeeded in discharging the onus of proving ownership of the land claimed. The learned Judge found that for the previous ten years farmers of both peoples had used the land, a situation which he described as "consistent with neither possessing exclusive rights of ownership". The judgment in that action was for a non-suit.	p.173 1.23
10		p.225
		p.226 11.1-4 p.226 1.8
20	9. By a Summons in the Native Court of Umuigwedo dated the 6th November, 1950 representatives of the Umuleri instituted	p.1
	<u>THE PRESENT SUIT</u>	
	The action was transferred to the Supreme Court (Onitsha Judicial Division) by Order made under Section 28 (1) (c) of the Native Courts Ordinance on the 8th December, 1950.	p.64 11.28-31
30	10. The Statement of Claim dated the 14th July, 1951 alleged that the land known as Otu-Ocha is and always has been the property of the Umuleri. The Statement of Claim purported to describe certain boundaries on the North and North-East, the South-West and the West but did not specify any other boundaries.	p.3

Record

A plan was filed with the Statement of Claim showing two boundaries on the East and South-East; one boundary, verged green, was referred to on the plan as the boundary of the land claimed by the Plaintiffs and the other boundary, verged pink, was there referred to as indicating the boundary of the land purported to be granted to the Royal Niger Company in 1898.

- p.5 11. The Respondents on behalf of the Aguleri filed a Statement of Defence dated the 4th October, 1951, wherein they claimed that the Otuocha land is and has from time immemorial been the bona fide property of the Aguleri. The Statement of Defence alleged that Umuleri people had come on to the land by permission of the Aguleri, stated that the Aguleri did not know of the grant to the Royal Niger Company and that if there was a grant to the Company it was made secretly and fraudulently, alleged various acts of ownership by the Aguleri and pleaded .. 10
1. Ownership
 2. Long Possession
 3. Laches and Acquiescence
 4. Estoppel
- pp.9, 10 12. By Orders made on the 14th December, 1951, and the 8th July, 1953, the present Appellants were substituted as the Plaintiffs on behalf of the Umuleri. 20
- p.13 13. The trial began on the 23rd November, 1953, the evidence was concluded on the 27th November, 1953 and judgment was given on the 7th January, 1955. Both parties adduced 30
- p.64

Record

evidence about the traditional history of their respective peoples, and also evidence of acts of ownership in relation to the land in dispute. The evidence with regard to acts of ownership related, inter alia, to the following events as set out in the Judgment of the learned trial Judge:-

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|----|--|---------------------------------------|
| 10 | (1) It was claimed by the 1st Respondent that in 1891 his grandfather gave some land in Otuocha to the Roman Catholic Mission. The learned Judge held that this land was outside Otuocha land. | p.72, 1.46

p.73, 1.27 |
| | (2) By 1891 the Umuleri were already in occupation of portions of the land. The Respondents claimed that the Umuleri were on the land by their permission. | p.74, 1.4 |
| 20 | (3) In 1894 the Aguleri gave a portion of Otuocha land, a beach at Ofianwagbo, to the Roman Catholic Mission. This was a contention put forward by the Respondents, contested by the Appellants and accepted as a fact by the learned Judge. | p.74, 1.15

p.74
11.26-28 |
| 30 | (4) In 1898 the Umuleri made their grant to the Royal Niger Company. The Appellants' evidence was that after the grant the Company built some small zinc houses on the land, but abandoned the place after three years. | p.75 1.6
p.117

