

Nana Kwaku Amoah, since deceased (now represented by Yaw  
Ewuah), and another - - - - - *Appellants*

*v.*

Nana Sir Ofori Atta - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER, 1932.

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*Present at the Hearing :*

LORD TOMLIN.

LORD THANKERTON.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD TOMLIN.]

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This is an appeal from a judgment of the West African Court of Appeal, which dismissed an appeal from the Chief Justice of the Gold Coast Colony, who had refused an application to set aside an award in favour of the respondents made by Mr. Justice Hall of the Supreme Court of the Gold Coast, sitting as an arbitrator.

The facts which give rise to this appeal are of this nature : There is a province, or kingdom, in the Gold Coast Colony called Abuakwa. The ruler of that province who holds the title of Omanhene, and who occupies the throne or stool of that province, has under him some fourteen subordinate chiefs, the province being divided into fourteen divisions. Each of those chiefs is the Ohene of his particular division. Some of the divisions have, or, at any rate, one of them has, further sub-divisions, each of which is ruled in its turn by a still more subordinate chief, known as the Odikro.

One of the fourteen divisions of Abuakwa is Asamangkese, and Asamangkese has a sub-division known as Akwatia, and it

is the Ohene of Asamangkese, and the Odikro of Akwatia who are the appellants before their Lordships, the respondent being the chief of the whole Province of Abuakwa, the Omanhene of Abuakwa.

The nature of the dispute between the parties which led to the arbitration is that the Omanhene, the respondent, claimed what may be called, for this purpose, by the neutral term of tribute from the appellants, and that that claim was disputed. The particular matter which made the question critical was that in recent years, after the discovery of gold and other minerals, and diamonds, in the territory, the appellants, from time to time, alienated part of the lands of their stools, to concessionnaires who desired to seek for minerals in the territory, and the respondent, as chief of the whole province, claimed a share in the proceeds of such alienation. Eventually a submission was framed upon which the award was made. The parties failed to present to the arbitrator specified issues for him to deal with; each of them put in a number of claims, and the arbitrator dealt with the matter on the basis of those claims. Such claims are all to be found in the Record at pages 6, 7 and 8. The parties also agreed as part of the submission, certain terms as to the procedure by which the arbitrator was to be governed, and those terms included a provision in these words: "The arbitrator may, moreover, seek, obtain and act upon any information whatsoever in respect of the matters in difference between the parties thereto in relation to the said matters in dispute as he in his respective and unfettered judgment should think most advisable, and should deem best applicable to the nature and circumstances of the case, any rule of law relating to the tendering giving reception or rejection of evidence to the contrary notwithstanding. Provided always that if the arbitrator should at any time in his respective discretion so determine, the evidence to be given before him should be given upon oath or affirmation."

In fact, the evidence before the arbitrator consisted partly of documentary evidence, and partly of oral evidence, and the arbitrator in his award has stated that he regarded the documentary evidence as of more weight than the oral evidence for the purpose of determining the questions which were raised before him.

His award is a document of considerable length, and, in the course of it, he discusses all the material which was placed before him, and sums up his conclusions, which are to be found at page 85 of the Record. There are, in all, fourteen conclusions. The first three deal with the relations between the Stool of Abuakwa and the sub-stools of Asamangkese and Akwatia, and nothing turns on them. They are constitutional points on which no argument is raised before their Lordships. Conclusion 4 deals with the meaning of a phrase describing in part the relations between the rulers, and the arbitrator says that he has not enough

material to enable him to come to a decision on its meaning. Then he holds in Conclusion 5: "That the assent of the paramount stool was not according to custom necessary for the valid alienation of lands held by stools of Asamangkese and Akwatia." In Conclusion 6, which deals with an important matter, he holds: "That the Paramount Stool was by the custom of Akyem Abuakwa entitled to receive one equal third part share of all rents and profits of lands alienated by the Stools of Asamangkese and Akwatia or either of them." That has to be read with Conclusion 14, where the arbitrator finds: "That the lands attached to the Stools of Ohene of Asamangkese and the Odikro of Akwatia have since the grant of the predecessor of the present Omanhene of Akyem Abuakwa never been so attached to the Stool of the Omanhene of Akyem Abuakwa as to give the Stool of the Omanhene of Akyem Abuakwa the rights of owner but have been so attached as to entitle the Stool of the Omanhene of Akyem Abuakwa to one-third share of 'what ever comes out of the said land'."

