

Judgment
19

1964

IN THE PRIVY COUNCIL

No. 39 of 1962

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

B E T W E E N:

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

(1) AZUIKE UME
(2) REMY NWOSU
(3) RAPHAEL DIM
(4) HYCINTH ONWUGIGBO
(5) UMEANONIGWE DIM
(6) ANAEDUM DIM
(7) DANIEL OKONKWO
For themselves and as
representing the people
of Akpo Defendants/Appellants

78581

- and -

(1) ALFRED EZECHI
(2) ALBERT OBI
(3) EZEOLIO EZENWOKOLO
(4) GEORGE AMICHI
(5) EZENWEKE OKPALA
(6) OKPALA OBIEGBU
(7) PATRICK OKPALAUGO
For themselves and as
representing the people
of Achina Plaintiffs/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.

Solicitors for the Appellants.

REXWORTHY BONSER & SIMONS,
83, COWCROSS STREET,
LONDON, E.C.1

Solicitors for the Respondents

IN THE PRIVY COUNCILNo. 39 of 1962ON APPEALFROM THE FEDERAL SUPREME COURT OF NIGERIAHOLDEN AT LAGOSB E T W E E N:

(1) AZUIKE UME
 (2) REMY NWOSU
 (3) RAPHAEL DIM
 (4) HYCINTH ONWUGIGBO
 (5) UMEANONIGWE DIM
 (6) ANAEDUM DIM
 (7) DANIEL OKONKWO
 For themselves and as representing
 the people of Akpo Defendants/Appellants

- and -

(1) ALFRED EZECHI
 (2) ALBERT OBI
 (3) EZEOLIO EZENWOKOLO
 (4) GEORGE AMICHI
 (5) EZENWEKE CKPALA
 (6) OKPALA OBIEGBU
 (7) PATRICK OKPALAUGO
 For themselves and as representing
 the people of Achina Plaintiffs/Respondents

RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE MBEMISI NATIVE COURT</u>		
1	Transfer Order	16th December 1954	1
2	Proceedings	5th and 8th December 1954	3
	<u>IN THE SUPREME COURT OF NIGERIA</u>		
3	Statement of Claim	5th October 1955	5
4	Statement of Defence <u>Plaintiffs' Evidence</u>	12th December 1955	8
5	Mathias Chukwurah	28th December 1959	10

No.	Description of Document	Date	Page
6	Alfred Eze Eki	28th and 29th December 1959	10
7	George Amechi	29th and 31st December 1959	17
8	Daniel Nbakwe	4th January 1960	24
9	Elijah Okafor	4th January 1960	28
10	Patrick Okpalalugo	4th and 5th January 1960	29
	<u>Defendants' Evidence</u>		
11	Samuel Nkeokeolonye	13th January 1960	33
12	Simon Emenike	13th January 1960	35
13	Shadrack Dim	13th January 1960	38
14	Ezechi Eze	13th January 1960	40
15	Okpara Nozo	14th January 1960	41
16	Samuel Okeke	14th January 1960	42
17	Okpaluka Chukwu	14th January 1960	44
18	Francis Uduji	14th January 1960	46
19	Ejike Chidolue	15th January 1960	47
20	Rafael Dim	15th and 18th January 1960	48
21	Andrew Nwosu	18th and 19th January 1960	51
22	Counsel's Addresses:-		
	(a) Araka for Defendants	28th January 1960	56
	(b) Ikpeazu for Plaintiffs	28th January 1960	59
23	Judgment	20th February 1960	61
	<u>IN THE FEDERAL SUPREME COURT OF NIGERIA</u>		
24	Notice and Grounds of Appeal	7th March 1960	65
25	Additional Grounds of Appeal	4th September 1961	67
26	Court Notes on Motion	25th September 1961	68
27	Counsel's Arguments on Appeal	29th September 1961	68
28	Judgment	9th November 1961	71
29	Order Granting Final Leave to Appeal to Her Majesty in Council	4th June 1962	79

E X H I B I T S

Exhibit Mark.	Description of Document	Date	Page
"A"	Plan	Not copied	
"B"	Proceedings in The District Officer's Court of Appeal holden at Mbemisi Native Court	December 1954	81
"B1"	Proceedings	Not copied	
"C"	Native Court Suit 128/48	Not copied	
"C1"	Appeal Proceedings in Suit 128/48	Not copied	
"D"	Native Court Suit 132/48	Not copied	
"D1"	Appeal proceedings 132/48	Not copied	
"E"	Native Court Suit 197/52-53	Not copied	
"E1"	Judgment of The District Officer's Court of Appeal and Court Notes	15th July 1954	83
"F"	Native Court Suit 116/53-4	Not copied	
"F1"	Order of Transfer	16th December 1954	85
"G"	Native Court Suit 172/52-53	Not copied	
"H"	Native Court Suit 128/52-53	Not copied	
"J"	Native Court Suit 83/47	Not copied	
"K"	Native Court Suit 190/49-50	Not copied	
"K1"	Evidence of Silas page 1-2 of Exhibit "K"	Not copied	
"L"	Minute Book	Not copied	
"M"	Agreement as to boundary	19th July 1950	86
"N"	Native Court Suit 106/38	Not copied	
"N1"	Page 15 of Exhibit "N"	Not copied	
"N2"	Pages 12-15 of Exhibit "N"	Not copied	
"O"	Plan	Not copied	
"O1"	Plan	Not copied	

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE SUPREME COURT OF NIGERIA</u>	
Pleadings	4th May 1955
Motion and Affidavit in Support	29th August 1955
Motion and Affidavit in Support	3rd September 1955
Court's Note	30th September 1955
<u>IN THE HIGH COURT</u>	
Court Notes	3rd July 1958
	22nd September 1958
	15th February 1959
	6th July 1959
<u>IN THE FEDERAL SUPREME COURT</u>	
Settlement of Record	5th April 1960
	and
	23rd April 1960
Bond for Costs on Appeal	2nd May 1960
<u>IN THE WEST AFRICAN COURT OF APPEAL</u>	
Civil Forms 3 and 4	16th December 1960
<u>IN THE FEDERAL SUPREME COURT</u>	
Motion with Affidavit in Support	9th January 1961
Motion with Affidavit in Support	2nd September 1961
Motion with Affidavit in support of leave to Appeal to Her Majesty in Council	13th November 1961
Affidavit in support of Motion	7th December 1961
Court Notes	4th December 1961
Ruling	5th January 1962
Order granting conditional leave to Appeal to Her Majesty in Council	5th January 1962
Bond for Costs on Appeal	27th March 1962
Affidavits of Means	6th March 1962
Motion for Final Leave to Appeal to Her Majesty in Council	19th March 1962
Affidavit in Support of Motion	5th May 1962
Court Note on Motion	4th June 1962
Settlement of Record	4th August 1962

IN THE PRIVY COUNCIL

No. 39 of 1962

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

BETWEEN: (1) AZUIKE UME
 (2) REMY NWOSU
 (3) RAPHAEL DIM
 (4) HYCINTH ONWUGIGBO
 (5) UMEANONIGWE DIM
 (6) ANAEDUM DIM
 (7) DANIEL OKONKWO
 For themselves and as representing
 the people of Akpo
Defendants/Appellants

10

-- and --

(1) ALFRED EZECHI
 (2) ALBERT OBI
 (3) EZEOLIO EZENWOKOLO
 (4) GEORGE ANICHI
 (5) EZENWEKE OKPALA
 (6) OKPALA OBIEGBU
 (7) PATRICK OKPALAUGO
 For themselves and as representing
 the people of Achina
Plaintiffs/Respondents

20

RECORD OF PROCEEDINGS

No. 1.

TRANSFER ORDER

In the Mbemisi
Native Court
of Nigeria.

PROTECTORATE COURT OF NIGERIA

IN THE MBEMISI NATIVE COURT - AWKA DIVISION

ORDER MADE UNDER SECTION 28(1)(b)

THE NATIVE COURTS ORDINANCE CAP.142

30

No. 1.
Transfer Order.
16th December,
1954.

I, CHARLES STANLEY GRISMAN, District Officer,
 Awka Division, by virtue of the powers vested in
 me under Section 28(1)(b) of the Native Courts
 Ordinance Cap.142, set aside the judgment of the
 Mbemisi Native Court in Suit No.223/53-54, and
 thereby order that the said be transferred as
 follows from the Mbemisi Native Court of the Awka
 Division to the Supreme Court, Onitsha.

40

In the Mbemisi
Native Court
of Nigeria.

No. 1.

Transfer Order.

16th December,
1954

- continued.

MBEMISI NATIVE COURT CIVIL SUIT No.223/53-54:

Parties: (1) Alfred Eze-Eki (2) Albert Obi.
(3) Ezeolio Ezenwokolo (4) George Amichi.
(5) Ezenweke Okpala (6) Okpala Obiegbu.
(7) Patrick Okpalaugo all of Achina.

versus

(1) Asuike Ume (2) Remy Nwosu (3) Raphael
Dim. (4) Hycinth Onwugigbo (5) Umeanon-
igwe Dim (6) Anaedum Dim (7) Daniel
Okonkwo all of Akpo.

10

CLAIM: (1) Declaration of title to land called
Achina land, starting from Amaesi to
Ube Okpoko tree, up to Ofo tree, Ugolo
tree and on the back of the Salvation
Army to Nwangwo Stream, and thence to
Ogbo mili.
(2) To pay to Plaintiffs £20 damages done
on the land.
Dispute arose a year ago.

Copies of proceedings in Mbemisi Native Court Suit
No. 223/53-54 and District Officer's Appeal No.
76/54 are attached.

20

Reasons: 1. The case concerns land about which
several apparently contradictory judgments have
been given in connected cases. In particular,
the same members of the Native Court have given
two inconsistent and contradictory judgments about
the same land and between the same parties within
the space of three months.

2. Local feeling about this land dispute
runs high and it is difficult for the Native Court
members to be strictly impartial.

30

3. Reference is made in the proceedings
to plans in previous cases and to documents con-
cerning the lease of land to the Church Missionary
Society and Salvation Army the Legality of which
plans and documents the Native Court would find it
difficult to interpret and assess.

I certify that the Order of Transfer of the
above mentioned Suit from the Mbemisi Native Court
to the Supreme Court was made by me on my own
motion after hearing representations from E. O.
Araka, Solicitor for the Defendants.

40

DATED at Mbemisi this 16th day of December, 1954.

(Sgd.) C.S. CRISMAN.
District Officer,
Awka Division.

In the Mbemisi
Native Court
of Nigeria.

No. 1.
Transfer Order.
16th December,
1954
- continued.

No. 2.

PROCEEDINGS.

IN THE DISTRICT OFFICER'S COURT OF APPEAL
HOLDEN AT MBEMISI NATIVE COURT

10 BEFORE: C.S. ORISMAN, Esq., District Officer
This 5th day of December, 1954.

No. 76/1954.

Mbemisi Native Court Suit No. 223/53/54.

Parties: 1. Alfred Eze-eki 2. Albert Obi
3. Ezeolie Ezenwokolo 4. George Amichi
5. Ezenweke Okpala 6. Okpala Asiogbu
7. Patrick Okpalugo all of Achine.

Versus

20 1. Azuike Ume 2. Remy Nwosu 3. Raphael
Dim. 4. Hycinth Onwugigbo
5. Umononigwe Dim 6. Anaedum Dim
7. Daniel Okonkwo all of Akpo.

CLAIM: (1) Declaration of title to land called
Achina land, starting from Amaesi to
Ubo Okpoko Tree, up to Ofo tree,
Ugolo tree, and on the back of the
Salvation Army to Nwangwo stream, and
thence to Ogbo mili.

30 (2) To pay to Plaintiffs £20 damages done
on the land.
Dispute arose a year ago.

Mbemisi Native Court Judgment: For Plaintiff for
the land claimed, according to the pillars
fixed as boundaries. The Defendants
should pay to the Plaintiff £5 survey
fee, £2 inspection fee, and £1.5/- cost
of action, 2 weeks allowed for payment.

In the Mbemisi
Native Court
of Nigeria.

No. 2.

Proceedings.

5th and 8th
December, 1954
- continued.

Both parties present.

Defendants appeal.

Grounds: (submitted in writing by the Appellants' Solicitor):-

1. Error in law (a) the Court members agreed in their judgment that the parties had no fixed boundary before and at the same time defined where the boundary should be; (b) the Court members based their definition of boundary on the evidence of one, Atia Agu, who was casually met by them on land inspection. 10

2. Judgment is against the weight of evidence.

(a) In Mbemisi Native Court Suit No.116/53-54 the same bench as now said Akpo and Achina owned the Oyo Akpo market in common, whereas now they give judgment for the Achina alone. (Mbemisi Native Court Suit No.116/53-54).

(b) Mbemisi Native Court Suit No.190/49-50 was taken against two Akpo men concerning land which, if the Court is now right, was the property of Achina people. 20

(c) Mbemisi Native Court Suits 172 and 197/52-53 concern only the Oye Market and the Achina never litigated over land above the Oye market.

(d) Mbalaolio Native Court Suit 106/38 was brought against the Akpo and Achina jointly i.e., the Achina were not then considered dispute.

3. Res judicata A claim by the Achina against the Akpo (Mbemisi Native Court Suit 197/52-53 for declaration of title to land called Achina land was dismissed by the Native Court on 8th July, 1953. The present parties and claim are the same. 30

I study the record in this case and in Mbemisi Native Court Case No.116/53-54, which is connected. I study the plans of the land now in dispute submitted by the Appellants (marked "A") and by the Respondents (marked "B") After inspection of the land in dispute on 5th December, 1954, I adjourn sine die for further study of the records.

(Sgd.) C.S. GRISMAN

District Officer,

Awka Division.

Resumed 8th December, 1954

By virtue of the power vested in me under Section 28(1)(b) of the Native Courts Ordinance Cap.142, I set aside the judgment of the Mbemisi Native Court and order that the case be retried in the Supreme Court, Onitsha, for reasons which I have set out in a separate Transfer Order.

(Sgd.) C.S. GRISMAN,
District Officer,
Awka Division.

In the Mbemisi
Native Court
of Nigeria.

No. 2.

Proceedings.

5th and 8th
December, 1954
- continued.

10

No. 3.

STATEMENT OF CLAIM

IN THE SUPREME COURT OF NIGERIA
IN THE SUPREME COURT OF THE ONITSHA
JUDICIAL DIVISION
HOLDEN AT ONITSHA

In the
Supreme Court
of Nigeria.

No. 3.

Statement of
Claim.

Suit No.0/61/54:

BETWEEN: ALFRED EZE EKI
For themselves and as representing
the people of Achina Plaintiffs

5th October,
1955.

20

- and -

AZUBIKE UME
For themselves and as representing
the people of Akpo Defendants

STATEMENT OF CLAIM

1. The Plaintiffs are natives of Achina in Awka Division and bring this action on behalf of themselves and as representing the people of Achina by whom they were authorised to sue.

30 2. The Defendants are natives of Akpo and are sued on behalf of themselves and as representing the people of Akpo.

3. The land in dispute is called "Achina Land" situated at Achina in Awka Division and is more particularly delineated and edged pink on the plan filed in this case.

40 4. The Plaintiffs are owners in possession of the land in dispute and as owners in possession the Plaintiffs have always exercised maximum acts of ownership by living on the land, reaping the

In the
Supreme Court
of Nigeria.

No. 3.
Statement of
Claim.

5th October,
1955
- continued.

fruit of the economic trees thereon and letting the land to strangers on payment of rent and tribute.

5. The members of the C.M.S. Church were authorized by Plaintiffs in 1916 to erect Church and School buildings on a portion of the land in dispute. This was known and called C.M.S. Mission Achina and indicated as such on a signboard.

6. About the year 1940 Akpo people requested the Plaintiffs to allow the Mission to describe the Church and School as C.M.S. "Achina-Akpo" so that adherents from Akpo could be attracted. The Plaintiffs allowed this but now the Defendants have gone a step further by setting up title in themselves and urging that the Mission be described as C.M.S. Akpo but to this the Plaintiffs as well as the Mission refused to agree. 10

7. Some times in 1945 the Defendants have stealthily entered into an agreement with the C.M.S. in their effort to assume title to the land in dispute. This transaction was not known to the Plaintiffs until later when the Plaintiffs then complained to the District Officer who ordered the agreement to be produced. The said agreement has not been produced before the District Officer and the Plaintiffs. The Defendants did not introduce the C.M.S. Church into the land and have no right so to do. 20

8. At one time the Plaintiffs' people gave a portion of land in dispute to an Akpo man called Ohia Agu. This portion is delineated and edged green on the plan. He built houses on it and was sued by a member of the Plaintiffs town called Anabachie for trespass. At the hearing the Akpo Defendants gave evidence that he bought the land from the Plaintiffs' people. The case did not reach finality after this admission which was not refuted by Defendants' people. He has since remained on the land undisturbed. 30

9. In 1948 one Akpo man called Jacob Onyebuchi cut bamboos on the land in dispute at a point between Ube Okpoko and Oye market along the N.A. road as shown on the plan. He was sued by one Simon Obiora of Achina who claimed £7 damages for trespass. This was suit Mbemisi Native Court No. 128/48. The Akpo Defendant counterclaimed for title to the same piece of land in Suit No. 131/48. 40

Judgment was given for the Achina Plaintiff in Suit No.128/48 for £3 damages and costs and the case of the Akpo Plaintiff for title was dismissed. These cases will be founded upon.

In the
Supreme Court
of Nigeria.

10 10. In 1948 the Achina people sued the Defendants people claiming damages against them for planting on the areas bounding on the Oye Market. Judgment was given for the Achina Plaintiffs for £5 damages and title to the Oye Market. This was paid and against this judgment there was no appeal. This was Mbemisi Native Court Suit Nos. 132/48 and will be founded upon.

No. 3.
Statement of
Claim.
5th October,
1955
- continued.

11. In 1953 the Plaintiffs in Native Court Suit No. 223/53-54 sued the Defendants claiming title to the whole of the land in dispute. The Native Court after hearing the evidence gave judgment in favour of the Plaintiff. On appeal the District Officer set the judgment aside and transferred it as present case.

20 12. The Defendants have gone on the land and have done acts on the land inconsistent with Plaintiffs right as owners. Defendants have farmed on the land in dispute without Plaintiffs knowledge and consent and Plaintiffs have suffered damages.

Whereof the Plaintiffs claim as follows :-

- (a) Declaration of title to the piece and parcel of land known and called "Achina land" and more particularly delineated and edged pink on the plan attached and filed in this case.
- 30 (b) £20 damages for trespass committed by the Defendants on the said land in dispute.
- (c) Injunction to restrain the Defendants, their servants and agents from entering into the land in dispute or doing anything thereon without the permission of the Plaintiffs.

DATED at Onitsha this 5th day of October, 1955.

(Sgd.) CHUBA IKPEAZU
Solicitor to the Plaintiffs.

In the
Supreme Court
of Nigeria.

No. 4.

STATEMENT OF DEFENCE

IN THE SUPREME COURT OF NIGERIA.
ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

No. 4.
Statement of
Defence.
12th December,
1955.

Filed at 8.30 a.m. on 12/12/55. Suit No.0/61/54:

(Title as No.3)

STATEMENT OF DEFENCE

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim. 10
2. The Defendants deny paragraph 3 of the Statement of Claim and state that the land in dispute is called AKPO land and is more particularly delineated and edged pink on the plan filed by the Defendants in this case.
3. The Defendants deny paragraph 4 of the Statement of Claim and aver as follows that they have always as rightful owners in possession, without interruption exercised maximum acts of ownership by living on the land, reaping the fruit of the economic trees thereon and letting the land to strangers on payment of rent and tribute. 20
4. The Defendants deny paragraph 5 of the Statement of Claim. Before 1916 the C.M.S. was established at Nwikpa Achina land. In 1916 the C.M.S. shifted to this present site Akpo land.
5. The Defendants deny paragraph 6 of the Statement of Claim. The Defendants state as follows:-
 - (a) That as per paragraph 4 the C.M.S. was situated at Achina land hence the original name C.M.S. Achina. 30
 - (b) After 1916 when the C.M.S. was transferred from Achina land to Akpo land it became known as C.M.S. Achina-Akpo.
 - (c) Later the Plaintiffs trickishly and unknown to the Defendants changed the name to C.M.S. Achina.
 - (d) In 1940 the Defendants detected the trick and petitioned the C.M.S. authority and a compromise agreement was reached to call the C.M.S. Achina Akpo. 40

6. In 1950 the Defendants and the C.M.S. authorities set up a boundary. This was as a result of an advice given to both parties i.e. the C.M.S. and the Defendants by the D.O. in Suit No.190/49-50.