p.75
1.26 |

- Record
- p.75, 1.43 (5) The Appellants alleged that about 1903 the Umuleri allowed Umocha people of Umuoba Anam to fish the Emu stream.
- p.75, 1.48 (6) The Respondents said that they gave a plot of land to the British Nigeria Company (in about 1906) and that the Company stayed only a year.
- p.76, 1.6 (7) In or about 1910 the people of Umuoba Anam acquired a settlement on the land. It was the Appellants' case that these people were allowed by the Umuleri to settle and that they paid the Umuleri a cow in return for this right. The Respondents' case is that the people of Umuoba Anam paid the Umuleri five cows for the right to settle, and then found that the Aguleri owned the land and paid them the price of seven cows. 10
- p.77, 1.5 (8) In 1910 or not long afterwards, Aguleri people began to occupy Otuocho land. The Appellants contend that this was with their permission and the Respondents say that it was by right of ownership. 20
- p.77, 1.15 (9) Subsequently (before 1920), the Umuleri allowed the Church Missionary Society to build a Church on the land.
- p.78, 1.44-
p.79, 1.13
p.124 (10) On the 13th September, 1922 an Affidavit was sworn by Chiefs of Aguleri Native Court for the purposes of an inquiry by the District Officer, Onitsha Division, as to the ownership of Otuocho 30

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land, when the Aguleri were about to lease a plot to the Niger Company Limited. Amongst the Chiefs were two Umuleri, namely Onowu and Okoye. The deponents swore in the Affidavit that the Aguleri were the rightful owners of the land.

- 10 (11) In 1924 the Aguleri leased a plot of land to the Niger Company Limited for trading and residence. p.77, 1.19
- (12) About 1925/6 the Umuleri allowed the Church Missionary Society to build a Church and a School. p.77, 1.22
- (13) In 1926 the Aguleri leased some land to John Holt's & Company Limited. p.77, 1.34
- (14) In 1931 the 1st Respondent leased some land to a French company, the C.F.A.O. p.77, 1.35
- 20 (15) There was another lease to John Holt's and Company Limited by the Aguleri in 1932. p.77, 1.36
- (16) The Aguleri made a grant of land on which the Roman Catholic Mission built a School. p.77, 1.38
- (17) The Aguleri allowed various settlements of Hausa, Yoruba, Ijaw and other strangers and permitted the establishment of Obioma village just outside the boundary claimed by the Appellants according to their plan. p.77, 11.39-42

Record

p.82
11.1-33

(18) A juju on the land known as Odakpa juju is claimed by the Appellants as belonging to the Umuleri. The Respondents say that it is a family juju which belongs to an old man at Aguleri. The learned Judge, after commenting on the view of the District Officer in the 1933 case (who saw the juju) that it did not appear to be an old juju said: "there is nothing that I can see in the evidence before me either that it was an old juju in 1933".

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14. The Appellants did not give any evidence to explain either of the boundaries on the East and South-East shown on their plan. Nor did they give any evidence to resolve the conflict or explain away the ambiguity and the uncertainty as to the boundaries of the land arising from the Appellants' pleading on this point.

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pp.66-72

p.71,
11.7-20

15. The learned trial Judge gave some consideration to the effect of the proceedings in 1933. He held that the appeal judgment in that action, although relevant had no weight because by virtue of Order No.38 of 1950 and Section 14 of the Lands Transfer Ordinance the land comprised in the 1898 grant is to be considered as never having been comprised therein. He further held that the trial judgment in the 1933 proceedings had no weight because the District Officer had misdirected himself as to the effect of a grant and had looked upon it as "in some way conclusive of the question of ownership by virtue of the Niger Lands "Transfer Ordinance".

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p.71,
11.26-
p.72,
1.1.

Record

16. With regard to the evidence, the learned trial Judge entirely rejected that part of the Appellants' evidence which related to traditional history. His judgment contains the following passage:-

pp.79-81

10 "It is impossible to find anything certain or even reasonably probable from all this traditional, legendary, or purely fictional material about genealogy and origins; all that can be said is that the effect of it on the whole is rather against the Plaintiffs and in favour of the Defendants. Neither side have established anything definite from it; and the Plaintiffs have failed to establish that the Defendants are strangers to them and to the left bank of the ANAMBRA, on which OTUOCHA stands. But this does not put them out of court; 20 it does not show that they do not own the land, or that the Defendants do. On that issue, the parties are back where they stood when the case was begun, and the issue remains to be decided on the rest of the evidence as if the particular questions about traditional origins had not been raised, for from the evidence that has been produced on those questions I find it 30 impossible to reach any conclusions about them."

p.81, 1.27

17. The Judgment therefore rested entirely upon the view of the learned trial Judge as to the effect of the evidence relating to acts of ownership. As regards these, the

p.81, 1.47-
p.82, 1.3.

