

~~2114-92~~

Judgment
18, 1959?

IN THE PRIVY COUNCIL

No. 4 of 1958

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

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.,
41 Whitehall,
London, S.W.1.
Appellants' Solicitors.

REXWORTHY, BONSER & WADKIN,
83/85 Cowcross Street,
London, E.C.1.
Respondents' Solicitors.

UNIVERSITY OF LONDON
INSTITUTE OF
LEGAL STUDIES
- 9 MAR 1960
25 RUSSELL SQUARE
LONDON, W.C.1.

55507

ON APPEAL FROM
THE FEDERAL SUPREME COURT OF NIGERIA

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RECORD OF PROCEEDINGS

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Notice of Motion for Substitution of Idoko Nwabuisi for Chinweze Chidebe	19th June 1953
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Order adjourning trial	14th September 1953
Order adjourning sine die for judgment	14th December 1953
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Description of Document	Date
Order striking out Motion for Stay of Execution	14th March 1955
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EXHIBITS RECEIVED WITH RECORD BUT NOT PRINTED

Original Exhibit Mark	Description of Document	Date
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Original Exhibit Mark	Description of Document	Date
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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

10

- and -

- 1. R.A. IDIGO and
 - 2. SONDI IFILI
- on behalf of themselves and the AGULERI people.
(Defendants) Respondents

RECORD OF PROCEEDINGS

No. 1

In the Native Court

20

NATIVE COURT SUMMONS

No. 1

IN THE NATIVE COURT OR JUDICIAL COUNCIL OF
UMUIGWEDO, NIGERIA

Native Court
Summons.

Between:- 1. Okafor Egbuche (m) } of Umuleri
2. Igweze Odili (m) } Plaintiffs

6th November
1950.

a n d

1. R.A. Idigo (m) } of Aguleri
2. Somdi Ofili (m) } Defendants.

To R.A. Idigo and Somdi Ofili (m) of Aguleri.

30

YOU are commanded to attend this Court at
Umuigwedo on the 20th day of November, 19 at
9 o'clock a.m. to answer a suit by Okafor Egbuche

In the Native Court

No. 1

Native Court Summons.

6th November 1950 - continued.

& Igweze Odili of Umuleri against you.

The Plaintiff claims: 1. Declaration of title. 2. An injunction. (See the attached statement of claim)

Issued at Umuigwedo the 6th day of November, 1950.

(Sgd.) ? ? ?

(Signature of President or Vice President)

TAKE NOTICE: If you do not attend, the Court may give judgment in your absence.

10

No. 2

Statement of Claim.

6th November 1950.

Exhibit P(P)

No. 2

STATEMENT OF CLAIM

1. Declaration of title to a piece or parcel of land known as Otu-Ocha situated at Umuleri in Onitsha Division and more particularly delineated and edged Pink on a plan to be filed in court.

2. An injunction to restrain the defendants and by their people, servants and agents from using the said land without the consent of the plaintiffs.

Dated at Umuleri this 6th day of November, 1950. 20

3.

No. 3

In the Supreme
Court

STATEMENT OF CLAIM

No. 3

IN THE SUPREME COURT OF NIGERIA,
IN THE SUPREME COURT OF THE ONITSHA JUDICIAL DIVISION,
HOLDEN AT ONITSHA,
BEFORE HIS HONOUR MR. JUSTICE MANSON, PUISNE JUDGE,
TUESDAY THE 1st DAY OF MAY, 1951.

Statement of
Claim.

14th July 1951.

SUIT No. 0/48/1950

10 Between: 1. Okafor Egbuche.
2. Igweze Odili, both of Umuleri:
Plaintiffs

A n d

1. R. A. Idigo
2. Sondi Ofili, both of Aguleri:
Defendants

Filed 21/7/51 at 11.30 a.m. (Sgd.) E. Ade Bamgboye
Registrar.

- 20
1. The plaintiffs are natives of Umuchezi Ikenga Umuleri and sue for themselves and on behalf of their people of Umuleri.
 2. The defendants are sued in a representative capacity.
 3. The land known as Otu-Ocha is and has always been the property of the people of Umuchezi Ikenga Umuleri who have made the fullest use of it from time immemorial.
 4. The plaintiffs have boundaries on the said land as follows:-
30 (1) On the North and North-East with the people of Ezi-Agulu Aguleri whose lands are separated from the plaintiffs' land by an ant-hill NKPUNWOFIA which has always been on the boundary north of a stream called EMU. The said stream is within the plaintiffs' lands.

In the Supreme
Court

No. 3

Statement of
Claim.

14th July 1951
- continued.

- (ii) On the South-West with their Kinsmen the people of NNEYI-UMULERI whose lands are separated from the plaintiffs' lands by the AKKOE RIVER which flows into the ANAMBARA RIVER.
- (iii) On the West with the ANAM people whose lands are separated from the plaintiffs' lands by the ANAMBARA river.
5. As owners of the said land of Otu-Ocha, the plaintiffs by their predecessors had permitted the people of Umuoba Anam to build settlements on the said land, and has also permitted the defendants people to settle on the said land. 10
- Exhibit C(P) 6. In or about the year 1898 the plaintiffs' predecessors by a deed of conveyance registered as No. 110 in Volume 2 of the Register of Deeds kept in the land Registry at Lagos Nigeria, assigned to the Royal Niger Company chartered and limited the said land of Otuocha.
7. By virtue of the Niger Lands Transfer Ordinance the said land of Otu-Ocha became vested in the Governor in trust for His Majesty; and by Order No. 38 of 1950 published in Nigeria Gazette No. 58 of the 2nd November, 1950, the Crown divested itself of all its right title and interest in the said land save for a small area reserved to the westward and edged yellow on the plan. 20
- Exhibit M(P) 8. In or about the year 1933 the plaintiffs predecessors, to wit Okafo Egbuche and Igweze Odili sued the present defendants claiming title to the said land of Otu-Ocha and got judgment. The said judgment was set aside by the Court of Appeal on the ground that the land was then Crown Land and the Plaintiffs had then no title. The plaintiffs will rely on the evidence given on the trial of that case. 30
- Exhibit M18(P)
Exhibit M20(P) 9. The plaintiffs say that the defendants' ancestors had emigrated from the Igara Country and had been allowed to settle on their present homestead by the plaintiffs' ancestors. In their original Igala country the defendants were known as AGULU-IKPA and had a boundary with people known as Odeke-Agulu. 40
10. The Plaintiffs say that while the land Otu-Ocha

In the Supreme
Court

No. 4

Statement of
Defence.

4th October
1951 -
continued.

Exhibit B(D)

- action for and on behalf of the Eziagulu family of Aguleri.
3. The defendants deny paragraph 3 of the Statement of Claim, and say that the said OTUOCHA land, known as OTUOCHA AGULERI, is, and has from time immemorial, been the bona fide property of the defendants.
 4. The defendants deny that the land in dispute is bounded as described in paragraph 4 of the Statement of Claim, and will file a plan showing the exact boundaries of OTUOCHA land. 10
 5. The plaintiffs' town of Umuleri is about 5 miles from the land in dispute, and between it and the land in dispute, lie other lands belonging to various families of Aguleri.
 - 5A. Many years ago some members of the plaintiffs' family came to the defendants' ancestors, and asked for permission to build a ferry shed on a portion of the land in dispute, known as ONU-OTU, from where to ferry people across the Anambra River to Anam. Their request was granted. They did not, and were not allowed to live thereon, but to use it for building a shed only. 20
 - 5B. Further to the North along the Anambra Creek, members of another family in Umuleri, known as Ogume Umundora asked and obtained from the defendants permission to build a ferry shed for a similar purpose, and when they tried to assert title to the land, the defendants sued them in Court, and they were ordered to leave the place. The proceedings in the said case will be founded upon. 30
 6. Subsequently, the Umuoba people came over in 1910 from Anam to settle on the land in dispute near to ONU-OTU, where members of plaintiffs' family built the ferry shed as stated in paragraph 5A above. They first met these Umuleri men who brought them to the defendants. After discussion, the Umuoba people gave to the defendants five cows, and were in return granted the right to settle on the land in accordance with native customary tenure by which they were to stay on the land in dispute, but cannot alienate or part with possession thereof unless 40

with the express permission of the defendants. The Umuoba people are staying on the land till this day, following the said grant by the defendants.

In the Supreme Court

No. 4

Statement of Defence.

4th October
1951 -
continued.

Exhibit C(P)

- 10 7. In answer to paragraph 6 of the Statement of Claim, the defendants say that they did not know of the said grant, and that at no time did the Royal Niger Company Chartered & Limited go into possession of the land in dispute as a result of the said grant. If the plaintiffs did grant the Royal Niger Company Chartered & Limited any portion of the land in dispute, they did so secretly and fraudulently, unknown to the defendants. Notwithstanding the said grant, the defendants used, and continued to use the said land as owners thereof, and nobody interfered with their use thereof, until 1933, when the plaintiffs, in a suit in the Provincial Court of the Onitsha Province, claimed ownership of the land, the subject matter of the said grant to the Royal Niger Company Chartered & Limited.
- 20

Exhibit M(P)

- 30 8A. As owners aforesaid, the defendants and their predecessors, have from time immemorial, used the land in dispute by building and farming thereon, and granting portions thereof to diverse tenants, both Europeans and Africans, without let or hindrance from the plaintiffs or anybody else, and in particular, the defendants have made the following grants of portions of the land in dispute:-

- (a) The grant to the Roman Catholic Mission in 1891 to build stores.
- (b) The grant to the British Nigeria Company in 1906.
- (c) The grant to the Hausas, Nupes, Yorubas and other native foreigners of portions of the land in dispute to make settlements.
- (d) The grant in 1924 to the Niger Company of the site now occupied by the United Africa Company Limited.
- (e) The Grants to John Holts & Co. (Liverpool) Ltd., in 1926 and 1931, of trading and residential sites.

Exhibit G(P)

Exhibit H(P)

In the Supreme
Court

No. 4

Statement of
Defence.

4th October
1951 -
continued.

Exhibit R(P)

Exhibit M(P)
Exhibit M18(P)
Exhibit M20(P)

Exhibit N(P)

(f) The grant to the C.F.A.O. in 1931, of a trading site.

- 8B. Before the grant to the Niger Company Limited in 1924, exhaustive enquiries were made by the District Officer, Onitsha, as to who were the rightful owners of the land, and an affidavit was sworn to by the plaintiffs' predecessors-in-title, stating that OTUOCHA land belongs to the defendants, and that they claim no title thereto. The said affidavit will be founded upon. 10
9. In answer to paragraph 8 of the Statement of Claim, the defendants admit that the plaintiffs' predecessors sued them in 1933, and that the judgment of the Provincial Court was set aside on appeal by the Supreme Court, but say that the plaintiffs cannot found on the evidence in the said case.
10. The defendants deny paragraph 9 of the Statement of Claim, and will put the plaintiffs to the strictest proof thereof. 20
11. In answer to paragraph 10 of the Statement of Claim, the defendants say that they have always dealt with the said land as owners thereof from time immemorial, and that before the British Government assumed control in Nigeria in 1900, the defendants and their predecessors, as owners aforesaid, had made grants of portions of the said land to the Roman Catholic Mission and some native foreigners. The plaintiffs only began to protest against grants to European Firms in recent years, long after the grants were made. The protests, though unfounded, were made in anticipation of the present suit. 30
12. In answer to paragraph 11 of the Statement of claim, the defendants say that the plaintiffs never had any title to the land in dispute, that they came into the said land originally with the permission of the defendants as stated in paragraph 5A above, and that it was after the case of 1933 referred to in paragraph 9 above that they, the plaintiffs, encouraged their people to enter and build dwellinghouses on the portions of the land, near the place originally granted to them to build a ferry shed. 40

13. The defendants are not in a position to plead to paragraph 12 of the Statement of Claim, and will put the plaintiffs to the strict proof of the allegations therein contained, and in particular, of the time they were so informed by the Government.

14. The defendants say that the plaintiffs are not entitled as claimed, and will plead:-

- 1. OWNERSHIP.
- 2. LONG POSSESSION.
- 3. LACHES AND ACQUIESCENCE.
- 4. ESTOPPEL.

10

Dated at Onitsha this 4th day of October, 1951.

(Sgd.) A. O. Mbanefo
DEFENDANTS' SOLICITOR.

No. 5

MOTION FOR SUBSTITUTION OF PLAINTIFF

TAKE NOTICE that the this Honourable Court will be moved at Onitsha on Friday the 14th day of December, 1951 at 9 o'clock in the forenoon or so soon thereafter as Counsel for Plaintiffs can be heard for an order that the proceedings in this action be contained between (1) Chinweze Chidebe (2) Ifeacho Igweze for themselves and on behalf of the Umuleri people and the defendants and that the said Chinweze Chidebe and Ifeacho Igweze be substituted as Plaintiffs in the action. AND FOR such further or other Order as meet.

20

ONYEAMA for Plaintiffs, in support of motion.

30

MBANEFO for Defendants does not oppose.

BY COURT: Motion granted: Chinweze Chidebe and Ifeacho Igweze are substituted as Plaintiffs in place of Okafor Egbuche and Igweze Odili.

(Sgd.) A.B.G. Manson
J.

14th December, 1951

In the Supreme Court

No. 4

Statement of Defence.

4th October 1951 - continued.

No. 5

Motion for Substitution of Plaintiff.

14th December 1951.

In the Supreme Court

No. 6

MOTION FOR SUBSTITUTION OF PLAINTIFF

No. 6

Motion for Substitution of Plaintiff.
8th July 1953.

SOETAN and ARAKA with him moving.

To substitute Idoko Nwabuisi for a deceased plaintiff for Chinweze Chidebe: Previously Igweze Odili was replaced by Ifeacho Igweze as 2nd plaintiff. So Plaintiffs therefore will become - (1) Idoko Nwabuisi and (2) Ifeacho Igweze previously approved. Osadebay and Balonwu for Defendants: No objection whatever.

10

Order:- The defendants have no objection: I approve the alterations so that the plaintiffs approved representatives are now (1) Idoko Nwabuisi and (2) Ifeacho Igweze respectively. I make no order for costs. The party ultimately successful in this suit will count it as an appearance, in the final reckoning of costs.

(Sgd.) F.W. Johnstone
J. 8/7/53.

No. 7

Application for Consolidation.
23rd November 1953

No. 7

APPLICATION FOR CONSOLIDATION

Suit No. 0/48/50

1. Idoko Nwabuisi 2. Ifeacho Igweze }
for themselves and on behalf of }
the people of UMUNCHEZI, UMULERI. }

vs.

1. R.A. Idigo 2. Sondi Ofili, for }
themselves and on behalf of the }
people of AGULERI. }

SOETAN, with him ARAKA and ANIAGOLU for Plaintiffs.

30

him. OSADEBAY for Defendants. Later BALONWU with

0/8/1951: Ogolo Ugbagwu & anor. for themselves
and on behalf of the people of Umuoba-
Anam.

In the Supreme
Court

vs.

George Okafor & anor. for themselves
and on behalf of the Umuleri people.

No. 7
Application
for
Consolidation.

R.A.Idigo & anor. for themselves and
on behalf of the Aguleri people.

23rd November
1953 -
continued.

10

Claim:- (1) Declaration of title to that piece and
parcel of Otuocho land edged pink and
particularly marked and delineated on
the plan to be filed in Court.

(2) Possession of the said land without any
interference from the defendants.

(3) Injunction to restrain Defendants,
their heirs, servants and agents from
interfering with Plaintiffs' enjoyment.

IKPEAZU for Plaintiffs, asks for consolidation
with 0/48/50 above.

20

SOETAN for Defendants, with him ANIAGOLU,
opposing, for Umuleri defendants.

OSADEBAY for Aguleri Defendants.

COURT: It would seem better to arrive at a
decision between Aguleri and Umuleri before hearing
Anam's claim.

IKPEAZU: Our possession is admitted by both
defendants, and allow we may be there indefinitely,
but object only to our alienating.

30

I am prepared to withdraw the claim for title
on the strength of their pleadings; as far as Umu-
leri are concerned, I want no more than is admitted
in the second last paragraph of the defence, that
we are customary tenants at will.

COURT: Any dispute as to the native law and
custom applicable to "customary tenants at will" ?
What is being admitted? Do both sides agree as to
what is being admitted?

In the Supreme
Court

No. 7

Application
for
Consolidation.
23rd November
1953 -
continued.

Ikpeazu: I admit "customary tenants", not "tenants at will".

Soetan: As long as they behave well and do not dispute our right, they are entitled to remain.

Ikpeazu: That is what I understand by the admission. In the Aguleri defence, I would be content with judgment in the terms of paragraphs 4 and 5. I ask for judgment now in the terms of the admission, if consolidation is inconvenient.

Soetan: He will not then know which side is his landlord. 10

BY COURT: That is his affair?

Osadebay: I suggest Anam be joined as defendants in O/48/50 and abide the decision there.

Soetan: Plaintiffs also ask for an injunction.

Ikpeazu: Possession is admitted.

BY COURT: Not of the whole area by AGULERI.

Soetan: Nor by UMULERI, now that I see the plan here. I will apply to amend paragraph 4 of our defence. 20

Their plan itself shows that the area is farmed by UMULERI and AGULERI as well as by them.

Note: After further discussion, it appears that Plaintiffs' plan as filed has no given verge shown (Note 5 in "NOTES" on plan). The area referred to as verged green is that enclosed in a red broken line.

Ikpeazu: What we want is exclusive possession within the red broken line, where our buildings are, and an unexcluded right of farming over the whole area, without prejudice to the defendants' over farming activities conducted as at present. 30

Soetan: That we cannot agree to. We agree to no exclusive possession of any part, and the area we admit was given them for settlement doesn't correspond to the red broken line, nor any right of farming over the whole area. They cannot get possession without showing interference.

COURT: They have claimed title, and can get a declaration of title on that, not of an absolute title, but of title as customary tenants, but the area is disputed.

In the Supreme Court

No. 7

Soetan: I agree.

Application for Consolidation.

Osadebay: We say we gave them no definite area.

23rd November 1953 - continued.

Further discussion ensues.

10 COURT: It seems abundantly clear that it will save time if 0/48/50 is determined and then the plaintiff herein can proceed against the unsuccessful party.

Soetan: We admit only that we gave plaintiffs an area in which to reside, nowhere to farm; and we wish to file a plan showing that area.

COURT: That might wait until decision in 0/48/50.

ORDER: 0/8/51: Adjourned sine die; case to be listed first at the next call-over.

20 (Sgd.) W.H. Hurley
J.
23.11.53.

No. 8

Plaintiffs' Evidence

PLAINTIFFS' COUNSEL'S OPENING ADDRESS

(0/48/1950, proceeding).

No. 8

Plaintiffs' Counsel's Opening Address.

30 Soetan opens: We trace descent from one IGBUELU who discovered the land, and his son ERI. ERI had 3 children between whom Umueri was divided. One MCHEZI, had 4 sons in turn, who occupied OTU-OCHA now in dispute, more properly OTUOCHE. The elders of the 4 quarters which occupied the area negotiated with Royal Niger Company in 1898. AGULERI came from far side of ANAMBRA and still have contacts and claim rights over there. They were given land to settle. They made an agreement in 1891 with Royal Niger Company for other land, their own; and so at various times did other branch of AGULERI, upstream.

Exhibit C(P)

Exhibit D(P)

2nd Plaintiff is ill and unable to attend Court.

In the Supreme Court

No. 9

EVIDENCE OF J.T. JOHN

Plaintiffs' Evidence

Plaintiffs' 1st Witness: Male. Sworn Bible. States English

No. 9
J.T. John.
Examination.
Exhibit P(P)

I am JOSEPHUS THEOPHILUS JOHN, Licensed Surveyor, Calabar. This plan (plan No. LD.7/51 filed by Plaintiffs, produced from suit file) was prepared by me from a survey made by me in 1951. I prepared the plan at the instance of the Plaintiffs, UMULERI. I called on Chief IDIGO (Defendant) beforehand, told him about survey, and invited him to survey. He did not come to the survey, but it was made in and round his premises and those of his people. The area was shown to me by UMULERI. They showed me a Gazette Notice and an agreement they made with the Royal Niger Company. The area originally granted to Royal Niger Company is edged pink, and the area retained by Government according to Gazette Notice is edged yellow. The various legends on the plan are based on information given me by Plaintiffs.

10

20

Exhibit A(P)

This plan now shown to me was made by me in 1935 and shows land in the 1935 suit UMULERI versus AGULERI (shown to Defendants' Counsel; tendered).

Osadebay objects: Different name.

Exhibit M(P)

Soetan: This was the plan used in 0/85/35; the file plan in that suit has been subpoenaed and it is hoped will be available; meanwhile we tender this copy.

Exhibit A(P)

(Received: Exhibit A).

Exhibit P

In the file plan LD7/51 which I first identified I was shown and have marked ADAKPA juju. I was shown and marked the various settlements.

30

Cross-Examined

Cross-Examination

"JOHN HOLTS & Co. Ltd." was shown to me by Plaintiffs.
- They said the land, also NIGER COY's and C.F.A.O's were leased to those firms by Defendants.

Exhibit B(D)

- This plan now shown to me by Defendants' Counsel is bounded by the same waterways as the land in LD.7/51, but goes further back.
(Not admitted; marked B. for identification).

No.10

EVIDENCE OF C.S. PALMER

Plaintiffs' 2nd Witness: Male. Sworn Bible. States English

I am CECIL STEWART PALMER, Regional Land Officer, Enugu.

10 This is a copy of Agreement 110 in 1st Schedule to Niger Lands Transfer Ordinance, with plan, or so it appears. It is not certified. I am not prepared to produce original. It is in Lagos, in custody of Registrar of Lands, Lagos. (Note: Cover is missing).

Osadebay: I will not object to this, upon condition that a properly certified copy is tendered before judgment.

20 COURT: Either you are morally satisfied that this is the remains of a certified copy, or you are not. In other case, you are entitled to object. If you are morally satisfied, you would be safe in admitting it.

Osadebay: We will admit, if Plaintiffs will admit our plan.

Soetan: I agree.

(Exhibit B received. Agreement No. 110 received Exhibit C.)

30 This is a certified copy of Agreement No.78 in the Schedule to the Ordinance (tendered; no objection: Exhibit D). This is a certified copy of Agreement No. 111 in the Schedule (tendered; no objection: received, Exhibit E).

This is a certified copy of Agreement No. 112 in the Schedule (tendered; no objection: received Exhibit F).

This is a certified copy of a lease dated 30.6.24 by Chief IDIGO and Niger Company, Ltd., and registered (tendered; no objection: received Exhibit G).

In the Supreme Court

Plaintiffs' Evidence

No.10

C.S. Palmer.
Examination.

Exhibit C(P)

Exhibit B(D)

Exhibit C(P)

Exhibit D(P)

Exhibit E(P)

Exhibit F(P)

Exhibit G(P)

In the Supreme Court

This is a certified copy registered lease by Chief IDIGO to JOHN HOLTS, dated 20.3.32 (no objection; received, Exhibit H).

Plaintiff's Evidence

(No Cross-Examination)

No.10

C.S. Palmer. Examination - continued.

Exhibit H(P)

Further Examination, by leave

Further Examination Exhibit J(P)

The original of Government Plan 3043 by J.F. Morris Government Surveyor dated 7.8.35 is not in my custody; it is with Survey Department.

(Soetan tenders a copy of this plan, which is admitted, Exhibit J).

10

No.11

No. 11

P. Onwualu. Examination.

EVIDENCE OF P. ONWUALU

Plaintiffs' 3rd Witness: Male. Sworn Bible. States English

I am PATRICK ONWUALU, District Interpreter, Office of District Officer, Onitsha Division.

Exhibit K(P)

I produce file OD.461 "Dispute between ODEKE (IGALA Division) and AGULERI concerning LARE OFO or OVO or IVI-OFULO" (tendered as containing admissions by Defendants against them, e.g. pages 1, 3, 29, 29A, 20 31: no objection; received Exhibit K).

Exhibit L(P)

I produce file OD.353 entitled "AGULERI - IDAH Fishing Rights Dispute" (tendered as containing admissions against the Defendants, p.55; received Exhibit L).

Cross-Examined

Cross-Examination.

None.

No. 12

EVIDENCE OF I. NWABUISIIn the Supreme
CourtPlaintiffs' 4th Witness: Male. Sworn gun. States
IboPlaintiffs'
Evidence

No.12

I. Nwabuisi.
Examination.

I am IDOKO NWABUISI, farmer, of OTUOCHA UMUERI. I am a Chief of UMUNCHEZI UMULERI, and the 1st Plaintiff in this action. The other Plaintiff is IFEACHO IGWEZE, he is not here, he is sick.

10 The land in dispute OTUOCHA UMUERI belongs to UMUNCHEZI UMULERI. UMUERI or UMULERI means that ERI had many children and his children were called UMUERI. ERI was the father of NCHEZI, who was the father of UGUMA, UMUDIANA, ADAGBE, AKAMANATO.

20 OFOAKU was the father of ERI. He came from AROCHUKU. He was a warrior and a hunter. When he came to where UMUERI people are living now it was thick bush, uninhabited. He settled there. He was hunting when he got there. While settled there, a woman called IGWEDO came and lived with him, and had by then a son called ERI. When OFOAKU died ERI became the owner of the land where UMUERI people are living now. ERI was OFOAKU's only child. The land was bounded thus - Above, from NGENE-OYI stream to ANAMBRA River; and from OKPINKA stream near NSUGEE to NGENE - NNUNU stream, NGENE-OYI separates NTEJE land from ERI land. OKPINKA separates NSUGBE land; NGENE-NNUNU separates NANDO land. ANABRA separates us from ANAM land.

30 ERI had 3 children, sons - NNEYI, NCHEZI, EGBEDE. When ERI died, his children shared the land. They had children. NNEYI had 3 sons - UMANOMA, AKWETE, EKPE. They have the share of NNEYI, and a boundary with NSUGBE. NCHEZI's 4 children already named took his share, and have a boundary with NANDO people. MCBEDE's share is occupied by his children UMUATULO, OGBU, ENUAGU, 3 sons.

40 OTUOCHA was first farmed by AGUBELUONWU, from ADAGBE quarter of UMUNCHEZI. AGUBELUONWU while living there had a son called OCHE. After AGUBELUONWU died OCHE cleared the grass at the bank of the ANAMBRA and made a market and ANAM people brought fish there and it was called OTUOCHE, OTU being the name given to any place where there is a

In the Supreme
Court

Plaintiffs'
Evidence

No.12

I. Nwabuisi.

Examination -
continued.

market near the water. The market is there today, is held every Eke day. UMUNCHEZI people use the land adjoining this market, own it. OTUOCHE is now called OTUOCHA, because when the whitemen came they were told it was OTUOCHE but they called it OTUOCHA. The first strangers to come were the white men. They came and said they wanted to buy palm kernels and palm oil. They asked for land. We agreed and showed them land. They gave 10 kegs of powder, 10 cases matchets, and guns for the Ndichies or elders. The Chiefs who negotiated with the whitemen were NAMAKA, EZEODU, IGWEBUIKE, MORA, and ANEROBI. MAMAKE was of ADAGBE quarter. IGWEBUIKE was of UGUME quarter, MORA from UNUDIANA, EZEODU from AKAMANATO; and ANEROBI was from ADAGBE. NAMAKA Was the head Chief. IGWEBUIKE was the Okpala.

10

Exhibit C(P)

The whitemen build small zinc houses on the land and we traded with them and worked for them. A paper was made in which the names of my people, the Chiefs I have mentioned, were written. (Soetan: Exhibit C). The buildings are not there today; they only stayed 3 years, then said they couldn't get palm kernels or oil and left.

20

Then UMUOCHE ANAM people came and begged us to allow them fish. They are from UMUOBA ANAM. They wanted to fish in a stream named after ADAKPA juju, near the juju. The stream is named EMU. ADAKPA owns the stream, but the name is EMU. We allowed them fish there. They gave 1 cow which was sacrificed to the juju before they were allowed to fish. These people fished there 7 years. Then they came again and asked for a place to live. We gave them a place, and they live there now. They gave us 1 cow and we sacrificed it there and prayed for them and wished them good luck, and both sides ate the cow.

30

Then C.M.S. people came. They introduced themselves as Missionaries. They asked my people to show them land on which to build a Church. We did so, at first close to the market. Later they wanted to build a school also, and were shown another place where they built a school and a church; and they are still there today. That was over 30 years ago, don't remember exactly when. UMUOBA were given their settlement either 42 or 43 years ago.

40

After C.M.S. came a man called Chief IDIGO,

about 30 years ago, over 30 years. He asked for land on which to live. This is the Defendant IDIGO. We gave him land. He paid nothing. His father's mother was from UMUNCHEZI, that is why. Also, his wife was from UMUNCHEZI. His full brother married an UMUNCHEZI woman. For these 3 reasons we gave him the land free. He came from MBIETO, and people followed him from there and joined him. He behaved as if he owned the land. He moved quickly, got Hausa people and all sorts of people and gave them land. He came because he had trouble in the MBIETO. The Reverend Fathers lived there and he had trouble with them. Before he came to us he tried to move elsewhere; Rev. Father Millet schooled him and drove him away and he went on EGBEAGU land and cleared portion and made blocks and tried to build. One ROBERT OGUEJIOFOR came with his people and destroyed the blocks. After the Hausa people, he brought in the firms and they built on the land, that was the cause of this trouble. We asked the firms why they were coming on the land, and they said IDIGO had brought them. We asked him, he said the land was Government land and was in his charge. We did not agree. We went to OLANME N.C. and sued him. He was told to take his hands off the land, it was ours. He did not. So we went to D.O. O'Connor and reported him. O'Connor inspected the land and asked ANAM people and ANAKU people and was satisfied the land was ours after inquiry. This was in a suit in O'Connor's Court. We got judgment. IDIGO appealed and on the appeal. (Soetan tenders certified copy of appeal proceedings and judgment Provincial Court Suit 2/1933; no objection; received, Exhibit M). After the appeal we petitioned Government that it was our land.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi. Examination - continued.

10

20

30

Exhibit M(P)

Court rises for 10 minutes.

Resuming: by consent, and subject to production of original petition only, copy thereof and connected correspondence received, Exhibit N.

Exhibit N(P)

40

2 p.m. Adjourn to 24.xi.53. 9 a.m.

At Onitsha, Tuesday the 24th day of November, 1953:

9.5 a.m. Resumed.

For Plaintiffs - Soetan, Araka, Aniagolu.

For Defendants - Osadebay.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Examination - continued.

Exhibit C(P)

Soetan: My client who had the documents in this case has discovered the cover of Exhibit C bearing the certification, which I now tender (received, attached to Exhibit C).

COURT: Sheriff has asked for fresh hearing date for Enugu witnesses subpoenaed by Plaintiff to produce documents and Affidavits of service in time. One, from the Lands Office, was here yesterday on an earlier subpoena. The other, the Civil Secretary, is now requested only to produce original of petition in Exhibit N. What date?

10

Balonwu for Defendant appears.

Osadebay: We wait the production of the original.

COURT: Sheriff will be told these witnesses are no longer required.

Exhibit P(P)

Idoko Nwabuisi on oath continues: Government told us they would abandon OTUOCHA, and have done so retaining portion at the market and along AKPOR river, as shown in my plan (and in Gazette 38 of 1950, per Soetan: Court will take notice of the Gazette 38 of 1950, Order 38 of 1950). So I took this action.

20

Exhibit A(P)

UMULERI are Ibo. AGULERI are Igala, from ODEKE neighbourhood. There they are called AGULU IKPA. They are not related to UMULERI. The original owners of land where AGULERI are now, beyond EMU River, were UMUNCHEZI UMULERI. AGULERI came there thus: Chief IDIGO's great grandfather ATUENYI came to NCHEZI and asked for a place to live; came from IKPA near ODEKE on the other side of ANAMBRA. NCHEZI gave him land. Land between us and NANDO people, who had a boundary with us before the land was given. The boundary between us and AGULERI now runs as follows - AGADIWAYI Ditch (Exhibit A), AKPUNOR WUNSAKUN tree, NGWU EBENEBE tree, INYI tree, still standing, then to NKPU NWOFIA, an ant-hill, and ANAMBARA river.

30

Exhibit O(P)

Osadebay: We will accept Exhibit A without those if Plaintiffs puts in a certified copy of proceedings in O/85/35.

40

Soetan: tenders certified copy of those proceedings; no objection; received Exhibit O.

AGULERI are still there today. After they got the land they changed name from AGULU IKPA to AGULERI, i.e. AGULU ERI, because they were on ERI land, from AGULU IKPA, as living on IKPA land before. When they came they said they left IKPA because floods used to carry away their houses in rainy season. They kept their rights at IKPA; they still fish there. Chief IDIGO in pursuance of these rights had a case with the ODEKE people over fishing pools. These are part of IGALA, and as children of AGULU related to Defendants. Dispute was inquired into by D.Os. at Onitsha and IDAH. (Soetan: Exhibits N and L).

Besides UMUNCHEZI, NNEYI gave land to Royal Niger Company. (Soetan: Niger Lands Transfer Agreement 109 in Schedule). So did AGULERI. 1st Defendant's grandfather did take part in the transfer. (Soetan: Agreement 78, Exhibit D). IDIGO on that agreement is 1st Defendant's grandfather. IFITE AGULERI also gave land to Company. (Soetan: Exhibit E - Agreement 111). Also IGBOEZUNU. (Soetan: Exhibit F - Agreement 112). We call them IGBOEZUNU, but ANAKU people say IGBOEZURU. None of these transactions were secret; they were dealing with their own property. (Soetan: tenders copy of file-plan herein for marking as Exhibit: no objection; received, Exhibit P). OTUOCHA is bounded by AKKOR River, the boundary with NNEYI, as far as OGENALE, and from there there is a boundary with AGUAKOR land along to ISI EMU. (Source of EMU River per interpreter) and then to NKPUNWOFIA and ANAMBRA River. Of OTUOCHA land we gave Royal Niger Company a piece on AKKOR side but not up to AKKOR. It is shown on our plan (is incorrect in "not up to AKKOR" - vide Exhibit C).

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.
Examination - continued.
Exhibit N(P)
Exhibit L(P)

Exhibit D(P)

Exhibit E(P)
Exhibit F(P)

Exhibit P(P)

Exhibit C(P)

(Here the evidence of H.O. Nwiji, see page 30 was interpolated).

Cross-Examined

40 - ERI had not 6 sons, but 3, NNEYI, NCHEZI, MGBEDE. I know AMUKWA people of UMULERI. Father of AMUKWA was a descendant of UMUNCHEZI.

Cross-Examination

Q. UMULERI are of 3 sections, IKENGA, EZI, IFITE? - These were the 3 sons of ERI.

Q. You said ERI had 3 sons, NNEYI, NCHEZI, MGBEDE? - Yes.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross-Examination - continued.

Exhibit O(P)

Q. Same ERI father of IKENGA, EZI, IFITE?
- NNEYI people have the title name EZI, NCHEZI have the title-name IKENGA, MGBEDE's is IFITE.

Q. Had ERI any title?
- No, he had only his father's name.

Q. You knew ENUAGU NRI?
- It is ENUAGU MGBEDE, not ENUAGU NRI.

Q. You know nobody by name ENUAGU NRI?
- No one in our place called ENUAGU NRI.

Q. You remember 0/85/35 (naming parties and subject matter); you know when case was going on?
- Yes.

10

Q. Remember AKPE of UMUNCHEZI who gave evidence.
- Yes. - is of our family.

Q. He was asked "Do you know of ERI?" and said "yes, father of UMULERI"; do you agree with that?
- ERI was not father of UMULERI.

Q. So AKPE was telling untruth? - OFOAKI was father of ERI. AKPE said ERI had 3 sons (named from record) ?
- ENUAGU MGBEDE and not ENUAGU NRI.

20

Q. Who is immediate father of the ENUAGUS?
- He came from MGBEDE. I know Chief Okoye who gave evidence in that case. Is dead now. Was Chief of all UMUNCHEZI. Gave evidence as such in this 1935 case.

Exhibit O6(P)

Q. At page 182, 1.5, he said that UMUCHEZI comprises ADAGBE, etc. (read); was he right?
- Yes, you have mentioned the children of NCHEZI, as I will explain if you wish.

30

Q. So he didn't mention AKAMANATO as one of the sections?
- It is one, but one wouldn't mention all the names in one word (the literal translation of witness' Ibo is "in one word").

Q. You omitted any son of NCHEZI yesterday?
- I didn't mention his grandsons. Immediate sons were UGUMA, UMUDIANA, ADAGBE, AKAMANATO, I still say that. If OKOYE included MGBAGO, he was wrong, for

that was a grandson. OFOAKU father of ERI came from AROCHUKU. We are not therefore strangers on the land we occupy. He came to a thick bush where Nobody lived, and cleared it.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross- Examination - continued.

Exhibit 06(P)

Q. OKOYE also said in evidence (page 183 that the two people who negotiated with Royal Niger Company were OGBUEFE AMAKA and OGBUEFE MORA; were those the only two?
- No, there were 5.

10 Q. So OKOYE wasn't stating the whole truth?
- There were not 2 but 5.

Q. AMAKA is from ADAGBE UMULERI?
- Yes.

Q. MORA is from AKAMANATO?
- No, UMUDIANA.

Q. UMUNCHEZI contains only ADAGBE and AKAMAN-ATO?
- Not so. I don't know land in OTUOCHA where R.C.M. bungalow was built.

20 Q. You know where R.C. Mission there stands?
- They have a school, only up to standard I or II (i.e., only a small school, per Interpreter).

Q. You know Rest House at OTUOCHA?
- Yes.

30 Q. Is on OTUOCHA land?
- No. IGWEDO the woman I mentioned yesterday was not from ONITSHA. She was the mother of the UMULERI. And NANDO. And AWKUZU. And OGBUNIKE. All are UMUIGWEDO, and we have an UMUIGWEDO clan Court. IGWEDO came BENIN side, not ONITSHA (laughter) I don't know that ONITSHA came from BENIN side too (laughter).

Q. OFOAKU married IGWEDO and had 4 sons?
- Only 1, ERI.

40 Q. What about NANDO, AWKUZU, OGBUNIKE?
- KOMENE was father of AWKUZU, when she left OFOAKU she went to him. NDEM was father of OGBUNIKE. UDO was father of NANDO. I know AKPE of UMULERI. He was of UMUNCHEZI section. He took ONOWEO title from OBI OKOSI of Onitsha. I know NNALUE of UMULERI. He is from UMUNCHEZI. Took ONOWEO title from OBI OKOSI II.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross-Examination - continued.

Q. These two got their titles because IGWEDO was from ONITSHA.

- No; they came to ONITSHA to take Ofor from OBI OKOSI because OBI OKOSI is the head of all the Kings in this area. I have never heard of UMUERI Clan N.C.

Q. (repeated): at any time in your life; think: it is UMUERI, and not UMULERI?

- I know of OLANME Court.

Q. (repeated):

- No, and there is no such Court UMUERI, but OLANME.

10

Q. Have you ever heard of UMUERI Clan?

- No.

Q. UMUERI Clan N.C., like UMUIGWEDO clan N.C?

- I don't know about that.

Q. UMUERI Clan N.C. was constituted of AGULERI, NTEJE, and IGBARIAM?

- NTEJE and IGBARIAM are not UMUERI, but have a liking for UMUERI. I mean, anybody who takes a name that is not his, likes that name. But today is the first time I've heard they've taken that name. I don't know if these names are so associated in official documents. I have heard of IDOMANI N.G.

20

Q. IDMANI Clan comprises NSUGBE, NKWELLE, UMUNYA?

- Yes, if you say so, but I didn't know before. I am now 64 years old.

Q. At that age, you seriously say you don't know what towns are in IDOMANI Clan?

- Yes. We have boundary with NSUGBE.

Q. But don't know to what Clan it belongs?

- Since you told me, not before. OTUOCHA is a corruption of OTUOCHE. OKOYE who gave evidence in the 1935 case was older than I. would know more about the land.

30

Exhibit 07(P)

Q. (Ex. 07(P) page 186, line 18) OKOYA said * "OTU" means a waterside, and "Ocha" is white and there is white sand there, hence the name; do you think he was wrong?

- We both said the same thing.

* Nwabuisi's evidence, not Okoya's evidence.

Q. Do you agree with his explanation (which is repeated)?

- I agree that "Ocha" means white, but I say that OCHE cleared that place.

Q. So "Ocha" in OTUOCHA is not a corruption of OCHE, but is because there was white sand there?

- If there was white sand there, it was OCHE who cleared it and opened it before the white sand was found there.

10 Q. You know EZIKE NWABISI who gave evidence in 1935 case?

- Yes. He is dead. - was older than I. Should have known more about land than I.

(Balonwu: I have just been reminded that it was EZIKE who gave the evidence about the sand, etc., not Okoye. Witness is so informed).

XX (Ctd.) - I know OBADIKE NAGBO, witness in 1935 case. (page 188). - is alive now. - not older than I.

20 Q. He said in 1935 that he was 60?

- We are the same age. I said yesterday Company built small zinc house and left after 3 years.

Q. OBADIKE NAGBO in 1935 case said they never used the land, only cleared to build on it, then left to plot given them by IDIGO; do you agree?

- What I told you is true, what OBADIKE said was not. - he is from UMUNCHEZI. I was there in 1935 when he was chosen to give this evidence.

30 Q. You know R.C.M. beach granted by IDIGO at OTUOCHA?

- No, he didn't give them a beach; I remember the small school I referred to. It is known as ST. RAPHAEL and is named after IDIGO.

(Q. was, and is repeated: did IDIGO grant the land to R.C.M.?).

- (answer repeated).

Q. (repeated)

- There is nowhere on OTUOCHA land where Revd. Fathers live.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross-Examination - continued.

Exhibit 08(P)

In the Supreme Court

Q. (repeated)
- Yes, that was what I said yesterday, he lived on our land and behaved as if he owned it.

Plaintiffs' Evidence

Q. About 40 years ago?
- It is not 40 years since he settled there.
- about 30 years ago. R.C.M. have no beach at OTUOCHA.

No.12

I. Nwabuisi.
Cross-Examination - continued.

Q. In 1935 OBADIKE NAGBO, asked (page 190, line 24) did he remember a beach was granted to Mission, said yes, it was on OTUOCHA, and not on the land in dispute in that case?
- The Revd. Fathers have no beach at OTUOCHA.

10

Exhibit 08(P)

Q. (repeated: OBADIKE's evidence read)?
- (answer repeated) (adds) and their own beach is still in existence, at OTU ABOKIE.

Q. Do you agree with OBADIKE when he said UMULERI knew AGULERI had given R.C.M. a beach in 1894 on land AGULERI got from UMULERI?
- No beach was given to R.C.M. on UMULERI land.

Exhibit C(P)

Counsel puts further evidence of OBADIKE to witness.
- I don't agree that Fathers have a beach between NKPUN OFIA and AKKOR. I would be about 5 years old when 1898 agreement between us and Royal Company was made.

20

COURT: 9 years, surely?
- I know about the agreement at the time.

Q. Are you prepared to say AGULERI knew of the grant?
- They wouldn't know; when they made their own grant we did not discuss it with them; we made the grant because the land was ours.

30

Q. In 1894, when IDIGO made grant to R.C.M., was he there on the land in his own right or put there by you?
- It isn't up to 40 years ago that he came to OTUOCHA.

Q. (repeated)?
- (answer repeated). I have heard of OSHODI; he was from UMUNCHEZI; otherwise OJODI. He came out from NCHEZI's children.

40

Q. (Ex 08(P) page 191, line 16 OBADUKE NAGBO's evidence). He said ERI had only one son, then was asked what name, and said 3 sons, IKENGA, EZE, and IPITE UMULERI; then asked weren't these sons of UMULERI son of OSODI, he said ERI was son of OSODI?

- I will explain it; OFOAKU was the name, but the title name was OSODI. I don't know ERI's title name. OSODI is not the title of ERI.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross-Examination - continued.

Exhibit 08(P)
Exhibit 011(P)

10 Q. (Ex. 011(P) page 195, line 15 evidence of AKPE). In 1935 case didn't AKPE say OSODI was title of ERI?

- Yes, if it was OFOAKU's title name it would be his son ERI's.

Q. NRI is one of the sons of ERI?

- No; we are not related to NRI.

Q. ENUAGU NRI was a descendant of NRI?

- We have no ENUAGU ERI in UMUERI, but we have ENUAGU MGBEDE.

20 Q. You said the land you gave Royal Niger Company did not touch the AKKOR?

- We gave them land and not the river.

Q. Did the land touch the river?

- Up to the river bank, but we didn't give the water.

Q. You gave AGULERI their present land on same terms as you gave them OTUOCHA, or on what terms?

30 - The place we gave them to live on is their own now, and we are not asking them to quit; in OTUOCHA we only gave land to the Niger Company and UMUOBA people and Chief IDIGO and the C.M.S.

Q. You remember case 6/1933 before Resident O'Connor?

- Yes. (Parties and claim described and admitted).

Exhibit M(P)

Q. EZIKE NWABISI gave evidence for you? (Soetan: This is in Ex.M; case was 2/1933 when it started, then renumbered 6/1933. p.5. of Ex.M.)

Exhibit M6(P)

40 Q. Was it only IDIGO you permitted to settle?

- He alone; he later brought his people. They came unknown to us; that's why I say he behaved as if he was the owner. At no time we permitted his people to settle.

(A)

In the Supreme
Court

Plaintiffs'
Evidence

No.12

I. Nwabuisi.

Cross-
Examination -
continued.

Q. Didn't EZIKE NWABISI say you let IDIGO's people settle?

- We were not driving them away. What he said was true; IDIGO is the same as his people.

COURT: So they were included in the permission you gave him, and by bringing them he was not behaving like an owner?

- I have not said in what way he behaved like an owner.

(reminded of his answer above (A))

- I said so, but when EZIKE's evidence was read I said he was right.

10

XXctd: (reminded of his evidence about why IDIGO was given the land free).

- he paid no rents.

Q. Didn't EZIKE say he paid rents yearly, in 1933?

- He wasn't paying rents.

Q. (EZIKE's evidence read)

- He gave tobacco, cola, palm wine when he came; perhaps EZIKE was trying to explain he was not paying rent; if IDIGO had been paying rent we'd not have taken the action. EZIKE was a stammerer, and perhaps he was not understood. He was my senior, and my full brother. Not true that AGULERI allowed us to settle and build a farming shed on ANAMBARA. Nor that we murdered an ANAM person and had to fly from our place to OTUOCHA.

20

(Balonwu: I withdraw that question).

XXctd: Q. The six immediate sons of ERI were AGULU, NRI, IGBARIAM, NSUGBE, NTEJE, AMANUKE?

- Not ERI our father.

30

Q. That NRI was father of OSODI?

- OSODI is a title man.

Q. RIAMU OSODI?

- A story.

Q. Who married IGWEDO, and begat UMULERI?

- No.

Q. Who then begat IKENGA, EZI, and IFITE?

- IFITE is a title-name. AGULERI is not as son of

ERI, but as living on ERI land.

Q. So UMULERI means the Umus who settled on ERI land?

- (No answer; not pressed). I have heard of AGULU EZECHUKU. - and AGULU UZOR IGBO.

Q. AGULERI so named to distinguish him from these?

- AGULU that went to EZECHUKU are called AGULU EZECHUKUKU and those who went to UZOR IGBO are AGULU UZOR IGBO.

10

Q. UMULERI means Umu, sons, l means distant ERI, that is, not immediate sons of ERI?

- No.

Q. There is only one place with each of the names NRI, IGBARIAM, NSUGBE, NTEJE, AMANUKE?

- We are not related. Yes.

Q. So they don't need the suffix? - ERI?

(COURT: an inference).

Q. UMUOBA came and met you on the creek in the ferry shed?

20

- No.

Q. You took them to AGULERI, introduced them?

- No.

Q. Advised them to pay AGULERI whatever they asked for permission to settle?

- No.

Q. They gave AGULERI £30, representing 7 cows?

- No.

Q. Gave you only 1 cow?

30

- Yes, we used it in sacrifice. Royal Niger Company were our first tenants. I knew ONOWU NZEKWESI of UMUNCHEZE who lived about 30 years ago.

- contemporary of witness OKOYE of 1935 case. I knew CHIBORGU of UMUOBA ANAM. - contemporary of the other two.

Q. In 1919 OKOYE and CHIBORGU were members of AGULERI N.C.

- Yes. ONOWU NZEKWESI is dead. So is CHIBORGU.

In the Supreme Court

Plaintiffs' Evidence

No.12

I. Nwabuisi.

Cross- Examination - continued.

In the Supreme Court

Q. When U.A.C. asked for land in 1922, D.O. made enquiries about ownership of OTUOCHA?
- I don't know.

Plaintiffs' Evidence

Q. OKOYE, ONOWU, and CHIBORGU swore affidavit that it belonged to AGULERI?
- It didn't happen.

No.12

I. Nwabuisi. Cross-Examination - continued.

Q. Six in all swore, two from your people, OKOYE and ONOWU?
- If they did, they did not know what they were swearing.

10

Exhibit R(D)

Q. When UMUOBA came, AGULERI performed NKPOBANI ceremony?
- No.

Re-Examination.

Re-Examined

The OKOYE who in the 1935 case said OTUOCHA was ours is the same person as the member of AGULERI court who made the 1922 affidavit. NKPOBANI ceremony is what landlords perform for tenants. That was what we did for UMUOBA with one cow. NRI and ERI are not the same. NRI is near AWKA. We are not related to NRI. AMUNUKE is near AWKA, ACHALLA side. Not near us, nor is NRI. UMU LE ERI has no different meaning from UMULERI, it depends on how one has one's tongue when pronouncing the word "UMU" means children UMULERI means children of ERI. St. RAPHAEL's school was built between 10 and 20 years ago. MGBAGO is the name of a land, not a person; in ADAGBE. Not a son of ERI but grandson. They came out from ADAGBE, who came from UMUNCHEZE. It is a small quarter in ADAGBE.

20

30

No.13

No. 13

H.O. Nweji. Examination.

EVIDENCE OF H. O. NWEJI

Plaintiffs' 5th Witness: Male. Sworn Bible. States English

I am HEZEKIAH OKONGWU NWEJI, Archdeacon, C.M.S. ONITSHA, retired.

I know OTUOCHA land. C.M.S. has a station at IKENGA UMULERI, on OTUOCHA land. UMULERI gave C.M.S. that land, it must be UMULERI because when I

came I saw the Church there. That was near the waterside, near the market, near chief MEBO's house. Church was removed from there. Umuleri gave permission. IKENGA UMULERI, same as UMUNCHEZI UMULERI, to build on new site. That was I think between 1925 and 1926, I am not sure. Church is on new site till today, I built it; and a station, rest house, school are there.

In the Supreme
Court

Plaintiffs'
Evidence

No.13

H.O. Nweji.

Examination -
continued.

Cross-Examined

10 (Balonwu): MEBO is from MMIATA ANAM. Never heard site of old Church was given to C.M.S. by people of ANAM, by MEBO. UMULERI worshipped there, also MEBO and his family. I wouldn't say MEBO gave the land, because people worshipping there were UMULERI, and we called the place IKENGA UMULERI CHURCH. I met the Church there, so I can't say for certain that UMULERI gave the land.

Cross-
Examination.

No. 14

EVIDENCE OF I. BEGBUM

No.14

I. Begbum.

Examination.

20 Plaintiffs' 6th Witness: Male. Sworn gun. States Ibo

30 I am IGEOELINA BEGBUM, farmer of OGUME. Knew OTUOCHA land. Know juju there called ADAKFA. It belongs to me. I cultivate it. It belongs to UMUNCHEZI. I am the priest of that juju. Since 7 years. Before me, priest was DIBOA. Before him, NZEKWESI. When I became priest DIEBOA had died. He succeeded MOSIE, who succeeded ODILI. That's as far as I know. ODILI to NZEKWESI to DIEBOA to me. ODILI to MOSIE to NZEKWESI to DIEBOA to me. I worshipped this juju once a year. With a goat. Provided by me. With my money. Not secretly, in presence of entire townspeople, on their behalf. Know AGULERI; they have never interfered with my worship. They have nothing to do with the juju.

In the Supreme
Court

Cross-Examined

Plaintiffs'
Evidence

No.14

I. Begbum.

Cross-
Examination.

(Osadebay): My house is about as distance from the juju as this Court from Niger at Onitsha (pointing). I don't know miles. I sacrifice at times fowls, at times goats; and at times my people buy them, not I, and I offer them. This is my 7th year as priest. Have offered sacrifice 7 times. Not 7 goats, not always goats, at times fowl.