In the
Supreme Court
of Nigeria.

7. The Defendants deny paragraph 9 of the Statement of Claim and state that the portion of land leased to Ohia Agu by the Plaintiffs is outside the portion of land in dispute vide Defendants plan.

No. 4.

Statement of
Defence.

12th December,
1955

- continued.

10 8. In answer to paragraph 10 the Defendants state that the actions do not affect Akpo people but Jacob Onyebuchi in his personal capacity. The case 131/48 went on an appeal but was adjourned sine die.

9. In answer to paragraph 11 the Defendants state that the Defendants in Suit No.132/48 went on an appeal to the Native Court of Appeal and there appeal was adjourned sine die.

10. The Defendants do not deny the Statement of Claim in paragraph 12 of the Statement of Claim.

20 11. The Defendants deny entering on any portion of land belonging to the Plaintiffs.

12. The Defendants have without any interference from the Plaintiffs leased out a portion of this land to Salvation Army.

13. In case No.116/53-54 the Defendants sued the Plaintiffs for demarcation of the boundary to the market. Judgment was given in favour of the Defendants. This case will be founded upon.

30 14. In Suit No.106/38 the Defendants sued the C.M.S. authorities for exceeding the boundary given to them. Judgment was entered in favour of the Defendants and 12 Achina people were among the judges. The case will be founded upon.

15. The Plaintiffs sued Andrew Nwosu of Akpo claiming title to the portion of land in dispute where he built a house.

The Court in Suit No.197/52-53 dismissed the case of the Plaintiffs. This judgment will be founded upon.

40 16. The Plaintiffs sued Andrew Nwosu of Akpo for trespassing in Suit No.172/52-53. The action was dismissed.

This judgment will be founded upon. The Defendants therefore deny that the Plaintiffs are entitled as they claimed. This action of the Plaintiffs should be dismissed.

(Sgd.) A.C.NWAPA,
Defendants Solicitor.

In the
Supreme Court
of Nigeria.

PLAINTIFFS' EVIDENCE

No. 5.

MATHIAS CHUKWURAH

Plaintiffs'
Evidence.

Resumed Monday the 28th day of December, 1959.

IKPEAZU, EMEJULU AND OFODILE for Plaintiffs.

No. 5.

ARAKA for Defendants.

Mathias
Chukwurah.

1. MATHIAS CHUKWURAH sworn on bible states in
English :-

28th December,
1959.

Licensed Surveyor living in Onitsha. I know the parties to this Suit. I made a plan of the land in dispute at instance of the Plaintiffs. This is the plan I made for the Plaintiffs. The particulars and inscriptions therein were inserted on the instructions of the Plaintiffs. Tendered and admitted as Exhibit "A". I made MEC/64/55. I don't think I made this or any other plan at the instance of Defendants.

Examination.

Exhibit "A".

Cross-
Examination.

Cross-Examined by Araka:-

I know quite a lot of Defendants people but I cannot differentiate Achina people from Akpo people. I see Defendants' plan. (Plan shown witness by Araka). I think there is slight difference at the Southern extremity.

(Ikpeazu objects to Defendants plan going in). All features in Exhibit "A" were shown me by Plaintiffs.

IKPEAZU: Ask leave to amend statement of Claim paragraph 11 by substituting "223/53-54" for "197/52-53" at end of first line thereof. Leave to amend granted.

No. 6.

Alfred Eze Eki.

28th and 29th
December, 1959.

Examination.

No. 6.

ALFRED EZE EKI

2. ALFRED EZE EKI sworn on bible stated in Ibo:-

I know 6 other Plaintiffs. I am 1st Plaintiff. I took this action as representing the people of Achina. I know the Defendants in this case. They are people of Akpo. I sued them as representing the people of Akpo. The dispute originated in the Mbemisi Native Court and was

10

20

30

heard there. D.O. heard case on appeal and transferred it to this Court. Order of Transfer made by D.O. tendered and admitted as Exhibit "B". I know this land. Surveyor made the plan at the instance of our people. I was one of those who took him on land and described the features. Beginning at bush ohia tunku (south west of plan Exhibit "A") thence to Ube tree, Okpa tree, Ezeokolo juju, Ubeokpolo, main road, boundary near C.M.S., then 6 or more pillars put there by Government when dispute arose between the parties: thence to Ugolo tree. Salvation Army Ugwu Eke Akpara hill. Ugwaogbudene, thence juju in bush. Thence to Okpale-Gwenie stream; thence along Ogbonmili stream up to Awoma lake to Northern extremity of the land. A stream forms our boundary with Akpo, and Aju tree north Oghoji; thence Ogene bush; past the boundary of our peoples houses (Ezemezie Okpalagu); thence Uchakwi tree; thence to houses of Ezeaka and Ezeanya; Rest house Achina; St. Peter's E.T.C. thence Achi and 2 Ube trees; Catholic Mission Achina; Ubeo Okpo tree; Okpala-Ezeokolo juju (Achina people own it). Eze Okolo juju; Oye (market); thence Semeon Obiora land; Achinwolu tree; Ukpaka tree; stamp of iroko tree; Ukpaka tree; Udeh tree; Owulu tree. We the Achina people own this land; we owned it from time immemorial. We farm the land and put strangers thereon. Our people also live on the land. Umu Ezeyi is a village in Achina. They live in South of land in dispute. There are 3 houses as shown on the plan. There is raffia palm grove there near the water belonging to Umueziyi. My people pay no rent to anyone in respect of the land but others who come on the land pay tribute to us. Our people do not seek permission to come on or farm on the land; but give permission to others to come on land. Our people own and make use of the land. We plant yam and cassava on the land and tap palm wine. There are no palm trees on land in dispute. There are palm trees on the land coming nearer home. There are bread fruit and pear tree on the land in dispute also oilbean trees. These trees are made use of by Achina people. Tunka is a pine apple farm. It extends to Akpo land. The Farm within land in dispute is owned by Achina people. No one has disturbed us in occupation of the land.

1. We put on Chiago on the land put by Samuel Obiako of Achina. Chiago is of Akpo (Green in Plan Exhibit "A").

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 6.

Alfred Eze Eki.
28th and 29th
December, 1959

Examination
- continued.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 6.

Alfred Eze Eki.

28th and 29th
December, 1959.

Examination
- continued.

2. Ezeonekwe Ezeonyido Akpo was put on land by Okpelanozie of Achina. Ezeokwuokoi Aloseyanya from Akpo were permitted to go on land by Ugwu Obiako of Achina. (Green in Exhibit "A"). There are many Akpo people who live on the land with the permission of our people. Apart from people I mentioned there are no other Akpo people on the land in dispute. I now say apart from the persons already mentioned there are some Akpo others who live on the land with our permission. We authorised C.M.S. to build also authorized the Salvation Army. Salvation Army and C.M.S. members can say about time when they came on the land. I was present when they came but I don't know the date. I know they sought permission from our people. Eze-muekwe Esekpere chief of Achina gave the Salvation Army permission to come on the land. I was in Achina when C.M.S. came about 1916 they sought permission from Achina people - the chiefs who were ruling. I know Chief Ezeokolo juju, of Achina people worship it. Achina people also worship Ogbodene juju. The Akpo people have no juju on the land. The C.M.S. when they came on the land called it "C.M.S. Achina". It was not called C.M.S.-Akpo. Today they call it C.M.S. Achina. Right from inception it was called C.M.S. Achina and it bears that name right up till to-day. It was called C.M.S. Achina Akpo later and that what is called now. After about 2 or 3 years Akpo people approached our Chief and said they would like the name of Akpo to be included in the Mission as that would attract people from Akpo to come and worship there. Our Chief agreed and said the Church needed people and it was then called C.M.S. Achina - Akpo. One person who took part in the negotiation is still alive and will explain. Ref. Paragraph 7 of Statement of Defence.

The D.O. put pillars between our boundary with Akpo. That was the boundary of the land we originally gave to C.M.S.

Q. Do you remember case brought by Simeon Oniora and Jacob Onyebuchi in 1948 in Mbemisi Native Court and Jacob counterclaimed. The action related to portion of land now in dispute.

Exhibit "C".

A. Yes. Record of Native Court Suit No.128/48 admitted as Exhibit "C". Appeal record in Suit No.128/48 put in by Defendants as Exhibit "C1" (by consent). There was a case No. 132/48 in Mbemisi Native Court. (vide paragraph 10 of Statement of

Claim and paragraph 10 of Statement of Defence).
 Record of case No.132/48 admitted in evidence as
 Exhibit "D". This claim related to part of land
 in dispute (Oye Market). Re case by Plaintiffs
 against Andrew Nwosu (Mbemisi Native Court Suit
 No. 197/52-53). The case was dismissed and we
 appealed. Mbemisi Native Court Suit No.197/52-53.
 Record put in as Exhibit "E" and appeal judgment
 therein as Exhibit "E1". (Statement of Defence
 paragraph 16). In Mbemisi Native Court Suit No.
 116/53-54. Native Court held that market should
 be held in common. We appealed. Record in
 Mbemisi Native Court Suit No.116/53-54 admitted as
 Exhibit "F". (This case was appealed judgment
 was set aside and suit was transferred to this
 Court and is now pending). (Statement of Defence
 paragraph 14). Transfer order admitted as Ex-
 hibit "F1". Mbemisi Native Court Suit No.172/52-
 53 (Statement of Defence paragraph 17). Where
 Plaintiffs sued Andrew Nwosu for damages for build-
 ing house on Plaintiffs' market premises. Native
 Court dismissed the suit. Record of 172/52-53
 put in as Exhibit "G". Mbemisi Native Court Suit
 No. 128/52-53 between Simeon and Nwosu Record ad-
 mitted as Exhibit "H".

In the
 Supreme Court
 of Nigeria.

Plaintiffs'
 Evidence.

No. 6.

Alfred Eze Eki.
 28th and 29th
 December, 1959.

Examination
 - continued.
 Exhibit "D".
 Exhibit "E".
 Exhibit "E1".
 Exhibit "F".
 Exhibit "F1".
 Exhibit "G".
 Exhibit "H".

Court rises for 10 minutes.

(Sgd.) J. REYNOLDS,
 Puisne Judge.
 28/12/59.

30 1.05 p.m. Hearing resumed as before.

2. ALFRED EZE EKI (on former Oath).

I remember Alaghachie Onwuezulike of Achina
 v. Oneago Mbemisi Native Court Suit No. 203/53-54.
 It is the same Oheago as mentioned in plan. It was
 for Izoehike land which is part of land in dispute.
 Native Court have not yet given judgment.

ARAKA: Do not object.

ARAKA: I now object as there was no judgment on
 the case.

40 IKPEAZU: It is to be put in as an admission by a
 party.

ARAKA: Not way to prove statement made in judic-
 ial inquiry.

Section 34: Evidence Ordinance Cap.63. Admission
 of records adjourned pending further argument.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 6.

Alfred Eze Eki.

28th and 29th
December, 1959
- continued.

Cross-
Examination.

Cross-Examined by Araka:

There are Akpo people living on the land.
There are 6 or 7 Akpo people who have house there.
I now say about 13 Akpo people. There are about
13 Akpo houses on the land in dispute.

Q. If Court goes to land today he will not see
more than 13 houses. (Witness says: Don't ask
me that question again).

A. Not more than 13 Akpo houses.

Q. How many Achina houses are a land in dispute? 10

A. 7 houses. I don't mean houses I mean com-
pounds i.e. 13 Akpo compounds and 7 Achina com-
pounds. I know Ezekolo juju.

Q. Your boundary with Akpo people is on this bush?

A. It is behind the bush. The boundary is near it.

Q. Your boundary with Akpo people is at Oye market.

A. It is not true. I was born at Achina. I know
where the boundary is.

Q. In all your previous disputes there was no
time when you asserted the boundary you now claim? 20

A. It was decided by Mbemisi Native Court (Wit-
ness refers to 128/48 (Exhibit "C")). Then it was
between individuals.

Q. All disputes centred around Oye Market Ezeo-
kolo juju?

A. Yes originally but it was decided they should
go back and live on their own land. It is not
true the Defendants case in all these suits has
been that the boundary runs through Oye Market.

Q. There is a R.C.M. Achina. A. It is called 30
R.C.M. Achina. It is not called R.C.M.Achina-Akpo
Akpo people do not attend the school there. I now
say Akpo people do go there.

Q. Why is it not called R.C.M. Achina-Akpo?

A. They have a R.C.M. in Akpo.

Adjourned till 9 a.m. tomorrow.

(Sgd.) J. REYNOLDS,

Puisne Judge.

28/12/59.

On Tuesday the 29th day of December, 1959
 10.50 a.m. Hearing resumed.

2. ALFRED EZE EKI (on former Oath)

Cross-Examination continued by Araka:

I know a place called Ebene it is a village in Achina. It is not within the land in dispute.

Q. That was where C.M.S. was first established?

A. Yes. I have my reasons.

Q. Then it was called C.M.S. Achina? A. Yes.

10 Q. Akpo people said it was too far away and they wanted it in some place more central and near them.

A. They did not say so.

Q. It was then moved to present site and became C.M.S. Akpo-Achina. I now say that C.M.S. was not established at Ebene.

Q. 21 years ago Akpo people sued C.M.S. people?

A. Yes. C.M.S. also took action against Akpo. I did not attend the trials. I was present when the pillars were being built after the case.

20 Q. 14 Elders of your town came to give evidence for C.M.S.?

A. I do not know. The history suggested by you is not true. There was no agreement with Salvation Army.

Q. Is it not called Salvation Army Akpo?

A. It is not true. I have never heard that name. I have heard Salvation Army Achina.

Q. This site was given to Salvation Army by Akpo people alone.?

30 A. That is not true. The bush there is called Ezekolo Achina.

Q. There are 2 sections of Ezeokolo Shrine?

A. Not true.

Q. One section is worshipped by Achina people and one by Akpo people?

A. Not true. Nobody planted the pineapple bushes; they grow wild.

Q. It was planted by an Akpo man who still gathers the fruits till today? A. It is not true.

In the
 Supreme Court
 of Nigeria.

Plaintiffs'
 Evidence.

No. 6.

Alfred Eze Eki.

29th December,
 1959.

Cross-
 Examination
 - continued.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 6.

Alfred Eze Eki.

29th December,
1959.

Cross-
Examination
- continued.

Samuel Obiaku put on land Obiaju over 20 years ago. The land was sold to him. I was present. The price was paid in cowries - 2 bags. Obiagu had then no land. I was not present when Okapu Name gave land to Ezenakwe Onyido.

Q. Apart from people living in 13 Akpo compounds and 7 Achina compounds in land in dispute were any others living there.

Question withdrawn.

I know Diogbugbo juju. I don't know Obinigwe juju. I know Obinigwe juju on Ezekolo bush. I know Ngene bush they are all children to Ezekolo Achina. There is no juju Ngwu Ugbolo juju. 10

Q. You did not show these juju to your surveyor because they are Akpo jujus.?

A. We showed him the boundary.

Re-Examination.

Re-Examined:

When I said 13 Akpo people and 7 Achina people lived on the land. I now say that these people live in Akpo i.e. for farm land in the Northern half of land in dispute. At one time a dispute as to Ezekolo and Oye market between Achina and Akpo was referred to Aguata District Council. We both belong to Aguata Divisional Council. Council set up 6 arbitrators to consider the dispute. It was in 1949. One of arbitrators was Josiah Okpala from Akpo and Egwieke Okpala of Achina. 20

Certified copy of Arbitration proceedings tendered.

Objection.

ARAKA OBJECTS: (1) This was never pleaded.

(2) Question of arbitration was never raised in cross-examination. 30

(3) No evidence to show submission to arbitration. Should have been raised in chief.

IKPEAZU: I now say this is not an arbitration strictly but settlement of dispute.

Hearing adjourned 15 minutes.

12.30 p.m. Hearing resumed.

ARAKA 2 (1957) W.A.C.A. 39.

Ruling.

DECISION: 'D' Council has no binding effect.

1 W.A.C.A. 192, distinguished. 40

EMEJULU: Authority is not on all fours with circumstances of present case. Page 40.

EMEJULU: I withdraw application to admit the document at the moment.

(Witness continuing):

Akpo people have a market on land of their own called Awo Akpo. Apart from C.M.S. Mission on land in dispute there is no other C.M.S. Mission at Akpo.

By leave of Court: The Achina people have no other market besides Oye Market.

10 (Note: This witness's evidence and demeanour appeared very unsatisfactory and he appears to be an unreliable witness)

In the Supreme Court of Nigeria.

Plaintiffs' Evidence.

No. 6.

Alfred Eze Eki.
29th December, 1959.

Re-Examination - continued.

No. 7.

GEORGE AMECHI

3 P.W. GEORGE AMECHI sworn on Bible states in Ibo:

20 4th Plaintiff. Native of Achina. I live there. I am a farmer. I know the Plaintiffs. This action is brought in the name of all Achina people who authorised me to represent them. I know the Defendants. We sued them as representing Akpo people. I know the land in dispute. It's at Achina. We took the surveyor to this land. We are owners of land in dispute. We farm and live on the land. We have our market Oye Achina there. We worship jujus on the land. We take drinking water from there. There are some Akpo people who live on the land with permission of Achina people. Akpo and Achina are brothers they live together.
30 Owing to scarcity of land in Akpo some came to Achina they were shown land to live and to 4 land was sold outright and others who live on the land pay yearly tribute. We did not give land to any other persons except the missions C.M.S. and Salvation Army. They are still there. It is over 40 years since C.M.S. came there. The Salvation Army came about 20 years ago. When C.M.S. came we showed them the bush in Ezeokolo. It is the same place as they now occupy. Our Council entered into agreement with C.M.S. to establish a school about 15 years ago at C.M.S. Achina. C.M.S. Church is also called C.M.S. Achina Akpo. Originally it was called C.M.S. Achina but later on Akpo people approached the Church Members and begged

No. 7.
George Amechi.
29th and 31st December, 1959.
Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.
George Amechi.
29th and 31st
December, 1959.

Examination
- continued.

name should be changed to C.M.S. Achina Akpo so as to attract more people from Akpo. Chiagu's house is inside the land in dispute. There is a case involving Chiagu's house. An Akpo man took action against Chiagu and Chiagu said the land was given him by Achina. I do not know Plaintiffs name in that case because I do not know names of all Akpomen. I remember Jacob Onyebuchi an Akpo man and Samuel Obiora an Achina man. 11 years ago they had a land dispute. Simon got judgment. I remember when there was a dispute as to Oye market. I remember when Defendants cultivated the land adjoining Oye market and we sued them and we got judgment. We took this action because Akpo people started to erect stone building in our Oye market - they were Andrew Nwosu, Okpara when this case was going on they came into land and started building on the market site. They came by force and without permission. They also farmed on the land. We are claiming title to this land, damages for trespass and injunction. Native Court Suit 116/53-4 was suit brought by Defendants in respect of Oye market judgment by Native Court was set aside by District Officer who transferred suit to High Court. We also sued Andrew Nwosu and judgment was set aside on appeal. Eze Okolo is land going down about 3 miles from Oye market. Umu Ezeiyi is a village in Achina. They live on the land in dispute. There are many of their houses on the land. There are no Akpo people on Umu Ezeiyi portion apart from those who came in by force. Ekpa means farm land. Our people live there. The Defendants' people who are there are those with the permission of our people.

10

20

30

Cross-
Examination.

Cross-Examined by Araka:

Hearing adjourned till Thursday 31st at
9 a.m.

(Sgd.) J. REYNOLDS,
Puisne Judge.
29/12/59.

40

On Thursday the 31st day of December, 1959

IKPEAZU for EMEJULU for Plaintiffs
APAKA for Defendants.

P.W.3. GEORGE AMECHI on former Oath:

Cross-Examined by Apaka:

Q. All dispute in past centred over Oye market:
A. Yes.

- Q. This dispute led to this case. A. That is so.
- Q. Defendants contend that Oye market is owned in common by Achina and Akpo people.
- A. That is so but it belongs to Achina.
- Q. In none of these cases did you state what is the actual boundary with Akpo.
- A. It is in this case that we are stating the boundary.
- 10 Q. There is no case up to now which has determined what is the boundary with Akpo people.
- A. It has not been established by any court.
- Q. It was when you took surveyor on land in this case that you first marked out your boundary.
- A. We did not do so.
- Q. Re case (Exhibit "C") between Simon Obiora. Simon is an Akpo man?
- 20 A. No he is an Achina man. I know his father. I know Simon was born at Achina. I don't know if his father was an Akpo man. He was an Achina man. Witness referred to Exhibit "C", (last page) "It is a fact that my father was of Akpo man but was sold Achina and consecrated Ezokolo juju"? I don't know if this is true.
- Q. Dispute was between 2 Akpo people?
- A. No Simon is from Achina. Witness referred to Exhibit "D". A. I know about this case.
- Q. Do you know the exact spot in Oye market that dispute was about? A. I know.
- 30 Q. A road runs through the Oye market?
- A. Yes, but later the road was removed to another place because of vehicles.
- Q. The Akpo people contended that this road was boundary.
- A. They said so but that is not the boundary.
- Q. The yams were planted on the Achina side of the Oye market?
- 40 A. A main road runs through the market it was built by Government. Action was taken because they planted on the market. Nobody would be allowed to plant yams in the market - even an Achina man.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Cross-
Examination
- continued.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Cross-
Examination
- continued.

