Privy Council Appeal No. 6 of 1945

Odikro Danso Abiam II - - - - - - - - *Appellant*

v.

Ohene Boakyi Tromu II - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH NOVEMBER, 1949.

Present at the Hearing:

LORD SIMONDS
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* LORD SIMONDS]

In this appeal, which involves the consideration of questions of West African law and custom, the appellant seeks to have set aside the judgments of no less than four Courts of the Colony, two of them the judgments of native Courts and two of them the judgments of Judges experienced in the local law.

The claim of the appellant, who is the Chief of the Tekyimantia people, was, as ultimately formulated, to the effect that he and his subjects were not liable to pay any tribute to the Chief of Nkwanta on behalf of his stool in respect of their occupation of that portion of Nkwanta land which was known as Tekyimantia land. This claim which he preferred against the respondent the Chief of Nkwanta was rejected first by the Asantehene's " B " Court and upon successive appeals by the Asantehene's " A " Court, the Chief Commissioner's Court and the West African Court of Appeal.

It is the appellant's case that at some time before 1896 the respondent's predecessor as Chief of Nkwanta at the instance of the Otumfuo Asantehene (" All-powerful Chief of Ashanti ") gave the Tekyimantia people certain land to occupy free so that they might live there and hunt for the Otumfuo Asantehene. This land admittedly belongs to the respondent. Before 1896 the Tekyimantia people were subject to the Etipinhene, but upon the reorganisation of the country by the British in that year they became subject to the Nkwantahene.

On the 11th February, 1919, an agreement was made between the predecessors of the parties, the then Chiefs of Nkwanta and Tekyimantia, upon which alone the appellant relies in support of his claim. It was in these terms : " We the undersigned the Chief and Elders of Nkwanta and the Chief and Elders of Tekyimantia 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, etc. etc.

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

" 2. The tribute shall be divided into three parts—one-third to be given to the Chief of Tekyimantia and two-thirds to the Chief of Nkwanta.

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

This agreement was duly executed before the then acting Commissioner.

In 1935 the British restored the Ashanti Confederacy and in the result the Tekyimantia people ceased to be subject to the Nkwantahene and became once more subject to the Etipinhene. At the same time a body called a " Committee of Privileges " was set up to consider constitutional questions arising out of the restoration of the Confederacy, and it was before this Committee that in the first place the Nkwantahene asserted that, though he had not charged the Tekyimantia people with tribute while they were subject to his Stool and contributed to his Stool debts, he proposed to do so now that they had become subject to the Etipinhene. The Committee of Privileges appears to have accepted this view as correct, being unaware, as the appellant alleges, of the agreement of the 11th February, 1919, and their decision was confirmed by the Otumfuo Asantehene. Accordingly the appellant commenced the proceedings out of which this appeal arises. In the Asantehene " B " Court the ruling of the Committee of Privileges was regarded as decisive and on this ground the appellant's claim was dismissed. It was observed that, if the agreement had been produced before that Committee the decision might have been reconsidered. It is, however, noticeable that the Court referred without dissent to the finding of the Committee that " so long as the people of Tekyimantia occupying and using the Nkwantia Stool land were no longer under the Nkwantahene they were bound by custom to pay tribute to the Nkwantahene." So also the Court referred without dissent to the evidence of Mr. Appiah, the Chief Registrar of the Asantehene's Court and Secretary of the Confederacy Council, to the effect that when the Tekyimantia were placed under the Stool of the Nkwantahene they contributed to his stool debt, therefore he charged them no tribute ; but now they were going to their former place, that is, to be subject to the Stool of the Etipinhene, he would charge them tribute.

The Asantehene " A " Court, to which the appellant first appealed, took the same view. Of the three native Chiefs who sat in this Court, the Kyidomhene placed some reliance on the ruling of the Committee but he used these significant words, " Since the Tekyimantiahene 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 the plaintiff appellant should pay tribute to defendant respondent's Stool."

The same view was expressed with equal emphasis by the other Judges, the Oyokohene and the Akwamuhene, who clearly thought, though they did not expressly deal with it, that the agreement of 1919 did not in the changed circumstances displace native law and custom.

The appellant next appealed to the Chief Commissioner's Court at Kumasi. His appeal was dismissed by the Assistant Chief Commissioner who dealt precisely with the agreement upon which alone the appellant relied and relies. He observed that, when the agreement 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, and went on to point out that, as he was now serving the Etipinhene while living on Nkwanta land he became a " stranger " and liable to pay tribute to the land owner. And he expressed the opinion that on account of the changed conditions the agreement was no longer valid and would violate the custom of land tenure.

Once more the appellant appealed to the West African Court of Appeal, which unanimously dismissed his appeal. The learned judge of that Court attached no direct importance to the ruling of the Committee of Privileges, since it was not a judicial tribunal, but found that the agreement upon which the appellant relied did not support his claim. They too emphasised that it was essential to bear in mind the relationship of the parties at the date of the agreement. Then the Tekyimantia people were

not " strangers " and it was because they were not strangers that they were exempted from payment of tribute. But it was clear that, if and when they became " strangers ", then by the very terms of the agreement they would no longer be exempted, and it was clear too that when by the action of the Government through the Committee of Privileges they were taken from the Nkwantahene and put back under the Etipinhene, they did become " strangers " to the former in the terms of the agreement. The agreement, therefore, so far from supporting the appellant's claim, in this view implicitly at least imposed the burden of tribute upon him and his people so soon as he ceased to be subject to the Nkwantahene.

From the conclusion to which the Courts of the Colony have unanimously come their Lordships see no ground for dissent. It may be the case, as counsel for the appellant pointed out, that the reasons for rejecting his claim have in the course of the proceedings been stated in somewhat varying terms. But throughout the underlying reason has been that which was well stated by the Akwamuhene in the Asantehene's " A " Court " I cannot find out 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 to his Stool debts ". The overwhelming consensus of evidence and opinion is that this accords with native law and custom and it is against this background that the agreement of 1919 must be interpreted and its effect measured. It matters little whether, as the West African Court of Appeal determined, the agreement is to be regarded as in effect providing that, when the Tekyimantia people became " strangers ", they would be liable to tribute, or, as the Assistant Chief Commissioner appears to have decided, the agreement was under the changed conditions no longer valid, or whether (as it might be put) that it was an implied term of the agreement that it should operate only so long as the Tekyimantia people were subject to the Nkwantahene. In any view it is in their Lordships' opinion impossible for the appellant to rely on the agreement as exempting him and his people from tribute so long as he and they dwell on the land of Nkwantahene and do not owe allegiance to him.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs of this appeal.

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In the Privy Council

ODIKRO DANSO ABIAM II

v.

OHENE BOAKYI TROMU II

DELIVERED BY LORD SIMONDS

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