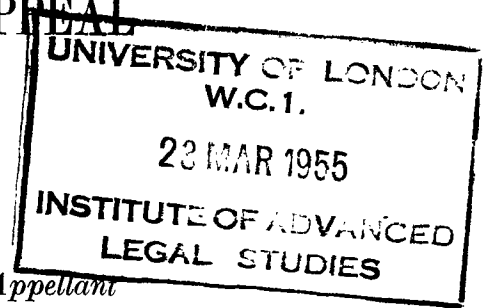


In the Privy Council.

No. 43 of 1951.

38077

**ON APPEAL FROM THE COURT OF APPEAL
FOR WEST AFRICA**



BETWEEN

ALHAJI IBRAHIMAH of Sekondi *Appellant*

AND

MAMMA GARIBA, MAAZU GARIBA, and ADJARA
GARIBA, as Children and Successors of the late
MALLAM GARIBA (deceased) of Sekondi *Respondents.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 43 of 1951.

ON APPEAL FROM THE COURT OF APPEAL FOR WEST AFRICA

BETWEEN

ALHAJI IBRAHIMAH of Sekondi *Appellant*

AND

MAMMA GARIBA, MAAZU GARIBA, and ADJARA
GARIBA, as Children and Successors of the late
10 MALLAM GARIBA (deceased) of Sekondi *Respondents.*

RECORD OF PROCEEDINGS

No. 1.

Civil Summons.

IN THE NATIVE COURT OF SEKONDI, WESTERN PROVINCE, GOLD COAST.

Suit No. 253/49621/48.

Between

1. MAMMA GARIBA,
2. MAAZU GARIBA,
3. ADJARA GARIBA,
20 as children and successors of the late Mallam Gariba (deceased) *Plaintiffs*

versus

ALHAJI IBRAHIM *Defendant.*

In the
Ahanta
Con-
federacy
Native
Court "B,"
Western
Province,
Sekondi.

No. 1.
Civil
Summons,
24th
February,
1948.

To ALHAJI IBRAHMA of Sekondi.

You are commanded to attend before this Native Court on Thursday the 11th day of March, 1948 at 8.30 o'clock a.m. to answer a suit by Plaintiff of Essikadu against you.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 1.
Civil
Summons,
24th
February,
1948—
continued.

The Plaintiff as per the attached copy.

Dated at Sekondi the 24th day of February, 1948.

					£	s.	d.
Sum claimed	...	...	...	...	-	-	-
Adasuum	...	...	...	...	-	-	-
Court fee	...	...	...	...	1	-	-
Mileage	...	...	...	...	-	-	-
Bailiff's fee	...	...	...	...	-	1	-
					<hr/>		
					£1	1	-
					<hr/> <hr/>		

(Sgd.) J. B. AZARIAH, 10
President.

(Sgd.) S. A. QUARSHIE,
Registrar.

Upon the 24th day of February, 1948, this summons was served by me on Alahaji Ibrahim Defendant. This I did by serving a copy of the above summons (and particulars of claim) on the said defendant personally at Sekondi.

(Sgd.) J. W. YALLEY,
Bailiff.

No. 2.
Particulars
of Claim,
23rd
February,
1948.

No. 2.
Particulars of Claim.

20

IN THE AHANTA CONFEDERACY NATIVE COURT " B " SEKONDI.

Suit No.

MAMMA GARIBA, MAAZU GARIBA, and ADJARA, as children
and successors of the late Mallam Gariba (Decd.) of Sekondi *Plaintiffs*

vs.

ALAHAJI IBRAHIMA of Sekondi *Defendant.*

The Plaintiffs as children and successors according to Mohammedan Law of the late Mallam Gariba (deceased) claim to eject the defendant from House No. 23/19 and the Compound thereof situate at George Street, 30 Hausa Zongo, Sekondi, the property of their late father Mallam Gariba,

and for a perpetual injunction to restrain the defendant his servants, agents and workmen from interfering with the Plaintiffs in the use and possession of the said House 23/19.

Dated at Sekondi this 23rd day of February, 1948.

(Marked) MAMA GARIBA,
Plaintiffs.

W/m :

Law Clerk to Barrister WILLIAMS, Sekondi.

Sir,

Please issue summons as above and oblige.

10

Yours faithfully,
(Marked) MANNA GARIBA,
for Plaintiffs.

W/m :

Clerk to Bar. WILLIAMS, Seko.
To the Registrar,
Ahanta Confederacy Native Court " B,"
Sekondi.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 2.
Particulars
of Claim,
23rd
February,
1948—
continued.

No. 3.
Notice of Motion.

20 IN THE AHANTA CONFEDERACY NATIVE COURT " B " SEKONDI.

Suit No.

In the Matter of the Estate of Mallam Gariba, (Deceased)

MAMMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA, as
Children and successors of the late Mallam Gariba (Decd.) *Plaintiffs*

versus

ALAHAJI IBRAHIMA of Sekondi *Defendant.*

No. 3.
Notice of
Motion,
26th
February,
1948.

30 Take Notice that this Court will be moved on Thursday the 11th day of March, 1948, at 9.00 a.m. or so soon thereafter by Mamma Gariba on behalf of the Plaintiff herein for an Order directing all the tenants residing in house No. 23/19 and the compound thereof situate at George Street, Hausa Zongo, Sekondi, the subject-matter of this action, to pay the rents into this Court to abide the result of this action ; And for an

In the Ahanta Confederacy, Native Court " B," Western Province, Sekondi.

Order prohibiting the defendant herein from receiving the said rents pending the decision herein ; And for such other relief or Order as to the Court may seem just.

Dated at Sekondi this 26th day of February, 1948.

(Marked) MAMMA GARIBA for Plaintiffs.

W/m :

No. 3. Notice of Motion, 26th February, 1948—continued.

Law Clerk to Bar. WILLIAMS, Sekondi. To the Registrar, Native Court " B " Sekondi, and to the Defendant ALAHAJI IBRAHIMA, Sekondi.

10

No. 4. Affidavit of Mamma Gariba in support of Motion, 26th February, 1948.

No. 4.

Affidavit of Mamma Gariba in support of Motion.

IN THE AHANTA CONFEDERACY NATIVE COURT " B " SEKONDI.

Suit No.

In the Matter of the Estate of Mallam Gariba (Decd.).

MAMMA GARIBA, MAAZU GARIBA and ADJARA GARIBA, as children and successors of the late Mallam Gariba (Decd.) of Sekondi Plaintiffs 20

versus

ALHAJI IBRAHIMA of Sekondi Defendant.

I, MAMMA GARIBA, of Sekondi, make Oath and say as follows :—

1.—That I am one of the Plaintiffs herein and the son of Mallam Gariba (Deceased), the owner of the premises known as House No. 23/19 and the compound thereof in George Street, Hausa Zongo, Sekondi.

2.—That the Plaintiffs herein have issued summons against the Defendant who was a domestic of the late Mallam Gariba (Decd.) to eject him from the said House and for an injunction to restrain him from interfering with the Plaintiffs in the use of the said House. 30

3.—That the said Defendant Alhaji Ibrahim, when the Plaintiffs were young was appointed the manager of the said House and has received large sums of money unaccounted for.

4.—That there are about eighteen to twenty tenants in the said House from whom the Defendant has been collecting rents.

5.—That the Plaintiffs are anxious that the Court should appoint a receiver or the Registrar of this Court to collect the rents of the said House and to deposit the same into the Bank to abide the result of this action and to restrain the Defendant from collecting the said rents pending the decision herein. I make this affidavit on behalf of the Plaintiffs herein in support of Motion for the appointment of a Receiver to collect and deposit the rents of the said House into Bank and for an Order to restrain the Defendant from collecting the said rents pending Judgment herein.

In the Ahanta Confederacy Native Court "B," Western Province, Sekondi.

No. 4. Affidavit of Mamma Gariba in support of Motion, 26th February, 1948—*continued.*

Sworn at Sekondi this 26th day of February, 1948, after this affidavit had first been read over and interpreted to the deponent in the Fanti language by William Anthony Bartels when he seemed perfectly to understand the same before making his mark thereto in the presence of and

Before me :

20 (Sgd.) J. E. ATTRAM,
Commissioner for Oaths.

No. 5.

Claim and Court Notes of Adjournment.

IN THE NATIVE COURT "B" OF SEKONDI AREA, HELD AT SEKONDI ON Thursday the 11th day of March, 1948 before J. B. AZARIAH, Esqr., President, and Councillors BENYA ESSON and KOJO YANKEY.

No. 5. Claim and Court Notes of adjournment, 11th March, 1948.

Suit No. 253/48.

- 1. MAMMA GARIBA,
- 2. MAAZU GARIBA,
- 3. ADJARA GARIBA,

30 as children and successors of Late Mallam Gariba (Deceased)... *Plaintiffs*

vs.

ALAHAJI IBRAHIMA... .. *Defendant.*

CLAIM :

Plaintiffs as children and successors according to Mohammedan Law of the late Mallam Gariba (Decd.) claim to eject the Defendant from House No. 23/19 and the compound thereof situate at George Street, Hausa Zongo,

In the
Ahanta
Con-
federacy,
Native
Court "B,"
Western
Province,
Sekondi.

Sekondi, the property of their late father Mallam Gariba, and for a perpetual injunction to restrain the Defendant his Servants, Agents, and workmen from interfering with the Plaintiffs in the use and possession of the said House No. 23/19.

Parties present.

Plea : "Not liable."

ADJOURNMENT :

No. 5.
Claim and
Court Notes
of adjourn-
ment, 11th
March,
1948—
continued.

Case adjourned to Monday the 15th March, 1948.

(Sgd.) J. B. AZARIAH,
President. 10

Recorder :

(Sgd.) S. A. QUARSHIE,
Registrar,
Native Court Registrar.

No. 6.
Court Notes
and Order
on Motion,
15th March,
1948.

No. 6.
Court Notes and Order on Motion.

MAMMA GARIBA & OTHERS

vs.

ALAHAJI IBRAHIMA.

Motion on notice by Mamma Gariba on behalf of the Plaintiffs herein 20
for an Order directing all the tenants residing in House No. 23/19 to pay
their rents into this Court pending the result of this action ; and to prohibit
the Defendant herein from receiving the said rents pending the decision of
this suit, and for such other relief or order as to the Court may seem just.

Parties present.

Motion papers and Affidavit in support filed 28/2/48 ; Motion paper
and Affidavit read to Court.

ORDER BY COURT :

Upon reading the Motion Paper and Affidavit in support, the Court
restrain the Defendant from further collection of the rents accruing of House 30
No. 23/19, the subject-matter of this suit and Orders that the Registrar of
this Court be appointed the Receiver and Manager of the rents pending the
final determination of this suit. The Registrar Mr. S. A. Quarshie of this

Court is therefore appointed to receive the rents from tenants in House No. 23/19 situate at George Street, Sekondi, and be responsible for its safety and the safety of the house, keep proper account of the monies received to the satisfaction of the Court.

Recorder :

(Sgd.) S. A. QUARSHIE,
Native Court Registrar.

(Sgd.) J. B. AZARIH,
President.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 6.
Court Notes
and Order
on Motion,
15th March,
1948—
continued.

No. 7.
Proceedings.

10

IN THE NATIVE COURT " B " OF SEKONDI HELD AT SEKONDI on Monday the 15th March, 1948, before J. B. AZARIAH, Esqr., President, and Councillors BENYE ESSON and KOJO YANKEH.

Suit No. 253/48.

MAMMA GARIBA & 2 OTHERS *Plaintiffs*
vs.
ALAHAJI IBRAHIMA... .. *Defendant.*

No. 7.
Proceed-
ings,
15th March,
1948.

CLAIM :

20 Plaintiffs as children and successors according to Mohamedan Law of the late Mallam Gariba (Decd.) claim to eject the Defendant from House No. 23/19 and the Compound thereof situate at George Street, Hausa Zongo, Sekondi, the property of their late Father Mallam Gariba and for a perpetual injunction to restrain the Defendant his servants, agents and workmen from interfering with the Plaintiffs in the use and possession of the said House No. 23/19.

Parties present.
Plea : " Not liable."

PLAINTIFFS' EVIDENCE.

No. 8.

Mamma Gariba, sworn.

30

EVIDENCE OF PLAINTIFFS :

1st Plaintiff for and on behalf of other Plaintiffs, sworn on Koran, states my name is Mamma Gariba ; I live at Sekondi, Zongo, Lorry Driver ; Defendant is a domestic servant to my late father Mallam Gariba ; we

Plaintiffs'
Evidence.

No. 8.
Mamma
Gariba,
15th March,
1948.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

Plaintiffs'
Evidence.

No. 8.
Mamma
Gariba,
15th March,
1948—
continued.

were then young as well as Defendant. When my father left Sekondi and went abroad, he did not return again; while here he was with a domestic woman too as his wife with whom he lived; he had no issues with her and married my mother again and again married 3rd Plaintiff's mother; when my father went he did not return again. Until we were removed from the old Sekondi. When going my father charged the Hausa Chief to be responsible of all his properties and of us; he did not come and during our removal the old premises were demolished and we were given new plot to build. The Government gave money to the Siriki Zongo to build in place of the demolished. The Siriki Zongo gave the money to my father's wife by name Salamatu Wangara to build house for us all to live in. Salamatu built a big premises wherein we all lived under the care of Salamatu. Later Defendant was grown older than us and when Salamatu died the premises were given in charge of Defendant to look after till we grow. We agreed. Later, I heard Defendant had altered the old name of the House and made a new plan. I went to him with 3rd Plaintiff my sister for possession, but he delayed reply; once Sofu Mallam Moru said to divide the premises between us the children but I objected on the reason that Defendant is not a royal born as I am, but domestic. Mallam Moru went home and later called me to have patience as the house is for us. I then requested that the Defendant remove from the house; Later Mallam Moru divided the rents collected amount to £76; and gave me £8, having taken £14 commission from it. I showed my share to Siriki Zongo, because I was not satisfied. This brought about the disposition of the Mallam of his position. The Zongo Chief requested the money to be collected back and paid to him but he refused and said he owns the house. Our Solicitor requested the Defendant to go to account with us, but he claimed the property to be his mother's property, hence this action. 10 20

XXD. BY DEFENDANT :

I cannot tell how long my father left Sekondi, because I was an infant. 30

He left before the removal to New Zongo. Salamatu built the house at Zongo. The Old House was built by my father. It was about 12 years since our father died. I cannot tell my age. It was the Mallam who gave you the house to look after. I would have asked the Mallam for possession but I found he appeared to be a thief. You had not been rendering accounts of the rents to me. I know that Salamatu built the house in question. I lived in the house when our father was alive. I married and had issues before my father died. I have no documents about the house. They are with you. The money paid by Government for the old house was taken to build the new house. I did not know the cost. Salamatu said we are the house owners. No documents to support it. The house had a plan in the name of Salamatu. You are nothing to Salamatu but slave to my father. I admit that Mr. Essien made the plan. 40

XD. BY COURT :

We were left in the old house when our father went away. The house was broken and new house erected, I was told the amount for the house was £190. The new house contains 31 rooms and 4 others ; Part is storied house. Salamatu was not my real mother. My mother was Fatuma Wangara. Salamatu had no issues. Salamatu was not succeeded.