Q. Do you remember case where Oba sued 10 Akpo people? A. Yes, in 1947.

Q. "Unlawfully destroying market camps"?

A. Yes. There Native Court gave judgment in his favour but D.O. set aside. Case No.83/47 of Mbemisi N. Ct. Record admitted in evidence as Exhibit "J".

Q. Plaintiff contended that the camps demolished were on Achina side of Oye market?

A. Anyone can go to market and build a shed and sell his wares. Neighbouring towns came. Market is not divided. Achina owned it. 10

Q. Oheagus land (where he has his house) is not within the area in dispute (verged in green in Exhibit "A")? A. It has been litigated before.

Q. 28 years ago there was dispute between C.M.S. and Akpo people and Akpo people sued C.M.S.

A. Yes.

Q. Do you know the area in dispute?

A. Area adjacent to C.M.S. where C.M.S. let and Akpo adjoin. It was a small strip at boundary that was in dispute. 20

Q. Is that within area now in dispute?

A. The boundary was demarcated. It is with land in dispute but since pillars were put on land it is no more in dispute.

Q. Do you remember D.O. Lawrence coming to inquire to dispute between Achina and Akpo over Oye market about 1953? A. I don't remember.

Q. One P. Okpalalugo (7th Plaintiff) was your District Councillor? A. Yes. 30

Q. Did he ever report to you about such meeting?

A. If he told others I did not hear.

Q. Akpo people living on the land in dispute have been living there since before you were born.

A. I am older than their houses. I was among those who permitted some of them to come there.

Q. How many are they there?

A. There are 13 we permitted. There are some people who live on Akpo land not in dispute. They also pay us customary tributes at end of the year. 40

Q. Akpo people on land in dispute are more than Achina people? A. That is true.

Q. There are only 3 Achina people living within the land in dispute and they live with permission?

A. The 3 Achina people who live on land in dispute are asked by Achina people to live there and look after Akpo people. I agree only 3 Achina people live on the land in dispute. By land in dispute I mean land shown in plan. Three people from Achina live on the farm land but nearer home there are many Umueziyi people.

10

Q. Three people of Achina living on land in dispute are tenants of Akpo?

A. They were not put there by Akpo.

Q. No Akpo man has ever paid you tribute in respect of land in dispute? A. They pay.

Q. Is there any other Achina man apart from 3 mentioned living? A. Umueziyi also live on the land.

Q. Do you know Eze Nwanyo juju priest?

20

A. I don't know him. No Akpo man worksip Eze Okolo juju. The juju priest of Eze Okolo is I never heard of Alabeba juju.

Q. You said your Council entered into agreement with C.M.S. to build a school?

A. There was a time C.M.S. wanted to upgrade the school to standard VI so they told town people and town people and council agreed. The Achina council.

Q. No such thing ever happened?

30

A. There were something I said the other say I said was wrong and on getting home realised were untrue and I was sorry for it.

Q. This was one of those statements?

A. I did not say this at last hearing (vide folio 188).

Q. Akpo and Achina used to have a combined meeting?

A. I was one of those who founded it and one who dissolved it.

40

Q. Chairman used to be Patrick Okpalejue (7th Plaintiff)? A. Yes.

Q. One of objects of this meeting was the maintenance of this market?

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Cross-
Examination
- continued.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Cross-
Examination
- continued.

A. We said this; after we felled the trees. Why we started the combined meeting was this. A tree fell in the market and killed an Akpo woman another fell and seriously wounded Michael of Achina. Ezekolo regarded as a sacred place know all about it but the Church members thought it was not good to stand by while trees hit people in the market - summoned the Achina towns people. They refused and said they would never be a party to cutting the trees. We called Church members from R.C.M. Akpo. C.M.S. Achina. Salvation Army and R.C.M. Achina. When they were all assembled we discussed this and arrived at conclusion that it was not fair that church members should stand by while trees from this juju bush killed people. The different churches contributed 3/- each total 12/-. We bought wine with part of money we went to forest guard and obtained permit from the Court. The day we were cutting the tree there was no rest at Achina and they came with sticks and said we would not cut the trees but when saw messengers from Aguata they withdrew.

10

20

Q. After that you formed a combined meeting for the maintenance of this market? A. That is so.

Q. You were closely related to Amesi (village)?

A. Yes, Amesi is first, Akpo second and Achina the youngest.

Q. Why was Amesi not invited to this combined meeting?

A. Amesi live further apart but Akpo and Achina live close. Ezekolo separates us from Akpo.

30

Q. Why had you invited Akpo to this combined meeting for maintenance of the market after the trees were cut down?

A. We continued as we thought that in the combined meeting we could contribute money together and send our children to school but we found meeting could not continue and it was dissolved.

Q. It was dissolved by this dispute?

A. No. The land case had not started when combined meeting was dissolved.

40

Q. Why had you to ask Akpo people to join in felling trees and maintaining the market?

A. We wanted to go in group so as to overpower the village who opposed the felling of the trees.

Q. Akpo and Achina people controlled market through this combined meeting because they owned market jointly? A. Not so.

Q. There were minutes kept at their meeting?

A. We did so

Q. Signed by Patrick Okpologu?

A. He used to sign.

10 Q. You had already sued Andrew Nwosu in N. Ct. and failed and then brought the action so it is not true that Andrew was building while this case was going on?

A. Andrews Nwosu's house brought about this case. At the beginning we were laying claim to Oye market later on we started to claim title to land where Oye market stands.

Q. Later you decided going beyond Oye market and directed towards Okpo and C.M.S. Mission.

20 A. We took action against Akpo for title and we traced our boundary with Akpo from the days of our ancestors to boundary between Akpo and C.M.S. Ezekolo bush is a sacred bush so we gave that to the school.

Q. The grant to C.M.S. and Salvation Army was made by Akpo people? A. Not so. Achina gave the land.

Re-Examined:

30 Before we felled the trees the combined meeting was not in existence. Before combined meeting Achina took case of the market. The combined meeting was started about 10 years ago. Before that Oye market Achina people looked after the market.

Q. What functions did the meeting carry out?

40 A. After the trees were felled we sold them and used the money realised in this sale in buying books and other material for the combined meeting. We at home know about how to conduct meetings but our sons from Onitsha came and officers were elected and we decided to contribute money to educate our children and if possible to send some to England. Combined meeting did not last up to 3 years. During this period for the combined meeting people were selected to look after the market all the natives were chased out. Since it was dissolved Achina people have been looking after

In the Supreme Court of Nigeria.

Plaintiffs' Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Cross-
Examination
- continued.

Re-Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 7.

George Amechi.
29th and 31st
December, 1959.

Re-Examination
- continued.

the market. At no time was market regarded as joint property of Akpo and Achina. Achina has always owned it. At no time did Akpo people assume responsibility for looking after market or sue anyone for any illegalities. They never sued anyone. I know Umueze where they live. I know the land in dispute. I know place Akpa (farm land). Last day I said an Akpo man took action against another Akpo man, and when I was asked the name I could not give the name. It was not an Akpo man who took out the action but Achina man. Last day I intended to say that Council and C.M.S. agreed to add standard 6 to the school. I don't know what a mile is. Amesi is four or five miles from our place. I know mile post. There are no mile posts between Achina and Amesi. It is far away from our place.

10

Adjourned till 4th January 1960 at 9 a.m.

(Sgd.) J. REYNOLDS,
Puisne Judge,
31/12/59.

20

No. 8.

Daniel Nbakwe.
4th January,
1960.

Examination.

No. 8.

DANIEL NBAKWE

On Monday the 4th day of January, 1960

P.W.4. DANIEL NBAKWE sworn on Bible states in Ibo:-

Native of Achina. I was born there. I think I am 60 years. I went to school at C.M.S. school at Ekwulobia - 6 miles from Achina. I attended school from my town. I also attended Church at St. John's Ekwulobia. These were the only school and church in that area. Many people from Achina attended this school and church. We did not like going this long distance. We went to Archdeacon at Awka and said the distance was too far. He asked us if we could provide land to build a school by we I mean people of Achina. This was in 1916. We went back to our town and approached people who had land and got someone whose land was on a good site namely Okpala Ejimofa of Achina. The owner of the land said he would like to consult his family. He did that further we went again said we should bring a basket of yam, a fowl, a gallon of wine and 8 kola nuts to use for the customary rites so that they could begin work. I gave him these

30

40

things. They showed us a boundary with Akpo and told us not to cross it. They gave us land. The land is called "Eze Okolo". We started work on the land. We build a school on the land we called it St. Peter's C.M.S. Achina. We did not shift our mission to another site. It does not still bear name C.M.S. Achina. After the church had been in existence some time certain people approached us and begged that the name should be changed and we as church members were kind and agreed that and the name was changed to C.M.S. Achina - Akpo. The person who led the delegation from Akpo was called Dilibe. The reason for the request for a change in the name was because we had members from Akpo and they were increasing in number their people blamed them for attending church there as it did not bear their name; so they begged us to change the name and we changed the name. The C.M.S. site never was changed. On the site a church was built which was used as a school as well. At no time did we go to Akpo for land - the land given us was sufficient. If anyone says that the church and school was erected elsewhere and came to the present site subsequently it would be untrue. At one time there was a dispute between the church and Enock Nwosu about the boundary between C.M.S. land and his land. The church took action against him and the Court asked him to leave the land. (Vide paragraph 7 S/D). Witness referred to claim in Suit No.190/49-50. I remember that case. 190/49-50 Record of Suit No.190/49-50 tendered and admitted in evidence as Exhibit "K". I remember Mr. Anderson the A.D.O. who dealt with the case. I think he decided the case. He said the elders of Achina and Akpo should be approached so that they should establish concrete boundaries. That was done to the satisfaction of both parties and there has been no trouble since. I saw the pillars at the boundary; they are still there. The boundary fixed then by boundary pillars was no different from that originally shown us.

Cross-Examined by Araka:

Witness referred to Exhibit "K". Silas Dike and Joseah Nwanma all from Achina. They represented the mission in the action. Silas Dike is now dead. He is much older than myself. I now say he is of same age group.

Q. Did the C.M.S. Mission ever get any land from Akpo people?

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 8.

Daniel Nbakwe.

4th January,
1960.

Examination
- continued.

Exhibit "K".

Cross-
Examination.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 8.

Daniel Nbakwe.
4th January,
1960.

Cross-
Examination
- continued.

A. At no time did they get land from Akpo. I don't know if they got land for any purpose such as farming or gardening. I know Enah Nwosu, as well as all Defendants in this case. They are all from Akpo. It was for damages for trespass on C.M.S. School farm.

Q. This farm is within the area you granted C.M.S. Mission?

A. Yes; and also within the land now in dispute in this case.

10

Silas Examined by Court:

Q. Who own the land where this school farm was made? (Vide record page 2)?

A. It was Enock Defendants brother. I don't think Silas would say so.

By Court:

Q. Did he give his consent when this piece of land was sub-let to the Mission?

A. No. 2 Defendant (Andrew Nwosu) was present.

Q. If he was there what did he do and what did he say?

20

A. I belong to C.M.S. I am one of members of Church Committee. I represent them at important transactions I have no time to go to Court. Case Exhibit "K" was in 1950. I was then a member of Church Committee. I did not go to Court then. I would say Silas Dike knows history of this land but he does not know when land was given to us. He came subsequently as a Church member. He wasn't a Church member when the land was given to Church.

30

Q. He would know which was Akpo or Achina land.

A. He would be known unless he was shown. He was born in Achina. I was shown which was Akpo and which Achina land. Okpala Ojimofu showed me the boundary.

Q. This land was granted Mission by Enoch Nwosu.

A. No Akpo man gave land to the Church. D.O. advised that boundary should be marked out. Concrete pillars were then put on the land.

Q. Was agreement signed by Mission and the parties?

40

A. I don't know. They made no agreement with Achina.

Q. Agreement was signed on 19th July 1950, Silas Dike was one of the signatories between C.M.S. and Akpo?

A. They made no agreement. I know Levi Ebuka. He is from Akpo. He comes to Church. I know Silas Dike. He is from Achina. Josiah Nwamna is an Achina man. He is alive. He writes his name. Okonkwo Catechist Ekwulobia I know. He is not Akpo or Achina. I know Uodoche Catechist Uga is not Akpo or Achina. Emenike Catechist. He is not Akpo or Achina.

10

Q. These people signed agreement on 19th July, 1950 when boundary pillars were marked out.

A. I don't know about. Our church pastor would have signed. A. Delibe was the pastor at that time; he was District Superintendent of C.M.S. Mission Agutu.

Q. The people with whom they signed this agreement were Akpo people?

20

A. I don't know. If any agreement was to be signed owners would be there.

Q. Do you know Ebane village?

A. It is a village in Achina.

Q. Was C.M.S. Mission first established there?

A. I never heard that.

Q. That was first place where C.M.S. Mission was established? A. Not true.

Q. When it was at Ebene it was known as C.M.S. Achina? A. Not true.

30

Q. Akpo people said Mission was too far away from them at Ebene and wanted it nearer?

A. The reason it was built there was because the site there was level.

Q. One of the conditions was that it should still bear name Achina and therefore it become C.M.S. Akpo-Achina.

40

A. When Church was brought there no Akpo man attended services there. We went to them and preached to them telling them the good things that would be derived from coming to Church and School they said they would not come as it belonged to Achina. It was in 1940 that the name was changed when Akpo people were attending church.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No. 8.

Daniel Nbakwe.

4th January,
1960.

Cross-
Examination
- continued.

In the Supreme Court of Nigeria.

Plaintiffs' Evidence.

No. 8.
Daniel Nbakwe.
4th January, 1960.
Cross-Examination
- continued.

Q. Why did you not tell them to build their own C.M.S. church on their own land.?

A. That is not done. We were begging them to come. We changed the name to attract them. Rev. Delibe was at Agulu in 1940 and led delegation to change name.

Q. In 1938 Akpo people sued C.M.S.?

A. I remember it.

Q. Was name not then C.M.S. Akpo-Achina?

A. No. It started to bear the name in 1940. (Suit No.106/38- not yet in evidence). At that time Akpo people were worshipping at the Church. In 1938 it was called C.M.S. Achina. 10

Q. In that case 14 elders of Achina gave evidence on behalf of C.M.S. (Defendants)?

A. I didn't know about that. In 1916 I was 14 years. In 1916 I went to Awka to see Dasbam. Ten of us went - all people of my group. There were no big men in our town then.

Q. Where were Akpo people attending school and church before 1916.? 20

A. Where they were going before church was established I don't know.

Re-Examination.

Re-Examined by Ikpeazu:-

Achina people never disturbed C.M.S. on the land. Disturbance lending to demarcation of boundary emanated from Akpo side. Two towns Achina and Akpo were present when boundary was marked with pillars.

No. 9.
Elijah Okafor.
4th January, 1960.
Examination.

No. 9.

30

ELIJAH OKAFOR

P.W.5. ELIJAH OKAFOR sworn on Bible states in 130:

Native of Ogboji. I am a farmer. I live at Ogboji also. I was born in Ogboji and brought up there. I have always been a farmer. Our people have their own lands. I know our land. It is on our land that we farm. We have a common boundary with Achina. There is a bush there. The bush is called Ofia Ogene. There used to be an Akpo tree on the boundary but now it is withered away. Going for water we go to Iyilogwu stream. It is our 40

10 boundary with Akpo. With back to Iyi Ogwu stream looking towards the Akpo on the left would be Akpo and Achina land. I know a town called Onah is on Ogboji land. There is a lake (Udele) near our land. Our land touches it. Agabuese town and Akpo land touches there. Our land and that of Agulu would be on one side and that of Akpo on the other. Akpo and Achina are on the same side and they know their boundary there. Akpo is on our boundary with Achina. It is far but not very far from the lake. The distance to the tree from the lake would be less than from this Court to the other Court. It would be a little further down from here to the C.M.S. Cathedral. Facing Akpo tree with back to lake Achina land is on left and Akpo on the right.

Cross-Examined:-

Only Achina land touches Akpo tree.

Q. Have Ogboge any land which you use in common with Akpo?

20 A. No. We have no land in common with Achina. No land is owned by Achina and Oneh.

Q. You do not know anything about the boundary with Achina and Akpo.

No Re-Examination.

No. 10.

PATRICK OKPALALUGO.

P.W.6. PATRICK OKPALALUGO sworn on Bible states in Ibo:

30 I am 7th Plaintiff in the case. Native of Achina. I was born at Achina. I was brought up there. I know Achina lands. I have a house in Achina. I know the land in dispute. I and 6 other Plaintiffs were authorised by Achina people to represent them in this action. We are suing Defendants as representing the Akpo people. C.M.S. church stands on the land in dispute. The Salvation Army also stands there. I attend Salvation Army. Salvation Army was brought to our town in 1936. I became Salvation Army in 1934. One Captain Igwe at Nnewi who was in charge of Nnewi and Awka, was asked to be given a teacher so that we could have school. He said we could provide the land for a church to be built he could provide a

40

In the Supreme Court of Nigeria.

Plaintiffs' Evidence.

No. 9.

Elijah Okafor.

4th January, 1960.

Examination - continued.

Cross-Examination.

No.10.

Patrick Okpalalugo.

4th and 5th January, 1960.

Examination

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.10.

Patrick
Okpalalugo.
4th and 5th
January, 1960.

Examination
- continued.

teacher. When we came back we negotiated land from Eze Muokwe native of Achina and juju priest of Ezekolo juju. He asked us to bring something for ceremony and called other family to consult them. He asked us to bring 8 big yams and 1 fowl 1 pot of wine and 8 kolo nuts. We gave him. He gave us the bush where could clear and build the church. We cleared the bush and built the church. That was on land in dispute. I am leader of that church up to now. At no time did we leave the place alone we first built and go to another place. The land where it was built was not got from Akpo people. Akpo people never disturbed us since. The Akpo people did not lease out the land to Salvation Army to build their place. We sue Akpo people inter alia for trespass. We sued them because they trespassed from the land we had given them to land we did not give them. They jumped into our land and farmed and built on it without our consent (on the land in dispute); They never farmed before with our permission. They are still farming without our consent.

10

20

Cross-
Examination.

Cross-Examined by Araka:

Adjourned till 9 a.m. tomorrow.

(Sgd.) J. REYNOLDS.
Puisne Judge,
4/1/60.

On Tuesday the 5th day of January, 1960

Hearing resumed.

Appearances as before.

30

P.W.6. PATRICK OKPALALUGO on former Oath:-

Cross-
Examination
- continued.

I married in Catholic Church. I taught 4 years in Catholic Church. I left Church when I married a second wife. I was not sacked as a teacher. I ceased to teach before I was married second time. I left Catholic Church in 1932. In Achina we have only Oye market in Achina. Eke is not a market it is a juju. There is no Eke market in Achina. You gave evidence in Case 116/53-54 (Exhibit "F") on behalf of Achina transferred 0/62/54 to this Court. I have never given evidence in that case. There is another Patrick Okpalugo he is a trader in Jos. I am Umuezenyi Quarter Umulolo family. I am a trader. I am aged about 50 years. There is another Patrick Okpalugo answering same description. I don't know if he was a

40

Councillor. I was a Councillor for 9 months. I went to North in 1942 and returned in 1949. There are concrete pillars to show the extent of Salvation Army land. The Army asked for the land given to them to be surveyed. No survey has yet been made. They asked about 1940 for the survey. I went North in 1942 - returned in 1949. I saw some pillars when I returned from the North about 1949-50. I did not ask who put on the pillars. I can't say if the pillars are still there. I went to this Church last Sunday. I have never seen this plan before. Plan marked Id. 1 (Plan U 73/52). Did surveyor Mr. Umeh visit the Salvation Army site for the purpose of making a survey of it. I did not notice I was then living at Onitsha. Nobody from my quarter told me a survey has been made.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.10.

Patrick
Okpalalugo.
4th and 5th
January, 1960.

Cross-
Examination
- continued.

