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In the Privy Council.

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

44356

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.

RECORD OF PROCEEDINGS

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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

10

AND

OHENE BOAKYI TROMU II

Defendant-Respondent.

RECORD OF PROCEEDINGS

No. 1.

CIVIL SUMMONS.

In the Divisional Court of Asantehene (Grade B).

ODIKRO DANSO ABIAM II on behalf of himself and
the subjects of the Tekyimantia stool

Plaintiff

Versus

OHENE BOACHI TROMU II-

Defendant.

20 To Ohene Boachi Tromu II of Nkwanta.

You are hereby commanded to appear before this Court at Kumasi, Ashanti on the 24th day of August 1942, at 8 o'clock forenoon to answer a suit against you by Plaintiff.

The Plaintiff claims (a) To show cause as per particulars attached.

Dated at Kumasi, Ashanti, this 4th day of August, 1942.

Sum claimed	£	To show cause
Summons fees	1 0 -	
Service	1	
Adasuum		
30 Mileage	15	
Total	£1 16 0d.	

Witness to mark
William Prempeh,
Registrar.

NANA OFORI KHAN II

his
X
mark

*In the
Asante-
hene's
Divisional
" B "
Court.
No. 1.
Civil
Summons,
4th August
1942.*

*In the
Asante-
hene's
Divisional
" B "
Court.*

**No. 2.
CLAIM.**

(Title as No. 1.)

No. 2.
Claim,
4th August
1942.

The plaintiff claims that he and all the subjects of Tekyimantia stool are not entitled to pay any tribute to the defendant on behalf of his stool and therefore calls on the defendant to show cause why he is demanding him and his subject that from henceforth every inhabitant of Tekyimantia stool subjects should pay a tribute of £2-7/- each whereas there are agreements to the knowledge of the defendant and made between the ancestors of both the plaintiff and the defendant by Messrs. Philbrick & Fell and confirmed by F. C. Fuller Chief Commissioner Ashanti dated 15.X.14, 17th April, 1917, respectively and L. H. Wheatley Ag: Commissioner W.P.A. on the 11th Feby., 1919, purporting that no tribute was to be collected from any residents of Tekyimantia. 10

2. The plaintiff further asks the Court in the meantime to restrain the defendant his servants and/or agents from proceeding to collect any such tribute from plaintiff or any subjects of Tekyimantia stool till final hearing of the case to a close.

Dated at Kumasi this 4th day of August, 1942.

(Sgd.) DANSO ABIAM II 20

For himself and on behalf of all
the subjects of Tekyimantia stool
—Plaintiff.

Prepared and witness
to signature by

(Sgd.) J. E. Kwaku,
Letter Writer Licence No. 17181/42/Kumasi.
Manhya Kumasi Fee : 4/- 3 copies.

*In the
Asante-
hene's
Native
Court.*

**No. 3.
NOTES of Tribunal.**

30

In the Divisional Native Court held at Kumasi on Friday the 18th day of December, 1942, before Gyasehene, the Toasehene and the Etutuohene.

(Title as No. 1.)

No. 3.
Notes of
Tribunal,
18th
December
1942.

Defendant to show cause why he is demanding him (plaintiff) and his subjects that henceforth every inhabitant of Takyimantia stool subjects should pay a tribute of £2.7/- each whereas there are agreements to the knowledge of the defendant and made between the ancestors of both the plaintiff and the defendant by Messrs. Philbrick and Fell and confirmed by F. C. Fuller, Chief Commissioner Ashanti, dated 15.X.14, 17th April, 40

1917, respectively and L. H. Wheatley Ag. Commissioner W.P.A. on the 11th Feby., 1919, purporting that no tribute was to be collected from any residents of Takyimantia.

In the Asante-hene's Native Court.

2. The plaintiff further asks the court in the meantime to restrain the defendant his servants and/or agents from proceeding to collect any such tribute from the plaintiff or any subjects of Takyimantia Stool till final hearing of the case to a close.

No. 3. Notes of Tribunal, 18th December 1942, *continued.*

Plaintiff present in person.

Defendant present by proxy.

Plea : Can show cause.

10

Adjourned to Monday 18th January, 1943.

Order by Court :

Pending the determination of the case, the defendant is hereby restrained from collecting tribute from the plaintiff and his stool subjects who owe direct allegiance to his stool.

Chief OFORI KHAN II his
X
mark



No. 4.

COURT NOTES.

In the Kumasi Divisional Court.

20

IN THE KUMASI DIVISIONAL COURT held at Kumasi on Monday the 25th day of January, 1943, before :—

No. 4. Court Notes, 25th January 1943.

THE GYASEHENE
THE TOASEHENE
THE ETUTUOHENE

ODIKRO DANSO ABIAM II on behalf of himself and the Subjects of the Tekyimantia Stool

Versus

OHENE BOACHI TROMU II - - - Defendant.

30

Both Parties present.

Defendant is represented by his Court Registrar, Mr. J. H. Gambrah, by power of Attorney, dated 22nd September, 1942.



In the
Kumasi
Divisional
Court.

No. 5.

Odikro Danso Abiam II.

Plaintiff's
Evidence.

Plaintiff ODIKRO DANSO ABIAM II Sworn according to Religious belief.

No. 5.
Odikro
Danso
Abiam II,
25th
January
1943.
Examina-
tion-in-
chief.

My simple case is this, that there is a written agreement made between the predecessors of both myself and the defendant to the effect that the defendant should not collect tribute in respect of farms snails collected or any other thing done on the Takyimantia land. This agreement was made a very long time ago and on the strength of it no Nkwantehene has ever collected tribute of any kind from anybody who hails from Takyimantia. If a stranger lives there and farms the Takyimantia land, the defendant has right to charge him tribute because the land belongs to him (defendant). If the defendant collects such tribute, according to the said agreement he is to give the Odikro of Takyimantia one-third share and he retains two-thirds. It was on account of my endeavours towards the safety of the Takyimantia land that the agreement to which I have referred was made. Despite this agreement and while the agreement still holds good the defendant wrote me about ten months ago proposing to charge myself and my stool subjects tribute on our cocoa farms lying and situate on the Takyimantia land. I did not understand the attitude of the defendant and in order to claim my right and vindicate my cause, I took this action for the defendant to appear and establish reasons for going beyond the said agreement between us. This is my case. My only witness is the said agreement which I now tender in evidence in support of my case. (Agreement dated 11th February, 1919, accepted in evidence and marked as Exhibit "A.")

Exhibit
"A."

Cross-
examina-
tion.

Xrd. by Defendant.

Question : Does the Takyimantia land belong to Nkwantehene ?

Answer : Yes, I admit that.

Question : Were you occupying the land prior to the drawing up of 30 the agreement ?

Answer : Yes.

Question : Why did I arrange to give you one-third share of tribute collected ?

Answer : Our predecessors understood why and they both made the agreement, all I know and it is in the agreement is that no Takyimantia man or woman should pay the Nkwantehéne any tribute in respect of Takyimantia land.

Question : Have I Nkwantehene or any of my predecessors ever charged you tribute since the agreement was made ? 40

Answer : No.

Question : Have you or anybody who hails from Takyimantia contributed to any Nkwanta levy since the document was made ?

Answer : No.

Question : Have you not contributed £300 to my Stool debt since then, which £300 is not tribute of course ?

Answer : Yes but it was not tribute. Your predecessor was being destooled and the Takyimantia people interfered in the matter and at the conclusion of which we Takyimantia people were made by the District

Commissioner Mr. Ballantine, Sunyani, to pay this £300 as our share of the debt incurred.

Question : Were you subservient to my Stool about fifteen years ago ?

Answer : Yes, British Government made me so.

Question : Is your Stool still under mine ?

Answer : No. It is under the Etipin Stool.

Question : Do you not remember that this agreement had been taken before the Otumfuo Asantehene and declared null and void ?

Answer : No, never.

10 Question : Do you not remember that on the 25th July, 1942, as a result of the cancellation of the agreement I was charged an "Aseda" of £9 6/- before the Otumfuo Asantehene ?

Answer : Yes the "Aseda" was paid by you because you proposed to charge me tribute and I refused on the strength of this agreement hence I took this action.

Question : Did not the Otumfuo Asantehene caused it to be declared that thenceforth you and all Takyimantia subjects should pay me tribute ?

Answer : Yes, but I reminded Nana of the agreement between us which still hold good.

20 Question : The agreement states that I should give you one-third share of the tributes collected, who has to collect the tribute ?

Answer : Both of us have to collect same.

Question : Since when did we collect the last tribute ?

Answer : We have collected it even in the current year.

Question : Did you get your share for last year ?

Answer : No.

Question : Have I given your share for the tribute collected last seven years ?

30 Answer : No, because your immediate predecessor begged my predecessor to allow him to use it to defray his debt and he agreed.

Question : Who came to beg you ?

Answer : He came himself.

Question : Which Nkwantehene did so ?

Answer : It was Kwame Kumaa.

Question : Was Kwame Kumaa occupying the Nkwanta Stool seven years ago ?

Answer : No, we used to share the tribute seven ago until Kwame Kumaa came to occupy it.

Question : If so how much does the Nkwanta stool owe you ?

40 Answer : The receipts issued out.

Question : Do you not remember that the tribute is collected by the Otumfuo's messengers ?

Answer : Plus your messenger and mine.

Question : I put it to you that I have never met with you and collected any tribute ?

Answer : All the receipts are available. Your allegation is incorrect.

Question : How much was realised last year ?

Answer : The tribute had been collected last year before I occupied my stool but we have realised £30 this year.

50 Further hearing adjourned to Tuesday, 26th January, 1943, at 10 a.m.

In the
Kumasi
Divisional
Court.

Plaintiff's
Evidence.

No. 510
Odikro, 1st
Danso, 1st
Abiam, 1st

25th
January
1943,

Cross-
examina-
tion,

continued.

*In the
Kumasi
Divisional
Court.*

26th January, 1943.

Defendant continues his questions to the Plaintiff.