Q. How many of each?

- First was goat, second a goat given by my people. 10

Q. There is in fact no regular period for sacrificing, but whenever an oracle bids you sacrifice?

- We worship yearly (adds) now, the time is up, now that the river is getting dry.

Q. You know Udealo?

- No. I am the priest of this juju. UDEALO NWABUNDU is not; I do it alone.

Q. Do you know a small house was built there by the juju priest?

- No, I haven't seen one. 20

Q. The hut is there now, built by UDEALO?

- If he did, I have not seen it.

Q. What is this juju; tree, stone, water?

- It is hilly and it has a stream; the shrine is about 12 feet from the stream.

Q. (repeated)

- A pot, a stone, and, some sticks around it, growing.

Q. Last time you sacrificed was when?

- Last year. When the water is quite dry - I sacrifice. 30

Q. How many months ago?

- 9 months ago.

Q. Who put it there?

- I was so high ($3\frac{1}{2}$ feet) when we were farming there and that juju was there and my people offered sacrifice to it.

Q. Fishing is done there?

- Yes.

Q. AGULERI people fish there now?
- No; our people.

In the Supreme Court

Q. Why is sacrifice offered to this juju; what happens that necessitates it?
- We pray for long life and good health. Whenever I want to offer sacrifice, I build a small hut, very small, for the juju; build it myself. When the new moon comes I will go and build that small hut. There is a small hut there and 3 stones which we use as supporters for the cooking pot when cooking for the juju. I said just now I did not see any other hut but the one I built myself. I fished there last year. Not this year, the water hasn't dried. I didn't see AGULERI fish there this year.

Plaintiffs' Evidence

No.14

I. Begbum.

Cross-Examination - continued.

10

(No Re-Examination)

1.45 p.m. adjourn to 25.xi.53 - 9 a.m.

No. 15

No.15

EVIDENCE OF A. MARA

A. Mara.
Examination.

20 At Onitsha, Wednesday the 25th day of November 1953

9 a.m. : resumed.

For Plaintiff: Soetan, Araka.

For Defendant: Osadebay, Balonwu.

Plaintiffs' 7th Witness: Male. Sworn gun. States Ibo

30

I am AKWUOGO MARA, farmer, of NNEYI, UMULERI. Know OTUOCHA land. Belongs to UMUNCHEZI UMULERI. Our land ends at AKKOR, and UMUNCHEZI have boundary with us there. Know AGULERI people. It is not true that OTUOCHA belongs to them. NNEYI and UMUNCHEZI have the same father, ERI. He had 3 children: NNEYI, UMUNCHEZI, MGBEDE. AGULERI came from AGULU IKPA. I heard that when I grew up. The land where they now are was the land of our father ERI. Before they came UMUNCHEZI had boundary with NANDO. UMUNCHEZI people put them where they are now. NNEYI people are UMUERI. UMUERI are not related to AGULERI.

In the Supreme
Court

Cross-Examined

Plaintiffs'
Evidence

No.15

A. Mara.

Cross-
Examination.

(to Balonwu): There is a section of UMULERI called UMURIAMU; it is in UMUNCHEZI.

Q. It means children of RIAMU?
- They were born of NCHEZI.

Q. (repeated)
- "Umu" means children.

Q. (repeated)
- The children of RIAMU are in UMUNCHEZI and were born by UMUNCHEZI. 10

Q. UMURIAMU took that name to perpetuate name of their ancestor RIAMU OSHODI?
- Our father OFOAKU's title name was OSHODI.

Q. (repeated)
- Yes; but RIAMU was born by NCHEZI.

Q. RIAMU descended from ERI?
- From NCHEZI.

Q. I mean descendant, not son; he can trace his descent from NRI?
- No. I don't know a section of UMULERI called ENUAGU-NRI. 20

Exhibit O11(P)

Q. Do you know AKPE of UMUNCHEZI?
- Yes.

Q. In 1935 in case before Provincial Court about AGUAFOR land he gave evidence and said (page 195, line 20) ENUAGU NRI was a son of ERI; was he lying?
- I don't know about that.

Q. You know IKENYELU of UMUNCHEZI?
- Yes; he's dead a long time. 30

Exhibit M16(P)

Q. In 1933 (Ex.M) in a suit he gave evidence and said that UMUNCHEZI got permission from EZIAGULU present defendant (Ex. M16(P) page 155, line 8) to have a ferry etc. (read)?
- That's a lie; he was a stupid man and took sides indiscriminately until he died.

Q. Why is OTUOCHA so called?
- Originally EKE UMUNCHEZI market; sand there was white, and so it was called OTUOCHA.

Q. If somebody said it was so called after one OCHE, would he be telling the truth?
- OCHE was the owner of that Otu.

In the Supreme Court

Q. You know UMULERI Clan Court?
- In old times ANAM, NSUGBE, NTEJE, ONITSHA, KANDO, OKUSU all had Court in one place.

Plaintiffs' Evidence

Q. (repeated)
- I am illiterate.

No.15

A. Mara.

10 Q. UMUERI Native Court?
- It is IGWEDO Court.

Cross-Examination - continued.

Q. AGULERI, NTEJE, and IGBARIAM go to UMUERI N.C.?
- If so, I don't know; I've said where we hold our Court.

BY COURT: Q. NNEYI don't go to same Court as UMUNCHEZI ?
- Yes, to IGWEDO.

XXctd: Q. What towns go to UMUIGWEDO N.C.?
- UMUERI, OGBUNIKE, OKOSU, NANDO.

20 Q. You, AGULERI, IGBARIAM, NSJGBE, NTEJE, AMANUKE, and NRI are all sons of ERI?
- A lie.

Q. You all come from IGALA?
- No.

COURT: There is no UMUERI N.C. Gazetted now.

XXctd: Q. There was an UMUERI N.C. 1933-38?
- I have said ONITSHA and other towns had one court.

(No Re-Examination)

No. 16

No.16

30 EVIDENCE OF N. NWEBINE

N. Nwebine. Examination.

Plaintiffs' 8th Witness: Male. Sworn gun. States Ibo

I am NWABIA NWEBINE farmer, of NANDO.
Know OTUOCHA land. Belongs to UMUNCHEZI.

In the Supreme
Court

Plaintiffs'
Evidence

No.16

N. Nwebine.

Examination -
continued.

Cross-
Examination.

Know AGULERI people. OTUOCHA, does not belong to them but to UMUERI. AGULERI came from AGULU IKPA. That is near ODEKE, over the ANAMBRA. Before they came UMUNCHEZI had boundary with us, NANDO. They were shown their present land by UMUNCHEZI.

Cross-Examined

(to Osadebay) Q. Ever heard of woman IGWEDO?

- Yes. She was our mother. Her children were OGBUNIKE, OKOSU, UMUERI, NANDO.

Q. Who was father of UMULERI?

- OFOAKU.

10

Q. Any other name?

- OFOAKU and UDOJI had a boundary.

Q. (repeated)

- I did not know him; he hadn't any other name.

Q. How did you know he was father of UMUERI?

- Because he had a boundary with our father.

Q. Who was your father?

- NANDO UDOJI.

Q. Who was father of other children of IGWEDO?

- I wouldn't know because our mother married him before our father.

20

Q. Because OBUNIKE has no land dispute, you don't know their father?

- I know UMUERI's because they have a boundary.

Q. Who else has NANDO boundary with?

- IGBARIAM.

Q. Their father?

- We have a boundary at EZUKUN with IGBARIAM.

Q. (Repeated)

- I do not know.

30

Q. Because OBUNIKE has no land dispute, you don't know their father?
- I wouldn't mention a name I don't know. In NANDO we have 3 sections; IKENGA NANDO is closest to IGBARIAM; an IKENGA NANDO man could say IGBARIAM's father's name.

Q. IGWEDO had children by 4 different men?
- Yes.

10 Q. Father of OKOSU?
- In olden times when women used to go from one husband to another you'd be at loggerheads with the man who took your wife.

Q. (repeated)
- I don't know.

Re-Examined

I am not IKENGA but IFITE NANDO. Not of same mother with IGBARIAM. IFITE NANDO are also known as NKEM.

No. 17

EVIDENCE OF O. NWADEGBU

20

Plaintiffs' 9th Witness: Male. Sworn gun. States Ibo

I am OKAFOR NWADEGBU, farmer of UMUEZE ANAM.

30

Know OTUOCHA land. UMUERI own it. UMUNCHEZI section. It has ANAMBRA as a boundary with our land. Know AGULERI people. They don't own OTUOCHA. They came from AGULU IKPA. They lived with ODEKE. The place where they are now settled is the UMULERI land that has brought us to this Court. Some of them live in OTUOCHA. Others live further in. Before they came, the place where they now live was owned by UMUERI, UMUNCHEZI section. Before AGULERI came, UMUNCHEZI had a boundary inland with I don't know whom, I don't know the inland, it's Ibo, if you ask me about the waterside I'll tell you something. I know UMUOBA ANAM people. They live in OTUOCHA. We were together with them at MANYI,

In the Supreme Court

Plaintiffs' Evidence

No.16

N. Nwebine.

Cross-Examination - continued.

Re-Examination.

No.17

O. Nwadegbu. Examination.

In the Supreme
Court

Plaintiffs'
Evidence

No.17

O. Nwadegbu.

Examination -
continued.

Cross-
Examination.

and when we fought with them they approached UMUERI for land on which to live, and the UMULERI gave them OTUOCHA - the UMUNCHEZI section did.

Cross-Examined

(to Balonwu) I know ONYAKA of UMUEZI ANAM. He is older than I, but we are of the same standing now.

Q. You know in 1933 UMUNCHEZI and EZIAGULU had case over OTUOCHA?

- I don't know, I wasn't in the case.

Q. You know UMULERI and AGULERI had case about OTUOCHA before?

10

- I've heard, and that's why I've come to this Court.

Q. (repeated)

- I heard there was a case before.

Q. And that your ONYAKA gave evidence?

- I didn't know. He is dead.

Q. He was spokesman for all UMUEZE ANAM?

- No.

Q. (pressed)

- I've said No.

20

Q. He was a titled man?

- Yes.

Q. A respectable man in his community?

- No.

Q. His father was Eze of UMUEZI ANAM, namely IGWUATU?

- He was Eze (King).

Q. 20 years ago you were not a titled man?

- I was; I made my title a long time ago.

Q. (Ex.M page 153, 1.30 ONYEKA's evidence)
"Elder of UMUEZE ANAM.... consent to this arrange-
ment". Are AMUKWA same as UMUNCHEZI?
- AMUKWA is in UMUNCHEZI.

In the Supreme
Court

Plaintiffs'
Evidence

No. 17

O. Nwadegbu.

Cross-
Examination -
continued.

Exhibit M13(P)

Q. Would you agree that ONYEKA was one of
those who crossed ANAMBRA in 1933 and met AMUKWA
watching the land?
- We have a boundary with UMUERI and go to their
market.

10 Q. After you fought with UMUOBA you wanted
them to leave?
- We asked them to leave. They divided into two,
and one part came to UMULERI and begged them for
land; other part remained.

Q. Did UMUEZE ANAM cross ANAMBRA to ask wat-
chers of OTUOCHA land to allow UMUOBA to settle?
- No, we did not go over to beg anybody, we stayed
on ANAM land.

20 Q. You know nothing about worship of OTUOCHA?
- You've asked me and I told you it belongs to
UMUERI; we have a common market with them. We
did not send ONYAKA, we held no meeting; if he went
on his own we are not responsible. I am an impor-
tant person in our community. I am not the son of
a king, my father's turn to be king did not come
before he died.

Re-Examined

Re-
Examination.

Umu - Eze- ANAM means "Children of the Head of
ANAM"

30 (Interpreter: I interpret "King" by "Eze").

No. 18

No.18

EVIDENCE OF N. ANAKWE

N. Anakwe.
Examination.

Plaintiffs' 10th Witness: Male. Sworn gun. States
Ibo

I am NNALU ANAKWE, farmer, ODEKE.

Know AGULU-IKPA people. Our neighbours we
have common boundary. Related to us. I am of

In the Supreme
Court

Plaintiffs'
Evidence

No.18

N. Anakwe.

Examination -
continued.

ODEKE AGULU IKPA is in our place Know AGULERI people. They are AGULU IKPA people. Know Chief IDIGO, related to me. (Witness is about 40; heading up to 50, nervous). IDIGO had dispute with us over a stream in our area. D.Os IDAH and ONITSHA looked into dispute. ODEKE and UKPA are on right side of ANAMBRA. AGULERI now live in another place, complained about flood and left for their present place. IDIGO came back for fishing dispute with us, and still has claims on our side.

10

Cross-
Examination.

Cross-Examined

(Osadebay). We have common boundary with AGULERI OTU.

Q. The same people as AGULERI on this side (1. of ANAMBRA)?
- I don't know.

Q. Know any other town with AGULU in front of name?
- We are ODEKE AGULU; IDIGO is AGULU IKPA.

Q. Heard of AGULU UZOR IGBO?
- I know that IDIGO is from AGULU UZORIGBO.

20

Q. So he's not from AGULU OTU?
- From AGULU IKPA, and we have boundary with them.

Q. Heard of AGULU NKATAKU?
- No.

Q. Any dispute over stream with AGULERI OTU living near you?
- With IDIGO, no one else.

Q. So all AGULUS don't come from ODEKE?
- I know that AGULU ODEKE and AGULU are relations.

30

Q. Would you say an AGULERI NKATAKU man came from AGULU ODEKE?
- No.

Q. You have only come here because of fishing dispute?
- No.

Q. You are related, your people, to UMULERI?
- Yes (laughter).

In the Supreme Court

To COURT: I didn't mean to say IDIGO was from AGULU UZOR IGBO, he's from AGULU IKPA. I don't know AGULU UZOR IGBO.

Plaintiff's Evidence

No.18

N. Anakwe.

Cross-Examination - continued.

Re-Examined

Re-Examination

10

(Araka): When I say were related to UMULERI, I mean we are related to AGULU IKPA and IDIGO, and IDIGO has his own finishing pond and was trying to take mine from me. I don't know if AGULUERI are related to UMULERI. We have no relationship with UMULERI.

TO COURT: Q. Which do you mean?
- I don't understand Ibo well. I thought I was being asked were we related to AGULU IKPA.

No. 19

Defendants' Evidence

DEFENDANTS' COUNSEL'S OPENING ADDRESS

No.19

20

Osadebay opens. Tradition: both parties descended from ERI, from ACHADO, the rulers of IGALA. Had 6 sons, AGULU, NRI, IGBARIAM, NSUGBE, NTEJE, AMANUKE. Plaintiffs from NRI. Seat of ancestor is where AGULERI live; plaintiffs are next to them.

Defendants' Counsel's Opening Address.

Acts of ownership. Division of land by ERI.

1891 ferry beach given to Plaintiffs by Defendants. Many Plaintiff ferry operators lived there.

1891 Defendants gave dwelling place to R.C.M. at MBITO in OTUOCHA.

1894 beach given to R.C.M. for wharf; they built stores there and kept watchman.

In the Supreme Court

1898 January renewed agreement with R.C.M. (June is date of Plaintiff's sale to Royal Niger Company).

Defendants' Evidence

1906 Defendants gave land to British Nigeria Company.

No.19

Defendants' Counsel's Opening Address - continued.

1910 August UMUOBA were brought by Plaintiffs to Defendants for land and given it on payment value of 7 cows, £30.

1922 Hausa and Nupe and other foreigners settled, on land given by Defendants.

10

1924 Niger Company Limited got land from Defendants.

1926 John Holt also.

1931 " " again, another site.

1935 " " 1926 agreement renewed.

1931 Franch Company also.

Exhibit R(D)

Chiefs OKOYA and ONOWU, of Plaintiffs, made affidavit as Court members in 1924 in D.O's inquiry concerning Niger Company transaction, saying land was Defendants'.

20

No.20

No. 20

R.A. Idigo. Examination.

EVIDENCE OF R. A. IDIGO

Defendants' 1st Witness: Male. Sworn Bible. States Ibo

I am RAPHAEL AKOBA IDIGO, Eze Aguleri, living in AGULERI. 1st Defendant herein, 73 years old.

2nd Defendant is dead. I represent people of EZEAGULU. 2nd Defendant was not alive at time of action brought; he died 16 years ago. Plaintiffs are related to us. On father's side. Our ancestor is ERI. He had six sons. AGULU, NRI, IGBARIAM, NSUGBE, NTEJE, AMONUKE.

30

We are descended from AGULU. Plaintiffs from

NRI. AGULU was the first son. NRI was the second. NRI's son was OSODI; his name was RIAMU, his title-name OSODI; was popularly known as OSODI. OSODI's son was UMULERI. The mother was IGWEDO. RIAMU married IGWEDO and descendants were UMULERI, not UMUERI. IKENGA was OSODI's son. So was EZI, otherwise NNEYI. So was IFITE. IKENGA, NNEYI, and IFITE are known collectively as UMULERI. When ERI died he had a land. His children divided it. AGULU lived where their father had lived. NSUGBE lived on his own, NTEJE on his own, IGBARIAM on his own, UMUOSODI, otherwise UMULERI, on their own. AGULERI lived in the Okpuno, the head place where ERI lived, the place is still there.

In the Supreme
Court

Defendants'
Evidence

No. 20

R.A. Idigo.

Examination -
continued.

Land in dispute, OTUOCHA, I know. Belongs to the EZIAGULU. They are a quarter in AGULERI. Not true we are not descended from ERI and called AGULERI because we live on ERI land; we live on our father's land. "Umu" is Ibo - I know the meaning. "Umu - le - ERI" means "Children - remote - from their forefathers ERI". That is, they are not direct sons of ERI. In our Okpuno, IFITE and IGBOEZUNU live where ERI was, in that area, and we live next to them and up towards the river, we, the EZI people. IGBOEZUNU are also called IKENGA.

OTUOCHA is bounded from AKOR to NGENE EMU, that is EMU stream. From ANAMBRA to UGUNWOSAKU. It was part of our share on the division of AGULU's land by his children. From UMULERI to ANAMBRA we live as follows: IFITE AGULERI land then EZIAGULU land, then ANAMBRA. We live in OTUOCHA and farm it. We give it out to people. Our father gave it to R.C. Mission. I can read and write a bit. I know dates. I was alive when land given to R.C.M., in 1891. Our father told us they gave land to AMUKWA people of UMUNCHEZI to keep their canoes when going to ANAM. This was at same period as gift to R.C.M. We gave land to R.C.M. in 1891, where they lived, and OTU where they keep their canoes in 1894. Then British Nigeria Company came as traders and we gave them land at OTUOCHA. Then AMUKWA family brought UMUOBA people to me in July or August 1910. OKAFOR EGBUCHE and ONYEMONYI brought them. All the heads in AMUKWA and EZI-AGULU sat together and discussed it.

Osadebay: "All the heads" is a misinterpretation.

In the Supreme
Court

Defendants'
Evidence

No.20

R.A. Idigo.

Examination -
continued.

Xctd: "Niisi Eziagulu" - The headmen in EZIAGULU and ONYEMONI and OKAFOR were there, and UMUCBA people. We told them ONYEMONI and OKAFOR, that we'd given them land and if we gave it to somebody else they'd have to quit. They said the UMUCBA would give them kola. We said that was not our concern. We told UMUCBA the kola they'd give to us, they gave it, we gave them the land. Kola was 7 cows, but they paid £30 in lieu. We gave land to Hausa, Nupe, and Yoruba people and other strangers. We gave land to Niger Company in 1924; and to John Holts in 1926.

10

Our dispute with Plaintiff about this land began in 1932 when they were driven away by ANAM people and 1933 they sued us. When we gave land to Niger Company, D.O. held an inquiry, Mr. Gardner from Onitsha, made inquiries about OTUOCHA, summoned UMULERI and UMUCBA.

(Witness is saying UMUERI, not UMULERI, as he has been doing before).

20

Exhibit R(D)

Xctd: Also NTEJE. District Officer asked us was the land given to Company in dispute, and was told it belonged to EZIAGULU. D.O. said we should swear an oath in writing in case there was any trouble. This was done. D.O. himself made it. People who swore to it were MOBA of IKENGA AGULERI; CHINWOBA of IFITE AGULERI; NNELI of AGULERI OTU; OKOYA of UMUNCHEZI UMULERI; ONUWO of UMUNCHEZI UMULERI; PAUL CHIBORGU of UMUORBA ANAM.

Exhibit R(D)

Osadebay tenders certified copy of affidavit.

30

Soetan: Objects: not in prescribed form as affidavit; doesn't comply with Illiterates Protection Ordinance; it wasn't put to OKOYA in 1935 case and he's dead now; and it's not shown he is Okoya from UMUNCHEZI; ONUWO is not identified either; and anyhow its only a title.

Xctd: In 1922 AGULERI N.C. was constituted from among following people - AGULERI, UMULERI, NSUGBE, NTEJE, IGBARIAM, NANDO. In 1919 I was the President of that Court, and by turns up to 1933, when they introduced what they called Clan Courts. When Clan Courts were introduced AGULERI, NTEJE, IGBARIAM, formed UMUERI Court. UMULERI went to IGWEDO Court, with OGBUNIKE, OKOSU, and NANDO, NSUGBE, UMUNYA and NKWELLE went to EDOMANI Court.

40

When I was President at AGULERI N.C. I remember the members. Okoye of UMUNCHEZI was one; PAUL CHIBORGU; it's a long time, I can't remember.

In the Supreme Court

I got this paper from D.O. when I was President about members their clerk.

Defendants' Evidence

(Tendered, no objection, received Exhibit Q).

No.20

The OKOYE of UMULERI in Exhibit Q is the same man who swore the Affidavit; and the CHIBORGU is the same.

R.A. Idigo. Examination - continued.

10 Osadebay tenders certified copy affidavit again.

Exhibit Q(P)
Exhibit R(D)

Soetan objects: In 1933 case Plaintiffs complained of this 1924 transaction and this affidavit wasn't brought in; nor was OKOYA cross-examined in 1935 case, and is now dead.

Also, Illiterates Protection Ordinance not complied with.

20 COURT: There appears to be two questions (a) was the signatory OKOYA the man whom witness says he was; as to that, the fact that the affidavit has not been referred to in earlier cases goes to the weight of witness' evidence now, but doesn't displace it; (b), did OKOYA know what he was putting his mark to; and I consider that as the paper was attested by the D.O., OKOYA did know. Received, Exhibit R.

Exhibit R(D)

30 Xctd: OKOYA and ONOWU were the heads of all the UMULERI people. I was in Court during 1935 case. OKOYA gave evidence for UMUERI. He was in Native Court from 1908 to 1933. He died a long time ago, not over 10 years.

Exhibit 06(P)

In 1933 I heard Plaintiffs made agreement with Royal Niger Company over this land. I didn't know of it at time when it was made. I do not know why it was made without my knowledge. We gave them a portion at OTU called ONU OTU where they keep watch, that is, AMUKWA.

TO COURT: Keep watch over canoes of ferry.

Xctd: It is not true that Plaintiffs gave us the land on which we live now. Niger Company did not use the land in any way, didn't even clear it; built

In the Supreme Court

Defendants' Evidence

No.20

R.A. Idigo.

Examination - continued.

Exhibit S(P)

Exhibit M16(P)

Exhibit T(P).

Cross-Examination.

no house. UMULERI built ferry shed and watched over canoes, did nothing else. Built where they stayed and kept watch, didn't live there. Many people came and lived there from all parts round about.

After the case Plaintiffs built on our land without our consent and I complained to D.O. He put Policemen in rest house to see that they did not build. That was after 1933 case. Written protests. These with D.O's replies in ink on them (produced and tendered; no objection; received, Exhibit S.) Government Rest House is in OTUOCHA. I showed the land to A.D.O. Swaine, about 1929.

In case 6/1933 I remember IKENIEZU who gave evidence; a man of UMUNCHEZI. Witness for us. Now dead. ADAKPA juju - I don't know witness IGBOELINA BEGBUM. He is not the priest of that juju. OGBOEFI UDEALO is. He is an old man at EZIAGULU. He lived by ADAKPA but when he grew old returned to the village and paid visits to the juju.

From about 1949 to now we have been living and farming on OTUOCHA. The Niger Company and the French Company pay rent to us. John Holts' agreement ended in 1945. Before that, they paid us rent. When Holts stopped paying rent we protested to Government. D.O. told us that UMUERI were complaining, and he asked us to sign a paper that Government would collect rent and pay it to us. We wrote to D.O. about John Holts and he replied. This is the letter (tendered, no objection, read Exhibit T). Plaintiffs knew about the grants we made to different people. Did nothing when we gave land to R.C.M.

Land is called OTUOCHA because the sand is white; and there is a hill there which is white from a distance. I called OTUOCHA. ONCHE was not corrupted into OCHA. No UMULERI man was OCHE that I knew at OTU. If there was, he was in UMUL-ERI village, not OTU.

Cross-Examined

(Soetan) As to 1891 grant to R.C.M. it was by our father IDIGO, I have no agreement. If there was one I did not see it. IDIGO my grandfather it was, not my father.

10

20

30

40

Q. Your grandfather never lived on OTUOCHA?
 - He did - in MBITO.

Q. MBITO is not in OTUOCHA?
 - It is.

Q. Since when?
 - Always.

Q. Never said to be part of OTUOCHA in previous cases, though you were said to be living there?
 10 - OKAFOR and others who made the case against us showed O'Connor round and he made a sketch (page 141, line 30) of the area and MBITO was in it.

Q. In 1933 you said (Ex. M. page 151, line 38) "At that time I was living at MBITO, etc.", that is when UMUOBA came?
 - In OTUOCHA there is a place called ONU OTU and another called OFFIA NWABOR, and a place called EMU, another OFFIA ARURU, another called MBITO, another AMOPA; all are in OTUOCHA. The UMUOBA
 20 asked for ONU OTU. The name OTUOCHA extends over them all. Someone in MBITO will say he's going to OTUOCHA if he's going to where the white sand is. UMUERI people in OTUOCHA are called NDI AKKOR.

Q. In 1933 OTUOCHA was the land from AKKOR to NKPUNOFIA?
 - Yes.

Q. And MBITO is 2 miles inland from NKPUNOFIA?
 - No. 1 mile.

Q. In 1933 you didn't claim ADAKPA juju?
 30 - We didn't agree UMUERI owned it.

Q. You didn't say it was your own?
 - We said it was ours. We said it before Captain O'Connor.

Q. In 1933 case you enumerated your juju but never mentioned ADAKPA?
 - It is a family juju, belongs to UDEALU and not to the whole of EZIAGULU. He is in EZIAGULU. I enumerated the town's jujus.

Q. When UMUERI claimed it as their town juju, why didn't you say it was your UDEALU's?
 40 - It is a family juju.

In the Supreme
 Court

Defendants'
 Evidence

No.20

R.A. Idigo.

Cross-
 Examination -
 continued.

Exhibit M3(P)

In the Supreme
Court

Defendants'
Evidence

No.20

R.A. Idigo.

Cross-
Examination -
continued.

Q. (repeated)

- I simply said they were not the owners. I didn't try to prove they were not the owners by showing who did own it, because we showed the fathers that area.

Q. In 1933 UMUERI said you came to beg for land and were not one of them; why didn't you say, as now, that you are the same Descendants of ERI?

- If they'd referred to relationship in that case, I'd have done so; but they only referred to land.

10

Q. You cross-examined the Plaintiff and he told you you were strangers whom they'd given the land to farm; why didn't you mention ERI then?

- If you look at my evidence in that case you'll see what I said. In that case they simply called us strangers; in this case they traced our origin, and so now I do so too.

Exhibit A(P).

Q. Is AGADIWANYI juju (Ex.A) on OTUOCHA?

- When they sued us for OTUOCHA they showed it to Captain O'Connor I don't know if it is, they would know. 1935 case was really about OTUOCHA, but they described it as AGUAKOR.

20

Q. In 1933 UMULERI said AGUBELONWU of UMUNCHEZI was first occupier of OTUOCHA?

- OKAFOR said it, a lie.

Q. In cross-examination you didn't deny it?

- I never said he spoke the truth.

Q. You've heard in this case OCHE was son of AGUBELONWU?

- I don't know. Royal Niger Company dealt with the elders. IDIGO my grandfather was Head Chief in 1891 (Ex.D.). ANOGU was a Chief in EZIAGULU. And MOLOKU, an elder. OKWALU I don't know. IFEACHUR I don't know; OBADIAGWU I don't know; there were many of that name. OYAKORA I didn't know. NCHO and IYADI I don't know, not without surnames. It was made by the elders and they told us of it. This was about AGULERI IBO land (Elonia Ibo). MBITO is not near there, nearer OTUOCHA.

30

Exhibit D(P)

2 p.m. Adjourn to 26.xi.53.

40

At Onitsha, Thursday the 26th day of November, 1953

In the Supreme
Court

Resumed.

For Plaintiffs - Soetan, Araka.

Defendants'
Evidence

For Defendants - Osadebay, Balonwu.

No.20

Raphael Akoba Idigo, Cross-Examination continued:

R.A. Idigo.

Land granted by my grandfather to Royal Niger Company in 1891 is in EZIAGULU. AGULERI have 3 quarters. EZIAGULU AGULERI, IFITE AGULUERI, IKENGA AGULERI. IGBOEZULU is IKENGA AGULERI.

Cross-
Examination -
continued.

10 Q. Sometimes called GBOEZUNU?
- By somebody speaking fast (sounds like GBWAYZOOMOO).
IFITE waterside is not next to EZIAGULU Beach. The
next land upstream from EZIAGULU is ENUGU, not
IFITE. ENUGU is not part of EZIAGULU; it is EZI.
EZI is different from EZIAGULU: ENUGU and EZIAGULU
are both called EZI. IGBOEZUNU beach is next to
IFITE beach. When this case was first heard I
knew IGBOEZUNU Chiefs granted waterfront to Royal
Niger Company. I see Exhibit F, and the plan;
20 IGBOEZUNU is next to IFITE. I am Eze of all AGUL-
ERI. I know all their land. After EZIAGULU beach
is ENUGU, then IFITE, then IGBOEZUNU.

Exhibit F(P)

30 Q. UMUNCHEZI is downstream from AGULERI?
- I don't know about UMUNCHEZI. This document
(Ex.C) I have seen before. If it's UMUNCHEZI grant
to Royal Niger Company, it's false. I don't know
if NNEYI further down made grant to Royal Niger
Company. I am AGULERI not UMULERI and though I
know about NNEYI land I need not know about the
agreement.

Exhibit C(P)

Q. Not correct your age is 73; it is only 68?
- I am not my own father (fair enough).

Q. In 1935 case you said you were 50?
- I gave my age as 55; I don't know if the judge
wrote it down. I was asked either by the Judge or
my lawyer, and gave my age as 55, before I gave my
evidence.

40 Q. You told me you were 11 or 12 in 1898?
- No - perhaps I answered that, but I do not know.
I said my grandfather was then the Chief. I said
all these things, and they are all true. My father

In the Supreme Court

Defendants' Evidence

No.20

R.A. Idigo.

Cross-Examination - continued.

Exhibit M12(P)
Exhibit O17(P)

Exhibit A(P)

Exhibit B(D)

was then alive.

Q. So if you didn't know about UMUNCHEZI's grant to Royal Niger Company, it was because you were too young to know?
- Yes.

Q. You said (page 150, line 31) in 1935 that OTUOCHA stretched not merely from Akor to NKPUNOFIA, but was the whole of EZIAGULU land?
- I never said so.

Q. Ex. O17(P) page 202, line 16 and page 205, line 30, you said it was all EZIAGULU? (A) 10
- The width is from AKKOR to EMU.

TO COURT: Depth is from ANAMBRA to UGWUNWASAKU. There is a juju there, a hill, a stone, a juju tree, a cotton tree or Akpu; the tree is recent; it is the same place as AKPUN WUNSAKUN on Ex.A. Otu means waterside.

Q. In 1933 UMULERI said MBITO was not in OTUOCHA? 20
- If they said so, I don't know; they took Captain O'Connor and told him these. MBITO was included in what they were disputing in 1933.

TO COURT: It is shown in red ink within OTUOCHA on our Exhibit B.

Xctd: - If they said in 1933 case MBITO was not in dispute, it was a lie. They said it was in their own land. If they said I came from MBITO to ask leave to live in OTUOCHA, they said what they liked. ATUENU or ATUEGBU was not our ancestor. - a member of our family. 30

Q. He's from AGULU IKPA?
- I don't know any place of that name. He came from EZIAGULU; was related to OKECHI. We are related to OLU ODEKE.

Q. ATUENU came from AGULU IKPA, Olu Odeke side to ask for the land where AGULERI now are?
- Only in this Court have we heard of AGULU IKPA; outside, nobody can show where it is; I know no town of that name.

Q. Didn't you hear it in 1935? 40
- Yes, in this Court; but not in 1933.

- AGULU OTU are still living there and have boundary with ODEKE; we left AGULERI IGBO and went over to AGULERI OTU.

TO COURT: There are two AGULERIS, with the ANAMBRA between. On ANAM side is AGULERI OTU, on OTUOCHA side is AGULERI IGBO. AGULERI IGBO was first.

10 XXctd: - OBIDIGWE is my brother. We had dispute with AGULERI, not ODEKE, over Ovo fishing. - with CHIKA of ENUGU. - in 1916.

20 Q. In 1935 case you said your brother OBIDIGWE said (O. page 207, line 27) your great grandfather fled from AGULERI OTU to his present place? Was that what he said?
- If it was, I don't know. We never came and asked UMUNCHEZI for land, and were not refused land by NANDO. - members of my family live near the ANAMBRA. I know no people called AGULU NRI; our name is AGULU, but there are many, and for people to know ERI is our father we are called AGULU ERI.

30 Q. Many AGULUS, distinguished by the names of the places they are?
- Yes. The AGULU AWKA at AWKA. The AGULU NRI at NRI, I don't know. The AGULU ERI on ERI's land. We are not grouped in same Clan Court with UMULERI because they followed the mother-line and not the father-line. Others are grouped together because they are near together. I became Eze 43 years ago. My grandfather died young. About 50 years ago. My uncle, his son, succeeded him, NWARIENI. NWARIENI gave land to R.C.M. in 1903, not in 1904. It was at MBITO. This is the agreement, matter started in 1903, agreement made in 1904 (tendered; no objection, Exhibit U).

40 Q. You agreed you came from IGALA?
- ERI came from IGALA. I don't know his father came from AROCHUKWU. ERI's father was ACHADO of IGALA. The name AGULERI is older than this case. After 1933 case we got costs; so we went on the land again. We surveyed for the appeal in 1933, not after. UMUERI tried to build on the land without our consent, we tried to stop them, Police came. We collected rent. In 1936 we sued OKECHUKWE and others (named) for £5 damages for trespass for unlawfully building. Elders advised us to withdraw, we did. We paid 21 guineas costs. We went on

In the Supreme
Court

Defendants'
Evidence

No.20

R.A. Idigo.

Cross-
Examination -
continued.

Exhibit 017(P)

Exhibit U(D).

In the Supreme Court

taking rents.

Defendants' Evidence

Q. Your grandmother was from UMUNCHEZI?
- I didn't know.

No.20

Q. You don't know your father's mother?
- From UGUME, which is not UMUNCHEZI. It is in IKENGA UMULERI. UMUNCHEZI is IKENGA, UGUME is IKENGA. NCHEZI was not father of UGUME. I don't know who was.

R.A. Idigo.

Cross-Examination - continued.

Q. Your wife is from UMUNCHEZI?
- Yes. Also my brother's wife.

10

Re-Examination.

Re-Examined

I said UMULERI were not in UMUERI Clan Court, but in UMUIGWEDE. I am in UMUERI Clan Court. I have sued there. This is a copy of proceedings I once brought there (objection: sustained; constitution of UMUERI clan court is not denied, but sought to be explained, by cross-examination). AGULERI are not related to AGULU AWKA. I first saw Ex.C in the 1933 case. UGWUNWASAKUN - Ugwu means a hill. Akpun means a cotton tree. The cotton tree stands on a hill.

Exhibit C(P)

20

When AGULERI OTU man takes title he goes to AGULERI IGBO, even now. That is because we have all our jujus in AGULERI IGBO, and the Ani is there. That is the head place and the place from where they came.

BY COURT: AGULU was our father's name, it has no meaning otherwise, not like UMU. In AGULU AWKA I think AWKA was the father of AGULU, but a different AGULU.

30

No.21

No. 21

M.E. Eziagulu. Examination.

EVIDENCE OF M. E. EZIAGULU

Defendants' 2nd Witness: Male. Sworn Bible. States English

I am MATTHEW EJOR EZIAGULU, of IKENGA AGULERI, living at OTUOCHA, trader.

Know parties, OTUOCHA belongs to EZIAGULU quarter of AGULERI. So called because there is white sand near AKOR River, and I believe name was given by Chief IDIGO. AGULERI are distantly related to UMUERI. Common ancestor ERI. ERI had 6 sons, AGULU, NRI, AMANUKE, IGBARIAM, NTEJE, NSUGBE. NRI had children. One was OSODI, I think another name was RIAMU OSODI. UMULERI descended from him. Know people called UMURIAMU. They are UMULERI people. Means children of RIAMU.

In the Supreme Court

Defendants' Evidence

No.21

M.E. Eziagulu.

Examination - continued.

In relation to ANAMBRA, coming from Onitsha you first come through NSUGBE by road and reach UMULERI, then to IFITE AGULERI called UMUNGALAGU, then to EZIAGULU, thence to ANAMBRA where OTUOCHA is; EZIAGULU land stretches to ANAMBRA and OTUOCHA land is in it. UMULERI in OTUOCHA came because first they had a ferry beach from EZIAGULU. When UMUOBA and part of AGULERI came over some UMUERI people came down and lived at OTUOCHA. UMUOBA came and met UMULERI ferry men at beach. UMULERI brought them to EZIAGULU who gave them land. Other strangers on the land are Hausa, Nupe, Yoruba, Igala, Okosu, Awka and many more. Yoruba and Hausa got land from Chief IDIGO to live.

I have heard of UMUERI, UMUIGWEDO, EDMANI and MBATETE Native Courts. UMUERI was comprised of descendants of ERI - NTEJE, AGULERI, and IGBARIAM. UMUIGWEDO of descendants of IGWEDO - UMULERI, OKOSU, NANDO, and I think OGBUNIKE. EDMANI of towns not related: NSUGBE from ERI with NKWELLE, UMUNYA; because they lived near each other. EDMANI means "Peace Maintainers". They wanted to maintain peace though unrelated. MBATETE is AMUNUKE of ERI and 8 others not related to him; MBATETE means "9 towns". UMULERI is shortened to UMU'ERI. UMUERI means descendants of ERI.

Cross-Examined

Cross-Examination.

(Araka) I am about 60 (looks 40-50). After EZIAGULU you come upstream to ENUGU, also a quarter of EZI. IFITE live East of EZIAGULU and ENUGU, along ANAMBRA. Have no boundary with NSUGBE. I know MBITO, where R.C.M. now is. Not quite a mile from OTUOCHA. It is in OTUOCHA. There is bush between. But OTUOCHA is the beach for MBITO. EMU doesn't separate them. There is a hill at MBITO where EMU rises. MBITO means 3 roads meet.

In the Supreme
Court

Defendants'
Evidence

No.21

M.E. Eziagulu.

Cross-
Examination -
continued.

Q. EZIAGULU people came down to the beach after UMOBA?

- The majority of them, but there was a village of them there before UMOBA came, called OBUNAGU, meaning farm dwellers. In EZI we have EZIAGULU and ENUGU, OBUNAGU are not a separate group. They go back to AGULU IGBO for ceremonies and feasts. AGULERI Native Court had AGULERI, NTEJE, IGBARIAM, UMULERI, NANDO, NZAM, NSUGBE. So called because built in AGULERI, not because of relationship. AGULU AWKA in Awka Division are not related to AGULERI. We are AGULERI to distinguish us from other AGULUS. Don't know where AGULU AWKA came from. NRI people at OTUOCHA are from AGULU. AGULU people are descendants of NRI. Never heard of OFOAKU. IGWEDO married RIAMU OSODI. Never heard of AGUBELONWU. Or of OCHE. Know AGULERI OTU.

10

Q. Have boundary with ODEKE?

- Never been there.

20

Q. AGULERI are from ODEKE?

- No, ODEKE from AGULERI. AGULERI OTU is from AGULERI IGBO, not vice versa. AGULERI OTU may be slightly more numerous than AGULERI IGBO, but I'd say equal. If more, not much, according to tak. Okpuno is not at AGULERI OTU, but in AGULERI IGBO where they came for ceremonies and titles.

Q. Great grandfather lived at AGULERI OTU, AGULU namely?

- No. Our first father ERI settled at AGULERI IGBO, not AGULERI OTU, he came from IGALA. AGULERI OTU is not in IGALA. ODEKE is. AGULERI OTU has boundary with ODEKE, the N/S boundary. But they live far off, empty space between them. Know Chief IDIGO's brother IBIDIGWE.

30

Q. He said in 1916 OVO lake was founded by his great grandfather from AGULERI OTU?

- Can't say, I'm not related to him; but he'd be making a great mistake.

Exhibit 018(P)

Q. In 1935 you said (page 211, line 28) you were 45?

40

- I was puzzled; the Judge looked at me and said "about 45" and I said yes. I was hesitating and agreed with what he said. Came to OTUOCHA about 7 years old. Lived in R.C.M. IDIGO was there,

didn't live with him. He was at MBITO then, I believe. I was at MBITO R.C.M. before UMUOBA people came. Then became a clerk in Agricultural Department, then retired. Can't say how long, not up to 20 years, no pension. UMUOBA paid EZIAGULU, no rent, gave kola or cow, I think, don't know, it would be hearsay. I think they said 5. I think they had no cow and changed it into money; I was only a boy. Before Niger Company and John Holt came, a notice was pasted 3 months in Court and the Chiefs had to swear an affidavit before lease granted. I gave evidence in 1935. Didn't mention affidavit because a different case, AGUAKOR land.

10

Q. Whole evidence in that case was about OTU-OCHA, didn't you know?
- Didn't concern me; they asked me about AGUAKOR and I said what I knew. I was at AGULERI on leave in 1922, rainy season. Stayed at the beach, not at MBITO. I saw one notice pasted, can't say when. It wasn't all done in one year; different years for different firms. I know there were notices for Niger Company and John Holt, wasn't at home for French Company. Never heard of action between UMUERI and AGULERI taken before 1920 about the beach.

20

Q. (Ex.M. page)
- I don't know about that. NRI had children, don't know how many, only know of RIAMU OSODI. AGULU was eldest son of ERI, then NRI. Know of no fishing disputes on ODEKE side.

30

Re-Examined

Separate places in OTUOCHA are MBITO, OFIA NWABOR, OFIA ARO, NDIAKOR, ONWUOTU, and ANYUORA. I am not living at MBITO now, but at the beach, at ONUOTU. AGULERI OTU is in ONITSHA Division. OBUNAGU people were from EZIAGULU.

In the Supreme Court

Defendants' Evidence

No.21

M.E. Eziagulu.

Cross-Examination - continued.

Exhibit R(D)
Exhibit 018(P)

Exhibit M(P)

Re-Examination.

In the Supreme
Court

No. 22

EVIDENCE OF O. CHIBORGU

Defendants'
Evidence

Defendants' 3rd Witness: Male. Sworn gun. States Ibo

No. 22

O. Chiborgu.
Examination.

I am OKUNWANNE CHIBORGU, of IFITE AGULERI, farmer. Aged 83 (possible).

Know OTUOCHA. Know parties. OTUOCHA belongs to EZIAGULU. They are AGULERI. Know UMUNCHEZI. They are UMULERI. Know UMUNCHEZI land; they have a boundary with us at UGUNMANITE. That is not a proper name. The boundary is from OGENE APAKA to AKOR. OGENE APAKA is a land. We have a boundary with EZIAGULU. It is UGWUNWUNSAKUN. It is also the boundary between UMUNCHEZI NNEYI. Coming from ONITSHA by road to OTUOCHA you come first to UMUNCHEZI land, then our land, then EZIAGULU. Plaintiffs didn't give EZIAGULU the land they now have.

10

Cross-
Examination.

Cross-Examined

Exhibit M15(P)

(Araka): IFITE AGULERI have land dispute with UMULERI. That was not before I gave evidence in 1933. It was before. That's not why I gave evidence against UMULERI.

20

Q. EZIAGULU gave you land where you farm now?
- All of us are AGULERI.

Q. (repeated)
- We farm our land and they farm theirs, and each may farm the other's.

Exhibit M15(P)

Q. In 1933 you said (page 155, line 3) EZIAGULU had allowed you farm on their land?
- Yes.

30

Q. This is why you are taking sides with them?
- Because we are all AGULERI.

Q. You know IGWEAKU, EGWAKO?
- Yes. Not in IFITE AGULERI. I am not from IGWEAKU. We are UMU NGALA AGU, the ISI ANIS or Heads. CHIBORGU was my father's name.

Q. He was buried at IGWEAKU?
- No.

Q. And your 3 elder brothers?
- Lie.

In the Supreme Court

Q. Heard of grant by IFITE AGULERI to Royal Niger Company?
- Don't know about that.

Defendants' Evidence

Q. (Ex. E) You know OFOCHA?
- No.

No.22

Q. OWEMBE?
- No.

O. Chiborgu
Cross-Examination - continued.

10 Q. IFEJEKA?
- Yes. Dead. Don't know if he gave land to Royal Niger Company. I knew all that happened in 1898. I don't know what happened when Royal Niger Company came to IFITE land. I know ONUOKWU of UMUNGALAGU. An elderly person. Now our Okpala, of UMUNGALAGU family. Don't know MMELI. Know ESIE; his father and mine had same father. IFITE own land to EZU stream. That is not OMERUN creek. EZU runs into ANAMBRA. From that point don't go on to OMERUN; 20 from that point you do go to UMULUN (per Interpreter; that is OMERUN). The creek running to UMULUN is OMERUN Creek or EZU river.

Exhibit E(P)

(No Re-Examination)

No. 23

No.23

EVIDENCE OF P. ONWUALU

P. Onwualu.
Examination.

Defendants 4th Witness: Male. Sworn Bible. States English

I am PATRICK ONWUALU, of Onitsha, District Office, Onitsha.

30 I produce Reorganization Reports of UMUIGWEDO Clan.

Exhibit VI(D)

I am instructed not to part with them, as public documents, certified copies will be supplied.

COURT: The originals will not be received, unless any question arises which makes inspection necessary; if it is only desired to prove their contents, certified copies must be used.

In the Supreme Court

No. 24

EVIDENCE OF I. OYALO

Defendants' Evidence

Defendants' 5th Witness: Male. Sworn gun. States Ibo

No.24
I. Oyalo.
Examination.

I am IGBOEKUN OYALO, of UMUOBA IGBO. I know ANAM people. I am from UMUOBA ANAM. Farmer. 80 years.

Gave evidence in 1933 in case about OTUOCHA (M, p.18). Know parties herein. AGULERI own OTUOCHA. Gave us land to settle on. EZIAGULU AGULERI did. OTUOCHA land. We first went to UMUERI. Discussed land and gave them 5 cows. Came over to live on land. Then AGULERI objected, said they were owners. We went to UMUERI, asked why AGULERI had claimed. They said if AGULERI claimed the land we should go to them. The mother of that part of UMUERI came from AGULERI and that was why land was put in their charge. We then went to AGULERI. They asked us to reclaim from UMUERI what we'd given them. We refused, said we'd taken an oath with them. Asked AGULERI to make their own offer. They asked us to pay £30 in lieu of 7 cows. We did so. They gave us the land. We live there now.

10

20

Cross-Examination.

Cross-Examined

UMULERI showed us the land. We have sued both UMUERI and AGULERI in a case about this land, still pending. Because UMUERI still claim the land (adds), it was UMULERI who told us that AGULERI were the owners of the land, they directed us to AGULERI; originally, we had a boundary with UMULERI. The boundary was ELILE EDE ONWU to OTU OKA IGWE EZE, otherwise AKOR. This was from AKOR to ANAMBRA.

30

COURT: Quite incomprehensible.

ELILE EDE ONWU is a tree: the boundary runs from there to AKOR. We know the place on OTUOCHA AGULERI, UMULERI told us it was AGULERI's. We swore with UMULERI that if we left they would become the owners, and they would not drive us away. I know our people representing us in the action against AGULERI and UMUOBA. We chose them. If they never pleaded UMULERI told us AGULERI were the owners, I don't know.

40

COURT: It was evidence, not to be pleaded.

In the Supreme Court

(No Re-Examination)

Defendants' Evidence

1.55 p.m. Adjourn to 9 a.m., 27.xi.53.

No.24

I. Oyalo.

Cross-Examination - continued.

No. 25

No.25

EVIDENCE OF J. ABARAKA

J. Abaraka. Examination.

At Onitsha, Friday the 27th day of November, 1953

For Plaintiffs: Soetan, Araka.

For Defendants: Osadebay, Balonwu.

9.30 a.m.

10 Defendants' 6th Witness: Male. Sworn Bible. States English

I am JOSEPH ABARAKA of EZIAGULU AGULERI. I was present yesterday when Mr. ONWUALU from the District Office came to tender the UMUIGWEDO CLAN Reorganization Report, and the Report on the UMUERI village of the AGULERI N.C. Area of the ONITSHA Division. I have now obtained certified true copies of these documents, which I tender.

Exhibit V1(D)
Exhibit V2(D)

Soetan objects: Not public document.

20 COURT: I have held that they are.

Soetan: Hearsay.

Balonwu: It is part of the traditional history.

COURT: It is hearsay of the tradition.

Balonwu: Sec. 38 Cap. 63.

Court: Is not "book" ejusdem generis with register or record?

In the Supreme Court

Balonwu: "Record" includes files like those from which these copies are taken.

Defendants' Evidence

COURT: I shall take these copies, and in my judgment make it plain exactly what weight, upon consideration, I give them.

No. 25

(Received Exhibits V1 and V2).

J. Abaraka.

Examination.

Exhibit V1(D)
Exhibit V2(D)

No. 26

EVIDENCE OF H. UMUEADI

No. 26

H. Umeadi.

Examination.

Defendants' 7th Witness: Male. Sworn Bible. States English

10

I am Chief HENRY UMEADI, Eze of IGBARIAM, where I live.

I know Plaintiffs and Defendants. We are related to AGULERI. And to UMULERI in other ways. Have common ancestor ERI with AGULERI. He had 6 sons. AGULU, NRI, IGBARIAM, AMANUKE, NTEJE, NSUGBE. NRI had RIAMU OSHODI, whose children were the UMULERI. Land where ERI himself lived is now occupied by AGULERI. OTUOCHA land is so called because land there is white. My brother's house is there. AGULERI own this OTUOCHA, EZIAGULU AGULERI.

20

Exhibit W(D).

I know UMUERI Native Court, for IGBARIAM, NTEJE, and AGULERI. Until now. Was President myself during case between OGOLO UGBAGU of UMUOBA and AKWOBU ANAEKWENSI of AGULERI EZIAGULU about fishing pools. This is a certified true copy (tendered).

Soetan: Objection: Res inter alios acta.

Balonwu: To demonstrate the existence of UMU-ERI N.C. and its constitution. The evidence and the rest of the proceedings apart from the title and heading and description of sitting members are not relied on.

30

Soetan: For these purposes, court warrant is the proper evidence.

COURT: We have had extensive oral evidence

about existence and constitution of several courts, which was not objected to and best evidence was not then called for.

Soetan: They may be satisfied with that; this document is irrelevant.

COURT: The document shows the existence of a Court of that name, and that an AGULERI man was on one occasion a suitor there. It shows no more. It will be received for that. (Exhibit W).

10 Xctd: The Defendants at the time of this case were living at OTUOCHA.

Cross-Examined

The UMUERI Court of that name is now called AGULERI Court. Consists of same 3, AGULERI, IGBARIAM, NTEJE. UMULERI went to IGWEDO Court. Before the Clan Courts UMUERI used to come to AGULERI Native Court. I am 63. Born at AGULERI, EZIAGULU AGULERI. And lived there. trained with Chief IDIGO, Defendant. Lifelong friend of his. UMUNCHEZI are living and farming on OTUOCHA. Went there myself about 1912, went down with Chief IDIGO to find a place to dwell, to build. Before that, he was living at MBITO. He moved simply because he wanted to go to waterside. I don't know of trouble between him and Father MILLER at MBITO. Or when he tried to build on land of ROBERT OGWEJO and his bricks were broken. ROBERT didn't allow him to build. I don't know if they made palaver. I was not concerned. MBITO is where Roman Catholics live. I was living there. It is in OTUOCHA. AGU AKOR is OTUOCHA. AGADI WAHINE is OTUOCHA. OTUOCHA is near the water, but all are called OTUOCHA. I know GLORIA IBO.