10

Q. It was after that survey that the pillars were put on the land? A. I was not told.

20

Q. It is not true that you saw pillars in 1949?

A. I agree I did not see the pillars before 1952.

Q. No one ever complained or raised objection at Achina?

A. We were not called. I heard surveyor was made but Achina people were not called. Surveyor was an Akpo man. They said they heard but they were not there. They didn't tell me this when the pillars were put on the land (after the survey). Nobody asked why pillars were put on the land. I don't know of an Akpo boy who was trained free in Salvation Army. No don't train our children there.

30

Q. This Akpo boy went to Salvation Army School free because the land was given Salvation Army by Akpo?

A. No land was given Salvation Army by Akpo. I heard D.O. Mr. Lawrence visited our place. I was not informed.

Q. Were you a district Councillor in 1953?

40

A. It may be in 1952-53. I was there for only one year. There was no other Okpalalugo from Achina who was a District Councillor in 1953. I never met Mr. Lawrence. Our people had combined meeting with Akpo people in 1940. It was before I went to the North about November, 1942. I am not sure of the date. This is my signature with date 28/12/42. The combined meeting was by Christians against pagan.

In the
Supreme Court
of Nigeria.

Plaintiffs'
Evidence.

No.10.

Patrick
Okpalalugo.

4th and 5th
January, 1960.

Cross-
Examination
- continued.

Re-Examination.

Exhibit "L".

Q. First combined meeting 21/12/40. A. I agree.

Q. In Agenda there is nothing about Christians and pagans.?

A. The combined meeting was dissolved in my presence after 3 years. I agree that maintenance of Oye market was among the objects of the combined meeting. Our Surveyor did not mark the pillars in our plan Exhibit "A" because the land of Salvation Army does not own land to the boundary.

Re-Examined:-

Achina in 1936 gave Salvation Army land they showed us the extent of the bush we had to clear. We did not put down boundary pillars to mark the extent of the land. Captain Igwe is the one who is running the Mission for the Salvation Army and Major Jackson. They are the Church authorities. They are owners of this mission. They control that Church. Since we gave the land there was never a dispute with Akpo or Achina people with the Salvation Army in respect of the land. The pillars were put there by Salvation Army authority and not Akpo or Achina. The boundary demarcated by pillars followed the original boundary of the land granted the Salvation Army by Achina. Church members children go to the Salvation Army School. This would include members from Akpo and Achina. In Akpo and Achina we have Catholic and C.M.S. schools also. Salvation Army School is a small school. This is the minute book of the combined meeting. Book tendered and marked Exhibit "L". There are many objects of meeting shown.

Q. What type of maintenance plan had this combined meeting?

A. By joining together to cut down the trees. Achina christians were not able to cut down those trees and begged Akpo to help. We changed the road which passed through the market and made it pass through another site. That's all was done in respect of maintenance of the market. By 1953 we had not started to have rows with Akpo. They started disputes for market stalls.

Case for the Plaintiffs subject to adjournment on admission of Case No. 203/53-54.

Adjourned 13th - 16th inclusive.

(Sgd.) J. REYNOLDS.
5/1/60.

10

20

30

40

On Wednesday the 13th day of January, 1960

Hearing resumed. Appearances as before.

IKPEAZU: I propose to withdraw exhibits tendered which can only be put in with Section 34 of Evidence.

Ordinance but no such foundation has been laid.

(Case 203/53-54 referred to).

ARAKA:- No objection.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.11.

Samuel
Nkeokeolonye.
13th January,
1960.

Examination.

10

DEFENDANTS' EVIDENCE

No. 11.

SAMUEL NKEOKEOLONYE

ARAKA CALLS:- 3rd Defendant Rafael out of Court.

D.W.I. SAMUEL NKEOKEOLONYE sworn on bible states in Ibo :-

20

Live at Osumanyi. I am officer of Salvation Army at Osumanyi. Native Ukpok, Onitsha Division. I have worked in Akpo and Achina area in Awka Division. I went there 14/7/37 at Akpo. I was working at Akpo compound where we had a Society. On 13th October, 1937 our divisional manager Major T.T. Sully, a European, came from Calabar to visit the Society and the comrades at the dedication and enrolment Service. After the Service he suggested that the place where the Society is there is no road leading to the station. Also when it rains the station is flooded and the place muddy. So when the visitor left I spoke to the comrade inquiring where we could get better place to put a church and a school according to instruction of District Manager. Being a newcomer at that time they assured me they had a site and that the owner of the site is Dim. Ibike of Akpo compound. That there is another Dim Ekwekere who has boundary with him on the other side. The Church Committees from Akpo and Achina fixed the day we should go to work on the new site. We went on the first day and brushed the area; second day we started to up-root the trees where church was to be. After that both

30

40

committees from Akpo and Achina measured where we

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.11.

Samuel
Nkeokeolonye.
13th January,
1960.

Examination
- continued.

Cross-
Examination.

were to have the Church (length and width) in my presence on 3rd day. Women from Akpo and Achina got us water for treating the mud. After building of the Church we opened a school there. In early 1938. Major Jackson our sectional officer stationed at Enugu the Capt. Jackson acted as school Manager and employed the first teacher there Mr. G. Igbokwe who was a native of Umuahia. On 6/2/1939 I had a letter from my commanding Officer for transfer to Awka Etiti. Since then I have not been back to Akpa Achine except on occasion of big meeting a reception for a colonel coming from Lagos. During my time there was no quarrel for land between Akpo and Achina.

10

We recognised Akpo people as our Landlords.

Cross-Examined by Ikpeazu:-

Salvation Army was opened at Akpo in 1936. My predecessor is Mr. Smart Eke of Item. I met no one as member of United Africa Church. Mr. Eke had bolted away before I came on a charge of adultery.

20

Q. In Eke's time there had been established a church and school.

A. There was no school at that time. There was a church building in the old compound (that was so wet and muddy). The muddy compound was at Akpo compound the Landlord Ezike Okpara one of the comrades - his brother was one Nwokeze. The old church was about $\frac{1}{4}$ mile from the new site.

Q. Would it be between Oye and new site?

30

A. From Oye market you get to new site before going to old site about $\frac{1}{4}$ mile. I recognise Peter Okpalago as one of richest comrades. He was one of the leaders but owing to being a trader he had no time to act as committee member. I had been there four months before agreement was made to move site. I made no paper with Landlords but my comrades that they have got the site. My comrades made all arrangements for obtaining the Land. I was taken to the Land and we started work and were not disturbed by anyone. After school children came together. I am not of Akpo or Achina.

40

Q. As to whom the land was got you were informed by your comrades.

A. It is correct. I don't know whether rent was paid or not. I did not pay any rent nor was it

demanded during my time. Nor did they pay any tribute during my time.

Q. It was not your concern to know how land was got and you did not know.

Re-Examined by Araka:-

Q. How did you know Dim was landlord?

10 A. Dim's son was planting yams on ground close to the site. The other man. One of the 2 Dims stated Dim Ekwekere that if his land should be taken he would like his child to be educated in return.

Q. How did you know Dim Ibekwe was your landlord?

A. Dim Ibekwe's son was also a comrade and worked on land undisturbed.

In the Supreme Court of Nigeria.

Defendants' Evidence.

No.11.

Samuel Nkeokeolonye. 13th January, 1960.

Cross- Examination - continued.

Re-Examination.

No.12.

SIMON EMENIKE

D.W.2. SIMON EMENIKE sworn on Bible states in Ibo:-

20 Live at Ezinifite. I am a teacher - a cate-chist of C.M.S. Mission. In 1950 I was at Achina and Akpo Mission. I live in the mission house. When I was there there was a dispute over the C.M.S. compound. The dispute was between Church members and one Enoch Nwosu of Akpo. It was a land dispute concerning the land given to the Church. Behind the teachers quarters boundary pillars were put and it was agreed that Enoch shall not cross the boundary to C.M.S. premises and Church shall not cross boundary to Enoch's side. An agreement was prepared to show that both 30 parties accepted. It was signed. I signed myself. It was countersigned by Pastor in charge the Rev. S.O.Delibe. This is the agreement. The plan at-tached might have been made subsequent. Agreement tendered Exhibit "M". Ikpeazu no objection. Agreement (without plan) admitted in evidence and marked Exhibit "M". I remained at the Mission in Akpo Achina 3 years. During this time since Enoch was only one troubling us I concluded that he was 40 the landlord. When he troubled us, we used to go to beg him with wine but after he went to court to take action and we also took action against him. We did not like this as we wanted matter to come

No.12.

Simon Emenike.

13th January, 1960.

Examination.

Exhibit "M".

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.12.

Simon Emenike.

13th January,
1960.

Examination
- continued.

to an end so we decided on settlement and on the day it was settled the D.O. Awka came. D.O. came spoke to them and left before we signed document Exhibit "M". The Mission that day brought wine and food in my house and after the settlement we drank wine and ate food.

Q. During time this dispute was going on did any Achina man come to say this land of C.M.S. belonged to Achina?

A. The church members included people from Achina and Akpo but none of them claimed the land individually only Enoch claimed it. After settlement pillars were put on the land.

10

Adjourned 30 minutes.

(Sgd.) J. REYNOLDS,
Puisne Judge,
13/1/60.

Hearing resumed as before.

2 D.W. SIMON EMENIKE (on former Oath):-

Cross-
Examination.

Cross-Examined:-

20

I can't say the date I went to Akpo. I was there from 1950-53. January 1950 to December 1953.

Q. You do not know how site at C.M.S. Mission was acquired?

A. I cannot. Houses were already there when I came.

Q. The boundary fixed by the pillars was the line claimed by C.M.S. as their boundary before the dispute?

A. Before there was no boundary and Nwosu used to cross over to church side. There may have been a boundary Enoch use to cross over to Church's land.

30

Witness referred to case 1950 Exhibit "K" C.M.S. v. Nwosu - trespass. I was there when case took place. I don't know what claim was. I was not in Court. I don't know if it was A.D.C. Anderson who intervened.

Q. Did Church get £5 damages against Nwosu?

A. I was the head of the Mission.

Q. Elders from Akpo and Achina met on the land agreed as to the boundaries - after which boundary pillars were put there?

40

A. I don't know what happened before I came and

that was the dispute between Enoch and church. The Church members which comprised people from Akpo and Achina took part in the settlement with Enoch. We were told boundary should go along Ak-waka tree at back of teachers quarters. The D.O. and Rev. Deribe were on land (blased) the boundary.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.12.

Simon Emenike.

13th January,
1960.

Cross-
Examination
- continued.

Q. It was agreed by elders of Achina and Akpo that there was boundary between Achina and Akpo?

A. If they did I do not know.

10 Q. The pillars were put along a line previously agreed on between Achina and Akpo and D.O. and there was no discussion that day?

A. There was no discussion after the pillars were put.

Q. It was not dispute between Akpo and Achina but for Enoch trespassing into C.M.S.?

A. It was between Enoch and the Church.

Q. The boundary fixed by pillars was between the Church and Enoch?

20 A. It showed extent of Mission land and where Nwosu boundary commenced. It was to restrain Enoch from going into mission land and vice versa. I don't know whether Enoch gave C.M.S. the land or not. During time I was there no rent or tribute was paid to anyone in respect of the land occupied by C.M.S.

Re-Examined by Araka:-

Re-Examination.

On the day the pillars were put the discussion was that no one should cross the boundary from either side.

30 Q. How was line of pillars marked out?

A. The D.O. and Pastor and Church members and Enoch were there and the D.O. marked the boundary and warned the parties not to cross the boundary. Enoch agreed to this boundary fixed by D.O.

Q. Before D.O. came was there any agreement to the boundary?

40 A. If they had any agreement before I came I do not know. The Rev. Diribe and Church members settled it. Before the D.O. came there was no agreement as to where the boundary was to go. I brought out drinks because we had settled the dispute.

In the
Supreme Court
of Nigeria.

No. 13.

SHADRACK DIM

Defendants'
Evidence.

3 D.W. SHADRACK DIM sworn on Bible states in Ibo:-

No.13.
Shadrack Dim.
13th January,
1960.
Examination.

I live at Akpo. Farmer. My father was Dim Ibekwe. He is now dead. I go to Salvation Army. I am a comrade. I know where the Salvation Army is situated. It is on my father's land. Salvation Army members originally had Church at house of Ezike Okpala. The members complained that that place was not accessible to their head (Captain) so they approached my father. That was 24 years ago. I was present when they approached my father. My father agreed to give them the land. He gave them the land. They gave wine, a goat, kola, 8 yams and 17/-. He showed them a site near where he was planting. I went with him when he was showing them the site.

10

Q. Did any Achina man stop your father when he was showing the land?

A. No. The Salvation Army brought a surveyor who surveyed the land and put a pillar about 10 years ago. I was present my father had then died and I was acting for him.

20

Q. Was there any arrangement at that time?

A. They exceeded the portion my father gave them by a small piece in order to provide a back yard for the teachers and I asked them what would be the compensation for that and they said if in future I had a child they would train him for me up to standard 6 - The Church would pay his school fees.

30

Q. Was this promise made only to yourself?

A. Not only to myself. The same promise was made to one of my brothers Alaedum Dim. They fulfilled the promise to Alaedum Dim but I have not had a child yet. The pillars were put on the land openly. No Achina man raised objection. The pillars are still there till today. No objection has been raised. It is not true that land was granted to Salvation Army by Achina people.

40

Cross-
Examination.

Cross-Examined by Ikpeazu:-

I know the time of influenza (1918). I used to go naked then. I was just a child. I am married. I started to live with my wife 16 or 17 years ago. I can say how long before my father

died. The land given to Salvation Army by my father after the influenza. How long I can't say. I first saw 1st D.W. when he came to work as teacher at our place. It is a long time ago. He came about the time my father gave the land to Salvation Army. My father said I should be there to see they did not exceed the boundary given them. 1st D.W. took over from former Officer when Salvation Army was in Ezike compound. Members of committee of Salvation Army approached my father. 1st D.W. did not approach my father.

10

Q. The land you yourself gave to Salvation Army was used for erection of boundary houses.

A. No. Students come from the villages. Best house is built on the land of Aliedum Dim. The land I gave them was used for teachers to walk. I know the extent of land claimed by Plaintiffs in this case. They claim boundary up to Ogbomili South of that Ogbadene bush is the boundary with them. South of that they claim up to Ubeokopoko. I was not present when pillars at C.M.S. were put there. I see pillars when I pass. The pillars signify boundary between C.M.S. and Enoch. I know a certain Ugolo tree. It is now withered. The land I gave to Salvation Army is not up to 1/2 mile from Ubeokopoko. To get to land you stand at Ubeokopoko with back to Oye market and go less than 1/2 a mile. That is location of the land my father gave to them.

20

30

Q. The land you say you gave has no connection with the land in dispute and is 1/2 mile away from it.

A. It is inside the land in dispute. About a little more and 1/4 mile away.

Re-Examined:-

It is further from Oye to Ubeokopoko than from Oye to Salvation Army. About as far as from here to that Cathedral from Salvation Army to Oye market and a few yards further from Oye market to Ubeokopoko (tree).

40

TO COURT:-

The positions of 3 points would be as demonstrated with coins thus:-

Ubeokopoko Tree

Oye market

O.S.A.Compound

In the Supreme Court of Nigeria.

Defendants' Evidence.

No.13.

Shadrack Dim.

13th January, 1960.

Cross-Examination
- continued.

Re-Examination.

To Court.

In the
Supreme Court
of Nigeria.

No. 14.

EZECHI EZE

Defendants'
Evidence.

D.W.4. EZECHI EZE sworn on Gun states in Ibo:-

No.14.
Ezechi Eze.
13th January,
1960.

Live at Akpo. Farmer. I am juju priest for Ezeokolo. I have been the priest for 22 years. One Anumba priest of Umualalla village was priest of Akpo before me; Ezeukwuma of Umuachalla Akpo; Eze Uwajaku of Uwuachalla Akpo. When we worship this Ezeokolo juju no one disturbs us.

Cross-Examined by Emajulu:-

10

Examination.

I am 50 years old. When my father took title for me that I know I was 50 years old. I took title when I was born and it is 50 years since I took my title. My father died 32 years ago. My father was juju priest. Custom in my place is that most senior member succeeds as priest and I had to wait until next most senior member died. I do not know Okpala Ejomofor. I don't know Ezeolie Ezeokolo. I know Ezemokwe Ezeapelechi. He is Ezeokolo priest on side of Achina. There are two Ezeokolo jujus one for Achina and one for Akpo - in the same place. I know where Salvation Army is. It is on part of Ezeokolo bush that was Church. It is all in Ezeokolo bush. C.M.S. mission is also on same Ezeokolo bush.

20

Cross-
Examination.

Q. Ezeokolo bush belongs to Ezeokolo juju?

A. Yes.

Q. People from Akpo do not worship Ezeokolo juju?

A. No. Many of us own it.

Re-Examination.

Re-Examined:-

30

I know people own land up to Ezeokolo bush.

Q. Who owns land up to juju?

A. Enoch Nwosu, Shadrack Dim from Akpo.

Adjourned till 9 a.m. tomorrow.

(Sgd.) J. REYNOLDS,

Puisne Judge.

13/1/60.

No. 15.

OKPARA NOZO

(COURT NOTE)

On Thursday the 14th day of January, 1960:

EMEJULU: We have not been served with Plan as ordered by the Court.

ARAKA: Plan was filed for service.

REGISTRAR: No service fee was paid for service of Plan on Defendant.

10 ARAKA: I undertake to have copy made and handed to Plaintiffs' Counsel.

Appearances as before except Ikoeazu absent.

D.W.5. OKPARA NOZO Sworn on Gun states in Ibo:-

Live at Ekwulobia. I am a farmer. I farm in Ezeabara. (North East in Defendants' plan). I have farmed there since I was brought there by my father long before the influenza. We farmed on the land with the permission of the Akpo people. From time we started farming there no Achina man has ever disturbed us.

20 Cross- Examined by Emejulu:-

There was a portion of the land pledged by Akpo to my father and I still farm on that land. One portion was pledged to my father and he farmed on 2 portions. I did not take part in the survey of this land by surveyor. Akpo people know the land they pledged to me. The land was pledged to my father before the influenza.

Q. What is your connection with Akpo people?

30 A. My connection is that I used to go with my father to farm on land and after his death I farmed on land. My mother does not come from Akpo, she comes from Oka Ekwulobia. Each Akpo man would show land that belonged to him. I now have bad leg but I go with my 2 children to farm. I still farm. I do not work since I had this leg trouble 7 years ago.

Re-Examined:-

For last 7 years I remain at home but send my children.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.15.

Okpara Nozo.
14th January,
1960.

Examination.

Cross-
Examination.

Re-Examination.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.15.

Okpara Nozo.

14th January,
1960

- continued.

To Court.

To Court:-

Any year I don't feel the pain much I accom-
pany them and direct them as to the extent to be
cultivated. I go with them to Egene Ezeabara.
It is the same land pledged to my father. Also
Onumgbuwani, Ogene I farm these lands on per-
mission of Akpo people.

No.16.

Samuel Okeke.

14th January,
1960.

Examination.

No. 16.

SAMUEL OKEKE

D.W.6. SAMUEL OKEKE Sworn on Bible states in Ibo:- 10

I live at Ogbodji. I have no work. I farm.
I am native of Ogbodji. I have boundary with
Achina at Ofia Ogene. I have also boundary with
Akpo from Achara down to the road leading to Ogbo-
mili. I call it Otosi. The road is a footpath.
We farm to the footpath and Akpo farm to the foot-
path. We stop there. No Achina man comes there.
Achina men stop at Ofia Ogene? We have farmed
there since 3 generations ago.

Cross-
Examination.

Cross-Examined:

20

You 6 people from Ogboji gave evidence for
Akpo people in 1954.

Q. People of Ogbogi called a mass meeting and sent
a letter to D.O. protesting against your evidence?

A. Ogbogi sent me to give evidence. He did not go
on my own. Ogbogi people did not meet nor protest
about our evidence. Ogbogi as a whole selected us
to give evidence in that case.

Q. People of Ogbogi also gave evidence for Achina?

A. No.

30

Q. You gave evidence in case where Andrew Nwosu
and 3 others sued and 3 others (Exhibit "F")?

A. The case was between Akpo and Achina. Witness
referred to case 223/53-54. That was case in
which I gave evidence. Jeremiah Okafor I know.
Alexander Nwako I know. Anthony Nwankwo I know.

Richard Obiekwu Obiekwo I know, Augustine Nwosu I know, Albert Nwosu I also know. All are Ogbogi people. I did not hear my name mentioned.

Q. These were 6 Ogbogi people who gave evidence and you were not there?

A. We were behind these persons. Jeremiah Okafor my brother now dead was the spokesman. His father and my father are the same father.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.16.