*Plaintiff's
Evidence.*

Question : Was the Etipinhene present on the occasion that the Otumfuo Asantehene sat in Council and decided that you should pay me (Nkwantahene) tribute in respect of the Takyimantia land ?

Answer : Yes.

No. 5.

Question : Was he given a share of the Aseda ?

Odikro

Answer : I did not interfere.

Danso

Question : Does a matter settle before the Otumfuo Asantehene in which an Aseda is paid stand valid ? 10

Abiam II,

Answer : It is valid. With all due deference, if the losing party is satisfied right is there for him to appeal.

26th

January

1943,

Cross-

examina-

tion,

continued.

Question : Did you appeal from the decision therefore ?

Answer : That decision was given at an arbitration hence I took this action in Otumfuo's own Court.

No more questions by Defendant.

Plaintiff Xxx by the Etutuohene.

Examina-
tion by
Tribunal.

Question : Was your agreement produced before the Otumfuo at the arbitration ?

Answer : Yes. 20

Question : Did the Otumfuo decide that the written agreement was dead and cancelled ?

Answer : No.

Question : Did the Otumfuo say the Takyimantia people should go and pay tribute to the Nkwantahene ?

Answer : Yes the Otumfuo said so, but on the strength of the agreement which still holds good, I begged and brought this action to the Court.

(No more questions by the Etutuohene.)

Plaintiff Xxd. by the Toasehene. 30

Question : You have an agreement of very long age with the defendant which agreement exempts you and your Stool subjects from paying tribute to the defendant's Stool. Why does he now come round and ask you for tribute ?

Answer : I failed to understand and that was the reason I took this action.

(No more questions by Toasehene.)

Plaintiff Xd. by the Gyasehene.

Question : Were any proceedings written down at the arbitration held by the Otumfuo to which it is referred ? 40

Answer : No.

Further hearing adjourned to Wednesday, 27th January, 1943, at 10 a.m.

Thursday 28th January, 1943.

Defendant has no more questions.

No. 6.
Defendant's Evidence.

*In the
Kumasi
Divisional
Court.*

Defendant, OHENE BOACHI TROMU II. Represented by J. H. Gambrah. Sworn on Bible.

*Defendant's
Evidence.*

I speak for and on behalf of the Defendant. The Takyimantia land is mine. Before 1896, the Otumfuo Asantehene brought these Takyimantia people, who are Etipinhene's subjects to me to give them a place to live and hunt for the Otumfuo Asantehene. I gave them the Takyimantia land to occupy free. About forty years ago, as the British Government

No. 6.
Ohene
Boachi
Tromu II,
28th
January
1943.

10 came to Ashanti these same people were made subservient to my stool. By and by the then Takyimantiahene called Kwabina Kwaa and his elders approached me to permit them to see about the collection of the tribute payable to the Nkwanta stool for me. Having consulted the then District Commissioner, Sunyani, I agreed. This was in 1919. We had an agreement prepared and entered into by both myself, and Nkwantahene and my elders and the Plaintiff and his elders. I admit, I agreed not to charge the Takyimantia people any tribute. Seven years ago the confederacy was restored and so these Takyimantia people reverted to their original clan, Etipin, and ceased to be under my stool. On that

20 occasion I declared at the meeting of the Committee of Privileges that these people were placed under my stool and so they had the use of my land free. The Committee decided that since they were going from under my stool, they should pay me tribute in respect of their cocoa farms on the said land. The Etipinhene as well as the plaintiff was present. Two years ago my predecessor incurred a debt as a result of land litigation and so I told the Takyimantia people to assist me with £2 7/- each man. They refused saying they had an agreement with me. I had to come and complain to the Otumfuo Asantehene who decided that these Takyimantia people should pay me tribute. Linguist Barfour Osei Akotoe

30 interpreted the Otumfuo. The plaintiff was found at fault and I was made to pay an Aseda of £9 6/-. After the Otumfuo's decision I obtained the Otumfuo's messengers to go and collect the tribute from the plaintiff and his people they refused to pay it. I came and reported the matter to the Otumfuo, the plaintiff was summoned and the Chief Registrar was asked to read the minutes of the Committee of Privileges in which it had been recorded that the Takyimantia people should pay me tribute. I made up my mind to send to collect the tribute and while I had not yet sent, the plaintiff took this action calling me to show reasons why I proposed to charge him and his people tribute. This is my case.

40 *Defendant Xcd. by Plaintiff.*

Cross-
examina-
tion.

Question : Was I present when the Committee of Privileges gave the said decision ?

Answer : Your predecessor and your head chief, Etipinhene were present.

Question : Was the agreement taken from me ?

Answer : I do not know.

Question : Have you charged me any tribute since then ?

Answer : You have refused to pay it.

50 Question : Had you demanded any tribute from me before you lodged a complaint with the Otumfuo Asantehene ?

*In the
Kumasi
Divisional
Court.*

*Defendant's
Evidence.*

No. 6.
Ohene
Boachi
Tromu II,
28th
January
1943,
continued.
Examina-
tion by the
Court.

Answer : Yes.

Question : Do you not remember at one time we appeared before the District Commissioner Sunyani who said that the agreement was still good and so you could not charge me tribute ?

Answer : I have never heard it.

Question : Which predecessor of mine do you say appeared before the Committee of Privileges ?

Answer : Your predecessor called Praka and all his elders.

No more questions.

Defendant Xcd. by Toasehene.

10

Question : If the plaintiff had assisted you as you requested then would you propose to charge him tribute still ?

Answer : Yes.

No more questions.

Bafuor Osei
Akoto, 28th
January
1943.

BAFUOR OSEI AKOTO, Linguist to the Otumfuo Asantehene. Sworn Great Oath and stated as follows :—

About five or six months ago, the Otumfuo Asantehene sat at Pat Akrom, I was present there. The defendant came and stated that he had once proposed to charge the Takyimantiahene and his people tribute to show that the land is his property. The defendant added that the Otumfuo referred the matter to the Etipinhene to go and see to the matter and let the Takyimantia people pay " Adwantwari " nominal fee but the Takyimantia people refused to do so. The plaintiff was asked if the statement of the Nkwantehene was true, he said yes and he had an agreement and on that account the Takyimantia people were not to pay tribute. The Chief Registrar was asked to fetch and read the section of the minutes of the " Committee of Privileges " dealing with the Takyimantia land question. It was observed that the Committee had decided that the Takyimantia people lived on Nkwantahene's land and should pay tribute to him. The Plaintiff and his people were asked if they would now pay the tribute, they said no. The Otumfuo decided that, on the strength of the decision of the " Committee of Privileges " the defendant should charge the Takyimantia people tribute. The Nkwantahene thanked the Otumfuo and paid an Aseda of £9 6/-. This is all that I know.

No question by Defendant.

Witness Xcd. by Plaintiff.

Cross-
examina-
tion.

Question : Do you remember I declared before the Otumfuo that if the defendant was in debt and needed my assistance I was willing to give it but I had an agreement not to pay tribute to him ?

Answer : You said you had not to pay tribute.

40

Question : If my predecessor had consented to the cancellation of the agreement then I have nothing to say ?

Answer : Yes, that is the case.

No more questions.

Further hearing adjourned to Friday, 29th January, 1943, at 9.30 a.m.

29th January, 1943.

Mr. J. W. K. APPIAH, Chief Registrar, Asantehene's Court. Sworn on Bible :—

On the 20th June, 1935, the " Committee of Privileges " met and the following were present :—

Major Jackson, Chief Commissioner, Otumfuo Asantehene, Nana Kofi Adu—Kokofuhene, Nana Essumingahene, Nana Gyasehene—Kumasi.

The Nkwantahene laid a claim to Yanfo, Adrobaa, and Susanso. He added that the Takyimantia land belonged to him from the time immemorial but the people living there served Etipinhene. He alleged that since the Takyimantia people were placed under his stool they contributed to his stool debts therefore he charged them no tribute but now that they were going back to serve Etipin he would charge them tribute. He stated that, with regard to Yanfo, Adrobaa and Susanso, nobody was litigating with him. The Committee therefore decided that these three villages should remain as they were and if anybody appeared to litigate with him, he might apply to or bring the case before the Committee of Privileges. With regard to Takyimantia the Otumfuo Asantehene said that the Nkwantahene could charge the Takyimantia people tribute and if they refused to pay it, he might bring the matter before him for settlement. This is reported at page 40 of the proceedings of the meetings of the Committee of Privileges held at Kumasi, from the 18th June, 1935, to the 3rd January, 1936.

Witness Xcd. by Defendant.

Question : Have you since seen me come before the Otumfuo asking the Plaintiff to pay me tribute and he refused ?

Answer : Yes, but on the first occasion you requested him share your stool debt and he refused.

30 Question : Have I since appeared before the Otumfuo in respect of tribute ?

Answer : Yes, when the Otumfuo told the Plaintiff to pay tribute to you.

Question : Was I charged any Aseda ?

Answer : I believe Henry Prempeh took proceedings that day, I was not there.

No more questions by the Defendant.

Witness Xcd. by the Plaintiff.

40 Question : Did the Nkwantahene mention any agreement before the " Committee of Privileges " ?

Answer : No, he did not.

No more questions. Parties close their case.

Judgment reserved till Tuesday, the 2nd February, 1943.

Chief OFORI KHAN
President

his
X
mark

*In the
Kumasi
Divisional
Court.*

*Defendant's
Evidence.*

No. 6.
J. W. K.
Appiah,
29th
January
1943.

Evidence-
in chief.

Cross-
examina-
tion.

JUDGMENT.

*In the
Kumasi
Divisional
Court.*

No. 7.
Judgment,
2nd
February
1943.