Q. Is it OTUOCHA?

- All AGULERI are called GLORIA IBO. Not EZIAGULU alone. Father lived at EZIAGULU and called them GLORIA IBO, and then it belonged to all AGULERI. MBITO is GLORIA IBO. So is IGBEZUNU. And they are all OTUOCHA.

40 Q. EZIAGULU waterside is called GLORIA IBO?

- EZIAGULU is GLORIA IBO (adds) but not alone. They gave GLORIA IBO to Royal Niger Company (Exhibit D). I know OTUTUNZU. There was a market there. And on the land granted to Royal Niger Company.

In the Supreme Court

Defendants' Evidence

No.26

H. Umeadi.

Examination - continued.

Exhibit W(D)

Cross-Examination.

Exhibit D(P)

In the Supreme Court

Q. IFITE AGULERI granted their own waterside to Company?
- I don't know.

Defendants' Evidence

Q. And so did IGBUFZUNU?
- I don't know.

No.26

H. Umeadi.

Cross-Examination - continued.

Q. All are AGULERI?
- Yes. IGBARIAM is 17 miles from OTUOCHA. IGBARIAM is not called IGBARIAM ERI, though descended from ERI, because they are not living where ERI lived, while AGULERI are. IGBARIAM are not descendants of RIAMU. The "Riam" in IGBARIAM is(unheard). "Igbo" means "people". IGBARIAM does not mean "People of RIAMU", it is just a name. ERI's father ACHADO came from IGALA. RIAMU and OSHODI are not different people; OSHODI is a title name. He married IGWEDO; she was a harlot, had no husband, except RIAMU at last. She had NANDO before. Don't know where she died. Don't know if she died at NANDO; if she did, she went back there.

10

Exhibit VI(D)

(Soetan refers to VI, IGWEDO was married either to RIAMU or OSHODI).

20

TO COURT: UMULERI are the children of children of ERI. They don't live where ERI lived. Nor do we, but we have no ERI.

Re-Examination.

Re-Examined

There are many AGULUS, so AGULERI take the ERI. Others are AGULU IGWE OGIDI. AGULU OLIMBEKWU.

No.27

No. 27

Defendants' Counsel's Closing Address.

DEFENDANTS' COUNSEL'S CLOSING ADDRESS

27th November 1953.

Osadebay: Plaintiffs have not proved traditional history or conclusive acts of ownership indicating exclusive title. Onus: Kodilinye versus Mbanefo Odu 2 WACA 336, and p.337. Plaintiffs' version of traditional history varies 1933, 1935, and today. Silent in 1933; 1935 different from now. Exhibit VI paragraph 10 equates RIAMU and OSODI. VI, V2 don't mention OFOAKU. Plaintiffs deny connection with NRI. UMUERI comes from UMUL-ERI by ellipsis, properly UMU'ERI, which is distinct

30

Exhibit VI(D)
Exhibit V2(D)

from UMUERI, and district from UMUERI N.C. of which UMUE'ERI were not members. Plaintiffs' witness AKWUOGO MARA admitted ERI - NRI - RIAMU genealogy of Ex.O page 196 - also lets in NRI.

In the Supreme Court

No.27

Defendants' Counsel's Closing Address.

27th November 1953 - continued.

10 Then, Acts of ownership: ours are earlier. Royal Niger Company met UMUERI first just as UMUOBA did. Exhibit O page 188, OBIDIKE's evidence. Read Exhibit R with Exhibit Q. OKOYA is 4th Plaintiffs' Witness: OKOYA in Exhibit O. What are Plaintiffs' acts of ownership? 1898 settlement? But all sorts of people live there. 1925 grant? - Ours are more proper. Though Government hold under 1898 transfer, they came to us to get a place to build a rest house. Exhibit M. page 155, IKENYELU's evidence. Witness from ODEKE admitted we are related to UMULERI.

Exhibit 012(P)
" 08(P)
" R(D)
" Q(D)
" 06(P)
" M16(P)
Exhibit M20(P)

An Estoppel is the judgment in Ex. M, on appeal.

No. 28

PLAINTIFFS' COUNSEL'S CLOSING ADDRESS

No.28

Plaintiffs' Counsel's Closing Address.

20 Soetan: Estoppel: there is none; appeal judgment was that plaintiffs had exercised the most important act of ownership, and had thereby directed themselves. Niger Lands Transfer Ordinance, section 14, Halsbury 19: 267. The new facts are the enactment and publication of the Ordinance.

27th November 1953.

30 Traditional history; no traditional history in 1933, but we maintained men as new Defendants were strangers to our land, which is what the traditional history now says with more particularity. Exhibit M, page 143, XX of OKAFOR OGBUCHI; page , MBITO not in OTUOCHA. Exhibit B; file plan. Exhibit C; R.C.M. in relation to NKPUNWOFIA. Defendant's brother OBIDIGWE Exhibit O page admitted they asked us for land. That they come to this side for titles and ceremony doesn't mean they started this side, if the Head with the insignia crossed to this side they must follow him. So people come to take Ofor from Obi of Onitsha, but not because they are from ONITSHA. V1 shows RIAMU and OSHODI are different. If we and they are of same descent and share ancestor's land, why don't they show what our share was other than Otuocha which they say is in

Exhibit M4(P)

Exhibit B(D)
Exhibit C(P)
Exhibit 017(P)

Exhibit V1(D)

In the Supreme
Court

No.28

Plaintiffs'
Counsel's
Closing
Address.

27th November
1953 -
continued

theirs. V2 discredits their genealogy from ERI;
NRI was eldest son.

What evidence of 1891 grant to R.C.M. Order
and dates of Royal Niger Grants: What people ever
granted land on two separate occasions? Exhibit J
calls it OTUOCHA UMULERI on information of Chief
IDIGO. Defendants "acts of ownership" were con-
tested. Ex. R: Why wasn't OKOYA in Ex. O xxd on
Ex.R.? Rest house was not granted by IDIGO, but by
UMULERI: Ex.O; evidence of AKPE and Treasurer.
Exhibit O refusal of costs, and reasons.

10

Juju: you can't put a juju on another man's
land. Where is UDEALU? Exhibit K page 229 :
ODEKE and AGULERI are related.

No.29

Judgment.

7th January
1955.

No. 29

JUDGMENT

At Onitsha, Friday the 7th day of January, 1955.

SOETAN, with him ARAKA, for Plaintiffs.

BALONWU for Defendants.

J U D G M E N T

20

In this action the people of UMULERI repre-
sented by IDOKO NWABISI and another of UMUNCHEZI
UMULERI sue the people of AGULERI represented by
R.A. IDIGO and another of EZIAGULU AGULERI for a
declaration of title to a piece of land called OTU-
OCHA and an injunction to restrain the AGULERI from
using the land without the consent of the UMULERI.

The action was begun in the UMUIGWEDO Native
Court on 6th November, 1950, and was transferred to
this Court by an order made under section 28(1)(c)
of the Native Courts Ordinance on 8th December, 1950.

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OTUOCHA is occupied by members of both the
communities who are parties to this action. They
have been there together, or have performed acts of
ownership side-by-side there, for over thirty years

according to the testimony of the Plaintiffs' witnesses in this action, and for about sixty years according to the defence testimony. Briefly, the case made by each side is that they are the owners of the land from the beginning and have allowed the other side to come on it.

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continued.

10 The land lies along the left bank of the ANAMBRA Creek, and extends up-stream from a tributary of the ANAMBRA called the AKOR for over 2,000 yards to an ant-hill called NKPUNWOFIA a short distance beyond another tributary, the EMU. As described in this action, the land in dispute extends inland according to the Plaintiffs (I refer to their plan Exhibit P) for a distance varying between something under 1,000 yards and something under 2000 yards, and according to the Defendants (I refer to their plan Exhibit B) for about 3,000 yards. It is bordered beyond the AKOR by land of the NNEYI UMULERI, and beyond the EMU and NKPUNWOFIA by land of
20 the EZIAGULU AGULERI which the UMULERI say they gave to the AGULERI.

Exhibit P(P)

Exhibit B(D)

30 From the inland limits of OTUOCHA as described in this action a disputed corridor of land which has been given the appellation of AGUAKOR runs further inland. Like OTUOCHA, it lies between UMULERI and AGULERI land and is claimed by both parties. The Plaintiffs have said that AGUAKOR extends as far as their own UMUNCHEZI quarter of UMULERI town about four miles from the ANAMBRA, while the Defendants have put its limit a little over three miles inland at a spot called UGU NWUSAKWU or AKPUN WUNSAKUN which marks the boundary of an area occupied by their kinsmen the IFITE AGULERI (as owners, according to the Defendants, but by leave of the UMULERI, according to the Plaintiffs).

40 My information about AGUAKOR is derived not only from the testimony offered and the plans received in evidence in this action, but also from a copy (Exhibit O) of the proceedings in one of two earlier actions between the parties to this action or their privies. These earlier actions were begun in 1933 and in 1935. Nominally, the 1933 case was about OTUOCHA and the 1935 case about OGUAKOR. In fact, the 1933 case was about the land later called AGUAKOR as well as being about the land now called OTUOCHA, and the 1935 case was about the same land as had been in dispute in the 1933 case, less the ANAMBRA waterfront to a depth of 1,000 yards, to

Exhibit O(P)

Exhibit M(P)

Exhibit O(P)

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continued.

Exhibit C(P)

which the name OTUOCHA was then confined. Thus the inland limits of OTUOCHA were differently described in the two earlier actions. Neither description is the same as the description given by either party in this case, but the history of the litigation helps to explain the present differences.

The whole course of the litigation between the parties has been affected by a transaction which took place between the Royal Niger Company and the Plaintiffs' people, the UMUNCHEZI UMULERI, in 1898. This transaction, which I shall refer to as the 1898 grant, was in writing, and a certified copy has been put in evidence as Exhibit C. It is dated 25th June, 1898, and was made between the Royal Niger Company and the Head Chief and Chiefs of UMUTSHEXI (UMUNCHEZI), who sell to the Company "all the private rights of every kind not already possessed by the Company" in the land between AKPU NWOPIA and AKOR on the left bank of the ANAMBRA and extending 1,000 yards inland, the Company covenanting not to disturb "present tenants or their heirs ... except at a price to be fixed by mutual agreement at the time." This grant was registered as No.110 in the Register of Deeds, and is mentioned in the First Schedule to the Niger Lands Transfer Ordinance (Cap.149), by section 2 of which Ordinance the land granted was vested in the Governor as from 1st January, 1900. By Order No. 38 of 1950 made under section 10 of the Ordinance the Governor abandoned all right, title, or interest vested in him by virtue of the Ordinance in the land granted in 1898, except for a small area which is not part of the land the subject-matter of the present action.

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Exhibit M(P)

In both the earlier actions, as in the present action, the UMULERI were plaintiffs, and the AGULERI were defendants and were represented by the present 1st Defendant. The 1933 case was Provincial Court Suit No. 2 (renumbered No.6) of 1933 (copy proceedings Exhibit M), for a declaration of title to "all that piece or parcel of land known as OTU-OCHA Umuleri commencing from the Stream known as AKO to an Ant-Hill known as NKPUNWOPIA situate in the ONITSHA Division." The claim did not specify the inland limits of OTUOCHA and no plan was used at the trial or on the subsequent appeal. It is not immediately clear from the trial proceedings and judgment what was the area claimed and disputed under the name OTUOCHA. On the one hand, the word Otu in OTUOCHA means "waterside"; one of the plaintiffs' witnesses

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(IKEGBUAM) said that the defendants had been claiming the plaintiffs' land "down on the waterside"; the acts of possession and ownership described in the evidence, including the transactions which were said to have brought on the dispute, occurred mainly within the 1,000 yard line of the 1898 grant; and in his judgment the District Officer with Resident's judicial powers who tried the case, after pointing out that the area covered by the 1898 grant had been vested in the Governor by virtue of the Niger Lands Transfer Ordinance, said "Actually then, the land in dispute between the parties is Crown Land." On the other hand, other witnesses on the plaintiffs' side said not only that the land from the waterside to UMULERI town was theirs, but that the land they were claiming extended that far; the defendants' evidence was that they themselves owned from the waterside to the IFITE AGULERI boundary; the name AGUAKOR was never mentioned; and the District Officer, who had viewed the land, described the disputed area in the judgment as being or including the area from the ANAMBRA to UGU NWASAKWU and gave judgment for that area, and in the succeeding case said in evidence that at the time of the trial his understanding of the matter had not been that the claim was only in respect of the area granted in 1898. It appears then, after all, that in the 1933 case the plaintiffs were claiming under the name of OTUOCHA all the land running inland from the waterside as far as UMULERI town; that the defendants in reply said that the land was their own as far as UGUNWUSAKWU, and beyond that the IFITE AGULERI's; and that judgment was given in respect of the area extending inland as far as UGUNWUSAKWU.

Nevertheless, when the case went to the Supreme Court on appeal it was argued and decided as if it concerned only land within the 1,000 yard limit of the 1898 grant, and indeed as if the land it concerned was precisely the same as the land comprised in the 1898 grant - that is, as if land known as OTUOCHA to local inhabitants none of whom had probably ever seen a plan in his life was exactly the same as land bounded inland by an unnatural, arbitrary, and imaginary line which could be seen only on a plan. The trial judgment had been for the plaintiffs, the UMULERI, and arguing the appeal Counsel for the AGULERI said that the 1898 grant was a grant of the whole of the land in dispute, and based his first ground of appeal on that assertion. Counsel on the other side accepted the

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Exhibit M18(P)
Exhibit M18(P)

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Exhibit M20(P)
Exhibit J(P)

assertion, and in the appeal judgment the Court said "It should also be noted that both parties admit that the land in question in this suit is precisely the same land as that covered by the Royal Niger Company agreement." That this misunderstanding could have been allowed to arise is all the more remarkable because, as the present 1st Defendant said in the 1935 case, the AGULERI, between the trial and the appeal, had procured a plan of the land, which is Exhibit J in the present action and shows the land stretching back to and including IFITE AGULERI's holding; because the surveyor who made the plan had been engaged by the AGULERI's lawyer and the plan when made had been given to their lawyer; and because the 1st Defendant, who is an educated man, was present at the hearing of the appeal and had told his lawyer at a conference before the hearing that the land extended back to UGU NWUSAKWU, a statement which he has repeated in his evidence in the present action. The Defendant said all this in the 1935 case when, in a bold attempt to have things both ways, he was trying to establish the 1933 decision about OTUOCHA as a res judicata for AGUAKOR; but it is confirmed by the plan Exhibit J, which is dated 7th August, 1933, between the trial and the appeal, and I have no doubt that it is true. The Defendant's explanation of how the misunderstanding nevertheless arose, which to my mind is an insufficient explanation, was that he had given the plan to his leading Counsel, Sir W.M. Geary, and the latter had not come to ONITSHA for the appeal. A contributing factor, which may have helped to mislead the Appeal Court, may have been the District Officer's observation in the trial judgment, that the land in dispute was Crown Land by virtue of the 1898 grant and the Niger Lands Transfer Ordinance.

In whatever way the misunderstanding was brought about - and had I to decide how it was brought about, I would feel the greatest difficulty in believing that it was due to pure inadvertence on the part of everybody concerned - it enabled the AGULERI to succeed in their appeal, which was decided on the first ground of appeal alone. The appeal Court held that the UMULERI (whose UMUNCHEZI branch were the grantors in 1898) had by that grant divested themselves of whatever right or title they might have had to the land, and had nothing left to justify the Court in giving them a declaration of title. The District Officer who had tried the case had been

Exhibit M20(P)

asked to take the 1898 grant into consideration as an act of ownership, which it was, and, finding very little to choose between the evidence of the parties otherwise, had based his judgment in favour of the UMULERI mainly on the grant. In so doing, the Appeal Court held, he had misdirected himself as to the effect of the 1898 grant (which had had the effect of divesting the UMULERI of whatever ownership they had). If he had not misdirected himself, he would have found it difficult (on the remaining evidence), as he himself had said, to formulate a correct judgment. The Appeal Court was in no better position, and was indeed in a worse one and was unable to hold that the UMULERI had established their title in the court below (having held that they had not, but on the contrary that they had shown they had no title), and was also unable to hold that they had been in a position to give a good title to the Company in 1898.

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continued.

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The 1933 case having thus decided that the UMULERI did not own the land then in dispute under the name of OTUOCHA because in 1898 they had sold all their interest (if any) in the whole of it (which they had not done), they started the 1935 case claiming under the name of AGUAKOR the same land as had been disputed in 1933 as OTUOCHA, less the exact area comprised in the 1898 grant. This was High Court Suit No. O/85/1935 (Exhibit O in this action), a representative action on behalf of UMUNCHEZI UMULERI against the present 1st Defendant and another on behalf of EZIAGULU AGULERI, for a declaration that the Plaintiffs were the owners of "all that piece and parcel of land known as AGUAKOR situate at Umuleri Onitsha Province bounded as follows:- On the side towards the Anambra Creek by Otu-Ocha Umuleri, granted by the Umunchezi Umuleri to the Royal Niger Company. On the side towards Umuleri town by Ugume and Mgbago villages of Umuleri. On the Aguleri side by (various features); and on the side towards Nneyi Umuleri by Akor Stream. The plaintiffs' plan in that action, a copy of which is Exhibit A in the present action shows the 1,000 yard line of the 1898 grant as the north west boundary of AGUAKOR. As in the 1933 case, the plaintiffs' evidence was that the land was theirs up to UMULERI town, and the defendants' was that it was theirs to the IFITE AGULERI boundary, and then IFITE AGULERI's. The case ended in a non-suit.

Exhibit O(P)

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Exhibit A(P)

In 1950, when nearly all the land comprised in

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Exhibit P(P)

Exhibit B(D)

Exhibit B(D)

Exhibit A(P)

Exhibit P(P)

Exhibit A(P)

Exhibit P(P)

the 1898 grant was abandoned by Order No. 38 already mentioned, the effect was as if the part abandoned had never been included in the grant: Niger lands Transfer Ordinance, section 14. The Order was Gazetted on 2nd November, 1950, and on 6th November the Plaintiffs began the present action claiming under the old name of OTUOCHA the area abandoned (less small corner at the south east marked "OBIOMA Village" on their plan, the exclusion of which is explained by the admission made in the 1935 case by the then plaintiffs' 6th witness that a village of OBUOMA women had been founded on AGUAKOR by the 1st Defendant.) together with a triangular addition to it on the south east enclosed in a seemingly arbitrary boundary marked by no named features: I refer to Plaintiffs' plan Exhibit P. This addition, of course, is part of what was called AGUAKOR land in the 1935 case; but it was part of the OTUOCHA of the 1933 case. The Defendants, on their part, in their plan Exhibit B in this action have described OTUOCHA as comprising a good deal more of the 1935 AGUAKOR and the 1933 OTUOCHA. But the boundary they put to it is almost equally arbitrary, though it does, on the east and south east, lie along a road and pass two named trees. They do not show UGU NWUSAKWU in Exhibit B and they put the inland boundary some way short of the AKPUN WUNSAKUN of the Plaintiffs' 1935 plan, Exhibit A. But in evidence the 1st Defendant said OTUOCHA went inland as far as UGU NWUSAKWU. On the North East their boundary runs above the boundary shown by the Plaintiffs on that side, so as to bring in the Roman Catholic Mission and the Mission village (and OBIOMA village) which undoubtedly stand on land granted by AGULERI; the boundary shown by the Plaintiffs here, both on their plan in this action (Exhibit P) and on their plan in the 1935 case (Exhibit A), excludes all this area in an equally pointed manner, and indeed it does not appear that the Plaintiffs ever claimed it, except for the part where OBUOMA village is, in the whole course of this litigation. Whatever the Defendants' plan shows, what is in dispute in this case is what the Plaintiffs claim, that is, the area described as OTUOCHA land and edged pink in the plan Exhibit P.

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The Defendants have said that they are pleading the 1933 appeal decision as an estoppel. That is, their defence concludes "14. The defendants will plead ... 4. ESTOPPEL", and in his concluding address their Counsel explained that this referred

to the appeal decision. That is not the way to plead a judgment as an estoppel, and it cannot be said that the estoppel has been pleaded. And the purported or intended plea has been abandoned; the estoppel was not argued. But, though for want of pleading (if for no other reason) it is not conclusive, the appeal decision is directly relevant on the question of the ownership of so much of the land now in dispute as was comprised in the 1898 grant, and indirectly relevant as regards the ownership of the remaining and adjoining land. In my judgment, however, it has no weight, because (by virtue of Order No. 38 of 1950 and section 14 of the Niger Lands Transfer Ordinance) the land comprised in the 1898 grant is to be considered as never having been comprised therein, so that it can no longer be said, as was said in the appeal decision, that the Plaintiffs cannot be the owners of that land because they have divested themselves of whatever interest they had in it. Whatever interest they had in it has been restored to them. That the UMULERI had divested themselves of their interest was the main, if not the only, ground of the appeal decision; if it was the only ground, the decision cannot even be considered relevant.

The 1933 trial judgment is in evidence, and it may be suggested that it is relevant now that the basis of the appeal decision has been removed by Order No. 38 of 1950. If it is relevant, I do not think it has weight, any more than the appeal decision, though for different reasons. The District Officer did not feel ready to come to a decision on the evidence apart from the 1898 grant. The grant was submitted as evidence of an act of ownership by the UMULERI, but I do not think that the District Officer considered it solely in that light. He misdirected himself as to the effect of the grant, as the Appeal Court said, but the whole of the misdirection, and perhaps not the less important error in the misdirection, was not that he failed to observe that in relation to a large part of the land the effect was to divest the UMULERI of their title. He also misdirected himself by taking the grant as more than simply an act of ownership, evidence of ownership; he looked at it as in some way conclusive of the question of ownership by virtue of the Niger Lands Transfer Ordinance. He said that there was no doubt that the land between AKOR and NKPUNWOFIA had been sold to the Company in 1898. He observed that it had been vested

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Exhibit M18(P)

Exhibit M20(P)

in the Crown by the Ordinance. He said "Actually then, the land in dispute between the parties is Crown Land." The defendants had said that the grant was fraudulent; the District Officer said "An unsupported allegation of this nature is not enough to set aside a fact which has been established 35 years ... It is not for me - at this stage - to enquire into the legality of the Niger Company treaty; and in any case there is nothing beyond that mere allegation of fraud to upset it. It is a fact that the land was transferred to the Niger Company and as such this case must be viewed from that standpoint." The view that there was a misdirection here, not only as to the effect of the 1898 grant on the title but also as to its value and effect as evidence, seems to me to be implicit in the Appeal Court judgment. The appeal judgment does not stop at saying that the UMULERI had not established their title in the Court below because they had shown that they had divested themselves of it; it continues "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." That question was a question of fact; the District Officer, though not ready to decide it on the evidence without the 1898 grant, did decide it after taking the grant into consideration, and his finding must have stood had he considered the grant solely as evidence, and directed himself properly as to its effect as evidence instead of looking on it as something amounting to conclusive evidence. Since he had misdirected himself about it as evidence, the Appeal Court, as its judgment says, was in a worse position than he was to reach a conclusion on the evidence as a whole which without the evidence had been too nicely balanced to make the District Officer willing to come to a finding. No doubt if that had been the sole reason why the appeal was allowed the Appeal Court would have ordered a retrial; but the Appeal Court had already held that the appellants had shown that they had no title whatever against the respondents.

I now turn to the other evidence in this action. There have been a number of dispositions of the land by both parties, which are acts of ownership.

In 1891, the 1st Defendant says, his grandfather gave land in OTUOCHA to the Roman Catholic Mission to live on. This was not mentioned in either of the earlier actions. A "former Roman

Catholic Mission site" is marked on the Defendants' plan Exhibit B, but it was not marked in their 1933 plan, Exhibit J. In his evidence in the 1933 case 1st Defendant, speaking of the 1894 grant of OFIAN-WAGBO Beach to the Mission, which I next mention, said that at that date the Mission had been established for four years "where it is now". The UMUL-ERI's witness OKOYE in the 1935 case, who is now dead, said the Mission bungalow was beyond NKPUNWOFIA. Against all this, the Plaintiffs' plan Exhibit P shows a road crossing the OTUOCHA boundary below OBIOMA Village marked "From Roman Catholic Mission Church" at its Western end. But this must refer to the Roman Catholic Mission Church shown on Defendants' plan Exhibit B in a position which would be to the east of Plaintiffs' OTUOCHA boundary, for no Roman Catholic Mission church is shown on Exhibit B or any other plan to the west of that boundary. I conclude that when the 1st Defendant speaks of an 1891 grant to the Mission he refers to a grant of land situated beyond the Plaintiffs' boundary at NKPUNWOFIA though within the Defendants' boundary at that place - that is, at or in the neighbourhood of the Roman Catholic Mission Church and "Christian Village" on MBAITO land in Exhibit B. For the Plaintiffs, this is not within OTUOCHA land at all. I do not believe that this grant, or MBAITO land, are in fact within OTUOCHA land properly so called. As I have said, the 1891 grant was not referred to in the earlier actions and Mission land within the Plaintiffs OTUOCHA boundary was not shown in the Defendants' first plan. In the 1935 case the 1st Defendant said the AGULERI gave the Mission a new beach north of NKPUNWOFIA in 1903. In cross-examination in this action, and not as part of his direct evidence of acts of ownership, he said his uncle gave land in MBAITO to the Mission in 1904, and he tendered the lease, Exhibit U. This lease, made on behalf of the AGULERI, is of a strip of land in AGULERI running from the waterfront inland in a south-easterly direction for about 1,500 yards. The Roman Catholic Mission Church on Exhibit B is just about that distance south-east of the ANAMBRA; the grant in Exhibit U would have been a grant of a beach and a strip of land connecting the beach to the Mission site; and I have no doubt that Exhibit U comprises the new Roman Catholic Mission beach which was north of NKPUNWOFIA and therefore outside OTUOCHA, or that MBAITO, where the land granted by Exhibit U is situated, is outside OTUOCHA. The 1891 grant to the Mission was not an act of ownership

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Exhibit B(D)
 " J(P)
 " M12(P)
 " P(P)
 " B(D)

Exhibit B(D)

Exhibit M12(P)

Exhibit U(D)

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on OTUOCHA land but on land adjoining, which is admittedly Defendants' (though the Plaintiffs say they gave it to the Defendants).

By this time the UMULERI were already in occupation on OTUOCHA. It is their own case that they were living and farming there. Whether or not they occupied more, they occupied two ferry stations, one near the AKOR, and the other upstream near OFIANWAGBO. They had these ferry stations because they were going across the ANAMBRA to farm on the far side. The AGULERI say they allowed the UMULERI to occupy these places. The AGULERI themselves did not come down into OTUOCHA until after the UMUOBA settlement referred to below, which is dated about 1910.

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Exhibit 08(P)

In 1894 the AGULERI made a disposition of part of OTUOCHA land. They gave the Roman Catholic Mission a beach at OFIANWAGBO. In the 1935 case they said this was a lease, renewed in 1898, and they exhibit a copy of the renewal, having lost the original. No document was exhibited in this action; but in the 1933 case (sic) plaintiffs' witness OBI-DIKE NAGBO said in cross-examination that the beach was given in 1894, while in the 1935 case the then 1st and 3rd plaintiffs said it was within OTUOCHA, though they said also it was not granted until after their own grant to the Company in 1898. I believe the grant of OFIANWAGBO beach was made in 1894 and renewed in 1898.

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In 1903 the Mission abandoned this beach and acquired the new beach beyond NKPUNWOFIA which was leased to them the following year. On the AGULERI side it has been said that this move was because the new site was more convenient. Against this, the UMULERI have said it occurred because of a UMULERI attack on the Mission's canoe sheds on the beach, made about 1897 in assertion of the UMULERI's rights of ownership in OTUOCHA. In reply, the AGULERI explanation of the attack is that it arose out of a private quarrel between the watchman on the beach and the UMULERI canoemen established by AGULERI's leave nearby. On the evidence before me, and at this distance of time, it would be rash to be positive about the truth of these events; on the one hand, there is nothing to show that when the Mission took the beach at OFIANWAGBO they could not have had instead the allegedly more convenient beach they got later beyond NKPUNWOFIA, or that they could not have had the latter at any time during the nine years

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they continued at OFIANWAGBO if they had wanted it. On the other hand, if the UMULERI attack was made in assertion of their rights, it was nevertheless made only after the Mission had been some years on the beach.

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10 In 1898 the UMULERI made their grant of practically the whole of OTUOCHA to the Royal Niger Company. Representatives of all branches of the UMUNCHEZI UMULERI joined in the grant. This was on 25th June of that year (Exhibit C), and on the same date the Company acquired land from the NNEYI UMULERI; Instrument No. 109 in the First Schedule to the Niger Lands Transfer Ordinance. The NNEYI UMULERI are next to OTUOCHA, on the far side of the AKOR River. The Company had already acquired land on the other side of OTUOCHA in 1891 (Exhibit D). This acquisition was at and around GLORIA IBO, where the Roman Catholic Fathers first established themselves on the ANAMBRA, and which they so named by a pun on AGULERI IGBO. 1st Defendant's grandfather was one of the grantors to the Company in 1891. (That was the year when he gave the Mission their inland site at MBAITO; it seems possible that the Mission moved there because the Company were taking over their original site at GLORIA IBO). On 4th January, 1898, the Company acquired two tracts of land next upstream from their AGULERI beach, that is, from GLORIA IBO (Exhibits E and F), so when on 25th June of that year they took the grants of land downstream evidenced by Exhibits C and D they were completing a designed extension of their territory in both directions from the beach they had acquired in 1891. Whatever they may have done on their other acquisitions, the Company do not seem to have made any use of their OTUOCHA purchase. The Plaintiffs say they built some small zinc houses and abandoned the place after three years, but they concede that the Defendants would not have known about the transaction. The Defendants say that the Company did not build there at all, and the Plaintiffs' chosen witness in the 1935 case, OBADIKE NAGBO, said the same in his evidence then.

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Exhibit C(P)

Exhibit D(D)

Exhibit E(P)
Exhibit F(P)
Exhibit C(P)
Exhibit D(P)

Exhibit 08(P)

About 1903, according to the UMULERI, they allowed the UMUOCHE people of UMUOBA ANAM to fish the EMU stream, near which the UMULERI claim to have a juju called ADAKPA (Exhibit A). The AGULERI have had little to say against this assertion.

Exhibit A(P)

Next, the AGULERI say they gave a plot to the

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Exhibit M4(P)

Exhibit M12(P)

Exhibit M14(P)
Exhibit M13(P)

(No. 18 -
Evidence of
Anekwe)

Exhibit M18(P)

British Nigeria Company. In the 1935 case they dated this grant in 1906, and said the Company stayed only a year. There is no documentary evidence of the transaction, and it seems likely that UMULERI did not know about it.

In or about 1910 the people of UMUOBA ANAM acquired a settlement on the land. The UMULERI case is that the UMUOBA ANAM came to them and paid a cow in return for the right to settle. The AGULERI case is that the UMUOBA ANAM went to the UMULERI (precisely, to the AMUKWA family of the UMULERI who had been put there by the AGULERI to look after the place) and paid five cows for the right to settle and then found they had to reckon with the AGULERI as well, and were obliged to pay them seven cows. The question first arose in the 1933 case. The plaintiff in that case, OKAFOR EGBUCHE, said in evidence that his father had permitted the UMUOBA ANAM to settle on payment of a fee. The defendant, the present 1st Defendant, did not cross-examine the plaintiff on this evidence, though he did cross-examine about the grant to the Mission at OFIAN-WAGBO; but he gave evidence that the AMUKWA brought the UMUOBA ANAM to the AGULERI, who allowed them to settle for a payment, and he produced a witness from UMUOBA ANAM and another from UMUEZE ANAM (who were the people who drove UMUOBA ANAM to the OTUOCHA side of the ANAMBRA when the settlement was made), and both these witnesses said that at the time the AMUKWA were only "watching" the land for the AGULERI. The UMUOBA ANAM witness has given evidence again in this case; he is the only witness from UMUOBA ANAM itself who has ever testified about the settlement, and his evidence is deserving of close attention. In 1933 he said that the AMUKWA sent the UMUOBA ANAM to OKAFOR EGBUCHE, who accepted five cows from them, and then, after exacting a promise that the cows would not be reclaimed, he told them that the land was really AGULERI's and took them to AGULERI, who on payment of seven cows showed them where to settle. Of this, the District Officer who tried the case said "The story of a 'kola' of 5 cows obtained by fraud is a trifle thin." In the present case this witness said that having paid the five cows to UMULERI, the UMUOBA settled on the land and then AGULERI objected and claimed the land, whereupon UMULERI said that if AGULERI claimed the land they, the UMUOBA ANAM, should go to the AGULERI. This they accordingly did, and paid the seven cows, and the AGULERI advised them to claim back the five cows from the UMULERI. The evidence of the 1st Defendant

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himself in this action was that OKAFOR EGBUCHE (whom as I have said he did not cross-examine about it in 1933) personally brought the UMUOBA ANAM to him to ask leave to settle.

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10 In 1910 or not long afterwards the 1st Defendant came down to OTUOCHA from MBAITO, and appears to have been the first of his people to go into occupation on OTUOCHA. In this action, the UMULERI dated this event after 1920; but in the 1933 case they put the date much earlier, and at the latest about 1914. The UMULERI say this settlement was made with their permission, just as the AGULERI say the first occupation by the UMULERI in or before the '90s was with AGULERI permission.

After this, and before 1920, the UMULERI allowed the Church Missionary Society to build a church near the AKOR without objection, apparently, from the AGULERI.

20 In 1924 the AGULERI leased a plot to the Niger Company, Ltd., for trading and residence (Exhibit G), and the UMULERI made no objection.

Exhibit G(P)

About 1925-6, the UMULERI allowed the Church Missionary Society to build a church and a school on a new site further inland, where by then there was a growing settlement of their own, and the AGULERI did not object.

30 After that, the AGULERI, whose settlement was also growing, made numerous open dispositions of parts of OTUOCHA without opposition from the UMULERI, who raised no objection until 1933, unless the Native Court case about fourteen years before 1935 mentioned by 1st Defendant in the 1935 action can be so reckoned, as 1st Plaintiff suggests. There was a lease to John Holts & Co., Ltd., in 1926; a lease by the 1st Defendant in person to the C.F.A.O. in 1931; another lease to John Holt's in 1932 (Exhibit H); and between ten and thirty years ago a grant of land on which the Roman Catholic Mission built a school, and various settlements of Hausa, 40 Yoruba, Ijaw, and other strangers on the waterside, as well as the establishment of the OBIOMA Village just outside the Plaintiffs' present boundary. The Roman Catholic Mission School was St. Raphael's, and it is significant that the UMULERI's plan Exhibit P shows it in the centre of the UMUOBA ANAM settlement. When at last the UMULERI took exception

Exhibit H(P)

Exhibit P(P)

In the Supreme
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7th January
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continued.

to these dealings with the land and instituted the 1933 action, it was, as they then said, because they wanted the rents which AGULERI were getting - a perfectly legitimate reason. Perhaps they had not realized the value of leases to commercial firms before; their own grant to the Royal Niger Company in 1898 had been made outright in exchange for a few cases of gunpowder and matchets and some guns.

From the foregoing one thing at least seems to appear plainly: whoever the owners of the land were, they were prepared to let the other party dispose of small portions of it.

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If UMULERI were the owners, they allowed the AGULERI to put their guests the Roman Catholic Fathers there in 1894, and suffered them to remain there for nine years; and after allowing the AGULERI themselves to settle, not before 1910, they allowed them to lease four plots to firms and give a plot for a church, and settle numerous strangers on the waterfront, all within twenty years or less, and raised no objection until they saw that there was money in it which they were not getting. If AGULERI were the owners, and allowed UMULERI to settle, then after the settlement they let them bring the UMUOBA ANAM in to fish, and later to settle (after taking tribute themselves, they say), and afterwards on two occasions let them give plots to the Church Missionary Society. The result seems to be that neither side can convincingly say that any of these transactions on their own part (except, on AGULERI's showing, the UMUOBA ANAM settlement) is inconsistent with ownership of the land by the other side. Even so, the UMULERI as owners show themselves far the more complacent when compared with the AGULERI as owners, for the AGULERI dispositions are much more numerous. But the acts of ownership which are of weight in themselves and not merely by their number are, on the UMULERI side, the 1898 grant, as being a disposition of more than a mere portion of the land, and, on the AGULERI side, the 1894 grant of OFIANAGBO beach (because of its date) and the UMUOBA ANAM settlement, if their evidence about the latter is believed.

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Before I leave, for the present, the subject of the various dealings with the land by the parties, I have to refer to a connected matter which tells in favour of the AGULERI. Before they made their lease to the Niger Company in 1924 the District

Officer made enquiries about the ownership of the plot and an affidavit (certified copy Exhibit R) was sworn to, setting out that 1st Defendant and the EZIAGULU AGULERI were the rightful owners. The deponents included two of the UMUNCHEZI UMULERI, namely ONOWU and OKOYE. The latter was a Court Member. Both are dead. OKOYE gave evidence in the 1935 case, and was not cross-examined about the affidavit, which indeed was mentioned for the first time in the present action, save for reference to it and to similar enquiries in the cross-examination of the plaintiffs' 6th and 7th witnesses in the 1933 case.

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7th January
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continued.

—
Exhibit R(D)
Exhibit 06(P)

I turn now to the evidence about the traditional history of the two peoples, parties to this action. The Plaintiffs say that the AGULERI are strangers to them and newcomers to the left bank of the ANAMBRA, having come from ODEKE near IGALA, where they were called AGULERI IKPA, and having received their land on the left bank beside NANDO from the Plaintiffs' ancestor NCHEZI. The Defendants say that they have the same ancestor as the Plaintiffs, namely ERI, and their place of origin was where they are now on the left bank. ERI himself, they say, came from IGALA, but it is since his time that they have moved back there, and so have the people of ODEKE. The Plaintiffs say ERI's father was from AROCHUKU. The AGULERI who live now on the left bank are known as AGULERI IGBO, and those on the other side are the AGULERI OTU, and the Plaintiffs say that AGULERI IGBO is the same as AGULERI IKPA. The Plaintiffs' account is supported by witnesses from NANDO, UMUEZE ANAM, and ODEKE. The last made a bad impression. The Plaintiffs seek to support their account by certain correspondence between the District Officer of ONITSHA and IGALA about a dispute between AGULERI and ODEKE over fishing ponds (Exhibit K, L). This correspondence shows that the AGULERI claimed a lake in ODEKE and ODEKE disputed the claim and that AGULERI claimed relationship with ODEKE. But it also shows that the AGULERI said they went to ANAM from their present place on the left bank of the ANAMBRA; and it shows further that nine years before the first record of the dispute 1st Defendant was disclaiming responsibility for AGULERI trespassers in fishing pools in ODEKE (IBAJI), and made no claim to any pool there.

Exhibits K & L

In support of these rival versions of the

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continued.

AGULERI origins, each side has put forward a traditional genealogy to show their descent from ERI, to the exclusion of the AGULERI according to the Plaintiffs, and with the UMULERI in the junior branch according to the Defendants. It is difficult enough to find any witness who seems truthful in a land case; it is more difficult still when the evidence being given is evidence of tradition; and it is next to impossible when the tradition is genealogical tradition of this kind. I feel hardly better able to decide between these genealogies than between the two etymologies suggested for the name UMULERI. This is often pronounced "UMUERI", even by 1st Defendant, and in that form it can only mean "Descendants of ERI", and the "I" would be there for euphony. But the Defendants say it is there because the name is really "UMU-LE-ERI", "le" meaning "far from", which gives "Remote descendants of ERI". As to the "ERI" in AGULERI, the Plaintiffs say it is there because the land allowed to AGULERI by NCHEZI on which they settled was the land originally occupied by ERI. At any rate, the other etymological question raised in this action can be settled with some assurance. The word OTUOCHA means "white beach", and the sand there is white. The Plaintiffs however say it is a corruption of OTUOCHE, after an ancestor of theirs called OCHE who first went there. In the 1935 case their witness OKOYE said it got its name from the white sand, and that is what the Defendants say, and I am satisfied that it is correct.

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According to the Plaintiffs' genealogy, the UMULERI are the immediate sons of ERI, namely NNEYI (Ezi), NCHEZI (Nkenga), and MGBEDE (Ifite). According to the Defendants, they are one remove from ERI's second son NRI (his eldest son was AGULU); their father was NRI's son RIAMU, and they are otherwise known as UMURIAMU. The Plaintiffs' 7th witness has said there are UMURIAMU in UMUNCHEZI, but their genealogy from NCHEZI down does not explain where they come. If the name is in UMUNCHEZI its presence is unexplained except by the AGULERI genealogy. Again, the Plaintiffs say that the MGBEDE branch of UMULERI includes the ENUGU MGBEDE, who are not known as the ENUGU NRI; but the plaintiff in the 1935 case said ENUGU NRI was one of the three sections of ERI.

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There has been a lot said about the names and arrangement of native court areas in the neighbourhood, and it is suggested that this throws light on these questions of genealogy and origins. I do not

think it does; native court areas must be demarcated in accordance with other considerations as well as tribal ones, for instance, considerations of topography, and there is nothing before me to show what considerations were effective in any particular instance.

10 Of more interest are the Intelligence Reports, Exhibits V1 and V2, which presumably were used in the reorganisation of the native courts. They are however dated in 1932, before the date of the 1933 case it is true, but not so certainly before the dispute was beginning, or at any rate in sight. And there is nothing to show where the writers got their information, or how thorough or well-directed their inquiries were. However, I think I may presume that the officers who prepared the reports did so after making some sort of inquiries among prominent men in the communities concerned. I think there is authority for making such a presumption in section 148 of the Evidence Ordinance. The reports are relevant; and whatever weight they may have (and I do not feel I ought to give them much) is on the Defendants' side; the version of these peoples' genealogy they give is more in accordance with the Defendants' than with the Plaintiffs' version, though it is exactly the same as neither.

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30 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; 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 impossible to reach any conclusions about them.

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That leaves me with the evidence provided by acts of ownership consisting of dispositions of the

In the Supreme Court

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No.29

Judgment.

7th January
1955 -
continued.

—
Exhibit V1(D)
Exhibit V2(D)

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Judgment.

7th January
1955 -
continued.

land; and with the evidence about the ODAKPA juju which, as I find, the Plaintiffs now maintain on the land. The Defendants have no juju on the land, and have never claimed to have one, until the present case, in which the 1st Defendant has said that the ODAKPA juju is neither UMULERI's nor communal, but belongs to an old man at AGULERI who has not given evidence. The Plaintiffs on the other hand have called a witness who says he is the juju priest, and has named his predecessors, and the UMULERI gave evidence in the 1933 case that the same juju was theirs. However, it seems clear that the 1933 evidence did not appear convincing to the District Officer who tried the case. He saw the juju shrine, and remarked that it appeared new. The UMULERI offered the explanation that it had been recently restored after a period of neglect following the death of the priest. This evidence cannot have seemed sufficiently credible to the District Officer to enable him to accept it as accounting for condition of the shrine, for he treated the evidence about the juju as all one with the rest of the evidence upon which he thought it would be difficult to formulate a judgment, and he must have given it much more weight had he been satisfied that the juju was really an old-established one. The juju looked new at the trial of the 1933 case, and the District Officer was not then convinced by the Plaintiffs' explanation of its condition designed to show it was really an old juju that had been there for a long time; there is nothing that I can see in the evidence before me to satisfy me either that it was an old juju in 1933. 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. As I have said, the only UMUOBA ANAM witness who has given evidence about that settlement supports the Defendants' case. He is a key witness. He gave a favourable impression in the witness box. The story he told, it is true, differs from the story he told in 1933 in one respect; he said then that the UMULERI voluntarily revealed that they did not own the land, after the UMUOBA ANAM had paid them for it, and now he says that the fact came out by the AGULERI's challenging the UMUOBA ANAM after they had settled there. Perhaps he remembered that the District Officer described his story in 1933 as "trifle thin". At any rate, in this action he gave his evidence firmly and confidently, and seemed

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truthful. And there is evidence that AGULERI, not UMULERI, gave UMUOBA ANAM the land where they have settled, in the fact that St. Raphael's Church, the site for which 1st Defendant gave to the Mission, is in the area of the UMUOBA ANAM settlement.

The 1898 grant was the only disposition of the whole of the land in dispute, or nearly the whole, made by either party. It was made by representatives of all UMUNCHEZI, and it was made when the Company were extending their holdings up and down the ANAMBRA and may be thought to have taken some care to ascertain, and to have been in a good position to ascertain, the true ownership of the land. Whether the AGULERI knew about the grant or not, it has considerable evidential value as an act of ownership; if the AGULERI did know about it, its evidential value is increased. One would expect the Company's extensive purchase up and down the ANAMBRA on either side of AGULERI, all made within a little over six months, to have become known in the neighbourhood whether the Company ever went into occupation or not, and not least to the AGULERI themselves, among whom the Company were already settled, and on either side of whose land the 1898 purchases were made; and indeed the acquisitions of January, 1898, were made from the UMUNGULAGU or IFIPE (EFFETEH) and IGBOEZUNU (UGBORZURA) branches of AGULERI. But the next two transactions of 1898, including the UMUNCHEZI's grant, came six months later. And all the documents were executed, and presumably the consideration in respect of each transaction was paid, at ABUTSHI; and wherever that may be (I have no information where it is) there is nothing to show that it is anywhere in AGULERI or near it, or even on the ANAMBRA. Besides, it is common ground that the UMULERI were in occupation on the land at the time the grant was made; the Company must have met them there, and may have looked no further. These are reasons which prevent me from being satisfied that the Defendants must have known of the grant. If they did know of it, they would probably have known that, as in the January grants by their AGULERI relatives, the rights of occupiers and their successors were protected, so that the transaction might have seemed to them to be as negligible as subsequent transactions by either side seemed to the other side.

The AGULERI, on the other hand, were not on the land when they gave part of it to the Mission

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Court

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Judgment.

7th January
1955 -
continued.

—
Exhibit C(P)

Exhibit E(P)
Exhibit F(P)

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Court

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Judgment.

7th January
1955 -
continued.

for a beach at OFIANWAGBO in 1894, and this seems to show that the Mission looked further than the occupiers and found the true owners, which, if that were so, the Company did not do four years later. So likewise the UMUOBA ANAM, by the AGULERI's account, dealt first with the occupiers and then had to come to a reckoning with the true owners. It seems to me that, other things being equal, a transaction with persons not in occupation is of greater evidential value to show their ownership than one with occupiers. And the 1894 acquisition of OFIANWAGBO beach by the Mission was undoubtedly a transaction of that sort. Further, it must have been known to the UMULERI, who let it pass for some years (as later grants by either side were disregarded by the other side); and, whatever the probabilities, there is no such certainty that the 1898 grant was known to the AGULERI.

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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.

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Judgment read: Plaintiffs' claim dismissed; judgment for Defendants, with costs assessed at 100 guineas payable by Plaintiffs to Defendants.

(Sgd.) W.H. Hurley

30

J.

7. 1. 55.

No. 30

NOTICE OF APPEAL

In the
West African
Court of
Appeal

IN THE WEST AFRICAN COURT OF APPEAL

Suit No. 0/48/1950

No. 30

Notice of
Appeal.

21st March
1955.

BETWEEN:

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

10 on behalf of themselves and Umuleri people Plaintiffs.

- and -

- 1. R.A. IDIGO,
 - 2. SONDI OFILI,
- on behalf of themselves and Aguleri people Defendants

Filed in the Supreme Court Registry Onitsha
21/3/55 @ 10.30 a.m. (Intld.) S.N.I.N.(Ndiwe).

20 TAKE NOTICE that the plaintiffs being dissatisfied with the decision of the Supreme Court contained in the judgment of Hurley J. dated the 7th day January, 1955, do hereby appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

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

2. Whole decision.

30 3. Ground of Appeal:

- (1) The learned trial Judge misdirected himself as to the areas of land in dispute in

In the
West African
Court of
Appeal

No. 30

Notice of
Appeal.

21st March
1955 -
continued.

1933 and 1935 cases and the effect of the judgments in the said cases.

- (11) The learned trial 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."
- (111) 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 Otuocha. 10
- (1V) The learned Judge was wrong to have admitted in evidence Exhibit R and to hold that it told in favour of the respondents.
- (V) That the judgment is unreasonable and unwarranted and cannot be supported having regard to the weight of evidence.

4. Relief sought from West African Court of Appeal:-

That the judgment of the Supreme Court should be set aside and judgment entered for the plaintiffs or alternatively, that the case be sent back to Supreme Court for a fresh trial. 20

5. Persons directly affected by the appeal:-

N a m e		Address:
1. Idoko Nwabuisi	} Appellants	Umuleri
2. Ifeacho Igweze		"
3. R.A. Idigo	} Respondents	Otuocha, Aguleri
4. Sondi Ofili		"

30

Dated at this 21st day of March, 1955.

(Sgd.) Idoko Nwabisi, Appellant.

SUPPLEMENTARY GROUNDS OF APPEAL

In the Federal
Supreme Court
of Nigeria

IN THE FEDERAL SUPREME COURT OF NIGERIA

WACA 266/1955

No. 31
Supplementary
Grounds of
Appeal.
(undated).

Between

- 1. IDOKO NWABISI, substituted
 - for Chineze Chidebe and
 - 2. IFEACHO IGWEZE, substituted
 - for Igweze Odili,
 - on behalf of themselves and
 - Umuleri people
- } Plaintiffs
} Appellants.

10

- and -

- 1. R.A. IDIGO
 - 2. SONDI OFILI,
 - on behalf of themselves and
 - the Aguleri people
- } Defendants
} Respondents.

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.

20

(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.

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

30

(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.

In the Federal
Supreme Court
of Nigeria

No.31
Supplementary
Grounds of
Appeal.
(undated)
- continued.

(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).

(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. 10

(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.

Sgd. M.O. Ajegbo.

SOLICITOR FOR APPELLANTS.

No.32

Notes of
Hearing of
Appeal.
28th January
1957.

No. 32

NOTES OF HEARING OF APPEAL

MONDAY the 28th day of JANUARY, 1957 20

BEFORE THEIR LORDSHIPS

SIR STAFORD FOSTER SUTTON,	FEDERAL CHIEF JUSTICE
NAGEOIN DE LESTANG,	FEDERAL JUSTICE
PERCY CYRIL HUBBARD,	AG. FEDERAL JUSTICE

Mr. Dingle Foot, with him Messrs. Soetan and Ajegbo, for appellants.

Mr. Phineas Quass, with him Messrs. Osadebay and Balonwu, for Respondents.

Mr. Foot:

Appeal from a judgment of Hurley J. dismissing the Plaintiffs/appellants claim for a declaration of title to an area of land known as Otuocho. 30

Leave to file supplementary grounds of appeal granted - new grounds (a) to (h) - ground (i) omitted.

In the Federal
Supreme Court
of Nigeria

Draws attention to lapse of time in giving judgment - over 12 months. Facts not in dispute. Refers to Exhibit "A" plan.

No. 32

Notes of
Hearing of
Appeal.

Three agreements between defendants and Niger Co.

28th January
1957 -
continued.

10 25th June 1898, is the plaintiffs one with Niger Co. "C".

Land reverted from Crown - Says trial judge found that Umuleri were in possession up to 1910 - States facts dispositions by defendants.

Exhibit A(P)
Exhibit C(P)

Three leases granted - 1924 - Niger - then 2 to Holts then one to C.F.A.O.

Exhibits G(P)
and H(P).

"M" Judgment in favour of plaintiffs by District Officer later upset on appeal only on ground that land was Crown land.

Exhibit M18(P)

Exhibit M20(P)

20 Waddington J. - re leases page 226, 1939 - Petition by Umuleri.

Letter 31st January, 1949, page 245
Evidence - traditional possession, ownership.
Does not discuss traditional evidence - admits almost impossible to reach any conclusion between two stories.

Exhibit N7(P)

Possession: up to 1910 - exclusive. Defendants alleged acts of ownership unsupported by any other evidence.

30 Acts of ownership by plaintiffs clear - grants to C.M.S. too. Juju never put on other persons land. Grant 1898.

On defendants side no documentary evidence until leases to European firms in 1920's.

Trial Judge held that in 1894 Aguleri leased land to Catholic Mission - leased a beach - on disputed land to Roman C. Mission. No one was called from Mission and in these proceedings no document was produced. Agreement renewed in 1898. Copy alleged to have been produced in 1935 case - never

In the Federal
Supreme Court
of Nigeria

No. 32

Notes of
Hearing of
Appeal.