Samuel Okeke.

14th January,
1960.

Cross-
Examination
- continued.

10 Q. Akpo and Ogbogi people have land in common, called Nigbowuana? A. Yes.

Q. This Mgbowa Ana starts from Otosi tree and goes up the footpath?

A. Yes. It extends to Ogbonmili stream.

Q. Akpo and Ogbogi had no defined boundary but farmed their land in common?

A. Our ancestors did that and we have been doing that.

Q. Akpo and Ogbogi regard themselves as blood relations? A. Yes.

20 Q. Ofia Ngene is the boundary of Akpo Ogbogi and Achina? A. Yes.

Q. Ngene is the boundary of Akpo Ogbogi and Achina?

A. I did not give the boundary of Akpo and Achina as I do not know. I said our boundary with Achina. I agree we have no defined boundary with Akpo. From the point I mention we farm towards our place and Akpo towards their place. Apart from Jeremiah the 6 persons previously mentioned are all alive. I don't know Eke Akpala nor Eze Akpala. I know places where Ogbogi people we have no such places in our own farmland. Case No.223/53-54 is attached to Exhibit "B" (order for transfer) and marked Exhibit "B1".

30

Q. You know nothing about this matter?

A. I know.

Re-Examined:-

Re-Examination

Q. What is significance of Otosi tree?

A. It shewed the boundary with Akpo. Ogbomili is a stream.



In the
Supreme Court
of Nigeria.

No. 17.

OKPALUKA CHUKWU

Defendants'
Evidence.

D.W.7. OKPALUKA CHUKWU sworn on Gun states in Ibo:

No.17.

Okpaluka
Chukwu.

14th January,
1960.

Live in Akpo. I do small farming now. I am an old man. I am an Akpo man. We of Akpo have authorised the Defendants to represent us in this case. I am here to explain what I saw in the olden days. I know the land in dispute. There are 3 brothers Ameri, Akpo and Achina. Ameri lives on the other part, the southern part was divided between Akpo and Achina. Ameri did the division in the olden days.

10

Examination.
Objection.

EMEJULU: Objects that traditional history has not been pleaded.

ARAKA: No authority that traditional history must be pleaded.

EMEJULU: Order 33 Rule 5 "..... all material facts". Rule 6. Decision of Dove-Edwin in 1955.

Ruling.

RULING: Decision reserved for further arguments, if necessary.

20

Examination
(Continued)

WITNESS CONTINUES: There are two water tracks or gullies on our boundary with Achina thence to Ofin Tunkwo (pineapple bush) to Mgboko Achenwolu (trench) thence to Akpu Obosi (a tree) a boundary mark on boundary with Achina. The old one is dead but the new one is there. Thence to Ezeokolo juju. On our side of land there are 2 walls and on Achina side two walls with Ezeokolo in the middle; thence Obinugu juju on other side Achina own a juju. Obinugu is on Akpo side Achina juju on the other side and the boundary between. Thence to Echa (tree) it is on our side; thence to Akwu-lega, we own Akwuogbu they own Obenwagwu; thence to Ohia Chuku (we own it; they own Boli) Thence to Ahankari (a tree) on the boundary: thence Eze-obara land Plaintiff call their land Isi Ata; thence to Ofia Ogene. We own Ikpa Ogene they call their's Ofia Ogene. We then own land towards Oglogi. We farm on our own side and they on theirs. We kept rafia palm trees on our own side. We harvest palm fruits. From death of my father and grandfather I have not heard of any dispute over this land. This is the first time. I am 80 years old. The school compound and Enoch's compound started the dispute. We have never been disturbed during 80 years of my life. There is

30

40

C.M.S. Mission within our area. The school was originally built at Egbene in Achina. One by name John Emenike a native of Akpo of my age group got land from our people Umuchara and Umuchia on behalf of the C.M.S. and they made him the head of the Church because of that. He was a church member and the distance from his home to Egbene were the Church then was too far and the school children used to trek a long distance to school and back, so he got this site nearer home so that children could go to school from Akpo and Achina. This was a long time ago. That was first church to be established in Achina and Akpo. Later one Enoch said his land was being taken by force so he used to farm the whole place. At times they would fight and they started to take action amongst themselves. It was subsequently settled by Church Pastor from C.M.S. European said we should settle the matter I was one of the elders. There was an agreement. I was not present when the agreement was made. I was present when the boundary pillars were put. They were all Akpo people no Achina men because the land belongs to Akpo. I don't remember thumb printing any such agreement as the one shown to me (Exhibit "M"). Since the pillars were put there has been no dispute. Achina now has started disputing Oye and that brought about this dispute.

Cross-Examined:-

I was not present when white man came. I was told what he said. I was present when pillars were put in. The matter was being discussed until night. The Church members from Achina and Akpo were there. The townspeople were not there. Church members made agreement between themselves and with Enoch. The literate ones signed agreement. I don't remember whether or not I did thumb impress it. I know Adinam Udogu and Aludilo Ezelike, both from Akpo. They are still alive. If they gave evidence I don't know in 1954 case. I gave evidence in the Court we were 7.

Q. In that case you gave boundaries different from boundaries given today. (page 14 Exhibit "B1"). There is no Ahiu Etiti in our place.

Q. Part of Obia Tunkwo is only your land and part on Plaintiffs' land.

A. It does not extend to Achina land. It starts from the boundary. I know them Ogbonmili I have

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.17.

Okpaluka
Chukwu.

14th January,
1960.

Examination
- continued.

Cross-
Examination.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.17.

Okpaluka
Chukwu.

14th January,
1960.

Cross-
Examination
- continued.

not seen any fish traps there. We own land in common with Ogbogi at Aghamana and Ogelli Ezeokolo, Okpara and Obunagwu are in Ezeokolo bush. C.M.S. is near bush called Mppukpo. I was there when C.M.S. came.

Q. Was place where you live C.M.S. Mission originally Ezeokolo Bush? A. No we called it Ekpukpo.

Q. Was place where Salvation Army now stands? A. No.

Q. Why is C.M.S. still called C.M.S. Achina Akpo? 10

A. I don't know. Akwu Egbu land is owned by Akpo. Any Akpo can go on the land without permission.

Q. Achina as junior brothers are not entitled to any land except what you give them. You said that in Native Court p.12 Exhibit "B1".

A. I was not spokesman in Native Court. I agree with what was said by him.

Q. Your boundary is from Tunkwo bush right up to Ogoli bush up to Ogbomili?

A. No. We live on both sides of Ogbomili. 20

Re-Examination - None.

Adjourned 5 minutes.

(Sgd.) J. REYNOLDS,
Puisne Judge,
14/1/60.

Hearing resumed as before.

No.18.
Francis Uduji.

14th January,
1960.

Examination.

No. 18.

FRANCIS UDUJI

D.W.8. FRANCIS UDUJI sworn on Bible states in Ibo:-

Live Nkpo. Farmer and trader. Native of Akpo. I trade at Oye market. I have traded there for over 25 years. I have a market stall there. I built the stall a long time ago. The dispute then was that we should not build the stall where we intended but at the side of the market. This was said by the elders of the 2 villages of Akpo and Achina. I know C.M.S. Mission the land there belongs to my father Enoch Nwosu. The dispute started when C.M.S. members exceeded the area given them by my father. My father Eze Udoji and others 30 40

sued the C.M.S. in 1938. This is a record of the proceedings - tendered (Case No.106/38). Exhibit "N". No objection by Emejulu. Admitted in evidence as Exhibit "N". The Francis referred to in Judgment page 25 is myself. I built my shed after that. The market referred to is the Oye market.

In the Supreme Court of Nigeria.

Defendants' Evidence.

Cross-Examined by Emejulu:

No.18.

10 I went to school. I stopped class 2 1922. My children keep account C.M.S. and Oye are all on my father's land. Not only elders from Achina objected. Witness states I do not know what the record is. Emejulu asks that record be withdrawn as Exhibit "N" and marked for identification.

Francis Uduji.
14th January, 1960.

Objection overruled as mere technicality.

Examination - continued.

Re-Examination - None.

Cross-Examination.

Adjourned till 9 a.m. tomorrow.

(Sgd.) J. REYNOLDS,
Puisne Judge,
14/1/60
Ejike Chidolue

20

No. 19.

No.19.

EJIKE CHIDOLUE

Ejike Chidolue.

On Friday the 15th day of January, 1960:

15th January, 1960.

D.W.9. EJIKE CHIDOLUE sworn on Bible states in English:-

Examination.

30

Live at Ikot Ekpene Anang province. Provincial Commissioner. In 1955 I was licensed Surveyor at Onitsha. In that year I made a plan for Defendants in this Case on 21/10/55. The Akpo Defendants took me round the land in dispute and showed me the features. I saw all the features I indicated on the plan. I saw all jujus marked on plan. Plan tendered and admitted as Exhibit "O". This plan Id was prepared by late Udo Uneh. I am familiar with his signature and plan bears his signature. I see marked beacons on Id as shown on my own plan Exhibit "O". The plan shews area with area in dispute namely that of Salvation Army School. Plan Id tendered. Plan is U/73. Umeh is the only surveyor who used such No. U and

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.19.
Ejike Chidolue.
15th January,
1960.
Examination
- continued.
Cross-
Examination.

beacons also had a serial No. for each surveyor and the beacons also bear the prefix "E.B.". Id I admitted in evidence as Exhibit "P".

Cross-Examined by Ikpeazu:-

Names inserted of jujus were supplied me by Defendants. I have no personal knowledge as to who owns jujus. Names of features were also supplied by Defendants.

No Re-Examination.

No.20.
Rafael Dim.
15th and 18th
January, 1960.
Examination.

No. 20.
RAFAEL DIM
D.W.10. RAFAEL DIM sworn on Bible states in Ibo:-

Third Defendant. Live at Akpo. Farmer. Authorised by people of Akpo to represent in this case. I know the land in dispute. Akpo are the owners of it. We have boundary with Amesi on one side on the other part with Achina down to Ogboji. Features of boundary with Achina: Otosi, Ubo, Ukwa, Water track, Oji, Odala tree, Otosi tree, Ichisi, Okuwu, Ogilisi, Ube, Ukwa, Ukwa, Ogilisi, Otosi, Ube, Ukwa, Main Road, Ukwa Stump, Ube, then trench, then Akuebosi at Oye market, Ezeokolo juju, main road, Obinyu juju, thence long wall, then heap of stones owned by Achina, thence another wall, Uche-ku and then another Uchaku, mound (ant hill) Uche-ku, Abosi, heap of stones, Ube tree, Alubu tree, Ogirisi, Ukwa Uchulu, Otosi tree at the end. After that we get to land we own in common with oloji. We live in our land, some other Achina people are there as tenants; only three named Nnadike, Ofodum, Ukwarafiri. They are there because their mothers are from our place. They pay tribute to us. At the end of year after harvest, 8 yams, one fowl, a pot of wine, 8 kola nuts. We farm on land and reap fruit of economic trees thereon. We also admit tenants from other towns and any individual who is in need of money could pledge a portion of his own land to anyone. We gave land to people from Ekwulobia, one is named Okpala Nuozo who gave evidence yesterday. There are others. We have juju

10

20

30

10 on the land, Nwugbu juju, Isigwucka, Abalaba, Obinnjo. These are the few I know they are worshipped by our people. Case Simon against Jacob Onyebuchi (Exhibit "C" and "C1"). The land the subject matter of that action is within land in dispute by Oye market. It is on Akpo side of Oye market. Case against Oheagu. I know where he lives. He lives on Achina land. We do not claim area where he lives. Case 116/53-4. I was one of Plaintiffs (Exhibit "F") I was present in Court during hearing of this case. One Patrick Okpalugo gave evidence. He is the man now in Court 7th Plaintiff. I was in Court and I even asked him a question.

Cross-Examined by Ikpeazu:-

20 I knew when Oheagu was going to Court. I did not go to Court. I heard what he said in Court. It is not correct that he said something we disapproved and that he was fined by us. Achina people claimed land where he lived. He went to Court and mentioned the name of the person who sold him. Still lives where he was living then.

Adjourned till 10 a.m. 18th January, 1960.

(Sgd.) J. REYNOLDS,
Puisne Judge,
15/1/60.

On Monday the 18th day of January, 1960:

Hearing resumed.

Reappearances as before.

30 D.W.10. RAFAEL DIM (on former Oath):-

Cross-Examination by Ikpeazu continued:-

Q. Do you know boundary as claimed by Achina people?

40 A. I don't know boundaries of the land they claim but they surveyed our land. We surveyed boundaries which existed for time immemorial. They measured to their boundary but later on they said they shall trace the boundaries as shewn by the Plaintiffs but I cannot say that the area they claimed is larger or smaller than our land. I don't know the western boundaries the Plaintiffs gave. They surveyed right into the village. Akpo village we did not enter Achina village. There are three Achina people we showed land. Ofeduno's father and mother are from Akpo. She is not alive.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.20.

Rafael Dim.
15th and 18th
January, 1960.

Examination
- continued.

Cross-
Examination.

Cross-
Examination
(Continued)

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.20.

Rafael Dim.
15th and 18th
January, 1960.
Cross-
Examination
- continued.

I knew when she died - less than 20 years. I was home when she died. Akuejinwa is her name. I would know someone who was born in Akpo.

Q. Those 3 people live there in their own right because it is Achina land?

A. No and they perform certain rites. If Achina people have built any houses since case began we do not include these. I know Simon Obiora he is from Akpo not Achina. Witness referred to Exhibit "C". His father is from Akpo and lives on Akpo land. I heard when parties to Exhibit "C" were attending Court. It was a dispute between 2 Akpo people. The land in dispute there was part of land page 8 Exhibit "C". Simon's house is near C.M.S. It is about 200 yards from Ubeopoko. I don't know of case between Jacob Onyebuchi and Simon Obiora (also Exhibit "C") Suit 131/48. Vide land verged blue in Exhibit "A". Nkpukpo land extends from Salvation Army land to C.M.S. land. I don't know about the case. Simon's father lived there because he was an Akpo man. Simon owned the land as an Akpo man.

10

20

Q. Akpo man described him as of Achina.

A. I don't know. Simon's father was Ezeokolo priest.

Q. Did he assume charge of Ezeokolo juju and Ezeokolo bush?

A. He was in charge of the area given him. His father was from Akpo later father died and he came to attend church at Achina. Maybe because of that he changed to claim Achina. Native Court accepted his story that land was given him by Achina and not Akpo. We have only one Nkpukpo land. We showed it to surveyor. I agree Jacob and I come from same village. Nkpukpo land to Akpo one village might not mean the same as Nkpukpo land to Akpo another village.

30

Q. The names given to your surveyor on land are names given to places by Akpo people. Ref.128/52-3 (Exhibit "H") I know of this suit.

40

Q. That relates to land now claimed by Achina.

A. It does not. The subject matter is on Achina side.

Q. D.O. said in judgment it was same land to which Jacob land claim?

A. That land is outside land in dispute and belonged

to Achina. Enoch went over boundary and encroached on Achina portion.

Q. Enoch was wrong in claiming it as Akpo land?

A. He was wrong that is why we advised him to withdraw.

Q. Do you know house of one Nzekwu?

A. No. I do not know Okala Nosie of Achina or where their houses stand. I know where Oheagbu lives. He is from Akpo. It is not near Nwiteta stream. Copy of Exhibit "O" which was served by Defendants on Plaintiffs put in as Exhibit "O1".

10

Q. There appears to be difference in the 2 plans Exhibit "O" and Exhibit "O1" as to Abagu's house therein?

A. There is wall ancient boundary separating the Ohiagu land from Akpo land.

Q. Usually natural features like roads and streams form boundary? A. I don't know.

Q. Boundary is Ogbonmili stream?

20

A. No it is in our village and is from where we fetch water.

Re-Examined:-

Re Exhibit "O1". Q. Simon Obiora admitted that he was of Akpo but was sold to Achina?

A. Yes. The land was granted to him by Akpo people because his father is an Akpo. Simon's father lived on land because he was Akpo man and Akpo people showed him the land. Simon goes to Church at Achina. There are many Ubeobiko trees on land in dispute.

30

No. 21.

ANDREW NWOSU

P.W.11. ANDREW NWOSU sworn on Bible states in Ibo:-

I live at Onitsha. I am a trader. A native of Akpo. I was Defendant in case (Exhibit "C") (No.197/52-3). Also Defendant in Exhibit "G". Also Defendant in Exhibit "K" (190/49-50). Re case (Exhibit "E") the land there is within land in dispute. It faces market and backs the compound of the Church. I got judgment. Re Exhibit

40

In the Supreme Court of Nigeria.

Defendants' Evidence.

No.20.

Rafael Dim.

15th and 18th January, 1960.

Cross-Examination
- continued.

Re-Examination.

No.21.

Andrew Nwosu.

18th and 19th January, 1960.

Examination.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.21.

Andrew Nwosu.
18th and 19th
January, 1960.
Examination
- continued.

"G" subject matter of this case was the same land and was dismissed in my favour. Re case (Exhibit "E") was about the land of the C.M.S. The land was granted to C.M.S. by Enoch Nwosu and Uduji father of Francis Uduji (a witness). Enoch is not well. He is my senior brother. I am aged 48 years. (Born in 1912). Achina has never claimed that they granted land to C.M.S. Re 106/38 (Exhibit "K") I know this case. I was in Court during hearing of the case. I belong to C.M.S. Francis Uduji belonged to Catholics. Uduji went to build his produce shop near the Oye market. The C.M.S. Church said he should not build there. My father was not alive then so Enoch Nwosu and Eze Uduji took action against the Church. The church called 14 elders from Achina and 14 elders from Akpo. The elders of Achina said the Church was formerly at Ebene and Akpo people begged them to bring it down and Akpo people would show them land where they should build. There were 6 villages making up native Court with 42 members. These were Achina people and Akpo as judges. They said Umuhi (people of my father) used the land up to where pillars of C.M.S. are. They asked Umuachalla of Akpo to use the land up to Ukpu Ezeokolo where we have boundary with Achina. They asked Francis to go and build his stall where he originally wanted to build it. Francis built the stall. After the case Exhibit "K" when we were sued by C.M.S. Plaintiffs are both natives of Achina. Sued in respect of damages to C.M.S. farm. I was present during case. Silas said the land was given to C.M.S. by Enoch Nwosu. As a result of case boundary pillars were put on land. I was present Achina people were not invited but Silas and Josiah and Levi Ezoka Achina people represented the Church. The Akpo elders were invited to attend and did attend. Achina people were not invited because the land did not belong to them. Agreement was drawn up that day. It was signed by Enoch. I know his signature. Achina never complained about the pillars being put on the land. Achina and Akpo own Oye market. There is a market called Nkwo-Akpo and one at Achina called Eke Achina. I remember the combined meeting. The people abroad (from Akpo and Achina) said the market was not good and so they summoned a people to discuss ways of developing the market. They appointed Patrick Okpalugo chairman and Stephen Arajaka his Secretary. We discussed about developing the market. At this

10

20

30

40

50

combined meeting Achina did not claim market was theirs solely but only since this case started. I know Salvation Army site. Dim Eleke and Dim Ekwchere granted the land. They are natives of Akpo. I knew time when pillars were put around 1949; plan was prepared between 1952-3. Achina people who were present were church members of Salvation Army, Committee selected Ezekiel Okpara and Patrick Okpalugo. After survey was made the plan was sent to the owner of the land. I have seen the plan before. Exhibit "P" is the plan. Since the pillars were put on the land no Achina man has raised any complaint. I know Case No. 132/48 Exhibit "D". This case went on appeal the appeal was adjourned sine die. This is record of appeal. Record tendered admitted as Exhibit "D1". I know the site where it was alleged the yams were planted. It was on Achina side of the market.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.21.

Andrew Nwosu.
18th and 19th
January, 1960.

Examination
- continued.

Cross-Examined by Ikpeazu:-

Cross-
Examination.

20 Q. Re case Exhibit "E" judgment was set aside on review Exhibit "E1"?

A. Agreed. He asked them to take action against me but they did not.

Q. In Exhibit "K" settlement of boundary was at instance of D.O.? A. Yes.

Q. All circumstances were placed before D.O.?

30 A. Yes. D.O. said what he said about Achina elders because church was joint property of Achina Akpo and Akpo people protested said if elders from Achina come we would not attend the settlement.

Q. On day boundary pillars were erected Achina were there as owners of land and Akpo as disturbers?

40 A. If so they would have signed agreement. I know Joseph Onyemobi he is Akpo man and older than I am. He is C.M.S. man he was brought up at Akpo. He is now dead. Evidence of Joseph Onyemobi - page 15 of Exhibit "N" tendered under section 34 of Evidence Ordinance. He would know Akpo man. Admitted as Exhibit "N1". He would know who gave the land to C.M.S. but he would not say the truth because committee appointed him as spokesman so that judgment would be in their favour. I knew he was a liar from that day. If he had told the truth the

Exhibit "N1".