This is a civil cause in which the plaintiff sued the defendant as follows :—

“ The plaintiff claims that he and all the subjects of Takyimantia stool are not liable to pay any tribute to the defendant on behalf of his stool and therefore calls on the defendant to show cause why he is demanding him and his subjects that from henceforth every inhabitant of Takyimantia stool subjects should pay a tribute of £2 7/- each whereas there are agreements to the knowledge of the defendant and made between the ancestors of both plaintiff and the defendant by Messrs. Philbrick and Fell and confirmed by F. C. Fuller, Chief Commissioner, Ashanti, dated 15.10.14, 17th April, 1919, respectively and L. H. Wheatley, Acting Commissioner, Western Province of Ashanti, on the 11th February, 1919, purporting that no tribute was to be collected from any residents of Takyimantia. 10

2. The plaintiff further asks the court in the meantime to restrain the defendant his servants and/or agents from proceeding to collect any such tribute from the plaintiff or any subjects of Takyimantia stool till final hearing of the case to a close.” 20

The plaintiff called no witness but tendered in evidence copy of the said agreement dated 11th February, 1919, and entered into by Yaw Buaten, Chief of Nkwanta and a number of his stool elders on one part, and Kwabina Kwaa, Chief of Takyimantia and a number of his stool elders on the other. The agreement was accepted and marked as Exhibit “ A.”

The defendant’s version of the case was that during the disintegration of Ashanti by Government, when the Takyimantiahene was placed under the Nkwantahene, and when the people of Takyimantia did customary service to the Nkwanta stool the agreement to which the plaintiff made reference was made between the respective predecessors of both the defendant and his stool elders and the plaintiff and his stool elders indicating that in view of the fact that the people of Takyimantia served under the stool of Nkwanta, they were not to pay tribute, but since the Confederacy has been restored and the said Takyimantia people have been removed to their original clan—Etipin, they were no more subservient to the Nkwanta stool and therefore should pay tribute in respect of the Nkwanta stool land situate at Takyimantia and occupied and farmed by the Takyimantia people. In substantiating his case, the defendant stated among other things, that at a meeting or sitting of the “ Committee of Privileges ” when His Honour the Chief Commissioner, Ashanti, in the person of Major Jackson of blessed memory and the Otumfuo Asantehene Sir Osei Agyeman Prempeh II, K.B.E. were present, his predecessor raised the question of his title to the Takyimantia land and of his right to collecting tribute therefrom but the plaintiff’s predecessor produced no agreement and the Committee therefore held that so long as the people of Takyimantia occupying and using the Nkwanta stool land were no longer under the Nkwantahene they were bound by custom to pay tribute to the Nkwantahene. The defendant subpoenaed Mr. J. W. K. Appiah, Chief Registrar; Asantehene’s court and Secretary, Confederacy Council 30 40 50

to give evidence. Mr. Appiah's evidence was that, on the 20th June, 1935, when the "Committee of Privileges" sat the Nkwantahene laid a claim to Yamfo, Adrobaa and Susanso and added that the Takyimantia land belonged to him from time of old but occupied by the Takyimantia people who served the Etipin stool. That since the Takyimantia people were placed under his stool they contributed to his stool debt therefore he charged them no tribute but now that they were going to their former place, he would charge them tribute. Mr. Appiah added that the Committee saw with the Nkwantahene and decided that the Nkwantahene could charge the Takyimantia people tribute and if they refused the Nkwantahene should take the matter up before the Otumfuo Asantehene for settlement. Mr. Appiah produced, at the request of the defendant, the proceedings of the "Committee of Privileges" meetings held at Kumasi from the 18th June, 1935, to the 3rd of January, 1936, and the Committee's decision as regards this Nkwanta Takyimantia affair is reported at page 40 of the said proceedings. In answer to a question put by the defendant Mr. Appiah said Yes the Otumfuo Asantehene told the plaintiff to pay tribute to the defendant and that was when recently both the plaintiff and the defendant appeared before the Otumfuo. The other witness for the defendant was Barfuor Osei Akoto, Linguist of the Otumfuo Asantehene. His evidence was that, about five or six months ago, when the Otumfuo Asantehene sat at Patokrom the defendant appeared and stated he once proposed to charge the Takyimantia people tribute to show that the land occupied by them was and is still his property. That the Otumfuo referred the matter to the Etipinhene for settlement and make the Takyimantia people pay the Nkwantahene "Adwantware"—nominal fee but the Takyimantia people refused saying that they had an agreement with the Nkwantahene and were therefore not to pay any tribute to the Nkwantahene. That reference was made to the proceedings of the meetings of the Committee of Privileges which were read to the hearing of all present by Mr. Appiah, and it was discovered that the Committee had decided that the Takyimantia people lived on the Nkwantahene's land and therefore should pay tribute to him, and that on the strength of the decision of the "Committee of Privileges" therefore, the Otumfuo Asantehene decided that the plaintiff and his subjects occupying the defendant's land should pay tribute to the defendant. Now, in the opinion of this court, the plaintiff is entirely wrong in instituting this action against the defendant seeing that the plaintiff is bound by the decisions of the "Committee of Privileges" and of the Otumfuo Asantehene who, in the olden days acquired this Takyimantia land from the Nkwantahene and made the Takyimantia people occupy it to act as his hunters. Still in the opinion of this court, if the plaintiff produced the said agreement before the "Committee of Privileges" the decision as regards the Takyimantia land might have been reconsidered. In the absence of this fact the plaintiff is bound by the decision given by the Committee, and therefore, judgment is entered for the defendant and against the plaintiff with costs to be taxed.

*In the
Kumasi
Divisional
Court.*

No. 7.
Judgment,
2nd
February
1943,
continued.

50 Witness to mark

(Sgd.) I. K. Agyeman,
Registrar, 2nd February, 1943.

GYASEHENE OFORI KHAN II
President

his
X
mark

No. 8.

PLAINTIFF'S EVIDENCE.

In the Asante-hene's "A" Court.

Plaintiff's Evidence.

No. 8.

Danso Abiam II, 28th August 1943.

IN THE ASANTEHENE'S "A" COURT held at Kumasi on Saturday the 28th day of August, 1943, before :—

The Akwamuhene
The Oyokohene and
The Kyidomhene.

ODIKRO DANSO ABIAM II on behalf of himself and the subjects of the Takyimantia Stool - Plaintiff-Appellant

Versus

10

OHENE BOACHI TROMU II- - - - - Defendant.

Plaintiff-Appellant in person.

The Defendant-Respondent per proxy.

An Appeal from the Judgment of the Kumasi Divisional Native Court.

DANSO ABIAM II, Plaintiff-Appellant, Sworn according to religious belief :—

I am dissatisfied with the judgment of the Court below on the grounds following :—

The Respondent stated in evidence in the Court below that before the "Committee of Privileges" he mentioned that he would collect the 20 tribute from me and my subjects. That this he did in the presence of the Etipinhene and my immediate predecessor Ex-Odikro Kwasi Praka. That the notes of the Committee of Privileges meeting (sitting on that matter) which he subpoenaed were read, it did not confirm his statement that my predecessor was present.

I have to add that the Respondent failed to make it clear to the Committee of Privileges that my stool had an agreement with his stool.

My immediate predecessor not being present when the Committee of Privileges made that Ruling i.e. that my subjects should pay his stool 30 tribute how could he have an opportunity to make a defence.

The Respondent stated that he did not collect tribute from me before the Confederacy on account of the fact that my stool was then serving his stool, but I contend that there is no such stipulation in the agreement existing between us, that is to say that I should pay his stool tribute when after the Confederacy I waived the allegiance I owed to him.

I say definitely to this Court that on the standing of the agreement that exists between Respondent and me, myself and my subjects are not entitled to pay tribute to the Respondent's stool. (Agreement produced, read and marked Exhibit "A.")

Exhibit "A."

Xcd. by Respondent.

40

Question : Through whom does your stool serve the Asantehene ?

Answer : I serve through the Atipinhene.

Question : Do you say that your immediate predecessor ex-Odikro Praka was not present when the Committee of Privileges ruled that you and your subjects should pay tribute to my stool ?

Answer : Yes.

Question : Was the Etipinhene present ?

Answer : I cannot tell since I was not present.

Question : Are you contending that your predecessor was not present because his name does not appear in the notes as one of the chiefs sitting on that Committee ?

Answer : Yes.

Question : I put it to you that the ex-Odikro of Takyimantia was present at that sitting and that his name did not appear on record as one of the chiefs sitting on that committee because he is an inferior chief ?

10 Answer : I say that he was not there.

Question : Do you admit that very recently, I lodged a report against your predecessor to the Asantehene as to the same tribute question ?

Answer : I do not know anything about it.

Question : When the alleged agreement referred to by you was drawn up, did you dream that some day, the Ashanti Confederacy would be restored ?

Answer : I did not.

By the Court.

Question : Whom did your stool serve before the Confederacy ?

20 Answer : I served the Respondent's stool. I did not contribute to his stool debts. After the Confederacy I serve the Etipinhene.

Question : Are you not entitled to contribute towards payment of Atipin stool debt ?

Answer : Yes.

Question : On whose land are you and your subjects living now ?

Answer : I live on the Respondent's land.

Question : Supposing his stool falls into debt, as a result of litigation or by any other means, would you pay a portion of it ?

Answer : No.

30 Question : Why ?

Answer : On account of the agreement that exists between us—drawn since 1919, I am not entitled to pay anything.

Question : How did it happen that you now owe allegiance to the Etipinhene instead of Respondent ?

Answer : The restoration of the Ashanti Confederacy brought about this. That was the order of the Confederacy Council. I have carried out that order.

40 Question : Is the Respondent exacting this tribute from you and your subjects by his own authority or by the powers he holds under the Ruling of the Committee of Privileges ?

Answer : He is doing so by his own authority.

Question : Assuming it is the ruling of the Committee of Privileges that your stool subjects should pay tribute to the Respondent's stool, would you and your people pay ?

Answer : Yes.

Question : You have told the Court that you were not present when the Committee of Privileges or the Confederacy Council made any order affecting your stool, how is it that you obtained the order to serve Atipin stool ?

50 Answer : That was told us when all the Chiefs met.

Question : Do you agree that whatever order the Otumfuo sitting in Council makes as affecting your stool is valid ?

*In the
Asante-
hene's
" A "
Court.*

*Plaintiff's
Evidence.*

No. 8.
Danson
Abiam II,
28th
August
1943,
continued.