28th January
1957 -
continued.

Exhibit R(D)

Exhibit O(P)

been seen in present case.

See judgment page 83. Affidavit "R" page 124 should never have been admitted. Okoye gave evidence in 1935 case. Now deceased - Submits no real evidential value merely because a member of our family signed it - Umuleri - he was not asked about it, Okoye, in 1935 case - we do not know the circumstances in which it was made.

Judgment page 67, 69 submits misdirection.

Page 157 - 163 make it clear that land in dispute in 1933 was land granted to Niger Co. in 1898.

10

Judgment page 74 line 4. Finding that defendants did not come on land until 1910. "The Aguleri themselves did not come down into Otuochoa.."

1935 Case Exhibit "O"

Important finding.

Page 74 line 15 to line 28. Page 82 line 33. Page 83 - line 48 and on.

Trial Judge does place great weight on grant to R.C. Mission in 1894.

20

In 1920 plaintiffs did take action in native Court gives references to case - page 142/3 - 145 - 152 - also 146, 148, 149. Submits Judge erred - plaintiffs did protest and took action regarding grant to R.C.M.

Leases to Holts, C.F.A.O. etc - not acts of ownership - it was then Crown land. Plaintiffs had themselves parted with land in 1898 - they could do little about it and so they found when they want to appeal in the 1933 case.

30

Exhibits M(P)
and O(P)

1894 grant renewed in 1898. Page 151 "M" and "O" page 209 - protest. Store burnt down.

Judgment page 77.

Hausa, Yoruba and Ijaw - no witness called to support defendants' evidence that these strangers were put on the land.

Judgment pages 78 and 79.

Admitted "R" wrongly Okoye not available.

In the Federal
Supreme Court
of Nigeria

Objected to page 45. Trial Judge did attach some importance to it.

No. 32

Judgment page 82. Juju - Plaintiffs now maintain on the land. District Officer page 157. Defendants did not say it was new - Juju. Plaintiffs gave the fishing rights.

Notes of
Hearing of
Appeal.

Judgment page 83.

28th January
1957 -
continued.

10 Divested 2nd November, 1950, four days later plaintiffs commenced these proceedings.

Exhibit R(D)

Recapitulates -

Submits the least Court should do is to send case back for new trial, but that there is evidence to justify one giving judgment for plaintiffs. No account should be taken of transactions since 1898. Undisputed evidence that Umuleri were in possession. Gold Coast's Judgment 1926. 109, 1874 - 1928. Possession - page 110.3 W.A.C.A. 240 W.A.C.A.Cycl: Reports February - April - May - 1953 page 57.

20 Exclusive possession of a long period of years, as much evidence as one can expect to have when you have to go back to 1898. If more - in a case where there has been a divesting order - could never get a declaration.

Quass:

30 Submits quite impossible to grant declaration of title. First thing to prove boundaries - no attempt made to prove Eastern boundary - They failed in both 1933 and 1935 cases - to establish any boundary - Refers to Statement of Claim. Submits nothing in grounds of appeal about 1898. It is admitted they were in possession - but of what. Refers to pleadings. Land granted to Niger Co. in 1898.

Exhibits M(P)
and O(P)

In 1933 - action - N.L.R.11 page 156. Concurrent findings of fact that plaintiffs were not in a position to prove their right to a declaration of title.

In Court of Appeal judge held that they were right to have failed before District Officer on the

In the Federal
Supreme Court
of Nigeria

No. 32

Notes of
Hearing of
Appeal.

28th January
1957 -
continued.

Exhibit 03(P)
Exhibit 025(P)

merits - submits they cannot now re-litigate.

What happened in 1935 - they came and asked for a declaration of title to all the land to the East of the Niger line.

1935 case - now having a shot at the land to the right of the Niger line - had a shot at obtaining a declaration to a portion of the whole area.

Refers to evidence of John - Surveyor, Exhibit "O", page 174. Judgment page 222.

Plaintiffs' case in 1935 exactly same as in 1933. What justification has he now for asking for a declaration non-suited in 1935 - not in 1933. Lost in latter.

10

Adjourned to 9 a.m. on 29.1.57.

28.1.57 (Intld) S.F.S. F.C.J.

Resumed 29.1.57

No. 32
(continued)

29th January
1957..

Quass:

In this case they go back to 1933 case, i.e. are claiming, according to them, same area involved in 1898 grant.

20

Page 70 of record - Estoppel - does less than justice to defendants case on the point.

Exhibit M20(P)
Exhibit P(P)

Page 63 - was clearly raised - line 17. "Estoppel" is the judgment in Ex. "M". Area edged pink "P" claim is edged pink. Plan - Exhibit "P" See page 4 Statement of Claim para 6. If land claimed is that edged pink then res judicature -

Exhibit M(P)

Exhibit "M".

Submits they are asking for a declaration of title to whole of Otuocho which edged pink on plan "P" - that is plain meaning of Statement of Claim and - evidence contradicts it as does the case he puts up in the Court below.

30

Case in court below was that he was claiming land edged green - as set out in first line of legend on plan.

Judgment page 64 line 32.

Then describes land.

10 1933 - District Officer's judgment - could not make up his mind in other words plaintiffs failed to establish his right to a declaration on the facts. Reads from judgment page 157. "There is really very little to choose between these two versions..." "might be difficult". Submits 6-1½ dozens to others". Now deals with Graham Paul J's judgment page 162.

They have tried three times - to satisfy court that they had some title to land east of river. All same evidence.

Hurley J. learned friend tried to find some errors.

20 Facts - Trial Judge preferred defendants evidence regarding tradition - page 80 - line 30 page 81. Plaintiffs failed on traditional evidence. He cannot show anywhere that he had possession - exclusive of any particular area. Both there for a long time - 1894 grant. Reads from page 74 line 15 - 1894 grant, 1933 case defendants evidence page 151. 1935 case - page 204 Says trial Judge in present case accepted defendants evidence re this grant. Refers to plaintiffs own evidence page 190. 1935 case - "Yes, but that is on Otu Ocha, not on Aguakor". Both sides made grants.

Juju - 1933 judgment "M"

30 Refers to Archdeacon's evidence - back where they started:

5th witness for Plaintiff also gave evidence in 1933 case - page 153 - If that evidence accepted end of case. Now refers to Judgment page 82. Judge obviously believed this witness.

40 Affidavit page 124. Okoye was a Prime Chief of Omuleri - "Was chief of all Umunchezi" - page 22. Refers to page 24 "Okoye ----- was older than I - would know more about the land." Page 124 - Exhibit "R". Declaration against interest - refers to evidence of Raphael Idigo page 44. Mr. Gardner held an enquiry. Affidavit admitted, page 45.

In the Federal
Supreme Court
of Nigeria

No. 32

Notes of
Hearing of
Appeal.

29th January
1957 -
continued.

Exhibit M18(P)
Exhibit M20(P)

Exhibit R(D)

In the Federal
Supreme Court
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No. 32

Notes of
Hearing of
Appeal.

29th January
1957 -
continued.

Exhibit M18(P)

Exhibit R(D)

Plaintiff has to prove his right to a declaration - beyond reasonable doubt. 14 W.A.C.A. page 13 went to Privy Council. Refers to case cited by Foot - Privy Council decision.

Not right to allow them to keep having shots - never satisfied any court. Area not defined. No new material. What case had he established - occupation of two places on waterside.

Foot:

We indicate we do not wish to hear him on question of res judicature - exhibit "M". D.O's judgment - which went on appeal, or on submission made by Quass regarding no proof of exact area claimed, i.e. not sufficiently defined to enable a declaration to be granted.

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Affidavit:

Custody from whence produced. Official record - certified copy, weight to be attached.

One does not know if District Officer spoke the language. Do not know all the circumstances of case - or way in which document came to be drawn, therefore - very little weight.

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Juju. What District Officer appears to have done is to pose the question then left it without coming to any conclusion - really decided on 1898 grant. Page 205, communal Juju.

Archdeacon -

1894 grant. Page 179. We say originally we owned all the land including Aguleri land. All the witness is saying we owned all at one time. Says nothing to link it up with 1894 grant. 1894 - One or two of plaintiff's witnesses said there was a part of our land which was built upon by R.C.M. - we were annoyed about it - and it was burnt down.

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Page 190 - They objected to defendants coming on their land. Page 209. We were annoyed - strongly in our favour - plaintiffs at once objected - then in 1898 we made a grant. There had never been any protest about our grant. Highly probable they did know.

Evidence of possession - judgment pages 74-83.
 Line 12 - page 74 - Finding of fact - did not come
 down until 1910. Page 83 - line 36 "it is common
 ground until 1910 we were in exclusive possession
 of land in this case". You then have a prima
 facie case. 1874 - June 1928 - P.C. page 83

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Page 82. Umuoba Anam witness. Story im-
 proved upon since 1935.

10 We have as much evidence as could be expected
 in a case where you have a divesting order.

Exclusive possession - grant - Juju. Convin-
 cing - very little to displace it on other side.

Submits entitled to declaration sought. In
 new trial more than probable same evidence. This
 Court is in possession of salient facts about this
 matter.

20 If not prepared to go as far as that then new
 trial. "There were various misdirections to which
 I have referred". Most exts: error - if Aguleri
 knew that we made grant in 1898 - they would most
 certainly if they were the owners have protested.

Quass: Page 26 - line 28 - his own witness said
 they might not have known.

Foot: Page 83 - line 41.

C.A.V.

29.1.57 Intld. S.F.S., F.C.J.

23.2.57 Judgment delivered by Hubbard Acting F.J.

Order: Appeal dismissed with costs fixed
 at £120.0.0

30 Sgd. S. Foster Sutton

FEDERAL CHIEF JUSTICE.

23.2.57.

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In the Federal
Supreme Court
of Nigeria

No. 33

JUDGMENT OF HUBBARD, ACTING F.J.

No. 33

SATURDAY THE 23rd DAY OF FEBRUARY 1957

Judgment of
Hubbard,
Acting F.J.
23rd February
1957.

This is an appeal against a judgment of Hurley J. whereby he dismissed the appellants' claim for a declaration of title and for an injunction. The two appellants sued in a representative capacity on behalf of their people, the Umuleri, and the two respondents were sued in a representative capacity on behalf of their people, the Aguleri. The appellants' action was originally commenced in the Native Court of Omuigwedo, Onitsha Division, from which, by order of a District Officer, it was transferred to the Supreme Court Onitsha.

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Exhibit P(P)

The claim was for a "declaration of title to a piece or parcel of land known as Otu-Ocha situated at Umuleri in Onitsha Division and more particularly delineated and edged pink on a plan to be filed in Court." The plan in question is Exhibit P. The area edged pink can be clearly seen on the plan. By the first paragraph of the prayer in the statement of claim the appellants excepted from this area an area edged yellow on the plan. Mr. Quass, who appeared for the respondents, took the point that one of the boundaries of the land is not described in words in the statement of claim, and contended that the appellants did not really know what they were claiming. It appears to me, with respect, that there is no substance in this point. The appellants claimed the land demarcated on the plan. If they proved their right to more, they could still only get what they claimed; if they proved their right to less, they could only be given what they had proved to be theirs. The fact that the appellants used the name Otu-Ocha, which admittedly applies to a wider area, is immaterial in view of the clear limits shown on their plan.

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Exhibit P(P)
Exhibit C(P)

There have been three previous actions between the parties concerning this land or land adjacent to it. The history of the land has been complicated by the following facts. On 25th June 1898, the Royal Niger Company acquired from the appellants a piece of land which appears more or less to coincide with the land shown on Exhibit P (see Agreement, Exhibit C). Its boundaries are: first, the left

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bank of the Anambra River (or Creek) between the Akkor River to the westward and a spot known as Nkpunwofia to the eastward. This Nkpunwofia is the site of an ant-hill and appears later in the proceedings as Nkpunwofia. From the Akkor River and Nkpunwofia two other boundaries run inland - according to the sketch accompanying the agreement, in a straight line - for a depth of a thousand yards. The fourth boundary joins the ends of these two boundaries and runs parallel to the Anambra River at a distance of a thousand yards.

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By section 2 of the Niger Lands Transfer Ordinance, which came into force on 25th February 1916, the land transferred by the appellants to the Royal Niger Company was vested in the Governor of Nigeria as from 1st January 1900. By order 38 of 1950 made under Section 10 of the Ordinance the Governor abandoned all right, title and interest in the land, except for the small area edged yellow on Exhibit P.

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Section 14 of the Ordinance provided that "such abandonment shall have effect as if such vested trust lands or part thereof had never been included in the instrument, agreement or document, as the case may be, by which the same were originally transferred to the Company". The appellants, if in fact they were the owners in 1898 became again the owners by virtue of the Governor's order, and they therefore began their action in the Omuigwedo Native Court in 1950, to enforce that right of ownership against the respondents, who were at that time settled on part of the land in dispute.

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The first litigation between the parties was a native court action brought by the appellants somewhere about 1920 claiming "Otu Ocha". No written record of this action was produced, but R.A. Idigo, the first respondent in the present appeal, admitted while giving evidence in another action between the same parties in 1935, that this action had been brought and said that the appellants brought it because the respondents had driven them away from the Anambra beach. This action is relevant only as evidence that the appellants were making a claim against the respondents in connection with this land as far back as about 1920.

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The next action, also by the appellants against the respondents, was brought in 1933. The whole record of the case was before the lower court and

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Exhibit O17(P)

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continued.

Exhibit M(P)
Exhibit M19(P)
Exhibit M18(P)

is Exhibit M. The boundary of the land on the side opposite to the Anambra River was not given in the particulars of claim and the District Officer in giving judgment dealt with the claim as though it extended beyond the boundary of the land sold to the Royal Niger Company as far as a place known as Ugu Nwusakwu. On appeal, however, in the Supreme Court sitting at Onitsha, it was admitted by both parties that the land claimed in that action was "precisely the same as the land covered by the Royal Niger Company Agreement." That, in my view, is conclusive on the point. The District Officer said in his judgment: "If judgment were to be based upon these contending claims and allegations, it might be difficult to formulate one which would be the correct one. But there is now to be taken into account that other factor to which I referred in my opening sentence." That other factor was the sale of the land to the Royal Niger Co. and its subsequent vesting in the Governor. The District Officer took the view that it was then too late to challenge the validity of the sale to the Company and that it must be assumed that the appellants had the right to transfer it. The land had since become Crown Land, but the District Officer was of opinion that the Crown had "not sought to protect its rights in the land" and was "content that the original owners of the land should renew their ownership". He therefore, granted the appellants the declaration they asked for.

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Exhibit M20(P)

Graham Paul J., on appeal reversed this judgment, on the ground that by the 1898 agreement the appellants had divested themselves of all rights in the land and were, therefore, not entitled, to a declaration. He referred to the District Officer's doubts as to how judgment might have gone, apart from the 1898 agreement, and said that he was in no better position in this respect than the court below, but he concluded his judgment by saying :- "All I can find on the material before me is that the plaintiffs-respondents did in fact prove that they had no right or title to this land left in them after the 1898 agreement; and that their claim for a declaration of title should, therefore, have been dismissed and judgment entered for the defendants-appellants". Mr. Quass contended that the appellants were estopped by these judgments from bringing their present action. On a careful consideration of both judgments it appears to me that this is not so. By Section 53 of the Evidence Ordinance "every judgment is conclusive proof, as against

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parties and privies, of facts directly in issue in the case, actually decided by the Court, and appearing from the judgment itself to be the ground on which it was based". In neither judgment is there any finding of fact on which the judgment itself is based which decided the issue as to the appellants' right of ownership of the land in question immediately prior to its sale to the Royal Niger Company. It is clear that the District Officer made no attempt to arrive at a decision, and whatever might be inferred from the immediately preceding paragraph in Graham Paul, J.'s judgment, from the paragraph I have quoted it is clear that the ground for his holding that the appellants' claim for a declaration of title should have been dismissed was the fact that they had proved that they had no right or title in the land. His judgment was not based on any other concurrent finding of fact.

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1957 -
continued.

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The third action, also by the appellants against the respondents, was brought in 1935. The record of the case was produced in the court below and was marked Exhibit O. In this case the appellants claimed an area of land starting from that boundary of the land sold to the Royal Niger Company which ran opposite the Anambra River at a distance of a thousand yards, and stretching from that boundary in a south-westerly direction for something over three miles (see plan Exhibit A). Waddington, J., who tried this action, decided that on the evidence before him it was impossible to draw any definite conclusion, and he, therefore, non-suited the appellants. Mr. Quass contended that this judgment also constituted an estoppel on the ground that although the area was admittedly different from that claimed on the former case, yet the facts to be established were identical. With respect, I think, this is clearly not so. It would have been so if, for example, the appellants' claim had in both cases depended upon the same document of title. But in this case the appellants' right, if any, depends on their occupation of the land and exercise of rights of ownership in relation to it. They might well not have been able to prove occupation of the land claimed in the 1935 action, but yet be able to prove occupation of the land now in dispute.

Exhibit O(P)

Exhibit A(P)

Mr. Dingle Foot, who appears for the appellants, classified the evidence before the court below as (1) traditional evidence (2) evidence of possession and (3) evidence of ownership. On the question

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of traditional evidence, he did not address us at all. This course seems abundantly justified by the very unsatisfactory evidence which was adduced, the learned Judge himself saying that it was "impossible to find anything certain or even reasonably probable from it" and that neither side had "established anything definite from it", although he ventures the opinion that its effect was "on the whole rather against the plaintiffs", the present appellants, "than in favour of the respondents".

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As to the evidence of possession Mr. Foot maintained that "there was very strong evidence of exclusive possession up to about 1910." The year 1910 is the approximate date at which some people known as Umuoba Anam settled on an area within the land in dispute. The appellants say that they gave the Umuabo Anam permission to settle, while the respondents say that they gave them permission. However, this may be, there is no dispute that they came about 1910 and that at that time the respondents were still dwelling to the east of the land in dispute on the other side of the Emu Stream, and not on the land in dispute at all. But, as Mr. Quass pointed out, the question in relation to the appellants' possession is not so much one of dates, as of quantum. What possession have the appellants shown? No doubt they were on the left bank of the Anambra in 1898 but what extent of land did they occupy? The learned Judge found that they had two ferry stations on the left bank and that they used these ferry stations for the purpose of going over to the other bank of the Anambra to farm there. This appears to me to be the only definite finding of fact made by the learned Judge as to the appellant's occupation. He certainly did not find as a fact that they were living and farming further inland, as they alleged. Mr. Foot contended that the learned Judge should have placed more weight on the admitted existence of a "juju" on the land, since a "juju" is placed only on one's own land. It appears to me on the whole of the relevant facts that there is some doubt as to the correctness of the learned Judge's finding that this "juju" was not an old-established "juju" in 1933; indeed, as Mr. Foot pointed out, the first respondent in giving evidence in the present action in the Court below did not challenge the antiquity of the "juju" he challenged its ownership. But it is not only the existence of a "juju" but its relative position that must be considered. The District Officer who tried

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the 1933 case inspected the "juju" and this is what he says in his judgment: "The defendants claim that they first gave Uguma-Umleri people the right to use a ferry at Ofianwagby which is within the disputed area. On the other hand plaintiffs point to their "juju" (Odakpa) at this spot and insist that it has always been there". Now, there is no dispute that the appellants did occupy a ferry station at Ofianwagbo, and whether they occupied it, as they say, as owners, or, as the respondents say, by their permission, they would be entitled to have their own "juju" there. The true ground for placing no weight on the existence of this "juju" is, in my opinion, that it was erected thereby the appellants as occupiers of Ofianwagbo only and cannot possibly be deemed to indicate occupation of the whole area in dispute.

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As I see the case, what the appellants had to show was that they were owners of the land in dispute in 1898 at the time of the sale to the Royal Niger Company. The onus was on them to show as at 1898 "acts of ownership extending over a sufficient length of time, numerous, and positive enough to warrant the inference that" they "were exclusive owners" (Ekpo v. Ita, XI N.L.R. 68 at 69). In my opinion, they failed to do this. Apart from this, there was some evidence of acts of ownership on the land by the respondents. I think Mr. Foot was right in contending that any of such acts, such as a lease to J. Holt & Co. in 1926, which occurred after the land had been sold to the Royal Niger Company, should not be held against the appellants. They could not have challenged them; they would have been told, as they were in the 1933 appeal, that they had parted with their ownership of the land. But there was a grant in 1894, by the respondents of the Ofianwagbo beach, which is on the left bank of the Anambra River within the area in dispute, to the Roman Catholic Mission, which the learned Judge found proved, and there was evidence to support this finding.

The learned Judge, after having disposed of the traditional evidence and after indicating his view of the evidential value of the Odakpa Juju said: "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." As

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regards the latter, I think it must be taken, although he has not expressly said so, that the learned Judge found that the land was given to the Umuoba Anam by the Respondents. This settlement, however, took place in 1910 when the land was already Crown Land. Unless the land granted to the Umuoba Anam overlapped any land occupied by the appellants, the appellants could not have complained in any court of law of the settlement. They had parted with all the rights they had in the land to the Royal Niger Company. I am of opinion, therefore, that the Umuoba Anam settlement can be of no evidence against the appellants in relation to their claim of ownership. It is true that the Privy Council has held in Chief Kodilinye v. Phillip Akunne Ananogu (P.C.A. No.30 of 1951) that Section 14 of the Niger Lands Transfer Ordinance "is not to be construed as compelling the Court to disregard all events which have happened in the period between" the grant to the Company and the order by the Governor under the Section "in so far as they may affect any rights of use and occupation in respect of such land as may have been acquired or have accrued by acquiescence or otherwise during those years." But what was in issue in the court below was not use or occupation, but ownership, and the effect of Section 14 as regards ownership is, in my opinion, to place claimants thereto in the same position as they occupied at the date of the transfer to the Company.

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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. After stating that the 1898 grant has considerable evidential value, the learned Judge says:

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"The Aguleri, on the other hand, were not on the land when they gave part of it to the Mission for a beach at Ofianwagbo in 1894, and this seems to show that the Mission looked further than the occupiers and found the true owners, which, if that were so, the Company did not do four years later. So likewise the Umuoba Anam, by the Aguleri's Account, dealt first with the occupiers and then had to come to a reckoning with the true owners. It seems to me that, other things being equal, a transaction with persons not in occupation is of greater evidential value to show their ownership than one with occupiers. And the 1894 acquisition of Ofianwagbo beach by the Mission was undoubtedly a trans-

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action of that sort." With respect, I have considerable doubts as to the soundness of this proposition. In the first place, this Court has had numerous cases before it where persons not in occupation have sold land which actually belonged to someone else. Secondly, the facts of the present case appear to me to be against the applicability of this proposition, even if it might hold good in other circumstances. In 1898 the Umuleri were in occupation of land beyond the river Akkor and the Aguleri of land beyond the Emu stream. Upon the land in dispute, the land in between these two boundaries, the Aguleri were admittedly nowhere in occupation, while the Umuleri were in occupation of at least some areas along the river bank. Whatever the historical reason may be, it appears that this land between the two streams was vacant land into which only the Umuleri had so far infiltrated. Now, ownership to native land is acquired by occupation. It was never suggested that the Aguleri had at any time been in occupation of the land, and it is difficult to see how they could have been the owners of any of it.

On the other hand, I do not think the 1898 grant tells in favour of the appellants as regards their total claim. I am inclined to think that the Aguleri must have known of the 1898 grant by the Appellants to the Royal Niger Company. The Company was active that year along the Anambra River. In January 1898 it acquired two tracts of land from the Aguleri above the Emu stream and five months later it acquired the land in dispute from the Umuleri and built some small zinc houses on it, although they were abandoned after three years. 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 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.

Upon a careful consideration of the whole

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Judgment of
Hubbard,
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23rd February
1957 -
continued.

Exhibit C(P)

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(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.

I would, therefore, dismiss this appeal with costs.

(Sgd.) PERCY C. HUBBARD.

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No. 34

Judgment of
Foster Sutton,
F.C.J.

23rd February
1957.

No. 34

JUDGMENT OF FOSTER SUTTON, F.C.J.

I agree that this appeal should be dismissed, and only wish to add a few words to the judgment which has just been read.

Exhibit R(D)

I think the learned trial Judge was right in placing some weight on the affidavit made by the Chiefs of the Aguleri Native Court in the year 1922, since Chief Okoye, Chief of Umunchezi Umuleri was a party to it, and the deponents swore therein that the Aguleri were the rightful owners of a piece of land forming part of the land known as Otuocha which is the land in dispute in this case.

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Chief Okoye was the then Chief of the Umuleri (plaintiffs), the declaration was against the interests of his own people, and I think it highly improbable that their chief would have then admitted that the Aguleri (defendants) were the "rightful owners" of a portion of Otuocha if such was not the case.

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In the present case the Umuleri set out to prove that they are, and from time immemorial have been, the owners of the whole of Otuocha.

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 has persuaded me that he ought to have held otherwise.

(Sgd.) S. FOSTER SUTTON. F.C.J.

I concur. (Sgd.) M.C. NAGEON DE LESTANG, F.J.

Counsel for the Appellants, Mr. Dingle Foot with him Messrs. Soetan and Ajegbo.

Counsel for the Respondents, Mr. Phineas Quass with him Messrs. Osadebay and Balonwu.

In the Federal Supreme Court of Nigeria

No. 34

Judgment of Foster Sutton, F.C.J.

23rd February 1957 - continued.

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No. 35

ORDER DISMISSING APPEAL

Saturday the 23rd day of February, 1957.

UPON READING the Record of Appeal herein and after hearing Mr. Dingle Foot, with him Messrs. Soetan and Ajegbo, of counsel for the Appellants and Mr. Phineas Quass, with him Messrs. Osadebay and Balonwu, of counsel for the Respondents:

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IT IS ORDERED that this appeal be dismissed and that the Appellants do pay to the Respondents costs of this appeal fixed at £120.0.0d.

(L.S.)

(Sgd.) W.A.H. Duffus

(Sgd.) S. Foster Sutton

CHIEF REGISTRAR.

CHIEF JUSTICE OF THE FEDERATION.

No. 35

Order Dismissing Appeal.

23rd February 1957.

In the Federal
Supreme Court
of Nigeria

No. 36

ORDER ALLOWING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No. 36

Order allowing
Final Leave to
Appeal to Her
Majesty in
Council.
22nd May 1957.

Wednesday the 22nd day of May, 1957.

UPON READING the application herein for final leave to appeal to Her Majesty's Privy Council from the judgment of this Court given on the 23rd day of February, 1957, and the affidavit of Kasali Aremu Kotun, sworn to on the 2nd day of May, 1957, filed on behalf of the Applicants, and after hearing Mr. K.A. Kotun of counsel for the Applicants and Mr.M.O. Balonwu of counsel for the Respondents:

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IT IS ORDERED that final leave to appeal to Her Majesty in Council be and is hereby granted.

(Sgd.) O. JIBOWU
ACTG. CHIEF JUSTICE
OF THE FEDERATION.

(Sgd.) F. Olawale Lucas.
AG. CHIEF REGISTRAR.

No. 37

Order for
Stay of
Execution.
22nd May 1957.

No. 37

ORDER FOR STAY OF EXECUTION

IN THE FEDERAL SUPREME COURT OF NIGERIA HOLDEN AT
LAGOS

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Suit No. 0/48/1950
W.A.C.A.266/1955

Between

1. IDOKO NWABISI, substituted for Chinweze Chidebe,
2. IFEACHO IGWEZE, substituted for Igweze Odili, on behalf of themselves and Umuleri people

Applicants

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- and -

1. R.A. IDIGO,
2. SONDI OFILI, on behalf of themselves and the Aguleri people

Respondents

Wednesday the 22nd day of May, 1957.

UPON READING the application herein for an order granting stay of execution of the judgment

of this Court given on the 23rd day of February, 1957, pending the determination of the appeal lodged to Her Majesty's Privy Council, and the affidavit of Idoko Nwabisi, sworn to on the 6th day of May, 1957, filed on behalf of the Applicants and after hearing Mr. K.A. Kotun of counsel for the Applicants and Mr. M.O. Balonwu of counsel for the Respondents:

IT IS ORDERED that execution be stayed subject to payment into Court of the costs awarded against the appellants within one month of the date of this order.

Intld. O.J.

ACTING CHIEF JUSTICE
OF THE FEDERATION.

Intld. F.O.L.

AG. CHIEF REGISTRAR.

In the Federal
Supreme Court
of Nigeria

No. 37

Order for
Stay of
Execution.

22nd May 1957

- continued.

Exhibits

E X H I B I T S

"D(P)"

EXHIBIT D(P) - AGREEMENT NO. 78 in VOLUME 2

Agreement No.
78 in Volume
2.

NO. 78

VOLUME 2.

17th September
1891.

THIS AGREEMENT and CONVEYANCE made the seventeenth day of September eighteen hundred and ninety-one. Between Idigo, Onobu, and Moloku (chiefs) and Oyakora, Oonchoe, Ayadoe, Okunaloh, Efachur Obodagu Abata, Waka and Oyema of the first part and Cyril S.P. Hankin, District Agent of the Anambara creek in the Niger Territories for and on behalf of the Royal Niger Company Chartered and Limited of the second part.

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WITNESSETH that in consideration of the payment by the said Cyril S.P. Hankin acting as aforesaid, to the said Idigo, Onobu and Moloku (chiefs) and Oyakora, Oonchoe, Ayadoe, Okualoh, Efachur, Obodago, Abata, Waka and Oyema of the sum of Forty Measures (in goods), local value they the said Idigo Onobu and Moloku (chiefs) and Oyakora, Oonchoe, Ayadoe, Okualoh, Efachur, Obodago, Abata, Waka and Oyema do hereby cede and convey to the Royal Niger Company Chartered and Limited and its assigns as its and their absolute property for ever, all that plot of land situate at Gloria Ibo From the river side with a frontage extending 1170 feet, that is 550 feet to Westward from the centre of the dwelling house and 620 feet to eastward from the same point and extending back in a direction due south for a distance of 920 feet And that they the said do hereby declare that they have the power so to dispose of the said land.

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In witness whereof the said Idigo, Onobu and Moloku, Oyakora, Oonchoe, Ayadoe, Okualoh, Efachur, Obadagu, Abata, Waka and Oyema have hereto affixed their marks and the said Cyril S.P. Hankin having so set his hand for and on behalf of the Royal Niger Company Chartered and Limited.

Idigo	x his mark	Okualoh	x his mark
Onobu	x his mark	Efachur	x " "
Moloku	x " "	Obadagu	x " "
Oyakora	x " "	Abata	x " "
Oonchoe	x " "	Waka	x " "
Ayadoe	x " "	Oyema	x " "

40

(Signed) Cyril S.P. Hankin.
p.p. The Royal Niger Company Chartered and
Ltd.

The said have affixed their marks to the above written instrument in the presence of us the undersigned witnesses; the same having first been interpreted to them in the Ibo language and they having expressed their assent thereto in our presence.

Exhibits

"D(P)"

Agreement No. 78 in Volume 2.

Witnesses. (signed) James Frederick Hill
(signed) Saml. A. Cole.

17th September 1891 - continued.

(Signed) Cyril S.P. Hankin,
Dist. Agent Anambara.

10

Done in triplicate this 17th day of September 1891 at Gloria Ibo.

(Signed) Saml.A.Cole (Interpreter)
(Signed) Cyril S.P. Hankin.

This instrument was delivered to me for registration by John McTaggart for and on behalf of the Royal Niger Company Chartered and Limited at 9.0 o'clock in the forenoon this 1st day of December 1897. I am satisfied it is a genuine instrument under the hands of the respective parties thereto.

20

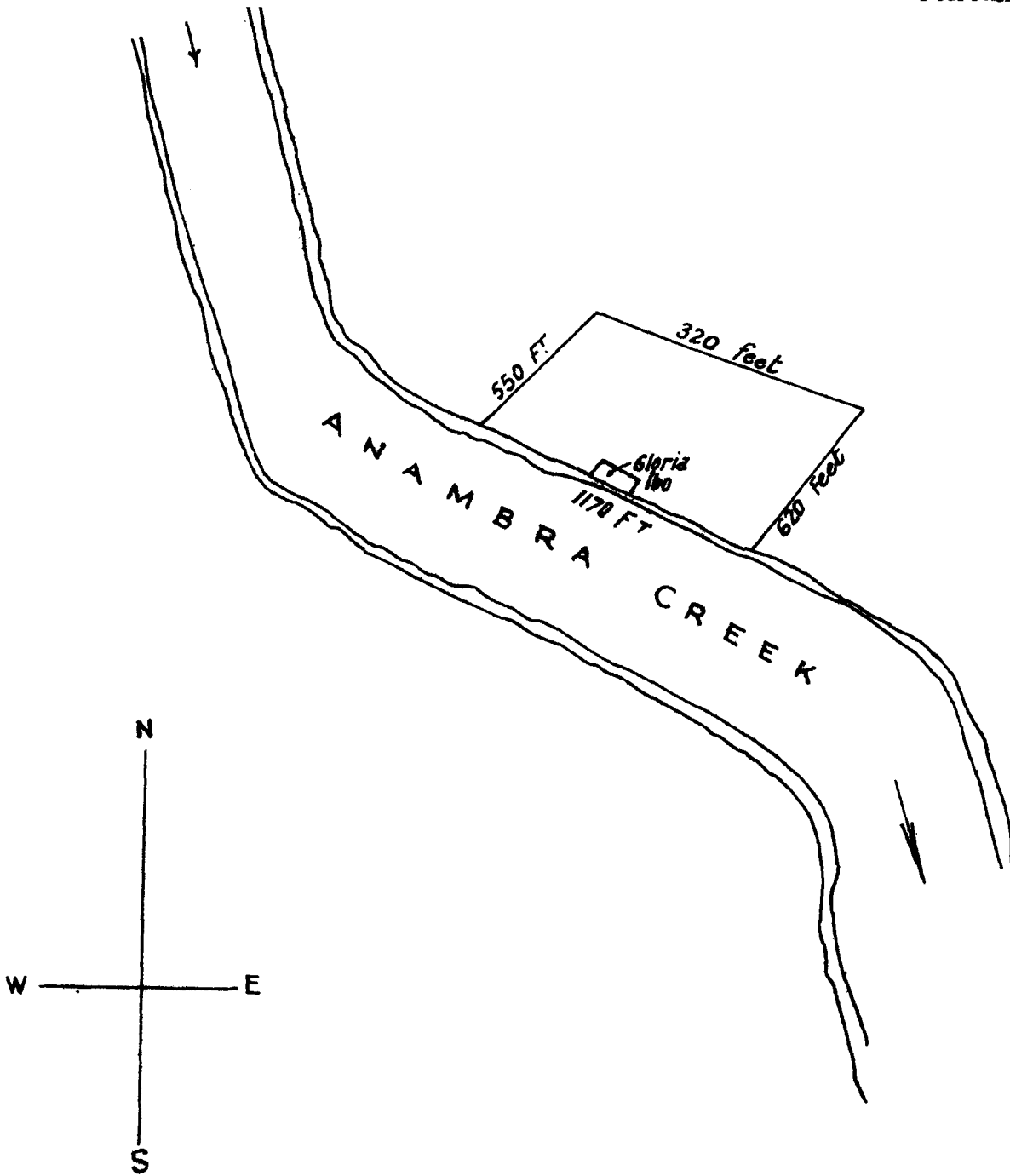
(Sgd.) T.A. Harkworth
Registrar of Instruments.

(Intld.) JOD:



Exhibits

"D(P)"
Agreement No.
78 in Volume
2.
17th September
1891 -
continued.



Tracing N^o 3363/78

EXHIBIT E(P) - DEED OF AGREEMENT
NO. 111 in VOLUME 2

Exhibits

"E(P)"

AGREEMENT FOR PURCHASE OF LAND

Deed of
Agreement No.
111 of Volume
2.

4th January
1898.

AGREEMENT between The Royal Niger Company, Char-
tered and Limited hereinafter called the Company on
the one part and the Head Chief and Chiefs of
Effeteh hereinafter called the vendors on the other
part.

10 1. The Vendors for good consideration, the rec-
eipt of which is hereby acknowledged sell to the
Company all the private rights of every kind not
already possessed by the Company the land between
Ezeogoro on the East to the limit of Ugborzura on
the East on the left bank of the Omerum branch of
the Anambra Creek and extending back from the river
One thousand yards inland.

20 2. The Company agrees not to disturb present ten-
ants or their heirs who may wish to continue in
personal occupation of their lands or houses from
the date, except at a price to be fixed by mutual
agreement at the time.

We, the undersigned wit-
nesses do hereby solemnly
declare that the persons
whose names are placed
opposite their respective
marks, have in our presence
affixed their marks of their
own free will and consent,
and that, Herbert W. Booth
District Agent Anambra on
behalf of the Company, has
in our presence affixed his
signature.

Head Chief	X	Ofoocha
"	X	Owenbeh
"	X	Iffigekeh
"	X	Onokwo
"	X	Noeri
"	X	Osiah

Witnesses:-

(Sgd.) T.S. Rogerson.

(Sgd.) Percy T. Humby.

40 I, Herbert W. Booth District Agent of the Anambra
District for and on behalf of The Company, do
hereby approve and accept the above Agreement, and
hereby affix my hand.

(Sgd.) Herbert W. Booth.

ExhibitsNo. 111.Volume 2.

"E(P)"

DECLARATION BY INTERPRETER

Deed of
Agreement No.
111 of Volume
2.
4th January
1898 -
continued.

I, Isaac Thomas Palmer native of Sierra Leone do hereby solemnly declare that I am well acquainted with the Effeteh language, and that on the 4th day of January, 1898 I truly and faithfully explained the above Agreement to all the native signatories, and that they understood its meaning.

(Sgd.) Isaac T. Palmer

Witnesses to the above mark or signature,

10

(Sgd.) T.S. Rogerson

(Sgd.) Percy T. Humby.

Done in triplicate at Abutshi this 4th day of January, 1898.

This instrument together with the preceding sheets numbered 1 & 2 respectively with a plan attached was delivered to me for registration by H.W. Booth for and on behalf of the Royal Niger Company (Chtd & Ltd.) at 8 o'clock in the forenoon of the 17th day of August 1898. I am satisfied that it is genuine instrument under the hands of the respective parties thereto.

20

(Sgd.) W.M. Harold Baker
Registrar of Lands.

THE ROYAL NIGER COMPANY

Chartered and Limited.

A G R E E M E N T W I T H

Head Chief and Chiefs of

E F E T E H . .

Dated 4th day of January, 1898.

EXHIBIT E.

Exhibits

"G(P)"
Deed of
Agreement No.
111 of Volume
2.

4th January
1898 -
continued.

PLAN OF EFFETEH
*showing Land purchased by the
Royal Niger Company
Chartered & Limited*

*This was the Plan which was
attached to the agreement
when registered.*

*(Sgd.) Wm Harold Baker
Land Registrar*

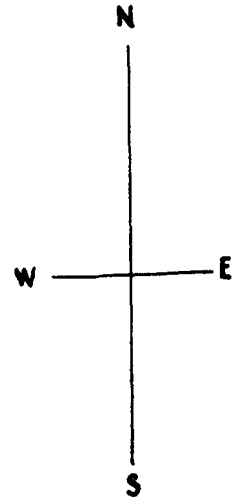
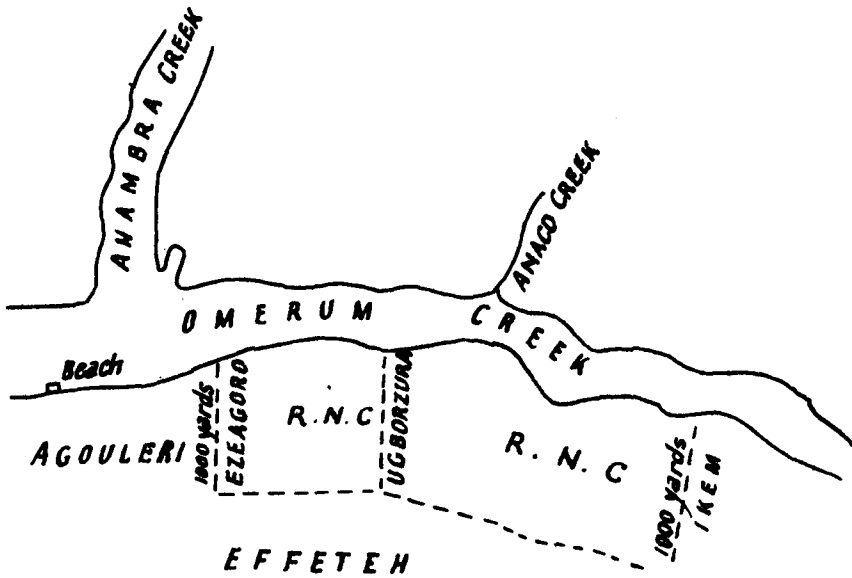


EXHIBIT F(P) - DEED OF AGREEMENT
(NIGER LANDS) NO.112 in VOLUME 2

Exhibits

"F(P)"

AGREEMENT FOR PURCHASE OF LAND

Deed of
Agreement
(Niger Lands)
No. 112 in
Volume 2.
4th January
1898.

AGREEMENT between The ROYAL NIGER COMPANY, Char-
tered and Limited hereinafter called the Company
on the one part and the Head Chiefs and Chiefs of
Ugborzura hereinafter called the vendors on the
other part

10 I. The Vendors for good consideration, the re-
ceipt of which is hereby acknowledged sell to the
Company all the private rights of every kind not
already possessed by the Company the land between
Effeteh on the West to the boundary of Ikem on the
East on the left bank of the Omerum Branch of the
Anambra Creek and extending back from the river
One thousand yards inland

20 II. The Company agrees not to disturb present
tenants or their heirs who may wish to continue in
personal occupation of their lands or houses from
this date, except at a price to be fixed by mutual
agreement at the time

				Their
	We, the undersigned wit-	Head Chief	X	Igbokwe
	nesses, do hereby solemnly	Chief	X	Ekwe
	declare that the persons	"	X	Udebwoo
	whose names are placed	"	X	Wandigbu
	opposite their respective	"	X	Iffejika
	marks, have in our pre-	"	X	Wankudeh
	sence affixed their marks	"	X	Igweagu
30	of their own free will and	"	X	Ibidike
	consent, and that, Herbert	"	X	Inameka
	W. Booth District Agent			Marks
	Anambra on behalf of The			
	Company, has in our pre-			
	sence affixed his signature.			

Witnesses

(Sgd.) T.S. Rogerson

(Sgd.) Percy T. Humby

40 I Herbert W. Booth District Agent of the Anambra
District for and on behalf of The Company, do
hereby approve and accept the above Agreement, and
hereby affix my hand.

(Sgd.) Herbert W. Booth.

ExhibitsDECLARATION BY INTERPRETER .

"F(P)"
Deed of
Agreement
(Niger Lands)
No. 112 in
Volume 2.

4th January
1898 -
continued.

I, Isaac Thomas Palmer native of Sierra Leone do hereby solemnly declare that I am well acquainted with the Ugboezum language, and that on the 4th day of January 1898 I truly and faithfully explained the above Agreement to all the native signatories, and that they understood its meaning.

(Sgd.) Isaac T. Palmer

Witnesses to the above mark or signature,

(Sgd.) T.S. Rogerson

10

(Sgd.) Percy T. Humby

Done in triplicate at Abutshi this 4th day of January 1898.

This instrument together with the preceding sheets numbered 1 and 2 respectively with a plan attached was delivered to me for registration by H.W. Booth for and on behalf of The Royal Niger Coy (Chtd & Ltd) at 8 o'clock in the forenoon of the 17th day of August 1898. I am satisfied that it is a genuine instrument under the hands of the respective parties thereto.

20

(Sgd.) Wm. Harold Baker.
Registrar of Lands.

(Intld.) JOD:

Exhibits

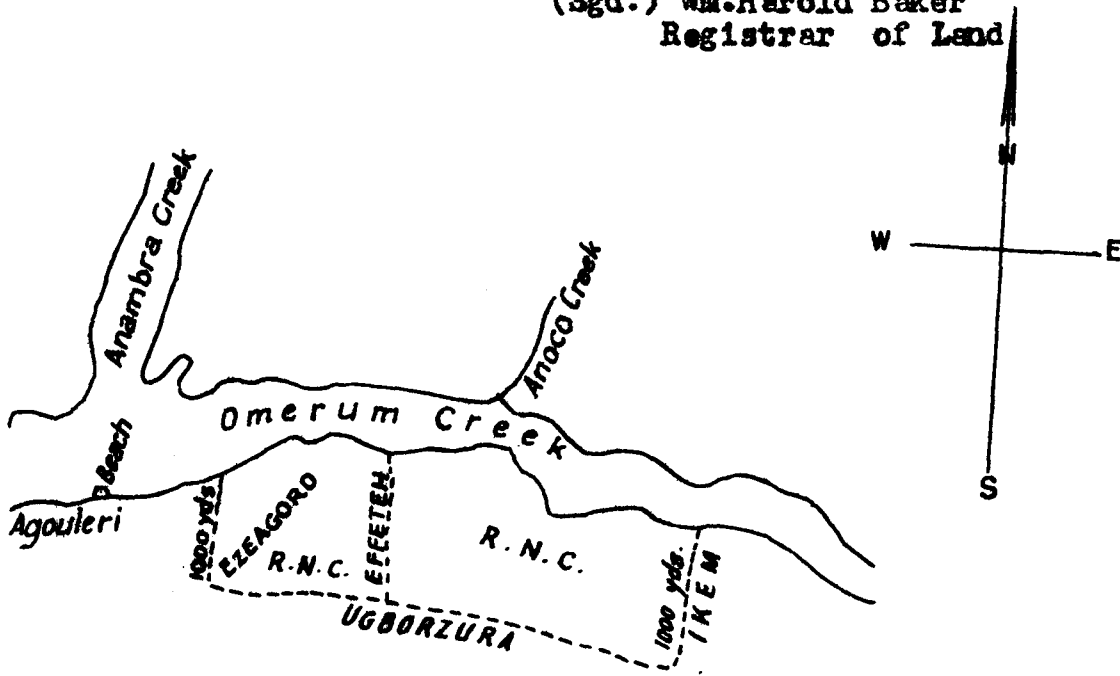
"P(P)"
Deed of
Agreement
(Niger Lands)
No. 112 in
Volume 2.
4th January
1898 -
continued.

PLAN OF UGBORZURA

showing land purchased by The Royal
Niger Company, Chartered & Limited.

This is the plan which was attached
to the Agreement when registered.

(Sgd.) Wm. Harold Baker
Registrar of Land



Tracing N° 3363/112

EXHIBIT C(P) - NIGER LANDS AGREEMENT
NO. 110 in VOLUME 2

Exhibits

"C(P)"

AGREEMENT FOR PURCHASE OF LAND

Niger Lands
 Agreement
 No. 110 in
 Volume 2.

25th June
 1898.

AGREEMENT between the ROYAL NIGER COMPANY, Chartered and Limited hereinafter called the Company on the one part and The Head Chief and Chiefs of Umutshezi in the Anambra Creek hereinafter called the vendors on the other part

10 I. The Vendors for good consideration, the receipt of which is hereby acknowledged sell to the Company all the private rights of every kind not already possessed by the Company the land between the boundary of Agouleri known as Apuwonfia to the Eastward to the limit of Akkor to the Westward on the left bank of the Anambra Creek and extending back from the river to a distance of One thousand yards inland.

20 II. The Company agrees not to disturb present tenants or their heirs who may wish to continue in personal occupation of their lands or houses from this date, except at a price to be fixed by mutual agreement at the time

30	WE, the undersigned witnesses do hereby solemnly declare that the persons whose names are placed opposite their respective marks, have in our presence affixed their marks of their own free will and consent, and that, Herbert William Booth on behalf of The Company, has in our presence affixed his signature.	Head Chief Ogboefin Wamaka Chief Ogboefin Mosa " Igwebike Okpara " Aniobi " Ezudoo	Their X X X X X Marks
----	---	--	---

Witnesses

(Sgd.) Thomas Scott Rogerson
 D.A. Igara.

40 (Sgd.) S.T. Haastrup

I Herbert William Booth for and on behalf of The Company, do hereby approve and accept the above Agreement, and hereby affix my hand.

(Sgd.) Herbert W. Booth
 Dist. Agent.

ExhibitsDECLARATION BY INTERPRETER

"C(P)"
 Niger Lands
 Agreement
 No. 110 in
 Volume 2.
 25th June
 1898 -
 continued.

I, Isaac Thomas Palmer native of Sierra Leone do hereby solemnly declare that I am well acquainted with the Eboe language, and that on the 25th day of June 1898, I truly and faithfully explained the above Agreement to all the native signatories, and that they understood its meaning.

(Sgd.) Isaac T. Palmer

Witnesses to the above signature,

(Sgd.) Herbert W. Booth
 Dist. Agt.

10

(Sgd.) S.T. Haastrup

Done in triplicate at Abutshi this 25th day of June 1898.

This instrument together with the preceding sheets numbered 1 & 2 respectively with a plan attached was delivered to me for registration by H.W. Booth for and on behalf of the Royal Niger Company (Chtd. & Ltd.) at 8 o'clock in the forenoon of the 17th day of August 1898. I am satisfied it is a genuine instrument under the hands of the respective parties thereto.

20

(Sgd.) Wm. Harold Baker
 Registrar of Land.

(Intld.) JOD.

Exhibits

"C(P)"
Niger Lands
Agreement
No. 110 in
Volume 2.
25th June
1898 -
continued.

PLAN OF UMUTSHEZI
showing land purchased
by

THE ROYAL NIGER COMPANY CHARTERED
AND LIMITED

This is the Plan which was attached
to the Agreement when registered.

(Sgd.) Wm. Harold Baker
Land Registrar.

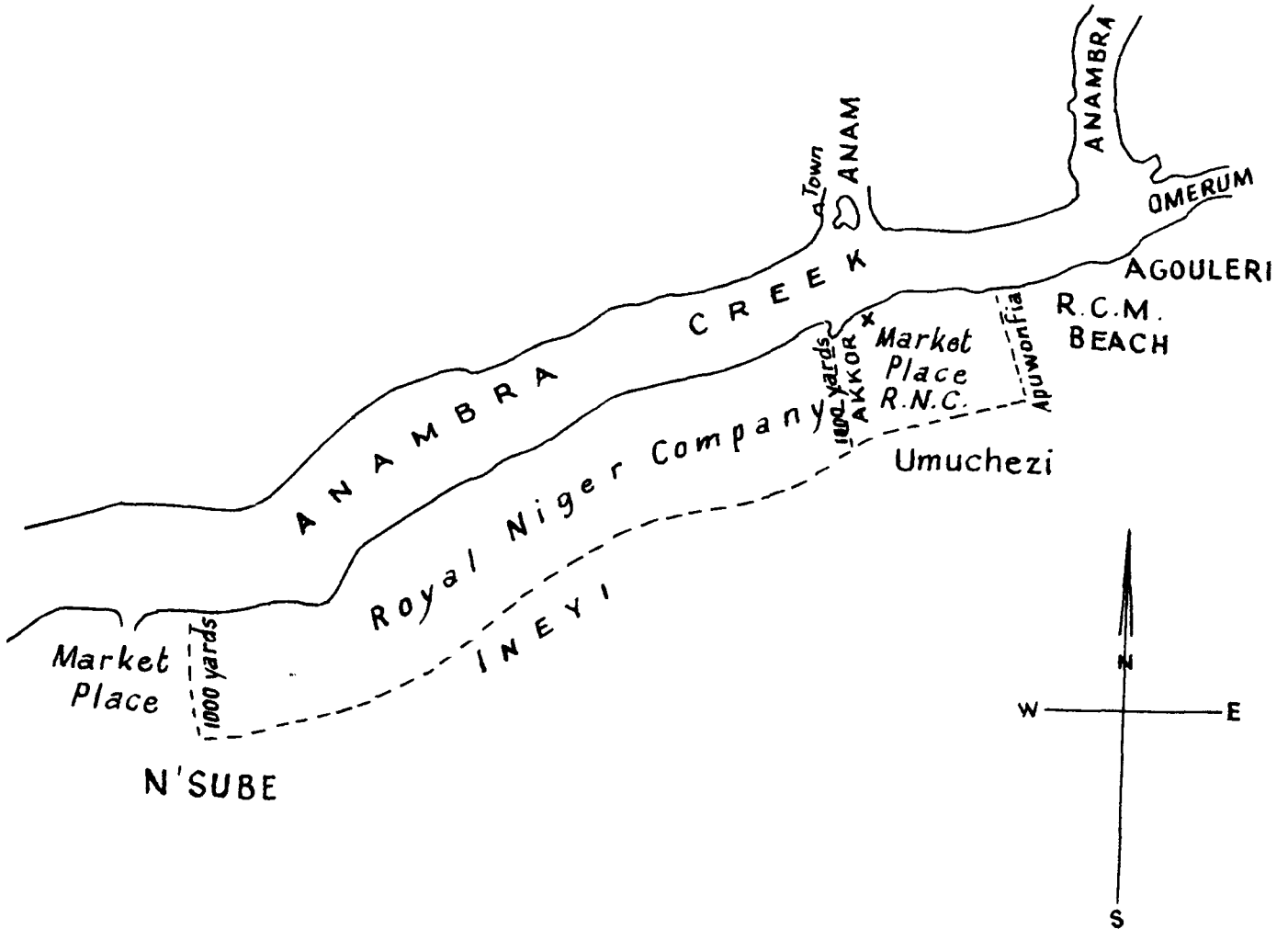


EXHIBIT U(D) - DEED OF LEASE No. 110/1904
PAGE 107 in VOLUME 2 (Calabar)

Exhibits

"U(D)"

Deed of Lease
 No. 110/1904
 page 107 in
 Volume 2
 (Calabar).