In the
Ahanta
Con-
federacy,
Native
Court " B.,"
Western
Province
Sekondi.

ADJOURNMENT :

Case adjourned by Court to Tuesday, the 16th March, 1948.

Plaintiffs'
Evidence.

(Sgd.) J. A. AZARIAH,
President.

10

Recorder :

(Sgd.) S. A. QUARSHIE,
N.C. Repr.

No. 8.
Mamma
Gariba,
15th March,
1948—
continued.

IN THE NATIVE COURT " B " OF SEKONDI AREA, held at Sekondi on Tuesday the 16th day of March, 1948, before J. B. AZARIAH, Esq., President, and Councillors BENYA ESSON and KOJO YANKEY.

Proceed-
ings—
continued,
16th March,
1948.

Suit No. 253/48.

MAMMA GARIBA & 2 OTHERS }
vs. } Case from page 301
ALHAJJI IBRAHIMA } of 15/3/48.

20

Parties present.

XD. BY COURT *continued.*

Defendant being our father's domestic son cannot be sacked, but we have to give him place to live with us. Salamatu once sacked Defendant and I begged for his return. Defendant is the collector and receiver of the rents since Salamatu died. It is not our Mohamedan custom for the Mohamedan Priest to distribute deceased estates. The Siriki Zongo was not aware of the distribution of the estate by the Mohamedan Priest. It is about 12 years since the death of Salamatu. The Siriki Zongo and the
30 Mallam handed the property to Defendant. We are two sons and one daughter of our father. I am the elder. The 1st plan was in the name of Salamatu, the 2nd new plan made in the name of Defendant himself.

No. 9.

Siriki Zongo, sworn.

In the
Ahanta
Con-
federacy.
Native
Court "B,"
Western
Province,
Sekondi.

Plaintiffs'
Evidence.

No. 9.
Siriki
Zongo,
16th March,
1948.

EVIDENCE OF PLAINTIFFS' 1ST WITNESS :

Plaintiff's 1st witness sworn on Koran, states, my name is Ibrahima. I live at Sekondi. I am Siriki Zongo. I know both parties. All houses at Zongo were built by my permission. When Government removed us from Old Zongo each house owner was paid reasonable sum for re-building. An amount of £190 was paid in respect of Mallam Gariba's house to me and I gave same to his slave domestic by name Salamatu when Mallam 10
Gariba married. When we removed I gave her a plot on which a house should be built. Mallam Gariba had been gone away. Mallam Gariba then having heard his house had been broken he remitted £50 to add to that which Government paid and build a new house. Plaintiffs were then young; the money was given to Salamatu who built the house. When Salamatu died myself and my priest gave the properties to Defendant to look after until Plaintiffs are grown to have possession. About 4 months ago Plaintiff reported that my priest had divided the estates between the Defendant and others. I found he had no authority. I summoned him before my elders, was found guilty and as a result he ordered to return 20
an amount of £76 collected in respect of the house in dispute, and the priest was destooled. This is what I know.

XxD. BY PLAINTIFF :

No question.

XxD. BY DEFENDANT :

Mallam Gariba's money was paid to me and I gave to Salamatu. I did not receive Receipt for the money I paid to her. Plaintiff's mother had then been seduced by another man.

ADJOURNMENT :

It is with regret that the Court remarks that the conduct of the 30
parties before the Court during Siriki Zongo's evidence was most displeasing and exemplarily bad, they had shown no respect due to the Court yielded to a very bad temper and behaved in a deplorable and disrespectful manner, putting the whole Court into disorder. Case therefore adjourned on that account by Court to Friday 19th March, 1948 at Essikadu.

(Sgd.) J. B. AZARIAH,
President.

Recorder.

(Sgd.) S. A. QUARSHIE,
N.C. Registrar.

IN THE NATIVE COURT " B " OF SEKONDI AREA held at Essikadu on Friday the 19th day of March, 1948 before J. B. AZARIAH, Esq., President and Councillors BENYA ESSON and KOJO YANKEH.

Suit No. 253/48.

MAMMA GARIBA & 2 OTHERS } Case from page 307
vs. } of 16/3/48.
ALAHAJI IBRAHIMA }

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

Plaintiffs'
Evidence.

No. 9.

Siriki
Zongo,
19th March,
1948--
continued.

Parties present.

XxD. BY DEFENDANT TO WITNESS (*continued*)—

10 Salamatu did not report to me she built the house for which was given the money, or not. The £50 remitted by Mallam Gariba was given to Salamatu for the building in addition to the £190 ; later when part of the building broke and the story building was erected I was informed. There was no plan to any house at first. I am the owner of the Zongo lands, I collect yearly ground rents from every house owner and give receipts. I collect yearly ground rents from you and give you receipt. First I give receipt in Salamatu's name and later in your name. Your name appeared on receipt as Caretaker. Plaintiff was born at Old Zongo It is about 37 years since new Zongo was established. You were given
20 the house and the children to look after. It was so done by me and my elders after one week of Salamatu's death.

Xd. BY COURT :

A domestic can never be removed from the premises where no offence committed. Mallam Gariba bought Defendant. He was left with Salamatu a domestic wife. Government gave me lands. It is about 12 years since the house was given to Defendant. Mallam Gariba first Plaintiff's mother, Salamatu, and defendant. Plaintiff's mother still remains Mallam Gariba's domestic, and has access to the house as well. Salamatu was first domestic, 2nd Plaintiff's mother Fatuma Wangara, and 3rd defendant ; the money
30 was given to Salamatu as elder when Plaintiff's mother was away. I am responsible of Mallam Gariba's property ; I did not supervise the building. At that time the £240 would suffice the cost of the buildings. Defendant and Salamatu are domestic brother and sister, a son of any domestic woman by Mallam Gariba becomes the master of all domestics. (Awarded £2 for 2 days.)



No. 10.

Fati Wangara, sworn.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

Plaintiffs'
Evidence.

No. 10.
Fati
Wangara,
19th March,
1948.

PLAINTIFF'S 2ND WITNESS—S.A.R.B. states :

My name is Fati Wangara. I live at Sekondi, Zongo. I do no work. I know both parties. When defendant was brought from Cape Coast by one Hausa Musa he was given to me to look after by Mallam Gariba. I was a wife to Mallam Gariba and Salamatu was my rival for some time. I left the house to the *Dersets*. I returned and met Salamatu who told me that Siriki Zongo had given her some money. I then asked her to add on the money and do work. The old Zongo had then been removed. I gave Salamatu £5 to maintain my children. Plaintiff and Defendant, Salamatu informed me that Siriki Zongo had given her £190. This is what I know. 10

XXD. BY PLAINTIFF :

You are my son born with Mallam Gariba. I had two issues with your father. Defendant is your relative. Defendant is your father's slave. You can use him.

XXD. BY DEFENDANT :

I was not present when Salamatu died, and I did not hear. I have now come to look home. I did ask the whereabouts of Salamatu, because I was not informed of her. I know the time my son Plaintiff married. It is about 20 years. 20

XD. BY COURT :

My husband Mallam Gariba bought Defendant from one Musa at Sekondi. Salamatu and I were bought also by Mallam Gariba at Sekondi. I was told the £190 was given for buildings Defendant has no right to anything in the premises. When I came I heard the house is in charge of Defendant. Unless Plaintiff allowed me, I have no right to anything in the premises.

(Allowed 10/- 2 days.)

Plaintiff did not require the evidence of his witness Chief Dawudu Wangara. 30



DEFENDANT'S EVIDENCE.

No. 11.

Alahaji Ibrahima, sworn.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

DEFENDANT sworn on Koran, states :

My name is Alahaji Ibrahima, I live at Sekondi Zongo, Book seller. Salamatu alias Krama Atta was my mother. She gave me to Lemanu Omoru to teach me education. We were then at old Zongo. We were removed to new Zongo and my mother was later given a plot to build. She hired labourers to clear and clean the plot, she engaged carpenter
 10 Esson who made zinc house temporary. One Gyentey, carpenter was also employed and later swish building was erected in place of the zinc house. After the building my mother Salamatu made a Plan of the house, the building contained 26 rooms ; later 6 rooms were destroyed and a plan for storey house was prepared by Mr. Essien and it was erected. Mr. Essien prepared the plan in my name Ibrahima. The plan was proved. Kofi Ackon took the contract of the building and erected same. The contract was £354. Agreement was prepared in presence of witnesses. The £354 was workmanship, excluding building materials which my mother provided. In course of the building my mother broke the contract and
 20 was sued before Police Magistrate's Court for balance of £125 6s. 3d. My mother felt sick and I was given an Attorney to represent her. I did. It was found that $\frac{3}{4}$ of the work was done and so £49 10s. was ordered to be paid by me to Ackon. The amount was paid. While my mother was alive I was responsible for the house. I completed the building after the death of my mother. My mother was sick for 2 years before she died. I was with my sister Suttley. I completed the house and gave some rooms to let. During the funeral I announced according to Mohamedan Custom if my mother owed anybody or anybody got anything with her but none appeared. She died in 1935. I pledged part of the house and paid debts.
 30 Later I redeemed them. After a time, my sister applied for her portion of the estates of our mother and according to Mohamedan Customary Law as a Priest (Mallam) has to distribute the estates ; Plaintiff was called who raised objection as his father's house and the distribution was not made. My mother Salamatu was a rival to Plaintiff's mother and was cared for from his infancy by my mother when his father and mother went away. After matter had been explained to Plaintiff, the rooms of the house were distributed between us, Plaintiff then reported to Siriki Zongo who summoned the Mallam before his elders and queried him for distributing the rooms without his knowledge and consent, and ordered that the
 40 rooms should be divided myself, Plaintiff and Suttley. Plaintiff 14 rooms, self 12 rooms and sister Suttley 4 rooms. I objected. The Siriki Zongo said if I do not pay £60 to him he would take the premises from me for Plaintiff. I once left the premises in Plaintiff's charge and left to some place

Defendant's
Evidence.

No. 11.

Alhaji
Ibrahima,
19th March,
1948.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

Defendant's
Evidence.

No. 11.
Alahaji
Ibrahima,
19th March,
1948—
continued.

for 7 months and when I returned he rendered accounts to me. I pay all Town Council rents and ground rents about the house.

XXD. BY PLAINTIFF :

Salamatu bought me as domestic son and educated me. Mallam Gariba married Salamatu. I was young when she was married. She told me she was married at Sekondi. My mother Salamatu said she bought me. You are Mallam Gariba's son. You were born in my presence. The money for the old house offered by Government was £190 and was given to Salamatu. I hold 3 plans. The plan for the swish building was prepared in 1922. Yes, you had collected 2 months' rents from a tenant whom I sued. 10
If a wife dies without issues, she is succeeded by the husband, if with issues, the children partly succeed. A slave by adoption inherits, if not by adoption he does not inherit.

XD. BY COURT :

Salamatu built the old house at Old Zongo, she was then married to Mallam Gariba. Mallam Gariba was given a room by Salamatu to live in. The amount paid for the house was £190. Plaintiff's mother was in the house at Old Zongo. I pay yearly groundrent to Siriki Zongo. I collected rents of the house and do not pay anything to Plaintiff. I gave Plaintiff house to live in because he is my mother's rival son. I do not know 20
Salamatu and Plaintiff's mother were slaves to Mallam Gariba. Defendant tendered in evidence 3 plans one dated 6/4/22, one dated 23/7/24 and one dated 31/8/32 of building in the name of Kramo Atta, Brahima, copy of Agreement for the building. Indenture for loan of £300 dated 13/1/28 accepted and marked " A," " B," " C," " D " and " E."

No. 12.
Lemanu
Moru,
19th March,
1948.

No. 12.

Lemanu Moru, sworn.

EVIDENCE OF DEFENDANT'S 1ST WITNESS :

Defendant's 1st witness sworn on Koran states : My name is Lemanu Moru. I live at Sekondi Zongo. Mallam (Priest). I know both parties. 30
Closed.

XXD. BY DEFENDANT :

You were given to me for schooling by Salamatu. Mallam Gariba was present. Government paid money to every one whose house was demolished at the Old Zongo to rebuild. You were young when you were

given to me. She said you were her son and I should show you Arabic education. Salamatu said the building was her's. I assisted as mother-in-law. I signed the agreement as witness for the loan of £300. The house was not completed when Salamatu died. You completed the building. Salamatu was sick for 2 years before she died. You buried her. During the "Salaka" you asked if anybody had any claim but no one appeared. You were in charge of the estates. It was not the Siriki Zongo who gave the house to you.

In the
Ahanta
Con-
federacy
Native
Court "B,"
Western
Province,
Sekondi.

Defendant's
Evidence.

XXD. BY PLAINTIFF :

10 I do not remember I called you and said Defendant would look after you. Your father was present. Salamatu said Defendant was her son. She did not tell me Defendant was her slave. Mallam Gariba married Salamatu. I did not know how long they were married. They lived together in their own premises. The old premises was for Salamatu. I knew Salamatu in her own premises before Mallam Gariba married her. Salamatu had no issues. I heard it was said Defendant was bought. A domestic son by adoption inherits a father's property. A husband can inherit a wife's property. I gave you a portion in the estates because you were trained by Salamatu.

No. 12.
Lemanu
Moru,
19th March,
1948—
continued.

20 X D. BY COURT :

I did not know how much was paid for the old building. When I saw Salamatu first, Defendant was not then in. Mallam Gariba married Salamatu in Salamatu's own premises. (Awarded 30/- 3 days.)

Case adjourned to Wednesday 24th March, 1948, at Essikadu.

(Sgd.) J. B. AZARIAH,
President.

Recorder.

