

In the Privy Council.

No. 6 of 1945
UNIVERSITY OF LONDON
W.C.1

-8 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL
(GOLD COAST SESSION).

44357

BETWEEN

ODIKRO DANSO ABIAM II on behalf of himself and
the Subjects of the Tekyimantia Stool (Plaintiff) *Appellant*

AND

10 OHENE BOAKYI TROMU II (Defendant) *Respondent.*

Case for the Appellant.

1. This is an appeal from a judgment of the West African Court of Appeal (Kingdon and Paul, C.JJ. and Doorly, Acting C.J.) dated the 1st March, 1944, affirming a judgment of the Chief Commissioner's Court of Ashanti (G. P. H. Bewes, Esq., Assistant Chief Commissioner), dated the 30th November, 1943, which affirmed a judgment of the Asantehene's "A" Court dated the 28th August, 1943, affirming a judgment of the Asantehene's "B" Court dated the 2nd February, 1943, by which the Appellant's claim against the Respondent was dismissed with costs.

RECORD.

pp. 29-32.
p. 21.pp. 14-15.
pp. 10-11.

20 2. The Appellant's claim as amended by leave in the West African Court of Appeal, sought a declaration that the Appellant and his subjects are not liable to pay tribute to the Respondent in respect of their occupation of the Takyimantia part of Nkwanta land.

p. 2; p. 30, ll. 9-26.

3. The facts established by the evidence were :

(A) At some date before 1896 the Respondent's predecessor in title, at the instance of the Otumfuo Asantehene ("All Powerful Chief of Ashanti"), gave the Takyimantia people certain land to occupy free so that they might live there and hunt for the Otumfuo Asantehene. This land, known since then as the Takyimantia land, has belonged at all material times and still belongs to the Respondent.

p. 7, ll. 6-9.

p. 4, ll. 28-29.

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(B) Before 1896 the Takyimantia people were subject to the Etipinhene. At the reorganisation of the country by the British in 1896, they became subject instead to the Nkwantahene.

p. 7, l. 7.

p. 5, l. 4; p. 7,
ll. 9-10.

p. 34.

(C) On the 11th February, 1919, the predecessors of the parties agreed that tribute on snails, kola, cocoa, etc., should not be collected from bona fide residents on Takyimantia land but only from strangers; that the tribute should be collected jointly by representatives of the two Stools, and that one-third should go to the Chief of Takyimantia and two-thirds to the Chief of Nkwanta.

p. 4, ll. 15-17.

p. 14, ll. 8-11.

p. 7, ll. 20-21.

(D) The reason for the making of this agreement was in dispute. The Appellant alleged that the making of the agreement was on account of his endeavours towards the safety of the Takyimantia land and as a reward for help given by the Appellant's Stool to the Respondent's Stool in litigation. The Respondent, on the other hand, said that the agreement was made because the Takyimantia people had been made subject to the Respondent's Stool. 10

(E) In 1935 the British restored the Ashanti Confederacy, and the Takyimantia people ceased to be subject to the Respondent's Stool and became once more subject to the Etipinhene.

p. 31, ll. 6-16.

(F) When the Ashanti Confederacy was restored in 1935 the Government set up a "Committee of Privileges" to consider constitutional questions arising out of this restoration. The Committee was not a judicial tribunal. 20

p. 9.

(G) According to the evidence of the Chief Registrar of the Asantehene's Court the record of the proceedings shows that at a meeting of this Committee held on the 20th June, 1935, the Nkwantahene stated that although he had not charged the Takyimantia people tribute while they were subject to his Stool and so contributing to his Stool debts, he proposed to charge them tribute now that they were going back to serve Etipin. The Otumfuo Asantehene said the Nkwantahene could charge the Takyimantia people tribute and if they refused to pay he might bring the matter before him for settlement. The Nkwantahene did not mention any agreement to the Committee. Whether the Appellant's predecessor was present at the meeting of the Committee, was in dispute. 30

p. 9, ll. 39-41.

p. 7, l. 24; p. 7, l. 43; p. 8, ll. 6-8; p. 12, l. 43-p. 13, l. 10.

p. 8, ll. 17-43;
p. 7, ll. 24-39;
p. 5, ll. 10-19;
p. 6, ll. 18-28.

p. 6, ll. 26-28.

