Privy Council Appeal No. 42 of 1940

Chief Kwabena Agyare of Asakraka – – – – *Appellant*

v.

Chief Kofi Kwakye of Nteso – – – – – *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JUNE, 1943

Present at the Hearing:

LORD ATKIN
LORD THANKERTON
LORD RUSSELL OF KILLOWEN
LORD MACMILLAN
LORD WRIGHT

[*Delivered by* LORD ATKIN]

This is an appeal from a judgment of the West African Court of Appeal sitting in their Gold Coast Session, by which they reversed the decision of the Provincial Commissioner's Court, which in its turn had set aside a judgment given by the Native Tribunal of the Paramount Chief of Kwahu.

The claim was by one Stool Chief against another in respect of the boundaries of their respective stools.

The action was commenced in the year 1936 by a civil summons which related only to a small portion of the land which afterwards came in dispute; but it appeared in May, 1937, that there was already another dispute pending between the parties, which had been commenced by proceedings on oath. What was the exact nature of that dispute their Lordships have not been told; but they do know that by consent of the parties that pending proceeding was consolidated with the summons relating to the smaller claim and with the consent of both parties the two actions proceeded together.

It appears to their Lordships, as it did, they think, to the West African Court of Appeal, to be fairly obvious that both parties must at that time have been in a position, as they thought, to deal with both cases or they would not have consented to go on at the time that they did go on.

The case proceeded before the Native Tribunal for some days and eventually the Native Tribunal, after having directed a surveyor to mark out what were the disputed boundaries between the parties, in 1938 came to a conclusion, by which they delimited the boundaries over the whole of the land which was then in dispute.

That decision was reversed by the Court of the Provincial Commissioner, but was restored by the West African Court of Appeal.

The Court of Appeal, as their Lordships think quite rightly, founded itself upon a passage in the judgment of this Board in *Abakah Nthah* v. *Anguah Bennieh* [1931] A.C. 75. The passage which they cited and which their Lordships repeat was this:

> "By Colonial legislation all suits relating to the ownership of land held under native tenure are placed within the exclusive original jurisdiction of native tribunals, unless satisfactory reason to the contrary is shown. It appears to their Lordships that decisions of the Native Tribunal on such matters, which are peculiarly within their knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without very clear proof that they are wrong; and their Lordships fail to find such proof in the present case."

Applying those principles, the West African Court of Appeal allowed the appeal and in their Lordships' opinion they were quite right in so doing.

The two points that were urged before that Court and were urged before their Lordships were these: First of all, it was said that the Native Tribunal had refused leave to the defendant, who is the appellant before their Lordships, to issue subpoenas for the purpose of calling two witnesses, the Native Tribunal holding that, in their opinion, the application was made too late. The actual hearing had been proceeding for three days; the proceedings had been before the Court for a very long time and apparently the Native Tribunal saw no reason why the defendant should not have taken steps to have had the witnesses present, if he had wished to call them, before that late date in the hearing.

That appears to their Lordships to be entirely a matter for the discretion of the Native Tribunal. There is nothing that their Lordships can find that is in any way contrary to natural justice in their decision. It has to be remembered that the case had been proceeding for a long time and that several adjournments had been made at the early stages of the smaller claim for the express purpose of subpoenaing witnesses. Their Lordships think that it is very likely that the Native Tribunal were a little tired of adjournments for the purpose of subpoenaing witnesses, but they were perfectly entitled to come to the conclusion to which they did come. As is pointed out by the Court of Appeal, there was no material before them, and there is no material before their Lordships, to show that the evidence of those witnesses was even material, but certainly none to show that it would be conclusive. Further, it is not irrelevant to remember that, while this decision was given on the 7th May, 1937, the defendant, having called some evidence, then elected not to call further evidence and the proceedings were adjourned *sine die* and were not resumed until September, during which time, if the defendant had wished to do so, he could have appealed against the refusal to allow him to call witnesses.

The other point arises on a suggestion that the Native Tribunal erred in drawing the boundary line which they did draw, on the ground that it was arbitrary and not based upon evidence and that it merely indicated that that was what the Native Tribunal thought would be a fair division between the parties.

Their Lordships are far from saying that, if the Native Tribunal had not purported to proceed upon evidence at all, but were merely proceeding on what they thought to be a reasonable settlement between the parties, that would not be outside their duty; but in this case it appears from a survey of the record, as was considered by the Court of Appeal, that the Tribunal founded themselves on the evidence before them and came to a right conclusion. At any rate, there is no evidence before their Lordships that they came to a wrong conclusion or that they acted in any respect otherwise than as they conceived to be in accordance with the evidence.

If that is so, this is exactly a case within the rule as laid down previously by the Board. It is a decision of a Native Tribunal, on a matter peculiarly within its knowledge, arrived at after a fair hearing on relevant evidence and without any demonstration that it is wrong.

In those circumstances, it appears to their Lordships that this appeal must be dismissed with the usual consequences. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

CHIEF KWABENA AGYARE OF ASAKRAKA

v.

CHIEF KOFI KWAKYE OF NTESO

DELIVERED BY LORD ATKIN

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