(Sgd.) S. A. QUARSHIE,
N.C. Registrar.

30 IN THE NATIVE COURT "B" OF SEKONDI AREA, held at Essikadu on Wednesday the 24th day of March, 1948, before J. B. AZARIAH, President, and Councillors BENYA ESSON and KOJO YANKEY.

Proceed-
ings,
24th March,
1948—
continued.

Suit No. 253/48.

MAMMA GARIBA & 2 ORS. {Case from page 307
vs. {of 16/3 48 and page 320
ALAHAJI IBRAHIMA {of 19/3/48.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.
—
Defendant's
Evidence.
—
No. 13.
Andrew
Essien,
24th March,
1948.

No. 13.
Andrew Essien, sworn.

Parties present.

EVIDENCE OF DEFENDANT'S 2ND WITNESS :

Defendant's 2nd witness sworn on Bible states : My name is Andrew Essien. I live at Sekondi. Surveyor and Contractor. I know both parties. Sometime ago one Madam Kramo Atta engaged me to build a house for her. I prepared the plan and built the house for her. This is what I know.

XXD. BY DEFENDANT :

The woman was well and sane at the time.

10

XXD. BY PLAINTIFF :

The old houses were demolished and new one built. I cannot remember if you were present. I made one plan. She made me to prepare the building plan in Defendant's name. I can identify the plan.

XD. BY COURT :

Defendant was in the premises. The building plan was approved. The woman told me that Defendant was her son.

No. 14.
Petteh
Esson,
24th March,
1948.

No. 14.
Petteh Esson, sworn.

EVIDENCE OF DEFENDANT'S 3RD WITNESS.

Defendant's 3rd witness s.a.r.b. states : My name is Petteh Esson. I live at Mpintsin, Stool elder. I know both parties. Some years ago I was at Sekondi Carpenter, Public Works Department. Once Mami Kramo Atta engaged my services to remove the iron sheets and boards of her old building at Old Zongo for rebuilding at New Zongo. I did the work for her and charged £8. I erected the new building at New Zongo. At the time I was Defendant and her sister whom Mami Atta said they were her son and daughter. They carried the iron sheets from Old Zongo to New Zongo. The woman told me her husband left her long ago to the French Ivory Coast and that the old house was hers. This happened before the Great War in 1914. This is what I know.

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XKD. BY DEFENDANT :

I did the work with other carpenters. I was not told the house was for somebody than Mami Atta.

In the Ahanta Confederacy, Native Court " B," Western Province, Sekondi.

XKD. BY PLAINTIFF :

There were many children with Mami Atta. You were not introduced to me as her husband's son. I did not know if the woman bore the Defendant and his sister.

XD. BY COURT :

10 I build 2 rooms with the old iron sheets and boards. She said she owned the old house. I cannot remember if Plaintiff was present. I know the woman 3 years before she engaged my services. No man was then with her. I know some of the Hausa men at the time. I know and can recognise the then Siriki Zongo and the Mallam. They are not presently here in this Court. (Awarded £2). Plan shown to Andrew Essien identified. I made plan passed on 11/9/24. The first name was Braimah and in 1925 it was changed into the name Kramo Atta by me on her own instruction.

Defendant's Evidence. No. 14. Petteh Esson, 24th March, 1948-- continued.

BY COURT :

20 All evidence closed in this case. Court reserved judgment to be delivered on Tuesday the 30th day of March, 1948, at 9 a.m. at Sekondi.

(Sgd.) J. B. AZARIAH.

Recorder :

(Sgd.) S. A. QUARSHIE,
N.C. Registrar.

No. 15.
Judgment.

No. 15.
Judgment,
30th March,
1948.

IN THE NATIVE COURT " B " OF SEKONDI AREA, held at Sekondi on Tuesday the 30th day of March, 1948, before J. B. AZARIAH, Esq., and BENYA ESSON and KOJO YANKEH, Councillors.

30

Suit No. 253/48.

- 1. MAMMA GARIBA,
- 2. MAASU GARIBA,
- 3. ADJARA GARIBA,

as children and successors of late Mamma Gariba (Deceased)... *Plaintiffs*
vs.

ALAHAJI IBRAHIMA *Defendant*

Parties present.

JUDGMENT.

This is action in which Plaintiffs as children and successors according to Mohamedan Law of the late Mallam Gariba (Decd.) claim to eject the Defendant from House No. 23/19 and the compound thereof situate at

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 15.
Judgment,
30th March,
1948—
continued.

George Street, Hausa Zongo, Sekondi, the property of their late father Mallam Gariba and a perpetual injunction to restrain the Defendant, his servants, agents, and workmen from interfering with the Plaintiffs in the use and possession of the said house.

Defendant pleaded " Not liable." The 1st Plaintiff for and on behalf of 2nd and 3rd Plaintiffs stating his case said (*inter alia*) that his father Mallam Gariba bought one Salamatu otherwise called Kramo Atta and took her to wife, but had no issues with her, and Defendant was also his late father's domestic servant (slave). He further added that while at Old Zongo, his father went abroad when they were young, and did not return 10 till he died. And in course of time, Hausas in Old Zongo were removed by Government and each house owner was compensated with a sum of money to rebuild on a new site allocated to the Siriki Zongo, and his late father's compensation was £190 paid to the Siriki Zongo who gave such money to Salamatu Mallam Gariba's slave-wife who built the present house and premises in dispute. Concluding he said that Salamatu cared for them all from their infancy, the Defendant then being little grown was given the property after the death of Salamatu to be caretaker to manage the Estates until such time that Plaintiffs would attain the age of puberty. Two 20 witnesses called for the Plaintiffs confirmed that late Mallam Gariba owned the old premises at Old Zongo for which £190 was paid and given to Salamatu for the new premises in dispute. Defendant on the other hand led evidence that he was a son by adoption to Salamatu and not Mallam Gariba's slave, and that his mother Salamatu owned the old premises at Old Zongo. When married to Mallam Gariba and after Mallam Gariba left her away for sometime and died abroad, the Old Zongo was removed by Government when his late mother Salamatu started building the present house which was not completed before she died ; and that the building was brought to completion by himself as her mother bequeathed to him, and that his right of succession to the said property is indisputable. In proving his 30 case, Defendant tendered in evidence plans and documents in respect of the house in dispute which were accepted and marked " A," " B," " C " and " D."

The plans originally bearing Defendant's name and altered to Kramo Atta. Mr. Andrew Essein in the witness box identified the plans and gave evidence as to how Salamatu made him to draw the building plan. Petteh Esson 3rd witness for Defendant also stated that the house in dispute was built by Salamatu. Lemanu Omoru, the Mohamedan Priest, 1st witness for Defendant, stated that he knew Mallam Gariba and Salamatu and the parties as children to them. He added that after some dispute he divided 40 the rooms in the premises between the parties but Plaintiff disagreeing brought this action. From the evidence adduced on record and from the examinations, it is apparently disclosed that parties are related in one way or the other. The only question for this Court to consider is whether the property is Mallam Gariba's or Salamatu's (both deceased). To this question it has been evident that the compensation of £190 paid for the Old Mallam Gariba's house put this new building up by Salamatu. Going strictly into

the question of the right of succession, there is little difficulty in determining it as Mallam Gariba died before Salamatu, but since it is admitted by parties that Plaintiffs are children of the late Mallam Gariba and Defendant an adopted child of Salamatu, and both had been living in the premises to the present date, this Court in its opinion find that Plaintiff's action to oust Defendant entirely from occupation should fail and in dismissing the action without costs, orders that parties should continue to live in the premises, and that the rooms should be divided among themselves. Action therefore dismissed each to pay his own costs.

In the Ahanta Confederacy, Native Court " B," Western Province, Sekondi.

10

Recorder :

(Sgd.) S. A. QUARSHIE,
N.C. Registrar.

(Sgd.) J. B. AZARIAH,
President.

No. 15.
Judgment,
30th March,
1948--
continued.

No. 16.
Notice of Appeal of Plaintiffs.

IN THE DUTCH SEKONDI NATIVE CONFEDERACY COURT " B," DUTCH SEKONDI.

Suit No. 253/1948.

No. 16.
Notice of
Appeal of
Plaintiffs,
7th April,
1948.

20 MAMMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA,
as children and successors of the late Mallam Gariba
(Deceased) of Sekondi Plaintiffs

vs.

ALHAJI IBRAHIMA of Sekondi Defendant.

To the Registrar, Ahanta Confederacy,
Native Court " B " Sekondi.

TAKE NOTICE that the Plaintiffs being parties to the above cause which was decided by the Dutch Sekondi Confederacy Native Court " B " of the 30th day of March, 1948, and being aggrieved by the said

30

decision do intend to appeal to the Native Court " A."

Dated at Sekondi this 7th day of April, 1948.

(Marked) MAMMA GARIBA,
Appellants.

W/Mark :

(Sgd.) J. B. MENSAH,
Sekondi.

Received this 19th day of April, 1948.

(Sgd.) S. A. QUARSHIE,
Registrar of the Native Court.

The Registrar of the Appeal Court.

40

A certified true copy of the Order or decision of the Native Court is attached.

The cost of making up the record of Appeal is £4.

(Sgd.) S. A. QUARSHIE,
Registrar, Native Court.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 17.

Notice of Appeal of Defendant.

IN THE NATIVE COURT " B " OF SEKONDI AREA, SEKONDI.

Suit No. 253/48.

No. 17.
Notice of
Appeal of
Defendant,
7th April,
1948.

- 1. MAMMA GARIBA,
- 2. MAAZU GARIBA, and
- 3. ADJARA GARIBA,
as children and successors of late Mallam Gariba (deceased) *Plaintiffs*

versus

ALAHAJI IBRAHIMA Defendant. 10

To the Registrar of the Native Court " B " Sekondi.

TAKE NOTICE that I, being a party to the above case which was decided by the Native Court " B " of Sekondi on the 30th day of March, 1948, and being aggrieved by the said decision, do intend to appeal to the Native Court " A " Sekondi Area.

Dated at Sekondi this 7th day of April, 1948.

(Sgd.) ALAHAJI IBRAHIMA.

Received this 7th day of April, 1948.

(Sgd.) S. A. QUARSHIE, 20
Registrar Native Court " B."

To the Registrar of the Native Court " A " Sekondi Area.

A certified true copy of the Order or decision of the Native Court " B " is attached.

The cost of making up the record of appeal is £4.

Dated at Sekondi this 12th day of April, 1948.

(Sgd.) S. A. QUARSHIE,
Registrar Native Court " B."

No. 18.
Notice of Motion.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

IN THE AHANTA CONFEDERACY NATIVE COURT " B " WESTERN PROVINCE,
SEKONDI.

MAMMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA, as
children and successors of the late Mallam Gariba (Deceased)
of Sekondi *Plaintiffs*

No. 18.
Notice of
Motion,
8th April,
1948.

versus

ALAHAJI IBRAHIMA of Sekondi *Defendant.*

10

TAKE NOTICE that the Native Court " B " will be moved on
Monday the 12th day of April, 1948, at 9 of the clock or so soon thereafter
by the Plaintiffs or the Representative herein for a REVIEW of the Judgment
of this Court dated 30th March, 1948, to define and clarify the
position and title of the Plaintiffs to the house No. 23/19 and the premises
attached thereto in so far as the said Judgment decides that the said house
No. 23/19 and the compound were built with the proceeds of the
compensation paid by Government from Mallam Gariba's house and that
the Defendant Alhaji Ibramhima was and is the slave of the Plaintiff's
father Mallam Gariba.

20

Dated at Sekondi this 8th day of April, 1948.

(Marked) MAMAH GARIBA,
Plaintiffs.

W/Mark :

(Sgd.) L. B. MENSAH,
Law Clerk, Seki.

To the Registrar, Native Court " B "
Sekondi, and to the Defendant
ALAHAJI IBRAHIMA, Sekondi.

30



No. 19.

Affidavit of Mamma Gariba in Support of Motion.

In the
Ahanta
Con-
federacy,
Native
Court " B,"
Western
Province,
Sekondi.

No. 19.
Affidavit of
Mamma
Gariba in
support of
Motion,
8th April,
1948.

IN THE AHANTA CONFEDERACY NATIVE COURT " B," WESTERN PROVINCE,
SEKONDI.

MAMMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA, as
children and successors of the late Mallam Gariba (Deceased)
of Sekondi Plaintiffs

versus

ALAHAJI IBRAHIMA of Sekondi Defendant.

10

I, MAMMA GARIBA of Hausa Zongo Sekondi make Oath and say
as follows :—

1.—That I am one of the Plaintiffs herein and swear this affidavit
for myself and on behalf of the other Plaintiffs as authorised by them.

2.—That judgment was given in this case by the Native Court " B " on 30th day of March, 1948, declaring that house No. 23/19 and the compound thereof were built out of the compensation paid by Government in respect of the late Mallam Gariba's house in old Hausa Zongo together with other monies collected from the rents of the house by Salamatu, the domestic and wife of the said Mallam Gariba (deceased).

20

3.—That the said judgment did not clearly state or define that the said house No. 23/19 and the compound have been so built from the said compensation and the rents of Mallam Gariba's property which became according to Mohamedan Law the property of the Plaintiffs the children of Mallam Gariba (deceased). That it is necessary that the said judgment should clearly state that the said house No. 23/19 and the compound became according to Mohamedan Law the Property of the Plaintiffs and that the Defendant Alahaji Ibrahim was the slave of the said Mallam Gariba and is not the owner of the said house No. 23/19 and the compound thereof.

30

4.—That the said Defendant Alhaji Ibrahim may reside in the said house No. 23/19 during good behaviour under the Plaintiffs.

5.—That the said judgment in dismissing the claim of the Plaintiffs does not make it clear in so dismissing the claim that it decided that the Plaintiffs are the owners of the said house No. 23/19 and the compound thereof. We are advised that according to Law it is necessary that the said judgment should not dismiss the Plaintiffs' claim but decides that the

said property belongs to the Plaintiffs as children of the said Mallam Gariba according to Mohamedan Law.

6.—That I therefore make this affidavit on behalf of the Plaintiffs in support of Motion for Review of the said Judgment.

Sworn at Sekondi this 8th of April, 1948, after the contents hereof had been first read over and interpreted and explained to the deponent in the Fanti language by Jonathan Arthur and who seemed perfectly to understand the same before making his mark thereto.

(Marked) MAMMA GARIBA.

Before me :
(Sgd.) J. E. ATTRAM,
Commissioner for Oaths.