29th February
 1904.

THIS DEED made the 29th day of February, 1904,
 Between Nwanne King of Aguleri, for and on behalf
 of the Chiefs and people of Aguleri, (who with his
 successors in title is hereinafter referred to as
 the grantor) of the one part and the very Reverend
 Leo Lejcune, Prefect Apostolic in Southern Nigeria
 for the congregation of the Holy Ghost and of the
 10 Immaculate Heart of Mary, of 30 Rue Lhomond, Paris,
 in France, for and on behalf of the said Congrega-
 tion of the Holy Ghost and of the Immaculate Heart
 of Mary (who with his successors in office is here-
 inafter called the trustee) of the other part
 WITNESSETH that the grantor doth hereby grant to
 the trustee all that piece or parcel of land situ-
 ate at Aguleri, in the Asaba District of the Pro-
 tectorate of Southern Nigeria, which piece or par-
 cel of land is more particularly described and
 20 delineated on the plan attached to these presents
 and is thereon coloured yellow subject nevertheless
 to the covenants and conditions hereinafter con-
 tained:-

To hold the premises from the date of these
 presents In trust for the said congregation so
 long as the same shall be used, occupied and enjoyed
 for the purposes of a Mission Station yielding
 therefor during the continuance of the said grant
 the yearly rent of one shilling (1/-) to be paid on
 30 the 29th day of February in every year the first of
 such payments to be made on the 29th day of Febru-
 ary, 1905 and trustee doth hereby covenant with the
 grantor that he the trustee during the continuance
 of the said grant will pay the yearly rent herein-
 before reserved on the day and in the manner afore-
 said and will pay all taxes, rates, and outgoings
 now or hereafter payable in respect of the premises
 and will not assign or underlet the premises or any
 part thereof without the consent in writing of the
 40 grantor and will immediately after the premises
 ceased to be used for the purposes aforesaid or at
 the sooner determination of the said term deliver
 up the premises to the grantor and it is hereby
 expressly agreed that it shall be lawful for the
 trustee at the expiration or determination of this
 grant or within a reasonable time thereafter re-
 cover all building and erections erected by him on
 the premises. And it is hereby further expressly

Exhibits

"U(D)"

Deed of Lease
No. 110/1904
page 107 in
Volume 2
(Calabar).
29th February
1904 -
continued.

agreed that on any breach of the covenants by the trustee herein contained the grantor may re-enter upon the premises and immediately thereupon the said grant shall absolutely determine.

In witness whereof the said Nwanne has hereunto made his mark and set his seal and the said Leo Lejeune has hereunto set his hand and seal the day and year first written above.

Signed sealed and delivered
by the above named NWANNE
in the presence of

NWANNE
HIS MARK X (L.S.) 10

(Sgd.) P.H.A. Grant.
A. D. C.

Witness
(Sgd.) S.A. Bruce

Signed sealed and delivered
by the above named LEO
LEJEUNE in the presence of

(Sgd.) L. Lejeune (L.S.)
Proef. Apes.

(Sgd.) P.H.A. Grant
A. D. C.

Approved by me this 18th day of April 1904 20

(Sgd.) W. Egerton
High Commissioner.

I, Percy Hugh Arthur Grant make oath and say that on the 29 day of February, 1904, I saw Nwanne, King of Aguleri duly executed the Instrument now produced to me and marked A, and that the said Nwanne cannot read and write and the said Instrument was read over and interpreted to him by Samuel Okonue at the time of its execution and that he appeared to understand its provisions.

30

(Sgd.) P.H.A. Grant

Sworn at Asaba this 29th day of
February, 1904.

Before me,

(Sgd.) William S. Boyle.
District Commissioner.

This instrument was proved before me by the oath of the within named P.H.A. Grant to have been duly executed by the within named Nwanne on the 29th day of February 1904.

Given under my hand and official seal.

(Sgd.) William S. Boyle

District Commissioner.

Exhibits

"U(D)"

Deed of Lease
No. 110/1904
page 107 in
Volume 2
(Calabar).

29th February
1904 -
continued.

10 This instrument was delivered to me for registration by the Registrar General at 8.20 o'clock in the forenoon this 25th day of April, 1904.

(Sgd.) ? ? ?

Registrar of Deeds.

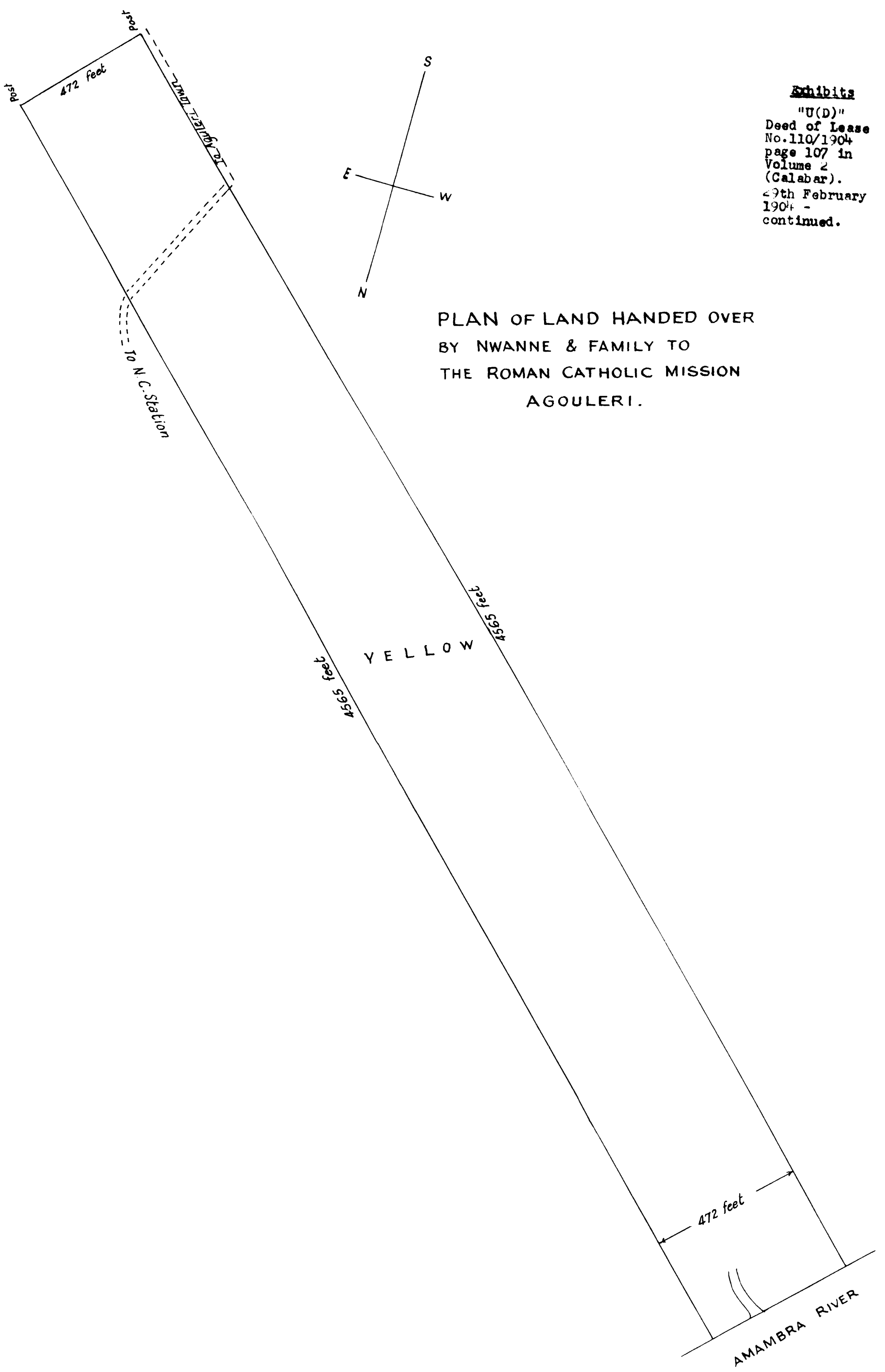
This Instrument is registered as No. 10/04, and is engrossed on pages 107 to 110, Register of Deeds, Volume 2.

(Sgd.) ? ? ?

Registrar of Deeds.

Exhibits

"U(D)"
Deed of Lease
No.110/1904
page 107 in
Volume 2
(Calabar).
29th February
1904 -
continued.



PLAN OF LAND HANDED OVER
BY NWANNE & FAMILY TO
THE ROMAN CATHOLIC MISSION
AGOULERI.

Exhibits

"R(D)"

Affidavit of
Chiefs of
Aguleri Native
Court,
13th September
1922 -
continued.

Onowu
Paul Chibogu

Their
X
X
marks

Witness to Marks. (Sgd.)

P.J. GARDNER
District Officer
Onitsha Division.

Before me.

Certified a true copy.

(Sgd.) M.N. EKWEREKWU
District Clerk
District Office,
Onitsha.

10

13th January, 1951.

"G(P)"

Deed of Lease
No. 12/1924
page 843 in
Volume 10
(Warri),
30th June 1924.

G(P) - DEED OF LEASE NO. 12/1924
page 843 in Volume 10 (Warri)

THE NATIVE LANDS ACQUISITION ORDINANCE, 1917.
12/1924

THIS DEED made the 30th day of June, 1924 BETWEEN
Chief Idigo of Otoisha Aguleri and the elders of
the Eziagulu Quarter of Aguleri hereinafter called
the lessors, which term includes the successors in
title of the lessors where the context so admits,
of the one part and The Niger Company Limited
hereinafter called the lessee, which term includes
the successors in title of the lessee where the
context so admits, of the other part WITNESSETH
that in consideration of the annual rent of
£20.0.0 (Twenty pounds) ----- to be paid by
the lessee as hereinafter mentioned the lessors do
hereby demise to the lessee ALL that piece or
parcel of land situate at Otoisha (Aguleri Water-
side) in the Onitsha province containing an area
of 1.414 acres and which is more particularly
delineated and shown surrounded by a border
coloured pink on the plan endorsed on these pre-
sents TO HOLD the same unto the lessee for a term
of 30 (thirty) years from the 1st June 1923 the
lessee paying therefor to the lessors without de-
mand the said annual rent on the first day of
January in each year, the proportion of rent due

20

30

40

up to the first day of January next being paid upon the issue of these presents.

Exhibits

"G(P)"

2. The lessee covenants with the lessors as follows:-

Deed of Lease
No. 12/1924
page 843 in
Volume 10
(Warri),
30th June 1924.
- continued.

- 10
- (1) To pay the said rent at the times and in the manner aforesaid.
- (2) To pay all existing or future taxes, rates, assessments, and outgoings of every description to which the premises or the lessors or lessee in respect of the premises are or is or shall be liable
- (3) Not to assign or underlet the said piece of land without the consent of the lessors and of the Governor.
- (4) To fence off the said piece of land within three months from the date of these presents to the satisfaction of the lessor and of the Governor and to keep the same so fenced off during the continuance of these presents.
- 20
- (5) At the expiration or sooner determination of these presents to deliver up the said piece of land peaceably to the lessors.
- (6) To use the said land for the purpose of trading and residence only, and to begin to use the said land for such purpose within six months from the date hereof.

3. Provided always and it is hereby agreed as follows:-

- 30
- (1) If the rent hereby reserved or any part thereof shall be in arrear for one month or if there shall be a breach or non-observance of any of the covenants aforesaid on the part of the lessee the lessors themselves or by the District Officer of the District on their behalf may re-enter upon the said premises and those presents shall forthwith absolutely determine.
- 40
- (2) If there shall be a breach of any of the said covenants hereinbefore contained, and if upon such breach the lessors shall not

Exhibits

"G(P)"

Deed of Lease
No. 12/1924
page 843 in
Volume 10
(Warri),
30th June 1924
- continued.

avail themselves of the powers of re-entry conferred upon them by the last mentioned proviso, the Governor for the time being may, by notice in writing, require the lessee to make good such breach within such time as is stated in the said notice, and, if the lessee shall neglect or fail to comply with such notice, these presents shall be null and void as if the consent of the Governor had not been given to the same. Such notice shall be a good and sufficient notice if the same be addressed to the lessee and delivered on the premises hereby demised.

10

(3) If the lessee shall not within six months from the date hereof use the said land for such purpose as aforesaid these presents shall be null and void as if the approval of the Governor had not been obtained thereto.

20

(4) If the lessee shall not use the said land hereby demised for the said purpose at any time during the continuance of the term hereof for the space of six calendar months, then and in such case these presents shall cease and determine.

(5) The lessee may at any time within three months before the expiration or determination of these presents or within a reasonable time thereafter remove any buildings, erections or fixtures erected or made by the lessee on the said land.

30

IN WITNESS WHEREOF the parties hereto set their hands and make their marks and set their seals the day and year first above written.

Signed sealed and delivered	Anisedo	His mark	O
by the above-named Chief	Sgd. R.A. Idigo		
Idigo and the Elders of	Somudi	His	X O
Eziagulu quarter of Aguleri	Ilakaisa	"	X O
in the presence of	Uba	"	X O

40

128.

Signed sealed and delivered
by the above-named Niger
Company Limited in the
presence of

P.P. Lyon Gardiner
The Niger Co. Ltd.
Lagos.

Approved the 25th day of August 1924

Sgd. A.G. COLES

P/A Reqd. 44 p.199 Vol.
169
Registered Deeds Lagos

Exhibits

"G(P)"

Deed of Lease
No. 12/1924
page 843 in
Volume 10
(Warri),
30th June 1924
- continued.

10 Witness to mark

A/g P & T Onitsha

Sgd. H.C. MOORHOUSE

Lieut Governor.

The within instrument is in the opinion of the
Commissioner of Stamp Duties chargeable with a duty
of One Pound and the duty thereon has been assessed
accordingly.

Sgd. R. LELMARE
9/9/24 Treasury Assistant
Commr. of Stamp Duties.

20 This Instrument was delivered to me for Registra-
tion by the Resident through the Treasury Assistant
Warri on the 16th day of September 1924 at 12 noon.

Sgd. H. NORMAN CLEVERLEY
Deputy Registrar of Deeds

This Instrument is Registered as No. 12/1924 and
engrossed on pages 843 to 844 in Volume 1 'C' of
the Lands Registry in the Office at Warri.

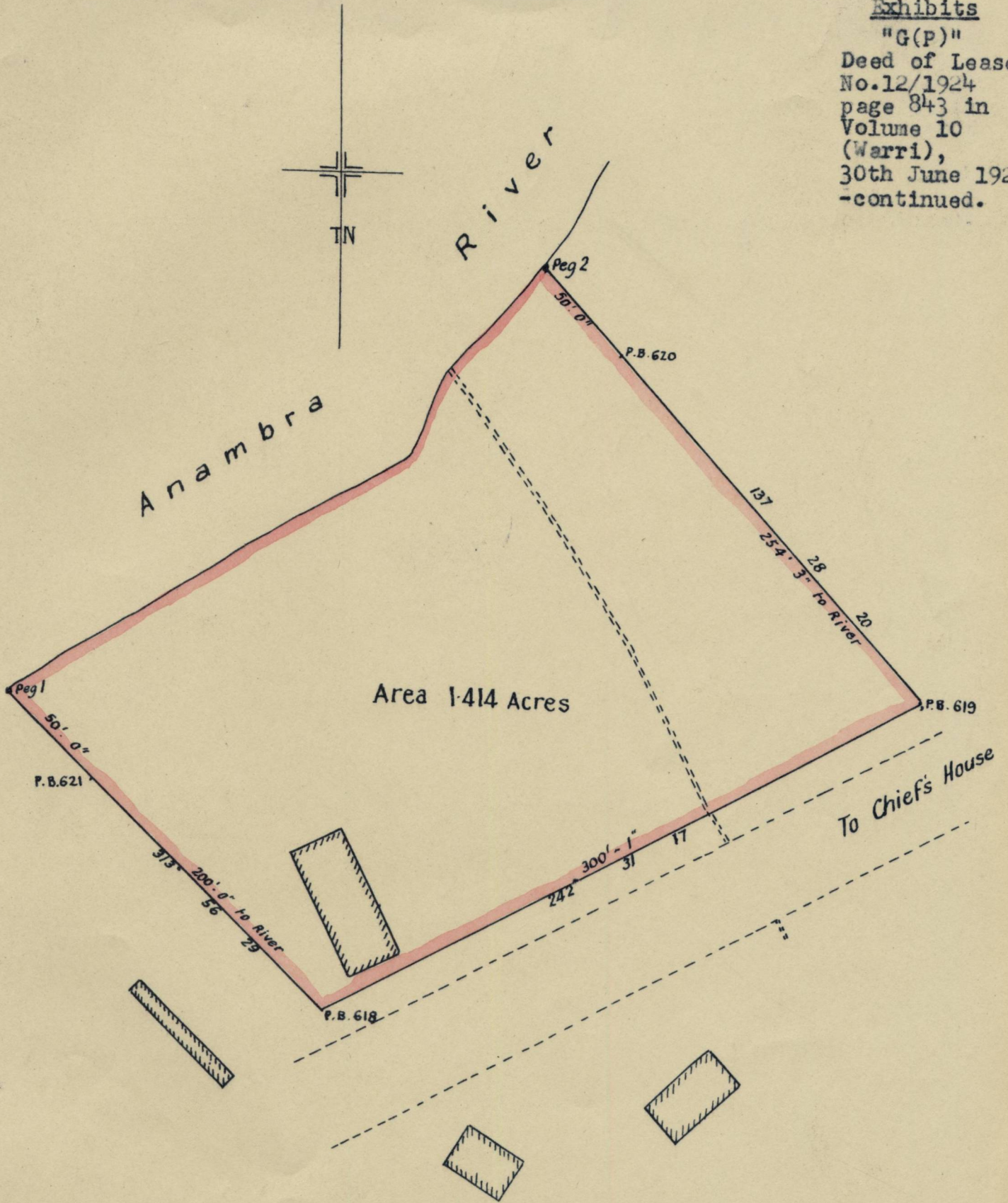
Sgd. H. NORMAN CLEVERLEY
Deputy Registrar of Deeds

30

16.9.24.

Exhibits

"G(P)"
Deed of Lease
No. 12/1924
page 843 in
Volume 10
(Warri),
30th June 1924
-continued.



Scale: 60 Feet to an Inch

L(P) - LETTER: R.A. IDIGO TO DISTRICT
OFFICER, ONITSHA.

Page 55 of O.D.353.

Exhibits

"L(P)"

Letter: R.A.
Idigo to Dis-
trict Officer,
Onitsha,
5th June 1926.

I K K A
5th June, 1926.

To
The District Officer,
Onitsha, at IKKA.

Sir,

I beg most respectfully to submit through you to the D.O. Idah, this my humble petition:

10 As the Head-Chief, Chiefs, and People, of the neighbouring towns and villages of Ibaji in Idah Division, were hireing, requesting, and calling Aguleri and Anam People to fish for them without my knowledge, and during or after the fishing, disputes and palavers often arise; complaint is then brought to me, sometimes by both sides, for settlement when I was unaware of the transaction or arrangement made.

20 Again when fishermen from Aguleri and Anam went stealthingly to a pool or pools which they were previously introduced by the owner, and if the fishermen are caught by the owner in the pool, to free or get rid of the trouble, they might pretended that I sent them; then without taken trouble to find the fact, the owner regarded their pretence and falsely accused me of trespass, or sending people to fish unlawfully.

30 Many times I was falsely accused of been offender or ring-leader in the matter of fishing-pools, while I was innocent.

As a Head-Chief of Aguleri, I was in several occasions called upon to answer or explain in the matters or transactions between the Ibaji people in Idah Division, and my people, (Aguleri & Anam). And I have to suffer and bear troubles innocently.

40 To avoid future complaints, disputes, and disturbances, I hereby earnestly and humbly beg, through your assistance, if the District Officer, Idah, could make it as a rule, and give good notice to the People concern, through the Head-Chief and Chiefs Chiefs,

Exhibits

"L(P)"

Letter: R.A. Idigo to District Officer, Onitsha, 5th June 1926 -continued.

that whenever they want fishermen from Aguleri or Anam to fish for them, they should ask me or apply through me to send (fishermen) people to fish for them, either in their pools situated in Onitsha Division, or in Idah Division, if necessary. So that I can or may be aware of the transaction made, and to refrain my people from causing disturbances, or breach of the contract, which is often the cause of disputes.

Soliciting to obtain your kind and favourable assistance to this my earnest request.

10

I have the honour to be,
Sir,
Your most obedient Servant.
(Sgd.) R. A. IDIGO
Head-Chief of Aguleri.

"H(P)"

Deed of Lease No. 7/1932 page 35 in Volume 2 E (Warri), 20th March 1932.

H(P) - DEED OF LEASE NO. 7/1932
PAGE 35 in VOLUME 2 E (WARRI)

THE NATIVE LANDS ACQUISITION ORDINANCE
(Chapter 89)

20

Registered as No. 7/1932
page 35 Vol. 2 "E"

Treasury
7th April 1932
No. 1594
Enigu

THIS DEED made the 20th day of March 1932 BETWEEN Chief Rapheal Akwoba Idigo for and on behalf of the people of Aguleri quarter hereinafter called the lessor, which term includes the successors in title of the lessor where the context so admits, of the one part and Messr John Holt and Company (Liverpool) Limited hereinafter called the lessee, which term includes the successors in title of the lessee where the context so admits, of the other part WITNESSETH that in consideration of the annual rent of £15 (Fifteen pounds) ----- to be paid by the lessee as hereinafter mentioned the lessor do hereby demise to the lessee ALL that piece or parcel of land situate at Aguleri Waterside in the Onitsha Province containing an area of 2548.58

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square yards and which is more particularly delineated and shown surrounded by a border coloured pink on the plan endorsed on these presents TO HOLD the same unto the lessee for a term of 20 (Twenty) years from the date of these presents the lessee paying therefor to the lessor without demand the said annual rent on the first day of January in each year, the proportion of rent due up to the first day of January next being paid upon the execution of these presents.

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2. The lessee covenants with the lessor as follows:-

- (1) To pay the said rent at the times and in the manner aforesaid.
- (2) To pay all existing and future taxes, rates, assessments, and outgoings of every description to which the premises or the lessor or lessee in respect of the premises are or is or shall hereafter be liable.
- 20 (3) Not to assign or underlet the said piece of land without the consent of the lessor and of the Governor.
- (4) To fence off the said piece of land within three months from the date of these presents to the satisfaction of the lessor and of the Governor and to keep the same so fenced off during the continuance of these presents.
- 30 (5) At the expiration or sooner determination of these presents to deliver up the said piece of land peaceably to the lessor.
- (6) To use the said land for the erection of a dwelling house for their European employe~~es~~es and their domestic servants only, and to begin to use the said land for such purpose within six months from the date hereof.
- 40 (7) To erect and complete upon the said land buildings to the value of £200 within twelve months from the date of these presents.

3. Provided always and it is hereby agreed as follows:-

Exhibits

"H(P)"

Deed of Lease
No. 7/1932
page 35 in
Volume 2 E
(Warri),
20th March
1932 -
continued.

Exhibits

"H(P)"

Deed of Lease
 No. 7/1932
 page 35 in
 Volume 2 E
 (Warri),
 20th March
 1932 -
 continued.

- (1) If the rent hereby reserved or any part thereof shall be in arrear for one month or if there shall be a breach or non-observance of any of the covenants aforesaid on the part of the lessee the lessor by himself or by the District Officer of the District on his behalf may re-enter upon the said premises and the term hereby created shall forthwith cease and determine but subject to the rights and remedies of the lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the lessee to be performed or observed. 10
- (2) If there shall be a breach of any of the said covenants hereinbefore contained, and if upon such breach the lessor shall not avail himself of the powers of re-entry conferred upon him by the last mentioned proviso, the Governor may, by notice in writing, require the lessee to make good such breach within such time as stated in the said notice, and if the lessee shall neglect or fail to comply with such notice, the term hereby created shall cease and determine but subject to the rights and remedies of the lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants on the part of the lessee to be performed or observed. Such notice shall be a good and sufficient notice if the same be addressed to the lessee and delivered on the premises hereby demised. 20 30
- (3) If the lessee shall not within six months from the date hereof use and continue to use the said land for such purpose as aforesaid a sum equivalent to twelve months rent shall be and become payable by the lessee to the lessor as liquidated damages and the term hereby created shall cease and determine but subject to the rights and remedies of the lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants or conditions on the part of the lessee to be performed or observed. 40

10 (4) If the lessee shall not use the said land hereby demised for the said purpose at any time during the continuance of the term hereof for the space of six calendar months, then and in such case the term hereby created shall cease and determine but subject to the rights and remedies of the lessor for or in respect of any rent in arrear or any breach or non-observance of any of the covenants or conditions on the part of the lessee to be performed or observed.

Exhibits
 "H(P)"
 Deed of Lease
 No. 7/1932
 page 35 in
 Volume 2 E
 (Warri),
 20th March
 1932 -
 continued.

(5) The lessee may at any time within three months before the expiration or determination of these presents or within a reasonable time thereafter remove any buildings, erections or fixtures erected or made by the lessee on the said land.

20 IN WITNESS WHEREOF the parties hereto have hereunto set their hands or made their marks and set their seals the day and year first above written.

Signed sealed and delivered
 by the above-named Raphael Akwoba Idigo in the presence of
 Sgd. R.A. IDIGO (L.S.)
 Sgd. D.P.J. O'Connor.

30 Signed sealed and delivered
 by Stanley Lendrum to above-named on behalf of Messrs. John Holt and Company (Liverpool) Limited by virtue of a Power of Attorney No.66 dated 23rd April 1928 and Registered at Lagos Registry in the presence of
 John Holt & Company (Liverpool) Limited
 Sgd. S. LENDRUM (L.S.)
 Sgd. G.H. Hulme.

APPROVED the 4th day of April, 1932.

40 Sgd. WM. BUCHANAN SMITH
 Lieutenant-Governor.

Exhibits

"H(P)"

Deed of Lease
No. 7/1932
page 35 in
Volume 2 E
(Warri),
20th March
1932 -
continued.

The within Instrument is in the opinion of the Commissioner of Stamp Duties chargeable with a duty of Ten Shillings and the duty thereon has been assessed accordingly and the document has been duly stamped.

Sgd. M.S. LEWIS
Commissioner of Stamp Duties
Assistant Treasurer
Enugu 7 April 1932.

THIS INSTRUMENT WAS DELIVERED TO ME FOR REGISTRATION through post BY THE SECRETARY SOUTHERN PROVINCES OF ENUGU AT 11.30 A.M. O'CLOCK IN THE FORENOON THIS 25th DAY OF APRIL, 1932.

10

Sgd. T.J. SOUTHERN
Deputy Registrar.

THIS INSTRUMENT IS REGISTERED AS NO. 7/1932 AT PAGE 35 IN VOLUME 2 "E" OF THE LANDS REGISTRY IN THE OFFICE AT WARRI.

£1 paid - Onitsha
T.R.No.420500/72
of 10.2.31

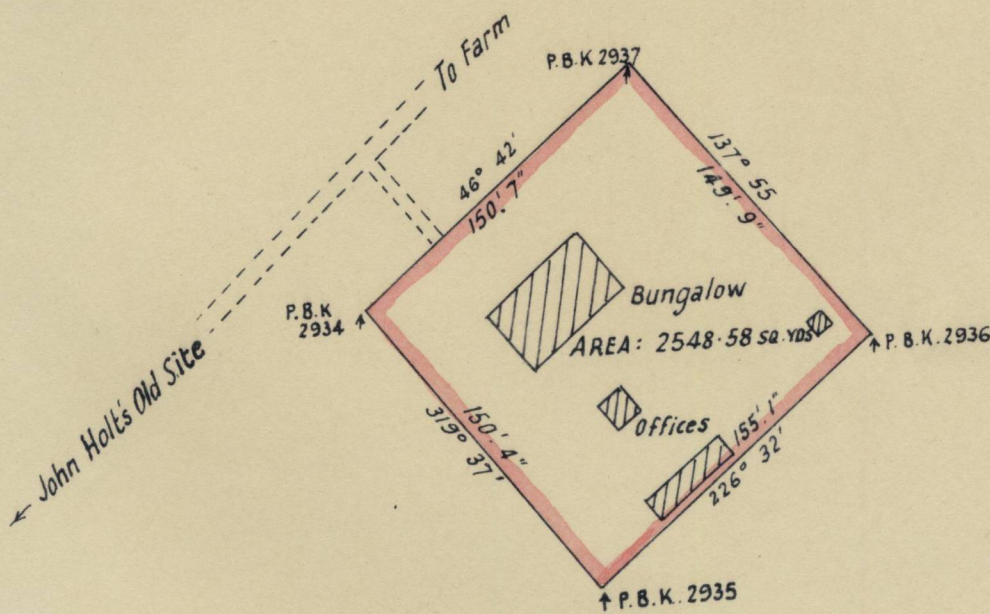
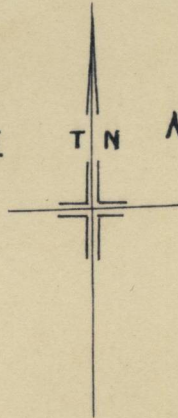
Sgd. T.J. SOUTHERN
Deputy Registrar.

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Exhibits
"H(P)"
Deed of Lease
No. 7/1932
page 35 in
Volume 2 B
(Warri),
20th March
1932 -
continued.

AGULERI
ONITSHA PROVINCE

MESS^{RS}. JOHN HOLT & COMPANY LIMITED



(Sgd.) A.O. ODUYOYE,
Surveyor.

— Scale: 80 Feet to an Inch —

Exhibits

"V.1(D)"

Umuigwedu Clan,
Reorganisation
Report, 14th
October 1932
- continued.

There is no common meeting place for the clan - the members met as conditions require.

11. The Clan combined on two occasions before Government took over control. The first was when Nteje and Umuleri had a war and the other towns helped Umuleri either with food or fighting men. The second was when Awkuzu hired Aros to attack Nteje and the latter, who are related to Asaba, (where the Royal Niger Company Headquarters were then), informed the Company who sent troops and burnt Awkuzu. The clan then helped Awkuzu to re-build their houses.

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12. Since the advent of Government the towns appear to have been peaceful. All four were originally included in Awka Division but about 1909 Ogbunike and Umuleri were transferred to Onitsha Division by order of the Provincial Commissioner. Nando and Awkuzu at present attend Achalla Native Court, in Awka Division, Umuleri and Ogbunike attend Aguleri and Igidi Native Courts respectively, in Onitsha Division. Administration up to 1928 was through the warrant chiefs, who were appointed at town meetings by the people with the approval of Government. These chiefs sat in the various Native Courts as appointed by the District Officers and executive orders were sent through them. Purely town matters were discussed in the town by the natural leaders whether the District Officer was present or not.

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(Sgd.) A.F.B. BRIDGES
District Officer,
Awka Division.

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"V.2(D)"

Report on the
Umueri Vil-
lages of the
Aguleri Native
Court Area,
2nd November
1932.

V.2(D) - REPORT ON THE UMUERI VILLAGES
OF THE AGULERI NATIVE COURT AREA

Report on the Umueri Villages of the Aguleri Native Court Area of the Onitsha Division together with the villages of Nkwelle and Umunya at present contained in the Initsha and Ogidi Native Court Areas by Mr. B.G. Stone, Assistant District Officer.

.....

III. Historical

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19. The villages under report are, with the

exception of Nkwelle, of Igala origin. Aguleri, Igbariam, Nteje and Nsugbe claim to be descended from a common ancestor, Eri, a warrior who left Idah several hundred years ago and settled down in the Ibo country. He married Ibo wives and had seven sons NRI, AGULU, IGBARIAM, ANUKE, NTEJE, NSUGBE and ARABA who founded AGUKU, AGULERI, IGBARIAM, AMANUKE, NTEJE, NSUGBE and ASABA respectively. NRI is recognised by all as the eldest son but there is much dispute as to the relative seniority of the remainder. Another version of the story of Nri current at Igbariam is that he came down from heaven and found the whole earth covered with mud and water. So he prayed to God for assistance and God sent him a blacksmith who with the aid of his fire and bellows soon dried a sufficient area from them to settle down. This blacksmith gave his name to the town of Awka. Eri begat all the sons mentioned above and also another named ONOJOBOLI who went northwards and founded Idah. This latter story looks like an attempt to discount the importance of the Igala influence in the area. The truth would appear to be that these sons of Eri were military outposts of the Igala placed at strategic points in the conquered Ibo territory. This would account for the distance by which many of them are separated from each other.

20. In course of time they became completely assimilated with the local Ibo inhabitants and today speak no language but Ibo.

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(Sgd.) B.G. STONE
Assistant District Officer,
2/11/32.

Exhibits
"V.2(D)"

Report on the
Umueri Vil-
lages of the
Aguleri Native
Court Area,
2nd November
1932 -
continued.

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Exhibits

"M(P)"

Egbuche
(umuleri)
v Idigo
(Aguleri),
March 1933
to February
1934.

M(P) - RECORD OF PROCEEDINGS IN PROVINCIAL
COURT OF ONITSHA, NO. 2/1933, OKAFOR
EGBUCHE AND OTHERS (UMULERI) v. CHIEF IDIGO
AND ANOTHER (AGULERI).

M.1(P) - SUMMONS

IN THE PROVINCIAL COURT OF THE PROVINCE OF ONITSHA.

Suit No. 2/1933.

"M.1(P)"

Summons,
2nd March 1933.

BETWEEN:

- 1. OKAFOR EGBUCHE
- 2. IGWEZE ODILI
- 3. MASIE IFEJUKA and
- 4. EZIKE NWABISI for and on behalf
of the people of Umuleri ... Plaintiffs

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- and -

- 1. CHIEF IDIGO
- 2. SONDI for and on behalf of the
people of Eziagulu Quarter of
Aguleri Defendants

TO Chief Idigo and Sondi of Eziagulu Quarter of
Aguleri, Onitsha Division. You are hereby com-
manded in His Majesty's name to attend this
Court at Onitsha on a date to be notified later
to answer a suit by 1. Okafor Egbuche 2. Igweze
Odili 3. Masie Ifejuka and 4. Ezike Nwabisi for
and on behalf of Umuleri people against you. The
Plaintiff's claim is for a Declaration of Title
as per particulars attached. The value of the
land is £200.

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Issued at Onitsha the 2nd day of March, 1933.

(Sgd.) DERMOT O'CONNOR
District Officer
Onitsha Division.
2/3/1933.

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M.2(P) - PARTICULARS OF CLAIM

Exhibits

The Plaintiffs seek a Declaration of Title to all that piece or parcel of land known as OTU-OCHA Umuleri commencing from the Stream known as AKO to an Ant-Hill known as NKPUNWOFIA situate in the Onitsha Division. The value of the land is £200.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri),
March 1933
to February
1934.

Dated at Onitsha this 2nd day of March, 1933.

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Okafo Egbuche	Their	X
Igweze Odili		"
Masie Ifejuka		"
Ezike Nwabisi		" marks

"M.2(P)"

Particulars of
Claim, 2nd
March 1933.

for and on behalf of the people of Umuleri
Onitsha Division.

Witness to marks

(Sgd.) M.C. OKECHUKWU
D.H. P.C.

M.3(P) - DISTRICT OFFICER'S NOTE

"M.3(P)"

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CLAIM:- Declaration of Title to all that piece or parcel of land known as Otu Ocha - Umuleri commencing from the Stream known as AKO to an Ant-Hill known as NKPUNWOFIA situate in the Onitsha Division valued at £200.

District
Officer's Note,
10th April
1933.

Not admitted.

I am authorised by the Lieutenant-Governor Southern Provinces to exercise the full powers and jurisdiction vested in a Resident in charge of a Province to hear this action. Authority dated 23rd March 1933.

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I visit the land and made a sketch thereof which I propose to use for my own guidance in hearing the evidence. This sketch is not a part of the Proceedings.

I take evidence.

ExhibitsM.4(P) - EVIDENCE OF OKAFOR EGBUCHE

"M(P)"

Egbuche
(Umuleri)
v Idigo
Aguleri),
March 1933
to February
1934.

"M.4(P)"

Plaintiffs'
Evidence.
Okafor Egbuche.
Examination.

OKAFOR EGBUCHE S/S:- I am an elder of Umuleri. We of Umuleri claim this land Otu Ocha Umuleri as ours - situate between AKO Stream and NKPUNWOFIA. It has always been ours. One AGUBELONWU of UMULERI was the first owner - about the time of our founding UMULERI. At that time EZIAGULU lives away from Otu Ocha - where they have houses on the motor Road. Many years before the Niger Company came here, the UMUNCHE family of UMUOBA ANAM who live over the ANAMBARA came to us. We gave them right to fish in the ANAMBARA adjoining the NKPUNWOFIA. They asked to be allowed to live at Otu Ocha and my father gave them a site near the present market on payment of a fee. The market was already there though not so large as it is today. They settled. At that time defendant IDIGO was living at MBITO near the R.C. Mission (of today). The rest of EZIAGULU were still away from Otu-Ocha.

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I do not know how long after this the Niger Company came. They took over land belonging to NEYI - UMULERI below the AKO Stream and land from UMUTCHEZI - UMULERI between the AKO and NKPUNWOFIA. They did not build on this latter piece and made negotiations for land elsewhere. They paid us ten kegs of gunpowder 10 boxes or machettes and a number of gowns for Otu-Ocha. At that time UMUCHE-UMUOBA were only fishing off Otu-Ocha - by the ODAKPA juju. They had not yet settled (with our permission) at Otu-Ocha.

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Note: Plaintiffs had requested the District Officer to produce from his safes - the copy of the Niger Lands Treaty referring to this transaction. I take judicial notice of this agreement. (Initialled) D. O'C.

Later representatives of all UMUOBA came to my father to be allowed to settle at Otu-Ocha. They were allowed to do so on payment of a fee. We did this as the Company had not occupied the land. We of UMULERI did not live there - merely farmed and went to the market. We gave UMUOBA only living rights. A year later I cannot say how long this was after the Niger Company Agreement - Idigo first defendant came to us and asked for permission to live at Otu-Ocha. We permitted him and his people from Eziagulu. He built his house at the northern

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end of Otu-Ocha: gradually his people came and spread all over Otu-Ocha. This was about twenty years ago - I cannot count years. We did not sell the land - though no rent was paid. We gave to Idigo and his people living rights - i.e. right to build houses only. On the advent of Government they began to farm on this land - we did not attempt to use force to get them out. We gave defendant no right to give the land away. Some years ago defendants began to claim the land. We took action against them in the Native Court - about 10 years ago. We got judgment but defendants refused to go. In the present action we seek our declaration of title so that they may pay us rent - we do not seek to drive defendants away. A few years ago - about the time we took action in the Native Court - we found the Niger Company building at Otu-Ocha. We went to the Company saying this land was ours: they said they had got it from first defendant. Later we found John Holt at Otu-Ocha. We approached them and were told the same thing. Last year we heard that the French Company were coming - we claimed the land - but were told that Idigo had leased it to them.

In our opinion these leases by defendant were opposed to our grant of the land to Eziagulu. Rents are being paid to the Defendants by these Firms. We went to the first defendant and he said he held the land because of Government. So we recently built a bush Road from the Rest House towards Umuleri to assert our ownership on the land. Defendants tried to close this road as it went through their farms trouble arose. Before Government's time there was never any dispute between us. The site of the present Rest House was originally the farm of my people. Long days ago the Defendants used to live over the ANAMBRA - they migrated thence.

CROSS-EXAMINED.

XXD by first Defendant:- We claim the land between the AKO and NKUPNWOFIA on the river and it extends inland to OJIMA. IFITE-AGULERI are on our land. You are strangers - We gave you this land. You gave land to the Mission after the Niger Company came. Ofia-NWAGBO is within the land we gave to the Niger Company. The land given by you to the Mission at OFIA-NWAGBO was after our Agreement with the Niger Company.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri),
March 1933
to February
1934.

"M.4(P)"

Plaintiffs'
Evidence.
Okafor Egbuche.
Examination -
continued.

Cross-
Examination.

ExhibitsNot XXD by second Defendant.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri),
March 1933
to February
1934.

By Court: We hold juju - ODAKPA, - near NKPUNWOFIA. The priest died two years ago: We have now got another. It is two years since we worshipped there. We have reopened the path to it: and repaired the juju shrine. It is the death of the priest that has caused this neglect and it is not due to our trying to re-assert claims to the land that we have renovated the shrine. I know the AGADI-NWANYI juju worshipped at AGULERI. We do not interfere with it. We gave the Defendants the right to farm on the land. They are now claiming ownership - we object. It is because of the Firms paying rents to Defendants that has caused us to protest. We used to be allowed to farm on Anam land but following a murder by an UMULERI man there we were driven off - having no land we began to re-assert our rights to this Otu-Ocha. This is one reason why we ask for this Otu-Ocha - but not the sole one. The rents question from the Firms is the principal one. We have tried to assert our rights - in Court and by approaching the Firms. Even without the murder this present action would have come.

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"M.4(P)"

Plaintiff's
Evidence.
Okafor Egbuche.
Cross-
Examination -
continued.

We now want rents from everyone living on our land - yearly rents.

Defendants are not acting according to our original grant of the land to them.

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"M.5(P)"

M.5(P) - EVIDENCE OF MASIE IFEJUKA

Plaintiffs'
Evidence.
Masie Ifejuka.
Examination.

MASIE IFEJUKA S/S:- Elder of Umuleri. All the land between the Ako and NKPUNWOFIA belongs to UMULERI. We have ceased to farm at the AKO and since we allowed UMUOBA to settle on the land. We started to farm the Land towards the site of the present Court (Native). Just behind first Defendant's new house below the Rest House - is a ditch which marks first Defendant's boundary with UGUMA - UMULERI. First Defendant originally lived at MBITO near the present site of the Mission - Many years ago, he came to first Defendant and got permission to live at Otu-Ocha. He came to his present house. All the land extending inland from the Anambra River belongs to UMULERI. We assert

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our rights today because AGULERI are claiming it. The Defendants obtain rents from Strangers living on Otu-Ocha: We the real owners are not recognised at all. We gave Defendants no rights to let the land on rents to strangers - but only for their own use. We do not want to drive defendants away - but only to make them recognise us as landlords. Thus strangers coming to live will approach us as the landlords. Many years ago the Niger Company I was young then - came to us and made agreement with UMUTSHEZI and Umuleri for the land between AKO Stream and the NKPUNWOFIA. We gave it to the Company. It was after this that Defendants came to live on the land. We made no arrangements with the present firms at Otu-Ocha - They were put there by the Defendants. We approached these firms when they started to build but disregarded us. We do not want to drive Defendants away: but to pay us rents. At first we did not know that so many would come. They will not regard us if they wish to build. Rents from strangers must be paid to us. We were recently driven by Anam from their land and we have not enough land. We began to farm on the north side of the AKO - where we had let Defendants farm before. Ifite - Aguleri farm on the land between us and Eziagulu. We gave the land to them. If rents were paid to us by strangers at Otu-Ocha we would not raise objections to farms already held by Eziagulu - we would go to farm at Nsugbe.

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CROSS-EXAMINED

XXD by first Defendant:- The Mission (R.C.) went to you for a beach. We objected - told the mission. It disregarded us. You were young then. You gave the permission to them to use OFIA-NWAGBU. We claimed it and objected. I do not know which came first - this arrangement or UMUTSHEZI agreement with the Niger Co. OFIA-NWAGBU is within the land which UMUTSHEZI gave the Niger Co.

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XXD by second Defendant:- We have never heard of a dispute with AMUKWA people.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri),
March 1933
to February
1934.

"M.5(P)"

Plaintiffs'
Evidence.

Masie Ifejuka.

Examination -
continued.

Cross-
Examination.

ExhibitsM.6(P) - EVIDENCE OF EZIKE NWABISI.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934.

EZIKE NWABISI S/S:- Elder of Umuleri. The land between NKPUNWOPIA and the AKO belongs to Umuleri. Beyond the AKO (south) is NWEYI-UMULERI. Aguleri have never claimed this land before. From this ANAMBARA River to UMULERI town is ours. IFITE-AGULERI farm near us. They farm between us and EZIAOCHA-AGULERI. We have no palaver with IFITE. The land here is known as OTU-UMULERI. There are UMUOBA settlers here - allowed on by UMULERI. 10
EZIAGULU people are here because about 20 years ago first Defendant came and begged us for land. We allowed him to live at Otu-Ocha: he gave us kola. Later we let his people settle there also. We gave them living rights only - he used to pay rents yearly - but stopped some 16 years ago. We sued him in the Native Court. But he had not paid. We take action against Defendants now because they have been getting rents from Strangers on this land. If rents are paid to us - Defendants may continue to live here. They may farm round their houses. They have been living and farming on this land since the Govt. came. Defendants receipt of rents from Hausas and European firms is contrary to our grant of the land to Defendants. They were not to give away or to lease land to strangers. I was young when Niger Co. first came: they approached Umuleri for land. JMUTSHEZI made agreement with them. OGBOEJIN WAMAKA - who first signed the agreement was my father. The land concerned was the AKO - NKPUNWOFIA land. The Company - left for IGBAKU Defendants were not on OTU-OCHA then. They were allowed on to OTU- OCHA after our arrangement with the Company. Umuoba people had first got our permission to live on the land - then came Defendants (after the Company). Recently the Niger came back. The first Defendant put them on the land - he stole the land from us. We showed our agreement of old. Later a fire burnt our copy. First Defendant has since claimed all this land. The other firms there now were brought on by Defendant. 20 30 40

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We maintain the ODAKPA juju - near NKPUNWOFIA - we worship it every year. It has been "mourning" the death of the last priest - died two years ago.

Cross-
Examination.

CROSS-EXAMINED

XXD by first Defendant:- We did not claim OTU-OCHA because of a dispute with NNEYI over the AKO Stream.

The boundary on the South is the AKO Stream up to UMULERI. On the other side the Ant-heap is the boundary at the waterside - thence to the UKPA land - by the Court. We gave EZIAGULU-UNO (the town) its land years ago, where you farm is on our land.

Not XXD by second Defendant.

10 By Court:- We used to farm on Anam land. They stopped us - because an Umuleri man committed a murder there. Without this Anam land and the land which we have permitted Eziagulu to use we will not have enough ourselves. We did not mind Eziagulu farming here so long as we had Anam land. If there had been no murder on Anam land we would be farming there to-day - but even then there would be trouble because Defendant is receiving rents from our own land.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934.

"M.6(P)"

Plaintiffs'
Evidence.
Ezike Nwabisi.
Cross-
Examination -
continued.

M.7(P) - EVIDENCE OF IKEGBUAM

20 IKEGBUAM S/S:- Elder of Umuleri. We claim the land from AKO Stream to the NKPUNWOFIA on the water- side - thence leaving the present R.C. Mission on the left (north) the boundary comes up to our town. To the north-east we have a boundary with EZIAGULU near the R.C. Mission - MBITO - thence a boundary with IFITE-AGULERI as the land goes to our town. IFITE-AGULERI farms between us and EZIAGULU - we have no palaver with IFITE-AGULERI - only with EZIAGULU because down on the waterside the latter are claiming our land. They are building there and have no right to. I know the Niger Co. They made an agreement with Nwamaka and others of UMUTSHEZI-
30 UMULERI in respect of the land from AKO Stream to NKPUNWOFIA. Defendants were not on the land then - afterwards Defendant and his people came and asked permission of us to live on this same land. We allowed them to do so. We let them build: they were not to farm. First defendant is leasing the land to Europeans firms and receiving rents - thus he is claiming our land. He must not bring more
40 strangers without letting us know: otherwise he may live there with his people. They may not farm at all without our permission. We may demand this land back at any time so long as Defendants bring Strangers on.

"M.7(P)"

Plaintiffs'
Evidence.
Ikegbuam.
Examination.

ExhibitsCROSS-EXAMINED.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934.

XXD by first Defendant:- The return of the Niger Co. was arranged by you behind our backs. You and Umuoba begged us to let you settle there. We know that the present Niger Co. had come - but we did not know they were paying rents. We took action in the Native Court against you before the second coming of the Niger Company. I do not know if this Case was reviewed.

"M.7(P)"

Plaintiffs'
Evidence.

Ikegbuam.

Cross-
Examination.

XXD by second Defendant:- I do not know who first settled at Otu-Ocha - first Defendant or Umuoba people. 10

By Court:- We cut a bush path thro Eziagulu farms recently to assert our rights to the land. We did this to bring matters to a head because first Defendant was taking dues from strangers. The expulsion from Anam land is not the main cause of the dispute.

"M.8(P)"

Plaintiffs'
Evidence.
Akwobu Mara.
Examination.

M.8(P) - EVIDENCE OF AKWOBU MARA.

AKWOBU MARA S/S:- Native of Umuleri - Nneyi. I have a boundary with the AMUKWA family of Umuleri. This is the AKO Stream from the ANAMBRA River to the ISI-AKO (i.e. source of AKO). My family is UMUNABA of Nneyi. This stream has always been the boundary between the two families. At no time has it been the boundary with land owners other than AMUKWA. 20

For a short time now - I cannot reckon time - I have seen Eziagulu people on the north side of the AKO. I have not regarded them as the owners - I think that they have come by force. 30

Cross-
Examination.

CROSS-EXAMINED.

XXD by first Defendant:- I represent the OKPALA - of UMURA OKOYE - the OKPALA, has never said the AKO is a boundary with Aguleri people. I remember no fight with ABAGBE-UMULERI about this Nneyi land. I have never heard the AKO described as a boundary with Aguleri. I know no market OTU-OGBANYELU.

XXD by second Defendant:- UMULERI used to clean the motor road to the ANAMBRA. I know nothing of a division of this work. 40

M.9(P) - EVIDENCE OF OKUEFUNA.

OKUEFUNA S/S:- Chief of NTEJE (EZE). Member of Court Aguleri Native Court.

Sometime ago - I cannot remember when - I was a member of the Aguleri Court when Umuleri brought an action against first Defendant - claiming some land I do not remember the name - nor the boundaries- Otu-Ocha (waterside) was part of the land. No judgment was given. I say this land is Umuleri's.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.9(P)"

Plaintiffs'
Evidence.

Okuefuna.

Examination.

10

CROSS- EXAMINED.

Cross-

Examination.

XXD by first Defendant:- I remember the D.O. Gardiner asking questions about the ownership of Otu-Ocha land when the Niger Co. - nine years ago wished to come here. I did not hear the answers. I was not present at the signing of the deeds. I don't remember a white officer discussing ownership of land prior to John Holts taking up a site. Umuleri owns all land from the Oyi River to the ANAMBRA. I do not remember a case between Ifite-Aguleri and Umuleri. I am wrong - I do remember.

20

XXD by second Defendant:- I remember seeing a tree on this land in dispute which you said that your father planted. You are not stopped from farming.

By Court:- I don't remember D.O. Gardiner's questions about the ownership of the Otu-Ocha land.

M.10(P) - EVIDENCE OF OBI NWABEZE.

"M.10(P)"

OBI NWABEZE S/S:- Native of Nsugbe. Member of Aguleri Native Court. I have always heard that AMUKWA family of Umuleri owned Otu-Ocha. I understood that the AMUKWA people allowed UNUOBA to come on to the land. I can't account for the presence of EZIAGULU here.

30

Plaintiffs'
Evidence.

Obi Nwabeze.

Examination.

ExhibitsCROSS-EXAMINED.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.10(P)"
Plaintiffs'
Evidence.
Obi Nwabeze.
Cross-
Examination.