Record

learned Judge after considering all the matters referred to above in paragraph 14 made the following observation:-

- p.82, 1.33 "The acts of ownership which are significant are, as I have said, the 1898 grant, the 1894 grant of the OFIANWAGBO beach to the Mission (because it preceded the entry on the land of the AGULERI who were the grantors), and the UMUOBA ANAM settlement". 10
- p.82, 1.38- On the last mentioned point the learned Judge
p.83, 1.5. indicated that he was disposed to accept the evidence of the fifth witness for the Respondents, an old man belonging to the Umuoba Anam people, whose evidence about the settlement supports the Respondents' case.
- p.83, 1.6. On the question of the 1898 grant the learned Judge pointed out that it had considerable evidential value as an act of ownership, particularly if the Aguleri knew about it. He held, however, that he was not satisfied that the Aguleri must have known of the grant, and that if they did know of it they would probably have regarded the transaction as unimportant. 20
- p.83, 1.46.
- p.83, 1.48. The 1894 grant by the Aguleri to the Mission appeared to the learned Judge as a transaction of considerable evidential value.
18. The learned trial Judge held that the Appellants had failed to discharge the burden of proof which was upon them. He stated his conclusion in the following terms:- 30

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"The evidence afforded by the dealings with the land by the parties, and by the existence on the land of a juju now tended by the Plaintiffs, in my judgment falls short of establishing the fact that the Plaintiffs are owners of the land, and on this evidence, and on the case as a whole, it is quite impossible for me to find in favour of the Plaintiffs, whose claim must accordingly be dismissed".

p.84, 1.19

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19. The grounds of appeal were all (with one exception which related to admissibility of the Affidavit of the 13th September, 1922) directed to questions of fact and were mainly concerned with the weight of evidence. The grounds were as follows:-

pp.85-88

"(I) The learned trial Judge misdirected himself as to the areas of land in dispute in 1933 and 1935 cases and the effect of the judgments in the said cases.

p.85, 1.31

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(II) The learned Judge misdirected himself in holding that the 1935 case 'was about the same land as had been in dispute in 1933 case, less the Anambra waterfront to a depth of 1000 yards'.

(III) The learned Judge was wrong to have held that the appellants raised no objection until 1933 to the alleged dispositions by the respondents of parts of Otuocho.

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(IV) The learned Judge was wrong to have

Record

admitted in evidence Exhibit R. and to hold that it told in favour of the respondents Exhibit R. is the Affidavit.

- (V) That the judgment is unreasonable and unwarranted and cannot be supported having regard to the weight of evidence".

p.87, l.17

SUPPLEMENTARY GROUNDS OF APPEAL

"(a) The learned judge erred in holding that in 1894 the Aguleri made a disposition of part of the Otuocho land. There was no or no sufficient evidence to justify this finding. 10

(b) The learned judge erred in holding that the Umuleri allowed the Aguleri to put the Roman Catholic Fathers on the land in dispute in 1894 and suffered them to remain there for nine years. There was no or no sufficient evidence to justify this finding. 20

(c) The learned judge erred in holding that the Aguleri made numerous open dispositions of the parts of Otuocho without opposition from the Umuleri.

(d) The learned judge erred in holding that between 10 and 30 years before the date of his judgment the Aguleri made a grant of land on which the Roman Catholic Mission build a school. There was no or no sufficient evidence to justify this finding. 30

(e) The learned judge erred in holding that

the Aguleri permitted various settlement of Hausa, Yoruba, Ijaw and other strangers on the waterside.

(f) The learned judge misdirected himself as to the effect of the evidence of the witness Igboekun Oyalo from Umuoba Anam (5th Defendant's witness)

10 (g) The learned judge erred in failing to draw an inference adverse to the Defendants from their failure to call the old man at Aguleri who was alleged by them to be the owner of the Odakpa juju.