In the
Asante-
hene's
" A "
Court.

Answer : Yes it is valid.

Question : What connection has Nkwanta stool to your stool ?

Answer : We have no connection at all.

Plaintiff's
Evidence.

Question : Do you not agree that Respondent stool refrained from collecting tribute from your subjects because your stool was then serving his at that time ?

Answer : No. It is not so.

Question : What brought about the existence of the alleged agreement existing between you ?

Answer : My stool assisted it to litigate with the Offinsohene some 10 time ago.

No. 8.
Danso
Abiam II,
28th
August
1943,
continued.

No. 9.

DEFENDANT'S CASE.

RESPONDENT per proxy. Sworn according to religious belief :—

I do not desire to say anything besides what has been recorded by the Court below.

Copy of the proceedings of the Court below read and marked Exhibit " B."

No. 9.
Defendant's
Case, 28th
August
1943.

Exhibit
" B."

No. 10.

JUDGMENT.

20

VIEWS OF MEMBERS.

KYIDOMHENE.

In my opinion, the judgment of the Court below is a sound one. The plaintiff-appellant who was originally serving the defendant-respondent is now serving the Etipin Stool upon (according to him) the Ruling of the Committee of Privileges. I see no reason why therefore he should refuse to abide by its further ruling that his stool should pay tribute to the Respondent.

The Plaintiff's main ground seems to be based on the facts that since he still holds the agreement Exhibit " A.1," he is not entitled to pay 30 tribute : but I view that the Ruling of the Committee of Privileges annuls that agreement. Since the Takyimantiahene the plaintiff-appellant is now not serving the Respondent's stool, and since he and his subjects do not contribute to the payment of the Respondent's stool debts while he and his people live on Respondent's land, it is only equitable that plaintiff-appellant should pay tribute to the defendant-Respondent's stool.

OYOKOHENE.

I concur with the view of the Kyidomhene. If both the appellant and the Respondent were serving one master, that matter would give a different aspect to the case, but it will not be in the interest of justice 40 for the plaintiff-appellant to refuse to pay anything to the Respondent while he lives on his land, and collects any gains or products thereon with which he serves another chief. In my view, plaintiff-appellant should not have brought up this action against Respondent at all.

No. 10.
Judgment,
28th
August
1943.

AKWAMUHENE.

I concur. I cannot find how the plaintiff-appellant should refuse to pay tribute to Respondent's Stool when he lives on his land, and when he and his people do not serve his stool and they do not contribute towards his stool debts.

JUDGMENT.

There is no substance in the appeal. The Court sees no reason why it should disturb the judgment of the Court below.

Appeal dismissed. Costs to the Defendant-Respondent to be taxed.

*In the
Asante-
hene's
"A"
Court.*

No. 10.
Judgment,
28th
August
1943,
continued.

10

NANA ACHAMPONG YAW his
President X
mark

Witness to mark :
(Sgd.) Henry Prempeh
for Registrar,
28.8.43.

No. 11.

GROUNDS OF APPEAL.

CHIEF COMMISSIONER'S COURT, KUMASI.

20 In the matter of :—

ODIKRO DANSO ABIAM II (Tekyimantia) - Plaintiff
Appellant-Appellant

Versus

NKWANTAHENE BOAKYI TROMU II Defendant
Respondent-Respondent.

*In the
Chief
Commis-
sioner's
Court,
Kumasi.*

No. 11.
Grounds of
Appeal,
27th
October
1943.

The Plaintiff-Appellant-Appellant being dissatisfied with the judgment of the Ashantihene's Divisional Court "A" Kumasi delivered on or about the 28th day of August, 1943, and having obtained Final Leave to appeal therefrom dated the 27th day of October, 1943, hereby appeals to the
30 Chief Commissioner's Court of Ashanti upon the grounds hereinafter set forth :—

GROUNDS OF APPEAL.

Judgment irregular and bad in law :—

Because the Court below had no jurisdiction to declare that the Agreement between the Plaintiff-Appellant-Appellant and the Respondent-Respondent is automatically void by reason of the importation of the proceedings of the Committee of Privileges which said Committee sat without the predecessor of the Plaintiff-Appellant-Appellant being present.

40 An agreement such as this Exhibit "A.1" can only be declared null and void or set aside by the Divisional Courts by the Supreme Court of the Gold Coast (see Ashanti Validated Ordinance No. 7 of 1929 section 3).

Judgment against Equity and good conscience :—

Because when Plaintiff-Appellant-Appellant tendered Exhibit "A.1" in evidence which said Exhibit embodied three (3) carefully delivered

*In the
Chief
Commissioner's
Court,
Kumasi.*

No. 11.
Grounds of
Appeal,
27th
October
1943,
continued.

decisions in respect of tributes, the Court below before arriving at an equitable decision should have ascertained from His Honour the Chief Commissioner's Court and satisfied itself as to whether any one of the decisions given had been validated and recorded; but the Court took no cognizance of this all important point and gave judgment in the way it did.

It has been the practice of this appellant Court (The Chief Commissioner's Court) to make such enquiries in land disputes before giving its judgment. Plaintiff-Appellant-Appellant respectfully submits that this wise step was taken by this Honourable Court in the land cases between Berekumhene and Nsoatrahene and Akusuasi and Akyrensua in respect of tribute. This Honourable Court found that it had been validated and therefore could not be disturbed. 10

Judgment against the weight of evidence :—

Because the Plaintiff-Appellant-Appellant is not estopped in law from impugning the terms of the Agreement Exhibit "A.1" and that the Defendant-Respondent's defence as to the claim of tribute from the residents or natives of Tekyimantia is untenable and indefeasible.

Court below misdirected itself :—

Because in its judgment the Court below considered proceedings which were not before it. The traditional history as given by the Defendant-Respondent-Respondent and his witnesses was inconsistent as it was irrelevant taking into consideration the Agreement and the well considered decisions dated respectively 14th day of October, 1914, and 17th day of April, 1919, by Messrs. Philbrick and Fell and that of the Acting Commissioner Western Province Mr. L. H. Wheatley dated 11th February, 1919, and confirmed by F. C. Fuller Chief Commissioner of Ashanti and yet the Court below erroneously based its judgment on it. In the opinion of the then Chief Commissioner's Court it has been found since 1919 by F. C. Fuller in favour of Plaintiff-Appellant-Appellant and there has never been dispossession since then by anybody. Giving some credence to the dubious opinion of the Court below one is tempted to ask how did the Agreement Exhibit "A.1" come to be made. 30

If the land originally belonged to the Nkwanta stool Exhibit "A.1" unequivocally made the Nkwanta stool and the Tekyimantia stool co-owners. Hence it was stated in Exhibit "A" that both stools should send representatives to collect the tribute from strangers.

In fine, Plaintiff-Appellant-Appellant humbly and respectfully submits that the judgment of the Court below seriously disturbs the legalised Agreement and Decisions between the Plaintiff-Appellant-Appellant and Defendant-Respondent-Respondent under the Ashanti Validated Ordinance No. 7 of 1929 section 3. 40

Dated at Kumasi this 27th day of October, 1943.

The Registrar,
Chief Commissioner's Court,
Kumasi, Ashanti,
and to

(Sgd.) DANSO ABIAM II,
Plaintiff-Appellant-Appellant.

Nkwantahene Boakyi Tromu II—Nkwanta, or his Agent or Representative.

Writer and witness to signature :

O. D. Holdbrook
Free of charge.

No. 12.

ANSWERS to Grounds of Appeal of Appellant and Submissions of Respondent in support of Judgment.

*In the
Chief
Commissioner's
Court,
Kumasi.*

Judgment irregular and bad in law :—

It was quite within the competency of both lower courts to wit Asantehene's Courts "B" and "A" to determine as to whether the Tekyimantia stool subjects were liable to pay tribute or not for cultivating farms on the Defendant's stool lands. The two (2) Native Courts had jurisdiction to adjudicate on the claim.

No. 12.
Answer to
Grounds of
Appeal,
16th
November
1943.

- 10 The contention of the appellant that the Agreement Exhibit A1 can only be declared null and void by the Supreme Court is without any foundation in law.

Judgment against equity and good conscience :—

It was the duty of the appellant to substantiate his claim before the Native Court by producing the necessary evidence.

If the agreement he relies on has been validated it was for him to prove this fact.

- 20 Even if the said agreement is validated it does not preclude the variation or substitution of it by another agreement owing to changed circumstances. Upon the restoration of the Ashanti Confederacy, questions of status and rights were brought before the Committee of Privileges which was specifically set up to decide issues which were in doubt. The decision of the said Committee that the Tekyimantia people should serve the Etipin stool instead of Nkwanta stool has great bearing on the relationship between subjects of Tekyimantia and those of Nkwanta. By this decision Tekyimantia owed no allegiance to Nkwanta. They became "strangers" farming on Nkwanta land. All incidents applicable to strangers farming on other people's lands have therefore to be applied; and one of such incidents is the paying of tribute for occupation.

- 30 *Judgment against weight of evidence :—*

The appellant did not call any witnesses to support his contention; whereas the Respondent called the Asantehene's Linguist as also his Chief Registrar.

The evidence of both these witnesses was of great weight coupled with the proceedings of the Committee of Privileges.

Court below misdirected itself :—

- 40 There was no misdirection on the part of both the Native Courts who came to a fair decision on the facts. The foundation upon which the agreement Exhibit "A1" was based having been removed, it could not be said to have any valid effect thereafter.