In the Ahanta Confederacy, Native Court " B," Western Province, Sekondi.

No. 19.
Affidavit of Mamma Gariba in support of Motion, 8th April, 1948—
continued.

No. 20.

Affidavit of Alahaji Ibrahima in Opposition of Motion.

IN THE AHANTA CONFEDERACY NATIVE COURT " B," WESTERN PROVINCE, SEKONDI.

20 MAMMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA, as children and successors of the late Mallam Gariba (Deceased) of Sekondi Plaintiffs

versus

ALAHAJI IBRAHIMA of Sekondi Defendant.

I, ALAHAJI IBRAHIMA of Sekondi make oath and say as follows :

1.—That I have today the 10th day of April, 1948, been served with an Affidavit and motion paper filed by Mammah Gariba and others applying for a Review of Judgment delivered by the Court on the 30th day of March, 1948, " asking for clarification of the position and title of the Plaintiffs
30 " as to the house No. 23/19 and the premises attached thereto and the " compound were built with the proceeds of the compensation paid by " Government from Mallam Gariba's house and that the Defendant Alahaji Ibrahima was and is the slave of the Plaintiffs' father Mallam Gariba."

No. 20.
Affidavit of Alahaji Ibrahima in opposition of Motion, 10th April, 1948.

In the
Ahanta
Con-
federacy,
Native
Court "B,"
Western
Province,
Sekondi.

No. 20.
Affidavit of
Alahaji
Ibrahima in
opposition
of Motion,
10th April,
1948—
continued.

2.—That I have had the motion and Affidavit read over and explained to me, and I say that Mammah Gariba did not claim ownership of the house and premises in his summons issued 24/2/48 but claimed an ejection Order against the Defendant Alahaji Ibrahimah and perpetual injunction which claim was dismissed by the tribunal.

3.—That the said Mallam Gariba, in order to deceive the Court, filed a motion paper and swore to an affidavit dated the 26th day of February, 1948, they raised the question of ownership which was not in his claim nor did he apply to the Court for amendment of the writ of summons to that effect, therefore that was not in issue before the tribunal to which a direct answer would be expected but only a side issue. 10

4.—That the tribunal could only give judgment on the ejection asked for which was accordingly dismissed.

5.—That the side observation as to who built the house made by the tribunal and with what money it was built is obviously wrong by the fact that £190 could not put up a house worth £1,500 even if true so many years ago.

6.—That the tribunal could not go beyond the claim made on the summons and were therefore wrong in their observation which issue was not the vital issue before them. 20

7.—That the Plaintiff Mallam Gariba, having taken Counsel has realised that his claim is dismissed now requires the Court to place on record a judgment to his own liking and so stultify the Court's proceedings and judgment.

8.—That as an application for leave has been applied for by Alahaji Ibrahimah and filed, the Court cannot revise its own judgment and give another judgment and so nullify the whole proceedings.

9.—That the motion of Mallam Gariba be dismissed.

Sworn at Sekondi this day of April, 1948, the contents having been read and interpreted to the deponent by Harruna in Hausa Language and who understands same before annexing his signature thereto. }

(Sgd.) ALAHAJI IBRAHIMA. 30

Before me :

(Sgd.) M. O. ADDO,
Commissioner for Oaths.

No. 21.

Orders allowing conditional leave to appeal, 15th and 26th April, 1948,
Bonds for Costs and Justifications of Sureties.

[Not printed.]

In the
Ahanta
Con-
federacy
Native
Court " B,"
Western
Province,
Sekondi.

No. 21

No. 22.

Notice of Motion for final leave to appeal and Affidavit in support.
4th May, 1948.

[Not printed.]

In the
Ahanta
Con-
federacy,
Native
Court " A,"
Western
Province,
Sekondi.

No. 22

No. 23.

Plaintiffs' grounds of Appeal.

10 Filed on 6/5/48.
(Sgd.) LAW. CUDJOE,
Registrar,
N. Appeal Court, Sekondi.

No. 23.
Plaintiffs'
grounds of
appeal,
6th May,
1948.

IN THE AHANTA CONFEDERACY NATIVE COURT " A " SEKONDI.

- 1. MAMMA GARIBA
 - 2. MAAZU GARIBA
 - 3. ADJARA GARIBA *Plaintiffs*
- vs.*
- ALAHAJI IBRAHIMA... .. *Defendant.*

PLAINTIFFS-APPELLANTS GROUNDS OF APPEAL.

- 20 1.—Because on the evidence, the Native Court " B " should have been judgment for the Appellants.
- 2.—Because the judgment of the Native Court " B " is against the weight of evidence.
- 3.—Because the judgment of Native Court " B " is indefinite and vague and did not decide the issue raised by the Claim or the evidence.

In the
Ahanta
Con-
federacy,
Native
Court "A,"
Western
Province,
Sekondi.

4.—Because the judgment of Native Court "B" is otherwise erroneous or contrary to law.

Dated at Sekondi this 6th day of May, 1948.

(Marked) MAMMA GARIBA,
for Plaintiffs-Appellants.

The Registrar, Native Court "A,"
Sekondi, and to the Defendant-
Respondent ALAHAJI IBRAHIMA.

No. 23.
Plaintiff's
grounds of
appeal,
6th May,
1948—
continued.

W/Mark :
(Sgd.) ?

10

No. 24.
Defendant's
grounds of
appeal,
12th May,
1948.

No. 24.
Defendant's grounds of appeal.

IN THE AHANTA CONFEDERACY NATIVE COURT "A," WESTERN PROVINCE,
SEKONDI.

In the Matter of the Estate of Mallam Gariba (Deceased).

MAMMA GARIBA, MAAZU GARIBA, and ADJARA
GARIBA as children and successors of the late
Mallam Gariba (deceased) of Sekondi ... *Plaintiffs-Respondents*

versus

ALAHAJI IBRAHIMA of Sekondi ... *Defendant-Appellant.* 20

GROUPS OF APPEAL.

1.—That the Plaintiffs in their writ of summons against the Defendant sued for ejection of the Defendant, from the house No. 23/19 and compound situate at George Street and injunction restraining the Defendant from collecting the rents thereof.

2.—That the Native Court was in error in their judgment that the house belong to Mallam Gariba, as they ignored the plans, receipts and evidence adduced by the Defendant and Plaintiffs that the Defendant's mother Salamatu Atta herself built the house, matters not claimed on the writ of summons issued by the Plaintiffs. 30

3.—That the judgment is contrary to law for it contained findings of other matters not claimed vide Exhibit "A."

4.—That the Defendant now appeals for rectification of the judgment and confirm judgment dismissing the action without including the ownership of the house by Mallam Gariba because that was not the claim of the Plaintiffs on their writ of summons and therefore not the question for the Native Court to decide and if so judgment should have been that the house belong to Salamatu.

In the Ahanta Confederacy Native Court "A," Western Province, Sekondi.

Dated at Sekondi the 12th day of May, 1948.

(Sgd.) ALAHAJI IBRAHIMA,
Defendant-Appellant.

10 To the Registrar,
Native Court "A," Sekondi.

No. 24.
Defendant's grounds of appeal, 12th May, 1948—
continued.

No. 25.

Affidavit of Alahaji Ibrahim in support of Motion for final leave to appeal, 12th May, 1948.

[*Not printed.*]

No. 25

No. 26.

Order allowing final leave to appeal.

20 IN THE AHANTA CONFEDERACY NATIVE APPEAL COURT held at Sekondi on Friday 25th June, 1948, before J. R. AZARIAH, Ag. President, ESSOR ACKAH Councillor, KOFI SIAR ANDOH, Councillor.

No. 26.
Order allowing final leave to appeal, 25th June, 1948.

MAMMA GARIBA & 2 ORS. *Plaintiffs-Respondents*
vs.
ALAHAJI IBRAHIMA *Defendant-Appellant.*

Verbal Motion for final leave to appeal. Affidavit in support of Motion filed on 13/5/48.

Upon examination the Court is satisfied that Defendant-Appellant has fulfilled the conditions imposed upon him by this Court on 15/4/48.

BY COURT :

Final leave to appeal granted.

30

(Sgd.) J. R. AZARIAH,
Ag. *President.*

Recorder :

(Sgd.) LAW. CUDJOE,
Registrar.

In the Ahanta Confederacy, Native Court "A," Western Province, Sekondi.

MAMMA GARIBA & ORS. *Plaintiffs-Appellants*

ALAHAJI IBRAHIMA *Defendant-Respondent.*

vs.

Motion Ex-parte filed on 6/5/48 for final leave to appeal.
 Affidavit in support filed on 6/5/48.
 Upon examination the Court is satisfied that Appellants have fulfilled the conditions imposed upon them on 26/4/48.

No. 26.
 Order allowing final leave to appeal, 25th June, 1948—
continued.

BY COURT :

Final leave to appeal granted.

(Sgd.) J. R. AZARIAH, 10
Ag. President.

Recorder :

(Sgd.) LAW. CUDJOE,
Registrar.

No. 27

No. 27.

Order for directions as to date for hearing of appeal,
 17th September, 1948.

[*Not printed.*] 20

No. 28.
 Court Notes setting down Defendant's grounds of appeal, 14th October, 1948.

No. 28.

Court Notes setting down Defendant's grounds of appeal.

IN THE AHANTA CONFEDERACY NATIVE APPEAL COURT held at Sekondi 30
 on Thursday 14th October, 1948, before JOHN CROMWELL KOOM,
 Ag. President, J. E. QUAISON, Councillor, J. R. AZARIAH, Councillor.

Appeal No. 10S/48.

1. MAMMA GARIBA,
 2. MAAZU GARIBA,
 3. ADJARA GARIBA *Plaintiffs-Respondents*

vs.

ALAHAJI IBRAHIMA *Defendant-Appellant.*

Appeal from Sekondi Native Court " B "

Parties present.

Defendant-Appellant's grounds of appeal read. 40

1.—That the Plaintiffs in their writ of summons against the Defendant sued for ejection of the Defendant from the house No. 23/19 and

compound situate at George Street and injunction restraining the Defendant from collecting the rents thereof.

2.—That the Native Court was in error in their judgment that the house belong to Mallam Gariba as they ignored the plans, receipts and evidence adduced by the Defendant and Plaintiffs that the Defendant's mother Salamatu Atta herself built the house, matters not claimed on the writ of summons issued by the Plaintiffs.

3.—That the judgment is contrary to law for it contained findings of other matters not claimed, vide Exhibit "A."

10 4.—That the Defendant now appeals for rectification of the judgment and confirm judgment dismissing the action without including the ownership of the house by Mallam Gariba because that was not the claim of the Plaintiffs on their writ of summons and therefore not the question for the Native Court to decide and if so judgment should have been that the house belongs to Salamatu.

In the Abanta Confederacy, Native Court "A," Western Province, Sekondi.
No. 28.
Court Notes setting down Defendant's grounds of appeal, 14th October, 1948--
continued.

No. 29.

Court Notes setting down Plaintiffs' grounds of appeal and consolidating both appeals.

Counter Appeal No. 11S/48.

20 1. MAMMA GARIBA
2. MAAZU GARIBA
3. ADJARA GARIBA Plaintiffs
vs.
ALAHAJI IBRAHIMA Defendant.

No. 29.
Court Notes setting down Plaintiffs' grounds of appeal and consolidating both appeals, 14th October, 1948.

Plaintiffs-Respondents Counter Appeal against the judgment of Sekondi Native Court "B."

Plaintiffs-Respondents grounds of appeal read.

1.—Because on the evidence the Native Court "B" should have given judgment for the Appellants.

30 2.—Because the judgment of the Native Court "B" is against the weight of evidence.

In the Ahanta Confederacy, Native Court "A," Western Province, Sekondi.

3.—Because the judgment is indefinite and vague and did not decide the issue raised by the claim or the evidence.

4.—Because the judgment of Native Court "B" is otherwise erroneous or contrary to law.

BY COURT :

No. 29. Court Notes setting down Plaintiffs' grounds of appeal and consolidating both appeals, 14th October, 1948—*continued.*

The two appeals Nos. 10S/48 and 11S/48 have been consolidated into one for determination. Case adjourned to 15/10/48.

(Sgd.) J. C. KOOM,
Ag. President.

Recorder :

(Sgd.) LAW. CUDJOE,
Registrar.

10

No. 30. Proceedings, 15th October, 1948.

No. 30.
Proceedings.

IN THE AHANTA CONFEDERACY NATIVE APPEAL COURT held at Sekondi on Friday 15th October, 1948. Before JOHN CROMWELL KOOM, Esqr., Ag. President, J. E. QUAISON, Esqr., Councillor, J. R. AZABIAH, Esqr. Councillor.

Appeal No. 10S/48.

1. MAMMA GARIBA, 20
2. MAAZU GARIBA,
3. ADJARA GARIBA *Plaintiffs-Respondents*
- vs.*
- ALAHAJI IBRAHIMA *Defendant-Appellant.*

DEFENDANT'S EVIDENCE.

No. 31.

Alahaji Ibrahima, sworn.

Parties present.

DEFENDANT-APPELLANT STATES : The old house for which a compensation of £190 was paid belong to my mother, Salamatu. There is no proof that the money £190 was paid to Salamatu by Siriki Zongo. Plaintiffs did not contend or interfere with the ownership of the building in dispute while Salamatu was alive and 1st Plaintiff was fully grown having
 10 three children. I have been in possession of the house for the past thirteen years without any interference from the Plaintiffs. The Siriki Zongo who gave evidence was present as well as the Mallam Lemanu during the removal of the old place to the present place. The £190 paid by Government for demolished house was given directly to Salamatu as the owner of the house.

In the
 Ahanta
 Con-
 federacy,
 Native
 Court "A,"
 Western
 Province,
 Sekondi.

Defendant's
 Evidence.

No. 31.
 Alahaji
 Ibrahima,
 15th
 October,
 1948--

PLAINTIFFS' EVIDENCE.

No. 32.

Mamma Gariba, Sworn.

FIRST PLAINTIFF STATES : Both my mother, Fati Wangara and Salamatu were bought by my father Gariba. As we are royal born of Mallam Gariba,
 20 we have right over the Defendant.

Plaintiffs'
 Evidence.

No. 32,
 Mamma
 Gariba,
 15th
 October,
 1948.

BY COURT : Case adjourned to 16/10/48 for judgment.

(Sgd.) J. C. KOOM,
Ag. President.