XXD by first Defendant:- UMUATOLO of Ifite-Aguleri has no waterside of its own - it is on Nsugbe's land. This waterside is not known as OTU UMUATOLO. Nteje has an Otu on Nsugbe land. There is an Otu Nteje on Nsugbe land. There is an otu Umuatolo on Nsugbe land. There is no Otu Umuleri on Eziagululand. Nkwelle has no otu on Nsugbe land. I have not heard of my son coming to Defendants for land. I do not remember the D.O. Swayne causing a paper to be read in Court for three months enquiring about the ownership of land before the French Coy. came. Umuleri owns the land from the Anambara to the Oyi. I helped to give judgment for an Ifite man against Unuleri for farm land up to road. Ifite land comes across the road.

10

Not XXD by second Defendant.

By Court:- I remember a D.O. asking about the ownership of land when John Holt took up their new site. But I said nothing. Nor did I speak when Nziagulu made the lease with John Holt.

20

"M.11(P)"

Plaintiffs'
Evidence.
Okafor Egbuche.
Re-called.

M.11(P) - FURTHER EVIDENCE OF OKAFOR EGBUCHE

I re-call Okafor Egbuche.

On his former Oath :-

XXD by Court:- Ifite Aguleri separates Ikenga from Ezi quarter. Ojima is beyond Ifite. We do not claim this today. We gave it to Aguleri years ago.

Case for Plaintiff closes.

"M.12(P)"

Defendants'
Evidence.
R.A. Idigo.
Examination.

M.12(P) - EVIDENCE OF R.A. IDIGO.

RAPHAEL AKWUBA IDIGO S/S:- Eze of Aguleri.

30

All the land from Eziagulu-Uno to the Anambra belongs to Eziagulu. From AKO to beyond NKPUNWOFIA belongs to us. I am of Eziagulu. This claim of ours has never before been disputed. We follow the line of the AKO and thence to Eziagulu Uno. We

have a boundary with Ifite-Aguleri beyond Eziagulu-Uno on the road and behind (east of) the Court a boundary with Enugu of Ezi quarter. About 40 years ago when Uguma-Umuleri were farming over the Anambra we gave them a place for their canoes at OFIA-NWAGBO which is the spot called by Umuleri the ODAKPA juju shrine. I cannot say the exact time. 39 years ago an agreement was made by Eziagulu with the R.C. Mission for a beach at OFIA-NWAGBO. The mission was already established where it is now. It had been already for 4 years. This place was for the Mission to keep a store for goods coming from Onitsha. They kept a watchman. The Mission had not to pay for it. This OFIA-NWAGBO is in between AKO and the NKPUNWOFIA. They held this spot for 9 years. The store was there in that time. This agreement was made in 1894 - and renewed in 1898. In 1897 we had dismissed Ugwuma from the place. They and the Mission had been using it together till then. We drove them because they burnt the Mission store. In 1903 we gave the Mission a new beach beyond (north of) NKPUNWOFIA. The Mission decided that OFIA-NWAGBO was too far away. The same year we let Uguma and UMUTSHEZI-UMULERI use the ferry again. The latter, we also allowed to use a beach near the AKO. We gave this beach to the AMUKWA people of UMUTSHEZI to look after for us. In 1906 the British Nigerian Coy. came to Aguleri and settled just this side of (south) John Holt bungalow site. They built a store. Money was paid to elders of Eziagulu - I do not know how much. It stayed a year only. AMUKWA had a watchman's hut there. This people brought UMUOBA people to us - they paid us money and we let them settle where they are now - below the present Rest House and between it and the market. We reported this settlement to the D.C. of the time at Onitsha. At that time I lived at MBITO. Soon after the UNUOBA people came the EZIAGULU people began to go down into OTU-OCHA where they are to-day - along the line of the present factories. In 1922 certain Yoruba and Hausa and Nupe settlers came direct to me asking for permission to settle. The AMUKWA and Uguma people continued to maintain their houses. These new settlers paid nothing. They brought trade so we were glad to have them. We gave them living rights. In 1924 the Niger Co. came and a lease was prepared between them and me and the elders of Eziagulu. They were to pay £20 a year and they still do so. In 1926 John Holt came - lease made

Exhibits

"M(P)"

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"M.12(P)"

Defendants'
 Evidence.
 R.A. Idigo.
 Examination -
 continued.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
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as above. They paid and still pay £25 a year. The Niger Co. lease was for thirty years - the John Holt one for 10 years. In 1932 John Holt came - lease prepared as before - for 20 years at a rental of £15. This was the bungalow site. In 1931 the CFAO came - lease between me alone and them. The elders of Aguleri were not concerned as the French Co. has taken over a site of my own near the market. Period 30 years at a rental of £35.

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"M.12(P)"

Defendants'
Evidence.
R.A. Idigo.
Examination -
continued.

About 14 years ago Plaintiff took an action in Aguleri Native Court claiming the beach which we had allowed them to look after. The D.O. of the time - Stubbs - was sitting in the Court and dismissed the claim. This is the case referred to by OKUEFUNA in his evidence for the other side. I am wrong - he did not dismiss the claim. He recorded that the present plaintiff should make a plan. This was done. Later he told Plaintiff to go away. I know of no record of a judgment.

20

There has been no other case in this matter. Three years ago Ifite won a case in the Aguleri Court against Unuleri in respect of the land in which they now farm. Last year Umuleri were driven from Anam - land so now they are now trying to get this land from us.

Cross-
Examination.

CROSS-EXAMINED.

Not XXD by Plaintiff.

By Court:- I have never heard of the Niger Lands Treaties. I am not aware of the fact that certain of these lands held by the Niger Co. were surrendered to the Crown. I am not aware of the fact that UNUTSHEZI-UMULERI made an agreement with the Niger Co. I do not know that the Niger Co. purchased certain land from the UMUTSHEZI. I do not know that the land is referred to as ceded to the Crown under the Niger Land Treaties. I am not aware of the fact that UMUTSHEZI sold to the Niger Co. all the land on the Anambra between AKO Stream NKPUNWOFIA for a depth of 1000 yards, nor that this was done 35 years ago.

30

40

SOMDI S/S:- Native of Eziagulu. I do not wish to say anything. I rely upon whatever the first Defendant has said.

Not XXD by Plaintiff.

By Court:- I have never heard of the sale by UMUTSHEZI-UMULERI of any land, anywhere at any time to the Royal Niger Co.

M.12A(P) - EVIDENCE OF IGBODEKWU.Exhibits

"M(P)"

10 IGBODEKWU S/S:- Native of UMUOBA residing at Otu-Ocha for the last 24 years I and others of my town in ANAM came over to Otu-Ocha and met some people who said they were of UMUKWA-UMULERI. We spoke about settling on this land. They were watching this land. They told us that we should address ourselves to Plaintiff. We went to him. We said that we wished to settle at Otu-Ocha. He asked for Kola. We gave it. He said that this land was not really theirs - he directed us to EZIAGULU being led by Plaintiff. Eziagulu showed us where to settle at Otu-Ocha. This was where we are today, between the Rest House and the Market. Plaintiff witnessed the arrangement.

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.12A(P)"

Defendants'
Evidence.

Igbodekwu.

Examination.

CROSS-EXAMINED.

Cross-

Examination.

20 XXD by Plaintiff:- On our arrival we gave AMUKWA people 5 cows. We thought then that they were the rightful owners. This was after we had seen Plaintiff. We said we had been driven by Umu-zianam.

By Court:- The kola to which I referred as given to plaintiff were the 5 cows. Having got them he admitted the land was not his. We had given as much as 5 cows assuming that he was the landlord. He had made us swear not to ask back that which we had given. We paid Eziagulu £30 in those days the value 7 or 8 cows.

M.13(P) - EVIDENCE OF ONYEAKA.

"M.13(P)"

30 ONYEAKA S/S:- Elder of UMUEZEANAM. UMUEZEANAM some years ago had been fighting with UMUOBA. We wanted them to go. They said that they would like to settle near the AKO. We said that this was too close. I was one of the people who came over and asked the AMUKWA people who owned the land. They said EZIAGULU did. We found these AMUKWA people watching the land. We made this enquiry before the UMUOBA people emigrated. We tried to get EZIAGULU to refuse permission to UMUOBA. We failed to get their consent to this arrangement. Later Umuoba emigrated. Later Government made peace between us.

40

Defendants'
Evidence.

Onyeaka.

Examination.

Exhibits

CROSS-EXAMINED.

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

XXD by Plaintiff:- We worship no juju on this side the Anambra.

"M.13(P)"

Defendants'
Evidence.
Onyeaka.
Cross-
Examination.

"M.14(P)"

Defendants'
Evidence.
Anekwe.
Examination.

M.14(P) - EVIDENCE OF ANEKWE.

ANEKWE S/S:- Native of NNEYI-UMULERI. I am of the Akweto family. The AKO is our boundary with EZIAGULU. The Umunaba family of NNEYI has land along the AKO. This land over the AKO is communal to all NNEYI - my family can go anywhere in it. EZIAGULU owns this side.

10

Cross-
Examination.

CROSS-EXAMINED.

XXD by Plaintiff:- Ikenga-Umuleri has land elsewhere. AMUKWA has no land on this north side of the AKO. AKWOBA-MARA witness for Plaintiff is a liar.

"M.15(P)"

Defendants'
Evidence.
Okwunwanne.
Examination.

M.15(P) - EVIDENCE OF OKWUNWANNE.

OKWUNWANNE S/S:- Native of IFITE-AGULERI. We own land between Eziagulu on one side and Umuleri on the other. UGU-NWUSAKWU hill is our own boundary with Eziagulu. Thence to this Anambra is theirs. We won a case against Umuleri 3 years ago for our holding of land. I have never heard of Umuleri owning land between UGU-NWASAKWU and this Anambra. We have a boundary on the upper

20

AKO with Ikenga-Umuleri.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.15(P)"

Defendants'
Evidence.
Okwunwanne.
Examination -
continued.

CROSS-EXAMINED.

Cross-
Examination.

XXD by Plaintiff:- Eziagulu have allowed me to farm on their land.

M.16(P) - EVIDENCE OF IKENYELU.

"M.16(P)"

10

IKENYELU S/S:- Native of ADAGBE-UMULERI. We and Ugume once had trouble with NNEYI. We obtained permission from EZIAGULU to have a ferry place and to keep a watchman's house at Otu-Ocha near the market. This was long years ago. I am of UMUT-SHEZI. When Anam refused to let Umuleri farm on their land after the murder Plaintiff called a town meeting to let every one swear to make a claim for Eziagulu land. Umuleri do not want to live nor to farm here - they just want the money obtained from the firms.

Defendants'
Evidence.
Ikenyelu.
Examination.

CROSS-EXAMINED.

Cross-
Examination.

20

XXD by Plaintiff:- I am an Umuleri man. I know that the UMUTSHEZI sold land to the Royal Niger Coy. about 37 years ago over the AKO. This land belonged to NNEYI. I know of no sale by them to the Niger Coy on this side of the AKO. I know of Ogbo-efin Wamaka and OGBOEFIN MOSA. I know of no sale arranged by them of land to the Niger Coy. on this side of the AKO.

Exhibits

"M(P)"

Egbuche
(Umuleri)
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(Aguleri)
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to February
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M.17(P) - FURTHER EVIDENCE OF R.A. IDIGO.

R.A. IDIGO re-called by Court
on his former Oath states:-

I meant that I had not heard of the UMUTSHEZI agreement until I was shown it by the D.O. about 3 weeks ago, about the middle of March. I am wrong - I knew of this in February - two months ago.

"M.17(P)"

Defendants'
Evidence.

R.A. Idigo.

Re-called.

"M.18(P)"

Judgment of
District
Officer.

10th April
1933.

M.18(P) - JUDGMENT OF DISTRICT OFFICER.

Putting aside a certain factor which will be discussed later the rival claims boil down to this:-
Plaintiffs say that many years ago before the Niger Co. first came they gave fishing rights to Umuoba: that later, they allowed UMUOBA to settle on the land: that Eziagulu quarter of Aguleri sought permission to settle: were granted it but only on living rights - terms which did not even include farming: that later Eziagulu began to claim the land as theirs and years ago there was a Native Court case about this. Plaintiffs contend that the leasing of land to European firms is a breach of the arrangement whereby Eziagulu were allowed to settle.

10

20

The defendants claim that they first gave Eguma-Umuleri people the right to use a ferry at OFIA-NWAGBO which is within the disputed area. On the other hand Plaintiffs point to their juju (ODAKPA) at this spot and insist that it has always been there.

Defendants granted OFIANWAGBO to the R.C. Mission as a beach for its canoes etc: and they say that later when the Mission took up a beach further north they allowed UGUMA to come back. They say that in 1906 they allowed the British Nigeria Coy. to come - that this company stayed a year paying rent to EZIAGULU. They contend that UMUOBA were

30

given permission by them and that Plaintiffs merely acted as intermediaries: that after the UMUQBA people settled down, Eziagulu decided to come down to settle on this, their own land. In due course they allowed Europeans in as they had a right to do so.

10 There is really very little to choose between these two versions. Umuleri say that the land is theirs but that they did not wish to use it themselves, but were content to let others do so, on terms. They point to the juju - explaining its apparent freshness by the fact that there has been no juju priest available for a year or so, until just lately. The evidence of IGBOEKWU of UMUQBA if anything supports UMULERI - the story of a "kola" of 5 cows obtained by fraud is a trifle thin. Again the evidence of Defendants that they did not come down to Otu-Oche until after UMUQBA had settled is just as suggestive of the fact that they had first to get Plaintiffs permission, as it is of the fact that they could come down just when it suited them to do so. The main difficulty here lies in the fact that defendants granted ODIA-NWAGBO a part of the area in dispute to the Mission either with or without the cognisance of plaintiffs.

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30 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. But there is now to be taken into account that other factor to which I referred in my opening sentence.

40 There is no doubt whatever that the land lying between AKO and NKPUNWOFIA was sold in 1898 by UMUTSHEZI-UMULERI to the Royal Niger Co. This land is referred to in instrument No.110 in the First Schedule to Cap 86 of the LAWS of Nigeria. Under this Ordinance - the Niger Lands - all lands referred to in the first schedule, provided that there were no restrictions attaching to them as defined in the Fourth Schedule, were vested in the Governor (the Crown) as from 1st January 1900. Actually then, the land in dispute between the parties is Crown land. The Defendants allege that they did not know of this agreement - a statement that I am inclined to doubt. They state also that in any case it must have been engineered fraudulently behind their backs. An unsupported allegation of this nature is not enough to set aside a fact which

Exhibits

"M(P)"

Egbufe
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.18(P)"

Judgment of
District
Officer.

10th April
1933 -
continued.

Exhibits

"M(P)"

Egbuche
 (Umuleri)
 v Idigo
 (Aguleri)
 March 1933
 to February
 1934

"M.18(P)"

Judgment of
 District
 Officer.

10th April
 1933 -
 continued.

has been established 35 years (June 25th 1898). It is not for me - at this stage - to enquire into the legality of the Niger Co. treaty: and in any case there is nothing beyond that mere allegation of fraud to upset it. It is a fact that the land was transferred to the Niger Co. and as such this case must be viewed from that standpoint.

The first thing to consider is the question as to whether the rights of the Crown affect the Plaintiffs claim. I do not think so. It is clear 10 that this land was vested in the Crown but it is equally clear that the Crown has sanctioned leases by the Aguleri people of plots to third parties. These leases do not give Aguleri any rights in the land which they did not possess before - but they do imply that the Crown, for reasons not disclosed, has not sought to protect its rights in the land and is content that the original owners of the land should renew their ownership. It must be presumed 20 that the Crown in approving these leases was not aware of, or omitted to realise, the rightful ownership of the Plaintiffs - as established by the agreement of 1898. As I have said these leases give to Aguleri no rights in the land which Aguleri did not enjoy before.

The next point is - granted that the original ownership is vested in Umuleri under what terms does Aguleri hold the land today? It must be assumed that the contention of plaintiffs is correct - that 30 only living rights were conferred, with no right to alienate without consent of the landlords the Plaintiffs. Living rights however must be interpreted a little more broadly than Plaintiffs suggest - more especially as certain rights other than mere housing have been exercised for a long time. Living rights must therefore include the erection and maintenance of dwellings and the continuance of such farming within such area as Defendants have been enjoying for some 20 years.

The effect of all this is that Aguleri may con- 40 tinue to live and to farm within the disputed area from the ANAMBRA River to the UGU NWUSAKWU which marks its boundary with IFITE-AGULERI: that UMULERI none the less are the owners of the land: and that alienation of land to other parties, European or anyone else even for only a term of years is contrary to the term of occupancy of the Defendants and cannot be allowed.

In brief - Plaintiffs must have the declaration of title prayed for, but subject to the limitation that they must in no way interfere with the peaceful possession of the land enjoyed by Defendants - possession of course not meaning ownership. The existing Lease to European Firms must be set aside in so far as they are contracted by the Defendants. Monies due from the lessees by virtue of these leases must be placed upon deposit in the Government Treasury until such time as Plaintiffs have been substituted for Defendants as lessors.

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(Sgd.) DERMOT O'CONNOR.

D.O.
10/4/1933.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.18(P)"

Judgment of
District
Officer.

10th April
1933 -
continued.

M.19(P) - IN THE SUPREME COURT:
JUDGE'S NOTES ON THE APPEAL

"M.19(P)"

IN THE SUPREME COURT OF NIGERIA.
MONDAY THE 29TH DAY OF JANUARY, 1934.
BEFORE HIS HONOUR,
GEORGE GRAHAM PAUL,
J U D G E.

In the Supreme
Court:
Judge's Notes
on the Appeal,
29th January
1934.

20

AT ONITSHA.

Suit No.2 of 1933.
Appeal No. 253

OKAFOR EGBUCHE,
IGWEZE ODILI for and on behalf
of the people of Umuleri ... Plaintiffs
... Respondents

VERSUS

CHIEF IDIGO, SONDI, for and on
behalf of the people of EZIAGULU
Quarter of AGULERI ... Defendants
... Appellants

30

Thompson, Kayode and Oddie for the Appellants.
Clinton (for McCormack) for Respondents.

ODDIE. Transactions re land.

1. 22 January 1898 Lease by Appellants to R.C.
Mission.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.19(P)"

In the Supreme
Court:
Judge's Notes
on the Appeal,
29th January
1934 -
continued.

2. June 1898. Sale by Respondents to Niger Com-
pany.

3. Lease to Niger Company - subsequent to sale,
by Appellants.

4. Lease by Appellant to John Holt.

5. " " " to French Company.

No. 2 is only recorded dealing by Respondents.

Sale to Niger Company was of whole land.

Written Grounds of Appeal put in.

Not admitted that by Defendants that Plain-
tiffs had right to sell the land.

10

Found as fact that land sold. How can sellers get
declaration of title. Vol.I page 872. No.110 (Laws
of Nigeria). Statutory to transfer to Crown.

GROUND No. 2. Statute of Limitations.

Sec. 14 of Supreme Court.

T.J. Solomon vs. African Steamship Co. Vol.IX
Page 100.

Sec. 20 of Supreme Court Ordinance does not apply
to prevent statute of limitations being applicable.

20

No custom put forward in evidence.

GROUND No. 3. Laches and Acquiescence.

Nothing done by Plaintiffs to interfere till
this case.

CLINTON in reply.

1. R.C. Mission transaction not proved.

2. Agreement with Niger Company must be looked at
as D.O. took practical notice of it.

3. Government abandoned land and it goes back to
original owners.

30

4. Agreement not a sale.

Oddie objects to terms of agreement being re-
ferred to but after discussion agrees to the
agreement being referred to.

5. Document not by Aguleri people, only by Chief.

6. Tenants includes Umuleri people other than the
actual signatories.

- 7. Private rights sold not the land.
D.O. wrong in saying otherwise.
- 8. Only private rights of signatories.
- 9. Crown has sought no remedy.
- 10. Land reverts to original owner if purchasers abandon.
- 11. Statute of Limitations does not apply Brass Case.
- 10 12. No Laches. We thought Niger Company had come back under 1st agreement.

Exhibits

"M(P)"

Egbuche
 (Umuleri)
 v Idigo
 (Aguleri)
 March 1933
 to February
 1934

"M.19(P)"

In the Supreme
 Court:
 Judge's Notes
 on the Appeal,
 29th January
 1934 -
 continued.

KAYODE in reply.

- 1. No? by either parties' story page 18.
- 2. R.C. Mission transaction not proved. See page 18 D.O. accepted.
- 3. Terms of Agreement. Probate rights and land.
Not already in possession of Company.
Uncertified copy laid over by Clinton agreed to by Oddie.
- 4. Niger lands transfer Ordinance.
- 20 5. No evidence of abandonment by Crown.
- 6. No evidence that Niger Company abandoned.
- 7. Defendants are in occupation.
- 8. Native law and custom.
No evidence.
- 9. Brass Case. No application. Counsel agree that agreement refers to same land as in dispute.

Judgment reserved.

(Sgd.) G.G. PAUL.
 J U D G E.



Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934.

"M.20(P)"

Judgment of
His Honour
Judge G.G.
Paul,
13th February
1934.

M.20(P) - JUDGMENT OF HIS HONOUR
JUDGE G.G. PAUL.

This is an Appeal from the Provincial Court of the Onitsha Province against the Judgment of that Court delivered herein on 10th April, 1933.

The Plaintiffs claimed a declaration of title to certain land known as OTU-OCHA UMULERI, and under the Judgment appealed against the Plaintiffs obtained the declaration of title prayed for, subject to the limitation that they must in no way interfere with the peaceful possession of the land enjoyed by the Defendants. 10

The Judgment also ordered that leases to European firms must be set aside in so far as they were contracted by the Defendants; and that money due from the lessees by virtue of these leases must be placed upon deposit in the Government Treasury until such time as Plaintiffs have been substituted for Defendants as Lessors.

Against the Judgment the Defendants have appealed to this Court, and at the hearing of the Appeal Counsel for the Defendants-Appellants handed in a Note of three Grounds of Appeal. I find it necessary to deal only with the first Ground of Appeal. 20

The first Ground of Appeal is that the Court below, having found as a fact that the Plaintiffs-Respondents had sold the land in dispute to The Royal Niger Company Chartered and Limited in June 1898, should not have given to the Plaintiffs the declaration of title but should have given judgment for the Defendants. 30

In putting forward this Ground of Appeal Appellants' Counsel made it clear that neither in the Court below nor in this Court did or do the Appellants admit that in June 1898 or at any other time the title to the land in question was in the Plaintiffs. The Appellants say that the Agreement giving effect to the sale to The Royal Niger Company was executed without their knowledge; that The Royal Niger Company never entered into possession under the Agreement or did any overt act of ownership in respect of the land; and that the whole transaction was done without the Appellants' knowing anything of it until these proceedings were brought. 40

In my view these considerations do not affect the consideration of the first Ground of Appeal.

It must be noted here that under the Niger Lands Transfer Ordinance 1916 (Cap.86) the rights of the Royal Niger Company in the land in question under the Agreement became vested in the Crown.

10 It should also be noted that both parties admit that the land in question in this Suit is precisely the same land as that covered by the Royal Niger Company Agreement.

In the Court below two rival stories as to occupation and ownership of the land were given.

20 In dealing with these rival stories the Court below said "If judgment were to be based upon these "contending claims and allegations it might be "difficult to formulate one which would be the correct one. But there is now to be taken into account that other factor to which I referred". The "other factor" was the Agreement of June 1898 between the Plaintiffs-Respondents and The Niger Company, and the Court below undoubtedly based its judgment on that Agreement which showed that at its date the Plaintiffs-Respondents ancestors did in fact exercise one of the principal rights of ownership, namely the right to convey the land owned.

30 The Court below took judicial notice of the Agreement referred to. This was at the request of the Plaintiffs-Respondents who founded on it as evidence of an act of ownership of their ancestors namely a sale of the land. With the consent of Counsel, to ensure that the correct terms of the Agreement were before the Court, I had a certified copy supplied for use of the Court by the Lands Department, and I take judicial notice of that certified copy which is in the same terms as the uncertified copy laid over by Counsel for the Respondents in the course of his arguments and accepted by Counsel for Appellants.

40 Although the Agreement in its operative clause is ungrammatical I am satisfied from its terms, coupled with the evidence of the Plaintiff Okafo Egbuche on the point, that the Agreement was in fact and law a sale to the Royal Niger Company of whatever rights the Plaintiff's ancestors had in the land to it refers. And it is agreed that it refers to the land in dispute in this case.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.20(P)"

Judgment of
His Honour
Judge G.G.
Paul,
13th February
1934 -
continued.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

In my opinion the Court below, in giving the Plaintiffs-Respondents a declaration of title, failed to appreciate the real effect of the Agreement of June 1898. Whatever right or title the Plaintiffs-Respondents had in that land was by the Agreement sold to The Royal Niger Company and, being by that Agreement completely divested of their right or title to the land the Plaintiffs-Respondents had nothing left to justify the Court in giving them a declaration of title.

10

"M.20(P)"

Judgment of
His Honour
Judge G.G.
Paul,
13th February
1934 -
continued.

It was suggested by Respondents' Counsel that there had been abandonment by The Royal Niger Company and that the title to the land had thereby revived in his clients. I am unable to accept that argument.

There is no evidence of abandonment or of intention to abandon on the part of The Royal Niger Company. Indeed by this Agreement being included in the schedule of statutory transfers by the Company to the Crown in 1916 it is apparent that at that date both the Company and the Crown regarded it as a live and effective Agreement.

20

It is true that there has been no occupation or any overt act of ownership by the Crown since 1916 but that is not sufficient to show that the Crown had abandoned its rights under the statutory transfer. And if one were to assume that by some date subsequent to 1916 the Crown had given up its rights to this land (an assumption which could not easily be made) the effect would be to revive the rights of the immediate author of the Crown's title namely The Royal Niger Company, and not the Plaintiffs.

30

Counsel for the Respondents made some attempt to pray in aid native law and custom whereby he suggested abandonment by a grantee revived title in the grantor. I am unable to uphold that argument. No such custom is proved; nor in my view could there be a native custom dealing with the transfer under the Agreement to the Company or with the transfer under the Ordinance to the Crown. Such transactions were obviously not within the purview of native law and custom.

40

I am clearly of opinion that the Court below mis-directed itself as to the effect of the 1898 Agreement. From the terms of the Judgment it is apparent that if the Court below had not mis-directed

itself on this essential point it would have been difficult for the Court below to formulate a Judgment which would be the correct one. In dealing with the rival versions of the facts the Court below said "There is really very little to choose "between these two versions".

10 I am in no better position - indeed I am in a worse position - than the Court below in this respect. I am unable to hold that the Defendants-Appellants have in the Court below established their title to the land. 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.

20 All I can find in the material before me is that the Plaintiffs-Respondents did in fact prove that they had no right or title to this land left in them after the 1898 Agreement; and that their claim for a declaration of title should therefore have been dismissed and judgment entered for the Defendants-Appellants.

I accordingly allow the appeal, set aside the Judgment appealed against in toto, and substitute therefor an Order dismissing the Plaintiffs' claim, which in my view is the order which should have been made.

The Appellants must have the costs of the Appeal which I assess as twenty guineas.

30 (Sgd.) G. GRAHAM PAUL.

J U D G E

13th February, 1934.

Exhibits

"M(P)"

Egbuche
(Umuleri)
v Idigo
(Aguleri)
March 1933
to February
1934

"M.20(P)"

Judgment of
His Honour
Judge G.G.
Paul,
13th February
1934 -
continued.

Exhibits

"J(P)"

Plan No. 3043
drawn by
J.F. Morris,
7th August
1933.

J(P) - PLAN NO. 3043 DRAWN BY J.F. MORRIS.

PLAN J(P) - SEPARATE DOCUMENT.

S.1(D) - LETTER: R.A. IDIGO TO
DISTRICT OFFICER, ONITSHA.

Exhibits
"S.1(D)"

Chief R.A. Idigo
P.O. Box No.1
Onitsha.

Otuocha Aguleri,
20th December, 1934.

Letter:
R.A. Idigo to
District
Officer;
Onitsha,
20th December
1934.

To The District Officer,
Onitsha.

Sir,

10 With humble respect I beg to submit to you this
my complaint against Umuleri people who are erecting
new buildings at Otuocha without any permission as
usual.

That over ten persons of Umuleri are now bravely
and wilfully erecting new buildings at Otuocha, after
being warned since the 4th inst. by the Elders of
Eziagulu and self not to build contrary to the rule
made for Otuocha.

20 That as Aguleri People at Otuocha viewed the
sites yesterday, and found that Umuleri People are
not only disobeying, but are still increasing in
erecting new buildings at Otuocha, now proposed to
have all those new buildings under construction des-
troyed.

But I suggest, that taking legal actions at
Umuleri Court would be advisable.

Humbly beg to hear early and favourably from
you.

30 I have the honour to be,
Sir,
Your most Obedient servant,
(Sgd.) R.A. IDIGO
EZE-AGULERI.

Chief Idigo,

Take action in Umueri Court as I have told
already. But note that the Umueri Court is not to
hear the case. Let me know the parties on issue
of the summons.

(Intld.) D.P.J.O.
21.xii.

Exhibits

"S.2(D)"

S.2(D) - LETTER: R.A. IDIGO TO DISTRICT OFFICER, ONITSHA.

Letter:
R.A. Idigo to
District
Officer,
Onitsha,
21st March
1935.

To The District Officer, Aguleri
Onitsha. 21st March, 1935.

Sir,

I beg to report that the Police Constables on duty here could not allow any of Aguleri man to erect new buildings at Otuocho, saying that they have instruction to do so.

This action hinders many of Aguleri People to continue their buildings; and I am requested to ask to know whether this instruction is from you.

10

I have the honour to be,
Sir,
Your most Obedient servant,
R.A. IDIGO.
EZE-AGULERI.

Police Constable
in Charge.

Aguleri men may build.

20

Umuleri men may not unless permission is given them by the Elders of Aguleri.

(Intld.) D.P.J.O.
21/3.

"S.3(D)"

S.3(D) - LETTER: R.A. IDIGO TO DISTRICT OFFICER, ONITSHA.

Letter:
R.A. Idigo to
District
Officer,
Onitsha,
18th May 1936.

The District Officer, Aguleri,
Onitsha Division, 18th May, 1936.
Onitsha.

Sir,

I beg most respectfully to approach you with this complaint against the trespassers of Umuleri who are erecting buildings and farming on Otuocho Land without permission of Landlords (Eziagulu

30

Elders) as usual, which they continue since the recent land dispute of the Otu-Ocha.

Exhibits
"S.3(D)"

They (Umuleri People) are now increasing in numbers, disregarding all our rules made for Otu-Ocha land, and provoking the Landlords as to commit breach of the peace by their offensive actions.

Letter:
R.A. Idigo to
District
Officer,
Onitsha,
18th May 1936
- continued.

10 Every effort has been made by us to maintain peace; e.g. (1) Enough patience had been exercised, (2) Actions have been taken in the Umueri Court and transferred to the Magistrate Court (by the order of the District Officer) Onitsha, since early in 1935, and as nothing done or heard about the suits up to date, the defendants ventured and succeeded to complete the buildings in dispute and reside therein, laughing at us to scorn. (3) About two months ago another action was taken in Umueri Court, judgment given in the absence and the Defendant after resisted the warrant of arrest, continue the building, and thereby encourage other Umuleri People
20 to erect buildings and farming profusely at Otu-Ocha land.

As the Landlords now desire either to quit those trespassers from the Otu-Ocha Land, or to order them to be paying tribute or rent for plots taken, I hereby humbly request for your Worship's good consideration and approval to this.

I have the honour to be,
Sir,
Your most Obedient Servant.
30 R.A. IDIGO, EZE AGULERI

Chief Idigo/

Actions should be taken in the Umueri Court against Umuleri people building without permission in the Otu Ocha.

A. BARTON
A.D.O.
19/5/36.

171.

for the payment of rents due for the current year in respect of leases at Otuocho, I was informed that no instructions have yet been received from you to pay the rents direct to us as heretofore.

I shall be grateful if necessary steps may be taken early to enable us to receive the rents which are now due.

I have the honour to be,
Sir,
Your obedient servant,

R.A. IDIGO,
Eze-Aguleri.

10

Chief Idigo/

They will be paid to you through this office.

(Intld.) ? ? ?
7/1/35.

Exhibits

"T(D)"

Letter:
R.A. Idigo to
District
Officer;
Onitsha,
7th January
1935 -
continued.

Exhibits

"A(P)"

Plan drawn
by J.T. John,
1935.

A(P) - PLAN DRAWN BY J.T. JOHN.

PLAN A(P) - SEPARATE DOCUMENT

O(P) - RECORD OF PROCEEDINGS IN HIGH COURT
OF ONITSHA, JUDICIAL DIVISION, NO.0/85/1935,
OMONYI AND IGWEZE ODILI (UMUTCHEZI-UMULERI)
v CHIEF IDIGO AND ANOTHER (EZIAGULU QUARTER
OF AGULERI.

Exhibits
"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarto of
Aguleri).

O.1(P) - NOTE OF CLAIM.

December 1935
to March 1936.

PROTECTORATE OF NIGERIA
IN THE HIGH COURT OF THE ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
BEFORE HIS HONOUR HARRY WADDINGTON ASSISTANT JUDGE
THE 17TH DAY OF DECEMBER, 1935.

"O.1(P)"

Note of Claim,
17th December,
1935.

Suit No.0/85/1935.

OMONYI AND IGWEZE ODILI for and on behalf
of the people of Umutchezi - Umuleri

versus

CHIEF IDIGO AND OKEKE EGBUCHE for and on
behalf of the people of Eziagulu Quarter of
Aguleri.

Claim per writ:

20 The Plaintiffs seek for a declaration that the
people of Umutchezi Umuleri are the owners of all
that piece and parcel of land known as AGUAKOR
situate at Umuleri Onitsha Province bounded as fol-
lows :-

30 On the side towards the Anambra Creek by Otu-Ocha
Umuleri, granted by the Umutchezi Umuleri to the
Royal Niger Company. On the side towards Umuleri
town by Ugume and Ngbago village of Umuleri. On the
Aguleri side by Inyi tree, Ngu Ebenebe tree, Aro
juju and Ekpe Agadinwanyi; and on the side towards
Nneyi Umuleri by Akor stream.

The said boundaries will be more particularly
described and delineated in a plan to be produced
at the trial.

Value of land £500.

Soetan for Plaintiffs.

Thompson (Oddie with him) for Defendants.

Pleadings filed.

Exhibits

"0(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

0.2(P) - NOTE OF PLAINTIFFS' COUNSEL'S
OPENING ADDRESS.

SOETAN: Res judicata plea should be proceeded with first.

THOMPSON: Necessary to call evidence before it will be clear whether land same in Provincial Court case as the present land. No plan then. There is nothing at present on which I can consider whether or not the matter is Res Judicata and the question must be raised if need be at a later stage). 10

"0.2(P)"

Note of
Plaintiffs'
Counsel's
Opening
Address,
17th December
1935.

SOETAN: Umutchezi Umuleri own Aguakor land as shown on plan and described in writ. Stretches to Anambra creek but strip near creek, known as Otu-Ocha given to Royal Niger Company by Umutchezi Agreement of 1898. After Royal Niger Company went other companies came. Paid rents to Defendants. Chief Idigo is at the bottom of this action. Previous Provincial Court action. Appeal therefrom. Nigeria Law Reports Vol.XI page 140. Umuleris divested of all rights by conveyance to a 3rd party, i.e. Royal Niger Company. Judgment misinterpreted by Aguleris. They are now greatly extending area then adjudicated upon. 20

"0.3(P)"

Plaintiffs'
Evidence.
J.T. John.
Examination.

0.3(P) - EVIDENCE OF J.T. JOHN.

SOETAN calls:

1. JOSEPHUS THEOPHILUS JOHN: Male 40 sworn says in English:

Licensed Surveyor, Onitsha. I prepared this plan at instance of Plaintiffs, Umuleri people. They supplied the information. One part of boundary was a path already cut. They gave land name of Aguakor. Surveyed what they said was the whole of Aguakor land excluding strip given to Royal Niger Company. (Plan tendered, admitted and marked Ex.A). 30

Cross-
Examination.

CROSS-EXAMINED.

THOMPSON: XX.

Q. How did you know what area had been given to Royal Niger Company? - Umuleri showed me an old agreement from which I estimated boundary of that

land. Not an estimate because agreement stated "1000 yards from Anambra creek," on the Ako side.

Exhibits

"O(P)"

Q. What 1000 yards did you take? - 1000 yards at right angles to creek where Ako river joins it, and line from Nkpunwofia to Anambra creek.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

Q. Ever heard of Igite Aguleri people? - Yes.

Q. Are they and the Umutchezi people on south-eastern portion of this land? - I have no Ifite village on my plan; I have Umugalago.

December 1935
to March 1936.

10 Q. They are the same as Ifite? - It would not surprise me to hear it.

"O.3(P)"

Q. (Puts a Government to witness).

Plaintiffs'
Evidence.

Q. Does that quadrate generally with your plan? - No.

J.T. John.

Q. Entirely different area? - It shows more than my area, to the north-east.

Cross-
Examination
- continued.

Q. You see "land of Ifite-Aguleri" in S.E.? - Yes.

Q. Is that on your plan? - Yes, but not by that name. The area is on my plan.

20 (Government plan tendered; admitted, marked Ex.B).

Q. Does this rough sketch show the same land as yours, sketch by a District Officer?

Soetan objects on ground that plan is not by a licensed Surveyor and certified by Surveyor-General.

30 THOMPSON: In a running-down case, a sketch is admissible; so should this be. If Court moves out to the site, a sketch might be made then and become part of copy of Judge's notes. This sketch was part of District Officer's notes when he tried this action.

(Soetan after discussion agrees to the question being put, sketch to be put in for identification only, D.O. who made it to be called later).

Q. Does this rough sketch show same land as yours

Exhibits

"O(P)"

Omonyi.
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.3(P)"

Plaintiffs'
Evidence.

J.T. John.

Cross-
Examination
- continued.

roughly? - No, it is a different area.

(Tendered for identification pending D.O.
being called; Marked Ex.C).

Re-Examination.

RE-EXAMINED.

SOETAN: ReX.

Q. See this agreement: is it from this you made
your plan of the boundary? - Yes.

(Tendered; admitted, marked Ex.D).

Q. See Ex.B; "Ifite Aguleri land" marked in two
places; are these within your plan? - One of them
is but not by the name.

10

"O.4(P)"

Plaintiffs'
Evidence.

Omonyi.

Examination.

2. OMONYI: Male 80 Ibo Sworn says in Ibo:

Of Umutchezi Umuleri. Name Umutchezi covers
village of Adebe-Ikenga Mgbago-Ikenga Oguma-Ikenga
Umudiani-Ikenga. I am the oldest man in Umutchezi
now. I know land in dispute, and its boundaries.
Aguakor is its name. It belonged to my father;
belongs to the Umutchezi people. The Aguleris
concerned in this dispute are Eziagulu-Aguleri. They
are Olu people, called Agulekpa. They asked per-
mission to live on a piece of Umuleri land, and we

20

granted it. Before they came we had a boundary with Ikem Nnando:- Ochichi stream, Akpuezu tree near Ezu stream Igelenono stream boundaries of part we gave to Aguleri are:- Agadinwanyi ditch Akpu nwusaku tree nguebenebe trees site of old Inyi tree Nkpunwofia Anambra creek Akor stream is boundary between us and Neyi people. Ifite Umuleri or Enuago are near Akor which separates them from us. No boundary with Anam. We have one with Ikem. Land between boundary I have described and Akor stream belongs to us. It is called Aguakor. Otu-Ocha is name of land about which we had a previous action. Otu-Ocha extends from where Umuoba people are living to Anambra creek. Aguako is our farm land. My father farmed there; so did I till I was too old to work. I know Defendant Idigo's father; Ichezo, and his grandfather. I am older than Idigo's father. They never farmed this Aguakor land, nor disturbed us until this Chief Idigo began. He surveyed it after Otu-Ocha land case and cut trees. That is why we bring this action. In his survey he came through my compound.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.4(P)"

Plaintiffs'
Evidence.

Omonyi.

Examination-
continued.

CROSS-EXAMINED.

Cross-
Examination.

THOMPSON: XX.

Q. In 1933 were you the oldest man in Umuleri? - One man older than me, now dead; Okafor Egbuche.

Q. He was Plaintiff in last action before D.O. O'Connor? - Yes.

Q. You authorised him to bring it? - That was a different case; (Witness will not answer question).

30 Q. The 4 quarters of Umutchezi you named live outside area you are now claiming? - I came to give evidence of the boundaries.

Q. You know Ifite Aguleri? - Yes.

Q. Next to Umutchezi Umuleri? - Yes; we gave them the land, they occupy.

Q. And that land is between Umutchezi and this land in dispute? - No.

Q. Are Ifite not between Eziagulu and you? - That is Agadinwanyi ditch.

40 Q. You have a boundary with Ifite Aguleri? - Yes.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.4(P)"

Plaintiffs'
Evidence.

Omonyi.

Cross-
Examination
- continued.

Q. And beyond Ifite over that boundary is Eziagulu land? - Yes; Inyi is the boundary.

Q. Ifite Aguleri and you 4 years ago had a case in Native Court about land they occupy and they won? - That was not between Ifite and us; but between Ifite and a woman Machi.

Q. You know Umuoke; is it a woman? - No, a man.

Q. He brought the action? - He is her husband.

Q. Ifite won? - I don't know what order Native Court made. I do not go to Court.

10

Q. Did you go to Court in the Otu-Ocha case? - No.

Q. Your father was Okafor Ebuche? - Brother.

Q. Your father was a party; what is his name? - I meant my senior relative.

Q. Do you know what he said in Court? -

Q. Is the rest-house on Otu-Ocha? - No, on Aguakor land.

Q. All your witnesses in Otu-Ocha case said it was on Otu-Ocha land? - I did not see that myself.

Q. D.O. shows it on his plan as on Otu-Ocha? - D.O. is not an authority on the land.

20

Q. Your senior brother in that case said you claimed land up to Ojima on Ifite Aguleri boundary? - Yes.

Q. He then called it Otu-Ocha and you now call it Aguakor? - Otu-Ocha is different.

Q. Was it called Otu-Ocha before you gave it to Niger Co.? - Yes.

Q. Did you give all Otu-Ocha to them or only part? - Part along riverside.

Q. You still have part of Otu-Ocha? - No. It is only strip along river we call Otu-Ocha.

30

Q. Is R.C. Mission on Otu-Ocha? - (Witness will not answer).

Q. The main complaint in case before D.O. was that Aguleri, Idigo has granted lease to R.C.M. on your land; is that why you do not answer? - It is their land they gave to R.C.M.

Q. You know Aguleri Native Court? - Yes.

Q. Is that on Otu-Ocha or Aguakor? - Aguakor; we gave that piece of land.

10 Q. If D.O. says it is Otu-Ocha land, that would be untrue? - Original name of that was Oname; that is not true.

Q. If D.O. says where R.C. bungalow is built was claimed by you as Otu-Ocha that would not be true? - We have given those pieces up and make no further claim on them.

Q. Did you call them Otu-Ocha? - You are speaking of a long time ago.

RE-EXAMINED.

SOETAN: Re-X.

20 Q. Do any people of Ifite Aguleri farm with you on this land Aguakor? - No.

(Note: A somewhat senile witness).

0.5(P) - EVIDENCE OF IGWEZE.

3. IGWEZE: Male 60 Ibo sworn says in Ibo:

30 Of Umutchezi Umuleri, farmer. 4 quarters at Umutchezi; also called Ikenga. I know land in dispute called Aguakor. Owners are Umutchezi. Owners from time immemorial. It is our farm land. We live in villages known as Adagbe, Mbago, Umudiana, Ogume. I know Neyi people. Boundary between them and this disputed land is Akor stream. It is also boundary between us and Ifite Umuleri. I know Otu-Ocha. That is from Akor stream to Mkpunwofia. Sand on riverside is the boundary of Otu-Ocha. Also an Ofor tree. Otu-Ocha is beyond the land we are

Exhibits

"0(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"0.4(P)"

Plaintiffs'
Evidence.

Omonyi.

Cross-
Examination
- continued.

Re-Examination.

"0.5(P)"

Plaintiffs'
Evidence.

Igweze.

Examination.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

claiming now. I know Agulekpa people. They are from Olu. I know Chief Idigo. His people also from Olu. Their relative are still at Agulekpa. They are now occupying part of Aguakor land, given them by our fathers long ago. That part reaches as far as Agadinwanyi; Akpunwusaku; Ebenebe tree, Old Inyi tree; Mkpunwofia. Land between this boundary and Akor stream is occupied by us. We farm it. No permission from anybody. It was our fathers' land and we have never paid tribute for it. We receive tribute from others to farm there. We brought this action because Idigo surveyed the land and cut trees on it.

10

"O.5(P)"

Plaintiffs'
Evidence.

Igweze.

Examination
- continued.

Cross-
Examination.

CROSS-EXAMINED.THOMPSON: XX.

Q. Who came first on the land you are now on, Ifite Aguleri, Eziagulu or Umutchezi? - Umutchezi, Aguleri are strangers.

Q. And Umuleri occupied part where there villages now stand? - Yes, they have always lived there.

20

Q. And you farmed up to Anambra creek? - Yes.

Q. In those days who lived at the other side of the boundary you have described? - It was unoccupied forest.

Q. When Aguleri people came you made that boundary and put them on the other side? - Yes.

Q. Before they came the boundary did not exist? - We had a boundary with Ikem people.

Q. You gave Aguleri people Ikem land then? - Ikem refused to give them land; we gave them land.

30

Q. Did Aguleri come before Ifite Aguleri? - They are the same.

Q. The Eziagulu Aguleris or the Ifite Aguleris? - They increased and formed compounds. My father did not tell me any of them came first.

Exhibits

"O(P)"

Q. Land between your 4 villages and the land you now claim belongs to Ifite Aguleri? - No.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

Q. Last witness said it was? - I am sure he did not.

Q. You say Ifite Aguleri are not near land in dispute? - No.

December 1935
to March 1936.

10 Q. You remember Native Court case Aguleri and Umuleri? - One in which a woman was concerned, not our village; I do not know anything about it. Not present at trial.

"O.5(P)"

Plaintiffs'
Evidence.

Q. Do you know decision? - No.

Igweze.

Q. You know Otuocha land? - I will not answer that.

Cross-
Examination
- continued.

Q. Between boundary you gave and the Akor stream, what is the land called? - Aguakor.

20 Q. Any part of it called Otuocha? - Let us talk of Aguakor land.

Q. On land you now claim you say only Umuleri people now live? - Yes.

Q. No Aguleri people? - No.

Q. And you take these proceedings because Idigo made a survey? - Yes.

Q. If an Aguleri man says he lives on land with Anambra on north and Umutchezi on south, he speaks untruth? - No answer.

RE-EXAMINED.

Re-Examination.

30 SOETAN: Re-X.

Q. You say your people gave Otuocha away and it is not now in dispute? - Yes, given to the Company.

Q. Is any Ifite man farming on Aguakor today? - No. To 18th.

ExhibitsO.6(P) - EVIDENCE OF OKOYE.

"O(P)"

O/85/35.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

Resumed at Onitsha this 18th December, 1935.

4. OKOYE: Male 60 Ibo sworn says in Ibo:

"O.6(P)"

Plaintiffs'
Evidence.
Okoye.
Examination.

Chief of Umutchezi. Umutchezi consists of Adegbe, Mbago, Umudiana and Ogome. I am a chief for all four. Being a chief for 27 or 28 years. I know this land in dispute well. Called Aguakor land. Belongs to Umutchezi. It is their farm land and some also live on it. The 4 villages are situated away from Aguakor. Umutchezi have no other farm land than Aguakor. The Aguleri people got the land they now occupy from us Umutchezi people. Our father granted it to them. They come from Olu. Before they came, we had boundary with Ikem Nandu. That boundary was Ngenenono stream; Ochichi stream; Akwezu trees and anthills; reaching to Anambra creek. Originally Aguakor land stretched from this boundary to Akor stream. We gave them land up to our boundary with Ikem Nandu. The other boundary of this tract is Agadi Nwanyi trench, to Akpuwusako, Ngu ebenebe, Inyi, to Ekpu Nwofia and the Anambra creek. The part between that and our old Ikem boundary we gave to Aguleri. In those days it was forest. The part between the boundary I described and the Akor stream we kept for ourselves and it is still ours. We have always lived there. We are not strangers from any part. I know Neyi people. Part of Umuleri. Akor stream is between us and them. We had a separate piece of land called Otuocha. Boundaries are a stretch of Akor stream and Nkpu Nwofia, and the Anambra. It comes inland from Anambra as far as the Umuoba houses, which are on Otuocha. From there to our villages is Aguakor, and is the land now in dispute, and this is the first dispute we have had about it. Umutchezi have jujus on this land - Aro, Iyioji-Mozie, Ekpe Agadinwanyi, Ogu Umuriamu, and Eke, Araba Ulala. Umutchezi sacrifice at all these. An old woman sacrifices at the Araba juju. Called Udegbuna. I farmed on the land as my fathers did from time immemorial, on parts called Nnogbo and Okeyihu. No other people but Umutchezi farm on Aguakor today. No Ifites there. Nor Eziagulu men. Defendant Idigo has been interfering with this Aguakor land. His fathers never did. After case of Otuocha land was decided and we lost it, Idigo and his people began to interfere. He had

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a survey made there. Came past my compound. It caused a fight between Umuleri and Aguleri. We were detained and sent to Onitsha prison. After that no Aguleri men came to farm there. I remember when our people gave Otuocha to Royal Niger Co. I know the people who negotiated for our side - Ogbuefi Amaka, Ogbuefi Mora. Aguleri people knew about it; and gave their own portion to the Company. Neyi gave theirs too. Idigo was a small boy then. I knew his grandfather. Aguleri raised no objection. I know the rest house. It is on Aguakor. An Umutchezi man farmed there before the rest house was built. He received compensation on being disturbed when rest house was built, and handed the money to the Elders. I was present; so was Idigo, defendant. He raised no objection and made no claim to land. I farmed this land without anybody's leave.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.6(P)"

Plaintiffs'
Evidence.

Okoye.

Examination
- continued.

CROSS-EXAMINED.

Cross-
Examination.

20 THOMPSON: XX.

Q. Were you present when Otuocha case was tried? - Yes and heard everything witnesses said.

Q. You remember R.C. Mission Bungalow being referred to as being on Otuocha? - No; we gave that up previously to Aguleri who gave it to R.C.M. Nkpu Nwofia is the limit.

Q. You deny the rest house was said by everybody to be on Otuocha land? - It is on Aguakor.

30 Q. Agedi Nwanyi juju - was that not said to be on Otuocha land? - No; it is on Aguakor on boundary between us and Aguleri.

Q. Were you there when it was shown to D.O.O'Connor when he went there? - No.

Q. Your people went? - Some of them.

Q. If D.O. O'Connor says R.C.M. bungalow, the rest house and juju Agadi Nwanyi are on Otuocha he is wrong? - R.C. compound is on land we gave to Aguleri.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

"O.6(P)"

Plaintiffs'
Evidence.
Okoye.
Cross-
Examination
- continued.

Q. You heard Okafor Egbuchi give evidence? - Yes.

Q. All you complain of is that Idigo came on the land and surveyed it? - They farmed on it too. That caused the fight.

Q. Was that the only time they tried to farm there? - Yes.

Q. They never tried again? - No.

Q. None there now? - No.

Q. In that case why are you claiming it now? - Because he surveyed it and we wanted to avoid future trouble.

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Q. Do you remember Okafo Egbuchi saying "Idigo 1st Defendant came to us and asked permission to live at Otuocho --- seek to drive Defendants away? - Yes.

Q. How do you square that with your statement? that no Aguleri person farms there? - He said they were allowed to farm on land we gave them.

Q. There are Aguleris on the land you gave them? - Yes; but we do not allow them to come on our portion.

20

Q. What did Okafor Egbuchi mean by saying Aguleris had left that part you gave them and were spreading over your part? - He was talking about Otuocho land which is not involved in this case. We do not include Otuocho now in Aguakor land.

Q. You knew Ikem Nando people? - Yes.

Q. Used to have boundary with them? - Yes.

Q. None now? - No.

Q. Who gave Aguleri the land, you or Ikem Nando? - We did.

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Q. Aguleri have no land except what you Umuleris gave them? - Yes, on the Anambra, and their own land at Olu.