The appellant is estopped by his acquiescence in the decision of the Committee of Privileges from denying his liability to pay tribute. In the suit Kwesi Sarfo versus Yensu-Boandwo, Claimant; which came before the Divisional Court Kumasi and went on appeal to the West African Court of Appeal, the judgment therein laid emphasis on and was principally based on a decision of the Committee of Privileges affecting the parties therein. It was held to act as an estoppel and respondent craves leave to refer to the said judgment, and also to the case of Yardom

*In the
Chief
Commissioner's
Court,
Kumasi.*

No. 12.
Answer to
Grounds of
Appeal,
16th
November
1943,
continued.

versus Minte at page 76 of Full Court judgments 1926 to 1929 which shows that a judgment of a court can be varied by the parties going before an arbitration. The award of the arbitration has the effect of setting aside even the judgment of a Court. It is even much stronger to say that an agreement such as Exhibit "A1" can be set aside by the parties thereto submitting to the decision of a Committee specially appointed by law and to which the parties have voluntarily submitted and acquiesced in its decision.

Submission of Respondent.

1. *Estoppel.* Appellant cannot raise the question of liability to pay 10 tribute because this has in effect been decided by the Committee of Privileges as well as by the Asantehene as is borne out by the evidence adduced before the two (2) lower courts.

The appellant and his superior chief the Etipinhene were present when the rights and status of the parties were settled.

2. *Equity and law.* Appellant does not deny the ownership of Respondent to the lands occupied by Tekyimantia people. Further he does not deny that whereas formerly Tekyimantia stool owed allegiance to the Nkwanta stool, now since the restoration of the Ashanti confederacy, no such obligation is imposed on it. 20

Their allegiance has been transferred to another stool. Why then should they enjoy the privileges and rights of those who owe allegiance to the Nkwanta stool.

Dated at Kumasi this 16th day of November, 1943.

(Sgd.) J. HUGH GHAMBRAH

Attorney for Defendant Respondent Nkwantahene Boakyi Tromu II.

No. 13.
Sub-
missions,
26th
November
1943.

No. 13.

SUBMISSIONS of Plaintiff-Appellant-Appellant in support of his Grounds of Appeal.

1. That the crux of the whole case is how and why did the Tekyimantia come by the agreement Exhibit "A." The right to enjoy the privileges 30 of the land by Tekyimantia has already been established by the respective decisions of Commissioners Fell and Philbrick which said decisions speak for themselves.

2. That the Agreement Exhibit "A" establishes these important facts :—

(A) That the defendant-respondent-respondent has condescended to and the plaintiff-appellant-appellant has also been in joint possession since the determination of the last case between the plaintiff-appellant-appellant and defendant-respondent-respondent as one party and the Offinsohene as another party as evidenced by 40 Commissioner Philbrick's decision of 1914.

(B) That since the said decision of 1914 by Commissioner Philbrick both the plaintiff-appellant-appellant and the defendant-respondent-respondent have been exercising over the land many important acts of joint ownership as is borne by Exhibit "A."

3. That the case referred to by the defendant-respondent-respondent reference Kwasi Sarfo versus Yensu-Boandwo Claimant cannot be construed to be on all fours with the present one ; whereas the issue involved in the said case had no document evidencing the transaction and the relationship existing between the parties, the present one has an agreement which apparently deprives the Committee of Privileges from interfering with a binding agreement between the plaintiff-appellant-appellant and the defendant-respondent-respondent.

10 It is further submitted that if there is anything in the form of estoppel as alleged by the defendant-respondent it is solely against him in respect of the agreement, a stubborn fact which he cannot get out of. An agreement of this nature can only be declared null and void when both parties to it consent so to do.

4. That there was no such acquiescence by Tekyimantia in the said Committee's sitting as can be found that there was not even a linguist representing the Odikro of Tekyimantia in his official or private capacity during the sitting of the said Committee ; nor was there any proof evidential or otherwise to say that Tekyimantia was represented and summoned to this meeting. The two witnesses for the defendant-respondent could not even in their evidence suggest that there was the Odikro of Tekyimantia or representative present as a party as alleged by the defendant-respondent-respondent in his submissions.

5. That in the other case referred to by the defendant-respondent-respondent, re Yardom versus Minta in full court judgment, the case was specifically referred to arbitration for award when it came before it, by the Judge, who sat on it and after going into the case and appreciating that the issue involved was one of constitutional nature.

Dated at Kumasi this 26th day of November, 1943.

(Sgd.) DANSO ABIAM II

30

Plaintiff-Appellant-Appellant.

The Registrar,
Chief Commissioner's Court,
Kumasi, Ashanti.

Writer and witness to signature

O. D. Holdbrook,

Free of Charge.

*In the
Chief
Commissioner's
Court,
Kumasi.*

—
No. 13.
Sub-
missions,
26th
November
1943,
continued.

*In the
Chief
Commissioner's
Court,
Ashanti.*

No. 14.

COURT NOTES of Arguments.

No. 14.
Court Notes
of Argu-
ments, 30th
November
1943.

IN THE CHIEF COMMISSIONER'S COURT OF ASHANTI held at Kumasi on the 30th day of November, 1943, before His Worship G. P. H. Bewes, Esq., Assistant Chief Commissioner, appointed to preside over the Chief Commissioner's Court.

ODIKRO DANSO ABIAM II on behalf of
himself and the Subjects of the
Tekyimantia Stool - - Plaintiff-Appellant-Appellant

Versus

10

OHENE BOACHI TROMU II of Nkwanta
Defendant-Respondent-Respondent.

APPELLANT DANSO ABIAM II.

My dissatisfaction with judgment of Court "A" is that that Court's judgment is based on fact that Committee of Privileges sat and decided that agreement between myself and Respondent had been cancelled, whereas this was done in the absence of my predecessor, neither was he represented. No notice was sent to me to appear before the Committee of Privileges, so I could not understand why the agreement between myself and respondent should be cancelled and on this cancellation the judgment was based. Another fact is Nkwanta Stool and mine jointly litigated with Offinsohene claiming ownership of the land in dispute. Nkwantahene and I got judgment against Offinsohene. Because of this land dispute the agreement I referred to was made between myself and Nkwanta (Exhibit "A"). This was done because of the good help I gave him we entered into the agreement for fear that in future there would be some query as to correctness of this agreement we appeared before the Commissioner. Since this agreement was made he has not been collecting any tribute from me. But if strangers are farming on the land, he and I collect tribute. By strangers I mean people who serve neither myself or the Nkwantahene. That is native custom. At the time that Exhibit "A" was made I was serving Nkwantahene and therefore not a stranger on the land. Now I serve the Etinpinhene. Up to the time Exhibit "A" was made I was collecting tribute for Nkwantahene. I base my entire grounds of appeal on the agreement Exhibit "A."

Exhibit
"A."

Exhibit
"A."

ON BEHALF OF RESPONDENT, Mr. J. H. Gambah in reply.

It has never happened that Tekyimantia has joined me in making a case against the Offinsohene i.e. the proceedings in the Court. Before Tekyimantia was serving me and took part in all my labours and he contributed towards my stool debt and therefore regarded him not as a stranger. I was taking tribute from people who have no allegiance to my stool and were not contributing to my stool debts. Tribute was being collected by myself. In course of time Kwabena Kwaa of Tekyimantia approached me to permit him to collect tribute on my behalf and give him one-third share. At the start he did not ask for one-third share but said that he was going to collect the tribute for me. He collected the tribute honestly for me some time. Later I found it advisable to give him a share

of tribute for his trouble in collecting. He approached me with his elders to ask me for a share and I then entered into Exhibit "A" with him. After we had signed it we sent it to the Commissioner to see and he signed it. What prompted this agreement was that he was taking part in communal work. He was serving under my stool until the restoration of confederacy. He made an application to the Committee of Privileges to serve the Etinpinhene, I tried to retain him but the Committee did not agree, as in the olden days he served allegiance to the Etinpin Stool. I asked Committee what I should do about the land he lived on. After a lengthy discussion it was decided that they should pay tribute. I agreed to the decision of Committee of Privileges and later my stool became indebted as a result of a land dispute.

Asantehene counselled Tekyimantia to help me pay my stool debt and he flatly refused.

DANSO ABIAM II in reply. I did not contribute towards the stool debt of Nkwanta. I was serving Etinpin Stool before I was placed under Nkwanta Stool by Government. Nkwanta knew that I used to serve Etinpinhene yet in spite of this he entered into agreement with me. If there was a levy to be paid to Government I did through Nkwantahene, but I have never paid a share of his stool debts. If Government also wanted work done I helped Nkwanta. From time immemorial none of my predecessors have paid a debt of Nkwanta Stool. The only debt I shared with the Respondent is the debt in the Offinso case.

*In the
Chief
Commissioner's
Court,
Ashanti.*

No. 14.
Court Notes
of Arguments, 30th
November
1943.
continued.
Exhibit
"A."

**No. 15.
JUDGMENT.**

At the time the agreement Exhibit "A" was made the appellant was serving Nkwanta and was therefore not a stranger on the land and could not by native custom be called upon for tribute. Times have changed and appellant is now serving the Etinpinhene of Kumasi, and this does not appear to be against his own will.

It is not denied that the appellant is on Nkwanta land and he now therefore becomes a "stranger" and liable to pay tribute to the land owner. In my opinion on account of the changed conditions the agreement Exhibit "A" is no longer valid. As conditions now are Exhibit "A" violates the custom of land tenure and it appears that both Courts below contend that this could not be permitted. With this I agree. Appeal dismissed with costs to Respondent to be taxed.

(Sgd.) G. P. H. BEWES,
Assistant Chief Commissioner,
Ashanti,

30/11/43.

No. 15.
Judgment,
30th
November
1943.
Exhibit
"A."

No. 16.

GROUNDS OF APPEAL.

*In the
West
African
Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL.

No. 16.
Grounds of
Appeal,
20th
December
1943.

Between ODIKRO DANSO ABIAM II Plaintiff-appellant-appellant

AND

NKWANTAHENE BOAKYI TROMU II

Defendant-respondent-respondent.

The appellant, being dissatisfied with the judgment of the Chief Commissioner's Court, Kumasi Ashanti delivered on the 30th day of November, 1943, and having obtained final leave to appeal therefrom dated the 21st December, 1943, hereby appeals to the West African Court of appeal upon the grounds hereinafter set forth. 10

GROUNDS OF APPEAL.