Recorder :

(Sgd.) LAW. CUDJOE,
Registrar.

In the
Ahanta
Con-
federacy,
Native
Court " A,"
Western
Province,
Sekondi.

No. 33.
Judgment.

IN THE AHANTA CONFEDERACY NATIVE APPEAL COURT held at Sekondi on
Saturday 16th October, 1948 before JOHN CROMWELL KOOM, Ag.
President, J. E. QUAISON, Councillor, J. R. AZARIAH, Councillor.

Appeal No. 10S/48.

No. 33.
Judgment,
16th
October,
1948.

- 1. MAMMA GARIBA,
 - 2. MAAZU GARIBA,
 - 3. ADJARA GARIBA *Plaintiffs-Respondents*
- vs.*
- ALAHAJI IBRAHIMA *Defendant-Appellant.*

10

Parties present in person for judgment.

JUDGMENT :

Plaintiffs' claim is for ejection against Defendant restraining him his servants, agents and workmen from house No. 23/19 the property of their late father, Mallam Gariba.

The Native Court " B " dismissed the Plaintiffs' action without costs and ordered the parties to divide the rooms in House No. 23/19 among themselves.

The Defendant on the 7th of April, 1948, filed Notice of intention to appeal against this judgment. The Plaintiffs also filed Notice of Intention to appeal against the same judgment on the 17th April, 1948. The two appeals have been consolidated into one for determination.

The Plaintiffs in proving their case said that the old house belong to their late father Mallam Gariba and when it was demolished by Government a compensation of £190 was paid to Siriki Zongo who gave it to Salamatu to put up a building in substitution for the one demolished. They stated that Siriki Zongo made Salamatu to understand that the house she would build should be given to the Plaintiffs when they reached the age of puberty. They said *inter alia* that their father Mallam Gariba bought their mother, Fati Wangara and Salamatu and married both of them. They said that the Defendant was also bought by Mallam Gariba. According to the Plaintiffs, the parties in this case are all domestics. The Defendant on the other hand proved that the old house which was demolished belonged to his late mother Salamatu and the compensation of £190 was paid directly to her by Government. The Siriki Zongo gave evidence on behalf of the Plaintiffs that the old house belonged to the late Mallam Gariba and Mallam Lemanu Moru (Priest) also gave evidence on behalf of the Defendant that the old house belonged to the late Salamatu, mother of the Defendant.

40

There is no proof to convince this Court to believe that the old house belonged to Mallam Gariba. When the late Mallam Gariba was leaving Sekondi for French Ivory Coast, he did neither inform any person that he

possessed a house nor did he appoint someone to take care of his interest or that of his children the Plaintiffs who were young at that time. Mallam Gariba simply went to French Ivory Coast, stayed there and died. Evidences prove to the satisfaction of the Court that the old house was owned by Salamatu long ago before Mallam Gariba married her in Sekondi while she was staying in her own house which was later demolished by Government. According to the evidence of Siriki Zongi, the supporter of the Plaintiffs when house No. 23/19 was being put up, although Mallam Gariba was alive but only out of town yet the plot on which house

10 No. 23/19 situates was in Salamatu's name but not in the name of either Mallam Gariba or his successors the Plaintiffs.

It is an admitted fact that when the Plaintiffs reached the age of puberty and even 1st Plaintiff had married and had had about three children, Salamatu was then alive, but the Plaintiffs never interfered with the question of her ownership to the house in dispute. The demolition of the old house took place in about 1911 and Salamatu also died in 1935, but since 1935 to 1947 nobody challenged Defendant's title to the house in dispute. According to the evidence of Petteh Esson the old house belonged to Salamatu. Salamatu engaged Petteh Esson to

20 demolish her old house and put up a temporary building with iron sheets and boards and he did the work for £8, Defendant was not contradicted in his statement that he allowed the Plaintiffs to stay with him in House No. 23/19 as his mother and their mother were both married to the same man, Mallam Gariba and that at one time when 1st Plaintiff collected two months' house rents from a tenant without his (Defendant's) knowledge, he sued him. The Court believes the evidence of Lemanu Moru and Defendant that Salamatu had no issue but bought Defendant and adopted him as her own son and gave him to Mallam Lemanu to educate him. The evidence of Andrew Essien, Surveyor and Contractor, supported by

30 Exhibit " A " proves that Salamatu engaged Andrew Essien to prepare the plan of her house in the name of her son, the Defendant. Exhibit " D " proves that when Salamatu alias Salam Attah was financially handicapped in completing the house in dispute, she pledged the incompleting house for a loan of £300. Indisputably the late Salamatu was succeeded by the Defendant and according to Mohamedan Law when the " Salaka " was being performed in the presence of Mallam Lemanu Moru (Priest) nobody put up any claim against the Estate of the late Salamatu.

According to the evidence adduced from the record of the proceedings, the Court is satisfied that both the old demolished house and House

40 No. 23/19 in dispute belonged to the late Salamatu who was customarily succeeded by her domestic adopted son, the Defendant.

The judgment of the Court below is therefore set aside and the Plaintiffs' action is dismissed with costs to be taxed for the Defendant.

Recorder :

(Sgd.) LAW. CUDJOE,
Registrar.

(Sgd.) J. C. KOOM,
Ag. President.

In the
Ahanta
Con-
federacy,
Native
Court " A,"
Western
Province,
Sekondi.

No. 33.
Judgment,
16th
October,
1948.—
continued.

In the
Ahanta
Con-
federacy,
Native
Court "A,"
Western
Province,
Sekondi.

No. 34.

Notice of intention to appeal, 20th October, 1948.

[Not printed.]

No. 34

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 35.

Order allowing conditional leave to appeal, 6th November, 1948,
Bond for Costs and Justification of Sureties.

[Not printed.]

No. 35

No. 36.
Plaintiffs'
Grounds of
Appeal,
13th
November,
1948.

No. 36.

Plaintiffs' grounds of appeal.

Filed 15/11/48.

8 a.m.

10

(Sgd.) J. ARTHUR,
for R.D.C.

IN THE SUPREME COURT OF THE GOLD COAST WESTERN JUDICIAL DIVISION,
LAND COURT, SEKONDI.

Land Appeal No. 13/1948.

MAMMA GARIBA, MAAZU GARIBA and ADJARA
GARIBA as children and successors of the late
Mallam Gariba (Deceased) Plaintiffs-Appellants
versus

ALHAJI IBRAHIMA Defendant-Respondent.

20

PLAINTIFFS-APPELLANTS' GROUND OF APPEAL.

1.—Because on the evidence the Native Court "B" was not justified in dismissing the Plaintiffs' action and the finding by Court "B" that the Plaintiffs were the lawful children of the late Mallam Gariba (deceased) whose compensation of £190 together with the rents collected from the new building to complete the new building the subject matter of this suit was tantamount to the finding that the new building, the subject matter of this action was the late Mallam Gariba's property and therefore passed to the Plaintiffs-Appellants as owners.

2.—Because the Order directing the division of the house, the subject matter of this action was equivalent to the finding of fact that the house the subject matter of this action belonged to the Plaintiffs-Appellants and the Order dismissing the Plaintiffs-Appellants' action therefore was wrong.

In the Supreme Court of the Gold Coast, Western Judicial Division, Land Court, Sekondi.

3.—Because the evidence proved that the Defendant-Respondent Alhaji Ibrahima was the slave or domestic of the late Mallam Gariba (deceased) and therefore could not have equal share of the subject matter of this action with the Plaintiffs-Appellants.

4.—Because the judgment of the Native Court " B " was contradictory and inconsistent and therefore cannot stand.

No. 36. Plaintiffs' Grounds of Appeal, 13th

5.—Because of the evidence judgment should have been given for the Plaintiffs-Appellants.

November, 1948—
continued

6.—Because the Native Court " A " took no evidence and its judgment therefore cannot stand.

7.—Because on the whole findings, judgment should have been given for the Plaintiffs-Appellants or in the alternative the Court should rehear the case upon the merits.

8.—Judgment contrary to Law.

Dated at Sekondi this 13th day of November, 1948.

20

(Sgd.) F. AWOONOR-WILLIAMS,
Counsel for Plaintiffs-Appellants.

To the Registrar, Land Court, Sekondi,
and The Defendant-Appellant ALHAJI
IBRAHIMAH, Sekondi.

Upon the 17th day of November 1948 copy of this Grounds of Appeal was served by me on Alhaji Ibrahimah personally at Sekondi.

(Sgd.) WILLIAM ANTHONY BARTELS,
Bailiff.

No. 37.

No. 37

30 Plaintiffs' Motion for final leave to appeal (ex parte) and Affidavit in support,
23rd November, 1948.

[*Not printed.*]

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 38.

Order allowing final leave to appeal.

LAND COURT, SEKONDI, Wednesday, the 24th day of November, 1948,
Coram : HOOPER, J.

MAMA GARIBA & Ors. *Plaintiffs-Appellants*

v.

ALHADJI IBRAHIMAH *Defendant-Respondent.*

No. 38.
Order
allowing
final leave
to appeal,
24th
November,
1948.

Motion *ex parte* for leave to appeal under Regulation No. 10 of 1945.

Mr. Williams for Appellants.

All conditions imposed have been complied with.

10

BY THE COURT :

Leave to appeal granted.

(Sgd.) C. A. HOOPER,
J.

No. 39.

No. 39.

Arguments of Plaintiffs' Counsel, dated 31st May, 1949.

[*Not printed.*]

No. 40.

No. 40.

Arguments of Defendant's Counsel, dated 31st May, 1949.

[*Not printed.*]

20

No. 41.

No. 41.

Judgment.

LAND COURT, SEKONDI, Thursday, the 4th day of August, 1949, Coram :
Mr. Justice RAGNAR HYNE.

Land Appeal No. 13/1948.

MAMA GARIBA, MAAZU GARIBA and
ADJARA GARIBA as children and
successors of the late Mallam
Gariba (Deceased) of Sekondi ... *Plaintiffs-Respondents-Appellants*

versus

ALHADJI IBRAHIMAH of Sekondi ... *Defendant-Appellant-Respondent.*

30

JUDGMENT.

This is an appeal by Mama Gariba and two others from the judgment of the Ahanta Confederacy Native Appeal Court, held at Sekondi on the 16th October, 1948, the Native Appeal Court having held that a certain house No. 23/19 situate at George Street, Hausa Zongo, Sekondi, was the

property of a woman called Salamatu who was succeeded by her domestic adopted son, the Defendant-Appellant-Respondent herein.

The claim by the Plaintiffs-Respondents-Appellants (hereinafter referred to as "the Appellants") is that as children and successors according to Mohamedan law of the late Mallam Gariba (deceased) they claim to eject the Defendant-Appellant-Respondent) from house No. 23/19 and the compound thereof situate at George Street, Hausa Zongo, Sekondi, the property of their late father Mallam Gariba, and for a perpetual injunction to restrain the Defendant, his servants, agents and workmen from interfering with the Plaintiffs in the use and possession of the said house No. 23/19. Although the form of the claim appears to be an action for ejection, examination of the record shows that the real issue between the parties is whether the house No. 23/19 is the property of the Appellants or whether it is the property of the Defendant-Appellant-Respondent (hereinafter referred to as "the Respondent").

The grounds of appeal are as follows :—

20 " (1) Because on the evidence the Native Court " B " was not justified in dismissing the Plaintiffs' action and the finding by Court ' B ' that the Plaintiffs were the lawful children of the late Mallam Gariba (deceased) whose compensation of £190 together with the rents collected from the new building to complete the new building the subject matter of this suit was tantamount to the finding that the new building, the subject matter of this action was the late Mallam Gariba's property and therefore passed to the Plaintiffs-Appellants as owners."

30 " (2) Because the Order directing the division of the house, the subject matter of this action was equivalent to the finding of fact that the house the subject matter of this action belonged to the Plaintiffs-Appellants and the Order dismissing the Plaintiffs-Appellants' action therefore was wrong."

" (3) Because the evidence proved that the Defendant-Respondent Alhaji Ibrahim was the slave or domestic of the late Mallam Gariba (deceased) and therefore could not have equal share of the subject matter of this action with the Plaintiffs-Appellants."

" (4) Because the judgment of the Native Court ' B ' was contradictory and inconsistent and therefore cannot stand."

" (5) Because on the evidence judgment should have been given for the Plaintiffs-Appellants."

40 " (6) Because the Native Court ' A ' took no evidence and its judgment therefore cannot stand."

" (7) Because on the whole findings, judgment should have been given for the Plaintiffs-Appellants or in the alternative the Court should re-hear the case upon the merits."

" (8) Judgment contrary to law."

In the
Supreme
Court of the
Gold Coast,
Western .
Judicial
Division,
Land Court,
Sekondi.

—
No. 41.
Judgment,
4th August,
1949—
continued.

In the
Supreme
Court of the
Gold Coast
Western
Judicial
Division,
Land Court,
Sekondi.

—
No. 41.
Judgment,
4th August,
1949—
continued.

The action was first instituted in Native Court " B " of Sekondi area, held at Sekondi on Tuesday the 30th March, 1948, when the Native Court found as follows :—

" That since it is admitted by parties that Plaintiffs are
" children of the late Mallam Gariba and Defendant, an adopted
" child of Salamatu, and both had been living in the premises to
" the present date, this Court in its opinion finds that Plaintiffs'
" action to oust Defendant entirely from occupation should fail,
" and in dismissing the action without costs, orders that parties
" should continue to live in the premises and that the rooms 10
" should be divided among themselves."

Both parties appealed from this decision to the Native Appeal Court with the result set out at the commencement of this judgment. The Appellants claim the land, as children and successors, according to Mohamedan law, of the late Mallam Gariba (deceased) and in support of their claim, evidence was given by the 1st Plaintiff, Mama Gariba, by Ibrahimah the Siriki Zongo, and by Fati Wangara.

For the Respondent in this appeal evidence was given by the Respondent himself, by Lemanu Moru, by Andrew Essien and by Petteh Esson. 20

The 1st Appellant said that his father, Mallam Gariba left Sekondi, went abroad and did not return. While in Sekondi he lived with a domestic woman Salamatu, by whom he had no issue. He later married 1st Appellant's mother, Fati Wangara, by whom he had two children, the 1st and 2nd Appellants. Mallam Gariba's third wife was the mother of the 3rd Appellant. The 1st Appellant stated that, on his departure, his father charged the Hausa Chief to be responsible for his properties and children.

