

In the Privy Council.

ON APPEAL

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

31374

UNIVERSITY OF LONDON
W.C.1.
9 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

NANA KOFI ADU, Kokofuhene Defendant-Appellant

AND

NANA KWASI AGYEMAN, Boagyaahene . . Plaintiff-Respondent.

10

Case for the Respondent.

RECORD

1. This is an Appeal from the judgment of the West African Court of Appeal (Gold Coast Session) dated the 28th day of January, 1949, dismissing with costs an appeal from the judgment of the Chief Commissioner's Court, Ashanti, dated the 2nd day of April, 1948, which in turn dismissed with costs an appeal from a judgment of the Asantehene's Court 'A' given at Kumasi on the 6th day of December, 1947, decreeing with costs the claim of the above-named Plaintiff (now Respondent) against the above-named Defendant (now Appellant). p. 42
p. 38
p. 28

2. The Plaintiff, suing as the Bogyaahene, claimed by Civil Summons in the Native Court of Asantehene (Grade A) dated the 19th August, 1946, from the Defendant a satisfactory and reasonable explanation as to why, though the latter's Akwamuhene and subjects had paid tribute to the Plaintiff's Stool as far back as the reign of the then Boagyaahene Nana Asamoah Kenin by virtue of their occupation of certain land known as "Dwoamin" belonging to the Boagyaahene Stool, the Defendant had ordered his subjects on the said land not to pay the tribute to the Boagya Stool. p. 1

3. The following narrative is taken from the judgment of the Chief Commissioner's Court of Ashanti dated the 5th day of August, 1947 :—

30 "The Asantehene's "A" Court for the purpose of this case was conducted by the Omanhene of Kumawu, the President, the Oyokohene of Kumasi and Gyasehene of Kumasi. p. 3

"These Chiefs were unable to reach agreement and two judgments have been delivered one by the Kumawuhene and a joint

CASE FOR THE RESPONDENT

one by the Oyokohene and Gyasehene. It is left to this Court to assume that the joint judgment of Oyokehene and Gyasehene is the prevailing judgment and in his fourth Ground of Appeal the Defendant-Appellant draws attention to the point that the judgment of the Court should be signed by the President.

“ This is a technicality which might be rectified but both judgments seek to grant the ownership of land to one or other of the parties.

“ The viewer’s report further makes it clear that the definition of the land in question is confused. 10

“ The appeal is therefore allowed and both judgments are set aside. The Asantehene’s “ A ” Court is to hear the case *de novo*. The Court will no doubt empanel Chiefs other than those who have sat on this case and if the ownership of the land is in issue the Court may consider that a survey is necessary.”

p. 4 4. On the 2nd day of September, 1947, after receipt of the directions referred to in the preceding paragraph, the Asantehene’s “ A ” Court ordered a survey of the land in dispute, appointing Mr. E. A. Kufuor for the purpose, and directed the parties to furnish the Registrar of the Court with details of their claims. 20

pp. 4-7 5. On the 15th September, 1947, the Plaintiff, and on the 18th September, 1947, the Defendant furnished a description of the boundaries of the land in dispute.

Ex. “ D ” 6. On the 12th November, 1947, Mr. Kufuor aforesaid after inspection *in loco* prepared his plan, which he produced in evidence without objection by either side on the 1st December, 1947, and this plan was marked as Exhibit “ D.” It is not seriously disputed that Plaintiff’s Stool owns land immediately to the north and south of the disputed land and that land admittedly belonging to or occupied by the Defendant’s Stool is separated from the disputed land by several miles. 30

p. 7 seq.
p. 12 seq.
p. 16 seq.
p. 18 seq.
p. 19 seq.
p. 23 seq. 7. The evidence on the Plaintiff’s side consisted of the Plaintiff himself; of one Kwaku Abroneh, the previous Akwamuhene of Kokofu and Odikro of Dwoamin; of one Solomon Adarkwah, Okyeame, representing the Assacherehene, who claimed a common boundary with the Plaintiff on the Dwoamin lands; and of one Adomako Ansah II, the Assamanghene, who claimed a common boundary between Assamang Stool lands and the Plaintiff’s Stool lands. The Defendant’s evidence consisted of one Kyeame Akwasi Yeboah, representing the Defendant; and of one Atta Gyamfi II, Ahurenhene, who had had a land dispute with the Plaintiff. 40

Ex. “ A ”
p. 44 8. Both sides relied on tradition as to the ownership of the land in dispute, but the Plaintiff also relied on recent acts evidencing ownership and among others Exhibit “ A,” given by the former Akwamuhene of

Kokofu, the said Kwaku Abroneh referred to in the preceding paragraph hereof, to the previous Boagyaahene, on the 24th January, 1935, which was in the following terms :—

10 “ THIS IS TO CERTIFY that I the undersigned Chief Kwaku Abroneh (Akwamuhene) of Kokofu faithfully promise to pay to Chief Kwabena Dapaa (Boagyaahene) cash the sum of £35.0.0d. Thirty-five pounds being cocoa tribute paid annually by my subjects of Dwoamin to the said Boagyaahene in respect of his land on which their cocoa trees situates. Payment to be made exactly the first day of January every year.

“ 2. In default of payment at the expiration of the time specified herein, the said Chief Kwabena Dapaa has the right and power to take action against me to recover the above stated amount subject to the provisions of this agreement.”