In the Supreme Court of Nigeria.

Defendants' Evidence.

No.21.
Andrew Nwosu.
18th and 19th January, 1960.
Cross-Examination
- continued.

Pastor would have dismissed him. Witness Silas was Achina. I agree he was one of foundation members. He is dead. Pages 12-13 and 14.

ARAKA:- Objects as it was said by an adversary an Achina man.

IKPEAZU:- Not relevant whether adverse party for purpose of Section 34 of Evidence Ordinance.

RULING:- I hold evidence is admissible under Section 34 and admitted as Exhibit "N2". In 1938 I was C.M.S. member. I was member since I was aged 5 years. I was not member of Committee then. Silas was not present when the land was shown. I agree I was only 4 years old when land was shown. In 1938 the Court used sticks for marking boundary after case.

10

Adjourned till 9 a.m. tomorrow 19th January, 1960.

(Sgd.) J. REYNOLDS,
Puisne Judge,
18/1/60.

20

On Tuesday the 19th day of January 1960

Hearing resumed.

Ikpeazu for Plaintiffs.

Araka for Defendants.

Cross-Examination
(Continued)

D.W.11. ANDREW NWOSU (on former Oath)

Q. Re Exhibit "N" (Claim for C.M.S. to quit from the land where they were not given)?

A. That was not so it was quit from the whole land including that on which school and Church were established. Ezeokolo juju is owned in common by Akpo and Achina people. The places where C.M.S. and Salvation Army have are not on Ezeokolo bush Mkpukpo. We claim to own market in common because it was so from ancient time. There was demarcation in the olden days. Akpo Achina own the market. The market is in middle of Akpo and Achina as agreed between them. The market stands on one side on Achina land and on the other side on Akpo land but there is a boundary. The boundary has been there right from time the market was started. Witness referred to Exhibit "F" page 1 where he gave evidence.

30

40

Q. There you said there was no boundary and elders met to make dividing line?

A. The boundary was I referred to there was boundary by fixing cement pillars as trees forming boundary were dying. The first boundary is a trench there was Achi tree there before but it is now dead then Akpo Obosi tree; Okpu Ezeokolo (the juju) runs through the bush to our farm land. "I did not say there was no remarkable boundary features in market" in that case. Witness referred to Exhibit "K". Before this case there was no marked boundary feature between us and C.M.S. except where we stopped farming and they stopped. We know what land we owned.

10

Q. The boundary pillars posted later they followed that course?

A. No, not exactly. We were given part of C.M.S. land. We complained the part C.M.S. used to farm to exceed the boundary we gave to them and when pillars were put they were put on the original point we stopped. While C.M.S. surveyor surveyed up to point C.M.S. were farming up to. Nobody farms there now because houses have been built.

20

Q. It was you who encroached into C.M.S. land and when boundary was settled you were thrown back?

A. No, they were thrown back.

Q. It was C.M.S. who sued?

A. Court held it was not on their land we farmed - the case was dismissed.

30

Q. You have no knowledge whatever of things you have given in evidence? A. Not so.

Re-Examined:-

Evidence of Silas Exhibit "N2" was read to you. In Exhibit "K" I was sued by Silas and for C.M.S. It is that same Silas. In Exhibit "K" was cross-examined as to who owned land C.M.S. I heard him say this. This Silas is now dead. Deposition of Silas at page 2 tendered an marked Exhibit "K1" pages 1-2 of Exhibit "K". In Exhibit "N" Okpala Kemlu gave evidence. He is still alive.

40

TO COURT:- In olden days we used the Oye market in common there was no demarcation we had a common meeting too. It is as a result of the trouble that

In the Supreme Court of Nigeria.

Defendants' Evidence.

No.21.

Andrew Nwosu.

18th and 19th January, 1960.

Cross-Examination - continued.

Re-Examination.

In the
Supreme Court
of Nigeria.

Defendants'
Evidence.

No.21.

Andrew Nwosu.
18th and 19th
January, 1960.

Re-Examination
- continued.

using Oye in common broke down and we wanted each party to be confined to his own side by a dividing line. There is just one Ezeokolo juju. It is the same juju that is owned both by Achina and Akpo. Ezeokolo juju is on the boundary but Achina built a house where they worship it each on own side of the boundary. Achina built their house first about 1950. There was no dispute then. I don't know when Akpo built their's because I was then abroad. They are now Zinc houses but these were mud houses. There before I was born.

10

Case for the Defendants.

IKPEAZU: Ask Court to go on Inspection.
Adjourned for inspection of locus in quo tomorrow.
Leaving Court at 3 p.m.
Addresses 28th January at 9 a.m.

(Sgd.) J. REYNOLDS,
Puisne Judge,
19/1/60.

No.22.

Counsels
Addresses -
(a) Araka for
Defendants.
28th January,
1960.

No. 22.

20

COUNSELS ADDRESSES (a) ARAKA FOR DEFENDANTS
On Thursday the 28th day of January, 1960:

Resumed hearing.
Appearances as before.
Addresses of Counsel.

ARAKA:- Action by people of Achina for title to land set out in plan and damages for trespass and injunction. Issues are simple. One inference from all the evidence that this land belongs to people of Akpo and not Plaintiffs. Plaintiffs have failed completely to prove that this land belongs to them exclusively. Must show they are exclusive owner to get decree for title. No prima facie case made by Plaintiffs. Plaintiffs admitted that hitherto dispute had always centred around ownership of Oye market and that previously they had never claimed boundary now claimed. In all previous disputes Defendants (Akpo) had always said Oye market belonged to Akpo and Achina people in common. Plaintiffs claim includes the whole

30

40

In the
Supreme Court
of Nigeria.

No.22.

Counsels
Addresses -
(a) Araka for
Defendants.

28th January,
1960

- continued.

market. Why have they not attempted to establish their boundary before in dispute about Oye market. Earliest case is of 1938. Action against C.M.S. by Defendants Exhibit "N". 11th Defendant witness gave evidence as to this action. Said in attempt by C.M.S. to stop Nwosu (11th D.W.) from building stall in C.M.S. market. Judgment Francis is free to build shed in market place". (Francis is son of 1st Defendant and a witness in present case). This judgment established for first time title of Akpo people to this market place. There were among judges some Achina people and some Achina people gave evidence in case for C.M.S. Mission and must have known case. Why did Achina people not stop Francis from erecting or using the stall which he says he still uses. "Ezeokolo juju in which they (Akpo) are the head". We say Ezeokolo juju stands on boundary. The Akpo people and Achina people worship juju in common each having their own section. Patrick Okpalugo 7th Plaintiff admitted at inspection that Akpo had their own section. Grant to C.M.S. Mission. Submit Akpo people were people who made grant to C.M.S. Mission and who put up the boundary marks with C.M.S. authority after dispute with Enoch Nwosu. Plaintiffs have not been truthful. 2nd P.W. Alfred Azike admitted C.M.S. Mission was first established in Ebene. This is the Defendant's case. Later he changed his evidence when he realised significance of his evidence. That it was first established at Ebene is borne out by page 21 of Exhibit "N" a statement made by Achina elders. This statement was put to 2nd P.W. Bears out history given by Defendants. In Exhibit "K" at page 2. Silas Dike (now dead) of Achina 1st Plaintiff gave evidence admitted as Exhibit "K1". Dispute between C.M.S. and 2 Nwosus. Who owns land where Mission was made. It was Enoch brother of 2nd Defendant. Boundary pillars put on land to shew extent of grant to C.M.S. It is evidence as result of case (Exhibit "K"). D.O. advised C.M.S. Akpo and Achina elders to look into matter and boundary pillars put in. Exhibit "M" agreement drawn up at instance of C.M.S. authorities during demarcation of boundary. Catechist Emenike was called in present action as witness. Achina elders did not take part in settlement and were not parties to settlement of line of concrete pillars. Those Achina people who were there were representatives of the Church. No place in Exhibit "M" where

In the
Supreme Court
of Nigeria.

No.22.

Counsels
Addresses -
(a) Araka for
Defendants.

28th January,
1960

- continued.

Achina elders signed as such but 4 Akpo elders signed as such also Enoch Nwosu. What step did Achina people take since 1950 in order to show their objection to people who have not title to land demarcating boundary. They did nothing. In explanation said the line of pillars passed along line of boundary between Achina and Akpo. This was shattered on inspection of land. Cement pillars were shown on inspection not to follow the line of the boundary and were put right inside the land they claimed.

10

GRANT TO SALVATION ARMY:

1st D.W. member of Salvation Army. Stated S.A. had already acquired site before he came, but he said Akpo people were farming around the site. Akpo people 3rd D.W. who gave grant to Salvation Army was called. Said that in return for grant his son was to be educated free. Plaintiffs called no independent testimony to establish grant by them to Salvation Army. Patrick Okpalugo was only witness. Not a truthful witness. Denied giving evidence in previous case. Then plan made by surveyor Ume in 1952 - Exhibit "P". Fact that plan was prepared by Salvation Army in conjunction with Akpo people alone without any reference to Achina people and that cement pillars were put on land without any reference to Achina people shew that Salvation Army were dealing exclusively with true landlords the Akpo people, can be no greater act of exercise ownership over land than this. Patrick Okpalugo admitted that on return from North he saw pillars on land but took no action, nor did any Achina people take any action. Only inference is that we are true owners. Combined meeting of Akpo and Achina. One of objects of the meeting was preservation and maintenance of this market. How could people who have no interest in market have any part in maintenance of market. Inference is that Akpo have interest in the market and market belongs to two towns in common. Plaintiff claims Ohiago and we admit this is outside the land we claimed. Erasure in plan is outside land we claim. Claims of ownership based on certain cases Exhibit "C" Jacob Onyebuchi Exhibit "C1" and also Exhibit "D" and "D1". Exhibits "C" and "C1" Simon Obiora v. Jacob Onyebuchi. Significant to note that Simon Obiora in Exhibit "C1" stated on oath that his father was from Akpo town. Submit case does not point one way or the other. It is a dispute between 2 Akpo men. We say land was

20

30

40

50

acquired by his father because he was Akpo man. Exhibit "D" and "D1". We admit part of Oye market is owned by Achina and part owned by Akpo. In case Plaintiff was asked on what side of market yams were planted and said Achina side. Appeal adjourned sine die. 3 P.W. stated in answer to Court said case was brought because nobody should plant on market place and even if he had been Achina man he would have been sued. Oral evidence adduced by Plaintiff is insufficient to justify decree declaration of title. Called 1st, 2nd and 7th Plaintiffs and surveyor. Only 4th and 5th P.W. are not Plaintiffs. 4th P.Ws. evidence was unsatisfactory, gave evidence as grant to C.M.S. Mission. He was only 14 at time of grant. 5th P.W. Oboji witness knows nothing about the case. If Plaintiffs have failed in establishing exclusive ownership over area cleared judgment should be for Defendants.

10

20

Notes - 11 N.L.R. 68 at page 69. Onus on Plaintiffs to show acts of ownership positive and numerous. We have shewn acts of ownership over land more numerous than shown by Plaintiffs. Achebong v. 14 W.A.C.A.520. Plaintiffs have failed to discharge onus. 2 W.A.C.A. 336 at page 337 (last paragraph). Submit case should be dismissed. Acts of ownership by Defendants. Gave to C.M.S. also gave Salvation Army. Boundary never litigated before. On evidence on locus alleged boundary could not be substantiated. Ezeokolo juju shown on view to be worshipped by both sides in common. Only 3 Achina people live on land in dispute and we Akpo have 13 houses. Called an independent witness a tenant farming there for years from Ekwulobia. Apart from Oye market there is no other acts of ownership.

30

(b) IKPEAZU FOR PLAINTIFFS

IKPEAZU:- Question of non-suit or dismissal is discretionary. Plaintiff has burden of proving acts of ownership numerous and positive enough to warrant inference that he is the owner. Plurality of witnesses not necessary. Not true that disputes have always centered around Oye market. Achina market is open to all and persons from neighbouring towns entitled to build stalls. Ownership of land as whole never put in issue. Plan Exhibit "A". When claim extended to land we decided to enforce our rights. D.O. advised that elders of Akpo and Achina should meet and agree where the boundary

40

In the
Supreme Court
of Nigeria.

No.22.

Counsels
Addresses -
(a) Araka for
Defendants.

28th January,
1960

- continued.

(b) Ikpeazu for
Plaintiffs.

In the
Supreme Court
of Nigeria.

No.22.

Counsels
Addresses -
(b) Ikpeazu for
Plaintiffs.

28th January,
1960

- continued.

should run. If Achina people had no interest in subject matter of that it would be wrong for D.O. to impute Achina people into settlement. Shews interest of Achina people extends to the line of pillars. 11th D.W. denied that encroachment in C.M.S. case was on C.M.S. side of boundary. Area which was interfered with was West of line of pillars (i.e. Akpo side). This would be no reason why Achina should take interest in that action. Exhibit "M" agreement. Purport of agreement was to settle dispute between C.M.S. and Akpo people. It was not necessary that Achina people should have been parties to agreement. Line of pillars from boundary between Akpo and C.M.S. and automatically between Akpo and Achina. Not speculation to claim that land. Exhibit "N" judgment should be interpreted in terms of claim. A lot of judgment to obiter. Plaintiffs have adduced sufficient evidence which if believed entitled them to judgment. Three Plaintiffs who gave evidence were witnesses of truth. Nature of their evidence - sufficient acts of ownership. Persons in Umum Ezeyiri village are Achina people who have lived there for a long time. In farm land Akpo people were put there and pay tribute. Obiagu was sued and admitted he had his land from them. Exhibits "O" and "O1". In Exhibit "A" clearly lies within claimed. Cases Exhibit "H" is evidence of act of ownership (Suit 128 and 131/48). Exhibit "D" (Case No.132/48). Judgment was for Achina by 4 neutral judges. Who granted land to C.M.S. 4th P.W. was a foundation member. Gave his evidence in forthright manner. Said C.M.S. was established where it is now. Exhibit "N" (128/52-53). Exhibit "L" (Minute book) has not created any interest in favour of Akpo people in the market. Not evidence of joint ownership and management. Submit we have discharged onus upon us. Defence case lies not whittled down our case. In 1952 when plan was prepared there was already a dispute. It was prepared for case by Akpo man and has no weight. If Court does not accept Plaintiffs' evidence Court can hold that Plaintiffs have failed to prove they are absolute owners of land. Proper order cannot be one of dismissal where people have acquired right by long possession. Portions of land over which they have valid title Oye market; purple ring. Though we have claimed title if our evidence in proof of title does not succeed yet when Court finds we have been

10

20

30

40

50

in possession we will be entitled to judgment for possession under Native Law and custom. Proper order should be non-suit. Exhibit "N" page 15 Exhibit "N1". "Akpo man said shown to us by Akpo and Achina it is bad bush.

In the Supreme Court of Nigeria.

No.22.

ARAKA: Any areas which they have established title by res judicata will not be over-ridden by any judgment of the Court. Do not lose right established by estoppel by record or conduct.

Counsels Addresses - (b) Ikpeazu for Plaintiffs.

10 IKPEAZU: Ayo Ita v. Asido 2 W.A.C.A.339. Submission to remain in possession.

28th January, 1960 - continued.

Adjourned for judgment till 20th February, 1960.

No. 23.

No.23.

JUDGMENT

Judgment.

On Saturday the 20th day of February, 1960

20th February, 1960.

20 This is a transferred action by the Plaintiffs for themselves and on behalf of the people of Achina against the Defendants for themselves and as representing the people of Akpo for a declaration of title to a certain area of land delineated and verged pink in the Plaintiffs' plan Exhibit "A". Plaintiffs also claim £20 for trespass by the Defendants on the said land and an injunction.

30 In addition to giving evidence of the boundaries of the area claimed, the Plaintiffs gave evidence of the exercise of acts of ownership over particular areas. These areas included land occupied by the C.M.S. and land occupied by the Salvation Army and Oye Market, the Ezeokolo juju and certain small areas the subject of litigation in the Native Courts between individuals of Achina and Akpo.

40 With regard to the land occupied by the C.M.S. the Plaintiffs' case is that about 1916 the people of Achina gave the land to C.M.S. to build on and it was called C.M.S. Achina. About 2 or 3 years later people from Akpo approached Achina Chiefs and said they would like the name Akpo to be included as it would attract people from Akpo to come and worship there. This was agreed as the

In the
Supreme Court
of Nigeria.

No.23.

Judgment.

20th February,
1960

- continued.

Achina people wanted more members and thenceforth it was known as C.M.S. Achina-Akpo. The Defendants however say that originally the C.M.S. was established at Ebene in Achina and was known as C.M.S. Achina. As it was too far for children to go to the school at Ebene Akpo people begged Achina to bring it down to Akpo where Akpo would show them land. That this was agreed and the land to build was given C.M.S. by Enoch Ewosu and Eze Udenzi in 1916 and thenceforth became known as C.M.S. Achina-Akpo, the name Achina being left in to show its former connection with Achina.

10

With regard to the Salvation Army Plaintiffs say that one Captain Igwe who was in charge of the Salvation Army at Nnewi and Awka was asked by the people of Achina to supply a teacher and agreed to do so if Achina could provide land. Land was provided by one Ezemuokwe of Achina, on payment of tribute and in 1936 the bush was cleared and the Church built. However the Defendants evidence was that the Salvation Army had originally been at the compound of one Ezike Okpala of Akpo where the land was unsuitable as it became flooded and muddy when it rained and it had no approach road to it. Consequently the Salvation Army looked for a better place to put a church and school and the members secured the land from one Dim Ibekwe of Akpo which was then cleared and occupied in 1937.

20

The Plaintiffs' claim that the Oye Market is entirely in their land and owned and controlled exclusively by Achina. The Defendants say that the boundary runs through the market and part of it is owned by Achina and part by Akpo. Achina also claim that they and they alone own and worship Ezeokolo juju whereas Akpo say that they as well as Achina own and worship the juju.

30

With regard to the title to the land now occupied by the C.M.S. the 1st Plaintiff, although he later denied it, admitted that C.M.S. was first established at Ebene, a village in Achina outside the area in dispute and was at that time known as the C.M.S. Achina. This is the Akpo case. The evidence of D.W.2. Simon Emenike, catechist of C.M.S. 1950-1953 an independent witness, was that he always regarded Enoch Nwosu of Akpo as his landlord and that the dispute with Enoch was in respect of the land given to the C.M.S. and although the Church members included people from Achina and Akpo, Enoch was the only person claiming the land individually.

40

50

Exhibit "M" is a settlement of the boundary between C.M.S. Mission Achina Akpo and Enoch Nwosu of Akpo. It states that the elders of Akpo Town met and fixed the boundary. This agreement was signed by C.M.S. members and Akpo elders. No Achina person, as such, signed the agreement although it is true that earlier the D.O. had suggested that the Achina and Akpo elders should intervene to settle the dispute (vide review judgment of A.D.O. Anderson in Mbemisi Native Court Suit 190/49-50, Exhibit "K"). In this case Silas Dike (now dead) for C.M.S. said that the land let to the Mission belonged to Enoch brother of Andrew Nwosu of Akpo. (Vide Exhibit "K1").

In the
Supreme Court
of Nigeria.

No.23.

Judgment.

20th February,
1960

- continued.

10

20

30

40

On my inspection of the land in dispute, the boundary cleared by the Plaintiffs and shown to the Court beginning at the Ubeokpolo tree on main road did not follow the cement boundary pillars of the C.M.S. Mission but ran 20 or 30 feet to the West of the pillars which (if the correct boundary) would give the Plaintiffs a small triangle of land that, on the uncontradicted evidence given before me, undoubtedly belonged to Enoch Nwosu of Akpo.

With regard to the land occupied by the Salvation Army the Plaintiffs rely chiefly on the testimony of 7th Plaintiff Patrick Okpalugo, a prominent member of the Mission, having considered his evidence and demeanour carefully I have come to the conclusion that he was not a truthful witness and I did not accept his evidence that this portion of land was given to the Salvation Army by Eze Muokwe of Achina. On the other hand I was impressed by the evidence of D.W.I. Samuel Nkeokeolonye, another independent witness, who said that in 1937 the Salvation Army Mission moved to a new site owned by Dim Ibekwe of Akpo compound and that they recognised Akpo as their landlords. I also accepted the evidence of Shadrack Dim, the son of Dim Ibekwe that his father gave the Salvation Army Mission the land.