Certain old premises in which they had lived were demolished and Government gave money to the Siriki Zongo for the erection of houses in 30 place of those demolished. This money was given by Siriki Zongo to Salamatu for the purpose of building a house in which they all should live. He said further, that the Respondent, who was a domestic servant to his late father Mama Gariba, being older, was given charge of these premises when Salamatu died.

The division of the premises was attempted by Sofu Mallam Moru. To this, 1st Appellant objected as the Respondent was not royal born, but a domestic. He admitted that Salamatu built the house at Zongo but contended that the old house was built by his father. In cross-examination by the Defendant he declared that Salamatu said they, 40 the Appellants were the owners of the house. He admitted, however, that he had no documents to support his contention and he also admitted that the plan was in the name of Salamatu. It is contended by him that the Respondent was not related to Salamatu but that he was a slave of 1st Appellant's father. Examined by the Court, he said that the

- Siriki Zongo and the Mallam handed the property to the Respondent, that the first plan of the building was in the name of Salamatu, and the second plan was in the name of the Respondent himself. The first witness for the Appellants was the Siriki Zongo who said that when Government removed them from old Zongo each house owner was paid a reasonable sum for re-building. An amount of £190 was paid in respect of Mallam Gariba's house. He said that he gave this sum to Mallam Gariba's slave domestic, Salamatu, and that, later he gave Salamatu a plot on which a house should be built. He admitted in cross-examination, however, that he did not
- 10 obtain a receipt for the money he paid to her. He said further that Mallam Gariba, when he heard that the house had been demolished, remitted £50 to be added to that which Government paid for re-building the house. Continuing, he said that when Salamatu died, he himself and his priest gave the properties to the Respondent to look after until the Appellants were old enough to have possession. There is evidence by this witness that the priest divided the estate between the Respondent and others, but he contended that as this division was done without his authority he ordered the priest to return the amount collected and the priest was deprived of his office. Cross-examined by the Respondent, the Siriki Zongo said that
- 20 he collected yearly ground rents from every house owner and gave receipts. He admitted giving receipts to the Respondent, but he said that his name appeared on the receipt as caretaker. He concluded by saying that Respondent was given the house and the children to look after, by his authority and the authority of the elders, a week after Salamatu's death. In answer to a question by the Respondent, he said that the house was given to the Respondent about 12 years ago.
- The Appellants' 2nd witness, was Fati Wangara, 1st Appellant's mother. She admitted that Salamatu informed her that Siriki Zongo had given her some money, namely £190. She stated that the Respondent
- 30 was the slave of Mallam Gariba, having been bought by him from one Musa at Sekondi. In reply to the Court, she said she was told the sum of £190 was given for the building, and she also said that the Respondent had no right to anything in the premises. She said further that when she came back she heard the Respondent was in charge of the house.
- For the defence, Alahaji Ibrahim said that Salamatu, alias Kramo Atta was his mother, that she was given a piece of land on which to build and that she hired carpenters for the purpose of erecting first of all temporary premises and subsequently for the erection of a large house containing 26 rooms. Later a second storey was added to the building
- 40 the plan for which was prepared by Mr. Essien. The plans were in the name of Ibrahim, and the total cost was £354. His mother having made default in payment in connection with the building was successfully sued for the amount outstanding. He said that when his mother was alive he was responsible for the house and that he completed the building after Salamatu's death. At the funeral he called persons to whom his mother owed money and no one appeared. He pledged part of the house and paid debts. After a time his sister applied for her portion of the estate.

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division.
Land Court,
Sekondi.

No. 41.
Judgment,
4th August,
1949—
continued.

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 41.
Judgment,
4th August,
1949—
continued.

In accordance with Mohammedan custom, the priest should distribute. The 1st Appellant objected and no distribution was made. The matter subsequently went to the Siriki Zongo and the elders, and an order was made dividing the house, each one obtaining certain rooms. Respondent further gave evidence to the effect that on one occasion when he was absent. 1st Appellant was left in charge of the premises and he rendered an account to the Respondent on Respondent's return. He also pays all Town Council rates and ground rents in relation to the house. Examined by the Court, he said that Salamatu built the old house and that Appellant's mother was also living in the house and that he permitted the Appellant to live in the house because he also was the son of a woman married to Mallam Gariba. 10

The Respondent's 1st witness was Lemanu Moru the priest. In reply to a question by Respondent, he admitted that Salamatu handed Respondent to the witness to be educated and that at the time when this was done Mallam Gariba was present. He says that the Respondent completed the building and that on Salamatu's death during the "Salaka" Respondent asked if anybody had any claim but no one appeared. He said further that Respondent was in charge of the estate and that it was not the Siriki Zongo who gave him the house. Cross-examined by the Appellant he said that he knew Salamatu in her own premises before Mallam Gariba married her and he further said Respondent was bought. He also said that he gave portion of the estate to the 1st Appellant because he was trained by Salamatu. 20

The Respondent's 2nd witness was Andrew Essien. He gave evidence, in effect, that Kramo Atta, that is Salamatu, engaged him to build a house for her and that he prepared the plan and built the house. The building plan was in the name of the Respondent.

The Respondent's 3rd witness was Petteh Esson. He gave evidence to the effect that Kramo Atta engaged his services to remove iron sheets and boards from the old building at old Zongo for re-building at new Zongo. He said he was informed by her that the old house was hers. In reply to a question by the Court he said he made the plan which was passed on the 11th September, 1924, that the original name on such plan was Braimah and that in 1925 it was changed to the name of Kramo Atta on her own instructions. 30

As I have previously stated, this matter first came before the Native Court "B" and the Native Court "B" gave judgment from which both parties appealed to the Native Court "A," Sekondi. The Native Appeal Court consolidated the appeals and proceeded to review the record of the case before the Native Court "B." 40

It is difficult to understand what precisely is meant by the finding of the Native Court "B" which said "Going strictly into the question of rights of succession, there is little difficulty in determining it as Mallam Gariba died before Salamatu." The Court, however, does not, in its judgment, indicate who is entitled to succeed, but merely contents itself by saying that the parties should continue as they were, living in the premises and dividing the rooms among themselves.

It is contended on behalf of the Appellant that the Native Court "A" took no evidence and that therefore Court "A" would not be justified in reversing the judgment of Court "B" unless there was strong ground for so doing.

It has been laid down that—

10 " An Appeal Court is not debarred from coming to its own
 " conclusion on the facts, and where a judgment has been
 " appealed from on the ground of the weight of evidence the
 " Appeal Court can make up its own mind on the evidence, not
 " disregarding the judgment appealed from, but carefully weighing
 " and considering it and not shrinking from overruling it if, on
 " full consideration it comes to the conclusion that the judgment
 " is wrong."

In the
 Supreme
 Court of the
 Gold Coast,
 Western
 Judicial
 Division,
 Land Court,
 Sekondi.

—
 No. 41.
 Judgment,
 4th August,
 1949—
continued.

Although the grounds of appeal do not specifically set out that the judgment of Court "B" has been appealed from on the ground of the weight of evidence, nevertheless the general tenor of the grounds of appeal is that the Court was not justified on the evidence, in coming to the decision it did, and this in my view is tantamount to an appeal on the ground of the weight of evidence and the principle above enunciated should apply.

20 Learned Counsel for the Appellants has traversed the evidence, and he says that the Respondent was merely appointed caretaker for and on behalf of the children of Mallam Gariba and Fati Wangara. Reviewing the whole evidence, I am satisfied that the Respondent was not merely a caretaker as contended and that Respondent was not collecting rents and administering the property for and on behalf of the Appellants.

It is contended also that the old house which was pulled down was the property of Mallam Gariba. The evidence of the Respondent and the priest, however, was that the old house was the property of Salamatu. This evidence is supported by that of Essien, who stated that Kramo Atta
 30 (who, it is admitted is Salamatu) engaged him to build the house for *her*, that he prepared the plans for the building and actually built the house. The evidence that the old building belonged to Salamatu finds some support in the evidence of Petteh Esson who was engaged in removing iron sheets and boards from her old building at Zongo for re-building at the new Zongo. He also made a plan which was at first in the name of Ibrahima and subsequently changed into the name of Kramo Atta on her instructions.

I am of opinion therefore that the Native Court "A" was right in holding that the old house was the property of Salamatu and that, since Government compensated people for houses demolished in order that new houses might
 40 be built, the sum of £190 was given to Salamatu in order that she might build her house for herself in substitution for the one pulled down. I do not agree the money was given to her as agent for Mallam Gariba.

The Siriki Zongo did not say that he gave Salamatu a plot of land to hold for and on behalf of Mallam Gariba—he said simply he gave her a plot of land and I do not think that the sum of £50 sent by Mallam Gariba to the Siriki Zongo to give to Salamatu, establishes that Mallam Gariba

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 41.
Judgment,
4th August,
1949—
continued.

regarded himself as having any interest in the house which Salamatu erected.

Learned Counsel for the Respondent has pointed out, and quite correctly, that considerably more than £240 was spent on the erection of the house, and there is evidence that Salamatu mortgaged the property in order to pay for extensions.

The Native Court "A" found that the house belonged to Salamatu and in the course of its judgment, the Court correctly pointed out that from 1935 until 1947 no one had challenged Respondent's right to the house in dispute and furthermore, at the time of Salamatu's death no person came forward to challenge the Respondent on his assumption of the control of the building. That the building was originally the building of Salamatu is also borne out by the documentary evidence in the case. Exhibit "A" is the plan of the property in 1922 and this plan is in the name of the Respondent—there is no mention of the Appellants at all. Exhibit "B" is a plan approved in 1942 and provides for extensions to the existing building. This plan, duly approved, is in the name of the Respondent. Exhibit "C" the plan of 1924, referred to by Esson is in the name of the Respondent but this was later altered into the name of Kramao Atta.

Exhibit "D" is an Instrument whereby Salamatu authorizes one John Tetteh Aryenor to arrange a mortgage of the property for £300 and Exhibit "E" is, in effect, an Agreement with a Contractor to build the house for her. This is dated, November, 1924. It is in my view quite clear from these various documents that Salamatu was the owner of the premises. The Native Court "A" very properly took into consideration not only the oral evidence but also the documentary evidence, and came to conclusion, which in my opinion was the correct one, namely that the house belonged to Salamatu. The house being therefore Salamatu's, the Appellants can have no claim to it. The Native Court also found—and with this I agree—that the Respondent was entitled to succeed to Salamatu's property Salamatu having no issue. Furthermore, the Appellants by their conduct prior to the institution of this action have not disputed the Respondent's right to ownership—they made no claim when they might have claimed, and the 1st Appellant even accounted to Respondent for rents collected by him during a seven months' absence of the Respondent.

Learned Counsel for the Appellants has submitted that there was perjury, falsehood, interest and bias on the part of the Respondent and his witnesses and particularly on the part of the priest. He submits that since these existed, the Court of Appeal should not reverse the judgment of the trial Court, unless for good reasons, as for example, if the trial Court ignored certain facts. He refers to Appeal Cases 1912—page 323, *Khoo Sit Hoh & Others vs. Lim Thean Tong*. In the head note to this case the following appears: "Where upon an issue depending upon oral evidence, there is plainly perjury on the one side or the other the Court of Appeal ought to be greatly influenced by the opinion of the trial Judge who has seen and examined the witnesses except where he has failed to observe

“inconsistencies or to take account of material circumstances or responsibilities.” The crux of this note is that the opinion of the trial Judge has great weight where the issue depends on oral evidence which is plainly perjury. After careful consideration of the record in this case, I cannot agree that there is perjury on the part of the Respondent and his witnesses. His evidence as to the ownership of the building is supported by two entirely independent persons, namely Essien and Esson and there is further support in the documents which were produced by him. It follows from the foregoing that ground (1) fails. As to ground (2) the “finding” of Court “B” was certainly not a finding that the building belonged to the Plaintiffs-Appellants. As to ground (3) it has not been established by evidence that the Defendant was a slave of Mallam Gariba. It has on the contrary been established that he was the adopted son of Salamatu. As to ground (4) there can be no doubt that the judgment of Native Court “B” was contradictory and inconsistent, and the Native Court “A,” in effect, by its judgment agreed it was. As to ground (5), I am satisfied that the Native Court was right in holding that the evidence justifies judgment for the Respondent. As to ground (6) the Native Court “A” was not debarred from basing its judgment on the written record and this ground therefore fails. As to ground (7), the judgment of the Native Court was in my view correct, in view of the oral and documentary evidence before it, and this ground as well as the 8th ground, that the judgment was contrary to law, also fails.

The judgment of the Native Court “A” is affirmed. The Respondent will have the costs of the appeal in this Court, namely £2 14s., and professional costs amounting to 10 guineas.

(Sgd.) RAGNAR HYNE,
Judge.

Counsel :

30 Mr. F. AWOONOR WILLIAMS for the Appellants.
Messrs. R. CROWTHER-NICOL and R. S. BLAY for the Respondent.

No. 42.

No. 12.

Notice of Motion for conditional leave to appeal (ex parte) and Affidavit in support, 3rd November, 1949.

[*Not printed*]

No. 43.

No. 43.

Order allowing conditional leave to appeal, 15th November, 1949.

[*Not printed*]

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 41.
Judgment,
4th August,
1949—
continued.

In the
Supreme
Court of the
Gold Coast,
Western
Judicial
Division,
Land Court,
Sekondi.

No. 44.

**Notice of conditional leave to appeal, 12th December, 1949.
Bond for Costs and Justification for Sureties.**

[*Not printed*]

No. 44.

No. 45.

No. 45.

**Notice of Motion for final leave to appeal and Affidavit in support,
15th December, 1949.**

[*Not printed*]

No. 46.
Order
allowing
final leave
to appeal,
31st
January,
1950.

No. 46.

Order allowing final leave to appeal.

10

LAND COURT, SEKONDI, Tuesday the 31st day of January 1950, Coram :
Mr. Justice DENNISON.

Land Appeal 13/48.

MAMA GARIBA & OTHERS

v.

ALHAJI.

H. CHRISTIAN for WILLIAMS for Appellants.

Respondent in person.

CHRISTIAN : I only ask for final leave to appeal at the moment. All conditions fulfilled within stated time—owing to the Court vacation the 20 present application had to stand over until to-day.

COURT : Final leave to appeal granted as prayed.

(Intd.) T.A.D.,
Ag. J.

No. 47.

Grounds of appeal.

Filed 31/1/50.

(Sgd.) J. ARTHUR,
for R.D.C.