The Defendant objected to the admissibility of this document, but the objection was overruled by the trial Court.

p. 8, l. 12

The Plaintiff also relied on Exhibit “ B,” which was a certified copy of an application by one Kwame Asare to the Plaintiff, through the Omanhene of Kokofu, for the grant of a Native Physician Licence to carry on the duties of a Fetish Bresan on the disputed lands. It was in evidence that Kokofu Dabihene Katawire accompanied the said Kwame Asare when the application was delivered to the Plaintiff.

p. 45

p. 8, l. 17

The Defendant objected to the admissibility of this document on the ground that the letter was not endorsed by the Defendant, but the objection was overruled by the Court.

p. 8, l. 20

The Plaintiff also relied on the Native Administration Receipt Book No. B28401-500, which was marked as Exhibit “ C,” which has not been printed but has been sent over in original and is in custody of the Registrar of the Privy Council, as evidence that he has been collecting tribute and issued receipts therefor. No objection was raised by the Defendant to the admissibility of this Exhibit.

Ex. “ C ”

9. In their judgment of the 6th December, 1947, the Asantehene “ A ” Court said *inter alia* :—

40 “ Now, having patiently listened to the evidence of the parties and their witnesses we are convinced that the weight of evidence is in favour of the Plaintiff. There is no doubt that the Plaintiff has been in undisturbed possession of the disputed land for many years and we cannot believe the story of the Defendant that he was not aware that his subjects had been paying tribute to Plaintiff’s Stool for many years past. Defendant’s argument that Plaintiff’s 1st witness, the ex-Akwamuhene of Kokofu, rebelled against him and made that agreement during the period of his rebellion cannot also be believed, because it is proved that the successor of the said ex-Akwamuhene has also paid the tribute more than once to the Plaintiff (Defendant himself admits once). If Abroneh was a rebel, Assamoah, his successor, is not.

p. 27, l. 10 to
p. 28, l. 4

“ We fail to understand why the Defendant does not collect tribute from Plaintiff’s subjects who farm on the disputed land, if, as alleged by the Defendant, the land is his. If he is not aware that Plaintiff’s subjects farm on the land why has his caretaker, the Odikro of Dwoamin, not reported this fact to him ?

“ Exhibit ‘ A ’ is also clear. It is admitted that Kwame Asare is a Kokofu subject. Why did he not apply for a Physician Licence at Kokofu but from Kumasi ? because he knew that the land on which he lived belonged to Plaintiff.

“ It was revealed at the hearing in cross-examination that 10 both parties subpoenaed the Assamanghene (3rd witness for Plaintiff) as a common witness during the first hearing of the case, but as the Assamanghene gave evidence against the Defendant, the Defendant deliberately did not subpoena him again at this second hearing. This makes the Court to believe that the Assamanghene’s evidence is true.

“ Now, turning to Exhibit ‘ D,’ the Plan, and considering the evidence of the Ahurenhene, the only witness for the Defendant, it will be observed that three subjects of the Ahurenhene, namely Panin Kwakyi, Kofi Penya and Kwasi Akora pay cocoa tribute to 20 the Plaintiff. One of these three persons, Kwasi Akora, who happened to be in Court and who was questioned by the Court, admitted that he has paid tribute once to the Plaintiff, but adds that he was made to understand that it was being sent to Kokofuhene (Defendant).

“ It is hard to believe how the Ahurenhene does not know if any of his subjects pay tribute to a neighbouring Chief in respect of land on which they farm. If the evidence of the Ahurenhene to the effect that his predecessor presented the land in dispute to the Defendant is to be believed, why should his subjects who farm on 30 this very land which he has presented occupy the land free of any rent or without any arrangement with the Defendant who is the present landlord ? ”

p. 28, l. 4 10. In the result the Court found that the Plaintiff had proved his case beyond all reasonable doubt, and were satisfied that he owns the Dwoamin lands, and accordingly entered judgment for him and against the Defendant with costs of the previous and of the subsequent hearing of the suit.

p. 28 11. The Defendant thereupon appealed to the Chief Commissioner’s Court of Ashanti, and on the 13th February, 1948, final leave to appeal 40 was granted, the grounds of appeal to be filed within seven days and a copy to be served on the Plaintiff-Respondent. The fully reasoned grounds of appeal were filed on the 19th February, 1948, which were expanded on the 12th March, 1948. The fully reasoned Reply to these was filed by the Plaintiff-Respondent on the 22nd March, 1948.

p. 29
p. 30 seq.
p. 32 seq.

12. On the 2nd day of April, 1948, the Chief Commissioner's Court of Ashanti having heard the parties in person delivered judgment in the following terms :—

“ Having read the record of the Lower Court together with p. 38
grounds of appeal and reply, I can see no reason to interfere with
the judgment given by the Asantehene's 'A1' Court on the
6th December, 1947.

“ Appeal is therefore dismissed.

“ Costs to be taxed and paid by Appellant.”

10 13. On the 28th May, 1948, the Defendant-Appellant obtained final p. 38
leave to appeal to the West African Court of Appeal, and was ordered to
file his Appeal and Grounds of Appeal within seven days and to serve a
copy thereof on the Plaintiff-Respondent, which was complied with.

14. On the 28th January, 1949, the West African Court of Appeal
(Gold Coast Session) delivered judgment dismissing the Appeal in the
following terms :—

“ Appeal dismissed with costs assessed at £26 1s.” p. 42

15. On the 19th July, 1949, final leave to appeal to the Privy
Council was granted by the West African Court of Appeal (Gold Coast p. 43
20 Session).

16. This Respondent respectfully submits that the Appeal should be
dismissed with costs for the following, among other,

REASONS

- (1) BECAUSE the matters in issue were matters of fact and
all the Courts below have found in Respondent's favour.
- (2) BECAUSE the concurrent judgments are right and
ought not to be disturbed.

GILBERT DOLD.

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P.C. Appeal No. 41 of 1950.
In the Privy Council.

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