Q. There is no such place as Olu? -

Q. What is "eri" termination of Aguleri and Umuleri? - Sons of "Eri"? - It means "Agulu of Umuleri".

Q. Both from common ancestors "Eri"? - No.

Q. Agulu, Nri, Nteje, Igbariam, Aneke, Nsugbe, were those not the sons of Eri? - No, we are the only sons of Eri.

Q. Are Nteji related to you? - No.

Q. Nor Igbariam? - No.

Q. Nor Amanuke? - No.

Q. Nor Nsugbe? - No.

Q. Nor Ifite Aguleri? - They live near Aguleri.

10

Q. There are Ifite Umuleri? - Yes, not same as Ifite Aguleri. Ifite Umuleri are our people.

Q. Umuleri have no relations? - Not that I know of.

Q. What is Aguleri clan Court called? - Is it called Umueri? - Aguleri.

Q. Not Umueri clan Court? - No.

Q. And Umuleri clan Court the Umuigwedo Clan Court? - I go there to sit sometimes just as I come to Onitsha.

20

Q. Is there an Umueri Clan Court in your part? - Yes, near my compound. Umuleri go to it, not Aguleri.

Q. Does Idigo never sit as President? -

RE-EXAMINED.

SOETAN: Re-X.

Q. These people of Eziagulu are originally Agulus who came to Umuleri to settle? - Yes.

Q. Are you the only people they got land from? - No, some went to Awka, called Agulu Awka; some to Nri, called Agulu Nri; and those who came to us are called Agulu Eri. Umuleri is same as Umueri, meaning sons of Eri.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.6(P)"

Plaintiffs'
Evidence.

Okoye.

Cross-
Examination
- continued.

Re-Examination.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

"O.7(P)"

Plaintiffs'
Evidence.
Ezike Nwabisi.
Examination.

O.7(P) - EVIDENCE OF EZIKI NWABISI.

5. EZIKE NWABISI: Male. 60 Ibo sworn says in Ibo:

Elder of Umuleri - Umuchezi. Farmer. I know this land in dispute, Aguakor. I know where Aguleri people live. In olden days when Aguleri were not there, we had boundaries with Ikem Nando. They were Ngene Nduno stream; Ochichi extending to Akpu Ezu. Aguleri came from Ulu, a distant place near Odeke. Our forefathers gave them land, bounded by Ekpe Agadi wanyi Akpun Wusakum, Ebenebe, Inyi, Nkpu Nwofia to Anambra creek. On the other side was the Ikem Nando Boundary. I know the Neyi and Ifite peoples. Boundary with them is Akor stream, to Anambra creek. Our land near Anambra is called Otuocha. Its boundaries are an Akparata tree and an ofo tree to the Anambra; reaches from Akor to Nkpu Nwofia. Umuoba people live near the trees. "Otu" in "Otuocha" means a waterside. "Ocha" is white, there is white sand there, hence the name. Aguakor land extends inland, Otuocha is the waterside. Otuocha is not in this case. Umuchezi are owners of Aguakor. Aguakor is our only farm land. I farmed there as did my fathers. Nobody gave us the land. It is ours. I knew Idigo's grandfather and father. They never troubled us on this land nor has any other Aguleri Chief except Defendant Idigo. After Otuocha case had been decided, Idigo brought a surveyor. Also brought men to disturb our farmers and there was a fight. We have jujus on the land - Araba, looked after by the women, Aneke, Aro Mochili, Iyoji Mozie. No Aguleri men sacrificed to these. I know rest house. It is on Aguakor. Akpe Okafor formerly farmed it. He got £2 for crops and £4 for land as compensation. Passed the £4 Umuchezi elders. Aguleri got no share of it.

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Cross-
Examination.

CROSS-EXAMINED.

THOMPSON: XX.

Q. Were the £2 and £4 paid by Government? - Yes.

Q. Any document? - Government has it.

40

Q. Were you farming where rest house was built? - No.

Q. Akpe told you he had had this money from Government? - I was there when he received the £2, but not the £4.

- | | | |
|----|---|---|
| | Q. Where is Olu? - Beyond the Anambra. | <u>Exhibits</u> |
| | Q. You know Ugu Wusaka? - Yes. | "O(P)" |
| | Q. Near Umuchezi villages? - On boundary between us and Aguleri. | Omonyi
(Umutschezi-Umuleri)
v Idigo
(Eziagulu Quarter of Aguleri). |
| | Q. You and Ifite Aguleri? - No, Eziagulu. Line of boundary is from Ugu Wusakan to Anambra. | December 1935 to March 1936. |
| | Q. All that line is Aguakor? - Yes, and as far as Agadi Wanyi. | <u>"O.7(P)"</u> |
| 10 | Q. Otuocho is just a narrow strip of river bank from Akor to Nkpu Nwofia? - It extends from creek to Akparata tree. Not as far as Rest House. | Plaintiffs' Evidence. |
| | Q. Where is Neyi Umuleri; on boundary of Umuleri? - Across the Akor stream. | Ezike Nwabisi. |
| | Q. Otuocho means only waterside? - Yes. | Cross-Examination |
| | Q. Land behind it is Aguakor? - Yes, from Umuoba inland. | - continued. |
| | Q. Last witness said all this land was known as Aguakor, but you cut off Otuocho after losing the case about that? - Not so. | |
| 20 | Q. You gave evidence before D.O. O'Connor? - Yes, and other Umuchezi people too. | |
| | Q. Did you hear the evidence? - Yes. | |
| | Q. Did you hear the judgment delivered? - Yes. | |
| | Q. All your evidence referred only to Otuocho, the narrow strip at waterside? - I gave the same boundaries. | |
| | Q. Did you mention the word Aguakor at all or any others of your people? - There was no case about Aguakor. | |
| 30 | Q. There was no case about Aguakor then? - It is as old a name as any other. | |
| | (Puts part of judgment to witness: "the effect of all this ... from Anambra river to Ugwu Uwusaku which marks its boundary with Ifite Aguleri, but Umuleris are the owners.") | |
| | Q. You still say Otuocho was a narrow strip along | |

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

waterside? - What I have described.

(Puts witness's evidence before D.O.
O'Connor to him.)

Q. Is that what you said? - No.

(Witness's evidence tendered, admitted,
and marked Ex.E).

Q. What case was that evidence given in? - Otu-Ocha.

Q. Was Aguakor then in dispute? - No.

Q. Is Otu-Ocha along whole length of Akor up to
your village? Akor goes across Aguakor and meets
Anambra at Otu-Ocha.

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"O.7(P)"
Plaintiffs'
Evidence.
Ezike Nwabisi.
Cross-
Examination
- continued.

Q. Was the land you described as Otu-Ocha in case
before D.O. O'Connor same as you gave to Royal Niger
Co.? - Yes.

To 19th December, 1935.

H. WADDINGTON
Assistant Judge.
Onitsha, 18-12-35.

"O.8(P)"

Plaintiffs'
Evidence.
O. Nagbo.
Examination.

O.8(P) - EVIDENCE OF O. NAGBO.Trial Resumed this 19th December, 1935.

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6. OBIDIKE NAGBO: Male 60 Ibo sworn says in Ibo:

Of Ogume, farmer. Farm on Nnogbo in Aguakor
land. Aguakor is owned by Umutchezi Umuleri. My
grandfather and father farmed that land. I have
done so all my life. Have a house there in which I
live. A great number of my people have houses
there. Over 60 farm-houses on Nnogbo. During plan-
ting period, about 2 months, I live there. Then go
back to town to my house there. Farm is distant
from village. For that reasons I live in farm.
Never paid anything to anybody to farm there. The
land is ours. I know Chief Idigo Defendant. No
other person of his town has ever given us trouble
over this land. He began to disturb us after the
Otu-Ocha land case. He brought a surveyor and also
some people to farm on the land. Our people re-
sisted. Our crops are on the land now. There is
no Eziagulu or Ifite man on the land now.

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CROSS- EXAMINED.ExhibitsTHOMPSON: XX.

"O(P)"

Q. You remember the Otu-Ocha case? - Yes.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

Q. You remember the land referred to in that case?
- Yes.

Q. From Anambra river to Umuleri boundary? Was
that what the Provincial Court gave judgment on? -
No.

December 1935
to March 1936.

10 Q. If the Commissioner of the Court said so it would
be untrue? - Yes.

"O.8(P)"

Q. Did your witnesses say only Aguleris were there
and they did not intend to turn them out provided
they got rents? - That area was only from creek
to Umuoba settlement.

Plaintiffs'
Evidence.

Q. That was granted to Niger Company? - Yes.

O. Nagbo.

Q. To whom after they left? - When they left part
of it was granted to Umuoba.

Cross-
Examination.

20 Q. Did Niger Company ever use it? - No, they
cleared to build on it, but never did so. Left to
a plot given them by Idigo.

Q. Did you ever grant any of the land from creek to
Umuoba, to the people of Eziagulu Aguleri? - Yes,
to Idigo.

Q. You forbade then, Idigo, Niger Company and
Umuoba - to go beyond Otu-Ocha? - Yes.

Q. On rest of land from Umuoba to Umuleri are there
any Aguleris on the land at all? - No.

30 Q. If Commissioner of Provincial Court found you
had granted the land up to Umuleri to Aguleri to
live and farm on, though ownership should remain in
Umuleri, that is not correct? - No, we told them
not to go beyond the land we granted to them.

Q. Ever heard of Obuoma women? - Yes.

Q. Were they put on Aguakor or Otu-Ocha? - They
were on Aguakor but left it over two years ago.

Q. Who put them there? - Idigo; that is one of
our complaints in this case.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)v Idigo
(Eziagulu
Quarter of
Aguleri).December 1935
to March 1936.

"O.8(P)"

Plaintiffs'
Evidence.

O. Nagbo.

Cross-
Examination
- continued.

Q. You drove them away? - Village was non-existent over 2 years ago. The women were practising witch-craft. We did not drive them away. Anybody will drive away a woman practising witch-craft. They are still there today. On Aguakor.

Q. All witnesses so far have said the only grievance was Chief Idigo brought a surveyor on the land and some people to farm there? - That was the immediate cause. It does not surprise me that the witnesses said it was the only cause.

10

Q. Otu-Ocha extends from Anambra to Umuoba village? - Yes.

Q. Was it ever part of Aguakor land? - No.

Q. Witness Okoye said it was, and after losing the Otu-Ocha case they called the rest of the land Aguakor? Do you disagree with that? - I disagree.

Q. What age are you? - About same as Idigo.

Q. Can you remember what happened 41 years ago? - No. Idigo might; he is educated.

Q. You know Christmas? - Yes.

20

Q. Aguleri and Umuleri people went that month to R.C. Mission to talk about giving them a beach? - No.

Q. Do you remember a beach was granted to Mission then? - on the Anambra creek? - Yes, but that is on Otu-Ocha, not on Aguakor.

Q. Your people knew Aguleri had given R.C. Mission a beach in 1894, on Anambra creek, a portion of land you had granted to Aguleri? - Yes.

Q. Forty-one years ago? - Our people were not interested in the land granted to R.C.M. on beach.

30

Q. Your people do not care whether Idigo gave it to them or not? - Yes we were annoyed about that. That is another of our grievances.

Q. Niger Company agreement was 37 years ago? - I don't know.

Q. Did you consult Aguleri before signing? - No, no occasion; to; it was our land.

Exhibits

"O(P)"

Q. But you say you had given Aguleri a right of occupancy? - Not to Aguleri as a whole, only to Idigo. He took advantage of it and brought in some of his people.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

10

Q. If you grant land to a person, can you grant it to another without consulting the first one? Is that Native Custom? - I might give different grantings of same land to different persons.

Q. Are Umuleri related to Aguleri? - No.

"O.8(P)"

Q. Was the ancestor of Umuleri men called Eri? - Yes.

Plaintiffs'
Evidence.

Q. Are Umuleri descended from Eri or Nri or son of Eri? - No.

O. Nagbo.

Cross-
Examination
- continued.

Q. Eri had only one son? - Yes.

Q. What name? - Three sons, not one. Names, Ikenga, Ezi Umuleri, Ifite Umueri.

20

Q. Are those not sons of Umuleri who was the son of Osodi? - Eri was the son of Osodi.

Q. Then you are descended from Osodi? - He was Eri's father.

Q. Why are you not called Umuosodi then? - Eri had sons.

Q. Did they include Igbariam, Nri, Nsube? - No.

Q. You know Enugu Nri? - Yes.

Q. Was he father of Osodi? - No.

RE-EXAMINED.

Re-Examination.

SOETAN: RE-X:

30

Q. Who got land in Otu-Ocha first Niger Company or Idigo? - Niger Company.

Q. Did land you granted to Aguleri as a whole form part of Otu-Ocha land? - No.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.8(P)"

Plaintiffs'
Evidence.

O. Nagbo.

Re-Examination
- continued.

Q. Is there any beach you granted to Aguleris as a whole? - Yes.

COURT:

Q. What are the farm houses? Temporary shelters built for 2 months only? - No, they last two or three years.

"O.9(P)"

Plaintiffs'
Evidence.

P.E.G. Achikoh.

Examination.

O.9(P) - EVIDENCE OF P.E.G. ACHIKOH.

7. PHILIP EGWUATU GLADSTONE ACHIKOH: Male sworn says in English:

Registrar High Court Onitsha. I produce a certified copy of judgment of appeal Court in Okafor Egbuche versus Chief Idigo and Another.

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(Tendered, admitted, marked Ex.F).

"O.10(P)"

Defendants'
Evidence.

D.P.J.O'Connor.

Examination.

O.10(P) - EVIDENCE OF D.P.J. O'CONNOR.

THOMPSON: I wish to interpose evidence of Capt. O'Connor District Officer who wishes to leave Onitsha. Soetan consents. Granted.

Thompson calls: DERMOT PATRICK JOSEPH O'CONNOR: Male sworn says in English:

District Officer Onitsha Division. Was so in April 1933, with full powers of Resident to try land cases in Provincial Court. I produce a certified copy of case Egbuche versus Idigo tried by me (Exhibit M). I visited the area in dispute at the

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trial. Made a sketch plan for my own guidance for purposes of my judgment. I produce a certified copy of the sketch plan.

(Tendered);

10 SOETAN: I object, on ground (1) that sketch was for own guidance; (2) it is recorded that the sketch does not form part of proceedings; (3) D.O. is not a licenced surveyor. (4) Judgment it refers to set aside by Court of Appeal. (5) Judge cannot be called to explain his judgment;

THOMPSON: (1) proceedings go in as proceedings; I put it in as a rough sketch made by Commissioner; (2) Agreed it is not an attachment to the judgment. But it illustrates and illucidates it. (3) judgment set aside; that judgment was given in an existing fact. Any document illustrating it is admissible. (4) Judge cannot be called to explain: He can be called to explain an ambiguity.

SOETAN replies: No ambiguity.

20 Thompson as Counsel said in that Appeal there was no doubt about the land.

THOMPSON: I will rely on the two plans put in by Plaintiff and myself and withdraw the sketch.

WITNESS RESUMES:

As far as I remember Ifite Aguleri bounds with Umuleri. Ifite Aguleri is between area I adjudicated and Umuleri.

SOETAN:

(Put Niger Co. agreement to witness).

30 Q. At the time you tried that case did you understand claim was only in respect of land granted by Umutchezi to Niger Co.? - No.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.10(P)"

Defendants'
Evidence.

D.P.J.O'Connor.

Examination
- continued.

Exhibits

O.11(P) - EVIDENCE OF AKPE.

"O(P)"

SOETAN continues:

Omonyi
(Umutchezi-
Umuleri):
v Idigo
(Eziagulu
Quarter of
Aguleri).

AKPE: Male 25 Ibo sworn says in Ibo:

December 1935
to March 1936.

Of Umutchezi. I know Aguakor land. I farm on Uzuiji part where resthouse is. My crops are there. My father's people of Umutchezi gave the land for the Government resthouse. I was paid some money twice for it. £2 first, then £4. £2 was my share. Elders got the £4. I am still farming there today. I know Chief Idigo. Eziagulu men never came to my land at any time. I was taken to Court for fighting the Aguleris over the land. Fight was on main road leading to waterside.

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"O.11(P)"

Plaintiffs'
Evidence.

Akpe.

Examination.

Cross-
Examination.

CROSS-EXAMINED.

THOMPSON: XX:

Q. You gave land for government resthouse? - My fathers did; I farmed there. Gave me £2 for my crops as compensation.

Q. Chief Idigo gave government that land? - No, he did not.

20

Q. Which Umuleri chiefs gave it? It is a new resthouse? - No individual one. The elders gave it. Omonyi, Igweze, Ajans, and others are the ones who went.

Q. You know village for witches, Obuomu? Is it a settlement in Aguakor? - Yes.

Q. Idigo put those women there a few years ago? - All the chiefs arranged it, that any woman found practising witchcraft should be sent there.

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Q. Was it not Idigo who made the settlement? - I don't know.

Q. Last witness said Idigo founded it? - I say what I heard.

Q. What you say is what you heard from the chiefs?

-

- | | | |
|----|---|---|
| | Q. You know the R.C.M. beach on the Anambra? A | <u>Exhibits</u> |
| | store there? - No. | "O(P)" |
| | Q. Never seen it? (Witness reluctant to answer) finally says No. | Omonyi
(Umutchezi-
Umuleri) |
| | Q. Was Otu-Ocha ever known as Aguakor? - No. | v Idigo
(Eziagulu
Quarter of
Aguleri). |
| | Q. Never? - They are different. | December 1935
to <u>March</u> 1936. |
| | Q. When witness Okoye says Otu-Ocha was part of Aguakor before the Otu-Ocha case, he is not speaking the truth? - Otu-Ocha has always been called that. | "O.11(P)" |
| 10 | Q. Any Aguleris living on Aguakor? - No. | Plaintiffs'
Evidence. |
| | Q. Sure? - Yes, I am. | Akpe. |
| | Q. You know Niger Co. beach? - Yes. | Cross-
Examination
- continued. |
| | Q. You remember Umuleri agreement with them? - I heard from fathers. | |
| | Q. You know who Osodi is? - A title-name for Eri our forefather. | |
| | Q. Was Enugu Eri a son of his? - I don't know about that. | |
| | Q. You know of Eri? - Father of Umuleri. | |
| 20 | Q. Who were his sons? - He had three; Enuagu Nri, Uchezi, and Nneyi. | |
| | Q. Enuagu Eri is the grandson of Eri and son of Nri? - Nri are separate from us. | |
| | Q. Was Nteje a son of Eri? - No. | |
| | Q. Was Igbariam? - No. | |
| | Q. Omanuke? - No. | |
| | Q. Ever heard of Nsugbe people? - Yes. | |
| | Q. Sons of Eri? - No. No other people related to Umuleri. | |

Exhibits

RE-EXAMINED.

"O(P)"

SOETAN: RE-X:

Omonyi
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Q. Have Enuagas any other name? - Ifite Umuleri.

Q. And the Nneyi people? - Ezi Nneyi.

Q. And Umutchezi? - 4 quarters together make up
Umutchezi also called Ikenga.

December 1935
to March 1936.

Q. Ever asked Idigo's leave to farm there? - No.

"O.11(P)"

Plaintiffs'
Evidence.

Akpe.

Re-Examination.

"O.12(P)"

O.12(P) - EVIDENCE OF A. MARA.

Plaintiffs'
Evidence.

9. AKWOBU MARA: Male 45 Ibo sworn says in Ibo:

A. Mara.
Examination.

An Obuefi of Nneyi. Nneyi is divided into
Ekpe, Akwete and Manoma quarters. I belong to
Ekpe. I know the Akor stream. Ekpe touches the
Akor. Next to Ekpe is Akwete. Manoma is near
Nsugbe. Umutchezi are on the other side of the
Akor. I know Aguakor land, along Akor stream, our
land is on opposite side. Umutchezi own Aguakor.
They farm on Aguakor. Seen them there since I was
very young accompanying my father to the farm. They
are still there; it is their land. I know the
Aguleris, and the land they occupy today. I am an
Umuleri man Nneyi being part of Umuleri. Land
Aguleri are now on was given to them by Umutchezi.
So I heard from my father.

10

20

Cross-
Examination.

CROSS-EXAMINED.

THOMPSON: XX:

Q. You gave evidence before D.O. O'Connor? - Yes.

Q. You remember land you gave evidence about? -
All I know is Akor stream is between us and Umutchezi.

Q. Did you know what the land in dispute was at the time you gave evidence? -

Exhibits
"O(P)"

Q. It was Otu-Ocha? - Yes.

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Q. You gave boundary? - Yes.

Q. Did you say "I have boundary with ----- this is Akor stream to source of Akor"? - Yes.

December 1935
to March 1936.

Q. That was the boundary between your land and Otu-Ocha land which was in dispute? - That is Akor stream as far as Umuoba settlement.

10 Q. You told D.O. O'Connor that? - Yes.

"O.12(P)"

Q. You know land now in dispute? - Aguakor.

Plaintiffs'
Evidence.

Q. Did you tell D.O. O'Connor there was such land as Aguakor? - I knew there was Aguakor land.

A. Mara.

Q. Did you know it included Otu-Ocha? - I know Umutchezi had both. I have always heard both named.

Cross-
Examination
- continued.

Q. Did you mention name Aguakor to D.O. O'Connor? Witness will not answer.

SOETAN: No re-examination.

O.13(P) - EVIDENCE OF NWABIA.

"O.13(P)"

20 10. NWABIA: Male 60 Ibo sworn says in Ibo:

Plaintiffs'
Evidence.

Of Ikem Nando, an Obuefi. I know Umutchezi people. In former times we had a boundary with Umutchezi people. It was Ngene Nunu stream; the Ochichi hill; Akuzu tree. Same boundary is now between us and Aguleri. Aguleris settled on land between there and Umutchezi.

Nwabia.

Examination.

CROSS-EXAMINED.

Cross-

Examination.

THOMPSON: XX:

30 Q. What you say of Aguleri getting land from Umutchezi is what you heard? - My father showed it to me.

SOETAN: No re-examination.

Exhibits

O.14(P) - EVIDENCE OF CHIDOKWE.

"O(P)"

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11. CHIDOKWE: Male 60 Ibo sworn says in Ibo:

Chief of Olu Odeke, in Idah Division. I know Chief Idigo. His people came from Ekpa, in our country. We had a dispute with Idigo who claimed the Ofo stream in our country. Went to Native Court Idah. No decision given. Some of his people are living in Ekpa today. We speak Igala at Olu. Idigo is a stranger at Aguleri.

"O.14(P)"

Plaintiffs'
Evidence.
Chidokwe.
Examination.

Cross-
Examination.

CROSS-EXAMINED.

10

THOMPSON: XX:

Q. If I called Idigo's claim to fishing rights in Ofo an unrighteous one you would agree? - Yes.

Q. Whose are the rights? - Mine.

Q. Had Idigo any at all? - No, he had other ponds.

Q. Have you a copy of the case? - No.

Q. You really are from Olu? - Yes.

Q. How far is Idah from Umuleri? - 2 days.

Q. You came 2 days on foot to say you have a case with Idigo and you have no copy of it? - I had a letter from D.O. Idah.

20

Q. Are you Chika of Aguleri Otu? - No, but I know him.

Q. Is he from Idah? - Aguleri Otu.

Q. You know Nwofia? - No.

Q. Is it not an Aguleri Native Court Case you are referring to? - Same case heard both at Aguleri - Olami and Idah.

RE-EXAMINED.

SOETAN: RE-X:

Q. Is Aguleri Otu in Idah? - No.

Q. Is Chika a relation of yours? - No.

to 20th December, 1935.

H. WADDINGTON A.J.

Onitsha, 19/12/35.

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"O.14(P)"

Plaintiffs'
Evidence.

Chidokwe.

Re-Examination.

O.15(P) - EVIDENCE OF J. IFEAJUNA.

12. JOSEPH IFEAJUNA: Male 50 sworn says in English:

10

Native Administration Treasurer, Onitsha Native Administration. Remember Government resthouse being built at Umuleri between 1930 and 1931. One Akpe was paid £6 compensation first time £2 in March 1931, £4 in July 1931. I produce N.A. Cash Book with record of the payments. I keep the cash book.

(Tendered, admitted and marked Ex.).

"O.15(P)"

Plaintiffs'
Evidence.

J. Ifeajuna.

Examination.

CROSS-EXAMINED.

THOMPSON: XX:

20

Q. Who owns such a resthouse Government or Native Administration? - Native Administration.

Q. The N.A. is composed of people of that locality? - Yes.

Q. Those payments are consistent with compensation for crops? - That was a matter of arrangement between him and the D.O.

Cross-
Examination.

Exhibits

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Plaintiffs'
Evidence.

J. Ifeajuna.

Cross-
Examination
- continued.

Re-Examination.

Q. A much higher sum would be paid for land? -
That is for him.

Q. Is it usual to pay compensation for the land? -
Do not know any such case.

Q. Do you remember a payment of £21 about the same
time to Chief Idigo and in connection with this
resthouse? - (Witness cannot find entry in cash
book).

Q. What is the resthouse known as? - Aguleri rest-
house.

10

RE-EXAMINED.

SOETAN: RE-X:

Q. Why is it called Aguleri resthouse? - Because
of the Court near it.

COURT:

Q. Why is Court called Aguleri? - Because it is
in Aguleri town about $1\frac{1}{2}$ - 2 miles from resthouse.

Q. Why the £2 and £4 in separate payments? -
Because man was dissatisfied with £2.

SOETAN: That is my case.

20



O.16(P) - NOTE OF DEFENDANTS' COUNSEL'S
OPENING ADDRESS.

Exhibits

"O(P)"

THOMPSON:

Defence

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"O.16(P)"

Note of
Defendants'
Counsel's
Opening
Address,

20th December
1935.

10 Was D.O. O'Connor judgment about the narrow strip on creek, or on the area from Ifite to creek? Judgment of Appeal Court states Counsel agreed the area concerned was that covered by Niger Co. grant. I was for appellants. That admission was made on supposition that the area the Provincial Court had dealt with was the area covered by the lease. No plan was available to the Appeal Court. Counsel on both sides were certain that the land from Ifite to the creek had been sold to the Niger Co. Land near creek not now in question. Plaintiffs claim from thousandth yard up to Umuleri. At trial, the site of Eziagulu village was in dispute. Now it is cut out of plaintiff's plan. They deny that Ifite Aguleri is interposed between this land and Umuleri village. D.O. O'Connor says it is, in his evidence. How can they hold land to South of disputed area while this community unrelated to them are between there and Umuleri? One solitary act of ownership by Plaintiffs. This will be negatived by surrounding circumstances. Niger Company lease from Umuleri in 1898, near creek. Umuleri people were then living there. Considered then as brothers by Aguleri. Niger Company would naturally make their agreement with people they found living on the land. If Niger Company had built on it, it might have been said that Aguleri had knowledge. Provincial Court found as a fact that Aguleri people not be turned out but had no rights of alienation or to receive rents.

20

30

Defendants granted in 1894 a plot from a boathouse to R.C.M. Umuleri must have seen it.

Agreement renewed in 1898. Plaintiffs did nothing.

40 1924 - Royal Niger Company having ceded their rights to Government - successors, the Niger Company Limited went to Aguleri to obtain a site for a factory.

Obtained a lease from them. Another act of ownership.

1926 - John Holt & Co. Ltd. obtained a lease

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for a trading plot on Otuocha land.

These leases are subject to Government's approval.

D.O. has to inquire.

1932 - Holts obtained another lease from Aguleri.

C.F.A.O. also obtained a lease - from Aguleri.

1922 - there is a document relating to conditions of Hausa occupation from Aguleris.

These acts of ownership are conclusive against Plaintiffs. Umuleri has lost lands in Anam across the Anambra. They are now trying to get Aguleri land.

10

"O.16(P)"

Note of
Defendants'
Counsel's
Opening
Address,
20th December
1935 -
continued.

"O.17(P)"

Defendants'
Evidence.
R.A. Idigo.
Examination.

O.17(P) - EVIDENCE OF R.A. IDIGO.

THOMPSON calls:

1. RAPHAEL AKWUBA IDIGO: Male 55 Ibo sworn says in English:

Eze of Aguleri. I know the land in dispute. Called Otuocha. Boundaries are Akor river; Anambra from Nkpu Nwofia to boundary of Eziagulu and Ifite.

20

Over the boundary there are Enugu, Ifite, and Eziagulu-Aguleri. South side are Ifite Aguleri. Eziagulu Aguleri is where I live. It is in the middle of land in dispute. I know Umuleri town. It is after Ifite-Aguleri going towards Oyi river. Boundary between Ifite Aguleri and Umuleri reaches Akor stream. Boundary between Ifite Aguleri and Eziagulu reaches Akor stream. Settlement of Ifite Aguleri divide Umuleri from this disputed area. There was a previous case between Ifite Aguleri and Umuleri over this land. I produce a copy of the case.

30

(Tendered; Soetan objects; witness is not a party; and he is not an Ifite man. Thompson withdraws.)

Umuleri and Aguleri are related. Common ancestor Eri. I know of 6 sons of his. Agulu, eldest. Nri Agbariam Nteje Nsugbe Amanuke. Eziagulu are descended from Agulu. Umuleri from Nri. "Umuleri" means "Umu" - children; "le" means "far"; so the word means descendants of Nri. After Eri's death his sons inherited a large extent of land; divided it amongst themselves. We retained our ancestors' place in Ezi Aguleri, comprising the land now in dispute.

10

Nri had a site between Nsugbe Aguleri and Nteje. That is Umuleri where their villages are now. The children of Nri scattered. Occupied other parts.

On Otuocha side of Anambra we own the land. Directly opposite across Anambra, we own that too. Same Aguleris both sides, but those across Anambra are called Aguleri Otu.

20

On Otuocha side, we are called Aguleri Igbo, and are the parent stock. Aguleri Otus come to us to take title. Government resthouse is on this disputed land. When site was acquired Akpa was compensated for his yam and cassava crops. I told D.O. Swayne he ought to be compensated. I suggested 15/-. Akpe wanted £4. D.O. gave him £2. After completing building, compound had to be extended. None of Akpe's crops were destroyed and he got a further £4. Akpe is of Umuleri. He was on Otuocha with Aguleri people; has a house there now, with my permission.

30

In case before D.O. O'Connor, Plaintiffs took us from Anambra to Ugu Nwusaku (Ex.B) or Akpun Umusakun (Ex.A). No question of land only extending 1000 yards inland from Anambra. No plan before D.O. O'Connor at trial. On appeal I instructed counsel. No plan. I explained at the conference with them what the land was - from Ugu Nwusaku to Anambra. I was present at the appeal. No plan produced. I was present when D.O. gave his judgment. I understood it to refer to land from Anambra to Ugu Nwusaku. From time immemorial Eziagulu have been in occupation of this land. We farm on all of it.

40

1922 I had some Hausa, Yoruba and Nupe tenants farming on this land. Referred matter to D.O. Onitsha. A.D.O. came out and made enquiries and laid down

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"O17 (P)"

Defendants'
Evidence.

R.A. Idigo.

Examination
- continued.

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"O(P)"

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"O.17(P)"

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Evidence.
R.A. Idigo.
Examination
- continued.

conditions. I signed a paper setting forth the conditions. Chief of Umuoba and the chiefs of the strangers all signed. I produce it.

(Tendered, admitted, marked Ex.H).

I granted land to those people on these conditions. Umuleri, Nteje, Okuzu people also sought and obtained my leave to farm there.

1894 we gave R.C. Missiona beach on the strip between Akor and Nkpu Nwofia, to build a store and boathouse. It was built in 1894 - there for anybody to see. Kept it there 9 years. Our Umuleri tenants saw it. January 1898 we renewed the agreement about this beach - site. Had the original but lost it. Searched for it but could not find it. R.C. Father at Aguleri lent me his copy. He gave it to me. It has been in my possession ever since. I produce it.

10

(Tenders; Soetan objects; this purports to relate to land; not registered. Land Registration Ordinance. I rule that this document having been made in 1898 and plot surrendered 9 years later, the Ordinance which did not come into force until 1925, does not apply. Admitted and marked Ex.I).

20

I produce this leave by which we granted a plot to the Niger Co. Ltd., dated June 1924. Also on Otuocha beach.

(Tendered, admitted and marked Ex.J).

19th February 1926 I gave a trading site to John Holt & Co. Ltd. on Otuocha beach.

30

I produce the lease.

(Tendered, admitted and marked Ex.K).

20th March 1932 I gave another site to Holts on same beach. I produce the lease.

(Tendered, admitted and marked Ex.L).

2nd December 1931 gave C.F.A.O. a site on the same beach. I produce the lease.

(Tendered, admitted and marked Ex.M).

No protest from Umuleri in any of these cases. In case of C.F.A.O. lease notices were read in Native Court Aguleri at 3 sittings that plot was to be leased to French Co. on my land. No protest. In 1898 Royal Niger Company erected no buildings on the beach, nor cleared the ground in preparation for building. 2 months before trial of Otu-Ocha case by D.O. I heard for the first time of the existence of the Royal Niger Co. agreement.

10 Aguleri people have over 1000 houses on this land, and farms all over it, including strangers we allow there. We have jujus on the land - Agadinwanyi, Iyi Ogugu, Idemili, Udo, Aro. By Native Custom a man will not put a juju on another man's land, except his personal juju, not a communal juju.

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"O.17(P)"

Defendants'
Evidence.

R.A. Idigo.

Examination
- continued.

CROSS- EXAMINED.

Cross-
Examination.

SOETAN: XX:

20 Q. When did you begin to live on Otu Ocha? - My ancestors lived there; I was born there. Father and grandfather buried there.

Q. Is Otu-Ocha not the name given to waterside only? - No.

Q. All Aguleri is called Otu-Ocha? - From Ugu Nwusaku to Anambra.

Q. Who call that Otu-Ocha? - Plaintiffs themselves and we also.

Q. What do you call from Ugu Nwusaku up to Umuleri houses? - Ogbuzuzu.

Q. When case was tried you had no plan? - No.

30 Q. Did land include Eziagulu? - In the middle of the land.

Q. Is Umungalagu land in Otu-Ocha? - I don't know Umungalagu.

Exhibits

"O(P)"

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 Evidence.

R.A. Idigo.

Cross-
 Examination
 - continued.

Q. You know Mbito? - Yes.

Q. Is that Otu-Ocha? - Yes.

Q. Your father lived there? - Yes, I live there too. It is Otu-Ocha.

Q. Mbito was not claimed in last case? - No.

Q. What part of Aguleri is Otu-Ocha? - All Eziagulu.

Q. Where is Umutchezi farm land if all this land is Aguleri's? - From boundary of Aguleri for about 3 miles towards Ifite Umuleri. Also at other side of Akor, towards Neyi.

10

Q. Akor stream is not boundary between Aguakor and Ezi Umuleri or Neyi -

Q. What is boundary between Umutchezi and Neyi? - I don't know.

Q. You heard Omonyi, Okoye and Igweze say that apart from this land they have no farm land? - Yes.

Q. You accompany Surveyor to make plan Ex.B? - Yes.

Q. Showed him the places? - Yes.

Q. You engaged him? - My lawyer did.

20

Q. You did not produce it at the Appeal? - No.

Q. What does Otu-Ocha Aguleri on this plan mean? - That is only where the houses are; it is not the whole of Otu-Ocha.

Q. Plaintiffs did not claim Umungagagu? - No.

Q. Why did you point it out to Surveyor? - I did not. It was included because Plaintiffs went so far with D.O. in Provincial Court case.

Q. Did Aguleri ever grant land to Royal Niger Company before 1898? - Yes, about 1886.

30

Q. How old are you? - 50.

Q. In 1898 you were 11 or 12? - Yes.

Q. No voice then in town affairs? - No.

Q. Your father alive then? - Yes.

Q. Your grandfather was a chief then? - Yes.

Q. In 1891 your people gave a lease to Royal Niger Co.? - Yes.

(Tendered, admitted and marked Ex.N).

Q. On their own waterside? - Same land.

Q. Do you know Neyi have an agreement on their foreshore with Niger Co.? - Heard of it at time of Provincial Court Case.

Q. Do you say Umutchezi have no foreshore on Anambra? - Only what we gave them.

Q. You know Atuegbu? - A man of my family.

Q. Did you come from the other side of the Anambra? - No.

Q. You are related to Olu Odeke? - Yes.

Q. Is not the story that your people came from there and Umuchezi gave you land? - No.

Q. Are Anam related to you? - They are from various towns - Aguleri, Nteji and others.

Q. Is the Ofo lake in Idah Division? - No, Onitsha.

Q. Is Ayanti your brother? - Yes.

Q. And Obidigwe? - Yes.

Q. And Atuenye? He is at Aguleri Otu?

Q. You remember case in 1916 against you? Brought by Chika? - Yes.

Q. Obidigwe said "I know Ofo lake and it was founded by our great-grandfather who formerly lodged at Aguleri Otu and then fled from there to this place" - Yes.

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Evidence.

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Cross-
Examination
- continued.

10

20

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Evidence.

R.A. Idigo.
Cross-
Examination
- continued.

Q. You agreed with it? - Not with the word 'fled';
He came back.

to 21st.

H. WADDINGTON

Assistant Judge.
Onitsha, 20-12-35.

Trial resumed at Onitsha this 21st December,
1935.

SOETAN: resumed;

Q. Eziagulu is on motor road? - Yes about 3 miles 10
from waterside.

Q. From Eziagulu you moved to Mbito? - Yes.

Q. Your grandfather and father were buried at Mbito?
- Yes.

Q. Where the resthouse is has always been in occu-
pation of Umuleri? - They used to farm there.

Q. Akpe is an Umutchezi man? - His house is in
Otu-Ocha now.

Q. He says he never had anybody permission for it?
- I heard it, but it is false. 20

Q. You say Aguleri and Umuleri are related by
reason of 'eri' termination? - Yes.

Q. Igbariams are Umu-eris - children of Eri? - Yes.

Q. And Nteji? - Yes.

Q. And Nris? - Yes.

Q. And Amanuke? - Yes; all those towns know it.

Q. And Umutchezis too? - They are Umuleri.

Q. Is that not a corruption of Umueri? - No.

Q. And Aguleri? - That is Agulu - Eri.

Q. Ever heard of Agulu-Awka? - Yes, a quarter in 30
Awka town.

Q. Do you know any other town name with "-la" in
it, meaning "remote" descendants, as in "Umuleri"?
- I don't know of any.

Q. You were the most enlightened people in your part - first in contact with European? - I don't know.

Q. Mission settled first on your land? - Yes.

Q. Royal Niger Co. first took lease from Aguleri in 1891? - Yes, on Otu-Ocha site still marked by iron posts.

10 Q. Stayed there a long time? - Yes, subsequently they came to a site below which I gave them, on same land.

Q. Where the Hausas and Yorubas settled was at waterside? - Yes.

Q. Do you say these attempts to grant leases did not meet with serious opposition from Umuleri? - They did not.

Q. When R.C.M. wanted beach site, did not Umutchezi burn down the store? - Yes after 4 years.

20 Q. About 1921 did Umutchezi not protest against your bringing strangers on land they claimed to be theirs and bring an action against you? - No, in 1918 they brought one claiming Otu-Ocha because I had driven them from the beach.

(Puts Okafor Egbuch's evidence in Provincial Court case to witness).

Q. You heard Okafor Egbuche say that? - Yes, it is false.

Q. In Provincial Court case Judge went round same land as is claimed now? - Yes.

30 Q. You are giving same evidence now as last time? - Yes.

Q. You knew Judge gave judgment about all this land? - Yes.

Q. Before the Appeal you had land surveyed? - Yes.

Q. And got plan before the appeal and gave it to your lawyers? - Yes.

Exhibits

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Cross-
Examination
- continued.

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"O.17(P)"

Defendants'
Evidence.

R.A. Idigo.

Cross-
Examination
- continued.

Q. Dated 7th August 1933 and Appeal was heard 13th February 1934? - Yes.

Q. At trial of Provincial Court case you said Royal Niger Co. lease from Umutchezi in D.O.'s possession? - Yes.

Q. D.O. showed it to you and explained depth 1000 yards of the plot? - Yes, but Umuleri were going far beyond 1000 yards.

Q. You were present at the Appeal? - Yes.

Q. Did you see lease? - No.

10

Q. You admitted that land in dispute was the same as that in Royal Niger Co. agreement? - I did not know how big land leased was. (Puts agreement to witness).

Q. That was in Court? - I don't know.

Q. And you admitted that the land covered by that was the same as Provincial Court adjudicated on? - Plaintiffs go beyond that.

Q. Witness Okoye says he farms here, always has done and his father did before him? - Not true, nor Omonyi either.

20

Re-Examination.

RE-EXAMINED.

THOMPSON: RE-X:

Q. You tried to explain what witness Akpe's father said? - He said Eziagulu were permitted to farm on the land. Name of father, Okafor.

Q. Did you try to get the intelligence book in Court to show what the relation is between you and Umuleri? - Got a subpoena, but D.O. said book would be held to be privileged, and my money was returned.

30

Q. You were trying to give name with "le" in it? - Ebalole means "a far place"; it is not a place name.

Q. Why was it R.C.M. store was burnt? - Watchman took a woman from Ogume village in marriage. Ogume were angry. We drove Ogumes off the beach and renewed the agreement with R.C.M. who rebuilt.

Q. What was the 1921 action you mentioned? - From 1916 we gave Umuleri permission to farm across Anambra. Then stopped them, so they crossed to Anam to get land. We then told them they could not remain on the beach. Okafor brought action against me over it.

Exhibits

"O(P)"

Omyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

10 COURT:

Q. Are there others besides Akpe farming on the land? - Yes.

"O.17(P)"

Q. How long have the Umutchezi strangers been there? - Ten years some of them. Not more.

Defendants'
Evidence.

R.A. Idigo.

Q. How many? - About 100 from all parts of Umuleri.

Re-Examination
- continued.

Q. Have they houses there as well as farms? - No, only farm-shelters.

Q. That was with your permission? - Yes.

20 Q. You still permit it? - Yes: they try to build houses there and we stop that.

Q. Any rent or tribute? - No, we take them as Aguleri people.

Q. And at this moment all your farms are mixed up - Aguleri, Umutchezi and the rest of Umuleri? - Yes.

O.18(P) - EVIDENCE OF M.E. EZIAGULU.

"O.18(P)"

2. MATTHEW EJOR EZIAGULU: Male 45 Ibo sworn says in English:

Defendants'
Evidence.

30

An Aguleri man. I know this land Otu-Ocha. Boundaries Akor stream to Nkpu Nwofia to Ifite Aguleri Enugu boundary. Then to Ugunwusaku. Along Akor to Anambra. Eziagulu is in the middle of the area. Ifite Aguleri have boundary with Umutchezi and with Eziagulu. We walk to Akor

M.E. Eziagulu.
Examination.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.18(P)"

Defendants'
Evidence.

M.E. Eziagulu.

Examination
- continued.

stream through Ifite Aguleri land. From Eziagulu to Umutchezi one passes through Ifite Aguleri. Otu-Ocha has belonged to Eziagulu from time immemorial. Umuleri are distantly related to us. We have common ancestors Eri. Eri was the father of Aguleri, Nri, Amanuke, Nsugbe, Nteji, Igbariam. Aguleri descended from Agulu. Umuleri from Osude, ultimately from Nri. Land was distributed among sons of Eri. Aguleri stayed where they were. That area includes area in dispute. Umuleri have land towards Nteji and Nsugbe. Other sons of Eri also have their own land. Today on this disputed area are strangers living with us at Otu-Ocha, who farm there. Some from Umuleri and other local towns. And Yorubas, Hausas, Nupes.

10

Eziagulu permit them at Otu-Ocha. Umuleris living at Otu-Ocha pay nothing for their dwelling plots except 2/- when it is marked out. We are brothers, so they pay us no rents. On the farming land all the farms are mixed up together. No houses on that land, only farm shelters. Over 80 strangers live with us at Otu-Ocha. Not true that there are no Aguleri men farming there. I remember Provincial Court case by D.O. O'Connor. I live on the area. I accompanied him when he went there. We have over 1000 houses on this Otu-Ocha area. Over 1000 farms. From Ngwunwusaku to Otu-Ocha beach is the whole area in dispute.

20

Cross-
Examination.

CROSS-EXAMINED.SOETAN: XX:

30

Q. What work do you do? - I was an asst. clerk in Agriculture Dept. at Igbariam 1924-1927.

Q. What are you now? - Trader.

Q. You are an Eziagulu man? - No.

Q. You belong to Ikenga? - Yes.

Q. Miles from land in dispute? - Not far; not 3 miles from Eziagulu.

Q. You are a stranger at Otu-Ocha? - Otu-Ocha does not belong to Ikenga Aguleri?

RE-EXAMINED.THOMPSON: RE-X:

- Q. You live at Otu-Ocha? - Yes.
- Q. Ikenga and Eziagulu are all Aguleris? - Yes.
- Q. How old were you when you began to live at Otu-Ocha? - About 7; I still live there.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
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"O18(P)"

Defendants'
Evidence.

M.E. Eziagulu.
Re-Examination

O.19(P) - EVIDENCE OF I. OGWUEJENWA.

3. ILEGBUNO OGWUEJENWA: Male 60 Ibo sworn says
in Ibo:

10

Of Igbariam. I know Otu-Ocha land. I have lived on it - between Eziagulu and Agadiawanyi. I know Akor stream. My farm on this land was near bank of Akor. We had permission to farm there from Eziagulu. Been farming there about 47 years. No Umuleris have ever disturbed us.

"O.19(P)"

Defendants'
Evidence.

I.Ogwuejenwa.
Examination.

CROSS-EXAMINED.SOETAN: XX:

- Q. Is the place you speak of near Ekpe Agedinwanyi?
- Between Aziagulu and Agedinwanyi juju.

20

- Q. You know agadinwanyi ditch? - I know Agadinwanyi.

- Q. You know Umungalogu? - Yes.

- Q. Ditch round it? - Yes.

- Q. What name? - Ekpe.

- Q. Agadinwanyi juju near it? - No.

Cross-
Examination.

Exhibits

"O(P)"

Omyoni
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.19(P)"

Defendants'
Evidence.

I.Ogwuejenwa.

Cross-
Examination
- continued.

Q. How old were you when Achalla people drove you out? - Grown up; I fought.

Q. You have farmed this land ever since? - No, returned later to our town; over 30 years ago. Have not been on the land since.

Q. From Agadi Nwanyi to Eziagulu is Ifite? - Eziagulu is between the other two.

Q. Were you old enough to fight 47 years ago? - Yes, grown up.

THOMPSON: No re-examination.

10

to 23rd.

H. WADDINGTON

A.J.
Onitsha, 21/12/35.

"O.20(P)"

Defendants'
Evidence.

P.E. Achike.

Examination.

O.20(P) - EVIDENCE OF P.E. ACHIKE.

Hearing resumed at Onitsha this 23 December, 1935.

Thompson continues:

4. PHILIP EGWATU ACHIKE: Male sworn says in English:

20

Registrar High Court, Onitsha.

I produce copy of proceedings in Provincial Court suit 6/33 Okafor Egbuche etc. versus Chief Idigo etc.

(Tendered, admitted, marked Ex.E).

O.21(P) - EVIDENCE OF OKUNWANE.Exhibits

5. OKUNWANE: Male 65 Ibo sworn says in Ibo:

"O(P)"

Of Ifite Aguleri. I know Otuocho land. I also know Umuchezi land beyond. Ogu Wuseku is on our boundary with Otuocho. On one side we have a boundary with Umuchezi-Umuleri, and on the other side with Eziagulu.

Omonyi
(Umuchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

Eziagulu own Otuocho. Our land lies between the Umuchezi people and Otuocho.

December 1935
to March 1936.

10 Our land reaches the Akor stream. We pay no tribute; it is our land.

"O.21(P)"

Defendants'
Evidence.

Okunwane.

Examination.

CROSS-EXAMINED.

Cross-

Examination.

SOETAN: XX:

Q. You are not a native of Ifite Aguleri? - I was born there.

Q. Is Chibogu your father? - Yes.

Q. Enanya your brother? - Yes.

Q. Where is he now? - At Otuocho.

Q. Is he not at Igbaku? - He is at Otuocho.

20 Q. Where did Chibogu live? - In Umungalagu of Ifite.

Q. You came from Igbaku? - No.

Q. You have no land of your own? - The Ifite land in dispute is mine.

Q. There is no Ifite land in this dispute? - There was one with the Umuleris.

Q. You gave evidence in Otuocho case? - Yes.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).
December 1935
to March 1936.

"O.21(P)"

Defendants'
Evidence.
Okunwane.
Cross-
Examination
- continued.

Q. You said in cross examination Eziagulu allowed you to farm on their land? - No.

Q. You know Ekpe Agadi Nwanyi near Umugalagu? - No, there is no such place.

Q. Or any Ekpe (Ditch)? - No.

Q. Does Akpe mean a ditch? - I don't know.

Q. What is your word for a ditch? - Ogugu.

Q. You know Nmokeyi? - My mother.

Q. Who is Anyanwu? - Her other name.

Q. You know Joseph? - No.

10

Q. Is your brother Egwatu not Joseph? - I never call him that.

Q. You know Igbeke? - Yes.

Q. Father of Joseph Egwatu and Nwabe? - No, he is a distant cousin of mine.

THOMPSON: No re-examination.

"O.22(P)"

Defendants'
Evidence.
Anekwe.
Examination.

O.22(P) - EVIDENCE OF ANEKWE.

6. ANEKWE: Male 60 Ibo sworn says in Ibo:

Of Nneyi Umuleri. I know Otuocho land; also Akor stream. Eziagulu own Otuocho. Nneyi own the land opposite Otuocho across Akor. We always had that land. I always knew Eziagulu as the owners of the land opposite. Nneyi and Umuchezi are both parts of Umuleri and are brothers. Not true that Umuleri own Otuocho.

20

Cross-
Examination.

CROSS-EXAMINED.

SOETAN: XX:

Q. Your portion of Nneyi is Akuete? - Yes.

Q. There are three branches of Nneyi? - Yes.

Q. Ekpe Nneyi, Akute Nneyi, and Umuanome? - Yes.

30

Q. It is Ekpe who touch Akor? - All Nneyi have land in common.

Exhibits

"O(P)"

Q. Your quarter does not touch Akor? - Our land is common to all Nneyi.

Omonyi
(Umuchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

Q. You know Amuse and Udalo and Okenwe? - Yes.

Q. Three chiefs of Nneyi? - Yes.

Q. If they say their boundary over Akor was with Umuchezi you disagree? - Yes.

December 1935
to March 1936.

10

Q. You know they sold land to Niger Co. on Neyi side long ago? - Yes.

"O.22(P)"

Q. If they then agreed that their boundary was with Umuchezi they were wrong? - Not true.

Defendants'
Evidence.

Anekwe.

(Soetan tenders an agreement between Nneyi and Royal Niger Co. Thompson objects: this has nothing to do with this land. Admitted; marked Ex.O).

Cross-
Examination
- continued.

Q. You have a grudge against Umuchezi? - No.

Q. You know chief Melikem? - Yes.

Q. Your brother? - Yes.

20

Q. Deposed by people of Nneyi? - Yes.

Q. You tried to get Umuchezi to intercede to get him restored and they would not? - He is dead now; Umuchezi did nothing.

RE-EXAMINED.

Re-Examination.

THOMPSON: RE-X:

Q. You gave evidence before D.O. O'Connor? - Yes.

SOETAN through COURT:

Q. Melikam was deposed before Provincial Court case? - He died long ago.

30

THOMPSON: That is my case.

Exhibits

"O(P)"

O.23(P) - DEFENDANTS' COUNSEL'S
CLOSING ADDRESS.

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

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"O.23(P)"

Defendants'
Counsel's
Closing
Address,
23rd December
1935.

THOMPSON:

Res Judicata.

If waterside strip is held included in this claim, it is impossible by appeal Court judgment for Plaintiffs to obtain their title. If it is not included in land now claimed, it is also impossible for Plaintiffs to succeed.

Appeal - No plans. When counsel agreed that the land was the same as that ceded to Royal Niger Company, they had nothing to show it was not. Appeal Judge had to send for a copy of the agreement. Judgment says nothing about plan attached to uncertified copy.

10

I cannot invite Court to say this is res judicata outside area ceded to Royal Niger Company. I ask for decision on merits.

Evidence and conclusions in Provincial Court show land was from Creek to confines of Aguleri. Page 19 of D.O.'s judgment last paragraph. Disputed boundary. "Aguleri must continue to live there" - a finding of fact by D.O. Borne out by the evidence now before this Court. Page 20 - conclusive proof that Aguleris are in possession. Court can take this into account. Plaintiffs say no Aguleris on all the land, a preposterous statement.