On the evidence I hold as a fact that the land occupied by the C.M.S. and that occupied by the Salvation Army Mission belong to Akpo. Whereas in their evidence in Court the Plaintiffs claimed that Ezeokolo juju was exclusively worshipped and owned by Achina. On my visit to the locus in quo however it was clear that there were two walled areas one on the East and the other on the West side of the Ezeokolo juju, the Eastern

In the
Supreme Court
of Nigeria.

No.23.

Judgment.

20th February,
1960

- continued.

one of which was used by worshippers of Achina and the other used by Akpo, a fact which was admitted on the spot by Patrick Okpalaugo (7th Plaintiff). I have therefore come to the conclusion and find as a fact that the Ezeokolo juju is on the boundary between Achina and Akpo land and is worshipped by both communities.

With regard to the ownership of the Oye market the Plaintiffs relied on the judgment of the Mbemisi Native Court in case No.132/48 Exhibit "D" giving Achina people £5 damages against 5 persons from Umuachalla-Akpo for planting yams on the Oye market. The Defendants rely on the fact that one of the objects of a combined meeting of Achina and Akpo was the management of the market as shewing that the market is owned by Achina and Akpo in common.

10

Plaintiffs also relied on two other cases as being evidence of acts of ownership by them over parts of the land in dispute namely the suit between Simon Obiora of Achina against Jacob Onyebuchi and another of Akpo. Mbemisi Native Court Suit No.128/48 and cross action Suit No.131/48 (Exhibit "C") in which Simon got damages for trespass and Jacob's claim for title in respect of land in area in dispute and verged blue in Plaintiffs' plan Exhibit "A". The second suit is Chiagu's case which the Defendants say (and which I find) is outside the land they claim as shewn in their plan (Exhibit "O").

20

30

The findings in these cases are far from being clear or conclusive of the rights of the communities over the areas affected by these decisions particularly as they were suits between individuals. Having regard to this and to the unsatisfactory nature of the Plaintiffs evidence and that of their witnesses which I considered unreliable I have come to the conclusion that the Plaintiffs have failed to prove acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the Plaintiffs are exclusive owners of the land in dispute. Consequently the Plaintiffs claim is dismissed with costs. I would like to state, however, that the effect of this judgment is not to overrule the decisions of the Native Courts relating to parts of the disputed area given in favour of persons from Achina but simply that the Plaintiffs' claim as a community to the land in dispute

40

is dismissed; nor will it deprive Achina persons living on the land in dispute of any rights acquired by long possession to remain there.

In the Supreme Court of Nigeria.

ARAKA: Re costs. Ask for 300 guineas. Plan filed by Defendants 60 guineas. Many witnesses.

No.23.

Judgment.

EMEJULU: Costs as to hearing were settled up to Federal Supreme Court. 11 hearing dates. Costs to Defendants measured at 140 guineas.

20th February, 1960

- continued.

(Sgd.) J. REYNOLDS,
Puisne Judge.

20th February, 1960.

10

No. 24.

In the Federal Supreme Court.

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT OF NIGERIA

NOTICE OF APPEAL (RULE 12)

No.24.

Notice and Grounds of Appeal.

Suit 0/61/54:
F.S.C.

BETWEEN:- ALFRED EZE-EKI and 6 OTHERS
For themselves and as
representing the people of
Achina Plaintiffs/Appellants

7th March 1960.

- and -

AZUIKE UME and 6 OTHERS
For themselves and as
representing the people
of Akpo Defendants/Respondents

20

TAKE NOTICE that the Plaintiffs being dissatisfied with the decision of the High Court contained in the judgment of the said Court dated the 20th February, 1960, do hereby appeal to the Federal Supreme Court of Nigeria upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

30

AND the Appellants further state that the names and addresses of the persons affected directly by the appeal are those set out in paragraph 5.

2. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF

The whole decision.

In the Federal
Supreme Court.

No.24.

Notice and
Grounds of
Appeal.

7th March 1960
- continued.

3. GROUND OF APPEAL:

(a) That the decision is altogether unwarranted, unreasonable and cannot be supported having regard to the weight of evidence.

(b) Misdirection:

That the learned trial Judge misdirected himself both as to the law and as to the fact in the following passage of his judgment:-

"The findings in these cases are far from being clear or conclusive of the rights of the communities over the areas affected by these decisions particularly as they were suits between individuals". 10

(c) The learned trial Judge was wrong in law in dismissing Plaintiffs' case a community and yet holding that persons from Achina in favour of whom Native Courts have awarded title to parts of the disputed area are not to be affected by the dismissal of the action. 20

(d) Additional grounds of appeal will be filed when the record of proceedings is received.

4. RELIEF SOUGHT FROM THE FEDERAL SUPREME COURT:

That the said judgment be set aside and judgment be entered for the Plaintiffs.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

	<u>Address</u>	
(1) Alfred Eze-Eki		
(2) Albert Obi	All of Achina - Via Awka	30
(3) Ezechie Ezenwokolo	c/o Mojakuw & Umezina	
(4) George Amechi	Barrister-at-Law,	
(5) Ezenweke Okpalu	18, New Market Road,	
(6) Okpala Omiegbu	Onitsha.	
(7) Patrick Okpalaugo		
(1) Azuikie Ume		
(2) Remy Nwosu	All of Akpo - via Awka	
(3) Raphael Dim	c/o E.O. Araka,	
(4) Hycinth Onwuzugbo	Barrister-at-law,	
(5) Uneomigwe Dim	96 Upper New Market Road,	40
(6) Anaechim Dim	Onitsha.	
(7) Daniel Okonwo		

DATED at Onitsha this 7th day of March, 1960.

(Sgd.) T.C. UMEZINWA,

MOJEKWU & UMEZINWA,

Solicitors for Plaintiffs/Appellants.

No. 25.

In the Federal
Supreme Court.

ADDITIONAL GROUNDS OF APPEAL.

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

No.25.

H.C. No. 0/61/54
F.S.C.No.370/1960

Additional
Grounds of
Appeal.

4th September,
1961.

BETWEEN:- ALFRED EZE EKI and
6 OTHERS Plaintiffs/Appellants

- and -

10 AZUIKE UME and
6 OTHERS Defendants/Respondents

ADDITIONAL GROUNDS OF APPEAL

1. The learned trial Judge mis-directed himself when he held that the findings in those cases relied upon by the Plaintiffs "Are far from being clear or conclusive of the rights of the communities over the areas affected by these decisions particularly as they were suits between individuals".
20 Suit No.132/48 was not a suit between individuals but between Achina as a community against five individuals. In Suits Nos.128/48, 131/48 and 128/52-53, the individual Achina man who sued or was sued based his claim on a grant by Achina Community.

2. The learned trial Judge was wrong when he held that the Ezekolo juju which is within the premises of Oye market is on the boundary between Akpo and Achina thereby overruling the decisions in Suits No.128/48, 131/48 and 132/48.

30 3. The learned trial Judge was wrong in ignoring the admissions made by the Defendants in respect of Ohiagu's land and in holding that it was outside the land claimed by the Defendants there being no clear evidence at all that the land is outside the area in dispute.

4. That the decision of the learned trial Judge is unreasonable and unwarranted and cannot be supported having regard to the evidence.

40 DATED at Onitsha this 4th day of September,
1961.

(Sgd.) ? ? ?
Mojekwu & Umezina,
Appellants Legal Representatives,
Whose address for service is
18, New Market Road,
Onitsha.

In the Federal
Supreme Court.

No.26.

Court Notes on
Motion.

25th September,
1961.

No. 26.

COURT NOTES ON MOTION

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

ON MONDAY the 25th day of SEPTEMBER, 1961

BEFORE THEIR LORDSHIPS:

SIR ADETOKUNBO ADEMOLA, KT., Chief Justice of the
Federation.

EDGAR IGNATIUS GODFREY

UNSWORTH, C.M.G., Federal Justice. 10

JOHN IDOWU CONRAD TAYLOR Federal Justice.

ALFRED EZE EKI & OTHERS

- and -

AZUIKE UME & OTHERS.

Chief Okorodudu (Umezina and Eze Uko) with him
Appellants.

Araka for Respondents.

Motion to argue additional grounds of appeal
filed. Not opposing.

Court: Leave granted to argue additional grounds 20
of appeal filed.

Adjourned till 29/9/61

(Sgd.) A. ADE ADEMOLA
Chief Justice of the Federation.

No.27.

Counsels
Arguments on
Appeal.

29th September,
1961.

No. 27.

COUNSELS ARGUMENTS ON APPEAL

On Friday the 29th day of September 1961

Alfred Ezechi and 6 Others etc.

Plaintiffs/Appellants

- and -

Azuike Ume and 6 Others etc.

Defendants/Respondents 30

Chief Okorodudu (Umezina and Ezeuko with him) for
Appellants.

Araka (Ndiwe with him) for Respondents.

Appeal from decision of Reynolds J. dated
20/2/60.

Okorodudu reminds the Court that on 25/9/61 he obtained leave to argue additional grounds of appeal.

Now wish to abandon grounds 3 and 4 of the additional grounds which overlap with some of the original grounds.

Okorodudu argues

10 Natural boundaries: It would appear both sides relied on Native Court cases - pleaded at pages 11 and 12 from line 27 at page 11 on to page 12 from line 3 ... Exhibits C, D refer. For the Defendants at pages 14 and 15 from paragraphs 7 of the Defence to paragraph 17. Exhibits, K, F, N, E, G refer. The dispute really is as to boundary between parties.

20 Important features are Ubeokpoko tree. C.M.S. School, Salvation Army School and Oye Market - all in plans Exhibits A. & O. Refers to Exhibit C: judgment in Case No. 128/48. It is clear that before this dispute both sides have adopted Ubeokpoko tree as boundary in the west. More houses in the Western boundary of the plans belong to the Plaintiffs' people. See houses marked in violet in the plan Exhibit O. Plan states that houses marked in violet are Defendants' houses and marked black are Plaintiffs.

30 Land litigated upon in Exhibit C is marked in blue circle in the plan Exhibit A. The brown circle in the plan is land litigated upon in Exhibit D. Land litigated upon in Exhibit N is Mkpokpo land near Salvation Army School shown in Exhibit O. - Refers Evidence of Raphael Dim, 10th defence witness at page 63 lines 5 and 6.

Church: Why called Achina - Akpo church. Each side gave its own explanation. Learned trial Judge preferred the Defendants explanation.

40 Misdirection: At page 81 lines 11 - 21. It is misdirection to say that the findings in the Native Court cases (Exhibits C and D) are not clear. It is submitted they are clear. It is also misdirection as to capacities. Clearly wrong as regards D.

To know in what capacity an action was fought in the Native Court, the evidence must be looked at, to know what are the issues.

See cases Abakah Ntahn v. Auguah Benniah 2 W.A.C.A. 1 at page 2 Dinsey Noi Owno and another

In the Federal Supreme Court.

No.27.

Counsels Arguments on Appeal.

29th September, 1961

- continued.

In the Federal
Supreme Court.

No.27.

Counsels
Arguments on
Appeal.
29th September,
1961
- continued.

v. Ossei and another 5 W.A.C.A. 177 at 178 - 179 -
last two paragraphs at page 178 to page 179.

Chukuntah v. Chuku 14 W.A.C.A. 341 Exhibit D
is clearly an action brought in a Representative
capacity.

Agreed appeals are pending in Exhibits C and
D. Submit that does not destroy issue of "Res
Judicata".

See Larinde etc. v. Afiko and Another 6
W.A.C.A.108. Chukuntah v. Chuku (above) 14
W.A.C.A.341 at page 342. Sekondi v. Ojoko 14
W.A.C.A.504. In the present case appeal was pend-
ing since 1949 See Exhibit D. No decision given
until 1954 when the present action was brought by
the present Defendants in the Native Court. Case
transferred to High Court Defendants did nothing
about the appeal.

10

Also see Marchuness of Huntly v. Gaskell
1905, 2 Ch. 656 at page 666 and 667 which is ex-
actly in all fours. Appeal pending does not in
any way mean judgment given in the case does not
create an estoppel.

20

Estoppel: Trespass: how far it affects
subsequent action on declaration of ownership.

Duedu v. Yiboe (1961) 1 W.L.R.1040. Misdirec-
tion must result in a miscarriage of Justice. It
must be shown it did not influence the result.

Anthony v. Halstead, 37 L.T.R. 433 followed
in White v. Barnes, 1914 WN.74.

Araka for Respondent:

30

Natural boundaries Refers to the Record at page
77 line 4.

Exhibit C: Parties in the case: personal action.
Both sides were Akpo men. It was a dispute between
Akpo people. Exhibit C is definite that Simon
Obiora in his Evidence admitted he is an Akpo man.

Diagrams drawn are not accurate. All disputes
on the Eastern boundary near Oye market: every-
thing is centred around Oye market. No dispute
about the Western boundary. All evidence points
only to the Eastern boundary. The Defendants
granted land to the C.M.S. and Salvation Army:
abundant Evidence.

40

Page 80 from line 8: Ezeokolo juju referred

to by the Judge as commonly worshipped by the two sides to the dispute. Acts of ownership to farm of the Defendants.

In the Federal Supreme Court.

Note page 25 line 5: the witness was the only one who claimed certain boundaries. The learned Judge disbelieved him. Also page 79 line 23, another witness disbelieved by the Court.

No.27.

Counsels Arguments on Appeal.

10 Isolated acts of user not ownership of the whole. See Ededem Archibong v. Ntoe Asuin Ita 14 W.A.C.A. 520.

29th September, 1961

- continued.

Proper order it is submitted should be a dismissal not a non-suit. No misdirection: correct statement of fact.

Chief Okorodudu replies:

Exhibits K and N: parties not the same as in the present case. Archibong v. Ita (supra) does not avail Respondent: it is contra.

20 Sections 54(1) and (2) of Evidence Ordinance as evidence it is conclusive as Estoppel. Refers to page 80 of the Record line 8. The Ezekolo ju-ju being worshipped in common nowadays, but see Exhibit D.10 years earlier. In 1948, it was found against them.

See Okai v. Nii Ayikai 11 - 12 W.A.C.A. 31 showing that a person by his acts cannot prove something in his favour. Evidence of lease to C.M.S. and Salvation Army are therefore in-effective.

Judgment reserved.

30

(Sgd.) A. ADE ADEMOLA.
Chief Justice of the Federation.

No. 28.

No.28.

JUDGMENT.

Judgment.

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

9th November, 1961.

Thursday the 9th day of November, 1961.

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA

Chief Justice of the Federation

40 EDGAR IGNATIUS GODFREY

UNSWORTH

Federal Justice

JOHN IDOWU CONRAD TAYLOR

Federal Justice

In the Federal
Supreme Court.

F.S.C. 370/1960.

No.28.

Judgment.

9th November,
1961

- continued.

BETWEEN:- ALFRED EZECHI
and 6 OTHERS Plaintiffs/Appellants

- and -

EZUBIKE UME
and 6 OTHERS Defendants/Respondents

J U D G M E N T

TAYLOR, F.J.: This is an appeal from the Judgment of Reynolds, J., of the High Court of the Eastern Region dismissing the Plaintiffs/Appellants claims for:- 10

- (a) A declaration of title to land known and called Achina and edged pink on the Plaintiffs' plan.
- (b) £20 damages for trespass alleged to have been committed by the Defendants.
- (c) An injunction to restrain the Defendants, their servants or agents from further acts of trespass.

At the hearing of this appeal, Chief Okorodudu argued, on the Appellants' behalf, only the 1st and 2nd of the four additional grounds of appeal and abandoned grounds three and four. Of the original grounds of appeal filed with the Notice of Appeal, grounds (b) and (c) are in fact covered by additional ground I, and ground (a) deals with the weight of evidence. Okorodudu's able argument can, I think, without doing him injustice be summed up as follows:- 20

- (i) That on the evidence before the trial Judge, of the boundaries of the land in dispute, the Appellants' evidence which followed a natural boundary was the more likely one and should have been accepted, and more so when certain features, like the Ube Okpoko tree on the western boundary, and the Juju on the eastern boundary were well established and accepted landmarks on both plans filed in Court. 30
- (ii) The fact that the C.M.S. was first called C.M.S. Achina before it became, by consent C.M.S. Achina-Akpo, he contended, supported the claims of the Appellants to title of the land in dispute in addition to other 40

evidence, on record, of acts of ownership exercised by the Achina people over certain portions of the land in dispute.

- (iii) Thirdly, and around this Chief Okorodudu built up his appeal; that, the following passage in the judgment of the trial Judge was a grave misdirection which dominated his findings:-

10 "The findings in these cases are far from being clear or conclusive of the rights of the communities over the areas affected by those decisions particularly as they were suits between individuals. Having regard to this and to the unsatisfactory nature of the Plaintiffs evidence and that of their witnesses which I considered unreliable I have come to the conclusion that the Plaintiffs have failed to prove acts of ownership extending over a
20 sufficient length of time numerous and positive enough to warrant the inference that the Plaintiffs are exclusive owners of the land in dispute".

Counsel for the Appellants sought to establish that the trial Judge misdirected himself in two respects:-

- (a) In saying that the findings are far from clear of the rights of the communities, and
30 (b) In saying that the previous Native Court proceedings were suits between individuals and not in a representative capacity between the parties to this appeal.

Before dealing with these grounds of appeal, I shall set out as shortly as possible the facts with a comment on the plans tendered by the parties. I shall not in this statement of the facts deal with the innumerable Native Court proceedings tendered in evidence as most of them serve no useful purpose. When I come to deal with the third
40 ground as summarised by me, I shall set out those proceedings that are relevant to this appeal.

The Appellants are representatives of Achina, and by virtue of paragraph 1 of the Statement of Claim, claim to bring the suit under consideration in a representative capacity. They also, by paragraph 2 of the Statement of Claim, purport to sue the Defendants as representatives of the

In the Federal Supreme Court.

No.28.

Judgment.

9th November, 1961

- continued.

In the Federal
Supreme Court.

No.28.

Judgment.

9th November,
1961

- continued.

people of Akpo. Both these matters are admitted in the Statement of Defence. As the claim originated in the Native Court, and there are decided cases to the point, no leave is required by the Appellants to bring the action in such capacity. The Respondents have not, however, sought or obtained the leave of the Court to defend in a representative capacity, but as nothing turned on this at the hearing of the appeal, I will say no more about it.

10

The area to which the Appellants laid claim running from north to south is shown in pink in Exhibit "A" as being bounded on its western side by the Awema lake, Ogbonmile stream, Ugolo tree, Ubeokpoko tree and Ukwa, ube and owulu trees. That, the Appellants say, is the boundary with the Akpo people, and, further, that all land to the east of that is land of Achina. The Respondents' plan is Exhibit "O", and the natural boundaries shown on the Appellants' plan, i.e. the stream and lake or pond and marsh are all depicted therein, and also the Ubeokpoko tree. The Respondents, however, put their boundary to the east of these features along what is shown on their plan as being marked out by trees, a water track, an (Ekpe) ancient boundary stretching for a considerable way up to Oye market, and then a trench, footpath and some trees. This is also in the north to south direction. The evidence adduced at the hearing and on record points to the exercise of acts of ownership over portions of the land in dispute by both parties. The issue must therefore, in the main, be whether such acts are sufficient on the Appellants' part, to entitle them to the declaration sought. One must concede to learned Counsel for the Appellants that in early times it was quite common for the boundaries of land to follow natural features. On the other hand, the Respondents have shown on their plan an ancient wall as having been built along a greater part of their alleged eastern boundary of the land in dispute. This wall, if it exists can equally be explained away by the fact that it was used as a boundary mark. Its existence was deposed to by the 7th defence witness, and indeed it was mentioned in the Judgment of the Native Court in 128/48 on which the present Appellants rely. It is therefore significant that such an ancient wall should find no place on the plan filed by the Appellants. The learned trial Judge who saw and heard the witnesses was of the view

20

30

40

50

that the Plaintiffs and their witnesses were unreliable. In my view the matter of the existence of a natural boundary cannot by itself be sufficient justification for upsetting the findings of fact of the trial Judge. I now propose to consider whether the appeal is taken any further by a consideration of the second matter contained in the summary of Counsel's arguments. In this respect it was urged that:-

- 10 (a) The area shown in green on Exhibit "A" to the north of the plan as Ohiagu's house was sold to him by Achina people.
- (b) That the area edged blue was awarded to the present Appellants in Suit 131/48.
- (c) That the area edged brown was awarded to the Appellants in 132/48 and further that in that suit the ownership of Ezeokolo juju was exhaustively dealt with.
- 20 (d) Finally, that Oye Market falls within Achina land.