1. The Judgment of the Asantehene's Court " B " (Confirmed on Appeal by the Asantehene's Court " A " and also by the Court of Chief Commissioner) to the effect that " the Plaintiff is bound by the decisions of the Committee of Privileges," and of the Otumfuo Asantehene is *wrong in law* because the said decisions (if any) of the Committee of Privileges and of the Otumfuo Asantehene were neither in the nature of (A) Arbitration Awards following submissions nor (B) Judicial Pronouncements of Competent Judicial Bodies—and therefore cannot be binding on anybody. 20

2. The Judgment of the Asantehene's Court " B " (confirmed on Appeal by Asantehene's Court " A " and subsequently by the Chief Commissioner's Court) was based on a complete misconception of the true nature of the so-called Decisions of the Committee of Privileges and of the Otumfuo Asantehene, and is therefore wrong.

Exhibit
" A."

3. The Judgment of the Asantehene's Court " B " (confirmed on Appeal by Asantehene's Court " A " and also by the Chief Commissioner's Court) which entirely ignored and disregarded the *terms of the Agreement* dated 11th February 1919 made between the predecessors in title of the Plaintiff and Defendant respectively and which admitted as Exhibit " A " at the trial for the only reason that it had not been produced before the Committee of Privileges, amounts Rejection of Material Relevant Evidence, and the Judgment is therefore palpably wrong. 30

Exhibit
" A."

4. *The Terms of the Agreement* dated 11th February 1919 Exhibit " A " substantially refutes the Defendant's case that the Plaintiff's people do not pay Tribute only when they serve the Defendant's stool but are bound to pay such Tribute when they cease to serve the Defendant's stool—and upon the admission in evidence of the said Exhibit " A " the Court should have held its terms to be in complete contradiction to the Defendant's case—and the Court should not have given judgment for the Defendant. 40

5. The Judgment of the Asantehene's Court " B " (confirmed on appeal by Asantehene's Court " A " and by the Chief Commissioner's

Court) was based upon the wrongful admission of inadmissible oral evidence to contradict or vary the clear terms of the written Agreement Exhibit "A"—and is therefore wrong.

6. The trial was materially irregular in that the Asantehene's Court "B" purported to admit the contents of a written document i.e. the Record of the so-called Decision of the Committee of Privileges—without having the original record or a certified true copy tendered into evidence—and the Court wrongly based its decision on such wrongly admitted contents of an unproduced Record.

10 7. The Judgment was completely against the weight of the evidence. Dated this 20th day of December, 1943.

(Sgd.) K. ADUMUA BOSSMAN,
Counsel for Appellant.

The Registrar,
Chief Commissioner's Court,
Kumasi, Ashanti,

and

To the above-named Respondent,
Nkwantahene Boakyi Tromu II,
20 His Solicitor or Agent, Kumasi.

*In the
West
African
Court of
Appeal.*

No. 16.
Grounds of
Appeal,
20th
December
1943,
continued.
Exhibit
"A."

No. 17.

ADDITIONAL GROUNDS OF APPEAL.

IN THE WEST AFRICAN COURT OF APPEAL.

Between ODIKRO DANSO ABIAM II on behalf of
himself and the Subjects of the Tekyimantia
Stool - - - - Appellant

AND

OHENE BOACHI TROMU II - Respondent.

No. 17.
Additional
Grounds of
Appeal,
14th
February
1944.

ADDITIONAL GROUNDS OF APPEAL.

30 8. The Chief Commissioner's Decision confirming the Decision of the two lower courts (Asantehene's Courts A & B) on the alleged ground that "*the Agreement Exhibit 'A' is no longer valid on account of the changed conditions*" is wrong—because there is no provision in the said Agreement that it should cease to be valid in certain eventualities or in the event of any changed conditions and mere change in conditions does not normally discharge a Contract.

Exhibit
"A."

40 9. The Chief Commissioner's Decision that "*as conditions now are Exhibit 'A' violates Native Custom of Land Tenure* and it appears that both Courts below contend that this could not be permitted—and with this I agree" is palpably wrong, because parties are entitled to make any agreement they like, even for the alteration of rights under Native Customary Law—and providing such an Agreement is valid in other respects it is enforceable even though in violation of Native Customary Law.

Exhibit
"A"

*In the
West
African
Court of
Appeal.*

No. 17.
Additional
Grounds of
Appeal,
14th
February
1944,
continued.

10. The Chief Commissioner and the 2 Courts below (Asantehene's Courts A & B) were wrong in their decision that the Allegiance of the Plaintiff's Stool (the Takyimantia Stool) has anything to do with the Plaintiff's Right to free occupation of the Land, because of the Defendant-Respondent's own admission he gave the Land to the Takyimantia people "To occupy free" (in his own words) at a time when the said Takyimantia's were not his subjects but subjects of the Etipinhene sometime before 1896—and was not till 1896 by the British Arrangement that the Takyimantia's became his subjects, after which he contracted to share and divide tributes collected from persons not being Takyimantia's on the Land in the proportion of 2/3rds for himself and 1/3rd to the Takyimantia Stool. 10

11. The Chief Commissioner is wrong in his decision that "it is not denied that the Appellant is on Nkwanta Land and *he now therefore becomes a 'Stranger' and liable to pay tribute to the Landowner*"—because the Commissioner ignores the Respondent's admission that the Land was originally given to the Plaintiff and his people "to occupy free" when they were in exactly the same conditions as now (i.e. serving the Asantehene through Etipinhene), and that there is no difference in the Plaintiff's condition now and his condition when he originally had the Land "to occupy free." 20

12. The Decision of the Chief Commissioner confirming the Decisions of the two lower Courts (Asantehene's Courts A & B) was based on—

(i) Misconception that mere change in conditions nullifies an Agreement.

(ii) Misconception that the Agreement Exhibit "A" was annulled or rendered invalid by the change in the Plaintiff's allegiance from the Nkwanta to the Etipinhene Stool.

(iii) Disregard of the Plaintiff's Original free occupation without payment of Tribute. 30

(iv) Misconception that an Agreement otherwise good could not be made to alter or "violate" Rights existing according to Native Custom.

And the said Decision is therefore wrong.

13. The Decision of the Chief Commissioner confirming the decisions of the 2 Courts below (Asantehene's Courts A & B) is contrary to Equity—in that the Plaintiff who has been originally given free occupation without payment of tribute long before 1896 and who by the Agreement Exhibit "A" has been sharing Tribute collected from the Land with the Defendant-Respondent in the proportion of One-third ($\frac{1}{3}$) and Two-thirds ($\frac{2}{3}$) respectively—And who has occupied for so long under that belief and incurred pecuniary liabilities in cultivating valuable Farms under that belief, is now required to pay Tribute contrary to what Defendant-Respondent has led the said Plaintiff to believe. 40

Dated this 14th day of February, 1944.

(Sgd.) K. ADUMUA-BOSSMAN

To the Deputy Registrar,
West African Court of Appeal,
Gold Coast Session, Accra.
and

To the above-named Respondent, Nkwantahene Boakyi Tromu II,
His Solicitor or Agent, Accra.

No. 18.

COURT NOTES of Arguments.

*In the
West
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Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Tuesday, the 15th day of February, 1944, before Their Honours Sir Donald Kingdon, C.J., Nigeria (President), Sir George Graham Paul, C.J., Sierra Leone and Alfred Noel Doorly, Ag. C.J. Gold Coast.

No. 18.
Court Notes
of Arguments
(Submission
of Bossman
for Appel-
lant), 15th
February
1944.

(31) 11/44.

Civil Appeal.

10 DEKRO DANSO ABIAM II, on behalf of himself
and the subjects of the Takyimantia Stool,
Plaintiff-Appellant-Appellant-Appellant
V.

OHENE BOAKYI TROMU II,
Defendant-Respondent-Respondent-Respondent.

Appeal from judgment of Bewes, Assistant Chief Commissioner, Ashanti,
dated 30th November, 1943.

Bossman for appellant.

E. O. Asafu-Adjaye for respondent.

20 Bossman : I ask for leave under Rule 19 to argue additional grounds.
Adjaye does not oppose.

Granted.

Bossman : Judgment at page 10. Claim and judgment of Asantehene's
Divisional Court " B " at page 10 : held Committee of Privileges had given
a binding decision which compelled plaintiff to pay tribute to defendant.

(In answer to C.J., Sierra Leone) : Committee of Privileges had no
judicial functions.

(Adjaye : See Proclamation of 31 January, 1935 and 7 W.A.C.A.
page 167. *Safo v. Yensu* at 170. Ground 1 (D)) Judgment of Court of
Appeal pages 35/6.

30 Adjourned till 16th instant.

(Sgd.) DONALD KINGDON,
President.

15th February, 1944.

16th February, 1944.

Bossman continues : See Gazette No. 10 of 31st January, 1935.

(Adjaye refers to Order No. 1 of 1935 under Cap. 79. Laws Vol. III
page 374.)

40 See Appiah's evidence page 9. This is what the Courts below
misconstrued to be a binding decision. The Committee is not a judicial
body dealing with legal claims but a body appointed to deal with purely
political rights and its reference to tribute was not a decision at all. One
of its members said something—that was all.

(In answer to Court—Adjaye states this is a matter between two
States.)

16th
February
1944.

*In the
West
African
Court of
Appeal.*

No. 18.
Court Notes
of Argu-
ments
(Submission
of Bossman
for Appel-
land), 16th
February
1944.

Bossman : This is a question of tribute for land and is a land matter.
(Court refers to Cap. 80 Section 7A added by No. 3 of 1940 and definition
added by same Ordinance.)

Query is this claim within the definition ?

(Refers to Writ.)

Bossman : See page . The dispute is about the payment of tribute
for farms.

(Adjaye refers to Order No. 2 of 1940. If it is a matter of a
constitutional nature it should have been started in the Divisional Council
of the Kumasi Division. See page lines .) 10

Bossman : See Exhibit " A " page 34—that is an Agreement between
landlord and tenant as to profits accruing by farming thereon by strangers.

(Adjaye applies to be allowed to raise the question that none of the
courts had jurisdiction since matter of a constitutional nature.)