FORM II.

IN THE WEST AFRICAN COURT OF APPEAL.

Between

MAMA GARIBA, MAAZU GARIBA, and ADJARA GARIBA, as
10 successors and children of the late Mallam Gariba (Decd.) *Appellants*
and
ALHAJI IBRAHIMA *Respondent.*

In the West
African
Court of
Appeal,
Gold Coast
Session.

No. 47.
Grounds of
Appeal,
31st
January,
1950.

The Appellants being dissatisfied with the judgment of the Land Court, Sekondi, delivered on the 4th August, 1949, and having obtained final leave to appeal there from dated the 31st day of January, 1950, hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUND'S OF APPEAL.

1.—Because the findings of fact by Native Court “ B ” that the House at Old Zongo was the property of Mallam Gariba (dec'd.) and that Salamatu
20 (dec'd.) used the Compensation paid therefor to erect the new building at the New Hausa Zongo was supported by the evidence of Shiriki Ibrahim the Hausa Chief, and that Court “ A ” and the Land Court were wrong and not justified in reversing these findings of fact.

2.—Because the findings of fact in I were tantamount to the fact that the House, the subject matter of this appeal was the property of Mallam Gariba (dec'd.) and his successors the Plaintiffs-Appellants.

3.—Because the facts admitted and proved were that the Plaintiffs-Appellants were the children of Mallam Gariba (dec'd.) and therefore successors according to Mohammedan Law of Mallam Gariba (dec'd.).

30 4.—Because the evidence of Shiriki Ibrahim, the Zongo Chief was not discredited by Court “ A ” and the Land Court, and was given in his official capacity as Chief of all the Hausas and was accepted as such by Court “ B ” the trial Court, and the Judgments of Court “ A ” and the Land Court cannot stand.

5.—Because the evidence of the Respondent and Mallam Moru with regard to the House at Old Zongo and the Compensation of £190 were

In the West African Court of Appeal, Gold Coast Session.

hearsay and Court " A " and the Land Court were wrong in accepting same and basing their Judgments thereon.

No. 47.

6.—Because the Land Court misconstrued the evidence of Andrew Essein as referring to the House at Old Zongo and the inferences it drew therefrom were wrong.

Grounds of Appeal, 31st January, 1950—*continued.*

7.—Because the parties being Hausas and natives no writing was in Law necessary for the acquisition and transfer of interest in land or personal property, and that Court " A " and the Land Court were wrong in Law in attaching undue weight to the Exhibits put in evidence. The said Exhibits were *ex post facto* acts long after the events to which they refer or dealt with. 10

8.—Because the Judgments of Court " A " and the Land Court were wholly and entirely against the weight of evidence.

9.—Because the conduct of the Respondent in laying claim to the House in dispute and in conniving with Mallum Moru the Defendant's witness in the division of the said House justified the Appellants in seeking to eject the Respondent and Court " B " should have granted the relief sought for by the Appellants.

10.—Because the Statement of Mohammedan Law by the witness Shiriki Ibrahim, the Hausa Chief, as to the status of the Appellants as masters and therefore successors was not controverted by the Respondent or by the 20 Court.

11.—Because the Judgments of Court " A " and the Land Court were for the above reasons otherwise erroneous.

Dated at Sekondi this 31st day of January, 1950.

(Sgd.) F. AWOONOR WILLIAMS
Counsel for Appellants.

To the Registrar, W.A.C.A., Accra, and
to Deft./Respdnt. ALHAJI IBRAHIMA,
Sekondi.

Upon the 2nd day of February, 1950, copy 30
of this ground of appeal was served by me
on Alhaji Ibrahimah personally at Sekondi.

(Sgd.) BENSON B. ONOSHOKUM,
Bailiff, Grade II.

No. 48.
President's Notes.

6th March, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

Coram : WILSON, C.J. (Presiding J.), LEWEY, J.A., and COUSSEY, J.
MAMA GARIBA & ORS. *Plaintiffs-Appellants*
v.
ALHADJI IBRAHIMA *Defendant-Respondent.*

In the West African Court of Appeal, Gold Coast Session.

No. 48. President's Notes, 6th March, 1951.

WILLIAMS for Appellants.

10 BLAY for Respondent.

AWOONOR-WILLIAMS : All parties Hausas and Moslems by religion. Dispute as ownership of a certain house at the Hausa Zongo at Sekondi. The Appellants say that the original finding of the Native Court B that the old house for which the £190 compensation was paid was the property of Mallam Gariba and not of Salamatu should not have been upset by the Native Court A and Appeal Court which had not the witnesses before it and heard no new evidence. Yet at p. 33 the Native Court A came to a contrary finding, saying there was no evidence that Mallam Gariba owned the old house and that there *was* evidence that it belonged to Salamatu.

20 The Land Court Judge on a second appeal in effect accepted the findings of fact of the Native Court "A." From p. 10 line 17 it is clear that the dispute about the property first arose about November 1947. GROUNDS 1, 2, AND 3 (AT PAGE 49) : At page 10 is the evidence of the Head Chief of the Sekondi Hausas—Siriki Zongo. This shows that the house on which £190 compensation was paid was the property of Mallam Gariba, though he paid it over to Mallam Gariba's "slave domestic" in his absence, so that she might build a new house for him. It is clear she was only a caretaker for Mallam Gariba.

30 No question was ever put to the Siriki Zongo as to whether Salamatu had a house of her own in the old Zongo. This should have been done in cross-examination

1st Plaintiff at page 8 says that when going away Mallam Gariba charged the Siriki Zongo to be responsible for all his property. (Court : It is to be noted that the Siriki Zongo himself did not say this.) She says the old house was built by her father Mallam Gariba.

At page 12 line 5 et seq. the Defendant's slave origin is evidenced by a former wife of Mallam Gariba who shows his status in Mallam Gariba's household. Defendant did not challenge her evidence at all in cross-examination.

40 If the old house belonged to Salamatu, how could she allow her rival Fati (or Fatuma) to live in her house.

There is abundant evidence that Salamatu was a domestic slave of Mallam Gariba and not a free woman.

In the West
African
Court of
Appeal,
Gold Coast
Session.

—
No. 48.
President's
Notes,
6th March,
1951—
continued.

Appellant does not quarrel with Petteh Esson's evidence. We do not deny the transactions concerned with the building of the new house. His evidence as to ownership of the old house is mere hearsay, but the Judge acted upon it.

The Native Court "B" in effect found in favour of the Plaintiffs as regards the ownership of the house. This finding should not have been disturbed: see *Abakah Nthah v. Anguah Bennieh* 2 W.A.C.A. 1 at page 3 line 10. *K. S. Hoh v. L. T. Tong* (1912) A.C. 323 at p. 325.

In the present case the trial Court summarized all the evidence and came to a careful conclusion on the facts shown in evidence. They took into full account the evidence for the Defendant and the Exhibits he put in. In spite of all this they came to a conclusion in favour of the Plaintiffs and their decision should not have been upset on the facts. *Folkestone Corporation v. Brockman* (1914) A.C. 338. 10

(To COUSSEY, J.): I am not instructed to accept a solution of this case which would involve divided possession of this property. This was really the decision of the Native Court "B" against which my clients appealed.

(To WILSON, C.J.): I agree that in the *Folkestone Corporation v. Brockman* case it was held that the finding of facts was within the exclusive jurisdiction of the justices and could therefore not be upset in any event by an appeal court (at page 351). 20

(To COUSSEY, J.): The proportions in which a division of the property would under Koranic law be made as between the Appellants and the Respondent are not shown in evidence or in the judgment of the trial Court.

GROUND 4: The evidence of the Siriki Zongo which had been accepted *in toto* by the trial Court and acted upon was not in any way discredited by the two appeal Courts and they were not therefore entitled to alter the decision which it established especially as it was corroborated in many details. *Omanhene Kweku Dua III v. Omanhene Kwamin Tandoh*, Judgments of the Privy Council 1874-1928 at p. 109. 30

GROUND 5: The acceptance of the evidence of the Respondent and of Mallam Moru by the Native Court A as to the ownership of the old house (see Judgments at pages 32-33 and page 37) is vitiated by the fact that that evidence was hearsay. (See p. 14 line 4 and page 13 line 41). (Court: The evidence at page 13 lines 41 and 42 is not hearsay. I agree but if Salamatu was a domestic slave how could she have a house of her own? The trial Court discounted all this evidence, but the appeal Courts accepted it and partly based their Judgments upon it. 40

Hearing adjourned to 7/3/51 at 9 a.m.

(Sgd.) MARK WILSON,
C.J.
6/3/51.

7th March, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.
Coram : WILSON, C.J., LEWEY, J.A. and COUSSEY, J.

In the West
African
Court of
Appeal,
Gold Coast
Session.

9/50

MAMA GARIBAH & OTHERS
v.
ALHADJI IBRAHIMHA

No. 48.
President's
Notes,
7th March,
1951-
continued.

Counsel as before. From page 213.

AWOONOR WILLIAMS (*continuing*):

10 GROUND 6: Evidence of A. Essien at page 16 as to the building of house at the New Zongo. Plan made in Defendant's name at Salamatu's request. At page 13 evidence of Defendant corroborating shows that they were talking about the building of the new house by Essien for her. But the Judge at page 45 seems to have taken the view that the plan made for a house by Essien was for the old house at the Old Zongo. This of course was not so. (Court: I doubt if the Judge meant that in the passage quoted—p. 45).

20 GROUND 7: The Exhibits A, B, C, D and E came into existence long after the removal from the Old Zongo and were made *ex post facto*. So no inference, such as the Judge in the Land Court made at page 46, line 26 *et seq.* can be properly drawn from them as to the ownership of the old house. Undue weight was given to them by the Native Court A and the Land Court.

The Native Court B (the trial Court) was not impressed by them. They found the old house belonged to Mallam Gariba, not to Salamatu.

The trial Court properly regarded Salamatu as merely a caretaker for Mallam Gariba and later for his children the Appellants. See the Hausa Chief's evidence at page 11, lines 19-20, taken with his general evidence at page 10. He was giving evidence of his official acts.

30 By Native Law no writing is necessary for the transfer of land (Redwar, page 77).

GROUND 8: I submit that the weight of evidence was in favour of the findings of Native Court B and not those of the two Appeal Courts.

40 GROUNDS 8, 9 and 10: I am asking this Court to give effect to the prayer of the Appellant that the Respondent having set up an adverse title and caused this litigation the Court should grant a perpetual injunction to prevent the Respondent interfering with the Appellant's enjoyment of the property. The Respondent was guilty of an offence. The Hausa Chief's evidence is that as masters the Appellants were the rightful successors to this property and that the Defendant-Respondent had no rights therein.

Nyankum v. Entsey & Others (Renner's Reports, Vol. I, pp. 217-218—powers of this Appeal Court to make any order the justice of the case requires.

In the West
African
Court of
Appeal,
Gold Coast
Session.

No. 48.
President's
Notes,
7th March,
1951—
continued.

Dinsey & Others v. Osei & Others, 5 W.A.C.A. 177 at p. 179. Appeal Court not justified in overriding findings of fact of trial Court (Native Tribunal) without very strong reasons.

BLAY : The passage in the Land Court's judgment quoting an authority as to the powers of an Appeal Court to come to its own conclusions on questions of fact is the undoubted law and cannot be whittled down.

The question at issue was : who was the owner of the new (or present) Zongo house ? The evidence as to who owned the Old Zongo house is conflicting. But there is evidence that the house first built on the new plot was a swish house which got broken down. Salamatu then with her own money built a new house on Essien's plan, and the fact that it may have been built on the site originally to her to build after the removal is immaterial. She was not getting a freehold title to that site in any event ; she had to continue to pay rent for it. 10

The Siriki Zongo (Hausa Chief) who gave evidence was not an impartial person. He was not so regarded when giving evidence—see the note made by the trial Court as to a demonstration in Court while he was giving evidence—bottom of page 10.

But there is nothing in the Chief's evidence to suggest that Mallam Gariba ever had anything to do with the new plot. Receipts he gave were given to Salamatu and then to Defendant in their name, not in Mallam Gariba's name. 20

Mamma Gariba was a grown up married man 20 years ago (page 12 line 21). Surely when Salamatu died 12 years ago Mamma Gariba would have challenged the rights of the Respondent if he really had any rights as successor of Mallam Gariba, his father. The Native Court A had regard for this fact in coming to its decision and the Land Court Judge on second appeal upheld that decision.

Mamma Gariba, the 1st Plaintiff, was only a child—an infant, he says himself—when Mallam Gariba his father went away. His evidence as to what happened at that time and before must be hearsay. 30

I am submitting that when the first house built on the new plot collapsed, it being a swish house, a new house was built with Salamatu's own money, to which Mallam Gariba's children as such had no claim whatever. (Court : That is not the picture given by the Defendant himself at page 12 lines 7 *et seq.*)

I mean that the worthwhile part of the buildings—the part built by Salamatu and Defendant in 1924 and afterwards on Essien plan : that was all built with Salamatu's and Defendant's property. It was not completed until 1942—by the Defendant-Respondent after Salamatu's death. 40

My client has been managing this building and letting it out for rent for many many years. The Plaintiffs never made any attempt to challenge his title until 1947.

The only evidence to show that Mallam Gariba was the owner of the old house is that of a possibly biassed party, the Siriki Zongo. But there is plenty of evidence on the other side that the house was Salamatu's.

The new Zongo was established about 1910, thirty-seven years before the trial. The Plaintiff Mamma Gariba, was born before that. He has been a grown man for about 20 years, but made no attempt to assert his rights.

In the West African Court of Appeal, Gold Coast Session.

The lengthy arguments for the Appellants are quite beside the point. The only issue is the ownership of the house. The only evidence in Plaintiffs favour is that of the Siriki Zongo. No evidence in the way of a receipt to show that the £190 was paid to Salamatu *on behalf of Mallam Gariba*.

No. 48.
President's Notes,
7th March, 1951—
continued.

- 10 The trial Court did not give due weight to the documentary evidence. The *Plaintiffs (sic)* should have non-suited the Plaintiffs. The Native Appeal Court A merely put right what the trial Court should have done but did not.

The appeal on the above grounds should be dismissed.

AWOONOR-WILLIAMS (in reply) : Exhibit A shows that a small portion of the swish building built round the courtyard was to be dismantled to allow the building of the storey house. A large part of the swish building round the courtyard remained.