20

Otuocha they claimed before was the land now claimed plus the creekside strip. To avoid matter being held res judicata they re-name it Aguakor. A deception to relitigate a matter already decided.

30

Description of land by witnesses in Provincial Court. They say up to boundary of Ifite Aguleri - page 4, 5, 7, 8.

If there is no Aguleri man there, what are Plaintiffs fighting for? We allow Umuleri on without charge, as brothers, except 2/- fee for marking out plot for house.

Idigo was asked certain questions by Court not asked in cross examination. Identical questions were put to next witness Matthew. He gave identical answers.

40

[REC. P.1587]

Dealings with land:

By Umuleri, only at waterside, when they transferred it in 1898. Company had nothing more than interesse termini. Never occupied site, Umuleri say they never warned Eziagulu of their action, and say they had no need to. Royal Niger Company became the Niger Company when they returned, they went to Aguleri not Umuleri. No doubt their taking originally from Umuleri was a mistake they later discovered. They may say these dealings are with Otuocho and not Aguakor. From the absence of barriers between them it may be inferred that the person who exercises right of ownership on one is the owner of all.

1894 - boathouse on beach by R.C.M. Everybody could see it. Umuleri took no action.

After 4 years lease renewed for another 3 years.

1922 - grant to Hausas.
1924 - Niger Company lease.
1926 - Holts.
1931 - C.F.A.O.

All done openly. Built upon. Plaintiffs did nothing.

1932 - Holts.

Conclusive proof of ownership in Defendants. D.O. said in witness box that Ifite Aguleri were between Umuleri and land in dispute.

Ifite Aguleri witness. Defendant's plan borne out by D.O. O'Connor. Plaintiff's plan incorrect in that. No Ifite man comes to say Ifite Aguleri holds of Umuleri.

Plaintiffs admit Obama, place for destitute women built by Idigo without their consent, on this land.

Witness Akpe was compensated for crops.

Idigo in box re C.F.A.O. plot. Notice given in Native Court.

Page 11 - Plaintiff's own witness admits he did nothing. Page 4 - reason for claims, land manager. "Reassert" suggest, they had abandoned any claim they ever had.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
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Quarter of
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"O.23(P)"

Defendants'
Counsel's
Closing
Address,
23rd December
1935 -
continued.

Exhibits

"O(P)"

Omonyi
(Umuchezi-
Umuleri)
v Idigo
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"O.24(P)"

Plaintiffs'
Counsel's
Closing
Address,
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1935.

O.24(P) - PLAINTIFFS' COUNSEL'S
CLOSING ADDRESS.

SOETAN:

Idigo is the only man of Eziagulu to give evidence. An educated man able to manipulate evidence. If other witnesses came, they would be unable to support him. Defendant did not plead that they had given land to Plaintiff to occupy. Not clear whether plea res judicata abandoned. Writ and plan are clear. Creek strip is not in question. D.O. reached conclusion that the land was that of Umuleri Idigo has added nothing to what he said in that case. Same result should follow, leaving out the creek strip. Admissions in appeal rule out any question of res judicata. We have excluded that strip from this claim.

10

Agreement of 1898 Ex.D describes clearly the area without the need of a plan. Court below and appeal Court took judicial notice of the agreement. So should this Court.

20

Umuleris were not passive, as suggested. They protested and even went to Court claiming that beach. No Aguleris at Otuocho in 1898. Eziagulu as shown in the plan is not in the area. Plaintiffs are not concerned with it. It was originally theirs long ago. Not interested now.

Ex.E. - Provincial Court record. Okafor Egbuche: Distinguishes between Otuocho and Eziagulu. Umuchezi exercising rights of ownership before 1898 agreement. Protests against Aguleri leases. Pages 5, 7 corroboration of this point. R.C.M. beach site - 1894.

30

Defendant himself says Umuchezi burnt the store. No proof of reoccupation of R.C.M. after that, though grant renewed. R.C. Fathers still there. Not called. Idigo dealt with firms as an educated man.

1891 - Royal Niger Company lease Ex.N; Idigo's grandfather made it. Plot beyond Nkpu Nwofia, up stream. Page 871 Laws - registered No. 78 Ex.D and O.

40

Umuleris dealt with as one unit comprising Nneyi, Umuchezi etc. Nothing surreptitious. Both

these agreements were on same day. Both registered page 872 Laws, Nos. 109 and 110. Ex.N - description of boundary of Aguleri "known as Nkpu Nwofia." Idigo's grandfather a party.

10 Ex. O. - Boundary of Umuchezi and Nneyi. Evidence of our Nneyi witness. And of theirs. If Umuchezi own land where their villages are and also beach strip, why should they not own the intervening area? Defendants have never said Umuchezi people on the area were put there by Defendants. Never suggested in cross examination of Umuchezi witnesses. Idigo said no Umuchezi people there more than 10 years ago. 10 years ago Umuchezi were fighting Aguleri for their rights. No mention of 2/- fee at Otuocha trial. Evidence re resthouse. £4 to elders for land. Evidence of Chief Okoye. Provincial Court judgment; Umuleris are owners. And Defendants themselves contend that this land is greater than that transferred to Royal Niger Company.

20

In judgment page 19 "The effect of all this" - "is merely obiter".

30 Ifite Aguleri -we agree this is between the land in dispute and Umuleri. Our plan shows it. Ifite Aguleri witness - not an Ifite man. Denies what he said before. Declaration against Ezia-gulu would not affect Ifite. Aguakor is composed of several areas each with a different name as on our plan. Otuocha was one of them. We deny any Hausa or Yoruba farmers there. Those of 1922 settled as traders on Otuocha. We protested. All grants in this action are at Otuocha. Not concerned with that now.

Obuomas: Idigo did not say he put them there and they are still there. Obidike's evidence on that. Idigo in Provincial Court case says C.F.A.O. lease was of his own land. But it was communal land. We seek this declaration to prevent further interference in this land by Idigo.

40 Idigo's version of local affinities should be rejected. No corroboration of Idigo. Witness Matthew another educated man. Not a farmer. How does he know how many farms there? He repeats what Idigo said. Evidence of Chidukwe of Olu. Nigeria Law Report Vol. XI page 68. Act of ownership with Royal Niger Company 37 years ago. Same

Exhibits

"O(P)"

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"O.24(P)"

Plaintiffs'
Counsel's
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Address,
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continued.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
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burning down the R.C.M. store. Protests against Idigo's grants to strangers culminating in legal proceedings. All these at north end. At south end, by occupation of villages Ogume etc. from time immemorial till today. And of intermediate area for farming.

Evidence of the old witnesses - a chief of 27 years standing among them. Idigo is the only one against them - a comparatively young man. The Igbariam witness Ilegbunam. Proves nothing. Not been near land for 30 years.

10

"O.24(P)"

Plaintiffs'
Counsel's
Closing
Address,
23rd December
1935 -
continued.

For judgment next Onitsha Sessions.

H. WADDINGTON

A.J.

Onitsha, 23/12/35.

"O.25(P)"

Judgment of
His Honour
Assistant
Judge H.
Waddington,
18th March
1936.

O.25(P) - JUDGMENT OF HIS HONOUR,
ASSISTANT JUDGE H. WADDINGTON.

This suit in which a declaration of title to land is sought comes before the Court on an Order of the District Officer Onitsha transferring it from the Umuigwedo Native Court in the exercise of his powers under the Native Courts Ordinance 1933.

20

The Plaintiffs represent the people of Umutchezi Umuleri and claim on their behalf title to a piece of land named by them AGUAKOR, and indicated as such on their plan (Ex.A).

The Defendants represent the neighbouring people of Eziagulu Aguleri. The suit was tried with pleadings. The Defendants have pleaded res judicata founding upon Provincial Court suit No.6 of 1933 and the subsequent appeal and the records in both are in evidence. With this plea I will deal first.

30

The land which was the subject of the Provincial Court Suit is described in the claim therein

adjudicated upon, as "Otu Ocha Umuleri, commencing from the stream Ako to an anthill called Nkpunwofia." Thus, it does not appear in the claim precisely what area was in question, and there was no plan in evidence to amplify this meagre verbal description.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
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(Eziagulu
Quarter of
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"O.25(P)"

Judgment of
His Honour
Assistant
Judge H.
Waddington,
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continued.

10 The appeal from the judgment of the Provincial Court was based upon three grounds with only one of which the Appeal Court found it necessary to deal; that ground was, that "the Court below, having found as a fact that the Plaintiffs-Respondents (Umuleri) had sold the land in dispute to the Royal Niger Company Chartered and Limited in June 1898, should not have given to the Plaintiffs the declaration of title but should have given judgment for the Defendants."

The judgment states:

20 "Both parties admit that the land in question in this Suit is precisely the same land as that covered by the Royal Niger Company Agreement."

Counsel for the present Defendants stated in his opening that at the appeal there was available neither a plan of the land for the purpose of the litigation nor a plan attached to the Royal Niger Company Agreement, and the admission was made under a misapprehension that the land upon which the Provincial Court had adjudicated and the land conveyed in 1898 were identical.

30 It appears to me that the question of res judicata is easily disposed of, and that nothing more about it need be said than that the Appeal Court held that the Plaintiff's claim to title to the land then in dispute, that is the land covered by the Royal Niger Company Agreement, should have been dismissed, and the Plaintiffs have in the present suit definitely excluded that area from the land they now claim as is plainly indicated both in their claim and on their plan.

The plea of res judicata therefore fails.

40 In considering the merits of the case I shall refer to the land dealt with in the judgment of the Appeal Court as the creek-strip, in order to avoid using the name Otu Ocha which the parties do not apply to the thing.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
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(Eziagulu
Quarter of
Aguleri).

December 1935
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"O.25(P)"

Judgment of
His Honour
Assistant
Judge H.
Waddington,
18th March
1936 -
continued.

The Plaintiffs' case is that the land has been in their possession and occupation from time immemorial; and they say that the people of Eziagulu not only were never in possession and occupation but are strangers who far from owning this farm land actually received a grant of the land their village itself stands upon from the Plaintiffs' ancestors.

In addition to evidence of these matters, they bring evidence of acts of ownership touching the creek-strip, inviting me to say that that strip is theirs and from its position in relation to that of the village of Umutchezi, the inference must be drawn that the intervening terrain, viz., AGUAKOR is theirs also. 10

What can the Plaintiffs be said to have proved by the evidence they bring? Various witnesses from Umuleri are called who state that the land is and always has been the property of the Plaintiffs. The bearing of these witnesses under cross-examination did not impress me as that of men imbued with the single-minded purpose of speaking the truth; they struck me rather as persons mainly preoccupied with promoting the interests of their party. I find myself therefore able to attach little importance to their testimony. 20

Nor do I consider it to be materially reinforced by witnesses Akpe and Nwabia. I am not satisfied that the compensation paid to the former was for more than the loss of his crops and the latter's brief account of a matter of history he heard from his father is not a piece of evidence which greatly influences me. 30

As to witness Chidokwe, he speaks of the rights defendant Idigo does not possess in the land rather than of those the Plaintiffs do possess.

The ownership of the creek-strip is not in issue in these proceedings, but considerable prominence has been given to that question and evidence of acts of ownership has been brought, in order to establish the Plaintiffs' proposition stated above, that if the creek-strip is theirs, so must this land which connects it with their village be theirs also. I express no opinion on the ownership of the creek, but even if it were admitted that it belongs or formerly belonged to the Plaintiffs, it 40

would, I think, be going too far to infer from that fact ownership of some tract of hinterland adjacent to it, without clearer evidence than is before me relating to the hinterland itself.

To the Plaintiffs' case might be applied the principle laid down by the Full Court in the case of Ntoe Ekpo Eta Ekpo versus Chief Eta Eta Ita (Nigeria Law Reports Volume XI page 69), expressed in the words occurring in the judgment of the Privy Council in Ntiaro and another versus Ibok Ebok Akpan and another (Nigeria Law Reports Volume III page 12). That principle is that "in a claim for a decree of declaration of title the onus is upon the Plaintiff to prove acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant the inference that the Plaintiffs were exclusive owners - if the evidence of tradition is inconclusive the case must rest on a question of fact."

I find it impossible to hold that the Plaintiffs have succeeded in discharging that onus, and the declaration they seek must accordingly be refused.

As to the case for the Defendants, they also, like the Plaintiffs, claim possession and occupation from time immemorial. Like the Plaintiffs, they say the creek-strip is theirs and that it is not divided from the disputed area, whence I am asked to draw an inference of ownership of the latter - a process similar to that in the case for the Plaintiffs.

Much reliance is placed on the evidence of defendant Idigo; he has a competent knowledge of English and is a man of considerable personality. However, I came to the conclusion after seeing him in the witness-box, that he is too deeply concerned for the success of his side to be accepted with anything but caution. Nor do I think the remainder of the evidence for the Defendants establishes a case in any way more convincing than that of the Plaintiffs. Had the former claimed relief they would have been in no better position to have obtained it on their present case, than are the latter.

One point should be mentioned on which I do

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.25(P)"

Judgment of
His Honour
Assistant
Judge H.
Waddington,
18th March
1936 -
continued.

Exhibits

"O(P)"

Omonyi
(Umutchezi-
Umuleri)
v Idigo
(Eziagulu
Quarter of
Aguleri).

December 1935
to March 1936.

"O.25(P)"

Judgment of
His Honour
Assistant
Judge H.
Waddington,
18th March
1936 -
continued.

believe Idigo, and that is that for the past ten years farmers of both villages have used the land, a situation which is consistent with neither possessing exclusive rights of ownership.

These considerations can, in my opinion, lead to only one result and that is that upon this evidence it is impossible to draw any definite conclusion. My judgment will therefore be one of Non-Suit.

Re Costs :

THOMPSON addresses : SOETAN replies.

10

I am clearly of opinion that the fact of the Defendants receiving rents for some time past from various European trading companies in respect of sites on the creek-strip is one of the main causes of this course of litigation. I do not believe, having regard to all the circumstances of the case as disclosed at this trial, that the negotiations between the Royal Niger Company and the representatives of Umutchezi could possibly have taken place without the matter being well known in the Defendant village and indeed in all the neighbourhood. Whatever right Umutchezi may or may not have had to convey the creek-strip in 1898, I consider the Eziagulu people acted improperly in negotiating leases on the land without disclosing their knowledge. This impropriety, I think, merits that the Defendants should not be awarded costs and as to these, therefore, there will be no Order.

20

(Sgd.) H. WADDINGTON

30

ASSISTANT JUDGE.

Onitsha, 18-3-36.

K.1(P) - LETTER: DISTRICT OFFICER,
IGALA, TO DISTRICT OFFICER, ONITSHA.

Exhibits
"K.1(P)"

OD461: Page 1.

No.189/1934/61.

The Divisional Office,
Idah, 29th November, 1935.

Letter:
District
Officer,
Igala, to
District
Officer;
Onitsha,
29th November
1935.

The District Officer,
i/c Onitsha Division,
Onitsha.

10

Fishing rights Ibaji Districts

The Atta Gala reports that 20 men under a man called Akuba have crossed the N.S. boundary and have fished for 15 days in the River Adufu about one mile down stream from the village of Odeke in Ibaji District of this Division.

2. These men are said to have come from the village of Aguleri in your Division.

20

3. It is further reported by the Gago of Odeke that certain Ibos from your division are employed by them as fishermen and that Akuba and his 20 men robbed these Ibos of their catch. The Gago informs me that this matter is being investigated by you.

4. I send the Gago Odeke (Osadekwe) herewith.

(Sgd.) ? ? ?

District Officer,
i/c Igala Division.

K.3(P) - LETTER: DISTRICT OFFICER,
ONITSHA, TO DISTRICT OFFICER, IGALA.

"K.3(P)"

30

OD461: Page 3.

No. O.D.353/5.

District Officer's Office,
Onitsha, 24th December, 1935.
The District Officer,
Igala Division, Idah.

Letter:
District
Officer,
Onitsha, to
District
Officer,
Igala,
24th December
1935.

Fishing Rights Dispute

I am in receipt of your letter No.189/1934/61

Exhibits"K.3(P)"

Letter:
District
Officer,
Onitsha, to
District
Officer,
Igala,
24th December
1935 -
continued.

of the 29th of November, 1935. The Gaga of ODEKE gave me to understand that the River ADUFU is known also as OFO or OVO or IYI-OFOLO. The only OFO or OVO known to me lies about eight miles south east of ODEKE and it is definitely an AGULERI lake. The man Akuba you mention is the EZE of AGULERI - R.A. IDIGO. He sent his men recently to OVO - and if ODEKE'S were there the fault would appear to be on the other side.

2. I send you a plan made by Captain Jewell an Assistant District Officer of this Division in 1927. He was working with an Officer from IDAH - plotting the Northern - Southern boundary.

10

Would you please to plot thereon the River ADUFU and return the plan to me?

(Sgd.) ? ? ?

District Officer,
Onitsha Division.

"K.29(P)"

Note to
arrange Camp.
10th February
1938.

K.29(P) - NOTE TO ARRANGE CAMP.OD 461 Page 29.

Note:-

O.D.114/230 of 10/2/38, the N.C. Members, Nzam were instructed to arrange Camp for the H.S.R. & staff, S.D.O & staff, D.O. Igala & staff and also informed that the S.D.O. will arrive Inoma on 21/2/38 & Ide pool on 22/2/38.

20

"K.29A(P)"

Tour Notes on
Nzam Native
Administration
Area,
27th February
1938.

K.29A(P) - TOUR NOTES ON NZAM NATIVE
ADMINISTRATION AREA.O.D. 461 Page 29A.

Tour Notes on the Nzam Native Administration Area by R.J. Hook, Senior District Officer in charge Onitsha Division, February, 1938 (File No.O.D.455).

30

11. LAKE OFO, OVO, or IYI - OFOLO. According to IDIGO, OVO has five branches, IYIOBINOKO, IYIOFOLO, IYIOJACHI, OTOKPO, OBOLI-MPATENS. The EZIAGULU Quarter of Aguleri and Oroma Otu fish OVO, and Enugu Otu share fishing rights in Ajiobe. He also

says the Isiokwe compound of Ifite-Aguleri live North of the OVO: this does not appear on Capt. Jewell's map. Idigo complained against the village Head of Odeke, CHIDOKWE, accusing him of bringing false claims and making false accusations. He alleged CHIDOKWE is the only person disputing his title to OVO. He says ODEKE and AGULERI are relatives, a son of one AGULU of Aguleri having left Aguleri for Omerun and afterwards settled at ODEKE after a fight. The District Officer Igala Division is inclined to agree that OVO belongs to Aguleri, and so informed Village Head ODEKE and others present, but pointed out that all actions in reference had taken place in the old Aguleri Native Court. We agreed we would first write Capt. Jewell and Mr. McCabe and enquire if they could throw any light on the matter.

10

27th February. To Enugu Otu, 3 hours 20 minutes walk.

20

FUO.
Enugu Otu,
27th February, 1938.

R.J. HOOK
Senior District Officer,
i/c Onitsha Division.

K.71(P) - MEMORANDUM: SENIOR DISTRICT OFFICER, ONITSHA, TO DISTRICT OFFICER, IGALA.

O.D.461 Page 71.

No.481/27.

4th March, 1938.

30

From The District Officer, i/c Igala Division, Idah. To The Senior District Officer, i/c Onitsha Division, Onitsha.

"K.71(P)"
Memorandum:
Senior District Officer, Onitsha, to District Officer, Igala, 4th March 1938.

Fishing Rights Dispute: Odeke (Igala Division) Versus Aguleri (Onitsha Division).

40

On my return to Odeke, while en route in fact, I was shown, by the Gago and Elders, various embankments close to Lake OVO which they stated had been made by them for a number of years in connection with the fishing. You may remember we walked

Exhibits
"K.29A(P)"

Tour Notes on Nzam Native Administration Area, 27th February 1938 - continued.

Exhibits

"K.71(P)"

Memorandum:
Senior
District
Officer,
Onitsha, to
District
Officer,
Igala,
4th March
1938 -
continued.

along some of them.

2. This does not mean that I consider they have a claim on Lake OVO but it points to the fact that they have been accustomed to fish in it, whether legally or illegally.

(Sgd.) ? ? ?

District Officer,
i/c Igala Division.

"W(D)"

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).

W.(D) - RECORD OF PROCEEDINGS IN UMUERI
NATIVE COURT, NO.105, A. ANEKWENSI
(EGBEAGU AGULERI) v. I. UDEALO AND
ANOTHER (UMU-OJI UMUOBA ANAM).

10

W.1(D) - EVIDENCE OF A. ANEKWENSI.

December 1937
to March 1938.

I
In the Umueri Native Court
Suit No.105.

(Page 305)

"W.1(D)"

Plaintiffs'
Evidence.

A.Anekwensi.

AKWUOBU ANEKWENSI (m) for himself on behalf of
EGBEAGU "AGULERI"

vs.

IZUOBA UDEALO (m) & OGOLO IGBAGU for themselves on
behalf of UMU-OJI "UMUOBA ANAM".

20

Claim:- £25 damages for trespass on the plaintiff's fishing pools by fishing in the following: Ikpa, Edeligba, Atuigwe, Ekpukulu, Ubulube, Akwosofulibearu, Efulu, & Uri which are situated in Aguagba land without permission from the plaintiffs.

It is one Izuoba Udalo, Ogolo Igbagu, Maneme & Ubanefo who went into our fishing ponds last year with young men of Umuoji of Umuoba and killed some fishes there without informing our families. Our quarter men (Eziagulu people) fished in one of the fishing pools "Ikpa". If it was the defendants' pools could they allow our people to kill fish there.

30

It is exactly 29 years ago that I had case No.841 with one Udengba of Anam concerning one fishing pool "Atuigwe" of which I obtained judgment. To prove my statements, here is the copy case I got on payment.

Ikpa rises from Ososo & Ededele situates near Ososo.

10 It was in the year 1926 that I took action against one Okoye of Umuoba & Nwanwune of Umuoba and they were fined £1 each or 1 month I.H.L. The cost was also refunded to me. Refer to case 648/26 of J.B. 1/26, Page 152. One part of Enugu "Aguleri" Umuegbe was summonsed for fishing in these pools. "Ekpukulu" and others without our knowledge. In this case one of the defendant's brother by name Ekwemo appeared in the court and gave evidence that he is one of Umaoji of Umuoba Anam. And it was about 45 years ago that his father informed him that plaintiff's father gave him the fishing pools in dispute to look after. That before anybody 20 fish there, they must get permission from him. This is evidence given in the civil case No.44/17 of J.B. 1/17 of 1917.

These fishing pools :- Atuigwe, Ekpukulu & Ubulube main fishing pools & the others are only arms stretching from one place to another.

30 So I summons the defendants to pay me £25 compensation for fishing in these said pools without our permission. I can produce the three copy cases referring to these fishing pools in dispute.

Case adjourned till next court sitting so that the defendants may appear & give evidence.

(Sgd.) R.A. NWAKAMMAH.

N.C.S. 16/12/37.

Exhibits

"W(D)"

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).

December 1937
to March 1938.

"W.1(D)"

Plaintiffs'
Evidence.

A.Anekwensi

- continued.

Exhibits

(See page 307)

"W(D)"

W.2(D) - EVIDENCE OF O. IGBAGU.

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).

(From page 305). Suit No.105/37 Reopened
13-1-38. Claim £25 not admitted. The 2nd Def-
endant on behalf of Umuoji of Umuoba Anam S/S: The
Umuoji people has no boundary with Iyira Anam.

December 1937
to March 1938.

"W.2(D)"

Defendants'
Evidence.

O. Igbagu.

We can not pay even half penny compensation
to the plaintiffs for we do not fish in the plain-
tiff's fishing pools. We will be grateful if the
plaintiff enumerate the fishing pools on which
they claim compensation of £25. Among these fis-
hing pools only. Ekpukulu was given to the plain-
tiffs on the ground that we are inlaws. What will
render assurance that Ekpukulu was given to the
plaintiffs by us, is that one Ekwemuo of our family
gave evidence on behalf of Egbeagu when Umuegbe took
action against Egbeagu about this fishing pool
"Ekpukulu". And Ekwemuo swore for this. One
fishing pool Ikpa was granted to plaintiff Akwobu
by us to fish when he was preparing to take Asamuo
title. It was on account of inlaw that this Ikpa
was given Akwuobu to make use of it only for a year.
Even one of the plaintiffs Akwuobu went to place
juju in this Ikpa, but we rejected, telling him
that the water is using for drinking. And that is
the reason why he summoned some of our people who
fished in Ikpa and he was awarded some compensation
for this. Atuigwe flows into Ogbagu. We never
had a case with the plaintiff, concerning the
fishing pool Ogbagu which is the most important of
all fishing pools there and all the fishing pools
flow into Ogbagu. We (never) have only boundary
with Iyora Anam and no other nation has boundary
with us there. On this account, Umuoji was called
upon to show the boundary between Umuzeanam and
Umuoji when fishing dispute arose between Iyora &
Umuzeanam.

Edelagba, Efulu & Uri were given to the whole
of Umuoba Anam in general so that we may accompany
the whole of Umuoba when fishing.

And this is all what we know concerning these
fishing pools in dispute.

Q. by court:- Who is the owner of all the fishing
pools in dispute? - Ans: We Umuoji, only Ekpukulu
is excluded.

10

20

30

40

Q. by court:- Whose daughter is married & by who?
- Ans: One Alozo married one woman by name Ekpeli from Ezeagu.

Q. by court:- What is the name of the fishing pool which you gave to the plaintiff Akwuobu to fish? -
Ans: Ikpa.

Q. by court:- Where is the woman now? - Ans: She was dead long (ago) since.

10 Q. by court:- How were you fishing with the plaintiffs since? (See page 313).
(From page 307) Ans: No.

Q. by court:- You say that a case was held once concerning one fishing pool Ekpulu - Ans: Yes.

Q. by court:- Who took action against each other?
- Ans: Part of Aziagulu by name Umuegbo summoned of which one Ekwemuo of Umuoji gave evidence.

Q. by court:- Is that Ekpukulu alone that Ekwemuo witness? - Ans: Yes.

20 Q. by court:- Do you say that Atuigwe is the most important of all the fishing pools? - Ans: No. "Igbagu" in which all the fishing pools flow into.

Q. by court:- When does this matter begin? - Ans: Last year.

Q. by court:- How were you using the fishing pools in olden days? - Ans: The plaintiffs usually got permission from us when they wanted to fish.

Q. by court:- How many of them asked permission for fishing in these pools? - Ans: One Alagufa & Somdi asked permission to fish in Ikpa.

30 Q. by court:- Can you tell the names of the people from whom the plaintiffs got permission? - Ans: One Agbogu, Okoye Ezekwe.

Q. by court:- Who is the owner of the land in which the fishing pools situated? - Ans: Umuoji of Umuoba Anam.

Q. by court:- How is it bounded? - Ans: It is bounded west by Umuoche of Umuoba and south west by Iyora Anam.

Exhibits

"W(D)"

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).

December 1937
to March 1938.

"W.2(D)"

Defendants'
Evidence.

O. Igbagu

- continued.

Exhibits

"W(D)"

Anekweni
 (Egbeagu
 Aguleri)
 v Udealo
 (Umu-oji
 Umuoba Anam).

December 1937
 to March 1938.

"W.2(D)"

Defendants'
 Evidence.

O. Igbagu
 - continued.

Q. by court:- Nearly all the going men of Ezeagulu Aguleri fished in Ikpa last four years from whom did they get permission before fishing? - Ans: I do not know this.

Q. by defdt:- Did you remember that your father was alive when the Atuigwe case No. 841 of 8.12.08 between Egbuche Vs Udemgba of Anam was tried? - Ans: I do not know.

Q. by plttf:- Do you remember that the whole of Umuoji of Umuoba Anam namely: Oba, Aduke, Onuora Akasi, Iwoba, Onuora Nwabia, Duaka Ogbagu, Okafo Nwaisi, Okoye Akpunwa, Ekweoba came to one Somdi of Egbeagu to get permission with 8 rows of fishes each? - Ans: I do not know. 10

Q. by plttf:- You say that you gave Ikpa to one of plaintiff's "Akwuobu". Why did you fail to appear and give evidence in case 648/26? - Ans: It is what I just stated that the fishing pool was given to the plaintiff by us.

Q. by plttf:- How many fishing pools are there in Nkpulu? - Ans: One big & other small ones. 20

Q. by plttf:- We Egbeagu gave the people of Umu-galagu one fishing pool Uri to fish, why did you not take action against them? - Ans: I do not know.

Q. by defdt:- Who is the owner of the land in which the pools situate? - Ans: We Egeabgu people.

Q. by defdt:- How is the land bought? - Ans: It is handed on one part by Umuenini of Enugu Aguleri. Umuakwu of Enugu Aguleri on one part, Umuezulu Enugu on the other side. 30

Q. by defdt:- How do you bound with Anam people? - Ans: We have no boundary with Anam till as far as to Ezichi River which is the boundary between Egbeagu and Anam.

Q. by defdt:- Are we paying any tribute or rent to you for the use of pools? - Ans: Yes.

Case adjourned till the members visit the fishing pools in dispute on 24th January 1938.

W/to mark

(Sgd.) R.A.NWANKAMMAH
 N.C.S.

(Sgd.) R.A.IDIGO his X mk
 for other court members.

13-1-37.

(See page 327)

W.3(D) - EVIDENCE OF O. MACHI.Exhibits

(From page 313). Suit No.105/37 Reopened
23-2-38.

"W(D)"

I witness OGUGWO MACHI (m) S/S: I am Ogugwo Machi of Umuoji Anam Isinso is the father of Machie. One man from Umuoji by name Alozo married one woman from Egbeagu "Ekpeli" who is the mother of Isinso. These fishing pools in dispute were given to Isinso by Egbeagu to look after them. Afterwards, Umuoji people made great efforts to deprive the fishing pools from Egeabgu people, but we family (Umuisinso) took oath that all these fishing pools which we looking after belong to Egbeagu Aguleri; As this matter arose I am not one of the Umuoji people who are trying their best to deprive the fishing pools from Egbeagu. Once Egbeagu had a case of fishing of fishing pools Atuigwe against Umuepenete of Umuoba of which Egbeagu had worn the case. Egbeagu has only boundary with Umuakwu of Enugu Aguleri.

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umuoji
Umuoba Anam).
December 1937
to March 1938.

"W.3(D)"

Defendants'
Evidence.

O. Machi.

10

20

Q. by court:- Are you one of Umuoji people? - Ans: Yes.

Q. by court:- So all the statement of the defendants are false. - Ans: Yes.

Q. by court:- Who is the right owner of "Igbogu"? - Ans: That is not included.

Q. by defdt:- Are the head of Umuolozo? - Ans: I am the head of Umuisinso and not Umuolozo.

30

Q. by defdt:- You and Onuora who is senior? - Ans: You have stated that Onuora is not alive so I am the head if that be the case.

Q. by defdt:- Is Ekwealo Alozo among the people that took oath that all the fishing pools belong to Egeabgu? - Ans: Ekwealo is not the family of Umuisinso.

Q. by defdt:- Is Onuora one of the family of Umuisinso who took oath that all the fishing pools belong to Egbeagu? - Ans: Yes.

Exhibits

W.4(D) - EVIDENCE OF C. OKONKWO.

"W(D)"

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).
December 1937
to March 1938.

Witness CHILOKWU OKONKWO (m) S/S: I am a native of Iyora Anam. We Iyora people have a boundary with Umuoji Anam. We Iyora have our own down below but, Umuoji people have upwards. As we Iyora have a case with Umuzianam, Umuoji people were called upon to give evidence or show the boundary. Even our wives usually go fishing in these fishing pools up to date and yet we do not see Egbeagu people or their wives. So Egbeagu have no fishing pools there, they are only making false statements.

10

"W.4(D)"

Defendants'
Evidence.
C. Okonkwo.

Q. by court:- Name all the fishing pools which Umuoji are making use of? - Ans: Atuigwe & others of which Ikpa is one.

Q. by court:- Do you ever see the plaintiff in the fishing pool? - Ans: No.

Q. by plttf:- Which family fought against Egbeagu? - Ans: Iyora people.

Case adjourned till next sitting in March.

W/to mark
(Sgd.) R.A.NWAKAMMAH
S.N.C. 23-2-38.

CHIKWUEMEKA his X mark
for court member
(See page 333).

20

"W.5(D)"

Statement of
N. Izummuo
(Court Member),
10th March
1938.

W.5(D) - STATEMENT OF N.IZUMMUO (COURT MEMBER).

(From page 327). Suit 105/37 Reopened 10/3/38.

NWEKE IZUMMUO on behalf of other court members stated that we had visited the fishing pools in dispute. Both parties give some name to all the fishing pools except one fishing pool which the plaintiff called (Atuigwe) and the defendant are living along the sides of the fishing pools & are using the fishing pools as drinking water. They have also some permanent crops such as ugili trees, Adu trees & Otosi trees.

30

The defendant have small playground there.

Case adjourned till the elders of both parties appear in the court, before the judgment is given.

W/to mark
(Sgd.) R.A.NWAKAMMAH.
S.N.C. 10/3/38

Ch. R.A.IDIGO his X mk
for others.

40

.6(D) - JUDGMENT.

(From page 333). Suit 105/38 Reopened 17/3/38.

JUDGMENT:- As the defendant had sworn a lawful oath that the fishing pools in dispute and the land belong to Egbeagu (the plaintiff) who gave the pools to defendant to look after and that gives assurance of the evidence of the defendant for plaintiff.

Exhibits

"W(D)"

Anekwensi
(Egbeagu
Aguleri)
v Udealo
(Umu-oji
Umuoba Anam).

December 1937
to March 1938.

"W.6(D)"

Judgment,
17th March
1938.

10 That one Egbuche of Egbeagu took action against one Udemgba of Umuoba of which Egbuche obtained judgment over twenty years ago.

That the plaintiff (Akwebu) of Egbeagu sued some Umuoji people with regard to these fishing pools, and few were sent to prison. The most old man of Aguleri in general said that all the pools on the right bank of Ezichi river belong to Egbeagu. All the fishing pools in dispute belong to Egbeagu.

Hence £20 compensation to the plaintiff with costs.

20 W/to mk.
(Sgd.) R.A.NWAKAMMAH
S.N.C. 17/3/38

Ch. UMEADI his mk.
for 21 other members.

Minority:-

30 As the defendants are living for ages in this land where these fishing pools are situated, and are making use of these pools both for drinking & fishing without permission from anybody else, all these fishing pools belong to Umuoji. No compensation is to be paid to the plaintiff so far as all the pools take rise from Ugbagu the main pool which belongs to defendant.

W/to mk.
(Sgd.) R.A.NWAKAMMAH
S.N.C. 17/3/38

NCHEKWUIFE his mark
for 13 other members.

Exhibits"N(P)"

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950.

N.(P) - CORRESPONDENCE BETWEEN C.D.ONYEAMA
(SOLICITOR FOR UMUTCHEZI UMULERT) AND SEC-
RETARY, EASTERN PROVINCE.

N.1(P) - LETTER: ACTING SECRETARY,
EASTERN PROVINCE, TO A. SOETAN AND
COVERING LETTER.

E.P.11032/315.
Eastern 16th August, 1939.

"N.1(P)"

Sir,

Letter:
Acting
Secretary,
Eastern
Province, to
A. Soetan
and covering
letter, 16th
August 1939.

I am directed by the Chief Commissioner to
acknowledge receipt of your letter dated the 27th
April, 1939, and to say that the matter is re-
ceiving attention.

10

2. It has been necessary to refer your letter
and its attachments to the Commissioner of Lands,
and I am to request that should you have a spare
copy of the petition and the attachments thereto
you would forward them to this office at your
early convenience.

I have the honour to be,

20

Sir,

Your obedient Servant,

(Sgd.) C.J. PLEASS.

Acting Secretary,
Eastern Provinces.

Mr. A. Soetan, Barrister-at-Law,
18, Alli Street, P.O.Box 701, Lagos.
u.f.s. thro' The Resident, Onitsha Province, Onitsha.

No.E.P.11032/315a.
Enugu, 16th August, 1939.

30

Copy to:-

The Resident, Onitsha Province, Onitsha.

For information with reference to his letter
No.O.P.505/264 of the 6th of July, 1939.

2. I am to request that the original of the
attached letter may be forwarded to the petitioners'
Solicitor.

(Sgd.) C.J. PLEASS.
Acting Secretary,
Eastern Provinces.

40

N.2(P) - LETTER: C.D. ONYEAMA TO CHIEF
COMMISSIONER, EASTERN PROVINCE.

Exhibits

"N(P)"

22nd May 1945.

Sir,

Re Otuocha Umuleri Land.

I have been instructed by representatives of Umutchezi, Umuleri to represent them in respect of their claims in respect of the above mentioned land.

Correspondence between Onyeama and Secretary, Eastern Province.

August 1939 to July 1950.

"N.2(P)"

10

On the 27 of April, 1939, a Petition was addressed to Your Honour by Adegunle Soetan, Esquire, acting on behalf of my present clients, and the Acting Secretary, Eastern Provinces replied that the matter was receiving attention. (Secretary's letter No.E.P.11032/315 of 16th August 1939 refers).

Letter: C.D.Onyeama to Chief Commissioner, Eastern Province, 22nd May 1945.

My clients have heard nothing further and I shall be grateful if you would let me know what the position now is.

I am, Sir,
Yours faithfully

*

20

Solicitor.

His Honour, The Chief Commissioner, Eastern Province, Enugu. Thro' the District Officer, Onitsha, and the Resident, Onitsha Province, Onitsha.

*
No signature on the Exhibit but evidently the letter is from C.D. Onyeama.

N.3(P) - LETTER: SECRETARY, EASTERN
PROVINCE TO RESIDENT, ONITSHA PROVINCE

"N.3(P)"

No.11032/429.

30

The Resident,
Onitsha Province,
Onitsha.

Secretary's Office,
Eastern Provinces,
Enugu, 9 July, 1945.

Letter: Secretary, Eastern Province to Resident, Onitsha Province, 9th July 1945.

Umuleri-Aguleri Land Dispute.

I am directed to refer to a letter of May 22, 1945, from Mr. C.D. Onyeama, Solicitor, endorsed by you to this office on June 9, and to say that

Exhibits

"N(P)"

Correspondence between Onyeama and Secretary, Eastern Province.

August 1939 to July 1950.

"N.3(P)"

Letter: Secretary, Eastern Province to Resident, Onitsha Province, 9th July 1945 - continued.

the Chief Secretary asks whether any of the land in dispute between Umuleri and Aguleri is the subject of proceedings now before any Court. The action which the Government will take under the Niger Lands Transfer Ordinance (Chapter 86) as amended by Ordinance No.22 of 1945 depends upon the answer to this question.

2. I am to suggest that Mr. Onyeama be informed that Government is at present considering this matter in the light of the most recent legislation and that the interested parties may expect to hear further in due course.

(Sgd.) L.T. CHUBB
Secretary
Eastern Provinces.

Mr. Onyeama, P.O. Box 2, Enugu.

For information as to para 2 above.

(Sgd.) D.P.J. O'CONNOR
Resident, 10.7.45.

10

"N.4(P)"

Letter: C.D.Onyeama to Secretary, Eastern Province, 21st July 1948.

N.4(P) - LETTER: C.D. ONYEAMA TO SECRETARY, EASTERN PROVINCE.

OCV/67/47/10.
21st July, 1948.

Sir,

UMULERI-AGULERI LAND DISPUTE.

I have the honour to refer to your letter No. 11032/429 of 9th July 1945 addressed to the Resident, Onitsha Province, and endorsed to me by him, and to draw attention particularly to paragraph 2 of that letter.

20

30

In view of recent developments on Otuocha land, particularly the formation of a Town Council by the inhabitants, my clients of Umuleri desire me to ask how soon they may expect to hear from Government.

I have the honour to be, Sir,
Your Obedient Servant,
(Sgd.) C.D. ONYEAMA, Solicitor.

The Secretary,
Eastern Provinces, Enugu.
Thro' the District Officer, Onitsha, and the Resident, Onitsha Province, Onitsha.

40

N.5(P) - LETTER: SECRETARY: EASTERN PROVINCE TO C.D. ONYEAMA.

No.11032/497.

SECRETARY'S OFFICE,
EASTERN PROVINCES,
ENUGU, NIGERIA.
7th September, 1948.

Sir,

10 With reference to your letter No.OCV/67/47/10 of the 21st of July, I am directed to inform you that the matter is under consideration, and to say that it is expected that it will be possible for Government to make a definite statement in the near future.

I have the honour to be,

Sir,

Your Obedient Servant,

? ? ?

Secretary, Eastern Provinces.

20 C.D. Onyeama, Esq.,
P.O.Box 2, Enugu, Nigeria.

Exhibits

"N(P)"

Correspondence between Onyeama and Secretary, Eastern Province.

August 1939 to July 1950.

"N.5(P)"

Letter; Secretary, Eastern Province to C.D.Onyeama, 7th September 1948.

N.6(P) - LETTER: C.D. ONYEAMA TO SECRETARY, EASTERN PROVINCE.

OCV/67/47/16.

13th January 1949.

Umuleri - Aguleri Land Dispute.

Sir,

I have the honour to refer to your letter No. 11032/497.; of the 7th September 1948, and have to add as follows to my letter Ref.No.OCV/67/47/10, of the 21st July 1948, :-

30 It has come to the knowledge of my clients of Umuleri that it is proposed to pay over to Chief Idigo of Aguleri certain moneys in respect of certain Niger Lands which my clients claim is the Otu-Ocha Land and belongs to them.

My clients are further informed and see no

"N.6(P)"

Letter: C.D.Onyeama to Secretary, Eastern Province, 13th January 1949.

Exhibits

"N(P)"

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950.

"N.6(P)"

Letter:
C.D.Onyeama
to Secretary,
Eastern
Province,
13th January
1949 -
continued.

reason to doubt the truth thereof that a renewal of the old lease to John Holt & Co. Limited is being considered between this firm and Chief Idigo of Aguleri.

I am therefore instructed to protest on behalf of the people of Umuleri against the payment to Chief Idigo of any part of the rent and against any renewal of the lease by Idigo as a party.

In this connexion, I am instructed to draw your attention to the fact that Item 110 of the First Schedule to the Niger Lands Transfer Ordinance Cap.86, under which the area now leased to John Holt & Co. Ltd. was vested in the Crown, recites a grant by the Head Chief and Chiefs of Umushezi - who represented the people of Umuleri. Idigo does not belong to this group of chiefs. Should the crown decide to allow Idigo to draw the rents, the crown would be acting in a manner inconsistent with the ownership of the grantors.

10

I can do no better than repeat the observations of Mr. Adegunle Soetan in his petition of March 1939 addressed to His Honour the Chief Commissioner, Enugu in respect of this very land matter, in which he said :-

20

"It is contrary to the Native Law and Custom as well as equity and good conscience, and it is repugnant to the feelings of your petitioners that their erstwhile customary tenants, namely, the Eziagulu people of Aguleri through the influence of Chief Idigo should enrich themselves with proceeds of leases improperly granted to the European firms in respect of the sites on the Creekstrip known as Otu-ocha Umuleri, formerly the property of the people of Umutchezi Umuleri which for a mere pittance the ancestors of your petitioners conveyed to the Royal Niger Company in 1898 (upon the question of costs in a case entitled Omony and Igweze Odili of Umutchezi Umuleri versus Chief Idigo and Okeke Egbuche of Eziagulu Aguleri - Suit No.0/85/1935, in respect of a claim for farmland adjoining the Creekstrip Otu Ocha Umuleri. Justice Waddington in his judgment delivered on the 18th day of March 1936 after entering a judgment of non-suit, observed as follows:

30

40

"I am clearly of opinion that the fact of the

10 "Defendants receiving rents for sometime past
 "from various European Trading Companies in res-
 "pect of sites on the Creekstrip is one of the
 "main causes of this course of litigation. I
 "do not believe, having regard to all the cir-
 "cumstances of the case as disclosed at this
 "trial, that the negotiations between the Royal
 "Niger Company and the representatives of Umut-
 "chezi could possibly have taken place without
 "the matter being well-known in the Defendant
 "village and indeed in all the neighbourhood.
 "Whatever right Umutchezi may or may not have had
 "to convey the Creekstrip in 1898, I consider the
 "Eziagulu people acted improperly in negotiating
 "leases on the land without disclosing their
 "knowledge. This impropriety I think, merits
 "that the Defendants should not be awarded costs
 "and as to these, therefore, there will be no
 "order."

20 "Your petitioners respectfully submit that the
 "situation at present is anomalous. The attitude
 "of the Eziagulu is a continuous source of pro-
 "vocation to your petitioners and the provocation
 "is daily aggravated by Chief Idigo and his Ezi-
 "gulu people continuing to take advantage of the
 "anomaly created by the agreement of 1898, and
 "the Niger Lands Transfer Ordinance, the rights
 "under which the Crown have no hitherto exercised,
 "by still leasing lands on the Otu Ocha Umuleri,
 30 "and collecting and retaining rents in respect
 "thereof. Even after the judgment of the Divi-
 "sional Court, referred to above (Exhibit "F"),
 "Chief Idigo and his people of Eziagulu continued
 "to grant leases of the land - a certified copy
 "of the lease dated the 2nd day of October, 1935
 "to Messrs. John Holt & Company, (Liverpool), is
 "forwarded herewith and marked Ex."G" - it will
 "be observed that in paragraph 7 whereof a ref-
 "erence is made to the Niger Treaties, that is
 40 "to say the Niger Lands Transfer Ordinance ves-
 "ting in the Government the rights under the
 "agreement of 1898. It is to be noted that
 "Chief Idigo and the people of Eziagulu are not
 "parties to the said agreement, but the Head
 "Chief and Chiefs of Umutchezi Umuleri, that is
 "to say, the ancestors of your petitioners.

"Your petitioners, therefore most earnestly im-
 "plore the Government to remedy the situation
 "either by exercising the rights conferred by the

Exhibits

"N(P)"

Correspondence
 between
 Onyeama and
 Secretary,
 Eastern
 Province.

August 1939
 to July 1950.

"N.6(P)"

Letter:
 C.D.Onyeama
 to Secretary,
 Eastern
 Province,
 13th January
 1949 -
 continued.

Exhibits

"N(P)"

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950.

"N.6(P)"

Letter:
C.D.Onyeama
to Secretary,
Eastern
Province,
13th January
1949 -
continued.

"Agreement of 1898 and the Niger Lands Transfer
"Ordinance and so put an end to the interference
"of Umuleri land. If, however, the Government
"do not now intend to exercise the rights vested
"in them as stated above, then your petitioners
"most earnestly implore and earnestly entreat the
"Government to release them from their obligations
"under their contract with Royal Niger Company
"Chartered and Limited as evidence by the Agree-
"ment dated the 25th day of June 1898, the right
"title and interest under which had become vested
"in the Government on the 15th day of January,
"1900 by virtue of the Niger Lands Transfer Ordi-
"nance either by a refund by them to the Govern-
"ment of the paltry consideration or by any other
"stipulated consideration to support a reconvey-
"ance to your petitioners of their right title
"and interest in their most cherished Otu Ocha
"Umuleri Creekstrip and so leave them unfettered
"any longer to prosecute their claim against
"their erstwhile tenants, the people of Eziagulu
"and resist their improper grants of leases of
"the lands formerly the proper of the people of
"Umutchezi Umuleri before the Agreement of 1898."

10

20

I submit with respect that it is a matter of
the highest provocation for Chief Idigo take shel-
ter under the fact that this area is still Crown
Land, and with the apparent collusion and connivance
of the crown to draw rents in respect of an area of
land to which he has not a scintilla of claim.

30

A copy of this letter has been forwarded to
each of the Resident and the District Officer,
Onitsha.

Yours faithfully,

*

The Secretary,
Eastern Provinces,
Enugu.

Copies to :-

The Resident, Onitsha,
and
The District Officer,
Onitsha.

For
information,
Yours
faithfully.

40

* No signature on the Exhibit but evidently the
letter is from C.D. Onyeama.

N.7(P) - LETTER: SECRETARY, EASTERN
PROVINCE, TO C.D. ONYEAMA.

No. 11032/510

SECRETARY'S OFFICE,
EASTERN PROVINCES,
ENUGU, NIGERIA.

31st January, 1949.

Exhibits

"N(P)"

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950.

"N.7(P)"

Letter:
Secretary,
Eastern
Province to
C.D. Onyeama,
31st January
1949.

Sir,

Umuleri - Aguleri Land Dispute.

10 I am directed to refer to your letter No. OCV/
67/47/16 dated 13th January, and to state that His
Honour will not approve a lease between Chief Idigo
of Aguleri and Messrs. John Holt & Co. (Liverpool)
Ltd., until your clients have been given an oppor-
tunity to establish title to the land in dispute.

20 2. It is Government's intention to abandon,
under the Provisions of the Niger Lands Transfer
Ordinance, Cap. 86, as amended by Ordinance No.22
of 1945, all the area vested in it under Item 110
of the 1st Schedule, except a small parcel on which
Government has erected a Rice Mill, and action to
that end is being taken.

3. Meanwhile, Messrs. John Holt will be per-
mitted to continue in occupation of the land, and
any rent payable will be paid into a Government
Treasury.

30 4. I am to add that, when abandonment by the
Crown has been effected, His Honour expects that
your clients will institute proceedings for declar-
ation of title, and he reserves the right to approve
a lease from Chief Idigo to Messrs. John Holt un-
less those proceedings are instituted within a
reasonable time.

I have the honour to be,

Sir,

Your Obedient Servant,

(Sgd.) C.S. PALMER

for Secretary,
Eastern Provinces.

40 C.D. Onyeama, Esq., LL.B.
P.O. Box 2,
ENUGU.

Exhibits

"N(P)"

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950.

"N.8(P)"

Letter:
Secretary,
Eastern
Province to
C.D.Onyeama,
29th May 1950.

N.8(P) - LETTER: SECRETARY EASTERN
PROVINCE TO C.D. ONYEAMA.

No.11032/556.

SECRETARY'S OFFICE,
EASTERN PROVINCES,
ENUGU, NIGERIA.

29th May, 1950.

Sir,

Umuleri - Aguleri Land Dispute.

I am directed to refer to my letter No.11032/
510 of the 31st of January, 1949, and to inform you
that Messrs. Irving and Bonnar, acting for Chief
Idigo of Aguleri and Messrs. John Holt & Co. Ltd.,
has protested to the Chief Secretary against His
Honour's decision not to approve a lease until your
clients have been given an opportunity to sue for
title.

10

2. I am to make it clear, therefore, that His
Honour reserves the right to approve a lease at any
time after abandonment, if he thinks fit, and to
stress the advisability of Umuleri suing for title
at the first opportunity after the order of abandon-
ment has been made.

20

3. I am to add that it is hoped that the order
of abandonment will be made and published in the
Nigeria Gazette not later than the end of August.

I have the honour to be,
Sir,

Your obedient servant,

(Sgd.) C.S. PALMER

30

for Secretary, Eastern Provinces.

C.D. Onyeama, Esq., LL.B.
P.O. Box 2,
ENUGU.

N.9(P) - LETTER: SECRETARY, EASTERN
PROVINCE TO C.D. ONYEAMA.

Exhibits
"N(P)"

No.11032/562.

Secretary's Office,
Eastern Provinces,
Enugu.

20th July, 1950.

Correspondence
between
Onyeama and
Secretary,
Eastern
Province.

August 1939
to July 1950

Sir,

Umuleri - Aguleri Land Dispute.

"N.9(P)"

10 I am directed to refer to my letter No.11032/
556 of the 29th of May, 1950, and to inform you
that the survey and demarcation of the area being
retained by Government has been completed.

Letter:
Secretary,
Eastern
Province to
C.D.Onyeama,
20th July
1950.

2. A draft Divesting Order, under section 10
of the Niger Lands Transfer Ordinance, Cap.149,
has been sent to Government, and it is expected
that the Order will be made and published in the
Nigeria Gazette within the next month.

20

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) C.S. PALMER

for Secretary,
Eastern Provinces.

C.D. Onyeama, Esq., LL.B.
P.O. Box 2, Enugu.

Exhibits

"P(P)"

Plan No. L.
D7/51,
6th March 1951.

P(P) - PLAN NO. L.D7/51.

PLAN P(P) - SEPARATE DOCUMENT.

249.

B(D) - PLAN NO. CC58/51.

Exhibits

"B(D)"

Plan No.
CC58/51
(Undated).

PLAN B(D) - SEPARATE DOCUMENT.

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

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.,
41 Whitehall,
London, S.W.1.
Appellants' Solicitors.

REXWORTHY, BONSER & WADKIN,
83/85 Cowcross Street,
London, E.C.1.
Respondents' Solicitors.