(Court decides to hear Bossman's argument first.)

Bossman : See page " land to occupy free." There was no question
then of serving Nkwanta Stool. It was a grant to complete strangers, in
no way subject to Nkwanta Stool, under distinct understanding that they
were to occupy free of tribute. Occupation continued for centuries and
centuries until 1896 the Ashanti war. Paragraph 3 of Exhibit " A " was 20
merely a statement of an existing state of things not establishing a new
state of things. Subservience to Nkwanta Stool did not affect paragraph 3.
Reversion to allegiance to Etipinhene did not affect original agreement to
occupy rent free. The truth is that land is much more valuable now.

Our case in a nutshell is this : Paragraph 3 of Exhibit " A " does not
rest on the fact that at that time we served Nkwantahene, but on the
original grant to occupy free given before we were under Nkwantas.
Our transfer from serving Nkwanta to Etipinhene would make us liable
to pay tribute if our exemption rested on the fact that we were under
Nkwantahene, but it does not—it rests on the original grant to us tribute 30
free—and the subsequent transfer of political allegiance arranged by British
Government can make no difference to our constitutional rights under this.
All the courts made the mistake of failing to notice the original grant.
Fortunately for us the respondent gave their evidence that established
our case. Plaintiff rested (wrongly) in Court below on Exhibit " A."
See page 34. That covers Grounds 10 and 11.

Ground 13 : When landowner has by his conduct allowed his tenant
to occupy under a certain belief and under pecuniary liability, he is estopped
in equity from behaving contrary to what he has led landowner to believe.
Ado. v. Wusu 6 W.A.C.A. p. 24. Here we do not claim ownership—only 40
free occupation.

Grounds 1, 2 and 6 : The two native courts founded on the decision
of the Committee of Privileges. The Chief Commissioner of Ashanti's
Court did not.

(In answer to Court—Adjaye states that he is contending that a
decision of the Committee of Privileges operates as an estoppel.)

Bossman : They cannot do so. No certified copy of record was
put in and it is not shown even that the whole of the relevant portion was
read. See page . It proves nothing. There was no decision by the

Committee—only remark by the Otumfuo Asantehene. Plaintiff said his predecessor was not present. Page ; . I submit Chief Commissioner was correct in ignoring the question of estoppel. See evidence page . I submit finding of original court page 11 that they were bound by the decision of the Committee of Privileges was wrong.

*In the
West
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Appeal.*

Ground 12: Mostly covered by argument. 12 (IV) refers to Chief Commissioner's statement that Agreement is not according to native custom. But it is common to have a grant free of tribute. I submit defendant has not shown that the change in status abrogated the
10 Agreement. I submit we are entitled to a declaration as prayed.

No. 18.
Court Notes
of Argu-
ments
(Submission
of Bossman
for Appel-
land), 16th
February
1944,
continued.

(Court: Surely not in the form in the writ, that is obviously too general.)

Bossman (after consideration): What we are asking is for a declaration that—

“Plaintiff and all his subjects are not liable to pay any tribute to the defendant on behalf of his Stool in respect of their occupation of that portion of Nkwanta land known as Takyimantia land.”

Adjaye for Respondents: That amendment would change the writ as it stood in the two native courts. First as to jurisdiction. Claim
20 as it stood before two native courts was one touching the constitutional relations between two stools. It is a matter of native custom that tribute is payable to the landowner—and the constitutional question arising is “Is tribute payable by a subject stool or not?” It is two stools that have to be considered—the relationship between them. At page 21 see what appellant said. Courts must consider if plaintiff stool is a stranger stool to defendant stool. Status of each stool must be considered. So Section 75 of Cap. 4 applies. (Court: Surely that is not relevant; the Chief Commissioner's Court is not a part of the Supreme Court). The relevant section is Section 11A of Cap. 79 added by Ordinance No. 2 of
30 1940. If matter is of a constitutional nature all the courts which have dealt with the matter have no jurisdiction. Then as to Bossman's argument:—

Reply of
Asafu
Adjaye for
Respon-
dent.

Plaintiff's claim page 2 is definitely based on Agreement of 1919 and that was so right up to Chief Commissioner's Court. He must stand or fall by that. If in lower courts he had based his claim on non-payment of tribute or the original grant that matter would have been thrashed out. (Court points out that plaintiff still bases on Agreement but argues that Chief Commissioner's reasons for declaring it abrogated were wrong.) My contention is that plaintiff was asking for a declaration of his stool
40 vis-a-vis Nkwanta Stool in the matter of tribute. On restoration of Confederacy questions affecting status of stools were brought up before the special Committee and plaintiff stool went before the special Committee and was ordered to serve another stool the Etipin Stool. It was he who applied to be so transferred. See page . As to original grant, the plaintiff's people were subjects of Etipinhene under Asantehene. Nkwantas were directly under Asantehene. A request was made by Asantehene to Nkwantahene to live on the land and hunt for Asantehene. That was the only purpose—not to make cocoa farms. The grant was made to Asantehene and not to the Takyimantias. For the purpose of hunting
50 the Nkwantahene is under the Asantehene and gives to Asantehene's subjects the free right to live and hunt on Nkwanta land—but not to make

*In the
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No. 18.
Court Notes
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ments,
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dent,
continued.

farms. It was not Takyimantia people who applied to Nkwanta for a place to live, but Asantehene asked for the land for a specific purpose. At the time they came on the land there was no question of tribute because tribute is only collected from people who cultivate. Forty years ago Asantehene was sent away and the object of the Takyimantias being there disappeared. Then British Government placed their people under the Nkwanta Stool. At that time there became a changed relationship between the two stools: they now became subjects of Nkwanta Stool and as subjects were entitled by native custom to live on the land and even cultivate it without payment of any tribute. They were however 10 liable to pay stool debts of Nkwanta Stool, and there is evidence that they contributed to such debts. Under those changed conditions they put the terms into writing hence Exhibit "A" of 1919. So that in construing the Agreement I submit it has to be construed bearing in mind that plaintiff stool was then subservient to defendant stool. The Takyimantia people were not strangers at the time. Appellant at page 20 admits that as to strangers we are entitled to charge tribute. On restoration of Confederacy the grounds of the Agreement were removed and plaintiff should not object to payment of tribute by virtue of changed relationship. See "A" paragraph 3: question is whether plaintiff's people are strangers 20 now or not. If they are they are liable for tribute and they have acquiesced in decision of Committee to serve the Etipin Stool—and so acquiesced in the fact of their being strangers on Nkwanta land, being the children of strangers or not, is whether there is or is not subservience to the stool. Therefore their claim at page 2 must fail and I submit that native court was right to dismiss the claim. See evidence pages . Plaintiff relied upon "A" not on any previous Agreement.

(Court: Is there anything to show how long before 1896 plaintiff's people were put on the land? Bossman suggests centuries.) No—I suggest shortly before Asantehene was sent away. If plaintiff relies on 30 occupation for hunting having been transferred with anything else, the onus is on him. Evidence page (shows it was Asantehene who acquired the land). On Agreement as it is appellant may claim one-third share of tribute collected by him, this may include tribute collected from his own people. That is all it comes to at the most.

Bossman in reply: As to how long prior to 1896 we had been on the land—see page 21 "the olden days" that bears out many "centuries." (Doorly points out at page 6 Etutuohene referred to 1919 Agreement as an "Agreement of very long age") Olden days is not to refer to a time before British occupation. As to object—hunting. They were to 40 live there "I gave them to occupy free." Can it be suggested they were to do nothing but "hunt." Could they not cultivate their own food and make markets and so on—they were to live there, lead a normal life and hunt for Asantehene and pay no tribute. If there had been any tribute charged before 1896 then I can understand his wishing to revert to the same position. The land was given to plaintiff's people to occupy, it is immaterial that Asantehene asked for it for them. I concede that plaintiff based his claim mainly on the 1919 Agreement, but if it is going to make alterations in it, Court should have before it all the facts. One is that plaintiffs were in occupation before 1896. (In answer to Court) 50 We have farms including cocoa farms on the land.

(In answer to Court) A stranger means one who does not owe political allegiance to a stool, but a stranger may occupy land without paying tribute with leave from stool. That can be done by agreement.

(Court—but what about paragraph 3 of “A”) That shows the kind of strangers—Takyimantia people are exempted. Our peculiar position was not recognised. As to payment of stool debts—I submit reference at page 6 to payment of stool debts does not show this. It is one instance only which is explained. It would be remarkable if there were only one call to pay stool debts over a long period if there was liability. See page 20 showing conflict of evidence as to reason for “A.” I submit that court was bound to make a finding as to the circumstances of making “A” in order to be able to say if conditions have altered the Agreement. No finding was made so if this court is not satisfied that plaintiff’s claim should be granted case should be sent back to trial court to make a proper investigation as to circumstances leading to “A.”

(Sgd.) DONALD KINGDON,

President.

Judgment reserved.

16th February, 1944.

*In the
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Court of
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No. 18.
Court Notes
of Argu-
ments,
Reply of
Asafu-
Adjaye for
Respondent,
continued.

20

**No. 19.
JUDGMENT.**

No. 19.
Judgment,
1st March
1944.

Read by the Chief Justice of Sierra Leone.

This suit was started in the Asantehene’s Court B, Kumasi, the Appellant being the Plaintiff and the Respondent the Defendant. The claim in the Writ of Summons was as follows :—

30

“The plaintiff claims that he and all the subjects of Tekyimantia stool are not entitled to pay any tribute to the defendant on behalf of his stool and therefore calls on the defendant to show cause why he demanding him and his subject that from henceforth every inhabitant of Tekyimantia stool subjects should pay a tribute of £2 7s. each whereas there are agreements to the knowledge of the defendant and made between the ancestors of both the plaintiff and the defendant by Messrs. Philbrick & Fell and confirmed by F. C. Fuller Chief Commissioner Ashanti dated 15.X.14, 17th April, 1917, respectively and L. H. Wheatley Ag. Commissioner W.P.A. on the 11th Feby. 1919, purporting that no tribute was to be collected from any residents of Tekyimantia.