- 20 Any improvement or addition to a building made by a caretaker or agent must enure to the benefit of the successors. Russell : Moslem Jurisprudence page 73, para. 235—rights of son of deceased.

The inference from the evidence is that Salamatu was the caretaker for Mallam Gariba's children and that the house was built either with Mallam Gariba's money or with a loan which was repaid out of the rents received by the Defendant for letting the premises.

The trial Court held that the house was Mallam Gariba's built with the compensation he received from Government for the breaking down of his old house, which money in his absence was paid to Salamatu as his agent.

Nothing to show that the Siriki Zongo was not entirely impartial.

- 30 This dispute arose because the Defendant tried to partition the property with the connivance of the priest Mallam Moru. The Plaintiffs were then forced to take action. This occurred only about 3 years ago. Up till then the parties had lived amicably in the house.

C.A.V

(Sgd.) MARK WILSON,
C.J. Gold Coast
7/3/51.

In the West
African
Court of
Appeal,
Gold Coast
Session.

No. 49.
Judgment.

16th March, 1951,

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

No. 49.
Judgment,
16th March,
1951.

Cor : Sir Mark WILSON, C.J. (Presiding J.) LEWEY, J.A., and Sir
James COUSSEY, J.

Civil Appeal No. 9 of 1950.

1. MAMMA GARIBA,
2. MAAZU GARIBA, and
3. ADJARA GARIBA, as children and successors of 10
the late Mallam Gariba (deceased) of Sekondi *Plaintiffs-Respondents*
Appellants-Appellants

versus

ALHAJI IBRAHIMAH of Sekondi *Defendant-Appellant*
Respondent-Respondent.

JUDGMENT.

(Delivered by Sir Mark WILSON, C.J., Gold Coast).

The action out of which this Appeal arose was tried in the Ahanta Native Court " B " at Sekondi, and the statement of claim read as follows :—

" The Plaintiffs as children and successors according to 20
" Mohammedan Law of the late Mallam Gariba (deceased) claim
" to eject the Defendant from House No. 23/19 and the Compound
" thereof situate at George Street, Hausa Zongo, Sekondi, the
" property of their late father Mallam Gariba, and for a perpetual
" injunction to restrain the Defendant, his servants, agents and
" workmen from interfering with the Plaintiffs in the use and
" possession of the said House 23/19."

Both parties were dissatisfied with the judgment of the trial Court, the significant passage of which read as follows :—

" From the evidence adduced on record and from the 30
" examinations, it is apparently disclosed that parties are related
" in one way or the other. The only question for this Court to
" consider is whether the property is Mallam Gariba's or Salamatu's
" (both deceased). To this question it has been evident that the
" compensation of £190 paid for the old Mallam Gariba's house put
" this new building up by Salamatu. Going strictly into the
" question of the right of succession, there is little difficulty in
" determining it as Mallam Gariba died before Salamatu, but since
" it is admitted by parties that Plaintiffs are children of the late
" Mallam Gariba and Defendant an adopted child of Salamatu, 40
" and both had been living in the premises to the present date,

“ this Court in its opinion, finds that Plaintiffs’ action to oust
 “ Defendant entirely from occupation should fail and in dis-
 “ dismissing the action without costs, orders that parties should
 “ continue to live in the premises and that the rooms should
 “ be divided among themselves. Action therefore dismissed each
 “ to pay his own costs.”

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— —
 No. 49.
 Judgment,
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continued.

Both parties appealed from this judgment to the Ahanta Native Court
 “ A.” That Court on a consideration of the conflicting evidence given in
 the trial Court came to the conclusion that the Defendant alone had definite
 10 rights in the property in dispute and that the Plaintiffs therefore had no
 right to eject him from the premises. They allowed the appeal in his favour
 with costs, holding that the Plaintiffs’ claim to eject him failed.

The Plaintiffs appealed to the Land Court, Sekondi, but were again
 unsuccessful and have now appealed to this Court.

We are of opinion, on full consideration, that the trial Court, although
 its judgment was in a sense inconclusive, was right in its findings, of fact as
 to the main issue in the case, namely, the respective rights of Mallam Gariba
 and his “ domestic ” wife Salamatu in the old and new houses with which
 this case is concerned, and in its conclusion from the evidence that both
 20 parties to the present litigation had some rights in the property now in
 dispute.

The trial Court found, and we agree with their view, that the original
 house in which the predecessors of the parties resided in the Old Zongo at
 Sekondi was the property of Mallam Gariba and that the later house built
 by Salamatu in the New Zongo, called the “ swish ” house, was built with
 the compensation money paid by the Government for the old house on the
 demolition of the Old Zongo, and that the Plaintiffs (who are the children
 by other wives of Mallam Gariba) therefore have rights in the property by
 succession under Mohammedan Law. But the trial Court also found (as we
 30 infer from the passage of their judgment quoted above) that Salamatu also
 had rights in the present property which consists of the “ swish ” house
 with additions and improvements, and that the Defendant as her adopted
 son succeeded to those rights.

Being in agreement with these findings we should have been disposed
 to restore the judgment of the Native Court “ B,” subject to its being varied
 so as to set out clearly and precisely the respective rights of the Plaintiffs
 and of the Defendant in the property. Unhappily, we are not in a position
 to make such a variation, since, although it is clear that the Plaintiffs and
 the Defendant each have some rights in the property, the exact nature and
 40 extent of those rights must obviously be governed by Mohammedan law
 in its local application. As to this, and any possible variations we have had
 nothing to assist us, either in the evidence on record or in the arguments
 of counsel. Nor is there upon the record sufficiently precise evidence as to
 matters of fact bearing upon the issue regarding the respective rights of the
 parties. In assessing those rights it will be desirable to have information as
 to the source and exact amount of the capital expenditure made by Salamatu
 and the Defendant in building and adding to the original “ swish ” house,
 thus making it the more durable and valuable property it is to-day, and as
 to whether any rents were received by them for letting rooms in the house

In the West African Court of Appeal, Gold Coast Session.

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continued.

and to what extent these were applied to improvements and addition This is an aspect of the matter which might considerably affect the extent of the respective rights of the parties in the present property.

We feel, therefore, that the only course to follow is to allow the appeal and send the case back to the Land Court at Sekondi, so that the Court may take evidence and decide, once and for all, what are the precise rights of the parties under Mohammedan Law as locally applied. We therefore make the following Order :—

The appeal is allowed and the judgment of the Court below is set aside and the case is remitted to the Land Court, Sekondi, with the direction that the Land Court shall proceed on the basis of the above findings of fact of the Native Court " B " as approved by this Court, and shall— 10

- (A) after taking evidence, including evidence as to the capital expenditure on the property as it now stands, define the respective rights to be enjoyed by the Plaintiffs and the Defendant in accordance with Mohammedan law, as locally applied, in House No. 23/19, and the compound thereof, situate at George Street, Hausa Zongo, Sekondi ;
- (B) after inspecting the premises, make an appropriate order partitioning the property between the Plaintiffs and the Defendant according to those rights, and make and give all 20 necessary consequential orders and directions.

This order shall not, of course, preclude the parties from arriving at an agreed settlement of the matters in dispute without further litigation, a course which their counsel, at the hearing of the appeal, agreed to recommend to their clients and which this Court considers ought, in all the circumstances of the case, to be followed.

We have given very careful consideration to the question of costs which arises on the determination of this appeal. We have reversed the judgment of the Land Court, which had affirmed the decision of the Native Court " A " and we wish it to be quite clear that the effect of that 30 is to set aside the orders as to costs of both the Native Court " A " and the Land Court whereby the Plaintiffs were directed to pay the costs in each of those Courts. We direct that each party shall bear his own costs in both those Courts, and that any costs already paid by the Plaintiffs are to be refunded to them. We are of opinion that the Native Court " B," which was the Court of trial, came to a proper decision in making no order as to costs since the result of the trial was, in effect, to establish that both Plaintiffs and Defendant had rights to some extent in the property. It was in pursuit of those rights—or to obtain a more exact definition of them—that both parties appealed to the Native Court " A," and the same might 40 be said to be true, up to a point, when the matter went on appeal to the Land Court. It is because we have had regard to the history of the case throughout those proceedings that we have come to the conclusion that the proper course is for each party to bear his own costs in connection with them.

There remains the question of the costs of the appeal to this Court on which the Plaintiffs have succeeded. It is true that they have not thereby excluded the Defendant from any rights in the property. But they have for the first time obtained a definite recognition of their own rights and in doing so have successfully challenged the findings of two Courts. We think, therefore, that they are entitled to some of the costs of this appeal though not to all, since they cannot be said to have won a complete victory over the Respondent. The cost of record to which they would ordinarily be entitled would be £34: 8: 0, plus out-of-pocket expenses amounting to £11: 8: 0. To this would be added £10: 10: 0 for counsel, making a total of £56: 6: 0.

We think that it is right that the Appellants should have half this sum, and we accordingly award them £28: 3: 0 costs against the Respondent.

The costs in the Land Court in the proceedings on remission will, of course, be in the discretion of the judge of that Court.

(Sgd.) MARK WILSON,
Chief Justice, Gold Coast.

(Sgd.) ARTHUR LEWEY,
Justice of Appeal.

20

(Sgd.) J. HENLEY COUSSEY,
Judge, Gold Coast.

Counsel :

F. AWOONOR-WILLIAMS for Appellants.

R. S. BLAY for Respondent.

No. 50.

No. 50.

Application for conditional leave to appeal to His Majesty in Council and Affidavit in support, 4th April, 1951.

[*Not printed.*]

No. 51.

No. 51.

30 Order allowing conditional leave to appeal to His Majesty in Council, 11th April, 1951.

[*Not printed.*]

No. 52.

Notice of appeal to His Majesty in Council, 25th April, 1951.

No. 52.

[*Not printed.*]

In the West African Court of Appeal, Gold Coast Session.

No. 49.
Judgment,
16th March,
1951--
continued.

In the West
African
Court of
Appeal,
Gold Coast
Session.

No. 53.

Motion with supporting and opposing affidavits for approval of sureties.

[*Not printed.*]

No. 53.

No. 54.

No. 54.

**Court Notes approving sureties, Bond for Costs and Justification of Sureties,
May, 1951.**

[*Not printed.*]

No. 55.

No. 55.

Motion for Final Leave to Appeal and Affidavit in support, 27th June, 1951.

[*Not printed.*]

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No. 56.
Order
allowing
final leave
to appeal
to His
Majesty in
Council,
18th July,
1951.

No. 56.

Order allowing final leave to appeal to His Majesty in Council.

18th July, 1951.

IN THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

Coram : LINGLEY, Ag. J. sitting as a single Judge of Appeal.

MAMMA GARIBA & OTHERS

v.

ALHAJI IBRAHIMAH

MOTION.

Motion for final leave to appeal to Privy Council.

Defendant-Appellant (applicant) in person.

LOKKO for AWOONOR WILLIAMS for Plaintiffs (Respondents).

LOKKO instructed to oppose the application on ground that not cognisable by a single Judge of Appeal. s. 3 s. 6 s. 7.

The single Judge appears to have power to grant final leave if case under s. 3 (a).

LOKKO : Agree this is an appeal as of right.

COURT : Final leave granted.

(Intd.) L. G. L.,
Ag. J.

20

Exhibit " D "—Power of Attorney.

Exhibits.
" D."
Power of
Attorney,
13th
January,
1928.

Tendered in evidence by Defendant in re MAMA GARIBA v. IBRAHIMAH
marked " D."

(Sgd.) S. A. QUARSHIE,
N. C. Regr.,

19/3/48.
6/28.

Gold Coast.
Ten Shillings
Stamp Duties.

TO ALL TO WHOM THESE PRESENTS shall come I SALAM ATTAH 10
of Zongo Sekondi in the Gold Coast Colony seised of and entitled to the
Messuage and tenement and the uncompleted block building erected
thereon situate and being in Hausa-Zongo West of Market Shed Sekondi
in the aforesaid Colony AND WHEREAS I am desirous to mortgage these
premises for a loan of THREE HUNDRED POUNDS (£300) for the purpose of
carrying on business AND WHEREAS I am desirous of appointing JOHN
TETTEH ARYENOR of Messrs. John Tetteh Aryenor & Company Sekondi in
the aforesaid Colony to act as my Attorney for the purpose of effectuating
a mortgage of the said premises and to execute a deed of mortgage with
respect to the same in my behalf NOW KNOW ALL MEN BY THESE PRESENTS 20
that I the said SALAM ATTAH DO HEREBY constitute and appoint the said
JOHN TETTEH ARYENOR my true and lawful Attorney for me and on my
behalf to mortgage the said messuage and tenement with the aforesaid
building erected thereon for a loan of THREE HUNDRED POUNDS (£300)
AND I the said SALAM ATTAH hereby grant unto the said JOHN TETTEH
ARYENOR full and sufficient power and authority in and concerning the
premises for the purpose aforesaid and agree to ratify and confirm all and
whatsoever the said JOHN TETTEH ARYENOR shall lawfully do in and
concerning the premises by virtue of these presents.

IN WITNESS whereof the said SALAM ATTAH has hereunto set her hand 30
mark and seal this 13th day of January 1928.

Signed Sealed and Delivered by the within- }
named Salam Attah the contents of this }
Power of Attorney having been first read over }
interpreted and explained to her in the Hausa } SALAM ATTAH Her
language by G. A. Derby and she seemed } X
perfectly to understand the same before } mark
making her mark thereto in the presence of }

MAMA DANGATA {
Mr. BUARI OSHUN { Their
X
X 40
Marks

In accordance with _____ of the Stamp Ordinance of 1899 I certify that
in the opinion of the Commissioners of Stamp this instrument is chargeable
with a duty of Ten Shillings.

(Sgd.) _____ ?
Commissioner of Stamps.

Commissioner of Stamps Office,
Secondee : 20th Jan. 1928.

Exhibits.

" D."
Power of
Attorney,
13th
January,
1928—
continued.

In the Priny Council.

No. 43 of 1951.

ON APPEAL FROM THE COURT OF APPEAL
FOR WEST AFRICA.

BETWEEN

ALHAJI IBRAHIMAH of Sekondi
Appellant

AND

MAMMA GARIBA, MAAZU GARIBA,
and ADJARA GARIBA, as Children
and Successors of the late MALLAM
GARIBA (deceased) of Sekondi
Respondents.

RECORD OF PROCEEDINGS.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 Copthall Avenue,
London, Wall, E.C.2,
Solicitors for the Appellant.