On the first point, the area edged green, though it appears on the land shown in Exhibit "A" as being in dispute does not appear in the Respondents' plan and would appear to be outside it. This therefore does not carry the Appellants' case much further. As to the second, third and fourth matters, it must be conceded that Suits 131/48 dealing with Nkpukpo land, and 132/48 dealing with Oye land were determined in the Appellants' favour and that these areas of land are contained within the area edged pink on both plans. In fairness to the Respondents, it must be said that appeals, though now some 12 years old are still pending in the Native Court in respect to same. Appeals having been lodged and even part heard were on the 30th March, 1949 adjourned sine die. Counsel for the Appellants contended that the area edged blue in Exhibit "A" is shown as being near to the Western boundary of the land in dispute and that this factor further supported his clients' evidence as to the boundary with Akpo being the western boundary of the area edged pink. There is, however, no plan before us of the areas in dispute in any of these Native Court proceedings, but even if one were to accept the position of the blue area as depicted on the Appellants' plan as well as the brown and yellow areas, it is still a very long way from saying that title to these comparatively

30

40

In the Federal Supreme Court.

No.28.

Judgment.

9th November,
1961

- continued.

In the Federal Supreme Court.

No.28.

Judgment.

9th November, 1961

- continued.

small areas is sufficient to warrant the inference of title over the large area involved in Exhibit "A". The learned trial Judge, on the evidence before him, found that the Respondents were the owners of the land occupied by the C.M.S. and the Salvation Army Mission. These areas are, on both plans filed in Court, shown to be further west than the area ringed blue, the subject matter of Suit 131/48. Chief Okorodu has not sought specifically to attack the findings of the trial Judge as to the ownership of these areas.

10

I now come to the finding of the trial Judge in respect of the Ezeokolo Juju. He says on this point that :-

"On my visit to the locus in quo however, it was clear that there were two walled areas one on the east and the other on the west side of the Ezeokolo juju, the eastern one of which was used by worshippers of Achina and the other used by Akpo.

20

.....

I have therefore come to the conclusion and find as a fact that the Ezeokolo juju is in the boundary between Achina and Akpo land and is worshipped by both communities".

This juju is shown on both plans as being on the eastern boundary of the land in dispute near Oye market and whereas the Respondents' plan depicts the walled areas referred to by the trial Judge, the Appellants' plan, made some four months before then, does not. The ground of appeal filed by learned Counsel on this point reads thus:-

30

"The learned trial Judge was wrong when he held that the Ezeokolo juju which is within the premises of Oye market is on the boundary between Akpo and Achina thereby overruling the decisions in Suits 128/48, 131/48 and 132/48".

Counsel contended that the area referred to by the trial Judge could have been walled at any time between 1948 when those suits were heard in the Native Courts and 1959-1960 when the trial Judge visited the locus. One must concede that these plans, which were made in 1955, were made some two years after these proceedings, the subject matter of this appeal, began in the Native Court and were therefore made with a view to litigation.

40

At this stage it will be convenient to deal also with the third ground in my summary of Counsel's points, as it is linked up with the second. In doing this I shall examine the four relevant suits to wit:- 128/48, 131/48, 132/48 and 128/52-53. Exhibit "C" i.e. the proceedings in suit 128/48 was an action between Simon Obiora of Achina, as Plaintiff, and Jacob Onyebuche and another, described as "all Akpo", as Defendants. The claim was for £7 for the damage done by entering the Plaintiff's Otosi bamboo and palm nuts farm. This suit seems to have been taken together with 131/48, between the same parties, but this time Simon Obiora is Defendant and Jacob Onyebuche is Plaintiff and the claim is for title to Ofia Owelle and Nkpukpo land, and an injunction. After reading through these proceedings, and bearing in mind that I must not pay too deep a regard to the heading or the form of the suit but must look at the proceedings as a whole in order to see what the real issues were, it is clear to me that they were personal as opposed to representative actions. Indeed, in the first suit the Native Court Judges sought to mark out the boundary between the Plaintiff and Defendant and it is in the course of doing this that mention is made of the Ekpe wall of which the present Appellants' Counsel says his clients knew nothing. There was in my view no misdirection by the learned trial Judge here.

In Suit No.132/48 one Okpaltawara and two others for Achina people sued Jacob Onyebuche and four others described as "all Umuaehallo Akpo" for £10 as damages for trespass to land at Oye Market by planting yams therein. In this, undoubtedly, the Plaintiffs sued as representing Achina, but the Defendants, from Akpo, were sued personally as the persons who planted the yams, though in various passages in the proceedings and the judgment it would appear to have been a dispute between Achina and Akpo over the ownership of Oye market. It would seem that in respect of this suit the trial Judge misdirected himself. In the last one, suit 128/52-53, Simon Obiora of Achina sued Enoch Nwosu of Akpo for £3 as damages for the trespass committed by the Defendant in carrying away some breadfruit from the Plaintiff's farm. This was clearly a personal action. Chief Okorodudu in his argument before us contended that even where the Defendants were sued personally they contested the case on the basis that their right to the land disputed

In the Federal
Supreme Court.

—————
No.28.

Judgment.

9th November,
1961

- continued.

In the Federal
Supreme Court.

No.28.

Judgment.

9th November,
1961

- continued.

was derived from the Akpo community, and similarly, Achina people put the title of their community in issue. As long as the people of Akpo did not sue or defend as representing their community they are in no way estopped by the judgments of the Native Courts in the above proceedings, but the Appellants may rely on those proceedings where it is shown clearly that the land therein disputed is within the area now in dispute, as acts of ownership exercised over such areas. Suit No.131/48 relating to Nkpukpo shown on both plans, and Suit No.132/48 relating to Oye market also shown on both plans, are in my view material on this point. The latter suit, as I have said before, also dealt with Eze-okolo juju. The learned trial Judge does not appear anywhere in his judgment to have taken any particular notice of these matters in the Appellants' favour. The question now is whether such misdirection or non-direction has resulted in a miscarriage of justice, and, as stated by Lindley, L.J. in Anthony v. Halstead 37 L.T.N.S.433 at page 434, "the onus is on the Respondents to show that there was no miscarriage of justice".

10

20

Mr. Araka has argued, for the Respondents on this point, that the trial Judge has made two specific findings in relation to the areas marked C.M.S. and Salvation Army Mission which were based on the facts before him and that in view of this the Appellants could not in any case have succeeded in the lower Court to title to the whole action, as the onus lay on them to prove their case. With this argument I must agree, but what I have to consider in the circumstances of this appeal is the outcome of or result of the dismissal of the Appellants' case by the trial Judge. It has been said that such a dismissal does not give title to the Defendants, but it certainly has the effect of forever barring the Plaintiffs from disputing the case with the Defendants, and where, as in this appeal, the Appellants have Native Court judgments in their favour which were not given full consideration by the trial Judge, to shut the door against them for ever, in my view, involves a miscarriage of justice. The proper order in these circumstances, I feel, should have been a non-suit.

30

40

In passing I would like to remark that from the evidence before the Court and from a perusal of the plans tendered, both parties to this action have been using portions of the land in dispute as they wished. It would appear from the judgment

50

of the Native Court in Suit No.132/48 that both parties are descended from a common ancestor, which factor may explain this common user of the land in dispute or portions thereof. It may very well be that the land is communal to both Achina and Akpo, having on it schools and missions, a market and juju, which on the evidence are used in common by both sides.

In the Federal Supreme Court.

No.28.

Judgment.

9th November, 1961

- continued.

10 In view of what I have said above, I would set aside the judgment of the trial Judge and in its place substitute an order of non-suit. I would not disturb the order of costs awarded in the Court below but would order each party to bear its costs in this Court in view of the fact that the Appellants are not fully entitled to the relief which they claim.

(Sgd.) JOHN TAYLOR.
Federal Justice.

20 I concur (Sgd.) A. ADE. ADEMOLA
Chief Justice of the
Federation.

I concur (Sgd.) E. UNSWORTH
Federal Justice.

Chief M.E.R. Okorodudu (Messrs. T.C. Umezina and G.E. Ezenko with him) ... for the Appellants
Mr. E.O. Araka (Mr. F.O. Ndiwe with him) ... for the Respondents

No. 29.

No.29.

30 ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

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

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS.

4th June 1962.

Suit No. 0/61/1954
F.S.C. 370/1960.

Application for an Order for final leave to appeal to the Privy Council.

'BETWEEN:- AZUIKE UME and 5 OTHERS Appellants

(Sgd.) - and -

40 A.Ade.Ademola
Chief Justice
of the
Federation.

ALFRED EZECHI and
6 OTHERS

Respondents

In the Federal
Supreme Court.

Monday the 4th day of June, 1962

No.29.

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

4th June 1962
- continued.

UPON READING the Application herein and the Affidavit sworn to on the 5th day of May, 1962, and filed on behalf of the Appellants and after hearing Miss Anyalogu of Counsel for the Appellants and Mr. Umezinwa of Counsel for the Respondents:

IT IS ORDERED that Final Leave be granted to the Appellants to appeal to Her Majesty's Privy Council.

(Sgd.) J.A. ADEFARASIN
Chief Registrar.

10

E X H I B I T S

Exhibits

"B" - PROCEEDINGS IN THE DISTRICT OFFICER'S COURT OF APPEAL

"B".

Proceedings in the District Officer's Court of Appeal.

IN THE DISTRICT OFFICER'S COURT OF APPEAL
HOLDEN AT MBEMISI NATIVE COURT BEFORE:
C.S. GRISMAN, Esq., DISTRICT OFFICER
THIS 5th day of DECEMBER, 1954.

December, 1954.

Exhibit "B" put in by the Plaintiffs in O/61/54.

10

(Sgd.) O.K. AJEGBU,
Clerk of Court
28/12/59.

No. 76/1954.

Mbemisi Native Court Suit No. 223/53-54.

PARTIES: 1. Alfred Eze-Eki 2. Albert Obi
3. Ezeolie Ezonwokolo 4. George Amechi
5. Ezenweke Okpala 6. Okpala Asigbu
7. Patrick Okpalugo all of Achina.

versus

20

1. Azuike Ume 2. Remy Nwosu 3. Raphael Dim.
4. Hycinth Onwugigbo 5. Umeononigwe Dim.
6. Anaedum Dim. 7. Daniel Okonkwe all of Akpo.

CLAIM: (1) Declaration of title to land called Achina land, starting from Amaesi to Ube Okpoko tree, up to Ofo tree, Ugolo tree, and on the back of the Salvation Army to Nwangwo stream, and thence to Ogbomili.
(2) To pay to Plaintiffs £20 damages done on the land. Dispute arose a year ago.

30

MBEMISI NATIVE COURT JUDGMENT: To Plaintiff for the land claimed, according to the pillars fixed as boundaries. The Defendants should pay to Plaintiffs £5 survey fee, £2 inspection fee and £1.5/- cost of action, 2 weeks allowed for payment.

Both Parties present:

Defendants' Appeal:

GROUNDS: (submitted in writing by the Appellants' Solicitor):-

40

1. Error in Law: (a) the Court members agree in their judgment that the parties had no fixed boundary before and at the same time defined where the

Exhibits

"B".

Proceedings in
the District
Officer's
Court of Appeal.

December, 1954
- continued.

boundary should be; (b) the Court members based their definition of the boundary on the evidence of one, Atia Agu, who was casually met by them on land inspection.

2. JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE:

(a) In Mbemisi Native Court Suit No.116/53-54 the same bench as now said Akpo and Achina owned the Oye Akpo market in common, whereas now they give judgment for the Achina alone. (Mbemisi Native Court Suit No. 116/53-54). 10

(b) Mbemisi Native Court Suit No.190/49-50 was taken against two Akpo men concerning land which, if the Court is now right, was the property of Achina people.

(c) Mbemisi Native Court Suits 172 and 197/52-53 concern only the Oye market and the Achina never litigated over land above the Oye Market.

(d) Mbalaolic Native Court Suit 106/38 was brought against the Akpo and Achina jointly, i.e. the Achina were not then considered exclusive owners of the land now in dispute. 20

3. RES JUDICATA: A claim by the Achina against the Akpo (Mbemisi Native Court Suit 197/52-53) for declaration of title to land called Achina land was dismissed by the Native Court on 8th July, 1953. The present parties and claim are the same.

I study the record in this case and in Mbemisi Native Court Case No.116/53-54, which is connected. I study the plans of the land now in dispute submitted by the Appellants (marked "A") and by the Respondents (marked "B"). After inspection of the land in dispute on 5th December, 1954, I adjourn sine die for further study of the records. 30

(Sgd.) C.S. Grisman,
District Officer,
Awka Division.

Resumed 8th December, 1954:

By virtue of the powers vested in me under Section 28(1)(b) of the Native Courts Ordinance, Cap. 142, I order that the case be retried at the Supreme Court set aside the judgment of the Mbemisi Native Court, Onitsha for reasons which I have set 40

out in a separate Transfer Order.

(Sgd.) C.S. GRISMAN,
District Officer,
Awka Division.

Certified true copy

(Sgd.) ? ? ?

Snr. District Interpreter
Awka
17/12/54.

Exhibits

"B".

Proceedings in
the District
Officer's
Court of Appeal.

December, 1954
- continued.

10 9/4d. Copy fee paid on Awka C.R. No.442206 of
17/12/54.

Certified true copy

Registrar.

"E1" - JUDGMENT OF THE DISTRICT OFFICER'S COURT
OF APPEAL AND COURT NOTES

"E1"

Judgment of the
District
Officer's Court
of Appeal and
Court Notes.

15th July, 1954.

20 IN THE DISTRICT OFFICER'S COURT OF APPEAL
HOLDEN AT MBEMISI N.C. BEFORE: C.S.GRISMAN,
Esq., DISTRICT OFFICER, THIS 15th day of
JULY, 1954.

No.52/54.

Exhibit "E1" put in by Plaintiffs in O/61/54.

(Sgd.) O.K. AJAEGBU
C. of C.
28/12/59.

MBEMISI N.C. SUIT NO. 197/52-53.

PARTIES: 1. Ezeanaso Okpala 2. George Aniche
3. Albert Obi for themselves and Achina
people

Vs.

ANDREW NWAOSU OF AKPO.

30 CLAIM: Declaration of title to land called Achina
land. To pay £20 for the damages done thereon,
Dispute arose 3 months ago.

MBEMISI N.O. JUDGMENT: Case dismissed 8/7/53.

Both parties present. Plaintiffs apply for leave
to appeal out of time. Judgment was given on

Exhibits

"E1"

Judgment of
the District
Officer's Court
of Appeal and
Court Notes.

15th July, 1954
- continued.

8/7/53. Appeal fees were paid on 1/4/54. Plaintiffs give the following explanation of the delay. We were not notified that judgment had been given in this case until we learned by accident in attending Court for another case. We were never called to give evidence in this case but merely invited to have it settled out of Court.

I grant leave to appeal out of time.

GROUND OF APPEAL:

(1) The Court was wrong to award our communal land to Defendants without hearing us. 10

(2) One Court member who sat on this case, namely Josiah Okpala, is related to Defendants.

I study the record. The sequence of events is as follows:-

21/5/53. Summons issued by verbal warning to both parties.

22/5/53 Plaintiffs absent.

23/5/53 Plaintiffs absent, case adjourned to 30/6/53. 20

30/6/53 Plaintiffs absent. Adjourned till 1/7/53.

1/7/53 Elders of Akpo and Achina asked to settle case out of Court.

8/7/53 Case struck out and claim dismissed.

The Court was entitled to strike out the case but erred in dismissing the claim without hearing any evidence. I therefore allow the appeal. I quash the judgment of the lower Court, and non-suit Plaintiffs. I order that his appeal-fee be refunded to him. 30

(Sgd.) C.S. GRISMAN,
District Officer,
Awka Division.

Certified true copy

(Sgd.) ? ? ?

Senior Interpreter (District) Awka,
17/12/54.

9/4d copy fee paid on Awka Court R. No.442206 of
17/12/54.

"F1" - ORDER OF TRANSFER

Exhibit "F1" put in by the Plaintiffs and admitted in evidence in O/61/54.

(Sgd.) O.K. AJEGBU
Clerk of Court
28/12/59.

Exhibits"F1"

Order of
Transfer.

16th December,
1954.

PROTECTORATE COURT OF NIGERIA
IN THE MBEMISI NATIVE COURT - AWKA DIVISION
ORDER MADE UNDER SECTION 28(1)(b)

10 THE NATIVE COURTS ORDINANCE, CAP. 142

I, CHARLES STANLEY GRISMAN, District Officer, Awka Division, by virtue of the powers vested in me under Section 28(1)(b) of the Native Courts Ordinance, Cap.142, set aside the judgment of the Mbemisi Court in Suit No.116/53-54, and hereby order that the said Suit be transferred as following from the Mbemisi Native Court of the Awka Division to the Supreme Court, Onitsha.

MBEMISI NATIVE COURT CIVIL SUIT NO. 116/53-54.

20 PARTIES: 1. Andrew Nwosu 2. Raphael Dim
3. Dim Ononiru 4. Nwachuku Ifedigbe
on behalf of Akpo people

versus

1. John Ezenwania 2. Albert Ojiaka
3. Columba Ezeunala 4. Onyegwuasi
Eze of Achina.

30 CLAIM: As Oye Akpo and Achina market is communal for Akpo and Achina, that you should appear before the Court to demarcate the boundary for us in the market; dispute arose 7 years ago.

Copies of proceedings in Mbemisi Native Court Suit No.116/53-54 and District Officer's Appeal No. 62/54 are attached.

REASONS: (1) Local feeling about this dispute runs high and it is difficult for the Native Court Members to be strictly impartial.

40 (2) A connected case - Mbemisi Native Court Suit No.223/53-54 has been transferred to the Supreme Court, Onitsha. It is advisable to determine the two cases in the same Court.

Exhibits

"F1"

Order of
Transfer.

16th December,
1954

- continued.

I certify that the Order of Transfer of the above mentioned Suit from the Mbemisi Native Court to the Supreme Court was made by me on my own motion after hearing representations from Mr. E.O. Araka, Solicitor for the Plaintiffs.

DATED at Mbemisi this 16th day of December, 1954.

(Sgd.) C.S. GRISMAN,
District Officer,
Awka Division.

10

Certified true copy

Registrar.

"M"

Agreement as
to Boundary.

19th July 1950.

"M" - AGREEMENT AS TO BOUNDARY

Exhibit "M" put in by the Defendants in 0/61/54.

(Sgd.) O.K. AJEGBU
Clerk of Court.
13/1/60.

Triplicate with St. Peter's C.M.S. Achina-Akpo
Original with the C.M.S. Headquarters Agulu.

20

19th July, 1950.

Settlement of boundary between C.M.S. Mission
Achina-Akpo and Enoch Nwosu of Akpo.

The elders of Akpo Town met today consequent upon the meeting of 13th July, 1950, and fixed the boundary as follows:-

From Akpaka tree on the main road along the lane leading to Enoch's house with cement pillars to the (Olo) mahogany tree stump to the cement pillar behind the teacher's quarters. The line cuts straight with cement pillars to the one behind the Teacher's latrine house to the end of Enoch's land between him and Umuachala people.

30

Levi Eboko	For and on behalf of himself	His mark
Silas Dike	" " " "	"
Enoch Nwosu	" " " "	"
Akpo Elders	Okpala Okechuku his mark	
	Dim Uheji " "	
	Okpala Orisakwe Ume his mark	

40

Tobias Okpala his Mark
Josiah Nwonma for and on behalf of the Church
U. U. Okonkwo Catechist i/c Ekwulobia
C. Oduocho Catechist i/c Uga
S.M. Emenike Catechist i/c Achina Akpo
Writer and witness to marks

(Sgd.) ? ? ?

District Superintendent, C.M.S.

Agulu
19/7/50.

Exhibits

"M".

Agreement as
to Boundary.

19th July 1950

- continued.

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

B E T W E E N:

(1) AZUIKE UME
(2) REMY NWOSU
(3) RAPHAEL DIM
(4) HYCINTH ONWUGIGBO
(5) UMEANONIGWE DIM
(6) ANAEDUM DIM
(7) DANIEL OKONKWO
For themselves and as
representing the people
of Akpo Defendants/Appellants

- and -

(1) ALFRED EZECHI
(2) ALBERT OBI
(3) EZEOLIO EZENWOKOLO
(4) GEORGE AMICHI
(5) EZENWEKE OKPALA
(6) OKPALA OBIEGBU
(7) PATRICK OKPALAUGO
For themselves and as
representing the people
of Achina Plaintiffs/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.

Solicitors for the Appellants.

REX WORTHY BONSER & SIMONS,
83, COWCROSS STREET,
LONDON, E.C.4.

Solicitors for the Respondents