(H) On the 25th July, 1942, following the refusal of the Takyimantia people to pay tribute, the Respondent complained to the Otumfuo Asantehene. The Appellant was present, and referred to the agreement of the 11th February, 1919. The Otumfuo Asantehene decided that because of the ruling of the Committee of Privileges on the 20th June, 1935, the Takyimantia people must pay the tribute. As a result of this decision the Appellant started these proceedings. 40

pp. 10-11.

p. 11, ll. 37-40.

p. 11, ll. 42-44.

4. The Asantehene's "B" Court gave judgment for the Respondent on the ground that the case was concluded by the decisions of the Committee of Privileges and the Otumfuo Asantehene, although the Court thought that if the agreement had been before the Committee of Privileges the Committee might have given effect to it.

5. The Appellant respectfully submits, firstly, that the question at issue could not be prejudiced by any opinion expressed by the Committee

of Privileges even if that Committee had had its attention called to the agreement; secondly, that the "B" Court were wrong in holding the Appellant at fault for not producing the agreement and in treating the matter as res judicata; and thirdly, that the "B" Court were right in suggesting that the agreement continued a valid and effective agreement notwithstanding the reorganisation of 1935.

6. The Asantehene's "A" Court, affirming the judgment of "B" Court concurred in the view that the case was thus concluded. The Court also held that it would be inequitable for the Appellant and his people to live on the Respondent's land neither serving his Stool nor contributing towards his Stool debts, and not to pay him tribute.

7. It appears from the views of the Oyokohene in the "A" Court that the references to equity and the interest of justice were intended as an independent ground for the Court's decision. There was uncontradicted evidence that the Nkwantahene had never collected tribute from Takyimantia people, but the Appellant had not contended that in the absence of the agreement or if the agreement had been annulled he and his people would have been free from liability to pay tribute. The Appellant submits, however, that the agreement clearly grants relief from this liability and should have been enforced without regard to irrelevant considerations.

8. The Chief Commissioner's Court appears to have held that native custom would, at the time the agreement was made, have produced the same effect as regards liability to tribute as did the agreement; that when suit was brought it would produce a different effect; that this could not be permitted, and consequently the changed conditions invalidate the agreement.

9. The Appellant submits that the reasoning of the Assistant Chief Commissioner is quite unsound, and that there is no reason why an agreement should not produce a result different from the result which native law and custom would independently produce.

10. On appeal to the West African Court of Appeal the Respondent questioned the jurisdiction of the "B" Court, on the ground that the claim as originally framed raised a constitutional issue. Accordingly, the Appellant by leave amended his claim to make it clear that no such issue was raised.

11. After setting out the main historical facts the West African Court of Appeal held (in the Appellant's submission, rightly) that the Committee of Privileges was not a judicial tribunal whose decision in matters such as that in issue would bind a judicial tribunal. The Committee could only decide the constitutional relations between the parties, and therefore the "B" and "A" Courts were wrong, in the opinion of the West African Court of Appeal, in treating the decision of the Committee as a judgment about rights to land. The Court, however, dismissed the appeal on the ground that at the date of the agreement the Takyimantia people being under the Nkwantahene were not "strangers" to the Nkwantahene but

they became so when the Committee of Privileges put them back under the Etipihene. The Court construed the agreement as making the Appellant and his subjects liable as such strangers to pay tribute to the Respondent.

12. The Appellant respectfully submits that the agreement cannot possibly bear the construction put upon it by the West African Court of Appeal, and that this appeal should be allowed and that the declaration for which the Appellant prayed should be granted for the following amongst other

REASONS.

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- (1) BECAUSE by the terms of the written agreement of the 11th February, 1919, the Appellant and his people were exempt from paying tribute to the Respondent.
- (2) BECAUSE the change of circumstances did not discharge or vary the agreement.
- (3) BECAUSE the rulings of the Committee of Privileges did not invalidate the agreement or alter its meaning.
- (4) BECAUSE the Appellant and his subjects did not in 1935 or at any time cease to be bona fide residents on Takyimantia land.
- (5) BECAUSE the Appellant and his subjects are not strangers within the meaning of clause 3 of the agreement.
- (6) BECAUSE the West African Court of Appeal misconstrued the agreement.

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FRANK GAHAN.

In the Privy Council.

ON APPEAL

*from the West African Court of Appeal
(Gold Coast Session).*

BETWEEN

ODIKRO DANSO ABIAM II

**on behalf of himself and the
Subjects of the Tekyimantia**

Stool (Plaintiff) - - Appellant

AND

OHENE BOAKYI TROMU II

(Defendant) - - Respondent

Case for the Appellant

SOLE, SAWBRIDGE & CO.,

62 New Broad Street,

London, E.C.2,

Solicitors for the Appellant.