40

2. The plaintiff further asks the Court in the meantime to restrain the defendant his servants and/or agents from proceedings to collect any such tribute from plaintiff or any subjects of Tekyimantia stool till final hearing of the case to a close.”

The Trial Court gave judgment in favour of the Respondent and from that judgment the Appellant appealed to the Asantehene’s “A” Court, which, after hearing further evidence from the Appellant and the statement of the Respondent that he did not “desire to say anything besides what has been recorded by the Court below,” found that there was

*In the
West
African
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No. 19.
Judgment,
1st March
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continued.

no substance in the Appellant's appeal and dismissed it. The Appellant further appealed to the Chief Commissioner's Court which after hearing further evidence dismissed the Appellant's appeal. From that judgment the Appellant has appealed to this Court.

In this Court Respondent's Counsel raised the question of the trial Court's jurisdiction to entertain the claim as stated in the Writ, his point being that the claim raised on the face of it a constitutional issue which the trial Court had no jurisdiction to entertain. On this point being raised Appellant's Counsel applied to amend the claim so as to seek only the following :—

“ A declaration that Plaintiff and all his subjects are not liable to pay any tribute to Defendant on behalf of his Stool in respect of their occupation of that portion of Nkwanta land known as Takyimantia land.”

An application to amend the Writ of Summons at such a late stage would not of course be granted by this Court without very good reasons, but in this case we think that there are such good reasons, namely :—

(1) that if the objection to the jurisdiction had been taken in the trial Court there would then have been an opportunity for the Appellant to apply to make this amendment and

(2) that, as always, we look not merely to the form of the Writ of Summons in Native Court proceedings but rather to the substance of the issues actually raised and tried in the suit, and that in the present case the issues raised and tried were those raised by the amendment now proposed.

We have therefore decided to allow the amendment sought ; the Writ of Summons is amended accordingly, and that disposes of the objection to the jurisdiction of the trial court, the issue being solely a question of whether or not tribute is payable in respect of the occupation of land, no constitutional question being raised.

Before dealing with the merits of the appeal or the judgments of the three lower Courts, it will be as well to state shortly the main historical facts of the case, about which there is no serious controversy. Prior to the British occupation the Takyimantia people were subject to the Etipinhene and through him subject to the Asantehene. Under the rearrangements made under the auspices of the British Government in 1896 the Takyimantia people were taken away from their allegiance to the Etipinhene and placed under the Nkwantahene. Later, on the re-establishment of the Ashanti Confederacy, the Takyimantia people were taken from the Nkwantahene and put back again under the Etipinhene.

In 1919 a written agreement was made between the Nkwanta Chief and Elders of the one part and the Takyimantia Elders of the other part. The text of that agreement, which was put in evidence, is as follows :—

“ We the undersigned the Chief and elders of Nkwanta and the Chief and elders of Takyimantia agreed to and hereby bind ourselves to accept and keep the following conditions with reference to the collection and division of tribute on snails, kola, cocoa, &c., &c. :—

1. Both parties shall send representatives who shall meet and combine to collect the tribute.

2. The tribute shall be divided into three parts 1/3rd to be given to the Chief of Tekyimantia and 2/3rd to the Chief of Nkwanta.

3. The tribute to be collected from strangers and not from bona fide residents on Tekyimantia land."

*In the
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No. 19.
Judgment,
1st March
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10 On the return of the Asantehene some years ago a "Committee of Privileges" was set up by the Government to deal with constitutional questions which might arise in connection with the restoration of the Ashanti Confederacy. No Report of that Committee dealing with matters now in dispute was formally put in evidence but it appears to have been available in the Asantehene's "A" Court and to have been read in whole or in part to that Court. We have not seen that Report but in our opinion it is not of direct importance to the determination of the claim as now amended, as the Committee was not a judicial tribunal whose decision would constitute *res judicata* on matters of this kind coming before a judicial tribunal.

20 The Appellant in all the lower Courts expressly, and very definitely, based his case entirely on the agreement which we have quoted, and the agreement therefore calls for careful consideration. To understand that agreement, and to define its meaning and effect, it is essential to bear in mind the relationship between the parties at its date, and the most important point in that connection is that at the date of the agreement the Takyimantia people were under the Nkwantahene. This land in question was undoubtedly Nkwantahene's land at the date of the agreement, so that at that date the Takyimantia people, in any questions or agreements about the land were not "strangers." It was by the action of the British Government in putting them under Nkwantahene that they had ceased to be "strangers" in regard to Nkwanta land. It follows that, not being "strangers" they were, by the terms of the 1919 agreement and
30 at its date, exempted from payment of tribute in respect of their occupation of that portion of Nkwanta land known as Takyimantia land.

The decision of the Committee of Privileges does not itself bind the Appellant as a judgment of a judicial tribunal about rights to land. If that idea were present, as it appears to have been, in the minds of the members of the first two Courts to deal with the case, it was wrong. All the Committee of Privileges could decide was the constitutional relations between the parties but upon these relations the parties themselves by their agreement made exemption from tribute to depend. In other words it was the parties by their agreement who made the decision of the
40 Government through the Committee of Privileges as binding for practical purposes as if it had really been *res judicata* as to tribute.

It is clear that if and when they should become "strangers" they were, *by the terms of the Agreement*, on which their whole case in the lower Courts was expressly based, no longer exempted from the payment of tribute. As has been pointed out they had by the action of the Government in 1896 ceased to be "strangers" to the Nkwantas but had become "strangers" to the Etipinhene. When later, again by the action of the Government through the "Committee of Privileges," they were taken from the Nkwantahene and put back under the Etipinhene, they became
50 "strangers" to the Nkwantahene just as they ceased to be "strangers"

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No. 19.
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continued.

to the Etipihene. Just as in 1919, by the 1896 action of the Government, they were within the express exemption of the agreement so now by the later action of the Government through the "Committee of Privileges" they have been taken out of that exemption.

In this Court Counsel for the Appellant, realising no doubt that difficulty about depending on the agreement, sought to go behind the agreement and to found on occupation prior to 1896—i.e. while they were "strangers" to the Nkwantahene. Nothing of this kind was suggested in the Courts below. In fact it was only quite incidentally in a casual sentence of the *Respondent's* evidence, that his occupation prior to 1896 10 was even mentioned in the trial Court. We are inclined to think that there must have been some good reason why in the trial Court the Appellant in his evidence never even mentioned the occupation prior to 1896, much less founded upon it. Possibly a clue to that good reason is to be found in the judgment of the trial Court which expressed the opinion that it was the Asantehene "who in the olden days acquired this Takyimantia land from the Nkwantahene and made the Takyimantia people occupy it to act as his hunters." If the Appellant in the trial Court had raised the question of the prior occupation it would possibly have been for the Asantehene to say what the terms of that occupation were, but the 20 Appellant apparently thought it better to confine his case, as in fact he did, to the agreement, made direct between the Nkwantas and the Takyimantias, to which the Asantehene was not a party. If the new case sought to be made put for the Appellant for the first time in this Court had been put forward in the trial Court, there would doubtless have been available ample evidence to show the circumstances and the terms of the Asantehene's hunters' occupation prior to 1896. As it is, there is no such evidence, and the lack of such evidence is due to the fact that the Appellant elected to rely entirely on the 1919 agreement and to draw a veil 30 over any previous occupation of the land. At this late stage the Appellant cannot ask us to guess at what is behind the veil, and to draw conclusions in his favour from our guesses. For these reasons we do not think it would be right or proper for us to consider in this appeal a case which was never by the Appellant put, or even suggested, to any of the three lower Courts.

We are therefore of opinion that the Appellant is not entitled to the declaration sought in his amended claim and the appeal is accordingly dismissed with costs assessed at £36 12s. 6d.

(Sgd.) DONALD KINGDON,

President.

40

(Sgd.) G. GRAHAM PAUL,

1st March, 1944.

Chief Justice, Sierra Leone.

(Sgd.) A. N. DOORLY,

Ag. Chief Justice, Gold Coast.

No. 20.

MOTION.

*In the
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Court of
Appeal.*

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION, held at Victoriaborg, Accra, on Friday, the 21st day of July, 1944, before their Honours Walter Harragin C.J., Gold Coast (Presiding), Alfred Noel Doorly and James Henly Coussey, JJ., Gold Coast.

No. 20.
Motion for
General
Leave to
Appeal,
21st July
1944.

Motion.

ODIKRO DANSO ABIAM II

10

V.

OHENE BOAKYE TROMU II.

Motion for final leave to appeal.

Mr. Bossman for appellant.

Granted.



Exhibit.

" A "

Agreement,
11th
February
1919.**EXHIBIT " A. "****AGREEMENT.**

Tendered in evidence by Odikro Danso Abiam II.

(Intd.) I.K.A.

25/1/43.

We the undersigned the Chief and Elders of Nkwanta and the Chief and Elders of Tekyementia agree to and hereby bind ourselves to accept and keep the following conditions with reference to the collection and division of tribute on snails, kola, cocoa &c. &c.

1. Both parties shall send representatives who shall meet and combine to collect the tribute. 10

2. The tribute shall be divided into three parts—1/3rd to be given to the Chief of Tekyementia and 2/3rd to the Chief of Nkwanta.

3. The tribute to be collected from strangers and not from bona fide residents on Tekyementia land.

(Signed) Yaw Buaten, Chief of Nkwanta	Their X	
Kwabina Kwaa Chief of Tekyementia	X	20
Nkwanta Elders—		
Kwasi Amankwa	X	
Atta Kwasi	X	
Kwami Anyim	X	
Tekyementia Elders—		
Yaw Kyereme	X	
Yaw Adu	X	
Kofi Buobae	X	
Linguist Kofi Buaten	X	
	Marks	30

Before me,

(Sgd.) L. H. Wheatley,
Ag. Commissioner, W.P.A.,
Tekyementia.
11th Feby. 1919.

Witness to marks

(Sgd.) E. D. Osman,
Interpreter & Witness to marks.