Reading that Conclusion, and Conclusion 6 together, their Lordships take the view that the arbitrator has found that the Omanhene of Abuakwa is not, in the strict sense, the owner of the lands which are attached to the Stool of the Ohene of Asamangkese, or to that of the Odikro of Akwatia, but that he is entitled to a third share of whatever comes out of the lands attached to those stools, and that the phrase: "whatever comes out of the lands attached to those Stools" covers that which is referred to in Conclusion 6 by the words: "all rents and profits of lands alienated by the stools," and that these words mean that where the subordinate stools alienate out of the stool any part of the stool lands, either permanently by sale, or temporarily by lease, then what comes to the stool from that alienation by way of purchase money or rent is, in fact, part of what comes out of the land, and therefore has to bear its one-third contribution to the Omanhene of Abuakwa.

The grounds upon which their Lordships are asked to hold that this award ought to be set aside are four. It is said, first of all, that there is an error in law on the face of the award, because the arbitrator is said to have held that there is no ownership in the Omanhene of Abuakwa in the lands attached to the stools of the subordinate chiefs, and that by the law of West Africa the tribute, or ebusa, payable to a head chief can only be paid, and is only exigible, in cases where the ownership of the land resides in the head chief, and that therefore there is, on the face of the award, an error in law on the part of the arbitrator. That is a matter upon which their Lordships would hesitate long before they differed from the courts below. Decisions of local courts familiar with the laws and customs of the colony are naturally of great weight in any matter of that kind. The Courts below have come to the conclusion that there is no error in law on the

face of the award, and their Lordships without some clear authority, would hesitate to differ; in fact, the passage to which their Lordships' attention has been called in the judgment in the *Impatassi* case, referred to in Mr. Casley Hayford's book, page 50, is a passage indicating that such a tribute as the arbitrator has found to be payable in this case is a tribute which may well be possible under the local law.

The second and third points made may be taken together. The second point was that there was no sufficient legal evidence to enable the arbitrator to find the custom which he has found. The third point was that even if there was a custom, there was no evidence upon which the arbitrator could find that it extended to the proceeds of sale of lands. Their Lordships' attention has been directed to the relevant parts of the Record upon this part of the case, and the evidence is set out at great length in the award. The question must depend upon the evidence as set out in the award. The appellants must show that it is patent upon the face of the award that there was no evidence at all on which the arbitrator could have come to his conclusion.

In approaching these questions regard must be had to the terms of the submission in relation to evidence to which their Lordships have already called attention.

Their Lordships are satisfied that there was ample evidence to enable the learned arbitrator to come to the conclusion that there was a custom for payment of one-third of whatever came out of the land.

Further, having regard to the document which is referred to as document "C. 1," and which appears on page 20 of the Record, in which the Omanhene of Abuakwa states what the custom was in these terms: "It is the fashion and customary from beginning of this Akim Throne that whenever any of the Akims had to make a sale of any land or happened to obtain a rock of gold or any valuable metal from any part or parts of any land the party is bound by our rule to give up one-third of the said product to the stool, but nowadays the people are unwilling to do so as it is customary to be done," and having regard to other passages to which attention has been called, the arbitrator was in their Lordships' judgment justified in finding that the custom was wide enough to include the proceeds of land.

There remains only the fourth point, and that rests upon Conclusion 7 of the arbitrator which related to an account and which was: That the party of the first part was entitled to have an account of all lands by sale or demise alienated by the Stools of Asamangkese and Akwatia or either of them since and from the period immediately antecedent to and after the date of a Petition of the Asamangkese and Akwatia Stools to the Acting Governor, dated 7th October, 1921, for independence, but that he (the arbitrator) himself was unable to take such account in view of the lack of sufficient data.

It is said that inasmuch as the arbitrator has not seen fit to take an account of the proceeds of land sold he has left his award incomplete, that it is not final, that it is unenforceable, and that, therefore, it ought to be set aside.

It has to be borne in mind in connection with this matter that the parties never agreed in terms the points which were to be determined by the arbitrator. They put forward claims. One of the claims by the appellants was a claim to an account, but the arbitrator, in fact, does not appear ever to have called upon them to specify definitely the issues which he was to determine. Their Lordships are of opinion that the proper inference to be drawn from the material before them is that the parties did not invite the arbitrator himself to take the account, but were content that he should declare their right to it, and leave it in that position. It is difficult to see why, that being so, the parties are not entitled to enforce the award, or why the respondent should not go to the court showing that his title has been established by the award of the arbitrator, and asking, if there have been sales, that there may be an inquiry as to what sales have taken place, and an account of the proceeds of such sales. Their Lordships are of opinion that the fourth point also fails.

That being so, the appeal must fail, and their Lordships will accordingly humbly tender to His Majesty the advice that the appeal be dismissed. The costs must be paid by the appellants.

In the Privy Council.

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DELIVERED BY LORD TOMLIN.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1932.