(h) The learned judge erred in failing to draw an inference favourable to the Appellants from the undisputed fact that until a date in or about 1919 the Umuleri were in sole occupation of the land in dispute".

20 Ag. F.J., Foster Sutton F.C.J. and Lestang F.J.) the principal judgment was delivered by Hubbard Ag. F.J. The said judgment - p.96

(a) Rejected the Respondents' contention that the Appellants had failed to identify the land claimed. p.96, 1.23

(b) Rejected the Respondents' contention that the Appellants were estopped by reason of the judgments in the actions brought in 1933 and 1935. p.98, 1.45 p.99 1.32

30 (c) Upheld the view taken by the learned trial Judge with regard to the traditional evidence. p.100 1.2

Record

- p.103, 1.49-
p.104, 1.7. (d) Upheld the view taken by the learned trial Judge that the Appellants had failed to prove such acts of ownership as to prove title to the land in dispute.
- p.102, 1.4. As regards the evidence relating to acts of ownership, the said judgment stated that the Umuoba Anam settlement could be of no evidence against the Appellants in relation to their claim, because at the date of the settlement in 1910 the land was already Crown land and, therefore, the Appellants could not have complained of the settlement in any court of law. The judgment continued as follows:- 10
- p.102, 1.30 "If we exclude the fact of the Umuoba Anam settlement, we are left with one significant act of possession by the respondents, namely, the 1894 grant, and one by the appellants, namely the 1898 grant". 20
- On the question of the 1898 grant the learned Federal Judge inclined to the view that the Aguleri must have known of the grant but stated:-
- p.103, 1.34 "I think the doings of the Company must have been the common talk of the riverside, but even if this be true, it obviously cannot be assumed that the Aguleri knew accurately the inland extent of the grant. All they would have known would have been that the Umuleri had made a grant to the Company, but would have no reason to suppose it extended beyond the land 30

effectively occupied by the appellants, which, at that date, were the two ferry stations, at one of which they had a 'juju'. The 1,000 yards line mentioned in the 1898 grant is relevant to the requirements of the Royal Niger Company at that date, but is no proof of occupation by the appellants."

The conclusion reached by the learned Federal Judge is stated in the following terms:-

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"Upon a careful consideration of the whole appeal and of the arguments advanced by Counsel on both sides, it appears clear to me that the appellants completely failed to prove the extent and length of occupation which is necessary to ground a claim for declaration of title, and that the learned Judge was fully justified in dismissing their action."

p.103,
1.49

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Foster Sutton F.C.J. agreed with the principal judgment and stated his conclusion as follows:-

p.104

"The onus of proving that they were entitled to the declaration of title to the land in dispute was upon the plaintiffs. The learned trial Judge reached the conclusion that they had not discharged that onus, and nothing that was said at the hearing of this appeal had persuaded me that he ought to have held otherwise".

p.104,
1.34

Lestang F. J. concurred.

p.105
1.5

Record

p.106.

21. Final leave to appeal to Her Majesty in Council was granted to the Appellants by Order dated 22nd May, 1957.

22. The Respondents submit that this appeal should be dismissed with costs for the following amongst other

R E A S O N S

1. Because there were concurrent findings of fact in the Respondents' favour in the courts below. 10
2. Because the said concurrent findings of fact are right on the evidence.
3. Because in order to succeed in a suit claiming title to land the claimant must establish his boundaries and this the Appellants failed to do.
4. Because the Appellants are estopped by the judgments in the actions brought by the Appellants in 1933 and 1935. Alternatively, the Appellants are estopped by the judgment at first instance in the 1933 action. Alternatively, the Appellants are estopped by the judgment in the 1935 action. 20
5. Because the Appellants failed to discharge the burden of proof which was upon them and both the courts below were right in finding that the Appellants had failed to discharge that burden.

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6. Because the Appellants had never established their title to the land in question in spite of numerous attempts to do so.

PHINEAS QUASS

RALPH MILLNER

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CASE FOR THE RESPONDENTS

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